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

UNITED STATES OF AMERICA	)	
	)	
v.	)	1:01cr455 (LMB)
	)	
ZACARIAS MOUSSAOUI a/k/a "Shaqil," a/k/a "Abu Khalid al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

The Court has considered the movant-intervenors' Motion for Access to Certain Portions of the Record (Motion for Access), in which they request contemporaneous access to all admitted documentary evidence and transcripts of bench conferences. By an order issued on February 14, 2006, the Court ruled that copies of the exhibits moved into evidence would not be immediately available while the trial is in progress, but would be made available at the conclusion of the trial unless there were compelling reasons preventing public availability. In the Order of February 23, 2006, the Court ruled that transcripts of bench conferences would not be available until after the trial proceedings were concluded, and if not otherwise subject to being kept under seal.

Both orders were issued out of concern about how best to maintain the integrity of the proceedings and minimize unreasonably burdening court and attorney resources while the trial is in progress. The Court's paramount interest in this

very complicated case is to provide the parties with a fair trial in the midst of a maelstrom of media and public attention. As previously explained by the Court in the two orders at issue, and underscored by the government in its opposition to the Motion for Access, the volume and nature of the evidence expected to be introduced during this trial is extraordinary.[1] The challenge of managing such evidence is increased by the potential that some evidence will only be partially de-classified, and by the way in which the government exhibits are numbered. Rather than numerical order, the exhibits are grouped in letter categories, such as F005521.07, MMD1203, and TR0063, with many exhibits having a translated version, indicated with a "T" following the exhibit number or a photographic version indicated by a "P" after the exhibit number. This volume of complex evidence makes the intervenors' request for immediate access logistically impossible. Neither the court staff nor counsel have the time or resources to provide copies of exhibits while the trial is in progress.

Even if it were feasible to provide copies, the potential for undermining the integrity of the proceeding is significant. Although the jury has to date been able to avoid media coverage,

[1] The government's Exhibit List, which is 214 pages long, appears to list several thousand exhibits that may ultimately be produced by the government. The defense will also be presenting extensive evidence.

as previously explained, if information not yet shown to the jury is publicly available and seen by a juror, the potential for jury taint arises. For example, Exhibit ST-01 is a thick set of stipulations. Although this exhibit has been admitted into evidence, only a few of the stipulations have yet been read to the jury. If that exhibit had been publicly disseminated when introduced, the government's case would be unfolded in public before the jury received it. Moreover, as often happens in a long, complex case, counsel sometimes change their use of exhibits. Again, Exhibit ST-01 presents a good example of an exhibit not all of which may be used. If a copy of that exhibit were made publicly available and not all the stipulations within it actually used, the media would be presenting an inaccurate representation of the evidence actually admitted during the trial.

Access to transcripts of bench conferences is even more problematic. The entire purpose of a bench conference is to keep certain information from the jury and often the public as well. To reveal the contents of such conferences by making transcripts of the conferences available, especially while the trial is in progress would undermine the very reason for having such conferences.[2] As the government has articulated in its

[2] In the first four days of this trial there have been several bench conferences the contents of which are not proper for public dissemination because they involve among other things,

opposition, neither the media nor the public has a clearly established right under either the common law or the First Amendment to transcripts of bench conferences.

The intervenors have suggested, as a compromise to their request for immediate access to such transcripts, that the Court employ a default system similar to what was used for electronic posting of pleadings on the website for this case. Under that procedure, a pleading would initially be filed under seal and unless within a certain amount of time a party articulated a reason for maintaining the seal, the pleading would automatically be unsealed. Although that procedure worked adequately in the pretrial setting, to expect either the Court or counsel in the midst of an extremely complicated case to review transcripts of bench conferences to decide if they can be publicly disclosed presents an unreasonable and inappropriate burden.

Lastly, neither of the two orders at issue in the Motion for Access inappropriately deny public access to this case, which in fact, has been one of the most visible federal criminal cases in history. It was one of the first, if not the first, federal criminal case to provide electronic access to the pleadings. As such, details about this case have been in the public forum to an unprecedented extent. Moreover, the trial is available to more

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sensitive, personal information about jurors, classified information, and trial management issues that could reveal the names of witnesses in advance of their testimony.

potential viewers in multiple locations than any other federal criminal trial has ever been. Lastly, as the government has made clear, this case is one of the most complex federal criminal cases in American history. The Court recognizes that there is great public interest in this case, however, the media and the public must respect the unique challenges such a case places on the personnel who have to manage and conduct the trial.

For the reasons previously stated in the Orders of February 14, 2006, and February 23, 2006, and articulated in the government's opposition, which the Court adopts in toto, and in the exercise of the discretion entrusted to trial judges who are responsible for managing the trial proceedings, it is hereby

ORDERED that the Motion for Access be and is DENIED.

The Clerk is directed to forward copies of this Order to counsel of record and counsel for the intervenors.

Entered this 10th day of March, 2006.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia