



This story is taken from [Sacbee / News](#).

New Hayat trial denied

Judge finds no judicial error, juror misconduct in terrorism case.

By Denny Walsh - Bee Staff Writer
Published 12:00 am PDT Friday, May 18, 2007

A Sacramento federal judge on Thursday denied Hamid Hayat's motion for a new trial on charges that he supplied material support to terrorists and lied to the FBI about it.

A jury found the 24-year-old Lodi cherry packer guilty 13 months ago of undergoing terrorist training in Pakistan, returning to Lodi prepared to wage violent jihad -- holy war -- against fellow Americans, and lying to the FBI when initially questioned.

Lawyers for Hayat, a U.S. citizen of Pakistani descent with a seventh-grade education who has spent much of his life in Pakistan, argued in a voluminous, multifaceted motion for a new trial that there had been juror misconduct and judicial error during the trial.

But U.S. District Judge Garland E. Burrell Jr. wrote in a 59-page order that he considered all of Hayat's claims, "both singly and in combination," and concluded there was no miscarriage of justice.

Additionally, the judge wrote, the cumulative effect of any errors he might have made did not deprive Hayat of a fair trial.

"We will definitely be appealing," Hayat's trial attorney, Wazhma Mojaddidi, said Thursday. "The system is failing Hamid. He's innocent, and we're confident that someday justice will prevail."

U.S. Attorney McGregor Scott said he was "gratified" by the judge's ruling.

"The sentencing of Mr. Hayat on Aug. 10 to many, many years in federal prison will mark an important chapter in our region's unyielding efforts to protect against future terrorist attacks on domestic soil," Scott said.

Asked what he thought the sentence might be, Scott said: "We anticipate the sentencing guideline range is up to 39 years. The guidelines are merely advisory, however. It will be up to the judge."

In seeking a new trial, the defense attorneys argued that jury foreman Joseph Cote made hangman gestures to other jurors before deliberations, made racist remarks during

deliberations, made an improper phone call to an excused alternate juror during deliberations, and made inappropriate post-trial remarks to a reporter for Atlantic magazine.

The hangman-gestures allegation was based on the sworn testimony of juror Arcelia Lopez, who also said that the first time she saw Cote make the gesture was on the second day of trial and that he said, "Hang him."

At an April 6 evidentiary hearing, "Cote categorically and convincingly denied making the hangman gestures ... and further testified that he did not have thoughts attributed to him in the Atlantic article before the commencement of ... deliberations," Burrell wrote.

"Cote's testimony was credible," the judge concluded.

Lopez appeared and testified at an April 13 hearing, and the judge found her not credible.

The fact that Lopez did not tell him of the hangman gestures during the trial, yet told a defense investigator about them in a sworn statement two days after the verdict, made her "unconvincing," Burrell wrote.

Lopez said in the sworn statement that she deeply regrets her decision to vote for Hayat's conviction, and the judge wrote that "indicates she may desire to get the guilty verdict reversed."

Burrell also pointed out that, "although Hayat's counsel interviewed other jurors post trial, no information has been provided that any other juror saw Cote make a hangman gesture before jury deliberations."

Federal rules of criminal procedure prohibit the judge from inquiring into matters that were part of the deliberations.

"Even assuming Cote made all of the statements in the Atlantic article, when read as a whole, the article reveals that the jurors, and Cote himself, thoroughly and thoughtfully deliberated regarding Hayat's guilt or innocence," Burrell wrote.

The defense lawyers argued that, when Cote told his fellow jurors that all Egyptians dressed in the same garb look alike, it betrayed a racial bias.

But Burrell found it not to be racist in the context in which the statement was made. Cote was trying to explain how a government witness could have misidentified certain individuals at the mosque in Lodi.

The judge ruled that Cote's phone call to the excused alternate juror during deliberations did not constitute prejudicial misconduct.

On cross-examination, Mojaddidi asked Naseem Khan, a Pakistan immigrant who had worked undercover for the FBI and covertly recorded a series of conversations with Hayat, whether Hayat told him on Oct. 7, 2003, that he never intended to go to a terrorist training camp and he had been lying to Khan for months about his intention.

But the government objected to the question, and Burrell sustained the objection.

Hayat's lawyers contend it "was the single most important question that Hayat's counsel put

to Khan on cross."

Had the jury learned that he was not going to a camp, and his previous statements to the contrary were untrue, "it very likely would have concluded that Hayat was a slacker and blowhard who had no desire to train for, much less commit, acts of jihadi violence," the defense lawyers insisted.

But Burrell disagreed.

"Since other evidence in the record reveals Hayat's argument that he did not intend to go to a training camp and that Hayat was simply lying to Khan, the ruling was not plainly erroneous," he wrote.

The judge also found he was not in error when he refused to allow defense testimony from James Wedick, a highly decorated retired FBI agent who served 34 years in the bureau.

Wedick proposed to testify that FBI agents should have considered Hayat's vulnerabilities as an interviewee, such as language and education barriers, during a series of interviews just before agents arrested him, and that the agents' use of leading questions during the interviews contaminated the videotaped confessions to render them unreliable.

Burrell found that the circumstances of Hayat's interrogation were readily apparent to the jury through the testimony of the interviewing agents and videotapes of some of the interviews.

Therefore, the judge ruled, "Wedick's testimony was not necessary to inform the jury about the circumstances surrounding Hayat's confessions."

Go to: [Sacbee](#) / [Back to story](#)

This article is protected by copyright and should not be printed or distributed for anything except personal use.
The Sacramento Bee, 2100 Q St., P.O. Box 15779, Sacramento, CA 95852
Phone: (916) 321-1000

[Copyright © The Sacramento Bee](#)