

Strategic View:

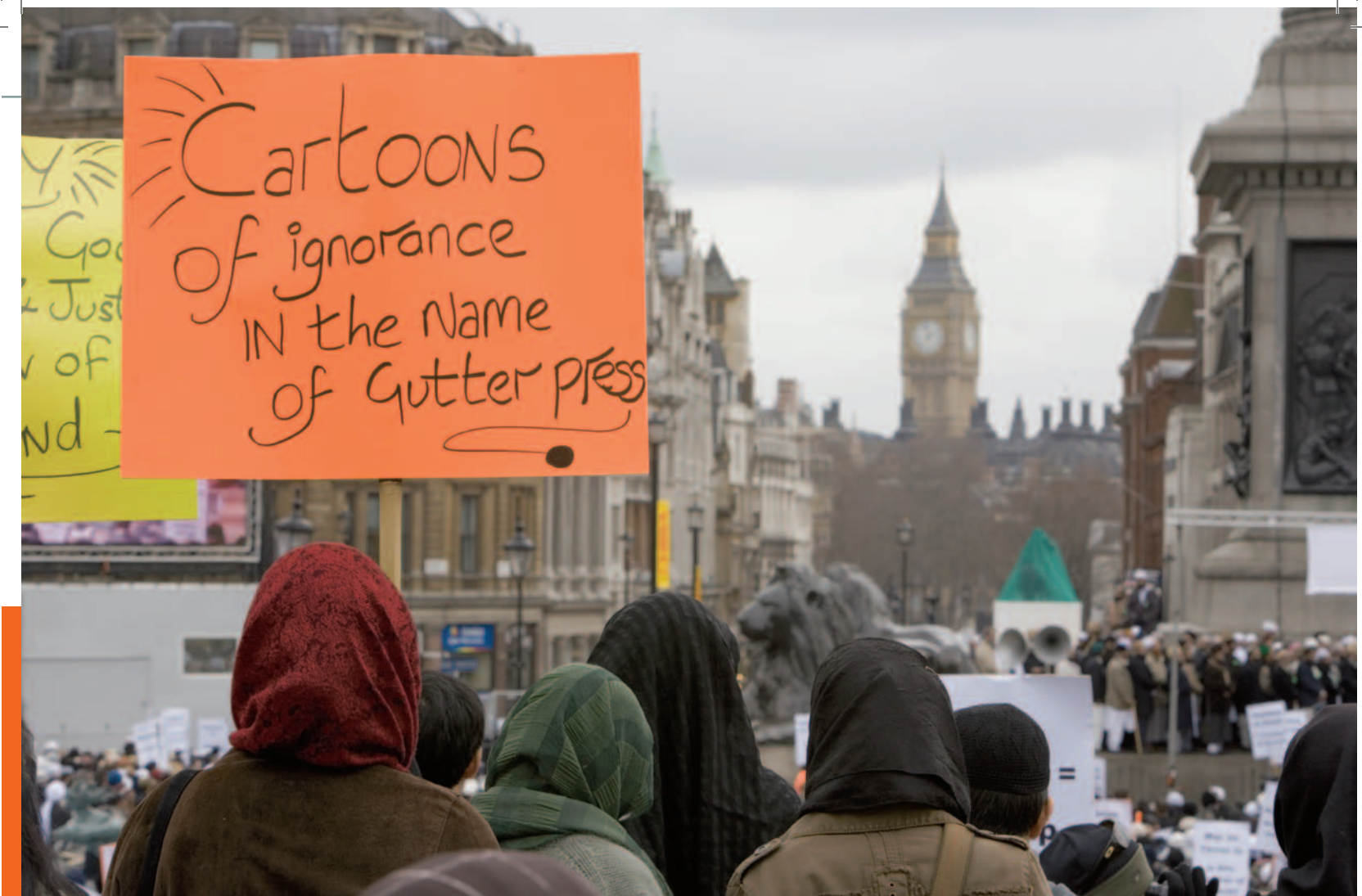
LAWFARE

PART 1

How Islamist Lawfare Tactics Are Targeting Free Speech

**By Brooke Goldstein
and Aaron Eitan Meyer**

Are American authors who write about terrorism and its sources of financing safe? Are counter-terrorist advisors to the New York City Police department safe? Are U.S. congressmen safe when they report terrorist-front groups to the FBI and CIA? Are cartoonists who parody Mohammad safe from arrest?



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Must a Dutch politician who produced a documentary film quoting the Koran stand trial for blasphemy of Islam in Jordan? Is anyone who speaks publicly on the threat of radical Islam safe from frivolous and malicious lawsuits designed to bankrupt, punish, and silence them? These days, the answer is no.

Lawfare is usually defined as the use of the law as a weapon of war¹, or the pursuit of strategic aims through aggressive legal maneuvers.² Traditionally, lawfare tactics have been used to obtain moral advantages over the enemy in the court of public opinion,³ and to intimidate heads of state from acting out of fear of prosecution for war crimes.⁴ Al-Qaeda training manuals instruct its captured militants to file claims of

torture or other forms of abuse so as to reposition themselves as victims against their captors.⁵ The 2004 decision by the United Nation's International Court of Justice declaring Israel's security fence a crime against humanity, which pointedly ignored the fact that the fence contributed to a sharp decline in terror attacks, is another example of lawfare aimed at public opinion.⁶

Yet, lawfare has moved beyond gaining mere moral advantages over nation-states and winning lawsuits against government actors. Over the past ten years, we have seen a steady increase in Islamist lawfare tactics directly targeting the human rights of North American and European civilians in order to constrain the free flow of public information about radical Islam.

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THE ISLAMIST MOVEMENT

The Islamist movement is that which seeks to impose tenets of Islam, and specifically Shari'a law, as a legal, political, religious, and judicial authority both in Muslim states and in the West. It is generally composed of two wings—that which operates violently, propagating suicide-homicide bombing and other terrorist activities; and that which operates lawfully, conducting a “soft jihad” within our media, government, and court systems; through Shari'a banking;⁷ and within our school systems.⁸

Yet Islamism, the drive to promulgate Islamic values as they are defined by various Imams and Muslim leaders, is the ideology that powers not only Hamas and Al-Qaeda, but motivates organizations such as the Canadian Islamic Congress, the Islamic Circle of North America, and the Council on American Islamic Relations.⁹

Both the violent and the lawful arms of the Islamist movement can and do work apart, but often, their work reinforces each other's. For example,

one tenet of Shari'a law is to punish those who criticize Islam and to silence speech considered blasphemous of its prophet Mohammad. While the violent arm of the Islamist movement attempts to silence speech by burning cars when Danish cartoons of Mohammed are published, by murdering film directors such as Theo Van Gogh, and by forcing thinkers such as Wafa Sultan into hiding out of fear for her life, the lawful arm is skillfully maneuvering within Western court systems, hiring lawyers and suing to silence its critics.

LEGAL JIHAD

Islamist states, organizations, and individuals with financial means have launched a “legal jihad,” filing a series of malicious lawsuits in American courts and abroad, designed to punish and silence those who engage in public discourse about radical Islam. Such lawsuits are being used as a weapon of war against counter-terrorism experts, law enforcement personnel, politicians, and anyone working to disseminate information on Islamist terrorism and its sources of financing. The lawsuits are often predatory, filed without a serious expectation of winning, and undertaken as a means to intimidate, demoralize, and bankrupt defendants. Claims are often based on frivolous charges ranging from defamation to workplace harassment, from “hate speech” to “Islamophobia,” and have resulted in books being banned and pulped, thousands of dollars worth of fines, and publishing houses and newspapers rejecting important works on counter-terrorism out of fear of being the next target.

By suing to impose penalties and gag orders on counter-terrorism experts, government officials, authors, and the media, noncombatants who engage in Islamist lawfare are assuming critical support roles, whether intentionally or

not, for violent operations that seek to establish principles of Shari'a law in the West. The following cases represent a small percentage of Islamist lawfare in the U.S. but are illustrative.

In 2003, the Washington-based Council on American Islamic Relations (CAIR), sued former U.S. Congressman Cass Ballenger after an interview with the congressman revealed that he had reported the group to the CIA and FBI as a “fundraising arm for Hezbollah.”¹⁰ Fortunately, the judge in Ballenger's case ruled the congressman's statements were made in the scope of his public duties and were therefore constitutionally protected speech in the interest of public concern.

The following year, CAIR instituted a 1.3 million dollar lawsuit against Andrew Whitehead, an American activist and blogger, for maintaining the website Anti-CAIR-net.org, on which CAIR is described as an Islamist organization with ties to terrorist groups. After refusing Whitehead's discovery requests, seemingly afraid of what internal documents the legal process it had initiated would reveal, CAIR withdrew its claims against Whitehead, a settlement was reached, and the case was dismissed by the court with prejudice.¹¹

In 2005, the Islamic Society of Boston (ISB) filed a lawsuit charging defamation against a dozen defendants including the Boston Herald, FOX 25 News, counter-terrorism expert Steven Emerson, and several others. The defendants were targeted by ISB for publicly speaking about the Islamic Society's connections to radical Islam and for raising questions about the construction of its Saudi-funded mosque in Boston. A full two years after it had initiated the lawsuit, and just a few months after the discovery process was initiated into ISB's financial records, ISB dropped its case and abandoned all of its claims against all of

the defendants, without receiving any form of payment.¹²

Bruce Tefft, a former CIA official and counter-terrorism consultant for the NYPD, was sued by a Muslim police officer for “workplace harassment” after Tefft sent out emails to a voluntary recipient list of police officers containing information about radical Islamic terrorism.¹³ Tefft’s suit is ongoing.

Sometimes American authors and publishers wrongfully targeted are able to take advantage of Anti-SLAPP statutes, the acronym being Anti-Strategic Litigation Against Public Participation. Anti-SLAPP statutes have been enacted in several, but not all, U.S. states and are aimed at preventing lawsuits designed to hinder legitimate public dialogue. The problem, however, with Anti-SLAPP statutes is threefold—not all states have enacted them, there is no federal equivalent, and one must wait to be sued in order to take advantage of them.

Such was the case when American author Matthew Levitt and his publisher, Yale Press, were sued by KinderUSA for Levitt’s book *Hamas*, in which Levitt describes KinderUSA as a charitable front for terror financing. In response to the lawsuit, Levitt and Yale Press instituted a counter-claim based on California’s Anti-SLAPP statute arguing that KinderUSA’s suit was a disguised attempt at wrongfully intimidating them into silence. Shortly after the counter-claim was filed, KinderUSA mysteriously dropped its lawsuit, claiming only that it found the suit too costly to pursue.¹⁴

Most disturbing, however, are the examples of parties sued for reporting on official U.S. government investigations into terrorist activities, or for formally appealing to government authorities to conduct investigations into suspected illegal activity. Parties targeted in this vein include the New York Times, which, in 2001, reported on the U.S.

government’s investigation of the Global Relief Foundation and was subsequently sued¹⁵; The Wall Street Journal, which, in 2002, reported on the monitoring of Saudi bank accounts and was also sued¹⁶; and the Anti-Defamation League, which, in 2002, called for the investigation of a public school superintendent named Khadja Ghafur, based on indications that schools under his supervision were teaching religion in violation of the establishment clause. Ghafur predictably sued ADL for libel and lost, but only after much time and money was spent by ADL defending itself.¹⁷

The cumulative effect of these lawsuits, combined with the looming threat of future lawsuits, is creating a detrimental chilling effect on the exercise of free speech within this country, and raising the cost of public debate about the war on terrorism. Islamist lawfare has also sparked a wave of self-censorship, with publishing houses going as far as hiring security experts to assess the potential for violent reactions in the Muslim community to printed words.

The strategy of silencing Western material “blasphemous” of Islam began not with objections to truth, cartoons, politicians, or political articles. After the 1988 publication of Salman Rushdie’s famous work of fiction, *The Satanic Verses*, Iran’s Ayatollah Khomeini issued his infamous fatwa against Rushdie, a British citizen at the time.¹⁸ The fatwa marked the beginning of the end of open discourse—fictional or otherwise—on Islam. Only six months ago, the deputy head of the Khomeini Archives proudly stated on Iranian television that “Imam Khomeini’s fatwa on Salman Rushdie has historic significance for Islam. It was not just a fatwa; it was a verdict that still holds today.”¹⁹ From this epochal attack, Islamists have moved on to silencing public discourse on issues of national security directly, even as they still seek to

quash creative works of fiction to which they object. Though Salman Rushdie published *The Satanic Verses* in 1988, he remains in hiding a full 20 years later.

Most recently, Random House Publishing Group pulled a fictional novel entitled “The Jewel of Medina” by journalist Sherry Jones about the Prophet Mohammad’s child bride. The publishing house feared it would prove offensive to some in the Muslim community and “incite acts of violence.”²⁰ Prior to making its decision public, Thomas Perry, deputy publisher at Random House, consulted with security experts and scholars on Islam and received “from credible and unrelated sources”²¹ cautionary advice not to publish the work.

Denise Spellberg, an associate professor of Islamic history at the University of Texas, made what was described as a “frantic” appeal to drop a “very ugly, stupid piece of work,” that she said “made fun of Muslims and their history.”²² Despite the commercial success of fictional pieces about the war on radical Islam, such as the New York Times’ bestseller *The Last Patriot*,²³ written by Brad Thor and published by Atria Books, and Daniel Silva’s *Secret Servant*, published by Putnam, Random House seems to be leaving its business decisions up to articulate professors of Islamic studies. Although the publication of the book was officially postponed for “safety reasons,” it is certainly open to question whether the hysterical response of an associate professor constitutes a credible danger. Chastising Random House further, the Islamic Community in Serbia released a statement claiming it was not satisfied with the mere withdrawal of the novel and the organization’s leader, Muamer Zukorlic, demanded all of the published copies be handed in.²⁴

The cases listed above reflect a few of the same battles going on now:

free speech of Americans and other Westerners being placed under siege by Islamists. Those targeted run the range from government officials actively engaged in battling Islamist terrorism to novelists who dare to use Islamic themes or history in their writing.

What must be appreciated is the fact that this problem is by no means limited to lawsuits within the United States, or even lawsuits involving U.S. citizens. As we will demonstrate in Part II of this article, lawfare as an Islamist strategy has made significant inroads in Europe, Canada, and international organizations. And as lawfare continues to be increasingly utilized the world over, the stakes for Western democracies, including the United States, continue to be raised significantly. ●

ABOUT THE AUTHORS

Brooke Goldstein is a practicing attorney, an award-winning filmmaker, and the director of the Legal Project at the Middle East Forum. The Legal Project is dedicated to providing pro-bono legal representation to authors, activists, and publishers who work on the topics of radical Islam, terrorism, and their sources of financing.

Aaron Eitan Meyer recently received his Juris Doctor degree from Touro Law Center, and is currently Assistant to the Director at the Legal Project of the Middle East Forum and Legal Correspondent to the Terror Finance Blog.

THE NEXT ISSUE WILL CONTAIN PART II, THE CONCLUSION, OF HOW ISLAMIST LAWFARE TACTICS ARE TARGETING FREE SPEECH.

NOTES

¹ Dunlap, Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts (29 Nov 2001),

and David Rivkin, The Wall Street Journal Op Ed at <http://online.wsj.com/article/SB117220137149816987.html> (commentary at: http://www.prospect.org/cs/articles?article=the_lawfare_scare)

² <http://www.opinionjournal.com/forms/printThis.html?id=110005366>

³ <http://online.wsj.com/article/SB117220137149816987.html>

⁴ Israeli Minister Avi Dichter canceled a trip to Britain after being threatened with arrest over a 2002 incident. (See <http://www.timesonline.co.uk/tol/news/uk/article3012503.ece>) Also, current Israeli Deputy Prime Minister and former Israel Defense Forces Chief of Staff Shaul Mofaz cut short a trip to Britain after “the director of public prosecutions in England asked police in London to investigate war crimes allegations.” (See <http://www.smh.com.au/articles/2002/11/01/1036027036796.html>)

⁵ “Lawfare” By David B. Rivkin & Lee A. Casey, The Wall Street Journal (Feb 26, 2007) at <http://prasad.aem.cornell.edu/doc/media/PrasadRajan.WSJAFeb07.pdf>

⁶ For the text of the decision see: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>

⁷ For more information on Shari’a compliant financing see David Yerushalmi, “Sharia’s Black Box: Civil Liability and Criminal Exposure Surrounding Sharia-Compliant Finance,” Utah Law Review (Sept 2008 forthcoming), see also www.stopsharianow.org

⁸ Much has been said about the Saudi effort to produce school textbooks for American grade schools, and the establishment of Islamic-language public schools such as the Khalil Gibran Academy in New York, raising issues of Establishment Clause violations and contravening separation of church and state, or more accurately, Mosque and state. “Islam in America’s public schools: Education or indoctrination?” <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2008/06/11/cstillwell.DTL> On New York’s “Khalil Gibran International Academy” <http://www.danielpipes.org/blog/2007/03/on-new-yorks-khalil-gibran-international.html>

⁹ CAIR: “CAIR believes the active practice

of Islam strengthens the social and religious fabric of our nation.” <http://www.cair.com/AboutUs/VisionMissionCorePrinciples.aspx>. CAIR also offers a ‘guide’ which offers “... background information about Islam and Muslims, best practices on reporting on the Muslim community and a list of accurate terminology to use when covering issues relating to Islam.” Also, they have a campaign to ‘Explore the Quran’ with the following description of their aim: “In today’s climate of heightened religious sensitivities and apparent cultural clashes, now is the time for people of all faiths to better acquaint themselves with Islam’s sacred text, the Holy Quran.” <http://www.explorethequran.org/> This is to be accomplished by distributing copies of the Quran. There is a similar campaign regarding Muhammad. <http://www.exploremuhammad.org/> ISNA: Imam Sirraj Wahhaj, listed as Member, ISNA Majlis Ashura: “In time, this so-called democracy will crumble, and there will be nothing. And the only thing that will remain will be Islam,” Wahhaj was quoted as saying in one of his sermons. as cited in “Radical Imam Promotes Pro-Islamic Ad Campaign to Run on New York Subways” <http://www.foxnews.com/story/0,2933,387701,00.html> CAIR: Omar M. Ahmad, then-director of CAIR: “If you choose to live here (in America) ... you have a responsibility to deliver the message of Islam...” in “American Muslim leader urges faithful to spread Islam’s message” and “The Koran, the Muslim book of scripture, should be the highest authority in America, and Islam the only accepted religion on earth...” Article by Lisa Gardiner Available online at <http://www.danielpipes.org/394.pdf> See also, The WorldNetDaily “Did CAIR founder say Islam to Rule America?” http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=53303

¹⁰ Ballenger made the comment in a phone conversation to journalist Tim Funk of the Charlotte Observer on October 1, 2003. As cited by the Court in Council of American Islamic Relations, v. Cass Ballenger, 444 F.3d 659 (D.C. Cir. 2006) <http://pacer.cadc.uscourts.gov/docs/common/opinions/200604/05-5161a.pdf>

¹¹ Despite CAIR’s failed effort at

intimidation, Whitehead's Anti-CAIR website is still up and running along with the text that was at issue and is available at www.anti-cair-net.org

¹² In line with the old adage that actions speak louder than words, the fact that both ISB and CAIR abandoned their claims right before they would have been required, by court order, to turn over internal documents speaks volumes about whether the two Plaintiffs had ever intended to pursue their legal claims on their merit or had instead, intended to use the court system to intimidate the Defendants as well as other journalists, into not reporting on their activities.

¹³ <http://frontpagemagazine.com/Articles/Read.aspx?GUID=AF613BFA-8E34-4A07-8DB4-20D89DE3D84B>

¹⁴ KinderUSA claimed that its resources were better spent on charity. <http://www.libraryjournal.com/info/CA6470780.html>

¹⁵ In affirming the decision, the 7th Circuit Court of Appeals reiterated that "Truth is an absolute bar to recovery for defamation." 390 F.3d 973 (7th Cir. 2004) <http://cases.justia.com/us-court-of-appeals/>

F3/390/973/506579/

¹⁶ The bank dropped the suit in 2005, but the WSJ published a 'clarification' that it had not in fact reported any allegation that linked the bank to terrorism. <http://online.wsj.com/article/SB118530038250476405.html>

¹⁷ "Court throws out Muslim educator's suit against ADL" http://www.jewishsf.com/content/2-0-/module/displaystory/story_id/20626/edition_id/422/format/html/displaystory.html

¹⁸ For an excellent synopsis and explanation of these events, see "The Ayatollah, the Novelist, and the West" by Daniel Pipes, available online at <http://www.danielpipes.org/article/186>

¹⁹ <http://www.danielpipes.org/blog/2004/06/is-salman-rushdie-now-safe.html>

²⁰ "Random House Pulls Novel on Islam, Fears Violent," by Edith Honan, (Aug 7, 2008) at: <http://www.reuters.com/article/newsOne/idUSN0736008820080807>

²¹ [http://www.telegraph.co.uk/news/uknews/2524540/Random-House-scrap-publication-of-novel-on-Prophet-](http://www.telegraph.co.uk/news/uknews/2524540/Random-House-scrap-publication-of-novel-on-Prophet-Mohammeds-child-bride.html)

Mohammeds-child-bride.html

²² <http://dick-meom.blogspot.com/2008/08/random-house-randomly-decides-not-to.html>

²³ The book is available at: [amazon.com: http://www.amazon.com/Last-Patriot-Thriller-Brad-Thor/dp/141654383X/ref=pd_bbs_sr_1?ie=UTF8&s=books&qid=1218036222&sr=8-1](http://www.amazon.com/Last-Patriot-Thriller-Brad-Thor/dp/141654383X/ref=pd_bbs_sr_1?ie=UTF8&s=books&qid=1218036222&sr=8-1)

²⁴ <http://www.adnkronos.com/AKI/English/Religion/?id=1.0.2419224932>

²⁵ <http://domino.un.org/UNISPAL.NSF/>

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