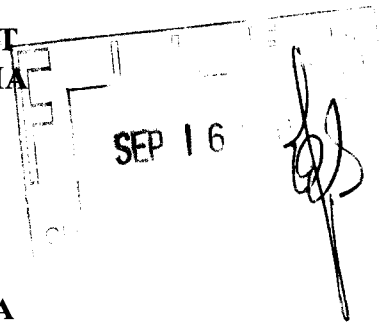
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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| **UNITED STATES OF AMERICA**<br><br>**vs.**<br><br>**ZACARIAS MOUSSAOUI,**<br><br>**Defendant.**<br><br>**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,**<br><br>**Movants-Intervenors.** | **Criminal No. 01-455-A** |

**MOVANTS-INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ACCESS TO CERTAIN PORTIONS OF THE RECORD**

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") respectfully submit this memorandum of law in support of their motion for access to certain portions of the record herein.

## INTRODUCTION

The Media Intervenors seek modification of the Order dated August 29, 2002, in which the Court, *inter alia*, directed that "any future pleadings filed by the defendant, *pro se*, containing threats, racial slurs, calls to action, or other irrelevant and inappropriate language will be filed



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and maintained under seal." 08/29/02 Order at 4. The Media Intervenors do not here contend that the First Amendment or common law rights of access to the record in criminal proceedings are absolute. Nevertheless, the Media Intervenors respectfully submit that the constitutionally and common-law mandated presumption in favor of access to the record in a criminal action requires a more finely honed approach to dealing with what the Court has termed the defendant's "inappropriate" comments in his pleadings than is reflected in the August 29 Order. Regardless of whether the defendant "desires his pleadings to be publicly filed," *id.* at 4 n.3, the press and public have both the constitutional and common-law right to access his pleadings except where compelling interests require otherwise, and then their rights of access may be set aside only to the limited extent necessary to vindicate such higher interests. The August 29 Order does not appear to pay sufficient heed to these important principles.

## BACKGROUND

On September 11, 2001, thousands of Americans and citizens of dozens of other countries were killed or injured in terrorist attacks on the United States. The attacks – the most severe acts of terrorism in the history of this nation – captured the attention not only of citizens across the country, but of all people around the world. On December 11, 2001, the United States filed its first criminal charge directly related to the terrorist attacks, charging Zacarias Moussaoui 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. Four of the six counts in the indictment carry the death penalty. *See* Second Superseding Indictment in *United States v. Moussaoui*, No. 01-CR-455-A (E.D. Va. July 16, 2002). Moussaoui is scheduled to go to trial in January 2003, and the government and the

defendant currently are engaged in substantial pre-trial motions practice that will establish the parameters of the trial against him.

By letter to the Court dated August 22, 2002, which originally was filed under seal, the government expressed concern that "defendant is writing pleadings for the purpose of either (1) sending messages to conspirators or sympathizers, or (2) making public political statements." 08/22/02 Letter from R. Spencer to Hon. L. Brinkema at 1. While expressly conceding that "any motion filed by the defendant that had a legitimate purpose could be publicly disseminated," *id.* at 2, the government requested that his future filings be "presumptively sealed" unless the government and/or the Court agreed otherwise, *id.* at 3. As authority for its request, and without any consideration whatsoever of the controlling Supreme Court and Court of Appeals precedent governing requests to seal the record, the government invoked the Special Administrative Measures ("SAMs") imposed on defendant's pre-trial confinement that sharply limit his communication with the outside world. *Id.* at 1; *see* 28 C.F.R. § 501.3. By permitting defendant to file his pleadings publicly, the government argued, "the purpose of the SAM is gutted." 08/22/02 Letter at 1.

On August 29, 2002, without public notice and in a proceeding closed to the public, the Court took up the issue addressed in the government's August 22 letter. Indicating that it was treating the government's August 22 letter as a motion to seal the pleadings, the Court advised the defendant that all of his pleadings would be kept sealed "unless [he] tone[s] down the rhetoric," 08/29/02 Tr. 34:15-17, and "confine[s] them to proper, lawyer-like rhetoric," *id.* 35:1-3. In an Order dated the same day memorializing its bench ruling, the Court explained that defendant's *pro se* pleadings "continue to contain extensive inappropriate rhetoric" and are "replete with irrelevant, inflammatory and insulting rhetoric." 08/29/02 Order at 2-3. The Court

further found that the record "supports the United States' concern that the defendant . . . is attempting to use the court as a vehicle through which to communicate with the outside world in violation of the Special Administrative Measures governing the conditions of his confinement." *Id.* at 3. Consequently, the Court granted the government's motion to seal the defendant's pleadings and ordered, *inter alia*, "that any future pleadings filed by the defendant, *pro se*, containing threats, racial slurs, calls to action, or other irrelevant and inappropriate language" be filed and kept under seal. *Id.* at 4. The Court expressly declined to employ the alternative of redacting, or directing the government to recommend redacting inappropriate material from the defendant's pleadings so that the remainder could be placed in the public record, on the ground that to do so would "waste resources" of the Court or government. *Id.* at 4 n.3.

The Media Intervenors have now moved to intervene for the purpose of obtaining modification of the August 29 Order and gaining access to portions of the pleadings sealed pursuant to it.

## ARGUMENT

### I. THE FIRST AMENDMENT AND THE COMMON LAW AFFORD A PRESUMPTIVE RIGHT OF ACCESS TO THE PLEADINGS AT ISSUE

The First Amendment affords the public and press a presumptive right of access to criminal trials, and this right extends as well to the record, including pre-trial motions and related papers filed in such proceedings. As the Supreme Court has explained,

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

*Press Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984). Closed proceedings and records, in contrast, inhibit the "crucial prophylactic aspects of the administration of justice" and lead to distrust of the judicial system if, for example, the outcome is unexpected and the reasons for it are hidden from public view. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980).

As the Court of Appeals has several times reiterated, the First Amendment, as well as the common law, imposes specific procedural requirements on a district court whenever it considers sealing a record or closing a courtroom:

> First, the district court must give the public adequate notice that the sealing of documents may be ordered.
>
> Second, the district court must provide interested persons "an opportunity to object to the request *before* the court ma[kes] its decision."
>
> Third, if the district court decides to close a hearing or seal documents, "it must state its reasons on the record, supported by specific findings."
>
> Finally, the court must state its reasons for rejecting alternatives to closure.

*Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253-54 (4th Cir. 1988) (citations omitted) (emphasis added) (quoting *In re Knight Publ'g Co.*, 743 F.2d 231, 234-35 (4th Cir. 1984)); *accord In re Charlotte Observer*, 882 F.2d 850 (4th Cir. 1989); *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178 (4th Cir. 1988); *In re Washington Post Co.*, 807 F.2d 383 (4th Cir. 1986). Moreover, the Court of Appeals has expressly rejected an argument by the government that these requirements should not apply in situations where the government asserts that national security interests are at stake:

> [T]roubled as we are by the risk that disclosure of classified information could endanger the lives of both Americans and their foreign informants, we are equally troubled by the notion that the judiciary should abdicate its decisionmaking responsibility to the executive branch whenever national security concerns are present. History teaches us how easily the spectre of a threat to "national security" may be used to justify a wide variety of repressive government actions. A blind acceptance by the courts of the government's insistence on the need for secrecy, without notice to others, without argument, and without a statement of reasons, would impermissibly compromise the independence of the judiciary and open the door to possible abuse.

*In re Washington Post*, 807 F.2d at 391-92.

Assuming that the constitutionally-mandated procedural prerequisites for closure or sealing are met, the public's First Amendment-based right of access to a judicial proceeding or the record it generates may be denied only where the court finds "a compelling government interest" in secrecy and where the remedy afforded is "narrowly tailored to serve that interest." *Rushford*, 846 F.2d at 253 (citations omitted). Put differently, access to judicial proceedings and the record therein may be prohibited consistent with the First Amendment "only if (1) closure [or sealing] serves a compelling interest; (2) there is a 'substantial probability' that, in the absence of closure [or sealing], that compelling interest would be harmed; and (3) there are no alternatives to closure [or sealing] that would adequately protect that compelling interest." *In re Washington Post Co.*, 807 F.2d at 392 & n.9 (applying standards for closing courtroom to sealing of record). "Moreover, the court may not base its decision on conclusory assertions alone, but must make specific factual findings." *Id.* at 392; *see also Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (holding that failure, *inter alia*, to "identify any specific reasons or recite any factual findings justifying . . . decisions to override the public's right of access" rendered invalid order sealing settlement agreement in civil action).

The Court of Appeals reaffirmed these controlling First Amendment principles in *In re Time Inc.*, 182 F.3d 270 (4th Cir. 1999). There, the Office of Independent Counsel prosecuted Julie Hiatt Steele on obstruction of justice charges related to its investigation of President Clinton. Pursuant to a protective order, Steele filed various exhibits to certain of her pretrial motions under seal. When, prior to trial, various news organizations moved to unseal the exhibits in question, the district court denied the motion. 182 F.3d at 271. As the Court of Appeals squarely held in response to the news organizations' petition for a writ of mandamus, "[a] First Amendment right of access applies to a criminal trial, including documents submitted in the course of a trial." *Id.* The Court of Appeals emphasized that this right imposes certain obligations on a trial court:

> [A] court must assess whether sealing documents is "'necessitated by a compelling government interest, and . . . narrowly tailored to serve that interest.'" In making this assessment, a district court . . . must (1) provide public notice that the sealing of documents may be ordered, (2) provide interested persons an opportunity to object before sealing is ordered, (3) state the reasons, supported with specific findings, for its decision if it decides to seal documents, and (4) state why it rejected alternatives to sealing.

*Id.* On remand in *Steele*, the district court unsealed various of the exhibits at issue, ordering that only certain portions of individual exhibits be redacted for specified reasons. *See* Order in *United States v. Steele*, No. 99-CR-9 (E.D. Va. May 11, 1999); *see also, e.g., In re Motions of Dow Jones & Co.*, 142 F.3d 496, 500-02 (D.C. Cir. 1998) (approving trial court's decision to proceed "by redacting documents" for release to public in case involving proceedings ancillary to grand jury investigation that were required, in part, to remain under seal).[1]

[1] By the same token, a common law presumption of access also attaches to the record in a criminal proceeding. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) (recognizing common law right "to inspect and copy public records and documents, including

## II. THE AUGUST 29 ORDER PRESUMPTIVELY SEALING PLEADINGS THAT CONTAIN PURPORTEDLY OBJECTIONABLE CONTENT DOES NOT COMPORT WITH THE PROCEDURAL OR SUBSTANTIVE REQUIREMENTS OF THE FIRST AMENDMENT AND COMMON LAW

The Media Intervenors are mindful that this criminal proceeding, by its nature, imposes extraordinary demands on the Court, the government, and the defense. The Media Intervenors likewise recognize that the Court's obligation, and its motive in all of its rulings in this proceeding, is to afford the defendant a prompt and fair trial. There are, however, other compelling interests at stake as well. The Media Intervenors respectfully submit that the August 29 Order does not comport with the controlling procedural and substantive law governing the sealing of the record in a criminal case and, as such, it violates both the First Amendment and the common law and should be modified.

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judicial records") (footnote omitted); *In re Knight Publ'g Co.*, 743 F.2d 231 (4th Cir. 1984) (recognizing common law right of access to pre-trial motions in criminal proceedings); *In re Nat'l Broad. Co.*, 653 F.2d 609, 612-13 (D.C. Cir. 1981) (public's "common law right to inspect and copy judicial records is indisputable" and both "'precious'" and "'fundamental'") (citations and footnotes omitted) (emphasis added). While the public's common law right of access is not absolute, the right to inspect the record in a criminal proceeding may be denied

> only if the district court, after considering "the relevant facts and circumstances of the particular case", and after "weighing the interests advanced by the parties in light of the public interest and the duty of the courts", concludes that "justice so requires". The court's discretion must "clearly be informed by this country's strong tradition of access to judicial proceedings". In balancing the competing interests, the court must also give appropriate weight and consideration to the "presumption however gauged in favor of public access to judicial records."

*In re Nat'l Broad. Co.*, 653 F.2d at 613 (footnotes omitted). Indeed, the Court of Appeals has observed that the common law presumption of access can be rebutted only "if countervailing interests *heavily* outweigh the public interests in access." *Rushford*, 846 F.2d at 253 (emphasis added). "The party seeking to overcome the presumption bears the burden of showing some *significant* interest that outweighs the presumption." *Id.* (emphasis added).

First, the August 29 Order does not comport with the procedural requirements established by the Court of Appeals, in that the motion to maintain the defendant's pleadings under seal was not placed on the public docket until after the Court had ruled on it, and the motion was argued and ruled upon in closed session, without any notice to the public or opportunity for interested members of the public to be heard. For this reason alone, the Order is facially invalid and must be modified after appropriate opportunity for the Media Intervenors and other interested members of the public to be heard. *E.g., Rushford*, 846 F.2d at 253-54; *In re Time Inc.*, 182 F.3d at 271; *see also In re Knight Publ'g Co.*, 743 F.2d at 235 ("district court's error was in giving too little weight to the presumption favoring access and making its decision to seal the documents without benefit of [media petitioner's] arguments for access").

Second, the interest cited by the government as supporting its request to seal the defendant's pleadings is the risk that he will "gut" the SAMs that limit his ability to communicate with the outside world by conveying "coded messages to his confederates" through his pleadings. 08/22/02 Letter at 1. The Court in granting the government's request accepted this rationale as sufficiently compelling to justify sealing the record.[2] For purposes of this

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[2] In this regard, it bears emphasis that neither the regulations authorizing SAMs, nor the specific SAMs that Media Intervenors understand were promulgated with respect to Moussaoui, purport to require that pleadings filed by the defendant, *pro se*, be placed under seal. *See* 28 C.F.R. § 501.3; Memorandum for Benigno G. Reyna re Origination of Special Administrative Measures Pursuant to 28 C.F.R. § 501.3 for Federal pre-Trial Detainee Zacarias Moussaoui ("Reyna Memorandum"). Indeed, if they purported to do so, the regulations and the Reyna Memorandum would be facially unconstitutional. *See, e.g., Richmond Newspapers*, 448 U.S. at 571; *In re Washington Post*, 807 F.2d at 391-92. It is an elemental principle that the Department of Justice may not, by executive fiat, revoke or limit the public's constitutional right of access to the record in this criminal proceeding. It likewise bears emphasis that, while the Reyna Memorandum purports to prohibit Moussaoui from communicating anything to anyone except as specifically authorized by its terms, Reyna Mem. ¶ 1.c.i., it also provides that its intent is to prevent him from communicating "terrorist information," *id.* ¶ 1.c. While not a defined term, by "terrorist information" the Department of Justice presumably means communications posing a

motion only, the Media Intervenors accept, *arguendo*, that the government's interest in preventing a *pro se* defendant from using his pleadings as a means to evade legitimately-imposed SAMs that restrict his ability to communicate to the outside world "terrorist information," Reyna Mem. ¶ 1.c., *i.e.,* communications that pose a "substantial risk . . . [of] death or serious bodily injury to persons," 28 C.F.R. § 501.3(a), constitutes a "compelling interest" sufficient to outweigh the public's right of access to those portions of the pleadings that constitute such "terrorist information."[3] The portion of the August 29 Order to which the Media Intervenors object, however, nevertheless violates the First Amendment and common law because it is not narrowly tailored to achieve the identified end.

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"substantial risk . . . [of] death or serious bodily injury to persons." 28 C.F.R. § 501.3(a). Thus, even assuming that the Reyna Memorandum provides a proper basis for sealing any pleadings, that basis extends only to those portions of the pleadings that the Court finds pose such a risk.

[3] In granting the government's motion to seal defendant's pleadings, the Court also found that "defendant's pleadings have been replete with irrelevant, inflammatory and insulting rhetoric" that "would not be tolerated from an attorney." 08/29/02 Order at 3. While the Court of Appeals has suggested that the presence of "'impertinent and scandalous'" matter in a pleading may be sufficient ground for sealing the specific portion of the pleading containing *that* matter, *In re Knight Publ'g Co.*, 743 F.2d at 236 (citation omitted), it is plain that the First Amendment cabins the reach of any sealing order entered on this basis. Indeed, the court in *In re Knight Publ'g Co.* evidently was concerned with the defendant's inclusion in his motion papers of libelous statements regarding third parties, whom the court expressly noted were *not* the public officials involved in prosecution of the defendant, *id.* Moreover, as the Court of Appeals approvingly observed, the trial court in *In re Knight Publ'g Co.*, had redacted the documents in question, "narrowly tailor[ing] the excision order in order to preserve the substance of the motions and supporting documents" for the public record. *Id.* As the Sixth Circuit has observed in the analogous context of efforts to restrain extra-judicial statements by criminal defendants, "[t]he 'accused has a First Amendment right to reply publicly to the prosecutor's charges, and the public has a right to hear that reply, because of its ongoing concern for the integrity of the criminal justice system and the need to hear from those most directly affected by it.'" *United States v. Ford*, 830 F.2d 596, 599 (6th Cir. 1987) (citation omitted). In light of the SAMs, Moussaoui's pleadings are the *only* avenue through which the public may exercise its right to hear his reply to the charges against him, and the Court therefore should be especially hesitant to remove from public view material that, though "irrelevant" or "insulting," does not pose the "substantial risk" of "death or serious bodily injury" that the SAMs are intended to prevent.

In this regard, it bears emphasis that this is not a case in which the defendant seeks to seal certain pleadings in order to protect his right to a fair trial. Indeed, the defendant objects to the sealing of his pleadings and expressly suggested that the appropriate remedy was for the Court or the government to redact those portions of his pleadings that are deemed improper and to place the remainder in the public record. 08/29/02 Tr. 35:17-36:7. In granting the government's motion to seal defendant's pleadings, the Court expressly rejected this less drastic alternative of undertaking to redact, or directing the government in the first instance to propose redactions of material in his pleadings that violates the intent of the SAMs, on the ground that such a process would burden the Court and the government. 08/29/02 Order at 4 n.3. Although not wishing to make the Court's responsibilities in conducting these proceedings any more complicated than they are, the Media Intervenors respectfully submit that it was error for the Court to reject the less drastic alternative of redaction on this ground. *See, e.g., In re Knight Publ'g Co.*, 743 F.2d at 231.

As the Court of Appeals has made clear, a trial court is required to review *each document* sought to be sealed and to determine as to *each* such document that the asserted compelling interest in secrecy outweighs the public's right of access to it. *Stone*, 855 F.2d at 181 (trial court must weigh competing interests "with respect to each document sealed"); *see also In re Time Inc.*, 182 F.3d at 271-72 (where media intervenors have moved for access to sealed documents, court is obliged to conduct *in camera* review of them and cannot order that they remain under seal without reviewing them). Given that the Court is constitutionally required to review each pleading filed by defendant before ordering that it be maintained under seal, the Media Intervenors respectfully submit that such additional burden as may be imposed on the Court by redacting those portions that violate the intent of the SAMs would be minimal. Such a task flows

naturally from the Court's constitutional obligation to weigh the conflicting interests that are implicated whenever a document that forms part of the record of a criminal proceeding is sought to be sealed. Indeed, in *In re State-Record Co.*, 917 F.2d 124, 129 (4th Cir. 1990), the Court of Appeals considered the trial court's contention that "it did not have the time or the resources to accurately and fairly accomplish [the] task" of "selectively edit[ing] public documents to excise potentially prejudicial and improper material." There, certain news organizations had sought relief from an order sealing the record in a criminal prosecution. The Court of Appeals observed that the trial court's rationale was insufficient to meet its obligation under *In re Charlotte Observer* and *In re Washington Post*: "We certainly sympathize with the case load of the district court and the many demands upon its time, but without specific findings of fact we cannot adequately review closure orders." *Id.*

This burden on the Court can be further minimized by directing the government, in the first instance, to propose specific redactions for the Court's consideration. And, as the party seeking to seal the records, that burden quite properly rests on the government. *See Boone v. City of Suffolk*, 79 F. Supp. 2d 603, 606 (E.D. Va. 1999) (where, as here, "the right of access is grounded in the First Amendment, the burden, which falls on the one seeking confidentiality, is as rigorous as the burden for overcoming any other fundamental right").

Additionally, the August 29 Order sweeps into its largely undefined ambit potentially all-encompassing categories of speech. As so structured, the Order can be read as intended to target speech by the defendant on the basis of its content, divorced from any compelling need for secrecy. Specifically, the Court has sealed pleadings that contain "threats, racial slurs, calls to action, or other irrelevant and inappropriate language." 08/29/02 Order at 4. By labeling broad, undefined categories of "rhetoric" by the defendant as unsuitable for public inspection based

merely on its tenor or substance, divorced from any finding that specific passages pose a security threat, the August 29 Order is significantly broader than necessary to protect the government's asserted interest in controlling the defendant's ability "to communicate with conspirators or sympathizers to provide information useful to them." 08/22/02 Letter at 1. Quite apart from the difficulty inherent in determining what portions of which pleadings fall within these undefined categories, the discomfiture such rhetoric may cause simply does not afford a basis for sealing it from public view, and the Order is therefore overbroad. *See In re Pepco Employment Litig.*, No. 86-0603 (RCL), 1992 WL 115611, at *6 (D.D.C. May 8, 1992) ("The court knows of no legal authority upon which to justify the sealing of a document simply because the opposing party does not like its contents or is offended by its accusations. . . . If plaintiffs' memorandum were sufficiently inappropriate, defendant may move to strike or to seek sanctions . . . ; in any case, none of those remedies involve denying public access to the memorandum."); *see also Ramirez v. Bravo's Holding Co., L.L.C.*, No. Civ. A. 94-2396-GTV, 1996 WL 507238, at *1 (D. Kan. Aug. 22, 1996) (denying motion to seal "potentially . . . inflammatory and prejudicial" pleadings where defendant "fail[ed] to establish public or private harm sufficient to overcome the public's right of access"); *Medcom Holding Co. v. Baxter Travenol Labs., Inc.*, No. 87 C 9853, 1988 WL 71197, at *1 (N.D. Ill. June 24, 1988) (allegation that case should be sealed "to avoid 'improper use of unalleged, false and scandalous matters' . . . is an insufficient basis for sealing civil proceedings").

At bottom, therefore, the Media Intervenors submit that, in modifying the August 29 Order, the Court is required to adopt a procedure by which pleadings filed by the defendant, though accepted for filing under seal on a temporary basis, are promptly reviewed by the Court, either *sua sponte* or with the government's input, on a document-by-document basis. In addition,

the Court must make specific findings with respect to whether the compelling interests in secrecy identified by it and/or the government would be effectively served by sealing some portion of the pleading, and must place in the public record those portions of the pleading not properly subject to seal.

In this regard, as the Court of Appeals has observed, "[o]penness is a value in itself that the trial judge must consider even when the participants in the trial may wish otherwise. . . . [T]he ready resort to suppression is for societies other than our own; an accommodation of competing values remains the commendable course." *Washington Post Co. v. Hughes*, 923 F.2d 324, 331 (4th Cir. 1991) (upholding district court's decision to unseal search warrant affidavit at newspaper's request) (footnote omitted). And, as a sister Court of Appeals observed just recently, in connection with another effort by the government to keep secret the proceedings in September 11-related cases, "[d]emocracies die behind closed doors." *Detroit Free Press v. Ashcroft*, __ F.3d __, 2002 WL 1972919, at *1 (6th Cir. Aug. 26, 2002). As that court explained, "[w]hen government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation. The Framers of the First Amendment 'did not trust any government to separate the true from the false for us.'" *Id.* (citation omitted).

## CONCLUSION

For the foregoing reasons, the Media Intervenors respectfully request that this Court enter an order granting their request for access to certain portions of the record herein, as follows:

(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.

Dated: September 13, 2002

Respectfully submitted,

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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 Memorandum of Law to be served by the means indicated, upon counsel for the parties as follows:

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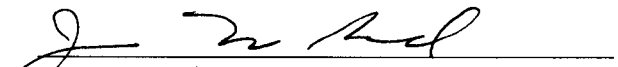

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