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# Terrorism, Panic and Pedophilia

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## TERRORISM, PANIC, AND PEDOPHILIA

**Daniel M. Filler\***

When Southern Baptist leader Reverend Jerry Vines recently declared that Mohammed was a “demon-possessed pedophile,” and that Allah leads Muslims to terrorism, his comments received national attention.<sup>1</sup> Yet many people, particularly outside the South, may have dismissed the speech as reactionary nonsense<sup>2</sup> from the group that, four years earlier, pronounced that a wife “should submit herself graciously” to her husband’s leadership.<sup>3</sup> This article argues that Vines’ speech drew links between Islam, terrorism, and pedophilia in ways far more significant than dismissive readers might have anticipated. While Vines’ statement was among the most explicit efforts tying Islam and terrorism to pedophilia, close scrutiny of rhetoric following September 11th suggests that this link is becoming increasingly common and natural. Why should this seemingly tenuous metaphor be consequential to legal scholars? Because this rhetorical connection may help create the

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<sup>1</sup> See, e.g., Susan Sachs, *Baptist Pastor Attacks Islam, Inciting Cries of Intolerance*, N.Y. Times, June 15, 2002, at A10; Berta Delgado, *Another Convention, Another Controversy*, Dallas Morn. News, June 13, 2002, at A31; *Baptists Acknowledge Sexual Abuses*, L.A. Times, June 13, 2002, at A32; Jim Jones, *Baptist Calls Islam Founder ‘Pedophile,’* Pitt. Post-Gazette, June 13, 2002, at A5; *Southern Baptist’s Talk Riles Muslims*, Chi. Trib., June 12, 2002, at 12.

<sup>2</sup> See, e.g., Bill Wineke, *Church Leaders Set a Bad Example*, Wis. St. J., June 22, 2002, at F1 (saying that “Southern Baptists did elect a crackpot like Vines as its president”); Greg Jonsson, *Comments on Islam Displeased Many U.S. Baptists*, St. Louis Post-Dispatch, June 16, 2002 (noting that Southern Baptist Convention once had more diverse membership but now “conservatives have consolidated their power – ‘like Invasion of the Body Snatchers’”).

<sup>3</sup> See Gustav Niebuhr, *Southern Baptists Declare Wife Should ‘Submit’ to Her Husband*, N.Y. Times, June 10, 1998, at A1.

social conditions necessary to support for radical detention policies that currently seem implausible.

In the immediate aftermath of September 11th, many commentators feared a frontal assault on civil liberties. Muslims and Arabs were targeted for surveillance and detention. The Immigration and Naturalization Service initiated closed deportation hearings and the Department of Justice imposed new policies significantly impairing attorney-client confidentiality.

To be sure, the United States government did not completely obliterate civil liberties.<sup>4</sup> After early criticism, the President modified plans for short-cut military tribunals, the Department of Justice claimed its attorney monitoring policy applied to a small number of inmates, and federal courts slowly pushed back against the Administration's most aggressive detention and secrecy policies. Contrary to the view of many in the academic community, some scholars even argue that the nation's dramatic new criminal law, the USA PATRIOT Act,<sup>5</sup> does not substantially expand governmental powers.<sup>6</sup> The evidence is mixed, but it appears that in the period since early 2002, the government's policing and intervention strategies have been less intrusive than were originally feared.

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<sup>4</sup> See Eric L. Muller, *12/7 and 9/11: War, Liberties and the Lessons of History*, 104 *W. Va. L. Rev.* 571 (2002); Jeffrey Rosen, *Liberty Wins – So Far*, *Wash. Post*, Sept. 15, 2002 at B1 (arguing that “it’s worth engaging in a cautious celebration of the resilience of our constitutional checks and balances.”).

<sup>5</sup> See USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (providing, among other things, for indefinite detention of certain non-citizens and expanded ability of government to engage in search and surveillance).

<sup>6</sup> See, e.g., Orin Kerr, *Internet Surveillance Law After the USA Patriot Act: The Big Brother That Isn't*, 97 *NW. U. L. Rev.* 607 (2003). This is not a dominant view. In November 2002, on a request from the Department of Justice, the United States Foreign Intelligence Surveillance Court of Review upheld the expanded ability of the Department of Justice to work with foreign intelligence officials in initiating and developing searches under the Foreign Intelligence Surveillance Act. See *In re: Sealed Case 02-001*, (decided Nov. 18, 2001), *available at* <http://www.cadc.uscourts.gov/common/newsroom/02-001.pdf>. In the aftermath of this decision, as well as publicity about the Total Information Awareness program at the Department of Defense, commentators from the left and right have rushed to express concern about expanding governmental power. See, e.g., William Safire, *You are a Suspect*, *N.Y. Times*, Nov. 14, 2002, at A35; Shira Kantor, *Pentagon Database Project Raises Alarm*; *Iran-Contra Figure Leads Look into U.S. Citizens' Lives*, *Chi. Trib.*, Nov. 23, 2002, at 1 (citing concerns of both American Civil Liberties Union and conservative Senator Charles Grassley).

One reason for the relatively restrained legal response to terrorism may be lack of public pressure. Americans have not settled on a single domestic culprit in the attacks.<sup>7</sup> Although initially, many citizens blamed Arabs and Muslims as a group,<sup>8</sup> government leaders and media commentators swiftly refuted such a simplified explanation.<sup>9</sup> For example, they argued that the public should blame only a radical, illegitimate subset of Islam.<sup>10</sup> Over time, commentators and the public directed their anger at a host of culprits, ranging from government regulators to homosexuals and abortionists.<sup>11</sup> As September 11th recedes into history, and domestic terrorism does not recur, public support for legal policies targeting Muslims dissipates. Despite initial concerns that the public might call for policies similar to Japanese internment during World War II, such fears now seem overstated.<sup>12</sup>

Or are they? This article suggests that the emerging rhetoric tying terrorism to pedophilia is significant precisely because it sets the groundwork for more oppressive detention of Muslims at some future date. What might happen if another attack occurs, this time involving Muslim American citizens?<sup>13</sup> At first blush, it seems unlikely that

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<sup>7</sup> Plainly, the President and the American people lay significant blame on Osama Bin-Laden, members of Al Qaeda and, to some extent, the Taliban regime. This article, however, focuses on the way blame is distributed to people within the United States.

<sup>8</sup> Muslims suffered vigilante attacks in the aftermath of September 11. See, e.g., Jerry Hicks, *Fire Guts Part of Pakistani Eatery*, L.A. Times, Sept. 28, 2001, at part 2, B8. Airline staff were particularly concerned about people they thought were of Middle-Eastern descent and sometimes sought to have them excluded from flights. See, e.g., Blaine Harden & Somini Sengupta, *Some Passengers Singled Out For Exclusion by Flight Crew*, N.Y. Times, Sept. 22, 2001, at B8.

<sup>9</sup> See, e.g., Carter Dougherty, *Bush Says Most Arabs, Muslims Are Patriots, Cautions Against a Backlash*, Wash. Times, Sept. 14, 2001, at A13.

<sup>10</sup> See, e.g., Carlyle Murphy, *Bin Laden's Radical Form of Islam; Most Muslims' Interpretations of the Koran Don't Condone Terrorist Violence*, Wash. Post, Sept. 18, 2001, at A23.

<sup>11</sup> See *infra*.

<sup>12</sup> See e.g. Jeffrey Rosen, *Liberty Wins - So Far*, Wash. Post, Sept. 15, 2002 at B1 (suggesting that although libertarians predicted excesses like internment of Japanese, during aftermath of attack, "nothing quite so dramatic has materialized"); Representative Robert Matsui, *America's New War: Reacting to a National Crisis*, CNN Capital Gang (CNN telecast, Sept. 15, 2001) (quoting former Nissei internee, and Congressman saying "I don't think there is any question that we would never see an internment camp situation again. I think there are too many good Americans who have the history of what happened and would never let that happen.").

<sup>13</sup> In no way do I intend to suggest that Muslims, as a group, are terrorists, or that Islamic doctrine supports terrorism. In fact, the world is filled with terrorists of every stripe. Rather, I focus here on the implications of a future attack orchestrated by Muslims in part because some radical Muslims have suggested that they plan future terrorism against America and in part because the rhetoric surfacing linking Islam,

Americans would fully endorse any remedy as draconian as widespread detention of Muslims on religious grounds alone. To support such a move, Americans would be forced to renounce core civil rights values.<sup>14</sup> Yet the developing rhetorical links between Islam, terrorism, and pedophilia may help those who promote such policies in the future.

Public responses to devastating crimes, accidents, and other phenomena are shaped by rhetoric. As Jack Goldsmith and Adrian Vermeule note, language has “the socially productive power...to reorient perceptions.”<sup>15</sup> Society’s conception of the nature and cause of, and proper response to, an incident depends on how it is framed. This article argues that after September 11th, Americans were offered a variety of explanations for the carnage and did not settle on a single dominant theory. Rather, citizens (and commentators) assigned responsibility to a variety of parties and policies, from Muslims and religious zealots, to failed foreign policy and inadequate regulation. As a consequence, the nation’s response to the incident was diffuse, ranging from tougher criminal laws to enhanced security at nuclear power plants. After future terrorism, the public may yet again search for suitable culprits. To the extent that commentators successfully demonize Muslims as a group, invoking the link between Islam and pedophilia, they may convince citizens to assign all blame to people of the Muslim faith.

These links do more than simply implicate Muslims as morally culpable, and thus direct public concern in the direction of moral panic. They implicitly suggest a solution to the terrorism crisis. Current legal responses to pedophilia include offender registration and community notification. In addition, many states are now adopting laws authorizing pre-emptive detention of sexually dangerous individuals.<sup>16</sup> If the public continues to view terrorism as a “Muslim problem” and also comes to equate Islam, terrorism, and pedophilia, we can anticipate a call for the application of these anti-pedophilia policies to Muslims. Taking the metaphor to its logical conclusion, advocates might equate preventive

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terrorism, and pedophilia could have particular resonance if Muslim terrorists again attack America.

<sup>14</sup> See Lawrence Friedman, *American Law* 263-67 (1984) (discussing development of community consensus against racial classifications since *Brown v. Board of Education*).

<sup>15</sup> See Jack Goldsmith & Adrian Vermeule, *Empirical Methodology and Legal Scholarship*, 69 *U. Chi. L. Rev.* 153, 157 (2002).

<sup>16</sup> The Supreme Court has approved such provisions. See *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

detention of Muslims with preventive detention of pedophiles. Yet such mass imprisonment would look eerily similar to the Japanese internment during World War II. It is worth noting that the current cultural response to terrorism – from limited incursions on civil liberties, to public displays of support for targeted minorities, to rhetorical attacks on these minorities – bears a great resemblance to the years and months preceding Japanese internment. A review of history suggests society ought not dismiss Reverend Vines as a crank. For those of us concerned about civil liberties in an era of terrorism, his speech serves notice of lurking dangers.

Part I explores the surprising prevalence of rhetorical links between terrorism and pedophilia. The Vines speech is only one instance of an individual using language in ways that naturalize the connection between Islam, terrorism, and pedophilia. This section provides several examples of rhetoric that, both explicitly and implicitly, equates and relates the aforementioned connection.

Then, in order to show how this rhetoric might affect legal policy, Part II explores how social panic develops in the aftermath of serious crimes and catastrophes by focusing on two models of social panic: moral panic and risk society panic. During moral panics, the public comes to see highly publicized crimes as examples of a greater social crisis. Moral entrepreneurs, using strategic rhetoric, then seek to convince people that a particular individual or group, a “folk-devil,” is to blame for the problem. During risk society panics, which often follow technological or industrial disasters, public blame is more diffuse, and may be directed at powerful institutions such as government and industry. This section applies these models to the aftermath of September 11th, concluding that public reaction exhibited traits of both sorts of panic. While government detention and surveillance policies focused disproportionately on Muslims, civil liberties in the United States remained largely intact. At the same time, commentators and the public continue to spread blame for the attacks across a variety of groups. As a result of this ambiguous response, it is not possible to fully predict public response to another serious attack.

Part III argues that the rhetoric creating links between Islam, terrorism, and pedophilia has the potential to shape public anxiety in ways more conducive to moral panic. In order for claims makers to successfully demonize a particular community, the public must be primed to view that group as morally suspect. Americans will endorse

widespread Muslim detention only if it fits within an existing conception of Muslim culpability. Part III then provides historical precedent for exactly this process. It tracks rhetorical claims about the Japanese in years preceding World War II, suggesting that civil libertarians must take the possibility of Muslim internment seriously. Finally, this section offers some suggestions for lawyers and advocates who might attempt to fight such a mass confinement.

#### I. THE LINKS BETWEEN ISLAM, TERRORISM AND PEDOPHILIA

In the aftermath of September 11th, commentators have repeatedly drawn connections between the Islamic faith and terrorism. Yet a new sort of rhetoric has surfaced, creating less familiar links between Muslims, terrorism, and pedophilia. These are not necessarily intuitive connections. Why would Islam produce more pedophiles than Christianity, Judaism, or other religions practiced in America? And how can terrorism, a political action designed to produce long-term, society-wide repercussions, really be compared to pedophilia, a personal crime perpetrated on a single individual? Notwithstanding their tenuousness, these rhetorical links now appear with some frequency in the media. This section outlines several examples of rhetoric binding Islam and terrorism to pedophilia.

When Reverend Vines spoke out against Islam at the Pastor's Conference preceding the June 2002 Southern Baptist Convention meeting, he surely anticipated press attention. The annual meeting of the Southern Baptist Convention is often the source of high profile news. While the Convention claims only about 16 million members, it is the nation's largest Protestant denomination, and its membership includes many powerful political elites.<sup>17</sup> As one commentator noted, the Southern Baptist church has moved from its southern roots to become a national force.<sup>18</sup> When speakers at the annual gathering stake out a controversial position, as they are wont to do, the national media pays attention. For example, in 1998, the Convention amended the Baptist Faith and Message, a core religious document, to state that a woman should "submit herself graciously" to the leadership of her husband.<sup>19</sup> Perhaps because this view seemed so out of step with modern

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<sup>17</sup> In 1998, for instance, four of the most powerful people in Washington – President Bill Clinton, Vice-President Al Gore, House Speaker Newt Gingrich, and Senate Majority Leader Trent Lott - all identified as Southern Baptists.

<sup>18</sup> Peter Applebome, *Good Morning America*, May 10, 1999 (ABC telecast).

<sup>19</sup> See Niebuhr, *supra* note 3, at A1.

conceptions of marriage,<sup>20</sup> the story earned front-page coverage from several major newspapers, including the New York Times,<sup>21</sup> Los Angeles Times,<sup>22</sup> and Chicago Tribune.<sup>23</sup>

Vines' speech in June 2002 was designed to rally the troops – in this case, the nation's Southern Baptist clergy. Vines delivered a jeremiad, calling for pastors to eschew liberal, humanistic Christianity, and to instead insist on tough, fundamentalist theology. He inveighed against the very notion of Biblical interpretation, religious relativism (which he defined as the view that all religions are equally good), and all manner of “feel good” theology. Speaking in the powerful cadence of an experienced pulpit preacher, he railed against churches that had discarded core Christian principles, caving in to the soft-bellied desires of their membership. He argued:

Humanism would have you believe that the whole purpose of your ministry is to make people happy. . . . and so we have all these feel good churches now. I call it Church Lite. It is the church of the 7 ½% tithe, the church of the 45 minute service and the 15 minute sermon, the church of the 800 year millennium, the church of the 8 commandments and you get to pick ‘em. It's Church Lite. All you ever wanted in a church and less. That's those feel good churches for you.<sup>24</sup>

For all its wit and bluster, the press ignored most of Vines speech. Only one brief detour, less than one minute of his thirty-minute presentation, captured the media's imagination. As reported in the press, Vines' speech consisted of the following rhetoric:

Some would have us believe that Islam is just as good as Christianity. . . . Christianity was founded by the virgin-

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<sup>20</sup> The New York Times offered a very different conception of modern marriage recently when it expanded its wedding announcement page to include gay and lesbian commitment ceremonies. See *Times Will Begin Reporting Gay Couples' Ceremonies*, N.Y. Times, Aug. 18, 2002, at 30.

<sup>21</sup> See *supra* note 3, at A1.

<sup>22</sup> See Larry B. Stammer, *A Wife's Role is 'To Submit' Baptists Declare*, L.A. Times, June 10, 1998, at A1.

<sup>23</sup> See Steve Kloehn, *Southern Baptists Approve Submissive Wives Doctrine*, Chi. Trib., June 10, 1998, at 1.

<sup>24</sup> Remarkably, I have been completely unable to obtain a written transcription of this speech. Fortunately, if inconveniently, it is available on video over the Internet. See Reverend Jerry Vines, *Message to the Pastor's Conference*, June 10, 2002, at [http://video02.sbcannualmeeting.org/pc\\_final.htm](http://video02.sbcannualmeeting.org/pc_final.htm).

born son of God, Jesus Christ. Islam was founded by Muhammad, a demon-possessed pedophile who had 12 wives, the last one of which was a nine-year old girl. . . . Allah is not Jehovah either. Jehovah's not going to turn you into a terrorist that'll try to bomb people and take the lives of thousands and thousands of people.<sup>25</sup>

Though Vines might not have chosen this message as a fair reflection of his core theme, it was the only one received by the millions of Americans reading press accounts of the speech.

Vines used a swift three-step maneuver to equate Islam, terrorism and pedophilia: 1) Christians must accept the primacy of Christianity; 2) the guiding figure of Islam was an immoral pedophile; and 3) the God of Islam created terrorists who kill innocent people. Parsing the rhetoric of this (admittedly abbreviated) speech, Vines attacked the whole of Islam by pounding its most salient representatives: Mohammed and Allah. He claimed that Islam was inferior to Christianity because Islam is an immoral religion. To the extent Islam is understood as an extension of the prophet Mohammed, it is no more than a pedophile's faith. This faith, argued Vines, serves a God who calls for killing innocent people.

The speech, as embodied in these quotes, earned widespread coverage. Much like the Convention's 1998 marriage announcement, Vines' remarks were reported in papers ranging from the New York Times<sup>26</sup> and Chicago Tribune,<sup>27</sup> to the Houston Chronicle<sup>28</sup> and Los Angeles Times.<sup>29</sup> CNN made the comments the theme of an episode of Crossfire.<sup>30</sup> The press reported that Vines was not alone in this view of Mohammed; other church leaders, including Jerry Falwell and incoming Southern Baptist Convention president Jack Graham, echoed Vines' claims about the prophet's sexual transgressions.<sup>31</sup> The topic received

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<sup>25</sup> See John Dart, SBC Leaders Rap Islam, Gays, *The Christian Century*, June 19, 2002, at 12.

<sup>26</sup> See Sachs, *supra* note 1, at A10.

<sup>27</sup> See Southern Baptist's Talk Riles Muslims, *supra* note 1, at 12.

<sup>28</sup> See Richard Vara, Texas Secession Rumor, Attacks on Islam Mark Baptist Meeting, *Houston Chron.*, June 11, 2002, at A6.

<sup>29</sup> See Baptists Acknowledge Sexual Abuses, *supra* note 1, at A32.

<sup>30</sup> See Crossfire (CNN television broadcast, June 12, 2002) transcript *available at* <http://www.cnn.com/TRANSCRIPTS/0206/12/cf.00.html>.

<sup>31</sup> See, e.g., Scott Galupo, Hellbent, *Nat'l Rev. Online*, June 17, 2002, *at* <http://www.nationalreview.com/comment/comment-galupo061702.asp> (noting that Falwell backed away from claim that Mohammed was demon-possessed, even as he confirmed that prophet was pedophile); Delgado, *supra* note 1, at A31 (quoting Graham

additional airplay when President Bush, who spoke to the convention after Vines' speech, failed to personally disavow the comments.<sup>32</sup>

Vines' articulation of the connection between Islam, terrorism, and pedophilia gained particular notoriety, but it was not unique. Jamie Glazov, a columnist for Frontpage Magazine.com, offered a pseudo-psychological explanation for the link.<sup>33</sup> He argued that Islamic culture encourages both terrorism and sexual molestation of boys.<sup>34</sup> He contended that because Islam represses adult sexuality, Muslims often turn their sexual energy on boys, resulting in widespread sexual abuse.<sup>35</sup> As a consequence of this mistreatment, these boys come to dehumanize others.<sup>36</sup> As they grow into men, they become sociopaths, themselves abusing children and engaging in brutal terrorism.<sup>37</sup>

Others who pressed the connection between Islam, terrorism, and pedophilia were more ham-handed. For example, I recently received email spam referring me to a site entitled "Islam Exposed."<sup>38</sup> There I was referred to an article entitled "Islam: Sex with Babies and Animals is OK!"<sup>39</sup> The author allegedly quotes Iran's Ayatollah Khomeini supporting both pedophilia and bestiality:

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as saying Vines' remarks were "strong but accurate."). Vines' and Falwell's claims relied upon material in Ethan and Ergun Caner's *Unveiling Islam: An Insiders Look at Muslim Life and Beliefs*. The Caners, former Muslims who have now converted to Christianity, argue that Islam is generally an oppressive faith. Directly confronting the idea that Mohammed's sexual relations might have been considered appropriate at the time, they argue that across cultures and time, nine year olds have been seen as too young for sexual relations.

<sup>32</sup> Ari Fleischer, the President's spokesman, when asked about Vines' comments, stated that "it's something the president definitely disagrees with. The president said that Islam is a religion of peace." See Editorial, *Back to the Bully Pulpit*, Wash. Post, June 23, 2002, at B6 (quoting President and criticizing him for not making these comments personally); Editorial, *Before Calling Islam 'Intolerant', Christians Must Consider the Beam in Their Own Eyes*, Pitt. Post-Gazette, July 24, 2002, at A11 (criticizing President for supporting religious bigotry by speaking to Southern Baptist Convention the day after Vines' speech).

<sup>33</sup> See Jamie Glazov, *The Sexual Rage Behind Islamic Terror*, FrontPage Magazine.com, Oct. 4, 2001, at <http://www.frontpagemag.com/articles/readarticle.asp?id=246>.

<sup>34</sup> See id.

<sup>35</sup> See id.

<sup>36</sup> See id.

<sup>37</sup> See id.

<sup>38</sup> See <http://www.islamexposed.com> (last visited Oct. 3, 2002). The e-mail message is on file with the author.

<sup>39</sup> See *Islam: Sex With Babies & Animals is OK!*, at <http://www.islamexposed.com/essays/sexwithbabies.htm> (last visited Oct. 4, 2002).

I will let the above speak for itself . . . .If Islam is peace. . .then I choose chaos because Islamic peace is not my ideal and vision of peace. [The author ends this attack by predicting that Islam will attack America and kill] ‘thousands or millions.’<sup>40</sup>

The religion of pedophilia is, according to this commentator, the religion of brutal murder.

The website [sexualpredators.com](http://sexualpredators.com) built a slightly more oblique, but nonetheless compelling, connection between the three concepts.<sup>41</sup> The site, which bills itself as the “Sexual Predators & Sex Offenders National Registry,” is principally a portal to the various online state sexual offender registries.<sup>42</sup> Visitors presumably come for information about pedophiles and other sexual criminals.<sup>43</sup> Yet people concerned about these offenders discovered that, according to this site at least, the concept of “sexual predators” subsumes Islamic terrorists as well. Until very recently, the homepage featured photographs of the FBI’s 22 most wanted terrorists. Each photo was subtitled with the suspect’s Arabic-sounding name.<sup>44</sup> This message linking sexual predators with Middle Eastern terrorists could not have gone unnoticed; the site normally

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<sup>40</sup> Citing “Khomeini’s book, ‘Tahrirolvasyleh,’” he quotes Khomeini saying things such as “a man can have sexual pleasure from a child as young as a baby” and “a man can have sex with animals such as sheep’s (sic), cows, camels and so on. However he should kill the animal after he has his orgasm.” See *id.* I make no claim as to the accuracy of these quotes, or the validity of the site’s claims. Rather, it is further evidence of rhetorical moves that appear to naturalize links between Islam, pedophilia, and terror.

<sup>41</sup> See *Sexual Predators & Sex Offenders National Registry*, at <http://www.sexualpredators.com> (last visited June 24, 2002).

<sup>42</sup> See *id.* Many states distribute extensive sexual offender data online. The Alabama sexual offenders website, for instance, allows surfers to search for offenders in the community by either zip code or county. The state provides a photo of the offender, biographical information, and a listing of the offense that resulted in notification. *Sexualpredators.com* organizes links to many states in one convenient place.

<sup>43</sup> While the official title of the site seems to include all sexual offenders, it appears that the site is principally concerned with pedophiles. On October 11, 2002, the *sexualpredators.com* homepage featured photos of 14 people wanted for sexual offenses. Thirteen of these individuals were wanted on child sexual charges. See *Sexual Predators*, *supra* note 40.

<sup>44</sup> See *Sexual Predators*, *supra* note 40. After featuring these photos for several months, the site moved them off the home page at the end of summer 2002.

welcomes approximately 30,000 visitors daily, logging close to 100,000 daily hits during the height of the 2002 child abduction scare.<sup>45</sup>

Other links between terrorism and pedophilia developed via textual proximity.<sup>46</sup> For example, in a CNN.com article about anonymous e-mail, the author trotted out the line: “most anonymous e-mail proprietors admit their products can be tools for terrorists, pedophiles, and scammers.”<sup>47</sup> The New York Times Magazine featured a profile of novelist Chuck Palahniuk whose fictional narrator can kill people by reciting the words to a song. Asked if he believes such audio plagues really exist, Palahniuk says yes, noting: “[N]obody imagined that the Internet was going to connect all the terrorists and all the pedophiles.”<sup>48</sup>

At least one product – new facial recognition technology – has been suggested as a particularly useful weapon against terrorists and pedophiles. Imagis Technologies issued a press release on March 13th announcing its expansion to the Asian Pacific Region, boldly stating that the technology would “help identify terrorists, drug traffickers and pedophiles.”<sup>49</sup> John Woodward, a senior policy analyst with the Rand Corporation, confirmed this link, arguing that facial recognition technology would help the fight against terrorists and child molesters.<sup>50</sup>

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<sup>45</sup> See telephone interview with Sammy Riotti, webmaster, [www.sexualpredators.com](http://www.sexualpredators.com) (August 2002.)

<sup>46</sup> Some rhetoric ties terrorism to pedophilia, but makes no reference to Islam or Muslims. I include it because it reconfirms the comments of people like Reverend Vines.

<sup>47</sup> See Tom Spring, Will Anonymous E-Mail Become a Casualty of War?, CNN.com, Feb. 13, 2002, available at <http://www.cnn.com/2002/TECH/internet/02/13/anonymousemail.idg> (last visited Aug. 4, 2002).

<sup>48</sup> See Questions for Chuck Palahniuk, The Pugilist Novelist, N.Y. Times Magazine, Sept. 29, 2002, at 21. See also Jan Glidewell, Giving Away Your Privacy is Not Such a Great Idea, St. Petersburg Times June 2, 2002, at 1. (arguing against allowing too much governmental intrusion into person privacy, he admits that “yes, terrorism and pedophilia are bad things.”)

<sup>49</sup> See Press Release, Imagis Expands to Asia Pacific, March 13, 2002, found at [http://www.imagistechnologies.com/File/NewsFile/240/Microsoft\\_Word\\_news\\_mar\\_13\\_0.pdf](http://www.imagistechnologies.com/File/NewsFile/240/Microsoft_Word_news_mar_13_0.pdf) (last visited August 4, 2002). This information was circulated worldwide via the PR Newswire, which is available in the Nexis database.

<sup>50</sup> See John D. Woodward, Jr., And Now, The Good Side of Facial Profiling, Wash. Post, Feb. 4, 2001, at B4. These links through textual proximity are not entirely new. For example, in March 2001, the Portland Oregonian featured an article with the lead sentence: “What do Saudi terrorist Osama Bin Laden and pedophiles have in common?” See John Snell, Digital Software Makes Web More Useful for Criminals, The Oregonian, March 20, 2001, at A7. The answer, it turns out, is that both made good use of the Internet.

One of the more curious connections between terrorists and pedophiles surfaced on Court TV's "The Smoking Gun" website.<sup>51</sup> After conservative commentator Rush Limbaugh announced that five of the terrorism suspects arrested on September 13th in Buffalo, New York were registered Democrats, The Smoking Gun responded by showing that David Westerfield, recently convicted of kidnapping and murdering seven-year-old Danielle van Dam, was a registered Republican.<sup>52</sup> In the tit for tat world of sleazy political claims, it now appears that terrorism has met its mate – and he is a pedophile.

Commentators have also tied terrorists to pedophilia by referring to them as "predators." In the last decade, "predator" – once used primarily to describe animals that survive by habitually preying on other animals – has become synonymous with pedophiles and sex offenders.<sup>53</sup> The metaphor "sexual predator" has become so natural that legislation unself-consciously incorporates the term.<sup>54</sup> Indeed, it is used so frequently in the sexual context that this meaning threatens to obscure its original definition.<sup>55</sup> In the past year, however, several commentators have appropriated this term to describe terrorists. In a recent interview, for example, Mark Ginsburg, a former United States ambassador, discussed a meeting of several organizations including Hamas and Islamic Jihad. He stated that "for the first time those terrorist organizations. . .held a Predator's Ball affair in Beirut."<sup>56</sup> Similarly, in an opinion piece in the

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<sup>51</sup> See <http://www.thesmokinggun.com>.

<sup>52</sup> See <http://www.thesmokinggun.com/archive/limbaugh1.html> (last visited Oct. 4, 2002.). Not only did this link appear on The Smoking Gun, but it was promptly referenced in Joe Conason's *Journal on Salon*. See Joe Conason's *Journal*, at [www.salon.com/politics/conason/2002/09/19/bush.index.html](http://www.salon.com/politics/conason/2002/09/19/bush.index.html).

<sup>53</sup> See Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* 193 (1998). See, e.g., Daniel M. Filler, *Making the Case for Megan's Law: A Study in Legislative Rhetoric*, 76 *Ind. L.J.* 315, 338-39 (2001). Use of the term predator to refer to certain sexual offenders actually dates back at least to the 1920's, when J. Edgar Hoover used the term in this way.

<sup>54</sup> See, e.g., *The Protection of Children from Sexual Predators Act of 1998*, Pub. L. No. 105-314 (1998); *Sexually Violent Predators Act*, S. 2363, 103<sup>rd</sup> Cong. (1994).

<sup>55</sup> Philip Jenkins provides a newspaper cite count for the term "sexual predator" showing that it was used zero times in 1985 and 1986, "a handful" of times from 1987-89, about 140 times each year from 1990-92, 321 times in 1993, 865 times in 1994, and 924 times in 1995. See Jenkins, *supra* note 52, at 194.

<sup>56</sup> CNN Live (CNN broadcast, May 26, 2001). The term 'predators' ball' was previously used to describe the Drexel Burnham Lambert investment house's High Yield Bond Conference, where high risk companies would attempt to sell their junk bonds to money managers. See Connie Bruck, *The Predators' Ball: The Inside Story of Drexel Burnham and the Rise of the Junk Bond Raiders* (1988) at 10-11. Notwithstanding this

USA Today, Hoover Institution scholar Peter Schweizer called for investors to boycott companies investing in countries that sponsor terrorism. "One of the first steps we should take in draining the swamp of terrorism is to identify and incapacitate those who would underwrite and provide safe haven for such predators."<sup>57</sup> Media commentators are not alone in making this leap; regular citizens now appropriate the term to describe terrorists.<sup>58</sup>

The link has surfaced in the opposite direction as well. This summer, for instance, President Bush referred to those charged with child sexual abductions as "terrorists."<sup>59</sup> Don Addis, a political cartoonist for the St. Petersburg Times, made the connection even more explicit. In a cartoon that neatly shows the crumbling integrity of the very concept of terrorism, he sketched a two-frame image of three men. In the first frame, they are all seated as a hidden narrator intones, "Will the Real Terrorist Please Stand Up." In the next frame, the three men, respectively marked "pedophile," "Al-Qaida," and "Corporate Boss" all rise. This cartoon takes advantage of the public's awareness of this disputed metaphor while confirming one more time that it somehow makes sense.

Even those who publicly attacked the impropriety of the links between terrorism, Islam, and pedophilia ultimately helped naturalize them. In the aftermath of the Southern Baptist convention, commentators and other interested citizens expressed outrage about Vines' association of Islam and pedophilia.<sup>60</sup> Vines ultimately "softened

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historical use, the average listener may still have been reminded of the sexual implications of the term.

<sup>57</sup> See Peter Schweizer, *American Investors May Indirectly Fund Terrorism*, USA Today, June 26, 2002, at 13A.

<sup>58</sup> For example, Michael Raab, a Bethlehem, Pennsylvania physician penned an opinion column in a local newspaper stating that terrorists "have made the choice to become predators." See Michael Raab, *A Terrorist is Best Defined by Hate*, Allentown Morning Call, Nov. 18, 2001, at A20.

<sup>59</sup> See Michelle Goldberg, *Summer Kidnapping Panic*, Salon.com, Aug. 7, 2002, at <http://archive.salon.com/news/feature/2002/08/07/kidnapping/index.html>.

<sup>60</sup> See, e.g., Greg Jonsson, *Comments on Islam Displeased Many*, St. Louis Post-Dispatch, June 16, 2002, at B1 (citing criticism by other Baptists); Sachs, *supra* note 1, at A10 (noting criticism of Muslim and Jewish groups); Bill Press, *Southern Baptist Convention Stirs Up Hatred for Muslims*, Charlseton Gazette, June 19, 2002, at 4A (opinion article by political commentator criticizing speech); Alan Cooperman, *Anti-Muslim Remarks Stir Tempest; Leading Evangelicals Back Baptist Preacher*, Wash. Post, June 20, 2002, at A3 (citing Episcopal bishop criticizing speech); *Back to the Bully Pulpit*, Wash. Post, June 23, 2002, at B6 (newspaper editorial criticizing speech).

his tone” – if not his message.<sup>61</sup> Yet the extensive debate and discussion over the link did not defang the metaphor. To the contrary, every attempt to contest Vines’ claims required restatement of his assertions; this in turn served to reinforce and reify the link. As Judith Butler argues, “language that is compelled to repeat what it seeks to constrain invariably reproduces and restages the very speech that it seeks to shut down.”<sup>62</sup> Much as child pornography censorship laws effectively created “a space for the perpetual discussion of children and sex, where children and sex are bound together,”<sup>63</sup> so Vines’ disputed claims about the relationship between terrorism and pedophilia created a new space where the two would be permanently bound together.

At first, terrorism and pedophilia may seem so disparate as to undermine any plausible connection. Yet, as this Part shows, links between terrorism are now surfacing repeatedly. In order to establish the ways in which these ties may affect legal policy, Part II explores the development of public anxiety in the aftermath of highly publicized crimes and catastrophes and the role of rhetoric in shaping that community response.

## II. MODELING SOCIAL PANIC

In the aftermath of an industrial catastrophe or high-profile crime, the public often panics. Citizens worry that the incident is only one instance of a broader crisis.<sup>64</sup> This section describes two models for the development of these social anxieties: moral panics and risk society panics. By analyzing the community response to September 11th through these theoretical lenses, it seeks to clarify how rhetoric linking terrorism and pedophilia might affect public responses to any new attacks.

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Concerned commentators continue to reference Vines’ comments. See, e.g., *The Fight for God*, *The Economist*, Dec. 21, 2002, at 36.

<sup>61</sup> See David DeCamp, *Vines Stands By Remarks, But Softens Tone of Criticism*, *Fla. Times-Union*, June 17, 2002, at A1 (quoting Vines saying that he loves Muslim people).

<sup>62</sup> See Judith Butler, *Excitable Speech: A Politics of the Performative* 129 (1997).

<sup>63</sup> See Amy Adler, *The Perverse Law of Child Pornography*, 101 *Colum. L. Rev.* 209, 267-68 (2001).

<sup>64</sup> See, e.g., Joel Best, *Random Violence: How We Talk About New Crimes and New Victims* (hereinafter “Best, *Random Violence*”) 28-29 (1999).

### A. Moral Panic

One form of sweeping social anxiety is frequently termed “moral panic.” The core attribute of a moral panic is the public’s identification and demonization of a particular person or group as a “folk-devil,” a morally flawed character that is the source of the crisis. Stanley Cohen, in his classic work *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*,<sup>65</sup> defined the phenomenon to include situations where:

[a] condition, episode, person, or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians, and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible.<sup>66</sup>

Since Cohen’s original formulation, scholars have fleshed out the concept, describing common attributes as: the existence of a triggering event,<sup>67</sup> heightened community concern over a particular group’s behavior,<sup>68</sup> hostility towards this group because its behavior is seen as a threat to society,<sup>69</sup> widespread agreement that the threat is serious,<sup>70</sup> concern disproportionate to available evidence about the problem,<sup>71</sup>

<sup>65</sup> See generally Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (1972).

<sup>66</sup> *Id.* at 9.

<sup>67</sup> See Jeffrey S. Adler, *The Making of a Moral Panic in 19th-Century America: The Boston Garroting Hysteria of 1865*, 17 *Deviant Behav.* 259 (1996)

<sup>68</sup> See Erich Goode & Nachman Ben-Yehuda, *Moral Panics: Culture, Politics, and Social Construction*, 20 *Ann. Rev. Sociol.* 149, 156-57 (1994).

<sup>69</sup> *Id.* at 157.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 158. Any claim that levels of public concern are excessive, as a factual matter is inherently suspect. Factual support is hardly an objective construct, depending on the particular “facts” one believes give rise to a crisis as well as the accuracy of these “facts.” Nonetheless, scholars such as Goode and Ben Yehuda offer several approaches to establishing disproportionality, including gross exaggeration of existing data, complete non-existence of the claimed threat, disproportionate concern over one problem compared to another when there is no evidence of a corresponding disparity in seriousness, and disproportionate concern about a problem at one point in time compared to another point in time when no evidence is adduced suggesting that the seriousness of the problem has changed.

volatility resulting in relatively swift disappearance and, sometimes, reappearance of concern,<sup>72</sup> and a legacy often in the form of new laws.<sup>73</sup>

Moral panic scholars have often suggested that social anxiety is triggered, in substantial part, by the strategic rhetoric of either interest groups or political elites.<sup>74</sup> These opinion makers, sometimes termed “moral entrepreneurs,” help direct public anger and anxiety towards marginal individuals or groups.<sup>75</sup> Three rhetorical moves are particularly effective in helping to generate these panics. First, in order to solidify hostility towards the offenders, claims-makers use melodramatic language that demonizes them, creating a stark contrast between the “evil” deviants and the “good” society.<sup>76</sup> This rhetoric also serves to glorify society, creating pride in its fundamental goodness.<sup>77</sup> Second, in order to heighten concern and promote consensus, they emphasize the randomness of the underlying incident, suggesting that anyone, anywhere might become the next victim.<sup>78</sup> Third, in order to sustain public outrage and, more pragmatically, to maintain their central role in public debates, claims-makers engage in domain expansion, identifying incidents substantially different than the triggering event as further examples of the underlying crisis.<sup>79</sup>

Concern over child abuse and pedophilia has been a frequent site of moral panic. The swift, nationwide adoption of Megan’s Laws – sexual offender community notification provisions – is the result of one such panic. In 1994, seven-year-old Megan Kanka was abducted and murdered by a neighbor, Jesse Timmendequas.<sup>80</sup> Timmendequas was a

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<sup>72</sup> *Id.*

<sup>73</sup> See Katherine Auerhahn, *The Split Labor Market and the Origins of Antidrug Legislation in the United States*, 24 *Law & Soc. Inquiry* 411, 414 (1999); Erich Goode & Nachman Ben Yehuda, *Moral Panics: The Social Construction of Deviance* 31 (1994).

<sup>74</sup> See Sheldon Ungar, *Moral Panic Versus the Risk Society: The Implications of the Changing Sites of Social Anxiety*, 52 *Brit. J. Sociol.* 271, 276-77 (2001); Best, *Random Violence*, *supra* note 52, at 22-44.

<sup>75</sup> See, Unger, *supra* note 74, at 284. (noting that moral entrepreneurs “exercise social control by amplifying deviance and orchestrating social reactions so that the panic becomes a consensus generating envoy for the dominant ideology.”).

<sup>76</sup> See James E. Hawdon, *The Role of Presidential Rhetoric in the Creation of a Moral Panic: Reagan, Bush and the War on Drugs*, 22 *Deviant Behav.* 419, 426-27 (2001).

<sup>77</sup> See *id.* at 427.

<sup>78</sup> See Best, *Random Violence*, *supra* note 63, at 1-7.

<sup>79</sup> See Joel Best, *Threatened Children* 80-81 (1990).

<sup>80</sup> See John J. Goldman, *Sex Offender Guilty of Killing Megan Kanka*, *L.A. Times*, May 31, 1997, at A1.

twice-convicted child sexual offender.<sup>81</sup> The media focused intense attention on the story, and activists soon argued that stranger child sexual abduction was a national crisis. The number of stranger child abductions was relatively low,<sup>82</sup> so claims-makers expanded the category of offenders in various ways to enhance their statistical claims. In the Congressional debates over federal sexual offender legislation, one legislator argued that 65,000 state prisoners admitted to “victimizing” a child<sup>83</sup> while another argued that in 1995, 50,000 children suffered abuse or neglect.<sup>84</sup> No matter that these numbers shed little light on the extent of the sort of stranger child abduction and sexual abuse typified by the Kanka killing. Legislators insisted that crimes, such as the abduction and killing of Megan Kanka, were not only common; they were random and could happen anywhere.<sup>85</sup> Who committed these offenses? Whatever the scientific debate about the efficacy of sexual offender treatment programs, people who committed these crimes were “a very special rank of evil, far, far beyond the human territory that is bounded by terms like ‘rehabilitation’ and ‘law-abiding,’ or even normal punishment.”<sup>86</sup> Even the language used to describe sexual offenders – terms such as “monsters,” “toxic waste,” and the now ubiquitous animal metaphor, “sexual predators” – reinforced the claim that such individuals were an evil, brutal “other.”<sup>87</sup>

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<sup>81</sup> See Thomas Zambito, *New Hearings Will Determine if Wyckoff Rapist Can Be Freed*, *Bergen Record* (N.J.), Aug. 4, 1994, at A3.

<sup>82</sup> A 1990 study commissioned by the United States Office of Juvenile Justice and Delinquency Prevention concluded that in 1988 there were between 200 and 300 “stereotypical kidnapping” cases involving stranger abductions where a child was taken a large distance, kept overnight, ransomed, or murdered. See David Finklehor et al., *Missing, Abducted, Runaway, and Thrownaway Children in America: First Report: Numbers and Characteristics National Incidence Studies 66-67* (1990).

<sup>83</sup> See 142 Cong. Rec. 18,765-66 (1996) (statement of Sen. Hutchison).

<sup>84</sup> See 142 Cong. Rec. 10,313 (1996) (statement of Rep. Jackson-Lee).

<sup>85</sup> For example, New York State Assemblyman Robin Schimminger argued that “what tragically happened to little Megan Kanka in New Jersey this summer. . . can happen anytime, anywhere.” Robin Schimminger, *Law Would Publicize Sex Predators*, *Buffalo News*, Sept. 16, 1994, at 2.

<sup>86</sup> Midge Decter, *Megan’s Law and the ‘New York Times’*, *Commentary*, Oct. 1994, at 61.

<sup>87</sup> For a discussion of the dehumanizing language used in the Megan’s Law legislative debates, see Filler, *Making the Case*, supra note 52, at 338-40. A wide array of scholarship indicates the important role of metaphors in political discourse. See Jeffrey S. Mio, *Metaphor and Politics*, 12 *Metaphor & Symbol* 113, 117-26 (1997). Otto Santa Ana provides a brief description of how metaphors actually work in this context. See Otto Santa Ana, *‘Like an Animal I Was Treated’: Anti-Immigrant Metaphor in U.S. Public Discourse*, 10 *Discourse & Society* 191, 194-96 (1999).

The moral panic following Kanka's murder had powerful consequences. In the four years following her death, 41 states adopted new sexual offender registration and community notification laws.<sup>88</sup> By 2000, every state had approved such legislation.<sup>89</sup> These provisions were passed despite minimal evidence of their efficacy, serious concerns regarding their constitutionality, and potentially significant negative side effects.<sup>90</sup> Panic over pedophilia led some states to adopt even more radical laws. In 1994, Kansas adopted the Sexually Violent Predator Act authorizing civil commitment of persons likely to engage in "predatory acts of sexual violence."<sup>91</sup> Although Kansas had a pre-existing civil commitment statute, the legislature specifically wanted to extend indefinite preventive detention to a class of people who did not have a mental disease or defect.<sup>92</sup> This provision was remarkable because it conflicted with the core criminal law assumption that one can only be punished for past conduct. The United States Supreme Court upheld the provision in *Kansas v. Hendricks*, however, concluding among other things that since the incarceration was not punitive, the law was not a criminal statute.<sup>93</sup> By 1998, seventeen states had adopted preventive detention statutes.<sup>94</sup>

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<sup>88</sup> See Scott Matson and Roxanne Lieb, Washington State Institute for Public Policy, *Megan's Law: A Review of State and Federal Legislation*, (Oct. 1997) at 3-4 (noting that only six states adopted notification laws prior to 1994, twenty-one adopted these provisions in 1994 and 1995, and twenty more adopted them in 1996 and 1997).

<sup>89</sup> See Filler, *Making the Case*, *supra* note 52, at 316.

<sup>90</sup> See *id.* at 346-61 (critiquing the limited scope of debate regarding Megan's Law).

<sup>91</sup> See *Kansas v. Hendricks*, 521 U.S. 346, 350 (1997).

<sup>92</sup> *Id.* at 350-51.

<sup>93</sup> See *id.* at 361. In *Kansas v. Crane*, the Supreme Court refined the *Hendricks* decision, requiring states to provide "proof of [a person's] serious difficulty in controlling behavior" prior to such confinement. See 534 U.S. 407, 413 (2002).

<sup>94</sup> See Review of State Sexual Assault Laws, 1998 Codes, *available at* <http://www.ilj.org/sa/rape-law98.htm> (last visited Oct. 7, 2002). The following states have statutes authorizing involuntary commitment of sexually violent offenders: Arizona (Ariz. Rev. Stat. Ann. § 36-3701, 36-3707), California (Cal Welf. & Inst. Code § 6600 (West 1998)), Florida (Fla. Stat. Ann. § 394.910 (West 2002)), Illinois (725 Ill. Comp. Stat. Ann. 207/1, 207/20, 207/40 (West 2002)), Iowa (Iowa Code Ann. § 229A.1 (West 2000)), Kansas (Kansas Stat. Ann. § 59-29a01 (Supp. 2001)), Massachusetts (Mass. Ann. Laws ch. 123A, § 14 (2003)), Minnesota (Minn. Stat. Ann. § 253B.185 (West 1998 & Supp. 2003)), Missouri (Mo. Ann. Stat. § 632.495 (West 2002 & Supp. 2003)), New Jersey (N.J. Stat. Ann. § 30:4-27.25 (West Supp. 2002)), North Dakota (N.D. Cent. Code, § 25-03.3-01 (2002)), South Carolina (S.C. Code Ann. § 44-48-100 (Law Co-op 2002)), Texas (Tex. Health & Safety Code § 841.081 (Vernon Supp. 2003)), Virginia (Va. Code Ann. § 37.1-70.6 (Michie Supp. 2002)), Washington (Wash. Rev. Code. Ann. § 71.09.010 (West 2002)), and Wisconsin (Wis. Stat. Ann. § 980.01 (West 1998)).

As a practical matter, community panic rendered political opposition to these bills exceedingly difficult. In the words of Congressman Watt, one of the few U.S. Representatives opposing the federal Megan's Law,<sup>95</sup> "I know that tomorrow when I get the message off my machine in the office, there will be a line of messages from people saying. . . I have just lost my mind on this bill."<sup>96</sup> Not all the critics were so discreet as to place phone calls; when Judge Denny Chin struck down New York's Megan's Law, a New York newspaper promptly named him "the pervert's pal."<sup>97</sup> Not surprisingly, several states adopted these provisions without a single dissenting vote.<sup>98</sup>

Not every high profile crime gives rise to a moral panic, however. Cass Sunstein and Timur Kuran argue that a panic only occurs when the public is receptive to the arguments offered by moral entrepreneurs.<sup>99</sup> Philip Jenkins contends that the success of any particular claim depends on public consciousness at that particular moment in history.<sup>100</sup> Before the public will support radical legal action against a particular group, it must be primed to see that group as morally culpable. Had Americans viewed sexual offenders as people with disabilities, draconian sanctions would have seemed inappropriate. Because advocates effectively characterized these offenders as predatory animals, however, people came to accept the need and desirability of more brutal punishments. Similarly, social responses to drug use depends on perceptions of the users themselves. Popular rhetoric in the 1930's framed users of cocaine and marijuana as "uncontrollably violent drug fiends."<sup>101</sup> By characterizing individuals in this way, rather than as benign addicts,

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<sup>95</sup> Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. §14071(d)(1994)).

<sup>96</sup> See 142 Cong. Rec. H11,133 (daily ed. Sept. 25, 1996) (statement of Rep. Watt).

<sup>97</sup> See Rogues Gallery of Junk Judges, N.Y. Daily News, Mar. 31, 1996, at 40.

<sup>98</sup> See Filler, Making the Case, *supra* note 52, at 316-17 (noting that Virginia, Illinois and Washington all adopted community notification without dissent).

<sup>99</sup> See Timur Kuran & Cass R. Sunstein, Availability Cascades and Risk Regulation, 51 *Stan. L. Rev.* 683, 713 (1999) (arguing that availability cascades, where individual events cause social crisis, occur only when a sufficient number of people are receptive to it).

<sup>100</sup> See Jenkins, *supra* note 52, at 45, 222-23 (discussing how cycles of moral panic around sexual crimes depend on public consciousness at particular moment). See also Hawdon, *supra* note 75, at 422 (noting that although widespread fear usually precedes panics, fear must be legitimated and given focus).

<sup>101</sup> See Jenkins, *supra* note 52, at 55.

moral entrepreneurs successfully argued for expanded drug laws and expansion of the federal anti-drug bureaucracy.<sup>102</sup>

If crimes sometimes give rise to moral panics, other catastrophes, such as plant explosions and toxic spills, often instigate a different sort of crisis. The next section describes the social anxiety that is endemic to a society built on high-risk industry and technology.

### *B. Risk Society Panics*

Some crimes seem to produce moral panics almost naturally. When a small child is abducted, raped and killed in an affluent suburban community, parents nationwide fear their children are next. Yet not all public panic develops in this way. Catastrophes that result from the risks inherent in modern technology can generate overwhelming and understandable public terror, but these anxieties look somewhat different than moral panics. The danger implicated by these incidents may be both wider, and less perceptible, than those arising from a typical crime. They are an inevitable consequence of what Ulrich Beck calls a 'risk society.'

In his book, *Risk Society: Towards a New Modernity*,<sup>103</sup> Beck argues, "In advanced modernity, the social production of wealth is systematically accompanied by the social production of risks."<sup>104</sup> Where the risk of mass disaster becomes normalized, the "political potential of catastrophes" emerges and "averting and managing [them] can include a reorganization of power and authority."<sup>105</sup> Risk society dangers are more complex and wide-ranging than those implicated even by repeated individual criminal acts. The potential impacts of such dangers are: "1) very complex in terms of causation; 2) unpredictable and latent; 3) not limited by time, space, or social class (i.e., globalized); 4) not detectable by our physical senses; and 5) are the result of human decisions."<sup>106</sup>

A catastrophe involving such dramatic risks may trigger a "risk society panic."<sup>107</sup> Sheldon Ungar argues that moral panic describes society's response to "a small number of the subset of social problems that fall in the domain of deviance. . . . a relatively small pool of mostly

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<sup>102</sup> See *id.*

<sup>103</sup> See Ulrich Beck, *Risk Society: Towards a New Modernity* (1992).

<sup>104</sup> *Id.* at 19.

<sup>105</sup> *Id.* at 24.

<sup>106</sup> See Sheldon Ungar, *supra* note 73, at 273.

<sup>107</sup> *Id.*

familiar threats.”<sup>108</sup> He argues, however, that the model fails to address the “vast number of relatively unfamiliar threats” associated with a risk society.<sup>109</sup> While scholars often describe moral panics as “disproportionate” to the risk, this concept has little meaning in the case of risk society panics. Rather, these panics involve unknowable – but potentially overwhelming – dangers. Ungar contends that risk society panics are different from moral panics in significant ways.

First, in a risk society panic, powerful political and corporate claims-makers are less successful in directing public concern and anxiety. Unlike moral panic, risk society panic does not develop in a top-down fashion.<sup>110</sup> Multiple claims-makers compete to frame the source of the problem and the target of blame may shift repeatedly.<sup>111</sup> Ungar argues that, in the case of the Exxon Valdez oil tanker spill, anger was initially directed against the ship’s captain, then moved to the corporation, and finally to government regulators.<sup>112</sup> Second, whereas a moral panic is focused on one typically marginalized culprit, in a risk society panic the public may turn against powerful entities such as industry and government.<sup>113</sup> In a moral panic, the perpetrator is a distinguishable moral transgressor - a “folk-devil.” In a risk society panic, “the violators are more institutionally-based” and “are as likely to be seen as perplexed, vacillating and inept as evil or malign, especially as beleaguered experts search for immediate answers to complex questions in what amounts to a media fish tank.”<sup>114</sup> Third, as a consequence of the politically dangerous nature of these panics, as well as the fact that the risks themselves are unpredictable, “authorities typically forfeit their commanding role. . . . rather than amplifying the threat, they usually try to dampen it.” Thus, unlike moral panics – in which we see public rhetoric designed to construct a crisis (with a clearly identified culprit), in a risk panic we see public rhetoric designed to minimize the extent of

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<sup>108</sup> Id. at 276.

<sup>109</sup> See id.

<sup>110</sup> See id. at 277.

<sup>111</sup> See id. at 281.

<sup>112</sup> See id.

<sup>113</sup> See id.

<sup>114</sup> See id. at 284. Beck, *supra* note 102, at 37-38. Beck suggests that in a risk society, the significance of class, race, and regional differences may be diminished. He argues that serious catastrophes that involve nuclear fallout or the release of toxins will affect people across such classifications. See id. at 23. This assumption has come under attack. See, e.g., Wendy Chan & George S. Rigakos, *Risk, Crime and Gender*, 42 *Brit. J. Criminology* 743 (2002) (generally arguing that much risk society literature underappreciates the importance of gender.)

the crisis, creating an environment less, rather than more, likely to produce dramatic new laws.

One example of a risk society incident was the 1984 fatal emission of methyl isocyanate gas from a Union Carbide plant in Bhopal, India. Within days of the leak, approximately 3,000 people died of poisoning and thousands more deaths were linked to the incident over the next few years.<sup>115</sup> In the aftermath of the incident, Union Carbide chief executive Warren Anderson visited Bhopal.<sup>116</sup> Upon his visit, he was detained then subsequently released on bail.<sup>117</sup> Vilified by an angry public, Anderson left the country never to return.<sup>118</sup> Union Carbide argued that the incident was the result of sabotage.<sup>119</sup> Others blamed the government for failing to properly distribute settlement funds paid by Union Carbide.<sup>120</sup> Some tribunals have been accused of extracting bribes from claimants while bureaucrats contended that victims were simply attempting to bilk additional compensation.<sup>121</sup> The public also targeted its anger at governmental efforts to rehabilitate the area and provide employment to victims.<sup>122</sup> Over time, this horrific incident produced a host of culpable parties. Anderson remains at large, however, even as the government attempts to reduce charges to a non-extraditable offense.<sup>123</sup> Union Carbide and Anderson share blame with government, tribunals, and even the victims themselves. The problem is that in a technology age disaster, there is no easily identifiable single culprit. Citizens benefit from the employment opportunities produced by the technology, but they also assume serious risk when a factory opens nearby; while no particular disaster can be predicted, technological catastrophe is potentially imminent. Such a diffuse assignment of responsibility contrasts significantly with the remarkably uncomplicated nature of the American child sexual abuse issue, which is seen primarily as a matter of sexual deviance – pedophilia – rather than

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<sup>115</sup> See Amy Waldman, *Bhopal Seethes, Pained and Poor 18 Years Later*, N.Y. Times, Sept. 21, 2002, at A3.

<sup>116</sup> See *id.*

<sup>117</sup> See *id.*

<sup>118</sup> See *id.*

<sup>119</sup> See *id.*

<sup>120</sup> See *id.*

<sup>121</sup> See *id.*

<sup>122</sup> See *id.*

<sup>123</sup> See *id.*

as the product of governmental ineptitude, parental irresponsibility, or some other third party failure.<sup>124</sup>

### *C. Modeling Terrorism Panic*

The first days after the September 11th attack unfolded like a moral panic; the public experienced heightened concern about, and hostility towards, a particular group. Early reports indicated that Muslims of Middle Eastern descent orchestrated the attacks.<sup>125</sup> As a consequence, Muslims, Arabs, and those thought to be members of these groups were subjected to vigilante violence. Within a week of the attack, the Council on American-Islamic Relations reported hundreds of cases of Muslims being threatened, harassed, and attacked.<sup>126</sup> A vigilante killed an Arizona Sikh man he mistook for a Muslim.<sup>127</sup> Some airline flight crews, feeling that every Muslim or Arab passenger was a threat, declined to fly with such individuals aboard.<sup>128</sup>

Media rhetoric also reflected heightened concern about Muslims. United States Congressman John Cooksey announced that the police would be justified in stopping any person with “a diaper on his head and a fan belt wrapped around the diaper.”<sup>129</sup> Columnist John Leo argued for

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<sup>124</sup> One might argue that the Catholic Church has been held substantially responsible for the sexual transgressions of priests. To the extent that the church is as a parallel governmental structure for priests, this may be a rare example where the public blames a quasi-governmental party as much as the sexual transgressors themselves.

<sup>125</sup> See, e.g., Steve Miller, *New York Muslims Fear Vigilantes*, Wash. Times, Sept. 17, 2001, at A1 (citing Justice Department claims).

<sup>126</sup> See, e.g., David Van Biema, *As American As . . . ; Although Scapegoated, Muslims, Sikhs and Arabs are Patriotic, Integrated—and Growing*, Time, Oct. 1, 2001 (quoting Council on American-Islamic Relations as saying there had been 600 “incidents” victimizing people thought to be Muslim or Arab, including four murders); Stephanie Armour, *Offices Try to Prevent Harassment of Muslim Staff*, USA Today, Sept. 14, 2001, at 10B.

<sup>127</sup> See Laurie Goodstein & Tamar Lewin, *A Nation Challenged: Violence and Harassment; Victims of Mistaken Identity, Sikhs Pay a Price for Turbans*, N.Y. Times, Sept. 19, 2002, at A1.

<sup>128</sup> See, e.g., Nurith C. Aizenman, *For Middle Eastern Travelers, Scrutiny Is Already Increasing; Profiling’s Usefulness Unproved, Activist and Some Experts Say*, Wash. Post, Sept. 22, 2001 at A16.

<sup>129</sup> See John LaPlante, *La. Congressman’s Comments on Racial Profiling Surprise Some, Advocate (Baton Rouge)*, Sept. 20, 2001, at 1-B. This comment indirectly implicated the gender specific nature of public concern: both public and governmental concern seems to have focused on men. Recent terrorism in Israel perpetrated by female Palestinians may have complicated these assumptions, however.

the appropriateness of Arab<sup>130</sup> and Arab-American racial profiling.<sup>131</sup> In a society in which polls themselves are a form of rhetorical persuasion, CNN's finding that forty-nine percent of Americans supported issuing federal identification cards to Arab-Americans, and thirty-one percent supported internment camps for Arab-Americans, spoke more powerfully than any politician or columnist.<sup>132</sup> Some even argued that Islam was an inherently dangerous religion.<sup>133</sup>

Yet something happened on the way to mass demonization of Muslims: many citizens joined government officials and the media to wage an active campaign aimed at diffusing anger targeted towards Muslims. Americans were repeatedly told they should not demonize Muslims.<sup>134</sup> President Bush spoke out, arguing that terrorists were part of "a fringe movement that perverts the peaceful teaching of Islam."<sup>135</sup> The media reinforced this message with its coverage and opinion pieces.<sup>136</sup>

The Administration and the media may have had a number of reasons for urging such caution. First, they may have honestly believed this to be morally correct advice. Americans are now very sensitive to racial classifications and stereotyping, a sensitivity produced by the Civil Rights movement, modern critiques of such race-based legal policies as internment of Japanese citizens during World War II, and the radical increase in national diversity – and particularly racial and ethnic diversity – that has occurred since the Second World War. Second, the Administration may have realized that any war against terrorism would require the help of many Muslim nations, including, most prominently, Pakistan and Saudi Arabia. Demonization of Muslims by the

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<sup>130</sup> Not all Arabs are Muslims. Given that these attacks were blamed on Islam, however, Americans probably conflated the two identities, at least with respect to issues of terrorism.

<sup>131</sup> See John Leo, *Open Society Becomes a Casualty*, Wash. Times, Sept. 20, 2001, at A18.

<sup>132</sup> See Time/CNN: *Dems Lead Generic Ballot by 4*, Hotline, Oct. 1, 2001.

<sup>133</sup> This was presumably Vines' essential claim in his speech to the Southern Baptist Convention.

<sup>134</sup> See, e.g., Carter Dougherty, *Bush Says Most Arabs, Muslims are Patriots, Cautions Against a Backlash*, Wash. Times, Sept. 14, 2001, at A13.

<sup>135</sup> See President Bush's *Address on Terrorism Before a Joint Meeting of Congress*, N.Y. Times, Sept. 21, 2001, at B4.

<sup>136</sup> See, e.g., Deborah Alexander, *Law, Clergy Calling for Tolerance*, Omaha World-Herald, Sept. 22, 2001, at 8b; Cf. Johann Hari, *How to Divide 'Us' from 'Them'*, New Statesman, Nov. 19, 2001 (stating that in British press "there has been an unspoken media consensus since 11 September that we must avoid inflaming anti-Muslim opinion.").

administration, or even by high-profile individuals outside of government, could produce serious international political difficulties.<sup>137</sup> Finally, some may have called for restraint out of their own wariness of spurring a moral panic.<sup>138</sup>

Since September 11th, the government has implemented few policies explicitly classifying individuals based on race or religion. That is not to say that Muslims have escaped special scrutiny. To the contrary, the Department of Justice targeted Mosques for special surveillance<sup>139</sup> and the government interviewed thousands of Muslims, detaining hundreds of non-citizens on immigration violations.<sup>140</sup> The Immigration and Naturalization Service focused special scrutiny on visitors from particular Muslim nations. Without diminishing serious concerns about these policies, however, their impact has been limited to a relatively small number of individuals, particularly in comparison with World War II internment.<sup>141</sup> Most importantly, it appears that the government based its detention decisions on individualized assessments of risk, rather than on simple race, ethnic, or religious classifications.<sup>142</sup>

As September 11th recedes further into memory, public anxiety now follows the path of a risk society panic. Perhaps, given the remarkable nature of the crime, this was to be expected. The terrorists responsible for the attacks appropriated apparently safe technology, jet aircraft, and converted it into dangerous weaponry. They used these newly crafted weapons to undermine the safety of the high-rise World Trade Center, itself a monument to modern technological prowess. Similarly, the ensuing anthrax scare was the product of biotechnological research that made possible both the production of anthrax spores, and their

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<sup>137</sup> See Eric Muller, *12/7 and 9/11: War, Liberties, and the Lessons of History*, 104 *W. Va. L. Rev.* 571, 591 (2002). In the aftermath of September 11, a number of non-governmental officials have been quite critical of Saudi Arabia. Saudi Arabian sensitivity to these comments shows that even unofficial criticism has the potential to affect foreign policy.

<sup>138</sup> See Angela McRobbie & Sarah L. Thornton, *Rethinking 'Moral Panic' for Multi-mediated Social Worlds*, 46 *Brit. J. Sociol.* 559 (1995).

<sup>139</sup> See Tom Brune, *Taking Liberties: Collateral Damage; Government Efforts to Prevent Future Terrorist Acts are Putting Civil Liberties at Risk, Critics Say*, *Newsday*, Sept. 15, 2002, at A3.

<sup>140</sup> See *id.* We do not know the number of Muslims detained after September 11th though, as of November 2001 – when the federal government last provided such data – the total was 1,147. More than 400 individuals have been deported following closed hearings. See Matthew Brzezinski, *Hady Hassan Omar's Detention*, *N.Y. Times Mag.*, Oct. 27, 2002, at 50, 52.

<sup>141</sup> See Muller, *supra* note 4, at 591.

<sup>142</sup> See *id.*

weaponization. The attacks of September 11th, and their aftermath, created risks radiating well beyond any immediate site of impact. Effluents flowing from the collapsed World Trade Center affected thousands of people within lower Manhattan.<sup>143</sup> Anthrax-laced letters mailed in New Jersey killed people living hundreds of miles away.<sup>144</sup> The terrorist attacks of Fall 2001 were a new kind of crime, grander in scale than a rape, a single murder, or even the less ambitious terrorism practiced by radical groups around the world. They were products of a risk society; they simply could not have occurred a century earlier because we had not yet designed the dangerous contraptions terrorists undermined so effectively.

Not only did the acts themselves incorporate technology; they exposed the hidden dangers of other putatively safe technology. For example, in the aftermath of September 11th, critics became concerned about security at nuclear power plants,<sup>145</sup> chemical plants,<sup>146</sup> and water filtration facilities.<sup>147</sup> Americans discovered that an assault on the Trans-Alaskan oil pipeline could devastate both the environment and the United States economy.<sup>148</sup> If terrorists successfully attacked a nuclear power plant, the results would be even more devastating.<sup>149</sup> Many of the dangers, unlike the physical attack itself, would be virtually undetectable to a human being. The anthrax attack exposed a further concern about

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<sup>143</sup> See Maggie Farley, *A Toxic Legacy Lingers as Cleanup Efforts Fall Short*, L.A. Times, Sept. 4, 2002, at 1. Christine Haughney, *In N.Y., Taking a Breath of Fear; Illnesses Bring New Doubts About Toxic Exposure Near Ground Zero*, Wash. Post, Jan. 8, 2002, at A1 (noting that EPA studies showed heightened levels of dioxins, PCBs, lead and chromium in downtown Manhattan.). See also Shelley Emling, *Ailments Blamed on Ground Zero's Toxic Brew*, Atlanta J. & Const., Nov. 4, 2001, at 13A.

<sup>144</sup> See Greg B. Smith, *Anthrax Peril Fades; Key Deadline Passes But More Spores Found*, N.Y. Daily News, Dec. 7, 2001, at 7.

<sup>145</sup> See, e.g., Editorial, *Nuclear Reactors as Terrorist Targets*, N.Y. Times, Jan. 21, 2002, at A14 (detailing terrorism risks of nuclear power plant).

<sup>146</sup> See, e.g., James V. Grimaldi & Guy Gugliotta, *Chemical Plants Are Feared as Targets; Views Differ on Ways To Avert Catastrophe*, Wash. Post, Dec. 16, 2001, at A1; David Whitman, *A Highly Explosive Mixture*, U.S. News & World Rep., Oct. 22, 2001, at 31.

<sup>147</sup> See, e.g., Larry Lange, *Water Agencies in Region Stepping Up Security*, Seattle Post-Intell., Oct. 4, 2001, at B1.

<sup>148</sup> See Study Urges Federal Aid to Protect Energy Assets, Gas Daily, Nov. 6, 2001, at 1.

<sup>149</sup> In 2002, the National Research Council, a division of the National Academy of Sciences, published preliminary results of its study of the effects of terrorism on nuclear power plants. Though the organization released no details, for national security reasons, they concluded that an attack could produce "potentially severe consequences." See Jenny Weil & Daniel Horner, *NAS Study: Attack on Reactors Could Have 'Severe Consequences'*, Nucleonics Week, June 27, 2002, at 1.

these new crimes. Because powerful chemical and biological weapons can be delivered covertly, the government may not be able to identify and incapacitate offenders.

Terrorism triggered latent anxiety about extant technological risks. In a risk society, where the production of wealth involves the concomitant production of risk, we rely on the reassurances of scientists, regulators, and industry to feel confident that we are protected. These attacks placed the integrity of such protections in doubt.

As might be expected in a risk society panic, critics and the public search for possible culprits. Americans hold Osama bin Laden, Al Qaeda, and to some extent, the Taliban, responsible. At the same time, other individuals and groups receive harsh criticism for failing to stop the attacks or inadequately ameliorating their effects. Commentators blame the attack, in part, on inadequate and ineffective intelligence agencies,<sup>150</sup> inept airport security,<sup>151</sup> faulty architectural choices,<sup>152</sup> abortionists and homosexuals,<sup>153</sup> and the Clinton administration.<sup>154</sup> Critics blame the American Red Cross and other charities,<sup>155</sup> the Federal Emergency Management Agency,<sup>156</sup> and the Environmental Protection Agency<sup>157</sup> for botched work in the months following the attack. Over administration protests, Congress embarked on an investigation of the

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<sup>150</sup> See, e.g., Philip Shenon & David Johnston, 2 Agencies Say Silence Prevented Pair's Tracking, *N.Y. Times*, Oct. 2, 2002, at A17 (discussing testimony before House – Senate panel suggesting numerous intelligence failures prior to September 11 attack).

<sup>151</sup> See, e.g., Reinventing War, *Foreign Pol'y*, Nov. 1, 2001, at 31 (quoting Lieutenant General Paul Van Riper saying “[W]hat we ought to do is look at who was responsible for security, right down to the individuals who checked these terrorists through the airports, if we can identify them.”).

<sup>152</sup> Tort lawyers suggested that the World Trade Center architects might be at fault because of design flaws that impeded escape. See Jeffrey Rosen, *Bad Luck: Why Americans Exaggerate the Terrorist Threat*, *New Republic*, Nov. 5, 2001, at 21.

<sup>153</sup> See Laurie Goodstein, *After the Attacks; Finding Fault; Falwell's Finger Pointing Inappropriate, Bush Says*, *N.Y. Times*, Sept. 15, 2001, at A15 (discussing claims of Reverend Jerry Falwell that September 11 attacks were caused, in part, by abortionists, gays, lesbians, feminists, and the American Civil Liberties Union, all of whom made God angry).

<sup>154</sup> See, e.g., Jerry Seper, *Clinton White House Axed Terror-Fund Probe*, *Wash. Times*, April 2, 2002, at A1.

<sup>155</sup> See Bob Dart, *9/11 Effort Hurtful to Public's Trust in Charities*, *Atlanta J. & Const.*, Aug. 30, 2002, at 3A.

<sup>156</sup> See David W. Chen, *Public Frustration Persists Over 9/11 Relief Program*, *N.Y. Times*, Oct. 12, 2002, at B3.

<sup>157</sup> See, e.g., Emling, *supra*, note 142.

intelligence failures leading to the September 11th attack.<sup>158</sup> Legislators and the White House have even created an independent panel that would catalog the failures leading to September 11th.<sup>159</sup> In order to appreciate the difference between a moral panic and a risk society panic, one need only consider whether a legislature would ever organize an inquiry into the governmental failures producing the child abduction crisis of the summer of 2002.

The American response to terrorism has thus been ambiguous and does not clearly fit into either panic model. Given this history, we cannot predict what might occur in the aftermath of a new terrorist attack. The next Part argues that the rhetorical links between Islam, terrorism, and pedophilia may be priming the American public to enter a moral panic if a new attack occurs. By creating an atmosphere in which Muslims are viewed as less human and less moral than other people, this rhetoric may increase public receptiveness to those blaming terrorism on Muslims and calling for a dramatic legal attack on this group.

### III. THE SIGNIFICANCE OF THE TERRORIST – PEDOPHILE LINK

The significance of the terrorist – pedophile link turns on whether it produces serious real-world consequences. The first section below outlines how the links set out in Part I might prepare the public to enter a moral panic demonizing Muslims generally. The second section imagines how a moral panic might unfold and considers the implications of such a panic for anti-terrorism legal policy. The third section discusses strategies advocates might use to resist radical new laws that target Muslims.

#### *A. Towards a New Moral Panic*

To understand how these new links might be used to transform American legal responses to terrorism, one must consider how public concern might unfold in the aftermath of future terrorist attacks. The horrors of September 11th cannot be minimized; the mere act of imagining future terrorism is not intended to trivialize these appalling incidents. Nonetheless, in order to provide some guidance should future

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<sup>158</sup> See Susan Milligan, *Hearings Begin Today on Pre-9/11 Intelligence*, *Boston Globe*, June 4, 2002, at A1.

<sup>159</sup> See Dana Milbank and Walter Pincus, *Kissinger to Lead 9/11 Panel; Mitchell Named Vice Chairman of Probe on Intelligence Flaws*, *Wash. Post*, Nov. 28, 2002, at A1.

attacks occur, it is essential to evaluate how this emerging rhetoric might inform public responses to a new terrorist incident.

As shown, *supra*, the American response to September 11th exhibited signs of both moral panic and risk society panic. While the public demonized Muslims initially, over time its anger was directed at many other culprits. Perhaps, as a result, the nation's legal response to terrorism was somewhat muted. Imagine, then, that America again suffers a severe terrorist attack inflicted by radical Muslims.<sup>160</sup> Imagine, also, that Muslim American citizens are implicated in the attack. In the past year, two American citizens – Jose Padilla and Esam Hamdi – have been detained as enemy combatants<sup>161</sup> and Muslim Americans have been arrested in Buffalo,<sup>162</sup> Portland,<sup>163</sup> Ann Arbor,<sup>164</sup> Chicago,<sup>165</sup> and Tampa<sup>166</sup> on charges that they were planning terrorism or otherwise involved with terrorist organizations. How might the nation respond to such an occurrence?

Americans might feel ambivalent about the root causes of such an attack. One can easily imagine citizens initially focusing on the Muslim community. Those perceived to be Muslims might again be subjected to random acts of violence. For the same reasons as before, opinion leaders – including the President – might again work to subdue this response. Citizens might continue to feel concern about governmental failures, believing that the nation's leaders failed to respond properly to events of 2001. Legislators might push for incrementally tougher anti-terrorism laws, while also agitating for further changes in the bureaucracy of homeland security. Commentators, meanwhile, might call for reconsideration of the country's foreign policy.

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<sup>160</sup> Americans have been repeatedly told to expect more terrorism. See, e.g., Ann Scott Tyson, *Is More Terror in U.S. Inevitable*, *Christian Sci. Monitor*, May 23, 2002, at 1 (noting that Rumsfeld and Bush administration officials suggest that government cannot realistically stop all future terrorism).

<sup>161</sup> See Victoria Toensing, *A National Need for Preventive Justice*, *Wash. Post*, Sept. 23, 2002, at A19.

<sup>162</sup> See Philip Shenon & David Johnston, *Seeking Terrorist Plots, The FBI Is Tracking Hundreds of Muslims*, *N.Y. Times*, Oct. 6, 2002, at 1.

<sup>163</sup> See Sally Bourrie, *Arrests Startle Few in Portland*, *Boston Globe*, Oct. 7, 2002, at A4.

<sup>164</sup> See Sept. 11 Detainee Testifies at Public Hearing, *Wash. Post*, Oct. 2, 2002, at A6.

<sup>165</sup> See Eric Lichtblau, *U.S. Indicts Head of Islamic Charity in Qaeda Financing*, *N.Y. Times*, Oct. 10, 2002, at A1.

<sup>166</sup> See John Mintz, *Professor Indicted as Terrorist Leader*, *Wash. Post*, Feb. 21, 2003, at A1.

On the other hand, there would likely be voices arguing that Muslims (or perhaps Arabs) should be held responsible for the new attack. Already, Peter Kirsanow, a member of the United States Civil Rights Commission, has suggested that if terrorists strike again, “and they come from the same ethnic group that attacked the World Trade Center, you can forget about civil rights.”<sup>167</sup> Just as some commentators called for racial profiling after the first attack, it seems likely that people would argue for religion-based or ethnicity-based policing on the grounds that, since members of the same group committed both acts, society can confidently predict the identity of future culprits.

America’s leaders might also push the public towards demonizing Muslims in the hope of offering a simple and reassuring solution to the crisis. In the effort to quell widespread fear, they might argue in favor of isolating and incapacitating a single demon. More importantly, however, development of a moral panic could serve the personal and professional interests of many parties. In a risk society panic, public blame might again target intelligence agencies, regulators, and governmental leaders. Damaging investigations could undermine the credibility of government as a whole. Individual officials could lose their jobs or, worse, be prosecuted for incompetence. Operators of risky industrial and technological facilities – from chemical plants to toxic waste disposals – might prefer a moral panic since in a risk society panic, legislators might be pushed to adopt expensive and unrealistic new regulations with the goal of rendering inherently dangerous operations safe. Some government agencies might also affirmatively benefit from a moral panic. Just as J. Edgar Hoover promoted public anxiety about a series of issues, ranging from sex crime to parole scandal, in order to maintain strong FBI funding,<sup>168</sup> one might expect the FBI or the Office of Homeland Security to promote such targeted anxiety in the hopes of maintaining and expanding their fiefdoms.

Would the public respond to moral entrepreneurs attempting to frame terrorism as a Muslim problem requiring an anti-Muslim solution? Perhaps, but only if they viewed these claims as plausible. As discussed, *infra*, moral panics only take hold when the public is amenable to these arguments. In order for opinion makers to convince the public to blame Muslims as a group, and to subject them to targeted legal action,

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<sup>167</sup> See Niraj Warikoo, Civil Rights Unit Member Foresees Arab Detainment in U.S., Det. Free Press, July 20, 2002.

<sup>168</sup> See Jenkins, *supra* note 52, at 55.

Americans must view both Muslims and terrorism as unambiguously evil. The emerging rhetorical links between Islam, terrorism, and pedophilia have the potential to produce both results.<sup>169</sup>

First, by associating Muslims and terrorists with pedophilia, this rhetoric tars them with the pre-existing social stigma attached to pedophiles. Americans need not believe that Muslims and terrorists are, in fact, all pedophiles. They need only think that Muslims are equivalent to pedophiles, and thus deserving of similar treatment. When activists describe pedophiles as predators, they are not arguing that these offenders are actually animals; rather, they are suggesting that pedophiles are like beasts, a lesser form of human, incapable of change, and not worthy of respect. A similar process occurs when Muslims and terrorists are termed pedophiles. A public that views terrorists and Muslims as comparable to pedophiles will presumably view terrorists and Muslims as inhuman: opportunistic, incapable of change, and in need of incapacitation.

Language pegging terrorists as predators is particularly effective because it has the effect of stacking negative images on top of each other. The move to signify pedophiles as predators was reflexive. Not only did the redefinition of pedophiles cause us to see pedophiles as predators, but it also caused us to see predators differently. Twenty years ago, the word “predator” might have evoked images of animals; today, it also evokes the image of a child molester. Thus, the successful application of the metaphor “pedophile = predator” inherently implied the inverse metaphor “predator = pedophile.” This new rhetoric titling Muslims and terrorists as predators relates the four concepts together: “predator = pedophile = terrorist = Muslim.”

These links do more than simply dehumanize terrorists and Muslims, however. The association of Islam, terrorism and pedophilia has the potential to transform and stabilize the very concept of terrorism. Despite the best efforts of some commentators, terrorism remains a morally ambiguous concept. Reuters news service will not use the term, except in quotes (as in “terrorist”), explaining that “one man’s terrorist is

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<sup>169</sup> I am not arguing that Reverend Vines, or any of the other people developing this link, intend to trigger a moral panic or any other particular result. Rather, I am suggesting that these rhetorical links, even if generated unwillingly, have the power to alter public perceptions. Indeed, one might argue that Vines’ reference to Mohammed as a pedophile might be designed to evoke images of pedophile priests, perhaps comparing them to Mohammed.

another man's freedom fighter."<sup>170</sup> For some Americans, moral clarity about the inherently evil nature of terrorism was undermined by the ongoing hostilities in Israel. If Israel was really persecuting the Palestinians, some asked, might suicide bombings have some moral justification? And despite protestations that nothing could justify the September 11th attack,<sup>171</sup> Americans looked to see what we had done wrong. We searched for what we could do differently. We tried to understand how people could be driven to such horrible acts. And Newsweek offered answers in its issue titled "Why They Hate Us."<sup>172</sup>

After another such attack, if Americans continue to see ourselves as partially culpable, we may be less likely to support draconian policies directed at a discrete group. Such proposals only resonate and make sense if we can say, unambiguously, that the terrorist's conduct was both unjustified *and* unjustifiable. The link between terrorism and pedophilia confirms terrorism as an unambiguously evil act, because that is how we view pedophilia. Despite the fact that pedophiles could be seen as people with mental disabilities, or even as victims of a society which does not view children as sexual agents, in the aftermath of repeated moral panics, most Americans perceive them as simply bad people. We rarely question why pedophiles engage in sexual offenses and we virtually forbid the possibility that victims of pedophilia bring abuse on themselves. We criticize those who would dare ask a child victim, "Why did he victimize you?"<sup>173</sup> If terrorism is really like pedophilia, this implies not only that terrorism is unambiguously wrong, but also that we no longer need to ask questions about why it occurs. By definition, America cannot be culpable. The link adds a new gloss to the term "terrorism," imputing a moral clarity that, despite some protestations to the contrary, has thus far been lacking.

These arguments suggest that recent rhetorical moves interrelating Muslims and terrorists with pedophilia are very consequential. They

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<sup>170</sup> See, e.g., Jeff Jacoby, *Preserving Our Moral Clarity*, Boston Globe, Sept. 12, 2002, at A11.

<sup>171</sup> See, e.g., Joel Connelly, *U.S. Response to Terrorist Attacks Must Be Deliberate, Accurate and Devastating*, Seattle Post-Intell., Sept. 13, 2001, at A2.

<sup>172</sup> See Newsweek, Oct. 15, 2001.

<sup>173</sup> As an example of the unacceptability of child culpability in pedophilia, one need only consider the outrage that surfaced when some Catholic church officials suggested, recently, that victims of pedophile priests might be partly responsible for their victimization. See, e.g., *Newsnight With Aaron Brown*, (CNN telecast, April 29, 2002) (describing response to Catholic church's answer to abuse complaint which alleged that the "negligence" of victim contributed to abuse).

prepare Americans to listen with an open mind to those moral entrepreneurs arguing that Muslims are to blame for terrorism. The next section suggests one possible outcome of a moral panic – preventive detention of Muslims – and places this legal policy in the context of prior American internment policy.

*B. Anti-Terror Laws in a New Moral Panic*

If moral entrepreneurs effectively group Muslims and terrorists with pedophiles, their rhetoric does more than simply describe a problem. It also suggests a solution. We do not deal with pedophilia through diagnosis and treatment, as we might address schizophrenia. We treat pedophiles as we might treat roaming animal predators: we track them and we cage them.

In the last decade, many states have adopted a three-step approach to tracking and caging sexual offenders.<sup>174</sup> First, every state has adopted a registration regime under which every offender released into the community must register with the authorities.<sup>175</sup> Second, every state has adopted some form of community notification, such that the public is informed when an offender moves into a neighborhood.<sup>176</sup> Although some states provide only localized notice, by distributing flyers for example, many states now distribute information about offenders widely via the Internet.<sup>177</sup> Third, seventeen states authorize preventive detention of individuals predicted to commit future sexual offenses.

Moral entrepreneurs may be expected to argue that since Muslims and terrorists are the equivalent of pedophiles, they ought to be treated similarly. How might the anti-pedophilia regime be applied in the aftermath of a new attack? A first step would be a call for mass registration of potential offenders. Once all Muslims have been identified and located, the next step might be nationwide notification via the Internet. Advocates of sexual offender community notification argue that it empowers people to protect themselves and their families.<sup>178</sup>

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<sup>174</sup> The steps I outline here are in addition to normal prosecution and incarceration of convicted offenders.

<sup>175</sup> See text accompanying note 87-88.

<sup>176</sup> See text accompanying note 87-88.

<sup>177</sup> See Jane A. Small, Note, Who Are the People in Your Neighborhood? Due Process, Public Protection, and Sexual Offender Community Notification Laws, 74 N.Y.U. L. Rev. 1451, 1463-64 (1999) (listing states with internet community notification).

<sup>178</sup> See, e.g., Filler, Making the Case, *supra* note 52, at 340-41.

Supporters of notification in this context might make a similar claim: if you know a potential terrorist lives nearby, you can at least take protective measures. The third, and dramatic, final step would be to demand mass detention of Muslims – including, presumably, Arab-Americans and Muslim-Americans – on the grounds that they pose an ongoing risk to society. Advocates might argue that such detention is nothing daring or new. Their historical claim, however, may include an unexpected twist. Instead of pointing to Japanese internment during World War II, and therefore relying on the Supreme Court’s dubious decision in *Korematsu v. United States*,<sup>179</sup> upholding such imprisonment, they may contend that preventive detention of Muslims is simply a logical extension of modern detention policies for sexual offenders. Admittedly, the details would be very different. In *Kansas v. Hendricks*, the court authorized detention based on individualized determinations of future risk<sup>180</sup> and only for those individuals previously charged or convicted of a sexual offense.<sup>181</sup> In *In re Crane*, the Court refined the *Hendricks* standard to require “proof of [a person’s] serious difficulty in controlling behavior.”<sup>182</sup> In making a case to the lay public, however, the details of these cases would not necessarily be relevant. At their core they stand for the following principle: the government may preventively detain dangerous people. If citizens are convinced that Muslims are more dangerous than other people, and that other sorts of dangerous people – namely pedophiles – are subject to detention, they might be convinced that such detention does not reflect prejudice, but rather practical, reasonable self-protection.

Despite any efforts to compare sexual offender detention to Muslim detention, preventive detention of Muslims will necessarily echo World War II era internment. In fact, a review of history leading up to the confinement of the Nissei<sup>183</sup> and Issei<sup>184</sup> offers remarkable parallels to our present situation. Even before Pearl Harbor, and American entry into the war, the government was concerned about enemies in its midst.

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<sup>179</sup> See generally 323 U.S. 214 (1944) (upholding government’s transfer of Issei and Nissei to internment camps).

<sup>180</sup> See 521 U.S. at 352.

<sup>181</sup> Id. at 357.

<sup>182</sup> See 534 U.S. at 412.

<sup>183</sup> Nissei refers to American born citizens of Japanese descent.

<sup>184</sup> Issei refers to Japanese-born residents of the United States. Because American immigration law at that time did not permit Asians born outside the United States to become naturalized citizens, Issei would have included some people who had lived many years within the United States.

In 1940, Congress adopted the Alien Registration Act requiring registration by all non-citizens over age fourteen.<sup>185</sup> In May 1941, the United States Attorney General requested new wiretapping powers.<sup>186</sup> Issei and Nissei grew increasingly concerned about their prospects in the event of American entry into the war, but their concern was somewhat ameliorated by public displays of support for newly naturalized immigrants.<sup>187</sup> Almost immediately after the Japanese army attacked Pearl Harbor, the federal government detained a limited group of approximately 1500 Issei.<sup>188</sup> It was not until three months after Pearl Harbor that President Roosevelt signed Executive Order 9066, which provided the legal basis for the internment of 120,000 people.<sup>189</sup>

Internment did not happen out of the blue; as these facts suggest, widespread detention built up over two years, in incremental steps. Yet a factual recitation of the history of internment policy misses one of the most significant parallels to the present day. In the years preceding internment, moral entrepreneurs used rhetoric to prime American hostility towards the Issei and Nissei. Beginning in the early part of the twentieth century, moral entrepreneurs – including media moguls, filmmakers, and political pressure groups – actively promoted negative images of the Japanese.<sup>190</sup> The “yellow peril” campaign, as it was termed, featured news stories, films, and political publications highlighting Japanese treachery.<sup>191</sup> In an eerie parallel with current rhetoric, this propaganda emphasized claims that the Japanese were sexually dangerous. The film *Shadows of the West* portrayed Japanese

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<sup>185</sup> See Roger Daniels, *Concentration Camp North America: Japanese in the United States and Canada During World War II* 27 (1981). This act remains law and its enforcement has been renewed by the Attorney General.

<sup>186</sup> See Roundup and Rally, *Newsweek*, May 26, 1941, at 22.

<sup>187</sup> See *id.* (describing 1941 “I Am an American Day,” lauding naturalized citizens, including massive gatherings in New York and Chicago, as well as a nationally broadcast radio address); Arnold Krammer, *Undue Process: The Untold Story of America’s German Alien Internees* 28-29 (1997) (indicating that public show of support calmed fears of Japanese-Americans). Krammer’s claims may be open to challenge because, since Issei were ineligible for naturalization, these celebrations did not include the Japanese. On the other hand, to the extent that these events suggested a generalized comfort with diversity, the Japanese may have felt somewhat reassured.

<sup>188</sup> See Daniels, *Concentration Camp*, *supra* note 179, at 34.

<sup>189</sup> See Exec. Order No. 9066, Feb. 19, 1942. Notably, the order contained no reference to the Japanese or any other particular ethnic group.

<sup>190</sup> See Roger Daniels, *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion* 65-91 (1977).

<sup>191</sup> See *id.*

immigrant farmers as sex fiends.<sup>192</sup> An article from the *Grizzly Bear* – the mouthpiece of California’s most powerful pressure group – warned that affluent Issei and Nissei were “casting furtive glances at our young women.”<sup>193</sup> These materials also featured de-humanizing language and metaphors, referring to Japanese/Asian immigrants and their children as “mad dogs”, “yellow vermin”, and “vipers.”<sup>194</sup> Editors of the *Los Angeles Times* made the case for internment of Nissei, American-born citizens, on the grounds that “a viper is nonetheless a viper wherever the egg is hatched.”<sup>195</sup> Historian Roger Daniels argues that this rhetoric made internment politically possible. “The long racist . . . tradition plus the widely believed ‘yellow peril’ fantasy – when triggered by the traumatic mechanism provided by the attack on Pearl Harbor, were the necessary preconditions for America’s concentration camps.”<sup>196</sup>

If the nation again embarks on mass detention, a certain sector of the population would certainly express vocal opposition. America’s World War II internment policy has long been viewed as a national shame, and many people would oppose any detention policy that appears to flow from the logic of these internments. Yet, as David Cole argues, “today’s war on terrorism has already demonstrated our government’s remarkable ability to repeat history and to insist that it is not repeating history.”<sup>197</sup> The terrorist-as-pedophile link offers an explanation for preventive detention policy that skirts references to Japanese internment. Detention can be seen as a policy resembling the tolerable, even appropriate, tactics of the war on pedophilia, rather than the “shameful” tactics of Japanese internment in World War II.

#### CONCLUSION: PLOTTING TO PROTECT LIBERTY

The internment of Muslims is in no way the inevitable result of future terrorism. Rather, today’s rhetoric could have a profound effect on the direction of public concern, and ultimately legal policy, in the aftermath of future attacks. By understanding how this rhetoric might unfold, we can begin to think about ways for civil liberties advocates to respond. Activists would certainly, and appropriately, fight preventive

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<sup>192</sup> See id. at 90.

<sup>193</sup> See id. at 85.

<sup>194</sup> Daniels, Concentration Camp, *supra* note 179, at 32, 62.

<sup>195</sup> See id. at 62.

<sup>196</sup> See id. at 31-32.

<sup>197</sup> David Cole, The New McCarthyism: Repeating History in the War on Terrorism, 38 Harv. C.R.-C.L. L. Rev. 1, 1-2 (2003).

detention policies on legal grounds. Arguing that *Korematsu* has been discredited, they would contend that any precedent for such detentions is no longer good law. It is of course possible that this view would prevail in court; according to Professor David Cole, at least eight sitting Justices have criticized *Korematsu*.<sup>198</sup>

Yet if public anxiety soars and anger is targeted at Muslims, and if the public demands internment camps, history suggests that the courts may not serve as an effective protector of civil liberties.<sup>199</sup> The best way to prevent such detention is to stop its adoption in the first instance. This will require a fight for the public's hearts and minds – which, this article suggests, is essentially a rhetorical battle. Those opposing mass detention will need to find ways to re-humanize Muslims. These strategies might include telling the stories of Muslims who actively opposed terrorism, including tales of Muslims who fought on the side of the United States in Afghanistan. These stories might expose the diversity of Muslims. They might highlight narratives humanizing Muslims, telling stories of Muslims in their day-to-day lives, showing the ways in which Muslims are an essential part of the fabric of American life.

History suggests that counter-narratives can sometimes transform public opinion. During the 1920's, northern newspapers routinely reported stories of African-American men sexually assaulting white women in the south.<sup>200</sup> Initially, they described these cases as examples of dangerous black men receiving swift justice.<sup>201</sup> Philip Jenkins argues that northern opinion about these cases changed radically after the Scottsboro Boys case, in which nine African-American Alabamians were falsely accused of rape.<sup>202</sup> As a result of this powerful narrative of Southern racism, northerners became highly skeptical about the fairness of Southern interracial rape prosecutions.<sup>203</sup> New cases were reported as

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<sup>198</sup> See Marcia Coyle, War, Liberty: Justices Face Hard Decisions, *Fulton Cty. Daily Rep.*, Sept. 11, 2002.

<sup>199</sup> For example, *Korematsu* is now seen less as a reflection of prevailing law in 1944 than as an indication that federal courts are only resistant, and not immune, to public pressure. Stuart Taylor, the editor of the *National Law Journal*, termed *Korematsu* "capitulation to racist panic." See Stuart Taylor Jr., Thinking the Unthinkable: Next Time Could Be Much Worse, *Nat'l L. J.*, Sept. 15, 2001, at 37.

<sup>200</sup> See Jenkins, *supra*, note 52, at 95.

<sup>201</sup> See, e.g., Negro Gets Quick Justice, *N.Y. Times*, Sept. 9, 1921, at 1.

<sup>202</sup> See Jenkins, *supra*, note 52, at 95.

<sup>203</sup> See *id.*

“yet another case of racism” rather than “yet another case of black sexual violence.”

Civil liberties advocates must begin to develop rhetorical strategies immediately so that they will be prepared in the case of new attacks. Just as the rhetoric linking Islam, terrorism, and pedophilia works today to prime the public for future events, humanizing counter-narratives need time to sink into the public consciousness and gain acceptance. The prospect of widespread internment is upsetting, but it is by no means inevitable. Today’s strategic choices will have a powerful influence on the direction of any future panics.

We do not know whether future terrorist attacks, at least on the magnitude of September 11th, will ever recur. We have no idea whether such attacks will be perpetrated by Muslims, by members of the many other groups hostile towards America, or by others. And we cannot predict whether, even if a new incident perpetrated by Muslims does come to pass, opinion leaders will direct public anger towards an entire religious community. However, a new and surprising rhetoric is surfacing which, if taken to its logical conclusion, might be used to justify policies that many have thought inconceivable. By exploring the potential implication of the links between Islam, terrorism, and pedophilia, this article hopes to begin a conversation about the civil liberties battles that lie ahead. For the moment, Reverend Vines remains a marginal voice. We ignore it, however, at our own peril.