

Anti-Arab and Anti-Muslim Sentiment amongst Potential Jurors: Underlying Psychological Constructs and Tools for Identification¹

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Confronting bias amongst venire members is something that all trial consultants and trial attorneys have had to do. While there has been a vast literature dedicated to racial bias held by participants in the legal system in general, and in relation to capital cases in particular, most of that research has been focused on bias against African American and/or Hispanic individuals. This paper will summarize some emerging data concerning prejudice against Arab and/or Muslim individuals in our society, and provide some tools for how to identify and deal with these issues at trial.

Polls Demonstrating Bias and Prejudice

Bias and prejudice against individuals who are (or even who are perceived to be) Arab, Middle Eastern, or Muslim has been a reality in this country for some years, and these views persist today, despite the distance in time since the tragedies of September 11, 2001. A recent Gallup poll reveals many Americans admit to holding negative views about people of the Muslim faith, with 39% saying they have at least some feelings of prejudice against Muslims (Saad, 2006). Less than half of those polled (49%) believe that Muslims living in the U.S. are loyal to the United States and 34% believe that U.S. Muslims are sympathetic to Al-Qaeda. In addition, substantial minorities perceive Muslims as being overly committed to their religious beliefs, less than respectful of other religions and disrespectful towards women (Saad, 2006). Nearly 4 in 10 Americans support stricter security measures for Muslims as compared to other U.S. citizens, including requiring U.S. Muslims to carry special ID (39%), and to undergo differential security checks before being allowed to board airplanes in the U.S. (41%) (Saad, 2006).

People who do not personally know someone of the Muslim faith hold even more extreme negative views than those who have such an acquaintance. For instance, 31% of those who do not know a Muslim person would not want a Muslim as a neighbor, compared to just 10% of those who do know someone of the Muslim religion. Amongst poll respondents who did not know anyone who was Muslim, 38% said they would be nervous if a Muslim man was on the same flight as them (Saad, 2006). Age also plays a factor in attitudes towards Muslims, with those over 65 holding the most negative views (Saad, 2006).

Another Gallup poll found that 37% of the American public holds unfavorable opinions towards Muslim countries and that a majority of Americans (82%) believe that people in Muslim countries hold negative opinions of the United States (Newport, 2006). There is also a perception that Muslim or Islamic societies are simply not concerned about getting along with the Western world. Poll participants were asked an open-ended question about what Muslim or

¹ Special thanks to Professor Donald Ernst for providing the author with a copy of the Anti-Muslim Prejudice Scale.

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Islamic societies could do to improve relations with Westerners. Fifteen-percent of responses referred to controlling or stopping “extremists/terrorism,” and 12% involved suggesting that these cultures “accept our way of doing things” (Newport, 2006).

A Pew Research Center poll conducted in September 2007 revealed that most Americans (58%) say they know little or nothing about Islamic practices, and yet 70% say that their own religion is “very different” from Islam (Pew Research Center, 2007). Respondents were also asked to give single-word descriptions of the Muslim religion. Thirty percent used negative words, with the most frequently cited negative word being “fanatic” with “radical” and “terror” mentioned nearly as often (Pew Research Center, 2007).

Empirical Research Demonstrating Bias and Prejudice

In attempting to understand the reasons behind Anti-Arab or Anti-Muslim sentiment, researchers have examined the variables and processes associated with prejudice and bias against other groups. Shortly after September 11, 2001, Oswald (2005) conducted an online survey designed to gauge Anti-Arab reactions. Dr. Oswald hypothesized that several underlying mechanisms and/or belief structures would be associated with Anti-Arab sentiment: perceptions of threat, self-categorization, belief in a just world, and social dominance orientation.

When events or situations are threatening to our sense of individual and/or group security the result can be a stronger sense of in-group loyalty and increased hostility towards members of the out-group (Oswald, 2005). The events of 9/11 created both real and symbolic threats to American’s sense of security and way of life. Following 9/11 the media and politicians perpetuated a strong sense of the fight against terrorism as being about “us vs. them”. Categorizing oneself as “us” and those of Arab decent or the Muslim religion as “them” is a likely consequence of this world-view. Categorizing based on group membership is associated with derogation of out-group members, depersonalization, and over emphasis on in-group similarity and out-group differences (Tajfel, 1981; Tajfel & Turner 1986).

Individuals who hold a “belief in a just world” think that people get what they deserve and deserve what they get (Lerner, 1980). Belief in a just world has been associated with authoritarianism and racial/ethnic prejudice (Rubin & Peplau, 1975, support for the death penalty (Butler & Moran, 2007), and blaming victims of sexual assault (Weir & Wrightsman, 1990). Oswald (2005) suggests that the events of 9/11 likely violated individual’s belief in a just world, as so many innocent people lost their lives. Those with a strong belief in a just-world might react by thinking that bias and even violence against Arabs would be justified responses. Social dominance theory suggests that people who have a high social dominance orientation support inequality between groups and favor social systems where there are clear social hierarchies (Sidanius, Pratto, & Mitchell, 1994). Beliefs about subordinate groups are used to justify and perpetuate the existence of inter-group inequalities. Perhaps not surprisingly, social dominance orientation has been associated with racism and sexism (Pratto, Sidanius, Stallworth, & Malle, 1994a), support for the death penalty, and military action (Pratto et al., 1994a).

Dr. Oswald (2005) collected data from 201 respondents December 11, 2001 through February 28, 2002. Participants were asked to indicate their agreement/disagreement with statements designed to measure prejudicial reactions,³ stereotypical reactions,⁴ and discrimination⁵ against Arab individuals. Dr. Oswald also included The Social Distance Scale (Crandall, 1991) which assesses participants' willingness to interact with Arab individuals. A measure of self-categorization as an American⁶ was also part of the study, and participants' perceptions of threat were assessed.⁷ Shortened versions of the Just World Scale and Social Dominance Orientation Scale were also included in the survey.⁸ Dr. Oswald also collected demographic information from survey participants.

Self-categorization as an American was the most effective predictor of anti-Arab sentiment. The self-categorization questions were significantly associated with endorsement of items measuring prejudice, stereotypes, discrimination and social distance. Agreement with the statement "It is clear which countries are enemies of the United States" was the strongest predictor of prejudice and a reluctance to interact with Arab individuals. From the threat scale, the items that were significant predictors of prejudice included "The United States is vulnerable to future attacks," "It is likely that terrorists will attempt future attacks against the United States," "I feel personally at risk for being a victim of a terrorist attack," and "The September 11th terrorist attacks have changed how Americans live their lives." The last two items were also predictive of stereotypes, discrimination and/or social distance.

Both just-world beliefs and social dominance orientation were associated with prejudice, stereotypes, and social distance, while social dominance (but not belief in a just world) predicted discrimination. The best predictor of anti-Arab attitudes was evidenced by an interaction between self-categorization and perceived threats. Respondents who were highly identified as American and who perceived greater threat levels against America exhibited the most bias against Arab individuals. In addition to the attitudinal scales, demographic variables were also

³ "Arab people make me feel uncomfortable," "I feel angry when I see an Arab person," and "When I see an Arab person I am suspicious of his or her behavior."

⁴ "Arabs have little appreciation for democratic values," "People of Muslim religion tend to be fanatical" and "All Arabs are essentially alike."

⁵ "Arab-looking people should be searched more carefully before being allowed into public events," "At this time, I would ride on a plane with people who are Arab looking," "The U.S. government should require all Arab students and visitors to return to their home countries," and "Landlords should be cautious if renting to Arab-looking individuals."

⁶ "I believe that unless someone totally supports the war on terrorism, they are against the United States," "It is clear which countries are enemies of the United States," and "I am proud to be an American."

⁷ "The United States is vulnerable to future terrorist attacks," "It is likely that terrorists will attempt future attacks against the United States," "The September 11th terrorist attacks have changed how American's live their lives," "The United State's economy will suffer long-term consequences due to the terrorist attacks" and "I feel personally at risk for being a victim of a terrorist attack."

⁸ The Just World Scale items utilized included the following: "Basically the world is a just place," "By and large, people deserve what they get," "Although evil men may hold political power for a while, in the general course of history, good wins out," "In almost any business or profession, people who do their job will rise to the top," and "People who meet with misfortune have often brought it on themselves." The Social Dominance items used were: "In getting what you want, it is sometimes necessary to use force against other groups," "If certain groups stayed in their place, we would have fewer problems," "Sometimes other groups must be kept in their place," "We would have fewer problems if we treated people more equally" and "No one group should dominate in society."

somewhat predictive, with White, older, and less educated respondents demonstrating greater anti-Arab sentiment.

Common sense suggests, and research has demonstrated, that media coverage portraying certain groups in a negative light can create bias or prejudice against these groups (Persson & Musher-Eizenman, 2005). One possible mechanism behind this process is the accessibility principle, which suggests that frequent and/or repeated exposure to an idea or image makes that idea or image more readily accessible in the future (Shrum, 2002). Emotionally engaging or “vivid” media portrayals are also more salient and thus more accessible for future recollection. Persson and Musher-Eizenman hypothesized that levels of prejudice against Arabs would be higher when accessed closer in time to media coverage of a terrorist attack as compared to one year later (2005). They also proposed that higher levels of media exposure would result in greater levels of prejudice.

In order to measure prejudice, the researchers used a modified version of the Should-Would Discrepancy Questionnaire (Monteith & Voils, 1998). This scale asks respondents to indicate what they “should” do in situations involving a member of a racial group as well as what they actually “would” do in that circumstance. The original scale was designed to measure prejudice against Blacks. Persson and Musher-Eizenman repeated the scale substituting using “Arab” in place of “Black” to compare levels of prejudice against these two groups. They also added two questions concerning passengers boarding an aircraft.⁹ In addition, participants were asked to list the number of minutes they spent daily watching news on TV, listening to news on the radio, reading news online and reading the newspaper.

The first round of data collection took place about six weeks after the attacks of September 11, 2001. Comparative data was collected in August 2002. There was significantly greater prejudice against Arabs than Blacks across both the “should” and “would” scales at both time points. Additionally, those who had heavy media exposure were significantly more prejudiced overall as compared to those in the light exposure category. Another interesting aspect of this study is that participants not only indicated that they *would* be more prejudiced against Arabs at both time periods; they also believed that they *should* be more prejudiced. This suggests a feeling of justification for holding biased views towards this particular ethnic group.

Although it may be deemed somewhat more socially acceptable to exhibit bias or prejudice against Arab or Muslim individuals as compared to other racial/ethnic or religious groups, true prejudicial or stereotypical beliefs are probably much stronger than what people are willing to admit, particularly in a situation where they may be held accountable for their answers. The Implicit Association Test (IAT) was developed to measure implicit attitudes by looking at automatic associations between group members and attributes (Greenwald, McGhee, & Schwartz, 1998). This test method is valuable because it controls against participants altering their answers to be more socially acceptable.

⁹ “I should not be nervous when I see a(n) Black/Arab person boarding an airplane,” “If I saw a(n) Black/Arab person boarding an airplane, I would feel nervous about his intentions.”

Park and colleagues utilized a version of the IAT to measure and compare respondents' beliefs about Arab-Muslim individuals to beliefs about Whites and Blacks (Park, Felix, & Lee, 2007). Participants were shown Arab-Muslim male first names and White (Black) male first names in association with either pleasant or unpleasant words. Results demonstrated an implicit preference for White as opposed to Arab-Muslim names (Study 1) and Black vs. Arab-Muslim names (Study 2). Participants were also asked to give open-ended responses indicating what they knew or heard about Arab-Muslims through the media or others. The most common responses referenced terrorism and/or violence, followed by deep religiosity, discrimination against women, negative personality traits, and physical appearance. Participants who mentioned terrorism in their responses were more likely to demonstrate implicit bias against Arab-Muslims.

In a third study, Park et al. sought to manipulate exposure to materials associating Arab-Muslims with terrorism. Prior to beginning the IAT task, Study 3 participants were asked to read either an article written on September 12, 2001 (negative information), a health report on drinking water (neutral information) or an introduction to Muslim culture (positive information). Exposure to the negative information article was associated with greater levels of prejudice as measured by the IAT. Participants who read the positive article had significantly less IAT effects than those in the negative and neutral information conditions, suggesting that exposure to positive information about Arab-Muslims helped to mediate against automatic negative associations.

How Bias and Prejudice Can Impact Trial

So how do these negative views and stereotypes affect individuals of Arab decent and/or the Muslim faith who find themselves involved in the American civil or criminal justice system? Legal scholars have defined four types of pretrial prejudice: interest prejudice, specific prejudice, generic prejudice and conformity prejudice (Vidmar, 2003). Interest prejudice occurs when one has a personal interest or stake in the outcome of trial. Specific prejudice involves holding beliefs or attitudes about the case or issues involved that would prevent them from being fair or impartial. Knowledge of pretrial publicity can often result in specific prejudice. Generic prejudice relates to beliefs about certain classes or types of people, charges, allegations, lawsuits, etc, that would affect the way a potential juror would view the evidence in the case. Examples of generic prejudice include the belief that police officers are more credible than laypersons, African American's are more violent than other races, plaintiff's who sue in personal injury cases are greedy, and so on. It is generic prejudice that is most likely to be at work in cases where the defendants, parties or litigants are Arab and/or Muslim.

In terrorism trials particularly, Professor Neil Vidmar suggests a mental mechanism that goes like this: All terrorists are Muslim. The defendant is a Muslim. Therefore, the defendant must be a terrorist (Vidmar, 2003). Conformity prejudice results from perceived community pressure to vote a certain way. This is likely to occur in smaller communities, in situations where many people felt personally impacted by an event (e.g., September 11th attacks, the Oklahoma City bombing), and when there is a feeling of a "collective conscious" as to what the outcome of a trial should be. Additionally, government and media sources can encourage conformity

prejudice against terrorist suspects by stressing the need to unite in the fight against terrorism and propagating an “us vs. them” mentality (Vidmar, 2003).

In the U.S. there have been several studies linking racial prejudice against Blacks to pro-death penalty attitudes (Barkan & Cohn, 1994; Butler, 2007; Soss, Langbein, & Metelko, 2003; Young 1991; Young 2004). Recent research has also identified an association between anti-Arab views and death penalty support. Dambrun (2007) wanted to explore the “why” behind the relationship of racially prejudice views and favoring the death penalty. He examined several potential mediating variables, including authoritarianism and social dominance orientation. Ultimately, he found support for “racist punitive bias” as an explanation (Dambrun, 2007). Specifically, those who hold prejudicial views towards a minority group which are related to perceptions about that group’s criminality (i.e., group members are more violent, aggressive, likely to steal) are more inclined to support punitive measures, such as the death penalty. The relationship between these beliefs and death penalty support usurped the link between authoritarian attitudes and death penalty support, and also explained more variance than social dominance orientation (Dambrun, 2007).

Further replication of the initial findings suggested that, in particular, individuals who attribute criminal traits to a given racial or ethnic group support the death penalty *for members of that racial or ethnic group*. Dambrun’s (2007) research has marked applicability for Arab or Muslim criminal defendants. While national polls and other empirical research suggests that a sizable portion of potential jurors will hold some prejudicial views towards Arab and/or Muslim individuals, the defense will want to pay particular attention to those who’s prejudicial views include beliefs about criminality, as opposed to other more generic traits or stereotypes.

Tools to Help Identify Biased and Prejudiced Jurors

As Persson & Musher-Eizenman (2005) reported, participants not only admitted prejudicial attitudes, they also felt justified in holding such views. While this is not particularly comforting, one silver lining may be that, because people feel comfortable expressing these views and feel that their position is warranted, they may be more forthcoming in offering up their attitudes and beliefs during the jury selection process.

Following September 11, 2001 Ernst, Bornstein, and Venable (2003) set out to develop and validate a measure of explicit prejudice against Muslims. The result was a 20 item scale entitled The Anti-Muslim Prejudice Scale (AMP), which has since been cross validated (Scott, Cardell & VonWaldner, 2004) and utilized in research on attitudes towards Arab and/or Muslims (e.g., Park et al., 2007). The format of the AMP follows that of Altemeyer’s (1996) Right Wing Authoritarianism Scale, allowing for agreement or disagreement with statements on a scale of -4 to +4.¹⁰ Ernst and colleagues administered the scale to groups of college students who were predominately Christian and White. The AMP has been found to be internally consistent

¹⁰ -/+4 = very strongly disagree/agree, -/+3 = strongly disagree/agree, -/+2 = moderately disagree/agree, -/+1 = slightly disagree/agree. Respondents are instructed to circle 0 “if you feel exactly and precisely neutral about an item.”

(Cronbach's alphas .92-.94 in three samples) and to have good test retest reliability (Ernst et al, 2003). The AMP correlates with Social Dominance Orientation, described previously, as well as Right-Wing Authoritarianism. The AMP was also correlated with a previously devised shorter scale of Anti-Arab racism (Pratto, Sidanius, Stallworth, & Malle, 1994b).¹¹

Taken as a whole, the research suggests that, in addition to soliciting potential jurors' attitudes and perceptions about Muslim and/or Arab individuals, self-categorization as an American, and perceived threats of terrorism, inclusion of items measuring Social Dominance Orientation will help in distinguishing those who hold the most animosity towards an Arab or Muslim litigant or defendant. In addition, Gallup polling indicates that a mediator of potential bias or prejudice against Muslims is knowing someone of the Muslim faith (Saad, 2006).

Views about immigration may also be an indirect path to identifying bias against Arab, Middle Eastern, or Muslim individuals. Immigration is a hot button topic in the country today, with political leaders and the media taking sides in the debate over immigration reform. As a result, it is socially acceptable to voice opposition to immigration, and to express the view that American borders should be closed or at least more tightly controlled. While this view alone does not indicate racial or ethnic prejudice or bias, a closer examination of the reasons for opposing immigration can be more revealing. Concerns about "American values" and national security are probably coming from a conceptually different place than concerns about jobs and taxpayer consequences. A poll conducted by YouGov/Pollmetrix for the Economist revealed that a total of 38% of participants strongly agreed that immigration threatens traditional American values; 52% of Republicans and 40% of Independents held this position (YouGov/Pollmetrix, 2007). Over half of respondents strongly agreed that allowing immigration compromises national security. When looking just at those who identified as Republican, the percentage of strong agreement rose to 69%.

In conclusion, the reality is that bias and prejudice against people of Middle Eastern descent generally and the Muslim faith specifically is widespread and common in American society. If you are working with a civil litigant or criminal defendant who fits potential jurors' description of these categories (regardless of whether or not the litigant/defendant actually *is* Arab, Muslim, or Middle Eastern), you will be faced with bias and prejudice in the venire. Careful questioning of potential jurors is required to ascertain not only the existence but also the source and strength of these prejudicial views in order to establish challenges for cause and to intelligently exercise peremptory challenges. If you run into judicial resistance, a quick internet search produces the results of several national polls clearly demonstrating the persistence of anti-Arab, anti-Muslim attitudes amongst Americans. Citation of research contained in this article may also be persuasive to some members of the judiciary. Wherever possible, written questionnaires are preferable to open-court questioning when it comes to sensitive topics like racial/ethnic bias, but the perceived acceptability of some of these prejudicial attitudes suggests that potential jurors may in fact be more forthcoming about their views concerning Arab and Muslim individuals than less socially acceptable biases against other minority groups.

¹¹ Items from this scale include: "Most of the terrorists in the world today are Arabs," "Historically, Arabs have made important contributions to world culture" (reverse scored), "Iraqi's have little appreciation for democratic values," "People of the Muslim religion tend to be fanatical," and "Muslims value peace and love" (reverse scored).

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