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respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Discrimination Against Arab-Americans: Learning from the Past *by Phyllis Raybin Emert*

Hate crimes directed against Arabs, Muslims and Middle Easterners increased dramatically across the nation in the months following the September 11 attacks on the World Trade Center and the Pentagon.

In Texas, a Pakistani Muslim storeowner was murdered. In California, an Egyptian Christian was killed. In a Chicago suburb, hundreds of men and women chanting, "USA, USA" marched on a local **mosque** and were stopped by police. In Brooklyn, an Islamic school was pelted with rocks and bloody pork chops (Muslims are forbidden to eat pork). Fire-bombings of mosques and Islamic centers occurred in Chicago, Seattle, Texas and New York.

And, in a Washington suburb, the home of a Pakistani-American family was vandalized. Their Jeep Wrangler was trashed in the driveway. "Go Home" was scrawled in magic marker across the garage door. The doctor who owns the home and has lived in the neighborhood for 17 years wrote back — "We Are At Home."

And, in New Jersey . . .

In Wayne, gunshots were fired through the window of a fast food store. The owner is Palestinian. Also in Wayne, an arrow was shot through the bedroom window of a young girl. The family is Arab-American. A Muslim man was beaten with a bat and cut with a knife in Ocean County. In Lawrence Township, a man told a Middle Eastern gas station attendant that he would kill him. Teenagers in Paterson rode through an Arabic neighborhood waving American flags. One shouted, "We're going to bomb you when you sleep"

Passaic County Prosecutor Boris Moczula has dealt with numerous incidents involving Arab-Americans since September 11, ranging from bomb threats and gunshots fired, to anonymous calls, computer hate mail and random graffiti. These kinds of events are characterized as hate crimes, he explained.

"We take **hate crimes** seriously in New Jersey," declared Robin Parker, Chief of the Office of Bias Crimes. "It's a high priority in this state."

The system in place for reporting and processing bias crimes in the Garden *>continued on page 5*

Scouts' Honor

by Dale Frost Stillman

Kittatiny Mountain Scout Reservation in Sussex County, New Jersey lends itself to quiet hikes in the woods and introspection. Here, Lee Johnson, a former Troop Leader at the camp, did some soul-searching.

"Plenty of straight guys could do the job of Scoutmaster, but by eliminating gays from the mix, you just might rule out someone who could really help the kids," Johnson thought.

Johnson's comment reflects one side of the ongoing conflict over the U.S. Supreme Court's decision that the Boy Scouts of America have the right to deny membership to **homosexuals**.

The Boy Scouts, however, believe that as a private organization they should have the right to determine standards for membership. According to a press release issued after the U.S. Supreme Court decision, the Boy Scouts "believe an avowed homosexual is not a role model for the values espoused in the Scout Oath and Law." *>continued on page 3*

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The December Dilemma:

The Constitutionality of Holiday Displays *by Karen M. Spring*

A brightly decorated fir tree by the entrance, a corner manger scene and the large menorah on the front lawn of your local library seem to have less to do with Constitutional rights and more in common with the December holiday season. Although the season is now behind us, those decorations have caused problems in the past because some find the symbols too religious to appear on public property.

The First Amendment to the U.S. Constitution guarantees, among other things, our right to freedom of religion (the First Amendment also protects freedom of speech, assembly, the press, and the right to petition the government). Within the First Amendment, there is an **establishment clause**, which prevents the government from creating one official religion in the United States or from giving preference to one faith over another. Our forefathers long ago believed that the government had no right to interfere with a person's decision to practice a particular religion and many original settlers came to America in search of religious freedom, after facing persecution in their native countries.

The First Amendment keeps the government or state as it is called, separate from each citizen's religious practices, giving everyone the freedom to practice whichever religion he or she chooses without government interference.

What about the holidays?

The holiday season creates its own dilemma. Is the establishment clause violated when a holiday display is put up on government property? Although holiday decorations are not clearly mentioned in the First Amendment, they come into play because many festive exhibits have purely religious meaning. A menorah is a symbol of the Jewish holiday of Chanukah. Angels or a manger scene depict Christian themes. If these religious-themed objects are displayed on public property, such as a school, public library or a municipal building, does it mean that the institution is endorsing that particular faith?

By allowing occupants of government buildings, such as courthouses, government offices, and public schools to put up holiday displays that have a religious theme, like a Nativity scene, it may seem that the American government is endorsing and supporting the Christian religion. A Muslim member of the community might be upset by such a display because his or her faith is not being publicly acknowledged, whereas the Christian religion is. Such situations have led to holiday displays being declared unconstitutional on government-owned property.

According to Ronald Chen, Associate Dean of Rutgers Law School-Newark, a lawsuit was brought by the American Civil Liberties Union against Brett Schundler, at the time mayor of Jersey City, for putting up a display of a Nativity scene and a menorah in the town square. While Schundler claimed that the display was part of a **secular** cultural exhibit, the judge in the case ruled in favor of the ACLU-NJ and declared that it was too religious in nature and, therefore, unconstitutional.

A plastic Frosty the Snowman and Santa Claus were added to the same display to detract from the religious themes. Another lawsuit was brought against Schundler, and this time the judge ruled in the mayor's favor, declaring that the additions made the display secular enough.

In a similar case in Wall Township, reindeer were added to a religious scene and the court deemed the display secular enough that it was not in violation of the Constitution, according to Chen.

"There is not a unifying theme in these cases anymore," said Chen, who has tried a number of these lawsuits on behalf of the ACLU-NJ. "It has become a very case-by-case basis determination by the courts," he said.

There are basic rules that must be followed when holiday decorations are displayed in a public place like a school. Because of the First Amendment's establishment clause, teachers and administrators in public schools are not legally

allowed to decorate schools with holiday displays that are based strictly on religious themes.

"Schools are a different story," said Chen. "The law is more strict when it comes to schools because you're dealing with impressionable children."

Any religious symbols used in public school displays must be part of an overall educational display, Chen said.

How to handle the dilemma

Can there be a happy medium? Is there a way for public schools to decorate for the December holidays while establishing a more community-like atmosphere so that no student feels left out? Judy Wilson, the superintendent of Woodbury's public schools thinks so.

"While we absolutely separate church and state as far as policy, preferences, and choices, we do acknowledge many cultures and many religions," Wilson says. "Signs and symbols of those cultures and religions are found in our schools, but we seek balance and perspective."

The federal government has suggested ways for schools to decorate classrooms and buildings, so that all students feel included in the activities. Instead of sticking with one theme, like a Christian-based manger scene, teachers and administrators are advised to opt for winter decorations. Evergreen trees, snowflakes, reindeer, snowmen and candles are all secular or non-religious "neutral" decorations. A secular symbol like Santa Claus can also be added to the display, because he is a figure that is not linked to just the Christian faiths, but well-known by children all over the world. The Christmas party in the classroom can be replaced with a holiday celebration or a winter festival, the government advises. In this way, the school exhibits an appreciation for a winter theme that includes all of its students rather than showing favoritism for just a handful of faiths.

Deptford Township High School approaches the December holidays in exactly this way.

"We celebrate the holiday season with Christmas trees and Toys for Tots and food drives for the needy," says Dr. Joseph Canataro, the school's principal. "We do not believe the tree to be a religious symbol. It is symbolic of the spirit of the holiday season celebrated by all religions and cultures. This is how we approach the issue. We believe it maintains neutrality, yet does help all of our students feel part of the season."

Some school districts feel that promoting unity is the best way to encourage holiday spirit. Wilson agrees.

"In celebrating, we encourage the exposure to many religions and customs and garner support from family members of children whenever possible. It is all about understanding, not about promoting one another," she says. ■

Scouts *continued from page 1* <

The Boy Scout Oath, written in 1910, reads as follows: "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake and morally straight." It became an issue in this case as well. The term *morally straight* was used by the Boy Scouts to show that "homosexual conduct is inconsistent with the values embodied in the Scout Oath."

Chief Justice William H. Rehnquist cited the terms "clean" and "morally straight" in his **majority opinion**, claiming that the values of the Boy Scouts are spelled out in these terms. According to the Random House dictionary, *straight* is a slang term used to refer to **heterosexuals**.

"The Court's decision is a betrayal of what scouting is all about," contends attorney Ryan Lillienthal of Princeton. "I never conceived that being morally straight or clean had anything to do with sexual orientation."

In a letter to the editor of the *New Jersey Law Journal*, Lillienthal wrote, "Since the Supreme Court case stems from action taken by a New Jersey Scout Council, it is only appropriate for our local Scouting leaders to speak out forcefully in support of a BSA that embraces diversity, regardless of race, ethnicity, religion or sexual orientation."

An Eagle Scout, Lillienthal hails from a family devoted to Scouting. His grandfather was his father's Scoutmaster, and his brother and cousins were all Boy Scouts.

Shortly after the U.S. Supreme Court decided the case, the Boy Scouts of America issued a press release. "This decision affirms our standing as a private organization with the right to set its own standards for membership and leadership," the release stated. The Boy Scouts were very pleased with the Court's decision, stating that it "allows us to continue our mission of providing character-building experiences for young people, which has been our chartered purpose since our founding."

How did the U.S. Supreme Court decision come about?

How the case started

Assistant Scoutmaster and Eagle Scout, James Dale, received a letter informing him that the Boy Scouts of America had revoked his membership after they read a newspaper article discussing Dale's support for gay role models for homosexual teenagers. At the time, Dale attended Rutgers University where he became co-president of the Lesbian/Gay Alliance. The Monmouth Council told Dale that "the Boy Scouts specifically forbid membership to homosexuals."




Dale, who defines *morally straight* as “standing up for yourself and being honest,” believes he put his definition of the oath to practice in his own life when he filed the discrimination charges against the Boy Scouts. He filed suit in New Jersey alleging that the Boy Scouts had discriminated against him because of his sexual orientation.

New Jersey has a state law (the Law Against Discrimination) prohibiting discrimination against someone on the basis of sexual orientation in a place of public accommodation.

New Jersey Supreme Court decision

In August 1999, the New Jersey Supreme Court ruled **unanimously** in favor of James Dale, making New Jersey the first state to rule against the Boy Scouts. The Supreme Courts of California, Oregon, Kansas and Connecticut all ruled in favor of the Boy Scouts in similar discrimination cases.



The New Jersey decision stated in part that the application of the public accommodations law did not violate the Boy Scouts’ First Amendment right of *expressive association*. While the words expressive association do not appear in the First Amendment to the U.S. Constitution, the U.S. Supreme Court recognizes them as a constitutionally protected part of freedom of speech. Expressive association is the right to freely associate with any one person or group. The New Jersey Supreme Court reasoned that

including Dale in the Boy Scouts would not have an impact on the Boy Scouts’ “ability to carry out their purposes.” The New Jersey Court made it clear that the state wanted to eliminate the “destructive consequences of discrimination from society.”

Claiming that the New Jersey Supreme Court violated its freedom of speech and association by forcing them to accept Dale, the Boy Scouts **appealed** the New Jersey decision to the U.S. Supreme Court in January 2000. The Boy Scouts contended that the organization speaks through its leaders and forcing them to accept a leader that is homosexual would essentially be state control of its free speech. In addition, the Boy Scouts, through its attorneys, stated that its right to freely associate included the right not to associate, just as the First Amendment right to speak includes the right not to speak.

U.S. Supreme Court decision

The U.S. Supreme Court had to decide whether the Boy Scouts engaged in a public or a private form of expression to determine whether the First Amendment’s expressive association right protected them. Adult leaders instilling “its youth members with its value system,” constitutes expressive association according to the Court. The Court decided that Dale’s presence in the Boy Scouts would force the organization to communicate a message regarding homosexuality that it did not believe in. Allowing Dale to remain a Boy Scout would “significantly burden” the Boy Scouts’ right to “oppose or disfavor homosexual conduct,” the Court found.

U.S. Supreme Court Chief Justice William H. Rehnquist wrote in his majority opinion that “although homosexuality is becoming more socially acceptable, this is scarcely an argument for denying First Amendment protection to those who refuse to accept these views. The First Amendment protects expression, be it of the popular variety or not.”

Finally, the Court stated that the New Jersey public accommodation law, requiring the Boy Scouts to keep Dale as a member, violated the Boy Scouts’ First Amendment right to freedom of expressive association. The Court interpreted New Jersey’s law to mean that although “the state has an interest in eliminating discrimination,” it should not do so “at the cost of another group’s constitutional rights” The U.S. Supreme Court overturned the decision of the New Jersey Supreme Court by a vote of 5 to 4.

Scouting’s future

The U.S. Supreme Court decision has generated a backlash against the Boy Scouts, with some people accusing the organization of **homophobia**, which is a fear or hatred toward homosexuals. This, in turn, is cutting off support from various other organizations, including United Way agencies, many of whom do not want to contribute money to an organization that it believes discriminates. Several corporate donors including Chase Manhattan, Fleet Bank and Wells Fargo have also withdrawn their support. In addition, many public schools and municipal sites around the country no longer offer Boy Scouts free use of their facilities. The controversy has filtered down to Boy Scouts themselves and their parents, some of whom, like Lillienthal, are uncomfortable belonging to an organization that discriminates against homosexuality.

Many former Boy Scouts have joined Camp Fire Boys and Girls because they do not prohibit gays. Steven Cozza, a Scout who did not believe in discriminating against homosexuals, helped found Scouting for All when he was only 13. The group’s membership now exceeds 7,000 people from all over the country.

The new Boy Scout Handbook contains the following words: “you should respect and defend the rights of all people.” Are the Boy Scouts being consistent with their oath when they refuse to allow membership to homosexuals? ■

Discrimination *continued from page 1* < State has been called a “model hate crime reporting system” by famed civil rights attorney Morris Dees of the Southern Poverty Law Center.

According to Parker, hate crimes have risen from five incidents for the entire year prior to September 11, to 30 in the first two months after the World Trade Center disaster.

“Most incidents are committed by ordinary people in ordinary circumstances,” stated Parker. “But 40 percent of these hate crimes are committed by kids 13 to 17 years of age, who make up only 24 percent of the population.”

It’s easy to fall into bigotry and stereotypes, Parker noted. “Kids may feel threatened and under stress and they take

out their anger against certain groups. They need to stop and take a breath. They should begin to think about themselves and their own cultural heritage. If you treasure your own heritage and culture, you also have to respect that of other people.”

Parker explained that there is a lack of information among many Americans, who have little understanding of Islam. The vast majority of Muslims do not support terrorism and world leaders of Islam have overwhelmingly condemned the attacks of September 11, he pointed out.

Learning from the past

After the World Trade Center attacks, intolerance, hatred and frustration have been directed at a specific segment of Americans.

For the perpetrators of hate crimes, Arab, Muslim or Middle Eastern is equated with “terrorist.”

And, it’s not the first time that something like this has happened in America. After the unexpected attack on Pearl Harbor on December 7, 1941, distrust, fear and anger against the 130,000 Japanese-Americans living in the United States at that time intensified, especially in California where an enemy invasion was anticipated. About 115,000 Japanese lived on the West Coast, and their presence was considered a security threat. Americans questioned the loyalty of these Japanese people even though 80,000 of them were second-generation, natural-born U.S. citizens. There was fear that these *>continued on page 6*

Arabs, Islam and Muslims: How Much (or Little) Do You Know?

Most hate crimes focused against a particular group are the result of fear, ignorance, insecurity and lack of information. How much do you know about Arabs, Muslims and the Islamic faith?

The following facts come from the books *Islam* by Karen Armstrong and *Islam-World Religions* by Matthew Gordon.

- Seventy-five to 80 percent of the approximately 3.5 million Arab-Americans are Christians.
- Four in five Arab-Americans were born in the United States.
- There are approximately 6.5 million Muslims in the United States, and fewer than a million are Arabs. Most are African-American or Asian.
- There are approximately 250,000 Muslims and about 65,000 Arabs living in New Jersey.
- The Islam religion is second only to Christianity in the number of followers around the world, with more than one billion Muslims worldwide.
- Allah is the Arabic word for God—the same God that Christians and Jews worship.
- Islam, along with Christianity and Judaism, is one of the three major religions in the world that worship one God.
- Muslims believe that the Prophet Muhammad founded Islam in the seventh century when the Angel Gabriel appeared and gave him the words of God. These revelations from God were written down and passed on to followers in the form of the Quran (also spelled Koran), which is in the Arabic language.

- Muslims submit to Allah through the Five Pillars of Islam, which are the basic requirements of the faith:
 1. *Salat*—five daily prayer sessions facing Mecca, the holy city where Muhammad was born.
 2. *Shahadah*—a statement affirming that “there is no god but God and Muhammad is the Messenger of God.”
 3. *Sawm*—a ritual fast from sunrise to sunset during Ramadan, the 9th month of the lunar calendar.
 4. *Zakat*—the giving of money to the poor and the sick.
 5. *Hajj*—a pilgrimage to the holy city of Mecca, at least once during a lifetime.
- The Quran commands Muslims to respect the beliefs of Jews and Christians—“for our God and your God is one and the same, and it is unto Him that we surrender ourselves.”
- The chief duty of Muslims is to create a society in which all members are treated with respect, justice, equality and compassion.
- Religion and politics are considered by some as inseparable in Islam, as Muslims believe that it is God, and not the people, who gives the government legitimacy. This is why it is often difficult for Muslims to set up a modern democratic nation where church and state are separate.
- Islam is a peaceful religion that values compassion, justice and benevolence, and does not condone acts of violence.

Sources: *Islam* by Karen Armstrong, New York: The Modern Library, 2000 and *Islam-World Religions* by Matthew Gordon, New York: Facts on File, Inc., 2001.

Discrimination *continued from page 5<*

Japanese-Americans would resort to sabotage or **treason** to aid America's enemies.

Public leaders like the California Governor, Attorney General, and U.S. military

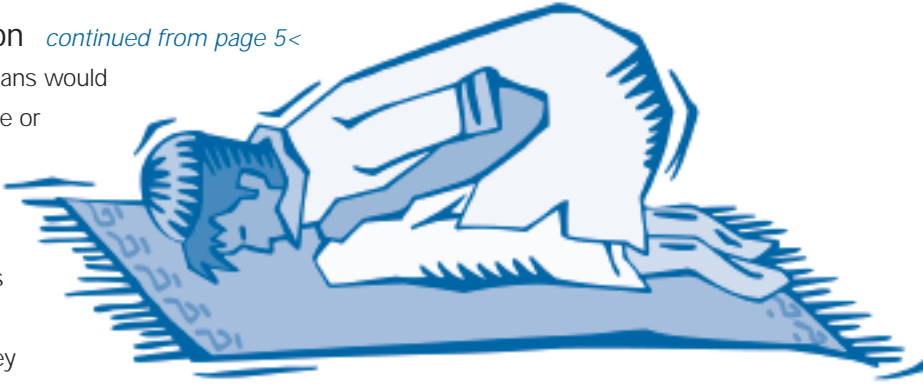
commanders supported the idea of a mass evacuation of all Japanese from the West Coast. Beginning on March 22, 1942, approximately 110,000 Japanese were transported to 15 temporary assembly centers in California, Oregon, Washington and Arizona. Several months later, they were moved to 10 permanent relocation centers scattered throughout the country. These Japanese-Americans lost nearly everything they owned. They were forced to sell their homes and businesses at rock bottom prices.

Although they were given food and shelter at the **internment** camps, the living conditions were overcrowded and poor. Barbed wire fences surrounded the area and armed guards patrolled the perimeter. Some internees were allowed to leave for seasonal agricultural employment or to attend colleges in the East. Others enlisted in the armed forces and fought in the much-decorated 442nd Regimental Combat Group (all Japanese-Americans) to prove their patriotism. Most of the Japanese remained in the camps throughout the war years.

It has been estimated that internees suffered losses of more than \$400 million. In 1988, President Ronald Reagan signed a bill, which publicly apologized to the Japanese-American internees and gave each of the survivors a tax-free payment of \$20,000.

Are we doomed to repeat history?

There may be similarities between the intolerance shown to Japanese-Americans during World War II and the intolerance to Muslim and Arab-Americans today, but the



United States has come a long way in identifying, understanding and dealing with the perpetrators and victims of hate (or bias) crimes.

Whereas prominent citizens including President Franklin Roosevelt, top military leaders and even the U.S. Supreme Court supported the decision to intern Japanese-Americans during World War II, President George W. Bush and other important citizens have urged tolerance and calm after the September 11 tragedy.

One week after the World Trade Center attack, President Bush visited the mosque at the Islamic Center of Washington in an effort to prevent hate crimes and discrimination against Arab-Americans and Muslims.

"The face of terror is not the true faith of Islam," said President Bush. "Islam is peace. Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America. They represent the worst of humankind, and they should be ashamed of that kind of behavior," he declared.

Attorney General John Ashcroft urged Americans not to descend to the level of those who perpetrated the violence against America by targeting individuals based on their race, their religion or their national origin.

In September 2001, the U.S. Senate passed a resolution sponsored by Senator Tom Harkin (D-Iowa) and Senator Orin G. Hatch (R-Utah) calling for the protection of the "civil rights and civil liberties of all Americans, including Arab-Americans and American Muslims."

Prosecutor Moczula perhaps summed it up best. "Even one hate crime is one too many," he declared. ■

appealed—when a case is brought from a lower court to a higher court to be heard. **establishment clause**—prohibits the state or federal government from setting up a church or passing a law which aids one or all religions or giving preference to one religion or forcing a believer or disbeliever in any religion. **hate crime**—a criminal offense, usually involving violence, intimidation or vandalism, in which the victim is targeted because of his or her race, religion, sexual orientation, ethnicity, gender or mental or physical disability. **heterosexual**—a person who romantically desires a person of the opposite sex. **homophobia**—an irrational fear of homosexuals. **homosexual**—a person who romantically desires another person of the same sex. **internment**—to confine, especially in times of war. **majority opinion**—the opinion of a court in which the greater number of its members join. **mosque**—a Muslim place of worship. **secular**—non-religious. **treason**—the offense of attempting to overthrow the government. **unanimously**—all in agreement.