

United States v. Abdel Rahman: Preliminary Voir Dire

Hon. Michael B. Mukasey
Southern District of New York
January 9, 1995

The following text was prepared by the Southern District of New York's United States District Judge Michael B. Mukasey to address prospective jurors selected for the prosecution of defendants suspected of seditious conspiracy to conduct a campaign of urban terrorism, including participation in the 1993 bombing of the World Trade Center and plans to bomb New York landmarks, in *United States v. Abdel Rahman*, No. 1:93-cr-181 (S.D.N.Y. Mar. 17, 1993).

Preliminary Voir Dire

Good morning, ladies and gentlemen. I am Judge Mukasey, and we are here this morning to pick a jury in a criminal case. Our purpose today and in the coming days is to pick a jury of citizens who can listen to the evidence in this case and decide the case based only on the evidence presented here in court and on my instructions as to the law.

The case is one that many of you—perhaps all of you—have heard about or read about. The defendants in this case are charged with participating in a conspiracy, which is simply the legal term for an unlawful agreement, to commit various acts of violence, including bombing buildings and other structures, as a way of opposing the United States and United States policy in the Middle East, and with committing other acts that are said to be related to that conspiracy.

We are not trying to find people for this jury who have never heard of this case or of these charges. We are not even trying to find jurors who have never held or expressed an opinion about these charges or about matters related to them. We are trying to find jurors who, regardless of what they have seen or heard, and even regardless of what they have thought or said, can understand that their job as jurors is to decide this case based only on the evidence presented here in court, to apply only the legal rules that I explain and no others, and by applying those rules to that evidence to determine whether or not each defendant's guilt has been proved beyond a reasonable doubt.

We are going to use the following procedure for jury selection: After I finish these preliminary remarks, which should take about 20 minutes, each of you will be given a questionnaire that contains certain questions for you to answer that will help us—the lawyers for the parties and me—to decide whether you can serve on this jury. As I will explain in more detail later on, after you finish filling out the questionnaire today you will submit it and go home, and then return on Wednesday, January 18, at which time some of you will be asked additional questions in person. We will use this process to get a panel of about 80 jurors. In addition to coming back on January 18, you may be asked to come back once or twice more during this selection process. From among this panel of 80 or so, the parties will select the 12 jurors and six alternate jurors who will hear and decide

the case. I hope, if everything goes smoothly, that we can get started with the trial itself not later than Monday, January 30. Of course, if we can start earlier, we will.

The questions in the questionnaire, and those we will ask in person in a few days, ask certain facts about you and members of your family: whether you and any family members or close friends have any connection with the people or events underlying this case; whether you have opinions on certain subjects; and other matters, including how you are employed. I hope you understand that this is not an attempt to pry into your private life but simply a way of helping all of us determine who can serve on this jury.

Before you are given the questionnaire to fill out, there are a few things I should explain about the case. The first is the charges, which are contained in an indictment voted by a grand jury. An indictment is simply the document that contains the charges that the government is required to prove beyond a reasonable doubt. It is the way that the government brings into court people whom the government claims have violated the law. That is the only function of an indictment in a criminal case. An indictment itself is not evidence of the guilt of any defendant. An indictment does not change in any way the presumption of innocence that the law gives every accused person at the start of a trial, a presumption that stays with the defendant throughout the trial unless and until the jury finds, in accordance with legal rules described by the court, that each and every element of a charge has been proved beyond a reasonable doubt.

The indictment in this case contains 28 separate counts or charges, but those charges can be described briefly in three categories. The first category of charges includes three conspiracy charges; one charge of attempted bombing; two charges of soliciting or asking others to commit violent acts; and four charges of receiving, using, or carrying weapons or destructive devices. Those charges are contained in Counts One through Six and Counts Fifteen through Eighteen of the indictment. All of these counts involve charges that some or all of these defendants participated in conspiracies to commit or attempted acts of violence or helped others to do so.

As I mentioned before, a conspiracy is simply an agreement between two or more people to violate the law. The first of these conspiracy charges is that all defendants named in the indictment agreed to oppose the United States and its policies, including its policies in the Middle East, through a series of violent acts, including bombings and murder. These acts are said to have included the bombing of the World Trade Center in February 1993 as well as plans to bomb other buildings and locations, including FBI headquarters and the Holland and Lincoln Tunnels; plans to commit violence against various public figures, including President Hosni Mubarak of Egypt; and plans to try to secure the release of imprisoned members of the group. The indictment charges that these acts were motivated also by opposition to Israel and by a radical interpretation of the Islamic religion. The second conspiracy charge is brought against two defendants and accuses them of agreeing to help arrange the assassination of Egyptian President Hosni Mubarak during a visit he made to the United Nations in the spring of 1993. The third conspiracy charge is brought against all 12 defendants on trial here and accuses them of participating in an unlawful agreement to bomb build-

ings and other locations. This conspiracy charge differs from the first because among other things it does not mention or require proof that opposing United States policy was a motive. Count Six of the indictment contains the charge of attempted bombing and is brought against 10 of the defendants on trial here. Counts Two and Four contain the charges of soliciting or requesting others to commit acts of violence, and both of these counts name one defendant. Counts Fifteen and Sixteen charge that two defendants received and used a semi-automatic weapon in connection with the bombing conspiracy charged in Count Five. Count Seventeen charges seven defendants with using and carrying destructive devices in connection with the bombing conspiracy charged in Count Five, and Count Eighteen charges one defendant with using and carrying destructive devices in connection with the conspiracy charged in Count One. That is the first group or category of charges.

The second category of charges includes Counts Seven through Fourteen; they are brought only against the defendant El Sayyid Nosair, and they all involve conduct that is said to have occurred on November 5, 1990. Count Seven charges that on November 5, 1990, he killed a man named Meir Kahane, and Count Eight charges that he attempted to kill a man named Irving Franklin. Counts Nine and Ten charge that he attempted to kill a U.S. postal inspector named Carlos Acosta. Counts Eleven through Fourteen charge that he used and possessed a weapon unlawfully on November 5, 1990.

Finally, the third category of charges—Counts Nineteen through Twenty-Eight—contain charges only against defendant Ibrahim El-Gabrownny for conduct that allegedly occurred on March 4, 1993. Counts Nineteen through Twenty-Two charge him with obstruction of justice and assault for allegedly trying to interfere with law enforcement officers who were executing a search warrant at his apartment in connection with the investigation of the World Trade Center bombing. Counts Twenty-Three through Twenty-Eight charge Mr. El-Gabrownny with possessing forged Nicaraguan passports at the time of his arrest on March 4, 1993.

As you can see from the description of the charges, this is a case in which people are charged with agreeing to commit criminal acts and with committing criminal acts. No one here is charged simply with having opinions or expressing ideas, neither of which is a crime in this country.

Each defendant, by entering a plea of not guilty in this case, has denied these charges, and the government has the obligation to prove the charges beyond a reasonable doubt.

I have just summarized these charges in a general way not for the purpose of describing what is necessary to prove them; I will do that in detail as part of the trial. The only purpose of summarizing the charges at this point is so that you can understand the reasons for some of the questions you will be asked to answer on the questionnaire and later on during the jury selection process.

When I referred to Count One, I mentioned that the bombing of the World Trade Center in February 1993 is charged as part of the conspiracy set out in Count One. You may be aware that four men were convicted in this court last spring in connection with the World Trade Center bombing. However, those convictions have no relevance to this case. Just because those four men were convicted does not mean that any of these defendants were involved in that

bombing. On the other hand, just because those four men were found to have been involved in that bombing does not mean that anyone on trial here, or anyone else, could not also have been involved. To put the matter simply, although the same bombing is charged as part of this case, the verdict in the other case has absolutely nothing to do with this case.

Now that I have summarized the charges, I will introduce each of the defendants and the lawyers and others who will be participating in the trial of this case. The government is represented in this case, as it is in all cases in which the government is a party before this court, by the United States Attorney for the Southern District of New York, Mary Jo White. This case will be presented by Assistant United States Attorneys Patrick Fitzgerald, Robert Khuzami, and Andrew McCarthy. Assisting them will be Jane Chu.

I will now introduce the defendants and their lawyers. You will notice that some may be represented by more than one lawyer, and you should draw no conclusion from that fact. The question of whether one or more lawyers represent a defendant is simply a matter of convenience and efficiency and should not concern you. The first defendant named in the indictment is Omar Ahmed Ali Abdel Rahman who is known also as Sheik Abdel Rahman.

Dr. Abdel Rahman will be represented by Lynne Stewart, assisted by Ramsey Clark and Abdeen Jabara, and Emanuel Moore also has provided legal counsel to Dr. Abdel Rahman. The second defendant is El Sayyid Nosair. He will be represented by Roger Stavis and Andrew Patel. The third defendant is Ibrahim A. El-Gabrownny. Mr. El-Gabrownny will be represented by Anthony Ricco and Gary Villanueva. Next is Siddig Ibrahim Siddig Ali. He will be represented by Daniel Felber of the firm of Balsam and Felber and by Jerry Tritz. The next defendant listed in the indictment is Clement Hampton-El, who is represented by Kenneth Wasserman. Next is Amir Abdelgani, who is represented by Steven Bernstein. The next person listed is Fares Khallafalla. He is represented by Valerie Amsterdam. The next defendant is Tarig Elhassan. He is represented by Joyce London. The next defendant listed in the indictment is Fadil Abdelgani, who I should note is not the same person as Amir Abdelgani, whom I introduced a moment ago. Mr. Fadil Abdelgani is represented by Charles Lavine of the firm of Grossman, Lavine, and Rinaldo. The next defendant is Mohammed Saleh, who is represented by John Jacobs. The next defendant is Victor Alvarez, who is represented by Wesley Serra. And the last defendant listed in the indictment is Matarawy Mohammed Said Saleh, who is also called Wahid Saleh and is not the same person as Mohammed Saleh, whom I introduced a moment ago. This Mr. Saleh—Matarawy Saleh or Wahid Saleh—is represented by Thomas Nooter of the firm of Freeman, Nooter, and Ginsberg.

Obviously, when you hear a lot of names and see a lot of faces it is difficult at first to keep everyone straight, particularly when some people have similar names. But I can assure you that as the trial progresses you will have no difficulty keeping everyone's identity straight, and there are name cards on the table in front of each person identifying that person.

Now that I have introduced the parties and their lawyers, I should tell you a couple of additional facts about the case that may help you fill out the questionnaire and help you understand how the privacy of jurors can and will be pre-

served in a case like this in which there has been a good deal of public interest. Some of you may have heard or read about jurors being sequestered. The jury in this case will not be sequestered. The jurors will go home every night. However, the names and addresses and other identifying information about jurors, such as their places of employment, will not be disclosed to anyone other than the jury clerk who will send each juror his or her check for jury service. That is to ensure that the privacy of jurors is preserved and that you are not contacted by the press or by others who may be curious to discuss the case. In addition, jurors will be picked up each morning by deputy U.S. Marshals at a convenient meeting place, or perhaps at several different places, and driven to the courthouse. While the jury is in the courthouse, its members will remain with the marshals and will take their coffee breaks and meals together. A light breakfast—coffee and other refreshments—and lunch will be provided by the court during the day for the jurors. In the evening, the jurors will be driven from the courthouse by the marshals back to a convenient drop-off point, or perhaps several drop-off points, and will make their way home. The jury will hear evidence in the case four days a week—Monday through Thursday—at least initially. I hope it will not be necessary for us to go to a five-day-a-week schedule, but I cannot promise that.

Perhaps I should say a few words about the security procedures in this case. When you came to the courthouse this morning you may have noticed that there are marshals and other security people posted inside and outside. The security people are here simply to ensure that whatever people's opinions or feelings may be about this case, they will not cause disruption of the trial, and that the jury can proceed in an orderly way to hear the evidence and decide the case based only on the evidence and on my instructions as to the law.

I am sure you are wondering how long the trial will take. Actually, I am wondering the same thing. It is not possible to predict with great accuracy how long it will take, but the best estimate I can make—and it is only an estimate—is that it will take between six and nine months. I know that is a very long time, and there may be many of you who simply cannot take that amount of time to hear a case, even four days a week. I will discuss that later. But please understand that the lawyers and the court will do everything we can to present the case as quickly as possible, consistent with giving everyone here—both the defendants and the government—a fair trial. I should also tell you that after 30 days of trial, the jury fee you receive goes from \$40 per day to \$50 per day, so there is some slight additional compensation in a longer trial such as this. In addition, jurors will be paid for the cost of public transportation to and from whatever pick-up and drop-off point the marshals use.

You should also know that no one who is employed need be concerned about how their employer might react to their service on a jury during a lengthy trial. Most employers, I think, are pretty good and understanding about that, but in any event there is a federal statute that forbids any discrimination of any kind against anyone on account of jury service. I have made sure in the past that that statute was scrupulously observed by the employers of jurors who have served in this court, and you have my word that I will do so in this case. So you will not lose seniority or any other employment right as a result of your jury service. Although that statute does not require that an employer pay a person his or her salary dur-

ing jury service, it does require that any employer who has a policy of paying employees during jury service continue to apply that policy.

During the trial, those who serve on the jury will have to agree not to read any of the newspaper or magazine reports about the case or watch or listen to any radio or television news report about the case. I may discuss the reasons for that in greater detail later during or after jury selection, but you can probably figure out the reasons for that yourselves. Those who are selected to serve on the jury will take an oath to decide the case based only on the evidence presented in court. There are two parts to that. First, it is the jurors who must decide the case for themselves; and second, they must do so based only on evidence received in court. If jurors read and are influenced by news reports about the case, in effect they are surrendering their responsibility to news reporters or to people whose comments the reporters quote in the newspapers or on radio or television. Reporters frequently highlight what is interesting and easy to understand. As you probably realize, not everything that is interesting and easy is necessarily important, and not everything that is important is necessarily interesting or easy. Even when reporters try in good faith to get facts correct, they are often working in a hurry with partial information, and they do not have an unlimited amount of space or time to explain the facts. To put it simply, even when media representatives try their best, they may not get it right or complete.

Also, people may be quoted in news reports who have an interest in having the case come out one way or the other, and those people will say things they hope will influence public opinion one way or the other. There have already been several people quoted in news reports about this case who fit that description, some of them currently involved in this case, some not. People with an interest in having the case come out one way or the other naturally will say what they think helps the side they want to help, and they will avoid discussing anything they think does not help their side. There have already been many statements like that reported about this case in the newspapers, on television, and elsewhere. Needless to say, such statements are not evidence, and many such statements have included outright falsehoods about what the evidence will show. If a juror is influenced by statements in press reports, which are not evidence and which the parties to this case do not have a chance to rebut or explain, then that juror is not being true to his or her oath to decide the case for himself or herself and to decide it based on the evidence and not based on news reports. That is just a summary of the reasons why we do not want jurors being influenced by news reports, and the easiest way not to be influenced by news reports is not to see or hear them. Start today.

I will also ask you today and on future days not to talk to anyone about this case, particularly not to reporters if they try to question you about it. Obviously, I am also asking the reporters not to try to question jurors or potential jurors because that could simply disqualify those jurors from service and would be interfering with the process of selecting a jury in this case.

But although you will not be able to read about this case or hear about it from news reports, you should know that we will make available to the jurors at the courthouse the local daily newspapers with the stories about this case deleted, so you will be able to keep up with sports—at least those sports that are still being

played—and with other important things like the comics. Unfortunately, none of us will be able to keep up with the Far Side cartoons because Gary Larson has decided to retire and stop drawing them, but we will be able to keep up with everything else.

I am almost done with these preliminary remarks, and I thank you for your attention. A moment ago, when I mentioned the projected length of the trial, some of you looked and even sounded uncomfortable. Others may feel that they would have difficulty serving because of the nature of the charges. I want to assure you that no one is going to be forced to serve on this jury who should not sit because he or she really cannot decide the case based only on the evidence but rather would be influenced by other considerations, or who cannot sit because that person simply cannot afford the time away from business or other pressing matters. That is part of what we will be trying to find out through the questionnaire. But I hope when you answer the questions on that questionnaire you will keep the following in mind: If you, or someone close to you, were accused of a crime, or were the victim of a crime, or were simply involved in an accident or some other event that caused a lawsuit, you would expect a group of your fellow citizens to put aside their beliefs and prejudices, and their other activities, for whatever time it took to hear your case; and you would have every reason to expect that because it is your right in this country to expect it. The people involved in this case have a right to expect that as well. Also, each of you took an oath before we started that you would give truthful answers to all questions put to you touching upon your qualifications to serve as jurors. Everything that happens in this building depends on people taking oaths seriously. No witness is allowed to testify until the witness takes an oath. Each of these lawyers took an oath before that lawyer was permitted to practice in this court. I had to take an oath before I assumed my responsibilities here. Your oath is no less important than the oaths of others who participate in this trial, and it applies to the questions on the questionnaire.

Just a few more words about the questionnaire and then I am finished. The form is about 20 pages long. Most of the questions are “Yes/No” questions, so you will not have to sit and write any long answers. There are two sets of questions on the questionnaire—questions 20(a) and (b) and questions 76 through 80—that I should mention in particular. Questions 20(a) and (b) ask about the ethnic background of you and your spouse, and questions 76 through 80 ask about your religious background. Those questions are optional. You need not answer them if you would prefer not to do so. Whether you answer them or not, please understand that we do not pick juries in this country, and we will not pick this jury, based on ethnic background or religion. The only reason those questions are there is that a person’s background, whether ethnic or religious, might possibly help someone reading the questionnaire better understand the answers to other questions. But again, you need not answer such questions if you would prefer not to do so, and the questionnaire says just that before each of those questions.

Finally, as I mentioned, no one but the jury clerk will know the identity of the jurors. Each of you has been given a juror number. That number should go on the form in the designated space. Please do not put your name anywhere on the

form. The only person who has a list of the names corresponding to the numbers you have is the jury clerk who will issue the checks to the jurors for their jury service, so the lawyers and others who get copies of the questionnaire to review will not know the name or other identifying information about jurors.

After you have finished filling out the questionnaire, you may give it to the clerk, who will make sure that it is complete and that your number appears in the proper place. You may then go home. We will ask you to return on _____ at 1:00 p.m. to Courtroom 110, where you are about to go to fill out your questionnaires and which is just across the hall from the jury assembly room, and you will be told then whether you will be asked any further questions as part of the remainder of the jury selection process. Those who are to be questioned further will meet with me and the lawyers and the defendants in a conference room, one by one, and we will have whatever further discussion we need to have. After that, we will pick about 45 jurors at random, and they may be asked some additional questions in open court. From this group, we will select the 18 jurors who will hear and decide this case.

I will now ask each of you to go with the marshals to the room where you will fill out your questionnaire. When you are done, just signal to one of the clerks that you have finished the form, and one of them will come by and review the form to make sure it is complete. You are then free to leave.

Once again, thank you for your attention. Have a pleasant day and a safe trip home.