

National Security and Human Rights Campaign: Contents

<u>Document</u>	<u>Page</u>
Overview and description of panel	2
Biographies of panelists and staff	4
Background on guest panelist's organization	8
Two-year strategic plan and request for reauthorization	18
NSHR Campaign Grants Portfolio	43
Listing of selected NSHR Campaign events	57
Recent media articles and reports from grantees	63
Background on At Home in Europe	97

(To go to a specific document, click “menu,” then hold the “alt” key and type the page number for the document (you will see the numbers you type in a window across the bottom of the screen), then click enter, which is the button with the arrow. The Kindle will take you to that document, and you can use the “next page” and “previous page” bars to navigate through it.)

National Security and Human Rights Campaign Request for Reauthorization

The National Security and Human Rights (NSHR) Campaign was launched as a three-year campaign in January 2008 to take advantage of the opportunities that a new administration would offer to dismantle the extreme and misguided “global war on terror” measures implemented by the Bush administration following the September 11, 2001 terrorist attacks, and to replace them with national security policies that respect human rights, civil liberties, and the rule of law. At the September 2010 USP Board meeting, the Campaign will present its request for reauthorization for the two-year period from January 2011 through December 2012. The Campaign’s strategic plan is attached and discusses the work of the Campaign and its grantees and the current context for reform.

The NSHR Campaign envisions a future where the American public and its leaders have renounced the politics of fear and anger and the extreme counterterrorism measures that have worked to undermine America’s traditional constitutional values, diminish the standing of the U.S. in the global community, and feed into a terrorist narrative of an America at war with the Muslim world – and where instead the American public and its leaders confront the threat of terrorism with a resilience rooted in a shared understanding that our nation’s long-term security and its ability to deter and withstand future acts of terrorism depend on our adherence to democratic institutions and open society values.

In 2011 and 2012, the Campaign will promote the following policy reforms and goals through its grantmaking and operational work: (1) ending indefinite detention, torture and other forms of cruel, inhuman, and degrading treatment, and extraordinary rendition; (2) fighting illegal surveillance at the federal, state, and local levels, and protecting dissent; (3) challenging the profiling of, and discrimination against Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) individuals and communities and building their voices; (4) limiting government secrecy and expanding government oversight of and accountability for abuses committed in the name of national security; (5) shifting the national security paradigm away from the politics of fear and anger to a resilience that recognizes adherence to core democratic and open society values as essential to our nation’s long-term security and ability to deter and withstand future acts of terrorism.; and (6) building the capacity of core organizations to advance policy reforms.

NSHR Campaign Board Advisor Aryeh Neier will facilitate a discussion on the Campaign’s two-year strategic plan and reauthorization request that will include OSI staff and one outside expert, Farhana Khera of Muslim Advocates. Ms. Khera co-authored a memo for OSI in 2007 on the disproportionately adverse impact of counterterrorism policies on Muslim communities that informed the USP Board’s decision to launch the NSHR Campaign.

Moderator: Aryeh Neier, President, OSI

Panelists: Nancy Chang, Manager, OSI National Security and Human Rights Campaign
Farhana Khera, Executive Director, Muslim Advocates
Morton Halperin, Senior Advisor, OSI-DC
Stephen Rickard, Director, OSI-DC

Questions to frame the Board's discussion:

1. To what extent has the Obama administration continued the Bush administration's "war on terror" policies? To what extent has the Obama administration departed from Bush administration policies? What are the greatest accomplishments and biggest disappointments in the NSHR field's policy advocacy since President Obama came into office?
2. What can be done to address the anti-Muslim bigotry that is being expressed with increased intensity and fervor following the foiled Christmas Day and Times Square terrorist attempts, and that includes opposition to the building of mosques and threats to burn the Koran?
3. What contributions can OSI make over the next two years? What are the key opportunities and challenges for this work going forward?

National Security and Human Rights Campaign Panelist Biographies

Nancy Chang leads the Open Society Institute's National Security and Human Rights Campaign, which was launched in January 2008 with the goal of restoring human rights while promoting a progressive national security policy. Previously, Ms. Chang served as the Program Officer for the Open Society Institute's Gideon Project, which supported the fair administration of criminal justice through repeal and reform of the death penalty, indigent defense reform, and measures to end racial profiling in law enforcement.

Prior to joining the Open Society Institute in 2005, Ms. Chang was a Senior Litigation Attorney at the Center for Constitutional Rights in New York City, where her docket focused on protecting the First Amendment rights of political activists and the due process rights of non-citizens held in immigration detention, and on ending racial, ethnic, and religious profiling.

Previously, Ms. Chang was a Supervising Attorney at South Brooklyn Legal Services, where she engaged in both direct representation and impact litigation on behalf of low-income residents of Brooklyn, New York. Ms. Chang is a graduate of the New York University School of Law and the author of *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures Threaten our Civil Liberties* (Seven Stories Press 2002); "How Democracy Dies: The War on Our Civil Liberties," published in *Lost Liberties: Ashcroft and the Assault on Personal Freedom* (The New Press 2003); and "The War on Dissent," *The Nation* (September 13, 2004).

Morton H. Halperin is a senior advisor to the Open Society Institute. In this capacity, he provides strategic guidance on U.S. and international issues. Mr. Halperin previously served as Director of U.S. Advocacy for OSI.

Mr. Halperin has a distinguished career in federal government, having served in the Clinton, Nixon, and Johnson administrations. In the Clinton administration, Mr. Halperin was Director of the Policy Planning Staff at the Department of State (1998-2001), Special Assistant to the President and Senior Director for Democracy at the National Security Council (1994-1996), and consultant to the Secretary of Defense and the Under Secretary of Defense for Policy (1993). He was nominated by the President for the position of Assistant Secretary of Defense for Democracy and Peacekeeping. During the first nine months of the Nixon administration, Mr. Halperin was a senior staff member of the National Security Council staff with responsibility for National Security Planning (1969). In the Johnson administration, Mr. Halperin worked in the Department of Defense where he served as Deputy Assistant Secretary of Defense (International Security Affairs), responsible for political-military planning and arms control (1966-1969).

Mr. Halperin also has a long record as a Washington advocate on national and international issues. He spent many years at the American Civil Liberties Union (ACLU), serving as the Director of the Washington office from 1984 to 1992, where he was responsible for the national legislative program as well as the activities of the ACLU Foundation based in the Washington office. Mr. Halperin also served as the Director of the Center for National Security Studies from 1975 to 1992, where he focused on issues affecting both civil liberties and national security.

Mr. Halperin has been associated with a number of universities and think tanks including

Harvard University where he taught for six years (1960-66), the Council on Foreign Relations and the Center for American Progress (CAP). He has been widely published in newspapers and magazines across the world, and has authored, coauthored, and edited more than a dozen books.

The recipient of numerous awards, Mr. Halperin also served as senior fellow at the Center for American Progress. He serves on the boards of the Center for Democracy and Technology, ONE, the Partnership for a Secure America, and The Constitution Project, and is the chair of the advisory board of the Center for National Security Studies. Mr. Halperin holds a PhD in International Relations from Yale University. He received his BA from Columbia College.

Farhana Khera is the President and Executive Director of Muslim Advocates, a national legal advocacy and educational organization dedicated to promoting freedom, justice and equality for all, regardless of faith. Prior to joining Muslim Advocates in 2005, Ms. Khera was counsel to the U.S. Senate Judiciary Committee, Subcommittee on the Constitution. She worked for six years for Senator Russell D. Feingold (D-WI), the Chairman of the Constitution Subcommittee, where she advised the Senator on civil rights and civil liberties, including the USA PATRIOT Act, racial and religious profiling, and other issues raised by the government's anti-terrorism policies since September 11, 2001.

Prior to the Senate, Ms. Khera was an associate with the law firm of Hogan & Hartson, LLP, and the law firm of Ross, Dixon & Masback, LLP, where her work as the lead associate on several *pro bono* employment discrimination cases resulted in the firm being honored with the Outstanding Achievement Award by the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

In 2008, Ms. Khera was honored by the Auburn Theological Seminary with its Lives of Commitment Award, along with former Maryland Lt. Gov. Kathleen Kennedy Townsend. The Minority Bar Coalition of San Francisco awarded Ms. Khera with its Unity Award in 2008. She has also been recognized by *Islamica Magazine* as one of "10 Young Muslim Visionaries," for leadership, innovative approaches, and "a level of success that bodes well for America."

Ms. Khera received her B.A. from Wellesley College and her J.D. from Cornell Law School. In 2009, she completed the Executive Program for Nonprofit Leaders at Stanford Graduate School of Business.

Aryeh Neier is President of the Open Society Institute. Prior to joining the Open Society Institute in 1993, he served for 12 years as Executive Director of Human Rights Watch, of which he was a founder in 1978. Before that, he worked 15 years at the American Civil Liberties Union, including eight years as national Executive Director. He served as an adjunct professor of law at New York University for more than a dozen years.

Mr. Neier is a frequent contributor to the *New York Review of Books*, and has published in periodicals such as the *New York Times Magazine*, the *New York Times Book Review*, and *Foreign Policy*. For a dozen years he wrote a column on human rights for *The Nation*. He has contributed more than a 150 op-ed articles in newspapers including the *New York Times*, the *Washington Post*, the *Boston Globe*, and the *International Herald Tribune*. Author of six books,

including his most recent, *Taking Liberties* (2003), Mr. Neier has also contributed chapters to more than 20 books.

Mr. Neier has lectured at many of the country's leading universities. He is the recipient of six honorary degrees and the American Bar Association's Gavel Award and the International Bar Association's Rule of Law Award.

Stephen Rickard is the Director of the Washington office of Open Society Institute. Under his direction, the office engages in advocacy on U.S. and international issues, including promotion of human rights and support for open societies abroad.

Mr. Rickard has a distinguished career as a Washington advocate for human rights. Before joining OSI, Mr. Rickard served as the Director of the Nuremberg Legacy Project, working to promote U.S. support for international justice. Mr. Rickard was also the director of the Robert F. Kennedy Memorial Center for Human Rights (2000-2001) and the Washington Director for Amnesty International USA (1996-2000).

Mr. Rickard spent many years working for the U.S. government. He was the Senior Advisor for South Asian Affairs at the State Department where he focused on economic and global issues, including human rights. He also served as Senior Foreign Policy Advisor to Senator Daniel Patrick Moynihan on the Senate Foreign Relations Committee. During his time on Capitol Hill, he helped secure Senate approval for numerous treaties on international human rights and labor rights.

In the 1980s, Mr. Rickard worked as a litigator with the law firm, White & Case in New York, Washington, and Stockholm. At the firm, he specialized in international arbitration. He helped manage the firm's pro bono legal aid program and served as secretary of the New York City Bar Association's Committee on Legal Assistance.

Mr. Rickard received his JD from Yale Law School where he was a member of the Moot Court Board and an editor of the *Yale Journal of International Law*. He holds a master's degree in public affairs from Princeton University's Woodrow Wilson School. He graduated summa cum laude from Adrian College with a bachelor's degree in political science and English.

**National Security and Human Rights Campaign
Staff Biographies**

Nancy Chang
Campaign Manager, National Security and Human Rights Campaign

Nancy Chang leads the Open Society Institute's National Security and Human Rights Campaign, which was launched in January 2008 with the goal of restoring human rights while promoting a progressive national security policy. Previously, Ms. Chang served as the Program Officer for the Open Society Institute's Gideon Project, which supported the fair administration of criminal justice through repeal and reform of the death penalty, indigent defense reform, and measures to end racial profiling in law enforcement.

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Sophia Conroy
Program Officer, National Security and Human Rights Campaign

Sophia Conroy is the Program Officer for the Open Society Institute's National Security and Human Rights Campaign. She also serves on the Steering Committee of the U.S. Human Rights Fund and co-coordinates the U.S. Human Rights Working Group of the International Human Rights Funders Group. Ms. Conroy joined OSI in 2004 as a Program Associate on judicial independence, LGBT rights, and civil liberties. Previously, she worked as Tibet research team coordinator for Human Rights Watch and was a lead campaigner for five years in the Tibet movement. She serves on the Leadership Council of Students for a Free Tibet, on whose Board she served for eight years as a founding member helping to build the international grassroots organization from its infancy and to develop its leadership training program. Ms. Conroy received her B.A. in Philosophy from Vassar College.

Hyon Seo Kwon
Program Associate, National Security and Human Rights Campaign

Hyon Seo Kwon is the Program Associate for the Open Society Institute's National Security and Human Rights Campaign. Prior to joining OSI in 2007, Ms. Kwon worked at the Japan Foundation where she focused on grantmaking in the areas of grassroots exchange between nonprofit organizations in Japan and the U.S., and education exchange addressing the needs of K-12 students, educators, and the surrounding community. Ms. Kwon has worked as a program and fund development specialist at a nonprofit organization based in Milwaukee, whose mission was to prevent teen pregnancy and empower teens, single mothers and fathers through in-home and community-based efforts. Ms. Kwon received her B.A. in political science and fine arts from Franklin and Marshall College and completed a master's degree in international affairs and a nonprofit management fellowship program at Marquette University.

*"I've been repeatedly questioned, searched and harassed when returning home from overseas travel. **Muslim Advocates helped me get my story told to Congress.** Now the U.S. Department of Homeland Security and Congress are paying attention. But more must be done – and resources are needed. I urge you to support Muslim Advocates"*

-Jawad Khaki, former executive vice president of a high tech company and Muslim community leader in the Greater Seattle area



Empowering Community, Protecting America's Promise

Equality, liberty and justice are *not* guaranteed for all, regardless of faith. That is why Muslim Advocates works directly with leaders at the highest levels of government and through the courts to protect the civil rights of all Americans. Muslim Advocates develops sophisticated legal and policy solutions and educates and empowers the Muslim community.

Muslim Advocates emerged in 2005 as a 501(c)(3) sister entity to the National Association of Muslim Lawyers (NAML), a professional association of approximately 500 Muslim lawyers, law students and other legal professionals.

Our Mission

Muslim Advocates provides leadership through legal advocacy, policy engagement, and civic education, and by serving as a legal resource to promote the full and meaningful participation of Muslims in American public life.



*"**Muslim Advocates provides necessary leadership and expertise** to protect our rights and to enhance our community's civic participation. This is a vital organization that provides a unique service to the American Muslim community. I am impressed with their professionalism, focus and effectiveness. They deserve our full support."*

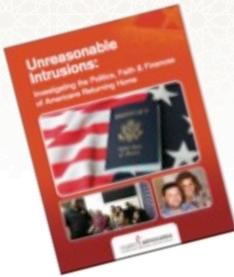
- Dr. Ingrid Mattson, President, ISNA

Recent Accomplishments

Regularly Consulted by President, Congress & Key U.S. Officials



- The Obama administration **made special mention of Muslim Advocates for our role** in the reversal of TSA policy targeting travelers from 13 Muslim-majority nations.
- The Obama administration **invited Muslim Advocates to an exclusive meeting at the White House** to share our views on the recent Supreme Court vacancy.
- Muslim Advocates is the **only Muslim organization to testify before both the U.S. Senate and U.S. House of Representatives** on civil rights issues affecting American Muslims.
- In 2009, Muslim Advocates **published a critical report** on border profiling, **prompting a Senator's inquiry and policy review** by Homeland Security Secretary Janet Napolitano.



Using the Courts to Protect Fundamental Rights

- Muslim Advocates **sued the FBI** for its surveillance of mosques and the Muslim community, **forcing the disclosure** of its newly asserted power to engage in broad racial and ethnic data-gathering and "mapping."

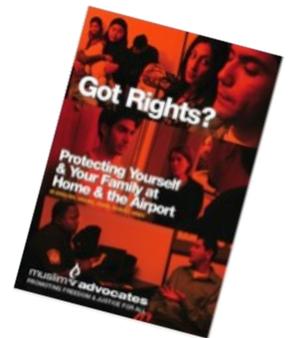
Strengthening the Community via Legal Education

- **400 mosques and charities** have benefited from Muslim Advocates live seminars, webinars and technical assistance on legal compliance.
- **40,000+ community members** have viewed our educational video for dealing with law enforcement, *Got Rights? Protecting Yourself & Your Family at Home & the Airport*. (Watch it here: www.muslimadvocates.org)
- **100 attorneys trained** by Muslim Advocates and ready to represent community members approached by the FBI.
- **First four Muslim nonprofits** receive Better Business Bureau-Wise Giving Alliance accreditation, through special initiative with Muslim Advocates.



Making Our Voice Heard Through Media

- **The New York Times** has mentioned Muslim Advocates in **two front-page stories** in the past seven months. CNN, National Public Radio, and *The Washington Post* have also featured our work.
- Since January, Muslim Advocates has authored **two op-eds** published in **16 newspapers** across the United States reaching millions of readers.





Written Testimony of

**Farhana Khera
President & Executive Director
Muslim Advocates**

**Hearing on
Racial Profiling and the Use of Suspect Classifications
in Law Enforcement Policy**

**U.S House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

June 17, 2010

Introduction

Muslim Advocates submits this testimony to the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, regarding racial profiling and the use of suspect classifications in law enforcement.

Muslim Advocates (www.muslimadvocates.org) is a national legal advocacy and educational organization dedicated to promoting freedom, justice and equality for all, regardless of faith, using the tools of legal advocacy, policy engagement and education and by serving as a legal resource to promote the full participation of Muslims in American civic life. Founded in 2005, Muslim Advocates is a sister entity to the National Association of Muslim Lawyers, a network of Muslim American legal professionals. Muslim Advocates seeks to protect the founding values of our nation and believes that America can be safe and secure without sacrificing constitutional rights and protections.

Law enforcement has a solemn responsibility to protect the American people consistent with the rights and protections guaranteed by the Constitution to *all* Americans, regardless of race, religion, or ethnicity. And Congress must ensure that they do so.

Muslim Americans, who number about six million today, are an important and vital part of our nation and its history. The first Muslims arrived in America on slave ships from Africa. Over time, some Americans have converted to Islam, and other Muslims have come as immigrants. We serve our country as lawyers, teachers, police and firefighters, members of our armed forces, and even as members of Congress. Our research and innovation adds to the progress of our nation in science, medicine, business and technology. We also keep America humming, staffing factories, driving taxis, and running corner shops.

Muslims have also embraced our nation's promise of life, liberty and the pursuit of happiness. But since 9/11, these hopes and dreams have been dashed, and fundamental rights infringed. Today we face government discrimination in our everyday lives – whether we enter a mosque to pray, get on a plane, cross the border, or log onto the Internet. We worry that we will be interrogated by government agents, or worse, arrested and detained, for no reason at all. Our nation has not seen such widespread abuse, discrimination and harassment by federal law enforcement since the J. Edgar Hoover era.

Muslim Americans are also affected by biased policing practices at the state and local levels. African-Americans and Latinos, some of whom are Muslim, are unfairly targeted for stops by law enforcement when driving or walking down the street. The New York Police Department recently released arrest data showing that stops and frisks of African-Americans and Latinos remain at disproportionate levels,

reminding us that racial profiling remains an urgent challenge.¹ The state of Arizona recently enacted a law that requires state and local police to demand proof of immigration status, raising fears of discriminatory policing. At the state, local and federal levels, racial profiling is wrong and counter-productive and must end.

As discussed in detail below, Muslim Advocates describes the problem and provides specific examples of innocent Americans who have been unfairly targeted by federal law enforcement. Muslim Advocates concludes with recommendations for steps Congress should take to protect Americans from being targeted for law enforcement scrutiny based on their race, ethnicity, religion or national origin.

Racial & Religious Profiling of Muslim Americans

Since 9/11, Muslim Americans and those perceived to be Muslim – including Arabs, South Asians, Middle Easterners, and Sikhs – have been subject to heightened scrutiny by federal law enforcement. Such discriminatory targeting includes: FBI interviews conducted in the community without suspicion of wrongdoing; extensive and invasive questioning and searches at the border; the surveillance of community organizations and the use of informants and undercover agents; and data gathering and mapping of the community based on cultural and ethnic behavior.

These discriminatory law enforcement policies and practices are contrary to our nation's promise of equal protection and equal treatment under the laws. President William J. Clinton, President George W. Bush, and President Barack H. Obama have all said racial profiling is wrong and should not take place in America. Indeed, President Bush pledged to end it and took an important step when the U.S. Department of Justice in 2003 issued guidance banning racial and ethnic profiling by federal law enforcement in certain contexts. But more must be done to end racial profiling by federal, state, and local enforcement in all investigatory activities.

Not only is racial profiling wrong, it is ineffective. Discriminatory policing practices divert valuable resources from legitimate investigations, increase fear and suspicion within the Muslim community towards law enforcement and make individuals more reluctant to call the authorities when needed. They also erode the trust between the community and law enforcement agencies, jeopardizing a vital relationship needed to counter actual criminal activity.

The following are examples of the type of discriminatory policing tactics practiced by federal law enforcement across the country.

FBI Interviews

Since 9/11, the FBI and other federal law enforcement agencies have been increasingly targeting Muslim Americans for questioning with no individualized suspicion of wrongdoing. These law-abiding citizens – who range from public

¹ See Al Baker, *New York Minorities More Likely to Be Frisked* (May 12, 2010), at <http://www.nytimes.com/2010/05/13/nyregion/13frisk.html>.

servants to students to professionals – are frequently approached by law enforcement not because they are the subject of an investigation, but, rather, because of a perception that – by virtue of their religion, ethnicity, race, or national origin – they are either engaged in, or will be able to provide evidence of, criminal activity.

These interviews are intimidating and cause immense fear within the community. FBI agents approach individuals for uninvited questioning in their homes and at work. Such unannounced, public interviews cast suspicion over a person's activities and jeopardize their personal and professional relationships.

Some examples of individuals who have been contacted by the FBI, with no apparent evidence of wrongdoing, and reported to Muslim Advocates:

- A young computer programmer and Muslim American in Northern California was approached for questioning, in his workplace, by the FBI after posting political articles from mainstream news sources on his Facebook page. His Facebook page had privacy settings limiting viewers of his posts to only those in his circle of Facebook friends. Although this young man had no criminal background and was not the subject of an investigation, the FBI contacted him because the articles were interpreted as threatening because of his religious and ethnic background. By approaching him at work, in front of his colleagues and managers, the FBI intimidated this young man and jeopardized his job.
- A physician of Pakistani descent in New England was contacted by the FBI for questioning after peaceful, non-violent comments he made about the political situation in Pakistan were published in his local newspaper. This physician is a law-abiding and civic-minded member of his community and was not under investigation. The FBI's interest in him appears to be motivated primarily by his ethnic and religious background.

Surveillance of Mosques & Community Events & Organizations

The FBI's asserted broad authority to target individuals, without reasonable suspicion, is codified in the latest version of the FBI's Domestic Investigations and Operations Guide (DIOGs), which was updated in December 2008. Specifically, the DIOGs allow for unprecedented, massive data gathering on racial and ethnic communities and for the use of informants or undercover agents to infiltrate houses of worship and religious and political groups and gatherings. The FBI asserts the power to open an investigation and send undercover agents and undisclosed participants into organizations with no factual predicate that criminality is afoot. These activities result in chilling First Amendment protected activities, as law-abiding Muslim Americans and community institutions across the country, including mosques, non-profits, and social service organizations, are subject to such surveillance tactics.

Furthermore, the DIOGs authorize the collection of racial and ethnic demographic data and cultural and behavioral information of racial and ethnic communities, without any evidence of wrongdoing. This type of data collection is based on perceived characteristics and activities of racial and ethnic communities, not individualized suspicion of criminal activity. The DIOGs allow for this racial and ethnic information to be mapped, heightening the concern that this information will be used by law enforcement agencies to unlawfully target innocent Muslim-Americans for further investigative activities.

Examples of the FBI's surveillance activities across the country:

- In Orange County, California, the FBI used an ex-felon as an informant to infiltrate a local mosque and spy on congregants. There was no evidence that there was criminal activity at the mosque. In fact, mosque leaders became alarmed when the informant began espousing violent ideas, and reported him to the local FBI office. This incident has resulted in fear within the American Muslim community and had the effect of limiting speech and decreasing attendance at mosques in Southern California and arguably across the country.
- FBI agents routinely attend cultural events hosted by an Arab American organization in the San Francisco Bay Area, without invitation, and interview employees and participants, sometimes without disclosing their identity. The FBI has also sought to meet with the organization's employees outside regular business hours and without consulting with the executive director or other leadership. The FBI's tactics have the effect of intimidating community members and leaders, who are afraid that speaking out about the surveillance will result in increased targeting and scrutiny of the organization, its members and activities.
- Muslim community leaders in Houston, Texas, were recently invited to a meeting with the FBI. During this meeting, FBI agents told community leaders that they were seeking information on the Muslim community in the area, and asked leaders to report any Muslims in their communities who were espousing conservative ideologies or adopting conservative religious practices for observation by the FBI. These requests appear to have been made based on generalized suspicion toward an entire faith and ethnic community, not in response to a particular investigation nor based on evidence of wrongdoing in that community.

Given the constitutional rights and freedoms implicated and the enormous power being wielded by the FBI, the FBI should be forthcoming about the guidance it has given its agents to infiltrate First Amendment protected gatherings and activities. Despite repeated informal requests, a (formal) Freedom of Information Act (FOIA) request, and later a FOIA lawsuit by Muslims Advocates, however, the FBI has failed

to disclose the DIOGs fully.² In particular, the FBI refuses to disclose Chapter 16 of the DIOGS in their entirety. Chapter 16 apparently describes the guidance to agents to surveil and send informants into houses of worship and other religious and political gatherings. Congress should urge the FBI to disclose Chapter 16 of the DIOGs without further delay.

Border Interrogations

Muslim American travelers returning home from international travel are being targeted for additional and extensive questioning by CBP, based on no more than their religion, ethnicity, race or national origin. Innocent Americans from all walks of life have been interrogated about their political views and activities, religious beliefs and practices, and associations with organizations, friends and relatives – all without any reasonable suspicion that the individuals were engaged in unlawful activity. Muslim travelers have been frequently asked questions such as, “what mosque do you attend?,” “how often do you pray?,” “why did you convert?,” “what is your view of the Iraq war?” They have also been asked about donations to, or affiliations with, lawful, U.S. charitable entities and mosques. This type of questioning suggests that racial, ethnic or religious profiling is taking place at the borders and airports. Muslim Advocates chronicled the stories of almost three dozen travelers in its report, *Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home*.³

A few recent examples of individuals who have been questioned at the border:

- An Asian-American Muslim man traveling back from Canada across the land border near Buffalo, New York, was stopped and questioned for approximately 3 hours about his political and religious beliefs, including his conversion to Islam. This young man is a law-abiding citizen and was not the subject of any investigation. He was targeted for detention and questioning because of his religion, causing him great humiliation and fear about openly practicing his faith.
- A respected Arab-American leader in Detroit, Michigan, returning home from a family trip to Connecticut and passing through Canada, was stopped at the Port Huron border crossing, north of Detroit. He and his wife were dragged from and thrown against their car by federal agents, in front of their two young daughters, and were handcuffed, detained, and separated from each other and their children. They were then aggressively interrogated for hours about lawful organizations they support, their work and political activities, and the names of family members and their locations. On subsequent trips, this man has experienced similar intensive and invasive questioning about his ethnicity and country of origin, confirming that he is being targeted for questioning because of his religious and racial background.

² The partially disclosed DIOGs can be viewed on our website at www.muslimadvocates.org.

³ Available at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

Border Searches

Muslim Americans returning home from international travel are subject to invasive searches at the border of their person and belongings, including electronic devices, without any individualized suspicion of wrongdoing. CBP agents look through pictures on digital cameras, documents on computers, and contacts and information in cell phones, Blackberries and iPhones, for no reason at all. CBP also asserts that they have the authority to seize these devices, including the data contained within the devices, without probable cause. The invasive nature of these searches – and the ability of the government to target individuals without any individualized suspicion – highlights the broad, abusive power being asserted by CBP agents.

Examples of individuals whose personal belongings, including electronic devices, were subject to search at the border include:

- A Muslim-American of South Asian descent who is an engineer in Silicon Valley had his personal belongings, including his checkbook and cell phone, searched and seized when returning home after an overseas business trip. His cell phone was confiscated from him during the search, and returned to him five months later in inoperable condition. He was never given a reason as to why he was subjected to such an intensive search of his belongings, but the questions asked by the CBP officer conducting the search – including questions about donations he had made to specific, lawful charitable and religious organizations – indicate that he was targeted because of his religion.
- A Californian businessman, who has been searched on numerous occasions upon his return to the United States, had his computer removed from his presence for several hours. During that time, all of his files, including letters from his wife and children, were reviewed. He was not informed as to why his computer was seized. However, the questions asked of him by the CBP agent during his detention, including questions about his recent Hajj pilgrimage to Saudi Arabia, suggest that his religious identity played a role.

Despite repeated requests to DHS by Muslim Advocates and other civil rights organizations to disclose CBP's policies for selecting individuals for secondary searches, DHS has not been fully candid and forthcoming, nor has it revealed the extent to which individuals are being targeted based on their race, religion, ethnicity or national origin. CBP should prohibit questioning about First Amendment protected beliefs and activities and should be required to collect data on individuals targeted for interrogations so that Congress and the public can fully understand how CBP is conducting questioning at the border. A Civil Liberties Impact Assessment solely on its electronic devices searches policy, ordered by the Secretary of Department of Homeland Security, has yet to be released, nearly six months after its completion.

Recommendations

Muslim Advocates urges Congress to enact legislation to:

1. Ban racial, ethnic, religious and national origin profiling by federal, state and local law enforcement;
2. Require training of federal, state and local law enforcement, to ensure that discriminatory policing does not take place;
3. Establish an effective redress mechanism for those aggrieved, to ensure accountability;
4. Require federal, state and local law enforcement to collect data on stops, interviews and all investigatory activities to allow the agency and the public to monitor whether racial, ethnic and religious profiling is taking place; and
5. Require the Attorney General to report to Congress on the implementation of such a law.

Legislation previously introduced by Congressman Conyers and Senator Feingold, the End Racial Profiling Act (ERPA), is a good place to start. ERPA should contain language that explicitly prohibits profiling in the types of law enforcement activities described above, specifically:

- Interviews, including FBI interviews and those by CBP agents at the border;
- Searches of persons and/or property; and
- Data collection and analysis, assessments, and predicated investigations.

ERPA should also contain a provision that requires data collection of individuals who are targeted by law enforcement activities. Such data is necessary to monitor the problem and determine whether policies, practices and training are preventing and ending racial, ethnic and religious profiling.

Conclusion

Racial, ethnic and religious profiling affects millions of Americans, including African American, Latino, Muslim, Arab and South Asian communities. Racial profiling is wrong and produces negative results. It erodes trust that the public should have in law enforcement. Simply put, racial and religious profiling is bad policing. It is time for Congress to act to ensure that all Americans, regardless of race, religion, ethnicity or national origin, are treated fairly and equally by law enforcement at the federal, state and local levels.

OSI U.S. Programs
National Security and Human Rights Campaign
Two-Year Strategic Plan and Reauthorization Request (2011-2012)
September 14, 2010

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**OSI U.S. Programs
National Security and Human Rights (NSHR) Campaign
Two-Year Strategic Plan and Reauthorization Request (2011-2012)
September 13, 2010**

TABLE OF CONTENTS

I. Overview	1
II. The Formation of the NSHR Campaign and Its Grantmaking to Date	4
III. Challenges and Opportunities in 2011 and 2012	5
A. The External Climate for Reform.....	5
B. The Campaign’s Key Funding Partners and the Funding Climate.....	7
IV. NSHR Campaign Grantmaking and Program Strategies for 2011 and 2012	8
A. Ending Indefinite Detention and Torture	9
B. Fighting Surveillance and Protecting Dissent	11
C. Challenging Profiling and Discrimination Targeted at Arab, Middle Eastern, and South Asian Communities, and Expanding their Voices	13
D. Limiting Government Secrecy and Expanding Government Oversight and Accountability on National Security Matters.....	16
E. Shifting the National Security Paradigm Away From the Politics of Fear	18
F. Building the Capacity of Core Organizations to Advance Policy Reforms.....	21
G. Cross-Program Strategies, Collaboration, and Coordination	22
V. Conclusion.....	23

I. OVERVIEW

The National Security and Human Rights (NSHR) Campaign was launched in January 2008 to take advantage of the opportunities that the November 2008 elections and a new administration would offer to dismantle the extra-legal “global war on terror” policies implemented by the Bush administration following the September 11, 2001 terrorist attacks, and to replace them with national security policies that promote human rights, civil liberties, and the rule of law. This strategic plan is submitted in support of the Campaign’s request for reauthorization for the two-year period from January 2011 through December 2012.

The Campaign envisions a future where the American public and its leaders have renounced the politics of fear and anger and no longer resort to extreme and short-sighted counterterrorism measures that undermine our nation’s core constitutional values, diminish our standing in the global community, and feed into a terrorist narrative of an America at war with the Muslim world – and where instead the American public and its leaders confront the threat of terrorism with a resilience rooted in a shared understanding that our nation’s long-term security and ability to deter and withstand future acts of terrorism depend on our adherence to our democratic institutions and open society values.

The Campaign’s aim is to break the self-destructive cycle of fear, anger, and overreaction in which this nation is gripped before the current condition becomes the new normal. Toward this end, the Campaign promotes the following policy goals through its grantmaking and operational work:

1. Ending indefinite detention, torture and other forms of cruel, inhuman, and degrading treatment, and extraordinary rendition;
2. Fighting illegal surveillance and protecting dissent;
3. Challenging the profiling of, and discrimination against, and building the voices of, Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) individuals and communities;
4. Limiting government secrecy, expanding government oversight, and securing accountability for abuses committed in the name of national security;
5. Shifting the national security paradigm away from the politics of fear; and
6. Building the capacity of core organizations to advance policy reforms.

To advance these goals, the Campaign employs an integrated set of strategies that includes: policy advocacy; litigation; innovative thinking and scholarship; investigative journalism and research; public, media, and policy maker education; grassroots mobilization; and engagement of new and unusual voices and constituencies.

In the nineteen months since President Obama took office, the Campaign has won a number of pivotal policy gains, for which the Campaign’s grantees painstakingly laid the groundwork. These include:

- Executive orders mandating an end to the torture of terrorism suspects, the closure of secret Central Intelligence Agency (CIA) prisons, and the closure of the Guantanamo detention center.

- The release of highly revealing “torture memos” prepared by the Department of Justice (DOJ) and the CIA, and the appointment of a prosecutor to investigate allegations of CIA interrogation abuses.
- The resettlement of 38 Guantanamo detainees, the repatriation of 26 detainees, the transfer of one to the U.S. to stand trial in federal court, and the clearance of many others for release.
- The rescinding of guidelines for airports in 14 “countries of interest” – nearly all of which were Muslim-majority nations – to subject everyone flying to the U.S. to burdensome and intrusive security measures.
- Congressional momentum for the End Racial Profiling Act and progress in working with DOJ to expand the scope of guidelines curbing profiling to the national security context.
- Improved transparency in the Executive branch, including the creation of a National Declassification Center to streamline and expedite declassification reviews across agencies.

But progress on the Campaign’s issues under the Obama administration has been disappointingly slow due to a set of challenges. An aggressive opposition campaign run by Bush administration defenders has joined forces with the energized and vocal Tea Party movement. At the same time, many who had spoken out against “war on terror” abuses during the Bush administration have refrained from criticizing the Obama administration when it has failed to put a firm end to these abuses. In addition, concern that the U.S. may be the target of a new terrorist attack has risen following the November 2009 Fort Hood shootings and Christmas Day and Times Square bombing attempts, and this has unleashed an outpouring of anti-Muslim and anti-immigrant bigotry. In this toxic environment, President Obama and the Congress have yet to demonstrate the courage and leadership required to fully implement a rights-respecting national security agenda.

As the Campaign moves into the 2011 to 2012 funding cycle, we will adjust our strategies and priorities to take into account the progress that has been made to date and the prospects for reform in the upcoming period. This cycle will unfold against the backdrop of a highly charged presidential election, and the Campaign’s grantees will need to operate at a heightened state of vigilance if they are to block efforts to erode rights while they create and take advantage of openings to advance the Campaign’s policy goals. We are heartened by the fact that Obama appointees in key positions are asking the NSHR community to generate the innovative ideas, empirically based research, opinion leader and public support, and media attention that will provide them the ammunition they need to advocate for reforms sought by the Campaign. The Campaign plans to continue to prioritize support for core organizations with the expertise, nimbleness, and credibility needed to engage in productive dialogue with policy makers, and to encourage these groups – most of which are based inside the Beltway – to share information and collaborate with grassroots groups that understand how national policies are playing out at the state, local, and grassroots levels.

Critical to the Campaign’s success will be expanding and deepening public understanding of, and mobilizing broad-based public support for, the NSHR Campaign’s policy goals through civics education, civic engagement, and the use of arts, culture, and new media. Already the Campaign has begun to explore strategies for developing educational curricula and public debate programs

on matters of concern to the NSHR Campaign. And we are investigating how arts and culture can sway a wider and more mainstream swath of the American public to support the Campaign's goals.

Other strategies that the Campaign will prioritize in 2011 and 2012 include:

- Building the capacity of AMEMSA organizations and leaders with the potential to become recognized and respected voices in national debates on NSHR issues.
- Forging alliances between the NSHR field, the faith community, and the immigrants right movement to counter anti-Muslim xenophobia and bias-motivated violence.
- Bridging the gap between human rights advocates and national security experts, and supporting the two communities as they engage in research and develop strategies to advance resilience as a framework for promoting smart national security policies that are effective and hold true to our nation's core constitutional and human rights values.
- Preparing civil society to stay calm and resilient in the event of a future terrorist attack on the U.S., and supporting the development of communications kits for public officials and other opinion leaders at the federal, state, and local levels on how to quell fear and anger in a time of crisis and prevent a backlash against AMEMSA communities.
- Bringing together experts from the NSHR and criminal justice fields to stop the adverse impacts that efforts to deny established constitutional and statutory rights to defendants charged with terrorist crimes are having on the integrity of the criminal justice system.
- Exploring state-based grantmaking strategies with our USP colleagues.

To ensure that adequate funds are available in 2011 and 2012 to support these priorities, the Campaign will need to make some hard choices and plans to scale back its grantmaking in several areas. Last year, the Campaign made a set of large rapid response grants when efforts to reform detention policy threatened to unravel. We have worked to improve coordination and collaboration between NSHR grantees working on detention issues, and with support from the Campaign in the form of annual and biannual grants and more modest rapid response grants, we are hopeful that these groups will have sufficient resources to continue their aggressive advocacy. Additionally, barring unexpected breakthroughs, we will decrease funding to support efforts to fight the overbroad surveillance powers authorized by the Foreign Intelligence Surveillance Act and Patriot Act, and we will plan to provide tie-off grants to several discrete surveillance projects that should be positioned to find new sources of support. We will also reduce the level of our general support grantmaking to groups that we currently co-fund with the Transparency and Integrity Fund and direct our future co-funding exclusively to those that prioritize government secrecy, oversight, and accountability in the context of national security.¹

¹ This strategic plan was developed with valuable input from the NSHR Campaign's advisors from the USP Board, Aryeh Neier and Mallika Dutt; USP Executive Director Ann Beeson; OSI-DC colleagues Stephen Rickard, Director, Morton Halperin, Senior Advisor, and Wendy Patten, Senior Policy Analyst; Laleh Ispahani, Director of the USP Transparency and Integrity Fund; OSI Justice Initiative Senior Legal Officer Amrit Singh; and Farhana Khera, Executive Director of Muslim Advocates. The plan incorporates recommendations and findings from a two-part strategic review process that the Campaign undertook in early 2010 with Atlantic Philanthropies. The TCC Group conducted a review of the Campaign's first two years of grantmaking; and a team of independent evaluators consisting of Irma Gonzalez of Zoen Resources, Patty Blum, a former clinical professor at Boalt Hall School of Law, and Professor Aziz Huq of the University of Chicago Law School, conducted a forward-looking field analysis.

II. THE FORMATION OF THE NSHR CAMPAIGN AND ITS GRANTMAKING TO DATE

In the nine years that have elapsed since the 9/11 attacks, OSI has played a crucial leadership role within the philanthropic world in the national security and human rights arena, and it has been one of the field's most strategic funders. In the immediate aftermath of 9/11, U.S. Programs funded organizations working to stop the dragnet-style round ups and preventive detention of more than a thousand AMEMSA non-citizens in the U.S. who had no involvement in terrorism, and to challenge the Bush administration's usurpation of broad and unprecedented executive powers as a passive Congress enacted the measures requested by the President. Between 2004 and 2007, USP provided \$3.6 million to 16 organizations through a dedicated Civil Liberties Funding Portfolio.

Based on detailed strategy memos presented to the board in November 2007, the USP Board approved the National Security and Human Rights Campaign for the three-year period from January 2008 through December 2010 with a grantmaking budget of \$21 million, to which \$1.5 million was added in 2010 to address new challenges.² The Board's decision was based on input from leading NSHR advocates, experts, and funders. In addition to staff, outside advisors Harold Koh and Rosa Brooks, both of whom currently hold high level positions in the Obama administration, made critical contributions.³ And because we saw a critical need to build the capacity the AMEMSA communities, we retained Farhana Khera and Naheed Qureshi to conduct a separate AMEMSA field assessment memo. Atlantic Philanthropies joined OSI as a partner in this effort and pledged a grantmaking budget of \$20 million over three years.

The NSHR Campaign has pursued the six policy goals listed above in Section I. As soon as the Campaign was launched in January 2008, staff geared up rapidly to advance an ambitious work plan under a tight timetable to take advantage of opportunities for change in a fast-moving environment. To date, the Campaign has made 105 grants totaling \$20,052,784 to 63 organizations. In addition, the Campaign has disbursed \$1,505,674 from OSI's JEHT Emergency Fund to ten former JEHT Foundation grantees. A full list of the grants awarded by the Campaign to date is attached.

² See U.S. Programs Board Binder, November 2007: "A Campaign to Restore Human Rights and Promote a Progressive National Security Policy," by Ann Beeson (October 26, 2007); and "National Security and Human Rights Field Assessment: Views of Advocates in the Arab, Muslim and South Asian American Communities," by Farhana Khera and Naheed Qureshi (September 17, 2007).

³ The key OSI staff who developed the campaign strategy include: OSI President Aryeh Neier, an eminent human rights and civil liberties advocate who served as Executive Director of Human Rights Watch and National Director of the American Civil Liberties Union; USP Executive Director Ann Beeson, the former Associate Legal Director at the ACLU who led the ACLU's national security and human rights work before joining OSI; NSHR Campaign Manager Nancy Chang, who litigated national security cases and wrote for the public on the loss of civil liberties in the wake of the 9/11 attacks while at the Center for Constitutional Rights; Sophia Conroy, NSHR Program Officer; OSI-DC Director Stephen Rickard, a distinguished human rights advocate who worked at Amnesty International; OSI-DC Senior Advisor Morton Halperin, who has decades of experience on national security issues, having served in three administrations and worked for the ACLU; and OSI-DC Senior Policy Analyst Wendy Patten, who was previously U.S. Advocacy Director for Human Rights Watch, and has served the Department of Justice and the National Security Council.

The Campaign and Atlantic Philanthropies employ grantmaking strategies that complement one another well. Atlantic has tended to provide large multi-year grants to a select group of core organizations that are vital to the field's long-term success. This has freed the Campaign to cultivate, in addition to core organizations, a wider array of groups, including national security think tanks with access to policy and opinion leaders, a cohort of emerging AMEMSA organizations, organizations that engage in grassroots mobilization, and organizations that bring innovative approaches and new voices to the work of the Campaign.

One of the Campaign's priorities has been the promotion of persuasive spokespersons and constituencies, including: retired military officers, former interrogators, prosecutors, and judges; experts in national security, counterterrorism, intelligence, homeland security, and law enforcement; religious communities; 9/11 family members; physicians and other health care professionals; veterans; musicians; authors; librarians; and teachers.

Another Campaign priority has been the seeding of strategic projects timed to take advantage of new opportunities and challenges. These projects include:

- The production in the fall of 2008 of a policy paper for the Obama transition team that offered analysis and proposals for reform on each of the Campaign's issue areas. Spearheaded by the Constitution Project, this effort benefited from the input of dozens of experts;
- The launch of networks and coalitions that have brought advocates together to influence policymakers and move public opinion. These include the National Religious Campaign Against Torture, the End Racial Profiling Campaign, the Digital Due Process Coalition, the Charity and Security Network, and a project to provide the NSHR field's litigators opportunities to coordinate and strategize with one another as well as with academics and policy experts.
- With our funding partners at Atlantic Philanthropies and the Proteus Fund, the launch of a field-wide communications hub that offers daily news alerts, media and polling analysis, state-of-the-art online media tools, media training, and technical assistance to all of our grantees.

III. CHALLENGES AND OPPORTUNITIES IN 2011 AND 2012

A. The External Climate for Reform

President Barack Obama struck a high note for the rule of law on January 22, 2009, his second full day in office, by recognizing the urgent need to restore "the standards of due process and the core constitutional values that have made this country great, even in the midst of war, even in dealing with terrorism," and by repudiating some of the Bush administration's most egregious post-9/11 abuses. With sixteen distinguished retired military officers behind him, President Obama signed executive orders: prohibiting the use of torture and secret detention; requiring all U.S. personnel to comply with a single standard in conducting interrogations; mandating the closure of the Guantanamo detention center within one year; and calling for an inter-agency review of U.S. detention, interrogation, and rendition policies.

President Obama deserves tremendous credit for issuing these executive orders at the outset of his presidency, as well as for his decisions to release revealing DOJ and CIA “torture memos” and his call for “a new beginning” with the Muslim world. However, defenders of the Bush administration’s “war on terror” tactics wasted no time in orchestrating a fierce, no-holds-barred backlash campaign led by former Vice President Dick Cheney. Cheney has since been joined by the heavily financed Keep America Safe organization, which is headed by his daughter, Liz Cheney, Bill Kristol, and Debra Burlingame, a family member of a victim of the 9/11 attacks.

The opposition’s message of fear and anger was stoked by the November 2009 shootings at the Fort Hood military base, the Christmas Day 2009 airplane bombing attempt over the skies of Detroit, and the May 2010 Times Square car bombing attempt, as well as the arrests on terrorism charges during this time period of more than a dozen U.S. citizens alleged to have ties to overseas terrorists. The recent trend toward small-scale terrorist attacks carried out by “homegrown terrorists” with “clean skins” who have yet to arouse the suspicions of law enforcement and intelligence agencies has been a source of consternation in the law enforcement community as such attacks can be difficult, if not impossible, to detect and prevent.

With Fox News as their mouthpiece, Keep America Safe is deftly playing the fear card by painting President Obama as soft on terrorism⁴ and citing to his decision to remove waterboarding from America’s counterterrorism toolkit as dangerously naive. These opposition forces have also borrowed liberally from Joe McCarthy’s guilt by association tactics. As an example, they are attempting to smear the reputations of accomplished DOJ lawyers who had pressed for due process protections for Guantanamo detainees before joining the Obama administration by referring to them as the “Al Qaeda Seven.” These forces are also leveraging the Tea Party movement’s calls for the banning of mosques, amending the Constitution to abolish birthright citizenship, and copycatting Arizona’s overtly anti-immigrant S.B. 1070 legislation in other states.

With the midterm elections upon us, and with the approach of a presidential election, conservatives will be presented with a wealth of opportunities to use national security as a wedge issue and to intimidate candidates for office from taking principled positions on national security matters. In the face of these pressures, the President has continued to emphasize a rule of law approach to terrorism. But he has exhibited a reluctance to place his full political weight and moral authority behind the dismantling of the “war on terror” architecture erected by the Bush administration following 9/11, as has Congress. While President Obama has avoided characterizing his counterterrorism efforts in terms of a “war on terror,” preferring instead to refer to a “war on al Qaeda and its affiliates,” he signed into law the Military Commissions Act of 2009, and the first military commission trial of a Guantanamo detainee during his administration is getting underway in the case of Omar Khadr, who was detained in Afghanistan when he was a 15-year-old child. Earlier this year, the Obama administration announced that 48 Guantanamo detainees would be held in indefinite detention without charge or trial in order to prevent their return to the battlefield.

⁴ According to a June 2010 Rasmussen poll, 51% of Americans trust Republicans to handle “national security and war on terror” issues, while only 34% trust Democrats to handle these issues. And according to an August 2010 Zogby poll, only 37% of Americans rated President Obama’s handling of the “war on terrorism” as positive, while 59% rated it as negative.

Seeking accountability for past abuses remains a challenge. President Obama has failed to support an official inquiry into the torture of detainees through the use of “enhanced interrogation techniques” by the U.S. in the “war on terror.” In addition, the Justice Department has continued to defend Bush administration counterterrorism measures in litigation and has continued to assert barriers to the courthouse that are blocking those injured as the result of such measures from obtaining legal redress. While some of these actions and inactions have disappointed human rights advocates, Obama openly stated during his presidential campaign that the U.S. should “look forward” rather than backward. Even the minor steps he has taken to advance accountability – publishing torture memos, initiating an investigation into the CIA on whether interrogation videotapes were destroyed and whether interrogation methods went beyond what was authorized by the torture memos – have been labeled by conservative critics as "Obama's 'war on the CIA.'"

Without a doubt, the Campaign faces a challenging external environment. But given the harsh reality that the prospects for eradicating the threat of terrorism in the foreseeable future are slim to none, if we are to maintain an open society, we must redouble our efforts to prevent the extraordinary measures introduced by the Bush administration from becoming the new normal. Fortunately, as detailed in Section IV, many promising avenues for restoring civil liberties, human rights, and the rule of law to national security policy remain open, and the Campaign’s nimble and skillful grantees stand poised to identify and pursue them. These advocates have the backing of key Obama administration officials who are eager to work with the NSHR community to bring about the Campaign’s policy goals.

B. The Campaign’s Key Funding Partners and the Funding Climate

The Campaign has sought to expand the pool of donors advancing the goals of the Campaign. During the first half of 2008, OSI and Atlantic Philanthropies provided grants to the Proteus Fund to create a pooled donor fund, the Security and Rights Collaborative.⁵ The Collaborative currently has four members: OSI, Atlantic Philanthropies, the Oak Foundation, and an anonymous foundation. The Collaborative has distributed \$2,793,176 in grants and has focused on building the capacity of emerging AMEMSA organizations, building the communications capacity of NSHR grantees, and providing rapid response grants.

Also during the first half of 2008, OSI and Atlantic established the NSHR Funders’ Roundtable to keep colleague funders abreast of the latest developments on NSHR issues, introduce them to the field’s leading advocates, and promote strategic grantmaking. The Campaign’s staff has organized panel discussions for the Funders’ Roundtable that have been attended by representatives of several dozen foundations. A list of selected funder events, grantee convenings, and public forums sponsored by the Campaign from January 2008 through September 2010 is attached.

In addition, on January 8, 2009, just two weeks before the Obama administration took office, OSI and Atlantic organized and sponsored a full-day convening of presidents and senior staff from a dozen national foundations and a dozen field experts. Harold Koh opened the meeting by

⁵ The Collaborative was originally named the National Security and Human Rights Pooled Fund.

observing that the start of the Obama administration would present the U.S. with a historic opportunity to reclaim its national identity and global reputation, and he urged that this opportunity be seized and cautioned that a long-term investment would be required.

The Campaign has built good will and deepened relationships with a range of funders, and this has led to important successes in securing bilateral funding for specific projects. But efforts to persuade new donors to enter the field have been largely unsuccessful. In addition, the Campaign lost a close funding partner with the demise of the JEHT Foundation in December 2008. Other funders have been hit hard by the economic crisis and have either left the field or cut back on their funding.

Atlantic Philanthropies remains our closest and most important funding partner, and its commitment to the core human rights organizations working in the NSHR arena is longstanding. While the foundation is still developing its future funding plans and is scheduled to close its operations in 2016, we are optimistic that Atlantic will remain a key funder in the field in the coming years. We are also confident that when Atlantic decides to leave the field, it will do so responsibly and in a way that positions core grantees for long-term success.

OSI's continued leadership in the NSHR arena is critical. OSI has more staff with expertise and experience in NSHR policy advocacy than perhaps any other foundation, and its grantmaking and operational activities have earned respect within the philanthropic community and beyond.

IV. NSHR CAMPAIGN GRANTMAKING AND PROGRAM STRATEGIES FOR 2011 AND 2012

As the NSHR Campaign transitions into its second cycle of funding spanning the two-year period from January 2011 through December 2012, it will adhere to its core goals but will adjust its strategies and priorities to take into account the progress that has been made to date and the prospects for reform in the upcoming period. These adjustments, a number of which are highlighted at the end of Section I, are discussed in the following subsections in the context of specific Campaign goals.

As the Campaign proceeds, we will be guided by the central finding of the Field Analysis Report commissioned by OSI and Atlantic Philanthropies:

Transforming American national security policy is a complex, long-term struggle against a powerful political psychology of fear and anger, and the interest groups that are willing to exploit that dynamic. This is a generational fight, not a transient matter of one "bad apple" administration. No single strategy will work against it.... Rather, what *is* necessary for transformative change is more elementary: a robust, sustainable community of civil society organizations, backed by significant constituencies energized to address the challenges of a dynamic political climate, which, over time, both can achieve social change and support political coalitions to sustain that change.

A. Ending Indefinite Detention and Torture

The Campaign's Goals

The Campaign will seek to end arbitrary, indefinite, and secret detention of terrorism suspects; eliminate the use of torture and cruel, inhuman, and degrading treatment; end the use of extraordinary rendition; and empty and close the Guantanamo detention center in a rights-respecting manner.

Accomplishments and Challenges

President Obama's January 2009 executive orders to end torture and mandate the closure of Guantanamo stand as a testament to the tireless, strategic, and innovative efforts undertaken by the NSHR Campaign's grantees. The retired military officers who stood behind the President on that day were part of a coalition of military leaders and interrogators opposed to the use of torture that **Human Rights First** has been cultivating since 2004 as compelling spokespersons for the position that America's national security and military successes depend on its compliance with the Geneva Conventions and human rights principles. And President Obama's executive order banning torture bears a striking resemblance to a proposed executive order drafted and promoted in 2008 by the **Center for Victims of Torture**, the **National Religious Campaign Against Torture**, and **Evangelicals for Human Rights** with endorsements from an impressive group of former military officers, former diplomats, national security experts, and religious leaders from many faiths.

But the road to success on this cluster of issues has been bumpy. The Obama administration has blocked proposals to create a national security court that would dispense second class justice to terrorism suspects, and it has worked with Congress to add protections for detainees in the Military Commissions Act of 2009, including a rule barring the admission into evidence of statements obtained through cruel, inhuman, and degrading treatment. While President Obama and Attorney General Holder have expressed confidence in the American judicial system to try suspected terrorists, the decision to try Khalid Sheikh Mohammed and his co-defendants in a federal court in New York is under review by the White House. Meanwhile, a spate of domestic terrorism plots has spawned proposals to weaken *Miranda* protections for suspected terrorists and to remove citizenship in the case of those who are U.S. citizens.

The Obama administration has also announced plans to subject 48 Guantanamo detainees to preventive detention whom it claims cannot be safely transferred to a third country and cannot be prosecuted. On the positive side, however, the administration has never claimed this authority beyond the pool of detainees who remain at Guantanamo; nor has it sought legislation establishing a formal regime of preventive detention.

In addition, the CIA reports that it has ceased its operation of secret prisons, and the Department of Defense has made a commitment to providing notification of detainee names and identification numbers within two weeks of capture to the International Committee of the Red Cross (ICRC). The Obama administration has also instituted improved screening review procedures at the Bagram detention center. However, reports suggest that detainees at Bagram are being transferred between screening centers to delay, and even evade, ICRC notification. Moreover, the Obama administration has defended in court the Bush administration's position

that detainees who were captured outside of the Afghanistan war zone and transferred to Bagram cannot petition American courts for *habeas* relief.

The Army Field Manual now sets a uniform standard for interrogations of terrorist suspects for all U.S. personnel, including the CIA and the recently formed High Value Detainee Interrogation Group. However, the Obama administration has failed to ensure that its ban against torture will be fully implemented. Appendix M of the Army Field Manual continues to permit prolonged isolation and sleep deprivation – techniques that can constitute torture, especially when used in combination. Also, it remains uncertain whether the U.S. is continuing to mistreat detainees, directly or by proxy, and the administration’s program of extrajudicial “targeted killings” outside the zone of combat, which it has extended to U.S. citizens, raises grave human rights concerns and is now under legal challenge.

This checkered pattern of advances and retreats is also reflected in the courts. The valiant efforts of the **Center for Constitutional Rights (CCR)** and the **American Civil Liberties Union (ACLU)** to secure legal rights for detainees has yielded three landmark Supreme Court rulings, the most recent of which was issued in June 2008 and ruled that Guantanamo detainees have the right to petition the courts for *habeas* review. But litigators are continuing to run up against barriers to litigation as they seek redress for detainees who endured torture and abuse at the hands of U.S. personnel and security contractors or by countries to which the U.S. has rendered them.

Strategies and Priorities

- Continue to fund a set of knowledgeable and capable grantees to engage in high-level policy advocacy and outreach to policy makers on these issues, as well as to engage in research, public education, media outreach, litigation, and the cultivation of credible spokespersons.
- Build broad-based public support for these goals through increased focus on civics education, civic engagement, and the use of arts, culture, and new media.
- Support the mobilization of constituencies to promote reforms and organic collaborations between policy groups and grassroots organizations, interfaith coalitions, 9/11 family members, veterans groups, and the immigrant rights movement.
- Support collaboration between attorneys from the criminal defense bar and NSHR advocates to block regressive policies introduced in the context of terrorism prosecutions and prevent these policies from infecting the entirety of the criminal justice system while simultaneously blocking efforts to establish an indefinite detention regime for terrorist suspects.
- Encourage increased coordination between grantees working on these issues to improve their effectiveness so that the Campaign can decrease its rapid response grantmaking and free up resources for other priorities.

Benchmarks and Impacts

- Guantanamo is closed in a rights-respecting manner, and terrorism suspects held at Guantanamo are released to countries where they will be safe from torture or are tried in Article III courts rather than military commissions.

- Proposals to block funds for trials of detainees in the American judicial system, codify preventive detention, and weaken *Miranda* rights and citizenship rights of terrorism suspects are defeated.
- The Army Field Manual is revised to explicitly ban torture, and the portions of Appendix M that permit prolonged isolation and sleep deprivation are deleted; and mechanisms for training, supervision, and accountability are put in place to ensure that the ban on torture is implemented in practice by all U.S. personnel. Torture is soundly rejected by the government as a legitimate counterterrorism tool.
- The rights of those injured by U.S. policies are vindicated, and the American people are provided a fully documented record of abuses committed in their name. All individuals who legitimated or engaged in torture, including but not limited to interrogators, attorneys, and health care professionals, are identified and held to account, and in the case of professionals have their licenses removed.
- Rendition is subject to strict and ongoing oversight, and the administration releases public standards and procedures to guarantee against rendition of persons to countries where they are at risk of being subjected to torture or inhumane treatment.

B. Fighting Surveillance and Protecting Dissent

The Campaign's Goals

The Campaign will seek to reform surveillance laws and policies to restore privacy protections at the federal, state, and local levels; and ensure that anti-terrorism laws and law enforcement activities are not targeted based on race, ethnicity, religion, national origin, or political viewpoint.

Accomplishments and Challenges

The Campaign's grantees that are working to prevent America from becoming a full-fledged surveillance society are fighting uphill battles on multiple fronts. Recent terror scares have weakened public resistance to entrusting the government with broad surveillance powers. At the same time, Americans now rely on electronic devices to such an extent that we cannot avoid generating reams of digital data as we simply go about our daily routines, and technological advances are producing ever more sophisticated surveillance systems that are being linked and data-mined. Yet, it is all too easy for mistakes to be made. In 2009, a DOJ Office of Inspector General report found that as many as 24,000 people may be on an FBI terrorist watch list based on outdated or irrelevant information, while the list fails to include a number of people with genuine ties to terrorism. And a DHS report found that those erroneously listed on terrorist watch lists are facing bureaucratic obstacles as they seek to be removed from the lists. At the same time, the government is demanding increased surveillance powers, citing to an increased threat of cyberterrorism and an increased need for cybersecurity. In addition, the Obama administration has been unwilling to relinquish the executive branch's dangerously overbroad surveillance powers, which Congress has codified into law under FISA and the Patriot Act.

A major setback took place on June 21, 2010, when the Supreme Court held in a 6-3 opinion in *Holder v. Humanitarian Law Project* that the act of engaging with a designated foreign terrorist group for the constructive purpose of turning the organization away from violence and toward peacebuilding, conflict resolution, and human rights advocacy was not protected by the First

Amendment and could lead to criminal conviction for providing “material support” to terrorism, a crime punishable by a sentence of 15 years. The ruling has sent shock waves through the NGO and foundation communities and the Muslim-American community.

Against this bleak backdrop, Campaign grantees have had some successes. Earlier this month, the **ACLU** won a court order lifting a gag order that had barred a “John Doe” plaintiff in a suit challenging an FBI National Security Letter he had received from revealing his identity. Through advocacy and public education at the federal and state levels, the **Cato Institute** and **ACLU** have thus far staved off efforts to institute a national system of identification. Also, the launch of the Digital Due Process Coalition in the spring of 2010 under the leadership of the **Center for Democracy and Technology (CDT)** offers the prospect of limiting law enforcement access to personally sensitive electronic data through a long overdue overhaul of the electronic communications privacy laws, and of advancing the creative use of technological design solutions to protect privacy. **CDT** has enlisted the **Electronic Frontier Foundation**, **ACLU**, and privacy advocates from across the political spectrum, as well as industry giants such Google, Microsoft, AT&T, and Intel, to team up on this important campaign.

At the local level, the **New York Civil Liberties Union** has forced the release of thousands of pages of documents from DHS on the plans of the New York City Lower Manhattan Initiative to create a high-tech video surveillance zone, and it helped lay the groundwork, along with the **Center for Constitutional Rights**, for a new law in New York State that bars police from data-mining information obtained on stops and frisks that turn out to be groundless. The **ACLU of Massachusetts** has issued a white paper on the surveillance functions played by the state’s fusion centers and has worked with the community to demand limits on video surveillance of public spaces.

In the area of dissent, the nation has not seen the degree of government targeting on the basis of political viewpoint that was portended by former Attorney General John Ashcroft’s chilling warning three months after the 9/11 attacks, “To those who scare peace loving people with phantoms of lost liberty, my message is this: your tactics aid terrorists for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies and pause to America’s friends.” And in a positive development, in January 2010, Secretary of State Hillary Clinton signed orders ending the “ideological exclusion” of two foreign nationals, Tariq Ramadan from Oxford University and Adam Habib from the University of Johannesburg, both of whom the Bush administration had barred from entering the U.S. under the Patriot Act on the basis of their political views.

Strategies and Priorities

- Continue to fund core grantees with the depth of expertise necessary to monitor developments in this complex area, fight back against new threats to privacy, and advance an affirmative agenda for reform.
- Encourage increased collaboration between surveillance advocates and: (1) experts in the criminal justice system who are concerned about increased surveillance under the pretext of fighting terrorism; (2) AMEMSA organizations and communities that are too often the target of improper law enforcement profiling and surveillance; and (3) grassroots organizations and civics education groups that are working to educate the “Facebook generation” and

Americans of all ages on the importance of preserving personal privacy and how to take action to protect against its loss.

- Facilitate coordination among grantees as they fight excessive surveillance at the federal, state, and local levels. Expand support for state and local strategies to monitor and impose limitations on fusion centers.
- Continue to review DHS spending to identify projects that fail to make us safer and intrude on privacy, and build the case for smarter homeland security spending that protects civil liberties and safety.
- In order to free up funds for new priorities, the Campaign is not likely to renew funding to several current grantees that are working on discrete privacy and surveillance projects. In addition, the Campaign will not allocate funding to efforts to reform FISA and Patriot Act surveillance provisions unless the prospects for reform improve.
- Support advocacy to reverse the devastating impact of the Supreme Court's broadening reading of the material support laws in *Holder v. Humanitarian Law Project*.
- While the Campaign expects that its grantmaking in the area of dissent will remain relatively low, it will continue to monitor developments at the intersection of national security and dissent.

Benchmarks and Impacts

- Privacy standards for domestic intelligence collection and limits on the sharing and retention of terrorism-related information between federal, state, and local law enforcement agencies and through fusion centers and other structures are adopted.
- The Digital Due Process Coalition succeeds in its goal of ensuring that privacy protections limiting government access to personally sensitive electronic data are up to date with technological advances.
- Privacy advocates fight at the state and local levels throughout the country to stop the trends in policing toward greater profiling of AMEMSA communities and individuals, video and electronic surveillance, and data collection and datamining.
- Surveillance advocates work closely with criminal justice experts and AMEMSA organizations to advance reforms; grassroots and community based organizing on surveillance and privacy increases; and Americans, particularly youth, build a relevant political constituency on these issues.
- Counterterrorism laws do not target charities or donors engaged in international peacebuilding and human rights advocacy and are not discriminatorily applied to Muslim charities or donors engaged in humanitarian aid efforts.
- Terrorist watch list procedures are improved so that only people with genuine ties to terrorism are placed on the lists and that there is an effective means of redress for those erroneously listed.

C. Challenging Profiling and Discrimination Targeted at Arab, Middle Eastern, Muslim, and South Asian Communities, and Expanding Their Voices

The Campaign's Goals

The Campaign will seek to end the practice of racial, ethnic, national origin, and religious profiling of AMEMSA individuals and communities; build their capacity to fight abusive

national security policies disproportionately directed at them; and promote their acceptance in American society.

Accomplishments and Challenges

As the “homegrown terrorism” narrative has gained currency, AMEMSA individuals and communities have faced heightened suspicion and discriminatory targeting by law enforcement that has taken on many forms, including intrusive border searches by DHS, FBI questioning of AMEMSA individuals at their homes and places of employment, surveillance of mosques, the overzealous use of informants and laws against providing material support to terrorists, and ethnic and religious profiling by police departments. Demonstrations coordinated by the Stop Islamization of America organization have erupted with increasing vitriol around the country against the construction of mosques and for the expulsion of Islam from the U.S. and reflect a rise in religious intolerance, racism, and xenophobia in America. Efforts to copycat Arizona’s S.B. 1070 legislation, which criminalizes the failure to carry immigration documents and gives police broad power to detain persons suspected of being in the U.S. illegally, threaten to expand law enforcement profiling and to increase the incidence of ethnic profiling.

Though the challenges are many, the Campaign has made significant inroads toward its goal of building the capacity and leadership of the small but growing set of AMEMSA organizations that are advocating for national security policies measures that comply with civil rights, civil liberties, and human rights principles. More resources will allow AMEMSA leaders to rise to national stature and mobilize constituencies with clout, and be integrated into broader policy debates and featured in the national media.

During the Obama administration, high level DHS and DOJ officials have actively sought out the Campaign’s AMEMSA grantees for policy discussions. At a meeting with DHS Secretary Janet Napolitano in January 2010 immediately after the failed Christmas Day airplane bombing, AMEMSA grantees **Muslim Advocates**, the **Sikh Coalition**, and **South Asian Americans Leading Together** presented an ultimately successful case for rescinding the 14-country enhanced security directive that the Transportation and Security Agency had issued and that targeted primarily Muslim travelers. AMEMSA grantees have also expanded Know Your Rights community education efforts at a time when FBI questioning of, and solicitation of informants from within, Muslim-American communities has increased. In addition, AMEMSA legal organizations are beginning to lead their own litigation strategies and file lawsuits that previously might have been filed by non-AMEMSA legal organizations such as the ACLU and CCR. Through a Freedom of Information Act request, **Muslim Advocates** secured the release of the FBI’s controversial 2008 Domestic Investigations and Operations Guidelines. The release of reports last year by the **Asian Law Caucus** and **Muslim Advocates** on intrusive stops of AMEMSA travelers at the U.S. border prompted a Congressional hearing in April 2009, after which DHS Secretary Napolitano committed to undertaking a review of border screening and search policies. And AMEMSA organizations are exercising leadership within the NSHR field and are collaborating with its surveillance experts and other advocates.

Campaign funding enabled the launch last fall of the End Racial Profiling Campaign by a coalition of traditional civil rights organizations and state, regional, and national organizations representing AMEMSA and immigrant communities that is being coordinated by the **Rights**

Working Group. On June 17, 2010, AMEMSA leaders of two Campaign grantees, **Muslim Advocates** and the **Sikh Coalition**, were invited by a House Judiciary Subcommittee to testify at a hearing on “Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy.” Then on July 15, 2010, the End Racial Profiling Act of 2010 was introduced in the House. On a related note, Attorney General Holder has committed to Congressman Keith Ellison, several Muslim community leaders, and **Muslim Advocates** to reviewing and revising the 2003 Attorney General Guidance on the Use of Race by Federal Law Enforcement Agencies and has set up an intradepartmental working group to lead this process. The DOJ working group has met with AMEMSA and other NSHR grantees to discuss amendments to the Guidance that would expand its reach to racial profiling in all contexts, including the national security, border, and immigration contexts.

In response to the recent upsurge in anti-Muslim bias and hate crimes across the country, **Muslim Advocates** organized a meeting on August 30 with faith leaders Rabbi David Saperstein of the Religious Action Center for Reform Judaism, Reverend Welton Gaddy of the Interfaith Alliance, and J. Brent Walker of the Baptist Joint Committee for Religious Liberty, and Assistant Attorney General for Civil Rights Tom Perez and other senior Justice Department officials, to discuss DOJ’s assumption of a leadership role both in quelling bigotry and in utilizing the recently enacted Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act to investigate perpetrators of hate crimes and hold them to account.

During the period leading up to the ninth anniversary of 9/11, heightened media attention was focused on opponents of the so-called “Ground Zero Mosque” – which, in fact, is slated for a site two blocks away from the World Trade Center site, is planned not as a mosque but as a community center open to all that includes a place of worship, and has as one of its primary missions the promotion of interfaith understanding – and a previously obscure pastor of a small Florida congregation who gained international attention when he threatened to burn Korans on 9/11. Unusual voices and allies from the Campaign community mobilized effectively in this period. The **September 11th Families for Peaceful Tomorrows**, a group of family members of the victims of 9/11, has brought the important voices of both AMEMSA and non-AMEMSA family members of 9/11 victims in support of the building of the community center, and New York City Mayor Michael Bloomberg – one of the most forceful and articulate supporters of the proposed center – reported that he found his discussions with family members heartening. The **National Security Network** and the **New America Foundation** spread the word through respected national security experts that burning the Koran supports al Qaeda recruitment efforts. In the days leading up to 9/11, the **New Evangelical Partnership for the Common Good** and **National Religious Campaign Against Torture** brought together Christian, Jewish, and Muslim faith leaders for a high profile summit against religious intolerance that was covered in full by C-SPAN and by CNN, the *New York Times*, and other major media outlets. In addition, leaders of **Muslim Advocates**, **Sikh Coalition**, and **South Asian Americans Leading Together** met with Attorney General Eric Holder and provided him the perfect setting in which to condemn the burning of the Koran and pledge his commitment to enforcing the laws against hate crimes and protecting the right to practice one’s religion in peace.

Strategies and Priorities

- Increase the level of capacity building support to leading AMEMSA organizations with the potential to become nationally recognized advocates.
- Continue to support the multi-stakeholder End Racial Profiling Campaign.
- Explore ways to further deepen and expand collaboration between our AMEMSA grantees and groups focused on surveillance, immigrant rights, and criminal justice.
- Mount an offensive strategy to counter bias-motivated violence.
- Through the Security and Rights Collaborative, support leadership development for AMEMSA advocates working on NSHR issues and bring additional funders into this arena.

Benchmarks and Impacts

- The visibility of progressive AMEMSA leaders and organizations on NSHR issues is raised.
- Opinion leaders, political leaders, religious leaders, and AMEMSA groups stand up against anti-Muslim and anti-Islam bigotry, and respect and religious tolerance prevail.
- Federal law enforcement agents are barred from targeting AMEMSA individuals and communities, and AMEMSA individuals and communities are educated on their legal rights and have access to legal advice and representation.
- The End Racial Profiling Act is passed into law and the Attorney General's guidance on the use of race is revised to ban profiling in the national security context.
- The FBI's domestic investigation guidelines are fully disclosed and revisions are secured to add protections against suspicionless investigations and raise the threshold of suspicion that will support FBI infiltration of mosques and questioning of AMEMSA individuals.
- AMEMSA, immigrant rights advocates, criminal justice reform advocates, and others work effectively together to change public perceptions and secure policy reforms on these issues.

D. Limiting Government Secrecy and Expanding Government Oversight and Accountability on National Security Matters

The Campaign's Goals

The Campaign will seek to decrease government secrecy; restore strong oversight of executive actions taken in the name of national security; and expose and hold U.S. government officials and private actors accountable for violations of law committed in the "war on terror," including but not limited to the torture and mistreatment of terrorism suspects.

Accomplishments and Challenges

On his first day in office, President Obama signed a Memorandum on Transparency and Open Government, and in December 2009, the administration released an Open Government Directive instructing agencies to take actions to open their operations to the public and promote transparency, participation, and collaboration. Then in May 2009, President Obama issued a Memorandum on Classified and Controlled Unclassified Information, and in December 2009, he signed an executive order directing a Fundamental Classification Guidance Review process. Campaign grantees, including the **Federation of American Scientists'** Project on Government Secrecy, the **National Security Archive Fund**, **OMB Watch**, and the **Project on Government Oversight (POGO)**, deserve recognition and credit for the years they have spent developing and promoting these important policy reforms to increase government transparency. In addition,

POGO continues to conduct well attended bipartisan training sessions for members of Congress and their staffs on the scope and use of legislative branch oversight powers.

In the narrower context of national security information, the administration's record on transparency has been mixed. The administration continues to assert a panoply of barriers to litigation by victims of U.S. "war on terror" abuses. After ordering a review of all pending litigation in which the Bush administration had invoked the state secrets privilege, Attorney General Holder issued rules in September 2009 that offered minor procedural reforms but maintained positions that have caused the privilege to derail legal challenges to government policies on detention, interrogation, torture, and surveillance. In September, in a sharply divided *en banc* ruling, the Ninth Circuit reversed a panel ruling and dismissed on state secrets grounds a lawsuit against Jeppesen Dataplan brought by former CIA prisoners who alleged that they had been tortured following rendition flights arranged by that company. The **ACLU** will be petitioning the Supreme Court for review.

In addition, national security whistleblowers and the press are coming under threat as DOJ aggressively pursues leaks of classified information, as evidenced by the recent indictment of National Security Agency whistleblower Thomas Drake, and a renewed subpoena demanding that *New York Times* reporter James Risen reveal the identity of his sources. In May of this year, in an act of prior restraint of the press, the Department of Defense barred a group of established reporters from attending Guantanamo military commission proceedings on the grounds that they had reported the identity of a witness notwithstanding the fact that his identity had previously been made public. The controversial release by Wikileaks of many tens of thousands of classified documents on military operations in Afghanistan is drawing greater attention to these issues. Legislation to expand federal whistleblower protections is haltingly making its way through Congress, and it remains possible that protections will be secured for national security whistleblowers.

In the area of accountability, Attorney General Holder took an important step forward in expanding federal prosecutor John Durham's mandate to include – in addition to his ongoing investigation into missing CIA videotapes of detainee interrogations – a preliminary review to determine if crimes had been committed in the interrogation of specific prisoners by CIA personnel who "went beyond the scope of legal guidance" in their actions against specific prisoners. This review is still pending.

President Obama has steadfastly refused requests to open an official inquiry into the torture and mistreatment of terrorist suspects and other abuses committed in the "war on terror," and early interest on the part of Representative Conyers, Senator Leahy, and other members of Congress to conduct an inquiry into the treatment of detainees has not been sustained. As observed by the ACLU in a July 2010 report: "[W]hile President Obama has disavowed torture, a strong democracy rests not on the goodwill of its leaders but on the impartial enforcement of the laws. Sanctioning impunity for government officials who authorized torture sends a problematic message to the world, invites abuses by future administrations, and further undermines the rule of law that is the basis of any democracy."

Campaign grantees have methodically and doggedly investigated and reported on abuses in carrying out counterterrorism policies. Under the auspices of the **Constitution Project**, a blue ribbon Task Force on Detainee Treatment may soon be launched to undertake a comprehensive investigation into the mistreatment of detainee terrorist suspects that can build the case for an official accountability process. The U.K., under the leadership of Conservative Party Prime Minister David Cameron, has announced an official national inquiry into allegations that British intelligence agents aided and abetted the U.S. torture program. The examples set by the U.K., as well as by Canada, Italy, and other U.S. allies, in pursuing accountability for torture will offer advocates new channels for pressuring the U.S. government to initiate an official inquiry into past abuses.

Strategies and Priorities

- Continue to support grantees leading efforts within the context of national security information to decrease government secrecy and defend whistleblower rights.
- Restore strong government oversight over, and hold U.S. government officials and private actors accountable for, abuses committed in the “war on terror.”
- Support the Task Force on Detainee Treatment and support advocates as they complement and amplify the work of the task force and push for an official inquiry into torture.
- Use the Campaign’s grantmaking and convening powers to build and mobilize broad public support on these issues.
- To free up funds for new priorities, reduce the level of general support grantmaking to groups that we currently co-fund with the Transparency and Integrity Fund and consider tie off grants to some of these groups. Direct future co-funding to groups that prioritize government secrecy, oversight, and accountability in the context of national security.

Benchmarks and Impacts

- The Task Force on Detainee Treatment documents abuses and effectively makes the case for an official inquiry into torture and detainee mistreatment that results in accountability for abuses, thereby helping ensure that U.S. policy never again sanctions torture or cruel treatment. Official inquiries are also opened into other forms of abuse committed in the “war on terror,” including warrantless electronic surveillance by the National Security Agency.
- Protections are secured for national security whistleblowers, and the government takes a fair and reasonable approach in dealing with whistleblowers and journalists who leak classified information in a responsible manner to shed light on matters of public concern.
- The Fundamental Classification Guidance Review process reduces the overclassification of information, and the National Declassification Center expedites the declassification of national security documents.

E. Shifting the National Security Paradigm Away From the Politics of Fear

The Campaign’s Goals

The Campaign will seek to dismantle the flawed “war on terror” paradigm and build broad and sustained public and policy maker support for national security policies that promote human rights, civil liberties, and the rule of law; and replace the politics of fear and anger with a national resilience that recognizes adherence to core democratic and open society values as

essential to our nation's long-term security and ability to deter and withstand future acts of terrorism.

Accomplishments and Challenges

The ability to shift the national security paradigm away from the politics of fear and anger is critical if the Campaign is to succeed on the above policy goals. Unfortunately, the Obama administration missed an important opportunity to introduce the concept of resilience to the public following the attempted Christmas Day attack by becoming flustered in its messaging over what was, at bottom, an unsophisticated and failed bombing attempt. But it seemed to have learned an important lesson. Its calm and effective response to the Times Square bombing attempt four months later, and the prompt arrest of the Faisal Shahzad, displayed resilience and inspired public confidence.

Grantees are working to advance the Campaign's paradigm shifting goals in a number of ways that hold promise. Through a consultancy with the Campaign, the **New America Foundation (NAF)** has laid the groundwork for dialogue, coordination, and collaboration between national security experts and human rights advocates – two communities that have traditionally maintained their distance from one another. At a closed convening on April 14, 2010, a group of 40 leading experts selected from the fields of national security, homeland security, counterterrorism, intelligence, law enforcement, defense, emergency preparedness, strategic communications, law, civil liberties, human rights, and AMEMSA communities jointly assessed the nature and extent of the threat to the U.S. posed by terrorism, America's preparedness to address this threat, and what civil society actors can do at this juncture to prevent the erosion of civil liberties and human rights in the event of another terrorist attack on the U.S.

As an outgrowth of this convening, a Resilience Working Group composed of approximately 20 thought leaders from the national security and human rights communities is being formed under the leadership of **NAF**, the **Center for National Policy**, the **National Security Initiative**, and **Human Rights First**. The group will focus on resilience as a framework for supporting smart and effective counterterrorism policies that hold true to American constitutional values. The group intends to take full advantage of the window of opportunity to claim, define, and shape the concept of resilience following the Obama administration's endorsement of the concept earlier this year in the Quadrennial Homeland Security Review and the National Security Strategy. The Resilience Working Group will conduct original research, produce a set of action-oriented materials, including talking points and communications kits for officials and other opinion leaders in times of crisis, and reach out to promote these ideas to thought leaders and the broader national security community.

Another promising model for paradigm-shifting is being developed by **Human Rights First**. This summer, HRF ran two highly successful summits on national security policy in Philadelphia and Chicago, at which more than a dozen retired generals and admirals met with close to two dozen Democratic and Republican candidates for Congressional seats from the states of Pennsylvania, Delaware, and Illinois. The organization hopes to replicate this model for

educating political candidates in a non-partisan manner in other states, including, potentially, Florida, New York, New Hampshire, and California.⁶

In addition, Campaign grantees are publishing and disseminating white papers and books and are sponsoring public forums with the goal of building the case for a resilient approach to the threat of terrorism. Examples include the **Cato Institute**'s 2010 book of collected essays, *Terrorizing Ourselves*; **New America Foundation**'s October 2009 forum, "Al Qaeda and Its Allies: The Endgame," which attracted a high-powered audience of over 450 and over 10,000 unique web viewers; and a May 2009 Civilian-Military Safe Havens Conference sponsored by the **Eisenhower Project** in cooperation with the U.S. Military Academy at West Point. In March 2010, **U.S. in the World** released a messaging tool kit for the use of the NSHR field that was developed in consultation with many of the Campaign's grantees and on the basis of message testing research. The messaging kit presents a set of communications strategies for advocates working to counter fear-driven "war on terror" narratives and encourage persuadable Americans to understand the issue of rights protections in a new light.

We have also supported the development and dissemination of companion websites, curricula, and educational materials targeted at high school students, college students, and young adults, in conjunction with films such as *Torturing Democracy*, *Secrecy*, and *Why We Fight*. To harness arts, culture, and new media for social change, we have funded the production and dissemination of two videos by **Link Media**, *Torture on Trial* and a filming of the Culture Project's *Blueprint for Accountability*. We plan to pursue the use of civics education and public education to build public support for the NSHR Campaign's policy goals.

Strategies and Priorities

- Continue to support the Resilience Working Group as it fosters collaboration between thought leaders in the national security and human rights communities and support the promising research and initiatives that the group identifies and develops.
- Explore and develop innovative strategies for the use of arts, culture, and new media to portray how a resilient America can withstand and recover from disastrous events and adapt to future threats without sacrificing human rights and civil liberties, as well as to broaden the base of support for all of the Campaign's goals.
- With OSI's Youth Initiatives program, develop a debate series on NSHR issues at the high school and college levels. We have already begun working to develop a Fall 2010 debate topic related to the "Ground Zero mosque" controversy and rising expressions of anti-Muslim sentiment in the U.S.
- Assist grantees in maximizing the opportunities for public education presented by the tenth anniversary of 9/11 in 2011.

Benchmarks and Impacts

- The Resilience Working Group develops a persuasive case for resilience and adherence to civil liberties and human rights in response to the threat of terrorism through its research,

⁶ All candidates will be invited to meet with the military leaders in order to hear fact-based information they can consider when formulating their policy positions, and all participating candidates will be assured that details of the meetings will remain private and that no endorsements will be based on the discussions.

outreach, communications kits, and media training, and this approach gains acceptance within policy circles and the general public.

- In the event of another terrorist attack, federal officials, first responders, governors, mayors, police chiefs, religious leaders, community leaders, and the media are trained and equipped to: avoid the counter-productive responses of fear and anger and encourage a measured response that is conducive to rational decision-making; preempt and fight against discriminatory actions and hate crimes against the AMEMSA community; and promote a resilience that adheres to core constitutional values.
- The use of arts, culture, and new media are effective in building resilience and respect for human rights in the face of the threat of terrorism.
- Civics education, civic engagement, and mobilization initiatives expand public and policymaker constituencies for, and engagement on, NSHR issues.
- NSHR grantees channel the media attention on the 10th anniversary of the 9/11 attacks to show how our long-term security interests are enhanced by dismantling the “war on terror” paradigm and promoting a rule of law-based approach.

F. Building the Capacity of Core Organizations to Advance Policy Reforms

The Campaign’s Goals

The Campaign will seek to support and build the capacity of a set of core organizations that are essential to advancing NSHR policy reform across multiple issues because of their expertise, leadership, and the value they place in collaboration and the building of constituencies; and will support shared communications resources for grantees.

Accomplishments and Challenges

The Campaign’s grantees are gaining wide visibility and recognition for their work in the media and with the public and policy makers. In a radical departure from the days of the Bush administration, the White House and key administration officials regularly meet with grantees and seek out their expertise and policy recommendations. However, as described in Section III, in the context of a tough external climate, a downturn in the economy, and the dashed hope that the Obama administration would swiftly reverse the Bush administration’s flawed counterterrorism policies, grantees are contending with strained budgets and reduced staffs.

Strategies and Priorities

- While continuing to address short-term needs, focus more resources on the long term goal of fostering a civil society infrastructure of core organizations and constituencies to press for the Campaign’s goals.
- Continue to connect grantees working on related issues, sponsor convenings for grantees, and support leadership development to advance policy reforms on the full range of NSHR issues.
- Continue to maintain a communications hub to disseminate daily news alerts and analysis, provide media training, state of the art media tools, and messaging guidance as appropriate, and offer technical assistance to organizations on request.
- Continue to support grassroots efforts to secure reforms at the state and local levels.
- Offer NSHR advocates working at the grassroots level opportunities to learn from experienced and successful leaders from other movements and discuss strategies for mobilizing grassroots support for controversial causes.

- Explore and develop strategies for building vibrant constituencies in support of the Campaign’s policy goals through civics education, civic engagement, and mobilizing efforts. Work with OSI colleagues to promote debate topics for high school and college students on NSHR issues.

Benchmarks and Impacts

- Grantee policy recommendations are adopted at the federal, state, and local levels.
- Civics education, civic engagement, and mobilization initiatives expand public and policymaker constituencies for, and engagement on, NSHR issues.
- Grantees receive high quality media training and tools that lead to increased media visibility and contribute to policy successes.
- Grantees work more effectively and collaboratively within their issue areas and across the boundaries that have tended to separate them, including geography and the Beltway divide.
- Additional funders support NSHR work bilaterally or through the Security and Rights Collaborative.

G. Cross-Program Strategies, Collaboration, and Coordination

In addition to the six Campaign goals discussed above, the NSHR Campaign will seek to deepen its cross-program strategies, collaboration, and coordination with other parts of U.S. Programs in order to leverage the expertise of our colleagues and their grantees for the benefit of the NSHR field and to advance USP’s goals more broadly.

To support our goals of ending the profiling of AMEMSA communities and opposing intrusive surveillance, we will work with the Equality and Opportunity Fund and Criminal Justice Fund to build alliances between the NSHR field and the immigrant rights movement, as well as between the NSHR field and advocates working for criminal justice reform. In addition, we will continue to participate in a cross-program effort that is being spearheaded by the Equality and Opportunity Fund to counter hate-based violence. We will also work with the Criminal Justice Fund to fight efforts to counter the overbroad application of terrorism statutes and the corrosive influence that terrorism prosecutions are exerting on routine criminal prosecutions and domestic detention.

In support of our goals of government openness, transparency, and accountability, and rights for national security whistleblowers, we will continue to partner closely with the Transparency and Integrity Fund. While we will reduce the level at which we co-fund general support grants in this area, we will continue to co-fund grants that address this cluster of issues in the context of national security.

In our work to strengthen grantee capacity and collaboration and enhance the use of civics education, civic engagement, arts, culture, and new media on NSHR issues, we will work with several parts of U.S. Programs. We plan to connect our grassroots grantees with those of the Democracy and Power Fund, so that they can share movement building strategies and learn from one another. With the Strategic Opportunity Fund, we plan to explore ways to use arts, culture, and new media to expand and deepen public understanding and engagement on our issues.

We also plan to collaborate with our USP colleagues as we develop state-based grantmaking strategies, most likely with a focus on Texas, where there are large and active AMEMSA communities that are building ties to activists who are monitoring abusive law enforcement and surveillance methods. Additionally, we will explore the possibility of targeting a city with an active African-American Muslim population in which the Campaign for Black Male Achievement is active, such as Chicago.

V. CONCLUSION

The suspension of civil liberties protections following a threat to national security and the return of those protections upon the resolution of the crisis are a recurring pattern in American history. The peace reached after World War I was disrupted by the Red Scare and the Palmer Raids, during which the government rounded up, interrogated, and deported thousands of resident aliens based on their suspected political associations with anarchists. The attack on Pearl Harbor during World War II was used as an excuse to intern more than 100,000 Americans of Japanese ancestry. The Cold War unleashed the ugly red baiting of the McCarthy era and fueled the escalation of a dangerous arms race with the former Soviet Union that subjected much of the world's population to the threat of nuclear annihilation. President Nixon, in his quest to suppress the civil rights and anti-war movements of the 1960s and 1970s, sanctioned the FBI COINTELPRO program, which used dirty tricks to disrupt and discredit these movements and conducted domestic surveillance of law-abiding Americans. But in each case, as tensions receded, human rights and democratic values were restored.

Today, our nation faces a more complex threat – one that is international in nature, rooted in ideology rather than conflict between nation states, and, in this globalized world, virtually impossible to eradicate. To make matters worse, the corrosive effects of the counterterrorism measures this nation has adopted in response to this threat are not easily cabined and are already corrupting other areas of central importance to OSI, including the integrity of the nation's criminal justice and immigration systems, and the nation's commitment to civil rights, civil liberties, and the rule of law. If America is to remain an open society in the face of an ongoing threat of terrorism, we must break free of the politics of fear and anger and recognize that our long-term national security depends on building a reputation in the world community for leadership in promoting human rights and international cooperation.

Since 9/11, OSI has stood out as a leader within the philanthropic community on NSHR issues. It is critical that OSI remain in this fight for the long haul. The NSHR Campaign's highly capable and multi-talented grantees and leaders are poised to take advantage of the many avenues for reform that remain open and to craft an approach to counterterrorism that will allow this nation to stay true to its principles.

For these reasons, we request reauthorization for the Campaign for the two year period from 2011 through 2012, and we urge OSI to make a commitment to remain in this field for the long term.

**Open Society Institute, U.S. Programs
National Security and Human Rights Campaign
Grantee Portfolio August 2010**

I. National Security and Human Rights Campaign Grants Approved in 2010

American Progressive Caucus Policy Foundation

\$200,000 over 2 years to support the National Security Program.

Center for Democracy and Technology

\$400,000 over 2 years to support the Project on Freedom, Security, and Technology.

Center for International Policy

\$150,000 over 14 months to support the Rule of Law Campaign, which aims to secure the closure of the Guantanamo Bay Detention Center in a rights-respecting manner.

Center for Investigative Reporting

\$275,000 over 18 months to support the investigative journalism project, America's War Within: Investigating the Legacy of Homeland Security.

Center for Media and Democracy

\$200,000 over 2 years to support the launch of the Project on Homeland Security *and* Liberty.

Center for National Policy

\$250,000 over 18 months to support the Building a Resilient America Project in creating a strategic communications agenda and to support the formation of the Resilience Working Group (a new working group of national security and human rights leaders that will help build public and policymaker support for the view that resilience and the observance of civil liberties are essential to national security).

Center for Victims of Torture

\$90,000 over 1 year to support the Regaining Momentum Against Torture Project.

Constitution Project

\$250,000 over 14 months to support an examination of U.S. policies governing the treatment of terrorism suspects in U.S. custody and preparation of a report and recommendations on how the nation can align its counterterrorism policies with the rule of law.

Duke University

\$10,000 over 3 months to support the conference, Weaving a Net of Accountability: Taking on Extraordinary Rendition at the State and Regional Level, hosted by the Duke Human Rights Center.

Federation of American Scientists

\$140,000 over 2 years to support the Project on Government Secrecy, which challenges excessive government secrecy and promotes public access to government information, particularly in the areas of intelligence, national security, and foreign policy, with a goal of invigorating public deliberation and oversight.¹

Focus Project, Inc.

\$150,000 over 14 months to support OMB Watch's Charity and Security Network.

¹ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$180,000.

Fund for Constitutional Government (OpenTheGovernment.org Coalition)

\$25,000 over 1 year to provide general support.²

Human Rights First

\$800,000 over 2 years to support the Law and Security Program in working to restore respect for human rights in U.S. national security policy. The Program will utilize policy advocacy, litigation, public education, and popular culture in its work to end and seek accountability for torture, and end the indefinite and secret detention of terrorism suspects. The grant will also support the continued mobilization of retired military leaders in public and policymaker education efforts on these issues and facilitation of the Resilience Working Group.

National Religious Campaign Against Torture

\$210,000 over 15 months to support the National Religious Campaign Against Torture and the Torture Education Program of the New Evangelical Partnership for the Common Good in their public education and advocacy on the issues of torture, detention, and accountability.

National Security Initiative

\$300,000 over 20 months to support the Terror, Resilience, and Rights: Next Steps project that will convene and facilitate the Resilience Working Group. In addition, this grant will support National Security Initiative's continued and expanded work on its Creating a Progressive Paradigm Project, which it started in 2009 with OSI funding to engage in media, policymaker, and opinion leader outreach on national security matters.

New America Foundation

\$300,000 over 16 months to support the Promoting Resilience, Preserving Liberties Project, which will continue a 2009 project funded by OSI to conduct evidence-based issue analysis and policy recommendations on counterterrorism, and, with other NSHR grantees, form the Resilience Working Group.

Proteus Fund, Inc.

\$750,000 over 1 year to support the Security and Rights Collaborative.

September 11th Families for Peaceful Tomorrow (A project of the Tides Center)

\$70,000 over 1 year to support the 9/11 Voices for Restoring Rule of Law Campaign to mobilize and amplify the voices of 9/11 family members in opposing violations of human rights committed in the "war on terror."

Trustees of Columbia University in the City of New York

\$210,000 over 20 months to support a project of Columbia Law School's Human Rights Institute to convene and provide coordinating support to litigators working on national security and human rights issues.

University of San Francisco

\$30,000 over 4 months to support the University of San Francisco School of Law's Witness to Guantanamo Project.

Young People For and Young Elected Officials Network (People for the American Way Foundation, fiscal sponsor)

\$25,000 over 2 years to provide general support.³

² This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$75,000.

³ This grant was co-funded with the Democracy and Power Fund, Transparency and Integrity Fund, Neighborhood Stabilization Initiative, and Campaign for Black Male Achievement. The total amount of this grant is \$850,000.

II. National Security and Human Rights Campaign Grants Approved in 2009

American Civil Liberties Union Foundation

\$500,000 over 2 years to support the Exposing and Opposing Government Surveillance Through Local Advocacy Project, a special initiative of the national ACLU and state affiliate campaigns in Illinois, Massachusetts, Maryland, New York, and Washington to roll back government monitoring of political activists and religious minorities.

American Environics (Proteus Fund, fiscal sponsor)

\$200,000 over 6 months as a matching grant to support American Environics' Real Security to Overcome Fear Project.

American Progressive Caucus Policy Foundation

\$100,000 over 1 year to support the National Security Project, which helps develop strategic working relationships between progressive organizations across the U.S. and the Congressional Progressive Caucus.

American Society of International Law

\$225,000 over 1 year to support the Mainstreaming International Law in Judicial Training and Education Project.

American University

\$25,000 over 1 year to support the Collaboration on Government Secrecy Project, an academic center devoted to government transparency, freedom of information, and the study of government secrecy in the U.S. and internationally.⁴

Amnesty International USA

\$125,000 over 1 year to support the Constituency Expansion Project.

Arab Community Center for Economic and Social Services

\$200,000 over 2 years to support the National Network for Arab American Communities, which seeks to strengthen grassroots institutions serving Arab Americans in order to deepen civic participation, promote economic empowerment, and enhance the community's ability to engage in policy advocacy, particularly on immigration reform and ending racial and religious profiling of Arabs and Muslims by national security agencies and law enforcement.⁵

Asian Law Caucus

\$200,000 over 2 years to support the organization's litigation, policy advocacy, and elevation of community voices to combat the racial and religious profiling and intrusive searching of individuals from South Asian, Muslim, Arab, and Middle Eastern communities by the Customs and Border Patrol, the Federal Bureau of Investigations, and local law enforcement.

Aspen Institute

\$125,000 over 1 year to support the Justice and Society Program's judicial seminars on international human rights and international humanitarian law and their application in American jurisprudence.

Bill of Rights Defense Committee

\$250,000 over 2 years as a matching grant to provide core operating support.

⁴ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$100,000.

⁵ This grant was co-funded with the Equality and Opportunity Fund. The total amount of this grant is \$300,000.

Brennan Center for Justice

\$200,000 over 2 years to provide general support.⁶

Cato Institute

\$80,000 over 2 years to support a public and policymaker education campaign on the threats to civil liberties that a national system of identification would pose.

Center for American Progress

\$50,000 over 1 year to establish the value of human rights in U.S. counterterrorism policy and establish a strategic partnership with American allies on counterterrorism rooted in respect for human rights and the rule of law.

Center for Constitutional Rights

\$90,674 over 1 year to provide general support.

Center for International Policy

\$125,000 over 7 months to support the closure of the Guantanamo Bay Detention Center in a rights-respecting manner.

Center for Strategic and International Studies

\$75,000 over 1 year to support the Human Rights and Security Initiative's Avoiding False Dichotomies and Crafting New Counterterrorism Policies in the First Year of the Obama Administration Project.

Center for Victims of Torture

\$80,000 over 1 year to support the Campaign to Ban Torture, which works with non-traditional human rights advocates to seek accountability for torture, engage validators to advance human rights in U.S. counterterrorism policy, and reclaim the American consensus against torture.

Constitution Project

\$225,000 over 21 months to support the Recruiting Validators Program, which aims to close the Guantanamo Bay Detention Center in a constitutional manner that avoids preventive detention and the revival of military commissions, and to support the Rule of Law Program, which addresses threats to constitutional liberties posed by the expansion of presidential authority in the name of fighting terrorism.

Crimes of War Education Project

\$100,000 over 1 year to provide general support.

Eisenhower Project

\$160,000 over 1 year to support outreach and education efforts targeted at students, the media, the military, policymakers, and the human rights community to increase awareness of the military-industrial complex and other forces shaping U.S. national security policy.

Focus Project (d/b/a OMB Watch)

\$100,000 over 2 years to provide general support.⁷

Foundation for Criminal Justice

\$200,000 over 22 months to provide general support.⁸

⁶ This grant was co-funded with the Transparency and Integrity Fund and Criminal Justice Fund. The total amount of this grant is \$1,250,000.

⁷ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$600,000.

⁸ This grant was co-funded with the Criminal Justice Fund. The total amount of the grant is \$425,000.

Government Accountability Project

\$150,000 over 2 years to support the Homeland Security Program as it advocates on behalf of national security whistleblowers and seeks to reform interrogation policy, illegal surveillance, excessive government secrecy, and politically-based discrimination.

Human Rights First

\$25,000 over 1 month to support communications work to advance President Obama's January 22, 2009, executive orders closing the Guantanamo Bay Detention Center and ending torture.

Human Rights First

\$25,000 over 2 months to support the Restoring Human Rights to U.S. Detention and Interrogation Policies: How to Evaluate the Obama Administration's First 100 Days Project.

Human Rights First

\$300,000 over 1 year to provide general support.

Human Rights First

\$375,000 over 7 months to support U.S. detention policies that promote human rights and national security.

Human Rights Watch

\$150,000 over 1 year to support the Closing Guantanamo Responsibly Project, which works to ensure that the Guantanamo Bay Detention Center is closed in a manner that is protective of human rights and that avoids preventive detention and trials by military commission, involuntary return of detainees to their countries of origin, and the return of Yemeni Guantanamo detainees to proxy detention.

Institute for Policy Studies

\$50,000 over 2 years to provide general support.⁹

International Center for Transitional Justice

\$125,000 over 1 year to support the U.S. Accountability Project, which shares its expertise with advocacy organizations in the U.S. that seek accountability for violations of rights committed by the U.S. in pursuit of counterterrorism policies following September 11, 2001.

Let's Breakthrough

\$100,000 over 2 years to provide general support.¹⁰

Link Media

\$25,000 over 2 months to create *Torture on Trial*, a half-hour feature video on seeking accountability for torture for broadcast on Link TV satellite television and on Link Media's website.

Link Media

\$15,000 over 2 months to support Link TV in recording, broadcasting, and streaming the production of the Culture Project's *Blueprint for Accountability: Working the Dark Side*.

⁹ This grant was co-funded with the Seize the Day Fund and Strategic Opportunities Fund. The total amount of this grant is \$400,000.

¹⁰ This grant was co-funded with the Equality and Opportunity Fund and Strategic Opportunities Fund. The total amount of this grant is \$300,000.

Muslim Advocates

\$320,000 over 2 years to provide core support to continue work to end the racial and religious profiling and discriminatory treatment of Muslim Americans and to strengthen Muslim American charitable organizations.

National Religious Campaign Against Torture

\$130,000 over 9 months to support the National Religious Campaign Against Torture and Evangelicals for Human Rights in their efforts to bring a permanent end to and seek accountability for U.S.-sponsored torture in the “war on terror.”

National Religious Campaign Against Torture

\$25,000 over 2 months to support the project, Religious Witness Calling on President Obama to Create a Commission of Inquiry.

National Religious Campaign Against Torture

\$20,000 over 4 months to support research and planning for a possible expansion of the organization’s work into two new areas in 2010: (1) encouraging the U.S. government to use its influence to end torture by other nations; and (2) working for an end of torture in U.S. prisons with a focus on SuperMax prisons.¹¹

National Security Archive Fund

\$450,000 over 2 years to support the Open Government and Accountability Program, which seeks to combat government secrecy in matters of national security and ensure independent oversight for U.S. national security practices.¹²

National Security Initiative

\$175,000 over 18 months to support the Creating a Progressive Paradigm Project to promote a shift away from the “war on terror” paradigm to an alternate foreign policy paradigm that is based on the values of due process of law and human rights.

National Whistleblower Center

\$225,000 over 21 months to support the Protecting National Security Whistleblowers Campaign.

New America Foundation

\$300,000 over 18 months to support the project, Leaving the Dark Side: Shaping a New U.S. Counterterrorism Narrative.

New York University

\$180,000 over 19 months to support the Advocating Against Torture: The Clinician’s Voice Project (a project of the School of Medicine’s Bellevue/NYU Program for Survivors of Torture) as it seeks to end U.S.-sponsored torture and pursues accountability for health care professionals who participated in the torture of detainees in U.S. custody.

New York University

\$65,000 over 1 year to support the Human Rights in Transition: Ensuring Truth and Justice in U.S. National Security Project (a project of the School of Law’s Center for Human Rights and Global Justice) to challenge abuses committed in the extraordinary rendition, detention, and interrogation of terrorism suspects in the “war on terror.”

¹¹ This grant was co-funded with the Criminal Justice Fund. The total amount of this grant is \$30,000.

¹² This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$650,000.

New York University

\$150,000 over 18 months to support an empirical research study on the effects of procedural fairness and legitimacy in the context of counterterrorism policing in Muslim communities in New York and London, and the dissemination of the researchers' findings and recommendations.

OneAmerica (formerly Hate Free Zone Washington)

\$100,000 over 2 years to provide general support.¹³

Physicians for Human Rights

\$25,000 over 3 months to support the Afghan Graves Massacre Media Project.

Physicians for Human Rights

\$200,000 over 2 years to support the Campaign for Justice to obtain a full public accounting of U.S. interrogation abuses; pursue a full investigation of the November 2001 massacre in Dasht-e-Leili, Afghanistan; restore U.S. adherence to basic standards of medical neutrality; end indefinite detention of national security detainees; and advocate for policies that prohibit health professionals from engaging in torture and coercive interrogation.

Project on Government Oversight

\$200,000 over 2 years to provide general support.¹⁴

Rights Working Group (Asian American Justice Center, fiscal sponsor)

\$60,000 over 8 months to support the first phase of the End Racial Profiling Campaign.

Rights Working Group (A project of the Tides Center)

\$200,000 over 16 months to support the Racial Profiling: Time to Face the Truth Campaign, which works to educate policymakers, the media, and the public on the importance of ending racial, ethnic, and religious profiling by federal, state, and local law enforcement agencies, and mobilize affected communities and their allies to push for concrete policy reforms.¹⁵

Shomrey Mishpat Rabbis for Human Rights/North America

\$100,000 over 18 months to support the organization's public education, advocacy, and religious and moral leadership in efforts to seek accountability for U.S.-sponsored torture and to end arbitrary and indefinite detention by the U.S.

Sikh Coalition

\$200,000 over 2 years to support advocacy and grassroots mobilization to combat post-9/11 racial and religious profiling.

South Asian Americans Leading Together

\$100,000 over 2 years to provide core support to the organization as it deepens its work with the National Coalition of South Asian Organizations and pursues public education and advocacy against profiling and discrimination and in support of immigration reform.¹⁶

¹³ This grant was co-funded with the Equality and Opportunity Fund. The total amount of this grant is \$200,000.

¹⁴ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$700,000.

¹⁵ This grant was co-funded with the Equality and Opportunity Fund and Criminal Justice Fund. The total amount of this grant is \$350,000.

¹⁶ This grant was co-funded with the Equality and Opportunity Fund. The total amount of this grant is \$200,000.

Yale University

\$75,000 over 1 year to support the National Litigation Project at Yale Law School as it challenges unlawful U.S. counterterrorism policies through litigation, legislative advocacy, policy development, and public education.

III. National Security and Human Rights Campaign Grants Approved in 2008**Active Voice (Community Initiative Fund of San Francisco Foundation, fiscal sponsor)**

\$50,000 over 15 months to support the use of the feature-length film, *The Visitor*, as an education and advocacy tool on immigration detention and deportation in Muslim, Arab, and South Asian communities.¹⁷

American Environics (Proteus Fund, fiscal sponsor)

\$250,000 over 7 months to support American Environics' Putting Fear to Work Project.

American Library Association

\$350,000 over 3 years to develop and execute a three-year campaign to engage librarians in public education and advocacy to advance privacy rights.

American University

\$25,000 over 1 year to support the Collaboration on Government Secrecy Project, an academic center devoted to government transparency, freedom of information, and the study of government secrecy in the U.S. and internationally.¹⁸

Amnesty International USA

\$750,000 over 3 years to support the Counter Terror with Justice Campaign to build and mobilize, through grassroots education and advocacy, a movement of concerned individuals and communities dedicated to securing human rights protections in U.S. national security policies.

Cato Institute

\$150,000 over 3 years to support the Civil Liberties and Counterterrorism Initiative as it engages with national security, counterterrorism, and foreign policy experts from across the political spectrum in the development and dissemination of policy recommendations for an effective counterterrorism strategy that protects civil liberties, human rights, and the rule of law.

Cato Institute

\$37,150 over 1 year to support a project to educate policymakers and the public on the dangers of a national system of identification and monitor efforts to create such a system.

Center for Constitutional Rights

\$400,000 over 2 years to support litigation and public education to restore civil liberties and human rights protections that have been undermined by the U.S. in the "war on terror."

Center for Democracy and Technology

\$500,000 over 2 years to support the Freedom, Security, and Technology Project and the Digital Fourth Amendment Initiative.

¹⁷ This grant was co-funded with the Immigrants' Rights portfolio. The total amount of this grant is \$100,000.

¹⁸ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$100,000.

Center for Investigative Reporting

\$250,000 over 1 year to support the investigative journalism project, America's War Within: Investigating the Legacy of Homeland Security.

Center for Investigative Reporting

\$26,000 over 7 months to support the development of the investigative reporting project, The Homeland Security Bonanza: Scrutinizing State and Local Law Enforcement Spending After 9/11.

Center for National Security Studies

\$500,000 over 30 months to support the Center for National Security Studies, a project of the National Security Archive Fund, as it works to restore civil liberties and human rights in U.S. counterterrorism policies.

Center for National Security Studies

\$220,000 over 1 year to support the Domestic Intelligence and Surveillance: Preparing for the Transition Project.

Center for Victims of Torture

\$155,000 over 7 months to support the Campaign to Ban Torture in generating support for a Declaration of Principles for a Presidential Executive Order on Prisoner Treatment, Torture, and Cruelty.

Constitution Project

\$100,000 over 2 years to advance the objectives of human rights, liberty and security, and criminal justice advocacy communities during the transition period by providing policymakers with a collaborative catalogue of policy objectives and reforms designed to promote the rule of law, and to support the Rule of Law Program, which addresses threats to constitutional liberties posed by the expansion of presidential authority in the name of fighting terrorism.¹⁹

Demos: A Network for Ideas and Action

\$100,000 over 6 months to support U.S. in the World's Helping Progressive Leaders Counter the Political Use of Fear Initiative of its Managing the Fear Factor Project.

Eisenhower Project

\$155,000 over 1 year to support the core operating costs of the organization as it undertakes outreach and education to increase awareness of the impact of the military-industrial complex and other forces shaping U.S. foreign policy in the "war on terror."

Electronic Frontier Foundation

\$300,000 over 2 years to support the Civil Liberties Project and FOIA Litigation for Accountable Government Project.²⁰

Federation of American Scientists

\$75,000 over 2 years to support the Project on Government Secrecy, which challenges excessive government secrecy and promotes public access to government information, particularly in the areas of intelligence, national security, and foreign policy, with a goal of invigorating public deliberation and oversight.²¹

Focus Project (d/b/a OMB Watch)

\$250,000 over 2 years to support the Charity and Security Network.

¹⁹ This grant was co-funded with the Criminal Justice Fund. The total amount of this grant is \$150,000.

²⁰ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$400,000.

²¹ This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$150,000.

Focus Project (d/b/a OMB Watch)

\$100,000 over 1 year to support the initiatives on government transparency, accountability, and regulatory policy.²²

Foundation for Criminal Justice

\$150,000 over 1 year to provide general support.

Human Rights First

\$400,000 over 2 years to support the Law and Security Program and the End Torture Now Campaign.

International Center for Transitional Justice

\$125,000 over 18 months to support the Accountability for Abuses in the United States “War on Terror” Project.

Migration Policy Institute

\$150,000 over 31 months to support the Mobility and Security Program in promoting rights-sensitive approaches to immigration and migration in U.S. national security policies and to prevent security concerns from distorting U.S. immigration policy.

Muslim Advocates

\$200,000 over 1 year to build capacity to educate and engage Muslim American lawyers and community leaders in advocacy against abusive national security policies targeted at their communities.

National Religious Campaign Against Torture

\$145,000 over 1 year to support the National Religious Campaign Against Torture and Evangelicals for Human Rights to continue their work with faith-based communities to end U.S.-sponsored torture.

National Religious Campaign Against Torture

\$40,000 over 7 months to support Evangelicals for Human Rights’ conference, Religious Faith, Torture and Our National Soul.

National Security Archive Fund

\$300,000 over 18 months to support the Openness Advocacy Project to develop and advance reforms on government secrecy.

National Security Archive Fund

\$25,000 over 2 months to support an educational campaign around the documentary film, *Torturing Democracy*.

New Democracy Project

\$30,000 over 19 months to support the production and dissemination of a non-partisan, agency-by-agency presidential transition document.²³

PEN American Center

\$150,000 over 2 years to support the Campaign for Core Freedoms, an advocacy initiative that challenges post-9/11 threats to freedom of expression.

²² This grant was co-funded with the Transparency and Integrity Fund. The total amount of this grant is \$250,000.

²³ This grant was co-funded with the Democracy and Power Fund, Transparency and Integrity Fund, and Women’s Rights Program. The total amount of this grant is \$100,000.

President and Fellows of Harvard College

\$60,000 over 1 year to develop and implement an outreach program for the documentary film, *Secrecy*.

Proteus Fund

\$2,000,000 over 2 years to initiate a donor collaborative fund to complement and be informed by OSI's campaign to restore human rights and promote a progressive national security policy.

Psychologists for Social Responsibility

\$24,685 over 1 year to support the development of the *Psychology and Military Intelligence Casebook for Interrogation Ethics*.

Shomrey Mishpat Rabbis for Human Rights/North America

\$40,000 over 1 year to support the Campaign to End U.S.-Sponsored Torture and K'vod Habriot Network.

University of California, Berkeley

\$40,000 over 10 months to support the Human Rights Center and School of Law's International Human Rights Law Clinic in disseminating its report and book, *Guantanamo and Its Aftermath: A Study of Detainees Released from U.S. Custody at Guantanamo Bay, Cuba*.

Yale University

\$24,949 over 3 months to support the convening, *After Guantanamo*.

IV. OSI Civil Liberties Portfolio Grants Approved in 2007

Arab Community Center for Economic and Social Services

\$200,000 over 2 years to support the National Network for Arab American Communities' civil liberties advocacy.

Bill of Rights Defense Committee

\$1,066 over 9 months to support an organizational strategic planning process.

Bill of Rights Defense Committee

\$200,000 over 2 years to provide general support.

Brennan Center for Justice

\$200,000 over 2 years to support the Project on Liberty and National Security.

Cato Institute

\$25,935 over 1 year to support a project to educate policymakers and the public on the dangers of a national system of identification and monitor efforts to create such a system.

Center for Democracy and Technology

\$200,000 over 2 years to support the Freedom, Security, and Technology Project and Digital Fourth Amendment Initiative.

Center for National Security Studies

\$125,000 over 19 months to support the Center for National Security Studies, a project of the National Security Archive Fund.

Center for National Security Studies

\$150,000 over 1 year to support the Center for National Security Studies, a project of the National Security Archive Fund.

Electronic Frontier Foundation

\$100,000 over 1 year to support the Civil Liberties Litigation Project in its work to prevent unlawful government surveillance and to protect privacy and freedom of expression.

Electronic Frontier Foundation

\$50,000 over 1 year to support the Surveillance Self-Defense Project's creation of an online guide for protecting private data against government surveillance.

Human Rights First

\$100,000 over 1 year to support the Law and Security program and the End Torture Now Campaign.

National Religious Campaign Against Torture

\$50,000 over 1 year to support the Evangelicals for Human Rights Education Program.

National Religious Campaign Against Torture

\$75,000 over 1 year to provide religious groups and people of faith with a platform to speak out against America's use of torture in the "war on terror."

National Security Archive Fund

\$55,000 over 1 year to support The Torture Archive, a searchable database of primary source documents relating to the detention and interrogation of individuals by the U.S. in connection with the "war on terror."

New York Civil Liberties Union Foundation

\$200,000 over 2 years to support the Security and Surveillance Project.

New York University

\$200,000 over 2 years to support the Survivors of Torture, Advocating Against Torture: The Clinician's Voice Project (a project of the School of Medicine's Bellevue/NYU Program).

OneAmerica (formerly Hate Free Zone Washington)

\$100,000 over 2 years to provide general support.

Project on Government Oversight

\$200,000 over 2 years to support the Congressional Oversight Initiative and the launch of the Inspector General Reform Initiative.

The New Press

\$24,500 over 5 months to support an outreach campaign to promote the book, *Less Safe, Less Free*, by David Cole and Jules Lobel.

Yale University

\$166,545 over 2 years to support a Yale Law School Litigation Facilitator.

V. OSI Civil Liberties Portfolio Grants Approved in 2006

Bill of Rights Defense Committee

\$60,000 over 1 year to provide general support.

Brennan Center for Justice

\$100,000 over 1 year to support the Project on Liberty and National Security.

Cato Institute

\$31,295 over 1 year to support a project to educate policymakers and the public on the dangers of a national system of identification and monitor efforts to create such a system.

Center for Democracy and Technology

\$100,000 over 1 year to support the Project on Freedom, Security, and Technology.

Center for Democracy and Technology

\$100,000 over 1 year to support the Digital Fourth Amendment Project in developing and promoting principles for the protection of privacy against government intrusions in the digital age.

Churches' Center for Theology and Public Policy

\$50,000 over 1 year to support the National Religious Campaign Against Torture's launch of the Evangelicals for Human Rights Project.

Electronic Privacy Information Center

\$75,000 over 1 year to support the Open Government Project.

Georgetown University

\$18,700 over 2 years to support Georgetown University Law Center's litigation before the U.S. Supreme Court in *Hamdan v. Rumsfeld*.

Health Privacy Project

\$150,000 over 1 year to support the Consumer Coalition for Health Privacy.

National Security Archive Fund

\$55,000 over 1 year to support The Torture Archive, a searchable database of primary source documents relating to the detention and interrogation of individuals by the U.S. in connection with the "war on terror."

VI. OSI Civil Liberties Portfolio Grants Approved in 2005

Bill of Rights Defense Committee

\$60,000 over 1 year to provide general support.

Brennan Center for Justice

\$100,000 over 1 year to support the Project on Liberty and National Security.

Center for Constitutional Rights

\$50,000 over 1 year to support the Civil Liberties Defense and Education Project.

Center for National Security Studies

\$50,000 over 1 year to provide general operating support for the Center for National Security Studies, a project of the National Security Archive Fund.

One America (formerly Hate Free Zone Washington)

\$50,000 over 1 year to provide general support.

VII. OSI Civil Liberties Portfolio Grants Approved in 2004

American Library Association

\$13,500 over 1 year to support an amicus brief in the case of *Cheney v. U.S. District Court*.

Bill of Rights Defense Committee

\$50,000 over 1 year to provide general support.

Center for Democracy and Technology

\$100,000 over 1 year to support the Project on Freedom, Security, and Technology.

Center for National Security Studies

\$100,000 over 1 year to support the Project to Defend Civil Liberties and Protect Security of the Center for National Security Studies, a project of the National Security Archive Fund.

Electronic Privacy Information Center

\$100,000 over 1 year to support the Open Government Project.

VIII. OSI Civil Liberties Portfolio Grants Approved in 2003

Center for Democracy and Technology

\$100,000 over 1 year to support litigation and public education to protect privacy in the context of electronic surveillance.

Center for National Security Studies

\$100,000 over 1 year to support the Emergency Project to Defend Civil Liberties and Protect Security of the Center for National Security Studies, a project of the National Security Archive Fund.

Constitution Project

\$100,000 over 1 year to support the Liberty and Security Initiative.

Human Rights First

\$100,000 over 1 year to support activities related to the detention of non-citizens and military tribunals.

National Whistleblower Center

\$50,000 over 1 year to support the Democracy and Security Project.

Project on Government Oversight

\$50,000 over 1 year to support the Erosion of Government Transparency Project.

The New Press

\$25,000 over 1 year to support outreach for a book of essays, *Lost Liberties: Ashcroft and the Assault on Personal Freedom*.

Open Society Institute, U.S. Programs
National Security and Human Rights Campaign
Selected Events, 2008-2010

I. Field Convenings

- February 29, 2008: **Arab, Middle Eastern, Muslim, and South Asian Advocates Convening**
(Facilitator: Aziz Huq, Brennan Center for Justice)

- May 1-3, 2008: **First NSHR Field Convening**
 1. **Strategies to Shift the War on Terror Paradigm**
(Speaker: Ann Beeson, OSI)
 2. **Communications Capacities: A Review of the Field and Communications Strategy Session**
(Presenters: Lynn Fahselt and Peter Ferenbach, ReThink Media)
 3. **Shifting the War on Terror Paradigm: An Exploration of Worldview, American Values, and Lessons from the Field**
(Speakers: Matt Foreman, Evelyn and Walter Haas, Jr. Fund; Richard Healey, Grassroots Policy Project; Laura Murphy, Laura W. Murphy, LLC; and Ted Nordhaus, American Enviroincs)
 4. **Using Values to Shift Worldview**
(Speakers: Richard Healthy, Grassroots Policy Project; and Ted Nordhaus, American Enviroincs)
 5. **Expanding Constituencies to Shift the Paradigm: Strategies for Cultivating Allies and Finding Common Values**
(Speakers: Maria Eschaveste, Nueva Vista Group; Jim Harper, Cato Institute; Clarissa Martinez de Castro, National Council of La Raza; and Hilary Shelton, NAACP)

- November 21, 2008: **Second NSHR Field Convening, Building Communications Capacity for the National Security and Human Rights Field**
 1. **Presentations and Discussion of Research Commissioned by OSI and Other Relevant Research**
 - Polling Meta-Analysis by Public Agenda, *Terrorism, Civil Liberties, and the Public*
 - Media Audit by Spitfire Strategies, *Four Main Issues Relating to National Security and Human Rights*
 - Relevant research from Fenton Communications and Opportunity Agenda (not commissioned by OSI)
 - Research by American Enviroincs, *National Security and Human Rights Report on Focus Groups*;
 - Research Synthesis and Analysis by U.S. in the World, *Protecting Rights and Liberties in the Context of National Security: Research on Communications Challenges and Opportunities*
 2. **Discussion of insights from breakout sessions on implications and applications of the research presentations, and identification and discussion of common themes and messages**

- October 29-30, 2009: **Third NSHR Field Convening, Effective Messaging & Media Outreach**
 1. **Talking About Human Rights and Civil Liberties in the Context of National Security**
 - a. Welcome
(*Speakers: Staff, US in the World; Deepa Iyer, South Asian Americans Leading Together; Ann Beeson, OSI; Lisa Graves, Center for Media and Democracy; and Peter Ferenbach, ReThink Media*)
 - b. Promoting Progressive Thinking about Human Rights and Civil Liberties in Fearful Times: Report on new Public Opinion and Message Development Research
(*Facilitator: Sharon Kelly, Human Rights First; Presenters: Meg Bostrom and Axel Aubrun, Topos Partnership*)
 - c. Impact and Implications for Communicators: What Do the Research Findings Mean for Advocates' Messaging and Media Strategies?
(*Speakers: Staff, US in the World; Lisa Graves, Center for Media and Democracy; Elizabeth Condon, Center for Victims of Torture; Jen Nessel, Center for Constitutional Rights; and Nadine Wahab, Rights Working Group*)
 2. **Media Training for Senior Spokespeople and Communications Leaders**
 - a. Shaping the Debate Through the Nation's Op-Ed Pages
(*Speaker: Katie Orenstein, Op-Ed Project*)
 - b. Creating a Buzz in the Blogosphere
(*Speaker: Colin Delany, ePolitics.com*)
 - c. Successful Television Interviews
(*Speakers: John Neffinger and Matt Kohut, KNP Communications*)
 - d. Making Your Points on Radio
(*Speakers: Jimmy Durschlag and Halimah Collingwood, Mainstream Media*)

II. Funder Roundtable Panels (held in conjunction with Field Convenings; funders were invited to plenary sessions at Field Convenings)

- May 2, 2008: **A Briefing for Funders on Preventive Detention and Congressional Developments**
(*Presenters: Elisa Massimino, Human Rights First; and Wendy Patten, OSI-DC*)
- November 21, 2008: **Implications of the Change in Administration and Congress on National Security and Human Rights Grantmaking**
(*Moderator: Nancy Chang, OSI; Speakers: Heather Hurlburt, National Security Network; Farhana Khera, Muslim Advocates; and Joe Onek, Senior Counsel to House Speaker Nancy Pelosi*)
- October 29, 2009: **Taking Stock of the Obama Administration at Nine Months: Reflections from Leaders of the National Security and Human Rights Field**
(*Moderator: Nancy Chang, OSI; Speakers: Representative Tom Andrews, Center for International Policy; Shahid Buttar, Bill of Rights Defense Committee; Jameel Jaffer, ACLU; and Vince Warren, Center for Constitutional Rights*)

III. Funder Briefings

- January 7, 2009: **Foundation Presidents' Convening on National Security and Human Rights**
 1. **Renewing Respect for Human Rights and the Rule of Law:** An overview of the short-term opportunities and long-term efforts that are required to shift away from the global war on terror
(*Speaker: Dean Harold Hongju Koh, Yale Law School*)
 2. **Reclaiming and Restoring the Balance of Power:** Perspectives on the judiciary, congressional and executive branches
(*Moderator: Frederick A.O. Schwarz, Jr., Brennan Center for Justice; Speakers: Danielle Brian, Project on Government Oversight; and Anthony Romero, ACLU*)
 3. **Addressing Public Fear to Shift the Global War on Terror Paradigm**
(*Moderator: Priscilla Lewis, U.S. in the World Initiative, Dēmos; Speakers: Jim Harper, Cato Institute; and Michael Shellenberger, American Environics*)
 4. **Profiling, Law Enforcement and Counter-Terrorism: Views from Affected Communities**
(*Moderator: Aziz Huq, Brennan Center for Justice and University of Chicago Law School; Speakers: Farhana Khera, Muslim Advocates; and Cecilia Muñoz, National Council of La Raza and incoming White House Director for Intergovernmental Affairs*)
 5. **Examining Opportunities and Challenges in the New Administration**
(*Moderator: Catherine Powell, Fordham University School of Law; Speakers: Mike Lux, Progressive Strategies LLC and Advisor to the Transition, Office of Public Liaison; and Suzanne Spaulding, Principal, Bingham Consulting Group*)
 6. **Implications for the National Security and Human Rights Campaign**
(*Speaker: Ann Beeson, OSI*)
- August 6, 2009: **OSI Funder Briefing on Rights Working Group and the End Racial Profiling Campaign**
(*Facilitators: Nancy Chang and Maria Teresa Rojas, OSI*)
- July 1, 2010: **OSI Funder Briefing on the Charity and Security Network: Reforming National Security Policies on Charities in the Wake of the Supreme Court's Humanitarian Law Project Ruling**
(*Moderator: Nancy Chang, OSI; Speakers: Kay Guinane, Charity and Security Network Program Manager; David Cole, lead counsel in Holder v. Humanitarian Law Project; Heather Hanson, Mercy Corps; and Ellen Willmott, Save the Children*)

IV. Public Forums

- December 9, 2008: **Obama's Dilemma: Guantanamo and Its Aftermath**
(*Moderator: Jamil Dakwar, ACLU; Speakers: Eric Stover, UC Berkeley Human Rights Center and UC Berkeley School of Public Health; Laurel Fletcher, UC Berkeley School of Law; Jonathan Mahler, journalist*)

- June 3, 2009: **Seeking Accountability for Torture – Photography as Evidence** (co-sponsored with the OSI Documentary Photography Project)
(Moderator: Stephen Rickard, OSI-DC; Speakers: Matthew Alexander, former Air Force Interrogator, Iraq, and Open Society Fellow; Chris Bartlett, Photographer; Susan Burke, Burke O'Neil LLC; Dr. Allen Keller, Bellevue/NYU Program for Survivors of Torture)
- September 15, 2009: **Whistleblowers: A Conversation with Daniel Ellsberg & John Dean**
(Moderator: Ann Beeson, OSI; Speakers: John Dean and Daniel Ellsberg)
- December 7, 2009: **The Interrogator's Dilemma: Abuse, Accountability, and the Myth of the "Ticking Time Bomb"** (co-sponsored with the Open Society Fellowship)
(Moderator: Nancy Chang, OSI; Speaker: Matthew Alexander, former Air Force Interrogator, Iraq, and Open Society Fellow)
- January 22, 2010: **One Year and Counting: When and How Will Guantánamo Close?** (co-sponsored with the Constitution Project and Rockefeller Brothers Fund)
(Moderator: Jeffrey Toobin, The New Yorker; Speakers: Stephen Abraham, US Army Intelligence Corps (Reserves); Honorable John Coughenour, Federal District Court, Seattle, Washington; Talat Hamdani, September 11th Families for Peaceful Tomorrows; Shane Kadidal, Center for Constitutional Rights; Celeste Koeleveld, U.S. Attorney's Office, Southern District of New York (1991-2008))
- September 13, 2010: **None of Us Were Like This Before: A Book Discussion on Soldiers and Torture**
(Moderator: Nancy Chang, OSI; Speakers: Joshua Phillips, journalist and author of None of Us Were Like This Before; Michael Blake, Iraq war veteran; Dr. Steven Xenakis, psychiatrist and retired Brigadier General; Susan Burke, Attorney, Burke O'Neil LLC; and Professor Darius Rejali, Reed College)

V. Grantee Convenings

- September 18-19, 2008: **OSI Summit on Systemic Racial Discrimination in the Criminal Justice System**
(Moderator: Nancy Chang, OSI; Speakers: Brad Seligman, Impact Fund; Farhana Khera, Muslim Advocates; Aziz Huq, Brennan Center for Justice; Barry Krisberg, National Council on Crime and Delinquency; and Deborah Ramirez, Northeastern University)
- April 20, 2009: **Meeting of Paradigm Shifting Grantees**
(Facilitator: Nancy Chang, OSI; Participants: Patrick Doherty, and Peter Bergen, New America Foundation; Tim Lynch, Christopher Prebel, and Jim Harper, Cato Institute; Heather Hurlburt, New Security Network; Priscilla Lewis; US in the World; Lorelei Kelly and Darcy Burner, ProgressiveCongress.org; Stephen Rickard, Morton Halperin, and Wendy Patten, OSI-DC)

- November 6, 2009: **Joint Meeting of OSI's Privacy and Immigration Advocates on the Threat of a National Identification System Through Comprehensive Immigration Reform**
(Facilitators: Nancy Chang and Maria Teresa Rojas, OSI)
- April 14, 2010: **New America Foundation Convening – Homeland Security, Counterterrorism, and Strategic Resilience** (Introductions from Steve Coll, New America Foundation; and Aryeh Neier and Nancy Chang, OSI)
 1. **Assessing Threats and Vulnerabilities - Al Qaeda Strategy and Capabilities; Domestic Extremism; and Large-Scale Threats**
(Moderator: Steve Coll, New America Foundation; Presenters: Peter Bergen, Glenn Carle, David Schanzer, Karen Greenberg, Gary Ackerman, Laurie Garrett, and Bruce Schneier)
 2. **Assessing the Homeland Security Enterprise - Legal Landscape; Homeland Security in the Obama Administration; Law Enforcement and Intelligence; MASA-Federal Relations; and Strategic Communications**
(Moderator: Patrick Doherty, New America Foundation; Presenters: William Banks, Kim Scheppele, Randy Beardsworth, Juan Zarate, Mike German, James Bamford, Suzanne Spaulding, Farhana Khera, Imam Johari Abdul Malik, Ken Ballen, Joshua Geltzer, Lawrence Wilkerson, and Priscilla Lewis)
 3. **Building Resilience: Assessing Our Priorities - Legal Frameworks; Physical Resilience; and Societal Resilience**
(Moderator: Steve Coll, New America Foundation; Presenters: Joanne Mariner, Jameel Jaffer, Stephen Flynn, Patrick Doherty, Aziz Huq, Amardeep Singh, David Gray, Janice Jenner, and Heather Hurlburt)

VI. Grantee Events

- **Yale Law School Litigation Meetings** (supported by OSI grants)
 1. April 23-24, 2008: **Beyond Guantanamo Convening**
 2. June 8-9, 2009: **Barriers to Accountability Convening**
- May 1, 2009: **Civilian-Military Safe Havens Conference** (supported by OSI grant)
(Facilitator: Eugene Jarecki, The Eisenhower Project)
- March 17, 2010: **Discussion on Racial and Religious Profiling Issues between AMEMSA Advocates and Surveillance Advocates**
(Facilitators: Deepa Iyer, SAALT; Amardeep Singh, Sikh Coalition)

VII. Sessions at International Human Rights Funders Group Meetings

- July 21-22, 2008 Semi-Annual Meeting: **Guantanamo and Beyond: Detention of Terror Suspects**

(Facilitator: Wendy Patten, OSI; Speakers: Elisa Massimino, Human Rights First; Ken Roth, Human Rights Watch. Session Organizers: Sophia Conroy, OSI, and Puja Dhawan, Public Interest Projects.)

- March 18-19, 2009 Federal Policy Briefing: **Bringing Human Rights Home**
(Moderator: Ann Beeson, OSI; Speakers: Joseph Zogby, Chief Counsel to Senator Durbin, Senate Judiciary Committee; Catherine Powell, Fordham Law School. Session Organizers: Sophia Conroy, OSI, and other members of planning committee.)
- March 18-19, 2009 Federal Policy Briefing: **Restoring the Rule of Law: Pursuing Accountability for Abuses Committed in the Struggle Against Terrorism**
(Moderator: Wendy Patten, OSI-DC; Speakers: US Representative John Conyers, Jr. (D-MI); Suzanne Spaulding, Bingham Consulting Group. Session Organizers: Sophia Conroy, OSI, and other members of planning committee.)
- July 13-14, 2009 Semi-Annual Meeting: **Military Justice: Promoting Human Rights and Accountability in War**
(Facilitator: Robert Goldman, Washington College of Law at American University; Panelists: Eugene Fidell, National Institute of Military Justice and Sara Solewinski, Campaign for Innocent Victims in Conflict. Session Organizers: Merrill Sovner and Sophia Conroy, OSI)
- January 25-26, 2010 Semi-Annual Meeting: **Half Empty or Half Full? National Security and Human Rights: The Obama Administration After One Year**
(Facilitator: Vince Warren, Center for Constitutional Rights; Speakers: Shahid Buttar, Bill of Rights Defense Committee; Kay Guinane, Charities and Security Network; Admiral John D. Hutson, Franklin Pierce Law Center. Session Organizers: Sophia Conroy, OSI; Lesley Carson, Wellspring Advisors; Dimple Abichandani, Proteus Fund; Kica Matos, Atlantic Philanthropies)
- July 13-14, 2010 Semi-Annual Meeting: **Implications for Funders of U.S. Supreme Court Ruling on Material Support to Terrorist Organizations**
(Speakers: Nancy Chang, OSI; Conrad Martin, Stewart R. Mott Charitable Trust)

The so-called "Ground Zero Mosque" has become a rallying point for anti-Muslim and anti-Islamic sentiment. Members of the **September 11th Families for Peaceful Tomorrows**, a National Security and Human Rights Campaign grantee, have engaged in an endless round of media engagements to present the voices of both Arab, Muslim, Middle Eastern and South Asian (AMEMSA) and non-AMEMSA family members of 9/11 victims who support religious tolerance as a core American value.

NY Daily News

Defeat mosque demagogues: Why aren't they bothered by the nearby stripclub?

[Errol Louis](#)

Thursday, August 12th 2010, 4:00 AM

Well-meaning people like [Gov. Paterson](#) and [Abraham Foxman](#), national director of the [Anti-Defamation League](#), are wasting their time trying to cut a deal with the politicians and ideologues hellbent on blocking the creation of the proposed Islamic cultural center in lower [Manhattan](#).

Paterson offered to help find an alternate location for the [Park51](#) cultural center - and even suggested giving state land for the project, which would almost certainly violate the [First Amendment](#) ban on using government resources to support or establish a particular religion.

The loudest voices in the braying chorus denouncing a so-called "Ground Zero Mosque" belong to people - many of them non-New Yorkers - with no interest in honest debate, dialogue or true solutions.

Some are plain and simple bigots, like right-wing radio host and ex-[Tea Party Express](#) spokesman [Mark Williams](#), who on May 21, 2009, posted on his personal blog the view that "Islam is a seventh century death cult coughed up by a psychotic pedophile and embraced by defective, tail-sprouting, tree-swinging, semihuman, bipedal primates with no claim to be treated like human beings."

Williams and other Islam haters should be ignored if possible and beaten back if necessary. Never should they be coddled or accommodated.

The fact that national leaders continued to embrace Williams after his public garbage-spewing speaks volumes about the true sentiments behind those who pretend that moving the proposed center "a few blocks" away from Ground Zero would alleviate legitimate concerns.

The just-a-few-blocks people are uninformed, disingenuous or both. There has been a mosque on Warren St., a stone's throw from Ground Zero, since 1970, the year the [World Trade Center](#) opened. It draws 1,000 worshipers each Friday, according to the group's website, [masjidmanhattan.com](#).

Do today's complainers now want to expel Masjid Manhattan? For that matter, I wonder why they haven't said a word about [New York Dolls](#), a strip club that's as close to Ground Zero as the proposed Park51 center.

The nightly boozing and lap dances do not seem to have disturbed the sensibilities of those now earnestly defending the sacred ground near the World Trade Center site.

For that matter, I wonder why they haven't objected to the space inside [the Pentagon](#) where Muslim prayer, holiday celebrations and readings of the Koran have gone on for nearly a decade.

[Mayor Bloomberg](#) showed the proper way to deal with the issue. Flanked by clergy of many faiths, he gave the finest speech of his career this month.

"It is my hope that the mosque will help to bring our city even closer together, and help repudiate the false and repugnant idea that the attacks of 9/11 were in any way consistent with Islam," said Bloomberg. "Muslims are as much a part of our city and our country as the people of any faith - and they are as welcome to worship in lower Manhattan as any other group."

It is fitting, and exactly right, that the elected leader of our city should defend tolerance and the Constitution against attacks on both.

Bloomberg proved himself to be in a league above candidates who are desperately trying to fan anti-Islamic sentiment to revive their sagging poll numbers, with no concern about the bitterness and division they will likely leave behind.

I'm talking about people like the Republican candidates for [New York](#) governor, ex-[Rep. Rick Lazio](#) and [Buffalo](#) businessman [Carl Paladino](#), who are trying to outdo each other in devising ways to block the cultural center. Presidential wanna-bes like [Newt Gingrich](#), [Sarah Palin](#), [Rudy Giuliani](#) and [Tim Pawlenty](#) have also come out against the project.

These shallow pols could learn a lesson from people like [Donna Marsh O'Connor](#), a spokeswoman for September 11th Families for Peaceful Tomorrows.

O'Connor lost her daughter [Vanessa Lang Langer](#) in the World Trade Center attacks - but she and her group support the Park51 project.

"Whatever this experiment [called] [America](#) ever was, the most important thing is that we test our ability to keep our liberties in times of difficulty and conflict," O'Connor told me. "We're all happy to be free when it's easy. This is not easy."

History - not to mention voters - will judge our leaders on whether they took the easy, unprincipled path, or instead chose to defend our Constitution and the protection of an embattled religious minority when it mattered most.

http://www.nydailynews.com/opinions/2010/08/12/2010-08-12_defeat_mosque_demagogues_why_arent_they_bothered_by_the_nearby_stripclub.html

On June 17, 2010, the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on "Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy." Leaders from the **Sikh Coalition** and **Muslim Advocates**, two of the National Security and Human Rights Campaign's grantees, and the NAACP were among those invited to testify. These organizations are part of the End Racial Profiling Campaign, which was launched in the fall of 2009 by the **Rights Working Group** with support from the National Security and Human Rights Campaign, Criminal Justice Fund, and Equality and Opportunity Fund. In July 2010, the following month, the End Racial Profiling Act of 2010 was introduced in the House. This article from *The Times of India* provides an indication of the attention that is paid around the world to the profiling of Arab, Middle Eastern, Muslim, and South Asian communities in the U.S.

THE TIMES OF INDIA

In US, Sikhs succeed in push for understanding their unique culture

Chidanand Rajghatta, TNN, Jun 17, 2010, 08.33pm IST

WASHINGTON: Sikh, Muslim, and Black witnesses will be testifying on the issue of racial profiling before the [US Congress](#) on Thursday in an unprecedented hearing on a subject that has caused much heartburn among minorities.

The hearing, on "Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy" has been called by the [House Judiciary Subcommittee](#) on the Constitution, Civil Rights, and [Civil Liberties](#) amid complaints of incessant and increasing marking in the US of minorities and colored people, particularly at airports.

While Muslims claim to be familiar targets during airport security screening, Sikhs, who are often mistaken for Islamists because of their distinctive turban, are also victims of the process. The fact that the more religious [Sikhs](#) are required to carry articles which security folks deem to be dangerous (viz kirpan) also puts them at odds with the screening process.

All these matters will come up for discussion when Amardeep Singh, Program Director of the advocacy group Sikh Coalition, steps forward to testify before the House Panel. [Coalition](#) representatives said it is the first time a Sikh organization has ever testified before the [United States Congress](#) on an issue of national significance and the subject of the testimony will be the Sikh experience at airports across the United States.

Also listed to testify before the panel are Farhana Khera of the Muslim Advocates organization and [Hillary Shelton](#) of the National Association for Advancement of Colored People (NAACP), while the law enforcement perspective will come from Christopher Burbank, chief of police in [Salt Lake City](#) and two law school professors.

The [Obama administration](#) has generally been more sensitive to minority concerns -- certainly more than some European nations -- and has stepped up its outreach to them.

Last November, the [White House](#) for the first time hosted a reception commemorating the 540th

anniversary of the birth of Guru Nanak, an event President Obama mentioned to Prime Minister [Manmohan Singh](#) when they met.

While the election of a minority Sikh as India's Prime Minister has ennobled the Indian people and their liberal spirit, and raised the profile of the community in the U.S and across the world, no less a contribution has come from Sikh advocacy groups in the US which have campaigned vigorously to educate Americans about the religion.

Both the Sikh Coalition and United Sikhs have been tireless in sensitizing US law-makers and law-enforcers about facets of Sikhism, including having to wear and carry distinctive articles of faith such as the kada and kirpan. As a result, they have won important concessions from law enforcement officials, including separate private screenings at airports if security personnel feel the need to touch their turbans.

Last month, in another unique first, Sikh advocacy groups succeeded getting the Texas public school system, with 4.8 million students, to prescribe mandatory teaching in schools about Sikhism. "What does this mean for our community?" the Sikh Coalition asked, and explained, after that victory. It means that [Maneera Kaur](#) (Dallas, TX) will not have to make Sikh presentations in her classroom every year, because now her teachers are making them. It means that Tejinder Singh's (Austin, TX) teacher will no longer ask him to take his patka off because she will understand the significance of our articles of faith. This means that students like [Jaspreet Singh](#) (Houston, TX), who were constantly bullied, will have a more respectful and understanding environment in school.

<http://timesofindia.indiatimes.com/World/US/In-US-Sikhs-succeed-in-push-for-understanding-their-unique-culture/articleshow/6059797.cms>

The American Civil Liberties Union, a grantee of the Open Society Institute, will be petitioning the Supreme Court for a review of the Ninth Circuit's en banc ruling in this case.

The New York Times

September 8, 2010

Court Dismisses a Case Asserting Torture by C.I.A.



Shaun Curry/Agence France-Presse — Getty Images

Binyam Mohamed, an Ethiopian now in London, says he was arrested in Pakistan and handed to the C.I.A., which then passed him to the security service in Morocco, where he was tortured.

By **CHARLIE SAVAGE**

WASHINGTON — A federal appeals court on Wednesday ruled that former prisoners of the **C.I.A.** could not sue over their alleged torture in overseas prisons because such a lawsuit might expose secret government information.

The sharply divided ruling was a major victory for the Obama administration's efforts to advance a sweeping view of executive secrecy powers. It strengthens the White House's hand as it has pushed an array of assertive counterterrorism policies, while raising an opportunity for the Supreme Court to rule for the first time in decades on the scope of the president's power to restrict litigation that could reveal state secrets.

By a 6-to-5 vote, the United States Court of Appeals for the Ninth Circuit **dismissed** a lawsuit against Jeppesen Dataplan Inc., a Boeing subsidiary accused of arranging flights for the Central Intelligence Agency to transfer prisoners to other countries for imprisonment and **interrogation**. The **American Civil Liberties Union** filed the case on behalf of five former prisoners who say they were tortured in captivity — and that Jeppesen was complicit in that alleged abuse.

Judge Raymond C. Fisher described the case, which reversed an earlier decision, as presenting “a painful conflict between human rights and national security.” But, he said, the majority had “reluctantly” concluded that the lawsuit represented “a rare case” in which the government’s need to protect state secrets trumped the plaintiffs’ need to have a day in court.

While the alleged abuses occurred during the Bush administration, the ruling added a chapter to the Obama administration’s aggressive national security policies.

Its counterterrorism programs have in some ways departed from the expectations of change fostered by [President Obama](#)’s campaign rhetoric, which was often sharply critical of former President [George W. Bush](#)’s approach.

Among other policies, the Obama national security team has also authorized the C.I.A. to try to [kill a United States citizen](#) suspected of terrorism ties, [blocked efforts](#) by detainees in Afghanistan to bring [habeas corpus](#) lawsuits challenging the basis for their imprisonment without trial, and continued the C.I.A.’s [so-called extraordinary rendition program](#) of prisoner transfers — though the administration has forbidden torture and says it seeks assurances from other countries that detainees will not be mistreated.

The A.C.L.U. vowed to appeal the Jeppesen Dataplan case to the Supreme Court, which would present the Roberts court with a fresh opportunity to weigh in on a high-profile test of the scope and limits of presidential power in counterterrorism matters.

It has been more than 50 years since the Supreme Court issued a major ruling on the [state-secrets privilege](#), a judicially created doctrine that the government has increasingly used to win dismissals of lawsuits related to national security, shielding its actions from judicial review. In 2007, the Supreme Court [declined](#) to hear an appeal of a similar rendition and torture ruling by the federal appeals court in Richmond, Va.

The current case turns on whether the executive can invoke the state-secrets privilege to shut down entire lawsuits, or whether that power should be limited to withholding particular pieces of secret information. In April 2009, a three-judge panel on the Ninth Circuit [adopted the narrower view](#), ruling that the lawsuit as a whole should proceed.

But the Obama administration appealed to the full San Francisco-based appeals court. A group of 11 of its judges reheard the case, and a narrow majority endorsed the broader view of executive secrecy powers. They concluded that the lawsuit must be dismissed without a trial — even one that would seek to rely only on public information.

“This case requires us to address the difficult balance the state secrets doctrine strikes between fundamental principles of our liberty, including justice, transparency, accountability and national security,” Judge Fisher wrote. “Although as judges we strive to honor *all* of these principles, there are times when exceptional circumstances create an irreconcilable conflict between them.”

Ben Wizner, a senior A.C.L.U. lawyer who argued the case before the appeals court, said the group was disappointed in the ruling.

“To this date, not a single victim of the Bush administration’s torture program has had his day in court,” Mr. Wizner said. “That makes this a sad day not only for the torture survivors who are seeking justice in this case, but for all Americans who care about the rule of law and our nation’s reputation in the world. If this decision stands, the United States will have closed its courts to torture victims while providing complete immunity to their torturers.”

Some plaintiffs in the case said they were tortured by [C.I.A. interrogators](#) at an agency “black site” prison in Afghanistan, while others said they were tortured by Egypt and Morocco after the C.I.A. handed them off to foreign security services.

The lead plaintiff is [Binyam Mohamed](#), an Ethiopian citizen and legal resident of Britain who was arrested in Pakistan in 2002. He claimed he was turned over to the C.I.A., which flew him to Morocco and handed him off to its security service.

Moroccan interrogators, he said, held him for 18 months and subjected him to an array of tortures, including cutting his penis with a scalpel and then pouring a hot, stinging liquid on the open wounds.

Mr. Mohamed was later transferred back to the C.I.A., which he said flew him to its secret prison in Afghanistan. There, he said, he was held in continuous darkness, fed sparsely and subjected to loud noise — like the recorded screams of women and children — 24 hours a day.

He was later transferred again to the military prison at Guantánamo Bay, Cuba, where he was held for an additional five years. He was released and returned to Britain in early 2009 and is now free.

There were signs in the court’s ruling that the majority felt conflicted. In a highly unusual move, the court ordered the government to pay the plaintiffs’ legal costs, even though they lost the case and had not requested such payment.

Judge Fisher, who was a senior Justice Department official before President [Bill Clinton](#) appointed him to the bench in 1999, also urged the executive branch and Congress to grant reparations to victims of C.I.A. “misjudgments or mistakes” that violated their human rights if government records confirmed their accusations, even though the courthouse was closed to them.

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He cited as precedent payments made to Latin Americans of Japanese descent who were forcibly sent to United States internment camps during World War II. But the five dissenting judges criticized the realism of that idea, noting that those reparations took five decades.

“Permitting the executive to police its own errors and determine the remedy dispensed would not only deprive the judiciary of its role, but also deprive plaintiffs of a fair assessment of their claims by a neutral arbiter,” Judge Michael Daly Hawkins wrote.

After the A.C.L.U. filed the case in 2007, the Bush administration asked a district judge to dismiss it, submitting public and classified declarations by the C.I.A. director at the time, [Michael Hayden](#), arguing that litigating the matter would jeopardize national security.

The trial judge dismissed the case. As an appeal was pending, Mr. Obama won the 2008 presidential election. Although he had criticized the Bush administration's frequent use of the state-secrets privilege, in February 2009 his weeks-old administration told the appeals court that it agreed with the Bush view in that case.

In September 2009, Attorney General Eric H. Holder Jr. issued a new state-secrets privilege policy requiring high-level approval, instructing officials to try to avoid shutting down lawsuits if possible, and forbidding its use with a motive of covering up lawbreaking or preventing embarrassment.

The administration told the court that using the privilege in the Jeppesen Dataplan case complied with that policy.

Judge Fisher agreed that "the government is not invoking the privilege to avoid embarrassment or to escape scrutiny of its recent controversial transfer and interrogation policies, rather than to protect legitimate national security concerns."

Jeppesen Dataplan and the C.I.A. referred questions to the Justice Department, where a spokesman, Matthew Miller, praised its new standards.

"The attorney general adopted a new policy last year to ensure the state-secrets privilege is only used in cases where it is essential to protect national security, and we are pleased that the court recognized that the policy was used appropriately in this case," Mr. Miller said.

A version of this article appeared in print on September 9, 2010, on page A1 of the New York edition.

http://www.nytimes.com/2010/09/09/us/09secrets.html?_r=3&hp

Two National Security and Human Rights Campaign grantees, the **American Civil Liberties Union** and the **PEN American Center**, teamed up on the eighth anniversary of the “torture memos” to advocate for accountability for the torture and mistreatment of terrorism suspects by U.S. personnel, and to contrast the recent decision of the U.K. to take the important step of opening an official inquiry into torture with the failure of the U.S. to do so.

McClatchy Washington Bureau

Posted on Sun, Aug. 01, 2010

Commentary: Torture memos — Accountability everywhere but here?

Jameel Jaffer and Larry Siems | The American Civil Liberties Union

Last updated: August 02, 2010 08:02:41 AM

Eight years ago today, armed with two legal opinions that gutted the prohibition against torture, CIA agents and contractors began the month-long "enhanced interrogation" of Abu Zubaydah in a secret CIA dungeon in Thailand.

Throughout August, drawing from the specific menu of "techniques" the memos offered, interrogators slammed Abu Zubaydah repeatedly into walls, locked him in "confinement boxes," deprived him of sleep, shackled him naked in stress positions, and waterboarded him 82 times. They stopped waterboarding him when they finally concluded he was not concealing information — and then officials flew from Washington to Thailand and insisted on watching an eighty-third session.

Today, nobody argues that Abu Zubaydah wasn't tortured. His name has disappeared from dozens of charge sheets against other detainees because the information he gave was so clearly tainted by his treatment. And yet we have done practically nothing to address the abuse that he and many others suffered, as U.S. and international laws against torture require — no prosecutions or investigations of senior officials who oversaw the torture program, no meaningful acknowledgment or redress for the program's survivors.

President Bush, Vice President Dick Cheney, legal memo author John Yoo, and the other architects of the program brazenly discuss their crimes in public appearances, still pressing the memos' flawed line that the brutal treatment of prisoners was necessary, that it was justifiable as self-defense, or simply that the President can ignore the law in the name of national security.

Meanwhile, the world is beginning to shame us for our inaction.

We now know that Abu Zubaydah's treatment in Thailand was the foundation of a kind of Ponzi scheme for torture, in which others were tortured until they confessed to fictitious plots that Abu Zubaydah had invented for his interrogators. One of those caught in this scheme was Binyam Mohamed, who was tortured in Pakistan and then rendered to Morocco and tortured some more to press him to confess to participating in a fantastical "dirty bomb" plot with Jose Padilla. There never was such a plot, and finally, last year, Mohamed was released from Guantanamo; he is now back home in the U.K. There, the entire country knows his story, thanks partly to the fact that U.K. courts refused to be bullied by the U.S. into suppressing evidence of his abuse.

The British are responding to the Binyam Mohamed revelations as they should: they are demanding that British intelligence agents who aided and abetted the U.S. torture program be investigated and held accountable for their actions. A few weeks ago, in announcing an official national inquiry into these allegations of complicity, British Prime Minister David Cameron told the House of Commons that "the longer these questions remain unanswered, the bigger the stain on our reputation as a country that believes in freedom, fairness, and human rights grows."

Similar processes are unfolding in other countries.

An Australian high court has ruled that its government, too, must answer allegations that it aided the U.S. in the rendition and torture of one of its citizens. Prosecutors in Munich and in Rome have issued indictments against CIA agents in connection with renditions carried out on their soil. Poland and Lithuania are investigating their government's connection to CIA black sites in their countries. And Canada conducted a national inquiry leading to an official apology and millions of dollars of compensation to Maher Arar, a Canadian citizen whom the U.S. mistakenly sent to Syria to be tortured.

By contrast, both the Bush and Obama administrations fought to keep Maher Arar's case out of American courts, arguing that airing his uncontested and internationally accredited story could damage diplomatic relations and national security. Last month, the Supreme Court refused to reconsider the dismissal of the case. A low point in the United States' undignified slink from accountability, the symbolism of our nation's highest court literally refusing to hear the case of a man that the world knows was kidnapped and tortured couldn't be clearer.

The situation we are facing now will only get worse.

Even here, lower courts hearing the habeas corpus petitions of Guantanamo detainees are routinely adding to the damning record of abuse.

"Throughout his detention, a constant barrage of physical and psychological abuse was employed to manipulate him and program him into telling investigators what they wanted to hear," one recent opinion reads; another, "There is unrebutted evidence in the record that, at the time of the interrogations at which they made the statements, both men had recently been tortured."

Every week we stand more exposed—before the world, and before ourselves.

The past is not receding: the record is more present and more visible all the time. The torture of Abu Zubaydah eight years ago this month diminished our standing in the world. As more cases of torture and abuse come to light, and as many of our indispensable allies renounce their own collusion with the U.S. torture program, the question now is whether we'll diminish ourselves even further by not owning up to truths that are widely known.

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<http://www.mcclatchydc.com/2010/08/01/98406/commentary-torture-memos-accountability.html>

Human Rights First, a National Security and Human Rights Campaign grantee, has been cultivating since 2004 a coalition of retired military leaders as spokespersons against torture and for the position that America's national security and military success depends on its compliance with the Geneva Conventions and human rights principles. In June 2010, the organization ran a successful non-partisan summit on national security policy in Philadelphia at which thirteen retired generals and admirals met with eleven candidates for the U.S. House of Representatives from Pennsylvania and Delaware. Two of the participating generals authored this opinion piece in the *Pittsburgh Post-Gazette*.



Try terror suspects in civilian courts: Al-Qaida types are criminals; we should not accord them the status of warriors

Wednesday, June 02, 2010

By Gen. Charles C. Krulak and Gen. Joseph P. Hoar

Pennsylvania's primary election captured the nation's attention as a bellwether for November's midterm vote. For months, candidates sparred about health care and jobs, bailouts and balanced budgets. This week, we are in Pennsylvania to meet with a bipartisan group of congressional candidates to ensure that another important issue is not overlooked this election year: national security.

Recent knee-jerk reactions by some lawmakers to events like the Time Square bombing attempt are part of a dangerous trend to use fear to try to circumvent our nation's core principles and laws. How the United States holds enemy prisoners in our custody, how we treat them, how we gain intelligence from them, and how we try them are serious issues that deserve serious consideration. We must be wary of those who use these issues for political gain, or who hold a finger to the wind of shifting public opinion.

As retired generals who served for years in our armed forces, we believe the decision about how and where to try terrorist suspects is far too important to our national security to be determined based on political considerations.

The goal of terrorist organizations like al-Qaida is to instill fear -- to persuade the public that they are a powerful, unstoppable global threat and the Western world should simply cave in to their demands. They call themselves "jihadists" to give themselves the status of holy warriors. In fact, they are criminals, thugs and mass murderers.

Trial in military courts accords terrorists the status of warriors. Treating terrorists as soldiers instead of criminals supports their claim that their murderous attacks are justifiable acts of war. This is a profound tactical mistake. It dishonors every American who wears our uniform.

Do we really want to legitimize terrorists with the same term we apply to America's sons and daughters? The Guantanamo Review Board's findings, made public Friday, that the vast majority of detainees held at Guantanamo were low-level fighters only further calls into question the wisdom of a military commissions system that elevates defendants by treating them as if they were special.

Fear of terrorism has made the American public susceptible to demagoguery and disinformation -- and misinformation is what is being peddled. The public has been falsely told that federal courts are not as skilled as military commissions or as good at handling classified evidence. That's nonsense.

Despite the word "military," military commissions are not tougher, safer, faster or smarter than federal courts. Just the opposite. Since 9/11, military commissions have yielded only three convictions. In the same period, regular civilian courts have won convictions in over 195 cases involving connections to al-Qaida or its allies.

These include such notorious terrorists as the "shoe bomber" Richard Reid, the so-called "20th hijacker," Zacharias Moussaoui, and scores of others who have failed to grab the limelight.

When Congress passed the Military Commissions Act of 2009, it required the commissions to follow the civilian courts' rules for handling classified information. So the distinction between military commissions and federal courts in their ability to protect sensitive information is simply that the civilian courts have nearly 30 years of experience doing so successfully, while military commissions have none.

Military lawyers vehemently oppose the proposal to use the commissions for these reasons and more. We should be listening to them.

Some claim that federal trials will give the 9/11 suspects a soapbox from which to spew their hateful ideology. In fact, it's the judges in military commissions who have at times allowed suspects to rant. Meanwhile, the seasoned federal judge in the Moussaoui case effectively silenced the defendant's anti-American outbursts.

Some in Congress have suggested that it is inappropriate to give the mastermind of the 9/11 attacks the same constitutional rights as an American citizen. Yet military commissions also follow the U.S. Constitution's mandate to treat suspects as innocent until proven guilty. If what some politicians really want are Star Chamber trials with muzzled defendants and predetermined guilty verdicts, then we'd prefer they kept the U.S. military out of it.

Gen. Colin Powell recently said that the military commissions had proved a disappointment and that he had "no problem" with terrorist suspects being given due process in civilian courts here in the United States.

"We have two million people in jail," Gen. Powell said. "They all have lawyers. They all went before the court of law. And they all got hammered."

Our nation doesn't need more legal controversy. The focus of world attention should return to the crimes that were committed against us on 9/11.

A presidential decision to reverse the attorney general and reject civilian trials for terrorists would also send a dangerous message to al-Qaida and its sympathizers worldwide. It would tell Osama bin Laden that we think his followers are so powerful and so terrifying that our justice system, the finest in the world, cannot handle them. Those of us who know the smell of cordite

on the battlefield understand that sending such a message violates a basic rule of warfare: Never encourage or empower the enemy.

This week, as we meet with Pennsylvania's congressional candidates, we will urge them to not allow backroom deals and political posturing to dictate national security policy.

We encourage you to do the same. It's important to know whether candidates will support policies that empower the enemy, or will take a stand for the legal principles that have supported and strengthened our nation for centuries.

Charles C. Krulak was commandant of the Marine Corps from 1995 to 1999. **Joseph P. Hoar** was commander in chief of U.S. Central Command from 1991 to 1994.

<http://www.post-gazette.com/pg/10153/1062314-109.stm>

Physicians for Human Rights, a National Security and Human Rights grantee, issued a report, *Experiments in Torture: Human Subject Research and Experimentation in the “Enhanced” Interrogation Program* <http://phrtorturepapers.org/?page_id=87>, that concluded, based on its review of thousands of documents, that U.S. physicians and medical professionals may have been involved in experimentation on terrorism suspects held in detention to: determine how “enhanced interrogation techniques” should be deployed; “calibrate the level of pain caused by the techniques in an effort to keep the pain from crossing the threshold that the Department of Justice Office of Legal Council had defined as constituting torture”; and “create a basis for legal defenses for individuals engaging in acts that arguably constituted torture.” The report also shows how health care professionals, while supposedly working to ensure the “safety” of detainees as they were being interrogated, may have instead played the role of increasing the effectiveness of “enhanced interrogation techniques.” The *New York Times* editorial below is followed by the Executive Summary of the report.

The New York Times

June 7, 2010

Doctors Who Aid Torture

Disturbing new questions have been raised about the role of doctors and other medical professionals in helping the Central Intelligence Agency subject terrorism suspects to harsh treatment, abuse and torture.

The Red Cross previously documented, from interviews with “high-value” prisoners, that medical personnel helped facilitate abuses in the C.I.A.’s “enhanced interrogation program” during the Bush administration. Now Physicians for Human Rights [has suggested](#) that the medical professionals may also have violated national and international laws setting limits on what research can be performed on humans.

The physicians’ group, which is based in Cambridge, Mass., analyzed a wide range of previously released government documents and reports, many of them heavily censored. It found that the Bush administration used medical personnel — including doctors, psychologists and physician assistants — to help justify acts that had long been classified by law and treaty as illegal or unethical and to redefine them as safe, legal and effective when used on terrorism suspects.

[The group’s report](#) focused particularly on a few issues where medical personnel played an important role — determining how far a harsh interrogation could go, providing legal cover against prosecution and designing future interrogation procedures. The actual monitoring data are not publicly available, but the group was able to deduce from the guidelines governing the program what role the health professionals played, assuming they followed the rules.

In the case of waterboarding, a technique in which prisoners are brought to the edge of drowning, health professionals were required to monitor the practice and keep detailed medical records. Their findings led to several changes, including a switch to saline solution as the near-drowning agent instead of water, ostensibly to protect the health of detainees who ingest large volumes of liquid but also, the group says, to allow repeated use of waterboarding on the same subject.

Another government memorandum concluded from medical observations on 25 detainees that combining several techniques — say a face slap with water dousing or a stress kneeling position — caused no more pain than when the techniques were used individually. That was used to justify the application of multiple techniques at the same time.

The group concludes that health professionals who facilitated these practices were in essence conducting research and experimentation on human subjects. The main purposes of such research, the group says, were to determine how to use various techniques, to calibrate the levels of pain and to create a legal basis for defending interrogators from potential prosecution under antitorture laws. The interrogators could claim that they had acted in good faith in accord with medical judgments of safety and had not intended to inflict extreme suffering.

The report from the physicians' group does not prove its case beyond doubt — how could it when so much is still hidden? — but it rightly calls on the White House and Congress to investigate the potentially illegal human experimentation and whether those who authorized or conducted it should be punished. Those are just two of the many unresolved issues from the Bush administration that President Obama and Congressional leaders have swept under the carpet.

<http://www.nytimes.com/2010/06/08/opinion/08tue1.html>

PHR

**Physicians for
Human Rights**



**EXPERIMENTS
IN TORTURE:**
Evidence of Human Subject
Research and Experimentation
in the "Enhanced" Interrogation Program

A White Paper by
Physicians for Human Rights
June 2010

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Kathleen Sullivan, JD, Chief Program Officer of Custody Programs at PHR, oversaw the report and provided guidance on the report's structure and content. **A. Frank Donaghue, MA, MS**, PHR Chief Executive Officer, and **Susannah Sirkin, ME**, PHR Deputy Director, reviewed and edited the report. **Benjamin Greenberg**, PHR Director of Online Communications, and **Sarah Kalloch**, Outreach and Constituency Organizing Director, provided critical support to the launch of the report.

Isaac Baker, Assistant to the PHR Campaign Against Torture/Campaign for Accountability, provided background research and assisted in writing, editing and formatting the report. **Katrina Welt** and **Andrew Angely**, PHR interns and students at Northeastern University School of Law, provided legal background research for the report. **Kevin Vickers**, Harvard Law School, and **Klara Bolen, LLD**, also contributed to legal review of the report.

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PHR is deeply indebted to critical research performed by **Daniel Scarvalone**, **Louise Place**, and **Jesse Hamlin**. This report could not have been written without their contributions.

PHYSICIANS FOR HUMAN RIGHTS

PHR was founded in 1986 on the idea that health professionals, with their specialized skills, ethical commitments, and credible voices, are uniquely positioned to investigate the health consequences of human rights violations and work to stop them.

Since 2005, PHR has documented the systematic use of psychological and physical torture by US personnel against detainees held at Guantánamo Bay, Abu Ghraib, Bagram airbase, and elsewhere in its groundbreaking reports *Break Them Down*; *Leave No Marks*; *Broken Laws, Broken Lives*; and *Aiding Torture*.

PHR is a non-profit, non-sectarian organization funded through private foundations and by individual donors. Membership is open to all, not only health professionals. PHR shared the 1997 Nobel Peace Prize.

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Cover Photo:
Chris Hondros/Getty Images

EXECUTIVE SUMMARY

Following the Sept. 11, 2001, attacks, the Bush administration initiated new human intelligence collection programs. To that end, it detained and questioned an unknown number of people suspected of having links to terrorist organizations. As part of these programs, the Bush administration redefined acts, such as waterboarding, forced nudity, sleep deprivation, temperature extremes, stress positions and prolonged isolation, that had previously been recognized as illegal, to be “safe, legal and effective” “enhanced” interrogation techniques (EITs).

Bush administration lawyers at the Department of Justice’s (DoJ’s) Office of Legal Counsel (OLC) accomplished this redefinition by establishing legal thresholds for torture, which required medical monitoring of every application of “enhanced” interrogation. Medical personnel were ostensibly responsible for ensuring that the legal threshold for “severe physical and mental pain” was not crossed by interrogators, but their presence and complicity in intentionally harmful interrogation practices were not only apparently intended to enable the routine practice of torture, but also to serve as a potential legal defense against criminal liability for torture.

Investigation and analysis of US government documents by Physicians for Human Rights (PHR) provides evidence indicating that the Bush administration, in the period after Sept. 11, conducted human research and experimentation on prisoners in US custody as part of this monitoring role. Health professionals working for and on behalf of the CIA monitored the interrogations of detainees, collected and analyzed the results of those interrogations, and sought to derive generalizable inferences to be applied to subsequent interrogations. Such acts may be seen as the conduct of research and experimentation by health professionals on prisoners, which could violate accepted standards of medical ethics, as well as domestic and international law. These practices could, in some cases, constitute war crimes and crimes against humanity.

The knowledge obtained through this process appears to have been motivated by a need to justify and to shape future interrogation policy and procedure, as well as to justify and to shape the legal environment in which the interrogation program operated.

PHR analyzes three instances of apparent illegal and unethical human subject research for this report:

1. Medical personnel were required to monitor all waterboarding practices and collect detailed medical information that was used to design, develop, and deploy subsequent waterboarding procedures;
2. Information on the effects of simultaneous versus sequential application of the interrogation techniques on detainees was collected and used to establish the

policy for using tactics in combination. These data were gathered through an assessment of the presumed “susceptibility” of the subjects to severe pain;

3. Information collected by health professionals on the effects of sleep deprivation on detainees was used to establish the “enhanced” interrogation program’s (EIP) sleep deprivation policy.

The human subject research apparently served several purposes. It increased information on the physical and psychological impact of the CIA’s application of the “enhanced” interrogation techniques, which previously had been limited mostly to data from experiments using US military volunteers under very limited, simulated conditions of torture. It served to calibrate the level of pain experienced by detainees during interrogation, ostensibly to keep it from crossing the administration’s legal threshold of what it claimed constituted torture. It also served as an attempt to provide a basis for a legal defense against possible torture charges against those who carried out the interrogations, since medical monitoring would demonstrate, according to the Office of Legal Counsel memos, a lack of intent to cause harm to the subjects of interrogations.

Yet the Bush administration’s legal framework to protect CIA interrogators from violating US statutory and treaty obligations prohibiting torture effectively contravened well-established legal and ethical codes, that, had they been enforced, should have protected prisoners against human experimentation, and should have prevented the “enhanced” interrogation program from being initiated in the first place. There is no evidence that the Office of Legal Counsel ever assessed the lawfulness of the medical monitoring of torture, as it did with the use of the “enhanced” techniques themselves.

The use of torture and cruel and inhuman treatment in interrogations of detainees in US custody has been well-documented by Physicians for Human Rights (PHR) and others. The role of health professionals in designing, monitoring and participating in torture also has been investigated and publicly documented. This current report provides evidence that in addition to medical complicity in torture, health professionals participated in research and experimentation on detainees in US custody.

The use of human beings as research subjects has a long and disturbing history filled with misguided and often willfully unethical experimentation. Ethical codes and federal regulations have been established to protect human subjects from harm and include clear standards for informed consent of participants in research, an absence of coercion, and a requirement for rigorous scientific procedures. The essence of the ethical and legal protections for human subjects is that the subjects, especially vulnerable populations such as prisoners, must be treated with the dignity befitting human beings and not simply as experimental guinea pigs.

The use of health professionals to monitor intentionally harmful interrogation techniques places them in the service of national security objectives which are in conflict with the interests of those who they are monitoring. The result has been a co-opting of health professionals by the national security apparatus and a violation of the highest medical admonition to “do no harm.” Until the questions examined in this paper are answered and, if ethical violations or crimes were committed, those responsible are held accountable, the misuse of medical and scientific expertise for expedient and non-therapeutic goals jeopardizes the ethical integrity of the profession, and the public trust in the healing professions risks being seriously compromised.

Methods and Limitations

This PHR report draws primarily upon US government documents in the public record, including memoranda from the Office of Legal Counsel and the CIA’s Office of Inspector General Special Review of the CIA Enhanced Interrogation Program.

Most of these documents are heavily redacted and many additional, relevant documents remain classified. While the observational medical monitoring data are not publicly available for the instances indicating human experimentation cited by PHR, and while the specific extent to which medical personnel complied with requirements of the CIA’s Office of Medical Services (OMS) monitoring requirements is not known, there is clear evidence that medical personnel were required to monitor and document all EIT practices and that generalizable knowledge derived therefrom subsequently was used to refine harmful EIT practices.

While this report provides evidence that data from human research were compiled, apparently analyzed, and used to affect subsequent interrogations and to set policy, a comprehensive federal investigation is required to answer the questions this evidence raises.

Recommendations

Physicians for Human Rights calls on the White House and Congress to investigate thoroughly the full scope of the possible human experimentation designed and implemented in the post-Sept. 11 period. The War Crimes Act must be amended to restore traditional human subject protections.

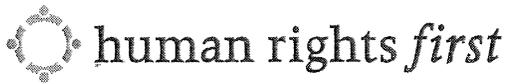
Those who authorized, designed, implemented and supervised these alleged practices of human experimentation — whether health professionals, uniformed personnel, or civilian national security officials — must be held to account for their actions if they are found to have violated what international tribunals previously have held to constitute war crimes and crimes against humanity.

If any victims of research and experimentation perpetrated by the United States are found, they must be offered compensation, including health care services, to address ongoing health effects related to the experimentation, and a formal apology.

Based on the findings of this investigation, the United States should take the following actions:

1. President Obama must order the attorney general to undertake an immediate criminal investigation of alleged illegal human experimentation and research on detainees conducted by the CIA and other government agencies following the attacks on Sept. 11, 2001.
2. The secretary of the Department of Health and Human Services must instruct the Office for Human Research Protections (OHRP) to begin an investigation of alleged violations of the Common Rule by the CIA and other government agencies as part of the “enhanced” interrogation program.
3. Congress must amend the War Crimes Act to eliminate changes made to the Act in 2006 which weaken the prohibition on biological experimentation on detainees, and ensure that the War Crimes Act definition of the grave breach of biological experimentation is consistent with the definition of that crime under the Geneva Conventions.
4. Congress should convene a joint select committee comprising members of the House and Senate committees responsible for oversight on intelligence, military, judiciary and health and human services matters to conduct a full investigation of alleged human research and experimentation activities on detainees in US custody.
5. President Obama should issue an executive order immediately suspending any federally funded human subject research currently occurring in secret — regardless of whether or not it involves detainees.
6. The Department of Justice’s Office of Professional Responsibility should commence an investigation into alleged professional misconduct by OLC lawyers related to violations of domestic and international law and regulations governing prohibitions on human subject experimentation and research on detainees.
7. President Obama should appoint a presidential task force to restore the integrity of the US regime of protections for human research subjects. This task force, comprising current and former officials from the Department of Health and Human Services, the Food and Drug Administration, the National Institutes of Health, the human rights community, and leading health professional associations, should review current human subject protections for detainees, and recommend changes to ensure that the human rights of those in US custody are upheld.
8. States should adopt policies specifically prohibiting participation in torture and improper treatment of prisoners by health care professionals. Such participation is considered professional misconduct and is grounds for loss of professional licensure. Proposed legislation in New York State provides a model for such policy.
9. The United Nations special rapporteur on torture should undertake an investigation of allegations that the United States engaged in gross violations of international human rights law by engaging in human subject research and experimentation on detainees in its custody.

Two National Security and Human Rights Campaign grantees, Human Rights First and the Constitution Project, have released a report by 16 former federal judges that concludes that the federal courts are competently conducting habeas reviews filed by Guantanamo detainees, and that new legislation to address Guantanamo detainee habeas rights is unwarranted.

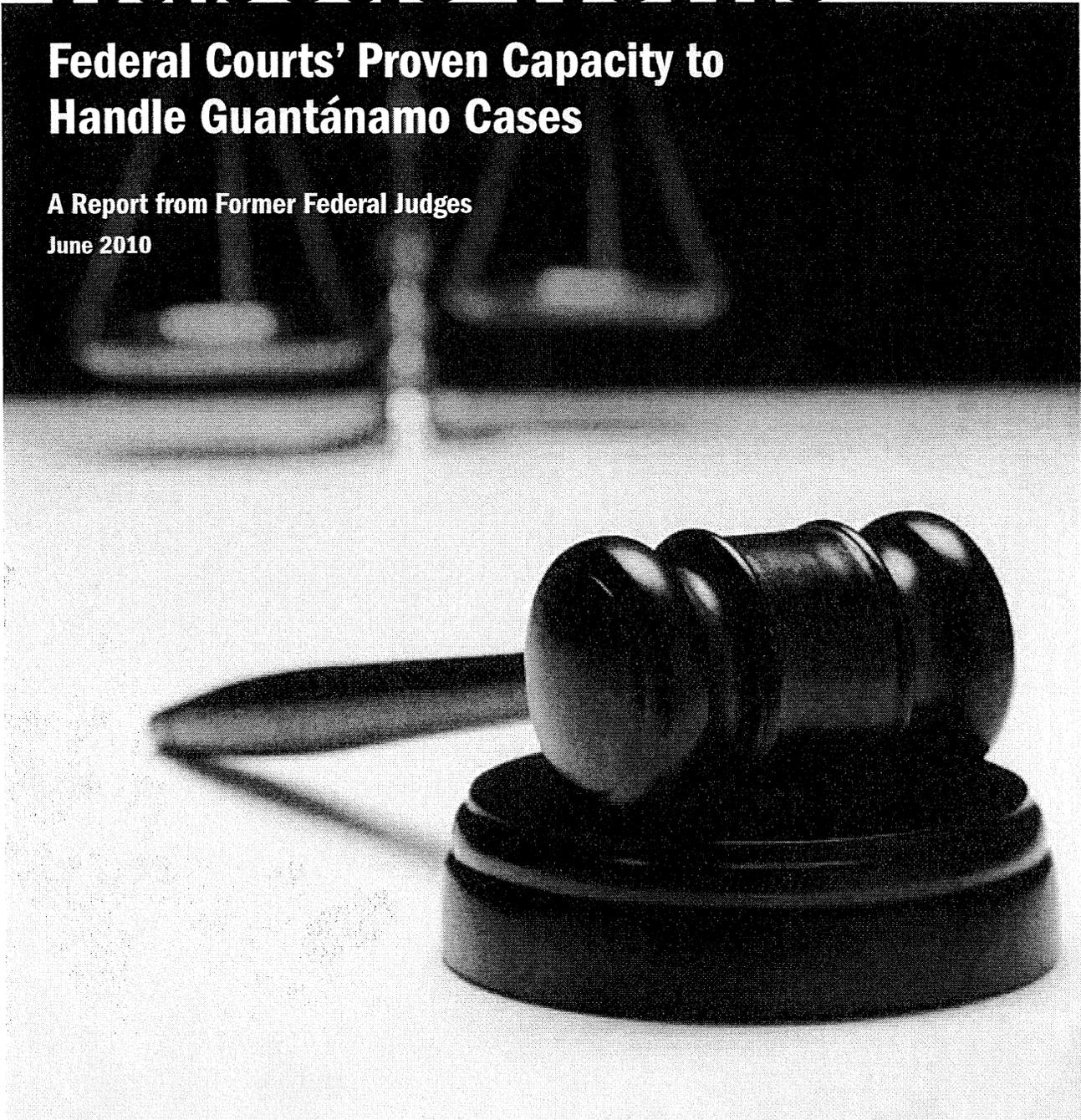


Habeas Works

Federal Courts' Proven Capacity to Handle Guantánamo Cases

A Report from Former Federal Judges

June 2010



The following former federal judges endorse this report:

- Hon. John J. Gibbons** Appointed to the United States Court of Appeals for the Third Circuit by President Nixon; served 1970-1990
- Hon. Shirley Hufstedler** Appointed to the United States Court of Appeals for the Ninth Circuit by President Johnson; served 1968-1979
- Hon. Nathaniel R. Jones** Appointed to the United States Court of Appeals for the Sixth Circuit by President Carter; served 1979-2002
- Hon. Thomas D. Lambros** Appointed to the United States District Court, Northern District of Ohio, by President Johnson; served 1967-1995
- Hon. Timothy K. Lewis** Appointed to the United States District Court, Western District of Pennsylvania, by President George H.W. Bush; served 1991-1992; appointed to the United States Court of Appeals for the Third Circuit by President George H.W. Bush; served 1992-1999
- Hon. James K. Logan** Appointed to the United States Court of Appeals for the Tenth Circuit by President Carter; served 1977-1998
- Hon. Abner Mikva** Appointed to the United States Court of Appeals for the District of Columbia Circuit by President Carter; served 1979-1994
- Hon. Robert P. Murrian** Appointed United States Magistrate Judge to the United States District Court by the Judges of the Eastern District of Tennessee; served 1978-2002
- Hon. William A. Norris** Appointed to the United States Court of Appeals for the Ninth Circuit by President Carter; served 1980-1997
- Hon. Robert O'Connor, Jr.** Appointed to the United States District Court, Southern District of Texas, by President Ford; served 1975-1984
- Hon. Stephen Orlofsky** Appointed to the United States District Court, District of New Jersey, by President Clinton; served 1995-2003
- Hon. Raul A. Ramirez** Appointed to the United States District Court, Eastern District of California, by President Carter; served 1980-1989
- Hon. Charles B. Renfrew** Appointed to the United States District Court, Northern District of California, by President Nixon; served 1972-1980
- Hon. H. Lee Sarokin** Appointed to the United States District Court, District of New Jersey, by President Carter, served 1979-1994; appointed to the United States Court of Appeals for the Third Circuit by President Clinton; served 1994-1996
- Hon. William S. Sessions** Appointed to the United States District Court, Western District of Texas, by President Ford; served 1974-1987
- Hon. Alfred M. Wolin** Appointed to the United States District Court, District of New Jersey, by President Reagan; served 1987-2004

I. Executive Summary

Habeas is working. The judges of the U.S. District Court for the District of Columbia have ably responded to the Supreme Court's call to review the detention of individuals at Guantánamo Bay, Cuba. As former federal judges, many of us expressed our confidence as *amici* in *Boumediene v. Bush*¹ that courts are competent to resolve these cases.² We write now to affirm that our confidence has been vindicated. While we take no position on particular cases, a review of the District Court's treatment of the Guantánamo litigation convinces us that the court has effectively developed a consistent, coherent, and stable jurisprudence.

The government began to detain individuals at Guantánamo in January 2002. After a series of storied decisions culminating in *Boumediene v. Bush*, the Supreme Court charged the judges of the District Court with developing the framework for reviewing the habeas cases of individuals detained at Guantánamo in order to determine whether their detentions are lawful. Some commentators, including some judges and legislators, have suggested that the courts are struggling to take on an essentially legislative project, and that the courts are in desperate need of further instruction from Congress. On the contrary, courts are well suited to meet this challenge. Their competence in developing evidentiary and procedural rules comes from hard-won experience. District Court judges are on the front lines, applying the law to complex facts and balancing the competing needs of litigants. Because of their institutional competence, courts have historically developed rules of procedure and evidence. This was true under the common law, and is true of the Federal Rules.

In their "time-honored and constitutionally mandated roles of reviewing and resolving [habeas] claims,"³ courts are also uniquely competent to determine the lawfulness of a prisoner's detention. In Guantánamo cases, courts make this determination by assessing whether the detention standard advanced by the government comports with the law, and then applying the standard to the particular facts of the case presented by a prisoner's habeas petition. Assessing the law, and applying it to facts. This is the core of what courts do. This is judging.

It comes as no surprise, then, that the District Court has capably answered the Supreme Court's charge. The bench has moved judiciously and cautiously to apply the pertinent law and develop the procedural rules governing habeas cases. In that way, the courts have gradually forged an effective jurisprudence that seeks to address the government's interest in national security while protecting the right of prisoners to fairly challenge their detention.

A. Detention Standard

In *Boumediene v. Bush*,⁴ on remand from the Supreme Court, Judge Richard Leon adopted the detention standard used by the Department of Defense in Combatant Status Review Tribunals and endorsed by Congress. When the Obama Administration took office, the government modified the proposed detention standard based on the authority conferred by the Authorization for the Use of Military Forces (AUMF). Judge Reggie Walton adopted the new detention standard in *Gherebi v. Obama*,⁵ under which the government claimed the right to detain individuals who "planned, authorized, committed, or aided" in the attacks of 9/11, or who "were part of, or substantially

supported” the Taliban, al Qaeda, or associated forces.⁶ The Administration conceded that its detention authority must comport with the Constitution and the law of war. Judge Walton found the government’s standard met those requirements so long as “the terms ‘substantially supported’ and ‘part of’ are interpreted to encompass only individuals who were members of the enemy organization’s armed forces.”⁷ In accordance with the principles of the common law, Judge Walton recognized that the contours of the standard would be developed as the standard was applied to the facts on a case-by-case basis. Subsequently, other judges of the District Court adopted and applied this standard.

The common law process has continued to refine the detention standard. In *Hamliily v. Obama*,⁸ Judge John Bates agreed with Judge Walton’s reasoning, but rejected “substantial support” as a basis of the government’s detention authority.⁹ The implication of this rejection is modest: While it produced a superficial divergence in the language used by the two courts, the substantive standard was largely the same. What the *Gherebi* standard accomplished by narrowly interpreting “substantial support,” the *Hamliily* court did by rejecting “substantial support” as a basis for detention. Under both standards, the courts consider circumstantial evidence of membership, not just a petitioner’s self-identification. Under both standards, the government must justify a prisoner’s detention by demonstrating the prisoner was functionally a member of the Taliban, al Qaeda, or an associated force. Judge Bates recognized the functional equivalence of the two standards, asserting that any difference in the application of the standards “should not be great” because what qualifies as “substantial support” under *Gherebi* qualifies as “part of” under *Hamliily*.¹⁰ Again, consistent with the tradition of the common law, other judges of the District Court have followed *Hamliily*, and found the standard “not inconsistent with Judge Walton’s opinion in *Gherebi*.”¹¹

In *Al-Bihani v. Obama*,¹² involving an acknowledged member of a Taliban brigade, the U.S. Court of Appeals for the District of Columbia Circuit returned to the detention standard originally offered by the Bush Administration. The court also rejected the law of war as a constraint on the government’s detention authority, contrary to the view of the Supreme Court in *Hamdi* and both the Bush and Obama Administrations. While we express no view on the D.C. Circuit’s substantive opinion, we agree that the work of the U.S. District Court for the District of Columbia demonstrates that courts are competent to move carefully and incrementally in the application and refinement of a substantive detention standard. In the process, they have produced a body of law that provides a predictive framework for litigants and useful guidance for the government and intelligence agencies in the current military campaigns.

B. Procedural and Evidentiary Rules

The District Court has also developed effective rules of evidence and procedure that seek to balance the government’s interest in protecting national security against the detainee’s interest in his liberty. Shortly after the decision in *Boumediene*, Judge Thomas Hogan drafted a Case Management Order (CMO) to govern the Guantánamo litigation.¹³ The result is a cautious and coherent set of procedural and evidentiary rules. The CMO established a model for the District Court, which has now applied the CMO to numerous cases, creating a common law interpreting its provisions. The government and detainees at Guantánamo look to these interpretations for guidance. What is more, the rules provide the essential flexibility required for addressing the new and complex factual scenarios presented by Guantánamo cases.

Boumediene established that prisoners at Guantánamo have a right to mount a meaningful challenge to their detention. The CMO protects that right by giving prisoners access to three categories of evidence: 1) exculpatory

evidence; 2) evidence relied on by the government to justify its detention; and 3) additional evidence if and only if the detainee can show good cause. For the first category, the CMO directs the government to disclose to the petitioner “all reasonably available evidence in its possession that tends materially to undermine the information presented to support the government’s justification for detaining the petitioner.” Over a series of cases, the District Court has settled on the interpretation that “reasonably available” means information in one of three databases compiled by the government. The District Court judges have also arrived at uniform interpretations of what evidence “tends materially to undermine” the government’s case. They agree, for instance, that it includes evidence that a witness was subjected to “abusive treatment [or] torture.”¹⁴

The second category, evidence on which the government relies, includes “(1) any documents and objects in the government’s possession that the government relies on to justify detention; (2) all statements, in whatever form, made or adopted by the petitioner that the government relies on to justify detention; and (3) information about the circumstances in which such statements of the petitioner were made or adopted.”¹⁵ The District Court judges interpret this language narrowly, and defer to assertions by the government that it did not rely on information requested by a detainee.

Under the CMO, disclosure of exculpatory evidence and evidence upon which the government relies is automatic. Disclosure of any additional evidence, however, requires a showing of good cause by the detainee. Such requests must be narrow and specific, must explain why the requested evidence is likely to show the prisoner’s detention is unlawful, and must establish why production will not “unfairly disrupt [] or unduly burden [] the government.”¹⁶ The court is quick to reject broad requests and “fishing expeditions,” but has granted narrow and

specific requests, such as requests for medical records and evidence of torture.

Beyond discovery, the courts have developed a host of procedural and evidentiary rules to assist in the orderly and judicious resolution of these cases, which evolve with experience. Foremost, the court has imposed a strict set of procedures that guard against the misuse or disclosure of classified evidence. On the merits, the courts have held the government must establish its case by a preponderance of the evidence—the standard proposed by the government. The government generally enjoys a rebuttable presumption that its evidence is authentic, but not that its evidence is accurate. Hearsay is admissible, with the weight given to a particular piece of hearsay determined by the court based on the entire record. Similarly, statements procured by torture or undue coercion are generally accorded no weight. The court designed these rules in an effort to avoid unduly burdening the government or compromising security, while still requiring it to justify the individual’s detention.

C. The Results

Although the District Court has granted the writ of habeas corpus to 36 of the 50 individuals whose cases have reached final decisions, the raw numbers do not tell the whole story. One case in which the writ was granted involved 17 Uighurs, whom the government had already conceded were “no longer” enemy combatants and had agreed posed no threat to the United States.¹⁷ Controlling for these 17 individuals, the government has prevailed in more than 40% of the habeas petitions that it has actually contested. Of the habeas cases that have reached resolution in the District Court, 18 appeals are pending, 12 by detainees and six by the United States. One of the cases on appeal, *Al Bihani v. Obama*, was affirmed, but the appellants are seeking *en banc* review.

Thus, a careful study of the D.C. federal courts’ post-*Boumediene* jurisprudence shows that attacks on the

judiciary's role are entirely unfounded. We fully recognize that Congress has the power, within constitutional limits, to set a detention standard of its own, and to prescribe rules of evidence and procedure to govern habeas cases. But in our considered judgment, reflecting our many years of experience on the bench, and based on our study of the available data, there is no need for Congress to do so

here. Moreover, even if Congress were to legislate new standards, the courts will still have to interpret and apply the new law. Asking Congress to legislate an entirely new set of substantive or procedural rules to govern these cases would simply destabilize the emerging jurisprudence.

On August 30, 2010, the **Center for Constitutional Rights**, a National Security and Human Rights Campaign grantee, and the **American Civil Liberties Union**, an OSI grantee, filed a case of first impression challenging the U.S. government's asserted authority to carry out extrajudicial targeted assassinations of U.S. citizens suspected of terrorism outside of the zone of active combat.



Rights groups sue over U.S. authority to use terror kill list

By Spencer S. Hsu
Washington Post Staff Writer
Tuesday, August 31, 2010; A3

The American Civil Liberties Union and the Center for Constitutional Rights [filed a federal lawsuit](#) Monday challenging the U.S. government's authority to target and kill U.S. citizens outside of war zones when they are suspected of involvement in terrorism.

The civil liberties groups sued in U.S. District Court in Washington after being retained by the father of [Anwar al-Aulaqi](#), a radical U.S.-born cleric who is in hiding in Yemen.

The CIA placed Aulaqi on its list of suspected terrorists it is authorized to kill earlier this year; the cleric had been on a separate list of individuals targeted by the Joint Special Operations Command.

"The United States cannot simply execute people, including its own citizens, anywhere in the world based on its own say-so," Vince Warren, executive director of the Center for Constitutional Rights, said in a written statement. "That the government adds people to kill lists after a bureaucratic process and leaves them on the lists for months at a time flies in the face of the Constitution and international law."

The groups said that the Constitution prohibits targeted killings absent a trial and due process, except as a last resort to prevent specific and imminent threats of death or serious injury.

As part of the suit, the groups have sought a preliminary injunction to halt the U.S. practice of targeting American citizens. Separately, they asked the court to order the government to disclose the standards under which it places individuals, including U.S. citizens, on target lists, noting that it remains unknown how many Americans or other people are on such lists.

"Whatever people think about the merits of the program, we think at a minimum Americans have a right to know under what circumstances the government has the right to impose the death penalty without charge or trial," said Jameel Jaffer, director of the ACLU's National Security Project.

A spokesman for U.S. Attorney General Eric H. Holder Jr. said the Obama administration "is using every legal measure available to defeat al-Qaeda, and we will continue to do so as long as its forces pose a threat to this nation."

The Justice Department declined to comment on the specific allegations, but spokesman Matt Miller said Congress has authorized the use of "all necessary and appropriate force" against al-Qaeda and its allies.

"The U.S. is careful to ensure that all its operations used to prosecute the armed conflict against those forces, including lethal operations, comply with all applicable laws, including the laws of war," Miller said. "The government has the authority under domestic and international law, as well as the responsibility to its citizens, to use force to defend itself in a manner consistent with those laws."

U.S. authorities have said that Aulaqi played a direct operational role in the [attempted bombing of a Northwest airliner](#) en route to Detroit on Christmas Day. Intelligence officials think he is also increasingly involved in the operations of al-Qaeda's affiliate in Yemen.

The Treasury Department named Aulaqi a "global terrorist" on July 13.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/08/30/AR2010083005284.html>

The **New America Foundation**, a grantee of the National Security and Human Rights Campaign, is exploring the nature and extent of the threat to the U.S. posed by terrorism, and how American actions in response to that threat are perceived by the Muslim world. Brian Fishman of the New America Foundation, a counterterrorism expert, is quoted below warning an unintended consequence of the protests over the “Ground Zero Mosque” could be a boost to terrorist recruitment efforts.

The New York Times

U.S. Anti-Islam Protest Seen as Lift for Extremists



Seth Wenig/Associated Press

Passers-by confronted Abu Rahman, right, Matt Sky, and Julia Lundy, who demonstrated for religious tolerance at the site of a proposed Islamic center near ground zero in Lower Manhattan.

By [SCOTT SHANE](#)

Published: August 20, 2010

WASHINGTON — Some counterterrorism experts say the anti-Muslim sentiment that has saturated the airwaves and blogs in the debate over plans for an Islamic center near ground zero in Lower Manhattan is playing into the hands of extremists by bolstering their claims that the United States is hostile to Islam.

Opposition to the center by prominent politicians and other public figures in the United States has been covered extensively by the news media in Muslim countries. At a time of concern about radicalization of young Muslims in the West, it risks adding new fuel to [Al Qaeda](#)'s claim that Islam is under attack by the West and must be defended with violence, some specialists on Islamic militancy say.

“I know people in this debate don’t intend it, but there are consequences for these kinds of remarks,” said Brian Fishman, who studies terrorism for the [New America Foundation](#) here.

He said that [Anwar al-Awlaki](#), an American-born cleric hiding in Yemen who has been linked to several terrorist plots, has been arguing for months in Web speeches and in a new Qaeda magazine that American Muslims face a dark future of ever-worsening discrimination and vilification.

“When the rhetoric is so inflammatory that it serves the interests of a jihadi recruiter like Awlaki, politicians need to be called on it,” Mr. Fishman said.

Evan F. Kohlmann, who tracks militant Web sites at the security consulting firm Flashpoint Global Partners, said supporters of Al Qaeda have seized on the controversy “with glee.” On radical Web forums, he said, the dispute over the Islamic center, which would include space for worship, is lumped together with fringe developments like a Florida pastor’s call for making Sept. 11 “Burn a Koran Day.”

“It’s seen as proof of what Awlaki and others have been saying, that the U.S. is hypocritical and that most Americans are enemies of Islam,” Mr. Kohlmann said. He called the anti-Islam statements spawned by the dispute “disturbing and sad” and said they were feeding anti-American sentiment that could provoke violence.

While some critics of the Islamic center have carefully limited their objection to its proximity to the site of the Sept. 11 attacks, and have rejected any suggestion that they are anti-Muslim, the issue has tapped into a well of suspicion and hostility to Islam across the country.

Many Republican politicians, including [Newt Gingrich](#) and [Sarah Palin](#), have said that the proposed location of the center showed insensitivity to the victims of 9/11.

Others political leaders, including [President Obama](#), Mayor [Michael R. Bloomberg](#) of New York and Gov. [Christopher J. Christie](#) of New Jersey, have defended the right of Muslims to build the center or warned against anti-Muslim hysteria.

The dispute has tapped strong emotions in the wake of a series of terrorist plots and attacks over the last year aimed at American targets, several of them inspired or encouraged by Mr. Awlaki. The events included the killing of 13 people in November at Fort Hood, Tex., by an Army psychiatrist, Nidal Malik Hasan; the failed attack on a Detroit-bound airliner on Dec. 25 by a young Nigerian man; and the attempted bombing of Times Square in May by Faisal Shahzad, a financial analyst who had worked for a Connecticut cosmetics company.

Mr. Awlaki, whose Web diatribes calling for attacks on the United States have turned up repeatedly in terrorism investigations, has sought to counter the notion that American tolerance extends to Muslims.

In a March posting, Mr. Awlaki, who lived in the United States for nearly 20 years, predicted that America would become “a land of religious discrimination and concentration camps.”

“Don’t be deceived by the promises of preserving your rights from a government that is right now killing your own brothers and sisters,” he wrote. “Today, with the war between Muslims and the West escalating, you cannot count on the message of solidarity you may get from a civic group or a political party, or the word of support you hear from a kind neighbor or a nice co-worker. The West will eventually turn against its Muslim citizens!”

Dalia Mogahed of the [Gallup Center for Muslim Studies](#) said the outcry over the proposed center “plays into Awlaki’s arguments and [Osama bin Laden](#)’s arguments” by suggesting that Islam has no place in the United States.

She said that extreme anti-Muslim views in the United States ironically mirror a central tenet of extreme Islamists: “That the world is divided into two camps, and they’re irreconcilable, and Muslims have to choose which side they’re on.”

Mr. Gingrich, the former House speaker and a potential 2012 presidential candidate, said in a Fox News interview that “Nazis don’t have the right to put up a sign next to the Holocaust museum in Washington,” a comment that drew criticism for appearing to equate those proposing the Islamic center with Nazis.

Asked about the view that such remarks could fuel radicalism, Mr. Gingrich sent an e-mail response on Friday that did not directly address his critics but said that “Americans must learn to tell the truth about radical Islamists while being supportive of and inclusive of moderate Muslims who live in the modern world, respect women’s rights, reject medieval punishment and defend American laws and the American Constitution.” He added that he believed “it is possible to be a deeply religious Muslim and a patriotic American.”

Muqtedar Khan, an associate professor of political science at the University of Delaware, said he was not sure the Islamic center dispute alone would radicalize anyone. But he said it was “demoralizing” for Muslims like him who defend the United States as an open and tolerant society.

“For the first time, anti-Islamic rhetoric has gone mainstream,” he said. “What this really does is weaken the moderates and undermine their credibility.”

A version of this article appeared in print on August 21, 2010, on page A4 of the New York edition.

http://www.nytimes.com/2010/08/21/world/21muslim.html?_r=1

In this blog post and in other forums, David Gushee, a Professor of Christian Ethics at Mercer College in Atlanta and a leader of the **New Evangelical Partnership for the Common Good** (formerly Evangelicals for Human Rights), a National Security and Human Rights Campaign grantee, calls up his fellow Christians and evangelicals to keep with their religious faith by ending anti-Islamic hatred.

The Huffington Post

'Ground Zero Mosque' Controversy: America's Dreyfus Affair?



Dr. David P. Gushee

Professor of Christian Ethics

Posted: August 24, 2010 07:16 PM

Sometimes public policy disputes become transformed into symbolic conflicts that go to the heart of national identity. The "mosque controversy" was initially a mere zoning question. It is now a symbolic conflict over the place of Muslims in our national life.

As a scholar whose first book was on the Holocaust, I hear echoes of the Dreyfus Affair.

Alfred Dreyfus (1859-1935) was the only Jewish member of the French General Staff in the late 1800s, a time when France was deeply infected with anti-Semitism, and its elites resented the admission of Jews into the higher reaches of French society, including the military.

Dreyfus was appointed to the General Staff in 1893. His appointment, and the advance of other Jewish army officers, evoked strong protests from anti-Semitic French newspapers which sought to whip up fears that Jews were not loyal Frenchmen, and were in fact potential traitors.

In 1894, it was discovered that a French officer was passing secrets to the hated Germans. Dreyfus was accused on the basis of the flimsiest of evidence, and when it appeared that he might be acquitted, leading officers -- including the minister of war -- forged documents to implicate Dreyfus and slipped them to the judges without the knowledge of the defense attorney. Dreyfus had been framed. He was convicted, sentenced to life in prison, publicly stripped of his rank and degraded before crowds shouting "Death to the Jews," and shipped off to Devil's Island.

Convincing evidence surfaced within the military pointing to the innocence of Dreyfus and the guilt of a different, non-Jewish officer. But by now the army had too much at stake to allow this evidence to become public. Eventually, however, the evidence (as well as newly forged anti-Dreyfus materials) leaked, and all of France fell into an uproar over the matter. It became clear that not just the guilt or innocence of Dreyfus was now at stake, but the honor of the military, the role of emancipated Jews in France, and the capacity of France to reach a just verdict.

Demagogic media leaders stoked the fears and prejudices of the French Christian (primarily Catholic) majority throughout the conflict. Images of the Jew as Judas were routinely employed to cast aspersions on the trustworthiness of Dreyfus or any Jew. When one of the anti-Dreyfus forgers killed himself in prison, the anti-Semitic press honored him as a Christ-figure, casting

Dreyfus and "the Jews" as betrayers. The French newspaper *La Libre Parole* and other voices began calling for a massacre of the Jews.

It took until 1906 for the Dreyfus case to be resolved. Only then was his conviction reversed and Dreyfus restored to his rightful position in the military. Holocaust scholars take this case seriously because it anticipated the way Germany and its collaborators and allies turned on the Jews in their midst from 1939-1945. People who had seemingly been integrated into modern European countries were all too easily plucked out of those societies, rejected and dehumanized, and finally sent to their deaths.

The limits of my comparison between the Dreyfus case and the mosque controversy are obvious. But the similarities must also be taken seriously. Those similarities include the identification of an entire religious minority as a threat to the nation, the harmlessness of both Captain Alfred Dreyfus and Imam Abdul Rauf, the role of major media voices in whipping up frenzied national fears, and the questionable capacity of the nation to honor its own legal and moral principles. The other parallel is almost too painful to name: the role of the Christian majority and some of its most vocal and visible leaders in turning the religious "Other" into an object of infamy. In France a hundred years ago, these were Catholic demagogues leading the charge. Today they are mainly Protestant evangelicals.

A close look at the Dreyfus case reveals that its outcome hinged largely on honorable leaders finally resisting demagoguery and standing on higher principle. We have seen such leadership from Mayor Bloomberg of New York and a handful of other leaders.

One of those leaders has been President Barack Obama. He made one forceful stand for the constitutional principle of religious liberty in this case. But he has been very careful. I think I know why. He himself is at risk of being "Dreyfused." In fact, as last week's much-discussed polling pointed out, he is already being Dreyfused on the "Muslim issue." He has been called "Imam Obama" by Rush Limbaugh. One-fifth of the nation thinks he is a Muslim, and in this moment in American public life, that is a dangerously high number. A concerted effort is being made by extremists to "other" him right out of American public life. It is a truly shameful display.

So the president cannot carry the ball on the mosque controversy. It is up to the rest of us to resolve our own budding Dreyfus case before it goes any further.

http://www.huffingtonpost.com/dr-david-p-gushee/americas-dreyfus-case_b_690908.html

In the midst of a nationwide increase in violence and intimidation toward Muslim Americans and mosques, Muslim Advocates and a coalition of faith and advocacy organizations met on August 30, 2010, with U.S. Assistant Attorney General Tom Perez and senior DOJ advisors to ask that measures be taken to protect millions of American Muslims and the right to religious freedom of all Americans. Muslim Advocates Executive Director Farhana Khera was joined by J. Brent Walker of the Baptist Joint Committee for Religious Liberty, Rev. Dr. C. Welton Gaddy of the Interfaith Alliance, and Rabbi David Saperstein of the Religious Action Center of Reform Judaism.



Anti-Muslim Rhetoric: Free Speech or Hate Speech?

Faith Coalition Calls on DOJ to Take Public Stance Against Anti-Muslim Rhetoric

By JOHN R. PARKINSON

WASHINGTON, Aug. 31, 2010—

A coalition of faith groups met with Justice Department officials Monday to encourage the [Obama administration](#) to take a more public stance against [anti-Muslim](#) hate speech and [hate crimes](#).

Farhana Khera, president and executive director of [Muslim Advocates](#), said the community leaders requested the meeting due to an "alarming rise in anti-Muslim hate" that has become commonplace as the debate over the so-called "Ground Zero mosque" in New York City continues.

"Unfortunately, this very escalating trend of hate speech in the country has now transformed into actual acts of violence and the attorney general, as the nation's chief law enforcement officer, has an obligation to really enforce the laws, including the hate crime laws and holding those that engage in hate crimes responsible," Khera said.

Last week in New York City, a [taxi cab driver was repeatedly stabbed](#) allegedly by a passenger who asked him, "Are you a Muslim?" before the attack.

On Saturday, a fire was discovered at the [construction site for a mosque and community center](#) in Murfreesboro, Tenn., that has been a topic of controversy in the city. Police said the fire is being investigated as a possible arson and hate crime.

And a [church in Gainesville](#), Fla., has announced it plans to burn copies of the Quran on Sept. 11, to mark the anniversary of the 2001 terror attacks.

"We are a thriving democracy, we appreciate free speech, but when it crosses the line into violence, that's against the law," she said. "And the [Justice] Department, the federal government, the nation's chief law enforcement officer is going to prosecute and hold them responsible to the fullest extent of the law."

She said the groups asked the Justice Department officials to hold people who engage in hate crimes accountable, and "send a message that hate and criminal activity and attacks on houses of worship is un-American."

"Our concern is that we believe that there needs to be more attention, more resources put into investigating and prosecuting these cases as well as a higher level of attention to whatever efforts the department may be undertaking as well," she said.

Rev. Dr. C. Welton Gaddy, the president of Interfaith Alliance, called on President Obama and Attorney General Eric Holder to better inform the public on the administration's efforts to quell hate violence.

"It is a time when people would be comforted to know what the federal government is doing in assuring rights and in prosecuting people who are trying to deny other people their rights," Gaddy said. "The religious community is looking to government to do what government ought to do and that we're trying to do everything we can to do what the religious community ought to do in a very tense situation."

The faith leaders and advocates said they came away from the meeting without any commitments from the Justice Department and called on the administration to make a strong public statement before the anniversary of the terror attacks of Sept. 11, 2001.

"Time is of the essence," Khera said. "The end of Ramadan is about a week and a half away, Sept. 11 anniversary is also a week and a half away. I think the Department understands the urgency and the need to act in an urgent way."

Nevertheless, the leaders said they were encouraged by DOJ's willingness to meet and the department's eagerness to hear the group's concerns.

"It was a very heartening conversation, they were very responsive, they took it to heart, they realize that much of what they have been doing so well the nation doesn't know about, and that this is a moment that requires more intensity on their part, as well as on ours, so we found it to be a very productive meeting," said Rabbi David Saperstein of the Religious Action Center of Reform Judaism.

Still, the leaders admit that combating the spate of hate starts at the local level and is not the sole responsibility of the Obama administration.

"The Justice Department, local law enforcement officials can address the crimes of hate violence, hate crimes, but it's up to local citizens like us, and local community leaders like us to see that we begin to tone down the rhetoric and speak to each other with civility and mutual respect, or we're going to see some already sick minds made even more sick and a level of violence that we can't clean up after it's done," Gaddy said.

The Justice Department has not yet responded to an ABC News request seeking comment.

<http://abcnews.go.com/Politics/anti-muslim-rhetoric-free-speech-hate-speech/story?id=11519631>

At Home in Europe Project

THE AT HOME IN EUROPE PROJECT of the Open Society Institute works to advance and promote the integration of minority groups in Western Europe. Currently the project is examining the level and nature of integration of Muslims in 11 cities across Europe.

Why Muslims?

About 20 million Muslims live within the European Union, mostly in capital cities and large industrial towns. Muslims in Europe are a diverse and growing population of citizens as well as newly arrived migrants. Though the majority of Muslims are a long-standing and integral part of the fabric of their cities, many Muslims still experience discrimination and suspicion. As a result of the attacks in New York, Madrid, and London, Muslim communities in Europe today are under heightened scrutiny. Yet, there is also increasing acknowledgment of the prejudice Muslims experience and the social and economic disadvantages they suffer. This complex situation presents Europe with one of its greatest challenges: how to effectively ensure equal rights and social cohesion in a climate of political tension, a global recession, and rapidly expanding diversity.

Muslims in Europe

Through monitoring and advocacy, the At Home in Europe Project seeks to improve the integration of Europe's diverse Muslim communities and other minority groups. The project is currently examining local government policies and practices in 11 EU cities to determine their effectiveness in achieving meaningful integra-

tion of Muslims. The 11 cities are Antwerp (Belgium), Copenhagen (Denmark), Marseille and Paris (France), Berlin and Hamburg (Germany), Amsterdam and Rotterdam (the Netherlands), Stockholm (Sweden), and Leicester and Waltham Forest–London (United Kingdom).

There is very little official data available on Europe's Muslim and minority populations. What does exist is extrapolated from ethnic and country of origin data, which contributes to an inaccurate picture of Muslims and minorities in Europe and a lack of understanding of the trends, experiences, and concerns of Muslims.

“Yes, I am new compared to others. But I feel that I have lived in Leicester forever. I would define myself as European, Somali, Muslim—you know, a lot of definitions. In Leicester, no matter your background, whether you're black, or white, or Asian, or Muslim, or Christian, or Sikh, people have respect for you.”

The project's city reports, focusing on participation and citizenship, the role and impact of the media, education, employment, and housing, health, and the criminal justice system, will offer new data on the situation in



Muslim communities and recommendations for improving living conditions. After the release of the reports, the project will mount advocacy campaigns to push for the adoption of its recommendations on the local, national, and European levels.

Responding to Urban Challenges

Using in-depth interviews, focus groups, and a questionnaire with 200 Muslim and non-Muslim residents in each city, the At Home in Europe Project documents daily experiences and the ways in which residents interact with their city, neighbours, local government, and others. It also examines how the city engages with and consults its residents across a range of issues and

“I feel German, because I speak the language and I have adopted the culture. I am Russian and Kazakh and Ukrainian and German and Muslim, and I feel good about it.”

what the city is doing to better understand its Muslim and minority groups. The project will identify the shared experiences and concerns of residents regardless of their ethnic or religious background, and highlight good practices on social inclusion that can be promoted to other cities in Europe and beyond.

Locally based city researchers analyse the data and draft reports. Small consultative meetings are held in each city to allow key stakeholders to offer their views on the report's findings and recommendations before they are published.

- ▶ In December 2009 a comparative overview report: *Muslims in Europe – A Report on 11 EU Cities* was launched in London. The 11 individual city reports will be launched from April 2010 onwards.

Bringing about Change: Advocating for Inclusion

Alongside the publication of the city reports, the At Home in Europe Project continues its advocacy activities and campaigns based on the recommendations in the reports. Working with local, national, and international partners, the project will facilitate roundtables and neighborhood debates, commission further research papers on emerging issues, and, most importantly, promote the active engagement of civil society.

Advocacy efforts will seek to shape and influence public policies on integration of Muslims and other minorities, and contribute to the discourse on minorities in Europe by challenging stereotypes and assumptions with a view to changing attitudes and behaviour. A number of activities will be designed to empower marginalized and minority communities in the 11 urban settings.

For More Information

For more information about the At Home in Europe Project and upcoming events and activities, please visit www.soros.org/initiatives/home. For further information on advocacy activities, please contact Klaus.Nielsen@osf-eu.org. For website and report related queries, please contact Helene.Irving@osf-eu.org.

Open Society Institute

The Open Society Institute works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. On a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media. At the same time, OSI builds alliances across borders and continents on issues such as corruption and freedom of information. OSI places a high priority on protecting and improving the lives of people in marginalized communities.

At Home in Europe Project

Muslims in Europe—A Report on 11 EU Cities Findings and Recommendations

THIS REPORT CONSTITUTES the comparative analysis of data gathered from 11 cities in seven European countries. It points out common trends and offers recommendations at the local, national, and international levels, including to the European Union (EU) and to international organisations. While not representative of the situation of all Muslims in these cities, this report does capture a snapshot of the experiences of Muslim communities in select neighbourhoods in Amsterdam and Rotterdam, Antwerp, Berlin and Hamburg, Copenhagen, Leicester and Waltham Forest–London, Marseille and Paris, and Stockholm.

This body of work comes in response to major trends with regards to Muslims living in Europe: whether citizens or migrants, native born or newly-arrived, Muslims are a growing and varied population that presents Europe with one of its greatest challenges, namely how to ensure equal rights and opportunities for all in a climate of rapidly expanding diversity.

MYTHS VERSUS REALITIES

MYTH: Muslims do not want to integrate; they want to live separately from the rest of the population.

REALITY:

- The OSI research challenges the myth of segregation and alienation and reveals a much more positive picture of integration at the local level. The majority of Muslims and non-Muslims identify strongly with the city and the country where they live. Sixty-one per cent of Muslims have a strong sense of belonging to the country and 72 per cent have a strong sense of belonging to the city. In Antwerp, for example, over 90 per cent of respondents expressed a “very strong” or “fairly strong” sense of local belonging.
- However, 50 per cent of all Muslim respondents who identify themselves with the country where they live believe that they are not seen as belonging to that country by the wider society.

MYTH: The needs and concerns of Muslims are very different from non-Muslims.

REALITY:

- The needs and experiences of Muslims and non-Muslims are largely the same. Across all 11 cities surveyed, daily concerns centre around the need for better quality of education, improved housing, cleaner streets, and tackling antisocial behaviour and crime.
- Muslims want to live in mixed, not segregated, neighbourhoods across the cities studied. Muslim parents are concerned about the impact of segregation on their children and discrimination in accessing housing which limits their choice of residential location. They are concerned that urban renewal programmes in some cities, aimed at creating more mixed neighbourhoods, are displacing the most disadvantaged people.
- Both Muslims and non-Muslims enjoy living in and are proud of their mixed neighbourhoods. The major-



ity of people feel that their neighbourhood is a place where people are willing to help and trust each other and where people from different backgrounds get on well together.

MYTH: Muslims are not involved in political and civic life.

REALITY:

- Muslims who are eligible to vote are active in local civic and political life. The majority of Muslims who are eligible to vote did vote in local and national elections. Younger Muslims are more likely to feel they can influence decisions at local levels than older Muslims: 56 per cent of those under 20 believe they can affect decisions at the local level.
- Over 70 per cent of all eligible Muslims surveyed voted in local and national elections.
- Just under half of the Muslims surveyed (47 per cent) have been involved in some form of civic participation in the last year.
- Political parties based on ethnic and religious identities have not gained the support of Muslim voters—increasing numbers of Muslims are standing for political office in mainstream parties but they face additional scrutiny and questions due to their background.

KEY FINDINGS BY MAJOR ISSUE AREA

IDENTITY

“I really feel at home in Leicester. We are a big family here. I feel the whole of Leicester is my home”. [British Asian woman, aged 20–29, questionnaire respondent, Leicester]

- Muslims feel a stronger connection to their neighbourhood and city than country. Over 55 per cent of total respondents across the 11 cities agreed with the question: “Do people from different backgrounds get on well here?”
- Of those who identified themselves with the country where they live, 50 per cent believe they are not perceived as belonging to the country by the wider society.
- Overall, 50 per cent of Muslim respondents compared to 9 per cent of non-Muslims reported experiencing religious discrimination at some point over the last 12 months. Over one fifth of Muslims frequently experienced religious discrimination over the last 12 months.

EDUCATION

“Where does the responsibility lie? Does it lie with the parents, the children’s upbringing? Does the responsibility lie with the school? Or with the city council? It lies with everyone. Everyone has to do their share. We do our share at home, the school has to do its share at school. We have a joint responsibility”. [Muslim Moroccan woman, aged 40–49, focus group participant, Amsterdam]

- Muslims want more ethnically mixed schools—parents are concerned that segregation has an adverse effect on a child’s prospects.
- Some Muslim pupils continue to suffer from prejudice and low expectations from teachers.

CHANGE AT THE LOCAL LEVEL

In Amsterdam, the education and social services have developed an innovative outreach programme for young pupils, including a significant number of Muslims, considered to be at risk of falling out of the education system. Under the “8 to 8” programme coaches provide advice, support, and direction to pupils from 8 am to 8 pm.

EMPLOYMENT

“In Germany, things are getting worse for veiled women. They can find jobs only in the service sectors (and that’s if they are lucky). They can’t work in sectors that require intellectual abilities. It’s very hard for them to find good jobs”. [Focus group respondent, Berlin]

- Many Muslims work in marginal and low-paid jobs which lead to segregated or parallel working lives.
- Muslims are almost three times more likely to be unemployed than non-Muslims; 19.8 per cent of Muslims involved in the OSI survey are unemployed, compared with 6.8 per cent of non-Muslims.
- Women are discriminated against in the labour market if they wear the veil.

CHANGE AT THE LOCAL LEVEL

In Leicester, the employment advice agency Job Centre Plus took employers to local community centres, temples, and mosques, so that they could get a better understanding of the barriers faced in recruiting minorities. When a new shopping centre was being developed, the agency put on a “roadshow” to showcase the new employers to the community.

HOUSING

“I like this area because of its residents: There is a good atmosphere among people and they generally get on well with each other. People respect and help one another in any way they can”. [Malian woman, aged 30–39, questionnaire respondent, Paris]

- Muslims want to live in mixed communities, challenging claims that the geographical concentration of Muslims reflects their desire to live among their own kind.
- Discrimination in housing restricts choices of where many Muslims across Europe can live.

CHANGE AT THE LOCAL LEVEL

In Copenhagen, the city’s integration policy states that its aim is to combat the problem of vulnerable housing areas by tackling unemployment and social problems and making public housing more attractive: “The positive side-effect will be a great demand for public housing, including from high resource families”.

HEALTH AND SOCIAL SERVICES

“Health services are excellent in Germany. May Allah bless them. We couldn’t find these kinds of services in Turkey. I’m very satisfied about it”. [Focus group respondent, Berlin]

- Respondents reported high levels of satisfaction in the healthcare that they receive. Reports of discrimination and unfair treatment are low, and most respondents felt that doctors and health clinics respect the needs of people of different faiths.

CHANGE AT THE LOCAL LEVEL

The Waltham Forest Faith Communities Forum partnered with the Local Strategic Partnership to implement a system of “health preachers”. The central concept of this programme was to identify and train local religious representatives from the borough’s Muslim, Christian and Sikh communities, and to draw on their positions as faith leaders to communicate important messages on health to their congregations.

POLICING AND SECURITY

“When you are African, you are always exposed to certain looks and some policemen act differently around you. The only time I was checked by the police, the officer literally threw my identity papers back at me! In spite of this, I feel well integrated and am happy to have obtained French nationality”. [French man of Senegalese origin, aged 30–39, questionnaire respondent, Paris]

- Despite overall high levels of trust in law enforcement (58 per cent), there are also low levels of trust among young European-born Muslim men, who experience the greatest amount of discrimination and unfair treatment at the hands of the police.
- Muslims and non-Muslims differ greatly when it comes to reporting hate crimes—that is a crime motivated by discrimination. Overall, 36 per cent of Muslims reported the crime to the police compared with 59 per cent of non-Muslims.

CHANGE AT THE LOCAL LEVEL

In Berlin, contacts between the police and mosque associations have taken place through the development of “cooperation agreements”. In 2003, the local police in the district of Neukölln, together with the local mosque association, started a programme called “TiK” (Transfer of Intercultural Competencies). The programme aimed to put mosque staff and police officers from different districts in contact with each other and to develop national guidelines for the police about how to act in their contacts with mosques and Muslims.

PARTICIPATION AND CITIZENSHIP

“I would like to be perceived as German but not in the national sense—the blood principle—but as a citizen and member of this country, with my various identities and self-perceptions and my multiple perspectives”. [German Turkish man, aged 40–49, questionnaire respondent, Berlin]

- Many Muslims who are not EU citizens remain disenfranchised, particularly in Germany and France, where they do not have the right to vote in local elections even though many are long-term residents.
- Political parties based on ethnic and religious identities have not gained the support of Muslim voters.
- Increasing numbers of Muslims are standing for political office in mainstream parties but they face additional scrutiny and questions due to their background.
- Muslims and non-Muslims have similar levels of trust in local government and institutions, but Muslims have significantly lower levels of trust in Parliament.
- Respondents involved in same ethnic/religious civic organisations are significantly more likely to trust their city councils than those involved in mixed organisations indicating the importance of how recognition of such groups by local policymakers leads to greater confidence and integration.

MEDIA

“We should get our people involved in journalism and enter into the field and change the mindset. I think the opportunities are there and I think we should grab them so our communities can become more engaged”. [Focus group respondent, Leicester]

- On average, Muslim respondents viewed reporting by local media as more balanced, fair, and representative of Muslim communities than reporting by the national media.
- Muslim respondents believe that the enormous media scrutiny of Muslims in different European countries has contributed to the negative reinforcement of stereotypes and prejudices.
- The generally negative media coverage has also provided the impetus for individuals, civil society, and public entities to respond with greater engagement in media discussions and to focus on the need for encouraging and supporting more Muslims working in the media.

CHANGE AT THE LOCAL LEVEL

In Belgium, the public television network, VRT, has signed a diversity charter which states that as a public mass medium it should reflect the diversity of the population. Efforts to increase the visibility on television of young people from ethnic minorities in Flanders include the programme *Rwina*, broadcast on VRT. In the focus groups there was, however, criticism that the programme reproduced stereotypes.

KEY RECOMMENDATIONS

At the City Level:

- Cities should pursue urban regeneration policies that ensure access to housing for all neighbourhoods with a good mix of ethnicities.
- City officials must find ways to maintain areas that are ethnically and religiously mixed and to ensure that Muslims are not limited by discrimination and prejudice when choosing where to live.
- Local policymakers should develop municipal campaigns

that emphasise a common and inclusive city identity as an effective way to increase cohesion and belonging. Amsterdam, Antwerp, and Copenhagen are three cities which have initiated such campaigns with success.

- Local policymakers must examine schools, businesses, and workplaces for opportunities to increase interactions between various ethnic and religious groups within the community.

At the National Level:

- National officials, taking into account the results of the OSI research showing a general preference for mixed neighbourhoods, should ensure that discrimination does not present a barrier to the free choice of where to live. Officials should pursue urban regeneration policies that ensure access to housing for all and neighbourhoods with a good mix of ethnicities.
- National officials should consider reforming nationality laws for long-term settled third country nationals where necessary, so that naturalisation is the desired goal of settlement (as it is in the United States, Canada, and Australia), and that dual citizenship should be possible.
- National officials should consider extending the right to vote in local elections to all those who are long-term settled residents in order to address concerns about democratic legitimacy amongst policymakers in areas with large disenfranchised populations.

At the EU Level:

- The EU should encourage the adoption of principles of equal treatment to cover discrimination on the grounds of religion and belief in education, housing, transport, and the provision of goods and services. It is important that measures to tackle prejudice and stereotypes ensure and engage public support.
- EU statistical agencies and projects should collect accurate data on minorities to support evidence-based policies to facilitate integration and fight discrimination.
- The EU should develop a forum among cities for exchanging information and best practices about collecting educational data on minority students.

FOR MORE INFORMATION

To obtain more information about the report's findings and the At Home in Europe Project, contact:

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