

United States v. Koubriti: Preliminary Voir Dire

Hon. Gerald E. Rosen
Eastern District of Michigan
March 18, 2003

The following text was prepared by U.S. District Judge Gerald E. Rosen of the Eastern District of Michigan to address 280 prospective jurors selected for a high-profile prosecution of suspected terrorists in *United States v. Koubriti*, No. 2:01-cr-80778 (E.D. Mich. Sept. 27, 2001). Judge Rosen adapted these remarks from remarks prepared for another case by U.S. District Judge Michael Mukasey of the Southern District of New York, who retired in 2006.

Preliminary Voir Dire

Good morning, ladies and gentlemen. I'm Judge Gerald Rosen, and we're here this morning to begin the process of picking a jury in a criminal case. Our purpose today and in the coming weeks 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 some of you—perhaps many of you—have heard about or read about. The defendants in this case are charged with participating in a conspiracy to provide support for various terrorist activities both here in the United States and abroad, as well as several counts of document fraud. I will have more to say about the charges in a moment.

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. In other words, we are looking for people who can serve as fair, objective, and impartial jurors.

We are going to use the following procedure for jury selection: After I finish these preliminary remarks, which should take about 30 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 Tuesday, March 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 75 jurors. In addition to coming back on March 18, you may be asked to come back once or twice more during this selection process. From among this panel of 75 or so, the parties

will select 16 of you to serve as jurors and alternate jurors who will hear and decide the case. I hope, if everything goes smoothly, that we can get started with the trial itself later that week or early the following week.

The questions on the questionnaire and those we will ask in person 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, and, thereby, informs people of the charges against them so that they may defend themselves. In other words, 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 proven beyond a reasonable doubt.

The indictment in this case has four separate “counts” or charges. Count 1 charges the defendants with participating in a conspiracy (which is simply a legal term for an unlawful agreement) to provide material support and resources to terrorists. In this charge, the government alleges that the object of the conspiracy was, among other things, to provide false documentation and identification materials, personnel, indoctrination, recruitment and training, target data collection, weapons, and other assistance for the purpose of engaging in violent attacks against persons and buildings within the United States and overseas—in Jordan and Turkey. Counts 2, 3, and 4 charge the defendants with conspiring and engaging in fraud and misuse of visas and other permits by obtaining and attempting to obtain false travel documents, passports, resident alien cards, social security cards, and drivers licenses for the purpose of disguising their own and other persons’ true identities.

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.

Further, none of the defendants here is charged with being involved with the events of September 11, 2001.

Each defendant, by entering a plea of not guilty in this case, has denied each of 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. 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.

Now that I have summarized the charges, I will introduce the lawyers 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 Eastern District of Michigan. This case will be presented by Assistant United States Attorneys Richard Convertino and Keith Corbett.

I will now introduce the defendants' lawyers and tell you who each lawyer represents. You will notice that some defendants 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 Karim Koubriti. Mr. Koubriti is represented by Leroy Soles, Richard Helfrick, and James Gerometta. The next defendant is Ahmed Hannan. Mr. Hannan is represented by James Thomas. The third defendant is Abdel-Ilah Elmardoudi. He is represented by William Swor. The last defendant is Farouk Ali-Haimoud. He is represented by Robert Morgan.

Obviously, when you hear a lot of names and see a lot of faces, it is difficult at first to keep everyone straight. But, I can assure you that as the trial progresses you will have no difficulty keeping everyone's identity straight.

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 preserved 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 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 place 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 about the case and want to talk to you about it. 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. 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 Wednesday and Friday, at least initially. The jury will have Thursday off. I do not believe it will be necessary for us to go to a five-day-a-week schedule, but I can't 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 four and six weeks. I know that sounds like a long time, and there may be some 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 their mileage—36¢ per mile—from your home to court and back.

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 during 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 to watch or listen to any radio or television news report about the case. This includes, of course, the Internet. I will discuss the reasons for that in greater detail later during and after the 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 only 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. I believe most reporters try their best to “get it right.” But 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. And,

we do not want media reports—or anything else—to taint jurors' views about the case.

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 may say things they hope will influence public opinion one way or the other. 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. Needless to say, such statements are not evidence and cannot be considered by you. 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 the 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. Therefore, because you are now a prospective juror, please begin following this instruction today!

I am also instructing you that beginning today and on future days not to talk to anyone, including family and friends, about this case, and particularly not to reporters if they try to question you about it. Obviously I am also instructing 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 and with other important things.

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 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—indeed, in both our civil and criminal justice system—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 law, and a separate oath to practice in this court. I had to take an oath before I assumed my responsibilities as a federal judge. 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. The form is about 25 pages long. Most of the questions are “Yes/No” questions, so you won’t have to sit and write any long answers. There are a few questions I should call to your attention. First, there is question 13, which asks for the city or township where you live and the city and state where you grew up. We are asking for the city or township and state only. Please do not put down the name of a village within a township, if you do live in a village. Again, just the township, not the village. Similarly, in questions 27 and 33 through 36, which ask questions about your education and employment, do not give the name of any schools or the names of any employers. Simply answer by way of the type of school and a description of your job.

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 will get copies of the questionnaire to review will not know the name or other identifying information about jurors. And, when you return here on March 18, do not wear anything with your monogram on it and do not bring with you any magazines with address labels on them or any books with your names or addresses on them. You should also remember to address each other by your first names only. Our goal in giving you these instructions is to protect your rights of privacy.

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 March 18 to the jury room. You will then be told 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 my courtroom. After that we will pick about 45 jurors at random, and they may be asked some additional questions. From this group we will select the 16 jurors who will hear and decide this case.

Importance of Jury Service

I will now turn this over to the jury clerks who will hand out the questionnaires. When you are done, you will turn your questionnaire in to one of the clerks who will 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.