

SPRING 2016 • VOL. 15, NO. 3

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Banning a Damaging Therapy for Minors

by Phyllis Raybin Emert

It has many names—sometimes called gay conversion therapy or reparative therapy, or sometimes it is referred to as sexual orientation change efforts (SOCE). Whatever the name, the “therapy” claims to be able to change a person’s sexual preference. Experts contend the consequences of the treatment are at the very least not effective and at worst damaging to the mental health of those being “helped.”

The American Psychiatric Association (APA) has argued that the practice can cause “depression, anxiety and self-destructive behavior.” The organization also states: “There is no published scientific evidence supporting the efficacy of ‘reparative therapy’ as a treatment to change one’s sexual orientation, nor is it included in the APA’s Task Force Report, *Treatments of Psychiatric Disorders*. More importantly, altering sexual orientation is not an appropriate goal of psychiatric treatment.”

More than 40 years ago, the APA removed homosexuality from its classification of mental disorders. Today, same-sex attraction is considered a normal variant of human sexuality.

New Jersey in the forefront

In August 2013, a bill outlawing gay conversion therapy for minors was signed into law by Governor Chris Christie, making New Jersey the second state in the nation (California was first) to outlaw this practice. Since then, Oregon, Illinois,

and Washington, D.C. have passed similar bans and other states have indicated that they will do the same. In February 2016, New York Governor Andrew Cuomo announced multi-agency regulations that ban public and private health care insurers from covering the conversion therapy in the state. *>continued on page 6*

Anti-Semitism Not a Thing of the Past

by Barbara Sheehan

They make up only 0.2 percent (14.2 million) of the world’s population, yet Jewish people continue to face a disproportionate amount of intolerance and harassment in the U.S. and around the globe. In recent years, there have been reported increases in anti-Semitism surfacing everywhere from European soccer stadiums to synagogues to college campuses here in the U.S.

The Anti-Defamation League (ADL), a national civil rights/human relations agency, defines anti-Semitism as “beliefs or behavior hostile toward Jews just because they are Jewish and may take the form of religious teachings that proclaim the inferiority of Jews, or political efforts to isolate, oppress, or otherwise injure them.” The ADL states on its website: “Although some see anti-Semitism as a thing of the past, the hatred and intolerance of anti-Semitism remain powerful and significant realities today.”

In remarks given at the Israeli Embassy in Washington, D.C. in January 2016, President Barack Obama said. “We must confront the reality that around the world, anti-Semitism is on the rise. We cannot deny it. An attack on any faith is an attack on all of our faiths,” he said. “When voices around the world veer from criticism of a particular Israeli policy to an unjust denial of Israel’s right to exist... we stand up...in defense of the Jewish state of Israel. America’s commitment to Israel’s security remains, *>continued on page 5*

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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Free Speech for One Means Free Speech for All

by Phyllis Raybin Emert

The First Amendment to the U.S. Constitution contains one of the most important safeguards of our democracy—freedom of speech. But does hate speech have constitutional protections?

That issue was brought to the forefront in March 2015 when a Snapchat video surfaced on the Internet (eventually going viral on YouTube) showing members of Sigma Alpha Epsilon (SAE), a fraternity at Oklahoma University (OU), on a bus singing a racist chant to the tune of the song, "If You're Happy and You Know It." The SAE brothers were on their way to a fraternity event while they sang: "There will never be a n***** at SAE, You can hang him from a tree, but he'll never sign with me, There will never be a n***** at SAE."

Officials of the fraternity and the university were swift in punishing the offenders. With a unanimous vote of the national fraternity board, the OU chapter of SAE was suspended. OU President David Boren informed the fraternity it had two days to leave the frat house since it was owned by the university. In addition, the two SAE members who led the singing were expelled.

"To those who have misused their free speech in such a reprehensible way, I have a message for you," Boren said in a statement posted to his Twitter page. "You have violated all that we stand for. You should not have the privilege of calling yourselves 'Sooners.'"

Reprehensible, but protected

"I think President Boren was right to denounce the views expressed in the song and to make clear that they are inconsistent with the values of the university," says Thomas Healy, a professor at Seton Hall University School of Law who teaches constitutional law and the First Amendment. "However, I think his punishment of the students and the fraternity likely violated the First Amendment right to free speech."

According to Professor Healy, free speech protections extend to students at public schools and public universities.

"As the Court stated in the 1969 case of *Tinker v. Des Moines School District*, students do not 'shed their constitutional rights to freedom of speech or freedom of expression at the schoolhouse gate,'" Professor Healy says, but also notes there are some exceptions. "For instance, in the K-12 context, students can be disciplined if their speech poses a 'material disruption' to the learning environment, advocates drug use, or is unacceptably lewd [vulgar]. But aside from these few exceptions, students cannot be punished based on the subject matter or viewpoint of their speech."

Coding speech

In an effort to combat racism, many colleges and universities in the 1980s and '90s instituted campus speech codes. The Foundation for Individual Rights in Education (FIRE) defines a speech code as "any university regulation or policy that prohibits expression that would be protected by the First Amendment in society at large." FIRE, a non-profit group focused on defending civil liberties in academia, contends "many speech codes impermissibly prohibit speech on the basis of content and/or viewpoint. FIRE's philosophy is "a nation that does not educate in freedom will not survive in freedom, and will not even know what it has lost."

When challenged in the courts, speech codes have consistently been struck down as being vague or overbroad. An American Civil Liberties Union (ACLU) essay on "Hate Speech on Campus" stated: "The First Amendment to the U.S. Constitution protects speech no matter how offensive its content. Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution...The ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society."



“Where racist, sexist, and homophobic speech is concerned...more speech—not less—is the best revenge...Speech codes are not the way to go on campuses, where all views are entitled to be heard, explored, supported or refuted...When speech is out in the open, people can see the problem. Then they can organize effectively to counter bad attitudes, possibly change them, and forge solidarity against the forces of intolerance... Codes that punish bigoted speech treat only the symptoms: The problem itself is bigotry.”

After the incident at OU, Anthony R. Douglas, the NAACP president for Oklahoma, expressed his disagreement with the university’s decision to expel the two students. “These young people, they may not know how harmful their chant was... they have learned from this,” Douglas told *The Washington Post*, saying that a broader conversation about racism across the country should be the next step.

Free speech for all, even bigots

Professor Healy explains that hate speech is protected by the First Amendment. “The theory is that punishing such speech would interfere with the search for truth and the marketplace of ideas. There are exceptions for speech that is threatening, or intended to and likely to incite imminent lawless conduct, or likely to provoke an immediate breach of the peace (‘known as fighting words.’) But, in general,” Professor Healy notes, “hate speech is fully protected.”

In his column for *The Washington Post*, Eugene Volokh, a professor at the UCLA School of Law, wrote, “Racist speech is constitutionally protected...and universities may not discipline students based on their speech.” According to Professor Volokh, President Boren expelling students at Oklahoma University was unconstitutional and the broad hatred of the chant by SAE members was not specific enough to be



threatening to anyone listening.

Kent Greenfield, a law professor at Boston University, disagrees and told the *U.S. News and World Report* “the fraternity members’ speech should be seen as creating a hostile atmosphere...giving black people a reason to worry about their safety...The remedy of counter speech is a good remedy if the speech that needs to be countered is from a small, powerless group,” Professor Greenfield said. “When free speech is aimed at a discrete group that’s already feeling some marginalization, it just adds to the hassle they have to go through just getting through the day.”

Professor Volokh wrote in his *Washington Post* column, “Calls for a new First Amendment exception for ‘hate speech’ shouldn’t just rely on the undefined term ‘hate speech’—they should explain just what viewpoints the government would be allowed to suppress, what viewpoints would remain protected, and how judges, juries, and prosecutors are supposed to distinguish the two. Saying ‘this isn’t free speech, it’s hate speech’ doesn’t, I think, suffice.”

Nothing new

SAE is one of the oldest (dating back to the antebellum South) and the largest fraternities, represented on approximately 200 campuses with 15,000 current members, in addition to 200,000 alumni. The offensive song, an OU investigation revealed, was apparently learned at an SAE leadership cruise several years before.

This is not the first time an SAE chapter has been involved in a racially charged incident. An article published by *Inside Higher Ed* cited several incidents on different campuses dating back to 1982 at the University of Cincinnati, where SAE members held a racist party to celebrate Martin Luther King Jr.’s birthday, where party goers were encouraged “to bring such things as a canceled welfare check, your father if you know who he is, and a radio bigger than your head.” The most recent example involved an incident at Clemson University, where the SAE chapter held a “cripmas” party in 2014 where frat brothers dressed as gang members.

Possible lawsuit

The OU chapter of SAE hired attorney Stephen Jones, who cited free speech laws as possible grounds for a lawsuit against the university. “The university still has codes of conduct,” Jones said in press reports. “Whether any of those trump the First Amendment is yet to be determined.” At press time, no lawsuit had been filed.

If SAE were to bring a lawsuit against OU, Professor Healy believes that “the students and the fraternity would likely be successful...The university’s strongest argument would be that it expelled the students and closed the fraternity not because of the viewpoint they expressed, but because the song was evidence that they discriminated on the basis of race, in violation of Title VI and university policy.”

Professor Healy explains, “Although the First Amendment protects racist speech, it does not protect discrimination on the basis of race. So if the university can convincingly argue that it was simply enforcing federal law and its own anti-discrimination policies, it might win. However, the statement from the university’s president indicated that the students and fraternity were being punished not for discrimination but for expressing unacceptable ideas.” ■

Give Us Your Tired and Poor—Not So Fast

by Jodi L. Miller

It is said that America is a “nation of immigrants.” Unless you’re Native American, every U.S. citizen is descended from an immigrant.

According to the Migration Policy Institute (MPI), as of 2013 approximately 41.3 million immigrants live in the United States. MPI estimates that the U.S. attracts 20 percent of the world’s migrants, indicating that America is a desirable destination for those seeking refuge.

The U.S. has not been so welcoming, however, to Syrian refugees who fled their homeland amid a violent civil war, which began in 2011 and where more than a quarter of a million people have been killed. In September 2015, President Barack Obama pledged to accept at least 10,000 Syrian refugees.

After the Paris terrorist attacks in November 2015, where 129 people were killed and many more injured by the Islamic State of Iraq and Syria (ISIS), a militant terrorist group, it was reported that a Syrian passport was found near the body of one of the terrorists. Speculation was that the deceased terrorist could have been a Syrian refugee. In light of this, many Americans questioned the wisdom of accepting Syrian refugees into the country. It was later reported that the passport was a fake, but the seed of fear had already been planted and subsequent attacks in San Bernardino and most recently in Brussels have only heightened that fear.

In an online commentary after the Paris attacks, Aaron Zelin, a fellow at The Washington Institute whose research focuses on **jihadi** groups, wrote, “For those who want to blame the attacks on Paris on refugees, you might want to get your facts straight. The reality is, [ISIS] loathes that individuals are fleeing Syria for Europe. It undermines [ISIS’s] message that its self-styled caliphate is a refuge.”

A caliphate is an Arabic word that refers to a geographic area containing a caliph, which is an Islamic spiritual leader or successor to the prophet Muhammad.

Screening

Lori Nessel, a professor at Seton Hall School of Law who teaches a course on immigration and refugee law, says, “Refugees undergo the most rigorous screening process of any type of immigrant seeking admission to the United States.”

According to Professor Nessel, refugees can wait years at refugee camps abroad before they are allowed in the U.S. The average wait time for admittance to the U.S. is 18 to 24 months. During that time, a number of different federal agencies, including the Department of Homeland Security, the National Counterterrorism Support Center, the Federal Bureau of Investigations and the U.S. State Department, screen potential candidates.

“Refugee fingerprints are checked and re-checked multiple times

against terrorism databases,” Professor Nessel says. “Refugees also go through medical screening and only those who are deemed strong candidates for resettlement are even eligible for the screening process.”

According to the United Nations there are more than four million registered Syrian refugees. Of those, nearly 24,000 have applied to resettle in the U.S. FactCheck.org claims that between 2011 and 2015 a total of 2,290 Syrian refugees have settled in the U.S., and according to the U.S. State Department, 67 percent of them are either women or children under the age of 12. President Obama has stated that the “overwhelming numbers who have been applying are children, women, families—themselves victims of terrorism.”

Resettling

To date, most of the Syrian refugees accepted by the U.S. have been settled in California, Texas, Illinois, Arizona, Michigan and Pennsylvania. More than 30 governors have said outright that their states would not welcome Syrian refugees. It is not a decision left up to the states, however, but a federal decision of where to place refugees. That decision is based on whether a particular refugee may have relatives in the area or whether or not jobs are available.

In November 2015, Indiana Governor Mike Pence directed Indiana state agencies not to help Syrian refugees resettle in the state. The American Civil Liberties Union (ACLU) of Indiana filed a lawsuit against the state on behalf of a refugee group, claiming Indiana violated the Civil Rights Act, as well as the U.S. Constitution by accepting refugees from other countries but not Syria. In March 2016, a federal judge agreed with the ACLU stating that Indiana “clearly discriminates against Syrian refugees based on their national origin.”

In her decision, U.S. District Court Judge Tanya Walton Pratt wrote, “The State deprives Syrian refugees that are already in Indiana of social services in the hopes that it will deter [voluntary agencies] from resettling other Syrian refugees in the State. This is essentially a policy of punishing Syrian refugees already in Indiana in the hopes that no more will come.”

Governor Pence is **appealing** the court’s decision.

Tighter security

A bill that would have required the Homeland Security secretary, the FBI director and the national intelligence director to certify that each Syrian or Iraqi refugee was not a security threat before admittance to the U.S. passed in the House of Representatives by a vote of 289-137. The legislation failed to pass in the U.S. Senate.

The Obama Administration did call on Congress to tighten restrictions on the U.S.’s visa waiver program, an avenue it views as much more likely to attract terrorists *>continued on page 7*

Anti-Semitism *continued from page 1*

now and forever, unshakable...it would be a fundamental moral failing if America broke that bond."

So what does anti-Semitism look like today? It can take many forms, from hurtful remarks or a violent act to graffiti and vandalism.

Kicking it out

According to a Pew Research Center study, anti-Semitism is at a seven-year high and widespread in Europe with harassment faced by Jewish people in 34 of 45 European countries. The study looked at 198 countries around the globe and found that while Christians were more likely to experience harassment by governments, Jewish people were more likely to be harassed by individuals or groups.

Anti-Semitic sentiment is rampant at European soccer games where chants of "Jews burn the best" can be heard coming from the fans. Kick It Out, a football [soccer] anti-discrimination group, reported 65 anti-Semitic incidents during the 2014-2015 soccer season—a 35 percent increase.

In a press statement, Roisin Wood, Kick It Out's director, said, "The 35 percent increase in incidents of discrimination reported to us since the start of the season...have shown the true extent of the issues that persist across all levels of English football."

Putting a positive spin on the increase, Wood also stated, "We take encouragement from receiving a greater level of reports, because it suggests people are more willing and confident to come forward." According to Kick It Out, of the 65 incidents, 48 were reported through social media.

An editorial in *The New York Times* stated: "It is absurd to claim, as some soccer apologists do, that this is no more than the usual rough give-and-take of pumped-up, and sometimes liquored-up, spectators. The history of anti-Semitism in Europe is too deep and too raw not to see the problem for the hate-mongering it is."

Anti-Semitism in the Garden State

According to the Jewish Virtual Library, a project of the non-profit American-Israeli Cooperative Enterprise, New Jersey has the second highest Jewish population in the country at 5.8 percent in 2014—only New York is higher at 8.9 percent.

New Jersey is no stranger to anti-Semitism. This past March in Toms River, the words "Burn the Jews" were found among other obscenities scratched onto playground equipment at Riverwood Park and most recently in April, a photo of Princeton High School students playing an anti-Semitic version of beer pong, called "Alcoholocaust" or "Jews vs. Nazis," was shared on Snapchat.

The ADL's Audit of Anti-Semitic Incidents, issued in April 2015, details a total of 107 anti-Semitic incidents across New Jersey during the 2014 calendar year, according

to Joshua Cohen, regional director of the ADL of New Jersey. This represents a 37 percent increase from the 78 incidents reported during the same period in 2013.

The 107 incidents included three assaults, 56 incidents of vandalism, and 48 incidents involving harassment. Cohen notes that New Jersey ranked third in the nation for anti-Semitic incidents in 2014, behind New York and California.

Nationally, the ADL counted a total of 912 anti-Semitic incidents during the 2014 calendar year, a 21 percent increase from the 751 incidents reported during the same period in 2013. Cohen notes this is the first time in nearly a decade of declines where the overall number of incidents has substantially risen. Despite the increase, however, the total number of anti-Semitic acts still represents one of the lowest totals reported by the ADL since it started keeping records in 1979, Cohen says.

College campuses

From personal slurs to hateful posts on social media, anti-Semitic behavior is showing up on U.S. college campuses as well. A Trinity College survey of more than 1,000 Jewish college students found that 54 percent of Jewish students experienced anti-Semitism on campus in the first six months of the 2013-2014 academic year.

The seven-week conflict between Israel and Hamas in the Gaza Strip, which ended in August 2014 and resulted in the deaths of 2,100 Palestinians, 66 Israeli soldiers and seven Israeli citizens, caused students on many college campuses to speak out against Israel and its policies. Demonstrations have taken place on many campuses with some students calling for divestment and economic boycotts of Israel. According to *The New York Times*, there are Boycott, Divestment and Sanctions (BDS) campaigns at "hundreds of major colleges, including the University of Michigan, Princeton, Cornell and the University of California."

In 2015, a five-hour debate at Northwestern University over a divestment resolution resulted in the student government asking the university's administration to divest. It did not. According to *The New York Times*, during the sometimes heated discussion, one Egyptian-American senior said, "Discomfort is felt by every person of color on this campus. To those who say this divestment bill makes you uncomfortable, I say: Check your privilege." While another student, *The Times* reported, said voting for divestiture is "pointing fingers, it's aggressive, it's misinformed, it's unjust, and—most important for this campus—it's totally one-sided."

Taking a stand

So, can individuals protest Israeli policies without being anti-Semitic? Many people, including some in the Jewish community, say they can, but there is a fine line.

"Conservatives routinely conflate [combine] anti-Israel and anti-Semitic speech," Jay Michaelson wrote *>continued on page 8*



Therapy *continued from page 1*

These bans apply only to those under the age of 18. Adults are not banned from seeking this treatment. The New Jersey ban applies to licensed professional counselors, social workers, psychiatrists and psychologists, who are prohibited from using the method on minors.

Within days of Governor Christie signing the bill, a lawsuit (*King v. Christie*) was filed in New Jersey federal court contesting the legislation. A second lawsuit was filed three months later (*Doe v. Christie*). Meanwhile, a lawsuit filed against the California gay conversion therapy ban (*Pickup v. Brown*) failed in August 2013. The U.S. Court of Appeals for the Ninth Circuit ruled that the California law "as a regulation of professional conduct, does not violate free speech rights of SOCE practitioners or minor patients, is neither vague nor overbroad, and does not violate parents' fundamental rights."

In July 2014, the U.S. Supreme Court declined to review the Ninth Circuit decision, in effect allowing it to stand. In press reports, California State Senator Ted Lieu, who sponsored the law and is now a U.S. congressman, said, "The Supreme Court has cement shut any possible opening to allow further psychological child abuse in California. The court's refusal to accept the appeal of extreme ideological therapists who practice the quackery of gay conversion therapy is a victory for child welfare, science and basic humane principles."

New Jersey cases

The *King* case was filed by counselors who had practiced gay conversion therapy and claimed the law violated their First Amendment right to free speech and to practice their religion. U.S. District Court Judge Freda Wolfson of the District of New Jersey rejected those claims, concluding the law "restricts neither speech nor religious expression" and noted that the therapists' challenge to the law "runs counter to the longstanding principle that a state generally may enact laws rationally regulating professionals, including those providing medicine and mental health services." Citing the Ninth Circuit ruling in *Pickup v. Brown*, Judge Wolfson ruled the law is constitutional and dismissed the case. The Third Circuit Court of Appeals **affirmed** the judgment of the District Court in September 2014.

The *Doe* case involved parents who believed the law infringed on their constitutional rights to free speech, freedom of religion and the Fourteenth Amendment right to equal protection. The parents

contended that the ban prevented their 15-year-old son from being voluntarily treated with gay conversion therapy.

Judge Wolfson dismissed the case, noting that the New Jersey law did not violate First Amendment rights of speech because it covers conduct, meaning the therapy itself, not speech. As for religion, Judge Wolfson ruled that the law is neutral in regards to religion even if it "disproportionately affects those motivated by religious belief." In regard to equal protection, Judge Wolfson wrote, "Surely, the fundamental rights of parents do not include the right to choose a specific medical or mental health treatment that the state has reasonably deemed harmful or ineffective. To find otherwise would create unimaginable and unintentional consequences."

Coming around

In July 2014, nine former leaders of Exodus International, a Christian group and leader in the gay conversion therapy movement, formally apologized in a published letter for their participation in reparative therapy, coming out in support of laws that ban such treatment.

The letter read: "We know firsthand the terrible emotional and spiritual damage it [gay conversion therapy] can cause, especially for LGBT youth. We once believed that there was something morally wrong and psychologically 'broken' about being LGBT. We know better now. Conversion therapy reinforces internalized homophobia,

anxiety, guilt and depression. It leads to self-loathing and emotional and psychological harm when change doesn't happen."

Still, others are not swayed. Despite the denouncement of the treatment by many medical organizations, including the American Academy of Pediatrics, the American Medical Association, the APA, the World Health Organization and the National Association of Social Workers, in 2014 the Texas Republican Party platform included support for gay conversion therapy. The platform stated: "We recognize the legitimacy and value of counseling which offers reparative therapy and treatment to patients who are seeking escape from the homosexual lifestyle. No laws or executive orders shall be imposed to limit or restrict access to this type of therapy."

Peddling fraud

Another New Jersey case involved Jews Offering New Alternatives for Healing (JONAH), a Jersey City organization that advocates the belief that people can "journey out of homosexuality." New Jersey's ban did not apply to JONAH, as its employees are



not licensed therapists. *Ferguson v. JONAH* was brought by the Southern Poverty Law Center (SPLC), a civil rights organization based in Montgomery, Alabama, and involved three young men and two parents who sued the organization for “fraud, deception, and unconscionable business practices” in claiming their counseling services could “cure” clients of being gay.

In February 2015, a state court judge in Hudson County, Peter Bariso Jr., found that JONAH violated the New Jersey State Consumer Fraud Act by “depicting homosexuality as abnormal or a mental illness” and “touting ‘success’ statistics for such services in the absence of a factual basis.”

One of the men was told he was gay because he was too close to his mother and his therapy involved hitting a pillow (symbolizing his mother) with a tennis racket. Others were encouraged to avoid talking to their female relatives, and to re-enact violent role-playing games. The jury ordered JONAH to reimburse the plaintiffs three times the fees paid for the therapy. Judge Bariso granted a permanent injunction against JONAH in December 2015, ordering them to close all operations by February 1, 2016.

“This ruling is monumental and devastating to the conversion-therapy industry,” SPLC Deputy Legal Director David Dinielli said in a press statement. “For the first time, a court has ruled that it is fraudulent as a matter of law for conversion therapists to tell

clients that they have a mental disorder that can be cured. This is the principal lie the conversion-therapy industry uses throughout the country to peddle its quackery to vulnerable clients. Gay people don’t need to be cured, and we are thrilled that the court has recognized this.”

A federal ban

President Obama and his administration have publically supported all bans on gay conversion therapy for minors. In February 2016, four members of Congress, including Senator Cory Booker of New Jersey, urged the Federal Trade Commission to “take all actions possible to stop the unfair, deceptive, and fraudulent practice.”

In April 2015, a We the People petition to the White House called for a ban on LGBT conversion therapy, referring to the story of Leelah Alcorn, a 17-year-old transgender girl who killed herself in December 2014 after undergoing the treatment. Her suicide note, which she posted online, referred to religious therapists who tried to convince her she was a boy. “The only way I will rest in peace is if one day transgender people aren’t treated the way I was,” she wrote, “they’re treated like humans with valid feelings and human rights.” ■

Immigrants *continued from page 4*

trying to gain access to the country. In December 2015, the House passed a bill 407-19 that would restrict travel to the United States by citizens of 38 countries who are currently allowed in the country without a visa. These citizens would be required to obtain a visa if they had travelled to Syria, Iraq, Iran or Sudan within the last five years. At press time, the Senate had taken no action on the bill.

Banning Muslims

An NBC News survey revealed that 56 percent of Americans oppose allowing Syrian refugees into the country. The issue has become a talking point for some presidential candidates, with one in particular advocating barring Muslims from entering the United States, only accepting Christian refugees or deporting the Muslim/non-Christian refugees already resettled here if he is elected.

“There has been some debate over the constitutionality of barring Muslim immigrants because of the plenary power doctrine,” Professor Nessel says. “Under the plenary power doctrine, the courts have historically afforded extreme deference to Congress and,

to a lesser degree, the Executive [President] when regulating immigration. Because of this, the Supreme Court has allowed discriminatory immigration laws, such as the Chinese Exclusion Act passed by Congress in 1882, to stand.”

Professor Nessel believes that “barring Muslims from entering the country would be immoral, ill-conceived, and in violation of our human rights obligations” and thinks the U.S. Supreme Court would strike down an immigration law that blatantly discriminates against Muslims. She also points out that the President would not have the power to enact such a law.

“It would need to come from Congress and there is no reason to think that today Congress would bar all Muslims from entering the United States or that the Supreme Court would uphold such legislation as constitutional,” Professor Nessel says. “In addition to violating the Equal Protection Clause, such a law would be unconstitutional pursuant to the First Amendment because it targets a religious group.”

Professor Nessel says that refugees cannot be deported solely because of political will and points out that the U.S. Constitution applies to all persons within the United States, *>continued on page 8*



Glossary

affirm — to uphold, approve or confirm. **antebellum** — before the Civil War. **appeal** — legal proceeding in which a

case originates in a lower court is brought to a higher court for review of the lower court decision.

efficacy — effectiveness. **jihad** — (among Muslims) a war or struggle against unbelievers.

Anti-Semitism *continued from page 5*<

in an opinion piece that appeared on *The Huffington Post*. "In fact, a swastika is not just a swastika. Consider an anti-Israel protest that depicts an Israeli flag with a swastika on it. Offensive, to be sure. But what is it saying? It's saying that Nazis are bad, and that the Israeli government is Nazi-like. Now consider an anti-Semitic incident in which someone sprays a swastika on a synagogue door. Also grossly offensive, to say the least. But it is saying something very different. It is saying that Nazis are good, and we should finish the work they started. The same symbol thus has two nearly opposite meanings."

Michaelson, who holds a doctorate in Jewish thought from Hebrew University of Jerusalem and a law degree from Yale Law School, also wrote, "The fact is the borders of anti-Semitism are permeable. Human speech does not divide neatly into 'hate speech' and 'political speech.' Thus, if we are to avoid the over-generalizations, we must be more rigorous in our definitions of the phenomenon or we risk diluting the evil of anti-Semitism itself."

Finding common ground

David Snyder, Executive Director of the Jewish Community Relations Council (JCRC) of Southern New Jersey, believes that one way to find common ground among those with differing opinions is to bring people of different backgrounds together to bridge those differences. To that end, the JCRC conducts about 200 programs each year, predominantly at local schools through its Goodwin Holocaust Museum and Education Center, as well as through numerous "open to the community" programs. Through the lessons of the Holocaust, Snyder says that the JCRC aims to share with young people messages of perseverance, forgiveness, hope, and resilience.

It's natural, he acknowledges, for people to seek out others who are like themselves. But when people make an effort to get to know others who are different, they can bridge divides and develop a greater understanding and respect for one another. ■



Immigrants *continued from page 7*<

regardless of immigration status. "While constitutional protections may be more limited in the context of immigration regulation, immigrants enjoy full constitutional protection in all other aspects of their lives," she says.

Acceptance

The inscription on the Statue of Liberty, given to us by France on our 110th birthday, reads: "Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my lamp beside the golden door!"

It seems, however, even a "nation of immigrants" can be intolerant, according to a *Time* magazine piece referring to America's history of refugee acceptance. "In 1948, a Gallup poll found that 57 percent of Americans would disapprove of resettling 10,000 displaced Europeans in their state," the article reported. "In 1975, only 36 percent of Americans wanted to take in Vietnamese refugees; in 1980, 71 percent of Americans were against Cuban refugees coming to the U.S."

Tolerance, it seems, is alive and well in France. Even after the horrific attacks in Paris, French President Francois Hollande pledged to accept 30,000 Syrian refugees, an increase of France's original pledge to accept 24,000. "France will remain a country of freedom," he said, calling it "a humanitarian duty." ■

