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A tale of two trials

Why is it that Americans get to know so much more about important court cases?

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Topple Chicago's Sears Tower. Attack the Miami Federal Courthouse. Blow up FBI buildings in five cities.

That's what the so-called Liberty City Seven, a group of suspected terrorists from Miami, were alleged to be scheming when their plot was foiled last summer. The seven men had planned to wage a "full ground war" that would be "just as good or greater than 9/11," said prosecutors at the time of the arrests.

But American reports published after the takedown painted a different picture. According to testimony and court documents, no weapons, explosives or maps were found linking the men to a terrorist act. Rather, the accused spoke of wanting bows and arrows.

The plot became fodder for late-night talk show hosts. Jon Stewart remarked, "I am not a general...but I believe that if you are going to wage a full ground war against the United States, you need to field at least as many people as, say, a softball team."

Meanwhile in Canada, another terror bust was making headlines. The so-called Toronto 18 were suspected of being an Al Qaeda inspired homegrown terror cell and faced similarly explosive accusations. Behead the prime minister. Storm Parliament Hill. Blow up CSIS and RCMP headquarters.

Yet unlike in the United States, Canadian media reports following the arrests did not balance the picture that police and prosecution painted in the days after the arrests. A sweeping ban prevented the publication of any evidence contained within court documents or heard at the bail and preliminary hearings for the 14 adults and four youths.

The ability of reporters to freely convey the goings-on inside a public courtroom is the fundamental difference between the American and Canadian/British legal systems, says Lucy Dalglish of the Reporters Committee for Freedom of the Press in Washington.

"Allowing people to go to the hearing but not talk about it or write about it is just about the biggest infringement of free speech and free press that you could ever possibly have," says the former media lawyer. "It blows my mind that Canada lets it go on."

A total publication ban skews public perception and fuels a culture of fear, particularly in a case such as this, say some of the lawyers of the accused in the Toronto.

That argument was brought into sharp relief this week when the preliminary hearing for the adults in the case was halted and the Crown decided to go straight to trial.

"In terrorist cases, there is this visceral fear," says defence lawyer Michael Moon, one that is

"exacerbated" when the flow of public information is one-sided. "Where the practice of the state is to publicize everything they've done and what they've stopped, the public is better served by the media being able to publish the foibles and fallacies of what the government says it saved them from."

The Public Prosecution Service of Canada would not comment on the issue when contacted by the Star.

The main argument for pre-trial publication bans is to protect the rights of the accused and the purity of the jury pool. But if all the jury hears until the trial date is the state's version of what happened, potential jurors are bound to have pre-formed ideas that have never been challenged, say some lawyers.

The prosecution in the Brampton case, says Moon, tried everything to "sink these guys in those first days," referring to a flurry of international media reports that focused on one version of the events.

The day after the bust, police held a news conference where they presented evidence such as a 9-millimetre Luger handgun, military fatigues, two-way radios, a crude cellphone detonator and a sample of ammonium nitrate that was alleged to have been purchased to build truck bombs.

That was followed by even more sensational headlines when accused Steven Chand's then-lawyer leaked part of the Crown's synopsis, which identified Chand as personally wanting to behead the PM.

Moon, who replaced that lawyer, has struggled with his client's notoriety but says he's hamstrung by the ban and unable to paint a different portrait. Although the Crown's key witness, police mole Mubin Shaikh, has publicly said in various interviews that Chand should never have been arrested, his testimony at the preliminary hearing on this matter cannot be published. Nor can his testimony about Jahmaal James, another suspect Shaikh has publicly said should never have been arrested.

And when it comes to the group's so-called terrorist training camp, located about 150 kilometres north of Toronto – well the details of what took place there are also protected. Moon says that rather than a group of *jihadists* hell-bent on destruction, the accused resemble characters from *F Troop*, an old sitcom about an inept cavalry unit.

Publicizing the evidence of what transpired at the camp would "ease the public's sense of, 'My God, we had Al Qaeda up in Orillia.'"

Osgoode Hall law professor Alan Young, who supports publication bans at bail and preliminary hearings, doesn't think it's the ban itself that contributes to a culture of fear but the length of time it takes for a trial to get to court.

Because terrorism allegations go to the heart of security and public order, people want details quickly, he says. But when proceedings, which are protected by a ban, take a long time to unfold, "it really allows for more rumour and innuendo to circulate than accurate information."