

# Usama bin Laden Is Legally Innocent With Dismissal Of 1993 and 1998 Indictments

By Hans Sherrer

U.S. District Court Judge Lewis A. Kaplan [ordered dismissal](#) of two federal grand jury indictments of Usama bin Laden on June 17, 2011. The dismissals were in response to a *nolle prosequi* motion filed by the U.S. Attorney's Office in Manhattan based on evidence that bin Laden was killed on May 1, 2011. Usama bin Laden was commonly referred to in the press as Osama bin Laden.

The indictments were the only pending criminal charges against bin Laden.

In June 1998 bin Laden was secretly indicted by a federal grand jury in New York City on one count of "Conspiracy to Attack Defense Utilities of the United States." The only act of violence alleged [in the indictment](#) (98 CR 539) was:

1. On October 3 and 4, 1993, members of Al Qaeda participated with Somali tribesmen in an attack on United States military personnel serving in Somalia as part of Operation Restore Hope, which attack killed a total of 18 United States soldiers and wounded 73 others in Mogadishu;

After truck bombings in August 1998 outside the U.S. embassies in Dar es Salaam, Tanzania and Nairobi, Kenya killed 224 people, including 12 U.S. citizens, an indictment was issued against bin Laden in November 1998. The indictment (98 CR 1023) alleged among other things that bin Laden conspired to kill Americans for his support of the embassy bombings. That indictment was supplemented by two superseding indictments, the first in June 1999 and the second in May 2000. Those superseding indictments did not add any new acts of violence that bin Laden allegedly supported.

Bin Laden was added on June 7, 1999 to the FBI's Most Ten Wanted list. [His FBI poster](#) stated he was wanted for "Murder Of U.S. Nationals Outside The United States, Conspiracy To Murder U.S. Nationals Outside The United States, Attack On A Federal Facility Resulting In Death."

Hours after the events of September 11, 2001 elected officials claimed and the press widely reported that bin Laden was involved. Bin

Laden was not bashful about taking credit for the things he was involved in, but he publicly denied any involvement in 9/11. Consistent with bin Laden's denials the United States did not attempt to pursue any criminal terrorism charges against bin Laden related to 9/11 or for any alleged harm to any American anywhere in the world after the August 1998 east African embassy bombings, for which he had been indicted. That fact did not interfere with public officials and the press painting bin Laden for years after 9/11 as a satanic figure with almost supernatural like powers to direct from a secret location his minions around the world. Bin Laden was portrayed by politicians and the media as a real-life Emanuel Goldstein -- who was the boogeyman in George Orwell's 1984 that the government relied on to justify its repressive domestic policies.

There was speculation in the years following September 11, 2001 that bin Laden was dead, but on May 1, 2011 it was reported that U.S. Navy seals had stormed bin Laden's home in Abbottabad, Pakistan without the foreknowledge or permission of the Pakistani government and killed him. It has been reported that bin Laden was unarmed and in his bedroom wearing nightclothes at the time he was repeatedly shot. There was no reported attempt to apprehend bin Laden alive. It has also been reported that afterwards bin Laden was buried at sea, and to date no pictures of him related to the May 2011 raid or his burial have been publicly released.<sup>1</sup>

Bin Laden died with no criminal history because he had never been convicted of any crime in the United States or any other country. Bin Laden, a former U.S. government asset and CIA operative, had never even been arrested for an alleged crime. When bin Laden was removed from the FBI's Most Ten Wanted list in May 2011 [his FBI poster](#) did not state he was wanted for any alleged criminal act or terrorism committed in the United States, or anywhere in the world after the 1998 embassy bombings.

The circumstances of Bin Laden's death that have been reported are disturbing to Americans because he was under indictment by the U.S. government for alleged criminal acts against Americans in foreign countries in 1993 and 1998. The United States Department of State offered "a reward of up to \$25 million for information leading directly to the apprehension or conviction of Usama Bin Laden." Bin Laden was officially classified as a fugitive from justice, and his extradition could have been sought from a country where he was captured.

It is known that when convenient the U.S. government has bypassed the extradition process and kidnapped a person for return to the U.S. for trial. A well-known case is that of Panama's President Manuel Noriega, who the U.S. forcibly transported to the United States in 1989. Noriega was convicted by a jury in April 1992 of federal drug trafficking, racketeering, and money laundering charges. His 40 year sentence that was reduced to 30 years on appeal, was completed in 2007. Noriega was held in custody for almost 3 years fighting extradition to France. In April 2010 Noriega was extradited to France, where he was convicted of money laundering in July 2010 and sentenced to 7 years in prison.

As Noriega's case illustrates, every person accused of a federal crime -- regardless of who they are, where they are, or what they allegedly did or didn't do -- has specific due process rights, including the right to a jury trial to ascertain the truthfulness of the charges against him or her. The invasion of bin Laden's home in the middle of the night without a warrant and the summary shooting of him when he was unarmed has no precedent in American history as an action that conforms with the accepted norm of due process. Under the common-law dating back to the Magna Carta in 1215 a person's home is their castle and a person has the right to forcibly resist an unlawful invasion of his or her home by authorities.<sup>2</sup> The federal government made no effort to lawfully search bin Laden's home under U.S. or Pakistani law, and there has been no evidence publicly disclosed that the military personnel involved even had an arrest warrant for bin Laden -- or that he forcibly resisted arrest. When you strip away the hysterical rhetoric about bin Laden the pre-planned storming of his home without any judicial process is no more legally justifiable than the police using lethal force against an unarmed person whose home is stormed without warning and without a warrant in Evansville, Indiana or Bakersfield, California.<sup>3</sup> That is particularly the case in a situation such as bin Laden's when there was not even an allegation that he had ever personally killed anyone.<sup>4</sup> In contrast, the former Boston mobster and FBI informant Whitey Bulger was on the FBI's Most Wanted List for allegedly personally committing more than a dozen murders, and in spite of being a notoriously violent person he [was peacefully captured](#) in Santa Monica, California six weeks after bin Laden's home was stormed.

The test of whether due process is an immutable principle or merely something to be

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given lip service when it is convenient is if it is accorded to a person under the most extreme circumstances. Everyone wants due process to be accorded a respected person accused of a crime, but those same people should just as enthusiastically advocate that an accused serial rapist or murderer must be accorded the same due process rights. If only persons considered respectable are automatically accorded due process, then it is not a right, but a privilege bestowed by the government that can be denied at the discretion of those people in a position of power to do so.

Lynching is decried because it relies on passion and the impression a person is guilty rather than a consideration of the facts. Members of a lynch mob fervently feel a person is guilty -- and to them that feeling is enough. It is precisely that attitude of blind vigilantism that due process is intended to counter by providing for an analysis of the facts supporting whatever a person is accused of committing. The lynching of bin Laden by shooting instead of a rope constitutes a triumph of the mob led by the President of the United States and the major media, and a breakdown in the rule of law and a public and orderly process to determine if he was guilty of what he was indicted of committing.

After World War II high ranking Nazi officials who had been demonized in the press for years, and who were accused of heinous crimes against humanity light-years beyond anything alleged against bin Laden, were not summarily executed when found or after they were taken into custody. Those persons that included Hitler's right-hand man Hermann Goering, were afforded the due process of public trials during which they had the opportunity to present a vigorous defense to refute the grave charges against them. Only a handful of the high-ranking Nazis were sentenced to death after their conviction, with most receiving prison terms. Some of them were acquitted. Japanese military and civilian officials captured after WWII were also afforded public trials for their alleged crimes.

Prosecutors control the secret grand jury process since they dictate what evidence the grand jurors see and what witnesses testify. That is why it has often been said that a prosecutor can indict a ham sandwich. Consequently an indictment against a person means nothing if the truthfulness of the government's alleged evidence is untested during a public trial.

Although it may seem a novel thought, it is possible that the federal prosecutor's actual

evidence against bin Laden for the 1993 and 1998 bombings was so sketchy that he could have been acquitted or had a hung jury after a public trial in the U.S. However, in spite of being legally presumed innocent bin Laden was accorded no due process rights. The possibility he wouldn't have been convicted was eliminated when he was killed with no attempt to apprehend him for a public trial in the U.S. Consequently, bin Laden's death not only denied him his day in court, but it relieved federal prosecutors of ever having a jury judge the value of their evidence in support of his indictments.

Usama bin Laden is legally innocent of ever having violated any state or federal law. Dismissal of his 1993 and 1998 indictments on June 17, 2011 means those indictment's allegations will forever remain unproven accusations. Since he was not indicted for any of the events that occurred on September 11, 2001, there are only unproven suspicions he was involved in those events.

### Endnotes:

1 There is speculation that bin Laden was not present or killed during the raid on May 1, 2011 given the circumstances that there was no effort to apprehend "bin Laden" alive, and since "his" body was disposed at sea there is no way to independently determine the body's identity. Reports that DNA from the disposed body establish to a high degree of certainty that it was bin Laden are unverifiable because the federal government controls all the evidence, so there is no way to verify that the DNA tested was from the body and not from a bin Laden relative -- or if the DNA test results were not simply fabricated from thin air. Likewise, the technology is readily available to edit a photograph or produce the photograph of a person at a particular place and time -- so the photographs of bin Laden's body that have not yet been publicly released are meaningless without independent verification of his identity from examination of the body. Questions about whether bin Laden died on May 1, 2011 or some time prior to then will persist for decades if not centuries -- just as questions of whether Marilyn Monroe's death was accidental or a murder persist, and there are questions of whether there was a shooter of President Kennedy on the grassy knoll.

2 The English common-law right to resist unlawful police action has been traced by scholars trace to the Magna Carta in 1215. See e.g., Craig Hemmens & Daniel Levin, *Not a Law at All: A Call for the Return to the Common Law Right to Resist Unlawful Arrest*, 29 Sw. U. L. Rev. 1, 9 (1999). In the case of *Bad Elk v. United States*, 177 U.S. 529, 535 (1900) the United States Supreme Court recognized that: "If the officer had no right to arrest, the other party might resist the illegal attempt to arrest him, using no more force than was absolutely necessary to repel the assault constituting the attempt to arrest." The Supreme Court affirmed that right in the 1948 case of *United States v. Di Re*, 332 U.S. 581, 594 (1948) ("One has an undoubted right to resist an unlawful arrest, and courts will uphold the right of resistance in proper cases.")

3 The case for President George W. Bush's criminal liability for the U.S.'s 2003 invasion of Iraq is detailed in *The Prosecution of George W. Bush for Murder* (Vanguard Press, 2008) by former Los Angeles County Assistant District Attorney Vincent Bugliosi. Mr. Bugliosi was the lead prosecutor of Charles Manson and other high-profile defendant. A case can likewise be made that President Obama can bear criminal liability

for his executive order that authorized the storming of bin Laden's home during which he was summarily killed. A president cannot at will issue an order that abrogates or otherwise suspends the U. S. Constitution and an indicted person's right to due process of law -- especially since a person is legally presumed innocent of the their indicted crime(s) until a jury (or a judge in a bench trial) determines the person has been proven guilty beyond a reasonable doubt in a court of law. For all practical purposes President Obama acted as bin Laden's judge, jury and executioner by issuing his executive order authorizing the raid.

4 Not only was there no evidence bin Laden was violent, but documents seized during the raid on bin Laden's home reveal he was completely marginalized by al-Qaida's leaders and he had no influence over the organization. A U.S. official description of bin Laden's relationship to al-Qaida is, "He was like the cranky, old uncle that people weren't listening to." (See, "Official Bin Laden lost influence, was 'cranky, old uncle.'" *The Seattle Times*, June 29, 2011, p. A1, A6.)

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