

Security, Individual Rights & Minority Communities after 9/11

How do we maintain national security while also protecting individual civil liberties? On March 25, the Council on Middle East hosted a panel and community discussion around this quandary through presentations by scholars, legal experts, and other professionals in conversation with Yale and New Haven community members. Surveying topics from FBI surveillance techniques to the experience of Muslim communities to a history of terrorist tactics, the discussion investigated legal, social, and political implications for the post-9/11 experience.

General Counsel at the FBI, Valerie Caproni, in an effort to improve transparency in the FBI's policies in surveillance, emphasized the legal significance of FISA (Foreign Intelligence Surveillance Act) to regulating of FBI investigations. She noted the importance of ensuring that information collected is relevant to an investigation and warned against broad-based surveillance tactics. However, Caproni acknowledged that innocent people do sometimes get caught up in the mix: "Do we investigate innocent people? Absolutely. That's the cost of doing business. Sometimes we're wrong. If we set the bar so that we never miss a bad guy, it means we're occasionally going to investigate some people that are not terrorists or criminals."

Louay M. Safi of the Islamic Society of North America (ISNA) discussed the experience of many American Muslims who have been branded as "terrorists" in the public eye and who have experienced intrusive surveillance measures. He noted that the careless overusage of terminology such as Islamofacism or Islamic fundamentalism greatly alienates American Muslims. He also pointed out that terrorism is not an identity that could be ascribed to one particular ideology or group, but rather a *tactic* that many actors have used for various reasons throughout history.

Professor Reva Siegel of the Yale Law School addressed the elusive issue of racial profiling in surveillance tactics. She criticized the courts for leaching out any possible acknowledgement of racial bias, unconscious or intentional, in investigations, citing too narrow a

definition of "what counts" as race-based profiling, a tendency to rule acknowledgement of race as description rather than profiling, and a lack of judicial oversight.

"Will we be information gluttons or information gourmets?" Professor Jack Balkin of the Yale Law School suggested that we have a choice of becoming one of two models of an information state: authoritarian or democratic. The former is a miser, seeking and hiding information it gathers with no clear purpose. The latter is a philanthropist, gathering only what it needs, freely giving information about its operations, thus allowing us to "watch the watchers."

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Finally, Professor Beverly Gage, a Yale historian, contextualized post-9/11 realities within the longer history of terrorism in the United States. Tracing its origins to the late 19th century, she underscored the point that "if terrorism is a tactic, then it has been used by a variety of groups for a variety of reasons, in a variety of contexts." Gage described terrorist acts that occurred between 1870-1930 associated with anarchist groups and labor movements. These acts were met with reactions that bear striking resemblance to what we see today – restrictions on violence-inspiring speech and a chilling distrust of foreigners.

A community discussion following the panel echoed many of these themes, dominated by a clear sense of discontent and frustration with the legal frameworks for challenging current surveillance practices, particularly those applied to Muslims.

BEHIND THE BLINDFOLD OF JUSTICE: SECURITY, INDIVIDUAL RIGHTS & MINORITY COMMUNITIES AFTER 9/11

5:30PM, TUESDAY
3/25/08

AN EXPERT PANEL & COMMUNITY DISCUSSION ON THE CHALLENGES OF MAINTAINING NATIONAL SECURITY & ALSO PROTECTING INDIVIDUAL RIGHTS

LUCE HALL AUDITORIUM, 34 HILLHOUSE AVENUE

SPONSORED BY THE COUNCIL ON MIDDLE EAST STUDIES AT THE MACMILLAN CENTER & THE YALE CHAPLAIN'S OFFICE

PANELISTS:

- VALERIE CAPRONI, GENERAL COUNSEL OF THE FBI FROM THE OFFICE OF THE GENERAL COUNSEL, FBI, WASHINGTON, DC
- LOUAY M. SAFI, EXECUTIVE DIRECTOR OF THE ISLAMIC SOCIETY OF NORTH AMERICA (ISNA) LEADERSHIP DEVELOPMENT CENTER, PLAINFIELD, INDIANA
- REVA B. SIEGEL, NICHOLAS DEB. RAFTENBACH PROFESSOR OF LAW AND ASSOCIATE DEAN OF YALE LAW SCHOOL
- JACK M. BALKIN, KNIGHT PROFESSOR OF CONSTITUTIONAL LAW & THE FIRST AMENDMENT, YALE LAW SCHOOL
- BEVERLY GAGE, ASSISTANT PROFESSOR OF HISTORY, YALE UNIVERSITY