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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2004 FEB 24 PM 4:55
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATIM NAJI FARIZ
_____ /

**DEFENDANT HATIM NAJI FARIZ'S RESPONSE TO THE
PROPOSED JURY QUESTIONNAIRE AND MEMORANDUM OF LAW**

The Defendant, Hatim Najj Fariz, by and through undersigned counsel, hereby files his (1) objections and requests for proposed modifications to this Honorable Court's proposed Jury Questionnaire provided to the parties on January 21, 2004, and (2) objections to the Court's proposed use of an anonymous or innominate jury.

INTRODUCTION

The instant response is not intended to supersede Mr. Fariz's initial proposed jury questionnaire (Doc. 253), and, therefore, is not a waiver of any issues raised therein. Furthermore, the instant responses to the proposed jury questionnaire have been drafted based on the Court's indication that the written questionnaire's purpose is to identify "cause" challenges prior to voir dire so as to shorten the process while also providing for appropriate attorney voir dire. As such, when appropriate, a juror's uncertain response to material questions should be allowed despite the necessity that an equivocating juror be brought to court for the purposes of clarification and/or rehabilitation. Many other proposals merely reflect corrections to apparent scrivener's errors. Finally, as to the proposed juror

489

questionnaire, Mr. Fariz seeks leave to submit later proposed amendments or additions as the nature of the case and evidence related to this matter is discovered or developed.

Mr. Fariz also objects to the use of an anonymous or innominate jury, particularly at this time. As set out in the memorandum of law, at the present time there has been no showing of the necessity of this mechanism as contemplated by existing Eleventh Circuit standards. Although Mr. Fariz acknowledges this Court's authority to use an anonymous or innominate jury, that discretion is subject to certain limitations which have not been shown to exist.

Wherefore, Mr. Fariz respectfully submits the following proposals and objections to the Court's proposed Jury Questionnaire and objections to the use of an anonymous or innominate jury:

RESPONSE TO PROPOSED JURY QUESTIONNAIRE

General Instructions

(a) The Defendant respectfully requests that the Court strike the word "*something*" from the first sentence under the General Instructions section of the proposed questionnaire. Use of this term in this context may mislead a potential juror into believing a partial response would satisfy the juror's responsibility while completing this questionnaire. Subsequent directions properly advise the juror of the need to answer each question completely; consequently, the use of the term "*something*" at the outset of the instructions could prove confusing or misleading and otherwise serves no apparent purpose.

(b) The Defendant also requests that the third sentence in the third paragraph, “*While other people were allegedly involved in this conspiracy, only four defendants are on trial*” also be stricken. The sentence is potentially inflammatory and confusing. It does nothing to aid the jurors’ understanding of the case.

Hardship Question

The Defendant respectfully requests the Court include the word “*to*” in the second sentence following the response to the question “Would you have a serious hardship if chosen for this case? The proposed sentence would read “*Please move on to the next section of the questionnaire.*”

Proposed Question to Follow Question 10

The Defendant respectfully requests that the Court include, following Question 10, a similar question pertaining to the juror’s familiarity or reliance on news radio broadcasts. The Defendant proposes the following question as Question 11:

“11. Do you listen to news radio broadcasts on a regular basis?

Yes _____ No _____ If Yes, which ones?

Question 13

The Defendant requests that Question 13 be amended to add to the existing question: “*or have you, your spouse or a former spouse held dual citizenship?*”

Question 14

The Defendant requests that Question 14 be amended to substitute the word “*an*” for “*the*” immediately before the phrase “*official interpreter’s translation.*” This substitution eliminates potential confusion concerning the role of interpretation during the proceeding.

Proposed Question to Follow Question 14

In light of the government’s intended reliance on evidence in the Hebrew language, a similar question should be added regarding the familiarity, use and understanding of the Hebrew language and/or its dialects.

Question 15

The Defendant requests the court supplement Question 15(b) by including the specific question “*What was or is your primary or chosen vocation?*” This additional question provides for greater specificity concerning a retired or unemployed juror’s work history and avoids the possibility that a juror reading proposed Question 15(b) would simply list his or her most recent work regardless of its proximity or lack thereof to the juror’s lifework.

Question 19

The Defendant requests the inclusion of the conjunctive term “*and/*” to Question 19. The question would then read “*Please tell us the following about your children, stepchildren and/or grandchildren.*” The inclusion of the conjunctive term would ensure a comprehensive response by the juror.

Question 20

The Defendant requests the inclusion of the phrase “*and/or former spouses*” to Question 20. The inclusion of this phrase would again ensure a comprehensive response by the juror.

Question 26

The Defendant requests that Question 26 be amended to read, “*Have you, or anyone close to you, ever participated in, or contributed money to, any group concerned with human rights, crime prevention, or victim’s rights?*”

Question 27

The Defendant requests the Court include in Question 27 an inquiry concerning the juror’s Military Occupational Specialty within the sub-question asking the juror to identify the particular branch and highest rank. The proposed sub-question would then read:

“*Branch, Military Occupational Specialty, and highest rank: _____*”

The inclusion of this inquiry would provide a greater understanding of the juror’s military experience.

Question 29

The Defendant requests the phrase “*Don’t Know*” be modified to read “*Unsure*.” It is also requested that the sub-question then read, “*If Yes or Unsure, please tell where and when or describe uncertainty.*”

Question 29(a). The Defendant requests that the question include at the end of the sentence, “*or as a result of an attack on military personnel or facilities arising from issues related to Middle Eastern conflicts?*”

Question 29(a). The Defendant requests that the Court include the response of “*Unsure*” and an opportunity for explanation.

Question 30

The Defendant requests that Question 30 include the response of “*Unsure*” and an opportunity for explanation.

Question 32

The Defendant requests that Question 32 include the possible response of “*Unsure*” and an opportunity for explanation.

Proposed Question to Follow Question 32

The Defendant requests that the following question be included:

“*Have you ever traveled to the Middle East?*

Yes _____ *No* _____ *If yes, when and where* _____

”

Question 33

The Defendant requests that Question 33 be amended to delete the phrase “allegations of terrorism” and insert as a proper description of the charges, “*allegations of support for people and/or organizations the government has designated as terrorists.*”

Question 34

The Defendant requests that Question 34 be amended (1) to insert “*Israelis*” into the question together with “*Palestinians or Arabs*,” (2) to include the response “*Unsure*” (3) and then to reword the sub-question as, “*If Yes or No, what, if anything, gives you that impression? If Unsure, please explain:* _____”

Question 35

The Defendant requests that Question 35 be amended (1) to insert “*Israelis*” into the question together with “*Palestinians or Arabs*,” (2) to include the response “*Unsure*” (3) and then to reword the sub-question as, “*If Yes or No, what, if anything, gives you that impression? If Unsure, please explain:* _____”

Question 36

The Defendant requests that Question 36 include the response “*Unsure*” and that the explanation portion of the question should read, “*If Yes or Unsure, please explain:* _____”

Question 41

The Defendant’s name, as spelled in the Indictment, is “*Hatim Naji Fariz.*”

Question 56

The Defendant requests the inclusion of the word “or” following the phrase “*applied to*” in Question 56. The question would then read “*Have you or anyone close to you worked for, applied to or had training with.*”

Question 63

Question 63 appears to be redundant with Question 56 and is less comprehensive. The Defendant would therefore ask that Question 63 be stricken.

Question 76

The Defendant requests that the first sentence of Question 76 be amended to read, “*A defendant is presumed innocent. Under the United States Constitution, a defendant does not have to testify in his defense, and his silence may not be used against him.*”

Question 79

The Defendant requests the inclusion of a limiting instruction within Question 79. Although this Question is legally accurate, it is also potentially misleading. The Question states, “*Before received in evidence, the Court will have ruled that this evidence is lawfully before you.*” A juror could misinterpret the assertion that “*this evidence is lawfully before you*” as a comment not only on its admissibility but also its credibility. A limiting instruction alerting the juror that the question of the conversation’s meaning, reliability or weight is solely within the province of the juror would avoid this potential misunderstanding.

Question 84

Question 84's sub-question should probably read "*If you answered 'Yes' to either Question 83 or 84, please explain.*"

Additional Proposed Questions

The defendant reasserts the appropriateness of his originally proposed questions 87 through 91 (Doc. 253) concerning the juror's views on religion and specifically the religion of Islam, and would therefore request that they be reinserted.

OBJECTION TO ANONYMOUS/INNOMINATE JURY

Mr. Fariz objects to the empaneling of an anonymous or innominate jury in this case.¹ The Eleventh Circuit, in *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994), delineated the standards by which a district court may empanel an anonymous jury.² Sufficient cause exists to empanel an anonymous or innominate jury upon a showing of a combination of factors, which include:

(1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance the

¹An innominate jury is one in which all information about the jurors is disclosed to the parties, with the exception of the jurors' names, addresses, and exact place of work. *United States v. Carpa*, 271 F.3d 962, 963 n.1 (11th Cir. 2001).

²While *Ross* dealt with the issue of an anonymous, as opposed to innominate, jury, the test it delineated has been extended to the issue of innominate juries. *United States v. Bowman*, 302 F.3d 1228, 1236 n.1 (11th Cir. 2002).

possibility that jurors' names would become public and expose them to intimidation or harassment.

Id. at 1520.

It is clear that, in this case, an adequate combination of the above-stated factors does not exist to allow the empaneling of an anonymous or innominate jury. As for the first factor, Mr. Fariz is not alleged to have been involved in organized crime, at least with respect to the traditional concept of organized crime in the United States, *i.e.*, large-scale criminal enterprises engaged in illegal activity solely for personal power or profit. While Mr. Fariz does not concede that he is in any way involved with the Palestinian Islamic Jihad (PIJ), even if the Court believes the PIJ to be an organized crime group for the purposes of this issue, the mere invocation of the PIJ in the indictment is insufficient to order an innominate jury. *Id.* at 1521 n.26. With respect to the second factor, it is undisputed that the PIJ has not conducted any violent activity in the United States that could possibly harm jurors within the Middle District of Florida. As for the third factor, it is also undisputed that Mr. Fariz has made no attempts to interfere with the judicial process anywhere within the United States.

With respect to the fourth factor, while it is true that Mr. Fariz faces a lengthy incarceration and substantial monetary penalties if convicted, such a factor, on its own, would allow the empaneling of an anonymous or innominate jury in an inordinate number of federal cases, a result which is obviously untenable and unintended. Regarding the fifth factor, while there has been a great deal of pre-trial publicity in this case, a trend that is likely to continue throughout the trial, there has been no allegation, intimation, or possible showing

that Mr. Fariz has or would engage in the harassment or intimidation of anyone with respect to this case. A review of the case law on this issue plainly indicates that district courts should empanel an anonymous or innominate jury only when there is reason to believe that a defendant is engaged in witness intimidation commensurate with violent conduct. *Id.* at 1520; *Bowman*, 302 F.3d at 1238-39. Those concerns are not evident here. Therefore, a review of the above factors reveals that there is no basis for empaneling an anonymous or innominate jury and, accordingly, Mr. Fariz's objection in this regard should be sustained.

Alternatively, if the Court decides to empanel an anonymous or innominate jury, Mr. Fariz would request that a limiting instruction be made with respect to this issue, as referenced in *Ross*. 33 F.3d at 1521 n.27. Such a limiting instruction would serve the purpose of eliminating any inference of Mr. Fariz's guilt on the jury's part.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER



Kevin T. Beok
Florida Bar # 0802719
Assistant Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: 813-228-2715
Facsimile: 813-228-2562
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2004, a true and correct copy of the foregoing has been furnished by hand delivery to Terry Zitek, Assistant United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602 and to the following by U.S. Mail:

Mr. Bruce G. Howie, Esquire
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, Florida 33707

Mr. Stephen N. Bernstein, Esquire
P.O. Box 1642
Gainesville, Florida 32602

Mr. William B. Moffitt, Esquire
Asbill Moffitt & Boss, Chtd
The Pacific House
1615 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Ms. Linda Moreno, Esquire
1718 East 7th Avenue, Suite 201
Tampa, Florida 33605


Kevin T. Beck
Assistant Federal Public Defender