



Ashcroft's big con

False confessions, coerced pleas, show trials — the Justice Department's reliance on Soviet-style tactics has turned the war on terror into a Potemkin village

BY HARVEY A. SILVERGLATE
June 25, 2004

BOSTON IS HOME to the Ponzi scheme, named after the notorious swindler Charles Ponzi who, in 1919, amassed a fortune by fooling investors tempted by reliable returns. The plan worked this way: by delivering regular payouts from "earnings," Ponzi established a track record that attracted ever more investors. The catch was that investors were not paid with profits on anything *real*, but out of funds invested by later investors. And later investors were paid from investments made by those who followed them. And so on. It was an ingenious façade until the music stopped — which was, of course, inevitable.

Ponzi ended up doing time in federal prison, and yet Attorney General John Ashcroft — the man who today is in charge of guarding against such criminal maneuvers — seems to be something of a Ponzi schemer himself. Only this time what is at stake is not the hard-earned cash of hapless investors, but our national security.

On June 14, Ashcroft unveiled the federal indictment of Nuradin M. Abdi, a 32-year-old Somali citizen living in Ohio who was charged in a conspiracy to bomb an unidentified shopping mall in Columbus; if convicted, he could face 55 years in prison. Although the indictment itself was mostly boilerplate, the prosecutors' motion to deny bail contained all kinds of damning detail about Abdi's comings and goings between Canada and Ethiopia, and his training in "radio usage, guns, guerrilla warfare, bombs [for] violent Jihadi conflicts overseas and any activity his al Qaeda co-conspirators might ask him to perform here in the United States."

Well, this may or may not be true. We have no way of knowing, now or in the future, because there has not been and likely never will be a trial. And even if Abdi were to plead guilty and "admit" all these facts, we could not have any confidence in their truth. Why? Because one of Abdi's alleged co-conspirators was none other than Lyman Faris, a former Ohio truck driver who

was more or less forced to plead guilty last year to planning to destroy the Brooklyn Bridge. For that crime, Faris was sentenced, in October 2003, to a prison term of 20 years. A public trial was not an option for Faris; his choice was either to plead guilty or be detained indefinitely, incommunicado, as an "enemy combatant." Under such circumstances, any information he may have provided implicating Abdi must be considered dubious at best.

To an observer unfamiliar with Faris's unusual situation, the case against Abdi sounds pretty straightforward, typical of cases involving state witnesses: in an effort to reduce his long prison sentence, Faris must have ratted on his former partner-in-crime to federal investigators and then to a grand jury, resulting in Abdi's indictment. Justice prevailed, and useful intelligence is making us safer.

But is it? Even if Faris were simply a convict hoping to gain a reduced sentence, he would still have all the credibility problems we normally associate with rewarded witnesses — who, as Harvard Law professor Alan Dershowitz often says, "are taught not only how to sing, but also how to compose." However, Faris is not just an ordinary convict, much less an ordinary witness; he's not even an ordinary *rewarded* witness. As Carl Takei and I explained in this column back in March (see "[Crossing the Threshold](#)," News and Features, March 5), Faris falls into a special category of individuals who are the victims of a prosecutorial ruse reminiscent of the Stalinist show trials described by Arthur Koestler in his powerful novel *Darkness at Noon*. There, we said: "In ... *Darkness at Noon* ... the protagonist is accused of crimes against the state and is given a choice by his jailers. If he signs a confession and admits wrongdoing, he will receive a public trial. But if he refuses to cooperate, his case will be dealt with 'administratively' and out of sight. This two-track justice system, in which problem cases were whisked from view and dealt with in secret while public trials merely paraded the coerced guilt of the 'accused,' converted the Soviet Union's justice system into an appalling masquerade."

And, indeed, Faris, a naturalized US citizen of Kashmiri birth, was the victim of just such a masquerade. He was secretly arrested in March 2003, charged with plotting to destroy the famous bridge, and held incommunicado for two months. Then he was made an offer he couldn't refuse: he could either plead guilty and cooperate with the FBI, or President Bush and the Department of Defense would declare him an "enemy combatant." Once so declared, his criminal case would be terminated without trial, and he would be held incommunicado indefinitely, without access to legal counsel. Rather than fall into such a purgatory, Faris agreed to plead guilty, sign a statement of "facts," and be sentenced to 20 years. It was a long sentence, but a 20-year tunnel with light at the end of it was better than the alternative.

Faris told FBI interrogators that the signed statement of "facts" they were going to present to the sentencing judge was a fabrication. During his public sentencing hearing in October of last year, he interrupted the proceedings to insist, again, that he'd been pressured by prosecutors and agents to sign the false statement of facts. Faris's frantic pleas went unheeded by the sentencing judge, who went along with the program. So did Faris's lawyer, former federal prosecutor J. Frederick Sinclair, who cooperated with the feds to draft the plea agreement in which Faris waived every single right, including the right to appeal or even to obtain his case records. Faris then began serving his sentence.

SO IT SHOULD come as no surprise that, half a year later, Faris's name has popped up as a co-conspirator in yet another plot, this time with another alleged member of Al Qaeda, Nuradin M. Abdi. Thanks to the extreme secrecy surrounding these cases, we cannot be certain that Abdi was indicted based on whatever it was that Faris, under continued pressure by the feds, told his interrogators. And, after all, the pressure on Faris was not the usual one applied to "turned" witnesses, in which the defendant is sentenced, and then sings and composes to get a reduction; instead, the pressure was on him to sing and compose merely to be allowed to plead guilty and get the 20 years, rather than fall into the "enemy combatant" mire.

A hint of the relationship between Faris's Kafkaesque dilemma and Abdi's indictment is provided by the *Washington Post's* June 15 report that "prosecutors have spent the past six months building a criminal case against [Abdi]," according to unnamed "officials." Faris was sentenced on October 29, and it is quite possible that he told a tale about Abdi just around the time he was desperately seeking to avoid designation as an enemy combatant. And, of course, we have no idea what other harsh methods federal interrogators may have used to win Faris's cooperation, now that, in the aftermath of Abu Ghraib, we understand the repertoire of persuasive techniques in their arsenal (see "[Advice of Counsel: Torture Is Okay](#)," This Just In, June 18).

Let's be very clear about why the Justice Department has developed this ruse for circumventing the courts: a trial jury, once aware of these circumstances, would never believe a word of Faris's testimony against Abdi, but if the pattern established in the Faris case is any guide — and it almost certainly is — *the Abdi case will never go to trial*. Given that there's no sign of substantial corroborating evidence from *reliable* sources other than Faris, even a novice lawyer could probably get Abdi acquitted by any moderately fair-minded jury — but without a trial, that won't make any difference.

Abdi almost certainly will face the same Hobson's choice earlier presented to Faris: he can either plead guilty or, if he insists on going to trial, President Bush will prevent such a trial by designating him an enemy combatant, meaning he will be turned over to indefinite military custody and held incommunicado. Then, of course, he will get no visits from relatives, friends, or lawyers. I'd wager that Abdi's case will follow this pattern and end just as Faris's did, with a Soviet-style show-trial plea of guilty. And then the cycle can begin over again.

See the emerging picture? It's an endless series of faux prosecutions in which defendants are threatened to "cooperate" and plead guilty, or face indefinite incommunicado imprisonment, with all the physical and psychological terrors that accompany finding oneself in a bottomless legal pit. Like a Ponzi scheme, the structure of these prosecutions resembles a pyramid: defendants are pressured to testify against other friends, associates, and cohorts, who are then indicted regardless of whether the testimony, given under enormous pressure, would ever stand up in a real trial — and, in fact, it never *will* have to stand up at a real trial. Those new defendants are then, in turn, subjected to the same pressures. None of the "evidence" ever gets to be heard and evaluated by a jury of honest Americans, but the march of prosecutions and guilty pleas rolls onward, and the Bush administration's war on terror is palmed off on the public as a huge success.

This is one helluva way to run a war on terror. After all, Ashcroft was certainly right when he warned, as he did at the June 14 press conference announcing the Abdi indictment, that "we know our enemies will go to great lengths to lie in wait and to achieve the death and destruction they desire." But what's really scary is that if these kinds of show trials — the law-enforcement and judicial equivalents of Ponzi schemes — are what Ashcroft & Company are doing to protect the nation, then we are likely in worse trouble than even the pessimists among us imagine, for we have no reasonable assurance that we are capturing and imprisoning the right people. It's all a great public-relations front for the FBI and the Departments of Justice and Defense. In the end the testimony and the intelligence they've gathered by such means add up to little more than, in Macbeth's words, "a tale told by an idiot, full of sound and fury, signifying nothing."

Harvey A. Silverglate can be reached at has@harveysilverglate.com. Carl Takei and Dan Poulson assisted with this piece.