

VICTIMS OF AMERICA'S DIRTY WARS

**Tactics and Reasons
from COINTELPRO to the War on Terror**

By Stephen Downs, Esq.

Revised February 2012

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Victims of America's Dirty Wars can be downloaded from the website of Project SALAM (Support And Legal Advocacy for Muslims): <http://www.projectsalam.org>

Stephen Downs
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Tactics and Reasons from COINTELPRO to the War on Terror

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INTRODUCTION

This booklet will focus on the use, by the FBI and the U.S. Justice Department, of fake or contrived charges against people who have not committed any crimes, in order to incarcerate those the government regards as potential security risks. The allegation that the FBI and the Justice Department deliberately create fake or contrived cases against innocent people, as they did in the era of COINTELPRO, may be shocking to some; but in the context of the unconstitutional and illegal activity in which the government has engaged under the guise of fighting the war on terror, fake criminal prosecutions are just one more step.

The Fourteenth Amendment to the Constitution guarantees due process and equal protection of the laws to all people. The opposite of equal protection is the profiling of people based on their ethnicity, religion, race, ideology, or other factor in order to deny them equal protection of the laws. The last decade has seen a dramatic increase in profiling and a corresponding loss of civil freedoms—for targeted groups in the first instance, but ultimately for all of us.

African Americans fear that discriminatory drug laws and racist police officers may doom their children to a life behind bars for actions that would be excused in children of other races. Immigrant communities from Latin America, Asia, the Middle East, and Africa fear that unfair immigration laws and biased enforcement by Immigration and Customs Enforcement (ICE) may result in arbitrary arrests and deportations of people of color, all of which destroy families. Muslims fear that the FBI may unfairly eavesdrop on their mosques and private conversations, target them for contrived crimes, and railroad them with manufactured charges even though they have no intent to hurt America in any way. Peace activists, civil rights proponents, union organizers, environmentalists, animal rights advocates, and people of many different ideologies fear that the government will target them, infiltrate and disrupt their groups, spread lies about them to employers and the media, and bring false legal proceedings against them. Although different in substance, each of these fears is a concern about profiling—that individuals will be treated harshly and unfairly because of their race, ethnicity, religion, ideology, or other factor.

America profiles minority or ideological groups out of fear. We allow stereotyping, race-baiting, intolerance, and hate to justify treating targeted groups differently. Instead of treating each person equally before the law, people persuade themselves to make an exception for a targeted group, claiming that the group is dangerous and that members share a collective guilt for the circumstances about which everyone is so frightened—thus the group must be brutally repressed and humiliated so that its alien ideology cannot continue to infect our way of life. Islamophobia is just the latest in a long string of backlashes that have included the COINTELPRO repression by the FBI against Black Power advocates and Vietnam War protesters; Communist witch-hunts; the internment of Japanese-Americans during World War II; anti-Semitism against the Jews; the

Palmer raids against immigrants and leftists; Jim Crow laws, segregation, and the Ku Klux Klan against African Americans; and many other periods of bigotry against different racial, religious, ethnic, and ideological groups.

In the 1970s, the right-wing government of Argentina launched a “dirty war” of terror against its own citizens and against left-wing ideologies that it wanted to repress. Thousands of people were snatched from their homes without any valid basis and kept in inhuman conditions for years, enduring torture and the fear of death day after day. Approximately 30,000 never returned and became known as the “disappeared.” Only years later, after thousands of angry, grieving relatives demanded answers, did the truth finally emerge about how the disappeared had been murdered.¹

Today, the U.S. government has launched its own “dirty wars” against citizens whose ideology it wants to repress. People who have committed no crime are taken into custody, isolated without adequate recourse to legal advice, railroaded with fake or contrived charges, and “disappeared” into prisons designed to isolate them. Some are arbitrarily deported to dangerous countries, leaving their families behind. Some are placed in solitary confinement for years until they are too mentally disabled to function. Some are isolated in special prisons, where their communication with the outside world is severely restricted, as if they carried a virus that might infect others. In some cases, relatives learn only months later what has happened to a loved one, and then their ability to communicate with the imprisoned individual is impeded.

At the heart of these dirty wars is the idea of “preemptively” dealing with ideologies that the government is afraid of. With false charges, harassment, and lies it can marginalize ideologies with which it disagrees (ideological prosecution). By passing unfair laws and bringing false or contrived charges, the government can convict innocent people it opposes (preemptive prosecution). And with these unfair laws, coupled with arbitrary arrests, it can deport immigrants it does not want (preemptive deportation).

Each country and each dirty war is different, but the impact of such government-inflicted fear and repression transcends national borders and causes us all to reflect on our common humanity and dignity, and on government’s fundamental obligation to preserve that humanity and dignity. When governments anywhere fail in this obligation, we all suffer. This booklet tells the story of America’s dirty wars against ideology, starting with the FBI’s infamous COINTELPRO program of the 1960s and ending with the government’s attack on and repression of innocent Muslims, peace activists, and immigrant communities after 9/11.

¹ Visit the website of Project Disappeared, <http://www.desaparecidos.org/arg/eng.html>, for information about this period in Argentina’s history, and see the Wall of Remembrance that honors the individuals who were “disappeared.”

Chapter 1

PROFILING OF PEOPLE OF COLOR: RACIAL PROSECUTION

Historical Framework

Historically, the African American community has borne the brunt of profiling. The fact that African Americans were brought here as slaves, and the deep-seated way this legacy has permeated our whole culture, has made discrimination against African Americans different and more severe than discrimination faced by other groups (other than Native Americans, who were subjected to a campaign of genocide.) After the Civil War, the Ku Klux Klan, Jim Crow laws, impoverishment, segregation, and biased law enforcement worked to keep the African American community “in its place.”

In the 1960s, the FBI and J. Edgar Hoover began to focus on the newly emerging Black Power movement as a threat to America, along with a number of other movements from the Left, including Communists, socialists, Vietnam War protesters, civil rights advocates, and political organizations of Puerto Rican nationalists, Native Americans, and women’s rights advocates (the Black Panthers, the American Indian Movement [AIM], and Puerto Rican nationalist groups were targeted the most fiercely). Hoover and the FBI created a counterintelligence program known as COINTELPRO to combat these supposed “threats.” COINTELPRO was a covert, often illegal FBI program to infiltrate, discredit, and disrupt domestic political organizations that the government did not approve of. It targeted Dr. Martin Luther King, Jr. and his followers, for example, even though they were non-violent, because they represented an ideology of empowerment for African Americans that the FBI was not willing to accept. The FBI planted false reports in the media, smeared reputations through forged letters and rumors, used *agents provocateur* to disrupt organizations and create false arrests, engaged in violence, and in many other ways attacked the ability of targeted organizations to function and achieve their political goals. The justification for this illegal activity was to “protect national security, prevent violence, and maintain the existing social and political order.”

The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (called the “Church Committee” because it was chaired by Senator Frank Church of Idaho) issued a final report in 1976 on its investigation of the COINTELPRO program and stated:

Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that...the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence...**nonviolent organizations and individuals were targeted because the Bureau believed they represented a “potential” for violence.**¹ [emphasis mine]

¹ See <http://en.wikipedia.org/wiki/COINTELPRO>.

In short, the FBI engaged in a “preemptive” attack against minorities and ideologies it did not like. Moreover, once a particular group was targeted, this attack quickly provided the justification to target other groups with similar goals. In this way, most anti-war groups were eventually targeted, even when it was clear that a particular group was peaceful and represented no threat of violence.

Most groups, including the Black Panther Party, quickly became aware of FBI infiltration and harassment and spent a great deal of energy trying to fight off the government and its agents who disrupted meetings, circulated false rumors, and engaged them in violence. The FBI arranged for many city police forces to conduct violent raids against Black Panthers, and when the Panthers tried to defend themselves they were blamed for the deaths or injuries that resulted. In other cases, the FBI simply framed Black Panther leaders they wanted to get rid of. Here are some of their stories.

The Assassinations of Fred Hampton and Mark Clark

In Chicago, the police and the FBI became involved with the Black Panther Party (BPP) in an increasingly intense series of confrontations instigated by COINTELPRO. On December 4, 1969, the Chicago police decided to raid the apartment of Chicago BPP Chairman Fred Hampton, a rising star of the party who had just accepted the job of national chief of staff and spokesperson. An FBI informant, William O’Neal, prepared a meal for a group of the Panthers that night and laced the food with a heavy dose of barbiturates so that they would be unable to respond to the raid. (O’Neal later committed suicide after confessing to his role in the government’s attack.) When the police broke into the apartment at 4 a.m. that morning, none of the Panthers could respond to the hail of bullets directed at them. Mark Clark was killed in the initial burst of fire. Fred Hampton was severely wounded while lying in his bed next to his pregnant girlfriend, and was unable to move because of the barbiturates. He was then reportedly dragged into the living room and shot twice in the head while the rest of the Panthers were rounded up and charged with the attempted murder of the police. An official inquiry cleared the Chicago police of any misconduct in the deaths of Hampton and Clark, but later a civil suit found the city liable and awarded the survivors substantial damages.

The Framing of Elmer “Geronimo” Pratt

As part of COINTELPRO, in 1970 the FBI accused Elmer “Geronimo” Pratt, a Black Panther Party leader, of murder even though the government knew at the time that Pratt was not in the area where the murder had been committed and could not have been guilty. The government suppressed information that Pratt was innocent and manipulated his conviction by listening in on his legal phone calls. On June 10, 1997, twenty-seven years after his conviction, Pratt was released from prison after an FBI agent acknowledged that Pratt had been framed. Pratt eventually received a \$4.5 million dollar settlement.

The Framing of Mumia Abu-Jamal and the MOVE Defendants

In 1978, a back-to-Africa group in Philadelphia called MOVE came into conflict with city officials, and eventually a large number of police and firefighters were dispatched to order the group to vacate their building. The MOVE members refused. During the standoff, Police Officer Ramp was shot in the back of the head and killed. In the ensuing shootout, a number of MOVE members, firefighters, police, and others were injured. Since Officer Ramp had been facing the MOVE members in the building at the time he was killed, it was claimed that someone from behind him in the police ranks must have fired the shot that killed him. However, nine members of MOVE were later tried and convicted of his murder. Most of the MOVE 9 are still in prison.

A young journalist (formerly Wesley Cook, now Mumia Abu-Jamal) wrote extensively about that 1978 confrontation with MOVE and the injustice of what the city had done in convicting the MOVE 9. On December 9, 1981, Police Officer Faulkner was shot and killed during a traffic stop, and Mumia was charged with the crime. At the trial, a series of prosecution witnesses seemed to establish a circumstantial case that Mumia had shot the officer, and he was convicted of murder and sentenced to death. Later, however, a number of these witnesses recanted or changed their testimony, and new evidence suggested that someone else had shot Officer Faulkner. It was suggested that perhaps the City of Philadelphia blamed the killing on Mumia in retaliation for his journalistic jabs at the city over the MOVE fiasco.

For almost thirty years, Mumia's case has bounced around in the court system, with judges unable to reach a decision on what to do about the apparently unjust conviction. Meanwhile, on Death Row Mumia has become a beloved and eloquent spokesperson for justice who is recognized worldwide. While lawyers struggle for a just result in the case, millions of people have concluded that nothing would be achieved by further persecuting him and that it is long past time to set him free. However, without further legal intervention, he may soon be executed.

Meanwhile, the City of Philadelphia kept up its persecution of MOVE. In 1985, the city demanded that MOVE vacate its new residence. Again the MOVE members refused and another standoff resulted. On May 13, 1985, the city flew a helicopter over the compound, which was populated by a number of women and children, and in one of the most outrageous police actions ever undertaken dropped a high-powered bomb on the building that killed eleven people, including five children, and ultimately destroyed sixty-five homes on the block. Not one member of the Philadelphia police or city government was ever charged in the deaths of eleven people or the destruction of an entire city block. To this day, the police adamantly oppose the release of Mumia, as though their outrageous destruction of life and property in the MOVE bombing is a matter entirely different from Mumia's unjust conviction.

The Destruction of Jamil Abdullah Al-Amin and the Assassination of Imam Luqman Ameen Abdullah

In the 1960s, H. Rap Brown (born Hubert Gerold Brown) was deeply involved in Black Power politics, but by 2000, Jamil Abdullah Al-Amin, as he is now known, had converted to Islam and was working with a group, the Ummah, to build an Islamic community. However, the police continued to harass him and view him as dangerous. (By this time, COINTELPRO was officially over, but the program of harassment against African Americans continued.) On March 16, 2000, two police officers drove to Al-Amin's house in Fulton County, Georgia to serve him with a

speeding ticket and also with a criminal complaint for impersonating a police officer for displaying an honorary police badge the city had given him for his efforts to clean up the city's West End. These petty and mean-spirited charges, served by two police officers, show the extent to which the police would go to harass Al-Amin. A confrontation ensued, culminating in a shootout in which one of the police officers was killed and the other one wounded; the latter lived to testify that Al-Amin had shot him.

The evidence at trial was contradictory and mishandled. The wounded officer could identify Al-Amin as the shooter only with difficulty because it was so dark, but he claimed to have shot the person who shot him. Indeed, there was blood all over the ground, but it was never tested to determine whose blood it was. Moreover, Al-Amin was not wounded. Nevertheless, he was convicted of murder and was sentenced to life in prison. Later another person confessed to being the shooter, but the police ignored the confession—they already had the man they wanted. In 2007, Al-Amin was transferred to the federal supermax prison in Florence, Colorado, where he is presently being kept in solitary confinement.

In 2009, Imam Luqman Ameen Abdullah, who was then leading the Ummah Islamic community in Detroit, was lured by an FBI *agent provocateur* into a warehouse that was surrounded by dozens of FBI and police agents and gunned down in a hail of bullets. The FBI claimed it was conducting a sting operation at the time—which completely failed to explain why the imam, who had not been charged with anything, was assassinated. A subsequent official report cleared the FBI of any misconduct. A police dog wounded in the attack was airlifted to a hospital, while Imam Luqman was handcuffed and allowed to bleed to death on the warehouse floor. Is Luqman's assassination a separate isolated event unrelated to any of the history that precedes it, or is Luqman just the latest COINTELPRO victim? (See more on this case in Chapter 3, Profiling of Muslims, #3, *Agent Provocateur* Cases.)

There is not space here to review all of the cases of injustice that were perpetuated during the official COINTELPRO era, or to advocate for the release or retrial of all the victims of these injustices who are still incarcerated. Since COINTELPRO targeted individuals because of their ideology and dissent from governmental policy, these people can be accurately described as political prisoners. The National Jericho Movement has started a campaign to free these political prisoners, and information about them can be found on the National Jericho Movement website, <http://www.thejerichomovement.com>. A systematic national re-examination of the COINTELPRO era and its legacy of political prosecutions is long overdue (see Appendix 1, 9/11: The Reinvention of COINTELPRO).

COINTELPRO was officially discontinued following the investigation by the Church Committee in 1976, but its techniques and philosophy have continued within the government in subtle ways. Drug possession laws have been used to profile and convict a whole generation of young people of color. On the surface, the laws apply equally to everyone, yet through a system that profiles race at every level people of color are consistently targeted, interrogated, arrested, convicted, and given longer sentences than other groups. In what has become a national disgrace, U.S. jails are now disproportionately populated by people of color.

Many people of color (and others, mostly from the bottom of the economic ladder) have been

wrongfully convicted via bad eyewitness identifications, lying informants, and false confessions. The police can often control these mechanisms. When they think they have the right person (or, sometimes, when they want to frame someone they know is innocent), they can subtly “suggest” a certain person in a lineup; or they can put pressure on informants, who are trying to save themselves from their own legal problems; or they can coerce false confessions with physical beatings and mental manipulations. They can use all or a combination of these tactics. In many cases, innocent people have been convicted because DNA analysis proves their innocence. These people were profiled as criminals and then falsely convicted using one or more of the above mechanisms or other tools, such as not disclosing evidence favorable to the defense.

It is remarkable that governments have been slow to seize on the potential of DNA evidence to release individuals who have been wrongfully convicted. Releasing such defendants would save the government huge amounts of money that is now spent to house them in prison; a program like this would easily pay for itself many times over, and would also allow the government to search for the real criminal while rehabilitating the wrongfully convicted. Yet few governments have set up systematic programs to identify the wrongfully convicted through DNA testing—suggesting that the wrongful convictions were really intended to incarcerate people the government wanted to suppress, and that the government does not want to publicly acknowledge its responsibility for these injustices.

Chapter 2

PROFILING OF PEACE ACTIVISTS: IDEOLOGICAL PROSECUTION

As the Vietnam War dragged on, one of the main targets of COINTELPRO became the peace movement. Peace activists were subjected to extensive surveillance, their groups were infiltrated, and *agents provocateur* were used to destroy the groups and initiate illegal arrests. The Church Committee stated in its final report:

The government has often undertaken the secret surveillance of citizens on the basis of their political beliefs, even when those beliefs posed no threat of violence or illegal acts on behalf of a hostile foreign power. The Government, operating primarily through secret informants, but also using other intrusive techniques such as wiretaps, microphone “bugs,” surreptitious mail opening, and break-ins, has swept in vast amounts of information about the personal lives, views, and associations of American citizens. Investigations of groups deemed potentially dangerous—and even of groups suspected of associating with potentially dangerous organizations—have continued for decades, despite the fact that those groups did not engage in unlawful activity.

Groups and individuals have been harassed and disrupted because of their political views and their lifestyles. Investigations have been based upon vague standards whose breadth made excessive collection inevitable. Unsavory and vicious tactics have been employed—including anonymous attempts to break up marriages, disrupt meetings, ostracize persons from their professions and provoke target groups into rivalries that might result in death.¹

At one point in the 1970s, the FBI actually financed, armed, and controlled an extreme right-wing group called the Secret Army Organization that targeted activists and leaders of the anti-war movement for intimidation and violent acts.

The Investigation of CISPES

In the 1980s, long after COINTELPRO was supposedly terminated, the FBI targeted a non-violent solidarity group, CISPES, using ideology and techniques that were remarkably similar to those of COINTELPRO. The investigation of CISPES started with a false rumor by a far-right ideologue who wrote an article arguing that a shoe factory, which CISPES was helping to fund in El Salvador, was supplying boots to “Marxist terrorists.” The article was nonsense, but someone sent it to the FBI, and because it coincided with the foreign policy perceptions of the Reagan Administration, it gained traction. In 1983, the FBI decided to open an investigation to determine if CISPES was a terror group.

The article cleverly intimated that CISPES was a “front group” that had at its core a “covert program” of terror. As a result, it was almost impossible to prove that CISPES was *not* a terrorist organization. Whenever FBI agents reported that the organization was run by normal people

¹ See <http://en.wikipedia.org/wiki/COINTELPRO>.

doing normal, peaceful things, FBI headquarters would remind the agents that that was what CISPES wanted people to think—but they were actually a front group for a covert terrorist program, and the agents had to look deeper. The more the agents claimed that CISPES was non-terrorist, the more headquarters insisted they look deeper. Moreover, because CISPES was supposedly a “front” group, any other group that had a significant association with CISPES automatically came under suspicion. The investigation expanded to include more and more individuals and organizations until eventually it grew to involve fifty-two of the fifty-nine FBI offices. The investigation came to utilize wiretaps, undercover agents, informants, and surveillance and was actively directing a campaign of harassment against those who opposed the Reagan Administration’s foreign policy. Tactics included breaking into offices and doing surreptitious searches. Eventually an FBI agent testified to Congress about the lawlessness of the investigation, and it was terminated in 1985 without indictments.

2010: Peace Groups Accused of Material Support for Terrorism

In 2010, the FBI began a campaign of intimidation and prosecution directed at peace activists, including members of the Palestine Solidarity Group, Students for a Democratic Society, the Twin-Cities Anti-War Committee, the Columbia Action Network, and the Freedom Road Socialist Organization. On September 24, 2010, FBI agents launched coordinated raids against peace activists in Chicago, Minneapolis, and Michigan. Their homes were ransacked; boxes of papers and books, computers, and other property were seized; and fourteen members were subpoenaed before a grand jury to testify about their efforts to promote peace. Nine more peace activists were subsequently called to testify. Members of the groups had visited countries in conflict, such as Columbia and Palestine, and had tried to meet with community leaders there in an attempt to find peaceful solutions to the conflicts. The government claimed these peace-building activities constituted material support for terrorism. The subpoenaed members all have stood firmly together in refusing to testify before the grand jury, even if means being held in contempt and going to jail; in their opinion, it is better to go to jail than to provide testimony through which their friends and fellow members might be indicted.

The subpoenaed defendants learned that in 2008, just before the Republican National Convention in St. Paul, Minnesota, the FBI had infiltrated the Anti-War Committee through one of its agents named “Karen Sullivan.” After the convention, Sullivan joined the Freedom Road Socialist Organization and informed on their activities to the FBI until 2010; when the subpoenas were served, “Sullivan” disappeared. During her infiltration, she developed close relationships with members, even playing with their children. It has come down to this: your new friend at church, or your associate in the book club, or your fellow worker in political dissent may be an FBI agent trying to manipulate you into committing crimes you never heard of, while secretly recording your conversations to be used as evidence against you.²

On May 17, 2011 at 5 a.m., Los Angeles police and FBI agents smashed in the door of Carlos Montes, a longtime activist for immigration rights and for the Chicano civil rights movement. They held Montes at gunpoint while ransacking his house and seizing personal computers, cell phones, and documents. Then he was questioned about the Freedom Road Socialist

² The Justice Department has also brought predatory prosecutions against some environmentalists and animal rights activists, apparently for their ideology of aggressively protecting animals and the environment.

Organization, indicating that the FBI investigation of peace activists has expanded to include immigrants and the Latino civil rights movement. A subpoena has also been issued to Montes to appear before the grand jury.

Chapter 3

PROFILING OF MUSLIMS: PREEMPTIVE PROSECUTION

Since 9/11, the dramatic and often secret changes to the law and to law enforcement described above have been directed primarily, but not exclusively, against the Muslim community in America. This community has been discriminated against because of the crimes of a small group of Muslim extremists and the false perception of Islamic belief. Muslims are overwhelmingly a peaceful, law-abiding community. Although there has been no evidence whatsoever to show that the American Muslim community had anything to do with the 9/11 attacks, the government has targeted this community apparently to eliminate anyone whose religious ideology might suggest sympathy with the 9/11 attackers. The government calls this “preemptive prosecution”—essentially convicting the target of a contrived crime because of the target’s associations or ideology. It is an extreme form of profiling that might be better referred to as “predatory prosecution.”

For example, in *U.S.A. v. Aref*, the defendant was convicted of facilitating a fake terrorist plot (conceived of in a sting) by witnessing an apparently legal loan. The evidence for conviction was so weak that on March 8, 2007 at a post-sentencing press conference, the prosecutor was asked if Aref actually was a terrorist. The prosecutor replied, “We had no evidence of that, but he had the ideology.” The prosecutor went on to explain, in a classic description of preemptive prosecution, that terrorist organizations “have a vast, vast network of people” to “lay the groundwork.” The FBI was concerned that Aref “was one of those people...and that the sting preempted anything that might have happened later on.” The FBI was also concerned that if a real terrorist had come along, Aref might have been sympathetic and might have helped him, and the sting was used to “preempt” this possibility. (The Albany Muslim community never believed that Aref was involved or interested in terrorism in any way. Moreover, there has never been evidence of a vast network of terrorists in America. The claim of such a network is simply fiction.)

Preemptive prosecution takes its inspiration from former Vice President Cheney’s 1% Doctrine: that if there is even a 1% chance of some terrorist act occurring, the government must act to preempt it as though it is a certainty. The government launched a war in Iraq allegedly to preempt the Iraqi government from sharing weapons of mass destruction with terrorists. (No such weapons were found—it was later claimed that the intelligence was faulty.) The U.S. rounded up suspected terrorists abroad and incarcerated them indefinitely at Guantanamo in order to preempt them from attacking the U.S. (Military and government officials now say that the Bush Administration knew that most of the detainees were innocent, but did not care. Having a large number of detainees served the administration’s purpose of creating fear of Islamic extremists.) The government has also preemptively prosecuted hundreds of innocent Muslims in the U.S. for contrived crimes, on the pretext of preempting them from committing crimes in the future. It seems clear that the U.S. government does not care that most of these Muslim defendants are also innocent. It serves the government’s purposes to claim that it has

caught hundreds of “terrorists” in the U.S., even if the defendants never intended to harm the country.¹

Preemptive prosecution involves not only convicting innocent defendants of contrived or fake crimes, but also twisting and breaking procedural rules in order to convince a jury, the media, and the American public that the innocent defendants are really guilty and dangerous. It is a cynical grand opera. The drama often begins when the FBI sends dozens of agents to arrest the defendants, search the mosque, and interview hundreds of frightened friends and neighbors in a manner designed to intimidate the community. The defendants are often held under Special Administrative Measures (SAMs) in solitary confinement, sometimes for years (see Chapter 5, Profiling of Prisoners, #1, SAMs). Solitary confinement is so debilitating mentally that under the Geneva Convention III—1948 (Article 90) it may not be used to punish for more than thirty days; how able, therefore, will a defendant be to testify in his own defense, or cooperate with his lawyers, when he has been held in solitary confinement for years? It is a practice that amounts to torture and inhibits the possibility of preparing a defense.

At the trial, the government often makes an absurd display of security in order to intimidate the jury and media into believing the defendants are really dangerous. A massive police presence surrounds the court, with snipers posted on rooftops. (Whom are they supposed to shoot?) The government often requests anonymous juries and witnesses, and it calls phony experts, who are essentially government mouthpieces, to testify about a fantasy “terrorist network” that might involve the defendant. The government feeds “secret” evidence, obtained from illegal electronic surveillance, to the judge in order to affect the court’s rulings and to prevent the defense from seeing or objecting to the material, and uses material obtained from these secret sources to assault the defendant’s character, even when the material is irrelevant to the charges. In this way, the government creates an atmosphere of hysteria and confusion to cover the lack of any substantive evidence that a real crime was committed.

When the defendant claims as a defense to have been entrapped in a crime manufactured by the government, the government counters with the claim that the defendant was “predisposed” to commit the crime, which would negate the entrapment defense. To prove predisposition, the government claims that routine, normal behavior of the defendants—dress, religious observances, Islamic financial transactions, literature, etc.—indicate a “predisposition” to commit terrorism, based on the false stereotype that *all* Muslims are predisposed to commit terrorism. If they are sufficiently “Muslim,” they are sufficiently “predisposed.” While this is illogical nonsense, it is difficult for jurors who are not sophisticated about Islam to sort through and understand the nuances.

In a July 10, 2009 report, the Inspector General of the Justice Department found that the government failed to provide a mechanism to identify exculpatory information obtained from secret surveillance in terrorism cases. (Exculpatory information is information favorable to the

¹ The government also created special Muslim prisons (Communication Management Units, or CMUs) to hold mostly preemptively prosecuted Muslims under restrictions much harsher than those of the prison population as a whole. The only purpose served by this cruel, unjustified incarceration is to convince the public that the Muslim defendants really are dangerous terrorists. In fact, the government knows this is untrue. See Chapter 5, Profiling of Prisoners, #2, CMUs.

defense that might show evidence of innocence.) By law, the government is required to provide exculpatory information to defendants, but it has refused to do so in these cases, and keeps such information classified. The government can cherry-pick information from your private conversations to show that you might be guilty of a crime, but it will not identify information that would show that you were *not* guilty of the crime. The unfairness of this is obvious.

The Inspector General has recommended that all terrorism convictions should be reviewed, presumably by special prosecutors, in order to possibly reverse convictions against those who were not given the required exculpatory information. It is a classic profiling problem: Muslim targets are presumed guilty through profiling, and so they are deprived of a fair chance to defend themselves by the government withholding evidence that would prove them innocent. Congress should adopt the recommendation of the Inspector General and review these terrorism cases.

In May 2011, the Center for Human Rights and Global Justice at New York University's School of Law published a report entitled *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, about the problem of preemptive prosecution. The report uses three cases—the Newburgh 4, the Fort Dix 5, and the Shahawar Matin Siraj case (see all these below under #3, *Agent Provocateur* Cases)—as examples of the misuse of *agents provocateur*. The report notes that since 9/11, there has been a tendency in society, as well as in law enforcement, to conflate Muslims with “terrorism” and to create the myth that Islamic societies are becoming increasingly “radicalized,” notwithstanding that the evidence shows precisely the contrary. The report then states:

A third interrelated factor is law enforcement's shift to a preventive approach to counterterrorism, whereby the government investigates individuals without any evidence of individual wrongdoing. ... Rather than focusing on the policing of criminal activity, this approach facilitates the criminalization of those who “act Muslim” either through their religious practice, attendance at a mosque, or their expression of political opinions critical of U.S. foreign policy. ...

A fourth factor... is the use of particular law and policies that facilitate the preventive model of aggressive policing and prosecution, combined with a concomitant absence of legal or regulatory safeguards. The U.S. government has aggressively used material support statutes, conspiracy or attempted charges, or combinations thereof in terrorism prosecutions, resulting in the criminalization of a range of behaviors that do not seem to be indicative of any intent to commit a violent crime.²

Preemptive prosecutions generate different patterns that can be used to group the cases into several rough categories: charity financing, material support, *agent provocateur*, training camp, and other cases that do not seem to fit clearly into any of the above. Here are some examples of these different groupings.

1. Charity Financing Cases

² See <http://www.chrgj.org/projects/docs/targetedandentrapped.pdf>.

Immediately after 9/11, the U.S. government moved to close down virtually all Muslim charities and both freeze and seize their assets, supposedly to prevent money raised in the U.S. from being used to finance terrorism abroad. The U.S. also preemptively charged the directors of several charities with financing terrorism, even when no money actually went to finance terror.

When charities tried to challenge the claim that they were financing terror, they were often met with a claim by the government that the information upon which the seizure was based was classified. According to the government, the charities were entitled to a due process hearing about the basis of the evidence for the seizure, but since the evidence was classified and the charity was not allowed to see it, there would be no point in actually holding such a hearing. Clearly we should all just trust the government when it claims these charities are terrorist organizations.

Even though the actual reasons were classified, the basic case against the charities was that they provided material support to foreign terrorist organizations (FTOs). Designated FTOs are organizations that were placed on a list by the secretary of state for essentially engaging in violence against foreign governments that our own government happens to support politically. There are liberation struggles going on all over the world, and for political reasons our government often chooses one side and labels the other side “terrorists,” even though these “terrorist” groups do not engage in any more violence than the side we support. Often these so-called “terrorist” groups actually control geographic territory and are the *de facto* governments in these areas. They are trying to provide schools, hospitals, food, and medicine to their people, at the same time that they are trying to fight off attacks. If a charity tries to help provide humanitarian aid to impoverished people in these areas, it is accused of providing material support to these “terrorists.”

George Washington, Mahatma Gandhi, Nelson Mandela, and a host of our most beloved leaders were called terrorists or the equivalent at some point in their careers, although the people for whom they fought called them “freedom fighters.” The term “terrorist” has now been used to condemn groups fighting to protect Muslim communities in Bosnia from the Serbian death squads; groups building hospitals in Palestine; groups protecting nature from development (“eco-terrorists”); and groups taking down sites on the Internet (“cyber-terrorists”). The word is useful to fearmongers because it requires no thought or analysis—it just condemns mindlessly. This booklet tries to avoid the term “terrorist” and focuses instead on the reasons for a conflict and how the interests of the U.S. are involved. Here are some examples.

The Al-Haramain Case (Pete Seda, Soliman Al-Buthe)

Pete Seda is an American citizen of Iranian descent who was the head of the U.S. branch of the Muslim charity Al-Haramain, whose U.S. headquarters are in Ashland, Oregon. (Al-Haramain is a Saudi charity with branches in many countries.) In 2004, Al-Haramain was declared a terrorist organization by the U.S. government and its assets were frozen.

In 2006, Al-Haramain sued the U.S. government to challenge the basis upon which it was declared a terrorist organization. The charity denied that it was involved in terror and demanded a due process hearing so that it could confront and refute any evidence that would indicate it had

engaged in any activity related to terrorism. The government acknowledged that Al-Haramain was entitled to a due process hearing, but said such a hearing would be pointless because all the evidence on which the government's decisions had been made was classified. By classifying this information, the government was able to deny Al-Haramain a hearing on seizure of its assets. However, the defense appealed. In the appeal, the government argued that informing each person and organization listed as a "global terrorist" of the reasons they were so designated would be too much work; but the defense argued that representatives of Al-Haramain had been left in the dark after the organization was put on the global terrorist list, and had to continue to fight the designation without knowing what was driving it. Lawyers argued that a much more effective defense could have been provided if the reasons for the charges were produced. A ruling on this appeal is pending.³

During the course of the original 2006 litigation, Al-Haramain asked for discovery (the pre-trial phase in a lawsuit in which each party can obtain evidence from the opposing party), and a government agent erroneously turned over to Al-Haramain a classified memo showing that the government had illegally wiretapped phone conversations between the leaders of Al-Haramain and their lawyers. This wiretapping had been conducted by the National Security Agency (NSA) without a warrant or determination of probable cause as required by the Constitution, and without complying with FISA (the Foreign Intelligence Surveillance Act), which at that time set the basic rules for clandestine surveillance. Thus the wiretapping was clearly illegal and actually constituted a felony under FISA.

This revelation set in motion another series of legal proceedings. The government demanded the return of the memo on the grounds that it was classified, and further demanded that all notes about the memo made by lawyers for Al-Haramain had to be destroyed. The government broke into the home and office of at least one of Al-Haramain's lawyers in an attempt to find the document, and it also convinced a reporter in Washington, D.C. to whom a copy had been given to return it. Eventually the court ruled in the government's favor, leading to an absurd spectacle in which the lawyer for Al-Haramain had to give his laptop to the FBI and watch while its hard drive was pounded into small pieces with a hammer. Only by this method could the government be sure that no written mention of the classified document survived, which admitted the government's illegal conduct.

At the same time, the Al-Haramain Foundation brought a claim that the government had illegally wiretapped its confidential legal telephone calls. The court ruled that the defense lawyers could not refer to the memo from the government, which admitted that the government had illegally wiretapped, because the memo was classified. However, the court also held that the Al-Haramain Foundation could try to prove the illegal surveillance in some other way, and eventually the defense lawyers were able to do that. In 2010, a court held that the government had illegally wiretapped Al-Haramain's legal phone conversations, and the foundation was awarded compensation for its legal fees, although not punitive damages.

In the meantime, Pete Seda and Soliman Al-Buthe, the two directors of Al-Haramain, were criminally charged with tax crimes and smuggling money out of the country, allegedly to give to

³ "Treasury: Terrorist List Explanations Too Tedious" by Nigel Duara, *ABC News*, March 10, 2011, <http://abcnews.go.com/US/wireStory?id=13098712>.

Chechen fighters in their war of independence from Russia. Since Al-Buthe was a Saudi national living in Saudi Arabia, and since Saudi Arabia did not have an extradition treaty with the U.S, Al-Buthe did not go to trial, and Pete Seda had to face the criminal charges by himself.

The government claimed that Seda had transferred \$150,000 to Saudi Arabia to be given to the *mujahideen* (Muslim fighters) in Chechnya. The only proof that Seda intended the money to go to Chechnya was from a government witness, Barbara Cabral, who testified that she and her husband went with Seda on a pilgrimage to Mecca. At the end of the trip, Seda had asked them to donate \$400 of leftover money to buy food and blankets for the *mujahideen* who were fighting the Russian Army in Chechnya.

Seda's defense team portrayed the longtime Ashland resident as a victim of scapegoating and guilt by association. They said Seda was a moderate Muslim known for promoting tolerance and peace. The *Mail Tribune* noted that even a prosecution witness said that Seda hated terrorism. The article stated that "...under cross-examination, David Gartenstein-Ross acknowledged he told investigators four years after the smuggling allegedly occurred that Pete Seda hated terrorism and believed it gave Islam a bad name."⁴

Despite this testimony, Seda was convicted. On March 1, 2011, the defense team made a motion for a new trial and to disqualify the prosecution for serious professional misconduct, since after the trial an FBI agent had asked the court to approve a payment of \$7,500 to its chief witness, Barbara Cabral. The judge initially refused to approve the payment, noting that the prosecution had failed to disclose to the defense before trial this promise of payment to a prosecution witness. A decision on the motion is pending.

The Holy Land Foundation Case (Ghassan Elashi, Shukri Abu-Baker, El-Mazain, Mufid Abdulqader, Abdulrahman Odeh)

The Holy Land Foundation, formed in 1989 to provide relief to the Palestinian people impoverished by the repression of the Israeli government, eventually became the largest Muslim charity in the U.S. In 2007, the Bush Administration brought criminal charges against six of the directors of the Holy Land Foundation for essentially sending money (between 1995 and 2001) to *zakat* (charitable) committees in Palestine that were supposedly controlled by Hamas, after Hamas was declared to be a terrorist organization. The first trial resulted in one defendant being acquitted and a hung jury for the remaining five defendants. A second trial resulted in those five defendants being convicted of providing material support for Hamas.

The five defendants were given very harsh sentences. Shukri Abu-Baker and Ghassan Elashi each received sixty-five years in prison; El-Mazain received fifteen years. Two brothers, Mufid Abdulqader and Abdulrahman Odeh, received twenty and fifteen years respectively. All have families who are devastated by this criminalization of men who devoted their lives to relieving the suffering of the Palestinians.

⁴ "Prosecution witness: Seda hated terrorism" by Jeff Barnard, *Mail Tribune*, September 2, 2010, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20100902/NEWS/9020324/-1/SPECIAL16>.

During the trial, it was conceded by the government that the defendants had not encouraged or engaged in any violence, and that the money sent by the Holy Land Foundation had been used only to provide basic needs and services, such as building schools and hospitals for truly impoverished people. None of the money went to finance terrorism directly. But the government argued that since some Holy Land money went to *zakat* committees controlled by Hamas, the charity's money had helped enhance the prestige of Hamas and allowed it to divert money from its charitable and social activities into promoting terrorism.

The defendants argued that the *zakat* committees were the only practical way to get money to people who needed it. Other organizations, including UN agencies and USAID, used the same *zakat* committees for the same reasons. If Hamas controlled some of the *zakat* committees, it was because Hamas was, in effect, the government of Palestine at that time, as shown by Hamas's victory in the elections of 2006. The government's successful prosecution of the Holy Land defendants meant that in effect, almost any support for the Palestinian people, no matter how compassionate the motive, could be prosecuted as support for terrorism as long as Hamas was the government.

Akram Musa Abdullah (Holy Land Subcase)

During the investigation of the Holy Land Foundation, the FBI interviewed Akram Musa Abdullah about fundraising that he supposedly did for the foundation in the mid-1990s. At the time, the FBI was secretly recording his conversations and believed that as imam of a Phoenix mosque, Abdullah had in fact done some fundraising for the foundation. Abdullah supposedly denied this, although the judge who studied the two-hour transcript said that the mis-statements were so minor that they could have been memory lapses. The FBI then told Abdullah that he had lied and that he had better improve his story, or they would charge him with lying. The judge concluded that the FBI used the threat of charges to try to pressure Abdullah into changing his story so as to improve its case against the Holy Land Foundation.

Abdullah refused to change his story and was indicted for lying to the FBI. Before trial, the judge ruled that he might impose a "terrorism" enhancement, which could have raised the potential sentence from about a year to about eight years. As a result, Abdullah pleaded guilty and was sentenced to eighteen months.

Dr. Rafil Dhafir, Priscilla Dhafir (www.dhafirtrial.net)

Dr. Rafil Dhafir, born in Iraq and naturalized as an American citizen, is a highly regarded oncologist from Syracuse, New York who became concerned about the humanitarian catastrophe created by the Gulf War and the UN sanctions imposed on Iraq. After Saddam Hussein invaded Kuwait on August 1, 1990, more bombs were dropped on Iraq in a six-week period than were dropped by all parties during World War II. In total, these were at least six times more powerful than the two atomic bombs dropped on Japan. Some bombs contained depleted uranium, which was spread across the country. All major bridges, communication systems, and water purification systems were bombed, and the UN never allowed them to be repaired. Nor were hospitals and schools spared. As a result of the bombing and the sanctions, the health and education systems in Iraq went from being the best in the region to being the worst.

After the war, according to the UN's own statistics, throughout the 1990s 6,000 children under the age of five in Iraq died every month from lack of food and access to simple medicines as a result of the U.S.-led sanctions. Three senior UN officials resigned because of what they considered a "genocidal" policy against Iraq. The number of civilians killed as a direct result of the sanctions rose to between 1.5 and 2 million.

It was in direct response to this humanitarian catastrophe that Dr. Dhafir founded the Help the Needy charity in 1990, and for thirteen years he worked tirelessly to help publicize the plight of the Iraqi people and to raise funds to help them. According to the U.S. government, Dr. Dhafir donated \$1.4 million of his own money over the years. As an oncologist, he was particularly concerned about the effects of depleted uranium on the Iraqi population, which was experiencing skyrocketing cancer rates.

In 2003 (just weeks before the U.S. invasion of Iraq), Dr. Dhafir was arrested, and Attorney General John Ashcroft announced that "funders of terrorism" had been apprehended. On that same day, 150 local Muslim families were interrogated because they had donated to his charity. However, no charges of terrorism were ever brought against Dr. Dhafir. Instead, he was charged with violating the Iraqi embargo and was held without bail for nineteen months until his trial in October 2004.

When Dr. Dhafir refused to accept a plea agreement, twenty-five additional charges of Medicare fraud were added. Medicare fraud usually involves fictitious patients and non-existent treatments; Dr. Dhafir's case had none of this. The government never denied that his patients received appropriate care, treatment, and medicines; rather, it claimed that because Dr. Dhafir was sometimes not present in his office when patients were treated, Medicare forms were improperly rendered and did not reflect treatment by someone else other than Dr. Dhafir. Illogically, the government argued that if Dr. Dhafir's forms were not correctly filled out, he was not entitled to any reimbursement for treatments actually given or for the expensive chemotherapy his office had actually administered, and so he was guilty of Medicare fraud. (In fact, Dr. Dhafir, a very compassionate man, treated people without health insurance and paid for medicine for those who could not afford it out of his own pocket.)

Other companies violated the Iraq embargo and were merely told by the U.S. government to stop. Other doctors ran into trouble trying to bill under the confusing Medicare formula and were merely told to straighten out their billing. But Dr. Dhafir was prosecuted as though he were a career criminal. After he was convicted, the government switched theories again and claimed at sentencing—without proof—that Dr. Dhafir was engaged in financing terrorism. He was sentenced to twenty-two years in the notorious Muslim CMU in Terre Haute, Indiana.

Priscilla Dhafir, Dr. Dhafir's wife and also his bookkeeper, was also charged and eventually pleaded guilty to one count of lying to a government agent: she had told a government agent that her husband was present in his medical office on a day that he had not been. At the trial, while she testified about the intricacies of Medicare reimbursement, a large screen opposite the jury featured an excerpt from the *Medicare Handbook*, which said that in the event of a billing error "a refund would be requested" by the government. This was the backdrop as Mrs. Dhafir

described the mayhem at her house on the day of her husband's arrest. After her husband left for work at 6:30 a.m., the doorbell rang, and before she could answer it, five FBI agents battered down the door. Finding Mrs. Dhafir in her nightclothes, they held guns to her head. Helicopters and local media hovered over the house as eighty-five government agents rummaged through the house all day. Mrs. Dhafir spent the day in her nightclothes and was not even allowed to shut the door when she went to the bathroom.

Although at trial the government claimed that Dr. Dhafir's prosecution was not related to terrorism, the government now includes him, Mrs. Dhafir, and their accountant on their lists of convicted terrorists. Unlike the Holy Land defendants, the government could not charge Dr. Dhafir with supporting a terrorist organization like Hamas. No listed terrorist organizations existed in Iraq because Saddam Hussein would not permit it. So the government simply framed him for Medicare fraud and then called it terrorism. This is precisely what preemptive prosecution is all about: convicting people of contrived crimes for ideological reasons.

Enaam Arnaout

Enaam Arnaout, a Syrian-American, was the director of the Benevolence International Foundation charity. In 2002, he was indicted on racketeering conspiracy charges for funneling a small percentage of the group's charitable contributions to Muslim fighters in Bosnia in the 1990s—when the United States was fighting alongside these same Muslims. He eventually pleaded guilty to one count, but in the plea agreement the government stated that he had never acted contrary to the interests of the United States, and the judge said there was no evidence that Arnaout “identified with or supported” terrorism.⁵ He was sentenced to 120 months in the CMU at Terre Haute and was released in February 2011.

In March 2011, Arnaout, now a free man, sought permission to take a three-month vacation to Turkey, Bosnia, and Saudi Arabia to deal with family business and to visit his ailing mother in Saudi Arabia. The U.S. Attorney's office in Chicago didn't object to the travel plan, but the judge decided to limit Arnaout's travel only to Saudi Arabia, saying that while he was allowed to visit with other family members, he must live with his brother and check in regularly with his probation officer by telephone. Evidently, now that Arnaout is out of prison, the government no longer considers him dangerous.

2. Material Support Charges and Guilt By Association

Material support of terrorism laws have been used to bring preemptive prosecution charges against not only charities, but also others who were engaged in nothing more serious than free speech and common hospitality and compassion.

In *Humanitarian Law Project v. Holder*, the U.S. Supreme Court held that advice and assistance offered by peaceful organizations to help designated terrorist organizations give up terrorism would be considered material support for terrorism. Even those contacts that supported legal and

⁵ “U.S. Campaign Produces Few Convictions on Terrorism Charges” by Dan Eggen and Julie Tate, *Washington Post*, June 12, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/11/AR2005061100381.html>.

beneficial activities of the designated organization would be material support, as would free speech supporting the organization, if it was “coordinated” with the organization.⁶

Astonishingly, the Court held that this standard was not vague and did not infringe the right of free speech. The Court held that people would know what conduct to avoid in order not to run afoul of the anti-terrorism statutes. In fact, just the opposite is true. The law is so vague that there is no way to know what is criminal and what is not criminal. One side’s “terrorist” is the other side’s “freedom fighter.” How much “coordination” with a designated organization is required to turn free speech into criminal conduct—meeting with an organization member? Reading the organization’s literature? Attending the organization’s rally? Giving clothes to the poor might be criminal if the clothes end up with groups the U.S. opposes; even filing a legal brief seeking to change the designation of a foreign terrorist organization could be criminal. Another version of the law, the Animal Enterprise Terrorism Act, targets animal rights activists when they advocate for humane treatment of animals.

The government has used the material support statutes to criminalize trivial or benevolent conduct that nobody would expect to be illegal (i.e., building hospitals and schools in Palestine is material support because it enhances the prestige of Hamas—see the Holy Land Foundation Case, above, under #1, Charity Financing Cases). The government sometimes targets people it believes are suspicious and charges them “preemptively” with material support because of some trivial contact with a terrorist organization. In other cases, the government brings material support charges against people “associated” with possible terrorists, even when the associates have no apparent involvement in terrorism. They are convicted essentially of guilt by association. When free speech and ideology are criminalized to favor only the speech and ideology approved by the government, we live under tyranny.

Sami Al-Arian (Hatem Fariz, Sameeh Hammoudeh, Ghassan Ballut)

Dr. Sami Al-Arian, the son of Palestinian refugees, has lived in the United States since 1975. He was a tenured professor at the University of South Florida. As a professor, he criticized the Israeli occupation of Palestine and openly promoted the rights of Palestinians. Hatem Fariz is a Palestinian-American who was born in Puerto Rico and raised outside Chicago. In 2002 he moved to Florida, where he ran a clinic and became very involved in volunteer work at his children’s school. “Unfortunately, it’s wanting to help out that got me in trouble,” Fariz told the *St. Petersburg Times* in June 2006.⁷

In 2001, the government began wiretapping Fariz, although Dr. Al-Arian had been wiretapped for years before that. In 2003, Dr. Al-Arian, Fariz, and two other men, Sameeh Hammoudeh and Ghassan Ballut, were indicted and charged with having provided material support to Palestinian Islamic Jihad (PIJ). The government was aware that they had virtually no evidence to connect Dr. Al-Arian to the PIJ and thus to the charges, so they brought additional charges against Fariz in an effort to get him to make a deal and give false testimony against Dr. Al-Arian, who was the

⁶ See *Holder v. Humanitarian Law Project* for the Supreme Court’s strained attempt to find a rationale on which to uphold the material support law: <http://www.supremecourt.gov/opinions/09pdf/08-1498.pdf>.

⁷ “Al-Arian associate gets prison” by Meg Laughlin, *St. Petersburg Times*, July 26, 2006, http://www.sptimes.com/2006/07/26/Tampabay/Al_Arian_associate_ge.shtml.

real target. Fariz refused. (Fariz had earlier owned a business that, among other things, handled food stamps. He sold the business but allowed the new owners to use his identification number for a period of time when handling the food stamps. These individuals misused the identification number to exchange food stamps for money, which is illegal, but Fariz was legally responsible for the fraud because it was done with his number. The FBI hoped to use this charge in order to pressure Fariz into giving perjured testimony against Dr. Al-Arian.)

The defendants were tried in 2005—Hammoudeh and Ballut were completely acquitted, and Fariz and Dr. Al-Arian were mostly acquitted, with the jury deadlocked (10 to 2 for acquittal) on a few minor counts. As an example, one of the charges brought against the defendants was extortion. The supposed proof was that a woman in Israel had a sister who had been killed by a Palestinian suicide bomber. The woman testified at trial that she was so scared of the violence that she left her house and property in Israel and moved to the U.S. Thus it was alleged that the woman had been defrauded of her property by the defendants—without any proof that the defendants had anything to do with the bombing, or her leaving Israel, or anything else relevant to the charge. Instead, the prosecutors showed films of blown-up buses and people killed supposedly by the PIJ without ever connecting these attacks to the defendants, in the apparent hope that the jury would be so traumatized by all the blood and carnage that they would convict anyway.

The prosecution announced its intention to retry the defendants on the minor charges on which the jury was deadlocked, and in the meantime they insisted on keeping Dr. Al-Arian in jail. As the case dragged on, it appeared that the government would try to keep him in jail as long as possible until he finally agreed to plead guilty to something. Dr. Al-Arian was held in solitary confinement in humiliating and inhumane conditions. When he went to a legal visit with his lawyer, for example, he was so shackled that he could not hold his legal papers, and his guards refused to hold them for him. As a result, he had to bend over and shuffle to the interview with the papers balanced on his back. The conditions became so bad that Dr. Al-Arian, a diabetic, eventually went on a hunger strike to protest his treatment. It almost killed him.

In order to get out of jail, Fariz eventually pleaded guilty in 2006 to having provided completely non-violent services to members of PIJ: in 2000 he had arranged for a magazine interview with PIJ associate Abd Al Aziz Awda; in 1995 he had sent tapes to Shallah in Tampa, seven months before Shallah became PIJ leader in Syria; and in 2001 and 2002 he had raised money for bookbags and an ambulance for needy Palestinians in the Occupied Territories. Fariz was sentenced to thirty-seven months in prison and sent to the CMU in Terre Haute. He was released in May 2010.

Despite Dr. Al-Arian's acquittal on the most serious charges, the government continued to hold him in jail for a retrial in Florida. In early 2006, in an effort to gain his freedom, Dr. Al-Arian agreed to plead guilty to a single count of conspiracy in exchange for his release and voluntary deportation. The acts in the plea were non-violent: he admitted hiring a lawyer for his brother-in-law, filling out an immigration form for a visiting Palestinian scholar, and failing to disclose the political associations of a colleague to a newspaper reporter. The government then claimed that these acts provided material support to PIJ because the individuals involved were associated with the PIJ. In the written agreement, the Justice Department stipulated that Dr. Al-Arian

1. had not engaged in any violent acts and had no previous knowledge of violent acts committed in the United States or the Middle East;
2. would not be required to “cooperate” by providing information to prosecutors; and
3. would be released for time served, and the Justice Department would assist in his immediate voluntary deportation.

However, after the guilty plea, the government continued to hold Dr. Al-Arian in jail until another U.S. Attorney, Gordon Kromberg, subpoenaed him to testify before a grand jury in Virginia. Dr. Al-Arian refused to testify, saying that the plea bargain exempted him from “cooperation.” It was believed that the only reason the government wanted his testimony in another state was to charge him with perjury there, in the same way that Sabri Benkahla was treated after he was found not guilty of being part of the Virginia Paintball Network (see this case below under #4, Training Camp Cases). After his acquittal, Benkahla was forced to testify before a grand jury about the same material for which he had been found not guilty by a jury. He was then charged and convicted of perjury, and is now serving a long prison term.

After Dr. Al-Arian refused to testify before the grand jury, he was charged with contempt of court. After his contempt trial began in Virginia, the government was forced to produce the prosecutor in Florida who had negotiated the original plea bargain in which Dr. Al-Arian had pleaded guilty, and that prosecutor affirmed his understanding that Dr. Al-Arian was not required to “cooperate” by testifying before a grand jury. The defense then moved to dismiss the contempt charge as violating the plea bargain. Pending her decision, the presiding judge agreed to release Dr. Al-Arian under house arrest: he would remain in his daughter’s apartment in Virginia wearing a GPS bracelet, and he would not be allowed to leave the apartment until the decision was made. However, the court has been considering its decision on the motion for over two years, while Dr. Al-Arian remains confined to his daughter’s apartment under house arrest in the middle of a contempt of court trial.

Syed Fahad Hashmi (www.freefahad.com)

The case of Syed Fahad Hashmi illustrates the use of material support charges and guilt by association, but also the use of SAMs. Therefore it is also detailed later in Chapter 5, Profiling of Prisoners, #1, SAMs. On June 6, 2006, British police arrested Hashmi at London’s Heathrow Airport on a U.S. warrant for conspiracy to give material support to terrorism, claiming that in 2004 a bag of clothing—waterproof socks and raincoats—that was subsequently delivered to a terrorist official by Junaid Babar had been stored for two weeks in Hashmi’s apartment in London. There was apparently no evidence that Hashmi was involved in terrorism, or that he knew the bag of clothing was to go to a terrorist. Babar had been an acquaintance of Hashmi’s, and Hashmi had simply allowed Babar to store the bag.

After being held in Belmarsh Prison in London for eleven months, Hashmi was extradited to the U.S. in 2007, where he was placed in solitary confinement in the Metropolitan Correctional Center (MCC) in New York for nearly three years under extremely harsh pre-trial conditions, including Special Administrative Measures (SAMs), and essentially was held incommunicado. His lawyers tried to work under the difficult conditions imposed by the SAMs to prepare him for trial. A main contention was that, except through the testimony of Junaid Babar—who was not

the most credible of witnesses—the government had no evidence that the package of clothing in Hashmi’s apartment had gone to terrorists. Babar had himself been arrested on terrorism charges in New York in April 2004 after his return from Pakistan, and on June 2, 2004 he pleaded guilty to five counts of material support for terrorism for providing, and conspiring to provide, money and supplies to Al-Qaeda terrorists fighting in Afghanistan against the U.S., international forces, or the Northern Alliance. Babar faced up to seventy years in prison. His arrest in April 2004 meant that he had agreed to cooperate with the government probably as soon as he was arrested, and this time period could have coincided with the two-week period during which he stored the bag of clothing in Hashmi’s apartment. Indeed, Babar was scheduled to be the main government witness against Hashmi.

By 2010, Hashmi was struggling to keep his sanity, having endured nearly three years of solitary confinement, and his lawyers were concerned about their ability to communicate with him and about his ability to cooperate in his defense. The government then disclosed that it had been following Hashmi for some time before his arrest, secretly recording his statements and especially his criticism of the U.S. and its policies. Over the objections of the defense—that these statements were simply Hashmi’s protected First Amendment rights—the judge ruled that he would permit the government to show at trial the “background of the conspiracy.” When groups supporting Fahad indicated that they would attend the approaching trial, the prosecution made the bizarre argument that if the jury saw the courtroom packed with supporters, they might be intimidated by “speculation that at least some of the spectators share the defendant’s violent radical Islamic leanings.” The judge granted the prosecution’s motion for an anonymous jury with extra security, thereby increasing the chance that the jury would be prejudiced before the trial ever started.

A day after the judge delivered this decision, and apparently realizing that he could not get a fair trial, Hashmi accepted a plea bargain and pleaded guilty to one count of conspiring to provide material support, with the promise of a reduced prison sentence. He was sentenced to fifteen years in June 2010, which he is now serving, still in solitary confinement under SAMs, in the Supermax prison in Colorado.

Junaid Babar’s freedom came with the aborted Hashmi trial. After spending four years and eight months—out of a possible seventy years—in prison, over a year of which was in a high-security section of the Metropolitan Correctional Center (MCC) in New York (the same place where Hashmi had been held from 2007–2010), Babar was released on bail in 2008. On December 10, 2010, six months after Hashmi’s sentencing, Babar’s sentence was officially commuted to “time served.” The judge noted his exceptional service in convicting others, and also noted that he “began cooperating even before his arrest.” This statement led to speculation that Babar might have become an *agent provocateur* for the government before he left the bag of clothes in Hashmi’s apartment, and that he might have been sent by the government to “get” Hashmi because of Hashmi’s criticism of the U.S.

Ehsanul Islam “Shifa” Sadequee and Syed Haris Ahmed (www.freeshifa.com)

In the Toronto 18 case (described below under #4, Training Camp Cases), a group of young Muslim men in Canada attended several training camps and also engaged in considerable general

online discussions about jihad and their obligations as Muslim men. Consequently, the U.S. government looked for U.S. “associates” of the Toronto 18 and focused on Ehsanul Islam “Shifa” Sadequee, 20, and Syed Haris Ahmed, 22, both from Atlanta, Georgia, who were involved in these online discussions, although no plans had been formed to do anything illegal.

Based on evidence from 2004 and 2005, Sadequee was charged with supporting a foreign terrorist organization, Lashkar-e-Taiba (LET), a group struggling to liberate Muslim-dominated Kashmir from India—although LET was not designated as a terrorist organization in the U.S. in 2005 and did not even exist as an organization then. The evidence against Sadequee included online chats between teenagers and religious literature that he had translated from Arabic to English and published online. He was also accused of sending videos of tourist sites in Washington, D.C. to his online friends, who supposedly were in contact with LET. However, the government could not demonstrate a single conversation or sentence from the online chats about plans or plots for attacking these sites.

Sadequee, a U.S. citizen, had gone to Bangladesh to get married. On April 17, 2006, he and his wife were returning home when he was kidnapped by Bangladesh authorities at the request of the U.S. government. No one knew where he was for four days. His father requested the help of journalists and the public in finding his son, but the Bangladesh government kept silent. What had actually happened was that the FBI had kidnapped Sadequee and flown him via Alaska to New York aboard a “secret” CIA plane, stripping off his clothes and wrapping him in a plastic-like material during the flight. The High Court Division of the Supreme Court of Bangladesh later declared Sadequee’s detention, deportation, and handover to U.S. authorities illegal because it violated international laws.

In New York, Sadequee was charged with making a false statement to the FBI. However, in pre-trial hearings, the FBI revealed Sadequee had never lied to them; rather, it was the FBI who had lied in the initial indictment to capture him: while he was in Bangladesh, FBI agents had communicated with him via e-mail and chat forums, pretending to be his teenaged friends. In addition, the government had searched his luggage and found a map of Washington, D.C. This, coupled with his sending videos of tourist sites in Washington, D.C. to his online friends, apparently caused the government to reinterpret these normal activities as something sinister, although prosecutors conceded that Sadequee was not discussing a terrorist plot; at best, they claimed that he was trying to get in contact with terrorists abroad, and that he was in some way “associated” with the Toronto 18, since he and Syed Haris Ahmad had met with some of those young men.

Sadequee was jailed at the Metropolitan Correctional Center (MCC) for three and half months before the government transferred him to the Atlanta Penitentiary in August 2006. Prosecutors offered him a plea bargain: in exchange for dropping three charges, he would plead guilty to one count of material support for terrorism, agree to identify other teenagers from the chats, and testify against Syed Haris Ahmed and other Muslims who were also facing similar charges. Sadequee refused. In Atlanta, he was placed in solitary confinement for over 1,300 days. He was kept in a room that was approximately 12 feet by 8 feet with no windows or proper ventilation. During this time, his health declined significantly.

The evidence at trial demonstrated that Sadequee did not send videos to LET; that he did not send his co-defendant, Ahmed, to Pakistan to join LET; and that Ahmed never joined LET despite multiple opportunities to do so. Information related to Sadequee's kidnapping in Bangladesh was not presented to the jury. The majority of government witnesses were FBI agents who had not participated in the online chats but were allowed to *interpret* this evidence; no actual participants from the chats testified to interpret them. No act of violence had been committed by Sadequee or anyone else, but the connections to other teenagers (particularly the Toronto 18) were used as evidence only because they too were Muslims. The word "jihad" and quotations from the Qur'an with mistranslated interpretations were also used as evidence. Religious expression and the debates of teenagers were taken out of context by the government to paint them all as terrorists and to preemptively prosecute them. All the actual chats, where the teenagers discussed and criticized Freemasonry and their Global New World Order agenda, remained classified and were not presented to the jury. Sadequee was convicted and sentenced to seventeen years.

The case against Syed Haris Ahmed was similar to the one against Sadequee. In March 2006, the FBI visited Ahmed in downtown Atlanta, asked about a recent trip to Washington D.C., and indicated that they knew all about his chat room activities and another recent trip to Canada. They also said that if he would testify against Sadequee, they would leave him alone; otherwise, he might be arrested. Later they interviewed him for more than eighteen hours stretched over a week without an attorney present, and also threatened to involve his family if he did not say or admit what they wanted. Ahmed refused to testify against Sadequee, and on March 23, 2006 he was arrested and charged with four counts of material support for a foreign terrorist organization (LET), supposedly for sending them a video of tourist sites in Washington, D.C. and for trying to join them to get military training so he could perform "violent jihad."

As with Sadequee, the district attorney offered a plea bargain: three charges would be dropped if Ahmed would plead guilty to one count of material support for LET and agree to testify against Sadequee and some other Muslims who were also facing such charges. Ahmed refused, and instead chose a bench trial (only a judge would hear the evidence and decide on a verdict, not a jury) in June 2009, thinking it would be fairer than a jury trial. Although the prosecution could not prove that Ahmed made any attempt to join LET, the judge found Ahmed guilty of the one count of material support, but reduced the prosecutor's demand for a sentence of fifteen years to thirteen, followed by thirty years of supervised release.

About this case, the U.S. Attorney stated, "We can't wait until something happens, or until things get very close to happening. I think we all learned on September 11, 2001 that we don't wait anymore." But surely we still have to wait for a crime to be committed before we convict someone of it. Like the other cases described in this section, no crime was committed; the government simply created one based on guilt by association.

3. *Agent Provocateur* Cases

The government has made extensive use of *agents provocateur* to create contrived crimes with which to entrap innocent or unaware Muslims who have no interest in terrorism. Sometimes these *agents provocateur* have targeted certain individuals for preemptive prosecution because of

information obtained by the government on a tip or through secret surveillance. On other occasions, these agents have simply hung around mosques, offering money and friendship to anyone who would join them in jihad. The cases below illustrate both kinds of tactics.

Agents provocateur are trained to manipulate people, find their weak spots, and offer large sums of money to manufacture crimes. They pursue their targets for years, sometimes posing as friends—sometimes even moving into their homes—in order to secretly tape-record enough information to manufacture cases of material support for terrorism. Hundreds of people, mostly Muslims, who had no interest or involvement in terrorism have been convicted of thought crimes or contrived charges manufactured by the FBI and given sentences of many decades or life in prison.⁸ Significantly, in none of these cases was anyone killed or injured, nor was any property damaged or money stolen. The FBI claims it anticipated and prevented these crimes before they happened, but it is unlikely that most of the crimes would have occurred, and in any event anticipation of criminal activity is not a valid basis to prosecute someone. Many defendants are now serving long prison terms essentially for exercising rights guaranteed to other Americans under the Constitution.⁹

Yassin Aref and Mohammed Hossain (www.nepajac.org/Aref&Hossain.htm,
www.yassinaref.com)

Aref was a Kurdish refugee from Iraq who was the imam of a mosque in Albany, New York. The government claimed to have become suspicious of Aref’s “ideology” for some reason and decided to entrap him with a sting that used an *agent provocateur*, Shahed Hussein, who was called Malik for the sting. Malik, awaiting sentencing for his own crimes, was promised a sentencing break if he cooperated with the government to get Aref.

First Malik, acting for the government, entrapped a member of Aref’s mosque, Mohammed Hossain, into accepting a loan so that Hossain could improve his rental properties. (The government conceded that it had no concern that Hossain was a terrorist; it was only using Hossain as a way to get to the target, Aref.) Malik told Hossain (but not Aref) that the money for the loan came from the sale of a missile to a terrorist group. Hossain, a naturalized American citizen from Bangladesh, indicated that he had no interest in missiles or terrorists, but he agreed to take the loan to fix up his rental properties.

At this point, Malik and Hossain asked Aref to witness the loan. That was Aref’s only act—to be a gratuitous witness for the loan—and the only relevant question was whether Aref was given enough information by Malik to understand that the money for the loan came from an illegal source, the sale of the (fake) missile. Any impartial reading of the record would indicate that Aref had no idea that anything illegal was going on; in fact, Aref made statements to Malik indicating his support for America and against violence and terrorism.

⁸ For more information about preemptive prosecutions, visit Project SALAM at <http://www.projectsalam.org>.

⁹ See *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the U.S.*, a May 2011 report of the Center for Human Rights and Global Justice of New York University School of Law, that focuses on three *agent provocateur* cases: the Newburgh 4, the Fort Dix 5, and the case of Matin Siraj: <http://www.chrgj.org/projects/docs/targetedandentrapped.pdf>.

After the indictment was announced, the governor of New York hysterically proclaimed to the media that “terrorists are living among us.” The FBI made absurd displays of security to intimidate the jury. The trial featured secret and presumably illegal surveillance material, mistranslations of foreign words and documents, and other tricks to convince the jury that the two men were dangerous. Both men were convicted and sentenced to fifteen years each. Until April 2011, Aref was serving his sentence in a CMU. The two men left behind their wives and a total of ten young children who must struggle with inadequate resources and support.

The jury convicted Hossain of all twenty-seven counts of the indictment, but dismissed twenty of the thirty counts of the indictment against Aref, who was the target of the sting, except for those counts associated with the last conversation between Malik and Aref during the sting. This last conversation was conducted in code—the word “chaudry” meant “missile”—but there was no evidence introduced that Aref knew the code word, and without knowing it the conversation would not have meant anything illegal to him. On appeal, the appellate court apparently concluded that the conviction could not be sustained based on the evidence of that last conversation, presumably because there was no evidence that Aref knew the code. However, the court never even mentioned, in its analysis of the insufficiency of the evidence, the counts for which Aref was convicted by the jury. Instead, to sustain the conviction, it relied entirely on evidence taken out of context from earlier counts for which the jury found Aref *not* guilty. Thus Aref’s appeal was denied solely on evidence that a jury had seen and rejected as unreliable and/or insufficient.

In explaining this inexplicable result, it may be significant to note that during the appeal process, the prosecution was granted permission to file two secret briefs with the Appeals Court that neither the defense nor the public were allowed to see. The prosecution was also allowed to make a secret argument before the court, outside of the hearing of the defense and the public.

In 2010, Aref became the lead plaintiff in a lawsuit, brought by the Center for Constitutional Rights, that challenged the legality of the CMUs. In 2011, the lawsuit survived a motion to dismiss, and the government decided to move Aref out of the CMU and into the general prison population, apparently hoping that it could avoid having a final judgment filed against it by moving the lead plaintiff into a new prison situation. Yet the strain of living for four years in a CMU extracted its toll on Aref. By the time he was transferred, at age forty, his jet black hair and beard were turning white.

The Newburgh 4 (Onta Williams, James Cromitie, David Williams, Laguerre Payen)

On May 21, 2009, the FBI announced the indictment of four “Muslims,” Onta Williams, James Cromitie, David Williams, and Laguerre Payen, on charges that they were planning to blow up a synagogue and shoot down military airplanes at Stewart Airport in Newburgh, New York with a missile. The government claimed that they were violent Muslims who hated Jews and wanted to strike back against America for what it was doing in the Middle East. When the facts emerged, it turned out that all of the men were ex-convicts who were only marginally involved with Islam. They participated in the plot only because they were offered large amounts of money to do virtually nothing. The plot was created, financed, and continuously promoted by an FBI *agent*

provocateur, Shahed (“Maqsood”) Hussein—the same person who, a few years earlier as “Malik,” had entrapped Yassin Aref and Mohammed Hossain.

Pretending that he was a devout Muslim, Maqsood first went to a Newburgh mosque and fished for terrorists by talking about violent jihad. His con was so obvious that the real Muslims would have nothing to do with him, but he was able to attract Cromitie (and later the other three) with offers of money and friendship. Maqsood offered the defendants large sums of money to join his “team”—up to \$25,000 each, and \$250,000 to one of them—and he provided all of the equipment and plans. The defendants had no money, cars, driver’s licenses, contacts, weapons, training, or interest in jihad, and only went along for the money. At least one of the defendants had a drug addiction; another was unemployed; and another had mental health issues. For \$250,000, the FBI could have entrapped similarly frustrated people in virtually any homeless outreach program or religious charitable organization in the country, and it is significant that it targeted only a mosque. It is also significant that the FBI, not the defendants, decided to attack a synagogue (to arouse religious anger in the country), and that the FBI, not the defendants, decided to attack military planes at Stewart Airport (to arouse patriotic anger in defense of the military). Thus the FBI cynically tried to manipulate public opinion into outrage, which would overlook the obvious fact that the men were entrapped.

The defendants clearly had no means of, or interest in, engaging in any terrorist activity, except for the relentless persuasion of Maqsood and his money. Significantly, the lead FBI agent in the case, Robert Fuller, reassured security people at Stewart Airport that Cromitie “would never try anything without the informant with him.”¹⁰

After the defendants were arrested, they were placed in solitary confinement twenty-three hours a day for four months. The corrections officers were told to “go hard” on the defendants, according to David Williams; they called him names and made up lies about him. New York City Mayor Michael Bloomberg made a big show of congratulating the FBI on preventing “what could be a terrible event in our city,” even though the FBI had both created the crime and solved it and the defendants had virtually nothing to do with it except ride around in the FBI’s (Maqsood’s) car.

The defendants turned down a plea bargain offer of fifteen years and decided to go to trial. The presiding judge referred to the case as the “un-terrorism case” and appeared to be highly skeptical of the government’s proof. At the trial, there was a devastating cross-examination of Maqsood, who was shown to be a habitual liar and con man who lied even to his own FBI handlers. Whenever the defendants indicated that they were no longer interested in the plot or wanted to withdraw, Maqsood would offer them more money, even when these offers were not authorized by the government. He also failed to record key conversations and lied about his past,

¹⁰ Fuller has been involved in a number of controversial cases that include the detention and illegal rendering of Maher Arar to Syria in 2002–2003, where Arar was tortured for a year before it was decided that he was innocent. Fuller was also handling the Tarik Shah case (see below) when his *agent provocateur*, Mohamed Alanssi, bizarrely set fire to himself in front of the White House in 2004. Although Alanssi survived, his suicide note was addressed to Fuller. Fuller was also on the team that was assigned to track down two of the 9/11 hijackers in August 2001 and failed to do that. See “FBI Agent on Synagogue Case Has Questionable Record” by Graham Rayman, *Village Voice* blogs, May 21, 2009, <http://blogs.villagevoice.com/runninscared/2009/05/index.php?page=11>.

his debts, and his personal life. Although it was difficult to believe anything he said, the jury convicted the four men of terrorism.

After the trial, the defendants explained that they saw Maqsood as a source of money and wanted to con him out of it. They never had any intention to hurt anyone. Away from Maqsood they never talked about jihad or a “plot,” but around him they said what he wanted them to say because he gave them money afterwards. David Williams, who needed to raise money for his brother’s liver operation, told the *Village Voice* that “[o]ur role in this case was to get over on the [Confidential Informant] and get that money he was offering us... We were always lying to him and he was always lying to us.”¹¹

It is illegal for the government to entrap people who have no inclination to engage in criminal activity. The government is supposed to stop crime, not create it. Nonetheless, as part of its preemptive prosecution program, the government regularly employs Muslim criminals like Maqsood to entrap innocent Muslims in activities it can claim are criminal.

The Fort Dix 5 (Eljvir Duka, Dritan Duka, Shain Duka, Mohammed Shnewer, Serdar Tatar) (<http://freefortdixfive.com/>)

In January 2006, a store clerk in South Jersey, New Jersey gave the FBI a videotape of some young men riding horseback, having a pillow fight, shooting guns at a firing range, and shouting Islamic phrases. The men—brothers Eljvir, Dritan, and Shain Duka, along with Mohammed Shnewer and Serdar Tatar—had given the videotape of their family vacation together in the Pocono Mountains to the clerk to duplicate.

The FBI decided that the group looked suspicious and sent in two *agents provocateur* to try to entrap the young men in criminal activity. The agents showered attention on the young men and used money and manipulation to try to create an interest in jihad. They asked the young men to download jihadist videos, taunted them for their lack of resolve to take action, and followed them around with hidden tape recorders to record every word spoken. When the other youths were not present, one agent talked in general terms with one of the targets, Mohammed Shnewer, about how someone could theoretically attack the Fort Dix army base. In response to the agent’s repeated demands, another defendant, Serdar Tatar, gave the agent a map of the Fort Dix base, which his father used to deliver pizza there. (Tatar thought that the agent was suspicious and reported him to the local police, who told him not to worry about it.) The other agent then persuaded the Duka brothers to buy some guns, supposedly for target shooting in the Poconos.

At this point, the whole group was arrested and charged with conspiracy to attack Fort Dix, even though no plans had been made to attack anything and most of the defendants had never had any conversation about any plan to attack Fort Dix. The government claimed that the men had formed a conspiracy to commit jihad, and so under the law each member of the conspiracy was responsible for the acts of every other member, even if he knew nothing about the acts. The Dukas were responsible for Shnewer’s conversations with the agent about how to theoretically

¹¹ “Were the Newburgh 4 Really Out to Blow Up Synagogues? A Defendant Finally Speaks Out.” by Graham Rayman, *Village Voice*, March 2, 2011, <http://www.villagevoice.com/2011-03-02/news/were-the-newburgh-4-really-out-to-blow-up-synagogues/>.

attack Fort Dix, although they knew nothing about it; Shnewer was responsible for the Dukas buying guns, even though he knew nothing about it. And both the Dukas and Shnewers were responsible for the map of Fort Dix that Tatar had obtained from his father. This illustrates a typical government strategy, which is to try and divide defendants by using them differently, in the hope they will attack each other at trial. Since no one person knows the whole “plot,” anything bad becomes “foreseeable” and is therefore attributable to all members. Thus the “plot” becomes a “conspiracy” and ramps up the charges against all of them. The five men were eventually convicted and sentenced to life plus thirty years (i.e., their sentences will expire thirty years after they have died.)

The young men who became the Fort Dix 5 were foreign-born, but they had grown up American. Three of them ran a roofing business together. All of the defendants are vouched for by a community of supporters who know the character of the defendants, know that they are not terrorists, and know that they had no intention of hurting anyone. They are men with families, people who love America, people who support their communities. They had everything to lose and little, if anything, to gain by becoming involved in the FBI plot.

The Miami 6 (Liberty City) Case (Narseal Batiste, Patrick Abraham, Burson Augustin, Rothschild Augustine, Stanley Grant Phanor, Naudimar Herrera)

Narseal Batiste, the leader of a religious group in a part of Miami known as Liberty City, was reported to have told people that he wanted to overthrow the U.S. government by blowing up the Sears Tower in Chicago so that it would fall on a nearby prison and release hundreds of Muslims, who would then become his army with which he would establish his own country. This information was relayed to the FBI, who dispatched an *agent provocateur* to try to influence Batiste into turning this nonsensical fantasy into a real conspiracy. The *provocateur* tried to persuade Batiste that Osama bin Laden wanted him to bomb FBI offices in several cities, and the *provocateur* persuaded seven men to take an oath to bin Laden. Shortly afterwards, one of the men left the seven-member group, and it fell apart without having made any plans to do anything.

Two trials ended with hung juries, and one defendant, Lyglenson Lemorin, acquitted; jurors refused to convict the five remaining men essentially for having taken an oath to bin Laden in a theatrical script written and directed by the FBI and the *agent provocateur*. On May 12, 2009, a third jury finally convicted five of the original Miami 6 of conspiracy (Naudimar Herrera was acquitted). The defendants argued that the *agent provocateur* was offering them money for his outlandish plots and that they were willing to play along to get the money—not realizing that he was playing them along to get convictions.

Hamid and Umer Hayat

One of the first experiments with preemptive prosecution began when a store clerk reported to the FBI that Ayman al-Zawahiri, the number-two man in Al-Qaeda, had visited a mosque in Lodi, California. This claim was preposterous as well as false. Nevertheless, the FBI gave the clerk money and a tape recorder, and for three years he walked around the mosque tape-recording everything he could. No criminal activity was found, although the two imams from the

mosque were deported for immigration violations. Then the government agent, who had been paid over \$250,000 by the government, focused on a new target: the Hayats. This was easy, because the Hayats had taken the agent into their home and treated him like a son. In return, the agent secretly tape-recorded the family.

The son, Hamid, went on a trip to Pakistan to arrange his wedding and to take care of his mother. While he was in Pakistan, the government agent kept calling him up like a brother on the telephone, goading Hamid to join a training camp and take up jihad. Hamid was arrested upon his return, and after a grueling interrogation he confessed to having attended a training camp. Hamid's father, Umer, was also arrested and pressured into confessing his attendance at a training camp. The father's description of the training camp was so bizarre—it was supposedly as big as a football field, all underground, with *ninja*-like people practicing pole-vaulting—that it seemed almost certain he had made the whole thing up and had never been to a training camp. He just wanted to appear to cooperate with the FBI. Eventually Hamid was convicted of providing material support to terrorism and was sentenced to twenty-four years in prison. His father's case ended in a hung jury, and the father pleaded guilty to a minor charge to avoid a retrial.

The Tarik Shah Martial Arts Case (Tarik Shah, Mahmud Faruq Brent, Dr. Rafiq Sabir, Abdulrahman Farhane)

Three months after 9/11, on December 1, 2001 the FBI directed an *agent provocateur*, Mohamed Alanssi, to go to Abdulrahman Farhane's Islamic bookstore in New York City and say that he wanted to send some money to jihadist brothers overseas. Farhane refused to help, but referred the *provocateur* to Tarik Shah, a well-known jazz bass player, self-defense trainer, and martial arts teacher in New York City who had played at President Clinton's inauguration. Shah did nothing illegal, but the *provocateur* continued to follow Shah around for three years, trying to persuade him to do something illegal. The agent was reportedly paid \$100,000 for his work. (In a bizarre twist, Alanssi became so frustrated with his FBI handler, Robert Fuller, that in 2004 he set himself on fire outside the White House.¹²)

In 2003, the FBI assigned another *agent provocateur*, Theodore Shelby (aka "Saeed"), an ex-convict and former Black Panther, to get Shah. Shelby asked Shah to give him music lessons and eventually moved into Shah's home with him, tape-recording every conversation. Shelby then introduced Shah to a supposed Al-Qaeda recruiter (who was actually an undercover FBI agent, Ali Soufan), who offered Shah \$1,000 a week if he would agree to train jihadists in martial arts. Shah agreed, although he did not accept any money. Soufan then recruited an old friend of Shah's, Dr. Rafiq Sabir, a physician, to provide medical assistance to injured combatants; Sabir, who lived in Florida, was in town visiting Shah. The *New York Times* wrote that "the tapes reveal a plot that was almost entirely talk...No weapons appear to have been bought, and no martial arts training took place." The "plot" went on for two years, and became a joint FBI/NYPD sting operation.

Shah was arrested in 2004 and was held incommunicado for three days, during which he was

¹² "FBI Agent on Synagogue Case Has Questionable Record" by Graham Rayman, *Village Voice* blogs, May 21, 2009, <http://blogs.villagevoice.com/runninscared/2009/05/index.php?page=11>.

threatened with both prosecution under the PATRIOT Act and rendition. Neither his attorney nor his family knew where he was for those three days, and only after that was he finally able to get some legal counsel. At one point, Shah agreed to talk in a wiretapped conversation to a former martial arts student, Mahmud Faruq Brent, about Brent's attendance at a training camp in Pakistan after 9/11 run by Lashkar-e-Taiba, a group fighting for the independence of Kashmir that had been designated as a foreign terrorist organization (FTO). However, once Shah was wired and taken to Maryland for the phone call, he refused to cooperate.

Shah was held for thirty-three months in solitary confinement at the Metropolitan Correctional Center (MCC) in New York from 2005 until 2007. He wrote of this difficult time in solitary:

My emotions and feelings began to close-in on me and I've never dealt with anything like that before, so I think this resulted in me just writing what could be dubbed as Islamic letters, but even in this, writing letters became more and more difficult. It would take me days to finish just one letter and it was so mentally exhausting that I would sometimes sit with the pen directly above the paper for hours and nothing coherent would be written. My situation only seemed to get worse and I would not have minded for the government to save their money and to spend on only one bullet in my head. At least my family's suffering and mine would have been over. (personal e-mail to Lynne Jackson, March 18, 2011.)

Facing a thirty-year sentence, and realizing that he could not get a fair trial and would be found guilty by association, he pleaded guilty in April 2007 to one count of conspiracy to provide material support to terrorism. He was sentenced to fifteen years. Farhane pleaded guilty for similar reasons and was sentenced to thirteen years; Brent also pleaded guilty and received fifteen years for his attendance at the training camp. Sabir, who pleaded not guilty and went to trial, was convicted and sentenced to twenty-five years.

Like the Virginia Paintball Network convictions (see this case, below, under #4, Training Camp Cases), the government fastened on an innocent activity—in Shah's case, his practice of the martial arts—and said it was evidence of terrorist activity. But any such activity was suggested and facilitated only by the FBI *provocateurs* and agents, not Shah. The *New York Times* wrote that “[t]he government has acknowledged that neither Mr. Shah, nor the three others accused in the case...were on the verge of any violent act.”

Shah, who is forty-seven, is serving his sentence at the medium-security federal prison in Petersburg, Virginia, and is scheduled for release in June 2018. He has never in his life advocated violence. He is not a terrorist, and pleaded guilty to save his family.

The Detroit Ummah Case (Luqman Ameen Abdullah and eleven others)

Imam Luqman Ameen Abdullah was the founder of the Detroit chapter of the Ummah (Islamic community), whose national leader, Jamil Abdullah Al-Amin (formerly H. Rap. Brown), is in prison for allegedly shooting a police officer to death. (See his case in Chapter 1, Profiling People of Color, along with some details about its contemporary parallel, Imam Luqman). Luqman's community was alternatively praised as being one of the most dynamic communities for improvement in Detroit and condemned for supporting itself by crime. The FBI sent *agents*

provocateur to infiltrate the Ummah and attempted to involve Luqman and his community in the fencing of stolen merchandise.

As part of the sting, on October 28, 2009 the FBI lured Luqman into a warehouse supposedly containing stolen goods. The warehouse was surrounded by FBI agents. The FBI claimed that Luqman opened fire after refusing to turn over his weapon, and that the FBI shot back, causing the imam to be hit with twenty bullets. However, it was reported that when Luqman was found, his hands were handcuffed behind him, indicating that either he was handcuffed before he was shot twenty times or the agents handcuffed a dead or dying Luqman. It was also reported that there were scratch marks on Luqman's face apparently made by a dog, and that a police dog was shot during the attack. The wounded dog was supposedly transported to a hospital, while the handcuffed imam was left to die in the warehouse. Like the Aafia Siddiqui case (below under #5, Other Cases), this violent attack on a Muslim has never been credibly explained by the authorities, and it reeks of a cover-up. It was supposedly a sting involving stolen property, so there would have been no reason to ask Luqman to give up his weapon or to shoot him down in a hail of bullets. As Dawud Walid, a local Muslim leader, noted, "If one imam can be killed by law enforcement, any imam can be killed by law enforcement."

Eleven members of the Ummah have since been charged with receiving or selling stolen property and with weapons violations. It is ironic that the members would be charged with possession of weapons apparently needed to defend themselves, while their leader was shot to death by a platoon of FBI agents who, to date, have not been able to give a coherent explanation for why Luqman was killed. If the Siddiqui trial is any example, we are likely to wait a long time for the truth to emerge.

The Herald Square Plot (Shahawar Matin Siraj, James Elshafay)

This case illustrates several tactics used to entrap and punish unwary Muslims: use of *agents provocateurs* and a fictional sting; pre-trial detention designed to break down a defendant and incarceration post-conviction in a CMU (see Chapter 5, Profiling of Prisoners: Prisoner Abuse); and intimidation of family members. In 2004, the NYPD hired a paid *agent provocateur*, Osama Eldawoody, to infiltrate the Bay Ridge Mosque in Brooklyn. Eldawoody befriended Shahawar Matin Siraj, a young man who worked in the Bay Ridge Islamic bookstore who had come to the U.S. in 1999 from Pakistan with his family. He trusted people easily and was also capable of being easily manipulated, since he was immature for his age due to a low IQ. Undercover agent Kamil Pasha from Bangladesh had also visited the mosque in 2002 to spy on Muslims, and befriended Siraj, but could not engage him. This time, however, Osama Eldawoody mentored Siraj for thirteen months and taught him about Islam, saying jihad was the duty of all Muslims. Eldawoody wanted Siraj to engage in jihad, but Siraj declined, saying he had to get permission from his mother.

Narrative continues on page 88, Addenda.

Hamant Lakhani: The Super-Salesman Plot

Hamant Lakhani was a businessman who came to the attention of the government as someone who might be persuaded to buy and sell arms. The government assigned Muhammed Habib Rehman, a failed businessman, to try to entrap Lakhani, a non-Muslim, in an arms sting. Rehman did not have to try hard; Lakhani was eager to supply his new customer with anything he wanted. Rehman asked Lakhani to supply him with a missile to use in a terrorist attack. Lakhani offered to obtain even more weapons for him, and said he would even obtain a submarine if Rehman wanted that. The problem was that Lakhani had no way to obtain such weapons. He was a salesman, not a terrorist. He wanted to keep his customer happy, but he did not know anything about the arms trade. Almost two years went by, and Lakhani was unable to obtain anything that Rehman wanted, although he kept promising delivery next month. Rehman, who was eventually paid over \$450,000 for his work, recorded over 200 conversations with Lakhani over the twenty-two months that the sting was in effect, which reflected the increasing desperation of the government to get Lakhani to do something so that they could charge him. Finally the FBI worked out a deal with the Russian government, which would pretend to be an arms seller so that Lakhani would finally be able to purchase a missile.

On August 12, 2003, Rehman brought Lakhani to the Wyndham Hotel, which overlooked Newark International Airport in Elizabeth, New Jersey, and showed him a dummy missile supposedly ordered from an arms merchant (the Russians) and delivered (by the FBI) to the hotel. As the tape recording clearly shows, Lakhani was astonished that the missile had been delivered. He did not know how it worked or anything else about it. As Lakhani was marveling over how this could have happened, the FBI came into the room and arrested him.

Lakhani was convicted and given a long prison sentence, even though it was clear that he was not interested in terrorism and wanted only to sell his customer whatever the customer wanted. Lakhani had no way to obtain weapons for Rehman, and would not have been convicted of any crime except for the strenuous efforts of Rehman and the U.S. government for over twenty-two months to induce him to complete the project.

4. Training Camp Cases

Many Muslims have been given long prison sentences for attending training camps, and even for attempting (unsuccessfully) to join a training camp abroad to fight abroad. There is, of course, nothing illegal about attending training camps. Paramilitary groups in the U.S. with extreme ideological agendas, ranging from white supremacists to anti-government ideologues to religious fanatics to hate groups, regularly hold training camps in the woods to practice weapons training and ideological indoctrination. The KKK has a training camp near Washington; nobody bothers them because indoctrination and weapons training is constitutionally protected free speech and exercise of the Second Amendment right to bear arms. The criminal line is crossed only when such groups conspire to commit a specific crime. However, preemptive prosecution makes an exception for Muslims. Muslims are regularly targeted and convicted for attending training camps inside or outside the U.S., even if no specific crime is ever discussed.

There is a long tradition of U.S. citizens going to fight in foreign conflicts. Americans fought in the Spanish Civil War, the Irish “troubles,” the Israeli conflicts, the Russian Revolution, and many other conflicts in which the U.S. was officially neutral. Merely going abroad to training

camps—or even fighting—is not illegal, as long as the Americans do not support America’s official enemies. Representative Peter King (R–NY), chairman of the House Homeland Security Committee and instigator of the recent “King hearings” on the radicalization of Muslims, is a good example, having traveled to northern Ireland and supported the IRA when it killed civilians. But material support laws make an exception for Muslims, who are convicted merely for trying to join a training camp abroad, even when the training camp is directed at the liberation of Chechnya or Kashmir or Palestine or some other area where America is formally neutral.

It is natural for American Muslims to feel strongly about the conflicts abroad that involve their ancestral homelands, where they have family and cultural ties. When they see their ancestral families and culture threatened in places like Chechnya, Kashmir, Palestine, Bosnia, Somalia, Afghanistan, Iraq, and Iran, they naturally want to defend the people and culture they love, and believe that defending these people and culture will not in any way hurt the U.S. Romantic, idealistic, and self-sacrificing young men (and women) are often those most attracted to defend such foreign homelands. (See *For Whom the Bell Tolls* by Ernest Hemingway.) Thus it seems particularly harsh that even unsuccessful attempts to attend training camps abroad by Muslims should be punished by long prison terms.

It is also difficult to know how seriously the young men will react to the training camps. Is it just romantic talk that will quickly be forgotten, or might it lead to something else? Each person reacts differently. Yet preemptive prosecution assumes that each Muslim who attends a training camp will emerge a committed warrior against the U.S. The result is that young Muslim men who may not have any interest in violence may nonetheless be convicted of terrorism and incarcerated for long periods of time after attending a camp.

The Lackawanna 6 (Mukhtar al-Bakri, Yahya Goba, Sahim Alwan, Shafel Mosed, Faysal Galab, Yassein Taher)

In the spring of 2001 (before 9/11), six young men of Yemeni heritage from Lackawanna (outside Buffalo), New York, all naturalized U.S. citizens, agreed to go to Afghanistan by way of Pakistan and accept training after a “recruiter” at their mosque persuaded them that it was their duty as Muslims. The six arrived for training just before 9/11 and did not like the anti-American feeling at the camp or the kind of training they received. They quickly returned to Lackawanna, resumed their lives, and spoke no more about it. Nonetheless, they were arrested in September 2002 after a still-anonymous tip came into the FBI’s western New York office. They were indicted by a grand jury in October 2002, and all six eventually pleaded guilty in 2003 to material support charges after they and their lawyers became convinced that they could not receive a fair trial after they were threatened with the death penalty and with being sent to Guantanamo as “enemy combatants.” They received sentences of between five to eight years each.

The Lackawanna 6 case achieved many “firsts” and brought up a range of issues, including preemptive prosecution, which are still being debated. More details of this case are in the Addenda on page 88.

The Toronto 18 (Qayyum Abdul Jamal, Shareef Abdelhaleem, Steven Vikash Chand, Jahmaal James, Fahim Ahmad, Asad Ansari, Ahmad Mustafa Ghany, Zakaria Amara, Saad Khalid, and a number of other minors or persons whose names were later dropped)

A group of young Muslim men near Toronto, Canada were brought together, first by some religious leaders and later by two Canadian government *agents provocateur* sent in to help create some actionable crimes. The group spent a significant amount of time discussing philosophy and religious obligations online (although no criminal plots were discussed), and a number of members attended two training camps in the woods, where they received gun training and religious indoctrination. In the romantic spirit of the time, they made videos of themselves in masks in the snow at night, jumping over campfires with guns in their hands. However, the government agents training them believed that they were not ready to actually do anything.

Several members of the group later went on to talk more specifically about engaging in terrorist crimes. One person actually bought some fertilizer to make into a bomb. Other members did not do anything. (If you spend a night in the woods with some friends discussing radical thought, how responsible are you criminally for what some of those friends later do? Did the indoctrination amount to a conspiracy for which everyone was later liable [see the Fort Dix 5 case, above under #3, *Agent Provocateur* Cases], or was it just loose talk, which is protected speech until a specific crime is discussed?) Because the case was handled by the Canadian government, charges against many of the defendants were dropped, and other defendants who planned more specific crimes received relatively light sentences. U.S. citizens “associated” with the Toronto 18 were not so fortunate (see Ehsanul Islam “Shifa” Sadequee and Syed Haris Ahmed, above, under #2, Material Support Charges and Guilt By Association).

Houston Taliban (Kobie Diallo Williams, Shiraz Syed Qazi, Adnan Mirza, Syed Maaz Shah)

In 2005 and 2006, a group of idealistic Muslim students who helped people in the Houston community cope with poverty and homelessness became increasingly concerned about the U.S.-led invasions and violence overseas in Muslim lands, focusing especially on Afghanistan. They began to take camping trips into the woods to prepare themselves for paramilitary action in possible support of the Taliban in Afghanistan. The FBI sent in some *agents provocateur* to recruit more individuals and direct the group into more specific acts that might constitute crimes. Eventually one of the leaders, Kobie Diallo Williams, became concerned about the direction of the group, reported his concerns, and agreed to cooperate with the FBI. The FBI eventually charged core members of the group with material support for the Taliban, essentially for exercising their right of free speech to discuss the appropriate response to the U.S. intervention in Afghanistan.

The Virginia Paintball Network (Sabri Benkahla, Ali Al-Timimi, Randall Todd Royer, Ali Asad Chandia, Yong Ki Kwon, Seifullah Chapman, Ibrahim Al-Hamdi, Mohammed Aatique, Khwaja Hassan, Masoud Khan, Hammad Abdur-Raheem, Donald Surratt)

As early as 1999, a group of about a dozen young Muslim men worshiping in the Dar al-Arqam mosque in Falls Church, Virginia became concerned about the attacks on Muslims in various places in the Middle East and began to explore ways to defend these Muslim communities under attack. They were led by two charismatic men, Ali Al-Timimi and Randall Royer. Scholars have described the group as “very romantic” and tending toward a glorification of martyrdom, but without specifying any particular target. Royer, a military veteran, took groups of students into the woods to play paintball and showed them videos of carnage in Chechnya, Bosnia, and Kashmir. Before 9/11, and before it was declared a foreign terrorist organization, some of the young men went to fight with Lashkar-e-Taiba (LET) to recapture the border areas of Kashmir from India. Royer claimed that during this period before 9/11, he did not believe that anything he did was illegal or that it would hurt America in any way.

After 9/11, Royer, Al-Timimi, Kwon, and some others went to Afghanistan to support the Taliban, but arrived after the Taliban had collapsed. Since they were not involved in the fighting, they simply went back to America. Later, the FBI investigated the network and brought charges against the members for planning jihad, even though nobody had made any plans to attack anything or to hurt the U.S. The defendants were essentially charged for exercising their right of free speech to urge support for Muslim communities in Bosnia, Chechnya, Afghanistan, and Kashmir. Three of the men who traveled to Afghanistan after 9/11 pleaded guilty and testified against the others. They received sentences of three years. Masaud Khan, who also traveled with them but was less involved, pleaded not guilty, and was convicted. He was sentenced to life plus forty-five years.

Ali Asad Chandia (Paintball Subcase)

Chandia was a popular third-grade teacher who was only somewhat involved in the Virginia Paintball Network described above. Prior to 9/11, Chandia went to Kashmir and stayed with an LET official, Mohammed Ajmal Khan, at a time when LET was not a designated foreign terrorist organization. In early 2002, after LET had been added to the FTO list, Khan came to visit the U.S. and stayed for a short time with Chandia. While he was Chandia’s guest, Khan borrowed Chandia’s cell phone and called people associated with his organization. Khan also borrowed Chandia’s computer and ordered a shipment of paintballs. Chandia helped Khan pack the paintballs for shipment overseas. This was the extent of Chandia’s involvement. He was convicted of material support and is now serving a fifteen-year sentence.

In October 2010, an appeals court vacated (for the second time) Chandia’s sentence, agreeing with the defense that the application of a “terrorism enhancement”—which turned a suggested six-year sentence into fifteen years—was not justified. However, on March 11, 2011, Chandia was resentenced to fifteen years. His lawyers say they will appeal again.

Sabri Benkahla (Paintball Subcase)

Sabri Benkahla was one of the defendants tried, as part of the Virginia Paintball Network, for going abroad to fight with the Taliban, and he was acquitted. The prosecutor, Gordon Kromberg, then called Benkahla to give testimony before a federal grand jury allegedly investigating the membership and structure of LET. After Benkahla testified, Kromberg charged him with perjury

and obstruction of justice. The defense claimed that Benkahla's grand jury testimony was simply a perjury trap set up in order to bring new charges against him—the prosecutors already knew the answers, and no matter how Benkahla answered, he would have been charged. Moreover, they claimed that Benkahla had virtually nothing to do with the Paintball Network—he had been out of the country for most of the time it was in existence. However, Behkahla was convicted of the perjury and obstruction charges. Normally the sentence would have been three years, but the prosecutors were granted a terrorism enhancement because Benkahla's testimony concerned a terrorist organization. He was sentenced to ten years.

The Portland 7 (Patrice Lumumba Ford, Jeffrey Leon Battle, October Martinique Lewis, Muhammad Ibrahim Bilal, Ahmed Ibrahim Bilal, Habis Abdulla Al Saoub, Maher “Mike” Hawash)

On September 29, 2001, Battle, Ford, and Al Saoub were discovered by a law enforcement officer target-shooting in a gravel pit. A few weeks later, they left on a journey to Afghanistan, China, and Bangladesh and returned separately to the U.S. in late 2001 and early 2002. In 2002, the group traveled to China, supposedly for the purpose of entering Afghanistan and joining the Taliban. However, they were turned back at the border, and all but Al Saoub returned to the U.S. On October 3, 2002, the group was indicted for trying (unsuccessfully) to join a terrorist organization. All of the defendants eventually pleaded guilty, except for Al Saoub, who was never caught and was killed in Afghanistan in October 2003. Ford and Battle are each serving eighteen-year sentences. Lewis was sentenced to three years in a work camp. Muhammad Bilal received an eight-year sentence, while Ahmed Bilal got ten years. Hawash was sentenced to seven years and was released in 2009.

Operation Arabian Knight: Mohammed Alessa and Carlos Almonte

Mohammed Alessa and Carlos Almonte were two young men from New Jersey who, after being befriended by an undercover NYPD officer, decided they would go to Somalia and join a training camp there. They had no contact with anyone at a camp, and Alessa was clearly mentally ill (he had stopped taking his psychiatric medicine three years earlier).

The Joint Terrorism Task Force (composed of federal and state agents and local police) had the two under surveillance for four years, culminating in a “takedown” at JFK Airport. The men were unable to get passports and were on the no-fly list—but these restrictions were secretly suspended so the targets could proceed with their travel plans. On the appointed date, surrounded at all times by government agents, the men tried to board their flight and were finally arrested. At the same time, dozens of agents waited for a signal to speed to the men's houses and seize all their videos and e-mails—material that the FBI already had as a result of the surveillance.

5. Other Cases

In addition to the above categories, there are certain preemptive prosecutions that do not clearly fit into any particular category.

Dr. Aafia Siddiqui (www.FreeAafia.org, <http://aafiamovement.com/>)

Dr. Aafia Siddiqui, thirty-nine, a brilliant Pakistani Ph.D. with degrees from MIT and Brandeis, left the U.S. with her three young children in 2002 to return to Karachi, Pakistan. In March 2003, she and her children were “disappeared” while on their way to the Karachi airport. Statements by her parents and her lawyers suggested that she and the children were arrested by the Pakistani government and turned over to American agencies, and that she was held in secret custody at the U.S. base at Bagram, Afghanistan, where she was tortured for years. Over the next five years, prisoners released from Bagram began reporting that Dr. Siddiqui was Prisoner 650. She was known there as the “Gray Lady of Bagram” because she looked like a ghost who had had all the blood sucked out of her. Her face showed signs of severe beatings, including broken teeth and a twisted nose. Some reports suggested that her cries of agony while being tortured were so haunting that prisoners went on a hunger strike to protest.

On July 7, 2008, UK journalist Yvonne Ridley publicly identified Dr. Siddiqui as Prisoner 650 at Bagram and described how she had been tortured there. On July 17, 2008, only a few days after Ms. Ridley’s article was published, Dr. Siddiqui was reportedly seen, apparently at liberty, outside the governor’s compound in Ghazni, Afghanistan with one of her children, carrying with her a number of allegedly incriminating documents. She was arrested by the Afghan police. The next day, a group of armed American military personnel came to the Afghan facility where Dr. Siddiqui and her son were being held to interrogate her. According to the U.S. government, Dr. Siddiqui, standing unrestrained behind a curtain when the Americans entered the room, walked into the room, grabbed a rifle, and shot twice at the Americans, missing both times. She was then shot by the Americans. She almost died from her injuries, and was subsequently held in solitary confinement for many months. She was finally brought to trial in the U.S. for attempted murder of the U.S. soldiers.

Her eldest son, Ahmad, was repatriated from Afghanistan to Pakistan in late 2008. He was found to be suffering from severe trauma and physical growth disabilities consistent with prolonged confinement and lack of physical exercise.

At the 2010 trial, the government presented confused, inconsistent, and conflicting accounts from the soldiers as to what had happened in the room, and showed a photograph of two bullet holes in the wall of the room, supposedly where Dr. Siddiqui’s errant shots had struck. The defense showed that there were no bullets in the holes, nor were shell casings or fragments of bullets recovered from the room, nor were Dr. Siddiqui’s fingerprints on the gun. A video of the room taken before the incident showed the same two “bullet holes” already in place. In short, there was no forensic evidence to support the contradictory stories of the soldiers, which were obviously concocted to cover up their near-murder of Dr. Siddiqui. Nonetheless, Dr. Siddiqui was convicted. The defense was not allowed to introduce evidence of the years of torture she endured at Bagram; nor an explanation of why she was abruptly released from Bagram with incriminating documents, only to be immediately rearrested in Ghazni by the Afghans; nor an explanation of what happened to her two other children. She was sentenced to eighty-six years in prison, which she is presently serving in solitary confinement at FMC Carswell Prison in Fort Worth, Texas, located on a U.S. military base.

Some months after Dr. Siddiqui's conviction, a young girl who spoke only fluent English with an American accent was left wandering near her grandmother's house in Pakistan. DNA testing indicated that she was Dr. Siddiqui's daughter, Maryam. The third child, Suliman, has not been found and remains missing, presumed by many to be dead.

More details of this case are in the Addenda on page 91.

The New York City Landmarks Case (Sheikh Omar Abdel Rahman and nine other defendants)

In 1993, Sheikh Omar Abdel Rahman (the "Blind Sheikh") and ten other co-defendants were charged with conspiracy to bomb New York City landmarks, including two tunnels, the UN, and FBI headquarters (ironically, the landmarks did not include the World Trade Center, although the public often erroneously believes that Abdel Rahman was convicted of plotting to bomb the World Trade Center). There was no doubt that Abdel Rahman was an outspoken critic of the corrupt secular government of Egypt and urged that it be overthrown. But he denied that he inspired terrorism or that he was leading any conspiracy in this country, and there was little evidence involving him in the landmarks case.

Nevertheless, the government paid a million dollars to a former associate of Abdel Rahman's essentially to frame the Sheikh and his associates. As in other cases of entrapment, the *agent provocateur* worked diligently to create a conspiracy, which involved a truck bomb directed at the UN, so that there would be a real crime to prosecute. Other defendants were swept up in the conspiracy, including a few, like Mohammed Saleh, who only were involved a few days before the bomb was supposed to be used (Saleh pled guilty). Abdel Rahman and his co-defendants were eventually convicted, and Abdel Rahman was sentenced to life in prison. The other defendants also received long prison sentences.

Ahmad Niazi

In 2007, Ahmad Niazi reported to the FBI the suspicious behavior of a new Muslim convert, Craig Monteilh, at his mosque in Irvine, California. Monteilh was talking about jihad and trying to get others at the mosque to join in planning for terrorist attacks. The FBI said that they would investigate the matter, and the mosque obtained a court injunction to keep Monteilh away from the mosque.

Later, FBI officials contacted Niazi and asked him to become a paid informant for the FBI. When he refused, the FBI agents allegedly threatened him by saying that they would make his life "a living hell." In February 2009 the FBI arrested Niazi and charged him with perjury, fraud, and false statements on his immigration papers. He was released on \$500,000 bail.

After several years of negotiations and claims that the charges were brought in retaliation for Niazi's refusal to become an informant, all the charges against him were dropped in 2011. The FBI has since identified Monteilh as a "government informant." On February 11, 2011, the

American Civil Liberties Union sued the government for its actions in trying to entrap Muslims at the mosque based on their religion.¹³

Kifah Jayyousi and Adham Hassoun

Kifah Jayyousi was tried, along with Adham Hassoun and Jose Padilla (see below), on material support for terrorism charges in Florida in 2007. Jayyousi was convicted of only three counts. He was a well-respected engineer who had, like Enaam Arnaout (see his case above under #1, Charity Financing Cases), provided aid to Muslim fighters prior to 1995, when they were not opposed to the U.S. Everything Jayyousi was convicted of doing took place during the time period before 9/11 and was not directed against the U.S. Nevertheless, Jayyousi was sentenced to twelve years, and is at the Terre Haute CMU.

Jayyousi was convicted for supporting Muslim fighters in places and at times when the U.S. was supporting those same Muslim fighters. It is well known that the U.S. provided military aid and training in the 1980s to the *mujahideen* in Afghanistan, including Osama bin Laden, because they were fighting the Soviets. (See the book and movie, *Charlie Wilson's War*, about how the U.S. secretly involved itself in the Afghanistan conflict against the Soviets.) Then in the 1990s, the U.S., as part of a UN force, joined the war in the former Yugoslavia on the side of the Bosnian Muslims, who were the victims of a genocidal campaign by Serbian leader Slobodan Milosevic. So even though Jayyousi *financially* supported the same people that the United States supported *militarily*, he was later targeted and prosecuted for these previously applauded actions.

Jose Padilla

On May 8, 2002, Jose Padilla, a U.S. citizen, was arrested when he tried to enter the U.S. The government claimed (without charging him) that he was working with Al-Qaeda and was planning to make and detonate a “dirty” bomb inside the U.S. (A “dirty” bomb is a conventional explosive device surrounded by radioactive material; when the bomb detonates, it spreads radioactive material across a wide area.) Padilla was held on a material witness warrant until June 9, 2002, when, instead of charging him with a crime, President George Bush announced that Padilla would be held in solitary confinement indefinitely as an “enemy combatant.” Defense lawyers filed an appeal on the legality of designating someone, especially a U.S. citizen, as an enemy combatant. The case worked its way through the court system for three and a half years while Padilla remained in solitary confinement in a Navy brig in Charleston, South Carolina. During this time, he was treated so deplorably, under conditions amounting to torture, that questions were raised as to his sanity.

The case eventually reached the Supreme Court, essentially on the question of whether the president had the power as commander in chief of the Armed Forces to hold an American citizen in jail indefinitely without charges as an “enemy combatant.” In order to avoid a decision on an issue that the administration was likely to lose, Padilla was removed from “enemy combatant” status and charged with conspiracy to commit terror overseas in the 1990s in places like Bosnia. The charges did not mention the dirty bomb or any other terrorist plot, and were so lacking in

¹³ “Lawsuit alleges FBI violated Muslims’ freedom of religion” by Jerry Markon, *Washington Post*, February 23, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/22/AR2011022206987.html>.

facts that some commentators described the “conspiracy” as a plan to make a plan about something that never happened. On August 16, 2007, Padilla, along with Kifah Jayyousi and Adham Hassoun (see their case, above), was found guilty of conspiracy, and on January 22, 2008 he was sentenced to seventeen years and four months in jail.

Padilla subsequently sued various Bush Administration officials for his prolonged detention and torture. On February 17, 2011, the suit was dismissed on the grounds that it would jeopardize national security.¹⁴

James Yee (http://en.wikipedia.org/wiki/James_Yee)

James Yee, a Chinese-American born and raised in New Jersey, graduated from West Point in 1990 and converted to Islam the following year. He was appointed chaplain for the detainees at Guantanamo and received commendations for that work. In September 2003, after having left Guantanamo, he was arrested when he was found with a list of detainees and interrogators. He was court-martialed, charged with sedition, and held in a Navy brig in South Carolina, which included seventy-six days of solitary confinement. However, all charges against him were dropped in March 2004, and he received an honorable discharge. In 2004 he wrote a book about his experiences, *For God and Country: Faith and Patriotism Under Fire*.

The Detroit Sleeper Cell Case (Abdel-Ilah Elmardoudi, Karim Koubriti, Ahmed Hannan, Farouk Ali-Haimoud)

Six days after 9/11, Abdel-Ilah Elmardoudi, Karim Koubriti, Ahmed Hannan and Farouk Ali-Haimoud were arrested in a raid for possessing fraudulent documents. Later they were accused of forming a terrorist “sleeper cell” for the purpose of hatching terrorist plots. In one of the country’s first preemptive prosecution cases, Elmardoudi and Koubiti were convicted of various terrorism-related charges by prosecutor Richard Convertino. Hannan was convicted of fraud, and Ali-Haimoud was acquitted.

Then allegations surfaced that Convertino had failed to disclose all of the exculpatory evidence to which the defendants were entitled. U.S. District Judge Gerald Rosen appointed a new prosecutor, who found that Convertino had failed to turn over a wealth of documents and information that undercut his entire case. As Judge Rosen put it, “The prosecution materially misled the court, the jury and the defense as to the nature, character, and complexion of critical evidence that provided important foundations for the prosecution’s case.”

On September 1, 2004, almost three years after they were arrested, Judge Rosen dismissed the terrorism-related charges against the defendants. Document fraud charges against them are still pending. Misconduct charges were filed in 2006 against Convertino by the U.S. government. He was acquitted in 2007.

Sami Omar Al-Hussayen and Abdullah al-Kidd

¹⁴ “U.S. Justice v. the world” by Glenn Greenwald, *Salon*, February 18, 2011, http://politics.salon.com/2011/02/18/justice_9/.

In February 2003, Sami Al-Hussayen was arrested and charged with visa fraud and lying to federal officials, based on the fact that while a foreign student, he worked as a webmaster on sites connected to Hamas. Foreign student visas do not permit students to work for employers off-campus. Al-Hussayen claimed that his work as a webmaster was voluntary, and so it was not a violation of his visa, and also that the website merely had links to Hamas, which was not his responsibility. After a six-week trial he was acquitted of most of the charges, but the jury deadlocked on three immigration charges. Since Al-Hussayen was, at the time, incarcerated by immigration authorities, and faced a long period of incarceration before the retrial, he agreed to be deported if the government would not retry him. He currently lives in Saudi Arabia, where he teaches at a technical university. His wife is a kindergarten teacher.

Abdullah al-Kidd (born Lavoni T. Kidd) was born in the U.S. and was a former University of Idaho football player. In March 2003, while attempting to board an airplane in Dallas for Saudi Arabia, Kidd was arrested but was not charged with a crime. Rather, he was held as a material witness under an obscure section of the PATRIOT Act that allowed foreign nationals to be held in custody as material witnesses for seven days—even though al-Kidd was a U.S. citizen and not a foreign national. During his confinement, he was stripped and forced to sleep on the floor with his head next to the toilet. He was called a terrorist and made to sit naked, shivering on the floor, while male and female guards looked on.

Al-Kidd was held as a material witness for thirteen months supposedly so he could testify against Al-Hussayen, but he was never called as a witness in the trial. After his release, Kidd was never charged. He sued the jail over the conditions of his incarceration and received a settlement. Eventually he sued former Attorney General John Ashcroft for instigating his illegal detention under the pretext that he was a material witness. In May 2011, the Supreme Court decided in a narrow, confused opinion that the fact that John Ashcroft used a material witness warrant as a “pretext” to detain al-Kidd was irrelevant and not actionable, and dismissed the lawsuit. At the same time, the Court expressed doubt that a material witness statute could be used to detain someone when there was no intention to use their testimony. Thus the Court seem to find that Ashcroft’s actions were wrong, while inventing the “pretext” issue as an excuse to dismiss the lawsuit.

Amir Hossein Ardebili

In 2007, Amir Ardebili, an Iranian businessman living in Iran, was lured by an undercover U.S. immigration agent to Tblisi, Georgia, where he was kidnapped, secretly extradited to the U.S., and held in solitary confinement from January to May 2008 until he pled guilty to U.S. export control violations. Even after his plea, he was held secretly for another nineteen months until his indictment was finally unsealed at the time of his sentencing in December 2009. He received five years in prison.

As stated in *Politico*:

Some export control lawyers said the Ardebili case may have set a troubling precedent, because it sought to prosecute and lure abroad an Iranian inside Iran for violating U.S. export control laws. “What’s most interesting here is the U.S. effort to expand,

seemingly without limit, claims of U.S. jurisdiction over activities by foreign citizens which are performed in their own countries and which are legal in those countries,” said Clif Burns, an export control attorney with Bryan Cave.

Burns posited further:

“What would be the response if Iranian agents abducted the CEO of Twitter while he was in, say, the UAE, dumped him into solitary confinement in an Iranian prison, and secretly indicted him with aiding and abetting sedition by Iranian dissenters? The U.S. government and the general U.S. population would be apoplectic and would be citing the very same provisions of international law that the U.S. wants to ignore in the case of Ardebili.” Also potentially troubling was the fact that the U.S. held Ardebili in secret for two years, including four months in solitary confinement, before he made his guilty plea.¹⁵

The Alaska Case (Paul Rockwood Jr. and Nadia Rockwood)

Paul Rockwood, an American convert to Islam who moved to Alaska in 2006, supposedly had been in contact with Anwar al-Awlaki, a U.S.-born former imam now living in Yemen who has inspired Islamic terrorists against the West (update: al-Awlaki was killed by a U.S. drone attack in Yemen on September 30, 2011). In early 2010, Rockwood apparently created some sort of “list of targets,” all of which were outside Alaska. Supposedly his wife, Nadia, knew about the list. Based on this, and essentially nothing more, he and his wife were both charged with making false statements to the FBI after extensive interrogation. Eventually, with both of them facing many years in prison on inflated charges, the couple entered into a plea agreement whereby Paul pled guilty for making false statements related to terrorism and Nadia pled guilty to making false statements. Sentenced in August 2010, Paul received eight years in prison, and Nadia received five years’ probation.

This case stands in sharp contrast to many “target list” threats against Muslims, in which generally no one is even charged. In one case in 2008, a man who sent a specific threat to an Illinois mosque, demanding that it close down or he would do “whatever it takes to eradicate Islam,” was convicted in 2010 and sentenced to *one year in jail*.¹⁶ This man went further with his hate than Rockwood—but is serving one year, not eight. The difference, of course, is that Rockwood is Muslim.

Ali Al-Marri

Ali Al-Marri was arrested in Peoria, Illinois in December 2001, apparently for driving while Muslim. Initially he was held as a material witness, as were many other Muslim men rounded up post-911, and he was interrogated until the government charged him with making false

¹⁵ “U.S. sentences Iranian lured in sting to 5 years” by Laura Rozen, *Politico* blogs, December 14, 2009, http://www.politico.com/blogs/laurarozen/1209/US_sentences_Iranian_it_lured_in_sting_to_five_years.html.

¹⁶ “Man Who Sent Threat to IL Mosque Sentenced To Year In Prison” by Rachel Slajda, *TPM Muckraker*, November 4, 2010, http://tpmmuckraker.talkingpointsmemo.com/2010/11/student_who_sent_threat_to_il_mosque_sentenced_to.php.

statements in 2002. Those charges were dropped when President George Bush declared him an enemy combatant, and Al-Marri was transferred to a Naval brig in South Carolina. There he was held without access to counsel until October 2004; he was also subjected to extreme cold and held in solitary confinement with no reading material. In many ways the conditions were even worse than those in Guantanamo. Memos recovered later show that officials worried that these conditions were driving Al-Marri insane.

His attorneys challenged his illegal detention, and the case eventually went to the Supreme Court. The *New York Times* outlined the case in an editorial that criticized the Bush Administration's enemy combatant doctrine and called on the Supreme Court to "make clear that a president cannot trample on individual rights by imprisoning people indefinitely simply by asserting that they are tied to terrorism."¹⁷

However, as occurred in many other cases, before the Supreme Court could rule on this important case the Attorney General played switch-up and charged Al-Marri with material support for terrorism. In April 2009 he pled guilty, admitting to having attended terrorist training camps between 1998 and 2001. In October 2010 he was sentenced to eight years in prison, and is currently being held at the Supermax prison in Florence, Colorado. His projected release date is January 18, 2015, so apparently he is getting only partial credit for the time he spent in custody since 2001. Perhaps the sentence was lower than it would have been because the judge was disgusted by what the government had done to this man.¹⁸

Ahmed Omar Abu-Ali: The Tortured Confession of a Plot Against Bush

Ahmed Abu-Ali was born in Houston, Texas in 1981 and was the valedictorian of his high school class in Alexandria, Virginia. He received a scholarship to study at the Islamic University of Medina in Saudi Arabia, so he left the University of Maryland to pursue a degree in Islamic Studies. In June 2003, Saudi *Mabahith* officers arrested Abu-Ali as he was taking a final exam in Medina. He was detained for more than twenty months without charges or assistance of counsel and was tortured in Al-Ha'ir Prison in Riyadh, Saudi Arabia. Saudi Arabia insisted that it was only acting at the behest of the United States, but the U.S. government denied any involvement. FBI officials in the Washington Field Office informed a friend of the Abu-Alis that it was not interested in Abu-Ali. However, discovery documents later showed that there was direct, close contact between the FBI and the Saudi *Mabahith*, who allowed U.S. agents to participate in Abu-Ali's interrogation by submitting questions and watching through a one-way mirror. Saudi officials had also shared a confession video with the FBI.

When Abu-Ali's parents received conflicting messages from both governments, they filed a writ of habeas corpus in the D.C. District Court, and the judge granted discovery. However, in February 2005, before any documents were submitted, Abu-Ali was transferred to the U.S. to answer an indictment charging him with material support for terrorism for allegedly having

¹⁷ "Indefinite Detention," editorial, *New York Times*, November 24, 2008,

<http://www.nytimes.com/2008/11/25/opinion/25tue2.html?scp=1&sq=Indefinite+Detention&st=nyt>.

¹⁸ "Eight Years for Al-Marri: Sleeper Agent Given Low Sentence by Judge Outraged by Abuses of the United States" by Jonathan Turley, *Jonathan Turley.org*, October 30, 2009, <http://jonathanturley.org/2009/10/30/sleeper-agent-given-low-sentence-by-judge-outraged-by-abuses-of-the-united-states/#more-16705>.

joined a cell in Medina led by Al-Qaeda officials, who were trying to develop a plan to assassinate President George Bush. These charges were almost entirely based on information in a recorded confession obtained in Al-Ha'ir Prison after Abu-Ali was tortured.

At trial, he testified that the Saudis hit him, punched him in the stomach, and beat him on his back while yelling "Confess!" The beating only stopped when Abu-Ali said he would cooperate. He had marks on his back over a year later, and a torture expert produced a report indicating that the marks were a product of torture and that he suffered from Post-Traumatic Stress Disorder as a result. The prosecutor's expert's report alleged that the marks were only skin discoloration. The judge did not publish the torture expert's report to the jury, and stated that Abu-Ali's statements were not credible, thus admitting the coerced confession into evidence. The jury convicted Abu-Ali, and the judge sentenced him to thirty years in prison.

On appeal, the court upheld the verdict but reversed the sentence, advising the district judge to sentence Abu-Ali to life in prison, which Judge Lee did. Abu-Ali is currently incarcerated in isolation at the Supermax prison in Colorado. He is under Special Administrative Measures (SAMs), which restrict his contact with people and require screening of his reading material. Under these measures, he was denied permission to read President Obama's two books, *Dreams of My Father* and *The Audacity of Hope*, on the grounds that the books contained material "potentially detrimental to national security."

Amnesty International called the trial unfair, and stated:

Amnesty International is seriously concerned that the trial of Ahmed Abu-Ali may set a precedent in U.S. courts of according unqualified support to the declarations of a foreign government regarding its human rights record as a means of rendering evidence admissible, including statements obtained by torture and ill-treatment. In this case, the statement of officials from Saudi Arabia, a state with a clear record of widespread torture and ill-treatment, flatly denying that such practices existed, appear to have been taken at face value with no serious attempts allowed to challenge the claims presented.¹⁹

Abu-Ali's sentence was subsequently affirmed by the Fourth Circuit Court. His lawyers intend to file a writ of habeas corpus to challenge his detention.

Abelhaleem Ashqar and Mohammed Salah

In 1993 Mohammed Salah, a U.S. citizen, was captured in Israel with a large amount of cash and was accused of helping raise money for militant groups in Gaza and the West Bank. Abdelhaleem Ashqar, a former Howard University business professor, was accused of helping him launder the money and facilitate communication with Hamas. (Hamas at that time was not designated as a foreign terrorist organization, and was only designated thus in 1995.) Both men said they were not terrorists, but were only trying to help the Palestinians.

¹⁹ See http://en.wikipedia.org/wiki/Ahmed_Omar_Abu_Ali.

In 2004 the two men were indicted in the U.S., mainly on racketeering charges. The trial focused mostly on a confession that Salah had supposedly given to Israeli agents. Salah claimed that the confession was a result of torture. But prosecutors said that Salah had not been tortured, and the trial judge allowed two Israeli officers to testify anonymously that Salah was treated very well. Judith Miller of the *New York Times* testified that she saw Salah interrogated and saw no indication of torture. However, the jury did not convict the men on the main charges; instead, Salah was convicted of obstruction of justice for providing false answers in a civil lawsuit, and Ashqar was convicted of criminal contempt for refusing to testify before a grand jury.

Brandon Mayfield

Brandon Mayfield is an American-born lawyer who converted to Islam. Following the Madrid train bombing in 2004, the FBI obtained access to fingerprints from a bag that had contained the detonation devices used in the bombing and concluded with “100%” certainty that the fingerprints were those of Brandon Mayfield. A judge later issued a decision in which she found that the FBI’s conclusions about the identity of the fingerprints were “largely fabricated and concocted by the FBI and DOJ [Department of Justice].” Even the FBI’s internal documents indicated that it did not believe the prints matched Mayfield’s until after a determination was made to build a case—any case—against him.

Spain learned of the FBI determination and disagreed, saying the prints were not from Mayfield and that they were pursuing several real Algerian suspects. But the FBI ignored the Spanish warnings, proceeded to arrest Mayfield on a material witness warrant, and held him essentially incommunicado in jail. The FBI leaked information to the press to indicate that Mayfield was one of the Madrid bombers. Mayfield was released only after Spain arrested the real culprit, Ouhane Daoud, with the matching fingerprints. The FBI later apologized to Mayfield and acknowledged that his religious beliefs as a Muslim had been a factor in his arrest. Mayfield received a \$2 million settlement from the government for false arrest.

In connection with the Pete Seda/Al-Haramain case (see above under #1, Charity Financing Cases), U.S. Attorney Dwight Holton stated that since the 9/11 attacks, “the DOJ has incarcerated over 400 people from cases arising out of terrorism. Some have gone on to become cooperating witnesses—yet another important tool in stopping other plots.” Perhaps the Justice Department hoped that by arresting Brandon Mayfield on false charges, they might scare him into giving false testimony against some of his clients.

Chapter 4

PROFILING OF IMMIGRANTS: PREEMPTIVE DEPORTATION

Profiling closes the door to immigrants. People who formerly were welcomed into this country are now profiled and subject to arbitrary arrest, incarceration, and deportation using laws so complex that they no longer make sense. Many immigrants arrive in this country legally but overstay their visas. If given a chance, they might well be able to file an application for an adjustment of status that would allow them to stay in the country to the benefit of everyone involved. Many arrived in this country as young children of immigrants, believing that they had come legally. They grew up in the U.S. as hard-working Americans who married and had children of their own—only to learn much later that their parents, and thus they, were not properly documented when they first arrived in the U.S. Others have errors in their documentation as a result of marriages and divorces. Some are undocumented but married to American citizens, and simply never got around to requesting a change of status. This is what it means to be “undocumented.”¹

One day an undocumented resident may come to the attention of the government. For example, the person may be involved in a minor traffic charge, and the arresting officer may profile him based on his accent or appearance and make unauthorized inquiries about his legal status. Almost before his family knows what has happened, the person can be sent off to prison, put into deportation proceedings, and thrown out of the country. Often the person has no legal assistance or an opportunity to file papers seeking an adjustment of status. The person may not even have time to assemble a defense from the complex files of prior legal and immigration proceedings, which are not physically available to someone in prison.

The government can bring contrived charges against an immigrant whom it wants to deport, in what might be described as “preemptive deportation.” For example, Ibrahim Dremali, who had lived in the U.S. legally for over twenty years as a respected scholar, was asked on several occasions by federal law enforcement agents to become an informant, but he always refused. Suddenly in October 2010, Dremali was arrested by federal officials in a spectacular raid in which they blocked off the road to his house, rushed through his door with drawn guns, and dragged him and his wife off to prison. The government claimed that Dremali omitted certain information from an immigration form he had filed more than twenty years earlier. Obviously the real reason for the humiliating arrest was not a twenty-year-old statement on an immigration form, but was retaliation for Dremali’s legitimate refusal to become an informant. Such abuse of an immigrant’s legal status to obtain informants is common.

It is a crime to lie to a federal officer. When a target is questioned and tries to explain himself to federal officers, even when not under oath and even when the statement is not recorded, officers can claim the target lied and bring criminal charges. At a trial, it is the word of the FBI against the target’s as to what was said during the interview. Often a slight “deviation” in recollection by the FBI agent can turn a truthful statement by the target into a lie, especially when the target’s

¹ The national debate has focused on “illegals”—people who came to this country “illegally”—but this is a misnomer that profiles and stereotypes without providing understanding. “Undocumented” is a more accurate and inclusive term.

statement is taken out of context. The FBI has become expert in claiming that a target lied to them. Indeed, the FBI deliberately does not tape-record any formal interviews with individuals, so that when an agent claims a target lied to him it is the agent's word against the target's, and the target does not have a recording with which to defend himself. This procedure is grossly unfair. The target is invited to give an explanation to the FBI, and then charged with giving false statements when the government disagrees with the target's version of the statement. False statement charges are often brought to increase the pressure on the target to become an informant, or to give false testimony against another target at trial.

The government uses different kinds of contrived charges in preemptive deportation. Sometimes it may challenge the validity of the immigrant's marriage to an American spouse, even when the couple has children. Sometimes, after an immigrant is found not guilty in a criminal proceeding, the government will use the exact same evidence in a deportation proceeding to have the immigrant thrown out of the country. Thousands of loyal, hard-working people have suffered humiliating incarceration, mistreatment, and denial of legal services in recent years. Their families have been devastated and communities have been destroyed.² Here are some of their stories.

The Disappearance and Deportation of Ali Yaghi

Ali Yaghi, a longtime resident of Albany, New York, had immigrated to the U.S. from Jordan in 1985 at the age of sixteen. He eventually married, had children, and became a pizza shop owner. Shortly after 9/11, someone reported Yaghi to the FBI for making an inappropriate joke about the 9/11 attacks. Almost immediately afterwards he was snatched from his business and "disappeared." Nobody knew where he was for three days; apparently he was held in the county jail anonymously as a "ghost" prisoner. In fact, he was being held without charges or any apparent legal authority, and only after three days was he allowed to call his family. On October 25, 2001, he was transferred from the county jail to the Metropolitan Detention Center (MDC) in Brooklyn, along with approximately 1,000 other Muslims who were rounded up after 9/11.

At the MDC, Yaghi was held in a tiny, windowless cell in solitary confinement for approximately eight months and was periodically interrogated. The government found nothing with which to charge him, he was not provided with a lawyer, and the guards mistreated him and called him "Osama." In July 2002 he was summarily deported to Jordan without ever seeing his family. Later the government offered to allow him to return to the U.S. and rejoin his family if he would testify falsely against Yassin Aref, whose trial was then approaching (see this case in Chapter 3, Profiling of Muslims, #3, *Agent Provocateur* Cases), but Yaghi refused and remained in Jordan.³ Yaghi's story is similar to those of literally thousands of immigrants who were snatched away from their families and deported in the wake of 9/11.

² See *Mohammed's Ghosts* by Stephen Salisbury (Nation Books, 2010), which documents the destruction of one such immigrant community in Philadelphia. Immigrant communities all across America were subject to the same abuse, and thousands of people were essentially thrown out of the country without any significant attention to legal rights or fairness.

³ See *Rounded Up, Artificial Terrorists and Muslim Entrapment After 9/11* by Shamshad Ahmad, Ph.D. (Troy Book Makers, 2009), p. 18–22, 94–95.

The Deportation of Ansar Mahmood

One beautiful autumn day shortly after 9/11, Ansar Mahmood, a Pakistani immigrant, asked an official at a reservoir south of Albany to take Mahmood's picture with the trees and the reservoir in the background. He was living legally in Hudson, New York at the time. The incident was reported to the FBI, which arrested Mahmood and conducted an investigation. After determining that he had significant community support and was completely innocent (why would a would-be terrorist ask an official at the reservoir to take his picture?), the FBI decided to frame Mahmood for a contrived violation. It claimed that his roommate had overstayed his visa, and since Mahmood had co-signed the lease he had violated the conditions of his own visa. Mahmood was deported. Thousands of individuals who are legally in the country have been deported on contrived or manufactured charges because the government cannot find any legal basis on which to deport them and does not want to admit that it made a mistake.

The Deportation of Essam Almohandis

In 2004, Essam Almohandis was arrested and charged with bringing explosives onto an airplane after some sparklers were found in his backpack. Immediately after he was acquitted at trial, he was rearrested and eventually deported, based on the same evidence for which he had been acquitted. This has been a common experience for thousands of individuals legally in the U.S. who are found not guilty at trial, only to be deported based on the same evidence that was insufficient to convict them. The government claims that the burden of proof for deportation is lower than for criminal charges.

The Coercion of Abdul Hareez Baradi

In December 2003, Baradi was arrested and charged with possessing a fake passport at the time he filed an application for asylum. Baradi claimed that he had answered everything truthfully and correctly at the time he filed the application for asylum, and further claimed that the FBI asked him to become an informant; when he refused, they manufactured false charges against him. This deportation case is typical of the hundreds of fake cases that the government has brought to pressure people into becoming informants (see, for example, the Ahmad Niazi case in Chapter 3, Profiling of Muslims, #5, Other Cases).

The Postville, Iowa Raid and Kangaroo Court

On May 12, 2008, over 900 officers from Immigration and Customs Enforcement (ICE) descended on Postville, Iowa, a town of only 2,000 people, and arrested 400 workers at the Agriprocessors meat-packing plant. Most of the arrested workers had come north from Mexico and Guatemala to earn money for their families. NAFTA (North American Free Trade Agreement) had made small-scale farming unprofitable in the south, and so these workers were forced to find jobs in the U.S. to feed their families. Because they could not obtain work in the U.S. without a social security number, many of them had forged papers. This was routinely done to obtain work—the American companies they worked for clearly understood this.

Agriprocessors and other companies like it took advantage of the poor foreign workers by not

paying them for all the hours they worked and by using minors to operate dangerous equipment. The workers were threatened by the plant operators with loss of their jobs if they complained. ICE filed over 9,000 counts of child labor violations and violations of safety regulations at the plant in Postville.

ICE could have simply deported the workers for crossing the border without proper work papers, but instead it decided to engage in a show of cruelty, presumably to discourage the repetition of undocumented workers actually doing productive work in the U.S. ICE decided to charge 260 of the workers with identity theft for using false social security numbers (needed to get hired), and insisted that the workers spend an average of five months in jail (at the expense of American taxpayers).

Immediately after the arrests, ICE set up a kangaroo court, appropriately located in a cattle auction house next door. For the next seventy-two hours, the workers were marched through a proceeding that was judicial in name only. The official Spanish translator, Dr. Erik Camayd-Freixas, was so upset by the proceeding that he later wrote an essay about it:

...driven single-file in groups of 10, shackled at the wrists, waist, and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10.⁴

Dr. Camayd-Freixas stated that as the official interpreter, he could not understand the charges, so he doubted that the prisoners could, either. The prisoners waived their right to a trial and had virtually no contact with lawyers before pleading guilty, hoping to simply be deported—only to learn that they would spend an average of five months in jail, during which time their families would have no financial support.

The incarceration of the workers separated parents from young children, many of whom were U.S. citizens and depended on their parents for food and shelter. The raid was devastating to Postville as well: in a few months, 80% of the rental properties were vacant, the town was empty, stores were boarded up, the economy collapsed, and the town declared bankruptcy. As Dr. Camayd-Freixas stated in his essay, “A line was crossed at Postville.”

Such behavior by the federal government would be shocking if it happened only once, but in fact it was a tactic that was repeated in other communities, including Laurel, Mississippi and New Bedford, Massachusetts.

The Leadership Conference Report on Profiling

In 2011, the Leadership Conference on Civil and Human Rights published an important study,

⁴ “The Shame of Postville, Iowa,” editorial, *New York Times*, July 13, 2008, <http://www.nytimes.com/2008/07/13/opinion/13sun2.html?scp=1&sq=The+Shame+of+Postville%2C+Iowa&st=nyt>

The Reality of Racial Profiling,⁵ which detailed the many ways that Hispanic, Asian, Black, and Muslim communities are profiled. Statistics show that non-white individuals are at a much higher risk of being stopped and frisked by the police, even though the number of arrests resulting from such stops is about the same for white and non-white groups. Non-white motorists are much more likely to be pulled over for minor traffic infractions than white motorists, giving rise to the perception of “driving while Black (or Muslim, or Hispanic).” These pretextual (“preemptive”) stops are not only humiliating and disrespectful to the individuals involved, but they can deteriorate in unexpected ways into serious cases of injustice. The report details specific cases of individuals who were subjected to false arrest, confiscation of property that was rightfully theirs, and embarrassment at being presented as a criminal in the community.

The report also documents the institutionalization of profiling in federal policy as a result of 9/11. The federal government launched a number of programs, such as the National Entry-Exit Registration System (NEESR) and Operation Front Line (OFL), to openly profile Muslims. NEESR required certain individuals from predominantly Muslim countries to register and to be fingerprinted, photographed, and interviewed. Then the information was secretly given to OFL, a clandestine program to detect and deter terrorism operations, in order to conduct investigations of those who were required to register with NEESR. The vast majority of those investigated by OFL were Muslim, and no terror-related convictions for anyone were ever obtained as a result of the program—a good example of how wasteful and unproductive profiling is. The report also gives examples of the disarray created by the FBI’s Terrorism Screening Center, which lists individuals already on terror-related lists who have no involvement in terrorism whatsoever. Individuals who travel continued to be profiled, treated disrespectfully, and on occasion barred from flights.

In addition, the report cites a new approach by the federal government to profiling. Known as 287(g) (for its paragraph number in the Immigration and Nationality Act), under which state and local law enforcement agencies enforce federal immigration laws through a Memorandum of Agreement (MOA) with the federal government, this new approach’s stated purpose is to allow state and local officials a greater opportunity to use immigration laws to deal with serious threats to public safety. In practice, however, it often becomes just another excuse to profile non-white individuals.

For example, on July 3, 2008, Juanna Vilegas, who was nine months pregnant, was stopped in Nashville, Tennessee for “careless driving” (often used as a pretext for “driving while not white”). When she could not produce a driver’s license, she was taken to jail, although the normal procedure in Tennessee was to simply issue a ticket. Under the 287(g) program, local authorities checked her background and determined that she was undocumented, although she had no prior criminal history. When she went into labor in jail, she was chained to the bed until she gave birth; she was not allowed to see or speak to the father when he came to get the baby. Her breasts became infected because she could not nurse the baby, and the baby became jaundiced. Five days later she was allowed to plead guilty to driving without a license, with a

⁵ *The Reality of Racial Profiling* is available from The Leadership Conference on Civil and Human Rights, 1629 K Street NW, 10th Floor, Washington, D.C., 20006; or online at <http://www.civilrights.org/publications/reports/racial-profiling2011/the-reality-of-racial.html>.

sentence of time served, and was turned over to ICE for deportation. However, she was then released because it was against ICE's policy to separate mothers from nursing babies.

In some counties, 287(g) has been used as an excuse to constantly harass whole communities of immigrants.

The Airport Worker Purge

After 9/11, the government arrested thousands of Hispanic airport workers and portrayed them as would-be terrorists because many were undocumented or used valid social security numbers restricted to driver's licenses for the illegal purpose of getting a job in the U.S. Parents were locked up, leaving children alone at home, and families were thrown into turmoil. U.S. Attorneys across the country found minor mistakes on applications and inflated them into terrorist-sounding crimes, although most privately admitted they had no evidence that the defendants were involved in terrorism; the defendants were just Hispanic immigrants trying to get work in the U.S. to support their families and lead a better life.⁶

Discrimination Against Muslim Immigrants

In 2011, the Center for Human Rights and Global Justice of New York University School of Law issued a lengthy and significant report entitled *Under The Radar: Muslims Deported, Detained, and Denied on Unsubstantiated Terrorism Allegations*.⁷ The report identifies five governmental practices that profile and discriminate against Muslims in immigration proceedings:

1. The introduction of unsubstantiated and uncharged terrorism-related allegations in such proceedings to prejudice the judge.
2. Subjecting Muslim immigrants to detention as security risks for minor violations that would ordinarily not require detention.
3. Subjecting Muslims to strained or flimsy immigration charges not imposed on other groups.
4. Subjecting Muslims to overly broad interpretations of the law that bars terrorism.
5. The undue influence of the FBI on immigration agencies.

The report cites numerous examples of Muslim immigrants abused by the system, and concludes:

We are concerned that the practices outlined in this briefing paper are guided by racial and religious stereotypes, in a way that constitutes discrimination in violation of U.S. obligations under international human rights law. The practices identified in the briefing paper also suggest the United States is failing to uphold its international human rights obligations to guarantee the rights to due process; liberty and security of person; freedom of religion; freedom of expression and opinion; and the right to privacy and family. The government must stop targeting and punishing individuals for what it predicts they will do, especially when these predictions are not based on fact, but instead on religious and racial stereotypes and flimsy "evidence." (p. 2)

⁶ "The Feds' Post-9/11 Airport-Worker Purge" by James Bovard, *Freedom Daily*, May 13, 2010, <http://www.fff.org/freedom/fd1002c.asp>.

⁷ Available at <http://www.chrgj.org/projects/docs/undertheradar.pdf>.

On May 3, 2011, the Vera Institute of Justice and the Katzmman Immigration Representation Study Group combined to issue a report, *The New York Immigrant Representation Study*. This report finds that 60% of detained immigrants in New York City do not have lawyers, but that those immigrants who were released before trial and did have a lawyer had a 74% percent success rate in removal proceedings, while detained immigrants without representation had an 18% success rate. The study also notes that two-thirds of the individuals detained in New York City have been transferred to Texas, Louisiana, and Pennsylvania, where obtaining a lawyer presents the “greatest obstacle.” About 425,000 immigrants were detained last year in distant locations, with hardly any lawyers around, making it extremely difficult for a detainee to prepare a case.⁸

⁸ “Study, Forum Stress Plight of Unrepresented Immigrants” by Mark Hamblett, *New York Law Journal*, May 6, 2011, <http://www.law.com/jsp/article.jsp?id=1202493130604&slreturn=1>.

Chapter 5

PROFILING OF PRISONERS: PRISONER ABUSE

Profiling, predatory prosecution, and preemptive deportation can exist only in an atmosphere that assumes the targeted group shares a collective guilt, permitting the government to strip the members of their constitutional guarantee of equal protection. To justify this second-class status, it is common to humiliate these groups with racist language, degrading treatment, physical abuse, and even torture. People of color are routinely subjected to unjust procedures all the way through the criminal justice system. Undocumented persons detained for possible deportation are routinely held in degrading conditions and given little or no legal assistance. Prison guards use epithets, abuse, and other forms of humiliation. Prisoners awaiting trial on contrived charges are routinely held, by use of Special Administrative Measures (SAMs), in solitary confinement for months and even years until they are so mentally debilitated they cannot participate in their own defense. Those defendants convicted of contrived ideological charges are often sent to special prisons, Communication Management Units (CMUs), designed to isolate them from contact with the outside world.

Since the late 1980s, the U.S. has experimented with using prisoner isolation as a method of discipline. Disruptive prisoners are placed in Security Housing Units (SHUs) and subjected to solitary confinement and sensory deprivation for a month or more. Special isolation prisons, such as the “Supermax” in Florence, Colorado, have been constructed for the most dangerous prisoners, who are housed entirely in solitary confinement and are allowed out of their cells for only an hour a day. These isolation conditions have had a devastating impact on the prisoners’ mental condition. Application of SHU conditions to SAMs and the CMUs means that for the first time, these isolating conditions are being applied to non-violent prisoners with no history of disciplinary problems; are based primarily on their religion, Islam; and that in the case of SAMs, such isolation is imposed before trial, at a time when the defendants are presumed to be innocent. The use of isolation is not, therefore, related to discipline but is instead used to “break” the prisoner for information and to render him/her incapable of cooperating in his/her own defense.

1. Special Administrative Measures (SAMs)

Special Administrative Measures (SAMs) are a little-regulated legal device for holding defendants in jail, often pre-trial, under special conditions. They are not judicial measures but administrative ones. They were originally created for holding organized crime figures in jail under conditions that would preclude them from threatening witnesses or continuing to run their illegal operations from their jail cells by communicating with the outside world. Since 9/11, there has been an explosion in the use of SAMs, and the conditions imposed have been so draconian and long-lasting as to amount to torture, essentially depriving defendants of the right to counsel and to a fair trial.

Terror suspects are now routinely placed in solitary confinement pre-trial under SAMs, even when it is apparent that a defendant is not in communication with any terrorist group. Solitary confinement for twenty-three or twenty-four hours a day is so debilitating that the 1948 Geneva Convention III—1948 (Article 90) precludes its use as punishment for more than thirty days,

since lengthy solitary confinement can amount to torture. Yet defendants are routinely held in solitary confinement for years before trial without any showing as to why such conditions are necessary.

Prolonged solitary confinement brings significant mental deterioration. Prisoners rapidly develop a mental condition resembling psychosis, may show paranoid symptoms, and have difficulty with speech. Under these circumstances, when the prisoner finally does come to trial after years of SAMs, he may be unable to cooperate with his lawyer or testify on his own behalf. The prolonged use of SAMs before trial thus raises serious constitutional issues concerning the right to counsel and the right to testify. Many defendants who have been subjected to long periods of solitary confinement plead guilty in the end, and it is surmised that one reason for putting a prisoner into solitary in the first place is to break him down to the point where pleading guilty is the only alternative.

Even former Defense Secretary Donald Rumsfeld, in his April 16, 2003 memo authorizing aggressive forms of interrogation, warned that isolation was not generally used for more than thirty days, and that more prolonged isolation would require specific guidelines, as well as medical and psychological review. Many of the prisoners profiled in this booklet have spent years in solitary, both before and after trial. Lawrence Hinkle, a psychiatrist at Cornell Medical Center and a CIA consultant, wrote:

It is well known that prisoners, especially if they have not been isolated before, may develop a syndrome similar in most of its features to the “brain syndrome”... They become dull, apathetic, and in due time they become disoriented and confused; their memories become defective and they experience hallucinations and delusions... their ability to impart accurate information may be as much impaired as their capacity to resist an interrogator... From the interrogator’s viewpoint it has seemed to be the ideal way of “breaking down” a prisoner, because, to the unsophisticated, it seems to create precisely the state that the interrogator desires: malleability and the desire to talk, with the added advantage that one can delude himself that he is using no force or coercion... However, the effect of isolation on the brain function of the prisoner is much like that which occurs if he is beaten, starved, or deprived of sleep.¹

Psychologist Craig Haney of the University of California-Santa Cruz, an expert on long-term solitary confinement, has stated that

(Solitary confinement)... is itself a painful and potentially harmful condition of confinement... (it) has historically been a part of torture protocols. It was well documented in South Africa. It’s been used to torture prisoners of war... it is a very painful experience. People experience isolation panic. They have a difficult time psychologically coping with the experience of being completely alone. In addition, solitary confinement imposes conditions of social and perceptual stimulus deprivation. Often it’s the deprivation of activity, the deprivation of cognitive stimulation that some people find to be painful and frightening... It’s certainly profoundly damaging if people

¹ “Isolation: ‘The Ideal Way of “Breaking Down” A Prisoner”” by Jeff Kaye, *Firedoglake*, March 7, 2011, <http://my.firedoglake.com/valt/2011/03/07/isolation-the-ideal-way-of-breaking-down-a-prisoner/>.

lose hold of their own sanity. For some people, their sense of themselves changes so profoundly and so fundamentally that they are unable to regain it. The other thing that happens more frequently...is that people lose the ability to interact with others...Their ability to be comfortable during social interaction and maintain relationships is permanently impaired. And for some people the actual experience of isolation is so painful that it generates an anxiety or panic reaction. People lose their ability to control themselves. They become uncontrollably and sometimes permanently depressed in the face of this kind of treatment. Others become angry and unable to control those impulses.²

David Hicks, who was held at Guantanamo for five and a half years, stated of his experience:

Everything outside the four walls is quickly forgotten. With no mental stimulation the mind becomes confused and dull. That state of mind is an advantage to interrogators who manipulate every aspect of your environment. They create a new world reality. Time ceases to exist. Talking becomes difficult, so when conversations do take place you cannot form words or think...[C]oherent sentences become elusive and huge mental blanks become common, as though you are forgetting the very act of speaking. Everything you think and know is dictated by the interrogators. You become fully dependent with a childlike reliance on your captors. They pull you apart and put you back together, dismantling into smaller pieces each time, until you become something different, their creation, when eventually reassembled. Indefinite detention is draining and cruel. Only after five and a half years when I had been promised a date of release did the intense battle with insanity subside...It was a psychological battle, a serious and dangerous one. It was a constant struggle not to lose my sanity and go mad. It would have been so easy just to let it go: it offered the only escape.³

Mohammed Abdullah Warsame

In 2000, Mohammed Warsame, who has been described as a young, naïve dreamer, decided to visit Afghanistan because he had heard they were building an Islamic utopian society there. He attended a training camp in Afghanistan at a time when there were no restrictions on traveling to Afghanistan, but decided it was not the paradise he had expected. In 2001 he returned to the U.S., where he enrolled at Minneapolis Community College to become a teacher.

In December 2003, the U.S. government asked Warsame for an interview, and he told them all about his time spent in Afghanistan. He was arrested the next day and was placed in “secret detention” as a “ghost” prisoner; he was registered at the jail anonymously so people would not know where he was and so he would leave no paper trail.

Warsame claims that while he was in secret detention, the government tried to pressure him to lie and say that Zacarias Moussoui had told him that he (Moussoui) was part of the 9/11 plot. (At

² “Solitary Confinement: The Invisible Torture” by Brandon Keim, *Wired Science*, April 29, 2009, <http://www.wired.com/wiredscience/2009/04/solitaryconfinement/>.

³ “An Interview with Former Guantanamo Detainee David Hicks” by Jason Leopold, *Truthout*, February 16, 2011, <http://www.truth-out.org/exclusive-an-interview-with-former-guantanamo-detainee-david-hicks67818>.

the time, the government was trying to build a case against Moussoui.) When Warsame refused to lie, the government charged him with material support for terrorism. The FBI at first claimed that Warsame had lied to them and charged him with providing false information. Later, however, the FBI agreed that Warsame had been completely honest with them. But having already indicted him, the government's problem was to find some evidence that he had actually violated the law.

While awaiting trial, Warsame was placed into solitary confinement under SAMs that continued for nearly six years. His may be the longest pre-trial solitary confinement in the history of the U.S. In 2006, his lawyers moved to dismiss the case because of the government's repeated delays in bringing the case to court, but the judge denied the motion. Finally in 2009, with no relief from solitary in sight, Warsame agreed to plead guilty to one charge of material support.

At his sentencing, Warsame's defense lawyer, Andrea George, made an impassioned plea that the court should give him a very "difficult" sentence: "He should serve forty-eight, 185 hours of solitary confinement. He should live in a ten-by-ten box and all he should see are white walls." Then she noted that Warsame had already served this sentence while waiting for a trial he never received. She argued that this incredibly harsh sentence should be enough for a man who never did anything to hurt the U.S. and who tried to cooperate with the government when they asked him to. However, the judge was not impressed with this logic, and sentenced Warsame to serve an additional ten months.

It is astonishing that for almost six years, Warsame could have been portrayed by the government as one of the most dangerous people on earth—so dangerous that only by completely isolating him pre-trial in a ten-by-ten cell would keep the country safe—right up until the time that he agreed to plead guilty. After he pleaded guilty, the government no longer considered him dangerous, and agreed that he could be released.

Aafia Siddiqui

As described earlier in Chapter 3, Profiling of Muslims, #5, Other Cases, Aafia Siddiqui was probably arrested with her three young children in Karachi, Pakistan in 2003 and then apparently held in solitary confinement and tortured by the Americans for about five years at Bagram, Afghanistan or at some "black site" controlled by the Americans. (Her young daughter, Mariyam, was later found speaking fluent English with an American accent, suggesting that she must have been held by Americans.) After Siddiqui "reappeared" in 2008 and was arrested in Ghazni, Afghanistan, she was turned over to a group of armed American soldiers who shot her in the stomach, almost killing her, and then charged her with attempted murder for allegedly grabbing a gun and shooting twice at the armed Americans in a small interview room. No forensic evidence was ever found that she either grabbed a gun or shot it—no fingerprints of hers were found on the gun, and no bullets or bullet holes were found in the walls of the interview room.

While awaiting her attempted murder trial in 2008 in New York City, Siddiqui was kept under SAMs in solitary confinement, so that by the time of the trial she had been held in solitary confinement for a total of seven years, which included years of probable physical torture and

extreme mental distress over the fate of her three young children. What effect did this have on Siddiqui's mental health and on her ability to cooperate with her lawyers in her defense?

During trial preparation in 2010, Siddiqui's lawyers reported that she had stopped communicating with them. It was suggested that she was afraid the lawyers were working for the government, and so would not talk to them. Paranoia is known to result from prolonged isolation in solitary confinement, and may often be directed at a prisoner's lawyers; if the lawyers are unable to secure the defendant's freedom, under conditions of extreme isolation the defendant may well conclude that the lawyers are working with the government.

Based on reports of psychologists and experts who examined her, eventually the defense claimed that Siddiqui was not competent to stand trial because she was unable to cooperate in her own defense. The government countered with claims that she was faking. The issue of her competency thus posed a difficult problem for the court and the prosecution. If she was not competent before her confrontation with the American soldiers, it might well be that she could raise the insanity defense in response to the claim that she tried to shoot the soldiers. Moreover, it would be relevant to an insanity defense as to where she had been before the shooting; if she had been in an American prison being tortured and isolated for those five missing years, that by itself might have caused her to become insane.

A compliant Judge Berman got the government off the hook by ruling that Siddiqui was competent to stand trial, and because she was competent, nothing that happened in the five years before the shooting was relevant to the charges. No questions could be asked about those five years when she was rumored to have been held in solitary and tortured.

Siddiqui testified at trial and at her sentencing. Her testimony was coherent enough for the government to claim that she was competent to stand trial, and bizarre and paranoid enough for others to doubt her competency. Her lawyers claimed that she was truly mentally incompetent, while Siddiqui herself claimed she was competent and thus continued to refuse to cooperate with them.

But in the strangest twist of all, at sentencing in 2010 Judge Berman stated that Siddiqui was suffering from significant mental issues and recommended that she serve her sentence at the Carswell Prison hospital, where she could be treated for her mental condition. However, while there she would have to remain in solitary confinement—which presumably contributed to her mental issues that were supposed to be treated.

Aafia Siddiqui's case represents the many unpredictable ways in which prolonged isolation can infect the fairness of a trial. We know that prolonged isolation can lead to paranoia and confused thinking, but when Siddiqui displayed these symptoms, the government denied it was a problem, even when she refused to talk to her lawyers during both the trial and the sentencing. Yet after sentencing, the government used Siddiqui's mental issues as an excuse to further isolate her so that she could not talk about what had happened to her during the five missing years (and if she did talk about it, the government could claim it was just the delusional ramblings of insanity). There is thus a Catch-22 quality about solitary confinement and SAMs. Prolonged solitary confinement is presumed to distort a person's mental abilities, and so anything a person says

about her case after such confinement is presumed to be unreliable. Prolonged solitary is a way of manipulating and distorting the truth so it can be ignored, and Siddiqui's case is a good example of this.

The Lynne Stewart Case (Lynne Stewart, Ahmed Abdel Sattar, Mohamed Yousry)

During the time Sheikh Abdel Rahman was incarcerated (see Chapter 3, Profiling of Muslims, #5, Other Cases, The New York City Landmarks Case), he was placed under Special Administrative Measures (SAMs), which curtailed his ability to communicate with the outside world. All of his visits and other communications, including those with his lawyers, were monitored by the government. Lynne Stewart was one of Abdel Rahman's lawyers; Ahmed Sattar was a paralegal with Stewart; and Mohammed Yousry was a court-appointed translator. Stewart correctly saw the SAMs as an assault on a lawyer's time-honored ability to zealously represent a client. If the government monitored all of her communications with her client, how was attorney-client confidentiality to be maintained? Moreover, SAMs made it impossible to establish a relationship of trust with a client. The constant monitoring of the government made it appear that the lawyer was an agent of the government.

Abdel Rahman was a world-respected scholar with followers in many countries, and he wanted to stay in contact with them. At one point in 1999, he told Yousry about an announcement that he wanted to make to his supporters in Egypt. Yousry told Sattar, who told Stewart, who announced the statement at a press conference. Similar statements from the sheikh had been announced at press conferences in the past by other defense lawyers, and the prosecution had not objected. Indeed, the prosecution did not immediately object to this announcement, either. It seemed to be the kind of duty that lawyers owed their clients in such situations.

Three years later, after 9/11, the government looked back at the incident, and in an apparent effort to intimidate lawyers who did not take SAMs seriously enough indicted Stewart, Sattar, and Yousry for conspiracy and for violating the SAMs. They were convicted. Sattar was sentenced to forty-five years, Yousry was sentenced to twenty months, and Stewart to ten years. The sentences reflect an unprecedented attack on the legal profession by the government that makes it almost impossible to give zealous representation to clients in terrorist cases.

Lynne Stewart is known as "the people's lawyer" because of her commitment to represent her clients zealously, especially those who were being prosecuted for their politics. Lawyers who represent defendants charged with committing crimes in the public interest, such as civil disobedience or radical speech, have a different burden and perspective than lawyers who represent clients charged with crimes of greed. Often public interest clients cannot pay; they may be unpopular; or the government may threaten retaliation against people who support them. Lynne Stewart was beloved because she took on these challenges, gave clients who could not pay 150% of her time and talent, and spoke out loudly to support people who were being unfairly vilified by the government and the public. Even outside the courtroom, she gave generously of her time. She was one of the founders of Project SALAM, and she had a wise and compassionate word for everyone who called on her for help.

After Stewart was convicted of a felony, she automatically lost her license to practice law. She was nearing the age of retirement and was being treated for breast cancer. It was feared that her ten-year sentence would become a life sentence. It is genuinely hard to understand the malice of the government and the courts in sentencing such a dedicated and admired attorney to a ten-year prison term, especially one who would never practice law again. Indeed, it is hard to understand the malice of the government and courts in sentencing most of the Muslim defendants to absurdly long terms of much more than ten years and up to life, notwithstanding that nothing significant happened as a result of their “criminal” conduct.

Syed Fahad Hashmi

This case is also detailed in Chapter 3, Profiling of Muslims, #2, Material Support Charges and Guilt by Association. On June 6, 2006, British police arrested Syed Fahad Hashmi on a U.S. warrant in London’s Heathrow Airport on material support and conspiracy charges, claiming that in 2004 a bag of clothing—waterproof socks and raincoats—that was subsequently delivered to a terrorist official by Junaid Babar had been stored for two weeks in Hashmi’s apartment in London. After being held in Belmarsh Prison in London for eleven months in general population, Hashmi was extradited to the U.S. in 2007, where he was placed in solitary confinement in the Metropolitan Correctional Center (MCC) in New York for nearly three years under extremely harsh pre-trial conditions, including SAMs, and essentially was held incommunicado.

Hashmi was not allowed any contact with anyone other than his lawyers, and, to some extent, his immediate family. He could not make telephone calls, talk to the media, or even talk to other inmates. Bathing and use of the toilet took place in front of a monitoring camera. He could write only one three-page letter a week to a single member of his family. He could receive one visit every two weeks from a parent, but often these family visits were cancelled for arbitrary reasons. He could read only what his jailers permitted him to read, and he could not read a newspaper unless it was over thirty days old. He was permitted out of his small cell for only one hour a day to exercise in a “solitary” cage, like a captive animal.

Although he had been a model prisoner in London, the government justified imposing SAMs on Hashmi by citing his “proclivity for violence,” notwithstanding that he had no criminal record, had not been charged with a violent act, and had not tried to incite violence inside or outside of the prison or at any other time. Other prisoners at MCC—murderers, rapists, and gang members with records of violence—were not subjected to SAMs. Why, then, was Hashmi? Since prisoners charged with terrorism who were subjected to SAMs pre-trial were almost exclusively Muslim, it seemed clear that both the prosecutor and the courts were following the theory that merely to be charged with a terror-related crime was the equivalent of a conviction. These Muslim defendants were guilty until proven innocent.

The prosecution tried to increase the pressure on Hashmi. One day he practiced martial arts moves in his cell; he was then charged with “unauthorized gestures” and his family visits were cancelled for three months. Later, when his lawyers tried to challenge the imposition of SAMs in court, the judge cited these “unauthorized gestures” as a basis to continue the SAMs.

Prosecutors hinted that what they really wanted was for Hashmi to “cooperate” with them, and that he would be tortured with solitary confinement until he did what the government wanted. Hashmi refused, and later said at his sentencing, “In all reality, I had nothing to cooperate about.” A day before trial, the government dropped three of the four charges against him. That it did so suggests that it had applied these draconian pre-trial measures not because it considered Hashmi a high-level terrorist, but to induce his cooperation or conviction.⁴

By 2010, Hashmi was struggling to keep his sanity, and his lawyers were concerned about their ability to communicate with him and about his ability to cooperate in his defense. Hashmi’s family maintains that one of the reasons he took a plea bargain and pleaded guilty was that nearly three years of solitary confinement had taken their toll on his psychological health.

Bradley Manning

In July 2007, a video of a helicopter airstrike in Baghdad was published by WikiLeaks. Titled “Collateral Murder,” it showed the crew of the helicopter casually and randomly shooting Iraqis from the helicopter. At the same time, WikiLeaks also released a video of another airstrike in Afghanistan, as well as a large number of diplomatic cables, all of which were classified. In May 2010, a U.S. soldier, PFC Bradley Manning, was detained for the unauthorized disclosure of the classified material. Manning had been assigned to a unit that had access to the Secret Internet Protocol Router Network (SIPRNet) used by the State Department to transmit classified information. Manning allegedly told a friend, Adrian Lamo, during an online chat that he had downloaded material from SIPRNet and passed it on to WikiLeaks. Lamo then reported Manning to the authorities.

On July 5, 2010, Manning was charged with transferring classified data onto his personal computer and communicating it to an unauthorized source between November 19, 2009 and May 27, 2010. He was held in solitary confinement for ten months under conditions amounting to torture. He was isolated from all contacts, kept in his tiny cell for twenty-three hours a day, and forced to sit naked in his cell while the government tried to break him in order to build a case against Julian Assange, the founder of WikiLeaks. Manning was sealed off from the world so tightly that not even the UN and human rights organizations were allowed unmonitored access to him; even his lawyers had difficulty in being allowed to communicate with him. The government insisted that it would continue to hold him under these inhuman conditions indefinitely, even though the prison’s psychiatric experts recommended against it. The U.S. State Department’s spokesperson, P.J. Crowley, issued a condemnation of Manning’s treatment and was forced to resign by the Obama Administration.

After the UN’s torture investigator filed a complaint that he had been denied an unmonitored visit with Manning, the German parliament protested Manning’s treatment to the White House. Amnesty International said that Manning’s treatment violated human rights. The British government formally raised concerns about the U.S.’s treatment of Manning, whose mother is British. The mainstream media in the U.S. began to raise questions about why Manning was being tortured.

⁴ “My Student, the ‘Terrorist’” by Jeanne Theoharis, *The Chronicle of Higher Education*, April 3, 2011, <http://chronicle.com/article/My-Student-the-Terrorist/126937/>.

On April 20, 2011, in response to overwhelming international and domestic pressure, the Obama Administration finally agreed to move Manning into a medium-security facility with an “open day room,” where supposedly he can move around, have contact with other prisoners, and eat meals with them. He supposedly can shower when he wants, have access to books and TV, and have three hours a day of recreation time. However, it remains to be seen if the government follows through with its promise of humane treatment.

Glenn Greenwald stated about the persecution of Manning:

For multiple reasons, the treatment of Manning has been a profound stain on the Obama administration. It isn't merely that the treatment is inherently inhumane, although that's true. It isn't merely that oppressive detention conditions are such a glaring betrayal of Obama's repeated signature vow to end detainee abuse, though that's also true. And it isn't merely that Manning has never been convicted of anything, rendering this obvious punishment (masquerading as protective detention) offensive on multiple Constitutional and ethical levels...though that, too, is true. What makes it most odious are the purposes that likely drove it: a desire to break Manning in order to extract incriminating statements to be used against WikiLeaks, and, worst of all, a thuggishly threatening message to future would-be whistleblowers about the unconstrained punishment they'd face if they too exposed government deceit, wrongdoing and illegality.⁵

This case is important because the government cannot continue its program of preemptive prosecution against innocent people, or its assault on civil rights based on false information, unless it can keep its programs secret. Manning represents a threat to the government's ability to keep its illegal conduct secret, and so he was essentially tortured to break him and to break WikiLeaks from potentially exposing these secrets.

But the case also raises troubling questions. Why was there no international outcry over the treatment of Mohammed Warsame (see his case, above), who was similarly held in solitary confinement for over five years on a minor charge until he was so damaged that he agreed to plead guilty to a minor charge in order to be released? Dozens of Muslim defendants were held pre-trial under similar conditions; why was there no international outcry over the preemptive prosecution of them, or over the illegal CMUs? The support Manning has received suggests that there is still a double standard of human rights. Inhuman persecution of Muslims is permitted, but persecution of others is not.

2. Communication Management Units (CMUs)

In December 2006, the Bush Administration quietly opened a new tool in the war on terror, a special prison unit called a Communication Management Unit (CMU) in Terre Haute, Indiana, without complying with the legal procedures required to do so. The idea of the unit, as explained by the initial rule proposal under the Administrative Procedures Act, was to “limit communication for terrorist inmates.” Specifically the proposal sought to limit inmates with

⁵ “Lessons from Manning's transfer out of Quantico” by Glenn Greenwald, *Salon*, April 20, 2011, http://www.salon.com/news/opinion/glenn_greenwald/2011/04/20/manning.

“terrorist-related activity” in their convictions to one six-page letter a week, one fifteen-minute phone call a week, and one one-hour visit per month by the prisoner’s immediate family—strict isolating conditions not imposed on the general prison population. This compares with the normal allowance in most prisons of 300 minutes of calls a month and generally unlimited visits and letters. Even the Supermax prison in Colorado, the prison for inmates with the highest need for security, allows thirty-five hours of visits per month. When the administration received extensive criticism of its CMU proposal, it secretly went ahead and opened the CMU without ever completing the legal requirements. It became a special “Muslim” prison because initially Muslims were almost exclusively assigned to it.

In March 2008, the Bureau of Prisons established a second CMU in Marion, Illinois, and two non-Muslim, non-Arab inmates were transferred there: Daniel McGowan and Andy Stepanian. McGowan was transferred because he was associated with an environmental group (so-called “eco-terrorists”) that in 2001 burned down some buildings to block development in a national forest. Stepanian was notified that the reason for his transfer was that he “has known connections to Stop Huntingdon Animal Cruelty (SHAC) and the Animal Liberation Front (ALF), groups considered to be domestic terrorist organizations.” Among the prison guards, the two became known as “balancers,” who had been transferred to the CMU to deflect criticism that the prisons were exclusively populated by Muslims.

In fact, designation to a CMU is almost completely arbitrary. Yassin Aref (see his case in Chapter 3, Profiling of Muslims, #3, *Agent Provocateur* Cases) was sent to a CMU because, according to his designation, he had provided material support to a designated terrorist organization—JEM—whereas in fact he had been convicted in a fictional sting. There were no real terrorist organizations operating in his case, least of all JEM, and Aref had repeatedly told the *agent provocateur* during the sting that he did not know anything about JEM and was not interested in terrorism. On the other hand, his co-defendant, who was more involved with the *agent provocateur* than Aref was, was not sent to a CMU. Sabri Benkahla (see his case in Chapter 3, Profiling of Muslims, #4, Training Camp Cases) was acquitted of a charge that he was involved in terrorism, but later was convicted of lying to a grand jury. He was sent to a CMU. The government brought fraud charges against Dr. Rafil Dhafir (see his case in Chapter 3, Profiling of Muslims, #1, Charity Financing Cases) and specifically told the court that his case did *not* involve terrorism, yet after he was convicted Dhafir was sent to a CMU. Many inmates have nothing in their backgrounds to explain why they are there, except perhaps for making legitimate complaints about the Bureau of Prisons.

Both CMUs are located in isolated areas of the Midwest, far from areas of Muslim concentration. It takes several days to drive to Terre Haute or Marion from the East or West Coasts, and for poor Muslim families the drives are extremely difficult. Moreover, all visits are non-contact—a family must view its husband or father through a Plexiglas window while talking on a telephone. This lack of contact is devastating to both prisoners and families. It is very hard to maintain family relationships with one fifteen-minute call a week. In a five-member family, it means that each member has three minutes to talk, and if one has a problem that requires more extensive discussion, the rest of the family suffers.

In 2010, the Center for Constitutional Rights brought a lawsuit, with both Aref and McGowan among the plaintiffs, to close down the CMUs because of the failure of the government to follow legal requirements in establishing the units. In late March 2011, a judge ruled the lawsuit could proceed. Although the judge dismissed several of the claims raised by the lawsuit, including those of equal protection, substantive due process, and freedom of association, he agreed that conditions in the CMUs were restrictive enough to support the plaintiffs' claim that they had a "liberty interest" in having the right to procedural due process. It also allowed claims of retaliation to be heard. Since there is no meaningful review process—transfers to a CMU are not explained, nor are prisoners told how release into less-restrictive confinement can be earned—the court wrote that prisoners have a "high risk" that these procedures have resulted in erroneous deprivations of their liberty interests.⁶

A few weeks after the decision in the CCR lawsuit, Yassin Aref, the lead plaintiff, was transferred out of the CMU at Marion and put into the general prison population. This is a familiar tactic by the government: when the government is apparently about to lose a lawsuit involving prisoners, it transfers the prisoners to try to moot their claims, thus avoiding a decision that will affect prisoners not involved in the lawsuit.

Aref wrote that he was so excited by the move that he had trouble sleeping at first—there was suddenly so much to see and do. He could now call friends and family freely, and the prison administration indicated that he would probably be moved closer to his home in Albany, New York so his family could visit him more than once a year. He described his favorite pastime, after being transferred, as simply lying on his back on a patch of grass looking up at the sky. It had been years since he had seen grass or sky, and it was wonderful to him. He soon joined a prison soccer team and played in a tournament. These are among the everyday pleasures denied to inmates of the CMU.

Constructing prisons for a single ethnic group is highly unusual in America. It is so offensive to our notion of equal protection for all Americans that the U.S. government has gone to some lengths to blunt the claim that the CMUs are Muslim prisons. The government has included a few non-Muslims in the prisons, like environmentalists and animal rights activists, in order to claim that the CMUs are not Muslim prisons. However, the proportion of Muslims in the two CMUs is so high—upwards of two-thirds—that this over-represents the proportion of Muslim prisoners in BOP facilities by at least 1,000%.⁷ Since the enabling regulations for the CMU evolved out of the "war on terror," in which it was deemed necessary to isolate convicted Muslims from contact with the outside world, it is fair to speak of the CMUs as Muslim prisons. In American history (and disregarding the Muslim prison at Guantanamo), there is only one other clear example of the U.S. constructing prisons solely for a particular ethnic group, and this episode casts a shadow so dark on the conscience of America that it is worth remembering here.

⁶ "Court Vindicates Prisoners in Right to Challenge Experimental Isolation Units Restricting Communication," press release from Center for Constitutional Rights, March 30, 2011, <http://ccrjustice.org/newsroom/press-releases/court-vindicates-prisoners-right-challenge-federal-experimental-isolation-units-restricting-communic>.

⁷ "Aref, et al. v. Holder, et al.," Center for Constitutional Rights, n.d., <http://ccrjustice.org/ourcases/current-cases/aref-et-al-v-holder-et-al>.

Fred Korematsu and the Japanese Internment

After Pearl Harbor, President Roosevelt issued an executive order requiring that all persons of Japanese descent, including native-born American citizens and people with as little as one-sixteenth Japanese blood, be removed from designated military areas covering much of the West Coast and placed into internment camps. Pursuant to that order, 110,000 Japanese were taken in May 1942 from their homes and sent to such camps, where they were forced to work for only a few hundred dollars a month. 62% were American citizens. They were not permitted to return to their homes until after January 2, 1945. The camps were barren and brutal. Initially they consisted of simple, hastily constructed tarpaper barracks without plumbing or cooking facilities. In some cases, Japanese families were housed in empty horse stalls.

Fred Korematsu, a native-born American of Japanese parents, refused to go to an internment camp and was arrested. His case went to the Supreme Court, which held that in a time of national emergency, compulsory exclusion of a particular ethnic group, although constitutionally suspect, was justified by the circumstances.

In 1980, President Jimmy Carter appointed a commission to investigate the internment of the Japanese-Americans during the war. The commission concluded that the internment decision occurred because of “race prejudice, war hysteria, and failure of political leadership.” In 1988, Congress formally apologized to the country’s Japanese-Americans and granted personal compensation of \$20,000 to each surviving prisoner, which eventually totaled more than \$1.5 billion.

At around the same time, researchers discovered documents that showed that during the Korematsu argument before the Supreme Court, the government had deliberately suppressed FBI and intelligence reports indicating that Japanese-Americans posed no security risk. The government had lied to the Supreme Court and made false arguments that it knew to be untrue. On November 10, 1983, Judge Marilyn Patel of the U.S. District Court in San Francisco formally vacated Korematsu’s conviction because of the misconduct of the government. Korematsu said at that time, “I would like to see the government admit that they were wrong and do something about it so this will never happen again to any American citizen of any race, creed, or color.”

In 1998, President Bill Clinton awarded Korematsu the Presidential Medal of Freedom, saying, “In the long history of our country’s constant search for justice, some names of ordinary citizens stand for millions of souls. Plessy, Brown, Park...to that distinguished list, today we add the name of Fred Korematsu.”

After 9/11, Korematsu became an outspoken critic of the government’s treatment of Muslims. When Muslims were detained indefinitely at Guantanamo, Korematsu wrote two amicus briefs (in the cases of Shafiq Rasul and Jose Padilla) to the Supreme Court, warning the court not to repeat its mistake of the Japanese internment. In his briefs, he stated, “The full vindication for the Japanese-Americans will arrive only when we learn that, even in times of crisis, we must guard against prejudice and keep uppermost our commitment to law and justice.”

Fred Korematsu died on March 30, 2005. One of his last statements was to urge people to protest racial discrimination “but not with violence.” He also told people, “Don’t be afraid to speak up. One person can make a difference, even if it takes forty years.” His death came just one year before the government proposed the first CMU, on April 3, 2006, to incarcerate Muslim prisoners. On September 23, 2010, California proclaimed January 30 as “Fred Korematsu Day of Civil Liberties and the Constitution.” It is celebrated apparently without recognition or concern that only one year after his death, the U.S. government began planning the next great ethnic internment—this time, of Muslims.

CONCLUSION

Profiling and preemptive prosecution are, in essence, persecutions of ideology. The government identifies ideologies that it wants to suppress and then isolates people who might represent the ideology so that it will not spread. Prisoners are kept under cruel and inhumane conditions and humiliated in order to show rejection of the ideology. Thus it is no surprise as to which groups have been targeted for preemptive prosecution; the range has steadily expanded from racial minorities, immigrants, and Muslims to peace activists, environmentalists, animal rights advocates, and others. On the surface, it would seem that these groups have little in common, but each has an ideology that the government wants to suppress, and it is convenient to bring fake or contrived charges against these groups in order to suppress their ideas.

When profiling is encouraged by the government, when legal restraints are relaxed within the FBI, police, and Immigration and Customs Enforcement (ICE) in order to increase the surveillance and prosecution of targeted minorities and ideologies, and when law enforcement officials are rewarded for bringing false or contrived charges, everyone is in danger. The security industry, both governmental and private, has now become a vast secret empire that demands an ever-increasing number of prosecution victims to maintain the country's fear and justify its budget. If we do not demand equal protection of the law for the racial, ethnic, religious, and ideological targets of today, there may be no one left to defend the rest of us when we are eventually targeted by a government seeking to suppress all dissent. Equal protection is everybody's best guarantee against tyranny.

Some Responses to Injustice

There has been a great deal of grassroots response to the injustices detailed in this booklet. Here are a few examples.

In the six months between Yassin Aref's conviction and his sentencing, he wrote a book about his childhood in Kurdistan, his immigration to the U.S. as a UN refugee, and his arrest and imprisonment. Titled *Son of Mountains*, it was published in 2008 by the Muslim Solidarity Committee (see below). In 2009, Shamshad Ahmad, president of the mosque where Aref had been the imam, wrote and published a book about the Aref/Hossain trial and its aftermath, *Rounded Up*. It is still in print. Also in 2009, Ellie Bernstein, an independent filmmaker, wrote, directed, and produced a documentary about the case, *Waiting For Mercy*, which has been shown on LinkTV and at film festivals in the Northeast. Since 2006, journalists have continued to write about the case; in 2011, *New York Magazine*, *Harper's Magazine*, and *Mother Jones* featured the Aref/Hossain case in lead articles.

After the Aref/Hossain trial in 2006, two women in Albany, May Saffar and Cathy Callan, formed the Muslim Solidarity Committee (MSC) to help the mosque support the families of the men and to mobilize the community against the injustice of what had been done. Over the next few years there was an outpouring of community support, and by 2010 the MSC had raised over \$30,000 for the families. In August 2008, the MSC, along with the support committees for Dr. Rafil Dhafir in Syracuse, New York and for Syed Fahad Hashmi in New York City, held a conference/forum at Albany Law School to discuss the reality of preemptive prosecution directed

at the Muslim community and devise a response. Activist Lynne Stewart was the keynote speaker. As a result of the conference, Project SALAM (Support And Legal Advocacy for Muslims) was organized to document all of the cases of preemptive prosecution nationwide and to advocate against these unjust attacks on the Muslim community.

On April 5, 2010, Dominick Calsolaro, a member of the City of Albany's Common Council, working with Lynne Jackson, a member of Project SALAM, introduced a resolution to the Common Council urging the federal government to adopt the recommendations of the Inspector General of the Justice Department, which were detailed in a report dated July 10, 2009. This report recommended that the government review all terrorism cases because the government had failed to provide a mechanism, as required by law, to identify and disclose classified material that might establish a defendant's innocence or aid the defense (known as "exculpatory information"). Withholding this information was illegal on the part of the government, and could result, the report stated, in innocent defendants being convicted. In support of the resolution, twenty-five speakers, both Muslim and non-Muslim, including family members of some of the "terrorism" defendants, spoke to the Common Council in an emotionally charged presentation about the effect of preemptive prosecution on the Muslim community and about the need to review the fairness of terrorism cases. The Council voted 10-0 to approve the resolution.

Now known as the Albany Resolution, this political victory became a tool for activists who wanted to reverse the unjust practices of the federal government toward Muslims. In the fall of 2010, discussions were held with a number of national civil rights groups and individuals, including the family of Sami Al-Arian, which led to the formation of a new organization, the National Coalition to Protect Civil Freedoms (NCPCF), which focuses on profiling, preemptive prosecution, and prisoner abuse (SAMs and CMUs).

Appendix 1

9/11: THE REINVENTION OF COINTELPRO

After the Church Committee's report on COINTELPRO in 1976, reforms were introduced to force the FBI to conduct its investigations in conformity with the Constitution. An informational "wall" was created between the CIA and the FBI, so that information received abroad by the CIA that violated constitutional prohibitions would not be used by the FBI in domestic investigations. FBI agents were not permitted to start investigations without a significant factual basis to believe that a crime had been committed. Profiling of protected classes (by ethnicity, gender, religion, ideology, etc.) was prohibited.

After 9/11, these reforms were essentially eliminated. The "wall" between the CIA and the FBI was removed, and information received abroad by the CIA was shared with the FBI for domestic investigations, even when such information blatantly violated constitutional restrictions, such as having been obtained under torture or by warrantless wiretapping. FBI agents were permitted to open "pre-investigation assessments" based on profiling as long as such profiling was not the only basis, and these "assessments" were permitted increased latitude until they became mini-investigations.

Moreover, both the Bush and Obama Administrations began a secret dismantling of constitutional protections for the domestic population, ostensibly to prevent terrorism. Warrantless wiretapping and electronic surveillance were initiated (and apparently secretly ratified by Congress) as long as the surveillance pertained to "terrorism." In an attempt to avoid treaties pertaining to the treatment of prisoners of war and the constitutional protections afforded to domestic criminals, the government created an entirely new category of prisoner, called "illegal enemy combatant," which, according to the government, afforded prisoners held at Guantanamo Bay, Cuba no legal protection at all. The protections, if any, to which these prisoners are entitled are still being litigated in the courts, but it now has been acknowledged that the vast majority of prisoners were entirely innocent and that they were treated shamefully, under conditions amounting to torture.

The Justice Department's Office of Legal Counsel authorized the use of torture by redefining it as an essentially meaningless concept of near-death or organ failure (under this definition, only if the prisoner died under interrogation could it be argued that he or she had been tortured). John Yoo, the lawyer who wrote the opinion, has since been found to have written an incompetent legal opinion, but using the State Secrets Privilege the government has allowed no legal redress for the many people who were tortured as a result of Yoo's "torture memos."

Immediately after 9/11, Congress passed the PATRIOT Act, which gave the government an almost unlimited ability to investigate domestic groups and individuals as long as these groups and individuals were involved in "terrorism." Of course, the government could not know if the groups or individuals were actually involved in terrorism until they had been investigated, and so the mere allegation of terrorism was enough to permit the use of blatantly unconstitutional practices. Moreover, "terrorism" was defined so broadly in the statute—any dangerous and/or illegal act designed to "intimidate or coerce a civilian population" or "influence the policy of a

government by intimidation or coercion”—that it included much of what we consider dissent and free speech, such as environmental and peace activism, animal rights advocacy, and anti-corporate or -governmental protest.

The government then began to compile a secret, massive database using all available electronic records of the domestic public, such as bank, credit card, and financial information, travel records, e-mails, phone conversations, etc. A computer program was used to mine this data to locate supposed patterns of potential terrorism for investigation. The database was blatantly unconstitutional: there was no basis to search the records of the domestic public at large, against whom there were no allegations of illegal behavior or terrorism. However, information obtained by this database is now shared with the FBI and with “fusion centers” (where local and state officials are used as deputy federal officials to investigate “terrorism” leads). The government also created Joint Terrorism Task Forces and the Secure Communities Program to use state and local officials to enforce federal laws and obtain investigative material against various targeted groups, especially Latinos, African Americans, Muslims, and immigrants.

The government has not only insisted that information about these programs be kept secret, but it has stated in court that it will lie even to the courts to protect the secrecy of what it is doing. It has used the State Secrets Privilege to officially block lawsuits designed to identify illegal activity within the government.

It is not within the scope of this appendix to follow the unconstitutional activities of the Bush and Obama Administrations in fighting the war on terror, or the government’s attempts to lie and keep secret information about its activities. But because these unconstitutional activities form the context in which the government has reintroduced a more extreme version of the old COINTELPRO program—this time to target Muslims, Latinos, immigrants, and other ethnic and ideological minorities—it is important to understand the extent to which the government has been willing to engage in illegal activities in the war on terror.

After 9/11, the government took a number of dramatic but secret initiatives to reintroduce elements of COINTELPRO. Indeed, these go well beyond what was previously authorized. Here are some examples.

Guantanamo

After the invasion of Afghanistan by the U.S., the government created a prison camp in Guantanamo Bay, Cuba to hold the individuals it decided to detain. Many of the prisoners were there because they had been essentially “sold” to the Americans under an offer of “payments for “terrorists,” and they were “bought” even though they had nothing to do with terrorism. Approximately 80% of the prisoners at Guantanamo were eventually determined to be innocent, but the government took little action to release them and, under a variety of shifting theories, continued to hold individuals known to be innocent. The confused, ambiguous legal status of these prisoners reflected the confused, ambiguous thinking of the U.S. government with regard to what kind of struggle it was waging; the confusion and ambiguity are also reflected in the domestic prosecutions and deportations that are described in this booklet.

Guantanamo Bay was chosen for the site of the prison because it was an American naval base on Cuban soil rented from the Cuban government. The U.S. government hoped that because the prisoners were foreign nationals who had been arrested abroad and were detained on Cuban soil, it could make an argument that American law (and rights) did not apply to the prisoners (notwithstanding that they were being held by the U.S. government). Even though this hope was dashed in 2004, when the Supreme Court, in *U.S. v. Rasul*, held that the writ of habeas corpus is indeed available to prisoners in Guantanamo to review the reasons for their detention, there is still continuing litigation over just how far this review may go and what remedies are available. The federal courts appear to be as confused and ambiguous about the matter as the government itself.

The heart of the confusion is whether the Guantanamo detainees should be treated as potential criminals or as prisoners of war—thus whether the war on terror is a “war” or a “criminal investigation.” The two concepts are, in a sense, legal opposites. Traditionally, it has been understood that a captured enemy soldier cannot be put on trial for “criminal” acts such as assault or homicide, which were done in connection with military activities, because those are the very acts that soldiers are required to do. Rather, the soldier must be detained as a prisoner of war, to be exchanged and repatriated after the war is over.

But in the aftermath of 9/11 and the Afghanistan War, the Bush Administration could not decide what legal status to give to potential members of terrorist organizations. If they were criminals, then the government would have to protect all of their constitutional rights to a fair trial, including the right to a lawyer and to remain silent. If they were prisoners of war, then numerous treaties required that they be treated humanely, be allowed to communicate freely, and not be forced to cooperate with the U.S. government. But the government wanted information from them in order to destroy the terrorist organizations, and it did not want to be hampered by legal requirements that permitted both criminals and soldiers to remain silent and be treated humanely.

The solution was to create a new category of prisoner, “illegal enemy combatant,” and to claim that since the detainees at Guantanamo belonged to this entirely new category, they were not entitled to any rights at all. If they were either criminals or soldiers, they would be entitled to various rights prescribed by laws and treaties, but since they were both simultaneously, they were entitled to nothing. Indeed, the category itself was an oxymoron. An “enemy combatant” was simply a soldier. Someone who acted “illegally” was a criminal. So logically, how could a soldier act “illegally” by performing legal military duties? It was, and remains, a legal dilemma that has never been adequately explained, and continues to infect court cases and governmental decisions with confusion and intellectual dishonesty. As the Center for Constitutional Rights said about Guantanamo:

Guantanamo was designed to be a prison where no laws applied. Today, it remains a prison reserved exclusively for Arab and Muslim men, many of whom the president recently announced would be subjected to military commissions, an ad hoc system

intended to manufacture convictions unattainable in federal court.¹

Prisoners detained abroad for “terrorism” tend to be treated as prisoners of war, with lip service given to the Geneva Conventions and other treaties regarding the humane treatment of military personnel. Conversely, prisoners arrested in the U.S. for “terrorism” tend to be treated as criminals, with lip service given to the Constitution and the laws of criminal procedure. But in practice, both sets of prisoners tend to have similar outcomes—they tend to be held in isolation without charges for long periods of time, to have highly contrived charges brought against them either by a military commission or by a criminal trial, to face fundamentally unfair trials in which evidence of their innocence is withheld and the results manipulated, and to be sentenced to very long sentences for minor violations.

It is beyond the scope of this appendix to trace the histories of the “prisoners of war” at Guantanamo Bay, but their stories are not basically different from the stories of many individuals who have been arrested in the U.S. and charged as criminals. The treatment of domestic terrorism prisoners is, in many cases, so similar to the treatment of Guantanamo prisoners that commentators have begun to call the domestic prisons “Guantanamo North” or “Little Gitmo,” and to refer to the treatment of terrorism defendants in domestic criminal prosecutions as the “Muslim exception to the Constitution.”

Secret Authorization of Torture and Warrantless Wiretapping

After 9/11, the Bush/Cheney Administration was hungry for intelligence, and believed that torture was the quickest way to get it. John Yoo, a junior lawyer in the Justice Department’s Office of Legal Counsel, was told to write a legal opinion that would permit torture, even though it was firmly settled, both in treaties and domestic law, that torture was illegal. Yoo’s opinion was so shoddy and incompetent that it would have been immediately ridiculed and rejected—except that it was classified. Nobody could vet Mr. Yoo’s faulty reasoning, and so nobody could object to it. This legal sleight-of-hand was to become the hallmark of the Bush/Cheney Administration: it would authorize gross violations of constitutional law, using deliberate misreading of statutes and twisting of legal concepts to justify the unjustifiable—but in secret, so nobody could object. The American Bar Association would later find that Mr. Yoo’s opinion was incompetent, but it stopped short of imposing discipline on a lawyer whose legal work caused the illegal torture of thousands.

Similarly, Jack Goldsmith, head of the Office of Legal Counsel, was directed to write a secret legal opinion stating that warrantless wiretapping that violated the 4th Amendment was legal. Goldsmith’s specious reasoning was that in 2001, when Congress passed the Authorization for the Use of Military Force against Afghanistan, it implicitly authorized warrantless wiretapping even though the Use of Force law did not mention the subject. And, according to Goldsmith, if the Use of Force law did not implicitly authorize warrantless wiretapping, then the 1978 law, the Foreign Intelligence Surveillance Act (or FISA), which required warrants in national security wiretapping cases, was unconstitutional. (How could a law be unconstitutional for requiring the

¹ “Government Calls Native American Resistance of 1800s ‘Much Like Modern-Day Al-Qaeda’” by Vincent Warren, *Truthout*, April 11, 2011, <http://www.truth-out.org/government-calls-native-american-resistance-1800s-much-modern-day-al-qaeda/1302505200>.

very warrants that the 4th Amendment of the Constitution requires?) The speciousness of these arguments is obvious. Other lawyers were required to write opinions authorizing similar violations of settled constitutional law.²

A lawyer is required to exercise independent judgment and give legal advice that is based on the law, not on what the client wants in order to justify otherwise illegal acts. This is especially so of government lawyers, who act on behalf of the public, not private interest. It is a shame on the profession that so many lawyers in government service knowingly violated their professional duties and cooked their opinions to fit the demands of their employer.

The USA PATRIOT Act

A month and a half after 9/11, between October 23 and 26, 2001—four days—the USA PATRIOT Act was introduced, passed by both houses of Congress, and signed into law by President Bush. This sweeping law (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism; hereinafter, simply PATRIOT Act) authorized broad new police and investigative powers directed at controlling “terrorism.” A number of the provisions were later ruled to be unconstitutional. The law was so massive, the language at times was so vague and convoluted, and the debate on it was so rushed that a decade later, many are still trying to figure out what it actually authorizes. But the Bush Administration promptly pushed its interpretation of the law to the extreme. Because much of the law’s implementation was done in secret, the country is still trying to determine just what the government actually did and how many of America’s civil rights disappeared in the process.

In May 2011, during a debate on the the PATRIOT Act’s reauthorization, Senator Ron Wyden (D–Oregon) noted that it had been greatly expanded by the executive branch, which gave a far broader interpretation to the law than the specific language would allow. Moreover, the government had classified its interpretations so that the act could not be publicly assessed or challenged. Wyden, a member of the Senate Intelligence Oversight Committee, stated, “We’re getting to a gap between what the public thinks the law says and what the American government secretly thinks the law says. When you’ve got that kind of a gap, you’re going to have a problem on your hands.” However, Wyden could not make specific comments about the issue, because the information on which his comments were based is itself classified.³

Title II of the PATRIOT Act authorizes broad new surveillance powers, including roving wiretaps (not confined to a single phone or individual), sneak-and-peek search warrants (allowing the government to secretly break into a target’s home and examine documents and property), and the collection and mining of data from public and private databases to detect patterns of illegality. Title III of the act sets out new restrictions on money laundering. Title IV

² See *George W. Bush, War Criminal?: The Bush Administration's Liability for 269 War Crimes* by Michael Hass, (Praeger, 2008), Appendix 1.1, p. 255; and “Justice Department details legal blessing of warrantless wiretapping in 2004” by Josh Gerstein, *Politico*, March 18, 2011, http://www.politico.com/blogs/joshgerstein/0311/Justice_Department_details_legal_blessing_of_warrantless_wiretapping_in_2004.html.

³ “There’s a Secret Patriot Act, Senator Says” by Spencer Ackerman, *Wired*, May 25, 2011, <http://www.wired.com/dangerroom/2011/05/secret-patriot-act>.

of the act establishes broad new powers to secure America's borders and control alien residents. In theory, the law is restricted to detection and elimination of "terrorism," but "terrorism" is defined so broadly that it encompasses many activities not commonly thought of as such.

The definition of terrorism in the PATRIOT Act includes activities "dangerous to human life that are a violation of the criminal laws...[and are intended to] "intimidate or coerce a civilian population"...[or] "influence the policy of a government by intimidation or coercion." These criminalized activities include civil disobedience, free speech, and much of what we think of as dissent from governmental policy. For example, labor organizers and strikers who trespass at private plants to force wage concessions may be considered terrorists, especially where violence is threatened; so may environmentalists who try to change government policy by such tactics as confronting loggers in national forests; so may pro-life activists who picket abortion clinics; so may protesters blocking traffic to demonstrate against unfair laws. As Glenn Greenwald observed in *Salon*:

I've often written that Terrorism is the most meaningless, and thus most manipulated, term in American political discourse. But while it lacks any objective meaning, it does have a functional one. It means: *anyone—especially of the Muslim religion and/or Arab nationality—who fights against the United States and its allies or tries to impede their will.* That's what "Terrorism" is; that's all it means. And it's just extraordinary how we've created what we call "law" that is intended to do nothing other than justify all acts of American violence while delegitimizing, criminalizing, and converting into Terrorism any acts of resistance to that violence.⁴

Total Information Awareness

Another initiative of the Bush/Cheney Administration was to promote an ingenious data-mining scheme called Total Information Awareness (TIA), which sought to link as many private databases as possible with government databases to create one gigantic, secret database that the government could "mine" for information on innocent citizens who had not been accused of anything. Included in this giant database would be information from banks, credit card purchases, travel documents, phone records, e-mails, and many other electronic records of virtually everyone in the country—which would show for any individual the sources and uses of money, the types of travel and communication, his or her friends and associates, and the kinds of ideas and the philosophy he or she espoused. The data could then be "mined" with sophisticated computer programs to detect aberrations, patterns, or relationships between elements. The system essentially allied the big corporations with the government to target people who raised "concerns."

The most obvious problem with TIA was that it was unconstitutional. The government cannot search records and target individuals for investigation without probable cause, or at least reasonable suspicion that a crime has been committed, and in TIA there was no probable cause or suspicion to justify searching the records of the people in the databases. When TIA was publicly presented to Congress, it was quickly voted down. However, certain elements of it were

⁴ "The true definition of "Terrorist"" by Glenn Greenwald, *Salon*, June 22, 2011, http://www.salon.com/news/opinion/glenn_greenwald/2011/06/22/terrorism.

secretly approved in Congressional supplemental budget requests and added to the clandestine agencies, until most (or perhaps all) of TIA had been secretly adopted and put into effect. The *Washington Post* reported on the massive construction of up to thirty-three office buildings, with 17 million square feet of space, to house all of the equipment and staff necessary to run intelligence programs.⁵

Supposedly a deal was secretly made in Congress to declare the program constitutional as long as it was used only to investigate terrorists. But what and who are terrorists? As we have seen, the definition in the PATRIOT Act is so broad that it could include many otherwise lawful activities and innocent people.

The other big problem with TIA was that it did not appear to work well in catching “terrorists.” Since 9/11, there have been about a half-dozen clear terrorist attempts in the U.S., and none of these cases appear to have been detected by TIA. But while TIA does not seem to be much help in stopping terrorist attacks, it is very useful in compiling lists of, and information about, innocent citizens who are not alleged to have done anything illegal and in developing “security concerns,” which can be further investigated to prevent such “domestic terrorism” as objections to the corporate agenda.

Fusion Centers, Joint Terrorism Task Forces, Secret Surveillance Programs

“Security concerns” can be investigated in several ways. The government has created a series of decentralized “fusion centers,” in which federal, state, and local officials, private security officials, and even corporate interests meet to share information about “terrorism.” If, for example, the target of some information is an undocumented alien, that information may be given to Immigration and Customs Enforcement (ICE) to have the target deported. (See Chapter 4, Profiling of Immigrants.) Or if the information is about a citizen, the fusion centers could refer the case upward for enhanced clandestine surveillance by electronic monitoring or other methods. In addition, the information could be referred to an FBI Joint Terrorism Task Force (JTTF), which essentially deputizes local officials to act as federal officials to enforce anti-terrorism and immigration laws, in somewhat the same way that the federal COINTELPRO program secretly worked with local police departments to “neutralize” targets of concern.

In addition, the Department of Homeland Security and other government departments issue security alert bulletins to various agencies about potential terrorist threats, as well as create lists of potentially dangerous persons, such as No-Fly lists. Thus information obtained through clandestine methods is secretly shared with a broad spectrum of law enforcement agencies and private security companies and used to control those people in the country who raise “security concerns.” Here are three stories.

1. In the fall of 2010, Virginia Cody, a retired Air Force officer and environmental activist, was surprised to see a Homeland Security anti-terrorism bulletin warning that environmental activists planned to attend some public meetings to discuss regulation of gas drilling in the Marcellus Shale in Pennsylvania. Cody e-mailed the anti-terrorism bulletin to an environmental group. In

⁵ “Top Secret America” by Dana Priest and William M. Arkin, *Washington Post*, n.d., <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>.

response, she received an e-mail from James Powers, director of the Pennsylvania Homeland Security Office, warning her that the information concerning the environmentalists' intent to attend six public meetings was "sensitive information" that should not be disseminated to the public, only to those "having a valid need to know." Powers stated:

We want to continue providing this support to the Marcellus Shale Formation natural gas stakeholders while not feeding those groups fomenting dissent against those same companies.⁶

The same anti-terrorist bulletin also contained warnings against anarchists; Black Power radicals; deportation protesters; anti-mountaintop removal, animal rights, and anti-war activists; Ramadan; "the Jewish High Holiday season"; and a gay and lesbian festival. This information was included because there had been previous acts of environmental vandalism. Apparently, unsolved acts of vandalism justified the assumption that environmental (and other) groups were involved, and so would fit the definition of "terrorist," thereby making their attendance at public meetings dangerous enough to require anti-terrorism warnings.

To his credit, an "appalled" Pennsylvania Governor Ed Rendell then put out a statement that "ordered an end to the \$125,000 contract with the Philadelphia-based organization, the Institute of Terrorism Research and Response, that supplied the information."⁷

"Let me make this as clear as I can possibly make it," he said. "Protesting against an idea, a principle, a process—protesting is not a real threat. Protesting is a God-given American right, a right that's in our Constitution." He apologized to the organizations on the watch list, called their inclusion "ludicrous" and said that sharing them with private gas drillers "was against the guidelines set up for this program to begin with."⁸

2. In 2011, Scott Crow obtained his FBI file with a FOIA (Freedom of Information Act) request. The self-described anarchist and organizer of anti-corporate demonstrations discovered that the FBI had been following him around for years, although he had never been convicted of anything more serious than trespassing. The FBI noted who came and went from Crow's house, examined his garbage, and had even attached a camera to a telephone pole across the street from his house for round-the-clock surveillance. They had asked the IRS to examine Crow's tax returns, tracked his phone calls and e-mails, apparently obtained mortgage and financial information from his bank, and infiltrated agents into meetings at which he was present. Crow was astonished to find that some close allies were actually FBI informants. Michael German, a former FBI agent, said of the surveillance of Crow:

⁶ "PA Department of Homeland Security collecting and distributing information on drilling protestors," *Sourcewatch.org*, http://www.sourcewatch.org/index.php?title=Marcellus_Shale.

⁷ "'Appalled' Pa. gov. shuts down reports on protests" by Marc Levy, *The Palm Beach Post*, September 14, 2010, <http://www.palmbeachpost.com/news/nation/appalled-pa-gov-shuts-down-reports-on-protests-915717.html>.

⁸ "Keeping tabs? Gov. Rendell was quick to respond to Homeland Security's absurdity," editorial, *Pennlive.com*, http://www.pennlive.com/editorials/index.ssf/2010/09/keeping_tabs_gov_rendell_was_q.html.

You have a bunch of guys and women all over the country sent out to find terrorism. Fortunately, there isn't a lot of terrorism in many communities. So they end up pursuing people who are critical of the government.⁹

3. In January 2006, Julia Shearson, a Muslim and head of the Cleveland chapter of CAIR (Council on American-Islamic Relations), was returning with her four-year-old daughter from a trip to Canada. At the border, the Customs agent examined her passport and then saw a red warning on the Customs computer that said "armed and dangerous." Shearson was led away in handcuffs while her daughter cried in fear. After a few hours, Customs agents realized that they had made a mistake and released Shearson, but they failed to explain how Shearson had been erroneously placed on a computer terrorist watch list in the first place.

If someone is erroneously placed on a watch list, it is enormously difficult to get his or her name removed from the list—if at all. The government claims that the information and procedures by which people are placed on the list are classified and confidential. But if people cannot determine why they were added to the list, there is no way for them to show that the information is wrong.

However, Julia Shearson did something that most people in her position don't do: she sued the government to learn why she had been added to the watch list. She was an unlikely candidate. She had several Ivy League degrees, she had never been convicted of a crime, and she had tried to forge ties with the FBI—indeed, she had been invited to the FBI's 100th anniversary celebration on the same week she was stopped at the border. Mostly on her own, although occasionally with volunteer attorneys, she kept up a lonely legal fight to learn the truth, and in 2011 the 6th Circuit Court of Appeals ruled that an individual can sue the government for damages when the government maintains or disseminates documents in violation of that person's privacy rights.¹⁰

Virginia Cody, Scott Crow, and Julia Shearson are only examples of hundreds of other such incidents. Groups identified as potential threats to national security include both pro- and anti-abortion activists, environmental advocates, liberal Roman Catholics, Tea Party groups, a 2nd Amendment group, and anti-death penalty and anti-war activists.

Turning Citizens into Terrorists and Lawful Dissent into Terrorism

James Wesley Rawles, a law enforcement officer for eighteen years, wrote in his blog (SurvivalBlog.com) that in the last several years he has witnessed a dramatic shift in law enforcement training away from civil rights and community-based policing to investigations of domestic terrorism. The new training focuses on recognizing domestic terrorists and reporting these individuals to the local fusion center, which "compiles a watch list of suspicious people." Some qualities of domestic terrorists that Mr. Rawles has been taught to observe are libertarian philosophy; stockpiling food, ammo, hand tools, and medical supplies; expressed fears of Big Brother; home schooling one's children; declarations of constitutional rights and civil liberties;

⁹ "For Anarchist, Details of Life as FBI Target" by Colin Moynihan and Scott Shane, *New York Times*, May 28, 2011, <http://www.nytimes.com/2011/05/29/us/29surveillance.html?pagewanted=all>.

¹⁰ "Julia Shearson tells how a weekend trip to Canada became 5-year fight for rights" by Robert L. Smith, *The Plain Dealer*, June 4, 2011, http://blog.cleveland.com/metro/2011/06/julia_shearson_tells_how_a_wee.html.

possessing extremist literature, such as *Patriots* and *The Anarchist Cookbook*; growing one's own food; and ownership of guns.

The overly broad definition of terrorism has also led to a proliferation of “experts” who try to con the government into paying them to train government officials to detect terrorists. Since there are no standards for certifying “experts” in terrorism, anyone can claim to be a counter-terrorism expert. There have been many cases of people claiming to be experts who actually train law enforcement officers to hate the Islamic community and to treat them all as potential terrorists. For example, the Department of Homeland Security paid \$5,000 to Walid Shoebat to train law enforcement officers, even though his claims to expertise appeared to be false and his message was one of hate against the Islamic community.¹¹

Writer Chris Hedges has stated:

A cadre of right-wing institutions that peddle themselves as counterterrorism specialists and experts on the Muslim world has been indoctrinating thousands of police, intelligence and military personnel in nationwide seminars. These seminars, run by organizations such as Security Solutions International, The Center for Counterintelligence and Security Studies, and International Counter-Terrorism Officers Association, embrace gross and distorted stereotypes and propagate wild conspiracy theories. And much of this indoctrination within the law enforcement community is funded under two grant programs for training—the State Homeland Security Program and Urban Areas Security Initiative—which made \$1.67 billion available to states in 2010. The seminars preach that Islam is a terrorist religion, that an Islamic “fifth column” or “stealth jihad” is subverting the United States from within, that mainstream American Muslims have ties to terrorist groups, that Muslims use litigation, free speech and other legal means (something the trainers have nicknamed “Lawfare”) to advance the subversive Muslim agenda, and that the goal of Muslims in the United States is to replace the Constitution with Islamic or Shariah law.¹²

Meanwhile, the Department of Homeland Security has cut back its surveillance and analysis of right-wing extremism, notwithstanding a sharp increase in incidents of domestic terrorism unrelated to Islam. In 2009, the department issued a report entitled *Right-Wing Extremism*, which warned that Obama's election could stir violent homegrown radicalization. The report was harshly criticized by the political right as an attack on conservatives, and since then Homeland Security has kept its reporting of right-wing extremist incidents under close wraps. Reports about Muslim extremists have been quickly issued, while reports about right-wing extremists have been buried, notwithstanding that there have been far more incidents of the latter than of the former. A Homeland Security official is quoted as saying:

¹¹ “Dubious Muslim-bashing ‘expert’ hired to train cops” by Justin Elliott, *Salon*, May 24, 2011, http://www.salon.com/news/politics/war_room/2011/05/24/dhs_pays_walid_shoebat.

¹² “Your Taxes Fund Anti-Muslim Hatred” by Chris Hedges, *Truthout*, May 10, 2011, <http://www.truthout.org/your-taxes-fund-anti-muslim-hatred/1305042147>.

Unlike international terrorism, there are no designated domestic terrorist groups. Subsequently, all the legal actions of an identified extremist group leading up to an act of violence are constitutionally protected and not reported on by DHS.”¹³

The Reauthorization of FBI Profiling

The FBI’s legal right to start an investigation is circumscribed by its own guidelines. During the Ford Administration, it was revealed that for decades, the FBI had been engaged in domestic spying that targeted individuals based on their race or ethnicity. In response, Attorney General Edward Levi established new guidelines for opening investigations that required a factual predicate to indicate possible criminal activity and that precluded the FBI from using race, ethnicity, or other such profiling criteria as a basis to commence an investigation.

After 9/11, these guidelines were loosened. In 2008, Attorney General Michael Mukasey loosened the guidelines even further by creating a new category, “assessment,” which used the familiar formula that the Bush Administration used when it wanted to violate a fundamental law. While opening a formal “investigation” still required a non-profiling factual predicate, under the 2008 guidelines agents could open “assessments” to proactively assess threats to national security based on “no particular factual predication,” limited only by the requirement that the assessment could not be based on “arbitrary or groundless speculation.” In deciding whether to open an assessment, FBI agents were permitted to use ethnicity, religion, or 1st Amendment protected speech as a factor—as long as it was not the only factor. In other words, profiling may be used to target “assessments” against particular groups with very little factual basis as predicate. In the four-month period after the “assessment” category was created, the FBI opened over 11,000 new assessment files.¹⁴

An Official Policy of Governmental Lying

In 2006, various American Islamic organizations and individuals filed a FOIA request with the FBI to determine whether the FBI was engaged in illegal profiling and monitoring of mosques and Muslim communities. After the FBI turned over a total of only four pages to the plaintiffs, they filed a lawsuit, *Islamic Shura Council of Southern California v. FBI*, and in response the government turned over an additional 120 redacted pages and claimed to the court that there were no more documents. When Judge Cormac J. Carney of the 9th Circuit Court of Appeals was forced to review the original unredacted documents in private to determine if the redactions were proper, it became apparent that more documents were involved, and the government eventually was forced to acknowledge that it had lied to the plaintiffs, *and to the court*, about the existence of other relevant documents.

¹³ “Homegrown Security Department Curtails Home-Grown Terror Analysis” by R. Jeffrey Smith, *Washington Post*, June 7, 2011, <http://www.washingtonpost.com/politics/homeland-security-department-curtailed-home-grown-terror-analysis/2011/06/02/AGQEaDLH>.

¹⁴ “F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show” by Charlie Savage, *New York Times*, March 26, 2011, <http://www.nytimes.com/2011/03/27/us/27fbi.html>.

What is remarkable about this case is not that the government lied—the government has, in recent times, been caught lying on a regular basis to the courts and litigants. Rather, it is that the government argued that disclosing the documents would compromise national security and thus was not required to tell the truth. In effect, the government claimed that it could properly lie to the court and the litigants under the claim of national security. (The court disagreed with this position in its decision on April 27, 2011, but did not require disclosure of the remaining documents.)¹⁵ The government’s acknowledgment of an official policy of lying to the courts is a stunning development, which raises serious questions about the government’s good faith in turning over exculpatory information and in making other truthful representations to the court in the course of trying cases.

However, even before the Department of Justice acknowledged its policy of lying to the courts in national security cases, it was obvious that lying by government prosecutors had become endemic. In 2010, *USA Today* published an analysis of 201 federal cases in which federal prosecutors had been caught lying or engaging in misconduct. The article noted that even if lying is identified, there is little chance that the prosecutor will be disciplined or held accountable:

Judges have warned for decades that misconduct by prosecutors threatens the Constitution’s promise of a fair trial. Congress in 1997 enacted a law aimed at ending such abuses.

Yet *USA Today* documented 201 criminal cases in the years that followed in which judges determined that Justice Department prosecutors—the nation’s most elite and powerful law enforcement officials—themselves violated laws or ethics rules.

In case after case during that time, judges blasted prosecutors for “flagrant” or “outrageous” misconduct. They caught some prosecutors hiding evidence, found others lying to judges and juries, and said others had broken plea bargains. ...

USA Today found a pattern of “serious glaring misconduct,” said Pace University law professor Bennett Gershman, an expert on misconduct by prosecutors. “It’s systemic now, and...the system is not able to control this type of behavior. There is no accountability.”¹⁶

The Inflaming of Islamophobia and Anti-Immigrant Sentiment

After 9/11, there was a dramatic increase in instances of Islamophobia and immigrant-baiting around the country. Various hate groups organized themselves and began a campaign of intimidation and harassment against Muslim and other immigrant groups, using fear and outright lies to inflame the public. Protests against the building of new mosques and Islamic centers also increased. This campaign reached a climax when Representative Peter King, chairman of the House Committee on Homeland Security, insisted on holding hearings in 2011 on the radicalization of the American Muslim community and on homegrown terrorism.

¹⁵ “Judge: FBI lied, but documents about Muslims stay secret” by Salvador Hernandez, *Orange County Register*, April 29, 2011, http://articles.ocregister.com/2011-04-29/news/29491933_1_fbi-s-documents-islamic-shura-council-muslim.

¹⁶ “Prosecutors’ conduct can tip justice scales” by Brad Heath and Kevin McCoy, *USA Today*, September 23, 2010, http://www.usatoday.com/news/washington/judicial/2010-09-22-federal-prosecutors-reform_N.htm.

Hundreds of proposed new laws were introduced in various states to control non-existent threats from Islam, including prohibitions against state courts considering Shariah law. Arizona passed a law, widely copied in other states, which allowed law enforcement to profile citizens during police encounters and to ask for proof that these “immigrant-looking” citizens were in the United States legally.

All of these post-9/11 developments provide the context to understand what happened when the U.S. government turned its attention to the American Muslim community.

Addenda

PAGE 38, THE HERALD SQUARE PLOT:

Siraj then introduced Eldawoody to James Elshafay, who had schizophrenia, and Eldawoody began to talk the two targets into a criminal plot. He manipulated the two mentally challenged men into making angry and violent statements against America and got them to agree to plant a bomb in Herald Square in Manhattan, while secretly recording all of their conversations. Elshafay agreed to dress up as a Hasidic Jew and bomb the 34th Street subway station. (Note that the FBI again designed a plot that would cause religious outrage, in order to deflect attention from the obvious entrapment of malleable young men.) Siraj agreed to act as the lookout, because he said he did not want to hurt anyone. This led to both men's arrest, without warrant or Miranda rights, during the Republican National Convention—a strategy to scare the public into soliciting votes in order to show that “terrorists” had been captured. Siraj had no prior criminal record, did not commit any act of violence, and harmed no one, but he was charged with conspiracy to commit terrorism.

Pre-trial, Siraj was put into solitary confinement for fifteen months in twenty-three-hours-a-day lockdown in the Metropolitan Detention Center in Brooklyn. For months, his family was either not allowed to visit him, or their visitations were monitored. He could make a phone call once a week, but sometimes his family received no phone calls for months. For a short time he was placed in general population, but he developed health issues for which he received no treatment.

Elshafay pleaded guilty, testified against Siraj at trial, and was eventually released. Siraj was convicted in 2007 and given a thirty-year sentence. He received no plea bargain. On the same day, his whole family was arrested by ICE and put into an immigration detention center in Elizabeth, New Jersey. To date, his father is still under house arrest.

After Siraj was sentenced, he was sent to the Communication Management Unit (CMU) in Terre Haute, Indiana, where his family was unable to visit him until 2010 and where he did not receive medical treatment for his health issues. He was transferred to the federal prison in Otisville, New York in June 2011. All his appeals have been denied. His lawyers are in process of appealing for a reduced sentence.

PAGE 40, THE LACKAWANNA 6:

In 2002, President Bush and Vice President Cheney were briefed directly by the FBI and CIA about this case, and it was personally directed by then-Attorney General John Ashcroft. New York Governor George Pataki and the media trumpeted the Lackawanna 6 as the nation's first homegrown al-Qaeda terror cell. It was a test case in that "it was the first time U.S. citizens had been investigated for terrorist activity since 9/11," states Dina Temple-Raston, FBI correspondent for National Public Radio, who wrote a book about the case. But "[t]here was no evidence whatsoever that the Lackawanna Six were planning to do anything or attack anyone. So they were on trial, in a sense, for what they might have done." However, U.S. Attorney Mike Battle saw the earmarks of a conspiracy: material support was the issue, rather than whether the men were a sleeper cell, and "given the national mood...it was easy to prosecute terrorists, even before they struck. Even, in other words, if they could be deemed terrorists before they became terrorists."¹ This case thus marks the first time that preemptive prosecution was publicly stated to be a new law enforcement paradigm.

In 2009, the *Buffalo News* reported that "former Vice President Dick Cheney not only proposed to send U.S. soldiers into Lackawanna to arrest the Lackawanna Six [which would have illegally overridden the Posse Comitatus Act of 1878, which forbids deployment of federal military officers for local law enforcement] but also wanted to declare them enemy combatants, which could have put them in front of a military tribunal [at Guantanamo]. Cheney and ex-Defense Secretary Donald Rumsfeld argued that the six young men be declared enemy combatants, while former Attorney General John D. Ashcroft and FBI Director Robert S. Mueller III successfully argued against it, a retired high-ranking federal law enforcement official said."² President Bush ultimately rejected the proposal, and the arrests proceeded without incident.

Four of the Lackawanna Six were sent to the Communication Management Unit (CMU) at the federal prison in Terre Haute, Indiana, when it opened in December 2006: Mukhtar al-Bakri and Shafel Mosed, both paroled in February 2011; Faysal Galab, paroled in August 2008; and Yassein Taher, whose parole date was April 2009. Al-Bakri, Mosed, and Galab's release on parole makes them some of the first (and few) men imprisoned on terrorism-related charges to be released at all (since their guilty pleas in 2003, sentences for material support for terrorism have become extraordinarily long).

However, in mid-2008, Taher, Sahim Alwan (parole date December 2010), and Yahya Goba (parole date February 2011) suddenly did not show up on the Bureau of Prisons' Inmate Locator. According to Temple-Raston, Goba had been "instrumental in helping U.S. authorities bring cases against other suspected al-Qaeda members, including Jose Padilla and the Australian Joseph Thomas ('Jihad Jack')." Taher and Alwan were, in fact, suddenly removed from the CMU on October 23, 2008 and sent to Miami Federal Detention Center. On Friday, October 31, they, along with Goba, testified at Guantanamo before a military commission against Ali Hamza

¹ *The Jihad Next Door: The Lackawanna Six and Rough Justice in the Age of Terror* by Dina Temple-Raston (Public Affairs, 2007).

² "Lackawanna officials say troops in city was bad idea" by Lou Michel, *Buffalo News*, July 26, 2009, <http://www.webcitation.org/query?url=http%3A%2F%2Fwww.buffalonews.com%2Fhome%2Fstory%2F744712.html&date=2009-07-29>.

al-Bahlul of Yemen, who was characterized by counterterrorism analysts as al-Qaeda's public relations director. They spoke of a two-hour video, which al-Bahlul had produced, that they had been shown at the Afghanistan training camp they attended.³ (Al-Bahlul was convicted on November 3, 2008, and is still at Guantanamo.) Taher, Alwan and Goba said that they hoped they would be allowed to enter a witness protection program, with their identities shielded, after their release from prison. With their absence from the BOP Inmate Locator, the implication is that Goba had been freed and cooperating since 2007 (the date of Temple-Raston's book, which documented his help against other al-Qaeda suspects), and that Taher and Alwan were released from prison well before their parole dates because of their cooperation. It is not known whether or not any of them are in witness protection.

There were three additional men related to the Lackawanna Six case whom the media have largely ignored and who were never tried in the U.S.:

7. Jaber Elbaneh, a naturalized American citizen and friend of all six men, went to the Afghanistan training camp with them. But after the six returned to the U.S., Elbaneh remained in Afghanistan, was subsequently arrested and imprisoned in Yemen, staged a sensational escape in 2006, and was recaptured in Yemen in May 2007. To date, Yemen has refused to extradite him to the U.S. He is still on the list of the FBI's Ten Most-Wanted Terrorists.

8. Jumah al-Dossari, a Bahraini, who supposedly "recruited" the Lackawanna men for the training camp, was sent to Guantanamo in December 2001 from Pakistan. He has since become famous for his accounts of his torture at Gitmo, his tragically numerous suicide attempts, one in the presence of his lawyer, and for his anguished poems and diaries. From the beginning, he has insisted that his detention at Gitmo resulted from a case of mistaken identity. Apparently someone agreed with him: he was released to Saudi authorities on July 16, 2007, along with sixteen other Saudi prisoners. His file never contained a direct reference to Lackawanna. In 2009, at the inauguration of President Barack Obama, the Associated Press interviewed al-Dossari, who stated that his only wish was that "...Obama was elected years ago. Guantanamo would not have happened."⁴ Of course, President Obama, despite promising to close Gitmo, has not done so.

9. The story of the end of Kamel Derwish (aka Ahmed Hijazi), a friend of al-Dossari's who apparently was the liaison between the Afghan training camp and the Lackawanna Six, seems like the ending of the film *Syriana*. On November 3, 2002, Derwish was sitting in a truck in an SUV convoy traveling across the Yemen desert. His backseat companion was al-Qaeda's top operative in Yemen. Watching them via cameras on a Predator drone circling overhead were intelligence officers in Djibouti, East Africa, and in the U.S. Counterterrorism Center in Langley, Virginia, as well as CIA Director George Tenet, also in Virginia. Upon Tenet's nod, a Hellfire missile, fired remotely from the Predator, slammed into the convoy, incinerating the truck and its five occupants.

³ "3 From NY Terror Case Testify in Gitmo Trial" by David McFadden, Associated Press, October 31, 2008, <http://old.cageprisoners.com/articles.php?id=26701>.

⁴ "World Leaders Welcome Gitmo Closure" by Frank Jordans, Associated Press, *Toronto Star*, January 22, 2009, <http://www.thestar.com/news/world/article/575455>.

The problem was that Kamel Derwish, from Lackawanna, New York, was an American citizen, and “in killing him officials had murdered the one man who could clarify whether the Lackawanna Six were really a sleeper cell or half a dozen confused friends who had gotten in over their heads.” Aside from that, “the strike happened outside any formally recognized war zone...a clear violation of sovereign airspace...The killing smacked of political assassination...Before [this], the U.S. had considered acts of terrorism largely in judicial terms...but in this case...apart from [the al-Qaeda operative], none of the men in the convoy had even been charged with a crime.” Derwish may or may not have been the target—but “there is something alarming about the fact that the U.S. government approved the assassination of one of its own citizens without trial or, some would say, much in the way of evidence. Derwish had committed no greater crimes, that we know of, than the other men who came from Lackawanna. Yet he died brutally at the hand of his own government. After his death, U.S. authorities began to question whether he was, in fact, in the vehicle at all, clearly embarrassed at the precedent they might have set...the U.S. has yet to admit on the record that he was killed by U.S. forces.” Although a relative was requested to provide a DNA sample to identify the incinerated remains, “...[t]o have affirmed [Derwish’s] death would have meant admitting that the murder of an American, without charge or trial, was sanctioned by the Bush administration, and that would mean the administration had taken the war on terror to a new level: it had decided that it could summarily kill an American citizen.

“...[T]he attack was described by the Swedish Foreign Minister Anna Lindh as a ‘summary execution that violates human rights.’...Amnesty International called it a death sentence without a trial: ‘If this was the deliberate killing of suspects in lieu of arrest, in circumstances in which they did not pose an immediate threat, the kills would be extrajudicial executions in violation of international human rights law.’”⁵

The targeted assassination of Kamel Derwish from the Lackawanna Six case was perhaps precedent for the targeted assassination, nine years later on September 30, 2011, of U.S.-born Muslim cleric and al-Qaeda spokesman Anwar al-Awlaki in Yemen, along with al-Qaeda web magazine co-editor Samir Khan (also U.S.-born, of Pakistani heritage). Two Predator drones hovering above al-Awlaki's convoy fired the Hellfire missiles that killed the terror leader. According to a senior U.S. official, the operation was carried out by Joint Special Operations Command under the direction of the CIA. Two other people were also killed in the attack. The killing of al-Awlaki was originally approved by President Obama in April 2010.⁶

But al-Awlaki was not the first American in the “war on terror” to be placed on the CIA’s “kill or capture” list, not the first American to be targeted for assassination on foreign soil, and not the first American whose killing, without charge or trial, was sanctioned by an American president.

⁵ All quotes from *The Jihad Next Door*, Temple-Raston.

⁶ “Two U.S.-Born Terrorists Killed in CIA-Led Drone Strike” by Jennifer Griffin and Justin Fishel, September 30, 2011, Foxnews.com, <http://www.foxnews.com/politics/2011/09/30/us-born-terror-boss-anwar-al-awlaki-killed/>.

PAGE 43, DR. AAFIA SIDDIQUI:

An additional website for information about Aafia Siddiqui is

<https://docs.google.com/viewer?a=v&pid=sites&srcid=aWpuZXR3b3JrLm9yZ3xkci1hYWZpYS1zaWRkaXF1aS1yZXBvcnR8Z3g6NTk2NGQzMjc5ZmM3ZmJh>.