Special pamphlet

The New Criterion

Free speech in an age of jihad

Libel tourism, "hate speech" & political freedom

With essays by
Roger Kimball, 1; *Stanley Kurtz*, 5; *Robert Spencer*, 16;
Andrew C. McCarthy, 23; *& Mark Steyn*, 32

Responses from
Rachel Ehrenfeld, Brooke Goldstein, Ezra Levant,
Ibn Warraq, Steven Emerson, Frank J. Gaffney, Jr.,
Claudia Rosett, Robert H. Bork, Daniel Kornstein
& John J. Walsh

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The New Criterion *is pleased to offer readers this special pamphlet, free to subscribers, of a selection of essays on "Free Speech in an Age of Jihad."*

Earlier versions of these essays were presented at a conference on April 10, 2008 in New York. This pamphlet also contains edited highlights from the discussants' responses. The conference was organized by The New Criterion *along with the Foundation for Defense of Democracies, whose mission is to "fight terrorism and promote freedom through research, communications, education, and investigative journalism." Visit the Foundation for Defense of Democracies at www.defenddemocracy.org*

An unabridged audiocast of this conference is available for download at www.newcriterion.com/webcasts.cfm

—The Editors

The New Criterion

A special pamphlet

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Introduction: Free speech in an age of jihad

by Roger Kimball

The essays and reflections published below detail one of the most serious threats to freedom of expression since—well, I am not sure what date to pick. I was going to say "in a generation," but it might be more accurate to say since 1683, when the advance of Islam into Europe was decisively, if not quite finally, checked at the Battle of Vienna. No doubt some readers will think I am being hyperbolic. "One of the most serious threats to freedom of expression since 1683? Isn't that going a bit far?" I beg you to suspend judgment until after reading through this document. You may then conclude that I was speaking with my customary understatement.

The first essay, by Stanley Kurtz, introduces the subject of libel tourism. My informal studies have shown that 87 percent of the electorate responds "Libel what?" when first encountering the phrase. All I will say at the moment is that the phenomenon has nothing to do with vacation spots or travel agents, except in the derivative sense that those who are victims of libel tourism often wish to avail themselves of a travel agent's services.

Libel tourism is one face of a much larger phenomenon, of which efforts to suppress criticism of radical Islam (really, of Islam *tout court*, but we mustn't say that) is a prominent facet. Robert Spencer provides an overview of just how those efforts proceed, and Mark Steyn, in his keynote luncheon address, offers a report from the (Canadian) trenches. Finally, Andrew C. McCarthy offers some reflections on possible legal and legislative remedies to these threats.

"Jihad" isn't a word that enjoyed much currency in the West until after 9/11. Most people had heard the word, of course, but it belonged to that vast anthropological repository of atavisms—witch burning, cannibalism, public beheadings, and the like—that we believed belonged to the ugly childhood of some far away, barbaric culture—far away in time, most of us would have assumed, as well as geographically. But it was in the early twenty-first century that jihadists set the cameras rolling as they hacked off Daniel Pearl's head for the edification of their followers and as a warning to the rest of us.

"Free Speech in an Age of Jihad," a public symposium organized jointly by *The New Criterion* and The Foundation for Defense of Democracies, took place at the Princeton Club in New York City on April 10, 2008. Roger Kimball introduced the conference, and Stanley Kurtz, Andrew C. McCarthy, and Robert Spencer presented papers, edited versions of which appear below. Joining the presenters as moderators were Roger Kimball, Clifford D. May, and Jay Nordlinger. Discussants were Robert H. Bork, Rachel Ehrenfeld, Steven Emerson, Frank J. Gaffney, Jr., Brooke Goldstein, Daniel Kornstein, Ezra Levant, Claudia Rosett, John J. Walsh, and Ibn Warraq. Mark Steyn presented the luncheon keynote address.

If called upon to define "jihad," most would have said something like what my dictionary (copyright 1982) says: "A Moslem holy war against infidels." That is the practical or operational meaning of the term, and readers shouldn't allow themselves to be distracted by recent efforts on the part of the U.S. State Department and other well-meaning, naïve souls who caution us either to avoid the term "jihad" altogether or, if we insist upon using it, to redefine it as "a process of inner struggle and self-discovery" (first, hijack a jumbo jet . . .). But don't take my word for it. Listen to Omar Abdel Rahman, the "Blind Sheikh" who masterminded the first World Trade Center bombing in 1993. "Jihad," he insisted, "means fighting the enemies":

> There is no such thing as commerce, industry and science in jihad. This is calling things . . . other than by [their] own name. If God . . . says, "Do jihad," it means do jihad with the sword, with the cannon, with the grenades and with the missile. This is jihad. Jihad against God's enemies for God's cause and his word.

And what is the end, the goal, of jihad? What is the nature of "God's cause" to which Omar Abdel Rahman appeals? It is the institution of Sharia, of Islamic law—and not just in countries that are traditionally Islamic. Because, as Andrew C. McCarthy has noted, Islam "aspires to global hegemony," jihad ultimately aims to establish Sharia "throughout the world."

It is worth keeping these homely facts in mind. For the last few decades, American colleges and universities have been preaching the creed of multiculturalism and cultural relativism. Politicians, pundits, and the so-called cultural elite have assiduously absorbed the catechism. The chief tenet of the catechism is that all cultures are equally valuable and, therefore, that preferring one culture, intellectual heritage, or moral and social order to another is to be guilty of ethnocentrism and racism. It's actually not quite as egalitarian as it looks, however, for you soon realize that the doctrine of cultural relativism is always a *weighted* relativism: Preferring Western culture or intellectual heritage is culpable in a way that preferring other traditions is not.

The rise of multiculturalism in the West—and note well that it is almost exclusively a Western phenomenon—parallels dissolutions elsewhere in society. Only a few years ago we were invited to contemplate the pleasant spectacle of the "end of history" and the establishment of Western-style liberal democracy, attended by the handmaidens of prosperity and rising standards of health care and education, the world over.

Things look rather different now as the retribalization of the world proceeds apace. A variety of centrifugal forces threatens to undermine the sources of national identity and, with them, the sources of national strength and the security which that strength underwrites. The threat shows itself in many ways, from culpable complacency to the corrosive imperatives of "multiculturalism" and political correctness. The multiculturalists claim to be fostering a progressive cultural cosmopolitanism distinguished by superior sensitivity. In fact, they encourage an orgy of self-flagellating guilt as impotent as it is insatiable.

The crucial thing to understand is that, notwithstanding the emancipationist rhetoric that accompanies the term, "multiculturalism" is not about recognizing genuine cultural diversity or encouraging vibrant pluralism. It is about undermining the priority of Western values not only in our educational system but also in society at large. As the political scientist Samuel Huntington put it, multiculturalism is "anti-European civilization. . . . It is basically an anti-Western ideology."

It is in this sense that multiculturalism and political correctness have been critical intellectual and moral enablers for the agenda of radical Islam. Last summer, a Catholic bishop in the Netherlands suggested that people of all faiths refer to God as Allah in order to foster understanding and tolerance. "Allah," said Bishop Muskens, "is a very beautiful word for God." Not to be outdone,

the Archbishop of Canterbury recently advocated that Britain adopt certain aspects of Islamic Sharia law. This, said the Primate of All England, was "unavoidable" and would be an act of "constructive accommodation," which lexicographers tell me is Anglican for "craven capitulation." Meanwhile, Gordon Brown's government is on the verge of approving the issue of Sharia-compliant "Islamic bonds" in an effort to raise money from the Middle East to help pay for its public-spending program. The bonds, which are approved by Muslim clerics, eschew conventional interest payments because under Sharia charging interest is forbidden. The scheme, one English paper reported, "would mark one of the most significant economic advances of Sharia law in the non-Muslim world. It will lead to the ownership of Government buildings and other assets currently belonging to British taxpayers being switched wholesale to wealthy Middle-Eastern businessmen and banks."

It seems that everywhere one turns these days, we are warned against the evil of "Islamophobia" and cautioned against "offending Muslims." Let me pause to note that the word "Islamophobia" is a misnomer. A phobia describes an irrational fear, and it is axiomatic that fearing the effects of radical Islam is not irrational, but on the contrary very well founded indeed. If you want to speak of a legitimate phobia—it's a phobia I experience frequently—we should speak instead of Islamophobiaphobia, the fear of and revulsion towards Islamophobia.

As for "offending Muslims," the list of the things Muslims are offended by is long and growing daily. They don't like ice-cream that was distributed by Burger King because a decoration on the lid looks like the Arabic script for "Allah." The script is now gone. They are offended by—and I quote from an English paper—"pig-related items, including toys, porcelain figures, calendars and even a tissue box featuring Winnie the Pooh and Piglet" appearing in the workplace. Say goodbye to Piglet.

The result is a preemptive cringe—a sudden upsurge of that famous "chilling effect" that you are always hearing about but are now, at last, seeing in action. We hesitate to publish cartoons of Mohammed "for fear of offending Muslims." We mustn't publish articles pointing out the demographic disparity between the Muslims of Canada and Europe and other parts of the population "for fear of offending Muslims." We mustn't even publish books saying critical things about "Saudis and terrorists" "for fear of offending Muslims." My current favorite item in this lexicon of capitulation is the decision by Gordon Brown's government in England to rename Islamic terrorism "anti-Islamic activity" in order to "woo Muslims."

This "Let's Not Be Beastly to the Muslims" gambit reminds us that jihad comes in a variety of textures. Today, perhaps the most worrisome aspect of jihad is not the murderous "hard" variety, but the "softer" more insinuating varieties. Traditional jihad is waged with scimitars and their contemporary equivalents, e.g., stolen Boeing 767s, which make handy instruments of mass homicide. Soft jihad is a quieter affair: it uses and abuses the language and the principles of democratic liberalism not to secure the institutions and attitudes that make freedom possible but, on the contrary, to undermine that freedom and pave the way for theocratic intolerance. On April 9, just a day before our conference, Richard Warman, a former member of Canada's infamous Human Rights Commission, and the chap who might well be the most successful litigant in Canadian history, sued a long list of conservative Canadian bloggers as part of his effort to "tame" the internet and expunge opinions, prominently opinions critical of radical Islam, that he doesn't like.

Soft jihad is patient. It comprehends the importance of demographic trends as well as Mark Steyn does. It, too, sees the demographic writing on the wall and is content to wait a few years to occupy the West's real estate—it's so much easier, when you come right down to it, than blowing the stuff up and then finding yourself with a massive clean-up and rebuilding bill.

Even as some Westerners are beginning to wake up to the progress of soft jihad and "Sharia creep," it is worth noting that radical Islam continues to make conspicuous strides in coopting Western institutions and legal instruments to undermine the reality of Western liberty. A Turkish lawyer finds that the white jerseys with a bold red cross of an Italian football team remind him of the Crusades and so he sues the team for wearing shirts that are "offensive to Muslim sensibilities." This spring, the Associated Press reported on the summit meeting of the Organization of the Islamic Conference in Senegal. "Leaders of the world's Muslim nations," the report informs us, "are considering taking legal action against those that slight their religion or its sacred symbols." Quoth Abdoulaye Wade, Senegal's president, "I don't think freedom of expression should mean freedom from blasphemy. There can be no freedom without limits."

Of course, there is a sense in which President Wade is correct. There can be no freedom without limits. James Madison or John Locke might have said something similar—but with very different intent. The alarming thing is the way President Wade latches on the rhetoric of classical liberalism not to support the values of liberalism but to undermine them. If a Danish paper publishes a caricature of Mohammed, should Denmark, or the paper, or the cartoonist responsible be liable to an offended Muslim in Senegal?

The critical thing to bear in mind is this: one of the features of living in a modern, secular democracy is that there is always plenty of offense to go around. That's part of the give-and-take of a modern democratic society. Another word for the prerogative of offense is freedom. Prohibit the offense and you kill the freedom. No Muslim is more offended by cartoons of his Prophet than I am by their barbaric reaction to the cartoons. But their first reaction when offended is to torch an embassy, shoot a nun, or knife a filmmaker. Increasingly, they sue a individual, and institution, or even a country.

The large issue here is one that has bedeviled liberal societies ever since there *were* liberal societies: namely, that in attempting to create the maximally tolerant society, we also give scope to those who would prefer to create the maximally intolerant society. It is a curious phenomenon. Liberalism implies openness to other points of view, even those points of view whose success would destroy liberalism. Extending tolerance to those points of view is a prescription for suicide. But intolerance betrays the fundamental premise of liberalism, namely, openness.

The escape from this disease of liberalism lies in understanding that "tolerance" and "openness" must be limited by positive values if they are not to be vacuous. American democracy, for example, affords its citizens great latitude, but great latitude is not synonymous with the proposition that "anything goes." Our society, like every society, is founded on particular positive values—the rule of law, for example, respect for the individual, religious freedom, the separation of church and state.

The imperatives of multiculturalism and political correctness have hindered us from defending or even understanding those values. Radical Islam has taken advantage of the resulting vacuum. My point is that the "openness" that liberal society rightly cherishes is not a vacuous openness to all points of view. It is not "value-neutral." It need not, indeed it cannot, say Yes to all comers, to the Islamofascist who after all has his point of view, just as much as the soccer mom, who has hers. Western democratic society is rooted in a particular vision of what Aristotle called "the good for man." The question is: Do we, as a society, still have confidence in the animating values of that vision? Do we possess the requisite will to defend them? Or was the French philosopher Jean-François Revel right when he said that "Democratic civilization is the first in history to blame itself because another power is trying to destroy it"? It was part of the purpose of this conference to bring such questions into sharper focus.

Not without a fight

by Stanley Kurtz

It's been less than a year since the phenomenon of "libel tourism" first broke into public consciousness in the United States. On August 10, 2007, *The Chronicle of Higher Education* reported that Britain's Cambridge University Press had agreed to pulp all unsold copies of the 2006 book *Alms for Jihad: Charity and Terrorism in the Islamic World*.

In several passages, embedded in a much broader study, *Alms for Jihad* suggests that businesses and charities associated with one of the world's richest men, the Saudi banker Khalid bin Mahfouz, helped to finance terrorism during the 1990s. Bin Mahfouz's threat of a libel suit in Britain was sufficient to extract from Cambridge University Press not only an agreement to pulp the book, but also a public apology, payment of substantial damages, legal fees, and a pledge to contact libraries worldwide with a request that they remove *Alms for Jihad* from their shelves.

In the face of this legal challenge, *Alms for Jihad*'s American authors, the academic historian Robert O. Collins and J. Millard Burr, a retired employee of the U.S. State Department, stood by their work, offered evidence in support of their book's assertions to Cambridge, and refused to join in the press's apology. Indeed the manuscript of *Alms for Jihad* had been vetted and approved by Cambridge's in-house lawyers prior to publication. Yet the mere threat of a suit in a British court was enough to push this publisher to abandon *Alms for Jihad* without a fight.

The specter of an American-authored book on terrorist financing being physically destroyed, its copies pulled off of library shelves, its authors' defenses ignored, and obsequious apologies offered—all because of the mere threat of a suit in British courts—had American bloggers (myself included) in full cry. Alarm grew as readers flooded onto the Amazon.com, barnesandnoble.com, Alibris and other internet book sites trying to secure copies of *Alms for Jihad*. In real-time full-virtual-view of the blogosphere, the book was withdrawn from sale on all these sites and more. As outrage grew, the price of this instantaneously rare book rose astronomically.

The battlefield now shifted to the libraries. This was only the second time in nearly a quarter-century that Cambridge University Press had called on libraries to remove a book from their shelves. Would America's institutions of higher learning bow to Cambridge and withdraw *Alms for Jihad*? Rather than wait to find out, readers rushed to save the book from destruction by borrowing and holding it—perhaps even surreptitiously reproducing and circulating it. Numerous libraries reported missing copies, while others placed the book either behind the reserve desk or in rare-book collections.

Finally, on August 14, 2007, four days after the public controversy broke, the Of-

fice for Intellectual Freedom of the American Library Association issued a statement recommending that libraries refuse Cambridge's request and keep the book available. The ALA statement noted the stark difference between libel law in Britain, where the burden of proof is on the accused, and America, where the burden falls on the plaintiff. Given claims by many that bin Mahfouz was attempting to use Britain's plaintiff-friendly libel laws to silence critics, and given the fact that American libraries were under no legal obligation to destroy *Alms for Jihad* without an order from an American court, the ALA argued that "intense interest in the book, and the desire of readers to learn about the controversy first hand" ought to hold sway.

Although existing library copies had been saved, the *Alms* affair felt to many like a true-life scene from Ray Bradbury's dystopian novel *Fahrenheit 451*. The hero of this 1951 classic was a professional book-burner in a future where literature had been banned. Fahrenheit 451 is the kindling temperature of paper—the temperature at which a book will autoignite—essential information for professional book-burners everywhere, and perhaps nowadays for select Gulf-based financiers and British judges as well.

If the *Alms for Jihad* mini-scandal were an isolated case, its resonance with Bradbury's novel might be dismissed as a mere curiosity. In fact, however, this seemingly bizarre case of pulped non-fiction turned out to be the spark igniting public awareness of a far more pervasive problem. Not one book, but possibly as many as thirty-six books containing passing mentions of bin Mahfouz's financial activities, have been suppressed by the threat or reality of British libel suits. More important, the chilling effect of these suits has rendered publishers worldwide reluctant to accept material that touches upon terror-network financing. To see how a "touring" Saudi banker, suing American authors and publishers in a British court, has sent a chill over book publishers and news organizations worldwide, we'll need to consider the case of libel tourism's most famous victim: Rachel Ehrenfeld.

A sometime advisor to the U.S. Department of Defense, Ehrenfeld serves as the director of the New York-based American Center for Democracy. Since before 9/11, she's been a pioneering investigator of the shadowy financial networks that are terrorism's hidden lifeblood. Ehrenfeld's 2003 book, *Funding Evil*, reported that the Saudi billionaire Khalid bin Mahfouz was tied to charities that deposited tens of millions of dollars into terrorist bank accounts. This is the same bin Mahfouz whose threatened libel suit led to the pulping of *Alms for Jihad*. As in that and many similar cases, bin Mahfouz took Ehrenfeld to court in Britain, where libel laws are highly favorable to plaintiffs.

How could a resident of Saudi Arabia bring a British libel suit to bear on a book published in America? A few dozen copies of *Funding Evil* sold in Britain over the internet were deemed sufficient by a British court to claim jurisdiction. With these few sales, a book published in the United States, and therefore protected by the First Amendment and American law, fell under a shadow from abroad. By American legal standards, Ehrenfeld's allegations regarding bin Mahfouz were fully and properly sourced from reputable journals, magazines, lawsuits, government documents, and Ehrenfeld's personal contacts with government officials. The former CIA director R. James Woolsey wrote the introduction to *Alms for Jihad*. The Saudi financier was in any case discussed on only a handful of pages in Ehrenfeld's book. Now, however, without financial resources of her own, Ehrenfeld faced an extended legal battle with one of the richest men in the world—under a law that effectively presumed her guilt.

In response, Ehrenfeld refused to contest bin Mahfouz's suit and instead boldly denied British jurisdiction over a strictly American-published book. To drive home the point, the second edition of Ehrenfeld's contested volume included a discussion of the bin Mahfouz lawsuit and jacket copy

advertising *Funding Evil* as: "The book the Saudis don't want you to read." None-too-pleased with Ehrenfeld's defiance, British Justice David Eady—the presiding judge in the majority of notorious libel-tourism cases—ordered Ehrenfeld to apologize to bin Mahfouz, retract, pay hundreds of thousands of dollars in damages, and destroy all copies of her book.

Although Ehrenfeld refused to comply, this British judgment has cost her dearly. A frequent traveler to London for research purposes, Ehrenfeld must now avoid Great Britain for fear of arrest. Although the sourcing of *Funding Evil* is entirely unobjectionable by American standards, Ehrenfeld now stands stigmatized—convicted of libel. Even in America, knowing that a few internet purchases could bring a new book under attack overseas, publishers now shun her work. One of Ehrenfeld's key sources of income—not to mention one of America's key sources of life-saving information on terrorist infrastructure—is now cut off.

Worse still, any American author or news outlet interested in exposing terror-finance networks must now fear a British suit. So-called "libel chill" has descended upon a field of investigation essential to the war on terror, and likely suppresses publications on related topics as well.

By cleverly refraining from seeking to enforce his decision against Ehrenfeld in American courts, where he would almost surely fail, bin Mahfouz has effectively paralyzed an entire sub-field of American authors. Even without a direct legal attack in American courts, the stigma of a British libel judgment and the threat of more such judgments against any American publisher with a presence on the internet or overseas suffices to silence opponents. In effect, the internet-driven internationalization of publishing is nullifying America's First Amendment protections, and subjecting the world's authors to the standards of the weakest link in the international legal chain.

Fortunately, Ehrenfeld is fighting back. Although the case has saddled her with hundreds of thousands of dollars in legal fees and severely inhibited her own work, Ehrenfeld has gone to war with bin Mahfouz in American courts, seeking a ruling that English libel judgments violate the First Amendment and are therefore void in the United States. Although several courts have declined to rule on the underlying issues for lack of jurisdiction, New York's Court of Appeals referred the issue to the state legislature for resolution. And in fact, a mere ten days before the convening of this conference, the New York state legislature passed the Libel Terrorism Protection Act, otherwise known as "Rachel's Law," with the purpose of protecting American authors, news organizations, and publishers from being terrorized by the threat of foreign defamation law suits.

A notable feature of Rachel's Law was bipartisan sponsorship of the bill, unanimous votes for passage, and support from a wide array of organizations representing American writers, news outlets, and publishers. With luck, Rachel's Law will serve as the model for a similar—perhaps even tougher—federal law.

Unfortunately, the libel tourism battle is not yet won, and in fact will not be fully won, even if a badly needed national version of Rachel's Law finally passes. Indeed, libel tourism itself is only one aspect of a growing assault on freedom of speech occasioned by the war on terror and the growth of Muslim immigrant populations throughout the West, a significant portion of which have not yet adopted Western mores of liberty.

This point was driven home four months after the *Alms for Jihad* affair, in December of 2007, when an article in *Maclean's*, Canada's most widely read news magazine, by Mark Steyn, a Canadian writer living in America, became the object of complaints filed by the Canadian Islamic Congress (CIC) before several of Canada's Human Rights Commissions. Dubbed "columnist to the world," because his opinion pieces are published and widely followed in nearly every corner of the English-speaking world, Steyn had run an

excerpt from his bestselling book, *America Alone*, in *Maclean's*. Steyn's concerns about the cultural impact of large and relatively unassimilated Muslim immigrant populations on the West (Steyn's article was as much a critique of the West's loss of cultural confidence as of failed immigrant assimilation) did not sit well with the CIC.

Canada's Human Rights Commissions (HRCs) had been founded in the 1970s to deal with cases of job and housing discrimination. Yet a provision similar to Europe's hate-speech laws soon permitted these commissions to hear cases involving speech "likely to expose a person or persons to hatred or contempt." Free speech advocates have long opposed HRC attacks on speech, which extended even to imposing penalties on traditional Christians for upholding their own views on homosexuality. Yet the activities of these commissions were largely ignored until the dramatic advent of the Steyn case—wherein Canada's leading magazine came under legal assault for excerpting a book by a bestselling Canadian author.

I don't think it's too strong to say that the CIC's Human Rights Commission complaint against Mark Steyn is a totalitarian document. If the complaint carries—or is even partially vindicated—public discourse in Canada on the war on terror, Muslim immigration, and related topics will be transformed out of all recognition. It is as if, instead of simply rebutting or railing against conservatives and Republicans, liberal Democrats in the United States went to the Supreme Court and had the right side of the blogosphere and nearly all conservative opinion magazines placed into receivership. It is evident that the complainants are aware of this ambition. They announce their determination to reshape fundamentally a kind of journalism "that has become increasingly pervasive in Canada in the last few years." Read closely, the CIC's complaint is not really levied against any particular factual claim or rhetorical move. It is instead a request that vast sections of heretofore legitimate reporting and opinion journalism be banned.

Even a failed complaint would have a chilling effect on public discourse. Complaints accepted by Canada's HRCs are investigated and prosecuted free of charge to plaintiffs, while the accused must foot huge legal bills. The mere threat of the spectacle and its cost suffices to shut down debate on controversial issues, especially for outlets and commentators less prominent that Steyn and *Maclean's*.

Is this simply a Canadian affair—an artifact of Euro-style hate-speech laws with little relevance for Americans protected by the First Amendment? No, it is not. The assault on Steyn and *Maclean's* bears on American concerns in several ways. Steyn's work for foreign newspapers is immensely popular in America, transmitted across borders instantaneously by the internet. An attack on Steyn in Canada is thus effectively an attack on Steyn in America as well.

And while it's true that neither Canadian Human Rights Commissions nor British libel laws have direct counterparts in the United States, there are already glimmerings of parallels. Jeffrey Breinholt, a former Deputy Chief of the Counterterrorism Section at the U.S. Department of Justice, has compiled a long list of libel lawsuits by American Muslims and Muslim organizations against newspapers, magazines, public figures, internet chatrooms, etc. for their allegedly negative portrayals of Muslims or Islam. Although nearly every case pursued to its legal conclusion is eventually dismissed in favor of the defendants, the prohibitively expensive legal fees mean that settlement is sometimes the best option. Breinholt emphasizes that known cases may be merely the tip of the iceberg, with many more instances of quiet settlement or self-censorship likely. So even without a direct counterpart to Canada's Human Rights Commissions, and even with defendant-friendly law, libel litigation in American courts is being used to chill public debate.

Meanwhile, so-called "bias reporting systems," often inviting anonymous accusations, are being set up at many American

colleges and universities. Like Canada's HRCs, these bias reporting systems were initially established to police speech on questions of race or sexual orientation, yet are easily capable of being turned to suppress speech bearing on the war on terror or Muslim immigration. In effect, a rough equivalent of Canada's HRCs is already present on many American university campuses, and may in time spread to America at large.

The initial response to the Canadian HRC suit against Steyn and *Maclean's* was not particularly encouraging. True, there were a number of powerful opinion pieces from Canadian conservatives voicing outrage over the complaint and profound concern about the very existence of a parallel institution divorced from the protections of Canadian law and dedicated to the policing of public speech. It's also true that the same set of largely conservative and libertarian American bloggers that sounded the alarm on the *Alms for Jihad* scandal was again in full cry over the assault on Steyn, and this did not go unnoticed in Canada. Nonetheless, in the absence of concerns expressed by liberal and left-leaning Canadians committed to a classically liberal view of free speech, Canada looked set to accede to its HRCs and effectively shut down public debate on the war on terror and the cultural challenges posed by Muslim immigration.

The tide began to turn about a month after Steyn and *Maclean's* were accused. Ezra Levant, a blogger and former publisher of Canada's *Western Standard*, was hauled before a Human Rights Commission in January of 2008 for the supposed hate-crime of reprinting the Danish cartoon caricatures of Mohammed. Levant managed to videotape his interrogation, and the spectacle of a journalist being interrogated by a bureaucrat for his supposed thought-crimes became an instant hit on the internet. Once again, dystopian science fiction seemed to spring to life, as the slippery slope from hate-speech legislation to the suppression of fundamental political debate played out for all to see on the worldwide web.

Three months later, the case against Steyn and *Maclean's* remains unresolved, yet political momentum in Canada has clearly shifted against the HRCs. Levant's tireless exposure of HRC abuses on his weblog has brought the sordid truth about these speech suppression mechanisms to light. It turns out that, to date, no speech defendant has ever been acquitted of a case brought before a Canadian HRC. These commissions effectively act simultaneously as investigator, lawyer, and judge, and the 100 percent conviction rate means that, as in British libel cases, we are looking at de facto presumption of guilt.

Some Canadian officials now receive more mail protesting HRC abuse than on any other issue. Alan Borovoy, a prominent Canadian civil liberties advocate who helped establish the HRCs, has turned against them, declaring the hate speech laws now supervised by HRCs as fundamentally at odds with their original charter and intention. When a Liberal Canadian MP named Keith Martin finally joined the fray and offered a motion to abolish Canada's notorious hate-speech statute, a dam seemed to break. All of a sudden, civil libertarian liberals in Canada began to line up against the HRCs. Popular television comedians lampooned them—a death knell if ever there was one.

Already on the run, Canada's speech policing Human Rights Commissions faced their most disastrous embarrassment less than two weeks ago, when, after considerable resistance, their own investigators were put on the stand and forced to reveal their methods. It turns out that investigators were acting as internet *agents provocateurs*, logging onto websites under assumed names and leaving hateful comments designed to provoke incriminating agreement from their targets. To operate this deception, investigators assumed the identities of innocent citizens, totally unaware that their internet connections and identities had been commandeered for this purpose. The ugly, totalitarian feel of these revelations has deeply damaged the reputation of Canada's

Human Rights Commissions, and fundamental reform or abolition now seems a very real possibility.

So the eight months from August 10, 2007 through April 10, 2008 have seen a growing wave of concern in North America about novel threats to freedom of the press and freedom of speech—often internet-based and international in scope. How should we understand these emerging threats to freedom of speech and opinion? What elements unite them? And how can they best be overcome?

To begin to answer these questions, consider the very thoughtful but finally, I would argue, wrong-headed approach to the Ehrenfeld case, by the novelist and First Amendment lawyer Julie Hilden. Hilden sees the Ehrenfeld affair as a "clash of cultures." America, says Hilden, values speech and openness, while Britain so values reputation and privacy that it "errs in favor of what is, in effect, government censorship" by the courts. Although Hilden favors U.S. libel law on its merits, she is loathe to create "yet another instance of America imposing its way upon the world." So instead of pushing for libel reform in Britain, Hilden suggests that the United States and Britain sign a "defamation treaty," which would define the circumstance in which each country would surrender jurisdiction to the greater interest of the other in any particular case.

This bit of legal multiculturalism, I would suggest, is precisely the wrong way to look at the problem we face. There may well be cases where long-standing, profound, and deeply rooted cultural differences make it difficult to adopt uniform policies across international borders, but the foundational freedom of speech, press, and opinion in the West is not one of them. The West shares a long and deep tradition of rights-based political freedom, as well as a common legal culture that treats defendants as innocent until proven guilty. We discard these principles and protections at our peril, and peril is exactly what we face today. Whether our traditions of freedom have been traduced by nineteenth-century British libel laws or 1970s-vintage hate-speech laws, it's long past time for Europe and North America to return to first principles.

Ill-advised libel laws that trade our liberties for the convenience of criticism-averse politicians and minorities are a luxury the West simply cannot afford. We are no longer peering anxiously over the slippery slope—we are careening headlong straight down it. The fundamental reason that our liberties have survived their negation in libel laws that effectively treat defendants as guilty, or Human Rights Commissions empowered to police and suppress the expression of political opinion, is that we in the West do in fact share a profound faith in liberty.

If we occasionally traduce our own freedoms with ill-advised laws, yet survive, this is only because our underlying culture of freedom ultimately moderates and controls the operation of these laws. And so it is that the arrival in the West of large populations from Middle Eastern societies, where a culture of liberty cannot be taken for granted, seizes upon our most ill-conceived laws—shamelessly exploiting every hole in our liberty that we have been so foolishly complacent as to allow.

Citizens well-schooled in liberty, whether immigrant or native-born, would blush to bring suit against the mere expression of political opinion, however offensive. In the hands of those without such schooling, our imperfect laws have been turned into tools for the suppression of speech. The cultural challenge posed by immigration from outside the West is rapidly forcing every slippery slope. Our margin for error is lost, and the time for complacency is over.

Julie Hilden is right about one thing, however. Not only the cultural challenge of immigration, but the globalizing power of the internet is forcing these issues. Hilden points out that reputation is rapidly becoming a global affair. If it is unfair to allow British libel law to negate the First Amend-

ment for Americans, the passage of a national Rachel's Law combined with the power of the internet would inevitably subject personal reputation outside of the United States to American free speech standards.

To my mind, this does not suggest the need for defamation treaties, the operation of which will in any case be disputed, and inevitably end up trampling on one country or another's laws and mores. What the internationalization of reputation suggests instead is that laws of speech and libel worldwide are now up for grabs. On the matter of speech, the internet will inevitably push the world either toward a chaos of competing laws and norms, or force a gradual uniformity, which will be closer to the pole of liberty or the pole of restriction, depending on how we act now. What's needed, therefore, is a common front on behalf of liberty throughout the West—a coalition that will fight to abolish abominations to freedom such as Canada's Human Rights Commissions, Britain's libel laws, and America's campus bias reporting systems.

It is simply not the case that we are dealing with stable national traditions, or a strictly American belief in classic liberal principle. On the contrary, speech and libel laws throughout the West are very much in motion, and powerful voices in every Western country speak both for and against freedom, as classically understood. Many Americans, sadly, defend and promote the de facto speech laws embodied in campus bias reporting systems, but increasing numbers of Canadians speak out against so-called Human Rights Commissions, and growing numbers of Britons call for a reform of outdated libel laws. This is not America against the world, but the West in search of itself.

Let's bust some myths. It's certainly true that Canada's Human Rights Commissions (like Europe's hate-speech laws) are wielded chiefly by minorities, immigrants, and those on the left against Christians and those who lean right—a fact that points to their status as illegitimate and illiberal weapons of political-cultural warfare. Yet left-liberals are far from untouched by the new assault on speech. Craig Unger's *House of Bush, House of Saud*, an American bestseller, and a book beloved of Bush opponents during the 2004 presidential election, was banned in Britain under the same libel laws that suppress Rachel Ehrenfeld. Ruling against another British libel decision, the European Court of Human Rights declared that free speech rights of anti-corporate protesters had been violated when they were forbidden to hand out leaflets against what they believed to be economic, ecological, and humanitarian malpractices by McDonald's Restaurants. With McDonald's deep pockets and an effective presumption of guilt, it was impossible for these protesters' allegations to pass muster in British court. Here, in an attack on the left of the political spectrum, lies a slippery slope from British libel law to the end of political freedom. To call this banning of anti-McDonald's leafleting a product of British culture is an offense to the liberties of us all, born as they were in Britain, our mother country.

The only long-standing cultural tradition at stake in this battle is our tradition of freedom. For the most part, the laws in question are of comparatively recent vintage. Even America's expanded libel protections in the wake of the *New York Times v. Sullivan* case are mere decades old, and still evolving. Canada's Human Rights Commissions are likewise but decades old—young enough for one of their founders to have spoken out against what they have become. Britain's libel law is also very much in motion. The so-called "Reynolds defense," which expands speech protection in libel cases for responsible journalism in the public interest, is less than fifteen years old. Even now, the same Mr. Justice Eady who has rendered notorious decisions in the Ehrenfeld and *Alms for Jihad* cases is working to pare the Reynolds protections back. And only last week we saw calls in Australia to shift the burden of proof in hate-speech cases onto the defendant. We are not talking about well-established and divergent na-

tional traditions but a war within the West both for and against liberty, as classically understood.

Libel and speech laws in the West are even now in a highly contested state of rapid change. Immigration, globalization, and the internet have thrown every assumption and settled pattern into doubt. Our business today is not to compromise with incursions on our liberty but to battle alongside allies in every nation and continent to protect our freedoms before they are fatally eroded.

In truth, a national "Rachel's Law" is the barest beginning of what is needed. Canada must abolish or reform its Human Rights Commissions, and a major reform of British libel law and European Holocaust denial and hate speech laws must follow. An impossible goal? I don't believe so. Only a few months ago, the notion that Canada might abolish or radically reform its Human Rights Commissions would have seemed laughable. Today it is a likelihood.

If globalization and the internet have raised novel challenges to our freedoms, these forces hold salvation as well. Ezra Levant's internet videos rocked Canada and have made the impossible possible. Support for Levant, Steyn, and *Maclean's* from American bloggers helped kick-start a campaign that Canadians themselves have now expanded many times over. Every time another house of the New York state legislature passes a version of Rachel's Law, British papers wake up and take notice.

British news outlets on the Left as well as the Right have felt stung by Mr. Justice Eady's decisions. Stephen Glover in the *Independent* has publicly attacked Mr. Justice Eady as "a threat to a free press," and Geoffrey Wheatcroft in the far-from-conservative *Guardian* recently called for a fundamental overhaul of Britain's libel laws. Rachel's Law itself was cosponsored by legislators of both parties and passed both houses of the New York state legislature unanimously. The basis for a great cross-party coalition to restore and protect the West's political liberties exists today across the Anglosphere, and in Europe as well. It's up to us to activate it now.

Simply erecting a free-speech wall around America will not do. Even the essential first step of a national Rachel's Law won't restore Cambridge University Press as a resource for American authors who have long depended on this key outlet for their work. Nor will a national Rachel's Law allow Ehrenfeld to disembark at Heathrow without fearing arrest. And the silencing of American terrorism experts undermines the already gravely imperiled special relationship between America and Britain, which cannot sustain itself without an exchange of information, especially on this most crucial and controversial topic of the terror war.

Our immediate goals are a national Rachel's Law in the United States and fundamental reform—or better, abolition—of Canada's so-called Human Rights Commissions. Although far from guaranteed, both achievements are in sight. So it's time to set our sights on target number three—reform of Britain's libel laws. If American bloggers and legislators have added momentum to reform movements in Canada and Britain, the effect of even partial victory over Canada's Human Rights Commissions would be far greater. With the Canadian battle already attracting notice in Britain, victory in Canada could potentially wake up all of Europe to the dangers of its ill-starred hate-speech regimes.

Why not hold a conference in London, perhaps a year from now, to review the progress of Rachel's Law in America, the HRC battle in Canada, and to press for libel and hate-speech reform in Britain and beyond? Such a conference could draw substantial attention. The Canadian battle is our model. Although the mainstream American press has inexcusably ignored the Ehrenfeld battle, Canada's mainstream media has finally caught on to the problem of the Human Rights Commissions. All it took was for a prominent man of good will on the Left to speak out on behalf of classic liberal values. Then the dam burst.

It will not be difficult to find such figures in Britain. The press on both the Right and Left is already restless with Britain's libel regime. The real interest defending these laws are the very politicians who would need to authorize reform—since Britain's officialdom views the current libel regime as a kind of personal protection from public criticism. An international conference in London, perhaps following victory in Canada, would shift momentum in favor of reform in Britain. Imagine Rachel Ehrenfeld addressing the conference by video, as she would need to do in order to avoid arrest. That would be a first-class news event, generating significant media coverage in Britain and beyond.

So there is a battle plan. Rachel's Law today, Canada's Human Rights Commissions tomorrow, Britain's libel laws the day after, and Europe's Holocaust denial and hate-speech laws after that. We can turn the tide on each of these issues, by following the Canadian model—building our case until friends of liberty on both sides of the aisle return to their own, and our own, first principles. With the pressures of globalization and immigration undercutting both legal tranquility and the taken-for-granted cultural assumptions that have heretofore sustained our freedoms, the time has come for a return to the classic liberalism that is the lifeblood and source of the West. To remain what we are, the West as a whole must rediscover and reestablish, on the firmest possible footing, our own traditions of freedom. We all hang together or we all hang separately.

Selected responses

Rachel Ehrenfeld: Libel tourism has been (and remains) a problem in England for a long time before Cambridge University Press abandoned *Alms for Jihad*. It was in 2004, when I was sued by Mahfouz for *Funding Evil: How Terrorism Is Financed and How to Stop It*, that my reaction, and my looking into what bin Mahfouz was doing, started to create some interest. Bin Mahfouz has the highest record of suing for libel in England; by now he has had forty-one apologies, retractions, and judgments won. Yet his lawyer shows up in England, in the New York State Court of Appeals, and says that "My client is not litigious."

These lawsuits are being used to silence Western media. Bin Mahfouz himself studied in the West. Most of the wealthy Saudis have studied in America and in England. They know our laws very well, and they use them in order to subvert them, in order to undermine them, and in order to silence us. And that is something that we have to keep in mind. They know what to do in order to silence us.

Brooke Goldstein: The Islamist movement has two wings, one violent and one lawful, which can operate apart, but often reinforce each other. While the violent arm attempts to silence speech by burning cars in the street when Danish cartoons of Mohammed are published, the lawful arm, as we know, is skillfully maneuvering within the Western legal system, both here and abroad. Islamists with financial means have launched a legal jihad, filing frivolous and malicious lawsuits with the aim of abolishing public discourse critical of Islam, and with the goal of establishing principles of Sharia law as the governing political and legal authority in the West. Islamist lawfare is often predatory, filed without a serious expectation of winning, and undertaken as a means to intimidate, to demoralize, and to bankrupt the defendants. The lawsuits range in claims from defamation to workplace harassment, and they've resulted in books being pulped and meritorious articles going unpublished. Form shopping, whereby plaintiffs bring actions in jurisdictions that are most likely to rule in their favor, has enabled a wave of libel tourism.

At the time of her death in 2006, noted Italian author Oriana Fallaci was being sued in France, Italy, Switzerland, and other jurisdictions by groups who were dedicated to preventing the dissemination of her

work. Libel tourism has also resulted in foreign judgments against American authors, mandating the regulation of their speech and behavior, and we have some of those parties who have been targeted here today, including Rachel Ehrenfeld, Ezra Levant, and Mark Steyn, who can obviously speak for themselves in terms of the ordeals that they're going through. Yet the litany of American anti-Islamist researchers, authors, activists, publishers, congressmen, newspapers, television news stations, think tanks, NGOs, reporters, student journals, and others targeted here and abroad for censorship is very long.

Ezra Levant: Frankly it's been Americans who have helped me fight my fight in Canada, more even than other Canadians, and I think it's because you love the First Amendment so much, and you are the grownups in the world. You take things seriously, whereas other countries can afford to pose, and to have tantrums, but not to fight these fights. Canada is halfway between Europe and the United States in so many ways: demographically we're further along with the Islamification; culturally, legally, politically, we're a little bit more like Europe. We're sort of like a big Vermont: we're a little bit lefty, but 90 percent of us live within an hour's drive of the States. Other than how we pronounce some words like "house" and "about," we're pretty much just like you. We're an experimental lab for a lot of bad ideas that are then imported into the States, from multiculturalism to our immigration patterns to Sharia law for divorce, which came within an inch of being accepted as law in Ontario, and Sharia banking, which is being discussed by our government right now. So what happens in Europe today happens in Canada in five or ten years and might happen in America five or ten years after that.

One thing that happened in Canada was on February 13, 2006. I was the publisher of a conservative magazine that's unfortunately no longer around called *The Western Standard*, sort of like a Canadian version of *National Review* or *The Weekly Standard*. And we published the Danish cartoons, not as a provocative act, but as a news item. It was a media criticism story, actually; "Where Are the Free Speech Activists Now?" was our subtitle. It was not an attempt to get attention; we didn't increase our print run; it wasn't on the cover or anything; it was the news. A local radical imam named Syed Soharwardy, born in Pakistan and trained in the madrasas, does the Saudi lecture circuit, had debated me on the radio, which is what I do everyday, but I don't think he was used to being talked back to. So as soon as we were done with our radio debate, I went on and almost forgot about it; he went to the Calgary Police Service and asked them to arrest me. That's how they do it back home. The police were very liberal and said, "Well, you're a newcomer; that's not how we do things here; no." But he shopped around his complaint to someone far less liberal than the police, and he found a willing taker in the Alberta Human Rights Commission. Isn't that funny that in the twenty-first century, human rights activists are less liberal than the police?

The Human Rights Commission is a quasi-judicial tribunal, which means they're neither fish nor fowl; they have some powers. Let me list some for example: they have the power to enter my office without a warrant, to take any paper, and to take my hard drive without a warrant. Real police in Canada don't have that power, by the way. They have the power to enter my home and do so with a warrant, but they can get that warrant *ex parte*, which means I don't have to be there to argue against it. That's a power even our real police don't have. When the police get you, they are required to follow a lot of procedures that are in the favor of the accused, lots of rules; there's a high burden of proof, beyond a reasonable doubt, we say. Not so in Human Rights Commissions. There's no set standard of proof; there are no rules of evidence; there are no rules of procedure; hearsay is allowed; it's very loosey-goosey. So you have the harshness of the criminal system, but

without the protections of the criminal system.

Another attribute of these Human Rights Commissions is that the complainant, once he writes the complaint and gives it to the government, doesn't have to do anything more. He doesn't have to pay for the litigation; the litigation is conducted by the government using taxpayers' money for bureaucrats and lawyers. The defendant, myself, has to pay the full amount. And in Canada, one of the ways we're better than the American legal system, is the loser pays. It's a real damper on vexatious lawsuits. If you go around suing people as a nuisance, you'd better have a good case because if you abandon your suit in Canada or lose, you actually have to pay not only your own fees, but the other guy's. That's a great rule, I think. But it doesn't apply to these human rights cases.

So two complaints were filed against me: one by this Imam Syed Soharwardy, and one by the Edmonton Council of Muslim Communities. After two years, I've had to pay almost $100,000, partly through the magazine and now through donors. The imam, after getting such a beating in the press, for being such a Saudi-style censor, has just abandoned it and said, "Oh, the heck with this." It was a victory in a way, but he saddled the taxpayers with a half million dollars in costs, and me with almost a hundred grand. And I'm not out of the soup yet, because this other Edmonton group is still pursuing me, which shows how this is so open to being hijacked. What we had was a radical Muslim fatwa. His complaint actually quoted Koranic law, not Canadian law. This fatwa was prosecuted by the secular state. It's amazing.

It's been two years before the Human Rights Commission. Some of these cases take five years. One case, I'm not even kidding, took twenty-five years to grind through this process. The process is the punishment. If this was a real court, I could apply for what's called a summary dismissal in Canada. "Your Honor, this is junk. Throw it out and give me costs." You can't do that in these Human Rights Commissions.

Suppressing discussion of Islam

by Robert Spencer

The attempt by wealthy Saudis to suppress revelations about how they spend their money is only one aspect of the attempt to suppress discussion of the Islamic jihad—not only its financiers, but also its causes, motives, and goals.

Five years ago, I appeared on MSNBC's *Nachman* show with Ibrahim Hooper of the Council on American Islamic Relations (CAIR). (Incidentally, the host, Jerry Nachman, was ill and died soon after, and the guest host was none other than Keith Olbermann, before he became notorious.) In the course of the discussion, I referred to Sheikh Mohammed Hisham Kabbani's 1999 statement at a State Department Open Forum—that 80 percent of American mosques were under control of extremists.

Kabbani, a Naqshbandi Sufi, said: "The most dangerous thing that is going on now in these mosques, that has been sent upon these mosques around the United States . . . is the extremist ideology. Because [Islamic jihadists] are very active they took over the mosques; and we can say that they took over more than 80 percent of the mosques that have been established in the United States. And there are more than 3,000 mosques in the U.S. So it means that the methodology or ideology of extremists has been spread to 80 percent of the Muslim population, but not all of them agree with it."

When I referred to Kabbani's assertion, Hooper bristled. "It's just a falsehood. It's one of those standard lines put out by hate mongers like Mr. Spencer." When asked again about the "80 percent figure," Hooper replied: "It's a bunch of baloney. . . . When people don't have information about the real Islam, the real experience of the American-Muslim community, when somebody comes to them and makes the false claim that 80 percent of mosques are extremist, they go: 'Well, really? I don't know about Islam, so maybe that's true.' But if they have some contact with Muslims, if they know about Islam, if they understand what's really happening and they understand the agenda of those who are putting forward this hate and this misinformation, they can make a reasoned decision. But if they don't have that information, again, they're vulnerable to this."

Yet Kabbani, the actual source of the "80 percent" assertion, is intimately familiar with Islam and American Muslims. After visiting 114 mosques around the country, he said that "ninety of them were mostly exposed, and I say exposed, to extreme or radical ideology."

Hooper, you'll note, offered no substantive refutation of Kabbani's assertion. In fact, he ignored the fact that it came from Kabbani altogether, and replied as if I myself, out of ignorance and hatred of Islam, had fabricated the statistic.

This was my personal introduction to a phenomenon I have witnessed hundreds upon hundreds of times since then: when non-Muslims point out that Islamic jihadists commit acts of violence and justify them

by reference to the Koran, many non-Muslim and Muslim apologists for jihad, including many who are widely known as "moderates," respond by claiming that the one who is pointing out all this is committing an act of "hatred," "bigotry," "Islamophobia," and the like. They don't have a word to say about the actual acts of violence, hatred, and supremacism committed by the jihadists—no, the real villain is the one who reports on these actions.

We have seen this recently in the controversy over Geert Wilders's film *Fitna*. The core objection to the film has been that it linked Islam with violence. The Prime Minister of the Netherlands, Jan Peter Balkenende, declared that this was a false linkage: "We reject this interpretation. The vast majority of Muslims reject extremism and violence. In fact, the victims are often also Muslims."

But is Geert Wilders the one really responsible for the connection of Islam with violence? An answer can be found in the film itself. The main part of it features a series of quotations from the Koran, followed by scenes of violent acts committed by Muslims. But the key question is whether or not the violent acts really have anything to do with the Koran quotes. Most of Wilders's detractors would say that they do not, but Wilders has already accounted for this objection in the film itself. For example, the first verse of the Koran presented in *Fitna* is 8:60: "Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into the hearts of the enemies of Allah and your enemies." Wilders follows this with heart-rending scenes from 9/11 and the March 11, 2004 Madrid train bombings, as we hear two women calling for help on those days. The women are indeed terrified, but what does this have to do with Koran 8:60? An Islamic preacher—not Wilders or any other non-Muslim—soon appears to answer this question, stating in terms that clearly recall that verse of the Koran: "Annihilate the infidels and the polytheists, your [Allah's] enemies and the enemies of the religion. Allah, count them and kill them to the last one."

Another verse in the film is Koran 47:4: "Therefore, when ye meet the Unbelievers [in fight], smite at their necks; at length, when ye have thoroughly subdued them, bind a bond firmly [on them]." Wilders follows this with images of two unbelievers whose necks were struck by the warriors of jihad: Theo van Gogh and Nick Berg. The statements of the perpetrators make it clear that they believed themselves to be acting in accord with Islamic imperatives. Mohammed Bouyeri, the murderer of van Gogh, clutched a Koran as he told a Dutch court in 2005: "What moved me to do what I did was purely my faith. I was motivated by the law that commands me to cut off the head of anyone who insults Allah and his prophet." And the late jihadist Abu Musab al-Zarqawi invoked Mohammed's example to justify the beheading of Berg: "Is it not time for you [Muslims] to take the path of jihad and carry the sword of the Prophet of prophets? . . . The Prophet, the most merciful, ordered [his army] to strike the necks of some prisoners in [the battle of] Badr and to kill them. . . . And he set a good example for us." Here again, the Islamic justification for these acts of barbarism comes not from Wilders, but from Muslims.

And that points up the odd myopia of virtually all of the objections to *Fitna*. It was not Geert Wilders, but the many Muslims he shows in his film who link Islam with violence. And that link has already been made innumerable times around the world—by Islamic jihad warriors, not by non-Muslim "Islamophobes." Omar Bakri, once the leading jihadist in Britain but now in exile from the Sceptered Isle, even went so far as to say that with a few small edits, *Fitna* "could be a film by the Mujahideen." And that's precisely the problem: while a growing chorus of Muslim and non-Muslim voices denounces *Fitna*, what are they doing to limit the activities of the jihadists the film portrays?

Closely related to this is the common practice of condemning non-Muslims when

they speak about Islam accurately. The Al-Arabiya news channel gave an example of this recently in an attack on my book *The Truth About Mohammed*.

Al-Arabiya asserted that the book contains "lies and hate." As an example of this, it said: "The book claims that Mohammed said terrorism made him victorious and that he used to tempt people with paradise so they would crush his enemies."

While they present this as if it were a false claim, unfortunately for them it isn't—unless with my Zionist black arts I have the power to cast material into the Koran and other canonical Islamic texts. "I have been made victorious with terror"—so says Mohammed not according to me, but according to Bukhari. Sahih Bukhari is the hadith collection (that is, the collection of traditions of Mohammed) that Muslims consider most reliable.

And what about that bit about Paradise? Here's another Islamic tradition from Bukhari: "On the day of the battle of Uhud, a man came to the Prophet and said, 'Can you tell me where I will be if I should get martyred?' The Prophet replied, 'In Paradise.' The man threw away some dates he was carrying in his hand, and fought till he was martyred." Yes, more of Spencer's lies!

Al-Arabiya tries again with this: "The author also accuses Mohammed of treason, breaching the Treaty of Hudaybiya with the Meccan tribe of Quraish, and instigating Muslims to kill Jews." According to Mohammed's earliest biographer, Ibn Ishaq, the treaty contained this provision: "If anyone comes to Mohammed without the permission of his guardian he will return him to them; and if anyone of those with Mohammed comes to Quraysh they will not return him to him." That is, those fleeing the Quraysh and seeking refuge with the Muslims would be returned to the Quraysh, while those fleeing the Muslims and seeking refuge with the Quraysh would not be returned to the Muslims.

But soon thereafter a woman of the Quraysh, Umm Kulthum, joined the Muslims in Medina; her two brothers came to Mohammed, asking that she be returned "in accordance with the agreement between him and the Quraysh at Hudaybiya." But Mohammed refused: Allah forbade it. He gave Mohammed a new revelation: "O ye who believe! When there come to you believing women refugees, examine and test them. Allah knows best as to their faith: if ye ascertain that they are believers, then send them not back to the unbelievers" (Koran 60:10).

In refusing to send Umm Kulthum back to the Quraysh, Mohammed broke the treaty. Although Muslims have claimed that the Quraysh broke it first, this incident came before all those by the Quraysh that Muslims point to as treaty violations—as even the Islamic apologist Yahiya Emerick acknowledges in his own CAIR-endorsed biography of Mohammed. So I suppose Emerick's book also contains "lies" and "hate"?

And as for the bit about killing Jews, both of the earliest biographers of Mohammed, Ibn Ishaq and Ibn Sa'd, both zealous Muslims, record his telling his followers at a certain point: "Kill any Jew that falls into your power."

And finally, Al-Arabiya makes one last attempt: "Spencer, the director of the Jihad Watch and Dhimmi Watch websites, also claims that the prophet encouraged Muslim men to take women captive to control them." Yes, it is I who wrote into the Koran the permission for Muslim men to have sexual relations with women "whom your right hands possess" (4:24).

So it is Al-Arabiya that is either lying or ignorant about what the earliest Islamic texts say about Mohammed. I challenge anyone at Al-Arabiya, or Hamas, anyone anywhere, to substantiate a single lie or hateful statement within the book. They haven't yet.

The implications of this are larger than just my book. With Al-Arabiya and Hamas denouncing an accurate portrayal of Mohammed as he is depicted in Islamic texts, it appears that in their view non-Muslims are

not to be permitted to examine those texts and investigate how jihadists use them to justify jihad violence and Islamic supremacism. In other words, non-Muslims are not to be allowed to investigate the motives and goals of those who would destroy them. In the context of today's global jihad, that puts us all at risk.

There are innumerable examples of this. One of the most notorious was CAIR's action against the Fox drama *24* in 2005. A drama about terrorism, *24* has featured Bosnian terrorists, German terrorists, South American terrorists, and terrorists from a Halliburton-like conglomerate. And, most famously, *24* has featured Muslim terrorists—or at least terrorists with a vaguely Middle Eastern aspect. Yet Sabiha Khan of CAIR's Anaheim chapter worried that *24*'s Muslim terrorists would "contribute to an atmosphere that it's OK to harm and discriminate against Muslims. This could actually hurt real-life people." CAIR scheduled a meeting with Fox executives in Los Angeles to air their concerns.

Even before network execs met with CAIR, however, the producers of *24* removed from the show some material that they were afraid might stereotype Muslims. It is worth noting that no Bosnians, Germans, South Americans, or Halliburton execs have ever contacted Fox to complain about the way they were portrayed on *24*. Yet the one group that has produced the most actual terrorists around the world today is the most outraged if that reality is dramatized.

It is difficult not to conclude that CAIR's intention is to suppress discussion of Islam, divert attention from the elements of Islam that jihadists are using to justify jihad violence and Islamic supremacism, and thereby allow those jihadists to continue their work unimpeded.

This impression was only reinforced in March, when the fifty-seven-nation Organization of the Islamic Conference (OIC) met in Senegal. There they developed what the Associated Press called "a battle plan" to defend Islam "from political cartoonists and bigots." Not against the violent supremacists who have allegedly "hijacked" their religion, mind you. No battle plan is needed against them.

The OIC is instead concentrating on the greatest threat to Islam: those who draw cartoons of Mohammed and writers who point out that the terrorists find their motivations in Islamic texts and teachings.

"Muslims are being targeted by a campaign of defamation, denigration, stereotyping, intolerance and discrimination," explained Ekmeleddin Ihsanoglu, the OIC's secretary general. He did not mention the possibility that at least some of this "defamation, denigration, stereotyping, intolerance, and discrimination," if it exists at all, comes as a backlash to the 10,000-plus jihad terror attacks since 9/11, justified by their perpetrators by reference to the Koran and Islamic law.

The AP reported that the OIC "delegates, instead of working to divorce terrorism from Islam and condemn its perpetrators, "were given a voluminous report by the OIC that recorded anti-Islamic speech and actions from around the world. The report concludes that Islam is under attack and that a defense must be mounted." That's right: not that the non-Muslim world is under attack from jihadist Muslims, but that Islam is under attack. In response, the OIC is planning to create a "legal instrument" to combat criticism of Islam. "Islamophobia," Ihsanoglu declared, "cannot be dealt with only through cultural activities but [through] a robust political engagement."

What kind of robust political engagement? Restrictions on freedom of speech, of course. Abdoulaye Wade, the President of Senegal and chairman of the OIC, said: "I don't think freedom of expression should mean freedom from blasphemy. There can be no freedom without limits."

In saying that, the Senegalese President demonstrated why his nation is not a beacon of freedom in West Africa. His words, and the OIC's "legal instrument" in general, demonstrate why the foundations

of a free society cannot take root where Islamic law prevails.

Once you declare one group off-limits for critical examination or declare that these people must at all costs not be offended, or that if they are they're perfectly within their rights to stone, or lash, or imprison, or kill the offender, then you have destroyed free speech. In a free society, people with differing opinions live together in harmony, agreeing not to kill one another if their neighbor's opinions offend them. If offensive speech had been prohibited in the 1770s, there would be no United States of America, and that is one of the reasons for the First Amendment to the U.S. Constitution. Whenever offensive speech is prohibited, the tyrant's power is solidified. No less in this case, although the tyrant in question is of a different kind.

The upshot of this is that even reporting accurately about the teachings of Islam that jihadists use to justify violence will be branded hate speech that is offensive to Muslims.

That's why all free people should oppose the OIC's legal initiative. Not only does it threaten the foundations of Western society, it is also an attempt to leave us defenseless against the jihad threat.

But what about "Islamophobia"? Here is a five-point plan that Muslims could adopt to eradicate it instantaneously:

1. Focus indignation on Muslims committing violent acts in the name of Islam, not on non-Muslims reporting on those acts.
2. Renounce definitively not just "terrorism," but any intention to replace the U.S. Constitution (or the constitutions of any non-Muslim state) with Islamic Sharia law even by peaceful means.
3. Teach Muslims the imperative of coexisting peacefully as equals with non-Muslims for an indefinite period of time.
4. Begin comprehensive international programs in mosques all over the world to teach against the ideas of violent jihad and Islamic supremacism.
5. Actively work with Western law enforcement officials to identify and apprehend jihadists within Western Muslim communities.

If Muslims did those things, "Islamophobia" would vanish.

But in the meantime, the accusations of hatred and bigotry that Islamic groups routinely level at those who speak accurately about the global jihad and Islamic supremacism have thoroughly chilled the public debate in the United States. Both liberal and conservative analysts, talk show hosts, and commentators take as axiomatic the iron but the never-examined dogma that Islam is a religion of peace that has been hijacked by a tiny minority of extremists; They rarely allow opposing views a full or fair hearing.

If that doesn't change, honest analysis of the elements of Islam that jihadists use to justify violence and supremacism will continue to be impeded, to the great detriment of our national security and our ability to respond adequately to the civilizational and cultural problem posed by the jihadists.

Selected responses

Ibn Warraq: I remember when my first book came out, *Why I'm Not a Muslim* in 1995, I sent it to the Bangladeshi dissident Taslima Nasrin, and she was very excited by the book. She actually came to see me and stayed with me in my house in France, and she said to me, "Have you had a fatwa on you?" and I said, "No." And she was most disappointed and said, "It's such a damn good book, I don't understand why you haven't had a fatwa." It's a sort of Nobel Prize for us. I have not had any written threats; more often I've had letters, especially from women from Islamic countries, thanking me for defending their rights. More recently, I've been put on various death lists.

I have been very inconsistent about my security. Sometimes I worry; sometimes I don't worry. Often I've tried not to be in-

terviewed on television, but in recent years, I've decided that if I wanted my ideas to get out to the world, I had to really defend them in public, even if it meant being televised. So I have been lucky in some sense.

On March 28 this year, the Islamic nations, who dominate the Human Rights Council in Geneva, managed to kill freedom of expression. The fifty-seven Islamic states, with support from China, Russia, and Cuba, succeeded in forcing through an amendment to a resolution on freedom of expression. The U.N. special *rapporteur* on freedom of expression would now be required to report on the abuse of this freedom. Thus, people like Theo van Gogh, the Danish cartoonists, and Geert Wilders, anyone criticizing Islam or the Sharia, would now be deemed to have abused the freedom of expression. In other words, instead of protecting freedom of expression, they will now be limiting the freedom of expression.

Steven Emerson: I think CAIR's mission has unfortunately been adopted by almost every other Islamic group in the United States. The Islamist groups, which constitute the mainstream hierarchy of the Islamic institutions, play the victim card and claim it's Islamophobia, not Islamic terrorism. That's infected law enforcement and the government in an amazing way. For example, a program operating out of Northeastern University called the Open Society Program, funded by George Soros, was contracted by the FBI, of all places, to teach the FBI that it was not Islamic terrorism that was the problem since 9/11, but Islamophobia. And since that time the FBI has been joined by the Department of Justice and the State department. But it's particularly incriminating and infuriating to see the Federal Bureau of Investigation headquarters produce and bring in cultural sensitivity training seminars that teach that jihad means peace and love, that there's no such thing as Islamic terrorism, that there's no such thing as Islamic fundamentalism, that this is all part of a campaign by Zionist crusaders; and to see the FBI official headquarters adopt this, in contrast to the field, which really opposes this, is quite amazing because it affects even the course of their investigations. When the head of the FBI meets with an organization whose leader is subsequently indicted and convicted as a member of al Qaeda, it sends a message to younger FBI members that this organization remained sacrosanct.

Frank J. Gaffney, Jr.: Wafa Sultan said "How would you expect people to portray adherents to these Islamofascist views, except with bombs under their turbans and so on?" Well, in short order, she was responded to on Al Jazeera, where this debate took place, by an individual by the name of Sheikh Qaradawi. Sheikh Qaradawi, as you may know, is one of the prominent fixtures on Al Jazeera, one of the leading Islamofascist ideologues, one of those who is most aggressively involved in promoting this jihadist notion of the inevitability of the clash of civilizations and the ultimate triumph of Islam in the form of the caliphate imposing Sharia, a brutally repressive theocratic code, on all of us.

Sheikh Qaradawi is also a Sharia advisor in several of the financial institutions promoting something called Sharia-compliant finance. This is important because today, Islamists like Qaradawi are sitting in the corporate headquarters, or at least advising at approximately board level, many of the major investment houses and commercial banks of the West, increasingly those a few miles down the island from here, or even blocks. This is a phenomenon most like, as Brooke Goldstein very correctly put it, the idea of libel lawfare. This is another instrument of jihad against the west, "financial jihad," the likes of Qaradawi call it. And we have this spectacle of billions of dollars now, by some estimates, $800 billion, being invested in so-called Sharia-compliant instruments, an increasing number of which are now going to be made available through Western financial institutions in this country,

including some of those of the federal government, like Fanny Mae and Freddy Mac. In fact, I wonder how many of you know that there is a Dow Jones Islamic Index, or a Standard & Poor's Islamic Index, or an HSBC Islamic Index, all of which have, as their authorities, Islamofascists like Qaradawi. In fact, the head of one of the members of the Dow Jones Islamic Index is a man by the name of Usmani. Sheikh Usmani has urged violent jihad as an obligation against the West in books that he has written and speeches that he makes.

It is unimaginable that investors are not being told who are these Sharia advisors, what is their agenda, let alone what Sharia is, in the manner that in any other aspect of our financial transactions would be obligatory. So we have no due disclosure, no due diligence, no transparency, no accountability, no good governance. We have, in other words, suppression of information, we have encroaching, or Fabian, Sharia, and we have a mortal peril to the capitalist system, happening under our noses. And so when you compound what we've already been told and what we're about to be told, it's another piece of the soft jihad that is at work in the west and in the United States as well, and it must be fought at every turn.

Sharia-compliant finance is an instrument to try and deny Muslims the space to do other, to be other, than Sharia-adherent, and it is another reason why we must, among the other things we must do, resist the efforts to take that kind of freedom from Muslims as well as from the rest of us.

Claudia Rosett: Journalists, the people who are supposed to be writing and informing you of all of this, pride themselves on being an intellectual crowd; that involves a liberal bias and that involves all the multicultural everything that you usually hear about. But then there's this much more problematic piece of it, and that is when a reporter sits down to write a story, there are calculations you make about how much effort is going to be worth whatever's finally going to come out in print. And there's a point where you have to believe pretty powerfully and deeply. If you look and you think, I could get sued, I could get tied up, I could end up spending all my time unable to write anything because I'm going to be spending all my time with lawyers, I'm going to have to spend so much time, even though I can see something and document it, I'm going to have to spend so much time making sure that every small thing could not possibly offend somebody, or if it does, that I already have the reams of documentation ready. This goes far beyond a reporter's normal concern. In too many important cases, the temptation is to just scrap the story.

It takes the marketplace of ideas to win the war of ideas

by Andrew C. McCarthy

During the Age of Jihad that has enveloped us since radical Islam brought its global war to our shores by bombing the World Trade Center in 1993, the American judicial system has a troubled record when it comes to safeguarding the American people.

The system's efficacy (or lack thereof) as a national security asset is symbolized by the crater in lower Manhattan, where the selfsame World Trade Center once stood. About six blocks away from Ground Zero towers the storied Foley Square federal courthouse, our government's chosen battlefield for confronting the enemy through the eight tumultuous years when prosecution in the judicial system was the essence of our national counterterrorism strategy. The result? Less than three dozen mostly low-level jihadists neutralized, a provocatively weak response that can only have encouraged the series of audacious attacks that culminated in 9/11.

In the jihadi arsenal, by contrast, it is barely an exaggeration to say our courts stand second in effectiveness only to mass-murder attacks. The Supreme Court has repeatedly accommodated the enemy's requests that it supplant the political branches in the quintessentially political act of conducting war. Just since 2004, the justices have seized jurisdiction over wartime detainees, nullified the centuries-old power of the president to convene military commissions, and effectively rewritten the Geneva Conventions into a terrorist-friendly, judicially enforceable treaty—one to which the officials constitutionally responsible for treaty-making would never have agreed. This term, the justices will decide whether to grant alien enemy combatants American constitutional rights, while the lower courts call into doubt governmental surveillance authority and even the commander-in-chief's power to determine the parameters of the battlefield—in the midst of a war the enemy has made global, asserting the power to attack anyone, anyplace, at any time.

We are far removed from the Framers' vision of the judiciary as both a bulwark to ensure the rights of Americans against governmental arbitrariness and a non-player in the conduct of foreign affairs, including warfare and intelligence-gathering. To say the least, "lawfare" has left the body politic more the victim than the beneficiary of our system's reserves of due process and veneration of individual rights.

To widen the scope, moreover, lawfare is now an international phenomenon: the use of Western courts and legal processes to inhibit Western freedom. It is a fifth column in pinstripes, assaulting the very values that have made the West—economically, socially and militarily—history's most successful civilization.

Some such assaults are blatant efforts to shut down military operations. In 2004, for example, an American organization, the Center for Constitutional Rights (a leftist

redoubt which provides legal representation, *gratis*, for several of the approximately 270 alien enemy combatants still detained at Guantanamo Bay) cruised to Germany to file a suit against the Defense Secretary Donald Rumsfeld, the CIA Director George Tenet, and several military officials for alleged war-crimes in Iraq—and when Germany finally rejected the suit in 2007, CCR promptly announced it would try again . . . in Spain. To take another example, at the behest of the Organization of the Islamic Conference, the United Nations' judicial arm, the International Court of Justice ruled 14–1 (with only the American justice dissenting) that Israel's security fence—a passive defense measure which slashed Palestinian suicide bombings by over 90 percent—was somehow a violation of international law.

Most lawfare, however, is more subtle than that. Mark Steyn and Ezra Levant have written and spoken trenchantly about the official shenanigans of such governmental bodies as the Canadian Human Rights Commission, suppressing free speech under the guise of policing "hatred." Even more insidious, as many of our estimable panelists have recounted, is the unofficial infiltration by jihadist sympathizers into the highest reaches of government, co-opting policy-makers with their relentless, counterfactual religion-of-peace narrative. Consistent with a phenomenon critiqued by Joseph Schumpeter in 1942 (in *Capitalism, Socialism, and Democracy*), the patent agenda here is to quell dissent not by formally destroying freedom of choice but by shaping the choosing mentalities and narrowing the list of acceptable choices and attitudes.

To function properly and persevere, free societies are dependent on what Holmes famously described as the "marketplace of ideas." It is, with due respect, a hackneyed phrase. Justice Holmes, one imagines, would be stunned nearly ninety years later to see the relativism it has wrought—the diffidence that overtakes us when it comes time to recognize real evil, the risible rationalization of mass-murder as "resistance," the jurisprudential current that counsels hesitation in condemning even exhortations to jihadist violence lest we miss some kernel of legitimate dissent that the ACLU has somehow neglected to bring to our attention.

Nonetheless, that our asserted commitment to the "marketplace of ideas" is promiscuous at the margins does not prevent its being essentially correct, indeed imperative. The "war on terror" being a war driven by an ideology (whose name we dare not speak), we are told repeatedly that the outcome of the "war of ideas" will be every bit as dispositive as the war taking place on the battlefield. If the marketplace of ideas, the notion of sunshine as the best disinfectant, is our time-tested method for arriving at truth, and if a society goes to war only when it perceives a threat to the life of the state (or, at least, to the state's highest interests), then, as ideas go, the war must be coextensive with the marketplace.

And that is the challenge at the core of libel tourism. Can the legal processes that work so effectively against the interests of the American people be converted to their advantage, to maximizing their highest interests? That, after all, is the point of our legal system. Contrary to the apparent sensibilities of our elites, the law is not an end unto itself. It is a means by which we pursue our highest interests in a civilized manner—and there is no interest higher than our security and the preservation of our way of life. In the battle of ideas, the challenge of libel tourism asks: Will we set free the vaunted marketplace of ideas or will we unilaterally disarm?

In addressing potential legislative responses to libel tourism's suppression of speech, we must come to grips instantly with the fact that the practice is a phenomenon of the international arena. Specifically, it involves forum-shopping in order to bring civil defamation actions in a jurisdiction that meets two criteria. First, its laws of libel and slander are skewed in favor of a journalistic work's subject (usually a public figure)

rather than the journalist. Second, its adjudications are accorded international respect—we are talking here about Saudi sheikhs traipsing the globe to demand their day in court in England, a closely allied nation which maintains with the United States an intimate web of economic, cultural, and military ties. We would probably not be having a conference today if Sheikh Khalid bin Mahfouz had demanded justice in, say, Sierra Leone.

The immediate consequence of libel tourism's international context is the inadequacy of any solution involving the judicial system. This is not to say curative legislation is pointless. There could be great benefit in it. It may eliminate most of the worst abuses, meaning the lawsuits that, transparently, are simply schemes to nullify American free-speech rights through the intimidating specter of prohibitive litigation and judgment costs. Yet, we must recognize that law has its severe limits in the international realm, where nearly 200 nations assert the right to enforce their own rules. Transnational progressives envision a post-sovereign order guided by universal standards divined by international law professors and supranational bureaucrats. Thankfully, the world we actually inhabit is still premised on comity between sovereigns to whom deference is owed in their own legitimate jurisdictions. Pride of place in this world belongs to diplomacy, not legal processes.

Just two weeks ago, the Supreme Court reminded us of law's limits on the international stage. The case was *Medellin v. Texas*, involving a presumptuous attempt by the International Court of Justice (the U.N.'s judicial arm, often portentously referred to as "the World Court") to supersede the criminal and procedural law of sovereign states in America's federalist system. Specifically, the ICJ directed that aliens convicted of murder and awaiting execution be given new trials because Texas and other states failed to provide "consular nullification" at the time of arrest—an omission that was inconsequential to the outcome of the cases and which, like the denial of core constitutional rights, is deemed waived if not timely raised. Texas refused, hewing to its own precedents. In *Medellin*, the Supreme Court (which itself had previously rejected the ICJ's interpretation of the relevant treaties) affirmed the state's action.

Writing for the majority, Chief Justice John Roberts reaffirmed first principles: "The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments." It is in the political realm, he elaborated, that "sensitive foreign policy decisions" are to be made; they are not to be "transferred to state and federal courts" absent the clear creation of judicially enforceable rights either by legislation or in a treaty approved under the Constitution's prescription (which calls for supermajority consent in the Senate).

We lawyers can chatter 'til we're blue in the face about legislation. But let us be frank. Libel tourism would not be a problem if our political policy makers, and especially the executive branch, were offended by it. In the with-us-or-against-us heyday of the post-9/11 period, President Bush boldly announced a doctrine that threatened to treat terror-sponsoring regimes as the equivalent of terrorist organizations. One might have hoped that would mean: clear-eyed recognition of the nexus between Islamic doctrine and Islamic terror; appreciation of the doctrinal and empirical connection between Wahhabism (the militant Islam that is the Saudi state religion) and the rampage wrought by al Qaeda and its affiliates; and relentless pressure to force the House of Saud to change its ways, not least by promoting efforts to expose Saudi facilitation of jihadism—sunlight, we remind ourselves, being the best disinfectant.

Instead, something close to the opposite has happened. Despite the mounting evidence, our Saudi policy is more like, "You're with us or against us, whatever you like." We officially regard the Saudis as "key allies" in the war on terror, acquiesce in their zealous exportation of a triumphalist hate

ideology, and reward them with billions in high-tech military hardware. All in all, it is part of a determination (shared by administrations of both parties) to elide the "Islamic" in Islamic terror, portray jihadists as imposters who have perverted the real Islam, and insist that Muslim belligerents are really animated by poverty, ancient grievances, lack of democracy, etc.—anything but scriptural commands to quell non-believers.

The fact is unavoidable: at its highest levels, our government has been far from exercised over the silencing of an inconvenient truth. Were that not the case, diplomacy would already have pretermitted the need for other remedies. The U.S. has many diplomatic avenues and pressure-points for influencing Saudi and British policy. If moved to do so, the British Parliament could stanch libel tourism tomorrow by heightening the flimsy jurisdictional threshold that gives non-Britons access to the U.K.'s courts based on such gossamer as the online purchase of a mere twenty-three copies a book—the hook Sheikh Mahfouz used to sue Dr. Rachel Ehrenfeld after the publication of *Funding Evil: How Terrorism Is Financed—and How to Stop It*, the study she and her publisher did not even attempt to market in England.

Here, it is worth pausing to acknowledge that, until recent legislative action in New York State (about which there will be more to say), the condign legal developments regarding libel tourism have occurred on the Atlantic's eastern shores. In the groundbreaking 2006 case of *Jameel v. Wall Street Journal Europe* (Oct. 11, 2006), the Law Lords brought British defamation law much closer to American standards.

The U.K. has been fertile ground for the Saudis' gambit because British law has always put the onus on journalists to prove the truth of their assertions. This is a stark contrast from American First Amendment jurisprudence which, based on *New York Times v. Sullivan* (1964) and its progeny, imposes on a public figure the weighty burden of proving that a journalist's assertions are not merely false but maliciously or recklessly so. In the inevitable clash of values, the American theory elevates a functioning democratic society's interest in being fully informed about matters of public concern over the individual's interest in protecting his reputation. Further, it conveys a practical realization that many things which are true cannot be proved to the satisfaction of courtroom evidentiary standards: knowledgeable sources often insist on confidentiality for fear of reprisal or embarrassment; government has been known to conceal its malfeasance, or at least misfeasance, under the carapace of "classified information," dispiriting potential whistleblowers with the prospect of prosecution.

Jameel does not fully align British libel law with its American counterpart. It does, however, make positive strides in that direction. It creates a "qualified privilege" for establishment journalists accused of publishing falsehoods. They must be able to satisfy the court that they have reported on matters truly in the public interest and that the reporting has been done responsibly. This is a Brave New World for the U.K., and we will have to monitor closely further clarification on such issues as: Who is a *journalist*? What is in the *public interest*? What is *responsible* journalism? But *Jameel* is encouraging, so much so that Stephen Schwartz, a frequent commentator on Islamic radicalism, was moved to write in the *Weekly Standard*: "The action of the Law Lords may also express the strengthened will of an important section of the English political and legal establishment to remove the protections Saudis have long enjoyed in the United Kingdom."

It is past time to remove those protections in the United States as well. With diplomacy an apparently hopeless avenue, that will call for legislation.

Thoughtful critics of such a response to libel tourism, such as our colleague John J. Walsh, writing in the *New York Law Journal* ("The Myth of Libel Tourism," Nov. 20, 2007), correctly point out that Dr. Ehren-

feld chose not to respond to Sheikh Mahfouz's British libel suit. Thus, he urges, she did not avail herself of a meaningful opportunity to "back up her charge of terrorism support," notwithstanding that *Jameel* has theoretically made that easier to do. Such objections, particularly as posited by lawyers, tend to overlook the fact that litigation is incredibly time-consuming, burdensome, and expensive.

We should sing no sad songs for perpetrators of truly tortious conduct. But Dr. Ehrenfeld was engaged in First Amendment-protected activity when *Funding Evil* was originally published in 2003. Publication was in New York, where Dr. Ehrenfeld lives and works. And, to reiterate, there was no attempt to market the book in England.

When Sheikh Mahfouz, a Saudi citizen, chose to file his action in the U.K. rather than the U.S.—the locus of the purported slander—*Jameel* was not yet the law of England. Had she chosen to defend the suit, Dr. Ehrenfeld thus faced the prospect of expending several years and hundreds of thousands of dollars litigating in a foreign country, thousands of miles from home, where she had not sought to disseminate her claims, and where she was likely to lose given the burden of proof and the fact that many of her assertions stem from reputable public synopses of classified information, testimony about which she is not in a position to compel. For example, Richard Clarke, formerly the top counterterrorism official in the Clinton administration, told the Senate Banking Committee in 2003 that the Muwafaq Foundation, an organization described by the Treasury Department as an al Qaeda front, had "reportedly transferred at least $3 million, on behalf of Khalid bin Mahfouz, to [Osama] bin Laden." That Congress can adduce this sort of information from current and former government officials, and retreat to "closed session" if top-secret corroboration is called for, does not mean a private litigant such as Dr. Ehrenfeld could compel such testimony—much less any underlying classified corroboration—in the public courts of a foreign country.

Quite apart from Dr. Ehrenfeld's personal interests, moreover, the subject matter of her research and writing implicated the highest public interest: the financial support systems enjoyed by terror networks that target Americans for mass-murder.

The signal issue is not whether Dr. Ehrenfeld could have defended herself. It is whether she should have had to. If such lawsuits are permitted, journalists will not write about the central national-security challenges of our time. If some intrepid few do decide theirs is but to do or die, and thus charge into the valley of litigation, they cannot reasonably expect corporate publishers or scholarship-sponsoring foundations to charge along with them. They, after all, must answer to shareholders and donors, for they face the same litigation risk and, with deeper pockets, are likelier targets.

In that atmosphere, such crucial stories as Saudi underwriting of Islamic terror will not be told. A valid refutation of the narrative that limns the "moderate Saudi regime as a key ally in the struggle against those who've hijacked the religion of peace" will have been silenced. In the resulting vacuum, policy will be based on the regnant, suicidal fantasy. Technically speaking, the First Amendment will still be on the books, but the enemy's enablers will have succeeded in shaping the choosing mentality and narrowing the list of acceptable speech choices.

All this, furthermore, will have been permitted to follow from a gambit which, it is pluperfectly obvious, cynically schemes to skew public opinion by intimidation. This is best elucidated by the *Ehrenfeld* case: the agenda of Sheikh Mahfouz and like-minded Saudis is to scare off publishers and discourage scholarly inquiry, not vindicate their allegedly slandered reputations.

Those who fault Dr. Ehrenfeld for not availing herself of the (pre-*Jameel*) opportunity to defend herself in England pass silently over the fact that Sheikh Mahfouz has fought tooth and nail to avoid appear-

ing in Dr. Ehrenfeld's responsive American suit, which sought a judicial declaration that the First Amendment would be violated by any attempt to execute (i.e., collect) on the $225,000 British judgment against her (which also called for an apology and a retraction of her book's allegations). Unlike Dr. Ehrenfeld's relation to Britain, Sheikh Mahfouz has deep historic ties to the United States. In the early 1990s, he was engulfed in the infamous BCCI (Bank of Credit and Commerce International) scandal and slipped the noose of an American indictment only by paying a $225 million settlement. Yet after first strategically avoiding the U.S. by seeking to haul Dr. Ehrenfeld into English courts, he then vigorously protested against the corresponding effort to subject him to the jurisdiction of state and federal courts in New York, where he'd have had a cognate opportunity to back up his denial of Dr. Ehrenfeld's assertions.

The legerdemain is staggering. Sheikh Mahfouz went to England in pursuit of a judgment he plainly had no intention of ever executing on. Leave aside that the judgment amount, though substantial to Dr. Ehrenfeld, is barely a pittance to Sheikh Mahfouz, whose personal worth was estimated at $3.2 billion in 2006. To execute on the judgment, he would have to subject himself to the jurisdiction of U.S. courts. That is the very thing he has most energetically refrained from doing—a well-considered demurral that resulted in the conclusion of American courts to dismiss Dr. Ehrenfeld's suit on the ground that there is, as of now, no legal basis to assert jurisdiction over him.

That is, having narrowly escaped prosecution in the nineties, Sheikh Mahfouz substantially cut his U.S. residential and business ties. New York courts, meanwhile, have held that absent such substantial ties as living, working, or committing torts in the state, the filing of a foreign lawsuit against a New Yorker (even coupled with beseeching her appearance in it, periodically notifying her of its progress, and consequently causing her to take steps in New York) is insufficient to render a litigant subject to suit in New York. Taking steps to collect, though, would have triggered jurisdiction —so Mahfouz didn't do it.

In sum, Sheikh Mahfouz wants to *have* the British judgment, not *act on* it. His concern is not Dr. Ehrenfeld's purported slights. What he wants is the *in terrorem* effect the British default judgment has on potential publishers and backers of Dr. Ehrenfeld and others like her: the warning it conveys about the wages of exposing information about Saudi terror sponsorship: vexatious litigation and its mountainous costs.

Recognizing the pernicious tendency of such tactics to suppress speech on important public matters, many American states have enacted so-called anti-SLAPP laws. The acronym is for "strategic lawsuit against public participation." For present purposes, SLAPP directs itself against actions which (like Sheikh Mahfouz's) are filed primarily to harass those who seek to address matters of public concern. As the Manhattan Institute's Judith Miller has observed, SLAPP permits "the defendant to submit a prediscovery defense to prove good faith and no malicious intent, and, if successful, to convince the court to dismiss the suit as 'frivolous' or induce the plaintiff to settle or risk having to pay the defendant's legal fees."

In a recent example of its usefulness, Yale University Press and Matthew Levitt of the Washington Institute for Near East Policy filed an anti-SLAPP motion against a self-styled Muslim charitable organization called Kinder-USA. Yale had published Dr. Levitt's book, *Hamas: Politics, Charity and Terrorism in the Service of Jihad*, which, based on exacting research, documented the inextricable ties between the Palestinian terror organization's ostensibly charitable fund-raising and its savagery. In the course of so doing, he observed that the much-investigated Kinder-USA's creation was part of an "increasingly common trend: banned charities continuing to operate by incorporating under new names in response to designation [by the U.S. government] as terrorist entities or in an effort to evade attention."

It is not surprising that Kinder-USA emulated the Mahfouz practice of suing the author, his research institute, and the publisher. It tried to do so, however, in the United States—specifically, in California, home of the original SLAPP legislation. The defendants responded with the anti-SLAPP motion. Faced with the prospect of having its frivolous suit tossed out and being ordered to pay the legal fees of those it had sought to intimidate, Kinder-USA folded, dismissing its suit in August 2007.

The growing number of anti-SLAPP states (there are now at least 24, according to Ms. Miller) is an extremely positive development for free speech and a well-informed polity. Unfortunately, it is useless against the libel tourist, who lodges his claims before foreign tribunals. Back in England, American SLAPP laws were of no avail to Rachel Ehrenfeld. Similarly, they provided no comfort for Cambridge University Press, which cravenly caved in to Sheikh Mahfouz's tactics.

Cambridge not only paid a settlement and issued a lugubrious apology for its publication of *Alms for Jihad*, a scholarly work about the financing of Muslim terror written by the University of California Santa Barbara Professor Robert O. Collins and the former State Department official J. Millard Burr; in the worst book-burning tradition, it actually recalled already distributed copies and pulped the entire unsold lot. And for those who point to the Law Lords' *Jameel* decision and contend that the United States need take not action because all is now well in Albion, *Alms for Jihad* stands as a cautionary tale: The book was published (at least fleetingly) the year *Jameel* was decided, yet Cambridge's total surrender occurred in 2007, the following year. Clearly, despite *Jameel*, the publisher was still confronted by the prospect of lengthy, expensive litigation (with no prospect of SLAPP-style fast-tracking) and took the path of least resistance.

SLAPP alone does not explain why, in the *Ehrenfeld* case, Sheikh Mahfouz proved so desperate to avoid jurisdiction in the United States. The most palpable reason is that he would lose here. The related but more obscure rationale lies in the generous discovery rules that apply in American civil litigation. As plaintiffs, researchers like Dr. Ehrenfeld would be unleashed to conduct an extensive probe of the Mahfouz finances and reputed connections to terror. From a public relations or (one hopes) a government-policy standpoint, this would be even more of a catastrophe for prominent Saudis than the libel tourism gambit has been a coup.

As already noted, the New York State legislature has recently taken action. At the end of March 2008, it passed the "Libel Terrorism Protection Act." If signed by Governor Paterson, this bipartisan legislation would effectively reverse the result of Dr. Ehrenfeld's suit, which was dismissed on jurisdictional grounds. Henceforth, New York courts, and federal courts applying New York law in so-called diversity suits involving foreign parties, would have jurisdiction in a case where (a) an alleged libel was published in New York; (b) the author (or her sponsors or publisher) are New Yorkers or, at least, have property in the state which could potentially be executed against to satisfy a foreign judgment; and (c) a foreign judgment has been obtained in a jurisdiction which, in the view of the New York judge, did not provide "at least as much protection for free speech and the press" as is provided by the Constitutions of the United States and the State of New York.

Naturally, critics complain that such legislation is an instance of forcing American standards on foreign countries, an unwarranted departure from the deference we owe other sovereigns within their jurisdictions. But this is hardly the case. The proposed law narrowly directs itself to alleged defamations published in New York. It does not, and indeed could not, compel other nations to adopt the press-friendly standards of *New York Times v. Sullivan*. It does not and could not stop a libel tourist like Sheikh Mahfouz from continuing to

trawl the planet for hospitable legal climes. Instead, it recognizes that foreign actors are aggressively seeking to deny Americans the deference owed to our own sovereignty regarding actions taken within our own jurisdiction. In a healthy departure from the modern currents of lawfare, it arms *Americans* with legal tools to stave off the assault—a development that has the residual and all-important benefit of promoting the free exchange of information that is the *sine qua non* of good public policy.

The most persuasive criticism of the New York bill is that it is not enough—through no fault of New York lawmakers. New York City is an international media and book-publishing hub, and it may be that the state's legislation will provide the tonic necessary to invigorate the First Amendment against most attacks. But it won't suffice against all of them. It is, more to the point, an *American* freedom we are talking about, not merely one vouchsafed by New York's Constitution.

It is the national government's first responsibility to protect the federally guaranteed rights of the governed—and one would hope it would do so with at least as much verve as has animated it to provide, say, judicial review for alien terrorists detained or referred for military trial by our own armed forces. Libel tourism represents a challenge to a fundamental right of *our* citizens, a freedom on which the functioning of our democracy depends. It also plainly implicates our foreign relations. To return to the sage monitions of Chief Justice Roberts, such undertakings are the responsibility of Congress and the President.

Congress should craft an anti-libel-tourism statute creating a federal cause of action for American journalists, and their publishers and sponsors, who are sued in foreign defamation actions based on the U.S. publication of allegedly libelous claims. The statute should provide for expedited discovery, as well as damages and costs commensurate with the foreign judgment and expenditures.

It should, in fact, go further. In its preliminary ruling last summer in *Ehrenfeld v. Mahfouz*, the U.S. Court of Appeals for the Second Circuit noted Dr. Ehrenfeld's contention—made in an effort to establish jurisdiction over Sheikh Mahfouz—that Mahfouz had engaged in a scheme designed to undermine Ehrenfeld's ability to conduct research and write for publication. As part of the new cause of action, Congress should empower a court to impose double or treble damages if such a scheme is proved by a preponderance of the evidence.

To date, no federal legislation has been proposed, though Representative Peter T. King of New York (the ranking Republican on the House Homeland Security Committee) is actively engaged in the issue and considering the introduction of a bill. Action is sorely needed. Unlike most legislation, a provision to combat libel tourism would actually result in a *reduction* of litigation. Aware that their tactics are no longer cost-free, Sheikh Mahfouz and others would be far less likely to launch foreign suits, obviating any need by American journalists to file responsive actions. Truly irresponsible journalists who publish malicious falsehoods would still be liable under American and foreign law—the new legislation would protect only writers and publishers who adhere to standards of professionalism.

The national government, however, would have reaffirmed the salience of free-expression, the supremacy of American sovereignty over actions taken within our realm, and the commitment to protect Americans by law. Of perhaps greater significance, in the struggle against jihadism that is the central challenge of our time, anti-libel tourism legislation would revitalize the national purpose to defeat our enemies just as decisively in the war of ideas as in the war on the battlefield.

Selected responses

Hon. Robert H. Bork: The marketplace of ideas is a metaphor which sort of suggests a

moral equivalence between the kind of speech that the leaders in Iran use and our own. I don't think there is a moral equivalence, and I don't think that anybody ought to think that we should just put their ideas on the market and have a nice debate. We're in a struggle, not a debating society. I'm objecting to the metaphor, because clearly the importance of publication here is very great.

Now the legislation we're talking about and the responses we're talking about are not without their difficulties. For example, if we say that a judgment from a foreign court in a libel case that does not meet our First Amendment standards may not be enforced here, that still leaves the publisher, and the author perhaps, liable to enforcement of the judgment in all kinds of other countries.

Daniel Kornstein: The question is, what is to be done? In many ways, the actual effect, the real world effect, is less important than the symbolic effect of what's happening. The fact that people like Dr. Ehrenfeld bring lawsuits, the fact that legislation has been passed, is a symbol, and it's an important symbol in terms of keeping the banner aloft. That tells the world, tells publishers, tells everyone, that these things are important to us. That we're not going to be discouraged. That we're not going to stop writing, printing, and publishing. And we have to make it important and worthwhile. Ultimately, in the long run, there'll have to be some sort of international treaty or convention that deals with this because it's a global problem; in many ways, it's a perfect storm of a problem. You have the issues of the internet and instantaneous globalization of publishing, and the First Amendment interests; you have the national security, war on terrorism interests; they all come together in this problem. And that's a new complex of issues to deal with. It's evolving. If you publish something on the internet in America, it's immediately available everywhere. Does that mean that someone publishing here can be liable in Sri Lanka or Australia? And these are not names picked out of a hat. There have been very significant libel judgments in those countries against very large organizations. Large publishing companies have assets worldwide, so that to say that they may be able to sue here to have a declaration of unenforceability doesn't do it in terms of real world consequences.

John J. Walsh: I have a number of objections to the law that's just been passed, labeled the Libel Terrorism Protection Act, and they run to, primarily, the notion that it's an unnecessary law. If enforcement of a foreign libel judgment is to be thwarted over here, then there already exists a mechanism because enforcement can only be done through a judicial proceeding. And the American Constitution and the Bill of Rights and First Amendment law can come into play. The other thing that gets me about the LTPA is that it doesn't just single out cases brought from abroad based on allegations of terrorism or terrorism support. This law debars every claimant of every kind who wins an English libel judgment because it's expressed in general terms. It doesn't single out libel terrorism cases, probably that couldn't even get a nod in the legislature, but nevertheless that doesn't mitigate the effect. Another thing is about the strategy employed in Dr. Ehrenfeld's case, that after having told her readers that she was going to challenge Mahfouz, she changed her mind and defaulted. Now the consequences of default, under our system of law, under the British system of law, under almost every worldwide system of law, are well known. You're going to have something called a default judgment rendered against you.

The lamps are going out

by Mark Steyn

It's an honor to be here, with so many people I greatly admire, including Rachel Ehrenfeld, and my comrade-in-arms from our struggle up north, Ezra Levant. I feel like giving a version of the Churchill speech in Fulton, Missouri, about how a Maple Curtain has descended across the forty-ninth parallel. It's not quite that bad—yet—but if you do see a couple of guys bust into the Princeton Club in red coats on a dog sled, it's the Royal Canadian Mounted Police snatch team, so just let Ezra and me know and we can get a two-minute head start down Fifth Avenue.

I'd like to start with a bit of good news/bad news for me personally. As some of you are aware, the Canadian Islamic Congress complained about an excerpt from my book *America Alone* published in *Maclean's* magazine. They took the complaint to three of these cockamamie "human rights" commissions they have in Canada. So I was facing three trials: before the Canadian Human Rights Commission, the British Columbia Human Rights Tribunal, and the Ontario Human Rights Commission. In civilized justice systems, double jeopardy is a no-no, but triple jeopardy is apparently fine and dandy. Yesterday, the Ontario Human Rights Commission announced belatedly that they'd decided not to hear the case. Since it emerged that they were considering hauling into court not just me but Canada's best-selling news weekly over an excerpt from a book that was a number-one bestseller in Canada, they've had the worst four months' publicity in their existence. So they decided, in effect, they'd had enough and to quit while they were behind. That's the good news. The bad news is they decided to issue a verdict anyway. They declared my article and my magazine to be "racist" and "Islamophobic," and "strongly condemned" it. Over the years, I've written in newspapers and magazines in dozens of countries and have attracted my share of legal problems. But yesterday was a first for me. The Ontario Human Rights Commission, having concluded they couldn't withstand the heat of a trial, decided to cut to the chase and give us a drive-thru conviction anyway. If I'm charged with holding up a liquor store, I enjoy the right to the presumption of innocence and to defend myself in court. But when it comes to so-called Islamophobia—a word which was only invented a few years ago and which enjoys no legal definition—all the centuries-old safeguards of English Common Law go out the window.

On the radio yesterday, I was asked why I was bothering to defend myself. I live in the United States; nobody's going to extradite me; why not just write off Canada? Here's my self-interested answer: I make my living as an author. If I go to my American publisher to pitch a book, she'll listen to my précis and then figure, "Well, we won't be able to sell it in Canada, so there goes ten percent of the North American market. And we won't be able to license a British edition,

because some bigshot Saudi prince will sue in a London court. And we won't be able to sell French and German translation rights because it runs afoul of European Union xenophobia legislation." And pretty soon your little book is looking a lot less commercially viable. So it's easy to say write off Canada, Britain, Europe, Australia, but at the end of the day there'll be a lot of American authors affected by this and a lot of American books that will go unpublished here in America.

As I said, that's my self-interested answer as to why I'm fighting this thing, but here's my high-falutin' one. When my children are my age, I want Western civilization still to be in business. I think the idea that America can survive as a lonely beacon of light in a dark planet is absurd. To accept these thuggish assaults on free speech in the rest of the West is to make inevitable a world in which one day they will be under assault here. We're part of a global economy, signatories to global agreements, global distribution networks, members of transnational bodies. The notion that freedom can be undermined in every other part of the West without having an impact here in the United States is preposterous. My book is about to be published in France, and, if some French Muslim lobby group wants to do the same as the Canadian Islamic Congress, I'll defend it in a French court in my lousy Québécois-accented French (which I believe is a capital offense in the Fifth Republic). And I'll do that in every Western jurisdiction where bullies who can't withstand free, honest, open debate decide instead to use the legal system to shut the debate down. The President often says about Iraq that we're fighting them over there so we don't have to fight them over here. Same with me and the legal jihadists: I'm going to fight them over there because otherwise we're going to be fighting them over here, and sooner than you think.

On August 3, 1914, on the eve of the Great War, Sir Edward Grey, the British Foreign Secretary, stood at the window of his office in the summer dusk and observed: "The lamps are going out all over Europe." Today the lamps are going out on liberty all over the Western world in a more subtle and elusive and profound way. Much of the West has become far too comfortable with the proposition that in free societies it is right and proper for the state to regulate speech. The response of the EU Commissioner for Justice, Freedom, and Security to the Danish cartoons crisis a couple of years ago was to propose a press charter that would oblige newspapers to exercise "prudence" on, ah, certain controversial subjects. The response of Tony Blair's ministry to the problems of his own restive Muslim populations was to propose a sweeping law dramatically constraining free discussion of religion. At the end of her life, Oriana Fallaci was being sued in her native Italy and in Switzerland, Austria, and sundry other jurisdictions by groups who believed her opinions were not merely disagreeable but criminal. In France, Michel Houellebecq was sued by Muslim and other "anti-racist" groups who believed opinions held by a fictional character in one of his novels were not merely *artistically* disagreeable but criminal.

But it gets better. Among the other "flagrantly Islamophobic" articles the Canadian Islamic Congress took to the human rights commissions is my review of a situation comedy—the taxpayer-funded Canadian-Muslim sitcom "Little Mosque on the Prairie." I reviewed it for *Maclean's* magazine, and it wasn't exactly a non-stop laugh-riot, which would be an unexceptional observation, especially with regard to taxpayer-funded CBC sitcoms. But the Canadian Islamic Congress is alleging that finding Muslims insufficiently funny is Islamophobic. Perhaps I should call several Iranian scholars as expert witnesses. You may recall that, in one of his final pronouncements, the Ayatollah Khomeini declared—definitively, one would have thought—that "there are no jokes in Islam." But apparently the Canadian Islamic Congress disagrees: Their position is that not finding Muslims funny is no laughing matter. And in this case the joke's on me.

I'm a small piece of a very big picture. After the London Underground bombings and the French riots, the commentariat lined up to regret that Western Muslims are insufficiently "assimilated." But, in fact, at least in their mastery of legalisms and victimology, they're superbly assimilated. Every day of the week, a Muslim lobby group is engaging in something like this, whether it's the Council on American-Islamic Relations, which is an unindicted co-conspirator in a terrorism-funding investigation, or up north the Islamic Supreme Council of Canada, which took my friends at *The Western Standard* to the Alberta Human Rights Commission for republishing the Danish cartoons. In fact, if you want a snapshot of what's happening in our world, consider this: for republishing those cartoons, Ezra Levant has been hauled before a government tribunal in Canada and spent two years and a six-figure sum defending himself, while in London the masked men who marched through the streets with signs reading "Behead the Enemies of Islam" (and who promised to rain down a new 9/11 and a new Holocaust on Europe) were protected by a phalanx of London policemen. Multicultural societies are so invested in tolerance that they'll tolerate the explicitly intolerant and avowedly unicultural before they tolerate anyone pointing out that intolerance.

And so it goes every time. The response of the state to explicit Islamic intimidation is to find ways to punish those citizens foolish enough to point out the intimidation. And the Council on American-Islamic Relations understands that, and the Islamic Supreme Council of Canada understands that, and so does the Supreme Islamic Council of New South Wales down in Australia, and the Supreme Islamic Council of Pocatello and all the rest of them. How did we get to this state of affairs? I was reminded the other day of an observation by the American writer Heywood Broun: "Everybody favors free speech in the slack moments when no axes are being ground." I think that gets it exactly backwards. It was precisely at the moment when no axes were being ground that the West decided it could afford to forego free speech. There was a moment thirty or so years ago when it appeared as if all the great questions had been settled: There would be no more Third Reichs, no more Fascist regimes, no more anti-Semitism; advanced social democracies were heading inevitably down a one-way sunlit avenue into the peaceable kingdom of multiculturalism—and so it seemed to a certain mindset entirely reasonable to introduce speech codes and thought crimes essentially as a kind of mopping-up operation. Canada's "human rights" tribunals were originally created to deal with employment and housing discrimination, but Canadians aren't terribly hateful and there wasn't a lot of that, so they advanced to prosecuting so-called "hate speech." It was an illiberal notion harnessed supposedly in the cause of liberalism. A handful of Neo-Nazi losers in rented rooms in basements posting white supremacist messages on unread websites? Hold-out groups of homophobic fundamentalist Christians flaunting the more robust passages of Leviticus? Hey, relax, we'll hunt down the basement losers and ensure they'll trouble you no further. Just a few recalcitrant knuckledraggers who decline to get with the beat. Don't give 'em a thought. Nothing to see here, folks.

Canada is not under any threat from Nazis. If any "white supremacist" were really a "supremacist," he wouldn't be living in his mom's basement. The real "supremacists" are the moral poseurs fighting, as moral poseurs often do, phantoms. The Nazis are gone. We won that one, sixty years ago. So today the phrase "human rights" has been all but completely inverted. What human rights does the Ontario Human Rights Commission champion when it's not "strongly condemning" my Islamophobia? They're currently tied up hearing the case of two women who claim they were denied their human right to a labiaplasty by a Toronto plastic surgeon who specializes in that particular area. The women proved to be post-operative transsexuals who were unhappy with some of the aesthetic results

of their transformation, and Dr. Stubbs declined to perform the procedure on the grounds that he usually operates on the private parts of biological females and is generally up to speed on what goes where but, when it comes to transsexuals, he had no idea what he was, so to speak, getting into. If you don't know what a labiaplasty is, don't worry, I'm not going to explain it. I'm just relieved the Ontario Human Rights Commission hasn't ordered me to undergo one. When they're not crusading for the human right to a transsexual labiaplasty, they're busy supporting—in another current case—the human right to smoke marijuana on another man's property.

These pseudo-human rights come at the cost of real human rights. If you want to know what's gone wrong with Western democracy's conception of human rights, it's perfectly distilled by the Canadian "Human Rights" Commission's most assiduous human rights plaintiff, a man called Richard Warman. I used to work at the BBC, and one of my colleagues was a sports anchor called David Icke. David had a bit of a turn one day and called a press conference to announce he was the Son of God. Shortly thereafter he concocted a grand conspiracy theory to explain everything that happens anywhere in the world. David believes in a secret world government run by child-abusing Satanist Illuminati controlled by the Queen and the Bush family who are, he says, reptilian humanoids descended from the blood-drinking space lizards of the star system Alpha Draconis. Apparently the late Princess of Wales confirmed to him just before her mysterious death that the Royal Family are shape-shifting space reptiles. Her Majesty The Queen has never filed a libel suit against David Icke. As far as I know, she responds to allegations that she's a blood-drinking shape-shifting space lizard by laughing the socks off her sinister reptilian feet. So instead Canada's great human rights crusader Richard Warman filed suit on her behalf, taking David Icke to court on the following grounds:

> He has taken all the conspiracy theories that have ever existed and melded them together to create an even greater conspiracy theory of his own. . . . What benefit can there be in allowing him to speak?

Remember those words: "What benefit can there be in allowing him to speak?" A longtime "human rights" officer thinks that it's the state's role to "allow" citizens to speak if they can demonstrate some "benefit" in doing so. With human rights like that, who needs lack of human rights? So the human rights establishment started shutting up neo-Nazis who don't like Jews and fundamentalist Christians who disapprove of gay marriage and wiled away the idle moments in between by chastising a few kooks who think the Royal Family are giant space lizards. As I said, just a bit of mopping up en route to the great multicultural utopia.

And at that point Islamic lobby groups figured out, hey, if liberals are so eager to police speech, why not let them? Canada and much of Europe have statutes prohibiting Holocaust denial. Muslim scholars are not impressed by these laws. "Nobody can say even one word about the number in the alleged Holocaust," says Sheikh Yusuf al-Qaradawi, the favorite Islamic "scholar" of many Euroleftists, and a key associate of the big new mosque going up in Boston. Sheikh Qaradawi is a well-connected imam. He was invited to speak at a conference sponsored by Britain's Department of Work and Pensions and the Metropolitan Police on "Our Children, Our Future." And certainly, when it comes to the children, he has their future all mapped out. He's spoken up in favor of child suicide bombers as Islam's big trump card over the Israelis, and, whenever he does, I find myself thinking of Maurice Chevalier: Thank heaven for little girls, they blow up in the most delightful way. Yet he has a point on Holocaust denial. "Nobody can say even one word . . . even if he is writing an M.A. or Ph.D. thesis, and discussing it scientifically. Such claims are not acceptable." But a savvy imam knows an

opening when he sees one. "The Jews are protected by laws," notes Mr. Qaradawi. "We want laws protecting the holy places, the prophets, and Allah's messengers." In other words, he wants to use the constraints on free speech imposed by Europe and Canada to protect Jews in order to put much of Islam beyond political debate. The free world is shuffling into a psychological bondage whose chains are mostly of our own making. The British "historian" and Holocaust denier David Irving wound up in an Austrian jail—for his opinions. It's not unreasonable for Muslims to conclude that, if gays and Jews and other approved identities are to be protected groups who can't be offended, why shouldn't they be also?

They have a point. How many roads of inquiry are we prepared to block off in order to be "sensitive"? And, once we've done so, will there be anything left to talk about other than Paris Hilton and Jamie Lynn Spears? Holocaust denial should be ridiculous and contemptible but not illegal.

If the objection is that hate speech laws would have prevented the rise of Nazism, well, pre-Nazi Germany had such laws. Indeed, the Weimar Republic was a veritable proto-Trudeaupia of Canadian speech restrictions. There were more than 200 prosecutions for anti-Semitic speech, and a fat lot of good it did. In 1925, the State of Bavaria issued an order banning Adolf Hitler from making any public speeches. The Nazis responded by distributing a drawing of their leader with his mouth gagged and the caption, "Of 2,000 million people in the world, only one is forbidden to speak in Germany." In 1933, when Hitler became Chancellor and introduced the Enabling Act restricting certain liberties, the Social Democrats packed the Reichstag and their chairman Otto Wels made a powerful speech in defense of freedom. And Hitler smirked and quoted Schiller: "Spaet kommt ihr, doch ihr kommt," he tittered—which means more or less "You're late arriving, but you got here at last." And then added "You should have recognized the value of criticism during the years we were in opposition when our newspapers were forbidden, our meetings were forbidden, and we were forbidden to speak." Those who constrain speech in free societies are always stunned to find that one day the wind has changed direction and those speech constraints are now being used against them.

The idea that "hate speech" led to the Holocaust is seductive because it's easy: If only we ban hateful speech, then there will be no hateful acts. But, as Professor Anuj C. Desai of the University of Wisconsin Law School points out, "Biased speech has been around since history began. As a logical matter, then, it is no more helpful to say that anti-Semitic speech caused the Holocaust than to say organized government caused it, or, for that matter, to say that oxygen caused it. All were necessary ingredients, but all have been present in every historical epoch in every country in the world."

If the objection is a subtler one—that the Holocaust is a uniquely terrible stain on humanity that cannot be seen as ordinary crimes—that's all the more reason to talk about it openly. How did we end up in a world where David Irving sits in a cell for querying the numbers of the last Holocaust while the president of Iran plans the next Holocaust and gets invited to speak at Columbia, in a world in which masked men march through London streets promising to rain down a new Holocaust on Europe and are given a bodyguard of police officers to help them do so? The more we hedge ourselves in with "hate speech" regulations, the less we're able to hold any genuinely inquiring discussion on the issues we face. And once that's the case, as the angry young men in the streets have figured out, you might as well just threaten to burn and kill to get your way. You won't have to do a lot of burning and killing—just give the impression, in a not particularly subtle way, that you're an excitable type and it's best not to provoke you. That's why the state justifies its need to crack down on Islamophobia by fretting over the entirely mythical wave of anti-Muslim violence—at a time

when Danish cartoonists and Dutch parliamentarians and even California professors are in hiding, and French synagogues and schools and kosher butchers are being bombed and torched.

The price of liberty is eternal vigilance. And what the Council on American-Islamic Relations, the Canadian Islamic Congress, and similar groups in Britain and Europe are trying to do is criminalize vigilance. They want to use the legal system and other routes to circumscribe debate on one of the great central questions of the age—the relationship between Islam and the West—and to enforce silence on the most basic reality of that relationship: the remorseless Islamization of much of the Western world in what the United Nations calls the fastest population transformation in history.

Are we allowed to talk about that? Modern social-democratic governments preside over multicultural societies which have less and less glue holding them together, and they're very at ease with the idea of the state as the mediator between different interest groups. Most of these governments haven't a clue what to do about their turbulent surging Muslim populations, but they have unbounded faith in their own powers and so it seems entirely natural to manage the problem by regulating freedom in the interests of social harmony. For example, Iqbal Sacranie is a Muslim of such exemplary "moderation" he's been knighted by the Queen. Sir Iqbal, the head of the Muslim Council of Britain, was on the BBC and expressed the view that homosexuality was "immoral," "not acceptable," "spreads disease," and "damaged the very foundations of society." A gay group complained, and Sir Iqbal was investigated by Scotland Yard's "community safety unit" which deals with "hate crimes" and "homophobia."

Independently but simultaneously, the magazine of GALHA (the Gay & Lesbian Humanist Association) called Islam a "barmy doctrine" growing "like a canker" and deeply "homophobic." In return, the London Race Hate Crime Forum asked Scotland Yard to investigate GALHA for "Islamophobia."

Got that? If a Muslim says that Islam is opposed to homosexuality, he can be investigated for homophobia; if a gay says that Islam is opposed to homosexuality, he can be investigated for Islamophobia.

Personally I'm phobiaphobic. The reason I'm a phobiaphobe is that I have a great fear that all these mostly fictional "phobias" encourage the shrinking of public discourse and the expansion of the state as the sole legitimate arbiter of acceptable discourse. And because a lot of these phobia-prone identity groups are not equally motivated, the one who wins will be the one willing to apply the most muscle. Last year, Her Majesty's Government in London passed a law requiring elementary schools to teach kindergarteners and other youngsters all about the joys of same-sex marriage. You know the kind of books—*Heather Has Two Mommies*, or *King & King*, in which a handsome prince goes looking for a bride, meets three lovely princesses but eventually marries one of the princess's brothers and they reign happily over their magic fairy kingdom together. When evangelical Christians object to these books, they're told you uptight squares need to get with the beat. But when the Muslim parents at the grade school in Bristol, England objected to these books, the city council caved in nothing flat and yanked them from the school. It's an interesting lesson not just in the internal contradictions of multiculturalism but also in which side is likely to win. If it's a choice between *Heather Has Two Mommies* or *Heather Has Two Imams*, bet on *Heather Has Two Imams*—or *Heather Has Four Mommies and a Big Bearded Daddy Who Wants to Marry Her Off to a Cousin Back in Pakistan*.

That's the way it goes. If you point out that, for example, EU prohibitions on "xenophobia" or the proposed British law restricting comment on religion would be unconstitutional in America, the more thoughtful Europeans will respond ruefully that things like the First Amendment presuppose a social consensus that across the

Atlantic doesn't exist: It's all very well to say Danish cartoonists should be able to draw what they like, but not if it means people are getting killed and your cities are burning. Oddly enough, the state's urge to coerce self-restraint only applies to one party. Over in Sweden, they were investigating the Grand Mosque of Stockholm. Apparently, it's the one-stop shop for all your jihad needs: you can buy audio cassettes at the mosque encouraging you to become a martyr and sally forth to kill "the brothers of pigs and apes"—i.e., Jews. So somebody filed a racial-incitement complaint and the coppers started looking into it. Then Sweden's chancellor of justice, Goran Lambertz, stepped in. And Mr. Lambertz decided to close down the investigation on the grounds that, even though the porcine-sibling stuff is "highly degrading," this kind of chit-chat "should be judged differently—and therefore be regarded as permissible—because they were used by one side in an ongoing and far-reaching conflict where calls to arms and insults are part of the everyday climate in the rhetoric that surrounds this conflict."

In other words, if you threaten to kill people often enough, it will be seen as part of your vibrant cultural tradition—and, by definition, we're all cool with that. Celebrate diversity, etc. Our tolerant multicultural society is so tolerant and multicultural we'll tolerate your intolerant uniculturalism. Your antipathy to diversity is just another form of diversity for us to celebrate.

My supposedly Islamophobic book isn't really about Islam, it's about us. And the single most important line in it isn't by me, it's a famous and profound observation by the historian Arnold Toynbee: "Civilizations die from suicide, not murder."

One manifestation of that suicidal urge is the willingness of government ministers, judges, police agencies, social workers, and other officers of the state to make common cause with an ideology explicitly committed to overturning the liberal utopia they claim to be working for. Up north, the Ontario Federation of Labour decided to support the Canadian Islamic Congress' case. As Terry Downey of the OFL primly explained, "There is proper conduct that everyone has to follow"—and she and her union clearly feel my article is way beyond the bounds of that "proper conduct." Don't ask me why. I don't pretend to understand the peculiar psychological impulses that would lead the OFL to throw its lot in with Dr. Mohamed Elmasry, the openly, cheerfully judeophobic homophobic misogynist head of the Canadian Islamic Congress—except that there seems to be some kinky kind of competition on the Western Left to be, metaphorically speaking, Islam's lead prison bitch.

If you don't believe in free speech for speech you loathe, you don't believe in free speech at all. Our sedated happy-face multiculturalists need to grow up and recognize the dangers in forcing more and more public discourse into the shadows. For Rachel Ehrenfeld and Ezra Levant and others, the punishment is not the verdict, but the process—the months of time-consuming distractions and legal bills that make it easier for publishers and editors to shrug, "You know, maybe we don't need a report on creeping Sharia or terrorist funding or Saudi subversion, after all. How about we do *The Lindsay Lohan Guide to Celebrity Carjacking* one more time?" So on it goes: Australian publishers decline novels on certain, ah, sensitive subjects; British editors insist books are vacuumed of anything likely to attract the eye of wealthy Saudis who happen to have a flat in Mayfair. These are the books we will never read, the plays we will never see, the movies that will never be made. To reprise Sir Edward Grey one last time, when it comes to free speech on one of the critical issues of the age, the lamps are going out all over the world—one distributor, one publisher, one silenced novelist, one cartoonist in hiding, one sued radio host, one murdered film director at a time. It's time to stop it and to reverse it, and to relight the lights of liberty.

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