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# Inventing Terrorists: The nexus of intelligence and Islamophobia

**Abstract:**

The transatlantic Islamophobia industry, emboldened by US intelligence efforts to entrap Muslims, appears to have helped to increase permissible levels of Islamophobia across the US, as illustrated by the fiery anti-Muslim rhetoric during the 2016 presidential campaign. In this article, I first look at five key leaders of the Islamophobia industry who also claim to be "terrorism experts" and have links to US and Israeli intelligence. I then describe US law enforcement's mass surveillance of Muslims and its invention of terrorists, including a map of the "successful terrorist prosecutions" claimed by the US Department of Justice, most of which were tried only as criminal cases. And finally, I explore in-depth the case against the Holy Land Foundation, a Muslim charity based in Texas that was run by Palestinian-Americans and targeted by both the state and the Islamophobia industry for its dubious links to "terrorism," helping to legitimate the Bush W. Administration's "War on Terror". I argue that this nexus of intelligence and Islamophobia has empowered anti-Muslim voices that were formerly marginal.

**Keywords**:

Islamophobia, "War on Terror," Mass surveillance, Muslim charities, Israel/Palestine

# Introduction

While some Americans have long held negative views of Muslims, the level of Islamophobia, meaning a dread or hatred of Islam and therefore a fear or dislike of Muslims (The Runnymede Trust 1997), has now reached unprecedented levels across the United States (US).[1] The election of President Donald Trump in 2016 and his subsequent efforts to ban citizens from a number of Muslim majority countries from entering the US are illustrative of this trend. Crudely generalising about the world's two billion Muslims, during the election campaign Trump proclaimed on television that, "Islam hates us."[2] He raised questions about former President Barack Obama's citizenship and religion, "falsely suggesting that Obama was born outside the US and is a Muslim".[3] He also recommended surveilling all mosques and possibly even creating a "Muslim database".[4] Each of these statements is an attempt to de-Americanise Islam, so that Muslim-Americans are denied the same rights as other citizens.

But while Trump's outlook may seem shocking to some, the systematic mass surveillance of Muslims in the US has already been underway for some time. While Muslim-Americans comprise diverse populations, spanning different ethnic and political groups, US policy makers have manipulated the public's fear of terrorism since 9/11 to encourage Americans to imagine a homogenous community of Muslim-Arab-Middle Easterners that is a threat to homeland security. Ascribing a person membership to this deviant "imagined community"[5] retracts his or her civil rights, with Muslim guilt always presumed. In this way, Muslims are seen to constitute a particular "geography of evil,"[6] requiring the surveillance of not only their places of worship, but also their bodies and thoughts. As a result, many thousands of Muslims have been unjustly detained, deported or profiled, with hundreds being unreasonably prosecuted in the courts, and dozens of Muslim charities have been closed down. These policies have further inflamed the public's fears, giving rise to a more radical shift in politics.

What is unique about Trump's worldview is that it is not based on traditional sources, but the views of selected anti-Muslim activists of the so-called alt-right movement, described by some as fascist,[7] who were long perceived to be on the fringes of the state and society. Indeed, since Trump's inauguration there have been tensions between the intelligence community and his administration,[8] with former CIA director John Brennan highly critical of his policies and actions.[9] This article uses a triangulation of methods to probe this nexus of intelligence and Islamophobia. I first look at five key "terrorism experts" involved in what Lean (2012) calls "the Islamophobia industry," and their direct and indirect connections to Israeli and US intelligence. I then I examine the extent of US spying on Muslims post 9/11 and map out the cases that the US Department of Justice (DOJ) has listed as terrorist related, inventing Muslim terrorists to represent the threat embodied by "War on Terror" as something "knowable, actionable and controllable in a particular form" (Burnett and Whyte 2005, 2). Of these so-called terrorist cases, I then discuss in more detail the Holy Land Foundation (HLF), a Texas-based Muslim charity run by Palestinian-Americans. This case is significant because the five key "terrorism experts" actively lobbied against the defendants, and their conviction increased the public's fear of Muslims, ultimately feeding into the narrative of the Islamophobia industry and empowering formerly marginal voices.

## Terrorism studies and the Islamophobia industry

The field of terrorism studies has long been subjected to criticism, both from within and without. Hoffman (1992, 25) has noted that the field "attracts phonies and amateurs... as a candle attracts moths". Stampnitzky (2011, 9) adds that "the prevalence of 'self-appointed experts' has [also] been a long-standing complaint". However, the problem transcends any individual expert; as Smyth, Gunning, Jackson, Kassimeris and Robinson (2008, 1) point out, there is a "yawning gap between the "terrorism"

signifier and the actual acts signified by the term". Furthermore, the field's failure to properly account for state terrorism reinforces arguments that terrorism expertise is overly ideological because it is funded by governments with strong military interests (Stampnitzky 2011, 5). Indeed, as Miller and Mills (2009, 418) note: "Both counterinsurgency theories and 'terrorism studies' have a shared history of intertwined relations with the military, the government and the arms industry." Their research shows that a significant number of contemporary "terrorism experts" continue to have some kind of affiliation with either the intelligence or defence sectors, with the vast majority of them promoting orthodox views on the "War on Terror". As Irish journalist Kevin Toolis further argues, "Almost all Western counter-terrorist academic centres are closely linked to Israeli institutions such as the International Institute for Counter-Terrorism,"[10] also known as ICT, housed at the Interdisciplinary Center (IDC), Herzliya, a private Israeli university that has close ties to Israel's military and intelligence.

A number of well-funded Islamophobic and pro-Israel non-profit organisations that focus on terrorism have also entered the fray, rising in prominence since 9/11. They create a powerful "terrorism network" funded via tax-deductible donations to their registered charities. The wider US Islamophobia industry is much larger; Saylor (2014, 100) argues that there are at least 37 groups "whose primary purpose is to promote prejudice against or hatred of Islam and Muslims," with an additional 32 supporting Islamophobic themes. As Bail (2016, 3) summarises: "These think tanks, religious groups and social movement organisations not only captivate the media. They also raise hundreds of millions of dollars, testify before the Senate and House, train federal counter-terrorism agents and coordinate grassroots campaigns to shift American public opinion against Islam." However, I focus only on the leaders of five influential think tanks involved in the Holy Land Foundation case: R. James Woolsey, Elliot Abrams, Frank Gaffney, Steven Emerson and Daniel Pipes. This terrorism network can be studied using investigative research techniques like accessing tax records,[11] documents from the organisations and media reports,

what Heaney (2009, 18) refers to as the unobtrusive measurement of political networks. As *Figure 1* illustrates, these "terrorism experts" not only have connections to each other, but also to the Israeli and American security sectors. Nevertheless, their non-profit organisations help to give them the veneer of what Gramsci (2005 and 1985) called organic intellectuals, working for social change from below.

*Figure 1. Mapping the affiliations of five key American "terrorism experts" (2016)*

While Gaffney is reportedly the main person behind Trump's Muslim ban,[12] it is impossible to know the full extent of this network's influence. Burnett and Whyte (2005) present a compelling case to link the work of "terrorism experts" at the military think tank RAND Corporation and changing political practices after 9/11. Perhaps the attacks on New York and Washington were the catalyst for the shift, but the ideological work had already begun on redefining terrorism as something existentially dangerous, irrational and impossible to negotiate with. Furthermore, as Bail (2016, 10) notes, the selective but loud denunciation of the Islamophobic fringe post 9/11 has only raised their profile, allowing them access to the mainstream media at a time when the latter's narratives of Islam and the "War on Terror" have been conflictual and the American public faced increasing difficulties in their daily lives.

When dealing with political networks that are beyond the scope of ethnographic field research, triangulating methods like network analysis and content analysis allows researchers to conduct what Domhoff calls "Power Structure Research" to better understand power and social change.[13] As Freeman (2004, 2) notes, "The social network approach is grounded in the intuitive notion that the patterning of social ties in which actors are embedded has important consequences for those actors. Network analysts, then, seek to uncover various kinds of patterns. And they try to determine the conditions under which those patterns arise and to discover their consequences." According to Lazer (2011, 62),

studies of social networks more generally provide insights into three different areas: the structures through which people, ideas and money circulate; how a network structure can regulate an individual's behaviour; and how one's position in the network influences access to power. Here, the qualitative content analysis relates to what the "terrorism experts" actually say and do, especially in relation to the trial against the Holy Land Foundation. In addition, I add contextual analysis, looking at the backdrop of US policies towards Muslims under the guise of the "War on Terror" to better understand how ideas once on the fringes of the intelligence community are now influencing policy.

## Five key "terrorism experts"

In the years following 9/11, the most influential "terrorism experts" in the Islamophobia industry were prominently connected with the state; for example, R. James Woolsey, formerly director of the Central Intelligence Agency (CIA). Currently, Woolsey is chairperson of the think tank Foundation for Defence of Democracies (FDD),[14] which Eli Clifton of *Salon* news website has called "Washington's premiere hawkish think tank".[15] Its stated mission on tax documents is "to conduct research and provide education on international terrorism and related issues."[16] Woolsey also sits on the board of advisors for the Washington Institute for Near East Policy (WINEP),[17] sometimes referred to as the think tank of the American Israel Public Affairs Committee (also known as AIPAC);[18] the Middle East Media Research Institute (MEMRI), an American-Israeli media monitoring organisation cofounded in 1998 by Yigal Carmon, a former Israeli military intelligence officer, and Meyrav Wurmser, an Israeli-born American political scientist; and NGO Monitor in Israel, which Didi Remez of *Haaretz* newspaper has accused of using McCarthyite techniques to suppress its perceived ideological adversaries.[19] The Jerusalem Center for Public Affairs (JCPA), headed by Dore Gold, lists NGO Monitor as one of its online publications,[20] giving the latter several links to the Israeli government; Gold is a former advisor to Israeli Prime Ministers Benjamin Netanyahu and Ariel Sharon,[21] and Lenny Ben-David, JCPA"s director of publications,

previously served as former deputy chief of mission in the Israeli Embassy in Washington.[22] Woolsey himself is a frequent speaker at the annual ITC conference in Herzliya.[23]

During the 2016 presidential campaign, Woolsey served as national security advisor to Donald Trump,[24] but shortly after Trump faced criticism from the intelligence community, Woolsey decided to break ties with him.[25] Nevertheless, through his repeated collaborations with other "terrorism experts" previously on the fringes, and who continue to be aligned with Trump, Woolsey has helped to legitimise them.

Matthew Levitt, who is currently director of WINEP's Stein Program on Counterterrorism and Intelligence,[26] is probably the most commonly cited "terrorism expert" by Israeli groups.[27] Previously, he served as: counterterrorism intelligence analyst at the FBI; deputy assistant secretary for intelligence and analysis at the Department of the Treasury; and counterterrorism advisor at the State Department.[28] Levitt sits on the professional advisory board of the ICT,[29] as well as on the board of advisors of the FDD.[30] Nevertheless, his work on terrorism has been subjected to widespread criticism by both journalists and academics (for the latter, see in particular Hroub 2006, Roy 2007 and Khalili 2010). As Miller (2015) and Marusek and Miller (2015) argue, Levitt's 2006 book on Hamas is particularly notable for its failure to distinguish between political, social and military activities. For example, under the subtitle, "Muddying the Waters," Levitt (2006, 5) writes: "Inside the Palestinian territories, the battery of mosques, schools, orphanages, summer camps, and sports leagues sponsored by Hamas are integral part of an overarching apparatus of terror." Reviewing the book for *The New York Times*, Steven Erlanger criticised Levitt's overtly political motives and his failure to include the perspective of Palestinians, instead relying uncritically on Israeli sources.[31] Interestingly, Levitt appears to have no ties with Trump and has even spoken out against his Muslim travel ban, saying: "It's alienating key allies [and] it's giving a tremendous propaganda opportunity for [the] Islamic State [and] Al Qaeda."[32]

Steven Emerson, who founded the Investigative Project on Terrorism (IPT) in 1995, is another key member of the terrorism network. Emerson once worked on the Senate Foreign Relations Committee and served as an international investigator crafting the aid package to Israel and Egypt following the Camp David accords in 1978.[33] This allowed him access to the state later on: the *Middle East Quarterly* reports that "the videotape of [Emerson's] first documentary, *Jihad in America*, was distributed to all 535 members of Congress and, according to Rep. Chris Smith (Republican of New Jersey), it played a significant role in persuading them to pass the USA Patriot Act in the fall of 2001."[34] His wife sits on the board of advisors for NGO Monitor's US fundraising arm.[35]

Emerson's work has been widely criticised. The Center for American Progress labels IPT as being part of America's "Islamophobia network," saying that Emerson "frames Islam as an inherently violent and antagonistic religion." He once presented the *Associated Press* with a purported FBI dossier showing ties between Muslim organisations and "radical Islamist groups," but the agency's reporters "concluded [that] the dossier was created by Emerson and that he had edited out all phrases, taken out anything that made it look like his" (Ali et al. 2011, 49-50). Also, in January 2015, he falsely told *Fox News* that Birmingham is a "Muslim-only city" where non-Muslims "don't go". The subsequent public outcry forced him to apologise.[36] Nevertheless, Emerson too has been a regular speaker at the ITC's annual conference in Herzliya,[37] and is an author at the newly influential alt-right Breitbart News website.[38]

Perhaps the best known right-wing thinker in this terrorism network is Daniel Pipes. According to Lean (2012, 5), many Americans consider Pipes to be "the grandfather of Islamophobia". In addition to a stint in the academy, Pipes served as an official in the Departments of State and Defense.[39] Later on, in 1994, he founded the anti-Muslim think tank Middle East Forum, based in Philadelphia, Pennsylvania. He is

also affiliated with the CSP in the role of senior fellow.[40] Middle East Forum provides funding to other projects affiliated with Islamophobia, including MEMRI and NGO Monitor. A right-wing, pro-Israel neoconservative himself, Pipes created widespread controversy in 2002 when he launched a website called Campus Watch, which posted dossiers on academics critical of Israel and encouraged students to report comments or behaviour that might be considered hostile to Israeli interests.[41] The dossiers were removed after only two weeks, but the website continues to solicit student complaints about academics deemed to be anti-Israel. Pipes published a series of articles in 2007 and 2008 arguing that former President Barack Obama was a Muslim as a child and only converted to Christianity as an adult.[42] The Center for American Progress has argued that Pipes and the Middle East Forum are part of a network of "misinformation experts" that "peddle hate and fear of Muslims and Islam" (Ali et al. 2011, 2).

Perhaps the most influential activist in this terrorism network today is Frank Gaffney; although he too is connected to the state, until recently he was a marginal thinker. During the Reagan Administration, Gaffney served as Assistant Secretary of Defense for International Security Policy. Previously, he worked with the Senate Armed Services Committee, was a national security legislative aide to Senator Henry Jackson,[43] and also once served on the board of advisors for FDD.[44] The Anti-Defamation League has condemned his think tank the Center for security Policy (CSP) for pioneering "anti-*shariah*" (Islamic law) hysteria.[45] The Southern Poverty Law Center also identifies Gaffney as an extremist, noting that shortly after establishing CSP in 1988: "he seemed to go off the rails, becoming increasingly taken with a conspiracy theory about the infiltration of the US by nefarious Muslim Brotherhood operatives burrowed deep within the infrastructure."[46] Indeed, Gaffney claims that because of the Muslim Brotherhood, "most of the Muslim-American groups of any prominence in America are now known to be, as a matter of fact, hostile to the US and its Constitution" (Ali, Clifton, Duss, Fang, Keyes and Shakir, 2011, 30). To cite an example of his conspiratorial outlook, in a 2010 column for Breitbart News, he

wrote that the new logo for the Missile Defense Agency at the US Department of Defense "appears ominously to reflect a morphing of the Islamic crescent and star with the Obama campaign logo".[47]

Nevertheless, as a frequent author at Breitbart,[48] Gaffney has once again become politically prominent. In 2016, he served as advisor to Senator Ted Cruz's presidential campaign. Back in 2012, Gaffney had briefed Cruz on the Federal Bureau of Investigation's (FBI) case against "the Holy Land Foundation and on how *shariah* law is a threat to America," leading Cruz to introduce unsuccessful legislation to designate the Muslim Brotherhood as a terrorist organisation.[49] Gaffney has also influenced the Trump administration: the president's chief strategist and founding member of Breitbart News, Steve Bannon, has called Gaffney "one of the senior thought leaders and men of action in this whole war against Islamic radical jihad".[50] According to American journalist Peter Beinart, the new attorney general under Trump, Jeff Sessions, won the CSP's "Keeper of the Flame" Award in 2015; and Mike Pompeo, Trump's CIA director, has appeared on Gaffney's radio programme more than 24 times since 2013.[51] Beinart argues that, "Gaffney's theories represent an effort to "denationalise" American Muslims – to strip them of their national identity and legal protections," which is discussed in more detail below.[52]

In 2010, Gaffney co-authored a book published by CSP on the perceived threat of *shariah* law in the US with, amongst others, Woolsey and retired military general William Boykin; the book has an entire chapter on the HLF. Woolsey sits on the board of directors of Gaffney's Family Security Matters,[53] a project of CSP,[54] and Emerson serves as a contributing editor.[55]

## Normalising spying on Muslim-Americans

The attacks on 9/11 and subsequent US-led wars in the Middle East have raised the question of visibility for not only Muslim-Arab-Middle Easterners "over there," but also Americans "over here" who happen to be Muslim or of Middle Eastern descent. Indeed, scholars of Arab-American studies often cite the invisibility of Arab-Americans prior to 9/11 and their hyper-visibility alongside Muslims thereafter (See Jamal and Naber, 2008).[56] The attacks in New York and Washington created a climate of fear that was then manipulated to redefine American identity. The "us" versus "them" binary adopted by former President George W. Bush forced every American to choose a side, erasing the possibility of a hyphenated identity. Suddenly, criticising US foreign policy was synonymous with anti-Americanism, a phenomenon Salaita (2005) describes as "imperative patriotism". Religion was also racialized, since many different ethnic minorities were conflated together with Muslim-Americans on the basis of negative stereotypes of Islam.[57] Although this practice was not new (Naber 2000), after 9/11 the Muslim-as-terrorist typology entered public discourse, helping the state to make terrorism knowable in a way "that ensures the demonisation of a range of groups now regarded as potential terrorists, not least of these Muslims, Arabs and asylum seekers" (Burnett and Whyte 2005, 6). Furthermore, the coupling of Islamic and terrorism reinforced the notion that violence is inherent to Islam (Jackson, 2007).

Subsequently, many thousands of Muslims in the US have been unreasonably profiled and detained. For example, a Palestinian legal immigrant was imprisoned for two months after driving four miles over the speed limit in North Carolina (Cainkar, 2004, 246). Elsewhere, a law professor who looked Middle-Eastern was profiled for reading a philosophical text too slowly at an airport (Volpp, 2003, 152). A Muslim teenager in Texas was suspended after he brought a homemade clock to school and it was mistaken for a bomb.[58] And "after a discussion with a flight attendant about how to secure a child booster seat," United Airlines staff ordered a Muslim family to leave the plane because of an alleged "safety of flight issue".[59] As Mamdani (2004) points out, the system fundamentally presumes Muslims to

be “bad” unless proven otherwise, reversing a core principle of American jurisprudence. Bayoumi (2006, 288) similarly argues that immigrant males from targeted countries are now obliged to “misidentify from the Muslim-as-terrorist figure,” a typology repeatedly emphasised in the media. Indeed, Joseph, D’Harlingue and Wong (2008, 234) analyse a series of articles published in *The New York Times* after 9/11 and find that the newspaper systematically represents “Arab-Americans and Muslim-Americans in a manner that mostly operates to differentiate them from other Americans”.

Muslims living in and around New York State were particularly targeted after 9/11. The *Associated Press* published a series of exclusives in 2011 and 2012, after receiving secret documents, that detailed the extent of US law enforcement’s surveillance of local Muslims.[60] With the assistance of a former CIA officer, the New York City Police Department (NYPD) created a mass surveillance programme “to map the region’s ethnic communities and dispatch teams of undercover officers to keep tabs on where Muslims shopped, ate and prayed.”[61] This is despite laws prohibiting the CIA from spying on Americans and guidelines that prevent the FBI from discriminating against anyone based on religion.[62] Nevertheless, with access to census information and government databases, the NYPD mapped out ethnic neighbourhoods in the states of New York, New Jersey and Connecticut. Teams of undercover officers, known as rakers, quietly interrogated these communities,[63] while informants monitored mosques and attended sermons.[64] The NYPD even deployed at universities across the northeastern US, including the elite Ivy League colleges of Yale and the University of Pennsylvania.[65]

Following these revelations, a number of New York City residents brought a lawsuit against the NYPD, which was settled out of court in early 2016.[66] In October 2015, a federal appeals court reinstated a separate case against the NYPD”s surveillance of Muslim groups in New Jersey.[67] Nevertheless, American journalist Trevor Aaronson argues that the FBI is using similar tactics to the NYPD, sending

informants into Muslim communities across the US in order to spy and, as he says, “manufacture terrorists”.[68]

## Inventing terrorists within US borders

Through these mass surveillance programmes, the NYPD and FBI “have led the way in… shifting national security policing towards a focus on gathering intelligence on Muslim communities,” relating to almost all aspects of their life (Akbar 2013, 811). Writing about the “War on Terror,” Gregory (2004) builds on the work of Said (1979 and 1997) and Hall (1992) to describe how the US government’s post 9/11 ideas and practices have operated according to an Orientalist logic that incorporates new configurations of performance, memory and space to reproduce an “imagined community” of Muslim-Arab-Middle Easterners, or “the other”, as other. Gregory calls these new configurations “spaces of exclusion,” as they bypass moral and legal accountability. Drawing upon the work of Italian philosopher Giorgio Agamben, Gregory (Ibid, 62-63) explains how Muslim-Arab-Middle Easterners have become the objects of sovereign power, but not its subjects. For example, suspected enemies are classified as either terrorists or unlawful combatants, thereby denied universal rights,[69] and sometimes transferred to secret extraterritorial sites where neither international nor domestic laws apply.[70]

Within these new configurations, Muslim-Arab-Middle Easterners now occupy spaces of exclusion whose borders are infused with a religious ideology that is a threat to US national security, even if they are US citizens. As Volpp (2002, 584) argues, Americans who even appear Muslim-Arab-Middle Eastern have been “thrust outside of the protective ambit of citizenship as identity”. This effort is realised through not only intelligence gathering, but also the judiciary with pre-emptive prosecution, a tactic that denies Muslims in the US due process. The report “Inventing Terrorists” by New York-based legal

advocacy group Project Salam (2014) details how pre-emptive prosecution is a law enforcement strategy to target and prosecute individuals or organisations whose beliefs, ideology or religious affiliations are deemed threatening.[71] The actual criminal charges filed against them are merely pretexts manufactured by the government to incarcerate the targeted individuals for their beliefs, and include: using material support for terrorism laws to criminalise activities like free speech, free association, charity, peace-making and social hospitality; using conspiracy laws to treat friendships and organisations as criminal conspiracies, with all members guilty by association; using agents provocateur to actively entrap targets in criminal plots manufactured and controlled by the government; and using minor "technical" crimes in order to incarcerate individuals for their politics and ideology (Ibid, 3-4).

In 2010, the US Department of Justice published a list of what it called successful terrorist convictions.[72] An analysis by Project Salam (ibid, 2) found that 72.4 per cent of the convictions on the DOJ list "represent cases of pre-emptive prosecution that were based on suspicion of the defendant's perceived ideology and not on his/her criminal activity". Translated into numbers, this means that out of the 403 convictions, Project Salam classified 290 as being pre-emptive prosecutions. In addition, the group recorded 86 as having elements of pre-emptive prosecution and only 23 as not. Furthermore, it found that only ten individuals on the DOJ list actively sought to carry out attacks in foreign countries, while four others posed real domestic security threats to the US. Using Project Salam's database,[73] I was able to determine that 264 out of the 290 pre-emptive prosecutions (91 per cent) were either against Muslims or in some way related to the events of 9/11.

*Figure 2. Map of the 264 pre-emptive prosecutions against Muslims or related to 9/11 (2015)*

I then mapped out the 264 cases, as illustrated by *Figure 2.* Although the cases are quite spread out geographically, visually conveying that "the threat of terrorism" is all around the country, most of the pre-emptive prosecutions were in New York and the surrounding states. Given the extent of the NYPD's efforts, this should not come as a surprise, especially considering that any mass surveillance programme would be expected to produce results. To put this all into context, before 9/11, the FBI employed some 2,500 agents dedicated to national security investigations, spending $3.1 billion. After 9/11, however, the number of agents close to trebled and the budget was $8.4 billion by 2014.[74] Using data from the Centers for Disease Control and Prevention, *CNN* found that 406,496 people died by firearms on US soil from 2001 to 2013; whereas according to the US State Department, during that same time period the number of US citizens killed by terrorism, both domestically and abroad, was 3,380 – most of them victims of the 9/11 attacks.[75] The state of Texas, which has the largest Muslim population in the country, had a total of 15 pre-emptive prosecutions; however, eight were related to just one case – the Holy Land Foundation (many of the cases in the DOJ list have multiple prosecutions for the same alleged crime).

According to Project Salam's database, the types of cases on the DOJ list are varied, but most are related to minor criminal offences like immigration, drugs and credit card fraud. Some of the more bizarre cases include that of Javed Iqbal, a small-time satellite TV operator in Brooklyn, New York, who allegedly offered to sell a government informant a satellite dish with access to Hizbullah's al-Manar channel.[76] The government charged him with material support for terrorism and he was sentenced to 69 months in prison. Another is the case of Ansar Mahmood, who was caught taking pictures of a scenic reservoir in upstate New York and deported; or Salam Ibrahim El Zaatari, an aspiring filmmaker who had violated his student visa by dropping out of art school. El Zaatari was stopped at Pittsburgh International Airport and a utility knife was found in his computer case, leading him to be charged with terrorism. In another case, the father of Uzair Paracha asked him to check on the immigration status for a friend of a friend, Majid

Khan. Unbeknownst to Uzair, Khan was a suspected al-Qaeda member. After making the call to the Immigration and Naturalization Service, he was arrested for impersonating an al-Qaeda operative and is currently serving a 30-year prison sentence.

## The targeting of Muslim charities

Following the 9/11 attacks, Muslim charities were also included in the Department of Justice list,[77] with the majority having their assets frozen and their offices shut down without ever being formally prosecuted or convicted of any crime (Cassel 2004, 94). The few federal cases that have arisen against Muslim charities and their supporters have been legally problematic, because the government has adopted loose interpretations of material support for terrorism (Guinane, Dick and Adams 2008), as well as used *ex post facto* relationships to prove that suspects are "otherwise associated with" terrorists, according to former President George W. Bush's Executive Order 13224 of 24 September 2001.[78] As a result, most terrorism prosecutions against Muslim charities have not resulted in convictions, but some of those tried only as criminal cases have. The targeting of charities after 9/11 follows the argument of RAND scholars Arquilla and Ronfeldt (2001, 14) that what they call the "new terrorism," now often referred to as "Islamic terrorism," is dual in nature, "waged on the one hand, by terrorists, criminals and ethnonationalist extremists; and by civil-society activists on the other". The thrust of the argument here is that "'Islamic terrorists' exploit Islamic charities and non-governmental organisations by diverting funds to support terrorist activities" (Jackson, 2007, 410).

The most notable case on the DOJ list is probably the Holy Land Foundation. During the 2016 Republican presidential debates, then Republican candidate Ben Carson cited it as "an example" of how terrorists find support in the US.[57] Founded in 1989, the HLF was once the country's largest Muslim charity,

helping to raise funds for people misplaced by both natural and man-made disasters, focusing primarily on Palestinian refugees living in the occupied territories and neighbouring countries, but also helping both global victims of tornadoes, earthquakes and floods. The foundation even assisted the American victims of the Oklahoma City bombing in 1995.[58] Only three months after the 9/11 attacks, the US government designated the HLF as a terrorist organisation, closing down the charity and then in 2003 seizing all of its assets. However, the charges against the foundation actually predated 9/11.

The HLF had been subject to accusations by pro-Israel advocates for years. According to a report in the *Wall Street Journal*, "the FBI's Dallas field office opened an inquiry into the foundation shortly after the group was founded in 1992 as a non-profit corporation in Texas,"[79] three years before the US designated Hamas as a terrorist organisation. In 1996, Steven Emerson testified to Congress that the foundation was "the main fundraising arm for Hamas in the US," and Nita Lowey, a member of the Christian Zionist Israel Allies Caucus (headed by right-wing Israeli settler Binyamin Elon), petitioned to revoke its tax-exempt status.[80] The Israeli government outlawed the foundation the following year,[81] and the US Treasury Department covertly attempted to shut it down.[82] Daniel Pipes was often a vocal critic;[83] in August 2001, he too called on the US government to shut it down.[84] Less than one week before 9/11, an anti-terrorism taskforce raided InfoCom, a computer company sharing employees with the foundation, crashing 500 websites, many owned by Muslims, including *Aljazeera* satellite channel and Birzeit University in the occupied West Bank. According to *The Guardian*, "The 80-strong taskforce that descended upon the IT company included FBI agents, Secret Service agents, Diplomatic Security agents, tax inspectors, immigration officials, customs officials, department of commerce officials and computer experts."[85]

Federal prosecutors ultimately accused the foundation and its members of providing financial assistance to individuals and organisations linked to Hamas – but not Hamas itself – suggesting this constituted "material support for terrorism" as stipulated in the USA PATRIOT Act.[86] In particular, they claimed that the money the foundation was sending to *zakat* associations in Gaza, to build hospitals and feed the poor, relieved the social organisations affiliated with Hamas of carrying out this responsibility. Note, the practice of *zakat*, or giving a percentage of your income to benefit the poor, comprises one of the Five Pillars of Islam. According to Aslan (2005, 60), *zakat* literally means purification. It is "not an act of charity but of religious devotion: benevolence and care for the poor were the first and foremost enduring virtues preached by [the Prophet] Mohammed in Mecca". As the *Qur'an* repeatedly urges believers to perform *zakat*, such distributive associations are common in the Muslim world.

None of these *zakat* associations in Gaza were listed as "Specially Designated Nationals" (SDNs),[87] the official US term for banned terrorists, while the HLF was working with them.[88] Furthermore, the US Agency for International Development, Red Crescent and many other NGOs worked with both the foundation and the same *zakat* associations to distribute aid to the Palestinian community during that period.[89] But when convenient, the US government has adopted loose interpretations of the material support clause to target specific Muslim-Americans. The family that established the HLF, the Elashis, were already on the intelligence radar because they are related to Mousa Abu Marzouk, the deputy political chief of Hamas, through marriage.[90] But while the foundation had been operating as a charity since 1989, the US government targeted its operations only three months after the 9/11 attacks. This highly publicised move helped to conflate all Muslims with terrorism in the media, even humanitarians, creating a climate of fear. And despite having zero affiliation with al-Qaeda, then President Bush still called the closure of the HLF "another step in the war on terrorism".[91]

Leading up to the first trial in the summer of 2007, the US government amassed 197 counts against six key figures in the HLF, mostly criminal, not terrorism related, charges. Nevertheless, Matthew Levitt was the government's leading witness,[92] testifying that since one of the defendants had the personal telephone number for Marzouk, his cousin, and a document found at the foundation's office had a Hamas letterhead and office number, the connections were "clearly" established.[93] During the trial, Levitt also urged the public to conflate charity and terror when he published an article for the Washington Institute for Near East Policy arguing that, "Charity committees are Hamas's most effective tool for building grassroots support, radicalising and recruiting future activists, providing logistical support for terrorist operations and day jobs for operatives, and funding the group's various activities."[94] This was the same year that Israel had imposed a siege on the Palestinians living in Gaza, limiting even the most essential goods from entering the Strip.[95] Alan Colmes, a "liberal" host of *Fox News*, questioned the "broad brush" that Levitt and the government were using to equate charity with terrorism. Criminal layer Geraldo Rivera completely agreed, admitting that, "I'm shocked that they even got this case to trial." However, Emerson stated assuredly that: "They were Hamas… The fact is, that HLF was giving disproportionately to the families of suicide bombers in order to encourage suicide bombers to take their lives in order to provide funding for their extended families after they were killed."[96]

The prosecutor also submitted as evidence a memorandum found in the home of Palestinian-American accountant Ismail Elbarasse, unrelated to the actual case, outlining possible Muslim Brotherhood activities in the US.[97] David K. Shipler, former Jerusalem bureau chief for *The New York Times*, has called the memo "an old document of questionable authority," adding:

> It was never subjected to an adversarial test of its authenticity or significance. Examined closely, it does not stand up as an authoritative prescription for action. Rather, it

> appears to have been written as a plea to the Muslim Brotherhood leadership for action, by an author we know little about, Mohamed Akram. He is listed elsewhere as a secretary in the Brotherhood, but he writes in the tone of an underling.

While this memo is now widely cited by the Islamophobia industry as a smoking gun against the HLF, the 2007 case ended in mistrial for five of the defendants, with one defendant being found not guilty of all but one charge against him, for which the jury was deadlocked. Nanette Scroggins, one of the jurors, told reporters that: "The whole case was based on assumptions that were based on suspicions. If they had been a Christian or Jewish group, I don't think [the prosecutors] would have brought charges against them."[98]

Nevertheless, the government refused to drop its case, and a retrial was ordered in late 2008 against what came to be known as the Holy Land Five: Ghassan Elashi, co-founder and chairperson of the board; Shukri Abu-Baker, president and CEO; Mohammad El-Mezain, co-founder and the California office representative; Mufid Abdulqader, volunteer fundraiser and Abdulrahman Odeh, the New Jersey office representative. Nancy Hollander (2013, 46), the lawyer for Shukri Abu-Baker, since wrote "that when cases involve allegations of terrorism, the rules change. The law doesn't apply as we know it and the facts don't really matter." For the 2008 retrial, the government dropped almost half of the original charges; however, the CIA censored the defence's main witness, Edward Abington. Before retiring, Abington was the second top intelligence official at the State Department and served as US consul general in Israel from 1993 to 1997. Previously, he had also worked for the CIA, the National Security Agency and the Pentagon. His testimony at the first trial was key to the defence, as he stated that, "while he was in Israel, he got daily CIA briefings on Hamas and other security threats in the region, and was never informed that the terrorist group controlled the Palestinian charity groups, or *zakat*

committees, to which HLF had donated money."[99] But in the retrial, the CIA banned Abington from mentioning any references to the agency or its briefings, calling them too sensitive (even though the previous trial had been public), thus diminishing his testimony.[100] Although the State Department did not object to his referencing government briefings, it upheld the CIA's right to censor.[101]

Furthermore, the government called an anonymous Israeli intelligence expert as a witness, which meant that it was not possible to challenge his account or discredit his expertise. According to *Mondoweiss*, the anonymous witness testified that he knew the defendants had ties to Hamas because he "could smell Hamas".[102] Several lawyers have noted that the use of an anonymous witness was a legal first that clearly violates the defendants" sixth amendment right to face their accusers in court.[103] In addition to this violation, the government also "publicly named more than 300 individuals and American Muslim organisations as "unindicted co-conspirators," without allowing them to hear the evidence against them or defend themselves in court."[66] Meanwhile, during the retrial, a film version of the dubious memo obtained from Elbarasse was released, called *The Third Jihad*. Directed by Raphael Shore, founder of the anti-Muslim Clarion Project, it features Daniel Pipes and R. James Woolsey, among others. The film later created widespread controversy when media discovered that it was being shown to NYPD recruits. *The New York Times* editorial staff called it a "hateful film,"[104] and the *Village Voice* reported that, "This is pretty toxic stuff, the kind of film likely to spark a picket line at a local theatre."[105]

The retrial concluded in November 2008 when the Holy Land Five were found guilty of every criminal charge that was brought against them and given prison sentences of between 15 and 65 years, with four of the five men imprisoned in a Communications Management Unit. After 9/11 two of these units were built, one in Indiana and the other in Illinois, and the vast majority of prisoners in both institutions are Muslims. Most prisoners have extremely limited contact with the outside world, including their

families.[106] *National Public Radio* has called the units "Guantanamo North,"[107] and the *Nation* magazine similarly described them as "Gitmo in the Heartland".[108] After the trial, it was reported that material provided to the prosecutor by Emerson and IPT, in particular, "had an instrumental role in prosecuting and convicting the HLF".[109] The Holy Land Five have since tried to appeal their convictions, but the US Supreme Court declined their final appeal in 2012.[110]

Even before the courtroom hearing, the HLF was often presumed to be guilty. In 2000, the family of David Boim, an American 17-year-old killed by Palestinians in the Beit El settlement in occupied West Bank, sued the foundation along with two other US-based Muslim charities: the Islamic Association for Palestine and Quranic Literacy Institute. Daniel Pipes called the case a "key to fighting terrorism".[111] In 2004, a court ruled them all responsible for the 1996 shooting, awarding the family $156 million.[112] After a protracted appeals process, the court ultimately decided that the decision to hold the HLF liable was an error, because at that point the terrorism charges were presumed and not proven.[113] However, in the final appeal, the majority judge stated that, "Giving money to Hamas, like giving a loaded gun to a child, is an act dangerous to human life" (Rowe, 2009, 392-393). Thus, the decision upheld the conflation of humanitarian work and military operations, setting the precedent that "prosecutors did not need to prove the intent of the organisations charged with material support [for] terrorism".[114] About the same time of the 2008 HLF retrial, Gaffney and CSP filed an amicus brief for the Boim case about the "Muslim Brotherhood-Hamas conspiracy," hoping to influence the court's decision against the foundation.[115]

## Conclusion

Intelligence and judicial efforts that discriminate according to religion and invent terrorists, exemplified by the experience of the Holy Land Foundation, highlight how the US state has bended the rule of law

post 9/11 to make visible the "Muslim threat," vindicating the George W. Bush administration's approach to the "War on Terror". The mass surveillance of Muslims and pre-emptive prosecution have not only changed the rules of the game, allowing the state to target civil society activists for political, not criminal, reasons, but also reinforced the narrative of the Islamophobia industry, empowering the extremists. In recent years, R. James Woolsey has advocated banning the Muslim advocacy group Council on American-Islamic Relations (CAIR), because it was listed as one of the many unindicted co-conspirators of the HLF during the second trial.[116] Frank Gaffney goes even further, saying that CAIR "must be stopped" like the terrorist who attacked a mall in Nairobi, Kenya in 2013.[117] In 2011, Woolsey and Gaffney sent a joint letter, printed on CSP stationary, calling upon the US Congress to investigate the Muslim Brotherhood's "influence in and penetration of the US Government". The letter claims that:

> The true nature and purposes of the Muslim Brotherhood in this country was established in the 2008 HLF trial – the largest terrorism – financing trial in US history. In the course of that trial, a large body of evidence was introduced uncontested by the defence. It established the existence of a significant Muslim Brotherhood/Hamas conspiracy in the US, involving nearly all of the prominent and most influential Islamic organisations in North America.[118]

The letter indicates that the Justice Department had initially planned to pursue cases against some of the unindicted co-conspirators, but that these plans have since been dropped, leading the authors to quote an insider ominously warning that "Americans are going to die and it will be the very Muslim leaders we are working with who will be directly or indirectly responsible."[119]

By inventing terrorists, while reaffirming the Muslim-as-terrorist typology, the state has created a climate of fear where the Islamophobic fringes of the state and society, widely called out as extremists, have now come to occupy positions of power. While 94 per cent of what the FBI classifies as "terrorist attacks" in the US from 1980 to 2005 were committed by non-Muslims, the bureau's new terrorism website focuses exclusively on the threat of "international terrorism," mostly at the hands of Muslims.[120] This is despite the fact that less than two per cent of terrorist attacks in the European Union are religiously motivated, let alone affiliated with Muslims.[121] Instead, most were separatist attacks. And yet as Akbar (2013, 811) notes, government officials have "almost entirely fixated on Islam and Muslims, despite data that the terrorist threat emanating from Muslims is minimal to non-existent, including in comparison to violence from white-supremacist and right-wing groups". Nevertheless, the terrorism network continues to argue otherwise, and for now the White House is now listening.

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[57] Negative stereotypes of Muslims and Islam have been well entrenched in the American imagination for some time. As Said (1997, xiii) argued, Western news coverage of events like the Salmon Rushdie affair (1989) "seemed to epitomise Islam"s viciousness, its resolute war against modernity and liberal values, as well, of course, as its capacity of reaching across the oceans into the heart of the West in order to challenge, provoke and threaten".
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[61] Matt Apuzzo and Adam Goldman, "Inside the spy unit that NYPD says doesn't exist," *Associated Press*, 31 August 2011. http://www.ap.org/Content/AP-In-The-News/2011/Inside-the-spy-unit-that-NYPD-says-doesnt-exist. Accessed 5 October 2016.
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