Civil Wrongs

Louise Cainkar

Marquette University, Louise.Cainkar@mu.edu

The Bush administration promised not to “single out” Arabs and Muslims with its post-September 11 anti-terrorism measures, but in practice it did exactly that. These measures signaled to Arabs and Muslims in the US, citizens and non-citizens alike, that American legal protections did not really apply to them. And they yielded precious little in the way of fighting terrorism.

Within 24 hours of the September 11, 2001 attacks, the Bush administration had announced the identities of the alleged perpetrators, all but one dead, and had largely reconstructed the plot as it understood it. In short order the administration put forth the notion that another such attack was imminent and authorized immediate, aggressive law enforcement and domestic anti-terrorism actions. These activities were justified with statements such as this from Attorney General John Ashcroft: “Today’s terrorists enjoy the benefits of our free society—even as they commit themselves to our destruction. They live in our communities—plotting, planning and waiting to kill Americans again.”

In practice, government agencies focused their efforts on a particular set of persons and institutions, those of Arabs and Muslims living in the United States, where, they argued, the threat lay under deep cover, ready to strike anew. This assessment was based not on any particular knowledge but on its absence, and reflected more than anything the government’s own past failures. To compensate for these failures, Arabs and Muslims in the US were placed, en masse, under a security spotlight. As Nixon Center policy analyst Robert Leiken so aptly put it, “if the needle resists discovery,” go for the haystack, although in this case the needle had already been threaded.¹
The idea that Arab and Muslim terrorists were hiding in America under a veneer of normalcy, just waiting to attack, struck fear into the hearts of Americans. Bush administration statements were clear, calling fear to action: “The federal government cannot fight this reign of terror alone. Every American must help us defend our nation against this enemy.” Americans quickly came to view Arab and Muslims in the US—citizens, permanent residents and visitors alike—with suspicion. Since terrorists were alleged to be Arabs and Muslims posing as normal persons residing inconspicuously in “our communities,” close observation of them was not only necessary but also possessed of an air of patriotism. Arabs and Muslims spoke of a persistent feeling of being watched, of feeling that such actions as opening a car trunk, checking the mail or making an overseas phone call were subject to wild reinterpretation. In turn, Arabs and Muslims expended extra effort to convince spectators of their innocence and innocuousness. Whether or not each Arab and Muslim living in the US was in fact watched, most of them understood that, in the new panoptical world, they were under somebody’s surveillance, and conducted their daily lives accordingly.

As a result of the heightened focus on Arabs and Muslims, Ashcroft could declare on September 18, 2001, one week after the attacks: “To date the FBI has received more than 96,000 tips and potential leads: more than 54,000 on the website, nearly 9,000 on the hot line, the toll-free WATTS line, and more than 33,000 leads that were generated in the FBI field offices.” Each lead required an FBI or law enforcement visit to a worksite or home. While it is now clear that these interviews produced little useful information, at the time they suggested to onlookers that the subject bore some measure of guilt, even if by association. They fed into the notion that Arabs and Muslims were people who, if not terrorists themselves, could be harboring terrorists or covering up their knowledge of brewing terrorist plots. The interviews stigmatized Arabs and Muslims because bystanders likely presumed that something serious, something more than a name, a skin color, a phone call or a manner of dress, had spurred the visit.

The suspicions were unwarranted. As former FBI counter-terrorism agent Michael Rolince told the 2005 Muslim Public Affairs Council convention, after “about half a million FBI interviews… I’m not aware, and I know 9/11 about as well as anybody in the FBI knows 9/11… of any single person in your community who had they stepped forward could have provided a clue to help us get out in front of this. The reality of that attack is that 19 people came here with what they needed.”2 Arabs and Muslims in the US would endure much more than interviews before the pressure on their communities would be lessened.

**Visa Violators Are Terrorists**

Let the terrorists among us be warned: If you overstay your visa—even by one day—we will arrest you. If you violate a local law, you will be put in jail and kept in custody as long as possible. We will use every available statute. We will seek every prosecutorial advantage. We will use all our weapons within the law and under the Constitution to protect life and enhance security for America…. Some will ask whether a civilized nation—a nation of law and not of men—can use the law to defend itself from barbarians and remain civilized. Our answer, unequivocally, is “yes.” Yes, we will defend civilization.

—Attorney General John Ashcroft

Substituting “Arab and Muslim male non-citizens” where the word “terrorists” appears in Ashcroft’s speech of October 25, 2001 provides a proximate rendering of other anti-terrorism policies in the wake of the September 11 attacks, and certainly the way Arab and Muslim men perceived them. Invoking the language of the “clash of civilizations,” this statement equates terrorists and barbarians with visa violators and local lawbreakers, Arab and Muslim male non-citizens providing the unmentioned link between the categories. A close reading of Ashcroft’s language in the passage below locates the discursive trick in its fuzzy definition of “the law,” positioning of the word “or” and linkage of this blurred language to terrorists:

In the war on terror, this Department of Justice will arrest and detain any suspected terrorist who has violated the law. Our single objective is to prevent terrorist attacks by taking suspected terrorists off the street. If suspects are found not to have links to terrorism or not to have violated the law, they are released. But terrorists who are in violation of the law will be convicted, in some cases deported, and in all cases prevented from doing further harm to Americans.

In the next paragraph, Ashcroft is able to use this vague language to claim nearly 1,000 terrorist arrests, proving that the government was keeping Americans safe.

Within days of the September 11 attacks, we launched this anti-terrorism offensive to prevent new attacks on our homeland. To date, our anti-terrorism offensive has arrested or detained nearly 1,000 individuals as part of the September 11 terrorism investigation. Those who violated the law remain in custody. Taking suspected terrorists in violation of the law off the streets and keeping them locked up is our clear strategy to prevent terrorism within our borders.

In fact, these detainees were overwhelmingly Arab and Muslim men who were arrested on the basis of looks, national origins or reports of suspicion, as well as not being able to prove at the moment of contact with police that their presence in the US was legal. Human Rights Watch’s conclusion that “being a male Muslim non-citizen from certain countries became a proxy for suspicious behavior” highlights the primary use of stereotypes and phenotypes in government actions. Ditto the public, as the human rights organization found that some men were incarcerated “simply because spouses, neighbors or members of the public said they were 'suspicious' or accused them without any credible basis of being terrorists.”3 Some men were arrested because they were seen in rental cars, taking photos at tourist places, or walking with bags or backpacks.
Safa al-Habash and her son Basil, 10, sign a Father’s Day card to protest the plight of fathers who had been deported or were facing deportation due to post-September 11 immigration measures.

sites or with World Trade Center postcards taped to the counters of their delis. These men were held in high-security detention while the government looked for charges, unable to secure their release until a range of government agencies could prove without a doubt that they were not terrorists—a time-consuming process after which visa violators were deported. Human Rights Watch concluded: “Operating behind a wall of secrecy, the US Department of Justice thrust scores of Muslim men living in the United States into a Kafkaesque world of indefinite detention without charges and baseless accusations of terrorist links.” The arrests were aggressive, due process was denied and detainees endured verbal abuse, psychological pressure and physical deprivation, according to the investigations of Human Rights Watch and the Justice Department’s Office of the Inspector General. Some detainees experienced recurring strip searches and intentional physical cruelty. By 2003 it was assumed that most of these men had been released and that at least 500 were deported, but it was hard to know for sure since the government has never released their identities. The government netted not a single terrorist suspect from this operation.

FBI interviews, mass arrests, deportations of visa violators and detentions of “material witnesses” were supplemented by a host of other tactics that included widespread wiretapping, closing down Muslim charities and freezing their assets, eavesdropping on attorney-client conversations, property seizures, the “special registration” and fingerprinting of more than 80,000 male foreign nationals from Arab and Muslim-majority countries, and reviews of private Internet, telecommunication and financial records, secured through more than 30,000 national security letters issued annually to American businesses after the passage of the USA Patriot Act. Over time, the government initiated a few hundred cases against persons charged with espionage and a range of terrorism-related offenses.

Each Bush administration tactic was announced by the government and covered by the media as a “new development” in the fight against domestic terrorism, so that whether it actually nabbed any terrorists did not matter. The mere existence of these continuing efforts generated a sense that an aggressive and competent bureaucracy was rooting out a genuine domestic threat. Meanwhile, these measures signaled to Arabs and Muslims in the US, citizens and non-citizens alike, that American legal protections were easily circumvented and did not apply to them. When the administration was criticized on this point, its spokespersons would argue that this was indeed the objective—to incite fear in these communities in order to destabilize plotters. Despite President George W. Bush’s September 20, 2001 statement that “no one should be singled out for unfair treatment or unkind words because of their ethnic background or religious faith,” his administration’s post-September 11 policies did precisely that.

Report Card

These extraordinary efforts, characterized by legal scholar David Cole as “the most aggressive national campaign of
ethnic profiling since World War II," uncovered few terrorists. Not a single one of the 80,000 Arabs and Muslims who were required to register with the government because they were in the US on temporary visas was convicted of a terrorist charge. The same holds true for some 5,000 preventive detentions and tens of thousands of FBI interviews. The Bush administration said it had located terrorist cells in Detroit, Portland, Seattle, northern Virginia and Lackawanna, New York, but a close look at these cases shows that none of these groups were proven to have plans to inflict damage on the US. Only one of these groups, the Lackawanna Six, had an al-Qaeda connection. This group of young Yemeni-American men was not a new discovery at all; they had been reported to the FBI months before the September 11 attacks. Shortly after arriving at the camp in the spring of 2001, some of the boys fled in fear, wanting nothing to do with what was going on there, while others finished training and later returned home. Resuming their lives in Lackawanna under FBI observation and wiretapping, they did nothing materially suspicious and evinced no sign that they ever had plans to stage an attack. Yet when they were arrested in September 2002, they were heralded as the Bush administration’s key homegrown terrorist find.

The government’s success with criminal indictments in “terrorism-related” cases fared only somewhat better. As of 2005, more than 400 post-September 11 “terrorism-related” indictments had produced only 200 convictions. In fact, only 39 of these “terrorism-related” cases resulted in convictions on terrorism charges, and the majority of these were for “support” of a terrorist group (encompassing a wide range of non-criminal activities). An analysis conducted in 2003 by the Syracuse-based Transactional Records Access Clearinghouse found that the median sentence handed down in cases the Justice Department identified as “terrorism-related” was 14 days, hardly evidence of a terrorist catch. In 2005, New York University’s Center on Law and Security reviewed the “terror-related” cases and found “almost no convictions on charges reflecting dangerous crimes.” Some have argued that the government’s anti-terrorism measures had deterrent value, but as with the death penalty, any such value cannot, by definition, be measured.

The Treasury Department closed six Muslim charities and made it a crime to engage in transactions with them. No charges were filed against three of the six, and criminal charges were brought and then dropped against two, with only the Holy Land Foundation for Relief and Development eventually being charged with financing terrorism. Irrespective of these differences, the assets of all were frozen. Under an executive order, the government was not required to produce evidence supporting these closures. As a result of these actions, needy recipients in the Muslim world were largely cut off from the charity of American Muslims. Repeated requests to the US government to allow the transfer of these charities’ assets to agencies of which it approved were denied. In October 2007 a jury acquitted the Holy Land Foundation and its directors of all of the 197 criminal violations related to funding terrorism. In the meantime, however, fears concerning financial transactions, whether sending remittances to family members back home or charitable giving, were high among Arabs and Muslims. Under the Patriot Act, charitable giving could now be prosecuted as support for terrorism. Charities remaining open received substantially fewer donations at precisely the time they were needed to support the mobilizations required to defend Arab and Muslim civil rights.

The government’s actions and unsubstantiated claims, and the sensationalist media coverage that accompanied each, had other punitive outcomes. They stoked public fear and granted the government the leeway it needed to sidestep the rule of law. The production of 96,000 tips within seven days of the attacks highlights the fact that the public response to Arabs and Muslims was based on preexisting stereotypes. Government statements of threat and pleas for help needed no backup documentation, as they leveraged social understandings about Arabs and Muslims that were already widely held. These
narratives and stereotypes allowed the government excesses after September 11 to occur because they provided a context in which the government needed to prove little, and paved the way for the symbolic reconstitution of Arabs and Muslims as people who were not part of the American nation. Since “they” threatened “our” communities, it was easy to render them ineligible for the full package of American civil and constitutional rights. Poll after poll, along with flag waving in front of mosques and in Arab-American neighborhoods, showed substantial public support for depriving Arabs and Muslims of civil liberties. In fact, Arabs and Muslims were often described as persons who moved to the US just to take advantage of these very rights in order to carry out their plots of destruction.

Despite the dragnet tactics, a cooperative citizenry, secret evidence and secret hearings, the government’s allegation that Arab and Muslim terrorists were lurking in Arab and Muslim American communities, “plotting, planning and waiting to kill Americans,” was never proven correct. Nonetheless, these measures delivered a frightening world for Arabs and Muslims living in the US. In fact, it was the near 100 percent rate of false positives that exacerbated their anxiety because it produced an understanding that, for them, anything goes. One did not need to be guilty of any wrongdoing to be turned in by a neighbor, visited by the FBI, pulled off an airplane, denied a bank account, detained, arrested, incarcerated or charged.

The Road Ahead

It was precisely such excesses by the Bush administration in addition to violent public backlash against Arab and Muslim Americans that set in motion the dialectic of social change. Arab and Muslim Americans recognized the challenge before them rather quickly after the September 11 attacks and vigorously stepped up to defend their rights. And they were not alone.

The coalitions that emerged to defend Arab and Muslim Americans effectively transformed their status in many US locations from “outsider” or “unknown” communities to engaged and known ones. Over time, Arab and Muslim Americans became more deeply woven into the fabric of an extensive range of American activist, policy and watchdog organizations and many of their own community and faith-based organizations became stronger. Philanthropists and foundations formerly reluctant to support Arab and Muslim American organizations came forward with financial support after September 11 because emergency circumstances outweighed normative pressures to hold back. This material support, in turn, bolstered Arab and Muslim American institution building and leadership development. All of these positive social changes make it now far more politically difficult than in the first few years after the September 11 attacks for the US government to implement policies that openly and visibly target Arab and Muslim Americans en masse.

The post-September 11 experience for Arab and Muslim Americans thus reveals a paradoxical historical moment. At the same time that members of these groups experienced extensive institutional discrimination, government targeting (mainly focused on men) and public attacks (largely focused on women and Islamic religious institutions), they also experienced enhanced civic inclusion. This civic inclusion is by no means evenly distributed across the nation, nor is it uncontested, but it is measurable nonetheless. This perhaps unexpected positive outcome emerged from the dialectic put into motion when state repression, public attacks and popular vilification became intolerable to many. The work of countless groups left a handprint on the post-September 11 Arab and Muslim American story: human rights organizations investigating abuses of prisoners; philanthropies supporting community defense work; civil rights attorneys defending the falsely accused; immigrant coalitions marching in protest against government excesses; Japanese American and other ethnic organizations calling for an end to profiling; community organizers conducting civil rights teach-ins and special registration monitoring; mosques organizing open houses; neighborhood organizations forming mosque defense committees; inter-faith groups speaking out against hate crimes; schoolgirls exchanging solidarity visits; and local and national Arab and Muslim American organizations taking on a broader range of tasks than ever before.

Still, nativist voices keep alive a countervailing social impulse that Arab and Muslim Americans need to remain as “outsiders” in American society because they are persons “who cannot be
trusted to live by the rules.” These are not isolated individuals, but include elected officials, candidates for office and media personalities. Charges of Muslim American disloyalty were part of a number of 2008 political campaigns, in some cases sparking the criminalization and return of Muslim American campaign donations. A 2007 presidential primary advertisement for Republican Rudy Giuliani referred to Muslims as “a people perverted.” The most substantial resurgence of nativism, however, occurred during the 2008 general election campaign, when anti-Arab and anti-Muslim sentiments were mobilized to sow fear of (now) President-elect Barack Obama, who, although not Muslim, is the biological son of a Muslim man. Long-time Rep. Ray LaHood (R-IL) told WGN radio on October 10, 2008 that, while he supported the Republican presidential ticket, he was profoundly dismayed by crowds shouting “Kill him!” and “Terrorist!” when Obama’s name was mentioned during rallies for GOP vice presidential candidate Sarah Palin.

Although they continue to face structural barriers of race and religious difference, Arab and Muslim Americans enter the future in a better socio-political position than that they occupied on September 11, 2001. At a minimum, their heightened social and civic engagement should provide them with better protection from attack and mass arrest should another event occur that some might use to assign collective responsibility. Theoretically, the relationships are in place to block the major assaults on their civil rights and safety that occurred during the Bush years. It is unfortunately the case, however, that these very changes in Arab and Muslim American social status have exposed the segments of American society that rely on anti-Arab and anti-Muslim sentiments to promote their own interests. While these groups existed before September 11, it was then that they were able to capitalize on the public’s lack of knowledge and on Arab and Muslim social exclusion to get their message across. Well-organized, well-financed and invested in inciting fear, they continue to rely on strife in the Middle East to make their claims. As long as arguments that Arabs and Muslims are fundamentally different from “us” are socially tolerated in the United States, whether referring to people at home or abroad, it is difficult to pronounce that the road ahead will be smooth for Arab and Muslim Americans.

Endnotes
2 Excerpt from the speech of Michael Rolince, Muslim Public Affairs Council Convention, Long Beach, CA, December 17, 2005. A recording of the speech is online at http://www.mpac.org/multimedia/audio.
7 Washington Post, June 12, 2005.