

Portland, Oregon: Muslim defendants sentenced in treason trial

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Three of the Portland Seven—Patrice Lumumba Ford, Jeffrey Leon Battle and October Martinique Lewis—were recently sentenced to federal prison for their roles in attempting to enter Afghanistan to oppose the 2001 US invasion. The sentences resulted from plea bargains arrived at last September and October. In return for the guilty pleas, the US government dropped terrorism-related charges of providing material support to terrorist organizations and contributing services to Al-Qaeda and the Taliban.

Ford and Battle were each sentenced on November 24 to 18 years in a federal penitentiary for “conspiracy to levy war on the United States.” The charge is essentially treason, the same accusation that was leveled against John Walker Lindh—the American captured in Afghanistan—who received a 20-year sentence.

Lewis was sentenced on December 1 to three years in a federal prison work camp on six counts of money-laundering charges. The substance of the charge against her was wiring money to Battle—her ex-husband—while he and the other members of the Portland Seven were in China, attempting to reach Afghanistan. Mahar (Mike) Hawash and brothers Muhammad Ibrahim Bilal and Ahmed Ibrahim Bilal have also entered into plea agreements and are scheduled for sentencing in February. A seventh defendant was killed in Pakistan.

During plea negotiations, Ford and Battle insisted on the opportunity to explain and defend their actions after sentencing. In his statement, Ford denounced the US invasion of Afghanistan and the mass killing as “de facto genocide.”

“I refused to stand passively in the face of policies, which inflicted such tremendous injustice, death and destruction on Muslims.” He went on to describe President Bush’s policies as “cruise missile

diplomacy.” Battle stated: “The so-called crime that I’m being prosecuted and punished for is my controversial spoken thoughts, opinion and unaccomplished religious intention.” Both insisted that they had been tried not for terrorism, but for opposing the terror unleashed against the Afghan people by the US government.

The plea agreements exposed as a fraud claims made by Attorney General John Ashcroft last October that the arrests in Portland had disrupted a “terrorist sleeper cell.” At the time, Ashcroft exulted, “We’ve neutralized a suspected terrorist cell within our borders.” Ford and Battle were convicted solely of attempting to enter Afghanistan to join forces defending the Taliban government. The conviction itself was based on a Civil War-era law that bans “seditious conspiracy.”

The arrests and indictments of the Portland Seven were based on information collected by the FBI using secret warrants issued by the clandestine FISA (Federal Intelligence Surveillance Act) court.

Originally enacted in 1978, FISA and its courts were ostensibly designed to regulate the FBI’s spying by distinguishing between counterintelligence operations and persecution of the government’s political opponents. Before passage of the Patriot Act, FISA specified that “the purpose” of a secret warrant must be counterintelligence; investigations were limited to domestic spying by foreign countries.

The Patriot Act altered FISA to specify instead that a “significant purpose” of the warrant would be counterintelligence. This slight change opened the door to fishing expeditions in which the secret warrants may be used against US citizens to determine if they are engaged in criminal activity. These Citizens are, by virtue of FISA, deprived of their constitutional right to

view the evidence—or lack thereof—used against them.

Fearful that an October court hearing on a defense motion to suppress the evidence gathered under the FISA warrants might lead to ruling that the Patriot Act's amendment of FISA is unconstitutional, prosecutors offered Ford and Battle a last-minute plea deal.

Subsequently, three indictments alleging terrorist-related crimes, which could have led to life in prison if upheld, were dismissed. The government also acceded to the defendants' demand that they not be required to cooperate in any other investigation and that both would be allowed to make post-sentencing statements.

Ford's attorney, Marc Sussman, noted that defendants in similar cases in Lackawanna, N.Y., and Detroit were forced to cooperate to avoid trial. "I'm not aware of any other [similar] cases where the defendants pled with no-cooperation clauses," he said. According to *The Oregonian* newspaper, government sources stated that, "Battle and Ford faced a deadline from federal prosecutors and the Justice Department—to cut a deal before Thursday's hearing or there would be no deal. The sources said the driving force behind the government's offer was to avoid possibly losing an argument on the merits of FISA as amended by the Patriot Act."

The defendants had sued last March, contending that the government is constitutionally required—by the Fourth Amendment prohibition against unreasonable search and seizure—to reveal the affidavits used by the FBI to acquire the FISA search warrants. Lewis's lawyer, Jack Ransom, stated: "The court must disclose these materials to the accused where such disclosure is necessary to make an accurate determination of the legality of the surveillance. How do you attack applications for surveillance that you haven't and won't see? We're shooting in the dark."

The Department of Justice not only refused access to the information used by the FBI, it also objected to the judge examining them in camera. In his March ruling, federal judge Robert Jones agreed with the Justice Department demand barring the defendants, as well as himself, from viewing the affidavits. According to *FindLaw* columnist Anita Ramasastry, "This is a very troubling development. Unless the ruling is reversed on appeal, it will mean that a US citizen can now be convicted of a crime, without ever knowing the reasons

why the government was given permission to spy on them in the first place."

The government's frustration over not prevailing on the terrorism charges against Ford and Battle was reflected in the bizarre response by the chief prosecutor to Battle's statement. Assistant US Attorney Charles Gorder said, "I'm convinced that if someone told him to strap on a bomb and get on a TriMet bus, he'd do it."

The inability of the Bush administration to prevail on any charges connecting Ford, Battle or Lewis to a terrorist conspiracy exposes the political core of the indictment and prosecution of the Portland Seven. The justifications for the Patriot Act's draconian attack on civil liberties were premised on the possibility of another domestic terror attack—a threat the government proved unable to substantiate with this case.

In all, the FISA court issued 36 warrants against the Portland Seven. This allowed the FBI to place a microphone in one home and wiretaps on all the defendants' phones and computers, as well as conduct secret searches of their homes. Out of 271 recordings made, only 86 were released to the defendants. As well, an FBI informant, Khalid Ibrahim Mostafa, was inserted into the group around Ford and Battle. Mostafa, once suspected of illegal gun and drug possession, received immunity from prosecution in return for his spying for the government.

Testifying before the House Judiciary Committee this past June, John Ashcroft stated that 18,000 terrorism-related subpoenas and search warrants have been issued with hundreds of suspected terrorists identified and tracked in the US. In 2002, the FISA court issued 1,228 warrants, a 31 percent increase over the previous year. Moreover, in 170 of these cases, Ashcroft invoked an emergency provision in FISA authorizing the US Attorney General to carry out secret wire-tapping without prior approval from the FISA court. This was three times the total number of emergency cases recorded over the previous 23 years.



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