

Q: Can you tell us how you came to serve in this trial? What was the back story?

A: Well, an indigent person in the United States that's charged with a death penalty eligible offense is, as a matter of statute, entitled to two lawyers - one of whom is the federal public defender in that district, and then another lawyer. And the Judge appointed, when Moussaoui was first indicted, the Chief Judge in Alexandria appointed Frank Dunham, who was the federal public defender, and me, to handle the case. I got a call from the judge that said there's a guy down here who needs a lawyer.

Q: He was pro se for a while if I recall that correctly. Is that true?

A: He pretended to be pro se for a while, but in a death case the judge never lets the lawyers go. We acted as what's called 'standby counsel' for the whole time that he acted pro se.

Q: And eventually you were able to take over the entire defense?

A: Well, he repeatedly, after warning, insulted the judge by calling her the 'death judge' and a bitch, and she eventually withdrew his pro se rights for abusing the court rules.

Q: You have this incredibly high-profile defendant and a high-profile case. What were your strategies? Not just your legal defense, but public relations as well, and how you handled the case with this level of attention.

A: Well, one thing about practicing law in Washington, I had a lot of lawyers to talk to that had handled cases - you know, Watergate, Iran Contra cases before and knew how to do it. And media people would be upset to learn that the answer is you ignore the media entirely and just go do your job. You just can't worry about it. The case is going to be won in the courtroom in front of the jury. No matter how much you think it matters to talk to the *Washington Post*, the *Minneapolis Tribune*, or the *New York Times*, it doesn't. It doesn't matter at all.

Q: And the client, displaying the kind of behavior he did, what kinds of wrinkles did that add day-to-day during the course of the trial?

A: Well, you know at first we tried to see if we could have some kind of a meaningful relationship in which we would perhaps learn something about the case from your client, which normally happens in a criminal case. But early on we realized that there was no ability to have any control over this client. And I just made the decision that I was going to learn everything I could about the case and that's all I could do.

Q: An issue that I'm curious about is the amount of classified information in a national security trial like this. Talk about how that gets introduced into a criminal procedure.

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- A: Well, you get, first of all, you usually get a room in the courthouse, and it's called a 'skiff', a classified information facility, or whatever; that may not even be the right name. But you get information there and then you have to review all of it and determine what of all that information you think is helpful to your defense. Then you have to give notice to the government. You have to say, "I'm going to disclose the following information in the course of this defense." Then the government gets to tell the judge that you don't need it, that there's other ways to prove that fact. And then there's a whole process of getting the information out. So the really hard part as a trial lawyer is that you literally have to disclose to the United States government everything that you plan to do; because the rule says that if you don't follow the Act, the Classified Information Act, then you're not putting the evidence in.
- Q: Do you have to be certified by the court or by intelligence agencies to handle this information?
- A: Oh sure, you have to go through full FBI background clearance to make sure that you're not a national security threat in and of yourself.
- Q: So I imagine there's a few handfuls of lawyers in D.C. that achieve that clearance.
- A: I think - you know I've actually seen the list. I think that there may be twenty or twenty-five lawyers in Washington D.C. and Virginia that have clearances and can handle national security cases.
- Q: Walk us through the chronology of the case itself: the criminal trial ended up in a plea deal, and then there was a death penalty phase.
- A: Well, actually we were getting prepared to try the case and it was our judgment that Moussaoui should not plea guilty. But the client has the right to decide whether or not to plead guilty and one day he just announced he was going to plead guilty to the crimes. And he walked into court and that's what he did. So that left the case only for the sentencing phase; which because of the intricacies of the Federal Death Penalty Act, ended up being very similar to a trial anyway, because the government had to prove that Moussaoui did or caused an act which directly led to a death; that, essentially, Moussaoui had killed somebody on September 11th. So all the events of September 11th, and the events leading up to September 11th, became just as important in the sentencing phase as they would have in a regular trial.
- Q: What were you ready to present to the jury, saying that Moussaoui was not guilty of the offense?
- A: Well I - even in trying the case I never once used the word 'innocent' to describe Moussaoui. He was a self-proclaimed member of Al-Qaeda. He was a member of the conspiracies. He was here in your city learning how to fly on a flight simulator, obviously for some terrorist act. He was not innocent of any of the charges. It's a

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separate legal issue and a factual issue for the jury to resolve whether he should be executed. That's all that we dealt with, we knew that all along.

Q: In the aftermath of the trial, there's been talk about whether criminal proceedings like this are effective in trying terror suspects. Is it workable to try international terror suspects in the United States in a criminal venue like this?

A: Well I don't think the Moussaoui case proves that we can't have these trials. I mean, there's some people who were uncomfortable because Moussaoui would say things in court or that he was given a platform, but guess what, Moussaoui's gone. The system of justice we've depended on for over two hundred years results in Moussaoui's voice being silenced. He's in solitary confinement for the rest of his life. And I, for one, am not afraid of listening to a guy like Zacharias Moussaoui run his mouth a little bit in a courtroom; as opposed to giving up on our system of justice just for the threat of the day. These same things are raised in Civil War, the First World War, the Second World War; it's a repeat of history to say that our criminal justice system is unable to handle the threat of the day.

Q: I think we've covered the main points that I'd like to hit, unless there's anything else that you'd like to add.

A: No, I think that...you're the producer, I'm just a lawyer.