

FBI agent testifies: Bureau resisted Moussaoui investigation before 9/11 attacks

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The death penalty trial of Zacarias Moussaoui resumed on Monday, after Federal District Court Judge Leonie Brinkema partially reversed a decision that threatened to derail the government's case. Testimony continued with the defense's cross examination of FBI agent Harry Samit. Samit detailed the repeated rebuffs he received from top bureau officials as he sought an investigation into Moussaoui prior to the September 11 attacks.

Moussaoui has already decided to plead guilty to terrorism charges relating to his support for Al Qaeda, and the trial is focused on the sentencing phase. The government is trying to have Moussaoui sentenced to death on the grounds that he knew of plans for the September 11 attack, but did not tell FBI agents of these plans after he was arrested in August 2001. However, the testimony on Monday provided strong evidence of the complicity of top FBI officials, who refused to pursue leads despite clear indications that a plot to hijack airlines was under way.

The death penalty trial was halted last week after an attorney for the prosecution informed the court that Carla Martin, another government attorney who worked for the Federal Aviation Administration, had lied to the court and improperly coached witnesses. Martin flouted the explicit orders of Judge Brinkema, as well as standard procedure in such cases, when she provided trial transcripts and advice to FAA witnesses who were to be called by the prosecution.

Martin also claimed that three FAA officials subpoenaed as defense witnesses had refused to talk to Moussaoui's lawyers, even though they had done nothing of the sort. Rather, Martin herself had told the witnesses not to be interviewed.

Brinkema originally responded to these flagrant breaches of judicial procedure, which came after a

series of other mistakes and misdeeds on the part of the prosecution, by moving to prohibit all witnesses addressing aviation security. "I cannot allow that kind of conduct to go without there being serious sanctions," she said. Of Martin, who was involved closely in the prosecution's process of witness selection, Brinkema declared, "Her involvement in that portion of the case so taints everything she touched. How can any rational trier of fact rely on any representation she had made?"

However, by Monday Brinkema had agreed to a major reversal of this earlier decision. She had clearly come under intense pressure over the weekend, and accepted a proposal from the prosecution that would only bar those six witnesses who had received coaching from Martin. She will allow all other witnesses to testify, and will also allow the government to choose replacements for the witnesses who have been barred. This decision has saved the government's case, which under Brinkema's original decision would have been severely undermined.

The case resumed on Monday with the cross examination of Samit, who testified on behalf of the prosecution earlier this month. Samit is an FBI field agent who participated in the questioning of Moussaoui after his August 2001 arrest in Minnesota. The FBI picked up Moussaoui after executives at a flight school he was attending raised concerns due to his background, his lack of flying experience and the fact that he had paid for the school's \$6,800 tuition in \$100 bills.

Samit was called by the prosecution to testify that if Moussaoui had informed him that he belonged to Al Qaeda, this may have raised alarm bells in the FBI that would have prevented the September 11 attacks. However, his testimony on cross examination has demonstrated that the essential hurdle to a deeper

investigation into the September 11 plot was not Moussaoui, but the FBI itself.

Samit said that he was particularly concerned about Moussaoui not only because of the reasons cited by the Minnesota flight school, but also because he could not account for his sources of cash. The FBI was then informed by French intelligence in mid-August that Moussaoui had worked as a recruiter for an Islamic fundamentalist group in Chechnya with ties to Al Qaeda. Samit told defense attorneys that his concern about Moussaoui was based in part on the information provided by Moussaoui's roommate, Hussein al-Attas, who testified on Tuesday.

On Monday, Samit acknowledged that he had warned more senior officials at the FBI at least 70 times that Moussaoui was a terrorist who was plotting to hijack an airplane. He was repeatedly rebuffed in his attempts to seek a warrant to search Moussaoui's computer and other belongings. Samit testified that he had previously accused his superiors of "criminal negligence." He said that agency officials wanted to "run out the clock" to avoid prosecuting Moussaoui. They instead wanted to deport him, Samit said.

In particular, Samit pointed to the role of Michael Maltbie, a supervisor in the FBI's Radical Fundamentalist Unit, and David Frasca, who was the superior of Maltbie. Both agents scuttled Samit's attempts to get a warrant to search Moussaoui.

According to Samit, the main reason that the FBI sought to prevent agents in Minnesota from getting a warrant was concern over potential criticism from the courts. The story is that the courts had previously chastised the FBI for overreaching in seeking warrants for intelligence gathering. Samit said he was told by Maltbie that an application to the Foreign Intelligence Surveillance (FISA) Court for a warrant "was just the kind of thing that would get FBI agents in trouble."

At the same time, he was told by Frasca that an attempt to get a warrant from a criminal court could not proceed because the FISA court had criticized the government for using intelligence warrants in criminal cases. This rationale, however, appears nonsensical, since FBI officials were already blocking efforts to proceed through FISA, so there could be no question of using FISA warrants in a criminal case.

In addition to blocking attempts to get a search warrant, Samit said the FBI also prevented him from

placing an Arabic-speaking guard in Moussaoui's jail cell to gather information. At one point, Samit said that his boss, Greg Jones, told FBI headquarters that the Minnesota office was concerned that Moussaoui was planning on flying a plane into the World Trade Center. "It was a lucky guess," Samit said.

The story of FBI worries about judicial criticism is further undermined by the context of the Moussaoui arrest. At the same time as attempts to get a search warrant were being blocked, the FBI received the "Phoenix memo" from another FBI agent, noting that a number of students with ties to Islamic fundamentalists were taking classes in local flight schools, and warning that terrorists might be seeking to become trained as pilots for hijackings. Indeed, Frasca was in possession of the Phoenix memo, written in July 2001, even as he was blocking attempts to investigate Moussaoui.

News of Moussaoui's arrest also became known to the CIA. By at least August 24, CIA Director George Tenet was informed after receiving a memo on Moussaoui entitled, "Islamic Extremist Learns to Fly."

The most obvious explanation for the circumstances described by Samit in his testimony, and for the other evidence of government non-action in the weeks and months preceding September 11, 2001, is that certain high-level officials in the American intelligence apparatus were aware of the hijacking plot. And that not only was nothing done to stop it, but actions were taken—such as the moves to block an investigation into Moussaoui—that were deliberately intended to allow the hijackings to proceed.



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