




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Holy War: Juror Questionnaires for Cases with Middle Eastern, Arab, Muslim or Anyone-Who-Might-Be-One-of- the-Above Parties

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Holy War: Juror Questionnaires for Cases with Middle Eastern, Arab, Muslim or Anyone-Who-Might-Be-One-of-the-Above Parties

by **Diane Wiley**

I remember the first time it happened - we were in a pretty big city in the Midwest, federal court, well before 9-11. Some of the jurors were from outside the city. The defendant was Pakistani and there was a question from the judge (no attorney questioning allowed) about whether anyone would have any trouble being fair to someone who was Pakistani. The juror proceeded to talk about Pakistanis she had known who ran stores in another city where she had lived. I think she was actually talking about Palestinians. And I remember thinking, her problem is with Palestinians, but does it matter? I don't think it did.

In the years since 9-11 we at the National Jury Project have had numerous cases involving criminal defendants and civil and commercial parties who are Middle Eastern, Arab, Muslim or whose names and appearance cause jurors to think that they are one or all of the above. Some of them have been defendants in terrorism cases, others criminal defendants in ordinary crimes, some charged with white collar crimes. Others have been involved in civil or commercial cases which have little or nothing to do with their ethnicity. But we have found that anti-Muslim and anti-Arab prejudice is rife regardless of the case. In many of those cases we have been able to persuade the judge to use a juror questionnaire. It has often made a huge difference in our ability to identify bias and prejudice and get cause challenges.



We've found that anti-Arab/Muslim prejudice comes in a variety of forms. Some of it stems from perceptions that all Arabs and Muslims are terrorists. Some of it comes from personal experiences that jurors have had with Arabs or Muslims at work or in stores owned by Arabs or Muslims. Other jurors believe that Christianity is in a Holy War with Muslims. One juror told us he had problems with Muslims because Christianity has been at war with the Muslims for 500 years". This in

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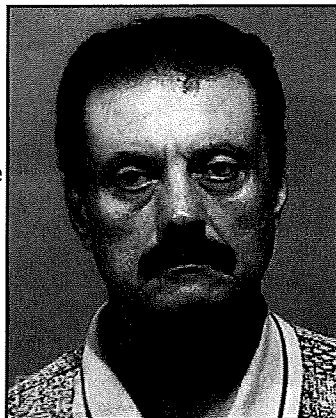
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a commercial case involving construction!

We've had clients of Arab ancestry who have said, but I'm not Muslim, I'm Christian. It's hard to explain to them that that probably won't matter in terms of prejudice. In the questionnaire you can construct a question such as, "Ms. _____ is of Arab ancestry, although she and her family are Christians. Is there any reason why you would have a problem with someone who is of Arab ancestry who is also Christian?" Believe me, there are Christian fundamentalists who either won't believe it or won't like it - and if they're in your jury pool, you better figure it out.

Of course, any jury questionnaire has to be tailored to the case and the jurisdiction. Trial consultants should do a search of local news stories and talk to the attorneys and the clients about controversial issues involving Arabs or Muslims that have come up in the community - even those going back years, because community memory can be long. Prejudice can be based on perceptions that Arabs have "taken over the old such and such neighborhood". You can ask jurors if they ever go to that part of town. In one case, there was community resentment because of misbehavior of some wealthy Arabs at local hotels. We've found jurors who are resentful that Arabs have been hired to work in certain departments at their job or that Muslims are allowed to take the time to pray - it's seen as special treatment. Often there is resentment in the inner city on the part of other people of color who feel they have been "cheated" in Arab-owned stores. In an employment case we worked on, attitudes of the Muslim plaintiff towards women subordinates was an issue. If there have been local controversies, news articles can be attached to the motion for a juror questionnaire, along with any polls about anti-Arab or anti-Muslim attitudes in general, to persuade the judge to grant the questionnaire.



There are some questions that will elicit the biases we see against anyone who is or will be perceived as being Middle Eastern and/or Muslim regardless of the case. Following are some of the questions that have worked the best in our questionnaires, many of them general, some more specific.

1. What kind of contact have you had with Muslims, Arabs, Middle Eastern immigrants or people with Arab ancestry?

2. **IF YOU ARE NOT ARAB OR MUSLIM:** Please describe any contact you have had with Arab or Muslim people:

	Past	Present
Neighborhood		
Work		
Social		
Family		

3. Have your experiences with people from the Middle East generally been:

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Michael Drake at Strange Doctrines blog has pointed his readers to Grime and Punishment [See the blog post](#)

Roland Stark has commented on Persuading with Probability [See the comment](#)

___ positive ___ negative ___ mixed

Please explain:

4. Have you or anyone you know ever had any negative experiences with Muslims, Middle Eastern immigrants or people with Arab ancestry?

___ Yes No ___

IF YES, is this:

___ Yourself ___ Spouse ___ Child ___ Family ___ Friend

Please explain:

5. There were accusations of misconduct a few years ago regarding Middle Eastern men in a local hotel. Do you remember hearing anything at all about this situation?

___ Yes No ___

IF YES, what do you remember and what were your impressions about the situation:

6. What effect do you think the influx of Muslims, Arabs and Middle Eastern immigrants has had on (the City or Area)?

7. Are there ethnic, racial or religious groups of people which you do not care to associate with?

___ Yes No ___

IF YES, which groups and why?

8. Have you ever traveled outside the United States?

___ Yes No ___

What Country?	When?	Business or Pleasure?	What Country?	When?	Business or Pleasure?

9. Have you ever known anyone from another country who worked in the U.S.

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The University of Texas at Austin Law School Advocacy Program recommends *The Jury Expert* to their law students [See the Law School press release](#)

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Tony Duncan has pointed readers of his blog to Jurors and the Internet [See the blog post](#)

Daylight Atheism blog has posted on America Hates Atheists [See the blog post](#)

and had to have a green card or permit to continue working here?

___ Yes No ___

Stephanie West Allen has blogged on A Courtroom Full of Reptiles at idealawg blog [See the blog post](#)

IF YES, please explain:

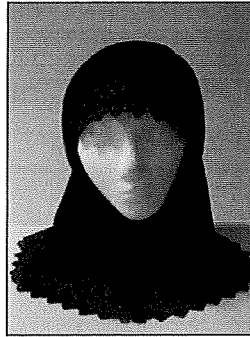
Mark Bennett has blogged on A Courtroom Full of Reptiles at Defending People blog [See the blog post](#)

10. Have you ever traveled in the Middle East?

___ Yes No ___

'Joe Attorney' has blogged on A Courtroom Full of Reptiles at Doing Justice blog [See the blog post](#)

Please explain:



Joe Markowitz has commented on A Courtroom Full of Reptiles [See the comment](#)

Rita Handrich has pointed readers of The Jury Room blog to this issue of TJE [See the blog post](#)

11. How did the events of September 11, 2001 affect your feelings about Arab and Muslim people?

John Mittelman has commented on A Courtroom Full of Reptiles [See the comment](#)

12. How significant a problem do you think prejudice against Arab or Muslim people is in _____ County today?

Victoria Ward has blogged on A Courtroom Full of Reptiles [See the blog post](#)

13. How significant a problem do you think prejudice against Arabs and Muslims is in this country today?

Stephanie West Allen has blogged on A Courtroom Full of Reptiles [See the blog post](#)

14. Were you or anyone you know affected personally by the attacks on the World Trade Center and the Pentagon?

Jason Barnes comments on A Courtroom Full of Reptiles [See the comment](#)

___ Yes No ___

Brian Patterson comments on Biggest Bully in the Room [See the comment](#)

IF YES, please explain:

Todd Schlossberg comments on A Courtroom Full of Reptiles [See the comment](#)

SCOTUS blog references Beneath the Robes & Behind Closed Doors [See the blog post](#)

15. Are you still feeling any direct or indirect effects from September 11th?

___ Yes No ___

Marjorie Fargo has commented on A Courtroom Full of Reptiles [See the comment](#)

Paul Sceptur has pointed readers of his blog, Sceptur's Law to A Courtroom Full of Reptiles [See the post](#)

Please explain:

16. Do you know anyone who is or has been involved in the war in Afghanistan or Iraq?

___ Yes No ___

Elie Mystal has referenced Beneath The Robes & Behind Closed Doors in Non Sequiturs at Above the Law Blog [See the post](#)

Montgomery Delaney has commented on A Courtroom Full of Reptiles [See the comment](#)

IF YES, please explain, included how this might affect you in a case where the defendant is of Arab ancestry:

Ken Broda-Bahm has commented on A Courtroom Full of Reptiles [See the comment](#)

17. Since the attacks on the World Trade Center and the Pentagon on September 11th, some people have negative feelings about Arabs, Muslims and people from the Middle East. Please tell us what your feelings are about Arabs, Muslims and people from the Middle East at this time:

Mark Bennett has commented on A Courtroom Full of Reptiles [See the comment](#)

Jessica Hoffman has commented on A Courtroom Full of Reptiles is a Bad Idea [See the comment](#)

18. Some people believe that Arabs and Muslims are more likely to offer or

Thaddeus Hoffmeister has blogged on Avoiding Problems During Jury Selection in the Age of Batson at Juries Blog [See the post](#)

take bribes than other racial or ethnic groups. What do you think about this?

Ken Broda-Bahm comments on A Courtroom Full of Reptiles is a Bad Idea [See the comment](#)

19. How do you feel about companies from the Middle East owning stores, hotels, and other businesses in (your state or city)?

Steve Schlicht comments on America Hates Atheists [See the comment](#)

20. Some people believe that Arab people are more likely to try to cheat in business. What do you think about this?

Stephen G. Schwarz has cited Jurors and Technology in Trial in a post at the Faraci Lange blog [See the post](#)

21. Some people believe that Arab nationals or immigrants are more likely to break the law than other racial or ethnic groups. What do you think about this?

David Shackelford has cited America Hates Atheists at the Shark Attack blog [See the blog](#)

22. Do you tend to think that Arab people are less honest than U.S. citizens are?

Groklaw cites Practical Tools for Staying Organized in Jury Selection & Voir Dire [See the post](#)

Doug Keene has blogged on Rules Don't Apply to Me at The Jury Room blog [See the post](#)

____ Yes No ____

Steven G. Pietrick has commented on From the Conference Room to the Courtroom [See the comment](#)

Please explain your feelings:



23. Some people believe that Arab men are more likely to treat women as second class citizens. What do you think about this?

John Buntin has blogged on Rules Don't Apply to Me at 13th Floor blog [See the post](#)

Razib Khan has blogged on America Hates Atheists at Gene Expression blog [See the post](#)

24. Is there anything about your religious beliefs that would make it difficult for you to fairly and impartially sit in judgment of a person of the Muslim faith?

Steven Gursten has blogged on Injured Body, Injured Mind [See the blog post](#)

Gribble the Munchkin comments on America Hates Atheists [See the comment](#)

____ Yes No ____

IF YES, please explain:

Stuart Bechman comments on America Hates Atheists [See the comment](#)

25. Have you ever contributed money to an organization that opposes immigration or opposes certain rights for immigrants or proposes changes to the immigration laws?

science + religion TODAY has blogged on America Hates Atheists [See the post](#)

Hemant Mehta has blogged on America Hates Atheists at Friendly Atheist [See the post](#)

____ Yes No ____

Stephanie West Allen blogs on Toying with Juror's Emotions at idealawg [See the post](#)

IF YES, please explain:

Marc Gray comments on America Hates Atheists [See the comment](#)

26. The defendant, Mr. _____ is a citizen of India who came to US as a student in 1995, and after graduating received a work visa and has been working here for 10 years. Some people are opposed to non-citizens working in the US, others think it is okay. What are your feelings about non-citizens working in the US?

Stephanie West Allen blogs on The Rules Don't Apply to Me at idealawg [See the post](#)

Robin Hanson has cited America Hates Atheists in his blog Overcoming Bias [See the post](#)

LawyersUSAOnline has cited The Rules Don't Apply to Me [See the link](#)

Given recent developments with the opposition to the Muslim Community Center in New York City and the threat by the pastor in Florida to burn a number of Qur'ans, I will most likely include the following questions in my next questionnaire.

Brian Patterson comments on Using Technology in Litigation [See the comment](#)

Ted Brooks comments on Using Technology In

27. Do you think that a Mosque or Muslim Community Center should be built two blocks from Ground Zero in New York City?

___ Yes No ___

Please explain your thinking about this:

28. What did you think about the controversy where a pastor in Florida was threatening to burn the Muslim Holy Book, the Qur'an or Koran?

For more information about juror questionnaires in general, including jurisdictions where they have been used, sample questionnaires and motions, see *JURYWORK: Systematic Techniques* (Krauss, Elissa, West Group, 2d Ed., 1978, updated annually).

Diane Wiley is a pioneer in the field of trial consulting, founder of the National Jury Project and President of the Midwest Office in Minneapolis. She has extensive experience and prides herself on making her work available to attorneys on cases both big and small all across the country. She has written numerous articles and chapters for legal publications and teaches at seminars. Diane's email address is dwiley@njp.com and the National Jury Project's website is www.njp.com.

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Article Comments (1)

P. Monte wrote:
Oct-21-2010

I find it disconcerting that the suggestion should be given that any religious group be singled out for special concern during voir dire. Extremism and intolerance exist on both sides of the aisle; witness, e.g., NPR's firing of Juan Williams (who happens to be African American) for the simple expression of a feeling, and its President's admonition that he work through his "Issues" with a psychiatrist (nuts). Jurors need to be taken as individuals out of respect for their rights to serve, as we ...[\[More\]](#)

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John Day has blogged at Day on Torts about Jurors & the Internet [See the blog post](#)

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Feminist Law Profs blog wants to know where the women are. [We know where](#)

Lawyers USA has written a piece featuring Katherine James and her article on Live

Communication [See the article](#)

Steven G. Pietrick has commented on Preparing for the Prep Question [See the comment](#)

David Oliver at Mass Torts: State of the Art Blog has cited 16 Simple Rules for Better Jury Selection [See the blog](#)

Scott Henson of Grits for Breakfast has cited 16 Simple Rules for Better Jury Selection [See the blog](#)

Julie Campanini has blogged on Out & Proud [See the blog post](#)

Grey Tesh sends readers of Palm Beach Criminal Lawyer Blog to see 16 Simple Rules for Better Jury Selection [See the blog post](#)

Tyler Cowen sends his readers from Marginal Revolution blog to see 16 Simple Rules for Better Jury Selection [See Tyler's blog](#)

Forensic Focus Forums has begun a discussion on Law on Display [See the forum posts](#)

Book Forum has cited Don't Poke Scalia on their Omnivore page [See the post](#)

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Louisville Courier-Journal has published on article (Taser-death verdict challenged over juror's conduct) which references our Jurors & the Internet article [See the Louisville Courier-Journal](#)

Florida Bar Journal has published an article (Reining in Juror Misconduct) citing our Jurors & the Internet article [See the Florida Bar Journal article](#)

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David Badertscher has listed our Table of Contents at his Criminal Law Library Blog [See the blog](#)

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