

Caged Citizen Will Test President Obama

Under 23-hour lockdown here, an innocent American is a Bush "dark side" legacy

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If our new president intends to try to make America resemble what it was meant to be, he will have to deal with the noxious residue of the Bush-Cheney war against terrorism. Barack Obama will be confronted, as Harold Reynolds predicted in the October 29 New York Law Journal, with bringing justice to "thousands of . . . men and women cut off from access to their families, tortured, humiliated . . . and kept off stage to this day by Bush's resistant administration."

Among these purported menaces to national security are survivors, if they can be found, of CIA secret prisons ("black sites"); victims of CIA kidnapping renditions; and American citizens locked up indefinitely as "unlawful enemy combatants."

We have one such pariah right here in New York at the Metropolitan Correction Center. He is 28-year-old Sayed Fahad Hashmi, whom I first told you about in this column last week. Confined in extreme isolation as if he were in a supermax prison, Hashmi was put away about a year ago by Bush's Attorney General Michael Mukasey under what are euphemistically called Special Administrative Measures (SAMs).

Of the 201,000 prisoners presently in the custody of the Federal Bureau of Prisons, fewer than 50 are so dangerous to the state that they are held under SAMs, which can be imposed in one-year increments. Mukasey was supposed to inform Hashmi's lawyer, Sean Maher, on October 29 whether those fierce conditions that were described here last week would be renewed for another year. But as of this writing, no word has come from the Justice Department, and the keys to Hashmi's cell will soon be in the hands of Barack Obama's attorney general. When Jeanne Theoharis—a professor of political science at Brooklyn College who has been leading the campaign to get Hashmi out of the cage where he's been jammed for his daily one hour of "recreation"—asked a Bureau of Prisons staff member how Hashmi has been SAM'd without even being charged with violence, she was told curtly: "He's being charged with terrorism, right?"

Enough said.

President-elect Obama, a former lecturer in constitutional law at the University of Chicago, should educate the Bureau of Prisons about elementary due process and should distribute copies of the Bill of Rights to its staff.

Mukasey was formerly a widely praised federal judge in New York before being employed by Bush, and he will now leave office as a chief law-enforcement officer that put the Bill of Rights under SAMs. When he authorized stashing Hashmi in New York's supermax, he explained, "There is substantial risk that Hashmi's communications or contact with persons could result in death or serious bodily injury to persons."

Wow! What did they have on this guy that he was extradited to the U.S. from London, where he had earned a master's degree in international relations at London Metropolitan University after graduating from Brooklyn College?

Hashmi has no criminal record anywhere and no history of committing acts of violence. But—and here's why he's under 23-hour lockdown in New York—he had a friend, Junaid Babar, stay over at his London apartment for two weeks. In the apartment, Babar stored luggage containing raincoats, ponchos, and waterproof socks. Babar—not Hashmi—later delivered them to the third-ranking member of Al Qaeda in South Waziristan, Pakistan. When, later in New York, a Grand Jury charged Hashmi with "conspiracy to provide material support or resources to a foreign terrorist organization," the socks, ponchos, and raincoats were transformed into "military gear." Also, an accusation exists that Hashmi let his houseguest use his cell phone "to call other conspirators." I have seen nothing to indicate Hashmi had any idea whom Babar was calling.

Particularly interesting about Babar is that he himself has pleaded guilty to five counts of material support of Al Qaeda and—gee whiz!—has agreed to serve as a government witness in terrorism trials in Britain, Canada, and at Hashmi's trial here next year. The Justice Department says Babar is the "centerpiece" of its case against Hashmi.

In return, under a plea bargain, Babar will get a reduced sentence. You get the picture.

But if Hashmi is convicted next year, he may be sentenced to 70 years of meditation on his nonexistent crimes under the care of the Bureau of Prisons. When he gets to trial, unless President Obama takes an interest in his case, Hashmi's lawyers note: "The government may act to withhold evidence from his attorneys, yet share that evidence with the judge. There is some evidence that the government may also choose to share evidence with the defense lawyers, but not permit Hashmi to see it." After all, he may get it to Osama bin Laden.

Right now, during preliminary court proceedings, U.S. District Judge Loretta Preska has closed some of the proceedings to the public and reporters, having ruled that some of the evidence is classified. Those must have been some explosive socks that Babar stored in Hashmi's London apartment! Maybe they were inspired by a classic James Bond movie!

On November 19, Maher, Hashmi's attorney, will appear before Judge Preska for a status hearing, and if his client is still being twisted out of shape by the SAMs, Maher will file a written application to reverse or modify them.

Theoharis, in whose political science class Hashmi had been an active participant, provided further and deeper context to this case when she told the *Chronicle of Higher Education* this past August 8: "[What is happening to Fahad Hashmi] is particularly significant in a moment when

we are seeing the criminalization of Muslim students. I think Fahad is a devout and practicing Muslim who is very political. If he can be treated like this, it sends a message to other young people, particularly other Muslim young people, that, you know, are not protected. . . . [This case] is crucial in terms of students thinking they can be who they want to be and espouse the politics they want to espouse. That's why we organized around this case. I fear very much that this is about [the government] sending a message."

This is a characteristic message of fearsome retribution aimed at dissenters that the government has been sending—and putting into action—for the past eight years. We need more than soaring language of hope from President Obama. What, specifically—and immediately—is he going to do to resurrect the Constitution? And, in the process, will he get Sayed Fahad Hashmi back on the streets so Hashmi can protest if he doesn't provide a renewed rule of law we can believe in?