

The Persecution of Syed Fahad Hashmi

by Stephen Lendman

*(*Please note: This article was edited by The Free Fahad Campaign due to factual discrepancies)*

It's a familiar story. A Muslim American is accused of terrorism for supporting Al Qaeda and conspiracy to provide support for a Foreign Terrorist Organization (FTO). The prosecution asks for the maximum sentence. Once again, an innocent man is arrested, charged, indicted and convicted with no substantiating evidence except for what prosecutors say they have. All of it is bogus and much classified and withheld from the defense. Witnesses are enlisted to cooperate and proceedings orchestrated to intimidate juries to convict. Justice again is denied. Those accused bear the mark of Cain for being Muslim in America at the wrong time - especially if they're devout, activist, and for some prominent and engaged in charitable work.

Syed Fahad Hashmi's Background

His friends strongly support him and say charges and media accusations against him are false and misleading. They call him humble, devout, attentive to studies, and accommodative to others and their needs - Muslims and non-Muslims alike.

He's victimized and innocent of all charges but has yet to be tried. Born in Karachi, Pakistan, he became known as Fahad. At age 3, his family emigrated to America and settled in Flushing, New York. He attended public schools and the State University of New York (SUNY), Stony Brook. He then transferred to Brooklyn College and in 2003 earned a BA in political science.

Devout in his faith, he became active in the Muslim community as an advocate for Islamic issues. After college, he enrolled in London Metropolitan University and received a master's degree in 2006. On June 6, his ordeal began when UK police arrested him at Heathrow airport as he awaited his flight home to Pakistan. Subsequently he was held as a Category A prisoner - defined as those considered highly dangerous to the public and/or national security. He was kept under draconian conditions in Southeast London's Belmarsh prison where he experienced extreme deprivation as follows:

- solitary confinement for 23 hours a day;
- 24-hour electronic monitoring
- no access to fresh air; and
- only occasionally given one hour of "recreation" inside a cage.

He was also placed under special administrative measures (the UK version of American-style SAMs) under which:

- he was denied communication with other prisoners, lawyers, family, the media or anyone

else outside prison;

-- for the most part, given no reading material or any news from outside;

-- prevented from regular praying;

-- refused medications and medical treatment;

-- threatened and abused by guards;

-- treated like a menace to society; a wild beast; a pariah for his faith and activism.

He was effectively buried alive in a virtual tomb as a consequence, making him and others like him no match against society's jihad against Islam.

"United States of America v. Syed Hashmi, a/k/a Fahad"

On May 25, 2007, Fahad was extradited to America on terrorism charges. On May 26, the Department of Justice charged him as follows:

Count One - "Conspiracy to Provide Material Support Or Resources To A Foreign Terrorist Organization;"

Count Two - "Providing and Attempting To Provide Material Support Or Resources To A Foreign Terrorist Organization;"

Count Three - "Conspiracy To Make Or Receive A Contribution Of Funds, Goods, Or Services To, And For The Benefit Of, Al Qaeda;" and

Count Four - "Making Or Receiving A Contribution Of Funds, Goods, Or Services To, And For The Benefit Of, Al Qaeda."

An accompanying press release read:

"From January 2004 through May 2006, HASHMI, 27, a United States citizen, provided support or resources to a foreign terrorist organization, namely al Qaeda. In connection with these charges, HASHMI assisted al Qaeda by providing military gear to others who then transported the gear to al Qaeda associates in South Waziristan, Pakistan. HASHMI also agreed with others to provide military gear to al Qaeda to be used by al Qaeda to fight against United States forces in Afghanistan....The total maximum sentence for the charges against HASHMI is 50 years imprisonment."

On May 26, 2007, Fahad was presented in US Magistrate's Court and on May 30 arraigned before Manhattan US District Court Judge Loretta Preska (appointed by GHW Bush and a close family friend). Supporters offered to put up \$500,000 in bail. Fahad's lawyer presented prosecution witness statements that supported his innocence. Michael Garcia, US

Attorney for the Southern District of New York, didn't refute them, yet claimed "we cannot give him bail because he doesn't respect American law....he believes Allah's law is superior." This said about a non-violent student with no prior arrests or record of wrongdoing.

Fahad was denied bail for his faith and activism, for being a devout Muslim, for believing God's law is sacrosanct. For feeling and behaving no differently than devout Christians, Jews or members of other faiths. Nonetheless, Judge Preska said she had to take his beliefs into account and deny him bail even though preceding Fahad's hearing, she agreed to a pre-arranged plea bargain for a convicted drug dealer - because (as she stated) he turned to the Bible during detention and bettered himself.

Fahad is a student, not a terrorist or supporter of violence. All charges against him are bogus. He wasn't charged with providing money or resources for terrorism or being an Al Queda member. Instead he was targeted for his beliefs and for letting an old acquaintance - Junaid Babar - stay in his London apartment for about two weeks in 2005.

Babar was alleged to have kept some raincoats, ponchos, and waterproof socks in luggage he stored there. DOJ claimed he gave them to a high-ranking Al Queda member. No evidence connects Fahad in any way if he did. He has no association with individuals or groups engaged in "terrorism." Nonetheless, he was so charged.

Junaid Babar

As it turned out, he's a dubious character indeed - a government cooperator paid to testify against targeted Muslims and nicknamed "Supergrass" by the UK media. He was used in Britain against Omar Khyam and other Muslim men in the so-called Fertilizer Case - the supposed plot to bomb a London nightclub and shopping center with a half-ton of ammonium nitrate. Charges were largely bogus but led to the arrest and conviction of targeted "bombers." Some, that is, not others let loose throwing into question the validity of any plot at all.

At trial, it was learned that Babar met with FBI agents in 2004 and agreed to be a government cooperator - because in June that year he was indicted and pled guilty to four counts of conspiring to and providing and attempting to provide material support or resources to terrorists. A fifth count as well for providing funds, goods, or services for the benefit of Al Queda. In return for a reduced sentence, he agreed to a plea bargain. It requires him to provide "substantial assistance," including testifying against other Muslims like Fahad. He's an innocent man whose only recent association with Babar was the two week period in his apartment during which time nothing nefarious happened or was discussed. Nor is Fahad connected with Babar's charged offenses.

Fahad's Confinement and Upcoming Trial

Fahad is incarcerated at Manhattan's Metropolitan Correction Center in solitary confinement in its Special Housing Unit. In October 2007, SAMs were imposed as in Britain to punish and isolate him from family, friends and nearly all human contact. They're the same draconian conditions he experienced at Belmarsh.

Less than 50 inmates in the Federal Bureau of Prisons population are under these constraints. The practice was established in 1996. They can be imposed for a year, then renewed for additional one-year periods. Before 9/11, 120 days was the maximum.

Visitations were denied him for many months. They're now severely limited to pre-cleared lawyers and immediate family only for short periods. His reading is also restricted to designated newspaper sections 30 days after publishing. No radio or TV news is permitted or participation in group prayer. Overall he's subjected to extreme deprivation under outrageous conditions for anyone and outlandish ones for a non-violent innocent man, guilty only of being Muslim at the wrong time in America.

On November 19, Fahad's attorney, Sean Maher, petitioned Judge Preska to reverse or lessen his harsh conditions. Whatever the ruling, it will test what Harold Reynolds wrote in the October 29 New York Law Journal - whether Barack Obama will bring justice to "thousands of....men and women (like Fahad) cut off from access to their families, tortured, humiliated....and kept off stage to this day by Bush's resistant administration."

Fahad's next court date is on December 17th - at US District Court, 500 Pearl Street, New York. The [freefahad.com](http://www.freefahad.com) web site urges supporters for him, to attend and "stand up against oppression."

*(*Please note: The original article stated that Dr. Aafia Siddiqui was a co-defendant in the case. This is inaccurate. For more information about Dr. Aafia's case, please visit: www.muslimsforjustice.org)*

The Constitutionality of SAMs

On June 24, 1974, the US Supreme Court ruled 5-1-3 in *Pell v. Procunier* that appellants' (four prison inmates and three journalists) First Amendment face-to-face interview rights weren't violated by a California Department of Corrections regulation (415.071) stating: "(p)ress and other media interviews with specific individual inmates will not be permitted." However, the Court held that inmates have alternative ways of communicating with the media and others on the outside, thus implying that prison authorities may not prohibit them.

On April 29, 1974, the High Court ruled 9-0 in *Procunier v. Martinez* for appellees (prison inmates). They challenged California Department of Corrections mail censorship regulations and its ban against use of law students and paralegals to conduct attorney-client interviews with inmates. These prohibitions violate First and Fourteenth Amendment rights - the First with regard to free expression and right of prison inmates to communicate with persons outside the penal system. The latter guaranteeing everyone (citizens and non-citizens) due process rights and "equal protection of the laws."

Sixth Amendment rights are also at issue. They guarantee a speedy trial before an impartial

jury in all criminal cases and right as well, not just to counsel but to "effective assistance of counsel." They also assure the opportunity between defendant and counsel to prepare an adequate defense and have one at trial. Despite ruling against petitioner in *Avery v. Alabama* (1939), the Supreme Court held that:

"denial of opportunity for appointed counsel to confer, to consult with the accused, and to prepare (a proper) defense could convert the appointment of counsel into a sham, and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel."

In *Powell v. Alabama* (1932), the Supreme Court (for the first time) addressed the "effective assistance of counsel" issue. It ruled that a defendant has the right to "the guiding hand of counsel at every step in the proceedings against him" under the Fourteenth Amendment's due process clause. It noted that this right "is not discharged by an assignment (of counsel) at such time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case." It reversed the convictions and sentences of the so-called "Scotsboro Boys," nine black youths falsely accused of raping two white women.

In two succeeding rulings, the High Court set two "effective assistance" standards. In *Strickland v. Washington* (1984), it established a dual approach:

-- whether or not counsel's performance was adequate or deficient; and

-- if the latter deprived a defendant of a fair trial, including if counsel's assistance was minimal or if the state interfered with adequate client - attorney preparations.

In *United States v. Cronin* (1984), the Court further noted that "(t)here are....circumstances....so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." They include:

-- "the complete denial of counsel;"

-- where "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing;"

-- "when counsel was either totally absent, or prevented from assisting the accused during a critical state of the proceeding (including proper trial preparation);" and

-- "when counsel labors under an actual conflict of interest."

By severely restricting Fahad's adequate time to confer with counsel; withholding state evidence to be used against him; its questionable validity as well; and how and from whom it was obtained, prosecutors are in violation of the letter and spirit of the Constitution:

-- Fahad's Fourteenth Amendment due process right as well; and

-- assurance he'll receive judicial fairness in a US federal court. In addition,

- his Eight Amendment protection against cruel and unusual punishment by his isolation;
- his First Amendment free expression rights; and
- his Sixth Amendment ones for a speedy trial with "effective assistance of counsel."

Upcoming Trial

Trial dates were set and postponed. It's now scheduled for sometime in spring 2009. Under SAMs, his lawyers can't discuss his case publicly, including supposed "evidence" they were finally able to see - some, that is, but not all. What's withheld is still classified and is described by the prosecution as "voluminous." Most of it is from recorded phone calls, conversations and the like plus testimony from Junaid Babar and other witnesses DOJ intends to call. It's the usual strategy to intimidate juries to convict and what awaits Fahad at his trial.

In the meantime, he is isolated under draconian conditions in a nation priding itself as a model democracy - except for Muslim victims of the "War on Terrorism." Justice for them assures justice denied.

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