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Article

The Last Minstrel Show? Racial Profiling, the War on Terrorism and the Mass Media

JOHN TEHRANIAN

This Article examines and critiques media portraits of the Middle East and Middle-Eastern Americans by tracing the alarming impact of this last minstrel show on public policy and the war on terrorism The Article begins by analyzing racial profiling's problematic discourse of legitimation, deracinating its unsound roots and charting the intricate relationship between representation and reality in the narration of the Middle-Eastern threat, especially after 9/11. The Article then examines the instrumental role of the mass media in both ossifying and perpetuating stereotypes that have rationalized policies targeting individuals of Middle-Eastern descent. Drawing on specific examples from the movies, television, music, publishing and advertising, the Article highlights the accretive impact of entertainment content on the epistemology of fear and the grave and underappreciated toll of such representations on the Middle-Eastern American community. Finally, the Article also calls for some modest but concrete reforms in the entertainment industry as a starting point for providing more balanced depictions of the Middle East and of Middle-Eastern Americans.

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JOHN TEHRANIAN*

I. INTRODUCTION

In New York City, more than 3250 intersections offer push button boxes. The boxes help pedestrians halt traffic when they approach a busy street, allowing them to cross safely—in theory, that is. In fact, a 2004 investigation revealed that the vast majority of the push button boxes actually do not work at all.[1] Even more surprisingly, the lack of function comes *by design*. Over the years, city officials have deactivated the push button boxes because they interfered with the coordination of the computer programming of lights that the city uses to better regulate traffic flow. Removal is more expensive than simply leaving the boxes. But the boxes provide a surprising secondary effect. New Yorkers, despite knowing better, continue to use them. In the words of Michael Zuo, the boxes offer "harried walkers a rare promise of control over their pedestrian lives."[2] Even if that promise is illusive, the masses continue to push the button in full cognizance of their state of disrepair. The illusion of control, it seems, is sometimes just as powerful as control itself.

Without belittling the consequences at stake, the war on terrorism shares at least this one commonality with the war on traffic. One of the most terrifying results of globalization is our increased vulnerability to terrorism. In truth, there is only so much that a government can realistically do to protect its citizenry from extremists hell-bent on senselessly sacrificing innocent lives along with their own. Unfortunately, racial profiling has taken its place alongside the screening of all shoes through x-ray scanners as an effort that at least makes us *feel* that the government is doing something to respond to the threat. Unlike the relatively harmless, impotent push button boxes, however, racial profiling has profoundly negative consequences. In promulgating policies targeting

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* Professor of Law and Director, Entertainment Law Program, Chapman University School of Law. The themes developed in this Article are further explored in my book, WHITEWASHED: AMERICA'S INVISIBLE MIDDLE EASTERN MINORITY (2008), with New York University Press.

[1] Michael Luo, *For Exercise in New York Futility, Push Button*, N.Y. TIMES, Feb. 27, 2004, at A1.

[2] *Id.*

individuals on the basis of their race, we are sacrificing, among other things, fealty to our most precious democratic principles. As David Cole reminds us, "The argument that we cannot afford to rely on something other than racial or ethnic proxies for suspicion after all, is precisely the rationale used to intern 110,000 persons of Japanese ancestry during World War II."[3]

But, of course, racial profiling in the war on terrorism has its supporters. And the most prominent defense by its advocates, both enthusiastic and even reluctant, comes from one seemingly irrefutable fact: each one of the 9/11 perpetrators was a man of Middle-Eastern descent. Yet this ostensibly unimpeachable summation of 9/11 is, in fact, a product of a biased lens. In an alternative world, using the same set of facts, the interpretive narrative could have been constructed quite differently. The attacks could have been anthologized as the work of a group of anti-Americans, of frustrated young men, of the disenfranchised and socioeconomically disadvantaged, of Saudi Arabians, or of Islamic radicals (with no specific racialized elements). Thus, our collective epistemological summation of the perpetrators could have reduced them to any number of other identity signifiers, including shared ideology, age, socioeconomic status, gender, religion, or nationality. But it did not. The terrorists were, above all, racialized. Such a bent not only compromises the protection of basic civil liberties and risks making the war on terrorism a war on a race; its misguided reductionism is also bad public policy.

Support for racial profiling in the war on terrorism continues unabated, despite its underlying irrationality, because of fear—an emotion that has animated ill-conceived and discriminatory government projects since time immemorial. The specter of another 9/11 causes otherwise sound policy makers to support anti-terrorism policies that target individuals of Middle-Eastern descent. The average American has little direct contact with the Middle East or even with Middle-Easterners. Instead, popular perceptions are driven by indirect contact through the *media*ting force of mass communications. In news and entertainment programming, fear is reflected, cultivated and magnified to devastating effect.

This Article traces racial profiling's problematic discourse of legitimation, deracinating its unsound roots. It then analyzes the particular role of the mass media in fueling support for such policies by both ossifying and perpetuating stereotypes about the Middle East. In particular, the Article highlights the grave and underappreciated toll of such representations on the Middle-Eastern American community. It also calls for some modest but concrete reforms in the entertainment industry as a starting point for providing more balanced depictions of the Middle East

[3] David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 976 (2002).

and of Middle-Eastern Americans.

II. RACIAL PROFILING AND ITS DISCOURSE OF LEGITIMATION

A. *The Myth of Colorblindness*

In the war on terrorism, Middle-Eastern Americans and our constitutional values have paid a high price. Powerful forces on both the political left and right have been complicit. Some liberals, anxious to capture the national security vote and prove their anti-terrorism bona fides, have singled out entities with Middle-Eastern ties for special treatment. Witness the recent furor over the potential transfer of the operations of several American ports to DP World, a company owned by the government of the United Arab Emirates (UAE)—a controversy that exemplifies the prevailing vision of Middle-Easterners as "the other." Despite the UAE's ostensible role as an ally in the war on terrorism, the fact that port security would remain in U.S. government hands (via the Coast Guard and the Customs and Border Control Agency), and the financial incentive that any port-management company would naturally have in opposing attacks against its ports, the outcry among the American public reached a frenzied level not witnessed in years.[4] Democrats such as Senators Hillary Clinton and Chuck Schumer and House Majority Leader Nancy Pelosi jumped at the opportunity to appear tougher than Republicans on a national-security issue.[5] Lost in the debate was the fact that foreign companies and contractors have long managed operations of American ports—in fact, DP World's immediate predecessor was a foreign entity.[6] The issue was plainly not one of foreign control—a practice that had gone unnoticed until the specter of Arab-run port operations arose. The port incident highlighted the way rampant stereotyping has caused us to harbor particularly serious misgivings about Middle–Easterners possessing any control over our infrastructure.

Meanwhile, many groups have shown little compunction about targeting individuals of Middle-Eastern descent in the war on terrorism

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[4] *See* David Brooks, Op-Ed, *Kicking Arabs in the Teeth*, N.Y. TIMES, Feb. 23, 2006, at A27 ("This Dubai port deal has unleashed a kind of collective mania we haven't seen in decades. First seized by the radio hatemonger Michael Savage, it's been embraced by reactionaries of left and right, exploited by Empire State panderers, and enabled by a bipartisan horde of politicians who don't have the guts to stand in front of a xenophobic tsunami.").

[5] *The Politics of National Security: Macho Moms and Deadbeat Dads*, ECONOMIST, Mar. 11, 2006, at 25 (arguing that the ports issue gave Democrats "a soundbite—'Arab hands off our ports'—that even the dimmest voter can understand. (Such soundbites have traditionally been a Republican strong point.) It allows them to pander to racist voters with plausible deniability. (Again, this is usually Republican turf.)").

[6] *See* Ken Belson, *Port Authority Now Accepts Dubai Deal, Easing Debate*, N.Y. TIMES, Feb. 17, 2007, at B2 (noting the "politically charged debate" and the fact a British-based company operated ports in the United States).

despite their steadfast assertion that we have a color-blind Constitution that virtually dictates race-blindness.[7] Vociferously opposing the use of race in any government policy, Chief Justice Roberts recently posited that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[8] But Roberts' tautological edict against discrimination apparently gave a federal appellate court no pause when it declared in 2008 that race or ethnic origin of a passenger may, depending on context, be relevant information in the total mix of information raising concerns that transport of a passenger might be inimical to safety.[9] On this basis, the First Circuit took the remarkable step of reversing the jury verdict for a plaintiff who, because of his Middle-Eastern appearance, had been forcibly deplaned despite clearing all security checks.[10]

Despite the conservative trope of colorblindness, courts have been similarly unsympathetic to many recent efforts by Middle-Easterners to vindicate their civil rights, virtually immunizing certain discrimination from adequate legal remedies. For example, in 2005, a federal jury held that Abdul Azimi, a Muslim immigrant from Afghanistan, had suffered years of vicious racial invective and physical abuse at his workplace.[11] The evidence established that co-workers had regularly taunted Azimi with the "N-word," linked him, by blood, to Osama bin Laden and Saddam Hussein, and left him notes with swastikas and profanity-laced vituperations against his faith.[12] They even assaulted him, forcing pork into his mouth and pockets as they denounced his religion in the crudest terms imaginable.[13] Shortly after finally filing a complaint against this hateful and abusive treatment, and just a few weeks after the attacks of 9/11, Azimi was summarily fired.[14]

Despite wholeheartedly agreeing that Azimi had suffered discrimination, the jury found that the unlawful harassment had not caused Azimi "to be damaged by emotional distress, pain, suffering, emotional anguish, loss of enjoyment of life[,] and/or inconvenience."[15] Azimi did

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[7] *See* Grutter v. Bollinger, 539 U.S. 306, 347, 349 (2003) (Scalia, J., concurring in part and dissenting in part) (declaring that race-conscious admissions policies in state education institutions are unconstitutional); *id.* at 378 (Thomas, J., concurring in part and dissenting in part) ("Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.") (quoting Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

[8] Parents Involved in Comm. Schs. v. Seattle Sch. Dist., 127 S. Ct. 2738, 2768 (2007).

[9] *See* Cerqueira v. Am. Airlines, Inc., 520 F.3d 1, 18 (1st Cir. 2008) ("The jury must be instructed that the Captain has the power to refuse transport because transport of a passenger 'might be' inimical to safety unless that decision was arbitrary or capricious.").

[10] *Id.* at 20; *see id.* at 7–8 (describing security procedures and occurrences at the airport).

[11] Azimi v. Jordan's Meats, Inc., 456 F.3d 228, 231 (1st Cir. 2006).

[12] *Id.* at 232–33.

[13] *Id.* at 232.

[14] *Id.* at 246.

[15] *Id.* at 233 (internal quotation marks omitted).

not receive a single penny in damages.[16] On appeal, the unfathomable verdict was affirmed,[17] making it fair to wonder whether the courthouse door is effectively shut for Middle-Easterners seeking redress for brazen civil rights violations. The ruling therefore threatens to provide a virtual *carte blanche* for the targeting of Middle-Easterners in the workplace.

Shockingly, as far as civil rights suits involving Middle-Easterners go, *Azimi* was a relative success for the plaintiff. In 2007, the year of the *Azimi* decision, courts reported decisions on sixty-nine employment discrimination cases involving claims by Muslims, many of Middle-Eastern descent.[18] *Azimi*, with at least its acknowledgement of discrimination, was the only "victory"—in the words of Adam Litpak—"if you can call it that."[19]

B. *The Epistemology of Fear: Narrating the Middle-Eastern Threat*

All the while, racial profiling policies, especially after 9/11, continue unabated. Supporters of policies targeting Middle-Eastern individuals have defended the practices as rational responses to a legitimate threat to the United States. A mass email that has floated about cyberspace over the past several years captures this prevalent mindset. Encapsulating the prevailing zeitgeist and providing a power testament, through its repeated forwarding, to its resonance with the public, the email purports to represent a transcript of a speech, entitled "AMERICA, WAKE UP!," given by Navy Captain Dan Ouimette before the Pensacola Civitan Club, a service organization in Florida.[20] The speech views the events of 9/11 as part of a continuing chain of events that began with the American Hostage Crisis in November 1979. "Most Americans think [9/11] was the first attack against US soil or in America. How wrong they are. America has been under a constant attack since 1979 and we chose to hit the snooze alarm and roll over and go back to sleep."[21] Billed with the subject line "When WWIII Started–1979," the email specifically posits that events during the past quarter century form a systematic campaign of Middle-Eastern terrorism against the United States.[22] Understood in a vacuum and as a purely factual and unbiased history lesson, the analysis appears imminently well-

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[16] *Id*.

[17] *Id.* at 232.

[18] *See* Adam Litpak, *Impressions of Terrorism, Drawn from Court Files*, N.Y. TIMES, Feb. 19, 2008, at A15 ("There were, for instance, [sixty-nine] employment discrimination decisions involving Muslim plaintiffs in 2007.").

[19] *Id.*

[20] Dan Ouimette, Captain, U.S. Navy, America WAKE UP! (Feb. 19, 2003), *available at* http://www.versagivoice.com/World_affairs/wakeup.htm (last visited Oct. 4, 2008).

[21] *Id*.

[22] Posting of Newbomb Turk to http://www.freerepublic.com/focus/f-news/1472042/posts (Aug. 27, 2005, 19:46 EST).

reasoned, making it virtually impossible for any rational reader not to conclude that there is a monumental race war at hand, pitting two distinct civilizations against each other. However, analyzed more carefully and in a fuller context, the pedantic chronology exemplifies the sophomoric reductionism that has unfortunately framed perceptions of the Middle East. Indeed, the selective list of events highlighted—the Iranian Hostage crisis in 1979, the attacks on American embassies in Beirut and Kuwait in 1983, the bombings of TWA Flight 840 over Argos, Greece in 1986 and Pan Am Flight 103 over Lockerbie, Scotland in 1988, the World Trade Center bombing in 1993, the attacks on American embassies in Kenya and Tanzania in 1988, the bombing of the USS Cole in 2000 in Aden, Yemen, and the horrific attacks of September 11, 2001[23]—is but one oversimplified narrative of a history of recent mass-violence involving much more than Middle-Eastern terrorism. As uniformly tragic and inexcusable as each of these vicious and barbarous acts was, they were not alone. Indeed, one could construct a similar narrative involving incidents on American soil—the Oklahoma City bombings, the Columbine massacre, the Waco conflagration, the standoffs with militiamen in Idaho and various abortion clinic bombings—and conclude that we are facing a systematic threat to our basic freedoms and way of life from Anglo-Saxon conservative Christian evangelicals. Such racist reductionism, however, is unwarranted. Unfortunately for the purveyors of the "AMERICA, WAKE UP!" vision, reality is much more nuanced and complex than the myth of the Middle-Eastern peril would allow.

It is instructive to compare our collective response to the "AMERICA, WAKE UP!" trope to a possible narrative involving the terrorist threat from Anglo-Saxon conservative Christian evangelicals. Take our national reaction to the largest terrorist attack on American soil prior to 9/11: the Oklahoma City bombing. Although the mainstream media and the American public initially speculated that the attack was the product of Middle-Eastern terrorism,[24] investigations proved otherwise. Some observers have noted that law enforcement's focus on Middle-Eastern suspects in the wake of the attacks may have even allowed Timothy McVeigh to initially evade the authorities.[25] As we now know, the perpetrators of the Oklahoma City bombing were a cell of crew-cut

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[23] *Id.*

[24] *See* Mary Abowd, *Arab-Americans Suffer Hatred After Bombing*, CHI. SUN-TIMES, May 13, 1995, at 14 ("Arab Americans were held hostage while, without evidence, terrorism experts and journalists told us the bombing resembled Beirut and that 'it looked like the work of Middle Eastern terrorists.'"); Kate Fitzgerald, *Sadness, Shock at Portrayal of Arabs*, ADVERTISING AGE, Apr. 24, 1995, at 4 ("Immediately after the bombing, it was reported that people who 'looked Middle Eastern' were seen leaving the scene. Which is a very racist and vague observation. It's impossible even to stereotype the appearances of people of Middle Eastern heritage in such a way.") (quoting Maha Jirad, national director of the Chicago-based Union of Palestinian Women's Association).

[25] *Id.*

sporting, blue-eyed American sons of European descent. Interestingly, the response to the Oklahoma City Bombing, and the problem of "domestic" terrorism, never took on a racialist bent. "Timothy McVeigh did not produce a discourse about good whites and bad whites, because we think of him as an individual deviant, a bad actor," notes Leti Volpp.[26] "We do not think of his actions as representative of an entire racial group. This is part and parcel of how racial subordination functions, to understand nonwhites as directed by group-based determinism but whites as individuals."[27] For example, anti-abortion bombers are not identified on the basis of their race (often white) or their religion (often evangelical Christian), and they are certainly not billed as terrorists. When a Christian individual of European descent commits a barbaric act against civilians, he is simply an outlier, a crazed lone gunman. By contrast, when a Muslim of Middle-Eastern descent commits a barbaric act against civilians, his acts of terrorism are imputed to all members of his race and religion.

Of course, Middle-Easterners are not alone in facing this conundrum. As legal scholar Steven Bender notes:

> Anglos tend to be judged on their individual merits—few Anglos viewed Timothy McVeigh or teenage school gunman Kip Kinkel as suggesting Anglos are inclined as a group towards terrorism or mass murder. By contrast, Latinas/os often are regarded in group terms, so that the depiction of a Latino as a murderous, soulless drug dealer is taken to represent all Latinas/os, and the reputation of individual Latinas/os is affected by each such image.[28]

That feeling of collective dread that emanates from the bad actions of a member of one's race afflicts many minority groups. I was speaking with a friend shortly after the Virginia Tech massacre and he mentioned how affected he was by the tragedy. While I thought his focus was on the victims, it turned out to be on the perpetrator of the crime. My friend, a South Korean, felt personally humiliated, ashamed and scared about the fact that the killer was also of South Korean descent. This internalization of group-based determinism becomes almost second nature to any member of a minority community. When an act of terrorism occurs, Middle-Easterners throughout the United States wince in pain. Other than the obvious sadness over the tragic loss of human life, they also have a more selfish motive. They cringe at the possibility that the perpetrator will be Middle-Eastern, a fact that will only further ignite hatred and suspicion

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[26] Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1585 (2002) (footnote omitted).

[27] *Id.*

[28] STEVEN W. BENDER, GREASER AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION 207–08 (2003).

against them. Holding their collective breath, they pray that the mugshots on the news are not of men named Mohammed or Amir.

Throughout my childhood and teenage years, I repeatedly was called upon by my classmates to respond to any unpleasant event in the Middle East or any act of terrorism. I can vividly remember the day during tenth grade when a fellow student waylaid me between classes and confronted me with a belligerent cross examination about whether my family had ties to the Ayatollah Khomeini and if we thought of the United States as the Great Satan. What my classmate did not realize is that the Ayatollah did more harm to my life, and the lives of other Iranian-American, than he did to most Westerners. But it did not matter to my classmate that I was an American citizen; it made no difference that it was nonsensical to accuse my family of supporting Khomeini since, as he well knew, we, like so many others, left Iran precisely because of our disgust over Khomeini; it made no difference to him that I was Catholic, not Muslim. There was nothing I could do to escape the association, and my classmate's artless bigotry reflected a prevailing misperception that I felt utterly powerless to change.

Of course, many individuals continue to insist that the only rational response to the terror threat is the continued targeting of Middle-Eastern Americans. In this regard, Middle-Eastern Americans are asked—or, more accurately, told—that they need to take one for the team. Take a recent incident at the University of California at Los Angeles in November 2006, when an Iranian-American student, Mostafa Tabatabainejad, was repeatedly Tasered after failing to show identification to campus police at the library.[29] The brutal episode, captured on film by an eye-witness,[30] presents a scene almost as disturbing and difficult to watch as the Rodney King beating some fifteen years earlier. After the first round of Tasering, Tabatabainejad lay incapacitated on the ground, yet the police repeatedly commanded him to get up. When he was unable to do so, the police callously Tasered him again and again as he screamed in pain. They continued to Taser him even as he was handcuffed and, as the police dragged him through the room, he wailed "I'm not fighting you" and "I said I would leave."[31] Yet, unlike the Rodney King beating (which was, admittedly, more brutal), the event did not make national headlines or even receive widespread condemnation, and it certainly did not trigger a debate about law enforcement's treatment of Middle-Easterners.

While Internet discussion forums do not exactly constitute bastions of

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[29] Sara Taylor, *Community Responds to Taser Use in Powell*, DAILY BRUIN, Nov. 16, 2006, http://www.dailybruin.com/news/articles.asp?id=38960.

[30] Internet Video: UCLA Student Tasered by Police in Library (YouTube 2006), *available at* http://youtube.com/watch?v=5g7zlJx9u2E.

[31] Taylor, *supra* note 29.

reasoned and erudite discourse, they do reveal popular perceptions and prejudices. A brief exchange from an Internet forum dedicated to discussions over the Tasering incident captures the prevailing sentiment that a failure to profile would represent a colossal lapse in judgment. "When terrorists start having blonde hair and blue eyes," noted one commentator, "I will agree that ID should be checked on blonde haired blue eyed woman rather than arabic [sic] looking young men. It is foolish and irresponsible to refuse to profile. If Mostafa doesn't like that then he should expect to get tazed."[32] Yet the folly of the commentator's viewpoint becomes readily apparent with a simple examination of the most realized terrorist threats against the United States since 9/11, as the face of terrorism does not even reflect the prevailing Middle-Eastern racial profile.

Richard Reid was the notorious shoe bomber convicted on charges of terrorism for attempting to blow up an American Airlines flight on December 22, 2001.[33] While en route from Paris to Miami, he attempted to light match to detonate plastic explosives hidden in his shoes.[34] Reid is a British citizen of English and Jamaican descent.[35] Jose Padilla, the American citizen detained since 2002 as an enemy combatant by the Bush administration for his alleged role in a dirty bomb plot, was born in Brooklyn and is of Puerto Rican descent.[36] More recently, on June 22, 2006, the FBI arrested seven individuals in connection with their alleged terrorist plot against such buildings as Chicago's Sears Tower and sites in Miami.[37] Of the seven, five were American citizens and the other two were Haitian nationals.[38] Moreover, the group had no apparent ties to Al-Qaeda or other foreign terrorist organizations. Similarly, on May 7, 2007, the federal government arrested six individuals with a domestic plot to attack Fort Dix.[39] While two of the individuals were from Jordan and Turkey, the remaining four, including a group of three brothers, were born in Yugoslavia and were of Yugoslavian descent.[40] On June 2, 2007, the government arrested four individuals involved in planning a deadly

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[32] Posting of Robert Masters to http://www.laist.com/archives/2006/11/17/ucla_students_demonstrate_against_ucpd_taser_use.php (Dec. 6, 2006, 12:00 PST).

[33] Alan Cowell, *A Nation Challenged: Jailed Briton*, N.Y. TIMES, Dec. 28, 2001, at A1.

[34] Pam Belluck, *Crew Grabs Man; Explosive Feared*, N.Y. TIMES, Dec. 22, 2001, at A1.

[35] *See* Cowell, *supra* note 33 (noting that Reid has roots in Jamaica and was raised in South London).

[36] Ewen MacAskill, *US Citizen Found Guilty of Aiding Terror Groups: Florida Cell Sent Padilla to Al-Qaida Training Camp: Attacks Planned in Bosnia, Afghanistan and Chechnya*, GUARDIAN (London), Aug. 17, 2007, at 19.

[37] *See Judge Denies Bond for 6 Men Accused of Sears Tower Plot*, CHI. TRIB., July 6, 2006, at 5 (claiming that seven men were arrested in a case involving a plot to blow up the Sears Tower and FBI buildings in Chicago, L.A., Miami, New York and Washington).

[38] Philip Morris, *This Jihad Thing Isn't for Everyone*, PLAIN DEALER (Cleveland), July 11, 2006, at B9.

[39] Dale Russakoff & Dan Eggen, *Six Charged in Plot to Attack Fort Dix; 'Jihadists' Said to Have No Ties to Al-Qaeda*, WASH. POST, May 9, 2007, at A1.

[40] *Id.*

terrorist attack at JFK airport. None of the four individuals hailed from the Middle East.[41]

Most recent terrorist acts on American soil also have no Middle-Eastern connection. The deadliest shooting in American history took place on the morning of April 16, 2007, at Virginia Tech and resulted in the death of thirty-three people, including the perpetrator, Seung-Hui Cho who was an American of Korean descent.[42] The second deadliest shooting on American soil occurred at the University of Texas some four decades earlier. On August 1, 1966, Charles Whitman, a blonde-haired, blue-eyed ex-Marine and former altar boy, an American citizen of European descent, went on a killing spree at the University's clock tower, killing fourteen people and wounding an additional thirty-one.[43] Finally, the third deadliest massacre—and perhaps most vivid in the minds of Americans—took place at Columbine High School in Colorado. On April 20, 1999, Eric Harris and Dylan Klebold took their own lives as well as those of thirteen of their classmates and teachers.[44] Harris, a native Kansan of European descent, was raised as a Catholic and Klebold, a native Coloradan also of European descent, was raised as a Lutheran.[45] Indeed, recent years have witnessed an alarming increase in acts of domestic terrorism. In a span of little more than a month, dating from August 24 through October 2, 2006, four separate deadly acts of terrorism took place in our nation's schools: a fatal shooting of a teacher followed by the suicide of the perpetrator, Christopher Williams, an African-American, on August 24th at Essex Elementary School in Vermont;[46] the fatal shooting of a hostage following the sexual assault of six school girls by Duane Roger Morrisson, a fifty-three year old American of European descent, at Platte Canyon High School in Bailey, Colorado on September 27th;[47] the fatal shooting of a school principal by Eric Hainstock, a fifteen year-old student of European descent, at Weston High School in Cazenovia, Wisconsin on September 29th;[48] and finally, the deadly shooting of five Amish girls at a

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[41] *See* Chris Michaud, *Four Charged in Plot to Blow Up New York Airport*, REUTERS NEWS, June 2, 2007, http://www.reuters.com/article/topNews/idUSN0238499820070602 (noting that three of the men who plotted to attack Fort Dix were citizens of Guyana and one man was a citizen of Trinidad and Tabago).

[42] VA. TECH REV. PANEL, MASS SHOOTINGS AT VIRGINIA TECH: REPORT OF THE REVIEW PANEL 31–32 (2007).

[43] Richard Hill, *25 Years Ago, Hatred Fueled a Massacre*, ST. LOUIS POST-DISPATCH, Aug. 3, 1991, at 1D.

[44] John Rosenthal, *Close the Gun Show Loophole*, B. GLOBE, Aug. 16, 2008, at A11.

[45] Wikipedia.com, *Eric Harris and Dylan Klebold*, http://en.wikipedia.org/wiki/Eric_Harris_and_Dylan_Klebold (last visited Nov. 10, 2008).

[46] Brian R. Ballou & Michael Levenson, *Deadly Rampage in Quiet Vt. Town; Man Kills Two, Hurts Two Others, Self in Shootings at School, Homes*, B. GLOBE, Aug. 26, 2006, at A1.

[47] Catherine Tsai, *School Gunman Sexually Assaulted Girl Hostages*, DAILY TELEGRAPH (Australia), Sept. 30, 2006, at 23.

[48] Libby Sander, *Principal Killed by Shot in Struggle with Angry Student*, N.Y. TIMES, Sept. 30, 2006, at 9.

schoolhouse in Nickel Mines, Pennsylvania on October 2nd by Charles Carl Roberts IV, an American milk truck driver of European descent.[49]

On the very same Internet discussion forum where one commentator supported the UCLA police's decision to Taser the Iranian-American student, a respondent struck back:

> [O]k racist, your wish is our command—Killings at US schools have never been conducted by Muslim terrorists. Not at the Quaker school this year, not from the University of Texas's clocktower and not from the halls and lunchrooms at Columbine. Those were all carried out by Caucasians. Infact [sic] using your dipshit logic, ONLY whites should have their IDs checked in school libraries since they are the ones who kill people in American schools.[50]

Profiling has also threatened to relegate Americans of Middle-Eastern descent to the status of second-class citizens and cement their position as perpetual foreigners who can never quite become American. In short, the practice betrays our most basic and cherished values of inclusiveness and equality. Witness the case of Cyrus Kar, a former Navy Seal, a staunch supporter of the war in Iraq and an American citizen of Iranian descent and Zoroastrian faith. In 2005, Kar found himself in the midst of a Kafkaesque ordeal. As a filmmaker working on a documentary about his namesake, King Cyrus the Great of Persia, Kar had visited England, Germany, Iran, Turkey, Afghanistan and Tajikistan to conduct interviews and shoot footage for his movie. He then obtained specific permission from the United States government to visit Iraq in order to film archeological sites around ancient Babylon. Several days after his entry into the country, he and his cameraman hired a cab driver to take them to the city of Balad. At a checkpoint, police discovered two plastic bags with washing-machine timers in the trunk of the car. Kar was summarily arrested and handed over to American military officials who subsequently detained him. The FBI quickly cleared Kar of any wrongdoing, concluding, as Kar had claimed all along, that the timers belonged to the cab driver and that Kar had no knowledge or involvement with any terrorist or insurgent activities. Nevertheless, the military continued to hold him without charges and in solitary confinement for approximately seven weeks. As Kar's attorney would later observe, "Saddam Hussein [was given] more due process than

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[49] Kathy Boccella, *Amish Stoically Endure Scars of Massacre*, PHILADELPHIA INQUIRER, Sept. 13 2007, at A01; Mark Scolforo, *Terror in Amish Country; Gunman Kills 3, Self at Schoolhouse*, HOUS. CHRON., Oct. 3, 2006, at 1.

[50] Posting of tony to http://www.laist.com/2006/11/17/ucla_students_demonstrate_against_ucpd_taser_use.php (Dec. 6, 2006, 12:47 PST).

Cyrus Kar."[51]

Eventually, concerned relatives in the United States learned of Kar's whereabouts and filed a habeas corpus petition on Kar's behalf. It was only then—after more than fifty days in custody—that the government released Kar. While in captivity, the government denied Kar his fundamental right to counsel. The military, for its part, remained unapologetic: "[H]is case 'highlights the effectiveness of our detainee review process,'" noted Brigadier General Don Alston, a Coalition Forces spokesperson.[52] "We followed well-established procedures, and Mr. Kar has now been properly released."[53] Understood literally, Alston's comments strangely suggest that depriving Americans of the right to counsel and the ability to know the charges facing them are now well-established procedures. However, understood in context, the comments appear to communicate a more specific idea: that well-established procedures now involve depriving Americans *of Middle-Eastern descent* of basic civil rights whenever the remotest specter of national security is raised.

C. *The Problem with Profiling*

The effectiveness of racial profiling is also problematic, even if one wishes to target on the basis of apparent Arab ancestry. Criminologist Albert Alschuler has noted that the defensibility of racial profiling rests on the ability of law enforcement to distinguish members of different racial groups.[54] Courts have already questioned the ability to identify Latinos by their appearance, and one can critique efforts to profile Arabs on similar grounds.[55] As Susan Akram and Maritza Karmely posit, "Arabs are even less racially or ethnically homogeneous than Mexicans or Hispanics—those fitting stereotypical 'Arab-appearance' will most likely be profiled and stopped, while many Arabs will not be."[56] Thus, even if there is a meaningful correlation between Arab or Muslim background and terror risk, the policy is both wildly over- and under-inclusive—a fact with which

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[51] Robert Greenall, *The Strange Case of Cyrus Kar*, BBC NEWS, July 7, 2005, http://news.bbc.co.uk/2/hi/middle_east/4659175.stm.

[52] Andy Mosher, *U.S. Military Releases American Filmmaker*, WASH. POST, July 11, 2005, at A11.

[53] *Id.*

[54] Albert W. Alschuler, *Racial Profiling and the Constitution*, 2002 U. CHI. LEGAL F. 163, 168–69 n.24 (2002).

[55] *See* Kevin R. Johnson, *Racial Profiling After September 11: The Department of Justice's 2003 Guidelines*, 50 LOY. L. REV. 67, 85–86 (2004) (discussing the inherent problems of affording law enforcement personnel the discretion to rely on an individual's appearance in order to distinguish racial and ethnic groups from one another).

[56] Susan M. Akram & Maritza Karmely, *Immigration and Constitutional Consequences of Post-9/11 Policies Involving Arabs and Muslims in the United States: Is Alienage a Distinction Without a Difference?*, 38 U.C. DAVIS L. REV. 609, 669 (2005).

I am intimately familiar. I am frequently perceived as an Arab Muslim. I am neither Arab nor a Muslim.

Our racial profiling practices are not only bad policy, however. They also fail to pass muster under the Constitution, which requires any government policy implicating race to be narrowly tailored to further a compelling government interest. While our national security undoubtedly constitutes a compelling government interest, the racial profiling of Middle-Easterners as a part of the war on terrorism is not a narrowly tailored policy under existing Supreme Court jurisprudence.

In *Craig v. Boren*, the Supreme Court addressed an equal protection challenge to a government policy based on gender classifications—a type of discrimination traditionally subject to lesser scrutiny by the courts than racial categorizations.[57] Law enforcement statistics have long-confirmed that young men, especially those between the ages of 18 and 21, are far more likely than young women of the same age to engage in drunk driving.[58] Drawing on this fact, the state of Oklahoma set two different minimum ages for the purchase of alcohol: 18 for females, 21 for males.[59] When the policy was challenged by an underage man and a female beer vendor, the Supreme Court struck down the law on the grounds that it violated the Constitution's Equal Protection Clause.[60] As the Court readily admitted, the fact that only 0.18% of females but 2% of males between the ages of 18 and 20 had engaged in drunk driving represented a "disparity [that] is not trivial in a statistical sense."[61] Yet, as the Court concluded, such a disparity "hardly can form the basis for employment of a gender line as a classifying device. Certainly if maleness is to serve as a proxy for drinking and driving, a correlation of 2% must be considered an unduly tenuous 'fit.'"[62] As legal scholar David Cole reminds us, "the vast majority of persons who appear Arab and Muslim—probably well over 99.9 percent—have no involvement with terrorism."[63] As such, the percentage of drunk drivers among college-age men is undoubtedly far greater than the percentage of terrorists among men of Middle-Eastern appearance. If a classification based on gender is impermissible under the former fact, then surely classification based on race is manifestly unconstitutional under the latter fact.[64]

As the facts reveal, *terrorism knows no creed or color*. By thinking

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[57] Craig v. Boren, 429 U.S. 190, 191–92 (1976).
[58] *See, e.g., id.* at 200.
[59] *Id.* at 191–92.
[60] *Id.* at 192, 208–10.
[61] *Id.* at 201.
[62] *Id.* at 201–02.
[63] Cole, *supra* note 3, at 976.
[64] It should also be noted that drunk driving actually causes far more deaths in an average year than terrorism does. Gregg Easterbrook, *Road Kill*, L.A. TIMES, August 5, 2007, at M-1.

otherwise, we not only sacrifice our true national security, but we threaten to make the war on terrorism a race war. By abandoning the rule of law, we betray the principles of equality and non-discrimination that form the bedrocks of our democracy. The tale of John Walker Lindh, the American Taliban, is revealing on several levels. First, Lindh demonstrates that the terror threat can come from socioeconomically advantaged American men of European descent. More importantly, it reveals the impending danger that the war on terrorism will indeed degenerate into a war on a particular race.

After his capture while fighting for Al Qaeda in the hills of Afghanistan, Lindh was tried for his treasonous actions in a federal court where, among other things, he enjoyed full due process protection, the requirement of a unanimous jury for conviction, strict admissibility rules for evidence used against him, and, perhaps most significantly, a top-notch legal defense team composed of attorneys from one of the most reputable law firms in the country.[65] At the same time, 158 non-whites captured for their alleged activities against the United States (including some individuals who were fighting alongside Lindh) were held in cages at a United States military base in Guantánamo Bay, Cuba, conveniently located outside of the United States proper to avoid complications with constitutional protections.[66] These individuals were held indefinitely without charges and the government refused to accord them basic protections under the Geneva Conventions.[67] The government also denied them individualized hearings to determine the lawfulness of their detainment.[68] When asked why Lindh enjoyed the benefits of civil justice while others were relegated to a regime of military justice with substantially fewer protections for the accused, the Bush administration claimed Lindh was an American, while the others were foreign nationals.[69] But that distinction held no weight. Not long after proffering this rationalization, the administration discovered that Yasser Hamdi, one of the individuals held at Guantánamo Bay, had been born in Louisiana and was, therefore, an American citizen.[70] Yet Hamdi did not receive the rights enjoyed by Lindh. Although our government eventually transferred Hamdi from Guantánamo Bay to the continental United States, it "continued to assert authority to hold him under the same conditions as the foreign nationals held in Guantánamo Bay: indefinitely, without charges, without trial, without access to a lawyer, and, for all practical purposes,

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[65] DAVID COLE, ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM 1 (2003).

[66] *Id.* at 2.

[67] *Id.*

[68] *Id.*

[69] *Id.* at 3.

[70] *Id.*

incommunicado."[71] Ultimately, the Supreme Court rejected the constitutionality of the administration's treatment of Hamdi. In a 6–3 decision, the Court sustained the government's right to hold American citizens as enemy combatants without criminal charges if they were engaged in hostilities against the United States.[72] But, in a repudiation of the Bush administration's position, the Court found that Hamdi had a right to petition civil courts with the assistance of effective counsel to challenge his status as an enemy combatant.[73]

One further note on Hamdi bears mentioning. Instead of pushing forward with the proceedings following the Supreme Court's ruling, the government released and deported Hamdi to Saudi Arabia in October 2004.[74] In return, Hamdi simply agreed to renounce his American citizenship and comply with strict travel restrictions going forward.[75] Hamdi's release represents a shocking turn of events involving a supposedly grave threat to our national security. If Hamdi were really as dangerous as the government repeatedly asserted, his release is a stunning abdication of the government's duty to protect us from terrorism. If he is not as dangerous as claimed, his treatment deserves scrutiny and demands, at the very least, a compelling justification.

Whether right or wrong, our constitutional jurisprudence draws a sharp divide between the rights to which citizens are entitled and the rights afforded to non-citizens. But the stark contrast in treatment between Lindh and Hamdi suggests that the civil right entitlements are even more fractured than that. Specifically, we appear to have two distinct classes of citizenship: the White and the Other. The prevalent discourse surrounding the Lindh affair epitomized this double standard. Lindh was repeatedly portrayed as just a lost, confused teenager experimenting with alternative ways of life.[76] Indeed, no less than George H. W. Bush referred to Lindh as merely "some misguided Marin County hot-tubber."[77] Our former President's word choice is emblematic of our problematic approach to the war on terrorism. The white American of European descent who fights for Al Qaeda is just "misguided." The darker skinned man who fights for Al Qaeda is a terrorist and an embodiment of the anti-American hostility

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[71] *Id.*

[72] Hamdi v. Rumsfeld, 542 U.S. 507, 509 (2004) (holding, in part, that "due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker").

[73] *Id.* at 538–39.

[74] *Hamdi Voices Innocence, Joy About Reunion*, CNN.COM, Oct. 14, 2004, *available at* http://www.cnn.com/2004/WORLD/meast/10/14/hamdi/.

[75] Adam Liptak, *In Terror Cases, Administration Sets Own Rules*, N.Y. TIMES, Nov. 27, 2005, at 1.

[76] Duncan Campbell, *From Hot Tub to Hot Water*, GUARDIAN UNLIMITED, July 16, 2002, *available at* http://www.guardian.co.uk/world/2002/jul/16/worlddispatch.usa.

[77] *Id.*

ubiquitous throughout the Middle East.

III. CINEMA AND STEREOTYPE

Racial profiling in the war on terrorism has betrayed our fundamental constitutional values and undermined our fealty to non-discrimination principles. It also represents misguided policy. One major culprit—though by no means the only—is the perceptions of Middle-Easterners that dominate the American imagination. And in that regard, the mass media has a central role. Hollywood is the world's most influential producer in the images. In that capacity, it has endured severe criticism in the past for its part in perpetuating invidious racial stereotypes.[78] In recent years, the entertainment industry has responded by encouraging the casting of individuals from historically underrepresented groups and eschewing the most egregious and cardboard portrayals of ethnic minorities.[79] The minstrel show, however, goes on for one notable group: Middle-Easterners. Representations of Middle-Easterners as barbaric terrorists, loathsome misogynists and religious lunatics continue to dominate the silver screen. In part, such portrayals are tolerated because of negative public opinion towards the Middle East. At the same time, these images not only reflect existing stereotypes, they also help to ossify and further perpetuate them. Art, after all, is the means through which we order the universe, and images play an instrumental role in both reflecting and constructing our notions of reality. As a result, they inextricably affect racial perceptions. With flawed deductive extrapolation, the public reifies these representations of Middle-Easterners as a fair and balanced reflection of reality.

A. *Representations of Minorities on the Silver Screen*

As numerous scholars have argued, minority groups have long faced the problem of insidious typecasting on the silver screen.[80] Two recent empirical accounts epitomize the compelling research on this issue. In his study *Greasers and Gringos*, Steven Bender details how media depictions have affected public policy towards the Latino community over the past century.[81] Specifically, Bender documents the ways in which images of indolent, mendacious, hotheaded, and hypersexual Latinos have

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[78] *See infra* notes 80–88 and accompanying text.

[79] *See infra* notes 89 and accompanying text.

[80] *See, e.g.*, Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1261–75 (1992) (documenting the social construction of racial stereotypes, particularly through entertainment and pop-culture media).

[81] BENDER, *supra* note 28, at 1.

perpetuated certain stereotypes.[82] The stereotypes, he argues, have adversely impacted their treatment by police and prosecutors, the course of immigration reform, and the scope and exercise of their legal rights.[83] Similarly, in *The Slanted Screen*, director Jeff Adachi exposes the rampant deployment of invidious stereotypes of Asian-Americans in film throughout the years. Hollywood has persistently abetted in the emasculation and desexualization of the Asian male by assiduously averting depictions of them in romantic situations. *Romeo Must Die*, a rare blockbuster featuring an Asian-American lead, starred Jet Li opposite actress/singer/sex-symbol Aaliyah. Despite the fact that the storyline derived from *Romeo and Juliet*, the movie carefully avoided any intimacy, let alone a love scene, between the stars. In the movie's most explicit moment, Li and Aaliyah briefly shared a hug. The film suggests the continued survival of an implicit, racially-grounded Hays Code[84] in Hollywood.[85]

At the same time, few Hollywood movies feature non-white lead protagonists,[86] and the subject matter of mainstream releases infrequently

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[82] *Id.* at 31–32.

[83] *Id*. at 1–2, 44.

[84] The Hays Code was a production code in effect from 1930 through 1967 that delineated what constituted morally acceptable content for motion pictures produced by the studios. Motion Picture Association of America, *Ratings History*, available at http://www.mpaa.org/Ratings_history1.asp.

[85] The intersection of race and love on the big screen demonstrates how media both reflects and perpetuates anti-egalitarian norms. Consider the fact that it was not until 1968 that American network television broadcast the first interracial kiss. The kiss, featured on the science fiction series *Star Trek*, generated a storm of controversy by showing Caucasian Captain James T. Kirk locking lips with African-American Lieutenant Uhura. *See Star Trek: Plato's Stepchildren* (CBS television broadcast, Nov. 22, 1968). Notably, the show's writers couched the scene in the context of coercion and a dream-like sequence in order to dampen the audience's shock. As the storyline of the episode goes, powerful telekinetic forces had gained control over the show's characters and dictated their "illicit" actions. Nevertheless, protests ensued against the series. Even to this day, the mainstream media shy from depictions of interracial relationships for fear of offending audiences. *See generally* Glenn Lovell, *Interracial Romances: In Hollywood, Love Is Still a Mostly Segregated Thing*, ATLANTA J. CONST., Sept. 16, 1994, at P11. Witness the big screen version of *The Pelican Brief*, which starred Julia Roberts and Denzel Washington. Almost any blockbuster featuring two major Hollywood sex symbols would inevitably involve a romance. However, like *Romeo Must Die*, the movie version of *The Pelican Brief* carefully eschewed any hint of romance, even though the actual book upon which it was based called for it. Similarly, until recently, virtually all television dating shows would match individuals only with members of their own race. Or take the massive public furor caused in February 1993 when Pulitzer Prize-winning novelist Art Spiegelman called for a reconciliation between the Jewish and African-American communities in New York by depicting an Hasidic man kissing an African-American woman on the cover of the Valentine's Day issue of the New Yorker. *See Racial Theme of New Yorker Cover Sparks Furor*, L.A. TIMES, Feb. 9, 1993, at 12. Spiegelman meant the cover as a Valentine's Day card to New York City. As he later recalled, "It was amusing that in a week in which 90 percent of the other magazines on the stands had all these S&M covers, because that seems to be very dominant in our culture right now, what got people most upset weren't whips and chains, but two people kissing." Arthur J. Maginda, *Out of the 'Maus' Trap?*, BALT. JEWISH TIMES, Jan. 20, 1995, at 43. The continual reinforcement of the traditional social opprobrium against interracial relationships is but one small way in which the movie industry has failed minority groups.

[86] It should be noted, however that, in recent years, African-Americans have made significant strides in this area.

involve minority groups. Even in the instances when a storyline treats a minority-related theme, the action is predominantly driven by a white character. As legal scholar Keith Aoki has asked, "Why do filmmakers generally seem to assume that a mainstream audience wants, indeed needs, a white character as an avenue into any story about an Asian American, or for that matter any other minority community?"[87] Take the recent wave of Hollywood movies focusing long overdue attention on the African continent. *The Last King of Scotland*, a purported biography of Ugandan dictator Idi Amin, used a wholly fictional young Scottish doctor, played by James McAvoy, as the central character and the propelling protagonist. *Blood Diamond*, an exposé of the horrors of the diamond trade, uses Danny Archer, a white mercenary from Zimbabwe played by Leonardo DiCaprio, as its chief protagonist and Maddy Bowen, a white American journalist played by Jennifer Connelly, as his love interest. In the few instances where this trend has not held true, it has taken the insistence of a minority in a significant position of power to force the issue. For example, Justin Lin, the director of both *Better Luck Tomorrow* and *The Fast and the Furious: Tokyo Drift*, found studio executives pressuring him to recast the movies with Caucasian characters in lead roles, despite the fact that both movies featured plotlines that inextricably involved Asian characters. It was only at his insistence and when he exercised his leverage as the films' director that the features were made with Asian leads.

Sadly, it is still a notable victory for minority groups when a Hollywood movie does something as simple as cast a minority in a non-stereotypical role that acknowledges his or her ethnicity without calling undue attention to it. As Edward Guthmann notes, a youth-oriented blockbuster as seemingly apolitical as Robert Rodriguez's *Spy Kids* represented a momentous occasion for Latinos in film. "By placing Latino characters at the forefront and not depicting them as outside the mainstream," Guthmann argues, "Rodriguez may achieve more than he would by raising a cinematic fist for racial equality."[88] The profound impact of such a seemingly mundane casting decision should not be underestimated.

There is much to criticize about Hollywood's historical treatment of minority actors, its perpetuation of invidious racial stereotypes, and its failure to address diverse subject matter. On the other hand, there has been significant outcry against Hollywood's history of unfavorable portraits and treatments of numerous minority groups. To its credit, the entertainment industry has begun to respond constructively. In recent years, more

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[87] Keith Aoki, *Is Chan Still Missing? An Essay about the Film* Snow Falling on Cedars *and Representation of Asian Americans in U.S. Films*, 7 UCLA ASIAN PAC. AM. L.J. 30, 48 (2001).

[88] Edward Guthmann, *From Stereotypes to a Nuanced View: Onscreen Portrayals of Latinos Have Changed with the Times*, S.F. CHRON., Sept. 16, 2001, at 49 (Sunday Datebook).

mainstream movies have subverted and even actively mocked stereotyping of Asians and African Americans. Consider the movies *Better Luck Tomorrow*, released in 2002, and *Harold & Kumar Go to White Castle*, released in 2004. Both features delivered resounding blows to the pernicious and oppressive "model minority" myth by casting Asian-Americans in leading roles portraying characters that are sexual, prone to hedonistic bouts of drinking and drug abuse, and yet simultaneously ambitious, witty and intelligent. At the same time, the public has also grown less tolerant of the demonization of minority groups. There is still, however, one notable exception to this trend: Middle-Easterners.[89]

B. *The Treachery of Images: Middle-Easterners in Media*

With alarming regularity, the entertainment industry continues to cast Middle-Easterners in a largely stereotypical light. Jack Shaheen's analysis of popular films documents the consistent vilification of individuals of Middle-Eastern descent on celluloid.[90] Hollywood does not feature Middle-Easterners in starring roles. When they do appear onscreen, the men are typically portrayed as wife beaters, religious zealots, and terrorists. Meanwhile, the women are often represented as cowering, weak, and oppressed. The most recognized Iranian-American actress is Shohreh Aghdashloo, and her two most prominent roles have covered both terrains: she played a reticent and abused Iranian-American wife in *House of Sand and Fog* (a role for which she received an Oscar nomination) and an Islamic matriarch of a domestic terror cell in the Fox drama *24*.

The blockbuster *Rules of Engagement*, which was released a year-and-a-half before 9/11, epitomizes Hollywood's deeply troubled handling of Middle-Eastern portrayals. In a key scene in the movie, an angry Arab mob gathers outside the American Embassy in Yemen. Filled with profound hatred of the United States and animated by a barbaric thirst for blood and violence, numerous Arab women and children—both boys and girls—appear to be threatening the Marines sent to protect the embassy. When snipers open fire on the Marines, the Marines decide to retaliate by opening fire on the crowd, killing eighty-three Yemenites in all. In one close-up, we see a five year-old Yemeni girl shooting an automatic pistol at the Americans. As Jack Shaheen observes:

> [N]o Hollywood WWI, WWII, or Korean War movie has ever shown America's fighting forces slaughtering children. Yet, near the conclusion of *Rules of*

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[89] It should be pointed out, however, that the deconstruction of Middle-Eastern stereotypes has begun. The recent *Axis of Evil Comedy Tour* is a key example. However, much of Hollywood has not yet altered its product.

[90] *See* JACK G. SHAHEEN, REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE 1–2 (2001).

> *Engagement*, US marines open fire on the Yemenis, shooting 83 men, women, and children. During the scene, viewers rose to their feet, clapped and cheered. Boasts director Friedkin, "I've seen audiences stand up and applaud the film throughout the United States."[91]

The American-Arab Anti-Discrimination Committee (ADC) deemed *Rules of Engagement,* with its ludicrous portrait of young Arab girls (even an amputee) attempting to kill Americans, as "probably the most vicious anti-Arab racist film ever made by a major Hollywood studio."[92] Critics from numerous mainstream media outlets—including CNN, *Entertainment Weekly*, the *Los Angeles Times*, *Time* and the *Christian Science Monitor*—condemned the film's blatant bigotry.[93] As reviewer Mark Freeman noted:

> The Yemeni people are painted in the broadest, most racist terms imaginable. Friedkin lets his camera linger over their angry faces, exaggerating their difference: the robes, the veils, the beards, the bizarre, harsh language, and their keen desire for violence . . . . The message of *Rules of Engagement* is the necessity to kill all those who actively oppose the United States and that the murder of women and children is acceptable in such cases. The implicit suggestion is that no matter what, these Middle Eastern fanatics will be carrying a gun and a desire to shoot you dead first—even innocent looking six year olds—so their annihilation is in the best interests of the 'civilised' world. This hysterical, paranoid fear of the Other pervades every scene in *Rules of Engagement*, it celebrates the death of these Yemeni people because they do not share a love for the USA. Much like the absurd representation of the Russians in the McCarthyist '50s (and again in the Reaganite '80s) those from the Middle East, those not sharing a Christian background, those who dress, speak, act differently to the shining example of America are an instant threat. Wiping them out, despite their guilt or innocence, age or attitude, is *Rules of Engagement's* solution

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[91] *Id. at* 97.

[92] Press Release, American Arab Anti Discrimination Committee, *Protest of Racist Film "Rules of Engagement" Scheduled for Washington DC*, Apr. 18, 2000, *available at* http://www.adc.org/action/2000/18april2000.htm.

[93] *See, e.g.*, Paul Clinton, Review: An Unengaging 'Rules,' CNN.COM, Apr. 7, 2000, http://archives.cnn.com/2000/SHOWBIZ/Movies/04/07/rules.engagement/index.html; Richard Corliss, *Movie Review: Rules of Engagement*, TIME, Apr. 17, 2000 at 84; Lisa Schwarzbaum, *Colonel of Truth*, EW.com, Apr. 14, 2000, http://www.ew.com/ew/article/0,,275900,00.html; David Sterritt, *Movie Guide: Rules of Engagement*, CHRISTIAN SCIENCE MONITOR, Apr. 7, 2000 at 14; Kenneth Turan, *'Engagement' Fails to Step Up in the Face of Tough Questions,* L.A. TIMES, Apr. 7, 2000, http://www.calendarlive.com/movies/reviews/cl-movie000406-67,0,1228900.story.

to the problem.[94]

Despite its virulent racism, the film topped the United States box office for two weeks and earned its studio tens of millions in profit.[95] The regular applause and cheer that the slaughter of the Arab crowd by the Marines garnered from audiences typified *Rules of Engagement*'s resonance with the public and the film's appeal to our most jingoistic tendencies. The movie also bucked the trend of increased sensitivity towards minority groups in recent mainstream features. Compare, for example, the treatment of the Arabs in *Rules of Engagement* with the portrait of the Japanese in Clint Eastwood's recent World War II drama *Letters from Iwo Jima*, which received criticism for what some observers felt was an overly *sympathetic* portrayal of Axis Japan.[96]

In contemplating the enduring acceptability of anti-Middle-Eastern sentiments, I am reminded of an incident from my youth. In December 1988, the world's biggest band at the time, Guns 'N Roses, had just come out with their eagerly anticipated follow-up to *Appetite for Destruction*, their multi-platinum major label debut. The new album, *G 'N R Lies*, was no disappointment. Partly acoustic, *Lies* would spawn a decade worth of unplugged performances on MTV and solidify their status as both the era's most popular and critically acclaimed hard rock band. Guns 'N Roses stood alone in bridging the gap between the cross-dressing, spandex, big-hair bubblegum metal of the mid-80s and the alternative, darker grunge that supplanted it in the early 90s. All of my closest high school friends were fans of their music, and this appreciation for the band had always brought us together. So it was with great anticipation that, one Friday, we headed to the record store *en masse* to pick up a copy of *Lies*. We then went back to one of my friend's houses, where he placed the album on the turntable (those were still the days of vinyl) and we listened, in a single sitting, to the work from beginning to end. We were all taken aback by the musicianship of the entire album. But, it was the final song, *One in a Million*, that brought us to a complete silence. A dark, haunting melody, it played on my friend's stereo. Its guttural, searing guitar line foreshadowed the ominous first-person lyric, the inner monologue of a small town, Midwestern white teen arriving for the first time in Los Angeles—portrayed, as in *Blade Runner*, as an apocalyptical multiracial inferno burning at the edge of the continent, one quake, mudslide, flood, fire or riot

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[94] Mark Freeman, Review of *Rules of Engagement*, *available at* http://www.sensesofcinema.com/contents/00/9/rules.html (last visited Oct. 5, 1998).

[95] *Box Office/Business for Rules of Engagement* (2000), IMDB, The Internet Movie Database, http://www.imdb.com/title/tt0160797/business (last visited Nov. 1, 2008).

[96] *See, e.g.*, Tony Medley, Review of *Letters from Iwo Jima*, Dec. 13, 2006, http://www.tonymedly.com/2006/Letters_From_Iwo_Jima.htm; Chris Tookey, *Letters that Re-write History*, Feb. 28, 2007, http://www.dailymail.co.uk/pages/live/articles/showbiz/reviews.html?in_article_id=437989@in_page_id=1924.

away from Armageddon. True to the subject matter, the lyrics took a disturbing and troubling turn. With callous, unremorseful bravado, Axl Rose sang:

Police and Niggers, that's right
Get out of my way
Don't need to buy none of your
Gold chains today

Moments later, with a reference to Iran, the lyrics became personal to me:

Immigrants and faggots
They make no sense to me
They come to our country
And think they'll do as they please
Like start some mini Iran,
Or spread some fuckin' disease
They talk so many goddamn ways
It's all Greek to me.[97]

I looked around to watch my friends' reactions. Like typical teenagers, they appreciated Rose's unapologetic rant, as racist and homophobic as it was. But just as the guys were bonding over the album, replaying the song and even singing along with its lyrics, smiling, in an odd acknowledgement of me, at the line about Iran, I felt a profound sense of Otherness. To this day, I listen to the song with deep ambivalence and an unease borne both from the lyrics and the chilling sensation of separateness I felt that day twenty years ago.

Rose argued that he had taken poetic license to express the innermost thoughts of what any mild-mannered Midwestern might think upon arriving, for the first time, in the heart of the big city. Yet Rose's poetic-license defense was betrayed in an interview he did with *Rolling Stone*, when he revealed that the inspiration for his Iran stanza was not the perspective of some fictional character, but came from his own personal experience. In an earlier incident, he and guitarist Slash reportedly entered a convenience store only to be chased out by an Iranian clerk, who was wielding a knife and swinging it wildly at them. Commented Rose:

> When I use the word *immigrants*, what I'm talking about is going to a 7-11 or Village Pantries—a lot of people from countries like Iran, Pakistan, China, Japan, et cetera, get jobs in these convenience stores and gas stations. Then they treat you like *you* don't belong here. I've been chased out of a store with Slash by a six-foot-tall Iranian with a butcher knife

[97] Lyricstime.com, Guns N' Roses Lyrics, One in a Million, http://www.lyricstime.com/guns-n-roses-one-in-a-million-lyrics.html (last visited Nov. 24, 2008).

> because he didn't like the way we were dressed. Scared me to death. All I could see in my mind was a picture of my arm on the ground, blood going everywhere. When I get scared, I get mad. I grabbed the top of one of these big orange garbage cans and went back at him with this shield, going, "Come on!" I didn't want to back down from this guy.[98]

Naturally, the song generated a storm of controversy, as serious concerns were raised over Rose's use of the "N–word" and even about the blatant homophobia. However, the voluminous coverage dedicated to the troubling lyrics scarcely mentioned Rose's anti-Iranian commentary or his immigrant bashing. Indeed, the extensive Wikipedia entry for the song focuses on the controversy surrounding *One in a Million*'s anti-black and anti-gay sentiments. Not a word is mentioned about the anti-Iranian hatred.[99]

As the final available frontier for blatantly racist portrayals in mass media, it is almost as if Middle-Easterners have become the target of the sublimated wrath that was previously (and acceptably) directed in film, television, music and books against African-Americans, Latinos, Native Americans, Asians and gays. Worse yet, the problem is growing. Paralleling the changing view of Middle-Easterners in the American imagination, the portrait of Middle-Easterners on celluloid and elsewhere has also undergone a fundamental transformation, growing even more pernicious through time. In prior decades, depictions of the Middle East focused on the exotic and mysterious, while the releases of recent years have increasingly emphasized the perfidious and barbarous. Laurence Michalak's study of mainstream movies with Middle-Eastern themes carefully documents this disturbing trend. Comparing 87 such films from the 1920s with 112 made in the 1960s, Michalak finds that the earlier depictions primarily romanticized the Middle East and highlighted the charm and allure of its people, while movies of the later era increasingly associated the region and its inhabitants with violence and a panoply of illicit practices, including torture, prostitution, money laundering, and treason.[100] On television, the stereotypical treatment is similar. As David Prochask observes:

> On TV, almost all of the fictional "Arab" figures—who

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[98] Del James, *The Rolling Stone Interview: Axl Rose,* ROLLING STONE, Aug. 10, 1989, at 47.

[99] Wikpedia.com, *One in a Million* (Guns N' Roses song), http://en.wikipedia.org/w/index.php?title=One_in_a_Million_%28Guns_N%27_Roses_song%29&oldid=157529659 (last visited Oct. 27, 2008).

[100] Laurence Michalak, *Cruel and Unusual: Negative Images of Arabs in Popular Culture* 18–20, 24 (American Arab Anti Discrimination Committee Research Institute, ADC Issue Paper No. 15, 1988); Laurence Michalak, *The Arab in American Cinema: From Bad to Worse, or Getting Better?*, 42 SOC. STUD. REV.: J. CAL. COUNCIL FOR SOC. STUD. 11, 12–13 (2002).

> are not even played by Arab actors—are typecast as villains and buffoons, ranging from oriental despots, backward sheikhs, and terrorists, to wealthy playboys, assassins, and white slavers. Negatively stereotyped Arabs have appeared on "Vegas," "Fantasy Island," "Bionic Woman," "The Six Million Dollar Man," "Police Woman," "McCloud," "Hawaii Five-O," "Cannon," "Columbo," "Medical Center," "Wonder Woman," "Trapper John, M.D.," "Charlie's Angels," and "Rockford Files."[101]

Hollywood is by no means alone in perpetuating such stereotypical images. According to Suha Sabbagh's study *Sex, Lies and Stereotypes: The Image of Arabs in American Popular Fiction*, Arabs were prominently featured in thirty-three best-selling works of American fiction during the 1970s and 80s.[102] Only one, John Le Carre's *The Little Drummer Girl*, depicted them in a favorable or historically accurate light. Advertisers have also done their part. A few years ago, Thomson & Thomson, a prominent trademark research firm, ran an unsettling advertisement in no less than the official publication of the American Bar Association: the *ABA Journal*.[103] The spread depicted an Arab raising a sword to decapitate a man and featured the following tagline: "Without Expert Trademark Research You Could Be Put in a Compromising Situation."[104] Taken by itself, such an image would be suspect, not to mention in poor taste, especially given the horrifying recent round of widely-disseminated videos depicting actual terrorist executions of hostages. But in a society where Middle-Easterners rarely appear in advertising, their sudden presentation, when cast in the most stereotypical of lights, becomes deeply troubling.

Besides enduring consistently negative portrayals on the screen and in the media, Middle-Easterners also suffer from relative invisibility in two different ways. First, mainstream filmmakers often cast non-Middle-Eastern actors in Middle-Eastern roles. Secondly, Middle-Easterners remain largely absent from the screen even when the setting or plot warrants, or even necessitates, the inclusion of a Middle-Eastern character.

In a time-honored practice, the movie industry has traditionally insisted on casting white actors, even when a role involves a person of color. In days of yore, Hollywood would hire an Italian man, slap on some

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[101] David Prochaska, *Disappearing Iraqis*, *available at* http://www.acdis.uiuc.edu/Research/S&Ps/1991-Sp/S&P_V-3/disappearing_iraqis.html.

[102] Suha Sabbagh, *Sex, Lies and Stereotypes: The Image of Arabs in American Popular Fiction,* AMER. ARAB. ANTI-DISCRIMINATION COMM., ISSUE PAPER NO. 23 (1990), *available at* http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/29/f4.pdf.

[103] Prochaska, *supra* note 101.

[104] *Id.*

war paint and have him play a Native American,[105] or take a raven-haired white female, offensively slant her eyes and cast her as an Asian.[106] Of course, there is nothing inherently wrong with race-blind casting, as long as it works both ways. But, in reality, it never has; one rarely sees, for example, an African-American, Latino or Asian actor cast as a white character.[107]

Yet, with the lobbying efforts of such organizations as the NAACP, Hollywood has recently abandoned such racially insensitive practices,[108] except with respect to Middle-Easterners. As far back as the silent movies, Hollywood has cast non-Middle-Easterners as Middle-Eastern characters. Rudolph Valentino played the lead Arab role in several silent movies, including *The Sheik* and *Son of the Sheik*. Numerous white actors have followed suit through the years, including Douglas Fairbanks (*The Thief of Baghdad*), Sean Connery (*The Wind and the Lion*), and Albert Molina (*Not Without My Daughter*). However, unlike the change we have witnessed with respect to other ethnic groups, the practice continues unabated to this day. Take the recent international blockbuster *300*, a retelling of the ancient Battle of Thermopylae between King Leonides' rag-tag crew of 300 Spartans and Emperor Xerxes's 120,000-strong Persian army. The movie raised a considerable stir in Iran, where the government issued a press release condemning its savage portrait of the Persians and denouncing the movie as a form of "psychological warfare" by the United States. Whatever the merits of such an argument (though it should be pointed out that few Americans even associate Persia with Iran), there was a problematic aspect of the film that remained completely ignored: most of the "Persians" in the movie were actually played by Hispanic or African-American actors. In fact, not a single major character was actually played by a Middle-Easterner, let alone a Persian—a particularly shocking fact when one considers how easy it would be to cast a Middle-Easterner in the movie, given the large Persian population living within close proximity of

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[105] *See, e.g.*, Imdb.com, Anthony Caruso (I), http://www.imdb.com/name/nm0142273/ (last visited Oct. 5, 2008) (cataloguing the career of character actor Anthony Caruso, an Italian-American who appeared in more than 200 Hollywood movies during his lifetime, often played Indian, Arab, Persian, Latino and Native American characters).

[106] See, for example, Zena Marshall's portrayal of the Chinese Miss Taro in Ian Fleming's *Dr. No*.

[107] One rare exception is the obscure but taut independent thriller *Sutre* (1994), which features half-brothers who create constant confusion because of their "remarkable resemblance." In fact, the two actors look nothing alike. Among other things, one is nebbish and the other athletic; one is black and the other is white.

[108] Of course, controversy still remains. The casting of Jennifer Lopez, a Puerto-Rican-American, in the role of Selena in the eponymously titled film upset many Mexican Americans. Moreover, casting of mostly Chinese actors in *Memoirs of a Geisha* received criticism from numerous individuals of Japanese descent. However, the very fact that there was a dialogue over the issue showed how far we have come on the issue of minority representation in Hollywood.

Hollywood.[109]

Just as perniciously, Middle-Easterners have been whitewashed from the screen even in settings where reasonable and normalized portraits of them would make eminent sense. Take the long-running Fox series *Beverly Hills 90210* which followed the lives of a fictitious group of teenagers residing in the wealthy West Los Angeles enclave. In the name of research, and research alone, I have personally viewed all 296 episodes of the series during its decade long run and never witnessed a single Persian character depicted. In fact, the closest the show came to having a Middle-Eastern character was an episode guest-starring Matthew Perry, long before his days on *Friends*.[110] In the episode, Perry plays Roger Azarian, a successful student-athlete at West Beverly High. The only indications of Azarian's Middle-Eastern origins are his Armenian last name and several veiled references to his father's status as a first-generation American. While Azarian is on his way to a good college and a potential run on the professional tennis tour, he deeply resents the pressure his successful father has inflicted upon him. Unable to deal with the crushing burden of living in his father's shadow, Azarian plans to kill his father in a murder-suicide. Brandon Walsh, the good-natured Anglo-Minnesotan lead protagonist, naturally saves the day at the eleventh hour.

The wholesale evisceration of any Middle-Eastern presence in *Beverly Hills 90210* is utterly perplexing when one considers the facts: at least forty percent of the teenage population in Beverly Hills is Persian.[111] It would be absurd to set a television show in Harlem and not depict a single black person; unthinkable to cast a program in rural Idaho and not have a single white person in the cast. Yet, for ten years, *Beverly Hills 90210* never featured a single Persian character. With the absence of any terrorist-related themes, it appears, the series had no use for one. For a show with several thousand characters, the complete absence of a group that makes up almost half of the real Beverly Hills teenage population is nothing short of stunning.

C. *Thinking about Reform: SAG's Diversity in Casting Initivative*

Of course, the wholesale whitewashing of an entire ethnic group is not

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[109] Of course, like many projects, *300* was actually filmed outside of the Thirty Mile Zone. It was shot in Montreal. Wikpedia.com, *300* (film), http://en.wikipedia.org/wiki/This_is_Sparta (last visited Oct. 27, 2008).

[110] *Beverly Hills 90210: April Is the Cruelest Month* (Fox television broadcast Apr. 11, 1991).

[111] Renee Montagne, *Living in Tehrangeles: L.A.'s Iranian Community*, (NPR radio broadcast June 8, 2006), *available at* http://www.npr.org/templates/story/story.php?storyId=5459468; Diane Wedner, *Neighborly Advice; Beverly Hills' Close Up? It Looks Different Now*, L.A. TIMES, Jan. 8, 2006, at K2. Overall, the *Washington Post* estimates that approximately a quarter of Beverly Hills 35,000 residents are Iranian. *See* Sonya Geis, *Iran Native Becomes Mayor of Beverly Hills*, WASH. POST, Apr. 1, 2007, at A3.

an entirely new phenomenon. As Steven Bender points out, Latinos have similarly faced systematic exclusion from many television programs—including *Friends*, *Seinfeld*, and *Will & Grace*—set in cities with large Latino populations.[112] While strides have been made in more fairly representing other ethnic groups, Middle-Easterners have made little progress. In recent years, political pressure has convinced various media arms to adopt diversity initiatives to rectify the systematic under-representation of minorities in television and film. One such example is the Screen Actors Guild's (SAG) Diversity in Casting Initiative (DCI).

Touted prominently in their public relations materials and on their website, the DCI incentivizes filmmakers to cast minorities and other historically underrepresented groups by offering lower minimum rates under the Master Agreement if a certain percentage of speaking roles go to diversity actors.[113] Although SAG's DCI represents an important step, it suffers from several significant shortcomings. First, the Initiative only applies to low budget movies—movies that rarely achieve broad mainstream distribution and audiences.[114] SAG is therefore providing breaks for the films that are generally the least viewed. As such, it fails to rectify the exclusion of minorities from the highest paid acting gigs and does nothing to improve diversity in the mainstream media. Second, by setting lower minimum rates on diverse productions, it arguably creates a problematic two-tiered minimum wage system: a higher rate for white male productions and a lower rate for diversity productions. To encourage greater casting on underrepresented groups, the Initiative is allowing filmmakers to pay members of those underrepresented groups lower rates than they would ordinarily receive.

Finally, and most pressingly for the purpose of our discussion, the program's scope has some notable limitations. The reduced minimum rates on qualifying DCI productions only apply to casts where a threshold percentage of speaking roles go to performers from one of four "protected" groups: Women, Senior Performers, Performers with Disabilities, and People of Color.[115] The Initiative defines People of Color as individuals who are "Asian/Pacific Islander, Black, Latino/Hispanic or Native

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[112] BENDER, *supra* note 28, at 84, 181.

[113] *See* Screen Actors Guild Diversity-in-Casting Initiative, http://www.sagindie.org/resources/contracts/ (last visited Oct. 2, 2008) (describing the incentive program and benefits available to filmmakers who cast minorities and other "protected" groups).

[114] *Id.*

[115] SCREEN ACTORS GUILD, LETTER AGREEMENT FOR LOW-BUDGET THEATRICAL PICTURES 2 (2005), *available at* http://www.sagindie.org/docs/sag-lowbudget-2005wm.pdf; SCREEN ACTORS GUILD, MODIFIED LOW BUDGET AGREEMENT 1 (2005), *available at* http://www.sagindie.org/docs/sag-modifiedlowbudget-2005wm.pdf. Interestingly, despite Hollywood's ostensible liberalism on social issues, sexual minorities do not count as a protected group.

American Indian."[116] Consequently, Middle-Easterners, who represent a significant victim of Hollywood stereotyping, are wholly excluded from protection under the DCI. At the same time, the inclusion of other minority groups in the DCI creates a perverse casting incentive. When the rare treatment of Middle-Eastern subject matter does hit the screen, filmmakers are effectively encouraged to cast Indians (who count as Asian), light-skinned blacks, Hispanics, and Native Americans in those roles instead of Middle-Easterners so that they might qualify for the special DCI rates.

SAG's data on casting trends, which industry analysts use to monitor both the progress of minorities in the acting profession and the diversification of film content, are similarly flawed. They capture race as one of five categories: Caucasian, African-American, Native American, Asian/Pacific Islander, and Latino.[117] Per usual, Middle-Easterners find themselves in the Caucasian box. Additionally, SAG has an Asian Pacific American Caucus, African American Caucus, Native American Caucus, Latino/Hispanic Caucus, Women's Caucus, Performers with Disabilities Caucus, and Senior Performers Caucus.[118] Surprisingly, there is no Middle-Eastern caucus.

SAG likely does not manifest overt concern about Middle-Eastern casting issues because there is not enough pressure surrounding the issue. In large part, there is a widespread public tolerance for stereotypical portraits of Middle-Easterners. Even as depictions have grown increasingly absurd, there has been little public outcry. As Akram and Kevin Johnson observe, "[t]he stereotyping and demonizing of Arabs and Muslims by American films may well have gone largely unnoticed because they are entirely consistent with widespread attitudes in U.S. society."[119] Maz Jobrani, an Iranian-American actor who has made guest appearances on numerous television shows, including *Law & Order* and *24*, poignantly describes the troubling portrayal of Middle-Easterners in the mass media: "We are always depicted as lunatics," he comments. Jobrani continued:

> I've guest-starred on TV shows and several times, even if I'm playing a good guy, there is someone on the show being accused of some terrorist act. If that's in people's minds and

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[116] SCREEN ACTORS GUILD, LETTER AGREEMENT FOR LOW-BUDGET THEATRICAL PICTURES 2 (2005), *available at* http://www.sagindie.org/docs/sag-lowbudget-2005wm.pdf; SCREEN ACTORS GUILD, MODIFIED LOW BUDGET AGREEMENT 1 (2005), *available at* http://www.sagindie.org/docs/sag-modifiedlowbudget-2005wm.pdf.

[117] Screen Actors Guild 2004 Casting Data Report Overview, http://www.sag.org/content/2004-casting-data-report-overview (last visited Oct. 2, 2008).

[118] Screen Actors Guild Affinity Groups, http://www.sag.org/content/committees (last visited Oct. 2, 2008).

[119] Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 310 (2002).

> nine times out of ten they see you on TV and it deals with terrorism, then it's going to stick.[120]

In the words of movie critic Godrey Cheshire, the portrait of Middle-Easterners as bloodthirsty terrorists appears to be "the only vicious racial stereotype that's not only still permitted but actively endorsed by Hollywood."[121]

Indeed, in a haunting recycling of the past, the racist tropes historically employed against blacks, Jews, and other persecuted minorities are now pointed against Arabs, culminating in a discourse that juxtaposes our Western values against their Oriental barbarism. Such portrayals depict the Middle-Easterner as a devious, hook-nosed perpetual foreigner who presents a continuous threat to our national security and way of life.[122] As political scientist Ronald Stockton suggests, the use of such imagery has frequently come at moments of crisis and unrest, such as the oil embargo in the early 1970s and the instability in the Middle East during the late 1980s and early 1990s. One salient example comes from an American national monthly that, in 1989, published a cartoon entitled *Reading the Arab Mind*. "Vengeance," "fanaticism," "double talk," and "blackmail" formed prominent compartments in the illustration. Interestingly, the work mimicked (perhaps subconsciously) a viciously anti-Semitic cartoon from nearly a century ago. The earlier image divided the "Jewish mind" into such categories as "worship of money," "cowardice," and "theft."[123] The striking commonalities—the portrayal of both Arabs and Jews as possessing "socially hostile orientations to the world and rigid mental compartmentalization with thought processes alien to normal humans"[124]—constitute a key lynchpin for racist ideologies that condone hatred by dehumanizing members of a targeted minority.

V. REPRESENTATION BECOMES REALITY: CECI N'EST PAS UN ARAB

In his deceptively simple painting, *La Trahison des Images*, Rene Magritte depicts a pipe with the words "Ceci n'est pas une pipe" ("This is not a pipe") written below the image in neat cursive. Magritte's seemingly paradoxical statement challenges our dangerous tendency to conflate

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[120] Kelli Skye Fadroski, *Setting the Terror Level to Funny*, SQUEEZE-OC.COM, Mar. 23, 2007.

[121] Brian Whitaker, *The 'Towel-Heads' Take on Hollywood*, THE GUARDIAN, Aug. 11, 2000, at 14, *available at* http://www.guardian.co.uk/film/2000/aug/11/2.

[122] EDWARD SAID, ORIENTALISM 285 (Pantheon Books 1978); Ronald Stockton, *Ethnic Archetypes and the Arab Image*, *in* THE DEVELOPMENT OF ARAB-AMERICAN IDENTITY 119, 138 (Ernest McCarus ed., Univ. of Mich. Press 1994); Sarah Gualtieri, *Strange Fruit? Syrian Immigrants, Extralegal Violence and Racial Formation in the Jim Crow South*, 26 ARAB STUD. Q. 63, 64–66 (2004).

[123] Stockton, *supra* note 122, at 138–39.

[124] *Id.* at 138.

mimetic representation (the painting of a pipe) and object (a pipe).[125] The treachery of images results when we internalize these coded visual messages as reality. Similarly, Hollywood not only reflects certain stereotypes about Middle-Easterners, but also recursively perpetuates and spreads those stereotypes. The memorable 1991 drama *Not Without My Daughter* provides a powerful example. The movie, starring Sally Fields fresh off her Oscar win in 1985, tells the story of Betty, an American woman of European descent who falls for the charming Moody Mahmoody, a seemingly Westernized, well-educated Iranian-American doctor living in Michigan. The two marry and, shortly thereafter, have a daughter. But all is not well for Dr. Mahmoody. He experiences recurrent racism at his workplace and grows increasingly homesick. In response, he convinces his wife that they should take their daughter for a visit to Iran. Unfortunately, once they arrive in Iran, the latent misogynistic and violent Muslim apparently lurking within Moody is unleashed with gusto. An erstwhile model of American assimilation, he transforms within a few weeks into a fanatical Islamicist who brutally assaults his wife, forces her to wear traditional head-coverings, and monitors her every movement under capital threat. He unilaterally announces that his family will be living in Iran permanently and beats Betty as he informs her that, in Iran, men exercise despotic control over every aspect of their spouses' lives. His insular, gang-like family members serve as co-conspirators, placing Betty under virtual house arrest. Ultimately, Betty plots her escape—but not without her daughter in tow.

Throughout the movie, Betty prominently dons a gold-cross necklace, a stark symbol of the clash-of-civilizations motif present throughout the movie. The one benign Iranian who assists Betty in escaping dresses impeccably in fine Italian suits, always has the delicate sounds of classical music wafting throughout his house, and sports a perfect Oxford accent. As a whole, however, the Iranian men are consistently portrayed as militant fundamentalists. Meanwhile, the Iranian women are depicted as cowering conformists unable to speak their minds or resist male authority. A heavy specter of Iranian anti-Americanism runs rampant throughout the

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[125] Magritte implores us to scrutinize our casual relationship with the environment and to question our most tacit assumptions about reality and representation on several levels. First, his painting emphasizes the inextricable disconnect between representation (the painting of a pipe) and reality (a pipe). Second, the painting deconstructs the fundamental disjuncture among different forms of representation, including visual depiction and linguistic discourse. *See* MICHEL FOUCAULT, THIS IS NOT A PIPE 27 (James Harkness trans., Univ. of Cal. Press 1983). Observes Michel Foucault in a mimeograph about Magritte's work, the word 'this' in *La Trahison des Images* could refer to the sentence, or language, itself: "[this is not] a pipe, but rather a text that simulates a pipe; a drawing of a pipe that simulates a drawing of a pipe; a pipe (drawn other than as a drawing) that is a simulacrum of a pipe (drawn after a pipe that itself would be other than a drawing)." *Id.* at 49. All told, as Foucault argues, the painting ruptures the implicit link between resemblance and discourse, representation and object. And so must we.

movie.

Despite its attempt at serious narrative, the movie degenerates into absurdity with the melodramatic title, sensationalist subject matter, Moody Mahmoody's ridiculous appellation, Sally Field's typical histrionics, and the movie's farcical tagline: "In 1984, Betty Mahmoody's husband took his wife and daughter to meet his family in Iran. He swore they would be safe. They would be happy. They would be free to leave. He lied."[126] There is no denying the harrowing story of the real Betty Mahmoody, who bravely managed to escape Iran with her daughter in 1986.[127] There is no doubt that fundamentalist Islam, as practiced in Iran and elsewhere, is an absolute affront to the basic rights of women. However, the movie drew upon and heightened the worst stereotypes about Iranians: their purported religious fanaticism, misogyny, and unassimilability. For example, at one point, Moody forcibly enrolls his wife in a Koran study class where she befriends a naïve Midwestern housewife who was brought to Iran under similar circumstances by her Iranian-American husband.[128] In a brief moment away from their husbands, Betty asks her: "Was he ever violent?" "Not in the States," her friend confides as Betty nods knowingly.[129] The message to the viewer is clear—no matter how seemingly Westernized an Iranian-American man might seem, under the veneer lies a violent, unrepentant jihadist.

Surprisingly, the movie received little condemnation or criticism at the time of its release. In an era when the slightest hint of racism can sometimes generate a massive controversy and result in numerous corporate apologies and firings,[130] the movie produced little dissent over its blatant racism or quibbles over its sensationalism and panderage. Popular reviews at the time of the movie's release were largely favorable, with critics even lauding its instructive insights into Iranian culture.[131] To this day, the movie continues to enjoy a successful syndication run on cable channels.

A. *Cultivation Theory and the Impact of Images*

On occasion, portraits of any ethnicity will inevitably conjure up and

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[126] NOT WITHOUT MY DAUGHTER (Pathé Entertainment 1991).

[127] *But see* IRAN—WITHOUT MY DAUGHTER (Journeyman Pictures 2003) (documentary about Dr. Mahmoody's side of the story wherein he denies many of the claims Betty made about him).

[128] NOT WITHOUT MY DAUGHTER, *supra* note 126.

[129] *Id.*

[130] See, for example, the fallout from the Don Imus incident involving epithets hurled against the women's basketball team at Rutgers University. *See, e.g.*, Paul Farhi, *Don Imus is Fired by CBS Radio*, WASH. POST, Apr. 13, 2007, at A01 (discussing the national outcry over racist statements made by Imus, and CBS Radio's subsequent decision to cancel Imus's morning program).

[131] *See, e.g.*, Chris Hicks, Review of *Not Without My Daughter*, DESERET NEWS, Jan. 11, 1991, http://deseretnews.com/movies/view/1,1257,1336,00.html (lauding the movie's purportedly instructive insights into Iranian culture).

reiterate certain stereotypes. There is nothing inappropriate about a writer or director, in isolation, making a movie about terrorism that predominantly features Middle-Easterners. That said, media portrayals should not always (or almost always) perpetuate stereotypes. The problem becomes clear upon examination of the overall trend. When virtually every single piece of mainstream media that features Middle-Easterners inextricably involves themes of terrorism, violence, misogyny and/or religious extremism, one must conclude the presence of a systematic failure to portray Middle-Eastern peoples with accuracy. As Steven Bender posits in the Latino context, "[o]ne might ask, what harm was done by . . . telling a factual slice of Puerto Rican life in New York City,"[132] or, for that matter, by making a movie based on the terrifying ordeal of Betty Mahmoody? Bender persuasively responds:

> The answer stems from the insignificance and illegitimacy of Latina/o stories in the culture of American mass media. Anglo borrowing of Latina/o influences and Anglo telling of Latina/o stories would be more tolerable and even welcome if they occurred against a backdrop of Latina/o relevancy and positive visibility. Surely, stereotypical images will lose their sting if they are balanced by a steady depiction of Latina/o characters in honorable roles. Against such a backdrop, *West Side Story* would not be the only media representation of Puerto Ricans, and thus their portrayal as a murderous but perhaps misunderstood thug in *Capeman* (or as an unruly mob in *Seinfeld*) could be viewed more properly as one man's misdirected life [rather] than as a cultural blueprint for Puerto Ricans and other Latinas/os.[133]

Similarly, Moody Mahmoody's dark descent into Islamic fundamentalism and misogyny would be viewed as one man's misdirected path rather than the blueprint of the Iranian-American male. Unfortunately, since such portrayals of Middle-Easterners are inevitably the only portrayals of Middle-Easterners that make their way into the mainstream media, existing prejudices only worsen with exposure to such one-sided depictions.

The media mediates, cultivating perceptions that have a profound and direct real-world impact.[134] As Michael Omi and Howard Winant note in their seminal work on the subject, racial formation is a function of "social

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[132] BENDER, *supra* note 28, at 181.

[133] *Id.*; *see also Seinfeld*: *The Puerto Rican Day* (NBC television broadcast May 7, 1998).

[134] *See, e.g.*, Daniel Chandler, *Cultivation Theory*, http://www.aber.ac.uk/media/Documents/short/cultiv.html (last visited Oct. 4, 2008) (explaining that "[c]ultivation theorists argue that television has long-term effects which are small, gradual, indirect but cumulative and significant").

structure and cultural representation."[135] Hollywood serves as both reflector and cultivator of cultural representations, and its images directly influence constructions of race which "becomes 'common-sense'—a way of comprehending, explaining and acting in the world."[136] This concept, abstract to many, becomes eminently tangible to its unwitting victims. When discussing *Not Without My Daughter* with a friend recently, he recounted a memorable incident from his adolescence. At that time, he had been dating a girl for several months. One day, concerned about the relationship, she confronted him about some anxieties she had been experiencing. When pressed to share her feelings, she revealed the source of her apprehensions: "You're not going to be like that guy in *Not Without My Daughter*, are you?" she asked. My friend, who is only half-Iranian and typically passes for a white European, carries the badge of his dad's Iranian surname and, with it, the inevitable associations. I could not help but laugh painfully at his tale; it was a fate with which I was all too familiar. On numerous occasions, I have also been forced by a girlfriend or her parents to answer for the sins of Dr. Moody Mahmoody. My Christian first name, Catholic upbringing, and otherwise "excellent" performance of whiteness (no matter how unconscious or unintentional) tempered the scrutiny I faced, but only slightly.

The media's increasing ubiquity has only exacerbated its negative impact on public perceptions of Middle-Easterners. As Edward Said once noted:

> One aspect of the electronic, postmodern world is that there has been a reinforcement of the stereotypes by which the Orient is viewed. Television, the films, and all the media's resources have forced information into more and more standardized molds. So far as the Orient is concerned, standardization and cultural stereotyping have intensified the hold of the nineteenth-century academic and imaginative demonology of "the mysterious Orient."[137]

With these words, Said highlights a dangerous consequence of the information age. While we have multiplied our rate of data access, we have not enjoyed a commensurate rise in data quality. More information is not necessarily better information, especially when that information is based upon invidious, wholesale stereotyping of an ethnic group. Through the consumption of media, individuals who have had no personal experience with Middle-Easterners receive and internalize a clichéd image

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[135] MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S 56 (2d ed. 1986), *available at* http://books.google.com/books?id=j9v6DMjjY44C&printsec=frontcover&dq=%22racial+formation+in+the+united+states%22.

[136] *Id.* at 62.

[137] SAID, *supra* note 122, at 26.

of the group as a whole. That *tabula rasa* has now disappeared, replaced with a flawed maquette of the quintessential Middle-Easterner that resides in the minds of many.

It should therefore come as no surprise that the images of Middle-Easterners, as reflected in mainstream media, are not innocuous. They play a role in animating public policy and contribute to the harsh realties that Middle-Eastern Americans must endure: hate crimes,[138] special registration requirements,[139] arrest with indefinite detention,[140] racial profiling,[141] and job discrimination.[142] The psychological tolls from this attack against the civil rights of Middle-Easterners cannot be underestimated.

B. *Flying the Unfriendly Skies*

Perceptions inextricably impact reality. According to the tenets of cultivation theory, a concept first devised by communication scholar George Gerbner, media exposure cultivates viewers' perceptions of reality by "mass-produc[ing] messages and images [which] form[] the mainstream of a common symbolic environment"[143] and by socializing viewers into "standardized roles and behaviors."[144] The process of enculturation from the visual images and symbolic queues that are widely disseminated by the media impacts racial perceptions. For Middle-Easterners, the power of cultivation theory is most readily apparent in one particular public space: the airport. When examining the treatment of Middle-Easterners at airports, we are given a poignant reminder that stereotypical media portraits can perpetuate racism and wreak a particularly devastating toll on the regular lives of targeted groups.

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[138] *See* Andrea Elliott, *Reported Hate Crimes Against Muslims Rise in U.S.*, INT'L HERALD TRIB., May 13, 2005, at 2 (stating that reported hate crimes against Muslims in the United States increased by more than fifty percent in 2004).

[139] *See* U.S. DEP'T OF JUSTICE, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002), *available at* http://www.usdoj.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm (announcing a registration system that will require periodic registration to individuals of "elevated national security concern").

[140] *See* David Cole, *The Priority of Morality: The Emergency Constitution's Blind Spot*, 113 YALE L.J. 1753, 1753 (2004) (estimating that over 5000 Middle Easterners had been detained after 9/11); David Rosenzweig, *3 Groups Sue Over Arrests of Arab Men*, L.A. TIMES, Dec. 25, 2002, § 2, at 3 (discussing immigrant detainment and lawsuits that followed for allegedly unlawful detentions).

[141] *See* Heidee Stoller et al., *Developments in Law and Policy: The Costs of Post-9/11 National Security Strategy*, 22 YALE L. & POL'Y REV. 197, 220–21 (2004) (discussing the use of racial profiling and the resulting number of arrests, mostly aliens from Arab and Muslim nations).

[142] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, QUESTIONS AND ANSWERS ABOUT THE WORKPLACE RIGHTS OF MUSLIMS, ARABS, SOUTH ASIANS, AND SIKHS UNDER THE EQUAL EMPLOYMENT OPPORTUNITY LAWS, *available at* http://www.eeoc.gov/facts/backlash-employee.html (last visited Oct. 4, 2008).

[143] George Gerbner et al., *Living with Television: The Dynamics of the Cultivation Process*, *in* PERSPECTIVE ON MEDIA EFFECTS 17, 17–18 (Jennings Bryant & Dolf Zillman eds., 1986).

[144] George Gerbner & Larry Gross, *Living with Television: The Violence Profile*, 26 J. COMM. 173, 175 (1976).

News coverage of Middle-Eastern issues and fictional portraits of Middle-Easterners in films and on television have combined to cultivate a fear of terrorism any time someone of Middle-Eastern descent boards the same flight as us. In numerous recent incidents, mere crew and/or passenger discomfort has triggered the forcible deplaning of individuals with Middle-Eastern features. Often predicated on nothing more than the abstract association of Middle-Eastern physiognomy with violence and terrorism—no doubt spurred by the endless blitz of media images reinforcing this stereotypical linkage—these evictions have a devastating impact on their victims. Airports serve as a remarkably public arena where individuals exercise a right deemed fundamental by the Supreme Court in *Saenz v. Roe*—the right to interstate travel.[145] Discriminatory incidents at the airport are therefore particularly humiliating and implicate a denial of basic civil rights.

Section 44902 of the Federal Aviation Act, originally enacted by Congress in 1961, grants airlines the unilateral right to permissive refusal, defined as the ability to deny "transport [to] a passenger or property the carrier decides is, or might be, inimical to safety."[146] Under Federal Aviation Regulations, this right flows to a pilot as well.[147] While courts have held that this right is "decidedly expansive, [it] is not unfettered."[148] As such, arbitrary or capricious refusal to allow a passenger to fly can theoretically give rise to a claim for damages. In practice, however, pilots have repeatedly exercised their unilateral right to refuse to fly a plane if they do not feel comfortable with any passenger. Virtually no cause need be demonstrated—often, it seems, appearing Middle-Eastern is cause enough.[149]

Such a posture flies in the face of our most cherished values and legal norms. The segregationist South had many white individuals who felt profound discomfort at the very sight of a black person in the same bus, restaurant or school as them. Yet we have long since universally condemned the practice of segregation. The *Brown v. Board of Education* decision rested, in large part, on the Supreme Court's view that such systematic separation inflicted tremendous psychological wounds on the black community. Citing several academic studies, the Court concluded that "[t]o separate [blacks] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way

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[145] Saenz v. Roe, 526 U.S. 489, 498–500 (1999) (finding that the Constitution guarantees a fundamental right to interstate travel).

[146] Federal Aviation Act, 49 U.S.C. § 44902(b) (1994).

[147] 14 C.F.R. § 91.3 (2007); 49 C.F.R. § 1544.215(c) (2008).

[148] O'Carroll v. Am. Airlines, Inc., 863 F.2d 11, 12 (5th Cir. 1989).

[149] *See infra* notes 151–65 and accompanying text.

unlikely ever to be undone."[150] The practice of forcibly deplaning Americans of Middle-Eastern descent solely on the basis of crew and/or passenger discomfort inflicts a badge of inferiority upon the entire Middle-Eastern community, undermining our basic tenets of equality.

Take the case of Jehad Alshafri, a thirty-two year-old Arab-American.[151] On November 3, 2001, American Airlines refused him the right to board a flight from Boston to Los Angeles. As the airline explained, Alshafri looked "suspicious."[152] It apparently did not matter that Mr. Alshafri worked as a defense contractor and possessed secret-level security clearance from the government.[153] He was still considered such a threat that his civil rights were unilaterally trampled in the name of security. To add a strong dose of humiliation to the incident, Alshafri was escorted from the boarding area in full view of his fellow passengers by a state trooper.[154]

Arshad Chowdhury, a Bangladeshi-American, simply looked too Middle-Eastern when he attempted to board a Northwest Airlines flight from San Francisco on October 23, 2001. An American-born citizen, Chowdhury grew up in Connecticut, attended Wesleyan University and was an M.B.A. candidate at Carnegie Mellon University at the time of the incident. Before entering business school, he was an investment banker for Deutsche Bank and worked at the World Trade Center.[155] Without any tangible security rational, the pilot declared that he would not fly with Mr. Chowdhury aboard. Both the FBI and the local law enforcement quickly arrived on the scene and, although they proceeded to clear Chowdhury to fly, the crew's decision stood.[156] For good measure, Northwest Airlines proceeded to place Mr. Chowdhury's name on a security block list distributed at all American airports, thereby frustrating any of his future attempts to fly.[157] As Chowdhury would later argue:

> Allowing pilots to trump law enforcement does not have anything to do with security. It's not even rational. The result of this system is that my parents and my friends in the Bangladeshi American community are too scared to

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[150] Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954).

[151] *Oversight Hearing on Passenger Screening and Airline Authority to Deny Boarding: Hearing Before a Subcomm. of the S. Comm. on Appropriations*, 108th Cong. 28–29 (2004) (statement of Michael A. Smerconish, Esq.) [hereinafter *Oversight Hearing on Passenger Screening*].

[152] *Id.* at 29.

[153] *Id.* at 28.

[154] *Id.* at 28–29.

[155] Arshad Chowdhury, *Airline Discrimination Lawsuit Client Profile*, http://www.aclu.org/racialjustice/racialprofiling/chowdhury_statement.pdf (last visited Nov. 1, 2008).

[156] Complaint at 2, Chowdhury v. Northwest Airlines (N.D. Cal. June 4, 2004), *available at* http://fl1/findlaw.com/news.findlaw.com/hdocs/docs/aclu/chwdhrynwa60402cmp.pdf.

[157] *Id.*

> fly. While we share with all Americans a fear of the statistically slim chance of terrorism, my community has the additional fear of almost certain harassment from our fellow Americans.[158]

In late 2001, Tony Zohrehvandi, a forty-one year-old Iranian-American software developer was denied the right to board an American Airlines flight from Seattle to his home in Dallas. The decision was particularly ironic since it was made by Sohrehvandi's *own employer*. At the time of the incident, Zohrehvandi happened to be a twelve-year veteran of American Airlines.[159] American Airlines officials informed him that "he had done nothing suspicious . . . he was being refused transport solely because the crew did not want to fly with him."[160] Specifically, he was told that the pilot "didn't like the way [he] looked."[161] In response, Zohrehvandi asked his company to limit his business flying and went on anxiety suppression medication.[162]

The dehumanization and psychological pain inflicted after suffering such a humiliating fate becomes evident upon consideration of Zohrehvandi's heartrending thoughts after the incident: "When I became a citizen and said my pledge of allegiance," he noted, "I said liberty and justice for all—not just for white, blond and blue eyes. It shatters your dream. Is it going to be like this from now one [sic]—every time some idiot takes an action against the U.S., are we going to be singled out again?"[163]

Unfortunately, one cannot help but conclude that the answer to Zohrehvandi's question is a resounding "yes." Yet we fail to contemplate the inexorable sense of ostracism, isolation and belittlement felt by the victims of such racism. Commented Zohrehvandi: "In this country when I became a citizen, they said, 'You're an American.' On [the day of removal from the flight, I realized] I will never be an American in this country as long as I look like this."[164] At the core, the experience suffered by Zohrehvandi and countless other Middle-Eastern Americans represents a fundamental betrayal of the promise of America and the values of the Constitution. Zohrehvandi's fear—that he will never be viewed as a full-fledged American—is harbored by all individuals who suffer the

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[158] Chowdhury, *supra* note 155.

[159] Laurie Goodstein, *A Nation Challenged: Civil Rights*, N.Y. TIMES, Nov. 10, 2001, at A1.

[160] *Oversight Hearing on Passenger Screening*, *supra* note 151 (statement of Christy E. Lopez, Esq.).

[161] Elizabeth Schulte, *Flying While Arab*, SOCIALISTWORKER.ORG, Oct. 19, 2001, http://www.socialistworker.org/2001/380/380_05_FlyingWhileArab.shtml.

[162] *Id.*

[163] *Id.*

[164] Sharon Cohen, *Mideast Names, Looks Grounding Passengers*, SEATTLE TIMES, Sept. 26, 2001, at A7.

humiliation of unchecked, and even socially condoned, discrimination such as profiling.

It is also a pang I have shared on numerous occasions, especially after 9/11. In early 2002, while waiting to check in for a flight from Orange County to Chicago, I noticed a middle-aged woman of European descent looking nervously over me. After several minutes, she engaged me in conversation, quickly getting to the point:

> "Where are you going?" she asked. I told her I was on my way to the East Coast, via Chicago, for a business trip. At my mention of Chicago, I could see her wince ever so slightly, as she realized we were going to be on the same flight. She pressed on, asking me what I did for a living. I told her.
>
> "You don't look like a lawyer," she challenged.
>
> "Thank you," I replied.
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> "My dad's a lawyer. And he always wears a suit," she countered. "Where's yours? You only have a backpack with you." The rapid-fire questions went on for several more minutes.

A few months later, I found myself on a flight from Los Angeles to Salt Lake City. I recognized the by-now familiar nervous gaze from the passenger, an older woman of European descent, sitting next to me. After fidgeting skittishly for several minutes, she worked up the nerve to talk. Like her predecessor in Orange County, she quickly got to the point and, within three questions, began to cross-examine me about my religious background.

Neither of these experiences was as traumatic as anything suffered by Alshafri, Chowdhury or Zohrenvandi. But each had its painful psychic toll. No matter what I do, it reminded me, I may never be a true equal in my country. As much as I would like to disarm the stinging query "Where are you going?" with a deadpanned quip "To see Allah," such a response would likely land me on the evening news. I am profoundly aware that, as a Middle-Eastern male, in many public spaces such as airports, I enjoy substantially fewer rights, First Amendment or otherwise, than others.

Although 9/11 has exacerbated this state of affairs, it did not create it. I can remember one of the first trips I took abroad as an adult. It was the Spring of 1993. A sophomore in college, I was traveling with a group of my classmates in Amsterdam. As we checked in for our flight to return to the States, I was taken aside by security officials for KLM Airlines. For the next twenty minutes, the fabled racial tolerance of the Dutch betrayed me as I was subjected to a demeaning interrogation by security, forced to recount my life story and justify every detail of my short trip. The reason I

was singled out for special treatment was quite clear and the guards shamelessly made no attempt to hide it. All was well and I was just another American traveling with my American passport until one of the guards got to the box naming my place of birth: Tehran, Iran. At that moment, I became very different from my classmates, and I could feel the badge of inferiority pinned on me. Eventually, the security officials let me go and allowed me to board my flight just in the nick of time. But I will never forget the humiliation I felt as my classmates looked on and wondered what I had done to warrant such disparate treatment.

C. *The Perpetrual Foreigner*

I am reminded of the words of Frantz Fanon, who captured the profound psychological impact and sense of helplessness that racial prejudice inflicts on its victims. Describing how individuals of African ancestry succumb to a heightened level of self-consciousness over their bodies, he writes:

> I am given no chance. I am overdetermined from without. I am the slave not of the 'idea' that others have of me but of my own appearance. . . . I am being dissected under white eyes, the only real eyes. I am *fixed*. . . . Why, it's a Negro![165]

Middle-Eastern Americans can never escape their skin. Under the dominant gaze, they remain perpetual foreigners, never quite equal, always a part of the Other. In *Covering*, his autobiographical contemplation on race and sexual orientation, Kenji Yoshino flags the problem of perpetual foreigner status: "I came to hate the question 'Where are you from, *really*?' that followed my assertion that I had grown up in Boston."[166] For certain groups, this question inevitably emerges in daily conversation and serves as a constant, nagging reminder of one's presumptive un-American-ness. Even more perniciously, it acts as an unconscious but powerful inducement for assimilatory behavior in the (perhaps futile) hope of one day escaping the inquiry. Finally, it is a tragic reminder that one is never fully an equal part of the American body politic. This fact causes more than just psychic damage. Indeed, at times of crisis, it has very real effects.

Consider the impact that the perpetual-foreigner notion has had on Asian-Americans in recent years. In the high-profile Wen Ho Lee scandal, the Chinese-American scientist working at Los Alamos National Laboratory was charged with espionage for allegedly selling nuclear secrets to the Chinese government. Lee professed his innocence all along,

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[165] FRANTZ FANON, BLACK SKIN, WHITE MASKS 116 (Charles Lam Markmann trans., 1967) (1952).

[166] KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 120 (2006).

but was denied bail and held in solitary confinement.[167] Most media outlets immediately assumed his guilt, a position all too easy to believe given the status of Asians as perpetual foreigners in the American subconscious.[168] Ultimately, however, Lee was vindicated as the case against him imploded. Years and millions of dollars worth of investigation turned up no evidence of spying and charges of espionage were dropped. In the end, the presiding judge in Lee's trial issued a remarkable personal apology to him for "the unfair manner in which you were held in custody by the executive branch" and deemed the prosecution an "embarrass[ment to] our entire nation."[169]

Shortly after 9/11, Captain James Yee, a Muslim Chinese-American chaplain serving with the Army, faced charges of espionage for allegedly using his position at Guantanamo Bay to spy for Islamic extremists. While awaiting trial, Yee spent three months in a maximum security military prison and his lawyers began to prepare a death-penalty defense.[170] Ultimately, the government dropped the charges for lack of proof. In the end, adultery and the downloading of pornography—hardly the stuff of national security—were the most significant allegations the government could muster against Yee.[171]

The tales of both Lee and Yee are instructive on several levels. First, they demonstrate that the problem of the perpetual foreigner and the impact of the war on terrorism reach beyond the Middle-Eastern population and affect all individuals on the darker side of the white/black divide. Second, the experiences are tragic reminders that we still endure a dual-tiered system of citizenship, where minorities, no matter how assimilated, still face questions about their loyalty. As Harvey Gee points out, both Lee and Yee possessed all of the standard model minority qualifications—they were both highly well-educated individuals who had achieved the American dream through hard work and perseverance.[172] But they could never escape their heritage. Focusing on their foreignness and Yee's ties to Islam, the government and the press all too readily believed the tenuous allegations of treason mounted against Lee and Yee.[173]

In arguing that the use of remedial race-conscious policies to redress

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[167] Tony Karon, *Wen Ho Lee Case: More Like Drefus Than Rosenbergs*, TIME.COM, Sept. 11, 2000, at 1.

[168] *See* FRANK H. WU, YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE 77, 79 (2002) ("[T]he perpetual foreigner syndrome haunts Asian Americans. . . . We are figuratively and even literally returned to Asia and ejected from America.").

[169] ERIC K. YAMAMOTO ET AL., RACE, RIGHTS, AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT 474 (2001).

[170] Harvey Gee, *From* Bakke *to* Grutter *and Beyond: Asian Americans and Diversity in America*, 9 TEX. J. C.L. & C.R. 129, 138–39 (2004).

[171] *Id.* at 139.

[172] *Id.* at 140.

[173] *Id*. at 139–40.

past discrimination is never constitutional, Justice Scalia once posited that, "[i]n the eyes of government, we are just one race here. It is American."[174] As the tribulations of both James Yee and Wen Ho Lee indicate, Scalia's optimism was, at the very least, premature. My own personal experiences also cast doubt on Scalia's one-race hypothesis. Ironically, when I travel abroad, I am viewed as an American. In my own country, I am presumptively viewed as an outsider.

My status as a perpetual foreigner became shockingly clear during a recent episode that should have had no racial subtext. In my non-academic life, I am an intellectual property and entertainment litigator. Recently, I represented one of the world's largest celebrity photography agencies (a.k.a. the paparazzi) in a copyright infringement suit against a prominent Internet gossip blogger named Perez Hilton. The litigation generated immediate headlines, partly due to the novel cyberlaw issues at stake, but mostly due to the fact that it pitted a controversial gossip reporter known popularly as the Most Hated Man in Hollywood against the controversial paparazzi. My client received numerous comments from the general public about the suit—mostly remarking on its merits. However, one comment had nothing to do with the substance of the litigation. Curiously, it dealt with my client's choice of counsel. "I see that you have an Iranian attorney," the note read. "USA classifies Iranians as residents of the Axis of Evil. Isn't it funny that you had chosen an Iranian to represent American beliefs?" Unfortunately, the comment was not a radical outlier, or an errant data point in an otherwise race-blind world. In fact, it is a reflection of sentiments often reflected by the mass media and residing unconsciously in the minds of some members of society. It is a trope I have experienced throughout my life, emanating from sources both uneducated and cultured, and it is a basic fact of life with which every Middle-Eastern American has to come to terms.

Stereotypical depictions reinforce clichéd perceptions which, in turn, produce discriminatory conduct. Middle-Easterners are portrayed as the perpetual foreigner, the enemy, the Other, the terrorists, the uncivilized heathens who threaten the American way of life with their inhumane thirst for violence. The impact of such prevalent prejudice is grave, and is reflected on a daily basis in government anti-terrorism policies that respond to our most irrational and stereotype-driven fears by specifically targeting individuals of Middle-Eastern descent.

Historically, no country has ever been more open and welcoming to immigrants than the United States, and no country has ever demonstrated a greater respect for civil rights and the protection of minorities. With respect to Middle-Eastern Americans, however, we have work to do. And

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[174] Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 239 (1995) (Scalia, J., concurring).

an important first step involves addressing their persistent demonization in news and entertainment programming. As Réné Magritte reminds us, images can be treacherous indeed.