
INTERDISCIPLINARY BOOK REVIEW EXCHANGE: TERRORISM AND AMERICAN LAW

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***In the Moment of Greatest Calamity:
Terrorism, Grief, and a Victim's Quest for Justice***

Susan F. Hirsch (Princeton: Princeton University Press, 2006)

Like the sudden recollection of a lost friend, *In the Moment of Greatest Calamity* evokes a wistful sadness, a nostalgic melancholy for an age we may never see again. It is the wise and touching account, skillfully told by cultural anthropologist Susan Hirsch, of the tragedy that began August 1998, when an al Qaeda bomb exploded outside the U.S. Embassy at Dar es Salaam, Tanzania. Moments earlier, and miles away, another explosion ripped a gaping hole in the U.S. Embassy at Nairobi, Kenya. The simultaneous attacks killed hundreds, including Hirsch's husband, who waited outside the Embassy in Dar while Hirsch retrieved the visa that would permit her husband, Abdurahman Abdalla, to make his maiden trip to this country. In the end, four defendants were tried and convicted in federal court in New York for their role in the bombings. *Calamity* traces events from explosion to sentencing as seen and experienced by Hirsch, who emerges as both an aggrieved victim and a sensitive, insightful observer.

Though far from perfect, the trial was a stunning success by almost every conventional measure. Despite the obvious difficulties occasioned by the investigation of an international act of terror, a skilled team of federal investigators and forensic experts, under the supervision of an elite group of federal counter-terrorism prosecutors, presented a careful and meticulous reconstruction of the conspiracy. The defendants were ably represented by some of the finest criminal defense lawyers in the United States.¹ The judge, Leonard Sand, presided over the lengthy and complex proceedings with a firm but flexible hand. Perhaps most importantly, the judge provided the defense teams with enormous resources, which prevented the trial from devolving into the sort of one-sided sham that mars so much capital litigation in the United States.

The evidence included riveting testimony from former members of al Qaeda, whose accounts provided a rare public glimpse into the organization's inner workings. And as Hirsch experienced, the trial gave victims much-needed recognition for the pain they had endured. In October 2001, in the federal courthouse nearest to ground zero, Judge Sand sentenced the four defendants to life in prison. Though trials in the United States are inevitably flawed vehicles for the delivery of justice, some legal forms are indisputably better than others, and this one was pretty good.²

Yet despite this success, many now view the embassy bombing trial as the dangerous symbol of a pre-9/11 naiveté. Once we could believe in the criminal law, but once we could believe that oceans kept us safe and planes were not missiles. Faith in the law today is just another childlike innocence buried beneath the rubble of the North Tower. The attacks of September 11 prove like nothing else that the face of today's terrorist is the face of pure evil. The law, intended for the prosaic challenge of a gentler time, is no match for this new and existential threat, the likes of which we have never faced before. As an anthropologist, Hirsch understands all too well the meaning of symbols and myth in American culture. And since 9/11, we have created the myth of the Super-Human Terrorist.

Within days of the attacks, a dual image of the terrorist enemy began to take shape in American thought. On the one hand, he is less than human. He is a barbarian who has renounced the conventions of civilized behavior. Whatever kindness we extend to him is because we are benevolent and humane, not because he is deserving. Yet on the other hand, he is also more than human. A zealot and fanatic, he worships a false God that commands him to destroy America and her institutions, and produces in him the unalterable conviction of his ultimate victory, for which he labors tirelessly. In his actions, he is unrestrained by Western morality. He recognizes no ties to society and is eager to sacrifice himself in the slaughter of innocent people. Though he is everywhere, he is invisible; anyone may be a terrorist, and all terrorists are the same. At special camps and schools, the terrorist trains his mind and body to perfection, which endows him with unique talents that make him all but impossible to locate or capture. Even if you manage to capture him, he has rare skills that will allow him to resist all interrogations. And guard him well, for no ordinary jail can hold him. He is not like mortal men.³

Myth making like this is old news. In the first months of the Second World War, the myth of a super-human Japanese fighter became so entrenched that the Roosevelt administration turned to the media to help debunk it before it could wreak havoc on American morale.⁴ After the war, American myth making turned its formidable powers back to the threat of communism. The federal judge who presided over the trial in 1949 of communist party members later confided to an historian that throughout the lengthy proceedings he never allowed himself to lock eyes with the defendants' supporters in the gallery. Communists, he explained, had mastered the art of hypnosis.⁵ And in the 1970s and 1980s, western security agencies deliberately created and spread a popular myth about the terrorist, Ilich Ramirez Sanchez (a.k.a., "Carlos the Jackal") making him out to be "a kind of super-terrorist of exceptional cunning and skills who was personally involved in virtually every major terrorist incident in western Europe at this time" (Jackson 2005:111). In fact, investigations long after the fact revealed Sanchez to be something of a bungler who benefitted from equal parts good fortune and official incompetence.

It is thinking like this that produced the political and social preference for special government powers to track, seize, detain, interrogate and try suspected terrorists. It accounts, for instance, for the widespread belief that the government had to devise and deploy "enhanced interrogation techniques." Otherwise thoughtful observers argued

that because alleged terrorists received “resistance training,” the United States simply had to use more aggressive methods.⁶ It is likewise behind the ridiculous notion that the detainees at Guantanamo are so uniquely dangerous that they cannot be safely relocated to any facility in the United States, even a super-maximum security prison.⁷ And it provides substantial support for today’s immensely popular argument that the criminal law is simply too forgiving, and terrorists too cunning, for them to be tried in federal court.

But as Hirsch discovered, this is pure prattle. Terrorists make the same mistakes and suffer from all the same psychological foibles and physical limitations as every criminal. They leave behind evidence and witnesses, they confess (even when we don’t torture them), they wire money, they talk on cell phones, they plead guilty and cooperate with the government, they become informants. And they have consistently shown themselves no more cunning or sophisticated than your average hoodlum. Hirsch, for instance, describes the pathetic “codes” used by the defendants in the embassy bombing, who worried (on tape) that their scheme would be uncovered by the “Food and Beverage Institute,” wondered (on tape) whether a collaborator’s phone would give them “a headache,” and took the elaborate precaution of writing phone numbers IN REVERSE! Miraculously, the Food and Beverage Institute was able to penetrate this cryptological craftiness.⁸

The power of myth, however, lies in its stubborn resistance to disproof. As sociologist Murray Edelman (1971:15–18) has observed, we accept and cling to myths not because we can verify them empirically, but because they help us create an image of the world, giving us a role and identity in society and bringing comfort and security from chaos. The myth of the super-human terrorist, an “unquestioned belief held in common by a large group of people that gives events and actions a particular meaning,” permits us to channel “individual anxieties and impulses into a widely shared set of expectations and a widely shared scenario to guide action. It frees the individual from responsibility for his unhappy or threatened place in society and prescribes a clear and widely supported program for protecting his identity” (Edelman 1971:54).

In the finest tradition of academic scholarship, therefore, *Calamity*’s greatest value is in myth busting. For years, Hirsch has sought not simply a blind vengeance, but a nuanced comprehension. She has struggled to see the defendants as people, with personal histories and unique motivations. She has tried to understand why the attacks happened, with complex explanations that draw anthropological lessons from politics, culture, and religion. The insight and compassion she brings to the task are rare indeed, and the greatest calamity may well be that we shall not see the likes of Susan Hirsch’s sensitivity again for a very long time. In the end, myth making reduces people to symbols. Like a machine press of the mind, it stamps out the infinite variety of human existence and leaves in its place a phantom that cannot survive in the real world but that lives easily in the fears of an anxious nation. In this way, myth making denies the possibility of humanity – “theirs,” of course, but “ours” as well. As we relinquish the power to distinguish one person from another, and any person from a lifeless machine, we become the myth we assail.

Notes

1. I confess I am not entirely neutral about the events I describe in this review. My wife represented one of the defendants convicted of the embassy bombings, and I have been involved in the post-9/11 detention litigation since November 2001, including as counsel of record in *Rasul v. Bush*. Presently I am counsel for abu Zubaydah, for whose interrogation the Bush administration sought the infamous torture memos.
2. I, like many others, am persuaded by Stuart Scheingold's (2004) critique of "the myth of rights," and accept that the rule of law is often as much a political as doctrinal construction. There is a difference that requires no elaboration, however, between a Stalinist show trial and a federal criminal trial. Still, it bears noting that Hirsch came away from the trial unsatisfied: "Because the political, religious, and cultural roots and repercussions of the bombings were never explored, the trial fell short of meeting my need for justice. This disappointment pushed me toward new understandings of justice and sparked my desire for something beyond the version of justice promised by law" (p. 10).
3. One of the most thoughtful discussions of the subhuman/superhuman terrorist appears in Richard Jackson's book, *Writing the War on Terrorism*, especially chapter 4. As Jackson observes:

In a series of constructions which sit uneasily with their simultaneous depiction as cowards, crazed fanatics, evildoers and faceless villains, the terrorists are made out to be formidable and frightening foes. . . . There would be no advantage for officials to admit that terrorists are normally rather incompetent and no match for the resources, training and expertise of counter-terrorist units, particularly those of the world's most powerful states; or that they were rather ordinary people just like everyone else. Instead, the authorities make terrorists out to be incredibly sophisticated and fearsome agents – super-terrorists, as it were. [2005:108–09]

Throughout his work, Jackson, like others, blames "the authorities" for the creation of this narrative. Though the demonstration is beyond the scope of this brief review, and would take us too far afield of Hirsch's book, I would argue that the construction was less top-down and more widespread than Jackson suggests. We agree, however, on the end result. (For an attempt to debunk the myth, see Mueller 2006).

4. For a discussion of this period, see John W. Dower's book *War Without Mercy: Race and Power in the Pacific* (1986) – especially chapter 5, "Lesser Men and Supermen." Dower traces the remarkably rapid appearance of the myth to the stunning and unexpected success of the Japanese military in the first months after Pearl Harbor. By March 1942, "a new creature roamed the fertile fields of the Anglo-American imagination: the Japanese superman. The superman came from land, sea, and air, as well as from the nightmares of the Westerners" (on this point, also see Pfeffer 1942).

5. This story appears in Ellen Schrecker's wonderful account of McCarthyism, *Many are the Crimes: McCarthyism in America* (1998:198).
6. This is discussed, for example, by Heather MacDonald (2006: 85): "Some of the al Qaeda fighters had received resistance training, which taught that Americans were strictly limited in how they could question prisoners. Failure to cooperate, the al Qaeda manuals revealed, carried no penalties and certainly no risk of torture – a sign, gloated the manuals, of American weakness." This particular piece of the super-human myth can be traced to an al Qaeda manual discovered during the raid of a home in Manchester, England. One lesson of the so-called "Manchester Manual" counsels prisoners, *inter alia*, not to provide information during interrogations and to resist torture. The manual was introduced by the government during the embassy bombing trial (along with the defendants' confessions to the FBI, which used conventional techniques). It is widely available online. See, e.g., <http://www.investigativeproject.org/documents/misc/10.pdf>. In the past, the entire manual was also available on the website of the Department of Justice, though the version presently available contains only a portion of the document. See http://www.usdoj.gov/ag/manualpart1_1.pdf. The manual was obviously written in the expectation that prisoners would be interrogated by someone other than the U.S. officers, and includes this observation:

The interrogation uses all kinds of physical and psychological techniques to break the will of the suspect and lead him to a total collapse. The agency that conducts the interrogation is the government's questioning apparatus that belongs to the Ministry of Interior Affairs. The officers of that apparatus graduate from the police academy. In our country, that apparatus has no values or code of ethics. It does not hesitate to use all kinds of torture and bodily and emotional harm to obtain evidence that could incriminate the suspect.

This "training," which appears to have involved nothing beyond the advice in these few pages, pales compared to the rigorous – and quite appropriate – instruction given to U.S. soldiers on how to resist interrogations should they be captured.

7. Suggestions that inmates could be moved to the supermax prison at Florence, Colorado, for instance, touched off a political firestorm, as evidenced in this quotation: "I think it is completely irresponsible for [Governor] Ritter to be rolling out the welcome mat for terrorists and enemy combatants," said state Rep. Cory Gardner, R-Yuma. This is an extremely dangerous proposition to bring enemy combatants into Colorado" (Cardona 2009; see also Johnson and Pincus 2009).
8. Other attacks have shown much the same thing. On February 26, 1993, for instance, terrorists left a rented truck laden with explosives in the garage beneath the World Trade Center. The explosion ripped a hole seven stories up, killed six and injured more than a thousand. The day before the bombing, Mohammed Salameh, who had rented the truck, called the rental office to report that it had been stolen in Jersey City. After the bombing he "kept calling the rental office to get back his \$400 [rental] deposit" (9/11 Commission Report 2004:71–2). The FBI arrested

him at the rental office six days after the bombing. Six defendants were eventually tried and convicted in the Southern District of New York.

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Guantánamo and the Abuse of Presidential Power

Joseph Margulies (New York: Simon and Schuster, 2006)

Joseph Margulies plunges readers into worlds that are, by his account, “Kafkaesque” or like something from *Alice in Wonderland*. Yet these well-worn literary allusions fall short of capturing the profound injustice and absurdity that ensued when the US government turned Guantánamo Bay into camps for detaining and interrogating individuals captured in the post-9/11 “war on terror” and, especially, when it repeatedly defended this action in court. Writing for a general audience from the perspective of a defense attorney and the position of a law school professor, Margulies documents well the legal face-down engaged in by the government and those critics of Guantánamo who railed against its breach of national and international laws. At the same time Margulies displays an anthropologist’s sensitivity to the details of daily existence that made Guantánamo a worldwide symbol of American injustice and a living hell of “debility, dependence, and dread” for detainees (p. 29). As Margulies describes, strict and unquestionable hierarchy, physical isolation and assault, and a variety of mental tortures were deployed to convince most detainees that they were less than human and possessed no right to argue otherwise.

Most of Margulies’ book focuses on the development of case law regarding the status and rights of Guantánamo detainees. Margulies writes with clarity and strong conviction about the strategy he and other attorneys used to counter Bush administration insistence that the detainees were “enemy combatants” with no rights in US courts. In offering an insider’s review of familiar cases, such as *Rasul*, *Hamdi*, and *Hamdan*, Margulies perceptively analyzes not only the starkly opposing sides but also the divisions among judges who confronted new legal questions in a politically charged era. The strongest criticism is lodged against Bush administration lawyers for their refusal to yield any ground. When decisions went against them, they used different legal tactics to revisit the same issue or simply ignored the ruling. They would release or reclassify a detainee rather than produce him in court. Detailed examples of the government’s evasive and deceptive strategies illuminate the contours of a bizarre world where defense attorneys are repeatedly stunned at the government’s brazen non-compliance with the rule of law. Moreover, these details convincingly establish Margulies’ overarching argument that the Bush administration’s creation of Guantánamo as a “world beyond law” constituted the abuse of presidential power.

Readers will be more than ready for some answers when they reach the book's penultimate chapter titled "Asking Why." However, Margulies' two-pronged explanation won't satisfy most social scientists. He argues first that the nature of war itself, rather than any particular political ideology, led to the abuses at Guantánamo. The "fog of war" explanation equates losing one's moral compass during war to a pilot losing his or her orientation during a turbulent flight. This rather unconvincing analogy has the further entailment that "pilot error" in such unavoidable situations rarely demands accountability. The second prong offers the less abstract explanation that Bush administration officials believed in a "unified executive" and thus considered themselves empowered to implement policies that would be above question. Some anthropologists might be more interested in a broader explanation that links Bush administration actions to larger geopolitical circumstances and strategies. Others might want more insight into the motivation of those who designed, implemented, and countenanced the horrific world of Guantánamo and the idiosyncratic legal world that shielded it. Tell-all accounts by Bush administration officials have been largely self-serving, and accounts by social scientists hold the promise of revealing more about how power operated (Wedel 2009).

Woven throughout the book is Margulies' first-person account of his involvement in *Rasul v. Bush*, one of the key legal cases. Through this insider narrative readers experience the drama of a case unfolding to a decision. With *habeas* as the core legal issue, the very humanity of particular people hangs in the balance and thus heightens the dramatic tension. Readers will share Margulies' frustration and outrage at the shifting and underhanded tactics of the Bush administration. Margulies' decision not to reveal a wider range of his subjective responses means that readers never learn why he jumped so whole-heartedly into Guantánamo litigation. Similarly, more attention to the other attorneys working on these cases could have revealed not only their motivations but also the professional and political networks that were built through this effort to counter injustice. Arguably, interviews with key actors lay beyond the scope of the book, yet the lack of mention of the military defense counsel who risked their careers to make arguments similar to those of Margulies and his civilian colleagues was a conspicuous omission.

To be fair, nothing in the volume suggests that Margulies intended to write a book about the motivations that can lead one person to abuse power and another to cry out for justice, and to his credit he does not aggrandize his own important and admirable role. Rather, Margulies' presence in the book accomplishes something more powerful. By placing himself among the putative "worst of the worst" and describing his reactions to the extraordinary legal, emotional, and physical worlds they inhabited, he humanizes his client and other detainees. His subjective responses to their deplorable living conditions and debilitated psychological states as well as his accounts of their displays of humanity – tears at the mention of family members, frustration at the irrational behavior of those in power over them – chip away at the dehumanization the Bush administration so effectively instituted.

Vivid ethnographic depictions of law's role in institutionalized dehumanization are not pretty, but they are an invaluable record of worlds hard to imagine (see, e.g., Hajjar

2005). As more details of Guantánamo's toxic culture emerge, Margulies' account takes an important place between early bare bones exposés (Rose 2004) and more recent attempts to document the tensions and disagreements among those charged with running the camp and the resulting shifts in detainee treatment (Greenberg 2009). Ethnographers reading back through this history will appreciate the challenges to conducting basic social science faced by those authors who have tried to illuminate the world of Guantánamo, which was, for a time, a very closely guarded American secret (and a dirty one at that). Ethnographers might also wonder, as I did, about the ethical guidelines that Margulies followed in researching and writing from such an unusual context and position. How, for instance, did he square his role as a writer with lawyer client privilege? How did he handle gaining consent from those he later quoted? Did he feel an ethical commitment, as an anthropologist might, to try to represent multiple perspectives in his account? Much as I wanted to learn the answers to these questions from his text, Margulies' lack of overt reflection on such issues is not surprising to me. My own monograph, written from the position of a participant in a 2001 terror case as a result of surviving the bombing of the US Embassy in Tanzania in 1998 (Hirsch 2006), offers little discussion of my methodological choices or my approach to research ethics, which I assumed were topics of interest primarily to academic colleagues. An article subsequently published in *PoLAR* addresses these issues (Hirsch 2007). My determination to reach a broad audience with my story of the abuse of power by the US government, an objective that also motivated Joe Margulies, shaped the topics we included and the styles in which we wrote. Neither of our texts is easily pinned into a genre, but rather each reads like a mixture of ethnography, analysis of law, political commentary, legal thriller, and memoir. Moreover, the extraordinary situations in which we found ourselves likely played a role in pushing us into the risky act of venturing beyond discipline-specific models of sociological or anthropological analysis and writing. Margulies is to be commended for pulling no punches in describing and denouncing the techniques of dehumanization at Guantánamo's core.

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