

2 GOP-Appointed Judges Shame America

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The federal Appeals Court decision to toss a lawsuit claiming contractors tortured detainees in Iraq's Abu Ghraib prison is what you'd expect from a tyranny.

The new ruling brushes off the charges by 212 Iraqis who said they or their late husbands were abused by U.S. personnel at Abu Ghraib. The suit charged private security firm CACI International Inc., of Arlington, Va., of crimes inside the Baghdad hellhole.

Yet in a 2-1 ruling, the D.C. Court of Appeals said CACI "is protected by laws barring suits filed as the result of military activities during a time of war," the *Associated Press* reported. This opinion was written by Judge Laurence Silberman, a Reagan appointee, and supported by Judge Brett Kavanaugh, a Bush appointee.

"During wartime, where a private service contractor is integrated into combatant activities over which the military retains command authority, a tort claim arising out of the contractor's engagement in such activities shall be pre-empted," Silberman wrote. If so, with about as many U.S.-led contract mercenaries as regular army involved in the Iraq conflict, this decision preposterously exempts some 150,000 fighters from legal action for any crimes they commit. It gives a shoot-to-kill pass to privateers such as Blackwater, whose operatives on one occasion are said to have gunned down 17 unarmed Iraqi civilians.

"This abuse and torture of these prisoners detained during war time constituted war crimes and torture in violation of the Geneva Conventions of 1949, the U.S. War Crimes Act, the Convention against Torture, and the U.S. Federal Anti-torture Statute—felonies, punishable by death if death results as a violation thereof," said Francis Boyle, an international law authority at the University of Illinois, Champaign-Urbana.

"Judges Silberman and Kavanaugh have now become Accessories After the Fact to torture, war crimes and felonies in violation of United States federal law and international criminal law," Boyle asserted. (See if they are ever prosecuted!)

Dissenter Judge Merrick Garland, appointed by President Bill Clinton, argued the law does not protect independent contractors, particularly when they are accused of acting outside the rules or instructions of their military overseers. But where Silberman said most of the claims were limited to "abuse" or "harm," not war crimes or torture, according to Courthouse News Service, Garland "found the claims much more alarming."

"The plaintiffs in these cases allege they were beaten, electrocuted, raped, subjected to attacks by dogs, and otherwise abused by private contractors working as interpreters and interrogators at Abu Ghraib prison," Garland said.

“No act of Congress and no judicial precedent bars the plaintiffs from suing the private contractors—who were neither soldiers nor civilian government employees,” he wrote.

“Neither President Obama nor President Bush nor any other Executive Branch official has suggested that subjecting the contractors to tort liability for the conduct at issue here would interfere with the nation’s foreign policy or the Executive’s ability to wage war,” Garland pointed out.

“To the contrary, the Department of Defense has repeatedly stated that employees of private contractors accompanying the Armed Forces in the field are not within the military’s chain of command, and that such contractors are subject to civil liability,” he wrote.

Judge Silberman was named to the Federal bench in 1985 by President Ronald Reagan and in 2008 received the Presidential Medal of Freedom, the nation’s highest civilian award, from (surprise!) President George W. Bush, the man who launched the Afghan and Iraq aggressions.

Silverman was supported in his opinion by Kavanaugh, a former legal aide to President Bush who was later appointed by Bush to the Federal bench. In July, 2007, Senators Patrick Leahy(D-Vt.) and Dick Durbin (D-Ill.) accused Kavanaugh of “misleading” the Senate during his nomination.

In a statement issued at the time opposing the appointment, Sen. Durbin prophesied, “By every indication, Brett Kavanaugh will make this judgeship a gift that keeps on giving to his political patrons who have rewarded him richly with a nomination coveted by lawyers all over America.” And that, of course, is exactly what happened. Here’s what aroused Durbin’s concern:

“For example, he (Kavanaugh) would not tell us his views on some of the most controversial policy decisions of the Bush administration—like the issues of torture and warrantless wiretapping. He would not comment. He would not tell us whether he regretted the role he played in supporting the nomination of some judicial nominees who wanted to permit torture as part of American foreign policy... It would have been so refreshing and reassuring if Brett Kavanaugh could have distanced himself from their extreme views. But a loyal White House counsel is not going to do that. And that is how he came to this nomination.” And that is how he came to dismiss the torture charges against contractor CACI. Surely, Kavanaugh’s decision in the CACI case is proof he misled the Senate and merits impeachment.

In Jan., 2005, *The New York Times* reported testimony suggesting that guards and/or interrogators at Abu Ghraib were urinating on detainees, pouring phosphoric acid on them, sodomizing them with a baton, tying ropes to their penises and dragging them across the floor, and jumping on their wounds. Some prisoners were hung with their hands tied behind their back until they died. It should be remembered that the Abu Ghraib inmates were *suspects, imprisoned without due process or trials*. Abu Ghraib’s commanding officer Brig. General Janis Karpinski estimated that *90 percent of them were innocent*.

According to an article by Jeffrey Toobin in the September 21 issue of *The New Yorker*, President Obama already has the chance to nominate judges for 21 seats on the federal appellate bench—more than 10 percent of the 179 judges on those courts, and at least half a dozen more seats should open in the next few months.

In a Detroit speech, Obama said the role of our courts “is to protect people who don’t have a voice...the vulnerable, the minority, the outcast, the person with the unpopular idea, the journalist who is shaking things up...And if somebody doesn’t appreciate that role, then I don’t think they are going to make a very good justice.”

Surely, hundreds of foreign prisoners tortured in an illegal war made by the U.S., or their survivors, are supplicants entitled to a fair hearing, not non-persons to be brushed aside as judges Silberman and Kavanaugh have done this past week. Their ruling that, essentially, injured parties cannot sue the Warfare State and its contractors, drives a tank through the Constitution. Americans had better pray Obama’s judicial choices will aspire to a higher standard.

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