

# **United States v. Abu Ali: Preliminary Venire Instructions**

Hon. Gerald Bruce Lee  
Eastern District of Virginia  
October 25, 2005

The following text was prepared by the Eastern District of Virginia's United States District Judge Gerald Bruce Lee to address prospective jurors selected for the prosecution of a suspected terrorist in *United States v. Abu Ali*, No. 1:05-cr-53 (E.D. Va. Feb. 3, 2005).

## **Preview of Trial**

Good morning ladies and gentlemen. My name is Gerald Bruce Lee, and I am the judge who will preside over the trial of the case.

The case we have for trial today is a criminal case entitled *United States v. Mr. Ahmed Omar Abu Ali*. Mr. Abu Ali is presumed to be innocent, and the purpose of this trial by jury is to determine if the Government can prove that the Defendant is guilty by proof beyond a reasonable doubt. Mr. Abu Ali has entered a plea of not guilty as to each of the charges.

You are here today to be involved in the selection of a jury to hear the case. I will be discussing the charges in more detail in a moment.

I want to first get started by stating what should be obvious but is, many times, misunderstood by many of us. The right to trial by jury is a fundamental right that each of us enjoys under the Constitution. We can only afford the essence of this right to those brought before our courts if all our citizens serve, no matter your station in life, your age, your education, or your background. In a very real sense, then, your presence today and your participation in this jury selection process are a part of a long-honored tradition involving hundreds of thousands of Americans over the years.

We lawyers and judges, who have made our careers and crafted our livelihoods in these courtrooms, have long since come to realize that our courts can only work and deliver equal justice to all as long as we have fair trials by jury. We recognize that along with the benefits of United States citizenship and liberty come duties and responsibilities. I say this at the outset because we want you to know that we understand that jury selection always comes at an inconvenient time; there is never a convenient time for jury duty. There is never a convenient time to go to the hospital emergency room or to undergo emergency surgery. There is never a convenient time to go to court. This case will certainly be no different.

This case in all likelihood will last for about three weeks, which amounts to twelve trial days, four days a week, Monday through Thursday. I anticipate this trial will begin for you on October 27, 2005, and continue until November 16 or later. We estimate the trial will require about three weeks in court, Monday through Thursday. So, to be clear, we anticipate bringing in the jury for jury selection procedures starting Tuesday, October 25, and we anticipate starting the

trial on approximately Monday, October 31, 2005, and we expect it to continue until November 17, 2005. We will be in court four days per week, Monday through Thursday, from 10:00 a.m. until 5:00 p.m., with an hour for lunch from 1:00 to 2:00 p.m.

I feel obliged to tell you that this will be a somewhat lengthy case for this court. Even if you were previously told that your term of jury duty is two weeks, if you are selected for the honor of serving on this jury, then you will have to stay with the case until it is completed, which will last much more than two weeks. I certainly will do my best to see that the case moves efficiently. These lawyers have never presented this case to a jury. The lawyers have been working on the case steadily for many months, so both sides are fully prepared to present the case to you without needless delay.

With the exception of service in the armed forces and voting, there is no other duty of citizenship more important than jury service. The right to trial by jury is why we need you and insist on your involvement.

Let me now introduce the parties in this case *United States v. Mr. Ahmed Omar Abu Ali*. Please pay attention to the appearance of each individual introduced, because later you will be asked if you know or are acquainted with any of these individuals. I'll ask the parties to face you as they introduce themselves. As they introduce themselves, ask yourself if you are personally familiar with any of the lawyers or parties introduced in court.

[Introduction of parties—by counsel.]

### **Summary of Charges Against the Defendant**

Let me summarize the charges in this case. I do so only so that you can understand what this case is about. The charges are not evidence of guilt or anything else. Any evidence regarding these charges will come before you only when we begin the actual trial. I emphasize that what I am going to summarize now are just the charges, and these charges are not evidence.

#### *Go Through the Indictment Count by Count*

1. Count One charges the Defendant with conspiracy to provide material support and resources to a designated foreign terrorist organization (al-Qaeda). The indictment alleges that al-Qaeda is a worldwide terrorist organization dedicated to opposing non-Islamic governments, particularly the United States, with force and violence. Al-Qaeda was formed by Osama bin Laden and other individuals.

The allegations in this case are that President William Clinton, in January 1995 and 1998, issued an Executive Order 12947. As a result of finding that a variety of acts of violence by al-Qaeda constituted a threat to national security and foreign policy, the executive order prohibits any United States person from making or receiving any contribution of funds, goods, or services to or for the benefit of such persons.

Additionally, President George W. Bush issued an executive order on September 23, 2001, that found that grave acts of terrorism and threats of terrorism were a threat to national security. President Bush's Executive order 13224 prohi-

bited any future transaction or dealing by United States persons from making or receiving any contribution of funds, goods, or services to or for the benefit of persons in the al-Qaeda Islamic Army.

On May 12, 2003, terrorist attacks were carried out against residential compounds in Riyadh, Saudi Arabia, resulting in the deaths of approximately 34 individuals including 9 Americans.

Saudi Arabia officials sought out and arrested several individuals who belonged to clandestine terrorist cells in Saudi Arabia. Saudi officials were investigating the Riyadh bombings and terrorism in general at the time.

During the questioning of one alleged terrorist cell member, the Saudi Arabian government informed the United States that the Defendant Mr. Abu Ali was allegedly identified as a terrorist cell member. Let me quickly say that there are no allegations in this indictment that Mr. Abu Ali was involved in the May 12, 2003, Saudi Arabia bombings. Mr. Abu Ali is not charged with being involved in that incident, and Mr. Abu Ali is not on trial for that incident.

The allegations are that the Defendant Mr. Abu Ali, while a student in a university in Saudi Arabia, came into contact with and agreed to join a conspiracy with other individual co-conspirators to plan and carry out certain terrorist acts. A conspiracy is an agreement between an individual and others to agree to commit a crime or what may be called a partnership in crime with others. The charges allege that Mr. Abu Ali joined a conspiracy to carry out several acts including:

- a. Allegations that the Defendant would become a planner of certain terrorist operations.
- b. Allegations that the Defendant discussed making plans with other co-conspirators to plan an assassination of the President of the United States.
- c. Allegations that the Defendant decided to go to Afghanistan to join in a fight against United States military personnel in September 2002 and on June 9, 2003.
- d. Defendant allegedly offered himself to al-Qaeda as a person committed to furthering the objectives of the organization.
- e. Allegations that the Defendant accepted funds from co-conspirators in al-Qaeda to purchase a laptop computer, a cell phone, and books.
- f. Allegations that the Defendant did purchase these items.
- g. Allegations that the Defendant discussed with co-conspirators that he would help set up an al-Qaeda cell in the United States and carry out a terrorist operation here.

This is just a brief summary of some of the allegations set forth in the charges.

2. Count Two charges the Defendant with providing material support and resources to a designated foreign terrorist organization—al-Qaeda—between September 2002 and June 9, 2003.

3. Count Three charges the Defendant with conspiracy to provide material support to terrorists. The allegations are that the Defendant entered into a conspiracy to provide material support and resources to al-Qaeda knowing and intending to prepare for and carry out the assassination of the President of the United States.

4. Count Four charges the Defendant with providing material support and resources to terrorists. The allegations are that the Defendant provided material support and resources to al-Qaeda knowing and intending that the resources or material support was to prepare for and carry out the assassination of the President of the United States.

5. Count Five charges the Defendant with contribution of services to al-Qaeda. The allegations are that the Defendant made a contribution of services to and for the benefit of al-Qaeda, a specially designated terrorist organization under a regulation and in violation of a regulation and executive order signed by the President of the United States declaring al-Qaeda a terrorist organization.

6. Count Six charges the Defendant with receipt of funds and services from al-Qaeda between September 2002 and June 9, 2003.

7. Count Seven charges the Defendant with conspiracy to assassinate the President of the United States.

8. Count Eight charges the Defendant with conspiracy to commit aircraft piracy.

9. Count Nine charges the Defendant with conspiracy to destroy aircraft.

*Proof Beyond a Reasonable Doubt*

The foregoing are the charges against Mr. Abu Ali, and it is up to the Government to present evidence under oath before the jury and to prove the Defendant's guilt, if it can, by proof beyond a reasonable doubt. Mr. Abu Ali has pleaded not guilty to each of these charges. In every criminal case brought in this country, it is the Government—the prosecution—that has the burden of proving by proof beyond a reasonable doubt a defendant's guilt with respect to any charge brought. As I told you earlier, the Defendant is presumed to be innocent of the charges. Mr. Abu Ali is not required to prove that he is innocent or not guilty. Under our American criminal justice system, Mr. Abu Ali is not required to testify; he is not required to offer any evidence or to even to have his lawyers question the Government's witnesses, because the burden of proof of every element of the charges is upon the Government. The fact that Mr. Abu Ali has been charged does not mean that he is guilty. Indeed, the purpose of this trial is to see if the Government can produce evidence that convinces you of his guilt beyond a reasonable doubt. Bear in mind that you have not seen one witness testify, and we do not know what the evidence will be.

**Juror Questionnaire**

Obviously, what I have just said is only an overview of the possible course of this trial and a shorthand summary of the law. I am giving you this information because shortly I will hand out a jury questionnaire for you to complete. I went over all of this because I need you to think about it in order to prepare to answer the jury questionnaire and to answer my questions when you return to court later for individual questioning.

Now, in a few minutes I am going to ask the assembled jury panel to complete a confidential jury questionnaire. The jury questionnaire is to be completed

in full, under oath, and to the best of your ability. The jury questionnaire will only be available for jury selection by the lawyers and the judge. The jury questionnaire will not be available to any media because I am placing the answers under seal to protect your privacy. If you have any questions about the jury questionnaire, please write them down and provide them to the Court Clerk, Ms. Solomon. Ms. Solomon will answer any questions she can about how to complete the jury questionnaire and if you believe that only the judge can answer your questions, then I will answer your questions here in court. If at any time you believe that your question or the answer to it may contain personal information that you would prefer not to have to respond to in the presence of your fellow jurors, please let me know that and we can take up your questions outside the hearing of your fellow jurors.

*Hardship Questions, Excuse*

The Juror Questionnaire asks for information about juror schedule conflicts or hardship or medical problems. Please write down any information you want me to know on the explanation sheet. Understand, as I said at the outset, that the court is not going to excuse many jurors because of job conflicts, children in school, or just because you are busy. Only really compelling reasons will require me to excuse you from this case. I will read all the questionnaires requesting an excuse and you will be informed of my answer. After you complete the questionnaire you will be told when to call the jury phone number on \_\_\_\_\_, 2005, after 5:00 p.m. to learn when you have to come back to court for individual questioning. On your designated day, you will either be asked to come in to Court at 10:00 a.m. or 2:00 p.m. When you return to Court, I will speak to each of you individually and ask you a few additional questions. Let me note three additional comments.

First, I want to emphasize that if you are selected for this jury your only duty will be to decide whether the Government has established the Defendant's guilt by proof beyond a reasonable doubt. If, after hearing all the evidence in trial, the jury is of the unanimous opinion that the Government has not shown the Defendant to be guilty, then the law requires you to return a verdict of not guilty and the charges will be dismissed.

On the other hand, if after hearing all the evidence in trial, the jury is of the unanimous opinion that the Government has shown the Defendant to be guilty, then the law requires you to return a verdict of guilty. You are not to concern yourself with punishment, because under the law, the judge will apply the United States Sentencing Guidelines, consider information not presented to you about the Defendant's background, and the judge will then impose a sentence according to law. The jury must not consider possible punishment in any way in this trial.

Second, please remember to call the jury phone number and remember to come back to court when you are supposed to return. You would be shocked to see the number of people we have to bring to court with the marshals who walk in here and say "I forgot." Nothing is more embarrassing than to come to federal court and to tell a judge in a crowded courtroom "I forgot." I promise you that if you forget and fail to report back to court when you are supposed to, I will send

the United States Marshal to your home or office to require you to come back to court. Our marshal's service is busy with other cases that I am sure you are aware of, so please do not make me have to send them out for a juror who "forgot." Place a string around your finger, write yourself a note, but do not forget to return to court. Your return-to-court date is as important as showing up at the hospital for a heart transplant operation. This jury duty is serious business and we need your undivided attention. Let nothing get in the way of returning to court for your appointment when you are directed to return.

Understand that when you return to court this process will take some time so bring something to read while you wait and please be patient with us as we go about this process. There is no easy way to conduct jury selection and we are going to try our best not to unnecessarily waste your time.

Third and finally, I recognize that jury duty is an imposition and a responsibility of citizenship. Next to the right to vote, jury duty is when you give back to your country in a way that affects human lives. If you have never served on a jury before, I assure you there is no experience comparable to it. There is no experience similar to acting as a judge of the facts in a criminal case as a juror. There is no experience you will have that will bring you closer to the ideals of our great nation than jury duty. Jury duty is not the draft and no one is asking you to take up with the military here.

Today is not a time to tell the judge I am too busy to serve. Today is not a day to tell the nation, I do not have time to serve on a jury.

What I mean is that what we are talking about here—jury duty—is just that: a duty of citizenship and an honor. We recognize, of course, that jury duty rarely comes at a convenient time. There is always something—day-to-day living, important jobs or projects at work, a meeting, elderly relatives to care for, medical appointments, vacations, and other plans. Your employer may not deprive you of the right to serve on a jury, and if any of you has a problem with your employer allowing you to be off work for jury duty, you let me know and we can bring the employer to court and straighten that out for your employer. If you need a note saying you will be on jury duty, let us know and the clerk can prepare it for you. We understand that jury duty will be inconvenient for work and other things in life.

Jury duty arrives when we would rather be doing something else, which is why I rarely allow excuses from jury duty. Each of us is busy, and if I excuse every juror who has something to do, then the courts will be left only with those who have nothing better to do or maybe just those who are idle. I suppose we could go to nursing homes or retirement communities and secure individuals who do not work, but that would not be fair. We want busy and engaged people like you who represent a broad cross-section of our community to serve as jurors. We think that juries that are inclusive of Americans of a variety of backgrounds, ages, gender, education, and cultures will make for sound judgments in the jury room. Indeed, the founders of this country thought that the right of a jury representing average people in the community was so important that they provided for it in the Constitution.

*The Media*

This case has received, and probably will continue to receive, some media attention, so I must instruct you—I am instructing you now—not to read, watch television, listen to radio, read any newspaper or magazine, and not to conduct any internet or google searches about this case or Mr. Abu Ali. If you see or hear anything related to this case, turn off the television or radio. You are instructed to refrain from media exposure and you are instructed not to conduct any research. I want the jury to receive information about this case here—in trial—from witnesses under oath, in the presence of the accused, the Government, and your fellow jurors. Please do not accept any statements in the media as evidence because they are not evidence. The media do not know what evidence will be presented here in court. Indeed, the thirty-second summaries in the media or stories of the most sensational aspects of a trial rarely capture what the twelve jurors who are seated in the courtroom for five to six hours a day observe. What is reported in the media are called “news stories” for a reason. They are not transcripts or recordings of what actually occurs in a trial. If you have seen or read reports, please just answer the questions in the questionnaire honestly. Media exposure alone will not get you out of jury duty.

*Final Instructions*

Please approach your preparation of the Juror Questionnaire not grudgingly or negatively. Consider it an honorable undertaking worthy of your time and interest.

Remember: if you have questions about the instructions or a particular question, please feel free to ask the Courtroom Clerk, Ms. Jo Solomon. Please ask the court security officer for a piece of paper to write down your question before you approach the Courtroom Clerk. After you complete your questionnaire, turn it in to the clerk and get your report date phone call information.

I will leave the courtroom now to allow you time to complete the questionnaire. If you need me to return to the bench to answer a question in open court, I am available to answer questions. On behalf of our court staff and these parties, let me thank you for your patience and cooperation.