

Criminalizing Compassion in the “War on Terror”

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“The first question which the priest and the Levite asked was: ‘If I stop to help this man, what will happen to me?’ But ... the good Samaritan reversed the question: ‘If I do not stop to help this man, what will happen to him?’” Martin Luther King, Jr.[1]

“The truth shall set you free? Maybe. But first the Truth must be set free.”Wole Soyinka, Nigerian playwright, educator.[2]

Since the events of 9/11, the government has implemented powerful new prosecutorial tools to gain convictions in its War on Terror. In an article entitled, “Terrorist Financing,” Jeff Breinholt, Deputy Chief of the Department of Justice’s Counterterrorism Section, explains these tools and how they are being used to win convictions.[3] On page thirty-one of the article, he lists the statutes being used in the criminal prosecution of terrorist financing and among these statutes is the International Emergency Economic Powers Act (IEEPA), which Breinholt also labels as “United States economic sanctions.”[4] IEEPA provides the President of the United States with authority to deal with any “unusual and extraordinary threat” that has its source in whole or substantial part outside the United States; this includes threat to “national security, foreign policy, and the economy.”[5]

Prosecutors armed with the statutes listed in Breinholt’s paper are further empowered by using them in conjunction with the “material support of terrorism” laws, Executive Order 13224, and civil asset forfeiture laws, particularly those under IEEPA, which were amended by the PATRIOT Act. Under the IEEPA civil asset forfeiture provisions the government can close down an organization and seize its assets while an investigation is ongoing, without probable cause of criminal activity and without any charges ever being brought against anyone.[6]

E.O. 13224 was issued on September 23, 2001, and introduced a blacklist of organizations and individuals suspected of terrorism, materially aiding terrorism, or associating with terrorists. IEEPA and international law permit humanitarian assistance for these suspects, including food, clothing and medicine, but this humanitarian aid is outlawed under the E.O. 13224.[7] The penalty, for an IEEPA violation, for organizations that knowingly engage in terrorist financing already carries a sentence of twenty years to life in prison. What this new provision does is “drastically increase the penalties for knowing violations of non-terrorism-related IEEPA offenses.”[8] People with a concern for civil liberties are troubled by the fact that the government provides no legal definition of what they consider a “specially designated terrorist” and by the broad manner in which the government is interpreting the new rules.[9]

Muslim charities and individuals connected with these charities are bearing the brunt of the

effects of this new law.[10] Since September 11, 2001, six major U.S. Muslim charities and several smaller Muslim charities have been shut down.[11] And working in close collaboration with the U.S. government does not provide charities with protection from this fate. In 2002 a new charity, KindHearts (KH), was established after the U.S. government had closed the three largest Muslim charities in the country in December 2001, accusing each of supporting terror.[12] Despite working closely with government agencies to ensure it complied with all the new rules, KH has suffered the same consequences as the other charities. In February 2006, KH's assets were seized and its operation frozen because of dubious allegations of financing terror.[13]

In a March 2006 article in *The Washington Post*, Laila al-Marayati and Basil Abdelkarim, board members of Kinder USA, a Muslim-American nonprofit humanitarian organization said,

“We are among those American Muslims who decided that because it is our right as Americans to fulfill our religious obligation to help the needy both here and abroad, we would start a new charity. We did so in 2002 and have experienced our fair share of government harassment as a result. None of us is interested in engaging in illegal activity; it is immoral, unethical and un-Islamic, and it serves no useful purpose whatever. Our crime is that we care about what happens to the children of Palestine. Who knows what price we will have to pay for our hot-breakfast program for hungry kids in Gaza, for our playground project in the West Bank, for our psychological trauma center in Hebron.”[14]

THE EFFECT ON MUSLIM CHARITY

In a report titled, “Muslim Charities and the War on Terror,” OMB Watch,[15] documented its concerns about the treatment of Muslim charities and the people involved with the charities.[16] Among the many concerns OMB voiced are use of questionable evidence to shut down the largest U.S.-based charities that has resulted in much needed humanitarian assistance not reaching people who desperately need it, use of anti-terrorist financing policies that deny Muslim charities the right of due process and are unequally enforced, and holding of organizations and individuals associated with humanitarian work “guilty until proven innocent.” They conclude that despite the new investigative powers the authorities have failed to produce evidence of terror financing by U.S.-based charities.[17]

In May 2005, David Cole, professor of law at Georgetown University and legal counsel in several “material support” cases, testified before the U.S. Senate Committee on the Judiciary about the constitutional implications of use of these statutes. Speaking about how the statutes impose “guilt by association” and therefore violate the First and Fifth Amendments, Cole said,

“The statutes described above prohibit virtually all associational support to selected political organizations, while granting executive branch officials effectively unreviewable discretion to target disfavored groups. These laws make it a crime to write an op-ed, provide legal advice, volunteer one's time, or distribute a magazine of any ‘designated’ group, even if there is no connection whatsoever between the individual's support and any illegal activity of the proscribed group.

“Under these statutes, an American citizen who sends a treatise on nonviolence to the Kurdistan Workers' Party to encourage it to forgo violence

for peace can be sent to prison for fifteen years. This is so even if he proves that he intended the treatise to be used only for peaceful ends, and that it was in fact used solely for that purpose. Such a moral innocent can be said to be 'guilty by association.' [18]

THE "HELP THE NEEDY" CASE

This is precisely the situation in which Dr. Rafil A. Dhafir found himself. In direct response to the humanitarian catastrophe created by brutal sanctions on Iraq, Dhafir, a man of Iraqi descent and Muslim faith, and an American citizen for almost thirty years, started the charity Help the Needy (HTN). According to United Nations (UN) statistics, every month throughout the 1990s almost 6,000 children under the age of five in Iraq were dying from lack of food and access to simple medicines.[19] Three senior UN officials resigned because of what they considered a "genocidal" policy against Iraq.[20]

When Madeleine Albright, then U.S. Ambassador to the U.N., was asked in a CBS interview if the deaths of half a million children was a price worth paying to punish Saddam Hussein, she infamously replied, "I think this is a very hard choice, but the price—we think the price is worth it." [21] When the deaths of children over the age of five and adults are added, the number killed as a direct result of the sanctions rises to between 1.5 and 2 million dead civilians.[22]

Dr. Dhafir is a pillar of the Muslim community in Central New York. He was a founding member of the local mosque, and he served as the imam at Syracuse University until they hired a full time imam. He paid a substantial amount of the running costs of the mosque and provided free medical consultation to those at the mosque without health insurance. His medical practice was in Rome, New York, an underserved area in which he was the sole oncologist. In his practice he provided free health care to people without insurance, and he paid for their expensive chemotherapy medicine out of his own pocket.[23]

For thirteen years Dhafir worked tirelessly to help publicize the plight of the Iraqi people and to raise funds to help them.[24] According to the government, Dhafir donated 1.25 million dollars of his own money over the years.[25] As an oncologist, he was also concerned about the effects of depleted uranium on the Iraqi population that experienced skyrocketing cancer rates.[26] For the crime of breaking the U.S. and U.K. sponsored UN sanctions on Iraq and sending humanitarian aid to sick and starving civilians, Dhafir was held without bail for thirty-one months and then sentenced to twenty-two years in prison.[27]

Since the day of Dhafir's arrest, February 26th, 2003, when eighty-five agents went to his home, government officials at national and state levels have portrayed Dhafir's humanitarian work as support of terrorism.[28] Simultaneous to Dhafir's arrest, between the hours of 6 a.m. and 10 a.m., others associated with HTN were arrested in Syracuse, New York; Boise, Idaho; and Amman, Jordan. At the same time about 150, mainly Muslim, families who had donated to HTN were interrogated by government agents.[29] On the same day, Attorney General John Ashcroft announced that supporters of terrorism had been apprehended, a completely unfounded assertion that was reiterated by New York Governor George Pataki in August 2004, just prior to the start of Dhafir's trial.[30]

At the same time, and throughout the trial, local government officials, the prosecutors and District Attorney, denied that the case had any connection to terrorism and instead portrayed Dhafir as a common thief.[31] District Attorney Glenn Suddaby said: "there's no

evidence that any of the Help the Needy money went to al-Qaida, the Iraqi government, or to buy arms and bullets that could be used against U.S. soldiers.”[32]

The inconsistencies in the government’s position have been a startling feature of this case from its inception, and they suggest two possibilities: either one hand of the government doesn’t know what the other is doing or the government is aiming deliberately to deceive. No media outlet has challenged the government directly and demand that it provide an explanation for its contradictory assertions, although Michael Powell of the *Washington Post* drew attention to them shortly before the trial began:

“There is a shadow-boxing quality to the terror allegations lodged against Dhafir. In August, Gov. George E. Pataki (R) described Dhafir’s as a ‘money laundering case to help terrorist organizations . . . conduct horrible acts.’ Prosecutors hinted at national security reasons for holding Dhafir without bail. But no evidence was offered to support the allegations.”[33]

Despite Pataki’s pre-trial announcement, which was perfectly timed to reach potential jurors, the prosecution successfully petitioned Judge Norman Mordue not to allow the charge of terrorism to be part of the trial.[34] Not surprisingly the specter of terrorism hung over the trial throughout the proceedings, and prosecutors could hint at more serious charges but the defense lawyers were never allowed to follow this line of questioning.[35]

Dhafir’s seventeen-week court case was conducted as a sixty-count case of white-collar crime with no charges of terrorism, and as a direct result of this only the local Syracuse newspaper, the *Post Standard*, covered the proceedings. The paper proved to be little more than a mouthpiece for the government; on the rare occasion that it did provide coverage of cross examination, it immediately followed with a re-statement of the charges in the indictment.[36] During the seventeen weeks of daily coverage of the proceedings the paper failed to give more than a passing mention to an ecumenical group that met every morning outside the federal building to worship for half an hour before the trial commenced at 8.30 a.m., or to the ACLU court watchers who were present in court every day.[37] Concern has been expressed about reporters being embedded in war zones; there should be equal concern about them being embedded in federal buildings.

Of the sixty counts in the indictment, most were related to breaking the sanctions: conspiracy, mail and wire-fraud, money laundering, and tax evasions. These charges are easily explained when viewed in the context of the sanctions, but the government did everything it could to prevent the condition of Iraq during the sanctions from being referred to at the trial.

According to the government, the investigation of HTN began with a Suspicious Activity Report (SAR) from a bank. The government encourages financial institutions to report “suspicious activity” by watching out for money transfers between related accounts of related entities. But many non-profit organizations that have nothing to do with supporting terrorism make these kinds of transfers on a regular basis.[38] Because of the SAR report seven government agencies investigated Dhafir and HTN for five years. They intercepted mail, email, and faxes; bugged his office and hotel rooms; and conducted physical surveillance.

Because the government was unwilling to prosecute Dhafir for sanctions-related charges alone, the last twenty-five counts of the indictment are related to Medicare fraud. The

government evidence for this part of the case was extremely weak. For example, a bar chart that supposedly compared the dollar amount of Dhafir's billing of Medicare with other doctors' billing was completely meaningless. It showed Dhafir's bar as being very tall and the other doctors' bars being much smaller, but when the witness was asked by the defense to say what types of doctors the other doctors were, or what their geographic location was, she could not answer.[39]

The whole of the Medicare case revolved around a single rule called "incident to," meaning any treatment performed by someone other than the doctor. The government claimed that Dhafir had filled out the forms incorrectly, and was therefore entitled to no reimbursement from Medicare, despite the fact that patients had received treatment and chemotherapy drugs. The defense contended that even if Dhafir's office had filled out the forms wrongly, which they did not believe he had; Medicare had only overpaid 15% of \$1102.80—the difference between what they pay for a doctor's time as opposed to a nurse practitioner's time—a total overpayment of \$166.[40] This was not fraud but merely incorrect billing. Medicare fraud usually involves fictitious patients and made-up illnesses; Dhafir's case had none of this.

The government presented the Medicare evidence in the same way they presented the evidence related to the sanctions. After weeks of testimony following checks from bank to bank, they then turned to day after day of testimony regarding Medicare forms, asking individuals from Dhafir's office to validate their signatures on the forms, thus proving that they had indeed signed the forms, but nothing else.[41] The defense presented one witness for fifteen minutes, Dr. Edward Cox, head of the carrier organization that processes claims for Medicare.[42] Reading from the New York State Handbook Cox confirmed the defense's contention that in order to bill Medicare under the "incident to" rule, a non-physician was required to have a license *or training*.[43] Thus, according to the handbook, Dhafir's billing of Medicare was proper.

The *Post Standard* reported this testimony correctly the day after it was given, but on the following day the paper had a front-page correction with a picture of the witness who was apparently contradicting his testimony of the day before.[44] And despite the testimony of this witness, the judge in his "charge to the jury" told them that under New York law a laboratory technician required a license; in other words, training alone was not sufficient.[45]

On the day of the sentencing of Mrs. Dhafir, she was ordered to pay back \$62,000 to Medicare. Mrs. Dhafir worked in the billing department of her husband's practice with several other people. Asked on the same day how much of that money had actually been spent on chemotherapy medicine that was administered to patients, Michael Olmstead, the head prosecutor, was unable to say. When Dhafir was asked the same question, he said that 90% of this money had been spent on medicine.[46] This leaves 10% of the money for the doctor's time, the nurse's time, and blood work. Dhafir also said that in 2002 Medicare reimbursed him less than he had spent on medicine alone. A look at the records would confirm or refute this, but Dr. Dhafir has been continually denied access to his own records that were taken from his house and office on the day of the arrest.

Jennifer Van Bergen, a journalist with a law degree and author of *The Twilight of Democracy*[47] has written a two-part article on Dhafir's case entitled "New American Law: The Case of Dr. Dhafir" and "New American Law: Legal Strategies and Precedents in the

Dhafir Case.”[48] In this article and other writings Van Bergen warns about the danger of civil liberties being undermined when the government uses parallel legal tracks not intended to be mixed.[49] She notes that, as happened in Dhafir’s case, conspiracy laws and money laundering laws used “creatively” with the PATRIOT Act and IEEPA can be used to construct a vast distorted picture. Dhafir’s case sets a legal precedent and means that others who provide humanitarian and medical assistance to those in need could, like Dhafir, end up being put away for the rest of their lives.

THE GOVERNMENT STRATEGY REVEALED

In November 2005, just weeks after Dhafir was sentenced to twenty-two years in prison for white-collar crimes, the government presented a lecture to a group of third-year law students at Syracuse University Law School in which Dhafir and the HTN case were highlighted. Jeff Breinholt, author of the article on terrorist financing mentioned above, and Greg West, one of the Dhafir prosecutors, presented the lecture, which was entitled, “A Law Enforcement Approach to Terrorist Financing.”[50] The other two Dhafir prosecutors, Michael Olmstead and Steve Green were also present, along with law school faculty and representatives from the Institute for National Security and Counterterrorism (INSCT), a sponsor of the lecture.[51]

The slant of this lecture, along with Breinholt’s 2003 “Terrorist Financing” article, and the fact that Dhafir and the other HTN defendants are listed on the FBI’s list of “terrorism convictions since September 11, 2001,” give credence to the idea that the government’s creative use of parallel legal tracks was a strategy from the outset.[52]

Breinholt told the students at this lecture that Dhafir’s case had been under-prosecuted. In the context of the lecture title — “A Law Enforcement Approach to Terrorist Financing” — the implication was clear. He told students about the statutes being used as powerful tools for prosecution of terrorist financing and explained that these tools were not widely known even among prosecutors. And he voiced a hope that law schools could serve as a kind of farm system educating students in this new field of law and that this in turn would create lawyers who would be familiar with and who could use these new prosecution tools.[53]

He explained that because the “American public won’t tolerate anything less than the rule of law,” creative ways had to be figured out to draft laws that can be used to prosecute what they are trying to prevent.[54] According to Breinholt, this task was addressed by a Department of Justice Terrorist Financing Task Force that came together to craft ways to apply white-collar expertise to the problem of terrorism. In his article, Breinholt says:

“Persons cannot be convicted of the federal crime of terrorism because there is no such crime. Instead, terrorism crimes have developed in the same manner as other crimes, policymakers determine what evil (or ‘mischief’) should be prevented, and then craft criminal laws that take into account how such mischief is generally achieved. On occasion, acts that are criminalized are not ones that should necessarily be discouraged, if committed by persons not otherwise involved in the targeted conduct. In such cases, laws are crafted to criminalize such conduct only when in particular circumstances.”[55]

A major tool that emerged from the work of this task force, Breinholt told students, is the use of IEEPA violations to gain convictions in terrorist financing cases. Breinholt said that to convict under IEEPA all that was necessary was to build a chain of inferences from available circumstantial evidence.[56]

In Breinholt's article, Dhafir and other HTN defendants are listed under the heading "Examples of 'clean money' cases." [57] Listed under this same heading are Enaam Arnaout of Benevolence International Foundation (BIF); Sami Al-Hussayen, a graduate student at the University of Idaho, associated with Islamic Assembly of North America (IANA); [58] and Sami Al-Arian, a Palestinian professor from Florida. [59] Later in the article, under the heading, "crimes of terrorist financing," Breinholt lists the statutes being used in prosecution of these cases. [60] Statutes under this heading that were used in Dhafir's case are 50 U.S.C. ss 1701, 1702 (IEEPA) and U.S.C. ss 1956(a)(2)(A), "operating an unlicensed money transmitting business." [61] One of the Dhafir prosecutors, Mr. West, explained to the class that one of the biggest frustrations of his career was having access to intelligence and not being able to share it.

Neither Breinholt nor West told the class that these "powerful prosecution tools" are being used mostly against Muslim charities and individuals associated with those charities, while violations by large corporations like Halliburton, which did billions of dollars worth of business in defiance of IEEPA, go largely unpunished. At the most these corporations have gotten a slap on the wrist and a fine, but no individual board member or officer has ever faced prosecution. [62] And although many non-Muslim charities work in the same troubled regions of the world as Muslim charities, not a single non-Muslim charity has been closed. [63] None of this was mentioned at the lecture.

By hosting this lecture on Dhafir and HTN, Syracuse University Law School gave credence to a charge never brought against Dhafir, and in doing so they became an accomplice in the government's subterfuge. After the lecture a request was made that the American Civil Liberties Union (ACLU) court watchers who attended the trial be provided with "equal time" to speak to the students. [64] Syracuse Law School Dean Hannah Arterian denied this request.

In testimony given on Capitol Hill by the U.S. Treasury Department, prosecution of Muslim charity cases is being used as a model of success in efforts to disrupt terrorism. [65] However, the testimony often contradicts the actual rulings in the cases and the testimony fails to acknowledge that there are no terrorist convictions among any of the cases. At a 2004 Pace University Law School symposium, Dr. Laila al-Marayati addressed the way this Treasury Department targeting of Muslim charities threatens civil liberties, constitutional rights, and the rule of law for not just Muslims, but for every American, regardless of creed:

"The ever present threat of a 'terrorist designation' by the Treasury Department functions based on the principle of 'guilty until proven innocent.' The use of secret evidence, hearsay, erroneous translations, guilt by association and press reports in recent court cases further erodes the ability of charities to rely on basic assumptions regarding their constitutional rights, especially when the courts ultimately favor the government when 'national security' is allegedly at stake. Over-zealous surveillance tactics of the intelligence community such as wiretapping, infiltrating organizations by bribing employees to work as spies (thereby disrupting normal and lawful humanitarian activities), and engaging in other forms of harassment - when added to the above bleak picture - will not only chill, but will freeze completely American Muslim charitable giving overseas. Perhaps this is the goal of the US government. However, no one should be fooled into thinking that America or the American people will be much safer as a result." [66]

LESSONS FROM HISTORY

Writing during the McCarthy era, Judge Irving R. Kaufman warned,

“We are not inclined to dismiss lightly claims of constitutional stature because they are asserted by one who may appear unworthy of sympathy. Once we embark on shortcuts by creating a category of ‘obviously guilty’ whose rights are denied, we run the risk that the circle of the unprotected will grow.”[67]

Writing after the Holocaust Pastor Martin Niemoeller said,

“First they came for the communists, and I did not speak out-because I was not a communist; then they came for the socialists, and I did not speak out-because I was not a socialist; then they came for the trade unionists, and I did not speak out-because I was not a trade unionist; then they came for the Jews, and I did not speak out-because I was not a Jew; then they came for me-and there was no one left to speak out for me.”[68]

We appear once again to have entered a dark time in which the civil liberties of a select group of people are being denied. The message being sent to Muslim communities across the country is that pillars of their community can be knocked down without any call for equal justice from the non-Muslim community. It is incumbent upon each of us to defend civil liberties for all, not least because “injustice anywhere is a threat to justice everywhere.”[69]

Katherine Hughes began attending the seventeen-week trial as a court watcher for the ACLU but quickly found that she could not in good conscience be the uninvolved observer their organization required. For the last two years she has worked to achieve justice for Dr. Dhafir. More information can be found at her website: www.dhafirtrial.net

Donations to the Dhafir appeal fund can be made to Dhafir Appeal Fund, c/o Peter Goldberger, Esq., Attorney at Law, 50 Rittenhouse Place, Ardmore, PA 19003. Write “Dr. Dhafir Appeal Fund” in the memo line and please note that donations are not tax deductible.

Notes

[1] New York Yearly Meeting (Quaker) action update on the Dhafir case, March 3, 2003: <http://www.nyym.org/qr/nyympa/wau/wau05mar03.pdf>.

[2] Teishan Latner, *The Quotable Rebel*, p. 359 (Common Courage Press, 2005).

[3] Jeff Breinholt, “Terrorist Financing,” U.S. Attorney Bulletin, July 2003, Volume 51, number 4 (hereafter Breinholt); http://www.usdoj.gov/usao/eousa/foia_reading_room/usab5104.pdf. Page 31 lists the United States Code provisions used to criminalize “terrorist financing.”

[4] Id.

[5] IEEPA, Title 50, United States Code, section 1701(a), taken from indictment of Rafil A. Dhafir, August 18, 2004: <http://www.dhafirtrial.net/static/indictment.pdf>.

[6] Jennifer Van Bergen, “How Government Forfeitures are Shutting Down U.S.-Based Muslim Charities: Going After Terrorism’s Financiers Is the Right Strategy, But the Law Needs

Reform,” Findlaw Writ Guest Column, May 1, 2006: http://writ.news.findlaw.com/commentary/20060501_bergen.html.

[7] For a more detailed description of the effects of these new regulations, see: Dr. Laila Al-Marayati, “American Muslim Charities: Easy Targets in the War on Terror,” presented on December 3, 2004 at Pace University Law Symposium, *Anti-Terrorist Financing Guidelines: The Impact on International Philanthropy* (hereafter Al-Marayati, Easy Targets): <http://www.library.law.pace.edu/PLR/25-2/Al-Maryati.pdf>.

[8] ACLU Interested Persons Memo on the Conference Report Agreement on H.R. 3199, the USA PATRIOT Improvement and Reauthorization Act of 2005 (3/1/2006): <http://www.aclu.org/safefree/general/24314leg20060301.html>.

[9] David Cole, “Constitutional Implications of the Statutes Penalizing Material Support to Terrorist Organizations,” Testimony Before the U.S. Senate Committee on the Judiciary (hereafter Cole Testimony), May 2004: <http://www.bordc.org/resources/cole-materialsupport.php>.
<[%A0](http://www.bordc.org/resources/cole-materialsupport.php)>

[10] Teresa Odendahl, “Philanthropic Patriot Games: How the U.S. Government Targets Charities in its War on Terror” (hereafter Odendahl, Patriot Games), *The Public Eye Magazine*, Fall 2005: http://www.publiceye.org/magazine/v19n2/odendahl_guest.html.

[11] Laila al-Marayati and Basil Abdelkarim, “The Crime of Being a Muslim Charity” (hereafter Al-Marayati, Crime), *Washington Post*, March 12, 2006: <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/10/AR2006031001859.html>

[12] The three charities closed down in December 2001, Holy Land Foundation (HLF), Global Relief Foundation (GRF) and Benevolence International Foundation (BIF). Al-Marayati, Easy Targets, *supra* footnote 7.

[13] Al-Marayati, Crime, *supra* footnote 11.

[14] *Id.*

[15] OMB Watch is a nonprofit research and advocacy organization dedicated to promoting government accountability, citizen participation in public policy decisions, and the use of fiscal and regulatory policy to serve the public interest: <http://www.ombwatch.org/article/archive/250>.

[16] OMB Watch, “Muslim Charities and the War on Terror” (hereafter OMB Watch Report), revised March 2006: <http://www.ombwatch.org//npadv/PDF/MuslimCharitiesTopTenUpdated.pdf> .

[17] OMB Watch Report.

[18] Cole Testimony, *supra* footnote 9. Cole is talking about the same statutes that Breinholt mentions in his paper on “Terrorist Financing.”

[19] “UNICEF: Questions and Answers for the Iraq Child Mortality Surveys” (August 1999), <http://www.casi.org.uk/info/unicef/990816qa.html>.

<<http://www.casi.org.uk/info/unicef/990816qa.html>> See also the Voices in the Wilderness site for more information on the condition of Iraq under sanctions: <http://vitw.org/>.

[20] Because of his humanitarian work, Dhafir was named as the sole honorary member of the BRussels Tribunal Advisory Committee. Two of the UN people who resigned, Denis Halliday and Hans Von Sponeck are also members of this committee: <http://www.brusselstribunal.org/about.htm>.

[21] "Punishing Saddam," 60 Minutes, CBS Television, May 12, 1996, quoted in John Pilger, *The New Rulers of the World*, p. 63 (Verso, 2002).

[22] Dr. Gideon Polya, "Passive Genocide In Iraq," 11 March, 2005 [Countercurrents.org](http://www.countercurrents.org) <<http://www.countercurrents.org/>> : <http://www.countercurrents.org/iraq-polya110305.htm>

[23] Kristen Hinman, "The Iraqi Doctor: Patients Revere Him; The Government Wants to Put Him Away," Fall 2004: <http://www.dhafirtrial.net/?p=287#more-287>. Hinman's grandmother was a patient of Dr. Dhafir's. She was a student at Columbia University when she wrote this essay.

[24] A video of a fundraising event at which Dr. Dhafir spoke was shown at his trial. The file is 120 MB and can be viewed here: (Quicktime version): <http://www.a39.net/Dhafir/Dhafir.html> and here (Flash version): <http://www.a39.net/Dhafir/DhafirFlash.html>.

[25] Katherine Hughes, notes of Dhafir Trial (hereafter Hughes, Notes.)

[26] See also Dhafir's address commemorating the nuclear bombing of Hiroshima: <http://www.dhafirtrial.net/?p=264#more-264>. The statement was made from prison on August 6, 2003, and Akira Tashiro *Discounted Casualties: The Human Cost of Depleted Uranium*, (The Chugoku Shimbun, 2001).

[27] For more information see Katherine Hughes, "Crime of Compassion," January, 2006: http://www.axisoflogic.com/artman/publish/printer_20800.shtml and Katherine Hughes, "The U.S.A. v Rafil A. Dhafir: Individual Responsibility and Complicity," November 2005: <http://www.nightslantern.ca/prison/dhafirkh.htm>.

[28] See, for example, Michael Powell, "High-Profile N.Y. Suspect Goes on Trial: Arrest Was Called Part of War on Terrorism, but Doctor Faces Other Charges" (hereafter Powell), for a description of the arrest. *The Washington Post*, October 19, 2004: www.washingtonpost.com/wp-dyn/articles/A43278-2004Oct18.html <<http://www.washingtonpost.com/wp-dyn/articles/A43278-2004Oct18.html>> .

[29] Other HTN defendants accepted plea bargains by pleading guilty to breaking the sanctions. Maher Zagher of Amman Jordan, Dhafir's co-defendant, was characterized during the proceedings as a fugitive by the government. On the contrary, he was held for two weeks after his arrest, interrogated by Jordanian authorities acting on behalf of the U.S., and then released to go about his normal business. Correspondence with Maher Zagher and Hughes, Notes, *supra* footnote 25.

[30] Powell, *supra* footnote 28.

[31] Hughes, Crime of Compassion, *supra* footnote 25.

[32] James Mckinnon, "Guilty As Charged... of Philanthropy?" *The Bachelor*, September 2004, p. 5, <http://bachelor.wabash.edu/issues/2004f/issue2.pdf>.

[33] Powell, *supra* footnote 28.

[34] Elaine Cassel, "The Lynne Stewart Case: When Representing An Accused Terrorist Can Mean The Lawyer Risks Jail, Too," Findlaw Writ Column, October 8, 2002: http://writ.news.findlaw.com/commentary/20021008_cassel.html. Cassel comments on a similar incident when, just prior to Lynne Stewart's case going to trial, Attorney General John Ashcroft appeared on the David Letterman show assuring viewers of her guilt.

[35] The jury knew that Dhafir had been held without bail for 20 months and that it was the presiding judge, Mordue, who had denied him bail on four occasions. They also witnessed five Federal Marshals trade off every hour, approximately 240 times, throughout the trial so that two were always present in the courtroom. (This was done because Dhafir would not submit to a strip search on religious grounds.) One Federal Marshal sat directly behind Dhafir and the other sat adjacent to the jury near the opposite exit at all times. This marshal presence was over and above the two regular court guards, one at each exit. The non-verbal message that this sent cannot be over-estimated and it undoubtedly helped the government gain conviction in this case.

[36] See, letter of Joel Cohen (one of Dhafir's trial lawyers) to the newspaper about the coverage: <http://www.dhafirtrial.net/?p=15#more-15>, November 15, 2004, and other letters at www.dhafirtrial.net <<http://www.dhafirtrial.net/>> under the headings, "court observers" and "media/judge letters."

[37] Despite the bitterly cold Syracuse winter a group of between seven and twelve people met every day with clergy members leading the worship in rotation. People who responded to the request of the ACLU for court watchers were also present every day at the trial. There was a core group of about twelve people, several of whom attended almost every day of the trial. Experience of the author who attended almost all of the trial.

[38] Odendahl, Patriot Games, *supra* footnote 10.

[39] My witness of the proceedings.

[40] Hughes, Notes, *supra* footnote 25.

[41] A big screen was available in the courtroom so that the jury and the public gallery could see each piece of evidence. Here is a link to a letter written by Dr. Dhafir in 1993 to Medicare complaining about their ever-changing rules, about which not even Medicare employees can agree: <http://www.dhafirtrial.net/?p=18>. Dhafir was put on a pre-payment flag, meaning Medicare checked all his billing before paying, after he wrote this letter. Judge Andrew Napolitano speaks about this tactic of the government overwhelming juries with evidence. He says: "When prosecutors seek victory through illegal threats—rather than through fair negotiation or through the slow methodical presentation of evidence to a jury—they corrupt the cause they seek to advance." Andrew Napolitano, *Constitutional Chaos: What Happens When the Government Breaks its Own Laws*, p. 152 (Nelson Current, 2004).

[42] The government presented their case in minute detail over the seventeen-week period.

Due to a lack of finances (the government had frozen all Dhafir's money) the defense was able to call one witness for fifteen minutes.

[43] Dr. Dhafir's laboratory technician had been with him for many years and was highly trained by Dr. Dhafir himself.

[44] Katherine Hughes, "Dr. Dhafir's Trial Concluded Today." A summary of the last day of the proceedings and this witness's testimony can be seen here: <http://www.dhafirtrial.net/?p=19#more-19>.

[45] Judge Norman Mordue, Jury Charge: U.S. v. Dhafir (US District Court, Northern District of New York, Case No. 03-CR-64 (NAM)) February 2005: http://www.dhafirtrial.net/static/charge_to_jury.html

[46] From conversations the author had with Olmstead on June 1st, 2005, and with Dhafir approximately one week later.

[47] Jennifer Van Bergen, *The Twilight of Democracy, The Bush Plan for America* (Common Courage Press, 2004).

[48] Jennifer Van Bergen, "New American Law," Part 1: <http://www.counterpunch.org/vanbergen10072005.html> and Part 2: <http://www.counterpunch.org/bergen10092005.html> (October 8 & 9, 2005).

[49] Jennifer Van Bergen, "The PATRIOT Act and Other Dilutions of the Constitution: America's Parallel Legal Systems," July 25/26 2005: <http://www.counterpunch.org/vanbergen06252005.html>.

[50] The lecture was advertised by the "Institute For National Security and Counterterrorism" (INSCT), http://insct.syr.edu/Research_SWP0506.htm.

[51] INSCT is hosted at Syracuse University.

[52] *The New York Jewish Times*, June 27, 2006: <http://nyjtimes.com/cover/06-27-06/TerrorConvictionsSince9-11.htm> See also: *The Washington Post*, "330 Suspects Charged," June 12, 2005: <http://www.washingtonpost.com/wp-srv/nation/dojstats/full330.html>

[53] I attended this lecture. This section is based on my recollection and notes of that event. (Hereafter Hughes, Lecture Observations.)

[54] In 2003, Breinholt was given the Attorney General's "Award for Excellence in Furthering the Interests of U.S. National Security," for his work in crafting creative legal theories that resulted in the initiation of several important prosecutions in the aftermath of 9/11: http://www.usdoj.gov/opa/pr/2003/July/03_ag_424.htm

[55] Breinholt, *supra* footnote 3.

[56] Hughes, Lecture Observations.

[57] Breinholt, *supra* footnote 3, at p. 19.

[58] IANA is a not for profit religious group registered in the U.S. and it's purpose is purely

religious and educational. See Elaine Cassel, *The War on Civil Liberties: How Bush and Ashcroft Have Dismantled the Bill of Rights* (Lawrence Hill Books, 2004). In a chapter called, "Guilt by Association: The Muslim Charities," p.p. 87-106, Cassel speaks about the cases of HLF, GRF, BIF, and HTN.

[59] Mr. Arnaout accepted a plea bargain by pleading guilty to using BIF donations in providing boots, tents, uniforms, and an ambulance to units of the Bosnian army at a time when Muslims in Bosnia were attempting to defend themselves against the genocidal atrocities of the Serbian army. He was sentenced to 11 years in jail. More information: <http://islam.about.com/library/weekly/aa021103b.htm>. In July 2004, after being cleared of charges, Sami Al-Hussayen was deported to Saudi Arabia: <http://www.nightslantern.ca/prison/prisoners.htm>. In December 2005, Sami Al-Arian was acquitted of the most serious charges against him and the jury was hung on other charges. Despite agreeing to deportation he is still being held by the government: <http://www.freesamialarian.com/home.htm>.

[60] Breinholt, *supra* footnote 3, at p. 31.

[61] Since Dhafir's conviction under IEEPA and for operation of an unlicensed money transmitting business in February 2005, he and other HTN defendants have been placed on the FBI list of terrorism-related convictions since Sept. 11, 2001. On June 12, 2005, The *Washington Post* listed the HTN defendants as part of the government list of 330 suspects in terrorist related charges: <http://www.washingtonpost.com/wp-srv/nation/dojstats/full330.html> And on June 27, 2006, the *New York Jewish Times* listed Dhafir and other HTN defendants in an article entitled: "Examples of Terrorism Convictions Since September 11, 2001:" <http://nyjtimes.com/cover/06-27-06/TerrorConvictionsSince9-11.htm> the FBI was given as the source. The indictment of Rafil A. Dhafir is available here: <http://www.dhafirtrial.net/static/indictment.pdf>

[62] Barrie Gewanter, director of ACLU-CNY speaking on "Access" with George Kilpatrick, WCNY Public Television, Wednesday, October 26th, 11pm. 26th, 11p

[63] Al-Marayati, *Crime*, *supra* footnote 11.

[64] Email from the author to Dean Arterian (11/27/05) available here: <http://www.dhafirtrial.net/?p=478#more-478>.

[65] Al-Marayati, *Easy Targets*, *supra*, footnote 8.

[66] *Id.*

[67] Pete Seeger, *The Incomplete Folksinger*, p. 473 (Simon and Schuster, 1972).

[68] Statement attributed to Pastor Martin Niemoeller: <http://www.nehm.org/contents/niemoller.html>.

[69] Martin Luther King Jr. in a letter from a Birmingham jail: <http://www.quotationspage.com/quote/4324.html>.

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