

**A REVIEW OF U.S. COUNTERTERRORISM POLICY:
American Muslim Critique & Recommendations**



MUSLIM PUBLIC AFFAIRS COUNCIL

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Preface

In July 1999, House Minority Leader Richard Gephardt took a bold and historic step by appointing a representative of a major American Muslim organization to the National Commission on Terrorism. Congressman Gephardt recognized the Executive Director of the Muslim Public Affairs Council, Salam Al-Marayati, for his organization's work on developing a counterterrorism position paper and for providing thoughtful analysis on the subject in forums across the country. The recommendations, data, and analysis provided in that paper are as useful to Americans now as they were in the pre-9/11 era, if not more so. Unfortunately, several special interest groups successfully pressured Congressman Gephardt to rescind the nomination. Many of those who participated in the smear campaign -- which was condemned by almost every major newspaper in the nation -- cited a belief that having an American Muslim on the commission would increase, not decrease, the likelihood of terrorism.

Now, four years later and following the worst terrorist attack against our country, the United States Government remains remiss in taking advantage of the expertise and resources of the mainstream American Muslim community on counterterrorism policy. While several meetings have taken place between American Muslim community leaders and high government officials, including meetings with the President of the United States, it is time to move to the next level of partnership in the struggle against terrorism.

Toward this end, MPAC has completed a second position paper on counterterrorism for the purpose of including the vital voice of American Muslims within counterterrorism discourse. It is up to our political leaders to respond to American Muslim and Arab-American efforts to participate during this critical time in history. We hope that today, unlike in 1999, the noise of exclusion, stigmatization, and intimidation will not prevent our leadership from performing their constitutional duty to serve and include all Americans in the business of government.

MPAC presents this paper in the spirit of contributing to end the scourge of terrorism and to demonstrate the need to do so collectively, in the true American spirit of *e pluribus unum*--from many we become united as one for America's interests.

September 2003

Executive Summary

In 1999, the Muslim Public Affairs Council (MPAC) developed a counterterrorism position paper, that provided analysis of US counterterrorism policy to date. After September 11, 2001 and in light of our government's commitment to end terrorism, MPAC felt it would be of great value to provide an in-depth analysis and recommendations to the American Muslim Community and US policymakers focusing on post-9/11 strategies to combat terrorism. MPAC presents the work on behalf of the American Muslim community to enhance the security of our country.

This position paper addresses the relationship between violence, war and Islam. According to the Qur'an, Muslims may only undertake fighting in order to defend the Muslim polity against aggression or oppose a system that oppresses helpless people who are asking for support. Hence, the vast majority of American Muslims were outraged by the vicious terrorist attacks of September 11, 2001, and helped with the recovery efforts through their religious and civic institutions. Unfortunately, there is a vocal minority of Americans who exploited the tragedy of September 11 to advance a pre-existing anti-Muslim agenda. This climate of intolerance, curtails American Muslims' ability to participate in our nation's counterterrorism efforts.

Obtaining a clear definition of Islamic terms is essential to clarify some of the misconceptions about Islam and Muslims that have arisen since September 11. Understanding religious terminology the way Muslims understand them will enhance law enforcement capabilities, as this knowledge will help law enforcement distinguish between credible and non-credible threats of terrorism. Thus, religious terms such as *jihad*, *shaheed*, and *fatwa* are discussed and defined. Additionally, *Islamism* and *Wahhabism* are two non-religious terms that have been inaccurately used since September 11.

Terrorism has an ancient history, and a study of the practice will reveal that what has been perceived as terrorist behavior throughout history has been necessarily subjective. In an era in which the threat of international terrorism is greater than ever, we believe it is important that the U.S. adopt a single definition of terrorism. MPAC defines terrorism as violent and threat of violent acts targeting non-combatants in order to achieve political or military goals.

Examining possible causes of terrorism is also key to enhancing counterterrorism efforts. For years, social scientists, politicians, security specialists and others have struggled to identify the cause and by extension, potential remedies for terrorism. Three major aspects of the causes of terrorism are discussed: terrorism's root causes, terrorism as strategic choice, and terrorism as an ideology.

In developing effective counterterrorism policies, it is important to examine the efforts of past administrations and review their effectiveness. Generally speaking, the last four decades have seen a shift from containing to preventing terrorism. The United States' response to international terrorism has historically been connected to U.S. strategic objectives. The Reagan Administration, which concentrated primarily on punishing state sponsors of terrorism, laid the philosophical and structural backdrop for current U.S. counterterrorism policy. During the mid-1990s dramatic escalations in terrorism worldwide prompted policy changes and the greater

prioritization of counter-terrorism efforts. Under the Clinton Administration, Congress passed the Anti-Terrorism and Effective Death Penalty Act (AEDPA) in April 1996.

In terms of threat assessment, state sponsors of terrorism were once thought to pose the greatest threat to U.S. interests. Now autonomous terrorist groups with no state sponsors are the primary threat. State sponsors of terrorism still present a threat, but, recently, focus has been widened to include “loosely affiliated” extremists—including Osama bin Laden and Al-Qaeda—and groups designated by the State Department as Foreign Terrorist Organizations, or FTOs. Of great concern to policymakers is the prospect of such terrorists acquiring nuclear or other weapons of mass destruction (WMD) capabilities. The conspicuous exemption of state terrorism from the purview of counterterrorism policy is not incidental. In the past, various U.S. administrations have supported regimes involved in deliberate and systematic attacks on civilians mainly out of deference to overriding strategic, political or ideological concerns.

In the wake of the September 11th attacks, many policy experts agreed that the lack of a broad, strategic vision to combat terrorism was one of the primary failures leading up to the attack. The White House released a document entitled *A National Strategy for Combating Terrorism* in February of 2003, eighteen months after the war on terrorism had been launched and after the USA-PATRIOT Act, the Homeland Security Act, and other anti-terrorism initiatives had been implemented.

Intelligence agencies, meanwhile, came under fire from several directions for the failure to accurately assess the severity and urgency of the terrorist threat against the U.S. September 11th-related lapses by intelligence and law enforcement officials, which have been widely publicized amid criticisms by Congress, revealed deficiencies in information-sharing and exposed serious inter-agency rivalries between law enforcement and intelligence officials. The FBI and CIA in particular were criticized for failing to connect several key elements of the September 11th plot prior to the attack.

Despite these failures, the introduction of various domestic surveillance programs has been generally not well-received by the public. Widespread public outrage in response to the Justice Department proposed Terrorist Information and Prevention System (TIPS) led it to effectively abandon the project before it started. Another surveillance and data-mining program, the Total Information Awareness (TIA – since renamed ‘Terrorist Information Awareness’), remains a point of contention.

The September 11th attacks exposed serious deficiencies in the ability of federal law enforcement authorities to recognize and respond to terrorist threats, due primarily to the fact that individuals are often labeled suspicious on the basis of ideological, rather than behavioral, grounds. Law enforcement—under the guise of national security-- has abused the designation “enemy combatant” to deny defendants basic due process rights. Similarly, individuals declared “material witnesses”, a status typically used to compel reluctant witnesses to testify in criminal proceedings, allows the government to detain individuals for lengthy periods of time without charge. Sensationalized allegations have become common features in terrorism-related prosecutions and arrests of Arab and/or Muslim men for non-terrorism related activity are often

called “successes” in the War on Terrorism. The casting of exceptionally wide nets in pursuit of terrorists is also counter-productive to law enforcement objectives.

As a key weapon against terrorism, the government has vowed to dry up the sources of terrorist funding. The financial war on terrorism involves a complex array of law enforcement efforts, diplomatic initiatives, and intelligence resources, including international trade sanctions, denying access to U.S. capital markets, blocking U.S.-based assets, and other financial and economic tools. The government’s ability to unilaterally designate and block the assets of those whom it suspects or accuses of having connections to terrorists - including charities - allows it to close businesses and accuse individuals of wrong-doing without having to prove a link to terrorism in court.

With respect to foreign policy and diplomacy, the United States’ increasing trend toward “unilateralism” has alienated key allies and lessened American credibility internationally. American credibility has been further undermined by the growing perception that the U.S. is prepared to tolerate human rights abuses, so long as they are justified in the name of fighting terror. To combat this problem, the U.S. should tie respect for human rights to its diplomatic and financial relations with nations, particularly in the area of foreign aid. Diplomacy in the Arab and Muslim world will also be greatly enhanced by understanding the concerns and frustrations of Arabs and Muslims. Ranking chief among these is a just resolution to the Arab-Israeli conflict, in which the U.S. is seen to be heavily biased in favor of the overwhelmingly stronger party in the conflict, the state of Israel. Delays and failures in the rebuilding of Iraq have also inflamed Arab and Muslim opinion.

Ultimately, U.S. counterterrorism efforts will require a partnership between policymakers and the American Muslim community and its organizations. This paper provides our recommendations and analyses that can serve as a foundation for forming and fostering this relationship.

SECTION I

Terrorism, Islam, and Muslims

A. Defining Key Terms

Many of the anti-Muslim stereotypes prevalent in Western popular and political culture are rooted in fundamental misunderstandings about basic Islamic beliefs and about contemporary social and political trends in the Muslim world. Religious terms such as *jihad*, *shaheed* and *fatwa*, as well as labels like “Wahhabism” and “Islamism” are commonly used, but often misinterpreted. This constant misappropriation, whether deliberate or otherwise, has hampered understanding of Islam and clouded discourse on terrorism, particularly since September 11th. It is therefore essential that these complex religious concepts and social phenomena be understood in the manner in which Muslims themselves understand them and within their appropriate religious and historical contexts.

1. *jihad*

The word “*jihad*,” perhaps more than any other, exemplifies the profound misconceptions many non-Muslims have about Islam. It does not mean “holy war”—a frequent mistranslation that is a source of considerable frustration for Muslims.¹ The word *jihad* is derived from the Arabic root *jahada*, meaning “effort” or “struggle.”² Consequently, *jihad* refers to a religious struggle incumbent on Muslims, both individually and collectively, whose ultimate purpose is to fulfill the Quranic command to “enjoin what is good and forbid what is evil.” What comprises *jihad*, therefore, is not the nature of the act, but rather its intention.³

According to Islamic tradition, there are two forms (or levels) of *jihad*: the Greater Jihad, which involves the inner struggle of the self to overcome sin, temptation, evil, and the like; and the Lesser Jihad, consisting of the outward struggle against social, economic or political injustice and oppression. Therefore, any personal, social, humanitarian, educational, or political endeavor undertaken with the aim of opposing injustice or fighting evil is considered a form of *jihad*. This includes, but is by no means limited to, warfare. A military *jihad* is subject to numerous conditions and is highly constrained by Islamic law. Noted Quranic translator and commentator Abdullah Yusuf Ali explains:

[*jihad*] may require fighting in God’s cause as a form of self-sacrifice. But its essence consists in (1) a true and sincere Faith, which so fixes its gaze on God, that all selfish or worldly motives seem paltry and fade away, and (2) an earnest and ceaseless activity, involving the sacrifice (if need be) of life, person, or property in the service of God. Mere brutal fighting is opposed to the whole spirit of Jihad, while the sincere scholar’s pen or wealthy man’s contributions may be the most valuable forms of Jihad.⁴

¹ As many Muslim scholars have observed, the term “holy war,” translated as *harb muqaddasa* in Arabic, has no equivalent in classical Islamic theology or jurisprudence. It is, rather, a medieval concept connected with the Christian Crusades.

² It is worth noting that the first mention of *jihad* in the Quran is made in reference to non-Muslims: “We have enjoined on man kindness to parents: but if they strive [*jahadaka*] to make thee ascribe partners with Me of which thou hast no knowledge, obey them not . . .” [Quran, 29:8].

³ A well-known saying attributed to the Prophet Muhammad illustrates this point. “A man asks the Prophet: ‘Should I join the *jihad*?’ He asked, ‘Do you have parents?’ The man said, ‘Yes!’ The Prophet said, ‘Then strive [*jahid*] by serving them!’” [Sahih Al-Bukhari, No. 5972]

⁴ Ali, Abdullah Yusuf. *The Quran: Text, Translation, and Commentary* (1989), n. 1270.

In its classical sense, the meaning by which Muslims historically have understood and continue to understand it, *jihad* is a religious doctrine principally and essentially rooted in the pursuit of justice and the betterment of both individual and society.⁵ However, this has not prevented Muslims themselves from abusing the term, which is often used by political and military factions to confer legitimacy upon their armed activities, whether or not they are in compliance with Islamic principles.

2. *shaheed*

Like *jihad*, the concept of *shahada* (“martyrdom”) has been subject to abuse by Muslims and non-Muslims alike. In the strictest religious sense, any believer who gives his/her life in the service of God is *shaheed* (a “martyr”). The word itself is derived from *shahida*, an Arabic root meaning to “witness” or “testify.” Literally, then, a *shaheed* is one who bears witness to Truth and is prepared to sacrifice his/her life for it. As a form of sacrifice, martyrdom is a manifestation of piety in Islam and is rewarded by salvation. The concept of *shahada* is intimately bound with *jihad* and, as such, with justice. Like *jihad*, a *shaheed* may take many forms. While an individual killed in a legitimate military *jihad* would qualify as *shaheed*, as ruled by classical Islamic jurists, so too would a woman who dies during pregnancy or childbirth. Life pursuits are of equal if not greater value than martyrdom in Islam, as illustrated by a well-known saying of the Prophet Muhammad: “The ink of the scholar is more holy than the blood of the martyr.”

In its use as a colloquialism, the word “*shaheed*” is applied more broadly to any individual—regardless of age, gender, religion, or involvement in actual combat—who is killed within the context of “resistance.” This is particularly true in the Arab world, usually with regard to the Palestinian uprising against Israeli military occupation. Euphemistic expressions like “martyrdom operations,” however, used by some Muslims to refer to suicide attacks against Israeli civilians, are morally unjustified since Islamic law expressly prohibits suicide and attacks on civilians. Also cynical are attempts to conflate “martyrdom” with “suicide bombings” or “terrorism,” which serves only to dehumanize Palestinians and perpetuate perceptions of Islam as violent and alien.⁶ A fact usually overlooked by many American pundits and politicians, for example, is that all of the approximately 2,453 Palestinians, including 530 children, killed by Israeli forces⁷ are referred to as “martyrs” and not just the 98 suicide bombers.⁸ Indeed, American peace activist Rachel Corrie, who was neither Palestinian nor Muslim, crushed to

⁵ For more on the concept of *jihad*, see Seyyed Hossein Nasr, “The Spiritual Significance of *Jihad*,” *Al-Serat*, vol. IX, no. 1 (n.d.) <<http://www.al-islam.org/al-serat/jihad-nasr.htm>>.

⁶ An example of such “otherization” of Islam are the overly-eroticized portrayals of *huris*, the allegorical mates of the afterlife referred to in the Quran, by the media as heavenly “virgins.” A segment on Palestinian “martyrs” by CBS’s *60 Minutes*, which aired on 19 August 2001, for example, readily indulged such misconceptions.

⁷ Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH), “Palestinian Human and Material Losses Inflicted by Israel during the Intifada (Uprising): September 28, 2000–August 18, 2003,” <<http://www.miftah.org/report.cfm>>.

⁸ See Joseph R. Biden, “Need for Mature Leadership in Saudi Arabia.” 25 April 2002. <http://foreign.senate.gov/press/statements/statements_020425.html>. See also Stephen Schwartz, “Wahhabis in the Old Dominion,” *Weekly Standard*, vol. 7, no. 29 (8 April 2002). See Section IV.E.

death by an Israeli bulldozer in Gaza in March 2003, is revered among Palestinians and other Arabs as a *shaheed*.

3. *fatwa*

While many that are unfamiliar with Islamic teachings may associate the term with a death sentence or violent edict, a *fatwa* is a far more mundane concept. As one scholar succinctly defines it: “A fatwa is a non-binding legal opinion, on any religiolegal topic, from ritual purity to inheritance and so forth, issued by any Muslim with sufficient knowledge of Islamic law. Its legitimacy rests on the perceived extent of the issuer’s knowledge of Islamic law.”⁹ Since Islam has no formal clerical establishment comparable to a priesthood or rabbinate, Muslims generally rely on individual scholars to provide guidance on matters of Islamic law and interpretation. Islamic jurists and other scholars who issue *fatwas*, called *muftis*, are usually trained or credentialed by recognized institutions of Islamic jurisprudence, such as Egypt’s Al-Azhar University. Thus, while Osama bin Laden may attempt to issue *fatwas* of one sort or another, few Islamic legal scholars would consider him an authoritative voice on Islamic law.¹⁰

4. “Wahhabism”

Caricatured portrayals of Islam extend beyond basic religious tenets. Since September 11th, “Wahhabism,” the dominant religious doctrine of Saudi Arabia, has been the subject of considerable misinformation and confusion—a phenomenon exacerbated by the facts that Osama bin Laden and a majority of the nineteen September 11th hijackers were Saudi nationals. According to one prevalent view:

Wahhabi teachings, religious schools and Saudi oil money have encouraged young Muslims in countries around the world to a jihad-like incitement against non-Muslims. The combination of Wahhabi ideology and Saudi money has contributed more to the radicalization and anti-Americanization of large parts of the Islamic world than any other single factor.¹¹

Such simplistic formulas, however, deny a far more complex reality. The Saudi state, for example, has had a decidedly pro-Western political orientation since its creation, considerably more so than most of its Arab neighbors. In fact, Saudi pro-Americanism is a primary motivating factor behind Osama bin Laden’s violent opposition, not only to the United States, but to the Saudi monarchy and religious establishment as well. Ultimately, the current wave of anti-Wahhabism may be rooted less in Wahhabi teachings than in antipathy toward Saudi Arabia and in an inability—or unwillingness—to understand the nature of Arab and Muslim grievances.

⁹ Paul Powers, “What are the basic beliefs and practices of Islam, and what is “Islamic fundamentalism?” (n.d.) <<http://www.lclark.edu/dept/collcomm/powers.html>>

¹⁰ See also Muslim Public Affairs Council, “Demystifying the Fatwa,” 5 January 2003 (available at <http://www.mpac.org/news_article_display.aspx?ITEM=329>

¹¹ Testimony of William Kristol, Chairman, Project for the New American Century, US House of Representatives. Committee on International Relations. Subcommittee on Middle East and South Asia *Hearing: The Future of US-Saudi Relations*, 22 May 2002.

The Wahhabi religious doctrine, borne out of the Hanbalite tradition (the most conservative of Sunni Islam’s four schools of jurisprudence), is based on the teachings of 18th century religious reformer and conservative Islamic scholar, Muhammad ibn Abd al-Wahhab.¹² Abd al-Wahhab sought to counter what he regarded as his society’s laxity in observing Islamic law and neglect of obligatory religious rites. He preached a return to the fundamental principles of Islam by reasserting the primacy of Islamic monotheism (*tawheed*) and eliminating alien “innovations” (*bid‘ah*) and superstitions believed to have corrupted Islamic practice, which he decried as forms of *shirk* (“associating” others with God)—the gravest sin in Islam. In 1745, in order to promote his religious doctrine, Abd al-Wahhab allied himself with Muhammad ibn al-Saud, a powerful tribal chieftain in northeastern Arabia who sought to unite the tribes of Arabia under his leadership. By 1932, with the aid of the British, the Saudi-Wahhabi alliance consolidated its control over most of the Arabian peninsula. The alliance between the ruling Saudi clan and Wahhabi religious jurists, whereby the latter are granted control over the state’s educational and religious institutions in exchange for conferring legitimacy upon the rulership of the Saudi dynasty, now forms the basis of the kingdom’s religiopolitical legitimacy.

Wahhabism represents an exceptionally austere and puritanical interpretation of Islam, one that rigidifies the faith by insisting that a constricted, literalist approach to the texts and traditions of Islam is the only “valid” perspective on Islam. In addition, Wahhabi scholars often exhibit considerable religious intolerance, particularly toward the Shi‘a and other Muslims they regard as “heterodox.” However, the vast majority of the world’s Muslims, including American Muslims, are neither Wahhabis nor educated in Wahhabi schools. While it is true that Saudi financial support has exaggerated the influence of Wahhabi beliefs in many American mosques, Islamic schools and other Muslim institutions, American Muslim opposition to Wahhabism stems more from its influence on the intellectual freedom of the larger Muslim community than on any conviction that adherents of Wahhabism have an “automatic” propensity toward violence.¹³

5. “Islamism”

The phenomenon known as “Islamism,” often used interchangeably with other labels like “Islamic fundamentalism” or “Radical Islam,” is another source of confusion and controversy. Despite their promiscuous use since September 11th, such labels and their many varied uses and misuses tend to obscure complex political and social realities surrounding Islamic political activism, religious extremism, and terrorism. Expressions such as “Radical Islam” and “Militant Islam” in particular, carry considerable ideological baggage as they imply the existence of a religious tradition within Islam that is inherently violent. While clearly there are Muslims who carry out acts of violence in the name of Islam, comparable expressions—for example, “Radical Judaism” or “Radical Hinduism”—are not ascribed to extremist Jews or Hindus engaged in religiously motivated violence or terrorism.

¹² The term “Wahhabi,” first used by the movement’s Muslim opponents, is rejected by its adherents, who instead refer to themselves as *ahl al-tawhid* (“People of Unity”) or *muwahhidun* (“Unitarians”).

¹³ While the Muslim Public Affairs Council (MPAC) rejects many of the ideas espoused by the doctrine of Wahhabism, it opposes any persecution of its adherents. MPAC also rejects attempts by those who seek to conflate the terms “Wahhabi” and “terrorist” or to label individuals as “Wahhabis” with the intention of smearing and defaming them for political reasons, as doing so would be akin to holding Baptism or Orthodox Judaism accountable for the intolerant views or violent actions of a handful of their adherents.

“Islamism,” more commonly known among scholars as Political Islam, broadly refers to the numerous sociopolitical movements that emerged during the last century or so that seek to establish Islam as a vehicle for social, political and economic change in contemporary Muslim societies. Although Political Islam is often regarded as a rejection of modern life, experts caution that it would be “a substantial error to conceptualize these movements as restoring an ‘original’ form of Islam. Rather, they seek to revitalize and re-Islamize modern Muslim societies.”¹⁴ Not unlike Christian, Jewish, Hindu, and other contemporary revivalist trends, Political Islam is largely a response to the many socioeconomic, cultural, and political dislocations caused by modernity, rather than a rejection of it as such.

The origins of modern Islamic political thought can be traced to the turn of the 20th century, when Islamic intellectuals were struggling to cope with social and political dislocations caused by the advent of European colonialism and the simultaneous decline of the Ottoman empire. During the 1920s, in the wake of the abolition of the Caliphate, Islamic reformers, primarily in Egypt, promoted the idea of an Islamic state governed by Islamic law as an alternative to the old political order.¹⁵ These reformers also sought to replace “secular” or “alien” influences with the more “authentic” values, constructs, and institutions of Islam. By the 1940s, these ideas had spawned political movements throughout the Arab Middle East and the Indian subcontinent. Political Islam became a particularly potent force in the latter half of the century in response to the perceived failings of the prevailing economic and political order within Muslim countries, as well as to social and cultural challenges posed by external forces.

In most Muslim countries today, Islamic movements represent the most important and organized forces of political opposition facing these governments. Notwithstanding superficial attempts to portray all forms of Islamic social or political activism as manifestations of “extremism,” Islamic movements and political parties are neither monolithic nor static. “Islamists” differ widely with respect to their values, tactics, and even goals.¹⁶ While some have sought to topple governments through violence, many others actively participate in the political process by registering as parties and fielding candidates in elections, with varying degrees of success and official sanction.¹⁷ Unlike the violent revolutionaries of Egypt’s Gamaa Islamiya, for example, who have engaged in assassinations and terrorist bombings, the Muslim Brotherhood has adopted an accommodationist approach by fielding candidates in Egyptian parliamentary and other elections. The history of the Muslim Brotherhood itself, the world’s oldest and most influential Islamist movement, has alternated between periods of violence and pacifism and between government repression and co-optation.

¹⁴ Joel Beinin and Joe Stork, “On the Modernity, Historical Specificity, and International Context of Political Islam,” in Joel Beinin and Joe Stork, eds., *Political Islam* (1997), 3-25, 3.

¹⁵ See Hamid Enayat, *Modern Islamic Political Thought* (1982).

¹⁶ Many US political pundits apply the label “Islamist” to an exceptionally wide spectrum of American Muslims, from religious conservatives to liberals, including even those identifying themselves as “agnostic” or “secular” Muslims. The Muslim Public Affairs Council rejects such attempts to smear American Muslims seeking to participate in the civic and political life of the country as a form of McCarthyism.

¹⁷ For more on Political Islam, see also John Esposito, *Political Islam: Revolution, Radicalism or Reform?* (1997); Fawaz A. Gerges, *America and Political Islam: Clash of Cultures or Clash of Interests?* (1999); Tamara Sonn, *Between Quran and Crown: The Challenge of Political Legitimacy in the Arab World* (1990).

B. Violence and War in Islamic Law

Among the most enduring misconceptions about the Islamic faith is the presumed link between Islam and violence. Like other religions, Islam sanctifies life and forbids arbitrary killing. On this the Quran is rather explicit: "... whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind" [Quran, 5:32]. In Islam, war should be avoided if possible and is to be entered into only when all other options for resolving a crisis have been exhausted. In addition, Muslims may engage in warfare as a form of *jihad*, but only under certain conditions and in a manner regulated by Islamic law, as defined by the Quran and Hadith (sayings of the Prophet Muhammad), which delineate how, when and why Muslims may take up arms against an enemy.

The Quran instructs Muslims to "Fight in God's cause against those who wage war against you, but do not commit aggression—for, verily, God does not love aggressors." [2:190] Just as not every form of *jihad* implies war, neither is every war necessarily a *jihad*. In Islam, war is to be considered only as a means to bring about an end to oppression and injustice.

Permission [to fight] is given to those on whom war is waged—and, verily, God is most powerful to aid them; ❖ Those who have been driven from their homes in defiance of right, [for no cause] except that they say "Our Lord is God!" For had God not checked one people by means of another, [then] monasteries, churches, synagogues and mosques—in which God's name is abundantly extolled—would surely have been destroyed. And God will surely aid those who aid His cause: for, truly, God is Most Powerful, Almighty; ❖ Those who, when firmly established on earth, remain constant in prayer, give charity, and enjoin what is right and forbid what is wrong; and with God rests the end of all matters" [Quran, 22:39-41].

According to the Quran, fighting may only be undertaken for the following purposes: to defend the Muslim polity against aggression, and to oppose a system that oppresses helpless people who are asking for support. War may not be undertaken for purposes of self-glorification, material gain, or exploitation of person or property. Furthermore, the decision to declare *jihad* must be made by a legitimate authority (or state). Fighting under any other circumstances is considered *fasad* ("disorder" or "anarchy"). Islamic law, moreover, strictly prohibits deliberate killing of non-combatants and wanton destruction of property. Islamic scholars have defined both combatants, those physically capable of fighting and directly engaged in battle, and noncombatants, those not directly involved in battle and other protected groups, in considerable detail.¹⁸ In 634 C.E., Abu Bakr, Islam's first Caliph, instructed his army as they set out for Byzantine Syria:

Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies.

¹⁸ Protected groups include women, children, the elderly, the blind, the infirm, the mentally ill, monks, and hermits; in addition to traders, merchants, contractors, peasants, servants, and slaves not involved in actual fighting. For more on warfare in Islam, see Maher Hathout, *Jihad vs. Terrorism* (2002). See also United States Institute of Peace, "Special Report: Islamic Perspectives on Peace and Violence," 24 January 2002.

Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone.¹⁹

C. American Muslims and September 11th

Like all Americans, American Muslims were shocked and saddened by the attacks on the World Trade Center and the Pentagon on September 11, 2001. Hours after the attacks, national and local Muslim institutions across the country condemned the terrorist attacks that killed nearly 3,000 people in Manhattan, Arlington, and Shanksville. The nation's leading Muslim political, educational, and religious organizations, spanning the breadth of the theological and philosophical spectrum, issued a joint, unequivocal condemnation of that day's horrific crimes:

American Muslims utterly condemn what are apparently vicious and cowardly acts of terrorism against innocent civilians. We join with all Americans in calling for the swift apprehension and punishment of the perpetrators. No political cause could ever be assisted by such immoral acts.²⁰

Compelled by both religious obligation and civic duty, mosques, charities, and other Muslim institutions actively participated in the recovery effort by organizing blood drives, mobilizing volunteers for the rescue effort and committing resources to aid the September 11th victims. Dozens of Muslims were among those killed on that day as well, and numerous Muslim firefighters, policemen, doctors, and rescue workers joined the ranks of those risking their lives to help save others.²¹ Muslims around the world also condemned the atrocity. Prayer vigils and memorial services were held in nearly all Muslim countries, from Morocco to Iran to Indonesia.²² At the same time, a group of prominent Islamic scholars from across the Muslim world issued a religious edict (*fatwa*) declaring that, "The terrorist acts, from the perspective of Islamic law, constitute the crime of *hirabah* (waging war against society)."

While Muslims in America shared the anger and profound sense of loss felt by other Americans, they faced the added fear of being held accountable for a crime they neither committed nor condoned. The days and weeks following the September 11th attacks witnessed an unprecedented rise in hate crimes and violent attacks against Muslims, Arabs, South Asians, and

¹⁹ Quoted in Abdul Hamid Siddiqui, trans., "Introduction," *Sahih Muslim, Book 19: Kitab al-Jihad wa'l-Siyar* ("The Book of Jihad and Expedition") <http://isgkc.org/Hadith/Muslim/019_smt.html#002_b19>

²⁰ Statement issued by American Muslim Political Coordinating Council (AMPCC), a consortium of the four national Muslim political organizations (the American Muslim Alliance, American Muslim Council, Council on American-Islamic Relations, and Muslim Public Affairs Council) and co-signed by the Association of Muslim Scientists and Engineers, Association of Muslim Social Scientists, Islamic Medical Association of North America, Islamic Circle of North America, Islamic Society of North America, Ministry of Imam W. Deen Mohammed and Muslim American Society, on 11 September 2001. For additional statements, see Appendix A.

²¹ See US Department of State, "Muslim Officers and Firefighter Honored for 9/11 Heroism," *Washington File*, 1 February 2002 <<http://usinfo.state.gov/usa/islam/a020102.htm>>

²² Despite the media's emphasis on a handful of scattered "celebrations," such as those filmed in the Occupied Palestinian Territories, the overwhelming majority of Palestinians, Arabs, and Muslims around the world expressed shock and sorrow at the terrorist atrocity against the United States.

their institutions. A national Muslim rights group logged at least twelve murders and more than 1,700 incidents of harassment, violence and discrimination against these communities in the six months after the September 11th attacks.²³ Ordinary Muslims, meanwhile, opened up their mosques and community centers to the general public in order to help dispel stereotypes and misinformation about their faith. Statements strongly denouncing attacks on Arab-Americans and Muslims by President Bush, former New York Mayor Rudy Giuliani, and other government officials gratified American Muslims. President Bush has reiterated “that our war that we now fight is against terror and evil. It’s not against Muslims.”²⁴ Muslims were also reassured by the countless expressions of support and solidarity exhibited by ordinary citizens from all faith backgrounds in response to the backlash.

These initial displays of tolerance, however, soon gave way to more cynical voices, many of which sought to exploit the tragedy for political or ideological purposes. “We should invade their countries, kill their leaders and convert them to Christianity,” wrote one nationally syndicated conservative columnist two days after the attacks.²⁵ Two months later, the influential Rev. Franklin Graham proclaimed Islam to be a “very evil and wicked religion.”²⁶ While such remarks have earned occasional rebukes by President Bush, Secretary of State Powell, and some mainstream media and religious figures, they are nevertheless expressed with alarming regularity. These voices, both secular and religious, brazenly denigrate the Islamic faith and openly scorn President Bush’s assertions that Islam is a “religion of peace.”²⁷

Once relegated to the political and ideological fringes, suggestions that Islam is inherently violent or that the mere presence of Muslims themselves represent a threat to the United States are now cast as legitimate political discourse.²⁸ For one senior columnist at the National Review Online, for example, “Islam is at its core inimical to democracy and human rights as we in the West understand them,” adding that “hatred, violence, backwardness, and fanaticism [are] endemic to the Islamic world.”²⁹ Similarly, an official editorial in the *Washington Times*, an incendiary commentary about Muslim clerics’ alleged support for terrorism, sarcastically concludes, “Only one of two things is possible. Either Islam doesn’t mean ‘peace,’ exactly, or another hijacker just climbed on board Islam.”³⁰ Similar anti-Muslim

²³ Council on American-Islamic Relations, *American Muslims: One Year After 9-11*, 5 September 2002, 29.

²⁴ US Department of State, “Excerpt: Bush Says Anti-Terrorism Struggle Not Against Muslims” *Washington File*, 2 November 2001 <<http://usinfo.state.gov/usa/islam/s021101.htm>>. For additional statements by government officials about Islam and Muslims, see Appendix B.

²⁵ Ann Coulter, “This Is War: We should invade their countries,” National Review Online, 13 September 2000. Prior to September 11th, anti-Muslim polemicists and pseudo-scholars had already developed a substantial body of anti-Muslim literature that has helped degrade the contemporary discourse on Islam. See, for example, Bat Yeor, *The Dhimmi: Jews and Christians Under Islam* (1985) and Daniel Pipes, *Militant Islam Reaches America* (2002).

²⁶ Other Evangelical Christian leaders later joined the fray. Pat Robertson has called the Prophet Muhammad “an absolute wild-eyed fanatic,” while Rev. Jerry Falwell declared that “Muhammad was a terrorist.”

²⁷ See Dana Milbank, “Conservatives Dispute Bush Portrayal of Islam as Peaceful: Critics, Include Some Policy Advisers, Call Stance Political,” *Washington Post*, 30 November 2002.

²⁸ Among the most notorious of such writings are two anti-Muslim tracts published by the Free Congress Foundation. See Robert Spencer, *Islam Unveiled* (2003) and William S. Lind and Paul M. Weyrich, *Why Islam Is A Threat To America And The West* (2002). See also “Islam, a Religion of Peace or War?” (Symposium sponsored by FrontPage Magazine), March 4-6, 2003 <<http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=6431>>

²⁹ Rod Dreher, “Not Peace-Loving, After All,” National Review Online, 23 September 2002 <<http://www.nationalreview.com/dreher/dreher092302.asp>>.

³⁰ “Perverted martyrdom” (House Editorial), *Washington Times*, 10 April 2002.

commentaries are regularly featured on Fox News, NewsMax.com, WorldNetDaily.com and other prominent news media.³¹

So blurred have become the lines between fact and innuendo, between evidence and hyperbole, that it has become nearly impossible for Muslims to participate in the political process without incurring allegations of having “ties to terrorism” of one sort or another. National Muslim organizations involved in advocacy work are sometimes simply dismissed as “terrorist sympathizers,” while Muslim political contributions are challenged as “blood money.”³² Even Muslim government officials cannot escape the specious allegations and inflammatory innuendoes leveled by extremists seeking to disenfranchise the American Muslim community.³³

The prevalence and increasing acceptability of such attitudes has fueled a general climate of intolerance and suspicion toward Islam, the Muslim community, and Muslim institutions. Consequently, a mostly uninformed public has been largely desensitized to such anti-Muslim sentiment, including otherwise well-meaning policymakers and public figures. Former House Subcommittee on Terrorism and Homeland Security chairman Rep. Saxby Chambliss’ quip that the way to combat terrorism is to “just turn [the sheriff] loose and have him arrest every Muslim that crosses the state line,” is perhaps rooted less in malice than in ignorance. Likewise, First Lady Laura Bush’s blunt response to a reporter’s question about whether she could empathize with the mothers of Palestinian children killed by Israeli soldiers: “Can I empathize with a mother who sends her child out to kill herself and others? No,” highlights the pervasiveness of dehumanized images of Palestinians. Meanwhile, remarks attributed to the US Attorney General John Ashcroft that, “Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you,” inevitably taint perceptions of his ability to mete out justice to members of the American Muslim community.³⁴

This general climate of intolerance curtails American Muslims’ ability to participate in our nation’s counterterrorism efforts. The exclusion of Muslims from forums such as counterterrorism Congressional testimonies harms both the American Muslim community and the intelligence-gathering capacity of the United States.

³¹ See UN Special Rapporteur on Contemporary Forms of Racism, *Situation of Muslim and Arab Peoples in Various Parts of the World in the Aftermath of the Events of 11 September 2001*, E/CN.4/2003/23, 3 January 2003.

³² See “Hillary returns pro-Palestinian cash” *BBC* website (insert URL), Thursday 26 October 2000.

³³ See Cal Thomas, “Eight down, many more to go,” *Washington Times*, 26 February 2003; and Frank J. Gaffney, Jr., “Islamists’ White House gatekeeper,” *Washington Times*, 11 February 2003.

³⁴ See Dan Eggen, “Ashcroft Invokes Religion In US War on Terrorism,” *Washington Post*, 20 February 2002.

SECTION II

Overview of Terrorism

A. Historical Overview of Terrorism

The history of terrorism in many ways parallels the histories of war, revolt, and powerlust themselves. Assassination and tyrannicide were common features of the fractious political life of ancient Greece, a tradition inherited by imperial Rome. The Romans also employed terror against their subject populations as a means of expanding the empire and crushing revolt. The Christianization of the Roman Empire did not stem the inclination toward terrorism, as the rule of Justinian II (525-565 C.E.) was marked by a six-year vindictive reign of terror. Among the earliest recorded examples of events that today might be considered “terrorist extremism” are the Jewish rebellions against Roman occupation (66-70 C.E.) by the Sicarii (“Dagger-Bearers”). Throughout most of Europe terror remained an essential component of warfare during the Middle Ages, as it had for centuries previously; peasant uprisings frequently resulted in massacres and the wholesale destruction of towns and villages. In the medieval Muslim world, the fanatical 12th century cult of the Assassins brought terror to ruler and ruled alike in many parts of the Muslim empire. Meanwhile, the Mongols (1220-1506 C.E.) turned terror into a strategic weapon of war during their conquests of large swaths of the eastern Mediterranean, Russia, Central Asia, and China, resulting in the slaughter of several million civilians.

While the phenomenon of terrorism may be as old as human history itself, the word can be traced to 1795 when it first entered the English language from the French *terrorisme* (derived from the Latin *terrere*, meaning “to tremble”). The term was first used to describe the violent purges by revolutionary France’s radicalized rulers, the Jacobins, of their political rivals in 1793-94. Through the infamous (and rather ironically named) Committee of Public Safety, 40,000 French men and women met their fate by the guillotine or died in prison. The Jacobins’ ten-month “Reign of Terror” became the prototype for establishment terrorism—the use of terror by the state as a means of maintaining control and domination—in the modern age. Vladimir Lenin’s Bolshevik secret police, Nazi Germany’s Gestapo and other police states around the world all drew inspiration from the Jacobin model of “terrorism from above.”³⁵

By the late 1800s, armed groups disaffected with the rapidly changing social and economic conditions of the time began to adopt terrorist methods against the state. Throughout the 20th century, dissident terrorism, or “terrorism from below,” became an increasingly common form of resistance and revolution by those seeking to upset or overturn the existing social and political order. Anarchists in Europe, Russia, and the United States, for example, carried out a wave of attacks on political and industrial leaders in the name of working people. During World War II, French, Czech, Polish, and other groups resisting German occupation were referred to by the Nazis as “terrorists.”³⁶

Dissident terrorism surged during the post-war era. Long before the African National Congress (ANC), the Irish Republican Army (IRA), and the Palestine Liberation Organization (PLO) adopted terrorist tactics as a means of combating their powerful state adversaries during the 1960s and 70s, groups like the Irgun Zvai Leumi in Mandatory Palestine and the National Liberation Front (FLN) in Algeria had already inspired a generation of anti-colonial and anti-authoritarian terrorism across Asia, Africa, Latin America, and even Europe.

³⁵ Martin Walker, “A Brief History of Terrorism,” *Europe*, 26.

³⁶ *Ibid.*

B. Defining Terrorism

Nothing reflects the difficulty in confronting terrorism more than the elusiveness of defining it. Sometimes called “propaganda by deed,” there is no universally accepted definition of terrorism. One famous study identifies 109 different definitions of terrorism.³⁷ Indeed, it is much easier to recognize terrorism than it is to define it. Nonetheless, definitions of terrorism do share a common structure. Each attempts to identify four elements: the perpetrators (state/non-state actors), motivations (political/otherwise), targets (deliberate/random, government/civilian), and objectives (coercion, fear, etc.) of the act. A neutral definition of terrorism – one that does not arbitrarily restrict one or more of these elements – may look like this: “the threat or use of violence for political purposes when such action is intended to influence the attitudes and behavior of a group wider than its immediate victims; its ramifications transcend national boundaries.”³⁸ Definitions of terrorism are seldom neutral, however, and usually reflect the historical, political, philosophical, partisan, and strategic biases of their definers.

The US government currently employs no less than *six* separate definitions of terrorism. A recent congressional assessment of counterterrorism policies found that “practically every agency of the United States Government (USG) with a counterterrorism mission uses a different definition of terrorism” and recommends the adoption of a single standard definition.³⁹ According to the US State Department, “The term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.” The conspicuous insertion of “subnational” groups effectively eliminates any consideration of terrorism by state agencies.

While the State Department defines terrorism in rather narrow terms, domestic law enforcement has adopted a different approach. The FBI, for example, employs two distinct definitions, one for domestic and one for international terrorism:

(Domestic): ...the unlawful use, or threatened use, of force or violence by a group or individual ... committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives;

(International) ...violent acts or acts dangerous to human life ... [that] appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping.⁴⁰

³⁷ See Alex Schmid and Albert Youngman, *Political Terrorism* (1988).

³⁸ Anthony C.E. Quinton, “Moral and Ethical Considerations in Defining a Counter-Terrorist Policy,” in David C. Rapoport and Yonah Alexander, ed., *The Rationalization of Terrorism* (1982), 39.

³⁹ US House of Representatives. Permanent Select Committee on Intelligence. Subcommittee on Terrorism and Homeland Security, *Counterterrorism Intelligence Capabilities and Performance Prior to 9-11: A Report to the Speaker of the House of Representatives and the Minority Leader*, July 2002.

⁴⁰ Federal Bureau of Investigation, Counterterrorism Threat Assessment and Warning Unit, National Security Division, *Terrorism in the United States: 1999*, ii. For full definitions, see Appendix C.

These definitions differ in more than just geography, however. While “political or social objectives” are deemed prerequisites for domestic terrorism, for example, the FBI’s definition of international terrorism requires only that such acts “appear to be intended to ... influence the policy of a government.” This is significant because the vast majority of post-September 11th Justice Department measures, including terrorism-related arrests and investigations, are aimed at threats of international terrorism, including those involving Americans and on US soil.⁴¹ Such asymmetries in government definitions of terrorism are not incidental. They reflect serious differences in the respective—and often competing—priorities and philosophies among the many policymakers and agencies involved in formulating counterterrorism policies.⁴²

International attempts to define terrorism have been beset with similar difficulties. The United Nations formally adopted a definition of terrorism in 1996: “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes [that] are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”⁴³ However, the UN’s 2000 Convention for the Suppression of the Financing of Terrorism also defined it as:

[an] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.⁴⁴

A draft Comprehensive Convention Against International Terrorism at the United Nations has been stalled at least partly due to the lack of consensus on how to define terrorism.

Academicians have fared no better in arriving at a consensus. Experts disagree on fundamental questions, such as whether governments may be perpetrators of terrorism, or whether terrorism need necessarily involve attacks on civilians. Paul Wilkinson described terrorism as “the coercively intimidatory weapon of revolutionary movement.”⁴⁵ Meanwhile, noted terrorism expert Walter Laqueur defines terrorism as “the illegitimate use of force to achieve a political objective when innocent people are targeted.” International law professor Richard Falk adopted a still broader definition of terrorism: “any type of political violence that lacks an adequate moral or legal justification, regardless of whether the actor is a revolutionary group or a government.”⁴⁶ Alex Schmid of the UN Crime Branch proposes a shortcut of sorts, arguing that since deliberate attacks on civilians, hostage takings, and killings of prisoners during times of war constitute “war crimes,” then terrorism might simply be defined as “peacetime equivalents of war crimes.” This definition, however, also falls short since in many regions of the world terrorist tactics are employed in conjunction with conventional or guerilla war tactics.

⁴¹ In order to be considered *domestic terrorism*, an act must be committed by “a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction,” which excludes groups like Al-Qaeda and other foreign terrorist organizations.

⁴² See Appendix C.

⁴³ UN General Assembly, A/RES/51/210, 17 December 1996.

⁴⁴ UN General Assembly, A/RES/54/615, 25 February 2000.

⁴⁵ Quoted in John Richard Thackrah, *Encyclopedia of Terrorism and Political Violence* (1987), 60.

⁴⁶ Richard A Falk, *Revolutionaries and Functionaries: The Dual Face of Terrorism* (1988)

Partisan considerations further complicate the task of defining terrorism. “The concepts of terror and terrorism are slippery and much abused, and their relation to other forms of political violence and criminality is often ambiguous,” explains terrorism expert John Thackrah.⁴⁷ Israeli military and political officials generally refer to all attacks on Israeli personnel as “terrorist,” regardless of whether the targets are military, paramilitary, or civilian. Likewise, many Palestinian political and military leaders deny the “terrorist” label even when civilians appear to be the exclusive targets of attack. Few governments or political movements have resisted the urge to manipulate the “terrorist” label in a manner that suits their interests. According to noted terrorism expert and IRA critic Coner Cruise O’Brien:

Those who are described as terrorists, and reject that title for themselves, make the uncomfortable point that national armed forces, fully supported by democratic opinion, have in fact employed violence and terror on a far vast scale than what liberation forces have yet been able to attain. The “freedom fighters” see themselves as fighting a just war. Why should they not be entitled to kill, burn and destroy as national armies, navies and air forces do, and why should the label “terrorist” be applied to them and not to the national militaries?⁴⁸

Ultimately, as Brian Jenkins, a prominent authority on terrorism, explains, “Use of the term thus implies a moral judgement. If one group can successfully attach the label *terrorist* to its opponent, then it has indirectly persuaded others to adopt its moral and political point of view ... Terrorism is what the bad guys do...”⁴⁹

The highly emotional nature of terrorism has led many to dismiss suggestions that terrorism is subjective as moral subterfuge. In 1987, then Vice President George Bush rejected the terrorist/freedom fighter formula as an exercise in “moral equivalency,” and dismissed the need to define terrorism altogether. “Within the context of the US consensus on the issue these things define themselves,” he wrote.⁵⁰ Indeed, this has been the prevailing view among Washington policymakers for most of the last two decades. Terrorism expert Peter Sederberg has argued that such sentiment is misplaced:

Definition does not involve the discovery of some transcendental idea; rather, it reflects particular historical eras, intellectual professions, and partisan positions. The definition of terms, like other human actions, reflects the interests of those doing the defining. Those who successfully define the terms of a political debate set the agenda for the community ... Definition therefore involves the exercise of power.⁵¹

The reality remains that a consensus, either inside or outside government, on what constitutes terrorism simply does not exist.

⁴⁷ John Richard Thackrah, *Encyclopedia of Terrorism and Political Violence* (1987), 63.

⁴⁸ Quoted in National Interagency Civil Military Institute, “The Foundations of Modern Terrorism,” 4.

⁴⁹ *Ibid.*

⁵⁰ George Bush, “Prelude to Retaliation: Building a Government Consensus,” *SAIS Review* (Winter-Spring 1987), 6.

⁵¹ Peter Sederberg, *Terrorist Myths, Illusion, Rhetoric, and Reality* (1989), 3.

C. The Psychology of Terrorism

Given the moral repulsion naturally associated with terrorism, it is difficult to understand what might compel people to inflict such cruel violence on others. While it is common—perhaps even comforting—to think of terrorists as “insane” or “deranged,” there is little evidence to support the claim that terrorists are psychotic, or even that they share particular psychological traits. Bryn Mawr psychology professor Clark McCauley explains the somewhat unsettling notion that “the psychology behind terrorist violence is normal psychology”:

No one wakes up one morning and decides that today is the day to become a terrorist. The trajectory by which normal people become capable of doing terrible things is usually gradual, perhaps imperceptible to the individual. This is among other things a moral trajectory... In too-simple terms, terrorists kill for the same reasons that groups have killed other groups for centuries. They kill for cause and comrades, that is, with a combination of ideology and intense small-group dynamics.⁵²

Given the conspiratorial and highly clandestine nature of terrorist organizations, it would be more likely that such potentially unreliable or unstable personalities would be purged from their ranks. Rather than pathology, therefore, terrorism involves “the intersection of psychological predispositions ... and the external environment.”⁵³

Terrorism is not, however, an individual endeavor. Identification with a group—its goals, ideology, norms, and other idiosyncrasies—is as central to involvement in terrorism as are individual choices.⁵⁴ According to noted terrorism scholar Martha Crenshaw, “for the majority of terrorists who are followers, to become a member of the group is a dominant motive.”⁵⁵ Involvement in terrorist organizations may be further reinforced by powerful group dynamics such as groupthink, the subordination of the self before the group, and personality cults. Consequently, terrorist groups, which are highly centralized, insular, and cohesive units by nature, develop and enforce their own values systems, often evolving their own subculture similar to many religious cults. For the terrorist, “The powerful psychological forces of conversion in the group are sufficient to offset traditional social sanctions against violence... To the terrorists their acts may have the moral status of religious warfare or political liberation.”⁵⁶

The moralistic rhetoric in which terrorists often couch their causes and the ostensibly altruistic goals they claim to pursue pose obvious, but not inexplicable, moral paradoxes. The legendary Reign of Terror of the Jacobins, after all, was initiated in the name of the otherwise noble principles of the French Revolution of freedom, equality, and brotherhood. Stanford

⁵² Clark McCauley, “The Psychology of Terrorism,” Social Science Research Council (n.d.) <<http://www.ssrc.org/sept11/essays/mccauley.htm>>

⁵³ Martha Crenshaw, “The Psychology of Political Terrorism,” in Margaret G. Hermann, ed., *Political Psychology: Contemporary Problems and Issues* (1986), 384-85.

⁵⁴ Martha Crenshaw, “The Psychology of Political Terrorism,” in Margaret G. Hermann, ed., *Political Psychology: Contemporary Problems and Issues* (1986), 385.

⁵⁵ Martha Crenshaw, “The Psychology of Political Terrorism,” in Margaret G. Hermann, ed., *Political Psychology: Contemporary Problems and Issues* (1986), 389.

⁵⁶ Eric D. Shaw, “Political Terrorists: Dangers of Diagnosis and an Alternative to the Psychopathology Model,” *International Journal of Law and Psychiatry*, 8 (1986), 359-68

University psychology professor Albert Bandura has written extensively about the mechanisms through which terrorists displace, or suspend altogether, normal human faculties of empathy and moral responsibility. According to Bandura, “moral standards do not function as fixed internal regulators of conduct. Self-regulatory mechanisms do not operate unless they are activated, and there are many psychological processes by which moral reactions can be disengaged from inhumane conduct.”⁵⁷ The psychological conditioning involved in this type of moral disengagement may take many forms. Terrorists may employ creative euphemisms for their actions in order to recast them as acceptable or even noble. Or they might rationalize that their transgressions pale in comparison to those of their opponents. An individual terrorist might also obscure the connection between his behavior and its consequences by diffusing responsibility to the collective group.⁵⁸ Likewise, terrorists may distort or deny the consequences of the act itself, dismissing official casualty or damage claims, for example, as “propaganda.”

The most common, and necessary, form of psychological conditioning as far as terrorism is concerned is to dehumanize the targeted group. In this way, victims are viewed “as abstraction, a structure, rather than a group of individuals . . . merely representatives of institutions.”⁵⁹ Dehumanization might enable dissident terrorists to deny the innocence of their victims altogether by arguing, for example, that as citizens (or supporters) of the state, they share responsibility for its actions. Conversely, in the case of state terrorism, dehumanizing one’s enemy enables the perpetrator to transfer blame to the victims themselves:

In this process, aggressors see themselves as essentially persons of good will who are forced into punitive actions by villainous adversaries. Victims are condemned for bringing the suffering on themselves either by their character defects or by their provocative behavior. Seeing victims suffer punitive treatment, for which they are held partially responsible, also leads observers to devalue them. The indignation aroused by attributed blame, in turn, provides more support for even more brutal acts of aggression.⁶⁰

Such rationalizations may have far-reaching implications for both individuals and society. As psychologists have observed, the capacity of otherwise normal people to rationalize the killing of innocents, whether through terrorism or conventional warfare, is rather high. Rationalization is itself a process—a slippery slope of moral and cultural ambivalence that, if left unchecked, slides along until eventually abandoning altogether the moralistic pretenses that originally sustained it. At the far end of this continuum are numerous examples from history whereby violence against innocents, initially rationalized as a means to an end, soon became an

⁵⁷ Albert Bandura, “Mechanisms of Moral Disengagement,” in Walter Reich, ed., *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (1998): 161-191. Bandura’s analysis is among the most valuable discussions of terrorist rationalizations from a psychological perspective.

⁵⁸ Albert Bandura, “Mechanisms of Moral Disengagement,” in Walter Reich, ed., *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (1998): 161-191, 176.

⁵⁹ Martha Crenshaw, “The Psychology of Political Terrorism,” in Margaret G. Hermann, ed., *Political Psychology: Contemporary Problems and Issues* (1986), 398.

⁶⁰ Albert Bandura, “Institutionally Sanctioned Violence,” *Journal of Clinical Child Psychology*, vol. II, no. 3, Third Printing (Spring 1975): 23-24, 24.

end unto itself.⁶¹ Indeed, one need not directly engage in, or even condone, terrorist violence in order to indulge in such rationalizations. Even in democratic societies, ordinary citizens, government officials, religious and civic leaders, and others may engage in more subtle, but no less dehumanizing, forms of rationalization and moral deflection.

D. Causes of Terrorism: Theoretical Explanations

For years, social scientists, politicians, security specialists and others have struggled to identify the causes and potential remedies of terrorism. No single theory can adequately explain the complex motivations behind terrorism. Broadly speaking, three common approaches have emerged toward understanding the psychological, social, economic, political, and cultural antecedents to terrorism.

1. Terrorism's Root Causes

The view that traditionally has dominated much of the literature maintains that terrorism is a response to repressive social, economic, and political conditions, such as economic deprivation, political repression, colonialism, and so on. Proponents of this view contend that such iniquities and repressive conditions represent the root causes behind the sort of social marginalization, political extremism, or religious fanaticism that animate terrorist ideologies and organizations. Root Causes theorists rely heavily on relative deprivation and frustration-aggression theories, the former being considerably more useful than the latter, to explain the connection between expectations and political violence.

Simply put, relative deprivation theory contends that when a group perceives a gap between where it is (capabilities) and where it feels it ought to be (expectations), the result is frustration. The wider the gap between capabilities and expectations, the greater the frustration, and the more intense the response. Frustration-aggression theory picks up where relative deprivation leaves off; it assumes that aggression results from increased frustration (i.e., the gap between rising expectations and the perceived actualization of those expectations). Thus, if terrorist behavior is a response to the frustration of various political, economic, and social objectives, then it stands to reason that the way to combat terrorism is to eliminate (or at least reduce) the social, economic, and political grievances that produce it.

2. Terrorism as Strategic Choice

Critics of Root Causes theory claim it is often used over-simplistically, while dismissing the assumption that aggression is always attributable to frustration. According to Martha Crenshaw, terrorism need not reflect “mass discontent or deep social cleavages” or psychological forces in which “certain types of personalities suddenly turn to terrorism in answer to some inner call.” As opposed to psychologically or socially driven reasons for terrorist activity, Crenshaw emphasizes the instrumental nature of terrorism: “Terrorism is an attractive strategy for small

⁶¹ The 19th century German-American radical Karl Heinzen and his Russian contemporary, Anarchist philosopher Mikhail Bakunin, for example, both extolled the “virtues” of violence. Similar expressions may be found in a number of contemporary conflicts in the Middle East, South Asia, and elsewhere.

organizations that want to attract attention, provoke the government, intimidate opponents, appeal for sympathy, impress an audience, or maintain the adherence of the faithful.”⁶²

According to the Strategic Choice model, terrorism is rationally and deliberately chosen for its utilitarianism and efficacy. This may be because such terrorist groups lack either the popular support or the material resources (or both) to mobilize a mass political movement.⁶³ While they do not deny the relevance of social conditions in fostering an atmosphere conducive to terrorism, Strategic Choice proponents argue that large numbers (perhaps even millions within a given country or society) may experience the same relatively repressive social and political conditions, while only a handful actually become terrorists. Strategic Choice proponents view terrorists as criminals and advocate swift law enforcement or even military action to eliminate the terrorist threat. However, this hypothesis tends to underestimate the popular appeal of many political movements and organizations that engage in terrorism in one form or another.

3. Terrorism as Ideology

Still others argue that repressive conditions and strategic choices do not sufficiently explain how and why terrorism exists. For many, explanations of terrorist violence lie in the violent philosophies of revolutionarism, political radicalism, and religious fanaticism. According to Paul Wilkinson, “Political terrorism cannot be understood outside the context of the development of terroristic, or potentially terroristic, ideologies, beliefs and life-styles.”⁶⁴ The “Terrorist Ideology” explanation emphasizes the primacy of ideological indoctrination, the development of cultures of incitement and violence, and the “social psychology of prejudice and hatred.”⁶⁵ Indeed, the glorification of revolutionary violence boasts a rich ideological pedigree—à la Maximilien Robespierre, Karl Heinzen, Franz Fanon, and others—and continues to inspire many terrorists around the world.

The Terrorist Ideology hypothesis is problematic in several ways. Specifically, it does not account for the existence of extremists who never embark upon a career of terrorism, nor does it account for terrorists who do not espouse extremist political views. Indeed terrorists’ political goals and worldviews may, and often do, parallel those of non-terrorist elements within a particular population. The theory also relies heavily on subjective notions of “hatred” and “extremism” and its proponents often tend to confuse correlation with causation.⁶⁶ The circular logic of the Terrorist Ideology paradigm poses yet another paradox, namely that extremism must itself have a cause. While collective psychology and ideological extremism cannot be discounted as motivators of terrorism, ultimately, attempts to define terrorists in terms of what they believe, as opposed to what they do, will invariably be informed by what the definer himself believes.

⁶² Quoted in “The Foundations of Modern Terrorism,” National Interagency Civil Military Institute, 8.

⁶³ See Martha Crenshaw, “The logic of terrorism: Terrorist behavior as a product of strategic choice,” Walter Reich, ed., *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (1998), 7-24.

⁶⁴ Quoted in Rex A. Hudson, “The Sociology and Psychology of Terrorism: Who Becomes a Terrorist and Why?” Federal Research Division, Library of Congress (September 1999).

⁶⁵ *Ibid.*

⁶⁶ See, for example, Jerrold M. Post, “Terrorists in Their Own Words,” Paper presented before a seminar sponsored by the Anti-Defamation League and the International Policy Institute for Counter-Terrorism, Jerusalem, 26 May 2002 <http://www.ict.org.il/institute/psychology_conference.html>

SECTION III

Overview of Counterterrorism

A. Evolution of US Policies

Historically, US responses to international terrorism have always been connected to US strategic objectives. During the early years of the Cold War, preoccupation with “counterinsurgency” in Latin America, Africa, and other regions where Marxist or left-wing insurgents threatened regimes allied with the United States largely determined where and when (and whether) anti-terror measures were undertaken.⁶⁷ Following the massacres at the Munich Olympics in 1972, President Nixon named a point-person at the National Security Council (NSC) to help develop a more focused and coordinated approach to counterterrorism. In 1979 the State Department for the first time identified Cuba, Iran, Iraq, Libya, South Yemen, Syria, and the USSR as “state sponsors” of terrorism, subjecting them to limited trade sanctions. While most of these countries already had limited or strained relations with the United States, the “terrorist list” has become a useful tool in reinforcing other US foreign policy objectives.⁶⁸

It was during the Reagan Administration that both the philosophical and structural foundations for current US counterterrorism policies were laid. In 1982, President Reagan created an Interagency Working Group on Terrorism (IWGT) and institutionalized the “lead agency” concept, under which the State Department was to take the lead for international terrorist attacks, the Justice Department for domestic incidents, and the Federal Aviation Administration for incidents aboard aircraft.⁶⁹ The following year, the State Department established the Anti-terrorism Assistance (ATA) program to provide training and equipment to foreign military and police personnel in nations confronting terrorist threats.

For the Reagan Administration, terrorism was not solely a question of national security, but a pitched struggle against a Soviet-backed network of international terrorists seeking to undermine Western democracy.⁷⁰ Indeed, such political and ideological considerations were often reflected in official determinations of who was and who was not a “terrorist.” During the 1980s, for example, the Reagan Administration overtly and covertly supplied the anti-Marxist Contras, a “subnational group” attempting to overthrow the leftist Sandinista government of Nicaragua, with training, weapons, and hundreds of millions of dollars in congressionally appropriated aid. The Contras, whom President Reagan referred to as “the moral equivalent of our founding fathers,” had engaged in systematic torture, rape, summary executions, and other atrocities against civilians.⁷¹

While the Reagan Administration did attempt to deter terrorist attacks, throughout the 1980s it focused on punishing the states believed to sponsor them, most notably Iran and Libya.

⁶⁷ David E. Long, “The American Response to Terrorism,” *Encyclopedia of World Terrorism*, vol. 3 (1997): 620-626, 620.

⁶⁸ For example, in 1982, when the United States first began to “tilt” toward Iraq in its war with Iran, the State Department removed Iraq from the list, only to return it in 1990 following its invasion of Kuwait.

⁶⁹ See Ronald Wilson Reagan, National Security Directive No. 30, *Managing Terrorist Incidents*, 10 April 1982 <<http://www.gwu.edu/~NSAEBB/NSAEBB55/nsdd30.pdf>>.

⁷⁰ See Claire Sterling, *The Terror Network* (1981). See also George H. Bush, “Prelude to Retaliation: Building a Government Consensus,” *S AIS Review* (Winter-Spring 1987), 1-9; David Forte, “Terror and Terrorism: There is a Difference,” *Ohio Northern University Law Review*, vol. 13 (1986): 39-51.

⁷¹ See Reed Brody, *Contra Terror in Nicaragua: Report of a Fact-finding Mission, September 1984-January 1985*. (1985).

Sanctions were imposed on Iran following the seizure of the US embassy in 1979 and expanded in January 1984 following a series of attacks and hostage-takings by pro-Iranian Lebanese militants in Beirut. The Reagan Administration also instituted the policy of never negotiating with terrorists. Congressional hearings in 1987, however, revealed an elaborate covert operation in 1985-86 by which US officials facilitated arms transfers, via Israel, to Iran in exchange for its assistance in gaining the release of Americans held hostage in Lebanon. Profits from the arms sales were then diverted to Nicaraguan Contra rebels to bypass congressional restrictions on Contra aid.⁷² In January 1986, the United States severed economic ties with Libya, and three months later President Reagan ordered the bombing of targets in Libya in retaliation for its suspected involvement in attacks at the Rome and Vienna airports and a Berlin nightclub.

In 1995, sanctions on Iran and Libya were greatly expanded with the passage of the Iran Libya Sanctions Act (ILSA), which penalized third countries doing business with either of these nations. European nations expressed great displeasure with ILSA, marking the first major rift, which continues to this day, between the United States and its allies over international efforts to combat terrorism. A European diplomat based in Tehran summarized transatlantic concerns over ILSA at the time: “The feeling in [Europe’s] diplomatic community was that America’s calculations had nothing to do with foreign policy. They all had to do with domestic politics, a field in which we had no interest in getting involved.”⁷³ Reflecting this preoccupation with “state sponsors,” economic and political sanctions, along with threats of military retaliation, remained the principle tools of US counterterrorism policy throughout the 1990s.

During the mid-1990s, dramatic escalations in terrorism at home and abroad prompted major changes in those policies. The bombing of the World Trade Center in February 1993 shattered the belief that Americans were immune from international terrorist attacks on their own soil. Meanwhile, the March 1995 release of sarin gas in a Tokyo subway by an extremist Japanese religious group, along with the Oklahoma City bombing the following month, instilled the frightening specter of mass terrorism for the first time. As a result, new emergency preparedness measures were instituted; by 1997 the Department of Defense, the Federal Emergency Management Agency (FEMA), the Department of Health and Human Services (HHS), and other federal agencies had instituted nationwide anti-terrorism and emergency preparedness programs to deal with catastrophic or chemical or biological attacks.

The anti-terrorism policies and measures adopted during this time, including the passage of far-reaching anti-terrorism legislation, shaped US counterterrorism policies into their present form. President Clinton’s January 1995 executive order prohibiting financial transactions with “terrorists who threaten to disrupt the Middle East peace process,” marked a significant change in US counterterrorism policy by focusing for the first time on disabling the financial and organizational capacities of terrorist groups themselves.⁷⁴ The passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) in April 1996 institutionalized this change by creating a new US government designation for “foreign terrorist organizations” (FTOs), whose members

⁷² See Peter Kornbluh and Malcolm Byrne, eds., *The Iran-Contra Scandal: The Declassified History* (1993).

⁷³ Quoted in Milton Viorst, “The Limits of the Revolution: Changing Iran,” *Foreign Affairs*, vol. 74, no. 6 (November/December 1995): 63-76, 75.

⁷⁴ William Jefferson Clinton, *Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process*, Executive Order 12947, January 23, 1995.

were barred from entering the country and with whom all financial dealings were prohibited. AEDPA made it illegal to provide “material support” to an FTO, including any of its lawful activities, and subjected legal permanent residents and other non-citizens to deportation or exclusion from the United States on the basis of secret evidence.⁷⁵

The deadly bombings of US embassies in Kenya and Tanzania in August 1998, meanwhile, brought about another decisive shift in US counterterrorism policy. “We are involved in a long-term struggle...” observed Secretary of State Albright, adding, “This is unfortunately the war of the future...” The subsequent US missile strikes on suspected Al-Qaeda targets in Afghanistan and Sudan marked the first time the United States had launched a preemptive military attack on a terrorist organization. Senior Administration officials at the time indicated that the United States would henceforth take a more proactive, and possibly unilateral, approach to fighting terrorism. This change in policy, according to one analyst, involved:

shifting from a long term diplomatic, economic and law enforcement approach to one which more frequently relies on employment of military force and covert operations. Implied in such a policy shift is the belief that though terrorism increasingly poses a threat to all nations, all nations may not sign up with equal commitment in the battle against it and bear the full financial and retaliatory costs of engagement. In such an environment, the aggrieved nations with the most at stake must lead the battle and may need to take the strongest measures alone.”⁷⁶

The African embassy bombings investigation, like that of the Khobar Towers bombings three years earlier, had thrust the FBI into the international policy arena in a significant way for the first time. While the “lead agency” policy officially remained in effect, the expansion of domestic law enforcement’s direct involvement in international counterterrorism frequently aggravated interagency rivalries. This was particularly evident during the investigation of the bombing of the *USS Cole* in late 2000, when tensions between the FBI investigators and the US Ambassador in Sanaa eventually led the State Department to bar FBI officials from returning to Yemen.

During the last four decades, as the scale and destructive capacity of the terrorist threat grew, US responses to terrorism have shifted gradually from containing terrorism to more actively working to eliminate it. Whereas in the 1970s and early 1980s, US officials viewed terrorism largely as a political and law enforcement concern, by the end of the Clinton Administration, counterterrorism had become “a top national security objective.”⁷⁷ While interagency rivalries, international law, and other factors had always affected the development of US anti-terrorism policies, it was the impact of direct terrorist attacks on US interests that ultimately led to the adoption of a more comprehensive approach toward counterterrorism. While the increasing frequency and magnitude of terrorist attacks directed at US citizens and property gradually determined the scope of American responses to terrorism, foreign policy imperatives,

⁷⁵ Despite having been signed as a response to (and on the first anniversary of) the Oklahoma City Bombing, AEDPA focused almost entirely on international terrorists.

⁷⁶ Raphael F. Perl, *Terrorism: US Response to Bombings in Kenya and Tanzania: A New Policy Direction?* CRS Report (1 September 1998), 3.

⁷⁷ William Jefferson Clinton, “Combating Terrorism,” Presidential Decision Directive No. 62, 22 May 1998.

as defined by prevailing domestic and international interests, were never far along in guiding both the nature and direction of US anti-terrorism policies.

B. Terrorist Threats

International terrorism, which kills or injures several hundred people worldwide each year, represents a growing threat to the national security of the United States. Since the 1970s, US personnel and property have increasingly become targets of choice for international terrorists.⁷⁸ During the 1990s, whereas the overall number of international terrorists attacks remained relatively constant, the proportion of attacks targeting US interests increased steadily from one fifth to about one half. Most of these anti-US attacks took place in Latin America. The September 11th attacks, which accounted for 90% of international terrorism’s global death toll in 2001, suggest that the magnitude of the terrorist threat, if not the frequency of attacks, against US citizens and property has greatly intensified. However, in 2002, overall attacks, along with those directed at US interests, declined sharply to pre-September 11th levels.

	Attacks		Fatalities		Injuries	
	Total	% anti-U.S.	Total	% anti-U.S.	Total	% anti-U.S.
2002	199	39%	725	4%	2,013	N/A
2001	346	~ 52 %	3,547	90 %	1,080	N/A
2000	423	47 %	405	5 %	791	N/A
1999	392	43 %	233	2 %	706	27 %
1998	274	40 %	741	2 %	5,952	< 1 %
1997	304	~ 30 %	221	3 %	693	3 %
1996	296	25 %	311	8 %	2,652	19 %
1995	440	23 %	165	7 %	6,291	N/A
1994	332	20 %	314	1 %	663	N/A
1993	427	21 %	109	6 %	1,393	~ 70 %

SOURCE: U.S. Department of State, *Patterns of Global Terrorism* (1993-2002)

The locus of the international terrorist threat has shifted in recent years. Whereas state sponsors of terrorism were once thought to pose the greatest threat to US interests, that distinction now belongs to autonomous terrorist groups with no state sponsors. American intelligence and security officials currently identify three principle sources of international terrorist threats. Topping the list are “loosely affiliated” extremist groups and networks, including Osama Bin Laden and Al-Qaeda, followed by foreign terrorist organizations, and, lastly, state sponsors of terrorism. Meanwhile, the increasing lethality of terrorist attacks, along with concerns that terrorists may acquire biological, chemical, or nuclear capabilities, have prompted fears that a *new terrorism* poses unprecedented threats to our national security.

⁷⁸ The State Department officially defines *international terrorism* to mean “terrorism involving citizens or the territory of more than one country.” This does *not* include acts of terrorism committed by and against citizens of the same country, vastly reducing the number of terrorist incidents under its consideration.

1. “Loosely Affiliated” Extremists and Osama bin Laden/Al-Qaeda

Osama bin Laden, his Al-Qaeda network, and groups affiliated with them have been tied to numerous attacks and terrorist plots against Americans, including a 1992 attempted bombing of US soldiers in Yemen and attacks on US troops in Somalia the following year, the bombing of the Khobar Towers in 1996, the 1998 bombings of US embassies in Kenya and Tanzania, the foiled “Millennium plot” to bomb LAX, the bombing of the *USS Cole* off the coast of Yemen in 2000, and of course the attacks of 11 September 2001. Bin Laden has direct and indirect ties to numerous militant and terrorist groups and Al-Qaeda is believed to operate in more than 90 countries, including the United States.⁷⁹ “[S]mall cells of terrorists have become true transnational threats—thriving around the world without any single state sponsor or home base,” according to State Department counterterrorism coordinator Amb. Francis X. Taylor.⁸⁰

By tapping a reservoir of anger, discontent, and alienation, Al-Qaeda’s extremist ideology provides it with ample recruits. For many disaffected Muslims in troubled areas of the world, Al-Qaeda offers a sense of purpose and religiously-ordained certitude. The threat posed by Osama bin Laden and those affiliated with him is uniquely diffuse and unpredictable. It is well financed, well equipped, and has shown itself to be both deliberate and methodical in its approach. Al-Qaeda “provides connectivity, training, and financial support to an extensive galaxy of terrorists enterprises, stretching from North Africa to the southern Philippines,” according to terrorism expert Brian Jenkins, who warns that “Destroying Al Qaeda will not end the social and political forces that feed it.”⁸¹

As early as May 1997, then FBI director Louis Freeh warned members of a Senate panel: “Loosely-affiliated extremists may pose the most urgent international terrorist threat to the United States at this time since they are relatively unknown to law enforcement. They have the ability to travel freely, obtain a variety of identities, and recruit like-minded sympathizers from various countries and/or factions.”⁸² At the time, however, neither Freeh nor other senior Clinton Administration officials made any mention of Osama bin Laden or the potential threat he posed. Only after the 1998 bombings of two US embassies in east Africa did US officials begin identifying Bin Laden and his Al-Qaeda network as the principal source of these “loosely affiliated” groups. Since then, CIA officials have repeatedly warned that Osama bin Laden and groups affiliated with him were planning further attacks and represented an immediate threat to the United States.

Early in 2001, CIA director George Tenet testified before Congress that Osama bin Laden constituted “the most immediate and serious threat” facing the United States.⁸³ Some months later the FBI’s Freeh offered a somewhat more vague assessment of the terrorist threat:

⁷⁹ Ambassador Francis X. Taylor, “The Global War Against Terrorism: The Way Ahead,” Address to the Institute for National Strategic Studies, National Defense University, Washington, D.C., 23 October 2002.

⁸⁰ Ibid.

⁸¹ Statement of Brian Jenkins, National Commission on Terrorist Attacks Upon the United States, *First Public Hearing of the National Commission on Terrorist Attacks Upon the United States*, 31 March 2003.

⁸² See Louis J. Freeh, Director, Federal Bureau of Investigation, US Senate. Committee on Appropriations, *Hearings on Counterterrorism*, 13 May 1997.

⁸³ George J. Tenet, Director of Central Intelligence, US Senate. Select Committee on Intelligence, *Hearings on the Worldwide Threat 2001: National Security in a Changing World*, 7 February 2001.

“Loosely affiliated extremists, motivated by political or religious beliefs, may pose the most urgent threat to the United States,” he told a Senate panel, adding that “the threat from Al-Qaeda is only part of the overall threat . . .”⁸⁴ The devastating attacks of September 11th have since eliminated any lingering doubts US officials might have had about the primacy of Bin Laden and Al-Qaeda’s threat and underscored the necessity of identifying *specific* threats.⁸⁵ “While we often talk of two trends in terrorism—state-supported and independent—in Bin Laden’s case with the Taliban we had something completely new: a *terrorist* sponsoring a *state*,” Tenet told a congressional panel.⁸⁶

The dislodging of Bin Laden’s Taliban patrons from power in Afghanistan and the killing or capture of several key Al-Qaeda leaders in that country and elsewhere have dealt a heavy blow to Al-Qaeda’s operational capabilities. According to terrorism expert Peter Bergen, less than a dozen Americans have been killed by Al-Qaeda in the 18-month period after September 11th. Moreover, following the March 2003 capture of senior Al-Qaeda leader Khalid Shaykh Mohammed, believed to be the mastermind of the September 11th attacks, US intelligence officials indicated that the demise of Al-Qaeda’s top leadership may be imminent.⁸⁷ However, Osama bin Laden, along with his top lieutenant Ayman Al-Zawahiri, remain at large, suggesting Al-Qaeda’s principal source of guidance, legitimacy and financing remains intact. Meanwhile, terrorism experts believe the network, which continues to adapt to changes in its operational environment, has already become more decentralized and dependent on local initiatives.

2. Foreign Terrorist Organizations

Since the mid-1990s, US policymakers have regarded individual terrorist organizations, rather than merely states who sponsor them, as a direct threat to American interests. The State Department formally began designating “foreign terrorist organizations” (FTOs) in 1997 as a means of “curtailing support for terrorist activities and pressuring groups to get out of the terrorism business.” The State Department list, which is issued every two years and periodically updated, currently names 36 organizations as FTOs.⁸⁸ With the exception of Al-Qaeda and its affiliates, however, the ability of most terrorist organizations to threaten the United States are limited by geographic, operational, and strategic constraints, largely due to their dependence on state sponsors, who provide political, financial, and military sustenance.

⁸⁴ Testimony of Louis J. Freeh, Director, Federal Bureau of Investigation, United States Senate. Committees on Appropriations, Armed Services, and Select Committee on Intelligence, *Hearings on the Threat of Terrorism to the United States*, 10 May 2001.

⁸⁵ See testimony of Vincent Cannistraro, Former Chief of Counterterrorism Operations, Central Intelligence Agency, US House of Representatives. Committee on International Relations, *Hearings on Al-Qaeda and the Global Reach of Terrorism*, 3 October 2001.

⁸⁶ Testimony of George Tenet, Director of Central Intelligence, US Congress. Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Intelligence Committee Inquiry* 17 October 2002.

⁸⁷ See Dana Priest and Susan Schmidt, “Al Qaeda’s Top Primed To Collapse, US Says,” *Washington Post*, 16 March 2003. On 1 March 2003, Pakistani authorities, aided by US intelligence agents, arrested Mohammed, along with Mustafa Ahmed Al-Hawsawi, believed to have financed the WTC/Pentagon attacks, in Rawalpindi, Pakistan. Mohammed and Al-Hawsawi are the most significant Al-Qaeda operatives to be apprehended since September 2002, when Ramzi Binalshibh, an associate of hijacker Mohamed Atta, was taken into US custody.

⁸⁸ For current FTO designees, see Appendix E.

Two groups in particular—the Islamic Resistance Movement (Hamas) in the Occupied Palestinian Territories and the Lebanese Shi'ite militia Hizbullah, both of which are backed by Syria and Iran—are regularly singled out by US policymakers. Hamas has carried out numerous attacks on Israeli civilians, including a wave of suicide bombings since January 2001. Although American citizens have been killed in these attacks, the US government has not claimed Hamas deliberately targets US citizens or seeks to carry out attacks on American soil. American officials appear to be more preoccupied with Hizbullah, however, and have intensified pressures on both Syria and Iran to reign in the militia, particularly since occupying neighboring Iraq. Hizbullah, which US officials say is responsible for more American deaths than any other group besides Al-Qaeda, is also officially blamed for the 1983 bombings of the US embassy and marine barracks in Beirut, though former senior Reagan Administration officials have questioned that determination.⁸⁹ Nor is Hizbullah's terrorist label necessarily a matter of consensus among senior US policymakers themselves. Commenting on Hizbullah activities in 1998, then-US Ambassador to Lebanon David Satterfield noted, "We make a distinction between resistance and terrorism, and we do not view this resistance as terrorism."

Many nations remain highly skeptical of US terrorist designations. This is reflected in the reluctance of nearly all other nations, including US allies in Europe and elsewhere, to designate groups such as Hizbullah and Hamas as "terrorist organizations."⁹⁰ Indeed, the selective character of the FTO list is manifested, not merely by who is on the list—all organizations currently and previously listed as FTOs have undoubtedly engaged in terrorism against civilians—but also by who is not. The State Department, for example, does not confer FTO status on all groups it considers to be terrorist organizations. Along with the 36 groups formally designated as FTOs, the State Department also identifies an additional 38 "terrorist groups", including the Irish Republican Army, Japanese Red Army, Lord's Resistance Army (Uganda), and others, who are not designated as such.⁹¹ To qualify as an FTO, a group must also be deemed to "threaten the security of US nationals or the national security (national defense, foreign relations, or the economic interests) of the United States."⁹²

While this determination indisputably entails genuine security considerations, it is essentially a political exercise, whereby the capacity of particular groups to disrupt—or conversely, reinforce—US policy objectives, along with domestic political interests, are also brought to bear. This was most certainly the case in 1995 when President Clinton first banned financial transactions with "terrorists who threaten to disrupt the Middle East peace process." It

⁸⁹ Former Defense Secretary Caspar Weinberger has said that the government lacks "actual knowledge of who did the bombing." See PBS, "Interview: Caspar Weinberger," *Frontline* (September 2001). Meanwhile, former Reagan Administration legal affairs counselor for the US mission to the UN, David Forte, questioned whether the marine barracks bombing can reasonably be considered a terrorist attack at all: "except for the fact that the driver of the truck bomb did not wear an insignia identifying him as an armed insurgent, his attack against the Marine barracks was probably not illegal under international law since the Marines were dispatched into a civil war and insurgency situation." See David Forte, "Terror and Terrorism: There is a Difference," *Ohio Northern University Law Review*, vol. 13 (1986): 39-51, 41.

⁹⁰ US Department of State, "Dam Cites US-EU Efforts in Financial War on Terrorism," 3 December 2002 <<http://usinfo.state.gov/topical/pol/terror/02120402.htm>>.

⁹¹ US Department of State, Office of International Information Programs, "State Dept. Names 36 Groups as Foreign Terrorist Organizations," 30 April 2003 <<http://usinfo.state.gov/topical/pol/terror/texts/03043004.htm>>.

⁹² See US Department of State, Office of Counterterrorism, "Fact Sheet: Foreign Terrorist Organizations," 30 January 2003 <<http://www.state.gov/s/ct/rls/fs/2003/17067.htm>>.

also was likely the case two years later when President Clinton added the anti-Tehran Mujahidin-e Khalq (MEK a.k.a. the National Council of Resistance of Iran, NCRI) to the terrorist list, it is widely believed, as a gesture to Iran. Ironically, the US government appeared to violate its own designation, not to mention long-standing policy to “strike no deals” with terrorists, when US military forces in Iraq signed a “cease-fire” agreement with the MEK in April 2003.⁹³ The MEK/NCRI, meanwhile, which had received financial backing from Saddam Hussein and was responsible for numerous bombings in Iran, along with the deaths of several Americans, had already been championed by dozens of Congress members for several years.⁹⁴

3. State Sponsors of Terrorism

The State Department currently names seven countries—Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria—as “state sponsors of terrorism,” all of which are subjected to an array economic, political, and diplomatic sanctions. For US policymakers these seven countries do not carry the same weight, either in terms of the threat they are deemed to pose or in terms of the extent to which they are sanctioned. For example, State Department officials have indicated that North Korean and Cuban active support for terrorism has diminished in recent years, and sanctions toward the latter have been greatly reduced. Moreover, Iraq and Iran, and to a lesser extent Libya and Syria, have been most persistently singled out for the sponsorship of terrorist organizations.

“State sponsors of terrorism” currently represent the least potent source of terrorist threats against the United States. That assessment has only recently been downgraded, however. Until the late 1990s, US officials considered “state sponsors” to be the most serious terrorist threat facing the United States, even at a time when a far more tangible and potent terrorist threat was emerging from Al-Qaeda and Bin Laden. Since then, senior US intelligence officials, along with independent terrorism analysts, have acknowledged that the overall threat posed by state sponsors of terrorism, which for nearly two decades had occupied center-stage in US counterterrorism policy, is now significantly diminished.⁹⁵ Officially, the Bush Administration attributes the recent decline in state sponsorship to the Soviet Union’s collapse more than a decade ago. However, it is difficult to ascertain whether that threat has actually declined or has simply been reassessed in light of new threats.

What is known, however, is that “state sponsor” designations quite often involve considerations that have little to do with formal intelligence reviews and threat assessments.

⁹³ Douglas Jehl and Michael Gordon, “American Forces Reach Cease-Fire With Terror Group,” *New York Times*, 29 April 2003.

⁹⁴ Among the group’s most prominent congressional supporters are Reps. Gary Ackerman (D-NY), Ileana Ros-Lehtinen (R-FL), Tom Tancredo (R-CO), some of whom have accepted campaign contributions from representatives of the MEK/NCRI. See also REUTERS, “US opposes dealing with Iranian opposition group,” 4 October 1994; and Sam Dealey, “A Very, Very Bad Bunch: An Iranian group and its surprising American friends,” *The National Review*, 25 March 2002 <<http://www.nationalreview.com/25mar02/dealey032502.shtml>>.

⁹⁵ See testimonies of George J. Tenet, Director of Central Intelligence, US Senate. Select Committee on Intelligence, *Hearings on the Worldwide Threat 2001: National Security in a Changing World*, February 7, 2001; and Oliver “Buck” Revell, Former FBI Associate Director in Charge of Investigative and Counter-Intelligence Operations, US House of Representatives. Committee on International Relations, *Hearings on Al-Qaeda and the Global Reach of Terrorism*, 3 October 2001.

According to one government analysis, “Presence of a country on the ‘terrorism list’ ... may reflect considerations—such as its pursuit of WMD [weapons of mass destruction] or its human rights record or US domestic political considerations—that are largely unrelated to support for international terrorism.”⁹⁶ Iran, most notably, has been consistently singled out as the “principal sponsor of global terrorism.” However, the thaw in relations with Iran that had begun under the Clinton Administration ended in 2001 when the Bush Administration assumed power, but did not result from any change in Iran’s behavior. Nor, for that matter, did Iran’s inclusion in the “axis of evil,” despite its assistance during the US war in Afghanistan.⁹⁷ Since then, the United States has steadily increased its pressure on Iran, including implicit threats of military action.⁹⁸

The list of state sponsors has remained unchanged since 1990. However, following the overthrow of the Iraqi regime in the spring of 2003, Iraq may become the first country in many years to be removed from the “terrorist list” following the overthrow of Saddam Hussein in April 2003, a precedent set two decades earlier, also, ironically, by Iraq. In 1982, during the US “tilt” toward Iraq in its war with Iran, the State Department removed Iraq from the list, despite its active support for the Abu Nidal Organization, Mujahidin-e Khalq (MEK), and other terrorist organizations, only to re-designate Iraq in 1990 following its invasion of Kuwait.

Since then, US officials have continually upgraded assessments that presumed threats posed by Iraqi-sponsored terrorism. This was particularly true during the lead-up to the US invasion of Iraq in the spring of 2003 when US officials made repeated attempts to establish a link between Iraq and Al-Qaeda.⁹⁹ In its April 2003 *Patterns of Global Terrorism* report, for example, the State Department claimed that the presence in Iraq “of several hundred al-Qaeda operatives” was “well documented.” However, no such determinations, or for that matter any reference to Al-Qaeda operating in Iraq, had been made in any of its previous annual assessments. In fact, in its 2001 annual *Patterns of Global Terrorism* report, the State Department had qualified its assessment of Iraqi support for terrorist groups as having its main focus “on dissident Iraqi activity overseas.”¹⁰⁰ Furthermore, prior to September 11th, US intelligence officials were on record as saying that Iraq had not supported anti-Western terrorism since its attempted assassination of former President George Bush in 1993.¹⁰¹

In addition, despite the State Department’s determination that Libya “appears to have curtailed its support for international terrorism,” the country remains subject to special sanctions legislation. The recently renewed Iran-Libya Sanctions Act (ILSA), which extended trade sanctions on countries doing business with either of these nations until the year 2007, owed its

⁹⁶ Rensselaer Lee and Raphael Perl, *Terrorism, the Future, and US Foreign Policy*, CRS Report (October 2002), 5.

⁹⁷ In addition to its offer to aid in search-and-rescue operations for US personnel in Afghanistan, according to Iran analyst Mansoor Ijaz, Iran has provided intelligence on Al-Qaeda sleeper cells through US allies in Europe. See Bob Newman, “Iranian Support in Terror War Debated,” CNSNews.com, 29 November 2002.

⁹⁸ See Reuters, “Military Action On Iran An Option – US Officials,” 20 June 2003.

⁹⁹ Most of these remained tenuous and implausible. In February 2003, for example, Secretary Powell alleged that “Iraq harbors a deadly terrorist network headed by Abu Musab Zarqawi, an associate and collaborator of Osama bin Laden and his al-Qaeda lieutenant” who purportedly operated a terrorist training camp in northeast Iraq. However, the area in question had not been under Saddam Hussein’s control since the end of the 1991 Gulf War.

¹⁰⁰ US Department of State, *Patterns of Global Terrorism* (2001).

¹⁰¹ Michael E. O’Hanlon, “Rumsfeld’s Exaggerations: On the Saddam/Al-Qaeda Link,” *In the National Interest*, 2 October 2002 <<http://www.inthenationalinterest.com/Articles/Vol1Issue4/vol1issue4Ohanlon.html>>.

success in large part to domestic politics. Similarly, State Department testimony in 2000 that there had been no evidence of Syrian involvement in terrorism since 1986 led some Middle East observers to speculate that Syria's inclusion on the list may be tied to progress in Syrian-Israeli peace negotiations.

There are a number of reasons why states may sponsor terrorist organizations of one sort or another. Generally the threats posed by such countries are constrained by the relationship between a particular terrorist organization and its state sponsor, as well as the limited objectives of each party within the context of regional rivalries and balances of power. For most, "sponsorship" affords a number of tactical advantages, primarily as a means for them to pursue parallel military or diplomatic goals by: destabilizing neighboring rivals; pressuring them into making political, economic, or military concessions; or as part of a strategy in conventional or proxy wars. Both Iran and Iraq, for example, throughout their nine-year war, sponsored terrorist organizations based in one another's territories, just as Syria and Israel sponsored various Lebanese militias against one another during their proxy war in Lebanon during the 1980s.

In much the same way, ironically, sponsorship designations also afford certain benefits to the designating government:

The wonderful elasticity of this term means that an adversary can be accused of sponsoring terrorism in some manner, but this accusation need not require evidence of control or even direct communication. . . . Any link, however tenuous, may be used to demonstrate the existence of sponsorship.¹⁰²

The State Department says designating governments as sponsors is "a mechanism for isolating nations that use terrorism as a means of political expression." However, much like FTOs, "state sponsor" designations also serve broader economic, political, and strategic US interests.

4. Terrorism and Weapons of Mass Destruction

The September 11th attacks profoundly altered contemporary attitudes toward terrorism. Not only has the introduction of mass terrorism (by non-state actors) challenged the old conventional wisdom that "terrorists want a lot of people watching, not a lot of people dead,"¹⁰³ the use of non-military commercial technology to carry out the devastating attacks have forever altered standard definitions of what constitutes a weapon. These, coupled with concerns over the proliferation of nuclear and other non-conventional technologies, particularly since the dissolution of the Soviet Union, have heightened US fears that terrorists may soon acquire weapons of mass destruction (WMD).

According to the State Department's Coordinator for Counterterrorism, "Terrorist groups today not only have global reach, but they are actively seeking to acquire and use chemical,

¹⁰² Peter Sederberg, *Terrorist Myths, Illusion, Rhetoric, and Reality* (1989), 113.

¹⁰³ Brian Jenkins, quoted in "Terrorism: An Introduction," *Terrorism Q & A* Council on Foreign Relations (2002) <http://www.terrorismanswers.com/terrorism/introduction_print.html>.

biological, radiological, or nuclear weapons in their campaign.”¹⁰⁴ An unclassified summary of a 1999 CIA National Intelligence Estimate, similarly found that, “Recent trends suggest the likelihood is increasing that a foreign group or individual will conduct a terrorist attack against US interests using chemical agents or toxic industrial chemicals in an attempt to produce a significant number of casualties, damage infrastructure, or create fear among a population.”¹⁰⁵

While the threat of a terrorist attack involving chemical, biological, radiological, or nuclear (CBRN) weapons is real, it nevertheless remains a highly qualified one. Though some have argued that “state sponsors of terrorism,” all of which have known of or suspected chemical, biological, or nuclear weapons programs, represent the most serious threat, many experts maintain, that such countries would be deterred from carrying out or sponsoring a WMD terrorist attack.¹⁰⁶ Not only would such an attack incur certain, severe retaliation, but such governments would also have little interest in ceding such power to groups they seek to control.¹⁰⁷ Meanwhile, there is no credible evidence to suggest that these or other states have supplied terrorists with WMD materials—though the possibility of leakages and illicit transfers of such materials remains.¹⁰⁸ Furthermore, evidence suggests that most traditional terrorist organizations, such as those sponsored by these states, would be dissuaded from inflicting mass casualties for fear of alienating their political bases of support, both governments and public, or incurring massive retaliation by state authorities.¹⁰⁹

The more likely threat of CBRN terrorism would come from clandestine, transnational terrorist organizations not connected to any state sponsor. These stateless sponsors of terrorism have already demonstrated both the capacity and the willingness to inflict massive human and material destruction. Bin Laden and Al-Qaeda, for example, believed to have access to as much as \$300 million, are reportedly attempting to acquire WMD capabilities.

Of all WMD potentialities, the prospect of nuclear terrorism is certainly the most alarming. The technical expertise and knowledge needed to develop an improvised nuclear device is widely available to the public. However, the massive resources, probably in the range of hundreds of millions of dollars, elaborate operational and security infrastructure, and, most importantly, access to tightly controlled weapons-grade radioactive materials required for such a program—are beyond the means of all but a handful of terrorist organizations. A more likely scenario is the possibility of terrorists deliberately releasing radioactive material into the atmosphere, either by detonating a radiological dispersion device (RDD), a conventional explosive used to disperse radioactive material (a “dirty bomb”) or through an attack on a

¹⁰⁴ Ambassador Francis X. Taylor, “The Global War Against Terrorism: The Way Ahead,” Address to the Institute for National Strategic Studies, National Defense University, Washington, D.C., 23 October 2002.

¹⁰⁵ Central Intelligence Agency, National Intelligence Council, *Foreign Missile Developments and the Ballistic Missile Threat to the United States Through 2015* (September 1999)

¹⁰⁶ See Chris Quillen, “State Sponsored WMD Terrorism: A Growing Threat?” Terrorism Research Center (2000)

¹⁰⁷ David Rapaport, “Terrorism and Weapons of the Apocalypse,” *National Security Studies Quarterly* (Summer 1999): 49-67, 59. See also Walter Laquer, “Postmodern Terrorism,” *Foreign Affairs* (Sept/Oct 1996): 24-26.

¹⁰⁸ Rensselaer Lee and Raphael Perl, *Terrorism, the Future, and US Foreign Policy* CRS Report (October 2002), 7.

¹⁰⁹ One comprehensive study, which looked at 900 terrorist incidents involving chemical or biological agents during the past century, found that the majority were carried out by terrorist organizations with little or no political support, such as religious cults or single-issue groups. See interview with Jonathan B. Tucker, “Bioterrorism Is a Low Probability, says Arms Control Expert,” *Biohazard News*, 3 May 2001 <<http://biohazardnews.net/tucker.shtml>>.

nuclear power plant.¹¹⁰ That prospect is all the more sobering in light of reports that Bin Laden's network is actively working to develop a "dirty bomb."

As horrible as such an eventuality would be, according to technical experts, the impact of a "dirty bomb" attack would be far more disruptive, in psychological and social terms, than it would be lethal, with fatalities and serious injuries measured in the tens rather than hundreds or thousands.¹¹¹ On the other hand, since deadly biological and chemical agents are far more accessible and easier to handle than radioactive materials, the likelihood of biological or chemical terrorism is much higher. In addition, precedents in chemical and biological terrorism, such as the release of sarin nerve gas by members of the Japanese cult Aum Shinrikyo in a Tokyo subway in March 1995, and the mailings of anthrax-laced letters by unknown terrorists in late 2001, have already been set.

Given the demonstrated ability of Al-Qaeda and its affiliates to transform conventional weapons, such as the October 2002 bombing of a Bali nightclub that killed more than 180, and even non-weapon technologies, such as the September 11th attacks, into instruments of mass destruction, the threat of a terror attack involving mass casualties and destruction remains very serious. In addition, the US government claims to have retrieved documents from Al-Qaeda facilities in Afghanistan containing information on CBRN materials. Nevertheless, the overall likelihood of a CBRN terror attack with catastrophic results remains low. According to a 2000 report by the General Accounting Office:

some of the public statements intelligence community officials have made about the terrorist CBRN threat do not include important qualifications to the information they present. For example, terrorists would have to overcome significant technical and operational challenges to successfully make and release many chemical or biological agents of sufficient quality and quantity to kill or injure large numbers of people without substantial assistance from a foreign government sponsor. These types of qualifications are important because, without them, policy makers in both the executive or legislative branch may get an exaggerated view of the terrorist CBRN threat.¹¹²

Terrorism experts, meanwhile, emphasize the importance of focusing attention and resources where they are most needed. According to the RAND Corporation's Bruce Hoffman, focus on low-end threats (such as traditional bombings) on the one hand, and high-end threats (CBRN terrorism) on the other, "left a painfully vulnerable gap in our anti-terrorism defenses..." "The lesson here," Hoffman told a congressional panel following September 11th, "is not that we

¹¹⁰ Wayman C. Mullins, *A Sourcebook on Domestic and International Terrorism: An Analysis of Issues, Organizations, Tactics and Responses* (1997), 356. See also US Senate. Committee on Foreign Relations, *Hearings on Dirty Bombs and Basement Nukes: The Terrorist Nuclear Threat*, 6 March 2002.

¹¹¹ Testimony of Dr. Steven E. Koonin, Provost, California Institute of Technology, US Senate. Committee on Foreign Relations, *Hearings on Dirty Bombs and Basement Nukes: The Terrorist Nuclear Threat*, 6 March 2002.

¹¹² US General Accounting Office, *Combating Terrorism: Linking Threats to Strategies and Resources*, 26 July 2000, <<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB55/gaot-nsiad-00-218.pdf>>.

need to be unrealistically omniscient, but rather that we need to consider the entire range of potential attacks and not just those at the extreme end of the technological spectrum.”¹¹³

C. State Terrorism

“There is no such thing as a good terrorist,” declared President Bush before the UN General Assembly in November 2001, adding, “Any government that rejects this principle, trying to pick and choose its terrorist friends, will know the consequences.” Despite the President’s explicitness, US policymakers themselves, both past and present, have not been above “picking and choosing” among terrorists. One of the most conspicuous features of US counterterrorism policy is its identification of terrorism with the identity of the perpetrator, rather than the nature of the act itself.

Specifically, the State Department definition of terrorism recognizes only those acts committed by “subnational groups or clandestine agents,” to the exclusion of all others, including and especially states (or agents of the state) that engage in attacks on civilians. In other words, the US government, as a matter of policy, does not recognize the existence of state terrorism as it is generally understood:

a method of rule whereby some groups of people are victimized with great brutality, and more or less arbitrarily by the state, or state supported actors, so that others who have reason to identify with those murdered, will despair, obey, or comply. Its main instruments are summary arrest and incarceration without trial, torture, political murder, disappearances, and concentration camps.¹¹⁴

Historically, such atrocities have been far more prevalent and lethal—often by several orders of magnitude—than terrorism by dissident groups. Nevertheless, within the framework of US counterterrorism policy, governments may only be held accountable for sponsoring “subnational groups or clandestine agents” who engage in terrorist attacks, but not for directly targeting civilians themselves.

The conspicuous exemption of state terrorism from the purview of counterterrorism policy is not incidental. In the past, various US administrations have supported regimes involved in deliberate and systematic attacks on civilians mainly out of deference to overriding strategic, political, and even ideological concerns. Even since September 11th, notwithstanding the ubiquitous appeals for “moral clarity”, political expediency, rather than moral or legal evaluations, continues to determine the course of US policy.¹¹⁵ The US-backed Northern Alliance, for example, has been accused by human rights groups of having “amassed a deplorable record of attacks on civilians” both before and after it helped wrest control of Afghanistan from the Taliban.¹¹⁶ The same might be said of other governments as well, including

¹¹³ Bruce Hoffman, Vice President, RAND Corporation, “Re-thinking terrorism in light of a war on terrorism,” US House of Representatives Permanent Select Committee on Intelligence, *Hearings on Defining Terrorism and Responding to the Terrorist Threat*, 26 September 2001.

¹¹⁴ Sean K. Anderson and Stephen Sloan, *Historical Dictionary of Terrorism* (2002), 8-9.

¹¹⁵ See, for example, Fareed Zakaria, “This Is Moral Clarity?” *Washington Post*, 5 November 2002.

¹¹⁶ Human Rights Watch, “Military Assistance to the Afghan Opposition,” October 2001 (<http://www.hrw.org/background/asia/afghan-bck1005.htm>)

Colombia, Indonesia, Israel, Russia, Rwanda, Sierra Leone, Sri Lanka, Turkey, other US allies, and others.¹¹⁷

D. International Responses to Terrorism

There are no international treaties or conventions proscribing international terrorism. International attempts to deal with terrorism have generally been limited to international cooperation in law enforcement, the enforcement of bilateral extradition treaties, the adoption of UN resolutions related to specific terrorist acts or situations, and multilateral conventions dealing with particular categories of terrorism, such as acts of air and sea sabotage, hijackings, hostage situations, and the security of nuclear materials. Currently there are twelve international conventions dealing with various aspects of terrorism, all of which the United States is a party to.¹¹⁸

Unlike war crimes, crimes against humanity, and other violations of the rules of armed conflict, terrorism has no legal basis in international law. Beyond the general characterization of terrorism as “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes,” in 1996, the United Nations has been unable to agree on a consensus definition of terrorism. “Without an international standard that defines acts of political terrorism, international law becomes impotent when confronted with terrorist crimes.”¹¹⁹

In the view of many, however, the lack of international consensus on legal definitions of terrorism is neither the result of neglect nor of error, but of deliberate design. According to Abraham Sofaer, former legal adviser to the Department of State (1985-90):

International terrorism is still supported by many nations as a legitimate means of struggle against regimes deemed by them to be colonial, alien, or racist. At the behest of these states, and by the acquiescence of others, international law has been systematically and intentionally fashioned to give special treatment to, or to leave unregulated, those activities that cause and are the source of most acts of international terror.¹²⁰

Conversely—though Sofaer does not concede as much—the same may be said of nations that support terrorism “as a legitimate means of suppression against groups deemed by them to be illegitimate, extremist, or terrorist.” It seems more likely, therefore, that such deficiencies in international law regarding terrorism would be the result of a mutual, though perhaps unspoken, arrangement between states that actively engage in or support state terrorism and those inclined to defend dissident terrorists. Indeed, much of the contention within the United Nations with regard to terrorism is centered on this very question.

¹¹⁷ See Jeffrey Sluka, *Death Squad: The Anthropology of State Terror* (2000); Alexander George, ed., *Western State Terrorism* (1991); and Michael Stohl and George A. Lopez, eds., *Terrible Beyond Endurance? The Foreign Policy of State Terrorism* (1988).

¹¹⁸ See Appendix D.

¹¹⁹ National Interagency Civil Military Institute, “The Foundations of Modern Terrorism,” p. 3.

¹²⁰ Abraham G. Sofaer, “Terrorism and the Law,” in Walter Laquer and Yonah Alexander, eds. *The Terrorism Reader* (1987), 377-78.

Attempts to craft a comprehensive legal framework to deal with international terrorism have met with little success. In the wake of the September 11th attacks, the United Nations revived negotiations on a Comprehensive Convention Against International Terrorism and, in February 2002, a draft was put forward that sought to “define terrorism, urge domestic legislation and the establishment of jurisdiction and to ensure that States parties do not grant asylum to any person involved in a terrorist act.”¹²¹ However, the convention has since stalled amid considerable controversy. Much of the contention surrounding the draft revolves around attempts by Western states to exempt “armed forces ... inasmuch as they are governed by other rules of international law” and the counter desire by several Muslim nations to exempt “parties during an armed conflict, including in situations of foreign occupation ... in conformity with international law” to prevent such groups from being more criminalized under the treaty than a state’s armed forces.¹²² A draft International Convention for the Suppression of Acts of Nuclear Terrorism, also in the works for several years, has stalled for similar reasons.

¹²¹ United Nations Press Release L/2993, 1 February 2002.

¹²² Susan Philipose, “Current Status of the Comprehensive and Nuclear Terrorism Conventions,” Lawyers’ Committee on Nuclear Policy, 12 February 2002, <<http://www.lcnp.org/global/terrorismconvention.htm>>.

SECTION IV

The War on Terrorism

A. Current US Policy

“With the help of 90 nations, we’re tracking terrorist activity; we’re freezing terrorist finances; we’re disrupting terrorist plots; we’re shutting down terrorist camps; we’re on the hunt one person at a time. Many terrorists are now being interrogated. Many terrorists have been killed. We’ve liberated a country,” declared President, Bush summarizing the accomplishments of the first year of the *war on terrorism*.¹²³ Unlike traditional wars, the “war on terrorism,” has no clearly defined theatre of operation or readily identifiable enemy. It is a both a literal war and a metaphorical one—a multi-front campaign involving the mobilization of a vast array of legislative, law enforcement, diplomatic, financial, intelligence, and military resources.

The foundations of US counterterrorism policies have remained essentially unchanged for almost two decades:

First, make no concessions to terrorists and strike no deals; Second, bring terrorists to justice for their crimes; Third, isolate and apply pressure on states that sponsor terrorism to force them to change their behavior; and Fourth, bolster the counterterrorism capabilities of those countries that work with the US and require assistance.¹²⁴

However, terrorism analysts have long lamented the absence of a broader strategic vision to guide such policies. In December 1999, the Gilmore Commission, an advisory panel created by Congress to make policy recommendations on counterterrorism, urged the President to “develop and present to Congress a national strategy to address the threat of domestic terrorism—conventional, cyber, chemical, biological, radiological and nuclear—from the perspectives of deterrence, prevention, preparedness and response within one year of assuming office.”¹²⁵ Two weeks after the attacks, the RAND Corporation’s Bruce Hoffman, told Congress members that September 11th “manifestly underscores the conspicuous absence of a national overarching strategy” to combat terrorism, adding that “the promulgation of a succession of policy documents and presidential decision directives, neither equates to, nor substitutes for” such a strategy.¹²⁶

According to various commentators, the release by the White House of a *National Strategy for Combating Terrorism* in February 2003 has not yet allayed these concerns.¹²⁷ To the previous “succession of policy documents and presidential decision directives” were added new ones, along with various legislative initiatives, department realignments and other procedural matters. The plan articulates the government’s strategic intent to fight terrorists and enumerates several anti-terror goals and objectives.¹²⁸ It did so, however, eighteen months after the war on terrorism had been launched and well after the USA PATRIOT Act, the Homeland Security Act, and other far-reaching anti-terrorism initiatives had already been implemented.

¹²³ President George H.W. Bush, “Remarks on signing the Homeland Security Act of 2002,” 2 December 2002.

¹²⁴ US Department of State, Counterterrorism Office <<http://www.state.gov/s/ct/>>.

¹²⁵ See *First Annual Report to The President and The Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (“Gilmore Commission”), 15 December 1999.

¹²⁶ Testimony of Bruce Hoffman, Vice President, RAND Corporation, “Re-thinking terrorism in light of a war on terrorism,” US House of Representatives. Permanent Select Committee on Intelligence, *Hearings: Defining Terrorism and Responding to the Terrorist Threat*, 26 September 2001.

¹²⁷ See also Laura Blumenfeld, “Former Aide Takes Aim at War on Terror,” *Washington Post*, 16 June 2003.

¹²⁸ See *National Strategy for Combating Terrorism*, February 2003.

B. Legislative Initiatives

1. The USA-PATRIOT Act of 2001

Immediately following the September 11th attacks, the Administration quickly presented Congress with bold new anti-terrorism legislation. After just one month of consideration and little public debate, Congress voted overwhelmingly to adopt the Administration's proposal with few modifications. On 26 October 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA-PATRIOT) Act was signed into law, vastly expanding the federal government law enforcement, intelligence, and financial powers. The USA-PATRIOT Act dramatically increased the government's surveillance powers in all areas by eliminating or reducing previous checks on its authority. The new law also stiffened penalties for new, more broadly defined terrorism-related crimes, including several newly created criminal offenses. In addition, the USA-PATRIOT Act tightened restrictions on the admission of foreigners into the country and extended the period for which non-citizens could be detained without charge.

Critics of the USA-PATRIOT Act argue that the haste with which the law was passed and the lack of debate over many of its more controversial provisions ignored "the system of checks and balances that traditionally safeguards civil liberties in the face of such legislation."¹²⁹ Sen. Russ Feingold (D-WI), the only Senate member to vote against the legislation, described it as a "truly breathtaking expansion of police power." Many also contend that passage of the landmark legislation had more to do with political expediency than with creating the tools to effectively combat terrorism. "The proposal did not represent a careful examination of the failures and deficiencies of the law enforcement and intelligence agencies that led to the attacks," observed the Center for National Security Studies. "Rather, it was a collection of old policies that were taken off the shelf and dressed up as the new powers they needed to combat terrorism."¹³⁰ As one federal law enforcement official concedes, the law represents a "wish list of everything that law-enforcement agencies had in the pipeline before Sept. 11."¹³¹ By May 2003, Philadelphia and Alaska joined 114 other state and local governments across the country in passing resolutions condemning the USA-PATRIOT Act as a threat to constitutional liberties. Meanwhile, more than a hundred Congress members have co-sponsored four separate bills aimed at repealing many of the law's provisions.¹³²

¹²⁹ Electronic Privacy Information Center, "The USA PATRIOT Act," <<http://www.epic.org/privacy/terrorism/usapatriot/>>.

¹³⁰ Center for National Security Studies, "USA Patriot Act," (n.d.) <<http://cnss.gwu.edu/~cnss/patriotact.htm>>.

¹³¹ "Cash Combat," *Insight*, April 1-8, 2002.

¹³² These are: (1) the Surveillance Oversight and Disclosure Act (HR 2429), requiring the Attorney General to "fully inform" Congress before obtaining intelligence orders; (2) the Freedom to Read Protection Act (HR 1157), which restores restrictions on FISA surveillance; (3) the Domestic Surveillance Oversight Act (S 436), mandating greater reporting in investigations involving library records; and (4) the Library and Bookseller Protection Act (S 1158), which bans authorities from viewing the personal information of library and book store patrons.

2. The Homeland Security Act of 2002

The Homeland Security Act was signed into law late November 2002. The mission of the new Homeland Security Department (DHS) is three-fold: prevent terrorist attacks within the United States; reduce the vulnerability of the United States to terrorism; and minimize the damage of potential attacks and natural disasters. The creation of the DHS consolidated twenty-two separate government agencies into a single cabinet-level department—the most radical government restructuring in fifty years. With nearly 170,000 employees and an annual budget of approximately \$37.4 billion, DHS is slated to become the third largest department in the federal government. Structurally, the DHS will consist of four directorates: (1) Border and Transportation Security; (2) Emergency Preparedness and Response; (3) Chemical, Biological, Radiological, and Nuclear Countermeasures; and (4) Information Analysis and Infrastructure Protection.

In addition to combining agencies from other departments, such as the Secret Service, Coast Guard, Customs Service, Immigration and Naturalization Service (INS), Federal Emergency Management Agency (FEMA), the Bureau of Alcohol, Tobacco and Firearms (ATF), and others, the DHS will also share or oversee functions in other departments as well. Among the many changes introduced by the restructuring is the transfer of the INS from the Department of Justice (DOJ) to the DHS and the division of the INS's enforcement and services functions between different sections of the DHS. In addition, the DHS will have authority over the immigration and naturalization functions of diplomatic and consular officers in connection with the granting or denial of visas, a function that will be exercised through the Department of State. The consolidation of the new Department of Homeland Security, whose mandate began on 1 March 2003, will not be fully operational until 30 September 2003.

There is broad congressional and public support for the Homeland Security Department, though very few details were made available to the public during the six months of its debate in Congress. In light of the major intelligence and organizational deficiencies exposed by the September 11th attacks, most observers agree on the need for reform and restructuring. The appointment of a cabinet-level Secretary of Homeland Security subject to Senate confirmation will no doubt give the task of defending American lives and property the high priority and resources it deserves. In addition, the DHS's coordination and information-sharing function could help fill gaps and minimize overlap among various competing and disconnected federal agencies. However, given the sharing of certain functions between DHS and other departments, it remains to be seen how such jurisdictional overlap will work in practice. Critics of the plan also point out that the massive governmental restructuring will have little or no impact on the problems exposed by September 11th, namely the lack of cooperation and intelligence-sharing between the CIA and FBI, neither of which are included in the new Department. Finally, the apparent absence of an overall homeland security strategy is also a source of concern.¹³³

3. “Patriot II”

The Justice Department's latest proposal to grant the federal government even more sweeping powers than those provided by the USA-PATRIOT Act has sparked renewed alarm

¹³³ See Brookings Institution, “Assessing the Homeland Security Department,” Washington, DC (July 2002).

among civil liberties proponents and members of Congress. Despite the leak of a draft of the 86-page bill entitled the Domestic Security Enhancement Act of 2003—dubbed “Patriot II”—by a Washington-based think tank in January 2003, the Justice Department has refused to acknowledge the new anti-terrorism legislation. The proposal would greatly expand the government’s domestic intelligence gathering and surveillance, increase law enforcement prerogatives, and further scale back judicial oversight. Among other things, Patriot II seeks to further expand the government’s authority to carry out Foreign Intelligence Surveillance Act (FISA) surveillance, explicitly authorize secret detentions of individuals “detained in connection with terrorism investigations,” and create a DNA database of “suspected terrorists”—expansively defined to include those associated with a “terrorist organization.” The bill’s most controversial feature is its proposal to strip any American who “becomes a member of, or provides material support to, a group that the United States has designated as a “terrorist organization” of his/her citizenship.¹³⁴

The draft Patriot II has been sharply criticized both for its content and for the secrecy surrounding it. According to a statement by the ACLU, “The new Ashcroft proposal threatens to fundamentally alter the Constitutional protections that allow us to be both safe and free.” Meanwhile, in a letter to Ashcroft from the Ranking Member of the House Judiciary Committee, Congressman John Conyers (D-MI) expressed “profound disappointment about your Department’s handling of anti-terrorism policy” and criticized the Attorney General for “using the war on terrorism as a partisan political tool.” “The Justice Department is waiting to spring this bill on the Congress when the nation once again has endured a terrorist attack or is in the midst of war,” wrote Conyers. Meanwhile, Sen. Patrick Leahy (D-VT) has accused the Justice Department of engaging in a process “shrouded in secrecy, steeped in unilateralism or tinged with partisanship,” and added: “The early signals from the Administration about its intentions for this bill are ominous, and I hope Justice Department officials will change the way they are handling this.”¹³⁵

C. Intelligence

In the wake of the largest security breach that targeted civilians in US history, intelligence officials were criticized for the failure to accurately assess the severity and urgency of the terrorist threat against the United States. In addition, September 11th-related lapses by intelligence and law enforcement officials, which have been widely publicized amid criticisms by Congress and others, revealed deficiencies in information-sharing and exposed serious interagency rivalries between law enforcement and intelligence officials. This has prompted a vigorous debate over the proper functioning of the intelligence community, which consists of fourteen federal agencies and operates on a combined annual budget of \$30 billion. Meanwhile, the FBI’s expanded surveillance powers, along with its reorientation toward prevention of terrorism, will have serious implications for both intelligence-gathering and law enforcement.¹³⁶

¹³⁴ For the full text of the Patriot II draft bill, see Center for Public Integrity <<http://www.dailyrotten.com/source-docs/patriot2draft.html>>.

¹³⁵ Comments Of Senator Patrick Leahy, Ranking Democratic Member, Senate Judiciary Committee, On The Justice Department’s Secrecy In Drafting A Sequel To The USA PATRIOT Act, 10 February 2003 <<http://leahy.senate.gov/press/200302/021003.html>>.

¹³⁶ See US Department of Justice, *Fact Sheet: Shifting from Prosecution to Prevention, Redesigning the Justice Department to Prevent Future Acts of Terrorism*, 29 May 2002.

The FBI and CIA in particular were singled out for failing to connect several key elements of the September 11th plot prior to the attacks. The FBI neglected a July 2001 warning from a Phoenix field agent that individuals with ties to Osama bin Laden were training in American flight schools. The arrest of Zacarias Moussaoui, the assumed “20th hijacker” and who had raised suspicions at a Minneapolis flight school the following month, also did not register with the FBI. Meanwhile, the CIA, which learned in May that Bin Laden’s network was planning an attack on US soil, had warned President Bush in August 2001 about the possibility of a Bin Laden hijacking of US airplanes. In addition, it was later revealed that two of the September 11th hijackers were known to the CIA as Al-Qaeda members two years before the attacks. It also appears that the threat from Al-Qaeda was taken far more seriously by the CIA than the FBI, which identified it primarily as a foreign threat.¹³⁷

Both FBI and CIA officials acknowledged problems in information sharing, accountability, analysis, and other areas exposed by the September 11th attacks.¹³⁸ “The FBI was either asleep or inept, or both,” remarked Sen. Richard Shelby (R-AL) of the Senate Select Committee on Intelligence, adding that they “had failed the American people.”¹³⁹ Others accused the intelligence community of mismanagement and called for the resignation of George Tenet, Director of Central Intelligence.¹⁴⁰ Similar criticisms were echoed throughout Congress’s Joint Inquiry convened June-October 2002 to investigate lapses in pre-September 11th law enforcement and intelligence. Others still cited organizational problems and antiquated structures, particularly those within the CIA, largely unchanged since 1947, and demanded a complete overhaul of the intelligence infrastructure. CIA officials maintain that they “never acquired the level of detail that allowed us to translate our strategic concerns into something we could act on.”¹⁴¹ CIA officials, like their counterparts in law enforcement, blamed the shortcomings on inadequate resources, along with bureaucratic and legal constraints.

What the law enforcement community considered constraints were removed with the passage of the USA-PATRIOT Act and other guidelines for enhanced surveillance. The USA PATRIOT Act expanded the FBI’s surveillance authorities in all areas, including wiretaps, search warrants, pen-trap orders and subpoenas. Law enforcement officials, for instance, could now obtain “roving wiretaps” on several phone numbers used by an individual without having to obtain separate court orders. It also allowed federal law enforcement officials to conduct secret searches of an individual’s property by delaying notification that a search warrant has been obtained for his/her property for “a reasonable period,” which may then be “extended for good cause shown.” The law also amended the Foreign Intelligence Surveillance Act (FISA), adopted in 1978 to delineate how the government could conduct surveillance and searches of foreign

¹³⁷ See Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Intelligence Committee Inquiry* September/October 2002 <<http://intelligence.senate.gov/hr107.htm#October%202002>>.

¹³⁸ See testimonies of Robert S. Mueller, III, Director, Federal Bureau of Investigation, and George J. Tenet, Director of Central Intelligence, US Congress. Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Intelligence Committee Inquiry*, 17 October 2002.

¹³⁹ *Washington Times*, “Agency mishandled pre-September 11 intelligence, ‘failed American people’: Shelby says FBI was ‘asleep or inept, or both,’” 19 May 2002.

¹⁴⁰ As Director of Central Intelligence, Tenet heads not only the CIA but also the other thirteen intelligence agencies.

¹⁴¹ *Reuters*, “CIA Says Al Qaeda as Big a Threat as Pre-Sept. 11,” 17 October 2002.

nationals. The new FISA rules defined “foreign intelligence” more broadly while eliminating the need for law enforcement to demonstrate probable cause of wrongdoing. Moreover, they allow the sharing of information gathered from criminal investigations, such as from grand jury proceedings or wiretaps, with other federal law enforcement, intelligence, immigration, or security agencies, effectively eroding the traditional “wall” between criminal investigations and intelligence gathering.¹⁴²

Much of the criticism directed at the intelligence community involves an understandable need to assess blame in the face of the devastating attacks. However, terrorism expert Bruce Hoffman of the RAND Corporation cautions that it would be “inaccurate if not delusory to write off the tragic events of September 11th simply as an intelligence failure. The problem is more complex and systemic than a deficiency of any single agency or component of our national security structure.”¹⁴³ Moreover, despite the rancorous and often angry criticisms on Capitol Hill, Congress seems to be prepared to give the intelligence establishment the benefit of the doubt. An assessment by the House of Representatives of the pre-September 11th intelligence breakdown concluded that, “The failure of the Intelligence Community (IC) to provide adequate forewarning was affected by resource constraints and a series of questionable management decisions related to funding priorities.”¹⁴⁴

While not all of the blame for September 11th lay with the intelligence community, serious intelligence problems remain. According to terrorism and intelligence analysts, recent reforms do not address fundamental deficiencies in information-sharing and analysis. The intelligence community still lacks adequate human intelligence resources, for example, to effectively deal with terrorist threats. In addition, federal officials have not effectively tapped available resources at the state and local levels. Meanwhile, despite official claims that the two rival agencies have “never worked better together,” interagency enmities between the FBI and CIA were on display in advance of Congress’ Joint Inquiry in mid-2002 as officials from the two agencies engaged in series of finger-pointing and buck-passing leaks against one another.¹⁴⁵ Moreover, many observers continue to express doubts about the FBI’s intelligence-gathering capabilities, as well as its willingness to share information.¹⁴⁶ “The prevailing view continues to

¹⁴² The special, secretive FISA court will grant a warrant, whether the target is a US citizen or foreign national, so long as the purpose of the search is “intelligence” and provided that the sole purpose of the warrant is not to investigate First Amendment protected activities. In May 2002, the FISA court ruled that the Justice Department misled the court in more than 75 applications for secret warrants and effectively shut down the new FISA powers. The FISA court’s ruling was overturned six months later, however, by a federal appellate court, affirming the Justice Department’s expanded surveillance authority under the USA-PATRIOT Act.

¹⁴³ Testimony of Bruce Hoffman, Vice President, RAND Corporation, “Re-thinking terrorism in light of a war on terrorism,” US House of Representatives. Permanent Select Committee on Intelligence, *Hearings: Defining Terrorism and Responding to the Terrorist Threat*, 26 September 2001.

¹⁴⁴ US House of Representatives, Permanent Select Committee on Intelligence, Subcommittee on Terrorism and Homeland Security, *Counterterrorism Intelligence Capabilities and Performance Prior to 9-11: A Report to the Speaker of the House of Representatives and the Minority Leader*, July 2002.

¹⁴⁵ Toby Harnden, “As hearings start, Bush admits rift on Sept 11,” *The Telegraph*, 6 May 2002.

¹⁴⁶ Associated Press, “Lawmaker: FBI not ready to do intelligence work,” 26 May 2002. See also Dana Priest and Susan Schmidt, “9/11 Panel Criticizes Secrecy on Saudi Links: Two Leaders Urge Public Information,” *Washington Post*, 12 December 2002.

be that the ‘Feds’ like to receive information but are reluctant to share completely,” according to one analyst.¹⁴⁷

Despite growing public skepticism, federal officials have continually sought to broaden surveillance powers. In May 2002, Attorney General Ashcroft relaxed Justice Department guidelines to allow FBI officials to more easily obtain wiretap warrants in non-criminal investigations. The new guidelines also made it easier for the FBI to monitor Internet communications and library information as well as infiltrate political groups and religious organizations, including houses of worship. The proposed “Patriot II” bill, meanwhile, would further expand the government’s authority to carry out FISA surveillance, while creating a DNA database of “suspected terrorists”—expansively defined to include anyone “associated” with a terrorist organization.

The introduction of various domestic surveillance programs generally have not been well-received by the public or their elected officials. Widespread public outrage in response to the Justice Department proposed Terrorist Information and Prevention System (TIPS), which would have sought to enlist roughly one million ordinary citizens to watch for “unusual and non-emergency issues” and report them to law enforcement, led it to effectively abandon the project before it started. Meanwhile, another surveillance and data-mining program, the Total Information Awareness (TIA—since renamed “Terrorist Information Awareness”), remains a point of contention. Under the direction of the Pentagon, TIA would create a massive database of information on thousands of persons “of interest,” including which organizations they support, their phone and email communications, Internet, travel, banking, and purchasing habits.¹⁴⁸

The expansion of FBI and other government agencies’ domestic surveillance powers has heightened concerns over violations of privacy and other basic rights. In January 2003, a broad civil liberties coalition, including the American Civil Liberties Union, American Conservative Union, Americans for Tax Reform, Center for National Security Studies, Electronic Privacy Information Center, and others urged the House Armed Services Committee “to act immediately to stop the development of TIA and other similar programs that create massive public surveillance systems. At a time when Americans are calling for more privacy of personal information, this program would provide a backdoor to databases of private information.”¹⁴⁹ Rights advocates also argue that delinking domestic intelligence from criminal investigations encourages law enforcement authorities to focus on political groups—much like they had in the past—turning the war on terrorism into a tool to restrict political dissent.

¹⁴⁷ Statement of Michael A. Wermuth, Senior Policy Analyst, RAND Corporation, National Commission on Terrorist Attacks Upon the United States, *First Public Hearing of the National Commission on Terrorist Attacks Upon the United States*, 1 April 2003.

¹⁴⁸ In response to growing public concern, Pentagon officials have attempted to reassure Congress members that TIA would not be used to spy on US citizens and would use only “data and information that is either (a) foreign intelligence and counter intelligence information legally obtained and usable by the Federal Government under existing law, or (b) wholly synthetic (artificial) data that has been generated, for research purposes only, to resemble and model real-world patterns of behavior.” See US Department of Defense, Defense Advanced Research Projects Agency, *Report to Congress Regarding the Terrorism Information Awareness Program* (20 May 2003).

¹⁴⁹ Letter from the Coalition for Constitutional Liberties to Reps. Duncan Hunter, Chairman and Ike Skelton, Ranking Member, House Committee on Armed Services, 14 January 2003.

The debate over intelligence lapses also highlighted deficiencies at more fundamental levels of threat assessment. The CIA has not conducted a net assessment of the foreign terrorist threat since 1995, for example, nor has it performed a comprehensive National Intelligence Estimate (NIE) on international terrorism that would anticipate future terrorist trends in over a decade. The FBI, meanwhile, has never conducted a comprehensive assessment of the threat posed by terrorists to the United States.¹⁵⁰ In addition to the dangers of basing assessments of terrorist threats on outdated intelligence and analyses, there is concern that formal threat assessments may be compromised by undue political or partisan influences as well. Unlike diplomatic, law enforcement, and even military actions, the inherent secrecy of intelligence work and the indispensability of objective threat assessments have largely insulated the intelligence community from public scrutiny, along with the political pressures that often accompany them.

However, according to Joseph Cirincione, director of the Non-Proliferation Project at the Carnegie Endowment for International Peace, this may no longer be the case:

A major reason why the United States was so unprepared for the terrorist attacks of September 11 is that national threat assessments produced over the past few years have consistently pointed policy-makers in the wrong direction. Partisan political agendas distorted these assessments, and fundamentally misled and misdirected national security resources.¹⁵¹

“Intelligence analysts have learned to give the Congress what they want, while preserving the integrity of the analysis,” explains Cirincione. “What happens is that you get assessments that include all possible worst cases.”¹⁵²

Ongoing problems in intelligence gathering have prompted renewed calls for overhauling domestic intelligence gathering. Some have argued for the creation of a separate domestic intelligence agency similar to the British MI-5 or a “fusion center” to harness domestic intelligence.¹⁵³ Others call for the transformation of the FBI from a law enforcement agency tasked with pursuing and punishing law-breakers, to something more akin to a domestic spy agency. Exactly how this might affect the FBI’s traditional law enforcement functions remains unclear. Whether or not such a transformation is ever formalized, however, the FBI—with its vast new powers and its allocation of unprecedented resources toward predicting and preventing terrorism—has to a significant extent already assumed the role of a domestic intelligence agency.

¹⁵⁰ GAO, *A Review of the Federal Bureau of Investigation’s Counterterrorism Program: Threat Assessment, Strategic Planning, and Resource Management*, September 2002 (Redacted and Declassified).

¹⁵¹ Cirincione’s assessment is based on circumstances surrounding the dramatic reversal of the CIA’s ballistic missile threat assessment in 1999, referred to by one triumphant Congress member as “the largest turnaround ever in the history of the intelligence agency.” Whereas throughout the 1990s the intelligence community had consistently downplayed short-term ballistic missile threats to the United States by “rogue” nations, sustained criticisms by congressional Republicans and foreign governments, particularly Israel, prompted a shift in the missile threat assessment in 1999. See Michael Dobbs, “How Politics Helped Redefine Threat,” *Washington Post*, 14 January 2002. See also Joseph Cirincione, “Intelligence Failure,” *Proliferation Brief*, Carnegie Endowment for International Peace, vol. 5, no.3 (4 March 2002).

¹⁵² Michael Dobbs, “How Politics Helped Redefine Threat,” *Washington Post*, 14 January 2002.

¹⁵³ Scott R. Burnell, “Panel wants domestic anti-terror agency,” *United Press International*, 16 December 2002.

Some intelligence and security analysts agree that the FBI should be turned into an intelligence agency. In December 2002, the Gilmore Commission concluded that “the [FBI’s] longstanding law enforcement tradition and organizational culture persuade us that, even with the best of intentions, the FBI cannot soon be transformed into an organization dedicated to detecting and preventing attacks rather than one dedicated to punishing them,” adding that “even if the FBI could be remade, the panel believes it is important to separate the intelligence collection function from the law enforcement function to avoid the impression that the US is establishing a kind of ‘secret police.’” The panel recommended instead that the President establish a National Counter Terrorism Center (NCTC) to which all domestic intelligence and information gathering responsibilities currently in the FBI, including FISA authority, would be transferred.¹⁵⁴

D. Law Enforcement

The September 11th attacks exposed serious deficiencies in the ability of federal law enforcement authorities to recognize and respond to terrorist threats. The FBI, the lead agency on domestic counterterrorism, was found to have neglected key clues from its own field agents and failed to share pertinent information with the CIA prior to the attacks. As a result, the Justice Department implemented major reforms aimed at enhancing its analytical and information-sharing capabilities, including reorganizing the FBI’s counterterrorism division and vastly expanded its domestic anti-terrorism infrastructure.¹⁵⁵ The most significant of these changes was the FBI’s designation of counterterrorism as its number one priority, which is reflected in the Justice Department’s new emphasis on prevention over prosecution.¹⁵⁶

This brings us to the crux of the matter. What, specifically, is the foundation on which the Justice Department intends to prevent terrorism? While State and Defense take the fight overseas, and the INS is charged with keeping potential or actual terrorists out of the country, the DOJ acts as the last line of defense. While the FBI has an admirable record in rapidly unraveling terrorist attacks that have actually taken place (i.e. both assaults on the World Trade Center, the Oklahoma City bombing), it is now charged with the unenviable task of preventing terrorism. All Americans are united in this goal, and the passage of time since September 11, 2001 has not mitigated its importance. But the assumptions that the Department of Justice are using to

¹⁵⁴ *Fourth Annual Report of the Advisory Panel to Address Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (15 December 2002), 43-44. One month after the release of the Gilmore Commission’s recommendations, President Bush announced the creation of a Terrorist Threat Integration Center (TTIC) aimed at ensuring “that intelligence information from all sources is shared, integrated, and analyzed seamlessly.” Questions remain, however, regarding how TTIC, which began operation on 1 May 2003, will be structured, how its processes will be implemented, and how it will relate to the FBI, DHS, CIA, and other agencies. See statement of Michael A. Wermuth, Senior Policy Analyst, RAND Corporation, National Commission on Terrorist Attacks Upon the United States, 1 April 2003. For information on TTIC, see White House, *Fact Sheet: Strengthening Intelligence to Better Protect America*, 28 January 2003.

¹⁵⁵ Since the attacks, the FBI has doubled the number of anti-terrorism agents and increased the number of Joint Terrorism Task Forces (JTTFs) from 35 to 66. Out of a total current budget of about \$4.2 billion, the actual amount or proportion of the FBI’s budget devoted to counterterrorism has not been made public. A recent GAO report, however, states that from 1995-2002 counterterrorism resources have increased threefold. See GAO, *A Review of the Federal Bureau of Investigation’s Counterterrorism Program: Threat Assessment, Strategic Planning, and Resource Management*, September 2002.

¹⁵⁶ See US Department of Justice, *Fact Sheet: Shifting from Prosecution to Prevention, Redesigning the Justice Department to Prevent Future Acts of Terrorism*, 29 May 2002.

pursue this goal are questionable if not seriously flawed. The first assumption is that an Al-Qaeda sleeper network exists in the United States which is helped or concealed, wittingly or unwittingly, by the broader American Muslim community. Both elements of that assumption are open to question. The second major assumption is that these cells can be discovered and dismantled by a diligent search for and apprehension of Muslims holding radical views, hence the FBI's focus on the "jihad" issue. Even if the first assumption is correct--and the paltry return on the FBI's focus on the American Muslim community in the two years since September 11, 2001 suggests that it is not-- for the second assumption to hold would require a large-scale assault on human rights and civil liberties. The USA-PATRIOT Act and other such measures have provided a limited assault on these civil liberties, but do not allow for a wide enough net to be cast to reliably scoop up an Al-Qaeda sleeper cell. To do that would require a far more systematic, and certainly unconstitutional, approach. Instead we have an erosion of civil liberties that yields little or no actual enhancement of security.

The other and far more profound problem with the second assumption is that a focus on ideological extremists in the American Muslim community is easily circumvented by Al-Qaeda members. Al-Qaeda deliberately recruited men to carry out September 11 who could easily evade any ideological profiling of Muslim radicals. They were clean-shaven, frequented strip clubs, often traveled to Las Vegas, did not regularly attend Mosques, did not receive radical literature, nor did they in any other obvious way expose their true agenda. Other than minimal violations, they did not commit any serious criminal act while in the United States before September 11. The Al-Qaeda agents found after September 11, namely Richard Reid (the would-be airplane "shoe bomber") and Jose Padilla, also could easily have evaded any profiling. In fact, Richard Reid was able to enter Israel on a tourist visa. The ideological approach has the bias of criminalizing thought—a profoundly un-American activity that does not seriously enhance security. This approach also limits the cooperation that law enforcement could potentially enjoy with the American Muslim community. American Muslims will naturally view with suspicion an FBI that holds and acts on the assumptions mentioned. This fundamental philosophical conundrum has not been seriously addressed by the FBI, the Department of Justice, or the Attorney General.

1. Enemy Combatant Designations and Material Witness Statutes

"Enemy combatant" designations are not the only means by which Americans may be detained indefinitely and without charge. Many US citizens have also been detained as "material witnesses," a status typically used to compel reluctant witnesses to testify in criminal proceedings, which nevertheless allows the government to detain individuals for lengthy periods of time without charge. According to the Justice Department, as many as 50 people were being held without charge as material witnesses as of January 2003. About half of these, say rights advocates, have never faced the grand juries before which ostensibly they are to testify.¹⁵⁷ According to the ACLU, the "use of material witness warrants and attorney gag orders has been part of the Justice Department's campaign of detention and secrecy targeting Muslim and Arab

¹⁵⁷ Steve Fainaru and Margot Williams, "Material Witness Law Has Many In Limbo," *Washington Post*, 24 November 2002. See also Timothy Egan, "Terrorism Task Force Detains an American Without Charges," *New York Times*, 4 April 2003; American Civil Liberties Union, "ACLU of Oregon Criticizes Use of Material Witness Law to Detain US Citizen," 3 April 2003.

Americans during the past 18 months.” Justice Department officials reject such claims, however, and Attorney General Ashcroft insists that material witness detentions are “vital to preventing, disrupting or delaying new attacks.”¹⁵⁸

2. Government’s Exaggeration of Successes

Sensationalized allegations have become common features in terrorism-related prosecutions, perhaps as means of bolstering cases that otherwise appear to be built on pretexts. The arrests of individuals connected with Muslim charities accused of involvement in “terrorist financing,” in particular, many of those that had been under investigation for several years prior to September 11th, bare strong signs of politicization. Following the closure of Benevolence International in December 2001, the government accused its director, Enaam Arnaout, of operating the Chicago-based Muslim charity as a financial front “to support al-Qaeda and other groups engaged in armed violence overseas.” Four months later, the government indicted Arnaout on charges of perjury. When a federal judge dismissed the charge, prosecutors brought new perjury charges, until, in October 2002—ten months after the raids on Benevolence—prosecutors finally secured an indictment on conspiracy and racketeering charges. In February 2003, the government dropped terrorism-related charges against Arnaout in exchange for a guilty plea on one count of racketeering (Arnaout admitted illegally diverting Benevolence funds to pay for boots, tents, and other non-lethal supplies for Muslim fighters in Bosnia and Chechnya) and agreeing to “cooperate” with the government.¹⁵⁹

Similar pretexts were used to indict Ghassan Elashi, a Palestinian-American businessman and former head of the Holy Land Foundation (HLF), along with four of his brothers in Dallas. In December 2002, the government charged the Elashi brothers with making “illegal exports,” consisting of used computer supplies, to Syria and Libya and having financial ties with a “designated terrorist,” Musa Abu Marzouk, who is related to the Elashi family through marriage.¹⁶⁰ The offices of Infocom, a software company owned by Ghassan Elashi were raided in September 2001 by 80 agents from the Joint Terrorism Task Force, though no arrests were made and the company continued to operate.¹⁶¹ The Elashi arrests, the culmination of an investigation dating back more than two years, also came one year after a formal request by the Israeli government to close HLF and more than six years of inflammatory allegations by pro-Israel groups.¹⁶² The Attorney General, meanwhile, hailed the Elashi arrests as “the latest in an aggressive campaign to identify, disrupt and destroy the sources of funding that make terrorism

¹⁵⁸ The courts are divided on the legality of detaining “material witnesses” in grand jury proceedings. In October 2002, US District Judge Shira A. Scheindlin in the Southern District of New York ruled they were “an illegitimate use of the statute.” However, Chief Judge Michael B. Mukasey, later opposed that ruling. See Mark Hamblett, “US Attorney Defends Detention of Material Witness for 9/11 Proceeding,” *New York Law Journal*, 11 April 2003.

¹⁵⁹ Much of the government’s case against Arnaout was based largely on accusations that he aided, among others, the Afghan *mujahidin* fighting Soviet occupation in the 1980s—an endeavor also supported by the Reagan and Bush Administrations at the time. See Kim Barker and Laurie Cohen, “Charity chief’s trial to start: Arnaout’s case may be hard sell,” *Chicago Tribune*, 9 February 2003. See also “Indictment cites funding of al-Qaeda,” *New York Times*, 10 October 2002; *United States vs. Enaam Arnaout*, US District Court, Northern District of Illinois, Eastern Division, 9 October 2002 <<http://news.findlaw.com/hdocs/docs/terrorism/usarnaout10902ind.pdf>>.

¹⁶⁰ Abu Marzouk, also named in the indictment, is a leader of the political wing of Hamas.

¹⁶¹ See Marcus Kabel, “FBI denies bias in US raid that shut Qatar Web site,” Reuters, 6 September 2001.

¹⁶² David Jackson, “Timing was everything in Holy Land crackdown,” *Dallas Morning News*, 9 December 2001.

possible.” Nevertheless, five days after the arrest, a federal judge ordered Ghassan Elashi released without bond.

“There has been a fundamental shift in proving whether someone is involved in terrorism,” says Laura K. Donohue of the Stanford University Center for International Security and Cooperation. “We have started to name people as terrorists without them having to have engaged in terrorism or even conspired to have engaged in terrorism.”¹⁶³ Many of the latest arrests, moreover, suggest that law enforcement authorities have begun targeting individuals on the basis of their perceived political and religious beliefs.

The February 2003 arrest of Sami Omar Al-Hussayen, a 34 year-old Saudi computer science student living in Idaho, on charges of visa fraud and making false statements may be one such case of ideological guilt-by-association. Al-Hussayen was arrested ostensibly for failing to disclose his relationship with a Michigan-based Islamic organization for which he provided Internet services on his visa application.¹⁶⁴ The government has not tied either Al-Hussayen or the group for whom he worked to terrorism. Rather, according to court documents, his arrest resulted from the fact that he maintained websites for an organization that the government alleges was engaged in the “dissemination of radical Islamic ideology, the purpose of which was indoctrination, recruitment of members, and the instigation of acts of violence and terrorism.”¹⁶⁵

In a June 2003 case with similar implications, FBI agents arrested eight Muslim men in northern Virginia accused of being a “jihad network” working with the Lashkar-i-Taiba, a Kashmiri separatist group designated by the State Department as a terrorist organization. Among other things, the government accuses the men of conspiring to use paintball games and other tactics to simulate combat “in preparation for violent jihad”, and of gathering “to hear lectures on the righteousness of violent jihad in Kashmir, Chechnya and other places around the world and to watch videotapes of mujahideen engaged in jihad in such locations.”¹⁶⁶ Within a few days of the arrests, however, US District Judge T. Rawles Jones, Jr. cast doubt on the government’s allegations and ordered five of the men released without bond. Remarking on one of those ordered freed, Judge Jones said he considered it inappropriate “to imprison him for what he thought, no matter how much someone else might disagree with him.” According to some legal experts, the ruling may also have broader implications for post-September 11th criminal justice. “It suggests that government can no longer just come in and say the T-word and expect the suspect to be locked up automatically,” observed Georgetown University law professor David Cole.¹⁶⁷

Prosecutors attempted to indirectly associate Mohamed Hussein, a Canadian of Somali descent charged with operating a money transfer business without a license in Boston, with the finances of Al-Qaeda. Upon his conviction of the relatively minor offense, government

¹⁶³ Richard B. Schmitt, Greg Krikorian, Josh Meyer and H.G. Reza, FBI Casts Wide Net to Battle Terrorism, *Los Angeles Times*, 16 March 2003.

¹⁶⁴ US Department of Justice, “Indictments allege illegal financial transfers to Iraq; visa fraud involving assistance to groups that advocate violence,” 26 February 2003.

¹⁶⁵ *United States v. Sami Omar Al-Hussayen*, US District Court, District of Idaho, 26 February 2002.

¹⁶⁶ See Jerry Markon and Susan Schmidt, “Area Muslims Charged With Conspiring With Terrorist Group,” *Washington Post*, 27 June 2003.

¹⁶⁷ See Eric Lichtblai, “4 Terror Suspects Ordered Released Pending Trials,” *New York Times*, 3 July 2003.

prosecutors asked for the maximum six-year jail term. However, US District Judge Robert Keeton, angrily refused to “sentence him as a terrorist,” and chided federal prosecutors for their tactics: “That shocks my conscience that I would even be asked to do that,” said Judge Keeton. “It is plainly not a just and a proper and appropriate and a fair sentence in this case.”¹⁶⁸ Yet, despite even its own insistence that Hussein was never accused of terrorist financing, the Justice Department continues to cite his case by name as evidence that the “fight against terrorist financing is a broad-based effort extending well beyond the al Qaeda network.”¹⁶⁹

These cases demonstrate that federal law enforcement officials have engaged in speculation and the dissemination of innuendo at the expense of the Arab and Muslim communities. Whereas a few judges have demonstrated integrity in the face of intimidation, these tactics have prejudiced jury pools and some judges. Whether such tactics are aimed at capturing headlines, prejudicing judges and juries, or both, such behavior makes the communities accused of crimes vulnerable to unfair hearings and a lack of due process.

3. An Ever-Expanding Net

Long before such high-profile arrests, law enforcement officials had already cast an exceptionally wide net in the search for “terrorists.” Since September 11th, the Justice Department has netted thousands of individuals through ever-expanding campaigns of mass detention, surveillance, list development, and other dragnet tactics. The first and most controversial of these was the mass detention campaign that began in the wake the WTC/Pentagon attacks. Most of the approximately 1,200-1,500 Arab and Muslim immigrant men arrested by the FBI and INS in what the Attorney General later termed a “preventative campaign of arrest and detention” were detained on minor immigration violations.¹⁷⁰ According to the USA-PATRIOT Act, the Attorney General may detain aliens suspected of terrorism for up to seven days, after which they must be placed in removal proceedings, charged, or released. However, the Justice Department has bypassed this provision, by using the immigration system, as well as “material witness” status, to detain hundreds of foreign visitors and residents indefinitely and without charge. Civil rights advocates have accused the government of violating the due process rights of detainees, many of whom were denied access to their lawyers, and of transforming the immigration system into a tool for criminal investigation.¹⁷¹

The Attorney General has rejected such claims and other general criticisms of DOJ policy, arguing that criticisms of the mass arrests “aid terrorists” and “give ammunition to

¹⁶⁸ John Riley, “Taking Liberties: Part 3: A Powerful Weapon: Financial sanctions are popular tool in war on terror,” *Newsday*, 17 September 2002, <<http://www.newsday.com/news/nationworld/nation/ny-usmone172928437sep17,0,7066509.story>>.

¹⁶⁹ See Testimony of Michael Chertoff, Asst. Attorney General, US Department of Justice, US Senate. Committee on Banking, Housing, and Urban Affairs, *Hearings: The Financial War on Terrorism and the Administration’s Implementation of the Anti-Money Laundering Provisions of the USA Patriot Act*, 29 January 2002.

¹⁷⁰ As non-criminal offenses, alleged immigration violators do not have the right to court-appointed legal counsel.

¹⁷¹ See Tom Brune, “Taking Liberties: Part 1: Collateral Damage: Government efforts to prevent future terrorist acts are putting civil liberties at risk, critics say,” *Newsday*, 15 September 2002; and John Riley, “Taking Liberties: Part 4: Held Without Charge: Material witness law puts detainees in legal limbo,” *Newsday*, 18 September 2002.

America's enemies, and pause to America's friends."¹⁷² The government, meanwhile, continues to shroud its mass detention campaign in secrecy by refusing to release the names of those it has detained.¹⁷³ However, a detailed study conducted by the Justice Department's Inspector General found law enforcement officials violated the rights of hundreds of detainees, including "a pattern of physical and verbal abuse" against many.¹⁷⁴ According to the report, many of those detained, some of whom had been picked up arbitrarily or on unsubstantiated tips, were often kept under harsh conditions.¹⁷⁵ The Justice Department, which has not contested the report's findings, nevertheless maintains that its actions were "fully within the law," adding that they "make no apologies for finding every legal way possible to protect the American public from further terrorist attacks."¹⁷⁶

At the same time, law enforcement authorities began conducting a series of interviews with thousands of Arab and Muslim immigrants as a means of gleaning information about possible terrorists and other intelligence. In the fall of 2001, the Justice Department requested that approximately 5,000 Arab and Muslim immigrants submit to "voluntary" interviews with law enforcement officials.¹⁷⁷ Along with questions about terrorist-related activity, interviewees reported being asked about their religious beliefs and practices, social concerns, and even their marriage plans, in addition to being asked to list the names and telephone numbers of their friends, relatives, and other associates in the United States.¹⁷⁸ Claiming the interviews were "valuable sources of information about the would-be terrorists in our midst," Attorney General Ashcroft expanded the program in March 2002 to include 3,000 additional immigrants.¹⁷⁹ In early 2003, as the United States edged closer to war with Iraq, FBI officials embarked upon a plan to interview as many as 50,000 Iraqi nationals as part of an effort to identify potential terrorists, spies, or others who might prove helpful to US war plans.

In January 2002, the Justice Department instructed the INS to locate and deport 314,000 absconders, individuals who have been issued final deportation or removal orders. Names of those identified as part of the "Absconder Apprehension Initiative" were then added to the National Crime Information Center (NCIC) and other criminal databases, starting with 6,000

¹⁷² Testimony of Attorney General John Ashcroft, US Senate. Committee on the Judiciary, *Hearings: Preserving our Freedoms While Defending Against Terrorism*, 6 December 2001.

¹⁷³ On 17 June 2003, the District of Columbia Circuit Court of Appeals upheld the government's authority to withhold the names and other information of those detained on suspicion of involvement in terrorism when it ruled that the courts are "in an extremely poor position to second-guess the executive's judgment in this area of national security." See also "Indefensible Secrecy" (House Editorial), *Washington Post*, 18 June 2003.

¹⁷⁴ See US Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, June 2003, <<http://www.usdoj.gov/oig/special/0603/>>.

¹⁷⁵ See "Fighting Terrorism Fairly" (House Editorial), *New York Times*, 15 June 2001.

¹⁷⁶ US Department of Justice, "Statement of Barbara Comstock, Director of Public Affairs, Regarding the IG's Report on 9/11 Detainees," 2 June 2003.

¹⁷⁷ See US Department of Justice, Office of the Deputy Attorney General, "Guidelines for the Interviews Regarding International Terrorism," 9 November 2001.

¹⁷⁸ Joel Stein, "Just a few questions: The Attorney General wants 5,000 Arabs here to come in for a chat," CNN.com, 3 December 2001, <<http://www.cnn.com/ALLPOLITICS/time/2001/12/10/questions.html>>. See also Anita Ramasastry, "Dagnet Law Enforcement that Won't Work," *Writ* (FindLaw's Legal Commentary), 17 December 2001, <<http://writ.news.findlaw.com/ramasastry/20011217.html>>.

¹⁷⁹ US Department of Justice, "Attorney General Transcript," 20 March 2002 <<http://www.usdoj.gov/ag/speeches/2002/032002agnewsconferenceedvainterviewprojectresultsannouncement.htm>>.

men from “al Qaeda-harboring countries.”¹⁸⁰ NCIC, accessed by police officials millions of times each day, is the nation’s most comprehensive law enforcement database. However, there are no standard criteria for adding or removing names to the massive database, some of which reportedly are based on as little as a neighbor’s accusation.¹⁸¹ In March 2003, the Justice Department eliminated requirements that FBI officials confirm the accuracy and timeliness of information included in NCIC.¹⁸² Similar issues of inefficiency, inaccuracy, and lack of accountability of other government watch lists of “suspected,” “potential,” or “would-be” terrorists, like the Transportation Security Administration’s “No-Fly” list, have led to numerous instances of identity confusion and harassment.¹⁸³

The ad hoc mass detention and intelligence-gathering measures employed in the immediate aftermath of September 11th have since been institutionalized and expanded. The most controversial of these, the INS’s National Security Entry-Exit Registration System (NSEERS), required non-resident males from 20 predominantly Arab or Muslim countries to register with authorities by specific deadlines or face possible deportation. By January 2003, at least 1,200 Arab, Middle Eastern, South Asian, and other foreign men had been detained, with another 2,400 facing deportation as a result of “Special Registration.”¹⁸⁴ This includes the mass detentions of as many as 800 Middle Eastern men and boys in California, arrested in December 2002 when they appeared at immigration facilities to register, many of whom were also denied access to their lawyers. Like previous interviewees, registrants reported being intrusively questioned about personal matters such as their mosque attendance, political affiliations, and views on issues.¹⁸⁵ Meanwhile, the program was harshly criticized by a wide range of legal experts, civil liberties advocates, and others, including a coalition of Muslim, Arab, Iranian, Pakistani, and other immigrant groups who filed a lawsuit against the Justice Department and INS challenging NSEERS.¹⁸⁶

Federal law enforcement officials continue to develop new methods of carrying out large-scale detentions and deportations. Following the official termination of the Special Registration program in April 2003 (two months after the Senate voted to cease its funding) the Department of Homeland Security unveiled a new entry-exit system program, the US Visitor and Immigrant Status Indication Technology system (VISIT), as the successor to NSEERS. In addition, at the start of the Iraq war in March 2003, the Justice Department issued new guidelines allowing federal authorities to detain foreign nationals on immigration violations against whom there is insufficient evidence to hold on criminal charges.¹⁸⁷ The Homeland Security Department’s short-

¹⁸⁰ US Department of Justice, Office of the Deputy Attorney General, “Guidance for Absconder Apprehension Initiative,” 25 January 2002.

¹⁸¹ See Tom Brune, “Taking Liberties: Part 1: Collateral Damage: Government efforts to prevent future terrorist acts are putting civil liberties at risk, critics say,” *Newsday*, 15 September 2002.

¹⁸² See Ted Bridis, “US lifts FBI criminal database checks,” Associated Press, 25 March 2003.

¹⁸³ See Alan Gathright, “No-fly list ensnares innocent travelers,” *San Francisco Chronicle*, 8 June 2003.

¹⁸⁴ See Patrick J. McDonnell, “Nearly 24,000 foreign men register in US,” *Los Angeles Times*, 19 January 2003.

¹⁸⁵ George Lardner Jr., “Registration Program Problems Cited,” *Washington Post*, 20 March 2003.

¹⁸⁶ The Muslim Public Affairs Council (MPAC) mobilized a national campaign to monitor the treatment of foreigners during the registration program at INS facilities. See Muslim Public Affairs Council, “INS Monitoring Continuing in Cities Nationwide,” 4 February 2003, <http://www.mpac.org/home_article_display.aspx?ITEM=392>. See also Traci Hukill, “Safe Haven Turns Hostile,” *AlterNet.org*, 27 March 2003.

¹⁸⁷ Dan Eggen, “Rules on Detention Widened,” *Washington Post*, 20 March 2003.

lived “Operation Liberty Shield,” however, which would have allowed the detention of asylum seekers from 30 Muslim countries for the duration of their processing period, was quietly and inexplicably terminated in April 2003, exactly one month after its launch.

Meanwhile, increased surveillance and ongoing “intelligence investigations” into legitimate political or religious activities have prompted widespread complaints of harassment across the nation and reinforced perceptions that law enforcement counterterrorism efforts are aimed broadly at Arab and Muslim communities as well as political dissidents.¹⁸⁸ FBI director Robert Mueller’s January 2003 directive requiring the Bureau’s field offices to tally the number of mosques in their areas as a means of aiding terror investigations has also raised concerns about religious and ethnic profiling, as have reports that FBI officials are soliciting mosque membership lists.¹⁸⁹ While a June 2003 Justice Department directive officially bans ethnic and racial profiling, the guidelines exempt cases dealing with “national security” and allow “that race and ethnicity may be used in terrorist identification.”¹⁹⁰ Furthermore, the guidelines make no mention of singling out individuals or communities on the basis of religion, implying that profiling based on religious affiliation will be tolerated.

Representatives of Muslim, Arab, and South Asian communities say the cumulative effect of such measures has been to deepen the sense of alienation among community members and fan mistrust of law enforcement. A report by the Illinois Advisory Committee to the US Commission on Civil Rights found that Arab-Americans and Muslims “were far more disturbed by the government’s national interview project of young Arab and Muslim men, the use of secret evidence, and the closure of Islamic charities” than by hate crimes.¹⁹¹ FBI Director Robert Mueller is himself reportedly more uncomfortable with blanket dragnet and profiling policies than many of his superiors, including the Attorney General.¹⁹² Moreover, stressing the importance of “community policing,” FBI officials have placed greater emphasis on outreach to these communities. In March 2003, representatives of the Muslim Public Affairs Council (MPAC), the Arab American Institute (AAI), other community based organizations and the FBI formalized the formation of the first-ever FBI Advisory Committee composed of law enforcement and community based organizations to promote dialogue between law enforcement and Middle Eastern and South Asian groups.¹⁹³ This example of cooperation between law enforcement and affected communities helps bridge the gap of misunderstanding between the two parties and builds a partnership that will help community-based policing.

¹⁸⁸ One Washington-area Middle Eastern-born activist who has advocated on behalf of Palestinian human rights reported being told by a federal agent visiting him for a second time: “When you choose to become an activist, you expose yourself to scrutiny, kind of like becoming a politician.” See also John Mintz, “US Keeps Close Tabs on Muslim Cleric,” *Washington Post*, 1 January 2003; and Hector Castro, “Activists fear terrorism laws will stifle peaceful protest,” *Seattle Post-Intelligencer*, 5 January 2002.

¹⁸⁹ Council on American-Islamic Relations, “FBI request for mosque list condemned: Maryland Islamic society asked for membership list, demand later rescinded,” 20 February 2003.

¹⁹⁰ See US Department of Justice, “Fact Sheet: Racial Profiling,” 17 June 2003. See also American-Arab Anti-Discrimination Committee, “DOJ Racial Profiling Guidelines Not Sufficient,” 18 June 2003.

¹⁹¹ Illinois Advisory Committee to the US Commission on Civil Rights, *Arab and Muslim Civil Rights Issues in the Chicago Metropolitan Area Post-September 11* (May 2003).

¹⁹² Steven Brill, *After: How America Confronted the September 12 Era* (2003), 149.

¹⁹³ Arab American Institute, “FBI Creates First Arab American Advisory Committee,” 28 March 2003. See also “FBI Official Pledges More Outreach to Muslim Community Leaders,” *Washington File*, 10 June 2003.

4. Gauging Success

There is little evidence that the Justice Department's mass detention campaign has resulted in significant law enforcement leads or successfully deterred terrorist activity. According to the Justice Department, 478 foreign nationals "linked to the September 11 investigation" were subsequently deported, and all but a handful of the remaining detainees have either been released or convicted of minor crimes unrelated to terrorism. "The vast majority of the one thousand plus persons 'detained' in the wake of 9-11 did not turn out to be terrorists. They were mostly illegal aliens," wrote FBI Special Agent Coleen Rowley in February 2003. In her public letter to FBI Director Mueller, Special Agent Rowley suggests another motive for the mass arrest campaign:

... after 9-11, Headquarters encouraged more and more detentions for what seem to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism. ... But from what I have observed, particular vigilance may be required to head off undue pressure (including subtle encouragement) to detain or "round up" suspects-particularly those of Arabic origin.¹⁹⁴

Similarly, in his book on post-September 11th America, Steven Brill reports how senior Justice Department officials encouraged FBI and INS agents to round up as many people as possible. "The obvious target was young Muslim men, plain and simple," writes Brill, adding that when other methods had failed, "they were even told to look in the phone book."¹⁹⁵

Despite the Attorney General's claims that Special Registration had resulted in "Hundreds of terrorists and criminals [being] stopped,"¹⁹⁶ legal experts, civil liberties advocates, immigrant groups, and others questioned its effectiveness in deterring terrorism, as well as its motives. According to Juliette Kayyem, Harvard University terrorism expert and former Justice Department attorney:

The pure accumulation of just massive amounts of data is not necessarily helpful, especially for an agency like the INS that already has problems keeping track of things. Basically, what this has become is an immigration sweep. The idea that this has anything to do with security, or is something the government can do to stop terrorism, is absurd...¹⁹⁷

A study conducted by the Migration Policy Institute similarly concluded: "the government's major successes in apprehending terrorists have not come from post-September 11 detentions but

¹⁹⁴ Rowley is the author of another controversial letter to Mueller in May 2002 exposing pre-September 11th FBI lapses. For the complete text of Special Agent Rowley's 26 February 2003 letter, see Appendix F.

¹⁹⁵ Steven Brill, *After: How America Confronted the September 12 Era* (2003), 146.

¹⁹⁶ Testimony of John Ashcroft, Attorney General of the United States, US House of Representatives. Committee on Appropriations, *Hearings: Commerce-Justice-State*, 6 March 2003.

¹⁹⁷ Dan Eggen and Nurith C. Aizenman, "Registration Stirs Panic, Worry: Some Muslim Foreign Nationals Risk Arrest to Meet INS Deadline," *Washington Post*, 10 January 2003.

from other efforts such as international intelligence initiatives, law enforcement cooperation, and information provided by arrests made abroad.”¹⁹⁸

Congress members spanning the ideological spectrum and from both political parties have been increasingly critical of law enforcement conduct since September 11th. In a letter to the Attorney General, Congressman John Conyers (D-MI), along with Senators Ted Kennedy (D-MA) and Russ Feingold (D-WI) called for the immediate suspension of the Special Registration program, describing it as “a component of a second wave of roundups and detentions of Arab and Muslim males disguised as a perfunctory registration requirement.” A growing number of conservative voices, including long-time allies of the Administration, have also expressed alarm at increasing threats to civil liberties. “Are we going to save ourselves from international terrorism in order to deny the fundamental liberties we protect to ourselves?” asked former House Majority Leader Dick Armey (R-TX). “I told the president I thought his Justice Department was out of control.”¹⁹⁹

Lawmakers also criticized the Justice Department, however, for what they perceived to be its overall ineffectiveness in dealing with terrorism. Congress’ Joint Inquiry, convened June-October 2002 to investigate pre-September 11th intelligence and law enforcement failures, underscored US lawmakers’ ongoing frustrations with the bureaucratic inefficiencies and interagency rivalries that continue to plague the FBI and other agencies. Specifically, members of Congress criticized the Justice Department for having little to show for their anti-terrorism efforts. “They still don’t know where the terrorists are, how many are here, what their intentions are, what kind of support network they have,” complained then-chairman of the Senate Intelligence Committee Bob Graham (D-FL) in November 2002. “They have so little to show for their work and we have so little time to take action now.”²⁰⁰ Senior Senate Judiciary Committee members Patrick Leahy (D-VT) and Charles Grassley (R-IA), among others, have echoed these concerns.²⁰¹ Even FBI agents express concerns over FBI preparedness and its ability to deal with new terrorist threats.²⁰²

Ironically, such criticisms were leveled even as Justice Department officials were congratulating themselves over the war on terrorism’s most celebrated successes to date. In late August 2002, in the midst of Congress’ Joint Inquiry, authorities announced the first of four dramatic sets of arrests involving alleged “sleeper cells” and “Al-Qaeda operatives” in Seattle, Buffalo, Portland and Detroit. On August 28, authorities arrested a Seattle man accused of attempting to establish a camp for “violent jihad and jihad training” on behalf of Al-Qaeda. Two weeks later, Joint Terrorism Task Force agents arrested six US-born Yemeni-American men in Lakawanna, New York accusing them of being an Al-Qaeda “sleeper cell,” aiding terrorists and conspiring to make war on the United States. On October 4, the Justice Department said it had “neutralized a suspected terrorist cell on our soil” with the arrests of several Muslim men in

¹⁹⁸ Migration Policy Institute, *America’s Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, June 2003, 13.

¹⁹⁹ See Eric Lichtblau and Adam Liptak, “On Terror and Spying, Ashcroft Expands Reach,” *New York Times*, March 15, 2003; and Mimi Hall, “Armey: Justice ‘out of control,’” *USA Today*, 16 October 2002.

²⁰⁰ “Officials Question FBI Terror Readiness,” *Washington Post*, 12 November 2002.

²⁰¹ “Terror FBI’s Top Job, Says Mueller,” *New York Times*, 2 December 2002.

²⁰² See Appendix F. See also Philip Shenon, “Agent Who Saw 9/11 Lapses Still Faults F.B.I. on Terror,” *New York Times*, 6 March 2003.

Portland and Detroit charged with providing material support to terrorists and illegal possession of firearms in “preparation to fight a jihad.” Attorney General Ashcroft called it “a defining day in America’s war against terrorism.”²⁰³

The Justice Department continues to cite these and other terrorism-related arrests and convictions as evidence that they “are winning the war on terrorism.” The steady stream of high publicity arrests and indictments that began in late 2002 and early 2003—on the heels of Congress’ Joint Inquiry—mostly involve investigations unconnected with Al-Qaeda and many pre-date September 11th by many years. Meanwhile, some have begun to question whether alleged terror plots, such as those in Seattle, Buffalo, Portland and Detroit, actually posed threats as serious as the government initially claimed them to be. “I keep looking for evidence that these men have really planned a terrorist operation in the United States or are sleeper cells waiting to be activated from abroad,” observed Harvard Law professor and former Deputy Attorney General Philip B. Heymann, “but generally I don’t see any.”²⁰⁴

At the same time, confusion over actual numbers of terrorism-related arrests and convictions has made it difficult to gauge the relative success of the domestic war on terrorism.²⁰⁵ For many months after the September 11th attacks, law enforcement authorities did not publicize any terrorism statistics of any kind. By June 2003, the Justice Department would not say how many individuals it has arrested and convicted for terrorism-related offenses, only that 240 individuals have been “charged with crimes uncovered in the course of terrorist investigations,” of whom 129 were subsequently convicted or entered guilty pleas.²⁰⁶ Given law enforcement officials’ reliance on pretextual charges to prosecute suspected terrorists, however, the significance of these figures remains unclear. Moreover, since the Justice Department admits using its new anti-terrorism powers to prosecute individuals for crimes unrelated to terrorism, it is impossible to determine how many of these 129 individuals were actually involved in terrorism-related offenses.²⁰⁷ The matter is further complicated by the large proportion of “terrorism” cases systematically mislabeled by Justice Department officials. According to a January 2003 report by the General Accounting Office, 75% of all “international terrorist” convictions in 2002 were mislabeled.²⁰⁸ The US Attorney’s office in New Jersey alone claimed 62 “international terrorism” cases were prosecuted in 2002, 60 of which involved Middle Eastern students charged with paying others to take their English proficiency exams.²⁰⁹

²⁰³ See also Richard Serrano, “Terror Plots, Not Actions, Go on Trial,” *Los Angeles Times*, 17 March 2003.

²⁰⁴ Tatsha Robertson, “Some doubt strength of US terrorism cases,” *Boston Globe*, 27 May 2003.

²⁰⁵ Justice Department officials did not respond to repeated requests for clarification regarding the number of terrorism-related arrests and convictions, the classification of such cases, and other discrepancies.

²⁰⁶ Opening Remarks of Attorney General John Ashcroft, Justice Department Terrorism Roundtable, Washington, D.C., 4 June 2003.

²⁰⁷ Dan Eggen, “Anti-Terror Power Used Broadly,” *Washington Post*, 21 May 2003.

²⁰⁸ GAO, *Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Conviction Statistics*, January 2003, 13 (GAO-03-266).

²⁰⁹ Mark Fazlollah, “Terrorism statistics inflated in N.J.,” *Philadelphia Inquirer*, 2 March 2003. See also “Reaction of Senator Patrick Leahy to GAO Report on DOJ Terrorism Statistics,” 21 February 2003, <<http://leahy.senate.gov/press/200302/022103.html>>.

5. Law Enforcement's Ideological Litmus Test

The Justice Department has repeatedly sought to widen both the scope and reach of counterterrorism measures by expanding already broad definitions of terrorism.²¹⁰ Unlike other government definitions—including its own definition of domestic terrorism—the FBI's definition of international terrorism does not explicitly mention political motivations, potentially subjecting a number of violent crimes to the severity of anti-terror laws. Immediately after September 11th, the Justice Department sought to expand the definition further by designating a wide range of non-violent criminal activities, such as defacing a government building or launching a computer virus, as “federal terrorism offenses.” Though unsuccessful in including this definition of terrorism in the original USA-PATRIOT Act, the Justice Department's “Patriot II” proposal would establish a similar open-ended definition of terrorism.

More central, however, are the vague and subjective criteria federal law enforcement officials use to identify terrorists and terrorist threats. Since the late 1990s, the FBI has characterized the principal terrorist threat facing the United States as “the radical international jihad movement”—an expression they have defined as “include(ing) a radicalized ideology and agenda for promoting the use of violence against the ‘enemies of Islam’ in order to overthrow all governments which are not ruled by Sharia, or conservative Islamic law.”²¹¹ In addition to being highly vague and subjective, such a characterization appears to be unique to the Justice Department. Neither the State Department nor the CIA, for example, defines terrorist threats in such explicitly religious terms. This is related to another formula standard in terrorism investigations, the rather simplistic assertion that terrorists oppose the United States mainly because they “regarded the United States as an ‘infidel’ because the United States was not governed in a manner consistent with the group's radical interpretation of Islam.”²¹²

Such characterizations are problematic on many counts, not least because they involve a number of assumptions about “jihad,” “Sharia,” and “infidels” that are themselves flawed. More importantly, these complex religious and political concepts are themselves subject to multiple and varied interpretations, an exercise that is well beyond the means and scope of law enforcement. The use of such highly subjective criteria politicizes domestic counterterrorism at its very core. Moreover, it suggests the Justice Department does in fact identify terrorists on the basis of what individuals believe—rather, what law enforcement officials believe they believe—instead of what they do.²¹³ Indeed, the goal of preventing or, more accurately, predicting terrorism almost necessitates that they do so.

²¹⁰ The FBI has two different sets of criteria for international and domestic terrorism. In order for an act to be considered *domestic terrorism*, it must be committed by “a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction.” See Section II.B and Appendix C.

²¹¹ Louis J. Freeh, Director, Federal Bureau of Investigation, United States Senate. Committees on Appropriations, Armed Services, and Select Committee on Intelligence, *Hearings on the Threat of Terrorism to the United States*, 10 May 2001. See also J. T. Caruso, Deputy Executive Assistant Director, Counterterrorism/Counterintelligence, Federal Bureau of Investigation, US House of Representatives. House Subcommittee on National Security, Veterans Affairs, and International Relations, *Hearings on Combating Terrorism*, 21 March 2002.

²¹² See, for instance, *United States v. Usama bin Laden*, US District Court, Southern District of New York, 4 November 1998.

²¹³ See Section II.D.3, “Terrorism as Ideology.”

The establishment of what amounts to an ideological litmus *test* for identifying “potential” and “would be” terrorists is consistent with Justice Department rhetoric and the pattern of recent arrests. In particular, there is the Justice Department’s conspicuous preoccupation with “jihad,” a concept that is not well understood by most non-Muslims, as is often evident in the ubiquitous references to “global jihad,” “jihad training,” “violent jihad,” “jihad-related messages,” and other “jihadisms” that pepper most of its official statements, affidavits, indictments, and terrorism investigations.²¹⁴ Aside from the apparent public relations value of the ominous-sounding, and presumably incriminating “jihad” references, it is unclear what purpose they might serve.

The use of vague and fluid criteria offer little insight into terrorists’ motives or their methods of operation. Nor have they been shown to be effective in identifying terrorists and terrorist threats. FBI officials in Maryland, for example, believed they had stumbled upon elements of the “radical international jihad movement” in the Baltimore apartment of six immigrant Muslim men. After local law enforcement discovered suspicious “jihad writings” in the apartment, FBI officials publicly speculated that the men might belong to an Al-Qaeda “sleeper cell” and had four of the six men detained on minor immigration violations. The case received nationwide media coverage until authorities finally determined that the “suspicious” writings were in fact verses from the Quran.²¹⁵ As one local Muslim leader observed, “Anything the police don’t understand can be called ‘jihad material.’”²¹⁶

E. Financial & Economic Tools

As a key weapon against terrorism, the government has vowed to dry up the sources of terrorist funding. The financial war on terrorism involves a complex array of law enforcement, diplomatic initiatives and intelligence resources including international trade sanctions (multilateral or unilateral), denying access to US capital markets, blocking US-based assets, and other financial and economic tools. Since September 11th, the Treasury Department and other federal law enforcement agencies have mounted an aggressive campaign “to deny terrorist groups access to the international financial system, to impair the ability of terrorists to fundraise, and to expose, isolate and incapacitate the financial networks of terrorists.”²¹⁷ The Treasury Department’s financial war on terrorism parallels the efforts of other federal law enforcement agencies in its overly broad and highly politicized approach to counterterrorism.

²¹⁴ One indictment, for example, incorrectly defines jihad as “an Arabic word meaning ‘holy war,’ in this context, the taking of actions against persons or governments that are deemed to be enemies of a fundamentalist version of Islam, including destruction of property and loss of life.” See *United States v. Ernest James Ujaama*, US District Court, Western District of Washington at Seattle, 28 August 2002 For a discussion of the concept of *jihad* in Islam, see Section I.C.1.

²¹⁵ This is reminiscent of the treatment received by Richard Jewell, wrongly accused by the FBI of bombing Centennial Park during the 1996 Olympics in Atlanta. In addition to being tricked by FBI agents into waiving his right to an attorney, Jewell was pursued relentlessly for three months by FBI officials and the media, to whom law enforcement officials were leaking information about Jewell. See testimony of Richard Jewell, US House of Representatives. Committee on the Judiciary. Subcommittee on Crime, *Hearing on the Activities of the Federal Bureau of Investigation*, 30 July 1997.

²¹⁶ “Cases hint of terrorism, fizzle into the mundane,” *Baltimore Sun*, 19 November 2002.

²¹⁷ US Department of the Treasury.

New anti-terrorism laws and mechanisms in the wake of September 11th have enabled the government to expand both the scope and reach of financial anti-terrorism measures. The Treasury Department inaugurated two new tools to help track terrorist finances among the millions of financial transactions that occur each day. *Operation Green Quest*, launched in October 2001, is a task force combining the efforts of the Customs Service, Internal Revenue Service (IRS), Office of Foreign Asset Control (OFAC), and the Secret Service in order to coordinate investigations of terrorist financing. The goal of OFAC's newly created Foreign Terrorist Asset Tracking Center (FTAT), meanwhile, is to provide domestic law enforcement agencies and foreign governments with intelligence and analysis to help them identify and disrupt sources of terrorist financing.

The USA-PATRIOT Act expanded the government's authority to regulate US financial institutions' relations with foreign entities, and enlisted them in the fight against terror by encouraging them to disclose information about "suspicious" transactions to law enforcement. More importantly, the law made it easier for law enforcement authorities to act against those they suspect of involvement in terrorism. It created new criminal offenses by broadening the definition of money-laundering, criminalizing the smuggling of large amounts of cash, and requiring money transfer businesses to obtain licenses from the Treasury Department. The USA-PATRIOT Act also broadened the "material support" provisions established by AEDPA in 1996 to include all those who provide "monetary instruments" or "expert advice or assistance" to designated terrorists.²¹⁸ In addition, it expanded the government's authority to seize the assets beyond those believed to be involved in terrorism to include any individual or group "under investigation" as well.

The Treasury Department also maintains an expansive list of hundreds of individuals and entities, drawn from lists provided by the State Department, FBI, CIA and other intelligence agencies, specially designated as terrorist and whose assets are to be blocked. President Bush's September 23, 2001 executive order naming 27 entities connected to Osama bin Laden and Al-Qaeda as "specially designated global terrorists" (SDGTs) prohibited financial transactions not only with the named entities, but with all those who "support or otherwise associate" with them as well.²¹⁹ Based on the order, OFAC issued instructions to some 5,000 banks nationwide to immediately halt transactions of all entities on the list and provide federal investigators with any information they had on those entities. Since then, the President has periodically made additional terrorist designations, which are then added to the Treasury Department's list of "Specially Designated Nationals" (SDNs).²²⁰

The government's ability to unilaterally designate and block the assets of those whom it suspects or accuses of having connections to terrorists allows it to close businesses and accuse

²¹⁸ For more on AEDPA, see Section III.A.

²¹⁹ George W. Bush, *Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism*, Executive Order 13224, 23 September 2001. The list built on previous designations made by President Clinton in January 1995 (E.O. 12947) and August 1998 (E.O. 13099) authorized under the International Emergency Economic Powers Act (IEEPA).
<<http://www.whitehouse.gov/news/releases/2001/09/20010924-1.html>>.

²²⁰ For a complete listing of Treasury Department SDNs, see Office of Foreign Assets Control, "Alphabetical Listing of Specially Designated Nationals and Blocked Persons,"
<<http://www.treas.gov/offices/enforcement/ofac/sdn/sdnlist.txt>>.

individuals, without having to prove a link to terrorism in court. This has been an especially powerful instrument in the “war on terror”—and one that appears increasingly targeted at Muslims and Islamic institutions. In December 2001, government agents raided the offices of the Holy Land Foundation for Relief and Development (HLF), the Global Relief Foundation and the Benevolence International Foundation. The government accused Global Relief and Benevolence of serving as “fronts” for financing Al-Qaeda, while alleging the “primary purpose” of HLF was “to fund Hamas.” Despite the seriousness of the allegations, no criminal charges were filed against Global Relief and BIF until many months after they were closed, had their assets frozen, and were designated “terrorist organizations.” To date, no charges whatsoever have been filed against the Holy Land Foundation.

HLF’s closure did not result in any arrests until one year later when its former director Ghassan Elashi was arrested, along with four of his brothers, on charges of making “illegal exports” and other offenses not related to HLF or terrorism.²²¹ Moreover, federal prosecutors dropped terrorism charges against Benevolence’s Enaam Arnaout, forcing them to downgrade their claim from “supporting Al-Qaeda” to “victimizing well-intentioned donors,” following an agreement in which Arnaout pled guilty to one count of racketeering.²²² Former Global Relief chairman Rabih Haddad, arrested for overstaying his visa in December 2001,²²³ has not been charged with a crime and was in detention on the basis of secret evidence and finally deported on July 15, 2003. All three Muslim charities have filed lawsuits against the government challenging the “terrorist” designations and blocking orders against them. Though the courts have typically shown deference to the executive branch in matters of declared “national security,” these cases could have broad implications with regard to the legality of such designations.²²⁴ The charities have argued that this governmental power violates the constitutional presumption of innocence and the right to due process.

Law enforcement officials have not proven their allegations of terrorist financing against the three Muslim charities, primarily because they are not required to do so. The current system largely relieves law enforcement authorities of the burden of having to prove actual involvement in terrorism or terrorist financing prior to taking action against them. The government’s broad interpretation of statutory provisions banning “material support” for terrorists allow it to prosecute nearly any person—regardless of whether the individual has knowledge or intent of terrorist involvement—coming into contact or conducting a transaction with a person or group designated by the government as terrorist.²²⁵ Moreover, the government is not required to show probable cause of wrongdoing or even seek the permission of a magistrate in order to make the “terrorist” designation and seize an individual’s or group’s assets. Nor is the government required to notify designees prior to—or even after—listing them.

²²¹ For additional information on the Arnaout and Elashi cases, see Section IV.D.1.

²²² “Muslim charity head admits sending funds to militants ahead of trial,” *Agence France Presse*, 10 February 2003

²²³ At the time of Haddad’s arrest, a Secret Service agent defaced a prayer calendar in his home with the words “Islam is evil, Christ is True.” The Treasury Department later suspended the agent for six months without pay.

²²⁴ In June 2002, California US District Judge Robert Takasugi ruled government designations of Foreign Terrorist Organizations (FTOs), as prescribed by AEDPA (1996), were “unconstitutional on its face.” That ruling, however, was contradicted days later by the conviction of a North Carolina man of providing “material support” to Hizbullah.

²²⁴ See Eric Lichtblau, “Statute Becomes Justice Department’s Weapon of Choice,” *New York Times*, 6 April 2003. See also Neely Tucker, “Muslim Charity Fights Closure,” *Washington Post*, 23 April 2003.

²²⁵ See Eric Lichtblau, “Statute Becomes Justice Department’s Weapon of Choice,” *New York Times*, 6 April 2003.

The president has sole prerogative to add or remove names from the list of designated “terrorists,” the criteria for which are not publicly known. The vague language of the President’s executive order, meanwhile, allows the government to block the assets of those who “support or otherwise associate with” individuals or groups designated as terrorists, even if they are unaware of the designated party’s alleged terrorist connection. “It is an extraordinary power,” notes Douglas Cassell, head of the International Center for Human Rights Law at Northwestern University law school. “It turns around the ordinary order—freeze first, then a hearing, and the target bears the burden of proof. And it does so in a situation where one’s honor is injured and one of the most fundamental rights in the American Constitution is at issue—the right to property.”²²⁶

Once so named, there is no mechanism by which to challenge the “terrorist” designation, as Liban Hussein, a Canadian citizen of Somali origin, learned in November 2001. Hussein was accused by US officials of using his family’s money-transfer business in Boston to fund Al-Qaeda and named by President Bush as “specially designated global terrorist” The US government seized about \$1 million, mostly in small wire transfers sent by Somali immigrants to relatives back home. Canadian authorities arrested Hussein, who was to be extradited pending supporting evidence. In June 2002, however, Canadian authorities reversed their decision. A spokesman for the Canadian Justice Ministry explained, “We looked at the evidence and then it became clear there was no evidence.” Even after intense pressure from the Canadian authorities, US officials only reluctantly removed Hussein’s name from the list. In the meantime, Hussein and his family have been financially ruined.²²⁷

Even when no formal terrorist designations are made, individuals and groups may still be susceptible to the blunt instruments of the financial war on terrorism. The March 2002 raids by US Customs agents on fourteen Muslim homes, businesses, and religious, charitable and educational organizations in Virginia and Georgia, including some of the most respected Muslim leaders and organizations in the country, seemed to confirm the worst fears of the American Muslim community. While no arrests were made, federal law enforcement officials claimed the raids were part of investigations into alleged financial support for groups associated with the Palestinian Islamic Jihad and Hamas. Among the groups raided was an educational institute responsible for training Muslim chaplains for service in the US military and an Islamic elementary school.²²⁸ Several individuals who were raided complained of mistreatment by federal agents. Muslim leaders, meanwhile, blamed the raids on overzealous law enforcement acting on flawed information. A joint statement by national Muslim organizations decried the raids as a “fishing expedition,” while the Arab American Institute declared that, “Fear and confusion now prevail in our communities and many believe the government has plans to punish

²²⁶ John Riley, “Taking Liberties: Part 3: A Powerful Weapon: Financial sanctions are popular tool in war on terror,” *Newsday*, 17 September 2002, <<http://www.newsday.com/news/nationworld/nation/ny-usmone172928437sep17,0,7066509.story>>.

²²⁷ John Riley, “Taking Liberties: Part 3: A Powerful Weapon: Financial sanctions are popular tool in war on terror,” *Newsday*, 17 September 2002, <<http://www.newsday.com/news/nationworld/nation/ny-usmone172928437sep17,0,7066509.story>>.

²²⁸ See Rosalind Helderman, “N.Va. Muslims Gather to Decry Raids,” *Washington Post*, 26 March 2002.

all Muslim organizations without clearly establishing a credible link to an ongoing criminal investigation.”²²⁹

The February 2003 arrests of four New York men, including one US citizen, for sending unlicensed humanitarian assistance to Iraq, raised new questions about the motives and priorities of law enforcement officials tasked primarily with halting terrorist finances. The men are accused of transferring approximately \$2.7 million to Iraq through a charity called Help the Needy without the requisite license from the Treasury Department authorizing financial transactions involving countries subject to US trade sanctions. While they have not been accused of involvement in terrorism, Attorney General Ashcroft’s statement following the arrests suggests the case may serve another purpose: “As President Bush leads an international coalition to end Saddam Hussein’s tyranny and support for terror, the Justice Department will see that individuals within our borders cannot undermine these efforts.” Meanwhile, other individuals and humanitarian aid organizations that have provided unlicensed humanitarian assistance, including making illicit trips to Iraq for many years, have never faced prosecution or arrest.²³⁰

Government actions against Muslim institutions, particularly the simultaneous closures of three of the country’s largest American Muslim charities, have adversely impacted the Muslim community, both practically and psychologically.²³¹ The seizures of Muslim charitable funds were during the month of Ramadan at the height of annual Muslim charitable giving. The disruption of charitable donations, considered a central religious obligation for Muslims, effectively eliminated close to \$20 million in annual humanitarian aid for Palestinians, Kosovars, Chechens, and others affected by war and other disastrous conditions. The measures also had a discernable “chilling effect” on charitable giving in the Muslim community, reducing formal contributions to traditional religious and humanitarian causes by as much as 20 percent.²³²

The “chill” has spread to many non-Muslims charitable and financial institutions as well, some of which have dissociated themselves from Muslims or Islamic institutions altogether. The December 2001 closures of Muslim charities led one of the nation’s largest public charities, Fidelity Investments’ Charitable Gift Fund, to block donations to any of the major Muslim relief groups still operating in the United States.²³³ Likewise, the Boston-based Fleet Bank, among the largest financial holding companies in the United States, reportedly closed the accounts of a Muslim mosque, school, and several individuals without explanation.²³⁴ Even Muslim charity drives at the local community level report significant reductions in corporate sponsorship as a result of the highly charged atmosphere. “The corporations are afraid to donate,” observed one

²²⁹ AAI Alert, “Treasury Department Must Address Overzealous Raids,” Arab American Institute, 29 March 2002.

²³⁰ See Renee K. Gadoua, “Other groups helping in Iraq not prosecuted,” *Syracuse Post-Standard*, 7 March 2003.

²³¹ See Testimony of Salam Al-Marayati, Executive Director, Muslim Public Affairs Council, US Senate.

Committee on the Judiciary, *Hearings: An Assessment of the Tools Needed to Fight the Financing of Terrorism*, 20 November 2002.

²³² Ian Wilhelm, “Muslim Charities Accuse Government of Harming Their Fund Raising,” *Chronicle on Philanthropy*, 9 January 2003. See also “In US, Muslims Alter Their Giving: Those Observing Islamic Tenet Want to Aid Poor but Fear Persecution,” *Washington Post*, 7 December 2002. Laurie Goodstein, “Muslims Hesitating on Gifts as US Scrutinizes Charities,” *New York Times*, 17 April 2003.

²³³ Philip Shenon and Neil A. Lewis, “Large Charity Blocks Funds To Several Islamic Groups,” *New York Times*, 7 December 2001.

²³⁴ Muslim American Society, “Fleet Bank Challenged over Shuttered Muslim Accounts,” 1 April 2003.

local organizer in Florida. “Afraid Ashcroft will knock on their door and call them terrorist because they give to a Muslim charity.”²³⁵

Internationally, the United States has placed considerable emphasis on ensuring that other countries comply with new guidelines, adopted in the wake of September 11th, aimed at denying terrorists access to the world financial system. For example, UN Security Council Resolution 1373 requires member states to report the actions they have taken to block terrorist finances to the United Nations. In addition, the Financial Action Task Force, a 29-member intergovernmental body established to combat international money laundering, expanded its mission in October 2001 to focus on restricting the international flow of terrorist funds.

The record on international cooperation in the financial war on terror, meanwhile, is mixed. Officially, the White House claims that it is pleased with the level of international cooperation, citing more than 160 countries with blocking orders freezing terrorist assets. Privately, however, senior US officials complain that many countries, including key European and Arab allies, could do more. Many US policymakers, especially those in Congress, continue to express particular concern over Saudi Arabia’s role, with some accusing the Saudis of playing a direct role in terrorist financing.²³⁶ While officials in Riyadh have angrily denied such charges, they concede that lax accounting practices may have led to the misappropriation of tens of millions of dollars in charitable funds over the years. In December 2002, Saudi officials announced new financial controls aimed at tracking the flow of funds in and out of the kingdom more effectively.²³⁷ Despite occasional criticisms by US policymakers, the Bush Administration maintains they are generally pleased with Saudi cooperation in the war on terror, a matter that is likely to remain highly politicized.²³⁸

Meanwhile, America’s Arab and European allies continue to express serious reservations about expanding the fight against terrorist financing beyond Al-Qaeda and those responsible for the September 11th attacks.²³⁹ In many cases, foreign governments have requested additional proof from domestic law enforcement officials before acting against individuals and groups designated by the United States. Meanwhile, Arab states question Washington’s list of designated pro-Palestinian groups and humanitarian organizations. It is clear that the current terrorist threat to the US emanates from Al-Qaeda and not Palestinian groups. There is no evidence that Palestinian groups designated as terrorist organizations have any connections to Al-Qaeda. Yet the preoccupation with these groups raises the question as to whether targeting Palestinian groups serves true national security interests or is based on political considerations.

Moreover, European resistance to US pressure to designate groups such as Hizbullah and Hamas as “terrorist organizations,” a source of frustration for Administration officials, reflects

²³⁵ Babita Persaud, “Mood cautious at Muslim fest,” *St. Petersburg Times*, 31 March 2003.

²³⁶ Dana Priest and Susan Schmidt, “9/11 Panel Criticizes Secrecy on Saudi Links: Two Leaders Urge Public Information,” *Washington Post*, 12 December 2002.

²³⁷ See “Charity and Terror: A fresh crackdown on Saudi money as Riyadh admits royal funds were misspent,” *Newsweek*, 3 December 2002.

²³⁸ See “Democrats attack Bush on terrorism war,” CNN.com, 18 May 2003, <<http://www.cnn.com/2003/ALLPOLITICS/05/18/democrats.terrorism/>>.

²³⁹ “Cash Combat,” *Insight*, April 1-8, 2002.

legal and political differences regarding who may appropriately be designated as terrorist.²⁴⁰ European nations, like most other countries, Western or otherwise, prefer to distinguish between terrorist or criminal activities carried out by members of such groups and their broader political and social functions—a distinction US officials have steadfastly refused to make in the case of Palestinian groups.²⁴¹

In addition to the apparent unresponsiveness of foreign governments to move against US-designated groups, the financial war on terrorism is beset by structural and philosophical problems. Many government officials privately concede efforts to shut down terrorist financing are crippled by intense interagency rivalries, a lack of discipline, and a highly politicized internal culture. Some officials complained that the USA-PATRIOT Act's new requirements on financial institutions were too burdensome and impractical to enforce. Disagreements over which agency ought to lead the war on terrorist financing resulted in significant breakdowns in cooperation between Justice and Treasury Department officials, particularly during the first six months after September 11th.²⁴²

While Administration officials acknowledge such difficulties, they nevertheless maintain that new anti-terror financial measures “are disrupting [terrorists’] ability to plan, operate, and execute attacks.”²⁴³ According to the Treasury Department, the government has blocked approximately \$36.3 million in “assets of terrorist organizations,” while other countries have blocked another \$98 million since September 11th.²⁴⁴ Approximately \$6.3 million of the \$36.3 million is still blocked, of which, according to the Treasury Department, about \$5.5 million is designated as belonging to “ Hamas” and nearly \$700,000 as “Al-Qaeda.”²⁴⁵ While Treasury Department officials have not said from whom these assets were seized, the amounts listed correspond roughly to those seized from the Holy Land Foundation and the combined frozen assets of Benevolence International and Global Relief, respectively. If this is indeed the case, then more than 99 percent of all “terrorist assets” still blocked by the government have been seized from American Muslim charities. Treasury Department officials will not say what proportion of the total \$36.3 million in frozen assets can be directly tied to terrorist activities or groups, as opposed to individuals/groups who “support or otherwise associate with” terrorists, as allowed by the president’s executive order.²⁴⁶

²⁴⁰ US Department of State, “Dam Cites US-EU Efforts in Financial War on Terrorism,” 3 December 2002, <<http://usinfo.state.gov/topical/pol/terror/02120402.htm>>.

²⁴¹ By contrast, American administration have long recognized the distinction between the political and military wings of the Irish Republican Army’s (IRA) resistance movement by recognizing and dealing with Sinn Fein, the political wing of the IRA.

²⁴² “Financial war on terrorism suffers from agency rivalry,” *Los Angeles Times*, 7 April 2002.

²⁴³ Testimony of Kenneth W. Dam, Deputy Secretary, US Department of the Treasury, US House of Representatives. Committee on Financial Services, *Hearings: Terrorist Financing: A Progress Report on Implementation of the USA PATRIOT Act*, 19 September 2002.

²⁴⁴ US Department of the Treasury, 12 April 2003. These figures refer only to assets seized from designated individuals and organizations (SDGTs, SDTs, and FTOs) and not those belonging to “state sponsors,” which total an additional \$3.2 billion approximately.

²⁴⁵ US Department of Treasury, Office of Foreign Assets Control, *Terrorist Assets Report: Annual Report to the Congress on Assets in the United States of Terrorist Countries and International Terrorism Program Designees* (2002), 7.

²⁴⁶ Officials at the Department of the Treasury did not respond to repeated requests for clarification on the issue of the proportion of frozen assets that can be linked directly to the funding of Al-Qaeda activities.

F. Foreign Policy & Diplomacy

The depth of international sympathy and outrage at the September 11th atrocity prompted an unmitigated display of global solidarity with America and, more critically, an unprecedented resolve on the part of the international community to support the US campaign against terrorism. The day after the attacks, the UN Security Council unanimously adopted a binding commitment “to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism.” In addition, both NATO and the Organization of American States (OAS) invoked mutual defense pacts for the first time in their respective histories.²⁴⁷ Even the launch of the Afghanistan war in October 2001 did not trigger many defections from the international coalition against terrorism, as most states recognized the right of the United States to defend itself. As the Bush Administration’s unilateralism became more entrenched and the universal interests of fighting terrorism gave way to specific American strategic and ideological considerations, particularly with regard to American war in Iraq, America’s international standing and the effectiveness of its diplomatic efforts in many parts of the world declined sharply.

1. US Credibility

The first cracks in the international coalition against terrorism began to appear in the weeks and months following the attacks on the WTC and the Pentagon. Many of the world’s leaders were particularly annoyed by the “with us or against us” formula articulated by President Bush in November 2001. Foreign diplomats and politicians argued that such black-and-white assessments denied the complex realities of a world full of gray and opened the door to continual conflict.²⁴⁸ The defining moment in the growing rift between Washington and the rest of the world, however, came when President Bush designated Iran, Iraq, and North Korea as members of an “axis of evil” during his January 2002 State of the Union address.

Reaction to the “axis of evil” speech was swift and widespread, not only in the Middle East and East Asia, but also among America’s closest allies and strategic partners. Foreign governments seemed alarmed as much by the prospect of expanding the “war on terrorism” as by America’s willingness to do so alone. “The international coalition against terror does not provide a basis for doing just anything against anybody—and certainly not by going it alone,” remarked German Foreign Minister Joschka Fischer.²⁴⁹ French Foreign Minister Hubert Vedrine summed up his country’s response to the “axis of evil” rather more bluntly: “Today we are threatened by a simplism that reduces all the problems of the world to the struggle against terrorism and is not properly thought through.”²⁵⁰ Meanwhile, the EU’s external affairs commissioner Chris Patten urged European governments to speak out before the United States went into “unilateralist overdrive.” For their part, Russian leaders also insisted that any use of force against Iraq should have the backing of the international community.

²⁴⁷ Article V of the NATO Charter and the OAS’s Rio Treaty both obligate their respective state parties to consider an attack against a member state as an attack against all.

²⁴⁸ See “‘With or against us’ war irks many UN nations,” *The Christian Science Monitor*, 14 November 2001.

²⁴⁹ BBC News Online, “Germany warns US against unilateralism,” 12 February 2002.

²⁵⁰ “Cracks widen in coalition against terror,” Agence France Presse, 7 February 2002.

Back home, meanwhile, former Secretary of State Madeleine Albright called the President's remarks "a big mistake" and members of Congress, on both sides of the aisle, expressed reservations about the consequences of the "axis of evil" categorizations. In addition, the "axis of evil" exposed an emerging rift between unilateralists and multilateralists at the highest levels of the Bush Administration. Secretary of State Colin Powell, for example, argued that the "axis of evil" "does not mean that we are ready to invade anyone or that we are not willing to engage in dialogue."²⁵¹ On the other hand, increasingly aggressive pronouncements by senior US officials—such as Under Secretary of State John Bolton's charge that Cuba, Libya, and Syria belonged to the "axis of evil" and risked becoming "our targets"—have continued to further define the Administration's posture.²⁵²

American credibility and international standing has been further undermined by the growing perception that the United States is prepared to tolerate human rights abuses, so long as they are meted out in the name of fighting terror. New "alliances of convenience" have been forged with some of the world's most repressive regimes in the name of the war on terrorism. President Islam Karimov of Uzbekistan, for example, a country reportedly with a record of systematic torture and more than 6,000 political and religious prisoners, received \$500 million in foreign aid in 2002 and is now America's closest strategic ally in Central Asia.²⁵³ Meanwhile, Human Rights Watch (HRW) has warned that "the anti-terror campaign led by the United States is inspiring opportunistic attacks on civil liberties around the world."²⁵⁴ American acquiescence to the increasingly repressive tactics against ethnic and political dissidents by such countries as China, Israel, and Russia, has harmed American credibility as well as prospects for peace, most notably in the Middle East.²⁵⁵

Human rights observers also say that America's own violations of international human rights standards in the war on terrorism, have emboldened other countries far less inclined to respect human rights. In December 2002, reports surfaced that US intelligence operatives were "referring" Al-Qaeda and Taliban prisoners in Afghanistan to the security services of countries with documented patterns of abuse.²⁵⁶ In addition, some of those recently released from US custody in Guantanamo Bay, where approximately 600 suspected Taliban and Al-Qaeda "enemy combatants" are still held, reported harsh conditions.²⁵⁷ Responding to these reports in June 2003, the President and the Pentagon "unequivocally rejected the use of any techniques to interrogate suspects that would constitute 'cruel' treatment prohibited by the US Constitution."²⁵⁸

²⁵¹ BBC News Online, "Analysis: The 'axis of evil' debate," 6 February 2002, <<http://news.bbc.co.uk/1/hi/world/americas/1804281.stm>>.

²⁵² BBC News Online, "US expands 'axis of evil,'" 6 May 2002, <<http://news.bbc.co.uk/1/hi/world/americas/1971852.stm>>.

²⁵³ Nick Paton Walsh, "US looks away as new ally tortures Islamists," *The Guardian*, 26 May 2003.

²⁵⁴ See Human Rights Watch, *2002 World Report*, January 2002. See also "We Kill Our Rebels the Israeli Way, Says Russia," *Sydney Morning Herald*, 7 January 2003.

²⁵⁵ See Jackson Diehl, "Parallel Propaganda," *Washington Post*, 15 October 2001.

²⁵⁶ See Dana Priest and Barton Gellman, "US Decries Abuse but Defends Interrogations," *Washington Post*, 26 December 2002. See also Holly Burkhalter, "No to Torture," *Washington Post*, 5 January 2003.

²⁵⁷ Carlotta Gall and Neil A. Lewis, "Tales of Despair from Guantanamo," *New York Times*, 17 June 2003. See also Andrew Gumbel, "America admits suspects died in interrogations," *The Independent*, 7 March 2003.

²⁵⁸ See Human Rights Watch, "Bush Administration Rules Out Using Cruel Treatment to Fight Terrorism," 26 June 2003.

However, reports of US plans to try to possibly execute Guantanamo detainees in secret have sparked renewed criticism and angered some of America's European allies.

2. The role of US Foreign Aid

Though foreign aid continues to be allotted largely on the basis of diplomatic and strategic utility rather than economic or humanitarian need, since September 11th, Administration officials have become increasingly cognizant of the link between socioeconomic and political development and national security. In March 2002, President Bush established the Millennium Challenge Account aimed to increase US development assistance abroad by 50 percent within three years.²⁵⁹ One year later, in May 2003, President Bush declared the United States was committed to battling "plague and starvation and hopeless poverty" with an additional pledge of \$15 billion to combat AIDS/HIV.²⁶⁰ In January 2003, USAID Administrator Andrew Natsios declared that, alongside defense and diplomacy, support for international development had become "one of the three essential components of American foreign policy."²⁶¹ Polls show that a large majority of Americans would support substantial increases in foreign aid to fight terrorism as well.²⁶² Nevertheless, while US officials appear willing to make dramatic changes in America's foreign aid priorities, it remains to be seen if and how such commitments will be met and what impact, if any, this may have on the overall allotment of US foreign assistance.

While US policymakers often stress the importance of promoting human rights and democracy abroad, that sentiment generally is not reflected in America's annual foreign aid package. Despite regular appeals from human rights monitors, the United States has generally resisted tying its annual assistance to particular countries to improvements in human rights standards. In August 2002, however, the Bush Administration announced a rare departure from that policy when it declined to support additional aid to Egypt, the world's second largest US aid recipient, in light of its existing human rights problems. American policymakers have not imposed similar restrictions on other major aid recipients, such as Israel and Colombia, for instance, both of which have been severely criticized for human rights abuses for many years. In raw dollar amounts, the United States, which allocated approximately \$11.4 billion in foreign aid in FY 2003, is currently the world's largest aid donor. However, in relation to the size of its economy, the United States ranks last among the world's wealthiest nations, with just 0.1 percent of its gross national product (GNP) going to foreign assistance programs each year. In fact, current US foreign aid levels stand at less than half of what they were two decades ago.

The US Agency for International Development (USAID) says rather explicitly that "US foreign assistance has always had the twofold purpose of furthering America's foreign policy

²⁵⁹ See "Millennium Challenge Account: A New Compact for Global Development," *Economic Perspectives* (An Electronic Journal of the US Department of State), vol. 8, no. 2 (March 2003) <<http://usinfo.state.gov/journals/ites/0303/ijee/toc.htm>>.

²⁶⁰ See "Bush, hero or hypocrite?" *The Economist*, 29 May 2003.

²⁶¹ Stephen Kaufman, "US Foreign Aid Shares Priority With Defense and Diplomacy, Says Natsios," *Washington File*, 7 January 2003. See also US Agency for International Development, *Foreign Aid in the National Interest: Promoting Freedom, Security, and Opportunity* January 2003 <<http://www.usaid.gov/fani/>>.

²⁶² See "Public Supports Increased Spending to Fight Terrorism, But Not a Net Increase in Defense Budget," Program on International Policy Attitudes (PIPA), 2 August 2002.

interests in expanding democracy and free markets while improving the lives of the citizens of the developing world.”²⁶³ However, this stated goal is not reflected in actual funding priorities. Of the more than \$11 billion in annual US economic and military aid abroad, for instance, nearly half goes to Middle Eastern nations in furtherance of the peace process and other strategic interests in the region. The bulk of this aid, meanwhile—approximately three-quarters for Israel and two-thirds for Egypt—is in the form of military aid. Israel alone, with an annual per capita income of \$14,000 and already the world’s sixteenth wealthiest nation, receives about \$2.7 billion each year, or roughly \$470 per capita in American aid.²⁶⁴ In contrast, all of sub-Saharan Africa, whose combined per capita income stands at about \$1,700 a year, receives about \$1.3 billion annually, or just over \$2 per capita.

3. Growing US Isolation

Rarely has the United States been as isolated in the international community as during the Iraq crisis and ensuing war against Iraq. Four and a half months after the UN Security Council unanimously approved a resolution authorizing the resumption of weapons inspections in Iraq, the Bush Administration formally abandoned the inspections process, as well as diplomatic efforts to resolve the Iraq crisis. Months of intensive diplomatic efforts, including Secretary Powell’s dramatic UN speech in February 2003 outlining Iraq’s alleged noncompliance and support for terrorism could not bridge the diplomatic divide between the United States and most of its allies. Ultimately, the United States failed to clearly win the support of the UN Security Council for the use of force against Iraq.²⁶⁵ On March 19 the United States, backed by British forces launched a military offensive aimed at toppling the regime of Saddam Hussein. The failure of the US Administration to demonstrate any credible links between Iraq and Al-Qaeda, along with the its inability to locate alleged weapons of mass of destruction in Iraq further undermines the administration’s credibility.

4. Why Do They Hate Us?

According to Ahmed Kamal Aboulmagd, a former aide to late Egyptian President Anwar Sadat and leading liberal Arab intellectual, America’s Arab friends have never felt so estranged from the United States. “People in Egypt and many parts of the Arab world used to love America, and now they have a sense of being betrayed, misunderstood, taken lightly,” says Aboulmagd. “And when it comes to the central problem of the Middle East—the Arab-Israeli conflict—we feel that even a minimum of American even-handedness is missing.”²⁶⁶

²⁶³ See also, General Accounting Office, Statement by Benjamin F. Nelson, Director, International Relations and Trade Issues, National Security and International Affairs Division, *International Affairs Budget: Framework for Assessing Relevance, Priority and Efficiency* (30 October 1997).

²⁶⁴ This amount does not include nearly \$2 billion in supplemental appropriations, grants, loan guarantees, and other financial assistance to Israel. See Clyde Mark, *Israel: US Foreign Assistance*, CRS Issue Brief, 6 June 2003.

²⁶⁵ Prior to the outbreak of war, American public opinion was deeply divided, with a majority of Americans opposed to a US strike against Iraq without UN or significant international backing. See Patrick E. Tyler and Janet Elder, “Poll Shows Most Want War Delay,” *New York Times*, 14 February 2003; Alan Elsner, “Polls Show US Support for Iraq War as Soft,” Reuters, 25 February 2003.

²⁶⁶ Susan Sachs, “Egyptian Intellectual Speaks Of the Arab World’s Despair,” *New York Times*, 8 April 2003.

Even before the Iraq crisis, American officials were already acutely aware of the growing resentment toward the United States around the world and the serious challenges this posed to US diplomacy. “How can a man in a cave outcommunicate the world’s leading communication society?” wondered former UN ambassador Richard Holbrooke, echoing the frustrations of many American diplomats and policymakers.²⁶⁷ Largely neglected since the end of the Cold War, public diplomacy has reemerged as a central component of American diplomacy since September 11th, as US policymakers devise bold new initiatives aimed at winning the hearts and minds of global, and particularly Muslim, audiences.²⁶⁸

There are few signs the United States is winning the “war of ideas.” When the State Department launched a \$15 million advertising campaign targeting Muslim nations in October 2002, Muslim audiences were unimpressed. Muslims, both in the United States and overseas, argued that the ad campaign, which focused on American Muslims and their lives in the United States, rather than American foreign policy, missed the point. For its part, Congress has sought to overhaul the entire public diplomacy apparatus in an effort to combat “hate” and “anti-American propaganda”. In the meantime, it has authorized \$30 million for the creation of a Middle East Broadcasting Network in an effort aimed in part at combating “misinformation and hostile propaganda” against the United States.

While it may be tempting for some policymakers to blame anti-American sentiment on “propaganda,” “hate,” and other abstract cultural or psychological influences, evidence suggests that America’s waning popularity has more tangible roots. According to retired Marine Gen. Joseph P. Hoar, the problem in the Muslim world is:

...they do not trust our government. The reason for this is a pattern of behavior perpetrated by the US Government in South Asia and the Middle East over the last 20 years. They believe the US Government has acted unilaterally, sometimes as a bully, and has sometimes used other nations for its own interests and abandoned them when the objective has been achieved. Most importantly, they believe the US has unjustly supported Israel over the legitimate aspirations of the Palestinian people.²⁶⁹

A major survey conducted by the Pew Research Center reaffirmed this view: “True dislike, if not hatred, of America is concentrated in the Muslim nations of the Middle East and in Central Asia, today’s areas of greatest conflict.” Moreover, the Pew study revealed that antipathy toward the United States and disaffection with American unilateralism is considerably more widespread: in addition to Muslim societies, “Images of the US have been tarnished in all types of nations: among longtime NATO allies, in developing countries, [and] in Eastern Europe.”²⁷⁰

²⁶⁷ Quoted in Council on Foreign Relations, *Terrorism: Questions and Answers*, “Public Diplomacy” (n.d.) <<http://www.terrorismanswers.com/responses/diplomacy.html>>.

²⁶⁸ The State Department spends approximately \$1 billion a year on information campaigns, exchange programs, and international broadcasts to influence foreign audiences regarding the United States, its interests, and policy objectives.

²⁶⁹ Testimony of General Joseph P. Hoar, USMC (Ret.), Former Commander in Chief, US Central Command, US Senate. Committee on Armed Services, *Hearings: US policy on Iraq*, 23 September 2002.

²⁷⁰ Pew Research Center, *What the World Thinks in 2002: How Global Publics View: Their Lives, Their Countries, The World, America*, 4 December 2002, 1.

The popular belief that Arabs and Muslims oppose American values—that “they hate us because we are free”—is not consistent with the evidence. An October 2002 poll by Zogby International found that while Arabs had highly unfavorable views of the United States, other western countries such as Canada and France received very favorable ratings, suggesting that antipathy toward the United States is directly related to its policies and not its secular, democratic values.²⁷¹ “Political grievances feed anti-Americanism. A war on terrorism that doesn’t address those grievances won’t change people’s minds about America,” observed Georgetown University professor John Esposito.²⁷² Indeed, in many ways, the opposite appears to be the case: “The frustration and anger Arabs have with America is very real,” notes James Zogby of the Arab American Institute. “They respect [American] values, but Arabs feel we don’t offer those qualities of life to them. America resonates to them not in the values it projects, but in the values it denies.”²⁷³

When asked what political issues most inflame the Muslim world and contribute to anti-American sentiment, most experts on the Muslim world will outline three major issues. The first is employing the rhetoric of “democracy” to explain American actions and the rhetoric of “anti-democracy” to disparage the Muslim world. Simultaneously, American administrations have unfortunately supported a number of dictatorships in the region, turning a blind-eye to human rights abuses within many Muslim nations considered American allies, including Egypt, Saudi Arabia, Jordan and Morocco. It is important to note here that what citizens of these nations want from America is by and large not a military intervention *à la* Iraq, but the full use of American diplomatic pressure to encourage democracy and the linkage of American foreign aid to states’ respect for human rights. The second issue is the unqualified support of Israeli policies that dispossess and brutalize the Palestinians that have marked American policy since the 1967 Arab-Israeli war. Widely-viewed images of the oppression of the largely civilian Palestinian population at the hands of the fourth largest military in the world, armed with American weapons, reinforces the perception that American values of justice and equality do not extend to Arabs and Muslims. Finally, first the sanctions, and now the occupation of Iraq serves as another test case for the evaluation of the gap, if any, between American rhetoric and American actions in the region.

In a world of instantaneous global communication, formal policy statements and diplomatic gestures must also compete with messages emanating from other civic and cultural voices. The message to Muslims, as articulated by the Office of International Information Programs, the nerve center of State Department public diplomacy, is uncharacteristically categorical: “The United States recognizes no such thing as ‘Islamic terrorism.’ The members of al Qaeda are simply terrorists and criminals, nothing more.” On the other hand, the actions directed at domestic Muslim communities, including mass arrests and deportations and the use of inflammatory rhetoric by domestic law enforcement officials, communicates something else entirely.²⁷⁴ Similarly, while President Bush, Secretary Powell, and other senior officials may

²⁷¹ Associated Press, “Arabs dislike US, not democracy - poll,” 31 October 2002.

²⁷² “Some Muslims Fear War on Terrorism Is Aimed at Them,” *Asian Wall Street Journal*, 24 September 2001.

²⁷³ “Arabs Share Same Concerns as Americans, Study Says,” *The Atlanta Journal Constitution*, 9 October 2002. See also James Zogby, *What Arabs Think: Values, Beliefs and Concerns* (2002). <<http://www.usip.org/pubs/specialreports/sr82.html>>.

²⁷⁴ See Section IV.D.

formally reject anti-Muslim sentiments or suggestions that the war on terrorism is directed at Islam itself, individuals and groups closely affiliated with the Administration openly and routinely challenge this view.²⁷⁵ Nor can one deny the impact of the American media, many of which regularly feature anti-Muslim commentaries and misinformation, on perceptions of the United States abroad.

As former US Ambassador to Israel and Egypt, Ned Walker, explains:

It is not just “why do they hate us” but “why do we fear them.” There is a duality here, a very real set of misconceptions on both sides. We cannot effectively address our image overseas, increasing a more positive understanding of our culture and freedoms without first recognizing that we have substantial work to do ourselves in understanding and empathizing with the concerns of others.²⁷⁶

The issue, therefore, has little to do with Bin Laden or any other individual “outcommunicating” the United States, but rather with the fact that what the United States communicates officially does not match what it communicates by other means, namely through its actions and policies. This is to say nothing of what it communicates unofficially, through American domestic policies, mass media, and other means. Ultimately, as the US Advisory Commission on Public Diplomacy recently determined, if the United States wishes to successfully influence foreign audiences, American policymakers will need to listen to foreign voices much more than they have thus far.²⁷⁷

Listening to and utilizing the voices of American Muslims is just as important an objective for American policy-makers. American Muslims are largely composed of individuals and families who made the active decision to immigrate to this country precisely for its freedoms, opportunities, democratic values and fruitful business environment. Therefore, these American Muslims are uniquely qualified to communicate the advantages of living under these conditions to people in the Muslim world, most of whom abhor the conditions of dictatorship under which they live. Moreover, an increase in American Muslims visibly participating in government and policy-making will enhance a feeling of inclusion and enfranchisement among the American Muslim community at large, and as such could speed the assimilation process.

²⁷⁵ See Section I.B. For statements by US officials about Islam and Muslims, see Appendix B.

²⁷⁶ Testimony of Hon. Edward S. Walker, Jr., US House of Representatives. Committee on International Relations. *Hearings: The Message is America: Rethinking Public Diplomacy*, 14 November 2001.

²⁷⁷ “Slick Ads Won’t Sell the US Message to Arabs, Report Warns” *Los Angeles Times*, 19 September 2002.

SECTION V

Recommendations

RECOMMENDATIONS FOR U.S. POLICYMAKERS

GENERAL POLICIES

Defining Terrorism:

- The U.S. Government should adopt a single definition of terrorism to be used by all agencies of the federal government. This definition should not place arbitrary restrictions on either the perpetrators (state or non-state actors) or targets (governments or civilians) of the act.²⁷⁸ Similarly, the U.S. Government should adopt a single set of criteria for the designation of individuals, groups, states and other entities as “terrorist” for use by the Departments of State, Justice, Defense, Treasury and other federal agencies.
- MPAC offers the following definition of terrorism:

“any violent or threat of violent action targeting non-combatants in order to achieve political or military goals.”

Inclusion of American Muslims:

To date, American Muslims have been *de facto* excluded from participating in the development of U.S. counterterrorism policies and from nearly all efforts, both official and unofficial, to develop effective responses to terrorism. Currently, there are no Muslims working on counterterrorism matters in the Departments of Defense, Justice, Homeland Security, State or Treasury.

Various government agencies should intensify their efforts to hire qualified individuals of credible standing from within the American Muslim community. Such individuals, with their understanding of the complex sentiments in the Middle East and their cultural and political sensitivity toward the Muslim world, should be part of substantive policymaking decisions in our government. American Muslims can also serve the crucial role as cultural interpreters between law enforcement and the American Muslim community.

Counterterrorism Strategy:

In order to garner public support, increase grassroots participation in government efforts and clarify our nation’s counterterrorism strategy, the House and Senate should conduct oversight hearings on the White House’s *National Strategy for Combating Terrorism*. Again, the inclusion of members of the American Muslim in such hearings would provide a valuable perspective to the policy makers. Providing a platform for the “usual suspects” of self-appointed terrorism experts with their own political agenda has proven, time and again, to be a fatal mistake.

²⁷⁸ See also U.S. House of Representatives. Permanent Select Committee on Intelligence. Subcommittee on Terrorism and Homeland Security, *Counterterrorism Intelligence Capabilities and Performance Prior to 9-11: A Report to the Speaker of the House of Representatives and the Minority Leader*, July 2002.

ECONOMIC & FINANCIAL

Terrorist Designations/Asset Forfeiture:

Individuals and entities labeled by the President as “specially designated nationals” (SDNs) and “specially designated global terrorists” (SDGTs) currently have no legal means of challenging those classifications. Those so designated are subject to a blocking order that may only be appealed through the designating entity itself, the Department of Treasury. It is worth noting here that Muslim charities have experienced a major drop in their income over the last two years as American Muslims are worried about “guilt by donation,” which is interfering with the Muslim rite of charity giving. Some charities have reported an increase in cash donations, making it more untraceable for government agencies.

- Terrorist designations by the U.S. Government should be made subject to judicial review before a permanent blocking order is rendered. Individuals, groups, and other entities so designated should be afforded the opportunity to appeal the designation before a magistrate (or other independent tribunal).
- The Treasury Department should establish an accreditation agency whose job it is to certify that U.S. charities are in compliance with the guidelines outlined in its recently released “Voluntary Best Practices for US-Based Charities.”
- The Office of Foreign Assets Control (OFAC) should provide simplified lists to community-based organizations, and provide outreach and training that can help community members detect problems. OFAC should also more vigorously market these services to the general public through an establishment of a community outreach office.
- Funds seized by the U.S. Government from Muslim charities as “terrorist assets” should either be returned to the donors or re-directed to their intended recipients abroad through legitimate non-governmental channels. The Government should publicly and repeatedly reassure Muslim donors that they will not be targeted on the basis of good faith donations made to organizations that may be made suspect in the future.

FOREIGN POLICY

America has experienced different forms of domestic terrorism such as acts conducted by the unibomber, Timothy McVeigh and others whose main motivation is the resentment of one or more of the US's domestic policies, whether it is abortion rights, environmental policies, or what they consider the government's abuse of power. Foreign terrorists, on the other hand, are motivated mostly by what they perceive as a fault in US foreign policy and using that to recruit their members and operatives. The following recommendations may be extremely helpful to US foreign policy makers in developing effective policies that can also undermine the spread of terrorists' ideologies and their recruitment efforts.

- United States policymakers and diplomats should pursue a foreign policy that is rooted in the American values of freedom and justice for all. Being perceived as serving the agendas of special-interest groups will only increase anti-American sentiment and create a breeding ground for recruiting terrorists. Countries with citizens who have a high degree of anti-American sentiment will hesitate to help the United States carry out its counterterrorism policies.
- Consensus-based diplomacy is essential to maintaining a broad, inclusive, and effective international coalition against terrorism. The United States should work with UN member states to establish a consensus definition of terrorism.
- The State Department should establish standard criteria for "Foreign Terrorist Organization" (FTO) and "State Sponsors of Terrorism" designations based on U.S. law, existing definitions of terrorism, and international standards, rather than on political considerations.
- To enhance the credibility of the War on Terrorism internationally, The U.S. Government should consistently condemn and take actions against perpetrators of acts of terrorism, whether by state or non-state actors.

Arab-Israeli Conflict:

A just resolution to the Arab/Israeli conflict brokered by the United States will dramatically reduce anti-American sentiment in the Arab and Muslim world. The United States should serve as an even-handed peace broker between Israelis and Palestinians by redoubling its commitment to secure a just, equitable, and lasting resolution to the conflict, that is based on international law. It should be highlighted here that the major points of the conflict: the Israeli occupation, the right of return of the Palestinian refugees, and the status of Jerusalem can adequately be addressed by international law.

Democracy-Building/Economic Reform/Foreign Aid:

Nations plagued by authoritarianism, civil strife, poverty, humanitarian disasters, and other crises are fertile breeding grounds for radicalism and terrorism. Conversely, increased respect for human rights, socioeconomic development, and civic empowerment can help mitigate some of the root causes of extremism and terrorism. American Muslim institutions, including educational and charitable institutions, can play a significant role in this regard by helping to provide

intellectual and financial resources to support economic and political development in Muslim countries.

- Given both the prominence and diversity of “revivalist” trends in most Muslim nations, as well as Secretary Powell’s affirmation that Islam and democracy are not necessarily incompatible, the State Department should develop dialogues and cultivate relationships with those within the Islamic movement who subscribe to democratic principles. In doing so, the United States should promote democracy without direct involvement or interference on behalf of (or against) one or another individual, group, or philosophical/ideological trend.
- The United States should place greater priority on promoting economic reform, democratic development, and human rights in countries most affected by international terrorism by reappropriating foreign aid in favor of countries, programs, and issues that have greatest need.
- In the past, U.S. policymakers have encouraged American businesses to invest in economic and infrastructure development overseas, with less emphasis on human development projects. The U.S. Government should encourage private investment in developing social, civic, and political institutions in host countries.
- The US Agency for International Development (USAID) and other agencies of the US Government should work constructively with Muslim charitable institutions to meet the urgent development and subsistence needs of many of the Muslim world’s poor and dispossessed.

Human Rights:

The US has had a great political capital as a champion of human rights, which goes back to the Wilson Principles. It is unfortunate that a lot of that capital has eroded over the years and the US needs to reestablish that credibility worldwide. In doing so, some of the most recent violations of human rights in this country and abroad must come to an end, such as:

- The United States should refrain from abusing its power in utilizing the material witness statute.
- The United States should abandon the “enemy combatant” designation in the War on Terrorism, as this designation violates constitutional rights.
- The United States should extend “enemy combatants” held in Guantanamo Bay the rights entitled to them under the Geneva Conventions.

Public Diplomacy:

- The United States should regularly consult Arab-American and American Muslim educational, civic, and political institutions in devising and implementing public diplomacy initiatives aimed at Arab and Muslim audiences.
- The United States should inform foreign students from the Muslim world on compliance with new immigration standards as they pursue higher education in the United States.

- In addition to having the US Information Agency, which is supposed to educate the world about America, the US government should increase its efforts to educate its citizens about other countries. This may be accomplished either through the Department of Education or a separate agency set up specifically for that purpose as long as it is able to effectively disseminate information to the American public about other nations and cultures. America is no longer separated from the rest of the world by ocean wide seas but by a few clicks on a keyboard.

Law Enforcement:

- Law enforcement should hold forums on how members of faith and ethnic communities can enhance dialogue with the FBI, Department of Justice and Homeland Security agencies in the local areas. As an example, the Washington Field Office (WFO) of the Federal Bureau of Investigation has formed an Advisory Committee of representatives of Muslim and Arab organizations which meets regularly on monthly basis. The Committee has also organized a forum for the local community to meet the officials from the FBI's WFO to discuss issues of concern to the community and law enforcement, which is a very effective communication and confidence building measure.
- Publicly acknowledge positive role models within the community for their efforts to help in forming a partnership between law enforcement and the local community.
- Present clear, unambiguous suggestions to citizens who want to assist in law enforcement efforts. The public needs to understand more clearly what it means to be 'vigilant,' and it needs clear directives on how to report suspicious behavior. Federal and local agencies must provide specific tips on recognizing criminal behavior while discouraging hoaxes and vigilantism. These guidelines must be easily accessible on hard copy as well as on the web.
- Work with schools, both public and private, to educate students about the White House strategy on combating terrorism.
- Develop a phone and email contact list of the local representatives of law enforcement for community-based organizations so members of the community can reach out to report a problem they are having or a lead on a crime. The FBI, US Attorney's Office, Department of Justice, State Attorney General, County District Attorney, County Sheriff, Mayor, and City Attorney must be on the list.

Politicization/Secrecy/Public Confidence:

- The Attorney General should work to regain the confidence of the Muslim community by assuring members of the community that he rejects the notion of “Islamic terrorism”,²⁷⁹ and by instructing federal agents, prosecutors, and other law enforcement officials to use Islamic terminology properly.
- The Justice Department should terminate its use of secret evidence and/or secret courts.
- The Department of Justice should abandon the so-called “PATRIOT II” and cease trying to pass “PATRIOT II” piecemeal through Congress.

Immigration Policies:

- Changes to immigration policy should be applied uniformly to all immigrants in the United States regardless of their religion, ethnicity, and national origin. For example, the Immigration and Naturalization Services (INS) Special Registration program, which was initiated in late 2002 and abandoned in mid 2003, was applied primarily to males from Arab and predominantly Muslim countries and was a complete failure that wasted scarce resources and was counterproductive to America’s image overseas.

²⁷⁹ Similar to statements articulated by the State Department and Secretary Powell.

RECOMMENDATIONS FOR THE AMERICAN-MUSLIM COMMUNITY AND ORGANIZATIONS

While some individual Muslims, motivated by political agenda rather than religious guidance, have sought (and may still seek) to inflict harm on American citizens and interests, the American Muslim community, along with its political, religious, educational, and charitable institutions, are integral components of American civic and political life, and can have a positive impact on American civil society. In this spirit, MPAC offers the following recommendations that focus on how the American Muslim community can contribute to discerning the name of Islam and Muslims from the acts of a misguided few as well as fulfill their role as partners in making America and the world safer:

- National Muslim organizations should develop educational materials and other initiatives designed to educate law enforcement officials, particularly at the Departments of Justice, Treasury, and Homeland Security about Islamic culture, the proper use and meanings of religious terms (such as jihad), and the histories behind the growth and ideologies of Islamic movements.
- The nation’s leading Muslim organizations should work in concert with other civil liberties groups to protect America’s constitutional freedoms. Issues American Muslim organizations can work on with other groups include:
 - (1) “enemy combatant” and material witness statutes
 - (2) the use of secret evidence in cases the government brings against defendants
 - (3) the granting of the rights accorded by the Geneva conventions to the prisoners at Guantanamo Bay, and
 - (4) working to repeal unconstitutional measures of the USA-PATRIOT Act.
- National and local Muslim institutions, including mosques and Islamic schools, should work towards fostering an American Muslim identity by becoming financially free of foreign influences. They should also check their membership databases with the lists of suspected individuals and institutions provided by the Office of Foreign Assets Control (OFAC).
- Muslim religious institutions should take steps to mitigate extremism and angry rhetoric by establishing educational and training programs that:
 - (1) emphasize the importance of tolerance, citizenship, and social/civic responsibility as *Islamic values*; and
 - (2) educate mosque officials about their responsibilities regarding irresponsible speech and/or activity on their premises.
- National and local Muslim institutions should take steps to understand the new guidelines of the Department of the Treasury for all non-profit organizations. They should also engage the authorities in a constructive dialogue to develop mutual understanding and to find fair, practical means for compliance with guidelines.
- National and local Muslim organizations should work with interfaith leaders, human relations commission representatives, and civic leaders, along with law enforcement officials at the local, state, and federal levels to establish community-based task forces to

discuss measures for protecting the nation from terrorism and hate crime and civil rights violations.

APPENDIX A

STATEMENTS BY LEADING ARAB AND ISLAMIC AUTHORITIES ON THE SEPTEMBER 11TH TERRORIST ATTACKS ON THE UNITED STATES

“American Muslims utterly condemn what are apparently vicious and cowardly acts of terrorism against innocent civilians. We join with all Americans in calling for the swift apprehension and punishment of the perpetrators. No political cause could ever be assisted by such immoral acts.”

— *American Muslim Political Coordinating Council (AMPCC), September 11, 2001*

“The Conference strongly condemned the brutal terror acts that befell the United States, caused huge losses in human lives from various nationalities and wreaked tremendous destruction and damage in New York and Washington. It further reaffirmed that these terror acts ran counter to the teachings of the divine religions as well as ethical and human values, stressed the necessity of tracking down the perpetrators of these acts in the light of the results of investigations and bringing them to justice to inflict on them the penalty they deserve, and underscored its support of this effort. In this respect, the Conference expressed its condolences to and sympathy with the people and government of the United States and the families of the victims in these mournful and tragic circumstances.”

— *Organization of the Islamic Conference, October 10, 2001*

“The General-Secretariat of the League of Arab States shares with the people and government of the United States of America the feelings of revulsion, horror and shock over the terrorist attacks that ripped through the World Trade Centre and Pentagon, inflicting heavy damage and killing and wounding thousands of many nationalities. These terrorist crimes have been viewed by the League as inadmissible and deserving all condemnation.”

— *League of Arab States, September 17, 2001*

“The undersigned, leaders of Islamic movements, are horrified by the events of Tuesday 11 September 2001 in the United States which resulted in massive killing, destruction and attack on innocent lives. We express our deepest sympathies and sorrow. We condemn, in the strongest terms, the incidents, which are against all human and Islamic norms. This is grounded in the Noble Laws of Islam which forbid all forms of attacks on innocents. God Almighty says in the Holy Qur’an: ‘No bearer of burdens can bear the burden of another’ (Surah al-Isra 17:15).”

— *Mustafa Mashhur, Muslim Brotherhood (Egypt); Qazi Hussain Ahmed, Ameer, Jamaat-e-Islami (Pakistan); Muti Rahman Nizami, Ameer, Jamaat-e-Islami (Bangladesh); Shaykh Ahmad Yassin, Islamic Resistance Movement (Palestine); Rashid Ghannoushi, Nahda Renaissance Movement (Tunisia); Fazil Nour, Parti Islam SeMalaysia (Malaysia); and 40 other Muslim scholars and politicians, September 14, 2001.*²⁸⁰

“The terrorists acts, from the perspective of Islamic law, constitute the crime of *hirabah* [war against society].”

— *Religious edict (fatwa) signed by: Shaykh Yusuf Al-Qaradawi, Grand Islamic Scholar and Chairman of the Sunna and Sira Council (Qatar); Judge Tariq al-Bishri, First Deputy President of the Council d'etat (Egypt), Dr. Muhammad s. al-Awa, Professor of Islamic Law and Shari‘ah (Egypt); Dr. Haytham al-*

²⁸⁰ Originally published in Arabic in *al-Quds al-Arabi* (London), September 14, 2001, p.2 (<http://www.alquds.co.uk/Alquds/2001/09Sep/14%20Sep%20Fri/Quds02.pdf>, accessed on DATE). English cited in MSANews, <http://msanews.mynet.net/MSANEWS/200109/20010917.15.html>, accessed on DATE).

Khayyat, Islamic scholar, (Syria); Fahmi Houaydi, Islamic scholar (Syria); Shaykh Taha Jabir al-Alwani, Chairman, North America High Council (USA), September 27, 2001.

“Hijacking Planes, terrorizing innocent people and shedding blood constitute a form of injustice that can not be tolerated by Islam, which views them as gross crimes and sinful acts.”

— *Shaykh Abdul Aziz al-Ashaikh, Grand Mufti of Saudi Arabia, Chairman of Senior ‘Ulama, September 15, 2001*

“Attacking innocent people is not courageous, it is stupid and will be punished on the day of judgement. ... It’s not courageous to attack innocent children, women and civilians. It is courageous to protect freedom, it is courageous to defend oneself and not to attack.”

— *Shaykh Muhammed Sayyid Al-Tantawai, Rector of Al-Azhar University (AFP, Sept. 14, 2001)*

“Killing of people, in any place and with any kind of weapons, including atomic bombs, long-range missiles, biological or chemical weapons, passenger or war planes, carried out by any organization, country or individuals is condemned. ... It makes no difference whether such massacres happen in Hiroshima, Nagasaki, Qana, Sabra, Shatila, Deir Yassin, Bosnia, Kosovo, Iraq or in New York and Washington.”

— *Ayatollah Ali Khamene’i, Supreme Jurist-Ruler of Iran (Islamic Republic News Agency, Sept. 16, 2001)*

“It is wrong to kill innocent people. It is also wrong to Praise those who kill innocent people.”

— *Mufti Nizamuddin Shamzai, Pakistan (New York Times, Sept. 28, 2001)*

“Neither the law of Islam nor its ethical system justify such a crime.”

— *Zaki Badawi, Principal of the Muslim College in London (Arab News, Sept. 28, 2001)*

“Our hearts bleed for the attacks that has targeted the World Trade Center, as well as other institutions in the United States ... I categorically go against a committed Muslim’s embarking on such attacks. Islam never allows a Muslim to kill the innocent and the helpless.”

— *Shaykh Yusuf Al-Qaradawi, Grand Islamic Scholar and Chairman of the Sunna and Sira Council, Qatar (IslamOnline.com, Sept. 13, 2001)*

“Beside the fact that they are forbidden by Islam, these acts do not serve those who carried them out but their victims, who will reap the sympathy of the whole world. ... Islamists who live according to the human values of Islam could not commit such crimes.”

— *Shaykh Muhammad Hussein Fadlallah, spiritual guide of Hizbullah (Lebanon) (AFP, Sept. 14, 2002)*

“The horrific terrorist attacks of Sept. 11, 2001, in the United States were perpetrated by cult of fanatics who had self-mutilated their ears and tongues, and could only communicate with perceived opponents through carnage and devastation.”

— *Muhammad Khatami, President of Iran, in address before United Nations General Assembly, November 9, 2001*

APPENDIX B

STATEMENTS BY AMERICAN OFFICIALS OPPOSING ANTI-MUSLIM INCITEMENT AND VIOLENCE

“The spirit behind this holiday is a reminder that Islam brings hope and comfort to more than a billion people worldwide. Islam affirms God's justice and insists on man's moral responsibility. This holiday is also an occasion to remember that Islam gave birth to a rich civilization of learning that has benefited mankind.”

— *President George W. Bush, December 5, 2002 (during visit to Islamic Center of Washington, DC)*

“Some of the comments that have been uttered about Islam do not reflect the sentiments of my government or the sentiments of most Americans. Islam, as practiced by the vast majority of people, is a peaceful religion, a religion that respects others. ... By far, the vast majority of American citizens respect the Islamic people and the Muslim faith. After all, there are millions of peaceful-loving Muslim Americans. ... Ours is a country based upon tolerance ... And we're not going to let the war on terror or terrorists cause us to change our values.”

— *President George W. Bush, November 13, 2002 (following anti-Islam slurs by Evangelical Christian leaders)*

“I assured [President Obasanjo], and assure those Muslims who live in his country, that our war that we now fight is against terror and evil. It's not against Muslims. We both understand that the Islamic faith teaches peace, respects human life, is nonviolent. And I want to thank the President's leadership in sending a – not only a message of tolerance and respect, but also his vision, which I share, that our struggle is going to be long and difficult. But we will prevail. We will win. Good will overcome evil.”

— *President George W. Bush, November 2, 2001 (after meeting with Nigerian President Olusegun Obasanjo)*

“These acts of violence against innocents violate the fundamental tenets of the Islamic faith, and it's important for my fellow Americans to understand that. ... The face of terrorist is not the true faith of Islam. That's not what Islam is all about. Islam is peace. These terrorists don't represent peace, they represent evil and war. ... America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country. ... In our anger and emotion, our fellow Americans must treat each other with respect. ... Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America. They represent the worst of humankind. And they should be ashamed of that kind of behavior. ... And it is my honor to be meeting with leaders who feel just the same way I do. They are outraged; they're sad. They love America just as much as I do.”

— *President George W. Bush, September 17, 2001 (after meeting American Muslim leaders in Washington, DC)*

“... our nation must be mindful that there are thousands of Arab-Americans who live in New York City who love their flag just as much as the three of us do. And we must be mindful that as we seek to win the war that we treat Arab-Americans and Muslims with the respect they deserve. I know that is your attitudes as well. Certainly the attitude of this government, that we should not hold one who is a Muslim responsible for an act of terror. We will hold those who are responsible for the terrorist acts accountable and those who harbor them.”

— *President George W. Bush, September 13, 2001*

“Since Tuesday the Justice Department has received reports of violence and threats of violence against Arab-Americans and other Americans of Middle Eastern and South Asian descents. We must not descend to the level of those who perpetrated Tuesday's violence by targeting individuals based on their race, their

religion, or their national origin. Such reports of violence and threats are in direct opposition to the very principles and laws of the United States and will not be tolerated.”

— *Attorney General John Ashcroft, September 13, 2001*

“... Americans of Arab or South Asian decent [sic] and people of the Muslim faith were also injured and killed in Tuesday’s attacks. In addition, they also are – along with other Americans – involved in relief operations, and other efforts to alleviate suffering. Any threats of violence or discrimination against Arab or Muslim Americans or Americans of South Asian descents are not just wrong and un-American, but also are unlawful and will be treated as such. As the Attorney General reminded us today, we must not descend to the level of those who perpetrated Tuesday’s violence by targeting individuals for threats of violence based on their race, religion, and national origin. To do so would be to grant terrorists a victory they cannot- and would not – otherwise achieve.”

— *Assistant Attorney General for Civil Rights, Ralph F. Boyd Jr., September 13, 2001*

“Nobody should blame any group of people or any nationality or any ethnic group. The particular individuals responsible or the groups responsible, that’s up to law enforcement and it’s up to the United States government to figure out. And citizens of New York should, even if they have anger, which is understandable, and very, very strong emotions about this, it isn’t their place to get involved in this. Then they’re just participating in the kind of activity we just witnessed. And New Yorkers are not like that.”

— *New York Mayor Rudolph Giuliani, September 11, 2001*

“Whereas vengeful threats and incidents of violence directed at law-abiding, patriotic Americans of Arab or South Asian descent, particularly the Sikh community, and adherents of the Islamic faith have already occurred: Now, therefore, be it Resolved by the House of Representatives (the Senate concurring), That the Congress – (1) declares that in the quest to identify, bring to justice, and punish the perpetrators and sponsors of the terrorist attacks on the United States on September 11, 2001, that the civil rights and civil liberties of all American, including Arab-Americans, American Muslims, and Americans from South Asia, should be protected; and (2) condemns any acts of violence or discrimination against any Americans, including Arab-Americans, American Muslims, and Americans from South Asia.”

— *Joint resolution by the Senate and House of Representatives (H.Con.Res. 227), September 26, 2001*

“We will also do all we can to protect the rights that make America such a special place. We will not adopt the characteristics of those who attack us. If we begin to compromise the civil liberties of our citizens, the terrorists will have won. In light of these traumatic events, I've heard reports of Americans who have attacked other Americans simply because of their race, ethnicity, religion or clothes. These attacks must stop. This is not a war against Islam. It is against terror. Those who did this are murderers, not martyrs. They cannot get to heaven by unleashing hell. The American Muslim community has said this loudly and repeatedly. Just as terror is not Islam, we must say to anyone who would lash out against Muslims this is not America...”

— *House Democratic Leader Rep. Dick Gephardt (D-MO)*

“No religious or ethnic group in our diverse society -- including Arab Americans and Muslim Americans should be made to suffer because of fanatics half a world away. Americans should channel their anger into good works for others, not to acts of prejudice and hatred directed at other Americans.”

— *Rep. Jim Moran (D-VA)*

“Anyone who resorts to acts of violence against Arab-Americans and/or American Muslims is giving the perpetrators of these heinous acts exactly what they wanted. Now more than ever, Americans of all ethnic and religious backgrounds must stand tall together in defense of our rich diversity and in defiance of those who seek to tear apart the American fabric.”

— *Rep. Tom Davis (R-VA)*

“The terrorists who attacked the World Trade Center and the Pentagon are not representative of the vast majority or [sic] Arabs or Moslems in the United States...We cannot allow anger at this horrible act to lead us to hate or discriminate against innocent individuals who happen to be of Middle Eastern descent. Terror has no regard for religion or ethnicity. If we attack the innocent simply because of their ethnic status, we are no better than the terrorists who attacked us.”

— *Rep. Mike Pence (R-IN)*

“...it is wrong and irresponsible to jump to conclusions and make false accusations against Arabs and Muslims in our communities. Above all, we must guard against any acts of violence based on such bigotry. Please do your part in defending America’s rich religious and ethnic diversity.”

— *Sen. Edward Kennedy (D-MA)*

“During this period of appalling pain for the American people, for the people of the entire world, as we absorb the shock and injustice of these acts -- the Pentagon and the ashes of the World Trade Center now crime scenes -- we resolve to apply our values as Americans as we seek justice. Even as national authorities focus on suspected individuals and organizations, we must not hurt or terrorize Americans of Arab Descent or Islamic faith. We, as Americans, proudly enshrine and practice justice and not vengeance, liberty and not racism and stereotyping.”

— *Washington Gov. Gary Locke*

APPENDIX C

CONTEMPORARY DEFINITIONS OF TERRORISM

U.S. Government

“‘terrorism’ means an activity that (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and (ii) appears to be intended (A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion; or (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”

— *Executive Order on Terrorist Financing, George W. Bush, President, United States, September 2001*

“the term ‘international terrorism’ means activities that (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended -- (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;”

— *Section 2331 of Title 18, United States Code (as amended by the USA PATRIOT Act)*

“‘domestic terrorism’ means activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.”

— *Section 2331 of Title 18, United States Code (as amended by the USA PATRIOT Act)*

“Terrorism means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”

— *U.S. Department of State (Section 2656f(d) of Title 22, United States Code)*

“Terrorism is the calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological.”

— *U.S. Department of Defense (DoD Instruction 2000.16, DoD Antiterrorism Standards, June 14, 2001.)*

“Terrorism is the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”

— *Code of Federal Regulations (28 C.F.R. Section 0.85)*

“Domestic terrorism is the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives.”

— *Federal Bureau of Investigation (Terrorism in the United States: 1999, p. ii)*

“International terrorism involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state. These acts appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.”

— *Federal Bureau of Investigation (Terrorism in the United States: 1999, p. ii)*

“... the unlawful use or threat of violence against persons or property to further political or social objectives. It is generally intended to intimidate or coerce a government, individuals or groups to modify their behavior or policies.”

— Public Report of the Vice President’s Task Force on Combating Terrorism (*Washington, DC: Government Printing Office, February 1986*), p. 1.

“Terrorism is the illegitimate, premeditated violence or the threat of violence by subnational groups against persons or property with the intent to coerce a government by instilling fear amongst the populace.”

— *House Permanent Select Committee on Intelligence, Subcom. on Terrorism and Homeland Security, July 2002.*

International Bodies

“... criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes ...”

— *United Nations General Assembly, UNGA Res. 51/210, December 17, 1996.*

“act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”

— *United Nations General Assembly, International Convention for the Suppression of the Financing of Terrorism, adopted December 9, 1999.*

“‘Terrorism’ means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.”

— *Organization of the Islamic Conference (OIC), Convention on the Combating of International Terrorism, adopted at Ouagadougou, July 1, 1999.*

Academia

“the threat or use of violence for political purposes when such when such action is intended to influence the attitudes and behavior of a group wider than its immediate victims; its ramifications transcend national boundaries.”

— *Anthony C.E. Quainton (1990)*

“the systematic use of unorthodox political violence by small conspiratorial groups with the purpose of manipulating political attitudes rather than physically defeating an enemy.”
— *Martha Crenshaw (1983)*

“Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted.”
— *Walter Laqueur (1999)*

“Terrorism [is] ... any type of political violence that lacks an adequate moral or legal justification, regardless of whether the actor is a revolutionary group or a government.”
— *Richard A. Falk*

“Terrorism is the use or threatened use of force designed to bring about political change.”
— *Brian Jenkins (1985)*

“the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.”
— *Bruce Hoffman (1998)*

“peacetime equivalents of war crimes.”
— *Alex Schmid (1992)*

“Terrorism is the systematic use of intimidation for political ends.”
— *David Moss (1971)*

“Terrorism involves the intentional use of violence or the threat of violence by the precipitator against an instrumental target in order to communicate to a primary target a threat of future violence.”
— *Jordan Paust (1977)*

“Terrorism may be defined as systematic and organized violence against non-resisting persons to create fear in them for the purpose of retaining or gaining governmental authority.”
— *Milenko Karanovic (1978)*

“terrorism is seen as the resort to violence for political ends by unauthorised, non-governmental actors in breach of accepted codes of behavior ...”
— *Juliet Lodge (1982)*

“Terrorism may be described as a strategy of violence designed to inspire terror within a particular segment of a given society.”
— *M. Cherif Bassiouni (1981)*

APPENDIX D

INTERNATIONAL TREATIES AND CONVENTIONS ON TERRORISM

International Conventions

Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. (Deposited with the Secretary-General of the International Civil Aviation Organization)

Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America)

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America)

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973. (Deposited with the UN Secretary General).

International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979. (Deposited with the UN Secretary General)

Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. (Deposited with the Director-General of the International Atomic Energy Agency)

Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America and with the Secretary-General of the International Civil Aviation Organization)

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. (Deposited with the Secretary-General of the International Maritime Organization)

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988. (Deposited with the Secretary-General of the International Maritime Organization)

Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991. (Deposited with the Secretary-General of the International Civil Aviation Organization)

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997. (Deposited with the UN Secretary General)

International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. (Deposited with the UN Secretary General)

Regional Conventions

European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977. (Deposited with the Secretary-General of the Council of Europe)

OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971. (Deposited with the Secretary-General of the Organization of American States)

SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987. (Deposited with the Secretary-General of the South Asian Association for Regional Cooperation)

Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998. (Deposited with the Secretary-General of the League of Arab States)

Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999. (Deposited with the Secretariat of the Commonwealth of Independent States)

Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999. (Deposited with the Secretary-General of the Organization of the Islamic Conference)

OUA Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999. (Deposited with the General Secretariat of the Organization of African Unity)

SOURCES: U.S. Department of State
United Nations (<http://untreaty.un.org/English/Terrorism.asp>)

APPENDIX E

FOREIGN TERRORIST ORGANIZATIONS (U.S. DEPARTMENT OF STATE, MAY 23, 2003)

Foreign Terrorist Organizations are foreign organizations that are designated by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA), as amended. FTO designations play a critical role in our fight against terrorism and are an effective means of curtailing support for terrorist activities and pressuring groups to get out of the terrorism business.

Abu Nidal Organization (ANO)
Abu Sayyaf Group
Al-Aqsa Martyrs Brigade
Armed Islamic Group (GIA)
Asbat al-Ansar
Aum Shinrikyo
Basque Fatherland and Liberty (ETA)
Gama'a al-Islamiyya (Islamic Group)
HAMAS (Islamic Resistance Movement)
Harakat ul-Mujahidin (HUM)
Hizballah (Party of God)
Islamic Movement of Uzbekistan (IMU)
Jaish-e-Mohammed (JEM) (Army of Mohammed)
al-Jihad (Egyptian Islamic Jihad)
Kahane Chai (Kach)
Kurdistan Workers' Party (PKK)
Lashkar-e Tayyiba (LT) (Army of the Righteous)
Lashkar i Jhangvi
Liberation Tigers of Tamil Eelam (LTTE)
Mujahedin-e Khalq Organization (MEK)
National Liberation Army (ELN)
Palestinian Islamic Jihad (PIJ)
Palestine Liberation Front (PLF)
Popular Front for the Liberation of Palestine (PFLP)
PFLP-General Command (PFLP-GC)
al-Qaeda
Real IRA
Revolutionary Armed Forces of Colombia (FARC)
Revolutionary Nuclei (formerly ELA)
Revolutionary Organization 17 November
Revolutionary People's Liberation Army/Front (DHKP/C)
Salafist Group for Call and Combat (GSPC)
Shining Path (Sendero Luminoso, SL)
United Self-Defense Forces of Colombia (AUC)
Communist Party of the Philippines/New People's Army (CPP/NPA)
Jemaah Islamiya organization (JI)

SOURCE: U.S. Department of State, Office of Counterterrorism, Washington, D.C.

For information on the legal criteria and ramifications of FTO designation and related information, refer to <http://www.state.gov/s/ct/rls/fs/2003/12389.htm>.

APPENDIX F

LETTER FROM SPECIAL AGENT COLEEN ROWLEY TO FBI DIRECTOR ROBERT MUELLER (FEBRUARY 26, 2003)

FBI Director Robert Mueller
FBI Headquarters
Washington D.C.

Dear Director Mueller:

In June, 2002, on the eve of my testimony to the Senate Judiciary Committee, you told me that you appreciate constructive criticism and that FBI agents should feel free to voice serious concerns they may have about senior-level FBI actions. Since then I have availed myself twice of your stated openness.

At this critical point in our country's history I have decided to try once again, on an issue of even more consequence for the internal security posture of our country. That posture has been weakened by the diversion of attention from al-Qaeda to our government's plan to invade Iraq, a step that will, in all likelihood, bring an exponential increase in the terrorist threat to the U.S., both at home and abroad.

In your recent testimony to the Senate, you noted that "the al-Qaeda network will remain for the foreseeable future the most immediate and serious threat facing this country," adding that "the prevention of another terrorist attack remains the FBI's top priority." You then noted that a "U.S.-Iraq war could prompt Baghdad to more directly engage al-Qaeda and perhaps provide it with weapons of mass destruction." But you did not connect these very important dots.

Your recent briefings of field management staff have thrown light on the immense pressures you face as you try to keep the FBI intact and functioning amid persistent calls for drastic restructuring. You have made it clear that the FBI is perilously close to being divided up and is depending almost solely upon the good graces of Attorney General Ashcroft and President Bush for its continued existence. Clearly, this tense environment poses a special challenge to those like you who are responsible for providing unbiased, objective intelligence and national security advice to the country's leaders. But I would implore you to step out of this pressure-cooker for a few minutes and consider the following:

1) The FBI is apparently the source for the public statement that there are 5,000 al-Qaeda terrorists already in the U.S. I would ask you to inquire as to whether this figure is based on any hard data. If it is, rather, an estimate based largely on speculation, this can only feed the suspicion, inside the organization and out, that it is largely the product of a desire to gain favor with the administration, to gain support for FBI initiatives and possibly even to gain support for the administration's initiatives.

2) What is the FBI's evidence with respect to a connection between al-Qaeda and Iraq? Polls show that Americans are completely confused about who was responsible for the suicidal attacks on 9-11 with many blaming Iraq. And it is clear that this impression has been fostered by many in the Administration. As far as the FBI is concerned, is the evidence of such a link "bulletproof," as Defense Secretary Rumsfeld claims, or "scant," as General Brent Scowcroft, Chairman of the President's Intelligence Advisory Board has said? The answer to this is of key importance in determining whether war against Iraq makes any sense from the FBI's internal security point of view. If the FBI does have independent data verifying such a connection, it would seem such information should be shared, at least internally within the FBI.

3) If, as you have said, “the prevention of another terrorist attack remains the FBI’s top priority,” why is it that we have not attempted to interview Zacarias Moussaoui, the only suspect in U.S. custody charged with having a direct hand in the horror of 9-11? Although al-Qaeda has taken pains to compartmentalize its operations to avoid compromise by any one operative, information obtained from some al-Qaeda operatives has nonetheless proved invaluable. Moussaoui almost certainly would know of other al-Qaeda contacts, possibly in the U.S., and would also be able to alert us to the motive behind his and Mohammed Atta’s interest in crop dusting.

Similarly, there is the question as to why little or no apparent effort has been made to interview convicted terrorist Richard Reid, who obviously depended upon other al-Qaeda operatives in fashioning his shoe explosive. Nor have possible links between Moussaoui and Reid been fully investigated. It therefore appears that the government may have sacrificed the possibility of acquiring information pertinent to future attacks, in order to conduct criminal prosecution of these two individuals. Although prosecution serves worthy purposes, including deterrence, standard practice in “Organized Crime/Terrorism 101” dictates imaginative, concerted attempts to make inroads into well-organized, cohesive groups. And sometimes that requires “dealing with the devil.”

In short, it is a matter of priorities. And lack of follow-through with regard to Moussaoui and Reid gives a hollow ring to our “top priority,” i. e., preventing another terrorist attack.

4) It is not clear that you have been adequately apprized of the potential damage to our liaison relationships with European intelligence agencies that is likely to flow from the growing tension over Iraq between senior U.S. officials and their counterparts in key West European countries. There are far more al-Qaeda operatives in Europe than in the U.S., and European intelligence services, including the French, are on the frontlines in investigating and pursuing them. Indeed, the Europeans have successfully uncovered and dismantled a number of active cells in their countries.

In the past, FBI liaison agents stationed in Europe benefited from the expertise and cooperation of European law enforcement and intelligence officers. Information was shared freely, and was of substantial help to us in our investigations in the U.S. You will recall that prior to 9-11, it was the French who passed us word of Moussaoui’s link to terrorism.

5) I know the FBI is no longer (or will shortly be no longer) in charge of regulating the color codes, but I expect we will still have input. I realize that decisions to change color codes are made at the most senior level, but perhaps you can caution senior officials about the downside to alarming the public unless there is adequate reason to do so. Increased vigilance must be encouraged when needed, but the FBI’s Joint Terrorism Task Forces can easily get bogged down in attempting to pursue all the leads engendered by panicky citizens. This, in turn, draws resources away from more important, well predicated and already established investigations.

Unintended consequences like the recent stampede in the Chicago dance club (which initial news accounts reported to be the case) can also occur when the public is put on these heightened alerts. The terrorists win in such circumstances even without attacking.

6) The vast majority of the one thousand plus persons “detained” in the wake of 9-11 did not turn out to be terrorists. They were mostly illegal aliens. We have every right, of course, to deport those identified as illegal aliens during the course of any investigation. But after 9-11, Headquarters encouraged more and more detentions for what seem to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism. The balance between individuals’ civil liberties and the need for effective investigation is hard to maintain even during so-called normal times, let alone times of increased terrorist threat or war. It is, admittedly, a difficult balancing

act. But from what I have observed, particular vigilance may be required to head off undue pressure (including subtle encouragement) to detain or “round up” suspects—particularly those of Arabic origin.

7) As I believe you know, I have a reputation for being quite “conservative” on legal and policy issues regarding law enforcement. I have complained loudly on occasions when some of our laws and procedures have-unnecessarily, in my view, hindered our ability to move boldly against crime. At the same time, I know from experience that the FBI’s policy on permissible use of deadly force has served the FBI and the country well. It should be noted, however, that the Administration’s new policy of “preemptive strikes” abroad is not consistent with the Department of Justice’s (DOJ’s) “deadly force policy” for law enforcement officers. DOJ policy restricts federal agents to using deadly force only when presented with an imminent threat of death or serious injury (essentially in self-defense or defense of an innocent third party). I believe it would be prudent to be on guard against the possibility that the looser “preemptive strike” rationale being applied to situations abroad could migrate back home, fostering a more permissive attitude towards shootings by law enforcement officers in this country.

8) I believe the FBI, by drawing on the perspective gained from its recent history, can make a unique contribution to the discussion on Iraq. The misadventure in Waco took place well before your time as Director, but you will probably recall that David Koresh exerted the same kind of oppressive control over members of his Branch Davidian followers, as Saddam Hussein does over the Iraqis. The parallel does not stop there.

Law enforcement authorities were certain Koresh had accumulated a formidable arsenal of weapons and ammunition at his compound and may have been planning on using them someday. The FBI also had evidence that he was sexually abusing young girls in the cult. After the first law enforcement assault failed, after losing the element of surprise, the Branch Davidian compound was contained and steadily increasing pressure was applied for weeks. But then the FBI decided it could wait no longer and mounted the second assault—with disastrous consequences. The children we sought to liberate all died when Koresh and his followers set fires leading to their mass death and destruction.

The FBI, of course, cannot be blamed for what Koresh set in motion. Nevertheless, we learned some lessons from this unfortunate episode and quickly explored better ways to deal with such challenges. As a direct result of that exploration, many subsequent criminal/terrorist “standoffs” in which the FBI has been involved have been resolved peacefully and effectively. I would suggest that present circumstances vis-a-vis Iraq are very analogous, and that you consider sharing with senior administration officials the important lessons learned by the FBI at Waco.

You are only too well aware that fighting the war on terrorism and crime is an unbelievably difficult mission that will only become more difficult in the years to come, adversely affecting future generations of Americans. The extraneous pressures currently being brought to bear by politicians of both parties upon the FBI and other U.S. intelligence agencies, however, only worsen the present situation.

I know that my comments appear so presumptuous for a person of my rank in the organization and I’m very sorry for that impression. A word of explanation is therefore probably in order as to why I feel moved to write you directly about these issues. A good part of the reason lies in a promise I made to myself after I realized the enormity of what resulted when FBI Headquarters Supervisory personnel dismissed the warnings of Minneapolis agents pre-September 11, 2001. I was well aware of the forceful but frustrated efforts being made by Minneapolis case agents and their supervisor in their efforts to get Headquarters to move. But since my own role was peripheral, I did not think I could be of much additional help. Since that fateful day of September 11, 2001, however, I have not ceased to regret that perhaps I did not do all that I might have done.

I promised myself that in the future I would always try.

I appreciate that you alone do not determine policy on the terrorist threat from inside or outside the country—that, indeed, you may have little influence in the crafting of broad domestic or foreign policy. And it seems clear to me now that the decision to attack Iraq was taken some time ago and you, even as FBI Director, may be little more than a helpless bystander.

Such an attack, though, may have grave consequences for your ability to discharge your responsibility to protect Americans, and it is altogether likely that you will find yourself a helpless bystander to a rash of 9-11s. The bottom line is this: We should be deluding neither ourselves nor the American people that there is any way the FBI, despite the various improvements you are implementing, will be able to stem the flood of terrorism that will likely head our way in the wake of an attack on Iraq. What troubles me most is that I have no assurance that you have made that clear to the president.

If you believe my concerns have merit, I would ask you to share them with the president and attorney general. We no doubt can agree that our Government has a gargantuan task facing it of melding American foreign policy to make the world, and primarily United States soil, a safer place. I pray for our American and allied world leaders' success in achieving this most important objective.

Thank you so much for allowing me to express these thoughts. They are personal in nature and should not be construed as representing the view of any FBI unit or other agents.

Yours truly,

Coleen Rowley
Special Agent, Minneapolis

APPENDIX G

LETTER FROM SENATOR PATRICK LEAHY TO ATTORNEY GENERAL JOHN ASHCROFT ABOUT DOJ INSPECTOR GENERAL'S REPORT ON 9/11 DETAINEES (JUNE 3, 2003)

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Ashcroft:

This week, the Department of Justice Office of the Inspector General (“OIG”) issued a report on the treatment of aliens detained on immigration charges in connection with the investigation of the September 11 attacks. The report found significant problems in the way the Department handled these detainees, including instituting a blanket “no bond” policy that resulted in the prolonged detention of aliens with final orders of removal who wanted and were able to leave the country. Left unexamined was the Department’s treatment of a related group of detainees – those held on material witness warrants in connection with the September 11 investigation.

I read in the May 24th Washington Post that the FBI made a rare public apology to eight Egyptian men living in Evansville, Indiana, who were among those individuals held as material witnesses in maximum security jails without being charged with a crime following the September 11 attacks. According to the Post, the material witness warrants were based on a Federal law enforcement officer’s affidavit containing the false allegations of an angry wife of one of the detainees. Thomas Fuentes, the FBI’s Agent In Charge in Indiana, acknowledged that each of the men had been wrongly accused and suffered severe repercussions: lost business, tainted reputations and the accusing stares of their friends and neighbors.

As you know, I have worked with you and with the Administration to ensure that law enforcement agencies have the tools necessary to keep Americans safe and to combat terrorism. In working together to craft the USA PATRIOT Act, we had intense and frank discussions about how to meet our shared objective of securing America without sacrificing the civil liberties so precious to us all. I also introduced and worked closely with the Administration to pass additional anti-terrorism legislation creating new crimes designed to implement international treaties signed by President Clinton, aimed at fighting terrorist bombings and terrorist financing.

As part of our oversight responsibilities, I and other Members of Congress have repeatedly voiced concerns that the material witness statute as currently drafted invites confusion and abuse. Unfortunately, efforts to clarify or reform that statute have been met with disinterest by the Administration. Indeed, even efforts to oversee the basic use of the statute have been stonewalled. At least one Federal judge has ruled that the Department is improperly using the statute, and another has ruled that the Department is erroneously keeping secret basic information about the scope of the statute’s use.

While I commend the FBI for apologizing to the Evansville 8, corrective legislative action would speak louder than words. Indeed, one wonders whether the gross intrusion on the rights of these wrongfully imprisoned men in the State of Indiana and the public humiliation suffered by the FBI for its egregious error could have been averted had the Department been willing to engage in our earlier attempts to begin an open dialogue concerning the shortcomings of the current statute.

Please provide timely and specific answers to the following questions:

What event or information caused the FBI to apologize to the Evansville detainees? How long did the FBI know that the affidavit underlying the arrests contained inaccurate information before it issued this apology?

Please provide copies of all court filings in the Evansville cases that are not currently under seal. To the extent that any filings remain under seal, would the Department oppose unsealing them, and if so, why?

Have any civil actions been filed by any of the men in Evansville against the U.S. Government or individual Federal agents? If so, please provide copies of any pertinent court filings.

What steps have been taken by the OIG or the FBI to review the actions of those responsible for the detention of the men in Evansville? If no referral to the OIG has yet been made, will the OIG review this matter and the Department's use of the material witness statute as a whole since the 9/11 attacks? (By copy of this letter, I am informing Inspector General Fine of my desire that he do so.)

Since September 11, 2001, how many people have been detained on material witness warrants that were ultimately dismissed without their having provided testimony or been formally charged with a crime?

In its May 13 response to questions posed by Chairman Sensenbrenner and Ranking Member Conyers, the Department stated that, as of January 2003, the total number of material witnesses detained in the course of the September 11 investigation was "fewer than 50," and that approximately 50 percent of these material witnesses were detained for more than 30 days. The Department further stated that a few individuals were detained for an extended period of time "because they pursued litigation ... made efforts to proffer or seek immunity ... or took other actions that delayed the proceedings." Aside from these few individuals, in cases where a material witness was detained longer than 30 days, why was each such witness's testimony not preserved sooner?

(A) Has the Department fully complied with Rule 46(h) of the Federal Rules of Criminal Procedure (both before and after its amendment in 2002), which now requires the Government to report biweekly to the court, listing each material witness held in custody for more than 10 days pending indictment, arraignment, or trial, and stating why the witness should not be released?

(B) What role, if any (formal or informal), did employees of the Department of Justice play in the amendment of Rule 46(h)? If the Department provided any information or written material to any non-DOJ employee regarding that amendment, please provide a copy of all such material or information.

What if anything is the Department doing as a result of the problem in Evansville to ensure against future wrongful detentions under the material witness statute?

Would the Department support legislation to clarify the standard for the release or detention of material witnesses under 18 U.S.C. § 3144 as, for example, by specifying that (a) material witness warrants may be used in the context of grand jury investigations; (b) affidavits in support of applications for material witness warrants must show probable cause to believe that the testimony sought is material to a matter in the case or proceeding; (c) in matters before a grand jury, witnesses may be detained only until their testimony can adequately be secured by appearance before the grand jury; (d) if a person is arrested pursuant to a material witness warrant, that person shall have the same rights and privileges as a person who is arrested pursuant to a warrant issued for an offense against the United States, such as disclosure of the affidavit in support of the warrant at the time of arrest; and (e) a "reasonable period of time" is limited to specific time periods, consistent with the purposes of the material witness statute.

I hope you will find it possible to respond to these oversight questions by July 18.

Sincerely,

PATRICK LEAHY
United States Senator

cc. Inspector General Glenn Fine

APPENDEX H

Interview with the FBI Director

Thursday, April 24, 2003

The Muslim Public Affairs Council was granted an interview with FBI Director Robert Mueller. MPAC asked The Minaret's editor-in-chief, Dr. Aslam Abdullah, to conduct the interview, which took place in the FBI offices in Washington, DC, on Wednesday, April 23, 2003.

Excerpts from Dr. Aslam Abdullah's interview with the FBI Director, Robert Mueller:

Q: How do you assess progress the FBI has made regarding terrorism?

A: Any progress against terrorism in the United States as well as overseas has been attributable to the joint effort with the FBI, State/Local Law Enforcement in the US working together along with our counterparts in the intelligence arena overseas, the CIA or the other intelligence. I might also add with the help of the Muslim American community, because we cannot be doing what we are doing without the help of the Muslim community. I think we have made substantial strikes overseas with eliminating Al Qaida refuges in Afghanistan, disrupted Al Qaida finances, communications, and most particularly Al Qaida leadership with the detention by our Pakistani counterparts--Khalid Muhammed, Shaikh Abu Zubaida, ...all those detentions have surely disrupted the leadership of Al Qaida.

Q: What about the 9-11 investigation and the post 9-11 investigation about certain plots? How many people have been arrested and prosecuted?

A: Well, thousands around the country and the world, but I don't have ready any statistics on those who have been charged within the US for material support or others who have been charged with a variety of crimes that are certainly related to terrorism and individuals who may have had some association with terrorism.

Q: Have any American citizens been charged for involvement in the 9-11 plot?

A: Well, we know that there were 19 hijackers, but we don't know if they were American citizens. You know there have been persons that have been charged with various offenses and have provided some kind of support to the hijackers while they were in the US and these would be American citizens, but they may have not been knowledgeable of the full parameters of the plot. So, yes there have been people charged, people convicted in the US who had provided some kind of support to the hijackers while they were in the US, perhaps illegal support like false ID's, but I don't want to mislead people to think that these were persons that were knowledgeable of the full goal of the plot.

Q: I think you have been very supportive of the Muslim community and you have appeared in several Muslim programs commending Muslims for their role in the fight against terrorism. What specific role have Muslim Americans played in the fight against terrorism?

A: ...Muslim Americans have been alert and they have alerted us of situations where individuals may represent concern. I find it very helpful that a great number of our investigators have received help from Americans, in fact Muslim Americans. When I met with Muslim American leaders, they do believe that it is important for our various communities to be alert because nobody wants another terrorist attack.

Q: Even though Muslim are partners in prevention, they seem to be also the primarily suspects in the kind of

investigation that has been going on during the last 18 months. They are the ones whose homes are being searched and those who have been investigated. How do we reconcile the two of them? On one side being the partner and on the other side being the suspect?

A: Well, that is true for all segments of our society. It doesn't make any difference which community you are in. If we have any reason to believe that there is evidence of a crime you go to a judge and get a search warrant.

Q: What can individuals do to get out of that kind of suspicion?

A: I don't think they are more or less suspect than any other community where we have had information of a possible crime being committed. None of our agents focus on the fact that somebody looks Muslim or not. We look at information that comes in that it may come in from Muslims or may come from somebody else. But if there is information that requires us to pursue information we do it without regard of the background of the individual.

Q: How could the image of the FBI be changed?

A: There are some misperceptions out there. They say it is an FBI agent but it is not. We have worked hard since Sept 11, to train every one of our agents in charge and to have them meet and work with the Muslim community. The FBI has opened a dialogue and wants to continue that dialogue to these days and I think it has accomplished a great deal to sort aside those misperceptions.

Q: But you talk about dialogue, where is that dialogue leading us?

A: Well, it is leading us to much better relations between the community and the FBI. We have what is called the citizens' academy in many of our offices where you have members of the community who work for a couple of hours a week, so they are introduced to the FBI and what the FBI does throughout the country. And we hope the Muslim American Community participates in the citizens' academy to learn more about the FBI.

Q: So do you intend to enhance these programs?

A: Yes absolutely, in fact we are recruiting to the extent that we can Muslims as agents, special agents. We have been very active in pushing more for Muslim Americans to consider a career with the FBI.

Q: What specific assurance we can give to the Muslim community that their civil rights will not be violated?

A: I can give you that assurance. Every time I have the opportunity to talk to the Muslim American Community I express that that is one of our priorities. Since 9-11 we have opened 414 investigations, 17 persons have been charged federally, and 129 with state local crimes as a result of this hate crime investigation. We are very aggressive in addressing that. Every time an issue like that comes to us we have taken action immediately. We are very aggressively on that issue.

Q: Is there any message you want to get out to the Muslim Community?

A: Yes, first of all I would like to thank the Muslim Americans for their support on the war against terrorism and working with the FBI around the country as well as state and local law enforcement on our task forces for continuing and opening a dialogue and the exchanged views, for participating in our training. Secondly, I would like to thank the Iraqi Americans for the information that was provided during the hostilities with Iraq. That information proved to be valuable to our troops overseas. Much of it was corroborated with what we found in Iraq and the Department Of Defense said that the information was timely, excellent, relevant and greatly assisted in breaching gaps with other intelligence. In a press conference last week with the Attorney General, I did indicate how appreciative we were, everybody from the President down with the efforts of the Iraqi American people and community in assisting with the war, and more generally we want to say that there is no one agency that can succeed in the war on terror to prevent the next attack. It is not only the FBI but also the other federal agencies with law enforcement and intelligence, state and local law enforcement but also all our communities and most particularly the Muslim American Community. So we look at them to work with us as they have in the past to prevent another attack.

