
BOB HERBERT

The Torturers Win

Justice? Surely you jest.

Terrible things were done to Maher Arar, and his extreme suffering was set in motion by the United States government. With the awful facts of his case carefully documented, he tried to sue for damages. But last week a federal judge waved the facts aside and told Mr. Arar, in effect, to get lost.

We're in a new world now and the all-powerful U.S. government apparently has free rein to ruin innocent lives without even a nod in the direction of due process or fair play. Mr. Arar, a Canadian citizen who, according to all evidence, has led an exemplary life, was seized and shackled by U.S. authorities at Kennedy Airport in 2002, and then shipped off to Syria, his native country, where he was held in a dungeon for the better part of a year. He was tormented physically and psychologically, and at times tortured.

The underground cell was tiny, about the size of a grave. According to court papers, "The cell was damp and cold, contained very little light and was infested with rats, which would enter the cell through a small aperture in the ceiling. Cats would urinate on Arar through the aperture, and sanitary facilities were nonexistent."

Mr. Arar's captors beat him savagely with an electrical cable. He was allowed to bathe in cold water once a week. He lost 40 pounds while in captivity.

This is a quintessential example of the reprehensible practice of extraordinary rendition, in which the U.S. government kidnaps individuals — presumably terror suspects — and sends them off to regimes that are skilled in the fine art of torture. In

So the government
now has the right to
remain silent?

terms of vile behavior, rendition stands shoulder to shoulder with contract killing.

If the United States is going to torture people, we might as well do it ourselves. Outsourcing torture does not make it any more acceptable.

Mr. Arar's case became a world-class embarrassment when even Syria's torture professionals could elicit no evidence that he was in any way involved in terrorism. After 10 months, he was released. No charges were ever filed against him.

Mr. Arar is a 35-year-old software engineer who lives in Ottawa with his wife and their two young children. He's never been in any kind of trouble. Commenting on the case in a local newspaper, a former Canadian official dryly observed that "accidents will happen" in the war on terror. The Center for Constitutional Rights in New York filed a lawsuit on Mr. Arar's behalf, seeking damages from the U.S. government for his ordeal. The government said the case could not even be dealt with because the litigation would involve the revelation of state secrets.

In other words, it wouldn't matter how hideously or egregiously Mr. Arar had been treated, or how illegally or disgustingly the government had behaved. The case would have to be dropped. Inquiries into this 21st-century Inquisition cannot be tolerated. Its activities must remain secret at all costs.

In a ruling that basically gave the green light to government barbarism, U.S. District Judge David Trager dismissed Mr. Arar's lawsuit last Thursday. Judge Trager wrote in his opinion that "Arar's claim that he faced a likelihood of torture in Syria is supported by U.S. State Department reports on Syria's human rights practices."

But in dismissing the suit, he said that the foreign policy and national-security issues raised by the government were "compelling" and that such matters were the purview of the executive branch and Congress, not the courts.

He also said that "the need for secrecy can hardly be doubted."

Under that reasoning, of course, the government could literally get away with murder. With its bad actions cloaked in court-sanctioned secrecy, no one would be the wiser.

As an example of the kind of foreign policy problems that might arise if Mr. Arar were given his day in court, Judge Trager wrote:

"One need not have much imagination to contemplate the negative effect on our relations with Canada if discovery were to proceed in this case and were it to turn out that certain high Canadian officials had, despite public denials, acquiesced in Arar's removal to Syria."

Oh yes, by all means, we need the federal courts to fully protect the right of public officials to lie to their constituents.

"It's a shocking decision," said Michael Ratner, president of the Center for Constitutional Rights. "It's really saying that an individual who is sent overseas for the purpose of being tortured has no claim in a U.S. court."

At kidnapping and torturing an innocent person O.K., what's not O.K.?