

**U.S. Commission on Civil Rights
Briefing on Boundaries of Justice:
Immigration Policies Post-September 11th**

October 12, 2001

Executive Summary

The U.S. Commission on Civil Rights (Commission) held a public briefing on October 12, 2001, on United States immigration policies in the aftermath of recent terrorist activities. The briefing examined the civil rights implications of these attacks on the evolution of this nation's immigration policies, practices, and laws. There were three panels of speakers. Panel one consisted of representatives from community organizations who provided accounts from their constituents; panel two consisted of legal experts and scholars; and panel three consisted of representatives from two federal agencies: the Immigration and Naturalization Service (INS) and the Department of Transportation (DOT).

Panelists discussed issues of harassment, discrimination, and other possible infringements of civil rights resulting from fears of recent terrorism. They discussed proposed civil rights implications of anti-terrorism legislation as well as examined the concerns about the federal government's role in implementing proper security procedures at airports and protecting civil rights in the process. Panelists spoke about racial, ethnic, and religious profiling in times of heightened concern about national security and reviewed current and proposed immigration detention policies in the anti-terrorism legislation. They also made recommendations on how the Commission could be involved in combating discrimination in the wake of the terrorist attacks.

This briefing summary represents the views of the participants as of October 12, 2001. Subsequent developments since then are not reflected in this summary. For example, on October 26, the anti-terrorism legislation was signed into law as the U.S.A. Patriot Act. At the end of October 2000, INS issued regulations broadening INS' ability to detain people and monitoring attorney-client communications of detainees. Additionally, on November 13, 2001, the President established a military tribunal to prosecute suspected terrorists.

SUMMARY OF TESTIMONY

PANEL ONE—COMMUNITY ORGANIZATIONS

- Mark Krikorian, Executive Director, Center for Immigration Studies
- Najeeba Syeed-Miller, Executive Director, Asian-Pacific American Dispute Resolution Center
- Timothy Edgar, Legislative Counsel, American Civil Liberties Union

- Charles Kamasaki, Senior Vice President, Office of Research, Advocacy and Legislation, National Council of La Raza
- James Zogby, President, Arab American Institute

Mark Krikorian, Executive Director, Center for Immigration Studies, explained how the United States Constitution, through the plenary power doctrine, grants Congress the power to establish a uniform naturalization and immigration system. According to Mr. Krikorian, controlling immigration is essential to maintaining national sovereignty. He stated, “In effect, foreign citizens, even if they are here illegally, enjoy the human rights endowed them by God, but remain here at our discretion, and the specifics of their due process rights are determined by Congress.”^{1[1]}

He discussed how the nation’s efforts to strengthen control over immigration in light of the September 11 terrorist attacks increase the focus on visa applicants from Islamic countries or from those who are of Middle Eastern origin. However, it is difficult under current immigration laws for the government to deny a visa application due to an applicant’s “beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.”^{2[2]}

Mr. Krikorian noted the historical use of “expedited exclusion” policies for false asylum claimants at airports. These policies provide immigration supervisors with the discretion to exclude an asylum claimant from being admitted to the United States if the claimant does not possess the appropriate documents. In addition, he predicted that INS will expedite implementing pilot programs to track the whereabouts of foreign students in the United States.

Najeeba Syeed-Miller, Executive Director, Asian-Pacific American Dispute Resolution Center, discussed the situation facing the South Asian community in the United States. According to Ms. Syeed-Miller, some people mistakenly view South Asians as Arabs or as a group linked to the September 11 attacks. As a result, South Asians have often been the target of hate-based incidents since the terrorist attacks.

Ms. Syeed-Miller explained the history of national immigration policies and their impact on the numbers of Asian American immigrants in the United States. She emphasized the significant implications of the internment of 120,000 Japanese Americans in the 1940s, since no evidence of subversive involvement was necessary to trigger the government’s internment of American citizens.

Ms. Syeed-Miller maintained that there is a need to continue to build coalitions between various groups that are often the victims of violent bias attacks. American universities offer viable opportunities for this cultural exchange. Because of their fears of reprisal attacks, however, many international students are leaving college campuses to return to their home countries. This trend

^{1[1]} Mark Krikorian, statement before the U.S. Commission on Civil Rights, briefing, Washington, D.C., Oct. 12, 2001, transcript, p. 64 (hereafter cited as Briefing Transcript).

^{2[2]} Ibid., p. 65.

will adversely affect our country because it limits the exposure of groups of people from outside our nation to our democratic values.

Timothy Edgar, Legislative Counsel, American Civil Liberties Union—Washington, D.C. office, reviewed the proposed anti-terrorism legislation and its effect on the civil rights and civil liberties of immigrants. Mr. Edgar outlined an effectiveness test for anti-terrorism initiatives. He proposed that measures used to address terrorism should provide maximum effectiveness, while simultaneously minimizing any adverse impact on civil rights and civil liberties. When applying this test to current anti-terrorism legislation, he said,

the most troubling provisions are measures that would allow for detention of immigrants on the basis of suspicion and lawful political associations for a potentially indefinite period of time; expand the ability of the government to conduct secret searches; minimize judicial supervision of federal telephone and Internet surveillance by law enforcement authorities.^{3[3]}

Mr. Edgar also discussed several constitutional problems with the detention and removal provisions of the proposed anti-terrorism legislation. These included: imprisoning individuals in INS facilities based solely on a certification from the U.S. attorney general and not on a substantive evidentiary requirement, detaining indefinitely immigrants who are not proven terrorists, and unfairly punishing immigrants for associating with groups that the government views as terrorist organizations.

Pending legislation allows noncitizens who are in violation of immigration status to be detained for a potentially indefinite period if their country of origin refuses to accept them. According to Mr. Edgar, this policy contradicts the U.S. Supreme Court's decision in *Zadvydas v. Davis*,^{4[4]} which warned that constitutional constraints occur when immigrants are detained for an indefinite period of time.

Charles Kamasaki, Senior Vice President, Office of Research, Advocacy, and Legislation, National Council of LaRaza, discussed the proposed anti-terrorism legislation and suggested three principles to govern the debate over anti-terrorism policies. First, any anti-terrorism policy should be narrowly tailored to address actual security threats. Second, these policies should be carefully considered to prevent unintended results that adversely affect entire communities. Third, the September 11 attacks should not prevent our nation from implementing immigration and civil rights policies that are in the public's interest.

James Zogby, President, Arab American Institute, informed the Commission that hate crimes and instances of bias against Arab and Muslim Americans are not new problems. He referred to the violent reaction toward Arab, Muslim, and Lebanese Americans following the Iranian hostage crisis, the Gulf War, the Oklahoma City bombing, and the explosion of a passenger airplane off Long Island. Moreover, after September 11, he said, "We had more than 300 reported [harassment complaints and threats] to our organization and the American-Arab Anti-

^{3[3]} Timothy Edgar, Briefing Transcript, p. 79.

^{4[4]} 121 S. Ct. 2491 (2001).

Discrimination Committee.”⁵[5] Because of the history of the FBI’s relationship with the Arab and Muslim American communities, members of these communities, particularly recent immigrants, are hesitant to report incidents of harassment, which include threats, assaults, deaths, vandalism, profiling on airlines, termination of employment, and indiscriminate detentions and round-ups by the FBI.

Dr. Zogby also discussed the efforts of the administration and Congress to combat hate crimes and violations of civil liberties of Arab and Muslim Americans in the wake of the September 11 attacks.

PANEL TWO—LEGAL EXPERTS AND SCHOLARS

- David Harris, Professor of Law and Values, University of Toledo College of Law
- Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium.
- Jeanne Butterfield, Executive Director, American Immigration Lawyers Association
- Elisa Massimino, Director, Lawyers Committee for Human Rights Washington Office

David Harris, Professor of Law and Values, University of Toledo College of Law, focused his testimony on racial profiling. According to Professor Harris, the September 11 attacks shifted the public debate of racial profiling, but compelling reasons remain to caution against its use. He also alluded to the errors made by the United States when it reacted to past national security crises, such as the internment of Japanese Americans, the Palmer raids, the McCarthy hearings, and the recent controversies concerning national secrets, that had civil rights implications.

Professor Harris acknowledged that the terrorist attacks present a strong case justifying the practice of racial profiling because all the identified suspects belong to a particular ethnic or religious group. Nevertheless, Professor Harris argued that data establish that racial profiling is an ineffective law enforcement tool. Data consistently show “across the board” that racial profiling is “not good law enforcement,” he said.⁶[6]

Professor Harris listed the following reasons to avoid racial profiling in the wake of the September 11 terrorist attacks:

- *Dilution of Law Enforcement Resources.* Racial profiling will dilute finite law enforcement resources that could have been expended to investigate more people. Most suspects would hold no interest to law enforcement agencies but for their appearance.
- *Damaged Ability to Gather Intelligence from Affected Communities.* Racial profiling treats members of an entire community as suspects and consequently hinders law enforcement’s efforts to gather intelligence from the profiled community. Unnecessarily treating people like suspects only alienates them from law enforcement efforts.⁷[7]

⁵[5] James J. Zogby, Briefing Transcript, p. 91.

⁶[6] David A. Harris, Briefing Transcript, p. 121.

⁷[7] *Ibid.*, pp. 121–22.

Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium, testified that fear of Arabs and Muslims might lead America to betray its principles just as it did with the internment of Japanese Americans during World War II “for the crime of looking like the enemy.”^{8[8]} She stated that the injured, deceased, and heroes from the September 11 attacks came in all creeds and colors. Anti-immigrant groups’ exploitation of fears of terrorism within the United States have begun “to push our country to close our borders, and attacks began as Americans began to seek personal retribution.”^{9[9]}

According to media reports, the FBI demanded that approximately 200 schools surrender financial and academic records of foreign students, generally of Arab and Middle Eastern descent. Many schools are complying without even providing notice to the students that their records had been surrendered.

Members of the immigrant community are most vulnerable to civil rights violations because of their unfamiliarity with the law, the language, and with the agencies that offer services to assist and protect them. Limited English proficiency can be a barrier to finding legal counsel, adequately communicating with counsel, and successfully navigating the justice system.

Ms. Narasaki stressed that Congress does not adequately fund the service side of the Immigration and Naturalization Service. She cited the backlog of citizenship and green card applications despite increases in fees charged to immigrants as an example. Consequently, waiting periods for obtaining citizenship and green cards are a “serious civil rights matter” due to the increased discriminatory nature of laws facing noncitizens.^{10[10]} Further, noncitizens are “subject to deportation for even the most minor of legal infractions.”^{11[11]} Ms. Narasaki cautioned that Congress should not add responsibilities to INS “until they can clean up what the INS is already unable to accomplish.”^{12[12]}

Ms. Narasaki stated that language is a troubling barrier for immigrants in our justice system. Yet, “[w]hen initially pressed for its plan, pursuant to President Clinton’s executive order asking all the federal agencies to service limited-English-proficient Americans, the INS—of all agencies—claimed that it did not come into contact with that many people who didn’t speak English.”^{13[13]}

^{8[8]} Karen K. Narasaki, Briefing Transcript, p. 138.

^{9[9]} Ibid., p. 136.

^{10[10]} Ibid., p. 134.

^{11[11]} Ibid., p. 135.

^{12[12]} Ibid., pp. 134–35.

^{13[13]} Ibid., p. 140.

She also explained the “discriminatory nature” of immigration laws.¹⁴[14] For example, INS’ failure to process citizenship applications in a timely manner raises civil rights issues because delays in citizen applications hold up the eligibility of prospective citizens for government safety net programs. Ms. Narasaki gave the example that an immigrant survivor of the September 11 attacks who became disabled would not be eligible for Medicaid or other federal assistance.

She also stated that the momentum to reform immigration systems was slowed by the September 11 attacks. She added, “The problem with distinctions based upon citizenship status is all too often that enforcement is based on racial profiling.”¹⁵[15]

Jeanne Butterfield, Executive Director, American Immigration Lawyers Association (AILA), reported that the anti-terrorism legislation originally proposed by the administration would allow law enforcement officials to detain and deport people based on mere suspicion without presentation of evidence or an opportunity for a hearing.¹⁶[16] Additionally, the original definition of the terms “terrorist activity” and “terrorism” in the proposed legislation would expose innocent people to broadened grounds of inadmissibility and deportability. Any new legislation should foster the balance of security and law enforcement needs with constitutional freedoms and civil liberties.

Ms. Butterfield cited three areas where her organization advocated improvements to the pending legislation:

- *Elimination of No Hearing Deportations.* AILA helped to eliminate from the proposed legislation the power to deport individuals based on suspicious terrorist activity without a hearing. Further, the government could not detain someone more than seven days without filing immigration charges.
- *Imposition of a “Reasonable Grounds” Burden.* In the proposed legislation, the attorney general must present “reasonable grounds” that the person falls within the definition of a “terrorist” before imposing mandatory detention. While AILA preferred a tougher standard, this standard was an improvement over earlier versions of the proposed legislation.
- *Retention of Habeas Review.* AILA also helped to preserve habeas review of the attorney general’s decision to detain an individual based on “terrorist activity.” Habeas review allows a detained individual the right to seek judicial review of the legality of the detention by the attorney general.

¹⁴[14] Ibid., p. 135.

¹⁵[15] Ibid.

¹⁶[16] Jeanne A. Butterfield, Briefing Transcript, p. 123. At the time of the briefing, no anti-terrorism legislation was passed in Congress. President George W. Bush signed Public Law No. 107-56, the U.S.A. P.A.T.R.I.O.T. Act, into law on October 26, 2001. Eric Krol, “New law to lessen limits for FBI; Local experts say it will keep agents ahead of terrorists,” *The Chicago Daily Herald*, Oct. 27, 2001, p. 1.

Ms. Butterfield also expressed concern over 148 people “swept up” and detained by the FBI for immigration violations without being charged.¹⁷[17] These people “are in a never-never land where the rights that attached in a criminal justice system, to counsel, to probable cause . . . do not attach.”¹⁸[18]

Elisa Massimino, Director, Lawyers Committee for Human Rights—Washington, D.C. office, said the Lawyers Committee issued a series of reports documenting the adverse impact of asylum laws on the refugee community. Following these reports, the Senate held a hearing in May 2001 to gather testimony about lengthy detentions, abusive treatment, and mistaken return of refugees. As a result, these hearings led to the introduction of the Refugee Protection Act six weeks before September 11. However, Ms. Massimino expressed concern over legislation introduced since September 11, which would still allow people to be detained for long periods without adequate access to the courts.

Ms. Massimino also reported that volunteer attorneys with the Lawyers Committee have not been allowed to see clients who are being held in detention facilities. She also relayed an incident where an immigration judge lectured volunteer attorneys that they should be prepared to prove not only that their clients are eligible for refugee protection but also that their clients are not terrorists.

Ms. Massimino concluded her remarks by relaying a story of an Afghan woman who was persecuted by the Taliban. When the woman fled to America without official travel documents, U.S. authorities interrogated her at the airport, shackled her to a bench, told her to remove her clothes, and placed her in a prison uniform. She fainted from the shock of the treatment she received, and she subsequently remained in jail for three months. While this incident occurred three years ago, Ms. Massimino wondered “what would happen to her today if she came here [after September 11].”¹⁹[19]

PANEL THREE—GOVERNMENT OFFICIALS

- Owen Cooper, General Counsel, Immigration and Naturalization Service
- David Venturella, Deputy Assistant for Detention & Removal, Immigration and Naturalization Service
- Joseph Langlois, Director of Asylum Division, Immigration and Naturalization Service
- Samuel Podberesky, Assistant General Counsel, Aviation Enforcement & Proceedings, Department of Transportation
- Fanny Rivera, Assistant Administrator for Civil Rights, Federal Aviation Administration, Department of Transportation

¹⁷[17] Jeanne A. Butterfield, Briefing Transcript, p. 127.

¹⁸[18] Ibid.

¹⁹[19] Elisa C. Massimino, Briefing Transcript, p. 132.

Owen Cooper, General Counsel for the Immigration and Naturalization Service (INS), stated the INS is not only a law enforcement agency focusing on preventing improper entry into this country but also an agency that concentrates on helping people legally enter the United States. INS is working to dispel the impression that its institutional culture is attuned only to keeping people out of the United States. Mr. Cooper cited examples of the following policy developments: the INS issued guidelines that alleviate undue hardships resulting from the strict application of immigration laws; it proposed new regulations expanding the definition of “refugee” to include gender-based and domestic violence claims; it implemented a more open and accessible system for receiving claims related to torture; it implemented the Legal Immigration and Family Equity Act, which allows eligible persons to adjust their immigration status without leaving the country; and it implemented the Child Citizenship Act, which allows most foreign-born children adopted by U.S. citizens to automatically acquire U.S. citizenship. After these remarks, Mr. Cooper read into the record a statement by INS Commissioner James W. Ziglar.

Mr. Cooper also discussed the 148 people detained by INS in connection with the terrorist attacks and their rights to legal representation. The number of detainees changes hourly, but all INS detainees are held for violations of immigration laws. He added that the FBI may be concurrently investigating the detainee for possible involvement in terrorist activity. However, INS is only involved when a basis for an immigration violation exists. The 148 detainees are in custody in various places around the country in accordance to the normal process that applies to anyone detained for immigration violations.

Additionally, Mr. Cooper summarized the INS process for detention. As part of the normal INS procedures for detention, INS provides detainees with a referral list of free or low-cost legal services compiled by the Executive Office for Immigration Review. The law guarantees a right to counsel but not a right to government-funded counsel. He noted that INS, in the wake of September 11, issued a formal reminder to INS employees of the agency’s policy regarding the right to counsel.

When asked if INS investigates newspaper accounts of INS personnel preventing attorneys from seeing their clients, **David Venturella, Deputy Assistant for Detention & Removal, INS**, affirmed that his division is investigating complaints of noncompliance with detention standards. He also noted that the Department of Justice hired PricewaterhouseCoopers to conduct an independent review of INS detention facilities and measure compliance with the guidelines and standards of the INS, the Justice Department, and the American Correction Association.

Mr. Venturella said INS instituted a new program to provide all detainees with a “know-your-rights” presentation and supplied related pamphlets to detainees in different languages. He acknowledged that the new program is in its infancy and requires improvement.

Mr. Cooper also described the two separate systems for requesting asylum and adjudicating an asylum claim. When a person requests asylum, the applicant is first processed in the affirmative asylum program and meets with an INS adjudicator in a non-adversarial setting. If the applicant is not granted asylum and INS seeks deportation, the asylum claim is adjudicated in an adversarial proceeding before an immigration judge. In this second process, asylum seekers appear before an independent decisionmaker and possess a right to counsel. The applicants also

may renew their asylum request in this proceeding. **Joseph Langlois, Director of Asylum Division, INS**, added that his division maintains statistics on asylum officers' approval rates and utilizes quality assurances trainers to monitor the asylum process. According to Mr. Cooper, another component of the Justice Department maintains statistics on asylum grants and denial rates of immigration judges.

Responding to questions about who pays for legal counsel for the detainees, Mr. Cooper said that some detainees provide for their own legal representation and that many organizations offer low-cost or no-cost legal services. Mr. Venturella conceded that he believed only a small percentage of detainees have legal representation.

Mr. Langlois explained that INS only provides interpreters for asylum seekers when asylum claims are adjudicated before an immigration law judge. Individuals participating in the affirmative asylum program are responsible for obtaining their own interpreters, but the government will provide an interpreter if the case moves to adjudication before an immigration judge. Further, Mr. Langlois clarified earlier testimony concerning the right to legal counsel. A detainee does not have a statutory right to counsel in an expedited removal proceeding, but the detainee holds a right to a consultant, who may be a lawyer.

Mr. Venturella acknowledged that INS missed its congressional reporting requirements and has not issued a report concerning the detention of asylum seekers since 1999. He claimed that INS lacked sufficient data to analyze and produce useful reports.

Responding to a question about extra scrutiny for either naturalization or family immigration petitions, Mr. Cooper asserted INS naturalized 45,000 people since September 11 and is continuing its attempts to process petitions promptly and efficiently. He acknowledged that enhanced security measures are causing backups at ports of entry. INS is ensuring that ports of entry remain open 24 hours a day.

Mr. Cooper commented on how INS does not always have access to the types of statistics that would be useful for an agency trying to monitor INS programs. For example, quantifying the number of asylum seekers in detention is difficult because INS does not have full access to information on individuals processed in the immigration courts. One commissioner suggested that INS contact the National Academy of Sciences, which is developing its procedures to measure and detect discrimination, and that INS be proactive and implement its own set of testers for discrimination by asylum officers or inspectors similar to tests used to detect housing discrimination. Mr. Venturella said his program is in the process of developing a strategic plan to evaluate detention and removal proceedings, ensuring they are humane and secure.

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement & Proceedings, Department of Transportation (DOT), read a letter sent by Secretary of Transportation Norman Mineta. In light of the strengthened security after the terrorist attacks, DOT took steps to ensure full compliance with civil rights laws and investigate all discrimination complaints. Mr. Podberesky added that it is the primary focus of his office to monitor civil rights compliance by the airlines and investigate security-related discrimination complaints.

Fanny Rivera, Assistant Administrator for Civil Rights, Federal Aviation Administration (FAA), DOT, said FAA issued a news release in 1998 that stated the FAA's airline screening system would fully comply with civil rights laws. On September 21, 2001, DOT cautioned airlines and airport enforcement authorities not to target passengers based on their race. Ms. Rivera acknowledged that FAA implemented new security measures for airlines since the terrorist attacks, but airlines still remain responsible for implementing these new measures in a nondiscriminatory manner. FAA also encouraged airlines to communicate to their employees the illegality of discriminating against airline passengers based on race, ethnicity, or religion.

Responding to a question about whether FAA utilizes guidelines or procedures permitting removal of airline passengers based on ethnicity, national origin, or Middle Eastern or Muslim appearance, Mr. Podberesky stated no guidelines exist that allow removal of an airline passenger based solely on race, nationality, or ethnic origin. However, a federal statute permits removal of passengers if airline personnel believe the passenger represents a safety or security risk to the airplane. Nonetheless, the airline cannot remove the person solely based on race under this statute. Mr. Podberesky added if an airline used race as a factor for removal, such action would raise serious concerns that would be dealt with on a case-by-case basis.

Ms. Rivera stated her office only investigates complaints filed with her office and does not examine unfiled complaints reported in the media. Mr. Podberesky added that DOT occasionally contacts airlines regarding incidents documented in the media that appear to be particularly egregious. However, it is difficult to pursue enforcement action without an official complaint.

Mr. Podberesky noted that FAA has no authority to enforce civil rights laws against airlines and explained that his office at DOT is charged with investigating civil rights complaints against airlines. Ms. Rivera's office at FAA establishes airplane security requirements.

Mr. Podberesky said that when determining what constitutes unlawful discrimination, he uses the "but for" test. Pilots must consider two statutes when removing passengers from airplanes: (1) 49 U.S.C. § 449.02, which gives airlines authority to remove anybody from the airplane they believe is a safety risk to the aircraft; and (2) 49 U.S.C. § 401.27, which prohibits airlines from discriminating based on race, ethnic origin, or religion.

According to Mr. Podberesky, DOT is aware of the Commission's May 2001 Michigan Advisory Committee report finding, among other things, the computer-assisted passenger screening (CAPS) program discriminates by profiling people. However, he disagreed with the findings in the report with respect to the CAPS program. He also noted that the Justice Department reviewed the CAPS program in 1997 and found it to be nondiscriminatory.

Mr. Podberesky explained that DOT maintains data on all complaints and keeps investigation files for each complaint.

CONCLUSIONS

SUGGESTIONS FROM PANEL MEMBERS

Panel members made several suggestions to the Commission, including the following:

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- The Commission should examine the impact of the September 11 attacks on the civil rights of the Arab American community.
- The Commission should work with legal, civil rights, and private philanthropic organizations to ensure access to legal counsel for those whose civil rights have been violated.
- The Commission should urge President Bush and Attorney General Ashcroft to take proactive interim steps to address racial profiling.
- The Commission should dissuade the U.S. Department of Justice from pursuing proposed collaborations between INS and local law enforcement agencies in conducting immigration law enforcement operations.
- The Commission should consider ways to improve accountability in law enforcement.
- The Commission should submit comments to federal agencies and other governmental entities that may be issuing proposed regulations related to immigration law enforcement, in order to ensure that civil rights concerns are adequately addressed.
- The federal government should examine broad policy questions to improve the naturalization and visa process to deter terrorism and not affect commerce and family reunification.
- Detention proceedings should place the burden of proof on the federal government to justify an individual's detention.
- The Commission should use its advisory committees in the states and the District of Columbia to convene briefings on a local level to address issues that disproportionately affect immigrant communities.
- The Commission should provide guidance on how hate crimes should be appropriately investigated. This may instill more confidence in members of the public who wish to report hate crimes.
- The Commission should systematically collect data regarding the interaction of members of the immigrant community with INS.
- The Commission should monitor whether INS is in compliance with its agreement with the American Bar Association addressing detainee access to counsel.
- The Commission should check the status of persons held by INS on immigration charges and alleged to be involved with the terrorist attacks to see if these individuals have access to counsel and family members who are able to post bond.
- The Commission should monitor INS' detention and parole of asylum seekers.
- The Commission should monitor the INS publication of data on the detention of asylum seekers.
- The Commission should educate the American public about racial profiling and the anti-terrorism legislation's definition of a "terrorist" and a "terrorist act."

- The Commission should monitor the implementation of the anti-terrorism legislation, particularly with respect to detention of members of the immigrant community. There is a concern that the powers granted to law enforcement officials may leave room for excess and abuse.
 - The Commission should monitor the compliance of any reporting requirements included in the anti-terrorism legislation.
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U.S. Commission on Civil Rights

Briefing on Boundaries of Justice: Immigration Policies Post-September 11th

October 12, 2001

PANEL I

This is an unverified transcript of the full and complete proceedings of the U.S. Commission on Civil Rights in the matter of its Briefing on Boundaries of Justice: Immigration Policies Post-September 11th.

CHAIRPERSON BERRY: Okay. All right. We're ready now, without objection, to go to the briefing. Could we ask the panelists for the first briefing to come forward? They are Mark Krikorian. I'll introduce you further as you come after you come up Najeeba Syeed-Miller. Am I reading the right thing? Tim Edgar, Charles Kamasaki all of these people? Jim Zogby. I mean, James James Zogby. James Jim Zogby.

Do we have names for everybody? Everyone has a name?

Okay. I want to welcome you. I, first, have an opening statement, and then I will introduce the panelists. If we could have order among the staff, I would appreciate it. Could we have order, please?

The terrorist attacks of September 11 and the tragic loss of thousands of lives has had a devastating effect on our nation. These attacks have caused us to reexamine policies and practices dealing with immigration, intelligence-gathering, and national security.

Overlooking ground zero of the attack on the World Trade Center is the Statue of Liberty, our nation's beacon of hope to countless numbers of oppressed people throughout the world. The attacks of September 11 seriously test the enduring message inscribed there: Give me your tired, your poor, your huddled masses yearning to breathe free.

Americans have a long and proud tradition of keeping our doors open to the world through immigration. The Commission is confident that America can and will remain the most free and open society in the world. At the same time, we must ensure the safety and security of all Americans.

How do we, as a nation, balance the need to secure ourselves from terrorist attacks with the need to maintain the freedoms and civil rights we cherish so dearly? It is this delicate, but vitally important balancing act, that will be examined today.

While the United States has declared war on terrorism, there has not been a formal declaration of war against another country. Certainly, when the nation is at war, greater deference must be given to government decisions about what is required for national security. As Justice Oliver Wendell Holmes wrote in 1919, the power of the government to regulate undoubtedly is greater in time of war than in time of peace because war opens dangers that do not then exist at other times. But, of course, we are not formally at war.

At the same time, however, we are keenly aware that not only have thousands of American lives been lost, but men and women in uniform are putting themselves in harm's way even as we speak to carry out important operations and missions that will, hopefully, lead to a more safe and secure nation and world.

As new laws and regulations are being passed and implemented concerning immigration and other issues, to what extent are freedom and civil rights being curtailed in a manner that might be acceptable during a time of war, but that is not acceptable during any other time?

Peace and security existed for so many years in this nation. It seemed nearly inconceivable to many of us that anything could change. But it did on September 11, and we watched the horrific events unfold on national television, footage shown repeatedly since the tragedies occurred. And in the thousands of images, articles, and newscasts we have all seen, read, and heard in the last four weeks, it is clear that America has lost a certain innocence.

While this is a new feeling to many younger Americans, there are countless older Americans who lived through a similar experience more than a half a century ago when Pearl Harbor was unexpectedly bombed during the morning of December 7, 1941. History does indeed repeat itself.

After Pearl Harbor was bombed, there were discussions about laxes in intelligence gathering and national security. More than 120,000 Americans of Japanese ancestry were rounded up and forced to live in interment camps, this at a time when more than 30,000 Japanese Americans served in the U.S. military during World War II. And the U.S. Supreme Court approved the interment of Japanese Americans in 1944.

And while legal scholars and commentators have almost universally scorned that case as one of the worst betrayals of Americans' constitutional rights in the Supreme Court's history, there are few who believe that similar measures could be implemented today. While the United States Government formally apologized for the internments in 1988, the Supreme Court has never overruled the decision that interred the Japanese Americans.

this Commission was not established until the passage of the Civil Rights Act of 1954. We would like to believe—and I've thought about this long and hard—that if the Commission had been in existence in 1944, perhaps the Commission could have helped steer public opinion and public policy toward answers and solutions that did not violate the civil and constitutional rights

of so many thousands of loyal Americans, just as if the Commission had been in existence during World War I it might have kept violations of the civil and constitutional rights of so many German Americans from being violated at that time.

Which brings us back to the realities of today. While the President and other public officials have eloquently appealed to Americans not to seek revenge on their fellow Americans who happen to be Middle Eastern or Muslim, some Americans have nonetheless waged vigilante attacks, including harassment, beatings, and murder, against persons because of their race, ethnic origin, and religion.

The Commission has utilized its hotline with a toll-free number so people could report the incidents of discrimination and harassment. Since we started publicizing the phone number, the Commission has received almost 500 calls.

As we hold this briefing today, we are mindful that reportedly terrorists may be planning additional attacks. This notice screams to us from the headlines and from the television and the radio. It appears that our heightened state of vigilance and alertness may have to become a way of life for years to come.

Clearly, we want our law enforcement and military personnel to have the most advanced capabilities and resources possible—the tools necessary to combat and prevent terrorist acts. However, as police powers are expanded, some new proposals could have serious unforeseen consequences for freedoms and civil rights that we take for granted.

As Lyndon Johnson once said, we have to worry not so much about whether legislation passed as good in evil times will really work in those times. We have to worry about who it will be used against then and after forevermore, and that this is an important worry for us who believe in and are responsible in the cause of civil rights.

These attacks on September 11 appear to have created the willpower among Americans to accept sacrifices in order to combat terrorism. The rights and freedoms that make this country a beacon of hope for oppressed people the world over must remain assured. So we ask the question again—how much must we sacrifice our values, our beliefs, our civil rights, and our civil liberties, to prevail in the daunting task at hand?

So what this briefing is addressing is the civil rights implications of anti-terrorism legislation on immigrant populations in particular and on all Americans. The briefing will also focus on the civil rights implication of new immigration policies, such as detention, implemented since the most recent U.S. Supreme Court cases on this subject.

We will hear testimony from community-based organizations on the effects of the anti-terrorism legislation and other immigration standards and policies on their constituents. Panelists representing various organizations will address the first-hand experiences of their constituents and the potential impact of this legislation and other new immigration regulations on their communities.

And then we will have legal experts and scholars who will talk about the constitutionality of the legislation, the civil rights implications of the evolving immigration laws and policies on the populations, and the constitutionality of such things as racial or ethnic or religious profiling in times of heightened national security.

Finally, there will be representatives from federal agencies, including the INS, Immigration and Naturalization Service, and the FAA of the Department of Transportation, who will address the civil rights implications of the proposed legislation, their role in implementing proper security procedures, while ensuring civil rights protections of affected populations, and their overall view on the protection of civil rights in times of national emergency.

We very much appreciate the participation of the panelists and expert witnesses as we discuss these important civil rights issues.

The panelists are Mark Krikorian, executive director, Center for Immigration Studies on this first panel. Mr. Krikorian holds an M.A. from the Fletcher School of Law and Diplomacy and is a Georgetown University graduate. He was a manager of a newspaper and other publications before joining the Center for Immigration Studies, and he has appeared on all of the media that everybody appears on and talks about this stuff. And in the center is a nonprofit/nonpartisan research organization.

We have also Najeeba Syeed-Miller, who is executive director of the Asian-Pacific American Dispute Resolution Center in Los Angeles. She is a South Asian American Muslim with a law degree from Indiana School of Law in Bloomington, and an undergraduate degree in psychology from Gilford College. The Asian-Pacific American Dispute Resolution Center has programs in community intergroup and peer mediation.

We also have Tim Edgar, who is legislative counsel of the Washington National Office of the American Civil Liberties Union. He is a Harvard Law School graduate and has an undergraduate degree from Dartmouth. And he is with us today, and he is responsible for defending and promoting civil liberties in the areas of national security, terrorism, and immigration in the Congress and the executive branch working on these issues.

We also have Charles Kamasaki, who is senior vice president, Office of Research, Advocacy, and Legislation, National Council of La Raza, where he has been for many, many years.

(Laughter.)

La Raza is one of the foremost you have been. You've been there almost as long as I've been here, Charles.

(Laughter.)

And doing good work.

Jim Zogby, James Zogby, is the president of the Arab American Institute. He has been working on these issues for a long time, too. I won't say years and years and years. He's the founder and president of the Arab American Institute, and we are pleased that he can be with us today.

We're going to begin the discussion with Mr. Krikorian. The staff has told you how long you should talk, I think, and you should do that and you should follow the instructions. And there will be questions from the Commissioners when you are finished.

Please proceed, Mr. Krikorian.

MR. KRIKORIAN: Thank you, Madam Chairwoman. Although unlike Congress, you don't have a red light, so I

(Laughter.)

won't know when to stop talking.

I thank you for the opportunity to participate in this briefing.

We're faced here I think with two questions relating to civil liberties. One is, is immigration a civil right? And the second is, what is the best way to create an environment respectful of the immigrants living among us?

The Constitution grants Congress the power to establish a uniform rule of naturalization from which is developed what's called the plenary power doctrine, under which Congress has essentially complete authority over immigration matters.

The Supreme Court has said that over no conceivable subject is federal power greater than it is over immigration. And as a consequence, as the Court has said elsewhere, "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."

This is as it should be, since control over immigration is fundamental to national sovereignty. If we, the people of the United States, have ordained and established a constitution, then we, by definition, retain the power to determine who is and is not a member of the American people. Thus, the decision to admit or exclude foreign citizens is a matter solely in the hands of the elected representatives of the people.

And anyone from overseas who is admitted to travel or to live among us does so as a guest, remaining here at our pleasure until such time as we agree to permit him to become a member of our people. In effect, foreign citizens, even if they are here illegally, enjoy the human rights endowed them by God, but remain here at our discretion, and the specifics of their due process rights are determined by Congress.

This is relevant in assessing many of the measures to tighten immigration control recommended in the wake of the September 11 attacks. All 19 hijackers were, after all, foreign citizens, as are many of those detained as possible accomplices or witnesses.

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This was also the case with the conspirators in the first World Trade Center attack, the 1993 CIA assassinations, the foiled bomb plot in New York in 1995, and in Washington State in 1999. And dare I venture a prediction foreign citizens or perhaps naturalized immigrants are virtually guaranteed to be responsible for the next attack, whether it actually does come in the next couple of days as the FBI has warned or farther in the future.

To begin at the first step in the process of coming to America, there is likely to be special scrutiny applied to visa applicants from Muslim countries or to people of Middle Eastern birth who have other citizenships.

Now, whether or not ethnic or religious profiling is an appropriate tool in the government's dealings with American citizens, there simply are no civil rights implications of such profiling of foreign citizens abroad. The United States Government may refuse entry to any foreign citizen for any reason at any time. It is precisely to preserve this irreducible element of national sovereignty that repeated attempts to subject visa refusals to review have been rebuffed by Congress.

One of the grounds for exclusion may well be expanded as a result of these attacks, a ground that would be unacceptable if applied to citizens but clearly permitted or even mandated when applied to non-citizens overseas. What I mean specifically is that current law makes it extremely difficult to turn down a visa applicant because of his beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

To keep out a terrorist sympathizer, in other words, one who publicly cheers the murder of Americans but who, as far as we know, is not a member of a terrorist group or raised money for terrorist organizations, the Secretary of State must personally make each decision and then report each individual instance to four separate congressional committees. Law is essentially written to apply the first amendment to foreigners abroad.

Whereas it seems to me imperative that visa officers be given a freer hand in excluding enemies of America, even if that hatred would be constitutionally protected if articulated by citizens and, again, this is not this has no civil rights consequences.

The next stage in coming to the United States is at the border. Here a tool to prevent the penetration of our society by terrorists and others has already been implemented to some useful effect. Although many have claimed that there are civil rights consequences to the procedure known as expedited exclusion, which was enacted in the 1996 immigration law, there are no such consequences.

That provision sought to end asylum abuses through the expedited exclusion from the United States of false asylum claimants at airports, generally speaking. When a person who arrived in the United States with no documents or forged documents claimed asylum, the initial plausibility of his claim is determined by an immigration officer, or then by his supervisor, if he's turned down. And if he is turned down, he is excluded from the United States without going through the whole asylum process.

This is part of Congress' plenary power over immigration. And, again, there are no civil rights consequences of such a policy.

Finally, within the United States, non-citizens do have rights, more if they are permanent residents, which means they are, in effect, candidate members of the American people, fewer if they are non-immigrants, which is to say visitors or long-term temporary residents, tourists, workers, what have you.

One change in the treatment of non-immigrants that is I think useful to look at would be that it's almost certain to be implemented in the wake of the attacks is the tracking of foreign students. Congress mandated a pilot program to track foreign students much more thoroughly than today, and that pilot program is very limited. It applies to a couple of colleges. The INS is certain to speed up the full implementation of this system.

Many foreign students and university spokesmen have complained about this as unfair or discriminatory, using civil rights language to express their displeasure with it. But as I've mentioned, these students are here purely as guests in our house, and we are entitled to place whatever conditions we deem appropriate on their stay.

Deportation policy is another area within the United States where some have warned that measures recently passed or proposed would have civil rights implications.

CHAIRPERSON BERRY: You have one more minute, Mr. Krikorian.

MR. KRIKORIAN: I'll speed it up. The problem with this view is that deportation is not punishment. Only non-citizens may be deported, and they are either here as our guests, as legal residents, or they are illegal aliens and may be removed at any time so long as lawful procedures are followed.

One example where this is relevant to the current discussions is the 1996 legislation which permits the use of secret evidence in deportations. Virtually all of the small number of people who have been subjected to the use of secret evidence in deportation proceedings have been Arabs or Muslims, and this has given rise to civil rights complaints.

Little has been heard of the measure—the efforts to repeal secret evidence legislation, but it they will resurface. But, again, deportation is not punishment. The Supreme Court has said that the purpose of deportation proceedings are administrative and they—the function—what they do is provide a streamlined determination of eligibility to remain in this country. Nothing more.

Therefore, as the FBI general counsel noted last year in testimony, The full range of rights guaranteed a criminal defendant, including the Sixth Amendment's right to confrontation of evidence, are not applicable in immigration proceedings.

I'll of course, my written statements are much more extensive than this, and I'll be happy to take questions from the Commissioners afterwards.

CHAIRPERSON BERRY: We will keep your if you have a written statement, you may submit it.

MR. KRIKORIAN: Yes, I do.

CHAIRPERSON BERRY: Without objection. Okay.

If you don't, no one was required to have a written statement. But if he has one, he may submit it.

MR. KRIKORIAN: They were making copies of them, I was told.

CHAIRPERSON BERRY: Yes. Ms. Najeeba Syeed-Miller?

And thank you, Mr. Krikorian. We will have lots of questions.

MS. SYEED-MILLER: Thank you. I am honored to be invited to this public briefing on immigration policies. The nature of my comments are reflective, based on my professional work as a mediator in the Asian-Pacific Islander community. I will explore various issues that the South Asian community faces as a result of the recent terrorist attacks on September 11, 2001.

I have been asked to focus particularly on the South Asian Muslim American community. My comments are offered as points to consider and not recommendations on specific policies.

One of the predominant I will first talk about the demographics of the South Asian community in the United States. One of the predominant misconceptions of the South Asian community is that they are included in the description under Arab or Middle Eastern. Indeed, recent violence has made this clear. South Asians have been targets of hate-based incidents because of the fact that some people view them as Arabs or linked to the 9/11 attacks.

For instance, a murder in Mesa, Arizona, of a Sikh man, Balbir Singh Sodhi, may be considered a racially motivated attack.

It may be helpful to consider the breakdown of major South Asian religious communities here in the United States. Estimates for the Sikh community in the United States number at 234,000. The number of Hindus 1,320,000.

The South Asian Muslim community is harder to track because of the continued discussion among scholars about the actual number of Muslims in the United States. It is estimated that they represent 25 to 35 percent of the total number of six to eight million Muslims here in the United States.

The South Asian American presence is extremely diverse in its ethnic, religious, and linguistic makeup.

Second, the history of immigration policies in the United States Asian Americans have had a long history of increases and decreases in the number of immigrants allowed to naturalize. In

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1882, Congress passed the Chinese Exclusion Act, which was to limit or exclude Chinese immigration for the next 60 years.

In 1907, the U.S. and Japan came to a gentleman's agreement which restricted Japanese immigration. South Asian Indians were affected in 1917 when Congress made India part of the Pacific Barred Zone of Asian countries which were included in certain exclusionary practices. It may be interesting to note that at that time it was considered a Hindu invasion as one of the terminologies that we use to consider India as a country that should be barred perhaps from some of the naturalizing processes.

Other groups face similar laws and some states prohibited the ownership of agricultural land by aliens ineligible to citizenship. Immigration, as we know, was later liberalized in the 1960s.

One of the most important time periods in the history of immigration for the Asian community was the internment of 120,000 Japanese Americans in the 1940s. No evidence of actual subversive activities were required for the interment, and some bank accounts of Japanese Americans were frozen at that time.

The experience is perhaps best explained by Elsi Hashimoto's quote, "Most of us failed to mention our experience for close to 40 years, because to this day our emotions overwhelm us. This is the opening quote for the exhibit, America's Concentration Camps: Remembering the Japanese Experience.

Reflections on how to foster pluralism—no one would consider similar actions as possible against minority communities in the present time of war as were carried out in the 1940s. The relevance of the Japanese American experience to today's situation is that we must understand the implications of policies that are applied sweepingly to one ethnic community.

Decisions made out of hysteria, or the yellow scare, as they were done in the 1940s, can be ones that we regret for generations. One of the results may be feared based on the particular community's view that they will be treated as inherently un-American because of the society's stereotype of them as possible criminals.

A number of clients have called me and were hesitant to report hate crimes because they were afraid that no one would take them seriously. At a more extreme level, people of South Asian descent have been afraid to go out of their homes alone. One positive aspect of this experience is that it has brought together various communities who have escorted or accompanied those who are experiencing fears to go outside.

What I wish to discuss is the current situation that we face as a nation. Our President has rightly identified that one of the tenets that was under attack on September 11 was that of pluralism. As a mediator, I work constantly to create spaces for diverse, complex, and interesting interactions between individuals and groups. I am blessed to be in a nation that values these freedoms. I will attempt to identify some potential areas for discussion regarding the recent attacks and interethnic and interreligious dialogue.

First, this is a time to work even harder to build coalitions between groups who find themselves targets of ethnic-based violence. The target of hate-motivated crimes has spilled over from the Arab and South Asian community into other groups. For instance, hate crime charges are currently being filed against two men who followed a Latino American man home in Los Angeles. They reportedly mistook him for someone from the Middle East.

Minority communities have the opportunity to engage one another and find common ground on issues they face together. I attended a powerful candlelight vigil in Los Angeles sponsored by the Nikkei for Civil Rights and Redress. This was a chance to bring together South Asians, Muslims, and Japanese Americans and reflect upon similar issues.

One powerful statement was made by Ayako Nagihara, NCCR co-chair that evening. She said, "We have many lessons to draw from the camps. We learned that we must safeguard our civil liberties, especially in times of perceived threat, and support those who face discrimination or threats based on race or ethnicity."

Second, it is important to recognize the losses that certain communities may face as a result of this recent horrible event.

CHAIRPERSON BERRY: You have one minute, please.

MS. SYEED-MILLER: These are losses that are not always protected by law and can often go unmeasured. For instance, South Asian businesses have been losing profits by closing early because of recent threats.

The second issue that we want to face is also the continued need for cultural exchange. In particular, our universities have shown to be viable forums for cultural exchange. A number of students have been called back from their universities here in the United States back home because of feelings of threat—fear of reprisal attacks, so their parents have called them back.

Indeed, our country's universities have fostered connections abroad with international students who gain an affinity for similar values. There are currently initiatives to block such access to American universities. While this is an understandable reaction, it may limit exposing groups of people to the opportunity to gain insight into the democratic processes of our nation.

At the local level, we must continue to dialogue and build bridges between various communities and groups. The combination of anger and ignorance can ignite problems and disputes that are violent in nature. Through carefully constructed interactions, we can dull anger and erase ignorance.

If such actions are not taken, long-term suspicion can ensue, and the process of fixing high levels of distrust is one of the most difficult tasks as any mediator will tell you.

I recently received an e-mail from a group that will be working on

CHAIRPERSON BERRY: Your time is up, Ms. Syeed-Miller.

MS. SYEED-MILLER: Okay.

CHAIRPERSON BERRY: You can finish the sentence.

MS. SYEED-MILLER: May I finish my sentence?

(Laughter.)

Okay. I recently received an e-mail from a group that will be working on Muslim Jewish dialogue in Los Angeles County. Some may think that this is precisely the wrong time to embark on such interreligious work. Rather, I think this is the most appropriate time to continue our grass-roots efforts to bring together all segments of society.

In the wake of this tragedy, we have a choice: to unite or to divide even further as a result of it.

Thank you.

CHAIRPERSON BERRY: Thank you very, very much.

Mr. Edgar, please.

MR. EDGAR: Good morning, Madam Chairperson and members of the Commission. My name is Timothy Edgar, and I am a legislative counsel for the American Civil Liberties Union.

The ACLU appreciates the opportunity to make a statement before you today on the government's response to the attacks on September 11, 2001, and its impact on civil rights and civil liberties. My testimony will focus primarily on proposed anti-terrorism legislation and its impacts on the civil rights and civil liberties of immigrants. I will also briefly address the issue of secret searches.

Every new measure proposed by the government in response to the terrorist attacks must meet a basic test. It must provide the maximum effectiveness in the fight against terrorism while minimizing any adverse impact on civil rights and civil liberties.

In that spirit, the ACLU has welcomed new measures to increase airport security and also believes that many provisions of proposed anti-terrorism legislation will provide law enforcement with needed tools and are unobjectionable from a civil liberties standpoint. However, as a whole, proposed anti-terrorism legislation flunks the basic test of making us safer without sacrificing essential civil liberties.

Among the most troubling provisions are measures that would allow for detention of immigrants on the basis of suspicion and lawful political associations for a potentially indefinite period of time. Expand the ability of the government to conduct secret searches. Minimize judicial supervision of federal telephone and internet surveillance by law enforcement authorities.

Give the Attorney General the power, for the first time, to designate domestic groups as terrorist organizations, permitting their non-citizen members to be detained and deported without

evidence of any involvement in terrorist activity. Grant the FBI broad access to sensitive business records about individuals without having to show evidence of a crime. And lead to large-scale investigations of American citizens for intelligence purposes.

We believe that the detention and removal provisions are the most troubling provisions in the legislation. As we explain, these provisions present three fundamental constitutional problems. First, they permit individuals to be imprisoned in INS facilities not on the basis of evidence but solely on the basis of an Attorney General certification of the kind of reasonable suspicion that ordinarily would permit no more than a brief stop-and-frisk encounter.

Second, these provisions still permit potentially indefinite detention of immigrants who are not terrorists, despite press reports that this problem has been fixed.

Third, the Senate bill contains provisions that permit immigrants to be punished for associational activity with groups our government later chooses to regard as terrorist organizations or terrorist fronts, without notice to the immigrant and without an effective defense for truly innocent associations.

Madam Chairperson, we believe that the recent sad history of INS proceedings on the basis of evidence not revealed to the defense, which as George Bush has recognized were directed almost exclusively against persons of Arab or Muslim background, dramatically illustrates the dangers of the even greater and detention and deportation powers the Attorney General now seeks.

The Attorney General has broad detention authority under our immigration laws. Under current law, any non-citizen can be arrested and detained pending a decision on whether or not he should be deported. However, before the attacks on the World Trade Center and the Pentagon, regulations required the INS to file a notice to appear and warrant of arrest within 24 hours, which has now been extended to 48 hours, and an additional reasonable time in an emergency.

However, those who are not charged with being deportable as terrorists do have the opportunity to ask for relief at a hearing before an immigration judge will be granted if the alien poses no danger to property or persons and is likely to appear for a future proceeding. The purpose of the legislation is to eliminate that hearing for those that the Attorney General has certified.

The legislation uses the standard of reasonable grounds to believe that an immigrant poses a danger to national security. This standard is identical to the standard of proof by the Supreme Court for a stop-and-frisk encounter in the criminal context.

In addition, the proposed legislation permits any non-citizen who is in violation of immigration status to be detained for a potentially indefinite period of time if their country refuses to accept them. This is directly contrary to the Supreme Court's most recent ruling on the subject of *Zadvydas v. Davis*, which says that allowing indefinite detention of immigrants not deported would pose a serious constitutional problem.

The Supreme Court did not allow the government to hold such immigrants, even those who the government said were dangerous and who had no right to remain in the United States, if their deportation was not likely in the reasonably foreseeable future.

While the Zadvydas court did not address the indefinite detention of persons ordered removed on terrorism grounds, it made clear in its analysis that preventive detention would not be allowed in the absence of strong procedural protections.

CHAIRPERSON BERRY: Mr. Edgar, you have one minute.

MR. EDGAR: And that proceedings must place the burden of proof on the government. It also said that indefinite detention would not be allowed broadly for aliens ordered removed for many and various reasons, including tourist visa violations, which would be permitted under the legislation.

Madam Chairperson, our country's record in time of war in ensuring the civil rights of every person protected by our Constitution, including immigrants, is mixed. For example, during and after World War I, hysteria about subversive foreigners led to the notorious Palmer raids.

Those raids led to the detention of thousands of immigrants who had done nothing other than take seriously our country's promise of political freedom by becoming active in labor unions and political organizations. Many were imprisoned and deported for their political beliefs.

Those excesses directly led to the founding of the Civil Liberties Bureau, later to become the American Civil Liberties Union. Establishment opinion was not with us then. The New York Times editorialized that good citizens willingly submit to infringements on civil liberties in wartime, dismissing the Civil Liberties Bureau as a little group of malcontents, troublesome folk, an unimportant and minute minority out of all proportion to their numbers.

The Washington Post applauded the Palmer raids, saying, "There is no time to waste on hairsplitting over infringement of liberty."

Madam Chairperson, our country has, thankfully, come a long way since those dark days. You should not turn back, and your continued oversight can help ensure that we do not, even with the increased, dramatic, extraordinary powers the Attorney General is seeking.

CHAIRPERSON BERRY: Thank you.

Although you're sitting there, Jim, you're not next.

(Laughter.)

Charles Kamasaki is next. I don't know how you guys did that. Mr. Kamasaki, please proceed.

MR. KAMASAKI: Thank you, Madam Chair. On behalf of the National Council, I thank you for the opportunity to be here today. In the interest of time, I'll try and be even briefer than five minutes' famous last words, right?

Hispanic Americans are committed to supporting effective efforts to make all residents of this country safer, but we also caution against moving too quickly and acting on emotion rather than

implementing well thought out and reasonable policies. With this in mind, I would like to put forward three general principles that ought to govern the debate over anti-terrorism policies.

First, new anti-terrorism policies must be effective and necessary and should be narrowly tailored to respond to real security threats. Second, these policies should be carefully considered so that they do not have unintended negative outcomes that adversely affect entire communities. Third, we believe that the events of September 11 should not prevent the nation from moving forward in due course on immigration and civil rights policies that remain in the national interest. And, Madam Chair, our written statement includes numerous examples of these.

If I may, what I would like to do is skip to some recommendations

CHAIRPERSON BERRY: Sure.

MR. KAMASAKI: and then briefly address some points Dr. Krikorian made.

CHAIRPERSON BERRY: All right. Thank you.

MR. KAMASAKI: As your opening statement noted, Madam Chair, the Commission on Civil Rights has a uniquely important role in ensuring the protection of basic civil rights particularly during a time of national crisis. As an independent agency whose members are not required to run for office, the Commission is uniquely qualified to serve as a watchdog, monitoring the activities of law enforcement and other federal and state agencies charged with protecting national security.

We believe, as Mr. Edgar just noted, that this role takes on added importance during emotionally charged and challenging periods when the potential for overzealous behavior is greatest. We believe this Commission can do much to prevent our country from doing things we will later regret, including many of the examples you and others have cited.

With this experience in mind, NCLR respectfully makes a number of recommendations, which I'll summarize here. We ask, first, that as data become available over time, the Commission continue to hold hearings and issue reports on civil rights implications in the aftermath of the September 11 attacks. One good place to start, we believe, would be to examine the impact of the September 11 events on the civil rights of the Arab American community.

Second, we encourage the Commission to take immediate steps to prepare to examine the government's response to the terrorist incidents. This may require the establishment of systems now to assure the future collection of relevant agency data.

Third, we salute you for establishing a hotline to report hate crimes, discrimination and other violations of civil rights, and urge you to work with others who are carrying out similar activities.

Fourth, NCLR is concerned about the paucity of legal representation for victims of hate crimes and other acts of discrimination and urge you to work with the bar and civil rights organizations,

as well as private philanthropy to assure that anyone whose rights have been violated has meaningful access to legal counsel.

We also encourage you to urge President Bush and Attorney General Ashcroft to take proactive interim steps to address racial profiling. In the short term, this may involve working with the Administration to help shape guidelines for law enforcement, and eventually we believe the President and the Attorney General should reaffirm their public commitments to the eradication of racial profiling by declaring and enforcing a band on such profiling by all federal agencies.

Next, we encourage you to help dissuade the Department of Justice from pursuing proposed collaborations between the INS and local law enforcement agencies in conducting immigration law enforcement operations, and we cite a number of egregious past examples that have resulted in widespread violations of civil rights.

We also encourage you to consider ways to improve accountability in law enforcement and have some specific recommendations there. And, finally, we urge that the Commission should aggressively assert its prerogative to submit comments to federal agencies and other government bodies that are issuing regulations or proposing legislation related to immigration law enforcement to ensure that civil rights concerns are adequately addressed.

Briefly, let me address Dr. Krikorian's suggestions regarding the absence of civil rights protections for persons who are foreign born or who are in the immigration process. I would note first that the Constitution says very clearly that its protections apply to all persons in the United States. So it seems to me that plain language ought to apply here.

I would note, second, that all of the relevant civil rights statutes do not make distinctions on the basis of alienage for a number of reasons. First, I would note, particularly from a Latino perspective, this is important because national origin or perceived nation origin is itself grounds frequently for discrimination. Thus, citizens who might be endangered by acts of discrimination, it seems to me, would lose protections if we were to follow Dr. Krikorian's suggestions, because perpetrators of discrimination need merely claim that they thought someone was foreign and would have an automatic pretext for any discrimination that occurred.

CHAIRPERSON BERRY: You have a minute, Charles.

MR. KAMASAKI: Thank you. Second, we believe that the policy and legal rationale that protects citizens for previous and ongoing acts of discrimination clearly apply to permanent, legal, lawful residents who have been in the country for a sufficient period of time to experience discrimination.

And, finally, I would note that it's not terribly easy to make distinctions between foreign born or foreigners and citizens, particularly at a time when the demographics show we have a number of so-called mixed families or citizens and other members of citizen children and other members of households who are likely to be adversely affected by discriminatory acts perpetrated against foreign-born members of those households.

CHAIRPERSON BERRY: Thank you very much, Mr. Kamasaki. Mr. Zogby, please, Dr. Zogby.

MR. ZOGBY: Thanks. I want to I will have a statement, but Monday, and I will also have a list

CHAIRPERSON BERRY: You don't have to, but if you want to.

MR. ZOGBY: Also we'll have a document that we are organizing we had organized it chronologically as we've taken in matters of concern, but we are now organizing it by type of incident in weeding it out. This is not a new problem. The problem of hate crimes or crimes of bias or instances of bias against Arab Americans and Muslim Americans negative stereotypes have shaped the understanding of our fellow citizens about who we are and what we're about.

In many several past crises we have experienced backlashes, even when Arabs themselves were not involved. The Iranian hostage crisis was one such instance where, for example, many of my community, Lebanese Americans who had nothing to do with Iran or with the hostage crisis found themselves attacked. The Gulf War was a time when I remember distinctly the FBI Director telling our community that they were a community, in quotes, at risk. We found that we were. Oklahoma City, in the immediate aftermath, within just two days, we reported 230 very serious incidents of backlash. When a passenger flight exploded off the coast of Long Island, again we had such a backlash, and now this.

In the current circumstance, I could describe all of the range of emotions that my community experienced, but let me just tell you that to have to shift immediately from shock and mourning to the fear of backlash was not a pleasant one. Almost within hours watching while I was watching it, I got the first death threat. It was, Jim, you towel-head, all you Arabs will die. We will slit your throat and kill your children.

It affected me, and it affected my family. My daughter got harassing and threatening calls, a 19-year-old girl, at her college. My nephew, the very next day, overhead conversations in rooms on his floor whether it was safe to be rooming on the same floor with him, and his uncle was such and such, and the Zogbys are going to have trouble. My brother got two bomb threats at his home and business and had to shut down for two consecutive days.

We've had more than 300 reported to our Organization and the American Arab Anti-Discrimination Committee. We know that there are more than that. You, yourself, noted that you've received over 500. New York Times reported just yesterday that New York City police alone have received 120 such complaints. And many go unreported.

And I want to make a comment here and a recommendation, if I can. Many immigrants, in particular, fear law enforcement. Many of my generation simply accept it as par for the course. I don't know if I reported the hate I did, actually, call the FBI, but in the past when my office was fire bombed in 1980, I never reported it. When I got death threats in the '80s, I never reported them. Many of my generation simply view it as the price you pay for being an Arab American and having feelings about the Middle East. And so many do not go reported.

The main concern I have here is with recent immigrants. There is a fear, for example, if the FBI is investigating hate crimes and Arab Americans, recent immigrants in particular, fear the FBI because of the sweep that is taking place and they don't want to get caught up in the

investigation because they may in some instances be out of status or be concerned about their status or they simply may fear law enforcement. Look, Arab Americans who come from countries in the Middle East where when the Mujabarrat, their secret services, knock on your door you're in trouble do not necessarily respond favorably.

And the past history of the FBI's relationship with our community has not always been the kind that encourages people to go to them and report a problem. And, therefore, I think that there is a need for not just improved system for hate crime reporting but for who mediates between victim communities and law enforcement so that we can have a better more confidence in victim communities that they can report and be safe.

The problems are in fact serious. Our polling shows, actually, probably more widespread than the numbers indicate. We just completed a poll of Arab Americans, both Christian and Muslim. We found that 32 percent report having experienced some form of discrimination, that 20 percent report specific instances of discrimination based on ethnicity since September 11, 49 percent in the age group 18 to 29, 45 percent, therefore, of students and 37 percent of Arab Americans who are of the Muslim faith. That tracks pretty much with the anecdotal evidence we have.

The most serious problems that are reported to us right now involve students in schools, which is why Community Relations Service that the Justice Department has worked out with us a program to get information to the schools and to be able to do better education in the schools about who Arab Americans and Muslims are. With Ramadan shortly coming up on us, I believe that we may have serious problems as the war effort continues. We've always had increased problems during Ramadan, and I fear that the problem may become more serious at that point.

The types of problems that we're getting fall into about five or so categories. First are assaults. There have been seven deaths reported which may be resulting from hate crimes, 75 other physical assaults, either shooting, beatings or stabbings that have been reported to us. Vandalism to property, special targets, of course, include mosques but also Arab-owned businesses that have Arab signage out front. We have about 80 instances of those across the country. Threats and harassment, including those I've mentioned in my own family, but those kinds of death threats or personal threats.

But, frankly, I believe that in this area in particular the numbers must be much higher. I mean just simply getting into a taxi cab in Washington, if it's a Sikh or a Pakistani or an Arab and asking if he's been threatened either by passengers or as they leave the cab or cars by driving by, the numbers appear to be I could probably fill a couple of dozen just with individuals I've asked about those kinds of problems.

And we have had a few job-related, not as many as I might have feared, but six have been reported to us where people have been fired and been told the specific reason for their being fired was that their fellow employees didn't want an Arab in the workplace.

We have had another area that is very troubling to me, and this is this issue of airplane profiling. We've had 11 specific instances reported to us involving over 20 passengers where people are either excluded or taken off a plane or not allowed to board a plane. And in every instance they've been cooperative.

Now, we've been told that what they've said is that the pilot would come and say that FAA provisions allow them to remove, but I've looked at the law on this, and it does not allow for that unless the passenger performs some action that makes passengers uncomfortable. Dark guys are not allowed to be removed from the plane because they're the dark guys on the plane. And, frankly, if you do something that makes people feel that you are unsafe, other than just happened to have an Arab face, the passengers can be asked to leave, not simply because they happen to be Arab or speak speaking Arabic is not, at this point in time yet, a crime.

CHAIRPERSON BERRY: Jim, you've got a minute.

MR. ZOGBY: We have another area of concern, and that's with the detentions and roundups. It appears the FBI cast a net that was too wide. They've acknowledged that to us, but they have too mottos at the FBI. One is the FBI always gets their man; the other one is that they never apologize publicly. The problem with this roundup is that it's created fear and a lack of reporting of hate crimes, which is why I want to mention it right now. I don't want to see the FBI, I don't think anyone wants to see the FBI doing the INS cleanup job, which is what seems to have been the case, and we now know some news agencies are actually trying to investigate those 600 reported detentions to find out exactly what the basis of them are. I think we'll all learn something in the future. In most cases, the reports that have come to us indicate that family members can't find the person who's been detained or lawyers can't find the person. The person's been moved, and so we don't know the exact status of the individuals, but there's a matter of concern here.

I want to close on a positive note, and that is to say that the problem is serious, but I believe it may have been more serious had it not been that the President and the Administration and officials in the country set such a positive tone. The President worked extensively in this area, as has the Attorney General, the Secretary of State, and most recently Secretary Mineta who has been extraordinary in the statements that he's been making about this behavior on airlines.

The Senate and the House have passed a concurrent resolution unanimously condemning these kinds of hate crimes and violations of civil liberties and have made individual meetings with our communities, both here in Washington and around the country. Civil Rights Division of Justice Department, Ralph Boyd, has convened several meetings and has set up a program for us to meet with FBI and meet with Community Relations Service and other relevant agencies at the Department.

And the FBI has made a significant effort. We have 130 cases that they tell us are actively being investigated and to indictments. We have never had an indictment before of anyone who's committed a hate crime against Arab Americans or Muslim Americans. We now have two, and that is very important to us. They are promising many more in the weeks to come.

Efforts are being made. I know that more efforts need to be made. I fear if we have another attack that we may still have more problems, that this will come in ebbs and flows. But right now there are some specific things that can be done, one regarding airline behavior and another regarding the relationship between FBI, INS and victims of hate crimes and how we can improve the reporting system.

CHAIRPERSON BERRY: Okay, Jim. Thank you very much. Now, Commissioners, if you have questions, I will limit each Commissioner to one question only. And then if there's time after that, then we can have another question. But rather than one person take up the entire time, then we will have one question.

Yes, Commissioner Thernstrom?

COMMISSIONER THERNSTROM: I have a question for anybody who wants to answer it. Nobody around this table, and I think we speak for the overwhelming majority of Americans, would find death threats, assaults, vandalism, harassment, other serious problems, including discrimination, acceptable, although your stories cannot be ignored. But we do face a danger that does raise questions about traditional legal standards. The problem is unprecedented and clearly we need to rethink some of these civil liberties, civil rights questions.

And let me just—I'm curious, let me give you a couple of hypotheticals. Let's say Pakistani chemistry major, University of Chicago, downloaded two articles about how terrorists might use small planes to start an anthrax epidemic, shown and intense but unexplained interest in crop dusters. What should the government do? Or, hypothetical again, Egyptian tourist arrested on a Boston-bound Amtrak train after the FBI has found in his luggage, through a search of doubtful legality, \$8,000 cash, an Islamic Jihad pamphlet and two box cutters. Last hypothetical, Iraqi refugee who has been photographed at a Beirut restaurant frequented by followers of Osama bin Laden, recently toured the Capitol three times during a one-week trip to Washington.

I mean under long-established constitutional law, the government would have to release all of these men after at most a few hours of questioning and investigation unless they had enough evidence to charge them with some kind of crime or deportable offense or could show them to be material witnesses likely to have evidence of crimes and to disappear if they were released. I mean, clearly, this long-established constitutional law has to be, in some respects, rethought in this context, and I wondered if you could respond to that.

MR. EDGAR: Well, I'd like to try to respond to that. I don't think that it's a good idea to rethink our belief that people who we have reason to suspect may be involved in crimes can be detained for very long periods of time without any evidence of criminal wrongdoing. And the reason I would use is I would say instead of your hypothetical, I would use a real case, the case of Dr. al Hamsi in Texas, who government officials believed may have been involved in the Osama bin Laden organization because of the number of suspicious circumstances, not unlike the ones you've described in your hypotheticals. And he was detained by INS and held for almost two weeks without any immigration charges at all, as he was a local resident. And he was able to explain each of the circumstances to the satisfaction of the officials who were holding him.

And I would say that that case illustrates two things. It illustrates—the first thing is that we don't need constitutional protections if every government official was as willing to admit a mistake as those who decided to release Dr. al Hamsi. That's obviously true. They realized that they had not gotten a terrorist and that he'd explained to their satisfaction and they released him.

But we also know that the liberty that we depend on cannot depend on the good faith of those who have the power to put us in jail, that if the only protection for someone who has

circumstances which might lead us to suspect them is that we can try to explain those circumstances to the satisfaction of government officials, that that just puts too much power into the hands of those who can imprison us. It allows them to put us in jail, and if we are not a genial doctor from Texas and if we are not someone who has political views that are acceptable to the majority, we could expect such a person to be imprisoned for potentially first or even indefinitely. And I don't think that that's an acceptable outcome, and I don't think that September 11 changed that.

COMMISSIONER THERNSTROM: Well, wait a minute. The law, as just passed, would not allow indefinite, up to a year.

CHAIRPERSON BERRY: Commissioner Thernstrom, I asked that each Commissioner ask one question.

COMMISSIONER THERNSTROM: Okay, but this was just a clarification, Madam Chair. I'm sorry.

CHAIRPERSON BERRY: Okay. That's all right. Others may need to ask a question. Let's see, who else is a lawyer up there? Anybody? If no one is, then I guess the lawyers have to ask the questions. Yes, Vice Chair?

VICE CHAIRPERSON REYNOSO: Well, I have a statement and a question. The statement is that I heard an interview of the doctor, and he said that one of the circumstances that made them suspicious was that he was—he had taken a plane ride with three other individuals who were of Arab descent at the same time. It turned out that the other individuals were his wife and children.

(Laughter.)

So my question has to do with profiling, and it's directed to Mr. Krikorian. It's true, of course, that the U.S. Supreme Court has said that with respect to activity with foreigners outside of this country the Constitution doesn't apply. So if an official says to another person, "I'm not going to admit you to the U.S. I'm not going to give you any visitor visa because you're black," the U.S. Supreme Court has said that. It's up to the government; we can't do anything about it.

But isn't it true that in this—that for the person that's in this country that they in fact do have the protections of the Constitution? So if a person did say to, certainly, a resident alien but even a visitor, "You can't come into this hotel because you're black or because you're Arab," that the Constitution and the laws do protect that person. So don't we have to make that distinction?

MR. KRIKORIAN: The laws do in fact protect non-citizens in the United States, whether it's the criminal law they may file, civil suits, buy and sell property. My point is not, though, related to punishment. Deportation is not punishment. Deportation is withdrawing the permission to remain as a guest in our home, and until you embrace America by becoming one of us, and we make that extraordinarily easy compared to everywhere else in the world, but until you do that you are here on our terms, not on yours.

And in fact we do not do this now, but we may well, Congress ought to have the authority to deport non-citizens based on political opinion. The Palmer raids may well have been a bad idea, but they ought not to be seen as unconstitutional.

VICE CHAIRPERSON REYNOSO: Madam Chair, just

CHAIRPERSON BERRY: Is it a follow up?

(Laughter.)

VICE CHAIRPERSON REYNOSO: No. It's actually a statement.

CHAIRPERSON BERRY: Oh, a statement.

VICE CHAIRPERSON REYNOSO: The statement is that many federal courts up here disagree with you. I was just talking to a federal judge who implemented local rules that say when somebody comes before us to plead guilty on a crime, we want to know what the effects are on immigration, because we in fact do consider it punishment. It's far more serious very often for that person, the immigration consequences, than actually a criminal conviction. So I think you have a lot of judges disagreeing with you. That's the statement.

CHAIRPERSON BERRY: Does anyone else

MR. EDGAR: I just wanted to make a comment on that briefly.

CHAIRPERSON BERRY: Yes.

MR. EDGAR: Which is that it is true that deportation is not criminal punishment, but the Supreme Court has said that it's very serious. It's a deprivation of their interest, and it involves taking away all made life worth living. Therefore, it does require the protections of the due process clause, and I think that's important. And, also, I would also remark that the federal courts, at least one federal court, did rule the Palmer raids unconstitutional back then when our understanding of the Constitution was much more restricted than it is today.

CHAIRPERSON BERRY: Commissioner Lee?

COMMISSIONER LEE: Thank you. This question is to anyone on the panel. I'd like to get your perspective, what do you think about U.S. immigration policies post-September 11, specifically family-based immigration, what happened to those people who have been waiting in line for many, many years? Some of them come from countries that are not friendly to us.

Second thing is employment-based immigration. Many folks come from countries, South Asia and other areas. The naturalization process, what happened to those people waiting in line to become citizens who are from Arab or Middle Eastern, South Asian countries? And, finally, asylum programs. Since I only have one question.

(Laughter.)

Downloaded from the Internet Archives, July 20, 2007. Not an official copy.

CHAIRPERSON BERRY: Yes. I think that's a very good question to ask the government people. Does anyone have a

MR. KAMASAKI: This is something briefly addressed in our statement, Madam Chair. The President and Mayor Giuliani and others have urged us, over time, to resume our normal lives, and we believe that the government, over time and in due course, ought to be looking at broad policy questions like increasing illegal immigration, like improving the naturalization process, like enacting legalization programs. So that's sort of part of the answer.

The second part of the answer, it seems to me, goes back to one of the principles I identified. With respect to visitors coming from abroad, it is natural now that there will be both increased scrutiny and hopefully better information sharing and other kinds of measures needed to deter or identify and prevent potential terrorists from entering the country.

The kinds of unintended consequences that are occurring now, for example, is that if you are a Salvadoran national who is part of the so-called NCARA class, it is virtually impossible for you to travel. And the reason is that the INS has suspended what they call advanced parole. So anybody, essentially, in immigration proceedings, here legally, lawfully and under the immigration work authorization, is not able to travel. We have heard reports that it is terribly difficult now for people to get timely visitor visas for emergencies, things like funerals of family members in the United States, people trying to come in from abroad.

I guess my point being I think it's extraordinarily difficult to make any kind of connection between imposing restrictions on those processes affecting the kind of people I'm talking about and any potential threat of terrorism. And that's why I say I think we ought to be careful about sort of broad brush let's tighten up the visa process. Well, no, let's tighten up the visa process in a way that's going to deter terrorist and not affect commerce, family reunification and so forth.

MR. ZOGBY: The individuals who came here to do this deed did not come to become part of our country or part of our civil society. They didn't join our organizations, they didn't become part of our community. They actually fit a very specific kind of profile. To not recognize that profile and to kind of extend it beyond that and make simply the profile Middle Easterners or Muslims between the age of 20 and 40 does real damage to entire communities, damage to families, damage to commerce and damage to the traditions of our country. And I think that that's the direction that some are moving in, and it would be a big mistake.

There is a specific kind of person that we're looking for here. You're not looking for my cousin Hisham who came from Lebanon and is trying to get an MBA here in Syracuse, New York and is afraid that he's not going to be able to get his visa renewed because he comes from Lebanon, one, and, two, because he fits the age profile, et cetera. That is something we have to be careful of here. And I think that legislation that's being proposed moves, in some cases, in a very wrong direction. It will shut down the relationship between the United States and these critical parts of the world and not help enhance the relationship at what I believe is a very important time in our history.

CHAIRPERSON BERRY: Was there another question? Did you have a question? Go right ahead.

COMMISSIONER THERNSTROM: And I would just like to know if it was possible, Madam Chair, to know what the profile is?

CHAIRPERSON BERRY: Commissioner Thernstrom, would you please let your colleagues who have questions have a shot, and then at the end, if there's time, then you can

MR. ZOGBY: Well, I'll tell you, Commissioner, there was a member of Congress who was of Arab descent who was kept off the plane because FAA they said FAA said, "We can't do it until we do a complete check because of who you are."

COMMISSIONER THERNSTROM: No, I understand that.

MR. ZOGBY: Well, no, you don't understand it, because the problem here is that the profile that's being used in too many instances is Arab Middle Eastern looking, between 20 and 40. He was flattered because he's actually over 40.

(Laughter.)

But I think the point here is that after Secretary Mineta last night spoke eloquently about this issue, eloquently about the fact that when you do this to people you are in fact, in a small way, doing what happened to his entire community 50 years ago.

I was on my way out and one of the executives of the corporation that was sponsoring the event said, "Well, I heard what he said about profiling, but, you know, if a dog bites you five times and you see another wild dog coming your way, I grabbed him, and I said, 'I'm not a wild dog, and I've been profiled, and frankly it is humiliating to be treated in this manner.'"

But profile and the concept of profiling and the Justice Department's provision that allows profiling in some instances does not say race alone. It says race or ethnicity and a whole bunch of other factors. It's 20 to 40 fellow of a particular country, with a three-inch scar, who went in this place and did this thing and has that occupation. You do this at the end of an investigation. You don't start casting it's bad law enforcement, it creates fear, it wastes a whole lot of people's time in law enforcement, and it victimizes a community of people who simply happen to share the ethnicity or race of the target group.

CHAIRPERSON BERRY: We'll ask another question and then somebody can tag onto that, because

COMMISSIONER THERNSTROM: Madam Chair, I'm particularly sorry I asked it since he misunderstood the question.

CHAIRPERSON BERRY: Ten seconds that black people have been putting up with this for years, and I know, and complaining about it. Yes, Commissioner Edley?

COMMISSIONER EDLEY: I'd be interested if any of you, particularly Charles, Jim and Tim, have suggestions about things that this Commission might try to do — might usefully do in connection with, I think, the first two things that Charles mentioned: The impact on Arab Americans and Muslim Americans post-9-11. Is there any useful role that we could play in trying to understand and characterize that for the public or basically do you think that that is a task well in hand between NGOs, CRS, ACLU, et cetera, and there being little value added for us?

And the second is this issue of monitoring oversight of the federal response where, if I can characterize it, I have been, myself, very impressed with much that the President has done, both the content and the effect. And that the question, of course, is whether what actually happens by law enforcement officials, by investigators and so forth is consistently detailed with those broad pronouncements? But, frankly, I am at a loss to understand what it is that we could do institutionally to effectively monitor whether or not there's a shortfall, a gap, between execution and aspiration.

MR. ZOGBY: I would just make two recommendations. One is that you have 51 advisory panels in all of the states and the District. And I think that to translate what the President and what the Attorney General and what the Director of the FBI have said, quite eloquently, on the national level down to the local level, it would be useful for the local panels to convene situations such as this and actually either visit affected communities or in some way highlight good practices, because there have been many outstanding good practices during this time that I think deserve to have a light shone on them in several communities around the country. So I would suggest that there is that role that the Commission can undertake.

And the second would be you are receiving reports of hate crimes, and therefore have a role maybe in recommending how those hate crimes actually then become investigated. Because as I said, while the FBI Director and the community relations side of the FBI have been great and we've actually brought them out to the local community and we've created meeting sessions and they've been far more responsive than they ever have been before, there still is a fear. And many people who have endured this problem have been afraid to report.

Somehow this question needs to be investigated of how we move from — how we create confidence in reporting crime and then move from once the crime is reported to the investigation of the crime so that people will feel comfortable doing it. I don't exactly know. I mean there's been a recommendation that U.S. attorneys offices be involved, that Civil Rights Division at Justice somehow be involved, that the matter be left with local law enforcement and only referred to the U.S. attorney, that maybe the FBI be kept out or that the FBI set up a special Hate Crimes Unit that be charged and that the public know is specifically only to be involved in hate crime investigation and is not then going to in any way become involved in other types of investigations.

I know people who've told me that they have reported a hate crime and when they've gone to the FBI and reported it, they said that they felt quite distinctly after an hour or so of conversation that they were being plied for knowledge about the community and not about the crime that was committed to them in which they lost confidence in continuing the conversation. I think that somehow I understand that the Civil Rights Division of Justice has sent the FBI a note that says,

Investigate the hate crime and leave the other stuff alone. Create confidence in the victim community. I think that that can be enforced by this Commission.

CHAIRPERSON BERRY: Could I please intervene to say that I have been reminded that people have schedules who came here to brief us and that we are behind, and that they would like us to move on so that they can keep their commitment to be here and not leave. So if I can be indulged by the Commissioners, could we simply if you have questions we got some recommendations from Mr. Kamasaki that were very good, and we appreciate them and others. And if you have anything else you'd like to submit, do that in answer to Edley's question, will you indulge me?

COMMISSIONER EDLEY: Of course.

CHAIRPERSON BERRY: All right.

COMMISSIONER EDLEY: Are we going to get written statements from

CHAIRPERSON BERRY: From those who can submit them. This is not a hearing, so we haven't ordered anybody to do anything. People have come voluntarily. If you have any questions that you'd like to submit in writing, you may do that, and I'm sure would you guys be responsive?

PARTICIPANT: Absolutely.

CHAIRPERSON BERRY: Yes. We want to thank you very much for coming. Thank you.

COMMISSIONER THERNSTROM: Can I just make one statement to correct the record perhaps a misunderstanding in the record?

CHAIRPERSON BERRY: Please, please, please.

COMMISSIONER THERNSTROM: I just want to say if there was any impression on Dr. Zogby's part that I was signing on to any kind of profiling, that was gravely mistaken. I would not my question was somewhat different, quite different than the one you responded to. But in any case, I just wanted to make it very clear I am very opposed to profiling. Thank you.

CHAIRPERSON BERRY: I want to thank the panel very much for coming. We very much appreciate it. And I wanted to ask the next panel to come forward: Ms. Butterfield, Mr. Harris, Ms. Massimino and Ms. Narasaki, please.

END OF PANEL ONE

U.S. Commission on Civil Rights

Briefing on Boundaries of Justice: Immigration Policies Post-September 11th

October 12, 2001

PANEL II

This is an unverified transcript of the full and complete proceedings of the U.S. Commission on Civil Rights in the matter of its Briefing on Boundaries of Justice: Immigration Policies Post-September 11th.

CHAIRPERSON BERRY: Okay. Thank you very much for coming. We very much appreciate it. We're going to start and people will settle down as we go along.

The panelists are Ms. Jeanne Butterfield, executive director of the American Immigration Lawyers Association. She is a law graduate of Northeastern and is a member of the Massachusetts bar. She is a lead spokesperson on immigration policy issues for the American Immigration Lawyers Association. Thank you for coming.

Mr. David Harris is a professor of law and values at the University of Toledo College of Law. He has a chair. He's called the Balk Professor of Law and Values. And I understand that, because people often write letters to me saying, "You're the Siegel Professor, so what is the subject of Siegel? We've never heard of that study before."

(Laughter.)

So I won't ask you what the field of Balk is.

MR. HARRIS: Nothing to do with baseball.

CHAIRPERSON BERRY: Ms. Elisa Massimino is the director of the Lawyers Committee for Human Rights Washington Office. She's a B.A. graduate of Trinity and MA from Johns Hopkins and has a law degree from my law school, the University of Michigan. Hail to the victors valiant. She's a former legal director of the Lawyers Committee for Human Rights.

Karen Narasaki is the executive director of the National Asian Pacific American Legal Consortium. She's magna cum laude graduate of Yale and UCLA School of Law, and she is also chairperson of the Compliance Enforcement Committee of the Leadership Conference on Civil Rights and is on the Executive Committee. And she also before used to be a Washington representative for JACL, the Japanese American Citizens League. Welcome to you.

I would like to start, for reasons I don't understand but the staff told me to, with Professor Harris, for some reason. I don't know what the reason is. Something about profiling or something.

MR. HARRIS: I hope I can justify their reason. Thank you very much, Madam Chair, members of the Commission. Thank you for having me here, and I do thank you for your hearing on these matters, your briefing and your interest in the subject.

I've heard any number of times since September 11 that the world has changed. I know we've heard that over and over on television, the world is different now, and I think there's a lot of truth in that. One aspect in which there has been a major shift in public discussion involves racial profiling. I've been studying racial profiling for six or seven years. My book will be out in February on the subject.

And if you needed any better indication of the change in the public discussion of the issue, there is today's Wall Street Journal on the front page which reads in a small article, "Racial profiling is no longer the issue it was before September 11," detailing a number of things that have happened, including the political advertisements of Representative Cooksey, who's the fellow who made the unfortunate comments in the wake of September 11. He is now running a campaign commercial for his Senate campaign in which he says in which he comes out and

says profiling is the right thing to do. He's using it as a political issue and says that the reaction has been very favorable to him. So if you needed a better indication, I don't know what it would be.

I think that the issue has been changed and recast, but there is still much we can learn from our experiences and our learning before September 11 that should inform the public discussion on this issue, that should tell us that there are reasons, strong reasons to hesitate to use any profile or profiling device, a major component of which is Middle Eastern or Arab or Muslim appearance.

All of our American experiences of the 20th century, when our nation has gotten into national security crises, would caution us, as has already been raised, the internment of Japanese citizens and non-citizens, the Palmer raids and the McCarthy era and even the secret evidence controversies of the last few years. Beyond that, though, we have learned things in the last couple of years that I think can be of assistance to us as our country decides what kind of tact to take.

I'm a law professor. Had I stood up on September 10 in my classroom and tried to come up with the single most difficult hypothetical to justify profiling, I couldn't have come up with a better one than the events of September 11. As other analysts have already said, catastrophic loss of life and seemingly, we don't know for sure, but according to what the government tell us, everybody involved was from one particular set of groups. It's got to be the strongest case one could imagine.

Yet I think there are reasons to stop, think carefully and hesitate and real reasons to wonder whether any profile in which Middle Eastern or other racial or ethnic appearance plays a role would be productive at all. Just to in the briefest possible way review what we knew about profiling before September 11, a lot of data had been gathered over the past two to three years and analyzed. Much of this is at the heart of my book, I won't bore you with it.

The major insight that we now have is that, number one, profiling was happening. It was not the imagination of people of color. The data showed it across the board. Number two, and perhaps even more importantly, it doesn't work as a law enforcement tactic. That's the justification put forth for profiling by many people, not just law enforcement but members of the public. Well, don't police officers just have to concentrate on African Americans and Latinos because those are who the bad guys are? Look who gets arrested, and look who's in jail.

Well, we've been able to measure it and I'm glad to get into this in further detail in response to questions if you like we find that it does not work. The success rates of stops and searches of cars, of pedestrians, of people going through Customs, the success rates when profiling is used on African Americans and Latinos are lower than the success rates of searches and stops on whites who are not profiled. They're not the same success rates, they're not the what you would predict, if that position makes sense. You'd predict a higher success rates. Instead it's across the board lower different data, different context, different law enforcement agencies. And all across the success rate is not as good. It's not good law enforcement, as Mr. Zogby said, and the data show that.

Now, here are the things that I think, very briefly, we can learn for our present situation and the reasons that I think we should really hesitate to get into

CHAIRPERSON BERRY: Time in 30 seconds.

MR. HARRIS: Thirty seconds. Number one, it will dilute our enforcement efforts. We will spread our enforcement resources, which, after all, are finite, over many more people, most of whom we would not be interested in at all but for their appearance.

Number two, it will take our attention off of the twin pillars of any law enforcement and that is observation of suspicious behavior and gathering of intelligence. It's too easy to regard people who look different as strange and therefore threatening. That may be how the human mind works, but it's not how law enforcement should work.

And number three, it will damage our ability to gather any intelligence from the communities affected. Because just like African Americans and Latinos were in the so-called war on drugs, those same people, if we treat them all like suspects, they will be alienated from our efforts and that is an asset we simply, at this juncture, cannot afford to lose.

So it moves us away from what we should be doing, which is observing behavior what is suspicious in these actions and towards a sort of set of surface details. And while nobody can say for sure that this would not in any case, that you couldn't produce results with it, I'd say there are reasons to hesitate, to be careful and not to go down the path that we went before with this crisis.

CHAIRPERSON BERRY: Okay. Thank you very much. Ms. Butterfield, please.

MS. BUTTERFIELD: Yes, Madam Chairman. Thank you very much for having me here today, and I think my principal task is to bring you up to date and outline a bit more detail about the pending legislation and some of the activities of the Justice Department and the INS in the wake of the FBI investigation.

I had some materials I think have been handed out a comparison chart, so it can give you as much detail as you care to delve into, and I'm just going to hit on the high points or the low points, as they may be.

I think, first, it's important to note that we've come a long way in the last month from where the Administration started with its request and its legislative proposal for the sweeping kinds of powers that you heard about in the previous panel. The Administration basically put a proposal on the table a month ago that would have allowed them to not only detain but deport people based on mere suspicion, without having to present any evidence, without giving the person the opportunity for any hearing whatsoever administrative deportation of suspected terrorists. And the Administration asked for that extraordinary power along with an explicit prohibition on any judicial review of those actions.

It also put forward an expanded definition of terrorist activity or terrorism in the immigration law that would have broadened the grounds of inadmissibility and deportability to

sweep up within its scope purely innocent, speech association membership fundraising for the purely humanitarian projects of a later designated or suspected terrorist organization.

I'm happy to report that on all of those fronts we've made significant improvements in the pending legislation over the last month. And I think that due to the work of many in Congress who are concerned about maintaining that very important balance between our legitimate security and law enforcement needs and our constitutional freedoms and civil liberties, which are so precious, that they've tried to make that within this expansion of power, which still exists in the legislation, there are some checks and balances to try to prevent any potential abuse. So I think we've moved a great distance.

Three specific examples. We've eliminated from the legislation the power to deport without any hearing whatsoever. That's just not in there anymore. On the detention

VICE CHAIRPERSON REYNOSO: I'm sorry, say that again.

CHAIRPERSON BERRY: On both House and Senate?

MS. BUTTERFIELD: Yes. There's no provision now that would allow the government to deport someone administratively without any hearing, just based on suspicion of terrorist activity. The detention provision was strengthened with some checks and balances where the government cannot detain someone longer than seven days without filing actual immigration charges against them, number one.

Number two, the Attorney General is required to present reasonable grounds to believe that the person is encompassed in the terrorist definition in order to exercise the mandatory detention. And while that standard may not be what we would have liked, it's greater than where we started a month ago.

And, thirdly, and I think most importantly, habeas review was preserved even of the substance of the Attorney General's certification decision to detain a suspected terrorist. So there is preserved there a very fundamental protection of a court review.

The terrorist definition is something that it's very difficult, as you can imagine, to talk about on Capitol Hill right now. Who wants to stand up and say, "We shouldn't expand the definition of what constitutes terrorist activity," but I think that remains a point of concern, because if you read the language in the pending House bill, the language extends so far as to say in one of its sections that a terrorist activity is the use of any object with the intent to harm a person. Well, that kind of encompasses anything one might imagine, and I think that demonstrates and illustrates the potential for abuse here. Of course nobody expects John Ashcroft to be rounding people up and detaining them based on throwing a rock at another person, but if we don't intent that, then I don't think our laws should state that. And that remains a point of concern.

On the material support issue, which the previous panel touched on, we did manage to scale back and protect innocent support and association but only as to groups that are not yet designated officially on the Secretary of State's list of terrorist organizations. And as the previous panel, my colleague Tim Edgar stated, one of the versions of the pending legislation would give the

Secretary of State extraordinary new power to designate groups merely upon publication in the Federal Register and without the attached opportunity to challenge that designation that exists in the current Section 219 of the immigration law.

CHAIRPERSON BERRY: Thirty seconds, Mr. Butterfield.

MS. BUTTERFIELD: Great. The legislation is pending right now. I can tell you about the procedural status if you care to hear that in questions.

The final point I want to make and urge your action and attention to is the situation of detention right now of those swept up in the FBI investigation. Ashcroft reports that there are some 148 persons being detained currently on immigration violations, and they are in this kind of never-never land where the rights that attach in the criminal justice system, to counsel, to probable cause, all of those things that are so familiar to us, do not attach.

And in this situation they are being held without being charged yet, in many cases. In some cases, they have appeared for bond hearings, some of these people, and Immigration judges have actually set bond. And when the family has showed up to post the bond, the INS has refused to release the person. In other cases, the bond that was set has been rescinded, and the person has been transferred somewhere else in the country, and the attorney can't find out where they are.

So we have a huge concern here that in this investigation the use of immigration charges allows the government to detain people without really guaranteeing that they're being allowed to contact counsel, that they're being given access to representation that they might need and that within a timely manner the charges are being presented to them so they have the opportunity to defend. And I think that your Commission's watchdog oversight on that question and demand of the government that they be more forthcoming with information about these cases and individuals and procedures that can provide them some modicum of due process would be very welcome indeed.

CHAIRPERSON BERRY: Okay.

MS. BUTTERFIELD: Thank you.

CHAIRPERSON BERRY: Thank you very much. Ms. Massimino, please.

MS. MASSIMINO: Yes, thank you. And thank you again for convening this hearing and for the opportunity for the Lawyers Committee to share its views on this subject of such great importance, not only to all of our organizations but to the country.

The Lawyers Committee, as many of you may know, has for 20 years worked on a range of human rights issues, both internationally and here in the United States, including in many countries whose justice systems have been perverted by their response to terrorism: Northern Ireland, Turkey, to name only two examples. We have a particular focus on promoting international justice, democratic and accountable police practices, protecting the rights of workers and the protection of refugees, which is the subject on which I've been asked to speak by you today.

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We have 20 years of experience on this issue in particular, and this is hands-on experience through our pro bono asylum representation project through which we represent more than 900 indigent refugees. Today, as we convene this discussion about the boundaries of justice in the wake of September 11, we need to recognize that those boundaries were already profoundly affected five years ago at a time after the Oklahoma City bombing and the first attack on the World Trade Center when anti-immigrant sentiment in this country ran very high.

Much of the Lawyers Committee's work over the last five years has been on refugee protection has been focused on addressing the impact of those sweeping changes that were made to the '96 law in asylum procedure expedited removal, the new summary deportation power granted to immigration inspectors, expanded mandatory detention authority, even for those that the government recognized as having credible claim to protection, and an arbitrary one-year filing deadline under which refugees who fear persecution in their home countries have been barred from receiving asylum because they didn't meet the deadline.

My organization has documented the real-life impact of these provisions on refugees in a series of reports, including one entitled, "Refugees Behind Bars," which deals with the effect of detention and an arbitrary exercise of the detention authority under the '96 law, and a report called, "Is This America?" of which you have the executive summary in front of you. The report's title is based on a real-life incident in which under the expedited removal authority a young Jamaican student with a valid student visa was told by an INS airport inspector, "You may be standing in JFK Airport, but until I say you're in, this is not America." That was in response to his request if he could call a lawyer.

In response to these and other incidents, the Senate convened a hearing in May of this year at which it heard from legal experts, religious leaders and from refugees themselves about the well-documented abuses, mistaken return of refugees, lengthy detention and abusive treatment that have proliferated under the 1996 law. Following that hearing, six weeks before September 11, Senators Leahy, Brownback, Kennedy, Collins and a number of others introduced the Refugee Protection Act, S. 1310, that would address many of these problems. The need to recommit to that effort is greater now than ever before. We're now looking at S. 1510, 200 bills later and seemingly a world later, that would still leave open some serious risk that people would be detained for long periods of time without adequate access to the courts.

Since September 11, my own organization has noticed some distressing developments in our own work. Our volunteer lawyers—some of our volunteer lawyers were turned away from a detention facility in New York. One of them had an Arab-sounding name, a Muslim-sounding name. Another appeared to be of South Asian background. They were told they went to see their clients. They work for a big law firm in New York, and they were told by people at the detention facility that they not only couldn't get in to see their clients that day, but they ought to expect to be stopped on the street and questioned—they, themselves, not their clients. And an Immigration judge has lectured some of our volunteer lawyers about the need not only to document that their client is eligible for refugee protection, having suffered persecution, but also to prove that they're not a terrorist.

So the importance of getting this right, I think, is demonstrated best by the experience of our clients, and I just want to leave you with this story. A young woman from Afghanistan who was

a medical student until the Taliban ordered all women out of the schools, she and her sister also ran a school for young girls and that particularly enraged the Taliban authorities. They arrested her, they beat her up, they threatened her with death, and she fled here, as you might expect, without official travel documents from the Taliban government, looking for help and protection. When she got here she was interrogated at the airport, shackled to a bench, told to remove her clothes, put in a prison uniform and fainted because she was so shocked by the treatment that she received here. She stayed in jail for three months. When did this happen? October, not of this year but three years ago. I just wonder what would happen to her today if she came here. Thank you.

CHAIRPERSON BERRY: Thank you very much. Ms. Narasaki?

MS. NARASAKI: Thank you, Chair. On behalf of the National Asian Pacific American Legal Consortium, I also join in thanking the Commission for holding this important hearing. I'd like to try to, as quickly as I can, focus on the challenges that faced us before September 11, then talk about the impact of September 11, and if I have time, talk about some of the collateral issues.

Even before September 11, as my co-panelists have pointed out, the INS was an extremely dysfunctional agency. Anti-immigrant groups were already running multi-state advertising campaigns designed to appeal to the basest xenophobic instincts, and immigrants faced a multitude of policies that were inhumane and sometimes totally unjust.

Congress has repeatedly failed to adequately fund the service side of the Agency, and despite massive increases within the last three years of fees charged to immigrants for these services, the INS has unable to bring its backlog of citizenship and green card applications current. In many parts of the country it still takes more than two years to get citizenship.

Given the increased discriminatory nature of laws facing non-citizens in the United States who have not completed the transition to citizenship and the vulnerability that immigrants without green cards have always faced in this country, these waiting times are a serious civil rights matter.

The INS has also routinely failed to issue regulations to implement programs legislated by Congress in a timely manner, and let me just give you one example. Congress passed, a year ago today, a law that would allow refugees from Southeast Asia and from other parts of the world who are here on a status called "Public Interest Parolee" to adjust their status so they can become legal permanent residents, which is the next step to becoming citizenship. Yet INS has yet to even come close to issuing regulations. In the meantime, many of these individuals still remain in legal limbo.

President Bush has made reorganizing INS a priority, and it should be, but with sufficient funds to make sure that the service sides of the Agency does not falter. Congress is looking at adding additional burdens, and I would caution against that until they can clean up what the INS is already unable to accomplish.

As I pointed out, one of the reasons why this processing is so important is because of the discriminatory nature of the laws. Legal permanent residents who are not citizens are not eligible

for many government safety net programs. In other words, for example, a recent immigrant survivor from the World Trade Center disaster who became disabled in the attack would not be eligible for Medicaid or any other federal assistance. An immigrant injured in a hate crime who came into the country after August 1996 would similarly not be helped.

The problem with distinctions based on citizenship status is all too often that the enforcement is based on racial profiling. For example, we've already seen in the welfare context of people who were being turned away who were still eligible were the people who looked Latino or Asian. Moreover, so long as you're not a citizen you're subject to deportation for even the most minor of legal infractions. Under the proposed terrorist legislation, their First Amendments are also, as you heard, severely compromised.

Finally, the events of September 11 generated such xenophobia that it slowed the momentum that President Bush and Congress seemed to have in moving to overhaul our immigration system to make it humane and more effective and efficient. I hope that Congress will pick it up again, because I believe that it is in fact in the interest of our national security to get the people, particularly the undocumented, out of the shadows so we know who they are.

After September 11, Americans of every color and creed were injured and lost their lives in these attacks. As many may not have really focused on, many of these were immigrants—some legal, some temporary employment-based, and a number who were undocumented or who have undocumented family members. The heroes of September 11 also came in all colors and creeds and immigration status. Yet immediately after the attacks, as you've heard, anti-immigrant advocacy groups cynically began exploiting Americans' worst fears to push our country to close our borders, and attacks began as Americans began to seek personal retribution.

According to a report recently issued by South Asian American Leaders of Tomorrow, in the first week of the attack, the media reported on 645 hate crime incidents in one week. Just to give you an idea of the magnitude of that, my organization tracks anti-Asian violence. In a typical year, we report maybe 500 in the entire year. Ironically, one of the groups most heavily targeted was the Sikh community who are generally descendants of India and whose faith is not Islamic. However, they wear turbans and beards similar to the news clips that we keep seeing over and over and over again of bin Laden. And so they've been chased by mobs with baseball bats, attacked in malls and schools. In a few tragic cases, they have been murdered. One sick woman in San Diego was knifed in the head by two men who pulled up in a motorcycle next to her car while she waited in traffic.

As you've heard, too many of our community now are afraid to leave their homes, to send their children to school, to even go grocery shopping. In addition, their businesses have been hit by rumors about their loyalties. There are some reports about people being refused services in restaurants and hotels, and we're beginning to hear about discrimination in the workplace. One South Asian working at a clinic was waving to a friend across the room while others were watching the news coverage of the terrorist attacks. And he was fired the next day because some of his coworkers mistakenly interpreted his behavior as being supportive of terrorism.

Just as during World War II when my parents were interned for the crime of looking like the enemy, there is a risk that the fear of those who are Arab or Muslim may lead us to betray our

most sacred American principles of justice and fairness. A poll of New Yorkers in another CNN general Gallup Poll found that one in three of those polled would support the internment of Arab Americans.

According to media reports, the FBI has demanded that almost 200 schools turn over financial and academic records of foreign students, generally targeting only those of Arab and Middle Eastern descent without any individual suspicion of these students. The schools are complying often without even giving notice to the students that their records have been turned over.

As you've heard, we're concerned about racial profiling. Even if it's not done intentionally, a lot of the investigation has been tip-driven. While many—as we've come to find, many neighbors are turning on neighbors and reporting people who—what are they being suspected of? Looking Middle Eastern. One innocent Sri Lankan reported in New York his fear when government agents burst into his apartment with their guns drawn based on a tip from a neighbor, and all he could think of was it had to be because he was dark.

Other panelists have talked about civil liberties, and I just want to make a particular point. Immigration laws talk about detention as if it's some holiday in a motel, but it is generally incarceration in a federal or other kind of facility. And even one day of detention can change someone's life. For example, a young Pakistani American college student was nervous about flying back to New York so his aunt dropped him off in a Greyhound bus to travel from Texas. The INS raided the bus in Mississippi, and he was held there because he'd overstayed a tourist visa and not yet changed to a student visa. While the guards watched, he was brutally beaten by three white inmates who called him bin Laden, threatened to kill him, stomped on his back and kicked him in the head.

The hysteria has also damaged efforts to improve other public policies that were moving quickly to address some of the most egregious problems faced by undocumented immigrants in our community, which is detailed in my longer written statement.

The one thing I do want to point out is that immigrants are among the most vulnerable in our community to civil rights violations. They don't know our laws, they don't know who the agencies are who are supposed to protect them, they're often unable to access attorneys who can communicate with them in their native languages. Language, in fact, is a troubling barrier to our justice system, in general, for the many immigrants who call the U.S. their home.

And I want to point out one problem with this. When initially pressed for its plan, pursuant to President Clinton's executive order asking all the federal agencies to detail their plans to service limited English-proficient Americans, the INS, of all agencies, claimed that it did not come into contact with that many people who didn't speak English.

I thank the Commission for taking up this issue of national origin, ethnic and race discrimination. Generally, community-based organizations all too often have to bridge the gaps that the agencies leave behind, and my concern is it's even more difficult given the slowing economy, the lack of limited funds that already existed and the pressing needs that have been generated by this national crisis. Thank you.

CHAIRPERSON BERRY: Thank you very much, Ms. Narasaki. I will ask if Commissioners have questions, but I have half of one myself. The half a question is we heard from an earlier panel, in particular from Mr. Kamasaki, about what this Commission might do, and what we have to figure out, one of the reasons why we're having this, is what we should do. And if, as the President states, this is a long, long crisis, it's not going to be over anytime soon, then we have to think of it in terms of the long haul. Is the best thing we can do, in addition to the hotline and other stuff, to monitor what the federal agencies do and try to keep after that or is there something else in terms of particular communities you think we ought to do? And, also, are things likely to get better or worse based on the legislation that's being passed that you described, Ms. Butterfield? So if someone would address any of that, I'd appreciate it, and then I'll see if anybody else has a question.

MR. HARRIS: That's half a question?

CHAIRPERSON BERRY: Yes.

(Laughter.)

MR. HARRIS: I guess we'd like to see a whole question.

I would just say very briefly that one of the things the Commission can do is to continue to hold briefings and hearings and to keep its voice up, frankly. The watchdog function that so many others have already mentioned is crucial. In a time when most institutions are pointing in one direction, it's important that there be at least one, and this is a wonderful one, to keep other values in mind and to watch for some of the potential problems that we've heard mentioned this morning. So I would just applaud what you're doing, and I would hope that it will happen many more times during the crisis.

CHAIRPERSON BERRY: Okay.

MS. MASSIMINO: I would just like to focus that a little bit on the issue of detention, particularly of asylum seekers. One of the problems that we've documented for so long and why we've been urging a change legislatively is because currently the detention authority and the parole power is exercised in a manner that we think is fairly arbitrary. There is so much discretion.

And one of the things that we fear is that because there's already such broad discretion that we will be seeing even less inclination by the INS to release people who are coming from Arab countries, coming from countries that may be targets of this anti-terrorism effort. So I would urge you to pay particular attention, as we will be, and we can certainly keep you updated on that as to whether that in fact unfolds.

CHAIRPERSON BERRY: Okay. All right. Yes, Ms. Narasaki.

MS. NARASAKI: Well, I think the Commission has an enormous opportunity to help educate the American public on these very difficult issues, particularly on racial profiling. I think one of the most challenging parts of the anti-terrorism bill is the definition of who is a terrorist and what

does it mean to engage in that kind of act? And the Commission is in a position to remind people that in the '60s that Martin Luther King was one of the people considered to be potentially a domestic terrorist and followed by the FBI very closely, to remind Americans of the McCarthy era, to remind people of the internment of Japanese Americans.

You had mentioned the Korematsu case, and I think the story even after the internment is the most telling one, and that is, as you know, Mr. Korematsu's actual conviction was subsequently overturned in a writ of coramobus. And the reason was because historians discovered several years, decades later by accident that the Department of Justice had actually lied to the Supreme Court about the military justification of the internment. And based on that evidence, a court ruled that his conviction had been in fact done unlawfully.

Unfortunately, it doesn't touch the Supreme Court present but it does tell the story of why we need to be concerned about the fact that our government in fact may be abusive. In their zeal to protect all of us, they in fact hurt all Americans.

CHAIRPERSON BERRY: And no one said whether the legislation makes things better or worse. What you said was very positive about it if I heard you right.

MS. BUTTERFIELD: It was positive in the sense of where the Administration wanted to start a month ago and the powers that it wanted. There are some checks, there are some cautions built in now, but I think there's still room for abuse, and I would urge the oversight function, the watchdog function to continue, specifically on the detention issue. There is a much lower standard for the Attorney General to detain than in any other kind of case. The certification gives him broad discretionary power. The definition of terrorism that I outlined, all he has to say is, "You meet that definition; therefore, I can detain you."

And there is sort of an open door at the end of the process. If someone is found deportable but the government can't deport them because the home country won't take them, the door is left open to continued and indefinite detention in one of the versions of the bill. In the other version, there may be some review inserted there that would help to limit that.

At any rate, I think that, again, in the balance of the extraordinary powers and the protections there is room for excess and abuse, and we all need to keep our watchful eye on that.

CHAIRPERSON BERRY: Okay. Commissioner Edley?

COMMISSIONER EDLEY: I want to push that since we've got four terrific lawyers on the panel here, because I want to knit it together with what Charles had recommended in the previous panel about trying to put data collection systems in place. So what I'd like you to think about is a year or two years ahead. And if one were exploring the question of whether or not the Justice Department's detention discretion was being exercised in a way that was not merely illiberal but constituted, quote, "a civil rights violation." You with me on the distinction?

MR. HARRIS: Yes.

COMMISSIONER EDLEY: Not merely illiberal but it is a civil rights violation. What kind of data, what kind of evidence would you think would be needed in order to establish that kind of claim? Is it a mere disparity? Is it that people with a connection to Afghanistan are detained in higher proportions than people with a connection to Peru or Northern Ireland? I mean what is that?

You see what I am saying? Because I am just having trouble figuring out what would constitute a prima facie case of discrimination under current statutes and constitutional interpretations and working backward from that to what kind of data would we or others need to be collecting in order to do an effective job of monitoring?

CHAIRPERSON BERRY: Anybody have any idea?

MS. MASSIMINO: Well, I guess one quick thing and then I think Professor Harris also, who she knows about a lot about data collection and sampling, that kind of thing. But one thing just before we try to construct exactly how we would analyze such data. I just want to point out that on the issue of detention, right now Congress has required the INS to keep and to report on data about the detention of asylum seekers, and it has that, I think, was a couple of years ago. It has never yet complied with that requirement.

And one thing would be to ask the INS whether it has got the resources. What is the barrier to you know, this is collecting kind of the most basic sort of data that you would need to make any of the kinds of judgments that you are talking about, however you would want to analyze it. So I guess I'd just like to start with the fact that they have a pretty tough time right now telling us who is in, for how long and for what reason.

COMMISSIONER EDLEY: And just to clarify because let's put aside let's put aside individual claims of disparate treatment where you get someone who says, "To hell with all you ragheads, so that you've got a smoking gun of real, racial, ethnic animus behind something. But if we're looking at pattern practice, disparate impact, of whatever, what are we after?"

MS. BUTTERFIELD: In the pending legislation, there is a reporting requirement, and Elisa's caution about compliance with that is well-taken, but the legislation on the new certification powers requires a report every six months. Who has been certified? How long have they been held? What are the grounds? What are the nationalities? Which one of these folks were granted any relief from removal and were removed? And how many of them continued to still be held?

So I think if that reporting if you all could help Congress assure that this reporting gets done, then we would have some good data on this new discrete certification detention power to see. If there are five people in the next two years, then it's probably not of great concern. If there are 5,000 and they were all ordered removed based on technical violations and none of them were even charged as terrorists but they're all being held as terrorists, that might tell us something else.

CHAIRPERSON BERRY: Good. That is very helpful.

MS. NARASAKI: I think the other problem is too many people really don't get access to counsel. They have a right to counsel, but it's not guaranteed right. So, therefore, it's very difficult for them to find counsel, for counsel to find them, and INS actually has this program where they move people around like every three weeks, and we find Asians who come into New York are being held in Louisiana or Montana, South Dakota where we can't get to them, because we don't have volunteer bases because our populations are not there.

So one of the things I think that the Commission could do to help is to look into this practice and ask the INS to explain how are they what are they doing in terms of an agreement they actually made with the American Bar Association on these issues of access to counsel, because my concern is it's your best data really comes from the attorneys who are representing these people, and the problem is too few of them are actually getting representation.

MS. BUTTERFIELD: And we raised that issue with INS three weeks ago. We have not gotten an answer, and I urge you to ask them in the next panel

CHAIRPERSON BERRY: What shall I ask them?

MS. BUTTERFIELD: what about this 148 people being detained on immigration charges, and how are you helping to ensure that they are getting access to counsel? How many of them are represented?

CHAIRPERSON BERRY: Okay. We will.

MR. HARRIS: If I might also, this is a tremendously important question having information and data on which to make judgments down the road. This has been the thing that broke open the national debate on profiling pre-September 11, because in the past little data was kept that could be broken down by race or ethnic group on who police were stopping and what they were doing to them once they stopped them. And that stymied the debate for a long, long time, because the reports then were just, well, they're just stories. It's just anecdotes. You can't do anything with that. And the emergence of the first sets of comprehensive data from Maryland and New Jersey and then from New York and some other places were the key turning point in that debate. So I cannot emphasize more strongly how important that is.

Now I would say that the provisions that Ms. Butterfield read out from the legislation would be a terrific start. I mean that would get us a long way. But I also have to tell you our experience in the profiling area was that as we went along and we collected sets of data, sometimes we learn things along the way that prodded us into getting more data and to saying, well, what we used to think was enough is not enough.

And the one example I'll give you is that we started at the point of thinking just about who police stopped, and it turns out that one of the better measures of the depth of the problem is who they search. And many police departments who have in good faith started to collect their own data don't collect any search data just because nobody was thinking about it at that point.

And, therefore, we have to keep open the idea that we will add things as we go along, as necessary, and as they would be helpful. But if we don't collect any data, we will be just

debating what some will call stories when we come back in a year or two years. So it's tremendously important that information is collected in a systematic way that we can rely on.

CHAIRPERSON BERRY: Okay. All right.

Well, thank you very much. We want to thank the panel. And now we'll ask the INS and the FAA, and so on, these questions. We very much appreciate you coming.

END OF PANEL TWO

U.S. Commission on Civil Rights

Briefing on Boundaries of Justice: Immigration Policies Post-September 11th

October 12, 2001

PANEL III

This is an unverified transcript of the full and complete proceedings of the U.S. Commission on Civil Rights in the matter of its Briefing on Boundaries of Justice: Immigration Policies Post-September 11th.

CHAIRPERSON BERRY: The last panel consists of government officials who will enlighten us. We would ask Owen Cooper, general counsel of INS, to come forward; David Venturella, deputy assistant commissioner for Detention & Removal of INS; and Joseph Langlois, director of the Asylum Division of INS; Mr. Samuel Podberesky, assistant general counsel, Aviation Enforcement and Proceedings, DOT; and Fanny Rivera, assistant administrator for civil rights, FAA.

If you will come forward.

VICE CHAIRPERSON REYNOSO: Thank you very much. I've been given the list. And the first person on the list is Mr. Cooper, who I understand has a more general statement about policies of the INS. And then we will meet Mr. Venturella and Mr. Langlois.

Please proceed.

MR. COOPER: Good afternoon.

VICE CHAIRPERSON REYNOSO: And thank you all for coming.

MR. COOPER: Good afternoon, Commissioners. My name is Bo Cooper, and I'm the general counsel of the Immigration and Naturalization Service. And I'm very grateful for the chance to come to your meeting today and to speak on behalf of the Immigration Service. I noted in reviewing transcripts of earlier hearings that the Commission has conducted on immigration matters the suggestion that I think that Commissioner Wilson had advanced. And I'd note, gratefully, that the chair has accepted the INS being invited to appear and to discuss these matters; and I think that's a very smart idea. Because these issues—the issues that arise in nearly any immigration discussion—are ones that generate the strongest of feelings from people who view the issue from many different angles. And they are issues that are never as simple as they're often portrayed to be. But they're issues that are at the very heart of what our country is, how we view ourselves, and how we move ahead as Americans; and, therefore, ones that I think are best discussed in light of the best possible information. And so I and my colleagues will try very hard to provide you with the best information that we can today.

I'd like to talk to you about some of the major issues that the INS has dealt with over the past couple of years, and to place them in the context of the principle that has driven our work both before and since September 11.

It's the INS' job to administer one of the very most open national immigration systems in the world, if not the most open; and to do so in a way that's germane and efficient but that also enforces the rules that govern who it is, who's invited to come into the country from abroad, and in a way that helps safeguard the national security.

And we've taken great pains not to forsake that former goal for the latter sets of goals that I described. And I'd like to address in particular the conclusions that the Commission seems to be drawing in previous discussions at the INS. I think it was very wise to inquire into institutional cultures, but I'd like to address the Commission's conclusion that the INS seems to have a culture that's only of law enforcement and that is only geared toward keeping people out of the United States and not permitting those in. And I'd like to note briefly some of the policy developments and activities of the INS over the last couple of years as examples that might help to dispel the impression that the INS views itself only as a law enforcement agency and has a culture that's attuned only to keeping people out of the United States.

Here are some of those examples.

In the past couple of years the INS has issued an extensive set of guidelines to its operational decision-makers around the country to try to help them to exercise prosecutorial discretion in a way that fulfills the mandates of the immigration statutes that Congress has passed and that governs the country, but that also can help in appropriate cases to alleviate undue hardship that can result from the strict application of those laws.

We have published proposed regulations that would alter the way in which the refugee definition is applied; in particular, what it means to be a member of a particular social group—regulations

that if they proceed to final rules under the procedures of the Administrative Procedure Act would expand, to a great extent, the way that gender-based claims and claims based, in particular, on domestic violence can be accommodated within the refugee definition under the laws of this country. That would put the INS in the company of only a small handful of states party to the refugee conventions around the world that recognize such claims in the way that is proposed by the regulation. This is an INS initiative.

We've implemented a system for receiving claims under the convention against torture that is more transparent and open and accessible than any such system that I'm familiar with around the world among the parties to the United Nations Convention Against Torture. And we undertook a great deal of study of various national systems when we were trying to put ours in place.

We've implemented the Legal Immigration and Family Equity Act and its amendments, including a temporary extension of Section 245(i), which would allow eligible persons to adjust their immigration status without having to leave the country under the normal rules. It would include a temporary non-immigrant status—a V status it's called—for spouses and for minor children of lawful permanent residents who've been waiting for more than three years for an immigrant or long-term visa; a temporary visa, called a K visa, for spouses of United States citizens and their children living abroad; and a legalization application period for class members of what are called the "late amnesty lawsuits."

We've implemented the Child Citizenship Act, which allows most foreign-born children adopted by U.S. citizens to automatically acquire U.S. citizenship on the date they immigrate to the United States. And we've been assigned primary responsibility within the Department of Justice for implementing many of the key provisions of the Victims of Trafficking and Violence Protection Act. We've been charged with developing regulations for the protection of trafficking victims while they're in federal custody.

CHAIRPERSON BERRY: You have one more minute, Mr. Cooper.

MR. COOPER: Okay, thank you.

CHAIRPERSON BERRY: There will be plenty of questions.

MR. COOPER: Okay, good.

for providing victims access to information that might affect their status. We have extended temporary protected status for nationals of Nicaragua, Honduras, El Salvador, Montserrat, the Sudan, the Sierra Leone, Burundi, Somalia and Angola.

These are just some of the things that we do that are quite contrary to what would take place in an agency that is attuned only to keeping people out.

I see that my time is just about up, and I understand there will be a lot of questions on, for example, our law enforcement efforts in the wake of September 11. I'll try my very best to answer those as well as possible. But I'd like to just close by noting on behalf of Commissioner

Zeigler, who was unable to attend today because of a commitment on the Hill, a statement that he gave yesterday before the Senate Appropriations Subcommittee on Treasury and General Government. This is what Commissioner Zeigler said.

It's been said that after September 11 everything has changed. I hope that is not true. America must remain America—a symbol of freedom and a beacon of hope to those who seek a better life for themselves and their children. We must increase our security and improve our systems, but in doing so we must not forget what made this nation great—our openness to new ideas and new people, and a commitment to individual freedom, shared values, innovation, and the free market.

If in response to the events of September 11 we engage in excess and shut out what has made America great, then we would have given the terrorists a far greater victory than they could have hoped to achieve.

And with that, I'd like to try to answer any questions you have. Thank you.

CHAIRPERSON BERRY: All right. We will hear from the others, and then we will have the questions. Thank you, Vice Chair.

Mr. Venturella, please.

MR. COOPER: Yes, ma'am, Madam Chair. My colleagues, Joe Langlois, who's the director of Asylum, and David Venturella, who's from our Detention and Removal section, have joined me in an effort to help be prepared to answer whatever questions you have. But we have no more prepared statements to offer.

CHAIRPERSON BERRY: I see. But they will answer questions.

Now we will have opening statements, if any, from the folks from Transportation, Mr. Samuel Podberesky, who is the assistant general counsel of Aviation Enforcement Proceedings.

Would you like to make a five-minute statement?

MR. PODBERESKY: A very short statement.

CHAIRPERSON BERRY: Yes, please.

MR. PODBERESKY: Thank you for the opportunity to appear here today on behalf of the Department of Transportation. The secretary of Transportation, Norman Mineta, apologizes for not being here today because of a prior out-of-town commitment. He has, however, asked that I deliver to the Commission a letter from him and his statement for the record that provides considerable information that should be of use to the Commission in carrying out its important responsibilities. Hopefully, copies of that have been made, delivered, and hopefully it's been distributed to the Commission members.

Without objection, I would like to read Secretary Mineta's letter and have his statement included for the record.

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CHAIRPERSON BERRY: Please, go ahead.

MR. PODBERESKY: Dear Madam Chairperson, thank you for the invitation to testify at the Commission's October 12 public briefing in Washington, D.C. to discuss the civil rights implications of strengthened security throughout the United States transportation systems. I will be on travel on that day and will be unable to attend, but I've prepared the enclosed written statement, which I would deeply appreciate your including in the record.

I applaud the U.S. Commission on Civil Rights on its efforts to ensure that all persons are provided equal protection of the laws; that no person is subject to unlawful discrimination when traveling in the nation. This is a time of great challenge to the nation, but that challenge cannot be allowed to serve as an excuse for unlawful discrimination.

As my statement indicates, the Department of Transportation has taken steps to make certain that our transportation system is in full compliance with the civil rights laws and that strengthened security requirements do not change that situation. We will continue to investigate any security-related airline discrimination complaints we receive vigorously and expeditiously.

As one of the 120,000 Americans of Japanese ancestry forcibly interned by the United States government during World War II, I understand how dangerous times such as these can be to civil rights and civil liberties.

I look forward to working with you and the Commission to ensure that our nation never again loses sight of those fundamental American values. I hope the enclosed statement is helpful. If you have any further questions, please feel free to contact Sam Podberesky.

Fanny Rivera, the head of the FAA's civil rights office, and I are here to answer any questions you may have regarding the airline security screening process and related civil rights issues.

The FAA develops and implements security screening requirements. I head the department's Aviation Enforcement office. My office is responsible for investigating complaints against airlines, charging them with civil rights violations, including security-related discrimination.

I cannot overemphasize the importance the department places on civil rights compliance by the airlines. It is a primary focus of my office. We investigate each security-related discrimination complaint we receive and thoroughly and as expeditiously as possible.

Secretary Mineta, who has personally faced significant discrimination and who has a long and successful history as a champion of civil rights, has made clear to each departmental employee the high priority he places on civil rights compliance by the department and each entity that we regulate.

I will be happy to answer any questions you may have. Thank you very much.

CHAIRPERSON BERRY: Now, Ms. Rivera, are you making a statement?

MS. RIVERA: A very short statement.

CHAIRPERSON BERRY: Yes, please proceed.

MS. RIVERA: Well, first, let me thank you for the opportunity to speak to the U.S. Commission on Civil Rights on behalf of the Federal Aviation Administration.

FAA takes the allegations of discrimination very seriously, and continues to be uncompromising in its enforcement of these laws. In 1998, we sent the following assurance to the public that articulates our responsibility. The FAA wants to assure all travelers that airline screening will comply fully with civil rights laws, and nothing will be done that might interfere with fundamental American liberties. The agency has cautioned airlines and airport law enforcement not to target or otherwise discriminate against passengers based on their race, their color, national or ethnic origin, religion; or based on passengers' names or modes of dress that could be indicative of such classifications.

Transportation Secretary Norm Mineta has stated that while FAA has put into place new heightened security measures that the airlines must follow, we will continue to be very vigilant in ensuring that the airlines as they implement the new procedures do not engage in unlawful discrimination.

The new security measures have been put into service for the safety of all; however, none of these new security measures decrease the responsibilities of the airports or airlines to ensure that airport and airline security procedures are carried out in a non-discriminatory manner.

The departmental office of Aviation, Enforcement and Proceedings—the office that has responsibility for these complaints—has sent to the airlines a message that encourages each airline to take steps to ensure that its employees understand not only is it wrong but it is also illegal to discriminate against people based on their race, ethnicity or religion.

To date, the FAA has received only one complaint regarding discrimination of an individual by an airline on the basis of race, ethnicity or religion. This complaint was given the highest priority and referred to the departmental office of Aviation, Enforcement and Proceedings.

FAA is unwavering in its commitment. We will continue to be ever vigilant and conscious of civil rights concerns and ensure that new procedures are consistent with civil rights laws.

CHAIRPERSON BERRY: Okay. I want to thank all of you. I have just one question, then I'll turn the whole thing over to the Commissioners to see what questions they would like to proceed. And my one question is to DOT.

We have heard testimony here this morning, and we have all heard media accounts, and we've heard some complaints made directly to us, and we did a report last May on the FAA guidelines, one of our advisory committees did—I think it was a Michigan one—and how they might affect airline passengers of Middle Eastern descent.

That despite what you have told us, and what the two of you have told us, that, in fact, Middle Eastern-looking passengers are being taken off, or not permitted on, or taken from airlines before

the plane takes off. And we've heard media counts also confirming, or at least reporting, that these things are happening.

Could you state as succinctly as possible, either one of you, what FAA guideline or procedure permits the removal of passengers from the airline by airline personnel, based on their ethnicity, national origin, looking Middle Eastern or Muslim or whatever? Is there anything in your guidelines and what is the guideline that permits this to happen, either discretionarily or otherwise on the part of airline personnel?

MR. PODBERESKY: Madam Chairperson, there is no guideline that allows anyone to remove a person from an airplane solely because of their race, nationality, ethnic origin.

CHAIRPERSON BERRY: How about as one factor? You said solely.

MR. PODBERESKY: There is a statutory provision which says that the airline is responsible for the safety and security of the aircraft. And they, in fact, may remove a person from an airplane if they believe that person is a safety or security risk to the airplane. But it does not mean that they can remove the person solely because of their race, nationality or ethnic origin.

CHAIRPERSON BERRY: Is it your interpretation that the overall authority of the airline would extend to an interpretation that included one factor in the determination about safety and security, the race, ethnicity or national origin; or is it your belief that such a determination which included that as a safety factor would, somehow, not be permitted as the FAA and DOT understand the responsibility?

MR. PODBERESKY: If in explaining why a person was removed from an aircraft, allegedly because of safety or security concerns, the carrier points to objective conduct that would raise reasonable suspicions that the person is a safety or security risk, that would be taken into account. If they state that the nationality and ethnic origin or race of the person was a factor, it would raise serious concerns with us.

CHAIRPERSON BERRY: And what does raise serious concerns mean?

MR. PODBERESKY: It's a matter to be investigated on a case-by-case basis.

CHAIRPERSON BERRY: And is there any imaginable circumstance that the two of you can imagine since September 11, or before, that the race or national origin or ethnicity were an Arab American, Muslim, might become part of an acceptable set of criteria? Is there any way that you can imagine that that might be considered as one factor that could be included given the circumstances?

MR. PODBERESKY: I cannot imagine it, but I can't imagine everything that might go on on the outside.

CHAIRPERSON BERRY: Well, I'm imagining, in terms of the Department of Transportation and your responsibilities when it's called to your attention. Would you consider, since on or before September 11 or after September 11, that an airline reporting once you found out that

this happened and somebody complained to you that one of the factors was that this person appeared to be of Middle Eastern or Arab descent or Muslim descent, along with other factors, that you wouldn't automatically tell them that that's an unacceptable criteria to be even considered?

MR. PODBERESKY: Yes, I could. If four Arab American-looking people were on an aircraft, and they were all visibly carrying guns, and they were all discussing with each other what they were going to be doing before an airplane took off, and the person said, among the reasons I took into consideration were they were all looking at Arab Americans, then my guess is they had proper cause for removing the people from the aircraft and questioning them further.

CHAIRPERSON BERRY: Because they were Arab Americans?

MR. PODBERESKY: No, not because they were Arab Americans. There were sufficient grounds to remove those people from the aircraft without the fact of their race or nationality or ethnic origin being taken into consideration.

CHAIRPERSON BERRY: Okay. So their mention of the Arab American was simply

MR. PODBERESKY: That would lead me that would raise concerns with me, but I would have to look at all the factors that take place on board the aircraft. That's why I say each case has to be investigated on an individual basis.

CHAIRPERSON BERRY: Okay.

MR. PODBERESKY: The end of that situation may have been that those four individuals may be in jail for the rest of their life. At the same time, we might send a warning letter to the airline saying, you had grounds to remove the people from the airplane. You shouldn't have considered their race or nationality.

CHAIRPERSON BERRY: I will turn it over to others once I ask, in all the cases that were reported to us and that were in the media and the accounts, no one was carrying guns. And, in fact, there were no examples of people carrying guns. And you would agree with me that if someone's carrying a gun, that would be a reason, we hope, to kick them off the airplane, whoever they were, right?

MR. PODBERESKY: You were asking about

CHAIRPERSON BERRY: So what I'm asking is, now and I'm through with it for the moment is, if somebody says that it's an Arab American, and that was why they kicked them off, in your view, then, that would be the wrong thing to do.

MR. PODBERESKY: That would be discriminatory. That would be a problem.

CHAIRPERSON BERRY: Anybody else? Yes? Vice chair?

VICE CHAIRPERSON REYNOSO: Sir, does the general counsel office issue advisory opinions? I see Ms. Rivera shaking her head, meaning no. I wonder if you should, because many general counsels do issue advisory opinions. And it seems to me it would be quite helpful to the airlines to have you issue an official advisory opinion that ethnicity alone is not enough.

MR. PODBERESKY: I think Ms. Rivera indicated in her statement that we've already done that. On September the 21, I believe, we sent a message to all the major carriers, advising them of the fact that they should not remove people from aircraft based on their race, ethnicity, national origin. Since then we've polled the carriers and we also recommended that they let everyone of their employees know about our statement and of the law as it exists. We've polled the carriers. And it's included in the secretary's statement.

VICE CHAIRPERSON REYNOSO: May I ask that question of Ms. Rivera?

Ms. Rivera, do you investigate only when you receive a complaint? What if you see a report in the newspaper where a person is saying, I was refused service, or I was treated impolitely, and so on? Do you investigate that at all?

MS. RIVERA: Not from the media, but we would investigate if we received a complaint.

VICE CHAIRPERSON REYNOSO: Don't you think you should?

MS. RIVERA: What's that?

VICE CHAIRPERSON REYNOSO: Don't you think you should? I mean, many people probably don't even know that you receive complaints, and others may not have enough confidence in you to file complaints. Shouldn't you investigate those matters? Wouldn't that be a matter of some assurance to the public and a break upon those employees who are violating your regulations?

MS. RIVERA: The way we have been operating is that when we receive the complaint, we deal with it; we address it. And we take them very seriously. I mean, we follow up and investigate the complaint directly. Now, with regard to complaints around the airlines, that would go to your office. And maybe you want to speak to that as well.

MR. PODBERESKY: We on occasion do follow up with airlines when we see information in the newspaper about situations that appear to us to be particularly egregious. The airlines provide us information on the reasons why they've done what they've done.

But without a complaint, we have difficulty in pursuing enforcement action. And from our perspective that's what we can do. All the major airlines have in place non-discrimination policies.

VICE CHAIRPERSON REYNOSO: I know. But with due respect, we're dealing now with broad general policies. Apparently, if we're to believe the numerous reports that we've read in the press, the regulations are simply not being followed. My question is, can you folks do

something about it. And your response seems to be to say no. And I'm, frankly, quite disturbed by that.

MR. PODBERESKY: I personally have seen you state that there have been numerous problems. I've seen we've gotten a total of 11 complaints since September 11. And of those, I think about half are ones that have been talked about in the newspaper in one form or another. And, perhaps, I've seen another four or five in the newspaper, and I do follow the news reports on these kinds of incidents.

Now, considering that there are 700 million airline passengers a year, many of whom are members of minority groups, I don't believe the numbers are numerous. I don't believe that a substantial number of people are being adversely affected.

VICE CHAIRPERSON REYNOSO: And that's all I had seen is three or four reports.

MR. PODBERESKY: And the other thing I'd like to add is, that based on the information that I have the complaints I've seen, the reports I've seen in the newspaper hopefully, this was an anomalous situation that occurred over the first week when a lot of people were scared to death of flying and a lot of people were scared to death of working on airplanes because they were afraid they were going to die when they flew. And hopefully, the situation has eased off now.

I think the last incident of the type you're discussing, where people were asked to leave an airplane for additional questioning, occurred like September 24 or so.

VICE CHAIRPERSON REYNOSO: Yeah. I guess I'm just concerned about the perception by the public; that is, we have read about those incidents. And at least I haven't read in those stories or subsequent stories that that was brought to your attention, and that you responded, and so on. It seems to me we would get perhaps a more full picture or at least a sense of confidence that folk are not being discriminated against if there was some sort of follow up.

So, one, having read those reports, and two, having had the response that you don't investigate on the basis of those reports, I was just concerned, one, that it may have happened and they weren't investigated; and two, that there was no subsequent report to assure the American public that, in fact, that type of discrimination is not permitted.

CHAIRPERSON BERRY: Commissioner Meeks?

COMMISSIONER MEEKS: No, actually the vice chair took care of my question.

CHAIRPERSON BERRY: Okay. Commissioner Edley?

COMMISSIONER EDLEY: I don't get it. I'm confused about the difference in jurisdiction. Ms. Rivera, you said you're working on one complaint. and Mr. Podberesky, you said you have 11 complaints.

MR. PODBERESKY: My office is charged with the responsibility of investigating civil rights complaints against airlines.

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COMMISSIONER EDLEY: As opposed to?

MR. PODBERESKY: And the FAA is in charge of establishing security requirements on airplanes and approving security procedures for airlines. So the FAA has no authority to enforce civil rights laws against the airlines. And it is statutory.

COMMISSIONER EDLEY: So the 11 incidents that we've heard about of people being removed from planes

MR. PODBERESKY: They're not all people being removed from planes. We've had 11 complaints.

COMMISSIONER EDLEY: Well, the 11 incidents that Mr. Zogby was talking about.

MR. PODBERESKY: Well, I don't know about the 11 incidents that Mr. Zogby was talking about.

COMMISSIONER EDLEY: Not those. Okay. So if those are about people being removed from planes

MR. PODBERESKY: Right.

COMMISSIONER EDLEY: That's not her jurisdiction; it's your jurisdiction?

MR. PODBERESKY: It's my jurisdiction.

COMMISSIONER EDLEY: And both of you basically said that you would be vigilant against unlawful discrimination. Could you tell me what your definition is of unlawful discrimination and what you're doing to be vigilant with respect to compliance with that legal standard, upon you responding to complaints that you hear? So just to flush that out, number one, what your definition is. Because I'm uncertain about what the definition is. Actually, the chair and the vice chair said two very different things.

The vice chair's comment was that race or ethnicity can't be the sole factor. Now, I've heard that definition. The chair's definition seemed to be that there has to be adequate grounds for action independent of race or ethnicity. There's a lot of distance between those two. So what is your definition of discriminatory racial profiling or discrimination? If you have one.

Do you see what I'm getting at? I was involved in a lot of worrying about this issue with the Clinton administration. And there never was an agreement about what the definition was of racial profiling. Everybody was prepared to decry decisions using race as the sole basis. But, of course, that's not really where the hard problem is.

So what's your definition? And how do you know they're obeying your definition?

MR. PODBERESKY: Well, my definition again, going back to it is it can't be the sole business for

COMMISSIONER EDLEY: So it can be a factor.

MR. PODBERESKY: It might be a factor in certain circumstances.

COMMISSIONER EDLEY: That's a yes.

MR. PODBERESKY: I can imagine circumstances where it would be considered to be a factor. But I would expect that the other factors that were considered have to justify the disparate treatment.

COMMISSIONER EDLEY: So it can be an irrelevant factor. It can be an immaterial factor.

MR. PODBERESKY: It could be a factor that we might take some kind of action, but it would not be—it might not be actionable by us beyond something like a warning unless there was not independent justification separate from the race or national origin for the entity to have taken the action that they took.

COMMISSIONER EDLEY: Okay, I think I understand. Let me just try to make sure.

So it sounded to me like what you said was, if the race or ethnicity is a part of the package of factors and is necessary to reach the threshold of adequate justification, that's discrimination. If race or ethnicity is an additional factor on top of the quantum needed to establish justification, then that smells funny, may justify a warning, a caution, but it does not constitute discrimination. Is that what you're saying?

MR. PODBERESKY: No, that's not what I'm saying. I'm saying that we wouldn't do anything other than issue a warning. There's adequate justification for the carrier to do what it did, without taking into account the race or ethnicity of the person involved.

COMMISSIONER EDLEY: Okay. So that sounds to me—so if race is considered but is immaterial to the decision, then that's okay. I mean immaterial in the technical evidentiary sense. You don't need it to make your case.

MR. PODBERESKY: I don't think it's okay, but I don't think that we would take enforcement action on that kind of a case.

COMMISSIONER EDLEY: As a matter of your prosecutorial discretion or as a matter of the way you interpret the antidiscrimination laws?

MR. PODBERESKY: In my mind it would be a matter of prosecutorial discretion. If we would take action, it would probably be in the form of a warning. But that's also applying our prosecutorial discretion.

COMMISSIONER EDLEY: Okay. Well, I guess I give up trying to unmuddle myself, but I want to associate myself with the vice chair's suggestion that, if you have a specific guideline that spells this out, it would be great if you could—I'd like to read it. I'd like to look it up. If you don't, I think it would be terrific to produce one that is really clear enough to provide the kind

of guidance to the public and to everybody that has to comply with it. I think there's a great deal. I mean, I'm a law professor; I teach this stuff. I think there's an awful lot of confusion out there about exactly what the boundary is, what constitutes illegal racial profiling, if you will.

And I've gone on too long. But I just want to say

MR. PODBERESKY: Well, maybe I can add just one thing, try to clarify it. I take your point about providing guidelines to heart. I think that's a good idea. Maybe I can apply sort of a "but for" test.

If you can only justify removing that person because of the race, even if you have other factors—if you had to consider the race to remove the person, then it's illegal; then it violates the law. Does that help?

COMMISSIONER EDLEY: It's incredible. It's terrifically helpful. Well, I mean, at least it's clear. I have to think about whether I think that's right, but at least it's clear. And you think everybody gets that?

MR. PODBERESKY: No, I don't think everybody gets it because there are a lot of people out there, and there are a lot of people that would even apply that test in different ways.

COMMISSIONER EDLEY: I'll give up on my monitoring question. But on this issue of—there were some press reports I heard with the removal—pilots saying, or people saying that pilots had authority, under the statute or under your guidelines, to remove somebody if they felt uncomfortable, if they thought it was a security issue, et cetera. And it sounded like a very broad grant of discretion.

I took your earlier statement to mean that there has—somebody said that there has to be actually an action; that there has to be some behavior; that it can't just be free-floating anxiety felt by a passenger or felt by the pilot; that there has to be something concrete, something objective, to trigger it. Am I understanding that correctly?

MR. PODBERESKY: Yes. But let me clarify. There is a statutory provision. It's 49 U.S.C. 449.02, gives the airlines authority to remove anybody from the airplane they believe is a safety risk to the aircraft. There's also a statutory provision, 49 U.S.C. 401.27, which prohibits airlines from discriminating, based on race, ethnic origin, religion, et cetera.

You've got to read those two statutory provisions together. And airline pilots who make decisions based on anxiety and unsubstantiable fears are violating the law, if that's related to race, ethnicity or religion of the passengers involved.

These complaints about people being removed from airplanes for additional questioning—and my understanding is that everybody that was removed eventually flew, either on the same flight or on a later flight. But this is a situation that we have not seen in the past. I mean, we've received complaints since we've monitored complaints closely and investigated complaints thoroughly since 1997. This situation where people are being asked to leave airplanes and being questioned further, that's new. That's something we haven't really seen before.

CHAIRPERSON BERRY: May I ask this? You have a CAPS program that you use, computer assisted passenger screening that FAA has been using since 1998. And in May, our advisory committee in Michigan reported that the CAPS system does, in fact, target people on the basis of being Arab Americans and Muslims. That was before September 11. Although as I understand it, the FAA says that you do not.

Also, since September 11, Arab American passengers are being asked, or people are asked at least they think they are do you know anybody who has information regarding the attacks.

Are you aware of any of this at the FAA? Have you heard about any of this? You do know about the computer assisted passenger screening program, right?

MS. RIVERA: Yes.

CHAIRPERSON BERRY: And are you aware that our advisory committee recommended to us, at least, that they feel that CAPS does discriminate and profile people. And do you know that Arab Americans at least claim that they're being asked these questions since September 11, about whether they know anything about the attacks and so on? Is FAA aware of any of this?

MS. RIVERA: I personally was not aware that they were being asked that question.

CHAIRPERSON BERRY: Right. Is FAA aware of any of the claims made by I'm talking about FAA now, not the DOT office any of these concerns expressed? And did you know about the advisory committee report concerning CAPS before September 11?

MS. RIVERA: You're saying that it was in May of this year?

CHAIRPERSON BERRY: I'm asking you, yes.

MS. RIVERA: I was not aware of May of this year

CHAIRPERSON BERRY: You didn't know that there was such a report?

MS. RIVERA: But my colleague

MR. PODBERESKY: I was aware of it. I called the Commission staff and tried to become a witness for that proceeding, and I was not invited. I believe the findings of the proceeding with respect to CAPS are an error.

The CAPS criteria were reviewed by the Justice Department in 1997 and found to be nondiscriminatory. And there clearly has been a continuing perception among many communities that they are discriminatory, but the criteria are not discriminatory.

CHAIRPERSON BERRY: Okay. And although the advisory committee disagreed, you're saying that from your perspective they were wrong.

MR. PODBERESKY: Yeah. The advisory committee did not call anyone to testify, did not ask any questions, as far as I know, as to what the CAPS criteria was.

CHAIRPERSON BERRY: Before we turn to INS for some questions, are you collecting any data in DOT? Are you doing data collection that we can come back and review later? I'm not asking you whether we can, because I know how we go about doing it. But are you collecting data that may be useful in someone coming back later to monitor how this whole process happened, whether there were complaints, what you did with them—the way our evaluation office does all the time? They go around to agencies and do this as one of our functions.

Are you collecting data on all this and maintaining records?

MR. PODBERESKY: We maintain data on all our complaints. And with respect to all civil rights cases, we maintain investigation files for each complaint.

CHAIRPERSON BERRY: Okay.

COMMISSIONER EDLEY: I'm sorry, Madam Chair.

Let me just urge you to try to think a little bit more about this. We've got this massive increase in security attention, with the security lines and so forth. A lot of people are very concerned that there's going to be enormous opportunities for profiling, for discrimination, for whatever; just for hassling people based on what they look like in ways that most of us would think are unfortunate.

At one level, the law is you can have whatever training programs you have, whatever policy guidance you give to folks. But I guess what we're asking is, beyond that, what are you going to do to try to make sure as best one can that what happens at the airport in Pittsburgh with all of these folks being hard to do screening and so forth is going to be consistent with your policy pronouncements? Whether it's a program of auditing, whether it's a program of ongoing professional supervision. I mean, whatever the strategy is, at least my view is that given this enormous effort that the nation and that you, in particular, are going to be putting into it, if you can build in up front more safeguards and more monitoring so that we can have confidence in the fairness of it

They're going to be complaints, and there's going to be a lot of public itching and moaning about it, especially the farther we get away from September 11. And the more confidence people can have if you set in place a process to keep tabs on it. And the same way that people ask for the state police to have a way of monitoring whether or not there's racial profiling. It ain't enough to have the policy pronouncement. What system do you have in place to make sure that it's not really happening? I think that would be very, very helpful.

CHAIRPERSON BERRY: Right. And it would make our job a lot easier, so that when we come back to do a monitoring report, we can say what you put in place in the beginning. And we don't have to have as one criticism that you didn't put anything in place at the beginning, even though you were even reminded to do it over and over again. It just makes the work we have to do, in addition to public confidence, a lot easier. So we hope that you will do that.

On INS, all I want to make sure we ask you is, what about detention? Where are the 148 people who have been arrested? And have they been arrested because they have a propensity toward terrorism in your view or some other reason? The panelists earlier don't want them to be part of the disappeared ones, I guess.

And the other part of that is, what do you do to see to it that they have adequate legal counsel, given that they are moved around? So someone can answer those two for me, and then I'll turn to other people.

MR. COOPER: Yes. I'd be delighted to at least begin. The group that you're talking about is slightly under 150 people. These are people who are in custody and who have, at least in the eyes of the INS, and formally according to our charging documents that began the immigration proceedings, are people who are here in violation of the immigration laws. They also, though, are people who are believed by the U.S. government to be of concern because of potential connections with the events of September 11.

Now, typically, it's a law enforcement agency other than the INS that has that institutional role of deciding when someone is of that sort of law enforcement concern. And so, we, for example, aren't the ones who are principally the anti-terrorism experts. But if the FBI, for example, considers someone to be of law enforcement concern because of potential connections to September 11, and the person also is in the United States in violation of the immigration laws, then it's appropriate—it's lawful—for us to proceed on the basis of the immigration violations at the same time that the investigation into the September 11 incident goes forward. And that is true of the category of people that you're describing.

They're in custody in various places around the country, and they're in custody according to the normal process that applies to anyone who's in detention for immigration purposes. And let me describe what that is.

First of all, for someone to be in our custody—just for clarity sake—they have been under arrest. There was some discussion in other law enforcement context in the immediate days after September 11 about whether arrests had been made. If we have someone in custody for immigration purposes, they're under arrest. And for us to do so we've got to have probable cause to believe that immigration violation has occurred. And within a certain period of time, one that has changed by regulation since September 11—and we can come back to that if anyone is interested—within a certain period of time, now 48 hours, we've got to make a decision whether to proceed with a formal immigration proceeding to remove that person and to judge whether, in fact, we're correct that they're here in violation of the immigration laws, or whether to give them what's called voluntary departure, or simply to release them and end any sort of immigration proceeding at that point.

After we've made that decision, if the decision is to go forward with formal removal proceedings, then we've got to serve them with a charging document. It's called a Notice to Appear. And that gives the person notice of the formal institution of removal proceedings, and among other things, it gives them notice of their right to go before—in most categories of cases—an immigration judge, which is a separate authority from the INS, and ask that judge to reevaluate our initial custody decision.

They also are given in the course of that immigration proceeding a listing that varies from locale to locale of free or low-cost legal services that is actually compiled by that other authority I mentioned, the Executive Office for Immigration Review. It is a Justice Department component that is separate from the INS, but it is done in consultation between the two agencies. And the formal list is given to everyone who is in INS custody.

I should clarify what one of the earlier panelists has said. There is, in fact, a guaranteed right to counsel through the immigration process. What there is not a right to is government-funded counsel through the immigration process. But in order to give effect to that right, there are a number of steps that the INS or other department components have taken to ensure that people have a way of getting an attorney.

One is this list that I mentioned to you. Another is the provision of access to telephones, visitation access, and so forth, when people are in our custody, for, among other purposes, the right to get or to consult with counsel. And in the wake of September 11 we had issued formally a reminder to both my attorneys around the country and, more important, to INS operational personnel around the country who administer detention of what it means to have a right to counsel and to have actual access to counsel when you've got attorneys, and a right also to consular access, to consular personnel from your country of nationality should you wish it.

Those are among the steps that we've taken to ensure that the statutory right to counsel is actually observed when we have someone in immigration custody. That is something that we've taken steps to do generally, and we've taken particular steps to ensure that since September 11.

I had read in the newspaper accounts of instances where people said, I'm an attorney who tried to go see my client and was turned away. In addition, we've heard what Ms. Massimino, for example, from the Lawyers Committee we work with them on a quite regular basis. And I heard her comment in other contexts that they'd had word of attorneys who are affiliated with them who had trouble getting access. That is what generated this formal reminder that access to counsel is required and what that means.

So that is the basic answer about counsel.

CHAIRPERSON BERRY: Mr. Cooper, in addition to reminding me to ask the same kind of question that the vice chair and Commissioner Edley have asked before is there some way you could check out these stories that I mean, if Ms. Massimino, with whom you work her organization that is, on occasion has contact says that some attorneys weren't able to do this, isn't there some way for you to ask whatever office it is do they know about these folks coming and trying to get to see these lawyers or to check out some of these things?

You know, we're awfully inquisitive around here. When we read about things in the paper, even though nobody brought them to our attention, we can't even sleep at night until we try to figure out, did this really happen? Gosh. If somebody says that our regional office in Atlanta, thus and so happened, we want to find out. Did it happen? Call up people and ask them and all kinds of questions. We're restless.

COMMISSIONER EDLEY: It might, for example, be grounds for some kind of disciplinary action

CHAIRPERSON BERRY: Right, absolutely.

COMMISSIONER EDLEY: if somebody actually stands in the way of somebody getting access to their lawyer.

CHAIRPERSON BERRY: I don't know. Curiosity alone would inquire I think. Isn't there some way you could check out some of these things to see if they're really true?

MR. COOPER: Well, we also act on the basis of news accounts. And this is just my personal experience. And that or relations with organizations that whose job it is to watch what we do and to let us know when they think we're doing wrong is, typically, the quickest and most efficient way to find out when something's gone awry. But, perhaps, Mr. Venturella has more to offer. And then I see that we have a question from Commissioner Reynoso as well.

MR. VENTURELLA: We do take this very seriously. And we do investigate when we get complaints or see these issues in the newspaper. As Mr. Cooper mentioned, we did see that same article. And we do go out and contact our officials down there, get the facts of the case, and try to work—for example, in Newark we have an issue with Highes having attorney access into that facility, one particular individual. We constantly are in contact with Highes, with that office to try to resolve those issues.

So it's not if a formal complaint comes in, then we react to it; we react when we hear instances where this might be a problem, where our detention standard is not being followed.

Also prior to September 11, the Department of Justice has independently contracted for reviews of all of our INS major detention facilities and our U.S. marshal's facilities. And that's being headed up by Price WaterhouseCoopers. And they're doing an independent review of these facilities and measuring them against our standards, the department's standards, and I believe ACA standards.

And within my own program we do have a compliance and monitoring component. And part of what they do is to ensure that our facilities are meeting these standards or are taking steps to try to meet these standards.

CHAIRPERSON BERRY: Yes. Commissioner Lee and then Commissioner Meeks.

COMMISSIONER LEE: You mentioned that everyone has rights to counsel and everything else. How are those information being related to these individuals? I mean, do you have something in writing in the person's native language? Do you have translators right there, and then say you have right to legal counsel, you have right to make phone calls, whatever? How is that being transmitted to the individuals?

MR. VENTURELLA: When we take a person into one of our detention facilities, whether it's one we own, contract, or one that's contracted with a local entity, we do provide the individuals

with a know-your-rights presentation, which is something that was established last summer and across the country is beginning to pick up. We also work with local NGO groups to provide those independent know-your-rights presentations. There have been pamphlets made in different languages.

Again, it's not consistent across the country. Obviously, there's different needs for the different populations that are being detained. But local offices are trying to let the individuals know of these rights under the detention standards. This is a new program for us that started in January of this year, and this is the first phase of it. Recognizing that there are a lot of issues, now that we are charged with detaining more individuals, persons with violent and criminal backgrounds, the whole landscape of our detention has changed over the last five years. And, unfortunately, now we're playing catch up to deal with these issues, and the first was with our detention standards.

So we have a long way to go in that area, but we are taking steps. I think the right steps to ensure that individuals understand, at least at the basic level, what their rights are or where they can have access to more resources or more information.

COMMISSIONER LEE: Mr. Cooper, you mentioned that the immigration judges are not part of the INS.

MR. COOPER: That's right.

COMMISSIONER LEE: So who have oversight of their work, and do you and INS keep records of approval and denial rates of asylum seekers? Who keeps records of this?

MR. COOPER: The answer is that both of us do because there are two separate systems for asking for and having an asylum claim adjudicated. The basic rule is that if a person comes to us and asks for asylum first, then they're in what's called the affirmative asylum program. And they would meet with an officer in Mr. Langlois' program in a non-adversarial setting. It's an interview. The two people sit down alongside a translator, attorney if they'd like to have an attorney and so forth. And it's an asylum interview. And the asylum officer is an INS adjudicator and would decide whether or not that person is a refugee and is entitled to asylum. And their program keeps statistics by nationality, and a number of other things, of the recognition rates.

If that person is not granted asylum in that context and is out of status—is not here legally—or if it's someone that we go to first and allege that they're removable from the United States, they would go into this immigration judge proceeding, or we would put them into an immigration judge proceeding, where they have a chance to ask for asylum again. And it's a de novo determination; it starts from scratch. And they can ask an immigration judge for asylum or for any other remedy under the immigration laws that they may believe they're entitled to.

That's a somewhat different setting. It's an adversarial setting and looks much more like the classic courtroom setting, where there's an INS attorney who's there to represent the INS. And then that person has a right to counsel as well. And there's an independent decision-maker who would determine their asylum claim. That's the immigration judges that are part of this separate

component of the Justice Department. They also keep statistics on grant and denial rates; although, I can't speak with any expertise about that.

You asked about oversight. A negative decision there can be appealed to an administrative appeals tribunal that's also separate from the INS. And many, but not all, kinds of negative decisions there can be reviewed in the federal courts.

COMMISSIONER LEE: I guess my specific question is, do you keep statistics on individual judges' decisions. I think I read somewhere, L.A. Times or something, that there was a judge who never approved one's application in her entire life as an immigration judge, which I found sort of hard to believe. I'm not talking about the overall approval/denial rate; I'm just talking about specific officers or specific judges—how do they deal with asylum cases, and do you monitor them. For instance, if someone has never approved anything, do you have a red light to say, oh, maybe something's going on.

MR. COOPER: I read this same article. That, of course, was about immigration judges, and I'm not in a position to be able to speak for them. But Joe Langlois would have the same sort of concern because he administers the group of INS asylum officers who would make those decisions here. And I noted that in the last hearing—I don't know if it was the last, but previous hearing—that the Commission held on immigration matters, one of the panelists made what I thought was a wise suggestion, for you to watch a film, a documentary that had been made called *Well-Founded Fear* that addresses, among other things, this issue. And so, perhaps, Joe has some other insight.

MR. LANGLOIS: Okay. Certainly, ensuring consistency is a very difficult task. We do a number of things to ensure consistency. Certainly, we keep statistics on the individual asylum officer and their approval rates. In addition, we have, of course, 100 percent supervisory review of all decisions that are in the affirmative asylum adjudication. So we've got a supervisor reviewing and signing of the grant letter or the charging document.

Now, the supervisor ensures the consistency of the group that the individual supervises. But we also have what are called quality assurance trainers, sometimes two, sometimes three, sometimes one, depending on the size of the office. We have eight offices in the United States. It's the job of these individuals to look at what the supervisors are signing off on in order to determine trends and also to see trends and adopt training material in order to correct the trends that they're seeking.

And last of all, we have the headquarters in Washington, D.C. that mandates that certain types of cases come to headquarters for review. And then, sometimes we do random samplings in the offices themselves. So we do a number of things to ensure that the law is being applied consistently and fairly. But I would mention that our approval rate at this point is about 42 to 43 percent in the affirmative program of the individuals that we interview and decide.

CHAIRPERSON BERRY: Commissioner Meeks?

COMMISSIONER MEEKS: Several of the other panelists mentioned legal representation. And you referred to it a little bit, Mr. Cooper. Explain that a little bit. They have a right to it, but the government doesn't have to pay for it. Is that what you said?

MR. COOPER: Right.

COMMISSIONER MEEKS: So this list of lawyers, I guess, that can represent, then who pays for them? The individuals?

MR. COOPER: Well, there's a huge network of private counsel who, depending on the client, people engage and pay in the normal sense. But there also are a large number of organizations that provide low-cost or no-cost legal services. Often they're funded and I can't speak with full expertise on this, but just the organizations I've come across. There are organizations that are funded by churches or faith-based groups. There are organizations, like the Lawyers Committee for Human Rights whose representative testified a while ago. And one of their functions is to work with private law firms around the country who do all kinds of different law, but to encourage their attorneys to spend time pro bono representing asylum seekers or other people in the immigration context and providing training and so forth. But in the normal way that pro bono organizations derive funding, there are those whose focus is to represent the interest of immigrants or people of foreign nationality who are in the immigration process.

COMMISSIONER MEEKS: So how much does the detention relate to this? I mean, I would imagine that these pro bono lawyers have backlogs. And how much of the detention relates to them just not being able to get an attorney when they need one?

MR. COOPER: That's a good question. I don't think I have a very precise answer.

Do you wish there

COMMISSIONER MEEKS: I probably should have asked that of another panel.

MR. COOPER: They might be in a better position, actually, to give information from the ground.

CHAIRPERSON BERRY: But are you saying that the people you have in detention, insofar as you know it, they usually do have legal representation, or you don't know? Or they don't?

MR. VENTURELLA: From my personal experience, I would say a small percentage have legal representation.

CHAIRPERSON BERRY: Okay. Because I think that's what Elsie wants to know—a very small percentage.

MR. VENTURELLA: I don't know what that percentage is.

CHAIRPERSON BERRY: Right.

MR. COOPER: And with respect to the group of 148 that you asked about, I couldn't tell you precisely how many are represented. I know that very many are just because of seeing their cases go through this, one of the things that I would look for is whether or not there's an attorney. I know that, for example, people have asked for continuances and gotten continuances in order to get a representative.

CHAIRPERSON BERRY: Could you check on the 148, just whether they have legal representation, and let us know that? That's all we want to know.

MR. COOPER: Yeah, I'll try to get a more precise estimate.

CHAIRPERSON BERRY: We don't even care you don't have to tell us who it is. But we just would like to know whether those particular folks have legal representation.

MR. COOPER: I know that there will be a significant percentage who do, but I'll try to find out more precisely how many it is.

CHAIRPERSON BERRY: We would appreciate you letting us know that.

MR. COOPER: Yes, I will. I also should note that that's just so that you understand the caseload a bit, it's a changing number. For example, it was more than 148 yesterday. But among the things that we have been trying to do is—and I also should make clear for the record that these people are in custody, and the INS has determined that they should be in custody without the possibility for bond. And that's the decision that they'll have the opportunity to have reviewed by an immigration judge.

Now, that is our most serious custody decision. Most people who come to the immigration process are not in custody. And many people are released at some level of bond or with some set of safeguards designed to ensure, as much as possible, that they'll return to the process at the points they're called upon to appear for hearings and so forth.

So that's our most serious custody determination, and we reserve it only for the most serious of situations. And let's be plain. We wouldn't pretend other than that it's serious. These are people who are detained without a possibility, in our view, of being released. And so, among the things that we've done to try to make sure that that's an authority that we are exercising carefully is, I have attorneys from my office and from INS offices around the country who are working, first of all, around the clock in a center to offer consultations to INS operators—operational personnel around the country—to get advice on search and seizure principles, and to make sure that when we take someone into custody, we've got a lawful basis for doing so.

We have another unit staffed, again, on sort of an emergency basis of people from my office and from around the country that's working, again, 24 hours to make sure that with respect to this caseload there is, in fact, we've confirmed that there is an immigration violation. In other words, it's appropriate for us to be going forward with immigration proceedings.

Then there is another group of attorneys who is working with the law enforcement agencies to ensure that there are facts; that there is a possible connection with the events of September 11 that would continue to justify this no-bond determination and to try to review those cases as thoroughly and as frequently as possible. And when there comes a point where a person can be said not to be involved, that they're not treated for custody purposes as if they were. And that's why, for example, that the list would be smaller today than it was yesterday. It would also increase if there were new people who were discovered.

CHAIRPERSON BERRY: I understand.

MR. COOPER: So I just want to give you a picture of the group.

CHAIRPERSON BERRY: Okay. Vice chair, did you still have a question?

VICE CHAIRPERSON REYNOSO: Two questions. One, we've heard that there are many linguistic groups, for example, in Afghanistan. If somebody is asking for asylum, do you have provisions for an interpreter, particularly for the groups that are not well represented in terms of numbers?

MR. COOPER: Let me ask Joe to respond to that in the context of the affirmative asylum process.

MR. LANGLOIS: Certainly. Just as a clarification, the asylum division administers two programs that this would have bearing on. The first program is the affirmative asylum program, where an individual, of course, steps forward to us with an application. The individual is not provided an interpreter by the government; the individual has to provide his or her own interpreter in order to make him or herself understood to the asylum officer. Certainly, *Well-Founded Fear* portrays that very well, some of the problems and difficulties that we encounter given that situation. However, if an individual does not receive asylum from an asylum officer, they're placed in immigration proceedings in front of an immigration judge for a de novo proceeding. And at that point, the government will pay for interpreting services.

VICE CHAIRPERSON REYNOSO: Okay. And so far you've found that you can find interpreters for some of these languages that are not very common.

MR. LANGLOIS: The individual in the affirmative context finds his own interpreter. And I am not familiar with the immigration judges' problems in securing interpreters for themselves.

The other context that this would have a bearing on is when an asylum officer conducts a credible fear hearing or interview during the expedited removal process. And we hire interpreters telephonically. We've had some difficulties getting some languages, of course, but we've been able to resolve those issues.

If I could, I'd just like to have one clarification of the record for the right to representation. An individual that's up for an immigration judge proceeding and that is detained has the right to representation. An individual that is in expedited removal prior to setting up for proceedings does not have the right to representation. So an individual can be detained, awaiting their

credible fear interview. And the credible fear interview can be conducted, and the individual does not have the right by statute to representation but has the right to a consultant that can be a lawyer as well as a friend or et cetera. So it's a little bit wider, but it doesn't carry the official weight of having a representative.

VICE CHAIRPERSON REYNOSO: Thank you.

My second question has to do with some of the discussion we had earlier. The impression I had is that some individuals have been detained by the FBI that may have some immigration issues but need not. And they have been detained or detained as potential witnesses. And there's those potential witnesses who don't have a right to counsel and so on. And that may be some of the folk that have not been able to be contacted by lawyers and so on.

Are you aware of that?

MR. COOPER: I know of the authority to detain people who may be material witnesses, but we don't have the institutional role or expertise to do that. And that's something that would be best addressed to the FBI.

VICE CHAIRPERSON REYNOSO: For example, we had the testimony of the doctor from Texas. He actually was an immigrant already here. So, generally, you would be dealing with him, and yet he was detained for several days by the FBI. So I assume that he was detained by authority not within your purview but the Justice Department purview.

MR. COOPER: In his case, that was precisely someone else's authority. And I understand it was this material witness custody authority. But there may well be people who are already here but who can come into immigration custody if we determine, again, that there's probable cause to consider that they've committed immigration violations.

CHAIRPERSON BERRY: Sure, or they lied.

MR. COOPER: Yes, that's right. For example, there's been a fair amount of press coverage of this person from Minneapolis, the suspicions about whom stem from his efforts to learn to fly a plane but not having an interest in taking off or landing and so forth. That person is not in our custody now. He was, however, in immigration custody earlier on but for separate entirely unrelated reasons. And that can happen daily for people who are already here in the country. But with the person that you're asking about, no; he's in custody under separate authority from the immigration authority.

VICE CHAIRPERSON REYNOSO: Thank you, Madam Chair.

CHAIRPERSON BERRY: Yes. Commissioner Meeks?

COMMISSIONER MEEKS: Yes, I just have one more question that was brought up by one of the panelists.

You, evidently, have some reporting requirements that were legislated, that you report to and I'm not even sure who the appropriate agency is or who you report to, Congress about the status of detainees. And it sounded like these reports really hadn't been regularly forthcoming. And the question was, what are the barriers of that, why haven't the reports been

MR. COOPER: I had heard that question. We have scores of congressional reporting requirements. And this particular one about as I understood the testimony, it was about detention of asylum seekers.

Are you familiar with that requirement?

MR. VENTURELLA: Yes, I am.

CHAIRPERSON BERRY: Are you behind on any of your reporting requirements?

MR. VENTURELLA: Yes, we are, ma'am. There's no question about that. I will be brutally honest; yes, we are. There are two or three reports that we have not submitted. And the simple answer is, is because we don't have enough data to really analyze and give a useful report. And we're in the process now of trying to negotiate with the requesters of that particular report what exactly are they looking for, and this is what we can give you to see if that satisfies their needs. But, yes, we have not issued those reports since 1999.

CHAIRPERSON BERRY: Okay.

Commissioner Lee? Were you finished, Commissioner Meeks?

COMMISSIONER MEEKS: Yes.

COMMISSIONER LEE: I just have one question.

Post-September 11, I've heard some communities worrying that their applications for either naturalization or family immigration petitions will have to go through extra scrutiny. Do they have reason to fear? Or if not, have you done anything to send directives to your staff to make sure that certain people who go through the naturalization process would not be unduly singled out?

MR. COOPER: I do know that we've naturalized 45,000 people since September 11, and have with that and with every other aspect of our benefits-providing function continue to try to make sure that that happens in a prompt and efficient way. There are, undoubtedly, going to be some ways in which our functions slow down. I think that the ports of entry are probably a good example.

We have taken steps to augment our personnel at the ports of entry and to have INS staff, for example, at ports that had previously been staffed just by customs agents. We've tried to make sure that ports are open 24 hours throughout the week. And at those ports we have enhanced security measures in place and there are backups at the ports of entry. We open the trunks of every car now that comes through the land ports. There is more careful screening at ports in

general. And we have, for example, eliminated situations where we have alternative methods of inspection and have tried to focus on ways in which there's a biometric way of inspecting someone, and have increased the ways in which we've consulted databases and so forth. So the inspections process clearly has been affected. And if you were to go to the southern border, for example, and looked at the lines that form on the other sides of those borders, you'd see them much longer than before September 11.

The refugee admittance process, we're early in the process, but in the process, that was begun before September 11 of evaluating whether the refugee screening process—that is of people who are being brought in from overseas as refugees—could be improved. Nevertheless, we've continued to admit refugees right up until the last day of the fiscal year, at the end of September, including from Afghanistan and other countries that would be of interest.

So that's a long way of saying that we've got business to do and have tried to make sure that that business goes forward, with naturalization, refugee admissions, inspections at the ports and so on. But there will be ways in which that business is affected.

COMMISSIONER LEE: Is there any way that you can monitor, specifically, the work visa programs and the family immigration programs, proceed normally? And, particularly, for applicants from certain countries that's under extra scrutiny to not be singled out, is there any way you can monitor that?

MR. COOPER: I suspect that the answer is yes, but what I'd like to do is defer a response on that question and consult with people in my agency who are better expert in that aspect of our work, and submit something in writing afterward, when I give you the answer on representation of people in our custody, if that's agreeable.

CHAIRPERSON BERRY: Now, would there be an advantage to our having our staff talk to somebody I don't know who the somebody is—in INS about these matters? Because, you see, as I told the DOT folk, we will have to do monitoring reports on what you're doing. And if there are data collection issues and problems, they can be resolved early and before we come back and ask you for the information that would be useful.

So do you think that would be useful? And you don't have to tell me who the someone is now. But do you think it would be, perhaps, useful to do that? So that we can all be assured that we're speaking from the same script and we know what we're talking about here when we come back. So we don't simply have to come back and say, well, they didn't keep this kind of data, and they didn't do that, and they should have done that, and they didn't do that. Is there some way to have that done possibly?

MR. COOPER: Sure.

CHAIRPERSON BERRY: Not that we're telling you want to or you're telling us.

MR. COOPER: You might after the consultation reach the conclusion that we didn't do that and we should have done that. But it's in our interest to provide you with as much information as

we can. And one way to do that is just through the connection that was made in inviting us. I know that your acting deputy, general counsel, had communicated with Ms. Huey.

CHAIRPERSON BERRY: That would be good.

Did you have something?

VICE CHAIRPERSON REYNOSO: No. I just wanted to emphasize the thanks that we all have, particularly to you folks who are in government, coming forward and having this discussion with us because we do have those oversight responsibilities. So I just wanted to underscore how grateful we are that all of you have come forward.

CHAIRPERSON BERRY: Edley, did you have something else?

COMMISSIONER EDLEY: Well, just really a recommendation, a request that as the staff thinks about what the data needs and monitoring ideas might be actually, bearing in mind the new statute and the new kinds of data collection things that seem to be contemplated in the new legislation, that the staff consult with a few researches.

Professor Harris, for example, and some others who have looked at this issue of effective strategies for monitoring compliance and racial profiling context or whatever because you've got an enormous amount of discretion, immigration, a little bit. And it's about to get bigger. And I think if we can build in some safeguards and just everybody feel confident that if all the good ideas people have reasonable come up with that will help you ensure that folks in the field are obeying your policy directives in non-discriminatory ways and so forth, I think everybody would feel happier than they might otherwise.

MR. COOPER: In our view, honest scrutiny serves the process, doesn't disserve it. But I should caution you that a lot of times we're not going to have ready access to the kinds of statistics that would be useful to have.

Just to illustrate, for example, with the statistic that Mr. Venturella was talking about, that you were asking about, and that a previous panelist had mentioned asylum seekers in detention. That sounds on its face like it should be something simple and obvious to know. But when you actually work out what that means in practice, it gets much more complicated, and you understand that that's actually a difficult statistic for us to come up with.

When someone goes into the immigration court process, unless they've come from Mr. Langlois program, we don't know they're an asylum seeker until much later in the process and under circumstances where that's not automatically going to be recorded, for example, for us as opposed to a different institution. That's not to say that's not a statistic we ought to have; it's just one that we don't for reasons that are complicated. And we may run across that as you ask us about bits of information. With that caution, though, I think we welcome the opportunity to provide you with as much information as we can.

COMMISSIONER EDLEY: I just want to make sure at the moment the National Academy of Sciences, National Research Council, has just started a panel that's going to go on for two

years, focused on the question of, how do you detect and measure discrimination. I would, at a minimum, suggest that you might want to touch base with the National Academy of Sciences and see if the people there have anything that might be of use of you.

But the kind of problem that I'm worried about has a little, perhaps, to do with data collection, but it's just very concrete. If you have an asylum officer or if you have an inspector at a port of entry, or anybody in your system who's making a discretionary decision, do they treat people comparably.

And maybe you guys ought to have your own set of testers, the way that it's used to detect housing discrimination, for example, or entry-level employment discrimination, where you could have people, somebody dressed up wearing a turban and somebody who looks like they're from France; present the same kind of facts, and see if they get treated different. I mean, different strategies that you might use to see to it whether or not the training that you give your personnel is actually effective at preventing disparate treatment.

Just off the top of my head, what I'm saying is a good faith, full-force effort to try to figure out how do we make sure the ramping of our security without multiplying the opportunities of discrimination is something that you guys could do proactively. And I think we'd like to try to be helpful.

MR. VENTURELLA: For my particular program, detention and removals, our mission is to provide humane and secure detention. And now what we're trying to do is find measures that tell us we're reaching that objective. And that is different than what we've done before because in the past, people were more concerned with how many people we've removed. We are now focusing our measures to achieve that objective, and I think that's where you're getting at.

So, yes, we are being proactive. We are developing a strategic plan to get us to that objective. And we have no problem sharing that plan once it's developed. But that's what we're striving to achieve in my particular program.

CHAIRPERSON BERRY: As we let our briefers, who were kind enough to come over today, go, I wish we would agree, or if there's no objection, we would simply ask the staff director to have the staff put together for us a schedule of how we would go about monitoring the two agencies we have before us in terms of the issues we've been discussing here as we go through this process; and that we would all agree that that is what we will do as we go through this process, the details to be discussed later. Because it seems to me that what this whole discussion has informed us of today is that there is a need to do that. And so we will do it, if there's no objection.

Is there no objection? Then the staff director will do that.

Let me thank all of you for coming, and wish you every good luck as you continue the hard work that you do, and tell you how much we appreciate it. Thank you.

(Whereupon, the foregoing matter went off the record at 2:03 p.m.)

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END OF PANEL THREE

**"FLYING WHILE ARAB," IMMIGRATION
ISSUES, AND LESSONS FROM THE RACIAL
PROFILING CONTROVERSY**

**Written Testimony of
David A. Harris
Balk Professor of Law and Values
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Briefing for the

United States Commission on Civil Rights

Hon. Mary Frances Berry, Chair

Washington, D. C.

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Good morning, distinguished ladies and gentleman. I am David A. Harris, Balk Professor of Law and Values at the University of Toledo College of Law, and the author of "Profiles In Injustice: Why Racial Profiling Cannot Work," (The New Press, February 2002.). We meet here today, in the unfortunate aftermath of the September 11 tragedies in New York and Washington, to discuss the implications of these events, especially as regards the treatment of those who have immigrated to our country. What changes in the law might we see? We know that we are a nation of immigrants - that, in many ways, immigrants built our great nation. We know that the immigrant experience has, in many ways, been at the core of the American experience, and that the diversity that these people have brought to our country has been, and continues to be, our greatest strength. But we also know that we have sometimes dealt harshly and unfairly with them, especially in times of national emergency and crisis. Thus the Commission does exactly the right thing by inquiring into these issues now, even as new legislative proposals continue to unfold in the Congress. In short, we seek to understand what the implications will be of the changes that will surely come because of the events of September 11 - changes in the very idea of what America is, and what it will be in the future.

History

I said earlier that our history gives us reason to feel concern at such a critical juncture. Any serious appraisal of American history during the some of the key periods of the twentieth century would counsel an abundance of caution; when we have faced other national security crises, we have sometimes overreacted - or at the very least acted more out of emotion than was wise. In the wake of World War I, the infamous Palmer Raids resulted in the rounding up of a considerable number of immigrants. These people were deported, often without so much as a scintilla of evidence. During the Second World War, tens of thousands of Japanese - immigrants and native born, citizens and legal residents - were interned in camps, their property confiscated and sold off at fire-sale prices. To its everlasting shame, the U.S. Supreme Court gave the internment of the Japanese its constitutional blessing in the infamous Korematsu case. It took the United States government decades, but eventually it apologized and paid reparations to the Japanese. And during the 1950s, the Red Scare resulted in the ruining of lives and careers and the jailing of citizens, because they had had the temerity to exercise their constitutionally protected rights to free association by becoming members of the Communist Party years before.

Categorical Thinking

We must hope that we have learned the lessons of this history - that the emotions of the moment, when we feel threatened, can cause us to damage our civil liberties and our fellow citizens, and

that this is particularly true for our immigrant populations. And it is this legacy that should make us think now, even as we engage in a long and detailed investigation of the September 11 terror attacks. As we listen to accounts of that investigation, reports indicate that the investigation has been strongly focused on Arab Americans and Muslims. What's more, private citizens have made Middle Eastern appearance an important criterion in deciding how to react to those who look different around them. Many of these reports have involved treatment of persons of Middle Eastern descent in airports.

In itself, this is not really surprising. We face a situation in which there has been a catastrophic terrorist attack by a small group of suicidal hijackers, and as far as we know, all of those involved were Arabs and Muslims and had Arabic surnames. Some or all had entered the country recently. Given the incredibly high stakes, some Americans have reacted to Middle Easterners as a group, based on their appearance. In a way, this is understandable. We seldom have much information on any of the strangers around us, so we tend to think in broad categories. It is a natural human reaction to fear to make judgments concerning our safety based on these broad categories, and to avoid those who arouse fear in us. This may translate easily into a type of racial and ethnic profiling, in which - as has been reported in the last few weeks - passengers on airliners refuse to fly with other passengers who have a Middle Eastern appearance.

Use of Race and Ethnic Appearance in Law Enforcement

The far more worrying development, however, is the possibility that profiling of Arabs and Muslims will become standard procedure in law enforcement. Again, it is not hard to understand the impulse; we want to catch and stop these suicidal hijackers, every one of whom fits the description of Arab or Muslim. So we stop, question, and search more of these people because we believe it's a way to play the odds. If all the September 11 terrorists were Middle Easterners, then we get the biggest bang for the enforcement buck by questioning, searching, and screening as many Middle Easterners as possible. This should give us the best chance of finding those who helped the terrorists or those bent on creating further havoc.

But as we embark in this new world, a world changed so drastically by the events of September 11, we need to be conscious of some of the things that we have learned over the last few years in the ongoing racial profiling controversy. Using race or ethnic appearance as part of a *description* of particular suspects may indeed help an investigation; using race or ethnic appearance as a broad *predictor* of who is involved in crime or terrorism will likely hurt our investigative efforts. All the evidence indicates that profiling Arab Americans or Muslims would be an ineffective waste of law enforcement resources that would damage our intelligence efforts while it compromises basic civil liberties. If we want to do everything we can to secure our country, we have to be smart about the steps we take.

As we think about the possible profiling of Arabs and Muslims, recall that much the same argument has been made for years about domestic efforts against drugs and crime. African Americans and Latinos are disproportionately involved in drug crime, the reasoning goes; therefore concentrate on them. Many state and local police agencies, led by the federal Drug Enforcement Administration, did exactly that from the late 1980s on. We now know that police departments in many jurisdictions used racial profiling, especially in efforts to get drugs and guns off the highways and out of the cities. But as we look back, what really stands out is how

ineffective this profile-based law enforcement was. In departments that focused on African Americans, Latinos, and other minorities, the "hit rates" - the rates of successful searches - were actually *lower* for minorities than they were for whites, who were not apprehended by using a racial or ethnic profile. That's right: when these agencies used race or ethnic appearance as a factor - not as *the only* factor but *one factor among many* - they did not get the higher returns on their enforcement efforts that they were expecting.

This is because race and ethnic appearance are very poor predictors of behavior. Race and ethnicity describe people well, and there is absolutely nothing wrong with using skin color or other features to describe known suspects. But since only a very small percentage of African Americans and Latinos participate in the drug trade, race and ethnic appearance do a bad job identifying the *particular* African Americans and Latinos in whom police should be interested. Racial and ethnic profiling caused police to spread their enforcement net far too widely and indiscriminately.

The results of this misguided effort have been disastrous for law enforcement: constant efforts to stop, question, and search people who "look like" suspects, the vast majority of whom are hard working, tax paying citizens. This treatment has alienated African Americans, Latinos, and other minorities from the police - a critical strategic loss in the fight against crime, since police can only win this fight if they have the full cooperation and support of those they serve. And it is precisely this lesson we ought to think about now, as the cry goes up to use profiling and intensive searches against people who look Middle Eastern or Muslim.

Even if the hijackers share a particular ethnic appearance or background, subjecting *all* Middle Easterners to intrusive questioning, stops, or searches will have a perverse and unexpected effect: it will spread our enforcement and detection efforts over a huge pool of people who we would not otherwise think worthy of any police attention. Profiling will drain enforcement efforts and resources away from more worthy investigative efforts and tactics that focus on the close observation of behavior -- like the buying of expensive one-way tickets with cash just a short time before takeoff, as some of the World Trade Center hijackers did. Focusing on race and ethnicity keeps police attention on a set of surface details that tell us very little, and draw officers' attention away from what is much more important and concrete: conduct.

At least as important, one of the most crucial tools we can use against terrorism is intelligence. And if we are concerned about terrorists of Middle Eastern origin, among the most fertile places from which to gather intelligence will be the Arab American and Muslim communities. If we adopt a security policy that stigmatizes every member of these groups in airports and other public places with intrusive stops, questioning, and searches, we will alienate them from the enforcement efforts at precisely the time we need them most. And the larger the population we subject to this treatment, the greater the total amount of damage we inflict on law-abiding persons.

And of course the profiling of Arabs and Muslims assumes that we need worry about only one type of terrorist. We must not forget that, prior to the attacks on September 11, the most deadly terrorist attack on American soil was carried out not by Middle Easterners with Arabic names and accents, but by two very average American white men: Timothy McVeigh, a U.S. Army veteran from upstate New York, and Terry Nichols, a farmer from Michigan. Yet we were smart

enough in the wake of McVeigh and Nichols' crime not to call for a profile emphasizing the fact that the perpetrators were white males. The unhappy truth is that we just don't know what the next group of terrorists might look like.

Treatment of Immigrants

The numbers from the 2000 census of our country's population tell us that the 1990s were a time of considerable immigration to the United States. Some of this immigration came from Asia and the Middle East. These immigrants helped many of our older cities make population gains not seen in some time, and helped the American economy to achieve unprecedented growth and prosperity. This was especially true in the high technology sector, which has become a crucial mainstay of growth over the last ten years despite a shortage of American workers to fill computer-oriented positions. Immigrants stepped into the breach for us, bolstering our high-tech labor force just when we needed it.

Yet under the antiterrorism proposal now circulating in the U.S. Senate, immigrants could suffer treatment that smacks strongly of racial profiling and associated practices. Popularly referred to as the USA Act, S. 1510 allows the unlimited detention of noncitizens whom the Attorney General moves to deport or charge criminally, when the Attorney General "reasonably believes" these noncitizens to be engaged in certain terrorist activities. If none of the specifically mentioned activities applies, the Attorney General can still detain the noncitizens based on his or her own determination that the noncitizen "is engaged in any other activity that endangers the national security of the United States." Section 412 of S. 1510 reads, in pertinent part:

(a) DETENTION OF TERRORIST ALIENS-

(1) CUSTODY- The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) RELEASE- Except as provided in paragraph (5), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

(3) CERTIFICATION- The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien-

(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) NONDELEGATION- The Attorney General may delegate the authority provided under paragraph (3) only to the Commissioner. The Commissioner may not delegate such authority.

(5) COMMENCEMENT OF PROCEEDINGS- The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

(b) HABEAS CORPUS AND JUDICIAL REVIEW- Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3)) is available exclusively in habeas corpus proceedings in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

The Attorney General is empowered to hold these noncitizens even in the face of a court's determination that they are not terrorists. And if the government attempts to deport them and no nation will take them, the legislation appears to allow the Attorney General to detain them indefinitely. The slippery slope here is obvious; the dangers of abuse are easy to see. The basic structure of Section 412 allows the Attorney General to make the decision of who is a terrorist suspect, and to continue to detain these people even in the face of contrary judicial review. The checks and balances built into our basic system of government vanish under this scheme - a worrisome development under any circumstances.

Conclusion

The terrorist attacks in New York and Washington present us with many difficult choices that will test our resolve and our abilities. We must find effective ways to secure ourselves without giving up what is best about our country; the proper balance will often be difficult to discern. But we should not simply repeat the mistakes of the past as we take on this new challenge. Nobody would gain from that - except those who would destroy us.

STATEMENT ON TERRORISM, IMMIGRATION, AND CIVIL RIGHTS

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**The United States Commission on Civil Rights
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I. Introduction

My name is Charles Kamasaki and today I represent the National Council of La Raza (NCLR), a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country through our network of 250 plus affiliate community-based groups and five field offices. We have supported fair and effective immigration policies for over two decades and approach this issue as a civil rights organization with an interest in both protecting the rights of our constituency and promoting the values and principles of the nation as a whole.

On September 11 our nation experienced a great tragedy. Latinos in the United States have suffered as victims of this vicious attack and have been heroic in the search, rescue, and recovery efforts. Immigrants have held vigils and donated money, time, blood, and support, demonstrating this nation's strength in unity during a challenging time. Like all Americans, we are horrified, saddened, and angered by the attacks on the World Trade Center and the Pentagon.

As advocates, we are also concerned about the immediate and long-lasting civil rights implications of efforts to hold those responsible accountable for their actions and prevent future terrorist attacks. While we are committed to supporting effective efforts to make all residents of this country safer, we also caution against moving too quickly and acting on emotion rather than implementing well thought out and reasonable policies.

With that in mind, I would like to put forward three general principles:

- 1. New anti-terrorism policies must be effective and necessary, and should be narrowly tailored to respond to real security threats.
- 2. These policies should be carefully considered so that they do not have unintended negative outcomes that adversely affect entire communities.
- 3. The events of September 11 should not prevent the nation from moving forward on immigration and civil rights policies that remain in the public interest.

II. Focus on Effective and Necessary Measures

We should ensure that anti-terrorist measures are effective and necessary; any new anti-terrorism policies must be narrowly tailored to respond to real, not imagined, security

threats. We must be careful to distinguish between that which makes us only feel better and that which makes us truly safer.

Each year there are approximately 517 million entries and exits of persons from abroad through the United States' land borders, airports, and seaports; that is roughly two times the current U.S. population. Of course, some of these are people who cross the border many times. Through our legal immigration system we admit roughly 100,000 refugees, 500,000 family-sponsored immigrants, and 140,000 employment-sponsored immigrants each year. We also admit roughly 25 million nonimmigrants each year including 20,000,000 tourists, 3,800,000 business visitors, 450,000 students, 120,000 foreign government officials and their families, and many more. In addition, between 200,000 and 300,000 undocumented immigrants enter the U.S. annually. The overwhelming majority of these persons are not terrorists and do not pose any national security threat.

We simply do not have the financial or human resources to track and surveille every single one of these individuals. Doing so would require government actions and powers contrary to the fundamental principles of freedom and liberty of this country. We need to focus on those individuals who are truly dangerous and pose a threat to our security. Given the extremely large numbers of people who enter and exit the United States each year, far-reaching immigration restrictions and border control measures will be extremely costly and burdensome, and run the risk of violating civil rights and liberties. Furthermore, the ability of these measures to reduce the risk of terrorism is unproven. Any such measures should be proven to be both necessary and effective before we invest great amounts of time and energy into them.

Clearly, there is much the nation can do to improve its security which would pose minimal threats to civil rights. Many of these policies, including tighter security at airports and other ports of entry and on common carriers, identification and "hardening" of potential terrorist targets, improved controls on money laundering and better tracking of funds relied on by terrorist groups, and increased funding for intelligence and law enforcement agencies, have been or will soon be adopted. In addition, there are prudent and effective steps the nation can take related to the entry and monitoring of foreign nationals; such measures include:

- Improving the collection and sharing of intelligence on potential terrorist threats, including the deployment of promising, relatively nonintrusive technology such as "face recognition" systems at ports of entry; integrated multilateral information sharing systems, particularly with our North American neighbors, to form a "first line of defense" against terrorists seeking to enter the U.S.; and substantially increased funding to support such systems.
- Full implementation of the airline entry/exit system, with federal funding if necessary; periodic spot checks of those admitted on a temporary basis; expansion of the current INS Student and Exchange Visitor Program prototype project to all institutions authorized to

enroll foreign students, as soon as technically feasible; and periodic comparisons of student rolls with updated "watch lists" and "look out" systems.

While these and other new immigration and border control mechanisms may be necessary and appropriate, and would actually improve our ability to stop terrorism, most of the major issues associated with immigration policy itself are not and should not be central to the debate regarding terrorism. One exception is pending anti-terrorism legislation; in this case we have several concerns about the bill's immigration provisions. First, the definitions of "terrorism," "terrorist," and "terrorist group" are overly broad; they include many persons who are not involved in terrorist activity, and their family members. Second, we are concerned about provisions allowing the Attorney General and the INS to indefinitely detain suspected terrorists with only limited judicial review. Notwithstanding these concerns, thanks to the bipartisan efforts of Congress, there have been significant improvements to the legislation over the last several weeks, and NCLR will not oppose the bill. However, in whatever form the law is eventually passed, it must be judiciously implemented and subject to careful scrutiny by those inside and outside of the government since the above-mentioned provisions pose a significant potential for abuse and accompanying civil rights violations.

III. Unintended Consequences

We must work to ensure that any new anti-terrorism measures that are implemented do not result in unintended outcomes. NCLR can document many such instances of well-intended policies that have resulted in negative consequences for Latinos, immigrants, and others.

A. Racial Profiling

In the wake of the September 11 terrorist attacks, the potential for and the incidence of racial profiling has probably increased dramatically, particularly targeting persons of or perceived to be of Middle Eastern descent. NCLR believes that this is a dangerous trend, not just for the Arab and Muslim communities, but for all Americans, including many Latinos who may be targeted in cases of mistaken identity.

This is particularly troubling because racial profiling not only violates civil rights, it also undermines the ability of law enforcement to enforce the law effectively. When an innocent individual's ethnicity is used to establish a cause for suspicion of a crime, then that individual - along with family members, friends, and neighbors - may lose trust in the integrity of law enforcement. As a result, the public safety may be placed in jeopardy because members of these communities are likely to fear harassment and abuse by the police and are thus less likely to seek police help when they legitimately need it - to report a crime or suspicious behavior, serve as a witness or on a jury, or otherwise cooperate with law enforcement. It would be truly ironic if, at some point in the future, we experience a terrorist act because community members were deterred by racial profiling tactics from reporting suspicious or criminal behavior.

The problem of racial profiling broadly manifests itself in the Latino community and cannot be dismissed simply as a matter of a few isolated incidents of poor judgment. For example, Latinos have been systematically targeted for "dragnet" tactics by local and state law enforcement officers, and those same tactics have been applied and used, as a matter of formal policy, by some federal law enforcement agents.

NCLR often receives reports from Latino individuals who have been victimized by police and federal agents overstepping the bounds of the Constitution in the name of drug and immigration enforcement. The vast majority of cases, however, goes unreported. Even fewer actually result in successful civil rights litigation or investigation by agencies responsible for enforcing civil rights. Some types of profiling experienced by Latinos, which may foreshadow the dangers that lie ahead, are described below.

1. Local Law Enforcement

Local law enforcement relies on a widespread number of tactics including traffic stops, "stops and frisk" approaches, and others to enforce the law. Such tactics cross the line when they have a disproportionate or disparate impact based on race or ethnicity. Below we cite just a few of the cases we are aware of involving racial profiling against Latinos by local law enforcement.

- In 1999, the American Civil Liberties Union (ACLU) filed a federal lawsuit on behalf of a San Jose lawyer who says the California Highway Patrol (CHP) violated his civil rights when officers stopped him and other Hispanics allegedly because of their ethnicity. According to the lawsuit, the CHP pulled over the attorney and at least five other Hispanic drivers on the Pacheco Pass portion of Highway 152 while carrying out its federally-funded drug-interdiction program, "Operation Pipeline." According to a CHP Sergeant, the CHP canine units searched nearly 34,000 cars in 1997. Only 2% of them were carrying drugs. In other states, up to 95% of all "Operation Pipeline" searches have been found to be "dry holes."
- In the past, the Louisiana State Police Department used a training film that explicitly exhorted officers to use traffic stops to conduct narcotics searches of "males of foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders." [*United States v. Thomas*, 787 F. Supp. 663, 676 (E.D. Tex. 1992)]
- In Colorado's Eagle County Sheriff's Department, race, ethnicity, and out-of-state license plates were common drug-courier profile factors in criminal investigations. After the use of such a profile was determined to be unconstitutional, they have switched to using traffic enforcement stops as a means of catching drug traffickers, but have not stopped the use of racial profiles. [*United States v. Laymon*, 730 F. Supp. 332, 337 (D. Colo. 1990)]

- A December 1999 report by New York's Attorney General on the use of "stop and frisk" tactics by the New York City Police Department revealed that between January 1998 through March 1999, 84% of the almost 175,000 people stopped by NYPD were Black or Hispanic, despite the fact that these two groups compose less than half of the city's population.

2. Federal Law Enforcement

The use of racial profiling is not limited to local law enforcement agencies. Federal agencies such as the Immigration and Naturalization Service's (INS) Border Patrol and Inspections and Investigations divisions, the Drug Enforcement Administration (DEA), and the U.S. Customs Service have been found to use profiling tactics, including community-wide "sweeps," searches, and seizures without proper reasonable suspicion, relying heavily on ethnic background and race as an exclusive or primary factor.

a. INS

The INS and other federal law enforcement agencies have significantly stepped up efforts in the last several years to enforce immigration laws along the U.S.-Mexico border, inland, and at the workplace. Efforts such as increased workplace raids, neighborhood "sweeps," and an escalating number of armed INS agents along the border and the interior have served to undermine the physical safety and constitutional and civil rights of Latino communities throughout the United States. NCLR has noted that numerous civil rights violations and abuses have been committed in the process of enforcing immigration law. Incidents of illegal or inappropriate seizures, traffic stops based solely on ethnic appearance, arrests without cause, deprivation of food and water or medical attention, and actual physical abuse have been recorded; for example:

- According to a May 1, 2001 *New York Times* article, a review of 37 INS worksite raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented. An example found in the review disclosed that an INS agent conducting a surveillance of a delicatessen between 34th and 35th Streets in New York City, reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English "with a foreign accent." The *Times* study confirmed that the INS *explicitly* uses ethnicity to guide its enforcement efforts, a tactic the agency previously has denied using.
- On January 29, 1998 in Bethesda, Maryland, waitress Allegra Foley was preparing tables for lunch at the Thymes Square Café when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested. Foley was particularly upset that employees at the

Café were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that "at no time did they ever question a White, Black, or Asian employee on duty at the restaurant... with sole exception of the manager... who... voluntarily provided his green card."

- On July 9, 1997, in Portland, Oregon, INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the majority of the people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. "I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn't answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned," recalled Lucy Bernard, a witness from the Workers' Organization Committee in Portland.
- INS agents conducted a raid in Jackson Hole, Wyoming in August 1996, in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; "They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car," stated an eyewitness. Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were "hailed away in a dirty horse trailer lined with fresh manure." In the end, 40 of the "suspects" were released after proving they were citizens or documented workers.

b. Border Patrol

The *New York Times* has reported that many residents of South Texas believe that the Border Patrol agents in airports and roving patrol units systematically stop and detain too many innocent Hispanics. A federal judge, Filemon B. Vela, was stopped by Border Patrol when driving with three of his staff members (two of whom were also Latino) because, he was told, there were too many people in his car. The problem is pervasive enough to cause Cameron County Judge Gilberto Hinojosa to state that his community feels like "occupied territory" by the Border Patrol, that it "does not feel like we're in the United States of America."

Border Patrol agents on roving patrols in Arizona have also been stopping motorists without reasonable suspicion that violations of immigration law have occurred. In fact, using information gathered through the use of "I-44" forms that Border Patrol agents are advised to fill out after

traffic stops, a Federal Circuit Court of Appeals in the class action *Durgin v. De La Vina* found that:

Plaintiffs produced evidence of a pattern and practice of stopping persons without proper "reasonable suspicion" in the numerous I-44s that they submitted. Many of these reports do not describe facts that give rise to reasonable suspicion, and many of the reports list similar and repetitive reasons for stopping various persons. Plaintiffs also produced evidence of other persons of Hispanic appearance whom the Border Patrol had stopped, allegedly without reasonable suspicion. The Border Patrol had stopped some of these persons on numerous occasions.

The Border Patrol's lack of clear record-keeping indicates an inclination to hide a pattern and practice of profiling. In the *Durgin* case, Border Patrol agents did not fill out I-44 forms after stopping the plaintiffs. The Court quoted an internal training memorandum that shows that Border Patrol agents are strongly advised to fill out I-44 forms after every traffic stop they conduct because:

...written descriptions of "reasonable suspicions" are important not only to win the case against the suspect, but also to prove that agents acted properly in the event of civil lawsuits... [I]f the Border Patrol and/or individual agents are sued in a civil lawsuit alleging a pattern of discriminatory vehicle stops ... [agents'] written description of "reasonable suspicion" will be critical to prove that the agents acted properly.

Agents are trained to use the forms to protect against potential frivolous allegations of civil rights abuses. Thus, any instance where an agent does not fill out an I-44 should raise a concern that ethnic and racial profiling is being relied upon instead of the reasonable suspicion standard required for a lawful stop.

c. Customs Service

While the Customs Service has implemented a series of widely-praised reforms after substantial criticism of its previously race- and ethnicity-based profiles, the magnitude of disparities in past policies is noteworthy; for example:

- A March 2000 GAO report on the U.S. Customs Service found that Black, Asian, and Hispanic female U.S. citizens were four to nine times more likely than White female U.S. citizens to be subjected to X-rays after being frisked or patted down.

- In reported cases regarding federal (including Customs Service) bus and train sweeps, overwhelmingly those targeted for enforcement are Black or Hispanic. From January 1, 1993 to August 22, 1995, of 55 cases in which the defendant's race could be identified, Hispanics were 20% of those stopped and searched. According to some courts, if no "seizure" takes place, law enforcement agents do not need to explain *how* they select their targets. One federal court upheld the case allowing the stop and search of a "roughly dressed black male." [*United States v. Weaver*, 966 F.2d 391, 396 (8th Circuit 1992)]

B. Collaboration between Federal and Local/State Law Enforcement

Immigration enforcement by local and state law enforcement agencies, even under the guise of enforcement of separate criminal statutes, compromises and detracts from the true mission of local police of ensuring public safety, and worst of all, it undermines public trust and confidence. Many victims of abuse and mistreatment by joint immigration enforcement actions are U.S. citizens or legal permanent residents. A few examples of the discriminatory impact of joint collaborations between federal and local/state law enforcement agencies follow:

- Earlier this year, the Mexican American Legal Defense and Educational Fund, (MALDEF)* filed litigation in connection with allegations of widespread civil rights violations by local police involved in immigration enforcement in northwest Arkansas. According to one of the plaintiffs, the Rogers Police department has routinely targeted Hispanics for traffic stops, turning over "suspects" to the INS for immigration investigation. One of the plaintiffs is a woman who, after calling the police for protection from her abusive husband, was investigated as to her immigration status, arrested, and turned over to the INS. (*López, et al. v. City of Rogers, Arkansas, et al.* , USDC No. 01-5061, Western District of Arkansas, Fayetteville Division).
- After a federal judge in Ohio ordered the INS' Border Patrol to stop making discriminatory traffic stops (*Ramírez v. Webb*, later affirmed by the 6th Circuit Court of Appeals), the INS requested officials in the Ohio Highway Patrol to conduct the stops instead. Consequently, a federal court ordered the Highway Patrol to stop illegally confiscating green cards from legal migrant workers during profile-based traffic stops [*Farm Labor Organizing Committee vs. Ohio State Highway Patrol*].
- In Chandler, Arizona in 1997, local police collaborated with Border Patrol agents in illegal traffic stops and neighborhood "sweeps," purportedly to find undocumented immigrants. What they found instead was a multimillion dollar lawsuit on behalf of U.S. citizens and permanent residents who were repeatedly harassed and detained by local police officers - without probable cause by their own admission - because they "looked Mexican." A report by Arizona Attorney General Grant Woods concluded "without a doubt that residents of Chandler, Arizona were stopped, detained, and interrogated by

officers...purely because of the color of their skin." Some of the plaintiffs have settled the case while other claims are still pending.

- On January 29, 1997, in Crescent City, Florida, INS agents, Putnam County Sheriff's deputies, and Crescent City police officers conducted a nighttime joint operation in search of undocumented immigrants. They set up a highway checkpoint and conducted a sweep of a trailer park and public housing facility largely inhabited by Hispanic residents. Although the police explained to the press that they were searching for drugs, there were no drug arrests made, nor were any drug searches conducted. One eyewitness, a worker at the Farmworkers' Association of Florida, lives in the neighborhood between two White families whose homes were not raided. His home was approached twice. His wife was home but did not respond to the knock on the door. Approximately 50 other homes with Hispanic residents were raided. The police and Border Patrol would knock, announce "Police!", and barge in after the door was opened, without consent and without cause. The officers also stopped Hispanics in the street and requested immigration documents without cause. A 12-year-old U.S. citizen was arrested in the street and taken miles from home for not having "papers." When police realized their "mistake" they let him go and told him where he could catch the bus home. Border Patrol agents were involved, but one of them told local newspapers that he would never again participate in such a horrible operation.
- Courts have condemned INS and local police departments in several other similar cases, including *Velazquez v. Ackerman* (Director of INS, San Jose, CA); *de Haro v. City of St. Helena*; *Mendoza v. U.S. City of Farmersville*; and *Cedillo-Perez v. Adams* (Chief of Police of Katy, TX).

In 1996 Congress established a formal Memorandum of Understanding (MOU) process between the Department of Justice and state or local government to guide such INS- state/local collaborations. However, *none* of the programs cited above were conducted under the auspices of an MOU, which would have assumed review by DOJ's Civil Rights Division and training in immigration law for state/local offices.** Thus, these collaborations apparently are taking place informally, without any formal review or guidance from the Department of Justice.

In the aftermath of the terrorist attacks of September 11, some states are seeking to expand local law enforcement authority to enforce immigration law. For example, the Attorney General of South Carolina has announced that he is seeking an agreement with INS to create an "elite force to enforce federal immigration law." (*Press Release from South Carolina Attorney General Charlie Condon, October 8, 2001*).

In light of the troubled history described above, NCLR believes that such collaborations should not proceed, particularly since their proponents cannot demonstrate anything except a rhetorical connection to actual or potential terrorist threats.

C. Private Citizen Vigilantes

As Latinos become an increasingly more visible segment of American society, they have become likely targets of harassment that often borders on hate violence. One apparent effect of the increasing anti-immigrant sentiment in the nation has been a surge in incidents of vigilantism; that is, undue, and often illegal, enforcement of existing laws by ordinary citizens. Americans are taking law into their own hands to try to stem the perceived "flood" of illegal immigrants into the country. Often armed and working in groups, many of the vigilantes commit apparent acts of discrimination and actual violent confrontations. In addition, private individuals have also deliberately preyed on or abused Latinos by exploiting their immigration status. For example:

- In May 1997, in San Diego, CA, "Bob's Boys," a group of "volunteers" patrolling the San Diego border, armed themselves with semi-automatic rifles, seismic sensors, attack dogs, and camouflage outfits, ready to hold "illegals" at gunpoint until Border Patrol agents arrive to arrest them and return them across the border. They use zip ties for handcuffs on those who try to "cause trouble" and use their dogs to chase those who try to run away. They are one band of many organized and working along the U.S.-Mexico border region today.
- In May 1996, in San Diego, CA, "Roger's Airport Posse," a local vigilante organization, patrolled the airport, "scouting" for and verbally abusing and intimidating persons "suspected" to be undocumented, until the group it was stopped by a temporary restraining order. The "Posse" members wore uniforms and badges that resembled those used by Border Patrol.
- California's Proposition 187 shows the extent to which citizen "enforcement" of immigrant eligibility laws can harm individuals. Proposition 187, a ballot initiative approved by California voters in 1994, would deny undocumented immigrants access to public programs such as schooling, and would require certain public workers to turn in "suspected" undocumented immigrants over to the INS. Despite the fact that implementation of Proposition 187 was prevented by the courts, some California residents engaged in their own "enforcement" mechanisms. Immediately after the passage of Proposition 187, there were many reports of "foreign-looking" and "foreign-sounding" individuals being asked to show documentation and/or being denied services in fast food restaurants, on buses, in hotels, and in hospitals.

In the aftermath of the terrorist attacks of September 11, incidents like these targeting persons of or perceived to be of Middle Eastern descent have become all too common. Some of the perpetrators of these acts have irrationally lashed out at innocent people because of their appearance; in many of these cases, existing and proposed hate crimes laws may provide an appropriate remedy. However, in cases that do not involve acts or threats of violence -

passengers refusing to fly with Arab Americans or denials of public services and accommodations to Muslims - other approaches are required. Clearly, all Americans should be vigilant about terrorist threats to our physical security. At the same time, we must vigorously resist the temptation to cross the line into vigilantism, which poses an equally dangerous threat to our fundamental values.

D. Identification Cards/Employer Sanctions

In the wake of the September 11, 2001 terrorist attacks, there have been calls for anti-terrorist measures including a national identification system, either in the form of an ID card or a national computer registry system. While President Bush has stated that he is not considering a national ID card, it is likely that these proposals will continue to receive attention. NCLR vigorously opposes the creation of a national ID card, whether the card is an actual card or a "virtual card" with a computerized database system, primarily because such are likely to be ineffective and to lead to widespread abuses and violations of rights. Research has demonstrated that there are extraordinarily high error rates in existing major federal databases. Regardless of how secure or effective a specific technology such as a "smart card" may be, the entire system will be virtually useless if it rests on flawed data.

In addition, because these verification schemes are designed and implemented by human beings who bring to the system their own frailties, these systems are inherently unreliable. Innocent mistakes, such as the misspelling of "unusual" names, transposing given names and surnames, and the like, inevitably have a disproportionate impact on ethnic minorities. Such systems are also prone to abuse by persons who may use it to screen individuals improperly and selectively based on appearance, surname, accent, or other identifying features.

History has shown that laws which require individuals to show proof of legal status or citizenship result in increased discrimination based on national origin and/or appearance. For example, in 1986 Congress passed the Immigration Reform and Control Act (IRCA) which implemented a national worker verification system and sanctions for employers who knowingly hired undocumented workers. Every honest observer agrees that employer sanctions have been an utter failure - by any measurement, the number of undocumented workers entering or remaining in the U.S. has not been reduced since 1986. Furthermore, one result of employer sanctions and worker verification has been increased discrimination against persons who look or sound "foreign" or have a "foreign" surname. Some employers demand that certain workers show additional or "better" documents, while other employers implement unlawful "citizen only" policies. A Congressionally-mandated GAO report found a "widespread pattern of discrimination" resulting "solely from the implementation of IRCA." GAO reported that 10 % of employers discriminated on the basis of foreign accent or appearance, and 9 % discriminated by preferring certain authorized workers over others.

In the current law enforcement context, the failure to carry an ID card would likely provide a pretext to disproportionately search, detain, or arrest African Americans, Arab Americans, Latinos, and Asians, and these and other ethnic minorities would be subject to new levels of government discrimination and harassment. In the private sector, minorities would likely be the targets of identity checks by banks, landlords, health care workers, and others.

The bottom line is that national ID systems don't work and inevitably violate basic civil rights and liberties. The right to act and travel freely without required identity papers sets the United States apart from Nazi Germany, the former Soviet Union, apartheid-era South Africa, and Castro's Cuba, among others. This is a distinction that our country should be proud to keep.

E. Border Enforcement

In the aftermath of the September 11 events, some have proposed additional enforcement along the northern and southern borders. However, few can articulate specific, achievable policy proposals that would be effective in deterring terrorism without causing major, unacceptable, negative effects. Moreover, such enforcement has had enormous human consequences, in the past including racial profiling and increased border deaths. Operation Gatekeeper was launched seven years ago. Unfortunately, it has resulted in the appearance of a border under control by "redirecting" the undocumented foot traffic out of the San Diego/Tijuana area and into the Imperial Desert. The results have been just as deadly and ineffective in other parts of the Southwest border where variants of Gatekeeper have been implemented. By the Mexican government's count, more than 1,800 migrants have died along the entire Southwest border since Oct. 1, 1994 - roughly one migrant death for each mile of border. At the California border with Mexico, migrant deaths have jumped by 500% from pre-Gatekeeper years. In Arizona and Texas, they have increased by 1,000%. Despite a much touted border safety initiative and a drop in apprehensions, the two deadliest Border Patrol sectors, El Centro and Tucson, recorded more migrant deaths during fiscal year 2001 than the year before, according to immigration scholars.

In summary, history has shown us that sometimes seemingly reasonable policies can have unintended, harmful consequences. Policies that are intended to increase national security can easily result in racial profiling, vigilantism, increased discrimination, and other violations of civil rights. We should learn from the past and do everything possible to ensure that we do not repeat past mistakes, particularly since many proposed policies are likely to be of dubious effectiveness, and in some cases would undermine effective law enforcement, including deterring terrorism.

IV. Pursue Sound Policies

The events of September 11 and any subsequent policies enacted to prevent future terrorist acts should not preclude us from moving forward on proposals and policies that were already deemed to be in the public interest.

It is understandable that much of the nation's business has been put "on hold" as the Administration and Congress deal with the immediate issues associated with the September 11 terrorist attacks. However, just as the nation's leaders have urged us to resume our normal activities, so too should the government proceed in due course with consideration of policies that otherwise make sense for the country. I would like to highlight several immigration and civil rights policies that NCLR believes should continue to move forward in due course.

A. Legalization

Immediately prior to September 11, the United States was engaged in high-level negotiations with the Government of Mexico over a proposed "earned legalization" for many undocumented immigrants currently in the U.S. It was expected that this proposal eventually would be expanded to include similarly-situated immigrants from other countries. Legalization is an effective first step toward reshaping our nation's immigration policies to respond to current economic and social realities.

Now, in the post-September 11 atmosphere, NCLR believes a legalization policy is even more critical as we search for ways to make our immigration policy more orderly and effective. A generous legalization would bring millions of undocumented workers out from the shadows, reducing the need for false documentation, border crossings without inspection, and other behavior that limits our ability to screen immigrants entering and residing in the U.S. Furthermore, perhaps the most important lesson that we can learn from recent events is the critical nature of hemispheric, and indeed global, relations and collaboration. Rather than pushing U.S.-Mexico negotiations to the back burner indefinitely, policy-makers should continue to see this as an historic opportunity to shift fundamentally the immigration debate and pass rational, far-sighted solutions that recognize today's global and regional realities. Western Hemispheric relations have taken on new importance as we begin our global campaign against terrorism and develop comprehensive ways to identify and stop terrorist threats before they enter our country. Just as a joint effort is needed to control undocumented migration, we need to work even more closely with our neighbors, share intelligence, and coordinate our efforts to stop global terrorism. These efforts would be substantially enhanced, both substantively and politically, by a broad legalization program.

B. Increases in Legal Immigration

We must be careful to distinguish between immigrants and terrorists. Immigrants continue to come to this country seeking employment, to reunite with their families, and to flee persecution. Following the terrorist attacks, some have called for dramatic decreases in immigration levels, or even complete moratoriums on legal immigration. These knee-jerk proposals do not aid in the war against terrorism and are not in the best interest of the country. On the contrary, in times of economic uncertainty, immigrants can contribute to economic growth. In 1997, the prestigious National Academy of Sciences found that immigrants contribute approximately \$10 billion to the nation's economy per year and pay more in taxes than they use in services.

In Congressional testimony presented in July of 2001, Federal Reserve Board Chairman Alan Greenspan said, "I've always argued that this country has benefited immensely from the fact that we draw people from all over the world. And the average immigrant comes from a less benign environment, and indeed that's the reason they've come here. And I think they appreciate the benefits of this country more than those of us who were born here. And it shows in their entrepreneurship, their enterprise, and their willingness to do the types of work that make this economy function." We should not permit the events of September 11 to indefinitely sidetrack increases in legal immigration that are essential to our long-term economic prosperity.

C. Racial Profiling Legislation

The End Racial Profiling Act of 2001 (S.989/H.R. 2074) introduced by Senators Feingold (D-WI), Clinton (D-NY), Corzine (D-NJ), and Representatives Conyers (D-MI), Morella (R-MD), Ferguson (R-NJ), Greenwood (R-PA), and Johnson (R-IL) would ban the practice of racial profiling by federal law enforcement agencies, and provide incentives to state and local law enforcement agencies to eliminate this practice. Additionally, it requires the collection of data on routine investigatory activities; establishes procedures for receiving, investigating, and responding to claims of racial profiling; and requires training of law enforcement agents and holding them accountable for engaging in racial profiling. In addition, the Act offers incentive grants that encourage compliance, development, and implementation of practices such as the acquisition of technology to facilitate data collection, training to prevent racial profiling, and a fostering mechanism that would make the interaction between law enforcement and the community more respectful.

After the September 11 attacks the need to develop more sophisticated methods to detect and preclude acts of terrorism is more apparent than ever. However, such methods need not and should not include any form of racial profiling. NCLR will therefore continue to press for timely passage of this important legislation.

D. Hate Crimes Legislation

The Local Law Enforcement Enhancement Act of 2001 (LLEEA) sponsored by Senators Kennedy (D-MA), Specter (R-PA), and others would amend current federal law to include real or perceived sexual orientation, gender, and disability. The amendment would enable the FBI to investigate and prosecute violent hate crimes against gays, lesbians, and bisexuals. Current law already allows investigation and prosecution only on the basis of race, religion, national origin, and color. In addition, the bill would provide other reforms strengthening our ability to punish perpetrators of all hate crimes.

The FBI recently released the *1999 Hate Crimes Statistics Report*, showing that the majority of hate crimes committed that year were motivated by racial and ethnic/national origin biases. In 1999, there were 7,876 bias-motivated criminal incidents reported, compared to 7,775 in 1998. Of the 7,876 total incidents, 55% were motivated by racial bias, 11% by ethnicity/national origin, and less than one-half of 1% by disability and multiple biases. On October 1, 2001, a new Justice Department report was released revealing that only 20% of hate crimes result in an arrest.

Even before the apparent massive increase in hate crimes resulting from the September 11 events, these and other data demonstrated a compelling need to take additional steps to address hate crimes. Now, more than ever, we should swiftly enact the hate crimes bill.

V. Recommendations for the Commission

The U.S. Commission on Civil Rights has a uniquely important role in ensuring the protection of basic civil rights, particularly during a time of national crisis. As an independent agency whose members are not required to run for office, the Commission is uniquely qualified to serve as a "watchdog," monitoring the activities of law enforcement and other federal and state agencies charged with protecting our national security. This role takes on added importance during emotionally-charged and challenging periods when the potential for overzealous behavior is

greatest. This Commission can do much to prevent our country from doing things that we will later regret. The history of our nation is punctuated with unfortunate and regrettable incidents stemming from fear, bigotry, hatred, and xenophobia. The Palmer Raids, the internment of Japanese Americans, and the phenomenon known as "McCarthyism" immediately come to mind.

More recently, the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), passed in the aftermath of the first World Trade Center bombing, the Oklahoma City tragedy, and the terrorist attacks on our embassies in Tanzania and Kenya, had far-reaching and devastating effects on innocent people who had nothing to do with terrorism. For example, the AEDPA made §212(c) relief from deportation unavailable to aliens convicted of almost all crimes including minor, first-time offenses committed decades earlier. As a result, legal immigrants convicted of crimes that were not remotely related to terrorism were deported. Many young adults who had come to the U.S. as children were deported after first-time convictions on drug possession charges or other relatively minor offenses. Often, such immigrants were deported to countries that they had no memory of and whose language they could not speak. Families were forced to make difficult decisions as they faced indefinite separation from loved ones; U.S. citizen children were separated from immigrant parents; primary breadwinners were separated from their spouses and other dependents. We note that this provision was enacted well after it was well-established that no legal immigrants in the U.S. were in any way even remotely involved in any of these incidents.

With this experience in mind, NCLR respectfully makes the following recommendations:

- We ask that, as data become available over time, the Commission hold hearings on the civil rights implications in the aftermath of the September 11 attacks. We also suggest that you issue periodic reports, particularly wherever essential civil rights protections are endangered. One obvious place to start would be to examine the impact of the aftermath of the September 11 events on the civil rights of the Arab American community, as well as others affected due to cases of "mistaken identity."
- We encourage the Commission to take immediate steps to prepare to examine the government's response to the terrorist steps. As the imminent security threat passes, or at some other reasonable and appropriate time, we encourage the Commission to examine the actions of the government and to make determinations as to the range and frequency of civil rights violations that may have occurred. This may require the establishment of systems now to ensure the future collection of relevant agency data.
- We salute you for establishing a hotline to report hate crimes, discrimination, and other violations of civil rights. We encourage you to work with the ethnic media, community organizations, and others to publicize this hotline and other sources of information and assistance that encourage the public to report hate crimes and related incidents. National

organizations such as the American Civil Liberties Union, which maintains a racial profiling hotline, and the Southern Poverty Law Center, which monitors many forms of hate violence, may be particularly helpful in this effort.

- NCLR is also concerned about the paucity of legal representation for victims of hate crimes and other acts of discrimination. Hispanics historically have suffered from a lack of adequate legal representation in civil rights cases, and we suspect that Arab Americans may be experiencing this problem today. NCLR urges you to work with public interest law firms, the American Bar Association, private philanthropy, and others to ensure that anyone whose rights have been violated has meaningful access to legal representation.
- We also encourage you to urge President Bush, Attorney General Ashcroft, and others in the Administration to take proactive, interim steps to address racial profiling. In the short term, this may involve working with the Administration to help shape guidelines for law enforcement and other agencies involved in anti-terrorism activities. Eventually, we believe the President and the Attorney General should reaffirm their public commitments to the eradication of this social problem by declaring and enforcing a ban on racial profiling by all federal agencies.
- We encourage you to help dissuade the Department of Justice from pursuing any proposed collaborations between INS and other law enforcement agencies in conducting immigration law enforcement operations. NCLR believes any existing cooperation agreements between the INS and local/state law enforcement should be terminated, and the Attorney General should decline to pursue additional agreements.
- We urge you to consider ways to improve accountability in law enforcement. In particular, the INS should establish an improved mechanism to address complaints about discrimination and abuse of authority in the enforcement of federal immigration laws, particularly as this power is expanded. An independent body, such as a "civilian review panel" with the ability and resources to accept and investigate complaints of federal law enforcement abuse and to make recommendations for remedial action, should be established to help ensure government accountability and deter civil rights violations. Such a panel could be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.
- Finally, the Commission should aggressively assert its prerogative to submit comments to federal agencies or other government bodies issuing regulations or proposing legislation

related to immigration law enforcement, to ensure that civil rights concerns are addressed.

Precisely at this difficult time, when we are faced with making important decisions regarding our national security, the cause of civil rights may be unpopular to some. This Commission has the mandate, the independence, and the authority to call attention to any measures taken by our government which may threaten fundamental civil rights. We encourage you to use this authority judiciously and thoughtfully, but to act aggressively when major civil rights violations are threatened. In the aftermath of this national security tragedy, you can help prevent a potential future civil rights tragedy.

* NCLR is grateful for the assistance of the Mexican American Legal Defense and Educational Fund (MALDEF) in providing the latest information on the litigation.

** One proposed MOU between DOJ and Salt Lake City was rejected by the City Council after extensive protest from Latino community leaders and other civil rights organizations.

Mineta letter one

October 12, 2001

The Honorable Mary Frances Berry
Chairperson, United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Dear Madame Chairperson:

Thank you for the invitation to testify at the Commission's October 12, 2001 public briefing, in Washington, D.C., to discuss the civil rights implications of strengthened security throughout the United States transportation systems. I will be on travel on that day and will be unable to attend, but I have prepared the [enclosed written statement](#) which I would deeply appreciate your including in the record.

I applaud the U.S. Commission on Civil Rights on its efforts to ensure that all persons are provided equal protection of the laws and that no person is subject to unlawful discrimination when traveling in the Nation. This is a time of great challenge to the nation, but that challenge cannot be allowed to serve as an excuse for unlawful discrimination.

As my statement indicates, the Department of Transportation has taken steps to make certain that our transportation system is in full compliance with the civil rights laws and that strengthened security requirements do not change that situation. We will continue to investigate any security-related airline discrimination complaints we receive vigorously and expeditiously.

As one of the 120,000 Americans of Japanese ancestry forcibly interned by the United States Government during the World War II, I understand how dangerous times such as these can be to civil rights and civil liberties. I look forward to working with you and the Commission to ensure that our nation never again loses sight of those fundamental American values.

I hope the enclosed statement is helpful. If you have any further questions, please feel free to contact me or Samuel Podberesky, our Assistant General Counsel for Aviation Enforcement and Proceedings, whose phone number is 202-366-9342.

Sincerely yours,

Norman Y. Mineta

Enclosure

Mineta letter two

STATEMENT OF NORMAN Y. MINETA
SECRETARY OF THE DEPARTMENT OF TRANSPORTATION
BEFORE THE U.S. COMMISSION ON CIVIL RIGHTS
OCTOBER 12, 2001

Chairperson Berry, Vice Chairperson Reynoso, Members of the Commission, and Staff Director Jin, I appreciate the opportunity to submit this statement on the Department of Transportation's (DOT's) work to strengthen transportation security in the aftermath of the horrific attacks that occurred on September 11, and our efforts to ensure that those new security requirements preserve and respect the civil rights of individuals to be protected from unlawful discrimination.

DOT and the agencies under our jurisdiction are working to prevent intentional harm to our critical air, surface, and water transportation systems, as well as to support national security and counter-terrorism policy. In securing our national air transportation systems, where much of our efforts have been directed to date, we have taken specific steps to ensure that persons do not face discrimination on the basis of race, color, national or ethnic origin, religion, sex, ancestry, or disability.

I understand that of particular concern to the Commission is the potential racial, ethnic, or religious profiling of individuals as a result of revised or proposed procedures to strengthen security measures at airline checkpoints and passenger screening locations in response to the terrorist hijackings and tragic events of September 11. As a result, this statement, while describing actions taken throughout the Department, will focus primarily on steps taken to ensure that DOT's efforts to secure our air transportation system do not unlawfully discriminate.

While safety and security are of the highest order of concern to DOT, we also understand the nature of the Nation our efforts are designed to protect: a society that respects civil and constitutional rights and cherishes the values of equal justice and equal opportunity.

As one of the 120,000 Americans of Japanese ancestry interned by the United States government during World War II, I know firsthand the dangers with which we are presented in the current

crisis. All of us will face heightened security in the aftermath of September 11, but the security and scrutiny must never become pretexts for unlawful discrimination.

SECURITY PROCEDURES AT AIRPORTS

The Department of Transportation's authority in connection with discrimination in airline security and related issues is carried out through two departmental organizations: the Office of the General Counsel in the Office of the Secretary, which is responsible for investigating security related discrimination complaints, and the Federal Aviation Administration (FAA), which is tasked with developing and implementing airline security requirements, as well as monitoring airline compliance. In carrying out those responsibilities, the FAA is careful to ensure that the security requirements comply with the civil rights laws. The FAA, which has the authority to require modification of airline security programs that violate the law, will not tolerate airline security procedures that are unlawfully discriminatory.

Much of the aviation security selection procedures for enhanced checked baggage screening in the United States is now conducted by computer, thus avoiding human error and subjectivity. For screening of passengers, all major U.S. airlines and over 40 U.S. regional carriers are now using the Computer-Assisted Passenger Prescreening System (CAPPS). In late 1997, the Department of Justice found that the CAPPS criteria, as mandated by the FAA and used by U.S. airlines to select persons for additional checked baggage security procedures, are non-discriminatory on their face.

In light of the terrorist hijackings and tragic events of September 11, security measures at airports and airlines have been greatly heightened. The additional security measures include more thorough carry-on baggage screening and allowing only ticketed passengers beyond security checkpoints, except for those with specific medical or parental needs. We are confident that these new security procedures are nondiscriminatory and do not abridge the rights of citizens to be free of discrimination on the basis of race, color, nationality, ethnicity, or religion. We will continue to do everything in our power to ensure that remains the case.

HANDLING OF DISCRIMINATION COMPLAINTS IN AIR TRAVEL

The Department has an effective system to deal with security related discrimination complaints when they arise. In this regard, our Office of Aviation Enforcement and Proceedings (Enforcement Office) is tasked with ensuring that the civil rights of air travelers are respected by the airlines we regulate.

Over the past four years a primary focus of the office has been on the investigation of security-related discrimination complaints. Of all the civil rights complaints the Enforcement Office receives, those alleging security-related discrimination cause it special concern. This is so because the Federal government establishes the underlying security requirements. We know that if they are not being applied in a nondiscriminatory manner, they will eventually lose their acceptance, to the serious detriment of the public.

The Enforcement Office thoroughly investigates each security-related discrimination complaint it receives and the Department continues to take other actions to perfect our authority to pursue these cases, to change airline procedures that lead to these complaints, to increase our resources

to pursue these cases more effectively and to determine if the security procedures have a disparate impact on any minority group.

Members of the public who feel they have been the subject of discriminatory actions or treatment by air carriers may file a complaint by sending an email, a letter, or a completed complaint form to the Department of Transportation's Aviation Consumer Protection Division (ACPD), part of DOT's Enforcement Office. The Department's website provides detailed information on filing complaints, and complaint forms that consumers may download are also available on the website.

Since September 11, the Department has received seven complaints from persons alleging that they were removed from flights or denied permission to board because they are, or were perceived to be, of Arab, Middle Eastern, or South Asian descent and/or Muslim. The Department has also received three complaints alleging discrimination prior to boarding at security check points. Each of these complaints have been reviewed, are being acknowledged, and will be investigated. We take all these cases very seriously.

ACTIONS TAKEN SINCE SEPTEMBER 11

Since September 11, the Department has taken or will be taking several proactive steps regarding security-related discrimination issues. For instance, our Rapid Response Team on Airport Security, composed of representatives from airlines, airports, airline manufacturers, labor, and government agencies emphasized that its recommendations for strengthened security measures, released on October 5, 2001, must be implemented in a way that is wholly consistent with America's commitment to the protection of civil rights.

Earlier, on September 21, 2001, the Department of Transportation reminded the eleven major airlines and several airline associations that Federal law prohibits air carriers from discriminating against passengers on the basis of race, color, national origin, religion, sex or ancestry. The Department also strongly encouraged air carriers to take steps to ensure that their employees understand that it is illegal to discriminate against people based on their race, color, national origin, religion, sex, or ancestry. A copy of the "[Tolerance](#)" memo that we e-mailed to the airlines has been placed on our website at <http://www.dot.gov/airconsumer/01-index.htm> and a copy of it is appended to this statement.

On October 1, 2001, as follow-up to the September 21 notice, the Department requested information on actions each airline has taken to make certain that its employees understand their responsibility to treat passengers in a fair and nondiscriminatory manner. So far, seventeen airlines, including the largest U.S. carriers, have contacted us to let us know that they have taken specific steps such as sending a letter to all of their employees worldwide requesting tolerance of all people and cultures, and explaining that their employees must comply fully with this Nation's civil rights laws.

Further, since the September 11, 2001, attacks, I, as well as Administrators of various DOT operating administrations, and other senior-level officials in the Department, have continuously spoken out against discrimination, scapegoating, and incivility. Officials from the Department are committed to working with the public, particularly the Arab-American, South Asian American and Muslim communities, to ensure that heightened security measures do not violate

the civil rights of any American. For example, on October 9, 2001, the Assistant General Counsel for Aviation Enforcement and Proceedings met, in Chicago, with representatives of the local Arab-American community, the Sikh community, and other similarly affected groups for an informational session on what to do if confronted with discrimination as a result of the tragic events of September 11. The information session was hosted by the Department of Justice and Illinois State officials, and included representatives from various Federal agencies.

In addition, I am delivering remarks today at the public forum at the University of Rochester on this very subject. In those remarks, I will stress that we must be vigilant against bigotry, intolerance, and discrimination as we heighten security in America's transportation systems..

Finally, because of concerns about intimidation and harassment directed at certain individuals as a result of the terrorist attacks of September 11, 2001, I will soon issue a policy statement reminding the Department's employees carrying out transportation inspection and compliance responsibilities of longstanding DOT policy prohibiting unlawful discrimination against individuals because of their race, color, religion, ethnicity, or national origin.

CONCLUSION

At the Department of Transportation, we have been, and will continue to be, vigilant in ensuring that our transportation system is safe, secure, and not unlawfully discriminatory. Protecting the civil rights of passengers is essential to maintaining the security of our Nation, because those civil rights are essential to our most fundamental values. There have been times in our history as a Nation when that has been forgotten. I am committed, and the Administration is committed, to ensuring that it is never forgotten again.

Once again, I am sorry I could not be with you today for this important hearing. I look forward to continuing the work we have done together over the years in building a fair society with equal justice for all.

Thank you again for the opportunity to submit this statement today.

Mineta letter three

COPY OF DOT E-MAIL MESSAGE TO AIRLINES

TOLERANCE

This message was e-mailed to major airlines and aviation associations on September 21, 2001. It concerns the aftermath of the attacks on the World Trade Center and the Pentagon on September 11,2001.

Since the terrorist hijackings and events of September 11, we have seen several reports of airlines apparently removing passengers from flights because the passengers appeared to be Middle Eastern and/or Muslim. We caution airlines not to target or otherwise discriminate against passengers based on their race, color, national or ethnic origin, religion, or based on passengers' names or modes of dress that could be indicative of such classification. Various Federal statutes prohibit air carriers from subjecting a person in air transportation to

discrimination on the basis of race, color, national origin, religion, sex, or ancestry. At DOT, we are and will continue to be vigilant in ensuring that the airport security procedures, mandated by FAA and implemented by the airlines, are not unlawfully discriminatory.

We strongly encourage each airline to take steps to ensure that its employees understand that, not only is it wrong, but it is also illegal to discriminate against people based on their race, ethnicity, or religion. Recently, the President and Chief Operating Officer of Delta Airlines sent a letter to all of the airline's employees worldwide requesting tolerance of all people and cultures, and explaining that its employees must comply fully with civil rights laws. A copy of this letter is attached.

Norman Strickman
Assistant Director for Aviation Consumer Protection
Office of Aviation Enforcement and Proceedings
Office of the General Counsel
U.S. Department of Transportation

Sent to:

Alaska Airlines
Northwest Airlines
America West Airlines
Southwest Airlines
American Airlines
Trans World Airlines
American Trans Air
United Airlines
Continental Airlines
US Airways
Delta Air Lines
Air Transport Association
Regional Airlines Association
International Air Transport Association
Air Carrier Association of America

**Testimony of Karen K. Narasaki,
President and Executive Director of the
National Asian Pacific American Legal Consortium
before the U.S. Commission on Civil Rights**
The Boundaries of Justice: Immigration Policies Post September 11 October 5,
2001

On behalf of the National Asian Pacific American Legal Consortium, I would like to thank the Commission for holding this hearing to discuss the challenges facing immigrant communities in the aftermath of the tragic terrorist attacks on September 11.

First, I would like to focus on the challenges that already existed before September 11, then describe the direct consequences and finally touch upon the collateral consequences.

Immigration Policies Before September 11

Even before the terrorist attacks on September 11, the Immigration and Naturalization Service (INS) was an extremely dysfunctional agency; anti-immigrant groups were running multi-state advertising campaigns designed to appeal to the basest xenophobic instincts; and immigrants faced a multitude of policies that are inhumane and unjust.

Despite massive increases in fees charged to immigrants, the INS has been unable to bring its backlog of citizenship and green card applications current. In many parts of the country, it still takes two years or more to have the INS complete what should be a relatively simple process for citizenship and after pressure was brought to bear on the INS to bring these backlogs under control, the green card processing times further eroded.

While Congress has poured increasing resources into the border patrol along Mexico, making the INS the largest law enforcement enterprise in the country, it has repeatedly failed to adequately fund the service side of the agency. Given the increased discriminatory laws facing immigrants in the United States who have not completed the transition to citizenship and the vulnerability that immigrants without green cards have always faced, these ridiculous waiting times are a civil rights matter.

President Bush had made restructuring the INS a priority during his campaign. Funding is not the only problem. As outrageous is the treatment that immigrants receive at the hands of too many INS employees who have often been former border control agents. Attached to this testimony is a [report](#) NAPALC prepared in April 1999 setting forth the principles we believe need to be acknowledged along with stories from people out in the community about how they are routinely treated by the INS. I think the following story is instructive:

One Asian American client was asked questions that are not part related to citizenship - one INS officer in Fresno, California asked an applicant "what is your skin color" and when the response was "Brown" the INS examiner failed him for not saying "yellow."

INS has also routinely failed to issue regulations to implement programs legislated by Congress in a timely manner. This problem is made even more serious by the fact that Congress often passes programs with unreasonable sunset dates. All too often, INS can take a year or more to issues regulations for programs that only had one year of life. This causes extreme confusion in immigrant communities who hear about the creation of a program but have no way to access it or who then are given only a month to avail themselves of the program.

This is particularly a problem when special programs are enacted to provide immigrants with an opportunity to adjust their status. For example, there are tens of thousands of Public Interest Parolees from regions like Southeast Asia who were admitted because of U.S. interests and responsibilities for people who, for technical or political reasons, might otherwise not be able to enter as a refugee or asylum seeker. Last year, Congress recognized the need to give these parolees an opportunity to become legal permanent residents and be put on a path towards citizenship. The INS has yet to issues regulations. In the meantime, many of these individuals remain in limbo.

One of the reasons that eligibility and processing for citizenship is so important is that noncitizens, even if they are legal permanent residents, are generally not eligible for most government safety net programs. In a cruel policy enacted by Congress as part of the welfare reform legislation in 1996, immigrants who came after 1996 who, for example, become disabled, are not eligible for Supplemental Security Income regardless of how they became disabled. In

other words, a survivor from the World Trade Center who became disabled in the attack would not be eligible for medicaid or any other federal assistance. An immigrant injured in a hate crime who came to the country after August 1996 would similarly not be eligible for aid.

Moreover, so long as a legal permanent resident is not a citizen, no matter how long he or she has lived in the United States or how little contact they may have had with their home country as in the case of refugees, for example, who came as young children, they are subject to deportation for the most minor of legal infractions. Under the proposed terrorist legislation, their first amendment rights are also severely compromised.

Finally, before September 11, President Bush and Congress seemed to be moving to overhaul our immigration system to make it more humane and effective. The Democratic leadership had announced principles which included an effort to address the backlogs in family reunification categories - some of which have waiting times of 10 to 20 years. Over 3.5 million adult children and siblings are waiting to join their parents and brothers and sisters. Almost half of these are from Asian countries. Adult children face a particularly cruel choice. If they want to marry before being able to immigrate to reunite with their parents, they will move to the back of an even longer line for adult married children which is now 13 years for immigrants from the Philippines.

In addition, there seemed to be consensus between business and labor leaders on the need to address the plight of undocumented workers and provide an opportunity for a more systematic flow. The vulnerability of undocumented workers to abuse of every kind is well known to this commission. Deportation is all too cruel for those who have families in the United States and who have been contributing to the economic and civic life of their communities.

In the concern about our borders that has arisen and general fear of immigrants that has been engendered, the momentum to address these issues in a rational and humane way has slowed, despite the fact that these are still pressing concerns.

Attached is [testimony](#) I presented earlier this year before the Senate Immigration Subcommittee that provides more detail as to these issues.

Post September 11 - Direct Consequences

As you know, Americans of every color and creed were injured and lost their lives in the three attacks. As you may not have considered, many were immigrants who had come to America through various channels. Indeed we believe that a number of them were undocumented or had undocumented family members. The heroes of September 11 also come in all colors and creeds, and again, many of them were immigrants or the children of immigrants.

Yet, almost immediately after the attacks on September 11, anti-immigrant advocacy groups cynically began exploiting Americans worst fears to push our country to close its borders. Reporters covering the tragedy, and perhaps new to immigration issues, all too often ran extremely unbalanced stories, presenting avowed anti-immigrant groups as neutral experts.

Barely had the reality of the attacks begun to sink in when some Americans started to take matters into their own hands and seek retribution from anyone who looked Arab or Muslim. According to a report recently issued by South Asian Leaders of Tomorrow, in the first week after the attack, the media reported on 645 hate crime incidents with a genesis in the September 11 attacks. Ironically, one of the groups most heavily targeted was the Sikh community who are generally descendants of India and whose faith is not Islamic. However, because the men wear turbans and beards similar to that shown by news clips of Bin Laden, they were chased by mobs with baseball bats, attacked in malls and schools, and in a few tragic cases, murdered.

NAPALC also has received reports of attacks on Latinos, Filipinos, and basically anyone who is not white. Houses of worship, homes, businesses and cars have been firebombed, hit by drive by shootings and arson, and vandalized. Men, women and children have been beaten, shot and harassed. Even school children have been attacked. Education Secretary Paige has had to issue a statement reminding schools of their obligations under Title VI to address these incidents.

At a candlelight vigil in Virginia, a cab driver who had immigrated to the U.S. from Pakistan was quickly surrounded by a mob of white youths while he waited to pick up one of the vigil participants. As police were trying to break of the mob, one of the men spit in the cab drivers face. He said it was the third such incident. Other people have been chased by men wielding base ball bats. One Sikh woman in San Diego was knifed in the head by two men who had pulled up on a motorcycle next to her car while she waited in traffic.

These attacks have continued despite pleas for human decency from the President, Congress, Assistant Attorney General, and local officials such as New York City Mayor Guiliani. They have made prisoners of many Arabs, Muslims, Sikhs and other South Asians who are afraid to leave their homes, afraid to wear traditional clothing, and afraid even to report these crimes. While we applaud this Commission for also issuing a statement on this issue, we are concerned that it ignored the particular plight of Sikhs who, because they wear turbans and beards as part of their religious practices, have been a favored target.

In addition to hate crimes, vigilante actions have taken place on airplanes with Americans who are Arab, Muslim or South Asian being ordered to leave the airplane because either the crew or the passengers complained they were afraid to fly with them. These acts of national origin and race based discrimination have prompted the Department of Transportation to remind airlines of their obligations under our civil rights laws.

In addition, some businesses owned or operated by Americans who are Arab, Muslim or South Asian have been hit by rumors about their loyalties. There are also some reports of people being refused service in restaurants and of discrimination in the work place. One South Asian working at a clinic was waving to a friend across the room while others were watching the news coverage of the terrorist incidents on television and was fired because some of his co-workers interpreted his behavior as supporting terrorism.

Just as during World War II when my parents were interned during World War II for the crime of looking like the enemy, there is a risk that the fear of those who are Arab or Muslim may lead us to betray our most sacred of American principles of justice and fairness. The one poll of New Yorkers and another CNN/USA Today/Gallup general poll found that one in 3 of those polled

would support the internment of Arab Americans. These polls also found a majority support racial profiling of Arab Americans, particularly on airplanes.

The current environment also echoes that of the experience Asian Americans recently had during the campaign finance scandal. Then, as you will recall, the DNC and the media looked at the records of only the donors with Asian last names. According to media reports, the FBI has demanded that almost 200 schools turn over the financial and academic records of foreign students, generally targeting only those of Arab or Middle Eastern descent. The requests are not based on any assessments of individual probable cause and include data that should be protected by privacy laws. Most schools are eagerly providing the information, generally without even notifying the students.

While at the same time the Attorney General is paying lip service to the notion that racial profiling is bad, in fact we have every reason to believe it is being employed in the investigation. Much of the investigation has been tip driven. Neighbors are calling about neighbors - in some reported cases, apparently based on the appearance of the individual alone. One innocent Sri Lankan reported on his fear when government agents burst into his apartment with guns drawn based on a tip from a neighbor that had to have been based on his color.

Other panelists have detailed our concerns about civil liberties, particularly as it relates to how noncitizens are currently being treated and the pending anti-terrorism legislation. As they will tell you, even without new legislation, the Attorney General already has the ability to take sweeping, and arguably unconstitutional actions (including the use of secret evidence) to deport and hold immigrants.

I'd like to make one particular point. Immigration laws speak of "detention" rather than incarceration. Detention may sound benign, but it is not. In INS speak it generally means being incarcerated in prison with the general prison population - which as you know can, and often is, quite violent.

Even one day of detention can change someone's life. For example, a young Pakistani American college student was nervous about flying back to New York so his Aunt dropped him off to board a Greyhound bus in Houston. The INS raided the bus and held him in custody in a Mississippi county jail because he was found to have overstayed a tourist visa even though he might well be eligible for a student visa now. While the guards watched, he was brutally beaten by three white inmates who called him Bin Laden and threatened to kill him.

This hysteria has also damaged efforts to improve the public policies addressing undocumented immigrants. Many state legislatures were looking at ways to remove legal roadblocks to undocumented immigrants becoming licensed, and therefore, insurable drivers. Several were also looking at the plight of undocumented students who upon graduation found the doors of colleges closed to them.

Post September 11 - Indirect Consequences

Many immigrants lost their lives on September 11, and not all of them had entered the country legally. They left behind families, some of whom are citizens and some not. Some left orphaned

children. Those who survived are at the bottom of the economic ladder and will not be able to prove their eligibility for unemployment and other benefits. We are concerned that these victims will be forgotten.

In addition, the impact of September 11 on our economy has already begun to hit those already at the bottom of our economic ladder. Service industries like hotels, restaurants and stores, have already announced massive lay-offs. Many of these low wage workers are immigrants.

There is virtually no safety net for them. Undocumented immigrants are eligible for only emergency care under federal programs. Even legal permanent residents, if they arrived after August 1996, are not eligible for most federal programs. Just imagine, a victim from the World Trade Center attack would not be eligible for Supplemental Security Insurance for his disability even if he was legally here and working. His family might also not be eligible for assistance.

Some states, such as Washington and New York, have funded some programs to fill some of the gaps in the safety net for immigrants who are not yet citizens and for those who are not legal permanent residents. However, with state budgets also being hit by the recession, even the limited state efforts may be lost.

Even those who are eligible for some assistance may find themselves without help. Immigrants, particularly those who face language barriers, have been the last to go from welfare to work. In fact, one of NAPALC's affiliates, the Asian Pacific American Legal Center, had to initiate an action with the Office for Civil Rights of the Department of Health and Human Services because of the discriminatory impact of how the California program has been run.

Many families may be finding themselves cut off from assistance because of the life-time five year time limits of Temporary Assistance to Needy Families, a program that is up for reauthorization this year.

Language barriers has been cited as one of the primary issues for immigrants receiving appropriate health care, access to child care, fairness in the legal system, and job training for jobs that pay more than a poverty wage. Last year President Clinton issued Executive Order Executive Order 13166 calling upon all federal agencies to prepare a plan and issue guidances to improve access to federally funded programs and activities by eligible limited English proficient (LEP) individuals.

These guidances do not impose new requirements, but merely explain the longstanding requirements of Title VI of the Civil Rights Act and other civil rights laws. Congressman Ernest Istook (R-OK) is seeking to exploit the current hostile environment towards immigrants and has announced his intention to introduce an amendment the Labor, Health and Human Services, and Education appropriations bill when it comes to the House floor this week. Although the scope and breadth of the Istook Amendment is not yet clear, it will likely prevent federal agencies from implementing the modest provisions of Executive Order 13166. The Amendment may even go further and thwart other efforts by these agencies to expand access to government programs by people who are not yet fluent in English. If enacted, the Istook Amendment would threaten policies that have been on the books for three decades requiring recipients of federal funds to provide meaningful access to persons who do not yet speak English.

Downloaded from the Internet Archives, July 20, 2007. Not an official copy.

Here is an example of why there is a need to ensure that immigrants, Recently, the Hendricks County Commissioners announced that they will not provide funding for the county Department of Health to hire a translator for a Burmese immigrant, who is under quarantine with a highly contagious disease. The cost is a mere \$40 per hour. Two years ago, a Laotian mother was arrested by county police and held in jail for six months, some of it in solitary confinement under suicide watch, without ever being charged because of a misunderstanding about the risk of tuberculosis medicine caused by language barriers.

These guidances are very important. When initially pressed for its plan pursuant to the Executive order, the INS claimed that it did not come into contact with people who didn't speak English and that the little information and assistance they were providing in Spanish was sufficient. Most agencies had not given much thought at all to whether or not they were adequately serving immigrants, despite the fact that immigrants and their businesses pay significant federal taxes that support these services. .The Executive Order does not require the agencies to translate every document into every known language or to hire interpreters. The guidances balance take into account need and resources.

Immigrants are often the most vulnerable to discrimination and civil rights abuses. They are often unaware of the laws and the agencies that exist to pursue civil rights violations. They are unable to access attorneys who can communicate with them in their native languages.

Generally, community based organizations must try to bridge the gaps. However this will be even more difficult because of their limited funds, which have been further pressed by this economic crisis. More, not less, needs to be done to fund English as a Second Language classes as well as provide adequate reimbursement for the use of translators in health care and fund translators in our legal system.

I thank the Commission for taking up the issue of national origin, ethnic and race discrimination faced by immigrants and look forward to its report and recommendations.

Thank you.

STATEMENT FOR THE
US COMMISSION FOR CIVIL RIGHTS
BY
FANNY RIVERA
FEDERAL AVIATION ADMINISTRATION ASSISTANT ADMINISTRATOR FOR
CIVIL
RIGHTS AND DIVERSITY ADVOCATE

OCTOBER 12, 2001

WASHINGTON DC

Thank you for the opportunity to speak to the US Commission on Civil Rights on behalf of the Federal Aviation Administration.

FAA takes allegations of discrimination very seriously and continues to be uncompromising in its enforcement of these laws. In 1998, we sent the following assurance to the public that articulates our responsibility:

"The FAA wants to assure all travelers that airline screening will comply fully with civil rights laws and nothing will be done that might interfere with fundamental American liberties. The agency has cautioned airlines and airport law enforcement not to target or otherwise discriminate against passengers based on their race, color, national or ethnic origin, religion or based on passengers' names or modes of dress that could be indicative of such classification."

Transportation Secretary Norman Mineta has stated that while FAA has put into place new heightened security measures that the airlines will carryout; we will continue to be vigilant in ensuring that the airlines, as they implement the new procedures, do not engage in unlawful discrimination.

The new security measures have been put into service for the safety of all. However, none of these new security measures decrease the responsibility of airports and airlines to ensure that airport and airline security procedures are carried out in a non-discriminatory manner.

The Departmental Office of Aviation Enforcement and Proceedings, the office that has responsibility for these complaints, has sent to the airlines a message that encourages each airline to take steps to ensure that its employees understand, not only is it wrong, but it is also illegal to discriminate against people based on their race, ethnicity or religion.

To date, FAA has received only one complaint regarding discrimination of an individual by an airline, on the basis of race, ethnicity, or religion. This complaint was given the highest priority and referred to the Departmental Office of Aviation Enforcement and Proceedings.

FAA is unwavering in its commitment: we will continue to be ever vigilant and conscious of civil rights concerns and ensure that new procedures are consistent with civil rights laws.

**Submission to
The United States Commission on Civil Rights**

**Testimony of Dr. James J. Zogby
OCTOBER 12, 2001**

**WITH AN APPENDIX
HATE-BASED INCIDENTS
SEPTEMBER 11 - OCTOBER 10, 2001**

A Report of the Arab American Institute Foundation ©

In the immediate aftermath of the terrorist attacks on the World Trade Center and the Pentagon (even before it became clear that the perpetrators were from Arab countries), Arab Americans found themselves the targets of incidents of hate and bias. It was something that we had come to expect. For a number of decades now, Arab Americans have experienced similar "backlashes".

During the Iranian hostage crisis, for example, despite the fact that Iranians are not Arabs, Arab Americans were targeted. The same was true in the days following the terrorist bombing in Oklahoma City and the tragic explosion of TWA flight 800.

Part of the reason why Arab Americans have come to be scapegoated in times of crisis is because for many decades, my community has been defined by negative stereotypes propagated by the popular culture. Arab Americans are not known as the complex and diverse community that we are.

Compounding this is the fact that, in recent years, these destructive stereotypes have been fed by the outrageous and condemnable acts of terror committed against the United States by some extremist groups with roots in Arab countries.

The result of this confluence of preexisting negative stereotypes with actual terrorist acts has created, with each of these crises, a dangerous situation where, in the minds of some, blame was generalized and collective guilt was assigned to the entire Arab American community.

In just three days after the Oklahoma City bombing, for example, more than 200 serious hate crimes were committed against Arab Americans and American Muslims. The same was true in the days following September 11.

I have attached to this statement a selection of such instances of hate crimes and acts of bias that were reported to my organization and the American-Arab Anti-Discrimination Committee (ADC) during the period of September 11 to October 10, 2001. The list is not complete, but represents a state-by-state selection, organized by type.

Let me review, for a moment, the types of cases we are reporting.

First, there have been assaults. Among them, there have been seven deaths which may be the result of hate crimes. We also list about 90 other physical assaults, either shooting, beatings, or stabbings that have been reported to us. Next we list over 85 incidents of vandalism to property. Special targets for vandalism include mosques and Arab-owned businesses that have Arab signage out front. Threats and harassment are next. These include death threats or personal threats. Although we list a large number of these types of incidents, I believe that the numbers must be much higher. While direct assaults and acts of vandalism are reported to law enforcement, most victim communities hesitate to report threats. They all too frequently accept this form of hate crime as expected behavior and are afraid to create more problems by reporting the offense and offenders.

We also have had a few job-related acts of discrimination, though not as many as I might have feared. So far, six cases have been reported to us where people have been fired and been told the specific reason for their dismissal was that their fellow employees didn't want "an Arab in the workplace." This is an area of concern that bears watching, since there are signs that it may grow in the future.

Another area of discrimination that is very troubling is the matter of airplane profiling. We've had 11 specific instances reported to us involving over 20 passengers where people have either been taken off a plane or not allowed to board a plane because of their ethnicity. Since there is no provision, in law, for a cooperating passenger who has passed security screening to be removed from a flight because "the pilot won't fly with someone named Mohammed", or "because other passengers are nervous to fly with you on board" (these were actual reasons given), we feel that

there is a very dangerous form of vigilantism at work here. It must be stopped. We have raised this matter with the Secretary of Transportation and have pressed the Department of Transportation to issue a clear policy statement to the airlines.

The key to understanding the gravity of this entire situation for Arab Americans is that no segment of my community has been exempt.

An Arab American Congressman was excluded from a flight. Arab American churches as well as mosques were attacked. And, in many instances, bigots struck out at anyone whom they suspected was Arab, victimizing Sikhs, South Asians and Hispanics.

My own family, for example, has been dramatically impacted. The morning after September 11, I received a harrowing death threat at my office. The caller left this message: "Jim, you towelhead, all Arabs must die. We will slit your throats and kill your children." My daughter, a college student, received two threatening phone calls. My nephew, also a college student, was affected. My brother, John, received two bomb threats at his office.

The problem was widespread. A poll of Arab Americans we conducted from October 6 to October 8, 2001, showed that while 32% of Arab Americans reported having been subjected to some form of ethnic-based discrimination during their lifetimes, 20% reported having experienced an instance of ethnic-based discrimination since September 11. Most affected were the vulnerable parts of my community. Of special concern, for example, is the fact that 45% of students and 37% of Arab Americans of the Muslim faith report being targeted by discrimination since September 11.

Let me note here that however serious this period has been, I dread to think how much worse it might have been had our nation's leadership not acted as quickly and proactively as they did.

The President took the lead in cautioning against this backlash and was joined by the Secretary of State, the Attorney General, and the Director of the FBI. Their repeated statements, I believe, helped to stem the tide of the wave of backlash.

Also worthy of note were the actions of the U.S. Senate and House of Representatives who passed resolutions decrying hate crimes against Arab Americans and American Muslims. Individual Senators and members of Congress also took immediate action to shine a light on this problem.

Equally impressive was the effort by the Ad Council which worked with us to produce radio public service ads and newspaper ads that focused on warning against anti-Arab and anti-Muslim hate and bias (see the attached [Ad Council ad](#)).

The constant repetition of this positive message on TV and radio and in print media has helped restrain the hands of the bigots. The hate has not gone away, but the hate crimes have been greatly reduced. Now we must begin the long and difficult task of addressing the negative stereotypes. And in this area we have also been blessed by the support of several national organizations and parts of the Administration. The Community Relations Service of the Department of Justice has assisted us in reaching school districts that have asked for materials on

Arab Americans, Arab culture, and Islam. The Department of Education and school boards across the U.S. have also been helpful, as have the nation's unions representing America's teachers.

While noting the role of the Department of Justice, I must single out, for special commendation, the Civil Rights Division and the Assistant Attorney General for Civil Rights, Ralph Boyd. He has brought us together, early on and frequently, to discuss both the problem of backlash and our concern with various law enforcement agencies. Mr. Boyd has also made himself available to us in several important outreach efforts to the Arab American community.

Finally, I want to mention the support we received from the FBI. From the Director on down, the FBI has responded to each and every complaint of hate we have brought to them. They have met with our community's leadership in Washington and in several centers across the US.

While we still have some concerns with some reports we have received of overzealous investigative techniques used by some FBI agents, we have had the opportunity to raise each of these concerns with officials from the Bureau.

At the same time, we are gratified that the FBI has aggressively pursued our reports of hate crimes. At the time of this testimony, they have opened 130 investigations and actually brought 3 federal indictments against perpetrators. I understand that they have already identified the individual who made the death threat against my family.

I would like to close with a few recommendations. The first deals with the problem of reporting hate crimes. Immigrants, especially those from some Arab countries, have a fear of law enforcement. For example, if the FBI is investigating hate crimes, recent immigrant Arabs may fear reporting a hate incident because they are concerned that it may compromise their stay in the US. This fear is compounded by the fact that the past history of the FBI's relationship with our community has not always been the kind that encourages people to go to them and report a problem. I therefore believe that there is a need for not just an improved system for hate crime reporting but also for a mediating presence between victim communities and law enforcement so that victims can have more confidence in reporting problems.

Since this Civil Rights Commission is receiving reports of hate crimes, I recommend that you seek a role in suggesting how those hate crimes actually then become investigated. I have noted that while the FBI Director and the community relations side of the FBI have been very responsive, there still is a fear. And many people remain afraid to report hate crimes.

There have been recommendations that the U.S. Attorney's offices be involved, or that the Civil Rights Division at the Justice Department be involved, or that the FBI set up a special Hate Crimes Unit that is only involved in hate crime investigations. These are only some suggestions, but I do urge you to look into this matter and help us address this concern.

Secondly, the USCCR has 51 advisory panels in all of the states and the District. It would be useful for the local panels to convene hearings on hate crimes such as this one and actually visit affected communities or highlight good practices that are occurring across the United States.

Thirdly, there is concern with the large numbers of detentions that have occurred in this investigation. It appears the FBI cast a net that was too wide. They've acknowledged that to us. The problem with this roundup is that it's contributed to fear and a lack of reporting of hate crimes, which is why I want to mention it right now.

I don't want to see the FBI-and I don't think anyone wants to see this-doing the INS cleanup job, which is what seems to have been the case. We now know some news agencies are actually trying to investigate those hundreds of reported detentions to find out exactly who the detainees are and on what basis they are being held. In some cases, the reports that have come to us indicate that family members can't find the person who's been detained or lawyers can't find their client. We have asked the Attorney General to disaggregate the growing number of those who are reported "arrested or detained", so that we can better understand what is happening.

The more we know about this situation, the better off we will all be. If large numbers of immigrants are being held without charge, we should know this. If, in fact, they have been released, we should know this. The fact is that at present, the number in the aggregate is a mystery and is a cause for concern.

Let me conclude by noting once again that despite this backlash and the problems I have noted related to it, on balance, we have been pleased with the positive message of support we received from the Administration and the response we have received to some of our concerns.

While a small minority of Americans turned against Arab Americans and American Muslims in the aftermath of September 11, the leadership of our country and the majority of our fellow citizens turned to us and offered their support and concern for our rights. It was a most gratifying experience.

All problems have not been solved. The hate has not gone away. But we are confident that as our nation has joined together to condemn and root out the terrorists who killed so many of our citizens, the same resolve exists that we root out and stop bigotry and backlash as well.

APPENDIX

HATE-BASED INCIDENTS SEPTEMBER 11 - OCTOBER 10, 2001

**Arab American Institute Foundation Report ©
To
The United States Commission on Civil Rights
October 11, 2001**

Editor, Claudette Shwiry Hamad

This report is a compilation of hate-based incidents that have occurred in the United States over the one-month period following the September 11 attacks on the World Trade Center Towers and the Pentagon.

The events described were compiled from print and established Internet media sources and individual testimony. Although incidents have been reported from almost every state of our nation, there undoubtedly have occurred many other episodes of discriminatory actions that have either not been reported for fear of further backlash, or not considered sufficiently newsworthy.

The Arab American Institute Foundation is grateful for the research efforts its staff, especially webmaster Melyssa Morey, consultant Patsy Thomasson, and the American Arab Anti-Discrimination Committee (ADC) reports which are cited with source origination.

<p>Alabama</p>	<p><u>DISCRIMINATION/PROFILING</u> Birmingham. System technician for Vulcan Publications accused of ties to terrorist groups. Technician feared he would be terminated. (ADC, 9/19)</p> <p>Arab American contractor for Defense Department has had his clearance pulled. Lawyer hired to determine discrimination. (ADC, 10/10)</p>
<p>Alaska</p>	<p><u>VANDALISM</u> Anchorage. Vandals destroyed several hundred thousand dollars worth of equipment and merchandise at a printing shop owned by an Arab-American. The perpetrators also sprayed "We Hate Arabs" on one of the walls of the shop. (MSNBC.com 9/23)</p>
<p>Arizona</p>	<p><u>ASSAULTS</u> Phoenix. On Sept. 15th, Frank Silva Roque shot to death Balbir Singh Sodhi. Roque allegedly killed Sodhi as part of a multiple-incident shooting rampage that included shootings at a Lebanese-American clerk who escaped injury, at another gas station in Mesa, and at the home of an Afghan family. (Arizona Republic, 9/18)</p> <p>Mesa. 49-Year-old Indian Sikh shot while standing outside his Chevron station. Family believes he had been killed because he looked 'Middle Eastern'. Attack apparently part of multiple incident-shooting rampages. Gunman also shot at Lebanese-American clerk who escaped injury and fired upon home of Afghan family. (ADC, 9/15)</p> <p><u>THREATS</u> Phoenix. Anonymous callers told police they planned to attack Middle</p>

	<p>Eastern businesses. (<i>Arizona Republic</i>, 9/12)</p> <p>Tempe. Bomb threat phoned into Islamic Cultural Center. (<i>Arizona Republic</i>, 9/12)</p> <p><u>DISCRIMINATION</u></p> <p>Phoenix. Three Arab men were refused readmission to their Sept. 25th United Airlines flight to Chicago after a female passenger allegedly raised her concern about them. (First plane evacuated allegedly for mechanical problems.) The three have filed a lawsuit. (<i>Chicago Tribune</i>, 10/4)</p> <p>Phoenix. Arab American pilot pulled off line and told he cannot fly. Coworker allegedly reported pilot sympathetic to Palestinian cause. After background check, put back on and able to fly, but pilot concerned he may be terminated. (<i>ADC</i>, 9/19)</p> <p>Scottsdale. Bar briefly posted sign: "Arabs not welcome." Co-manager later removed it and admitted, "it was a stupid think to do." (<i>Arizona Republic</i>, 9/14)</p>
<p>California</p>	<p><u>ASSAULTS</u></p> <p>Los Angeles. Palestinian-born salesman killed while making door-to-door rounds. Family called killing hate crime, but police say robbery was likely motive. (<i>Agence France Presse</i>, 10/9)</p> <p>Los Angeles. On an evening walk close to his home, Sikh man wearing Pakistani dress attacked by four men who beat and punched him. Norwalk police filed report as robbery because attackers ripped his clothes and pulled his wallet. However, the Sikh claimed the attackers yelled, "terrorist" as they beat him. (<i>ADC</i>, 10/9)</p> <p>San Diego. Two men on motorcycle pulled up next to Sikh woman stopped at red light, yanked open her door, shouting "This is what you get for what you've done to us!" Then, "I'm going to slash your throat!" The woman raised her elbows to protect her neck and hunched over. She was slashed in the head at least twice before the men, hearing a car approach, sped off. (<i>San Diego Union-Tribune</i>, 10/5)</p> <p>Reedley. Abdo Ali Ahmed, Yemeni grocer shot to death in his shop over the weekend. Family members said the day before he was killed, death threat that included anti-Arab statements was found on windshield of Ahmed's car. It is being investigated as a hate crime. (<i>Washington Post</i>, 10/3)</p> <p>Fresno. Arab American, Rien Said Ahmed, was shot and killed while at work. Witnesses saw four males speed from the store in white sedan. No money or merchandise was stolen. Ahmed had received threats since mid-</p>

September. (*The Fresno Bee*, 10/2)

Los Angeles. Thinking he was Iranian, two men bumped a Mexican immigrant's car, followed him to his home, broke in and beat him in front of his wife and daughter, shouting insults against Arabs. (*Agence France Presse*, 10/2)

Los Angeles. Driver got into argument with Iranian driver while on road. He allegedly yelled racial threats and waved gun at both Iranian driver and passenger, also Iranian. Driver charged with making criminal threat, violating civil rights and exhibiting firearm. (*The Bulletin's Frontrunner*, 10/1)

Industry. Two Arab customers in bar beaten by four bouncers. One of the customers had been arguing with bartender over bill. Bouncers attacked him, breaking his nose and arm, while calling him a terrorist. Victim's cousin put his hands up, indicating he did not want trouble, asked "Are you gonna beat me?" The bouncers turned on him, breaking his ribs and bruising his eye. (*ADC*, 9/30)

San Francisco. Sean Fernandes, a 26-year old Indian, said he was walking with a white Australian friend early the morning of Sept. 15th, when they were approached by a man who called him a "dirty Arab," and punched him and the friend. His friend was stabbed in the ensuing brawl and remains hospitalized in critical condition. (*NY Times*, 9/19)

Central Valley. Police investigating death of Sikh man as possible hate crime. His body was found floating in nearby canal two days after family reported him missing. (*The Hotline*, 9/19)

San Gabriel. Egyptian-American grocery storeowner shot to death in what authorities said was robbery, but family called hate crime. Owner shot after confrontation with two customers, who sped off in Honda driven by a third man. Money in cash register not taken. (*Arizona Republic*, 9/18; *ADC*, 9/15)

San Mateo. Three-year old Sikh child hit in the head by gasoline bomb thrown through window of her home. The bomb did not explode. (*San Francisco Chronicle*, 9/18)

San Gabriel. While grocery shopping, woman dressed in Muslim clothing attacked by another woman who beat her while yelling, "America is only for white people." Victim taken to emergency room. (*Los Angeles Commission on Human Relations*, 9/17)

Beverly Hills. Noticing Koran charm worn around neck of Muslim bagel shop customer, another female customer attacked her, saying, "Look what you people have done to my people." She lunged at the Muslim woman

making derogatory comments but was restrained by two men. The victim called police; storeowner apologized to attacker and offered help. (www.hatewatch.org, 9/17)

Palmdale. Shots were fired into convenience store. (www.hatewatch.org, 9/17)

San Bernardino. 60-year old Arab American businessman victim of police brutality after Popeye's employee screamed as the businessman was leaving the restaurant, "He's an Arab, he's an Arab. Get him!" Her cries alerted police officer inside whom pursued the frightened customer in his squad car, allegedly yelling, "Get that f----- Arab". When Arab American arrived home, he was followed by helicopter and squad cars that rammed his car. Officers shot at him point blank with rubber bullets; another officer broke his nose with his baton. Man was taken to hospital, then to jail, charged with abating the law and assault with deadly weapon (his car). Inmates are threatening man. (*ADC*, 9/14)

San Francisco. Australian software engineer stabbed in chest by someone who allegedly thought engineer's friend, Australian of Indian and Hispanic heritage, was Arab. Men said stabbing took place when they were passed by a group while crossing street. Scuffle started when engineer was punched or bumped by one of the men, who spewed racial epithets and said, "We don't like Arabs", then wounded engineer. (*San Francisco Chronicle*, 9/14)

Los Angeles. Young Persian woman exiting restaurant with friend followed by another woman, who asked if she is Arab before punching her in the eye. (*Los Angeles Commission on Human Relations*, 9/14)

Los Angeles. Arab American woman threatened with gun. (*Sacramento Bee*, 9/14)

Los Angeles. Syrian American convenience store owner shot at twice during week; two shots on 9/11 and four shots 9/13. (*Los Angeles Times*, 9/14)

Los Angeles. Two Spanish-speaking women harassed and one beaten by woman in doctor's office. Woman allegedly yelled, "You foreigners caused all this trouble" before attacking them. (*Los Angeles Commission on Human Rights*, 9/12)

Fremont. Sikh student verbally harassed and physically assaulted at his school. (*San Jose Mercury News*, 9/12)

San Francisco. Palestinian American teenager beaten. (*San Francisco Chronicle*, 9/11)

VANDALISM

Anaheim. Pakistani restaurant gutted in blaze called suspicious by city officials. (*Orange County Register*, 9/28)

Los Angeles. Home of Pakistani family burned down after series of phone threats. (Family had moved to safer location before blaze. No injuries reported.) (*ADC*, 9/27)

Los Angeles. Car of Iranian family, parked in their driveway, attacked by man with baseball bat and hammer. (*Los Angeles Times*, 9/22)

Palo Alto. Tires of car belonging to Palestinian American slashed with knife or other sharp object. (*ADC*, 9/22)

San Jose. Fire officials reported there had been 14 suspicious fires since Sept. 11th. Two occurred 9/14 at homes of East Indian and Middle Eastern American families. (*San Francisco Chronicle*, 9/18)

West Sacramento. Sikh temple barricaded with tractor, truck and trailer that were padlocked, after refusing to angry caller's order to lower its religious flag to half mast. Perpetrator charged with felony vandalism and trespassing after he jumped into the temple's holy pool. (*Los Angeles Weekly*, 9/20)

Napa. Sikh American fast food restaurant manager found his car vandalized. (*Contra Costa Times*, 9/19)

San Jose. Afghan restaurant attacked with bottles and rocks. (*San Jose Mercury News*, 9/18)

Encino. Afghan/Persian restaurant destroyed in fire 9/17. (*Los Angeles Times*, 9/18)

San Diego. A cherry bomb exploded on the sidewalk outside the Islamic Center 9/16, forcing worshipers to evacuate the building during a prayer service. (*Los Angeles Times*, 9/18)

San Diego. Mosque struck by paintballs 9/14 and by gunfire during morning prayers 9/15. (*Boston Globe*, 9/14?)

Los Angeles. Pakistani Muslim returns to mall parking lot to find body of his car scratched in several places with "Nuke em". (www.hatewatch.org, 9/14)

Woodland Hills. Two students scrawled word "die" in Persian Club's booth at Pierce College. (*Sacramento Bee*, 9/14)

San Francisco. Bag of blood thrown at immigration office that serves Arabs. Anonymous caller told paralegal he left package 'for your brother Osama bin

Laden." (*Salon.com*, 9/13)

San Francisco. Perpetrator booked on suspicion of destroying property, interfering with another's exercising civil rights and one act of terrorizing. Bail was set at \$20,000; he was released 9/12 on own recognizance. (*San Francisco Chronicle*, 9/13)

San Francisco. A bag filled with blood was hurled at the door of a law office building in the Mission District 9/12 by someone who apparently mistook the building for an Islamic Community Center. The name of Osama bin Laden was scrawled on the bag. (*Philadelphia Inquirer*, 9/13)

Pacifica. Car with "Free Palestine" sticker vandalized. (*San Francisco Chronicle*, 9/13)

Yuba City. Hindu American awoke to find "USA" spray painted across hood of car and religious medallion that had hung from rearview mirror missing. (*Sacramento Bee*, 9/12)

Anaheim. Three teenagers hurled skateboard through window of Arab American-owned market. Police caught perpetrators and their parents apologized. (*AP*, 9/12)

THREATS

Huntington Beach. Man arrested for making a death threat against Iranian couple in their 70s. (*Los Angeles Times*, 9/25)

Palmdale. Five public high school students were sent home for their safety after note was found at school threatening World Trade Center attacks would be avenged 9/18 with "massacre" with their names listed beneath. (*AP*, 9/20)

Sign posted on freeway: "Kill All Arabs." (www.hatewatch.org, 9/17)

Moreno Valley. Man arrested on suspicion of making terrorist threats to radio station KHPY. Caller accused of leaving message on station's answering machine, threatening to damage tower. Police believe threat connected to station's Sunday morning program, "Islamic Perspective". (*The Press Enterprise*, 9/14)

San Diego. Caller to Middle Eastern grocery store asked if the owner sold rat poison, "I wish you do so I can poison you." (*San Diego Union-Tribune*, 9/14)

Los Angeles. Sign found in Hall of Records elevator, "Kill all towel heads." (*Los Angeles Commission on Human Relations*, 9/13)

San Jose. Islamic group received calls threatening lives of all Muslims.

Another caller said, "You ruined the country and you will all die!).
(www.hatewatch.org, 9/11)

HARASSMENT

University of So. California Muslim Public Affairs Council reported some students harassed on campus and some women have had their veils pulled off. (NBC-4 News, 9-14)

DISCRIMINATION /PROFILING

Los Angeles. Egyptian American business owner accused by deliverywoman of 'terrorist threats' (also sexual battery and imprisonment) on 10/2. Although police insisted he was not being arrested (and therefore not read Miranda rights), was not allowed to go to station on own volition, was handcuffed in front of pregnant wife, employees and customers; at station was photographed and fingerprinted and questioned. Passed voluntary polygraph test, released 10/4 on \$50,000 bail. Week of 10/14, computers and other equipment confiscated. On 10/22, judge granted prosecutors three-week continuance to find evidence of 'terrorist threat.' (AAI, 10/12, 10/24)

Stockton. Jordanian man, single father of two, fired from job at L3 Celerity systems in Cupertino. Said although week before attacks, weekly evaluation was 'as usual' positive, day after boss gave him negative review and forced him to report whereabouts every half hour. Jordanian lost job a week later in series of layoffs, though company kept technicians with less seniority. Has received no response to many job applications he has submitted since then. Is considering legal action. (Newhouse News, 10/17)

San Francisco. A teenage boy was denied entrance on a public bus due to his appearance. (San Francisco Chronicle, 9/25)

Los Angeles. Six passengers of Indian ethnicity brought to back of plane on flight from LAX to Washington Dulles. The pilot first questioned the men; FBI and INS agents arrived an hour later and interrogated passengers. Three passengers left plane because they were uncomfortable. (ADC, 9/26)

Fresno. Hairdresser stomps off; salon owner yells at Pakistani American client and orders him to leave immediately after he refused to answer hairdresser's questions about bin Laden and recent events. FBI agents went to man's home later that night and interrogated his wife. (ADC, 9/24)

Colorado

VANDALISM

Colorado Springs. "Terrorist on Board" spray painted during night on car belonging to Sikh American. "Terrorist" also painted on driveway. (AP, 9/18)

THREATS

According to University of Colorado police, library pillars spray painted with

	<p>"Nuke sand nigger", Arabs go home" and "Bomb Afghanistan". (<i>Colorado Daily via u-wire, 9/19</i>)</p> <p>Aurora. Muslim man heard eight shots fired outside of his home. Suspicious of stranger on sidewalk wearing a raincoat and ski mask seemingly keeping post-midnight vigil, he called police. (<i>ADC, 9/15</i>)</p> <p>Colorado Springs. Four men entered mosque, cursed at a worker, and threatened to burn down the building. (<i>Philadelphia Inquirer, 9/13, AP Online</i>)</p>
Connecticut	<p><u>ASSAULTS</u> Bridgeport. Brazilian waiter attacked on street by eight men who taunted and accused him being Arab. Waiter's face badly bruised and arm broken. (<i>Deutsche Presse-Agentur, 9/13</i>)</p> <p><u>VANDALISM</u> Bridgeport. Muslim arriving at mosque for afternoon prayer 9/17 found phone wires cut and threatening graffiti. (<i>AP, 9/17</i>)</p> <p><u>THREATS</u> Turban-wearing Sikh threatened by second-grade classmate, who said, "You better watch out - you're going to get beat up." She later explained to the principal, "He looks just like the guys they said did it on TV." (<i>AP, 9/20</i>)</p> <p>Bristol. Man threatened to blow up Arab American-run Subway restaurant. (<i>AP, 9/18</i>)</p>
District of Columbia	<p><u>ASSAULTS</u> Two women wearing Muslim headdress spat at on subway near White House. (<i>Plain Dealer, 9/14</i>)</p> <p><u>VANDALISM</u> Rocks thrown against front door and windows of former mosque inhabited by Turkish family. Prior, guests leaving the home were approached by man asking questions about family. Before walking away, said his name was "Osama bin Laden." (<i>ADC, 10/3</i>)</p> <p><u>THREATS</u> Number of threats received by Arab American Institute, including death threat to president, bomb threats and hate mail at office.</p> <p>Indian American stopped by car with four males who accused him of being terrorist and threatened, "we will bomb you." (<i>IACFPA, 9/18</i>)</p> <p>Islamic Center received bomb threats; closed as result. (<i>ADC, 9/13</i>) Sikh American leaving work accosted by pedestrians yelling verbal expletives; threatening to 'get' him and bomb him in retaliation for 9/11 attacks.</p>

(IACFPA, 9/17)

DISCRIMINATION/PROFILING

DC area. Department store employee subjected to hostile work environment. Alleges supervisor said government should restrict admission of Arabs and Muslims. 'better to prohibit them from living here because anyone of them can become a terrorist in waiting, even their children'. Supervisor is threatening to fire her (based on bad economy. Two other employees of Middle Eastern origin fired over past two weeks. (ADC, 9/28)

Florida

ASSAULTS

Punta Gorda. Gas station shot at by vandals. (ADC, 9/20)

Brooksville. A Muslim woman in a car was almost run off road by another driver. (St. Petersburg Times, 9/16)

Herando County. Mosque shot at and vandalized. (St. Petersburg Times, 9/14)

Sunrise. Islamic school principal, driving home with his sister and three children chased by men in Jeep. Jeep driver reached behind seat, yelling 'Where's my gun? Let me take care of them.' Principal called 911; when Jeep driver saw cell phone, made abrupt u-turn and sped off. (Sun Sentinel, 9/19)

VANDALISM

Jacksonville. Fire that destroyed storage shed in rear of restaurant with Middle Eastern name being investigated as arson. (Florida Times-Union, 9/27)

Port Charlotte. Roadside planter, shrubs and plastic sign burned at mosque (second vandalism that week). (ADC, 9/19)

Temple Terrace. "Muslims F---" found written on white door of family's garage 9/13. (St. Petersburg Times, 9/14)

St. Petersburg. Palestinian American man's brand new GMC truck found 9/12 with threatening note and splattered with paint. (St. Petersburg Times, 9/14)

THREATS

Deerfield Beach. Ku Klux Klan cards placed under windshield wiper of Egyptian man's car. (Sun Sentinel, 9/19)

DISCRIMINATION /PROFILING

Miami. Palestinian American student in care of legal guardian while father out of country was taken out of school by guardian concerned that father could not return, and was going to send him to relatives out of area. When

father advised that he could come back, she tried to reenroll student, but assistant principal rejected admission. Boy finally enrolled; first day back, was badly beaten by classmate urged on by father. Student now in night school; feels his presence is too provocative. (AAI, 10/5)

Tampa. Manager of airport hotel service terminated. Although half the workforce was laid off for lack of business, he was the only manager to lose his job. (ADC, 10/1)

Fort Lauderdale. Scottish/Lithuanian wife of Egyptian American forced to disembark a Southwest Airlines flight while bags and documents were once again checked. Her checked bags were removed from plane and flight took off without her. Apparently, flags were raised because she had traveled to Florida with husband; he returned to California (although also pulled off American Airlines flight, airline handled situation discreetly and held plane while checking his 'story'), she was to fly to Connecticut to visit family. (AAI, 10/8)

Tampa. Egyptian American prevented from boarding United Airlines flight to Cairo. As he was entering plane, was called back to ticket counter and informed that pilot refused to allow him on flight. Ground crews kind, put him on later flight to make connection to Cairo. (Pittsburgh Post-Gazette, 9/21; AAI 10/10)

Orlando. Two Pakistani businessmen forced to disembark US Airways plane. Takeoff delayed 45 minutes until security officers and US Airways representatives arrived. They requested the men leave because the captain did not feel comfortable with them aboard. (ADC, 9/17)

Georgia

ASSAULTS

Atlanta. Four men tried to stab a Sudanese man after telling him, "You killed our people in New York. We want to kill you tonight." (Atlanta Journal Constitution, 9/13)

Gwinnett. Following illegal U-turn, Arab American motorist pulled over by police sergeant in patrol car. Motorist alleges sergeant approached car while holding gun; ordered motorist out, threatened him, called him "bin Laden supporter" then searched his car. (ADC, 10/4)

THREATS

Atlanta. On Arab American woman's answering machine: "We know where you are and we can get you." (ADC, 9/14)

DISCRIMINATION/PROFILING

Savannah. Authorities boarded AirTrans flight to Atlanta and took away passenger. Airport officials told Savannah Morning News passenger's name similar to that of one on FBI watch list. After questioning, passenger was

	cleared and allowed to depart on later flight. (<i>ADC, 9/18</i>)
Illinois	<p><u>ASSAULTS</u></p> <p>Evanston. Chicago taxi driver and college student, Mustapha Zemkour (who was assumed to be of Arab descent) was injured Monday when two men—including a Cook County corrections officer—chased him on motorcycles, then allegedly hit him in the face and yelled, "This is what you get, you mass murderer." (<i>Chicago Tribune, 9/18</i>)</p> <p>Orland Park. Motorist drove alongside Arab family of four, screamed obscenities about the Sept. 11th events and began swerving as if to hit the family's vehicle. They were able to pull off to side road, but reluctant to report motorist's license plate number in fear of further harassment. (<i>ADC, 9/16</i>)</p> <p>Chicago. Man attacked gas station attendant he thought was of Arab descent with blunt end of 2-foot machete. Attacker arrested and charged with hate crime. (<i>Chicago Tribune, 9/13</i>)</p> <p>Chicago. Firebomb tossed at Arab American community center. (<i>AP, 9/13</i>)</p> <p>Palos Hills. Two Muslim students beaten at Moraine Valley College. Two Arab boys assaulted attackers in defense of the girls. (<i>NIAMC</i>)</p> <p><u>VANDALISM</u></p> <p>Chicago. Assyrian church set on fire; estimate \$200,000 damage. Fire being investigated as arson. (<i>Chicago Tribune, 9/24</i>)</p> <p>Chicago. Reports of vandalism. (<i>Chicago Tribune, 9/13</i>)</p> <p>Chicago. Arab American living above his place of business awakened by smoke coming from first floor. Fire was ignited by something thrown into building. Fire department called; police and FBI investigating as possible hate crime. (<i>ADC, 9/13</i>)</p> <p><u>THREATS</u></p> <p>Chicago. Several bomb threats reported. (<i>Chicago Tribune, 9/13</i>)</p> <p>Chicago. Man entered Arab American-owned grocery, approached owner with bag in his hands, claimed to have bomb and threatened to "blow up this store like you Arabs blew up the World Trade Center." Man arrested and charged with hate crime, assault and disorderly conduct. (<i>ADC, 9/13</i>)</p> <p>Chicago. High school crowd chanted threats at passing cars with occupants who appeared Arab. (<i>AP Worldstream, 9/13</i>)</p> <p>Chicago. While closing office of Arab American Action Network, three</p>

	<p>members threatened by man driving by: "We're going to make sure you guys are going to get yours!" (<i>AP Online</i>, 9/12)</p> <p><u>HARASSMENT</u> Chicago. Crowd of young people shouted anti-Arab insults at Bridgeview Mosque. (<i>Chicago Tribune</i>, 9/13).</p> <p><u>DISCRIMINATION/PROFILING</u> Chicago. Palestinian American medical technician told coworkers not comfortable and terminated from position. He had been suspended without pay after joking about image of Palestinians celebrating after 9/11 attacks. (<i>ADC</i>, 9/19)</p>
Indiana	<p><u>ASSAULTS</u> Fort Wayne. Two men attacked, robbed and cut the penis of an Indian man, calling him an Arab and saying, "to be an American you must be circumcised." (<i>MSNBC.Com</i> 10/1)</p> <p>Gary. Assault rifle fired more than 21 shots into Yemen native Hassan Awdah's gas station, 9/12. Awdah shielded by thick glass; gunman also shot through wall behind which Awdah crouched. No one was injured. Investigation turned over to FBI (<i>CNN.com</i>, 9/19)</p> <p>Palos Hills. Two Muslim female students beaten at Moraine Valley College. Two Arab male students assaulted offenders in defense of the women. (<i>ADC</i>, 9/11)</p> <p><u>DISCRIMINATION/PROFILING</u> Indiana couple, husband from Pakistan, claims that captain of Delta Flight matched their last names, Malik, to list of possible security threats and delayed flight until they could be searched. (<i>Evansville Courier Press</i>, 10/12)</p>
Iowa	<p><u>VANDALISM</u> Des Moines. Bottles were thrown and windows smashed at Bosnian bar and restaurant, 9/28. Assailants, wielding BB gun, hammers and bat, assaulted a woman in parking lot behind bar. Witnesses said assailants shouted obscene remarks about Bosnians and Muslims. Police have disputed these claims and believe incident was run-of-the-mill bar fight that stemmed from earlier conflict among customers. (<i>Des Moines Register</i>, 10/6)</p> <p>Evansville. Local man rammed his car at 80 miles per hour into Islamic Center. (<i>Washington Post</i>, 9/14)</p>
Kansas	<p><u>ASSAULTS</u> Topeka. Muslim student was attacked at Washburn University. (<i>MSNBC.Com</i>, 10/9)</p> <p><u>THREATS</u> Kansas City. Phone calls urging retaliation against Arabs and Muslims led to</p>

	<p>closing of Palestinian-American restaurant and two Islamic schools. (<i>Kansas City Star</i>, 9/13)</p>
Kentucky	<p><u>ASSAULTS</u> Islamic Meeting Places vandalized and one Indian student attacked because he was believed to be an Arab. (<i>AAI</i>, 9/13)</p> <p><u>HARASSMENT</u> Harrods Hill. Neighborhood sign: "Arabs are Murderers." Man refused neighborhood association's request to take it down. Two Arab Americans live in neighborhood. (<i>ADC</i>, 9/14)</p> <p><u>DISCRIMINATION/PROFILING</u> On Sept. 21st, in Northern Kentucky, outside Cincinnati, federal agents took the computers and personal papers of more than two dozen Muslims. On Sept. 22nd, said they had found nothing of concern. (<i>Cincinnati Enquirer</i> 9/24).</p>
Louisiana	<p><u>VANDALISM</u> Parish of St. Bernard. Islamic school and a number of businesses have been repeatedly vandalized. (<i>Times-Picayune</i> 9/18)</p> <p>New Orleans. Muslim-owned convenience store vandalized. (<i>ADC</i>, 9/14)</p> <p>New Orleans. Windows of mosque shot at with BB gun and neighboring Islamic school windows shattered by rocks. Two people arrested. (<i>ADC</i>, 9/13)</p> <p><u>HARASSMENT</u> Jefferson Parish. Schools were closed after classmates taunted students of Middle Eastern origin. (<i>Washington Post</i>, 9/15)</p>
Maryland	<p><u>ATTACKS</u> Belmont. Eyewitness reported Greek convenience store owners, believed to be Arab, attacked. Police contacted. (<i>ADC</i>, 9/29)</p> <p>Baltimore. Sikh-American pizza deliveryman threatened in parking lot of restaurant. Police responded but made no arrests. Attacker returned later that day, spraying the Sikh with pepper spray. Coworkers tried to restrain, but were also sprayed. Police and ambulance arrived; Sikh filed complaint 9/29, but was arrested 10/4 on charges of second degree assault (attacker alleged Sikh threatened to kill him). (<i>ADC</i>, 10/4?)</p> <p><u>VANDALISM</u> Resident found two nails underneath tires of both his and wife's cars. His antenna also bent and toothpicks broken in keyhole of his mailbox. (<i>ADC</i>, 10/6)</p> <p>Arab American woman reported excrement covering door handle of her car</p>

	<p>and long scratch on its side. (ADC, 9/22)</p> <p>Germantown. Rear window of minivan smashed while parked in front of Arab American home. Family targeted twice previously: while out driving, firecracker thrown in front of car. 16-year-old daughter attacked on Montgomery College campus by group of young adults. (ADC, 9/28, 9/21, 9/12)</p> <p>Rockville. Rug company owned by Palestinian set on fire. Owner reported threatening phone calls 9/11. (ADC, 9/11)</p> <p>Two adjoining buildings owned by a Palestinian burned to ground. (<i>Miami Herald</i>, 9/13)</p> <p>Burtonsville. Home damaged with graffiti; auto pushed out of driveway and hit; @ \$5,000 damage done to car. (AAI)</p> <p><u>THREATS</u></p> <p>Baltimore. Daughter of AAI president received threatening phone calls in dorm room at college. (AAI)</p> <p><u>HARASSMENT</u></p> <p>Gaithersburg. When Arab American construction worker reported constant threats and hostility received at work, supervisor responded "Well, don't you think they have a right to be angry?" Coworker acted as if he would attack with metal pipe. (ADC, 10/2)</p>
<p>Massachusetts</p>	<p><u>ATTACKS</u></p> <p>Holden. Police arrested and charged man with assault and battery to intimidate for race or religion, simple assault, two counts of assault and battery on a police officer, destruction of property and driving to endanger. Assailant was stopped at traffic light when he saw Middle Eastern looking van driver. He got out of his car, pulled driver out of his van, punched and yelled at him, striking several times before victim fought back. He then assaulted two police officers and destroyed property in police booking room. (<i>Boston Herald/AP</i>, 10/1)</p> <p>Fairhaven. Arab American attempting to obtain restraining against neighbors. Father hit with baseball bat, ending up in emergency room; tires of son's car slashed; followed and harassed with racial slurs, such as "hey you f----- Arab terrorist, you bombed the World Trade Center." (ADC, 9/19)</p> <p>Boston. 20-year-old Saudi Arabian Boston University student attacked 9/16, by group of men as he left a Back Bay nightclub. Student suffered two knife wounds in his arm and third puncture to his back. (<i>Boston Herald</i>, 9/18)</p> <p>Boston. FBI agents, mistaking her fiancé's last name with that of Mohammed</p>

Atta, dragged veiled Saudi woman down corridor of Westin Copley Place Hotel, handcuffed and beat her leaving a 6" scratch across her face. She had accompanied her family on numerous visits to Boston for father's medical treatment. Media reports of incident did not refer to error or include public apology by FBI. (*Boston Globe*, 9/16)

VANDALISM

Laurel. Car belonging to Indian immigrant spray painted with "Terrorist murderer"; tires slashed and windshield shattered. Police investigating as hate crime. (*ADC*, 9/19)

Fall River. Plastic bottle containing chemical hurled at Mobil gas station managed by Pakistani man. No one was hurt. (*Boston Herald*, 9/14)

Everett. Softballs inscribed with pro-American slogans including "God bless America" and "Freedom for all," thrown through window of cafe owned by a Greek American. Owner believes assailants were aiming for nearby Middle Eastern café, and missed target. (*Boston Globe*, 9/13)

Weymouth. Fire set at gas station owned by Lebanese man (police believe a man and a woman doused a pump with gas and set it on fire before running away). (*Boston Globe*, 9/13)

Plymouth. Pizza shop owned by Iraqi American badly damaged by fire. The owner had been receiving threatening calls prior to fire and bullet left at front door. (*Boston Herald*, 9/13)

Quincy. Two Middle Eastern markets vandalized. (*Boston Globe* 9/13)

Somerset. Three teenagers set fire to store they believed to be Arab owned (in fact owned by Indian American). Teens arrested and told police they wanted to "get back at the Arabic people for what they did to New York." (*Boston Globe*, 9/12)

HARASSMENT

Cambridge. Muslim Harvard University graduate student wearing hijab verbally and physically harassed on way to worship by four white males who tried to take off her hijab and reportedly said, "What are you doing here? Go home to your own country" (*Harvard University Wire*, 10/1)

DISCRIMINATION

Boston. On 10/8, Pakistani consultant with U.S. work visa pulled off United flight to Washington, DC area. Airline officials had identified him as security risk because his name is similar to one on FBI list of suspected terrorists. By time he was cleared by officials, plane had already departed. (*Wall Street Journal*, 10/23)

	<p>Boston. Indian-American flying to Los Angeles asked to disembark plane by United Airlines flight attendants who explained that passenger not comfortable with him on board. United put him on another flight, departing four hours later. (<i>NPR, Weekend All Things Considered, 9/17</i>)</p> <p>Boston Logan Airport. Various media report passengers pulled off three separate flights. Suspicions of flight crews determined to be unwarranted in each instance. (<i>Los Angeles Times, 9/16</i>)</p> <p>Boston area. Students of Tufts University Egyptian professor walked out of class after he entered classroom. (<i>NIAMC</i>)</p>
<p>Michigan</p>	<p><u>ASSAULTS</u></p> <p>Lincoln Park. 45 year old Yemeni-American Ali Al Mansoop shot 12 times in back and killed, 9/13. Attacker, former boyfriend of Mansoop's girlfriend, broke into their home, saying "I'm going to kill you for what happened in New York and DC". Attacker made full confession to police. (<i>ADC, 9/21, WDIV Detroit, ClickonDetroit.Com 9/21</i>)</p> <p>Fair Haven. Windows of Mazen Mislmanion's family service station were shot at 9/13. (<i>AP, 9/14</i>)</p> <p><u>VANDALISM</u></p> <p>Detroit Metro Airport. Two Arab Americans claim tickets they had placed with personal items in basket to pass through x-ray missing. Fear they were confiscated by security. (<i>ADC, 10/2</i>)</p> <p>East Lansing. Home of mosque caretaker shot at. Police providing protection. (<i>ADC, 9/27</i>)</p> <p>Detroit. Arab American-owned store destroyed by arson. Fire investigators found gasoline inside store; molotov cocktail, intact and unlit, outside building (<i>Detroit News, 9/23</i>)</p> <p>Detroit. Windows of Muslim Students Assoc. office at Wayne State University broken by vandals. (<i>Detroit News, 9/13</i>)</p> <p><u>THREATS</u></p> <p>Dearborn. Six bomb threats called in to major businesses. (<i>Detroit Free Press, 9/13</i>)</p> <p>Dearborn. Super Greenland supermarket owner reported two men in car yelled threats and racial slurs at Arab American customers. (<i>Detroit News, 9/13</i>)</p> <p><u>HARASSMENT</u></p> <p>Dearborn. Female customer at gas station insulted by man driving by who</p>

	<p>yelled, "Get out of America. Get out of America." (<i>ADC, 9/12</i>)</p> <p><u>DISCRIMINATION</u></p> <p>Detroit. Ahmed Esa, a Yemeni American fired from 16-year welding job; told by boss to "go home, you are Arabic, you are Muslim. Go home, pray to your leader, go to your mosque and pray. I don't want to see your face." Esa is suing. (<i>Detroit Free Press, 10/2</i>)</p> <p>Midland. Despite good record with company, Arab American truck driver suspended by branch manager for 'safety reasons'. When asked if suspension had anything to do with the attacks or his religion, manager responded affirmatively. (<i>ADC, 10/2</i>)</p> <p>Detroit Int'l. Airport. Avis Rent-A-Car employee of Lebanese origin terminated after being questioned by FBI for taking two pictures of Osama bin Laden from person distributing them at airport shouting 'this is the terrorist'. (<i>ADC, 9/26</i>)</p> <p>Detroit Int'l. Airport. Yemeni American man, waiting for aunt's flight to arrive from Yemen, publicly searched by U.S. marshals. Officers stopped when satisfied man was 'clear'. (<i>ADC, 9/25</i>)</p> <p>Detroit Airport. Federal Express employee asked if he is of Arab origin by Fed. Exp. Security Chief. Employee later suspended without pay, then called and asked to report back to work. (<i>ADC, 9/19</i>)</p>
Minnesota	<p><u>ASSAULTS</u></p> <p>Eagen. Indian American woman followed out of grocery store by three high school age boys. One pushed her against her car; another punched her in stomach and elbowed her in the back. As they left, said "This is what you people deserve." (<i>Minneapolis Star Tribune, 10/2</i>)</p> <p><u>THREATS</u></p> <p>Minneapolis. Palestinian-born businessman found mutilated squirrel and threatening note in his mailbox. He had also received hate mail at his office. (<i>ADC, 10/1</i>)</p> <p><u>DISCRIMINATION/PROFILING</u></p> <p>Four Arab-American men were removed from a Northwest jet and questioned by law enforcement after passengers allegedly refused to fly with them. (<i>AP, 9/21</i>)</p> <p>Minneapolis-St. Paul Int'l. Airport. Three Iraqi natives prevented from boarding Northwest flight to Salt Lake City because some of the passengers and crew were upset at their presence. NW officials said they regretted incident but bound by FAA rules. (<i>ADC, 9/20</i>)</p>
Missouri	<u>Threats</u>

	<p>St. Louis. Clerks in 7-11 store flooded with telephoned threats after caller to local radio station alleged they were celebrating 9/11 attacks. After making purchase, Red Cross worker threatened to shoot them if that was true. (<i>St. Louis Post-Dispatch, 9/14</i>)</p> <p>Forest Park. Palestinian-American owner of a market contacted police after someone entered store and threatened him. (<i>St. Louis Dispatch, 9/13</i>)</p> <p>St. Louis. Mosque received telephone threats. (<i>St. Louis Dispatch, 9/13</i>)</p>
Montana	<p><u>DISCRIMINATION/PROFILING</u> Highway Patrol officers pulled over caravan of "Arab-appearing" people with MA license plates after 911 call reported group of 15-20 people with olive skin driving 5 cars and talking to one another on walkie-talkies. When they were pulled over, it was learned that they were Puerto Ricans on way to start a church in Oregon. (<i>Missoulian, 9/14</i>)</p>
Nevada	<p><u>DISCRIMINATION/PROFILING</u> Palestinian American officer at Dept. of Corrections filed complaint with EEOC about hostile comments coworkers made about Arabs in the U.S. (<i>ADC, 9/14</i>)</p>
New Jersey	<p><u>ASSAULTS</u> Teaneck. Man hanging U.S. flag on his car approached by woman who asked if he was "Arab". When he responded "Yes, why", she replied "Because I was in the department store buying a rope to hang myself before you kill me." The man ignored her remark and continued hanging his flag with his back turned when she assaulted him with her fist and keys. He slapped her in the face, and she left. (<i>ADC, 9/19</i>)</p> <p>Muslim attendant at a service station punched in face by a motorist. (<i>AP State and Local Wire, 9/13</i>)</p> <p><u>VANDALISM</u> Molotov cocktail thrown at a Hindu temple. (<i>AP State and Local Wire, 9/13</i>)</p> <p>Garbage and stones thrown at car owned by Sikh. (<i>AP Worldstream, 9/13</i>)</p> <p>Two businesses owned by Indians were spray-painted with the words "Leave Now [expletive]." (<i>Philadelphia Inquirer, 9/13</i>)</p> <p>Portuguese American wife of Syrian reported car vandalized. (<i>ADC, 9/22</i>) (<i>ADC, 9/22</i>) Collingswood. Vandals spray painted "leave town" on walls of two Indian-owned businesses. (www.hatewatch.org, 9/12)</p> <p><u>THREATS</u> West Babylon. Man arrested and charged with possessing homemade metal pipe bomb and other explosive material. He showed pipe bomb to friends, saying he 'planned to use the bomb to get an Arab". Friends took the pipe</p>

	<p>bomb and called police. (<i>Bergen County Record</i>, 9/17)</p> <p>Carload of people drove by Arab neighborhood yelling "We're going to bomb you when you sleep!" (<i>AP State and Local Wire</i>, 9/13)</p> <p><u>HARASSMENT</u></p> <p>Turkish woman wearing Islamic head scarf verbally abused by woman who leaned out of her car and cursed at her. (<i>AP State and Local Wire</i>, 9/13)</p> <p><u>DISCRIMINATION/PROFILING</u></p> <p>A number of Pakistani immigrants reporting detainment and harsh treatment at the hands of FBI agents. (<i>Washington Post</i>, 10/3).</p>
New York	<p><u>ASSAULTS</u></p> <p>Bronx. Yemeni man working at newsstand hit on head with bottle by three men who dragged him to street, allegedly yelling, "You Arabs get out of my neighborhood. We hate Arabs! This is a war!" (<i>Daily News</i>, 9/30)</p> <p>Manhattan. Two drivers assaulted and suffered minor injuries. (<i>New York Times</i>, 9/24)</p> <p>Long Island. Police charge man with bias crime after he assaulted gas station attendant whose ethnic background he questioned. (<i>New York Post</i>, 9/19)</p> <p>Buffalo. On 9/16, Arab-American man assaulted by teenage employee at the Tops Market on Broadway. Police charged Brian K. Marshall, 18, with second-degree assault as a hate crime and aggravated harassment after the victim told police Marshall pushed a steel restroom door with both hands into his head. The victim, who briefly lost consciousness, said Marshall called him an "Arab terrorist," and that when he left the restroom, several employees and his alleged assailant laughed at him and refused to offer him aid. (<i>Buffalo News</i> 9/18)</p> <p>Stony Brook. Shots fired at home of Indian-American Stanford University graduate. (<i>San Jose Mercury News</i>, 9/18)</p> <p>Albany. Two college students hit in face, apparently because of their Middle Eastern heritage. (<i>New York Times</i>, 9/15)</p> <p>New York. Intoxicated 75-year old man tried to run over Pakistani woman in parking lot of shopping mall; followed her into a store and threatened to kill her for "destroying my country." (<i>AP Worldstream</i>, 9/13)</p> <p>Staten Island. Arab American soccer player for College men's team nearly run down by car. (<i>Daily News</i>, 9/13)</p> <p>Suffolk County. Man arrested for allegedly making anti-Arab threat and</p>

pointing pistol at gas station employee. (*San Francisco Chronicle*, 9/13)

Manhattan. Sikh man pounced on by three white men yelling "terrorist." (*New York Times*, 9/12) Ronkonkoma. Man arrested after waving pellet gun and shouting ethnic slurs at gas station attendant. (*Newsday*, 9/12)

Ardsey. When Arab American deli owner responded affirmatively to customer's asking if he was Arab, customer cursed and yelled at him. As deli owner attempted to escort him out of store, customer sprayed him with pepper spray. (*ADC*, 9/11)

Richmond Hills. Indian American attacked with baseball bat; hospitalized with severe injuries. (*IACFPA*, 9/18)

VANDALISM

Bronx. Over past two weeks two medallion taxis belonging to Muslim drivers set on fire. (*New York Times* 9/24)

Bronx. Nine parked livery cars and taxis vandalized. (60 to 75 percent of the city's medallion-cab drivers are of Arab, South Asian or North African descent.) (*New York Times* 9/24)

Buffalo. On 9/22, passing bicyclist smashed two windows of Arab-run convenience store. (*Buffalo News* 9/24)

Manhattan. Six to eight men harassed and threw rocks at 36 year old Arab American. (*New York Post*, 9/19)

Manhattan. Stones thrown through windshields of cabs in Central Park, apparently targeting dark-skinned drivers. (*Time*, 9/18)

Washington Heights. 35-year-old man complained to police that a man spit in his face and made anti-Arab remarks. (*Daily News*, 9/17)

Manhattan. When Muslim American reported to two patrol officers that he was spat upon and harassed, the officers allegedly responded "(your) people should have known about this before ... (you) deserve everything (you) get." (*ADC*, 9/17)

Brooklyn. Motorist blocked path of cab driver that appeared to be of Middle Eastern descent. Motorist pounded on car shouting, "Get out of the car, Arab. You are going to die, you Muslim." (*Daily News*, 9/14)

Nesconset. Grocery owned by Pakistani American target of apparent arson. (*Newsday*, 9/11)

THREATS

Manhattan. Staples employee harassed Arab American customer about his accent and threatened to cut his throat. Police were called and report filed. (ADC, 10/1)

Rochester. Contractor received daily threats and verbal assaults by coworkers since 9/11; include "Let's kill all the Arabs we find here"; "We're going to kill you and send you back where you belong".... (ADC, 10/1)

North Patchogue. Sign on fire department vehicle, driven by senior NPDF official: "Let's kill all the ragtops and turbanheads. Let God sort it out." (ADC, 9/26)

Manhattan. Message on television station answering machine: "F----- Arabs, I know where you live and I'm going to murder you...get out of my f----- country." (ADC, 9/23)

Bronx. Threatening, expletive filled messages including "you better watch your back, Muslim" left on Muslim Center voice mail throughout week. (ADC, 9/19)

Queens. Jordanian newsstand worker reported man threatened to kill him. (Daily News, 9/17)

Brooklyn. Arab American grocer subjected to racial slurs and threats after grocer attempted to pay delivery bill. The grocer was then told to call main office where manager made racist remarks. Incident reported to police. (ADC, 9/13)

Brooklyn. Woman picking up son from school threatened by 'older Caucasian man'. (CAIR, 9/11)

Hicksville. Sikh man chased him as he fled home. (Newsday, 9/11)

VANDALISM

Queens. Anti-religious graffiti scrawled on sides of Bangladeshi newspaper office. (New York Post, 9/19)

Manhattan. Threatening letters sent to upper east side residents who may be of Arab descent. (New York Post, 9/19)

Buffalo. Vehicle belonging to Arab American torched. Police and fire officials investigating. (Buffalo News, 9/17)

New York City. "Don't support terrorists" spray painted on awning of Afghanistan-owned 'Chickens 'R Us' restaurant. (Daily News, 9/17)

Brooklyn. Palestinian American head of Arab American Family Service

Center received several threatening calls, one saying, "you should all die for what you've done to my country." (*XINHUA, 9/12*)

HARASSMENT

Manhattan. Priority mail package containing dried pig's ear and remarks of bin Laden delivered to Afghan Mission. (*New York Post, 9/19*)

DISCRIMINATION/PROFILING

Manhattan. Permanent resident from Moroccan received no mail for some time since 9/11. When mail finally delivered, believes did not get all bank and credit card statements; contacted credit card companies to cancel account and issue new card with different address. Fears retribution if files complaint; is considering moving. (*AAI, 10/10*)

Manhattan. Man detained in New York. After 20 days, authorities would still not allow family to see him; did allow lawyer visit. Hearings scheduled three times; cancelled three times by FBI. (*AAI, 10/10*)

Rochester. Turkish man contacted EEOC after expected job offer was rescinded. Was told by company, "We decided we don' need you here." (*ADC, 9/28*)

Manhattan. Pakistani American computer analyst for Henry Electronics on one week assignment at NY Transit Authority. NYTA supervisor saw picture of man's wife with WTC buildings in background on laptop and said, "Oh boy, you're in real trouble." Short while later, supervisor told Pakistani he did not want him to work there; he was then also terminated from Henry Electronics. (*ADC, 9/21*)

Island Park. Muslim woman fired from part-time job at laundry. Had been there three years; boss said he didn't know she was Muslim. Although the woman claims he is afraid of her and she is 'loved' by the customers; he alleged they threatened to boycott store after hearing her say, "America had it coming" while watching destruction of World Trade Center on television. (*Newhouse News, 10/17*)

North Carolina

ASSAULTS

Greensboro. University of North Carolina Lebanese student attacked and taunted by two men who told him to "Go home, terrorist." They hit him with their fists, twisted his arm and broke his glasses. (*MSNBC.Com 9/19*)

VANDALISM

Charlotte. On 9/25, Arab American-run restaurant

Charlotte. On 9/25, Persian rug store vandalized with anti-Arab epithets, swastika, and the letters KKK. (*Charlotte Observer,)*

	<p>Charlotte. Windows broken and containers filled with gasoline left at Persian rug store. Police investigating whether attack is hate crime. (<i>AP, 9/18</i>)</p>
Ohio	<p><u>THREATS</u> Outside Cleveland. Two men posing as salesmen asked Arab American businessman if he was from Afghanistan, threatening to kick him if he was. The men were arrested. (<i>ADC, 10/3</i>)</p> <p><u>VANDALISM</u> Cortland. Fire set to hedge outside Indian American-owned gas station. (www.hatewatch.org; 9/19)</p> <p>Suburban Cleveland. Guru Gobind Singh Sikh Temple attacked with lit bottles of gasoline. (<i>New York Times, 9/18</i>)</p> <p>On 9/17 a 29-year-old man smashed his car through the entrance of an unoccupied Ohio mosque at 80 m.p.h., landing in a fountain. (<i>Chicago Tribune, 9/18</i>)</p> <p>Cleveland. Ford Mustang driven through entrance of Ohio's largest mosque. Mosque unoccupied at time; only driver injured. (Estimated damages: \$100,000) (<i>AP, 9/13</i>)</p> <p><u>DISCRIMINATION/PROFILING</u> Cleveland Int'l. Airport. Pakistani American reported that hours after passing intense security, he was singled out by police officers who scanned his bag twice with x-ray machine just before he was to board his flight. (<i>ADC, 9/22</i>)</p>
Oklahoma	<p><u>ASSAULTS</u> Tulsa. Police investigated attack on food store employee jumped by three people while leaving his apartment. He was knocked down, eyes covered and beaten. The men further threatened to "cut you like you cut our people." (<i>Tulsa World, 9/14</i>)</p> <p>Tulsa. Police classified beating of Pakistani native by three men outside of service station as hate crime. Victim hospitalized. (<i>Tulsa World, 9/11</i>)</p> <p><u>THREATS</u> Waurika. Fire broke out on roof of truck stop owned by Sikh after caller repeatedly threatened he wants to "kill all you Muslims" and "kill everyone up there who's not white." Closed circuit videotape showed man in pickup threw something onto roof before fire. (<i>Fort Worth Star Telegram, 10/2</i>)</p> <p><u>HARASSMENT</u> Oklahoma City. Motorists made obscene gestures outside Islamic Society building. (<i>AP Worldstream, 9/13</i>)</p>
Oregon	<p><u>ASSAULTS</u> Eugene. California woman arrested after attempting to pull turban off head of</p>

	<p>Sikh man she believed he was an Islamic extremist.</p> <p><u>VANDALISM</u> Vancouver. Muslim family new to neighborhood reported to Sheriff's office that 'murder' had been spray painted on their driveway. (<i>Oregonian</i>, 9/15)</p> <p>Portland. While shopping at Target, tires of Pakistani man's car slashed. Police investigating as possible hate crime. (<i>Oregonian</i>, 9/19)</p> <p>Gladstone. Woman reported racial slur against Arabs painted on street in front of her house. (<i>Oregonian</i>, 9/12)</p> <p><u>THREATS</u> Eugene. 33-year-old man arrested after making threatening phone call to Islamic Cultural Center. (<i>New York Times</i>, 9/18)</p> <p>Portland. Customers threatened to blow up store and homeland of Iraqi convenience store clerk. In fear, the clerk closed store early. (<i>Oregonian</i>, 9/14)</p>
<p>Pennsylvania</p>	<p><u>ASSAULTS</u> Philadelphia. Off-duty police officer pulled gun on Pakistani convenience store owner. (<i>Philadelphia Daily News</i>, 9/13)</p> <p>Philadelphia. Foreign-looking taxi drivers threatened. (<i>Philadelphia Daily News</i>, 9/13)</p> <p>Philadelphia. Muslim cab driver reported to police passenger broke his arm when he reached back to receive fare. (<i>Plain Dealer</i>, 9/13)</p> <p>Meadville. Female high school student of Middle Eastern descent attacked by man with knife, who yelled at her, "You're not an American. You don't belong here!" He was arrested and is currently in jail. (<i>Pittsburgh Post Gazette</i>, 9/18)</p> <p><u>THREATS</u> Threats made to Muslim and Arab students. (<i>Morning Call</i>, 9/15)</p> <p><u>HARASSMENT</u> Allentown. Harassing voice mail and e-mail that caused the Allentown mosque to cancel its services this week. (<i>Morning Call</i>, 9/15)</p> <p>Lehigh Valley. Muslim Association leaders reported prank telephone call and a carload of people shouted derogatory words at congregation members leaving the mosque. (<i>Morning Call</i>, 9/15)</p>

	<p>Exeter. Ten pigs' heads left outside mosque. (<i>Press Association, 9/13</i>)</p> <p><u>DISCRIMINATION/PROFILING</u></p> <p>Philadelphia. Mentally and physically disabled Lebanese American girl mistreated at school; officials 'unyielding'. Father hired lawyer to file complaint against school system. AAI providing resources. (<i>AAI, 10/10</i>)</p> <p>Philadelphia. Arab American teacher at Christian school told by principal that he was being replaced and they do not want him to return. When teacher asked for reason, principal stated "...because you're Arab." (<i>ADC, 9/13</i>)</p>
Rhode Island	<p><u>ASSAULTS</u></p> <p>On 9/16, pregnant Muslim woman wearing shawl was using payphone when car pulled up behind her and someone in the car threw rock, hitting her foot. She turned to see what was happening when the passenger, a young woman of around 20, threw another rock and missed. (<i>ADC, 9/16</i>)</p> <p>State fire investigators detonated explosive device left at gas station owned by Lebanese Americans. Police investigating as possible hate crime. (<i>Providence Journal Bulletin, 9/18</i>)</p> <p>Three teenagers arrested for throwing molotov cocktail on roof of convenience store. Told police they wanted to "get those Arabs for what they did to us." (<i>AAI, 9/13</i>)</p> <p><u>VANDALISM</u></p> <p>Pawtucket. Anti-Arab epithet spray-painted on garage door of gasoline station owned by a Lebanese-American. (<i>Providence Journal, 9/18</i>)</p> <p>Cranston. Pakistani-owned convenience store vandalized. (<i>MSNBC.Com, 9/14</i>)</p> <p><u>DISCRIMINATION/PROFILING</u></p> <p>Providence. Police forced Sikh telecommunications consultant and ten others off Amtrak train and questioned them for two hours. Consultant charged with possession of concealed weapon: three-inch knife traditionally carried by Sikh men. (<i>ABC, CNN</i>)</p>
South Carolina	<p><u>VANDALISM</u></p> <p>Charleston. Vandals broke window of minivan belonging o man of Middle Eastern descent. (<i>Post and Courier, 9/15</i>)</p>
Tennessee	<p><u>ASSAULTS</u></p> <p>Memphis. Muslim woman badly beaten on way to worship. (<i>Dallas Morning News, 9/16</i>)</p> <p><u>THREATS</u></p> <p>Waverly. Two Arab American clinicians received threatening phone calls telling them to "go home and get out of our country"; their daughter in</p>

	Atlanta also received threatening calls. (<i>ADC, 9/12</i>)
Texas	<p><u>ASSAULTS</u></p> <p>Iraqi man shot in leg after struggle with assailant, described as African-American, greeted man in Arabic and then pulled out a gun. Police are investigating as possible hate crime. (<i>MSNBC.Com, 9/26</i>)</p> <p>(<i>Check if duplicate of above</i>) Houston. Man of Middle Eastern ancestry wounded by gunman. Attacker approached victim as he was getting out of his car, asked for cigarette, then held handgun to victim's head, cursed and accused him of having blown up the country and killing his family and friends. Victim grabbed gun and was shot in left hip. Attacker fled scene on foot. (<i>AP, 9/21</i>)</p> <p>North Texas. Shots were fired at Pakistani home. No one was injured. (<i>MSNBC.Com, 9/24</i>)</p> <p>Fort Worth. While visiting Botanic Gardens, two Ethiopian men were stabbed by white man who apparently approached them and, without saying a word, stabbed each one before fleeing. The two men were hospitalized. (<i>Fort Worth Star Telegram, 9/22</i>)</p> <p>Dallas. Pakistani grocer in shot and killed 9/15. (<i>LA Times, 9/18</i>)</p> <p>San Antonio. Three bullets struck Sahara Grocery. (<i>ADC, 9/11</i>)</p> <p>San Antonio. Shiraz Iranian Restaurant attacked. (<i>ADC, 9/11</i>)</p> <p><u>VANDALISM</u></p> <p>Austin. Carpet store owned by Palestinian American destroyed by fire. (<i>American Statesman, 9/23</i>)</p> <p>Carrollton. Window at Islamic Center of broken by slingshot. (<i>LA Times, 9/18</i>)</p> <p>Houston. Auto mechanic shop owned by Pakistani torched in early morning fire. No one was injured. Son of owner received threats a few days prior. Federal law enforcement agents and Houston Fire Department arson unit investigating. (<i>Houston Chronicle, 9/17</i>)</p> <p>Austin. Incendiary devices thrown onto roof of Nation of Islam mosque. (<i>ADC, 9/17</i>) Irving. Six bullets shattered windows of Islamic Center. (<i>AP Worldstream, 9/13</i>)</p> <p>Denton. Islamic Society fire bombed. (<i>Dallas Morning News, 9/13</i>)</p> <p>Professor of Middle Eastern language and cultures at University of Texas</p>

	<p>spat on by passerby. (ADC, 9/11)</p> <p><u>THREATS</u> North Texas. Two death threats prompted Pakistani-American to shut down his gas station. (AP, 10/9)</p> <p>Austin. Arab American realtor received phone threats, ordering him to "leave this country or else!" (ADC, 9/13)</p> <p><u>HARASSMENT</u> San Antonio. Two Muslim girls verbally abused in high school. (ADC, 9/11)</p> <p><u>DISCRIMINATION/PROFILING</u> Houston. Palestinian anesthesiologist at Baylor College of Medicine was assisting three physicians during surgery, when one began to complain about Islam and Palestinians. When the anesthesiologist told him he is Palestinian, an argument ensued, and the physician ordered him out of the operating room. Physician's behavior reported to in-charge nurse and hospital vice president by nurse and doctor who were present. (ADC, 9/26)</p> <p>San Antonio. Ashraf Khan, a 32-year-old Pakistani businessman, removed from Delta Airlines flight after the flight crew said they did not feel comfortable with him aboard. (Los Angeles Times, 9/20; St. Petersburg Times, 9/17?)</p> <p>Palestinian woman sent home by boss, who said he didn't know if she would be celebrating death of Americans in the office. (ADC, 9/12)</p>
Utah	<p><u>VANDALISM</u> Salt Lake City. 31-year-old man doused Pakistani-owned Curry in a Hurry restaurant with gasoline and ignited it, 9/13. (Associated Press, 9/27; Salt Lake Tribune, 9/13?)</p>
Virginia	<p><u>ASSAULTS</u> Roanoke. Arab American family suffered series of incidents: mother blocked from entering her apartment by group of young men; fist-sized rocks thrown through two-year old daughter's open bedroom window; their two cars scratched and dented; mother again prevented from entering and hit with baseball; rocks again thrown through windows almost hitting daughter. (ADC, 9/30) Falls Church. Muslim hit in head with baseball bat near Dar Al Hijra mosque. (ADC, 9/28)</p> <p>Fairfax County. On 9/23, white male pulled to stop light ahead of Middle Eastern person, got out of vehicle and approached Middle Easterner with hammer, yelling, "You guys blew up the Trade Center. You m----- f-----", and spit on victim's hood. (Fairfax County Police Report, 10/10)</p> <p>Fairfax. On 9/19, teenagers playing basketball harassed; one hit in stomach</p>

and face. (*Washington Post 9/21; Fairfax County Police Report, 10/10*)

Alexandria. Afghan American approached by passerby who asked his ethnicity. When Afghan replied affirmatively, passerby screamed, "I'm going to kill you" before assaulting him. (*CBS, 9/16*)

Falls Church. On 9/14, Afghan American assaulted after verbal altercation in a parking lot. (*Washington Post 9/18*)

Fairfax County. On 9/11, intoxicated man entered Chinese restaurant, punched patron in back of head; yelled at staff about being foreigners, should not be in this country and referred attacks. (*Fairfax County Police Report, 10/10*)

Fairfax County. On 9/11, man asked woman where she was from, said 'I'm gonna show you where I'm from', returned with gun, stated he wouldn't be afraid to use it, pointed it at woman and told her to go back to her country. (*Fairfax County Police Report, 10/10*)

VANDALISM

Fairfax County. On 9/30, mailbox smashed; drive-byes yelled 'why are you here; go back to where you came from.' (*Fairfax County Police Report, 10/10*)

Springfield. On 9/29, vehicle parked at mall, 'keyed' with "F--- Palestine Terrorists" and strewn with garbage and U.S. postage stamp. (*Fairfax County Police Report, 10/10*)

Home of Vietnamese woman and husband of Arab origin and found epithets written in yard. (*AAI, 10/10*)

Fairfax. Large swastika burned into lawn of Middle Eastern family's home. (*ADC, 9/28*)

Fairfax County. On 9/28, vehicle rammed by driver who said 'go back to your country you foreigner.' (*Fairfax County Police Report, 10/10*)

Fairfax County. On 9/16, Pakistani-owned store trashed by suspects making statements, "You are terrorists. You support Osama bin Laden. This is our country, not yours." (*Fairfax County Police Report, 10/10*)

Fairfax County. "F----- Arab" scratched on vehicle hood and headlights broken, 9/16. (*Fairfax County Police Report, 10/10*)

Fairfax County. Graffiti in boys' restroom at Oakton High School, 9/14: "Towel Heads got 2 Options 1) Go F----- Home 2) Hit the Curb." (*Fairfax*

County Police Report, 10/10)

Officials at two mosques reported vandalism and threatening calls.
(Washington Post, 9/13)

Old Town Alexandria. Islamic bookstore vandalized. Owner found two bricks on premises with notes that said, "You come to this country and kill. You must die as well." And "Arab murderers." *(Washington Post, 9/13)*

Fairfax County. Student found note, 9/13, stating "Die you stupid half-Pakistani...Burn in Hell Die!" *(Fairfax County Police Report, 10/10)*

Fairfax County. Sign indicating site as future home of Muslim society vandalized and attempt made to set it on fire, 9/14. "F--- the Arabs" written on sign. *(Fairfax County Police Report, 10/10)*

Fairfax County. "F--- Arabs written on door of home. *(Fairfax County Police Report, 10/10)*

Fairfax County. Anti-Arab and anti-Jewish statements spray painted on walking tunnels, 9/13. *(Fairfax County Police Report, 10/10)*

Fairfax County. "F--- Islam" and "F--- Arabs spray painted on property, 9/12. *(Fairfax County Police Report, 10/10)*

THREATS

Resident reported threatening phone call. Caller first mocked his name, asked to speak with wife, and then said, "You're all going to die." *(ADC 10/3)*

Fairfax County. Madina Afghan Kabob restaurant received threatening phone calls 9/14 warning family to go back to Afghanistan or they would be killed. *(Fairfax County Police Report, 10/10)*

Fairfax County. On 9/23, note found on windshield: "Muslim children are hell bound"; on daughter's bike: "Muslims must die!" *(Fairfax County Police Report, 10/10)*

Fairfax County. Washington Islamic Academy received letter, 9/18, stating all Muslims should be shot and killed and are evil; on 9/12, received nasty phone calls; people driving by yelling and making obscene gestures. *(Fairfax County Police Report, 10/10)*

James County. Woman arrested for threatening to bomb mosque. Coworker contacted police after woman emailed her "...I am making plans to bomb the mosque in Hampton." *(Daily Press, 9/13)*

Hampton. Police investigating phone threat received by Islamic Center and

mosque. Male voice threatened "prepare to die." (*Daily Press*, 9/13)

HARASSMENT

Fairfax County. Arab female stopped at traffic light 9/22, white male in another vehicle yelled "You are not wanted here you animals! Go blow up another building." (*Fairfax County Police Report*, 10/10)

Charlottesville. Arab American physician verbally assaulted by neighbor. (*ADC*, 9/17)

Sterling. Members of Islamic community arriving at Red Cross Center to donate blood found hallway painted with "Die pigs." And "Muslims Burn Forever." (*XINHUA*, 9/12)

Fairfax County. On 9/11, several white males in front of K-Mart asking people to sign petition to support America, displayed banner with anti-Islamic sentiments, shouted at people who appeared to be of Middle Eastern descent. (*Fairfax County Police Report*, 10/10)

Manassas. Hate messages left on answering machine of mosque (*AP Worldstream*, 9/13)

DISCRIMINATION/PROFILING

Ashburn. Egyptian American fired from Wal-Mart. Called into office at store and questioned by FBI in early October. Coworkers uncomfortable working with him. FBI and Wal-Mart would not comment. (*Newhouse News*, 10/17)

Woodbridge. Three-year old boy of half-Arab origin dismissed from day care. Mother enrolled him in another center, to receive call from assistant director withdrawing admission after having conversation with former director. Mother alleges decision based on ethnicity; not, as director stated, discipline problem. (*ADC*, 10/2)

Falls Church. Egyptian American and coworker fired from tax revenue office after reporting anti-Arab slur made by their boss to an attorney and city manager. Apparently, after hearing news that suspect connected with 9/11 attacks had been detained, the boss allegedly joked, "Did he have a rag on his head?" In termination letters to the two men, the boss claimed they had "challenged my integrity, impeding my authority to operate this office. Your action is harassment and a breach of trust in our relationship." (*ADC*, 9/24)

Manassas. Although their children often played in front of their homes, neighbors contacted Social Services when Algerian children were seen outside unsupervised. (*ADC*, 9/24)

Dulles. United Airlines flight to London delayed four hours after Saudi pilot sought to fly in cockpit. United pilot refused and returned to gate. Saudi pilot

	<p>and two other men detained and questioned by FBI and INS for three hours. FBI field office spokesman said 'their story check out...they were sent on their way.' (Pittsburgh Post Gazette9/21)</p> <p>K-Mart closing manager demoted to hourly-basis employee. Employee suspects demotion because of his national origin and 9/11 attacks; does job well and never been written up. (ADC, 9/17)</p>
<p>Washington</p>	<p><u>ASSAULTS</u></p> <p>Snohomish. Man indicted by a federal grand jury on hate-crime charges for allegedly pouring gasoline over a man's vehicle and then firing a handgun at two people leaving the Idriss Mosque on 9/13. (<i>Seattle Times</i>, 9/27)</p> <p>SeaTac. Sikh taxi driver assaulted by man he picked up at bar. Suspect asked driver if he was a terrorist. Then he choked the cabby, punched him in the face, pulled out part of his beard and knocked the turban off his head. (<i>MSNBC.Com</i>, 9/15)</p> <p>Seattle. Three white men attacked a Somali woman with a knife 9/16 in a grocery parking lot. (<i>Seattle Times</i>, 9/14)</p> <p>Seattle. 53-year-old man charged with first-degree assault and attempted arson after dousing car at Islamic Idriss Mosque with gasoline. When confronted by car owner, he tried to fire at him, 'squeezing a shot into the ground'. The man then drove his own car into a telephone pole. (<i>Seattle Post-Intelligencer</i>, 9/13)</p> <p>Snohomish. Man accused of spitting at Middle Eastern woman picking up her children at elementary school, arrested. (<i>Seattle Times</i>, 9/14)</p> <p>Prison fights broke out over Muslim slurs. (<i>AP Worldstream</i>, 9/13)</p> <p>Seattle. Suspect arrested for suspicion of malicious harassment. Allegedly threatened to burn down mosque and walked into mosque wearing his shoes. When asked to leave, pushed mosque leader in chest. (<i>Seattle Post-Intelligencer</i>, 9/11)</p> <p><u>VANDALISM</u></p> <p>Lynwood. Dar Alarqam Mosque defaced with black paint. The mosque also received a flood of hate calls. (<i>MSNBC.Com</i> 9/24)</p> <p>Tacoma. A small arson fire damaged synagogue Sunday in what police termed a hate crime. (<i>Seattle Post-Intelligencer</i>, 9/24);</p> <p>Edmonds. Iranian-owned grocery vandalized. (<i>Seattle Times</i>, 9/18)</p> <p>A Kenmore man is in jail awaiting charges for allegedly pouring gasoline on</p>

a Northgate mosque and firing a gun when employees there tried to stop him. (*Seattle Times*, 9/18)

THREATS

Vancouver. Man arrested after leaving messages on local Islamic school's voice mail; mosques, other schools and cultural centers threatening to blow them up in retaliation for Sept. 11 attacks. (*Vancouver Sun*, 10/5)

Seattle. Man charged with malicious harassment for threatening to burn down mosque. (*Seattle Times*, 9/18)

Seattle. Two men threatened East African home improvement store employee. (*AAI*, 9/16)

Seattle. Man stormed into mosque, threatening to burn it down. (*Seattle Times*, 9/16)

Spokane. Threats made at two gas stations owned by Arab Americans. (*The Hotline*, 9/13)

Seattle. Sign hung from footbridge: "Death to all Palestinians." Sign later removed (*Seattle Post Intelligencer*, 9/11)

Seattle. Police report local mosques received not only abusive calls but also several death threats, including 'we will kill you like sheep'. (*Seattle Post Intelligencer*, 9/11)

Taxicab dispatcher received calls threatening company to "tell your Muslim drivers not to drive today", among other threats. (*Seattle Times*, 9/11)

DISCRIMINATION/PROFILING

Seattle. 12 year American Airlines employee escorted off AA flight to Dallas with another passenger of Arab origin. They were informed "pilot does not feel safe with you guys on board and we have notified the FBI to come here and question you." Interrogation and background check performed by three Seattle police officers, after which they were permitted to board a later AA flight to Dallas. Apologetic stewardess later informed them that pilot of second flight was asked by FBI agent if he feels comfortable flying with "two Middle Eastern men." (*ADC*, 9/26)

Wisconsin

THREATS

Beloit. On 9/29, Jordanian man reported that threat to blow up his store if he did not leave the country in 24 hours. Forty-four-year-old man arrested and charged with conveying 'false bomb threat,' making threatening phone call and probation violations. All charges filed as hate crimes. (*MSNBC.Com*, 10/9)

Wyoming

THREATS

Laramie. American-born Muslim woman and her children chased from Wal-Mart by angry shoppers yelling for her "to go back to her country."
(Associated Press, 9/11)