

## **PROFILE OF A FRAME-UP**

by Stephen Downs

Yassin appeared in chains, squinting and dazed as though he had suddenly been exposed to light from a dark place. I put my arms around him and held him tight for a few seconds, aware that he could not hug me back as he usually did because his wrists were chained to a belt around his waist. The guard helped him sit in a chair across the table from me. He looked abused.

“Are you all right?” I asked him.

“They don’t beat me,” he mumbled. He tried to say something else, but didn’t seem to know where to begin. Finally he said, “How did you find me? I could not write or even make a call.”

“They listed you on the prison computer directory as being here at Ray Brook,” I said. “You’re only allowed a visit from your lawyer, so I couldn’t bring the family.”

It was April 11, 2007, and I had not seen Yassin Aref for almost three weeks, one of the longest periods during the year that I hadn’t seen him. On March 8, he had been sentenced to fifteen years in prison from his conviction in October 2006 on terrorist-related charges: support for a foreign terrorist organization, conspiracy with a weapon of mass destruction, money laundering, lying to the government. In early April, the Federal Bureau of Prisons had started him toward his destination, Terre Haute, Indiana—but with a “stopover” at Ray Brook, near Lake Placid, New York. We didn’t know that the bureau would subsequently “stop” him for a week here and two weeks there in three more federal prisons in Massachusetts, Brooklyn, and Oklahoma City, or that his trip to Terre Haute would take over a month and a half.

“I am in the box, in solitary,” Yassin said. “I have no radio, nothing to read, and nobody to talk to. I cannot call anyone or write to anyone. They let me out of my cell for exercise one hour a day, but the exercise yard is smaller than my cell, three steps across. The only exercise I get there is shivering. I asked a guard how I could get some things that the other prisoners had, like soap. He told me to fill out a request form—addressed to S.H.I.T. He said he would roll it up into a ball, shove it up my ass, and wait to see what kind of a response I got.” He trembled. “Why would he say something like that to me? I told him he should fear God. He said I better get used to it because it would be worse in Terre Haute.”

Yassin looked at me and began to tear up. “I can hold out for six to eight months of this,” he said. “But I do not know how much longer than that. Please file the appeal as soon as possible.”



In April 2006, I became part of Yassin’s defense team. Being a lawyer recently retired from a New York State job, I volunteered to help Terry Kindlon, Yassin’s court-appointed lawyer. In the cinder-block conference room at the Rensselaer County Jail in Troy, Yassin and I discussed the charges against him that grew out of a “sting,” in which a government informant, pretending to be an arms merchant, had tried to involve him in a plot to assassinate the Pakistani ambassador with a missile. Yassin emphatically denied that he knew anything about a plot. He challenged me to find anything he had ever said, in the hours of secretly tape-recorded conversations with the informant, that showed he was told of or knew anything about a plot, or that he had ever said anything supportive of terrorism. But he had a more immediate problem: he wanted a new bail hearing, since his most recent application on March 24, 2006 for release on bail **probably would not be** granted. “It was just tricky by the government,” he said in his still-

evolving English, “and my lawyer did nothing to show their tricky.” Clearly he was upset with both the result and his legal team, and he didn’t hesitate to tell me so. I agreed to help him draft a new bail application.

Yassin was very worried about his wife, Zuhur, and his four children, who ranged in age from 1 to 12; the youngest had been born while Yassin was in jail. Zuhur had no source of income except charity from the mosque, and she had never worked at a job in America. Although the family seemed to have no resources, attempts to provide them with money or supplies met with Zuhur’s resigned response, “All is fine. We have everything we need.” The children were very smart, active, and Americanized; the affection that they gave so readily to regular visitors like me made the destruction of the family doubly painful, and kept me working on what could be done to get Yassin out of jail. Yassin wanted to file the bail application in part to give Zuhur some hope that he might be released. Even if this were unlikely, hope was all he had to give her right then.

Because of his deprived childhood, Yassin wanted his children to have everything that he’d missed: fun and play, education and security. “That is why I came to America,” he said. But he was haunted now by the possibility that they would grow up under the same fear and deprivation he had suffered, and that history would repeat itself: “For myself, I don’t care that they put me in prison. In Iraq they would call this prison a hotel, and people would fight to get in where you had three regular meals and a safe place to sleep. But it is for my wife and children that I am afraid. They are the ones who are suffering, not me. What did they do to deserve this? Why should they suffer?”

Yassin told me that after he became the imam at Masjid as-Salam, he would play tag or hide-and-peek in the mosque with the children. Some people were shocked to see a grown man

cavorting like that in a house of prayer—with a group of children, no less—and would demand to see the imam about this outrage. Yassin would then introduce himself as the imam and explain that Allah loved children to play and have fun—and what better place to play than in a mosque? His eyes sparkled with the memory. “You see,” he said, “I am a radical Muslim imam—just not the kind of radical Muslim the government thinks I am.”

Yassin was especially upset that the government would claim he was a terrorist. He had repeatedly told Malik the informant, in conversations secretly recorded by him, that he was not interested in terrorism. “I always denied it,” Yassin would say in exasperation. “Here, look at the January 14, 2004 conversation. I told Malik that when we came to America we promised to obey the law—and a Muslim always obeys his promise. I told him that my duty in America is to build the community, to teach and marry couples and counsel people with their problems, and I had no interest in anything else. I told him that bombing buildings in America will not give any benefit. I told him that suicide was forbidden in Islam. I told him that if he wanted to help liberate Kashmir he should send his money to the women and children who were hiding in the mountains without food or shelter, and that way he did not have to help the terrorists. I told him that I have no plans for jihad, I am not in that situation. Where did I say anything that supported terrorism? You have to write about all this in the bail application.” I did, and after each draft he wanted even more material and arguments added, until the application approached the size of a small book.



The passage of the Patriot Act right after 9/11 signaled that the Bush Administration was preparing to fight a tough, if possibly unconstitutional, war against terrorism. New paradigms were introduced to law enforcement. Vice President Cheney urged the government to use the

“One-Percent Test,” whereby if only a 1% chance existed that a situation might result in a terrorist attack, the government must respond to prevent it. Department of Justice and FBI officials indicated that their post-9/11 strategy required them to prosecute suspicious individuals *before* a crime was committed—a kind of “preventive conviction” designed to remove anyone who, in their view, presented even a 1% chance of being sympathetic to terrorism. Now, six years later, what has emerged is just how unconstitutional the “war on terror” has become, and what devastation it has wrought on innocent people with no connection to terrorism.

On August 6, 2004, Washington journalist Mark Helm’s article in the Albany *Times Union*, “Goal Is to Break Up Conspiracies Early,” described this new strategy with comic delicacy:

Prior to the September 11 terrorist attacks, federal agents in counterterrorism cases were more at ease following evidence trails until arrests were *appropriate*. But in the wake of the attacks, with multiple inquiries focusing on law enforcement failure to figure out that a major strike was brewing, authorities are placing renewed emphasis on breaking up terrorist conspiracies before they *ripen*. (Italics added.)

When we were still operating under the Constitution, arresting someone before the evidence indicated that a crime had been committed would have been both *inappropriate* (to put it mildly) and illegal. But now authorities were arresting people before they had evidence that a crime had *ripened*. The euphemisms disguise what amount to the practices of a police state.

There have been hundreds of such arrests and convictions all across the country. Many cases, like those of Hamid and Umer Hayat in Lodi, California, Sami Al-Arian in Florida, and Maher Arar of Canada, generated widespread publicity and criticism of the government. Other

cases simply passed by with little media attention. Many of these started with overblown press conferences, in which the government proclaimed that it had broken up “terrorist cells” and described in lurid detail the plots that the cell members intended to inflict on the U.S., only to quietly acknowledge later that the defendants were not real terrorists. They had merely been lured into participating with a government informant by money or friendship—or in some cases, the defendants had not actually participated at all. The violent plots, the criminal intent, were found only within the *government agents’* minds, not the defendants’.

The government first claimed that Yassin was a dangerous terrorist “commander” based on a mistranslation of notebooks found in Iraq. After admitting that its translation was wrong, the FBI then seized Yassin’s 1999 diary, as well as some old poems and speeches from the time he was living in Syria, and concocted a fantasy of misrepresentations to create the illusion that he was “dangerous” and part of a terrorist plot against America. The government essentially claimed that in 1999, Yassin had been sent to America by an Islamic organization, the IMK (Islamic Movement of Kurdistan), as “our representative” to start a “center abroad” for Mullah Krekar, one of the leaders of IMK who was now a notorious terrorist leader intent on carrying out a “plan in America.” The government’s position was summed up at the bail hearing by prosecutor William Pericak, who said of the 1999 diary, “It’s cryptic notes. But we get the idea what they’re talking about. [A] Mullah Krekar Center abroad and ‘our representative’ coming a couple of months later to the United States here.”

In fact, the opposite was true. In 1998, Congress passed the Iraq Liberation Act, which made the overthrow of Saddam Hussein’s government in Iraq official U.S. policy. The act provided that various organizations—including IMK—would be allies of the U.S. in this effort, and would also be eligible to receive American aid. Neither IMK nor Mullah Krekar were

considered by the U.S. to be associated with terrorists at that time. It was not until 2003, long after both Yassin and Mullah Krekar had left IMK, that the government decided to classify a new organization with which Mullah Krekar was associated, Ansar al-Islam, as a terrorist organization; Yassin had no contact at all with Ansar al-Islam or with Mullah Krekar after he left IMK in 1999 and came to the U.S. The term “plan in America,” scattered throughout Yassin’s diary, was also mistranslated by the government from the correct term “America’s Plan,” which the diary made clear was the U.S. plan to topple Saddam Hussein from power. In 1999, the IMK had been working to support this plan, and Yassin as a minor employee in IMK had been helping in the effort. The “Mullah Krekar Center abroad” referred to in the diary actually involved a debate within IMK as to whether to open a *European* office of IMK, not an American office. In the diary, Yassin clearly opposed the Krekar Center abroad because he did not trust Mullah Krekar. As for the letter from IMK designating Yassin as “our representative,” it bore the letterhead not of IMK but of another harmless and unrelated organization, and in his diary Yassin clearly indicated that when he learned about the letter in 1999, he told the organization involved that he did not want to be their representative.

In short, the basis upon which the government claimed that Yassin was “dangerous” was either wholly false or a gross distortion of the truth, and it had to know that what it was telling the Court was untrue. I began to understand why Yassin was so upset. Our motion to reconsider the order of bail was filed on June 6, 2006, and the Court eventually denied it. But significantly, the government’s response to the motion did not contest most of what we claimed were outright lies and misrepresentations. I began to realize that the government was just throwing mud at Yassin and hoping some of it would stick. They were just making it up.

Under the Bush administration, the Justice Department had become highly politicized. An extraordinary amount of money had been channeled to the FBI and the Justice Department to hunt down and remove terrorists from our national domestic life, and yet compelling independent evidence showed that there were few, if any, actual terrorists in the U.S. after 9/11. The “Terrorist Trial Report Card,” published by The Center on Law and Security at New York University School of Law (<http://www.lawandsecurity.org/publications/TTRCCComplete.pdf>), reports on the terrorism cases brought by the Department of Justice in the U.S. between September 11, 2001 and September 11, 2006, and concludes: “The overall record revealed in these charts suggests the presence of few, if any, prevalent terrorist threats currently within the U.S.”

Given these circumstances, how did Justice Department officials prove their loyalty to an administration that demanded terrorists when there were no real terrorists to prosecute? The answer was to simply create some: manufacture plots and try to draw innocent Muslims into participating. From the government’s point of view, this exercise in fear not only justified a bloated counterterrorism budget and satisfied a political agenda; it also worked. Even if the defendants were not real terrorists, their convictions were success stories because these prosecutions reminded Muslims in the U.S. that the government was always watching, always infiltrating, always ready to strike at anyone it chose.

It was also becoming increasingly apparent that satisfying a political agenda was a primary criterion for U.S. Attorneys to retain their jobs. Karl Rove and the Bush White House seemed to have wanted these attorneys to undertake vigorous prosecutions against voter fraud in the run-up to the 2006 elections, notwithstanding clear evidence that there was little, if any, voter fraud in the country. Targeting Democratic candidates with voter fraud charges served a



political purpose, and the prosecutions by themselves were believed to hold down the votes of minority voters, who were more likely to vote Democratic. By 2007, the ploy was overt: U.S. Attorneys who were not perceived to be loyal Bush supporters and who did not follow this political imperative were threatened with replacement, fired, or forced out.

In the same way, it seems clear that the Bush Administration viewed prosecuting terrorists as having important political payoffs. Proving that terrorists were living in American communities reassured the body politic that the Republicans were indeed defending the country. U.S. Attorneys who did not bring such prosecutions were perceived as politically disloyal and were in danger of being replaced; those who could not find any real terrorists to prosecute were under pressure to “create” them. John McKay, a former U.S. Attorney in Washington State who was one of those replaced by the Bush Administration, reported that Glenn Suddaby, the U.S. Attorney for the Northern District of New York, was on the list to be fired but somehow escaped the political pressure. Suddaby was responsible for two major “terrorist” prosecutions in upstate New York: the Aref/Hossain case, and the case of a Syracuse oncologist, Dr. Rafil Dhafir, and four other co-defendants. These prosecutions apparently were considered top priority in Washington, and it may well be that they saved Glenn Suddaby’s job.

While I was working on Yassin’s bail application, something strange began happening. Starting in the fall of 2004, the government had begun to secretly show material to the presiding judge—secretly, because the government claimed the material was classified—without the defense being allowed to know what the material was or why it was being shown to the judge. The defense would receive copies of letters or briefs from the prosecutor to the judge related to Yassin’s case, but all of the substantive information had been deleted on grounds of national security.

In December 2005, the *New York Times* revealed that the National Security Agency (NSA) was conducting warrantless searches and eavesdropping in apparent violation of the Constitution. NSA officials were subsequently quoted as claiming that the NSA program helped catch some terrorists, specifically including an imam in Albany, New York. In “Spy Agency Data After Sept. 11 Led FBI to Dead Ends” in the *New York Times* on January 17, 2006, reporters Lowell Bergman, Eric Lichtblau, Scott Shane, and Don van Natta Jr. wrote that “[s]ome of the officials said the eavesdropping program might have helped uncover people with ties to Al Qaeda in Albany; Portland, Ore.; and Minneapolis.” The article later stated that

different officials agree that the N.S.A.’s domestic operations played a role in the arrest of an imam and another man in Albany in August 2004 as part of an F.B.I. counterterrorism sting investigation. The men, Yassin Aref, 35, and Mohammed Hossain, 49, are awaiting trial on charges that they attempted to engineer the sale of missile launchers to an F.B.I. undercover informant.

A color picture of Yassin in chains accompanied the article.

The defense seized on this statement and demanded to be shown what information resulted in Yassin being “uncovered.” Eventually the judge issued a decision but immediately “classified” it—meaning that the defense could not see it, even though the defense lawyers had obtained security clearance. An appellate court ruled that it would not decide the legality of classifying a judicial decision until after the trial was over. None of the secret information was ever given to the defense for the trial, nor has it been seen to date by anyone (including the jury) other than the government and the trial judge.



After filing the bail application, I began a search for character witnesses to present at trial. I met many people who spoke about Yassin's charisma and how he had been a positive influence in their lives. One African-American man who had met Yassin after being released from prison said: "He told me that as a Muslim I had made promises, and that a Muslim always keeps his promises. I had promised to obey the law, and now I had to do it. I had to tell the truth. I had to be faithful to my wife and take care of my children. I had to pray. I couldn't just say I would. I had promised to do these things, and so I had to do them. That is what it meant to be a Muslim—to give yourself over completely to God. It saved my life." Everyone I spoke to told me that both Yassin and his co-defendant Hossain were peaceful people who were not involved in any way in terrorism.

People also told me stories about Yassin's comic generosity and his naiveté regarding financial matters. He seemed incapable of saying no to people looking for help. People learned that all they had to do was tell him a story about a tragedy and he would immediately give them all the money in his pocket. As a result, he was perennially short of money. Their descriptions reminded me of Yassin's stories about his grandfather and uncle in their small village in Kurdistan—two beloved imams who were so simple and humble that they would rush out of their houses to share their suppers with a poor person wandering in the street.

I began work on the criminal charges themselves. Malik, the government's informant/actor, was a Pakistani who had recently been convicted of felony fraud in connection with 80–100 separate criminal acts. He took bribes to give the correct answers to foreign applicants during the written test for motor vehicle learner permits, under the guise that he was translating the tests for the applicants. He also worked with corrupt Motor Vehicles employees to provide drivers' licenses with false identification information and photographs to foreign

applicants. He was scheduled to serve a long prison sentence and then be deported to Pakistan, where he was said to be facing a murder charge. But the government offered to make all of his legal troubles go away, and allow him to remain free in the U.S., if he could bring about Yassin's conviction by involving him in a fictitious terrorist plot. So in 2003, Malik began to follow a carefully crafted script that would provide Yassin with just enough information to secure a conviction, but not enough to alert him that something illegal might be happening. The FBI set Malik up with all the trappings of a rich importer, including a store and merchandise. Then he began sniffing around Yassin's mosque to find a co-conspirator. (Under federal law, a government informant cannot engage in a conspiracy with the target, so another individual was needed as the co-conspirator.) After several false starts, Malik settled on a man named Mohammed Mosharref Hossain.

Hossain was originally from Bangladesh. He and his wife, Fatima, had been naturalized American citizens for nearly 20 years; they had 6 young children. Hossain ran a small pizza shop in Albany, and at the time he badly needed money to fix up some rental properties he had just purchased. Malik spent a long time winning Hossain's confidence by small talk and displays of concern for the family and by bragging about the wealth he'd made through his import business. Then he offered to loan money to Hossain. Malik claimed that Hossain was such a dear friend that he would allow Hossain to keep \$5,000 of the loan for himself. (Malik described this as his "jihad," or struggle, to help a fellow Muslim with a gift of money.) Malik would loan Hossain \$50,000 and Hossain would pay back \$45,000 in installments of \$2,000 every month.

Malik then began a long series of conversations in which he explained to Hossain that he obtained the money for the loans by selling "ammunition" to a listed terrorist group, JEM. The ammunition included missiles. On November 20, 2003, Malik even pulled out a SAM missile

that he had in his store (supplied, of course, by the FBI) and showed Hossain how it worked. JEM was supposedly trying to liberate Kashmir, a predominantly Muslim state, from India.

Hossain had no awareness of JEM; according to the secretly recorded tapes of his conversations with Malik, Hossain initially thought that JEM was a musical group. And even the government conceded that Hossain was not a terrorist sympathizer and was only used as a way to get to Yassin. Nor did freeing Kashmir from India have any obvious connection to the U.S. or threaten any U.S. interests. One can understand how Hossain might believe that it was none of his concern how Malik made his money in a struggle between Pakistan and India over Kashmir. But if Malik wanted to give him \$5,000 as a gift, why should he refuse, especially if it would save his business?

Eventually, on February 3, 2004, long after the loans had started, Malik suggested to Hossain that his group might try to assassinate the Pakistani ambassador during a visit to New York City, providing a possible connection to the U.S. But so strong is the power of rationalization that Hossain, who was by now full of gratitude to his wealthy benefactor, apparently did not see the trap and was still ready to accept Malik's money. Certainly Hossain never intended to be involved in an assassination of the Pakistani ambassador—he just wanted a loan to fix up his properties. It was a classic (and illegal) entrapment, in which the only party with any criminal intent was the government.

Under Islamic law, loan transactions had to be witnessed and recorded in much the same way that a notary is used, and both parties decided to use Yassin as their witness, since this was a traditional role performed by an imam. Once Yassin was selected to be the witness, Malik was supposed to give information to Yassin that the money for the loan was made from an illegal source (the sale of a missile), that it was part of a terrorist plot to assassinate the Pakistani

ambassador in New York City with the missile, and that the loan was intended to launder the proceeds of the illegal missile sale so it could not be traced by the government (money laundering). Theoretically, that is how Yassin, the target of the sting, should have been informed, so he could make a choice about whether to participate or not. But Malik did not do this. He simply failed to give Yassin information from which Yassin could have deduced that there was any illegality or any plot.

The government claimed that simply witnessing the loan transactions (which Yassin, as an imam, was willing to do for free as a service to his community), coupled with knowledge of the plot, was a criminal act, as long as Yassin did it with the intent to conceal the illegal source of the money in order to protect Malik so that Malik could make additional illegal arms sales in the future. The crucial question was whether Yassin ever received enough information to understand the illegality of an otherwise innocent act (witnessing a loan). If he was given enough information, the operation was a sting (stings are legal). But if he was not given enough information, it was not a sting: it was a frame-up.

On four occasions, Malik inserted vague, confusing statements during his secretly recorded conversations with Yassin that suggested he was involved with missiles or that there was going to be a missile attack in New York City. But with one notable exception, Yassin never reacted to any of these statements to indicate that he had either heard them or understood what Malik was talking about. For example, on January 2, 2004, while Yassin was witnessing one of the loan transactions, Malik handed Yassin a wad of paper money to count. While Yassin was looking down and counting the money, Malik leaned over to Hossain, held up a handle device that looked like a mechanism for putting price labels on products in supermarkets, and said, "This is the part of the missile [mizz-aile] I showed you." The government acknowledged

that Malik always mispronounced the word “missile” as “mizz-aile.” In his opening statement to the jury, prosecutor William Pericak said, “...the cooperating witness will take out the trigger mechanism for the surface to air missile...and he’ll say this is part of the missile (mi-syl) I showed you—and the court reporter may not be able to get down my change of pronunciation—but that’s how the cooperating witness pronounced missile. This is part of the missile (mi-syl)... .”

On the videotape it is clear that Yassin never looked up or reacted to Malik’s statement in any way—and even if he had looked up, he would not have recognized the handle device as anything related to a missile. Moreover, the mispronounced noun, even if heard, would not have conveyed any information about a plot. The government argued that on January 2, Yassin was shown the missile (handle), but it was obvious that Yassin had not seen it and had not understood its significance, nor would anyone else who’d happened to be there. The jury acquitted Yassin of the counts of the indictment related to the January 2, 2004 conversation.

On January 14, 2004, Malik began telling Yassin about JEM and Azar Mohammed’s attempts to liberate Kashmir from India. In the middle of this description, Malik stated:

He is in Pakistan right now, and he’s trying to liberate Kashmir from India. And, uh, he’s been fighting the Holy War for almost now, so many years and we’re, we are trying to help in that war. And this President Musharref, the President of Pakistan is, uh, is against him and, uh, against the Holy War because he’s helping the Mushriq [idolators], uh, and uh, we are fighting him too. Uh, that’s why, the missile, that we sent it to New York City to teach Mu, uh, President Musharref, the lesson not to fight with us. And I don’t know how, how I do look at it in

Allah's way. What do you think about that I mean, I want to make my mind clear with God.

Yassin responded, "Right brother, especial, I'm not talking about that group and that organization." He went on to say repeatedly that he did not know anything about JEM except that he had heard about it on television.

The government argued that on January 14, Yassin was told that a missile ("mizz-aile") had been sent to New York City to attack the Pakistani government, but clearly Yassin made no comment or reaction to indicate that he understood anything about the missile plot; instead, he focused on his lack of knowledge of JEM. At trial, Yassin testified that he did not know what the word "mizz-aile" meant, and had not heard it used. The notion that a person could hear and understand that a missile attack was being planned for New York City and not react in any way to it is almost impossible to imagine—and yet the position of the government was that Yassin heard and understood Malik's comment about a missile being sent to New York, and had no reaction to it. (In any event, there was no connection between this comment and the loan transaction, which was a required element of the crime). Significantly, the jury found Yassin not guilty of the counts related to the January 14, 2004 conversation.

The third conversation occurred on February 12, 2004, when Malik and Hossain came to Yassin's house so Yassin could witness another repayment transaction. That night Yassin had a guest for dinner from Michigan, Kassim Shaar, who was not known to either Malik or Hossain. (For all Malik knew, Shaar might have been an FBI agent.) While they were sitting at Yassin's table discussing the loan, Malik abruptly blurted out something to the effect that it would be advisable to stay out of New York City next week because there would be an attack. It was not clear exactly what Malik said, because the tape recorder he was supposed to have been wearing



“accidentally” fell out of his pants, and he allegedly failed to notice that it was gone. But whatever he said, it got Yassin’s attention.

Yassin testified at trial that he told Malik to leave his house, and that he was 100% certain on February 12 that Malik was joking and was not serious about an attack in New York City next week, because nobody involved in such an operation would blurt out such information in the middle of a conversation with people that he did not know. Yassin also testified that he warned Malik on March 2, 2004 not to make such jokes, because they could be misinterpreted. Obviously, according to Yassin, Malik was not a real terrorist, but jokes like that were dangerous and would get people in trouble.

The government argued that in the tape-recorded March 2 conversation, Yassin had entered the conspiracy by warning Malik not to speak openly about the plot. But why would Yassin warn Malik not to compromise a missile plot when Yassin knew nothing about the plot? Malik’s “attack” comment on February 12 conveyed no information about what was intended, or why, or by whom, or whether Malik was even involved. Moreover, Yassin told Malik that he believed that the FBI had bugged his house. If that were true, obviously the FBI would know from Malik’s careless comment that a missile attack was coming in New York next week and would arrest everyone involved. Why would Yassin want to be part of a plot that had already been compromised? Indeed, what would have been Yassin’s motive to enter into a missile plot at all?

Entering such a plot would not be undertaken lightly. Is it conceivable that someone working hard to provide for his wife and children in a new country, who had never before been involved in terrorism or plots or criminal activity, would suddenly one day hear a vague reference to a missile attack and casually decide to become part of it, without ever asking a

single question about the plot, its chances of success, or the consequences—especially after he knew that the plot, if it existed, had already been compromised? In later conversations, Yassin never referred to the plot, or questioned what had happened to the missile attack, or said anything else to indicate that he understood anything about it. Surely if he had wanted to join a terrorist plot on February 12, 2006, he would have mentioned it to Malik at later meetings. The jury acquitted Yassin of the counts associated with the February 12 and March 2 conversations.

It was the government's apparent position that whereas most people would be unlikely to enter into such an ill-conceived plot, a Muslim would, because fanatical Muslims will jump at any chance, no matter how vague, impractical, or suicidal, to destroy this country—a racist assumption directed against a new victim population. If evidence this weak can be used to frame an innocent man based on the assumption that members of his "race" are all terrorists at heart, the whole U.S. Muslim community is in danger.

Finally, there was the fourth conversation on June 10, 2004 in which the word "missile" was mentioned—*but only in code*. On February 3, 2004 in a private conversation, Malik told Hossain that his people (JEM) had a code word for "missile"—and that word was "chaudry." Yassin was not present during this conversation, and the government basically conceded that Yassin was never told that "chaudry" referred to a "missile." (FBI agent Tim Coll testified: "Q: Again, my question is, Malik did not ever tell Mr. Aref that Chaudry was a code word for missile, correct? A: On tape, right....Correct.")

On June 10, during a conversation about the loans, Malik referred to his business of selling "chaudries," and of sending a "chaudry" to New York, but since Yassin did not know what "chaudry" meant the statements conveyed no information about the plot. Later in that conversation, Malik said that he might have to hide himself from the FBI. Yassin reacted with

surprise, and said that for his part the FBI was welcome to investigate him because he (Yassin) was not doing anything except “eating, drinking and talking,” and as a result he did not “have a problem.” Obviously Yassin did not believe that he was doing anything illegal that the FBI would be interested in. Although no other significant information was exchanged on June 10, the jury convicted Yassin of all the counts and charges associated with that conversation, and it was only that conversation which gave rise to his terrorism-related convictions. Perhaps the jury had forgotten that he did not know the code word “chaudry.”

The indictment also alleged that Yassin had engaged in money laundering—using the loan transactions and repayments to disguise the money from the illegal sale of the missile. At their first meeting on December 10, 2003, Malik explained the terms of the loans to Yassin and asked whether he believed the terms were legal according to Allah’s laws, even though the loans might violate American laws. Yassin responded that he did not believe the loans violated American laws. At that point, if it had been a real sting, Malik would have clearly explained to Yassin that the loans violated American laws because the source of the money came from the illegal sales of missiles. Instead, Malik said something so misleading that it strongly suggests a deliberate frame-up. When Yassin said, “I don’t believe it is against the law,” Malik responded, “Because I don’t pay taxes.” In other conversations, Malik suggested that the loan transactions would provide documentation to help him pay his taxes and thus “legalize” his money. Malik never said anything about using the loan to hide the proceeds of the sale of a missile. The jury found Yassin not guilty for the money laundering counts arising from these discussions, although it found him guilty of money laundering for the counts surrounding the June 10, 2004 meeting, where Malik discussed the code word “chaudry,” which Yassin did not know.

The government tried to explain away the lack of motive for Yassin to enter the “plot” by recycling its discredited arguments, based on Yassin’s 1999 diary and other Syrian writings suggesting that he was a radical Muslim who had come to America as “our representative” for the establishment of a “Mullah Krekar Center abroad.” Yassin’s poems, diaries, and writings were so old and out of context that they were obviously irrelevant to the sting charges and should have been excluded from evidence. But the government had cleverly foreseen this problem by including two extra charges that related to Yassin’s life in Syria: one charge that he had failed to disclose his membership in IMK when he came to the U.S., and one charge that he had lied to the FBI when he said he did not know Mullah Krekar personally. Even though both charges carried only minor penalties compared with the others, they allowed the government to introduce large amounts of prejudicial evidence about the IMK and Mullah Krekar in the event that the judge limited its right to do so in connection with the character issue. The defense made a motion to strike the poems and other material as irrelevant and prejudicial, but the judge did not limit the government to any significant degree.

The trial began on September 12, 2006. Yassin was brought into court in chains in the middle of an absurd display of security that included posting snipers in buildings around the courthouse. (Who were they planning to shoot?) The government desperately wanted the public to believe that it had captured a real terrorist. The trial followed the government’s script, complete with an FBI agent parading a missile around the courtroom to intimidate the jury into believing that the defendants had posed a real terrorist threat, even though, by the government’s own evidence, neither defendant had ever sought to use a missile for any purpose whatsoever.

On the morning that Yassin was scheduled to testify in his own defense, I spoke to him at the defense table. Perhaps I looked a little emotional when I told him that I hoped we had made

the right decisions, because I didn't want him to suffer if we were wrong. He looked over at me and said, "Let me tell you a story. There was a man once who bought a beautiful vase. He warned his young son to be very careful not to knock the vase over and damage it. Daily he reminded the son of the horrible things that would happen to him if he broke the vase. But one day the son was playing in the house and knocked the vase off the table, and it broke into pieces. The son was terrified. He ran out of the house to hide, and ran straight into his father's arms.

'Why are you so upset?' the father asked his hysterical son.

'I broke your vase,' the son sobbed.

'So what?' said the father. 'If it is broken, we can just buy another.'

'But you said that you would do horrible things to me,' said the son.

And the father said, 'That was yesterday, when we still had the vase. Now it is broken, and we just have to start over from here.'"

Yassin looked at me closely. "I know you did your best," he said. "If the vase breaks, we will just have to start over from where we are."



Yassin's testimony was riveting, and he impressed everyone with his honesty. The defense felt that he had successfully refuted the charges. So powerful was his testimony that during the summation, prosecutor William Pericak felt forced to acknowledge:

...we are not proving that Mr. Aref is a terrorist. Mr. Kindlon [Yassin's lawyer] was wrong to say that's what the government is trying to prove. But we are trying to demonstrate to you on these charges that he knew a fact, he knew where the money came from and that he intended to help, he intended to help Malik disguise

where that money came from...That is all we are trying to prove here. All we are offering that evidence for. And that is all you should consider it for.

The secret classified aspects of the case continued to cast a shadow over the trial. At the end, the judge instructed the jury that the government had “good and valid” reasons for targeting Yassin with the sting, but that the jury need not consider this issue. The instruction seemed to tell the jury that there was other evidence of Yassin’s guilt that the prosecution had not been allowed to present, and it was unsuccessfully objected to.

Hossain was convicted of all of the counts against him. And in addition to convicting Yassin of the counts arising from the June 10, 2004 conversation, the jury also convicted him of the charge that he lied about knowing Mullah Krekar personally. It was a shock to the defense, because nobody had expected that the June 10 conversation would pose any problems. It seemed obvious that Yassin would not have understood Malik’s use of the code word “chaudry,” and the government’s witness had conceded that without knowing it, the conversation would not have amounted to much. The charge that Yassin lied about knowing Mullah Krekar personally seemed ridiculous because it was so obvious that he was telling the truth. Yassin was a low-level office worker at IMK in Syria, while Krekar was a senior IMK official living in Norway. Krekar came to Syria on just one occasion, for a one-month visit, and during that time Yassin met him on a few occasions at group functions involving IMK. How was this knowing someone “personally”? It was like having a candidate for national office fly into a city to thank the local campaign workers for their efforts. Did shaking hands with the candidate on several occasions mean that the campaign workers knew the candidate personally?

On the day after the verdict, I visited Yassin in jail. He was trying hard to put a brave face on the conviction, but he was obviously very worried about his wife and children. Still, he

tried to smile and joke with me even when both of us had tears in our eyes. He related how, whenever his father hit his head on the low rafters of the family barn, he would say, “*Okhay*,” which meant “I like it,” because he did not want Satan to derive any satisfaction from his suffering. We both said “*Okhay*” several times and laughed, as though to confirm that the government would not derive any satisfaction from our pain, either.



An analysis of the evidence raises serious questions about the fairness of Yassin’s conviction. Is it fair to expect a target like Yassin, who was only notarizing (witnessing) financial transactions as a favor, to remember a few casual comments out of hours of conversations, which were held over a six-month period in an imperfect, mispronounced, third language (English)? Is it fair to expect the target to later connect these conversations up and understand that there was an underlying criminal aspect to the financial transactions that transformed the otherwise praiseworthy act of being a witness into a crime? The government, the judge, and the jury apparently believed that this was a reasonable expectation. For the rest of us, it seems more like a frame-up.

Indeed, the government was quite open about the frame-up. On October 12, 2006, two days after the conviction, Albany *Times Union* reporter Brendan Lyons wrote an article in which he quoted various FBI agents about the “sting”:

In the eyes of the FBI, Yassin Aref was cunning and cautious. If the bureau’s undercover informant was too aggressive and pulled out a shoulder-fired missile in front of him, Aref might see through the trap and the sting would be over. So the agents were patient. They reeled him in slowly, ordering their informant to engage Aref in discussions on Islam and terrorism, and the profits it could bring,

before flashing a less-sinister-looking triggering device during a secretly videotaped meeting... Yet not once during the yearlong sting was Aref ever shown the missile tube, easily recognizable to the average citizen as a potential weapon of mass destruction. “There was a lot of debate on that issue,” said an FBI agent, who spoke to the *Times Union* this week on the condition he not be identified... If Aref saw the missile, the agent said, he may have been “spooked.”

In other words, if the agents had shown Yassin a missile, he might have recognized it and called the police, which would have ruined the frame-up. But if they just flashed the handle of the triggering device, Yassin would not be likely to recognize it, and they could argue that they had shown him the missile (mispronounced as mi-syl) without much possibility that he would realize what was happening.

The fingerprints of a frame-up are all over the evidence. The only time Malik ever suggested that the money for the loan came from the illegal sale of a missile was at the end of the sting, on June 10, 2004, but Malik used the code word “chaudry” for “missile,” which Yassin did not know, and so Yassin would not have learned anything from the conversation about the plot or its connection to the loan—an indication of a frame-up. Malik constantly mispronounced the word missile as “mi-syl” or “mizz-aile”—another indication. Malik showed only the handle of the missile to Hossain when Yassin was counting the money—a third indication. Malik claimed to have lost the tape recorder during the crucial conversation with Shaar about the attack in New York City—a fourth indication. Malik misled Yassin about the legality of the loan by saying the repayment checks were necessary in order to pay taxes—indication five. Yassin never used the word missile in his discussions with Malik; never said anything to suggest he knew about the sale of the missile; and never said anything to show he believed there was a serious plot for an



attack in New York City, or that there was anything illegal about the loan transaction, or that he was involved in any illegal activity. The government knew all this, and never attempted to fill in the blanks for him—another indication. In short, the government spent a great deal of time, money, and effort making sure that Yassin never learned anything about the “plot” so that he would not be “spooked” and could be convicted without ever knowing why. These are the parameters of a classic frame-up.

The government began its investigation of Yassin by using the Patriot Act (and the new law enforcement paradigm of preempting a “crime” before it “ripened”) to install listening devices in Yassin’s house and in the mosque; by wiretapping phones; by sending informants to the mosque; and by using the NSA to obtain information without a warrant. At one point during the trial, defense counsel asked FBI Agent Tim Coll on cross-examination, “Was Mr. Aref under 24-hour surveillance at this point [December 10, 2003]?” The prosecutor immediately objected, and stated in a lawyer’s conference with the judge that Coll’s answer could implicate classified evidence. Defense counsel replied, “What if I say constant *physical* surveillance?” This was acceptable to everyone, and back in front of the jury, defense counsel asked, “And, after the December 10, 2003 conversation, was my client under constant physical surveillance?”, to which Agent Coll answered, “No.” Thus it was quite clear that Yassin was under constant *non-physical* surveillance at this time, i.e., warrantless—illegal—bugging. December 10, 2003 was just a few months before various Justice Department officials rushed to then-Attorney General Ashcroft’s hospital bed in a fruitless attempt to get him to recertify the illegal NSA bugging program. As was widely reported, Ashcroft and Acting Attorney General James Comey refused to do so for a period of at least a few weeks, which would have coincided with the time period Yassin was recorded. It seems clear now that the NSA warrantless wiretapping/ eavesdropping program was

illegal and a violation of the FISA laws during its entire existence, not just during those few weeks when DOJ realized it was.

The government also interviewed such a large number of Muslims in Albany, and its presence was so heavy, that Muslims in the community commonly reminded strangers that conversations were likely to be recorded. In a police state, people routinely remind each other to be careful what they say because the government is listening everywhere, and they treat even friends with suspicion because they may be government informants. Muslims in the U.S. are living in just such a state.

After Yassin's conviction, a Muslim friend of mine described a conversation that he had with a casual acquaintance who was going to Afghanistan to visit. When my friend asked the reason for the trip, the acquaintance laughed and said, "Why, to join bin Laden, of course." At the time, my friend understood it as a joke; if the man was serious, he certainly would not have said such a thing to someone he hardly knew. But later my friend began to wonder if maybe the man was working with the FBI. Perhaps this was a test. What should he do? He certainly could not report the man to the FBI for making a bad joke, but he did not want to be targeted by the FBI in some sort of sting, either. He had many sleepless nights until he was finally able to satisfy himself that the man was not working for the FBI. If this is the fear that the government wants to create, it has succeeded very well—but at what price?

Destroying Muslims and their families and communities by framing the innocent does not make America safer from terrorism, but more vulnerable to it. Muslim communities in the U.S. have the greatest possible interest in preventing terrorism. Many of their members came to the U.S. to escape chaos in their native countries; they love America and know that a terrorist attack would, in the end, hurt American Muslims more than any other group. But trumped-up charges

and phony allegations understandably breed resentment; they know that if respected Muslims like doctors, teachers, and imams can be unfairly framed by the government, then none of them is safe. And if the rule of law that made America a beacon to other nations and cultures is shown to be nothing more than the machinations of a third-world dictatorship, nobody is safe.

Eventually, when the government's massive surveillance and interrogation program failed to turn up any criminal activity, U.S. Attorney Glen Suddaby and his bosses must have considered the enormous investment of time and money in the investigation, as well as the intense political pressure to convict Muslim terrorists at all costs, and the 1% possibility that Yassin might be open to radical activity, and they must have decided to send in Malik with instructions to say just enough to get a conviction but not enough to "spook" the target by suggesting an actual crime. So the frame-up began.

This "preventive conviction" campaign tramples on centuries of fundamental freedoms that are part of the fabric of America. It's a lawyer's trick to try and make an unthinkable idea (jailing someone before he commits a crime) into a perfectly reasonable proposition ("All we're trying to do is prevent another attack like 9/11"). If the government could lock up everybody who it believed was likely to commit a crime in the future, the crime rate might drop in the short run, but the country would be thrown into true terror from the fear of arbitrary arrest and prosecution. The fact that this terror is now directed at the Muslim community in America does not make it right, nor does it guarantee that the practice will not be directed against other groups in the future. In fact, the government cannot foresee future criminal activity with any certainty, and any such system will inevitably collapse under the weight of its own injustice.

During World War II, the U.S. government ordered over 100,000 Japanese-Americans held in concentration camps because their loyalty to America was suspect, based on nothing

more than their ethnicity. Not until 1988 did the country formally apologize for this maltreatment of its own citizens. Today it seems shocking that we could have engaged in such blind, irrational bias. But prejudice has accompanied virtually every conflict in our society. Native Americans were driven off their own lands. Colonists loyal to Britain were driven out of America after the Revolution. The government turned a blind eye to the lynching of African Americans after the Civil War. German-Americans were persecuted during the First World War. And in between, the Irish, the Italians, the Jews, the Chinese, the Latinos, and many other ethnic and religious groups all had their turn at being second-class citizens and subjects of hysteria and prejudice. In fact, the dark side of our history is littered with unjust laws and judicial decisions that reflected our fears and hysteria rather than our commitment to justice. Now it is the Muslims' turn. In due time, we will apologize for our present excesses against our Muslim neighbors, just as we have apologized for our excesses of the past. But wouldn't it be better if we learned from the past and reversed our folly now, while our apology might still do some good for the victims?



After the verdict, I watched Terry Kindlon interview new clients. I understood that he had to take new cases to keep his practice going; I had done the same in my career. But this time I found that I could not move on. I had never before in my professional life encountered a deliberate frame-up. I was familiar with prosecutorial abuses that led to innocent men being convicted—sloppy police work, concealment of errors, hubris and arrogance—but what happened to Yassin was something quite different. The government had deliberately plotted to convict a man who they knew had not committed a crime. There was no sloppiness, no incompetence, but rather a cold, calculating plan carried out over a long period of time, costing

millions of dollars and involving dozens of agents, prosecutors, and the acquiescence of high-level officials, to convict two men of terrorism who had no involvement or interest in terrorism. This frame-up was a basic shift in my experience as a lawyer. I had practiced law for over thirty-five years with certain assumptions about the rights of individuals and the limitations of government, but I could not adapt my assumptions to this new reality. For me, Yassin's case would not be over until the injustice was corrected. Besides, he was now my brother.

I continued to visit Yassin in jail and encouraged him to write about his life in Kurdistan. By the time he and Hossain were sentenced, six months later, to 15 years each in prison, Yassin had written this book about his life and I was involved in plans to get the book published. His wife and children needed legal advice and personal attention to deal with his absence. An activist organization, the Muslim Solidarity Committee, had been formed to protest and raise awareness of what had happened to the defendants and to the whole Capital District Muslim community. So many activities revolved around the case that they absorbed most of my time.

One day I stopped in at Little Italy, Hossain's pizza shop on Central Avenue, for a late lunch. I had taken Yassin's oldest son, Raiber, to the doctor for a bad cough, and we decided to have some of Hossain's famous pizza. Fatima, Hossain's wife, was running the shop now. In the shop, and later on the street, I became aware that people were smiling and nodding to me. Most of them were Muslims who lived or worked in the area, and normally they would have passed by without comment or recognition. But today something was different; it was as though I was one of them. And then I realized what was different—Raiber was with me. People knew him. They knew what had been done to his father; they knew that his father was not a terrorist but a respected imam who had been framed by the government. And if I were with Raiber, I must be OK; I must be on their side. It made me realize that this case would not move on, either. The

children and the families of Aref and Hossain continue to live in the community as silent witnesses to what happened, and no one who sees them and cares about justice can walk by without a sign of recognition or remembrance. Injustice, even if we cloak it in euphemisms like “Patriot Act” or “war on terror,” is still injustice, and it will not be forgotten.