

Chilling Effect

Oct 12, 2007



Articles & Testimony

Scholars beware: A wave of libel lawsuits threatens to stifle open and honest discussion of issues related to the financing of terrorism. Instead of competing on the battlefield of ideas, where facts speak louder than rhetoric, several individuals and organizations have sued scholars researching the financing of terrorist groups.

I know firsthand. I was sued, stood my ground, defended my research, and won. To their immense credit, my campaign to defend my free speech and academic rigor enjoyed the full and unconditional support of both my employer, The Washington Institute for Near East Policy, and my publisher, Yale University Press.

Not all scholars have been so fortunate.

In Great Britain, Cambridge University Press recently agreed to recall and destroy all unsold copies of *Alms for Jihad: Charity and Terrorism in the Islamic World*, following a libel suit filed there. Choosing not to defend the scholarship of its authors, two highly respected experts, Cambridge quickly published a public apology on its website and agreed to pay what it described as "substantial damages."

In 2004, a British court granted a default judgment against another author for statements in *Funding Evil: How Terrorism is Financing -- and How to Stop It*. The book was published in the United States and only sold 23 copies in England, but a British court awarded \$225,900 in damages and a public apology, and ordered unsold copies of the book destroyed. (The author, Rachel Ehrenfeld, has countersued in the United States, arguing that a British default judgment should not be enforceable in the U.S.)

These cases are part of a disturbing trend of lawsuits targeting scholars that appear to be an effort to intimidate authors and suppress free speech. Such suits threaten to have a chilling effect on scholars conducting serious, careful, and peer-reviewed research into critical and sometimes contentious policy debates.

In August, KinderUSA and Laila al-Marayati, a Texas-based charity and the chair of its board of directors, dropped their suit against me, The Washington Institute, and Yale University Press. Filed in California Superior Court in April 2007, the suit challenged statements in my book, **[Hamas: Politics, Charity and Terrorism in the Service of Jihad](http://www.washingtoninstitute.org/templateC04.php?CID=265)** (<http://www.washingtoninstitute.org/templateC04.php?CID=265>). In the book, I reported on the arrest and deportation of two KinderUSA officials in Israel in 2002, and noted the links between KinderUSA and the Holy Land Foundation for Relief and Development. The Holy Land Foundation, which has been designated by the U.S. Treasury as an entity that finances Hamas, was indicted in July 2004 by the U.S. Attorney's office in Dallas, Texas, for providing material support to a terrorist organization, among other charges; as of publication, the jury has yet to reach a verdict.

Soon after the suit against me was filed, the Washington Institute and I filed a motion under California's anti-SLAPP (Strategic Lawsuits Against Public Participation) provisions, which provide a mechanism for quickly resolving lawsuits designed primarily to chill the valid exercise of constitutionally guaranteed rights, including free speech. Our motion was supported by my declaration contesting the suit's allegations. Yale also filed a motion under the anti-SLAPP statute. KinderUSA and Al-Marayati withdrew their lawsuit shortly thereafter. (The UK has no such

mechanism, as well as far more lenient libel laws, making it an especially hospitable venue for such lawsuits, as Rachel Donadio wrote in The New York Times Book Review on Sunday.)

The dropping of the suit meant a complete victory for The Washington Institute, Yale University Press, and me. We offered no monetary compensation; we were not obligated to make any changes to the book; and we are not limited in what we can write in the future. The case was dismissed with prejudice. The contrast between my experience with Yale University Press and the recent capitulation by Cambridge University Press could not be starker.

To be honest, I was surprised at the suit and the accompanying press statement in which al-Marayati charged that my book "will take the food out of the mouths of hungry children in Palestine that so urgently need our help." After all, the book highlight the desperate need for humanitarian support to Palestinians in the West Bank and Gaza Strip. It specifically advocates for a robust international aid project to fill this gap, but with the caveat that such support be completely detached from terrorism. In essence, providing Palestinians much-needed international aid and denying Hamas the ability to muddy the waters between charitable giving and suicide bombings are simply two components of one foreign policy objective.

Recognizing this truism, the U.S. Treasury Department has proactively sought to help the charitable sector better regulate itself from diversion or exploitation by rogue actors. Treasury developed and published guidelines of best practices for charities, as well as a risk matrix identifying "common risk factors associated with disbursing funds and resources to grantees." But even Treasury acknowledges that self-regulating guidelines are only designed to assist charities that attempt "in good faith" to protect themselves from terrorist abuse.

The government's admission that it can only do so much to help the charitable sector self-regulate, and the inherent limitations of self-regulation, highlights the critical need for independent scholarship on the gray area between charitable giving and terror financing. The fact that the government's work in this area is often based on sensitive intelligence, and therefore cannot be fully transparent, makes the work of outside scholars even more essential. Similarly, the activities of those who divert charitable funds for illicit purposes are by their very nature covert. Proper due diligence demands more than just hiring a reliable accounting firm to balance the books. It requires collecting information about the charity's partners and recipient agencies operating on the ground, often in areas of conflict where such scrutiny is difficult. Scholarship can fill these gaps. Research can inform donors whether recipient agencies have taken all possible precautions against supporting terrorism. Research can also uncover whether recipient organizations partner with any other charities or service agencies with ties to terrorist elements.

Finding charities that conduct proper due diligence to prevent association -- either willful or inadvertent -- with terrorist entities, and identifying those that do not, is critical to achieve this goal. This was one of the reasons I wrote Hamas.

The kind of research published in Hamas is worthy of public attention and discussion because it is the kind of information the donor public needs to make informed decisions. It is a great loss that the protections I enjoyed in the California Superior Court are not available in the United Kingdom.

It is now the Muslim holy month of Ramadan, traditionally a time of increased charitable giving I certainly hope this spiritual season leads many to donate generously to support the needy, in the West Bank, Gaza, and elsewhere. That aid should be provided through transparent institutions with due diligence programs aimed at weeding out recipients tied to terrorist groups. Scholarly research and writing on such important issues, of concern to both policymakers and the general donor public, serves a clear public need. To that end, the resolution of my case was a victory for scholarship, free speech, the public interest -- and for hungry Palestinian children.

Matthew Levitt directs the **Stein Program on Terrorism, Intelligence, and Policy**

(<http://www.washingtoninstitute.org/templateI02.php?SID=11>) at The Washington Institute for Near East Policy

and is a former deputy assistant secretary of the Treasury for intelligence and analysis.

Read this op-ed at [New Republic Online](http://www.tnr.com/doc.mhtml?i=w071008&s=levitt101007). (<http://www.tnr.com/doc.mhtml?i=w071008&s=levitt101007>)

[Subscribe \(https://ssl.tnr.com/sumo/0405suboffer\)](https://ssl.tnr.com/sumo/0405suboffer) to the New Republic. ❖

New Republic Online

RECOMMENDED



ARTICLES & TESTIMONY

[The Ukraine Crisis Isn't Over: Russia Has Lied About Troop Withdrawals Before](#)

Feb 16, 2022



Anna Borshchevskaya

(/policy-analysis/ukraine-crisis-isnt-over-russia-has-lied-about-troop-withdrawals)



ARTICLES & TESTIMONY

[As China Thrives in the Post-9/11 Middle East, the US Must Counter](#)

Feb 16, 2022



Jay Solomon

(/policy-analysis/china-thrives-post-911-middle-east-us-must-counter)



BRIEF ANALYSIS

[Unpacking the UAE F-35 Negotiations](#)

Feb 15, 2022

◆
Grant Rumley
(/policy-analysis/unpacking-uae-f-35-negotiations)

TOPICS

Terrorism (/policy-
analysis/terrorism)

REGIONS & COUNTRIES

Palestinians (/policy-
analysis/palestinians)