



Ashcroft trumpeted the Detroit cases.

A FINE LEGAL MESS IN MOTOWN

The feds admit a litany of errors in a landmark terrorism prosecution

BY CHITRA RAGAVAN

It was once a signature case in the war against terrorists, but last week the convictions of three Middle Eastern men in Detroit were thrown out amid a host of astonishing revelations about the federal government's conduct of the case. In an unusual *mea culpa*, the Justice Department alleged that its lead prosecutor had improperly withheld evidence beneficial to the defense, and it urged a federal judge to vacate jury verdicts against the trio on terrorism-related charges. The judge concurred, stating that the prosecution had engaged in misdeeds that were "prevalent and pervasive."

The three defendants will undergo a new trial on document fraud charges, but that was scant consolation for the Justice Department. The dismissal of the only jury convictions that have resulted from the FBI's 9/11 investigation to date is a major embar-

rassment—but it isn't the only one. A growing chorus of legal analysts is raising questions about the government's so-far modest efforts to prosecute a legal war against terrorists.

The Detroit saga began as a document fraud investigation just six days after the Sept. 11, 2001, attacks, when FBI agents stumbled upon Karim Koubriti, 26, Ahmed Hannan, 36, and Farouk Ali-Haimoud, 24, in a sparsely furnished apartment, along with fake documents, jihadist audiotapes, and what seemed to be surveillance videotape and casing sketches of targets here and abroad, like

Disneyland. A year later, federal agents picked up the alleged leader of what they termed a "sleeper cell," Abdel-Ilah El Mardoudi, 38. In June 2003, Koubriti and El Mardoudi were convicted of providing material support to terrorists and of document fraud. Hannan was convicted of document fraud. Ali-Haimoud was acquitted of all charges.

But the convicted men's lawyers—who had accused lead prosecutor Richard Convertino of withholding evidence—filed a motion for a new trial. Federal District Judge Gerald Rosen, angered by Convertino's failures to heed his strict orders, ordered Attorney General John Ashcroft to conduct a complete file review. Last week, after a nine-month investigation, special attorney Craig Morford filed a 66-page legal memorandum stating that the prosecution had "committed a pattern of mistakes and oversights," in failing to give defense lawyers exculpatory evidence, and had "created a record filled with



Hannan

El Mardoudi

Koubriti

CHARLIE ARCHAMBAULT FOR USN&WR



ADVERSARIES. Convertino (above); defense attorneys (right) at a Detroit courthouse

“...a record filled with misleading inferences”

CRAIG MORFORD, special attorney

misleading inferences that such material did not exist.” Prosecutors are required to turn over evidence favorable to the accused under a 1963 Supreme Court case, *Brady v. Maryland*.

Morford also excoriated other government officials, including the head of the FBI’s joint terrorism task force in Detroit and military and State Department officials who provided inaccurate, perhaps even false testimony to support Convertino’s flawed theory of the case.

In a scathing 11-page opinion, Judge Rosen agreed, saying that the prosecution had, in its “zeal to obtain a conviction,” violated the defendants’ rights through misdeeds that were “of such a magnitude and were so prevalent and pervasive” that there was a “reasonable probability” the jury’s verdict would have

been different had constitutional standards been met.” Charged William Swor, one of the defense lawyers: “So many people knew what was going on was wrong, but only a couple took steps to say so.”

Convertino’s attorney, William Sullivan, said his client—who could face criminal prosecution—“vigorously prosecuted a just case and acted in the best interest of his community.” He said that even if Convertino had seen some of the materials in question, giving them to the defense would *not* have changed the outcome of the trial.

As for the larger war on terror, there have surely been some successes—the government has obtained two dozen terrorism-related guilty pleas or convictions in Oregon, New York, Virginia, and

Washington State. But there have been no showcase trials nor big fish reeled in. And some ballyhooed cases have resulted in acquittals or garden-variety plea bargains. In Portland, Ore., a federal judge threw out the case against an American lawyer, Brandon Mayfield, jailed for two weeks as a material witness in the Madrid train bombings, after the FBI said it mistakenly matched his prints to the crime scene. A federal judge in Idaho acquitted Sami Omar Al-Hussayen, a Saudi computer student, of charges he spread terrorism using the Internet. And in Albany, N.Y., a federal judge did an about-face last month and set bail for two mosque leaders caught in an FBI sting operation after prosecutors mistranslated a crucial document. “Evidence in this case appears less strong than it did,” the judge said. The government attributes some of its problems to an unwillingness to disclose classified intelligence in courtrooms. But civil libertarians remain skeptical. “I think [government prosecutors] are overplaying their hand repeatedly,” says David Cole, a Georgetown University law professor.

Common complaints. Defense attorneys have long railed about real or perceived government abuses of the Brady requirements. “The government plays games, or they wait until the last minute to dump thousands of pages,” says defense attorney Thomas Liotti. But, says Liotti, the government and courts have until recently rarely been persuaded enough to say, “Hey, defense lawyers, we’re going to give you a new trial.”

Last week, however, the government did just that, though it wasn’t a complete surprise. Convertino had long been at loggerheads with his bosses over the prosecution’s theory, strategy, and lack of resources. And Convertino is controversial; some FBI agents saw him as dedicated and aggressive, but defense lawyers and some judges distrusted him. A veteran drug and mob prosecutor with no terrorism experience, Convertino found himself in a pressure cooker, struggling to build expertise on Islamic terrorism while managing a complex proceeding involving classified intelligence. His supervisors said he had shut them out of the case. “It appears he had no sounding board,” says Laurie Levenson, who teaches the ethics of advocacy at Loyola Law School in Los Angeles. “There were no angels sitting on his shoulder saying, ‘Do you really want to do this?’ In the end they all watched him crash and burn.” ●

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With Monica M. Ekman and Carol Hook

CARLOS OSORIO—AP

