

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

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI)	

DEFENDANT'S MOTION TO RECONVENE EVIDENTIARY HEARING

Following the March 13, 2006 revelation of the violation of the Court's Sequestration Order, the Court held an evidentiary hearing on March 14, 2006 to determine the extent of the damage and the appropriate remedy. At that hearing, Carla Martin indicated to the Court that she had attempted to find counsel and had not been successful in doing so. She stated "And I very much want to address the Court and the issues, . . . I would like to be represented by counsel." March 14, 2006 Tr. 13. The Court proceeded to hear testimony from six witnesses. During the course of the hearing, the Court was contacted by Ms. Martin's attorney who indicated that he would not be able to prepare and attend a hearing with Ms. Martin on that date or the following day.

After an approximately five hour evidentiary hearing, this Court found the cumulative errors in this capital prosecution were so numerous and serious, that it could not recall a single case "in the annals of criminal law" that was comparable. Tr. 214. Many of these errors were caused by Ms. Martin's misconduct in violating the Court's April 22, 2005 Order and in directing witnesses not to speak to the defense and untruthfully indicating that witnesses would not agree to meet with the defense.

1688

As a result of these “significant errors,” the Court concluded that “at least a portion of the government’s case has been significantly eroded.” Tr. 216-17. The Court concluded that the appropriate sanction was to “strike out of the case that portion of the case that . . . has been irremediably contaminated by the misconduct of this attorney.” Tr. 217. As such, the Court “remov[ed] from this case any and all witnesses and evidence dealing whatsoever with the . . . aviation component of this case.” Tr. 217. Specifically, in its Order filed after the hearing, the Court directed that “the government is precluded from introducing aviation related evidence, including witness testimony and exhibits.” Order (filed Mar. 14, 2006, dkt. no. 1681).

On March 14, 2006, Ms. Martin’s attorney wrote a letter to the Court confirming his phone call with the Court and indicating that although Ms. Martin was unable to attend on March 14 or 15, 2006, “[i]t is our understanding that any hearing involving Ms. Martin will be addressed at a later time. We will wait to hear from the Court.”

The Government filed a Motion to Reconsider the Court’s Order on March 15, 2006 and the Court granted that motion in part on March 17, 2006 permitting “untainted aviation witnesses” and “evidence not tainted by Ms. Martin.” Dkt. 1686.

Ms. Martin’s attorney has now indicated that Ms. Martin is prepared to tell her story and that there is more to the story than has been revealed to the Court or the defense so far. “When [Ms. Martin’s] opportunity comes, her response will show a very different, full picture of her intentions, her conduct, and her tireless dedication to a fair trial,” the statement said. “Only those who will judge Carla Martin on the basis of one side of the story should believe what has been said about her.” Attachment A.

ARGUMENT

Given the importance of understanding the extent of the taint and the critical impact Ms. Martin's actions have had on this case, it is imperative that before any additional "untainted" aviation witnesses are permitted to testify, the extent of Ms. Martin's actions are explained by the only person in a position to know, Ms. Martin.

Counsel is prepared to cross-examine Agent Samit, and has been for days. For this reason, Counsel request that Agent Samit's testimony proceed on Monday morning and that at the termination of Agent Samit's testimony, the Court reconvene the evidentiary hearing addressing the violation of it's Sequestration Order and call Carla Martin to testify. This testimony will provide critical information to the Court and to the defense about the extent of the taint and about the possibility, or lack thereof, of potential "untainted" aviation witnesses who are the subject of the Court's Order granting the Government's Motion for Reconsideration. A hearing on this matter is required before the Court permits any aviation witnesses to testify so that the full extent of the taint can be determined and the record in this matter made complete.

Counsel has sent letters to both Assistant United States Attorney Robert Spencer and Ms. Martin's counsel requesting Ms. Martin's presence Monday after Agent Samit's testimony. Attachment B.

CONCLUSION

For the foregoing reasons, the defendant respectfully requests that the hearing on the violation of the Court's Sequestration Order be reconvened Monday after the conclusion of Agent Samit's testimony.

Respectfully Submitted,

Zacarias Moussaoui
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that by hand-delivery on this 17th day of March 2006, a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David J. Novak and AUSA David Raskin, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314 and faxed to Roscoe Howard, Esq., Troutman Sanders, LLP, by facsimile at 202-654-5665.

_____/s/
Anne M. Chapman

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LAW CENTER

Who is Carla Martin and why is she in trouble?

Lawyer excoriated by both sides after Moussaoui trial blunder

From Phil Hirschhorn
 CNN
 Friday, March 17, 2006; Posted: 1:05 p.m. EST (18:05 GMT)

WASHINGTON (CNN) -- Until Monday, Carla Jean Martin was a mid-career attorney working in relative obscurity at the Transportation Security Administration.

Now she's a fixture in the news.

It began with the disclosure of conduct that threatens to derail the sentencing trial of Zacarias Moussaoui, the only person to face a U.S. jury in connection with the September 11, 2001, terrorist attacks.

Martin, 51, is accused of improperly contacting a half-dozen aviation safety witnesses in violation of a judge's order. (Watch why a lawyer isn't so surprised by her conduct -- 1:52)

She sent them trial transcripts by e-mail, supplemented with her observations, suggestions and talking points, according to testimony.

Martin's attorney, Roscoe Howard, defended her Thursday.

"Someone has decided they're going to throw her under the bus, and that's exactly what's happened here," Howard said Thursday in an interview with CNN. "I think there are explanations for everything."

Howard said earlier in a statement that Martin has been "viciously vilified by assertions from the prosecution and various media pundits."

"Only her accusers' stories have been told; and those stories have been accepted as



Government lawyer Carla Martin has been placed on administrative leave.

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Who is Carla Jean Martin? (1:52)



Moussaoui trial in jeopardy (2:00)



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the whole truth. They are not," Howard's statement said

• [Blunder may save Moussaoui](#)

He indicated to CNN that Martin would tell her story first to U.S. District Judge Leonie Brinkema, who presides over the case.

"She didn't intentionally do anything wrong," said Martin's mother, Jean Martin Lay, 82. She lives in Tennessee, where Martin went to high school and college.

"She did not know she was not supposed to do anything with the witnesses."

Martin's actions violated Brinkema's order for witnesses not to follow court proceedings or discuss them with each other until they had testified.

"It was one of the most bone-headed blunders ever seen in a high-profile federal case," said Kendall Coffey, a former U.S. attorney in Miami.

"It was unfathomable for a government lawyer," he added. "It's like Law 101."

The damage done

Martin's father was an attorney, and she has been a member of the Pennsylvania bar for 15 years.

To repair the damage, Brinkema excluded six witnesses from the trial and barred testimony about aviation security, virtually gutting half of the prosecution's case.

In court papers, the three assistant U.S. attorneys whose trial has been jeopardized called Martin "inept" and a "miscreant" and wrote that her actions were "apparently criminal behavior."

Martin has been placed on paid administrative leave from her \$120,000 a year job at the Transportation Security Administration. She could face a contempt-of-court citation and witness-tampering charges.

Howard said Martin is preparing a response to the accusations.

"When her opportunity comes, her response will show a very different, full picture of her intentions, her conduct, and her tireless dedication to a fair trial," the statement said. "Only those who will judge Carla Martin on the basis of one side of the story should believe what has been said about her."

Martin's mother said her daughter is devastated.

"She knows what's at stake. Her career could be down the tubes," Lay said.

Daughter of an attorney

Martin is the second of four children, Lay said.

Her father worked for the government when the family lived in Washington in the 1950s and early 1960s. Carla Martin was born in the capital and lived there until she was 9.

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Her father went into private practice when the family moved to Tennessee in 1963. Martin's mother, a former government secretary, worked as his assistant.

Carla Martin earned her law degree from American University Washington College in 1989. She graduated from the University of Tennessee at Knoxville in 1976 as a liberal arts major with an emphasis in German. She belonged to the Kappa Kappa Gamma sorority.

Law school initially was not on her radar.

"She had no desire; she had other aspirations," her mother said.

Martin spent the years between college and law school working as a flight attendant.

"I think it was mostly the travel," her mother said of her daughter's attraction to that job.

Martin became an attorney in 1990 and secured a job with the Federal Aviation Administration in Washington, where she still lives. In April 2002 Martin switched over to the Transportation Security Administration's office of chief counsel.

The TSA was created after the 9/11 attacks and took over aviation security from the FAA. It is part of the post-9/11 Department of Homeland Security.

One attorney who was Martin's opposing counsel in a discrimination case, A.P. Pishevar, told CNN he regarded Martin as "aggressive, perhaps over-zealous."

Another former colleague, who requested anonymity, said Martin had "good attorney skills," but she was "very opinionated."

Martin is one of many government attorneys who assisted prosecutors in preparing government witnesses and documents for the trial that began last week to decide only whether Moussaoui should be executed or spend the rest of his life in prison.

Moussaoui pleaded guilty to terrorism conspiracy last year. He has denied any direct connection to the 9/11 attacks.

Now the aviation witnesses -- and perhaps others -- can't testify, and the prosecution is reeling.

Trying to save their case, prosecutors branded Martin "a lone miscreant" whose "aberrant and apparently criminal behavior should not be the basis for undoing the good work of so many."

The judge has accused Martin of misconduct and said she told lawyers "a bald-faced lie" about some witnesses' unwillingness to talk to Moussaoui's defense team.

Even one of the FAA witnesses labeled Martin a pest who peppered everyone with e-mail and had "a tendency to go off on tangents."

Family members of 9/11 victims say they feel betrayed, saying Martin's actions may have cheated them of the long-awaited chance to see justice done.

Rosemary Dillard, whose husband, Eddie, was aboard the hijacked plane that was crashed into the Pentagon, is among the angry 9/11 family members.

"I felt like my heart had been ripped out. I felt like my husband had been killed again. I felt like the government has let me down one more time," she said.

"One woman has made this entire case a laughingstock," Dillard said. "She knows the

rules, she didn't play by them."

CNN's John Martin and Mike Ahlers contributed to this report.

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March 17, 2006

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Re: United States v. Moussaoui,
Cr. No. 01-455-A

Dear Rob and Roscoe:

The defense is filing today a Motion to Reconvene the Evidentiary Hearing that was conducted on Tuesday, March 14, 2006. The purpose of this Motion is to attempt to complete the record as Mr. Howard has publicly indicated that Ms. Martin did not act alone and that she is willing to tell the complete story regarding her conduct in this matter.

I am therefore requesting that Ms. Martin be available to testify at the evidentiary hearing which we will suggest to Judge Brinkema be conducted after the conclusion of the taking of evidence on Monday the March 20, 2006. If we are informed that she will be produced we will not go through the effort and expense of subpoenaing her for the hearing.

I look forward to hearing from you both.

Best Regards,



Edward B. MacMahon, Jr.