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 REPLY TO DEFENDANT'S MEMORANDUM IN SUPPORT OF HIS MOTION TO DISMISS THE DEATH NOTICE AND FOR OTHER RELIEF

The United States respectfully submits this brief reply to the defendant's memorandum to address some of the errors contained in his memorandum. The content of Ms. Martin's e-mails misapprehends the Government's theory and what an opening statement is. Moreover, the content of Ms. Martin's emails — her opinion on the relative strength of the Government's case — is of no import except that she violated the Court's sequestration rule.

Throughout his memorandum, defendant paints Ms. Martin in two vastly different ways. On one hand, the defendant describes her as an attorney who knowingly violated the Court's sequestration Order. The Government agrees with this view. At the same time, however, the defense essentially attempts to portray Ms. Martin as a viable fact witness who undercuts the Government's opening. This latter description is plainly wrong.[1]

Ms. Martin's e-mails essentially make two points. First, that the opening wrongly asserts that gate screening alone will result in 100% confiscation of the hijackers knives. Second, that

[1] Similarly, defendant's assertion that the Government invoked the attorney work product privilege is simply wrong. In our letter to the Court, we merely noted that her e-mails "may constitute attorney work product." March 13, 2006, letter at 2.

even if the knives were seized from the hijackers, the hijackers could have been successful because they could have improvised and used materials on the planes as weapons and still accomplished the hijackings. Neither point contradicts the Government's opening.

On the first point, the Government recognizes that screening alone would not have resulted in 100% confiscation of the knives — this is a well-known fact even after the September 11 attacks. See E-Mail from Lynne Osmus dated March 8, 2006 ("I don't support including 100 percent gate screening . . ."). The Government's witnesses will testify that they recognize this fact when they react to threats such as this and order additional measures, creating a multi-layered security system. Indeed, this is exactly what Ms. Martin says that she would have argued had she given the opening statement. See March 7, 2006 e-mail to Lynne Osmus ("That the multi-layered system of aviation security . . . would have thwarted the attacks.").

Despite Ms. Martin's views, the Government's opening said nothing to the contrary. Indeed, the Government merely stated that there is a straightforward manner to address such a threat — no-fly lists, gate security, and the CAPPS system. First, Mr. Spencer stated that knives and box-cutters would have been prohibited and gate security changed. Tr. 43. Then, the CAPPS system — which identifies high risk travelers and which identified 10 of the 19 hijackers — would have been changed to require a search of the carry-on luggage of CAPPS selectees because the known weapon of choice would have been knives instead of bombs in checked luggage. Tr. 44-45. Such a description is the multi-layered system that Ms. Martin espoused. Apparently, Ms. Martin — and now the defense — do not understand that an opening statement is simply a preview of the Government's case, not a detailed recitation of every possible fact.

As to Ms. Martin's second point, the Government never discussed stopping the hijackings

if the hijackers boarded the planes without their knives. The Government's argument as it relates to the FAA evidence solely addresses preventing the hijackers, at least some of them, from boarding the planes. Ms. Martin's rants about other possibilities if the hijackers boarded the planes without their knives has nothing to do with what the evidence will be or what was previewed in the openings.

At bottom, Ms. Martin's opinion on how the opening should have been phrased (and she suggested how she would have put it) is irrelevant because it is not evidence. If the defense believes that she has evidence to present, they can call her as a fact witness and we will litigate whether she has anything proper, probative, or admissible to add. Simply stated, her opinion on the relative strength of the Government's case is just that — her opinion. That opinion is neither discoverable nor admissible. As we suggested in our letter to the Court, her musings on the relative weaknesses of the Government's case are patently meaningless. Her e-mails are of no import whatever except that she knowingly violated the sequestration order. Whether Ms. Martin tainted witnesses beyond repair should be addressed by the Court. The contents of Ms. Martin's emails matters not at all.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 14, 2006, a copy of the foregoing Government pleading was served, by hand, on the following counsel:

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