

A 'terrorist' reconsidered: Lodi man's 2006 conviction was injustice

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Eight years ago, a jury found Hamid Hayat, a 23-year-old former cherry picker from Lodi, guilty in California's first big terrorism trial. The case made national headlines. "Justice has been served," then-Attorney General Alberto Gonzales declared.

But the facts suggest a much different story -- not of justice served but of an innocent man unjustly imprisoned. A new habeas petition makes a compelling case that Hayat was convicted because an overzealous prosecution sought a conviction at all costs, and an inexperienced defense lawyer failed to marshal the evidence to acquit him.

Hayat's petition for a new trial makes a persuasive case that his trial lawyer, though well-intentioned, failed to adequately investigate the case and present exculpatory evidence. But this raises a much deeper question about our government's responsibility to seek justice when it prosecutes on our behalf.

The prosecution charged that Hayat had attended a training camp during his two-year stay in Pakistan and had returned to California bent on committing acts of terrorism. It offered three primary sources of evidence.

- Hayat's statements that he had attended a training camp -- which a retired FBI agent called the "sorriest confession" he had ever seen. Hayat, a man with a sixth-grade education, "confessed" only after hours of questioning, repeated denials that he had attended a camp and a litany of leading questions by FBI agents to which he sleepily assented.
- Statements that Hayat had made to Naseem Khan, a government informant who had befriended him. The recordings showed Khan, who was paid handsomely for his services, repeatedly goading Hayat to attend a training camp, cursing him for "wasting time," sleeping "half the day," and "walking around like a loafer."

With an evident desire to please his friend, Hayat promised Khan he'd go to terrorist training when he visited Pakistan. Had he done so, surely he would have shared his exploits with Khan on his return. But that never happened: Hayat never told Khan he actually attended a camp.

- Highly prejudicial evidence to show that Hayat had a "jihadi heart and a jihadi mind" -- particularly an Arabic prayer found in his wallet that, literally translated, urged Allah to "place you at their throats." The government's purported expert in Islamic law opined that only a person "engaged in war for God against an enemy" would carry such a supplication. In a case with no on-the-ground evidence of Hayat's attending a camp, the ominous-sounding prayer might well have persuaded the jury that Hayat was a terrorist.

The habeas petition devastatingly undermines the government's case, offering new evidence.

Eighteen sworn witnesses describe Hayat's whereabouts in Pakistan, painting a consistent picture of Hayat as a simple, fearful young man who almost never left his village. A leading Islamic law scholar declares that, far from being a "jihadi" prayer, the Arabic supplication is used widely by Muslim travelers seeking protection; a local imam says he recites it on mundane occasions when fearing harm -- like "visiting a gas station late at night."

And a journalist who had visited the Pakistani training camp affirms that it was closed long before Hayat allegedly attended it.

In a high-stakes case where defense counsel's weaknesses were readily apparent, our government had an obligation to do justice. We should hold our government to that higher obligation: Nine years into his imprisonment on a 24-year-sentence, Hamid Hayat deserves a second shot at justice.

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