

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 ALEXANDRIA DIVISION

3 UNITED STATES OF AMERICA, . Criminal No. 1:01cr455  
4 vs. . Alexandria, Virginia  
5 ZACARIAS MOUSSAOUI, . April 22, 2005  
a/k/a Shaqil, a/k/a . 3:30 p.m.  
6 Abu Khalid al Sahrawi, .  
7 Defendant. .  
8 . . . . .

9 TRANSCRIPT OF PLEA HEARING  
10 BEFORE THE HONORABLE LEONIE M. BRINKEMA  
11 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 FOR THE GOVERNMENT: PAUL J. McNULTY,  
13 United States Attorney  
14 ROBERT A. SPENCER, AUSA  
15 DAVID J. NOVAK, AUSA  
16 DAVID RASKIN, AUSA  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, VA 22314

17 FOR THE DEFENDANT: ALAN H. YAMAMOTO, ESQ.  
18 108 N. Alfred Street, First Floor  
Alexandria, VA 22314-3032

19 ALSO PRESENT: FRANK W. DUNHAM, JR.,  
20 Federal Public Defender  
21 GERARD FRANCISCO  
22 EDWARD B. MAC MAHON, ESQ.  
SPECIAL AGENT AARON ZEBLEY  
23 GERALD THOMAS ZERKIN,  
Assistant Federal Public Defender

24 (Pages 1 - 34)

1 COURT REPORTERS:

ANNELIESE J. THOMSON, RDR, CRR  
KAREN K. BRYNTESON, RMR, CRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
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1 P R O C E E D I N G S

2 THE CLERK: Criminal Case 2001-455, United States of  
3 America v. Zacarias Moussaoui. Will counsel please note their  
4 appearance for the record.

5 (Defendant present.)

6 MR. SPENCER: Good afternoon, Your Honor. Rob Spencer,  
7 David Novak, David Raskin, and Paul McNulty for the United States.

8 THE COURT: All right.

9 MR. YAMAMOTO: Good afternoon, Your Honor. Alan  
10 Yamamoto here with Mr. Moussaoui. Also in the courtroom are  
11 Mr. Zerkin, Mr. Dunham, and Mr. MacMahon on behalf of  
12 Mr. Moussaoui.

13 THE COURT: All right. Mr. Moussaoui, you are here as  
14 well.

15 Mr. Moussaoui, the reason for this hearing this  
16 afternoon is it's the Court's understanding that you wish to enter  
17 guilty pleas to the indictment. Is that still your desire?

18 THE DEFENDANT: Indeed I am.

19 THE COURT: All right. If you'd go up to the lectern,  
20 please.

21 Now, as you know from your previous appearances in  
22 court, the Court must place you under an affirmation to tell the  
23 truth.

24 THE DEFENDANT: It's understood.

25 THE COURT: All right. Mr. Moussaoui, you understand

1 that all answers to the Court's questions must be completely  
2 truthful and that if you should lie in answering any question, you  
3 could be prosecuted for a separate crime called perjury. Do you  
4 understand that?

5 THE DEFENDANT: It is understood.

6 THE COURT: It is understood, all right, sir.

7 For the record, what is your full name?

8 THE DEFENDANT: My full name is Zacarias Moussaoui.

9 THE COURT: Have you also used the aliases or kunya  
10 names that are listed in the indictment?

11 THE DEFENDANT: Indeed. I use the name, my war name, my  
12 jihad name is Abu Khaled al Sahrawi, and my name in, in the  
13 western world is also Shaquil.

14 THE COURT: All right, sir. And how old are you,  
15 Mr. Moussaoui?

16 THE DEFENDANT: I'm born the 30th of May, 1968.

17 THE COURT: And how much education have you received?

18 THE DEFENDANT: I have a degree, a French degree in  
19 commerce and technology, I have qualified from the Institute of  
20 Export of London, and I have a Master Degree in International  
21 Business from the University of -- South Bank University in  
22 London.

23 THE COURT: All right, sir. Are you presently being  
24 cared for by a doctor for any physical or mental condition?

25 THE DEFENDANT: No, grace to the Lord.

1           THE COURT: Are you presently taking any medications for  
2 any physical or mental condition?

3           THE DEFENDANT: No, grace to the Lord.

4           THE COURT: And are you presently under the influence of  
5 any alcohol or drugs?

6           THE DEFENDANT: No. I am Muslim. Grace to the Lord.

7           THE COURT: All right. Now, Mr. Moussaoui, as you know,  
8 the decision of a defendant to plead guilty is a decision that  
9 belongs to that defendant.

10          THE DEFENDANT: Indeed.

11          THE COURT: You understand that your lawyers are  
12 advising you against pleading guilty and are opposed to your  
13 decision?

14          THE DEFENDANT: I have received the representation of  
15 your lawyer, and I have made this decision. I have maintained  
16 this decision to plead guilty to the indictment.

17          THE COURT: All right, sir.

18          Now, have you had a copy of the second superseding  
19 indictment in your possession since it was returned in July of  
20 2002?

21          THE DEFENDANT: No, I do not have this copy. I only  
22 have the copy of the statement of fact.

23          THE COURT: All right. But you did receive a copy of  
24 the indictment a long time ago.

25          THE DEFENDANT: Yes, indeed, a long time ago.

1 THE COURT: All right.

2 THE DEFENDANT: But I know very much what it's talking  
3 about.

4 THE COURT: All right. Well, I need to go over the  
5 indictment with you at this time, the specific charges that are  
6 included in the indictment, the maximum sentences to which you are  
7 exposed with any finding of guilt, and to make sure you understand  
8 what the elements would be that the government would have to prove  
9 if the case went to trial. Do you understand that?

10 THE DEFENDANT: I understand this.

11 THE COURT: All right. Do you understand that Count 1  
12 of the indictment charges you with being a member of a conspiracy  
13 to commit acts of terrorism transcending national boundaries  
14 resulting in death, that that is essentially Count 1 of the  
15 indictment? Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you understand that Count 2 of the  
18 indictment charges you with conspiracy to commit aircraft piracy  
19 resulting in death? Do you understand that?

20 THE DEFENDANT: I do.

21 THE COURT: Count 3 charges you with conspiracy to  
22 destroy aircraft and with a death resulting from that conspiracy.  
23 Do you understand that charge?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Count 4 charges you with being a member of a

1 conspiracy to use weapons of mass destruction resulting in death.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Count 5 charges you with being a member of a  
5 conspiracy to murder United States employees. Do you understand  
6 that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And lastly, do you understand that Count 6  
9 charges you with being a member of a conspiracy to destroy  
10 property?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right, sir.

13 Now, because of the way the counts are charged in the  
14 indictment -- and we've already provided you with a list of the  
15 maximum penalties, you received that earlier this week, correct?  
16 That's the one-page document that had the penalties listed on it?  
17 I'm going to go over that with you again, but I just want to make  
18 sure you remembered receiving that.

19 THE DEFENDANT: You are saying --

20 THE COURT: Didn't you get a statement of facts? Did I  
21 not give you a statement of the penalties?

22 THE DEFENDANT: No, I did not -- he can confirm -- I did  
23 not receive this, the -- talking about the, the penalty.

24 THE COURT: All right. Well, let me go over that with  
25 you. But you've discussed those penalty provisions with

1 Mr. Yamamoto? That is, you are aware that the first four counts  
2 essentially expose you to the possibility of a death sentence or  
3 life imprisonment without the possibility of parole?

4 THE DEFENDANT: Yes, I read the document. It was an old  
5 document about this penalty, the penalty that the government can  
6 impose on me. Yes, I read this.

7 THE COURT: All right. Just so you're clear on that,  
8 then Count 1, if it's found that your activity in the conspiracy  
9 resulted in death, exposes you to the possibility of death or life  
10 imprisonment without the possibility for parole. Do you  
11 understand that?

12 THE DEFENDANT: Yes, I do understand.

13 THE COURT: In addition, the Court could sentence you to  
14 up to five years of supervised release, a fine of up to \$250,000,  
15 and there's an automatic special assessment -- that's called a  
16 special fine -- of \$100. Do you understand that?

17 THE DEFENDANT: Yes, I do. I wonder where I will get  
18 the money.

19 THE COURT: All right. Now, conspiracy -- Count 2 of  
20 the indictment, which is the conspiracy to commit aircraft piracy,  
21 again if a death results from the commission of the act, exposes  
22 you -- and, I'm sorry, in Count 1, that sentence, whatever  
23 sentence is imposed on Count 1 must run consecutive to any  
24 sentence imposed on any of the other counts in the indictment. Do  
25 you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: And Count 2 again exposes you to the  
3 possible maximum penalty of death or life imprisonment without the  
4 possibility for parole. Do you understand that?

5 THE DEFENDANT: Yes, I do understand that.

6 THE COURT: In addition, again, there's up to five years  
7 of supervised release, there is a maximum fine of \$250,000, and  
8 there's a \$100 special assessment. Do you understand that?

9 THE DEFENDANT: Yes, I do understand that.

10 THE COURT: With Count 3, which is the conspiracy to  
11 destroy aircraft resulting in death, again the maximum penalty  
12 there could be death or life imprisonment without any possibility  
13 for parole, the same special assessment of -- special assessment  
14 of \$100, the same maximum fine of \$250,000, and the same period of  
15 supervised release, five years, applies to that count. Do you  
16 understand that?

17 THE DEFENDANT: Yes, I do understand that.

18 THE COURT: Count 4, which is the conspiracy to use  
19 weapons of mass destruction if resulting in death, again could  
20 result in a death sentence or any term of years life or death, but  
21 again, life or death is affected by whether a death results from  
22 that conspiracy, and if it's life imprisonment, it's without the  
23 possibility for parole. Do you understand that?

24 THE DEFENDANT: Yes, I do understand that.

25 THE COURT: Again, the fine would be up to \$250,000,

1 there's a five-year period of supervised release, and a \$100  
2 automatic special assessment. Do you understand that?

3 THE DEFENDANT: Yes, I do understand.

4 THE COURT: With Count 5, which is the conspiracy to  
5 murder United States employees, the maximum term of imprisonment  
6 is any term of years or life. There is no death penalty  
7 associated with Count 5. Do you understand that?

8 THE DEFENDANT: I do understand that.

9 THE COURT: The maximum fine would be \$250,000. There  
10 is again a five-year period of supervised release and an automatic  
11 \$100 special assessment. Do you understand that?

12 THE DEFENDANT: Yes, I do understand that.

13 THE COURT: And the last count, which is the conspiracy  
14 to destroy property, if death results as a proximate result of  
15 conduct, then that could be up to life imprisonment followed by  
16 five years of supervised release, a fine of up to \$250,000, and a  
17 special assessment of \$100. Do you understand that?

18 THE DEFENDANT: Yes, I do understand that.

19 THE COURT: The special assessments are cumulative.  
20 That means if you're found guilty of all six counts, there'd be a  
21 total of \$600 in special assessments. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: The supervised release portion of the  
24 sentence doesn't begin until the imprisonment portion, if it's an  
25 imprisonment sentence, begins to run. When a person is on

1 supervised release, he's under the control of a federal probation  
2 officer, and there may be requirements to do certain things as  
3 well as requirements not to do certain things.

4           If any condition of supervised release is violated, then  
5 the Court can sentence you to the period of -- to a period of  
6 incarceration which could be for as long as the period of  
7 supervised release, which is five years. Do you understand that?

8           THE DEFENDANT: Yes, I do.

9           THE COURT: You understand that parole is not available  
10 in the federal system? And again, with the first four counts in  
11 this case, parole would not be a possibility in any case, so  
12 whatever prison sentence is imposed, if one is imposed, will have  
13 to be served entirely. Do you understand that?

14           THE DEFENDANT: Yes, I do understand that.

15           THE COURT: Now, do you understand that you have a right  
16 to plead not guilty and to go to trial on any one or combination  
17 of or all of these charges in the indictment?

18           THE DEFENDANT: I do understand that.

19           THE COURT: All right. And it is the Court's  
20 understanding that you wish to bypass your right to go to trial on  
21 those charges and to enter guilty pleas to the six charges. Is  
22 that correct?

23           THE DEFENDANT: It is correct that I want to plead  
24 guilty to the six charge that face in the indictment. It's  
25 absolutely correct.

1 THE COURT: All right, sir.

2 Do you understand that if you pled not guilty and went  
3 to trial on Count 1, the government would have the burden of  
4 proving each and every one of the essential elements of that  
5 offense beyond a reasonable doubt?

6 THE DEFENDANT: I understand that.

7 THE COURT: All right. And so what they would have to  
8 prove essentially is that the conspiracy as alleged in Count 1 of  
9 the indictment did, in fact, exist. No. 2, they'd have to prove  
10 that at some point during the life of the conspiracy, you  
11 knowingly and intentionally entered into acts in furtherance of  
12 the conspiracy, that you knew about the conspiracy, and that you  
13 purposely joined it. Do you understand that?

14 THE DEFENDANT: I understand that. That's what is  
15 contained in the statement of fact you're referring?

16 THE COURT: I'm just going through the elements right  
17 now.

18 THE DEFENDANT: All right.

19 THE COURT: Do you understand that the government would  
20 also have to prove beyond a reasonable doubt that at least one act  
21 in furtherance of the conspiracy occurred in the Eastern District  
22 of Virginia? So, for example, the allegation that the Pentagon  
23 was one of the recipients of the -- or targets of the conspiracy  
24 would give this Court jurisdiction over the conspiracy. Do you  
25 understand that?

1 THE DEFENDANT: I understand this.

2 THE COURT: And lastly, they'd have to prove that at  
3 least one of the specific overt acts that's listed in the  
4 indictment was committed either by you or by some other member of  
5 the conspiracy. Do you understand that?

6 THE DEFENDANT: I understand this.

7 THE COURT: And they would similarly because all of the  
8 remaining five counts of the indictment are conspiracy counts have  
9 the same burden; that is, they'd have to prove as to each of the  
10 remaining five counts beyond a reasonable doubt that the specific  
11 conspiracy alleged in that indictment -- in that count of the  
12 indictment did, in fact, exist; that at some point during the life  
13 of the conspiracy you knowingly and intentionally joined into the  
14 conspiracy; that at least one act in furtherance of the conspiracy  
15 occurred in the Eastern District of Virginia; and that at least  
16 one of the listed overt acts in the indictment was committed  
17 either by you or by one of the named coconspirators in furtherance  
18 of that conspiracy. Do you understand that?

19 THE DEFENDANT: I understand that.

20 THE COURT: Now, if you went to trial, there would also  
21 be various rights and protections that you would have at trial  
22 that you're giving up with a guilty plea. First, you would be  
23 able to see and hear the government 's evidence, and you could  
24 test it through the cross examination of your attorneys. Do you  
25 understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: You could ask the Court to issue subpoenas.  
3 Now, I know that that right has been limited to some degree in  
4 previous litigation in this case, but subject to that limitation,  
5 a defendant normally has a right and you would have a right to  
6 require that witnesses or physical evidence be brought to the  
7 courthouse that you could use in your defense. Do you understand  
8 that?

9 THE DEFENDANT: I do understand that.

10 THE COURT: You could testify as a witness if you went  
11 to trial. Do you understand that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: However, you could also invoke your Fifth  
14 Amendment right to remain silent and not testify, and if you  
15 remained silent at trial, no inference of guilt could be drawn  
16 from your silence. Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You would have the right to the help of a  
19 lawyer at all stages -- in fact, because this is a capital case,  
20 you have the right to at least two lawyers at all stages of the  
21 trial proceedings, and if you could not afford attorneys, they  
22 would be appointed for you. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: You would also have a right to choose how  
25 your case was tried. You could have a trial by a judge sitting

1 alone in what is called a bench trial or a trial by jury, in which  
2 case 12 people would be drawn from the community on a random basis  
3 to hear your case, but in either type of trial, you could not be  
4 convicted unless the government proved your guilt beyond a  
5 reasonable doubt. Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: If you continued with your not guilty pleas,  
8 your lawyers could continue to raise various defenses to the guilt  
9 phase of this trial. To the extent that there are any motions  
10 that are outstanding as to the guilt issue, you would be waiving  
11 or giving up your right to address any -- to waive -- I'm sorry,  
12 to argue any of those motions. Do you understand that?

13 THE DEFENDANT: Can you repeat, please?

14 THE COURT: Yes. If the Court accepts your -- if you  
15 plead not guilty, you have a right, as you know, to file pretrial  
16 motions and to raise various legal issues or attacks on the  
17 prosecution as to the guilt phase. If the Court accepts your  
18 guilty plea today as to the guilt phase of this trial, you will  
19 have given up any of those attacks that you might have on the  
20 prosecution as it relates to the guilt phase. Do you understand  
21 that?

22 THE DEFENDANT: For thing what happened before, prior  
23 the guilty plea?

24 THE COURT: Yes, but to some -- I'm sorry, Mr. Yamamoto?

25 MR. YAMAMOTO: Go on, Your Honor.

1 THE COURT: Some of the issues that I think you are  
2 concerned about in this case, such as access to certain witnesses'  
3 testimony, is still highly relevant to the sentencing phase.

4 THE DEFENDANT: That's why I was asking the question.

5 THE COURT: And you have not waived with this guilty  
6 plea any issues you might have as to what the Supreme Court ruled  
7 in that case, because the argument that I think has properly been  
8 made is that that evidence constitutes mitigating evidence.  
9 Mitigation is an extremely important factor at the penalty phase,  
10 and, therefore, that issue and some of those other issues that  
11 relate to the penalty phase are not being waived in your guilty  
12 plea to the guilt phase of the trial.

13 Do you understand that?

14 THE DEFENDANT: So if I understand properly, I'm only  
15 waiving thing what have happened prior the guilty plea regarding  
16 the guilt phase, but for the sentencing phase, I will, I will  
17 still have the ability to raise issue to the Supreme Court?

18 THE COURT: Well, you -- people can't just jump to the  
19 Supreme Court. You still have legal issues that to the extent  
20 they relate to the penalty phase of the trial, you are not by  
21 pleading guilty giving up any of those issues.

22 THE DEFENDANT: That's what I'm saying.

23 THE COURT: That's what I'm saying, too.

24 (Discussion between Mr. Yamamoto and defendant off the  
25 record.)

1 THE COURT: Mr. Moussaoui, do you understand what I have  
2 said?

3 THE DEFENDANT: Yes. That's what I understood in the  
4 first place.

5 THE COURT: All right. That's fine.

6 And, lastly, if you pled not guilty and you went to  
7 trial and you were found guilty of the offense, you could appeal  
8 the finding of guilt to a higher level court. Now, do you  
9 understand that if the Court accepts your guilty pleas today, you  
10 will be found guilty of the six charges in the indictment, and you  
11 will not have a right to appeal the findings of guilt? Do you  
12 understand that?

13 THE DEFENDANT: I understand this.

14 THE COURT: All right. Now, there was prepared for you  
15 a statement of facts. This is a five-page, 23-paragraph statement  
16 of facts, which I understand from our meeting two days ago that  
17 you went over yourself many times and you also consulted with  
18 Mr. Yamamoto about that statement of facts. Is that correct --

19 THE DEFENDANT: Absolutely.

20 THE COURT: -- Mr. Moussaoui?

21 All right. And you did bring to the Court's attention a  
22 change, a factual change you wanted made to paragraph 15, which  
23 had originally indicated a particular date that you felt was  
24 wrong, and so you should have before you the final statement of  
25 facts, which in statement 15 indicates that on August 2001, you

1 traveled to Minnesota, where you trained on a Boeing 747 400  
2 simulator at the Pan Am International Flight Academy in Eagan,  
3 Minnesota, and you told an al Qaeda associate that you would  
4 complete simulator training before September of 2001.

5 That was the correction you wanted made, correct, sir?

6 THE DEFENDANT: Indeed it's correct.

7 THE COURT: All right. Now, Mr. Moussaoui, have you had  
8 enough time to carefully go over every factual allegation in that  
9 statement of facts?

10 THE DEFENDANT: I read more than ten times this  
11 statement of facts, and I've pondered about each paragraph, and I  
12 find it factual.

13 THE COURT: And do you understand that by signing that  
14 statement of facts, if you do choose to sign it, and by telling  
15 the Court that you accept all of those statements of facts, you  
16 understand at the very beginning it indicates, "If this case were  
17 to go to trial, the government would prove the following facts  
18 beyond a reasonable doubt."

19 If you sign that statement of facts and if I accept it,  
20 that will suffice to be a factual basis to find you guilty. Do  
21 you understand that?

22 THE DEFENDANT: Absolutely. I do understand this.

23 THE COURT: All right. Do you want to sign that  
24 document at this time?

25 THE DEFENDANT: Yes, indeed, I want.

1 THE COURT: All right.

2 THE DEFENDANT: Finally I get a pen.

3 THE COURT: I remembered your request from the other  
4 day, Mr. Moussaoui.

5 THE DEFENDANT: I just want to check it out.

6 THE COURT: Yes, sir. Please, take your time.

7 (Pause)

8 THE DEFENDANT: Can I sit down to sign?

9 THE COURT: Yes, sir, you may. And if you want to talk  
10 with Mr. Yamamoto, please feel free to consult with him.

11 THE DEFENDANT: I think we have talk enough.

12 THE COURT: All right. If you'd hand it up to Mr. Wood,  
13 please.

14 Now, Mr. Moussaoui, you understand that you have  
15 absolutely no plea agreement of any kind with the United States  
16 government; is that correct?

17 THE DEFENDANT: Absolutely correct.

18 THE COURT: Has anybody promised or suggested to you in  
19 any respect that by pleading guilty, you might get a lighter  
20 sentence or more favorable treatment by the Court?

21 THE DEFENDANT: No, at all. I can't expect anything.

22 THE COURT: Excuse me?

23 THE DEFENDANT: I can't expect any leniency from the  
24 American.

25 THE COURT: All right. Do you understand that if the

1 Court accepts your guilty pleas today, there will be no further  
2 trial of the issue of guilt, you will not be able to come back and  
3 try to refute any of the facts in the statement of facts, and you  
4 will be found guilty today? Do you understand that?

5 THE DEFENDANT: I understand that these statements of  
6 fact is there to stay and I cannot go back and say no.

7 THE COURT: All right. And just for the record, when  
8 you appeared before me earlier this week, is it not correct that  
9 you were not in shackles, stun belt, or any other kind of  
10 restraints on you? Is that correct?

11 THE DEFENDANT: Yes, it's correct.

12 THE COURT: And the same thing today, correct?

13 THE DEFENDANT: Yes.

14 THE COURT: Has -- do you feel in any respect that  
15 anyone has put any force or pressure on you to plead guilty today?

16 THE DEFENDANT: To plead guilty? Absolutely not.

17 THE COURT: All right. Then, sir, for the record, as to  
18 Count 1, which is conspiracy to commit acts of terrorism  
19 transcending national boundaries resulting in death, how do you  
20 plead?

21 THE DEFENDANT: Guilty.

22 THE COURT: As to Count 2, conspiracy to commit aircraft  
23 piracy resulting in death, how do you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: As to Count 3, conspiracy to destroy

1 aircraft resulting in death, how do you wish to plead?

2 THE DEFENDANT: Guilty.

3 THE COURT: As to Count 4, conspiracy to use weapons of  
4 mass destruction resulting in death, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: As to conspiracy to murder United States  
7 employees, how do you plead?

8 THE DEFENDANT: Guilty.

9 THE COURT: And as conspiracy -- Count 6, conspiracy to  
10 destroy property, how do you plead?

11 THE DEFENDANT: Guilty.

12 THE COURT: All right. Mr. Yamamoto --

13 MR. YAMAMOTO: Yes, Your Honor.

14 THE COURT: -- I know that the defendant is pleading  
15 guilty against the advice of all counsel, but you have been the  
16 only attorney who has been able to communicate with Mr. Moussaoui.  
17 Are you satisfied that his guilty pleas today have been made after  
18 careful consideration by the defendant?

19 MR. YAMAMOTO: Your Honor --

20 THE COURT: Mr. Moussaoui, sit down for a second.  
21 Your -- I do have to have Mr. Yamamoto on the record.

22 MR. YAMAMOTO: Your Honor, I think we filed a pleading  
23 with the Court today at some point. I don't know if the Court  
24 has --

25 THE COURT: I understand that, but when you have dealt

1 with Mr. Moussaoui about this plea, and you're the only lawyer who  
2 has talked with him about this over the last two or three weeks,  
3 has he understood the legal ramifications of guilty pleas?

4 MR. YAMAMOTO: When I've spoken to him, Your Honor, we  
5 have discussed the ramifications of the guilty plea and the fact  
6 that he has -- he is facing the possibility of death and the  
7 possibility of life imprisonment. He has told me that he  
8 understands that.

9 THE COURT: And you're satisfied that he understands  
10 that?

11 MR. YAMAMOTO: In speaking with him, he's -- we've  
12 argued about it, and he indicates that -- well, he understands it.  
13 We've gone around in circles. It started out differently  
14 initially as to what he was looking for, so he appears to  
15 understand it, Your Honor.

16 THE COURT: I know it puts you in a difficult position  
17 because all counsel in this case are opposed to the defendant's  
18 decision, but we all know that the law allows a defendant who is  
19 competent the absolute right to determine his own fate as to key  
20 issues in a criminal case, the most critical of which is whether  
21 to plead guilty or not guilty.

22 MR. YAMAMOTO: He has responded appropriately when I've  
23 spoken to him. He has had disagreements with me with respect to  
24 certain items. Those disagreements were appropriate  
25 disagreements.

1 THE COURT: All right. Thank you.

2 All right, Mr. Moussaoui, come back to the lectern.

3 I have previously found based upon a rather unusual  
4 hearing that was done on the record with Mr. Moussaoui and  
5 Mr. Yamamoto present that I am fully satisfied that Mr. Moussaoui  
6 is completely competent to enter his guilty pleas today. The  
7 defendant has acted against the advice of his counsel, but he has  
8 clearly exhibited both today and earlier this week a complete  
9 understanding of the ramifications of his guilty pleas.

10 Mr. Moussaoui is an extremely intelligent man. He has  
11 actually a better understanding of the legal system than some  
12 lawyers I've seen in court. I reread the transcript from the plea  
13 hearing of two-and-a-half years ago, and he understands --  
14 understood then and I have no reason to believe he does not  
15 understand now the nature of conspiracy law.

16 The full reasons for my finding the defendant competent,  
17 I think, are adequately expressed in the transcript of that  
18 hearing, which will be released sometime today to make the record  
19 more complete, but I am satisfied, Mr. Moussaoui, that you have  
20 entered these guilty pleas in a knowing and voluntary fashion.  
21 You have intentionally disregarded the advice of counsel. That is  
22 your right in our legal system.

23 The Court is also satisfied that the written statement  
24 of facts which you have had several days to carefully go over and  
25 you have had the advice and consultation of Mr. Yamamoto is more

1 than sufficient evidence to establish your guilt beyond a  
2 reasonable doubt as to all six counts.

3           Is there anything, counsel for the government,  
4 Mr. Spencer, that I may have omitted in this Rule 11 colloquy that  
5 you need put on the record?

6           MR. SPENCER: Two points, Your Honor.

7           THE COURT: Yes, sir.

8           MR. SPENCER: First is I think the defendant ought to be  
9 given a warning that a -- as part of his sentence, he could be  
10 ordered to pay restitution to victims. And the second, Your  
11 Honor, I've asked to clarify for the record that in paragraph 15,  
12 where I understand Mr. Moussaoui requested a change to the  
13 statement of facts, he changed the second date, that is, the date  
14 September 2001, not the first date that appears in paragraph 15.

15           THE COURT: Correct. I thought I had read that into the  
16 record.

17           Mr. Moussaoui, in paragraph -- Mr. Moussaoui, in  
18 paragraph 15, you did not change the first date, the August 2001  
19 date. You simply changed the second date.

20           THE DEFENDANT: Yes, indeed.

21           THE COURT: Yes. All right.

22           MR. SPENCER: Thank you, Your Honor.

23           THE COURT: And, Mr. Moussaoui, there can be the  
24 possibility, I have to just legally tell you this, of having to  
25 make restitution to any and all of the victims in this case. Do

1 you understand that?

2 THE DEFENDANT: Yes, I understand what you're saying.

3 THE COURT: All right. As I said then, the Court is  
4 accepting today the six -- the defendant's six pleas of guilty to  
5 the six counts in the indictment. I'm fully satisfied he is  
6 competent to enter these pleas, the facts support them, and you  
7 are found guilty at this time.

8 Now, the next step in this case is there are outstanding  
9 motions on the threshold factors that qualify these convictions  
10 for capital punishment. That requires the Court to address  
11 motions raising legal issues. Some of that has been already  
12 briefed, but in the passage of time and the significant change in  
13 the evidence in this case, I am going to give defense counsel  
14 leave to file supplementary motions if you feel you need to on the  
15 issue of the death notice, and the government will have an  
16 opportunity to respond to that, and we will most likely have a  
17 hearing on that issue, and that will be sometime in the future.  
18 I'm going to let counsel consult with each other to determine a  
19 briefing schedule for that matter.

20 And the last thing is -- Mr. Moussaoui, you may have a  
21 seat because we are finished with the proceeding.

22 THE DEFENDANT: I just want to say because you mentioned  
23 that the, the transcript of the, of the hearing on Wednesday --

24 THE COURT: Correct.

25 THE DEFENDANT: -- were to be released.

1 THE COURT: I thought you had no objection to that.

2 THE DEFENDANT: And I have significantly changed my  
3 position following the advice I receive from you and certain  
4 information I come to realize regarding the death penalty, because  
5 on Wednesday, I did mention to you that I intended to plead for  
6 the death penalty, and you explained to me the process I was going  
7 to undergo. And you did send me the transcript of this hearing,  
8 and you gave me the opportunity to really understand fully the  
9 process of the sentencing phase.

10 And also I come to understand a few other thing by going  
11 through the different information that I receive from, from the  
12 lawyer, mainly relating to the Blackledge/Perry case, okay, but  
13 what I am saying is I will not apply for death. And, in fact, I  
14 will fight every inch against the death penalty, okay?

15 I need to say this at this point because if somebody is  
16 reading the transcript of, of Wednesday, the 20th, you will have  
17 the impression that Moussaoui is applying for death now, and  
18 that -- for some reason that will be too long to express now,  
19 okay, why I was doing this, but now I can say to, to you and to  
20 the lawyer and to the public that, no, Moussaoui will fight every  
21 inch against the death penalty.

22 And I have -- I want to file this motion regarding the  
23 ineffective assistance of defense counsel relating to some issue  
24 of the guilty plea because I've been misled by the defense counsel  
25 relating to what I could do after pleading guilty.

1           Basically, they say that I --

2           THE COURT: Mr. Moussaoui, I don't want to stop you but  
3 I'm going to because it's not appropriate to discuss in public  
4 attorney-client communications.

5           THE DEFENDANT: I'm not going to say anything about what  
6 they say.

7           THE COURT: All right.

8           THE DEFENDANT: I'm going just to say what I understand  
9 from the, the, the publicly available case, Blackledge v. Perry,  
10 okay, where the Supreme Court laid down the rule for defendant,  
11 what he can do after pleading guilty. And the Supreme Court said  
12 in the Blackledge v. Perry case he may not thereafter, thereafter  
13 a guilty plea, raise independent claim relating to the deprivation  
14 of constitutional right that occur prior to the entry of the  
15 guilty plea.

16           So initially I understand that was it. I could not make  
17 any claim after my guilty plea, but the fact of the matter, the  
18 new, the new substitution ordered by the Court of Appeals have not  
19 occur prior the entry of the guilty plea. They have not been  
20 written. And this is a fact.

21           So I will be able because of what may be or I believe is  
22 a legal loophole, maybe raise issue relating to this new  
23 substitution who have not occur happen, been written prior the  
24 entry of the guilty plea, okay? And this lawyer have not been  
25 giving me this advice.

1           Not only this, okay, I have not been -- this Dunham have  
2 been going to the press saying that Mr. Moussaoui is incompetent,  
3 okay, to plead guilty for 9/11. And I'm afraid that this  
4 statement of fact and Mr. Dunham or the prosecution, the  
5 government, will point out to me a single paragraph where they say  
6 that I'm guilty of 9/11.

7           I ask the government to point out to me a single  
8 paragraph where they say I am specifically guilty of 9/11 --

9           THE COURT: All right.

10          THE DEFENDANT: -- because the government had said that  
11 there is a broader conspiracy to use airplane as weapon of mass  
12 destruction. If that's absolutely correct, that I came to the  
13 United States of America to be part, okay, of a conspiracy to use  
14 airplane as a weapon of mass destruction, I was being trained on  
15 the 747 400 to eventually use this plane as stated in this  
16 statement of fact to strike the White House, but this conspiracy  
17 was a different conspiracy that 9/11.

18          My conspiracy has for aim to free Sheikh Omar Abdel  
19 Rahman, Sheik Omar Abdel Rahman, the blind sheikh, who is held in  
20 Florence, Colorado, okay, and we wanted to use the 747 because it,  
21 it is a long-distance plane who could reach Afghanistan without  
22 any stopover to give a chance to special forces to storm the  
23 plane.

24          So I am guilty of a broad conspiracy to use weapon of  
25 mass destruction to hit the White House if the American government

1 refuse to negotiate, okay.

2           So by -- Mr. Dunham is pretending to want to defend me,  
3 but, in fact, he's acting like a Judah, okay, going to everybody  
4 saying that Moussaoui is incompetent because Moussaoui should not  
5 plead guilty for 9/11, but as I said before, okay, you can point  
6 to me -- you can't point to me a single statement here which say  
7 Mr. Moussaoui came into the United States to participate into the  
8 9/11, okay, and that's not my conspiracy.

9           So that's what I want to put in the death phase as a  
10 mitigating factor to the jury. I don't want them to pretend that  
11 I have a minor part in 9/11 because you know very well the law of  
12 conspiracy was enacted by your government -- by your Congress to  
13 reject the idea that in drug cartel you could have a minor part  
14 because if somebody were to drive a truck full of chemical to  
15 process, to manufacture a drug, he could not say: Oh, I only  
16 drive a truck full of chemical. This chemical is illegally  
17 bought. No. The Congress and your government have enacted the  
18 law to say no, mister, you are part of a drug cartel, and this  
19 chemical have been drove to manufacture a drug, so you are guilty  
20 of this.

21           So when Mr. Dunham is saying Mr. Moussaoui have a minor  
22 participation of -- in the conspiracy, he is pleading for death  
23 for me because there is not such a thing as a minor participation  
24 into a conspiracy, okay?

25           Not only this Mr. Dunham is doing; Mr. Dunham is

1 agreeing to substitution. He have written in his pleading that he  
2 wanted to agree to substitution, but substitution are no more than  
3 stipulation. Substitution are no more than stipulation, where the  
4 government and the so-called defense lawyer are sitting together  
5 and agreeing on some event of were meant to have happened.

6 In my case, they are going to sit down and agree that  
7 Khalid Sheikh Mohammed, Ramzi Binalshibh, and Mustafa have make  
8 certain statement, and they will have to agree, and you will have  
9 to sanction.

10 It is exactly the same as exactly 100 percent as  
11 stipulation. And to enter a stipulation, the law is clear that  
12 you need the consent of the accused, and I'm vehemently, adamantly  
13 against this, okay, that they should not enter any substitution  
14 so-called in fact stipulation against my will because I want to  
15 preserve the issue of substitution for my appeal because you can,  
16 you can really imagine when the government will bring the victim  
17 impact story and many thing to the jury, what is going to weight,  
18 a CIA piece of paper of substitution stating that Mr. Khalid  
19 Sheikh Mohammed say this? What is going to weight in front of a  
20 jury? Nothing.

21 Whereas by preserving, by not accepting the  
22 substitution, by saying that we are going to follow what you have  
23 said, the judge, that this substitution were inadequate, unfair,  
24 it was not giving me a fair trial, and you restate, put this  
25 aside, okay, and we are not agreeing to anything with the

1 government and we present the case that I have been saying that I  
2 was part of a different conspiracy in the sentencing phase, is  
3 then this preserve my chance in front of the Supreme Court to, to  
4 raise the issue of substitution and to raise the issue of fair  
5 trial.

6 THE COURT: All right.

7 THE DEFENDANT: Because the, the, the Supreme Court  
8 might take the view to say to me, Mr. Moussaoui, indeed you have  
9 some points here, but the fact that your defense counsel have  
10 agreed to the substitution by itself speaks that somehow it was  
11 possible to find an agreement, and you have said that it was  
12 unfair in your memorandum. You have said clearly this, okay?

13 So I don't see why on earth they will insist on doing  
14 that.

15 THE COURT: Mr. Moussaoui, wait. I'm going to -- I know  
16 you wanted to say something. I'm going to stop you at this point  
17 for this reason. These are, in fact, issues that are going to be  
18 addressed, but this is not the time or place. I want -- I'm  
19 asking --

20 THE DEFENDANT: I have not a chance to have my voice  
21 being speak because they know that I've being held in this cave,  
22 in Alexandria Detention cave, and nobody speaking for Moussaoui,  
23 okay? And this is my last time, I'm sure, that I have the  
24 opportunity because I am not my lawyer.

25 The only reason I have the right to speak today is

1 because I'm pleading guilty. Otherwise, I will be silenced.

2 THE COURT: Mr. Moussaoui --

3 THE DEFENDANT: And I will be silenced in a few seconds  
4 because you will say whatever you are going to say, and you are  
5 going to shut my mouth, and you are going to run your, your show,  
6 okay?

7 And these people are not effectively defending me for  
8 many reason. They don't want to file to the Supreme Court using  
9 this potential loophole. They don't want to file contesting the  
10 validity of what the Court of Appeals have say because as I just  
11 said to you, it is, in fact, stipulations that you want to put in  
12 my mouth, okay, to make me agree against my will, okay, and not  
13 only this, okay, they don't want to present in the death phase my  
14 version of events that I was not part of 9/11, okay?

15 THE COURT: All right, Mr. Moussaoui.

16 THE DEFENDANT: So I don't see how on earth I'm  
17 receiving effective assistance of defense lawyer except that  
18 Dunham, he have his day with the journalists, you know, going  
19 around and saying Moussaoui is crazy, Moussaoui is crazy. He's  
20 crazy to want to defend his life, that's what he's crazy for, an  
21 ex-prosecutor, who is doing the job of the prosecution by the  
22 minor door, by the back door, okay, Mr. ex-Prosecutor Dunham.

23 THE COURT: All right, Mr. Moussaoui, thank you. Step  
24 down, please.

25 THE DEFENDANT: Yes, I will step down.

1 THE COURT: Now, I want to follow up, frankly, on  
2 something Mr. Moussaoui --

3 THE DEFENDANT: Everybody know that I'm not 9/11  
4 material.

5 THE COURT: I understand that. Have a seat, please.

6 Now, I do want to follow up on a very serious point  
7 Mr. Moussaoui has said, and that is that there has been way too  
8 much discussion in the media about this case. Our local criminal  
9 rule 57.1(C) and (G) make it quite clear that counsel are not to  
10 make extrajudicial statements about a criminal case, including  
11 such things as commenting on the merits of issues, and competency  
12 of a defendant is a critical issue in a case.

13 Also, I think it is absolutely appalling that people are  
14 talking about the contents of sealed hearings and then saying,  
15 "Oh, but I can't have my name attributed because it's under seal."  
16 "Under seal" means you don't talk about it at all, and it has to  
17 stop in this case.

18 Now, I don't want to put a complete gag order on  
19 everybody. There are times when there are some mild statements  
20 that are necessary to keep the public and the press informed, but  
21 I do not want to see again in any media any attribution to sources  
22 close to the case or to counsel themselves directly commenting  
23 upon pleadings that are about to be filed, commenting upon issues  
24 in this case. It has to stop.

25 This is a serious case. There are genuinely nuanced

