

To Win Or Not To Win

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By Robbie Friedmann

Zacarias Moussawi was convicted by U.S. Federal Court and sentenced to life in prison without the possibility of early release. He will be in solitary confinement for 23 hours a day. Moussawi's parting shot (pun intended) as he was leaving the courtroom was: "America, you lost!. I own." Soon after, commentary, editorials and letters to the editor, as well as lengthy discussions on talk show programs were dedicated to fierce arguments that his sentence was "right" as he "deserved" to "rot" in prison for the rest of his life because "we are not like them" (as in: "we should not execute criminals even if they are terrorists"). As vociferous were the arguments lamenting that he did not receive the death penalty. If someone like him did not deserve the death penalty for what he did (or actually did not do), then who does? One commentator even suggested that had the jury watched United 93, "it is likely that one or more of the jurors would have come out of the box to deliver the death sentence himself."

Of course, there are plenty of other arguments. The death penalty is warranted "because this way it will not 'cost' the government to maintain him in prison for life" and it will prevent the likelihood that he will "coordinate terror activities from prison" as well as the "potential demand for his release by other terrorists." Those arguing for the (full) life sentence are pleased that justice was done, because his involvement was not fully proven, and because he is not fully responsible for his actions (or inaction) because of his "allegedly abused childhood."

All of these arguments have weaknesses. Weaknesses are found in faulty facts and some in misguided principles. But both sides have missed the point. It is certainly legitimate to argue pro and con death sentences. Those arguments are heard usually around every death sentence in the U.S. and the only difference in the Moussawi case is the scope of his involvement and the utter scorn he has shown towards the court, the families and the United States. An editorial in the Atlanta Journal Constitution ("U.S. Justice triumphs in terror trial," May 5, 2006) declared: "Justice won." It is true that the criminal justice system is adversarial but justice itself is supposed to be blind. The prosecutor or the defender can "win" a case but the court is supposed to mete justice not to win battles.

The fact of the matter is that Moussawi was in a win-win situation from the outset. The pro and con death sentence arguments are neglecting in effect the view from the perpetrator's perspective. Like "traditional" criminals he could have opted to make a guilty plea and wait for the mercy for the court. He could have expressed remorse. Or he could have pleaded not-guilty (which he did) and still express remorse (which he did not). He would have won either way. Had he pleaded guilty and then receive a life sentence, his life would have been spared and he could have then deride the court, the families, and the U.S. That would have been also the case had he pleaded not guilty but expressed remorse at the sentencing. Risking the death penalty? That would have been a possible outcome and he would have won that one too by becoming a "martyr."

In other words, winning depends on the objectives. Had he wanted to live he would have won. Had he wanted to die he would have won. In short, he was holding all the cards and in a sense he still does. As an individual he may be nothing more than a "walking dead." But that is a "Western" view that assumes "individuality," a trait not very admired in the environment and culture in which he was raised and the values which he lives by. It is not simply the "wild imagination" that the orient is so "blessed" with. In 1967 the Arabs suffered a resounding military defeat that was unprecedented in world history in terms of odds, scope and swiftness. Yet they continue to insist that they won that battle and eventually will win the war. Forgotten in prison? Not really. To his comrades-in-terror he will be commemorated as a hero and a symbol of their Jihad.

Therefore, the war against terrorism needs to be fought not in the court of law. It is futile. Not because this is a vote of no confidence in the justice system. It is because the courts are not equipped to deal with terrorism. Western society is still fighting the war against terrorism as if it was a regular war. But the Moussawis of the world do not wear a uniform, they do not belong to a specific country (even if they are a citizen of one), and the war conventions that guide conduct under war conditions are antiquated and not suitable for a war that brings aggression to the homes, restaurants, streets, trains and plains where citizens cannot defend themselves against the terror aimed at them.

It is exactly because the courts cannot "win" such a battle, and certainly not the war, that the "must win" mind set needs to be adopted outside of the judicial realm. The Nuremberg Trial took place after WWII has ended and the enemy was vanquished. It was an appropriate scene with an appropriate sentence that symbolized not only the war crimes the Nazis have committed but also a moral victory of the Allied Forces (emphasis on force). Currently we are at the cusp of WWIII and vanquishing the enemy is not even in sight.

Until that war is won (and there is no other option) let the terrorists declare victories in the wilderness or on their web pages but not inside our courts.