

# US judge throws out Detroit terrorist “sleeper cell” convictions

**Kate Randall**  
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A US federal judge on Thursday threw out the June 2003 convictions of three Detroit-area men accused of being members of a terrorist “sleeper operational combat cell.” The ruling, issued by US District Judge Gerald Rosen, came at the request of the Justice Department following a nine-month internal review of the case. The department’s findings showed that prosecutors railroaded the defendants to prison, concealing dozens of pieces of exculpatory evidence that should have been given to defense attorneys during the trial.

The Detroit convictions were the only successful post-9/11 terror-related prosecutions, and had been hailed by administration officials and cited as one of the Justice Department’s “notable achievements.” Coinciding with the Republican National Convention in New York, the collapse further exposes the fraud of the Bush administration’s “war on terror,” the cornerstone of its re-election bid.

Judge Rosen ordered a new trial for the three men, in which they will face only the least serious of the charges upon which they were previously convicted: document fraud.

In his ruling, Rosen drew attention to the Justice Department’s ruthless drive to convict Arab and Islamic suspects. He said that the prosecution’s “understandable sense of mission and zeal to obtain a conviction” in the wake of September 11 “overcame not only its professional judgment, but its broader obligations to the justice system and the rule of law.”

The case brought against the four original defendants was a sham, both in terms of the manufactured and flimsy evidence and outright prosecutorial malfeasance. [See “Split verdict in Detroit terror trial exposes government frame-up”]

Farouk Ali-Haimoud, 24, an Algerian immigrant, and Ahmed Hannan, 36, Karim Koubriti, 26, and Abdel Ilah Elmardoudi, 38, all immigrants from Morocco, had been charged with operating an Islamic fundamentalist “sleeper cell” out of their Dearborn, Michigan, apartment. The prosecution’s claim was that this “cell” was waiting for a command to carry out a terrorist attack.

Elmardoudi and Koubriti were convicted of conspiring to provide material support to terrorists and document fraud; Hannan was convicted of document fraud, and Ali-Haimoud was acquitted of all charges. The acquittal of two of the four defendants on terror charges made a mockery of the prosecution’s theory that the four constituted a “sleeper cell.”

Attorney General John Ashcroft had gone so far as to suggest that the four men had advance knowledge of the September 11 attacks. However, as with the cases of thousands of other Arab and Muslim men rounded up in the aftermath of 9/11, the government was unable to prove any connection to the attacks.

According to a 60-page memorandum filed in US District Court last Tuesday and released Wednesday, the “pattern of mistakes and oversights” by the prosecution in the case was so egregious that the government has agreed to abandon the terrorism portion of the case altogether.

The internal investigation, conducted by Craig S. Morford, a federal prosecutor in Cleveland, found that the prosecution withheld from the defense numerous e-mails, photographs, witness statements and other items, and that the errors and misconduct in the case were so widespread that there was “no reasonable prospect of winning” on appeal.

“In its best light,” the report says, “the record would show that the prosecution committed a pattern of mistakes and oversights that deprived defendants of discoverable evidence...and created a record filled with misleading inferences that such material did not exist.”

William Swor, defendant Elmardoudi’s attorney, called the government’s decision to drop the terrorism charges “a major victory,” adding that the only outstanding allegation against his client amounted to “a garden-variety document case.”

The Justice Department review is particularly critical of Richard Convertino, the lead prosecutor, who has been removed from the case and is the subject of an ongoing criminal probe. Convertino allegedly failed to turn over photographic evidence to the defense and obtained evidence

from witnesses, leading the judge and other attorneys to believe the photographs did not exist. Convertino has disputed the allegations and has filed a lawsuit against the Justice Department.

The prosecution based its case on three supposedly interconnected elements: a videotape and drawing indicating the men were collecting intelligence for potential attacks in the US and abroad; testimony of witness Youssef Hmimmsa, who said he was asked by the four men to join a terrorist cell; and corroborating evidence that they were using methods consistent with terror operations.

The internal review, however, indicates that much of the key evidence and testimony in the prosecution's case was either fabricated or deliberately misrepresented.

"Unfortunately," the government wrote in its filing, "numerous developments since trial, including the discovery of significant materials not disclosed by the prosecution, have undermined each part of this three-legged stool."

One of the prosecution's main pieces of evidence was a videotape found at the men's apartment. A Tunisian man appearing in the video told investigators that the tape was amateur footage shot while he was a university student on trips to Disneyland, Las Vegas, New York and other tourist attractions. He had left the tape at the men's home, and none of them appear in it.

Prosecutors had led jurors to believe that the tape was surveillance footage for a potential terrorist attack. According to the review, they failed to reveal that FBI agents had disagreed with this supposition, and that "under the court's established protocol, the government should have brought this information to the court's attention."

Another crucial piece of evidence presented by the prosecution was a day-planner with sketches alleged to depict a military hospital in Jordan and an American airbase in Turkey. An Air Force colonel testifying for the prosecution gave the false impression that military officials agreed that the drawing was of an aircraft hangar at the base in Turkey. The report says American investigators in Germany concluded that the sketch was, in fact, an outline of the Middle East, and that a CIA official had showed it to various experts who discounted its significance.

Prosecutors argued that another sketch depicted a Jordanian military hospital. Defense attorneys asked to see any photographs of the hospital taken by the government, but two prosecution witnesses indicated no photographs had been taken. The review stated that the prosecution was indeed in possession of such photos and that "It is difficult, if not impossible, to compare the day planner sketches with the photos and see a correlation."

The report is also highly critical of the testimony of the Youssef Hmimmsa, the prosecution's star witness.

Hmimmsa testified at trial that the defendants asked him to join a terrorist cell that was planning to shoot down airplanes with Stinger missiles and were involved in other terrorist activities.

In return for his testimony, Hmimmsa was allowed to enter guilty pleas to 10 felony counts, including credit card fraud, receiving a sentence of 37 to 46 months in prison. He could have received a maximum jail sentence of 81 years for these crimes.

In the report, federal prosecutor Morford contends that Richard Convertino "made a deliberate decision not to have the FBI take any notes" during Hmimmsa's debriefing sessions, to curtail the defense's ability to challenge his testimony at trial.

The throwing out of the Detroit "anti-terror" convictions comes on the heels of the unraveling of the prosecution of two Muslim immigrants in Albany, New York, charged with providing material support to a foreign terrorist organization, importing firearms without a license, money laundering and conspiracy. Earlier this month, federal prosecutors admitted that the key evidence used in FBI affidavits for a search warrant to set up a sting operation against the men—a notebook alleged to be from a "terrorist training camp" in Iraq—was a fabrication. [See "FBI's Albany terror 'sting' begins to unravel"]

In another setback to the Justice Department, a federal jury on June 10 found University of Idaho doctoral student Sami Omar al-Hussayen not guilty of three charges of promoting terrorism brought against him under the Patriot Act. His supposed crime was helping to set up and register several Islamic web sites, which the government claimed promoted terrorism. [See "US: jury acquits Idaho webmaster of terrorism charges"]

The trumped-up charges, manufactured evidence and shoddy prosecution in each of these cases are of a piece with the Bush administration's seizing upon the tragic events of 9/11 to draft and utilize the USA Patriot Act and other "anti-terror" measures for its own reactionary political purposes.



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