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Hashmi: Finally, a Trial!

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by: William Fisher, *t r u t h o u t* | Report

Wednesday should be a big day for Syed Fahad Hashmi. After close to three years in solitary confinement in a federal detention center in New York City, the 29-year-old Queens-born American citizen will finally get his day in court.

He will be charged with conspiracy to provide material support to Al Qaeda.

If he is convicted, he could die behind bars.

The road Hashmi has traveled to get where he is has been, to say the least, tortuous and, some have said, Kafkaesque. And it doesn't appear to be getting any less bizarre as the trial date nears.

Last week, the Department of Justice lawyers asked the court to grant its motion for an anonymous jury, they say, to protect the jurors, the audience in the courtroom, the prosecutors and defense counsel, the judge, and the criminal justice process.

The motion asks that the jurors not be required to disclose their names, addresses or places of employment, and that they be kept together at all times under the watchful eyes of the U.S. Marshal Service.

The government lawyers tell the court that anonymous juries have been used in three terror-related cases in this same court, including the conviction of lawyer Lynn Stewart for passing a message from her terror-suspect client to his colleagues.

If Judge Loretta Preska grants the motion, jury selection would proceed under a process known as *voir dire*, referring to giving a true verdict.

The *voir dire* process in the U.S. is controversial. The amount of privacy that the potential jurors are afforded when asked questioned raises the issue of the definition of "impartial jury." Some question whether the intensive questioning of potential jurors looks not just for inherent bias but for a potential to be emotionally swayed. Proponents argue that this method gives both sides more confidence in the verdict.

But one of Hashmi's most ardent defenders - Dr. Jeanne Theoharis, Hashmi's teacher at Brooklyn College - terms the government's action "egregious."

"There's so many ways this is egregious -- not the least of which is that it speaks to how the US Attorney's office views Muslims in the audience and countenances racist speculation," she says, Theoharis cites the U.S. Attorney, who writes, "It is likely that the jurors will see in the gallery of the courtroom a significant number of the defendant's supporters, naturally leading to juror speculation that at least some of these spectators might share the defendants violent radical Islamic leanings."

But Theoharis says there are no demonstrations planned for the first day of trial. "The plan is to pack the courtroom with a possible press conference with human rights groups on the courthouse steps or in the park across the street for the first day," she explains, adding: "This is just about ratcheting up the fear of the jurors. (Hashmi's lawyers) will obviously contest the government's motion saying that, in a democracy, people are allowed to come and watch court. But of course the judge is very sympathetic to the government and will likely agree to do so."

"Clearly," she says, "this is proof that our organizing is getting to them - but also that, in this climate, they will try to use that to increase the fear (and secrecy) of the jury. They are using this activism - and people exercising their right to watch the process - to make the jury scared and gain a conviction."

Theoharis is not without allies in her support of Hashmi. In response to the government's anonymous jury motion, the Center for Constitutional Rights (CCR) said, "The case against Fahad Hashmi in itself raises many red flags related to the violation of his rights, prosecutorial overreach under the material support statute, and the unduly punitive and restrictive special administrative measures under which he has been kept without trial for nearly three years." CCR said "The government's call for the jurors at his trial...to be anonymous and kept under extra security because of the attention and political activism these issues have drawn to the case is a clear attempt to influence the jury by creating a sense of fear for their safety and to paint Mr. Hashmi as already guilty."

"The government is manipulating the fact that many individuals and human rights organizations are supporting Mr. Hashmi and raising important criticisms of his treatment in detention in order to gain a conviction. This is deplorable," the group said.

Why has this case been so hotly contested for so many years?

To answer that question, readers need to understand Hashmi's story. Here is it: Hashmi grew up in Queens, one of the boroughs of New York City. After receiving an undergraduate degree from Brooklyn College, Hashmi moved to London to study for a master's degree. According to prosecutors, a friend of his, Junaid Babar, stayed at Hashmi's London apartment for two weeks and stored luggage containing raincoats, ponchos, and waterproof socks in the apartment.

The government says Babar later delivered these items to the third-ranking member of Al Qaeda in Pakistan.

By the time a Grand Jury charged Hashmi with "conspiracy to provide material support or resources to a foreign terrorist organization," the socks, ponchos, and raincoats had become "military gear."

The government also charges that Hashmi let Babar use his cell phone "to call other conspirators." Hashmi says he had no idea whom Babar was calling. Hashmi has denied that he was part of conspiracies to help Al Qaeda, or that he ever gave support to

anybody to pass on materials to the terrorist group.

He was initially arrested in London in 2006 as he prepared to board a flight to Pakistan, and was extradited to the U.S. He has been held in New York since Memorial Day weekend in 2007.

In the Metropolitan Detention Center in New York, Hashmi, a Muslim, is not allowed to pray with others of his faith. He is on a 23-hour solitary confinement lockdown and 24-hour surveillance, including when he showers and goes to the bathroom. He was not allowed family visits for months. Now, he can see one person for an hour and a half, every other week. Visits are through a thick glass. No touching or hugging is permissible or possible.

Hashmi is permitted to write one letter a week to a single member of his family, but cannot use more than three pieces of paper per letter. Within his own cell, he is restricted in his movements and he is not allowed to talk to guards or other inmates.

Hashmi is forbidden any contact - directly or through his attorneys - with the news media. He can read newspapers, but only those portions approved by his jailers - and not until 30 days after publication. He is forbidden to listen to news radio stations or to watch television news channels.

He is also under 24-hour electronic monitoring inside and outside his cell. He is allowed one hour of recreation every day - which is periodically denied. He is not given fresh air but must exercise alone inside a cage.

One of Hashmi's Brooklyn College professors, Jeanne Theoharis, who has attended the hearings in his case, told us that Hashmi's "mental health appears to be deteriorating." His attorneys are concerned that his extreme isolation "will cause lasting psychological, emotional, and physical damage" to their client.

That kind of damage has been thoroughly documented by major medical and psychiatric institutions and organizations. To learn more about damage caused by isolation, Truthout consulted Jeffrey Kaye, a prominent psychologist who is among those mental health

professionals who have carefully studied the subject. This is what he told us: "Solitary confinement and isolation are among the cruelest punishments that can be inflicted on a human being. It attacks the nervous system, as well as the core humanity of the individual. It is a pernicious form of sensory and social deprivation, which has cytotoxic effects upon the brain.

"One study out of the University of Chicago in 2007 showed that essential enzymes in the brain that regulate the GABA neurotransmitter that helps modulate stress and anxiety is reduced by half under conditions of isolation. The result is the person is unable to cope with fears, aggression, and loneliness."

"Even the CIA, in their 1983 Latin American torture manuals, called 'a powerful stressor', and explained its purpose as producing a psychological regression in the victim," said Kaye. "People in long-term isolation, like Mr. Hashmi, can suffer from depression, panic attacks, hallucinations, and have great difficulty adjusting to a normal social life after incarceration. Isolation was the preferred form of torture used by the KGB and the East European Stalinist governments. It is one of the worst forms of psychological torture that can be inflicted on a human being, who is a social creature, and needs the stimulation of social contact to survive."

"When inflicted by people over whom the victim feels he has no control, or in an atmosphere of fear, control, and dominance, the effects of isolation are worsened tremendously," said Kaye. "Most people can stand only a few months of such treatment before they break down, much less the years Mr. Hashmi has endured."

Prof. Theoharis, an associate professor of political science at the City University of New York's Brooklyn College, was instrumental in organizing a campaign to draw attention to the civil liberties and human rights concerns in Hashmi's case. She enlisted more than 550 signatories to petition the Justice Department protesting the conditions of Hashmi's confinement and undermining his right to a fair trial. Among them were Henry Louis Gates Jr. and Duncan Kennedy of Harvard; Seyla Benhabib of Yale; and Eric Foner and Saskia Sassen of Columbia.

A number of prominent authors and journalists have written articles

in Hashmi's support. They include Nat Hentoff, Aziz Huq, Chris Hedges, Amy Goodman, and Prof. Theoharis. A website is dedicated to Hashmi's case - <http://freefahad.com/>.

Hashmi has no criminal record and no history of committing acts of violence. In court in January 2009, Hashmi's lawyers called the restrictions on Hashmi too severe and asked a federal judge to lift some of them, perhaps allowing Hashmi to have a cellmate or to exercise in fresh air. But the judge denied a motion to consider the psychological impact of solitary confinement and ease the conditions of his detention.

Hashmi's friend Babar has pleaded guilty to five counts of material support of Al Qaeda and has agreed to serve as a government witness in terrorism trials in Britain, Canada, and at Hashmi's trial. The Justice Department says Babar is the "centerpiece" of its case against Hashmi. In return, under a plea bargain, Babar will likely get a reduced sentence.

If Hashmi is convicted, he could be facing up to 70 years behind bars.

We asked Prof. Theoharis how she remembered Hashmi when he was one of her students. "He was a student of mine in 2002," she said. "He took the senior capstone seminar in political science with me - that year, the course I taught was on post-civil rights racial politics, which focused on civil rights from the 1960s to the present. It is a small course where students are required to do a research paper. He did his on the treatment of Muslim groups in the United States post-9/11 and - ironically or perhaps not - described the violations of civil liberties that Muslim groups of various political positions were facing. Now that paper he did with me is being lived out in lower Manhattan - and it is *his* rights that have been violated."

People who remember Hashmi as a student in Brooklyn think of him as a person who enjoyed debating political issues. He was militant but never violent, they say.

Theoharis encouraged Hashmi to seek a Masters degree in the UK. She wrote a letter of recommendation for his applications to graduate school. "He came to see me about his desire to go to graduate school

which made sense, given his scholarly interests," she said. "Also, as part of a class assignment for another course where students had to interview someone who had the job that they wanted, he came and talked with me about being a professor. But next I heard about him, he'd been arrested and we were being instructed by Brooklyn College not to have any comment to the media."

Theoharis says she has not seen him - "except for brief eye contact at his pre-trial court hearings" since he left for England. His mental health appears to have declined considerably, Theoharis says. "He appears less focused and more jittery. He used to pay attention to everything happening in court, constantly talking to his lawyer and for the brief moments entering and leaving court, making eye contact and smiling at people in the audience. He seems much more withdrawn (sometimes just keeping his head down the whole time), which certainly corresponds to the research on prolonged solitary confinement which documents this kind of degradation of people's mental health."

Theoharis says Hashmi's lawyers put up a solid defense against the imposition of the SAMs. She says, "His defense has challenged the SAMs on multiple occasions - including introducing medical and scholarly evidence of the damage that prolonged solitary confinement has on a person. The judge was unconcerned and ruled against every defense motion seeking to address the SAMs. She has refused even to make modest changes. She has determined the SAMs to be 'administrative and not punitive' and thus constitutional. Judges - and particularly this judge, Loretta Preska- seem to be allowing the government wide latitude in imposing these inhumane measures."

Judge Preska has cited possible dangers to prison guards after an August, 2008 incident where one guard said Hashmi was "shadowboxing" and practicing martial arts.

Hashmi's lawyer had argued the boxing incident was not properly investigated, and in court papers said Hashmi was not informed of his Miranda rights when the statements were taken.

Judge Preska was nominated by President George H. W. Bush in 1992, to a seat on the United States District Court for the Southern

District of New York. She was confirmed by the Senate in August 1992.

"The SAMS are legalized torture," Theoharis says. "The level of isolation and sensory deprivation are dehumanizing. They go against international standards and have been shown in medical and scholarly research to have severe impact on a person's mental health and stability. And they severely impact the ability of a person to participate effectively in his or her own defense."

She adds, "We have begun to have a public conversation in this country about torture but we have not addressed this crucial aspect of it happening right here in the federal system and, in Hashmi's case, right here in New York City. While there has been public attention to the use of torture and intelligence gathering, we have missed the use of torture to gain convictions - as a way to demonstrate the success of law enforcement and federal prosecution in the War on Terror."

Prof. Theoharis does not believe Hashmi can get a fair trial. "His right to a fair trial has already been severely compromised by the SAMs, and the use of 'classified' evidence," she said. "We are hoping to salvage justice in his case. But three years of solitary confinement and severe isolation have made a fair trial impossible."

Now, I have no idea about Hashmi's guilt or innocence. That's not what this is about. It's about getting our Department of Justice to dial back the Bush years and return to a tradition of humane treatment - even for prisoners. It's about the credibility of testimony from a convicted felon facing 70 years in prison. And it's about the 'material support' laws, which lawyers say rely far too heavily on McCarthy-era guilt-by-association.



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William Fisher has managed economic development programs in the Middle East and in many other parts of the world for the US State Department and USAID for the past thirty years. He began his work life as a journalist for newspapers and for the Associated Press in Florida. Fisher also served in the international affairs area during the Kennedy administration. Go to [The World According to Bill Fisher](#) for more.