

The Effect of Post 9-11 Policy on Foreign Students: A Critical Analysis

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Orono, ME

Plenary Session: The Patriot Act, Post 9-11 Politics, and the Protection of Privacy and Civil
Rights in the University Community

Presentation at the 26th National Conference on Law and Higher Education

Clearwater Beach, FL

February 20, 2005

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Educational exchanges between American and foreign scholars at all levels of education are an important means by which foreign relations are developed. Foreign students bring many positive aspects to schools and universities. They introduce a diversity of thought and attitudes to the college campus that provides American students with opportunities to interact in a close manner with people of other nations. Foreign students help to fill under-enrolled science classes and provide support for teaching and research, particularly in the sciences. They benefit graduate education and add important financial resources to the university economy (Johnson, 2003). For example, “according to the Institute of International Education, more than 70% of undergraduate foreign students pay full tuition... with foreign students and their dependents spending \$12 billion in our economy each year” (p. 1, Johnson, 2003). Most importantly, educating foreign students is a crucial step in foreign relations development (e.g., people-to-people diplomacy) given that many current foreign leaders (e.g., Kofi Annan, Hamid Karzai) have been educated in the U.S. and presumably, many future leaders will also spend some of their formative years in the U.S. Having a positive experience with their furlough in the U.S., international students take their understanding and appreciation of our culture and their feelings of goodwill back to their homeland. Future collaborative efforts between American academics and foreign students serve to strengthen these positive images and connections. Thus, the foreign student on a university campus is a precious commodity who needs to be protected and the relationship fostered. Unfortunately, there is ample evidence to suggest that the opposite may be occurring. That is, individuals of Middle Eastern descent not being protected but are actively discriminated against through formal international policy and informally through the attitudes of American citizens. The policies instituted by the government and legal venues after the events of September 11, 2001 (hence, termed post 9-11) raise questions about the future direction of American relationships with foreign students, scientists, and faculty.

The decade of the 1990's has been referred to as a “decade of hate – or at least of hate crime” (Rovella, 1994). If such a reputation was established prior to the events of 9-11, what impact have policy changes had on bias crimes, particularly with respect to Muslims and Arabs living in the U.S.? Further, how have governmental policies such as the Patriot Act, registration of foreign students, new visa application processes, and Student and Exchange Visitor Information System (SEVIS) impacted the experience of foreign students and the frequency of

hate crimes? This paper will examine these issues with particular emphasis on the effects of governmental policies on international students on college campuses. In order to provide a common, contextual foundation, a brief overview of hate crimes including definitional, historical, and typological topics will be presented. A discussion of the changes in specific governmental policies post 9-11 that apply to foreign university students will follow.

Background

History. The anti-hate crime movement emerged over the past 40 years as a result of outcomes from several social movements (Grattet & Jenness, 2001). Although the Black civil rights movement, the women's movement, the gay and lesbian movement, the disabilities rights movement, and the crime victims' rights movement all espoused disparate goals, a unifying focus was the issue of violence based on discrimination (Jenness, 1999). As such, in 1990, Congress passed the Hate Crime Statistics Act that requires the Attorney General to systematically gather information regarding "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity" (FBI, 1999). Since 1990, the Act has been amended to include bias against persons with a physical and/or mental disability and bias based on gender.

Typology. Although the underlying motivation behind hate crime appears to be bigotry (Levin & McDevitt, 1993), four motivations for committing hate crime have been identified (McDevitt, Levin, & Bennett, 2002). *Thrill crimes* are the most common variety of hate crime representing 66% of crimes reviewed in which the perpetrator is motivated to engage in criminal activity because of the ensuing feelings of excitement experienced when committing the act. These individuals tend to be of teen-young adult age and have a low commitment to the bias. The second most common type of hate crime is *defensive* in nature (25% of reported cases) in which the individual feels the need to protect his or her property from perceived threat of danger. This type of bias is evident, for example, in a neighborhood that is experiencing demographic changes such as transitioning from a one-race area to a multi-racial neighborhood. These individuals have a moderate commitment to their bias and typically have used intimidation as a means of expressing their attitudes. *Retaliatory* hate crime was evident in 8% of cases reviewed and represents hate crimes that are committed in response or retaliation to real or perceived attacks to the individual or group. Individuals within this typology have a moderate commitment to pursuing acts against their victims. Additionally, retaliatory hate crimes are thought to be the most likely to ignite

additional retaliatory measures, thereby perpetuating the hate crime cycle. The last type of hate crimes, *mission hate crime*, are committed by less than 1% of perpetrators who believe that their goal in life is to rid the world of a particular group of people who they believe to be evil. These individuals have a high commitment to their bias and are typically older than other hate crime perpetrators. All types of hate crime motivations can be applied to the post 9-11 world and America's apparent suspicion of people from Middle Eastern descent.

Recent frequency statistics. Regarding the current status of hate crimes in the U.S.A., in 2003, the agencies responsible for collecting hate crime data gathered information that represented 82.8% of the population and comprised information on crimes against people, crimes against society, and crimes against property (FBI, 2003). Based on this data, 51.4% of hate crimes were based on bias against racial identity, 18% were based on religious bias, 16.6% based on sexual-orientation bias, 13.7% based on bias against ethnicity/national origin bias, and 0.4% based on disability bias. With respect to religious bias crimes, 69.2% were directed towards anti-Judaism, 10.9% were anti-Islamic, 8.3% were unspecified, 5.5% were anti-Catholic, and 3.5% were anti-Protestant bias. Regarding locations where hate crimes occurred, 32.0% were in or near homes, 17.6% were on streets, alleys, highways, 11.8% were in schools or universities, 6% were in parking lots, 3.8% were in religious sites, 12.5% were unspecified, and 16.3% were in a various locations. During 2003, there were 884 hate crime incidents on school or college campuses; of these incidents, 481 (54.4%) constituted race bias, 165 (18.7%) were classified as religion bias, 147 (16.6%) were sexual orientation bias, 84 (9.5%) were ethnicity/national origin bias, and 6 (.001%) were disability bias.

Hate Crimes on Campus

Unfortunately, information about hate crimes and bias incidents on college campuses is not comprehensive because relatively few institutions report these types of events (Wessler & Moss, 2001). Despite the poor reporting, there is ample evidence to suggest that discrimination against individuals based on their race, religion, disability, sexual orientation, and/or ethnicity does exist in the form of non-violent bias incidents and violence-based hate crimes. Further, it is likely that the statistics are an underestimation of the problem because students, faculty, and staff are thought to under report incidents because of uncertainty regarding what, when, and where to report questionable incidents, and victims of incidents are often reluctant to report because they fear reprisal. Based on a 1998 FBI report of 450 reporting colleges from 40 states, there were

241 hate crime incidents with 57% involving racial issues, 18% motivated by anti-Semitism, and 16% related to sexual orientation bias. These statistics, however, do not provide information regarding incidents against students of Middle Eastern descent.

Post 9-11 Hate Crime

Hate crimes against Arabs, Muslims, and South Asians did not have its inception following September 11th. Rather, there were numerous incidents of bias against these nationalities following the 1991 Gulf War (Hong, 1998). After the Oklahoma City bombing in 1995, over 220 incidents of hate crimes against Arabs and Muslims were reported (Goodstein, 1996). Reports of threats and violence against Muslims rose 15% between March 2000 and March 2001 (Bates, 2001). The magnitude of hate crimes, however, increased significantly following the immediate aftermath of September 11th with 1000 bias incidents reported including 19 murders, against Arabs, Muslims, and South Asians (Ahmad, 2004). As such, the increase of incidents targeting people of Islamic faith increased by 1600% from 2000 to 2001 (FBI, 2001), although some dispute this number and believe it to be an underestimation (Abdelkarim, 2003).

Not only were there individual hate crime incidents but policy changes affecting immigration and law enforcement appeared to be directed specifically toward Arabs, Muslims, and South Asians. Further, the government acted to perpetuate bias incidents by formalizing operations based on racial profiling and implementing discriminating foreign and domestic policies. According to the Council on American-Islamic Relations (CAIR), there were 224 reported FBI/Police/INS acts of intimidation towards American Muslims and Arab-Americans (Abdelkarim, 2003). As such, Ahmad (2004) asserts that “These laws operate in tandem with the individual acts of physical violence that have been carried out against these same communities, thereby aiding and abetting hate violence” (p. 1262). In combination with the physical violence acts and the governmental racial profiling that has occurred, a new racial construct as been created: the Muslim-looking person (Ahmad, 2004). Membership into this category appears to be based primarily on appearance and not on religious or behavioral characteristics which results in an overly inclusive profile that is ripe for abuse. Although the frequency of hate crimes against Muslim-looking people has declined there are recent reports of continuing violence against Arabs, Muslims, and South Asians. For example, a Muslim man from Pakistani was shot in Texas by a white supremacist (Hanashiro, 2002), and an Indian Sikh gas station attendant who was mistaken for a Muslim was killed in Mesa, Arizona while his killer earlier boasted about

killing a “raghead” (Pierre, 2002). Ahmad (2004) contends that the continuing pervasiveness of hate crimes against these cultures suggests a normalization of the underlying discrimination towards Arabs, Muslim, and South Asians.

Formal measures implemented by the government encourage discriminatory practice and marginalization of Muslim-looking people from American society. Hing (2002) purports that the de-Americanization process that has evolved post 9-11 has involved the actions of individual citizens against Muslim-looking people and a crucial second aspect, the tacit sanctioning of such behavior by the government through its policies and actions. Whether individuals from Muslim, Middle-Eastern, or South Asian descent are American citizens or not, the de-Americanization process has strived to ostracize them from mainstream acceptance because they do not fit the narrow, Euro-centric definition of a “true American citizen” that is held by many (Hing, 2002). That is, Muslim-looking people differ from the norm through their dress, appearance, accent, etc., that “disqualifies them from membership in the club of Americans” (p. 14, Hing, 2002). Through the process of marginalization, individuals who ascribe to vigilante beliefs feel justified in committing bias acts based on their beliefs of protecting their country or retaliatory hate crime motivation. The government then plays a role in legitimizing this behavior by enacting policies that target individuals based on their country of origin, consequently, normalizing the ostracism process.

Although it is clear that Arabs, Muslims, and South Asians have suffered discrimination in a variety of forms both prior to 9-11 and, most dramatically, post September 11th, there is surprisingly little information available about the effect of these events and government policy towards foreign students enrolled in American universities. The next section will discuss the impact of the Patriot Act on Muslim-looking people and then the effect of three policies that are directly related to the well-being of foreign students.

Policies

The Patriot Act. President Bush submitted the Patriot Act or the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” to Congress on September 24, 2001 that was subsequently signed into law on October 26, 2001. In an analysis by Sekhon (2003), the Patriot Act has specifically targeted Arabs and South Asians and has undermined if not violated their civil rights in a number of ways. Specifically, first amendment rights (i.e., freedom of speech and association), are

compromised by the inclusion of sections 411 and 215 that deny citizens undergoing a Federal investigation the right to publicly express their dissatisfaction with the process and to deny entry of “suspect” Arab or South Asian American organizations into the U.S.A. Fourth Amendment rights (i.e., “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures”) have also been altered such that the rules for searching and seizing property have been modified to such a degree that wiretaps, surveillance of wireless communication is acceptable and under certain circumstances, a search warrant may not be necessary. Fifth Amendment rights (i.e., “no person shall be deprived of life, liberty, or property, without due process of law”) have been altered such that the Attorney General can detain any foreign nationals who are suspected of terrorist activity and confiscate property without court approval. The Sixth Amendment concerns the right to legal counsel and confidentiality of communication between legal counsel and the client. The Bureau of Prisons rule was extended to the Patriot Act and requires Prison Directors to monitor communications between lawyers and their clients in an effort to prevent situations in which death or serious bodily harm could occur. No court approval is needed for such monitoring. Clearly, the potential impact of these facets of the Patriot Act towards a group of individuals already targeted by the government and American society as being under a cloud of suspicion is alarming and has many civil rights groups advocating for the potential victims. Thus, not only are Muslim-looking American citizens not being protected, but specific civil rights are being violated.

SEVIS. Perhaps the policy that has had the greatest impact on university students is the Student and Exchange Visitor Information System that was proposed by the Department of Homeland Security and implemented by the Department of Justice and the Immigration and Naturalization Service (INS) on January 30, 2003. SEVIS is the implementation of Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 with the Enhanced Border Security and Visa Entry Reform Act of 2002 providing additional clarification concerning the need to collect information on students with the goal of protecting national security. SEVIS was instituted in order to tighten and improve tracking procedures for the one-million foreign students and exchange visitors residing in the U.S. each year. This internet-based system maintains a database of current information on nonimmigrant students, exchange visitors, and their dependents until they graduate. As such, SEVIS requires that students and their host universities report: (a) when the student arrives on campus, (b) failure of a student to enroll, (c)

full-time enrollment, (d) when a student drops below a full course load without prior authorization from INS, (e) any failure to maintain status or complete the program, (f) change in name or address within 10 days, (g) start date of each term, (h) a student's transfer to another program, (i) program extensions, (j) off campus employment, and (k) any other major changes to the student's program of studies.

Although the SEVIS system is well-intentioned in its goals, its implementation has resulted in numerous problems, some with serious consequences for international students. Reportedly, the system does not work smoothly partly because it was not tested prior to implementation (Johnson, 2003). Thus, long delays ensue when the system is "down" or a new glitch is being repaired. Further, a "detain first and ask questions later" approach (Johnson, 2003) has resulted in many students being detained for innocuous reasons such as not taking a full course load even with advisor permission and thus, missing classes, increasing their stress level, incurring legal costs in an attempt to clear their status, etc. Thus, as the system gets "debugged", international students and visitors' suffer the consequences with their basic human rights in risk of violation. Further, the reputation of the U.S. as a host country that detains innocent students does little to attract other international students and scholars to further their education in this country as well as places an additional negative impact on foreign relations.

NSEERS. In June 2002, John Ashcroft in conjunction with INS announced the implementation of a comprehensive registration system to track entries to and exist from the U.S. of all nonimmigrant visitors holding a visa who are from countries deemed to be of "highest terrorism risk". The goal of this registration system was provide the INS with additional measures to investigate and track those individuals who present an elevated risk to national security. This program, the National Security Entry-Exit Registration System (NSEERS), has been purported to target non-immigrant visa holders from Muslim and Arab countries (Abdelkarim, 2003). The first registration date in December 2002 required males over age 16 from Iran, Iraq, Syria, Libya, and Sudan to register which also entails fingerprinting and being photographed. In Southern California, estimates of up to 1000 men and boys were detained at INS offices for hours to days while their cases were reviewed (Abdelkarim, 2003). Figures were not available concerning how many of these individuals were students. The second INS deadline for registration in January 2003 affected males from 12 additional Muslim countries; however, this time there were no reports of widespread arrests. Critics of NSEERS point to the blatant

racial profiling that subsequently filters to the general population that such bias is acceptable to discriminate against Arabs and Muslims.

Visa applications. Another impact of post 9-11 immigration policies is the processing of visa applications. Due to increased pressure on INS agents to be scrupulous in their examination of applications, the process has become lengthy with many denials and greater scrutiny (Johnson, 2003). One of the central issues to university life have been the long delays in reviewing visa applications that has resulted in some students and visiting professors missing their program start dates. Two factors make the potential delays even more problematic: a stated goal of visiting the U.S. for scientific purposes and being either an Arab or Muslim man. If either of these conditions is met, the visas are reviewed in Washington, DC which can delay the process even further. Another change that has a complicating effect on academic life is the need for a new visa each time the student/faculty member leaves the country. Thus, if an international graduate student attends a conference outside of the U.S. or decides to visit family in their home country for holidays, he or she must get a new visa to re-enter the country. Thus, this policy clearly has a negative impact on the transfer of knowledge between countries with respect to scientific collaboration and discourages foreign students from studying in the U.S. unless they are willing to sacrifice their freedom to travel abroad. Clearly, this type of added complication to visiting one's homeland and having direct contact with family members could also have negative psychological effects on the foreign student and make their time in the U.S. less enjoyable and profitable. Further, news of this type of isolation is not likely to appeal to other prospective students who may choose other countries for their studies.

Future Directions

From the evidence reviewed, it is apparent that post 9-11 governmental international policy has impacted both formal and informal discrimination against Muslim-looking people. The extent to which this form of the discrimination has affected foreign students on American universities has yet to be formally documented. However, given the restrictive and inefficient nature of the SEVIS, registration, and visa application procedures, it is likely that these changes in policy have had a detrimental effect on attracting foreign students to study in the U.S., and has affected the quality of life for currently enrolled students, particularly when they wish to travel abroad. What is more difficult to determine, however, are the informal types of discrimination that Muslim-looking students may be experiencing from their fellow students, faculty, and

members of the university and broader communities. Verbal harassment, suspicious looks, social ostracism, and difficulties renting an apartment may be just some of the subtle ways in which foreign students of Middle Eastern roots may experience targeting and discrimination.

College campuses are not without resources, however, to counteract discrimination and to prevent or at least respond to hate crime and bias incidents. Wessler and Moss (2001) suggest a number of ways that universities can implement policy and programs to counteract hate crimes:

- 1) have a broad-based public condemnation of prejudice-based incidents from the President of the University or Deans of Colleges that could include a letter sent to everyone or town-hall types of meetings to discuss the nature of bias incidents
- 2) use education and training programs to raise awareness of hate crimes and underlying bias/prejudice issues as has been done at the University of California at Berkeley
- 3) sponsor a Hate Crimes Awareness week
- 4) reward student organizations that actively discourage bias and prejudice on campus
- 5) sponsor a Campus of Difference Program operated by the Anti-Defamation league that trains students to recognize bias crimes and to proactively change the climate on campus
- 6) initiate peer diversity education programs that encourage understanding of differences which can be incorporated into specific classes or into freshman orientation programs
- 7) as has been instituted at the University of Southern Maine's Campus Civility Project, have student leaders (e.g., RAs), faculty, administrators, and staff participate together in workshops that educate these individuals on diversity issues and provide them with practical methods of diffusing bias incidents when they occur
- 8) have a specific Hate Crimes policy on campus that makes clear what types of incidents to report and to whom
- 9) visit the website www.stophate.org to find 10 additional ways to "Stop the Hate"

In conclusion, although the jury is still out, it appears as if post 9-11 policy has had a negative effect on foreign students, particularly those from Middle-Eastern countries. Consistent with American values and history, we have a responsibility and duty to protect the safety and civil rights of foreign students. Despite the costs, it is clearly to our advantage to foster relationships with foreign students because it is in this way that we invest in our future foreign policy and national security.

References

- Abdelkarim, R.Z. (2003, April). Surge in hate crimes followed by official U.S. targeting of Muslim, Arab men. *Washington Report on Middle East Affairs*, 22, 51-54.
- Ahmad, Muneer I. (2004). A rage shared by law: Post-September 11 Racial Violence as crimes of passion. *California Law Review*, 92, 1259-1330.
- Bates, S. (2001, December). Fighting the backlash: Terrorist is resulting in misdirected anger against Muslim & Arab Americans . *HR Magazine*, 40-44.
- Goodstein, L. (1996, Apr.). *Report cities harassment of Muslims: Many cases followed Oklahoma City bombing*. <http://www.usatoday.com/news/apr20/1996=04-20>.
- Grattet, R., & Jenness, V. (2001). The birth and maturation of hate crime policy in the United States. *American Behavioral Scientist*, 45, 668-696.
- Hanashiro, R. (2002, September). *Hate crimes born out of tragedy create victims*. http://www.usatoday.com/new/sept11/2002-09-11-mesa_x.htm.
- Hing, B.O. (2002). Vigilante racism: The de-Americanization of immigrant America. *Michigan Journal of Race & Law*, 7, 1-16.
- Hong, P.Y. (1998). *Leaders in Southland say attacks on their people and businesses increased after the 1991 Gulf War and bombings in New York City and Oklahoma City*. L.A. Times, Feb. 9.
- Jenness, V. (1995). Social movement growth, domain expansion, and framing processes: The gay/lesbian movement and violence against gays and lesbians as a social problem. *Social Problems*, 42, 145-170.
- Johnson, V. (April, 2003). When we hinder foreign students and scholars, we endanger our national security. *The Chronicle of Higher Education*, 49 (31), 7-9.
- Levin, J., & McDevitt, J. (1993). *Hate crimes: The rising tide of bigotry and bloodshed*. New York: Plenum.
- McDevitt, J., Levin, J., & Bennett, S. (2002). Hate crime offenders: An expanded typology. *Journal of Social Issues*, 58, 303-317.
- Pierre, R. (2002, Sept.). *Victims of hate, now feeling forgotten*. Washington Post.
- Rayburn, N., Earleywine, M., & Davison, G. (2003). Base rates of hate crime victimization among college students. *Journal of Interpersonal Violence*, 18, 1209-1221.

- Rovella, D.E. (1994, August). Attack on hate crime is enhanced. *National Law Journal*, 29, A1.
- Sekhon, V. (2003). The civil rights of "Others": Antiterrorism, the Patriot Act, and Arab and South Asian American rights in post-9/11 American society. *Texas Forum on Civil Liberties and Civil Rights*, 8(1), 117-148.
- Turpin-Petrosino, C. (2002). Hateful sirens ... Who hears their song? An examination of student attitudes toward hate groups and affiliation potential. *Journal of Social Issues*, 58, 281-301.
- Wessler, S., & Moss, M. (2001). Hate crimes on campus: The problem and efforts to confront it. *Hate Crimes Series*, 3, 1-15.