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Dawinder S. Sidhu on Hate Crimes, Terrorism, and Sikhs

By Benjamin Wittes

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Dawinder S. Sidhu of the University of New Mexico School of Law writes in with the following comments on the fallout from the shooting at the Sikh Temple at Oak Creek, Wisconsin. It responds, in part, to this piece by my friend Naunihal Singh, which I wrote about here:

The Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights recently held a hearing on domestic terrorism and hate crimes, in large part as a response to the August shooting at a Sikh Temple in Oak Creek, Wisconsin. The hearing served to reinvigorate conversations on the legal and social issues stemming from the shooting. As a Sikh-American law professor who teaches and writes in the area of national security law, and who has researched extensively the rights and experiences of Sikh-Americans, I offer the following thoughts in an attempt to enrich and contribute to those now enlivened conversations.

Perhaps the most relevant legal question arising from the shooting is whether it constitutes a “hate crime” or “terrorism,” or both. In speaking at a memorial service for the victims of the shooting, Attorney General Eric Holder told mourners that “what happened here” was “an act of terrorism” and “an act of hatred.” I suspect that, given the nature of the occasion in which Mr. Holder was speaking, this statement may be the product of a generous attempt to provide comfort and assurance to an aggrieved audience and stung community, rather than a legal conclusion.

Indeed, it seems to me that it cannot be said with certainty that the incident qualifies as either a hate crime or terrorism. Federal hate crimes statutes generally require that a victim be selected “because of” a protected trait, such as race or religion, and federal terrorism statutes generally require that the act be done to influence some agenda, such as a political position.

It is true that the shooter, Wade Michael Page, was an avowed white supremacist and had invited members to be active. Accordingly, there may be a sense that Page acted because of racial or religious hostility towards his victims and in an effort to advance his supremacist platform. His general viewpoints may provide some measure of circumstantial evidence of motive, but they do not automatically convert his actions, however violent, into bias- or ideologically-motivated conduct. More is

needed to reliably hold that Page committed this particular act specifically because of the victims' race or religion or specifically because of an interest in furthering an agenda.

Uncertainty clouds, if not precludes, that final determination from being made. There are many possible reasons why Page did what he did, which include, but are not limited to: Page sought to kill people he thought were Muslims; he may have shot the Sikhs because they were a non-white "other"; he may have been harming the victims specifically because they were Sikh; Page may have sought simply to kill someone--- anyone---regardless of their background or characteristics; or, he could have been mentally unstable to the extent that he did not know what he was doing. Witnesses state that Page did not utter a word as he began shooting and did not respond to pleas from a victim during the shooting. Accordingly, it cannot be definitively stated which of these possibilities---or perhaps which combination of these possibilities--- accounts for why Page selected the victims. Page's motive is unknown. As the Oak Creek police chief admitted, "I don't know that we'll ever know, because when he died [from a self-inflicted gunshot wound], that died with him what his motive was or what he was thinking." Also terminated, it seems, is any firm conclusion that the incident is a hate crime or act of terrorism. Indeed, speaking at the hearing, a Department of Homeland Security official acknowledged that the Oak Creek shooting "was carried out by an individual with a history of involvement in the white supremacist extremist movement, although his motives remain unknown." In short, Mr. Holder's generous assessment may not, ultimately, be codified as an actual legal conclusion.

A central issue that warrants discussion is the charge by some Sikhs that the media and the political establishment has paid insufficient attention to the Oak Creek shooting, and specifically that such attention has been less than other incidents, such as the mass shooting at a movie theatre in Aurora, Colorado. In a widely-circulated essay published by *The New Yorker*, one Sikh wrote that, "The media has treated the shootings in Oak Creek very differently from those that happened just two weeks earlier in Aurora" and that, "The tragic events in the Milwaukee suburb were also treated differently by political élites, many fewer of whom issued statements on the matter." As to the President in particular, the disappointment seems to be that the President Obama did not visit Oak Creek, though he did visit Aurora, Colorado; further, President Obama did not visit Oak Creek, though his predecessor, George W. Bush, visited a mosque mere days after 9/11.

I take issue with this charge for several reasons. First, it is premised on the notion that the tragedy was entitled to coverage as an initial or ongoing matter, or entitled to a certain requisite level of coverage. Coverage of the shooting was not, and should not be seen, as a given. Indeed, tragedies in which multiple American lives were taken did not receive nearly the amount of media or public attention that the Sikh temple incident did. As an example, a week after the Oak Creek shooting, six U.S. soldiers were killed in Afghanistan in a twenty-four hour period. News of the deaths of these soldiers did not make the front pages of major newspapers or headlines of cable news stations for multiple days, did not provoke numerous statements or visits by leaders to Oak Creek, and did not lead to various officials

attending vigils and services---all of which occurred with respect to the Oak Creek shooting.

Second, the coverage charge reflects a lack of a first-order understanding for why Oak Creek did, in fact, amass the media and public attention it did. Several factors may have contributed to such interest: an absence of other news that may have otherwise dominated or competed for coverage; the fact that the shooting happened in a place of worship, when our society generally reveres religious practice and the sacred space in which such practice occurs; and third, the fact that the shooting happened shortly after the Aurora, Colorado, shooting, which was still fresh in the hearts and minds of the people.

Third, the charge does not indicate an appreciation for the significant immediate media coverage the shooting received. CNN, perhaps most notably, dedicated considerable airtime to the incident, treating it as a top story for multiple days. Its aftermath, such as family reactions, inquiries into Page's background, and the funeral service, was also covered. For two days each, the New York Times and Washington Post discussed the shooting on the front page of their respective papers. Indeed, a leading Sikh-American advocacy organization is honoring CNN and Comcast for their coverage.

The coverage deserves appreciation, as does the contents of that coverage. For the first time since the September 11, 2001 attacks, major media outlets began to meaningfully address Sikhism and Sikhs in America---and not in the context of a discussion of post-9/11 discrimination, in which Sikhs generally were subsumed with other groups or incidents, but rather as the sole subject of the news stories. As part of that focused coverage, these outlets explained, for example, the basic tenets of Sikhism, the historical origins of the faith, Sikh migration and contributions to the United States, and even how to properly pronounce the word "Sikh."

Further, President Obama ordered that U.S. flags be lowered in remembrance of the victims, First Lady Michele Obama spent time in Wisconsin with the victims, and Mr. Holder spoke at the Oak Creek memorial service. Countless federal, state, and local officials attended candlelight vigils and services across the country.

Fourth, and relatedly, the salient question is not whether Sikhs, in the wake of Oak Creek, receive the same response as others. Gestures, such as a presidential visit to Oak Creek, while perhaps important in symbolic terms, overlook the significant outpouring of support that Sikhs already have received following Oak Creek. As a Sikh in Pennsylvania expressed to a local reporter, "The whole of America stood with us, the people, the media, the politicians... There are no words to thank them." Rather than offer thanks for the support received, some other Sikhs are criticizing that support as not enough.

My refusal to join this criticism stems from my baseline---after 9/11 and prior to Oak Creek, knowledge of Sikhs in the United States was extremely limited. Oak Creek led to a rise in understanding of Sikhism, Sikh identity, and the ways in which Sikhs have contributed to and enriched the American experience. My assessment of the sufficiency of the governmental and press attention focus on the significant

improvements in Sikh awareness, instead of some comparative or relative scoreboard or checklist regarding what was done in other instances. Under this metric, the coverage warrants appreciation and gratitude.

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