

United States District Court

ECF CASE

SOUTHERN

DISTRICT OF NEW YORK

RACHEL EHRENFELD

Judge Casey

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

04 CV

9641

KHALID SALIM A BIN MAHFOUZ

TO: (Name and Address of Defendant)

Khalid Salim a bin Mahfouz
Jeddah, Saudi Arabia

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Kornstein Veisz Wexler & Pollard, LLP
757 Third Avenue
New York, New York 10017

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exciusiv: of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

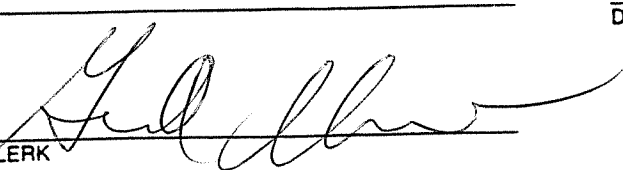
J. MICHAEL McMAHON

DEC 08 2004

CLERK

DATE

BY DEPUTY CLERK



Judge Casey

Daniel J. Kornstein (DJK-3264)
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04 CV 9641

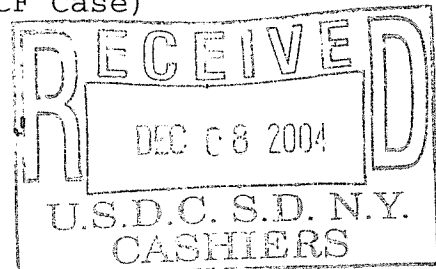
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

RACHEL EHRENFELD, : COMPLAINT
 :
 Plaintiff, : 04 CIV. 9641 (Casey)
 :
 - against - : (ECF Case)

KHALID SALIM A BIN MAHFOUZ, :
 :
 Defendant. :
-----X



Plaintiff, by her attorneys, Kornstein Veisz Wexler &
Pollard, LLP, for her complaint alleges:

Nature of Action

1. This is an action for a declaratory judgment under 28 U.S.C. §2201 against defendant regarding defamation claims purportedly arising from plaintiff's publication of a book entitled Funding Evil: How Terrorism is Financed -- and How to Stop It (the "Book").

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 because plaintiff is a citizen

of New York and defendant is a citizen or subject of a foreign state within the meaning of 28 U.S.C. §1332(a)(2), and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(2), because plaintiff resides in this district and "a substantial part of the events or omissions giving rise to the claims occurred" in this district.

The Parties

4. Plaintiff Rachel Ehrenfeld is a resident of the State and County of New York, and is the author of the Book.

5. Defendant Khalid Salim a bin Mahfouz ("KBM") is a businessman and international financier who is a citizen or subject of Saudi Arabia. On information and belief, KBM regularly does and transacts business in the United States and in New York individually and through various business entities he owns or controls.

Substantive Allegations

FIRST CLAIM (Declaratory Judgment)

6. This claim seeks a declaratory judgment under 28 U.S.C. §2201 and the common law that, under the law of the United States and the State of New York, defendant could not prevail on a claim of libel against plaintiff arising from the Book.

Background

7. This action grows out of the terrorist attack on the World Trade Towers on September 11, 2001, and the emergence and dangerous spread of international terrorism. As the ranks of al Qaeda and similar terrorist organizations have swelled in recent years and the United States and its interests abroad have increasingly become the target of terrorist threats and attacks, the public's attention has come to focus more and more on the sources of the funding that enables organizations such as al Qaeda to carry on and expand their terrorist activities against the United States.

8. It is against this backdrop that the controversy in this action has arisen.

9. Plaintiff Rachel Ehrenfeld is a Ph.D. and an author and one of the world's leading authorities on international terrorism, political corruption, money laundering, drug trafficking, organized crime, and the links between them. She is currently the director of the New York-based American Center for Democracy and has been a research scholar at New York University School of Law, a visiting scholar at the Columbia University Institute of War and Peace Studies, and a fellow at Johns Hopkins School of Advanced International Studies. She has also served as a government and law enforcement consultant, most recently having consulted for the United States Defense Department's Threat Reduction Agency.

10. Dr. Ehrenfeld's writings include articles in the Wall Street Journal, The National Review, the EU Observer, the Jerusalem Post and the New York Sun, and she is the author of three books: Narco-Terrorism (Basic Books 1990), Evil Money (Harper Collins 1992) and most recently Funding Evil: How Terrorism Is Financed -- and How to Stop It (Bonus Books 2003). She has testified before Congressional committees and has been a commentator on television.

11. KBM is a Saudi financier and billionaire with financial holdings and business interests in many parts of the world, including the United States. His father, Salim bin Mahfouz, founded the National Commercial Bank ("NCB"). The Mahfouz family businesses are organized through a series of "holding" companies, including a conglomerate, Saudi Economic and Development Co., LLC, and Thuraya Satellite Telecommunications Company in the UAE. KBM became president and CEO of NCB in 1986 and remained in that position until 1999. During this same period, KBM became the bank's principal shareholder, with control over more than 50% of its capital.

12. It has been widely reported that KBM provided material support to Osama bin Laden and his al Qaeda terrorists that aided and abetted al Qaeda in carrying out the September 11 attacks, by providing them with millions of dollars in the 1990's. NCB, according to a former CIA counterterrorism expert, was used by Osama bin Laden and al Qaeda as a financial conduit before 1999, while KBM controlled NCB. During the same period, moreover, NCB's

Zakat Committee allegedly funneled \$74 million to the International Islamic Relief Organization, a charity that has been shown to be a conduit for al Qaeda.

13. Nor was NCB the only entity through which KBM funded bin Laden and al Qaeda. KBM also endowed Muwaffaq, or "Blessed Relief." KBM's son is on its Board of Directors. Muwaffaq has been characterized by the United States Department of Treasury as "an al Qaeda front that transfers millions of dollars from wealthy Saudi businessmen to bin Laden," and as "providing logistical and financial support" to al Qaeda, Hamas, and the Abu Sayaaaf organizations. In 1995, Osama bin Laden identified Blessed Relief as one of the sources of funding for al Qaeda.

14. Between 1986 and 1990, KBM "became a principal shareholder and director in the BCCI Group" (Chief Operating Officer of the Bank of Credit and Commerce International ("BCCI")). In 1992, KBM paid a fine of \$225 million to resolve criminal charges brought against him by the State of New York arising from various scandals involving BCCI. In addition, his bank, the NCB, was forced to close its branches in New York and London as part of the same settlement. In the course of investigating BCCI for laundering drug money, the CIA learned that the bank was also involved in supporting international terrorism.

15. Funding Evil, which was published in the United States in 2003, is a thoroughly researched and documented book exploring how the rising tide of international terrorism has been financed.

Among the sources of funding for terrorism identified in Funding Evil are financial institutions and organizations owned or controlled, or both, by defendant KBM, and charitable organizations of which KBM is a major benefactor.

16. Dr. Ehrenfeld spent years researching the Book, drawing on substantial and credible sources, including information made available from such United States government sources as the CIA, Department of Defense and reports from Congressional hearings as well as investigative reporting in such leading and widely respected publications as the Wall Street Journal, The Washington Post, The London Times, The Financial Times, Newsweek and The Economist, to name a few.

17. Dr. Ehrenfeld's research revealed substantial credible evidence of KBM's role as a financial supporter of terrorist organizations, which she reported in the Book.

The English Action

18. On or about October 23, 2004, KBM and his sons Abdulrahman K S bin Mahfouz and Sultan K S bin Mahfouz purported to serve Dr. Ehrenfeld in Manhattan with papers in a legal proceeding in the High Court of Justice, Queens Bench Division in London, England (Claim No. HQ04X01988) ("the English Action"). They allege in the English Action that Dr. Ehrenfeld and Bonus Books, Inc. defamed them with statements appearing in the Book, only 23 copies of which were allegedly sold in the United Kingdom, and seek injunctive relief barring further publication

of the Book and unspecified monetary damages for libel.

19. The statements from the Book that KBM and his sons challenge as being defamatory are set forth below with the page numbers in the Book where they appear:

[From page 22]

Direct contributions from wealthy individuals also fund Islamist terrorists. It only takes a few such individuals to put into motion a great number of terror activities. A disproportionately large number of these funders are from Saudi Arabia -- members of the royal family and individuals close to the Saudi government. The former chairman of the National Commercial Bank (NCB) in Saudi Arabia, Sheikh Khalid bin Mahfouz, for example, deposited tens of millions of dollars in London and New York directly into terrorist accounts - the accounts of the same terrorists who were implicated in the 1998 bombings of the U.S. embassies in Kenya and Tanzania, in which 224 people were killed, including twelve Americans, and more than four thousand were injured.⁸⁰

[Text of footnote 80 from page 22; the footnote text appears on page 212]

Kevin Dowling, "The Ties That Bind: Barclays, a bin Laden Relative, Carlyle and the BCCI Boys", *Online Journal*, November 3, 2001. Following the bombings, former secretary of State Madeline Albright identified bin Mahfouz as having deposited tens of millions of dollars into terrorist accounts in London and New York.

[From page 35 to 36]

Despite recent denials from Saudi Arabia that it has been a major source of funding for the Islamists, the December 2002 report to the president of the UN Security Council stated that, over the past decade alone, Saudis contributed at least \$500 million to al-

Qaeda. Moreover, "most of this financial backbone is still at large and able to support fundamentalist organizations." Much of the funding for al-Qaeda and other Islamist terror groups comes from two of the biggest banking and business families in Saudi Arabia: the al-Rajhi and bin Mahfouz families. Both manage the intricate global infrastructure of businesses, investments, and charities, and the movement of money for Islamist groups.

[From pages 37 to 40]

Saudi charities that are known to have funded al-Qaeda and other Islamist groups often have incestuous ties with one another. Although each charity has a different name and states a different mandate, most often they support the same cause - advancing *Jihad*. Among the charities that have been supported by the prominent Saudi banking families, the al-Rajhi and the bin Mahfouz, that have been exposed as fronts for supporting al-Qaeda's terrorism, are: International Islamic Relief Organization (IIRO); Rabita Trust (which changed its name to Aid Organization of the Ulema); Benevolence International Foundation (BIF); SAAR network organizations; Taibah International Aid Association; Global Relief Foundation (GRF); World Assembly of Muslim Youth (WAMY); Islamic African Relief Charity; Saudi High Commission (AKA Saudi High Relief Commission or SRC); Saudi Joint Relief Committee; Muwafaq (or "Blessed Relief") Foundation; al-Haramain Islamic Foundation; Mercy International Relief Organization (Mercy); and the largest Islamic relief organization in the world, which serves as the umbrella for the charities mentioned above, the Muslim World League (MWL).

Some of the most significant al-Qaeda-linked charities are profiled below:

The Muslim World League (MWL)

The Muslim World League was founded by, and is completely funded by, the Saudi government. Since its inception in 1962, it

has expanded into at least one hundred branches in more than thirty countries. MWL is also the main body for other Saudi charities such as IIRO, Rabita Trust, and the SAAR Foundation Network. It is supported by Saudi government money and by the al-Rajhi and the bin Mahfouz families' global financial and business empires.

The Pakistani branch of the MWL was created to support al-Qaeda. It was funded initially by Osama bin Laden, and later by the Saudi government. MWL's chief officers in Pakistan have had close ties to Osama bin Laden, and have supported some of al-Qaeda's operations, including attempts to obtain nuclear material.

The International Islamic Relief Organization (IIRO)

The International Islamic Relief Organization, one of the many arms of the Muslim World League, was established as a non-governmental organization in 1978 in Jeddah, Saudi Arabia, "in response to the increasing need to alleviate the suffering of human beings worldwide." It is still financed by "the generous people of Saudi Arabia [the al-Rajhi and bin Mahfouz families], King Fahd, and the Royal family," according to IIRO's secretary-general, Adnan Basha. He also noted that the IIRO "donated more than \$60 million to the Taliban." Incidentally, employees of the IIRO who also worked for the MWL and al-Qaeda have stated that they were employees of the Saudi government.

The IIRO charity has used more than 70 percent of its funds to purchase weapons, thereby securing its status as a front for al-Qaeda's illegal activities (the rest of the funds were used for legitimate public works). The Arabic periodical *Rose al-Yusuf* described the IIRO as "firmly entrenched with Osama bin Laden's al-Qaeda organization." The IIRO has also directly funded the Egyptian branch of al-Qaeda, the al-Jihad organization, and has moved money to, and received money from, one of its sister

organizations, the International Relief Organization (IRO). The IRO, in turn, has financed the Success Foundation, which also received money directly from Khalid bin Mahfouz; both have sponsored al-Qaeda, HAMAS, and Hizballah.

The IIRO has been identified as a conspirator in:

The 1993 World Trade Center bombing Plots to destroy the bridges and tunnels of New York City.

An attempt to blow up twelve American airliners simultaneously

The 1998 bombings of the United States embassies in Kenya and Tanzania.

The IIRO was also involved in a conspiracy to assassinate former president William Jefferson Clinton and Pope John Paul II.

[From pages 47 to 48]

National Commercial Bank (NCB)

Another bank that was used as a vehicle to fund al-Qaeda's expansion around the world is the National Commercial Bank. The first commercial bank of Saudi Arabia, it was founded in 1950 in Jeddah, Saudi Arabia, by Salim bin Mahfouz. Even though the Saudi government stepped in to control the bank in 1999, the bank continued to fund Islamist terrorism. Its general manager and chairman until January 2003 was the founder's son, Sheikh Khalid bin Mahfouz, who was also the chief operating officer of, and a major shareholder in, the Bank of Credit and Commerce International (BCCI) before it was closed down for corrupt practices in 1992. The former U.S. customs commissioner William von Raab has described BCCI as the "Bank of Crooks and Criminals International."

A 1992 U.S. Senate investigative report implicates the NCB as having had a major role in the fraudulent schemes of BCCI,

specifically in "hiding assets, money laundering, the cover-up and obstruction of a Senate investigation, and sponsoring international terrorism." Khalid was subsequently indicted by a grand jury in New York City for having defrauded investors in the BCCI case; the indictment cost him \$212 million, barred him from any further activities in the American banking system, and forced NCB to close its branches in New York and London. "In the course of targeting BCCI for laundering drug money," the report found that "the CIA learned of BCCI's involvement in manipulating certain financial markets, in arms trafficking, and in supporting international terrorism, including handling of finances of Sabri al-Bannah [or, Abu-Nidal], and his terrorist organization."

Although the Saudi authorities had been tipped off by U.S. intelligence in 1992 that Khalid was involved in the funding of terrorism, it was only seven years later, after the bank lost large sums of money, that the Saudi government audited both the NCB and Khalid. The audit revealed that, over a ten-year period, the bank's Zakat Committee had transferred \$74 million to the IIRO and had channeled money from the Muwafaq (Blessed Relief) foundation to al-Qaeda. It also revealed that Khalid was in debt to the bank through loans that he had made to himself. These findings led the Saudi government, in 1999, to buy "a controlling 50 percent stake of NCB from Khalid for at least \$1 billion," which the government then used to eliminate a portion of his debt to the bank. The bin Mahfouz family retained 34 percent of the bank.

In January 2003, the Saudi government bought out the bin Mahfouz family by purchasing all their remaining NCB shares for \$1.8 billion, which was estimated to be "2.5 times book value" - in effect nationalizing the bank. According to U.S. financial analysts, this was how the Saudis swept under the carpet the bank's and Khalid's involvement in the funding of terrorism. Khalid, who is said to be recuperating from an undisclosed illness in the Saudi Arabian resort town of Taif,

maintains a 16 percent holding in Jordan's Housing Bank and controlling stakes in Lebanon's Crédit Libanais.

Despite the revelations of NCB's and Khalid's involvement in drug money laundering, illegal arms sales, banking fraud, and funding terrorism, many luminaries in U.S. business and politics continued to maintain their association with his family and with him.

20. A response by Dr. Ehrenfeld to the English Action was due by November 11, 2004. KBM's attorneys have threatened to enter judgment against Dr. Ehrenfeld on default in the English Action if she does not appear and answer. For the reasons that follow, and because she was not properly served with process and lacks the financial resources to litigate against a billionaire Saudi financier in a foreign forum, she has not responded and will not appear in the English Action. As a result, a default judgment has been or will imminently be entered against her in the English Action.

Why This Court Should Exercise Jurisdiction

21. KBM repeatedly threatened Dr. Ehrenfeld and her publisher, Bonus Books, with litigation and has sued them in an action for defamation in the United Kingdom for statements in the Book that could not support a defamation action against Dr. Ehrenfeld either under the law of New York State or under the United States Constitution. In this country, where the Book was published and sold, New York and federal law would plainly require the summary dismissal of any purported defamation action

by KBM based on the statements in Funding Evil. In writing the Book, Dr. Ehrenfeld sought to comply with the applicable United States and New York law, not that of the United Kingdom, a jurisdiction in which the Book was not published and in which Dr. Ehrenfeld never authorized the Book's distribution. Moreover, applying the laws of this country and this state, courts in this jurisdiction would readily recognize any defamation action based on the statements in Funding Evil as a threat to our national security as well as our national tradition of vigorous commentary on issues of vital public interest and public persons, and as jeopardizing the constitutional protections afforded to freedom of speech and of the press.

22. In contrast, in the United Kingdom, where KBM has filed suit and where on information and belief only 23 copies of the Book have been purchased, Dr. Ehrenfeld would have faced costly and potentially protracted proceedings in which KBM would be able to proceed under rules of law that plainly do not, from the perspective of fundamental American law, tradition and policy, adequately protect free speech and freedom of the press. For example:

a. Under English law, defamatory statements are presumed false and the libel defendant carries the burden of proving them to be true.

b. Under English law, defamation is a strict liability tort. It is not necessary for the plaintiff to prove that the libel defendant published with any form of fault, negligent or

otherwise.

c. Under English law, to obtain protection for expressions of opinion, the defendant must show that the facts on which the comment is based are true and that the comment expresses an opinion that a fair-minded person could honestly hold. But this protection does not apply if the statement is shown to have been made with malice, that is, ill-will or spite. Moreover, and most notably in the present context, whether a statement constitutes an expression of opinion at all -- and thus qualifies for any protection under the "fair comment" defense -- is not necessarily determined by considering the context in which the statement appears.

d. English law only recently has begun to evolve a limited qualified privilege that falls far short of the principles of New York Times v. Sullivan, 376 U.S. 254 (1964), and Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). "British law recognizes no special protection for defamation actions arising from critiques of public figures or public officials, routinely imposing large damage awards in cases involving what Americans would characterize as core political discourse." Rodney A. Smolla, The Law of Defamation at §1.9 (2d ed. 2004).

e. Procedural rules make the litigation of defamation actions in the United Kingdom particularly daunting for defendants accustomed to the protections of American law. If the defendant seeks to "justify" the publication, that is, to prove its truth, but fails, the plaintiff may be awarded aggravated

damages. The same is true if the defendant vigorously cross-examines the plaintiff, or if the defendant is found (for example, in the context of what otherwise would constitute "fair comment") to have published with a malicious motive. And the unsuccessful defendant will generally be ordered to pay the plaintiff's costs, including attorneys' fees, as well as any damages awarded.

f. English law does not recognize the "single publication rule," which is almost universally recognized by courts in the United States and which limits defamation actions by requiring that for any single publication: (1) only one action for damages can lie; (2) all damages suffered in all jurisdictions may be recovered in the same action; and (3) a judgment on the merits of a plaintiff's claims bars similar suits between the same parties in all jurisdictions. By contrast, English law would permit multiple, repetitive suits for each individual publication such as publication in different media or in different locations.

g. In the United Kingdom, no meaningful compulsory pretrial discovery is available to a defamation defendant. No pre-trial depositions are available, and document discovery is voluntary only. In sharp contrast, in the courts in the United States parties may avail themselves of and must comply with compulsory pretrial disclosure. The differences in pre-trial discovery between the two legal systems distinctly disadvantage a defamation defendant in England, exacerbate the already substantial procedural burdens she faces, and here would prevent

and impede the discovery of facts relevant to defendant's role in the funding of terrorism.

23. Defendant has used these differences between English and American libel law to try to "launder" his reputation. He has threatened to sue for defamation in the United Kingdom or actually sued for defamation there at least 29 times for statements concerning his role in the financing of terrorism. Because of the high costs of litigation and the difficult burdens for a defamation defendant under English law, everyone threatened by defendant has in fact been intimidated into settling with defendant -- except Dr. Ehrenfeld -- and withdrawing their allegedly defamatory statements. In this way, with the benefit of his vast financial resources, he has managed to silence his critics one at a time.

24. The net result of this abuse of the legal process is that defendant both hides the truth of his acts behind the screen of English libel law and seriously chills legitimate and good faith investigation into his behavior and links to terrorism.

25. Defendant is named as a defendant in a number of lawsuits brought in this country arising from the tragic events of 9/11. For example, he is named as a defendant in:

Burnett et al. v. Al Baraka 03 CV 9849 (SDNY)
Investment & Development Corp.
et al.

Burnett et al. v. Al Baraka 03 CV 5738 (SDNY)
Investment & Development Corp.
et al.

Ashton et al. v. Al Qaeda, et al.	02 CV 6977 (SDNY)
Tremsky et al. v. Osama Bin Laden, et al.	02 CV 7300 (SDNY)
Salvo et al. v. Al Qaeda et al.	03 CV 5071 (SDNY)
York et al. v. Al Baraka Investment & Development Corp. et al.	03 CV 5493 (SDNY)
Federal Insurance Co., et al. v. Al Qaida et al.	03 CV 6978 (SDNY)
Barrera et al. v. Al Queda et al.	03 CV 7036 (SDNY)
Euro Brokers et al. v. Al Baraka, et al.	04 CV 7279 (SDNY)
Burlingame, et al. v. Osama bin Laden, et al.	02 CV 7230 (SDNY)
Estate of O'Neill v. Al Baraka Investment and Development Corp. et al.	04 CV 1923 (SDNY)

26. The commencement of the English Action together with Dr. Ehrenfeld's default in that action means that this action is ripe and presents an actual controversy between the parties.

27. The decision in Dow Jones & Co., Inc., v. Harrods Limited, 346 F. 3d 357 (2d Cir. 2003), poses no impediment to this action, because each of the factors that the court there held should be considered in guiding the exercise of discretion in Declaratory Judgment Act cases such as this weigh heavily in favor of sustaining it:

a. A judgment in this action will serve a useful purpose in clarifying or settling the legal issues involved. The very existence of the judgment against Dr. Ehrenfeld in the English

Action will cause substantial harm to her reputation and impugn her integrity as a writer here in New York where she lives and works. It will have a chilling effect on her ability to attract publishers interested in publishing her books. That harm will be felt here rather than in the United Kingdom where she does not work or live and where she has no assets. Moreover, that harm, if left unaddressed by a proceeding in this jurisdiction in which the Court applies U.S. Constitutional law and New York common law, will continue. That factor distinguishes this case from the Dow Jones case, which involved a large corporation with assets in the United Kingdom and in which no author's integrity or reputation was being impugned or questioned.

b. A judgment in this action will finalize the controversy and offer relief from uncertainty as to Dr. Ehrenfeld's liability for defamation under United States law and the enforceability in the United States of KBM's English default judgment for libel.

c. The remedy Dr. Ehrenfeld seeks is not to be used merely for procedural fencing or a race to res judicata but is to settle the very real question of Dr. Ehrenfeld's potential liability under United States law based on her writings about matters of urgent public interest and concern. In fact, the only legal forum-shopping has been on the part of KBM, who has purported to invoke the jurisdiction of the English court without disclosing any address for himself in the United Kingdom. The only address he provides in the filings in that case is a post office box in

Jeddah, Saudi Arabia.

d. No increased friction between sovereign legal systems or improper encroachment on the domain of a state or foreign court is involved, since Dr. Ehrenfeld does not seek to enjoin the English Action.

e. Finally, Dr. Ehrenfeld simply has no better or more effective remedy available to her than to pursue this action. If Dr. Ehrenfeld were unable to pursue this action, she would effectively be denied any remedy to vindicate her rights and protect her integrity and reputation as a writer.

28. The funding of terrorism is, in our post-9/11 world, one of the most crucial issues of national security and acute public interest. It is one of the highest priorities of our national government. It is common knowledge that inquiry into the sources of such funding has been difficult. This action will allow such inquiry in the public interest to continue.

29. By this action, plaintiff does not seek to enjoin the English Action in any way.

30. Recognizing that United States law is "totally different from English defamation law in virtually every significant respect," and that "the differences are rooted in historic and fundamental public policy differences concerning freedom of the press and speech," courts in the United States have repeatedly refused to enforce judgments rendered by English courts in defamation cases. Telnikoff v. Matusevitch, 347 Md. 561, 598, 702 A.2d 230, 248 (1997). See, e.g., Abdullah v.

Sheridan Square Press, Inc., No. 93 Civ. 2515, 1994 WL 419847 (S.D.N.Y. May 4, 1994); Matuskevitch v. Telnikoff, 877 F. Supp. 1 (D.D.C. 1995); Bachachan v. India Abroad Publications, Inc., 154 Misc. 2d 228, 585 N.Y.S.2d 661 (Sup. Ct. N.Y. Co. 1992).

31. Under the law of the United States and the State of New York, defendant could not meet his burden of proving that the statements made by plaintiff about him in the Book were materially false.

32. Nor could defendant meet his burden of proving that Dr. Ehrenfeld was at fault -- i.e., that she acted with "actual malice" and was "grossly irresponsible" -- in publishing the statements in question.

33. Defendant would also be shown to be libel-proof given the many lawsuits against him accusing him of financially supporting terrorism and the abundant publicly available sources of information linking him with the funding of terrorism.

34. As a result, plaintiff is entitled to a declaration that the statements in question do not give rise to liability for defamation under the law of the United States or New York State.

SECOND CLAIM
(Declaratory Judgment of Unenforceability)

35. This claim seeks declaratory judgment under 28 U.S.C. §2201 and the common law that, under the law of the United States and the State of New York, the default judgment obtained by defendant in the English action is unenforceable in the United

States.

36. Plaintiff repeats and realleges the allegations in paragraphs 1-34 of this complaint.

37. Comity ceases where a foreign judgment's actual conflict with vital public concerns of the forum state begins to prejudice or undermine domestic interests.

38. No sovereign state is under unyielding compulsion to enforce the judgments of another nation that are predicated on law inherently repugnant to fundamental public policies or notions of justice of the forum state, or that do violence to its important domestic interests.

39. Applying these principles, the Court should decline to recognize or enforce the default judgment in the English Action on the ground that the judgment was antithetical to the public policy of the United States and New York State in that it was founded on legal doctrine contrary to freedom of speech protections embodied in the federal and New York constitutions.

40. As a result, plaintiff is entitled to a declaration that the default judgment in the English Action is unenforceable in the United States and in the State of New York.

WHEREFORE, plaintiff demands that judgment be entered in her favor:

a. Declaring that any claim for defamation based on the Book would be insufficient as a matter at law on the ground that the defendant cannot prove that any statements concerning him in the Book are materially false;

b. Declaring that any claim for defamation based on the Book would be insufficient as a matter of law because defendant would be unable to prove fault, i.e., that plaintiff acted with "actual malice" or with "gross irresponsibility" in publishing any statement concerning defendant in the Book;

c. Declaring that the judgment defendant obtained (or will obtain) from the High Court of Justice, Queens Bench Division on default against plaintiff for alleged defamation is unenforceable in the United States;

d. Awarding plaintiff her attorneys' fees, costs and disbursements in prosecuting this action to the extent permitted by law; and

e. Awarding plaintiff such other and further relief as to the Court seems just and proper.

Dated: New York, New York
December 8, 2004

KORNSTEIN/VEISZ WEXLER
& POLLARD, LLP

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