

Rush to Judgment?

Determinants of Public Prejudgments About Arab Muslims Accused of Terrorist Crimes

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ABSTRACT:

How do extralegal factors influence legal deliberations involving culturally distinctive defendants? Using a five city survey, we test the determinants of prejudgments about Arab-Muslim defendants in a real criminal case involving terrorist charges

Note: This is a preliminary version that requires further refinement. We ask that those wishing to quote or cite it please contact kenwald@polisci.ufl.edu for a more developed version.

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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 quoted in Precht (2003, 113)

Prejudgment, the root word of "prejudice" (Allport 1958, 7), involves making decisions about people without due consideration of the relevant facts. 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 indicated in his advice to lawyers representing a defendant in the 1993 bombing of the World Trade Center (above), prosecutors may consciously evoke hostility to Arabs and Muslims as trial strategy. That 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, Damphouse, Jackson and Sellers, 2002). If extralegal factors play a powerful role in deliberations about defendants who are ethnically and religiously distinctive, the legal system falls far short of the ideal of blind justice.

In this paper, we identify and test the impact of defendants' ethnicity and religion on 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 a real trial of four persons of Middle East heritage, all with connections to the Tampa (Florida) area, who were indicted by the federal government in 2003 for a variety of actions on behalf of the Palestinian Islamic Jihad. Given the prevalence of prejudiced attitudes about various minorities in the United States and the reality that humans necessarily employ cognitive shortcuts to simplify reality, it might seem self-evident that extra-legal forces influence prejudgments about minority defendants. The most visible of the Tampa defendants, Sami Al-Arian (Democracy Now 2007), characterized his prosecution as a bald effort by federal authorities to incite the American people against Palestinians, Muslims, and Arabs by waving the bloody shirt of 9/11.

However, like many assumptions that reflect truisms about human behavior, hypotheses about the influence of extra-legal factors cannot be taken for granted. In the trials that occasioned this research, the jury failed to convict any of the defendants on a single charge contained in the 53-count superseding indictment. This case and similar failed prosecutions (Transactional Records Access Clearinghouse 2006) may indicate that people 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. The failure to convict some accused terrorists may also attest to the power of structural remedies available to defendants facing potentially hostile jury pools—*voir dire* and venue changes. Even with all these factors available to mitigate juror partiality, widespread prejudgment is likely at the very least to raise the bar for defendants with the "wrong" set of personal traits.

This research helps to clarify which characteristics of potential jurors evoke a disposition to prejudgment. It is designed specifically to compare the impact of traits growing out of the particularities of the Tampa case—the Arab-Muslim identity of the defendants—with the effect of

other factors known to encourage prejudice against defendants in criminal cases. Do the identity of the defendants and the nature of the crime combine to drive assessments by potential jurors more than other factors or do we find the same kind of influences on potential juror assumptions that are evident in cases for other crimes and with defendants who are neither Muslim nor Arab? While it is widely assumed that post-9/11 terrorist-related cases present a unique set of problems in locating unbiased jurors, that assumption has not been tested empirically.

Accordingly, using data from surveys conducted on behalf of one defendant and drawing on various research traditions, we develop and test hypotheses about the influence of (a) general attitudes toward civil liberties and defendants' rights, (b) specific attitudes to Muslims and the Middle East conflict, (c) contextual properties of respondents' environments, (d) correlates of political interest and knowledge, (e) media exposure to the case, (f) religiosity, and (g) minority status. Multivariate models enable us to determine the relative weight of these forces on both prejudice of the cases in general and prejudice of the defendants' guilt.

*The Court Case: US v. Sami Al-Arian*¹

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. The charity, the Islamic Committee for Palestine (also known as the Islamic Concern Project) 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 WISE's 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. There was also concern about the backgrounds of many of the WISE instructors. Khali Shikaki, a trained political scientist who taught at WISE, was the brother of the late Fathi Shikaki, the former head of the Palestinian Islamic Jihad (PIJ), and was himself reported to be a lieutenant in the same organization. Another instructor, Ramadan Abdullah Shallah, disappeared from the Tampa area shortly after Fathi Shikaki was killed (allegedly by Israeli agents), reemerging some months later in Damascus as the new head of the PIJ. The PIJ itself had been declared a foreign terrorist organization by the U.S. Department of State in 1997.

Eventually two journalists began to investigate WISE, the ICP, and Dr. Al-Arian's activities.. Steven Emerson, an independent journalist, featured WISE and Dr. Al-Arian in his 1994 PBS documentary *Jihad in America*. This documentary, which suggested links between the Tampa-area organizations and Islamic terrorism, alerted the local media to a story. In mid-1995, the *Tampa Tribune* began a long-running series of investigative articles dealing with Dr. Al-Arian's organizations and activities (Fechter 1995). The video, *Tribune* series, and other investigators documented repeated inflammatory, anti-Semitic, anti-Israel, and anti-American statements by Dr. Al-Arian (many of these were caught on video). 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, the federal government began its own investigation of whether Al-Arian or his associates had committed perjury or violated immigration laws. This action prompted USF to suspend Al-Arian with pay from 1996-1998.

The ongoing issues between Dr. Al-Arian and USF, as well as the interest of the Department of Justice in his activities and those of several of his former instructors/employees at WISE, kept the attention of the local media, as well as national observers. In the wake of 9/11, 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. On grounds of public safety, USF again suspended Al-Arian in late 2001. As his profile increased, and USF continued to receive negative publicity about the matter, the University eventually fired Dr. Al-Arian in December, 2001 for bringing the institution into bad repute. Specifically, 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.

Spurred no doubt by the events of September 11, 2001, the ongoing and seemingly perpetual investigation of Dr. Al-Arian finally resulted in 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 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 in the possibilities and realities of juror prejudgment. Despite being part of the formal justice system, potential jurors are also supposed to be neutral third parties, individuals without a direct personal stake in the legal conflict. (Cooney 1998, Black 1998). As no one in the US knows exactly when or if they will be called for jury duty, all US citizens are potential jurors. While jurors are told to avoid information on the case they are hearing outside the courtroom, no such prohibition exists among potential jurors. Given the years of media coverage and publicity – from documentaries to articles to op-eds – it would be hard to find individuals within the Tampa area who did not know something about the case of Dr. Al-Arian and his co-defendants.

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) has usefully distinguished between three types of prejudice likely to operate in most cases—specific prejudice, generic prejudice and conformity prejudice. 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.³

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, it seems clear that greater exposure to information about a case does indeed stimulate prejudgment, usually against the defendant (Constantini & King 1980-1).

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, jurors bring to the decision-making task their pre-conceived attitudes about groups, rendering the actual people involved in a trial into ideal-types, exemplars of the groups to which they belong. Jurors may not see individuals but rather groups toward which they have specific affect. The impact of such group heuristics on political decision-making has been well documented (Brady and Sniderman 1978, Sears et al. 1980).

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 how 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).

As Vidmar (2003) has noted, these forms of pretrial judgment are not unique to cases involving criminal defendants accused of terrorist actions, even defendants of Muslim and/or Arab extraction. Specific, generic and conformity prejudice operate in a wide variety of legal settings. 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. This status is a function of the scale and skew of information flow to which the public has been exposed.

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, was heavily focused on Arabs and Muslims (Nacos and Torres-Reyna 2003). Editorial cartoons demonized the enemy by portraying Osama Bin Laden, al-Qaida, 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 who stepped into the dispute 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, presented 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 have likely been exposed to information about Dr. Al-Arian and his activities 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 distance and negative affect should thus activate the forms of prejudice identified by Vidamr. In terms of *specific prejudice*, the extensive reportage (to use the term loosely) by mass media outlets and blogs has familiarized audiences with terrorism cases and thus probably stimulated prejudgment. The content of this material, emphasizing the role of Muslim and Arab terrorists, 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 of out-group derogation by the majority and its salience (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—general level of attentiveness to public affairs, minority racial/ethnic status, religiosity, and a strong commitment to law and order—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. 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.

The alternative sources of prejudgment—alternative in the sense that they are generally true of jurors in typical cases—involve attitudes to crime and civil liberties, political attentiveness, religiosity, and personal status. When confronted with a criminal case, potential jurors may rely not on the facts of the legal proceeding but instead draw on their *general views about crime*. People 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 as guilty in criminal trials (Constantini & King 1980-1, 26-7; Casper and Benedict 1993). Attitudes to the death penalty seem especially potent in prompting jurors to prejudge the outcome of capital cases (Ellsworth 1993). This disposition may arise from the strong relationship between prejudice and a syndrome of traits, known collectively as right-wing authoritarianism, that emphasize submission to rightful authority and adherence to social norms (Altemeyer 1998).⁵ For much the same reason, *religiosity* has often been linked to 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.

Political attentiveness is also logically linked with prejudgment. People differ markedly from each other in the degree to which they follow public affairs through mass media and interpersonal communication. In a classic study, 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.

Not all generic forms of prejudice necessarily translate into a disposition to rule against defendants. In fact, as the O.J. Simpson murder case illustrated so graphically, some *minority groups* who have experienced poor relations with law enforcement may actually identify with the accused, especially so if the defendants are members of minority groups (Constantini & King 1980-1, 28-30). As people of color who have often clashed with police and suffer disproportionately high rates of conviction and imprisonment (Spohn, Gruhl and Welch 1987, LaFree 1985), African-Americans and Hispanics might well be somewhat skeptical about claims made by prosecutors. Prior research suggests that women are similarly less inclined to convict defendants unless the accusations include sex crimes. Similarly, it stands to reason that people who themselves have been convicted of crimes are likely to be skeptical of authorities and hence to favor defendants in criminal trials. Because these demographic traits are more likely to engender sympathy for the defendants than the authorities, they should be included as predictors of prejudgment with the expectation of negative signs for the coefficients.

To recap, among the extralegal factors likely to work particularly strongly against the presumption of evidence and to encourage prejudgment, we distinguish between factors that particularly disadvantage Arab-Muslim defendants accused of terrorist crimes and alternative factors that militate against defendants more generally. Rather than assume that prejudgment and assumption of guilt are largely driven by prejudices on the part of jurors, we test the possibility that such partiality is largely the consequence of dispositions that work against defendants in criminal cases regardless of their ethnoreligious identity or the specific crime with which they are charged.

Data and Measures

Data Set: The surveys available to us were 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, 2005 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. These districts are much larger than the cities in their name and comprise entire metropolitan areas.

This survey was conducted using five randomized samples of registered voters in each of the five geographic areas encompassed by the court districts 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%.⁶

Dependent Variables: The dependent variables were drawn from responses to a question about Sami Al-Arian, unquestionably the most prominent of the Tampa defendants. Respondents were asked whether they believed he “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. Prior to asking this question, the interviewer had identified Al-Arian as a person 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.⁷

This question produced two different variables that we will analyze below. *Guilt 1* divided respondents between those who expressed no opinion and those who selected any of the explicit response options provided by the interviewer. As such, Guilt 1 represents whether or not the respondent prejudged the defendant regardless of the intensity or direction of that verdict. The second variable, *Guilt 2*, combined direction and intensity. A judgment of definitely not guilty anchored the low end of the continuum and a definite belief in guilt was the other extreme with those offering no opinion placed in the middle. As coded, it represents the respondent's certainty of Al-Arian's guilt,

Table 1 (below) presents the distribution of respondents on these independent variables. As the table shows, only about 4 in 10 respondents prejudged Al-Arian in the survey. Of these 40%, however, 4 of 5 considered him guilty. The level of prejudgment rose to almost two-thirds of the Tampa-area respondents and almost all the respondents in that district who offered an assessment rendered a guilty verdict.

(TABLE 1 ABOUT HERE)

Independent Variables: The first set of predictors tap Vidmar's categories of specific prejudice, general prejudice, and conformity prejudice. The concept of specific prejudice, exposure to information about a case, was assessed by both self-reported *media consumption* regarding Al-Arian and a subjective self-assessment of *familiarity with the case*. Respondents were asked to indicate how many different news and information sources they encountered that made some specific reference to the defendant. The response options listed nine specific venues where the individual might have learned about Al-Arian and also coded any other source volunteered by the respondent. Respondents were presented with a standard Likert item to indicate familiarity with the case.

To measure the generic prejudices likely to operate in a case of this nature, we deployed three questions that tap *affect toward Arabs/Muslims*. The questions asked whether Islam encouraged violence, Palestinians were involved in the 9/11 attacks, and law enforcement agents should infiltrate Muslim civic and volunteer organizations in the United States.⁸ Following Pfeifer (1999), we expect to find that individuals with negative affect toward Islam will be more likely to rely on such perceptions and will thus be disposed to prejudgment and a guilty assessment. Respondents were also asked to whether they characterized the defendant as a *terrorist* or not and whether they would describe Al-Arian's public statements as critical of the United States.⁹ We assume that respondents who perceived the defendant as a terrorist and anti-American would be more likely to prejudge him and to consider him guilty.

Conformity prejudice results from conversations and assessments of opinion within the individual's social ambit. We have no direct measure of community opinion apart from the responses of the survey participants and will thus need to measure this concept indirectly. Following research about contextual influences on political behavior, we use ecological indicators of *community composition* as a surrogate for climate of opinion. One such measure is geographical concentration of the outgroup. Research on whites Americans' political behavior has often found that proximity to a concentration of a feared minority—particularly African

Americans—evokes strong racial reactions (Orum 1970). Correspondingly, community opinion about the Tampa case is likely to be most powerful when respondents encounter members of the groups that the media has implicated in terrorist activity—Arabs and Muslims. Although the U.S. Census does not collect data on religious affiliation, there is a decennial census of religious bodies collected on a voluntary basis by statisticians (Jones et al. 2002). From this source, we calculated for each county the proportion of adherents who are affiliated with Islam or with the Christian denominations that are disproportionately composed of persons of Arab heritage.¹⁰ Despite the measurement error inherent in this indicator, it is likely to reflect the perception of respondents about the presence of Arabs and Muslims in the community and we assume that higher levels of exposure will activate the tendency to prejudge defendants in terror-related cases. The second measure of climate of opinion is the *community* itself. The Al-Arian affair was centered in Tampa where it dominated news coverage for an extended period of time. It was widely covered elsewhere in Florida and throughout the nation but nowhere near the level recorded in Tampa. After controlling for other factors, we thus expect to find the greatest level of prejudgment in Tampa with markedly lower perceptions of guilt or innocence in the other four communities. This effect will be tested by the inclusion of *dummy variables for each survey locale outside Tampa*. Tampa itself is the omitted variable.

Apart from these indicators, we also require measures of jury characteristics that normally predict prejudgment and guilt assessments regardless of defendant traits or the nature of the criminal charges. To assess the *law and order* bias familiar to many jury researchers, we drew on seven items that assess opinions about criminals, prosecutors, law enforcement, public defenders and such. *Religiosity* was represented by a variable derived from a simple question that asked respondents to characterize their typical level of attendance at worship services.¹¹ Another factor widely associated with prejudgment, *political interest*, was operationalized both by direct questions about general media usage (separate variables for exposure to different information sources) and about social traits highly associated with political interest—age, education, and income. We operationalized *minority group membership*, a factor likely to mitigate prejudgment or to discourage the assumption of guilt, with dummy variables for African Americans, women and persons convicted of a felony. Finally, we also included a measure of respondents' reported *familiarity with the Arab-Israeli conflict* based on a question asked early in the survey. Because foreign policy questions are rarely salient to Americans, the inclusion of such a measure should indicate attentiveness to public affairs generally.

Data Analysis

The analysis will be based on a series of ordered logit equations, an approach suitable for a dichotomous and ordinal dependent variable. All the predictors identified above as potentially relevant to prejudgment and determination of guilt will be entered simultaneously. While it is quite possible that some variables influence these dispositions indirectly, through the influence of another variable, our model will simply test for each variable's direct effect on the two forms of prejudgment. In interpreting the findings, we will rely principally on the odds ratio rather than the coefficient.

We start by asking what kind of respondent is most likely to prejudge defendants regardless of intensity or direction. This disposition is represented by Guilt 1 in Table 2. The

table reports the findings for three models identical in all respects except one—the variable used to indicate anti-Muslim affect. Because the three items had a substantial number of missing cases, the model was estimated in turn with each one of the items. The discussion will focus on findings that held across the three models.

(TABLE 2 ABOUT HERE)

In terms of specific prejudice, knowledge about the facts of the case, we found that exposure to news about the case significantly encouraged prejudgment. The odds ratios reveal a fairly mild impact—an increase from 11 to 15 percent in the propensity to offer a judgment about Al-Arian’s guilt. The subjective familiarity item behaves oddly. In two of the three models, it significantly diminished the tendency to assess guilt or innocence, reducing the probability of a judgment by about 20%. We have no explanation for this counterintuitive finding.

The assorted generic prejudice items range in effect from small and insignificant to powerful and significant. Only one of the three items that tapped anti-Muslim affect, a belief that Palestinians were involved in the 9/11 attacks, was strongly and significantly associated with prejudgment across the three models but the magnitude of the effect was striking. Such a belief increased the probability of rendering a premature verdict by almost two-thirds. Even that impact pales when compared with a belief that Sami Al-Arian was a terrorist and critic of the United States. Respondents who regarded Al-Arian as a terrorist were 30 to 40 times as likely to render a verdict on his guilt or innocence and those who had heard him make what they considered critical remarks about the United States were two and one-half to three and half-times as likely to prejudge him. No other variables in the analysis came close to matching the impact of these two variables.

The conformity prejudice hypothesis yielded mixed results. On the one hand, the estimated proportion of Muslims and Arabs in the respondents’ county of residence had no significant relationship with prejudgment. On the other hand, simply residing in the Tampa metropolitan area dramatically improved the odds of the respondent offering any kind of prejudgment. To put it the other way around, the further the geographical distance from Tampa, the lower the probability of reaching any prejudgment. Atlanta residents, who live almost 800 miles from Tampa, were 80% less likely to offer a judgment. In Miami, Jacksonville, and Tallahassee, which are roughly 200 to 300 miles from Tampa, the tendency to prejudge was reduced by some 50 to 60% compared to the tendency in Tampa itself. 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 committing crimes.

Some of the general predispositions of prejudgment had the predicted effect. The respondents’ self-reported familiarity with the Arab-Israeli conflict had a significant positive impact on the propensity to reach a judgment. Across the three models, the impact was a considerable 50%. The issue public that follows Middle East affairs was apparently quite attentive to the Al-Arian case and ready to render judgment without benefit of a trial. Of the law and order items, two questions worked consistently across all three models. Respondents who agreed that “a defendant in a criminal trial should be required to prove his or her innocence”

were significantly more likely to render a verdict while those who believed that “Even the worst criminal should be considered for mercy” were about 15% less likely to prejudice Al-Arian. Although the effect barely missed the .05 significance level, respondents who advocated police infiltration of Muslim civic groups in the US were a third more likely to prejudice Al-Arian. Two forms of general media exposure—frequency of newspaper reading and watching news on cable television—also increased the propensity to assess Al-Arian’s guilt or innocence. In terms of personal traits, higher education was strongly and significantly related to the tendency to prejudice the defendant. We had anticipated that respondents from groups with legacies of distrusting the justice system would be less likely to offer a judgment about the defendant. Surprisingly, however, non-white respondents were actually much more likely to prejudice and by a considerable margin of 50 to 60%. Although the small number of cases militated against significance, we discovered a similar anomaly in the tendency of persons convicted of felonies to be much more judgmental. They were roughly three times as likely to assess guilt or innocence as respondents without a felony conviction. Direct exposure to the criminal justice system makes people more likely to prejudice others.

The finding that convicted felons are more likely to prejudice criminal defendants raises questions about the direction and intensity of such prejudgment. One might well imagine that convicted felons would differ not in their tendency to prejudice but in the direction of that judgment—i.e., to favor the defendant. Hence, beyond a tendency to prejudice a case, we are interested as well in the direction (guilt or innocence) and intensity (from no opinion to strongly) of the potential jurors’ view of the defendant. We present in Table 3 below models of Guilt 2, a dependent variable that examines these other properties of attitudes about guilt. Specifically, respondents were classified on a continuum from those who strongly believed in the defendant’s innocence to their opposite extreme, respondents who strongly pronounced a guilty verdict on Al-Arian. The mid-point on the 1-5 scale represents respondents who offered no opinion on the matter. The coding means that positive coefficients represent a high level of confidence in the defendant’s guilt and a negative sign indicates a strong belief that he was not guilty.

(TABLE 3 ABOUT HERE)

Starting with specific prejudice, we find that none of the predictors exert a significant impact on the second dependent variable. Neither exposure to news about the case (which stimulated prejudgment) nor self-assessed familiarity with the case enhanced the probability of judging the defendant guilty.

Generic prejudice, which was the strongest general predictor of prejudgment, also exerts significant impact on the direction and intensity of prejudgment. As was the case for the predisposition to render prejudgment, the most powerful effects in the model were registered by two assumed traits of the defendant—his status as a terrorist and as a critic of the United States. The terrorist label made respondents about 30 times as likely to believe strongly in his guilt on the charges. Respondents who believed that he had expressed critical judgments about the United States were roughly twice as likely to reach a guilty verdict before the trial. Some other measures of generic prejudice which also contributed substantially to prejudgment in Table 2 were not equally potent in accounting for confidence in the defendant’s guilt. Only one of the items

related to Arab/Muslim affect—a belief that Islam is prone to violence-- worked in the predicted direction and with an impact that nearly reached the .05 significance level.

Does conformity prejudice breed confidence that the defendant is guilty? The religious composition of communities was not important in this domain. The community dummies did matter but not exactly as they did when we looked at simple prejudice. Specifically, residents of Atlanta and Miami were significantly less likely than Tampans to believe that Al-Arian was guilty but there was no consistent difference between residents of Tallahassee and Jacksonville and the potential jury pool in the city where the trial took place.

The impact of the other variables—general correlates of prejudice independent of the case—were equally unimpressive in stimulating specific verdicts. Familiarity with the Arab-Israel conflict, high levels of media attentiveness, and all but one of the personal traits washed out of the models. These items had contributed significantly to prejudice. The sole exception was convicted felons who were much more convinced of the defendant's guilt than other survey participants. Some of the law and order variables did exert sizable impact on this dependent variable. Agreement with two questions facilitated a strong assumption of guilt:

If the government brings someone to trial, that person is probably guilty.

Law enforcement officials should be able to listen to the phone conversations of individuals in the United States who are suspected of supporting terrorist groups.

On the other hand, respondents who believed strongly in mercy and worried more about wrongly convicting the innocent than acquitting the guilty were inclined to believe in the defendant's innocence. These two items had previously predicted a resistance to prejudice. Belief in the two most conservative law enforcement questions increased by about 30% the determination of Al-Arian's guilt while adherence to the liberal positions on the rights of the accused reduced the probability of a guilty prejudice by about 15%.

Interpretation

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 partiality 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.

Whether it results from conscious decisions by prosecutors or not, by far the most powerful influences on the disposition to prejudice in general and support for the prosecution case in particular were indeed judgments about the kind of person who was on trial—what Vidmar described as generic prejudice. Among potential jurors, the belief that Sami Al-Arian was a terrorist and a critic of the United States was much more powerful than any other variable in stimulating both prejudice and a guilty verdict.

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.¹² 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 Al-Arian was 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, some respondents may have meant only to reaffirm their earlier judgment that he was guilty of terrorist charges. But for three 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 diminished 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. He was not charged with planning or carrying out any direct terrorist acts, making his designation as a terrorist problematic. Finally, the next most potent predictor of both prejudgment and a guilty verdict 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. That finding reinforces the conclusion that cases involving Arab-Muslim defendants accused of terrorism activate generic prejudice among potential jurors.

The other consistent finding was that distance mattered. Respondents who lived outside the Tampa-St. Petersburg metropolitan area, whether they were just a couple of hundred miles away or separated by four times that distance, were appreciably less likely to render a judgment of any kind and, in Miami and Atlanta, to express confidence in the defendant’s guilt. This might be expected if the Al-Arian prosecution was a local case but it was in fact covered as a national story and the victims of illegal acts alleged by the prosecution were foreigners who lived overseas. The power of community context—which may be a surrogate for media coverage although we had individual-level measures of such exposure—suggests the importance of conformity prejudice.

Beyond these findings, we were struck by the disparities between the determinants of prejudgment and the determinants of a strong belief in guilt. Knowledge of the specifics of the case mattered greatly for prejudgment but not for assessment of guilt. Similarly, the propensity to prejudge the case was associated with a number of personal traits, general political attentiveness, and general media consumption but these factors did not matter nearly as much for the kind of prejudgment rendered by respondents. Indeed, attitudes to law enforcement and the justice system mattered much more when respondents adjudicated guilt or innocence.

There thus appears to be solid grounding for the belief that cases alleging international terrorism potentially activate group-based attitudes that make such deliberations referenda on the personal traits of the defendants. Potential jurors are highly susceptible to these attitudes in their willingness to reach a verdict before the trial and to convict the defendant. This finding is consistent with prior research on juror partiality and shows the same decision-making dynamic recorded in empirical studies of the policy attitudes of the American public.

At the same time, we should underline the qualifiers in our conclusions. Despite all the circumstances that would seem to have generated a biased jury, 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. 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. Of course, people who are concerned about the dangers of such bias may argue that the case reviewed in this paper was itself exceptionally weak. After all, 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 more consequential in cases with stronger evidence or where the alleged terrorist acts struck closer to home. In any case, the findings suggest that such biases can be activated and have the capacity to induce prejudgment.

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Table 1

Prejudgments about Sami Al-Arian

Variable & Values	Al-Arian
Guilt 1	
No prejudice	59.1%
Prejudgment	40.9
Guilt 2	
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**Determinants of Prejudgment about Sami Al-Arian**

Parameter	Model 1			Model 2			Model 3		
	Estimate	Pr > ChiSq	Odds Ratio	Estimate	Pr > ChiSq	Odds Ratio	Estimate	Pr > ChiSq	Odds Ratio
Intercept	-3.2895	0.0002		-4.247	<.0001		-4.1728	<.0001	
Specific Prejudice									
Media Exposure	0.1371	0.0034	1.147	0.1376	0.0039	1.148	0.1083	0.0219	1.114
Familiarity with case	-0.2023	0.0382	0.817	-0.1324	0.1782	0.876	-0.1881	0.05	0.829
Generic Prejudice									
Anti-Arab/Muslim	0.0145	0.899	1.015	0.506	0.0312	1.659	0.3098	0.0664	1.363
AA a terrorist	3.5618	<.0001	35.225	3.8048	<.0001	44.915	3.7454	<.0001	42.324
AA anti-US	1.0926	<.0001	2.982	0.9656	<.0001	2.626	1.2831	<.0001	3.608
Conformity Prejudice									
Atlanta	-1.5765	<.0001	0.207	-1.586	<.0001	0.205	-1.6429	<.0001	0.193
Jacksonville	-0.749	0.0035	0.473	-0.7476	0.0038	0.474	-0.8172	0.0008	0.442
Miami	-0.952	0.0009	0.386	-0.9158	0.0016	0.4	-1.0358	0.0002	0.355
Tallahassee	-0.6503	0.0078	0.522	-0.6038	0.0162	0.547	-0.6998	0.0028	0.497
Arab religions	-0.00385	0.9612	0.996	0.00619	0.9389	1.006	-0.0278	0.7298	0.829
General Predispositions									
Def. prob. guilty	0.1431	0.1086	1.154	0.1634	0.0732	1.177	0.1197	0.168	1.127
Better to acquit guilty	0.00253	0.9733	1.003	0.038	0.6255	1.039	0.0486	0.5152	1.05
Prove innocence	0.1743	0.0156	1.19	0.2078	0.0044	1.231	0.1342	0.0539	1.144
Tap phones	0.0389	0.627	1.04	0.0259	0.7503	1.026	0.0562	0.4842	1.058
Public def. guilty	-0.0233	0.7892	0.977	-0.00556	0.9485	0.994	0.0268	0.7467	1.027
Donors responsible	-0.0191	0.8017	0.981	0.0492	0.5264	1.05	0.00975	0.8964	1.01
Mercy	-0.1444	0.0634	0.866	-0.1621	0.0401	0.85	-0.1641	0.0294	0.849
ME familiarity	0.3994	0.0008	1.491	0.3198	0.007	1.377	0.392	0.0004	1.48
Age	0.0042	0.4563	1.004	0.00198	0.7318	1.002	0.00838	0.1345	1.008
Education	0.171	0.0077	1.187	0.2042	0.002	1.227	0.1891	0.002	1.208
Reads newspapers	-0.0407	0.61	0.96	-0.0783	0.3511	0.925	-0.0593	0.4621	0.942
Freq. of newspapers	0.2577	0.0005	1.294	0.2448	0.0009	1.277	0.242	0.0007	1.274
Listens to radio news	-0.0653	0.4269	0.937	-0.0683	0.4181	0.934	-0.0383	0.6352	0.962
Watches cable new	-0.0587	0.4352	0.943	-0.0852	0.2676	0.918	-0.0586	0.4258	0.943
Freq. of cable news	0.1295	0.0839	1.138	0.1876	0.0142	1.206	0.1525	0.0365	1.165
Reads internet news	-0.0539	0.7473	0.948	-0.0175	0.9169	0.983	0.0345	0.8344	1.035
Female	-0.2544	0.1203	0.775	-0.2452	0.1454	0.783	-0.2464	0.1231	0.782
Nonwhite	0.4745	0.0305	1.607	0.3913	0.0861	1.479	0.414	0.0542	1.513
Felon	1.2275	0.1512	3.413	1.0898	0.2039	2.974	1.1598	0.1499	3.189
Religiosity	-0.044	0.718	0.957	-0.1221	0.3202	0.885	-0.0635	0.5975	0.938

Table 3**Determinants of Prejudgment of Sami Al-Arian's Guilt**

Parameter	Model 1			Model 2			Model 3		
	Estimate	Pr > ChiSq	Odds Ratio	Estimate	Pr > ChiSq	Odds Ratio	Estimate	Pr > ChiSq	Odds Ratio
Specific Prejudice									
Media Exposure	0.023	0.5467	1.023	0.0223	0.5607	1.023	0.00132	0.9725	1.001
Familiarity with case	-0.00722	0.928	0.993	-0.0227	0.7752	0.978	0.00564	0.9423	1.006
Generic Prejudice									
Def. prob. guilty	0.276	0.0001	1.318	0.3057	<.0001	1.358	0.2745	<.0001	1.316
Better to acquit guilty	-0.1672	0.006	0.846	-0.1362	0.0268	0.873	-0.1072	0.0696	0.898
Prove innocence	0.0823	0.1454	1.086	0.0342	0.5526	1.035	0.0611	0.2608	1.063
Tap phones	0.263	0.0001	1.301	0.275	<.0001	1.317	0.26	0.0001	1.297
Public def. guilty	-0.0813	0.2358	0.922	-0.1178	0.0839	0.889	-0.1174	0.0717	0.889
Donors responsible	0.0485	0.4327	1.05	0.0618	0.3211	1.064	0.0681	0.2574	1.07
Mercy	-0.1147	0.0665	0.892	-0.1914	0.0022	0.826	-0.1556	0.0092	0.856
Anti-Arab/Muslim	0.174	0.0651	1.19	0.1461	0.4008	1.157	-0.2364	0.0875	0.789
AA a terrorist	3.3271	<.0001	27.858	3.3815	<.0001	29.413	3.4417	<.0001	31.239
AA anti-US	0.6923	0.0001	1.998	0.7464	<.0001	2.109	0.7097	<.0001	2.033
Conformity Prejudice									
Atlanta	-0.4969	0.0281	0.608	-0.3266	0.1583	0.721	-0.5773	0.0098	0.561
Jacksonville	-0.1786	0.387	0.836	-0.1097	0.596	0.896	-0.3016	0.124	0.74
Miami	-0.4949	0.0392	0.61	-0.3561	0.135	0.7	-0.5485	0.0171	0.578
Tallahassee	-0.0814	0.6934	0.922	0.0305	0.8837	1.031	-0.2647	0.1778	0.767
Arab religions	0.0815	0.1702	1.085	0.0468	0.4373	1.048	0.0457	0.4407	1.047
General Predispositions									
ME familiarity	-0.0221	0.8099	0.978	-0.0459	0.6163	0.955	-0.0361	0.6694	0.965
Age	0.00449	0.331	1.005	0.0042	0.3704	1.004	0.00426	0.3467	1.004
Education	0.0679	0.1841	1.07	0.0737	0.1509	1.076	0.1243	0.0105	1.132
Reads newspapers	-0.033	0.5956	0.968	-0.0722	0.2602	0.93	-0.032	0.6063	0.969
Freq. of newspapers	0.0869	0.1385	1.091	0.0946	0.1082	1.099	0.0658	0.2504	1.068
Listens to radio news	-0.00185	0.9781	0.998	0.000584	0.9932	1.001	0.0104	0.8742	1.01
Watches cable new	0.0439	0.4626	1.045	0.0432	0.4742	1.044	0.0284	0.624	1.029
Freq. of cable news	0.0662	0.2823	1.068	0.0478	0.4401	1.049	0.0555	0.3507	1.057
Reads internet news	-0.1253	0.3548	0.882	-0.0794	0.5577	0.924	-0.0892	0.5021	0.915
Female	-0.1131	0.3984	0.893	-0.1502	0.271	0.861	-0.1737	0.1807	0.841
Nonwhite	-0.2534	0.1615	0.776	-0.2332	0.2068	0.792	-0.2786	0.1107	0.757
Felon	1.5936	0.035	4.921	1.3133	0.0851	3.718	1.4914	0.0361	4.443
Religiosity	0.1764	0.0813	1.193	0.2172	0.0325	1.243	0.1503	0.1305	1.162

Notes

¹The 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.

³Vidmar has 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. As we have no way to operationalized this form of interest prejudice, it is not examined.

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 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.

⁶The 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.

⁷The 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.

⁸The Palestinian item, which might seem oddly construed as an indicator of affect toward Arabs/Muslims, makes sense in a case when the defendants were persons of Palestinian descent charged with aiding Palestinian terrorists.

⁹This 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).

¹⁰The survey sampled respondents from metropolitan areas so there were typically ten or more counties per community.

¹¹Although religiosity is not tied to any faith tradition, evangelical Protestants typically report much higher levels of commitment than other religious traditions in the United States. This pattern is likely to be especially strong in the South. Thus there is likely to be some confounding between religious intensity and Evangelical identity in the measure. That overlap is problematic because many evangelical Protestants do in fact hold negative attitudes to Muslims a tendency that was accentuated after 9/11 when some leaders of this religious movement condemned Islam, in sermons, public speeches, and broadcasts. Our direct measure of affect to Islam should largely take care of the problem.

¹²Had 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.