Essays on the Islamic Legitimacy of Muslim Participation in American Law, Politics, and Military Service:

Our Duty and Pride as Muslims and American Citizens
Imam W. Deen Mohammed

Can a Person be a Believer and a Secular Government Lawyer Too?
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The Islamic Legitimacy of Muslim Participation in American Law, Politics, and Military Service

INTRODUCTION

Islam as a religion of significant representation is a relatively new American phenomenon. Approximately half of the six to seven million Muslims in this country are from the indigenous African American community. The other half is made up of a combination of ethnic groups including Asians, Arabs, Africans, and indigenous European American and Hispanic American converts. While the older generation of most non-African American Muslims are immigrants to this country with close ties to foreign societies, the ever growing percentage of second generation, indigenous offspring of these immigrants are American in their primary cultural orientation. Even so, however, all indigenous Muslims, regardless of ethnicity, eventually must reconcile their identity as “Muslim” against their identity as “American.” This dilemma is a vexing one for a vocal minority of American Muslims, who perceive being an American citizen as incompatible with being Muslim.

Of course African Americans, both Muslim and non-Muslim, have faced and struggled with this dilemma for generations and overall have less of a problem with accepting their role as Americans. Additionally, African Americans generally have no other specific country to which to turn and expect acceptance should they decide to renounce their citizenship, as has been implied by some anti-American advocates of disengagement.

This is not to say that all African American Muslims have resolved this tension. There exists a noticeable number of Muslims of all ethnic backgrounds who still struggle with this question. Anti-Muslim propaganda in the media, usually targeting the foreignness of
of Muslim traditions, has served to exacerbate the problem. At the time of the Oklahoma City bombing, for example, xenophobic Americans attacked Muslim Americans and visiting immigrant Muslims in incidents across the country. Needless to say, when the real culprits were caught the ethnic and religious groups to which they belonged were not attacked.

This disparity in treatment and mistreatment begs the question. How should Muslims relate to the United States as a country and government? Is it permissible under Islamic doctrine for a Muslim to serve as a government official, employee or in the U.S. military? Is it permissible for Muslims to even practice American law? In the essays that follow, these and related questions are addressed by several writers representing the spectrum of the American Muslim community. Most notably, Imam W. Deen Mohammed, of whom millions of African American Muslims identify as their leader, tackles the question head-on in the first essay (adapted from a recent speech). His treatment of and perspective on this topic cuts across the entire body of human activity, including Islamic law, and provides a moral and spiritual orientation for those American Muslims seeking to resolve the question of their role in this society.
Our Duty and Pride as
Muslims and American Citizens

Imam W. Deen Mohammed

Our greeting as Muslims is Peace, Peace be unto you. As Salaam Alaikum. We Praise God, we say Al Hamdulillah Ir Rabbil Alameen. We give praise and thanks to God, Who is the Lord and Cherisher of the world—of all the worlds. We witness that He is One and the Lord Creator of every thing and Creator of the wonderful creation; the best of creation, the model human person. We thank God and we salute the last of the prophets, Muhammad, with the traditional salute, Salla Allahu Alayhi Salam wa Mubarak, the prayers and the peace be upon him and what follows of that traditional salute to the last of the prophets, the seal of the prophets, Muhammad, peace and blessing be upon him or the prayers and the peace be upon him.

This is an honor again for me to be invited by you, the chaplaincy, and to have very distinguished persons, members and officers of the military of the United States here with us, and the chief of the chaplains and the others in our community who have been working as chaplains. It is a great honor and great pleasure for me to be your guest here today.

I’m going to speak very briefly on our duty and pride as American citizens and as Muslims. We would say Muslims first

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* This essay was adapted from a speech given at the First Annual Conference of the Muslim American Military Association on November 28, 1998, at the University of the District of Columbia, Washington, D.C. Imam Mohammed is the recognized spiritual leader of millions of Muslim Americans through an affiliation of perhaps hundreds of masajid (mosques) known as the Muslim American Society.

1 Imam Mohammed and his associates prefer to omit the letter “o” in the spelling of the Supreme Being (Allah), in English. Other faith communities use a similar technique when referring to the Supreme Being in writing because of the offensive connotation associated with the reverse full spelling of the word. In deference to the Imam’s sensitivity, we have adopted this technique for this essay. [Editor]
and then as American citizens. But in my history I was an American citizen before I became a Muslim. And some of you who know my family, you’ll say: How is that? You were born to Elijah Muhammad while he was a Muslim? Yes, but he didn’t understand what a Muslim was and so I didn’t understand what a Muslim was either until I got acquainted with our holy book as we should be acquainted with it or as we should have acquaintance with it. Then I began to be a Muslim, truly a Muslim, in the proper sense of the word. So I was an American citizen before I was a proper Muslim. But still we know our obligation to G-d is before, during, and after all other obligations and that includes our obligations as citizens of the United States or any other nation to which we may belong. But G-d obligates us, in my opinion, reading our holy book, understanding the life example of our prophet the leader of all of us, Muhammad of Arabia, prayers and peace be upon him, understanding that, I understand that G-d obligates us as to also serve country. We are to serve G-d and country. Not only that we should feel that we are supporters of the United Nations, because we are to suppose to serve G-d and humanity; G-d and the international community as well.

Closer to us is our own nation. We are citizens of the United States of America and this United States of America provides for us as a duty. It provides for us those things that we can’t provide for ourselves—life as a nation has given to us our growth. Our growing pain has been responded to first by common people, who needed government, and then by government with service. We couldn’t have the good life we have if we didn’t receive all these services that are provided by the government of the United States and by our state and local government.

So all we have to do is just reflect a little bit, think a little bit on our situation, what supports us as citizens of this country, what supports us having the conveniences we have with nations, what supports us feeling secure as citizens of this country. Not that we don’t worry about a thief coming into the home at night. But most of us don’t fear invasion from a foreign power—a takeover. Many nations have that fear. We don’t have that fear in the United States. It could happen, but we don’t expect it. We don’t have that kind of fear. So when we think of all the benefits that we have, the freedom we have in this country, that they don’t have in many
Muslim countries, and we are Muslims. It doesn’t mean that we
don’t feel affectionate, and don’t feel a love in our hearts and
warmth in our hearts for nations, like Iran, like Iraq—those are
Muslims—like Libya and the Libyans. But we know that we don’t
have the freedom in those countries that we have in here, in this
country, to practice our religion, to live the Muslim life as we
know we should live it. We don’t have that freedom. So this
country gives us more religious freedom than most of our own
Islamic nations or countries. We have to, soberly in the head,
soberly in the mind, see these facts and these realities. And
register them and appreciate that.

You know someone said, and I read in the holy book, our holy
book, the Quran, “the beginning of religion is really the beginning
of gratitude; a thankful heart.” And, “to be ungrateful is really to
be a disbeliever.” Yeah. This is Islam you see. Well, we should
apply that also to ourselves as citizens of this country and you
don’t need this, you who are present here, but I know you are
recording what I’m going to say. I’m doing this—you are my
witnesses—but my audience is really outside of this room. Yes.
And I want to be on record for saying these things. Not for myself,
or for my office, my office is the Ministry of W.D. Mohammed.
An office; not a missionary. My ministry; that’s what I represent.
But I also know that there are many believers, Muslims, who want
to hear what I have say on important questions. And this is a very
important question. How do I serve my country? My answer to
you is I serve my country as a citizen of this country and as a
believer in G-d.

I use to—well I never really thought of myself as a
conscientious objector, that is, I never thought it was consistent
with Islamic teaching and ideas and principles for me to claim
conscientious objector, that classification, because Muslims are not
nonviolent in that sense or to that degree that we won’t even pick
up arms to defend our country, our land, our homes, our families.
No, we’re peace makers but we’re also fighters in defense of what
G-d has permitted us to defend: our lives, our families, our
property, our rights, to live our life as G-d has ordered us to live it.
That is the life of Islam, the life of Muslims. So we’re not just
conscientious objectors, really, you know. So I felt like I was
being a liar when I applied for that classification. Would you
believe that I got it? I did. I got it. But I refused to report to Elgin State Hospital for conscientious objector service work. And they send me to federal prison for three years because I didn’t report to Elgin State Hospital. They weren’t sentencing me because I was not registered or because I didn’t accept to be registered. I did [register], as a fulfillment of my obligation as a citizen and able bodied young man. I fulfilled that. After pressure was put on me, I fulfilled that obligation. But then I was told by my attorney that you can apply for conscientious objector classification. So my story was so convincing that they accepted it and gave me that classification. I didn’t understand why myself. I said how could they accept that? I couldn’t understand it. Not then—I was too young. But as I grew older I came to understand why they accepted it. And they were correct. If you are moved by conscience—you believe in your conscience that you are doing the wrong thing to go to war. And if that’s your reason that you don’t want to go to war, that’s okay. But you’re suppose to do something else; do something other than fight. So our reason was [that] we shouldn’t fight for a country that didn’t give us equal citizenship, or gave other citizens advantages over us and denied us full citizenship rights. And when I applied for that classification that was still the situation for African Americans in this country. We were still not given full citizenship rights in these United States. And so as I said, when I got older I reflected on it and looked back and I understood why they granted me that classification, and, I think they were very wise and very just to grant me that classification.

Now, I don’t see it the same way anymore. Muslims are not conscientious objectors when it comes to going to war; our conscience is the conscience of a Muslim, a believer in G-d, a Muslim, a follower of Muhammad the Prophet, that’s what our conscience is. And our Prophet didn’t want to fight in his heart, but seeing the suffering, seeing the denial of justice, the denial of rights, the life persecuted by nonbelievers in G-d, idolaters who worshiped idols, the suffering, the physical suffering they had to endure; that burdened his heart so much, G-d had to give him permission. G-d revealed to Prophet Muhammad. G-d said now you can fight. Return the attack, fight the aggressors and be not yourselves aggressors.
So if we know the principles of Islam, the character of war for Muslims—now you know we would actually deceive ourselves or lie to ourselves knowingly if we were to say that Muslim countries, under the Muslim leaders that we have now in Muslim countries, respect the character of war authorized by G-d and His Messenger. We would be lying. They do not. They don’t respect the character of war as authorized by G-d and as demonstrated by His messenger and servant Muhammad, prayers and peace be upon him. But we’re in America. Our situation is much better than it is for citizens of Muslim states. Not only for the citizens, but the rulers too. Many of them, they are so hurt. They are so desperate because of their hurt; their inability to move in the way they want to move; progress their nation the way they want to progress it. They are locked up mostly by their own doing, but they are also locked up because of the power, the super powers, controlling things. And forcing them to recognize those controls.

So I’m not completely against them. I just wish they could heal themselves so they can get a better life as we have done. I don’t think any people on this earth now, unless it’s the American Indian, and I doubt the American Indian has as much to recall as a bad past in a relationship with America, with whites, white powers, than we have. Our memory is more painful if we start going back than it is even for the American Indian, not to mention those nations or states that were colonized by the West, and ruled by the West and still suffer because they haven’t overcome that problem that began with colonization of lands, of Muslims lands, etc.; the rise of Western power, etc.

I think that G-d has put us here for a reason. If we can overcome our hurt and heal ourselves and recognize that this is no more the day of plantation slavery in America. This is the day of equal opportunity for all people in America. This is no more the day of second class citizenship imposed upon the subjects by laws of the land; the law of the land treats us all the same now. If we can recognize these realities; these changes; and heal ourselves; and embrace the good and embrace the progress and embrace the good aims and good purposes for which this nation was envisioned or created by its founding fathers, and how the spirit and language that they left with us have gained support. Sometimes it took a hundred years. For us, African Americans, more than a hundred
years, two hundred years at least, for us to get the benefit of that great vision. But now we are [getting the benefit]. So if we can recognize that; come from the painful past enough—and free ourselves from that painful past enough to embrace America the beautiful. There’s America the ugly, we all know it, but if we can embrace America the beautiful and say well America the ugly is not so noticeable or prevalent as it was yesterday. America the beautiful is more noticeable now. American the beautiful has the upper hand. The Klan can’t do what it wants to blacks anymore, etc. If we can recognize these new realities, then I think all Muslims should try to recognize these realities.

And we should listen to what G-d says in our holy book about who is a *kafir* and who is not a *kafir*. Not take it from some imam that’s carrying a lot of pain in his head, a lot of wounds to his heart because of colonization, because of the superpowers standing in the way of what he believes his nation should be doing. But take it from the word of G-d that’s pure, the Quran, and take it from the life of Muhammad, the pure man, the pure servant and messenger of G-d, Muhammad. And let us follow what G-d says: “Let him who will believe, believe, and let him who have the will to disbelieve, let him disbelieve.” And our prophet mandated [this]. Why is this important for us? Because there are some Muslims, innocently, calling American Christians *kafirs*. And they think we’re not suppose to fight for this country because this is a country of *kafirs*, that we’re suppose to be fighting this country, not fighting with this country. “Whoever has the will to believe, let him believe. Whoever has the will to disbelieve, let him disbelieve.” And then Muhammad the Prophet mandated that once the Islamic state was realized, victory over the pagans was won, he said the Christians—the Jews first—of Medina are free, they have no fear from the state, they need not to fear. Their lives, their property are in no danger from us and they have the right to practice their religion as they were practicing it before. He didn’t impose any idea of religion upon Christians but he left it to them to follow the best of their own ideas. And [he] created a situation to encourage them to lift up their minds to purify their thoughts so

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2 *Kafir* is the Arabic word for disbeliever or infidel. It also can refer to one who is ungrateful. [Editor]
that they could find the best way or the correct way to practice their Judaism or Christianity. As we know later in the history the same right was given to Christians, or was pronounced. Although they had it all the time, it was pronounced.  It was put into law, I would say.

We have to accept that people who sincerely believe in G-d, the Creator of the heavens and the earth, no matter whether they call themselves Trinitarians and they have an idea that we can’t accept about G-d, but as long as they say they believe in the G-d of the heavens and the earth, we are not to say they are disbelievers; we are only to invite them to rational discussion in hope that maybe we can convince them to accept pure “oneness,” or monotheism. That’s a long road and we are not to compel them to accept our idea of one G-d. That’s a long road. Give them an invitation and demonstrate the excellence of faith, the excellence of Muslim life and that’s more convincing than your preaching and your arguing and or debating or condemning others. That’s not the way. This is my advice to the imams that are telling us that the Christians are kafirs. And the Jews are kafirs, and whatever. There are kafirs everywhere. There are kafirs and hypocrites among the Jews, among the Christians, among the Muslims, too. I know because I am meeting them everyday. So don’t fool yourself; you can’t fool me. We know where the kafirs are.

So we are obligated as citizens of this country, receiving benefits, to give this country no less than what our prophet mandated and imposed upon Jews, Christians and Sabians who lived in the Muslim state but practiced a different religion. They were obligated to give some kind of support to the Muslim state and not to work against the peace and security of the Muslim state. We are equally obligated. So I am proud to say I am a free spirit in this land and on this earth. G-d has freed me. I thank G-d that my soul is free. It’s not in prison anymore. First I had to unlock the locks that others put on it. And then I found that I still wasn’t free. I looked at my own thinking and my own thinking had some locks on my soul. So I had to change my own thinking a bit. And when I changed my own thinking, all my other locks became visible. And I freed my soul because of faith in the right things. And all of us can do the same if we are innocent and straight. And let us be truthful and clear-minded and clearheaded, clear-eyed and let us be
grateful. Because if you are ungrateful, G-d does not accept you. Be grateful. Thank G-d for the good that you have in this country because of the nature of this country, its constitution. Be grateful. Don’t be satisfied with it. Jews, Christians, Muslims, let us all work to make this a better country. But don’t deny the good that we already witness and are benefitting by and from. How can you improve a thing when you don’t even recognize that it is improved already? It is a great improvement on “government” period. The government of the United States is a great improvement on government period, for mankind! So let us make our contribution with that recognition, with that understanding. And hope that America will get better year by year, decade by decade. Thank you very much. Peace. *As Salaam Alaikum.*
Can a Person be a Believer and a Secular Government Lawyer Too?

Ra’ouf M. Abdullah

I. INTRODUCTION

One of the central debates in the Islamic World involves the question of the extent to which sincere, believing Muslims can retain their faith while interacting with people who do not follow the Qur’an Karriem and the verified Sunnah of Rasulullah, Sallallahu Alayhe was Salaam. Put simply, does the religion of Al Islam require its adherents to isolate themselves, as far as practicable, from “non-believers” or does Al Islam demand that the believers integrate with other communities. Or, is the answer located between the extremes? Fortunately, if you enjoy the art of debate, there are many proponents of the polar positions and yet many more backers advocating something in between. For this article, we want to narrow the issue somewhat and discuss the extent to which the Shari`ah (“Islamic Law”) permits or does not permit a Muslim to hold a position as an attorney in a contemporary American government unit.

With the advent of Muslim-based political actions committees and civil rights groups, Muslims have begun to aggressively use political manipulation and the justice system to promote Islamic

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*Community activist and attorney for the Federal Trade Commission.

1A convenient example of this attitude is the attack on Imam W. Deen Mohammed and the Muslim American Society for their policy of fully participating in the civic opportunities in the United States. Imam Mohammed has been deemed a traitor to the Faith because he has refused to categorically condemn the United States as a satanic nation. During the Gulf War, Imam Mohammed received widespread criticism for his decision to support the effort to repulse Iraq from Kuwait. In another instance, Mezrat Ghulam Ahmad, the leader of the Ahmadiyyah Movement was widely condemned for, inter alia, seeking to peacefully co-exist with the British in India. The late President, Mohammed Anwar Sadat, of Egypt was assassinated, in part, for his decision to make peace with Israel.
causes.\textsuperscript{2} Along with the acceptance of the presence of Islamic lobby groups has come the recognition by Christian and Jewish leaders of the legitimacy and the value of Muslim attorneys who work in government. Heretofore, the institution of American government was contrived so that it showed compassion and accommodation mostly to Christian and Jewish needs.\textsuperscript{3} Now that Muslim suitors are showing up at the statehouse and the national legislature, government leaders have conceded that Islam represents a new player at the table. Government and social leaders also have begun to recognize that Muslim government lawyers potentially can bridge the communicative gaps that traditionally have existed between Muslims and the other major religious communities. A concomitant factor that has accelerated the inclusion of Islamic concerns is that Muslim government attorneys are feeling the pressure to “represent” Islamic concerns in the same way that Christians and Jews do. All of these developments beg the question of whether Muslims can work in the American government consistent with Islamic law.

II. WHY THE IDEA OF WORKING FOR THE GOVERNMENT OFFENDS SOME MUSLIMS

During the Madinah Period of the development of the Islamic Ummah, though most Muslims migrated to Yathrib (Madinah) or some other neutral sanctuary, some Muslims chose to stay in

\textsuperscript{2} Examples of such national groups include the American Muslim Council, The Coalition for Good Government, and the Committee on American Islamic Relations. A common feature of these and many other such organizations is their unapologetic policy of “constructive engagement” in the mainstream secular political and judicial apparatus of the national and local governments. They market their value as accessible, responsible, and cooperative appendages to the amorphous Islamic presence that has “suddenly” appeared on the American landscape. As to be expected, Islamic lobbyists are as dependant on establishing and exploiting alliances with politicians and bureaucrats as are the advocates of other religious communities. Muslim attorneys within the government represent one such asset.

Another issue that is beyond the scope of this paper is the questions of why and how has the Muslim minority of North America emerged with such energy. Muslim social scientists are obliged to take of these questions so that the international Muslim ummah can replicate this accomplishment.

\textsuperscript{3} Of course, we do not intend to ignore the political and judicial struggle Jewish activists waged to force the various governments to accommodate Jewish concerns.
Mekkah. For whatever reason, these believers remained in the “camp” of the enemy. This fact is established firmly because Allah, Himself, addresses it in the Qur’an. Allah revealed:

"Surely those who believed and fled (their homes) and struggled hard in Allah's way with their property and their souls, and those who gave shelter and helped -- these are guardians of each other; and (as for) those who believed and did not fly, not yours is their guardianship until they fly; and if they seek aid from you in the matter of religion, aid is incumbent on you except against a people between whom and you there is a treaty, and Allah sees what you do." 4

In this verse of Qur’an, Allah addresses the Muhajirun (the Muslims who fled Mekkah), the Ansarun (those in Yathrib who received the Muhajirun) and the Mekkan-bound Muslims. Allah extols the Muhajirun and the Ansarun but indirectly denigrates those who stayed behind. Allah relieves the Prophet of any obligation to defend the Muslims who have not separated themselves from the “enemy.” This verse suggests that the Muslims who failed to separate themselves from the people who had rejected the Prophet’s message (the Mekkans) were not of the same caliber of the believers who had fled Mekkah. The verse describes the Muhajirun as those who have struggled. The verse implies that the stationary Muslims have failed to struggle in a way that is pleasing to Allah, the Most High. 5 If you believe that all who do not profess Al Islam are enemies 6 or rather, if you believe that America is the Great Satan, then it follows that any Muslim who does not “migrate” or “separate” his affairs from America

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4 Qur’an, 8:72.
5 “The holders back from among the believers, not having any injury, and those who strive hard in Allah's way with their property and their persons are not equal; Allah has made the strivers with their property and their persons to excel the holders back a (high) degree, and to each (class) Allah has promised good; and Allah shall grant to the strivers above the holders back a mighty reward.” Qur’an 4:95.
6 “O you who believe! do not take the Jews and the Christians for friends; they are friends of each other; and whoever amongst you takes them for a friend, then surely he is one of them; surely Allah does not guide the unjust people.” Qur’an 5:51.
spatially is of those who remain behind and has failed to struggle in the Path of Allah. Such persons, one might reason, deserve no more protection from the “true believers” than the Mekkah Muslims received from the Messenger. Applying this rationale, attorneys who work for local, state, or national government entities could be viewed as Muslims who have stayed behind.\textsuperscript{7}

Thus, the Muslim government attorney can be viewed as a mercenary selling his or her services to the government that is dedicated to the destruction of the Ummah both within and beyond the boundaries of the United States. No only does the government attorney fail to separate from the enemy, he assists the enemy in its battle to forestall the inevitable triumph of the supremacy of Islam over all other religions even though the disbelievers detest it.\textsuperscript{8}

Having adopted this point of view, the proponent now is justified in declaring that the attorney who is so misguided that he has joined the ranks of the enemy must, upon being acquainted with his grave indiscretion, decide between, on the first hand, Allah and his Messenger, and, on the other, the Great Satan. Clearly, any who refuse to come out of the government are devils themselves and must be shunned by the faithful.

We can serve but one master. Allah says:

And when We made a covenant with the children of Israel: You shall not serve any but Allah and (you shall do) good to (your) parents, and to the near of kin and to the orphans and the needy, and you shall speak to men good words and

\textsuperscript{7} Say: Shall I inform you of (him who is) worse than this in retribution from Allah? (Worse is he) whom Allah has cursed and brought His wrath upon, and of whom He made apes and swine, and he who served the Shaitan; these are worse in place and more erring from the straight path. 5:60.

\textsuperscript{8} He it is Who sent His Apostle with guidance and the religion of truth, that He might cause it to prevail over all religions, though the polytheists may be averse. 9:33.
keep up prayer and pay the poor-rate. Then you turned back except a few of you and (now too) you turn aside.¹⁰

Accordingly, the Muslim, who by definition is Allah’s servant, cannot be found to be faithful serving the enemies of Allah and His Messenger. Like the Mekkan-bound Muslims of the past, if the Muslim attorney desires the guardianship of the Ummah, his duty is to flee the enemy and fulfil the role of a champion of Islam. Anything less, arguendo, misses the goal of excellence. More importantly, if the Muslims who are government attorneys are hindering the Ummah, the responsible Muslims must encourage them to end the association.

III. Why Some Muslims Advocate Government Service

It would seem that a good argument for Muslims who take the position that Allah permits and encourages Muslim attorneys to work for the various American government divisions can be found in the story of Prophet Yusuf, alayhe Salaam. As we know well, Prophet Yusuf was sold into Egyptian slavery by his own people. Through the Blessings of Allah and Yusuf’s own efforts he attained a high position in Firon’s government. Prophet Yusuf was installed in that government job by Allah, the Most High.¹⁰ Allah placed Prophet Yusuf in that position so that he would be a benefit for Bani Israel. Allah explained in Qur’an that He placed Yusuf in that position as a Blessing and a Mercy.¹¹

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¹⁰ Qur’an 12:56.
¹¹ Qur’an 12:21.

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*Qu’ran 2:83.  See also 3.64: “Say: O followers of the Book! come to an equitable proposition between us and you that we shall not serve any but Allah and (that) we shall not associate aught with Him, and (that) some of us shall not take others for lords besides Allah; but if they turn back, then say: Bear witness that we are Muslims.”

*And thus did We give to Yusuf power in the land -- he had mastery in it wherever he liked; We send down Our mercy on whom We please, and We do not waste the reward of those who do good. Qur’an 12:56.

*“And the Egyptian who bought him said to his wife: Give him an honorable abode, maybe he will be useful to us, or we may adopt him as a son. And thus did We establish Yusuf in the land and that We might teach him the interpretation of sayings; and Allah is the master of His affair, but most people do not know.” Qur’an 12:21.*
There are other arguments, as well. At the time of Firon's (Pharaoh) oppression of prophet Musa, alayhe Salaam, and his people, Bani Israel, Allah sent help to the Prophet Musa in the guise of a believer whose faith was concealed. The presence of the concealed believer in Firon’s court provided help to Prophet Musa from inside the government.

The presence of a believer near Firon shows that Allah sends his Holy Spirit everywhere and that it can find responsive hearts everywhere. If the believers were positioned near Firon and Allah did not express disapproval, perhaps a believer is permitted to be near the governing bodies of America.

In another instance, Allah showed favor for Muslims who were “inside” the government of the Quraysh. During the latter stage of Rasullulah’s mission, he embarked on a pilgrimage to Mekkah. At the valley of Hudabiyyah, he was forced to stop and negotiate with the Quraysh for safe passage. For a period, it seemed that the Quraysh had killed the Muslims’ envoy, Uthman. In response to the apparent crisis, Prophet Muhammad asked the Muslims for a pledge that they would retaliate for Uthman’s death. The attack did not occur because, first, it turned out that the Quraysh were bluffing and had not killed Uthman after all. Second, Allah determined that He did not want the Prophet to wage war with the Mekkans because in Mekkah there were believers whose identities were unknown to the Muhajirun and the Ansarun. It was Allah’s desire to protect those undisclosed Muslims who were in the enemy’s camp.

12 “And a believing man of Firon's people who hid his faith said: What! will you slay a man because he says: My Lord is Allah, and indeed he has brought to you clear arguments from your Lord? And if he be a liar, on him will be his lie, and if he be truthful, there will befall you some of that which he threatens you (with); surely Allah does not guide him who is extravagant, a liar.” Qur’an 40:28.

13 See, e.g., Qur’an 48:25. (“... and were it not for the believing men and the believing women, whom, not having known, you might have trodden down, and thus something hateful might have afflicted you on their account without knowledge ....”) No only would it have been a grave sin for the Messenger and the believers to kill the Muslims of Mekkah, it would have been a bad strategy. The presence of a growing minority of believers with Mekkah weakened the resolve of the Mekkans to resist the allure of Islam. Thus, the presence of Muslims outside of the boundary of the fledgling Islamic state was an unknown benefit for Muslims from Allah.
This second well-known example further supports the position that Allah permits or desires that His servants be dispersed throughout the society. One of the distinctions between Al Islam and Christianity is the Islamic emphasis on social utility. Prophet Muhammed stressed that the people who benefitted society most were the best people. This was a direct repudiation of the ascetic movement that had crept into the Christian Ummah. We cannot be a great benefit if we are limited in our vocations. These examples also indicate that we, as the servants of Allah, have limits on our ability to discern how and by what means Allah will aid us in our struggle. It may be that the thing that we hate is good for us and what we love is bad for us.

In each of the foregoing incidents, we have observed that Allah permitted believers to be in the government or in the vicinity of those who either opposed or who were not sensitive to the needs of the Muslim Ummah. In each scenario, the presence of Muslims on the “inside” conferred benefits on the believers. In this time, there continues to be a need for Muslims to be on the inside of the people who may not be sympathetic to Islam. If Allah permitted and desired Muslims to be in Firon’s government and if Allah protected the Mekkan Muslims, how can we condemn the attorneys who have chosen to work for social betterment from

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14 This principle is conditioned on the requirement that the person first lead a righteous life. See, e.g., Qur’an 9:19 (What! do you make (one who undertakes) the giving of drink to the pilgrims and the guarding of the Sacred Mosque like him who believes in Allah and the latter day and strives hard in Allah’s way? They are not equal with Allah; and Allah does not guide the unjust people.) In this verse, Allah clarifies that if you do a great evil – opposing Allah’s Messenger, it cancels the good you do – feeding the pilgrims.

15 “And he (Prophet Yaqub) said: O my sons! do not (all) enter by one gate and enter by different gates and I cannot avail you aught against Allah; judgment is only Allah’s; on Him do I rely, and on Him let those who are reliant rely.” Qur’an 12:67.

16 Fighting is enjoined on you, and it is an object of dislike to you; and it may be that you dislike a thing while it is good for you, and it may be that you love a thing while it is evil for you, and Allah knows, while you do not know. Qur’an 2:216. See also Qur’an, 4:19.
inside America’s political institutions. Do not the examples out of the Qur’an support this inference?

IV. WHAT IS THE ROLE OF THE MUSLIM GOVERNMENT ATTORNEY?

Assuming for this discussion that Islamic Law permits Muslims to contribute to the American political and civic establishment, what is the Muslim attorney’s role? The duty of the Muslim is to serve Allah. But how?

One of the strengths of world-wide nation of Islam (Ummah) is the absence of a rigid body-politic. Many modern Muslim intellectuals agree that neither the Qur’an nor the Sunnah of the Messenger delineate the structure of the ideal Islamic government. The Muslims are thereby free to evolve their body-politic to match their ever-changing needs. Allah instructs the believers to conduct their affairs justly and requires that leaders seek the input of the governed. However, in His strongest edit on the subject of authority, Allah makes it clear in Surah 114 that He alone is the sovereign. At best, the human being is a representative caretaker for his lord, Allah, the Most High. The Muslim attorney has a opportunity to extract from Shari’ah principles and concepts that will enhance and evolve the quality of the secular government.

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17 See, e.g., “Surely this Islam is your religion, one religion (only), and I am your Lord, therefore serve Me.” Qur’an 21:92; “And I have not created the jinn and the men except that they should serve Me,” Qur’an 51:56.
18 Qur’an 3:159; 42:38.
19 This reference is not intended to suggest that Islam requires a theocracy (a government in which the ruler claims his authority is devinely derived). Rather, Islam places limits of justice on the right of the ruler. Allah is just therefore all who rule at Allah’s sufferance, must also be just.
20 Qur’an 2:30.
21 Since the fall of the Ottoman Turkish Empire and the rise of the European powers, Islamic people have been on the receiving end of transmission of jurisprudential and bureaucratic education. The glorious time of Sulaiman, the Magnificent, the Law Giver, during which the Europeans sought jurisprudential guidance has been reversed such that the Islamic nations now look to the West for help.
The duty of excellence that the Messenger places on the Muslims obligates the Muslim government attorney to excel over those who do not accept the Shari`ah so that Allah’s light will be established. The Muslim government attorney is charged with extracting the Islamic wisdom and transmutating it for the greater society’s benefit.

The Muslim attorney must not be blind, however, to the highly evolved jurisprudence extant in America and in Europe. In many areas, such as ethics, human rights, animal rights, and criminal defendants’ rights, the ahl al kitab, the West has surpassed the Muslims. The rule of justice and fairness compels the Muslim government attorney to extract from American legal principles those concepts in which the government has developed superior rules, rules that are in line with and consistent with Shari`ah, and educate the Muslim community to its duty to meet the Islamic standard of excellence. All good comes from Allah. Therefore, Muslims can never justify knee-jerk rejection of everything that comes out of America. Thus, the imams should welcome the believing, sincere Muslim attorneys into their council. The believers should also view the Muslim attorneys as their representatives and as a communicative bridge to the specialized, complex legal community. Muslims should exploit the blessing of having their own kind in the “palace.”

V. CONCLUSION

The challenges that face Muslim attorneys who engage in public sector work are similar to the challenges that face all other believers. Problems arise when Muslims are subjected to Islamic blackmail. Muslim government attorneys have no more reason to apologize for their vocations than any other striving believer.

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22 Just think what would have happened had the Messenger rejected the idea of building a trench to protect Madinah, Al Munawaura, simply because the use of the trench had come from pagan Pershia. The Muslims would have undoubtedly prevailed many lives would have paid for the victory. Fortunately for the believers, the Messenger accepted the good of all societies.

23 “O you who believe! do not forbid (yourselves) the good things which Allah has made lawful for you and do not exceed the limits; surely Allah does not love those who exceed the limits.” Qur’an 5:87.
should. Since the decline of the *Ummah*, at the end of the 19th Century, some Muslims have shunned anything and anyone associated with the modern world. One way to avoid growth is to declare that all growth is heretical. Thereby, the declarant attacks the opponent and simultaneously fortifies his own position. *Allah* has informed us that we cannot give in to the unjust critic. Muslim attorneys have a critical role in the establishment of the *Ummah* in the United States.
Choosing Law as a Profession:
The Role of Muslim Attorneys

Ijaz Chaudhry*

Ibn Taymia, the famed Islamic jurist and legal philosopher, wrote nearly seven centuries ago, “Justice is the universal order of things.”¹ Truly, in Islamic theology, God himself is called Al-Haqq, “The Just.” And it only follows that Islam prescribes people, as God’s ‘Khulfa’² and vicegerents on Earth, to live life, and particularly collective life, with justice as a guiding principle. The role of Muslim attorneys in the United States is thus an extension of each individual Muslim’s duty to implement justice. Attorneys in America perform diversified tasks, from formulating laws to interpreting legal traditions. What all this amounts to, though, is the responsibility of enforcing justice and maintaining social order. In this paper, we would like to evaluate the specific role of Muslim lawyers in America by examining the status of justice in the world and how America offers a unique opportunity; by addressing some relevant challenges and concerns, and finally, by trying to develop a working philosophy and objective for Muslims in the legal profession.

I. ISLAMIC, CONTEMPORARY MUSLIM, AND AMERICAN JUSTICE

Islam, as a way of life, is replete with calls towards justice. “Allah commands justice, the doing of good, and liberty to kith and kin; and he forbids all shameful deeds, abomination and wrong

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* Legal consultant and community activist based in Philadelphia, PA.
² The Qur’an begins the story of man’s creation with, “Behold, your Lord said to the angels: ‘I will create a Khalifa (vicegerent) on Earth.’” 2:30
doing,” says the Qur’an. Islamic history is also filled with countless examples of uncompromising justice. Yet, Muslim countries today have deviated from these teachings and represent the epitome of injustice. Freedom of speech and expression, political representation, and legal recourse have been replaced with dictatorial rule, monarchies, corruption, and social chaos. Muslim countries have forgotten about justice, as Shariah (Islamic law) has been replaced with Jahilliya (ignorance).

On the other hand, the systematic implementation of the established rules in the United States has created a society that strives towards justice, at least on a domestic level. Where else in the world can a private citizen seek legal relief against the leader or head of state without the fear of reprisal? This is similar to the time of the Caliphate, where it was not uncommon for the citizens to openly question their leaders. In the United States, the law is established such that the President and Congressional leaders are subject to open questioning by those they represent. Aside from the established political system, there is also a set legal system.

This legal system itself has within it set procedures that must be followed in order to seek legal relief. Although legal relief in most instances is the last and most costly recourse, each individual has the opportunity to be heard. Even though inequities based on social and economic conditions do exist, the legal system itself guarantees, on a broad level, each individual the opportunity to seek legal recourse. This system is also amenable to change as exemplified by the changes in the law that tore down segregation in 1960s, or gave women the right to vote in the 1920s. These general principles are less prevalent in other parts of the world. Arguably, these characteristics of

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3 Quran, 16:90
4 See Majid Khan, Hayatus Sahabah (Daarul Ishaat; Karachi, Pakistan, 1993).
5 See, AbdulHamid AbuSulayman, Crisis in the Muslim Mind (International Institute of Islamic Thought, Herndon, VA, 1993).
American law make it one of the most Islamic legal systems in the world.

II. CHALLENGES AND CONCERNS

So far, an idealized picture of the American legal system has been presented. However, things are not so black and white. Complications and concerns develop for Muslims in the legal profession mainly due to two reasons.

First, Muslims in the legal profession are faced with the challenge of reconciling some of the consequences of the underlying American political and legal philosophy with Islamic teachings. Perhaps we can explain this best using a quote from Muhammad Iqbal, the famed Muslim poet and philosopher:

Democracy has a tendency to foster the spirit of legality – This is not in itself bad; but unfortunately it tends to displace the purely moral standpoint and to make the illegal and wrong identical in meaning.6

Unlike Islamic law where all authority comes through God, American law really does not derive itself from some absolute moral authority. Therefore, as Iqbal argues, morality is replaced with legality. If anything, the source of American legal authority is the people, as the Constitution is aimed at creating a “government for the people, by the people”. The absence of absolute moral authority can lead to manipulation and misapplication of the law. This, from an Islamic perspective, represents a flaw in the American legal system. But truly, this seems to be only an esoteric concern with little relevance to the actual practice of law in the United States.

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6 MUHAMMAD MUNAWWAR, DIMENSIONS OF IQBAL (Iqbal Academy, Lahore, Pakistan, 1986).
Second, the legal profession is almost a clique that dictates a certain social code of conduct. Often, this code is not too accommodating of Muslim practices. Remember the first time you talked to a client? Were they looking at your head scarf or beard? You wondered whether by your name, he could tell that you were Muslim. Or how did you feel at the social activity where you were repeatedly offered alcohol?

In the normal daily routine of life, we would like to think that our religious beliefs do not and should not conflict with our professional interests in a country that guarantees our right to practice our religion. Yet, our religious beliefs do differentiate us, and as a result, we find ourselves unable to interact with others the way they expect us to interact. The greater problem that develops here is not through the other people; it is through us. We eventually become self-conscious of these differences, and on some level, begin to sacrifice our Muslim identity. It seems, though, that as Islam grows in America, greater awareness of Muslim practices will develop, helping to reduce this outside alienation and resultant self-alienation of Muslims in the legal profession.

III. DEVELOPING A WORKING PHILOSOPHY AND OBJECTIVE FOR MUSLIMS IN THE LEGAL PROFESSION

We began this article by pointing out that the ultimate goal for a Muslim attorney was, from a religious perspective, to uphold justice. And through our subsequent discussion, it is clear that we, as Muslim Americans, need to utilize the unique opportunity presented to us by the American legal system to aid ourselves, our own community, and ultimately, our world. The American legal system should be our recourse for protecting and sustaining the Muslim identity in America, while simultaneously functioning as a way of achieving broader objectives that will help to alleviate the aforementioned problems in Muslim countries. Muhammad Rashid Rida, a Muslim reformist from the nineteenth century,
argued that “it was incumbent upon all Muslims to learn what they could from the West in order to restore their civilization to its former higher level of development.”

But first, we really have an obligation to ourselves. Educating ourselves about the cause that we wish to defend is essential to protect our religious identity. Second, we have an obligation to our community to promote an awareness of legal and political issues, and to work towards defending the needs of Muslim communities in the legal context.

Third, we have an overwhelming responsibility in addressing the issues of American society at large. In order to do this, we have to come to the realization that we are Americans, and that to help our community, we must help our society. If we let our society deteriorate, our community will inevitably suffer the same fate. In fact, the Prophet Muhammad (SAW) said, “A community in the midst of which sins are being committed which could be, but are not corrected by it, is most likely to be encompassed in its entirety by God’s punishment.”

To successfully achieve these objectives, Muslim American legal professionals need to utilize all options at their disposal. Political clout, mass community support, and working with the media are just three avenues that can be used to achieve our objectives. But to use these avenues, a coordinated approach is necessary. Slowly, local and national organizations have emerged to put these ideas in place. Working with these organizations and actively lending our support will enhance our ability to address our concerns.

In evaluating the role of Muslim American legal professionals, it is clear that we are at numerous crossroads in determining how we will deal with the issues that confront us. Law is the key that gives us the right of passage on many of these crossroads. It is a challenging profession that offers many rewards.

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7 Emad Shahin, Through Muslim Eyes, M. Rashid Rida, (Institute of Islamic Thought, Herndon, VA, 1993).
By trying to establish justice and by promoting social order, law is a way of keeping society on track. In a world where Muslims face so many difficulties, law is our way of fulfilling the famous hadith, “Whosoever of you sees an evil action, let him change it with his hand; and if he is not able to do so, then with his tongue; and if he is not able to do so, then with his heart – and that is the weakest of faith.”

8 An-Nawawi’s Forty Hadith, 110 (Ezzedin Ibrahim and Denys Johnson-Davies, translators, 1976)
Participation in the American Political Process: An Islamic Perspective

Ambassador Syed A. Ahsani*

Islam is a *deen*, or code of life, in which there is no separation of church and state. It lays down guidelines for all walks of life, be they socio-cultural, economic or political. Since these guidelines are for all times, transcending national boundaries, the Quran, Sunnah, Ijtihad and Ijma (consensus) are the sources of law in Islam. Maaz Bin Jabal was asked by Prophet Muhammad (SAW) how he would decide if he did not find anything in Al Quran and the Sunna; he said he would use his judgment (Ijtihad). The Prophet approved it.

Based on these basic principles, during the past 1400 years scholars have written on politics, with Abu Yusuf, Al Mawardi, Al Jahiz, Ibne Kaldun being a few among the early writers. In modern times, Syed Qutub, Allama Iqbal, Shakib Arsalan, Nuri Pasha, Maududi, Hamidullah Abul Hasanat Nadwi, Mumtaz Ahmad, and Khurshid Ahmad have made valuable contributions in this field, as well. Fatawa Alamgiri and Majallah are examples of two compilations of Islamic codes, apart from judgments, produced by these scholars. Despite the monarchy that emerged after the Four Guided Caliphs, research and judgments continued to be conducted and given by the scholars of the traditions and fiqh, even though they suffered for their views.

Since knowledge is a continuum, practice of earlier prophets is also worth study. Yusuf (Joseph) demanded to become the Finance Minister [of ancient Egypt] i.e., he took part in the political process and the Israelites became a significant minority, establishing later their own kingdoms under David and Solomon.

Our Prophet, Muhammad, signed 30 treaties with non-Muslims,

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* Former Ambassador of Pakistan to Brazil, Ghana, and Sudan. Ambassador Ahsani has taught at the University of Texas at Arlington and is currently Chairman of the American Muslim Alliance.
sent 33 letters to foreign heads of state and received 80 non-Muslim delegations in his mosque where they were allowed to pray, and were put up in the best houses.

Acquisition of influence and power through participation in the political process is therefore a sunnah of the prophets and a means of spreading good and confronting evil. To say that Yusuf’s example is not relevant because he was given complete authority, is to suggest that unless Muslims are promised the post of Secretary of Treasury, they should abstain from the U.S. political process. If Muslims are qualified and are part of the political system, they can aspire for cabinet positions and other offices. Furthermore, Muslim Americans are in the Meccan period during which our Prophet took part in local tribal wars, and arbitrated over the shifting of the Black Stone, thereby signifying his participation in the political process when Muslims were in a minority. What is more, he was ever ready to help his neighbors, widows and less-privileged, even carrying their burdens and performing other chores. Likewise, we should distinguish ourselves by being caring and loving towards our neighbors, co-workers and friends, and involving ourselves in community welfare, irrespective of ethnicity and faith.

Besides, what is not forbidden is lawful in Islamic jurisprudence. Maslaha (general good) is an important determinant in Islamic law. General good of American Muslims demands active participation in mainstream politics. Ali, the fourth caliph, said what Yusuf Qardawi has quoted from a Prophetic tradition, that extremism is to be avoided. Ibne Abbas quoted the Prophet: “Right proceedings, steadiness and moderation are parts of the four and twenty parts of a prophet’s character.”

It is therefore incorrect to say that we should not take part in the political process in U.S., which is possible through the party system established under the U.S. Constitution. As Americans, we should observe the Constitution, though we may not, like many constitutional scholars, approve of certain features of it. The U.S. Constitution has been amended 27 times, and some state constitutions have been changed more often. Islam expects us to be law-abiding citizens of the U.S. Muslim emigrants to Abbysinia [during the time of the Prophet] observed the law of that land. If
we come here for education and economic security, and we are not returning back home, we should exercise our political rights as tax paying citizens to vote and contest elections at the local, state and national levels, acquiring influence in government to ensure a secure future for our future generations. Other minorities coming before us have done it and are found in responsible positions now. These include American Indians, African Americans, Hispanics, Asian Americans, Arab Americans and Indians, not to mention Jews, Greeks, Armenians, Germans, Italians, French and Irish. President Clinton’s cabinet and other appointments reflect the diversity of the U.S. For example, some 197 Asian Americans have been appointed by him, the highest so far.

Following a study of the American political scene, Muslim organizations like the American Muslim Alliance, American Muslim Council, ISNA, ICNA, Council of American Islamic Relations, and the United Muslim Association have advocated that Muslims, in order to create a rightful place for them here, should get involved in voting and seek election to precinct, county, state and national conventions; contest for city council, school board, county, state and national offices and get internships for our youth in the Congress. Each member of the House can employ up to 17 staff members and each Senator up to 40. In all, there are some 520,000 elected political offices in the U.S. in which Muslims occupy only 20 or so offices.

For this purpose, the American Muslim Alliance was established four years ago. With chapters in 22 states and 100 Congressional districts, AMA’s *Fourteen State Strategy for Presidential Elections* enunciated by its founder and chairman, Dr. Agha Sayeed, underlined domestic issues like family values, drug abuse, teenage pregnancy, crime, and affirmative action; and foreign policy issues- opposition to the acquisition of territory by force, abuse of human rights in Afghanistan, Bosnia, Chechnia, Kashmir and Palestine. Based on civil rights provisions under U.S. law, it advocates influencing the media and public-opinion forming agencies in order to counter the stereotyping of Muslims as terrorists and fundamentalists who are ready to launch a jihad in the U.S.

In response, while most Muslim American organizations welcomed this plan, supported the registration drive of Muslims
and participation in elections, there was some opposition. Coming from countries where the political process is anathema for reasons well known, various pleas were given: “We are a non-political organization; democracy is a western concept, not sanctioned in Islam; the party system is un-Islamic; both Republican and Democratic parties are hostile to political issues of concern to Muslims, and they rather should be shunned altogether.”

Don’t the Friday sermons in the mosques talk about political issues: Afghanistan, Bosnia, Kashmir, Iraq, Palestine, stereotyping of Muslims, the burning of mosques, the bombing in Oklahoma (in which Imams personally visited the site to express solidarity with the victims); civil rights violations of Muslims in schools and the workplace (e.g., wearing of hijab and dismissal of Muslim women because of it); the depiction of Arabs as terrorists in the film Executive Decision; using slurs such as camel jockeys; the suspension of a Muslim football player, Abdul Ghani, for not standing when U.S. national anthem was played; the vandalizing of Denver mosque, and the like? It hardly stands to reason that participation in elections need not be mentioned in some mosques? By making Muslims apolitical or hostile to politics on religious grounds, we are giving a wrong message to our community. It seems we have yet to get rid of the emotional baggage we have brought with us. Time will not stand still and we will be held responsible by our children for isolating ourselves from society, like some religious minority groups in this country.

As regards political parties, Islam is not opposed to them; they date back to the time of the Guided Caliphs. Islamic scholars have participated in various government posts, including the judiciary during the past, and even during colonial rule. In modern times, in most Muslim countries political parties still exist. In the U.S., both parties have different views on various issues based on their history, racial and ethnic composition, and political philosophy (conservative or liberal), and that are misconstrued as religiously motivated by us. Granted that the Bill of Rights, guaranteeing civil rights is sometimes violated in the case of Muslims; but other minority communities complain of the same and resort to courts for redress. The U.S. judiciary is independent and is unmatched even in European countries where the legislature is supreme. Someone said the House of Commons can do
everything except to make a man a woman and vice versa. In most Muslim countries elections are held, parties are officially allowed and governments formed with the consent of the people as expressed through the vote. Shura principles in Islam can be practiced in the election process, as has been held by Islamic scholars well-vested in Quran, Sunnah, Fiqh and other Islamic and Western knowledge.

Finally, both the Republican and Democratic parties are the creation of 200 years of U.S. history. Abraham Lincoln formed a third party; Andrew Jackson stood as an independent candidate in 1828 and won; Tom Thurman of the Dixiecrats contested as an independent and lost in 1948. Ross Perot got 19% votes in 1992 and 9% in 1996. Moves are afoot to support a third party as a large body of Americans are tired of both the parties. Like earlier elections, more than 12 Presidential candidates stood for this post: Ross Perot of the Reform Party, Harry Brown of the Libertarian Party, Ralph Nader of the Green Peace movement, and John Hageland of the Nature Party, were prominent. However, not a single member from these parties was elected to the Congress in the last two decades. But they have not lost hope. When the present electoral college is changed or Congressional district system replaced by proportional representation, the other parties or independents can have a chance. Till then, let us work through the two party system and get candidates supportive of Muslim point of view elected.

Participation in the political process has yielded positive results: American Muslim Alliance members were elected to party conventions at the precinct, county, state and national levels; a resolution was adopted on Afghanistan in the Democratic Party platform; AMA members got appointments in the Democratic and Republican Central Committees; though AMA candidates didn’t win any seat on the local, state and national level, AMA supported candidates from both parties. Apart from President Clinton, two Senators, Robert Torricelli (D-New Jersey) and Tim Johnson (D-South Dakota), were elected with Muslim support, apart from other incumbents, both in the House of Representative and Senate at national, state and local levels.

In creating this awareness, all thanks are due to Allah Who guided us to perform our rightful duty of “spreading goodness and
confronting evil.” Muslim organizations played their part. Some of them initially reluctant, came on board. Others have yet to be convinced. As a result, however, a large number of Muslims became registered and voted; both Democratic and Republican parties responded to the Muslim concerns; the White House hosted an Eid reception in February, Hillary Clinton addressed Muslim scholars in Los Angeles in June in Hijab; verses from Al Quran were inscribed on a board behind the podium at the Democratic Convention in Chicago in August; Bill Clinton received a Muslim delegation in the White House. According to the Minaret and a Muslim PAC, 48% of Muslims voted for Clinton, almost the national average of votes. Bob Dole in a letter to Dr. Agha Sayeed recognized Muslims’ contribution to promote moral values impacting crime, drug use and the breakdown of family values. Decrying discrimination against Muslims, Bob Dole promised to oppose legislation violating the Bill of Rights and discriminatory airline security procedures. He promised an evenhanded foreign policy and a constructive dialogue with Muslim countries, which comprise one fifth of the human race.

The success of American Muslim political activism, though modest, has many lessons for the future. With a grass roots strategy, Muslims can make a decisive impact on the U.S. domestic and foreign policy agenda by active participation in the two or three party system, working other Muslim organizations, keeping the present momentum and forging coalitions with like-minded parties in minority and majority community. President Bill Clinton has laid down a plan for his second term and is expected to make decisions in domestic and foreign policy, not with an eye on reelection, but caring for the future of his party in the year 2000, with a view to ensuring a place for himself in history.
Religious Freedom in the Third Circuit:

The Case of Bearded Muslim Police Officers

INTRODUCTION

In an ongoing effort to bring timely and pertinent information about law and culture as they relate to Islam in America, the Journal will from time to time publish legal briefs and cases of special importance. This is a tradition that was established by the National Bar Association through its law journal during the civil rights era. It proved to be especially helpful in disseminating otherwise unavailable information. Legal briefs in successful and unsuccessful cases reveal invaluable information on strategies and arguments that can be considered for use in other cases. In addition to the plaintiffs’ brief, we also provide the court decision rendered in this matter.

Although the following case involves the right of Muslim police officers to wear beards when mandated by their religion, it stands for much more. This important post-City of Boerne decision sets out the recognized parameters of the freedom of religious practice in the Third Circuit and may very well serve as a model for other circuits. This is to say that the principles set out in the decision are readily applicable to other Islamic concerns as well as those of any other religion. Readers should take note that many Muslims do not consider it a sin for a male Muslim not to wear a beard, even though it is a universally followed cultural tradition. As noted in the brief, the practice of wearing a beard is not mandated by the Qur’an, but is rooted in the tradition of Prophet Muhammad. Obviously in this case the school of thought to which the plaintiffs adhere does consider wearing a beard a recognized requirement of their Islamic faith.

Lastly, we take special pleasure in thanking Robert R. Cannan, Esq. for providing a telephone interview and a copy of his brief for this publication. He quickly is becoming something of an expert in bearded Muslim cases. The New Jersey State prison system recently instituted a policy prohibiting prison guards from wearing beards.
Mr. Cannan is involved in seeking a resolution to that dispute, as well. The Journal has made only minimal editing and format adjustments to Mr. Cannan’s brief. In this regard, the brief as presented departs from our usual editing style. Also note that briefs often contain minor mistakes that remain uncorrected because they are prepared under the pressure of extreme time limits.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

App. No. 97-5542

FRATERNAL ORDER OF POLICE, NEWARK LODGE NO. 12; FARUQ ABDUL-AZIZ AND SHAKOOR MUSTAFA, Plaintiffs-Appellees

V.

CITY OF NEWARK; NEWARK POLICE DEPARTMENT; JOSEPH J. SANTIAGO, Police Director; THOMAS C. O’REILLY, Newark Chief of Police, Defendants-Appellants.

APPELLEES BRIEF IN OPPOSITION TO APPELLANTS, CITY OF NEWARK, NEWARK POLICE DEPARTMENT AND EMPLOYEES OF THE CITY OF NEWARK, APPEAL

SPEVACK & CANNAN, P.A.
525 Green Street
Iselin, NJ 08830
(732) 636-3030
Attorney for Appellees
Fraternal Order of Police, et als.

Of Counsel and on the Brief:
ROBERT R. CANNAN, ESQ.

On the Brief:
MARIO E. DIRIENZO, ESQ.
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POINT I

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STATEMENT OF THE STANDARD OF REVIEW

As to the Defendants Notice of Appeal from the District Court’s entry of a permanent injunction, the standard of review in De Novo. As to the Defendants Notice of Appeal from the District Court’s awarding of attorneys fees and expenses, with interest the standard of review is whether there was an Abuse of Discretion.

STATEMENT OF ISSUES

1. Whether the District Court Judge erred when entering a Permanent Injunction against the Defendants, from further violation of the protected Religious Freedoms of employees, the Plaintiffs.

2. Whether the District Court Judge abused his discretion in the awarding of attorneys fees, and interest to plaintiffs’ counsel.
STATEMENT OF THE FACTS

Plaintiffs, Faruq Abdul-Aziz and Shakoor Mustafa, are police officers for the City of Newark and are sincere, devout observers of the Islamic faith. (Aa 84) By order of the Chief of Police, Special Order No. 71-15, entered on March 23, 1971, the Newark Police Department has had established guidelines as to the appearance of their uniformed, male officers, requiring that they be either clean shaven or have a neatly trimmed mustache. (Aa 26-27) Since the March 23, 1971 Special Order No. 71-15, there has been an exception carved for those officers with “medical clearance” to wear beards. (Aa 29) As memorialized in memo No. 97-30 of the Chief of Police, dated January 24, 1997, in paragraph #2, “Personnel who have received medical clearance shall be documented and updated to ensure that medical clearance is current.” Memo No. 97-30 at paragraph number three reads, “A ZERO-TOLERANCE policy will be adhered to for those in non-compliance.” (emphasis theirs), Id.

Plaintiff Faruq Abdul-Aziz has been employed by the Police Department of the City of Newark since his entrance into the Police Academy on or before October 1989. (Aa 85) Plaintiff’s birth name was Ronald Samuel Wright, which he used until his legal name change to Faruq Abdul-Aziz on or about April 1995. Plaintiff, Aziz, born April 11, 1953, is a devout follower of the Al-Islam religion. His religion mandates the wearing of facial hair for all Muslim males that are capable of growing facial hair. Id. Plaintiff Aziz advised the defendants of this religious belief in a memorandum to Captain William Leone dated October 26, 1995, regarding the reason for wearing facial hair due to his religious belief. Plaintiff has worn his beard on duty in uniform since his graduation from the police academy in 1989. (Sa 1) Shaving of the facial hair is strictly prohibited by the Holy Quran and Sunnah. According to Imam Dawud Adib, in his affidavit of May 27, 1997, provided by Plaintiffs in support of their Application for a Preliminary Injunction and made a part of the record below, it is an obligation for Sunni Muslim men who can grow a beard to do so, and to not shave. (Sa 3, para 7) The Quran commands the wearing of a beard implicitly. The Sunnah is the detailed exploration of the general injunctions contained in the Quran. The Sunnah says in
too many verses to recount, “Grow the beard, trim the mustache.” (Sa 4, para 9). “The refusal by a Sunni Muslim male who can grow a beard, to not wear one is a major sin. I teach based upon the way I was taught and it is understood in my faith that the non-wearing of a beard by the male who can for any reason is as tantamount a sin as eating pork.” (Id. At para. 11) “A Sunni Muslim male will not be saved from this major sin because of an instruction of another, even an employer to shave his beard and the penalties will be meted out by Allah.” (Id. At para. 12)

Plaintiff Aziz was charged with disobeying a “lawful” order to shave, Complaint Against Personnel (CAP) Number 97-004 and served with a Preliminary Notice of Disciplinary Action. The Preliminary Notice of Disciplinary Action reads in section #3, “The following disciplinary action may be taken against you: Removal.” (Aa 98)

Plaintiff, Shakoor Mustafa, has worn a beard on duty and in uniform since 1986. (Aa 87) Plaintiff Mustafa advised the defendants of his religious belief in a memorandum to Commander John Witsch regarding his reason for wearing facial hair on June 26, 1996. (Sa 5)

On June 24, 1996, Plaintiff Shakoor Mustafa was given a verbal order from Lieutenant Alfred Pepe, directing him to shave off his beard. Plaintiff refused and was charged under Complaint Against Personnel (CAP) Number 96-407 on July 25, 1996, with disobeying an order of a superior officer. In the Preliminary Notice of Disciplinary Action served with the charge, the Department sought Plaintiffs “Removal.” Plaintiffs Aziz and Mustafa were ordered to appear before the Police Department Trial board for the trial of their disciplinary hearing on May 22, 1997. Plaintiffs sought a temporary injunction in the present matter with the filing of their Verified Complaint and Order to Show Cause on May 21, 1997.

Counsel appeared before Honorable John W. Bissell, U.S.D.J., on May 21, 1997, for hearings pursuant to the filing of the O.T.S.C. Judge Bissell denied the Temporary Restraints sought. Judge Bissell instead scheduled the matter for a May 29, 1997 hearing for a preliminary injunction, following oral arguments for the City of Newark to decide whether they would adjourn disciplinary hearings against plaintiffs until after the July 28, 1997,
return date of the parties’ Cross Motions for Summary Judgment. Judge Bissell memorialized the City of Newark’s consent to adjourn the disciplinary hearings in his letter to counsel dated June 2, 1997. (Sa 6) On July 28, 1997, Honorable John W. Bissell, U.S.D.J., granted a permanent injunction, enjoining the defendants from disciplining or otherwise disadvantaging Plaintiffs Aziz and Mustafa for violating Order No. 71-15 or any other directive which would require them to shave or trim their beards in violation of their religious beliefs. Judge Bissell further found that Order No. 71-15, the Department’s Grooming Policy, insofar as it requires these Muslim officers to shave is unconstitutional and a violation of the First Amendment and 42 U.S.C. § 1983. (Aa 3-4)

Judge Bissell, pursuant to 42 U.S.C. § 1988, ruled that Plaintiffs’ counsel were entitled to an award of attorney fees and disbursements in an amount of $12,444.42, with interest at the prevailing rate, from and after November 1, 1997. (Aa 6-7)

SUMMARY OF ARGUMENT

Special Order of the Chief of Police No. 71-15 and Chief of Police O’Reilly’s “Zero Tolerance Policy” dated January 24, 1997, are unconstitutional as they apply to Plaintiffs who are Sunni Muslim uniformed police officers for the City of Newark. Their managerial directives which prohibit Plaintiffs from wearing their beards in furtherance of their Sunni Muslim faith violate the Plaintiffs’ protections under the Free Exercise Clause of the First Amendment, Equal Protection Clause of the Fourteenth Amendment, Freedom of Expression under the First Amendment, and “Liberty” interests. Additionally, they are neither laws nor are they neutral and generally applicable to all.

Further, the above managerial directives are violative of the Plaintiffs’ rights under 42 U.S.C. § 1983 and Title VII. Under both 42 U.S.C. § 1983 and Title VII, the employer is required to provide in the absence of undue hardship a reasonable accommodation to Plaintiffs, Sunni Muslims, to wear their beards. In the absence of undue hardship, the managerial directives will not be permitted to circumvent the Plaintiffs’ protected rights under the Federal Constitution, New Jersey State Constitution, New Jersey State Law Against Discrimination, 42 U.S.C. § 1983 and Title VII.
Finally, the Court did not abuse its discretion in determining Plaintiffs are entitled to an award of attorneys fees, costs and disbursements along with interest under 42 U.S.C. § 1988.

LEGAL ARGUMENT


Special Order of the Chief of Police Number 71-15, was properly determined by the District Court judge to have been in violation of plaintiffs’ free exercise of freedom of religion under the Free Exercise Clause of the First Amendment of the United States Constitution and an unconstitutional infringement on the plaintiffs’ First Amendment rights protected by the 14th Amendment and 42 U.S.C. § 1983.

The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, see Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” U.S. Const., Amdt. 1. (emphasis added) The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all “governmental regulation of religious beliefs as such.” Sherbert v. Verner, 374 U.S. 398, at 402; 83 S.Ct. 1790, at 1793 (1963). The government may not compel affirmation of religious belief, see Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), punish the expression of religious doctrines it believes to be false, United States v. Ballard, 322 U.S. 78, 86-88, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944), impose special disabilities on the basis of religious views or religious status, see McDaniel v. Paty, 435 U.S. 618, 98 S.Ct.

The United States Supreme Court in Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 876-77 (1990), (hereinafter, Smith), held that neutral, generally applicable laws may be applied to religious practices even when not supported by compelling governmental interest. Also see, City of Boerne v. P.F. Floures, Arch Bishop of San Antonio, 521 U.S. 507, 117 S.Ct. 2157 (1997) (hereinafter, Boerne). In Smith, following the determination on remand by the Oregon Supreme Court that respondents’ religiously inspired use of peyote fell within the prohibition of the Oregon statute which “makes no exception for the sacramental use” of the drug, and criminalized the use of any controlled substances without a medical doctor’s prescription, the Supreme Court next considered the issue of whether such law and prohibition was valid under the Free Exercise Clause of the First Amendment. Smith, Supra 494 U.S. at 876. Central to the Supreme Court’s decision was the observation that the conduct at issue, the ingestion of peyote was a violation of the criminal laws of the State of Oregon, distinguishing the holding in Smith and the prior decisions of Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790 (1963), Thomas v. Review Bd., Indiana Employment Security Div., 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed. 624 (1981), and Hobbie v. Unemployment Appeals Comm’n of Florida, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987).

In Sherbert and its progeny, the Supreme Court had permitted the payment of unemployment benefits where a state conditioned the availability of the insurance on an individual’s willingness to forgo conduct required by his religion. Smith, Supra 494 U.S. at
874. Central to the Court’s decision in *Smith* was the distinction that the conduct of the plaintiffs was illegal and a violation of the State of Oregon’s criminal laws. *Id.* 494 U.S. at 874-75. The *Smith* Court reasoned that the determination to deny unemployment insurance benefits was tied to workplace misconduct for the violation of state law. Plaintiffs in *Smith* sought exclusion from the requirements of the substance abuse laws of the State of Oregon arguing the ingestion of the peyote was protected by the Free Exercise Clause of the First Amendment. “Respondent urges us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from government regulation. We have never held that, and decline to do so now.” *Smith*, Supra 494 U.S. at 882.

In *Smith*, the Oregon drug law was held by the Supreme Court to be neutral and generally applicable to all in part because the respondents never presented an argument to the contrary. “There being no contention that Oregon’s drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one’s children in those beliefs,” the Supreme Court was left with a determination weighing the Free Exercise of religion argument to violate the criminal law by plaintiffs who were not even contending that the law was other than neutral and generally applicable. *Id.*

In *Smith* the respondents urged the Supreme Court to apply the *Sherbert* test to the case before them for “determination whether the governmental actions substantially burdened a religious practice and whether that action was justified by a compelling governmental interest.” *Id.* at 883. The respondents believed that under *Sherbert*, an “individualized governmental assessment” would permit an exemption to the uncontradicted neutral and generally applicable criminal statute. The *Smith* court declined to do so. In *Smith* the Court reasoned that the sounder approach was to decline to apply the *Sherbert* test to Free Exercise challenges. *Smith*, Supra 494 U.S. at 885. The Court stated, “Although as noted earlier, we have sometimes used the *Sherbert* test to analyze Free Exercise challenges to such laws...we have never applied the test to invalidate one.” *Id.* at 884-885. “We conclude today that the sounder approach and the approach in
accord with the vast majority of our precedent is to hold the test inapplicable to such challenges.” *Id.* “The government’s ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, cannot depend on measuring the effects of a governmental action on a religious objectors spiritual development. *Id.* citing *Lyng v. Northwest Indian Cemetery Protective Assoc.*, 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988).

The District Court in the instant case found the *Smith* case to be distinguishable from the matter presented for its consideration. The District Court wrote in *Smith*, “the Court found it critical that the conduct at issue...was...prohibited by law.” *Smith* 494 U.S. at 876. (Emphasis added, District Court Opinion at page 11, Aa 18.) The District Court properly distinguished a law such as that in *Smith* from the Special Order of the Chief of Police, Order Number 71-15 which is, “merely a management directive of an employer, and carries no greater significance because that employer is a police department.” *Id.* at Aa 18-19. The District Court analyzed that although there is an exemption for medical reasons to Order 71-15, it is a categorical exemption rather than the “individual” exemptions which characterize *Sherbert* and its progeny. *Id.* at Aa 19.

Rather than applying the *Sherbert* test, the District Court applied the *Yoder* test which requires a showing that “there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.” *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). The District Court relied on the case of *Marshall v. District of Columbia*, 392 F.Supp. 1012, 1013 (D.D.C. 1975), aff’d. 559 F.2d 726 (D.C. Cir. 1977), to the extent that *Yoder* is the appropriate test in evaluating a police officer’s religious challenge to a grooming regulation.” District Court Opinion at 12-13 (Aa 19-20).

Although the District Court’s decision is at variance from the ultimately holding in *Marshall* the analysis and the application of the *Yoder* test are wholly consistent with the *Smith* decision. The *Smith* court held, “The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in
conjunction with other constitutional protections, such as freedom of speech and of the press.” See Cantwell v. Connecticut, 310 U.S. at 304-07, 60 S.Ct. at 903-05. Smith, Supra 494 U.S. at 881.

Plaintiffs agree with the District Court in this matter for the reasons related in the written opinion of the Court appearing at Aa 8 through Aa 29 and the Order entered at Aa 3 through Aa 5. Plaintiffs urge the Circuit Court of Appeals to affirm the decision made by the District Court and to expand the scope of its analysis to include application and consideration of the Sherbert Test as well as the Yoder Test.

A. Special Order of the Chief of Police Order Number 71-15 will be held unconstitutional under the Sherbert Test Analysis as the government has engaged in individualized assessment of the reasons for exemption from its grooming policy.

In Smith, the United States Supreme Court refused to apply the Sherbert Test as the facts of that case failed to present a hybrid scenario requiring that the Sherbert Analysis be applied. The facts of the case at bar present a hybrid situation in that in addition to the burden upon Plaintiffs’ Free Exercise of Religion pursuant to the First and Fourteenth Amendments, Special Order No. 71-15 also suppresses and burdens the Plaintiffs’ right to Freedom of Speech, Freedom of Expression and Liberty by either the Sherbert or Yoder Tests. Special Order of the Chief of Police No. 71-15 should be found to be an unconstitutional regulation.

The Oregon Criminal Statute which prohibited the ingestion of peyote which was scrutinized by the United States Supreme Court in Smith, prohibited all citizens in the State of Oregon from ingesting peyote for any reason. The Supreme Court noted that there was a general medical exemption from each of the identified and categorized prohibited substances, but that the intent of the Criminal Statute was neutral and generally applicable to all.

The facts of our case are uncontradicted and there are many exemptions from the general prohibition from the wearing of beards. First, as to the language used by the Chief of Police in Special Order No. 71-15, which made the Order applicable to male
police officers only, there is no mention of restriction as to female members of the department. Secondly, as already discussed there is the plain clothesmen exception to the beard prohibition under Special Order No. 71-15. Finally, in an acknowledgment to the City’s obligation as an employer under the Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (LAD) a medical exemption was permitted to those uniformed members of the department for a condition known as Pseudo Folliculitis Barbae (PFB) as earlier discussed. There was and never has been a shadow beard policy regulating the beard length of the male uniformed officers who suffer and have a documented medical condition of PFB. These officers therefore, under the medical exemption permitted in Chief of Police O’Reilly’s January 24, 1997, memo number 97-30 - “Zero Tolerance Policy” may wear their beards as long as they wish.

According to the requirement of Plaintiffs’, Aziz and Mustafa, Sunni Muslim faith, they are required to “grow their beards and trim their mustaches,” to the extent that those uniformed officers with the medical exemption can wear their beards in any fashion without restriction, it would therefore be impossible to decipher between the bearded medical exempt male officer with that of the Sunni Muslim male officer. It is important to note that the Sunni Muslim officers, Aziz and Mustafa and others, have not asked for any other accommodation for their faith, i.e., scheduling, assignment, plain clothes status, uniform, grooming and/or other appearance standards and regulations. The appearance of the Sunni Muslim officer would be no different than the many other bearded officers that the City has already provided an exception for.

The Defendants disciplining Plaintiffs, Aziz and Mustafa, for their failure to comply with the orders of superiors to shave their beards, when their appearance would otherwise be no different from other uniformed officers to wear their beards for a medical condition, presents a different fact situation from the Smith case and proves conclusively that the City has in place a system of “individual exemptions” and selective prosecution of those who wear their beards for religious reasons alone. It is for this reason that Plaintiffs argue that the Sherbert Test should be applied to the case at bar.
In the case of Geller v. Secretary of Defense, 423 F.Supp. 16 (D.C. Cir. 1976), the District Court noted that a Jewish rabbi who was employed by the military to serve as a Jewish chaplain and was permitted for a period of seven years to wear his beard even though he acknowledged that it was his personal preference and not his religion that required him to wear his beard. The Court concluded that there was no adequate justification for the inflexible approach of the Air Force in its grooming policy standard. \textit{Id.} at 18. Following the reasoning of the District Court in the case of Geller, plaintiffs in the case at bar would provide a more compelling factual scenario. Plaintiffs are required by their religion to wear beards, both Plaintiffs, Aziz and Mustafa, have worn their beards in furtherance of their faith on the job in uniform for longer than seven years. Plaintiffs are employed by a municipal police force, which will not be accorded the special “military” status typically afforded regulations in reference to uniform and grooming to the armed forces. See Goldman v. Weinberg, 475 U.S. 503, 506 (1986) and Bitterman v. Secretary of Defense, 553 F. Supp. 719 (D.D.C. 1982). As the Geller Court noted, the Air Force regulation under review and the rational behind their argument was not persuasive either under the Sherbert Test or the analysis announced in \textit{Kelly v. Johnson}, 425 U.S. 238 (1976). In Kelly, a Suffolk County police officer challenged a hair length regulation of the county police department on the grounds that it violated his constitutional right to “liberty.” The Kelly Court determined that the appropriate standard to be applied places the burden upon the plaintiff to demonstrate that there is no rational connection between the regulation challenged and its alleged purpose. \textit{Kelly}, Supra 425 U.S. at 247-48.

The Supreme Court in Church of the Lukumi Babalu Aye, Inc. \textit{V. City of Hialeah}, 113 S.Ct. 2217 (1983), (hereinafter Hialeah), determined that a Florida municipal ordinance which punishes those “whoever...unnecessarily...kills any animal” and permits every conceivable exception except for the type of animal sacrifices plaintiff’s free exercise of religion required, was unconstitutional. The ordinance represented a system of “individualized governmental assessment of the reasons for the relevant conduct.” \textit{Hialeah}, Supra at 229, \textit{Smith}, Supra, at 884. As noted in \textit{Smith}, in circumstances in which individualized
exemptions from a general requirement are available, the government “may not refuse to extend that system to cases of religious hardship without compelling reason.” Id. Respondents’ application of the ordinances test of necessity devalues religious reasons for killing by judging them to be of lesser import than non-religious reasons. This religious practice is being singled out for discriminatory treatment. Id. It is not unreasonable to infer, at least when there are no persuasive indications to the contrary, that a law which visits “gratuitous restrictions” on religious conduct, seeks not to effectuate the stated governmental interests, but to suppress the conduct because of its religious motivation. Id.

The Special Order of the Chief of Police No. 71-15, and Chief O’Reilly’s “Zero Tolerance” policy contained sufficient individualized government exemptions to warrant departure from the holding in Smith and reliance upon the broader Sherbert Test to affirm the District Court’s holding in the case at bar.

B. The District Court appropriately applied the Yoder Test consistent with the holding in Smith to the case at bar to find the Special Order of the Chief Number 71-15 to be unconstitutional.

In Smith, the Supreme Court distinguished the facts that they were considering under the Oregon statute with those cases of a hybrid nature that involve a Free Exercise claim in conjunction with another constitutional protection such as Freedom of Speech, Freedom of the Press and Equal Protection. Although the District Court did not discuss and analyze other claims of the Plaintiffs as part of its decision, the issuance of the permanent injunction should be affirmed. In addition to the Free Exercise Clause claims of the Plaintiffs, their conduct of wearing beards in furtherance of their religious beliefs at the same time holds Freedom of Expression protection under the First Amendment, Equal Protection under the Fourteenth Amendment, and “Liberty” interests.

The Supreme Court in Kelley v. Johnson, 425 U.S. 238 (1976), determined for the purposes of the case before them than an individual “in matters of personal appearance enjoy a liberty interest within the Fourteenth Amendment.” Id. at 244. Although
the Court concluded that the liberty interest of hair length was distinguishable from the Court’s *Roe v. Wade* and other abortion rights holdings under a liberty interest analysis, the Court did extend the Fourteenth Amendment of the United States [Constitution] to include a “liberty” interest, when grooming standards were to be applied.

As previously discussed, Plaintiffs argue that the matter before this court is distinguishable from the Smith case in that the facts of this case involve a “hybrid claim” for constitutional protection of these Plaintiffs. When some other constitutional right is combined with a First Amendment Free Exercise claim in so called “hybrid claims,” the state must demonstrate more than merely reasonable relation to a valid, secular State purpose to sustain the validity of a regulation over First Amendment concerns. *Alabama and Coushatta Tribes of Texas v. Trustees of the Big Sandy Independent School District*, 817 F. Supp. 1319 (E.D. Tex 1993). To establish the that the State regulation violates the First Amendment Free Exercise Clause, the claimants must show that they have a sincerely held religious belief which conflicts with and is burdened by the regulation. *Id.* at 1328. Once the Plaintiffs have proven the sincerity of the religious belief, the burden then shifts to the State or governmental agency to show that the regulation advances an unusually important governmental goal and that an exemption would substantially hinder the fulfillment of that goal. *Id.* at 1329. See *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). As the District Court indicated, the Special Order of the Chief Number 71-15 and the “Zero Tolerance” policy of Chief O’Reilly are mere managerial directives which, it could be argued, merely state the preference for clean shaven appearance. As this Court is no doubt aware, in no part of this record, and at no time in the prior proceedings or in the arguments made to this Court has the City ever alleged a “safety concern” for the officers’ health and well being as a basis for a denial of facial hair growth and beards for male uniformed officers who do not have a medical condition. The City instead espouses an interest in “maintaining solidarity, discipline and civility to establish an esprit de corp.” (Aa 101), to deny these two plaintiffs their constitutionally protected right to wear a beard.

As the District Court held in the case of *Sharif v. City of*
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Chicago, “no evidence was introduced by the Defendants at the hearing before this Court as to the basis of justification for the Department’s prohibition against beards. Moreover, the Department has not consistently applied that ban.” Sharif v. City of Chicago, 530 F. Supp. 667, 670 (N.D. Ill. 1982). In Sharif, the Court was asked to enjoin the Defendants from further disciplining a Sunni Muslim Police Officer, who wore his beard in violation of a grooming standard similar to that which the City of Newark seeks to enforce. He requested to be permitted to refrain from shaving and maintain his appearance identical to those officers suffering from a medical condition, PFB. In the Sharif case as here, the Defendant City argued that the ban on beards (to those other than the officers with a medical exemption) is based on its interest in uniformity of appearance, esprit de corp and discipline. The District Court in Sharif, as here, would not take judicial notice of those reasons in light of the obvious contradiction between the policy of those who seek a religious exception from the grooming standard with those who have a documented medical condition, or PFB, to wear their beards contrary to the grooming standard established. It is respectfully argued that the District Court in Sharif, as the District Court Judge in the case at bar, reached the correct conclusion in refusing to uphold the grooming standard against religiously conscientious uniformed police officers that would require them to shave when other officers are permitted to remain unshaven as a result of a medical condition. In Sharif, the Court concluded:

In light of the high value accorded First Amendment Rights in our system of law, defendants willingness to agree to the non-enforcement of the prohibition of beards against a large number of police officers for medical reasons precludes defendants from asserting that they have a compelling governmental interest in banning Sharif’s growth of a minimal beard for bonafide religious reasons. All the asserted interest referred to in this paragraph are impaired just as much (or just as little) by permitting a beard for one reason as for another.

Sharif, Supra 530 F. Supp. at 670. See also, Rader v. Johnston,

As the facts of the case at bar clearly indicate, it is uncontradicted that Plaintiffs as Sunni Muslims must wear their beard in furtherance of their sincerely held belief in their faith. The City of Newark makes no allegation or attempts to contradict either the devoutness of these individuals or the sincerity of the beliefs that they wish to express.

Consequently, since the Plaintiffs have proven the sincerity of their religious beliefs, the City must now show that the regulation advances an unusually important governmental role and that the exemption would substantially hinder the fulfillment of that goal. Wisconsin v. Yoder. The Defendants will continue to fail in their proofs under the Yoder Test, and it is respectfully submitted that the District Court should be affirmed.

II. Defendant City of Newark as an employer must make reasonable accommodations for religious needs.

Pursuant to Title VII, 42 U.S.C.§ 2000e et. seq., absent undue hardship, an employer must reasonably accommodate religious needs. Although the District Court did not reach a determination of the merits of Plaintiffs Title VII argument, it is now argued that the Circuit Court of Appeals should consider the merits of this argument in connection with those arguments advanced above or in the alternative, standing alone.

Title VII proscribes the unlawful discrimination of any individual on the basis of race, color, religion, sex or national origin. 42 U.S.C.§ 2000e - 2(a)(1). As interpreted by the United States Supreme Court, the law requires an employer to make reasonable accommodations for religious practices of its employees, unless it can demonstrate undue hardship. Transworld Airlines, Inc. v. Hardison, 432 U.S. 63, 74, 53 L.Ed.2d 113, 125, 97 S.Ct. 2264 (1977). Modeled after the shifting burdens of proof used in race and gender discrimination suits under Title VII, a plaintiff must first establish a prima facie case. Thereafter, the burden of production shifts to the employer to show that it cannot reasonably accommodate the worker without incurring undue hardship. Protos v. Volkswagen of America, Inc., 797 F.2d 129, 133-134 (3d Cir. 1986).
A plaintiff establishes a prima facie case of religious discrimination by showing:

(1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was disciplined for failure to comply with the conflicting employment requirement.

Id. at 113 (quoting Turpen v. Missouri-Kansas-Texas Railroad Co., 736 F.2d 1022, 1026 (5th Cir. 1984)).

After the plaintiff establishes a prima facie case, the burden of production shifts to the defendant to show that it cannot reasonably accommodate the employee without incurring undue hardship. Protos 797 F.2d at 134. “Once a prima facie case is established, the burden shifts to the defendant to produce evidence either (1) that it offered the employee or applicant a reasonable accommodation of her religious practices which she refused; or (2) that no accommodation was possible without subjecting it to ‘undue hardship.’” E.E.O.C. v. Reads, Inc., 759 F. Supp. 1150, 1155 (E.D. Pa. 1991), (citing United States v. Bd. of Educ. of School D. of Philadelphia, 911 F.2d 882, 886 (3d Cir. 1990)).

The employer must prove that it made a good faith effort to accommodate the employee’s religious beliefs. Getz v. Com. PA. Dept. of Public Welfare, 802 F.2d 72 (3d Cir. 1986); E.E.O.C. v. Hacienda Hotel, 881 F.2d 1504, 1512 (9th Cir. 1989). “The employer must show that it has taken ‘some initial steps to reach a reasonable accommodation of the particular religious belief at issue.’” Hacienda at 1512 (quoting American Postal Workers Union v. Postmaster General, 781 F.2d 772, 776 (9th Cir. 1986)). The Ninth Circuit held that “if the employer does not propose an accommodation, the employer must accept the employee’s proposal or demonstrate that the proposal would cause the employer undue hardship.” Hacienda 881 F.2d at 1512.

In the present matter, Plaintiffs Faruq Abdul-Aziz and Shakoor Mustafa have informed defendants of their bona fide religious beliefs that the shaving of facial hair is strictly prohibited. (Sa 1, Sa 5) Plaintiffs provided the District Court and Counsel for the City of Newark Defendants, by way of exhibits annexed to the
Brief in Support of Motion for Preliminary Injunction, and Certification, and Exhibits in Support of their Motion for Summary Judgment; documents which conclusively demonstrated that notice of their religious objection to shaving was received by Defendants. Defendants did not contradict that the notice was recorded, nor did the City of Newark oppose Plaintiffs’ Motion for Summary Judgment on the basis of notice, choosing instead to Cross-Motion to Dismiss Plaintiffs’ Complaint. It is therefore interesting to read that the Defendants now argue for the first time that notice was not received prior to the filing of Plaintiffs’ Complaint.

The record below contained numerous exhibits and reference to the prior history of these Plaintiffs’ and other officers’ search for religious accommodation. See “Statement of Related Cases” section, Appellant brief page 4. There were prior proceedings on the Division on Civil Rights (D.C.R.), State of New Jersey and the Equal Employment Opportunity Commission (E.E.O.C.) involving, among others, Faruq Abdul-Aziz. Originally filed on November 1, 1995, by the F.O.P. on behalf of several officers for discrimination based upon a medical condition, pseudofolliculitis barbae, (P.F.B.), the Complaint was later amended to include race and religious discrimination against Sunni Muslim officers. (Sa 14-20)

As the Court already is aware, these Plaintiffs were charged with violation of Special Order of the Chief of Police No. 71-15. (Aa 93:94) In the discovery packages provided to the undersigned in connection with his handling of their disciplinary charges were other conclusive indicia of prior notice to the Defendants. (See Supplemental Appendix generally.)

Defendants, nonetheless, have elected to discipline Plaintiffs for failure to comply with departmental guidelines which require uniformed police officers without medical clearance to shave their beards. Defendants, in response to Plaintiffs’ religious objection to shaving, have not offered or suggested a reasonable accommodation or compromise. Defendants, having carved out exceptions for uniformed officers with “medical clearance” to wear beards without condition, have steadfastly refused to entertain or consider Plaintiffs’ Free Exercise of Religion and Freedom of Expression request for accommodation.
Notwithstanding the fact that Defendants have failed to take some initial steps to reach a reasonable accommodation or to consider any alternatives, Defendants in the present matter cannot demonstrate “undue hardship.”

On this point, the Defendants now argue that:

More importantly, the medical exception, which the government currently accepts pursuant to other pending litigation, does not provide police officers with the ability to wear their beards at any length they wish. (Aa 66:68) The exemption created upon the basis of religion by the U.S. District Court is different from the medical exception which requires a shadow beard...This is important because the District Court concludes the government has a bona fide medical exemption to the grooming policy, the government is attempting to define the medical condition and has not done so.

Appellants Brief, pp. 11-12 (and Aa 66-67).

It appears that the only support for a “shadow beard” policy for those who have a “medical clearance” appears in the argument section of their brief. Additionally, at the time of oral arguments on July 28, 1997, the Defendants made no suggestion of a “shadow beard” or a beard length requirements. (Aa 66-68)

The unsworn statements of Counsel for the Defendant are mere statements and not competent evidence. E.E.O.C. v. U.P.S., 94 F.2d 314, 316 (7th Cir. 1996). To articulate legitimate reason for an adverse employment action, an articulation not admitted into evidence will not suffice. Thus, the Defendant cannot meet its burden merely...by argument of counsel, in particular when these new arguments contradicted earlier assertions. Id. at footnote n. 2.

Since graduating from the police academy in 1986, Plaintiff Mustafa, due to the medical condition P.F.B. has worn a full beard without qualification. Similarly, all “medically cleared” officers are still permitted to wear their beards without any length regulation. Contrary to the assertion of the Defendants through Counsel, there is no “shadow beard” regulation of policy. Any “undue hardship” argument advanced by Defendants at this time...
will only serve to demonstrate Defendants’ prejudice and intolerance towards these Plaintiffs and other Sunni Muslim police officers due to their religious beliefs.

III. The District Court Judge appropriately exercised his sound discretion in awarding attorneys fees and disbursements in the amount of $12,444.42.

Following the determination that the Defendants, City of Newark, Newark Police Department had violated the constitutionally protected rights under the First Amendment and 42 U.S.C. § 1983 of the Plaintiffs, the Court determined that an award of attorneys fees pursuant to 42 U.S.C. § 1988 were appropriate. At the discretion of the Court at the time of oral arguments for Summary Judgment and Defendants Motion to Dismiss Plaintiffs’ Complaint, the Court Ordered Plaintiffs’ Counsel to provide by way of formal motion an application for attorneys fees and disbursements within 30 days. Counsel prepared said motion with notice to the Defendants and Defendants opposed said motion.

Following oral arguments which took place before the Court on September 29, 1997, the District Court Judge rendered his decision by way of written opinion in his nineteen page Opinion dated October 6, 1997. (Aa 30-19) See transcript of oral arguments (Aa 75-82) In the District Court’s Order entered at the time of transmission of the written Opinion dated October 6, 1997, Counsel for Plaintiffs, Aziz and Mustafa, were awarded attorneys fees in the amount of $12,131.00, disbursements in the amount of $313.42, totaling $12,444.42. The Court further determined that Judgment would be entered in favor of the Plaintiffs as against the Defendants in said amount and that Judgment should bare interest at the prevailing rate from and after November 1, 1997. (Aa 49-50)

As is clear from the written Opinion, the Court found that the amount of Counsel fees per hour was “eminently reasonable in this day and age $150/$175 per hour” (Aa 81), further the Court reasoned in its Opinion, that a reduction of the amount of Counsel fees was appropriate to adjust for those claims that were dismissed.

There is nothing in the Order, the written Opinion, or the transcript, which would lead to a conclusion that the District Court
Judge abused his discretion in arriving at the appropriateness of the amount of attorneys fees and disbursements. Consequently, Plaintiffs ask that the portion of the balance of the Notice of Appeal be dismissed.

Plaintiffs reserve their right to pursue additional attorneys fees, costs and disbursements in connection with the substantial additional work expended in this matter as a result of the City’s decision to bring this matter before this Court of Appeals.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the City of Newark’s appeal should be dismissed and the District Court rulings affirmed.

Respectfully submitted,

SPEVACK & CANNAN, P.A.

ROBERT R. CANNAN - 1758
FRATERNAL ORDER OF POLICE NEWARK LODGE NO. 12; Faruq; Abdul-Aziz; Shakoor Mustafa, Plaintiffs

v.

CITY OF NEWARK; Newark Police Department; Joseph J. Santiago, Newark Police Director; Thomas C. O'Reilly, Newark Chief of Police, Appellants

No. 97-5542

United States Court of Appeals
Third Circuit

Argued June 25, 1998
Decided March 3, 1999

Michelle Hollar-Gregory, Darryl M. Saunders (Argued), City of Newark, Newark, NJ, Counsel for Appellants.

Robert R. Cannan (Argued), Mario E. Dirienzo, Spevack & Cannan, Iselin, NJ, Counsel for Appellees.


Before: GREENBERG, ALITO, and McKEE, Circuit Judges.
ALITO, Circuit Judge:

This appeal presents the question whether the policy of the Newark (N.J.) Police Department regarding the wearing of beards by officers violates the Free Exercise Clause of the First Amendment. Under that policy, which the District Court held to be unconstitutional, exemptions are made for medical reasons (typically because of a skin condition called pseudo folliculitis barbae), but the Department refuses to make exemptions for officers whose religious beliefs prohibit them from shaving their beards. Because the Department makes exemptions from its policy for secular reasons and has not offered any substantial justification for refusing to provide similar treatment for officers who are required to wear beards for religious reasons, we conclude that the Department's policy violates the First Amendment. Accordingly, we affirm the District Court's order permanently enjoining the Department from disciplining two Islamic officers who have refused to shave their beards for religious reasons.

I

Since 1971, male officers in the Newark Police Department have been subject to an internal order that requires them to shave their beards. In relevant part, the order provides:

Full beards, goatees or other growths of hair below the lower lip, on the chin, or lower jaw bone area are prohibited.

App. at 94 (Special Order from the Chief of Police No. 71-15, p.2 ("Order 71-15")). The order permits officers to wear mustaches and sideburns, id., and it allows exemptions from the "no-beard" rule for undercover officers whose "assignments or duties permit a departure from the requirements." Id. at 93. See Appellees' Br. at 14; Reply Br. at 9.
Officers Faruq Abdul-Aziz and Shakoor Mustafa are both devout Sunni Muslims who assert that they believe that they are under a religious obligation to grow their beards. See App. at 9-10; Supp. App. 3-4. According to the affidavit of an imam, "it is an obligation for men who can grow a beard, to do so" and not to shave. Supp. App. at 3. The affidavit continues:

... The Quran commands the wearing of a beard implicitly. The Sunnah is the detailed explanation of the general injunctions contained in the Quran. The Sunnah says in too many verses to recount [:] “Grow the beard, trim the mustache.”

... I teach as the Prophet Mohammed taught that the Sunnah must be followed as well as the Quran. This in the unequivocal teaching for the past 1,418 years, by the one billion living Sunni Muslims world wide.

... The refusal by a Sunni Muslim male who can grow a beard, to wear one is a major sin. I teach based upon the way I was taught and it is understood in my faith that the non-wearing of a beard by the male who can, for any reason is as [serious] a sin as eating pork.

... This is not a discretionary instruction; it is a commandment. A Sunni Muslim male will not be saved from this major sin because of an instruction of another, even an employer to shave his beard and the penalties will be meted out by Allah.

Supp. App. at 4. The defendants have not disputed the sincerity of the plaintiffs' beliefs.1

When Aziz and Mustafa were questioned about their non-compliance with Order 71-15, they informed Department officials that they were growing their beards for religious reasons. See Supp. App. at 1 & 5. This explanation was apparently deemed inadequate, and Mustafa received a Preliminary Notice of

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Disciplinary Action in July 1996 charging him with disobeying an oral command to comply with Order 71-15. App. at 96-97. Aziz received a similar notice in January 1997. Id. at 98-99. In both cases, the notices informed the officers that their actions might warrant "removal" from the Department. Id. at 96 & 98. 

On January 24, 1997, Chief of Police Thomas C. O'Reilly announced a "Zero Tolerance" policy for officers who were not in compliance with Order 71-15 and had not received "medical clearance" to wear a beard. App. at 95 (Memorandum from the Chief of Police No. 97-30 ("Memo 97-30")). Consistent with this policy, the Department ordered Officers Aziz and Mustafa to appear for disciplinary hearing in May 1997.

Prior to the hearing, Mustafa and Aziz filed a complaint in the District Court requesting permanent injunctive relief on the ground that the Department's enforcement of Order 71-15 would violate their rights under the Free Exercise Clause of the First Amendment. After the defendants filed a motion to dismiss, and the plaintiffs filed a motion for summary judgment, the District Court held a hearing and concluded that the Department's application of Order 71-15 to Mustafa and Aziz would violate their free exercise rights. Accordingly, the District Court permanently enjoined the defendants "from disciplining or otherwise disadvantaging Plaintiffs Aziz and Mustafa for violating Order 71-15 or any other directive which would require them to shave or trim their beards in violation of their religious beliefs." App. at 23.

II

The Free Exercise Clause of the First Amendment, which has been made applicable to the States through the Fourteenth Amendment, see Cantwell v. Connecticut, 310 U.S. 296, 303, 84 L. Ed. 1213, 60 S. Ct. 900 (1940), provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I. For many years, the Supreme Court appeared to interpret the free exercise clause as requiring the government to make

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2 Mustafa and Aziz brought several other claims, all of which were dismissed by the District Court. See App. at 15-16. The plaintiffs have not appealed these dismissals.
religious exemptions from neutral, generally applicable laws that have the incidental effect of substantially burdening religious conduct. See Wisconsin v. Yoder, 406 U.S. 205, 220, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) ("[T]here are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability."); see also Frazee v. Illinois Dept of Employment Sec., 489 U.S. 829, 832-34, 109 S. Ct. 1514, 103 L. Ed. 2d 914 (1989); Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 717, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981); Sherbert v. Verner, 374 U.S. 398, 403-404, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963). In these cases, the Court required the government to meet "strict scrutiny" when application of a given law or regulation served to impose a substantial burden on religious activity. See Thomas, 450 U.S. at 718 ("The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest."); Yoder, 406 U.S. at 215 ("Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.").

In 1986, a plurality of the Court raised doubts about the breadth of the Court's "exemption" jurisprudence and proposed a new approach. See Bowen v. Roy, 476 U.S. 693, 703-08, 90 L. Ed. 2d 735, 106 S. Ct. 2147 (1986) (Burger, C.J., joined by Rehnquist and Powell, J.J.). In Roy, a mother and father who wished to participate in the Aid to Families with Dependent Children program objected on religious grounds to the requirement that they furnish their daughter's Social Security number as a condition of receiving benefits. Id. at 695. Although the Court's precedent indicated that these circumstances were sufficient to trigger strict scrutiny because the government had "conditioned receipt of an important benefit upon conduct proscribed by a religious faith," Thomas, 450 U.S. at 717-718, the plurality opinion applied rational basis review. Roy, 476 U.S. at 707-08. The opinion explained:

We conclude . . . that government regulation that indirectly and incidentally calls for a choice between securing a governmental benefit and adherence to religious beliefs is wholly different from governmental action or legislation
that criminalizes religiously inspired activity or inescapably compels conduct that some find objectionable for religious reasons. Although the denial of government benefits over religious objection can raise serious Free Exercise problems, these two very different forms of government action are not governed by the same constitutional standard.

Id. at 706 (emphasis added). See also id. at 704.

In sum, the plurality proposed that the Court continue to apply heightened scrutiny to neutral, generally applicable laws that burden religious activity by affirmatively compelling or prohibiting conduct, but apply rational basis scrutiny to neutral, generally applicable rules governing benefits programs. However, rather than advocating the overruling of the Court's prior benefits-exemption cases, such as Sherbert and Thomas, the plurality distinguished those decisions on the ground that they concerned laws that already included "mechanisms for individualized exemptions." Roy, 476 U.S. at 708. The plurality explained that if "a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent," and it is "appropriate to require the State to demonstrate a compelling reason for denying the requested exemption." Id. Since the statutory framework at issue in Roy did not provide for individualized exemptions, the plurality did not believe that the Court's prior benefits decisions were controlling.

The Roy plurality's attempt to distinguish the Court's previous decisions and apply rational basis review failed to garner a majority of the Court. See id. at 715-16 (Blackmun, J., concurring in part); id. at 728-32 (O'Connor, J., joined by Brennan and Marshall, J.J., concurring in part and dissenting in part); id. at 733, 106 S. Ct. 2147 (White, J., dissenting). In 1990, however, the legal landscape changed dramatically when the Supreme Court handed down its decision in Employment Div., Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990). Smith concerned two individuals who were denied state unemployment compensation benefits after being fired from their jobs for ingesting peyote, a controlled substance under Oregon law. Id. at 874, 110 S. Ct. 1595. The individuals
challenged the denial of benefits on the ground that they were entitled to religious exemptions since they had ingested peyote for sacramental purposes at a ceremony of the Native American Church. Declining to apply strict scrutiny, the Court concluded that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Smith, 494 U.S. at 879, 110 S. Ct. 1595 (quotations omitted). See also id. at 878 (explaining that "if prohibiting the exercise of religion" is "merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended"). Accordingly, the Court held that Oregon could, consistent with the Free Exercise Clause, criminalize religious peyote use and deny unemployment compensation benefits to individuals whose job dismissals resulted from such use. Id. at 890, 110 S. Ct. 1595.

The Smith Court, however, did not overrule its prior free exercise decisions, but rather distinguished them. See Smith, 494 U.S. at 881-884, 110 S. Ct. 1595. In this case, the plaintiffs contend that their Free Exercise claim is not governed by the generally applicable Smith rule but is instead governed by the Court's pre-Smith decisions. In this connection, the plaintiffs make three arguments. First, they contend that the Smith decision should be limited to cases involving criminal prohibitions. Second, they argue that the Smith analysis does not apply to government rules that, like the "no-beard" policy, already make secular exemptions for certain individuals. Finally, they maintain that the Smith rule does not bar their exemption claim because they are relying on both the Free Exercise Clause and the Free Speech Clause. The District Court accepted the plaintiffs' first argument, applied the Court's pre-Smith jurisprudence, and concluded that the Free Exercise Clause prohibits the Department from enforcing its "no-beard" policy against Aziz and Mustafa. While we disagree with the District Court's conclusion that Smith is limited to the criminal context, we believe that the plaintiffs are entitled to a religious

exemption since the Department already makes secular exemptions. As a result, we need not reach the plaintiffs' "hybrid" free speech/free exercise argument. See generally Smith, 494 U.S. at 881-882, 110 S. Ct. 1595 (distinguishing "hybrid" claims from free exercise claims).

III

A

Aziz and Mustafa first contend that the Smith rule applies only to cases involving criminal prohibitions. Since this case concerns a non-criminal prohibition, Aziz and Mustafa argue that the Court's pre-Smith decisions govern and heightened scrutiny applies. This position, however, has already been rejected by our court. See Salvation Army v. Department of Community Affairs of New Jersey, 919 F.2d 183, 194-96 (3d Cir. 1990). Salvation Army involved a claim by The Salvation Army ("TSA") that it was entitled to a religious exemption from the requirements of the New Jersey Rooming and Boarding House Act of 1979, N.J. Stat. Ann. @ 55:13B-1 (West 1989), and the regulations promulgated thereunder. Salvation Army, 919 F.2d at 185. Like Aziz and Mustafa, TSA argued that "the Court's holding in Smith was limited to free exercise challenges to neutral, generally applicable criminal statutes." Id. at 194 (emphasis in original). Our response was unequivocal: "We cannot accept this interpretation of Smith." Id.

In addition to the analysis provided in Salvation Army, see 919 F.2d at 194-96, we believe there are two further reasons to conclude that Smith is not limited to cases involving criminal statutes. First, under a contrary reading of Smith, the Free Exercise Clause would not be implicated when the government prohibits religious conduct through generally applicable laws, Smith, 494

4 We do note, however, that the plaintiffs failed to allege a free speech violation in their complaint, see App. at 83-92, and explicitly disavowed such a claim before the District Court. See App. at 58 (July 18, 1997 Hearing) (counsel for plaintiffs) ("We can all agree that freedom of expression would not extend to the wearing of beards.").
U.S. at 878-79, but would be implicated when the government imposes a lesser burden on religion through a generally applicable civil regulation. This counter-intuitive interpretation of the First Amendment is undermined by the very language of the *Smith* opinion:

[I]f a state has prohibited through its criminal laws certain kinds of religiously motivated conduct without violating the First Amendment, it certainly follows that it may impose the lesser burden of denying unemployment compensation benefits to persons who engage in that conduct.

*Smith*, 494 U.S. at 875, 110 S. Ct. 1595 (quotation omitted) (emphasis added). *See also id.* at 898-99 (opinion of O'Connor, J., joined by Brennan, Marshall, and Blackmun, J.J.) ("A neutral criminal law prohibiting conduct that a State may legitimately regulate is, if anything, more burdensome than a neutral civil statute placing legitimate conditions on the award of a state benefit.").

Second, the Supreme Court's most recent characterization of *Smith* supports our holding in *Salvation Army* that *Smith* is not limited to the criminal context. In *City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), the Supreme Court stated:

*Smith* held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest.

*Id.* 117 S. Ct. at 2161. Nowhere in its discussion of *Smith* did the *Flores* Court indicate that the *Smith* decision only applied to generally applicable criminal laws. In fact, the law at issue in *Flores* was a non-criminal landmark ordinance. *See Flores*, 117 S. Ct. at 2160. If the plaintiffs are correct, and *Smith* does not apply to non-criminal provisions, there would have been no need for the *Flores* Court even to discuss *Smith*. However, the *Flores* Court did much more than to discuss Smith; it struck down the Religious Freedom Restoration Act of 1993, insofar as it applied to the
states, for the very reason that it was inconsistent with Smith. See Flores, 117 S. Ct. at 2171-72. In light of Flores, it is difficult to say that Smith has no application to cases involving non-criminal statutes.

Because this court has already rejected the argument that Smith is limited to cases involving criminal statutes, and because that rejection is amply supported by both the Smith opinion itself and recent Supreme Court case law, we cannot agree with the plaintiffs and the District Court that Smith is distinguishable on the ground that it concerned a criminal statute.

B

Aziz and Mustafa's second argument is that the Department's refusal to make religious exemptions from its no-beard policy should be reviewed under strict scrutiny because the Department makes secular exemptions to its policy. This contention rests on the following passage from Smith in which the Court explained why some of its earlier religious exemption cases had applied strict scrutiny:

The statutory conditions in Sherbert and Thomas provided that a person was not eligible for unemployment compensation benefits if, 'without good cause,' he had quit work or refused available work. The 'good cause' standard created a mechanism for individualized exemptions. As the plurality pointed out in Roy, our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason.

Smith, 494 U.S. at 884 (quotations, citations, and alterations omitted).

The Court reiterated this understanding of its religious exemption jurisprudence, and applied it outside the unemployment compensation context, in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 537-38, 124 L. Ed. 2d 472, 113 S. Ct. 2217 (1993). In Lukumi, the Court reviewed several municipal
ordinances regulating the slaughter of animals, one of which prescribed punishments for "whoever . . . unnecessarily . . . kills any animal." *Id.* at 537. The Court explained that this ordinance could not be applied to punish the ritual slaughter of animals by members of the Santeria religion when the ordinance was not applied to secular killings:

[B]ecause [the ordinance] requires an evaluation of the particular justification for the killing, this ordinance represents a system of individualized governmental assessment of the reasons for the relevant conduct. As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government may not refuse to extend that system to cases of "religious hardship" without compelling reason. Respondent's application of the test of necessity *devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons. Thus religious practice is being singled out for discriminatory treatment.*

*Lukumi*, 508 U.S. at 537-38 (emphasis added) (quotations and citations omitted).5

Aziz and Mustafa contend that, since the Department provides medical -- but not religious -- exemptions from its "no-beard" policy,6 it has unconstitutionally devalued their religious reasons

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5 See also Roy, 476 U.S. at 708 (plurality opinion):  If a state creates a mechanism [for exemptions], its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent. Thus . . . to consider a religiously motivated resignation to be "without good cause" tends to exhibit hostility, not neutrality, towards religion.

6 In their reply brief, the defendants argue for the first time that the District Court "incorrectly decided the City of Newark has a medical exception." Reply Br. at 14. We will not entertain this argument as it conflicts with the defendants' position both in the District Court and in their opening brief to this court. See Defendants' Answer P 3; Brief in Support of Defendants' Motion to Dismiss at 11; Appellants' Br. at 11. Moreover, we are at a loss to understand the defendants' new position given that Memo 97-30 clearly provides exemptions from the "Zero Tolerance" policy for those who "have received medical clearance." App. at 95.
for wearing beards by judging them to be of lesser import than medical reasons. The Department, on the other hand, maintains that its distinction between medical exemptions and religious exemptions does not represent an impermissible value judgment because medical exemptions are made only so as to comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. @ 12101 (1994). See Brief in Support of the Defendants' Motion to Dismiss at 11. While this argument initially appears persuasive, it ultimately cannot be sustained.

It is true that the ADA requires employers to make "reasonable accommodations" for individuals with disabilities. 42 U.S.C. @ 12111(b)(5)(A) (1994). However, Title VII of the Civil Rights Act of 1964 imposes an identical obligation on employers with respect to accommodating religion. 42 U.S.C. @ 2000e(j) (1994). This parallel requirement undermines the Department's contention that it provides a medical exception, but not a religious exception, because it believes that "the law may require" a medical exception. Brief in Support of Defendants' Motion to Dismiss at 11. Furthermore, it is noteworthy that the Department has clearly been put on notice of Title VII's religious accommodation requirements. See EEOC Determination Letter, Charge No. 171970408 (attached to Plaintiffs' Letter Brief in Response to Defendants' Cross Motion for Summary Judgment); App. at 83 (Plaintiff's Complaint) (citing Title VII). In light of these circumstances, we cannot accept the Department's position that its differential treatment of medical exemptions and religious exemptions is premised on a good-faith belief that the former may be required by law while the latter are not.

We also reject the argument that, because the medical exemption is not an "individualized exemption," the Smith/Lukumi rule does not apply. See App. at 19 (Dist. Ct. Op. at 12). While the Supreme Court did speak in terms of "individualized exemptions" in Smith and Lukumi, it is clear from those decisions that the Court's concern was the prospect of the government's deciding that secular motivations are more important than religious motivations. If anything, this concern is only further implicated when the government does not merely create a mechanism for individualized exemptions, but instead, actually creates a categorical exemption for individuals with a secular objection but not for individuals with
a religious objection. See generally Lukumi, 508 U.S. at 542 (1992) ("All laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice.) (emphasis added). Therefore, we conclude that the Department's decision to provide medical exemptions while refusing religious exemptions is sufficiently suggestive of discriminatory intent so as to trigger heightened scrutiny under Smith and Lukumi.

Contrary to the Department's contention, our decision to apply heightened scrutiny is entirely consistent with the result in Smith. In Smith, the Court upheld an Oregon law that prohibited the "knowing or intentional possession of a 'controlled substance' unless the substance has been prescribed by a medical practitioner." Smith, 494 U.S. at 874. The Department argues that, since the prescription exception did not prompt the Smith Court to apply heightened scrutiny to the Oregon law, we should not apply heightened scrutiny in the instant case based on the Department's allowance of medical exemptions. See Appellants' Br. at 8-9. This argument, however, overlooks a critical difference between the prescription exception in the Oregon law and the medical exemption in this case.

The Department's decision to allow officers to wear beards for medical reasons undoubtedly undermines the Department's interest in fostering a uniform appearance through its "no-beard" policy. By contrast, the prescription exception to Oregon's drug law does not necessarily undermine Oregon's interest in curbing the unregulated use of dangerous drugs. Rather, the prescription exception is more akin to the Department's undercover exception, which does not undermine the Department's interest in uniformity because undercover officers "obviously are not held out to the public as law enforcement personnel." Reply Br. at 9. The prescription exception and the undercover exception do not trigger heightened scrutiny because the Free Exercise Clause does not require the government to apply its laws to activities that it does not have an interest in preventing. However, the medical exemption raises concern because it indicates that the Department has made a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not. As
discussed above, when the government makes a value judgment in favor of secular motivations, but not religious motivations, the government's actions must survive heightened scrutiny.  

The Department has not offered any interest in defense of its policy that is able to withstand any form of heightened scrutiny. The Department contends that it wants to convey the image of a "monolithic, highly disciplined force" and that "uniformity [of appearance] not only benefits the men and women that risk their lives on a daily basis, but offers the public a sense of security in having readily identifiable and trusted public servants." Appellant's Brief at14 (citation omitted). We will address separately all of the interests that we can discern in this passage.

The Department hints that other officers and citizens might have difficulty identifying a bearded officer as a genuine Newark police officer and that this might undermine safety. But while safety is undoubtedly an interest of the greatest importance, the Department's partial no-beard policy is not tailored to serve that interest. Uniformed officers, whether bearded or clean-shaven, should be readily identifiable. Officers who wear plain clothes are not supposed to stand out to the same degree as uniformed officers, and in any event the Department permits such officers to wear beards for medical reasons. The Department does not contend that these medical exemptions pose a serious threat to the safety of the members of the force or to the general public, and there is no apparent reason why permitting officers to wear beards for religious reasons should create any greater difficulties in this regard.

The Department also suggests that permitting officers to wear beards for religious reasons would undermine the force's morale and esprit de corps. However, the Department has provided no

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7 While Smith and Lukumi speak in terms of strict scrutiny when discussing the requirements for making distinctions between religious and secular exemptions, see Smith, 494 U.S. at 884 (requiring a "compelling reason"); Lukumi, 508 U.S. at 537 (same), we will assume that an intermediate level of scrutiny applies since this case arose in the public employment context and since the Department's actions cannot survive even that level of scrutiny.
legitimate explanation as to why the presence of officers who wear beards for medical reasons does not have this effect but the presence of officers who wear beards for religious reasons would. And the same is true with respect to the Department's suggestion that the presence of officers who wear beards for religious reasons would undermine public confidence in the force. We are at a loss to understand why religious exemptions threaten important city interests but medical exemptions do not. Conceivably, the Department may think that permitting officers to wear beards for religious reasons would present a greater threat to the sense of uniformity that it wishes to foster because the difference that this practice highlights -- namely, a difference in religious belief and practice -- is not superficial (like the presence of pseudo folliculitis barbae) and thus may cause divisions in the ranks and among the public. (There is no doubt that religious differences have been a cause of dissension throughout much of human history.) But if this is the Department's thinking -- and we emphasize that the Department has not spelled out this argument in so many words -- what it means is that Sunni Muslim officers who share the plaintiffs' religious beliefs are prohibited from wearing beards precisely for the purpose of obscuring the fact that they hold those beliefs and that they differ in this respect from most of the other members of the force. In other words, if this is the real reason for the distinction that is drawn between medical and religious exemptions, we have before us a policy the very purpose of which is to suppress manifestations of the religious diversity that the First Amendment safeguards. Before sanctioning such a policy, we would require a far more substantial showing than the Department has made in this case. We thus conclude that the Department's policy cannot survive any degree of heightened scrutiny and thus cannot be sustained.  

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8 We also reject the defendants' argument that the District Court erred in awarding some $12,000 in attorney's fees in favor of the plaintiffs. The defendants argue that this amount was unnecessary because the plaintiffs might have prevailed without federal court litigation had they pursued available administrative remedies. We conclude, however, that the District Court acted well within the proper bounds of its discretion in making the award that it did under the circumstances present here.
For the reasons set out above, we affirm the decision of the District Court.
Mentoring in the Legal Profession:
Basic Principles and Objectives

Irshad Abdal-Haq

I. THE BENEFITS OF BEING MENTORED

For a number of years, women, minorities, and others who believed they had been locked out of many career opportunities expended a great amount of energy into "networking." This involved sharing information about career and business opportunities with persons within a special interest network. It was thought that these networks would enable persons who are closed out of the "old boy" network to otherwise realize career advancements.

It was not long before members of those networks encountered "glass ceilings" in law firms, government, and corporations. Women and minorities could rise only so high before opportunities were cut off by an apparently powerful, yet transparent force. Somehow the old boy network was overriding the networks of other groups. Their members were getting through to the top while others were not.

Those at the top sponsored and promoted proteges of their network into top positions. These proteges often had specialized experience, knowledge, and grooming that could not be obtained through lower-level work assignments or law courses. One had to be invited to partake of this knowledge and experience. One had to be shepherded. One had to be mentored.

The process of mentoring involves a highly experienced mentor intimately participating in the refinement of a protege or mentee's professional foundation of knowledge and experience. A mentor can serve as both a teacher and promoter of a mentee. Through networking you might be able to learn about doors of opportunity to knock upon, but through mentoring doors of opportunity not only can be opened, opportunities themselves can be created.
Mentoring is an ancient tradition of teaching and training that currently is enjoying popular appeal. In recent years, mentoring has come into vogue with respect to inner-city community interaction between "at-risk" youth and adults concerned about violence and drug abuse. Because it has become so popular on a community level, naysayers discount it as a mere fad. Some people may misuse and abuse mentoring in a faddish sort of way by not providing the level of commitment required to make it work. Others have never learned exactly what mentoring entails. In truth, however, the value of a properly established mentoring relationship can be immeasurable for anyone from a preschooler to a seasoned attorney.

A mentor, much like a coach or trainer, can help you grow and develop and reach your full potential. The wisdom of an effective mentor can embody decades of experience. He or she can pilot you through pitfalls and perils in your career development that you cannot even conceive. A genuine mentor is a friend, protector, coach, champion, and counselor to you.

Struggling law students and novice attorneys, especially women and those from minority groups who feel closed out of society's circles of influence, could realize phenomenal benefits from working with a mentor. A student or new attorney would benefit from the insight of a seasoned pro in shaping his or her career goals and career alternatives. He or she would benefit from the sage counsel of a former law student in addressing difficulties one might face in school, whether they involve poor exam taking skills, problems with professors, personal crises, or making course selections. And a mentee might have the inside track to internships, clerkships, and summer and permanent job opportunities.

Susan Fowler Woodring¹, one of the country's leading authorities on mentoring, has identified the following 10 very specific benefits that anyone could gain from being mentored:

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¹ An excellent in-depth presentation on the science of mentoring is presented by Susan Fowler Woodring in her 1993 two-set cassette lecture entitled "Mentoring," published and distributed by CareerTrack Publications, 3085 Center GreenDrive, Boulder, CO 80301, (303) 440-7440.
1. Greater pleasure in your work and a greater sense of mission in pursuing your career.

2. A clear, well-defined career plan, along with a role model with experience.

3. Greater knowledge of technical aspects of your business (or profession).

4. More knowledge of organizational aspects of your business (or profession).

5. Higher visibility.

6. Higher productivity.


8. Possibility of reaching an executive level in your firm or business organization more quickly.


10. Greater career satisfaction because a mentor helps you live up to your potential.²

In addition, a mentoring relationship also can have a significant impact on the development of the character of both the mentor and mentee. Through mentoring you should learn to be more humble, patient with others, tolerant and respectful of alternative views, and how to be more cooperative in working with others.

Through mentoring you also can learn how to gracefully accept constructive criticism from your mentor. This will not be so difficult to do so long as you remember that your mentor is loyal to your development as an attorney, politician, or business person and

²Id. at side one.
is not intent on hurting you. If your mentor works within the same organization as you, she or he can facilitate your navigation around organizational obstacles of a political nature, as well.

So a mentor does more than supervise you or train you to perform a job or task as a boss does. While a boss or supervisor also could be your mentor, a true mentor serves as your guide and protector and is about providing you a safe relationship or environment in which to develop your skills as a professional. You will know that you have an effective mentoring relationship if, through it, you are growing in competence and receiving encouragement and praise from your mentor.

II. WHERE TO FIND MENTORS

As mentioned previously, mentoring is not new. It is an ancient tradition that is thousands of years old. While a privileged few grow up in the midst of dozens of potential mentors, many low income, minority, and female law students have never been mentored in any academic, professional, or personal way. Consequently such students must go out and seek a mentor. Persons from more privileged backgrounds often are recruited as mentees because aging mentors desire to pass along their legacy to competent individuals who share the same values.

Identifying and recruiting a mentor can be a challenge. You certainly would want someone experienced in the profession or area of legal concentration you wish to follow. That could include lobbying, legal education, specialized areas of legal practice, nonprofit management, politics, etc.

The key to identifying potential mentors is going to places and participating in activities where they might be. As a law student, you might find a mentor in the very school you attend as either a professor, administrator or fellow student. Potential mentors in the corporate world can be found attending industry association meetings and activities. If it is your aspiration to work in that environment and to be mentored by someone from there, then you must work yourself into the activities of that world. You must go where the action is.

Community, civic, alumni, and religious associations often include persons with the background, values and personal
attributes that you seek in a mentor. The only way to find these people is to look for them. Think of this search as a vital part of your development strategy. It must be done to enhance the quality of your life and to better ensure your success. Search them out through newspaper and magazine articles, trade journals, and that old standby, networking. Networking might or might not open doors for you, but it certainly can provide the opportunity to meet potential mentors.

In selecting a mentor, look to someone you respect and admire. You cannot be shy in approaching them. They might reject your request to establish a formal mentoring relationship, but you will never know unless you ask. You have nothing to lose in asking. Some mentoring relationships are not so formal. Informal mentoring often exists between peers, parents and children, spouses, and friends.

Whether formal or informal, you and your mentor should be mutually supportive and actively engage in developing your career plan and promoting your goals. Mentoring involves more than mere casual conversations—it involves planning, evaluating, executing and follow through. It requires discipline and commitment on the part of the mentor and mentee. It requires energy, but it must be sustained by the reward of measurable progress.

Many organizations and companies establish formal mentoring services to promote the development of talented young people. In New York City, the Practicing Attorneys for Law Students Program, Inc. (PALS) has established a mentoring program. PALS sponsors educational, mentoring, and career guidance programs to over 1,000 students in New York area law schools. It was established in 1984 by African American law students at New York University and concerned lawyers to support minorities in the legal profession.

PALS is best known for its one-on-one mentoring program which matches minority law students with volunteer minority lawyers. Mentors provide support and advice to students during their tenure in law school. Additionally, the organization hosts lectures on contracts, torts, civil procedure and criminal law. PALS receptions provide an opportunity for students and attorneys to meet one another in a supportive environment.
mentors and mentees are recruited through questionnaires distributed among attorneys throughout the New York area. The mentoring relationship also is monitored by PALS after it is established.3

The Boston-based Massachusetts Bar Association (MBA) has a program to help minority students develop skills to meet the rigors of law school. In addition to workshops in study methods, outlining, exam writing, and legal analysis, law students are given the opportunity to meet and develop a relationship with established legal professionals. Several years ago the MBA Committee on Bar Admissions conducted a study on the failure rate of minority students and concluded that it was due at least partially to the lack of exposure to effective study and work techniques. To remedy this, an academic support program was established, which has provided an opportunity to foster mentoring relationships, as well.4

Thus, it is feasible to establish a formal mentoring program through a law school or outside legal organization in which you already are involved. Establishing a viable program probably would require research and consultation with organizations that have experience working with mentoring activities. Both mentors and mentees should be routinely monitored for their levels of commitment and progress and to resolve problems that might arise.

Additionally, participants should be surveyed in evaluating the perceived value of the program and suggested changes. Problematic match ups should be more closely monitored, modified or terminated. Above all, mentees should be tracked throughout their tenure in law school and recruited to support a mentoring program as they progress through their career track.

III. Attracting a Mentor

Once a potential mentor has been identified, he or she must be contacted, otherwise the relationship can never begin. A possible

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3 PALS is located at 42 West 44th Street, New York, NY 10036; (212) 382-6648.
4 More information about the MBA’s minority law student support activities should be requested from the MBA Committee on Bar Admissions of The Massachusetts Bar Association located at 20 West Street, Boston, MA 02111-1218; (617) 542-3602.
A mentor can be approached via telephone, letter, a third party, or in person. When an initial approach is rejected or ignored, it may be necessary to be more persistent in making the contact without being overbearing or pushy. If you show a genuine passion in your pursing your goals, whether that be in establishing a mentorship or finishing law school, your potential mentor is likely to be impressed.

If a potential mentor agrees to meet with you, be considerate and mindful of his or her time. Ask for a specific block of time, e.g., twenty or thirty minutes, or for lunch. If your request for a meeting is granted, stick to the time allotment you are granted. Otherwise you will appear to be unreliable, or even dishonest. Go to your meeting prepared with notes about your goals and values and what you want to know about from the mentor and what you might want from the mentor in terms of mentoring. Do not go to your meeting to ask for financial backing or a job. That would be quite a different objective than seeking a mentor. The one way to repulse a potential mentor is by asking for a material or financial benefit when you initially gave the impression that you were seeking advice. Always formally thank your potential mentor in writing and show the utmost of professionalism in your dealings with him or her.

The type of individual targeted as a potential mentor usually has achieved a degree of success and status that attracts attention from his or her peers. Such persons are serious-minded, extremely busy, intelligent, and highly motivated.

While a potential mentor might feel flattered by your request to establish a mentoring relationship, he or she would not want to waste time trying to work with someone who does not share similar values. Consequently, effective mentors will look for attributes in potential mentees that reflect their values and interests: intelligence, motivation and ambition, potential, self-confidence, loyalty and trustworthiness.\(^5\)

Remember, mentoring is a two-way relationship that involves a type of mutual benefit or symbiosis. The mentee should be growing, learning, and developing professionally through the

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\(^5\) For an excellent, detailed discussion of the attributes of mentees' and why mentors consider them essential, consult WOODRING, *Supra* Note 1, at side 2.
relationship, but so should the mentor. If the relationship is one in which either party conveys a lack of respect, support, confidence, or loyalty to the other, then adjustments should be made or the relationship should be terminated. A mentee should gain in confidence and competence through such a relationship. A mentor should be able to realize and perceive that growth in the mentee.\(^6\)

Never forget the wealth of knowledge and guidance you gain from being mentored. Return it by mentoring others. As you give support, you will receive not only mutual support from your mentee, but insight and deeper knowledge from having guided someone else. The great appeal in teaching and guiding others is the feeling of satisfaction one experiences in knowing that countless others in the world will benefit from the knowledge you sow. In some cases, for example with women and minority law students and novice attorneys, your contribution as a mentor will mean much more. It will play an important part in ushering a change in the balance of influence and power that should enrich our entire society.

IV. MENTORING MUSLIMS

A. Benefits of Mentoring A Muslim

Not unlike other religious oriented individuals, practicing Muslims strive to maintain those qualities that are generally attributed to fair, honest people including reliability, trustworthiness, dedication to duty, a sense of charity, and a high sense of fairness. Additionally, the Muslim mentee (or mentor) can provide an alternative cultural perspective, an acute sensitivity to minority issues, and a logic rooted in service to mankind, the latter of which also is apparent in other faith communities. In these respects, the mere experience of interacting with a Muslim mentee may serve to enrich a mentor’s outlook on society and the world.

B. What Every Mentor Should Know About Muslims

There are a number of general things about Islam and

\(^6\) *Id.* side 3.
Muslims of which every non-Muslim mentor should be aware. Depending on the individual mentee, some of these concerns might be taken more seriously than others.

**Diet.** Muslims do not eat pork or pork products or consume alcohol. Some Muslims will not eat any meat product unless it is officially designated “halal” which is similar to the “kosher” designation in Judaism. Others, however, will eat (non-pork) meat products in this society. There are many other dietary restrictions, but pork and alcohol are the two most common problem areas.

**Dress code & Modesty.** Many Muslim men believe Islam requires them to wear a beard. Thus, negative remarks about a man’s mere wearing of a beard should be avoided. In fact, as a mentor, your role would be to defend your mentee’s right (and perhaps duty) to wear a beard. Likewise, both men and women are expected to dress modestly. As a result, some men and women will not go swimming in mixed sex settings. Some will not go swimming in a situation where they might be visible by the opposite sex, or even in single sex environments for the same reason. Such behavior should not be interpreted as being antisocial, rather it faith-based for those individuals. Most Muslim women believe that Islam requires them to wear long garments and to cover their hair. Again this is an article of faith that should not be undermined by office policy.

On a similar note, many Muslim men and women believe that proper decorum does not permit male-female encounters behind closed doors. Thus, they might ask that an office door remain partially open during a meeting between two members of the opposite sex. Likewise, some Muslim men and women will not shake hands with members of the opposite sex, as is the Western tradition. This should not be interpreted as an affront.

**Prayer & Privacy.** Islam mandates prayer five times a day. Practically speaking, this means two to three times during the work day. Most Muslims prefer to conduct prayer in private. Thus, a mentee who does not have an office of his or her own would be grateful for use of a private area for about five minutes, twice a day. Additionally, Muslims generally will not stop to answer the door or a telephone during prayer (unless there is an emergency or other critical situation).

**Jumah.** Although Muslim men are mandated to attend
congregational prayer (Jumah) during midday on Fridays, many Muslim women also feel compelled to attend. Thus, scheduling midday meeting on Friday that would interfere with Jumah should be avoided. Jumah services generally last about one hour plus travel time.

Socializing and Social Activities. Your Muslim mentee would not feel comfortable nor would likely participate in any activities, including movies, jokes or attending bars or clubs, that involve gratuitous profanity, nudity, pornography, or demeaning jokes about God, the prophets or religion. A remarkable number of lawyers and law firms readily participate in such activity and have invited Muslim lawyer and summer intern involvement.

Holidays. Most everyone has at least heard of Ramadan. It is the annual month of fasting during which Muslims abstain from food and drink during daylight hours. In the United States Muslims generally attend work as during the rest of the year but generally prefer to leave work near sunset in order to return home or to another location to “break the fast,” or take a meal. While observing Ramadan is a strict requirement of the religion, leaving work to break the fast is not. Many employers, however, are sensitive to this tradition and try to make accommodations for their Muslim workers.

Muslims celebrate two major, universal “holidays.” The Eid ul Fitr is celebrated at the end of Ramadan and involves gift giving and recreational activities. It is not unusual for a Muslim to give non-Muslim friends and relatives gifts if he or she was the recipient of gifts during a Christmas or Jewish holiday. The other holiday is called Eid ul Adha. It commemorates Abraham’s total submission to God and his willingness to sacrifice his son by God’s command. As the story goes, instead of his son, Abraham was required only to sacrifice an animal. Eid ul Adha is considered the more significant Eid. Muslims observe this day in prayer, sacrifice, social activities and gift giving, as well. The two holidays rotate throughout the year and are best identified by asking your mentee as to their projected dates. Most Muslims prefer to take the entire day off from work for the Eids, as a Christian might take off Christmas or Easter.
C. Muslims Mentoring Muslims

Just as there are many denominations of Christians and Jews, there are different types of Muslims. Although this may not be an important matter for a Muslim/non-Muslim mentoring relationship, it is possible that differences in philosophy could cause friction between Muslims. Thus, in the case of a Muslim mentor it is incumbent that tolerance of alternative views predominate and that differences in culture, ethnicity, or interpretations of Islam not be allowed to undermine the professional relationship between mentor and mentee.