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Finding Unbiased Moussaoui Jury Not Easy

Finding Unbiased Jury for the Death Penalty Trial of Zacarias Moussaoui No Easy Task

By **MATTHEW BARAKAT**

ALEXANDRIA, Va. Feb 12, 2006 (AP)— Prosecutors and defense lawyers in the death penalty trial of Zacarias Moussaoui are searching for the perfect jury, poring through hundreds of questionnaires from potential jurors and looking for clues to their perceptions of the case.

Jury selection will be particularly difficult for the defense. The team must find an unbiased panel for a man who prosecutors say could have prevented the Sept. 11 attacks on the World Trade Center and the Pentagon, just a few miles from the courthouse where the trial takes place.

"It'd be like trying Tim McVeigh in Oklahoma City," said criminal defense lawyer John Zwierling, referring the 1995 bombing of the federal building in Oklahoma City that killed 168 people. A federal judge moved McVeigh's trial to Denver.

Zwierling once waived his client's right to a jury trial in a terror-related case in Alexandria rather than risk jurors' visceral reaction to words such as al-Qaida, Osama bin Laden and Sept. 11.

"It's a problem everywhere, but it's a particularly difficult problem in the shadow of the Pentagon," Zwierling said.

Moussaoui pleaded guilty in April to conspiring with al-Qaida to use aircraft to destroy buildings in the United States. Moussaoui denies any involvement in Sept. 11 and says he was preparing to fly a plane into the White House as part of a second wave of attacks.

Prosecutors must directly link Moussaoui to the attacks to obtain the death penalty. They plan to do so by arguing that Moussaoui's lies to investigators when he was arrested in



This August 2001 file photo released by the Sherburne County Sheriff Office shows Zacarias Moussaoui. After a volite opening, the jury selection process for Moussaoui continues this week in Alexandria, Va. Jury selection will be particularly difficult for the defense. The team must find an unbiased panel for a man who prosecutors say could have prevented the Sept. 11 attacks on the World Trade Center and the Pentagon, just a few miles from the courthouse where the trial takes place. (AP Photo/Sherburne County, Minn., Sheriff's Office, File)

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August 2001 prevented the FBI from thwarting the attacks.

Defense lawyers argue that the government knew more about al-Qaida's plans than Moussaoui ever knew and was still unable to prevent the Sept. 11 attacks.

Jeffrey Frederick, a jury consultant and director of jury research for the National Legal Research Group in Charlottesville, Va., said his death penalty research in recent year has found that people often cite Moussaoui's case as exactly the kind that warrants the death penalty.

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"You have a situation where he is almost the poster child for the death penalty," said Frederick, who once worked with Moussaoui's defense on other jury issues but is no longer on the case.

Only after a jury determines Moussaoui is eligible for the death penalty can they hear testimony and arguments about whether Moussaoui deserves execution.

Richard Dieter, executive director of the Death Penalty Information Center, said that in most capital cases the question of eligibility is little more than a formality and the real battle is whether execution is deserved. In Moussaoui's case, the reverse is true and the eligibility phase presents their best hope to avoid execution.

If the case makes it to the second phase, prosecutors can present emotional testimony from the families of Sept. 11 victims, Dieter said. Defense evidence of Moussaoui's difficult childhood, for instance, will certainly pale compared with the impact of nearly 3,000 murders, he said.

Potential jurors were called in Feb. 6 to fill out 49-page questionnaires asking about religious practices, perceptions of Islam, reactions to Sept. 11 and feelings on the death penalty.

Individual questioning of jurors begins Wednesday, with opening statements from lawyers set for March 6.

Frederick said one question on which Moussaoui's defense team should focus involves jurors' views of the FBI's handling of investigations like the 2001 anthrax attacks and the 1996 Olympic bombing investigation both cases for which the FBI has drawn criticism.

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People with doubts about the FBI's handling of such cases, he said, might also be disinclined to believe that the FBI would have foiled the Sept. 11 attacks with Moussaoui's cooperation.

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