ISLAMOPHOBIA AND THE RULE OF LAW

Introductory Report
By
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Loyola University Chicago School of Law
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I.
Introduction

The Arab American Bar Association in conjunction with the Muslim Student Association at Loyola School of Law, Arab American Business and Professional Association and the American Middle East Voters Alliance presents this continuing legal education forum on "Islamophobia and the Rule of Law". In part, our forum will address current legal issues confronting ethnic and religious minorities loosely characterized as Arab Americans and Muslim Americans.
II. The Arab American Bar Association of Illinois

Not long after its formation in 1990, the Arab American Bar Association was called to action in 1992 in the aftermath of a civil disturbance that followed a world championship basketball game in Chicago. After the completion of a telecast depicting a Chicago sports victory, wide scale civil disturbances erupted on the west and south sides of Chicago. 139 Arab American owned business properties were targeted by rioters, looters, vandals and arsonists, which caused over $14 million in losses. Our bar association presented the City of Chicago with a detailed "White Paper" which detailed pre-constructed strategies to avert future violence. That plan was partly adopted by the City of Chicago and the City of Portland, Oregon.

In 1996 our bar association presented a position paper to the American Bar Association concerning the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No. 104-132, 110 Stat. 1214). There was concern over a number of provisions which made it unlawful for persons to knowingly provide material support or resources to organizations designated by the federal government as "foreign terrorist organizations".

On September 26, 2001, our bar association held an internationally telecasted news conference two weeks after the 9/11 terrorist attacks upon the United States. We addressed the massive post 9/11 backlash against Arab-Americans and Muslims. At that time we issued a "Preliminary Report on Hate Crimes Against Arabs and Muslims in the United States", which was reissued, modified and updated in 2002 and 2003. The report was presented to the United States Commission on Civil Rights and several law schools, legal associations, and community groups. One important element of the Report addressed the "hate speech" abounding the civil unrest targeting our community in the aftermath of 9/11, including statements by Sen. Saxby Chamblis, columnist Ann Coulter, and evangelist Franklin Graham.

III. Demographics of Arab Americans and Muslims in the United States

According to the Economist and the Washington Post, there are 3.5 million Arab-Americans in the United States mostly concentrated in industrial states such as New Jersey, Pennsylvania, Ohio, Illinois and Michigan. Although there are 7 million Muslims in the United States, all Arab-Americans are not Muslim. Indeed, many are Catholic,
Orthodox and Protestants who can trace a continuous line of Christian faith back to the first converts to Christianity. Estimates of Arab Americans and American Muslims in the Northern Illinois area range from 250,000 to 400,000. 36% of Americans of Arabic ancestry have college degrees.

Among notable Arab-Americans are Dr. Michael DeBakey, the Houston heart surgeon who perfected the artificial heart, Farouk El Baz, the NASA scientist who trained lunar astronauts, consumer advocate Ralph Nader, former Senators Spencer Abraham, George Mitchell (majority leader), James Abdnor, James Abourezk, and John Sinunu. Former Secretary of Transportation, Ray LaHood. Also, there are Nobel Prize winners Ahmed Zewail (Physics) and Elias Corey (Chemistry), as well as Candy Lightner, the founder of Mothers Against Drunk Driving. Finally, we have Colonel James Jabara, the first “jet ace” in the Korean War, Four Star General George Joulwan, former Commander of NATO, the first school teacher in space, Christa McAuliffe who perished on the space shuttle “Challenger”, and Michael Monsour, a Navy Seal who was posthumously awarded the Medal of Honor by President Bush for his military service to the United States.

Arab Americans and Muslims Americans are proud of their contributions to the United States.

IV.

Recent Polling Shows Upsurge of Unfavorable Attitudes

A Zogby Poll released on December 21, 2015 reported that “favorable attitudes toward Arab Americans and American Muslims have declined since.... 2010 from 49% to 40% for Arab Americans; and 48% to 33% for American Muslims." Zogby found that 51% of Democrats oppose [profiling of Arab Americans and American Muslims] by law enforcement while 60% of Republicans find its use justifiable."

Also, the poll showed that a "growing percentage of Americans say they lack confidence in fellow Americans from these communities to perform their duties if appointed to serve in government."

This polling coincides with the recent terrorist attacks and the murder of innocent civilians in the United States, Europe, Syria, Iraq and throughout the Middle East (both Christian and Muslims victims).
V.

Hate Speech and Hate Violence in the past Six Months

Aside from the obvious reaction to the recent reports of terrorism in the United States and Europe, we have seen a plethora of negative rhetoric targeting Arab Americans and American Muslims by some major political candidates, as chronicled by media giants CNN, FOX News and MSNBC. Some of these leading politicians advocate (1) barring immigration of persons to the United States based upon religion and ethnicity; (2) disqualifying American Muslims from holding high governmental offices based upon religion; (3) requiring American Muslims to "register" with the government; (4) use of widespread surveillance of places of worship; and (5) "patrolling and securing their [Muslim] neighborhoods"

Some journalists, including Robert Reich, former Sec. of Labor and contributor to the NY Times, suggest that the upsurge of hate crimes against Arab Americans and Muslims Americans is fueled by hate speech:

Perpetrators of hate crimes often take their cues from what they hear in the media. And the recent inclination of some politicians to use inflammatory rhetoric is contributing to a climate of hate and fear...

Some candidates are also fomenting animus toward Muslims.

But by virtue of their standing as presidential candidates, their words carry particular weight.

In a sampling of 33 incidents in the past six months, there were attacks upon Arab Americans, Muslims Americans, and those mistaken for them in 15 states, including Arizona, California, Connecticut, Florida, Georgia, Idaho, Indiana, Nebraska, New Jersey, Nevada, North Carolina, Oregon, Pennsylvania, Texas and Washington.

Most attacks involves places of worship, residences, community centers, and businesses. Weapons of choice were baseball bats, guns, firebombs, rocks, eggs, Molotov Cocktails, fake grenade, machetes, feces, and animal parts. Many incidents coincided with the defacement of property with racial epitaphs, swastikas, as well as armed demonstrations, burglaries and ransackings.

Attacks targeted women and girls wearing hijabs (headscarfs), children, and entire families. Some persons were attacked when overheard speaking Arabic. Ironically, some non-Arab/Muslims were attacked, including Sikhs and an Asian monk accused of being part of "ISIS"
VI. The Government's Role

In the aftermath of the terrorist attacks on September 11, 2001, there was significant nonpartisan opposition to the pervasive hate speech and hate violence targeting Arab Americans and American Muslims by top political leaders such as then President George W. Bush, and former Presidents Gerald Ford, Jimmy Carter, George H. Bush, Sr., and William Clinton.

By contrast, when President Barrack Obama publically criticized the current upsurge of hate speech and hate violence in the United States, he was vilified by some who erroneously marginalized him as "a Muslim".

Most states have laws prohibiting "Hate Crimes". However, there is much debate on whether the First Amendment of the Constitution protects "Hate Speech" which foreseemably might or could incite violence. Article 20 of the International Covenant on Civil and Political Rights, as adopted by the United Nations in 1966 as part of its International Bill of Human Rights, prohibits "any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law".

However, the United States Constitution and most states resoundingly protect freedom of expression embodied in the First Amendment. Exceptions to this involve laws prohibiting lewd, profane, libelous and insulting words, which by their very intentional utterance will incite imminent violence. Brandenburg v. Ohio, 395 U.S. 444 (1969); See also R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) and Snyder v. Phelps, 562 U.S. 443 (2011)

VII. Conclusion

When the Arab American Bar Association issued its Report on September 26, 2001 to thwart the backlash against Arab Americans and Muslims Americans after the 9/11 attacks, it issued various "Findings and Resolutions", one of which invoked the American Bar Association Standards, which provide that law enforcement should "take appropriate action to prevent disorder... and to deal properly and effectively with disorder when it occurs". At that time we warned government officials, attorneys, and judges that reprisals against "blameless Americans of Arabic Ancestry and Muslims" were a "danger
to the liberties of all Americans"; violative of the rights of all Americans to “life, liberty and the pursuit of happiness”.

Our bar association had recommended that "federal, state and local law enforcement to develop and coordinate pre-constructed strategies" to avert more violence "in the event of an escalation of these hate crimes against Americans of Arabic descent and Muslim Americans and continue to publicly condemn hate crimes". And finally, we urged other bar associations and legal groups to engage in a dialogue to address hate speech and hate violence, prophetically ending our report with these words:

Those who would harm others because of their ethnicity or religion become accomplices to the terrorists. Those who embrace the innocent become accomplices to Freedom. The goal of our enemies is to destroy our Freedom.

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