



Convertino was a rising star. Now he's living a nightmare.

# A REAL CASE OF SNAKEBITE

How a trophy terrorism prosecution morphed into a big mud fight

BY CHITRA RAGAVAN

It was trumpeted as a landmark case in the war on terrorism. Last June, a jury in Detroit convicted three Middle Eastern men on a variety of terrorism and fraud charges stemming from the FBI's investigation into the Sept. 11, 2001, attacks. Attorney General John Ashcroft issued a statement saying the "convictions send a clear message. The Department of Justice will work diligently to detect, disrupt, and dismantle the activities of terrorist

cells in the United States and abroad."

Today, the government's trophy prosecution—still the first and only U.S. jury conviction stemming from the initial 9/11 probe—is a shambles, an acute embarrassment to Ashcroft's Justice Department. A *U.S. News* examination of internal documents, along with numerous interviews, reveals a Justice Department at war with itself, riven by petty jealousies and plagued by grandstanding that extends to Ashcroft himself, who damaged the government's credibility by twice violating a judge's gag order.

The case has turned into such a free-for-all that it seems almost all the people involved are either suing or investigating one another. The U.S. attorney in Detroit, Jeffrey Collins, has asked the Justice Department to investigate whether the lead prosecutor, Richard Convertino, committed acts of ethical misconduct—allegations that Convertino denies. Both Convertino and his supervisor, Keith Corbett, have been removed from the case. Ashcroft has named a "special attorney" to examine thousands of pages of documents relating to the case, including

classified reports that now could end up being shared with defense lawyers. The judge in the case, Gerald Rosen, calls the affair "a fine kettle of fish." He could throw out the convictions and order a retrial. *U.S. News* has learned that the bipartisan commission investigating the 9/11 attacks is conducting an inquiry into the case. Convertino, meanwhile, is suing Collins, Ashcroft, and other Justice Department officials, accusing them of "gross mismanagement" of terrorism cases. "Territorial infighting and office rivalries are going to destroy this prosecution," Convertino told *U.S. News*. Justice Department spokesman Brian Sierra, citing a gag order in the case, said the department could not comment.

**Rising star.** The 42-year-old Convertino, fit, soft-spoken, married for 20 years, and the father of five, hardly seems the rabble-rousing sort. A 14-year Justice Department veteran who has prosecuted complex fraud, gang, and mob cases, Convertino was seen as a rising star in the Detroit office and even interviewed for a federal judgeship three years ago. But his career began heading south six days after 9/11, when FBI agents arrested Karim Koubriti, Ahmed Hannan, and Farouk Ali-Haimoud at a Detroit apartment. The agents seized fake passport photos, forged green cards and visas, 105 audiotapes advocating jihad, sketches of a U.S. air base in Jordan, and a videotape showing Disneyland, the MGM Grand Hotel and Casino in Las Vegas, and the *New York Times* headquarters building. Eleven days later, the Secret Service arrested Youssef Hmimssa, a former roommate of Hannan and Koubriti, in Cedar Rapids, Iowa. In November, the feds picked up the alleged leader of the group, Abdel-Ilah El Mardoudi, with \$90,000 in cash and fraudulent documents, and evidence of having made numerous trips to Turkey under various aliases.

The men were initially indicted on document fraud charges. Hmimssa pleaded guilty to multiple felonies but negotiated a reduced sentence by agreeing to become Convertino's key witness against the others. Convertino began

prepping for the fraud trial, launched a terrorism investigation, and began working on a superseding indictment alleging that the men were actually part of a "sleeper operational combat cell" with designs on committing terrorist acts.

That's when things began to go sour. Convertino got little help or guidance, he says, from the Justice Department. "There was no sense of exigency," he told *U.S. News*, adding that he was given one

Through late 2001 and early 2002, Convertino tried to push the case forward, but no one in Washington was much interested in it, he says. Given the Justice Department's focus on the 9/11 investigation, perhaps Convertino shouldn't have been surprised. It "was a sleeper-cell case," he explains. "There were no bombs or booms, because the arrests were made before there was destruction or death."

The interest level soon changed. In August 2002, Florida federal prosecutor Barry Sabin became the acting chief of the terrorism and violent crime section at Justice. Suddenly, everyone wanted to be briefed on Convertino's case. At the time, the Justice Department was working to centralize decision making on terrorism cases at headquarters. But after Convertino objected to repetitive requests for updates on the case by Washington, he was accused of not being a team player.

Things went from bad to worse. Sabin and Breinholt, the Washington brass, quarreled with Convertino and Corbett over how to structure the charges to be contained in a superseding indictment. Sabin was intent on achieving some uniformity in how the various U.S. attorneys' offices handled terrorism cases by giving headquarters a bigger role. Convertino resented what he saw as a cookie-cutter approach. Finally, the new indictments were handed up, and things began looking better. Breinholt sent Convertino a congratulatory E-mail

from Washington and said he was "enjoying the speculation" that Convertino's case and a Seattle terrorism case were "part of an orchestrated nationwide" enforcement program. "The press gives us more credit than we deserve," Breinholt wrote, "not knowing that the timing was largely happenstance."

The harmony between Detroit and Washington didn't last long. In December 2002, Sabin, still the acting chief of the terrorism section, informed Convertino that he was sending a trial attorney named Joe Capone to Detroit to help with the case. Capone didn't show up until late February 2003, just as jury selection was beginning. Fed up, Corbett, Convertino's supervisor, fired off a blis-



FBI counterintelligence agent with no criminal trial experience. When he begged for more help, he says, Jeffrey Breinholt, then the acting chief of the counterterrorism section at Justice headquarters in Washington, assigned him a tax attorney. But the lawyer soon left the department. Convertino's request for a full-time appellate attorney during the trial was denied.

Turf wars began to brew. FBI agents in Iowa were incensed that the Secret Service had stolen their thunder by arresting Hmimssa. When the agents finally wrested control of Hmimssa from the Secret Service, he stopped talking. It took Convertino weeks before prosecutors in Iowa turned over the Hmimssa evidence.

ROBIN BUCKSON—THE DETROIT NEWS / AP



**HAPPIER DAYS.** From left, Corbett, Collins, and Convertino on June 3, 2003

tering E-mail to U.S. Attorney Collins. “In the 25 years that I have worked for the Department of Justice I have never seen anything approaching this level of micro-management,” he wrote. “The actions of Barry Sabin and his minions to insinuate themselves into this trial are nothing more than a self-serving effort to justify the existence of his unit. They have rendered no assistance, and are in my judgment adversely impacting on both trial preparation and trial strategy.” Capone believed the prosecutors in Detroit were simply freezing him out. Convertino and Corbett were told that their battles with Washington were “unacceptable” and that the brass there was aggrieved by their perceived lack of cooperation.

Somehow, despite all the squabbling, the prosecutors prevailed. In June 2003, El Mardoudi and Koubriti were convicted of providing material support to terrorists and document fraud. Hannan was found guilty only of document fraud. Ali-Haimoud was acquitted.

It might have ended there, but for Sen. Charles Grassley. The Iowa Republican is a longtime critic of both the FBI and the Justice Department. He wanted Convertino and Hmimssa to testify at a hearing on identity fraud and terrorism. When Justice officials declined to make the prosecutor available—standard department policy—Grassley subpoenaed Convertino. Corbett told Convertino that Alan Gershel, the chief of the criminal division in Detroit, had removed them both from the case because he believed that Convertino had long been talking

with Grassley about problems with the case. Convertino denies any such contacts but says that Justice Department officials told him they were worried he had “gone off the reservation.” Grassley has repeatedly warned Ashcroft not to punish the prosecutors. “In my 20-plus years of working on retaliation cases,” says Kris Kolesnik, a former Grassley investigator who now works for the private National Whistleblower Center, “this is the worst case of retaliation I have ever

**“I love the Department of Justice. I don’t want to leave it. It’s my life.”**

seen.” A Justice official assured Grassley in writing that no “adverse personnel actions” would be taken. But Collins, the Detroit U.S. attorney, began a review of all of Convertino’s files and then lodged a complaint against him with the Justice Department’s Office of Professional Responsibility. Convertino’s attorney, William Sullivan, says: “The allegations as reported in the press are untrue and unsubstantiated.”

**Jailbirds.** Collins is also concerned about Convertino’s handling of a letter that a colleague received from a convicted drug kingpin, Milton “Butch” Jones. Much of the letter was bizarre; Jones accused President Bush’s family of being drug dealers, for instance. But the letter

also noted that Jones had gotten to know Hmimssa—who was to be Convertino’s star witness—in jail and claimed that Hmimssa began “telling me things.” Most important, Jones wrote, Hmimssa described “how he lie’d to the FBI, how he fool’d the ‘Secret Service’ agent on his case.” Defense attorneys say the letter should have been given to them under the so-called Brady rule, which requires that prosecutors turn over any material that might be exculpatory. Convertino says neither he nor Corbett believed the letter contained Brady material when they reviewed it before trial. At a December hearing, Gershel, the chief of the criminal division in Detroit, stated he had ordered Corbett to disclose the letter, something Corbett said he could not recall. Corbett declined to comment for this article. Eric Straus, the deputy chief of the newly created counterterrorism section at the Detroit U.S. attorney’s office, gave defense attorneys the letter in November 2003 out of “an abundance of caution,” even though he believed, sources say, that the letter didn’t rise to Brady standards. The judge told Convertino and Corbett the letter was “exculpatory” and should have been delivered to the defense, given the questions about Hmimssa’s credibility.

To further complicate matters, before he became U.S. attorney in Detroit, Collins was the defense attorney for Jones, the drug kingpin. Later, the U.S. attorney’s office used the Jones letter—without Convertino’s or Corbett’s knowledge—in a failed effort to avoid the death penalty for the drug kingpin. Convertino says he would have turned over the letter had he known it was used that way. Collins, despite his previous ties to Jones, did not absent himself from a nearly three-hour evidentiary hearing on the letter and watched Jones testify. Collins said in a written statement to *U.S. News* that he left a prehearing conference in the judge’s chambers when the Jones topic came up, but sources say Collins was absent only briefly. Collins also said he had recused himself from Jones’s death-penalty case. A few weeks after the hearing, one of Jones’s fellow inmates wrote Convertino from prison. Jones had bragged in letters, the inmate wrote, about “how he was paid to lie on an Arab named Youssef Hmimssa to federal prosecutors, to mess up their case against some Arabs being charged with terrorist activities and their possible involvement in the September 11 terrorist attacks.”

It is unclear what weight Judge Rosen is giving that letter compared with the Jones letter, as he considers the many questions about how evidence was han-

CHARLIE ARCHAMBAULT FOR USN&amp;WR



**HEADQUARTERS.** The hallowed halls at Justice have rarely seen a mess like this.

uments. But at least a couple of the defense attorneys have had legal problems of their own. El Mardoudi's attorney, William Swor, for instance, admitted to using cocaine and got two years' disciplinary probation in 1989 for negligence in handling client funds. Another attorney in the case was accused of trying to smuggle pills to an inmate in a federal penitentiary but never prosecuted.

**Limbo.** As for Convertino, he has filed a response to the Office of Professional Responsibility complaint by U.S. Attorney Collins. In the civil suit he has filed in federal District Court in Washington, Convertino charges that Ashcroft, Collins, Gershel, and another Detroit official leaked the OPR complaint to the *Detroit Free Press* in an effort to ruin his reputation and career. And Convertino alleges that they further tried to damage him by illegally leaking the name of an FBI confidential informant with whom he was working. Collins declined to comment on that allegation. Convertino also has denied Collins's OPR allegation that he tried to obtain information from a court investigator to discredit yet another jailhouse snitch who testified for the defense against Hmimssa.

Convertino has little faith, he says, in the three-member Justice team that's reviewing the case documents because two of the three team members, Straus and Capone, are mentioned in the lawsuit he has filed and play a key role in the allegations made against him to the OPR. "One of the first things that should be done is recusing people who are caught in the middle of this," says Kolesnik of the National Whistleblower Center, to avoid the appearance of impropriety.

For now, Convertino remains in limbo. Grassley has had him detailed to work for the Senate Caucus on International Narcotics Control to prevent him from being fired by Justice. Convertino says he can't fathom how this case has turned his life into such a nightmare. "I love the Department of Justice," he says. "I don't want to leave it. It's my life."

Convertino didn't plan on getting into a nasty public brawl with his superiors in Washington, he says, but he felt he had no choice once the complaint against him to the Office of Professional Responsibility was leaked to the press. "I thought that airing out our dirty laundry," he adds, "was a pathetic way to go about this." Perhaps it was. But there's no going back now. ●

*With Nancy Bentrup, Carol Hook, and Monica Ekman  
ragavanc@usnews.com*

dled. At Rosen's request, Attorney General Ashcroft has asked a three-member Justice Department team headed by "special attorney" Craig Morford, the U.S. attorney from Cleveland, to examine all the documents in the case. Rosen's concerns appear to have some merit. *U.S. News* has learned that Morford is giving Rosen many classified documents, including some from the CIA, that were not made available at trial. Even Convertino and Corbett may not have known about these documents, federal sources say, because the FBI may never have made the prosecutors aware of them. Rosen will have to decide whether the documents must now be

shared in some form as Brady material with defense attorneys and whether he should grant the defense motion for a new trial because of the government's failure to turn over all relevant documents. The FBI has begun conducting security-clearance investigations of the defense attorneys so that they might have access to some of the classified doc-

**"This is the worst case of retaliation I have ever seen."**