

After 2 Mistrials, Prosecutors Try Again to Prove Jihad Plot



John Loomis for The New York Times

A search by the F.B.I. of what it called a terror group's headquarters in Miami, above, did not yield explosives or attack blueprints.

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MIAMI — A group of Miami men accused of planning to blow up the Sears Tower in Chicago as part of an Islamic jihad will return to federal court this week as prosecutors try for a third time to win convictions.

The government's first two efforts ended in mistrials. And legal analysts say the prosecutors face an even greater challenge this time because, nearly three years after the men were arrested, the public mind-set has changed.

"The fear card was what they were playing," said **Bruce Winick**, a [University of Miami](#) law professor. "If it didn't work the first two times with the juries that were selected, I think it's less likely that it will work right now because that fear of terrorism is a little more distant in our minds."

Former jurors in the first two cases have said they could not agree in part because of disputes over what some considered a lack of evidence.

Prosecutors tried to prove that the original seven defendants, a group of laborers from the tough Liberty City neighborhood, provided "material support" to a terrorist organization, and planned to destroy buildings. But they relied mostly on the men's words, citing their loyalty oath to [Al Qaeda](#) and aggressive comments made to two [F.B.I.](#) informants.

More concrete evidence did not emerge. Testimony showed that a search by the Federal Bureau of Investigation of what it called the group's headquarters did not yield guns, explosives or blueprints for an attack. Besides a samurai sword, no weapons were found.

"There was really nothing that indicated that this was a real threat," said Jeffrey Agron, a lawyer who served as the foreman at the first trial in 2007. "Another thing was the credibility of the confidential informants. The first informant, in the minds of most jurors, had no credibility, and with the second informant, a lot of the jurors felt he was trying to lead these guys on."

The first trial ended in December 2007 with an acquittal for one of the seven, Lyglenson Lemorin, and a mistrial for the other six: Narseal Batiste, accused of being the ringleader; Patrick Abraham; Burson Augustine; Rotschild Augustine; Naudimar Herrera; and Stanley G. Phanor.

The second trial followed a similar path. Each side laid out many of the same arguments, and another jury deadlocked. On April 16, Judge Joan A. Lenard of Federal

District Court ordered a mistrial for the second time. About a week later, prosecutors said they would try again.

Assistant United States Attorney Richard Gregorie, at a hearing where the decision was announced, said another trial was necessary to "safeguard the community." Mr. Gregorie cited some of the violent comments allegedly made by Mr. Batiste, including a threat to "kill all the devils."

Mr. Winick said that no new evidence was expected, and that this would probably be the last trial for a case that he, some former jurors and other legal scholars have seen as politically driven. The timing in particular has attracted scrutiny because the arrests came just a few months before the 2006 elections, and they were widely publicized by Attorney General [Alberto R. Gonzales](#), who outlined the most sensational evidence at a news conference.

Mr. Winick said that by that point, "The plot, to the extent there was a plot at that point, was falling apart," suggesting that it would have made more sense to continue observing the group, rather than making arrests.

Winning a conviction at this point, he and others said, will be difficult.

"I don't see it ending any differently than before," said Mr. Agron, the former juror.

Mr. Winick agreed. "It's a case where a government informant got a bunch of guys together to swear a loyalty oath to Al Qaeda," he said. "It's a B movie really, more than a criminal case."