

Post 9/11 “Terror Trials”: The Strange Case Against Abid Naseer

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There was nothing ordinary about the Abid Naseer trial, which was a proceeding that gave off different fumes and smells depending on the audience. After September 11, 2001, terror trials became something of a carnival, with manipulated legal whispers and stretched suggestions as to how best to net suspects. Naseer, a Pakistani national, claimed that the voluminous chat sessions with his supposed co-conspirators via the [Qiran.com](#) site were entirely based on seeking a rather innocent target: a suitable wife.[1] The prosecutors claimed, on the contrary, that he wished to cause catastrophic mayhem to a mall in Manchester and the New York subway – with the help of associates.

Writing in *Lawfare*, Diane Webber asked the question why Naseer found himself being convicted in a Brooklyn Federal Court on March 4. The “saga,” as Webber termed it, “has an additional strange element underlying the whole case: Naseer was apparently convicted in the wrong country, and was extradited from the country where his crime took place to take trial there.”[2]

The troubling feature, and one that has characterised the seemingly fluid nature court proceedings have been launched after September 11, 2001, lies in glaring procedural problems. The UK authorities found themselves unable to prosecute Naseer due to taxing evidentiary standards. The Crown Prosecution Service, as Webber notes, has to have sufficient evidence to support what is deemed a “realistic prospect of conviction”.

In the somewhat more mangled words of the Crown Prosecution Service, “The Code requires that in order for a prosecution to take place, there must be sufficient evidence for a realistic prospect of conviction, meaning that a conviction is more likely than not.”[3] It was easier, in fact, to extradite the suspect to the US, which requires the somewhat lower standard of probable cause that the suspect perpetrated the offence. Hence the absurd spectacle of MI5 agents dressed in wigs and wearing make-up in a US court session (BBC News, Feb 24).

As a CPS spokesperson explained, using words that should make civil liberty advocates shriek with dismay, “The evidence in our possession in relation to Abid Naseer which would have been admissible in a criminal court was very limited.”[4] The spokesperson proceeds to show how utterly hopeless the prosecution case was to begin with, a notable point given that Naseer’s activities had supposedly taken place on British soil. “Crucially, there was no evidence of training, research or the purchasing of explosives.” Nor did the prosecutors have “evidence of an agreement between Abid Naseer and others which would have supported a charge of conspiracy in this country.”

Naseer was not prosecuted, as he should have been had the case been viable, in a British court, suggesting that a bit of judicial outsourcing goes a long way. (We have seen it in the

context of allies who happily allow their own nationals to be tried and convicted in foreign jurisdictions for ease of effort.) The result was a legal feast of absurd efforts to keep Naseer under some form of lock and key.

Deportation was sought on grounds that the Pakistani national's presence would pose a threat to national security, in other words, conducive to the public good. Naseer appealed, with the Special Immigration Appeals Commission affirming (May 18, 2010) the view that he did constitute a serious threat, but could not deport him to Pakistan, where he faced a real risk of illegal detention, disappearance or torture.[5] In the damning words of Mr Justice Mitting, "There is a long and well-documented history [in Pakistan] of disappearances, illegal detention and of the torture and ill-treatment of those detained, usually to produce information, a confession or compliance" (para 32).

The release of Naseer then brought US authorities into play, who sought his extradition for purported roles in bomb plots linked to targets in the UK, Norway and the US. The British prosecution team did not seem to concern itself with seeing the extradition documents to begin with, and the District Judge at Westminster Magistrates Court in London duly approved the US request. "The CPS lawyers that decide on a domestic prosecution do not see the papers submitted by the American extradition request or vice versa." Is there any wonder, then, that individuals domiciled or resident in the UK might feel a certain concern that they might be shipped off to the wonders of US penal justice?

As if perceiving the local British rules to be a failure of prosecutorial discretion, it became essential that American partners would charge to the rescue. Justice is such a malleable, elastic creature. As the CPS itself noted, the Scott Baker Review of 2012 gave a clean bill of health to the UK's extradition arrangements with the US. They were "fair" and "balanced".

The evidence adduced at the trial provided glazed terror pundits, overly engaged security voyeurs, and virtually everybody else with a range of striking impressions. For one thing, the famed incompetence of the CIA was again on show – the result of material found by the raid on Osama bin Laden's Abbottabad compound in Pakistan. The documents produced at Naseer's trial do make for interesting reading about al-Qaeda's struggle with the drone campaign, but they make no mention of the Pakistani national.[6]

The documents also show how money ended up being used by Afghan authorities to recover a diplomat in the custody of al-Qaeda authorities.[7] The price for Abdul Khaliq Farahi, Afghanistan's future ambassador to Pakistan, was a healthy \$5 million. But Kabul deemed it a bit rich. This resulted in a raid on a CIA bank account used in remunerating Hamid Karzai for various expenses. (Karzai was hardly a stranger to being in US clover.) "Allah blessed us with a good amount of money this month," claimed Atiyah Abd al-Rahman in a letter to bin Laden. Given the loss of recruits and personnel via drone strikes, the money would enable the organisation to make a few more purchases.

The bounty of evidence, and the subsequent verdict, was hardly the end of it for Naseer. A few days after his initial conviction, the bemused Pakistani had to be reconvicted. The reason for this double conviction: no court stenographer was present at the original verdict. "Due to my inadvertence," claimed an inattentive Federal Judge Raymond Dearie, "we took the verdict without the reporter. We have a need to comply with the rule and create a record." In its usual language, the *New York Daily* vengefully noted how, "Two days after it was discovered that no stenographer was present when Naseer's verdict was taken, the jury forewoman returned to the courtroom Friday to confirm the terrorist thug was indeed found

guilty of all three counts.”[8] The terrorist thug must have been well and truly bemused by the wonders of Anglo-American justice.

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Notes:

- [1] <http://www.dailymail.co.uk/news/article-2941522/Terror-suspect-accused-plotting-blow-New-York-City-subways-claims-wasn-t-talking-bombs-intercepted-emails-quest-bride.html>
- [2] <http://www.lawfareblog.com/2015/03/how-did-abid-naseer-come-to-be-convicted-in-a-u-s-court/>
- [3] <http://blog.cps.gov.uk/2015/03/cps-decision-making-in-the-case-of-abid-naseer.html>
- [4] <http://blog.cps.gov.uk/2015/03/cps-decision-making-in-the-case-of-abid-naseer.html>
- [5] http://www.siac.tribunals.gov.uk/Documents/outcomes/1_OpenJudgment.pdf
- [6] <https://firstlook.org/theintercept/2015/03/13/al-qaeda-files-bin-laden-documents-reveal-struggling-organization/>
- [7] <http://sputniknews.com/us/20150314/1019502718.html>
- [8] <http://www.nydailynews.com/news/crime/abid-naseer-re-sentenced-no-court--stenographer-present-article-1.2139836?cid=bitly>

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