

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA

vs.

ZACARIAS MOUSSAOUI,

Defendant.

**THE ASSOCIATED PRESS,
CABLE NEWS NETWORK LP, LLLP,
THE HEARST CORPORATION,
NBC UNIVERSAL, INC.,
THE NEW YORK TIMES COMPANY,
WP COMPANY LLC d/b/a
“THE WASHINGTON POST”,
USA TODAY and THE REPORTERS
COMMITTEE FOR FREEDOM OF THE
PRESS,**

Movants-

Intervenors.

Criminal No. 01-455-A

**MOTION TO INTERVENE
FOR THE LIMITED PURPOSE OF BEING HEARD IN CONNECTION WITH ACCESS
TO CERTAIN PORTIONS OF THE RECORD AND MEMORANDUM IN SUPPORT**

Come now Movants-Intervenors the Associated Press, Cable News Network LP, LLLP, The Hearst Corporation, NBC Universal, Inc., The New York Times Company, WP Company LLC d/b/a “The Washington Post”, USA Today and The Reporters Committee for Freedom of the Press (together, the “Media Intervenors”) and, for their motion for leave to intervene in this proceeding for the limited purpose of being heard in connection with access to certain portions of the record, and for their memorandum in support thereof, respectfully state:

1. This is the penalty phase of a criminal prosecution instituted by the United States against an individual who has pleaded guilty to charges connecting him to the deaths of thousands of U.S. citizens in attacks against the Pentagon and New York City's World Trade Center on September 11, 2001. The government is seeking the penalty of death. The level of public interest in and concern with the substantial issues regarding national security and administration of justice presented by the case cannot be overstated.

2. Each of the Media Intervenors or their members are a news organization that regularly reports to the public, through their respective broadcasting, print and Internet properties, regarding this case in particular, and law enforcement and terrorism more generally. Each of the Media Intervenors or their members expect to broadcast or publish regular news reports regarding this prosecution throughout the course of the trial, which is expected to last several months.

3. During a hearing on February 14, 2006, the Court *sua sponte* ordered that "the bench conference transcripts [of any side bar conferences conducted during the trial] will be available to counsel only under seal . . . [and t]he transcript that will be available electronically to the general public, the media, whoever, will be minus the bench conferences until the trial is over." 02/14/06 Hearing Transcript at 15-16. For the reasons set forth more fully in the memorandum accompanying their contemporaneous motion for access, the Media Intervenors respectfully submit that this Order is both procedurally infirm and fails to apply the substantive standards required by the First Amendment and common law to resolve conflicts between legitimate law enforcement/security interests and the public's rights of access to the records of judicial proceedings.

4. Shortly before the February 14 hearing, the Court also issued a written Order prohibiting, until completion of the trial, all public access to all exhibits admitted in evidence. Because this ruling limits the ability of Media Intervenors to check record facts throughout the entire course of a several month trial and hampers their timely reporting of details concerning this important prosecution, and because they have not previously been afforded an opportunity to be heard, Media Intervenors request that the Order be narrowed in certain important respects. Mindful that the Court has expressed an unwillingness to reconsider this issue, Media Intervenors respectfully submit that the Order as issued is procedurally and substantively at odds with controlling law, but believe that both of the February 14 orders curtailing the public's rights of access can be modified to comport with controlling law and the needs identified by the Court.

5. Intervention is the appropriate vehicle for news organizations and other members of the public to vindicate their access rights in the context of criminal proceedings. *See, e.g., In re Washington Post Co.*, 807 F.2d 383 (4th Cir. 1986); *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984). As the Supreme Court and the Court of Appeals both have emphasized, a news organization moving to intervene in these circumstances must be afforded a prompt and full hearing on such a motion. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (media and public “must be given an opportunity to be heard” on questions relating to access) (citation omitted); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253-54 (4th Cir. 1988) (same).

6. Because the grounds for this motion to intervene are fully set forth herein, the Media Intervenors have not filed a separate memorandum.¹

¹ Counsel for the Movant-Intervenors has conferred with counsel for the United States and counsel for the defendant to ascertain whether they will consent to this motion. Counsel for

WHEREFORE, the Media Intervenors respectfully request that the Court enter an order granting their motion for leave to intervene for the limited purpose stated herein.

Dated: February 17, 2006

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: /s/ Jay Ward Brown

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ATTORNEYS FOR MOVANTS-INTERVENORS

the defendant has advised that defendant does not oppose this motion. At this time, counsel for the Movant-Intervenors does not know what position the United States will take.

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of February 2006, I caused true and correct copies of the foregoing Motion to Intervene to be served by the means indicated, upon counsel for the parties as follows:

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