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Prosecuting Terrorism Supporters: Lessons from a Recent Verdict

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On February 1, after fourteen days of deliberation, a Chicago jury acquitted Muhammad Salah and Abdulhalim Ashqar of charges that they were involved in a racketeering conspiracy by financing and supporting Hamas terrorist activities in the late 1980s and early 1990s. The two were accused of laundering funds, facilitating communications, and providing recruits for Hamas, but were convicted only on minor charges of obstruction of justice and, in Ashqar's case, criminal contempt. Like the 2005 prosecution of Sami al-Arian and several other Palestinian Islamic Jihad supporters in Tampa, Florida (where the jury acquitted the defendants of most charges and deadlocked on others), the case highlights the difficulty of prosecuting individuals for providing support to terrorist groups under the cover of humanitarian or political activity.

A Complex Trial

Although the defense has portrayed the ruling as proof that Salah and Ashqar were engaged in nothing more than constitutionally protected activities, the reality is that the acquittals reflect the case's complexity. Indeed, the jury implicitly acknowledged the defendants' terrorist activity by convicting them of obstruction of justice, finding that Salah gave false answers in a 2004 civil lawsuit related to his efforts on behalf of Hamas, and that Ashqar obstructed a federal grand jury investigation into Hamas by refusing to testify after being granted immunity from prosecution.

The trial was particularly complex because the defendants were being prosecuted for supporting Hamas in the late 1980s and early 1990s, before it was formally designated a terrorist group by the Treasury and State Departments in 1995 and 1997, respectively. Therefore, the primary terrorism-related indictment charged the defendants with engaging in a long-term conspiracy to support a group -- Hamas -- involved in terrorism and political violence. Although it was not necessarily illegal to materially support Hamas prior to its designation as a terrorist organization, it was illegal to knowingly support an entity engaged in acts of kidnapping and murder such as those carried out by Hamas in the early 1990s.

The trial was further complicated by Israeli Shin Bet agents who testified under aliases and an expert on torture who opined on the validity of Salah's 1993 jailhouse confession to Israeli security officials. Defense lawyers highlighted a State Department report that Shin Bet captives have been known to be hooded, handcuffed, and forced to sit in small, uncomfortable chairs while subjected to sleep deprivation. Yet, Salah also signed a written statement at the request of fellow prisoners whom he believed to be members of Hamas, but who were actually working for the Shin Bet. These statements, which are not alleged to have been signed under duress, also documented Salah's activities on behalf of Hamas.

Exploiting Legitimate Cover

By nature, terrorists and their supporters are engaged in covert activity, usually under the guise of some more legitimate, overt activity. That cover gives operatives day jobs, income, and -- if they are caught -- cause for "reasonable doubt." Salah, for example, was employed at the Quranic Literacy Institute (QLI) at the time he was accused of supporting Hamas, mainly by providing terrorist training to recruits and making trips to Israel

and the Palestinian territories in 1990-1991 to provide funds and logistical support to the organization, all at the direction of former Hamas leader Mousa Abu Marzouk, then based in the United States. (Marzouk was also charged in the case and is still listed as a fugitive from justice. He is believed to reside in Syria.) In the previously mentioned 2004 civil suit, Salah, QLI, and several other defendants were found liable for the death of David Boim (killed in a 1996 Hamas attack) and ordered to pay his family \$156 million.

For his part, Ashqar was enrolled as a graduate student at the University of Mississippi when he received thousands of dollars from Marzouk in the early 1990s, which he passed along to Hamas terrorists. Ashqar headed the defunct al-Aqsa Education Fund and maintained a SunTrust Bank account under the name "Abdelhaleem Hasan Ashqar for al-Mojamma al-Eslami -- Gaza Strip, account 1611688." According to Hamas officials, al-Mujamma was the name of a major Hamas precursor organization, one of several groups established in Gaza by Hamas founder Sheikh Ahmed Yassin.

Supporting Hamas

A large body of evidence documents Salah and Ashqar's activities on behalf of Hamas, though they predated the group's official terrorist designation. Marzouk dispatched Salah to the West Bank and Gaza several times between 1989 and 1993 to fund and reorganize the Hamas military wing, first after the 1989 arrest of some 260 Hamas activists and again in the wake of the 1992 deportation of hundreds of Hamas members and other radicals to southern Lebanon. Around 1990, Salah "hand-selected ten people to serve on a military team and had them trained in the United States by Muslim instructors from the United States and Lebanon who had military experience," according to information Salah provided to Israeli officials. Marzouk instructed him "to recruit people in the U.S. As a result, various operatives [in America] learned how to prepare explosive charges. These activists were planned to come to Israel and join the military activities of the Hamas there."

At the time of his January 1993 arrest in Israel, Salah had \$97,000 in cash in his possession and admitted to distributing approximately \$140,000 to activists in Hamas's Qassam Brigades. Salah had already provided funds to a Hamas military cell the previous year. Salah Arouri, the Hamas recruiter and commander to whom Salah provided these funds, admitted receiving "approximately \$96,000 to procure weapons from Abu Ahmed [Salah] in August 1992" and providing "\$45,000 to Musa Muhammed Salah Dudin to be used for weapons to conduct attacks." Dudin purchased several weapons, including one M-16 rifle, two Kalashnikov rifles, two Uzi submachine guns, two or three 8mm and 9mm pistols, one carbine rifle, and ammunition for each. Dudin and others then used these weapons in attacks on Israelis, including the murder of Yuval Tutange on December 12, 1992.

Ashqar's actions on behalf of Hamas were also the subject of an FBI investigation. In a 1994 telephone conversation recorded by the FBI, Sheik Jamil Hamami, a Hamas political leader in the West Bank, told Ashqar and a fellow Hamas member in Yemen: "We . . . will act to make [the peace process] fail too. Operations [of] particular types will take place to shake this [Palestinian] self-rule administration." FBI files include statements of Hamas militants arrested by Israeli authorities detailing Ashqar's role in overseeing Hamas militant activity. For example, Sufian Abu Samara, a Qassam Brigades leader in Gaza, provided verifiable details about specific funds transfers that Ashqar facilitated for Hamas militant activities, noting that Ashqar often specified how the funds should be spent. Until his arrest in 1991, Samara focused on recruiting new Hamas operatives to carry out attacks, especially at Gaza's Islamic University, a Hamas stronghold where Ashqar and many senior Hamas leaders have worked.

Conclusion

Criminal prosecution is only one of several means available to counterterrorism officials seeking to disrupt terrorist networks. In this case, the trial was important more for its presumed deterrence of other U.S.-based financiers and facilitators than for its disruptive effect. Salah's activities on behalf of Hamas dropped sharply after his 1993 conviction in Israel and 1995 Treasury Department designation as a terrorist. According to the FBI, an internal rift within Hamas sidelined Ashqar in 1994, when Marzouk decided to close Ashqar's al-Aqsa

Education Fund and streamline Hamas fundraising in the United States through the Holy Land Foundation in Texas. Although not a counterterrorism setback, the case underlines the difficulty of prosecuting terrorist support activities that predate a group's designation. In such cases, highlighting the defendants' direct support to elements engaged in illegal activity such as kidnapping or murder is critical to countering the defense that such support is protected first amendment activity.

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