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WAS A DOPE ROPED?

A trial judge thought so. But an appellate court disagreed.

For *Police Issues* by Julius (Jay) Wachtel. Considering its weighty implications, [the Indictment](#) is quite brief. Here's an extract from Count I:

In or around July 2012, defendant Adel Daoud was introduced to [undercover FBI agent]. Between on or about July 17, 2012, and on or about September 14, 2012 [Daoud] selected, researched, and surveilled a target for a terrorist attack to be conducted in Chicago, Illinois, with an explosive device to be supplied by [UC FBI agent.] On or about September 14, 2012 [Daoud] attempted to detonate a purported explosive device outside of a bar in downtown Chicago. After doing so [Daoud] was arrested...and charged with terrorism....

Two additional counts accuse Daoud, while imprisoned, of soliciting the undercover agent's murder and of assaulting another inmate. But we'll leave those for later.

Over a decade ago, one of our first posts, "[If You Can't Find a Terrorist, Make One!](#)" argued against encouraging wannabe Jihadists. Your writer's point of view, which was influenced by his long-ago experiences doing undercover work as an ATF agent, inspired a string of essays, from "[Taking Bombs From Strangers](#)" to its recent, unsettling cousin, "[Taking Missiles From Strangers.](#)"

We're not arguing that Daoud was illegally "entrapped." As we discussed in "[The Men Who Talked Too Much](#)," and as *Mathews v. U.S.* (1988), a leading Supreme Court case on point explains, that defense rarely succeeds:

...a valid entrapment defense has two related elements: government inducement of the crime and a lack of predisposition on the part of the defendant to engage in the criminal conduct...Predisposition, "the principal element in the defense of entrapment" ...focuses upon whether the defendant was an "unwary innocent" or, instead, an "unwary criminal" who readily availed himself of the opportunity to perpetrate the crime.

Like most of the dupes we've written about, Daoud was hardly "unwary." In 2012 the 18-year old Islamist high school student [came to the attention of the FBI](#) through his prolific online presence, which featured Jihadist videos and posts extolling terrorism. An FBI analyst posing as a Saudi Arabian Islamist contacted Daoud, and after some

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supportive online chats set up an in-person meeting between his pretend cousin “Mudafar” – actually, an FBI undercover agent – and the wannabe terrorist.

But when Daoud met Mudafar, the wannabe quickly made it clear that he lacked the ability to carry things through:

I’m not like a — I’m not like a genius. I don’t know how to make a bomb. I don’t know how to do like, basic things, you know? All I have is ideas and fantasies.

No worries, the agent helpfully replied. “Your fantasies, your, your ideas are good.” At Daoud’s sentencing hearing, prosecutors highlighted their grandiosity and repulsiveness. Daoud talked a big game, speaking of “throwing grenades into a crowded theater, shooting up a suburban mall and affixing butcher knives to a truck and driving it into a crowd.”

Yet Daoud lacked self-confidence. So the undercover agent got things going. [Why not use a car bomb, he suggested?](#) Mudafar offered to take care of that. He also set Daoud to the task of identifying potential targets for a terrorist attack. That list wound up including shopping malls, nightclubs, bars, liquor stores, and military bases. Daoud finally settled on a Chicago pub.

On September 14, 2012 Mudafar showed up in a Jeep with the pretend bomb already in place. It was supposedly rigged to detonate remotely. Daoud parked the Jeep in front of the pub and rejoined Mudafar in a nearby alley. Daoud had asked for permission to press the trigger when the time came, and his wish was granted. Really, one cannot imagine that the FBI would have wanted an agent to punch the button.

Daoud triggered the “bomb.” Alas, the only explosion was of Feds. Got ‘cha!

Daoud went directly to jail. But the FBI wasn’t done with him. Whether they “planted” Daoud’s cellmate isn’t clear, but the reported gang member quickly turned into a stoolie. And when Daoud asked if he could have someone on the outside [kill the undercover agent](#) who posed as “Mudafar,” everything was caught on tape. Daoud’s helpful new bud even set up a jailhouse phone call between Daoud and the confederate (to be sure, another FBI agent) who would supposedly direct the murderous mission. Natch, that, too was recorded.

One year after pushing the button, Daoud now faced another charge: murder-for-hire. His mental state reportedly plunged. A year later, while still awaiting trial, he stabbed a fellow prisoner for defaming the Prophet Muhammad. Described as “zoned out” and complaining of hallucinations, Daoud was placed on meds for schizophrenia. It

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would be another two-and-one half years before he was adjudged competent to face the legal music.

Daoud's trial for punching the button, soliciting the "hit," and the stabbing, was scheduled for November 2018, nearly six years after his arrest. That's when he tendered a so-called "[Alford](#)" plea, which allows Federal defendants to claim innocence while conceding that the Government can prove its case. Daoud in effect pled guilty to everything.

With sentencing looming, Daoud's legal team submitted a [123-page memorandum](#) that, among other things, accused the FBI of adroitly stage-managing their client from the very start:

Because Daoud did not present the UCE [undercover employee] with a plan, the UCE instructed him on numerous occasions on July 17, 2012 to "write down" his ideas. One may legitimately ask why Daoud had to "write down" ideas that he could not even articulate in the first place during the meeting with the UCE or any of the online conversations during the prior two months with the OCEs [online covert employees]. Indeed, it was the agent who continuously pushed Daoud to even come up with ideas for some type of attack or activity....(p. 58)

Recorded conversations suggest that Mudafar catered to Daoud's religious concerns about Jihad by relaying (made-up) supportive advice from a (made-up) sheikh. Only moments before Daoud punched the button, the agent reassured him that killing women was in fact allowed:

DAOUD: Freakin' whores. Every time I get...I think I'm gonna get sick every time I see a freakin' prostitute. They should die, man. I swear to God, man. Oh yeah, but was asking, like um, are women allowed to be shot here like in Palestine?

UCE (MUDAFAR): Are women allowed to be shot where?

DAOUD: Like you know, like women directly ought to be killed here?

UCE (MUDAFAR): In America?

DAOUD: Yeah.

UCE (MUDAFAR): Yes.

DAOUD: They are?

Given the charges, sentencing guidelines allowed everything up to a life term. Federal probation officers recommended a far more modest fifteen years. But Daoud's lawyers considered even that excessive. Instead, they suggested that Daoud's mental treatment continue and that he be considered for release to enroll in college in three years.

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That's definitely not what prosecutors were looking for. [Their memo](#) (it was "only" 55 pages long) called for forty years imprisonment to be followed by "a lifetime of supervised release." In their view, Daoud had been the instigator from the start. His own words supposedly demonstrated that all he sought from others were the resources and know-how that he might have personally lacked:

[T]he only thing I'm not really good at is the actual uh, uh doing of the operation. But all these ideas... I thought you could help with that. The only thing, the important things, okay, so the first one of the important things is the target...The other thing is uh, getting away with it...And the third thing is make it known it's a terrorist attack. (pg. 14)

Daoud's vicious ramblings, prosecutors insisted, demonstrated an unwavering commitment to Jihad. He didn't have to be talked into anything:

...if it's only like five, ten people I'm not gonna feel that good...I wanted something that like's simple, massive, I want something that's gonna make it in the news like tonight. (pg. 15)

As for the dastardly plot to kill the undercover FBI agent, prosecutors disputed the defense contention that Daoud's cellmate-cum-stoolie actually called the shots. Prosecutors also severely criticized the shrink who ruled Daoud mentally incompetent for not doing "independent research" or using any of the evidence that agents gathered during their investigation.

Two competing narratives – one from the defense, the other from prosecutors – landed on the desk of Chicago U.S. District Court judge Sharon Johnson Coleman. On May 6, 2019, more than six and one-half years after Daoud punched the button, [she sentenced him](#) to sixteen years in prison, to be followed by 45 years of supervision. Considering time already served, Daoud would be released in about a decade. In her decision, Judge Coleman criticized "hyperbole" from both sides. But she directed particularly fierce blows at the Government for having led on a mentally ill youth, an "awkward young man with few friends" who "continued to do what teenage boys do...talk big."

Her decision, which was essentially in line with the recommendation of Federal probation officers, was welcomed as "just and courageous" by the defense. But it dismayed prosecutors, who promptly appealed. On November 17, 2020, they got their wish. Finding it "one of those rare cases where the district court stepped outside of what was permissible under the circumstances," a three-judge panel of the Seventh Circuit [voided Judge Coleman's decision](#) and remanded the case for resentencing. Their

opinion, which ran twenty-six pages, criticized the sentencing judge for only paying “lip service” to the seriousness of what Daoud did. Judge Coleman was berated for underplaying Daoud’s role, exaggerating his frailties, and ignoring his very real risk of recidivism:

First, the court downplayed the extreme seriousness of Daoud’s offenses in ways that conflict with the undisputed facts. Second, the court failed to account for the need to protect the public from Daoud’s demonstrably high risk of reoffending. Third, the court improperly distinguished the sentences of similar offenders by relying on Daoud’s long period of pretrial confinement. Finally, the court premised its well-below-Guidelines sentence on mitigating factors that could not bear the heavy weight that it assigned to them, given the facts in this case. (pp. 15-16)

So the matter’s back in District Court, and the ultimate outcome doesn’t bode well for Mr. Daoud. Leaving the law for others to argue, we’re nonetheless convinced that, as Judge Coleman argued, the Feds eagerly led Mr. Daoud down the primrose path of self-destruction. During his long-ago experiences as an ATF agent, your writer and his colleagues looked askance at encouraging “schmucks” such as Mr. Daoud. His “roping” seemed inordinate, and considering his obviously needy psychological state, unconscionably so.

Yet when unknowns post hate-filled messages, what options exist? “[Preventing Mass Murder](#)” featured accounts of two killers and one wannabe whose online rants prophesized what ultimately took place. “[A Stitch in Time](#)” discussed the benefits of taking prompt action when substantial threats arise. During the past decade, approaches ranging from visits by mental health teams to outright commitment have become common in urban policing (see, for example, “[Red Flag at Half Mast I](#)”). However, mental-health interventions remain rare in Federal practice. Unless the Feds change their ways, or the courts start questioning the deplorable outcomes, “rope-a-dope” cases against wannabe Jihadists are likely to continue.

Here’s something else to ponder. Could it be that Daoud’s sentencing is being driven by something other than the “law”? [Sharon Johnson Coleman](#), the sentencing judge, was appointed in 2010 by President Barack Obama, he of the “Blue” persuasion. On the other hand, the appellate jurists: [Kenneth Francis Ripple](#), [Michael Brian Brennan](#), and [Amy Joan St. Eve](#), were selected by Presidents of the “Red” persuasion (Reagan, Trump and Bush, respectively.) Might their clashing views about Daoud’s culpability reflect the ideological split that besets American jurisprudence and seemingly everything else?

We’re just sayin’...