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Justice Denied

THE COWARDS who planted dynamite in the car of newsman Emilio Milian seven years ago had one purpose — to extinguish a voice that spoke fearlessly against terrorism. In deciding the other day to dismiss criminal charges against two suspects without a trial, U.S. Attorney Stanley Marcus cannot but gladden those who would commit terrorism.

That is too high a price for legal facility. Mr. Milian, for one, chose to continue the fight despite having lost both legs in the car explosion. The former news director for radio station WQBA waged an anti-terrorism editorial campaign that was singularly courageous for an exile journalist in 1976. Few dared speak so boldly then. Indeed, few still dare.

In the months that followed the bombing, more than 50 investigators from local and Federal police agencies patched together a case from vague clues, snippets of information, and precious few witnesses. Former U.S. Attorney Atlee Wampler reviewed the work and decided to prosecute. A Federal grand jury considered it and chose to indict — on four criminal counts.

Two suspects were indicted: Gustavo Castillo and Gaspar Jimenez. Both previously had been named in Government reports as principal figures in anti-Castro terrorist activities in the United States. Both men are presumed innocent, as are all defendants until proved guilty, and this newspaper fully respects that presumption.

After long delays, created in part because the defendants were unavailable, the case finally was set for trial. But Mr.

Marcus, who succeeded Mr. Wampler as U.S. attorney here, thought better of proceeding to trial. He cited a "lack of factual development" and said that the case no longer had "prosecutorial merit."

Mr. Marcus's judgment was based on a nightmarish set of factual circumstances. Only one witness indirectly linked defendant Castillo to the case, and that witness subsequently died. Thus the prosecutor's only option was to seek dismissal. An accused must be able to confront his accusers.

Different circumstances obtained against defendant Jimenez. The only witness against him here said that he saw defendant Jimenez tinkering under Mr. Milian's car an hour before the explosion.

But the unidentified witness admitted that he committed perjury to a grand jury in an unrelated matter. He previously had been convicted in a matter relating to his integrity. He had stolen from a public institution. He had an antagonistic relationship with Mr. Jimenez.

No prosecutor savors relying on such a witness at trial. However, the witness passed several polygraph tests when asked specific questions about his eyewitness account in the bombing. The Federal grand jury and previous U.S. attorney were aware of all but the perjury statements by the witness, and they chose to proceed.

Justice requires that this case be put to a jury. An attack in which a courageous man loses his legs ought not be dismissed because the Government's prosecutor loses heart.