

N.Y. Using Terrorism Law To Prosecute Street Gang

Critics Say Post-9/11 Legislation Is Being Applied Too Broadly

By MICHELLE GARCIA
Special to The Washington Post

The newest face of an alleged terrorist wears a goatee, stands about five feet tall, dresses in baggy clothes and resides in the Bronx. Gang member Edgar Morales, aka "Puebla," has the distinction of becoming one of the first people ever charged under New York's state terrorism laws.

The Bronx district attorney has accused members of the St. James Boys street gang of shootings "committed with the intent to intimidate or coerce a civilian population." The other charges include murder, attempted murder, various weapons charges and assault. But prosecutors have not alleged that the gang is connected to any terrorist network.

"The terror perpetrated by gangs, which all too often occurs on the streets of New York, also fits squarely within the scope of this statute," said District Attorney Robert T. Johnson.

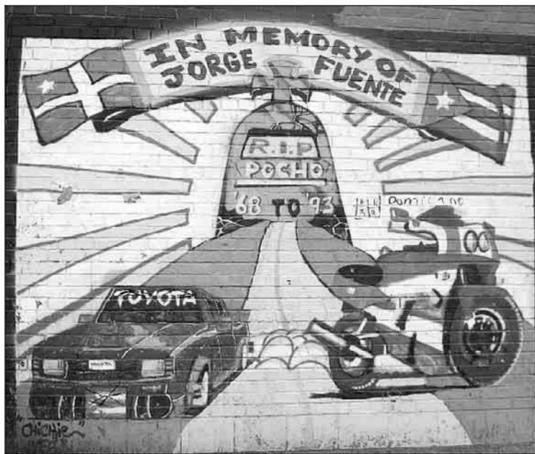
When members were arrested, Police Commissioner Raymond W. Kelly said the gang "terrorized" the community surrounding St. James Park, the neighborhood park from which the gang takes its name.

But civil libertarians and some terrorism experts say the case—now underway in New York State Supreme Court—is a misuse of state laws and should raise concern about what they consider is an ever-expanding definition of the term "terrorism."

Jameel Jaffer, a staff attorney with the American Civil Liberties Union, said that prosecuting the St. James Boys was not what most Americans envisioned when state legislators passed anti-terrorism bills.

"They didn't think of gang members in inner cities, drug crimes, non-security" crimes, Jaffer said. "It's not what people had in mind."

After the Sept. 11, 2001, terrorist attacks, 36 states added terrorism-related laws to their criminal codes, using them to enhance sentences that, in some cases, will now include the death penalty, according to the



National Conference of State Legislatures.

Most of the new laws focus on heinous crimes such as murder and kidnapping.

"Probably most of the crimes could have been prosecuted before," said Blake Harrison, a lawyer with the legislatures group. "Enacting these laws makes it a little easier to effect the same goal."

But the new laws also provide prosecutors with new opportunities. Once on the books, the laws can be applied to various crimes if prosecutors believe they can make them stick. It has happened before.

Anti-racketeering laws, for example, were created to combat mobsters but are now frequently used in drug and corporate-corruption cases.

"Language is plastic," said Gregory Mark, a former prosecutor who is now a legal historian at Rutgers University. "As new situations arise and the imagination of prosecutors is stimulated, the statutes which were clearly intended for one purpose are expanded."

In Virginia, state prosecutors brought terrorism charges against the now-convicted Washington area snipers Lee Boyd Malvo and John Allen Muhammad, in part because investigators could not pinpoint which man pulled the trigger. Virginia's Supreme Court is expected

to rule soon on the constitutionality of the state's terrorism laws.

The case against the St. James Boys began in 2002 with the shooting of 10-year-old Malenny Mendez. Shortly after midnight, Malenny and family friends left a christening party. A street fight broke out between the St. James Boys and another group of men. Shots rang out; the men ran. Malenny fell to the ground, a bullet lodged in her brain. She died several hours later.

At the time, police said the alleged shooter had fled to Mexico. Prosecutors accused Morales of hiding the gun. But he was convicted only of criminal trespass and was sentenced to time served and probation.

Bronx prosecutors have re-launched the murder case as part of a broader 70-count indictment against the gang that was unsealed last May. It named 19 defendants, charging all of them with terrorism for gang-related activity.

Earlier this month, Morales's attorney, Lewis Alperin, argued in a Bronx courtroom that the definition of terrorism was too expansive. "You put the key in the door and you know what happens: Any protester who takes a position [against the government] will be prosecuted under the terrorism law."

The judge is scheduled to listen to further arguments March 9 be-



PHOTOS BY REBECCA LETZ—NEWSDAY

Antonia Mendez holds a picture of her daughter Malenny, who was killed in the crossfire of a gang shootout.



On a street near St. James Park in the Bronx, graffiti memorials honor people killed in the neighborhood. After prosecutors failed to get a murder conviction in the 2002 slaying of Malenny Mendez, they invoked New York's 2001 anti-terrorism law to reopen the case against the St. James Boys, a Hispanic gang that, they say, killed Mendez and terrorized residents of the neighborhood.

fore deciding whether to permit the terrorism charges in the case.

New York's anti-terrorism law was born as a response to the 2001 attacks and a public clamor for action. Within a week of the attacks, the state legislature and Gov. George E. Pataki (R) approved terrorism legislation that they hailed as the toughest in the country. Assembly Speaker Sheldon Silver (D-Manhattan) characterized the bill as "overkill," even as he voted for it.

Silver predicted at the time that the law would be a purely symbolic gesture. "Will there be a prosecution under the state terrorist act?"

he asked. "I don't think so."

But terrorism expert Jessica Stern said New York and other states adopted terrorism laws that contained vague and open-ended language that allows the term to easily slip from its original meaning.

"Now we are seeing the possibility that it can be used by the government to go after people we wouldn't think of as terrorists," said Stern, a lecturer at Harvard University. "It's so often an epithet for the person we want to incarcerate [or] extradite."

Outside the Bronx courtroom, Morales's parents said prosecutors overreached with the terrorism

charges in a desperate attempt to win a conviction in the little girl's shooting.

The couple says that if prosecutors simply brought criminal charges against Edgar they would accept the fate, but the terrorism label horrifies them. They worry about the stigma the family might suffer if Edgar is convicted for terrorism, and the effect on their jobs and future.

"Sometimes I wonder when people see us walking down the street," said Morales's stepfather, Innocencio Hernandez. "Do they say, 'There goes the parents of Edgar' or 'the parents of a terrorist'?"

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