

Targets On Their Backs: Lawyers and Judges Under Siege Around the Globe

by Maria Z. Vathis



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Shakespeare's *Henry VI* coined the famous line: "The first thing we do, let's kill all the lawyers." As Dick the Butcher in *Henry VI* helped plot a conspiracy to overthrow the crown, he recognized that eliminating lawyers would be critical to the plot's success.

Today governments around the globe are becoming increasingly authoritarian, and autocratic leaders are taking a page from *Henry VI*'s Butcher. They realize that the key to controlling the people of their countries is to silence the "megaphones" of society who speak truth to power and amplify that truth for the rest of the population. Today, just for doing their jobs, courageous judges, lawyers, and other human rights defenders face risks in countries throughout the world—risks ranging from harassment, surveillance, and intimidation to disappearance, detention, prosecution, torture, imprisonment, and worse.

In China, for example, more than 300 Chinese lawyers and rights defenders have been ensnared in the government's "709 crackdown," which was launched in July 2015 and continues to this day. In what has been termed nothing less than "a war on law," Chinese lawyers and activists have been summoned for questioning, kidnapped by secret police, detained *incommunicado* in "black jails" and other prisons, tortured, and tried, convicted, and sentenced without due process on charges trumped up by the state.

Last June, President Rodrigo Duterte of the Philippines engineered the expulsion of that nation's chief justice, Maria Lourdes Sereno, who had been highly critical of the thousands of extrajudicial killings carried out as part of President Duterte's savage war on drugs. President Duterte's environment of retaliation has not been confined to the Supreme Court of the Philippines. In early November, renowned Filipino lawyer Ben Ramos was gunned down on the street, targeted for his *pro bono* work representing political prisoners, dissidents, suspected rebels, leaders of the environmental movement, impoverished alleged drug users, and other "enemies of the state." He was the 34th lawyer to be assassinated for human rights work in the Philippines since President Duterte took office in June 2016.

Saudi Arabia has imprisoned the country's leading women's rights activists based on their peaceful efforts campaigning for the right of Saudi women to drive. There are reports of some women being tortured. And, roughly one year ago, in retribution for two high-profile rulings that threatened his stronghold on power, former President Abdulla Yameen of the Maldives ordered the arrest of the country's chief justice and an associate justice in a dawn commando raid on the Supreme Court compound. The two justices are now serving prison sentences following trials that international authorities condemned as a sham. Sadly, there are many, many more such examples—including some here in the United States.

On January 24, the Federal Bar Association—for the first time—joined the international community in recognizing the International Day of the Endangered Lawyer. Now in its ninth year, the day is set aside to pay tribute to legal professionals around the globe who toil tirelessly to ensure that governments respect human rights obligations and commitments, often at great personal peril.

Each year, observance of the International Day of the Endangered Lawyer focuses on some specific country. This year that country is Turkey, where a dire situation grows worse with each passing day.

In the two-and-a-half years since the July 2016 attempted coup, in an effort to eliminate all opposition to his agenda, President Recep Tayyip Erdogan has implemented a purge of Turkish society that is unprecedented in its scope and scale—dismissing, detaining, arresting, imprisoning, and even torturing tens of thousands of civil servants, teachers, doctors, journalists, police, and military personnel, in addition to judges, prosecutors, and lawyers. Many are charged with national security offenses under the Turkish government's overly expansive definition of terrorism.

The purge of judges, prosecutors, and lawyers is particularly pernicious because it gravely undermines the system that otherwise would deliver justice to the rest of society. All three elements of the Turkish criminal justice system have been compromised—the

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L. 957 (2012); see also *The NLRB and Social Media*, NAT'L LABOR RELATIONS BD., <https://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media> (last visited Oct. 9, 2018).

²²See Maria Danaher, *Prohibiting Certain "NLRB finds policy against certain 'verbal comments or physical gestures' may restrict concerted activity," May Violate NLRA*, 16 LAW. J. 10 (2014).

²³See Frank Day, *The NLRB's Expanded Agenda*, 49 TENN. B.J. 28 (Jan. 2013).

²⁴Whole Foods Mkt. Inc., 363 N.L.R.B. 87205 (2015) (*aff'd*, *Whole Foods Mkt. Inc. v. N.L.R.B.*, 691 Fed.Appx. 49 (2d Cir. 2017)).

²⁵See Boeing Co., 365 N.L.R.B. 154 (2017).

²⁶See D.R. Horton Inc., 357 N.L.R.B. 184 (2012).

²⁷See *Epic Sys.*, 138 S. Ct. at 1620 (citing Memorandum from Ronald Meisburg, NLRB Gen. Couns., Off. of the Gen. Couns., to All Regional Directors, Officers-in-Charge and Resident Officers, Memorandum GC 10-06, Guideline Memorandum Concerning Unfair Labor Practice Charges Involving Employee Waivers in the Context of Employers' Mandatory Arbitration Policies 2, 5 (June 16, 2010)).

²⁸See Al-Haj, *supra* note 19, at 111 ("The Supreme Court has expansively interpreted Section 7 of the NLRA to protect more than an employee's right to form unions and engage in collective bargaining. In *Eastex Inc. v. NLRB*, the Court stated that it is well settled that 'mutual aid or protection' includes an employee's attempt 'to improve terms and conditions of employment or otherwise improve their lot as employees through channels outside the immediate employee-employer relationship.' The Court held that Section 7 'protects employees from retaliation by their employers when they seek to improve working conditions through resort to

administrative and judicial forums.'") (citing *Eastex Inc. v. NLRB*, 437 U.S. 556, 565-66 (1978)).

²⁹*Epic Sys.*, 138 S. Ct. at 1629 ("An agency eager to advance its statutory mission, but without any particular interest in or expertise with a second statute, might (as here) seek to diminish the second statute's scope in favor of a more expansive interpretation of its own—effectively bootstrapping itself into an area in which it has no jurisdiction.") (citation omitted).

³⁰See *supra* notes 10-11.

³¹*Epic Sys.*, 138 S. Ct. at 1647.

³²*Id.* at 1647-48.

³³Nina Totenberg, *Supreme Court Decision Delivers Blow to Workers' Rights*, NPR: ALL THINGS CONSIDERED (May 21, 2018, 10:55 AM), <https://www.npr.org/2018/05/21/605012795/supreme-court-decision-delivers-blow-to-workers-rights>.

³⁴Stern, *supra* note 8.

³⁵Epps, *supra* note 6.

³⁶See David Horton & Andrea Cann Chandraskher, *Employment Arbitration After the Revolution*, 65 DEPAUL L. REV. 457 (2016).

³⁷See Adams, *supra* note 12, at 123.

³⁸*Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974).

³⁹*Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010).

⁴⁰See *Concepcion*, 536 U.S. at 334.

⁴¹See *Epic Sys.*, 138 S. Ct. at 1636.

⁴²See *Gilmer*, 500 U.S. 20.

⁴³*Epic Sys.*, 138 S. Ct. at 1630 ("But like most apocalyptic warnings, this one proves a false alarm.")

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prosecution, the defense, and the judiciary. For example, in violation of the U.N. Basic Principles on the Role of Lawyers, the U.N. Declaration on Human Rights Defenders, and other international norms, lawyers have been prohibited from conferring with their detained clients, have had client meetings recorded by authorities, have been barred from reviewing charges and evidence, and have been banned from courtrooms. Often, when lawyers go to jail to meet with their clients or appear in court to represent their clients, the lawyers are detained and find *themselves* jailed and under prosecution.

Prosecutors and the judiciary have fared no better. In violation of the U.N. Basic Principles on the Independence of the Judiciary and the U.N. Guidelines on the Role of Prosecutors, a staggering 4,400-plus judges and prosecutors—more than one-fourth of all of the judges and prosecutors in the country—have been summarily dismissed,

and many have been detained, arrested, prosecuted, and imprisoned. The prosecutors and judges who have not been purged fear for their families, their jobs, and their freedom, tainting all trials, judgments, and sentences with the stench of threats and intimidation. The civil justice system has been similarly decimated. The independence of the judiciary, and the Turkish justice system as a whole, are casualties of President Erdogan's massive purge.

Protecting the safety, security, and independence of judges, lawyers, and other human rights defenders is a responsibility of all lawyers everywhere. As we mark the annual International Day of the Endangered Lawyer, the FBA stands in solidarity with the inspirational judges, lawyers, and human rights defenders worldwide who serve and champion justice and the rule of law. ☺