

# Police State America: Yassin Aref's Struggle for Justice

## Part II

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Global Research, May 30, 2008  
30 May 2008

Region: [USA](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#)

*Yassin Aref is an Iraqi Kurd and political prisoner in Police State America. A full account of his ordeal can be found at the following link:*

<http://www.globalresearch.ca/index.php?context=va&aid=8315>

In the post-9/11 climate of fear, Aref was targeted for his faith and ethnicity and victimized by a willful FBI frame. It began as a sting to entrap him. Charges against him were baseless. No evidence supports them. Yet he was falsely arrested, accused, indicted, tried and convicted in October 2006. It was on 10 of 30 fraudulent counts in a kangaroo court proceeding. They included money laundering, conspiracy to provide material support for a terrorist plot, terrorism, and making false statements in February 2002 and August 2004.

Aref was then sentenced in March 2007 and is now serving 15 years hard time at Terre Haute, Indiana's secret federal prison Communications Management Unit (CMU). It's for "high-security risk" Muslim and Middle Eastern prisoners and was established to limit or cut them off entirely from outside contact. The unit violates federal law as well as Prison Bureau regulations. They stipulate that "staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or political belief (including) administrative decisions (involving) access to work, housing and programs." The Federal Administrative Procedures Act requires that all prison regulations comply with this law.

In addition, the Supreme Court ruled in *Johnson v. California* (May 3, 2004) that segregating prisoners by race, ethnicity or language is illegal. Bush administration officials disdain the law and ignore whatever High or other court rulings go against them. There aren't many. Congress is complicit. It makes no effort to stop them, so nothing deters them from mocking the rule of law and erasing the last remnants of democracy in America. The result is victims like Aref and many others like him.

Here's a brief account of his ordeal and how events unfolded in his case:

- he's from Iraqi Kurdistan;
- he came to America in 1999, worked as a hospital janitor, ambulance driver and later became the Masjid As Salam Mosque's imam;
- the FBI targeted him and his friend, Mohammed Mosharref Hossain (a Bangladesh immigrant); it was in a 2003 sting that became a frame; it involved Aref's courtesy for

Hossain – agreeing to witness his loan transaction according to Muslim custom; it was at a time he spoke poor English, believed the transaction was legitimate, was unaware of any law violations, let alone a scheme to frame him;

– he was arrested in August 2004 and convicted in October 2006; charges against him were baseless and were from illegally obtained NSA warrantless wiretaps;

– he’s now at Terre Haute’s CMU, a victim of police state justice, separated from his wife and small children, and hoping for an appeals court verdict in his favor.

On March 24, 2008, Aref’s appeal was held before the Second Circuit Court of Appeals in New York. His status now awaits the outcome from a court that may be sympathetic. In an all too familiar post-9/11 pattern, they’re hearing other cases like his. It’s hoped that may arouse their judicial outrage over such extreme injustice to a growing number of Bush administration victims.

### **Aref’s Trial Lawyer’s Assessment of the Appeals Court Hearing**

Here’s an account of the proceedings from one of his pro bono trial lawyers, Stephen Downs. He attended the hearing and recounted what happened. Forty-seven supporters were there from Aref’s home city of Albany. They filled a bus, traveled to Manhattan, split evenly between Muslims and other faiths, and were all united for Aref.

Downs begins by explaining that predicting the appeals outcome is uncertain at best and perhaps foolish at worst. Separate attorneys represented Aref and Hossain and each used “very different legal arguments.”

Kevin Luibrand argued for Hossain on illegal entrapment. In addition, he claimed that “since the transaction was always presented as a loan, there was no attempt to conceal the source of the money, and hence no crime of Money Laundering occurred....” If the court agrees with either claim, Hossain’s charges may be dismissed. Further, if it accepts the Money Laundering argument, some or all of Aref’s counts may also be dropped.

Downs strikes a hopeful note that: “The Court seemed most interested in these two strong sharply focused arguments, and (assistant US attorney William Pericak) seemed to have the most difficulty with them.”

Terry Kindlon argued for Aref. He mainly claimed that insufficient evidence was presented at trial to justify his conviction. In addition, there were numerous erroneous “evidence” claims to the jury.

Downs is less upbeat about this strategy. While the argument may be strong, it’s hard to present orally “because it is impossible in just (the few minutes allotted) to go through all of the evidence” to show adequate proof. As a result, the Court seemed disinclined to spend a lot of time on this, even though one justice “seemed to have a very detailed understanding of the evidence (and) seemed to understand what the defense was saying.” But he didn’t indicate either way if he agreed or disagreed.

In Down’s opinion, however, the lack of time spent doesn’t indicate how the court will rule. It chose instead to review all evidence in briefs rather than discuss them in detail in open court.

The remainder of Aref's case involved procedural errors. If they're accepted, it would result in a new trial but not dismissal of charges against him.

Cory Stoughton of the New York Civil Liberties Union also argued briefly for Aref and Hossain. He focused on how the trial judge handled classified material but withheld it from the defense. He also addressed the illegal NSA wiretapping issue. Downs again thinks this tact is "awkward" because the DOJ kept information secret so defense has no idea what it is or if it's relevant. Even so, the short amount of time on this matter is no indication of its importance to the Court.

In a separate March 21 pre-hearing press release, the ACLU commented on the case. Executive Director Donna Lieberman said: "The courts must not be complicit in President Bush's campaign of secrecy. NSA spying is unconstitutional, and secret opinions only aid the government's effort to keep the illegal campaign hidden away from public scrutiny and outrage."

Before the March 24 hearing, Cory Stoughton added: "Secret court opinions are antithetical to the American system of justice. Especially when there are allegations of unlawful government surveillance and abuse of executive power at play, the public has a right to understand the government's arguments and the courts' justifications for their decisions." The ACLU firmly supports the public's First Amendment right to understand what happens in the judicial process and abhors the government's use of secret information.

Finally, Downs above noted how hard it is predicting the appeal's outcome, but he tries anyway and is upbeat. He felt "listening to oral argument that the defense, the Court and the prosecution were all quietly agreeing that Hossain was simply the patsy here." He (and Aref) were part of an FBI sting cum frame, "but nobody ever believed that he (or Aref were) a danger to anyone."

It means there's a good chance the Court will rule favorably on the entrapment defense. The justices spent a lot of time on this argument. The DOJ had a lot of trouble explaining its side, and Downs thinks attorney Pericak did a poor job of it. His conclusion leaves this writer breathless and likely Aref and Hossain supporters as well: "The facts are there," in Downs judgment, "to support a dismissal and so is the legal theory, and so is the sense that this man (and Aref are) not dangerous." The Court may agree and either dismiss Hossain's charges or grant him a new trial.

As for Aref, Downs thinks the outcome is harder to predict based on his lawyer's oral argument. Questions posed centered on evidentiary issues and a detailed knowledge of the record. The Court seemed to be looking for procedural errors that would justify a new trial as the "best way to clear the air."

Down's also believes the Court's view of Aref's character is important. If it thinks the DOJ unfairly targeted him as a "jihadist, at least he may get a new trial. His lawyer stressed the "character" issue so it may be key to the outcome.

On the issue of so-called "classified evidence," Downs has no idea how the Court will view it or if it will affect the decision. Without knowing what it is, it's impossible to gauge its importance, or, in the current climate, how the Court will react.

## **The New York Times on Aref's Appeal**

On March 25, the NYT wrote about the previous day's hearing in an article titled "Convicted Imam Seeks Evidence of Wiretapping." The article's tone was racist by emphasizing the term "imam" to highlight Aref's Islamic faith. In addition, it stressed use of NSA wiretaps, ignored the more important defense arguments, and also left out the most pertinent facts about Aref's case. Nonetheless, Times writer Alan Feuer included some key ones:

— that Aref was "convicted of supporting terrorism in an FBI sting operation;" (no mention was made of a willful frame);

— that he may have been "spied on improperly by the National Security Agency;" (in fact, he was);

— that if the Court agrees, his conviction may be "reverse(d);"

— that the FBI's "sting" involved a "fictitious plot involving shoulder-launched missiles (to be used for) the assassination of a Pakistani diplomat in New York;" (the idea on its face is preposterous, and the Court may see it that way);

— that secret DOJ evidence was withheld from defense lawyers with security clearances to see it; (it casts doubt on its relevance, authenticity or even existence);

— that the New York Civil Liberties Union testified on behalf of the defense for both men; and The Times concluded by saying:

"As it now stands, the case may be the best chance to obtain an appellate ruling on the (NSA's wiretapping) program (that persists) without court approval." Aref's case (and Hossain's draw) "directly on the substantial constitutional protections afforded to criminal defendants."

The Times continued that last year a Cincinnati federal appeals court "dismissed a case challenging the agency's program, saying that the plaintiffs did not have standing to sue." However, in November, "a federal district judge in Virginia told the government that if it did not allow lawyers for an Islamic scholar sentenced to life in prison for inciting followers to commit acts of terrorism to review classified material on possible wiretapping, she might order a new trial."

## **A Personal Note**

I first learned about Aref last March, wrote about him on March 13, and was encouraged that many web editors picked up the article. I also wrote to Aref, and he responded with a considerable delay because of the difficulty communicating with a federal prisoner, especially one called a "terrorist."

Aref's letter was glorious. He wanted me to have his book, and I now do. It's a poignant memoir/autobiography titled "Son of Mountains: My Life as a Kurd and a Terror Suspect." It was written at Troy, New York's Rensselaer County Jail after his wrongful October 2006 conviction and before his transfer to Terre Haute's CMU. It's a courageous man's story, and imagine his achievement. He wrote it in jail, barely spoke English when he arrived, has now improved it measurably, but he's still learning.

I don't think he'll mind if I share some of his comments. He began hoping I'm fine, in good health, and then said: "Thank you very much for all you (did) and what you are doing to

bring peace and justice for this nation and all over.

I read your article about my case (and) wanted to send you a letter and say thank you....I am glad you have (my) book, this means I will going to hear from you what you think of it, and I will be happy to receive many notes and advices from you....feel free to 'critisice' any part of any thing in the book."

Aref's book is glorious. It deserves praise and admiration, not criticism, and it's strongly recommended to readers. It's also easily available through Amazon, the site has three 5-star reviews on it, it's going into second printing after a limited first run, and book proceeds are for Aref's four young children through his Children's Fund.

Aref wrote much more, enclosed portions of his other writings, and he ended his letter saying: "You honored me by writing to me. I am sorry this is my best in writing English. Take care my 'brother.' Peace, salam. Yassin"

Yassin is now my "brother," a political prisoner and victim of injustice. Yet, his spirit seems high, he dreams of reunion with his family, and he continues to write. A recent article was on April 19. He called it "Bread for the Baker and Meat for the Butcher (Nan Bo Nanawa Goshtish Bo Qasab)." It's five paragraphs long and says (from the Kurdish experience)

"there is no possibility (in Iraq) for development, and we won't see any stability til they let our bakers bake bread and our butchers prepare meat. If this doesn't happen, we will see more corruption and our lives will become more and more miserable. Especially when:

Fools are ruling. The blind are leading. The ignorant are teaching. The racists are preaching"

...and a brutal occupation continues its ugly oppression. At his article's end, Aref cites two proverbs and asks that they be understood to "have a better sense of (one's) self-respect and recognition of (one's) own capacity." He wishes this for "many of our leaders and politicians (and) will be glad to see many of them honoring themselves by resigning from office." Millions around the world share that view and then some. Many also know about Yassin and how a brutish regime mistreated him.

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