

# Victims of Preemptive Prosecution

by Steve Downs, Esq.

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For Project SALAM - Support And Legal Advocacy for Muslims

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## Remembering the Victims of Preemptive Prosecution

After 9/11, fear of terrorism caused Americans to deviate from the equal application of the law for all Americans, and launched a wave of US government retaliation against Muslims in America that bore no connection to any individual guilt.<sup>1</sup> This is most easily seen in the US government's Preemptive Prosecution program, in which innocent Muslims are prosecuted for some contrived crime ostensibly to "preempt" them from possibly becoming involved in terrorism at some future time.<sup>2</sup>

Preemptive prosecution takes 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 was a certainty. The government launched a war in Iraq allegedly to preempt the Iraqi government from sharing weapons of mass destruction with the terrorists. (No such weapons were found – it was later claimed that the intelligence was faulty). The US rounded up suspected terrorists abroad and incarcerated them indefinitely at Guantanamo in order to preempt them from attacking the US. (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 US government has also preemptively prosecuted hundreds of innocent Muslims in the US for contrived crimes on the pretext of preempting them from committing crimes in the future. It seems clear the US government does not care that most of these Muslim defendants are also innocent. It serves the US government's purposes to claim that it caught hundreds of "terrorist" in the US even if the defendants in fact never intended harm to the US.<sup>3</sup>

Preemptive prosecution involves not only convicting innocent defendants of a contrived or fake crime, but it involves the twisting and breaking of 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 friends and neighbors in a manner designed to intimidate the community. The defendants are often held in Special Administrative Measures (SAMs) under essentially solitary confinement sometimes for years. (Solitary confinement is so debilitating mentally that it may not be used to punish for more than 60 days; how able therefore will a defendant be to testify in his own defense 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 that the defendants are really dangerous. Massive police presence surrounds the court with snipers posted on the roof tops. (Who are they supposed to shoot?). The government often requests anonymous juries and witnesses, and the government calls phony experts who are essentially government mouthpieces to testify about a vast terrorist network which might involve the defendant. The government feeds "secret" evidence obtained from illegal electronic surveillance to the judge in order to effect the courts rulings without allowing the defense to see or object to the material, and uses material obtained from these secret sources to assault the defendants' character even when the material is irrelevant to the charges. In this way the government creates an atmosphere of hysteria and confusion to cover over the lack of any substantive evidence that a real crime was committed.

In this article we remember the victims of preemptive prosecution and describe a little about their personal situation. The government has focused on several different areas as a pretext to bringing preemptive prosecutions charges, and so the cases have been grouped by to these categories (although a case may fit several categories).

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<sup>1</sup> This is not the first time that popular fear (and our government's manipulation of that fear for its own purposes), has caused unjustified attacks on minority groups. After the Civil War, the fear of freed slaves saw the rise of the Klu Klux Klan. After World War I, popular fear of anarchists and foreigners brought about the notorious Palmer raids. During World War II the American Government imprisoned Americans of Japanese ancestry in concentration camps. Senator McCarthy and others persecuted the political left during the communist witch hunts of the 1950's. It is not surprising that during times of crisis, some people will claim that a particular minority group is the scapegoat and must be made to suffer. What is sad is our inability to learn from our past mistakes, and to learn that in times of crisis we must hold tighter to our core values – the Constitution, the Bill of Rights, the Rule of Law, the equality of all persons – rather than taking unjust collective revenge against some minority group

<sup>2</sup> For example, in *US v. Aref*, after the government convicted the defendants of participating in a fake FBI "terrorist" sting, the prosecutors explained at a press conference that they did not have any evidence that Aref had engaged in terrorist acts, "but he had the ideology". They stated, "Our investigation was concerned with what he was going to do here and in order to **preempt** anything else, we decided to take the steps that we did". (The defendant denied strongly that he had any terrorist ideology or that he was given any information to indicate he was involved in something illegal).

<sup>3</sup> The government also created special Muslim prisons (Communication Management Units or CMUs) to hold mostly preemptively prosecuted Muslims under restrictions much harsher than 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.

## 1. Charity Cases

Immediately after 9/11 the US government moved to close down virtually all Muslim charities, supposedly to prevent money raised in the US from being used to finance terrorism abroad. The Muslim religion strictly requires Muslims to make charitable contributions, and the US failure to certify any acceptable charities has caused continuing and serious friction with the Muslim community as to how Muslims are to discharge their charitable requirements. The US also “preemptively” charged the directors of several charities with financing terrorism, even when no money actually went to finance terror.

The word “terrorism” in fact is deliberately misleading. George Washington, Mahatma Gandhi, Nelson Mandela, and a host of our most beloved leaders were called terrorists or its equivalent at some point in their careers. The people for whom they fought called them “freedom fighters”. The term “terrorist” is defined so broadly and is used so indiscriminately that it is essentially meaningless. It now has been used to condemn groups fighting to protect Muslim communities in Bosnia from the Serb death squads; groups building hospitals in Palestine; groups protecting nature from development (eco-terrorist), and groups taking down sites on the internet (cyber-terrorists). The word is useful to fear mongers because it requires no thought or analysis – it just condemns mindlessly. In this article we have tried to avoid the term “terrorist”, and to focus instead on the reasons for the conflict and how the interests of the US are involved. The charity cases clearly show how the term “terrorist” has been misused.

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

The Holy Land Foundation, formed in 1989 to provide relief to Palestinian people impoverished by the repression of the Israeli government, eventually became the largest Muslim charity in the US. In 2007, the Bush Administration brought criminal charges against six of the directors of the Holy Land Foundation for essentially sending (between 1995 and 2001) money to zakat (charitable) committees in Palestine 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 defendants. A second trial resulted in the remaining five defendants convicted of providing material support for Hamas.

The five defendants were given very harsh sentences. Shukri Abu-Baker and Ghassen Elashi each received 65 years in prison; El-Mazain received 15 years. Two brothers, Mufid Abdulqader and Abdulrahman Odeh, received 20 and 15 years respectively. All have families who are devastated by this criminalization of men who devoted their lives to relieving the suffering of the Palestinians.

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 Holy Land had been used only to provide basic needs for truly impoverished people like building schools and hospitals. None of the money went to finance terrorism directly. The government argued that since some Holy Land money went to zakat committees controlled by Hamas, the charity’s money helped to enhance the prestige of Hamas, and allowed Hamas 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 victory in the elections of 2006. The government’s successful prosecution of the Holy Land defendants meant in effect that almost any support for the Palestinian people no matter how compassionate the motive, could be prosecuted as support for terrorism as long as Hamas remained as the government.

### **US v. Rafil Dhafir ([www.dhafirtrial.net](http://www.dhafirtrial.net))**

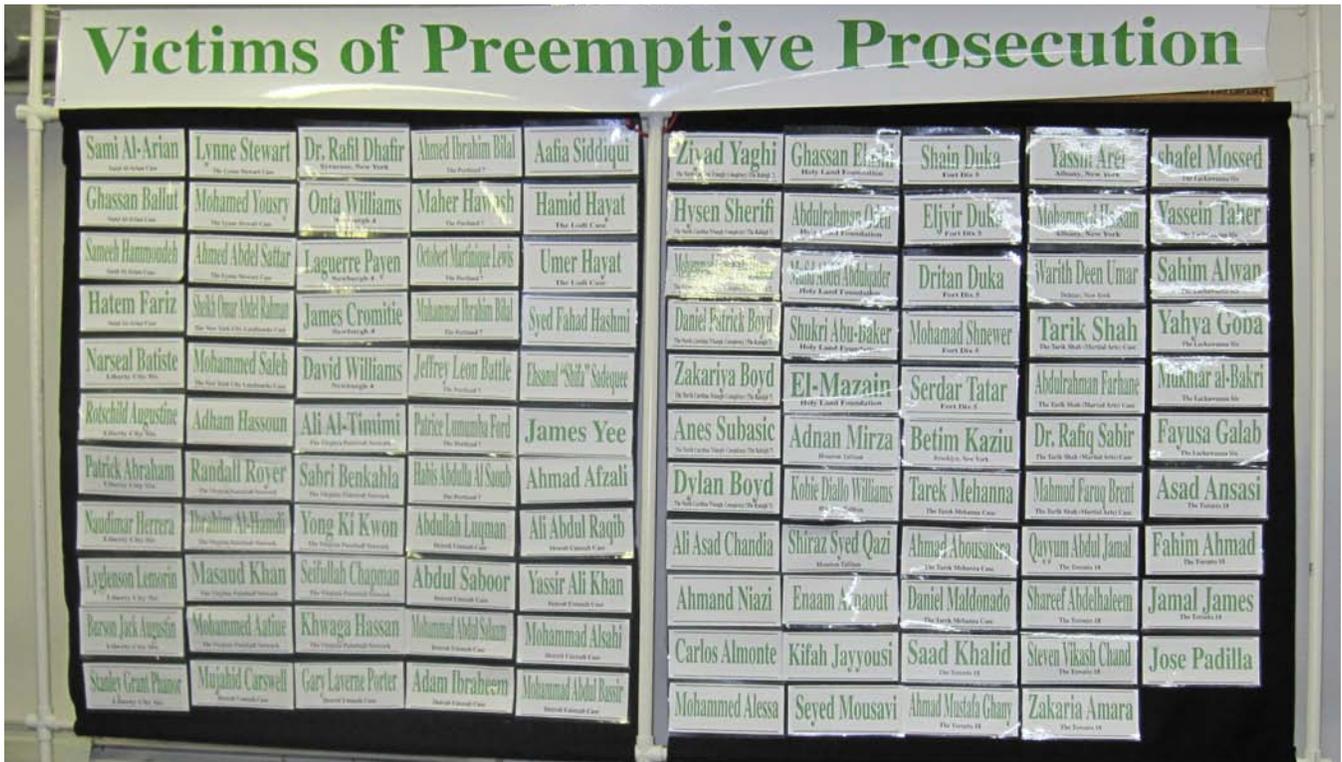
Dr. Rafil Dhafir, born in Iraq and naturalized as an American citizen, is a highly regarded oncologist from Syracuse NY who became concerned about the humanitarian catastrophe created by the Gulf War and the UN sanctions imposed on Iraq. Dr. Dhafir created a charity, Help the Needy, to aid the destitute in Iraq survive the effects of the embargo. For 13 years, Help the Needy openly sent food and medicine to starving Iraqi civilians when some 1.5 million people, mostly children, were dying from the embargo.

In 2003, Dr. Dhafir was arrested, and Attorney General John Ashcroft announced that “funders of terrorism” had been arrested. 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 held without bail until his trial in October 2004.

When Dr. Dhafir refused to accept a plea agreement, 25 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 not filled out correctly, and so he

was not entitled to any reimbursement for treatments actually given or for the expensive chemotherapy his office had actually administered. (In fact, Dr. Dhafir, a very compassionate man, treated people without health insurance and paid for medicine out of his own pocket for those who could not afford it).

Other companies violated the Iraqi embargo and were merely told by the US 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 22 years in the notorious Muslim CMU.

Although the government at trial had claimed that Dr. Dhafir’s prosecution was not related to terrorism, the government now includes him on the list of terrorists convicted. 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 charity Benevolence International Foundation. 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 1990’s - when the United States was fighting alongside these same Muslims. He eventually pled guilty to one count, but in the plea agreement the government agreed that Arnaout had never acted contrary to the interests of the United States. The judge said there was no evidence that Arnaout “identified with or supported” terrorism.<sup>4</sup> He was sentenced to 120 months in the CMU at Terre Haute and will be released in February, 2011.

### Seyed Mousavi (www.freeseeyedmousavi.com )

Seyed Mousavi is an Iranian-born U.S. citizen, who, despite a lack of proof that he had done anything wrong, was convicted in 2008 in California of violating the trade embargo with Iran, false statements, and tax evasion. Like the NY case of Dr. Rafil Dhafir, this case did not directly involve terrorism charges because there was absolutely no evidence of support for terrorism in Iran, but government’s suspicions led to his targeting and eventual conviction on spurious charges. He was sentenced to 33 months (a third of what the government was asking for) in October, 2008, was sent to the CMU in Terre Haute, and was released in January, 2010.

4 See [Few convictions on terror since 9/11: Most arrested not linked to extremists](#), *Washington Post*, June 12, 2005

## 2. Agent Provocateur Cases

The Government has also made extensive use of agents provocateur to create contrived crimes with which to entrap innocent or unaware Muslims who had no interest in terrorism. Sometimes these agents provocateur have targeted certain individuals for preemptive prosecution. On other occasions these agents have simply hung around Mosques offered money and friendship to anyone who will join them in jihad. The cases below illustrate both kinds.

### **US v. Yassin Aref, and US v. Mohammed Hossain ([www.nepajac.org/Aref&Hossain.htm](http://www.nepajac.org/Aref&Hossain.htm)), ([www.yassinaref.com](http://www.yassinaref.com))**

Aref was a Kurdish refugee from Iraq who was the imam of a mosque in Albany NY. The government claimed to have become suspicious of Yassin 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 from Malik so that Hossain could improve his rental properties. (The government conceded that it had no concern 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 Hossain agreed to take the loan to fix up his rental properties.

At this point, the two 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. 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.

After the indictment, 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 documents, and other tricks to convince the jury the two men were dangerous. Both men were eventually convicted and sentenced to 15 year each in prison. Aref is serving his sentence in a CMU. The two men leave behind 10 young children and two wives who have to struggle with inadequate resources or support.



### **The Newburgh 4 — Onta Williams, James Cromitie, David Williams, and 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 Jewish synagogue and shoot down an airplane with a missile, claiming that these 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 a large amount of money to do virtually nothing, and the plot was created, financed, and continually promoted by an FBI agent provocateur, Shahed (“Maqsood”) Hussein, the same person who a few years earlier as “Malik” had entrapped Aref and Hossain.

Pretending that he was a devout Muslim, “Maqsood,” went to a mosque in Newburgh and talked about violent jihad. His con was so obvious that the real Muslims there 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. (The FBI could have entrapped similarly frustrated young people in virtually any homeless outreach program or religious charitable organization in the country, and it is significant that it targeted only a mosque).

Maqsood offer 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, or cars, or driver’s licenses, or contacts, or weapons, or 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. The defendants clearly had no means 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 Air Force Base that Cromitie “would never try anything without the informant with him.”<sup>5</sup> The presiding judge has referred to the case as the “Un-terrorism case”, and has suspended the trial because of governmental failures to provide exculpatory material.

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. None-the-less, as part of its preemptive program, the government regularly employs Muslim criminals, like Maqsood, to entrap innocent Muslim in activities the government can claim are criminal.

### **The Fort Dix 5—Eljvir Duka, Dritan Duka, Shain Duka, Mohammed Shnewer and Serdar Tatar**

In January 2006, a store clerk in South Jersey, NJ 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 copy.

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 showed the young men jihadist videos, taunted the men on their lack of resolve to take action, and followed the young men around with hidden tapes to record every word spoken.

When the other youths were not present, one agent talked in general terms with one of the targets, Shnewer, about how one could theoretically attack Ft. Dix. In response to the agents repeated demands, another defendant, Tartar, gave the agent a map of Ft Dix which his father used to deliver pizza to the base. (Tartar thought that the Agent was suspicious and reported him to the local police who told him not to worry about it.) The agents 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 Ft. 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 Ft. Dix. The government claimed that the Ft. Dix 5 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 they knew nothing about the acts. The Dukas were responsible for Shnewer’s conversations with the agent about how to theoretically attach Ft. 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 Ft. Dix which Tartar had obtained from his father. They were eventually convicted and sentenced to life plus thirty years. (That is to say, their sentences will expire thirty years after they have died.)

The young men who became the Ft. Dix 5 were foreign-born, but they had grown up American and 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 the defendants were not terrorists, and had no intention of hurting anyone. They were men with families; people who love America; people who supported their communities. They had everything to lose and little, if anything, to gain by becoming involved in the FBI plot.

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<sup>5</sup> Fuller has been involved in a number of controversial cases including the detention and illegal rendering of Maher Arar to Syria where he was tortured for a year before it was decided that Arar was innocent. Fuller also was handling the Tarek Shah case when his agent provocateur bizarrely set fire to himself in front of the White House.



### The Miami 6 (Liberty City) Case

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 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 agent tried to persuade Batiste that Osama bin Laden wanted him to bomb FBI offices in several cities, and the agent persuaded seven men to take an oath to bin Laden. Shortly afterwards, one of the men left the group, and it fell apart without having made any plans to do anything.

The first two trials ended with hung juries; jurors refused to convict the six 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 Miami 6 of conspiracy. 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 big experiments with preemptive prosecution began when a store clerk reported to the FBI that Zawahiri, the Number 2 man in Al Qaeda, had visited a mosque in Lodi, California. This claim was preposterous and not true. 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 by then 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 in the family, Hamid Hayat, went on a trip to Pakistan to arrange his wedding and also to take care of his mother. While he was in Pakistan, the government agent kept calling him like a brother on the telephone, goading Hamid to join a training camp and take up jihad. Upon Hamid's return he was arrested, and after a grueling interrogation he confessed to having attended a training camp. Hamid's father, Umer, was also arrested and pressured into confessing to attending 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 for terrorists 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.

It is simply wrong for the government to allow one of its agents provocateur to follow someone around with a secret tape recorder for years, pretending to be the person's best friend and urging the person to commit crimes. This fits the classic definition of entrapment.

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

On December 1, 2001, the FBI directed one of its agents provocateurs to go Farhane's Islamic bookstore in New York City and say that he wanted to send some money to jihadist brothers overseas. Farhane refused the request but referred the FBI agent to Tarik Shah, a well known jazz bass player and martial arts teacher who had once played at President Clinton's inauguration. Shah did nothing, but the agent, Mohamed Alanssi, continued to try to get Shah to do something illegal for 3 years until the agent, in a bizarre twist, set himself on fire outside the White House. He had reportedly been paid \$100,000 for his work. (His FBI handler, Robert Fuller, was also in charge of the Newburgh case, and implicated in the rendition and torture of Maher Arar.)

The FBI then assigned another agent provocateur named Theodore Shelby 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 introduced Shah to another agent posing as an Al-Qaeda recruiter who offered Shah \$1,000 a week if he would agree to train jihadists in martial arts. Shah agreed and recruited a friend Dr. Rafiq Sabir to provide medical assistance to injured combatants. Shah was then arrested. After Shah was arrested he agreed to talk in a wiretapped conversation to a former martial arts student, Mahmud Faruq Brent, about Brent's attendance at a training camp.

When Shah became convinced that he could not receive a fair trial, he pleaded guilty and was sentenced to 15 years; Sabir was sentenced to 25 years; Farhane was sentenced to 13 years; Brent received 15 years for going abroad after 9/11 to train with an anti-Indian group.

## **The Detroit Ummah Case (Abdullah Luqman and 11 others)**

Imam Abdullah Luqman was the founder of the Detroit chapter of the "Ummah" (Islamic Community), whose national leader, Jamil Abdullah al-Amin (formerly H. Rap. Brown) is presently in jail for allegedly shooting a police officer to death. Imam Luqman's community was alternatively praised as being one of the most dynamic communities for improvement in Detroit, and condemned as supporting itself by crime. The FBI sent agents provocateur to infiltrate the Ummah and attempted to involve Imam Luqman and his community in the fencing of stolen merchandise.

On October 28, 2009 as part of the sting, the FBI tried to lure Imam Luqman into a warehouse supposedly containing stolen goods and surrounded everywhere by FBI agents. The FBI claimed that Imam Luqman opened fire after refusing to turn over his weapon, and that the FBI shot back causing the Imam to be hit with 20 bullets. However, it is reported that when Luqman was found, his hands were handcuffed behind him, indicating that either he was handcuffed before he was shot 20 times, or the agents handcuffed a dead or dying body. It is 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, this violent attack by the FBI on a Muslim has never been credibly explained by the authorities and reeks of cover-up. It was supposedly a sting involving stolen property and so there would have been no reason to ask Luqman to give up his weapon, or to shoot down the target 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"

11 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 would be 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 have to wait a long time for the truth to emerge.)

## **3. Material Support Charges and Guilt By Association**

Under US law it is a crime to provide "material support" to a designated terrorist organization (i.e. an organization listed by the government as "terrorist" for whatever reason). But what is "material support"? In Humanitarian Law Project v. Holder, the US Supreme Court held that even advice and assistance offered by peaceful organizations to help designated terrorist organizations give up terrorism would be "material support". 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 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 above). 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 charges persons "associated" with a genuine terrorist threat with material support, even when the associates have no apparent involvement in terrorism. They are convicted essentially of guilt by association.

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

Dr. Sami Al-Arian, the son of Palestinian refugees, lived in the United States since 1975 as a respected scholar at Florida State University. As a scholar 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. <sup>6</sup>

In 2001, the government began wiretapping Al-Arian and Fariz and in 2003 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). They were tried in 2005 – Hammoudeh and Ballut were completely acquitted, and Fariz and Al-Arian were mostly acquitted, with the jury deadlocked on a few minor counts.

Fariz eventually pled guilty in 2006 to having provided completely nonviolent services to members of PIJ – In 2000, he arranged for a magazine interview with PIJ associate Abd Al Aziz Awda; In 1995 he sent tapes to Shallah in Tampa, seven months before Shallah became PIJ leader in Syria; and, in 2001 and 2002, he raised money for book bags and an ambulance for needy Palestinians in the occupied territories. He was sentenced to 37 months in prison, sent to the CMU in Terre Haute, and was released in May, 2010.

Despite Al-Arian's acquittal on the most serious charges, the government continued to hold him, in jail for a retrial. In early 2006, in an effort to gain his freedom, Al-Arian agreed to plead guilty to a single count of "conspiracy" in exchange for his release and voluntary deportation. 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;
3. Would be released for time served, and the Justice Department would assist in his immediate voluntary deportation.

However, after the plea the government continued to hold Dr. Al-Arian, until another US Attorney in another state subpoenaed him to testify before a grand jury. Dr. Al-Arian refused, saying the plea bargain exempted him from "co-operation". (It was believed that the only reason the government wanted his testimony in another state was to charge him with Perjury there, so he could continue to be held in jail. See the Sabri Benkahlala case). Al-Arian was then charged with Contempt of Court for refusing to testify, and the defendant moved to dismiss the charges as violating his plea bargain. The Court has been considering its decision on the motion for over a year, while Al-Arian remains on bond under house arrest.

## **Syed Fahad Hashmi (freefahad.com)**

In on June 6, 2006, the government arrested Hashmi on material support charges claiming that in 2004 a bag of waterproof socks and raincoats which was delivered to a terrorist official by Junaid Babar, had been left for a few days in Hashmi's apartment in London. Mr. Babar had been arrested, pleaded guilty to Material Support charges, and received a reduced sentence in exchange for his cooperation. In tracing back the delivery of the clothing bag, the FBI learned that the bag had been stored in Hashmi's apartment in London for a short time. As a result Hashmi was charged with Material Support even though there apparently was no evidence that Hashmi was involved in terrorism, or knew that the bag of clothing was to go to a terrorist. Hashmi simply allowed an acquaintance to store a bag in his apartment for a week. After being extradited from London in 2007, Hashmi was detained under extremely harsh pre-trial conditions, essentially being held incommunicado. Realizing he would not get a fair trial, Hashmi pleaded guilty with the promise of a reduced prison sentence – he was sentenced to 15 years in June, 2010.

## **Ehsanul Islam "Shifa" Sadequee**

In the Toronto 18 case, described below, a group of young Muslim men in Canada attended several training camps and also engaged in considerable general internet discussions about Jihad and their obligations as Muslim men. The US government looked for US "associates" of the Toronto 18 and focused on Ehsanul Islam "Shifa" Sadequee, who was involved in these internet discussions, although no plans were formed to do anything illegal.

When Shifa took a trip to Dubai, the government searched his luggage and found a map of Washington DC. In addition Shifa had posted translations of Islamic documents and pictures of Washington landmarks on the internet. The government conceded that no terrorist plot was being discussed by Shifa. At best, the government claimed that Shifa was trying to get in contact with terrorists abroad. The government essentially decided that Shifa was in some way

<sup>6</sup> See [http://www.sptimes.com/2006/07/26/Tampabay/Al\\_Arian\\_associate\\_ge.shtml](http://www.sptimes.com/2006/07/26/Tampabay/Al_Arian_associate_ge.shtml)

“associated” with the Toronto 18, and then reinterpreted Shifa’s normal activities, like taking pictures of Washington DC landmarks, and traveling with a map of Washington DC in the luggage, as something sinister.

With respect to the Shifa case, the US attorney stated “We can’t wait until something happens, or until things get very close to happening. I think we all learned on Sept. 11, 2001 that we don’t wait anymore”. But surely we still have to wait for a crime to be committed before we convict people of crimes. In the Shifa case, like the other cases described here, no crime was committed; the government simply created a crime based on guilt by association.

### **The Tarek Mehanna Case (Tarek Mehanna, Ahmad Abousamra, Daniel Maldonado)**

Around 2000, Tarek Mehanna, Ahmad Abousamra, and another individual who eventually became an FBI informant, became best friends, and frequently discussed their common interests such as religion, the Muslim’s role in the US, and the justification for jihadist acts. After 9/11 the three friends talked about going to a training camp in Pakistan, but after Abousamra went abroad and was rejected at the only training camp he tried to join, the men give up for the moment on fighting overseas. They discussed making jihadist attacks in shopping malls in the US, but took no action and eventually decide to drop the plan. Eventually Mehanna tried to find a training camp in Yemen but he was not accepted there and he returned home. The group met Daniel Maldonado but he was unable to help them. Eventually Maldonado went to a training camp in Somalia where his group was attacked and he fled. Later he called Mehanna from Somalia to discuss his situation.

When the FBI asked Mehanna about Maldonado, Mehanna did not tell the FBI about the call from Maldonado. (Later Maldonado was arrested and convicted of attending a training camp in Somalia. He received a sentence of 10 years). Meanwhile, Mehanna translated works by various Afghani and Iraqi scholars on jihad, and posted them on his web site as well as poetry and other material relevant to radical Islamic thought.

On November 8, 2008, as Mehanna attempted to leave the US, he was arrested at Logan Airport in Boston and charged with lying to the FBI about the phone call from Maldonado. Later the indictment was expanded to include conspiracy to give material support to terrorism by translating radical Arabic writings into English and posting them on his blog. The indictment contains nothing about a conspiracy to shoot shoppers in a mall, although the FBI spread stories about this in the media.

## **4. Training Camp Cases**

Many Muslims have been given long prison sentences for attending training camps. There is of course nothing illegal about attending training camps. Paramilitary groups in the US with extreme ideological agendas ranging from white supremacists, anti-government ideologues, religious fanatics, and hate groups, regularly hold training camps in the woods to practice weapons training, and ideological indoctrination, and nobody bothers them because it is not illegal and is constitutionally protected free speech and the right to bear arms. The criminal line is crossed only where such groups conspire to commit a specific crime. Preemptive prosecution makes an exception for Muslims. Muslims are regularly targeted and convicted for attending training camps in the US even if no specific crime is ever discussed

There is also a long tradition of US 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 US was officially neutral. Merely going to training camps – or even fighting - abroad was not illegal as long as the Americans did not support official enemies of America. Again preemptive prosecution makes an exception for Muslims who are convicted merely for trying to join a training camp abroad even where 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 of course natural for Muslim US citizens to feel strongly about the conflicts abroad that involve their ancestral homeland 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 US. Romantic, idealistic and self-sacrificing young men are often those most attracted to defend such foreign ancestral homelands. (See: For Whom the Bell Tolls by Ernest Hemmingway). 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 US. The result is that young Muslim men who may not have any interest in violence after participating in a camp, may none-the-less be convicted of terrorism and incarcerated for long periods of time.

### **The Lackawanna Six (Mukhtar al-Bakri;Yahya Goba;Sahim Alwan; shafel Mossed; Fausa; Galab; Yassein Taher)**

In the spring of 2001, (before 9/11), six young men from Lackawanna, NY agreed to go to Afghanistan 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 that they received. They quickly returned to Lackawanna and spoke no more about it. None-the-less, they were arrested and eventually pleaded guilty to Material Support charges after they became convinced that they could not receive a fair trial, and after being threatened with being sent to Guantanamo as “enemy combatants”.

### **The Toronto 18 (Qayyum Abdul Jamal; Shareef Abdelhaleem; Steven Vikash Chand; Jamal James; Fahim Ahmad; Asad Ansasi; Ahmad Mustafa Ghany; Zakaria Amara; Saad Khalid; and a number of other minors or persons who 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 agent provocateurs sent in to help create some actionable crimes. The group spent a significant amount of time discussing philosophy and religious obligations on the internet, (although no criminal plots were discussed), and also 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 camp fires 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 is later liable, 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. US persons “associated” with the Toronto 18 were not so fortunate (See above, Ehsanul Sedequee )

### **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 US-lead 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, 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 US intervention in Afghanistan.

### **The Virginia Paintball Network (Sabri Benkahla; Ali Al-Timimi; Randall “Ishmael” Royer; Ali Asad Chandia; Yong Ki Kwon; Seifullah Chapman; Ibrahim Al-Hamdi; Mohammed Aatiue; Khwaga Hassan; Masaud Khan)**

As early as 1999 a group of about a dozen young Muslim men worshipping 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 – lead by two charismatic leaders 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 out into the woods to play paintball and showed them videos of carnage in Chechnya, Bosnia and Kashmir. Before 9/11, some of the young men went to fight with Lashkar-e-Taiba (LET) to recapture the boarder areas of Kashmir from India before LET was declared a foreign terrorist organization. Royer claimed that during this period of time before 9/11 he did not believe anything he did was illegal or that it would hurt America in any way.

After 9/11, Royer, Timimi, Kwon and some others went to Afghanistan to support the Taliban, but arrived after the Taliban had essentially 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 hurt the US. 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 3 years. Masaud Khan, who also traveled with them but was less involved, pleaded not guilty and was convicted. He was sentenced to life plus 45 years.

**- Ali Asad Chandia (Paintball Subcase)**

Chandia was a popular 3rd 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 terrorist organization. In early 2002, Khan came to visit the US and stayed for a short time with Chandia, after LET had been added to the foreign terrorist organization list. While he was Chandia's guest, Khan borrowed Chandia's cell phone and called people associated with his organization. Mr. Khan also borrowed Chandia's computer and ordered a shipment of paint balls. Mr. Chandia helped Mr. Khan pack the paint balls for shipment overseas. This was the extent of Chandia's involvement. He was convicted of material support and is now serving a long prison sentence.

**- 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 by the jury. 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 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 charges would have been 3 years, but the prosecutors were granted a terrorism enhancement because Benkahla's testimony concerned a terrorist organization. He was sentenced to 10 years in jail.

**The North Carolina Triangle Conspiracy (The Raleigh 7) – Daniel Patrick Boyd, Dylan Boyd, Zakariya “Zak” Boyd, Hysen Sherifi, Mohammad Omar Aly Hassan, Ziyad Yaghi, and Anes Subasic**

Between 1989 and 1992 Daniel Boyd allegedly received training in Afghanistan, and then moved to the “triangle” area of North Carolina with his wife and children. People in the community knew him well, and neighborhood children like Ziyad Yaghi played with his children until the Yaghi family moved away in 2006 and lost contact with the Boyd family.

Between 2006 and 2009 Boyd discussed with friends the situation in Bosnia where Muslim were being persecuted by the Serbs and expressed his desire to defend these vulnerable communities. Some three years later, the US government became concerned that Boyd had become too involved in discussions with a man in Kosovo, Bajram Asllani (akaEbu Hattab) about establishing an armed base in Kosovo from which to defend persecuted Muslims, and brought charges against him for conspiracy to commit terror, which are still pending. The charges included as defendants members of Boyd's family and others who had been involved in his discussions about protecting persecuted Muslims in Bosnia.

**- Ziyad Yaghi (Triangle subcase)**

Some 3 years after leaving North Carolina and Daniel Boyd's influence, Ziyad Yaghi traveled to Jordan to visit his relatives. The government apparently decided that Ziyad might previously have been “associated” with Boyd, and charged Ziyad with material support for terrorism, claiming that his visit to his relative in Jordan was part of Boyd's conspiracy to wage jihad abroad. Ziyad and his family deny that he had any contact or connection with Boyd or his plans; his trip was simply a trip to visit relatives. The case is now pending.

**Betim Kaziu**

In 2009, Betim Kaziu was arrested in Kosovo and accused by the US government of going abroad for the purpose of joining a training camp. Kaziu was alleged by the government to have tried to join an Al-Shabbab training camp in Egypt, and then to have tried without success to contact groups in Afghanistan, Iraq, and the Balkans. Kaziu's family said the allegations are nonsensical. Kaziu is a non-violent dedicated family man, who went abroad to study Arabic and visit family in Bosnia. This case is also pending.

## **The Portland 7 (Patrice Lumumba Ford; Jeffrey Leon Battle, Octobert Martinique Lewis; Muhammad Ibrahim Bilal; Ahmed Ibrahim Bilal; and 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 US in late 2001, and early 2002. In 2002 the group traveled to China, supposed with the purpose of entering Afghanistan and joining the Taliban. However they were turned back at the boarder and all but Al Saoub returned to the US. 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 left prison in 2009.

## **Mohammed Alessa and Carlos Almonte**

Mohamed Alessa and Carlos Almonte, were two young men from New Jersey who, after being infiltrated by an undercover NYPD officer, decided they would try to go to Somalia and somehow 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 the feds and state and local police) had the two under surveillance for four years, culminating in the big “take down” at JFK. The men were already 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, when the targets tried to board a plane, agents kept the targets surrounded at all times. Finally, they moved in and grabbed them. Meanwhile, another team of dozens of agents waited for the 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**

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

### **Dr. Aafia Siddiqui**

Dr. Aafia Siddiqui, 36 years old, a brilliant Pakistani doctor with degrees from MIT and Brandeis, left the US with her three young children on January 2, 2003 to visit her parents in Karachi, Pakistan, and on March 30, 2003, she and her children supposedly “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 the American government, and that she was held in secret custody at the US base at Bagram, Afghanistan, where she was tortured for years. Over the next 5 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 all the blood sucked out of her. Her face showed signs of severe beatings, including broken teeth and a twisted nose. Supposedly 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 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, Siddiqui was reportedly seen, apparently at liberty, outside the governor’s compound in Ghazni, Afghanistan with one of her children, and carrying with her a number of allegedly incriminating documents. She was arrested by Afghan police. The next day a group of armed American personnel came to the Afghan facility where Dr. Siddiqui and her son were being held to interrogate her. According to the US government, Dr. Siddiqui, standing unrestrained behind a curtain when the Americans entered the room, walked into the room, grabbed an American rifle, and shot twice at the Americans, missing both times. She was then shot by the Americans. She almost died from her injuries, was held in solitary confinement for many months. She was finally brought to trial in the US for attempted murder of the US soldiers.

At the trial the government presented confused, inconsistent, and conflicting accounts from the soldiers in the room as to what had happened, and showed a photograph of two bullet holes in the wall of the room, supposedly where Siddiqui’s errant shots had struck. The defense showed that there were no bullets in the holes, nor fragments of bullets or shell casings recovered from the room, nor were Siddiqui’s fingerprints on the gun, and a photograph of the room taken months before the incidents 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 obvious concocted to cover up their near murder of Siddiqui. None-the-less Siddiqui was convicted. The defense was not allowed to introduce evidence of her years of torture 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 other two children. She is awaiting sentencing.

Some months after Siddiqui's conviction, a young girl was brought forward as Siddiqui's second child. Supposedly, she had been living alone in a prison cell in Bagram for a long time, until a guard took pity on her and brought her to his home. DNA testing indicated that she was Siddiqui's daughter. The third child has not been found and is presumed to have died.



### **The New York City Landmarks Case (Sheikh Omar Abdel Rahman; Mohammed Saleh and 9 other defendants)**

In 1993, Sheikh Omar Abdel Rahman, (the “blind” Sheikh), and 11 other codefendants were charged with a Conspiracy to bomb New York City landmarks including two tunnels, the UN and the FBI headquarters. (Ironically the landmark conspiracy case did not include the World Trade Center, although the public often erroneously believes Rahman was convicted of plotting to bomb the World Trade Center). There was no doubt that Rahman was an outspoken critic of the corrupt secular government of Egypt and urged that it be overthrown. But Rahman denied that he inspired terrorism, or was leading any conspiracy in this country, and there was little evidence involving him in the Landmarks case.

In the Landmark's Case, the government paid one million dollars to a former associate of 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 involving a truck bomb directed at the UN so 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. Rahman and his co-defendants were eventually convicted and Rahman was sentenced to life in prison. The other defendants also received long prison sentences.

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

During the time Sheikh Rahman was incarcerated, he was placed under Special Administrative Measures (SAMs), which curtailed his ability to communicate with the outside world. All of his visits or other communications, including those with his lawyers, were monitored by the government. Lynne Stewart was one of Rahman's lawyers, Abdel 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 represent a client zealously. 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.

Rahman was a world respected scholar with followers in many countries and 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, and 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 to their clients in such situations.

Three years later the government indicted Stewart, Sattar and Yousry for Conspiracy and for violating the SAMs. They were convicted and Sattar was sentenced to 45 years in jail. Yousry was sentenced to 20 months, and Stewart to 28 months. The sentences reflected an unprecedented attack on the legal profession by the government that made it almost impossible to give zealous representation to clients in terrorist cases. After losing her appeal, Stewart was re-sentenced on July 15, 2010 (based on a government appeal of her sentence) and received 10 years – a much longer sentence.

### **Imam Warith Deen Umar**

Imam Umar was the first Muslim chaplain in the New York State prison system and eventually rose to be the head chaplain before retiring in 2000. In 2003 he was interviewed for Wall Street Journal article which, when it was published, to his surprise accused him without basis of being a radical cleric who supported the “9/11 martyrs”. He was vilified in the media and the US Congress and other Muslims were afraid to even associate with him.

Umar lived in a small community near Albany NY, but he also own an inherited apartment building in NY City where he went on occasion to deal with his tenants. On one occasion after the article was published, he was threatened by a prospective tenant. To scare the man off, Umar took out an old unloaded gun and waived it at him. Then Umar called the police. When the police arrived they arrested Umar for having an unlicensed gun. (The gun was legal upstate, and was brought into the City when it was legal to have one, but Umar had neglected in the meantime to have it registered in the City).

Shortly after Umar’s arrest, the NY City police and FBI ransacked his home near Albany, with his wife and children held hostage, and carted off boxes of computers, personal writings, passports and other personal items. He was charged with a federal felony because many years earlier as a young man he had been convicted of a weapons charge. The prosecutor asked for a long prison sentence. Eventually, under the prodding of a fair minded judge, Robert Patterson, the prosecutor agreed that the material seized from his home was irrelevant to the charges. Umar pleaded guilty to a simple gun charge and was sentenced to the minimum required sentence – 1 year incarceration, to be served at home.

After his sentence was served, the prosecutor refused to return the material taken from Umar’s home until Umar brought a law suit, and Judge Patterson directed that the seized material be returned. The case illustrates the importance of fair judges, and of the many ways that government’s preemptive prosecution program can attack Muslims when concerns are raised, even unfairly, about their “ideology”.

### **Ahmand Niazi**

In 2007, Ahmad Niazi reported to the FBI the suspicious behavior of a new Muslim convert at his mosque in Irvine California, Craig Montieilh. The new convert 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 Mr. Montieilh away from the mosque.

Later, FBI officials contacted Mr. 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 Mr. Niazi and charged him with perjury, fraud and false statements on his immigration papers. He was released on \$500,000 bail. The FBI has since identified Mr. Montieilh as a “government informant.” The Niazi case appears to be retaliation against a Muslim who refused to become an informant.

### **Kifah Jayyousi (Adham Hassoun, Jose Padilla)**

Kifah Jayyousi was tried (along with Adham Hassoun and Jose Padilla) in Florida in 2007, and was convicted of only three counts of material support for terrorism. Jayyousi was a well-respected engineer who had, similar to Arnaout, provided aid to Muslim fighters prior to 1998, when they were not opposed to the United States. Everything Jayyousi was convicted of having done occurred during that time period before 9/11, and was not directed against the United States. Nevertheless, Jayyousi was sentenced to 12 years, and is at the Terre Haute CMU.

Some Muslims, such as Enaam Arnaout and Kifah Jayyousi, were convicted for supporting Muslim fighters at times and places when the United States was supporting those same Muslim fighters. It is well known that the United States provided military aid and training in the 1980’s to the mujahideen fighters in Afghanistan, including Osama bin Laden, because they were fighting the Soviets. Then, in the 1990’s, the United States, as part of a United Nations 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 Slobodon Milosevic. So, even though Arnaout and Jayyousi financially supported the same people that the United States supported militarily, they were later targeted and prosecuted for these previously applauded actions.

### **Imam Ahmad Afzali (Najibullah Zazi)**

Born in Afghanistan but raised in Queens, New York, Ahmad Afzali was a well-respected imam who got in trouble for cooperating with the FBI. In September, 2009, New York City detectives approached him looking for information

about Najibullah Zazi, who was suspected of involvement in a terrorist plot. Because the police didn't tell Afzali why they were interested in Zazi, Afzali had no idea of the seriousness of the investigation. He told them he recognized Zazi from photographs but did not know him well. Afterward, he found Zazi's father's phone number, and eventually spoke to the younger Zazi, warning him he was being investigated, and telling him to stay out of trouble. When later confronted by the FBI, he at first did not disclose that he had spoken to Zazi. For that reason he was convicted of having made false statements to the FBI, and was deported to Saudi-Arabia

### **James Yee ( [http://en.wikipedia.org/wiki/James\\_Yee](http://en.wikipedia.org/wiki/James_Yee) )**

James Yee is a Chinese-American born and raised in New Jersey who graduated from West Point in 1990 and converted to Islam the following year. He was appointed to be chaplain to 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, including 76 days of solitary confinement. However, all charges were dropped in March, 2004, and Yee received an honorable discharge. In 2004, he wrote a book about his experiences, titled *For God and Country: Faith and Patriotism Under Fire*. He often speaks out about mistreatment of the detainees as well as his own situation.



April 5, 2010 — Marching in support of the Albany, NY Resolution asking for a special prosecutor to be appointed to investigate cases of preemptive prosecution of Muslims. *Photo by Daniel W. Van Riper, albanyweblog.com*