

Holy Land Foundation... The Retrial

By: Dennis M. Lormel, Northeast Managing Director

Date: 11/16/2008

Posted on: Counterterrorism blog

(<http://counterterrorismblog.org/>)

The second Holy Land Foundation (HLF) trial was completed last week and went to the jury for deliberation. The first trial ended in October 2007, when the jury could not reach a verdict and the judge had to declare a mistrial. This case is extremely complex and challenging in many respects. The U.S. Department of Justice (DOJ) should be commended for not backing away from the complexities, risks and challenges posed and for being committed to rightfully retry this matter.

The reality is, regardless of the jury verdict, HLF did in fact fund HAMAS through HAMAS fronted Zakat (Charity) Committees in the Palestinian territory. The first and second trials alike came down to a simple premise. Did HLF and the five HLF officials on trial wittingly provide funds to charitable fronts with the intent that the funds directly benefit HAMAS? The Federal Bureau of Investigation (FBI), who conducted the lengthy multi-year investigation and DOJ, who prosecuted the case, firmly believe the subjects intended to fund HAMAS. Defense lawyers argued that the subjects intended to provide necessary humanitarian aid to the Palestinian people and did not wittingly provide funds to HAMAS through the Zakat Committees. Although the premise or question is simple, proving intent is extremely difficult and challenging. DOJ has endured considerable criticism for investigating and bringing the HLF case to the original trial and retrial. Criticism ranged from accusations of Islamophobia, made by Islamic groups contending discrimination based on fear, to criticism that the Israelis influenced DOJ to pursue this case. Neither allegation is true. Other critics contend DOJ should never have taken this case to trial because they could not win and because the humanitarian aid provided was necessary to support under privileged Palestinians.

Blame and criticism should not be pointed at DOJ. Win or lose the jury verdict, bringing this case forward was the right thing to do. Blame and criticism should be directed at HAMAS. HAMAS is a terrorist organization, who clearly exploited the vulnerability of charitable giving for their organizational benefit as opposed to the benefit of the Palestinian people. If HAMAS had truly cared

about the Palestinian people they would have ensured funds from HLF and like charities would have gone to charities that were not affiliated with them. Instead, HAMAS ensured they were the beneficiaries furthering their logistical and psychological needs.

Proving intent is very difficult. That difficulty was compounded in both HLF trials due to the complexity of the documentary and circumstantial evidence required to prove the case. A rule of thumb for investigators and prosecutors when pursuing an extremely complex case is to simplify it as much as possible for the jury to better understand the facts. The first trial was almost twice as lengthy as the current trial was. DOJ had a hard time trying to simplify that case. That afforded defense lawyers the opportunity to raise uncertainties and confusion in the minds of the jurors, thereby negating the government's ability to prove their case beyond a reasonable doubt.

In assessing the hung jury in the first trial, it was determined that one juror intimidated and influenced other jurors. In addition, it was evident that jurors were confused and had trouble grasping the facts. In assessing the government's case, they did present the evidence that could have resulted in a prosecution. Another jury presented with the same evidence in the same manner could well have returned a guilty verdict. That was not the case however. As noted above, defense lawyers did a good job of establishing reasonable doubt in the minds of the jury which resulted in the mistrial.

As previously mentioned, the key for prosecutors in complex cases is to simplify the case for trial presentation. In preparing for the retrial, DOJ dissected their performance in the first trial as well as reviewed and assessed post trial juror interviews. As a result, they streamlined their case and kept their primary themes focused. This was evident by the fact the timeframe for presenting their argument was nearly cut in half. Prosecutors may not have been able to simplify the case as much as was desired, but by streamlining it, they were more focused and their case more understandable. They were able to repeatedly present their themes. This made it more difficult for defense lawyers to succeed in raising reasonable doubt about intent in the minds of the jurors. The question of intent now rests with the jury.

The best case scenario for the government will be guilty verdicts. The worst case scenario would be acquittals. Even if the trial ends with acquittals, DOJ deserves credit for bringing this matter to trial. First and foremost, when the government sanctioned HLF in December 2001, by freezing their assets, the government disrupted and prevented the flow of funds to HAMAS. By taking HLF to trial in 2007 and retrial in 2008, DOJ succeeded in bringing visible attention to the problem of funding through charitable exploitation by terrorist organizations. Specifically, during the first trial a number of my colleagues on the Counterterrorism Blog, including Steve Emerson and Doug Farrah, exposed HLF's relationship with HAMAS and the Muslim Brotherhood. They further

exposed the dangers posed by the Muslim Brotherhood. No verdict can change those facts. Investigative reporters to include Steve Emerson and his Investigative Project and Jason Trahan of the Dallas Morning News provided continual coverage of both trials. The specific media attention given to this case achieved a strong deterrent by demonstrating the government's commitment to pursue charities that support terrorists. No verdict can diminish the deterrent already achieved.

I firmly believe the prosecutors presented a stronger case in the retrial and established beyond a reasonable doubt the criminal intent of the subjects. They clearly demonstrated that HAMAS was the beneficiary of funds from HLF. I applaud the FBI and DOJ for their perseverance and willingness to take on the risk and challenge of bringing this matter to trial.