



EQUAL JUSTICE

Through awareness, education and action

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An official publication of the Washington State Minority and Justice Commission

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EQUAL JUSTICE NEWSLETTER SURVEY

FROM OVER YOUR NEIGHBOR'S FENCE

Dear Equal Justice Reader,

Ibrahim Hamide

Please help us better serve you by taking a moment out of your busy schedule to complete the Equal Justice Newsletter Survey on the Washington State Minority and Justice Commission Website. Our website is located on the Washington Courts website at www.courts.wa.gov under "Boards and Commissions" and listed as "Minority and Justice Commission." Please click on the "Equal Justice Newsletter Survey" to bring up the document. There are only five questions, and your answers will help us to provide our readers with information that is important and helpful to them. Please submit the document by clicking on the "Submit by E-mail" button. You also have the option of printing the form and mailing it to us, but we prefer your submission by email. If mailing, please send it to:

In this complex world, it seems one can't turn around without bumping into a controversy or a hot-button issue of some sort: abortion, wars, global

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Washington State Minority
and Justice Commission
Temple of Justice
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If you have any questions, please contact us at (360) 357-2109 or email us at minority.justice@courts.wa.gov. Thank you for your help in better serving you and your community.

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Celebrating the Courts in an Inclusive Society

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EQUAL JUSTICE

Equal Justice is the official publication of the Washington State Minority and Justice Commission whose goal is elimination of racial and ethnic bias, where it exists, from our state courts. The newsletter is a communications and networking tool providing information about Commission programs, projects and issues of concern.

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(retired)
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Department of Printing
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Equal Justice may not be reproduced in whole or in part without written permission from the Commission. The Washington State Minority and Justice Commission welcomes information and articles related to its mission. We are interested in programs and projects in the Washington courts addressing racial and ethnic bias, workforce diversity and cultural diversity. Please send information about your program to Monto S. Morton, Program Assistant, Minority and Justice Commission, Temple of Justice, Post Office Box 41174, Olympia, Washington 98504.

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warming, terrorism, gay and lesbian marriages, immigration, racism just to name a few. If we deal with these issues by choosing to only be with like-minded people, we would not be here in the United States. Therefore, tolerance and understanding of each other's point of views becomes that much more important, though we may choose not to agree with one another.

Sometimes when I'm weary of controversy, I wish I could just put on my black and white glasses so things would seem much easier. If only I could deny all that gray! When we are afraid we tend to paint with wide brushes with illusions that we can attain safety that way; however, we know how fraught with danger that thinking can be. We protest loudly when someone else uses their wide brushes to paint a picture of us, knowing full well that no nation, no group, and no person could fare well when judged by their weaknesses and their flaws alone. Yet in the case of Muslims, it is often that we judge the 1.3 billion of them by the actions of less than one percent of their totality, stereotyping the second largest religion in the world with very little, if any, knowledge about it.

I believe that when we open our minds to learning from one another, we stand a greater chance at dealing with all the controversies and these hot-button issues with better results. It is this belief that motivates me to do my presentations about Arabs and Muslims in addition to knowing that we all harbor some kind of "Hidden Bias" to some degree or another, and that it is better to acknowledge it rather than bury our heads in the sand.

Muslims and Arabs are our neighbors. There are six million of them in America, and it is a good idea to get to know our neighbors. On Monday September 17th, I gave a presentation on Arabs and Muslims to judges at the 50th Washington Judicial conference. The title was "Do We Know Our Arab, Muslim and Sikh Neighbors." The presentation was based on a curriculum sponsored by the United States Department of Justice which was designed as a response to the backlash towards Arabs, Muslims, and Sikhs in the aftermath of September 11, 2001. With the aid of a power point, I set out to give an overview about Arabs and Muslims in one hour. Knowing how diverse the Arab world is, and being aware how little is known about Islam, I thought I'd better not waste any precious time worrying about how impossible my mission was.

I started by talking about the ethnic origins of Muslims in America and how the vast majority of them were African Americans, followed by Asian Muslims and those from Middle Eastern backgrounds. I tried to explain the difference between Arab (race) and Islam (religion) and showed how most Arabs in America are actually Christians. I also gave a quick glance at the basic tenets of Islam, including the five pillars of Islam:

1. Witnessing that there is one god and Mohammad is a messenger of God.
2. Fasting during the month of Ramadan (when Muslims abstain from food and drink from sunrise until sunset).
3. Giving charity 2.5% of one's wealth to the poor (Zakat).

4. Making a pilgrimage to Mecca once in a life time.
5. Praying five times a day.

We also looked at the sources of law in Islam. Those being the Holy book (Quran), Hadith (what Mohammad said and/or did), and what the Muslim scholars agreed on. We discussed the modesty issues between the genders in Islam, including the dress code for women, which obliges them to cover their hair; and to wear dresses that reach their ankles. I pointed out, however, that Muslim women are free to choose not to follow the code. The discussion also touched on how many Arabs and Muslims in the United States view the legal system, and how they may feel as if they are considered "automatically guilty" because of their ethnic background.

I explained that Muslims believe in God, his books (Quran, Torah, and Bible), angels, heaven and hell, and the Day of Judgment, and that Muslims are permitted to marry persons from the Jewish and Christian faiths according to the Sharia (Islamic Law). I also explained that Allah is the Arabic word for God. It does not mean Muslim God. It simply means God, and Christian Arabs use the same word too. We also covered some of the values of the Arab culture such as the hierarchy and rank, the extended family involvement in all family affairs, and the importance of honor and dignity to the Arab society.

We had seven different court case scenarios which we discussed in small groups. Afterwards we convened to reflect on these cases and for a question and answer session. Needless to say, time went by way too fast. I wished we had more time for dialog because I felt that many more questions could have come out especially in regards to some of what we see on the television and movie screens about Muslims and the Arabs on a daily basis.

I was very pleased with how well organized the event was. It was apparent to me that Erica S. Chung, Butch Chapin, and Judge Ronald E. Cox had major contributions in the success of this training. I was a little apprehensive and a tad bit intimidated presenting to judges. To my pleasant surprise, I found them to be welcoming, accepting, warm, appreciative, and of good humor. I truly appreciated the open minds with which they received my presentation. This reaffirms my belief that given the opportunity to meet face to face and speak to one another in a safe environment, people will learn from each other and will rediscover their common humanity. I am very grateful for the

opportunity that was afforded to me to share information about my culture and my religion in a hospitable environment.

Books:

A Brief Illustrated Guide to Understanding Islam by Ibrahim Hamide
The Basics of Islamic Belief by Dr. Gary Miller
Beyond the Veil by Fatima Mermissi
Covering Islam by Edward Said
Reel Bad Arabs by Jack Shaheen

Available on DVD as well as a book:

A Century of Islam in America by Yvonna Haddad
100 Myths about the Middle East by Fred Halliday
Islam and the Changes of Democracy by Khaled Abou El Fadi

Web Sites:

www.Islamiccity.com
www.Islam101.com
www.Islam.com
www.Islamworld.net



Ibrahim Hamide is owner of Café Soriab in Eugene, Oregon and the president of the Eugene Middle East Peace Group.

Celebrating the Courts in an Inclusive Society

COURT POLICIES AND CASES INVOLVING CULTURE AND RELIGION

Reiko Callner

Judges have an obligation to maintain standards of decorum and public safety in their courts. The First Amendment protects the free exercise of religion and prohibits state "establishment" of religion. The Washington State Constitution, Article I, §11 guarantees "Absolute freedom of conscience in all matters of religious sentiment, belief and worship." Wearing of headscarves by Muslim women, carrying ceremonial daggers and wearing of turbans by Sikh men and other circumstances of our increasingly diverse society require judges to balance competing interests. In criminal and domestic law cases, cultural perspectives out of the American mainstream are sometimes advanced in aid of dismissing or mitigating issues of domestic violence or child abuse/discipline. Judges' efforts to balance these interests, or at times, their failure to acknowledge that competing interests exist at all have been subject to both appellate review

and judicial conduct enforcement. This article identifies some points of tension between these rights and interests.

Religious Attire

Judges have authority to regulate their courtrooms and the rules they impose need only show a rational relationship to that goal. For example, requirements that male attorneys wear jackets have been upheld, as showing a rational relationship between the rule and the goal of showing respect for the court. (Decorum-related attire directives on the part of the judge must be sufficiently specific. Thus, a trial court's order prohibiting a female attorney from appearing as counsel until her presentation was "suitable, conventional, and appropriate" was reversed as arbitrary. *Peck v Stone*, 32 App Div 2d 506, 304 NYS2d 881 (1969).)

A different, well-settled national standard is applied, however, when the person is exercising religious freedom, in which case a rule restricting attire must be narrowly tailored to accomplish a compelling government interest. See *McMillan v State*, 265 A.2d 453 (1970), contempt finding reversed. It does not matter what the religion is, whether mainstream or little known. The consideration for a judge in this instance is not the religion claimed, but the sincerity of the belief of the individual professing it. Importantly, it is not the judge's understanding of the religious requirements that matter, but what the individual believes. See *In re Ladenburg*, CJC No. 4939-F-130 (2006), admonishment by Commission on Judicial Conduct for prohibiting head coverings in court, including religiously-affiliated. (A particularly colorful example is in *State v. Hodges*, 1984 Tenn. Crim. App. LEXIS 2791. A contempt finding was reversed where defendant's ensemble consisted of a fur vest, a fur skirt, and fur ankle coverings, no shirt or shoes, and adornments of an antelope skull, a human skull covered with long hair, and animal jawbones. Defendant was otherwise respectful to the trial court.)

In this context, choices of best practices, or of picking one's judicial battles, are raised. In the words of a federal judge in *U.S. v. James*, 328 F.3d 953, 957 (9th Cir. 2003):

"Tolerance usually is the best course in a pluralistic nation. Accommodation of religiously inspired conduct is a token of respect for, and a beacon of welcome to, those whose beliefs differ from the majority's. The best way for the judiciary to receive the public's respect is to earn that respect by showing a wise appreciation of cultural and religious diversity. Obeisance differs from respect; to

demand the former in the name of the latter is self defeating. It is difficult for us to see any reason why a Jew may not wear his yarmulke in court, a Sikh his turban, a Muslim woman her chador, or a Moor his fez. Most spectators will continue to doff their caps as a sign of respect for the judiciary; those who keep heads covered as a sign of respect for (or obedience to) a power higher than the state should not be cast out of court or threatened with penalties. Defendants are entitled to trials that others of their faith may freely attend, and spectators of all faiths are entitled to see justice being done."

Cultural Considerations in Criminal and Domestic Cases

Far less straightforward than the competing interests of freedom of religion and the need to maintain courtroom decorum are questions raised about the extent to which cultural considerations should be brought to bear in criminal or domestic law cases. In a diverse society, cultural competency requires some measure of understanding about an individual's background, if it differs from the mainstream. Cultural defenses have been brought to bear in highly charged circumstances, however, such as a 1987 case in which a judge was persuaded by an anthropologist expert's testimony that Chinese culture so condemns marital infidelity that the judge sentenced the defendant to probation, rather than imprisonment, for beating his wife to death with a claw hammer. *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. 1988) There are serious concerns that cultural considerations raised in the court may actually perpetuate incorrect stereotypes or import patriarchal values from defendants' and dissolution litigants' countries of origin - taking US courts back to the equivalent of the "rule of thumb", whereby a husband could beat his wife and children so long as the instrument used was no wider than his thumb. Further consideration by judges of this difficult subject is warranted. Some of the challenges presented can be found on the Washington Courts website under (Educational Resources — High School Lesson Plans — Equality, Discrimination and Civil Rights) a lesson called "Cultural Defense to Crime". See also "The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism", Daina C. Chiu, 82 Calif. L. Rev. 1053 (1994); and "Negotiating the Boundaries of Crime and Culture: A Sociological Perspective on Cultural Defense Strategies," Kay L. Levine, 28 Law & Soc. Inquiry 39 (2003).

Useful websites for research include:
www.apiahf.org
www.chayaseattle.org
<http://fvpfstore.stores.yahoo.net>

The latter site offers a bench book resource which aims to help judges analyze qualifications of an expert on culture and the relevance of testimony in a criminal case; consider a defendant's contention that his or her views and reactions to a situation were reasonable according to his or her cultural beliefs; determine the influence of culture on sentencing of a domestic violence perpetrator; handle cultural issues in child custody and visitation decisions; resolve state or tribal court jurisdictional issues involving American Indian children under the Indian Child Welfare Act; understand immigration implications for victims and perpetrators who appear in state court proceedings involving domestic violence; remedy language and other barriers that inhibit equal access to courts. Whether it is successful or not, the list of circumstances described sheds some light on the range and magnitude of the challenges facing a judge in fairly considering the role of culture from the bench.



Reiko Callner is Executive Director of the Washington State Commission on Judicial Conduct.

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A REVISED EXCERPT FROM “AN INTRODUCTION TO MUSLIM WOMEN’S RIGHTS”

Azizah Y. Al-Hibri

The topic of Muslim women’s rights is vast; Muslim jurists have been writing about it for centuries. Because jurists are partly the product of their societies and these societies were and continue to be highly patriarchal, Islamic literature has been saturated with a patriarchal perspective on women’s rights. This perspective has become so entrenched that it has been rendered invisible. For most Muslims it no longer represents the *ijtihad* (jurisprudential interpretation) of individuals. Instead, it has come to be viewed by them as an “objective” reading of the sacred Qur’anic text.

Family law, like other branches of Islamic law, derives from the concept of *tawhid*, or the belief in a single God. *Tawhid* is the anchor of the Islamic worldview, which incorporates significant Qur’anic assertions relating to gender. For example, the Qur’an states that all humans were created by God from the same *nafs* (soul or spirit). This and other Qur’anic passages make very clear that no man is superior to a woman by virtue of his gender alone.

An Islamic law is usually based on a *‘illah* (justification or reason). By agreement of scholars, when the *‘illah* disappears, the law must be suspended unless there is another *‘illah* to justify it. Much of our heritage of *ijtihad* was formulated hundreds of years ago and has not been reexamined recently to determine whether the *‘ilal* (plural of *‘illah*) for the related laws are still appropriate or valid. This observation is especially significant because systems of Islamic law have often incorporated customs of local communities within them, so long as such customs were not viewed as contradicting the Qur’an. This practice, incidentally, is part of the Qur’anic philosophy of celebrating, rather than obliterating or punishing, diversity. Yet, subsequent to that incorporation, many customs have disappeared in the Muslim world, but the laws that enshrine them have continued to exist.

Historically, marriage has been an institution that favored men over women. Through this institution, basic women’s rights such as the right to education, financial independence, and freedom of self-fulfillment were usually denied. A fulfilled woman was, in fact, viewed as one who married, served her husband well, and bore him children. This view, although less common today, continues to exist both in the West and in Muslim countries. Yet it is in total contradiction to the Islamic worldview of women and marriage.

Islam guarantees for women, among other things, the right to an education similar to that of the male, the right to financial independence, and even the right to engage in *ijtihad*. Islam also views marriage as an institution in which human beings of both genders find tranquility and affection with each other. It is for this reason that some prominent traditional Muslim scholars have argued that a woman is not required to serve her husband, prepare his food, or clean his house. In fact, the husband is obligated, for example, to bring his wife prepared food. This obligation is based on the recognition that the Muslim wife is a companion to her husband and not a maid.

Islamic law provides numerous protections to Muslim women. Paramount among them is the ability of the Muslim woman to negotiate her marriage contract and place in it any stipulation that does not contradict its purpose or intent. For example, she could place in her marriage contract a stipulation forbidding her husband from moving her away from her own city or town. She could also insert a stipulation requiring him to support her in the pursuit of her education after marriage. She could also use the marriage contract to ensure that her marriage would foster, rather than

destroy, her financial independence. This goal is usually achieved by requiring a substantial *mahr* (*marital gift*). The woman may also insert a stipulation that protects her right to work outside the home. In short, the marriage contract establishes not only the marriage of two individuals, but also their particular understanding of their relationship within the marriage. This approach ensures the continued well-being of women entering matrimonial life in a world of patriarchal injustice and inequality.

Despite many patriarchal and Orientalist interpretations that have distorted and even damaged the Muslim woman's rights in this area, the law of *mahr* was made clear quite early on. *Mahr* is an obligatory marital gift imposed by God upon prospective husbands as a sign of their serious commitment and a gesture of goodwill. In fact, the giving of *mahr* is not much different from the Western custom of giving an engagement ring to signal commitment. Islamic law, however, preserved for the prospective wife the right to specify to her prospective husband the type of *mahr* she prefers. One woman may prefer cash, another property, depending on their relative needs or inclination. A third woman may choose something intangible (nonmaterial) as her *mahr*, such as education. That is acceptable also. A woman of meager means may prefer to ask for capital that she could immediately invest in a business. In fact, she could even use that capital to start her own business. Her husband would have no access to either the capital or income from that business even if he were in need because legally, her *mahr* belongs to her alone.

Sometimes women resort to the custom of dividing the *mahr* into two parts: prompt and postponed. The prompt *mahr* is usually small and merely symbolic. It is due by the time of the marriage ceremony. The postponed *mahr* is usually a substantial lump-sum payment. Unless otherwise specified, it becomes due only in case of death or divorce. If the husband dies, the postponed *mahr* becomes an outstanding senior debt against his estate (not to be confused with the woman's share/inheritance in the estate of her husband). If the couple divorces, the husband must pay the postponed *mahr* at the dissolution of the marriage, plus any other financial settlements due the wife at that point. For this reason, some Muslims view the concept of postponed *mahr* as analogous to that of lump-sum alimony in the United States. The only instances in which the woman is not entitled to her *mahr* upon divorce are instances in which she is primarily at fault in the dissolution of the marriage. Consequently whether payable because of

death or divorce, postponed *mahr* provides the wife with a measure of financial security.

Mahr, therefore, is not "bride price" as some have erroneously described it. It is not money the woman pays to obtain a husband, nor money the husband pays to obtain a wife. It is part of a contract that specifies the terms/stipulations under which a woman is willing to abandon her status as a single woman and its related opportunities in order to marry a prospective husband and start a family. Consequently, as in Western prenuptial and nuptial agreement, the contract addresses matters of concern to the prospective wife and provides her with financial and other assurances. Unlike prenuptial agreements, however, and contrary to common belief, the *mahr* provision does not describe the full financial rights of the woman at divorce. It only specifies the marital gift given to her by her husband at the time of marriage. The fact that part of it may be postponed only indicates the wife's willingness to facilitate payment.

Classical Islamic jurisprudence entitles the woman to maintenance by her husband. Even if fully financially independent, she is not required to spend any of her money except as she wishes. Furthermore, the wife is under no duty to do any housework although she may engage in such work on a volunteer basis. Some traditional jurists suggested that the wife was entitled to monetary compensation for her housework.

The law of maintenance is based on the Qur'an, but unfortunately it has been used to assert the general superiority of men over women. The relevant Qur'anic verse simply states that men may gain *qiwamah* (caretaking status) vis-à-vis women only if they satisfy two preconditions. First, the male must be the (financial) maintainer of the woman. In other words, if he is not carrying her financial responsibility, then he has no standing to interfere in her affairs by providing unsolicited advice. Second, the male must also possess qualities (such as financial acumen, real estate expertise, etc.) that the woman lacks (at that point) but needs in order to reach a particular decision. Without these two qualifications (which, incidentally, may change from time to time and from one decision to another), men may not even presume to provide advice or be caretakers (*qanmamun*) of a woman.

Divorce in Islam is relatively simple and is a consequence of the Qur'anic view that spouses should live together on equitable terms or leave each other with kindness. Present legal practices, however, can tie

up a woman in family courts for a decade before she is granted a divorce. This state of affairs is especially offensive in light of the fact that some traditional jurists gave women the right to seek judicial divorce if they had no conjugal relations with their husbands for more than four months.

There are many forms of divorce in Islam. The present standard marriage contract grants the male the right to an automatic divorce. Nevertheless, if properly informed, the prospective bride is entitled to negotiate with the prospective groom a stipulation that would give her a similar right. Unfortunately, women have not been properly informed of this right. Furthermore, not every woman has sufficient bargaining power to include in her contract all the stipulations she desires.

A woman who has not protected herself in the marriage contract can seek judicial divorce on a variety of grounds, including those of domestic violence and lack of support. As in the West, judges play a major role in determining the level of violent conducts by the husband that is deemed actionable. These levels vary from one country to another. In Yemen, for example *karabia* (extreme dislike), without more, is one of the statutory grounds for judicial divorce or annulment (*faskh*). In Jordan and Kuwait, verbal abuse is a statutory ground for judicial divorce.

Additionally, a Muslim woman who has not retained for herself the right to divorce may do so using the process of *khul'*. Under this form of divorce, the wife returns the *mahr* to her husband, stating that she fears for her piety if she continues living with him. *Khul'* is based on an incident that took place during the life of the Prophet which permitted a wife to divorce her husband for no fault of his. His wife simply stated that she feared for her piety if she continued in the marriage. Until recently however, most Muslim countries required the husband's consent for the *khul'* to take effect. The requirement made this form of divorce quite expensive because many husbands bargained for their consent. Recently, al-Azhar center of learning in Egypt, followed by the Egyptian parliament removed the consent requirement for *khul'* divorces, rendering this divorce process more in line with the prophetic precedent.

This revised excerpt is reprinted with permission of the author and the publisher, Syracuse University Press. To view the complete original article, which was featured in the Windows of Faith: Muslim Women Scholar-Activist in North America, Ed. Gisela

Webb (2000), visit the website of Karamah: Muslim Women Lawyers for Human Rights at <http://www.karamah.org>, under Articles.



Dr. Azizah Y. Al-Hibri is Professor of Law at the T. C. Williams School of Law, University of Richmond.

Celebrating the Courts in an Inclusive Society

SPOTLIGHT ON COMMISSION MEMBERS

JUDGE RONALD E. COX

On June 13, 2007, the King County Washington Women Lawyers honored Judge Ronald E. Cox at their 2007 Judicial Appreciation Luncheon for his advocate work for women and minorities.

JUDGE RICHARD A. JONES

On August 3, 2007, the YMCA of Greater Seattle honored Judge Richard A. Jones at its 24th Annual YMCA A. K. Guy Award Luncheon for his volunteer contributions to the community.

On October 4, 2007, the United States Senate confirmed Judge Jones as United States District Judge for the Western District of Washington upon nomination by President George W. Bush.

On November 19, 2007, a reception was held congratulating Judge Jones on his confirmation as United States District Judge. The reception was hosted by the University of Washington School of Law, the Black Law Student Association, the Minority Law Student Association, and the Latino/a Law Student Association.

JEFFREY C. SULLIVAN

On October 13, 2007, Jeffrey C. Sullivan was confirmed as United States Attorney for the Western District of Washington upon appointment by President George W. Bush. Mr. Sullivan had been Interim United States Attorney since January 2007.

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