

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

FILED

UNITED STATES OF AMERICA )  
)  
v. )  
ZACARIAS MOUSSAOUI, )  
a/k/a "Shaqil," )  
a/k/a "Abu Khalid al Sahrawi," )  
Defendant )

Criminal No. 01-455-A  
Hon. Leonie M. Brinkema

2006 MAR -1 P 3:50  
CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

**DEFENDANT'S PROPOSED PRELIMINARY JURY INSTRUCTIONS  
FOR PART ONE OF THE BIFURCATED PENALTY PHASE**

The defendant, by counsel, proposes that the following preliminary instructions be given to the jury, which are based upon those submitted by the Government and incorporate the changes identified in the Defendant's Memorandum.

ZACARIAS MOUSSAOUI

By \_\_\_\_\_ /s/ \_\_\_\_\_  
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## **Preliminary Instruction One**

### **Overview of the Case and the Jury's Role**

Members of the Jury:

On April 22, 2005, the defendant in this case, ZACARIAS MOUSSAOUI, pled guilty to three counts which subject him to a possible sentence of death. Those crimes are:

1. Count One: Conspiracy to Commit Acts of Terrorism  
Transcending National Boundaries;
3. Count Three: Conspiracy to Destroy Aircraft;
4. Count Four: Conspiracy to Use Weapons of Mass  
Destruction;

Because the defendant has pled guilty, there is no question about whether he is guilty of the crimes for which he was charged. You have been selected to serve as jurors solely to decide the defendant's punishment.

Under federal law, the punishment for each of these charges can be death or life imprisonment without the possibility of release. There is no parole in the federal system. Your conclusion that the defendant be sentenced to death or life imprisonment will be binding on the Court and I will sentence the defendant according to your conclusion.

The punishment hearing is divided into two phases. The purpose of the first phase is to make a threshold finding on the defendant's eligibility for the death penalty. You must determine whether the defendant, Zacarias Moussaoui, intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victims died as a direct result of the act. I will define this threshold finding in more detail at the end of the first phase before you deliberate; however, because this threshold finding will be the focus of the first phase.

I will summarize for you what the Government must prove as to this threshold finding.

The Government has informed the Court that the “act” upon which it will rely is that the defendant lied to federal agents at the time of his arrest on August 16-17, 2001 — approximately three weeks before the September 11 attacks occurred. Therefore, the Government must prove:

- (1) that the defendant intentionally lied to federal agents at the time of his arrest on August 16-17, 2001;
- (2) that the defendant did so contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense; and,
- (3) at least one victim died on September 11, 2001, as a direct result of the defendant’s lies.

The burden of proof for this threshold finding rests on the Government. To that end, you must decide whether or not the Government has proved the threshold finding beyond a reasonable doubt. If you fail to unanimously find that the Government has proved this threshold finding beyond a reasonable doubt, your deliberations are over. The Court will then sentence the defendant to life imprisonment without the possibility of release.

On the other hand, if you determine unanimously that the Government has proven this threshold finding beyond a reasonable doubt, then we will proceed to the second phase of sentencing in the case. During the second phase, if there is one, you will receive more information from the parties and then decide whether the defendant should be sentenced to death. Accordingly, during your deliberations on the first phase, you should not be considering or discussing whether death is the appropriate punishment. Instead, you should focus solely upon whether the Government has proven the threshold finding beyond a reasonable doubt.

## **Preliminary Instruction Two**

### **Stipulations**

Throughout the sentencing hearing, you will hear the lawyers speak about “stipulations.” When the attorneys on both sides stipulate or agree on the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard the fact as proved.

### **Preliminary Instruction Three**

#### **Consideration of Evidence**

I stress the importance of giving careful and thorough consideration to all of the evidence you will receive during both parts of the penalty phase. In reaching your decisions, you must be guided by your reason and not by bias, prejudice, or sympathy. You are to act impartially and objectively in deciding the issues before you, with your sole goal being to render a fair decision based on the law received from the Court and the facts as you have found them based on the evidence.

## **Preliminary Instruction Four**

### Note Taking

Due to the complexity of the case, I will permit you to take notes. You are instructed that your notes are only a tool to aid in your own individual memory and you should not compare your notes with those of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

## **Preliminary Instruction Five**

### Redacted Documents

During the trial of this case, the parties will introduce documents that have been redacted to remove certain information. The redactions were made consistent with the law and under the supervision and approval of the Court. You may not draw any inferences whatsoever from any redaction, nor may you hold any bias against either party due to the redactions.