

United States v. Batiste: Voir Dire Questions

Hon. Joan A. Lenard
Southern District of Florida
September 18, 2007

The following voir dire questions were prepared by the Southern District of Florida's United States District Judge Joan A. Lenard for jury selection in a prosecution for terrorism, *United States v. Batiste*, No. 1:06-cr-20373 (S.D. Fla. June 22, 2006). Judge Lenard does not use jury questionnaires. These questions are designed to be asked in three phases: first are questions directed to the whole panel, second are individual general qualification questions, and third are more sensitive case-specific individual questions. The court of appeals found Judge Lenard's voir dire procedures in a previous case a meticulous model. *United States v. Campa*, 459 F.3d 1121 (11th Cir. 2006).

Phase 1: Questions for the Whole Panel

1. Are you familiar with the area of N.W. 62nd Street and N.W. 15th Avenue?
2. Have you or a member of your family or close friend had either a positive or negative experience with law enforcement of any kind that would make it difficult for you to listen to the evidence in this case and be fair to both the government and the defendants?
3. In this case, you may hear testimony that the government used cooperating individuals, CIs or informants, to work in an undercover capacity who were paid or received other benefits. Is there any member of the jury panel who has such strong feelings one way or the other about the use of such cooperating individuals such that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
4. The evidence in this case may also include the recordings of conversations that were recorded without the knowledge of some of the participants through the lawful use of electronic devices commonly known as bugs or wiretaps. Is there any member of the jury panel who has such strong feelings one way or the other regarding the use of bugs or wiretaps such that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
5. In this case, you may hear evidence of the recordings of conversations that were recorded without the knowledge of all of the participants through the use of a body wire, by secretly taping telephone conversations, or by secretly recorded videotapes. Is there any member of the jury panel who has such strong feelings one way or the other that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
6. In this case, you may hear evidence that was obtained from photographic and physical surveillance as well as evidence seized pursuant to lawful searches

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- of various places including the homes of some of the defendants. Is there any member of the jury panel who has such strong feelings one way or the other that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
7. Is there any member of the jury panel who would not be able to listen to the testimony of a law enforcement officer and be fair to both the prosecution and the defendants? Or . . . be more likely or less likely to believe the testimony of a law enforcement officer solely because of the officer's position?
 8. Does everyone understand that any person charged with a crime is presumed innocent?
 9. Do you all understand that the indictment in a criminal case is the accusatory paper which states the charge or charges to be determined at the trial; it is not evidence against the defendant or anyone else?
 10. Do you all understand that the government has the burden of proving a defendant guilty beyond a reasonable doubt?
 11. Is there anyone who would hold the government to a higher or lower burden of proof?
 12. Do you all understand that the case of each defendant and the evidence pertaining to each defendant should be considered separately and individually by the jury?
 13. If you are chosen as a juror in this case—if the government proves its case against a defendant beyond a reasonable doubt, would you be able to return a verdict of guilty? Likewise, if the government fails to prove its case against the defendant beyond a reasonable doubt, would you be able to return a verdict of not guilty?
 14. Is there any member of the jury panel who feels that if the government goes to the trouble of bringing someone to trial, then the person is probably guilty?
 15. Is there any member of the jury panel who feels that a defendant in a criminal case should testify or produce some evidence to prove that he or she is not guilty?
 16. Is there any member of the jury panel who feels that the law does too much to protect the rights of the accused and not enough to protect the rights of crime victims and their families, such that it would affect your ability to be a fair and impartial juror in this case?
 17. Is there any member of the jury panel who feels that individuals are treated differently by the criminal justice system based on their race, creed, or national origin?
 18. Is there any member of the jury panel who you yourself or your spouse or family member has ever been audited or had a dispute with any agency or department of the U.S. government?

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19. Is there a member of the jury panel who thinks the government has gone overboard in its efforts to fight terrorism?
20. Is there any member of the jury panel who has any experience or formal training in the area of martial arts?
21. Is there any member of the jury panel who you yourself or someone in your home owns a firearm? How many and what kind?
22. Is there any member of the jury panel who knows any other member of the jury panel?
23. In this case, you may hear testimony from witnesses who are of a different religion from your own. Is there any member of the jury panel who has strong feelings one way or the other such that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
24. In this case, you may also hear evidence from certain witnesses who are from the Middle East. Is there any member of the jury panel who has strong feelings one way or the other such that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
25. This case may receive media attention. It is very important that this case is decided solely on the evidence presented in the courtroom and not based on anything that may be said outside the courtroom. Accordingly, you will be instructed if you are chosen as a juror that you must avoid reading about the case in newspapers or listening to any radio or television reports or viewing the Internet. Will you be able to follow my instructions regarding media coverage?

Phase 2: Individual Qualification Questions

1. How old are you?
2. What is your place of birth?
3. Where were your parents born?
4. What type of work do you do (without stating the name of the business, corporation, store, or the like)?
5. What is your general area of residence (i.e., Cutler Ridge, North Miami, etc.)? What is your length of time in that community? (If less than 5 years at your current residence, please indicate your prior town or community.)
6. Do you own your current residence or do you rent your current residence? Are you living with family or friends?
7. Have you ever lived outside the United States for more than 6 months? What countries and for how long?
8. What is your marital status (married, single, divorced)?

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9. If you live with someone else, what is that person's occupation (without stating where they work, the name of the business, corporation, store, or the like)?
10. What are the ages of your children, if any? If employed, what type of work do they do (without stating where they work)?
11. Do you have any children that live outside the United States?
12. Do you speak, write, or understand a language other than English? What language?
13. Do you have any hobbies? What do you do in your spare time?
14. What was the last grade you completed in school? (If you have a degree or certificate, what was your major area of study?)
15. Have you attended law school or a paralegal institute?
16. What are your major sources of news, if any: the newspaper, television, radio, or the Internet?
17. Are any of your family members or close friends employed in the criminal justice system (i.e., law enforcement officers, probation officers, criminal defense lawyers, private investigators)?
18. Have you, your spouse, or a family member ever worked for (answer yes or no for each):
 - a prosecutor's office?
 - a public defender's office?
 - a federal or state investigative agency?
 - a federal agency or a medical facility?
19. Do you have any advanced knowledge or special training in the field of videotaping or digital recording?
20. Do you or your spouse have any education, training, or employment experience in any of the following fields?
 - security
 - intelligence
 - law
 - psychology or psychiatry
 - social work
 - corrections
 - religion
 - media or Communications
21. Are you a vendor or a contractor for the United States Government or is your employer a vendor or a contractor for the United States Government?
22. Have you, your spouse, or a family member ever applied or sought employment in law enforcement (yes or no)? (If yes, what happened with the application?)

23. Have you ever been a victim of a crime?
 - A. Was it reported? Was anyone arrested? What happened with the case?
 - B. Are you generally satisfied or dissatisfied with the way you were treated by law enforcement officials and the justice system?
24. Have you ever been a witness to a crime?
 - A. Was it reported? Was anyone arrested? What happened with the case?
 - B. Are you generally satisfied or dissatisfied with the way you were treated by law enforcement and the judicial system?
25. Have you ever testified in a trial or deposition?
26. Have you ever been accused of, charged with, or convicted of any crime or been the subject of a criminal investigation, other than a minor traffic violation?
27. Has a family member or close friend ever been accused of, charged with, or convicted of any crime or been the subject of a criminal investigation, other than a minor traffic violation?
28. Do you belong to a church, synagogue, or other religious organization and follow its teachings (yes or no only)?
29. Would any of your religious, philosophic, or moral beliefs preclude you from sitting in judgment of another person or deliberating with others?
30. Have you previously served on a petit (trial) jury? If yes, was it in federal or state court? Was it a criminal or a civil trial? Did the jury reach a verdict? Did you serve as the foreperson?
31. Have you previously served on a grand jury? If yes, was it in federal or state court? Did you serve as the foreperson?
32. Do you have any loss of hearing, loss of sight, or any physical or emotional impairment that would make it difficult for you to participate as a juror?
33. Do you have any problems understanding or reading the English language which would make jury duty difficult?
34. Are you currently taking any medication or other substance that would have an impact on your jury service?
35. Do you own or regularly use a computer or access the Internet?

Phase 3: Case-Specific Individual Questions

1. In this case, the government has alleged that the defendants were engaged in conspiracies to commit various violations of federal laws regarding terrorist activities.

The charges include conspiracies or agreements to provide material support and resources to agents of al-Qaeda in conspiring to blow up the Sears

Tower in Chicago and several federal buildings in a planned war against the United States.

Given that, is there anything that would prevent you from being able to sit and listen to the evidence in this case and be fair to both the government and the defendants?

2. As I indicated to you earlier, due to the publicity surrounding this case and to prevent any outside influence from the public, I have determined that there will be an anonymous jury, whereby your name, address, place of employment and any other identifying information will be withheld from the public and the parties in this case. Do you have such strong feelings about these procedures that you would not be able to be fair and impartial to both the government and the defendants?
3. As I indicated to you earlier, due to the publicity surrounding this case and to prevent any outside influence from the public, I have determined that the U.S. Marshal will provide transportation to and from the courthouse for the jurors during the trial. Do you have such strong feelings about this provided transportation that you would not be able to be fair and impartial to both the government and the defendants?
4. I will instruct you in this case that each defendant has entered a plea of not guilty and under the law is presumed innocent. Given the procedures regarding the anonymous jury and provided transportation, will you be able to follow the Court's instruction on the law?
5. In this case, you may hear evidence that the government used informants who were not United States citizens and who posed as terrorist-agents of al-Qaeda.
Do you have such strong feelings one way or the other that you would not be able to sit and listen to this evidence and be fair to both the government and the defendants?
6. Have you acquired any information from newspapers, television, conversations, or any other sources about this case? From what source did you acquire this information?
7. Do you read the *Miami Herald*, *New Times*, or *Sun Sentinel* news publications either in print or on line?
8. Have you read anything in any newspaper or on the Internet, or have you seen anything on television or heard anything on the radio, about this case?
9. How closely have you followed the course of proceedings leading up to this trial?
10. Have you discussed this case with anyone? If so, with whom?
11. Do you have an open mind regarding this case?
12. Have you formed an opinion regarding any of the defendants based upon any outside information? What is your opinion?

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13. Would your opinion affect your ability to determine the defendants' guilt based solely on the evidence presented at trial?
14. Do you have any beliefs, thoughts, or opinions that may cause you to decide this case on anything other than the evidence you will here at trial? What are they?
15. Can you set those beliefs, thoughts, or opinions aside and decide this case based on the evidence that is admitted in this courtroom and the law as the Court instructs you? If yes, will you do that?
16. Are you knowledgeable about the history and practice of Islam?
17. Are you knowledgeable about the history and practices of the Moorish Science Temple?
18. Are you knowledgeable about the Universal Divine Saviors?
19. Are you a member of any type of Masonic lodge? Are you knowledgeable about the history, teachings, or practices of the Masons?
20. Have you, your spouse, or any of your family members ever visited the Middle East? If so, when was the trip? What countries did you visit? What was the purpose of your trip?
21. Do you, family members, or close friends have any prior or present military service? If yes, what was your or their place of service?
Did you or they serve in combat? Where? Were you injured or were they injured or did they suffer loss of life? Were you or they ever in the military police or shore patrol? Have you or they had any disciplinary action taken against you or them? Did you or they receive an honorable discharge? What was your or their rank at discharge?
22. Have you, any members of your family, or close friends had any personal experience with acts of terrorism?
23. Do you know or do you have a family member or friend who knows someone who was a victim of a terrorist attack?
24. Have the events of September 11th or any other terrorist act affected you to such an extent that it would make it difficult for you to sit and listen to the evidence in this case and be fair to both the government and the defendants?
25. Have you, any family member, or a close friend lost a job or a business contract or experienced any other financial hardship as a result of September 11th or any other terrorist attack?
26. Do you have an opinion as to who was responsible for the attack on the United States on September 11, 2001? If the answer is yes, who do you think was responsible?
27. A recent trial conducted in this district concerned a defendant named Jose Padilla. That case has no connection whatsoever with the case against the defendants here.

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Is there anything about the case of Jose Padilla that would prevent you from sitting and listening to the evidence in this case and being fair to both the government and the defendants?

28. Is there anything else you think the Court or the attorneys should know that might influence your ability to fairly and impartially judge the evidence in this case and follow the Court's instructions on the law?