

Sami Al-Arian: From Exoneration to Criminal Indictment

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A personal note. I've twice before written about Al-Arian and discussed his case on my radio program with his wife and daughter. Since February 20, 2003, he's been unjustly imprisoned. The FBI hounded him for 11 years. It falsely accused him of backing organizations fronting for Palestinian Islamic Jihad – a 1997 State Department-designated "Foreign Terrorist Organization (FTO)." It's one of 30 organizations so-designated that year. In 1999, three were removed. Another was added in 2001 for a total of 28. Sixteen of them are Arabic/Muslim and include Hamas, the Popular Front for the Liberation of Palestine, Hezbollah and Al Qaeda. Their ideologies differ from western standards. Washington thus calls them FTOs that "engage in terrorist activity (and) threaten the security of US nationals or the national security of the US."

In August 2001, Palestinian Islamic Jihad's (PIJ) General Secretary, Dr. Fathi Shikaki, agreed to be interviewed. He called the organization "an independent, Islamic, and popular movement with Islam (advocating) grassroots popular action and armed struggle (for the) liberation of (Occupied) Palestine." In this respect, it's no different from the Vichy French resistance. They were renown freedom fighters. So were the Mujahideen (when they were on our side) against the Soviets in Afghanistan and Serbia in the Balkans.

As Michel Chossudovsky noted in a September 2001 Global Research.ca article titled "Who is Osama Bin Laden?:"while the Islamic Jihad – featured by the Bush administration as "a threat to America" – is blamed for the (9/11 attacks), these same Islamic organizations constitute a key instrument of US military intelligence in the Balkans and the former Soviet Union." In other words, they're (unwittingly) used to further US interests and at the same time justify Washington's war on Islam (aka the "war on terrorism").

Shikaki denied that PIJ or the Islamic Jihad Movement (IJM) practice "terrorism." On the contrary, "terrorism is practiced by a state (Israel) that is fully supported by the West. (It and especially America back) dictatorial regimes that are tyrannical, oppressive and practice human rights abuses on massive scales....Tens of thousands of Islamists have been arrested and....held under severe conditions." However, "only a small segment used violence against the state-sponsored and state-supported violence."

How can Palestinians be called terrorists. We "scream from pain and suffering and (are) defending (our) land against Jewish soldiers....We are calling for peace based on justice, rights and dignity. We must be dealt with as equals and as carriers of a great civilization. Only then will peace prevail in our region and the whole world....Our state is Palestine....As for the Jews, they have lived peacefully with us for centuries....They could (always) live among us freely, but not as a political entity....We don't espouse throwing the Jews into the

sea (but) there will be no peace unless Palestine is returned to the Palestinians.”

Al-Arian: Falsely Targeted For Supporting “Terrorism”

Because of his faith, ethnicity, political activism and prominence, Al-Arian became a prime target. He was falsely vilified for supporting terrorism. Then at the behest of Governor Jeb Bush and despite his tenured status, the University of South Florida fired him following his February 20, 2003 arrest. Ever since, he’s been imprisoned and held in brutalizing and dehumanizing confinement in over a dozen maximum and other federal prison facilities. Only his spirit sustains him.

His June 2005 trial was a travesty. It lasted six months, cost about \$50 million, and in the end Al-Arian was exonerated on eight false terrorism charges. On nine lesser ones, jurors were deadlocked 10 – 2 for acquittal.

Al-Arian is a Palestinian refugee, a distinguished professor and scholar, community leader and civil activist. His crime – being an activist Muslim at the wrong time in America. After his exoneration, prosecutors planned to retry him but instead struck a secret plea bargain with his lawyers. It stipulated:

- he neither engaged in or had any knowledge of violent acts;
- that he would not be required to cooperate further with prosecutors;
- and that he would be released on time served and deported voluntarily to his country of choice.

He remained in custody pending sentencing and deportation on May 1, 2006. Yet he’s still imprisoned and his ordeal continues. In October 2006, assistant prosecutor Gordon Kromberg violated plea bargain terms by subpoenaing Al-Arian before a grand jury. It was to entrap him on perjury and obstruction of justice charges through clever and manipulative questioning.

At the time, he said this about all Muslims that should have automatically disqualified him: “If they can kill each other during Ramadan, they can appear before the grand jury – all they can’t do is eat before sunset. I believe Mr. Al-Arian’s request is part of the attempted Islamization of the American Justice System. I am not going to put off (his) grand jury appearance just to assist in what is becoming the Islamization of America.” Following these comments, Al-Arian’s attorney accused Kromberg of anti-Muslim bias and asked him to recuse himself. He denied the request and called Al-Arian before the grand jury.

He refused to testify and was held in contempt. He refused again before a newly convened grand jury, was again held in contempt, and had his sentence extended without mitigation until April 7, 2008. On March 3, 2008 (three weeks before his scheduled release and deportation), Al-Arian was again ordered to appear before another March 19 grand jury. He again refused, remained imprisoned, and on June 26 was indicted on two counts of criminal contempt.

Al-Arian’s case is crucially important. It shows the peril of being Muslim in America. It also represents a disturbing abuse of the grand jury system before which Al-Arian has no obligation to testify. It’s at a time our constitutional checks and balances have eroded, our civil liberties are weakest, a president has usurped “unitary executive” powers to claim the

law is what he says it is, and when we teeter on the edge of tyranny unless these practices are stopped.

Law Professor and Lead Al-Arian Counsel Jonathan Turley

Turley calls Al-Arian's case "a classic perjury trap used repeatedly by the government to punish those individuals who could not be convicted before an American jury." All the more so if you're Muslim, high-profile, and easily exploited for political advantage.

On June 30, Al-Arian was arraigned before Judge Leonie Brinkema of the US District Court for the Eastern District of Columbia. Turley was denied the right to meet with him in advance and wasn't prepared to enter a plea. The Court did it for him - "not guilty." His trial is scheduled to begin on August 13, 2008.

Turley requested that Al-Arian be released on bail. He's not charged with terrorism, has no passport, and isn't a flight risk. Since charges involve contempt, there's no reason to hold him. He's lived in the country since 1975, has lawful alien status, his children are US citizens, and they have deep ties here. In addition, citizens have volunteered to be custodians, and Al-Arian is willing to be continually monitored under home confinement. Turley calls the government's actions "purely gratuitous and retaliatory under (these) conditions."

He further requested a bond hearing, and Judge Brinkema agreed. During his Florida trial, friends offered millions in property as security. They were denied. Prosecutors asked for a one-day trial. Turley requested three days and told Judge Brinkema that counsel believes Al-Arian's indictment is "invalid on its face." He didn't refuse to cooperate. He'd already given two detailed affidavits establishing that he had no knowledge of any crimes committed by the International Institute of Islamic Thought (a Herndon, Virginia think tank) or its officers. He also repeatedly asked to take a polygraph exam for verification. He was denied.

Turley also explained that the day before his indictment the government expressed satisfaction with his affidavits. By indicting him, "the government's long pattern of retaliation against Dr. Al-Arian has now degraded further into raw thuggery." It has no interest in truth and justice. It intends to act outside the law by whatever means it takes to keep an innocent man imprisoned. Al-Arian is now at Alexandria, VA City Jail awaiting his bond hearing.

On July 10 it was held, and for the first time since his February 2003 arrest there was good news - at least so far. Over strong government objections, Judge Brinkema agreed that Al-Arian is not a flight risk or danger to his community and granted him bail. But it's not over yet because DOJ is sure to fight it. One possible way according to Turley - having ICE officials hold him for deportation and keep him imprisoned until his trial.

Turley cited Judge Brinkema's "significant statements in the hearing:

- that she was getting "strange signals" about this case; that "the government should not be found to have harassed efforts for another government to accept Dr. Al-Arian under his plea agreement;

- that the plea agreement still applies and the government is required to deport him "with expedition;"

- should ICE resume custody, the deportation provision would be triggered; and
- Judge Brinkema wants confirmation that Al-Arian already gave the government detailed statements and repeatedly offered to take a polygraph exam to prove his truthfulness.

Prosecutor Kromberg twisted the truth to deny Al-Arian bail. Turley expertly countered him. The week of July 14 he'll submit pre-trial motions and (formally) request Al-Arian's release on bail. DOJ will surely fight it. The case is far from resolved, and according to Turley: "Things are likely to become stranger still as the government continues its long campaign to hold Dr. Al-Arian by any means or method. We remain hopeful, however, that (he'll) be vindicated and (allowed) to leave the country" as his plea bargain stipulates.

Yassin Aref - Another Muslim Political Prisoner

A personal note. I've twice before written about Aref, discussed his case with his lawyers on my radio program, and have personal contact with him in prison. Like others of his faith, he was hunted down, rounded up, held in detention, kept in isolation, denied bail, restricted in his right and access to counsel, tried on secret evidence and trumped-up charges, then convicted in a kangaroo court proceeding and given a long prison term.

Like Al-Arian and other Muslims, Aref was targeted for his faith and ethnicity. He's an innocent man and another victim of police state justice. He's now serving a 15 year sentence at the secret Terre Haute, Indiana federal penitentiary's Communication Management Unit (CMU). Opened in December 2006, it's for "high-security risk" Muslim and Middle Eastern prisoners to limit or cut them off entirely from outside contact. Doing so violates the Supreme Court's 2004 *Johnson v. California* decision and Prison Bureau regulations. However, the courts and Congress haven't intervened.

Aref appealed on March 24, 2008 before the Second Circuit Court of Appeals in New York. After the proceeding, one of his pro bono trial lawyers, Stephen Downs, was hopeful but cautious. He explained that predicting the outcome was uncertain at best and foolhardy at worst.

On July 2 in *United States v. Aref*, the (three-judge panel) Appeals Court rendered a unanimous decision. Aref was denied, and unless a motion for rehearing or the Supreme Court decides otherwise, he'll remain imprisoned for 15 years. The Court issued an 11 page summary order rejecting evidentiary challenges and other defendant claims. Appeals Court lawyers Terrence Kindlon and Kathy Manley expressed profound disappointment with Kindlon saying: "I feel like somebody hit me in the face with a pie....We were feeling some optimism here. We thought there were some significant issues that dealt not just with the law but with some of the events that occurred throughout the course of the trial....I can honestly say I strongly and respectfully disagree with the decision."

A Schenectady, NY columnist, Carl Strock, was also dismayed and commented: "I thought the arguments (for reversal) were compelling, but I could hardly imagine an appeals court overturning a jury verdict in something so sensitive as Muslim terrorism, even if the terrorism was" bogus. The ruling "means it's OK for the FBI to lure law-abiding citizens (or legal residents) into doing something illegal" or that government prosecutors can claim (with secret evidence unavailable to counsel) is illegal and then arrest, charge and convict them for it. "That's the long and short of this case."

It's also OK for federal judges to assure jurors that the government has "good and valid (prosecutorial) reasons" even when there are none. The same government claimed "valid reasons" to invade Iraq and Afghanistan. We now know there were none.

Kindlon said he's preparing an en banc motion for rehearing before the full Appeals Court and a writ of certiorari petition to the Supreme Court asking it to review the lower court ruling. Winning a reversal in either court will be daunting given the preponderance of hard right federal judges on the bench. It shows what all Muslims (and the rest of us) are up against despite the important *Boumediene v. Bush* Supreme Court decision. It ruled Guantanamo detainees have habeas rights even if they're not US citizens and are held outside the country. Despite having them, however, getting justice in US federal courts may prove a bridge too far. Especially for those targeted as enemies of the state with or without evidence.

Like Al-Arian, Aref is an innocent man. His crime is being Muslim at the wrong time in America. He committed no crime and was victimized by an FBI frame. I have direct contact with him in prison. We exchange letters and occasional emails when he's allowed to send and receive them. He's a friend and a supremely gracious and decent man. Injustice to him, Al-Arian and others denies it to everyone. Today we're all Yassin Arefs and Sami Al-Arians, *Boumediene v. Bush* notwithstanding.

"I Am Not Surprised"

On the web site maintained for him (yassinaref.com), Aref responded to the Appeals Court decision in prose and poetry. Below are extended excerpts.

"I am not surprised. When they arrested me....I was shocked the next morning when they took me to court. I was surprised to see all those police, marshals and media, and I was really confused: what was all that about? Who am I (to be so important)? What did I do? What was going on? All of it was unbelievable. I (told) the marshals that there is a law in this country and I did nothing wrong, so the judge will free me and let me go back to my family."

He didn't and refused me bail, "claiming I was a flight risk and danger to the community, even" though I have no "travel documents and there was 50 cents in my wallet, plus I am stateless and have no country to go to. Above all, I did nothing wrong (and) have (nothing) to hide.

Then while....in jail....I understood what was going on....it's not me, it's politics and discrimination....if I was not a Muslim and Imam....never would I have been targeted (or) indicted" or tried without evidence. Even if they" tried me, no "jury (would) find me guilty," and if they did no judge would accept it. Even if the judge did, no "appeal court" would go along. "But all of this happened....because I was a foreigner, a Muslim who had a little beard.

All the government did was misrepresent their evidence to confuse the court and prevent justice from taking place." Everyone in the drama played a role. "But still I am happy because I did nothing wrong and harmed no one....what they did to me is wrong and not fair, and I believe the truth will never die and people will find it sooner or later."

The government "dishonored justice and humiliated the Constitution, not me. Anyone who knows me....knows I am innocent." Knows I'm not "a dangerous wild animal who must be

locked down in an isolated unit. I am just a scapegoat for the (government's wrong policies and a victim (of) their nonsensical ongoing war." Millions of others are suffering like me.

"The government....know(s) very well I had nothing to do with terrorists or (have any) anti-American (beliefs) or (approve of) violence, and that never in my life did I participate in any fighting or....support any terrorists....I am just a Muslim and a stateless Kurd....Let the government celebrate their victory for destroying my family and for putting an innocent man in prison. Let the media" and appeals court support what they did. It changes nothing. "I am innocent and did nothing wrong.

I am grateful for everyone who has supported me, wished and prayed for the best for me and felt sorry for my family....They cannot put hate in my heart and revenge in my thoughts. I know it's not over, and I hope you believe the same and stay firm until justice takes place and the truth comes out. Please do not forget my family."

We never will Yassin or stop supporting your struggle for justice. Or other innocent victims like yourself.

For Muslims in America, Their Ordeal Continues

Rumors are circulating about new police state tactics later this summer - so the DOJ may open new investigations without evidence of wrongdoing. Merely on the basis of an undisclosed "terrorist profile" or "pattern of behavior" suggesting suspects should be watched and interrogated about their Muslim or Arab-connected activities. Other grounds as well - where they travel as well as their occupation, race or ethnicity. It means millions of Americans will be targeted at a time no one's civil liberties are protected. Bogus charges will be brought against innocent people, and if they're Muslims and called "terrorists" imagine what little justice they'll get.

Congress won't help either. It gutted the Fourth Amendment further after both Houses passed and George Bush signed (on July 10) the FISA Amendments Act of 2008. It's FISA on steroids and more by granting telecom companies retroactive immunity to conduct warrantless spying post-9/11. Obama and McCain supported it. So did most others in Congress. Everyone has reason to fear it. Muslims most of all. They've suffered hugely since 9/11. No letup is in sight. This is how a police state works. Congress, the courts, and executive are on board. So is his successor. Expect little change in 2009 and no open public debate. The law of the land is now lawlessness. No one is safe, and there's no place to hide.

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