

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

Alexandria Division

UNITED STATES OF AMERICA)
)
 V.)
)
ZACARIAS MOUSSAOUI)
)

Crim. No. 01-455-A
Hon. Leonie M. Brinkema

GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION FOR IN CAMERA AND EX PARTE HEARING ON COMPETENCY

The United States: (1) Opposes defendant’s motion that the hearing on defendant’s competency be held *in camera*; (2) opposes defendant’s motion that any statements of the defendant be made *ex parte*; (3) does not oppose defendant’s request for an extension of time in which to file motions; and (4) takes no position on whether the Court leaves open the possibility of the defense psychologists testifying at the hearing on June 13.

First, the defense cites, and the United States knows of, no reason why the oral argument on defendant’s competency set by the Court for June 13 should be held *in camera*.¹ Any discussion of the reports issued by Dr. Patterson or Drs. Amador and Stejskal could be done at sidebar.

Second, the United States opposes the defense request that any statement that the defendant makes be *ex parte*. Our position is twofold: (1) There is no reason to believe that the defendant is incompetent and therefore if he chooses to speak, even to reveal attorney-client

¹ See *Press-Enterprise Company v. Superior Court of California*, 478 U.S. 1, 8-14 (1986) (common law right of access to court proceedings cannot be overcome absent specific, on the record findings that "closure is essential to preserve higher values and is narrowly tailored to serve that interest."); *Bell v. Jarvis*, 236 F.3d 149, 164-166 (4th Cir. 2000) (common law right of access to court proceedings contains a strong presumption in favor of open court proceedings); *In re Knight Publishing Company*, 743 F.2d 231, 233-34 (4th Cir. 1984) (same).

communications, that is his prerogative; and (2) defense counsel is still counsel of record until after a *Faretta* hearing at which the Court may or may not permit the defendant to exercise his right to represent himself, and, therefore, until the defendant waives his right to counsel, defense counsel represent him and are presumed to speak for him at any hearing. *See United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000) (upholding court's refusal to permit the defendant to represent himself until issue of competency was determined); *United States v. Purnett*, 910 F.2d 51, 55 (2d Cir. 1990) (court erred in permitting defendant to appear without counsel before his competency to stand trial was settled). In our June 7 brief, we suggest that once the defendant's competency is settled, that the Court adopt a hybrid arrangement for the *Faretta* hearing, under which assigned counsel would have full responsibility for representing the defendant, but the defendant would also be able to take an active role in the proceeding. Such an arrangement would enable the Court to assure proper testing of evidence and airing of the issues, while at the same time giving the defendant the voice that he requests.

Third, the defense request for additional time, as set forth in their June 7 motion, is entirely reasonable, and we do not oppose it.

Finally, we leave to the Court's discretion how to conduct the hearing regarding the defendant's competency.

Respectfully submitted,

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By: /s/
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Certificate of Service

I certify that a true and correct copy of the foregoing Government's Response to Defendant's Motion for In Camera and Ex Parte Hearing on Competency was served by fax on June ____, 2002, on the counsel listed below:

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