
COMBATING EMPLOYMENT DISCRIMINATION AFTER 9/11



A report by:
The Human Rights Commission City and County of San Francisco
25 Van Ness Ave., Suite 800, San Francisco, CA 94102
415.252.2500

SAN FRANCISCO HUMAN RIGHTS COMMISSIONERS

Cecilia Chung, Chair	August Longo
Michael Sweet, Vice Chair	Nazly Mohajer
Khaldoun Baghdadi	Linda Richardson
Doug Chan	Victoria Ruiz
Faye Woo Lee	Julius Turman

H RC EMPLOYMENT ADVISORY COMMITTEE MEMBERS

Commissioner Faye Woo Lee (Post 9/11 Employment Discrimination Task Force Member)
Molly Baier
Stella Beccera (Post 9/11 Employment Discrimination Task Force Member)
Rich Bondoc (Post 9/11 Employment Discrimination Task Force Member)
Cameron Douraghy (Chair, Post 9/11 Employment Discrimination Task Force)
Jerry Jones
Patrick Regan
Tom Ryan
Norma Tecson (Post 9/11 Employment Discrimination Task Force Chair)
Adrian Trujillo
John Weber

H RC STAFF

Romulus Asenloo	Deborah Lucero
Linda Chin	Carmen Smith Mary
Boris Delepine	Gin Starkweather
Caneel Fraser	Domenic Viterbo
Linda Janourova	Shameka Williams
Melinda Kanios	

SPECIAL THANKS TO:

Banafsheh Akhlaghi, Western Regional Director of Amnesty International
Linda Li, EEOC Program Analyst
Mary Gin Starkweather, *for her 20 years of service to the HRC Employment Advisory Committee*

COMBATING EMPLOYMENT DISCRIMINATION AFTER 9/11

I.	Introduction & History	4
II.	Employment Discrimination Post 9/11 Introductory Essay, <i>Shirin Sinnar, Asian Law Caucus</i>	6
III.	Summary of Panel Discussion and Public Hearing	8
IV.	Summary of Points Made by Panel Speakers and Public	19
V.	Recommendations	21
	Appendices	23
	A. Public Hearing Flier	
	a. English Version	
	b. Arabic Version	
	B. Press Release Announcing Public Hearing	
	C. Public Hearing Agenda	
	D. Public Testimony: Statement of the Equal Employment Opportunity Commission, San Francisco District	
	E. Public Testimony: Statement of the Asian Law Caucus	
	F. Public Testimony: Statement of the Sikh Coalition	
	G. Public Testimony: Statement of the Council on American-Islamic Relations (CAIR) SF Bay Area	
	H. Public Testimony: Statement of the Equal Justice Society (EJS)	

INTRODUCTION AND HISTORY

Within hours of the September 11, 2001 tragedy, the San Francisco Human Rights Commission (HRC) began to receive reports of anti-Arab and anti-Muslim attacks, threats, and harassment. In the weeks following 9/11, complaints from Arabs, Muslims, Hindus, Sikhs, North Africans, South Asians, West Asians and people so perceived increased dramatically across the United States, including San Francisco.

In response to this crisis, the HRC and the Board of Supervisors' Economic Vitality, Small Business and Social Policy Committee held a joint public hearing on January 10, 2002. A report of the this hearing, *Backlash, Violence, Human Rights Violations & Discrimination in San Francisco in the Wake of September 11, 2001*, was released in September 2002. During this hearing, numerous individuals testified about the harassment they had suffered at their jobs, ranging from insensitive remarks about their nationalities and religions, to accusations of terrorist activity, and even to termination. The findings and recommendations detailed in the hearing report included recommendations that the City and County of San Francisco hire and integrate Arabs, Muslims, Hindus, Sikhs, North Africans, South Asians, and West Asians to ultimately increase the visible representation of these peoples at every level of City government.

At its annual planning meeting in March 2008, the HRC Employment Advisory Committee voted to address the issue of continuing employment discrimination against groups affected by the 9/11 backlash as its highest priority in 2008. The committee invited Banafsheh Akhlaghi, founder and head of the National Legal Sanctuary for Community Advancement, Michael Baldonado, Director of the San Francisco District Equal Employment Opportunity Commission (EEOC), and Linda Li, Program Analyst at the EEOC, to the May and June 2008 Employment Advisory Committee meetings in order to provide guidance on approaching this form of employment discrimination.

At its June 6, 2008, meeting, the HRC Employment Advisory Committee formed a 9/11-Backlash Employment Discrimination Task Force staffed by Mary Gin Starkweather, an HRC Contract Compliance Officer, and comprised of Ms. Akhlaghi, Mr. Baldonado, Ms. Li and the following Committee members: Cameron Douraghy (Chair of the Task Force), HRC Commissioner Faye Woo Lee, Stella Becerra, Rich Bondoc, and Norma Tecson. The Task Force recommended to the Committee that a panel discussion and public hearing would be the best venue for collecting the most comprehensive and pertinent information and testimony, and that the hearing would focus on discussions of current incidents of discrimination and best practices for prevention. In order to capture and include various areas of relevant expertise, the Task Force recommended that the panel should consist of experts from government, the private sector, community groups, academia, and legal organizations. The committee endorsed these recommendations and charged the Task Force with

maximizing public input and participation by impacted groups and communities during the public testimony portion of the hearing. To carry out this charge, HRC Staff, including Mary Gin Starkweather, Linda Janourova, Caneel Fraser, and Romulus Asenloo conducted extensive outreach to mosques, cultural organizations, and relevant affinity and professional groups in the months prior to the hearing.

On July 10, 2008, the full Human Rights Commission unanimously approved the Employment Advisory Committee's motion to hold a public hearing on these issues. The official HRC public hearing, *Combating Employment Discrimination after 9/11*, was held on October 7, 2008, in the Milton Marks Conference Center at the California State Building in San Francisco. This report contains a summary of the testimony and remarks received at that hearing, a report on Employment Discrimination Post 9/11 by Shirin Sinnar, a staff attorney for the Asian Law Caucus, a summation of the points made by the speakers, and a set of resulting recommendations to the City and County of San Francisco.

EMPLOYMENT DISCRIMINATION POST 9/11

Shirin Sinnar is a staff attorney with the Asian Law Caucus (ALC) where she works on civil rights and workers' rights issues with a focus on the south Asian community. Prior to joining the ALC, Ms. Sinnar was an Equal Justice Works Fellow with the Lawyers' Committee for Civil Rights of the San Francisco Bay Area working on post-9/11 discrimination. Ms. Sinnar is a co-founder and former president of the Bay Area Association of Muslim Lawyers, an organization that has been recognized for its civil rights work, including its "Know Your Rights" education efforts. Though Ms. Sinnar was unable to participate in the October 7, 2008, hearing as a panelist, she has contributed the following introductory essay.

For the City of San Francisco and our nation as a whole, the year 2009 opened in a tumultuous domestic and international moment, amid a deepening recession at home and continuing strife in the Middle East and around the world. At times of economic instability and international security, immigrant and minority communities often bear the brunt of rising public fear and anxiety. Such times demand renewed attention to the problems of workplace discrimination, hate crimes, and other unfortunate manifestations of prejudice and bias against minority communities.

For South Asian, Muslim, Middle Eastern, and Sikh communities in the San Francisco Bay Area, employment discrimination has remained a persistent reality since the backlash generated by the September 11, 2001 attacks more than seven years ago. Participants in the City of San Francisco Human Rights Commission's special hearing on October 7, 2008 told stories of individuals affected by discrimination in our current political climate: a Vietnamese woman fired because she chose to wear a religious headscarf, a Jordanian man terminated based on an employer's overzealous attempt to enforce immigration law in the workplace, a Sikh man forced out of a federal security guard position because of his turban and unshorn beard. They also reported on how unconscious bias leads to discrimination, especially in hiring and promotions, and how official statistics generally understate the true extent of workplace discrimination.

These stories and findings resonate with my experience as a civil rights attorney, most recently at the San Francisco-based Asian Law Caucus. The image of the "Muslim terrorist" so prevalent in the media and popular culture feeds discrimination against people whose appearance, accent, or name reminds us of that "Other." This problem is especially visible in the service industry, where employers have often openly told job seekers that a Sikh man wearing a turban or a Muslim woman in a headscarf, for instance, would be "bad for business." Of course, most employment discrimination is not expressed so openly, reducing opportunities for racial, ethnic, and religious minorities in the workplace while leaving them with little chance of obtaining redress. And as always, those who are already on the margins as a result of socioeconomic status, language barriers, or immigration status, are particularly vulnerable, including taxi drivers, security guards, and other working-class individuals.

We are fortunate to live in San Francisco, where public agencies have often taken the lead in addressing discrimination. The San Francisco office of the Equal Employment Opportunity Commission has brought, and successfully settled, several "post-9/11" employment discrimination cases. And the San Francisco Human Rights Commission ought to be commended for its leadership in conducting the public hearing that is the subject of this report. By implementing the recommendations in this report, the City and private employers alike can help make real the vision of equal employment opportunity for all American communities.

BIOGRAPHIES OF OCTOBER 7, 2008 PANELISTS

Banafsheh Akhlaghi, Esq. — *Panel Moderator, Western Regional Director of Amnesty International USA*

Prior to joining Amnesty, Ms. Akhlaghi served as president and founder of the National Legal Sanctuary for Community Advancement (NLSCA), a non-profit organization dedicated to ensuring the human rights and dignity of Middle Eastern, Muslim, and South Asian (MEMSA) peoples. Not only has Ms. Akhlaghi provided direct legal services and advocacy to numerous individuals in the area of civil rights and immigration post-9/11, her organization also focused on human rights at the international level. She regularly conducts cultural sensitivity training with the Equal Employment Opportunity Commission (EEOC).

Maha ElGenaidi — *President & Chief Executive, Islamic Networks Group (ING)*

Through her work at ING, Ms. ElGenaidi promotes interfaith dialogue and education about world religions by delivering presentations and other educational programs to schools, universities, law enforcement agencies, corporations, healthcare facilities, and community centers. She is the author of seven training handbooks on outreach for American Muslims as well as eight training modules for public institutions on developing cultural competency with the American Muslim community.

Maninder Kahlon, Ph.D. — *University California San Francisco*

Dr. Kahlon received her doctorate in Neuroscience from UCSF, where she is currently Director of the Virtual Home for the Clinical & Translational Science Institute. Her past work at the Level Playing Institute explored and raised awareness about how workplace prejudice operates. Dr. Kahlon is also an activist around civil rights issues for immigrant communities.

Nura Maznavi — *Civil Rights Attorney, Rosen, Bien & Galvan*

Ms. Maznavi is currently co-counseling the matter of *Southavilay v. National Credit Acceptance, Inc.*, an employment discrimination case on behalf of a Muslim woman discharged from her job because she began wearing the Islamic headscarf, *hijab*. Ms. Maznavi is an active member and serves on the board of the Bay Area Association of Muslim Lawyers. She is also a member of the National Association of Muslim Lawyers where she served on the executive planning committee for the organization's 2007 national conference: "Protecting America's Promise."

Mountain Taylor, CABR — *District Recruiter, AlliedBarton Security Services* Mr. Taylor has been in the business of recruiting and selecting security professionals for AlliedBarton Security Services for over 10 years. He previously served as the Chair of the Forum on Older Workers and has served on the Employer Advisory Committees of Jobcorps, South of Market Employment Center, and PeninsulaWorks. Mr. Taylor and AlliedBarton have been recognized

by numerous private and public organizations for their efforts at recruiting and hiring a diverse workforce.

Dorothy Yee — Deputy Director of Equal Employment Opportunity Programs, City and County of San Francisco Department of Human Resources

In her role as Deputy Director of EEO programs, Ms. Yee is responsible for supervising the investigation of employment discrimination complaints, reasonable accommodations for persons with disabilities, workforce reports, and training to prevent workplace harassment. She has conducted targeted recruitment programs to attract historically underrepresented groups to all areas of City employment. Ms. Yee has worked in the City & County of San Francisco for more than 30 years and has also held positions at various community based agencies within the City.

SUMMARY OF OCTOBER 7, 2008 PANEL DISCUSSION AND PUBLIC TESTIMONY

The October 7, 2008, event commenced with an introduction by HRC Commissioner Faye Woo Lee. Commissioner Lee explained the charge of the HRC and how the evening's panel discussion related to the purpose and jurisdiction of the HRC Employment Advisory Committee. Commissioner Lee then introduced the panel moderator, Banafsheh Akhlaghi, Western Regional Director of Amnesty International USA.

Ms. Akhlaghi discussed the importance of the work of the HRC Employment Advisory Committee and briefly introduced each of the event's panelists: Maha ElGenaidi, President & Chief Executive of the Islamic Networks Group (ING); Dr. .Maninder Kahlon, UCSF; Mountain Taylor, District Recruiter for AlliedBarton Security Services; Nura Maznavi, Associate at Rosen, Bien & Galvan; Dorothy Yee, Deputy Director of Equal Employment Opportunity Programs for the City and County of San Francisco Department of Human Resources.

The panel discussion opened with Ms. Maznavi describing the trend of cases she has seen both as an attorney and as a community member, comparing the years directly following 9/11 with the present. Ms. Maznavi indicated she would speak anecdotally about the trend of cases following 9/11. She stated that there had been a spike in employment discrimination incidents reported after September 11, 2001; specifically, there were 1939 cases reported in 2000, 2127 cases in 2001, and 2572 cases in 2002. Ms. Maznavi expressed her view that this was a dramatic spike in religious discrimination cases that has not decreased; rather, she believes the discrimination has now become less overt. Ms. Maznavi explained that instead of an employer blatantly stating to an employee that they are being terminated due to their religion, discrimination is now likely to consist of employers not acknowledging their obligations under the law to make religious accommodations. Consequently, attorneys and individual employees are finding it more difficult to prove the allegations in court. Ms. Maznavi expressed her view that this does not mean discrimination is no longer prevalent; rather, it has taken on more subtle forms.

Dr. Kahlon described the findings of her research on unconscious bias and its implications for the workplace. Dr. Kahlon began by explaining the neuroscientific concept of "filling-in," a concept that forms the basis of unconscious bias. By providing concrete examples to the panel audience, Dr. Kahlon demonstrated how the human brain constantly uses context to fill in gaps in knowledge and imparts meaning on raw sensory input. Dr. Kahlon also discussed the human brain's reliance on patterns and its use of patterns to classify and make sense of the external world. Discussing the implications of this pattern reliance in the workplace, Dr. Kahlon explained that pattern reliance is particularly acute when individuals are called on to make quick assessments —something that happens frequently in the workplace. Dr. Kahlon expressed her

view that given the media portrayal of Muslims, this pattern reliance is extremely dangerous in the context of employment interviews and performance evaluations. Given these subtle effects of unconscious bias, its harms tend to go unreported.

Maha ElGenaidi discussed Muslim employees' needs within the workplace, explaining the importance of the religious aspects of Islam to the cultural identities of Muslims. While the religious aspects of a given Muslim's identity may not be the primary means by which they self-identify, asking an individual of Muslim faith to cover up or not acknowledge their religion within the workplace is tantamount to denying them a significant portion of their individual identity. Specifically, Muslims want their employers to provide flexible work dates and hours to accommodate holidays and prayers, to accommodate dietary requirements, to understand restrictions on social interactions, and to provide physical accommodations for prayer and prayer preparation. Ms. ElGenaidi recommended that employers create a written commitment to all of the above in addition to forming a company "Diversity Council" comprised of more than one member of each religion.

Ms. Akhlaghi underscored the vast array of the groups affected by the forms of employment discrimination being discussed, highlighting the various nationalities, cultures, and even religions that have fallen victim to the 9/11 backlash.

Dorothy Yee discussed what measures the City and County of San Francisco has undertaken to prevent harassment in City workplaces. She began by reporting that although the City and County of San Francisco has not taken any specific steps targeted at ending harassment of Muslim and perceived-Muslim people, the City and County of San Francisco does have procedures and policies in place at various levels to prevent harassment more generally within the City workplace. Such measures include, but are not limited to, an official harassment free workplace policy, anti-harassment training for all supervisors, and periodic reminders to all City employees regarding their rights to be free of harassment. Additionally, most major City departments have internal Equal Employment Opportunity staff as well as training for supervising a diverse workforce. Ms. Yee invited all panelists to provide suggestions as to how the City could formulate equal opportunity and anti-harassment efforts specifically targeted at populations affected by the 9/11 backlash.

Ms. Yee reported that the City only keeps national origin data in compliance with a State requirement to document nationalities comprising 2% or more of a given workforce.

Mountain Taylor described the diversity training mechanisms in place at AlliedBarton Security. AlliedBarton has an extensive diversity program; however, this program is not targeted at any specific population. He remarked that before 9/11, the company's anti-harassment training lasted only one hour; after 9/11, AlliedBarton added a diversity module and substantially increased the amount of

training time allocated to these issues. In addition to the orientation training, AlliedBarton employees participate in an annual diversity refresher which may be supplemented with further training based on the particular population with which a given employee works. This training model was recognized by Training Magazine. Mr. Taylor added that the company's current orientation trainer has significant personal experience with Southwest Asian cultures and brings this knowledge to his work. Mr. Taylor underscored the importance of such trainings to the success of a company that deals with not only a diverse workforce, but also a diverse clientele. He indicated that he appreciated Dr. Kahlon's insights and plans to take her ideas back to AlliedBarton's training department.

Ms. Maznavi described a religious discrimination case she has worked on and the lessons employers could take away from a legal perspective. Ms. Maznavi currently represents a Muslim woman from Vietnam working at a debt collection agency. This woman began wearing a hijab during the course of her employment. When she first wore the hijab to work, the woman was called in to the human resources department and told that if she did not remove the hijab, she would be fired. The woman did not oblige and was subsequently fired. Ms. Maznavi explained that under state and federal law, employers have a clear obligation to accommodate employee's religious attire (unless accommodating the attire poses an undue burden on the employer). In this case, the employer made no attempt to accommodate the hijab. This case is still in active litigation, and the plaintiff is seeking mandatory sensitivity training and other proactive measures.

Ms. Maznavi also described her experiences as a practicing Muslim counseling a case involving Muslim religious accommodation. She stated that many of the religious accommodations discussed in Ms. ElGenaidi's comments resonated with her. In particular, she explained how her law firm has accommodated her prayer needs through a privacy screen and private bathroom for prayer preparation. Ms. Maznavi noted that in spite of her own employer's accommodations, the physical manifestations of her faith continue to have a regular impact on her day-to-day life.

Ms. Maznavi remarked that she has been inspired by the number of Muslims attending law school and joining the legal profession since 9/11. Ms. Akhlaghi confirmed these observations, and cited her own experience with greater numbers of South Asian and Middle Eastern law students.

Ms. Yee described how the City and County of San Francisco, as an employer, deals with complaints of discrimination or harassment. She explained that before 1996, discrimination complaints were handled by various departments including the City's Human Rights Commission. After the City Charter changed in 1996, the discrimination complaint process became centralized under the Department of Human Resources. San Francisco's City Charter identifies protected categories that are more extensive than the State of California's list of protected

groups. Ms. Yee informed that specific information on filing a discrimination complaint can be found on the City's website, sfgov.org. The Human Resources Department is in its 4th year of a joint mediation program with Hastings College of Law. If a City employee's discrimination complaint is not resolved through mediation, the Department's EEO officer conducts an investigation and the Director of the Department of Human Resources makes a determination as to whether discrimination did in fact occur. This determination can be appealed to the Civil Service Commission. Ms. Yee noted that a City employee is not required to utilize the City's internal discrimination procedure prior to filing a complaint with the federal EEOC.

Ms. Yee stated that the City receives approximately 120-150 discrimination complaints per year, the majority of which are based on race, sex, and retaliation. Ms. Yee reported that the City has not seen a significant increase in complaints after 2001. She indicated that the City has received very few complaints from members of communities impacted by the 9/11 backlash, but those the City did receive related mostly to lack of promotion, not harassment. Ms. Yee could not draw a conclusion as to whether this lack of reported cases is reflective of the communities' lack of knowledge of how to file such a complaint, or whether it is indicative of the City's success in preventing this form of discrimination.

Mr. Taylor commented on how AlliedBarton's recruiting model ensures diversity and how successful its diversity recruitment model has been. AlliedBarton started with a regional affirmative action plan that was expanded to the national level. In San Francisco, the company has moved away from print advertising and instead relies on a community-based recruitment model. By reaching out to Community Based Organizations, Non-Governmental Organizations, and government at all levels, in addition to relying on word-of-mouth outreach by current staff, the company has been able to recruit a diverse workforce. Mr. Taylor stressed the importance of leveraging current employees within particular groups to maintain and build connections within those communities.

Ms. ElGenaidi described the concrete practices an employer can take to be more inclusive of Muslim employees. Ms. ElGenaidi began by commenting on Ms. Yee's statement that the City and County of San Francisco has not received many complaints from the Muslim community. Ms. ElGenaidi urged the City to not only think about its employees, but also the City's total constituency and those individuals' interactions with the City. She remarked that though there may not be many Arabs or Muslims working for the City itself, those who do work for the City may be reluctant to report discrimination or harassment for fear of being stereotyped. ING (Islamic Networks Group), Ms. ElGenaidi's organization, has received a great number of complaints from Muslims regarding their treatment by other City agencies. She urged the panel and audience to consider this aspect of discrimination, discussed the importance of sensitivity training, and remarked on the success her organization has had in working with the City's Police Department around these issues. Ms. ElGenaidi reminded the panelists that the

largest concentration of Muslims in America is in California (20% of the US Muslim population).

Immediately after 9/11, ING received numerous requests for sensitivity training from major Silicon Valley companies. More recently the organization has received fewer corporate requests and more requests for sensitivity training and assistance from public agencies.

As for specific suggestions to employers, Ms. ElGenaidi recommended that any training include not only a focus on cultural sensitivity and cultural awareness; but also a focus on religious awareness. Ms. ElGenaidi remarked that though our society is more reticent to discuss religion than ethnicity, accommodations for Muslims inherently arise out of their religion, necessitating a discussion of the religious aspects of the Muslim culture.

Toward the end of the panel discussion, Dr. Kahlon summarized how the research on unconscious bias could support efforts going forward to prevent discrimination. She emphasized that this remains a new area of research and that we are still exploring ways to deal with unconscious bias in the workplace. She urged a focus on the recruitment/interview and performance evaluation phases of employment. It is during these two phases that quick decisions are made; it is these quick decisions that are so susceptible to unconscious bias. Dr. Kahlon suggested focusing on trainings targeted at recognizing and defeating unconscious bias at each of these moments of employer/employee interaction.

Ms. Akhlaghi closed the event by thanking the panelists. Ms. Akhlaghi then invited public comment on the issues pertinent to the panel discussion and this form of employment discrimination more generally.

Mike Baldonado, San Francisco District Director of the U.S. Equal Employment Opportunity Commission

After briefly describing the mandate and purpose of the EEOC, Mr. Baldonado informed the audience that after 9/11, the EEOC created a new category of complaints: "Backlash Employment Discrimination Charges related to the Events of 9/11/2001, against Individuals Who Are, or Are Perceived to Be, Muslim, Arab, Afghani, Middle Eastern or South Asian." Since September 11, 2001:

The EEOC has received 1,018 charges alleging post-9/11 backlash employment discrimination.

- o Of these charges, 604 involved termination and 428 charges alleged harassment.
- o The EEOC found a violation of federal anti-discrimination laws in 135 of the charges filed (13.2%).

The EEOC has received 4,186 charges of discrimination based on Religion (Muslim), more than twice the number of charges filed in the prior seven years.

Mr. Baldonado made clear that the EEOC believes that these numbers represent merely "the tip of the iceberg." Understanding that many individuals may choose not to report discrimination due to distrust of government and the bureaucratic process, as well as fear of retribution, the EEOC actively conducts outreach and partners with advocacy organizations in order to build trust and credibility. Mr. Baldonado discussed a lawsuit the EEOC recently filed on behalf of an employee who was verbally abused because of his Egyptian national origin and who was fired in retaliation for protesting the harassment he suffered.

Mr. Baldonado urged those present to work with the EEOC and the SF Human Rights Commission to "get to the root of the problem," encouraging employees to know their rights and to speak up, and demanding employers proactively discourage any form of discrimination in their workplace.

A complete written statement of Mr. Baldonado's testimony is available in Appendix D.

Veena Dubal, Attorney at Asian Law Caucus

Ms. Dubal explained that the Asian Law Caucus (ALC), led by the work of Shirin Sinnar, has worked for the last two years to combat employment discrimination arising out of the political climate shaped by 9/11, the war in Iraq, and public fears over national security. Through its experience representing individuals of various national origins subject to workplace discrimination resulting from the post-9/11 climate, the ALC has observed three types of discrimination relevant to the public hearing:

- 1.) Employment discrimination against those wearing visible religious garb, often justified by employers on "customer preference" or "public image" grounds.
- 2.) The Federal Government's current focus on work-place enforcement of immigration laws has compounded discrimination against Muslims, South Asians, people of Middle Eastern origin, and Sikhs — even those who are legally employable -- diminishing employment opportunities available to individuals from these groups.
- 3.) Discrimination that is more difficult to prove — such as discrimination based on someone's name that links him/her to a certain part of the world. This kind of workplace discrimination is not necessarily overt and may be based on unconscious bias.

Based on its experiences with clients, the ALC has the following recommendations for the City and County of San Francisco and other employers:

- 1.) Employers should conduct mandatory trainings on religious discrimination for all human resources personnel and hiring managers.
- 2.) Employers should train human resources personnel and hiring managers on "document abuse," the illegal practice of insisting on excessive immigration and work status documentation.
- 3.) Employers should adopt mentorship programs linking employees of color to more senior employees in order to counteract feelings of isolation in a predominantly white workplace.

- 4.) The City and employers should recognize the role of unconscious bias in employment discrimination and incorporate changes in their workplaces based on our knowledge of unconscious bias.

A complete written statement of Ms. Dubal's testimony is available in Appendix E.

The Sikh Coalition

Though a member of the Sikh Coalition was not able to be present at the public hearing, Ms. Akhlaghi acknowledged that the group did submit a statement regarding the impact of the post-9/11 climate on the Sikh Community. She informed that the Sikh Coalition's statement would be incorporated into the official record of the public hearing via inclusion in the HRC report.

The complete statement of the Sikh Coalition is incorporated in Appendix F

Saqib Zuberi, Programs & Outreach Director, Council on American-Islamic Relations (CAIR) SF Bay Area

Mr. Zuberi informed that CAIR's civil rights departments in its 35 offices across America regularly receive complaints from members of the Muslim community detailing harassment, discrimination, and other civil rights violations.

CAIR recently released its annual "Report about the Status of American Muslims' Civil Rights." The report revealed a significant increase in the number of complaints received by CAIR regarding discrimination in the workplace between 2006 and 2007: complaints from those already employed increased from 384 cases reported to 452 cases reported; reports of discrimination against those seeking employment rose 34 percent; and cases reporting denial of religious accommodation in the workplace increased eight percent. CAIR reported that California received the greatest number of civil rights complaints (16 percent of all civil rights complaints received nationally by CAIR in 2007). Mr. Zuberi informed the audience that this trend was also reflected in the San Francisco Bay Area; in 2006, the local office received a total of 23 employment-related discrimination complaints, and in 2007, the office received 41 complaints (a 41 percent increase). As of the hearing date, Mr. Zuberi reported CAIR had received 27 complaints of discrimination in 2008, and the organization expects to exceed the total number of complaints reported in 2007.

Though the substantive bases for the complaints to CAIR vary, Mr. Zuberi emphasized that the effects of each of these cases on the persons affected are very real, in some cases causing such depression and anxiety that professional counseling is required.

CAIR is very concerned about the practice of employers requiring written religious accommodation requests from each/all of their Muslim employees in order to wear religious garb. CAIR believes that a blanket requirement of written accommodation requests inappropriately shifts the burden of proving religious belief onto the employee rather than requiring an employer to assess each religious accommodation request individually (and is inconsistent with EEOC recommendations).

CAIR also reported receiving complaints of differential treatment from individuals who were the only Muslims in their respective workplaces. Mr. Zuberi described a case study of a Muslim man of Indian descent who was singled out in performance reviews and in performance expectations as compared to his non-Muslim co-workers; the situation caused such stress for the complainant that he had to ask for leave and seek counseling. Mr. Zuberi explained that in many instances, differential treatment or acts of discrimination against Muslims are extremely subtle, making such cases difficult to prove. CAIR believes that employers can play an important role in preventing this form of subtle discrimination by taking proactive steps to create a culture of inclusiveness in their workplace.

CAIR concluded by recommending that the Muslim community should feel empowered to seek remedies for the employment discrimination they suffer, and by recommending that employers take affirmative steps to educate themselves about Islam and Muslims.

A complete written statement of Mr. Zuberi's testimony is available in Appendix G

Claudia Pena, Constance Baker Motley Civil Rights Fellow, Equal Justice Society (EJS)

Ms. Pena explained that EJS recognizes that employment discrimination against Muslim/Middle Eastern/South Asian communities existed long before September 11, 2001. Negative depictions of Middle Easterners in all forms of media since the 1800s have affected the public's image of these groups and necessarily affect employers' perceptions, as well.

Ms. Pena remarked that discrimination against Muslims and Middle Easterners has become more acute post-9/11, and that the state of constitutional law post-*Washington v. Davis* has exacerbated the employment discrimination problem faced by these communities. She noted that requiring a plaintiff to prove intent in order to succeed in an employment discrimination action (the "Intent Doctrine") has made it extremely difficult for affected communities to succeed in their employment actions. She added that since we understand that much of the employment discrimination occurring today is the result of unconscious bias, this intent requirement poses an even more onerous hurdle to redressing discrimination. Ms. Pena reported that EJS is working on a long term strategy to undo the negative effects of the "Intent Doctrine." In addition to providing trainings on unconscious biases encouraging individuals to recognize and actively counteract their own biases, EJS has published articles containing the social science data on unconscious bias and has argued in amicus briefs for the consideration of unconscious bias as legal evidence in discrimination cases. EJS recommended that employers be compelled to undergo trainings on unconscious bias in order recognize and actively work against its effects, including a mandatory training for all City employees on these topics.

A complete written statement of Mr. Zuberi's testimony is available in Appendix H

Ms. Akhlaghi informed those present that Amnesty International was in the process of embarking on its "Dignity Campaign," working to protect economic and cultural rights as a form of human rights. Ms. Akhlaghi stated that the instances of discrimination described so far in public comment are each examples of a violation of human rights, and she pledged Amnesty's partnership with each of the organizations present to work against these violations.

David Chin, San Francisco Resident

David Chin spoke about a case of what he considered religious discrimination in the appointment of a replacement Supervisor for District 4 in 2007.

Aleyamma Matthew, Program Director, WILD (Women's Institute for Leadership Development) for Human Rights

After explaining the work of WILD for Human Rights, Ms. Matthew encouraged the SF Human Rights Commission to investigate the creation and passage of an SF Human Rights Ordinance. Ms. Matthew suggested that a draft ordinance encompassing all the major human rights found in the UN treaties had already been formulated, but despite the support of various City departments, it was never passed. Ms. Matthew recommended that the Human Rights Commission revive this human rights ordinance and work to get it passed as a proactive step toward preventing discrimination.

Ms. Akhlaghi ended the public testimony portion of the hearing by providing a brief history of this hearing's origins and the work that had gone into its organization. She indicated that the recommendations and information shared will be reviewed and synthesized by the Human Rights Commission in order to see what can be done within the City and County of San Francisco and possibly at broader levels.

Commissioner Lee then closed the event by thanking the panel of experts for their participation and presenting each of them with a Certificate of Honor from the Mayor.

SUMMARY OF POINTS MADE BY PANEL SPEAKERS AND THE PUBLIC

Realities of the Post-9/11 Backlash in 2008

- 1.) Media depictions of Arabs and Muslims dating back to the 1800's have created and reinforced the image of a "Middle Eastern terrorist" that existed in the minds of the American public even before 9/11.
- 2.) Numerous nationalities, cultures, and religions have suffered discrimination in the workplace as a result of the 9/11 backlash.
- 3.) Religious discrimination against Muslims and perceived-Muslims increased after 9/11 and continues even more than seven years later.
- 4.) Discrimination resulting from the 9/11 backlash is now often less overt and more nuanced, making it more difficult to bring successful lawsuits against discriminatory employers.
- 5.) Data on instances of discrimination may be underreported. Many individuals may not report incidents of discrimination due to distrust of government and/or fear of retribution at their place of work.
- 6.) State and Federal laws require employers to make religious accommodations for any of their employees who so request, so long as such accommodations do not impose an undue burden on the employer.
- 7.) Panel members have observed an increase in the number of Muslim law students and practicing attorneys of the Muslim faith since 9/11.

Employer Practices

- 8.) The Federal Government's focus on workplace enforcement of immigration laws has compounded workplace discrimination against groups victimized by the 9/11 backlash. The practice of requesting that an employee or potential employee produce more documents than are required by law plays a large role in this discrimination, reducing work opportunities for immigrants or those who are perceived to be immigrants, including those who are legally employable. This practice, labeled "document abuse" by the Immigration Reform and Control Act, violates federal law.
- 9.) Employment discrimination against those who wear visible religious garb is often based on an argument by employers that they are responding to "customer preference" or "public image" needs. This type of religious discrimination is illegal under federal and state law.

- 10.) Currently, the City and County of San Francisco has general anti-harassment and anti-discrimination policies and procedures; however, it does not have programs specifically targeting discrimination based on a post-9/11 backlash.
- 11.) The City and County of San Francisco has internal mechanisms for City employees to file discrimination complaints.
- 12.) The Department of Human Resources for the City and County of San Francisco reports no significant increase in internal reports of employment discrimination after 9/11.
- 13.) ING (Islamic Networks Group) has received complaints regarding the treatment of Muslim constituents by City agencies.

Underlying Forces

- 14.) A significant portion of workplace discrimination is caused by unconscious bias.
- 15.) Negative media portrayals of Muslims combined with the neuroscientific underpinnings of unconscious bias directly impact decision making in ways that are often discriminatory.
- 16.) Due to the unconscious nature of this brain processing, this form of discrimination, though pervasive and powerful, often goes unrecognized and unreported.
- 17.) The effects of unconscious bias are most acute during the critical, quick decision periods of recruitment/interview and performance evaluation.
- 18.) Trainings on cultural sensitivity toward Muslims inherently require training on the religious aspects of Muslim culture
- 19.) Employer policies and procedures must exhibit specific sensitivity and understanding toward Muslim religious needs, including dietary, prayer, and social restrictions in order to be effective.

RECOMMENDATIONS

In response to the issues raised during the panel discussion, verbal and written testimony of the October 7, 2008, public hearing, the Human Rights Commission hereby recommends:

Department of Human Resources for the City and County of San Francisco

- 1.) Educate City employees about their rights to file complaints based on discrimination and harassment and ensure that they are empowered to do so, including by providing greater clarification on the procedures and methods for filing a complaint and ensuring confidentiality and non-retaliation in the complaint process. Steps that might help further this objective include:
 - a. Creating a user-friendly, online form for electronic submittal of employment discrimination complaints that clearly elicits the necessary information from the complainant.
 - b. Including an oral explanation of the individual's rights against discrimination and harassment, including explicit information on how to file a complaint, in each new employee orientation session.

- 2.) Review existing anti-harassment and anti-discrimination training programs to ensure that *all* City employees receive training that includes:
 - a. A significant unit on unconscious bias, understanding one's own underlying biases, and actively counteracting the bases and effects of such biases, including negative media portrayals, with a particular emphasis on decision-making in the hiring and evaluation processes.
 - b. For City employees with any constituent interaction, a unit on sensitivity and culturally-appropriate courtesy.
 - c. For all Department heads and managers, training on how to strengthen a focus on proactively building sensitive and inclusive workplaces and de-emphasize a focus on reactive measures (e.g. anti-harassment policies).

Ensure that these issues are covered at an initial sensitivity training block during the new employee orientation, and provide for annual refresher training.

- 3.) Encourage each major City Department to create a "Diversity Council" comprised of (if possible) more than one member of each religion. This Diversity Council would:
 - a. Educate department employees around issues of cultural and religious sensitivity;
 - b. Meet at least quarterly to discuss diversity issues within the department and actively work on promoting the values of diversity within the workplace.

- 4.) Develop a mechanism to cultivate suggestions from all employees and City constituents regarding further equal opportunity and anti-discrimination efforts targeted at populations impacted by the 9/11 backlash.

City and County of San Francisco Employers, Generally

- 5.) Develop a user-friendly, confidential procedure for filing intra-organization discrimination complaints, taking steps to ensure that all employees are aware of the procedure and their rights against discrimination and harassment.
- 6.) Structure and implement an ongoing, proactive sensitivity training system patterned after the proposed SF Department of Human Resources model (see Recommendation 2).
- 7.) Develop and implement a recruitment plan that is cognizant and responsive to the diversity present in the workforce and client base, with an emphasis on community-based recruitment.
- 8.) Treat each religious accommodation request individually and prevent the formulation of any "blanket" policies regarding employee religious accommodation requests.
- 9.) Ensure that "customer preference" is not used as a basis for denying an employee's right to religious accommodation of any religious garb.
- 10.) Take steps to train human resources and hiring personnel in the types of documentation that can properly be requested from an employee and from a prospective employee.

City and County of San Francisco

- 11.) Take measures to encourage all City contractors to adopt the practices and procedures detailed in recommendations five through 10.
- 12.) Task the Human Rights Commission (HRC) with revisiting this issue of ongoing discrimination in two years in order to gauge progress on the implementation of these recommendations and other advancements.

APPENDICES

Appendix A, a.

Public Hearing Flier: English Version

Gathering experts from government, the private sector and the community to share experiences and best practices

*Tuesday, October 7, 2008
6 - 8 pm*

COMBAT
DISCRI
9/1
PAN

1 LMPIAL MEN
Lkl/ Ar¹Tc7

:
EL PRESENTATION
1JBLIC TESTIMONY



For more information or if you cannot attend but wish to submit testimony in writing, please contact Caneel Fraser (caneel.fraser sfgov.org) or (415) 252-2517.

- * Appropriate accommodation will be provided for the hearing-, sight- and mobility-impaired
- * To arrange for a sign language interpreter or FM amplifier, please call the San Francisco Human Rights Commission at (800) 735-2922

Appendix A, b.

Public Hearing Flier: Arabic Version

ejLAIVI

CJLA

A4#1

تقدم ندوه ان :-

2001 ci..94.1- 11 .52114. 1.1,9_csf 1Q J

سعوپه ا

العنصري ' ,,,+a

cp 44.1.1.11 arlAtta:1A.A"

العنصري 1 ... ,4,11 ,41

041.111

cif'31

a41tAA'

1+4'.1-4. 11': IJA

CP (.1k):1.

J
(.1'9

N.A.1.1 4.41S' D,gc.i11

LsIQ'

1^:1^3 ..9^1--%-a

Tuesday, October 7, 2008 6 —

8 p.m.

CALIFORNIA STATE BUILDING
Milton Marks Conference Center, Lower Level
455 Golden Gate Avenue, San Francisco

411

jUi.431

C 1P,yy, ___ D.4

131 Lojix-431).4 3434.1.1

1.531

11

[caneel.fraser\(&.sfgov.org\)](mailto:caneel.fraser@sfgov.org) or (415) 252-2517

(i16%

4_41

(800) 735-2922 616'61111

6L6"



Appendix B

Press Release Announcing Public Hearing



Gavin Newsom
Mayor

Contract Compliance
Dispute Resolution/Fair Housing
Small and Micro Local Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Chris Iglesias
Executive Director

***** MEDIA ADVISORY *****

FOR IMMEDIATE RELEASE
Tuesday, September 30, 2008

CONTACT: Caneel Fraser — (415) 252-2517
Linda Janourova — (415) 252-3208

**City's Human Rights Commission to Hold Public Hearing:
Combating Employment Discrimination After 9/11**

San Francisco — Seven years after September 11, 2001, the city agency charged with fighting discrimination continues to take a stand against discrimination and harassment faced by people who are (or are perceived to be) Muslim, Middle Eastern or South Asian. Since 9/11, over 1,000 charges were filed nationwide alleging post-9/11 backlash employment discrimination; with 161 charges, California ranks as the fourth highest among states reporting this type of discrimination. In addition, charges of religious discrimination against Muslims have more than doubled nationally. (Source: U.S. EEOC statistics, as of 6/11/2008). "These statistics present a serious issue which we as a community have a responsibility to address," stated San Francisco Human Rights Commission Executive Director, Chris Iglesias. "This event is a chance to hear the voices and stories of those impacted and an opportunity to unite our City in problem-solving around these issues. We want to understand, discuss and share proactive solutions to this problem, knowing that what impacts one community today can impact any of our communities tomorrow. This issue belongs to all of us."

WHO: The Employment Advisory Committee of the San Francisco Human Rights Commission (HRC) will host the hearing. The HRC works to provide leadership and advocacy to secure, protect and promote human rights for all people. More information about the agency is available at www.sfgov.org/sfhumanrights.

WHAT: **Moderated by Banafsheh Akhlaghi, Western Regional Director of Amnesty International USA, a panel of experts will propose best practices based on insights from their experience in government, business, community and academia. Afterwards, community organizations and members of the public are invited to testify about their personal experiences and solutions for employment discrimination post-9/11.**

WHEN: **Tuesday, October 7 from 6:00pm — 8:00 pm (PST) —ONE WEEK from TODAY.**

WHERE: Milton Marks Conference Center, California State Building, 455 Golden Gate Avenue, by San Francisco's civic center. The location is handicapped accessible and close to BART and other public transportation.

WHY: This public hearing seeks to measure the progress and setbacks in battling this type of discrimination since HRC's previous hearing in 2002. The HRC Employment Advisory Committee will compile "best practices" from the event along with public testimony in a report to the full Human Rights Commission to make policy recommendations going forward.

RSVP: Caneel Fraser at (415) 252-2517 or caneel.fraser@sfgov.org, especially to request translation services. Those who cannot make the event but wish to submit testimony in writing should also contact Caneel Fraser.



25 Van Ness Avenue
Suite 800
San Francisco
California 94102-6033



TEL (415) 252-2500 FAX
(415) 431-5764 TDD (415)
252-2550 www.sfgov.org/site/sfhumanrights



Appendix C
Public Hearing Agenda



EMPLOYMENT COMMITTEE PANEL PRESENTATION AND PUBLIC HEARING:
COMBATING EMPLOYMENT DISCRIMINATION AFTER 9/11
Milton Marks Conference Center, California State Building
October 7, 2008

A G E N D A

I. WELCOME

Commissioner Faye Woo Lee, San Francisco Human Rights Commission

Commissioner Lee was first appointed to the Human Rights Commission (HRC) in 2004. She is currently the Chair of the HRC's Employment Advisory Committee. In addition to her work on the Commission, Ms. Lee is also the past president of San Francisco Lodge, Chinese American Citizens Alliance, and a current Grand Executive on the Board of Officers of the National Lodge.

INTRODUCTORY REMARKS

Banafsheh Akhlaghi, Esq., Western Regional Director of Amnesty International USA Prior to joining Amnesty, Ms. Akhlaghi served as president and founder of the National Legal Sanctuary for Community Advancement (NLSCA), a non-profit organization dedicated to ensuring the human rights and dignity of Middle Eastern, Muslim, and South Asian (MEMSA) peoples. Not only has Ms. Akhlaghi provided direct legal services and advocacy to numerous individuals in the area of civil rights and immigration post-9/11, her organization also focused on human rights at the international level. She regularly conducts cultural sensitivity training with the Equal Employment Opportunity Commission (EEOC).

III. PANEL PRESENTATION

Moderator:

Banafsheh Akhlaghi

Panelists:

Maha ElGenaidi — President & Chief Executive, Islamic Networks Group (ING)

Through her work at ING, Ms. ElGenaidi promotes interfaith dialogue and education about world religions by delivering presentation and other educational programs to schools, universities, law enforcement agencies, corporations, healthcare facilities, and community centers. She is the author of seven training handbooks on outreach for American Muslims as well as eight training modules for public institutions on developing cultural competency with the American Muslim community.

Maninder Kahlon, Ph.d. — University California San Francisco

Dr. Kahlon received her doctorate in Neuroscience from UCSF, where she is currently Director of the Virtual Home for the Clinical & Translational Science Institute. Her past work at the Level Playing Institute



explored and raised awareness around how workplace prejudice operates, Dr. Kahlon is also an activist around civil rights issues for immigrant communities.

Nura Maznavi — *Civil Rights Attorney, Rosen, Bien & Galvan*

Ms. Maznavi is currently co-counseling the matter of *Southavilay v. National Credit Acceptance, Inc.*, an employment discrimination case on behalf of a Muslim woman discharged from her job because she began wearing the Islamic headscarf, *hijab*. Ms. Maznavi is an active member and serves on the board of the Bay Area Association of Muslim Lawyers. She is also a member of the National Association of Muslim Lawyers where she served on the executive planning committee for the organization's 2007 national conference: "Protecting America's Promise."

Mountain Taylor, CABR — *District Recruiter, AlliedBarton Security Services*

Mr. Taylor has been in the business of recruiting and selecting security professionals for AlliedBarton Security Services for over 10 years. He previously served as the Chair of the Forum on Older Workers and has served on the Employer Advisory Committees of Jobcorps, South of Market Employment Center, and PeninsulaWorks. Mr. Taylor and AlliedBarton have been recognized by numerous private and public organizations for their efforts at recruiting and hiring a diverse workforce.

Dorothy Yee — *Deputy Director of Equal Employment Opportunity Programs, City of San Francisco Department of Human Resources*

In her role as Deputy Director of EEO programs, Ms. Yee is responsible for supervising the investigation of employment discrimination complaints, reasonable accommodations for persons with disabilities, workforce reports, and training to prevent workplace harassment. She has conducted targeted recruitment programs to attract historically underrepresented groups to all areas of City employment. Ms Yee has worked in the City & County of San Francisco for more than 30 years and has also held positions at various community based agencies within the City.

IV. PUBLIC TESTIMONY

The HRC Employment Advisory Committee invites and strongly encourages members of the public to share public testimony about their experiences with employment discrimination after 9/11 and any recommendations or thoughts on how to move forward. This testimony is completely voluntary and may be offered anonymously.

In order to make public comment, please complete and return a yellow "Public Comment" card to an HRC staff member. These cards can be found at the entrance to the auditorium.

Each member of the public wishing to make public comment will be allotted two minutes of speaking time.

To all members of the audience: please refrain from making distracting noises, clapping, cheering, jeering, etc. during all portions of the event.

V. CLOSING REMARKS

Banafsheh Akhlaghi

Appendix D

Public Testimony: Statement of the U.S. Equal Employment Opportunity Commission

San Francisco District

My name is Michael Baldonado. I am the District Director for the U.S. Equal Employment Opportunity Commission.

EEOC is

- The premier civil rights agency enforcing federal laws against **job discrimination and harassment** based on race, color, religion, national origin, sex, age, and disability.
- **Our services are free of charge.**
- **Immigration status does not matter to us— we do not ask for immigration status//and we do not share information with ICE or other federal agencies.** In fact, undocumented workers are protected from discrimination and harassment by our laws.

What have we seen?

Since 9/11, our agency has gathered data nationwide on a new category called:

"Backlash Employment Discrimination Charges related to the events of 9/11/2001, against individuals who are, or are perceived to be, Muslim, Arab, Afghani, Middle Eastern or South Asian."

Over the past seven years:

- **1,018** charges were filed alleging post-9/11 backlash employment discrimination.
- 604 charges involve **termination**; 428 charges allege **harassment**.
- the EEOC found a violation of Title VII in 135 charges (or 13.2% of 1,013 charges)
- On behalf of 153 individuals, EEOC has recovered \$4,226,000 in monetary benefits through investigative efforts, and
- Through 11 lawsuits, the EEOC obtained an additional \$1,946,500 in monetary benefits for 28 individuals.
- In the 7 years since 9/11/2001, the EEOC received 4,186 charges of discrimination based on Religion — Muslim (more than twice the 1,844 charges filed in the prior 7 years.)

Human faces behind these numbers:

Let me qualify these numbers: this is probably "the tip of the iceberg". In the San Francisco district, we are very conscious of the factors that keep people from even coming to our offices. Among them

- Fear and distrust of the government (associated with the folks conducting registration, raids, deportation)
- Fear and distrust of the bureaucratic process (with people saying "will this be worth my time?" "Who will listen to my side of the story?")
- Fear of retaliation (with people saying "It is so much more important that I keep working than seek justice" or "I need to put food on the table, I don't have time to report discrimination")

We have faced these concerns also in other communities that we outreach to, and through our efforts partnering with advocates like Banafsheh Akhlaghi, CAIR, Asian Law Caucus and others... through presentations at mosques, schools, community events... and by telling some of the stories of brave people who have come forward in mainstream and ethnic press, we seek to build trust and credibility.

Recently, EEOC filed a lawsuit on behalf of Mr. Ahmed Elshenawy against Sierra Pacific Industries. Our investigation found that after the attacks of 9/11, coworkers verbally abused Mr. Elshenawy because of his Egyptian national origin. Even after he reported this treatment, Sierra Pacific failed to take action and the harassment continued. In retaliation for protesting this harassment, he was disciplined and then fired after four years of employment.

A naturalized U.S. citizen and the father of three, Mr. Elshenawy said, "Facing regular abuse from coworkers wears on your mind and spirit. But when the company ignored my complaints and instead retaliated against me, it was devastating. Their actions struck at my ability to support my family."

In the interest of time, I will refer you to our press releases on EEOC's website: www.eeoc.gov. Or check out our outreach brochures, available in Arabic, Farsi, Urdu and Punjabi as well as in English. (Feel free to contact Linda Li, our outreach coordinator, at (415) 625-5618 or linda.lieeoc.gov to obtain outreach materials or to schedule a presentation.)

In conclusion: Let me urge all of you to work with EEOC and SFHRC at getting to the root of the problem.

Actions you can take

1) Employees: Know your rights and responsibilities. You have a right to work in an environment free of discrimination and harassment. You have the right to request an accommodation for your religious beliefs. Speak up — for yourself or for your co-worker -- when you see harassment or discrimination in the workplace. 2) As an employer, be proactive in setting the tone: there is no place for discrimination at work. And remember "The customer is not ALWAYS right": customer preference is never an excuse for allowing a non-employee to harass or discriminate against your employees.

File a complaint with the EEOC before the deadline of 300 days from the most recent incident of discrimination.

And remember:

- **Our services are free of charge.** And,
- **Immigration status does not matter — EEOC does not share information with other agencies** and our laws apply to all workers, whether undocumented immigrant or citizen.

Appendix E

Public Testimony: Statement of the Asian Law Caucus

I. Introduction

- a. My name is Veena Dubai, and I am an attorney at the Asian Law Caucus working a project to ameliorate working conditions for San Francisco taxi drivers.
- b. Thank you for the opportunity to speak here tonight

II. Asian Law Caucus

- a. Introduction to Asian Law Caucus: thirty-six year old civil rights organization advocating for the civil rights of Asian Americans and Pacific Islanders in Northern California, particularly low-income, recent immigrant, and other marginalized communities.
- b. For the last two years, the Asian Law Caucus, led by staff attorney Shirin Sinnar, has worked to combat employment discrimination arising out of a political climate shaped by 9/11, the war in Iraq, and public fears over national security. In particular, we have represented Muslim, South Asian and Middle Eastern individuals subject to workplace discrimination as a result of prejudice stemming from this political climate.

III. I'll be speaking about three types of discrimination we have frequently seen and suggest some recommendations for the San Francisco Human Rights Commission.

- a. First, we have frequently seen employment discrimination against individuals wearing headscarves, turbans, and other visible religious garb, often justified by employers on the grounds of "customer preference" or "public image." i. This type of discrimination usually affects Muslim women who choose to wear headscarves as an expression of their faith or Sikh men and women who wear turbans and keep their hair uncut as an article of their faith. This type of discrimination seems to be particularly rife in the service industry and other positions of widespread public contact, such as bank-tellers, waiters, receptionists, sales reps, and security guards. Employers often claim that hiring someone wearing a turban or a headscarf will detract from the image the employer wishes to cultivate or will antagonize customers who associate such images with current representations of "the enemy." While most employers would never *publicly* cite customer preference as a reason for not hiring an African-American or Latino job applicant, for example, many see nothing wrong with appealing to the prejudice of their customers when refusing to hire someone wearing a turban or a headscarf.
- iii. Earlier this year, the Asian Law Caucus and the San Francisco law firm of Minami Tamaki settled a case brought by Shereen Attia, a young woman who lost out on a job opportunity at Whitehall Jewelers, a major national jewelry retailer, because the manager told her that she would be bad for business because she wore a headscarf. This woman had successfully

worked for the company for more than a year at another store before she started wearing a headscarf, but the same employer rejected her once she began wearing a scarf.

- iv. We are now representing (with Nura Maznavi and the law firm of Rosen Bien Galvan) Zaylanin Southavilay, another woman who was terminated from her position at a debt-collecting company once she started wearing a headscarf, and we have also received complaints from Sikh security guards who faced termination for wearing turbans.
- b. Second, we have found that the federal government's current focus on workplace enforcement of immigration law has compounded discrimination against Muslim, South Asian, Middle Eastern and Sikh individuals-- even those who are legally employable.
- i. Two months ago we received a call from a Jordanian woman who was hired as an administrative assistant. When she filled out her employment paperwork, the office manager realized that she was Middle Eastern because her legal name was an Arabic name, unlike the name she used in her job interview. At that point the office manager insisted on seeing her Social Security card even though she had already proved her work eligibility with her green card. When the woman asked why she needed to show further documentation, the office manager replied, "How do I know you are not a terrorist?" When she expressed her concern several months later to the office manager about that comment, the office manager replied, "Do you blame me, after. September 11?"
 - ii. Although she did not lose her job, other employees of Middle Eastern or South Asian origin find they cannot get or retain jobs because of unfounded concerns over their immigration status. Last year the Asian Law Caucus settled a case on behalf of a Jordanian immigrant who was here on political asylum and was legally authorized to work. He obtained a job at a furniture retailer but lost it after the employer unlawfully insisted on seeing an employment authorization card. Although he could amply demonstrate his work eligibility with his driver's license and Social Security card, the employer rejected these documents and terminated the employee.
 - iii. The intersection between immigration status and national origin discrimination diminishes work opportunities for people of South Asian and Middle Eastern origin, including legal immigrants. We are concerned that more aggressive workplace enforcement of immigration law will continue to diminish job opportunities for immigrant communities.
- c. Third, we believe that most discrimination in the workplace is difficult to identify and even harder to prove, such as discrimination based on an individual's ethnic name. As recounted in the example of the Jordanian administrative assistant I just described, the mere fact that an employee has a name linking her to certain parts of the world can trigger discrimination. But most of the time, people do not even become aware that such discrimination has even occurred. Several years

ago, the Discrimination Research Center in Berkeley did a "testing" study in which they sent out 3,000 fictitious resumes to temporary employment agencies throughout the state of California. The qualifications in these resumes were identical, but the resumes bore names identified with different ethnic groups. The study found that the fictitious "Heidi McKenzie" received more call backs than any other applicant while the resumes bearing male Muslim names did markedly worse -- despite identical qualifications. We do not know whether staff at the temp agencies deliberately selected applicants of particular ethnic backgrounds; but regardless, the study suggests a level of bias, conscious or unconscious, that we need to address.

- IV. We have several recommendations for San Francisco city agencies and other employers that are committed to diversity in the workplace.
 - a. First, we recommend that employers conduct training on religious discrimination for human resources personnel and hiring managers. They might do this by adding such an component to the mandatory sexual harassment training that they must provide for employees under state law.
 - b. Second, we recommend that employers train human resources personnel and hiring managers on "document abuse" — the illegal practice of insisting on excessive documentation of an individual's immigration status and work eligibility.
 - c. Third, we urge employers to adopt mentorship programs to ensure that employees of color are linked with more senior employees to prevent the isolation that many people of color find in predominantly white workplaces.
 - d. Finally, we share the view that unconscious bias is responsible for a great deal of workplace discrimination and believe that new research into unconscious bias points to additional changes that should be made to promote true diversity in the workplace.
- V. We look forward to continue working with the San Francisco Human Rights Commission on equal opportunity in the workplace and society at large.

Appendix F

Public Testimony: Written Statement Submitted by the Sikh Coalition



39465 Paseo Padre Pkwy. • Suite
3550 Fremont • California .
94538 (510) 659.0900 (o) (510)
659.0903 (f)
www.sikhcoalition.org

STATEMENT ON SIKHS AND EMPLOYMENT DISCRIMINATION IN CALIFORNIA

From: Neha Singh, Western Region Director

Date: September 30, 2008

On September 11, 2001, when two airplanes hit the World Trade Center, Kevin Harrington was on the job. Kevin, a subway operator in New York City, saved a train-load of passengers by driving his train backwards away from the tumbling towers. Three years later, this hero was forcibly transferred to a lower-paying position by the Metropolitan Transportation Authority (MTA), forcing him out of contact with any customers. The reason? Simply that as a devout Sikh, Kevin wears a turban on his head - a marker that the MTA thought would make their passengers uncomfortable. Kevin was given a choice between keeping his faith and keeping the train operator position he loved, despite the fact that he had worked for over two decades driving a train without problem while wearing his turban.

Sikhism is the world's fifth largest religion, with nearly half a million followers in the United States. Sikhs' visible identity, a manifestation of their inner commitment to their faith, makes Sikhs stand out. According to the requirements of the faith, many Sikhs do not cut their hair or shave their beards. In North America, the majority of those who wear turbans are Sikhs. Since the terrorist attacks of September 11, 2001, Sikhs have been repeatedly misidentified as members of the Taliban or Osama bin Laden's terrorist network, and subject to bias, prejudice or hate as a result. Sikhs are regularly singled out for harassment, verbal abuse and mistreatment by both private and, at times, public actors. That can include employment discrimination against Sikhs around the country and here in California.

In Fresno, a Sikh who was a former major in the Indian Army was told that he could not serve as a security guard for the Federal Protective Service with his turban and unshorn beard. In Fontana, a Sikh with prior car sales experience was denied a car salesman position because of his unshorn beard. These are just a few of the many examples that the Sikh Coalition has encountered.

In recent years, bias against workers on religious grounds has reached all time high. The federal Equal Employment Opportunity Commission received over 2500 complaints of religious discrimination in 2006. Sikhs nationwide, including here in California, are disproportionately represented among that group in the workplace.

Appendix G

Public Testimony: Statement of the Counsel on American-Islamic Relations (CAIR)

San Francisco Bay Area

Thank you for the opportunity to address the Commission.

[CAIR intro] CAIR is America's largest Islamic civil liberties group, has 35 offices and chapters nationwide and in Canada. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

CAIR civil rights departments across the nation receive complaints from members of the Muslim community about harassment, discrimination and other forms of civil rights violations.

CAIR's annual publication — Report about the Status of American Muslims Civil Rights, was released a couple of weeks ago, which shows an alarming increase in the number of complaints of discrimination in the workplace.

According to the study, discrimination in the workplace against those already employed increased by 18 percent in the last year, from 384 cases reported in 2006 to 452 cases reported in 2007.

There was also a 34 percent increase in reports of discrimination against those seeking employment. Cases involving denial of religious accommodation in the workplace jumped eight percent.

Of all the States, California received the most number of civil rights complaints. In California, employment discrimination accounted for about 16% of civil rights complaints in 2007.

This trend is also reflected in the local San Francisco Bay Area chapter.

In the same period, there was almost a 180% increase in the number of workplace discrimination cases reported to our chapter. In 2006, we received a total of 23 complaints, and in 2007, we received 41. And so far in 2008, we have already reached 27 cases and it looks set to exceed last year's number.

2008 (so far):

Beard	Harassment	Hijab	Other	Prayer	Total
7	5	2	13	0	27

2007

Beard	Harassment	Hijab	Other	Prayer	Total
2	10	5	19	5	41

Case studies

The cases that have are reported to our office vary in substance and in severity. They include examples of hijab discrimination, beard discrimination, religious accommodation problems for prayers, religious holiday, or a combination of factors. The effects on the person affected in each case are very real. At the very least, people feel targeted or singled out, while some others feel isolated by the unfair treatment leading to stress, feelings of humiliation, and at the extremes, depression and anxiety requiring professional assistance and counselling.

Typical Case Study:

- Video Store hijab case — Muslim woman went for an interview and was told that she would be offered the job but that she had to take off her hijab. When the Muslim woman protested, the manager said that it was not "right for the environment." The woman felt humiliated, and walked out of the interview in tears.

Requirement for written religious accommodation requests as a general rule:

- Some companies require their Muslim employees to provide a written accommodation request from a religious institution in order for the employee to keep a beard or wear the headscarf as a blanket rule. They are told that they cannot come to work with the beard/hijab unless they have that letter. In our experience, the company is usually satisfied with receiving the same form letter from CAIR. From our perspective such a requirement is understandable and reasonable *only* if there is a question about the sincerity of the belief. But making this a requirement for every Muslim employee is problematic because it shifts the burden on Muslim employees, rather than the employer assessing each request individually without assumptions or stereotypes, as suggested in the EEOC Compliance Manual.

Cases that are harder to prove: e.g., lack of evidence, lack of witnesses, different treatment because they are the only person of that race or religion in the workplace

- These cases are more difficult to prove. Some community members contact us who are under an immense stress because they perceive that they are being treated differently than other co-workers, but often in very subtle ways. Such a work environment can also be a hostile work environment.
- Case study: man felt that he was consistently singled out in performance reviews and set very high expectations because he was the only person in his team who was Muslim and of Indian background, while all others, including the supervisors, were of another race. This led to a lot of pressure and stress and the man had to ask for leave and seek counselling.
- While we do not advocate that the criteria for discrimination be anything but stringent, we see that this is a problem area that is often overlooked.

- e This is where employers can play an important and proactive role if they are serious about ensuring that the workplace is a safe and non-hostile environment. Where there is any *possibility* of perception of bias, the employer should take proactive steps to create a culture of inclusiveness of all races and religions, and encourage all workers to be respectful to others.

Lastly we believe that the community should feel empowered to seek remedies either through direct negotiations or with assistance from agencies such as the EEOC or the DFEH. Conversely, in view of the high numbers of cases of discrimination against Muslims post 9/11 not just in CAIR's civil rights work but also reflected in the stats released by EEOC, employers should be proactive in seeking information and education about Islam and Muslims. To this end, CAIR has published a booklet called "An Employer's Guide to Islamic Religious Practices" to help managers gain a better understanding of Islam and Muslims in the workplace.

Appendix H

Public Testimony: Statement of the Equal Justice Society

Good evening and thank you for putting on this very important hearing. My name is Claudia Peha and I am the Constance Baker Motley Civil Rights at the Equal Justice Society, a racial justice civil rights organization here in San Francisco.

At EJS, we recognize the Muslim/Middle Eastern/ South Asian communities have suffered from employment discrimination long before 9/11. If you watch Planet of the Arabs, a 9-minute film by Jacqueline Salloum cataloguing the depictions of Middle Easterners in film from the late 1800s to present day, you will see that the concept of the Middle Eastern terrorist has been part of the American psyche for decades. As Dr. Kahlon already mentioned, media, film and culture in general affect the public's perception of particular groups and influences one's unconscious bias. Director Salloum found that out of 1,000 depictions of Middle Easterners, only a handful were positive and over 900 were negative. This certainly affects an employer's assessment of a prospective employee through her/his unconscious bias.

Post 9/11 this discrimination has become more acute and the state of constitutional law vis a vis equal protection has all but exacerbated the issues faced by these communities. Because of the intent doctrine provided by a case called *Washington v. Davis*, there is almost no recourse to address employment discrimination, at least as it pertains to public employment. The Supreme Court made it too difficult for plaintiffs to prove discrimination because they have to show the intent to discriminate. Since we know much of discrimination comes from unconscious bias, this hurdle makes it increasingly difficult to seek redress.

That's why EJS is working hard with a long term strategy to undo the harms of the intent doctrine and make it more feasible for affected communities to bring forth their grievances in suffering from discrimination and racism. We have provided trainings for the Equal Employment Opportunity Commission and California Teacher's Association regarding unconscious bias not only so that more people will be aware of their *own* biases and take affirmative steps to undo some of the effects of negative priming in our culture but also so that these entities will share the information with others. We have also published articles regarding this social science data and put forth the idea that unconscious bias should be regarded, in the eyes of the law, as a form of discrimination against which the people deserve protection.

Our suggestion to the San Francisco Human Rights Commission is that employers be compelled to undergo trainings regarding unconscious bias so as to limit their own discrimination against potential Muslim/Middle Eastern/South

ASian employees and any other group that has historically been discriminated against.

Thank you.