

HEARING OF THE CONSTITUTION, CIVIL RIGHTS, HUMAN RIGHTS, AND THE LAW  
SUBCOMMITTEE OF THE SENATE JUDICIARY COMMITTEE

- SUBJECT: PROTECTING THE CIVIL RIGHTS OF AMERICAN MUSLIMS
- CHAIRED BY: SENATOR RICHARD DURBIN (D-IL)
- WITNESS: THOMAS PEREZ, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

226 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C.  
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**SEN. DURBIN:** (Sounds gavel.) This hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights will come to order. Today is the first hearing of this new subcommittee formed by the merging of the Constitution Subcommittee with the Human Rights and Law Subcommittee, which I chaired for the last four years.

I want to personally thank Chairman Pat Leahy for giving me the chance to chair this new subcommittee. I look forward to working with Senator Lindsey Graham, my friend and colleague, and the ranking member of the subcommittee, and other members of the subcommittee who will join us. And after a few remarks -- after a few of my own personal remarks, I'll recognize Senator Leahy and Senator Graham.

I think it's appropriate to hold the first hearing of this new subcommittee on what is often called the Constitution's first freedom, the freedom of religion. Many of our nation's founders fled religious persecution and they placed great importance on religious freedom. George Washington summed up the prevailing view when he said, and I quote, "In this land of equal liberty, it is our boast that a man's religious tenets will not forfeit the protection of the law."

Despite the framers' best intentions, throughout our history many religious minorities have faced intolerance. The lynching of Leo Frank in 1915 is one infamous example, and anti-Semitism continues to be significant in America. Often prejudice has been directed at religions of recent immigrants. In the last century it was Catholics from places like Ireland, Italy and Lithuania, my mother's country of origin, whose loyalties were questioned.

I brought to this hearing a family treasure. One hundred years ago, in 1911, my grandmother landed in Baltimore, Maryland from Lithuania. She brought with her my mother, two years old, and my aunt and uncle. And they came down off the boat in Baltimore and somehow found their way to my grandfather in East St. Louis, Illinois. I have no idea how they made that journey not speaking a word of English. There is nothing -- no physical evidence left of that journey but this little book.

(Cardinal ?), it is a Catholic prayer book written in Lithuanian, printed in 1863, which at the time of their immigration was contraband. The czar had ordered that all prayer books had to be written in Russian. My grandmother, whom I never knew, knew that if she brought this prayer book to America she would have the freedom to use it. And I have remembered that, and it's one of the reasons why this is the first hearing. This freedom of religion meant so much to my

grandmother, who was no constitutional scholar, but she knew that America guaranteed that freedom, and that's what this hearing is all about.

Today, American Muslims from the Middle East and South Asia are facing discrimination. Attorney General Eric Holder put it well when he said that anti-Muslim bigotry is, quote, "the civil rights issue of our time." This backlash began after the 9/11 terrorist attacks. In fear and anger, some Americans wrongly struck out at innocent Muslims, Arabs, South Asians and Sikhs. Since 9/11, we have worked to combat terrorism. We continue to solicit and receive the support of many Muslim Americans who love this nation and work with our government to protect it. At the same time, many law-abiding Muslim Americans face discrimination and charges that they are not real Americans, simply because of their religion.

This debate will continue, but terrorism is not the subject of today's hearing. We should all agree that it's wrong to blame an entire community for the wrongdoing of a few. Guilt by association is not the American way, and American Muslims are entitled to the same constitutional protections as every other American. I had many differences with President George W. Bush, but he showed real leadership after 9/11 when he made it clear that our war was with the terrorists who perverted the teachings of Islam, not with Muslims, who were faithful to what he called, quote, "a faith based upon love, not hate."

Congress also spoke with a clear voice. I co-sponsored a resolution with John Sununu, who was then the only Arab-American in the Senate, that condemned anti-Muslim and anti-Arab bigotry, and said that American Muslims, quote, "are vibrant, peaceful and law-abiding and have greatly contributed to American society." A resolution passed both chambers of Congress unanimously.

Today President Obama continues to speak out as forcefully as President Bush, even though President Obama is often challenged by a chorus of harsh voices. A leading member of Congress stated bluntly, quote, "There are too many mosques in this country." A former speaker of the House falsely claimed, quote, "America is experiencing an Islamist cultural-political offensive designed to undermine and destroy our civilization." And even a prominent religious leader said Islam is, quote, "wicked and evil."

Some have even questioned the premise of today's hearing: that we should protect the civil rights of American Muslims. Such inflammatory speech from prominent public figures creates a fertile climate for discrimination. It's not surprising the Anti-Defamation League says we face, quote, "an intensified level of anti-Muslim bigotry." Last year the Southern Poverty Law Center, which tracks hate groups, designated five anti-Muslim hate groups for the first time. And we've seen anti-Muslim hate crimes, employment discrimination, bullying in schools, restrictions on mosque construction and Quran burnings.

Sadly, this is a nation-wide phenomenon, including my own home state of Illinois. To take just one example, a man was recently sentenced to 15 months in prison for blowing up the van of a Palestinian-American family that was parked in front of the family's home in Burbank, Illinois. It is our government's responsibility to prevent and punish this kind of illegal discrimination. And it's incumbent on all Americans who love this nation and the values our Constitution protects to make it clear to defend the civil rights of our Muslim neighbors -- make it clear that defending

the civil rights of our Muslim neighbors are as important as the rights of Christians, Jews and even nonbelievers.

Of course, the First Amendment protects not just the free exercise of religion but also the freedom of speech. But all of us, especially those of us in public life, have a responsibility to choose our words carefully. We must condemn anti-Muslim bigotry and make it clear that we won't tolerate religious discrimination in our communities. We can protect our nation and still protect the fundamental freedoms of our Bill of Rights.

I would like to acknowledge -- Senator Leahy is here. I'll let him --

**SENATOR PATRICK LEAHY (D-VT):** (Off mic.)

**SEN. DURBIN:** OK.

Senator Graham, if you'll proceed; and then I'll be happy to let Senator Leahy, the chairman, make a statement.

**SENATOR LINDSEY GRAHAM (R-SC):** Well, thank you.

To Senator Durbin, this is a hearing that we need to have, quite frankly. These are difficult issues, and, you know, what does it mean to practice religion in America? Well, it means that I have to stand up for your right to pursue your religion, because if I don't stand up for your right, you won't stand up for mine.

But part of freedom of religion and speech means that we can disagree. People can say -- the one thing that I've learned about freedom of speech, you can go to a funeral of an American serviceman who's been killed in action and say awful things in the name of freedom of speech. I'm not so sure -- I know I don't agree with the decision. But we're going to have to understand that religions are formed because people have different views. And it's OK to argue; there's just lines you cannot cross.

And we are living in a rule-of-law society, so I stand by Senator Durbin and anyone else who wants to send the message: You can have your disagreements, but there are lines we're not going to allow you to cross. There are thousands of American Muslims serving in our military. And to anyone who will wear the uniform and protect America, god bless you. And that's the unique thing about America, is that we are able to attract a wide group of people with different views who will fight for a common cause. And so I do -- I do understand where you're coming from.

But there are some real issues to be dealt with: Can we do two things at once? Can we stand up for the rights of Muslim Americans? I think the answer is unequivocally, yes, we must, because if any one group suffers, all of us suffer. But we're going to have to come to grips with two things that are going on in the world. There are some things being said in this country that are disturbing. There are efforts to recruit and radicalize young Muslims in America that have to be dealt with, and I can show you the statistics.

What's going on in Europe, we're not immune from that.

So the idea that we want to get ahead of an enemy who's trying to come to our shores and radicalize people in our country is a part of this war, and we are at war. What's going on in Scotland -- Europe, excuse me, England -- when you had doctors that attacked an airport, when you had young men raised in London blow themselves up in a subway, why should we be immune from that?

So, to the American Muslim community, I will stand with you to practice your faith and be an integral part of this country. But you're going to have to help your country, probably uniquely compared to anyone else, understand what's going on and fight back. The front lines of this war are in our own back door and our own neighborhoods. So to the American Muslim community, I will stand with you as you practice your religion and you exercise your rights under the Constitution, but I am asking you to get in this fight, as a community, and let it be known to your young people that there are lines that you will not cross and these radical messages being spread by people who would kill every moderate Muslim, Jew and Gentile, Agnostic, alike, that we're all in this together.

I've been to Iraq and Afghanistan enough to know that the biggest victim of radical Islam are fellow Muslims who choose to just basically try to live their life apart from this radical agenda, and for that they meet sometimes a very bad fate.

So, we're all in this one together. We're all in America together, we must stand up for each other and to Senator Durbin, I will try to do my part as a Republican to let my party and anyone listening know that I totally get it when it comes to freedom of religion and the ability to practice different faiths.

But I would like everyone in the country to know, including Muslims Americans, that the agenda being set by people who are trying to radicalize young Muslims here in America and throughout the world is just as bad for the Muslim American community as it is for anyone else, because maybe the worst offender of all is someone who practices the faith but rejects their ideology.

People in the Mideast who are trying to separate themselves from this radical minority movement within the Muslim faith need our help. And that's why we need to help those people in Libya who are trying to replace Gadhafi; we need to stand by these young people in Egypt who are trying to charter a different path. And you'll never convince me that the young women who went into the square in Egypt want to replace Mubarak with the Muslim Brotherhood or al-Qaida.

So, we live in very complicated, interesting times. But it always helps to keep it simple. The simple thing for an American is to understand that if we can't accept differences among faith, then maybe yours is next. And the simple thing for every American to understand, that we're at war with an ideology that has no capital to conquer, no air force to shoot down, or no navy to sink, and we're going to have to work hard and together to win. To the Muslim American community, get in this fight and protect your young people and your nation from radicalization.

**SEN. DURBIN:** Thank you, Senator Graham.

Senator Leahy.

**SEN. LEAHY:** Thank you, Senator, and thank you for holding this hearing. I think it's extraordinarily important and I'm glad this is the first hearing you and Senator Graham are going to have with your subcommittee.

We know that the FBI director's testified before this committee and others. In the past few years there has been a dramatic increase in the activities of domestic hate groups. Some of these activities result in attacks targeting the American Muslim community. To make matters worse some leaders, as Senator Durbin pointed out, have sought to sow fear and divisiveness against American Muslims. Fanning the flames of hate against those with different faith traditions runs contrary to our American values. Remember, our nation was founded in large part on the importance of religious freedom.

I welcome the renewed focus by some on our fundamental charter, the Constitution of the United States, but I remind everybody, the Constitution is not a menu with options to choose based on the political whims of the moment. Instead it's a Constitution that sets forth freedoms and protections for all of us. The First Amendment in our Bill of Rights, one of the most defining principles of our national character, preserves all our other rights by guaranteeing a free press and the free exercise of religion. It ensures an informed electorate and the freedom to worship God as we choose or not to worship as we choose, our choice. It guarantees diversity. You guarantee diversity and protect the idea of diversity, you guarantee democracy.

Now, throughout the history of the world religious minorities have been persecuted and maligned. It's a long list of religions whose members who have been systematically denied freedom and categorically stigmatized, even exterminated. We must never forget this when we consider religious freedom and religious minorities in this country. All Americans deserve civil rights protections and the freedoms provided in the Constitution.

That does not end with the vital freedom in the First Amendment. It continues to ensure due process and equal protections, it's bolstered by important civil rights laws that we have passed to guarantee there not be discrimination against religion. Members of the committee worked with the late Senator Ted Kennedy and myself over the past several decades to ensure this fundamental religion -- fundamental freedom. We worked together to pass the Religious Freedom Restoration Act, Religious Land Use Act, the Institutionalized Persons Act. It's been a long -- been a bipartisan issue in the Senate. But more importantly than being a bipartisan issue, religious freedom, it's been a consistent American value, and that's what really counts the most.

American Muslims, like all Americans, must be protected by the rule of law that upholds these constitutional and statutory protections. We passed the Matthew Shepard hate crimes act to strengthen the civil rights of all Americans. We responded to law enforcement concerns about the difficulty of bringing criminal prosecutions against those who target their victims because of their religion or ethnicity, their race, their gender and so on.

Last year in the run-up to the national elections the rhetoric became even more heated and threatening. There were threats of Quran burnings and some have even asserted that Muslim Americans are not entitled to the protection of the First Amendment. That comment should shock and offend anyone who claims to love and respect the Constitution.

Others on the radical right have suggested Islam, one of the oldest and widely practiced religions on earth, is somehow not a religion at all and so its followers shouldn't have the protections of the First Amendment. That is nonsense, and I would hope that Americans would remember why our founding fathers established this great nation when they hear this kind of divisive rhetoric.

I'm glad to see the Assistant Attorney General for Civil Rights Tom Perez here, former Assistant Attorney General for Civil Rights Alex Acosta, former Judiciary Committee Counsel Farhana Khera, here for the hearing. But I'm also pleased that one of the leading voices of the Catholic Church of America is here to testify. Cardinal McCarrick's testimony reminds us that we Catholics also had our loyalty to America questioned; not just in the earliest days of our public but during the lifetimes of many of us.

My friend Dick Durbin referred to the Irish and the Italians and the Lithuanians. I knew exactly what he was saying. My Irish ancestors faced this when they first came even to Vermont, now one of the most tolerant states in the country. My father as a teenager faced signs that said, no Irish need apply, or usually more directly, no Catholics need apply. My Italian grandparents, in a small town, an Italian community, were seen as different. My mother and my uncles and aunts, they spoke a strange language -- or some who have heard the Vermont accents might think that's a strange language.

But when they had mass, the priest would have to come in through the back door and the curtains had to be drawn, the shades had to be drawn. Now, that would be inconceivable today.

Members of the Senate of other faiths also know from their own experience that religious and ethnic bigotry can be easy to ignite, very difficult to extinguish. I agree with Cardinal McCarrick that religious freedom is destroyed by attacks on people because of their religion and by the terrible misuse of religion to incite hatred, even justify violence, and divisive religious rhetoric is used for partisan advantage. It demeans the principles upon which this great nation was founded.

So, Mr. Chairman, I thank you.

**SEN. DURBIN:** Thank you, Chairman Leahy.

I appreciate that comment. I know that the chairman takes great pride in his Irish-Italian heritage. And I have told him he is where the Gaelic meets the garlic. (Laughter.)

We have a returning member here. Senator Ben Cardin was a great member of the Senate Judiciary Committee for many years and now has gone on to other things. I won't say better things, but other things. But he still continues as co-chair of the U.S. Helsinki Commission on Human Right, and he's asked for the opportunity to give an opening statement and participate in this hearing. Senator Cardin.

**SENATOR BENJAMIN CARDIN (D-MD):** Well, Chairman Durbin and Senator Graham, thank you for allowing me to participate in this hearing. I appreciate that very much.

The right to freely profess and practice a faith or not to practice a faith is a fundamental right in our country. After more than 200 years our First Amendment withstands -- states that Congress shall make no laws respecting an establishment of a religion or prohibiting the free exercise thereof. It continues to be the envy of people around the world. Even before the First Amendment was ratified, the Constitution contained a very important provision in Article 6, Section 3 that requires all federal and state officials to swear an oath or affirmation to support the Constitution -- provides that no religious test shall ever be required as a qualification to any office or public trust under the United States.

In my own state of Maryland, only Christians could have full participation in public life until the Maryland General Assembly acted in 1825 to pass the so-called Jew Bill. I think my ancestors would have been proud to see me elected to the Maryland House of Delegates, the House of Representatives and now the United States Senate.

Among other reasons, my grandparents also came to this country in search of greater religious freedom and tolerance. Yet today, notwithstanding the protections in our Constitution and laws, I am very concerned that we are witnessing the demonization of a particular religion. For the last decade, Muslim Americans have been the target of a growing wave of anti-Muslim bigotry. It is our obligation to talk about this growing problem and what states -- what steps the government can take to reverse this trend and protect the civil rights of Muslims and all Americans.

In the 111th Congress, we took an important step forward to protect civil rights and that was the enactment of the Matthew Shepard and James Byrd, Jr Hate Crimes Prevention Act of 2009. This legislation gives the Justice Department new tools to combat hate crimes around the country, and strengthens the ability of DOJ to pursue these hate crimes, including hate crimes based on religion.

The Justice Department has indeed stepped up its enforcement to combat hate crimes and discrimination against Muslim Americans. I applaud these actions, whether in the criminal law enforcement, where aggressive enforcement of our Civil Rights Act -- and I do note our first witness, Tom Perez, has been a real leader in that regard.

In 1975, United States joined all the countries of Europe and established a conference on security and cooperation in Europe, now known as the OSCE. The United States Congress created the U.S. Helsinki Commission to monitor the U.S. participation and compliance with these commitments.

I am the Senate Chair of the U.S. Helsinki Commission in that capacity. I have raised religious human rights issues in other countries such as France, when in the name of national security the parliament banned burkas or the wearing of other religious articles, or when the Swiss restricted the building of mosques or minarets. These policies restricted not only the religious practice of Muslims, but also Christians and Jews.

I have also raised human rights issues in the United States when we are out of compliance with our Helsinki commitments. The United States, as a signatory of the 1975 Helsinki Final Act, has accepted a body of international commitments related to the rights of ethnic and religious minorities.

In the OSCE context, the United States has pledged to promote a climate of mutual respect, understanding, cooperation and solidarity among all persons living in its territory, without distinction to its ethnic or national origin or religion, and will encourage the solution of problems through dialogue. The United States has played a leadership role with the OSCE, including the OSCE parliamentary assembly, to focus on various aspects of intolerance and discrimination, including against Muslims.

The Helsinki Commission has been on the forefront of many related initiatives. During the 111th Congress I chaired a commission hearing at which we heard from special representatives from the OSCE, specifically to monitor and report on discrimination. Among those testifying was the OSCE personal representative on combating intolerance and discrimination against Muslims.

The Senate is taking another important step in complying with our OSCE commitments by holding this hearing. We need to encourage the Muslim community in the United States and to engage with them, and I applaud the chairman for holding this hearing. We cannot allow individuals or groups to pit Americans against another based on our religious beliefs. This only weakens our country and its freedoms.

Let us hold dear the protections in our Constitution that safeguard the individual rights to freely practice their religion. Our country's strength lies in its diversity and our ability to have strongly-held beliefs and differences of opinion while being able to speak freely and not fear reprisals for holding a religious belief that is not shared by the majority of Americans.

We need to stand up against intolerance and injustice. Let us come together as a nation and move forward in a more constructive and hopeful manner.

**SEN. DURBIN:** Senator Cardin, thank you. It's great to have you back on this panel.

**SEN. CARDIN:** Thank you.

**SEN. DURBIN:** Senator Kyl.

**SENATOR JOHN KYL (R-AZ):** Thank you, Mr. Chairman and thank you for holding a hearing where you could entice Cardinal McCarrick to come back and visit with us. We'll appreciate hearing from him.

If this hearing reaffirms the need for all Americans to respect each other's faith, then I'm sure we can all agree. But if it's part of a narrative that says it's improper to point out the obvious, that too many young Muslims are being radicalized to join jihad and everyone should stand against that, then count me out.

The only way to stop terrorists is to recognize where they're coming from. Political correctness cannot stand in the way of identifying those who would do us harm. Nor can we ignore the First Amendment protections. I'm a bit perplexed by the focus on today's hearing. If we're concerned about the most egregious religious hate crimes, then I wonder why we're not talking about crimes against Jews and Christians.

According the last year for which statistics are available from the Department of Justice regarding hate crimes based on religious bias, 71.9 percent were victims because of an offender's anti-Jewish bias, almost 72 percent; 8.4 (percent) because of anti-Islam bias; about 6.4 (percent) because of anti-Christian bias. So I wonder where are the priorities are here, and how about their persecution in some Muslim countries today? How about the persecution of some in Muslim communities who are former Muslims who have converted to another faith or no faith at all?

The point here is all bigotry is to be condemned, but we're only credible if we're principled in our condemnation. Selective indignation is not helpful. Thank you, Mr. Chairman.

**SEN. DURBIN:** Thank you, Senator Kyl. I would like to ask consent to enter into the record the list -- two-page list of hearings that have been held in both the House and the Senate relating to discrimination against specific religious groups, including Jews and Christians, and note that this is the first hearing relating to any discrimination of those of the Muslim religion.

I think it is obvious that we condemn prejudice and bigotry against all religious groups.

Senator Blumenthal, do you have a statement?

**SENATOR RICHARD BLUMENTHAL (D-CT):** I would just like to thank you, Senator Durbin and also Senator Graham, for conducting this hearing, which I think is by no means, as I understand it, intended to exhaust the subject, going to the point that Senator Kyl very appropriately made.

But I think that it really is designed to raise awareness and show our own commitment to fighting bigotry, hatred, prejudice, intolerance wherever it may exist. The United States right now is involved in a war against terror. In this very building two floors below us there is an ongoing hearing that springs from the war against terror before the Armed Services Committee.

In that hearing there is discussion about the service and sacrifice made by men and women wearing the uniform in places around the globe that we can barely pronounce. They are there to defend those values of freedom and democracy that really we celebrate today by having this hearing and recognizing the threats to our own freedom and democracy when we fail to defend it here at home. As intolerable as injustice and intolerance are in this country, as dangerous as intolerance and injustice is indifference, when we are indifferent to hatred and bigotry against anyone based on religion or the content of what people say.

And I believe that we are here today so that we can help protect those values at home that are threatened by terrorists abroad and can make sure that every individual is protected in his or her exercise of religion and speech.

Thank you, Mr. Chairman.

**SEN. DURBIN:** Thank you, Senator Blumenthal.

At this point I'd like to turn to our first witness.

Thomas Perez is the assistant attorney general for the Civil Rights Division in the Justice Department.

And if you'll please stand first and raise your right hand.

Do you affirm that the testimony you're about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

**MR. PEREZ:** I do.

**SEN. DURBIN:** Let the record reflect that the witness has answered in the affirmative.

Mr. Perez, thank you for being here. Please proceed with your opening statement and we'll have some follow-up questions.

**MR. PEREZ:** Sure.

Thank you, Mr. Chairman, Ranking Member Graham, and members of the subcommittee. My name is Tom Perez. It's an honor to be back in front of this committee. I know my former boss, Senator Kennedy, is here in spirit today, and it's a real honor to be here to talk about this critical issue with, among others, my home state senator, Senator Cardin.

Within hours of the 9/11 terrorist attacks, Muslim Americans, Arab Americans, Sikh Americans, and South Asian Americans nationwide were confronted with a powerful backlash. There was a surge of violence targeting these groups including threats, assaults, arson, and murder.

Two days after the attacks, an individual attempted to set fire to cars in the parking lot of a mosque in Seattle and shot at worshipers fleeing the mosque. On the same day an individual set fire to a Pakistani-American restaurant in Utah. The first person killed in post 9/11 violence, Balbir Singh Sodhi, was a Sikh shot while pumping gas at his gas station in Arizona four days after 9/11.

In the three and a half months following the attacks, more than 300 federal criminal investigations were initiated. There was also an increase in other instances of discrimination. On the afternoon of 9/11 a hotel in Iowa canceled the reservation that an Arab-American group had made to host a convention.

The federal government under President Bush's leadership responded forcefully. The Civil Rights Division's Criminal Section created a task force to address hate crimes and the civil litigating sections ramped up their work to combat other forms of discrimination.

Our predecessors built a solid foundation. Over the last two years we have worked to build upon that foundation and expand our efforts to engage with the communities to ensure that we are fulfilling our responsibility to protect their civil rights.

One of my predecessors, who is here today, Alex Acosta, was the leader in the administration's response to the 9/11 backlash incidents. Among other things, Dean Acosta established a new position of special counsel for religious discrimination, and he selected Eric Treene, who remains with me, and is one of my most trusted members of my staff on these issues, along with Mazen Basrawi.

We have continued to host regular interagency meetings with representatives of the Arab-American, Muslim, Sikh, and South Asian civic organizations so that we can learn more and do the best job possible. We have also made it a priority to expand our outreach.

In my travels across the country, I have met with leaders from the various communities, not just in Dearborn and L.A. or Chicago, but also I've met the Somali community in the Twin Cities, Muslim leaders in New Haven, Roanoke, Murfreesboro, Tennessee, and elsewhere.

These meetings allow us, not only to learn about civil rights violations where they are occurring, but also to build bridges to the community to build trust and understanding. Regrettably while nearly a decade has passed since 9/11, we continue to see a steady stream of violence and discrimination targeting Muslim, Arab, Sikh, and South Asian communities.

In each city and town where I have met with leaders, I have been struck by the sense of fear that pervades their life: fear of violence, bigotry, hate, discrimination. This headwind of intolerance manifests itself in many different ways.

Last month we secured a guilty plea from the fiftieth defendant charged in a federal criminal case of post-9/11 backlash violence. Last year three men were sentenced for vandalizing and firebombing a mosque in Columbia, Tennessee. In my outreach I consistently hear complaints that children face harassment in schools, that they're called terrorists and told to go home even though this is their home, America is indeed where they were born.

We have a regrettably robust docket of cases in the school systems involving harassment of Muslim, Arab, Sikh, and South Asian students. In fact, these sorts of harassment cases are the largest category of religious discrimination cases that our education section handles.

We continue to follow the leadership in Republican and Democratic administrations, the bipartisan leadership to combat religious intolerance in the workplace. We have a number of cases involving individuals facing discrimination at work, with the EEOC reporting a 150 percent increase in complaints of discrimination against Muslims since 9/11.

Many cases involve blatant, intentional discrimination such as an EEOC case filed during the Bush Administration on behalf of two Iranian Muslim employees of a car dealership who were repeatedly harassed by management, called unspeakable words, terrorists, "camel jockey," and other epithets. Similar cases have been brought during the Obama Administration.

We also continue the bipartisan tradition of pursuing religious accommodation cases. We recently filed a case on behalf of a Muslim teacher in Illinois who was forbidden to take an unpaid leave for a pilgrimage to Mecca, a requirement of her faith.

This case is very similar to the one filed by the EEOC in the Bush administration against a Tennessee hospital that refused to grant a Muslim medical technician a three-week leave of absence for the pilgrimage. No person should have to choose between their faith and their work, and Republican and Democratic administrations alike have fought hard to vindicate this principle.

We have -- we continue to work hard to enforce RLUIPA. We celebrated the ten-year anniversary. Of the 24 matters opened by the Civil Rights Division since 9/11 that involve mosques, fourteen have been opened in the last ten months. Last year we filed a brief in a state court case involving a proposed mosque -- the construction of a community center that included a mosque. And there were neighbors who challenged that and argued that Islam is not a religion, and therefore the county was wrong to treat the mosque in the same way it would treat a church.

Our brief argued one and really only one thing: Islam is a religion. And we had to file that brief, and the court agreed and dismissed the case. These issues are and will continue to be nonpartisan.

I applaud again, as I mentioned earlier, the efforts of my friend Alex Acosta on religious freedom. Our efforts are, indeed, as you have all noted, a reflection of our values as a society. As a nation we believe strongly and unequivocally in religious freedom, and this belief is embodied in the laws that we enforce.

The headwinds of intolerance that so many of the communities we are here to discuss today are facing, as you have all pointed out, are no different from the bigotry confronted by groups throughout our nation's history. The good news is that with each wave of intolerance, our nation has indeed responded, passing new civil right's laws, striking down old laws that sanction discrimination, and eventually recognizing the value of diverse communities and embracing those previously shunned.

Today we are simply using the long-standing tools in our arsenal to address an emerging challenge that threatens the freedom of individuals who want nothing more than for their families to be accepted in their communities, to live their lives, practice their faith, and realize the American dream.

We will continue to use every available tool in our law enforcement arsenal to transform this headwind of intolerance into a tailwind of inclusion and opportunity.

Thank you for the opportunity to participate and I look forward to answering any questions you may have, Mr. Chairman.

**SEN. DURBIN:** Thank you, Mr. Perez.

Yesterday the chairman of the House Homeland Security Committee criticized this hearing, and he said, quote, "It reinforces the false premise that Muslims are having their civil rights violated," end of quote.

Your testimony, of course, reflects the reality of discrimination facing Muslim Americans today. I'd like to look at the Justice Department's own statistics.

Muslims comprise less than 1 percent of the American population, but 14 percent of the Department of Justice's cases of discrimination against religious institutions involve Muslims.

Mr. Perez, according to your testimony, over 50 percent of the Department of Justice's mosque cases have been opened since May 2010. You testified you believe that reflected an increase in anti-Muslim sentiment. Can you elaborate?

**MR. PEREZ:** I've had the privilege in this job of traveling to probably half the U.S. attorney's offices across the country, and as part of our visits to make sure that we're aggressively enforcing civil rights laws and listening, we are, Mr. Chairman, listening and learning, as I did in Chicago, from various stakeholders in the Muslim, Sikh, Arab, and South Asian communities. And it really tears my heart out to listen to the stories.

I'll never forget my trip to Tennessee where an imam talked about how his son doesn't want to go to school because he is so scared that every day they were telling him, "Go home, you terrorist," and this is his home. And we see that across the country, not simply in my own anecdotes, but in our work across a wide array of areas: employment, the criminal context, the religious zoning context and the education context.

**SEN. DURBIN:** So let's speak to employment discrimination for a moment. According to data from the Equal Employment Opportunity Commission, Muslims account for approximately 25 percent of religious discrimination cases, although as I mentioned earlier, comprise less than 1 percent of the American population.

Mary Jo O'Neill of the EEOC said and, I quote, "There's a level of hatred and animosity that is shocking. I've been doing this for 31 years and I've never seen such antipathy toward Muslim workers." End of quote.

Another example. The EEOC filed suit against a meat packing company, Swift, alleging discrimination against 160 Somali Muslim employees. Among other things, the suit said that, quote, "Managers, supervisors and other employees regularly throw blood, meat and bones at the Somali and Muslim employees." So I'd ask you, in the area of employment discrimination, this notion that was expounded by someone in the other body of lack of evidence of discrimination against Muslims, have you found in employment discrimination similar cases?

**MR. PEREZ:** We have. And, again, these cases did not start simply in 2009. These cases -- and again, I want to applaud the Bush administration for aggressively pursuing these cases in the post 9/11 universe. A 150 percent increase post-9/11 is a rather eye-popping figure.

**SEN. DURBIN:** Can I ask you -- I want to give everybody a chance and there are quite a few members here today, which I'm honored that that's the case, but in her testimony Farhana Khera, who is going to follow in the next panel, recommends that the Civil Rights Division create a centralized hotline to receive, refer and track all civil rights complaints, not just those related to Muslim-Americans. She argues that the current decentralized system is confusing for victims who want to contact the Civil Rights Division. She also notes that the lack of a centralized hotline makes it difficult to track and collect data on civil rights complaints like a breakdown of complaints by race, national origin and religion.

So, for example, we don't know how many American Jews, Christians, Muslims have filed complaints with the Civil Rights Division and how many have led to prosecution. What is your reaction to this suggestion? Does the Division currently have a mechanism for tracking complaints by race, national origin and religion?

**MR. PEREZ:** Yes. We've had this discussion, and I appreciated the suggestion when it was brought to our attention a number of months ago. We now actually have an 800 number for addressing these issues, but the 800 number is not the only portal and we wanted to make sure that people could file complaints in whatever mechanism was most comfortable. If you are working or living in Phoenix, for instance, you may have a relationship with your local U.S. Attorney's office and we didn't want to preclude that, and so the collaboration and coordination that we've done with U.S. Attorneys offices to make sure we're speaking with one voice is a critically important part of our efforts to make sure that we're tracking these.

As it relates to your question about data collection, as you know, the hate crime statistics under that reporting is voluntary and there are many communities where there is no reporting at all. And so while those statistics under the Hate Crime Statistics Act are useful, they are -- I think everyone agrees that they understate the amount of violence that we're seeing across the country because of the voluntary nature of the reporting. That's the law and as a result of that, those are the weaknesses in that data.

**SEN. DURBIN:** I hate to preempt Ms. Khera's testimony by bringing up another point she's going to raise, but since you're here I'm looking for a reaction. She noted that under Title VI of the Civil Rights Act of 1964, which prohibits discrimination by federally funded entities, it covers discrimination on the basis of race or national origin but not religious discrimination. So discriminating against a person of the Jewish faith, Muslim, Sikh, a student perhaps, because of their religion is not prohibited under Title VI.

I would note that our former colleague, Senator Specter, who once chaired this committee, introduced legislation in the last Congress to expand Title VI to cover religious discrimination. What is your opinion of this loophole in the law and does it make it more difficult to protect children from discrimination in school?

**MR. PEREZ:** Well, we have a number of tools to attack religious discrimination. We have RLUIPA in the zoning context. We have Title II, which we use of the civil rights act, which is the public accommodations provisions, which have a religious reference. Title IV is the education context, so we do have tools there. Title VII is obviously employment.

The Equal Credit Opportunity Act gives us that opportunity there, as well as the Fair Housing Act, and, in addition, under Title VI, although Title VI does not have the word "religion" in it discrimination against Jews, Arab-Muslims, Sikhs and other members of religious groups can violate the statute if it is based on their actual perceived shared ancestry or ethnic characteristics rather than their religious practices. And that would be a very fact-specific determination.

**SEN. DURBIN:** Why wouldn't we want to clarify that? I don't understand why we're stopping short of making it clear that religious discrimination is included. Do you see a policy reason why we should not?

**MR. PEREZ:** Well, again, in certain circumstances Title VI can apply in these situations and I'm happy to have further conversation with you to explain how it can apply in these situations.

**SEN. DURBIN:** Thanks. Senator Graham.

**SENATOR LINDSEY GRAHAM (R-SC):** Thank you, Mr. Perez --

**MR. PEREZ:** Good morning, sir.

**SEN. LINDSEY:** -- for your service for the country. I guess my opinion about such matters is that one case is too many.

**MR. PEREZ:** I agree.

**SEN. LINDSEY:** Any time you have an example in America where somebody is being abused because of their faith, I think all of us should join in and push back, as the Bush administration did, as you are doing, so that's my baseline here. I don't know what the numbers are, but, you know, one for me is too many. And to those who have freedom of speech, it's a gift given to you by a lot of people risking their own lives, so when you say things here at home and you do things here at home that create tension, you know, based on religious differences, particularly when it's the Muslim community involved, you're putting our soldiers at risk.

We have soldiers all over the world, a variety of religions, fighting in the name of America trying to help moderate Muslims defeat radical Islam. And my view is that there are plenty of moderate Muslims out there that need our help and we should be helping because, you know, it's better to fight this war over there than it is here.

But at the end of the day we're all in this together. So let's talk about the school case in Berkeley, Illinois. It's fascinating. You gave some examples of conduct that I think almost every American would find offensive, and I am sorry that the child is having a bad experience at school and we should all speak out against that because there are plenty of Muslims wearing our uniform and we need to understand that, again, we're all in this together.

But the Obama administration, I think, made a curious decision. As I understand the fact pattern of Berkeley, Illinois, you had a math teacher, was it Ms. Khan? Is that her name?

**MR. PEREZ:** Yes, sir.

**SEN. GRAHAM:** Okay. Who basically wanted to go for a three week pilgrimage to the participating Hajj, is that correct?

**MR. PEREZ:** Yes, Senator.

**SEN. GRAHAM:** And she was the only math lab instructor in that school district and it was during the school year and the school district said we don't want you to take three weeks off because we need you to finish out the school year. As I understand civil rights law, it requires the employer to reasonably accommodate the worker's religious beliefs of practices as long as they don't impose more than a minimal burden on the employer's operation.

Common accommodations include permitting employees to wear religious headgear or arrange voluntary shifts with coworkers on the Sabbath. Quite frankly, Mr. Perez, I think as former Attorney General McCassey said that this is a stretch of the concept. Can she go on the Hajj during the summer? Is there any requirement that she go during the three weeks that she chose in the middle of the school year?

**MR. PEREZ:** Senator, the law says that an employer has an obligation to reasonably accommodate ---

**SEN. GRAHAM:** My question is could the lady in question have met her religious obligations by going in the summer when school was out of session?

**MR. PEREZ:** No, sir.

**SEN. GRAHAM:** She could not have?

**MR. PEREZ:** No, because -- well, I can't get into the specific facts of the case other than --

**SEN. GRAHAM:** I'm no authority on the Hajj but, I mean, is it just these three weeks in this one year that this lady could go?

**MR. PEREZ:** The Hajj, as I understand it, sir, is based on a lunar calendar and the Hajj in this particular year was during this three-week period and this case ---

**SEN. GRAHAM:** No, that's not my question. Now put yourself in the school district's position. If you were a Christian that says I want to go to Rome for three weeks or I want to go to Jerusalem for three weeks in the middle of the school year, I would say no. You know, I'm a Christian. I don't believe there's anything in my faith that says that I get three weeks off to observe Easter on any particular year.

And my point is that it's my understanding that she could have met her religious obligations without creating this burden of being the only math lab instructor in the school district, and I

think that's going too far, quite frankly. And the fact that you took this case up is going to do more damage than good. And that's just my two cents worth about it, but my question is simple.

Is this the only three weeks in her life where she could do this?

**MR. PEREZ:** Well, Senator, I can't get into the specific facts of this particular case but what I can tell you, sir, is --

**SEN. GRAHAM:** Can you get back with me about the answer to my question?

**MR. PEREZ:** Sure.

**SEN. GRAHAM:** I know that you may not be an expert on when you take -- visit -- take a pilgrimage. But my point is I don't think so. I think she could have accommodated her religious beliefs without leaving the school district in a lurch and it's nothing about her religion.

I would say that about any religion and I just think you're doing more harm than good on that front. Now, the case as you've described, I stand with you. You fight back. You push back. You bring these cases to court where people are being, you know, mistreated or abused. But my two cents worth, this is the wrong case to have taken.

**MR. PEREZ:** Well, Senator, I just want to point out because I know you want to make sure the record is complete, this is strikingly similar to a case brought by the Bush administration in 2007 where an individual requested a three-week leave of absence for a pilgrimage to Mecca and that, again, the employer had an obligation --

**SEN. GRAHAM:** Well, they were wrong too.

**MR. PEREZ:** Well, once again --

**SEN. GRAHAM:** You know, is it okay to disagree with the Bush administration? I hope so because a lot of people have been doing it lately.

**MR. PEREZ:** (Chuckles.)

**SEN. GRAHAM:** SO they were wrong too. I'm just saying this is a good case study of what's too far. I totally agree with you that the other cases you describe, all of us should stand up against someone being treated -- having material thrown at them and, you know, a kid feel like they can't go to school, you know, taunting, that's just -- that's not American.

But I just think the Obama administration has made a mistake here. If the Bush administration felt like this was right, I don't. One final question, I'm running out of time here. Is radicalization of American Muslims on the rise?

**MR. PEREZ:** Well, sir, I'm a civil rights expert. So it's hard for me to say that with authority.

**SEN. GRAHAM:** Fair enough. I just want to raise it for the record and here's what Secretary Napolitano said: we've seen an increased number of arrests in the U.S. of individuals suspected of plotting terrorist attacks or supporting terror groups abroad such as al-Qaida. Home-based terrorism is here and like violent extremism abroad, it will be part of the threat picture that we must now confront. She was absolutely right. So I want to do two things.

I want to stand by you to make sure that the American Muslim community has the right to practice their religion free of bigotry and hate because the First Amendment to me, Mr. Chairman, means one thing that's not subject to compromise.

It means someone can practice a religion I do not agree with and if we ever give in to the fact that that's not true, then who's to say your religion's not next? So I'm with you there but I do understand the concerns that a lot of Americans have that what's going on in Europe is now coming to our shores.

So I wish the Obama administration would be more forceful in their approach to fighting homegrown terrorism because I think that is a weakness, not reading a terror suspect their Miranda rights when they've just been caught trying to blow up a van in Times Square is not productive.

It is not helpful. So I wish the administration would look at the practice of insisting that Miranda rights be read to someone who just tried to attack America here at the homeland because we need to know what's coming next, not abuse anyone, not torture them but not say you have a lawyer right after you try to blow up a van or an airplane.

So I think the Obama administration, quite frankly, needs to change some of its policies when it comes to fighting terrorism here at home and I will stand with you as you try to push back against legitimate cases of discrimination. But there are two sides to this story, as Senator Kyl said, and I want to talk about both, not just one. Thank you very much.

**SEN. DURBIN:** Thank you, Senator Graham. Senator Leahy?

**SENATOR PATRICK LEAHY (D-VT):** I don't have any questions. I'd just note the Obama administration is coming out with new directives on the use of Miranda warnings which would make very clear. If you've got somebody who looks like they have a bomb in Times Square you can question about the bomb and not have to stop because of a need for a Miranda warning.

And I think I only mention that because sometimes we hear this tossed around by commentators who are misstating what is the rule with the administration. I would be interested in seeing your response to Senator Graham's question on the Hajj issue. I know that case is pending. I've heard a great deal about it. We're talking about U.S. v. Berkeley Illinois, I assume.

**MR. PEREZ:** That's correct, Mr. Chairman.

**SEN. LEAHY:** Okay. I'd be interested in seeing your response and I have no questions, Mr. Chairman.

**MR. PEREZ:** I will certainly provide a response and I'm very proud of the work we're doing in that case.

**SEN. DURBIN:** Thank you, Senator Leahy. Senator Kyl?

**SENATOR JON KYL (R-AZ):** Thank you.

**MR. PEREZ:** Good morning, Senator.

**SEN. KYL:** Good morning, sir. One of the cases that has been brought to our attention is the case of Luqman Abdullah. It created kind of a firestorm of criticism about FBI tactics. It's been one of the examples to accuse law enforcement agencies of overstepping their bounds and unlawfully targeting the Muslim American community. I understand your office investigated the Abdullah case and determined that no criminal investigation was warranted. Is that correct?

**MR. PEREZ:** We determined that no criminal prosecution was warranted.

**SEN. KYL:** No prosecution was warranted.

**MR. PEREZ:** Yes, that's correct, Senator.

**SEN. KYL:** And I assume that your office has reviewed similar allegations of misconduct. Could you just generally characterize for the committee here today your overall impression of our law enforcement agencies' procedures and tactics in these situations?

**MR. PEREZ:** Well again, our review in that particular case and our review generally is to ensure that in the course of carrying out their duties that there was not any violation of federal law and in this particular case it would be the law that says that anyone who is acting under cover of law who willfully deprives someone of a right guaranteed by the Constitution.

And in this case it would be the right to be free from the intentional use of excessive force, that was what we were examining and so our review focused -- and it focuses generally whether it's a federal law enforcement agent or a state or local law enforcement agency -- our review focuses on whether there's evidence of an intentional deprivation of a constitutional right.

And in that particular case, after a very thorough review, we concluded that the case did not prevent -- that the constitutional rights of the individual that you referenced were not violated.

**SEN. KYL:** Right, and now more than a decade after 9/11, do you have a general assessment of -- especially at the federal level -- law enforcement procedures and tactics, as I said?

**MR. PEREZ:** Procedures and tactics in what context?

**SEN. KYL:** As they relate to situations like this case.

**MR. PEREZ:** Well, we review a number of matters not simply involving federal law enforcement.

**SEN. KYL:** What I'm trying to get at -- there's no -- I'm just trying to get a general perception of how we're doing. Are we doing better? Are we doing worse?

**MR. PEREZ:** We're working very closely with all of our federal, state and local law enforcement colleagues to ensure that we do the best possible job of enforcing the laws and ensuring protections of the Constitution. Those are not mutually exclusive and I spent a lot of time, Senator, in New Orleans right now making sure that we're building a blueprint for sustainable reform so that we can reduce crime, we can ensure respect for the Constitution and we can enjoy public confidence in law enforcement.

Those are the real benchmarks for our work and whether it's the federal, the state or local law enforcement, those are the real benchmarks of, I think, success in our policing. And we certainly work with our colleagues in federal law enforcement to -- I've personally participated in trainings at the border patrol academics on police integrity issues and civil rights issues and our colleagues in federal law enforcement across the board actively welcome our participation in that because we recognize that, again, we must, again, succeed in reducing crime and respecting the Constitution.

**SEN. KYL:** Sure. I appreciate that. Last Friday I attended a dinner of American Muslims who complained to me about being intimidated and even threatened by other Muslims because these folks believed in separation of mosque and state and people who threatened and intimidated them -- well, intimidated them because of those particular beliefs.

I'm sure that your office would be just as willing to investigate and where appropriate prosecute those kinds of cases as in a situation where it's a non-Muslim doing the intimidating or threatening. Would that be accurate?

**MR. PEREZ:** That's correct, sir. If we have credible allegations of a potential violation of federal civil rights laws, we will investigate. In what I believe was the first prosecution under our new hate crimes law, we are again aggressively applying that new law that Senators Leahy and Durbin referenced before and we'll follow the facts and make an appropriate judgment of the application of the facts to the law.

**SEN. KYL:** Thank you.

One young woman specifically asked me why, after she had reported this -- and I will not indicate which city it was in -- but after reporting it to the police in this city, she said she got no satisfaction at all. And I didn't have much of an answer. What I'm going to do is get back to her, and tell her of our conversation, and see whether maybe communicating with the U.S. attorney in Arizona, for example -- that's one of the ways you suggested this could be done -- that there could be some relief in cases like the ones that she brought to my attention.

**MR. PEREZ:** Happy to answer any questions you might have or that your constituent might have.

**SEN. KYL:** Thank you very much. Appreciate it.

**SEN. DURBIN:** Senator Blumenthal.

**SENATOR RICHARD BLUMENTHAL (D-CT):** Thank you, Mr. Chairman.

And thank you, Mr. Perez, for your very dedicated and distinguished work, and the work of the Department of Justice in this area.

I want to go back to the question that Senator Durbin was pursuing: Should the laws be strengthened -- federal laws be enhanced in this area to provide more effective tools for federal enforcement; and if so, in what areas?

**MR. PEREZ:** Well, I feel like we have an ample number of tools right now and we're using them in a very robust fashion.

The biggest challenge is always to make sure you have the budget to carry out the laws. And I really appreciated the leadership of the president, and the Senate and the House in enabling us to get additional resources in the fiscal year 2010 budget, because with those additional resources -- that was the largest infusion of resources in our division's history -- we were able to expand the work in this and other critical areas, so that we could, again, do the work in the RLUIPA context, because we do see this headwind of intolerance rearing its ugly head in the zoning context.

We had a case in suburban Chicago, for instance -- the education setting. That's one of the two or three most frequently heard comments I get when I do outreach, is about bullying in schools, that it's -- If you are in a learning environment where you can't learn for whatever reason -- and in this particular reason because you are Muslim, or Arab, or Sikh or South Asian, and you're being told to go home, and this is your home -- that is an emerging growth area for us that we must address. So, for me, I guess my biggest wish list is to make sure that that we continue to have the resources to enforce these laws --

**SEN. BLUMENTHAL:** Your challenge is primarily in the area of enforcement, not so much the substantive authority that you would see the Congress --

**MR. PEREZ:** We feel at the moment like we have a large number of tools to do the work we need to do. We're always willing to listen and work with you on --

**SEN. BLUMENTHAL:** So let me ask you, then, wouldn't it make sense to engage or involve the states and local governments more actively in this effort?

**MR. PEREZ:** We actually have a -- that's an excellent question -- and we have a very active program of engagement. For instance, our community relations service has provided training to

over 750 law enforcement agencies across the country on precisely these issues of Muslim, Sikh, Arab, South Asian engagement.

After the passage of the Matthew Shepard-James Byrd, Jr. act, we used that new hate crimes law as an opportunity to engage state and local law enforcement, and so we've trained literally thousands of officers across the country. Law enforcement and civil rights enforcement is a joint venture between federal, state and local law enforcement, and --

**SEN. BLUMENTHAL:** And I know that many states --

**MR. PEREZ:** -- I completely agree.

**SEN. BLUMENTHAL:** -- like Connecticut, have laws that specifically prohibit --

**MR. PEREZ:** Correct. And I had the privilege --

**SEN. BLUMENTHAL:** -- crimes based --

**MR. PEREZ:** -- I had the privilege of spending a day in your --

**SEN. BLUMENTHAL:** In New Haven.

**MR. PEREZ:** -- in New Haven a week or two ago, and we had a wonderful conference with the U.S. attorney, Mr. Fein, where we -- and we had a lot of state and local officials there -- where we sent a very strong message to the residents of Connecticut that civil rights is, indeed, this joint venture among federal, state and local partners. And so your point is very well taken.

**SEN. BLUMENTHAL:** And I'm wondering if you have some guidance that we can take back to our states, to our enforcers at the state and local level as to how they can be more active partners in this effort?

**MR. PEREZ:** Communication is key, and we have set up a number of critical coalitions.

I was in Detroit recently, for instance, with the U.S. attorney, and she has a very wide-ranging coalition of community people, federal, local, state authorities who come together on a monthly basis to discuss issues. And sometimes those meetings can be tense, but they have built trust through that coalition. And when you have that trust established, then when an incident occurs that tests that trust, you at least have that reservoir that you can build from. If you wait until the train wreck to come together for the first time, you're seldom going to be able to forge the necessary consensus.

So that coalition building that we have spent a lot of time doing has really borne fruit for us, and I think for the communities as well.

**SEN. BLUMENTHAL:** Is there a written protocol or procedure that you follow in determining whether the enforcement of a hate crime prosecution -- and it is a criminal matter that obviously

is a violation of state law -- could be prosecuted by state authorities, or by federal law? And that issue frequently arises as to state, federal choices of jurisdiction or venue, but in the civil rights area, do you have one that applies in the hate crimes or bigotry and bias --

**MR. PEREZ:** Yes. I spent the better part of a decade as a career prosecutor -- federal prosecutor doing hate crimes cases. And the short answer is, yes, we do have protocols in the U.S. attorney manual.

The most important protocol, though, that we have followed, and we will continue to follow, is what's in the best interests of the case. We have -- and I have personally been involved in a number of hate crimes cases where we've worked them up, and then it was in the best interests of the case for the state to take it -- the murder of the Sikh-American in the aftermath of 9/11. That was a state prosecution. The federal government didn't prosecute that case. It was in the best interests of the case for the State of Arizona to take on that prosecution.

In the state -- and I did a hate crime case in Lubbock, Texas, involving South Bay Nazi Youth, neo-Nazi white supremacists who started a race war that targeted African-Americans in this case. In that particular case, the D.A. came to us and said, I really want you to take the case. He had just been elected. He was just building his staff. And we deputized one of his people as a special -- (inaudible) -- U.S.A., and that enabled us to secure the conviction of the three defendants in that case.

So it's -- there are U.S. attorney guidelines, but I think the most important guideline will always be what's in the best interests of the case.

**SEN. BLUMENTHAL:** Thank you very much.

**SEN. DURBIN:** Thanks, Senator Blumenthal.

Mr. Perez, I have two questions I'd like to ask -- one is brief. The staff research memo, on the issue raised by Senator Graham, relative to the teacher asking for three weeks for a visit to Mecca for the Hajj. I don't know why Illinois keeps popping up in all these cases -- (laughter) -- but it turns out that there are other cases that have been considered.

In one, *United States v. the Board of Trustees at Southern Illinois University* in 1995, it was about the employer's failure to accommodate an employee who requested leave to attend an eight-day religious festival, the Worldwide Church of God's Feast of Tabernacles; and I see that there have been other cases involving that particular Christian religion and this eight-day leave, 14-day leave that has been requested. I also find cases here involved discrimination against those who have asked to be spared being scheduled on the Sabbath. So there are cases involving Jews, Christians, and in this case, Muslims.

And am I not correct -- and I hope my staff is correct, I believe they are -- that these cases are very fact-specific with regard to evaluating the impact on the employee's religion and the hardship on the employer, so it really is a case, a fact case to be determined as to whether --

**MR. PEREZ:** Yes, absolutely.

**SEN. DURBIN:** -- a three-week absence or an eight-day absence causes a hardship in either or both directions?

**MR. PEREZ:** That's absolutely correct. And it's important to note that it is the employer that has the burden of demonstrating -- of providing the reasonable accommodation or demonstrating the undue hardship.

And there are a long line of cases, dating back literally decades: Some were brought by the United States, either the EEOC or DOJ. Some are private cases -- they relate to the Christian denominations, Seventh-Day Adventists cases involving accommodation, one day a week, of people who are working the Sabbath. So if you work that particular facility and you don't observe the Sabbath, you're going to work more Saturdays and more Fridays than that person. And, again, that was upheld in the jurisprudence.

I'm very proud of the work we're doing in this case. And, again, it's part of a long line of cases brought by Republican and Democratic administrations alike.

**SEN. DURBIN:** So let me move into one area we haven't touched on, that I think is timely and controversial, and perhaps is still being debated within the administration.

**SEN. DURBIN:** So let me move into one area we haven't touched on and I think is timely and controversial and perhaps is still being debated within the administration.

A number of states around the country are considering laws prohibiting the use of Islamic religious law, also known as Sharia. For example, Oklahoma adopted a ballot initiative prohibiting courts from using international law or Sharia. We are all familiar with the way Sharia is interpreted in Iran and Saudi Arabia. We -- hardly a day goes by that there isn't a report in the press of some abuse of this Sharia law by western standards. But for American Muslims, Sharia includes rules dealing with personal matters like prayer, fasting, marriage and inheritance. So there is a fear among some Muslim Americans that a strict ban on Sharia would in fact inhibit their freedom of religion.

An American Muslim in Oklahoma challenged the anti-Sharia ballot initiative on First Amendment grounds, arguing that the law would prevent courts from carrying out his will, which was drafted in accordance with Islamic law. A federal court agreed and has enjoined the Oklahoma ballot initiative. It is the Civil Rights Division, which you represent, monitoring anti-Sharia laws like the one in Oklahoma to determine if in fact they do violate the civil rights of American Muslims.

**MR. PEREZ:** I'm certainly aware of the Oklahoma matter and I'm aware of this conversation in other states. I certainly heard of this in my visit to Tennessee, for instance, where this issue was discussed and raised by one of the litigants in the local litigation where we filed our brief. And so we will continue to review these laws to see if there is a potential federal civil rights violation. And again, I'm aware of Oklahoma and other settings.

**SEN. DURBIN:** So at this point there is no case pending or any opinion on your part --

**MR. PEREZ:** We have not -- we did not intervene, we have not filed a brief in the Oklahoma matter or any other matter where this issue may be raised.

**SEN. DURBIN:** Thank you.

Senator Kyl, do you have any other questions?

OK, good.

Mr. Perez, thank you for your time. We sure appreciate that

**MR. PEREZ:** Thank you for your time. Thank you for your courtesy.

**SEN. DURBIN:** I'd like to invite the second panel to come up if they would please. And I'm going to read their bios as they approach the table to save a few moments here, first thanking all of them for being here.

Our first witness who will testify is Farhana Khera, the president and executive director of Muslim Advocates. Prior to joining Muslim Advocates in 2005, Ms. Khera was counsel to the Senate Judiciary Subcommittee on the Constitution, worked for six years with our colleague and friend Senator Russ Feingold in chairing -- when he chaired this very same subcommittee.

Prior to the Senate, Ms. Khera was an associate with the law firm of Hogan & Hartson and Ross, Dixon & Masback. Ms. Khera received her B.A. from Wellesley and her J.D. from Cornell Law School, and we're glad to have her back before the committee.

And before I administer the oath to all three. I'll just go through the biographies.

Our next witness is a dear friend, someone I respect so much, Cardinal Theodore McCarrick, the archbishop emeritus of Washington. Cardinal McCarrick is currently serving as a distinguished visiting scholar in the Kluge Center at the Library of Congress. He served as archbishop of the Roman Catholic Archdiocese of Washington from 2001 to 2006. On February 21, 2001, seven weeks after his installation as archbishop, McCarrick was elevated to the College of Cardinals by Pope John Paul II. That may be a record. I don't know. I'd like to check in the Vatican Library.

As archbishop of Washington, McCarrick served as chancellor of the Catholic University of America in Washington, D.C., president of the board of trustees of the Basilica of the National Shrine of the Immaculate Conception. From 1986 until 2001, he served as the fourth archbishop of Newark. In 1981, Pope John Paul II appointed him to be the first bishop -- I'm going to mispronounce this. Metuchen?

**CARDINAL THEODORE MCCARRICK:** Metuchen. But that's all right.

**SEN. DURBIN:** Metuchen, a newly-established diocese in New Jersey. Cardinal McCarrick earned a bachelor's degree and a master's degree from St. Joseph's Seminary in Yonkers, New York. After he was ordained into the priesthood, he went on to earn a second master's degree in social science and a doctoral degree in sociology from the Catholic University of America.


It is indeed an honor to have you with us today, and I'm going to feel a little bit nervous administering an oath to a cardinal.

Our next witness is R. Alexander Acosta, the dean of the College of Law at Florida International University.

Did I pronounce that right?

**MR. R. ALEXANDER ACOSTA:** You did.

**SEN. DURBIN:** Good.

Previously, Mr. Acosta was U.S. attorney for the Southern District of Florida where, among other high-profile cases, he handled the prosecutions of Jack Abramoff for fraud, Jos  Padilla for terrorism and Charles Taylor, Jr. for torture.

Prior to that, Mr. Acosta served as assistant attorney general of the Civil Rights Division, where he led the Justice Department's efforts to combat the post 9/11 backlash against Arab and Muslim Americans. Earlier, Mr. Acosta served on the National Labor Relations Board and worked at the law firm of Kirkland & Ellis. He received his B.A. from Harvard College, his law degree from Harvard Law School. He was a law clerk for Justice Samuel Alito, then a Third Circuit Court judge.

I'd like to ask all three witnesses, if you don't mind, please stand, and I will follow the ordinary committee procedure and administer the oath. If you'd raise your right hand. Do you affirm the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth so help you God?

**WITNESSES:** I do.

**SEN. DURBIN:** Thank you.

Let the record reflect that all three witnesses have answered in the affirmative.

Ms. Khera, please proceed with your opening statement.

**MS. FARHANA KHERA:** Great.

Good morning, Mr. Chairman, members of the subcommittee. On behalf of Muslim Advocates, thank you for the opportunity to testify on the civil rights of American Muslims today.

And Mr. Chairman and Senator Graham, I want to especially thank you for your leadership and holding this hearing and bringing much needed attention to rising anti-Muslim bigotry. You know, we've been hearing from Americans from all faith backgrounds and all walks of life who recognize that it's really become a growing menace to the safety and, frankly, the social fabric of our nation. So it's especially heartening to see bipartisan support on this issue.

I was born and raised in Painted Post, a small town in rural upstate New York. At the start of every school day, like schoolchildren across America, I stood and recited the Pledge of Allegiance. The last line of the pledge says that we are one nation under God, indivisible, with liberty and justice for all. There's no qualifier. It's just simply that we are one nation with liberty and justice for all.

As the subcommittee knows well, our nation has a unique long-cherished commitment to freedom, particularly religious freedom. In fact, Muslims have been a part of America for centuries, since the first slave ships arrived at its shores.

Today, American Muslims reflect every race and ethnicity that comprise our nation's rich heritage. That's why recent rhetoric demonizing Islam and Muslims, brutal attacks, harassment and discrimination, and in some cases, even threatening to kill Americans, including children, based on their faith is so vile. It is not who we are as Americans and it has no place in the schoolhouse, in the workplace or in our communities.

Nearly 10 years after 9-11, hate crimes motivated by anti-Muslim bias targeting Muslim, Arab, Sikh and South Asian-Americans remain higher than levels before 9/11. Some are deadly. Late last summer, a New York City taxi driver was stabbed and almost died after a passenger asked him whether he was a Muslim. Just earlier this year, two elderly Sikh men were gunned down while taking an afternoon stroll through their neighborhood in Northern California, killing one and critically injuring the other.

Employment discrimination complaints are at an all-time high with Muslim bias-based complaints comprising 25 percent, 25 percent of complaints received by the EEOC from 2008 to 2009 while Muslims comprise only 1 (percent) to 2 percent of the entire population. Opposition to mosque construction is also on the rise and getting uglier. And Muslim Arabs, Sikh and South Asian parents are more concerned than ever about their children.

In one especially egregious case, a Muslim high school student in Staten Island was subjected to a harrowing ordeal in which he was frequently labeled a terrorist, punched in the groin, and spat on by fellow teenagers. Sometimes his mother would catch him rocking back and forth saying, why me? What did I ever do to them?

One day he was beaten so severely that his mother took him to a doctor. There was blood in his urine, and he suffered from headaches and memory loss. His assailants were later arrested and charged with a hate crime.

This is just one vile example of how anti-Muslim bigotry is playing out ferociously across America today. Parents worry, will my child be next? And they worry about the future. Will

America be hospitable to minority faiths? Will its better angels prevail? Or will the values of freedom and respect become a relic of the past?

Anti-Muslim bigotry has been simmering and growing since the tragic events of September 11th, a terrorist attack that was an attack on all Americans, Muslims included. In the last several months, anti-Muslim rhetoric has reached a disturbing new level. Prominent religious, military and even political leaders have joined the fray, feeding fear and hysteria with some going so far as to say Islam is a cult, not a religion.

Now, one just might want to dismiss such statements as silly and absurd if not for the fact that the vitriol has real life and death consequences for Muslim, Arab, Sikh and South Asian-Americans and their families. The message is clear: "You are not welcome," words that were graffitied last year on a sign for a mosque in Murfreesboro, Tennessee.

But what gives me hope, Mr. Chairman, is knowing that more and more Americans from all walks of life are coming together to reject fear and divisiveness, because they recognize that it's not American. As former Secretary of State Colin Powell poignantly said, quote, "Is there something wrong with being a Muslim in this country? The answer is no. That's not America," unquote. I commend the stepped-up enforcement of the nation's civil rights laws under the attorney general's leadership. But challenges remain, and more must be done. I refer the subcommittee to my written testimony for specific recommendations of steps Congress and the administration should take and ask that my full written testimony be entered for the record. I would be happy to discuss those recommendations later in the hearing.

Thank you.

**SEN. DURBIN:** Thank you very much. And I can tell as a former staffer, you knew you had five minutes. (Laughs.)

**MS. KHERA:** (Laughs.)

**SEN. DURBIN:** Cardinal McCarrick, please proceed. Your written testimony will be made part of the record.

**CAR. MCCARRICK:** Thank you. Thank you, sir. Senator Durbin, Senator Kyl, allow me to thank you for the invitation and opportunity to be with you to offer testimony today. As archbishop emeritus of Washington, I'm here today representing the United States Conference of Catholic Bishops. I'll summarize my remarks and ask that you graciously accept it and that my full testimony be entered into the record.

My written testimony places the treatment of American Muslims in the broader context of religious liberty from the perspective of our rich American tradition and of our Catholic tradition and experience. As a community that has been the target of religious discrimination, even as was mentioned earlier, we understand the need today to bring attention to protecting the civil rights of our Muslim brothers and sisters. We see religious freedom as an essential foundation for our life together in our own nation and across the globe.

Over time we've made much progress together. But we fear this shared foundation is being weakened and undermined by religious prejudice, unwise policies and polarizing words and tactics which divide us. Most appallingly, religious freedom is destroyed by attacks on people in some countries because of their religion and by the terrible misuse of religion to incite hatred and even justify violence. Sadly, this fundamental betrayal of religious belief, attacking those of different religious perspectives in the name of religion, can sometimes be used to promote suspicion and fear of all people associated with a particular religious tradition.

This kind of generalized religious prejudice is wrong and unjust and a clear violation of religious freedom. A justified concern for security and the appropriate pursuit of those who pervert religion to attack others cannot be allowed to turn into a new form of religious discrimination and intolerance. This is why we stand with our Muslim brothers and sisters in defense of their dignity and rights just as we welcome and expect their reciprocity and solidarity with us when the rights of Christians and other religious groups are violated around the world.

In our pluralistic society, religious values and commitments are assets for the common good, not sources of division and conflict. Today we note that with particular sadness that Muslim Americans, with whom we have had a positive dialogue for over decades, have had their loyalty and beliefs questioned publicly in sweeping and uninformed ways. This compels us to reach out in solidarity in support of their dignity and rights as Americans and believers.

We worry about the rhetoric and actions that target our Muslim neighbors and friends. Like our own historical experience, their very loyalty as Americans and their traditions and values are being threatened. We remain firmly committed to the defense of religious liberty for all, not just for Catholics, because our commitment is to the dignity of each and every human person. At the same time, we recognize that not every charge of wrongdoing against people or groups within a religious community amounts to religious discrimination, bias or bigotry.

Religious beliefs are no excuse for threatening others or carrying out acts of violence. At this particular moment in our nations' history, we face a real threat to our national security from one kind of terrorism that has its origins in a particular form of extremist ideology which holds itself out falsely as authentic Islam. The legitimate concern for the public order, however, must be pursued with effectiveness, skill and respect for religious liberty. In particular, we need to avoid generalizing about any religion, especially about Islam, based solely on the extreme views and conduct of a small group of radical extremists. Those unfounded generalizations and efforts to fan the flames of fear are wrong and unjustified but are especially inappropriate and hurtful when expressed by leaders in public life. These attacks are a grave injustice against the vast majority of Muslims in the United States who are loyal and productive members of our American society.

For the Catholic bishops, religious freedom and its absence have many expressions. Our own history as an immigrant people and a religious minority has its own stories of suspicion, discrimination and intolerance, and unfortunately these are not merely a thing of the past. When the very right of conscience is sometimes attacked, the ability to exercise religious beliefs is subverted. There are well-known contemporary examples where the state would force religious groups and individuals to choose between following their religious beliefs and practices, and

following the dictates of law. Where is the respect for religious freedom, we ask, in compelling a religious entity to perform an act which contradicts its basic moral principles?

Who ultimately suffers by undermining the rights of conscience of religious groups and individuals? It is not merely the integrity of the principle of religious freedom but also the people whom we serve and employ. As pastors within a universal church, we Catholic bishops hear the cries and share the pain of believers around the world who suffer persecution, violence and discrimination simply because of their religious identity.

In the last year alone, we've seen dramatic examples of the persecution of Catholic and other Christian communities around the globe. An example that strikes us is this March, Shahbaz Bhatti, the Pakistani minister of minority affairs, was assassinated at the hands of Muslim extremists. Mr. Bhatti was a Roman Catholic who had advocated for tolerance and religious freedom for all religious minorities in Pakistan. For this courageous witness, he was brutally murdered.

We appreciate the many sincere expressions of sympathy and condemnation that have come from our religious partners, our dialogue partners in the Muslim community, especially the Islamic Society of North America, the Islamic Circle of North America. They have stood with us as trusted allies in speaking out against violence and in defense of religious freedom. Solidarity among people of every religion in the face of attacks on people of any one religion is respect for religious freedom and action.

Concluding, as a religious community, our Catholic faith commits us to defend and promote the rights of religious freedom for all as a moral priority and a human responsibility. This common commitment to religious freedom is at the heart of American life. It is also an example to a world where too many doubt that people of different religions can live together in peace and mutual respect.

As other countries wrestle with how to treat religious minorities, let them look to our nation, where we work to ensure that our Muslim sisters and brothers are treated with dignity and that their religious identity and beliefs must be treated with respect. Let them here see a people blessed with hard-won religious freedom living out our commitment to the rights of all by demonstrating full respect for the identity, integrity and freedom of all religions.

Thank you very much.

**SEN. DURBIN:** Thank you so much, Cardinal. And when I make a closing statement here, I'm going to include statements from a wide variety of religious faiths that join in your sentiment in expressing solidarity with Muslim Americans.

At this point, Mr. Acosta, please proceed with your testimony. Your written statement will be made a part of the record.

**MR. ACOSTA:** Thank you, Mr. Chairman. And Chairman Durbin, Senator Kyl, good morning.

I want to take a minute to thank you for holding this important hearing and I also want to take a minute to thank Assistant Attorney General Perez for his words and his division's current efforts. General Perez graciously made an important point that the protection of religious liberties is a bipartisan issue. Muslim Americans should take comfort in knowing that the effort to protect your religious liberties has been ongoing since 9/11, has transcended the partisan divide and I hope continues to transcend the partisan divide.

The title of today's hearing references American Muslims, and I thought it appropriate to begin by discussing two such individuals. The first is a student at the law school where I'm now dean. He is one of our student leaders and in fact he is a candidate for student body president.

I asked him to send me an email about himself. I was going to summarize it, but I'm going to quote it in full because I thought it made a powerful point.

He writes, "I'm a Muslim, born and raised in the United States. I suppose by most people's standards my childhood was pretty normal. I went to school, tried to get out of doing homework, and spent entirely too much time watching TV. The truth is I was pretty lazy. But that changed when I went to high school. I attended Estero High School in Estero, Florida, where I was introduced to the Army's Junior Reserve Officer Training Corps."

"I loved the JROTC program. It taught me what it meant to be a leader and why it was important to take responsibility for my actions. I excelled in the program. In fact, I was the first cadet in my class to be made a cadet officer and ultimately reach the program's highest rank, cadet lieutenant colonel."

"But it's not my success in JROTC that I remember most about high school. Rather, what I remember most about high school", he wrote, "is the confusion, the fear that overcame me on September 11th, when our teacher turned on the classroom television just in time for me to watch the second plane crash into the second tower of the World Trade Center."

"I knew that my country had been attacked, so I did what I knew was right. Five months later I enlisted in the military. I enlisted in the (Florida?) Army National Guard on February 7th, and I transferred to regular active duty on July 27th, 2003. In late 2007, I left active duty so I could go to law school."

Well, the student's name is Mohamed T. Al-Darsani. And last summer he was selected as only one of 25 first-year law students in the nation to intern for the Army Judge Advocate General's Corps. His goal is to become a JAG officer.

The second individual that I want to talk about is a young woman by the name of Nashala Hearn. Ms. Hearn testified to this committee in 2004. At the time, she was 11.

Nashala's story begins in Oklahoma at the start of the 2003 school year. At the time, she told her sixth grade teacher that she was Muslim and that she wore a head scarf as part of her religion. The teacher didn't object at the time and Nashala happily attended school for the next month.

That changed on September 11th, 2003, when her teacher asked her to remove her head scarf. The school permitted students to wear baseball caps and kippahs, but wanted her to remove her head scarf because it frightened other sixth grade students. Nashala declined and was sent to the principal's office. The principal insisted that she remove her head scarf, and when she declined to do so she was suspended.

I authorized the Justice Department to intervene in the case and eventually, after court action, Nashala was permitted to return to school wearing her head scarf.

I speak about these two individuals because I think they highlight some important principles -- some critical principles -- that make our nation great. The first principle is that foremost we are all Americans. Mr. Al-Darsani is an American. Listen to his words. "I knew that my country been attacked, so I did what was right: Five months later, I enlisted in the military."

The second principle is religious freedom. Nashala's situation was an opportunity for a public school to teach this principle of freedom. School officials could have taken the opportunity to talk about America's early settlers and their search for freedom to express their faith. School officials could have taken this opportunity to teach basic civics, a topic that is sometimes lacking in our system of education. It could have taken this opportunity to say that fear is wrong, that respect and tolerance for another's faith is right, and that these are founding principles of our nation. Instead, these public school officials fed the fear, signaling to Nashala's fellow sixth graders that they should be afraid of the head scarf and that the head scarf -- and by extension that her faith -- should be suppressed.

Nashala's case, unfortunately, offers an insight into our nature. Our nation is strong because we respond to attack with resolve. History has shown, however, the need for leadership that tempers resolve with wisdom. President George W. Bush understood this, when on September 17th, he visited the Islamic Center of Washington to remind a then resolute nation that those who feel they can intimidate our fellow citizens to take out their anger should be ashamed of that kind of behavior. President Obama has understood this and has spoken out as well.

Ten years later, as we approach the 10th anniversary of 9/11, I feel obligated to conclude by stating the obvious: As a nation, we have not forgotten the events of 10 years ago. Emotions remain charged, and the desire to blame remains high. This is a good time -- this is a critical time -- to temper our resolve with wisdom and to recall effort(s) to remain true to our American ideals and freedoms. We need to ensure that all people in this land are free to practice their faiths without fear of retaliation or reprisal. I thank you for the hearing and for your time and look forward to your questions.

**SEN. DURBIN:** I've been in the Senate for a long time. I can't recall a panel that's been so impressive. I thank you, all three of you, for your testimony. It really was heartfelt and is going to make an excellent record of what we are trying to talk about today.

I want to address an issue raised by Cardinal McCarrick and put it in terms of the topic that's before us. And the cardinal said -- I'm going to quote you here -- "Where is the respect for

religious freedom in compelling a religious entity to act in ways which contradict its most basic moral principles?"

And now let's move this principle or thought to the question of Shari'a law. You heard the question I asked earlier of Mr. Perez about where the line should be drawn. We certainly know the excesses of Shari'a law. They're publicized every day. The killing of this man in Pakistan who made controversy by saying he was opposed to the blasphemy laws. He gave his life for speaking out for tolerance. The same thing -- the suggested stoning of women for certain transgressions in Muslim countries. Those, for many people, are the images of Shari'a law.

I'd like to ask you, Ms. Khera, put what the cardinal said in the context of Shari'a law and what we know to be excesses in some context, but to be part of Muslim religious practice in a very peaceful way in another context.

**MS. KHERA:** Right. Mr. Chairman, thank you for that question. I think, as you pointed out, and Mr. Perez pointed out earlier as well, for everyday American Muslims, what Shari'a really means is that those guidelines that guide our everyday lives. So whether it's prayer, fasting, issues of marriage, in the way that religious law guides those everyday activities for Christians and Jews and the other faith communities in the United States, the kinds of -- should I say -- excesses of Shari'a that you've outlined, I cannot imagine the circumstances under which they would be tolerated here in America and our legal system.

You know, there is -- as a legal matter, the supremacy clause ensures that the Constitution is the law of the land -- no religious law, no foreign law. And that is absolutely important and something that, you know, I'm personally thankful for is there.

So I think this question of Shari'a and these efforts to introduce bills to ban Shari'a are just woefully misguided and they're chasing a threat that does not exist. But the implications if they're actually allowed to be enacted -- taking for example, like the Oklahoma one -- could have very significant consequences in terms of the religious practice of American Muslims here at home, and that's why it does concern us.

**SEN. DURBIN:** So I'll ask you to go a step further, because the case we talked about here -- the American Muslim who raised the case in Oklahoma, was objecting, saying that it was Shari'a law that had guided him in the execution of his will, how he would leave his property after death. Can you give me other illustrations -- I mean, as I said, the stereotype of Shari'a law is extreme and we wouldn't countenance it for any religion in this country. Can you give me other illustrations of Shari'a law in the life of an American Muslim that you believe should be understood by most?

**MS. KHERA:** So the one example you gave is a very good one in terms of the way some people may decide to write a will. It may also entail decisions to get married and those who get married under religious law in terms of how they go about their life, things like the prayer -- how they pray, when they pray -- fasting, which is also a cornerstone of the faith. Those are just some examples.

**SEN. DURBIN:** And as well, I believe, donations.

**MS. KHERA:** Yes. Charity -- charitable giving -- is an obligation for American Muslims, as it is for many people of faith in this country.

**SEN. DURBIN:** And the Hajj.

**MS. KHERA:** And the Hajj -- yes, thank you -- (chuckles) -- which was a topic earlier in the hearing. Thank you. The pilgrimage is something that's required for American Muslims as well.

**SEN. DURBIN:** I realized after 9/11 I didn't even know the pillars of Islam. I was trying to recall some of those as you testified.

**SEN. DURBIN:** I realized after 9/11 I didn't even know the pillars of Islam and I was trying to recall some of it as you testified. Mr. Acosta, would you address that in your role as former assistant attorney general for Civil Rights, the question of Sharia law?

**MR. ACOSTA:** Certainly, I will try to do so. I will confess to not being familiar with the details of Sharia law. I guess I have two thoughts. First, I would have concerns about equal protection issues. While a legislature or a state can certainly determine to what laws a state court will look, there are concerns when a particular type of law or a particular religion is singled out as against others in much the same way that you cannot ban a headscarf but allow other head coverings.

Second, I would also note that, as a general rule, courts do not apply foreign laws or religious laws. The context where that might come up is in the conflict of law situation when the contract or the will or the document of adhesion references another jurisdiction, and in that case it's the individuals that are signatories that are asking the court to look beyond the local jurisdiction and apply that other law, and so this is a fairly unusual circumstance where that would come up.

**SEN. DURBIN:** So I don't want to misstate your position. But I think initially you said neutrality.

**MR. ACOSTA:** Neutrality, absolutely.

**SEN. DURBIN:** So that you would put whatever that religious belief is in the context of American law?

**MR. ACOSTA:** Absolutely.

**SEN. DURBIN:** That's the way I see it, too. I don't understand the other point of view and I wanted to see if maybe you could point to some difference that I don't see, but I think we're in agreement on that.

Cardinal McCarrick, I need to ask you about a delicate and controversial issue. You played a role in the great controversy which rocked our country for weeks related to the Park 51, the proposed Islamic center in lower Manhattan. I understand that you were involved in an interfaith effort to

stand in solidarity with American Muslims who were experiencing religious discrimination. Can you tell me how you got involved in this and describe that effort to the committee?

**CARDINAL MCCARRICK:** Actually, I was involved only tangentially because it was a New York difficulty, a New York question, and we learned years ago don't get involved in other people's property because you've got enough troubles on your own. But it became such a national issue that people became very confused about it and the archbishop in New York, Archbishop Dolan, spoke to it, as did others.

I think it was because I have been very much involved with the Muslim leadership here in this part of the country, especially with the Islamic Society of North America and its leadership, actually because we've been trying to work together to look for peace in the Holy Land, and so we have a very close relationship with the leadership of the Muslim groups and with leadership of many of the Jewish groups in our area.

All of us looking for the two-state solution and that's -- we've become friends over that over the years, and it was that friendship which wanted us to speak out a little more carefully. A very difficult issue, an issue where you could understand reasons behind both positions.

I think we felt that you couldn't say this was an un-American thing, you couldn't say this was something that would destroy the unity of our religious friendship and our religious working together. That was basically, that we wanted to try to keep it above the level of saying this is something that you have to do. You have to attack. You have to speak against.

You could see that people of good will could look at both sides but you had to make sure that they were looking at it at a level where they understood that whatever you decided you could not be condemned for because there were good arguments on both sides. That often is what is the position that is always best at first to take.

We run into a world where everything is black and white. Well, there are a lot of grays in our world, and it is important that we recognize that.

**SEN. DURBIN:** Thank you, Cardinal. Senator Kyl.

**SEN. KYL:** Thank you. First of all, Dean Acosta, as a former assistant attorney general, let me just ask you a couple of questions about Sharia. It seems to me it's one thing to say that Sharia should not be banned, but it's quite another to say that it should or could supplant U.S. civil or criminal law. Would that be a correct way to look at it?

**MR. ACOSTA:** I don't see why any foreign law or any religious law could or should supplant U.S. law.

**SEN. KYL:** And if, therefore, it is merely a guide by which people should live their lives from a religious point of view, as has been described here, it could not and it should not allow things like underage marriage or polygamy or things of that sort, would that be correct?

**MR. ACOSTA:** I think the supremacy clause makes clear that the U.S. law is the law of the land. Absolutely.

**SEN. KYL:** Thank you.

And Cardinal McCarrick, let me ask you -- the U.S. Constitution and the teachings of your church allow all Americans to practice any faith of their choosing or no faith. Is that correct?

**CARDINAL MCCARRICK:** That is, absolutely.

**SEN. KYL:** And would also allow people to convert to a different faith, would it not?

**CARDINAL MCCARRICK:** Yes, we -- I'm not happy about that, but that is certainly -- (laughter) -- that is certainly a part of our position. Has been, always.

**SEN. KYL:** I think that is correct. For those who would condemn others in hateful language for doing that, that would not -- well, that speech would be permitted. It would not be speech that -- well, that speech would be permitted, but would you condemn -- I guess I'll ask it this way. Would you condemn people who use hateful or inciteful speech against those who have converted to another faith?

**CARDINAL MCCARRICK:** Well, I think that generally you should love your neighbor even if you don't love the actions that your neighbor posits. You have to have respect for your neighbor. You might tell your neighbor that we think you're wrong, that we're sorry that you're doing this, but to attack them as being anything less than your neighbor would certainly not be a Christian point of view.

**SEN. KYL:** Right. Ms. Khera, let me ask you a similar question. You belong to an organization which has been very clear about its positions on the website, for example. I wonder if you've made any public pronouncement or statement condemning those religious leaders who have employed violent or hateful rhetoric or promoted hateful views of other religious groups? Have you done that or has your website done that?

**MS. KHERA:** Well, let me maybe by way of background ---

**SEN. KYL:** As a former staffer, you know that my time is very limited.

**MS. KHERA:** (Laughs.)

**SEN. KYL:** Don't have a lot of background. I have three quick questions here. Have you done that?

**MS. KHERA:** Yeah, well, let me just to clarify, Senator Kyl, my organization's work is focused on protecting and upholding our constitutional values here at home.

**SEN. KYL:** So you haven't condemned the hateful speech of those who have criticized others in the way that I mentioned, then?

**MS. KHERA:** I guess I would have to know more specifically which particular case you're talking about, but ---

**SEN. KYL:** Well, let me just ask you this: would you today criticize threats of death or physical harm directed at writers or commentators who have criticized Islamic extremism? You would condemn that today, would you not?

**MS. KHERA:** I think we have in our country very cherished fidelity to the First Amendment and that includes ---

**SEN. KYL:** I'm not questioning whether people have the right to speak; the question is whether you would agree that that speech is helpful or hurtful, whether you would condemn it or be neutral about it.

**MS. KHERA:** Those who would threaten to kill somebody because of their political views, religious views, that's inappropriate.

**SEN. KYL:** Last, and I'm specifically talking about the website -- I guess I should identify your site here, which I will in just a moment.

**MS. KHERA:** It's MuslimAdvocates.org.

**SEN. KYL:** Yeah. And it is MuslimAdvocates.org, is that correct?

**MS. KHERA:** Yes.

**SEN. KYL:** Thank you. Let me just refer you to several cases here last year and then ask you about something on your website. Just last year U.S. intelligence agents and our justice system uncovered and prosecuted a number of attempted terrorist attacks that were planned by radical Muslim extremists. A compilation produced by the Investigative Project on Terrorism, based on recent Justice Department reports, lists just the following incidents: on November 27th, Mohamed Osman Mohamud was arrested and charged with attempting to explode a car bomb, Portland, Oregon. October 27th, Faruk Ahmed was arrested for attempting to assist others whom he believed to be members of Al Qaida implanting multiple bombings in the metro area here in Washington. October 19th, Hosam Smadi was sentenced to 24 years in prison for attempting to blow up a skyscraper in Dallas, Texas.

October 19th, Hosam Smadi was sentenced to 24 years in prison for attempting to blow up a skyscraper in Dallas, Texas. October 18th, a federal court in Manhattan found that James Cromitie and four others were guilty of attempting to detonate explosives near a synagogue in Bronx. On August 2nd, Russell Defreitas and Abdul Kadir were convicted of a conspiracy to attack John F. Kennedy Airport by exploding fuel tanks under the airport.

On June 21st, Faisal Shahzad pleaded guilty to attempting to detonate a car bomb in Times Square. He was sentenced to life in prison. On March 18th, David Headley pleaded guilty to charges that he participated in planning the November 2008 attacks in Mumbai, India, which killed 164 people.

Every one of these incidents could have resulted in the deaths of hundreds of people -- in fact, the Headley plot, of course, did, including six Americans. All of these terrorists were obviously indifferent to whom they killed, including women and children, and I think we owe a debt of gratitude to the enforcement agents who identified and stopped plots before they could be carried out.

In view of this history, I was curious about your website. The so-called "Community Alert" section, which is apparently directed to American Muslims, notes, and I quote, "The FBI is contacting American Muslims to elicit information and advice about addressing violent extremism.

Muslim Advocates strongly urges individuals not to speak to law enforcement officials without the presence of a lawyer." And I was stunned that you would issue that kind of instruction to people who would read your site, since obviously cooperation from Muslim Americans is one of the best way that law enforcement can uncover terrorist plots like the ones that I described. And it seems to me that it's the civic obligation of all Americans to assist in preventing these heinous crimes, especially given the participation of Muslims in all of the attempted attacks that I mentioned.

I would think that Muslim Americans would feel a special obligation to help intelligence agencies root this out. Do you think it's wrong to investigate and prosecute the individuals that I mentioned? And do you stand by the Muslim Advocates community alert instructing Muslim Americans not to cooperate with the FBI and other law enforcement investigating potential acts of terrorism, or at least not without having a lawyer present?

**MS. KHERA:** Senator Kyl, I fully understand the threat that we are facing. On September 11th I was working right here in the Capitol, and I ran from the Capitol with my colleagues as planes -- as we thought planes were approaching. So I fully understand the threat. Those who engage in criminal acts must be stopped and brought to justice, and every American has a civic duty to report criminal activity to law enforcement. And I might add that Attorney General Holder has actually said that the cooperation of the American Muslim community has been essential to detecting and thwarting terrorist plots.

At the same time, every American has the right to seek legal advice, and that's a right that's guaranteed to every American, and I think -- I know you're a lawyer; we're both lawyers, and I think we both know that our legal system is quite complex, and so encouraging community members to seek legal advice as they interact with law enforcement is something that every American has a right to do.

**SEN. KYL:** So you stand by that statement on your website?

**MS. KHERA:** I stand by all the statements on my website.

**SEN. KYL:** Thank you very much.

**SEN. DURBIN:** I recall a few weeks after 9/11 -- just remembering when I raced from the Capitol, as you did that day -- I flew into O'Hare. And as I went out to get a taxicab, there was a man wearing a turban in the cab. And I got in the cab and sat in the backseat. And as we started to pull away from the cab, I said to him, "How have things been for you since 9/11?"

Well, he said, "I'm Sikh, and I wear this turban every day. Some people give me the finger, some curse at me, some won't get in my cab, but most people are just fine." He said, "I wish they'd get in my cab. I'd like to show them something." And he reached over and he pulled down the passenger's side visor, and there was a picture of a young man in American U.S. Army military uniform. And he said, "This is my son. He's in somewhere now, overseas, in the Middle East, and he can't even tell me, but he's fighting for our country. And my other son is going to enlist in the Marine Corps."

And I thought to myself, the people who were cursing him -- if they only knew that this man was putting his two most prized possessions in service to the United States, risking their lives to keep this nation free.

I cannot quarrel with anyone who argues that we have a threat of terrorism and have to deal with it honestly. What I hope this hearing has suggested is that among the millions of Muslim Americans, the overwhelming majority are patriotic, law-abiding people who simply want to live their lives as we all do in this great and free country. We all have to work to keep it safe -- Muslim Americans and those who aren't. But the purpose of this hearing was to make it clear that there are some basic and fundamental principles that should guide us in our relationships with one another. And your testimony today, I want to say, for all three of you, has been extraordinary.

I'd like to close, as I mentioned I would, thanking you again, but also noting some of the groups that have submitted statements in support of this hearing. The subcommittee received written statements from over 40 different organizations -- the ACLU, the Alliance for Justice, the American Jewish Committee, Human Rights First, Interfaith Alliance, Islamic Society of North America, Leadership Conference on Civil and Human Rights, Military Religious Freedom Foundation, Muslim Public Affairs Council, Sikh Coalition, South Asian American Leaders Together, Southern Poverty Law Center, and the United Methodist Church. And without objection, I'll put the statements in the record.

I wanted to note in particular a statement we received from an interfaith coalition called Shoulder-to-Shoulder: Standing with American Muslims; Upholding American Values. Among others, this coalition includes the American Baptist Churches USA, Disciples of Christ, the Episcopal Church, Evangelical Lutheran Church, the Islamic Society of North America, the Religious Actions Center of Reformed Judaism, and the Reconstructionist Rabbinical Association. Here is part of what they said in their statement: "We remain profoundly distressed and saddened by the incidents of violence committed against Muslims in communities across

America, by the desecration of Islamic houses of worship, and by the destruction of sacred texts. We stand by the principle that to attack any religion in the United States is to do violence to the religious freedom of all Americans. We encourage all citizens of this country to honor freedoms guaranteed by our Constitution that enable the free exercise of religion across our great land."

That's an appropriate note to close. If there are no further comments from our panel or colleagues, I am going to thank the witnesses again and tell you that the hearing record is going to be open for two weeks and additional materials and questions may be sent your way, which I hope you will reply to in a prompt manner. Thank you again for being part of this hearing.

**MS. KHERA:** Thank you.

END.