



## SECRETS AND LIES: THE PERSECUTION OF MUHAMMAD SALAH (PART I)

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*The case of Muhammad Salah, a Palestinian-American grocer and Chicago resident, is the longest-running terrorism case in the United States. He was brought to trial on terrorism-funding charges in October 2006 after a thirteen-year saga that began with his January 1993 arrest in Israel as the “world commander of Hamas” and that continued in the United States following his release from Israeli prison in late 1997. Though acquitted of all terrorism-related charges by a U.S. federal jury in Chicago in February 2007, Salah was convicted on a single count of obstruction of justice.*

*In this exclusive report for JPS, Salah’s lawyers recount the unfolding of this landmark and labyrinthine case, analyzing its legal underpinnings and implications. His prosecution served to advance new standards governing the admissibility of coerced confessions at trial and the use of secret evidence, while at the same time establishing new procedures for preventing the cross-examination of key witnesses and closing the courtroom to the press and public during crucial testimony. Even before his U.S. trial, his taped confession extracted under Shin Bet torture served as the linchpin of the U.S. government’s investigation and prosecution of persons it suspected of providing material support for Palestinian resistance to Israeli occupation. More broadly, the years covered by the case show the erosion of the rule of law in the United States, as well as the melding of the discourses, strategies, tactics, and aims of U.S. and Israeli law enforcement and intelligence bodies long before the post-9/11 launch of the “global war on terror.”*

*Part I of this two-part account lays the ground for the 2006–7 Chicago trial, covering the period of Salah’s arrest, interrogation, and imprisonment in Israel and the investigations and legal proceedings against him upon his return. Part II will focus on the crafting of the case by the Justice Department under Pres. George W. Bush and the trial itself.*

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***Authors' Note:***

*As Muhammad Salah's lawyers, we felt compelled to write this article because the true story of the Salah case has never been told. Instead, many books and articles have repeated and spun mistruths about it built upon a foundation of lies and a confession extracted under Shin Bet torture. It is not without trepidation that we exercise our First Amendment right to present these facts to the public, however. Given the history of this case, not to mention the U.S. government's relentless persecution of Sami Al-Arian, Dr. Abdelhaleem Ashqar, and the officers of the Holy Land Foundation, the largest Muslim charity in the United States, it seems clear that the government will try again and again to punish those it sees as enemies of Israel. This demonstrated abuse of power by the government has created a profoundly "chilling effect" on the right of Palestinians living in this country to support the struggle against the illegal occupation of their homeland. Even the publication of this article could put Muhammad Salah and his family at risk of government retaliation.*

THE 2007 ACQUITTAL of Muhammad Salah on terrorism conspiracy charges in United States federal court was a victory for opponents of torture, government secrecy, and the U.S. government's uncritical and unconditional support for Israel. The verdict vindicated a Palestinian-American labeled a terrorist and persecuted by Israel, the United States, and the U.S.-based pro-Israel lobby for well over a decade.

The story of Muhammad Salah chronicles the U.S. decision to criminalize the Palestinian resistance movement and, ultimately, to team up with Israel in a joint "war on terror." U.S. criminal statutes were "weaponized" to achieve Bush administration objectives; racketeering laws were deployed to criminalize acts of resistance to the Israeli occupation by characterizing them as murder, kidnapping, and money laundering; the government used a multimillion dollar civil tort case brought by pro-Israel lawyers against Salah and several Muslim charities as the blueprint for its later criminal prosecution; and finally, the government fanned the flames of fear by charging Salah with material support for terrorism based on the false allegations of a known FBI "disinformant."

None of these objectives could have been achieved, however, if the U.S. Constitution had been respected. As this article will show, bedrock constitutional rights to free speech, due process, and public trial—as well as prohibitions against summary arrest, coerced confessions, and secret evidence—were cast aside in pursuit of the administration's goals. The result was what amounted to a military court sitting in the city of Chicago.

**MANUFACTURING THE CASE**

Muhammad Salah, a naturalized American citizen and Chicago-area grocer, was arrested by the Israeli military in 1993 as he attempted to cross into Gaza

while on a mission to deliver humanitarian funds to Palestinians in the occupied territories. (Fund-raising for Palestinian and other foreign organizations was protected at that time under U.S. law.) The timing of Salah's mission was not random: Five weeks earlier, relief services in the West Bank and Gaza Strip had been disrupted following the mass deportation by Israel of 415 Palestinians, many of them involved in local Islamic charities.

Within days of Salah's arrest, the Israeli government made the dramatic announcement that they had captured a top Hamas military commander and further declared that the Hamas leadership had relocated its "nerve center" and military command structure to the United States. Against U.S. protests, and on the basis of a "confession" known by U.S. officials to have been coerced, Salah was brought to trial several months later before an Israeli military tribunal.

This article contends that Israel manufactured the military leadership charge against Salah in order to force the U.S. government to outlaw support for Hamas and to stop the flow of funding and assistance from the United States to Palestinians in the occupied territories. Israel's strategy worked. As a result of Israel's relentless accusations concerning Salah—combined with heightened U.S. concerns about terrorism following the February 1993 bombing of the World Trade Center by Muslim extremists (unrelated to Hamas) and the launch a year later of Hamas suicide operations—the U.S. government made it illegal in January 1995 to conduct business with Hamas. The following year, Congress made it a crime to give money to Hamas for any purpose.<sup>1</sup> In the meantime, the initially vigorous defense of Salah by U.S. officials waned under the impact of these developments, and by the time he was convicted by an Israeli military court in January 1995, the State Department had all but ceased its diplomatic protests. All told, Salah spent almost five years in Israeli prison.

The subsequent decade-long pursuit of Salah in the United States provided a testing ground for new counterterrorism practices and dangerous legal precedents. In secret proceedings in 1995, Salah (while still in Israeli prison) became the first and only U.S. citizen to be branded a "specially designated terrorist" by the U.S. government and subjected to that designation's draconian restrictions. After returning home upon his release from Israeli prison, the U.S. government in 1998 sued to seize his assets, including his family home, invoking in a terrorism funding case a law designed to facilitate asset forfeiture in narcotics cases. Two years later, in May 2000, Salah and several Muslim American charities were named as defendants in a landmark \$600-million civil case (*Boim v. Quranic Literary Institute, et al.*) that legitimized the private prosecution of terrorism cases. The *Boim* lawsuit attempted to demonstrate that anyone making contributions to an organization designated as "terrorist" can be held liable for that group's violent actions, regardless of the donor's intent.

Despite an FBI counterterrorism unit's intensive investigation of Salah, the Clinton administration ultimately refused to indict him. In the wake of the attacks of 11 September 2001, however, the Bush Justice Department revived

the investigation and over the next few years crafted its own test case centered on Salah's 1993 "confession" to Shin Bet (Israeli Security Agency) interrogators. On 20 August 2004, U.S. Attorney General John Ashcroft, flanked by FBI chief Robert Mueller and famed terrorism prosecutor Patrick Fitzgerald (who later led the investigation into the leak of CIA operative Valerie Plame's identity), announced that "today, terrorists have lost yet another source of financing and support for their bombs and bloodshed,"<sup>2</sup> and read the indictment against Salah and two other Palestinians<sup>3</sup> accused of running "a U.S.-based terrorist-recruiting and financing cell associated with the foreign terrorist organization Hamas" that was "murdering innocent victims abroad, including American citizens."<sup>4</sup> Salah was indicted on three counts: participation in a thirteen-year racketeering conspiracy, material support for terrorism, and obstruction of justice.

The racketeering conspiracy count marked the first time that Hamas, a broad-based Islamist movement that was later democratically elected to head the government of the Palestinian Authority, was deemed a "criminal enterprise." Resistance to Israeli occupation was now considered murder, maiming, kidnapping, money laundering, and forgery "in aid of racketeering."<sup>5</sup> The material support for terrorism count, based on the testimony of an FBI informant long known within the agency to be untrustworthy, was dismissed on the eve of the trial by the government when faced with the prospect of having to release records detailing the informant's involvement in the case. Finally, the obstruction of justice count alleged that Salah had lied or refused to give information to the lawyers in the above-mentioned *Boim* case.

From the very beginning, the prosecution of Muhammad Salah ran afoul of the U.S. Constitution and bedrock American principles of due process and fair trial. The indictment itself violated principles prohibiting *ex post facto* and double jeopardy by prosecuting Salah for conduct that did not constitute a crime at the time of his arrest in 1993 and for which he had already served time in a foreign prison. The government sought to admit evidence it knew Israel had obtained through torture, and the United States and Israel colluded to deny Salah the right to obtain information essential to his defense.

During Salah's 2006–7 Chicago trial, the judge, U.S. prosecutors, Israeli government officials, and Shin Bet interrogators and their lawyers held secret hearings that neither Salah nor his lawyers were allowed to attend. Salah's constitutional right to cross-examine witnesses and examine documents fell by the wayside as the government introduced new procedures to govern the use of classified information at trial. Defense counsel was not allowed to question key witnesses about matters vital to the case. Finally, the government barred the public and press from the courtroom during pivotal testimony, depriving Salah of his right to a public trial.

Yet in the end, the jury, composed of Chicago-area citizens, acquitted Muhammad Salah of all terrorism-related charges. Despite the massive deployment of resources and pressure from two governments (with active,

behind-the-scenes support from the pro-Israeli lobby in the United States), the verdict demonstrates that, when presented with the facts and given the power, American jurors using critical judgment will refuse to fall in line with their government's pro-Israel agenda.

### THE CASE BEGINS IN ISRAEL

The Bush Justice Department's national press conference of 20 August 2004 was not the first time that a government had summoned the international press corps to present Muhammad Salah as a dangerous terrorist. Almost twelve years earlier, in January 1993, the Government of Israel (GOI) had gone into high gear to "stage a daily publicity campaign, complete with organization charts, color photos and secret police press briefings"<sup>6</sup> to announce the arrest by the Israeli Defense Forces (IDF) of the "World Commander of Hamas Military Wing" (as the *Jerusalem Post's* banner headline depicted Salah<sup>7</sup>) at the Erez

checkpoint between Gaza and Israel. The GOI press office released a diagram of Hamas's operational structure, reproduced in a number of publications, which put "U.S. leadership" at the top and drew lines that extended to several Middle Eastern states, including Iran.<sup>8</sup> A series of articles published in the ensuing days kept the issue alive with disclosures allegedly obtained from Salah during his interrogation by Shin Bet agents.<sup>9</sup> Significantly, the interrogation reports leaked by the Shin Bet for international media diffusion were the very ones the U.S. government later claimed to be highly classified and thus "undiscoverable" when needed for Salah's defense at trial.

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Why would the GOI go to such lengths to publicize the seemingly far-fetched accusations that a soft-spoken Arab American grocer from Chicago, known for his community volunteer work, was the world military commander of Hamas? The answer lies in Israel's need for political leverage against the United States at a time of particular tension. On 17 December 1992, Israel had expelled to Lebanon 415 Palestinians alleged to be members of Hamas (a movement formally established in 1987) and Islamic Jihad. At least a quarter of the deportees were students or professors at the Islamic University of Gaza, and many worked in hospitals, schools, and various social welfare organizations.

The day after the expulsions, the United Nations Security Council unanimously passed Resolution 799, which "strongly condemned" Israel's actions, held the deportations to be in violation of the Fourth Geneva Convention of 1949, and "demanded" that Israel, "the occupying power, ensure the safe and immediate return" of all the deportees to the occupied territories. UN emissaries were dispatched to meet with Israeli prime minister Yitzhak Rabin to demand compliance with the resolution. Rabin refused not only to allow

the civilians to return, but also to permit humanitarian aid to pass through the security zone to reach the deportees, who were camped out in tents in the “no-man’s land” between Israel and Lebanon in harsh winter conditions. Meanwhile, the expulsion of so many key social service administrators threatened a humanitarian crisis in the occupied territories as well.

Whereas international condemnation of Israel’s actions was nothing new, what was unusual was that the United States, which generally could be counted on to veto UN Security Council resolutions critical of Israel, took a hard line against the deportations, angering Israeli officials. *Time Magazine* reported that as a result of the deportation crisis, “all diplomatic niceties had slipped away” between the two governments.<sup>10</sup>

The U.S. government was aware that Palestinians in the United States were making financial contributions to Hamas-influenced charities, or *zakat*. At the time of Salah’s arrest in Israel, and up until Hamas’s placement on the U.S. terrorism list in January 1995, such fund-raising had been considered protected First Amendment speech under the U.S. Constitution.<sup>11</sup> Indeed, Hamas representatives had been meeting with members of the State Department into the early 1990s.<sup>12</sup> Furthermore, U.S. consular officials in Israel and Jerusalem had been openly disbursing aid money through Hamas affiliates. In a declassified State Department telegram of 4 February 1993 to Secretary of State Warren Christopher, U.S. Consul General to Israel Molly Williamson surmised that Salah’s arrest was likely a result of the consulate’s regular distribution of money in the territories through the *zakat* and the 17 December deportation of the consulate’s *zakat* contact person (one of the previously mentioned civilians expelled to South Lebanon). Indeed, Israeli radio had reported a day earlier that a receipt for \$30,000 issued by the U.S. Consulate in Jerusalem was found on a Palestinian-American arrested the same day as Salah.<sup>13</sup>

When faced with U.S. criticism about the deportations and demands that it allow the return of the 415 civilians, the Israeli government turned the issue on its head: It accused the United States of giving safe haven to the Hamas high command, implying that the United States was responsible for the very actions Israel claimed had necessitated the deportations in the first place. Indeed, Israel did not hide its motivations; a security official was quoted as saying that “the point” of the high-publicity arrest and the charts showing the U.S. as Hamas’s nerve center was to demonstrate that “this organization is your problem, too.”<sup>14</sup> The GOI’s accusations were predictably accompanied by demands that the U.S. outlaw Hamas.

U.S. intelligence officials dismissed Israel’s claims that the United States was Hamas’s “nerve center” as unsupported propaganda, even “bunk.”<sup>15</sup> Israel’s accusations were rejected by the FBI, the State Department, and the head of counterterrorism at the CIA. Evidence later introduced at Salah’s Chicago trial would reveal that FBI Assistant Director of Counterterrorism Neil Gallagher believed that the “Israeli-led media campaign” and “media blitz” had been calculated “to divert attention from the deportees issue.”<sup>16</sup> Uri Dromi, the head of the Israeli government press office, noted that the attempt to

convince U.S. officials of Salah's and America's Hamas connection was an "up-hill struggle."<sup>17</sup>

### INCOMMUNICADO DETENTION AND U.S. PROTEST

It was at the height of the U.S.-Israeli diplomatic standoff that Muhammad Salah was arrested at the Erez checkpoint between Gaza and Israel. IDF soldiers stormed a taxicab he was riding in, blindfolded and shackled him, and threw him facedown in the back of a military jeep. The soldiers drove him around for hours, jabbing him with rifle butts, threatening him, and calling him offensive names before depositing him at the Ramallah Shin Bet interrogation center. This newly built installation replaced the former Ramallah compound widely known for its human rights abuses, including its use of refrigeration cells.<sup>18</sup>

Declassified documents confirm that the one-hour trip from Erez to the Ramallah interrogation center in fact had taken nearly five hours. Salah's condition at the time of intake was noted as "requires medical attention." Nonetheless, Shin Bet medical staff found Salah "fit" to undergo "intensive interrogation."<sup>19</sup>

Having received clearance for interrogation, the Shin Bet replaced Salah's blindfold with a densely woven, foul-smelling hood, reeking of vomit and feces, which made it difficult for him to breathe. The interrogators took Salah to a small interrogation room and tied him to a child's chair with the front legs cut

off to maximize the strain to his legs and back. (According to the testimony of a Shin Bet agent at the Israeli military trial, the purpose of the small chair was to minimize the distance detainees would fall to the floor in the event that they fell asleep while shackled.) Hours later, Shin Bet interrogators entered the room and made Salah take off his clothes and stand naked in front of them. They struck him around the head, threatened to have the FBI arrest his wife in Illinois, and told him they would take photographs of him and publish them if he didn't cooperate.<sup>20</sup> The interrogation logs reveal the use of classic Shin Bet interrogation

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***According to Shin Bet testimony, the purpose of the child's chair with the front legs cut off was not to maximize the detainees' physical stress, but to minimize the distance they would fall if they fell asleep while shackled.***

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techniques on Salah. He was not allowed to sleep for the first 48 hours, and thereafter he was awakened for interrogation at all hours of the day and night.<sup>21</sup> His interrogators played loud music and kept the interrogation room at frigid temperatures. When not in active interrogation, the Shin Bet logs show that Salah was made to "wait." Shin Bet testimony established that during "waiting" periods, which can last up to twenty-four hours, a detainee is not allowed to sleep, and "slapping" is permitted. In general, "waiting" means that the detainee must either sit hooded and tied to the small chair or stand in the "closet cell" while he "thinks about his interrogation."<sup>22</sup> At Salah's Chicago trial, the government stipulated<sup>23</sup> that the "waiting cell" utilized by the Shin Bet was "tall enough for defendant Salah to stand but not large enough [for him] to lie down."<sup>24</sup>

In the critical first week of his interrogation, the Shin Bet held Salah incommunicado. Declassified State Department records establish that despite U.S. insistence, the GOI refused for two days even to confirm that Salah had been arrested; it then continued to refuse information about where he was being held.<sup>25</sup> Even after the embassy managed to locate him, the GOI refused to allow access to him, in violation of the Vienna Convention governing the treatment of a state's citizens arrested in a foreign country. On 31 January, U.S. Ambassador to Israel William Harrop protested the denial of consular access to Salah directly to Prime Minister Rabin and Defense Minister Shimon Peres.<sup>26</sup> Meanwhile, Secretary Christopher issued instructions to "press vigorously" U.S. concerns about delayed access to Salah with high-level Israeli officials.<sup>27</sup>

Declassified U.S. State Department telegrams and diplomatic communications provide evidence that U.S. officials knew what the Shin Bet was doing to Salah and why. Harrop advised Secretary of State Christopher that "in the case of Arab-Americans," the GOI "often delays access" on the grounds that they are "security cases," a term he characterized as "a euphemism for cases involving Palestinian defendants."<sup>28</sup> He also lodged an official protest with the GOI advising that Congress and the American public were "very concerned" about Israel's media blitz and its "deliberate attempt to convict Salah in the press."<sup>29</sup> Consulate officials alerted the secretary of state that "security sources" quoted in the *Jerusalem Post* were reporting that Salah was "cooperating and admitting to high-level Hamas activities" and that he had confessed that he was sent to rebuild Hamas's military capacities after the deportations.

When embassy personnel were finally allowed to meet briefly with Salah six days later, they reported that he denied the stories and reaffirmed that he had no ties with Hamas.<sup>30</sup> Meanwhile, some newspapers were running stories painting him as a collaborator, a charge with potentially fatal consequences in the occupied territories at the time.<sup>31</sup> Avigdor Feldman, renowned human rights jurist and Salah's lawyer in the Israeli military court proceedings, later testified at the Chicago trial that the press reports depicting Salah as a "collaborator" were intended not only to influence the United States but also to increase Salah's sense of isolation and dependence on his interrogators by convincing him that his life outside the interrogation room was in danger.

State Department complaints did not focus solely on Israeli media manipulation. On 4 February 1993, Secretary Christopher cabled Ambassador Harrop outlining concerns about Salah's mistreatment, incommunicado status, lack of formal charges, solitary confinement, and denial of access to a lawyer, instructing him to advise the Israeli Ministry of Foreign Affairs (MFA) that "high level government officials" found Salah's "detention to be unacceptable."<sup>32</sup> Again, the GOI brushed off the complaint. After stating that "Arabs talk without much effort and justify their collaboration with claims of torture," MFA officials declared that Salah had met with a lawyer on 31 January, six days into his interrogation.<sup>33</sup> Two days later, when pressed on the subject of the lawyer's visit, the MFA conceded that Salah had not met with a lawyer, but noted that Israeli law did not



require that he do so for thirty days.<sup>34</sup> Following Israel's failure to respond adequately to U.S. demands for due process, Harrop suggested to Secretary Christopher in a letter dated 18 February 1993 that another written protest about the Salah case should be sent to the GOI in order to "keep the record straight."<sup>35</sup>

#### **"FACILITATING INTERROGATION" AND THE "BIRD CAGE"**

Salah's detention incommunicado and in isolation was meant to "facilitate the interrogation," as a Shin Bet agent later testified at the U.S. trial.<sup>36</sup> During the first week of interrogation, Salah was repeatedly threatened with "administrative detention," a six-month (renewable) detention order with no judicial review, known to Palestinians as being "buried alive." Feldman testified in Chicago that for security detainees in the occupied territories, who are by definition under Israeli military jurisdiction, there is no equivalent to the American "right to remain silent" during police questioning; lawyers have no power to end an interrogation. Rather, Feldman explained, a detainee's silence can be used to extend the period of interrogation or to justify administrative detention and is by itself almost sufficient to secure conviction.<sup>37</sup>

On 27 January, the Shin Bet brought in an Israeli National Police officer to take a formal statement from Salah. The policeman later testified at Salah's Chicago trial that the Shin Bet told him that this case was very important and to get the statement quickly because Prime Minister Rabin needed it.<sup>38</sup> The police officer wrote out a statement in Hebrew, a language Salah did not understand, and ordered him to sign it. Salah did so because he was told that his statement contained only what he had actually said and that if he signed, his interrogation would end. The Shin Bet instead used the statement to obtain a military court order to extend the interrogation. This was the first of three statements in Hebrew that Salah was ordered to sign during his first month of interrogation. He signed the second one on 30 January 1993 when Shin Bet interrogators promised him that if he did he would be released as a "good will" gesture during Warren Christopher's visit to Israel the following week.<sup>39</sup>

Meanwhile, the Shin Bet was using the "good cop/bad cop" interrogation regime on Salah. Dr. Metin Basoğlu,<sup>40</sup> a world-renowned expert on the psychology of torture who testified for the defense at the Chicago trial, explained that torture's effectiveness depends not on the actual level of physical pain inflicted but rather on the degree of the victim's inability to predict or control the process. Because human beings have the capacity over time to develop resistance to pain and fear-inducing actions, prolonged and predictable exposure to such abuse inevitably diminishes its impact. Given that the goal of the interrogator is to maximize fear (so that the detainee will do anything to stop the interrogation), a means must be found to reverse the degree of immunity that the detainee can develop. Whereas the "bad cops" induce pain, fear, and

anxiety through a panoply of well-honed techniques, the appearance of the “good cop,” according to Basoğlu, provides respite from these emotions, creating an emotional contrast that serves to intensify the pain and stress still further when the “bad cops” return. The psychological manipulation involved in the technique causes the detainee to have confused and complex feelings of dependence on and gratitude toward the “good cop.”

In Salah’s case, the leader of the interrogation team, whose code name was “Chaim,” either played the role of “bad cop” himself or assigned it to any of about a dozen different Shin Bet interrogators involved in the months-long interrogation. The “good cop” role was played by “Nadav,” who would remove Salah’s head sack, untie his shackles, and give him a regular chair. “Nadav” would offer him tea or coffee and was the only interrogator who spoke to him about his home and family. But the comfort and hope “Nadav” offered was shattered each time he left and Salah heard different footsteps enter the room.

When Salah refused to sign the third Hebrew statement, bad cop “Chaim” took away his clothes and put him back in the “refrigerator cell,” according to consular reports.<sup>41</sup> Meanwhile, U.S. officials had been angry about the GOI’s refusal to investigate the repeated allegations of Salah’s mistreatment, and after this latest incident, Ambassador Harrop wrote his third letter to the MFA, stating, “[t]he Embassy again requests a full investigation into the interrogation and methods used by the Israeli officials to extract the signed statements.”<sup>42</sup>

Although Salah’s Hebrew statements served to extend his interrogation, they did not give the GOI what it needed to convince the Americans that he had done anything illegal. The State Department steadfastly maintained that Salah’s confessions were coerced and that his fund-raising activities were protected by law in the United States. It was undoubtedly this U.S. skepticism that led Prime Minister Rabin to take an extraordinary step: He arranged for his “personal friend,” *New York Times* reporter Judith Miller, to observe Salah’s eighteenth day of interrogation at the Ramallah facility through closed-circuit television. Access to the top-secret interrogation center was virtually unprecedented, being routinely denied to the Red Cross, human rights organizations, and even Israeli prison officials.

Miller, who acknowledged that she does not understand Arabic, listened to thirty minutes of Arabic conversation between Salah and good cop “Nadav,” with an unidentified Shin Bet agent acting as translator. The brief questioning was apparently sufficient for Miller to write the story that appeared on the front page of the *New York Times* on 17 February 1993. Characteristic of her later reporting on Iraqi weapons of mass destruction (in which she sought to give credence to Bush administration claims in order to hasten the march to war), Miller, without mentioning that she had observed the interrogation,<sup>43</sup> confirmed Israeli claims that Salah was a Hamas military leader operating in the United States and that he was cooperating freely with Israeli police. She also reported security source claims that Salah had admitted that Hamas’s political command was in the United States and that Muslim charity organizations were covers for funding Hamas.

Despite Miller's article and Salah's alleged confessions, State Department and security officials remained unconvinced that the Hamas military leadership was operating from the United States. (Indeed, Miller herself continued to report on ongoing U.S. skepticism about Israel's claims.) Moreover, U.S. officials did not find that Salah's statements—even if voluntary, as Miller claimed—amounted to proof of military leadership.

In the face of persistent U.S. doubts, the Shin Bet needed to obtain a detailed confession complete with terror plots, and they needed it to be written in Salah's own hand. Thus, after almost five weeks of intensive interrogation, Salah suddenly "disappeared." On 5 March 1993, when Consul General Williamson arrived at the prison for a scheduled visit, she waited ninety minutes before prison officials told her that they were "unsure of Salah's whereabouts." The embassy then secured special permission to see Salah in another prison, but when the consular officer arrived, the guards outside refused her entry and told her to "go home and protest."<sup>44</sup> Two days later, Salah's lawyer was similarly turned away at the prison gates.<sup>45</sup> Meanwhile, Secretary Christopher had advised the embassy in Tel Aviv that the Chicago press was reporting that Salah had admitted guilt and that "guilty pleadings were being prepared," and he asked that the matter be looked into.<sup>46</sup>

Salah had been moved to a prison in Hebron and put in a cell with several dozen Palestinian prisoners claiming to be leaders of various resistance factions. These were "birds"—collaborators used by the Shin Bet to coerce written statements from prisoners.<sup>47</sup> The "birds" told Salah that they had heard he was a collaborator and ordered him to write a confession, parts of which they would dictate, to be used against him if he became a government witness. When Salah refused, the men, who the government later admitted were working with the Shin Bet for "reduced sentences, better prison conditions, and/or money,"<sup>48</sup> threatened him with a razor, tied him to a bedpost, forced him to sit on painful objects, and beat him until he acquiesced. Over the next week, these men, who met regularly with their Shin Bet handlers during the process, forced Salah to write out a highly incriminating fifty-four-page "life story" substantially manufactured by the Shin Bet.

When Salah was transferred back to intensive interrogation after ten days in the "bird cage," his interrogators presented him with the "bird manuscript." Good cop "Nadav" then gave him a choice: either continue in intensive interrogation or end it by agreeing to ratify the contents of the manuscript. Avigdor Feldman later testified in Chicago that for a detainee who has undergone intensive interrogation, being transferred to a regular prison cell and not interrogated is like "going on a Hawaiian vacation." So Salah, his will broken after more than fifty days with bad cops and "birds," agreed to validate the Shin Bet manuscript. With encouragement and occasional prompting from good cop "Nadav," who repeatedly called him "friend," Salah made a five-hour secretly recorded statement, often reading directly from the manuscript placed in front of him.<sup>49</sup>

Proof that the Shin Bet itself did not believe the content of Salah's "confession" was inadvertently disclosed to the defense at the time of his Chicago

trial. In April 1993, soon after the “confession” was recorded, the Shin Bet administered a polygraph to Salah. The examiners questioned him about the various terrorist acts catalogued in the five-hour tape, and he denied any knowledge. The polygraph examiner concluded, “[N]o answers were diagnosed that characterize telling lies for the aforementioned questions.”<sup>50</sup>

### **MILITARY TRIAL, SENTENCING, AND THE CONFESSION’S “FIRST FRUITS”**

Notwithstanding, Salah was officially charged by an Israeli military tribunal on 16 March 1993 on the basis of the “bird” manuscript. At the military court proceedings (and later at trial in Chicago), the Shin Bet refused to disclose any documents or to testify about its authorized interrogation methods. In response to defense arguments that the authorized methods were relevant because they were systematically used on all designated “security detainees,” the Shin Bet consistently took the position that regardless of what they were authorized to do, they had not tortured or coerced Salah.

The military court proceedings, which were attended by consulate and embassy officials, dragged on for nearly two years. Declassified State Department documents are replete with references to threats made to Salah for insisting on a trial, for hiring Feldman, and for complaining to U.S. officials about his mistreatment and torture after the military judge had ordered him not to discuss the details of his interrogation, which continued off and on throughout the entire period even though under military court procedures, interrogation is to cease as soon as the person is charged. In March 1994, after the tribunal declared that Salah’s attorney would not have access to the evidence which was to be used against him, the new U.S. ambassador, Edward Djerejian, and Consulate General Williamson sent a joint message to Warren Christopher advising:

This whole proceeding and the interrogation are seriously lacking in basic fundamentals of due process and fair evidentiary rules. Unfortunately, this is not an atypical proceeding on the West Bank; nevertheless, it is one that involves an American citizen. We believe that a marker must be set down firmly with the Israeli Ambassador in Washington and at an appropriate level in the foreign ministry [indicating] that the United States Government does not believe due process is being done in a case where one of its citizens is being tried in a court where evidence is used against him which neither he nor his attorney is permitted to view and “tricks” involving a promise of release during a Secretary of State visit to Israel are used in order to obtain “confessions” to lesser offenses.<sup>51</sup>

Although consular staff members on the ground and other U.S. officials continued to believe that Salah’s statements had been coerced and doubted their veracity, high-level U.S. government intervention in the Salah case diminished

in the later stages of the Israeli military court proceedings. Besides the increasingly obvious futility of further protest, the political atmosphere had changed in the United States following Hamas's first suicide attack in April 1994 in retaliation for Baruch Goldstein's massacre of worshippers in Hebron. Eight Israeli civilians were killed in the April operation, which marked the end of the organization's policy of confining its military actions to Israel's occupation forces. Under the constant drumbeat of Israel's warnings about Hamas's active U.S. presence, added to the shock of the first World Trade Center attack, Congress introduced bills calling for Hamas's designation as a terrorist organization.<sup>52</sup>

Meanwhile, Salah had steadfastly refused to plead guilty before the Israeli military tribunal, against the advice of his lawyer, who emphasized that the judges, all of whom were Israeli military personnel, invariably accept at face value the "confessions" security detainees make to the Shin Bet. This being the case, Feldman advised Salah that if he did not agree to plead guilty to lesser charges, he would certainly be convicted and would potentially face a life sentence. This prospect, combined with the debilitating impact of repeated transfers from prison back into isolation or active interrogation, finally led Salah to give in. On 2 January 1995, one year and nine months after being charged, he followed his attorney's advice and was sentenced to five years in prison counting from the time of his arrest. Salah continued to be interrogated intermittently after his sentencing, even though his "confession" (with the incriminating additions crafted by the Shin Bet) had already provided Israeli and U.S. security forces with the means to go after a host of individuals they had targeted.

The first high-profile arrest resulting from Salah's confession was that of Hamas political leader Musa Abu Marzuq, who was apprehended by U.S. authorities at John F. Kennedy Airport on 5 July 1995 after he had been put on a "watch list" in response to a warrant from Israel. A month later, the Israeli government filed for his extradition on grounds based almost entirely on statements made by Salah under torture. Many Israeli legislators argued against the extradition, but Prime Minister Rabin insisted to his cabinet that "Israel would lose credibility if it didn't seek to bring Abu Marzuq to court."<sup>53</sup>

Abu Marzuq fought extradition from the United States on the grounds that the warrant was the product of testimony extracted under torture, arguing that if he were turned over to Israel, he would be tortured as well. Abu Marzuq's lawyers asked Salah—still in Israeli prison at the time—to write an affidavit outlining what the Shin Bet did to him during his interrogation. Declassified State Department documents reveal that in mid-January 1996, the Justice Department prosecutor in charge of the extradition request, Baruch Weiss, visited American Consular official Kathleen Riley, who had been one of Salah's principal contacts during his interrogation. Weiss showed Riley Salah's affidavit and asked her whether or not his allegations of torture and mistreatment were consistent with State Department knowledge of the interrogation. Riley studied the files and "determined that Salah's allegations of mistreatment had been

made from the beginning” and tracked “consistently with the statements made in the affidavit.” Riley passed this information on to prosecutor Weiss the next day.<sup>54</sup>

The Clinton administration never charged Abu Marzuq, and in April 1997, twenty-one months after he had been detained, Israel withdrew its extradition request after Abu Marzuq declared he was prepared to stand trial in Israel and would no longer contest extradition. Benjamin Netanyahu, who had become Israel’s prime minister after Rabin’s assassination by a right-wing Israeli fundamentalist, explained the surprising move by citing fears of a Hamas reprisal in the event of a trial. The following month, Abu Marzuq, who in August 1995 had been named by the United States as a specially designated terrorist, was released from U.S. custody and deported to Jordan.

Salah himself was released from Israeli prison six months before the end of his sentence and flew home to Chicago in November 1997. His relatively light five-year sentence and early release provide further evidence that the Israelis never believed that he was a Hamas military commander or that he had been involved in acts of violence. But then, reliable information had not been the Shin Bet’s goal in the Salah interrogation. The goal had been simply to get a confession that would silence U.S. criticism about the deportations, start a movement to cut off U.S. funding and support for the Palestinian cause, and provide a road map for pro-Israel forces in the United States to target supporters of Palestine.

### **HEMELCOMING: SOWING THE SEEDS FOR THE INDICTMENTS TO COME**

Muhammad Salah’s release from Israeli prison was not the end of his travails but rather the beginning of the next stage, with the U.S. government now taking the lead. Indeed, the government had taken action against Salah even before his return. On 24 July 1995, while still in Israeli prison, Salah had been branded a “specially designated terrorist” by the Office of Foreign Asset Control (OFAC) of the U.S. Treasury Department in secret proceedings based on secret evidence. The designation meant Salah had to get a special license to earn or spend money and government approval to work, obtain the services of a doctor or lawyer, or conduct any financial transactions. The designation’s restrictions were in force when he returned from Israel and remain in force today.

Also prior to his return, Salah was already one of the principal targets of Operation Vulgar Betrayal, a major probe into “terrorist financing” launched in late 1996 by the U.S. government at the instigation of the FBI’s counterterrorism unit. The Vulgar Betrayal investigation focused almost entirely on alleged Hamas-affiliated groups and individuals. Despite these actions, however, it should be emphasized that the Clinton administration did not move in lock step with regard to terrorism prosecution. A close study of the Salah case reveals the existence of fault lines and divisions within the U.S. government on the subject of targeting funders of Palestinian charities in the West Bank and Gaza.

FBI counterterrorism agents were poised to build a criminal case against Salah as soon as he set foot on U.S. soil. They assigned an informant who had been spying on the Palestinian community since the early 1980s to infiltrate the welcome home party of family and friends who greeted Salah at the Chicago airport. The informant, a Palestinian named Jawad al-Aroui (who went by the alias “Jack Mustafa”) was directed by the FBI to befriend Salah, whom he had never met before, and report on all his activities, contacts, and political views.

Over the next four years, Mustafa regularly reported to his FBI handlers about his alleged interactions with Salah. Hundreds of reports, which the government later produced to the defense, were generated memorializing FBI interviews with Mustafa. They detailed fantastic tales of plots to attack U.S. federal buildings, to obtain chemicals for making explosives, and to assist Hamas with its military activities in Israel and the occupied territories. Despite the incendiary nature of Mustafa’s reports, the FBI never took any action either to arrest Salah or to corroborate Mustafa’s wild claims. Indeed, in late 2000, in the midst of Mustafa’s reporting, the FBI and the Clinton Justice Department closed down the aptly named Operation Vulgar Betrayal because of insufficient evidence to prove that any of those under investigation had been involved in illegal acts. For the time being, Mustafa’s services were no longer required.

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questionable evidence, this hesitancy was not shared by all divisions and levels of the government. Israel had officially provided Salah’s taped confession to the U.S. government, and it appears that the Shin Bet had “unofficially” turned over documents relating to the case to American pro-Israel forces. The tape recording was a goldmine for FBI counterterrorism agents and others eager to close in on alleged Hamas affiliates. FBI investigations and federal grand jury probes focusing on Hamas financing began to proliferate around the country; all were directly related to Salah’s statements made to the Shin Bet under torture. Indeed, the tentacles of almost every known Hamas-related investigation or

prosecution in the United States, including the case against the Holy Land Foundation (the largest Muslim charity in the United States), lead back to Salah’s coerced confession.

The decision to shut down Operation Vulgar Betrayal outraged the FBI counterterrorism agents involved. The most vocal critic of the decision was Chicago FBI agent Robert Wright, who had been the driving force behind the investigation, as well as the instigator of the June 1998 civil asset-forfeiture suit that froze Salah’s assets and put a lien on his house.<sup>55</sup> Officially filed by the U.S. attorney of Illinois’ Northern District, the civil suit was based on the coerced confession extracted by the Shin Bet as well as on bank records (gathered under Operation Vulgar Betrayal) of moneys sent to Salah’s account and then transferred through

money changers in the West Bank and Gaza. Wright's forty-page sworn affidavit, attached to the suit, detailed the specifics of Salah's "confession" and provided the substance of the forfeiture case.<sup>56</sup>

Even before the official closing of Operation Vulgar Betrayal, FBI counterterrorism and allied circles claimed that the government was dragging its feet in moving against Salah and other "terrorism funders." Thus, in May 2000, a group of pro-Israel litigators led by Nathan Lewin appointed themselves "private attorneys general" and, with the help of the Anti-Defamation League, crafted a test case (*Boim v. Quranic Literary Institute, et al.*) to force the issue. The civil damages suit invoked a rarely used law passed by Congress in 1992 that gave U.S. citizens victimized by international terrorism a civil remedy against those responsible, including triple damages and attorneys' fees. This \$600-million legal action was brought by the parents of an Israeli American student, David Boim, who was killed in 1996 in a drive-by shooting in Israel by alleged Hamas members. The suit sought to prove that a number of Muslim charitable institutions, including the Holy Land Foundation, and several individuals, including Salah, were responsible for Boim's death through their financial support of Hamas (and the charities allegedly linked to it) in the years prior to the killing. (Salah himself had been in Israeli prison when the incident occurred.)<sup>57</sup>

Lewin, a board member of Zionists of America, an organization pledged to target "anti-Israel" bias in the media and on college campuses and a militant defender of Israeli settlements,<sup>58</sup> was an attorney for Richard Nixon and in recent years has been the lawyer for the American-Israel Public Affairs Committee (AIPAC), currently representing it in the FBI probe into espionage for Israel by AIPAC staff members.<sup>59</sup> In 1998, Lewin had lobbied high-level Justice Department officials to extradite Amjad Hinawi, who had been convicted by the Palestinian Authority that year of Boim's killing, and to seek the death penalty against him in a U.S. district court. The Clinton Justice Department refused on the grounds that the critical evidence necessary for Hinawi's conviction was the product of torture, whereupon Lewin accused the Clinton administration of selective prosecution and fomenting terrorism, with an implied inference of anti-Semitism.<sup>60</sup>

The *Boim* theory of litigation flouted basic American legal principles such as requiring proof that an individual or organization intended to cause harm and did in fact cause harm to the injured party. An immediate appeal raising these issues was filed by the defendant organizations in the hope that the case would be thrown out of court. Then came 11 September 2001. The case had been scheduled to be argued two weeks later. The Bush Justice Department quickly filed an amicus brief supporting Lewin's theory that these organizations should be considered "aiders-and-abettors" of terrorism. On 5 June 2002, the Seventh Circuit Court of Appeals agreed, allowing the case to go forward.

The *Boim* lawyers then set out to bankrupt U.S.-based Muslim charities, using the case as a vehicle to pursue their own political agenda and to lay the ground for future criminal prosecutions (including against Muhammad Salah). They engaged the media to undermine the charities, thereby discouraging



would-be financial donors. Indeed, in November 2002, Lewin testified before the Senate Judiciary Committee that one of the purposes of the *Boim* litigation was to deter financial contributions to the U.S.-based Palestinian relief organizations, irrespective of their charitable purpose.<sup>61</sup> Throughout the case, which is still pending,<sup>62</sup> Lewin had the support of the GOI and the U.S. Justice Department.<sup>63</sup>

Concerning Salah's case in particular, Lewin and his associates pursued a strategy based on two key goals. First, they wanted to prove to the formerly reticent Justice Department that Salah's 1993 statements to the Shin Bet were admissible in court in a civil case, thereby paving the way for their admission in a criminal prosecution. Second, they used Salah's limited answers to civil discovery requests to lay the groundwork for the subsequent obstruction of justice charge in his Chicago trial—the only charge for which the government was ultimately able to obtain a conviction. The importance of the *Boim* litigation for Salah's later trial can therefore not be overstated.

Meanwhile, the terrorist attacks of 9/11 had given the Bush Justice Department the political justification and “shock”<sup>64</sup> it needed to pursue the Salah case as a means of advancing a “war against terrorism” agenda already in the works. As will be shown in part II of this article, the Salah prosecution was a test case meant to demonstrate how federal terrorism cases could be litigated, providing an opportunity to advance new standards governing the admissibility of coerced confessions at trial, establish new procedures for the use of secret evidence, prevent cross-examination of key witnesses, and close the courtroom to the press and public during crucial testimony.

Before there could be a trial, however, the indictment had to appeal to an American public whose main concern was protecting U.S. national interests. The centerpiece of the Salah case was a ten-year-old coerced confession, and the entire case hinged on a distant conflict of little immediate interest to the average American, even after 9/11. Moreover, the obstruction of justice charge was relatively minor and had the disadvantage of being widely known as a *deus ex machina* brought in the absence of sufficient evidence to obtain a desired conviction. What was missing to sell the indictment to the American public was something more current, more spectacular—something that appeared to threaten U.S. soil.

Enter FBI “disinformant” Jack Mustafa, with his tales of terrorism recruitment in the American heartland and plots to blow up the Federal Building in Chicago. In 2002, Mustafa was brought back on the job as the Bush administration formally reopened the investigation of Salah two years after Clinton had closed it. Just days before the Republican National Convention that launched George W. Bush's 2004 reelection campaign, Attorney General Ashcroft convened a press conference and, with much fanfare, announced the indictments against Salah and the other two “suppliers of terrorist blood money.”<sup>65</sup> After almost two years of contentious pretrial preparations, the case was set for trial. Part II of this article will focus on the U.S.-Israeli joint venture to prosecute one of Israel's perceived enemies in an American court.

## NOTES

1. See President Clinton's Executive Order No. 12947, issued on 23 January 1995, and the Anti-terrorism and Effective Death Penalty Act of 1996 (18 USC 2339 (B)), which criminalized the provision of food and medical supplies to groups designated as "terrorists."

2. Department of Justice, "Chicago and Washington DC Area Men among Three Indicted in Racketeering Conspiracy in U.S. to Finance Hamas Terror Abroad," 20 August 2004, accessed at [www.usdoj.gov](http://www.usdoj.gov).

3. The others charged were Musa Abu Marzuq, former head and at the time deputy head of the Hamas political bureau, then living in Damascus and known to be out of reach, and Dr. Abdelhaleem Ashqar, a professor of business administration and an independent candidate for the presidency of the Palestinian Authority in 2006. Dr. Ashqar was codefendant with Salah at the Chicago trial in 2007; in addition to the racketeering charges, Dr. Ashqar was indicted for criminal contempt and obstruction of justice for his refusal to collaborate with U.S. grand juries convened in New York and Chicago to investigate the Palestinian resistance movement. Dr. Ashqar's story, like Salah's, is a tale of great injustice but is regrettably beyond the scope of this article.

4. Press Release, 20 August 2004, "Three Hamas Terrorists Indicted for Racketeering," distributed by the Bureau of International Information Programs, U.S. Department of State, available at [www.usinfo.state.gov](http://www.usinfo.state.gov).

5. Department of Justice, "Chicago and Washington DC Area Men among Three Indicted."

6. *Washington Post*, 3 February 1993.

7. See newspaper headlines and clippings from such publications as the *Boston Globe*, *Chicago Tribune*, *New York Times*, *Washington Post*, *Washington Times*, and *Jerusalem Post* contained in the State Department's response to Salah Freedom of Information (FOI) request.

8. See, for example, Bruce C. Nelan, "Hamas in the Heartland," *Time Magazine*, 15 February 1993; David Hoffman in *Washington Post*, 1 February 1993.

9. See, for example, Roni Shaked in *Yedi'ot Abaronot*, 1 February 1993. Gov't Bates Stamp No. 15214; State Department Cable, 1 February 1993, Gov't Bates Stamp

No. 09535-09536. It was later discovered that Shaked was a former Shin Bet interrogator with continuing close ties to the Israeli security apparatus.

10. See Bruce C. Nelan, "Hamas in the Heartland," *Time Magazine*, 15 February 1993.

11. The U.S. Supreme Court, in *Buckley v. Valeo*, 424 U.S. 1 (1976) (quoting in part *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 78-79 [1974]), ruled as follows:

"[The First Amendment] right to join together 'for advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.' "

See also the 14 May 1993 *CRS Report for Congress* entitled "Hamas: Freedom Fighters or Terrorists?" published by the Library of Congress's Congressional Research Service (CRS), which states (p. 6): "U.S. law permits persons living in this country to contribute to organizations in foreign countries, even those identified as terrorist, as long as their contributions are not used directly to support the terrorist activities. Hamas carries on an extensive religious program in Palestine and money donated in this country is purportedly used to support those activities."

12. *CRS Report for Congress*, "Hamas: Freedom Fighters or Terrorists?" 14 May 1993, pp. 5, 7. James P. Wooten, the author of the report, was a National Defense Specialist in CRS's Foreign Affairs and National Defense Division. Khaled Hroub, *Hamas: Political Thought and Practice* (Washington, DC: Institute for Palestine Studies, 2000), pp. 96, 150. In addition to acknowledging informal State Department talks with Hamas, the report also alluded to U.S. skepticism about the GOI's allegations in the Salah case, noting that there is "some validity to Hamas' position" that "it is fighting to free the 'Palestinian homeland' under the provisions of Chapter VII of the U.N. Charter" (p. 4). After the report was released, Representative Charles Schumer (D-NY) and the Anti-Defamation League of B'nai B'rith demanded that it be rescinded. On 14 October 1993, Schumer presented the "revised" and renamed report ("Hamas: The Organizations, Goals and Tactics of a

Militant Palestinian Organization”), explaining that the previous report was misleading and inconsistent with U.S. policy, and he strongly hinted that the report was anti-Semitic. All references to Muhammad Salah’s case were eliminated from the substituted report.

13. State Department Cable, 4 February 1993, Gov’t Bates Stamp No. 09493-09494.

14. *Washington Post*, 1 February 1993.

15. Mary Curtius, “State Department Denies Hamas Directs Operations from U.S.,” *Boston Globe*, 26 January 1993.

16. See Bruce C. Nelan, “Hamas in the Heartland,” *Time Magazine*, 15 February 1993; Report of 24 February 1993 meeting with Neil Gallagher, Gov’t Bates Stamp ASH073. Virtually all the foreign press reports contained in State Department’s response to Salah’s FOI request make the same link.

17. Bruce C. Nelan, “Hamas in the Heartland,” *Time Magazine*, 15 February 1993.

18. *London Sunday Times*, 19 June 1977.

19. See Military Tribunal Testimony of “Benny,” 11 October 1994, pp. 334–48; see Suppression Hearing Testimony of “Chaim,” 7 March 2006, p. 658. The use of “fitness for interrogation” forms was discontinued a year later when Physicians for Human Rights—Israel (PHRI) exposed their use to assess the risk of detainees dying during interrogations where torture was to be used. PHRI concluded that the examinations constituted “collaboration in torture” under the UN’s and World Medical Association’s international conventions, which ban the use of torture in general and the participation of doctors in torture in particular.

20. See excerpts from “Family Matters” (Doc. C3), a report recently published by the Public Committee against Torture in Israel (PCATI) detailing the use of threats against detainees’ family members by Shin Bet interrogators.

21. In May 1999, the Israeli High Court ruled that “[i]f the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or ‘breaking’ him, it is not part of the scope of a fair and reasonable investigation.” However, despite the High Court’s ruling, Shin Bet interrogators have continued to use torture and commit human rights abuses during interrogations.

22. Military Tribunal Testimony of “Cohen,” 29 August 1994, p. 290; see also Military Tribunal Testimony of “Benny,” 1 October 1994, pp. 334, 343.

23. To “stipulate” is a legal term meaning that a party “admits” certain facts in a case in lieu of calling a live witness.

24. Gov’t Substitution No. 5 pursuant to Classified Information Procedures Act (CIPA).

25. State Department Cable, 29 January 1993, Gov’t Bates Stamp No. 09531-09532; State Department Cable 2 February 1992, Gov’t Bates Stamp No. 09517-09522, 09586.

26. Gov’t Bates Stamp No. 09489.

27. Memo from Secretary of State to U.S. embassy, Tel Aviv, 2 February 1993, Gov’t 09495-09497.

28. State Department Cable, 18 February 1993, Gov’t Bates Stamp No. 09507-09510.

29. State Department Cable, 2 February 1993, Gov’t Bates Stamp No. 09495-09497; State Department Cable, 5 February 1993, Gov’t Bates Stamp No. 09498-09500; State Department Cable, 5 February 1993, Gov’t Bates Stamp No. 09392-09394, 09507.

30. State Department Cable, 1 February 1993, Gov’t Bates Stamp No. 09535-09536.

31. B’Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*, January 1994; see also Testimony of Avigdor Feldman, Transcript of Suppression Hearing at 2254.

32. State Department Cable, 4 February 1993, Gov’t Bates Stamp No. 09495-09497.

33. State Department Cable, 9 February 1993, Gov’t Bates Stamp No. 09501-09502; State Department Cable, 3 May 1993, Gov’t Bates Stamp No. 09570-09572.

34. State Department Cable of 11 February 1993, Gov’t Bates Stamp No. 09361-09362; 09507-09510.

35. State Department Cable, 18 February 1993, Gov’t Bates Stamp No. 09507-09510. After a meeting with GOI officials concerning delayed access to Arab-American detainees in general, embassy officials wrote to Secretary Christopher complaining about the systematic mistreatment of Arab-Americans, the use of “refrigerator cells,” and the Shin Bet’s use of so-called “moderate physical pressure” during interrogation. U.S. officials also protested

the lack of any meaningful investigation by Israeli authorities into complaints of misconduct. The GOI again responded with blanket denials. See State Department Cable, 3 May 1993, Gov't Bates Stamp No. 09570-09572.

36. Suppression Hearing Testimony of "Chaim," 7 March 2006, p. 618.

37. Testimony of Avigdor Feldman, Transcript of Suppression Hearing, p. 2216.

38. Suppression Hearing Testimony of Hezzi Eliyahu, 13 March 2006, p. 1760.

39. Military Tribunal Testimony of "Nadav," pp. 70-76; State Department Cable, 6 April 1994, Gov't Bates Stamp No. 09654-09657, and USSD Cable 25 July 1994, Gov't Bates Stamp 0967-0209672.

40. Dr. Metin Basoğlu is chief of Trauma Studies at University of London's Institute of Psychiatry and the founder/director of the Istanbul Center for Behavior Research and Therapy.

41. State Department Cable, 6 April 1994, Gov't Bates Stamp No. 09654-09657.

42. State Department Cable, 5 March 1993, Gov't Bates Stamp No. 09526-09528.

43. At the time, Miller stated that Israeli security sources had given her this information, but in her book, *God Has Ninety-Nine Names: Reporting from a Militant Middle East* (New York: Touchstone Books, 1997), she admitted that she was let into the facility to observe the interrogation personally.

44. Williamson to Secretary Christopher, State Department Cable, 5 March 1993, Gov't Bates Stamp No. 09525.

45. State Department Cable, 11 March 1993, Gov't Bates Stamp No. 09543.

46. State Department Cable, 6 March 1993, Gov't Bates Stamp No. 09529.

47. The use of collaborators to coerce written statements from Palestinian prisoners is a well-documented Shin Bet interrogation "exercise" and one that the government later admitted was used against Salah. These collaborators are called "birds" because they make detainees sing, and when a detainee, who does not know that the men work for Shin Bet but instead believes they are targeting him because of rumors planted about collaborating, later asks his interrogator how he got the statement, the interrogator characteristically responds, "I heard it from a little bird."

48. Gov't Substitution No. 2 pursuant to Classified Information Procedures Act (CIPA).

49. The recorded Arabic statement was listened to by Dr. Eyad El-Sarraj, a psychiatrist, lifelong Gaza resident, and director of the Gaza Community Mental Health Program who had interviewed hundreds of torture survivors. El-Sarraj testified at Salah's Chicago trial that the person on the tapes was not a military commander of anything, but rather, a "broken and helpless man" who was "desperately trying to please his interrogator," even calling him "brother."

50. Report of "Urgent: Polygraph Test No. 6/21/93: Muhammad Salah—U.S.A."

51. Department Cable, 31 March 1994, Gov't Bates Stamp No. 09644-09645.

52. See CRS brief (revised), 14 October 1993, p. 5. In March 1993, the U.S. State Department announced that it was ending its talks with Hamas representatives in Amman and elsewhere.

53. See Serge Schmemmann, "Israel Withdraws Bid to Extradite Chief of Hamas," *New York Times*, 4 April 1997.

54. Riley "Note to File," 17 January 1996, Gov't Bates Stamp No. 09421.

55. The case is still pending. According to court records, in summer 2001 the Justice Department had decided to negotiate with Salah to settle the case, but the attacks of 11 September 2001 intervened, and the government abruptly ended negotiations.

56. Wright was removed from the Vulgar Betrayal investigation in 1999 and later fired as the result of at least six disciplinary charges, including the unauthorized disclosure of nonpublic FBI information. Afterwards, he became a vocal public critic of the FBI counterterrorism effort, suing (along with a fellow agent investigating Salah) the FBI in 2002 for refusing to allow them to answer questions posed to them by Judith Miller about why Vulgar Betrayal had been closed down, claiming violation of their First Amendment rights. While Wright's disciplinary problems with the FBI are shrouded in secrecy, the circumstances suggest that one of the reasons he was removed from Vulgar Betrayal was his overzealous reliance on questionable sources and informants, including Jack Mustafa. The Bush administration reinstated Wright in 2005.

57. The case named seven organizational defendants, but the principal ones were the Holy Land Foundation for Relief and Development, the Quranic Literacy Institute (a group that translates Islamic texts), and the Islamic Association for Palestine. Besides Salah, the individual defendants were Musa Abu Marzuq and the two men who allegedly carried out the killing, although Salah was the individual actually served in the case.

58. See Jon Weiner, "Warriors for Zion in California: Exaggerated Claims of Campus Anti-Semitism Have Drawn Media and Congressional Attention," *The Nation*, 7 July 2008, p. 23.

59. *Jerusalem Post*, 2 June 2008; U.S. v. Rosen and Weissman, Case No. 05 CR 225, Memorandum Opinion of 26 January 2007, Judge T.S. Ellis III.

60. See Nathan Lewin, "A Promise the U.S. Makes, but Does Not Keep," *Jewish World Review*, 27 August 2002. See also Lewin's controversial 2002 essay calling for the execution of Palestinian suicide bombers' family members, "Deterring Suicide Killers," May 2002, available at [www.shma.com/may02/nathan.htm](http://www.shma.com/may02/nathan.htm).

61. Testimony of Nathan Lewin, United States Senate Judiciary Committee, on the subject of the tools needed to fight terrorism financing, 20 November 2002.

62. The *Boim* judge found liability without a trial (in the absence of "material issues of disputed fact") in favor of the Boims against Salah, the Holy Land Foundation, the American Muslim Society, and the Islamic Association for Palestine. (Musa Abu Marzuq and the other individual defendants were never served with the lawsuit and were therefore not part of the case.) A jury trial was then held to set the amount of damages. All the defendants declined to participate the proceeding,

and in December 2004 the jury, hearing no evidence from any of the defendants, found liability against them in the amount of \$156 million. In December 2007, however, a three-judge panel of the U.S. Court of Appeals for the Seventh Circuit reversed the damage award on the grounds that the trial court had erred in not requiring the Boims to show the defendants' "knowledge of and intent to further [ Hamas's ] violent criminal acts," adding that "giving money to Hamas or a Hamas-affiliated entity would not by itself suffice to establish civil liability . . . for terrorist acts committed by . . . Hamas." The opinion was not entirely clear, however: While stating that the Boims would have to show that the defendants knew that the murder of their son "was a reasonably foreseeable result of making the donation," the panel also suggested that the plaintiffs "might" be able to prove liability by showing that donating money to a Hamas-related charity was known by the defendants to "free up" money for violence. The *Boim* lawyers asked the full court of appeals to rehear the case, and on 16 June 2008, the court granted their request, specifically asking the parties to address the following question: "Whether a donor to an organization that, the donor knows, practices terrorism, can be liable under 18 USC 2333 (a) in the absence of proof that the donor intended to advance the violent component of the recipients' activities."

63. See Nathan Lewin, "A Promise the U.S. Makes, But Does Not Keep," *Jewish World Review*, 27 August 2002.

64. See Naomi Klein, *The Shock Doctrine* (New York: Henry Holt, 2007).

65. Department of Justice, "Chicago and Washington DC Area Men among Three Indicted."