

FILED

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

2003 APR -3 P 3:18

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA

vs.

ZACARIAS MOUSSAOUI,

Defendant.

**ABC, INC., ASSOCIATED PRESS, THE
HEARST CORPORATION, THE NEW
YORK TIMES COMPANY, THE
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS, TRIBUNE
COMPANY AND THE WASHINGTON
POST,**

Movants-Intervenors.

Criminal No. 01-455-A

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

Come now Movants-Intervenors ABC, Inc., Associated Press, The Hearst Corporation, The New York Times Company, The Reporters Committee for Freedom of the Press, Tribune Company and The Washington Post (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 in connection with the terrorist attacks on the United States on September 11, 2001. The level of public interest in and concern with the substantial issues regarding national security and the administration of justice presented by the case cannot be overstated. 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.

2. 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 genuine national security interests, can sometimes 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 open to all.

3. By Order dated September 27, 2002, this Court granted the motion filed by some of these Media Intervenors requesting modification of an earlier order that effectively had sealed defendant's *pro se* pleadings. Pursuant the Court's September 27 Order, all of defendant's *pro se* pleadings are initially filed under seal. The United States then has ten days to advise the Court in writing if the pleading should remain completely sealed or, alternatively, unsealed with or without redactions.

4. Since September 27, defendant has filed forty-five pleadings, nineteen of which have been sealed by order of the Court, fourteen of which have been unsealed, and twelve of which have not been acted upon. In accordance with the Court's September 27 Order, the *pro se* defendant's filings that the government has not demonstrated must be kept under seal should be made public.

5. There have also been sixty-three other documents initially filed under seal – fifty-four motions, responses, and memoranda, five transcripts and four other documents. All but four of these filings remain under seal, although no notice of the sealing or opportunity to be heard has been afforded the public. The Media Intervenors

recognize that this criminal proceeding, by its nature, imposes extraordinary demands on the Court, the government, and the defense. Nevertheless, the continued preemptory sealing of nearly all pleadings filed in this Court that were not filed by defendant *pro se*, without notice to the public and an opportunity to be heard on their sealing, does not comport with controlling procedural and substantive precedent. Accordingly, it violates both 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 this Court enter an order granting their request for access and unsealing certain portions of the record herein, as follows:

(a) all those pleadings filed by defendant *pro se* since September 27, 2002, to the unsealing of which the United States did not object within ten days of the filing of such pleadings; and

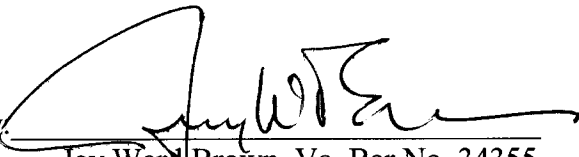
(b) all those other pleadings filed since September 27, 2002, that remain sealed, unless the Court, on the government's motion or *sua sponte*, determines that compelling interests require that specific portions of said papers be placed under seal, in which case the Court will enter a written order in 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

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 for access. Stand-by counsel for defendant does not object to this motion. Media Intervenors are not able to ascertain the position of the defendant.

Dated: April 3, 2003

Respectfully submitted,

LEVINE SULLIVAN & KOCH, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of April 2003, I caused true and correct copies of the foregoing Motion for Access to be served by the means indicated, upon the defendant *pro se* and counsel for the parties as follows:

By First Class Mail

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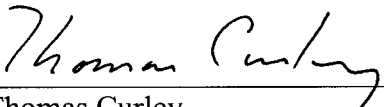
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