



Written Statement of the
American Civil Liberties Union

Laura W. Murphy
Director, Washington Legislative Office

Michael W. Macleod-Ball
Chief of Staff / First Amendment Policy Counsel

Before the
House Committee on Homeland Security

March 10, 2011

*“The Extent of Radicalization in the American Muslim Community and
that Community's Response”*

Chairman King, Ranking Member Thompson, and Members of the Committee:

The American Civil Liberties Union (ACLU) is a non-partisan organization of over half a million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the protection of individual rights and civil liberties under the U. S. Constitution and the Bill of Rights. As we have discussed with many of you in private, we have serious concerns with Chairman King's decision to focus these hearings on the American Muslim community. Such a focus ignores the pleas of fellow Members of Congress, advocacy groups, and community leaders to adjust the scope of the hearings to examine acts of domestic terrorism generally. Hearings that focus on American Muslims threaten to burden the free exercise of religion, give the appearance of official endorsement of one set of religious beliefs over another, and chill free association and free speech. Moreover, the rhetoric by some in advance of this hearing has targeted the American Muslim community for special attention even though the rhetoric is factually inaccurate and counterproductive to shared homeland security goals.

People who commit acts of domestic terrorism cannot be identified by any religious, ideological, ethnic, economic, educational, or social profile, and holding hearings that suggest otherwise is counterproductive to keeping America safe from real terrorist threats. In February 2010, Andrew Joseph Stack III of Texas flew a plane into an IRS building in Austin leaving behind an anti-government rant largely focused on taxes.¹ A lot of Americans oppose taxes, some vehemently, but this terrorist incident did not lead to an investigation of all tax opponents. In August 2003 the environmental group Earth Liberation Front reportedly burned down a nearly-completed \$23 million apartment complex just outside San Diego in protest of urban sprawl. Two years later the FBI declared eco-terrorists the country's biggest domestic terrorist threat.² Even then authorities did not target all those favoring environmental protection for investigation to root out "radicalized" individuals. The arrests of members of the Hutaree militia for planning to use roadside bombs in the Midwest has not provoked congressional investigations into the reasons why the millions of American gun control opponents aren't more cooperative with law enforcement in identifying those who would commit violence against the U. S. Government.³ We know that there is a difference between people with certain belief systems and those who are willing to commit acts of violence. Broadly targeting the entire American Muslim community for counterterrorism enforcement will make it more likely that law enforcement officials will misunderstand the factual evidence surrounding risk factors for violence and focus their investigative efforts on innocent Americans because of their religious beliefs rather than on true threats to the community.

We, together with most Americans, acknowledge that government has an obligation to help protect society from terrorists and other violent criminals, and that studying previous terrorist attacks and the people who committed them could provide clues useful to preventing future acts of violence. But to avoid infringing on fundamental rights that are essential to the functioning of a healthy democracy, Congress must tread carefully when attempting to examine people's thoughts or classifying their beliefs as inside or outside the mainstream. By focusing on the American Muslim community and its response to "radicalization", this Committee risks doing exactly what it should not: stepping on the basic First Amendment freedoms to which American Muslims, like all Americans, have a right. Sacrificing our civil liberties in the pursuit

of security is unwise, unnecessary, and according to several recent studies, counterproductive to preventing extremist violence.

Barry Goldwater, accepting the Republican nomination for the Office of President of the United States in 1964, said that “Extremism in the defense of liberty is no vice!” This Committee must keep in mind that extremism is nothing more than a chosen set of beliefs and, as such, is absolutely protected under the First Amendment. Asking whether extremist ideology is the precipitator of violence or not presumes that a connection exists between the belief system and the commission of violence. But recent empirical studies of terrorism downplay such a causal connection. We do not assume all those who oppose abortion are worthy of investigation just because there have been acts of violence committed by some who share that political view. To assume without evidence that everyone of a particular faith or ideology or political belief is a threat because of the actions of a few would betray American values and waste security resources. The government cannot and should not censure extremist ideology, in and of itself.

Violent action, on the other hand, whether in the name of ideology or otherwise, deserves the full-throated condemnation of the government and its people. As this Committee carries on its work, it has the opportunity to set a sterling and courageous example for the nation by rejecting the call to target a specific faith community and instead focusing on the root causes of violence. We will fully support this Committee’s examination of the historical events that may tend to explain why particular individuals choose to use violence as a means to effect social or political change in a manner that threatens the national security. We will steadfastly oppose any effort to examine, and thus cast official disapproval upon, any religious or political belief system. Any such effort would chill the First Amendment rights of those involved and be an unfair slap at untold numbers of wholly innocent Americans.

I. First Amendment Freedoms

The First Amendment to the United States Constitution guarantees freedom of religion, speech, press, petition and assembly.⁴ These protections are based on the premise that open and unfettered public debate empowers democracy by enriching the marketplace with new ideas and enabling political and social change through lawful means.⁵ Our First Amendment freedoms also enhance our security. Though “vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials” have to be endured under our constitutional system of government, the uninhibited debate these freedoms guarantee is recognized as “essential to the security of the Republic” because it ensures a government responsive to the will of the people.⁶ Moreover, as Justice Brandeis explained, our nation’s Founders realized that the greater threat to security lay not in protecting speech, but in attempting to suppress it:

Those who won our independence . . . knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by

law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.⁷

II. Contemporary Investigations of Terrorism

Of course, Congress can and should investigate terrorism. The danger posed by modern terrorists is real and Congress must understand the scope and nature of the threat and exercise its authorities to the utmost in overseeing the government's response, holding our military, law enforcement and intelligence agencies accountable, and crafting sensible legislation that enhances security while protecting the rights of innocent persons. But the security threat was no less real during the first red scare and during the Cold War. The question is not whether Congress should respond but how it should respond. History tells us that conflating the expression of certain belief systems or even hostile beliefs with threats to security only misdirects resources, unnecessarily violates the rights of the innocent, and unjustly alienates communities unfairly targeted as suspicious. Justice Brandeis argued that “[f]ear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears.”⁸

Unfortunately some government officials, including some on this Committee, have been influenced by ill-conceived and methodologically flawed government reports that claim not only that terrorist acts are linked to the adoption of certain beliefs but that there is a uniform process of “radicalization” in which one progresses from belief to association to terrorism. The New York Police Department (NYPD) report, *Radicalization in the West: The Homegrown Threat*, published in 2007, purports to identify a four-step “radicalization process” through which terrorists progress. But even the authors of the study admit that not all individuals who begin the process pass through all the stages, that many “stop or abandon this process at different points”, and that “individuals do not always follow a perfectly linear progression” through the four steps.⁹ Obviously, the steps along the path are not consecutive at all, but rather four stones scattered in the woods which a terrorist or anyone else wandering through may or may not touch. What is dangerous is that the each step involves constitutionally-protected religious and associational conduct, and the authors ignore the fact that millions of people may progress through one, several, or all of these stages and never commit an act of violence. Moreover, these conclusions are based on just five terrorism cases, clearly a statistically insignificant sample from which to draw such sweeping conclusions.

The NYPD report drew quick condemnation from the civil liberties and Muslim communities. The Brennan Center for Justice issued a memo complaining of the report’s “foreseeable stigmatizing effect, and its inferential but unavoidable advocacy of racial and religious profiling.”¹⁰ New York City Muslim and Arab community leaders formed a coalition in response to the NYPD report and issued a detailed analysis criticizing the NYPD for wrongfully “positing a direct causal relation between Islam and terrorism such that expressions of faith are equated with signs of danger,” and potentially putting millions of Muslims at risk.¹¹ Unfairly focusing suspicion on a vulnerable community also threatens to create the very alienation that effective and proper counter-terrorism policies should seek to avoid.¹²

Indeed, contrary to the NYPD study, a 2008 analysis by the United Kingdom's domestic intelligence service, MI-5, which was based on hundreds of case studies of individuals involved in terrorism, reportedly concluded that there is no single identifiable pathway to extremism and "a large number of those involved in terrorism do not practice their faith regularly."¹³ The MI-5 study concluded that the U.K. government should support tolerance of diversity and protection of civil liberties, conclusions that were echoed in a National Counterterrorism Center (NCTC) paper published in August 2008. In exploring why there was less violent homegrown extremism in the U.S. than the U.K., the NCTC paper authors cited the diversity of American communities and the greater protection of civil rights as key factors.¹⁴

The significant shortcomings with the NYPD report became so evident that the NYPD was compelled to insert a "Statement of Clarification" in 2009 that explained that:

NYPD understands that it is a tiny minority of Muslims who subscribe to al Qaeda's ideology of war and terror and that the NYPD's focus on al Qaeda inspired terrorism should not be mistaken for any implicit or explicit justification for racial, religious or ethnic profiling. Rather, the Muslim community in New York City is our ally and has as much to lose, if not more, than other New Yorkers if individuals commit acts of violence (falsely) in the name of their religion. As such, the NYPD report should not be read to characterize Muslims as intrinsically dangerous or intrinsically linked to terrorism, and that it cannot be a license for racial, religious, or ethnic profiling.¹⁵

More important, the statement of clarification said, "This report was not intended to be policy prescriptive for law enforcement."¹⁶

Unfortunately, the NYPD failed to retract the report altogether and inserted the clarification without public announcement, so it received little publicity.¹⁷ As a result, the NYPD report is still being referenced uncritically in academic and official government publications. A report by the Senate Homeland Security and Governmental Affairs Committee (HSGAC) entitled *Violent Islamist Extremism, The Internet, and the Homegrown Terrorism Threat* ignored the criticisms and flaws of the NYPD report, and simply re-stated the NYPD's flawed "radicalization" theories in arguing for a national strategy "to counter the influence of the Ideology."¹⁸ As they did in response to the NYPD report, Muslim and Arab civil liberties organizations united to issue a joint letter complaining that the HSGAC report "undermines fundamental American values" and "exacerbates the current climate of fear, suspicion and hatermongering of Islam and American Muslims."¹⁹ In testimony before the HSGAC, Dr. Marc Sageman, who conducted empirical studies of actual terrorists, downplayed the role of religious belief as a driver of violence: "...there has been far too much focus on ideology in trying to understand radicalization. In my observations of Islamist terrorists, I came to the conclusion that there were not Islamic scholars"²⁰ (emphasis in original). Instead, Sageman cited moral outrage at the Iraq war, abuses of U.S. detainees in Abu Ghraib and "GITMO," and the perception of a western "War against Islam" as causal factors, and warned against taking any counterterrorism measures that would tend to "alienate the Muslim community."²¹

Most recently, the special report on the Ft. Hood shootings issued by HSGAC Chairman Joseph Lieberman and Ranking Member Susan Collins explicitly endorsed the unsupported “radicalization framework” of the NYPD report and recommended that the Department of Defense and the FBI develop training regarding “ideological indicators and warning signs.”²² This recommendation not only clearly ignores the NYPD’s warning that its report should not be policy prescriptive for law enforcement; it directly conflicts with a scientific literature review documented in the Department of Defense Ft. Hood report. Citing scientific studies, the DoD concluded that “identifying potentially dangerous people before they act is difficult,” because while people who commit acts of violence can often later be shown to have exhibited identifiable risk factors, few people who have risk factors actually go on to assault or kill others.²³ In particular, and contrary to the NYPD report, the DoD found, “religious fundamentalism alone is not a risk factor; most fundamentalist groups are not violent, and religious-based violence is not confined to members of fundamentalist groups.”²⁴ Yet the FBI has already acted on the Lieberman-Collins recommendations and developed “radicalization” training that was presented to three field offices in 2010.²⁵

The negative influence of the NYPD report continues to be pervasive and damaging. The Virginia Fusion Center has cited the NYPD report, and two other similarly flawed reports that are based upon it, in designating Virginia’s universities and colleges as “nodes of radicalization” requiring law enforcement attention and characterized the “diversity” surrounding a Virginia military base and the state’s “historically black” colleges as possible threats to security.²⁶

It is disturbing and disheartening to see the discredited NYPD report relied upon again and again by people seeking an easy explanation for domestic threats. Chairman King’s public statements in advance of this hearing suggest a similar unwarranted reliance on this flawed theory of a discernable “radicalization” process, which undermines any legitimate rationale for holding them.²⁷ A more rigorous and more comprehensive examination of publicly available information might have led this Committee down a different and more productive path than the one it is now following.

III. Historical Abuse

Unfortunately, in times of national crisis we have often failed to recognize the strength of our democratic ideals. Indeed the ACLU was founded in 1920 to come to the defense of immigrants, trade unionists, and political activists who were illegally rounded up by the thousands in the infamous Palmer raids during America’s first “red scare,” a period of significant anarchist violence. Rather than focusing on finding the perpetrators of the violence, the government sought anyone who supported similar political views, associated with disfavored organizations or wrote or spoke in opposition to government policies. Lawyers who complained of the abuse, which included torture, coerced confessions, illegal searches and arrests, were subject to investigation themselves.²⁸

The Department of Justice General Intelligence Division (GID), the precursor agency to the Federal Bureau of Investigation (FBI), collected 150,000 secret files “giving detailed data not only upon individual agitators connected with the radical movement, but also upon organizations, associations, societies, publications and social conditions existing in certain

localities.”²⁹ The New York State Legislature also initiated a two-year investigation into the spread of radical ideas. The Joint Legislative Committee to Investigate Seditious Activities (commonly referred to as the Lusk Committee) ultimately produced a report, *Revolutionary Radicalism: Its History, Purpose and Tactics*, which “smeared liberals, pacifists, and civil libertarians as agents of international Communism.”³⁰ Though thousands were arrested, few were prosecuted or deported and little incriminating information was obtained during the Committee’s investigation.³¹ Studying radicals was of little help in finding actual terrorists.

Due in part to the public outcry over the red scare abuses, the Department of Justice reformed its policies to focus strictly on violations of law, but these reforms did not hold.³² The Cold War brought about a second red scare characterized by congressional witch hunts orchestrated by Senator Joseph McCarthy’s Permanent Subcommittee on Investigations and the House Un-American Activities Committee (HUAC), which ruined the careers of many loyal Americans based purely on their associations. At the same time, and sometimes in support of these congressional investigations, the FBI ran a domestic counter-intelligence program (COINTELPRO) that quickly evolved from a legitimate effort to protect the national security from hostile foreign threats into an effort to suppress domestic political dissent through an array of illegal activities. The Senate Select Committee that investigated COINTELPRO (the “Church Committee”) said the “unexpressed major premise of... COINTELPRO is that the Bureau has a role in maintaining the existing social order, and that its efforts should be aimed toward combating those who threaten that order.”³³ Once again, instead of focusing on violations of law, these investigations targeted people based on their beliefs, political activities and associations. In his Church Committee testimony White House liaison Tom Charles Huston, author of the infamous “Huston Plan,” explained the hazards of this shift in focus:

The risk was that you would get people who would be susceptible to political considerations as opposed to national security considerations, or would construe political considerations to be national security considerations, to move from the kid with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate.³⁴

FBI headquarters opened over 500,000 domestic intelligence files between 1960 and 1974, and created a list of 26,000 individuals who would be “rounded up” in the event of a national emergency.³⁵ The FBI used the information it gleaned from these improper investigations not for law enforcement purposes, but to “break up marriages, disrupt meetings, ostracize persons from their professions and provoke target groups into rivalries that might result in deaths.”³⁶

Our history shows that it is the executive branch that most often abuses power and targets political, ethnic, or religious minorities, and it is the legislative branch – the Church Committee – or the judiciary that investigates or remedies the abuses. But our history also shows – as the activities of the McCarthy Committee and HUAC demonstrate – that Congress is not immune to its own form of overreaching. Indeed, in the context of a case examining a congressional committee witness’ refusal to identify those who might espouse disfavored beliefs, the Court acknowledged Congress’ broad investigative powers inherent to its legislative function, and its unquestioned authority to hold recalcitrant witnesses in contempt. But it also held that abuse of the investigative process could lead to an unconstitutional abridgment of protected rights.³⁷ This

Committee's focus on the American Muslim community risks imposing exactly the kind of damage the Court warned of in the 1950's, and in doing so it will alienate this minority community. It is for this reason that we urge this Committee not to target the American Muslim community so that these hearings do not become yet another example of misguided and abusive government action.

IV. Distinguish Extremism from Violence

By its title, this hearing focuses on the "radicalization" of the Muslim community. The Counterterrorism Enhancement and Department of Homeland Security Authorization Act of 2010 defines "violent radicalization" as the process of adopting or promoting an extremist belief system for the purpose of facilitating ideologically based violence to advance political, religious, or social change.³⁸ This definition presents two distinct concepts as if they were one. Extremism is defined by one dictionary as the "advocacy of extreme measures or views".³⁹ Extremism is a state of mind or a set of beliefs. There is nothing about the notion of extremism or a radical belief system that necessarily denotes violence. And, as Goldwater suggested, some forms of extremism are to be admired. But all forms of extremism are entitled to protection under our Constitution.

Violence on the other hand is entitled to no such deference. The same source defines 'violence' as the "exertion of physical force so as to injure or abuse".⁴⁰ It is an invasive force intended to do harm and, as such, qualifies for no constitutional protection. It bears emphasis, again, that extremist viewpoints do not necessarily lead to violent action. In addition, conflating extremism and violence wrongly suggests that violence associated with extremism is somehow worse – or more worthy of examination - than other forms of violence, a misconception that can lead to flawed policy-making.

Violence that has no discernible tie to ideology occurs far more frequently and has far wider impact than violence assumed to arise out of extremist views. It would be a mistake to dismiss "regular crime" as not causing the same broad and lasting damage to society that terrorism does. Consider the societal impact of student shootings at Virginia Tech and Columbine, the anthrax attacks and the sniper shootings in Washington, DC, and elsewhere in the country – not to mention gang violence, and violence against women, children and the elderly. The FBI reported there were 1,382,012 violent crimes committed in the U.S. in 2008, including 16,272 murders and 89,000 rapes.⁴¹

The courts began to ratify such a distinction between extreme ideologies and violent actions in the first half of the 20th century. In a number of cases addressing convictions under the Smith Act, which criminalized advocating the violent overthrow of the United States or membership in any organization that did, the Supreme Court began drawing a line between advocacy of violence as a tactic of political change and incitement to violence: "the mere abstract teaching... of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action."⁴² These cases culminated in *Brandenburg v. Ohio*, in which the Court established that advocacy of violence could be criminalized only where "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."⁴³

The important element, therefore, is to examine the violence – not the belief system held by the violent actor. The Committee must ensure that its examination does not single out violent actions committed by adherents to any particular faith or ideology for scrutiny. It should not study only Muslims – just as it would not study only tax opponents or only environmentalists. To do so would pre-determine an outcome and cast a chilling net over all those non-violent individuals who happen to share all or some of the characteristics or beliefs of those studied. Moreover, to do so would tend to perpetuate the perception of alienation that, according to some, fuels the violence. Significantly, in this regard, one can infer that a renewed dedication to the protection of civil liberties, including associational, speech, and religious rights, is our best defense. As one expert who has conducted empirical studies of actual terrorists testified, “we must continue to promote core American values of justice and fairness and fight those elements in our society that try to single out and antagonize part of our nation.”⁴⁴

V. Muslim Community’s Cooperation with Law Enforcement

One of the core justifications made for and in advance of this hearing is that the American Muslim community has failed to cooperate sufficiently with law enforcement in the fight against domestic terrorism.⁴⁵ The assertion is baseless. Numerous law enforcement officials have gone on the record to dispute this charge,⁴⁶ academic studies have catalogued the assistance Muslims have provided to anti-terrorism efforts,⁴⁷ and the undersigned organizations work closely with many Muslim civil rights and advocacy groups that are deeply involved in efforts to improve security policies. Indeed, your Committee has heard testimony from several law enforcement witnesses regarding their engagement with Muslim-American communities on a host of issues.⁴⁸

Further, we are concerned by the claim that American Muslims’ “cooperation” in national security efforts must be measured by their willingness to provide information voluntarily to counterterrorism enforcement agencies. Although warning law enforcement officials of threats is indeed a shared civic and social responsibility, it would be illegal, unfair and impractical for Congress or law enforcement officials to require any religious or belief community to prove its loyalty to this country by “informing” on its members. To the contrary, American Muslims, like the rest of this country’s citizens, have the right to protest illegal, overzealous or abusive government security measures and to vigorously exercise, and encourage others to exercise, rights guaranteed in the Constitution. There are also legitimate concerns about whether individuals who volunteer information to law enforcement will find themselves threatened with legal jeopardy. Advising individuals to speak to lawyers before talking to law enforcement or even to refrain from talking to law enforcement is both prudent and completely legal speech protected by the Bill of Rights. We expect that many corporations, businesses and even congressional offices would advise their employees to consult a lawyer before speaking with law enforcement as well.

Recognizing and respecting the line between protected beliefs and illegal activity does not undermine our security, but rather strengthens it. Basing security policy on factually flawed “radicalization” theories will only waste precious security resources. Law enforcement has been successful in preventing terrorist plots many times over the past few years by focusing on facts and evidence. Inquiring how many Muslims hold “radical” beliefs, however that phrase is

defined, will not aid those efforts. To the contrary, it will undermine the crucial bonds between communities and the government and law enforcement. Most dangerously, it is likely to undermine our efforts to demonstrate to Muslims at home and abroad that the United States seeks to live up to its ideals in its treatment of all Americans, including Muslims, and is not engaged in a “war against Islam.”

VI. Conclusion

We urge this Committee to cease holding hearings that target any specific religious or ideological group for investigation based on unsubstantiated theories about “radicalization” and instead focus the government’s anti-terrorism investigations on actual terrorist acts and those who commit them. A fact-based investigation of historical events will likely be more successful at providing a clear picture of the threats we face and the appropriate methods we need to employ to address them without violating the constitutional rights of innocent persons. Neither fear, nor a misapprehension of beliefs held by a religious minority, should drive our government policies. As Justice Brandeis reminds us,

To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion... Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom.⁴⁹

Protecting our First Amendment freedoms will both honor our values and keep us safe. We urge this Committee to re-orient its hearings so as not to target the American Muslim community and instead focus on achieving a beneficial and accurate understanding of today’s domestic threats.

¹ Brick, Michael, *Man Crashes Plane Into Texas I.R.S. Office*, The New York Times (Feb. 18, 2010) available at <http://www.nytimes.com/2010/02/19/us/19crash.html>.

² Schorn, Daniel, *Burning Rage*, CBS News (November 13, 2005) available at <http://www.cbsnews.com/stories/2005/11/10/60minutes/main1036067.shtml>.

³ Mark Guarino, *Hutaree Militia Arrenst Point to Tripling of Militias Since 2008*, Christian Science Monitor (Mar. 29, 2010) available at <http://www.csmonitor.com/USA/Justice/2010/0329/Hutaree-militia-arrests-point-to-tripling-of-militias-since-2008>.

⁴ The Constitution of the United States, Amendment 1: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

⁵ See *United States v. Associated Press*, 52 F.Supp. 362, 372 (D.C.S.D.N.Y.1943); *Roth v. United States*, 354 U.S. 476, 484 (1957).

⁶ See *New York Times, Co. v. Sullivan*, 376 U.S. 254, 270 (1964), quoting *Stromberg v. California*, 283 U.S. 359, 369 (1931).

⁷ *Whitney v. California*, [274 U.S. 357](#), 375-376, (1927) (Brandeis, J., Concurring).

⁸ *Whitney v. California*, [274 U.S. 357](#), 376, (1927), (Brandeis, J., concurring).

⁹ Mitchell Silber and Arvin Bhatt, New York Police Department, *Radicalization in the West: The Homegrown Threat*, p. 6, (2007). This report seems to draw heavily from an earlier FBI Intelligence Assessment, “*The Radicalization Process: From Conversion to Jihad*,” (May 10, 2006), though it is not cited.

¹⁰ Aziz Huq, “Concerns with Mitchell D. Silber and Arvin Bhatt, N.Y. Police Dep’t, *Radicalization in the West: The Homegrown Threat*,” New York University School of Law, Brennan Center for Justice, (Aug. 30, 2007), at: http://brennan.3cdn.net/436ea44aae969ab3c5_sbm6vtxgi.pdf. See also, *Coalition Memo to the Senate Committee on Homeland Security and Governmental Affairs Regarding “Homegrown Terrorism,”* American Civil Liberties Union et al. (May 7, 2008) available at <http://www.aclu.org/safefree/general/35209leg20080507.html>.

¹¹ Muslim American Civil Liberties Coalition, *CountertERRORism Policy: MACLC’s Critique of the NYPD’s Report on Homegrown Terrorism*, (2008).

¹² See, e.g., Hearing of the Senate Homeland Security and Governmental Affairs Committee, *Violent Islamist Extremism: The European Experience* (June 27, 2007) particularly the testimony of Lidewijde Ongerling and Marc Sageman, available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=9c8ef805-75c8-48c2-810d-d778af31cca6.

¹³ Alan Travis, “MI5 Report Challenges Views on Terrorism in Britain,” *The Guardian*, (August 20, 2008) at: <http://www.guardian.co.uk/uk/2008/aug/20/uksecurity.terrorism1> and; Alan Travis, “The Making of an Extremist,” *The Guardian* (Aug. 20, 2008) available at <http://www.guardian.co.uk/uk/2008/aug/20/uksecurity.terrorism>

¹⁴ National Counterterrorism Center Conference Report, *Towards a Domestic Counterradicalization Strategy*, (August 2008). Notwithstanding the conclusion, the paper inexplicably went on to examine how the U.S. could better adopt U.K. counterterrorism strategies.

¹⁵ See “Statement of Clarification,” p. 11-12 (added in 2009) to Mitchell Silber and Arvin Bhatt, New York Police Department, *Radicalization in the West: The Homegrown Threat*, p. 6, (2007), available at http://www.nyc.gov/html/nypd/downloads/pdf/public_information/NYPD_Report-Radicalization_in_the_West.pdf.

¹⁶ *Id.*, at 12.

¹⁷ See Muslim American Civil Liberties Coalition [Letter to Raymond Kelly, “Response to NYPD ‘Statement of Clarification,’”](http://maclc1.wordpress.com/2009/09/08/maclc-90809-letter-response-to-nypd-statement-of-clarification) (Sept. 2009) available at <http://maclc1.wordpress.com/2009/09/08/maclc-90809-letter-response-to-nypd-statement-of-clarification>.

¹⁸ United States Senate Committee on Homeland Security and Governmental Affairs Majority and Minority Staff Report, “*Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat*” (May 8, 2008).

¹⁹ Coalition Letter to the Honorable Joseph I. Lieberman and the Honorable Susan M. Collins, May 14, 2008, available at: http://www.muslimadvocates.org/documents/temporary_HSGAC_report-Allied_response_FINAL.pdf

²⁰ Marc Sageman, testimony before the Hearing of the Senate Homeland Security and Governmental Affairs Committee, *Violent Islamist Extremism: The European Experience*, p. 2, (June 27, 2007), available at: http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=9c8ef805-75c8-48c2-810d-d778af31cca6.

²¹ *Id.* at 5.

²² Special Report by Joseph I. Lieberman, Chairman, and Susan M. Collins, Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs, “A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government’s Failure to Prevent the Fort Hood Attack,” (Feb. 2011), 77, available at: http://hsgac.senate.gov/public/ files/Fort_Hood/FortHoodReport.pdf.

²³ Department of Defense, *Protecting the Force: Lessons from Fort Hood*, Report of the DOD Independent Review at Appx. D (Jan. 2010) available at http://www.defense.gov/pubs/pdfs/DODProtectingTheForce-Web_Security_HR_13jan10.pdf.

²⁴ *Id.* at D-2.

²⁵ Lieberman-Collins report, p. 77.

²⁶ See ACLU press release, “*Fusion Center Declares Nation’s Oldest Universities Possible Terrorist Threat*,” (Apr. 6, 2009) available at <http://www.aclu.org/technology-and-liberty/fusion-center-declares-nation%E2%80%99s-oldest-universities-possible-terrorist-threat>.

²⁷ Peter King, “What’s Radicalizing Muslim Americans?,” *Newsday* (Dec. 19, 2010) available at <http://homeland.house.gov/news/newsday-king-whats-radicalizing-muslim-americans>.

²⁸ SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, U.S. SENATE, 94TH CONG., FINAL REPORT ON SUPPLEMENTAL DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS (BOOK III), S. Rep. No. 94-755, at 385 (1976), available at: http://www.aarclibrary.org/publib/church/reports/book3/html/ChurchB3_0196b.htm

²⁹ SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, U.S. SENATE, 94TH CONG., FINAL REPORT ON SUPPLEMENTAL DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES

AND THE RIGHTS OF AMERICANS (BOOK III), S. Rep. No. 94-755, at 386 (1976), [CHURCH REPORT] *available at* http://www.aarclibrary.org/publib/church/reports/book3/html/ChurchB3_0196b.htm

³⁰ Samuel Walker, *In Defense of American Liberties: A History of the ACLU*, Oxford, (1990) p. 16.

³¹ The Lusk Committee: A Guide to the Records of the Joint Committee to Investigate Seditious Activities: A Guide to the Records Held in the New York State Archives, *available at*:

http://www.archives.nysed.gov/a/research/res_topics_bus_lusk.shtml

³² CHURCH REPORT, at 388.

³³ *Id.*, at 7.

³⁴ *Id.*, at 27.

³⁵ *Id.*, at 6-7.

³⁶ *Id.*, at 5.

³⁷ *Watkins v. United States*, 354 U.S. 178 (1957).

³⁸ See *Thomas.gov* *available at* <http://thomas.gov/cgi-bin/query/F?c111:1:/temp/~c111dswbTI:e19995>.

³⁹ Merriam Webster's Online Dictionary, *available at* <http://www.merriam-webster.com/dictionary/Extremism>.

⁴⁰ *Id.* at <http://www.merriam-webster.com/dictionary/violence>.

⁴¹ Uniform Crime Reports, Crime in the United States, 2008, U.S. Dep't. of Justice, Federal Bureau of Investigation, Table 1 (2009), at: http://www.fbi.gov/ucr/cius2008/data/table_01.html

⁴² *Noto v. United States*, 367 U.S. 290, 297-298 (1961). See also, *Dennis v. United States*, 341 U.S. 494 (1951); and *Yates v. United States*, 354 U.S. 298 (1957).

⁴³ 395 U.S. 444, 447 (1969).

⁴⁴ Marc Sageman, testimony before the Hearing of the Senate Homeland Security and Governmental Affairs Committee, *Violent Islamist Extremism: The European Experience*, p. 5, (June 27, 2007) *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=9c8ef805-75c8-48c2-810d-d778af31cca6.

⁴⁵ Peter King, "What's Radicalizing Muslim Americans?", *Newsday* (Dec. 19, 2010) *available at* <http://homeland.house.gov/news/newsday-king-whats-radicalizing-muslim-americans>.

⁴⁶ See Counterterrorism Experts Reject Peter King's Targeting of Muslims, National Security Network (Jan. 28, 2011) *available at* <http://www.nsnetwork.org/node/1847>; "Baca: No Evidence Muslims Not Cooperating with Police," CBS Los Angeles (Feb. 11, 2011) *available at* <http://losangeles.cbslocal.com/2011/02/07/baca-no-evidence-us-muslims-not-cooperating-with-police/>

⁴⁷ See Charles Kurzman, "Muslim-American Terrorism Since 9/11: An Accounting," Triangle Center on Terrorism and Homeland Security (Feb. 2, 2011) *available at*

http://sanford.duke.edu/centers/tcths/about/documents/Kurzman_Muslim-American_Terrorism_Since_911_An_Accounting.pdf

⁴⁸ See, e.g., Hearing of the House Homeland Security Committee Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, "Working with Communities to Disrupt Terror Plots" (Mar. 17, 2010); Hearing of the House Homeland Security Committee Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, "Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror" (Apr. 5, 2007).

⁴⁹ *Whitney v. California*, [274 U.S. 357](#), 376, (1927), (Brandeis, J., Concurring).