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OPINION

Why the Brits Are Setting Terrorists Free

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It turns out that the U.S., whose Supreme Court last month ruled that non-American prisoners held at Guantanamo Bay may challenge their detention, isn't the only country where judges are hampering the war on terror. Many people here are rubbing their eyes at the fact that Britain is letting out of jail some of al Qaeda's most dangerous members. In June, a British court released the notorious Islamist preacher Abu Qatada, who had spent the previous three years in jail pending deportation to Jordan to stand trial on terrorism charges.

Now there are media reports that the U.K. government is considering releasing an even more dangerous terrorist this week, rather than deporting him to his native Algeria. The man known only as "U" (to protect his identity) was a close contact of Abu Qatada and allegedly was involved in planning terror operations in Los Angeles and Strasbourg, France.

Neither Abu Qatada nor "U" has been prosecuted in Britain, because U.K. authorities possess no evidence to charge these men with plotting terrorist acts. Abu Qatada could have faced charges for lesser offenses under Britain's terrorism law. But since these would have imposed only short prison sentences, the government considered it preferable to deport him to stand trial for more serious crimes in his home country.

Yet in both cases, the English courts have ruled that deporting these men would breach their human rights. Given that they were only being held pending deportation, their subsequent release became inevitable. These cases are but the latest examples of the way in which the English judiciary appears to be bending over backward to thwart the fight against terrorism.

"U" is considered so dangerous that his lawyers and the security service are still arguing over the unprecedented restrictions proposed for his bail, including permanent house arrest. Abu Qatada is free on the conditions that he remains at home for 22 hours every day, doesn't use a cell phone, and doesn't visit a mosque.

He now lives in a house in a London suburb, to the undoubted discomfiture of his neighbors. Dozens of police officers are required to ensure that he doesn't violate his bail conditions, at an

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estimated annual cost of £500,000 (\$996,274). Then there are his wife and five children who have to be supported on welfare benefits, as they have been during the years of his incarceration, at a further cost of some £45,000 per year – not to mention an extra £8,000 annually in disability benefits for Abu Qatada on account of his "bad back."

Britain's welfare "rights" culture only accentuates the surrealism of this situation. How is it that people as dangerous as these two men are to be maintained at vast expense by the British taxpayer rather than being deported? Puzzlement surely turns into astonishment when one learns the grounds on which the Appeal Court decided not to throw Abu Qatada out of the country.

The judges were worried that, at his pending trial in Jordan, the court there might use evidence from another witness that had been obtained by torturing him. This concern persisted despite the Jordanians' assurances that they would not do so, since this was against their own law.

Prohibiting torture is one thing. But extending such concerns to a witness in a case in which Britain was not even involved, thus preventing it from throwing out someone who endangered its own interests, is beyond perverse.

No sooner had Abu Qatada been released than yet another set of English judges in a terrorist case arrived at an even more bizarre conclusion. Led by England's top judge, the Lord Chief Justice Lord Phillips, the Appeal Court quashed the conviction of the "lyrical terrorist" Samina Malik.

Ms. Malik had been found guilty of collecting "information of a kind likely to be useful to a person committing or preparing an act of terrorism" after a jury heard that she possessed jihadi literature including "The Terrorists' Handbook" and "The Mujahideen Poisons Handbook," as well as operators' manuals for such firearms as an antitank weapon. She is known as the "lyrical terrorist" because she also wrote jihadi poetry.

The judges reversed her conviction, though, because they decided that information "useful" to a terrorist had to offer practical assistance. While the terrorist manuals in her possession plainly did just that, the judges decided that other jihadi literature did not, and so it was not unlawful to possess such literature. They then concluded that the jury may have been "confused" and wrongly convicted her for possessing the jihadi literature – as opposed to convicting her for possessing the terrorism manuals that did constitute an offense.

The debacles over Abu Qatada and "U" have occurred because England's overwhelmingly liberal senior judges have interpreted the prohibition of torture under the European Convention on Human Rights to include deportation to any country where ill-treatment might be practiced. This has made it all but impossible to deport foreign terrorist suspects, since the Muslim countries they usually come from are hardly scrupulous in observing the rule of law.

It was surely never the intention of the framers of the Convention to force a country to harbor individuals who posed a danger to the national interest. Yet that is what the English judiciary has brought about. These judgments are a clear signal to al Qaeda that Britain remains the safest and most hospitable place on Earth in which to ply their appalling trade.

The Samina Malik case, meanwhile, showed once again that the judges seem unable to grasp the part played in Islamic terrorism of literature which incites hatred and violence toward the West.

The undercurrent to all this is the belief among many members of the British establishment that the threat of Islamic terrorism has been overstated. This notion flies in the face of a statement last November by the head of MI5, Jonathan Evans, that there were 2,000 known Islamic terrorists in Britain.

There is much emotional talk about defending Britain's ancient rights and liberties, whose erosion in the ostensible cause of fighting terror would, it is said, hand victory to al Qaeda. But this view does not chime with British public opinion – which if anything wants the government to take more draconian measures against terrorism. That's why Prime Minister Gordon Brown decided to extend the current 28-day limit for detaining terrorist suspects before charge to 42 days, a measure which the House of Commons recently passed.

So does this mean that the establishment mood on counterterrorism is toughening up? Not a bit. Mr. Brown forced through the 42-days law only with the last-minute help of the handful of Northern Irish Ulster Unionist MPs. Not only his own Labour backbenchers but the Conservative Party and most of the political and intellectual class are solidly against the measure, which is likely to be thrown out when it reaches the upper house of Parliament this month.

It is surely no accident that this failure to grasp the true dimensions of the Islamic terrorist threat is so pronounced among the British elite. For these are the people whose education and careers embody the key attribute of Britain's liberal society – the belief that the world is governed by rational agents acting in their rational self-interest.

The British ruling class just doesn't get religious fanaticism. That is why its judges and politicians are finding it so difficult to fight Islamic terror. Not just Britain but the whole world is less safe as a result.

Ms. Phillips is a columnist for the Daily Mail and author of "Londonistan" (Encounter Books, 2005).

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