

# A Brooklyn College Grad Experiences the Constitution in a Cage

## Torture in Manhattan for 28-year-old Muslim American Sayed Fahad Hashmi

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For the past year, a 28-year-old Muslim American student, Sayed Fahad Hashmi—the first person extradited to the United States from Britain to face charges of terrorism—has been held at the Manhattan Correctional Center under conditions of confinement that are the very definition of the Eighth Amendment's prohibition of "cruel and unusual punishment."

He has not been charged with being a member of Al Qaeda or for providing any money or resources to any terrorist. He is here—for a trial months away in 2009—for letting a former acquaintance, Junaid Babar, stay for a couple of weeks in his London apartment, where Babar stored several ponchos, raincoats, and waterproof socks in a suitcase. (Hashmi was still in London after receiving a master's degree from London Metropolitan University.)

Babar—not Hashmi—gave these socks and ponchos, it is alleged, to a high-ranking member of Al Qaeda.

That gives you some indication of Hashmi's supposed connection to terrorism.

Says Hashmi's New York-based attorney, Sean Maher: "We are talking about socks here."

We are also talking about what has happened to this country after Dick Cheney—on September 16, 2001—said, "We also have to work, though, sort of on the dark side, if you will. . . . It's going to be vital for us to use any means at our disposal, basically, to achieve our objective."

Before I go further into the particulars of the case against Hashmi, I must first explain why three letters from civil liberties groups have been sent in the interest of what remains of our Constitution to Attorney General Michael Mukasey, under whose authority Hashmi is imprisoned here under Special Administrative Measures that violate Common Article 3 of the Geneva Conventions and our own torture laws. The Brennan Center for Justice, the Center for Constitutional Rights, and the Association for Muslim American Lawyers wrote to Mukasey asking him not to renew on October 29 these Special Administrative Measures for this prisoner who has not been convicted of anything and, under what used to be American law, is presumed innocent until proven guilty.

On a 23-hour solitary-confinement lockdown, Hashmi, was not allowed family visits for months. Now, he can see one person for an hour and a half, but only every other week. He is permitted to write only one letter a week to a single member of his family, but he cannot use more than three pieces of paper per letter. (I would be grateful, Mr. Mukasey, for an explanation of how these restrictions serve our security needs.) Mr. 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. And he is absolutely forbidden to listen to news radio stations or to watch television news channels.

You will not be surprised to learn that he is under 24-hour electronic monitoring and is forbidden to communicate with any of the other inmates. However, a merciful Justice Department allows him one hour of recreation every day—inside a cage. His attorneys are concerned, to say the least, that this extreme isolation "will cause lasting psychological, emotional, and physical damage" to their client. Among the scientific

evidence they cite are the findings of Craig Haney, professor of psychology at the University of California, Santa Cruz. Having reported for *Legal Times* on "supermax" prisons in the United States—about which Professor Haney has been an expert witness in court cases—I was familiar with the Haney's conclusion, cited by Hashmi's lawyers: "There is not a single published study of solitary or supermax-like confinement . . . that failed to result in negative psychological effects."

Years ago, I read Charles Dickens's account of the first American version of a supermax prison in his *American Notes*. Notwithstanding all he had seen in the bowels of British prisons, Dickens was horrified. With American know-how, today's supermaxes are far worse.

Professor Haney's research was brought into this case by Hashmi's lawyers because, they state: "The continuation of such draconian pre-trial conditions of detention will not only harm Mr. Hashmi's health, but also"—and this is crucial to what used to be known as due process of law in our Constitution—"the potential mental and physical deterioration that will follow such conditions [of confinement] will impact Mr. Hashmi's ability to assist counsel in preparing for trial."

Hashmi's defense lawyers continued with the hope of attracting the attention of General Mukasey, formerly a much-praised federal appellate judge in New York: "Because there are less restrictive means to protect the government's security interests without causing direct harm to Mr. Hashmi, any deterioration in Mr. Hashmi's health or ability to assist in his defense *will be directly attributable to the government*" (emphasis added—as if they care).

Not only will Hashmi have been stripped of his Eighth Amendment right to be free from cruel and unusual punishment, but he will also be deprived of his Sixth Amendment right to be in sufficient condition to help his counsel prepare for his defense—and thereby receive a fair trial.

Last August, Jeanne Theoharis, an associate professor of political science at the City University of New York's Brooklyn College, was instrumental in organizing a "Free Fahad" campaign that enlisted more than 550 prominent academics to sign a petition to the Justice Department protesting the fearsome conditions of Hashmi's confinement and the corollary undermining of his right to a fair trial. Among them were Henry Louis Gates Jr. and Duncan Kennedy of Harvard; Seyla Benhabib at Yale; Eric Foner and Saskia Sassen of Columbia University; and Professor Theoharis's father, Athan Theoharis, of Marquette University (emeritus), from whose work I've learned a lot about the FBI, constitutional law, and the determination to safeguard the latter from the government.

Hashmi was a student of Jeanne Theoharis at Brooklyn College, and as the *Chronicle of Higher Education* reported in a front-page August 8, 2008, story: "Ms. Theoharis recalls that her student took a keen interest in civil liberties. Mr. Hashmi wrote his final paper for her class on the contradiction between basic American freedoms and the U.S. government's treatment of citizens since the terrorist attacks of September 11, 2001. . . . He also loved a vigorous discussion with his fellow students, sometimes lingering after class to finish a debate.

Mr. Hashmi, in his cell here in New York, is witnessing the disappearance of the basic American freedoms he so enjoyed exercising. To be continued.