

Cuba

The Long Ordeal of James Sabzali

By Paul Harris, Axis of Logic Columnist

Apr 16, 2005, 10:08

In November 2003, I wrote an article entitled 'The Case of James Sabzali'. It first appeared at <http://www.vivelecanada.ca/> and it told of the strange case where a Canadian citizen, doing business in Canada, was charged by the government of the United States under the 1917 Trading with the Enemy Act.

I wrote the article because of an odd juxtaposition I saw in a news source. Beside the report that mentioned Mr. Sabzali's case was another piece about Human Rights Watch bearing its slogan: 'Defending Human Rights Worldwide'. It struck me as odd that Mr. Sabzali's human rights had apparently escaped their notice.

Although the case was already old at that point, it has only now finally had some resolution; but not before costing the defense more than \$8 million. I have included my original article here as background and have pasted below it an article written by Steve Eckardt. It was published in the online version of Granma on April 11, 2005. Granma is the state-owned media outlet in Cuba (www.granma.cu/ingles/index.html).

In the eighteen months since my article, other news sources have finally discovered James Sabzali. Mr. Eckardt's column sums it all up quite nicely and serves as a reminder that the international community can rest easy, knowing the United States Department of the Attorney General is ever-vigilant for dangerous men like James Sabzali.

November 2003:

'Defending Human Rights Worldwide' is the slogan of Human Rights Watch, a New York-based organization dedicated to, well, defending human rights worldwide. The front page of their website (<http://www.hrw.org/>) carried an editorial commentary earlier this year entitled 'Double Standards' which speaks to the hypocrisy of US complaints about the Iraqi military parading prisoners of war in Iraq while the US was practicing the same things themselves.

But this article is about the apparent hypocrisy, inattention, or 'double standards' of Human Rights Watch (HRW). This is a very estimable organization deserving of the full support of civilized people the world over; but on the one incident which follows, they roundly dropped the ball.

In the spring of 2003, HRW directed a message to its mailing list about a series of convictions in Cuba that sentenced non-violent 'criminals' to lengthy prison terms. These 'criminals' were declared guilty under Cuban law of subversion; at least one was also convicted of treason. HRW has some serious, and perhaps justified, concerns about the fairness of the legal process and whether the complaints about these particular individuals even really fit the confines of Cuban law, let alone international norms. But whether we like

it or not, there is a fuzzy line in punishment that separates harsh from inhumane. These criminals are what most of us would call 'dissidents' and they have received sentences ranging from twelve to twenty-seven years.

Cuban authorities began a crackdown in mid-March that saw the arrests of around 100 people. Ironically, the crackdown and these harsh sentences came just as the United Nations Commission on Human Rights was busy in Geneva debating the issue of human rights in Cuba. Over the previous eleven years, the Commission had already issued ten declarations condemning Cuba's human rights practices.

Just about one year earlier, in April 2002, James Sabzali was convicted in Philadelphia of violating America's 1919 *Trading with the Enemy Act*. Sabzali is a Canadian citizen, born in Trinidad, and working in the United States where he was convicted along with two American citizens. He was originally charged almost three years earlier and has already been under house arrest in Philadelphia since the conviction. But more than a year and a half after his conviction, he is still not sentenced.

So far, he is the only foreign national to be prosecuted for violating the US government's 40-year embargo of Cuba. He was convicted of twenty counts of trading with the enemy and one count of conspiracy. At least seven of the charges on which he was convicted are for trades he made while living in Canada where the *Foreign Extraterritorial Measures Act* forbids Canadians from complying with the US embargo. In fact, as a Canadian citizen, Sabzali was **obliged** to ignore the US embargo and to inform the Canadian government of any orders from the United States to refrain from trade with Cuba for political or legal reasons. Other charges related to shipments to Cuba originating in Spain, Italy, Britain, and Mexico; none of those nations recognize the US anti-Cuban legislation.

If Sabzali receives the maximum penalty under US law, he faces a possible 205 years in prison and \$5 million dollars in fines. Prosecutors were said to be willing to settle for 62 months in prison but the sentencing has been repeatedly pushed back and now a federal judge has ordered a new trial. There is no guarantee that he will fare any better with a new trial and, if convicted again, he could even receive a much more brutal sentence than originally proposed by the first trial prosecutor.

An official from the US Attorney General's office has commented that "This case was never about commerce between Canada and Cuba. It's about commerce between the United States with Cuba. We know Canada trades with Cuba. We don't have a beef with that." One wonders, then, why Sabzali was charged with offenses which occurred in Canada, where the trade did not involve the United States and where it was a requirement of law that Sabzali ignore the American embargo. The Canadian government did lodge a formal protest with American authorities at the time the charges were laid but, de rigueur, they continue to await a response.

In light of the recent allegations against the government of Canada in the [Maher] Arar and [William] Sampson cases, no one should be surprised that we have taken no action on behalf of Sabzali. It appears that our notion of 'quiet diplomacy' really amounts to doing nothing and letting the situations play themselves out.

By the way, Sabzali's crime was selling water purification systems to Cuban hospitals. US

officials in the Justice and State Departments claim that water purification is a matter of 'national security' for the United States. It is unclear if national security is at risk by purifying anyone's water, or only Cuban water, and there is no leeway given for the humanitarian aspect of purified water for hospitals.

Perhaps if you can get 205 years in the slammer for helping to provide clean water for hospitals, then twenty-seven years for conducting activities that you know your government considers to be treasonous or seditious doesn't seem so bad. Otherwise, there isn't much explanation for why Human Rights Watch has never so much as raised an eyebrow over James Sabzali and **this** case of abused human rights. Their mandate might be served better if they occasionally looked closer to home.

Sabzali can forget about any assistance from the government of Canada; we have already proved ourselves unwilling to apply pressure to the nations with whom we are only modestly friendly, we certainly aren't going to go to bat for one of our citizens who is being abused by our best friend.

And if you have a spare moment, enter 'James Sabzali' into a search engine and see if you can locate any US-based media that covered this story. Or even much Canadian media, for that matter.

- Paul Harris

April 11, 2005:

**FINAL ATTACK ON CANADIAN BUSINESSMAN CRUMBLES, SABZALI 'FINALLY FREE'
Stubborn resistance and world support ends eight-year, eight million dollar ordeal**

PHILADELPHIA - Eight years of battle over a key embargo issue came to a close early this year as the U.S. government quietly withdrew its final attack on Canadian businessman James Sabzali, an effort to deport him from his adopted home in the United States.

Washington had pursued deportation despite an earlier plea agreement with Sabzali. "The government reneged on its offer," he explained in an interview.

But now deportation has joined the original 76 charges filed against Sabzali in the rubble that was once Washington's largest prosecution for violation of its anti-Cuba embargo.

Sabzali had faced life imprisonment and over \$19 million USD in fines for sales of water purification supplies to Cuban hospitals. And while both the charges and their scale captured attention, the stakes were even more compelling: could the United States make its blockade legally binding on the entire world?

Key was Sabzali's being a Canadian citizen conducting business inside Canada for the majority of his alleged violations of the U.S. Trading with the Enemy Act. What's more, the Canadian Extraterritorial Measures Act simultaneously prohibited him from cooperating with the U.S. embargo.

And so the issue seemed simply posed: whose laws were paramount in Canada - Ottawa's or

Washington? Could the United States override law inside another sovereign nation?

Sure thing:

However extraordinary that possibility, there seemed little question that Sabzali would nonetheless fall under the wheels of the relentless U.S. blockade against Cuba.

After all, the case against him opened in the midst of Washington sharply tightening its stranglehold on the island in anticipation of Cuba's "imminent collapse" following the breakup of the Soviet Union.

Imposing draconian criminal sanctions on both foreign and its own citizens was simply a logical component of these escalations, a criminal law version of the Torricelli and Helms-Burton Acts.

In any case, Sabzali seemed an unlikely leading man for such an international clash. The smallish, quietly handsome family man - a Canadian citizen from Trinidad - was a businessman with a degree in chemistry. "Canadians have always had good relationships with Cubans," says Sabzali, now 46. "I was Canadian, I was in business for myself, and Cuba was an opportunity. So I went and did business with them."

Nor were his co-defendants, the U.S.-based Bro-Tech Corporation and its chief officers Stefan and Donald Brodie, likely standard-bearers for a battle against the blockade.

Indeed, their defense strategy was to retain highly influential lawyers --including president Clinton's personal attorney-- to 'make the case go away', the usual way that the wealthy avoid prison here, even if their crimes involve billions of dollars or even death. Such appeals to what's called the "old boys' network" (capitalist class solidarity) regularly result in dismissal of all charges or, at worst, short sentences in special prisons with private accommodations and no walls prisons commonly called "Club Fed," a reference to the all-expenses-paid hedonistic facilities run by the tourist corporation named Club Med.

In fact (reported here for the first time) negotiations on this case took place with the U.S. Attorney General, the highest U.S. law enforcement officer, rather than with the local official actually carrying out the prosecution.

But of course historic geopolitical considerations, the U.S. rulers' profound hostility to the Cuban Revolution and their belief in its 'impending collapse' overwhelmed the usual advantages conferred by either direct access to the Attorney General or being represented by the President's lawyer. The highest levels of the U.S. government had decided Sabzali and his co-defendants were going to go to prison, perhaps for a very long time indeed.

Target:

This intransigent position also allowed Washington to focus pressure on the lowest person being charged, James Sabzali. It began by seizing not only his passport, but also those of his wife and two young children, thereby detaining even his family.

At the same time, Washington seized the deed to Sabzali's house, meaning even a successful (if highly unlikely) escape from the U.S. would lose the family a property representing most of its life savings.

But in any case fleeing would be difficult indeed, thanks to the electronic bracelet on Sabzali's ankle that was constantly scanned to determine his location. A trip ten miles from his house would set off alarms and dispatch federal agents to the precise location given by his bracelet.

Sabzali had only to agree to testify against his co-defendants to make all this, including the 76 charges against him, "go away." Or at the very least to ensure his future would be far brighter than life in a federal penitentiary.

So as the millennium drew to a close, it seemed Washington had all its dominoes in place. And surely, with the momentum its anti-Cuba juggernaut steadily gained through the 1990's, they would fall: first Sabzali; then Bro-Tech; then Canadian law; next, resistance to a worldwide blockade; and finally the Cuban economy and the revolution itself. Perhaps forty-five years of war was about to pay off.

Problem:

The first hint that things might not proceed that smoothly came from domino number one: Sabzali. He turned aside all threats and promises, and refused to collaborate with the government against his co-defendants. To him this was no heroic act; as he explained in a recent interview for Granma, it was simple: "the government was wrong. There was no point in cooperating with them because I did nothing wrong."

The significance of this straightforward attitude almost surely escaped Washington, which proceeded towards trial apparently confident that the full weight and power of the U.S. government would win convictions anyway. But in fact Sabzali's quiet resolve had begun turning the whole case around; instead of a silent capitulation there would be a public fight, a struggle that would ultimately begin the dominoes falling in the opposite direction.

Indeed, news of the 76 charges filed against Sabzali caused what one Philadelphia newspaper called "a storm of protest" in Canada, long-tired of having its sovereignty violated by its colossal southern neighbor. Canadian editorialists called the charges "outrageous" and demanded their government oppose them, and Canadian citizens poured out letters of support for Sabzali; shortly thereafter Ottawa sent off first one and then another diplomatic protest to Washington.

Behind the outcry in Canada lay a growing international rejection of the U.S. blockade, a rejection not about to quietly abide Washington imposing its anti-Cuba laws inside other countries. And so as news of the case spread, so did worldwide support for Sabzali; the Scottish Parliament passed a protest resolution, and tens of thousands of Cubans demonstrated their backing, while Cuba solidarity activists in the United States unleashed a cascade of electronic publicity.

Rising opposition and the glare of international publicity increasingly revealed that, once again, the U.S. rulers had miscalculated their ability to strangle Cuba. The plan to use Sabzali to establish U.S. law applied outside its borders was in jeopardy.

Although Sabzali and his co-defendants were convicted in early 2002 on scores of charges, a slow retreat soon began. By June 2003 the same court actually overturned its own 'guilty'

verdicts, the judge recognizing the U.S. government had over-reached, citing grievous prosecutorial misconduct that otherwise would have passed unnoticed.

What came next was an agreement between defense and prosecution on a guilty plea to a single, lesser charge and no requirement of jail time, thus sparing both Washington further embarrassment and Sabzali another trial and the possibility of life in prison.

Sabzali pointed out that "the difference between the 76 counts and the single one we settled on is between possible life in prison and a single year of probation. It's a chasm that speaks volumes about the strength of the government's case."

Passing the torch:

But while Sabzali called the agreement a "victory", the story was not yet over for him. Next would come Washington's renegeing on its agreement and its efforts to deport him, and then finally its January 20th dropping of that endeavor.

And so after nearly five years of what he calls "all-consuming" struggle that left him "cut off from society, and unable to do anything else," Sabzali looks forward "to resuming normal life, being finally free" of the case. After half a decade without a passport, no surprise that travel is near the top of his list.

"Unfortunately," says Sabzali, "I cannot continue my friendships in Cuba." Like all residents of the United States, regardless of their citizenship, he is prevented from visiting Cuba by the U.S. travel ban, a small reminder that the embargo goes on.

In fact, even the issues in his own case are not entirely resolved. Sabzali's single guilty plea was for a 1994 transaction carried out while he was an independent businessman living in Canada. This establishes, said the U.S. prosecutor Joseph Poluka in an interview, that "you're not allowed to violate the laws of this country just because you live outside it."

Sabzali disputes the simplicity of that judgment: "I was convicted not for what I did, but for what I didn't do. I was supposed to inform the U.S. authorities that some of its citizens were violating U.S. law [by trading with Cuba]. What I pled guilty to was knowing that something was happening that was against U.S. law (not against Canadian law or any other law in the world) and not alerting the U.S. authorities that this was happening. But conducting business with Cuba from Canada remains perfectly legal."

In any case, according to Pamela Martin, a consultant for U.S. companies seeking business with Cuba, "the incredible size and length of this case and the eight million dollars it cost the defendants does have a certain chilling effect on people thinking about trading with Cuba here."

And so as Sabzali's story comes to a slightly equivocal close, it reveals itself as just a chapter in a tale many decades long volume of stories and struggles that continue every day.

But it's a chapter that shines far beyond its pages, exposing the Empire's weakness in the face of international support for one man's refusal to capitulate to injustice.

- Steve Eckardt