

WORKPLACE DISCRIMINATION AGAINST MUSLIMS, ARABS, AND OTHERS SINCE SEPTEMBER 11, 2001

ROBERT D. LEE

The Pennsylvania State University, University Park

ABSTRACT

This article examines Title VII workplace discrimination in the aftermath of the September 11, 2001, disasters. There were 63 federal court cases that alleged discrimination against Muslims, Arabs, and people from selected parts of the world such as the Middle East and South Asia. Discrimination was alleged to have occurred in failing to accommodate workers' religious practices, in treating people unequally, and in allowing for the existence of hostile work environments. Some workers alleged they had been retaliated against for exercising their rights to file complaints of discrimination. The study did not find a major wave of discrimination cases and found the courts to be remarkably consistent in the application of the law.

There is no doubt that the world changed on September 11, 2001 when terrorists crashed commercial airliners into the World Trade Center in New York City, the Pentagon in Washington, D.C., and a field in Pennsylvania. Since the terrorists had come from the Middle East, an immediate concern for many was whether there would be a severe backlash against anyone in the United States who had roots in the Middle East and/or was Muslim. Would a backlash be felt in the workplace?

While the events of that single day in 2001 were extraordinarily dramatic, there were some other trends that had a bearing on the situation. Some observers perceived that the United States was experiencing a resurgence in religion and spirituality and that this trend was influencing the workplace through people "witnessing" for their faiths [1]. A second trend was the sizable growth in the Muslim population in the United States. Just as this population was expanding rapidly, the potential existed for a strong backlash against these very people.

This article examines the period following the September 11 disasters in the area of employment law. Specifically, the article examines federal court cases between January 1, 2002, and June 30, 2003, that involved Title VII of the Civil Rights Act of 1964 and people who were Muslim and/or whose national origins were from Muslim nations [2]. Since any case stemming from September 11 would not appear in the courts immediately after the disasters, an arbitrary period was chosen, beginning January 1, 2002, and ending when the research was conducted, namely June 30, 2003. Title VII protects against employment discrimination based on “race, color, religion, sex, or national origin.” It should be kept in mind that complaints of discrimination frequently take considerable time before they reach the courts, having to first wend their way through the administrative process. Therefore, many of the cases discussed here originated before September 11, 2001, and many cases that arose after September 11 have not yet reached the courts. Also, the analysis only included federal court cases and did not consider action in the state courts. With these caveats, however, the analysis here provides some insights into how religion and national origin have been affected since those terrible disasters of September 11.

It should be understood that Title VII applies to basically all employers with 15 or more employees, and, therefore, the rulings of courts can have wide scope. A decision in a case involving a state police officer can affect policies in federal and local governments and private companies as well. The following discussion integrates the discussion of cases rather than segregating them based on the type of employer.

The article has five main sections. First, the law of discrimination is briefly reviewed. Second, Islam as it relates to the workplace is discussed. Here some aspects of Islam are considered as they relate to the need for accommodation by employers. Distinguishing among Muslims, Arabs, and others is considered along with the growth of the Muslim population in the United States. The section concludes by summarizing available information on the incidence of alleged religious discrimination following the September 11 disasters. The third section examines case law pertaining to alleged discrimination against Muslims. The fourth section discusses case law involving related forms of discrimination, namely discrimination against Arabs and discrimination based on national origin (especially people from Middle Eastern nations). The fifth and last section discusses the overall findings.

A REVIEW OF THE LAW OF DISCRIMINATION

Title VII of the Civil Rights Act of 1964 is the main workhorse in employment cases involving religious and national origin discrimination for employers with 15 or more employees. The Equal Employment Opportunity Commission, which has enforcement powers, has issued extensive regulations that expand upon what is in the law.

For example, Title VII defines religion as including “all aspects of religious observance and practice.” The EEOC regulations state that religious practice includes “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views [3, § 1605.1]. Complaints must be filed within 180 days of the relevant events when filed with the EEOC or within 300 days when filed initially with a state or local human relations commission. A right-to-sue letter must be obtained showing that avenues of administrative redress have been exhausted before someone is allowed to enter the federal court system. For convenience purposes, the rest of the discussion refers to the 300-day rule.

In addition to Title VII, there are other possible legal devices for redress. State and local government workers may be able to use the Civil Rights Act of 1871, better known as Section 1983 [4]. The law permits suits against state and local officials who deny someone his or her rights. When a local government can be shown as having denied a worker his or her rights, that government can be sued as though it were a person under the law. A religious discrimination case, then, might use Section 1983 coupled with the First Amendment’s freedom of religion clause in conjunction with the Fourteenth Amendment that is used to extend coverage of the First Amendment to state and local governments. In one case, for instance, an African-American Muslim man filed suit using the race protection afforded by Title VII and the religious protection afforded by Section 1983 [5].

The First Amendment not only guarantees religious freedom but also prohibits the “establishment of religion.” This provision can present problems in government employment; workers may contend that government policy toward workers has the effect of establishing religion or prohibiting the free exercise of that religion [6].

Government workers at all levels may utilize their respective civil service or merit protection laws. Since hiring, promoting, and firing workers based on merit means making decisions based on qualifications and job performance, merit systems automatically prohibit making decisions based on religion, except in the case of hiring religious personnel, such as government chaplains.

Suits against state governments are complicated by the Eleventh Amendment, which provides that the power of the federal courts will not “extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state.” That exclusion is modified by the Fourteenth Amendment, which gives power to Congress to enforce the civil rights provisions of that amendment. The states’ immunity then may be abrogated, providing that Congress has sufficient reason to do that, such as an established pattern of discrimination by the states.

These laws just mentioned and others may come into play along with Title VII. A person might use a combination of protections under Title VII, such as religion and national origin in one suit, and another person might blend religion and age discrimination in another suit, basing the case on Title VII and the Age Discrimination in Employment Act. Other suits may involve state, or state tort

law, especially the tort of emotional distress. Collective bargaining statutes and agreements can be brought into play, since they typically include anti-discrimination clauses. The Civil Rights Act of 1870, which is better known as Section 1981, gives everyone the right to engage in contracts as “enjoyed by white citizens” [7]. Therefore, one may be able to sue saying that an employment contract involved discrimination as in the case of a medical doctor of Indian birth being allegedly terminated from his job because of his race and national origin [8]. In other words, any individual court case can be complicated by a variety of federal and state statutes, administrative regulations, state tort law, and collective bargaining agreements.

ISLAM IN THE WORKPLACE

Needs for Accommodation

Islam, as with any other religion, makes demands on its adherents, but what complicates the situation in the United States is that the work setting has been designed to conform with Christian religious beliefs and practices and not those of Islam. With Sunday being the Sabbath for Christians, most workers have few problems attending church, given the Monday through Friday workweek. Accommodations exist for the two most important holy days in Christianity, namely Easter and Christmas. Easter always occurs on a Sunday, which is a day off for most workers, and on Christmas most private businesses and government offices are closed. To be sure, there are still problems for Christians and others in the workplace, such as issues arising over the wearing of religious symbols—crosses in the case of Christians and stars of David in the case of Jews. Rastafarians encounter problems in their religious requirement for wearing dreadlocks [9].

Islam is a comprehensive religion that is based on the *Holy Quran (Koran)* [10]. The religion follows the teachings of Mohammad. Here we are concerned primarily with how Islam relates to the work situation and not the detailed aspects of the religion. The Council on American-Islamic Relations publishes *An Employer's Guide to Islamic Religious Practices* as a means of helping employers appreciate the religion and why its followers may ask for accommodations at work [11].

Dress

Muslim men are expected to wear skullcaps known as “kufi,” and women wear headwraps known as “geles” or “hijab.” In addition, depending on specific beliefs and practices, men may need to be unshaven (wear beards), and women may be expected to wear veils or “niqab.” Such dress requirements can easily conflict with employers’ dress codes.

Food

“Halal” refers to permitted food and drink, while “haram” refers to unlawful products [12]. This area is complex, with some food products being treated as “mushbooh” or suspect. In general, meat may be eaten if properly slaughtered in the name of Allah (God), with the major exception of swine or pork. Alcohol and intoxicants are prohibited. These restrictions can cause problems when workers are expected to attend functions where pork and alcohol are served. Additionally, workers in restaurants may object to working around these products.

Worship

Muslims pray five times daily and may need accommodation in the workplace to meet this religious requirement. Prayer on Friday afternoon is especially important, and issues can arise when Muslim workers request time off for these prayers. Ramadan is a month-long annual practice of fasting during the daytime as a means of cleansing the body; Muslims worship and engage in contemplation throughout the month. The fasting, however, can result in workers feeling weak or ill and possibly not performing at their normal productivity levels. At the end of Ramadan is the holiday of Eid, a time when Muslim workers will want to have off from their jobs. In addition, every Muslim should make a one-time pilgrimage or “hajj” to Mecca, Saudi Arabia. Requests for time off for a hajj can lead to employment problems.

Muslims are expected to give witness to their religion, a practice that is followed by many Christians. Giving witness on the job can conflict with employers’ policies, especially governments, since they are expected to observe a separation between church and state.

There is considerable variation among Muslims as to how closely they follow their religion. Numerous sects exist within Islam. African-American Muslims, who have converted to the religion, are often noticeably different from those born into the religion and from those born in other parts of the world [13].

Islam and September 11, 2001

The aftermath of the September 11 tragedies affected Muslims in numerous ways, with employment being just one. According to the Council on American-Islamic Relations, immediately after the September 11, 2001, terrorist attacks, there were 1,717 incidents involving Muslims. Hate messages and harassment were the most prevalent (40%) followed by violence (18%) and false arrest and intimidation by authorities (13%). Workplace discrimination accounted for about one out of ten of the complaints.

Muslims have been intimidated by the ways in which the war on terrorism is being fought. The U.S. Department of Justice (DOJ), armed with the U.S.A. Patriot Act of 2001, uses its Federal Bureau of Investigation to fight terrorism

[15]. Indeed, the FBI considers protecting the nation from terrorist attack as its first priority, a priority that probably most Americans would support. However, protecting civil rights is only the FBI's fifth priority [16]. In the zeal to fight terrorism, investigators have sometimes detained Muslims for the slightest of reasons, have engaged in profiling of airline passengers in order to identify Muslims and Arabs, have closed some Muslim charities that may or may not have been supporting terrorist activities, have raided Muslim homes and businesses, and more generally have contributed to an atmosphere of fear among law-abiding Muslims. On the other hand, the fear of Muslim terrorists is fueled by such incidents as an Army Muslim chaplain allegedly having improper contacts with Muslim detainees at the Guantanamo Base prison camp [17].

At the same time, there have been governmental efforts to protect the rights of Muslims and others, particularly those with Middle Eastern roots. The DOJ's Civil Rights Division, which is a distinctly different arm from the FBI, has a Working Group Initiative to Combat Post-9/11 Discriminatory Backlash [18]. That unit and the department's Office of the Inspector General have been critical of how the FBI has conducted its antiterrorist activities, including its detention of Muslims [19]. The Equal Employment Opportunity Commission (EEOC) also has been concerned with backlashes against Muslims and Arabs. Shortly after the terrorist tragedies, EEOC issued a statement on the "Workplace Rights of Muslims, Arabs, South Asians, and Sikhs" [20].

It is clear that the aftermath of the disasters has had varied negative impacts on Muslims, Arabs, and others. One report suggests that there is a hidden toll, namely that Muslim men have turned to domestic violence [21]. The extent of this violence is unknown. Wife beatings among the Muslim community often go unreported, especially since there are few shelters in the country devoted to the needs of battered Muslim women.

Finding the right balance between fighting terrorism and protecting the civil rights of citizens and resident aliens has been difficult. Forces exist for cutting back on law enforcement officers' powers, an effort that is criticized as trying to shackle government's ability to identify terrorists and stop them from inflicting more disasters [22]. Other forces exist for broadening the powers of law enforcement beyond what already exists, a change that some fear would result in a police state.

Distinguishing Among Muslims, Arabs, and Others

Confusion almost certainly exists among a large segment of the U.S. population in distinguishing among Muslims, Arabs, and others. Not all Muslims are Arab, and not all Arabs are Muslim. As Table 1 indicates, the largest concentration of Muslims in the world is in Indonesia and not the Middle East. Next in size are India, Pakistan, and Bangladesh, which are the key countries of South Asia. India, which is a predominantly Hindu nation, has one of the world's largest

Table 1. Nations with the Largest
Muslim Populations, 2003
(in millions)

Nation	Muslim population
Indonesia	194.0
India	149.6
Pakistan	144.6
Bangladesh	129.5
Turkey	71.1
Egypt	67.8
Nigeria	67.0
Iran	65.9
China	38.1
Ethiopia	35.4
Algeria	31.4
Morocco	30.1

Source: Muslim population worldwide:
<http://www.islamicpopulation.com>.

concentrations of Muslims. These countries are followed by Nigeria, an African country. It is only after these nations that Middle East countries appear on the list—Turkey, Iran, and Egypt (and some would not classify Turkey as Middle Eastern).

Race and skin color are not distinguishing factors. Muslims from Indonesia and the Middle East tend to be brown-skinned, but the U.S. Census Bureau considers Arabs to be “white.” Nigerians and African-Americans, on the other hand, are considered “black” [23].

Sikhs and Muslims are sometimes mistaken for one another, but they are distinctly different, with the roots of Sikhism possibly stemming from both Islam and Hinduism [24]. A key characteristic of Sikhs that has bearing on the workplace is the men’s wearing of turbans. Employers sometimes object to such garb, and Sikhs are often exposed to such intolerant remarks as being called “rag-heads” or “diaper-heads.”

Not all Middle Easterners are Arabs, and not all darker-skinned people are Muslims. Iranians, for example, are generally not considered to be Arabs. A majority of the people in India are brown-skinned but are Hindu rather than Muslim.

The bottom line is that bigots often are not very “discriminating.” They tend to lump together Muslims, Arabs, Sikhs, Middle Easterners, and South Asians. People may experience discrimination because of their looks and presumed national origin rather than their religion. This blending of religion, race, and national origin means that court cases often claim multiple forms of discrimination.

The Muslim Population in the United States

The number of Muslims residing in the United States is unknown. Commonly accepted estimates vary from as little 4 million to as many as 10 million, with the figure of 6 million often used [25, 26]. One recent study estimated that the adult U.S. Muslim population could be as low as 1.1 million [27]. A common presumption is that the rapidly growing Muslim population will surpass that of Jews, perhaps by the year 2010 [25].

Table 2 shows estimates for the U.S. Muslim population. About 25% of U.S. Muslims are Middle Eastern Arabs, about 25% are South Asians, and about 25% are African Americans. Another 10% are Middle Easterners who are not Arabs. Another way of looking at these numbers is that three out of four Muslims in the United States are immigrants.

Religious Discrimination Post-September 11, 2001

In the 12 months following the September 11 disasters, the Equal Employment Opportunity Commission received 654 charges of employment discrimination relating to September 11. The people in this category included Muslims, Arabs, Afghani, Middle Easterners, and South Asians. Of this number, 449 cases were

Table 2. United States Muslim Population by World Regions, 2000

Region	Percent
Middle East (Arab)	26.2
South Asia	24.7
African American	23.8
Other	11.6
Middle East (not Arab)	10.3
East Asia	6.4

Source: Zoby International, survey commissioned by the American Muslim Council, 2000, as quoted in [25].

resolved, with 95 receiving a “merit” resolution, meaning that the individuals won their claim of discrimination. In the same time, an additional 706 charges were filed that specifically pertained to Muslim discrimination. (EEOC did not report the outcome of these cases.) All national-origin discrimination charges filed with EEOC rose 13% between 2001 and 2002 (8,025 in 2001 and 9,046 in 2002), and all religious discrimination charges rose 21% (2,127 in 2001 and 2,572 in 2002 [28]).

Table 3 shows there were 63 federal court cases involving Title VII claims by Muslims, Arabs, and related people for January 1, 2001, through July 30, 2003. In a few instances, both a federal district court and a court of appeals reviewed a specific case, and each court action is recorded in the table. Religion was the first search factor in compiling the table, so that if a case involved alleged discrimination against a Muslim worker, the case appeared in that category, even though the case might also have included national-origin discrimination.

The largest category consisted of suits claiming religious discrimination filed by Muslims (31 cases). There were four other religious cases filed by Sikhs, for a total of 35 of the 63 cases, or 56%. There were only two cases in which the plaintiffs alleged discrimination based on their being Arabs as distinguished from being Muslim or being discriminated against because of their national origin, such as being an Arab from Iran.

The remaining listings in Table 3 pertain to national origin discrimination. Of the 63 cases, 28 were based on national origin (44%). For most countries, only one or two cases were decided. India was a noted exception, with six cases or 10% of all of the cases. The higher number of cases involving Indians most likely reflects the larger population of this group in the United States compared with the other groups studied [29].

RELIGIOUS DISCRIMINATION CASE LAW

Several general observations can be made about the lawsuits involving Muslims and Title VII that were decided by the federal courts from January 1, 2002, through June 30, 2003. First, almost all of the cases were of an individual nature, in which one person claimed discriminatory treatment. An exception was a case in which an Islamic Society representing personnel in the New York City Fire Department alleged a “longstanding pattern” of discrimination. The case was procedural and did not address the substance of the matter [30].

The 63 cases involved a wide range of plaintiffs, from common laborers to people with advanced-degrees, such as physicians and college professors. The cases involved both citizens and resident aliens and both private sector and public sector employers. Although most of the cases involved people who had been born into the Muslim religion, some involved African-American converts. Issues sometimes arose when a person had been working without experiencing any problems, but then converted to Islam and asked for religious accommodation [31, 32].

Table 3. Title VII Employment Discrimination Federal Court Cases based on Religion (Muslim), Race (Arab), and Selected National Origin, January 1, 2002 through June 30, 2003

Type of case ^a	Number of Cases
Religion—Muslim	
District Courts	20
Circuit Courts	11
Religion—Sikh	4
Race—Arab	2
National origin—Middle East	
Afghanistan	0
Egypt	2
Iran	
District Courts	1
Circuit Courts	2
Iraq	2
Jordan	0
Kuwait	
District Courts	1
Circuit Courts	1
Lebanon	2
Qatar	0
Saudi Arabia	0
Syria	0
Turkey	0
United Arab Emirates	0
Yemen	0
National origin—South Asia	
Bangladesh	
District Courts	1
Circuit Courts	1
India	6
Pakistan	0
Sri Lanka	1
National origin—Indonesia	0
National origin—Nigeria	
District Courts	3
Circuit Courts	3
TOTAL	63

^aDistrict court cases unless otherwise indicated.

Most of the cases were based on motions for summary judgment. In such proceedings, the respondent, namely the employer being accused of discrimination, maintains that there are no material issues of fact and that the plaintiff cannot possibly win. The employer, then, asks for the court to dismiss the case. The courts typically granted summary judgment. Only on occasion were plaintiffs successful or even partially successful.

Plaintiffs sometimes lost because the treatment they had received was warranted and not discriminatory, as in dismissal cases, when workers claimed they were fired for religious reasons when in fact they failed to meet job requirements. For example, one doctor lost staff privileges at a hospital because of the “negative outcome” of a patient, not because of his religion [33]. A district court found that a police officer had been properly dismissed and not because of his Muslim faith [32, at 6-7]. The officer had been arrested for domestic violence and had been served a protection-from-abuse order, and the city’s policy was to prohibit any employee from carrying a gun who had such an order against him. In cases such as these, one might question whether the plaintiffs were playing the “religion card” as a cover for their wrongful behavior.

Some plaintiffs lost because of timing or procedural problems. Some cases were dismissed when workers failed to exhaust their administrative remedies through the EEOC or the state human relations commission [34]. Others failed because they were not filed within 300 days of the alleged event(s). That matter is discussed later.

Five topics were prominent in the cases involving discrimination against Muslims: 1) religious accommodation, 2) disparate treatment, 3) hostile work environment, 4) the continuing violation theory, and 5) retaliation.

Religious Accommodation

As noted above, Muslim employees may ask for accommodations to observe the requirements of their religion [35, 36]. Title VII requires reasonable accommodation “to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” Employers and labor unions must provide accommodation. President Clinton in 1997 issued guidelines on religious accommodation in federal jobs [37].

The General Framework

The Basic Principle—De Minimis

The Supreme Court has issued several rulings that have bearing on such situations, beginning with *Trans World Airlines v. Hardison* (1977) [38]. The Court ruled that the airline did not have to accommodate a worker’s religious belief that he have Saturdays off from work because it was his Sabbath. The Court said that would exceed “*de minimis* cost” and would constitute “undue hardship.”

This *de minimis* ruling has protected employers and served as a roadblock for employees seeking their preferred form of accommodations.

The Court in 1986 reviewed a school teacher's request for accommodation with his Worldwide Church of God requirement that he observe six specified holy days that conflicted with his school district's school calendar. In *Ansonia Board of Education v. Philbrook*, the Court held that the law only requires reasonable accommodation and not any particular form of accommodation [40].

The Equal Employment Opportunity Commission has issued regulations on reasonable accommodation based on the Supreme Court's decisions and those of other courts [3]. The regulations specify that undue hardship is not demonstrated by an employer saying that accommodating one employee's request could lead to many other employee's making requests. The EEOC reserves the right to determine what is the threshold for *de minimis* cost as provided in the *TVA* case [4].

Accommodation for Fundamental Aspects of Religion

While the *de minimis* approach is standard, the Court expects accommodation when fundamental aspects of religion are involved. In 1981, in *Thomas v. Review Board of the Indiana Employment Security Division* (1981) [39], the Supreme Court dealt with the situation of a Jehovah's Witness refusing to work in a foundry that produced armaments, since his faith opposed warfare and anything supporting it. Thomas had been working in a division of the company that had made sheet metal, but when that division was closed, his only option was to work in a division producing turrets or other related armaments. When the company refused to accede to his request that he be laid off, he quit, but then filed for unemployment benefits. The Court ruled in his behalf and against the state. Denying him benefits, said the Court, violated his free exercise of religion. The Court said that providing him unemployment benefits would not violate the Constitutional protection against the establishment of a religion by government. The Court did not rely on the *de minimis* standard from the *TVA* case.

In 1990, the Supreme Court dealt with the controversy of government workers being fired from their jobs and denied unemployment benefits because of their use of the hallucinogen, peyote, as part of their sacramental practices related to the Native American Church. In *Employment Division, Department of Human Resources of Oregon v. Smith*, the Court ruled that Oregon could ban the use of peyote without violating the freedom of religion guaranteed by the First Amendment [41]. The Court found acceptable the dismissal of workers because of their drug use and the state denying them unemployment benefits; the workers were employed at a drug rehabilitation facility.

Recent Case Law Pertaining to Muslims

In the time period for this study, there were a handful of Muslim religious-accommodation cases, most of which were at the circuit court level [42, 43]. One

public sector case involved separate accommodation issues for a Muslim and a Christian [44]. In one situation, a Muslim woman objected to her employer's requirement that she not wear her geles or headwrap; in the other situation, a Christian man who was a state police officer objected to having to work in a casino, since his faith forbade gambling. The court held that police departments could not be expected to assign officers based on religious beliefs or else Muslim officers might not work where pork is sold and perhaps no officer who was religious would work to protect prostitutes from being enslaved; the police officer's case was dismissed. However, the court found that the woman's case could proceed based on a contention of disparate treatment, namely that she was being treated differently and unfairly in comparison with other workers [44].

Three Muslim cases involved prayer and time off for religious holidays. One individual alleged his employer had failed to provide accommodation to his need to engage in congregational prayers (Jum'ah) each Friday afternoon for two hours; he lost the case due to failing to file within the 300-day time limit as noted earlier in this discussion [45]. In another case, an African-American woman claimed discrimination when she took off from work for a Muslim holiday and was denied retroactive approval for the leave [46]. The court rejected her claim, since she had not sought approval of the leave in advance of taking it [46]. In still another case, a medical doctor sued claiming he had been discriminated against because of his Muslim faith and his national origin (Pakistani) [33]. He cited several instances of alleged discrimination, including failure to accommodate his need for time off for a religious holiday [33]. The court rejected the doctor's claim on the grounds that the health-care facility had "legitimate scheduling concerns" because other Muslim doctors in the same unit also wanted three days off at the same time [33].

Religious Disparate Treatment

The fields of both religious discrimination and national origin discrimination borrow from doctrines developed regarding racial discrimination. The two key concepts are: 1) disparate treatment (workers were treated differently from others because of their race), and 2) disparate impact (on the surface employers treated the races the same but in reality did not). In an impact case, an employer might seemingly treat everyone fairly by setting a score of 70 as the minimum cut-off point on a test for hiring applicants. The impact of such a policy might be challenged as discriminatory if the result was to disproportionately screen out African-Americans or other minorities. Here, we consider how disparate treatment is used in religious-discrimination cases. Disparate impact has not been used in such cases.

Plaintiffs first must show: 1) they belong to a protected class; 2) they performed their jobs satisfactorily; 3) they "suffered an adverse employment action"; and the employer "treated similarly situated employees outside of . . . [their]

protected class more favorably” [47]. The first and second elements may be easy to show, namely that the person’s religious freedom is protected and that s/he had good performance evaluations. The third element is easy to demonstrate if a person was demoted or fired but less easy to demonstrate in other situations, such as not being selected for a job-training program. The fourth element also can be difficult to show, since one must name individuals from other religions who were treated more favorably.

If the court rules a plaintiff has met these four elements, then “burden shifting” occurs, as prescribed in the 1973 Supreme Court case of *McDonnell Douglas Corporation v. Green* [48]. The employer is required to rebut the *prima facie* case by explaining that its actions against the employee were warranted and not based on discrimination. If the employer succeeds at that step, the burden shifts back to the plaintiff, who must show that the supposed legitimate reasons were merely a pretext for discrimination.

In one case, Muslim woman worked in a supermarket’s deli salad bar area [49]. She objected to having to work around ham. She got into conflicts with employees, once threatening another employee with a deli knife. After that day she did not return to work, and her supervisor advised her that for safety concerns she was being reassigned to another area of the store. She had threatened earlier to quit and was later found working in a competitor’s store. She filed suit claiming disparate treatment, contending that she had in effect been forced to quit (constructive discharge). The court accepted her *prima facie* case but also accepted the employer’s response—that it had a legitimate reason for reassigning her and that she had simply followed through on her announced plan to quit. Then the court rejected her pretext argument, determining that she had abandoned her job and that the employer had a right to fill it with another person [49].

The issue of pretext arose in one case that allegedly hinged on the September 11 disasters [50]. A man who was Pakistani and Muslim was offered a position with a company, but before he began work, the disasters occurred and his job offer was retracted. He claimed the retraction was based on his religion and national origin, and the company’s response was that the offer was retracted because of his bad credit rating, uncovered when the company ran a background check on him after making the job offer. To be able to show the bad credit rating was only a pretext, the man demanded to see the company’s records on hiring its workers. When the company rejected this demand, he was able to obtain a court order to see the records. That was as far as this case went during the period of study [50].

The cases that came before the courts involved most aspects of the employment process—from job interviewing through termination. One Muslim worker, who was hired but eventually fired, claimed that having to wait two to three hours for a job interview was a sign of disparate treatment [51]. The court rejected that argument. In another case, a Muslim woman worked in a Neiman Marcus department store selling fragrances [52]. She was an independent contractor,

working for perfume companies, but claimed discrimination in not being hired as a permanent worker by the store. Her claim was unsuccessful. A city Muslim police officer claimed disparate treatment based on being required to report daily in uniform although he was on plain-clothes duty [32]. He also alleged that his sergeant had said he would not assign two Muslims to work together and then did so. The officer, however, lost his case on grounds that he was not fit for duty. He was the person mentioned earlier, who was prohibited from carrying a weapon [32].

A Muslim man from Bosnia claimed discrimination in the duties he was assigned, his hours worked, and the wages he received [53]. He claimed that he had been assigned to shaping loaves of bread, which was the “most onerous task in the department.” He said his hours had been cut back, resulting in a loss of income, and that his supervisor allegedly said the company had “special rules’ for people from former Eastern Bloc nations.” The court granted summary judgment to the company, since the worker could not present a solid *prima facie* case [53]. One is left wondering whether the worker was subjected to discrimination but lost simply for lack of proof.

As another example, a Muslim man from Pakistan, aged 55, filed a discrimination suit based on religion, national origin, and age against a restaurant chain [54]. He had been terminated during his job’s training period. The court granted summary judgment, holding that he had not shown a *prima facie* case of disparate treatment. He had not shown he was performing at an acceptable level. Instead, he had failed a cooking test three times and did not show that others who had failed the test had been kept on the job [54].

The outcome of two cases involving termination hinged on who was responsible for the termination. In one instance, the person responsible for firing an employee could not be shown to have known the plaintiff was Muslim and, therefore, could not have fired the employee because of his religion [32]. In the second case, the plaintiff also failed, because of the “same actor theory” [33, 55]. The person who had fired the Muslim man was the person who originally hired him. The court ruled that it would be illogical for someone bent on discriminating against Muslims to hire them at all. In a third termination case, the plaintiff lost because the company had fewer than the 15 U.S. employees required for coverage by the Act [56].

Religious Hostile Work Environment

The second main form of religious discrimination is that of hostile work environment. While the disparate-treatment doctrine relies on race discrimination law, the latter relies on sexual harassment law. The contention is that the work situation became unbearable due to discriminatory remarks and other matters. Workers often contend that their situations became so unbearable that they were forced to quit or were constructively discharged.

One case summed up the five elements that the plaintiff must show to establish her *prima facie* case of a hostile work environment:

- 1) she suffered intentional discrimination because of her religion or national origin; 2) the discrimination was pervasive and regular; 3) it detrimentally affected her; 4) it would have detrimentally affected a reasonable person of the same protected class in her position; and 5) there is a basis for vicarious liability [49, at 23].

Some of the elements require explanation [57]. The person must point to specific instances of discrimination. “Pervasive and regular” means that a person could not base a discrimination claim on a single event. Some courts have used the term “frequency and severity” to suggest the same concept. The plaintiff must show some harm. If a Muslim woman was told jokes about Muslims, she could hardly take offense if she responded with similar jokes herself. The fourth element requires plaintiffs to show that they are not being overly sensitive and that others would have had the same negative reaction to the work environment. The last element holds the employer responsible. If the employer was unaware of a hostile environment and had no way of knowing about it, the employer may not be liable. Questions arise over whether the worker complained to her supervisor about the environment and whether the supervisor took prompt and adequate action to correct the situation [49].

The court cases revealed a wide assortment of situations. One court found a woman had endured “consistent remarks concerning . . . [her] sex as a female, her religion as a Muslim, and her national origin as an Iranian” [58]. One man cited in his situation one instance after another of negative comments made about his Muslim faith and his black skin (Sudan). After September 11, the worker was told “cops with lights flashing and sirens are coming” after you and you “better run” [59]. Several comments made to this man are much too offensive to include here. In another situation, a Muslim man from Turkey lost his hostile environment case, although he could show his “fellow teachers teased him in the lunchroom about his food” and the students called him “turkey.” The court ruled this did not meet the test of “frequency and severity” [60]. The court particularly discounted the students’ remarks, since the students were adjudicated youth in a residential facility. As another example of failure to prove a hostile environment, a woman claimed that after workers became aware she was Muslim, “they started dealing with her badly, stopped giving her instructions, and treated her in a humiliating manner” [49, at 16]. The court dismissed these remarks as nothing but “vague allegations” [49].

The cases suggest that the courts are unable to deal with subtle as opposed to open bigotry [61]. In both disparate-treatment situations and hostile-environment situations, bigotry may exist, but the plaintiffs are unable to demonstrate that to the satisfaction of the courts. For example, a worker might be treated professionally but less than cordially due to his Muslim faith in comparison with non-Muslim

workers. Therefore, it should be kept in mind that the courts can never resolve all injustices in this area.

Religious Discrimination and the Continuing Violation Theory

A plaintiff must file for redress, as noted earlier, within 300 days of the alleged discriminatory events. This is true in disparate treatment and hostile environment cases. Problems arise in that the events may have occurred over a period of time, extending prior to the 300-day limitation.

During the study period, the Supreme Court dealt with whether the continuing-violation theory may be used, namely whether acts outside of the approved time period may be used to document that discrimination has occurred. In *National Railroad Passenger Corporation (Amtrak) v. Morgan* (2002), an African-American man claimed race discrimination as prohibited by Title VII [62]. The Court ruled that the continuing-violation theory may be used in hostile environment situations but not disparate treatment. It determined that disparate treatment consists of specific events that can be separated from one another; therefore, in making a case for disparate treatment, the plaintiff must separate out pre-300-day events from those that fall within the time period. On the other hand, hostile environment may be thought of as a continuing situation, and that hostile conduct cannot be discretely singled out as occurring only on given days [62].

Of the cases studied, there were three Muslim cases that involved the continuing violation theory. In one case, a Muslim woman was unable to assert discrimination in hiring since the alleged acts occurred prior to the 300-day limit [63]. In the case of the police officer with a protection-from-abuse order against him, the taking of his firearm from him was outside of the 300-day limit and could not be used as an alleged act of discrimination [32]. In the third case, a Pakistani-born Muslim man complained of a hostile environment in 1999 and reported events that had allegedly occurred back to 1996. The court accepted the continuing violation doctrine in his case, because the events alleged for 1999 were sufficiently documented [64].

Religious Discrimination and Retaliation

An irony of the law is that an employer might not be found liable for discrimination based on disparate treatment or hostile environment, but then is still found liable because of retaliation. Employees are protected when they file complaints against their employers. If an employer takes action against an employee and that action can be construed as stemming from the employee's complaint, the employer is liable for retaliation [65]. The Equal Employment Opportunity Commission publishes a *Compliance Manual*, which includes a chapter on retaliation [66]. In 2002, Congress Passed the NoFEAR Act, which strengthens protections against retaliation in federal employment [67].

Just as with other legal doctrines, the courts have devised elements for establishing a *prima facie* case of retaliation. The person must prove

- 1) she engaged in a protected activity; 2) this exercise of protected rights was known to defendant; 3) defendant thereafter took adverse employment action against the plaintiff, or the plaintiff was subjected to severe or pervasive retaliatory harassment by a supervisor; and there 4) was a causal connection between the protected activity and the adverse employment action or harassment [31, at 15].

In Gibson (quoted above), the employer won summary judgment on the claims of disparate treatment and hostile environment based on the plaintiff's being a Muslim, but lost on the motion for dismissing the retaliation charge [31].

The retaliation claim can sometimes aid a worker regarding the 300-day limitation. If the worker files a complaint but has missed the 300-day limitation, the worker may still be able to win by amending the complaint if the employer takes retaliatory action. The initial complaint might be found to be time-barred, but the retaliation complaint will be timely [68]. Sometimes retaliation becomes the main focus of a case [69].

THE CASE LAW OF RELATED FORMS OF DISCRIMINATION

Arab Discrimination

Only two cases were identified in the category of Arab discrimination as distinguished from discrimination based on religion and national origin [70]. Arab discrimination typically falls into the category of race, since people are often singled out for discrimination because of their skin color. In one case, a U.S. citizen of Arab descent alleged he had been subjected to a hostile environment that had led to his eventual quitting (constructive discharge) [71]. Using the continuing violation theory, he cited instances of discrimination dating back to 1989. On various occasions, he allegedly had been called "scum Arab" and told to "go back where [you] came from" [71, at 5-6]. The court, denying summary judgment for the employer, allowed the case to go forward with the understanding that the plaintiff would need to document the frequency of the abusive language that he had endured [71].

Another case, one of the few cases in this study directly related to September 11, involved alleged disparate treatment and hostile work environment that supposedly stemmed from a reaction to the disasters [72]. A telemarketer of Arab descent was terminated after failing to meet his sales quota. The worker's supervisor allegedly had told him to speak less Arabic and avoid being around his Arabic-speaking friends. The supervisor's explanation was that he seemingly only spoke English when trying to make telephone sales and that he needed to improve his English pronunciation. The court accepted the worker's *prima facie* case of

discrimination but rejected his argument that his weak sales record was only a pretext for his being fired. The court said that even though the company had not terminated a couple of non-Arab workers who had failed to meet their sales quotas, the plaintiff had failed to show this action was because of race [72].

National-Origin Discrimination

The Equal Employment Opportunity Commission broadly defines “national origin discrimination.” “People are protected from discrimination based on their physical, cultural or linguistic characteristics” and for their participation in or association with groups and organizations that are perceived as related to national origin, such as schools, mosques, and the like” [73, § 1606.1].

The case law involving national origin encompasses concepts similar to those pertaining to religion, but there are some differences. Both religious and national origin cases use the concepts of disparate treatment and hostile work environment, but national origin includes an additional concept, namely disparate impact. As was noted above, disparate impact entails treating everyone seemingly the same but having the effect of favoring some types of people over other types, as in the hiring of workers. EEOC regulations explicitly include the impact approach to discrimination [74]. Although disparate impact can be used in national origin cases, the concept was not used in those identified in the study period for the selected nations (see Table 3).

As with religious discrimination, those claiming national origin discrimination must present a *prima facie* case. In a case involving a Lebanese male nurse, the court rejected the *prima facie* case on the grounds that the worker had not met the requirements of his job; he had “threatened, intimidated, and harmed” a patient [75]. A worker from India lost his case because he was unable to show that his employer favored people who were not in the worker’s class [47, 76].

Hostile environment cases entailed an assortment of national-origin slurs. A worker from Lebanon celebrated his new American citizenship by inviting his superiors to lunch. At that event, one supervisor allegedly told him to “abandon his foreign ways and become an American” [77, at 1167]. A woman’s supervisor called her an “Indian bitch” [78]. A fellow worker allegedly made hostile comments against a Bangladeshi worker [79]. He said “I don’t like camel jockeys” and “Why don’t you go back to your country, I hate Indians [sic]” [79, at 737]. An Iraqi’s supervisor allegedly called him a “towel head” and a “rug head” [80, at 1872]. Sometimes national origin blended into religion, such as when a supervisor supposedly told an Indian worker, “All Indians worship idols” and asked whether he worshiped “monkey head gods and elephant head gods” [81, at 14020]. A worker from Egypt contended that workers had plotted against him because of his national origin by making unfounded accusations of sexually harassing them; he was unsuccessful [82]. The outcomes of these cases varied in the extent to which the plaintiffs were able to meet the “pervasive and regular” standard.

The vicarious liability of employers was at stake in some cases. In one case, the issue hinged on when a supervisor is a supervisor [47]. In another case, a jury found a person of Egyptian origin had been subject to racial discrimination, but the court then needed to decide that the employer was vicariously liable for the discrimination [83].

Proving that an employer's stated reason for taking an adverse action was actually a pretext for national-origin discrimination was a difficult task to achieve. In the case of a worker from Iran, he had been granted an interview for a promotion but lost the job to someone else; the second time around, he was not granted an interview and lost to another person [84]. He was unable to show 1) that the employer's reason was false *and* 2) that the real reason was national-origin discrimination. In the case, the person who won the job had superior credentials, and the plaintiff was unable to provide evidence of the employer's intent to discriminate against him because of his Iranian background [84].

Retaliation was at stake in some of the cases [85]. For example, a woman who was originally from India claimed adverse impact and retaliation [86]. She said she had been terminated because she had filed a complaint against her employer. The court held that she had failed to present a *prima facie* case, because other employees who had not filed complaints were terminated along with her [86].

DISCUSSION AND CONCLUSION

The world changed for everyone on September 11, 2001, including in the United States those who are Muslim, Arab, or come from certain parts of the world, especially the Middle East, South Asia, and the countries of Nigeria and Indonesia. This article has examined federal court cases involving alleged workplace discrimination in the period following the attacks in New York, Washington, and Pennsylvania. Only Title VII of the Civil Rights Act was examined here, but numerous other legal provisions are available at both the federal and state levels for litigants to use.

Four types of cases emerged over allegations of religious discrimination: 1) failure to accommodate; 2) disparate treatment; 3) hostile work environment; and 4) retaliation.

The plaintiffs were from all walks of life and allegedly experienced discrimination in a wide assortment of workplace activity. There were common laborers and physicians who sued. A majority of the plaintiffs were men, but there were several women as well.

In most of the cases, employers were successful in having the courts drop the charges against them, namely that the courts grant summary judgment [87]. A handful of reasons commonly explain why plaintiffs lost. In making their *prima facie* cases, they sometimes were unable to show they had been performing their work at acceptable levels or they were unable to show that they had been treated differently (unfairly) in comparison with others not in their class, such as

non-Muslims. If they were successful at the *prima facie* stage, they tended to be unsuccessful in refuting their employers' responses as being only pretextual. Plaintiffs had difficulty proving retaliation.

This study is perhaps more important for what it did not find than for what it did find. There was no huge wave of anti-Muslim cases following September 11. There were only 63 cases altogether, which seems rather small in comparison to the millions of Muslims, Arabs, and others who reside in the United States. It was thought that Muslim and Christian "witnessing" might come into conflict, but there was not one case of this type.

The study did not find any distinguishable pattern among the types of employers, which included a variety of private companies, such as a major airline, a major department store chain, a telecommunications giant, a small software company, and the like. Suits involving all levels of government were part of the study, including one case of alleged national-origin discrimination against the U.S. Justice Department, which has responsibility for enforcing the nation's laws. The First Amendment protection of religious freedom and protection against the establishment of religion were not major issues in the cases involving government employment.

Legal studies often find conflicts among courts over the interpretation of laws, but that did not happen here. The courts were consistent across-the-board in applying the law, whether a case dealt with discrimination against a Muslim or was based on national origin, such as a person being from India or Iraq. There were no issues of whether citizens had rights that differed from those of noncitizens; all were treated the same under the law. The courts did not hand down contradictory decisions that might call for review by the Supreme Court or corrective action by Congress.

ENDNOTES

1. M. Conlin, Religion in the Workplace: The Growing Presence of Spirituality in Corporate America, *Businessweek* (November 1, 1999), No. 3653, pp. 150-154, 156, 158.
2. Civil Rights Act, P.L. 88-352 (1964).
3. Equal Employment Opportunity Commission, *Guidelines on Discrimination Because of Religion*, 29 C.F.R.
4. Civil Rights Act, 42 U.S.C. § 1983 (1871).
5. *Mustafa v. State of Nebraska Department of Correctional Services*, 196 F. Supp. 2d 945 (D.Neb. 2002).
6. R. D. White, Jr. and J. D. Jeter, Separating Church and State or Guaranteeing Religious Expression? *Review of Public Personnel Administration*, 22(4), pp. 257-275, 2002.
7. Civil Rights Act, 42 U.S.C. § 1981 (1870).
8. *Jindal v. University Transplant Associates*, 2002 U.S. Dist. LEXIS 12416 (S.D.Ind. 2002).

9. *Booth v. Maryland*, 207 F. Supp. 394 (D.Md. 2002); *Wallace v. Manhattan East Suite Hotels and Southgate Tower Hotel*, 2002 U.S. Dist. LEXIS 2620 (S.D.N.Y. 2002). See Rastafarian.Net: <http://www.rastafarian.net>, accessed August 2003.
10. *A Brief Illustrated Guide to Understanding Islam*, available in print and online at <http://www.islam-guide.com>
11. Council on American-Islamic Relations, *An Employer's Guide to Islamic Religious Practices*, Washington, D.C.: CAIR, 1997. See CAIR Web site: <http://www.cair-net.org>, accessed August 2003.
12. Halal Foundation, *A Guide to Halal Food Selection*, <http://uh.edu/campus/msa/articles/halal.html>, accessed August 2003.
13. D. Pipes and K. Duran, *Muslim Immigrants in the United States*, Washington, D.C.: Center for Immigration Studies, 2002, <http://www.cis.org>, accessed August 2003.
14. CAIR, *The Status of Muslim Civil Rights in the United States*, Washington, D.C.: Council on American-Islamic Relations, 2002.
15. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act), P.L. 107-56 (2001).
16. U.S. Bureau of Federal Investigation, *FBI Priorities*, <http://www.fbi.gov/priorities/priorities.htm>, accessed August 2003.
17. Matt Kelley, Probe into Breaches at Guantanamo Expands, Associated Press, September 24, 2003.
18. Civil Rights Division, Civil Rights Division National Origin Working Group Initiative to Combat Post-9/11 Discriminatory Backlash, <http://www.usdoj.gov/crt/nordwg.html>, accessed August 2003.
19. Office of the Inspector General, U.S. Department of Justice, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, <http://www.usdoj.gov/oig/special/03-06/index.htm>, accessed August 2003; Office of the Inspector General, U.S. Department of Justice, *Report to Congress on Implementation of Section 1001 of the USA Patriot Act*, <http://www.usdoj.gov/oig/special/03-07/index.htm>, accessed August 2003; A. Ramasastry, A Flawed Report Card: How DOJ Mishandled the Post-September 11 Detention Process, Find Law (August 1, 2003), <http://writ.findlaw.com/ramasastry/20030801.html>.
20. U.S. Equal Employment Opportunity Commission, *Questions and Answers about the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, 2002, <http://www.eeoc.gov/facts/backlash-employee.html>, accessed August 2003.
21. S. Childress, 9/11's Hidden Toll, *Newsweek* (August 4, 2003), p. 37.
22. S. Taylor, Jr., UnPATRIOTic, *Government Executive*, <http://www.govexec.com> (August 4, 2003).
23. U.S. Census Bureau, *Overview of Race and Hispanic Origin*, Washington, D.C.: U.S. Department of Commerce, 2001.
24. Alternative Religions, *Sikhism: History, Beliefs, Practices*, <http://www.religioustolerance.org/sikhism.htm>, accessed August 2003; CanTeach, *The Sikh Turban and the Five K's*, <http://www.canteach.ca/elementarysikhism8.html>, accessed August 2003.

25. U.S. Department of State, *Fact Sheet: Islam in the United States*, Washington, D.C.: U.S. Department of State, 2001.
26. S. Musheer, *Muslim Population Statistics*, Institute of Islamic Information and Education, undated, <http://www.iiie.net/Intl/PopStats.html>, accessed August 2003.
27. B. A. Kosmin and E. Mayer, *Profile of the U.S. Muslim Population*, New York: Graduate Center, City University of New York, 2001, p. 4.
28. U.S. Equal Employment Opportunity Commission, *Muslim/Arab Employment Discrimination Charges Since 9/11*, Washington, D.C.: EEOC, 2002; U.S. Equal Employment Opportunity Commission, *National Origin Charge Data by Issue—Receipts*, Washington, D.C.: EEOC, 2002.
29. The Census Bureau reported that in 2000, the immigrant Indian population stood at 42,000, compared with only 7,200 for Bangladesh and 14,500 for Pakistan. Other comparable figures were 8,500 Iranians, 4,500 Egyptians, and 7,900 Nigerians. U.S. Census Bureau, *Statistical Abstract of the United States, 2002*, U.S. Government Printing Office, Washington, D.C., 2001, p. population 11.
30. *Islamic Society of Fire Department Personnel v. City of New York*, 205 F.Supp. 2d 75 (E.D.N.Y.), 2002.
31. *Gibson v. The Finish Line*, 2003 U.S. Dist. LEXIS 6942 (W.D.Ky. 2003).
32. *Morrison v. Philadelphia Housing Authority*, 2002 U.S. Dist. LEXIS 6272 (E.D.Pa. 2002).
33. *Ahmad v. Nassau Health Care Corporation*, 234 F.Supp. 2d 185, 189 (E.D.N.Y. 2002).
34. *Legard v. England*, 240 F.Supp. 2d 538 (E.D.Va. 2002).
35. See H. M. Findley, E. Ingram, and G. Amsler, Religious Accommodation Principles for Employers, *Journal of Individual Employment Rights*, 9(3), pp. 211-225, 2000-2001.
36. M. A. Spognardi and S. L. Ketay, In the Lion's Den: Religious Accommodation and Harassment in the Workplace, *Employee Relations Law Journal*, 25(4), pp. 7-27, Spring 2000.
37. President William J. Clinton, *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*, 1997, <http://clinton4.nara.gov/textonly/WH/New/html/19970819-3275.html>, accessed August 2003.
38. *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977).
39. *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981).
40. *Ansonia Board of Education v. Philbrook*, 479 U.S. 60, 1986.
41. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).
42. U.S. Equal Employment Opportunity Commission, Religious Accommodation without Undue Hardship, 29 C.F.R. § 1605.2.
43. For many years, attempts have been made to overturn the *TVA de minimis* ruling by passing the proposed Workplace Religious Freedom Act. In 2003 Senators Santorum (Republican, Penna.) and Kerry (Democrat, Mass.) introduced S.893 (2003).
44. *Endres v. Indiana State Police; Holmes v. Marion County Office of Family and Children*, 203 U.S. App. LEXIS 13027 (7th Cir. 2003).
45. *Elmenayer v. ABF Freight System*, 318 F. 3d 130 (2nd Cir. 2003).
46. *Sabir v. Thompson*, 2002 U.S. App. LEXIS 5245 (4th Cir. 2002).
47. *Sultan v. American NTN Bearing*, 2002 U.S. Dist. LEXIS 6444 (N.D.Ill. 2002), 12.

48. *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973).
49. *Amira Hussein v. Genuardi's Family Markets*, 2002 U.S. Dist. LEXIS 430 (E.D.Pa. 2002).
50. *Khan v. Sanofi-Synthelabo*, 2002 U.S. Dist. LEXIS 23161 (S.D.N.Y. 2002).
51. *Elries v. Denny's*, 1579 F.Supp. 2d 590 (D.Md. 2002).
52. *Zinalizadeh v. Neiman Marcus*, 2002 U.S. Dist. LEXIS 16707 (N.D.Calif 2002).
53. *Basic v. Eatzi's Texas Holding Corporation*, 2003 U.S. Dist. LEXIS 305 (S.D.N.Y. 2003).
54. *Khan v. Popeyes of Maryland*, 179 F.Supp. 2d 548 (D.Md. 2002).
55. *Grady v. Affiliated Central*, 130 F. 3d 553 (2nd Cir. 1997), cert. denied, 525 U.S. 936 (1998).
56. *Mousa v. Lauda Air Luftfahrt*, 258 F.Supp. 2d 1329 (S.D.Fla. 2003).
57. R. D. Lee, Jr. and P. S. Greenlaw, Employer Liability for Employee Sexual Harassment: A Judicial Policy-Making Study, *Public Administration Review*, 60(2), pp. 123-133, March/April 2000.
58. *Arbabi v. Fred Meyers*, 205 F. Supp. 2d 462, 465 (D.Md. 2002).
59. *Hammad v. Bamardier Learject*, 192 F.Supp. 2d 1222, 1233 (D.Kan. 2002).
60. *Kosereis v. State of Rhode Island, Department for Children, Youth and Families*, 2003 U.S. App. LEXIS 11640, 4 (1st Cir. 2003).
61. *Mukhtar v. California State University, Hayward*, 299 F. 3d 1053 (9th Cir 2002).
62. *National Railroad Passenger Corporation (Amtrak) v. Morgan*, 536 U.S. 101 (2002).
63. *Raad v. Fairbanks North Star Borough*, 323 F. 3d 1185 (9th Cir. 2003).
64. *Sheikh Hussain v. Long Island Railroad Company*, 2002 U.S. Dist. LEXIS 17807 (S.D.N.Y. 2002).
65. Civil Rights Act, 42 U.S.C. § 2000e (1964).
66. U.S. Equal Employment Opportunity Commission, *EEOC Compliance Manual* (1998), <http://www.eeoc.gov/docs/retal.html>, accessed August 2003.
67. Federal Employee Anti-Discrimination and Retaliation (NoFEAR) Act, P.L. 107-174 (2002).
68. See *Hall v. City of New York*, 2002 U.S. Dist. LEXIS (S.D.N.Y. 2002).
69. *Ray v. Trans State Airlines*, 2002 U.S. Dist. LEXIS 22658 (E.D.Mo. 2002).
70. In 1987, the Supreme Court ruled that discrimination based on ancestry or ethnic characteristic, such as being Arab, can be considered a form of racial discrimination: *Saint Francis College v. Al-Khazraji*, 481 U.S. 604 (1987).
71. *Nader v. Brunalli Construction*, 2002 U.S. Dist. LEXIS 7310, 5-6 (D.Conn. 2002).
72. *Agha v. Rational Software Corporation*, 252 F.Supp. 2d 1074 (D.Ore. 2003).
73. U.S. Equal Employment Opportunity Commission, Definition of National Origin Discrimination, 29 C.F.R. § 1606.1.
74. U.S. Equal Employment Opportunity Commission, Scope of Title VII Protection, 29 C.F.R. § 1606.2.
75. *Diab v. Illinois Department of Human Services*, 2003 U.S. Dist. LEXIS 1648, 4 (N.D.Ill. 2003).
76. Also see the case of a Nigerian worker, *Ayodeji v. Bank of America*, 2003 U.S. Dist. LEXIS 9295 (N.D.Tex. 2003).
77. *Raie v. City of Philadelphia*, 2003 U.S. Dist. LEXIS 11267 (E.D.Pa. 2003).
78. *Gupta v. City of Norwalk*, 221 F.Supp. 2d 282 (D.Conn. 2002).
79. *Karim v. Staples*, 210 F.Supp. 2d 737 (D.Md. 2002).

80. *Hadad v. American Airlines*, 2003 U.S. Dist. LEXIS 1872 (N.D.Tex. 2003).
81. *Wahi v. Northern Trust Corporation*, 2002 U.S. Dist. LEXIS 14020 (N.D.Ill. 2002).
82. *Hanna v. Infotech Contract Services*, 2003 U.S. Dist. LEXIS 7056 (D.Conn. 2003).
83. *El-Hakem v. BJY*, 2003 U.S. Dist. LEXIS 8143 (D.Ore. 2003).
84. *Samadi v. Ohio Bureau of Employment Services*, 48 Fed. Appx. 573 (6th Cir 2002).
85. *Habeebuddin v. City of Chicago*, 2003 U.S. Dist. LEXIS 5076 (E.D.Ill. 2003).
86. *Rawat v. Metropolitan Life Insurance*, 2003 U.S. Dist. LEXIS 5158 (N.D.Ill. 2003).
87. A precise tally of wins and losses is impossible, since some rulings were split. In some cases, the courts dismissed some charges but let others go forward. Some cases were not definitive, in that further rulings on the cases by the courts were expected as the procedures continued.

Direct reprint requests to:

Robert D. Lee
4 Turkestanskaya Street
c/o "Halgaro Pochtamt"
Attn: Robert Lee
Uzbekistan, 7000115 Tasshkent
e-mail: rdluzb@hotmail.com