

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI,)	
a/k/a “Shaqil,”)	
a/k/a “Abu Khalid al Sahrawi,”)	
)	
Defendant)	

GOVERNMENT’S OBJECTIONS TO
DEFENDANT’S PROPOSED JURY QUESTIONNAIRE

The United States respectfully objects to a number of the questions proposed by the defendant in his Proposed Jury Questionnaire.

In many of his proposed questions, defendant improperly seeks a sneak preview of the juror’s thoughts regarding the appropriateness of the death penalty in this particular case and tries to plant seeds for his defense. The Supreme Court in Witherspoon v. Illinois, 391 U.S. 510, 522 (1968) made clear that disqualification must be based on the juror’s general death penalty views and not on his views regarding the particular facts and circumstances of a specific case:

[A] prospective juror cannot be expected to say in advance of trial whether he would in fact vote for the extreme penalty in the case before him. The most that can be demanded of a venireman in this regard is that he not be irrevocably committed, before the trial has begun, to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the proceedings.

Id. at 522 n.21 (emphasis added); see also Morgan v. Illinois, 504 U.S. 719, 726-35 (1992); United States v. Tipton, 90 F.3d 861, 879 (4th Cir. 1996); United States v. McCullah, 76 F.3d 1087, 1114 (10th Cir. 1996) (“The district court was not required, as Mr. McCullah suggests, to

allow inquiry into each juror's views as to specific mitigating factors as long as the voir dire was adequate to detect those in the venire who would automatically vote for the death penalty"). The following proposed questions violate this rule: 105; 227-229 on page 47;¹ 233 (c) and (d) on page 49; 234-39 on pages 49-51; 258 (e), (f), (g) and (j) on pages 56 and 57; 263 (b), (c), and (d) on pages 57 and 58; and questions 265-269 on page 59. For the same reason, the defendant's proposed introductory paragraphs regarding the posture of this case on page 47² and regarding the death penalty on the bottom of page 53 and on page 54 up to question 249 are improper. Simply put, the juror questionnaire is not the appropriate vehicle to try the merits of this case.

Several other questions proposed by the defense lack relevance to this case or are too overbroad or attenuated from the case to justify their inclusion in the questionnaire: 22; 23; 34(a); 63; 78; 89; 90; 98; 99; 104; 107-09; 157; 164-65; 167 (g), (h) and (i); 168 (g), (h) and (i); 174; 178-80; 183-91; 193-97; 203; and 208-226 (on page 46).

Other proposed questions address issues on which the Court will instruct the jury and, therefore, should not be asked in the questionnaire because the only proper question would be whether the juror can follow the Court's instructions: 115; 117-19; 121; 124-28; and 134.

The following questions repeat earlier proposed questions: 123; 129; and 167(c).

The Government also objects to the following proposed questions that address the

¹ The defendant's Proposed Jury Questionnaire repeats its numbering of questions beginning on page 43; therefore, we identify the objectionable questions that fall on page 43 or thereafter by both the number and the page upon which the question falls.

² For example, there is no reason for the jury questionnaire to contain references such as: "more than three weeks before the attacks on September 11, 2001" or "but he has denied any knowledge of or involvement in the specific conspiracies that perpetrated the attacks on September 11, 2001." The latter statement is also factually wrong as is defendant's statement that the Pentagon is located in Alexandria, Virginia.

Court's proposed procedures in this case because they have no bearing on a juror's qualifications to serve: 270-75 on pages 59-60; 298-99 on page 65; and 302-03 on page 66.

Question 97 necessarily will involve disclosure of a juror's name in violation of the anonymous jury that the Court has ordered.

Finally, the factual premise for proposed question 280 on page 61 is incorrect because the defendant has pled guilty and is no longer presumed innocent.

For the foregoing reasons, the Government respectfully requests that the Court not include the above-identified questions proposed by the defense in the juror questionnaire.

Respectfully submitted,

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By: /s/
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Date: December 5, 2005

CERTIFICATE OF SERVICE

I certify that on the 5th day of December, 2005, copies of the foregoing
Government pleading was served, by facsimile and regular mail, on the following counsel:

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