

The diverse set of players that joined forces for this spring's launch of the Digital Due Process Coalition was brought together through painstaking work over several years by the *Center for Democracy and Technology*, a grantee of the National Security and Human Rights Campaign. The Coalition's members include several Campaign grantees, including the *American Civil Liberties Union* and the *Electronic Frontier Foundation*.

The New York Times

April 9, 2010
Editorial

Dial-Up Law in a Broadband World

The Internet has given the government powerful 21st-century tools for invading people's privacy and monitoring their activities, but the main federal law governing online privacy is a 20th-century relic. Adopted in 1986, it has had trouble keeping up with technological advances and is now badly out of date.

Congress has not moved to fix this problem, but a surprising coalition of major technology companies and civil liberties advocates have produced a blueprint for updating the law and both houses of Congress are poised to hold hearings. Having lawmakers proclaim their concern and ask learned questions will not be enough. The Electronic Communications Privacy Act is long past due for an upgrade.

Privacy is central to American law. And in 1986, Congress applied that principle to electronic communications by setting limits on law enforcement access to Internet and wireless technologies. It was a laudable law at the time, but cellphones were still oddities, the Internet was mostly a way for academics and researchers to exchange data and the World Wide Web that is an everyday part of most Americans' lives did not exist.

The law is no longer comprehensive enough to cover the many kinds of intrusions made possible by the advances of the past 24 years. In the absence of strong federal law, the courts have been adrift on many important Internet privacy issues. The law is not clear on when search warrants are required for the government to read stored e-mail, what legal standards apply to GPS technology that tracks people's whereabouts in real time and other critical questions.

Digital Due Process — a coalition that includes Google, Microsoft, the Center for Democracy and Technology and the American Civil Liberties Union — recently proposed a good set of principles for addressing those issues. The coalition recommends that all private data not voluntarily made public, such as stored e-mail or private financial data, should be as protected as data in a person's home. To get it, the government should need a search warrant.

For locational data — information about where a person has physically been, or currently is — the coalition also recommends that a search warrant be required. That would clear up a murky

area of the law in which courts have reached different conclusions about information obtained through GPS devices, cellphone towers and other technologies.

The coalition argues that when federal law authorizes a subpoena for customer data, it should be limited to information about a particular individual or individuals. This would prevent fishing expeditions, such as a request for data on everyone who visited a particular Web site on a given day.

The coalition's recommendations do not address other important Internet privacy issues that involve the ability of private companies to monitor and record their users' behavior. They also sidestep questions about how accessible data should be to private litigants, such as one company suing another. The recommendations do not include requirements that companies report on the personal data they are collecting and storing — a kind of transparency that customers should be entitled to.

Despite that, the Digital Due Process has gotten this much-needed discussion off to a strong start and set the bar high for hearings by the Senate and House Judiciary Committees.

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Three Arab, Middle Eastern, Muslim, and South Asian organizations supported by the National Security and Human Rights Campaign, *Muslim Advocates*, the *Sikh Coalition*, and *South Asian Americans Leading Together*, participated in the closed, two-day meeting in January 2010 with Department of Homeland Security officials, including Secretary Janet Napolitano, that is referenced below. In coordination with other Campaign grantees, including the *American Civil Liberties Union*, these organizations successfully advocated for the reversal of a Transportation Security Administration decision, implemented in response to the foiled Christmas Day airplane bombing attempt, to impose heightened security measures on individuals traveling into the U.S. from or through 14 “countries of interest,” most of which are Muslim-majority nations. Farhana Khera, the Executive Director of *Muslim Advocates*, is quoted at the end of the article.

The New York Times

White House Quietly Courts Muslims in U.S.

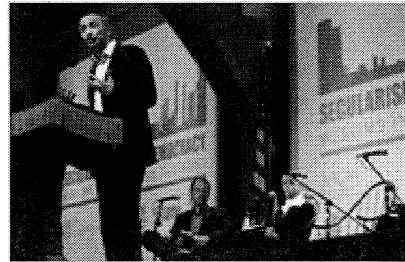
By ANDREA ELLIOTT

Published: April 18, 2010

When President Obama took the stage in Cairo last June, promising a new relationship with the Islamic world, Muslims in America wondered only half-jokingly whether the overture included them. After all, Mr. Obama had kept his distance during the campaign, never visiting an American mosque and describing the false claim that he was Muslim as a “smear” on his Web site.



Brendan Smialowski for The New York Times
Rashad Hussain, 31, a White House lawyer, was appointed to become the United States’ special envoy to the Organization of the Islamic Conference.



Brendan Smialowski for The New York Times
Tariq Ramadan, who was barred from the United States under President George W. Bush, spoke to a New York audience in April.

Nearly a year later, Mr. Obama has yet to set foot in an American mosque. And he still has not met with Muslim and Arab-American leaders. But less publicly, his administration has reached out to this politically isolated constituency in a sustained and widening effort that has left even skeptics surprised.

Muslim and Arab-American advocates have participated in policy discussions and received briefings from top White House aides and other officials on health care legislation, foreign policy, the economy, immigration and national security. They have met privately with a senior White House adviser, Valerie Jarrett, Homeland Security Secretary Janet Napolitano and Attorney General Eric H. Holder Jr. to discuss civil liberties concerns and counterterrorism strategy.

The impact of this continuing dialogue is difficult to measure, but White House officials cited several recent government actions that were influenced, in part, by the discussions. The meeting with Ms. Napolitano was among many factors that contributed to the government's decision this month to end a policy subjecting passengers from 14 countries, most of them Muslim, to additional scrutiny at airports, the officials said.

That emergency directive, enacted after a failed Dec. 25 bombing plot, has been replaced with a new set of intelligence-based protocols that law enforcement officials consider more effective.

Also this month, Tariq Ramadan, a prominent Muslim academic, visited the United States for the first time in six years after Secretary of State Hillary Rodham Clinton reversed a decision by the Bush administration, which had barred Mr. Ramadan from entering the country, initially citing the U.S.A. Patriot Act. Mrs. Clinton also cleared the way for another well-known Muslim professor, Adam Habib, who had been denied entry under similar circumstances.

Arab-American and Muslim leaders said they had yet to see substantive changes on a variety of issues, including what they describe as excessive airport screening, policies that have chilled Muslim charitable giving and invasive F.B.I. surveillance guidelines. But they are encouraged by the extent of their consultation by the White House and governmental agencies.

"For the first time in eight years, we have the opportunity to meet, engage, discuss, disagree, but have an impact on policy," said James Zogby, president of the Arab American Institute in Washington. "We're being made to feel a part of that process and that there is somebody listening."

In the post-9/11 era, Muslims and Arab-Americans have posed something of a conundrum for the government: they are seen as a political liability but also, increasingly, as an important partner in countering the threat of homegrown terrorism. Under President George W. Bush, leaders of these groups met with government representatives from time to time, but said they had limited interaction with senior officials. While Mr. Obama has yet to hold the kind of high-profile meeting that Muslims and Arab-Americans seek, there is a consensus among his policymakers that engagement is no longer optional.

The administration's approach has been understated. Many meetings have been private; others were publicized only after the fact. A visit to New York University in February by John O. Brennan, Mr. Obama's chief counterterrorism adviser, drew little news coverage, but caused a stir among Muslims around the country. Speaking to Muslim students, activists and others, Mr. Brennan acknowledged many of their grievances, including

“surveillance that has been excessive,” “overinclusive no-fly lists” and “an unhelpful atmosphere around many Muslim charities.”

“These are challenges we face together as Americans,” said Mr. Brennan, who momentarily showed off his Arabic to hearty applause. He and other officials have made a point of disassociating Islam from terrorism in public comments, using the phrase “violent extremism” in place of words like “jihad” and “Islamic terrorism.”

While the administration’s solicitation of Muslims and Arab-Americans has drawn little fanfare, it has not escaped criticism. A small but vocal group of research analysts, bloggers and others complain that the government is reaching out to Muslim leaders and organizations with an Islamist agenda or ties to extremist groups abroad.

They point out that Ms. Jarrett gave the keynote address at the annual convention for the Islamic Society of North America. The group was listed as an unindicted co-conspirator in a federal case against the Holy Land Foundation for Relief and Development, a Texas-based charity whose leaders were convicted in 2008 of funneling money to Hamas. The society denies any links to terrorism.

“I think dialogue is good, but it has to be with genuine moderates,” said Steven Emerson, a terrorism analyst who advises government officials. “These are the wrong groups to legitimize.” Mr. Emerson and others have also objected to the political appointments of several American Muslims, including Rashad Hussain.

In February, the president chose Mr. Hussain, a 31-year-old White House lawyer, to become the United States’ special envoy to the Organization of the Islamic Conference. The position, a kind of ambassador at large to Muslim countries, was created by Mr. Bush. In a video address, Mr. Obama highlighted Mr. Hussain’s status as a “close and trusted member of my White House staff” and “a hafiz,” a person who has memorized the Koran.

Within days of the announcement, news reports surfaced about comments Mr. Hussain had made on a panel in 2004, while he was a student at Yale Law School, in which he referred to several domestic terrorism prosecutions as “politically motivated.” Among the cases he criticized was that of Sami Al-Arian, a former computer-science professor in Florida who pleaded guilty to aiding members of a Palestinian terrorist group.

At first, the White House said Mr. Hussain did not recall making the comments, which had been removed from the Web version of a 2004 article published by a small Washington magazine. When Politico obtained a recording of the panel, Mr. Hussain acknowledged criticizing the prosecutions but said he believed the magazine quoted him inaccurately,

prompting him to ask its editor to remove the comments. On Feb. 22, The Washington Examiner ran an editorial with the headline “Obama Selects a Voice of Radical Islam.”



Steve Kagan for The New York Times
Mazen Asbahi, a lawyer and popular Muslim activist in Chicago, resigned from the campaign of Barack Obama in 2008.

Muslim leaders watched carefully as the story migrated to Fox News. They had grown accustomed to close scrutiny, many said in interviews, but were nonetheless surprised. In 2008, Mr. Hussain had co-authored a paper for the Brookings Institution arguing that the government should use the peaceful teachings of Islam to fight terrorism.

“Rashad Hussain is about as squeaky clean as you get,” said Representative Keith Ellison, a Minnesota Democrat who is Muslim. Mr. Ellison and others wondered whether the administration would buckle under the pressure and were relieved when the White House press secretary, Robert Gibbs, defended Mr. Hussain.

“The fact that the president and the administration have appointed Muslims to positions and have stood by them when they’ve been attacked is the best we can hope for,” said Ingrid Mattson, president of the Islamic Society of North America.

It was notably different during Mr. Obama’s run for office. In June 2008, volunteers of his campaign barred two Muslim women in headscarves from appearing behind Mr. Obama at a rally in Detroit, eliciting widespread criticism. The campaign promptly recruited Mazen Asbahi, a 36-year-old corporate lawyer and popular Muslim activist from Chicago, to become its liaison to Muslims and Arab-Americans.

Bloggers began researching Mr. Asbahi’s background. For a brief time in 2000, he had sat on the board of an Islamic investment fund, along with Sheikh Jamal Said, a Chicago imam who was later named as an unindicted co-conspirator in the Holy Land case. Mr. Asbahi said in an interview that he had left the board after three weeks because he wanted no association with the imam.

Shortly after his appointment to the Obama campaign, Mr. Asbahi said, a Wall Street Journal reporter began asking questions about his connection to the imam. Campaign officials became concerned that news coverage would give critics ammunition to link the imam to Mr. Obama, Mr. Asbahi recalled. On their recommendation, Mr. Asbahi agreed to resign from the campaign, he said.

He is still unsettled by the power of his detractors. “To be in the midst of this campaign of change and hope and to have it stripped away over nothing,” he said. “It hurts.”

From the moment Mr. Obama took office, he seemed eager to change the tenor of America’s relationship with Muslims worldwide. He gave his first interview to Al Arabiya, the Arabic-language television station based in Dubai. Muslims cautiously welcomed his ban on torture and his pledge to close Guantánamo within a year.

In his Cairo address, he laid out his vision for “a new beginning” with Muslims: while America would continue to fight terrorism, he said, terrorism would no longer define America’s approach to Muslims.

Back at home, Muslim and Arab-American leaders remained skeptical. But they took note when, a few weeks later, Mohamed Magid, a prominent imam from Sterling, Va., and Rami Nashashibi, a Muslim activist from Chicago, joined the president at a White-House meeting about fatherhood. Also that month, Dr. Faisal Qazi, a board member of American Muslim Health Professionals, began meeting with administration officials to discuss health care reform.

The invitations were aimed at expanding the government’s relationship with Muslims and Arab-Americans to areas beyond security, said Mr. Hussain, the White House’s special envoy. Mr. Hussain began advising the president on issues related to Islam after joining the White House counsel’s office in January 2009. He helped draft Mr. Obama’s Cairo speech and accompanied him on the trip. “The president realizes that you cannot engage one-fourth of the world’s population based on the erroneous beliefs of a fringe few,” Mr. Hussain said.

Other government offices followed the lead of the White House. In October, Commerce Secretary Gary Locke met with Arab-Americans and Muslims in Dearborn, Mich., to discuss challenges facing small-business owners. Also last fall, Farah Pandith was sworn in as the State Department’s first special representative to Muslim communities. While Ms. Pandith works mostly with Muslims abroad, she said she had also consulted with American Muslims because Mrs. Clinton believes “they can add value overseas.”

Despite this, American actions abroad — including civilian deaths from drone strikes in Pakistan and the failure to close Guantánamo — have drawn the anger of Muslims and Arab-Americans.

Even though their involvement with the administration has broadened, they remain most concerned about security-related policies. In January, when the Department of Homeland Security hosted a two-day meeting with Muslim, Arab-American, South Asian and Sikh

leaders, the group expressed concern about the emergency directive subjecting passengers from a group of Muslim countries to additional screening.

Farhana Khera, executive director of Muslim Advocates, pointed out that the policy would never have caught the attempted shoe bomber Richard Reid, who is British. “It almost sends the signal that the government is going to treat nationals of powerless countries differently from countries that are powerful,” Ms. Khera recalled saying as community leaders around the table nodded their heads.

Ms. Napolitano, who sat with the group for more than an hour, committed to meeting with them more frequently. Ms. Khera said she left feeling somewhat hopeful.

“I think our message is finally starting to get through,” she said.

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The *National Security Initiative*, a grantee of the National Security and Human Rights Campaign, and its sister organization, the National Security Network, promote progressive foreign policies that respect human rights and the rule of law. In the wake of the May 1, 2010 attempted Times Square car bombing, the National Security Network disseminated to hundreds of journalists a series of alerts, one of which, quoted at length below by James Fallows, urges resilience rather than fear in the face of terrorism. The Network also placed on the May 4, 2010 edition of MSNBC's *Countdown with Keith Olbermann* Retired Major General Paul Eaton, who defended Attorney General Eric Holder's decision to treat suspected Times Square bomber Faisal Shahzad as a criminal defendant against charges by Representative Pete King, Senators John McCain and Joseph Lieberman, and others, that he should be placed in military detention.

the Atlantic



James Fallows - James Fallows is a National Correspondent for *The Atlantic*. A 25-year veteran of the magazine and former speechwriter for Jimmy Carter, he is also an instrument-rated pilot and a onetime program designer at Microsoft.

If the TSA Were Running New York

By James Fallows - May 3 2010, 4:13 PM ET

How would it respond to this weekend's Times Square bomb threat? Well, by extrapolation from its response to the 9/11 attacks and subsequent threats, the policy would be:

- All vans or SUVs headed into Midtown Manhattan would have to stop and have their contents inspected. If any vehicle seemed for any reason to have escaped inspection, Midtown in its entirety would be evacuated;
- A whole new uniformed force -- the Times Square Security Administration, or TsSA - would be formed for this purpose;
- The restrictions would never be lifted and the TsSA would have permanent life, because the political incentives here work only one way. A politician who supports more open-ended, more thorough, more intrusive, more expensive inspections can never be proven "wrong." The absence of attacks shows that his measures have "worked"; and a new attack shows that inspections must go further still. A politician who wants to limit the inspections can never be proven "right." An absence of attacks means that nothing has gone wrong -- *yet*. Any future attack would always and forever be that politician's "fault." Given that asymmetry of risks, what public figure will ever be able to talk about paring back the TSA?

Something about airplanes and air travel heightens the emotional response to such threats (as Bruce Schneier and I discussed in a *Second Life* conversation [recently](#)). Thus the mood of fear and panic after this event seems less than after the foiled "underwear bombing" airline plot at Christmas time. But as a matter of logic, the steps above are what the TSA approach would necessitate. After all, we still feel the consequences (shoes off! no liquids!) of the failed "shoe bomber" in 2001, and there is no foreseeable reason to expect that to change.

There is one other crucial element in the Times Square case, and it can't be stressed often enough. So far we have seen a New York-style rather than a Washington-style response to the threat. And while New York is the least "American" of U.S. cities, its emotional and social response is just what America's should be. Let me explain:



The point of terrorism is not to "destroy." It is to *terrify*. And for eight and a half years now, the dominant federal government response to terrorist threats and attacks has been to magnify their harm by increasing a mood of fear and intimidation. That is the real case against the ludicrous "orange threat level" announcements we hear every three minutes at the airport. It's not just that they're pointless, uninformative, and insulting to our collective intelligence; it's that their larger effect is to make people feel frightened rather than brave.

I won't go into the arguments about whether creation of an ever-threatened public mood is deliberate, or what interests it serves. I'll just say: it works against larger American interests (as argued [here](#)), and New York in these past two days has shown the alternative. That is nothing more than: being alert, but *living your life* and not skulking around terrified. I hate to say that when people act fearful, "the terrorists win," but it's true.

After the jump, quotes from a National Security Network posting [today](#) that lays out the importance of being resilient, as New Yorkers in general are doing now. I am anything but a Gothamite in spirit. "Nice place to visit" is about as far as I'll go. But today I say: I Heart NY!

From the National Security Network "Taking on Terror" essay:

This is at least the tenth such plot on New York foiled since 9/11/2001, and the city continues to thrive. Just hours after the failed attack was discovered and the vehicle removed, Times Square was once again packed and back to business. The vendor who alerted police was among the first back at work, "out here showing my colors" at 8:30 Sunday morning. Such resiliency has "historically been one of the United States' great national strengths," says terrorism expert and President of the Center for National Policy Stephen Flynn. While resilience foils terrorists' intentions, the overreaction and fear-mongering advocated by some conservatives creates a siege mentality that works against America's interests and strengths. Today we can be proud of our police and our fellow-citizens - and we should all take a lesson from New York.

New Yorkers demonstrate resilience, refuse to give in to fear. During and after the bomb scare this weekend, New York City residents showed why awareness and resolve are the best means for defusing terrorist threats... Following the scare, New York City officials were keen not to raise fears unnecessarily by indulging in speculation about the thwarted attack.

The next morning, it was clear that New Yorkers and visitors alike would not be intimidated by the evening's drama. The Washington Post reported: "...it was a testament to the national resilience that Times Square was packed again Sunday morning, just a few hours after the vehicle was disarmed and removed. The only visible signs of the close call the night before were the scores of police officers on the scene, including the white Technical Assistance Response Unit vans surveying the hours of video surveillance recordings from the cameras that are a ubiquitous staple of New York's post-Sept. 11 life." ...

In a piece for Foreign Affairs in 2008, Steve Flynn, now President of the Center for National Policy, noted: "...A climate of fear and a sense of powerlessness caused by the threats of terrorism and

natural disasters are undermining American ideals and fueling political demagoguery. Rebuilding the resilience of American society is the way to reverse this and respond to today's challenges."

Editor of Newsweek International and Washington Post Columnist Fareed Zakaria writes that "The purpose of terrorism is to provoke an overreaction. Its real aim is not to kill the hundreds of people directly targeted but to sow fear in the rest of the population. Terrorism is an unusual military tactic in that it depends on the response of the onlookers. If we are not terrorized, then the attack didn't work." Similarly, Marc Lynch, senior fellow at CNAS and professor at George Washington University, explains that an "overreaction" to terrorism attempts plays "right into the hands of a terrorist group."

Next step in the thought experiment: after wondering what NY would look like this weekend if run by the TSA, imagining what the TSA might be like if run in the spirit of this weekend's NY.

This article is available online at: <http://www.theatlantic.com/politics/archive/2010/05/if-the-tsa-were-running-new-york/39839>.