

## 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.

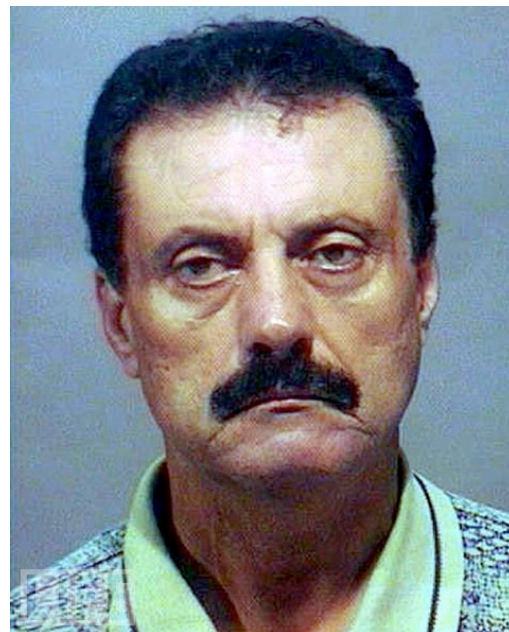


We've found that anti-Arab/Muslim prejudice comes in a variety of forms. Some of it stems from perceptions that all Arabs and Muslims are terrorists. Some it comes from personal experiences that jurors have had with Arabs or Muslims at work or in stores owned by Arabs or Muslims. Other jurors believe 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 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:

- 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 or 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. and had to have a green card or permit to continue working here? \_\_\_\_\_ Yes No \_\_\_\_\_

**IF YES**, please explain:



10. Have you ever traveled in the Middle East?

\_\_\_\_\_ Yes No \_\_\_\_\_

Please explain:

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

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

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

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

\_\_\_\_\_ Yes No \_\_\_\_\_

**IF YES**, please explain:

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

\_\_\_\_\_ Yes No \_\_\_\_\_

Please explain:

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

\_\_\_\_\_ Yes No \_\_\_\_\_

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

17. Since the attacks on the World Trade Center and the Pentagon on September 11<sup>th</sup>, 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:
  
18. Some people believe that Arabs and Muslims are more likely to offer or take bribes than other racial or ethnic groups. What do you think about this?
  
19. How do you feel about companies from the Middle East owning stores, hotels, and other businesses in (your state or city)?
  
20. Some people believe that Arab people are more likely to try to cheat in business. What do you think about this?
  
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?
  
22. Do you tend to think that Arab people are less honest than U.S. citizens are?  

\_\_\_\_\_ Yes No \_\_\_\_\_

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?
  
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?  

\_\_\_\_\_ Yes No \_\_\_\_\_

**IF YES,** please explain:



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?

\_\_\_\_\_ Yes No \_\_\_\_\_

**IF YES,** please explain:

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?

*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.*

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?

**Please explain** your thinking about this:

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](mailto:dwiley@njp.com) and the National Jury Project's website is [www.njp.com](http://www.njp.com).*

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## Editor's Note

As you page through this issue, you'll see content on shadow juries, managing and mentoring Millennials, a review of the iJuror application for the iPad, recommendations on family law disputes, some research on damages presentation, thoughts on communication and gender of attorney, supplemental jury questionnaire items for Arab or Muslim parties in cases, and an interview with the trial consultants involved in the civil rights retrials featured in the new movie *Neshoba*. As always, our goal is to educate and inform and cause you to think. We do that through a combination of articles and a sprinkling of original research and technical pieces aimed at helping you keep up with the latest in trial advocacy and thought. We have two departures from trial advocacy in this issue--the interview elicited by the *Neshoba* movie release and the article on *Managing and Mentoring Millennials*.

We are proud of our history with civil rights and proud of our ASTC members who have worked to bring justice (albeit delayed). We're bringing you this interview with Andy Sheldon and Beth Bonora to show that pride and to highlight the contributions of these consultants. (And to encourage you to see the movie!) The Millennial piece is a follow-up to our piece in the July issue on what we really know about the Millennial generation. There has been a tremendous debate in the online community on the work ethic of the Millennial attorney. We are publishing this review of research on the Millennials at work and offering management/mentoring tactics to firms struggling with welcoming and retaining Millennial attorneys.

Read. Comment. Enjoy. Tell your friends and colleagues about The Jury Expert! And (ta-da!) watch for our very cool and way current web redesign coming at some point during the next month!

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