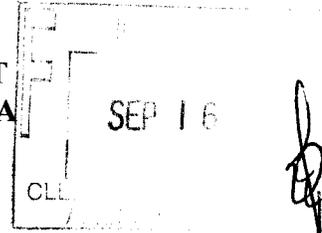


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA

vs.

Criminal No. 01-455-A

ZACARIAS MOUSSAOUI,

Defendant.

**TRIBUNE COMPANY,
ABC, INC., ASSOCIATED PRESS,
CABLE NEWS NETWORK LP, LLLP,
CBS BROADCASTING INC., THE
WASHINGTON POST, USA TODAY
AND THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS,**

Movants-Intervenors.

**MOVANT-INTERVENORS' MOTION FOR ACCESS
TO CERTAIN PORTIONS OF THE RECORD**

Come now Movants-Intervenors Tribune Company, ABC, Inc., the Associated Press, Cable News Network LP, LLLP, CBS Broadcasting Inc., The Washington Post, USA Today, and The Reporters Committee for Freedom of the Press (together, the "Media Intervenors") and, for their motion for access to certain portions of the record herein, respectfully state:

1. This is a criminal prosecution instituted by the United States against Zacarias Moussaoui. Defendant is charged with conspiracy to commit acts of terrorism, to commit aircraft piracy, to destroy aircraft, to use airplanes as weapons of mass destruction, to murder

government employees, and to destroy property, all in connection with the terrorist attacks on the United States on September 11, 2001. His trial currently is scheduled for January 2003 and the Court regularly is engaged in resolving pre-trial motions presented by both the government and the defendant.

2. The events of September 11, which form the basis of the charges against Moussaoui, have generated intense public interest and concern – not just in the United States, but also throughout the world. These proceedings, and the record herein, implicate not just the fairness of the American judicial system as it relates to the defendant, but also profound issues of national policy.

3. The rights of access to judicial proceedings and the record generated in the course of them are guaranteed by the First Amendment and the common law. The Media Intervenors concede that competing interests, including the national security itself, can be sufficiently compelling to overcome those rights. But, absent such a compelling and clearly articulated countervailing interest, the pleadings and other papers filed herein properly are presumptively open to all.

4. The Media Intervenors recognize that the Court faces a delicate and sometimes difficult task in balancing the conflicting interests of the government in security, the Court in maintaining the propriety of these proceedings without unnecessary burden, and the public in having the fullest access possible to the record in this seminal criminal prosecution. Nevertheless, the Media Intervenors respectfully submit that the Court's Order dated August 29, 2002 fails to strike the appropriate balance and should be modified. Specifically, insofar as the August 29 Order (i) maintains under seal in their entirety pleadings previously filed by the defendant and (ii) requires that future pleadings filed by the defendant be received and

maintained under seal in their entirety, without individualized findings that compelling interests justify the sealing of specific portions of the pleadings, and without an effort by the Court to segregate those portions of the pleadings that properly should be in the public record, the Order violates the First Amendment and the common law.

WHEREFORE, for the foregoing reasons and those set forth more fully in the accompanying memorandum of law, the Media Intervenors respectfully request that the Court enter an order granting their motion and modifying the Order dated August 29, 2002 to provide that:

(a) papers filed hereafter in this proceeding by defendant *pro se* shall be accepted by the Clerk provisionally under seal and promptly docketed, but shall, in the ordinary course and without further action or order, be placed by the Clerk in the public record within ten business days after filing, unless the Court, on the government's motion or *sua sponte*, first determines that compelling interests require that specific portions of said papers be placed under seal, in which case the Court will enter a written order in the public record identifying its findings and conclusions in this regard and placing in the public record those portions of the papers that are not properly subject to sealing; and

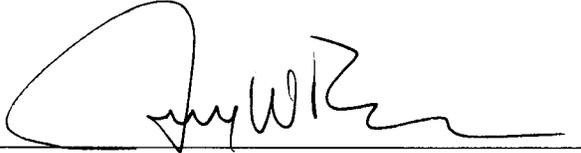
(b) with respect to the papers filed in this proceeding by defendant *pro se* since August 29, 2002 and currently maintained under seal, such papers shall be placed by the Clerk in the public record within ten days after the instant motion is decided, unless the Court, on the government's motion or *sua sponte*, determines that compelling interests require that specific portions of said papers be placed under seal, in which case the Court will enter a written order in

the public record identifying its findings and conclusions in this regard and placing in the public record those portions of the papers that are not properly subject to sealing.¹

Dated: September 13, 2002

Respectfully submitted,

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By: 

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THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

¹ Although not necessarily applicable to the instant motion, in compliance with Local Rule 7(D), counsel for the Media Intervenors has conferred with counsel for the United States, which objects to this motion. Stand-by counsel for defendant had not taken a position as of this filing. The Media Intervenors are not able to ascertain the position of the defendant with regard to this motion.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of September 2002, I caused true and correct copies of the foregoing Motion for Access to be served by the means indicated, upon counsel for the parties as follows:

By Hand Delivery

Zacarias Moussaoui, Inmate
c/o John Clark
United States Marshals Service
401 Courthouse Square
Alexandria, Virginia 22314

By Federal Express

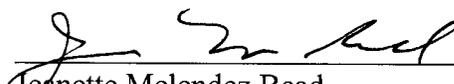
Frank W. Dunham, Jr.
Office of the Federal Public Defender
1650 King Street
Alexandria, Virginia 22314

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Edward B. MacMahon
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United States Attorney's Office
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Jeanette Melendez Bead