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**Should terror suspects be protected by politics?**



In *Dr Strangelove*, the crazed General Jack D Ripper claims 'war is too important to be left to the politicians'.  
So, it seems, is terrorism.

It's been just over one week since a Nissan Pathfinder caught fire in Times Square. The press has focused on the modest drama of stopping the departing Emirates flight carrying the alleged terrorist Faisal Shahzad, as he tried to leave the country.

But still, it seems he was pretty easy to catch.

The Pathfinder was taken to a forensic lab where investigators quickly traced its provenance - it had been sold on Craigslist, two weeks before the incident. The sale was made in \$100 bills in a supermarket car park.

But the seller had the buyer's mobile number. And, with a sketch artist, was able to draw a picture of buyer's face. Better: the buyer had driven himself to pick up the Nissan, and left his black Isuzu Rodeo in the car park.

With the registration of the Isuzu, investigators now had Faisal Shahzad's home address. They didn't even have to break in. The key to his apartment was in the Nissan's ignition.

Shahzad was in custody 53 hours after the bomb was left in Times Square.

The tale of Shahzad's speedy arrest makes him look less like a formidable jihadist with Pakistani terror camp training, and more like an incompetent, failed criminal.

But it's worth dwelling on the particulars of how Shahzad was identified and arrested

because the legal system largely worked.

What little effort Shahzad made to cover his tracks was easily side-stepped. He took two days to try to leave the US. The US government says Shahzad claims to have learnt bomb-making from the best, but his bomb didn't work.

And the legal case against Shahzad seems to have been made even easier because he started chatting to the FBI, apparently giving them "valuable intelligence and evidence".

Seems too simple, doesn't it? That's because the politicians haven't become involved yet.

Take the question of whether Shahzad should have been informed of his legal rights at his arrest. After investigators confirmed there were no other attacks imminent, he was. John McCain claimed doing so was a mistake. And the ranking Republican on the Homeland Security Committee, Peter King, strongly agreed, adding: "I know he's an American citizen but still...".

Joe Lieberman upped the ante by proposing to give the government power to remove anybody's American citizenship if they are merely suspected of being a terrorist. In their view, the rights we afford criminals are getting in the way of winning the war on terror. But the sorts of legal changes they recommend could very well lose it.

Terrorism is against the law. It's against a lot of laws. And even in a post-Guantanamo world, terrorism trials are conducted in the shadow of centuries of legal precedent, an adversarial court system, and extensive avenues of defence and appeal.

Those bombastic tough-on-terror politicians - if they got their way - could easily undermine terror prosecutions. Because it's not a question of whether terrorists deserve legal rights. It's that ignoring those rights allows terrorists to avoid justice.

As David Frum has pointed out, if Lieberman's proposed citizenship laws were in effect, the US would be on its way "to court right now to litigate the issue whether the Times Square bomber's bombing plot indicated an intent to relinquish his nationality. Only after taking that issue through trial and appeal (maybe multiple appeals) could we get to work questioning and punishing him".

It's happened before.

Ali Saleh Mohamed Kahlah al-Marri was arrested shortly after the September 11 terrorist attacks, accused by the government of being an al-Qaeda sleeper agent, and taking orders directly from Osama bin Laden.

With all the charges against him, al-Marri potentially faced 143 years in prison if convicted in a civilian court, according to the Cato Institute's David Rittgers. But the Bush administration was eager to show that American counter-terrorist efforts were a 'war' in America as much as Afghanistan. It moved him out of the civilian court system

and into military custody.

As a result, after years of legal wrangling and a Supreme Court case, he was convicted in October 2009 on just one count of material support for terrorism. He got eight years.

If you want to punish terrorists to the fullest extent of the law possible, that's an awful outcome.

Like Australia, the United States has a civilian legal system which has evolved from centuries of English legal precedent. It's handled mass murderers and politically-motivated misdeeds for hundreds of years.

Terrorists believe they are freedom fighters; captured terrorists believe they are political prisoners. Let's give them the disrespect they deserve and treat them like common criminals.

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