

House Committee on the Judiciary
Subcommittee on Commercial and
Administrative Law

Hearing on Libel Tourism

Thursday, February 12, 2009

Testimony of Dr. Rachel Ehrenfeld
Director of the American Center for Democracy

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Thank you, Mr. Chairman and members of the Committee, for holding this hearing, which touches me personally. My special thanks to Chairman Cohen for inviting me. In addition to my oral testimony, I submit my written statement for the record.

We are confronted by libel tourism -- a pernicious and growing phenomenon, especially after the 9/11 attacks on America -- whereby wealthy and corrupt terror financiers exploit plaintiff-friendly foreign libel laws and expansive Internet jurisdiction to silence American authors and publishers. Foreign libel laws have become a potent weapon used by the forces of tyranny who seek to undermine our freedom. The Free Speech Protection Act can stop this.

In *New York Times v. Sullivan*, the Supreme Court struck a critical balance between libel actions and a free press guaranteed by the First Amendment. The high court raised the bar for libel plaintiffs to insure our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Based on that principle, the court declared: "libel can claim no talismanic immunity from constitutional limitations."

Outside the United States, there are no such "constitutional limitations." The House of Lords explicitly rejected the *Sullivan* standard. So did the Canadian Supreme Court. Although all forty-one-member states of the Council of Europe submit to the European Court of Human Rights, Article 10 of its charter also rejects the *Sullivan* standard.

In many countries, journalists can be jailed for criminal libel; truth is often not a defense; high office holders enjoy extra protection against criticism; publications can be confiscated; newspapers and broadcast stations can be shuttered; and writers can be forced to publish adverse court orders, and repudiate as false what they know to be true.

Congress must protect American writers and publishers to guarantee the "uninhibited, robust and wide-open" debate the First Amendment was designed to protect. Scholars like me seek Congress's help to stop libel tourism from limiting our ability to write freely about important matters of public policy vital to our national security.

I can attest that libel tourism is costly, financially and emotionally. I do not command an army - or control an industry - or have vast wealth - or hold political office. In other

words, I do not possess any traditional sources of power in society. Instead, I write. I am a scholar dedicated to expose the enemies of freedom and Western democracy. I expend great time and effort tracking down information across the globe. My books and articles are based in large part on evidence presented to Congress, parliaments and courts. Like most responsible scholars, I publish only material that can be verified. My credibility and livelihood depend on it.

In 1992, I published *Narcoterrorism: How Governments Around the World Have Used the Drug Trade to Finance and Further Terrorist Activities*, and first called attention to the intimate relationship between drug trafficking and terrorism.

Terrorism is not cheap. To the contrary, it is a capital-intensive activity. It requires lots of cash for training, weapons, vehicles, salaries, cell phones, airline travel, food and lodging; etc. I showed how the drug trade, not just oil profits, fuels terrorist organizations. While policy makers were romanticizing the Palestine Liberation Organization as a group of so-called “freedom fighters,” I showed how the PLO filled its coffers with billions of dollars from heroin, hashish, airplane highjacking, extortion and illegal arms sales. Until my book, neither the American government nor international agencies for drug control publicly linked narcotics and terrorism.

When asked why he robbed banks, Willy Sutton famously replied: “Because that’s where the money is.” I followed his lead and followed the money. This led to my second book, *Evil Money: The Inside Story of Money Laundering and Corruption in Government, Banks and Business*, in which I connected the dots between drug profits, money laundering, political corruption, Islamic banking and how illicit funds are used to undermine democracies.

The Committee undoubtedly remembers BCCI, the Bank of Credit and Commerce International, the cash till for Hezbollah, the PLO, HAMAS, Abu Nidal and other terrorist organizations. BCCI’s chief operating officer was Saudi billionaire, Khalid bin Mahfouz, banker to the Saudi royal family and at that time, owner of the National Commercial Bank of Saudi Arabia. In 1992, Mahfouz paid \$225 million to settle criminal charges against him in New York arising from his control of BCCI.

In 2003, I published my third book, *Funding Evil, How Terrorism is Financed and How to Stop It*. In that book, I showed the true face of terrorism. It is not the stereotype of underprivileged Islamic youth yearning to be religious martyrs, but instead, an international network of corrupt dictators, drug kingpins, and villains like Mahfouz who transferred some \$74 million to at least two front charities for terrorism: the International Islamic Relief Organization and his Muwafaq or “blessed relief” Foundation, which then gave the funds directly to al Qaeda, Hamas and other radical Muslim organizations.

In response, Mahfouz sued me for libel. What happened to me did not occur in a dark backwater of totalitarian repression like Syria, Saudi Arabia, or North Korea, but in England. Mahfouz does not live there. I do not live there. My book was not published

or marketed there. Nonetheless, the English court accepted jurisdiction because twenty-three copies of *Funding Evil* arrived in England via Internet purchases.

English law does not distinguish between private persons and public figures. Allegedly, offensive statements are presumed defamatory and the libel defendant bears the burden to prove they are true. Official documents from non-English sources are typically inadmissible in court, and Arab dictatorships refuse to help Western writers and publishers prove allegations about terrorism.

Protection of opinion is limited and multiple suits are allowed for a single act of publication. Libel defendants have limited pre-trial discovery and no right to depose plaintiffs under oath, as in American courts. Thus, libel plaintiffs usually win, verdicts are substantial, and defendants must pay the plaintiff's legal fees. It is no wonder then, the Times of London called London the "libel capital of the Western world."

Mahfouz's threats conveyed by E-mails, faxes, and legal papers were unsettling, and on one occasion, I was warned to do as he demanded if I "knew what was good for me" because he has friends in high places who wield great influence in the U.S.

I refused to recognize the English court's jurisdiction because I should not have to defend myself abroad. The British court granted Mahfouz a default judgment and awarded him hundreds of thousands of dollars; required me to prevent copies of *Funding Evil* from reaching Britain; and ordered me to publish retractions drafted by his solicitors.

Libel tourism by Mahfouz and others like him made me realize something more was at stake than my book and the particulars involving him. In response, I sued Mahfouz in New York to declare his English judgment violated my rights under the First Amendment. That litigation led the New York Legislature last May to enact New York's version of the Free Speech Protection Act. Illinois followed suit last August.

Until the new statute protected me -- dubbed by the media as "Rachel's Law" -- Mahfouz's English judgment hung over my head like a sword of Damocles and kept me up at night.

The United States has a tradition of almost automatic enforcement of foreign judgments under the doctrine of comity enshrined in the Uniform Foreign Money-Judgments Recognition Act adopted by a majority of states. Although writers can assert a First Amendment defense to enforcement actions, few have the economic resources to do so.

Hence, libel tourism forces them to engage in self-censorship. Mahfouz's libel tourism in London led American publishers with assets abroad to cancel several books under contract or consideration. Those who once willingly courted my work now refuse to publish me. In nearly forty cases, Mahfouz obtained settlements against his victims, all with forced apologies, by the mere threat of libel litigation. His boasts about this on his website to effectively silence and intimidate his critics in the media and academia.

Case law speaks of the “chilling effect” on free speech threatened by unrestrained libel actions. My case demonstrates the chilling effect is no mere abstraction. I cannot travel to the U.K., lest I be arrested to enforce Mahfouz’s extant judgment, and I run the same risk in Europe, due to the European Community’s reciprocal enforcement of member states’ judgments. Similar laws apply in most Commonwealth states, too.

I close with the immortal words of Justice Brandeis in *Whitney v. California*:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

A free press is vital not only to our lifestyles, but also, to our national security to protect writers like me who expose those who do us evil. New York and Illinois have enacted laws to protect their citizens from the scourge of libel tourism which threatens press freedom and scholars, writers and publishers everywhere. The federal Free Speech Protection Act insures all American citizens will enjoy such protection. Congress should pass it without delay.



Dr. Rachel Ehrenfeld

Brief bio:

Dr. Rachel Ehrenfeld is the Director of the New York-based American Center for Democracy and the Center for the Study of Corruption & the Rule of Law. She is the author of *Funding Evil: How Terrorism is Financed - and How to Stop It* (BonusBooks, 2003, 2005); *Evil Money* (HarperCollins, 1992, SPI, 1994) and *Narco-Terrorism* (Basic Books, 1990, 1992).

Dr. Ehrenfeld is an expert on the shadowy movement of funds through international banking, governments and businesses to fund terrorism. She has a unique understanding of the challenges of international terrorism to democracy and freedom, and how money laundering and political corruption facilitates terror financing and economic warfare.

An American citizen fluent in several languages, Ehrenfeld has testified before Congressional Committees, as well as the European and Canadian Parliaments, provided evidence to the British Parliament, and has been a consultant to foreign governments as well as U.S. government agencies such as the Departments of State and Defense, Treasury, Justice, the CIA, and Homeland Security. She is also a Member of the Board of Directors of the Committee on the Present Danger.

She has been a visiting scholar at the Columbia University Institute of War and Peace Studies, a research scholar at the New York University School of Law, and a fellow at Johns Hopkins School of Advanced International Studies, Fletcher School of Law and Diplomacy and Jesus College at Cambridge University. She has a PhD in Criminology from the Hebrew University School of Law.

Her articles have appeared in numerous publications such as The New York Times, Forbes, Los Angeles Times, The Jerusalem Post, The Wall Street Journal and the Huffington Post, and she is a frequent guest on domestic and international TV and radio.

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