

Rush to Judgment?

Public Attitudes toward Arab Muslims Accused of Terrorist Crimes

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You don't see the case for what it is. It is a political case. You heard the government's opening statement. The stuff about America not being safe anymore, all those Arab terrorists out to get it. That's what they've turned this case into, not the guilt or innocence of your client.

--William Kunstler (Precht 2003, 113)

I am not going to put off Dr. Al-Arian's grand jury appearance just to assist in what is becoming the Islamization of America.

--Gordon Kromberg (Underbakke 2007)

I am crucified because of who I am . . . an Arab, a Muslim, an outspoken advocate for Palestinian rights.

--Samir al-Arian (2003)

Prejudgment, the root word of "prejudice," involves making decisions about people without due consideration of the relevant facts (Allport 1958, 7). While such activity might be endemic to human behavior, prejudgment becomes problematic when it arises in criminal cases involving Arab Muslims accused of terrorist actions. As William Kunstler warned lawyers for a Muslim defendant in the 1993 World Trade Center bombing case and the words of a Virginia prosecutor appeared to confirm (above), prosecutors may consciously evoke fear and hostility to Arabs and Islam as trial strategy. Such prejudice may explain why persons convicted of international terrorism in the United States receive substantially longer sentences than domestic terrorists or persons convicted of similar crimes lacking a terrorist dimension (Smith and Damphousse 1996, 1998; Smith, Damphousse, Jackson and Sellers, 2002). Put simply, ethnocultural bias may raise the bar for defendants with the "wrong" set of personal traits.

In this paper, we explore the public's pre-trial assessments of the likely guilt or innocence of an Arab Muslim defendant accused of terrorist-related crimes. We draw from the real case of Sami Al-Arian, a Palestinian Muslim in the Tampa (Florida) area who was indicted by the federal government in 2003 for a variety of actions on behalf of the Palestinian Islamic Jihad. Apart from other factors that may induce prejudgment in criminal trials, did the defendant's cultural identity as an Arab and Muslim color the views of potential jurors about whether or not he had committed the crimes for which he was indicted? The question is important because the system of jury trials rests on the core assumption "that at the start of trial the jurors should have open minds and regard the accused innocent until proven guilty" (Vidmar 2006, 1).

The results of the study may seem foreordained. Al-Arian characterized his prosecution as an effort by federal authorities to incite the American people against Arabs, Muslims and Palestinians by waving the bloody shirt of 9/11 (see above). Given strong evidence that Americans frequently employ cognitive heuristics to decide where they stand on issues involving minority groups in the United States (Sears et al., Petrocik, Sniderman, Conover refs) and that Arab Muslims have routinely been demonized since 9/11 (Cainkar 2004, Arab-American Anti-Discrimination Committee 2002, Rubenstein 2004), it might seem self-evident that extra-legal forces did induce prejudgment against him. Surveys of potential jurors by expert witnesses in other terrorist cases have yielded evidence of widespread anti-Muslim and anti-Arab affect (Vidmar 2003). On the basis of a pre-trial survey conducted by the judge of the Tampa court

where the trial was held, an expert employed by the Al-Arian defense team reported that 39% of jury pool members were biased against the defendants (Vidmar 2006, 17).

Why conduct the study if the outcome is predetermined? Like many assumptions about human behavior, hypotheses about the influence of extra-legal factors in criminal cases cannot be taken for granted. In the trial that occasioned this research, the jury failed to convict Al-Arian or any of his co-defendants on a single charge contained in the 53-count superseding indictment. Similar failed prosecutions of other accused terrorists (Transactional Records Access Clearinghouse 2006) may indicate that jurors do not in fact prejudge defendants to the extent commonly assumed or that such prejudgment, lightly held in mind, cannot withstand contrary evidence offered in a court of law. It is also conceivable that juries, as collective bodies, can override the prejudices of individual jurors. Considering how many “obvious” hypotheses have been falsified by social science research, we need at least to ask whether the evidence sustains claims of systematic prejudice among potential jurors against defendants with Arab-Muslim identity.

Even if the cultural identity of defendants in terrorism cases does predispose citizens to prejudge them, does it do so above and beyond the influence of other factors known to induce prejudgment in criminal trials? Prejudgment by potential jurors is not unique to terrorism cases involving Arab-Muslim defendants. In fact, prior research has identified a number of personal traits that may encourage members of the public to reach decisions about guilt or innocence before a trial has begun. These include attitudes toward the legal system, previous encounters with criminal justice, and other traits such as gender and religiosity. By comparing the impact of the Arab-Muslim identity of the defendant with the effect of other factors known to encourage hostility to defendants, this research will help to determine if Arab-Muslim defendants in terrorist cases evoke more hostility from their ethnoreligious identity or simply because they are defendants accused of serious crimes.

The third and final reason for conducting the study involves conceptual confusion about the dependent variable. Discussion about whether terrorist suspects can get fair jury trials is informed by the assumption that widespread juror prejudgment necessarily implies a guilty verdict. Because Americans have come to dislike and fear Arabs and Muslims, it is argued, they will assume, ipso factor, that Arab-Muslim defendants are guilty as charged. However, there are two potentially independent questions that potential jurors have to ask themselves. Do I know enough to offer an opinion about whether the defendant is guilty or innocent? If the answer to that question is “yes,” the potential juror must then ask: Is this defendant guilty or innocent? While we do not mean to suggest that individuals go through precisely this cognitive process, they do face separate issues.¹ Not all potential jurors who volunteer an opinion about the case necessarily opt for a guilty verdict. This possibility necessitates two dependent variables—a measure of whether the juror has prejudged the defendant and a separate indicator about whether the respondent is partial to the defendant (that is, whether the defendant is inclined toward innocence or guilt).

The next section discusses the scholarly literature about prejudgment of defendants in criminal cases, emphasizing the role of prejudice based on cultural identity, attitudes toward crime and civil liberties, and general social attitudes and respondent traits. We subsequently

present material about the case used for analysis, the survey which provides the data and the variables used in our statistical models. That is followed by the analysis of results and a concluding section with thoughts about the significance of the findings.

The Etiology of Prejudgment

As decades of research have now made abundantly clear, humans do not approach the task of judging others with blank slates. Rather, individuals draw on their own norms, stereotypes, understandings and dispositions in appraising the behavior of others. While they undeniably employ these cognitive devices to make sense of complex situations, many people are unaware of the implicit biases that underlie their assessments. To take just one set of extralegal influences, the power of cultural norms is so pervasive that they may well seem natural—fixed, given, intrinsic—as if no alternative basis for rational decision-making were even plausible. This accounts for the tendency of some jurors and potential jurors to insist on their objectivity when they in fact harbor strong beliefs that may induce them to reach prejudgments or judge harshly certain parties to a case (Mize 1999).

Vidmar (1997, 2002, 2006) has usefully identified three types of prejudice likely to operate in most legal cases—specific prejudice, generic prejudice and conformity prejudice.² While the distinctions among these three categories are not absolute, they nonetheless enable us to organize the potential extralegal influences on prejudgment in a coherent way. We will first describe these forms of prejudice and then indicate how they are likely to operate against Arab Muslim defendants accused of terrorist crimes.

Specific prejudice “exists when the juror holds attitudes or beliefs about specific issues in the case at trial which prevent the juror from rendering a verdict with an impartial mind” (Vidmar 2002, 77). Whether true or false, jurors’ beliefs about the facts of the case may well influence them long before they hear the evidence and filter how they process new information encountered during the course of a trial. While it is unclear how much this matters in jury deliberations, greater exposure to information about a criminal case appears to stimulate prejudgment against the defendant (Constantini & King 1980-1). That is why so much attention has been given by scholars and defense attorneys to the prejudicial impact of pre-trial publicity.

Generic prejudice is distinguished from specific prejudice in that the reported facts of the case are not the direct cause of the tendency to prejudice. Rather, generic prejudice arises when jurors bring to the decision-making task their pre-conceived attitudes about groups, rendering the actual people involved in a trial into ideal-types or exemplars of the groups to which they belong. Jurors may not see defendants as individuals but rather as representatives of groups toward which they have specific affect. Instead of asking whether a particular individual committed a particular act, the juror may instead decide how likely it is that somebody from a particular group would do something illegal. The impact of such group heuristics on political decision-making has been well documented (Brady and Sniderman 1978, Sears et al. 1980) and they are likely to extend to judging criminal defendants.

The final category, conformity prejudice, arises when individuals take into account, explicitly or implicitly, the “climate of opinion” prevailing in their social environment. Drawing

on Durkheim's classic work (1996), a long train of classic social influence studies have demonstrated that people often defer to the opinions of others in their environment rather than suffer social ostracism by dissenting from collective norms (Ash 1955, Milgram 1974). If community opinion is inflamed against a defendant, potential jurors are not likely to resist popular will.

Specific, generic and conformity prejudice operate in a wide variety of legal settings. As Vidmar (2003) has noted, these forms of pretrial judgment are not unique to cases involving criminal defendants accused of terrorist actions with defendants of Muslim and/or Arab extraction. However, they may become more salient in terrorist cases with Arab-Muslim defendants. Black (1976) has argued that individuals or groups who are distant from a society's cultural, morphological, economic, political, and religious center are more likely to attract official sanctions. In the wake of the events of September 11, 2001, there is hardly any group in the US considered further from the societal center than Arabs and Muslims accused of committing or abetting acts of terrorism.

The scale and skew of information flow to which the public has been exposed have underlined the "otherness" of Arab Muslims in the United States. Terrorism, national security and related matters have dominated press coverage since 9/11 (Project for Excellence in Journalism 2006). Even the war in Iraq, ostensibly launched to counter threats from weapons of mass destruction, was subsequently framed and justified as part of the war on terrorism despite the absence of credible links between Saddam Hussein and global terrorist networks.⁴ The extensive media coverage of cases alleging terrorism, abetted by the growth of 24-hours news channels and omnipresent blogs, has heavily focused on Arabs and Muslims (Nacos and Torres-Reyna 2003). Editorial cartoons essentialized the Arab enemy by portraying Osama Bin Laden, al-Qaeda, and the Taliban as animalistic, xenophobic, and barbaric (Hart and Hassencahl 2002). Despite considerable efforts by many public officials to absolve ethnic and religious groups of collective responsibility for 9/11 and discourage guilt by association, another group of individuals has helped shape public perceptions to the contrary. Some of these "third parties," terrorism researchers who sometimes blur the lines between scholars/specialists, journalists, and publicists, present the most inflammatory material regarding terrorism and extremist Islam. According to Mueller (2005), members of this "terrorism industry" make such vivid and provocative claims in order to justify their work, sell their books and videos, command large speaker fees, and guarantee consulting contracts. Despite a history of anti-Islamic partisanship, they are routinely featured as expert consultants by the mass media and given platforms by the Department of Justice, insuring that their views about Islamic extremism as the source of terrorism gain a wide audience (Waldman 2006). A large number of potential jurors in terrorist cases have likely been exposed to information from these sources. As most Americans know very little about Islam, any pre-trial exposure to material that either overplays or underplays Islam and its connections to terrorism can have a major impact on popular thinking.

This negative affect should activate each of the forms of prejudice identified by Vidmar when Arabs and/or Muslims are accused of terrorist crimes (Pfeifer 1999). The extensive reporting on domestic Arab-Muslim extremist violence by mass media outlets and blogs has inundated audiences with the details of terrorism cases and thus probably stimulated specific prejudice. By emphasizing the role of Muslim and Arab terrorists, such coverage also has the

capacity to activate generic prejudice against people of Middle Eastern heritage who are accused of such crimes. Based on evidence that terrorist violence perpetrated by members of a distinctive outgroup both raises the level and salience of out-group derogation by the majority (Bar-Tal and Labin 2001), this increases the disposition to treat defendants as stereotypes rather than individuals. To the extent that perceived terrorist threats heighten a sense of community solidarity, a common reaction to external challenges, they provide opportunities for activating prejudicial attitudes and behavior derived from conformity prejudice (Anthony, Rosselli & Caparyan 2003).

Apart from prejudice, previous research on juries has identified other juror qualities that often encourage prejudgment and bias against defendants. These qualities of jurors may well operate against defendants accused of terrorist actions just as they do for defendants accused of other types of crimes. That is, individuals may prejudge cases involving accusations against Arab-Muslim not because of the specifics of the case or defendant traits but simply because some individuals are disposed to making prejudgments about people accused of serious crimes. Once we have controlled for these factors, the influence of the defendants' crime, religion and ethnicity may attenuate, making such cases differ from more typical prosecutions in degree but not in kind.

Among the sources of prejudgment other than prejudice, none is more clearly documented than the impact of potential jurors' *attitudes to crime, civil liberties, and the criminal justice system*. Respondents who trust the authorities, believe in harsher forms of punishment and reject "excessive" concern for the rights of the accused exhibit a propensity to prejudge defendants guilty of criminal charges (Constantini & King 1980-1, 26-7; Casper and Benedict 1993) and to support harsh punishments for convicted defendants (Ellsworth 1993). This disposition may arise from the strong relationship between prejudice and a syndrome of traits, known collectively as right-wing authoritarianism, which emphasizes submission to rightful authority and adherence to social norms (Altemeyer 1998).⁵ On the other hand, there are several populations with life histories that tend to make them skeptical of the justice system and who are therefore strong candidates to prejudge *in favor of defendants*. Given their generally poor relations with law enforcement, African Americans are prone to identify with minority defendants, a venerable finding reinforced powerfully by the O.J. Simpson murder case (Constantini & King 1980, 28-30; Brigham and Wasserman 1999). The pattern is likely to hold generally for racial and ethnic minorities who have often clashed with police and suffer disproportionately high rates of conviction and imprisonment (Spohn, Gruhl and Welch 1987, LaFree 1985). Similarly, it is plausible that people who themselves have been convicted of crimes are likely to be skeptical of the authorities and hence to favor defendants in criminal trials. Minorities and convicted felons may be just as likely as law and order advocates to prejudge defendants but to believe in their innocence rather than guilt.

A pair of additional traits may also be related to juror partiality. *Religiosity* has sometimes been associated with prejudice and intolerance (Grasmick & McGill 1994). While some of the relationship appears to be a function of measurement artifact (Sullivan, Piereson & Marcus 1982), there is evidence that religiously-active people are generally less favorable to those they regard as deviants. Going back to the classic *Authoritarian Personality* studies of the 1950s (Adorno et al. 1950, ch. 18), strong religiosity has been associated with punitiveness, a

desire for social order, and other dispositions likely to encourage hostility to criminal defendants. Of course, strong religious commitment does not invariably take this form and scholars warn of the need to recognize that individuals differ in how they are religious as much as how religious they are. Nonetheless, there is enough evidence linking religiosity with judgmentalism to warrant examining the relationship empirically. Finally, some prior research suggests that *women* are less inclined to convict defendants unless the accusations include sex crimes.

For a full understanding of how well the legal system is likely to operate in terrorist cases, we need to test the relative impact of prejudice against Arab-Muslim defendants with these other sources of prejudice and partiality. Rather than assume that prejudice and assumption of guilt are driven solely or principally by anti-Muslim/Arab prejudices on the part of jurors, we test the possibility that such partiality is largely the consequence of other dispositions that work against defendants in criminal cases regardless of their cultural identity. The case of Sami Al-Arian provides grist for this particular mill.

*United States v. Sami Al-Arian*⁶

The central criminal prosecution that we analyze grew out of a Department of Justice investigation of a private Islamic charity and a Middle East/Islamic teaching and research center at the University of South Florida (USF) in Tampa.⁷ The charity, the Islamic Committee for Palestine (also known as the Islamic Concern Project or ICP) and the academic center, the World and Islam Studies Enterprise (WISE), were both headed by Dr. Sami Al-Arian. Al-Arian, a long-time U.S. resident, was a Kuwaiti-born Palestinian Muslim and a computer scientist in the USF College of Engineering. Several USF faculty members first complained to the university's administration that Al-Arian and the WISE faculty lacked the appropriate credentials to teach about the Middle East and that the institute's curriculum materials were factually inaccurate, biased, anti-Semitic, and anti-Israel. More seriously, there was also concern that several of the principals in the program were connected to the Palestinian Islamic Jihad (PIJ), a self-styled resistance group that had been declared a foreign terrorist organization by the U.S. Department of State in 1997.

Subsequent investigations by journalist Steven Emerson and the *Tampa Tribune* documented repeated inflammatory, anti-Semitic, and anti-Israel statements by Dr. Al-Arian.⁸ He was also alleged to have commingled funds between WISE and the ICP, used and transmitted ICP funds to the PIJ, and served as a PIJ representative in the United States. At about the same time these reports circulated in the press, Al-Arian was targeted in a civil suit filed by a former federal prosecutor and the Department of Justice began its own investigation of whether Al-Arian or his associates had committed perjury or violated immigration laws. The controversy became more heated after September 11th when Dr. Al-Arian either appeared or was the focus of several installments of the *O'Reilly Factor* on FOX Cable News, an article in *Newsweek*, and other media outlets. As his profile increased, and USF received negative publicity about the matter, the University eventually fired Dr. Al-Arian in December, 2001 for bringing the institution into bad repute.⁹

The investigation of Dr. Al-Arian produced an indictment by the Department of Justice in February, 2003. Eight men were indicted on a range of charges relating to activities on behalf of

the PIJ and the four still resident in the U.S. were arrested. Attesting to the political fanfare that the case had generated, Attorney General John Ashcroft made the announcement of the indictment himself, decried the seriousness of terrorists and terrorist supporters operating with impunity on American soil and in American institutions, and essentially “threw the book” at Dr. Al-Arian and the seven other defendants (U.S. Department of Justice 2003). Rather than a focused set of few charges, the DOJ formally accused Dr. Al-Arian with over twenty offenses, many of them highly arcane.

Given the politicized nature of the indictment, as well as almost a decade of both local and national pretrial publicity, the Tampa imbroglio offers an excellent case study of the possibilities and realities of juror prejudgment.

Data and Measures

In testing potential bias by jurors, scholars have typically chosen between sample surveys and experiments. The former technique, widely employed in jury selection, offers the advantage of high external validity, a large number of cases, and credibility under the federal rules of evidence (Morgan). In studying juries, most scholars have opted for an experimental design in which test subjects are put into juror roles for mock trials. This design offers a high degree of internal validity and allows the researcher considerable latitude in introducing various stimuli. Clearly each approach has its virtues and limitations and they should be seen as complementary techniques. In this study, where the concern is with the attitudes and traits that may bias potential jurors before a trial, the survey is the appropriate tool for data collection. As we will note in presenting our conclusions, it is important to remember that the dynamics of the jury room may inhibit some of the tendencies we observe in the pre-trial jury pool. Equally important, defendants and their attorneys have little recourse once a jury has been impaneled.

To test the determinants of juror prejudgment and partiality in the Al-Arian case, we draw on surveys conducted in five localities across the southeastern United States. As part of an unsuccessful motion for a venue change for one of the Tampa defendants, the surveys were commissioned by the Federal Public Defender, Middle District of Florida, and conducted by telephone from the survey facilities of the Florida Survey Research Center (FSRC) at the University of Florida in Gainesville. Researchers employed a CATI system to both guide the interviewer and code responses electronically. The surveys were conducted between March 3 and April 20, 2005.

The universe of the study was adults 18 years of age or older who were qualified for federal jury service. Thus, the specific population for this study was all registered voters with working telephone numbers within each of five court districts: Middle District of Florida, Tampa Division; Southern District of Florida, Miami-Dade Division; Northern District of Florida, Tallahassee Division; Middle District of Florida, Jacksonville Division; and, Northern District of Georgia, Atlanta Division. Even though these divisions bear the name of a single city, they comprise larger multi-county metropolitan areas.

This survey was conducted with randomly-selected samples of registered voters in each of the five geographic areas encompassed by the court divisions listed above. The listed samples

(purchased from a commercial sampling firm) were created by randomly generating a list of people on voter registration rolls for the geographic areas specified. A total of 400 interviews were completed with potential jurors in each of the five court districts. There were five attempted callbacks for working numbers that resulted in non-completion (no answer, answering machine, busy). The response rate was 20.5% and the cooperation rate 39.5%.¹⁰

The dependent variables were drawn from responses to a question about Sami Al-Arian, unquestionably the most prominent of the Tampa defendants. The question was preceded by a screener asking if respondents had “seen, heard, or read anything about a man named Dr. Sami Al-Arian.” Respondents who did not recognize the name were then asked if they were familiar with “a professor at the University of South Florida who was involved in fund-raising for Islamic or Palestinian activist groups.” Respondents who passed the screen were then asked several questions about their familiarity with the case and eventually told by the interviewer that Al-Arian was charged by the government “with conspiracy to commit various acts of racketeering, providing material support for the benefit of terrorists, and federal crimes including conspiracy to commit murder of persons outside the United States.” Both the prefatory material and the question wording thus sensitized respondents to the nature of crimes of which the defendant was accused and, by repeating the name, cued respondents to his Arab identity.¹¹ After the preliminary script was completed, survey participants were asked whether they believed Al-Arian “was definitely guilty, probably guilty, probably not guilty, or definitely not guilty of providing material support for the benefit of terrorists.” Respondents who hesitated or expressed uncertainty were told it was all right to say they had no opinion about the defendant’s guilt or innocence.

As we argued at the outset, jurors had to ask themselves both whether they had a judgment about the defendant’s guilt and the direction of that judgment. Accordingly, we mined the question to produce two different dependent variables. The first, *prejudgment*, was a dichotomous variable coded 1 if respondents offered any opinion about al-Arian’s guilt or innocence and 0 if respondents refrained from offering an opinion. The second variable, *partiality*, assessed the direction of the opinion for those respondents who offered a prejudgment. This measure was coded Likert-style from 1 (definitely not guilty) through 4 (definitely guilty). The use of two measures reflects our belief that prejudgment and partiality are analytically distinct orientations that should not be conflated.

Table 1 (below) presents the distribution of respondents on these dependent variables. As the table shows, only about four in ten respondents in the five-city sample prejudged Al-Arian in the survey. Of these 40%, however, four of five considered him guilty. These averages disguise considerable variation between Tampa, where the alleged crimes took place, and the other four sample points. Residents of the Tampa area were nearly twice as willing to offer a verdict and ten percent more likely to opt for guilt rather than innocence. While it appears that the extent of prejudgment varied appreciably from place to place, the direction of that judgment was much more uniform.

(TABLE 1 ABOUT HERE)

We constructed predictors to tap each of Vidmar's categories of specific, general, and conformity prejudice. Specific prejudice, a consequence of exposure to information about a case, was assessed by a Likert scale on which respondents assessed their familiarity with the Al-Arian case. The self-rating was supplemented by three measures highly correlated with general political attentiveness and knowledge in previous research—age, education, and newspaper readership (refs).¹² We had several items available to measure generic prejudice against Arabs, Muslims and terrorists. This included questions about whether law enforcement agents should infiltrate Muslim civic and volunteer organizations in the United States, tap the phones of suspected terrorist supporters, and hold individuals members of “activist groups” liable for crimes committed by the organization.¹⁴ Respondents were also asked to if they characterized the defendant as a terrorist and whether they considered his public statements as anti-American.¹⁵ Conformity prejudice which results from the climate of opinion within the individual's social ambit, is usually measured by ecological indicators of community composition. These data serve as proxies for the likelihood of interaction between respondents and members of minority groups (cf. Orum 1970), in this case Arabs and Muslims who have been implicated by the mass media in terrorist activity. Although the U.S. Census does not collect data on religious affiliation, a decennial census of religious bodies collected privately by statisticians (Jones et al. 2002) enables us to produce county-level estimates of the population that is affiliated with Islam or with the Arab Christian denominations.¹⁶ We also created a county-level measure of the proportion of residents of Arab descent from U.S. Census data. The climate of opinion was further assessed by the community itself. Given the intense coverage of the Al-Arian affair by the Tampa-area media and the patterns already noted in the analysis of the dependent variables, we included a dummy for residence in the Tampa metropolitan area.

Apart from these indicators, we also required measures of juror characteristics that predict prejudgment and guilt assessments regardless of defendant traits or the nature of the criminal charges. To assess the *law and order* bias, which has sometimes been described as legal authoritarianism, we drew on five Likert-style opinion items about criminals, prosecutors, law enforcement, public defenders and such.¹⁷ We identified African Americans, Hispanics and persons who reported a conviction for a felony (% of the entire sample) as persons likely to doubt the honesty and integrity of the legal and criminal justice system based on their own or their community's experience. This left us with the general social attitudes and traits identified as correlates of prejudgment in previous research. *Religiosity* was derived from a question that asked respondents to apply to themselves one of three labels, very religious, somewhat religious, or not at all religious.¹⁸ We also included a dummy variable for gender, allowing us to determine whether women are more or less judgmental and partial in terrorist cases.

Data Analysis

The analysis is based on ordered probit equations, an approach suitable for dichotomous (prejudgment) and ordered (partiality) dependent variables. Because the same variables may influence independently whether a respondent offers an opinion (prejudges) and the direction of that opinion (partiality), we need a two-stage model using an instrumental variable to satisfy the restriction exclusion requirement. Accordingly, we estimated a two-stage ordered probit model with one equation to account for prejudgment and a second for partiality. The predicted scores on the prejudgment equation were then included as predictors in the partiality model. The model is

presented in Table 2 below. The coefficients in the first column of Table 2 indicate which factors promote prejudice while those in the second column reveal the sources of partiality once we have accounted for the variables that encourage prejudice.

(TABLE 2 ABOUT HERE)

We start by asking what factors promote prejudice of defendants. In terms of specific prejudice, the result of knowledge about the facts of the case, we found that the objective correlates of exposure to news all significantly encouraged prejudice. Older people, those with higher levels of education, and more regular newspaper readers were more likely to offer an opinion about al-Arian's guilt or innocence. However, the subjective measure of familiarity—self-reported knowledge about the case—did not in fact encourage opinionation. This would not be the first occasion when respondents have overestimated their own political interest and attentiveness. In this case, the lawyer's conventional wisdom about uninformed jurors being more open-minded appears to have a basis in fact. The more respondents exhibited the traits associated with political attentiveness and interest, the more likely they were to prejudge the defendant.

Of the five generic prejudice items tested in the first equation, three significantly encouraged prejudice. Individuals who supported police infiltration of Muslim organizations and who believed that Samir al-Arian was a terrorist and had made anti-American remarks were more likely to offer an opinion about his guilt or innocence than their opposite numbers.

The conformity prejudice hypothesis yielded mixed results in terms of prejudice. A disproportional tendency to prejudice was not evident among respondents who lived in counties with large Arab or Arab-Christian communities. On the other hand, residence in counties with large Muslim populations did inhibit prejudice. Residence in Tampa (as opposed to the other four research locales) was associated strongly with a disposition to judge the case. Whether this was a function of news reportage or perceived relevance due to physical proximity, it suggests that community opinion was much more crystallized about Al-Arian's guilt or innocence in the city where the defendants lived and were accused of planning crimes.

What of the other traits or dispositions in the model? For the most part, attitudes to the criminal justice system, whether respondents favored the prosecution or the defense, did not predict prejudice. The sole exception was a question asserting that even the worst criminals should receive mercy. As one might expect, assent was associated with a refusal to judge Al-Arian in the survey. Two of the three groups with generally negative experiences of that system were quicker to judge. Non-whites, principally African-American, were significantly more likely to reach a conclusion about Al-Arian's guilt or innocence. Persons who had been convicted of a felony were also more predisposed to render a verdict although their very small size accounted for the failure of the coefficient to attain statistical significance. Being Hispanic had no relevance to prejudice. Only one of the two general traits—being female—exerted a significant effect on prejudice. In this case, women were appreciably less likely than men to offer a verdict before trial. Self-reported religiosity was not a significant predictor.

The second model in Table 2 reports the determinants of partiality—defined as belief in the defendant’s guilt—once we have accounted for the factors that stimulated or retarded having a pre-trial opinion about the defendant. None of the specific or conformity prejudice items mattered in terms of guilt or innocence. While several of these factors did strongly encourage prejudgment, the effect did not extend to the direction of that belief. However, generic prejudice—in the form of a belief that police should tap the telephones of suspected terrorists and that Al-Arian was a terrorist—were very important in persuading respondents that he was guilty.

We now turn to variables that attribute partiality to factors other than or in addition to prejudice. A belief in Al-Arian’s guilt was predicted by a negative attitude to defendants represented by public defenders. On the other hand, being non-white—which encouraged holding an opinion—actually had a significant negative effect on a guilty verdict. Nonwhites were quicker to judge than whites, all other things being equal, but more likely to deem the defendant innocent of the charges. Being Hispanic, female or a convicted felon did not have the same effect on partiality as being nonwhite. Nor did religiosity matter in the direction of prejudgment.

Discussion

There are two substantive issues we want to revisit at this stage, the degree to which the traits of the defendant and the crime encourage potential jurors to rush to judgment in terrorism trials involving Arab Muslim defendants and the possibility that prejudgment does not necessarily induce partiality. We conclude with some thoughts about the implications of the findings for the jury system in terrorism trials.

We set out to determine the importance of defendants’ traits in international terrorism cases. Specifically, we wanted to determine the relative importance of the more “political” aspects of such trials against other factors that are generally thought to produce prejudgment among potential jurors. This inquiry was pursued with an opinion survey of potential jurors in an actual case where four defendants of Middle Eastern heritage were charged on federal warrants with aiding terrorists outside the United States.

We found that prejudice in several guises was a significant influence on both prejudgment and partiality. Familiarity with the facts of the case—which we assume results from attentiveness to news and public affairs—had a very strong influence on inducing opinions before trial. Generic prejudice, a negative disposition to Muslims, Arabs and people accused of terrorism, also mattered greatly in stimulating a rush to judgment. Whether expressed as a belief that authorities should infiltrate Muslim civic organizations or that the defendant was a terrorist who harbored anti-American beliefs, such affect apparently was sufficient to encourage respondents to reach a verdict without benefit of trial. Conformity prejudice had a more complicated influence. On the one hand, people in the Tampa judicial circuit were appreciably more likely to have reached a verdict before the trial. It could hardly have been otherwise given the intense publicity generated by the case in that community. Yet respondents who lived in counties with larger Muslim populations were *less* likely to offer an opinion about Al-Arian’s guilt or innocence. In this instance, it seems, conformity prejudice worked on behalf of the

defendant. Despite the importance of prejudice in its many forms, it did not entirely displace other influences on judgmentalism. We found that women and respondents who believed that even the worst criminals warrant mercy were also less likely than other respondents to render judgment before the trial. On the other hand, African-American respondents were more likely than members of other ethno-racial communities to offer a verdict before the case went to court.

Apart from encouraging prejudgment, how did prejudice and the other factors operate to shape perceptions of the Arab Muslim defendant? Neither specific nor conformity prejudice appeared to have encouraged partiality although variables associated with those domains certainly encouraged prejudgment. Two measures of generic prejudice did encourage partiality. Respondents who favored aggressive wiretapping of terrorism suspects and those who considered Al-Arian a terrorist were both more inclined to consider him guilty of the charges in the indictment. Prejudice was not the sole explanation for partiality, however, as such behavior was also a function of attitudes to and experience with the law. Specifically, African American respondents were disposed to consider al-Arian not guilty.

We seem much better at predicting who prejudices than who among them will show partiality to a defendant. That itself suggests the need to keep separate explanations of who rushes to judgment from theories about who is most inclined to favor the prosecution. In our review of research on juror behavior, we suggested that scholars have conflated two separate dispositions—prejudgment and partiality—by taking for granted that potential jurors who prejudge a case will perforce conclude that a defendant is guilty. To control for the possibility that the two actions respond to different forces, we deployed a two-stage model. As noted, most of the determinants of prejudgment were distinct from the factors that induced partiality and vice versa. Of the 11 variables shown to be significant influences on opinionation, only two also influenced significantly the direction of judgment. Moreover, as we speculated, this partiality was not invariably directed against the defendant. While a belief that he was a terrorist encouraged both prejudgment and (negative) partiality toward Al-Arian, non-white respondents were more likely to reach an early verdict but less likely to consider the defendant guilty.

We acknowledge the possibility that some of the influence on prejudgment associated with the belief that Al-Arian was a terrorist could simply be the result of a tautology induced by question order effects.¹⁹ The instrument progressively sequenced questions both to account for differential levels of information about the case and to avoid contaminating later answers by early responses. Respondents were not asked if they considered Al-Arian to be a terrorist until after they had been told he was on trial for crimes that included “providing material support for the benefit of terrorists” and then were asked to assess his guilt on that charge and others. By defining Al-Arian as a terrorist in a subsequent question, some respondents may have meant only to reaffirm their earlier judgment that he was guilty of terrorist charges. But for four reasons, we do not believe this dynamic is solely responsible for the potent influence of terrorism in the statistical model. First, the actual charges against Al-Arian included racketeering and conspiracy to commit murder. Embedding the terrorist charge among these other crimes may well have attenuated the specific impact of terrorism. Second, the alleged link between Al-Arian and terrorism was rather indirect as he was accused of giving material support to terrorists and conspiring to commit murders abroad, none of which were directed against Americans or American interests. He was not charged with planning or carrying out any direct terrorist acts,

making his designation as a terrorist problematic. Moreover, the next most potent predictor of prejudice after the terrorist question was not subject to the same order effect. Respondents were asked if they considered any of Al-Arian's statements to be critical of the United States *before* they were informed of the charges against him or asked to assess his guilt or innocence. Finally, it is worth remembering that believing Al-Arian was a terrorist did not itself determine how respondents judged him. While virtually everybody who labeled him a terrorist considered him guilty, so did a sizable proportion of people who did not consider him a terrorist. Specifically, about two thirds of all respondents who did not describe Al-Arian as a terrorist nonetheless opined that he was guilty of the charges. The slippage between the verdict and the question about terrorism suggests that the answers to the latter were not merely an attempt to be consistent with answers to the question about guilt or innocence.

The evidence reported in the paper suggests that prejudice in many forms against Muslims, Arabs, and terrorist suspects did induce prejudice and, to a more limited degree, a disposition to consider the defendant guilty before a trial had taken place. In that sense, concerns about the ability of such defendants to a fair trial appear to have some basis in fact. Yet those factors did not render irrelevant other factors known to encourage both prejudice and partiality regardless of defendant traits or the nature of the crime. People apparently factor in their own general views about the law and the criminal justice system even when the defendant is "the Other" and accused of terrorist actions. In this sense, some of the challenge of defending Arab Muslims in terrorism trials arises from biases and personal convictions that operate regardless of and in addition to any specific negative affect toward Arab Muslim defendants in terrorism trials.

Before over-generalizing the findings, however, it is necessary to temper them with other facts. This is not a study of empanelled jurors but of citizens who met the requirement for jury service. At the most, we can say that the jury pool in the five communities was biased in terms of both prejudice and partiality. Despite all the circumstances that would seem to have generated a biased jury from such a pool, the Tampa defendants were not in fact convicted. This may indicate that potential bias can be countered both by various judicial remedies, such as, most prominently, *voir dire*, or that such bias is lightly held and easily overcome through collective deliberation. Research on mass public opinion has often emphasized the weak ties between attitudes revealed in surveys and behavior. Perhaps the apparent bias recorded here is just another instance of what Converse (1964) long ago labeled "non-attitudes," responses to survey questions wholly lacking in depth, stability or meaning for the respondent. The findings may not be so foreboding after all.

Rather than assume that the study obviates concern about juror bias, however, it should be remembered that the case reviewed in this paper was itself exceptionally weak. The failure to convict may not have had anything to do with the remedies for juror bias but reflected instead the challenges created by prosecutors' decisions. In a strategy almost universally criticized by outside observers, the U.S. Attorney filed a large number of complicated charges rather than concentrate on a few clear violations. In addition, the defendants put on no defense other than to state concisely that their activities were protected by the U.S. Constitution. Perhaps the biases in juror cognitions would be far more consequential in cases with stronger evidence or where the alleged terrorist acts struck closer to home (Vidmar 2006, 9, 13). In any case, the findings

suggest that such biases can be activated and have the capacity to induce prejudice and partiality. Subsequent investigations need to determine what circumstances attending terrorist cases may cause the latent bias in the jury pool to become manifest at the time of trial.

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Table 1

Prejudgments about Sami Al-Arian

| Variable & Values | Al-Arian |
|------------------------------|-----------------|
| Prejudgment | |
| No opinion | 59.1% |
| Prejudgment | 40.9 |
| Partiality | |
| Definitely not guilty | 1.0% |
| Probably not guilty | 6.5 |
| No opinion on guilt | 59.1 |
| Probably guilty | 28.2 |
| Definitely guilty | 5.2 |
| N | 2000 |

Table 2

Ordered Probit Analysis of
Prejudgment and Partiality

| | Coeff. | Std. Error | P> z | Effect Coeff. | Coeff. | Std. Error | P> z | Effect Coeff. |
|---|--------|------------|-------|---------------|--------|------------|-------|---------------|
| PREJUDGMENT (Opinion) | | | | | | | | |
| Specific Prejudice | | | | | | | | |
| Age | .006 | .003 | 0.034 | .183 | .003 | .004 | 0.489 | .019 |
| Education | .133 | .032 | 0.000 | .307 | -.002 | .043 | 0.963 | .001 |
| News Reading | .150 | .035 | 0.000 | .178 | -.039 | .049 | 0.427 | .011 |
| Case Familiarity | -.036 | .053 | 0.497 | .057 | -.004 | .058 | 0.940 | .001 |
| Conformity Prejudice | | | | | | | | |
| % Muslim | -.266 | .067 | 0.000 | .296 | .124 | .094 | 0.189 | .029 |
| % Orthodox | -.171 | .210 | 0.414 | .068 | -.060 | .347 | 0.864 | .026 |
| % Arab | -.006 | .208 | 0.977 | .002 | -.036 | .235 | 0.878 | .003 |
| Tampa Resident | .455 | .119 | 0.000 | .177 | .026 | .129 | 0.841 | .002 |
| Generic Prejudice | | | | | | | | |
| Wiretap terrorist suspects | .017 | .043 | 0.692 | .020 | .180 | .063 | 0.004 | .060 |
| Hold contributors responsible | .025 | .041 | 0.537 | .030 | .062 | .052 | 0.240 | .018 |
| Infiltrate Muslim orgs. | .199 | .091 | 0.029 | .079 | -.222 | .116 | 0.057 | .022 |
| Al-Arian a terrorist | 2.144 | .147 | 0.000 | .638 | .720 | .358 | 0.044 | .070 |
| Al-Arian anti-US | .832 | .129 | 0.000 | .310 | .089 | .1453 | 0.536 | .008 |
| Legal Attitudes & Experience | | | | | | | | |
| Accused probably guilty | .053 | .046 | 0.244 | .064 | .219 | .059 | 0.000 | .056 |
| Most imp. to free the innocent | .031 | .041 | 0.457 | .037 | -.067 | .047 | 0.156 | .019 |
| Def. must prove innocence | .045 | .036 | 0.207 | .054 | .018 | .044 | 0.688 | .005 |
| Pub.Defender clients guilty | .027 | .043 | 0.536 | .032 | -.056 | .054 | 0.297 | .017 |
| Worst criminals deserve mercy | -.085 | .040 | 0.033 | .101 | -.009 | .055 | 0.866 | .003 |
| Nonwhite | .218 | .105 | 0.038 | .086 | -.410 | .156 | 0.009 | .046 |

| | | | | | | | | |
|-----------------|-------|------|-------|------|------|------|-------|------|
| Hispanic | -.026 | .154 | 0.865 | .010 | .164 | .218 | 0.451 | .014 |
| Convicted Felon | .776 | .425 | 0.067 | .278 | .745 | .654 | 0.255 | .074 |

Miscellaneous Traits

| | | | | | | | | |
|----------|--------------|-------------|--------------|-------------|------|------|-------|------|
| Religion | -.062 | .065 | 0.338 | .050 | .095 | .080 | 0.235 | .019 |
| Female | -.202 | .085 | 0.017 | .081 | .010 | .110 | 0.924 | .001 |

| | | | | | | | | |
|---------------------|------|------|-------|------|------|------|-------|------|
| Prejudgement q32 | .068 | .111 | 0.542 | .186 | .715 | .620 | 0.248 | .075 |
|---------------------|------|------|-------|------|------|------|-------|------|

| | | |
|-------------------------|----------|----------|
| Number of cases | 1406 | 648 |
| X ² | 695.01 | 245.60 |
| Prob > chi ² | 0.000 | 0.000 |
| Log likelihood | -622.752 | -452.685 |
| Pseudo R ² | 0.358 | 0.213 |

Notes

¹Converse's classic study documented that many respondents foist "non-attitudes" on interviewers by offering answers to questions about which they have virtually no information. This would suggest that respondents do not first ask themselves if they know enough to offer an opinion before answering a survey question. However, Bishop et al demonstrated that question design can powerfully encourage respondents to opt out of questions that they are not capable of answering. The survey on which we draw had several features that made it easy for respondents to say they didn't have an opinion.

²Vidmar offers an additional category of prejudice for situations where potential jurors have a personal interest in the case. In a terrorist case, this might involve the degree of exposure to terrorist acts experienced by the juror. Because this case study involved allegations about terrorist acts to be committed abroad, this type of prejudice is not relevant.

⁴Finding a term to describe the object of this war—Islamofascism, Arab terrorism, Islamic terrorism—is complicated both by the frequent changes in language employed by the Bush administration and the danger that any appellation will wrongly implicate people by its breadth. We recognize the problem and wish to make clear that we are using but not endorsing terms that featured prominently in public discourse following 9/11.

⁵Constantini and King (1980-1) found that "law and order" dispositions in the 1970s were highly correlated with ideology. Although we lack a direct measure of political orientation, the performance of the scale regarding attitudes to crime can be considered a proxy for core political orientations.

⁶Some of the material in this section is derived from conversations that Adam L. Silverman had with his late father, Professor Mitchell Silverman of the Department of Criminology at the University of South Florida. With several colleagues, the senior Professor Silverman first approached the USF administration with complaints regarding Dr. Al-Arian's activities. Further information was obtained through a copy of court filings made in a civil suit against Dr. Al-Arian by John Loftus, a former DOJ official who was president of the Florida Holocaust Museum.

⁷United States v. Al-Arian and Hatem Fariz, Case No. 8:03-CR-77-t-30TBM, United States District Court, Middle District of Florida, Tampa Division.

⁸For many of these caught on video, see www.john-loftus.com/video_clips.asp.

⁹Specifically, USF claimed, Dr. Al-Arian did not clearly indicate that he was not speaking in his capacity as a faculty member in his many media appearances and thus compromised the safety and orderly operation of the institution.

¹⁰The Florida Survey Research Center makes substantial efforts to reduce error from non-responses. Non-response error results in a bias because those individuals who either refuse to participate or cannot be reached to participate may be systematically different from those individuals that do complete the survey. Efforts to reduce non-response bias include thoughtful preparation of both the introductory statement and the survey instrument in a format that promotes participation and full response to all questions, as well as extensive interviewer training on the survey instrument and the material content of the questions it poses. Phone numbers to be called back are also rescheduled to appear in the system for redial at different times and on different days of the week to reduce systematic error. In addition, FSRC supervisory staff attempt to convert refusals into completions by calling potential respondents who initially refuse to participate. Demographic characteristics of the completed sample are compared to those of the population at the conclusion of each interviewing shift. In this case, the data for respondents' gender were compared to the known gender characteristics of the samples. All districts' completed samples very closely approximate the population of registered voters in terms of gender.

¹¹The question about the defendant's guilt was first asked of respondents who indicated they had seen, heard, or read anything about Dr. Al-Arian. Those who were wholly unfamiliar were then asked about their familiarity with "the

case of a professor at the University of South Florida who was involved in fund-raising for Islamic or Palestinian activist groups” and those who indicated some recollection were told Al-Arian’s name.

¹²We do not mean to suggest that these traits are invariably linked to anti-Muslim affect. Rather, we infer from previous research that political attentiveness is logically linked to prejudgment. People differ markedly in the degree to which they follow public affairs through mass media and interpersonal communication. Converse (1962) demonstrated that those who most aggressively seek out political information via the media, interpersonal discussion and other sources are the self-same citizens who possess the strongest political views and commitments. Such individuals are likely to have a high sense of internal efficacy that encourages them to reach judgments based on their own information-gathering. Thus attentiveness to the flow of public information should encourage prejudgment. This would probably be true in any trial that had received extensive media coverage.

¹⁴Because these attitude items did not scale at acceptable levels, they were included as separate predictors rather than a combined scale.

¹⁵This question about whether the defendant was a terrorist followed the assessment of guilt. Had it preceded the inquiry about guilt, it might well have induced a greater propensity to reach a prejudgment of guilt. (Of course, the question about guilt did include a reminder that the defendants were accused of terrorist-related crimes.) While there is always the danger that respondents might retroactively justify their judgments about the defendants’ guilt by characterizing them as terrorists or not, we were more concerned about the reverse tendency (Bishop, Oldendick and Tuchfarber 1984).

¹⁶The survey sampled respondents from metropolitan areas so there were typically ten or more counties per community.

¹⁷Readers are welcome to contact the authors for the exact wording of these questions.

¹⁸We acknowledge the deficiency of this measure. It is not clear what respondents mean when they describe themselves as more or less religious and whether this self-characterization relates in a predictable way to objective indicators. Because of indicator weakness, we do not have a great deal of confidence in the test of religious influence on prejudgment and partiality.

¹⁹Had this been an academic survey, the researchers could have used a split ballot experiment to assess empirically the impact of the terrorist designation before and after the guilt question. As the goal was dictated by an impending trial, this option was not available.