

Padilla “terrorism support trial” unravels

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The US government’s “terrorism support trial” against Jose Padilla and two acquaintances, Adham Amin Hassoun and Kifah Wael Jayyousi, is rapidly unraveling as the prosecution continued with its case this week. Even though US District Judge Marcia Cooke has let the prosecution introduce irrelevant evidence and proceed despite procedural violations, it is clear the prosecution is grasping at straws to make a case against the accused.

Padilla, a US citizen, was arrested at O’Hare Airport in Chicago in May 2002, imprisoned and held without charges or access to a lawyer, in breach of fundamental democratic rights. The Bush administration declared that Padilla was an imminent terrorist threat to the US, planning to explode radioactive “dirty bombs” in US cities. Padilla has stated that he was tortured for three and a half years in a US military brig—held in total solitary confinement, often in painful stress positions, deprived of sleep, and force-fed psychoactive drugs such as LSD and PCP meant to act as “truth serums.”

The trial of Padilla, whom the prosecution had verbally downgraded from a “terrorist” to a “terrorism support” suspect while dropping any talk of a “dirty bomb” plot, began in May 2007. The proceedings have many times over justified an earlier assessment of Cooke, who euphemistically described the prosecution’s case as “light on facts.”

The prosecution is attempting to establish that Jose Padilla’s friends, Hassoun and Jayyousi, tried to recruit Padilla for terrorist actions in the Middle East. In doing so, it is relying on a massive archive of wiretaps of the three men’s phone conversations.

In the mid-1990s Hassoun and Jayyousi apparently helped Padilla, a recent convert to Islam, travel to Egypt to try to study to become an imam at the prestigious al-Azhar University in Cairo. They also sent money abroad to various parts of the Muslim world as charitable donations that prosecutors alleged were

destined for terrorist groups.

The prosecution has sought to explain the absence of any discussion of terrorism in the recorded conversations by claiming that the three were speaking in code. Thus “soccer equipment” supposedly meant guns, “eating cheese” meant violent jihad, and so forth.

This aspect of the prosecution’s case against Padilla collapsed when lead FBI agent James T. Kavanaugh admitted, under cross-examination by defense lawyers, that Padilla did not in fact use any of these alleged “code words” in his phone conversations. However, by this point jurors had already listened to many days of private conversations between Padilla, Hassoun, and Jayyousi. In these conversations, Padilla mainly described the difficulties of adjusting to his life in Egypt, his struggle to master Arabic, and the widespread suspicions amongst Islamic circles that he might be a US spy sent to monitor them.

The only significant piece of physical evidence for the prosecution is a “mujahideen identification form,” allegedly discovered by US forces in Afghanistan, that bears an alleged alias of Padilla and on which the government says his fingerprints have been found.

On Friday, Rohan Gunaratna, described as a “terrorist expert” by the prosecution and the media, testified that the document was similar to others he has examined relating to Al Qaeda. Gunaratna insisted that the camp Padilla is said to have attended was where “they trained people to kill.”

Gunaratna has made a name and career for himself by testifying and giving media appearances in support of cases against alleged terrorist suspects. His credibility as an “expert” on these matters is extremely strained, however. For example, he quickly shifted his position on David Hicks, the Australian prisoner who was held for years in Guantánamo Bay, after the US announced it would try him by military commission. (See “The Australian media and terrorism ‘expert’ Dr Rohan

Gunaratna”)

In fact, there is no independent evidence that Padilla ever traveled to Afghanistan. Padilla’s lawyers have argued that Padilla’s fingerprints on the form probably came from when he was handed the form while in US custody.

Given the unsubstantiated allegations against Padilla that US officials have already made and dropped, there is no reason to suppose that this “evidence” is any more genuine. The defense is due to cross-examine Gunaratna next week.

In an attempt to use widespread US hatred of Osama bin Laden to impugn the defendants, the prosecution has repeatedly referred to bin Laden and Al Qaeda in its arguments. As proof of Hassoun’s and Jayyousi’s terrorist inclinations, it cited the fact that FBI phone taps of Hassoun and Jayyousi picked up a discussion of a 1997 CNN interview between Osama bin Laden and reporter Peter Arnett. In the interview, bin Laden described the US as “unjust” and “tyrannical” and praised “heroes” who attacked US military forces.

Prosecutors insisted on showing a video of the interview at the trial. Defense lawyers quickly pointed out that there was no evidence Padilla had ever seen the bin Laden interview, and that it was not relevant to the case against Padilla as bin Laden discussed attacks on US forces, for which Padilla was not recruited, even according to the prosecution’s allegations. Despite the inflammatory and irrelevant character of the evidence, the judge ruled that the prosecution could proceed with showing the video.

The bin Laden interview also fails to provide any meaningful evidence against Hassoun and Jayyousi. In their phone conversations, they agreed with the description of US foreign policy as “unjust” and described bin Laden’s performance in the interview as “powerful,” but were also heard to describe bin Laden as “scary.” The entire bin Laden interview issue therefore appears to have been a red herring—a way for the prosecution to associate bin Laden with the defendants in jurors’ minds.

In a further trial mishap, defense lawyers argued earlier this week for a mistrial after some jurors witnessed one of the defendants in chains, a violation of trial procedure since it could prejudice the jury. The judge ruled against the defense and allowed the trial to continue.

The trial of Padilla is part of a long process of abuse, shifting rationales, and sensational charges. When Padilla was arrested, the media trumpeted his alleged actions in order to bolster government fear-mongering over a supposedly imminent terrorist threat. His trial, by contrast, has been virtually ignored, now that these charges have been deflated.

When, in November 2005, after years of secret detention, a Supreme Court intervention threatened to bring up the Bush administration’s practice of extra-legal detention, Padilla was hastily transferred to a Florida criminal court. US officials started cobbling together accusations against him of conspiracy and aid to terrorists abroad. The fact that the “dirty bomb” allegations were dropped was a clear sign that they were fabricated to begin with.

Padilla’s attorneys’ repeated efforts to get the case dismissed on the basis of grievous procedural errors were turned down. In October 2006, they argued that the US government had forfeited its right to try Padilla by torturing him, based on the US legal tradition that if treatment of the accused “shocks the conscience” the case against him must be thrown out.

In February 2007, his attorneys presented detailed testimony that Padilla suffered from serious mental impairment as a result of years of torture and was unable to participate in his own defense. In both cases, the judge allowed the case to proceed.



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