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The Big Chill

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It's September now and still warm, but the temperature is dropping steadily for those who seek to expose the money trails that underpin terrorism -- radical Muslim terrorism in particular. The chilling effect of foreign legal challenges already constrains their ability to write and publish their findings.

Five years ago, the U.S.-based publisher Bonus Books released Rachel Ehrenfeld's excellent look into the money behind terrorism, *Funding Evil: How Terrorism is Financed -- And How to Stop It*. *Publishers Weekly* hailed it as a "lively, well-documented primer," and predicted it would "heat up public demand for real progress in the war on terrorism."

In the book Ehrenfeld, a U.S. citizen, alleges that Saudi financier Khalid bin Mafouz, the former banker to the Saudi royal family, was a source of terrorist finance. Mafouz has a long and checkered history of dubious financial practices. In the early 1990s, U.S. authorities closed down the Bank of Credit and Commerce International (BCCI, nicknamed the Bank of Crooks and Criminals International), in which Mafouz was a 30% shareholder, for corrupt practices. Mafouz was fined \$225 million as part of a government settlement and was barred from further banking activities in the United States.

Funding Evil was published and sold in the United States. However, 23 copies that found their way to England provided sufficient grounds for Mafouz to file suit in the UK. He chose that country because its libel laws are plaintiff-friendly: the burden of proof in America requires a complainant to prove that the author wrote something knowing it was false. For public personalities, such as Mafouz, he'd also have to prove that the author acted maliciously.

In Britain, it is the author who has to prove the truth of the writing. This makes it a prime location for the so-called venue-shopping of "libel tourism." Ehrenfeld, who lost the British court case by default, was not alone in her predicament. Taking advantage of British libel laws that did not require proof that the allegations against him were unfounded, Mafouz obtained more than

40 apologies and retractions in London's High Court. Mostly he did so by threatening suit against authors and publishers, including many U.S.-based ones. The results of his actions -- advertised on his website -- spread a deep chill among American authors and publishers well beyond those actually threatened and sued.

Ehrenfeld countersued in New York, seeking to establish that she was not bound by the decisions of a foreign court operating under laws that violate her Constitutional right to free speech. When New York's Court of Appeal ruled against her, arguing that New York laws could not protect her, the New York State legislature unanimously and speedily passed the Libel Terrorism Protection Act, known as "Rachel's Law." Governor Patterson, who signed it into law on April 30, 2008, declared: "New Yorkers must be able to speak out on issues of public concern without living in fear that they will be sued outside the United States, under legal standards inconsistent with our First Amendment rights."

"Rachel's Law" is an important New York initiative. But unless it is reinforced by federal legislation, U.S. authors and publishers will remain vulnerable to "libel tourism" and intimidated into silence by it -- in essence, implementing a self-imposed "speech code" similar to that recently adopted by Executive Branch agencies.

Fortunately, Congressional leaders on both sides of the aisle have recognized this slow but steady degradation of our free speech protections. The U.S. Congress is now considering the bipartisan Free Speech Protection Act of 2008. Sponsored by Arlen Specter (R-Pa.), Joseph Lieberman (I-Conn.), and Chuck Schumer (D-N.Y.) in the Senate and Reps. Pete King (R-NY), Anthony Weiner (D-NY) and ten others in the House, the act would protect all U.S. authors from "libel tourism." As Lieberman and Specter note, "The new legislation would not shield those who recklessly or maliciously print false information. It would ensure that Americans are held to and protected by American standards." The goal is to restore constitutional protections, not create new rights.

It is our First Amendment that facilitates the exposure and defeat of the enemies of democracy who wish to impose the totalitarian vision of Al Qaeda and other terrorists and radical Muslim organizations. "Libel tourism" has put that freedom in danger, and we will never know whether vital information that was "chilled" could have saved American lives, in the past or in the future.

The Association of American Publishers (AAP), the American Library Association (ALA), PEN, Reporters without Borders, American University Presses, the American Society of Newspaper

Editors, and many others have urged Congress to pass this bill. If the Congress passes no other law, it should unanimously and swiftly pass the Free Speech Protection Act of 2008.

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