



# THE NYU REVIEW OF LAW AND SECURITY

A PUBLICATION OF THE CENTER ON LAW AND SECURITY AT NYU SCHOOL OF LAW

## *The Center on Law and Security*

New York University School of Law's Center on Law and Security is a study and policy program established to examine the legal dimensions of counterterrorism and peace keeping at the national and international levels.

The Center's main initiative for Fall 2003 was its Program on Law and Security. The Program convenes policy makers, academics, and law enforcement officials to discuss and make recommendations on a wide range of security issues, among them:

- Transformations in legal procedures in the wake of September 11
- Regulatory reform in the matter of information sharing among law enforcement agencies
- The role of international organizations in rebuilding Iraq
- Democracy and Islam
- Preparedness in New York City and other urban areas nationwide and abroad
- International codes for apprehension and punishment of terrorists
- Bioterrorism and legal restrictions on scientific research
- Secrecy in government and among nations

## *In This Issue*

Issue One is focused upon Al Qaeda, the terrorist organization held responsible for the September 11 attacks. In its pages, some of the world's leading experts address the security lessons learned from September 11 and make recommendations for future security strategies. Rohan Gunaratna, author of *Inside Al Qaeda: Global Network of Terror*, assesses the new kinds of threats from Al Qaeda and other terrorist organizations; Daniel Benjamin, co-author of *The Age of Sacred Terror*, offers recommendations for U.S. foreign policy in its efforts to stem the tide of terrorism; and William Wechsler, expert on terrorist financing, assesses the banking regulations of the USA PATRIOT Act.

In addition, our regular features include: Updates on Terrorist Trials; News Digests from China and the Middle East on the war in Iraq; and Profiles in Brief.

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THE TERRORIST THREAT

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## About the Colloquium

The Center for Law and Security hosts a colloquium each Monday afternoon. Present are law students, Professors Richard Pildes and Stephen Holmes, a number of interested members of the School of Law faculty and a handful of guests. Each week participants delve into the issues and current state of the debate over a specific topic, ranging from terrorist financing to the USA PATRIOT Act to the rebuilding of Iraq. The fall semester speakers included Robert Baer, author of *Sleeping With the Devil*; Jack Goldsmith, Assistant U.S. Attorney General, Office of Legal Counsel; Debra Livingston, Professor of Law, Columbia University; Bruce Hoffman, the RAND Corporation; and many others, among them the authors of the excerpts that follow.

A number of themes emerged from the colloquium meetings. Discussions elucidated many of the complexities that law enforcement agencies and policy makers face in the wake of September 11. For example, in the realm of law enforcement, the focus on terrorism shifted policies to include not only pursuit of criminals after a crime has been committed but additional means of crime prevention; an approach which entails an added emphasis on surveillance as opposed to apprehension and



Alongside Professors Pildes and Holmes, Rohan Gunaratna assesses the threat of Al Qaeda.

detention. Further, the colloquium participants examined the delicate balance between national security and liberty, exploring the USA PATRIOT Act and its more controversial sections, such as Article 215 which allows access to personal and financial records of suspected terrorists. Scholars on the Middle East explored the ways in which U.S. policy has maneuvered between terrorism as a crime and terrorism as an act of war and analyzed the legal ramifications of each stance.

Below are some examples of the colloquium's proceedings:

**Rohan Gunaratna:** Mr. Gunaratna, author of the best-selling *Inside Al Qaeda: Global Network of Terror*; is considered the leading expert on Al Qaeda and its affiliates. He advises numerous local, national, and international policing agencies and policy institutes and is currently the head of Terrorism Research, Institute for Defense and Strategic Studies in Singapore, and an honorary fellow at the International Policy Institute for

Counterterrorism in Israel. He led the team that designed and built the U.N. database on Al Qaeda, the Taliban, and its entities.

Mr. Gunaratna contends that Al Qaeda has been reduced to a third or less of its size as of September 11, 2001. However, other, smaller terrorist organizations have developed at the same time, some actually related to Al Qaeda, although only by self-definition if not necessarily by actual connection. Mr. Gunaratna contends that the war in Iraq interrupted the pace of the disruption of the Al Qaeda network by damaging our relationship with countries and sources of information.

### THE FUTURE OF AL QAEDA Ideological Threat

More than the organization itself, the ideology of Al Qaeda remains a resilient threat. Although Al Qaeda can still mount operations, with the increase in pressure Al Qaeda will become relegated to an ideology. As Al Qaeda increasingly depends on like-minded groups to conduct attacks, other Islamist groups will become more like Al Qaeda. For instance, Mas Salamat Kasthari, the Chief of Jemmah Islamiyah (JI) of Singapore was planning to hijack an Aerofloat plane from Bangkok and crash it to the Changi International Airport in Singapore in 2002. The tactic of using an air vehicle as a weapon was an Al Qaeda invention. Furthermore, the killing of 202 civilians in Bali by the same group was not Southeast Asian in character. Southeast Asia had never witnessed a mass fatality terrorist attack before. Likewise, the JI attack in Bali witnessed the first suicide attack by a Southeast Asian terrorist. During the past decade, JI and other associated Islamist groups had come under Al Qaeda influence in a substantial way.

Traditionally, with better trained, more experienced and highly committed operatives, Al Qaeda wanted to attack more difficult targets especially strategic targets, and leave the easier and tactical targets to its associated groups. With Al Qaeda decentralizing, its oper-

## news excerpts

### FROM CHINA

"The situation in Iraq is a sword over the head of President Bush."

Renmin Ribao, *China*, September 18, 2003

"Iraq's oil deposits are plentiful and easily accessible. This is directly related to China's resource security."

Diqi Zazhi, September 30, 2003, reprinted in Renmin Ribao

"In addition to oil and trade, China and Iraq have developed widespread, lasting cooperation in chemicals, transportation, and engineering."

Diqi Zazhi, September 30, 2003, reprinted in Renmin Ribao

atives are working together closely at a tactical level with these other groups. As a result, the lethality of the attacks conducted by the associate groups of Al Qaeda is increasing. As Bali in 2002 and Casablanca in 2003 demonstrated, the attacks conducted by the associate groups of Al Qaeda can be as lethal as the attacks conducted by the parent group itself. With attacks conducted by Al Qaeda's associated groups posing a threat as great as Al Qaeda itself, the theatre of war will widen. Government security and intelligence agencies will be forced to monitor the technologies, tactics and techniques of a wide range of organizations.

Especially after the U.S.-led coalition intervened in Afghanistan on October 7, 2001, Iraq is an attractive base for Al Qaeda. The Islamists desperately need a new theater to produce psychologically and physically war-trained operatives.

Although branded a "War against Terrorism" by the U.S., the fight is in reality against a radical ideology which produced Muslim youth willing to kill and die and

world. While the immediate (one to two years) consequences are apparent, the mid- (five years) and long-term (ten years) consequence of fighting primarily an ideological campaign militarily is yet to be seen. All indications are that Islamism — whether it is in Turkey, Pakistan, Malaysia, or in Indonesia — is moving from the periphery to the center. U.S. intervention in Iraq has spiked the ideological fuel prolonging the strength, size and life of Islamist political parties and terrorist groups.

#### Successes and Failures

The greatest failure of the U.S.-led coalition is its lack of capability to neutralize the core leadership of both Al Qaeda and the Islamic Movement of the Taliban. While preparations for protracted guerrilla operations against the coalition forces inside Afghanistan are coordinated by the Taliban leader Mullah Mohammed Omar, terrorist operations worldwide including in Afghanistan are coordinated by Osama bin Laden and his deputy, principal strategist and designated successor Dr. Ayman al-Zawahiri.

**“ THE FIGHT IS IN REALITY AGAINST A RADICAL IDEOLOGY WHICH PRODUCES MUSLIM YOUTHS WILLING TO KILL AND DIE. ”**

wealthy Muslims willing to offer support and suffer incarceration. For the Al Qaeda umbrella — the World Islamic Front for Jihad Against the Jews and the Crusaders — the fight is against a civilization. The reality is that it is a fight between the vast majority of progressive Muslims and the miniscule percentage of radical Muslims. It is not a clash of civilizations but a clash among civilizations — a fight that must essentially be fought within the Muslim



Professors David Golove and Richard Pildes discuss security and liberty at the student colloquium.

Multiple sources, including the CIA, make it clear that both bin Laden and al-Zawahiri are alive. Furthermore, they remain active, as evidenced by al-Zawahiri's reference to suicide attacks on the oldest Jewish synagogue in North Africa in Djerba, Tunisia, killing 21 including 14 German tourists on April 11, 2002, and the killing of 14 including 11 French naval technicians working on the submarine project outside Sheraton Hotel in Karachi, Pakistan, on May 9, 2002. Members of the former Army of the Islamic Emirate Afghanistan loyal to Mullah Omar and Al Qaeda's 055 Brigade that survived death or capture are supporting or engaged in guerrilla and terrorist operations against the U.S. led coalition both inside and outside Afghanistan respectively. Mullah Omar is building a clandestine network slowly and steadily in Afghanistan utilizing its vast and porous borders to wage a protracted campaign of sustained urban warfare. Bin Laden and al-Zawahiri are also developing targets overseas, especially soft targets with a twin focus on population centers and economic targets.

#### FROM CHINA

Iraq is a hotspot for great power politics, so China must actively assert its interests there. China needs Iraqi oil and trade, and should push for greater U.N. involvement. Iraq must be returned to the Iraqi people. Many countries want reconstruction to be multilateral, but they are unwilling to commit resources to the effort. Rather than risk being shut out of the lucrative Iraqi reconstruction market, China should work for international cooperation and pledge resources to reconstruction. In the Great Power struggle that is going on now in the Middle East, China must represent Arab interests and cooperate to ensure peace in the Middle East.

*From Diqui Zazhi, September 30, 2003, reprinted from Renmin Ribao: Ming Jian, "The Iraq Problem and China's Interest" (Translated by Chris Barr)*

*news digest*





The Directors of the Center on Law and Security, from left to right: Noah Feldman, Karen J. Greenberg, David Golove, Stephen Holmes and Richard Pildes.

### Change of Mindset

To make it difficult for its enemies, Al Qaeda has constantly innovated its military tactics, financial methods, and propaganda techniques in the past year. Al Qaeda — focusing on strategic targets prior to September 11 — is operating across the entire spectrum targeting both strategic and tactical targets. Although the West seized \$150 million of terrorist money in the first four months after September 11, with the transformation of Al Qaeda financial practices, only about \$10 million has been seized. With the targeting of the above ground open banking

mind of the USS Cole operation and a key Al Qaeda leader in the region. To meet the current threat, the Pentagon has increased its intelligence capability and the CIA has increased its paramilitary capability. In the foreseeable future, human intelligence and covert strike forces will remain at the heart of fighting secret and highly motivated organizations like Al Qaeda. It is critical for the U.S. to increase its sharing of intelligence especially with their Middle Eastern and Asian counterparts. Traditionally, the U.S. has been averse to sharing high-grade intelligence especially

the rate of production of Islamists is greater than the rate of their kill or capture. Into the counterterrorism toolbox, the powerful message that Al Qaeda is not Koranic but heretical has not been integrated. As such there is popular support for the Al Qaeda model of Islam among the politicized and radicalized Muslims. As there is no effort to counter or dilute the ideology of extremism, the military campaign against Al Qaeda, even if pursued single-mindedly and unrelentingly, is likely to take decades. The deep reservoir of hatred and a desire for revenge will remain unless the U.S. can start to think beyond the counter-terrorist military and financial dimensions.

The international community must seek to build a zero tolerance level for terrorist support activity. The tragedy of September 11, Bali, Moscow, Riyadh, Casablanca, and several other attacks demonstrate that contemporary terrorists are indiscriminate. As terrorists do not recognize and respect ethnicity, religion, or national borders, terrorism irrespective of location should be fought. There is no appeasement with those who seek to advance their political aims and objectives using violence. Like Indonesia, countries that condone, tolerate or fail to take tough action against terrorism will be touched by it. It is not only the countries in the South but even countries in the North have been complacent in the fight against terrorism. The \$150 million seized by the West following September 11 only reflects the magnitude of terrorist wealth in liberal democracies. Although Al Qaeda support network has suffered in the U.S., its propaganda, recruitment, and fundraising activities are still continuing in Europe. Despite efforts to the contrary, segments of Muslims in the migrant communities of North America, Western Europe, and Australia, and territorial communities of the Middle East and Asia continue to

“THE RATE OF PRODUCTION OF ISLAMISTS IS GREATER THAT THE RATE OF THEIR KILL OR CAPTURE.”

system, the underground unregulated banking network (hawala) has grown bigger. With mosques, madrasas, charities and community centers that disseminate Islamist propaganda coming under threat, Al Qaeda is increasingly relying on the Internet. As Al Qaeda is a learning organization, the law enforcement and security and intelligence fighting it must be goal-oriented and not rule-oriented.

With the terrorists adapting to the threat posed by government law enforcement authorities, government security and intelligence agencies are increasing their human and technical source penetration. Capabilities for terrorist tracking, and disruption of terrorist operations, is increasing. For instance, an Al Qaeda team travelling in their vehicle in Yemen's northern Province of Marib was attacked by a hellfire missile from the CIA-controlled unmanned Predator drone on November 4, 2002. The attack killed Ali Senyan al-Harhi alias Qaed Senyan al-Harhi alias Abu Ali, the master-

source based intelligence with the Muslim World. This has changed somewhat since September 11 but not enough.

If Al Qaeda is to be defeated, a change in the thinking of the U.S. led “War of Terrorism” is paramount. Despite the U.S.-led coalition campaign worldwide, the World Islamic Front for Jihad Against the Jews and Crusaders has managed to repair the damage to their support and operational infrastructure. As no serious international effort has been made to counter the Islamist ideology (the belief that “every Muslim's duty is to wage Jihad”) the robust Islamist milieu is providing recruits and financial support for Islamist groups worldwide to replenish their human and material losses. On a given day, two to four Al Qaeda and Taliban members are captured or killed in Afghanistan. By the end of the week the Islamists are successful in attracting a dozen recruits as members, collaborators, supporters and sympathizers. To put it crudely,

provide support to Al Qaeda and other Islamist groups. As Europe has not suffered a large-scale attack, Europeans do not perceive Al Qaeda as a grave threat. As a result, Islamist support activities are continuing in Western Europe. With the increase in threat, both governments and their publics that do not take threat information seriously are bound to suffer.

### Managing the Threat

Al Qaeda has had a head start of ten years. Until one month after U.S. diplomatic targets in East Africa was destroyed by Al Qaeda in August 1998, the U.S. intelligence community did not know the correct name of Osama bin Laden's group. However, during the past two years the understanding of the U.S. intelligence community of its principal enemy — Al Qaeda — has grown dramatically. The tragedy of September 11 has empowered the Counter Terrorism Center at the CIA to develop the much-needed organization and more importantly the mindset to hunt Al Qaeda. Largely due to detainee debriefings, the West today understands the threat it faces much better than ever before. The U.S. government, especially its security and intelligence community, has learned at a remarkable pace. There is a tremendous improvement in collection and analysis by both the CIA and the FBI. For instance, immediately before the Yemeni, Kuwaiti, and Bali attack, the CIA and FBI alerted friendly counterpart agencies and the U.S. State Department issued worldwide alerts. The West together with its Middle Eastern and Asian counterparts seriously started to fight Al Qaeda only after September 11 and Al Qaeda has suffered gravely. The global strategy of the West to meet the global threat posed by Al Qaeda is taking shape slowly but steadily. Like it contained the Soviet threat in the second half of the 20th century, it will develop an organization and a doctrine to contain the Islamist threat. With sustained efforts to target the core and penultimate leadership, it is very likely that the Al Qaeda echelon Osama bin Laden, Dr. Ayman Al Zawahiri and even the Taliban leader Mullah Omar will be captured or more likely killed. Nonetheless, Islamist terrorism will outlive Al Qaeda and Islamism as an ideology will persist in the foreseeable future.

## FUNDAMENTAL ISSUES IN COUNTERTERRORISM DANIEL BENJAMIN SPEAKS OUT

Daniel Benjamin is a senior fellow at the Center for U.S. Security Studies at the International Institute for Security Studies. Under the Clinton administration, he was the director of counterterrorism at the National Security Council from 1998-99. He was one of the individuals concerned about the threat of terrorist organizations to U.S. national security for many years prior to the September 11 attack. Below is an excerpt from his remarks before the colloquium.

\* \* \*

"I think we need to focus on five different things that are going to serve us in our foreign policy. And none of these, I should add, are military because while there may be military opportunities...we need to think about the things that are going to stop the drift into radicalism that we see in so many countries.

**1** The ticket for admission for everything is going to be the re-invigoration of the Middle East peace process, however awful the circumstances are right now. America is not viewed as a legitimate interlocuter in the region by most people so we are destined to remain in the kind of log jam we are in now. I have no illusions. I don't think we're going to resolve things any time soon. But unless the United States is vigorously involved, we lose credibility.

**2** I think there needs to be a more concerted effort to promote economic liberalization in the region. Additionally, the economics and demographics in the Islamic world are catastrophic. Liberalization will make changes only at the margins, but you have to start somewhere.

**3** We need more talk about reforming education in many of these countries so that parents don't feel that the only option for dealing with their children is to put them into religious schools where they will get shelter and food, but also an education that doesn't fit them for a global economy but rather, for a global Jihad.

**4** There needs to be more pressure put on governments in the region to end the incitement and the furtherance of this idea

that external forces are what oppresses Muslims. Specifically that means a dialing back of the anti-Americanism and the anti-Semitism that is staple of the government owned press, and also in the schools.

**5** Finally, there needs to be measured steps toward democratization. I'm not sure this can be done easily, but again, we need to start somewhere. The regimes as they exist now are incubators of radicalism and we can no longer go by the old bargain in which the United States allows these countries to do as they want so long as they can't undermine the Middle East peace process or undermine our security arrangements in the Gulf. When I say we need to emphasize democratization, I do think we need to take small steps, because if we take big ones we'll wind up with exactly the outcome we don't want, which is a Jihadist state. We could wind up that way not necessarily because the people in these countries want such a thing but because the only organized opposition in these countries tends to be the Islamists. And in the era when weapons of mass destruction are increasingly accessible, that would be a very bad outcome. Nonetheless, we need to make it clear to these non-Jihadist governments that their future lies with opening up their society some and allowing for more political voices. The State Department has a very small program so far that is supposed to grow in the coming years (but my guess is that most of the financing is being crowded out by the Iraq campaign) that supports the empowerment of entrepreneurs, women, and other groups within the society, who could be the basis for a better polity. So far, the governments have embraced these policies only half-heartedly.

We also have to recognize that if we're going to do any of these things, we need allies. The Iraqi experience shows just how much America is viewed as a toxic presence in the region. Unless there is a fair amount of Western solidarity in doing this, we will get nowhere. The U.S. has used up most of its political capital in the region to keep governments from actively opposing our policy in Iraq and so we will have to reinvigorate our alliances and take these first steps jointly."



Daniel Benjamin

**ON TERRORIST FINANCING  
AND THE USA PATRIOT ACT  
WILL WESCHLER GIVES  
HIS POINT OF VIEW**

**William Wechsler** is one of the world's leading authorities on terrorist financing. In 2002, he co-directed, along with Lee Wolosky, a Council on Foreign Relations Independent Task Force Report on terrorist financing. His work involves tracing the legal and illegal financial networks used to support terrorist activities in the United States and around the world. He remains optimistic about the possibility of using banking security legislation at home and in foreign countries to disrupt and prevent terrorist activities. Below is an excerpt from his talk.

\* \* \*

"There are three types of financial provisions in the USA PATRIOT Act :

1) Law enforcement/investigatory matters. These provisions make terrorism financing formally a predicate offense to money laundering,

which is important on a technical level.

2) Regulatory requirements regarding money laundering regimes that encapsulate all types of financial services and institutions and not just banks and banking institutions.

3) New tools that would enable us to target foreign financial institutions that we think are up to no good.

None of these things have ever been used by the Bush Administration in any counterterrorism context."



William Wechsler

## Update on Terrorists Trials



### UNITED STATES

**January 2003:** Richard Reid. Convicted on charges related to attempted use of weapons

of mass destruction. Pled guilty to eight felony counts. Sentenced to three life sentences plus 110 additional years in prison. Fined two million dollars. Prosecutor: Gerard Leone, Jr. Judge: William Young.

**May 2003:** Jamal Badawi and Fahd Quso. Charged as accessories to the bombing of the USS Cole. Escaped from Yemeni prison.

**November 2003:** Zacarias Moussaoui. Charged with conspiracy in September 11 attack. Death penalty sought. Trial ongoing. DOJ has said it will dismiss indictment in order to move the case into the appeals court. Judge revoked privilege to represent himself. Prosecutor: Kenneth M. Karas. Judge: Leonie M. Brinkema.



### GERMANY

**April 2002:** Lamine Maroni, Salim Boukajari, Fouhad Sabour, and Aeurobui Bendali. Charged

with conspiracy to murder. Charged originally with membership in a terrorist organization; those charged were dropped. Considered "non-aligned mujahedin." Sentenced to 10-12 years. Prosecutor: Kay Nehm. Judge: Karlheinz Zeiher.

**February 2003:** Mounir el-Motassadeq. Charged with 3000 counts of accessory to murder. Mounir operated out of Hamburg, Germany. Sentenced to 15 years. Prosecutor: Kay Nehm. Judge: Albrecht Mentz.

**July 2003:** Shadi Mohd Mustafa Abdellah. Charged with plotting terrorist attacks against Germany, passport forgery and membership in a terrorist organization. A personal body guard of Osama bin-Laden. Ruled fit to stand trial. Prosecutor: Dick Ferholz. Judge: Ottmar Bredling.

**September 2003:** Abdelghani Mzoudi. Charged with 3066 counts of accessory to murder and aiding a terrorist organization. Abdelghani said to be involved in planning and cover up of others' involvement in September 11 attack. Close friend of Mohammed Atta, Ramzi Binalshibh and Said Bahaji. Trial ongoing. Prosecutor: Kay Nehm. Judge: Klaus Ruelle.



### PAKISTAN

**July 2002:** Ahmad Saeed Omar Sheikh. Convicted on the charge of murder in the

case of Daniel Pearl. Member of Jayesh-al-Muhammad. Sentenced to death. Awaiting affirmation from higher courts. Prosecutor Raja Qureshi. Judge: Abdul Ghafoor Memon.

Nazi Khan, Abdul Rahim, Naseer Mahmood Sodozey. Convicted of murder. Sentenced to 20 years.



### AUSTRALIA

**August 2003:** Amrozi. Convicted on charges of terrorism related to the Bali

bombing. Prosecution named Jemaah Islamiyah (JI) as the terrorist group responsible for the bombing. Sentenced to death. Appealed sentence to Supreme Court of Indonesia. Decision pending. 30 more suspects to be

*web sites*

#### ABOUT AL QAEDA ONLINE

[www.janes.com](http://www.janes.com)

includes Jane's Terrorism Watch Report and Jane's Intelligence Watch Report

[www.debka.com](http://www.debka.com)

Israeli-based security and intelligence information

[www.weekly.ahram.org](http://www.weekly.ahram.org)

Egyptian-based online weekly devoted to analysis of politics and culture related to the Middle East

tried in connection with the Bali bombing. Prosecutor: M. Salim, Urip Tri Gunawan. Judge: I Made Karna.

**October 2003:** Ali Imron and Mukhlas (brothers of Amrozi). Convicted for crimes against humanity and terrorism related to the Bali bombings. Ali Imron sentenced to life. Mukhlas in process of appealing a death sentence. Prosecutor: I Gusti Putu Sulaba. Judge: Mulyani and Made Sura Atmaja.



#### INDONESIA

**September 2003:** Imam Samudra. Convicted on charges of terrorism related to the Bali bombing. Sentenced to death. Convicted retroactively under new anti-terror laws by a five judge panel. Abu Bakar Bashir. Convicted on charge of treason. Prosecution failed to present enough evidence for charge of heading the Jemaah Islamiah network. Sentenced to four years. Prosecutor: Hasan Madani. Judge: Mohammad Saleh.



#### BALI

**September 2003:** Mubaroq. Convicted on charges of terrorism related to the Bali bombing. Pleaded guilty. Prosecutor asked for life imprisonment. Sentence pending. Prosecutor: Nyoman Rudju. Judge: I Nengah Suryadana.



#### TURKEY

**September 2003:** Eleven members of Beyiat al-Imam. Acquitted of charges of acts of terror, defined as using force or violence. Evidence presented that members trained in Taliban camps in Afghanistan.



#### MOROCCO

**September 2003:** 41 people linked to May 2003 bombings. Charged with conspiring to undermine state security, instigating violence, violating sacred values, seeking to undermine Islam and membership in or other links to Salafia Jihadia. 27 Convicted. 14 Acquitted. Sentenced from six months to 15 years.

## Fall Events

### NOAH FELDMAN'S "REFLECTIONS ON IRAQ"

Noah Feldman is a senior Iraqi Constitutional Advisor as well as a professor at NYU School of Law and a faculty co-director at the Center on Law and Security. On October 30, 2003, The Center on Law and Security sponsored Noah Feldman's talk, "Reflections on Iraq." The event was held in Lipton Hall at NYU School of Law. The following are excerpts from Professor Feldman's speech:

"What is the source of the problem in Iraq? Why is it that almost every morning when you wake up to your radio the first thing you hear is, 'Three soldiers killed,' or — 'Iraqi civilians killed,' or 'A bomb has gone off at thus and such a site — in Iraq — a suicide bomb has gone off in thus and such a site inside Iraq?' How did that happen?"

I can tell you from personal experience that almost nobody in the United States government imagined that this was the likely consequence. Even the naysayers, who thought that we should avoid going to war in Iraq, thought that the security problem that we were going face in Iraq was going be driven, largely, by inter-ethnic Iraqi on Iraqi violence — with Iraqis going after each other, and essentially trying to split the country into multiple parts.

Now that hasn't happened. We haven't had inter-ethnic violence. And when you start hearing in the American press, as you probably will, about the 'ancient hatreds' of the Iraqi people for one another, you should react to that with deep skepticism. Iraq is not a country characterized by ancient hatreds. 'Ancient hatreds' is a code word that Americans use when they don't understand a country very well and they get the vague impression that people don't like each other very much there. Ancient hatreds have not been the problem in Iraq, and are still not the problem in Iraq. The problem in Iraq is very specific.

The problem in Iraq, specifically, is that a not insignificant number of Iraqis actively want not only for the United States to leave immediately, but want any Iraqis who have allied themselves with the United States in the wake of the invasion to be intimidated out of participating in a reconstruction process or a democratization process.

### FROM CHINA

America is expected to quickly topple Saddam Hussein and rebuild Iraq. But problems with this strategy are making Iraq America's "second Vietnam." America did not adequately plan for internal Iraqi opposition to U.S. control, and anti-Americanism is on the rise in Iraq. America is trying to increase military action, strengthen the economy, and expand political support for the new government... America cannot pull out of Iraq, but they can not rebuild it without outside help."

*from Renmin Ribao, September 18, 2003:*

*"America's Exit Strategy in Iraq,"*

*by Tang Zhi-Chao (translated and digested by Andrew Peterson).*

# news digest



**“STEP ONE IS TO RECONSTITUTE THE IRAQI SECURITY FORCES, AND FAST, PROBABLY BY CALLING THE IRAQI ARMY BACK TO BARRACKS. IT’S A RISKY THING TO DO BECAUSE THE IRAQI ARMY IN ITS HISTORY, HAS REGULARLY OVERTHROWN THE GOVERNMENT. RECONSTITUTE THE ARMY, CALL THEM BACK TO BARRACKS.”**

The borders of Iraq are wide open. And many, many people who have wanted to go into Iraq because they want to make trouble there, have entered. But there is, as of yet, no firm evidence suggesting that the attacks against Americans and against Iraqis are being perpetrated by foreign terrorists.

Now the fact that these attacks have shifted from being what they were in, say, June, when they were isolated attacks on American soldiers, to being organized attacks not only against coalition personnel, but also against Iraqis in, for example, the police or the Red Cross, strongly suggests that this resistance movement has the capacity to last. It is presently engaged in very ambitious and, I think, entirely plausible, efforts to weaken the will of the coalition and encourage it to leave. And they know that, as Iraqi security services grow, and as the police and eventually, the military grow, the capacity of the resistance to act freely will diminish.

They know perfectly well that the only way that the coalition can restrict the number of suicide bombings is by building relatively rapidly an Iraqi security force that would actually know whether the guy living in the house on the corner has lived there for 20 years, two weeks, or moved in yesterday afternoon and speaks with a Saudi accent.

Now I wish I could tell you that our intelligence services were capable of finding out information like that. I’m sorry to say that this is not the case; our intelligence capabilities are not that great. And frankly, even if we had an extensive network of informants, and paid large sums of money, we still couldn’t stop concerted and motivated suicide bombers...

...The United States has an enormous ethical duty, in my view — to take active steps not to leave Iraq in a situation where it will be far worse off than it would have been had we never have gone in the first place. Even if you think the war was the most preposterous, immoral violation of international law that it could possibly have been the

United States is morally required not to turn around and walk out. Even if we internationalize, we would still be under a duty, in my view, to keep our troops there, insofar as it was necessary to stop the country from going to pieces.

Step one is to reconstitute the Iraqi security forces, and fast, probably by calling the Iraqi Army back to their barracks. It’s a risky thing to do because the Iraqi Army, historically, has regularly overthrown the government. Reconstitute the army, call them back to barracks. Step two is the constitutional process. For the people involved in the constitutional process, there’s broad consensus on the following things: People agree that Iraq should be a democratic state in which the clergy has no special say in the government. They agree that there should be religious liberty for everybody, Muslims and non-Muslims. They also think that the constitution of Iraq should recognize Iraq as a state in which Islam is the official religion. And many would actually like the constitution to say that Sharia, or Islamic law, is either a source or a principle source of legislation in the state.

Now how do you reconcile all of these things?

Very briefly, the way you resolve these things is by putting all of them in the constitution, by guaranteeing religious liberty, by guaranteeing equality, by giving the advocates of religious liberty and equality all of the tools that they will need to argue that particular provisions of Islamic law, should they be adopted by a legislature in the future, violate those forms of equality, or violate those basic types of liberty... There is nothing incompatible between Islam as the official religion and democratic values...

...In the end, it will be up to Iraqis to make this work. They will not be solely responsible if it fails. But they will also not be without responsibility.”

**FALL CONFERENCE,  
NOVEMBER 15, 2003  
Are We Safer? Transformations  
in Security After September 11**

The attack on September 11 proved that American law enforcement and intelligence gathering agencies lagged behind the national security demands of the country. Since then, national security experts, law enforcement agencies, international organizations, and legal experts have examined the newly envisioned needs of the country. Now that two years have passed since the attack, much has changed in terms of structure, directives, and intent. Participants included representative voices from a wide spectrum of counterterrorist efforts. Experts on domestic and international law enforcement, as well as experts on Homeland Security, and on the defense of New York City and New York State addressed specific issues of counterterrorism

**“FOR THE PEOPLE INVOLVED IN THE CONSTITUTIONAL PROCESS, THERE’S BROAD CONSENSUS ON THE FOLLOWING THINGS: PEOPLE AGREE THAT IRAQ SHOULD BE A DEMOCRATIC STATE IN WHICH THE CLERGY HAS NO SPECIAL SAY IN THE GOVERNMENT. THEY AGREE THAT THERE SHOULD BE RELIGIOUS LIBERTY FOR EVERYBODY, MUSLIMS AND NON-MUSLIMS. THEY ALSO THINK THAT THE CONSTITUTION OF IRAQ SHOULD RECOGNIZE IRAQ AS A STATE IN WHICH ISLAM IS THE OFFICIAL RELIGION.”**



including terrorist financing, information sharing, and the experiences of other countries. The speakers included some of the more notable figures in law enforcement and counterterrorism. Below is a list of participants:

Mark Cohen- *Deputy Director, Public Security, NYS Homeland Security*

Frank Cilluffo- *Associate VP for Homeland Security, George Washington University*

R.P. Eddy- *Sr. Fellow for Counterterrorism, Manhattan Institute*

Stephen Holmes- *Walter E. Meyer Professor of Law, Co-Director, Center on Law and Security, NYU School of Law*

Peter Leitner- *Director, Higgins Center for Counterterrorism*

Mary McCarthy- *Visiting Fellow, Center for Strategic and International Studies*

Dan Richman- *Professor of Law, Fordham University*

Kent Roach- *Professor of Law, University of Toronto*

Howard Safir- *Chairman/CEO Safir Rosetti, former Commissioner NYPD*

Jeremy Shapiro- *Associate Director, Center of the U.S. and France, Brookings Institution*

Stephen Schulhofer- *Robert B. McKay Professor of Law, NYU School of Law*

Larry Thompson- *Sr. Fellow, Brookings Institution, formerly Deputy Attorney General, U.S. Department of Justice*

Adam Tompkins- *John Millar Chair of Public Law, University of Glasgow*

Keith Weston- *Detective Chief Superintendent, Anti-Terrorist Branch, New Scotland Yard*

Lee Wolosky- *Center for Strategic and International Studies, formerly director for Transnational Threats and Director of the International Crime Group, National Security Council.*

The participants examined the avenues of inquiry that currently define the legal debate over counterterrorism; among them, the ways in which terrorist law has impacted upon criminal law; the new draft of the E.U. Constitutions and its implications for international cooperation; the possibilities for consistent security strategies at home and abroad; and the consequences of legal change in the matters of domestic and international regulation of arms, money, and information sharing.

## Law and Security Summer Interns



Meg Holzer is a second year law student at NYU School of Law. She spent part of last summer as a Law and Security intern at the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague. These are some of the observa-

tions and thoughts she had while there:

“OPCW is a fascinating organization. But like the labyrinthine building it occupies, the organization discloses more layers every time I think I’m closer to understanding it! Its base is in the Chemical Weapons Convention (CWC) and it has been in operation since 1998, after the treaty came into force. Tonga joined only last month and now there are 153 States Parties.

The CWC’s goal is to ban chemical weapons, forever. States Parties have to prom-

ise never to make them, use them, help make them, or trade in prohibited chemicals, and they have to declare their stores of CWs and submit to verification and inspection. In the current climate, CWs as WMDs are especially worrisome because of the fear that terrorist groups will access them — as they did in Tokyo in the mid-90s.

I observed the work of various branches of the organization and assisted in their publications and information dissemination, trying to spread the importance of the CWC — not just the CW ban, but also the other goal of the CWC and of OPCW, which is to encourage peaceful uses of chemistry.”



Mariano Banos is a second year law student at NYU School of Law. He spent his summer as an intern at Interpol in Lyon, France. While there, he researched Al Qaeda trials and intelligence. See Terrorist Trial

Updates (page 6-7) for some of the findings of Mariano’s summer research.

## news digest

### FROM THE MIDDLE EAST

“The Gulf States have financed America’s wars of choice. In Vietnam we supported the American naval and air fleets...In Africa the U.S. established politically supportive allies in the war against Communism and some of us in the Gulf paid the outlays for these endeavors. In the 60’s and 70’s, we paid to keep the leftists from power in Yemen. In the 80’s we paid for America’s overthrow of the Sandanistas in Nicaragua and for the overthrow of the government in Grenada...In Afghanistan we paid \$40 billion....for the well being of America...We then paid \$20 billion following the defeat of the Taliban government...But America [changed its mind] and so decided to end the Taliban government and we paid for the invasion of Afghanistan...”

*Dr. Muhammad Saaleh al-Musafir, University of Qatar, in Al-Quds Al-Arabi, October 14, 2003 (Translated by Chris Barr).*

## Book Reviews

### *Al Qaeda, Before and After September 11*

**MASTERMINDS OF TERROR: THE TRUTH BEHIND THE MOST DEVASTATING TERRORIST ATTACK THE WORLD HAS EVER SEEN**

by Yosri Fouda and Nick Fielding  
Arcady Press, 2003

Most recent works on Al Qaeda jumble together facts, unsubstantiated speculations and uncritically recycled disinformation. Co-authored by two journalists — one from al Jazeera and the other from the *London Sunday Times* — this book stands out for the care and sobriety with which it attempts to clarify an intrinsically murky and difficult-to-study underworld. Among its other achievements, the book sheds fresh light on the role of Osama bin Laden in September 11 and the enigmatic relation between the 1993 and the 2001 attacks on the World Trade Center. The originality that the authors justly claim for their interpretation of September 11 derives from the two-day clandestine interview that Fouda conducted in May 2002 in Karachi with Khalid Shaikh Mohammed and Mohammed Atta's Hamburg roommate, Ramzi Binalshibh. (In the interim, both men have been arrested and are now in the custody of the U.S. or one of its Middle Eastern allies.)

The upshot of the book is that Khalid Shaikh Mohammed was the operational chief behind the September 11 attack, while Osama bin Laden and Ayman al-Zawahiri were merely "figureheads." Thus, when Mohammed Atta and Marwan al Shehhi went to Afghanistan, sometime around January 2001, "they took their military instructions from Khalid Shaikh Mohammed and the promise of Paradise from Osama bin Laden." Born in

Kuwait in 1964 or 1965 of Baluchi parents, Khalid Shaikh Mohammed represents, in his life story, the tie between the Gulf states and South Asia seemingly central to transnational terrorism today. The authors speculate, interestingly, that Khalid Shaikh Mohammed was the mastermind of the 1993 attempt to topple the Twin Towers as well. The son of Khalid Shaikh Mohammed's sister, Ramzi Yousef, apparently carried out the attack under his uncle's supervision. In 1993, at the time of that unsuccessful mission, Khalid Shaikh Mohammed was not yet a close associate of bin Laden's. But after 1997, "there is hardly a single Al Qaeda operation that Khalid was not involved in." More precisely, the 1998 East African embassy bombings were "the first major actions planned and carried out by the organization under the control of Khalid Shaikh Mohammed."

Besides clarifying Khalid Shaikh Mohammed's all-important role in the September 11 plot, the book also tells us, in the terrorist chief's own words, why he launched it. He told Fouda, for instance, that "The attacks were designed to cause as many deaths as possible and havoc and to be a big slap for America on American soil."

Alongside its strong thesis about the "principal organizer" of September 11, the book discloses many tantalizing details, such as the existence of videotaped statements by all 19 hijackers, only three of which have been released so far. (Thus, we may be treated sometime soon to a stone-faced Mohammad Atta, announcing on film what glories he is willing to perform for God.) Fouda and Fielding also touch upon the rumored role of Pakistani intelligence in the September 11 plot, which may, in turn, have some twisted connection to the case of Daniel Pearl, whose throat, they also report, may have been slit personally by Khalid Shaikh Mohammed.

Although based to some extent on guesswork, in other words, this book is not only serious but probably the most informative work yet published on the September 11

plot, even though some of its claims will no doubt be corrected and superseded by future researches and revelations.

*Reviewed by Stephen Holmes*

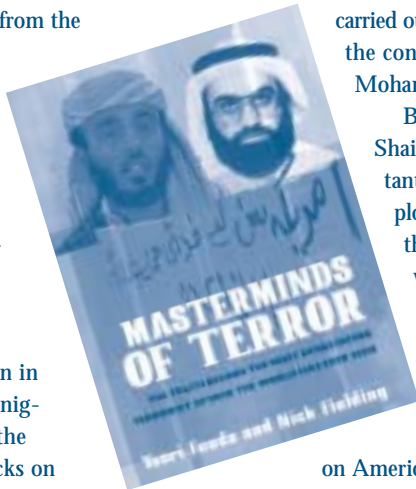
**WHO KILLED DANIEL PEARL?**  
by Bernard-Henri Lévy  
Melville House Publishing, 2003

Humans, it seems, are compelled to react to frightening news with self-concerned imagination. What if that had been me? Or someone I loved? In the case of *Wall Street Journal* reporter Daniel Pearl who was ostensibly killed as "a Jew, an American, a Zionist," the temptation to ruminate over his torture and vicious murder has, according to Bernard-Henri Lévy, kept us unnecessarily ignorant as to the causes and perpetrators of Pearl's murder.

Lévy understands well the seductive power of fictionalizing brutality in order to comprehend it. For the first third of his book, he conjures up the possible thoughts, impressions and responses that Pearl may have had to one of his captors. Pearl "sees his eyes, bright, feverish, too deeply set and strangely pleading. For a second he wonders if he, too, has been drugged. He sees the weak chin, the barely perceptible trembling of the lips, the outsized ears and bony nose...The nape of the neck, he thinks, shaking his head and trying to free himself — the center of voluptuousness, the weight of the world, the hidden eye of the Talmud, the executioner's axe."

Lévy's novelistic style is not reserved solely for Pearl. Lévy delves as well into the mindset of Omar Sheikh as well, the alleged mastermind of the kidnapping and assassination of Pearl. Omar, Lévy points out, like many terrorists, is well-educated, born and raised in the West, from a well-to-do background, and was not particularly religious in his youth. Omar was

born in London, attended private schools there and enrolled in the London School of Economics. (LSE) Throughout, he was bright, well-behaved, a chess champion, an arm wrestling champion, and often the star of his class. What changed



him was the Bosnian war. In one or two trips to the war-torn nation, “little Omar” discovered the resentment of the Muslim world and became its fierce avenger.

Once he has established an internal view of captor and victim, Lévy leaves off fictionalizing and enters the discourse of the journalist in pursuit of truth. It is the journalist, not the novelist, who holds the key to discovering the motives behind Pearl’s murder. Daniel’s wife, Mariane Pearl, warns Lévy to “Be careful... Don’t enter into their madness, or worse, their logic.” But Lévy is no more capable of stopping himself than others are capable of ceasing to identify emotionally with the victim. Lévy immerses himself in the world of terrorist cells, aliases and false leads. “Sensing” the difference between fabrications and the truth, he discovers that Omar was an ISI agent, recruited most likely at or preceding his entry into LSE; that the entire story into which Lévy led us initially was in truth a fictive world; that the story of Omar’s awakening to Muslim suffering in Bosnia was merely a cover story, “a lie, a deliberate invention, a construction.” Although Lévy wonders repeatedly along the way whether he’s been “taken in by a game of infinite theories,” he is led convincingly to the following conclusion: “Daniel Pearl was kidnapped and then murdered by Islamist groups who were manipulated by a single fringe group of the secret service. The murder of Daniel Pearl “was not petty, a murder for nothing, an uncontrolled act of fundamentalist fanatics — it’s a crime of state, intended and authorized, whether we like it or not, by the state of Pakistan.” Lévy finds further that a fringe group of the ISI was part of Al Qaeda and that Omar, working for the Pakistani secret police, was the “‘favored son’ of Osama bin Laden,” the embodiment of the “synthesis of ISI and Al Qaeda.”

Lévy surmises that Pearl was murdered for much more complicated and unsettling geopolitical reasons than was initially assumed. Perhaps Pearl learned more about his captors than they wanted. Perhaps he was working on American Al Qaeda cells. Perhaps he had uncovered a link between bin Laden and weapons of mass destruction.

Ultimately, Lévy’s investigation takes him to the motives not of Daniel Pearl or Omar Sheikh but of the United States. Above all, Lévy is asking, How capable is the United States of evading the fictive seductions of Al

Qaeda and the Taliban? How easily can the Bush administration and the U.S. intelligence services be duped by the kind of lies, deceptions and constructions that captivate others and that lead us astray, away from the complex and nefarious realities that lie beneath?

However unsettling Lévy’s conclusions, they teach us not only the dangers of the governmental reliance upon easily imagined and erroneous scenarios, but about journalists, whose pursuit of truth, Lévy contends, is essential to knowing and thereby fighting the enemy. Journalists, Lévy concludes, are essential to the war on terror.

*Reviewed by Karen J. Greenberg*

## Recommended Books on Al Qaeda

Below is a selective list of the books which our editorial staff considers the most informative on Al Qaeda.

Anonymous, *Through Our Enemies’ Eyes: Osama bin Laden, Radical Islam, and the Future of America* (Washington, D.C., 2003)

Peter L. Bergen, *Holy War, Inc: Inside the Secret World of Osama bin Laden* (New York, 2001)

Jason Burke, *Al Qaeda: Casting a Shadow of Terror* (New York, 2003)

Jane Corbin, *Al Qaeda: In Search of the Terror Network that Threatens the World* (New York, 2002)

Yosri Fouda and Nick Fielding, *Masterminds of Terror: The Truth Behind the Most Devastating Terrorist Attack the World Has Ever Seen* (New York, 2003)

Rohan Gunaratna, *Inside Al Qaeda: Global Network of Terror* (New York, 2002)

Roland Jacquard, *In the Name of Osama bin Laden: Global Terrorism and the Bin Laden Brotherhood* (Durham and London, 2002)

Barry Rubin and Judith Colp Rubin, editors, *Anti-American Terrorism and the Middle East: A Documentary Reader*, (New York, 2002)

## Profiles

### BALTASAR GARZON



©AP Photo

Baltasar Garzon has distinguished himself as a premier prosecutor against injustice worldwide. From Argentine to Chile to the United States, Garzon has pursued individuals from Pinochet to Henry Kissinger to Osama bin Laden. The judge bases his right

to initiate indictments on a 1985 Spanish law by which Spanish courts were allowed universal jurisdiction to hear human rights crimes, provided some aspect of the case can be linked to Spain. In the case of Osama bin Laden, Garzon bases his indictment on the existence of a Spanish al Qaeda cell that allegedly helped plan September 11. In his war against terrorism, Garzon often takes stands that provoke international controversy. A strong supporter of the International Criminal Court, he has criticized the United States for its refusal to join the ICC. His indictment of bin Laden would require the United States, should they find bin Laden alive, to deal with that charge before bringing him to trial themselves.



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### JEAN-LOUIS BRUGUIERE

French anti-terror Magistrate Jean-Louis Bruguiere has been involved in fighting terrorism for more than 20 years. Magistrate Bruguiere has investigated terrorist bombings of airlines, broken up active ter-

ror cells, and caught infamous terrorist “Carlos the Jackal” in 1994. Magistrate Bruguiere is known internationally as one of the most dedicated and successful trackers and prosecutors of terrorists, and his work has led to more than 500 arrests.

## Issue #2: Did you Know? The USA PATRIOT Act and what it means for us...

### Did you know that...

Persons, including students, from countries that have repeatedly supported terrorism are forbidden to enter science laboratories where there are restricted biological agents. Any “knowing violator” of the statute can be charged on the grounds of facilitating the transfer of toxins to unregistered persons... So, for example, a professor who knowingly allowed an unregistered student into a lab with restricted substances or who allowed restricted persons to possess toxins, could be seen in violation of the statute and subject to fines or up to five years imprisonment.

(USA PATRIOT Act, Section 817)

## *Thank You*

Thanks go to our dedicated,  
tireless staff.

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