

Oregon lawyer wins lawsuit over false arrest for Madrid bombings

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Brandon Mayfield, the Portland area lawyer wrongfully jailed in connection with the March 2004 commuter train bombings in Madrid, Spain, settled part of his lawsuit against the federal government late last month. The Department of Justice agreed to pay Mayfield and his family \$2 million and to issue a formal apology for his arrest and detainment, as well as for the surveillance of his family.

An unusual aspect of the settlement is an agreement by which Mayfield will be allowed to continue with his lawsuit challenging the constitutionality of several provisions of the Patriot Act.

Mayfield was arrested as a material witness under the Foreign Intelligence Surveillance Act (FISA) on the basis of a partial fingerprint, found on a bag of detonators after the Madrid bombings, that the FBI claimed matched his.

His arrest was preceded by extended and intensive observations, which included the execution of a secret search warrant allowing the surreptitious entry into and search of Mayfield's house and office, as well as the placement of electronic bugging devices in both locations. The search warrant was obtained under the "sneak and peek" provision of the Patriot Act, which Mayfield's lawsuit challenges. Additionally, secret FISA warrants were used by the FBI to intercept phone calls and e-mails.

The government has maintained that its only error in the handling of the case was the "misidentification of his fingerprint as matching one recovered in connection with the 2004 Madrid train bombings." It has denied allegation that it targeted Mayfield because of his religion. He is a convert to Islam.

In a statement released the same day as the settlement, Mayfield declared, "The power of the government to secretly search your home or business without probable cause, under the guise of an alleged terrorist investigation, must be stopped." He said, "I hope the public will remember that the U.S. Government also targeted me and

my family because of our Muslim religion." The part of the lawsuit that will proceed alleges that the Patriot Act is unconstitutional and violates the Fourth Amendment by allowing searches without showing probable cause that a crime has been committed.

There are strong indications that Mayfield was singled out for arrest because of his religion and because of his involvement in the defense of a local man facing terrorism charges.

Mayfield was arrested on May 6, 2004 with a warrant obtained through an FBI affidavit, which was subsequently sealed by the court. The affidavit devoted three paragraphs to the erroneous fingerprint and eight paragraphs outlining Mayfield's Islamic associations.

The FBI document highlighted his marriage to an Egyptian-born woman; his defense of a local Muslim, Jeffrey Leon Battle, who subsequently was accused of being a member of a "terrorist cell;" his alleged contact with a representative of an Islamic foundation that the government claims is linked to terrorism; and his advertising on a Web site referred to as the "Muslim yellow pages." The affidavit also revealed that "surveillance agents have observed Mayfield drive to the Bilal Mosque . . . on several different occasions."

In other words, the only physical proof obtained by the FBI was a fingerprint, which was itself problematic—the Spanish police disagreed with the match. Everything else in the affidavit was conjecture, religious profiling and guilt by association.

Battle, Patrice Lumumba Ford and several others, who eventually became known as the Portland Seven, were charged in October of 2002 in a 15-count indictment. Among the charges in the indictment were conspiracy to levy war against the United States, conspiracy to provide material support and resources to al Qaeda and conspiracy to contribute services to al Qaeda and the Taliban. All but one charge against Battle and Ford, conspiracy to levy

war against the United States, was dropped in a plea bargain.

The bombing of four trains in Madrid in March 2004 was an atrocity, which killed 191 people and injured more than 2,000. The trains had left from or traveled through the *Acala de Henares* train station. The Spanish National Police (SNP) located and searched a van parked in the vicinity of the station and discovered a bag containing detonators similar to the ones used in the bombing. Several fingerprints were lifted from this bag and sent to the national FBI crime lab in Quantico, Virginia.

Using its Integrated Automated Fingerprint Identification System, with a data base of 45 million fingerprints, the FBI came up with 20 possible matches. Mayfield's print, although it was the fourth-ranked print on the list, was determined to be a "100 percent" match. (Mayfield's fingerprint was in the database due to his military service.)

While the FBI was claiming a 100 percent positive identification of Mayfield's fingerprint, the SNP was actually refusing to endorse the FBI's match, stating that it was "conclusively negative." According to a June 7, 2004, *Newsweek* article a Spanish police official maintained, "At no time did we give our approval."

A June 5, 2004, *New York Times* article stated, "Spanish officials said their American counterparts relentlessly pressed their case anyway, explaining away stark proof of a flawed link—and seemingly refusing to accept the notion that they were mistaken." The article quoted Carlos Corrales, an official of the SNP science division, "It seemed as though they had something against him and they wanted to involve us."

On May 20, the Spanish interior minister issued a news release saying Spanish forensic specialists had determined that the fingerprints from the bag "correspond to the third finger and thumb" of the right hand of an Algerian national Ouhmane Daoud and issued an international warrant for his arrest. Shortly thereafter, the US government released Mayfield, declaring that the FBI had blundered in its fingerprint match and proceeded to dismiss the material witness proceeding against him.

Two investigations followed, both internal, which, predictably, resulted in a whitewash. The Department of Justice's Inspector General's investigation determined that, although "examiners committed errors in the examination procedure, and that the misidentification could have been prevented through a more rigorous application of several principles of latent fingerprint identification," the Inspector General did not find any

intentional misconduct by any FBI employee. Additionally, the report "did not find any evidence that the FBI misused any of the provisions of the Patriot Act," and concluded that "Mayfield's Muslim religion was not ... a factor in the initiation of the investigation but likely contributed in the examiners' failure to reconsider the fingerprint identification after legitimate questions had been raised."

An investigation by the Justice Department's Office of Professional Responsibility in December of 2005 found that "the federal prosecutors who handled the investigation of Mr. Mayfield acted appropriately, professionally and ethically in this matter."

Steven Wax, Mayfield's public defender stated, after his client's release, "The climate of fear of terror makes this a cautionary tale about the way in which that fear can ensnare an innocent person in the type of abuse to which Mr. Mayfield was subject."

In a report detailing the abuse of the material witness statute by the US government since the September 11 attacks, Human Rights Watch (HRW) and the American Civil Liberties Union document how the Justice Department's arrests of at least 70 men—all except one a Muslim—have trampled on constitutional rights. The federal government's refusal to levy criminal charges allowed it to deny those arrested fundamental due process. Jamie Fellner, an official with HRW, stated that "Criminal suspects are treated better than these material witnesses were."

Operating in a manner reminiscent of a court in a police state, proceedings in these cases were conducted in secret, with all documents sealed; many of the prisoners were never given an explanation for their arrest; immediate access to a lawyer was denied; and any evidence held by the government was kept from them. According to Anjana Malhotra, one of the report's authors, "Muslim men were arrested for little more than attending the same mosque as a September 11 hijacker or owning a box cutter."

Mayfield's saga is an object lesson in the effort of the Bush administration, with the willful assistance of the media, to smear Muslims in the US as terrorists to justify, as well as forestall any opposition to, its policies of war and repression.



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