

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

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

SAMI AMIN AL-ARIAN, *et al.*

ORDER

This cause came on for consideration upon a Motion for Leave to Intervene and for Order Establishing Media Access Guidelines (Dkt. #910) filed by Media General Operations, Inc. d/b/a/ The Tampa Tribune (the “Tribune”), and responses thereto (Dkt. ##934, 935) filed by the Government and Defendant Fariz, respectively.¹ Tribune is a member of the news media in the greater Tampa area which, *inter alia*, publishes a newspaper, operates a website devoted to items of interest to the residents of Tampa, and broadcasts a news program on WFLA-TV. Tribune asks this Court for leave to intervene “for the limited purpose of requesting that this Court enter an order establishing guidelines for media access” to proceedings and records related to this criminal case. Tribune’s request is based on an expectation of public “access issues” which will arise in this case of “intense local and national public scrutiny.”²

Tribune asserts three requests in its Motion. First, Tribune seeks access to and a copy of all evidence admitted during the trial. Second, Tribune asks for media access to the jury selection

¹ Defendant Al-Arian filed a Motion to Adopt Defendant Fariz’s response to the Tribune’s Motion, which this Court granted.

² Tribune’s requests were also made “to lessen the disruptiveness of intervention motions throughout the course of the trial.” Having now addressed the issues raised by Tribune in its Motion, this Court does not expect to receive any additional motions to intervene by the news media.

process and to be provided with a list of the names and addresses of the prospective jurors. Third, Tribune asks that this Court provide the media with transcripts of bench conferences and sidebars that occur during the trial.

Neither the Government nor Defendant Fariz has outright objected to Tribune's first request for access to the evidence that will be admitted at trial. Defendant Fariz simply requested that media access be limited to "that which can be accomplished reasonably by the clerk's office." The Government offered to provide the press with a copy of each documentary exhibit it introduces into evidence the day of the admission that is not ordered sealed by the Court.

It is well established that the First Amendment protects the right of the press and public to attend criminal proceedings and to acquire information related thereto. Branzburg v. Hayes, 408 U.S. 665, 681, 92 S.Ct. 2646, 2656, 33 L.Ed.2d 626 (1972). The Supreme Court has acknowledged that the exercise of this "qualified First Amendment right" serves a multitude of desirable purposes, not least of which is to ensure "the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 9, 106 S.Ct. 2735, 2740, 92 L.Ed.2d 1 (1986). The public's access to judicial records, however, "is not absolute," and this Court "may properly balance this right against important competing interests" in determining whether, and to what extent, such records should be excluded from the public domain. United States v. Rosenthal, 762 F.2d 1291, 1294 (11th Cir. 1994).

Because of the sensitive nature of certain information provided by the Israeli Government which is already subject to a pre-trial protective order and which could be introduced by the Government at trial, this Court can not conclude before trial whether the public will be entitled to every exhibit introduced into evidence in this case. This Court shall reserve ruling on whether any

sensitive information used at trial should be kept from public exposure until it has an opportunity to review the evidence, consider the proposed limitations on the public's access, and weigh all competing interests. The public will have access to all evidence of a non-sensitive nature, however, and each party who introduces an item into evidence shall be responsible for providing the designated representative of the press³ with a duplicate copy of the item at the close of proceedings each day.⁴

Tribune's second request for access to the jury selection process also has not provoked general opposition by the Government or Defendant Fariz, although both contend that this Court's decision to protect the jurors' identities and other contact information should remain in force. Public access to voir dire proceedings is among the rights protected by the First Amendment, Press Enterprise Co. v. Superior Court, 464 U.S. 501, 510-513, 104 S.Ct. 819, 824-826, 78 L.Ed.2d 629 (1984), and the press and public may view the jury selection process.⁵ Notwithstanding the public character of criminal proceedings, and voir dire specifically, maintaining the confidentiality of juror identities is permitted where such restrictions are in the interests of justice. See United States v.

³ This designated representative shall be selected by members of the press during the pre-trial meeting that will be held for the press by the Clerk of Court. The responsibility for informing the parties [and the Court] of the identity of the designated press representative lies with the press. It shall be the responsibility of the designated press representative to make himself/herself available to the parties for receipt of the duplicated exhibits. Neither party in this case shall distribute the duplicated exhibit earmarked for the designated press representative to any other person.

⁴ This Court leaves to the parties' discretion the process used for making duplicate copies of its exhibits. For physical exhibits that are not capable of being duplicated, this Court directs the parties to provide the press with a color photograph of the exhibit.

⁵ Due to the considerable public interest in this case, no single individual or entity of the public can be guaranteed a seat in the courtroom during the jury selection process or the subsequent trial. An overflow room with a live video feed broadcasting the trial will be available, however, so that additional members of the public may observe the proceedings.

Gurney, 558 F.2d 1202, 1209 (5th Cir. 1977) (explaining that a trial judge’s decision to maintain the confidentiality of jurors in a “widely publicized” case is appropriate because “it is the trial judge’s primary responsibility to govern judicial proceedings so as to ensure that the accused receives a fair, orderly trial comporting with fundamental due process”).

This Court’s decision to preserve the confidentiality of the jury was based in part on the recommendation of the U.S. Marshall’s Service that such measures should be taken as a safety precaution, and, in part, on the considerable publicity this case has received. Having now completed a review of close to four hundred juror questionnaires, it is apparent that large swaths of the public formed opinions of this case after discussing the news reports with their neighbors and friends. The news accounts of this case will only become more regular and widespread once the trial commences.

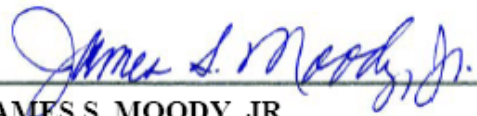
This Court determines that, in addition to potential safety concerns, the interests of justice require the maintaining of an innominate jury during the trial. The jurors will continue to be subjected to the firmly held opinions of others absent such measures. The protection of their identities, therefore, is important to guarantee the Defendants’ right to a fair and impartial jury. See id. (acknowledging that in widely publicized cases “the right of the accused to trial by an impartial jury can be seriously threatened by the conduct of the news media prior to and during trial”). Accordingly, neither the parties in this case nor any member of the media shall be given access to the names and addresses of the jurors or their employers during the course of this trial.

Tribune’s remaining request for contemporaneous transcripts of sidebars and bench conferences that occur during trial was opposed by both the Government and Defendant Fariz. Because this Court has no intention of relinquishing its “traditional authority to conduct closed bench conferences” during trial, see U.S. v. Valenti, 987 F.2d 708, 714 (11th Cir. 1993), neither

guidelines on sidebar conference procedures nor a hearing on the press' entitlement to transcripts thereof is necessary. Tribune's third request, therefore, is denied.

It is therefore ORDERED and ADJUDGED that the Tribune's Motion for Leave to Intervene and for Order Establishing Media Access Guidelines (Dkt. #910) is **GRANTED in part and DENIED in part** as set forth herein. The Clerk is directed to **TERMINATE** Media General Operations, Inc. from this case.

DONE and ORDERED in Tampa, Florida on March 23, 2005.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record
United States Marshal

S:\Odd\2003\03-cr-77 Al-Arian\Motn Press Intervention.wpd