

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

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	
ZACARIAS MOUSSAOUI)	

**STANDBY COUNSEL'S RESPONSE REGARDING
MOTION TO TRANSFER DISCOVERY MATERIAL TO MR. MOUSSAOUI**

Mr. Moussaoui has filed a Motion to Force the So Call Counsel and Standby Government Lawyer to Hand over Defense Production and Material Produce Before Any Installation as Pro Se on June 13. The gist of the motion is that Mr. Moussaoui wants copies of the discovery materials produced by the government to Standby Counsel, formerly counsel, turned over to the Clerk for inventory and then transmission to him. While we agree that all of this discovery should be turned over to Mr. Moussaoui, the proposal to do so through the Clerk places an unnecessary burden on the Clerk and creates an undue complication to a satisfactory process currently being followed, at least insofar as CD ROMs are concerned, for transmission of this material to Mr. Moussaoui.

First, the total amount of discovery material in the case is overwhelming. Based on our count, an approximate inventory of discovery received through June 12, 2002 is as follows:

- 1,200 CD ROMs
 - 598 discs with 962,624 inventoried images (often a single disc can contain as much as a banker's box full of documents when downloaded)
 - 82 discs which contain no index - number of images unknown

- 520 discs containing “Computer Media” or a generic description such as “Discovery from Afghanistan” - number of images unknown - includes, but not limited to:
 - 54 e-mail accounts
 - 12 hard drives from public libraries
 - 1 university language center hard drive
 - 10 e-mail accounts from Kinko’s locations
 - many of these discs contain Arabic documents with no translations
- 1,217 Cassette Audio Tapes - 45 minutes each side

estimating 912.75 hours of recordings equaling 152 days @ 6 hours a day - many in a foreign language
- 296 Video Tapes - 6-hour tapes

estimating 2 hours each tape/592 hours of recording equaling 99 days @ 6 hours a day
- 202 Computer Hard Drives

including the 80 GB Maxtor hard drive of the e-mail system from the University of Oklahoma
- Approximately 400 Classified Audio Tapes - most in a foreign language
- Approximately 170 Classified CD ROMs - containing an unknown number of documents
- Two Classified Video Tapes
- Approximately 755 Pages of Classified Discovery

Substantial additional discovery, both classified and non-classified, has been received during the period June 13 to June 28, 2002. We understand that since June 13, the government has been providing a copy of all discovery directly to Mr. Moussaoui. There is no way the trial team now acting as Standby Counsel, much less Mr. Moussaoui himself, can look at all of this discovery between now

and the scheduled trial date.

We have been making deliveries of CD ROMs received prior to June 13 to the Jail. Captain Mitchell acts as an intermediary by signing a receipt for the delivery and providing the discs directly to Mr. Moussaoui. These discs are being delivered in an orderly process and we hope to have all of the discs containing non-sensitive discovery delivered to Mr. Moussaoui by early next week. We have delivered ninety-one (91) discs so far and even if all Mr. Moussaoui has done since June 13 is to review the material on these discs and those provided to him directly by the government since June 13, he has not had time to review all of what has heretofore been provided to him.

At the present time, we have no clue as to what to do with the 1,217 audio tapes, 296 video tapes, and 202 computer hard drives insofar as Mr. Moussaoui is concerned. He has no equipment to make use of any of these items, although since he is his own counsel, there should certainly be some way for him to do so.

Finally, the amount of classified discovery is voluminous and we have no way of providing Mr. Moussaoui access to this material or information derived from it unless he is cleared to receive it. Also, we have given the government a date on which we plan, absent a protective order to the contrary, to begin providing discs with sensitive discovery to Mr. Moussaoui.

The point here is that while there are ongoing, orderly procedures to transfer CD ROMs to Mr. Moussaoui that do not need to involve the Clerk, there are also problems with transferring other aspects of discovery to Mr. Moussaoui that cannot be solved by involving the Clerk. To solve these problems, Mr. Moussaoui needs additional equipment (audio, video, and who knows

what is needed to address the 202 hard drives), access to translators, and a national security clearance.

Respectfully submitted,

ZACARIAS MOUSSAOUI

By Standby Counsel

/S/

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Standby Counsel's Position on Transfer of Discovery Material to Mr. Moussaoui was served via facsimile and first class mail upon AUSA Robert A. Spencer, AUSA David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314, Alan H. Yamamoto, Esq., 108 N. Alfred Street, 1st Floor, Alexandria, Virginia 22314, and via hand delivery only upon Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, Virginia 22314.

/S/

Frank W. Dunham, Jr.