Pace Law Review

Volume 25
Issue 2 *Spring 2005*
The Anti-Terrorist Financing Guidelines: The Impact on International Philanthropy

Article 7

April 2005

Malevolent Destruction of a Muslim Charity: A Commentary on the Prosecution of Benevolence International Foundation

Matthew J. Piers

Follow this and additional works at: http://digitalcommons.pace.edu/plr

Recommended Citation
Matthew J. Piers, *Malevolent Destruction of a Muslim Charity: A Commentary on the Prosecution of Benevolence International Foundation* , 25 Pace L. Rev. 339 (2005)
Available at: http://digitalcommons.pace.edu/plr/vol25/iss2/7

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

Malevolent Destruction of a Muslim Charity: A Commentary on the Prosecution of Benevolence International Foundation

Matthew J. Piers

Three years ago we, as a nation, suffered a ghastly act of mass murder and terrorism apparently perpetrated by the self-proclaimed Islamic fundamentalist group, al Qaeda. A remarkable thing occurred in the wake of this tragedy: the United States, already feared and respected as the world's sole remaining super power, became the object of a tidal wave of international support and sympathy. Perhaps never before in our nation's relatively short history have so many hands and hearts reached out to us.

The potential to build on this historic outpouring of support and sympathy, both domestically and internationally, was enormous. We could have forged international alliances not previously available and reaped increased economic benefits from the global economy, as well as furthered the development of democratic processes in parts of the world controlled by totalitarian or autocratic regimes. More immediately, we could have developed an effective international response to the threat of international terrorism, emanating from stateless, ideological, well-funded and heavily armed networks of zealots.

We did none of those things. Indeed, our national policies and actions since September 11, 2001 have resulted in making us more isolated and more resented internationally than ever before. Never has "the Ugly American" seemed uglier to so many people around the world. This would be bad enough if we at least had the prospects of enhanced economic and national security. Unfortunately, our government has engaged in policies which make economic prosperity more elusive for the vast majority of people in the United States as well as policies which have made us more vulnerable to terrorist attacks than before.

According to many reliable accounts, our so-called "war on terrorism"[1] seems to have been an abysmal failure. In the last three

1. The danger of characterizing an international police action against a stateless criminal network as a "war" has been the subject of a growing amount of commentary. *See, e.g.*, Jonathan Rubin, *The Truth About Terrorism*, *in* 2 THE NEW YORK REVIEW OF BOOKS, No. 1 (2005).

years, the threat of world-wide terrorism has decentralized, multiplied and heightened its firepower as well as its mass appeal throughout the Muslim and Arab world. Osama bin Laden, the evil architect of mass murder in New York, as well as probably in Madrid and elsewhere, is alive and well, sending us pre-election political announcements, and rapidly gaining more supporters and broader appeal and influence than ever before. We waited far too long to go after him and his camps in Afghanistan. By the time we finally invaded he had apparently fled into Afghanistan's White Mountains, likely with the assistance of his long-time supporters at the highest levels of the Intelligence Service of our government's fair weather ally, the Musharif government of Pakistan. Rather than striking a blow against terrorism, our invasion of Afghanistan resulted in displacing (perhaps only temporarily) the medieval Islamist regime of the Taliban with a puppet government and United States military occupation in Kabul, while the traditional pattern of control by diverse, corrupt and brutal tribal warlords returned to run the rest of the country.

If our efforts in Afghanistan were a failure, our next great offensive in the unfortunately named "war on terrorism," the invasion of Iraq, has been a failure on steroids. Apparently motivated by a combination of a preexisting geopolitical agenda of a group of influential neo-conservatives and a personal vendetta on the part of the current Bush president for a failed assassination attempt on the former one, the invasion of Iraq has predictably turned out to be a truly bad idea of monumental proportions.

Now there can be no doubt that the justifications for this war were lies. We now know that there was never any credible evidence of the much ballyhooed "weapons of mass destruction," and even less evidence of any ties between those unlikely bedfellows, Saddam's brutal Baathist regime and Islamic fundamentalist terrorism. The only legitimate remaining questions are who knew that the justifications were lies, and when they knew. Saddam was, of course, a vile, sadistic dictator with few, if any, redeeming qualities. Sadly, however, the world does not lack for these, and if our government continues to throw the post-World War II international world order aside and take unilateral military action[2] against all of them, we better start figuring out how to pay for it and what to do with the populations of the territories we invade after our

2. With all due apologies to the small and shrinking collection of geopolitically insignificant nations bullied and manipulated into taking part in what our government has given the Orwellian moniker of "The Coalition of the Willing."

extraordinary firepower destroys the existing government and infrastructure. As was the case with Tito in Yugoslavia, Saddam's heavy hand kept the disparate and largely incompatible religious and ethnic groups in check in a nation created by a foreign power in the wake of a World War. Forging a democratic consensus among Sunnis, Shia, Assyrians, Kurds and others will be an elusive goal. Holding any semblance of free and fair elections in January will also likely be impossible given the rapidly spreading violence of the ongoing war.[3]

The invasion of Iraq has also thrown gasoline on an even more dangerous fire than that of ethnic and religious sub-group rivalries. It has provided convincing proof to a great number of people throughout much of the Arab and Muslim world that we are the true descendants of the crusaders of Western Europe, invading and conquering with blood lust, and ideologically hostile to Islam. This invasion was the answer to bin Laden's dreams. It has resulted in swelling the ranks of militant Islamic fundamentalist groups all over the world, and triggered a religious guerrilla war in Iraq which promises to go on for many more years, while fanning the flames of worldwide terrorism. Rather than striking a blow against terrorism, this invasion has perhaps done more to encourage it than the Israeli occupation of Palestine and the Egyptian repression of the Muslim Brotherhood combined.

In short, the Bush administration's foreign policies seem more as if they were crafted by Osama bin Laden and Ayman al Zawahari than by Donald Rumsfeld, Paul Wolfowitz and Condaleeza Rice. These policies have aided the opponents of democracy more than countered them.

Exacerbating the increased instability and vulnerability caused by these foolish, bloody and illegal foreign policies have been the shameful and dangerous attacks on, and ceding of, democratic freedoms at home. In the name of national security, all three branches of our federal government have, to differing extents, been willing to cripple and abandon many of the very liberties that make our constitutional democracy worth fighting for. This hard right turn in the direction of a police state might be more defensible if in fact we were engaged in effective efforts to catch the terrorist evildoers and make the nation safer. In fact, this appears not to be occurring. Our government's efforts to

3. This article was originally submitted pre-election. Given the boycott of the Iraqi elections by most of the Sunnit Muslim population, as well as the growing number of accounts of systemic electoral improprieties, this expectation seems, unfortunately, to have been realized (notwithstanding President Bush's Orwellian pronouncements of blooming democracy to the contrary).

combat terrorism on the domestic front have been less than reassuring. Not only has our government failed to take effective measures to protect our ports and critical infrastructure, but it has also wasted huge resources on ineffective bureaucratic restructuring and engaged in such ridiculous efforts as putting the nation on meaningless color-coded "alerts," and telling people to seal themselves inside their homes in case of germ warfare (thus apparently revealing a federal preference for self-asphyxiation over death by pathogens). The government has also undertaken a series of high profile criminal prosecutions, which would, if not for the human toll involved, be comical in their ineptitude.

For the last three years, at the direction of arguably the single worst Attorney General in our nation's history, our taxpayer dollars have been spent on largely unsuccessful investigations and prosecutions, which seem to have little or nothing to do with actually combating terrorism.[4] Instead they often seem motivated primarily by the political desire to make it look like the administration was catching the bad guys, when in reality they had no idea who they were even trying to catch, let alone how to do so. As with our foreign policy, a very large number of innocent people have been harmed along the way as the administration collected political scalps rather than dealt effectively with the threat of terrorism.

In the year and a half after September 11, 2001, I got a close up view of these incompetent and destructive efforts of our national government when my law firm, and my partner, Mary Rowland, and I, were retained to represent one of the three largest Muslim charities in the U.S., Benevolence International Foundation, Inc. ("BIF").

BIF, along with the other two large Muslim charities operating in the United States, Holy Land Fund for Relief of Palestine and Global Relief Fund, have been systematically and effectively destroyed by the United States government in the three years since September 11. The legal arsenal used by the government to destroy these charities included not only the controversial Patriot Act,[5] but also the International Emergency Economic Powers Act[6] ("IEEPA"), and the Antiterrorism and Effective Death Penalty Act of 1996[7] ("AEDPA").

The Patriot Act was passed overwhelmingly by a frightened and

4. David Cole, *The D.C. Gang That Couldn't Shoot Straight*, L.A. TIMES, Sept. 19, 2004, at M.

5. 8 U.S.C. § 1226a (2001).

6. 50 U.S.C. §§ 1701-1707 (2002).

7. 28 U.S.C. § 2254 (2001).

confused Congress less than two months after September 11, without any committee hearings or even any serious consideration of its content and impact. Among its many other broad reaching provisions, it largely removed the crucial line between national security intelligence gathering and criminal investigation work, resulting in the government being able to employ in criminal prosecutions intelligence information which is often uncorroborated, outdated and extremely questionable on its face. In the case of BIF (as indeed in the case of Iraq) much of it turned out to be just plain false.

IEEPA is a little known and remarkable law which allows for an executive branch administrative determination, without any notice or hearing, which results in the blocking or freezing of all assets of the person or entity. An IEEPA designation can result in an order forbidding even United States citizens from giving or receiving essentially any goods or services to or from any United States person without a "license" from the Office of Foreign Assets Control of the United States Treasury Department ("OFAC"). OFAC grants or denies requests for such licenses based on completely standardless discretion and with no practical right of appeal. An IEEPA designation can be tantamount to the status of "internal banishment" that was employed by the apartheid government of South Africa.

AEDPA provides for a standardless designation of "terrorist" groups, also without notice or hearing. It further makes it illegal to provide any assistance to these groups, even if it is done for purely humanitarian reasons. Like the term "war," the term "terrorist" has lost much of its meaning in its current widespread usage.[8] Furthermore, such "terrorist" designations have often been politically driven in the past, without regard to true national security concerns. For instance, throughout the 1980s, the United States State Department designated Nelson Mandela's African National Congress as a terrorist organization. Mandela, of course, went on to win world-wide acclaim as he and the ANC founded democratic, post-apartheid South Africa. More recently, throughout most of the 1990s, our government gave encouragement and, it is widely believed, covert economic assistance to the Chechen forces fighting for independence from Russia. This was done in an effort to destabilize the post-Soviet Union Russian Federation. With the geopolitical sea change that took place in the wake of September 11, our

8. The term has largely lost its original meaning of actions calculated to create fear among a civilian population, and has come to mean acts of a violent nature with a political purpose. *See, e.g.*, 18 U.S.C. § 2331(1)(A), (B) (2001).

government turned around and designated the Chechen independence fighters as "terrorists" in an effort to further an alliance with Russia towards mutual cooperation in combating al Qaeda. In essence, we agreed to recognize their "terrorists" in exchange for their help fighting ours.

BIF began operations in 1993, and by the time our government destroyed it, it was providing approximately three million dollars a year in charitable funding to mostly Muslim parts of the world. The money was raised primarily in mosques and Muslim communities across the U.S. BIF's programs included orphan sponsorship in China, Bosnia, Afghanistan and elsewhere; refugee relief in Pakistan and in the Russian Federation; the operation of the only children's tuberculosis hospital in the TB ravaged nation of Tajikistan; and the Charity Woman's Hospital, the only obstetrical and gynecological hospital in the southern Russian republic of Daghestan.

In October of 2001, an article was published in the New York Times, indicating that unnamed persons within the government were lobbying to investigate major Muslim charities in the United States, including BIF, as possible sources of terrorist funding.[9] BIF approached our law firm with a request that we contact the government and offer them full cooperation with regard to any inquiry into BIF's activities, including access to all documents and staff, in order to clear the charity's name. We advised the client that neither the United States Attorney's office nor the United States Department of Justice was engaged in the business of "declaring innocence." The client, however, insisted that we make every effort possible, so we proceeded to make contacts with the United States Attorney's office in Chicago. For the next several weeks we traded phone calls with the U.S. Attorney's office, presenting our client's offer. In late November, we finally received a request from the government for a meeting with the client to discuss the offer. We informed the government that the executive director of the charity was temporarily overseas, and requested that the meeting be scheduled upon his return at the end of the Muslim holy month of Ramadan.

The government's "response" was to raid the BIF offices in Chicago and New Jersey on December 14, 2001, blocking all of the charity's financial assets and seizing substantially all of its physical property, including all files, video and audiotapes, and computers. This action was

9. Judith Miller & Kurt Eichenwald, *A Nation Challenged: The Investigation; U.S. Set to Widen Financial Assault*, N.Y. TIMES, Oct. 1, 2001, at A1, *available at* 2001 WLNR 2907811.

taken without any charges or hearing, and pursuant to Foreign Intelligence Security Act[10] powers enhanced by the Patriot Act.[11] In lieu of a warrant based on probable cause, the government proceeded under an Attorney General Emergency Physical Search Authorization ("AGEPSA") authorized by the Attorney General and issued without prior court review. In one of the many bizarre turns in this Alice in Wonderland case, the government refused to provide us with a copy of the AGEPSA or to make a photocopy of it, but did allow us to read it and copy its entire contents down long-hand. Perhaps it was not a coincidence that the AGEPSA revealed that the government's actions were based on bad intelligence and a case of mistaken identity. The government believed, wrongly, that BIF's executive director, Enaam Arnaout, was someone named Samir Abdul Motaleb. We found out later from Jane's Intelligence that Motaleb, who was much older than Arnaout and believed to be dead, had been involved in something called the Services Office, an entity in Pakistan in the late 1980s and very early 1990s, which provided support to the "Afghan Arabs" fighting the Soviet invasion of Afghanistan, and which had a historic relation to what became al Qaeda.

BIF's executive director immediately returned to the United States, but he returned to a raided and blocked organization, which had no files, no assets and no ability to engage in its charitable operations. At the client's request, we continued to ask government officials to sit down with the charity staff in order to assist with and expedite the government's review of the materials that it had seized. As the matter proceeded into the next year, it became painfully apparent that the government was in dire need of such assistance, as its agents clearly had no idea what the documents were that they had seized and were reviewing, let alone their significance, if any. In addition, many of them were written in Arabic, and the government had very few Arabic translators available because, in spite of the obviously increasing threat to national security from a number of Islamic fundamentalist groups in the 1990s (including bin Laden's fatwah against the west in 1995), little had been done to refocus the expertise of our national security agencies.

On behalf of BIF, we repeatedly urged the government to issue an OFAC license, allowing funds to be released for the organization's overseas charitable operation. We reminded the government that

10. 50 U.S.C. §§ 1801-1811 (2000), *amended by* Pub. L. 108-458, 118 Stat. 3638 (2004).

11. 8 U.S.C. § 1226a (2001).

shutting down the children's tuberculosis hospital in Tajikistan and releasing the children carrying this highly contagious disease into the general population would be tantamount to committing an act of germ warfare. We offered to have attorneys from our firm travel with FBI or other appropriate government agents, at the client's expense, to the sites of BIF's overseas operations in order to assure that they were legitimate charitable undertakings, and that the monies were being delivered for charitable purposes. Although the government acknowledged the legitimate, charitable nature of these activities, it steadfastly refused these requests.

Faced with the prospect of destruction of the charity, BIF filed suit in the United States District Court for the Northern District of Illinois in January 2002, alleging violations of the First, Fourth and Fourteenth Amendments to the United States Constitution, and the Religious Freedom Restoration Act. Along with the complaint, we filed a detailed preliminary injunction motion with affidavits attached from BIF's executive director as well as from the directors of its charitable operations in countries overseas.

Over the government's vigorous objections, the court ordered it to promptly copy all computerized, taped and hard copy documents which were seized, and to return them to BIF so that it could properly prosecute the litigation.[12] The government failed and/or refused to comply with the court's timetable, and documents were returned very slowly over a period of several months. Documents were also not returned in the manner in which they had been kept, so a painstaking and costly process had to be undertaken to reconstruct BIF's business records, file by file.

Even after initiating litigation, BIF continued to cooperate fully with the government investigation. Current and former staff members were made available for FBI interviews without need of subpoena. The level of cooperation extended by BIF to the government, however, was apparently not paralleled by the level of cooperation occurring between agencies within the government. The raid of BIF's New Jersey offices had been conducted by customs officers from the Treasury Department. The Chicago raid, on the other hand, was directed by FBI agents. Some of BIF's files were therefore in the possession of the Justice Department, and others were with the Treasury Department. The Treasury Department, which was engaged in an IEEPA investigation, was apparently unwilling to share the documents in its possession with the

12. Benevolence Int'l Found. v. Ashcroft, 200 F. Supp. 2d. 935 (N.D. Ill. 2002).

Department of Justice for its criminal investigation. In response to this problem, at the request of the FBI and with consent of BIF, we sent a letter to OFAC requesting that it share with the Department of Justice the BIF materials seized by the Treasury Department. Our efforts at ending this intergovernmental turf war were successful.

Mr. Arnaout, a Syrian refugee and United States citizen, whose mother and siblings resided in Saudi Arabia, had informed us when he returned from Bosnia that he needed to travel to Saudi Arabia at some point prior to early May 2002 in order to renew his multi-year Saudi visa. Expiration of this visa might have prevented him from engaging in further visits with his elderly mother and other family members. We informed the government that Arnaout intended to travel to Saudi Arabia on April 3, 2002, and we were informed that the U.S. Attorney's office did not wish him to leave the country. When we inquired whether that meant that the government would stop him if he attempted to leave the country, the government refused to answer that question, but would only say that they had the ability to do so. We informed the government that, in the wake of September 11, we had little doubt that as a practical matter they had the ability to stop any person of Arab descent from boarding an airplane anywhere in the United States, but that we were seeking clarification as to Mr. Arnaout's legal status with regard to the investigation of BIF and the basis of the government's authority to act. No further response was forthcoming.

On April 2, 2002, the day before Mr. Arnaout was to leave the country, he received a subpoena to testify before a grand jury on April 25. He therefore immediately cancelled his trip. Upon inquiry, the government then confirmed that Mr. Arnaout was the target of a criminal investigation. Accordingly, we informed the government that Mr. Arnaout would assert his Fifth Amendment right against self-incrimination before the grand jury unless he was granted immunity, and that he would testify if given immunity. We further informed the government that we needed a resolution of this situation as quickly as possible, as Mr. Arnaout's visa was set to expire on May 5. The government decided on April 25 not to require Arnaout to appear before the grand jury, but would not state whether or not he would be given immunity, and insisted that his grand jury subpoena remain in effect. Therefore, on April 29, we filed a motion with the Chief Judge of the United States District Court for the Northern District of Illinois, who was charged with supervising grand jury proceedings, requesting that Mr. Arnaout be allowed to travel, and that the government either discharge

the subpoena or grant him immunity. The motion was scheduled for a May 1 hearing. On April 30, Mr. Arnaout was arrested at his home in the early hours of the morning and taken in handcuffs and shackles to the Metropolitan Correctional Center, the federal detention facility in downtown Chicago.

The government charged Arnaout and BIF with two counts of perjury. The basis of the charge was a declaration of Arnaout which BIF had filed in federal court in support of the preliminary injunction motion in the pending civil case, in which, in pertinent part, he had denied that BIF supported terrorism or any other form of violence. At the press conference held that day by Patrick Fitzgerald, the United States Attorney, the government hyped these charges, as a major step in the war against terrorism. BIF's civil lawsuit was then stayed on the court's motion, pending resolution of the criminal case.

The perjury charge was fatally flawed for legal reasons. It was clearly contrary to a unanimous 1979 United States Supreme Court decision, *Dunn v. United States*.[13] It was also in direct violation of the Department of Justice ("DOJ") Manual, which expressly stated (based on *Dunn*) that a perjury charge under the pertinent statute was not available in the case of submission of a false affidavit.[14] Neither the violation of clear Supreme Court precedent nor the contradiction in the DOJ's own manual seemed to bother the government. It did, however, bother the court, which dismissed the government's indictment in September 2002.

The government immediately filed a new charge of obstruction of justice, based on the same conduct but different statutes. Because the prior case had been dismissed, and the government maintained that the new charges were not related to the prior perjury charges, the case was assigned to a new judge. The new charges included an obstruction of justice charge against BIF. Arnaout was also charged again, and was kept without bail and in maximum security, solitary confinement throughout the proceedings. He was transported to and from court for his appearances in the most sensational manner possible, with the short, three block route between the jail and the court house blockaded by armored vehicles, and Mr. Arnaout, in handcuffs and shackles, escorted by U.S. Marshals armed with machine guns.

In October 2002 (and again in January 2003) the government obtained indictments of Arnaout charging that he had run BIF as a

13. 442 U.S. 100 (1979).

14. Department of Justice Manual, *at* http://www.usdoj.gov/atr/public/guidelines/207102.pdf (last visited Mar. 14, 2005).

criminal enterprise to fund terrorism, including al Qaeda, the Chechen independence fighters and the Bosnian army, in violation of Racketeer Influenced in Corrupt Organizations Act ("RICO") and as part of a conspiracy, providing material support to terrorism by money laundering, mail fraud and wire fraud. The charity, BIF was not named in the new indictment, and was no longer a defendant in the proceedings. The sensationalism attendant to the treatment of Arnaout was matched by incendiary and unfounded statements made personally by Attorney General Ashcroft at press conferences.

Ashcroft, accompanied by his entourage of national media, appeared at an October press conference in Chicago to announce the new charges. During that press conference the Attorney General vowed to stop the "source of terrorist blood money" and described it as "sinister to pray on good hearts to fund the works of evil." He proclaimed, in a biblical tone, that "[t]here is no moral distinction between those who carry out terrorist attacks and those who knowingly finance those attacks."[15]

Ashcroft's press conferences appeared to be clear violations of the Rule of Professional Conduct which forbids extra-judicial statements which pose "a serious and imminent threat to the fairness of an adjudicative proceeding."[16] (Issued in the Northern District of Illinois as Local Rule 83.53.6). Leading members of the Chicago legal community called, urging us to file disciplinary charges against the Attorney General, while at the same time refusing to do so themselves claiming that to do so would be "a career ender." We opted not to file such charges for a slightly different reason, feeling that there was no likelihood that they would be acted upon in a timely and/or favorable manner under the circumstances, and that it was not in our client's interest to increase the level of animosity with what appeared to be truly a Justice Department run wild.

The press conferences were not the only conscious efforts on the part of the government to poison the atmosphere and prevent a fair trial. Equally distressing and even more frequent, were the government's placement of documents into the public record for the apparent purpose of having them published in newspapers. After the raids of BIF's two

---

15. Attorney General John Ashcroft, Remarks at a Chicago Press Conference Announcing the Indictment of Alleged Terrorist Financier (Oct. 9, 2002), *at* www.usdoj.gov/ag/speeches/2002/100902agremarksbifindictment.htm (last visited Feb. 10, 2005) [hereinafter Ashcroft Remarks].

16. N.D. Ill. Loc. R. 83.53.6.

United States offices, the government arranged for Bosnian authorities to raid BIF related locations in Bosnia, and recovered a number of documents relating to Arnaout's activities in the 1980s. These included a 1988 newspaper photograph of bin Laden, taken somewhere near the Afghan/Pakistan border, in which a young Arnaout was shown in the background. This photograph, as well as another from the same general time and place which showed someone who looked like (but in fact was not) Arnaout brandishing a rifle, appeared repeatedly on prominent display in newspapers in Chicago and elsewhere around the country. In addition, the OFAC investigation, utterly devoid of any semblance of due process and relying on an administrative record replete with secret evidence combined with newspaper articles and other rank hearsay, resulted in a highly publicized designation of BIF as a "terrorist organization" in November 2002.

Because of the conspiracy charges, the government was required by Seventh Circuit precedent to make a proffer of the evidence sought to be admitted under the co-conspirator hearsay exception (a so-called *Santiago* proffer) for the court's review and ruling prior to trial.[17] In furtherance of this obligation, the government prepared a 101 page *Santiago* proffer with 248 exhibits consisting of largely unrelated documents, and filed them in the court file with the obvious hope that they too would be reported by the press. The trial judge, disturbed by the government's attempt at creating further prejudicial publicity, as well as the failure of the government to present any coherent conspiracy theory based on this disparate collection of documents, denied the *Santiago* proffer and struck the exhibits from the court record. "The proffer," the judge found, "is devoid of analysis linking proffered hearsay to a specific conspiracy."[18] Although the court reserved ruling on the evidence until trial, it noted that the government's behavior was "deeply disturbing" and that "a significant amount of the government's . . . proffer contains materials that are not relevant to [Arnaout] nor probative of the charges in the indictment(s), but rather are highly prejudicial matters suggesting guilt by association."[19]

As the evidence was revealed during the course of the criminal proceedings, it became clear that the government claims of terrorist funding were baseless. Arnaout, it turned out, had known bin Laden in

17. United States v. Santiago, 582 F.2d 1128 (7th Cir. 1978).

18. United States v. Arnaout, No. 02 Cr. 892, 2003 WL 255266, at *1 (N.D. Ill. Feb. 4, 2003).

19. *Id.*

the Pakistan/Afghanistan border area in the late 1980s, when he was one of thousands of young Arab men who went to support the war of liberation against the Soviet invasion of Afghanistan. This war was openly supported by the United States government, and it is by now well known that bin Laden himself received funding and support in his efforts in the war from, among others, the governments of Saudi Arabia, Pakistan, and the United States. Although bin Laden and some of the others involved in this war ended up forming what became the terrorist organization al Qaeda during the 1990s, and Arnaout knew and had brief, subsequent contacts with two or three reputed members of al Qaeda in the years following the Afghan war, there was no evidence tying BIF or Arnaout to terrorism, or supporting the allegation that BIF was a funding source for al Qaeda. Indeed on the eve of trial the government revealed that one of these reputed al Qaeda members had voluntarily met with the government for several hours on two separate occasions and denied any terrorism connection. He was not arrested. At the same time the government revealed that a former high ranking al Qaeda security officer who had been cooperating with the government since 1996 and was a major source of information on the terrorist group had informed the government in December 2001, shortly after the raid on BIF's offices, that he had never heard of Benevolence International Foundation and could not identify photographs of any of its employees or associates.

As the trial approached, two things became painfully clear. First, in spite of the lengthy, massive, intrusive and expensive investigation, the government had uncovered no evidence tying BIF to the funding of terrorism. Second, the government's on-going publicity campaign had created the prejudice that it sought. There appeared to be no way that Arnaout could receive a fair trial in the context of the Attorney General's and the United States Attorney's pronouncements, the OFAC designation, and the recurring photograph of Arnaout and bin Laden. On the eve of trial, a plea bargain was agreed to. Arnaout pleaded guilty to conspiracy to defraud by not having informed all of BIF's donors that a relatively small amount of the money that had been raised over the years (about $300,000 out of $15,000,000) went, in the mid-1990s, to buy tents, boots and blankets for the Bosnian army (with whom the United States sided during the Bosnian war), and to purchasing uniforms for the civilian government of the Chechen independence forces and boots, an ambulance and medical supplies for their fighters (with whom, at the time, our government was actively cooperating). Prior to September 11, 2001 the government would likely have lauded someone for such

activities. Likewise, in a different atmosphere, no defendant would have pleaded guilty to such offenses. Under the sentencing guidelines (then still mandatory), Arnaout was sentenced to eleven years in a medium security federal penitentiary. Benevolence International Foundation, its reputation having been dragged through the mud by the government, its activities having been completely disrupted for better than a year, and its assets having been depleted in prolonged legal proceedings, was destroyed.

Since December 2001, the United States government has raided several Islamic charities operating in this country, including BIF, Holy Land Foundation, Global Relief Foundation, and the Sudan based Islamic American Relief Agency. Not one of these raids has led to any terrorism related criminal convictions. Last fall, a number of Muslim groups requested that the United States government provide them with a list of Islamic charities to which Muslims in the United States could donate without being suspected of terrorist ties. The request was denied, with an unhelpful statement from Bryan Sierra, a spokesman for the Justice Department that: "[o]ur role is to prosecute violations of criminal law. We're not in a position to put out lists of any kind, particularly of any organizations that are good or bad."[20]

As the National Commission on Terrorist Attacks Upon the United States ("the 9-11 Commission") noted:

> [T]he investigations of BIF and GRF revealed little compelling evidence that either of these charities actually provided financial support to al Qaeda - - at least after al Qaeda was designated a foreign terrorist organization in 1999. Indeed, despite unprecedented access to the U.S. and foreign records of these organizations, one of the world's most experienced and best terrorist prosecutors has not been able to make any criminal case against GRF and resolved the investigation against BIF without a conviction for support of terrorism. Although the OFAC action shut down BIF and GRF, that victory came at considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government's destruction of these charities reflects bias and injustice with no measurable gain to national security.[21]

It is hard to see how the government's activities with regard to

20. *Terror-free Charities*, THE JOURNAL NEWS (Westchester County, N.Y.), Oct. 22, 2004, at 6B.

21. JOHN ROTH ET AL., NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES: MONOGRAPH ON TERRORIST FINANCING 111 (2004), *available at* http://www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf (last visited Apr. 11, 2005). *See also* Ashcroft Remarks, *supra* note 15.

Muslim charities have had any positive effect on targeting terrorism. It is easy to see, on the other hand, why these actions have been perceived widely within the Islamic community and elsewhere as another example of the unfair targeting of innocent Arabs and Muslims. One thing is clear: critically needed resources for the many refugees and people living in poverty and other dire circumstances throughout the Islamic world have been terminated. As with its foreign policies, it would appear that these actions on the part of our government will further serve the interests of those who seek to convince Muslims around the world that we are an enemy worthy of being targeted by violent attacks. One can only hope that in its second term, the Bush administration will implement policies that will mitigate the harm that it has caused for the past four years. One can only hope that this will be done before it is too late.