

The New York Times

[EXTRACT]

Prosecutors Are Expected to Seek Dismissal of Charges Against Bin Laden

It should happen with little or no fanfare, but it will still represent a moment that some thought might never occur: federal prosecutors in Manhattan are expected to file court papers this week that will formally ask a judge to dismiss all charges against [Osama bin Laden](#).

The move should formally close a case against the leader of [Al Qaeda](#) that began in Federal District Court in Manhattan with an indictment on June 10, 1998, and expanded over the years with later versions, adding some two dozen defendants.

A recent version of the indictment was most recently used against [Ahmed Khalfan Ghailani](#), the first detainee at Guantánamo Bay, Cuba, to be tried in the civilian system. Among those still charged in the indictment is [Ayman al-Zawahri](#), Al Qaeda's second in command.

The first indictment against Bin Laden ran eight pages and charged him with conspiracy to attack United States defense installations.

But if the original indictment seems almost forgotten in the post-9/11 era and the debates over civilian versus military justice, it is still offered by early investigators as proof that the authorities had grasped the threat Bin Laden posed and could have gone after him much earlier.

"It shows that in spite of whatever everyone says, there were people in the government who knew about Bin Laden prior to 9/11 and were prepared to do something about it," said Daniel J. Coleman, who in 1996 was the first [F.B.I.](#) agent detailed to the [Central Intelligence Agency](#) in the investigation of Bin Laden.

"There was a lack of political will to do anything," said Mr. Coleman, who is retired.

The indictment detailed Al Qaeda's history and Bin Laden's role as its leader. It charged that his operatives had trained and assisted Somali tribesmen in an ambush in 1993 that killed 18 American soldiers in Mogadishu.

Later indictments charged a broad conspiracy that also included the bombings on Aug. 7, 1998, of two American Embassies in East Africa that killed 224 people and the deadly attack on the destroyer Cole in 2000.

The original indictment, kept secret at first, came at a time when the C.I.A. was considering a plan to capture Bin Laden and turn him over for trial, either in the United States or in an Arab country, according to the 9/11 Commission Report. Those plans were not carried out, but the law enforcement investigation continued.

"There was no question from our perspective that at the time of the June 1998 indictment, the objective was to bring Bin Laden back for trial," said [Mary Jo White](#), the United States attorney in Manhattan at the time.

Ms. White said there was always a risk he would have been killed in an attempted capture. But if Bin Laden had been captured, she added, "our expectation was that he would be tried."

Another former agent, Jack Cloonan, likened the case to that of Gen. [Manuel Antonio Noriega](#), the former Panamanian leader who was flown to Miami and tried after he was ousted in the invasion of Panama in 1989.

Mr. Cloonan said that there were even discussions about how Bin Laden would be read his rights, adding that agents had envisioned Bin Laden standing in court in shackles and "an orange jumpsuit."

The string of indictments resulted in a series of trial convictions and guilty pleas. The evidence in the early investigations offered a primer on Bin Laden and his organization. "It was essential to understanding Al Qaeda," said Ali H. Soufan, a retired F.B.I. agent who was the case agent on the Cole investigation.

Mr. Coleman said he had learned of Bin Laden's death after his son, a former Army Ranger who had been part of the initial American operations in Afghanistan after 9/11, called Sunday night and said he had heard the president would be speaking.

"It seemed really fitting," Mr. Coleman said, "that they dumped him in the same ocean" where the Cole was attacked. "The deaths of those young men and women were never avenged," he added. "There was no military response for an act of war."

Mr. Coleman and other F.B.I. agents and prosecutors involved in the early Bin Laden investigation hailed the operation that led to his death.

"We started the fight; the military ended it," Michael Anticev, an F.B.I. agent, said. "Everybody's proud."

Mr. Coleman said he hoped other defendants in the Bin Laden case would be brought to Manhattan for trial. But, he added, Bin Laden's actions dictated that he no longer deserved even treatment like a criminal. "It had gone too far," he said.

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Source: The New York Times website (4 May 2011)
<http://www.nytimes.com/2011/05/04/nyregion/with-bin-ladens-death-seeking-the-dismissal-of-all-charges.html>