

The Status of
Muslim Civil Rights
in the United States
2005



Unequal Protection

CAIR

Council on American-Islamic Relations

453 New Jersey Avenue, SE

Washington, DC 20003

www.cair.com

The **Council on American-Islamic Relations (CAIR)** is a non-profit grassroots organization dedicated to presenting an Islamic perspective on issues of importance to the American public. CAIR is the largest American Muslim civil rights and advocacy organization in the United States, serving the interests of over seven million American Muslims.

The vision of CAIR is to be a leading advocate for social justice and mutual understanding.

CAIR's mission is to enhance a general understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims and build coalitions that promote justice and mutual understanding.

CAIR would like to acknowledge Mrs. Khadija Athman, Ms. Sanaa Ansari, Mr. Noman Bajwa and CAIR's Civil Rights Department in the compilation of the 2005 report. We would also like to acknowledge Ms. Taiyyaba Qureshi and Mr. Mohamed Sabur for their research during their 2004 summer internship at CAIR.

Questions about this report can be directed to:

Arsalan T. Iftikhar
National Legal Director
Council on American-Islamic Relations
453 New Jersey Avenue SE
Washington DC 20003

Tel: 202/488-8787

Fax: 202/488-0833

Email: arsalan@cair-net.org

To obtain copies of this report, please contact publications@cair-net.org

FAIR USE NOTICE: This report may contain copyrighted material the use of which has not always been specifically authorized by the copyright owner. It is being made available in an effort to advance the understanding of political, human rights, democracy and social justice issues, and so on. It is believed that this constitutes a 'fair use' of any such copyrighted material as provided for in section 107 of the US Copyright Law. In accordance with Title 17 U.S.C. Section 107, the material on this site is distributed without profit to those who have expressed a prior interest in receiving the included information for research and educational purposes. If you wish to use copyrighted material from this site for purposes of your own that go beyond 'fair use', you must obtain permission from the copyright owner.

The material in this report is provided for educational and informational purposes only, and is not intended to be a substitute for an attorney's consultation. Please consult your own attorney in order to get counsel on your situation. The information in this report does not constitute legal advice.

No part of this publication may be stored in a retrieval system, transmitted or reproduced in any way, including but not limited to, photocopy, photograph and magnetic or other record, with the prior agreement and written approval of the publisher.

FRONT COVER: Southern Poverty Law Center (SPLC) available at http://www.tolerance.org/news/article_tol.jsp?id=280

Table of Contents

Glossary.....	4
Executive Summary.....	5
Background and Findings.....	7
The Dragnets of John Ashcroft.....	8
The Case of U.S. Army Captain James Yee.....	15
The Case of Brandon Mayfield.....	22
The ‘No-Fly List’ and the Cases of Tariq Ramadan and Yusuf Islam.....	29
The Case of Sami Al-Hussayen.....	36
2004 CAIR Civil Rights Findings.....	41
Sample Cases from 2004 CAIR Civil Rights Database.....	52
Conclusion.....	58
Appendix.....	59

Glossary of Islamic Terms

Allah	The most commonly used linguistic term for ‘God’ in Arabic. Allah is the same monotheistic God worshipped by Christians and Jews.
Beards	Many devout Muslim men grow beards to follow the tradition of the Prophet Muhammad.
Eid	Islamic holiday which occurs twice a year. Eid al-Fitr is the holiday celebrating the end of Ramadan on the first day of the 10 th lunar month of the Islamic calendar. Eid al-Adha, the most important Islamic holiday, commemorates the end of Hajj in Mecca, Saudi Arabia every year.
Hajj	The fifth pillar of Islam. It is the annual pilgrimage to Mecca, Saudi Arabia and every able-bodied, financially capable Muslim must perform Hajj at least once in their lifetime.
Halal	Permissible by Islamic law.
Hijab	Modest clothing that many Muslim women choose to wear in public. Generally, it is loose-fitting clothes and includes a head covering.
Imam	A prayer leader.
Kufi	A cap worn by some Muslim men.
Masjid	The Arabic word for ‘mosque’ - an Islamic house of worship.
Niqab	A face veil.
Prayer	The second pillar of Islam. Islam mandates structured prayers five times a day. Muslims are also required to attend a weekly congregational prayer on Fridays. During the month of Ramadan, devout Muslims also observe extended evening prayers.
Quran	Islam’s revealed text.
Ramadan	The Islamic holy month of fasting and the ninth lunar month of the Islamic calendar.

Executive Summary

"True patriotism hates injustice in its own land more than anywhere else."¹

-- **Clarence Darrow**

Nearly four years removed from the 9/11 terror attacks, the greatest tragedy to befall our nation in modern history, our country has learned certain lessons that will hopefully lead us to a stronger, safer and more vibrant society for people of all races, faiths and cultures.

Since the 9/11 attacks, the most disturbing legal trend is the growing disparity in how American Muslims are being treated under the law on many different levels.

In order to fully understand the status of civil rights in the post-9/11 era, it is essential that this report offer a documented historical overview of major federal law enforcement initiatives, high-profile national cases and statistical evidence of anti-Muslim discrimination in



CAIR candlelight vigil commemorating 9/11 victims

the United States, particularly those incidents that occurred during the last calendar year of 2004.

In 2004, CAIR processed a total of **1,522** incident reports of civil rights cases compared to 1,019 cases reported to CAIR in 2003. This constitutes a **49 percent increase** in the reported cases of harassment, violence and discriminatory treatment from 2003 and marks the highest number of Muslim civil rights cases ever reported to CAIR in our eleven year history.

In addition, CAIR received 141 reports of actual and potential violent anti-Muslim hate crimes, a **52 percent increase** from the 93 reports received in 2003.

Overall, **10 states** alone accounted for **almost 79 percent** of all reported incidents to CAIR in 2004. These ten states include: **California (20.17%), New York (10.11%), Arizona (9.26%), Virginia (7.16%), Texas (6.83%), Florida (6.77%), Ohio (5.32%), Maryland (5.26%), New Jersey (4.53%) and Illinois (2.96%).**

There have also been decreases, both in real and proportional terms, in certain categories from the previous year as well. For example, workplace discrimination complaints to CAIR constituted nearly 23 percent of complaints in 2003. In 2004, the number of workplace discrimination complaints decreased to almost 18 percent of the total complaints.

¹ <http://antiwar.com/quotes.php>

In addition, complaints involving governmental agencies decreased from 29 percent in 2003 to 19 percent in 2004. Internet harassment of American Muslims also decreased from 7 percent of total complaints in 2003 to less than 1 percent of total reported complaints in 2004.

By far the greatest increase from last year, in both real and proportional terms, occurred in the area of unreasonable arrests, detentions, searches/seizures and interrogations.

In 2003, complaints concerning law enforcement techniques accounted for only 7 percent of all reported incidents. In 2004, however, these reports rose to almost 26 percent of all reported cases to CAIR.

Although not a scientific study, there are several factors which may have contributed to the increase in total number of reports to CAIR over the past year. These include, but are not limited to, the following:



CAIR 2004 Civil Rights Press Conference at National Press Club

1. An ongoing and lingering atmosphere of fear since the September 11 attacks against American Muslims, Arabs and South Asians;
2. The growing use of anti-Muslim rhetoric by some local and national opinion leaders;
3. Local Muslim communities, through the opening of new CAIR chapters and regional offices, now have more mechanisms to monitor and report incidents to CAIR at the grassroots level;
4. Following the infamous legacy of the USA PATRIOT Act, other federal legislation and policies which severely infringe on the civil and constitutional rights of all Americans continue to be passed;
5. Increased public awareness about civil liberties and the impact of federal law enforcement initiatives on constitutional and civil rights.

In our conclusion, CAIR recommends that further congressional inquiries, inspector general reports from federal agencies and impact litigation continue to be used to ensure that the civil and legal rights of all Americans are never placed in jeopardy again.

Background and Findings

In the months directly following 9/11, Attorney General John Ashcroft, using his powers under section 412 of the now infamous USA PATRIOT Act², rounded up and imprisoned well over 1,200³ Muslim and Arab men based solely on pretextual immigration violations. The most disconcerting fact about these mass round-ups was the fact that the Justice Department refused to disclose the detainees' identities, give them access to lawyers or allow them to have contact with their families.

In April 2003, Inspector General Glenn A. Fine reported that at least 1,200 men from predominantly Muslim and Arab countries were detained by law enforcement officials nationwide.⁴ An August 2002 Human Rights Watch report documents cases of prolonged detention without any charge, denial of access to bond release, interference with



© MGN Online

detainees' right to legal counsel and unduly harsh conditions of confinement for the over 1,200 detainees.⁵ Georgetown University law professor David Cole said that, "Thousands were detained in this blind search for terrorists without any real evidence of terrorism, and ultimately without netting virtually any terrorists of any kind."⁶

In addition to the indiscriminate immigrant dragnet after September 11, several high profile cases against American Muslims further stigmatized the American Muslim community.

For example, after spending seventy-six days in solitary confinement and being labeled a 'spy' in most media circles; where can Army chaplain and West Point graduate Captain James Yee go to regain his respectability after being falsely accused of treasonous crimes that could have resulted in the death penalty? Where might Oregon attorney Brandon Mayfield reclaim his good name after being falsely linked by the FBI to the Madrid train bombings of March 11, 2004? How does Sami

² H.R. 3162 available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107

³ *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, U.S. Department of Justice Office of the Inspector General, April 2003 at 1 available at <http://www.fas.org/irp/agency/doj/oig/detainees.pdf> The Inspector General conceded in his official report that a senior officer in the Office of Public Affairs stopped reporting the cumulative count of detainees after 1,200 because the "statistics became too confusing. *Id* at note 2.

⁴ *Id.*

⁵ "U.S. Supreme Court Should Review and Reject Secret Detentions," Human Rights Watch press release, September 30, 2003 available at <http://www.hrw.org/press/2003/09/us093003.htm>

⁶ Linda Feldmann and Warren Richey, "Has post-9/11 dragnet gone too far?" *The Christian Science Monitor*, September 12, 2003 available at <http://www.csmonitor.com/2003/0912/p01s04-uspo.html>

Al-Hussayen resume a normal life with his family after being found not guilty of ‘aiding terrorists’ while serving as a webmaster and exercising his First Amendment right to free speech?

The American Muslim community has always categorically condemned acts of terrorism and believes that those who break the law should be prosecuted to the fullest extent of the law. However, in order to remain consistent with the constitutional hallmarks of due process and ‘equal protection’ under the law; it is essential that our law enforcement agencies enforce and apply the law in a consistent manner to all people rather than selectively target people based on their religious or ethnic affiliation.

It is time once again for American society to reclaim its true legal tradition and judge a person on the criminality of their acts; not on the color of his skin or the religion to which she adheres.

THE DRAGNETS OF JOHN ASHCROFT

Background

Under United States immigration law, an ‘absconder’ is defined as an "...alien who, though subject to... [deportation], has failed to surrender for removal or to otherwise comply with the order."⁷ According to a January 2002 memorandum sent to federal immigration and law enforcement officials, the Deputy Attorney General of the United States estimated that there are approximately 314,000⁸ absconders, or deportable illegal aliens, living in the United States today. Of these 314,000, only about 6,000⁹, **less than 2 percent**, originate from Muslim or Arab nations. Although over 90 percent of absconders are from Latin American countries, the Justice Department began selectively targeting absconders only from predominantly Muslim and Arab countries in the past few years. However, their selective targeting of Muslims and Arabs after September 11 bore almost no criminal fruits. By the end of May 2002, the Justice Department admitted that out of 314,000 absconders, only 585 had been located. More embarrassingly; not a single terrorist had been apprehended.¹⁰

Whereas all Americans have been greatly affected by 9/11 and its aftermath, young males from Arab and Muslim countries have been most profoundly affected by the dragnet conducted by the Department of Justice in our ongoing “war on terror.” In addition to the law enforcement

⁷ Memorandum, Office of the Deputy Attorney General, “Guidance for Absconder Apprehension Initiative” January 25 2002. See also <http://www.usvisanews.com/articles/memo2163.shtml>

⁸ *Id.*

⁹ See *Id.*

¹⁰ See Dan Eggen and Cheryl W. Thompson, "United States seeks thousands of fugitive deportees; Middle Eastern men are focus of search," *Washington Post*, January 8 2002: A01.

dragnets conducted by the Justice Department after 9/11, certain congressional legislation has also been passed which has stirred great debate in all American circles as to how to best balance national security interests whilst still safeguarding the civil liberties guaranteed to every American by our constitution.

The Secret Roundup

Glenn A. Fine, Inspector General for the Department of Justice, officially reported that at least 1,200 men from predominantly Muslim and Arab countries were detained by law enforcement officials nationwide within two months of 9/11.¹¹ The Inspector General conceded in his official report that a senior officer in the Office of Public Affairs stopped reporting the cumulative count of detainees after 1,200 because the “statistics became too confusing.”¹²



Former Attorney General John Ashcroft

In August 2002, Human Rights Watch (HRW) released a 95-page report, entitled *Presumption of Guilt*, which documented cases of prolonged detention without any charge, denial of access to bond release, interference with detainees’ right to legal counsel, and unduly harsh conditions of confinement for the over 1,200 detainees.¹³ HRW’s findings were later confirmed by Inspector General Fine’s report, which also identified a pattern of “physical and verbal abuse” by correctional staff at the Metropolitan Detention Center (MDC) in Brooklyn, New York.¹⁴

The September 11 detainees comprised citizens from more than 20 countries. The largest number, 254 (or 33 percent), were from Pakistan, more than double the number of any other country.¹⁵ The second largest number (111) was from Egypt and there were also substantial numbers

¹¹ *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, U.S. Department of Justice Office of the Inspector General, April 2003 at 1 available at <http://www.fas.org/irp/agency/doj/oig/detainees.pdf>

¹² *Id.* at note 2.

¹³ “U.S. Supreme Court Should Review and Reject Secret Detentions,” Human Rights Watch press release, September 30, 2003 available at <http://www.hrw.org/press/2003/09/us093003.htm>

¹⁴ Kelli Arena and Terry Frieden, “U.S. report critical of 9/11 detainee treatment,” CNN, June 3, 2003 available at <http://edition.cnn.com/2003/LAW/06/02/detainees/>

¹⁵ *Id.* at 21.

of detainees from Jordan, Turkey, Yemen and India.¹⁶ The ages of the detainees varied, but by far the greatest number, 479 (or 63 percent), were between the ages of 26 and 40.¹⁷

The fruits of these legally suspect and egregiously overarching dragnets was succinctly summed up by Georgetown University law professor David Cole when he said that, “Thousands were detained in this blind search for terrorists without any real evidence of terrorism, and ultimately without netting virtually any terrorists of any kind.”¹⁸

The “List of 5,000”, NSEERS (“Special Registration”) and US-VISIT Programs

On November 9, 2001, Attorney General John Ashcroft directed the FBI and other federal law enforcement officials to seek out and interview at least 5,000 men between the ages of 18 and 33 who had legally entered the United States on non-immigrant visas in the past two years and who came from specific countries linked by the government to terrorism.¹⁹ The list of individuals was comprised solely on the basis of national origin; for even the Justice Department acknowledged that it had no basis for believing that any of these men had any knowledge relevant to any terrorism investigation.²⁰

Subsequently, the FBI and other law enforcement officials began arbitrarily visiting mosques, schools and homes to conduct interviews with these 5,000 Muslim and Arab men who were lawfully residing in the United States. According to the American Civil Liberties Union (ACLU), although these were allegedly ‘voluntary’ interviews, “...the interviews were highly coercive and few felt free to refuse.”²¹

In March 2002, the Justice Department announced another round of interviews. This time, they were targeting 3,000 Arab, Muslim and South Asian men who again were legally residing in the U.S. as students or visitors.²² This time around, however, many law enforcement officials expressed concern over the mistrust that these witch hunts would cause in certain immigrant communities.

Community policing has always been a hallmark of American law enforcement typified by community members reporting crimes in their area to law enforcement officials. Many key law

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* note 6.

¹⁹ *Sanctioned Bias: Racial Profiling Since 9/11*, American Civil Liberties Union (ACLU), February 2004 at 5 available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15102&c=207>

²⁰ *Id.*

²¹ *Id.*

²² *Posted on* AILA InfoNet at Doc. No. 28au2001 (Apr. 5, 2002)

enforcement officials anticipated the problems that the implementation of this new policy targeting immigrant communities would create.

For example, Denver Chief of Police Gerry Whitman said that, “Communication is big...and an underpinning of that is trust...If a victim thinks that they’re going to be a suspect in an immigration violation, they’re not going to call us, and that’s just going to separate us even further.”²³

In June 2002, Attorney General John Ashcroft instituted the National Security Entry Exit Registration System, more commonly referred to as NSEERS.²⁴ One of the most ambiguous and publicly debated aspects of NSEERS was known as “Special Registration.” Special Registration required all male nationals over the age of 14 from twenty-five



NSEERS Protesters at a New York City rally

countries to report to the government to be registered and fingerprinted. With the sole exception of North Korea, every single one of the 25 countries²⁵ on the Special Registration bulletin was Muslim or Arab.²⁶ The ACLU denounced the plan as “a thinly veiled effort to trigger massive and discriminatory deportations of certain immigrants.”²⁷

In December 2002, up to 700 men and boys from Iran, Iraq, Libya, Sudan and Syria were arrested in Southern California by federal immigration authorities after they had *voluntarily* complied with the NSEERS “call-in” program. Some of these people were college students who were guilty only of not attending enough classes for a given semester. Others were just awaiting the outcome of their green card applications.

In response, the Center for Constitutional Rights (CCR), the Council on American-Islamic Relations (CAIR), the Arab Anti-Discrimination Committee (ADC) and other plaintiffs filed a class action lawsuit against Attorney General John Ashcroft on behalf of the hundreds of men and boys who had been unfairly arrested in Southern California in violation of their Fourth and Fifth Amendments rights.²⁸

²³ *Supra* note 50 at 6.

²⁴ *Fact Sheet: National Security Entry Exit Registration System*, U.S. Department of State, June 5, 2002 available at <http://usinfo.state.gov/topical/pol/terror/02060509.htm>

²⁵ In addition to Iran, Iraq, Libya, Sudan and Syria, the 25 “Special Registration” countries include Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan and Kuwait.

²⁶ *Id.*

²⁷ *Supra* note 50 at 6.

²⁸ Available at <http://news.corporate.findlaw.com/legalnews/us/terrorism/cases/civil.html>

In one year alone, the Special Registration program registered 83,310 foreign nationals, placing 13,740 into deportation proceedings.

Of these 13,740 deportations, not a single one of these individuals was ever charged with a terrorism crime.²⁹

In January 2004, the Department of Homeland Security (DHS) suspended a portion of the Special Registration (NSEERS) program and officially launched the “U.S. Visitor and Immigrant Status Indicator Technology” or US-VISIT program.³⁰ Many American advocacy groups, communities and individuals who had roundly criticized Special Registration for its blatantly prejudicial design and shoddy implementation foresaw similar potential problems with the implementation of the US-VISIT program as well.

"Contrary to assertions by the Homeland Security Department, the US-VISIT program is an addition to -- not a substitute for -- the notorious Special Registration (NSEERS) program that singled out Arab and Muslim men because of their national origin and that continues to subject them to special and confusing requirements," said Timothy Edgar, legislative counsel for the American Civil Liberties Union (ACLU)³¹. "Only one part of the special registration program -- the part that requires re-registration at local immigration offices -- was suspended last year. But, Arab and Muslim men are still subject to different requirements than other visitors."³²

The USA PATRIOT Act (H.R. 3162)

The editors of *Esquire* magazine once wrote that, “If there is one thing that always comes out of a terrible tragedy, it is really dumb legislation.”³³

On October 25, 2001, a mere 45 days after the September 11 attacks, Congress passed with virtually no debate, House Resolution 3162 entitled, “**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism” Act³⁴, which has come to be ominously known worldwide as USA PATRIOT.

²⁹ Cam Simpson, “Aspiring politician at center of policy,” *Chicago Tribune*, November 16, 2003 available at

<http://www.chicagotribune.com/news/specials/chi-111603tossed-sidebar-story.1.3565717.story?coll=chi-site-nav>

³⁰ “ACLU Says New Border Fingerprinting System Likely To Sow Confusion, Tracking of Arab and Muslims Based on National Origin Will Continue,” American Civil Liberties Union (ACLU) press release, January 5, 2004 available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=14649&c=206>

³¹ *Id.*

³² *Supra* note 62.

³³ The Editors of *Esquire Magazine*, *Esquire The Rules: A Man's Guide to Life*, New York, Hearst Books, 2003

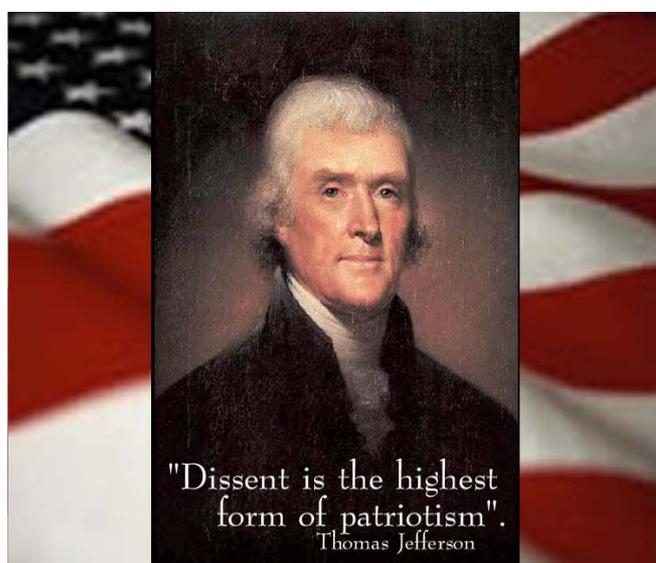
³⁴ Full text available at <http://thomas.loc.gov/cgi-bin/query/D?c107:4:./temp/~c107CatuiX::>

USA PATRIOT, at over 340 pages long, amends over 50 current federal statutes and was passed in the Senate by a vote of 98-1 with the lone dissenting vote being Democratic Senator Russell Feingold of Wisconsin.³⁵

Many provisions of USA PATRIOT have opened a new chapter in the debate on the application of constitutionally suspect laws. Although not all 340 pages of USA PATRIOT Act are legally controversial, there are major sections of the law which should tremendously concern those who cherish due process, free speech and other fundamental protections guaranteed by the United States Constitution.

For example, Sections 411 and 802 of USA PATRIOT broadly expand the official definition of ‘domestic terrorism’, so that college student groups who engage in certain types of protests could very well find themselves labeled as ‘terrorists’. For example, the Sheriff of Hennepin County, Minnesota once declared that the student groups “Anti Racist Action,” “Students Against War” and “Arise” were potential ‘terrorist’ threats.³⁶

Under Sections 215 and 505 of USA PATRIOT, law enforcement officials are given broad access to any type of record – sales, library, financial, medical, etc. – without having to show probable cause of any crime. USA PATRIOT also forbids the holders of this information, such as university librarians and college registrars, from disclosing that they have ever provided such records to federal officials.



A University of Illinois survey of American public libraries found that at least 545 libraries have been asked for records by law enforcement in the year following 9/11 alone.

According to the American Association of Collegiate Registrars and Admissions Officers, approximately 200 colleges and universities have turned over student information to the FBI, INS and other law enforcement agencies.³⁷

The “sneak-and-peak” provision of USA PATRIOT (Section 213) allows law enforcement agencies to conduct secret “sneak-and-peek” searches of anyone’s home or apartment without a

³⁵ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00313

³⁶ <http://www.aclufreedomtour.org/issues.html>

³⁷ Sara Gamay and Diane Lee, “Patriot Act Encourages National Insecurity,” *The (Georgetown) Hoya*, November 7, 2003 available at <http://www.thehoya.com/viewpoint/110703/view3.cfm>

warrant or even notification to the owner. This means that investigators could potentially enter anyone's place of residence, take pictures, download computer files and seize items without informing them of the search until days, weeks or even months later.³⁸

Since its inception in October 2001, the debate over privacy and constitutional issues raised by USA PATRIOT has motivated more than 4 states and 357 cities, representing over 55 million people in 44 states,³⁹ to pass resolutions officially condemning portions of USA PATRIOT in their local or state legislatures. In addition to resolutions passed in



more than 200 smaller cities, the list of successful CAIR joins congressmen at anti-USA PATRIOT Press Conference resolutions includes those passed in the large metropolitan cities of New York⁴⁰, Los Angeles, Chicago, Detroit, St. Louis and Philadelphia.⁴¹ In addition, the states of Hawaii, Alaska, Maine and Vermont have also passed statewide resolutions condemning portions of USA PATRIOT as being unconstitutional and infringing on individual rights.

Privacy and civil rights advocates, both Democratic and Republican, have also called for greater congressional oversight on any extensions or additions to USA PATRIOT. In addition to state and local governments, several bipartisan national organizations have also adopted similar pro-civil liberties resolutions condemning USA PATRIOT. Among them are the National League of Cities (NLC), American Conservative Union (ACU), the American Library Association (ALA), the Japanese American Citizens League (JACL), National Association for the Advancement of Colored People (NAACP), the Organization of Chinese Americans (OCA) and Veterans for Peace.⁴²

Even traditionally conservative voices like former Speaker of the House Newt Gingrich, Republican Senators Larry Craig of Idaho, Arlen Specter of Pennsylvania and Lisa Murkowski of Alaska, have all publicly voiced criticism of USA PATRIOT.

³⁸ *Supra* note 68.

³⁹ "Largest City to Date Passes Pro-Civil Liberties Resolution; Los Angeles Rejects Bush's Call to Continue Civil Liberties Curtailment," American Civil Liberties Union (ACLU) Press Release, January 21, 2004 *available at* <http://www.aclu.org/news/NewsPrint.cfm?ID=14765&c=206>

⁴⁰ Michelle Garcia, "N.Y. City Council Passes Anti-Patriot Act Measure," *The Washington Post*, February 5, 2004 at A11.

⁴¹ *Supra* note 66.

⁴² *Id.*

Douglas Dow, professor of government at the University of Texas perfectly summarized the national grassroots movement to oppose USA PATRIOT: "...It is necessary for us to secure our values in those institutions closest to home and to rely on ourselves and our local officers, rather than waiting for the courts or Congress to defend minorities from racial targeting, or protect the privacy of our personal records."⁴³

THE CASE OF U.S. ARMY CAPTAIN JAMES YEE

Background

James Yee was born in Springfield, New Jersey to Chinese-American parents and graduated from West Point Academy in 1990. In 1991, he converted to Islam and adopted the Islamic name Yusuf⁴⁴. Captain Yee left active duty in 1993, joining the United States Army Reserves so that he could go to Syria to learn Islam and Arabic, preparing to become one of the U.S. Army's first Muslim chaplains.⁴⁵ It was during his visit to Damascus that he met and married his wife, Huda.⁴⁶ When he returned from Syria, Captain Yusuf Yee became a chaplain with the 29th Signal Battalion at Fort Lewis, Washington and was stationed there during the September 11th attacks.

In November 2002, Yee was transferred as an army chaplain to Guantanamo Bay, Cuba, where he would minister Muslim prisoners and teach his superiors about Islam and pertinent issues relating to the 660 detainees being held at Camp X-Ray.⁴⁷ During this time, Captain Yee and other Muslim workers would use a vacant office in the prison compound for prayers and some meals.⁴⁸

Acts of Espionage?

On September 10, 2003, Captain Yee arrived at the Jacksonville (FL) Naval Air Station on leave for a one-week vacation. Investigators at Guantanamo Bay had 'tipped off' customs agents at the airport that Yee was possibly carrying classified materials. A customs agent testified at an Article 32⁴⁹ military investigation that he had been 'tipped' to stop Captain Yee and that he confiscated

⁴³ Douglas Dow, "Liberty starts at home," *Fort Worth (TX) Star-Telegram*, March 8, 2004 available at <http://www.dfw.com/mld/dfw/news/opinion/8133567.htm?1c>

⁴⁴ Yusuf is the Arabic version of the name Joseph.

⁴⁵ Rivera, Ray. "Pentagon to investigate case of Fort Lewis chaplain." *Seattle Times*, August 5 2004.

⁴⁶ Parker, Laura. "The ordeal of Chaplain Yee." *USA Today*, May 16 2004.

⁴⁷ "Yousef Yee Charged With Adultery, Storing Porn on Gov't Computer." *Fox News Channel*, November 26 2003. Topics ranged "from the history of Islam to insights on the rise in suicide attempts" among the detainees

⁴⁸ *Supra* note 8.

⁴⁹ An Article 32 hearing is the military equivalent of a grand jury proceeding or hearing.

"suspicious" documents from him.⁵⁰ Federal agents say the captain was found in possession of sketches of the military prison at Guantanamo Bay and lists naming U.S. interrogators and imprisoned Taliban and al-Qaida fighters.⁵¹ After being searched and found in possession of these classified documents, Captain Yee was arrested.

Thus began Captain Yee's seventy-six day confinement⁵², the vast majority of this ordeal was spent in solitary confinement without him being convicted of any crime.

At his confinement hearing on September 12, 2003, a Navy prosecutor argued that Yee should be held under maximum-security conditions since he was a 'flight risk'. This determination was made despite the fact that Captain Yee was a commissioned army officer with no history of fleeing a subpoena.

On September 16, 2003, Yee was subjected to sensory-deprivation treatment and driven to Charleston, South Carolina.

Shackled, blindfolded and deafened by covers over his ears, he was then transported to the Navy brig and given the same treatment used on Camp X-ray prisoners being flown to Cuba. Court papers from the confinement hearing reported that Captain Yee was being charged with espionage, spying, aiding the enemy, mutiny or sedition, and disobeying an order. Some media reports were already speculating that Captain Yee could face the death penalty if convicted.⁵³ Surprisingly, details of Yee's arrest appeared in the media before he was ever charged with a crime.



Army Chaplain Captain James Yee

A September 20, 2003 *Washington Times* article⁵⁴ proudly proclaimed "Islamic Chaplain is charged as spy" and proceeded to lay out details about the charges against him. Such media reports before any charges were levied against Captain Yee led many to believe that there had indeed been leaks by government officials to the media.⁵⁵

Captain Yee was finally brought to trial on October 10, 2003. Despite the severity and 'treasonous' nature of the accusations originally levied against Captain Yee, he was indicted on only

⁵⁰ Rowan Scarborough. "Yee case on hold as military falters." *The Washington Times*, December 12 2003.

⁵¹ *Supra* note 7.

⁵² *Supra* note 8.

⁵³ *Supra* note 11.

⁵⁴ Rowan Scarborough, "Islamic chaplain is charged as a spy," *Washington Times*, September 20, 2003 available at <http://www.washtimes.com/national/20030919-105619-9614r.htm>

⁵⁵ *Supra* note 8.

two much lesser charges; counts of failing to obey orders.⁵⁶ The Department of Defense's Southern Command, which oversees Guantanamo Bay, reported that Yee was charged with "taking classified material to his home and wrongfully transporting classified material without the proper security containers or covers."⁵⁷ Air Force Master Sergeant Jose Ruiz, a spokesman for the Southern Command, reported that the Army "had sufficient evidence that [Yee] violated the procedures in place for classified material given what he had in his possession."⁵⁸ After his trial, Yee's status was reduced to low security.⁵⁹

Inhumane Treatment

Without being convicted of a crime, Captain Yee was imprisoned under maximum security conditions in 23-hour solitary confinement for an astonishing grand total of 76 days.⁶⁰ According to his army-appointed civilian lawyer, Eugene Fidell, Yee was let out of confinement for only one hour a day for exercise which he had to perform wearing leg iron shackles and handcuffs.⁶¹ Personnel at the Navy brig in Charleston refused to recognize his status as a commissioned officer and required him to identify himself as an E-1, the lowest enlisted rank.⁶² Fidell also reported that brig personnel were "needlessly interfering with his daily prayers and religious practices" by refusing to provide him a prayer rug, a liturgical calendar or telling him the time of day or direction of Mecca.⁶³

"They let him languish in solitary confinement for 76 days. That's outrageous. When he saw his legal counsel, he was in leg irons," said John Fugh, a retired Army judge advocate general. "We don't treat commissioned officers that way. I don't care what they did."⁶⁴

From Treason to Pornography?

Captain Yusuf Yee was finally released from prison on November 25, 2003 after two and a half months of confinement. Instead of issuing an official apology for unjustly imprisoning a commissioned U.S. Army officer for seventy-six days; the Army thought it would be prudent to now charge Captain Yee with adultery and storing pornography on a government-issued computer.⁶⁵ The

⁵⁶ "Gitmo Chaplain Charged." *CBS News*, October 10 2003.

⁵⁷ Guy Taylor, "Muslim Chaplain Charged by Army." *The Washington Times*, October 10 2003.

⁵⁸ "Guantanamo Muslim chaplain charged." *Al-Jazeera*, October 11 2003.

⁵⁹ Mike Barber, "Yee reunited with family." *Seattle Post-Intelligencer*, April 6 2004.

⁶⁰ "Chaplain's prosecutors focus on porn, sex charges" CNN.com, December 8 2003 available at <http://www.cnn.com/2003/LAW/12/08/yee.hearing.ap/>

⁶¹ *Supra* note 7.

⁶² *See* note 20.

⁶³ *See* note 21..

⁶⁴ *Ibid.*

alleged adultery was said to have occurred with Navy Lt. Karyn Wallace⁶⁶ between July and September 2003.⁶⁷ The pornography was said to have been stored on his government-issued computer at Guantanamo Bay.

Yee was now scheduled to face an Article 32 hearing, the military legal equivalent to a grand jury or preliminary hearing.⁶⁸ Meanwhile, a US Southern Command spokesman said the military would graciously 'allow' Captain Yee to return as a chaplain to the base at Fort Benning, Georgia, but that he would not be allowed to have contact with any prisoners at Guantanamo.⁶⁹

The Article 32 hearing on the new charges against Captain Yee was postponed six times before finally being cancelled altogether.⁷⁰ The first postponement occurred on December 2, 2003 when the hearing was postponed after military officials realized they had 'mishandled classified information'. These Army officials seemed to have committed the same 'mishandling' which was one of the initial charges in Yee's litany of 'treasonous' charges. Apparently, officials accidentally released pages from Yee's diary to his defense attorneys. The prosecution even admitted that it was uncertain if Yee even possessed classified materials when he left Guantanamo Bay in September 2002.⁷¹ There would be four more subsequent court postponements until March 19, 2004.

Finally, on March 19, 2004, all criminal charges against Captain James Yee, including failure to obey orders and the mishandling of classified information, were dropped. However, the Army still would not admit Captain Yee's innocence despite the fact that they had just dropped every single charge against him. General Geoffrey Miller's reasoning for dismissing the charges was not because Yee was innocent, but due to "national security concerns that would arise from the release of the evidence."⁷²

Although Yee had now been transferred to a post at Fort Meade, Maryland⁷³, his ordeal was unfortunately far from over.

Although not a criminal offense, 'adultery' is punishable under the Uniform Military Code of Justice (UCMJ), the legal standard for soldiers in the armed forces. At a non-criminal administrative

⁶⁵ "Yousef Yee Charged With Adultery, Storing Porn on Gov't Computer." *FOX News*, November 26, 2003 available at www.foxnews.com/%2Fstory%2F0%2C2933%2C104082%2C00.html

⁶⁶ *Supra* note 8.

⁶⁷ *Supra* note 25.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See www.captainyee.com

⁷¹ Mike Barber, "Yee reunited with family." *Seattle Post-Intelligencer* April 6 2004.

⁷² *Supra* note 70.

⁷³ Rowan Scarborough, "Army, captain near deal in espionage case." *The Washington Times*, March 16 2004.

hearing on March 22, 2004, Yee was given a reprimand for the adultery and pornography charges.⁷⁴ Although he was never convicted of a crime and would now be a free man, Yee and his civilian defense attorney, Eugene Fidell, reiterated his innocence and appealed the reprimand.

Complete Exoneration and Freedom

On April 14, 2004, General James T. Hill, head of the Southern Command, granted Captain Yee's appeal, dropping all remaining reprimands from Captain Yee's record.⁷⁵ General Hill stated that he granted Yee's appeal because of the "extensive media attention given....[to] Chaplain Yee's personal misconduct...While I believe that Chaplain Yee's misconduct was wrong," General Hill said, "I do not believe, given the extreme notoriety of his case in the news media, that further stigmatizing chaplain Yee would serve a just and fair purpose."⁷⁶

Cleared of all charges against him, Yee finally returned as an Army chaplain at his home post of Fort Lewis, Washington in early May 2004. He was, however, placed under a strict 'gag order' not to wear his uniform in public when making comments about his case and was told he should be careful when speaking publicly so as to not to undermine military "loyalty, discipline or unit morale."⁷⁷

Denunciations of Army Abound

Throughout Captain Yee's case, numerous critics, including former military prosecutors, judges and congressmen, have been demanding further examination. Pointing to media leaks, lack of evidence, unjust confinement and unusual courtroom procedures, critics of the Army often felt that Yee was treated unfairly and was being targeted because of his faith. Most observers found it odd that despite the severity of the 'espionage' charges for which Captain Yee was initially arrested; charges for which he could have been given the death penalty, Captain Yee received only a simple reprimand for adultery. Eventually, even that reprimand was rescinded.

Retired Coast Guard judge Kevin Barry would be one of the first to speak out against the injustice against Captain Yee. He said that, "This is a case that's so obviously wrong that [even] people who don't know military law are, if not outraged, then very concerned about what

⁷⁴ Laura Parker, "The ordeal of Chaplain Yee." *USA Today*, May 16 2004 available at http://www.usatoday.com/news/nation/2004-05-16-ye-cover_x.htm

⁷⁵ "Muslim Army chaplain wins adultery appeal." CNN.com, April 14 2004.

⁷⁶ *Supra* note 74.

⁷⁷ *Supra* note 75.

happened." Speaking about the dismissal of charges, Judge Barry said, "There apparently was no evidence. If they had the goods, they would have prosecuted."⁷⁸

Certain patterns also emerge when Captain Yee's case is compared with other terrorism-related cases, noted Bob Barr, a former Republican congressman from Georgia. Congressman Barr noted that, "What we're seeing in Guantanamo, and perhaps in this case, is what happens when you've removed any judicial oversight over what the government is doing."⁷⁹

Of course, Yee's lawyer, Eugene Fidell, has consistently spoken out against major discrepancies in the case and has often called upon the Army to apologize for their vilification of Captain Yee. Fidell spoke about the lack of evidence against his client.

"When you see a gulf between the shrill charges and this anthill of evidence...you have to wonder." He also noted that the prosecutors never showed the defense any evidence of the classified materials Yee was suspected of carrying. "The government has never produced the evidence that it believes was classified, so I am somewhat at a loss...We were playing Hamlet without Hamlet here."⁸⁰

In finally realizing the blatant injustice committed against Captain Yee, four United States Congressmen called for a formal investigation into the Army's unjust actions against Chaplain Yusuf Yee.

Representatives Michael Honda (D-CA), House Armed Services Committee Ranking Member, Rep. Ike Skelton (D-MO), House Armed Services Total Force Subcommittee Ranking Member, Rep. Vic Snyder (D-AR) and Armed Services Committee member Rep. Adam Smith (D-WA); who also happens to be Captain Yee's congressman, wrote a letter to Joseph Schmitz, Inspector General of the Department of Defense demanding an investigation into the criminal probe and court martial hearings against Captain Yee.



Captain Yee⁸¹, his wife Huda and daughter Sarah, 3

The following are excerpts from the congressional letter:

- "...We write to formally request that your office investigate the U.S. Army's criminal probe and court martial of Army Chaplain, Captain James Yee. The Army's decision to drop all charges against Captain Yee raises important questions about the strength and

⁷⁸ *Supra* note 74.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ See http://www.spokesmanreview.com/local/story_txt.asp?date=032004&ID=s1501264

legitimacy of initial assertions by Army officials that Captain Yee had engaged in espionage and treasonous conduct at Guantanamo Bay, Cuba..."⁸²

- "...Press reports alleged that while confined, Captain Yee, a commissioned officer of the United States Army, was not afforded the military courtesies commiserate with his rank and that he was unduly targeted because of his religious affiliation with Islam. Given the unusual facts of this case, it is critical to determine whether Captain Yee was appropriately investigated, arrested and charged for criminal conduct by the U.S. Army..."⁸³

In addition, on the other side of Congress, Senators Carl Levin (D-MI) and Edward Kennedy (D-MA) also separately demanded that Secretary of Defense Donald Rumsfeld start an investigation into the Captain Yee fiasco.⁸⁴

In response to this request by the prominent Congressmen and Senators, the Inspector General of the Defense Department agreed in August 2004 to investigate the case. Assistant Inspector General John Crane said the investigation would be launched in the fall of 2004 and could not be started sooner because of "other ongoing and urgent matters."⁸⁵ Though the Inspector General's Office did not comment on what the probe would include, Congressman Honda expected that it would explore whether the Army ever had sufficient probable cause and evidence to suspect Captain Yee at all.

Eugene Fidell commented that the inspector general's investigation was long overdue. He hoped that the probe would eventually lead to an official apology, something that Captain Yee had been demanding for months. Mr. Fidell rightfully noted that congressional intercession should not be required for the Army to finally apologize to Captain Yee for its blatant mistakes and the undue hardships imposed upon him and his family. "The more tooth-pulling involved, it seems to me," said Fidell, "the less the apology."⁸⁶

Understandably, these trials and tribulations had a profound effect on Captain Yee and his family. In August 2004, Captain Yee tendered his resignation to his superiors, asking to be

⁸² "Letter Requesting Investigation of Captain Yee." May 20 2004. Mike Honda, Fifteenth District of California *available at* <http://www.house.gov/honda/InCongress/yeeletter.html>

⁸³ *Id.*

⁸⁴ *Supra* note 7.

⁸⁵ *Id.*

⁸⁶ *Ibid.*

discharged effective January 7, 2005. A portion of Yee's letter cited several reasons why he was leaving the Army.

Some relevant excerpts of his letter are as follows:

- "...In 2003, I was unfairly accused of grave offenses under the Uniform Code of Military Justice and unjustifiably placed in solitary confinement for 76 days. Those unfounded allegations -- which were leaked to the media -- irreparably injured my personal and professional reputation and destroyed my prospects for a career in the United States Army..."⁸⁷
- "...The only formal punishment I received (on matters having nothing to do with national security) was overturned, but at the same time official statements again unfairly tarnished my reputation..."
- Because of the gag order, said Yee, "my ability to defend myself against this pattern of unfairness has been impeded by official correspondence, the clear purpose of which is to chill the exercise of my right to free speech..."
- Yee wrote that he waited for months for a government apology, "but none has been forthcoming. I have been unable even to obtain my personal effects from Guantanamo Bay, despite repeated requests. In the circumstances, I have no alternative but to tender my resignation..."⁸⁸

After his ordeal and honorably completing his tenure with the United States Army, Captain Yee plans to complete his master's degree in international relations and return to his home in Washington.

THE CASE OF BRANDON MAYFIELD

On March 11, 2004, ten bombs exploded on four commuter trains in Madrid, Spain. The death toll exceeded 190 people and at least 1,800 people were injured.⁸⁹ A partial fingerprint found on a bag containing detonators was matched by FBI analysts and the Justice Department proclaimed

⁸⁷ Mike Barber, "Army chaplain Yee to resign," *Seattle Post-Intelligencer*, August 3 2004 available at http://seattlepi.nwsource.com/local/184640_yee03.html

⁸⁸ *Id.*

⁸⁹ "Timeline: Madrid Investigation." British Broadcasting Corporation (BBC), August 11 2004.

the match to be a “100% identification”⁹⁰ of American lawyer Brandon Mayfield;⁹¹ who was subsequently arrested and jailed as a ‘material witness’ in the 3/11 Madrid bombings.⁹²

Two weeks later, as Mayfield languished in prison, Spanish federal authorities confirmed their previous suspicions that the fingerprint did **not** belong to Mayfield. After two weeks in jail and hundreds of media stories labeling him a ‘terrorist’, he was finally released with a rare official apology from the FBI; who claimed that errors in fingerprint analysis were the sole cause for the catastrophic mistake.⁹³

Said Mayfield about his arrest; “I am a Muslim, an American, and an ex-officer of the U.S. military. I believe I was singled out and discriminated against...[for being] a Muslim.”⁹⁴

Background

Brandon Mayfield is a 37-year old licensed attorney who resides with his wife Mona and three children in a suburb of Portland, Oregon. After graduating from high school, he joined active duty in the Army and also spent time serving in the Reserves.⁹⁵ After an honorable discharge, he served in the ROTC and was commissioned as a Second Lieutenant. Mayfield returned to active duty service as an Air Defense Artillery Officer and was later honorably discharged due to a shoulder injury.⁹⁶

After completing law school and passing the Oregon State Bar Examination, Mayfield began to work as a family law attorney in Oregon.⁹⁷ Mr. Mayfield embraced Islam in the late 1980s after he had married his wife Mona Mayfield, an Egyptian-American. He was a regular attendee of Friday prayers at a mosque in the Portland suburb of Beaverton, Oregon.⁹⁸

The ‘Fingerprint’

According to the affidavit issued by FBI Special Agent Richard K. Werder requesting Mayfield’s arrest, the Spanish National Police sent the FBI digital photographic images of fingerprints found during the investigation of the Madrid bombings. Latent Finger Print #17, found

⁹⁰ Affidavit of Special Agent Richard K. Werder, FBI. May 6, 2004. United States District Court for District of Oregon at 3.

⁹¹ "Statement on Brandon Mayfield Case." U.S. Department of Justice, May 24 2004.

⁹² "Family: Oregon lawyer has no connection to Madrid attacks." *USA Today*, May 8 2004.

⁹³ *Supra* note 90.

⁹⁴ Kevin Johnson, "Bomb case against U.S. lawyer dropped." *USA Today*, May 24 2004.

⁹⁵ *Supra* note 90.

⁹⁶ *Ibid.*

⁹⁷ Ben Jacklet and Todd Murphey. "Now Free, Attorney Brandon Mayfield Turns Furious." *Washington Report on Middle East Affairs* July/August 2004.

⁹⁸ Daniel Wools, "Fingerprint Evidence Cited." *Topeka Capital-Journal*, May 8 2004.

on a plastic bag containing detonators believed to be used in the Madrid bombings, was run through the Automated Fingerprint Identification System (AFIS).⁹⁹

Brandon Mayfield was one of more than 12 people who emerged as a 'potential match' for the fingerprint.¹⁰⁰ After being identified at fifteen points and after a "confirming" second opinion, fingerprint analysis experts determined that LFP #17 was "a 100% identification"¹⁰¹ of Brandon Mayfield. Two senior law enforcement officials told the Associated Press that Mayfield and his home had been under FBI surveillance for several weeks prior to his arrest, due mainly to the fingerprint analysis.¹⁰²

Agent Werder's affidavit also states that surveillance agents observed Mayfield drive to his regular mosque on several occasions beginning on March 21, 2004. This did not go unnoticed by the Mayfield family, who felt that their house had been searched. Upon seeing the surveillance agents, neighbors of the Mayfield's also questioned the surveillance officers about why they were there.¹⁰³

One would hope that before arresting an American citizen for links to an international terrorist attack, the FBI would have investigated all leads and fully verified the fingerprint before rushing to judgment. However, despite the fact that Spanish law enforcement and investigative officials continued to remain doubtful about the print "match" to Mayfield, the lawyer was arrested anyway.

On March 20, 2004, the FBI analyzed the partial fingerprint sent from Spain and concluded that it did indeed belong to Brandon Mayfield.

Notwithstanding the fact that a Scotland Yard fingerprint expert found any claim of a fingerprint match "horrendous,"¹⁰⁴ part of the evidence used to detain Mayfield for two weeks were "miscellaneous Spanish documents" that the FBI found in his home. The absurdity of the Justice



Brandon Mayfield speaks to reporters after his release

⁹⁹ *Supra* note 90 at 7.

¹⁰⁰ Robyn Blummer, "All the fear that's fit to print." *St. Petersburg Times* June 6 2004. According to the affidavit by Special Agent Werder, the prints were on file from his service as an army officer and because of an arrest for burglary in 1984.

¹⁰¹ *Supra* note 94.

¹⁰² *Supra* note 98.

¹⁰³ *Supra* note 94.

¹⁰⁴ David Sarasohn "In Mayfield case, fingers are pointing" *The Oregonian*, June 9 2004 available at http://www.oregonlive.com/news/oregonian/david_sarasohn/index.ssf?/base/editorial/1086782164233840.xml

Department's case was revealed when the New York Times reported that these "documents" were later identified as nothing more than his children's Spanish homework¹⁰⁵. Unfortunately, since the story had already leaked to the media and many major news outlets were carrying the breaking story of the "American connection"¹⁰⁶ to the Madrid bombings; the damage to Mr. Mayfield and the American Muslim community had already been done.

However, less than a month later, Spanish forensic experts officially informed the FBI of their doubts and the two groups met in Madrid on April 21, 2004. The affidavit of Mr. Werder cites the same meeting as such: "Before the meeting SNP [Spanish National Police] personnel indicated that their examination of LFP#17 was preliminary and that a final determination had not been rendered. The SNP also indicated that they had not gone into the level three characteristics [...] utilized by the FBI when making their initial comparison. At the conclusion of the meeting it was believed that the SNP felt satisfied with the FBI Laboratory's identification of LFP#17..."

Spanish forensic experts and officials on the case had quite a different take on the same exact meeting. It seems that the Spanish officials had little success in convincing the FBI of its mistake and commented on the FBI's unwillingness to accept their mistake. Said one Spanish police official, "The Spanish officers told [FBI representatives] with all the affection in the world that it wasn't [Brandon Mayfield]... We never wanted to simply come out and say the FBI made a mistake. We tried to be diplomatic, not to make them look bad..."¹⁰⁷

The head of the SNP fingerprint unit, Pedro Lledo, noted that in the Mayfield case, the FBI "had a justification for everything... But I just couldn't see it."¹⁰⁸ A commissioner of the SNP's science division, Carlos Corrales said, "It seemed as though they had something against him and they wanted to involve us."¹⁰⁹

The Werder affidavit goes on to also highlight the fact that Mr. Mayfield has no record of international travel or border crossing.¹¹⁰ In fact, Mr. Mayfield's passport had been expired for almost a year and he had never filed for its renewal. Although some federal officials claimed that Brandon Mayfield may have traveled under a false or fictitious name, Agent Werder concedes in his affidavit that no known aliases for Brandon Mayfield could ever be found by the FBI¹¹¹. Acting on

¹⁰⁵ See *id.*

¹⁰⁶ Michael Isikoff, "An American connection?" *Newsweek*, May 7 2004 available at <http://msnbc.msn.com/id/4918333/>

¹⁰⁷ Christopher Brauchli, "Third time is not the charm for FBI," *The Boulder Daily Camera*, June 12, 2004 available at http://www.dailycamera.com/bdc/opinion_columnists/article/0,1713,BDC_2490_2957088,00.html

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Supra* note 60.

¹¹¹ *Id.*

information provided by the US Attorney's Office, Agent Werder notes that, "a Federal Grand Jury in the District of Oregon is investigating possible violations" of various bombing, terrorism, and conspiracy charges.¹¹²

In his affidavit, Agent Werder requested Brandon Mayfield's arrest because "...based upon the likelihood of false travel documents in existence, and the serious nature of the potential charges, Mayfield may attempt to flee the country if served with a subpoena to appear before the federal grand jury."¹¹³ This claim was made notwithstanding the fact that Agent Werder himself admitted that Mayfield had never used any aliases nor had ever left the United States. Nonetheless, Werder asked for Mayfield's arrest and went even further by requesting that the Court issue a seal on the affidavit, thereby making unavailable to the public any of the "evidence" linking Mayfield to the Madrid terrorist attacks.

FBI 'Apologizes' to Mayfield

On May 24, 2004, after noisy public outrage and scathing criticism from dozens of newspaper editorial boards, the FBI finally issued an official "apology" to Mr. Mayfield after his harrowing ordeal and complete exoneration.

In its one-page press release, the FBI blamed their monumental error simply on the "substandard image quality"¹¹⁴ of the fingerprints involved in identifying Mr. Mayfield. The vast majority of the FBI's "apology" press release deals with the technical and scientific fingerprint analyses. Only in the last line does it state, "The FBI apologizes to Mr. Mayfield and his family for the hardships that this matter has caused."¹¹⁵

The New York Times, like most Americans, believe that this "apology" was insufficient. The editorial board proclaimed that "The Justice Department and the Federal Bureau of Investigation ought to hang their heads in shame..."¹¹⁶

Mr. Mayfield summed up his ordeal in a written statement saying that, "The government's handling of this case has been prejudicial and discriminatory in the extreme. Upon initially being arrested, I was informed by the arresting officers that the media was close behind. Within minutes of my arrest the allegations of my involvement in the Madrid bombing were being disseminated

¹¹² *Supra* note 98 at 7.

¹¹³ *Id.* at 8.

¹¹⁴ "Statement on Brandon Mayfield Case," FBI National Press Office, May 24 2004 *available at* www.katu.com/printstory.asp?ID=67592

¹¹⁵ *Id.*

¹¹⁶ Editorial, "The FBI messes up," *The New York Times*, May 26, 2004 at A22.

through the media. Notwithstanding the judge's gag order, the government put out its theory and its facts while we were prevented from saying anything."

"The whole thing was unbelievable," said William Mayfield, Brandon's father. "It was a witch hunt."¹¹⁷

The *Washington Post* said that "an apology is not enough"¹¹⁸ and roundly criticized the Justice Department for their treatment of Mr. Mayfield and their abusive use of the Material Witness Statute.¹¹⁹

Justice Department Misuse of the 'Material Witness Statute'

Many critics of the Justice Department's tactics and procedures in the Mayfield case repeatedly pointed to the FBI's continuing abuse of the Material Witness Statute¹²⁰, which allows the government to arrest and hold witnesses who have information essential to a case but are considered a 'flight risk'¹²¹.

These 'material witnesses', many of whom are never charged or convicted of any crime, can be held secretly and indefinitely, without any access to counsel. This is the unfortunate method that has been used to detain many 'terrorism' suspects for long periods of time without any knowledge of the charges against them or any access to their lawyers. As in Mr. Mayfield's case, the media often paints these people as 'terrorists' based solely on government leaks and not on the evidence.

Meanwhile, the government conveniently seals all the evidence in these cases. As in the case of Mr. Mayfield and so many others, it seems that American Muslims are automatically presumed guilty in the court of public opinion before they ever set foot in an actual court of law.

Traditionally, in order to obtain a material witness warrant, a prosecutor is usually required to prove that a witness is likely to flee when summoned to court.¹²² Mr. Mayfield is a respected attorney and as such, he is an officer of the court sworn to uphold the law. No evidence was ever presented that an officer of the court would not respond to a subpoena or 'flee' had he been served with one. More importantly, there was virtually no 'flight risk' involved because Mr. Mayfield's passport had expired and even the FBI admitted that he had never left the country before.¹²³

¹¹⁷ Kevin Johnson, "Bomb case against U.S. lawyer dismissed," *USA Today*, May 24, 2004

¹¹⁸ "Apology is not enough" *Washington Post*, May 27 2004 at A30 available at <http://www.washingtonpost.com/wp-dyn/articles/A59014-2004May26.html>

¹¹⁹ *Id.*

¹²⁰ 18 U.S.C. 3144

¹²¹ *See Id.* The text of the Material Witness Statute says that a person may be arrested and detained as a "material witness" only "...if it is shown that it may become impracticable to secure the presence of the person by subpoena."

¹²² *See* Brett Zongker "Secret legal process misused, American-Islamic group says," *Associated Press*, August 30 2004.

¹²³ *See* note 67.

Many critics have spoken out against the Justice Department's use of the Material Witness Statute to round up Muslims who have not been charged with any criminal act. The former second-in-command in the Clinton Administration's Justice Department said that former Attorney General John Ashcroft was converting the Material Witness Statute into a preventive detention policy without congressional approval.

"After all, if they can pick people up like this, anyone can be picked up like this," said Michael Greenberger, now a University of Maryland law professor. "I am fearful that this is a long line of dramatic detentions, and we will find as time goes on that the evidence just peels away,"¹²⁴ Greenberger said.

The Material Witness Statute was issued a severe legal blow on May 1, 2004, when a federal judge called the imprisonment of material witnesses in the government's terrorism probe "unconstitutional."¹²⁵

U.S. District Judge Shira Scheindlin wrote that "imprisoning a material witness for a grand jury investigation raises a serious constitutional question under the Fourth Amendment," which prohibits unreasonable searches and seizures.¹²⁶

She added that, "Since 1789, no Congress has granted the government the authority to imprison an innocent person in order to guarantee that he will testify before a grand jury conducting a criminal investigation."¹²⁷

Brandon Mayfield Fights Back

On August 26, 2004, Brandon Mayfield hired one of the nation's most successful and colorful attorneys to represent him in a civil lawsuit against the Department of Justice.¹²⁸

Celebrity lawyer Gerry Spence says he decided to help Brandon Mayfield sue the government because "it's an important case to Mr. Mayfield, and it's an important case to all Americans."¹²⁹

¹²⁴ *Supra* note 78.

¹²⁵ Larry Neumeister, "Judge declares imprisonment of material witnesses unconstitutional," *Associated Press*, May 1 2004

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Rukmini Callimachi, "'Smoking Gun' author to represent Brandon Mayfield," *Associated Press*, August 26 2004 available at <http://www.katu.com/news/story.asp?ID=70524>

¹²⁹ Ben Jacklet, "Mayfield calls in heavy hitter," *Portland Tribune*, September 28 2004 available at <http://www.portlandtribune.com/archview.cgi?id=26394>

In his suit, Mayfield claims the federal government targeted him solely because of his Muslim faith and violated his Fourth Amendment rights by searching his home and office, seizing his family's belongings and incarcerating him for two weeks.¹³⁰



Brandon Mayfield is joined by his family after his acquittal (AP)

“It’s called the Muslim factor,” Spence said. “It’s profiling. It even affects what you see on a fingerprint, which is supposed to be science.”

After such a catastrophic blunder by the Justice Department and the FBI, the case of Brandon Mayfield serves to remind all Americans about our nation’s legal hallmarks of due process, evidential analysis and every person’s right to be presumed innocent until proven guilty in a court of

law.

Kent Mayfield, Brandon's brother, accurately summed up the frustrations of many Americans when he said that Mayfield's only crime was that "... he is of the Muslim faith and ... not super happy with the Bush administration. So if that's a crime, well, you can burn half of us."¹³¹

THE ‘NO-FLY’ LIST AND THE CASES OF TARIQ RAMADAN AND YUSUF ISLAM

The Transportation Security Administration (TSA) was created by the Aviation and Transportation Security Act of 2001¹³² and is charged with overseeing the security of all modes of interstate transportation. The TSA's current system for preventing terrorist access to airplanes relies on airline ‘watch lists’ compiled from a variety of government sources. At least two types of ‘watch lists’ are maintained: a ‘*no-fly*’ list of terrorist suspects, and a ‘*selectee*’ list targeting people who must be subjected to rigorous screening before they are allowed to fly¹³³.

The TSA has refused to supply details on whom or why someone is on the ‘no-fly’ or ‘selectee’ lists. However, according to TSA documents obtained through a Freedom of Information

¹³⁰ “Judge quits wrongly accused lawyer’s suit” *Associated Press*, November 9 2004.

¹³¹ See Arsalan Iftikhar “Worst since J. Edgar Hoover Era” *South Florida Sun-Sentinel*, November 16 2004 available at http://www.sun-sentinel.com/news/opinion/sfl-16forum16nov16_0,7656349.story?coll=sfla-news-opinion

¹³² Public Law 107-71 available at

http://www.tsa.gov/interweb/assetlibrary/Aviation_and_Transportation_Security_Act_ATSA_Public_Law_107_1771.pdf

¹³³ Airline Watchlists: Overview, Human Rights First available at

http://www.humanrightsfirst.org/us_law/privacy/airwatch_overview.htm

Act (FOIA) suit filed on behalf of six racially diverse plaintiffs by the ACLU;¹³⁴ the list of targeted people has been growing daily in response to requests from the intelligence community, DHS and other agencies. The ACLU is asking the court to declare that the No-Fly list violates airline passengers' constitutional rights of freedom from unreasonable search and seizure and also violates due process under the Fourth and Fifth Amendments¹³⁵. The ACLU is also asking the TSA to develop satisfactory procedures that will allow innocent people to fly without being treated as potential terrorists and without being subjected to humiliation and unnecessary delays.

Reverend John Shaw is one of the six plaintiffs in the ACLU lawsuit and one of the many names on the 'No-Fly' list.

"I am joining the ACLU lawsuit because I have been repeatedly interrogated, delayed, and have experienced 'enhanced' screening procedures and detention since 2002. I have also tried without success to have my name removed from the list¹³⁶," said the 74-year-old Presbyterian minister from Sammamish, Washington.



© *In These Times*

The Case of Professor Tariq Ramadan

Dr. Tariq Ramadan is a world renowned Swiss scholar known for his work on Islamic theology and the place of modernity within Islam and recently named one of *TIME* magazine's "100 Innovators of the 21st Century"¹³⁷. Because of his prolific academic record, Dr. Ramadan was appointed the Henry R. Luce Professorship of Religion, Conflict, and Peace Building¹³⁸ for the Fall 2004 semester at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame in South Bend, Indiana¹³⁹.

¹³⁴ Green et al. v. Transportation Security Administration et al. available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15419&c=272>

¹³⁵ Stella Richardson "ACLU Challenges 'No-Fly' Lists: Citizens targeted as terrorists" ACLU News of ACLU of Northern California, Spring 2004 available at <http://aclunc.org/aclunews/news0407/nofly.html>

¹³⁶ *Id.*

¹³⁷ See http://www.time.com/time/innovators/spirituality/profile_ramadan.html

¹³⁸ Jay Tolson, "Should this man come to the U.S.?" *U.S. News and World Report*, December 6 2004 available at <http://www.usnews.com/usnews/issue/041206/misc/6islam.htm>

¹³⁹ Interview with Tariq Ramadan and Scott Appleby "Leading Muslim Scholar Tariq Ramadan Denied U.S. Visa to Teach at Notre Dame" *Democracy Now!* September 13 2004 available at <http://www.democracynow.org/article.pl?sid=04/09/13/1428249>

Dr. Ramadan's visa application for admittance to the United States was initially accepted and he received a visa from the U.S. State Department. After receiving his visa, Dr. Ramadan was preparing to move his family and young children to Indiana and was scheduled to begin teaching his classes at Notre Dame in late August. However, just days before Dr. Ramadan was set to travel, his visa was revoked without any explanation at the behest of the Department of Homeland Security (DHS)¹⁴⁰.

It turns out that Dr. Ramadan's visa was revoked pursuant to section 411 of the USA PATRIOT Act, which bars entry to foreigners who have used a "position of prominence . . . to endorse or espouse terrorist activity."¹⁴¹

Although government officials have provided no explanation concerning Dr. Ramadan's visa revocation, some noted scholars said they suspected the government's decision to bar Ramadan could have been influenced by certain right-wing pro-Israeli groups that have "waged a campaign" against moderate Muslim scholars and intellectuals whose views on Islam and the Middle East conflict with their own.¹⁴²



Professor Tariq Ramadan

Graham Fuller, a Middle East expert, a senior Rand analyst and former Vice Chair of the National Intelligence Counsel told the *Chicago Tribune* that, "...pro-Likud organizations want to block people who can speak articulately and present the Muslim dilemma in a way that might be understandable and sympathetic to Americans." In talking about the Arab-Israeli crisis, he said, "They succeed by presenting this as a security matter. There is no way homeland security would initiate this on its own."

For example, websites which seek to chill the First Amendment and academic freedom, such as Campus Watch, initiated by neoconservative Daniel Pipes, seek to 'expose' professors who allegedly hold views critical of the right-wing Likud government of Ariel Sharon in Israel.¹⁴³

"They want to say all Muslims are a monolithic threat," said Professor John Esposito of Georgetown University, who describes Dr. Ramadan as "an established academic . . . with a strong record."¹⁴⁴

¹⁴⁰ *Id.*

¹⁴¹ See *supra* note 2.

¹⁴² Genevieve Abdo "Muslim scholar has visa revoked" *Chicago Tribune*, August 24 2004 available at <http://www.chicagotribune.com/news/local/chi-0408240223aug24,1,3887036.story?coll=chi-news-hed>

¹⁴³ *Id.*

Professor Scott Appleby, director of the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame, challenged Ramadan's critics to provide any credible evidence of nefarious links.

"If Mr. Pipes or anyone else has solid evidence that Tariq Ramadan has 'connections' with [terrorists] --whatever that might mean--I would like to see it," Appleby said.

"Otherwise, unsubstantiated charges intended to defame a Muslim intellectual is troublingly reminiscent of some of the darkest moments in U.S history."¹⁴⁵

Commenting on the arbitrary denial of a visa to Dr. Ramadan and his appointment to Notre Dame, Professor Appleby further states that despite the numerous requests to DHS and federal government officials, the University of Notre Dame has been given, "...no substantial evidence of any of the various things that have been said about him."¹⁴⁶

Professor Appleby goes on to further state, quite categorically, that "we stand behind Tariq fully, and are proud of the appointment, and believe and continue to believe it's the proper appointment."¹⁴⁷



Named TIME Magazine© Top 100 World Innovators

The case of Yusuf Islam (formerly Cat Stevens)

*"It started with a simple spelling error..."*¹⁴⁸ -- TIME Magazine, September 25 2004

On September 21, 2004, United Airlines Flight 919¹⁴⁹ was en route from London to Dulles International Airport in suburban Washington DC; when American officials realized that the former world famous pop superstar Cat Stevens, now named Yusuf Islam, was aboard the flight. After learning of Mr. Islam's presence on the flight, the plane was diverted 600 miles to Maine's Bangor

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Supra* note 130.

¹⁴⁷ *Id.*

¹⁴⁸ Sally Donnelly, "You say Yusuf, I say Yousof" *TIME Magazine*, September 25 2004 available at <http://www.time.com/time/nation/article/0,8599,702062,00.html>

¹⁴⁹ "Britain complains to U.S. about Cat Stevens' detention" *The Associated Press*, September 23 2004 available at <http://www.msnbc.msn.com/id/6067570/>

International Airport where federal authorities questioned Islam at 3:00pm Eastern Standard Time¹⁵⁰.

After the lengthy interview, U.S. officials ordered Islam's deportation, saying that he was on a "security watch list because of suspicions that he was associated with potential terrorists."¹⁵¹ After being held in Bangor, Mr. Islam, a British citizen, was then transferred to Logan International Airport in Boston, where the Massachusetts Port Authority said he would be put on a flight to Washington. From there, he was subsequently sent back to London.¹⁵²

Yusuf Islam was born Stephen Demetre Georgiou in London to a Greek Cypriot father and Swedish mother¹⁵³. In the 1970s, he took the stage name Cat Stevens and had a string of musical hits in the 1970s, including *Wild World* and *Morning Has Broken*.¹⁵⁴ Last year he released two songs, including a re-recording of his 1971 international hit *Peace Train*, to express his opposition to the war in Iraq.



CAIR Press Conference on Yusuf Islam

He left his music career in the late 1970s after his conversion to Islam. He later became a teacher and an advocate for his religion, founding a Muslim school in London in 1983. He founded Islamia Primary school in London in 1983. In 1998, it became the first Muslim school in Britain to receive government support on the same basis as Christian and other religious schools.¹⁵⁵

Yusuf Islam is also the founder of Small Kindness, a charity whose purpose it is to raise money for children and families suffering from poverty and war in the Balkans and Middle East. He has also donated, both personally and through his charities, money to victims of the September 11 tragedies and to victims of the AIDS pandemic in Africa.¹⁵⁶

¹⁵⁰ Kevin Anderson, "Cat Stevens to be deported after jet diversion" *Associated Press*, September 21 2004. See also http://www.usatoday.com/news/nation/2004-09-21-jet-diverted_x.htm

¹⁵¹ *See Id.*

¹⁵² Jeanne Meserve, "Detained Cat Stevens heading home" *CNN.com*, September 22 2004 available at <http://www.cnn.com/2004/US/09/22/plane.diverted.stevens/>

¹⁵³ "Cat Stevens denied entry into U.S." *British Broadcasting Corporation (BBC)*, September 22 2004 available at <http://news.bbc.co.uk/2/hi/americas/3678694.stm>

¹⁵⁴ *Supra* note 145.

¹⁵⁵ *Id.*

¹⁵⁶ "Cat Stevens wins peace prize" *Associated Press*, November 11 2004 available at <http://edition.cnn.com/2004/WORLD/europe/11/10/catstevens.peace.ap/>

Upon his return to London after his ordeal, Mr. Islam told a crowded press conference that he was "shocked and slightly amused" that U.S. officials had determined that he was on a 'terrorist' watch list and was not allowed to enter the United States. Islam said that he was a victim of an "unjust and arbitrary system," and that he has consistently denounced terrorism in his speeches and even on his official website.¹⁵⁷

In regards to the 'no-fly' list, the former pop singer was allegedly in the same league as United States Senator Edward M. Kennedy (D-MA), who apparently shares a name with someone



on the 'no-fly' list and had been told several times that he could not fly¹⁵⁸.

Senator Kennedy told the Senate Judiciary Committee that he was stopped and questioned at airports on the East Coast five times in March 2004 because his name appeared on the government's secret 'no-fly' list.¹⁵⁹ Senator Kennedy said that he had to personally enlist the help of Homeland Security Secretary Tom Ridge to get his name removed from the list.¹⁶⁰

CAIR's press conference on CNN

scrutiny of the Massachusetts Democrat should not have happened and even they acknowledged that the 'no-fly' list is imperfect. However, privately, officials were embarrassed that it took a United States senator and his staff "more than three weeks to get his name removed."¹⁶¹

As is the case with Yusuf Islam and Senator Kennedy, most of the other people ensnared in the 'no-fly' list debate have absolutely no links to terrorism. At least one person says he was told that he would need to "have his name legally changed to avoid the problem in the future."¹⁶²

Subsequently, the case of Yusuf Islam became humorous fodder for newspaper editorial pages and for late-night talk show monologues.

¹⁵⁷ *Id.*

¹⁵⁸ Editorial, "Moonshadow boxing" *Washington Post*, September 25 2004 at A22.

¹⁵⁹ Sara Kehaulani Goo "Sen. Kennedy flagged by no-fly list" *Washington Post*, August 20 2004 available at <http://www.msnbc.msn.com/id/5765143>

¹⁶⁰ "Ted Kennedy's Airport Adventure" *Associated Press*, August 19 2004 available at <http://www.cbsnews.com/stories/2004/04/06/terror/main610466.shtml>

¹⁶¹ *Supra* note 152.

¹⁶² *Id.*

The Washington Post commented that in the case of Islam and the ‘no-fly’ list, what the government was “missing was common sense.”¹⁶³ The Pittsburgh Post-Gazette called the fiasco a “ridiculous overreaction”¹⁶⁴.

“What did federal authorities think he was going to do? Threaten to sing ‘Peace Train’ over and over until certain demands were met?” said the Post-Gazette editorial. “...Here was someone who was traveling with his daughter and had been to the United States several times, most recently in May, when he met with officials of the White House Office of Faith-Based and Community Initiatives to discuss philanthropic work...”

Other notable figures have spoken up against the United States’ arbitrary and secretive denial of Yusuf Islam’s entry into the United States. Islam’s detention and return to Britain sparked a protest to the Bush administration by British Foreign Secretary Jack Straw.

On September 22, 2004, Secretary Straw personally told United States Secretary of State Colin Powell that the action against Mr. Islam "should not have been taken".¹⁶⁵

A final validation to the injustice committed against Mr. Islam occurred on November 10, 2004 when Yusuf Islam was presented with the "Man for Peace" award by former Russian president Mikhail Gorbachev at the opening of a meeting of Nobel Peace



Prize laureates in Rome, Italy.¹⁶⁶ The Gorbachev Yusuf Islam accepts ‘Man of Peace’ Award from Pres. Gorbachev (AP) Foundation said the peace award was for Yusuf Islam’s dedication to “promoting peace and condemning terrorism”¹⁶⁷.

Past winners of the Man of Peace Award include Italian film director Roberto Benigni, director of the critically acclaimed movie *Life is Beautiful*.

The ‘Man of Peace’ Award is given annually "to a distinguished personage of culture and entertainment for peace messages, fraternity and integration between nations."¹⁶⁸

¹⁶³ *Id.*

¹⁶⁴ Editorial, “National insecurity / Keeping America safe from Cat Stevens” *Pittsburgh Post-Gazette*, September 26 2004 available at <http://www.post-gazette.com/pg/04270/385027.stm>

¹⁶⁵ “Cat Stevens ‘shock’ at US refusal” *British Broadcasting Corporation (BBC)*, September 23 2004 available at http://news.bbc.co.uk/2/hi/uk_news/3682434.stm

¹⁶⁶ *Supra* note 151.

¹⁶⁷ “Cat Stevens honoured by Gorbachev” *British Broadcasting Corporation (BBC)*, November 9 2004 available at <http://news.bbc.co.uk/1/hi/entertainment/music/3994905.stm>

¹⁶⁸ *Id.*

At the presentation of the peace prize, President Gorbachev kissed Islam on the cheeks and praised him for standing by his convictions despite personal hardships.

"Cat Stevens' life has not been simple," Gorbachev said. "Every person who takes a critical stance to make the world a better place ... has a difficult life."¹⁶⁹

In summing up the receipt of this prestigious international award and his recent ordeal in the United States, Yusuf Islam told reporters that "...perhaps it's part of the irony that sometimes you have to go through a test in order to achieve a prize..¹⁷⁰ So maybe that's a symbol. Today I'm receiving a prize for peace, which is actually, I would say, a bit more descriptive of my ideas and my aims in life."¹⁷¹

The Miami Herald called Islam's receipt of the Gorbachev Foundation 'Man of Peace' award "sweet vindication".¹⁷²

THE CASE OF SAMI AL-HUSSAYEN

*'Free speech is intended to protect the controversial and even outrageous word; and not just comforting platitudes too mundane to need protection.'*¹⁷³ –Former Secretary of State General Colin Powell

Background

According to *The Wall Street Journal*, in the days right after September 11, 2001, Sami Omar al-Hussayen led fellow Muslims in the college town of Moscow, Idaho as they joined an emotionally charged candlelight vigil honoring the victims of 9/11. The computers science graduate student at the University of Idaho also helped organize a blood drive for 9/11 relief efforts. He also issued a press release on behalf of the local Muslim Students Association (MSA), the nation's largest American Muslim collegiate organization, stating that the small town's Muslims "condemn in the strongest terms possible what are apparently vicious acts of terrorism against innocent citizens."¹⁷⁴

¹⁶⁹ *Supra* note 151.

¹⁷⁰ *Id.*

¹⁷¹ "Cat Stevens named 'Man of Peace'" *Associated Press*, November 10 2004 available at <http://www.msnbc.msn.com/id/6444741/>

¹⁷² "Sweet vindication" *Miami Herald*, November 10 2004 available at <http://www.miami.com/mld/miamiherald/living/people/10141365.htm>

¹⁷³ <http://www.worldofquotes.com/topic/Speech/1/>

¹⁷⁴ Paul Barrett "MSA figure seized by FBI" *The Wall Street Journal*, May 29 2003.

That was why people in the small rural university town were so surprised on February 26, 2003 when FBI agents arrived before dawn in unmarked vehicles at Mr. Hussayen's home to arrest him¹⁷⁵. The agents roused him from bed and took him away in handcuffs. Over the next two days, most members of the campus MSA, which Mr. Hussayen formerly headed, were interrogated about their immigration status, extracurricular activities and views of the United States.¹⁷⁶

Sami Omar Al-Hussayen, 33, arrived in Idaho in 1999 to work on a doctorate in computer security. On two trips with his father to the U.S. when he was a child, his family toured Washington DC, Universal Studios and Disney World. In the mid-1990s, Mr. Al-Hussayen earned a master's degree at Ball State University in Muncie, Indiana and also studied at Southern Methodist University in Dallas, Texas.¹⁷⁷



Sami Al-Hussayen reunites with his three sons after his acquittal

From all evidence, Mr. Al-Hussayen and his family appeared at ease with many aspects of American life. The eldest two of his three young sons went to public school and played on local soccer teams. They skateboarded and speak better English than Arabic, according to Mr. Al-Hussayen's brother, Abdul, a 34-year-old cardiologist in Toronto.

"Their culture has been the culture of the United States kids," he said in court testimony in March¹⁷⁸. He recalled that he and Sami had joked about how hard it would be to go back to Saudi Arabia, because they both enjoyed living in the West.

The Charges against Sami Al-Hussayen

The alleged 'terrorist' crimes for which al-Hussayen was charged actually originated from the computer keyboard at his Idaho home. As the Justice Department would find out over time, this case would serve as a significant litmus test to take place at the intersection of terrorism law, the First Amendment and the infamous USA PATRIOT Act.

¹⁷⁵ See 'Free Sami Omar al-Hussayen' website available at www.samiomar.com

¹⁷⁶ *Supra* note 92.

¹⁷⁷ *Supra* note 93.

¹⁷⁸ See *supra* note 174.

Among other minor civil immigration charges, Al-Hussayen was being charged with “providing material support”¹⁷⁹ to terrorists, a common post-9/11 indictment in Attorney General John Ashcroft’s Justice Department.

The basis of the charges against Al-Hussayen was that he volunteered his computer expertise to help run websites for a Muslim charity. While the charity’s mission was geared toward peaceful religious teachings, prosecutors alleged that buried deep within the websites were a handful of violent messages — written by others — encouraging attacks on the United States and donations for terrorist organizations.¹⁸⁰

However, according to the *Seattle Times*, Al-Hussayen's case had nothing in common with other terrorism cases. There was no evidence that the websites recruited terrorists, or, for that matter, that Al-Hussayen even believed their hateful message.¹⁸¹ Even if he did, the First Amendment would protect his right to speak his mind, as long as there was no “imminent threat of violence.”¹⁸²

Law enforcement officials used the USA PATRIOT Act, the sweeping anti-terrorism law hurriedly passed in October 2001, to bypass some of these legal hurdles. Al-Hussayen was charged under a clause that broadly expanded the definition of "material support" to include those individuals who provide "expert advice or assistance" to cause of terrorists. Al-Hussayen was the first person in United States history to be charged under this provision.¹⁸³

The government’s flimsy contention was that Al-Hussayen used his “expert skills” as a webmaster; therefore, that made him a terrorist.

Terrorism vs. The First Amendment

John Steger, a juror on the case and retired federal employee, stated after Al-Hussayen’s acquittal that, “There was not a word spoken that indicated he supported terrorism...It was a real stretch.”¹⁸⁴

After being acquitted on the three immigration charges against him, the true power of the First Amendment became evident at the announcement of the final verdict.

¹⁷⁹ 18 U.S.C. 2339A

¹⁸⁰ Maureen O’Hagan “A terrorism case that went awry” *The Seattle Times*, November 22, 2004 available at http://seattletimes.nwsourc.com/html/localnews/2002097570_sami22m.html

¹⁸¹ *Id.*

¹⁸² Julie Hilden, “The Supreme Court tackles cross burning and the First Amendment” *CNN Student News*, November 15 2002 available at <http://cnnstudentnews.cnn.com/2002/LAW/11/15/findlaw.analysis.hilden.cross.burning/> See also *Brandenburg v. United States*, 395 U.S. 444 (1969).

¹⁸³ *Supra* note 97.

¹⁸⁴ *Id.*

"In two or three hours," juror Steger recalled, "we voted him not guilty on all three¹⁸⁵ [terrorism counts]..." Mr. Steger went on to add that, "I guess I'd say it was a lack of evidence."¹⁸⁶

"There was no direct connection in the evidence they gave us...between Sami and terrorism," said juror Clair Ingraham¹⁸⁷.

For supporters of the Constitution, the verdict was seen as a huge victory for the First Amendment and free speech. "It is encouraging...to see the jury so clearly distinguish between the right to freedom of expression on controversial matters, and acts of terrorism," said Nancy Chang, senior litigation attorney with the Center for Constitutional Rights (CCR) in New York. "Since Sept. 11th, the trend, starting with the Patriot Act, has been to expand the definition of terrorism to the point where free speech is at best chilled, and at times even criminalized."¹⁸⁸

According to the *Spokane (WA) Spokesman-Review*, William C. Bradford, a law professor at Indiana University, said he thought the case would make the government "a little bit more circumspect" about bringing terrorism charges against those whose connections to terrorism are indirect or tenuous at best.¹⁸⁹

Commenting on the Justice Department's broad use of the "material support" statute and the USA PATRIOT Act, Georgetown University Law Center professor David Cole noted that cases like Al-Hussayen's have "...become the linchpin of [outgoing Attorney General John] Ashcroft's war on terrorism precisely because it doesn't require proof that an individual engaged in any sort of terrorist act or even supported any terrorist activity...It is to my mind a resurrection of the principle of guilt by association."¹⁹⁰



David Nevin speaks to media after his client's acquittal

¹⁸⁵ *Id.*

¹⁸⁶ Betsy Russell, "Al-Hussayen acquitted in terror case" *The Spokane (WA) Spokesman-Review*, June 11, 2004 available at <http://www.spokesmanreview.com/local/story.asp?ID=10124>

¹⁸⁷ *Supra* note 97.

¹⁸⁸ *Supra* note 103.

¹⁸⁹ *Id.*

¹⁹⁰ *Supra* note 97.

Asked about how his client felt after being acquitted in a landmark First Amendment case, Al-Hussayen's attorney, David Nevin said that Sami was "happy about the verdict... He would love to be able to...be reunited with his family."¹⁹¹

"Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe."

-- Frederick Douglass

¹⁹¹ *Supra* note 103.

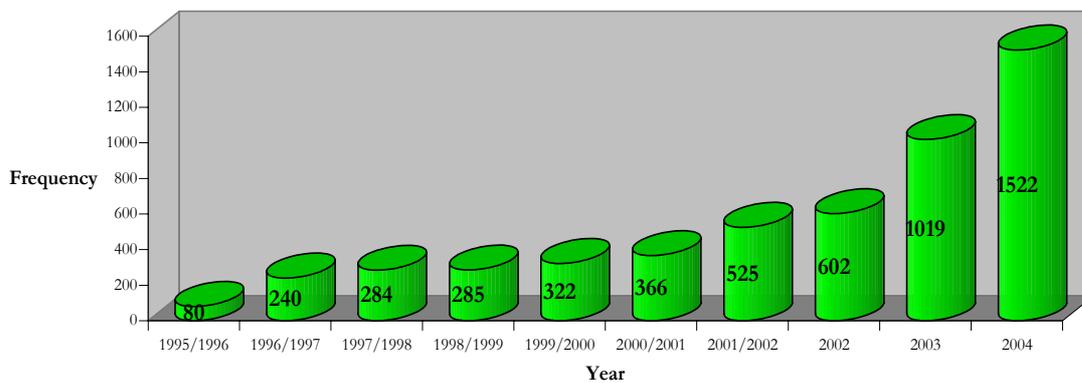
2004 CAIR CIVIL RIGHTS FINDINGS

Statistical Highlights

For the 2004 calendar year, CAIR and its affiliate chapters processed a grand total of **1,522**¹⁹² incident reports¹⁹³ involving claims of civil rights discrimination and harassment. This was a **49 percent increase** in reported cases of harassment, violence and discriminatory treatment from 2003 (1,019 reports). This also marks the highest number of Muslim civil rights cases ever reported to CAIR in our eleven year history.

Number of civil rights cases reported to CAIR:
2004: 1,522
2003: 1,019
2002: 602

Graph 1. Total Number of Civil Rights Reports by Year



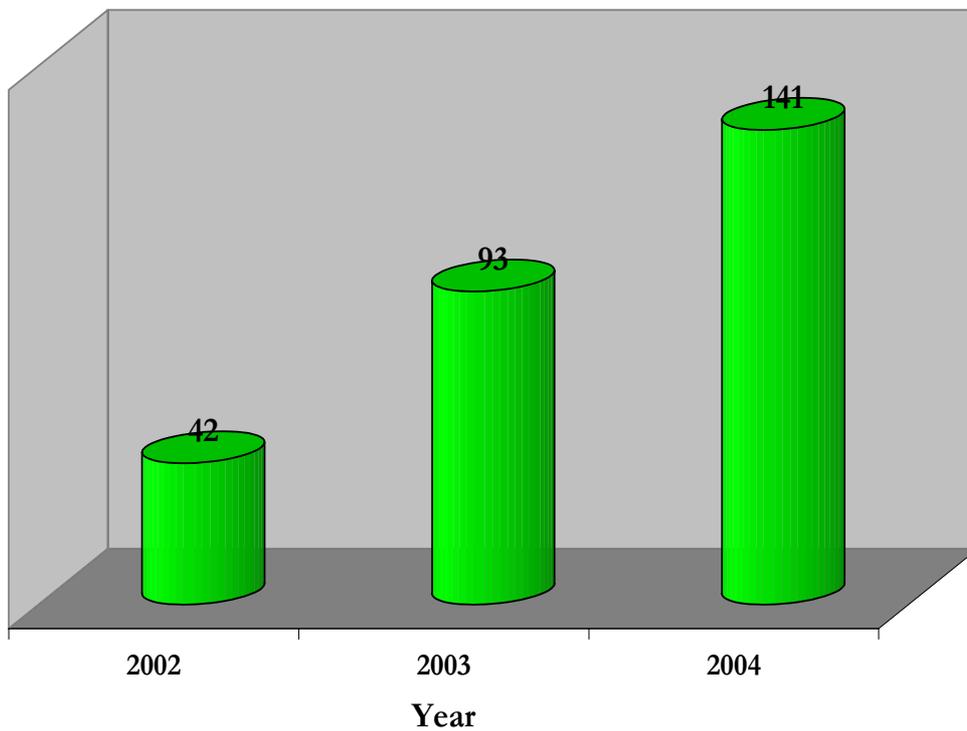
¹⁹² Although CAIR received over 1,900 reports of potential civil rights violations, CAIR found that only 1,522 of these 'reports' warranted further investigation by CAIR.

¹⁹³ See Graph 1.

Anti-Muslim Hate Crimes

Incidents of anti-Muslim physical violence have also gone up by **52 percent**- increasing from 93 in 2003 to 141 in 2004¹⁹⁴.

Graph 2. Anti-Muslim Hate Crimes by Year



Anti-Muslim Hate Crimes by Year:

2004: 141 cases

2003: 93 cases

2002: 42 cases

¹⁹⁴ See Graph 2.

Some examples of anti-Muslim hate crime reports received by CAIR in 2004:

- On March 17, 2004 Abbas Salmi and his family filed a lawsuit in Cook County Circuit Court against Eric K. Nix for bombing the family's van in Burbank, Illinois. According to the lawsuit, Nix threw a large, mortar-type firework into the Salmi family's van parked in front of their home. The bomb exploded, causing irreparable damage to the vehicle and terrifying family members who were home at the time, including Salmi, his wife, two small children and parents.
 - In September 2003, Nix pled guilty to arson and hate crime charges for the bombing. The 26-year-old was also convicted of criminal damage to property in 2001 for vandalizing an Arab-owned furniture store two days after the 9/11 attacks¹⁹⁵.
- According to police reports and eyewitnesses, a home-made bomb exploded outside of the Champions Mosque in the Houston suburb of Spring, Texas. Muslim children who saw two white males place the bomb in the mailbox narrowly missed being injured in the attack.¹⁹⁶
- Thomas Carroll, 33, pled guilty¹⁹⁷ and was sentenced to 30 years in prison for setting a string of arsons at Muslim owned convenience stores and gas stations in San Antonio, Texas.
 - His sentence was enhanced under the James Byrd Hate Crime Law, signed into law by Texas governor Rick Perry¹⁹⁸, which allows judges to increase the sentencing range for a defendant who committed crimes of 'race or ethnic hatred or bias.'
 - "These crimes were targeted against people because of their national origin and were designed to spread fear throughout the whole community. Terrorists [like Carroll] commit crimes based on hatred of a people or a religion and such acts will not be tolerated and will be dealt with firmly," said District Attorney Susan D. Reed¹⁹⁹.
- An American Muslim family in Tucson, Arizona recounted the horror of how bullet shots pierced through their home as they ate dinner in October 2004. In December, the same family's truck was smashed and vandalized in the front driveway of their home.²⁰⁰



© FBI

¹⁹⁵ See <http://www.cair-net.org/default.asp?Page=articleView&id=1496&theType=NR>

¹⁹⁶ See "Bomb explodes outside mosque," Council on American-Islamic Relations (CAIR) Press Release, July 7 2004 available at <http://www.cair-net.org/default.asp?Page=articleView&id=1100&theType=NR>

¹⁹⁷ "Man sentenced in hate crime arsons," Bexar County (TX) District Attorney Press Release, February 28 2005 available at <http://www.co.bexar.tx.us/da2/PressRelease/2005/2282005a.htm>

¹⁹⁸ See also <http://www.pbs.org/pov/pov2002/twotownsofjasper/update.html>

¹⁹⁹ *Supra* note 197.

²⁰⁰ Millie Martinez, "Hate Crime, Were They Targets?" KOLD-TV, October 27 2004 available at <http://www.kold.com/Global/story.asp?s=2490503>

Civil Rights Cases by State

Over the past year, CAIR has received complaints of potential civil rights violations from all 50 states.

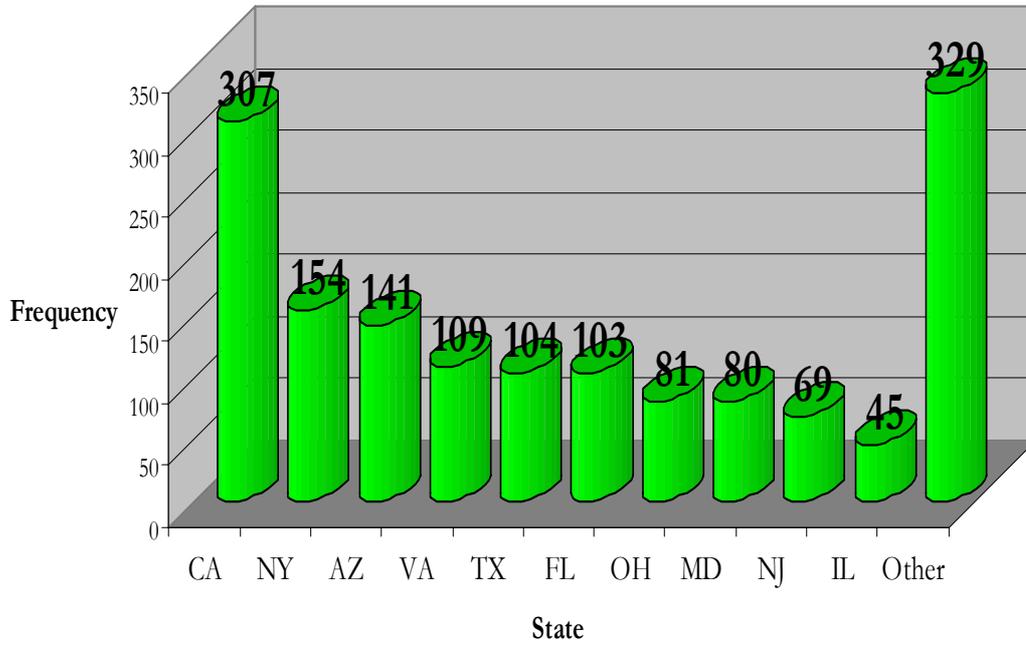
Overall, **ten states** alone accounted for **nearly 79 percent** of all reported incidents to CAIR in 2004. These ten states (and their percentages) include: **California (20.17%), New York (10.11%), Arizona (9.26%), Virginia (7.16%), Texas (6.83%), Florida (6.77%), Ohio (5.32%), Maryland (5.26%), New Jersey (4.53%) and Illinois (2.96%).**

Table 1. Number of Civil Rights Reports by State

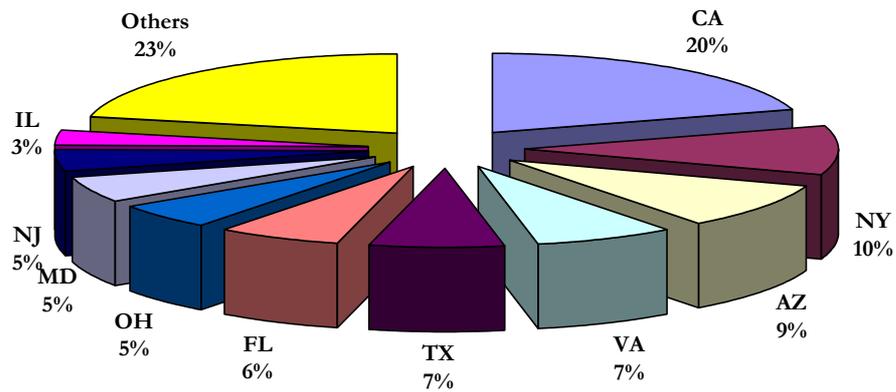
<u>State</u>	<u>Case Count</u>	<u>Percentage (% Total)</u>
CA	307	20.17
NY	154	10.11
AZ	141	9.26
VA	109	7.16
TX	104	6.83
FL	103	6.77
OH	81	5.32
MD	80	5.26
NJ	69	4.53
IL	45	2.96
All Others	329	21.62

California, New York, Arizona, Virginia and Texas represented the top 5 states with the most number of civil rights incident reports for 2004.

Graph 3. Civil Rights Reports by State



Graph 4. Percentage of Total Reports by State



Civil Rights Cases by Place of Occurrence

Discrimination can take many forms and occur in many different settings. A person who is wrongfully terminated from the workplace because of their religious affiliation may not be provided the same legal protections as someone who has had a violent hate crime committed against them. Therefore, in order to ascertain what current areas of civil rights law need the most immediate attention, it is essential to study where discrimination actually occurs within American society.

Of the 1,522 reports that CAIR received this past year, the most common places of occurrence for civil rights violations were the following (in descending order): **governmental agencies, workplaces, prisons and businesses**. These five categories alone constituted 59 percent of all of CAIR's received complaints in 2004.

Table 2. Number of Civil Rights Cases by Place of Occurrence

<u>Place of Occurrence</u>	<u>Case Count</u>	<u>Percentage (% Total)</u>
Government Agencies	293	19.25
Workplace	278	18.27
Prisons	117	7.69
Private Home/Property	115	7.56
Businesses	99	6.50
Schools	95	6.24
Airports	88	5.78
Internet/Mail	59	3.88
Street	56	3.68
Public Accommodation	41	2.69
Mosque/Community Centers	39	2.56
Police	37	2.43
Shopping Centers	34	2.23
Courts	30	1.97
College Campus	29	1.91
Financial Institution	25	1.64
Military	3	0.20
Other	81	5.32

Although governmental agencies and the workplace still represent the places where civil rights violations against American Muslims are the highest; if we look closely, we will actually see that both government agencies and the workplace declined in proportional terms from last year.

For example, discrimination involving governmental agencies constituted 19 percent of the reports received by CAIR in 2004. However, in 2003, reports of discrimination involving a government agency constituted 23 percent of last year's report²⁰¹. Although government agencies still constitute the highest frequency of discrimination in both real and proportional terms, the fact that it dropped four percent in proportional terms from last year is a notable statistic.

In addition, workplace discrimination accounted for a over 18 percent of 2004 case reports. When compared with the fact that workplace discrimination accounted for 29 percent of case reports from last year's report²⁰²; although workplace discrimination received the silver medal this year in both real and proportion terms, it is also important to note that reports of employment discrimination accounted for 10 percent less of the total reports than they did one year prior.

Table 3. Percentage of Complaints by Place of Occurrence

Setting	98/99	99/00	00/01	01/02	2002	2003	2004
Workplace	47	42	48	26	23	23	18.27
Government Agency	8	11	10	19	23	29	19.25
Police*	-	-	-	-	-	4	2.43
Airport	3	3	2	26	14	4	5.78
School	8	13	15	8	7	7	6.24
Public Accommodation	10	8	9	7	6	4	2.69
Mosque/Community Organization	2	2	1	3	4	2	2.56
Prisons	17	13	9	3	6	6	7.69
Internet/Email/Mail	0	0	0	3	6	7	3.88
Court	2	3	1	0	3	1	1.97
Military	1	0	1	0	1	1	0.20
Housing	0	0	0	0	4	1	7.56
Shopping Center	0	0	0	0	2	2	2.23
Financial Institution	-	-	-	-	-	3	1.64
Muslim-owned Business	-	-	-	-	-	1	6.50
Street	-	-	-	-	-	4	3.68
Other	1	3	2	5	1	1	5.32

“Justice cannot be for one side alone, but must be for both.”

-- Eleanor Roosevelt

²⁰¹ See Table 3.

²⁰² *Id.*

Civil Rights Cases by Types of Alleged Abuse

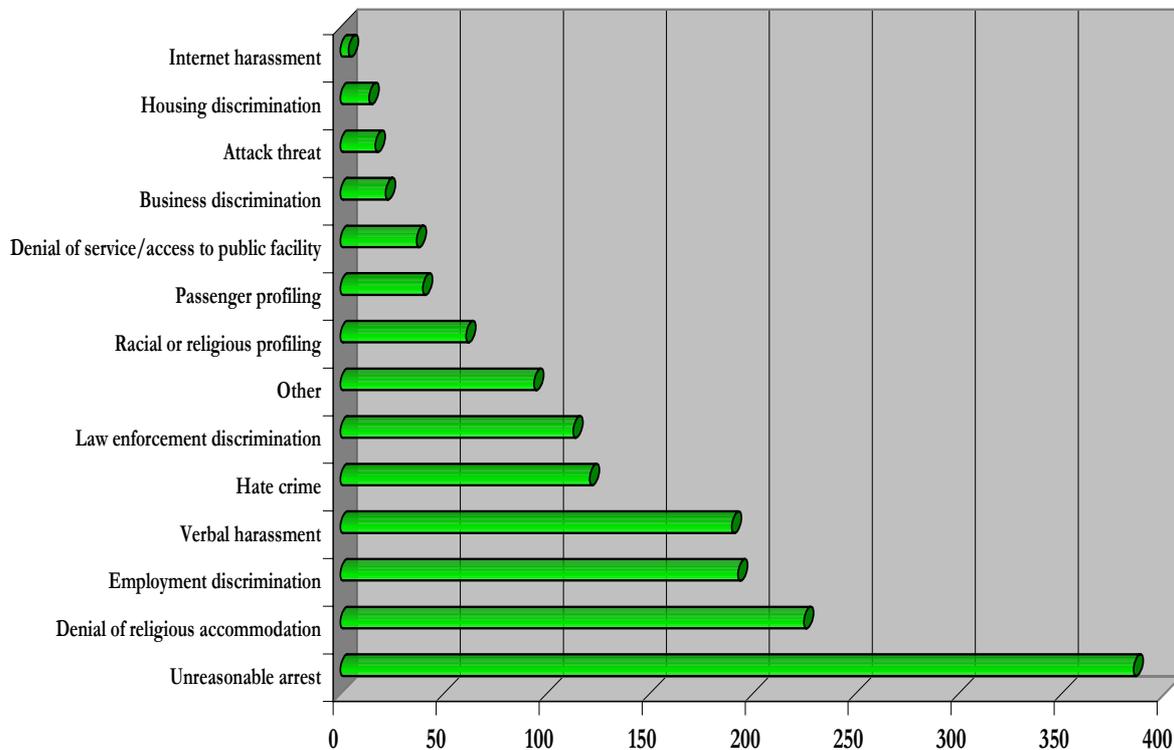
Equally as important as the place where discrimination occurs is the type of alleged abuse involved in every case. In order to comprehensively grasp the full scope of Muslim civil rights in America, it is essential to analyze the types of alleged abuse and any trends which can be ascertained from the compilation of this data.

Table 4. Case Reports by Type of Alleged Abuse

<u>Type of Alleged Abuse</u>	<u>Case Count</u>	<u>Percentage (% Total)</u>
Unreasonable Arrest	385	25.30
Religious Accommodation	225	14.78
Employment Discrimination	196	12.88
Verbal Harassment	190	12.48
Hate Crime	138	9.07
Law Enforcement Discrimination	113	7.42
Other	94	6.18
Racial/Religious Profiling	61	4.01
Passenger Profiling	40	2.63
Service Denial/Public Facility	37	2.43
Business Discrimination	22	1.45
Attack Threat	17	1.12
Housing Discrimination	14	0.92
Internet Harassment	4	0.26

Out of 1,522 reports of civil rights violations received by **CAIR** in 2004, over **69%** of these cases were triggered because of the person's ethnicity/religion.

Graph 5. Reports by Type of Alleged Abuse



From the graph above, it is quite clear that the highest type of alleged abuse, in both real and proportional terms, involved ‘unreasonable arrest’. For purposes of this Report, we categorized all case reports of unreasonable arrest, detention, surveillance, interrogation, seizure and accusations into one consolidated category of ‘unreasonable arrest’.

Unreasonable arrests, denial of religious accommodation, employment discrimination, verbal harassment and hate crimes made up almost 74% of all alleged abuse reports in 2004.

The top five types²⁰³ of alleged abuse made up nearly three-quarters of all civil rights incident reports received by CAIR in 2004. Of the 1,522 total reports received by CAIR in 2004, these five categories alone accounted for more than 1,100 of total reports.

Table 5. Percentage of Incidents by Type of Alleged Abuse

<i>Incident Type</i>	1999	2000	00/01	01/02	2002	2003	2004
Employment discrimination	18	22	27	17	17	16	12.73
Verbal harassment	10	9	8	14	15	13	12.53
Denial of religious accommodation	49	31	37	12	13	15	14.84
Passenger profiling	2	1	2	24	12	4	2.64
Racial/religious profiling	-	-	-	-	-	13	4.02
Discriminatory application of the law*	7	20	10	2	9	13	7.45
Unreasonable arrest, detention, surveillance, search, interrogation, seizure, accusation, suspicion	7	5	6	19	12	<u>4</u>	<u>25.40</u>
Hate crime	4	7	4	6	7	9	7.98
Denial of service/Access to public facility	3	5	5	5	6	3	2.44
Attack threat	-	-	1	1	2	1	1.12
Internet harassment	-	-	-	-	4	7	0.26
Business discrimination	-	-	-	-	-	1	1.45
Housing discrimination	0	0	0	0	3	1	0.92

*This category includes child custody discrimination cases, which were recorded separately in 2002. Also, the category “Unequal treatment” which appeared in previous releases was collapsed with this category in 2003.

Islamic Features Which Trigger Discrimination

Regardless of the situation, when a Muslim is discriminated against, there is usually a tangible feature or factor which the individual possesses which motivates the discrimination. Whether it is a Muslim woman who is not allowed to wear her *hijab*²⁰⁴ in the workplace or other Muslims who are discriminated against solely based on their national origin; it is important to acknowledge which Islamic features in today’s society tend to trigger the most acts of discrimination against American Muslims.



©Inminds.com

²⁰³ The top five types of alleged abuse in CAIR cases were: unreasonable arrest, denial of religious accommodation, employment discrimination, verbal harassment and hate crimes. See also Table 4 and Graph 5.

²⁰⁴ *Hijab* is a Muslim headscarf for women. See also p.1.

TABLE 6. Case Reports on Muslim Features Triggering Discrimination

<u>Feature Trigger</u>	<u>Case Count</u>	<u>Percentage (% total)</u>
Ethnicity/Religion	1051	<u>69.33</u>
Hijab/Scarf	131	8.64
Organizations/Activists	129	8.51
Prayer	82	5.41
Muslim Name	25	1.65
Beard	23	1.52
Quran/Literature	14	0.92
Ramadan/Hajj	14	0.92
Other	11	0.73
Halal Food	11	0.73
Eid/Religious Holiday	10	0.66
Kufi	9	0.59
Niqab	6	0.40

SAMPLE CASES

Hate Crimes:

- **March 21st, 2003** – A Muslim American family of Palestinian descent became victim of property damage when their van was bombed outside their home in the Chicago suburb of Burbank, Illinois. The individual responsible for the crime had been convicted earlier of criminal damage to property in 2001 for vandalizing an Arab-owned furniture store two days after the 9/11 attacks²⁰⁵.
- **December 12th, 2003** – A Muslim woman was shopping in a New York toy store when a man followed her, verbally accosted and assaulted her²⁰⁶. She reported the incident to the police and the attacker was arrested.
- **March 2nd, 2004** – In San Diego, a man of Portuguese descent was beaten by a group of four white men who mistook him for being Middle Eastern. They yelled racial slurs at him and told him to go back to Iraq.
- **March 3rd, 2004** - A San Antonio, Texas man²⁰⁷ was sentenced to 30 years in prison for setting a series of fires at Muslim-owned convenience stores and other businesses in the city. The County District Attorney referred to the man as a ‘terrorist’²⁰⁸ for his connection with another attack against a Muslim-owned business when the arsons began in 2003.²⁰⁹
- **April 24th, 2004** – A Muslim woman and her son were harassed, threatened and attacked by another woman while shopping in Pennsylvania. The woman yelled that American troops were fighting in Iraq and Afghanistan so that women did not have to dress like her and also hit her with her cart repeatedly. Employees of the store refused to call security when she requested that they do so and did not assist her in finding a phone to call the police.
- **May 27th, 2004** - A Muslim man and his family were verbally harassed by a patron while eating at a restaurant in Florida. The offender called them ‘terrorists’. When the Muslim man complained, the manager elected to remove him from the premises instead of the offender.
- **June 21st, 2004** – A Muslim man reported that while riding on a van that runs from New York to his home in Paterson, New Jersey, a group of Latino males harassed him. They hit him on his arm and made comments like, "take the bombs off before I kill you." The driver did not say anything until they began cursing him in Spanish at which point she asked them to stop.
- **June 26th, 2004** – While driving home in Illinois, a Muslim woman was harassed and physically assaulted. Three individuals asked her for a lighter. When she replied that she did not have one, they became angry and said, “Stupid Muslims. F-cking Muslims” as they

²⁰⁵ *Supra* note 195.

²⁰⁶ See Rocco Parascandola, “Muslim Assaulted With Toy in Brooklyn Store,” NEW YORK NEWSDAY, Apr. 23 2003 available at <http://www.newsday.com/mynews/ny-nybias233250054apr23.story>

²⁰⁷ *Supra* note 197.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

surrounded her car and repeatedly kicked it. When the victim stepped out of her car to confront them, one of the individuals punched her in the face and tore her *hijab* from her head.

- **July 14th, 2004** – A Muslim-owned grocery store was torched and completely destroyed. Anti-Arab slurs that read, “F-ck you Arab” were found spray-painted on the scene.
- **July 30th, 2004** – A Muslim woman from New York was soliciting donations on behalf of a charitable organization when she was verbally and physically attacked.
- **August 13th, 2004** – A cabbie in New York was punched in the face while driving a cab near Ground Zero after the offender said to him, “You are Muslim²¹⁰.” The offender was drunk and later charged with third degree assault and harassment.
- **August 23rd, 2004** – In Tucson, Arizona²¹¹, a Muslim family of Jordanian origin reported that their car was vandalized in the parking lot of their apartment building. Allegedly the car's tires were slashed and the windshield was smashed. A note taped to the vehicle read, “You are not welcome here. Go back home you stupid f-ckers.”
- **September 12th, 2004** – In California, a Muslim man and his children placed an order at a drive through Burger King, when he overheard an employee say to his co-workers, “Look, Osama Bin Laden” is here.
- **October 27th, 2004** – A community member filed a report of graffiti on a METRA stop in Illinois that read, “Kill all Muslims B4 they kill U.”
- **October 29th, 2004** – Two Staten Island men were arrested and charged with hate crimes for allegedly hitting a Muslim student at Stony Brook University²¹² while shouting anti-Muslim slurs. Suffolk County police charged the 19 and 20-year old with criminal trespass in the second degree and aggravated harassment in the second degree as a hate crime. The two men allegedly knocked on a student's door and awoke him at about 4 a.m. The victim said he opened the door and the two men went into his room and began throwing items at him, hitting him and overturning furniture, all the while calling him anti-Muslim names.
- **December 1st, 2004** – In Chesterfield, Virginia, a Sikh-owned gas station was destroyed by fire and anti-Muslim graffiti was found on a nearby trash container and shed. The fire is being investigated as an arson and possible hate crime.
- **December 21st, 2004** – A fire that took place at a used car lot in Nebraska is being investigated as arson and a hate crime. Swastikas were spray-painted on the walls. Most of the graffiti involves derogatory references to Latinos and Arabs.

²¹⁰ See “CAIR: Texas Muslim Store Torched, N.Y. Muslim Beaten; 'Go Home' Painted on Store, Cabbie told 'You are Muslim',” Council on American-Islamic Relations (CAIR) Press Release, August 13 2004.

²¹¹ *Supra* note 201.

²¹² See also Bill Mason, “Muslim student is attacked” *New York Newsday*, October 30, 2004 at A11.

Harassment:

- **March 25th, 2004** – A Muslim man went to his local fire department to pick up a child safety seat. As he approached the building, a part-time fire fighter tried to block his entry while making the following statements: "Why should I let you in? Are you a terrorist? What are you going to do?"
- **August 8th, 2004** – A man was verbally harassed as he exited a mosque in Florida after Friday prayers. The assailant called him epithets such as "A f-ing Muslim", and told him, "...if you breathe on me, I will die".
- **August 10th, 2004** - A Muslim man on his morning commute in Virginia reported that a car tailgated him, then went up beside him and yelled, "...f-ing terrorist, filthy motherf-ing raghead go back to the desert where you came from" and then got in front of him and slammed on his brakes.
- **December 30th, 2004** - In California, a Muslim woman wearing *hijab* was pushing a stroller with her baby in it on the sidewalk when a man in a truck almost ran her over exiting a gas station. When she exclaimed, "You almost killed me and my baby!" The man replied, "It wouldn't have been a big loss."

Mosque Vandalism:

- **February 23rd, 2004** – A mosque was set ablaze in Texas, resulting in \$50,000 worth of damage.
- **June 22nd, 2004** – Cans of beer and liquor bottles were thrown at a mosque in New Jersey.
- **June 24th, 2004** – 25 dead fish were dumped in the parking lot of an Islamic center in Houston²¹³.
- **June 24th, 2004** – An individual defaced a mosque in St. Louis, Missouri by painting a swastika on the side of the mosque.
- **June 24th, 2004** – An Islamic educational center in Texas was vandalized by an individual who smeared, "Kill all Muslims!!! Whose transgressions killed my father!! You killed my sister!!! Now I seek to kill you!!!" in graffiti on the building.
- **September 10th, 2004** – A brick was thrown through a mosque window in Kentucky.
- **December 8th, 2004** – A mosque was burned down in Arizona.
- **February 23rd, 2005** - Several bullet holes were discovered by community members in the main dome of a Houston mosque.

²¹³ *Supra* note 196.

- **March 2nd, 2005** - A Texas man was indicted for an alleged arson attack on the Islamic Center in El Paso. The offender fashioned two incendiary devices and threw one at the Islamic Center.

Discrimination in Schools:

- **January 25th, 2004** – A substitute teacher for an 11th grade history class in Pennsylvania told her students that “all Muslims are rootless [sic] and the war in Iraq is OK even killing Muslims is ok” because they killed her family in Armenia. The school will now refuse to employ that substitute teacher.
- **May 3rd, 2004** – In Florida, a Muslim high school student was viciously attacked and beaten by another student who ripped off her headscarf. School security guards failed to stop the fight until they were urged to interfere by another student.
- **June 4th, 2004** – In New York, two Muslim high school students were prohibited from attending graduation ceremonies because they wore *hijab*. The denial to participate in graduation was allegedly accompanied with other derogatory remarks, such as “if we let you wear your head covering, then the Africans would wear their robes.”
- **June 9th, 2004** - An article in the New York Post²¹⁴ stated that a 12-year-old Muslim child was beaten and subjected to anti-Muslim slurs in a Staten Island school.
- **August 26th, 2004** – A Muslim student visiting the United States as part of a State Department foreign exchange student program was prohibited from wearing *hijab* to school by her principal in California.
- **September 30th, 2004** - A substitute teacher at a high school in Florida told his class that the Quran is full of lies and that they should not read it.
- **October 29th, 2004** – Muslims were verbally and physically assaulted upon passing a fraternity house on a college campus in Illinois. Offenders referred to them as “F-cking terrorists.”

Passenger Profiling:

- **June 14th, 2004** – During a flight departing from Houston International Airport, a Muslim man switched seats with another man who wanted to sit next to his girlfriend. A flight attendant came and said that he had to switch back to his original seat because he had to stay in his assigned seat. The Muslim man complied, not wanting to make any trouble. At this point, a second flight attendant came and told him that they had received a complaint about his suspicious behavior and that he needed to disembark from the plane. The man refused, saying that he was doing nothing wrong, only reading a book. A third flight attendant came and said he had to leave because he was creating a disturbance. When he again refused, the flight attendant made a loud general appeal to the cabin, asking, "Does anyone have a complaint with this man," to which a man replied “yes, kick him off the plane," and another woman said, "I don't know why these people can't understand how we do things here in America." Again he refused, and the flight attendant said, "Don't try anything else because

²¹⁴ See <https://www.cair-net.org/default.asp?Page=articleView&id=33515&theType=NB>

security has already been notified in Baton Rouge (his destination) and they will handcuff you as soon as you land." The flight proceeded without incident.

- **December 1st, 2004** – On his way home from Paris, France, an American Muslim citizen was told that he would not be allowed on the plane before the airline received confirmation from Washington that he could board. After waiting for about an hour, he, his wife, and 4 children, including his 1-year-old-baby, were put on the high security list and searched from head to toe. When he landed in Philadelphia, the immigration officer asked him to follow him into a back room where he insisted that he had a middle name and a tribal name. The officer said that he was waiting for officials in Washington to confirm if he should be detained further. Several other agents came to interrogate him, including a custom officer, who examined every item in his wallet.

Unreasonable Arrest:

- **June 10th, 2004** – In Colorado, a Muslim family's house was raided by IRS and FBI agents with guns drawn. The family was told it was an IRS investigation and the agents proceeded to ask questions pertaining to religion such as "Are you Shiite or Sunni?" They were also asked about "the leadership of the Sunnis and Shias and which was stronger" and about "Hamas, Hezbollah, and suicide bombings." Finally, they were asked, "if the US went to war with Iran, which side would you be on?" The family felt the questions were inappropriate for an IRS investigation. Agents removed all personal items with non-English writing, including CDs, and their young daughter's personal diary.
- **July 1st, 2004** – When a Muslim woman and her husband were taking pictures of a train station for an advertising proposal in New Jersey, a security guard questioned them and called several police officers and a detective to the scene. The couple feels they were profiled, but the officers insisted that this was standard policy after September 11th.
- **July 28th, 2004** – In New York, mall security guards called the police because a group of Muslims were performing their prayers in the parking lot.
- **October 11th, 2004** – In Minneapolis, a Muslim student of Somali background wearing *hijab* was pulled over by police. Officers searched her car and threw all of her belongings on the street. Other Muslim witnesses were told by the police that if they tried to help her gather her things, they would be arrested. She was humiliated in public, left on the side of the street, with her belongings strewn on the ground, including her Islamic books and Qur'an.

Workplace Discrimination

- **February 1st, 2004** – A Muslim man from California reported that his co-worker called him a "F-cking Egyptian terrorist," and also made remarks that he was associated with terrorists.
- **March 1st, 2004** – A Muslim man was the subject of racial harassment and discrimination at his place of employment in California. His coworkers called him a 'terrorist', 'bomb maker', 'Osama Bin Laden', and 'Saddam Hussein'. They also accused him of going to the mosque to "learn how to make bombs."
- **April 6th, 2004** – A Muslim woman working in Maryland was fired for wearing *hijab*.

- **July 27th, 2004** – In Illinois, a Muslim man was subjected to name-calling by his coworkers who referred to him as "Terrorist" and "Bin Laden." He was also accused by coworkers of wanting to blow up the facility and that he had bombs in his car.
- **November 19th, 2004** – After being hired as senior director of clinical programs, a Muslim man in California reported that he was fired after three months and was told it was because his "cultural background was unfit for the level of the position" he had.
- **December 30th, 2004** – A Muslim woman in Virginia reported that her supervisor told her, "you didn't go to Saudi Arabia for religious reasons, you went to make bombs to blow up buildings," and told her co-workers that "...you are working with a terrorist."

The Justice Department says it has investigated more than 600 incidents of backlash since the September 11 attacks and that it has won convictions against 22 of the 27 defendants that it chose to prosecute.

"Injustice anywhere is a threat to justice everywhere."

-- Martin Luther King, Jr.

CONCLUSION AND RECOMMENDATIONS

“They who would give up an essential liberty for temporary security, deserve neither liberty or security.”²¹⁵

–Benjamin Franklin

The American Muslim community strongly supports national security efforts and understands the need to balance these efforts with hallmark constitutional and legal protections for all Americans, regardless of race, religion, gender or socioeconomic status. With over 1500 reports of civil rights violations against the American Muslim community in the last calendar year, it is apparent that post-9/11 backlash against Muslims, Arabs and South Asians continues to be a societal problem which needs to be redressed accordingly.

On December 31, 2005, sixteen sections of the USA PATRIOT Act are set to expire- or in legal parlance, “sunset.”²¹⁶ There is no federal initiative which will have a more long term effect on the constitutional and civil rights of all Americans in 2005 than the debate on the sunset provisions of the USA PATRIOT Act.

CAIR supports the passage of a bipartisan piece of legislation- the **Security and Freedom Enhancement (SAFE) Act**²¹⁷, which was co-sponsored by Democratic Senator Richard Durbin of Illinois and Republican Senator Larry Craig of Idaho. The SAFE Act would amend the USA PATRIOT Act to add key checks and balances to law enforcement agencies. The SAFE Act aims to protect Americans’ civil liberties by making modest but important changes to several of PATRIOT’s most troublesome provisions.

CAIR supports the call to pass the SAFE Act which has been led by a coalition of liberal, conservative and libertarian groups called the Patriots to Restore Checks and Balances (PRCB)²¹⁸. The coalition’s members include the ACLU, the American Conservative Union (ACU), Gun Owners of America and the Libertarian Party. The coalition’s aim is to preserve civil liberties while at the same time preserving America’s power to combat terrorism.

Civil and constitutional rights are non-partisan issues. Regardless of whether one is a Republican, Democrat or Independent, all Americans should be as stoic and vocal in demanding their legal, civil and constitutional rights for all Americans as we are dedicated to protecting our homeland from threats, both foreign and domestic.

²¹⁵ See http://www.wisdomquotes.com/cat_security.html

²¹⁶ Anita Ramasastry, “The Import But Flawed USA Patriot Act: Why Congress Should Allow Certain Provisions to Expire This Year,” FindLaw, April 20 2005 available at <http://writ.corporate.findlaw.com/ramasastry/20050420.html>

²¹⁷ S. 1709 available at <http://thomas.loc.gov/cgi-bin/query/z?c108:S.1709>:

²¹⁸ www.checksandbalances.org

Los Angeles Times

HE WWW.LATIMES.COM ↑

THURSDAY, APRIL 8, 2004

Copyright 2004 The Los Angeles Times

50¢ Designated A

THE NATION

LOS ANGELES TIMES

THURSDAY, APRIL 8, 2004 AM

3 Muslim-Owned Gas Stations Torched in Texas

By LIANNE HART
Times Staff Writer

HOUSTON — Three Muslim-owned gas stations in San Antonio have been set on fire by an arsonist in the last three weeks, piling the specter of hate crimes in a city that prides itself on its diversity.

"No one has taken responsibility and it's difficult to say what the motive is, but there are too many similarities between the fires for it to be a coincidence," said Capt. Art Villarreal, head of the arson unit at the San Antonio Police Department. "It flies in the face of logic to say these are random attacks."

For the 12,000 Muslims who live in San Antonio, the fires are

a reminder that fallout from the Sept. 11, 2001, attacks continues.

"The police aren't saying 'hate crime' yet, but we as a community are thinking it is because of what we've been going through, of being singled out," said Sarwat Husain, executive director of the Council on American-Islamic Relations in San Antonio.

"Our community needs to send a clear message to the perpetrators that bigotry and hatred will not be tolerated."

The first fire was set March 24 at a Texaco station on San Antonio's northwest side. Five days later, a nearby combination convenience store and gas station was torched. On Monday, a third station, in the south part of the city, went up in flames. No inju-

ries were reported in the fires.

All were set around 3 a.m. In each case, an accelerant was poured on an outside wall and ignited, causing between \$50,000 and \$100,000 worth of damage, Villarreal said. In at least two of the cases, investigators found red plastic gasoline containers among the charred rubble.

No anti-Muslim graffiti or notes were left behind, Villarreal said. "It would be difficult to say the perpetrator knew who the owner was in all instances," he added. "I think he would see the people working behind the counter were from the Middle East and that may have spurred the individual."

The gas stations, each affiliated with a different corporate

brand, were owned and operated

by husband-and-wife teams striving to achieve the American dream, Husain said. "They all worked so hard for their businesses, and now it's gone. . . . There is shock and anger and fear when you go through something like this. The Muslims here are all Americans. Americans hurting Americans — this should not be allowed in this country that tells the world it is the most civilized," she said.

In San Antonio, where 62% of the population is Latino, diversity is typically celebrated, Husain added. "We're taking it so seriously because this is the first time something like this has happened here, and we want to stop it before it spreads."



Associated Press
CALL FOR UNITY: Muslim rights advocate Sarwat Husain at a news conference with supporters after a series of arson attacks.

The San Antonio fires follow an incident last month in Lubbock, in west Texas, where vandals shattered windows and sprayed anti-Muslim graffiti on the walls of the Islamic Center of

the South Plains.

Four boys ranging in age from 13 to 15 were arrested and charged with burglary in the theft of cash and equipment from the mosque.

abc ACTION NEWS
TAKING ACTION FOR YOU • TAMPA - ST. PETERSBURG

News / Home
News / Archive
Accu-Weather
Sports
Investigators
Call For Action
Dirty Dining
Health
Community
Personalities
Programming
Links & Info
Entertainment
Live Cams
Contests
About Us

Search

American Muslim woman alleges hate crime at Westshore Mall

an ABC Action News report 4/08/04

TAMPA — As the violence escalates in Iraq, Tampa police say terror may be to blame for a hate crime at Westshore Mall.

Tuesday afternoon, a jewelry kiosk owner was verbally assaulted by three suspects, one of whom also tried to grab the Islamic woman's headscarf.

The suspects claimed to be from Madrid, and blamed the victim for the violent train explosions in that city last month.

"She found it ironic that she's American. She's born in this country, her parents are from this country. And they were telling her get out of America when the people asking her to get out are not American themselves," observed Ahmed Bedier of the Council on American-Islamic Relations.

Police are reviewing mall security tapes for any evidence of the crime. The suspects are described as a couple in their 40s or 50s, and may have had a daughter in her 20s.

Ahmed Bedier
CAIR Spokesman
abc ACTION NEWS
7p 11:03
abcactiounews.com

Vandalism Puzzles Arab Family

House in Waldorf Targeted Twice

By JENNIFER PATRICK
Washington Post Staff Writer

Rahab Saab stopped to check her front porch in Waldorf and pointed up at the stream of egg yolk on the second-floor window.

She continued to where another egg broke a slat, where soggy toilet paper still draped through the shutters, where the dog litter had been spread on her daughter's car and her own front door.

The house had been vandalized, that was obvious. But what did it mean? If it had happened just once, Saab said, she would have assumed it was a case of bored teenagers with nothing better to do. But last Sunday's episode marked the second time in about two weeks her house was vandalized in a similar manner.

"It's probably kids that decided they wanted to play a game, and we were out of town. Or they decided they didn't want Arabs around," she said. "It's a 10-10 chance someone down's want us around here."

The Charles County Sheriff's Office is investigating the vandalism as a possible hate crime, partly because of the family's Arab heritage. No offensive words or messages were left on the property, authorities said.

Saab, 48, is from Beirut. She immigrated to the United States more than 25 years ago and has lived in Waldorf for the past eight years. One of her two daughters, Raha, 16, graduated from Waldorf High School this year.

Hessenthal said she did not experience prejudice at her school, and she does not believe the family is being targeted because of its heritage. "I just think it's kids being stupid," she said. But the severity of the vandalism surprised her.

"Tearing and toilet paper is one thing," Hessenthal said. "It's the eggs, that's what throws me off."

Saab said that she lives her neighborhood, in a subdivision that straddles Harpers Lake, just off Sandwood Drive, and that she has never had any major problems before the vandalism. But since the act began to lay, she said, she has

<http://www2.ocregister.com/ocrweb/ocr/article.do?id=93321§ion=LOCAL&subsection=LOCAL&year=2004&month=5&day=4>

State's Muslims report upsurge in hate incidents

Tripling of reported abuses in 2003 over year before is an alarming trend to civil-rights group.

By **VIK JOLLY and ANN PEPPER**
The Orange County Register

ANAHEIM – Ghazal Alloulo fought back her tears until she got home from school.

Then the high school freshman wept and told her parents all about it.

Alloulo, 14, described her gym teacher's reaction when she told him her dad didn't want her to run a mile because she hadn't eaten - her family was fasting for the Muslim holy month of Ramadan.

The teacher responded by saying that the American military should wipe out Iraqis in Iraq while they were fasting. Then, she said, he and another teacher laughed about it.

Alloulo's experience on an Anaheim campus was one of 221 anti-Muslim incidents statewide reported in 2003, more than triple the number the year before, according to "The Status of Muslim Civil Rights in the United States 2004." The national study and a companion report on California was released Monday by the Council on American-Islamic Relations, a national civil-rights group.

The reports show the largest spike in anti-Muslim incidents since right after the Sept. 11, 2001, terrorist attacks. California, which has the largest population of Muslims in the nation - about 1 million - had the highest number of reported incidents. They ranged from the severe beating of a Yorba Linda youth to vandalism of a San Luis Obispo mosque.

Orange County, which has about 170,000 Muslims, accounted for 46 of the state's incidents, including 15 cases of verbal harassment and 12 of employment discrimination.

"I am a lot more protective, a little more scared," Rashid Alam, 18, said Monday. In February 2003, Alam was beaten in Yorba Linda by about 20 people wielding baseball bats and golf clubs. "I try not to be (scared), but it's not easy."

Nationwide, the council reported 1,019 anti-Muslim incidents of violence, discrimination or harassment, a 69 percent increase over 2002.



HER TEACHER LAUGHED: Ghazal Alloulo, 14, right, says she worries about anti-Muslim backlash at her Anaheim school. She sits next to her mother, Rania Baaj, at the Council on American-Islamic Relations in Anaheim recently. ROSE PALMISANO, THE ORANGE COUNTY REGISTER

Anti-Muslim incidents

[Click to see graphic >](#)

RELATED STORIES

• [Reversing discrimination](#)

<http://www.latimes.com/news/local/la-me-detain23jul23,1,3695316.story>

LOS ANGELES

Culver City Man Detained in Egypt to Return Today

By Teresa Watanabe
Times Staff Writer

July 23, 2004

A Culver City man detained by Egyptian authorities for nearly a week has been released and was scheduled to return to Los Angeles today, U.S. government officials confirmed.

Abdul Ghafoor Mahboob, a 26-year-old naturalized U.S. citizen of Afghan descent, was detained at the Cairo airport last Friday as he prepared to return to California after studying Arabic since December. Mahboob "sounded well and high-spirited" in a phone call with U.S. consular officials, said his brother, Mostafa.

It remained unclear why Mahboob was detained. The U.S. Bureau for Consular Affairs in Washington could not divulge details because of privacy laws, a spokeswoman said. The Egyptian Embassy in Washington did not return calls.

The detention had mystified Mahboob's family and friends, who said he was a devout and nonpolitical Muslim who did not belong to any militant organizations. Several speculated that it was a case of mistaken identity.

Mahboob immigrated to the United States in 1988 and worked as a fundraiser for an Islamic charity until last year.



CAIR-LA Communications Director Ms. Sabiha Khan with Mr. Mahboob upon his return to Los Angeles