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THE FACE OF ISLAM: THE PERCEPTION OF MUSLIMS IN AMERICA

Excerpt of Symposium Panel Discussion Transcript

Hera Hashimi: I would like to welcome all of you back to the law school. We took a little field trip, and the brisk walk in the cold was I guess part of the master plan to wake everyone up again. So I hope that everyone is ready to engage in our final panel of the day. We are about to begin panel 3, The Face of Islam: Perception of Muslims in America. The moderator of this panel is Professor Barbara Olshansky. Professor Olshansky is a professor at the University of Maryland School of Law, who teaches the international clinic. Most recently she was the Leanne Kaplan distinguished visiting professor in human rights at Stanford Law school. Previously, she was deputy legal director for the Center of Constitutional Rights and director of counsel of Guantanamo Global Justice Initiative. She was one of the lead attorneys who brought the landmark Supreme Court case that resulted in the decision, resulting in nearly 600 detainees at Guantanamo Bay Naval Base in Cuba to challenge their unlawful indefinite detention. She is the coauthor, most recently, of the case for impeachment and the legal argument for removing George W. Bush from office. Among other titles, she is the author of *Secret Trials, Execution, Military Tribunals, and The Threat to Democracy*. With this I would like to turn the floor over to Professor Olshansky.

Professor Olshansky: Thank you very much everyone for being here, I want to thank Hera and Carrie particularly for doing a wonderful job incorporating these issue[s] to the law school and area and bringing in so many interesting people together from all around so that we can have some very interesting conversations. In the interest of providing all of the speakers with the most time that we possibly can, I have begged their forgiveness and I am going to give very short introductions. The first one to speak today, will be Professor Sahar Aziz; she teaches a course on national security and civil rights law at Georgetown University Law Center and she serves as senior counsel to The Charity and Security Network, a legal fellow at the Institute of Social and Policy Understanding, and counsel to the Civil Rights Defense Committee, a very honorable institution. Sahar is a principal of her own law office, where she focuses on immigration employment discrimination and post 9/11 backlash issues; including racial and religious profiling, employment discrimination, and the impact of anti-

terrorism financing laws on American Muslim charities. Sahar is the author of two law review articles addressing post 9/11 backlash issues; *Sticks and Stones: Words that Hurt - Entrenched Stereotypes 8 years after 9/11*, and a very recent publication just out and *The Laws in Providing Material Support to Terrorist Organizations: The Erosion of Constitutional Rights or a Legitimate Tool for Combating Terrorism?*, an article in the *Texas Journal of Civil Rights and Civil Liberties* in the fall of 2003. She has published many commentaries on national security issues, and is well known for speaking on CNN and appearing in other commentary and appearing in other commentary venues. We are very lucky to have her here today to give on the ground and more theoretical views about what is happening in America. Please welcome her.

Professor Sahar Aziz: Thank you Barbara for that kind intro[duction], and thank you to the journal, and Hera for inviting me to this great conference. I was fortunate to be here in the morning and learned quite a bit from the speakers. What I am going to try to do today is contextualize what I suspect my co-panel is going to talk about because many of them do the very heavy lifting of working on the ground with the communities and doing a lot of crisis management. I think it is important to try to understand and theorize what is happening and compare it to what has happened in the past and try to predict how to deal with it based on our understanding. The[re are] three points I want to make. The first is that there has certainly been an authorization process which is not the first time it has happened in American history, but we have to acknowledge, describe, and deconstruct and strategize on how to eliminate it. The second point I want to make is that government action is legitimizing this authorization and it is essentially legitimizing private bias in various context. I will talk a little about the employment bias, which my recent paper is about. And third, I think there has been a depoliticization of counter-terrorism such that it is creating a coercive assimilation of these groups, and I want to go into more detail as to how that is happening and some of the troubling consequences that I think all of us should be concerned about because I think it is going to affect all Americans.

First, what is this authorization process? First what is the stereotype? It is the terrorist Other; that's the stereotype. So Islam, in my opinion, is not even just Arabs, Muslims and south Asians anymore. I used to think it was just these three groups. I think it is Islam that has been raced as terrorism, so anything affiliated with

Islam, whether you are perceived through your profession, faith, the way you took, that you are now raced as a terrorist, and the color of your skin doesn't matter; and that's if you've read any critical race theory or this process of racialization that is happening in America where for example Catholics were raced as non-white and inferior; Japanese were raced as disloyal, suspicious, treasonous; African Americans are raced as criminals, violent, gangsters; Latinos are raced as undocumented, illegal, inassimilable, etc. There [are] a lot of various groups that are raced in a pejorative sense and unfortunately it seems to be a tradition that we have in this country, but I think with every generation we can try to stop that, that historical trend.

So with Arabs, Muslims, South Asians, i.e. Islam, what's happening is you have a religiously driven racial discrimination that has happened, and race is socially constructed based on this war on terrorism that seems to never end. The emergency that at one point was post 9/11 the first maybe few months or year, but nine years later we are dealing with a lot of the same issues and a new administration even though they don't say the war on terror, on the ground the policies are the same, the laws are the same, they are still invoking the state secrets provision, they're still, Guantanamo still exists, etc. So [], the political social environment hasn't changed much unfortunately, and what's happening is there has been a rationalization of racism. And the term rational is really important because the way that much of, some of the rhetoric in the civil rights movement and the way that racism was directly countered was by taking racism and characterizing it as an irrational process. And that integrationism was the right solution, post racialism of color blind society, and so when something is irrational it is easier to discredit, but when it is a rational process then people don't think it is racism per se because they have already been indoctrinated to think, "oh racism is bad, is irrational, we're not racist." Instead what we are doing is protecting national security, that is a very rational process. If you look at *Korematsu*, which was the Supreme Court case that legalized the internment of Japanese that is still technically good law, unfortunately, there is a quote that says, "to cast this case into outlines of racial prejudice without reference to the real military dangers which were presented, merely confuses the issue." *Korematsu* was not excluded because of hostility to him or his race; he was excluded because we are at war with the Japanese empire." So, even the Supreme Court didn't think that internment was racist. They thought it was a rational national security policy. Does that sound familiar? I'm sure that Barbara can talk a lot about the case where the same theory was discussed.

So, we have to acknowledge that this is happening in Oklahoma. It's happening in all kinds of contexts. And this, the discrimination is being institutionalized through government policies. So, for example, immigration and enforcement, and the special registration, all non-immigrant males between the ages of 16-45 from 24 out of the 25 countries are all Muslim or Arab majority countries, that's that discrimination, that's just immigration enforcement and we're just trying to protect our borders and we have plenary authority in immigration as a government. And we have a right to decide who comes in and who comes out, and it is merely a coincidence that 24 of 25 are Muslim majority countries. But what message does that send to the public? It sends [the message] that these people are not to be trusted, because we the government have decided that we're going to selectively target them for special registration.

And then after 9/11 there were many many targeted enforcement efforts. The Saunders Program which said that we are only looking for Arabs and Muslims who are undocumented and we are putting all of our resources into that, sending the message to the public that we need to kick these people out, because their very presence threatens our national security, so it is not really just that they are undocumented and they broke the law, it is that they are a threat and we need to get them out. The other ways it is institutionalized, I'll go briefly, but I know my co-panel is likely to talk about it: voluntary interviews. So if the FBI has been going around interviewing, seeking the voluntary consent of many Muslims across the country particularly the Somali Muslim community after the time square attack, the Pakistani community got swarmed with FBI agents asking for voluntary interviews. The mosque surveillance issue, which I am sure Corey and Harris will go into, the Asian provocateurs, where you have all of these cases that people are being charged, and lo and behold the head, the leader of the pod was the informant, the FBI informant was leading the plot. It is very difficult to win an entrapment defense, but it still raises a lot of very troubling questions about, are these people really terrorist, or were they just hapless, naive, perhaps mentally ill people, who needed an FBI informant to help them commit a plot for terrorism?

It makes me very weary of what our FBI's priorities are. And then the closure of the Muslim charities is also institutionalized discrimination. You no longer have the civil society available that you can use to do good work, to do social services, to help the poor, whether it is in America or abroad. If you don't have the institutions, then the entire community is demobilized. So all of these, in my

opinion, are the institutionalization of this terrorist other stereotype, which then legitimizes private bias. And that is when you move in to things like the employment context, which I have written a paper on, and I encourage you [to read] if you are interested in reading some depressing case law, because it was more depressing than I anticipated when I started researching it, because it is case after case after case, all the way up until 2008, and its still continuing on, where you have people who were [subject to] visual racial harassment, hostile work environment claims. People were being called Osama Bin Laden. They were being called terrorists. They had their picture photocopied on top of a most wanted terrorist list picture and put up all over the office and everybody was laughing. One woman was reprimanded by her supervisor because he said “how dare you not call everybody and apologize for 9/11, you’re responsible, aren’t you a Muslim?” Another woman was literally someone, this was in Texas of all places—I’m from Texas—the guy comes up to her, I think he was her supervisor or co-worker, straight into her face and starts yelling at her and saying, “I know you are a terrorist and you better get out of here, you need to go home, you need to go back to your country.” She ended up having a nervous breakdown. She was one of the few that won her case because she had such a physical threat [made] to her, but generally there are actually very difficult to win unfortunately, because the courts, though they were political, they said this is not racial animus, this is not religious animus, these are political viewpoints. It’s not actionable, that’s not a protected basis for under Title VII. And I don’t think that the courts come to that conclusion on their own, I don’t think they just walk in and say that’s political. They are becoming, they themselves are consumers of the media and they see what the government is doing and thinking, “ok well, this is clearly, we’re not discriminating, we’re just engaging in rational national security policy.”

So from a doctrinal perspective, it is really problematic for, in order to win a hostile work environment claim, you have to ensure it is severe or pervasive, that the harassment was severe or pervasive such that the conditions of employment were negatively affected, and they’ve found that it’s not severe and not sufficiently severe, so it had to happen every day, or it had to be so severe that you were physically and almost had a break down or are about to be attacked, and that’s what it takes to win a case if you’re within these communities. So, to me, it just solidified that this problem has many, many tentacles, and it’s just spreading. Not just in the government context, but also within private bias.

I think the mosque construction is just another aspect of this. Opposition to mosque constructions, I just read an amicus brief that was filed with the Department of Justice, Civil Rights Division and the entire argument is that Islam is a religion that is protected by the Civil Rights Act. The fact that we have gotten to that point is very worrisome from a lawyer's perspective because of what happened, so the county did the right thing, didn't violate the religious right and institutional and inmate protection act of 2000, which says you cannot discriminate in land zoning laws against houses of worship. That law was passed as a result of Christians and Jews and I don't know how involved Muslims were, but it was a religious movement to protect churches from being discriminated against, predominantly churches. Ironically, you now have these Christian groups who are opposing the construction of mosques. Their argument is that the county granted the permit, they then sued the county and said, Islam is not a religion, it does not warrant protection. That is, that's how bad the discourse has gotten. And the Sharia Law is kind of based [on] this same concept.

And the other two things, I'll just go quickly, and I know that Corey will deal with this, is hate crime, school bullying, and there have been attempts to denationalize people, which is unprecedented. Unfortunately, the Supreme Court doctrine is in favor. You have to have an intent to give up your citizenship, but they were trying to denationalize people who were accused of material support to terrorists, which is a very, very broad law.

So finally I just want to close with what I think [is] another phenomena [that] is happening, which is the coercive assimilation of Muslims in America through the politicization of counter-terrorist groups. So what does that mean? Well, all groups, I think, many, many groups that come to this county in one way or the other are coercively assimilated. And I say coercive because the cost of not assimilating becomes prohibitively high, such that you have to assimilate. And different groups have to do different things. So Latinos you can't speak Spanish, you need to dress differently. That tends to happen with a lot of new immigrant groups. Some people will say with African Americans you can't wear dread locks, you need to act a certain way, you can't talk urban talk, you can't dress a certain way. So there is a coercive effect to assimilate into what some could argue kind of a Eurocentric definition of what an American is. And if you don't do that, you won't get the job, you won't get the promotion, you won't get opportunities, if your name is too ethnic you may not be able to improve it, but someone sees it on a resume . . . There have been studies of this if someone's name is Keisha and someone's name is

Jennifer, that Keisha was not getting the job it was an ethnic name, and that has all been studied.

So with Muslims I think what is happening is that through the surveillance of the mosques and through the surveillance of speech and religious freedom, excuse me, through the surveillance of the mosques and the use of informants, speech and religious freedom is becoming chilled, so people are afraid to go to the mosque, afraid to talk about politics at the mosque and amongst themselves. They distrust each other because they do not know who is the informant among them, and it undermines a social cohesion of the community. And people stop going to the mosque and they stop socializing with each other and that makes it very difficult to have a cohesive healthy community.

Political dissent becomes a basis for scrutiny so if you watch a lot of these videos, the Yemeni cleric in Yemen, if you just watch that video, I bet you the FBI's got you on their list, I think they have some tracking device to see who is watching the videos and that is who they are going to open an investigation on. They don't need a predicate act anymore because of the DOJ guidelines of 2008. A threat assessment does not require any kind of predict act. It could be a hunch. Opposition to foreign policy, another basis for scrutiny, and any religiosity, if you are too religious and politically dissenting, you've got real problems, because that fits the profile and the terrorist other stereotype, and ultimately you create the good Muslim-bad Muslim paradigm. The good Muslim is secular, politically docile; if you are religious you can still be a good Muslim, but you better not be too politically opposed to the government especially with regard to foreign policy. Then the government plays the good Muslim and the bad Muslim in their outreach effort. So the people they invite to their meeting and various events have to fit this coercively assimilated model that is based on the speech, religiosity, and appearance. And then that further divides the community, because in every community there will always be those people that seize that opportunity to be the token.

That's kind of minority politics in America, and you can talk to the African American community and Latinas and they will tell you the same thing. So I know I have run out of time, but those are essentially the three points that I wanted to make: the authorization process, its impact on private bias, its institutionalization through government action, and the coercive assimilation of Muslims. And I would just close with saying that, unfortunately, my prediction is that these things are not going away and it will get worse before it gets better. And what I would note to the audience is that this really isn't

just about these groups. I think we all care about what is happening to any group if we believe in any rights. But it will spread. They are now looking at anti-death penalty groups, anti war groups. It started with the Muslims and it is now spreading and I could go into another speech about how what is happening is inevitable, and historically proven that is how it works. So they all have an interest in addressing, so we all have an interest in addressing these trends. Thank you.