

ARRESTS AND TRIALS OF NON-CITIZENS WITHIN THE UNITED STATES

ZACARIAS MOUSSAOUI

Zacarias Moussaoui was arrested on August 16, 2001 in Minnesota. Instructors at a flying school he attended were suspicious of him because he paid for his \$8,000 flight classes in cash and expressed “unusual interest” in flying big airplanes and the fact that a plane’s doors could not be opened during flight. He was initially held on immigration charges, and was in INS custody on September 11, 2001. On December 11, 2001, Moussaoui was indicted in Virginia on charges of conspiracy related to the September 11 attacks. Moussaoui acknowledges being a disciple of Osama bin Laden and a member of al Qaeda, but he denies any involvement in the September 11 plot. He faces the death penalty, if convicted.

Moussaoui has rejected court appointed lawyers and insisted upon representing himself. Some observers have complained of the circus-like atmosphere created by his demeanor and his use of the U.S. court system as a platform for inflammatory political statements. The case is being heard by District Court Judge Leonie Brinkema.

On January 30, 2003, Judge Brinkema ordered the government to give Moussaoui’s lawyers access to alleged September 11 mastermind Ramzi bin al-Shibh. In the Moussaoui Indictment, bin al-Shibh, a Yemeni national and senior leader of al Qaeda, is named as an unindicted co-conspirator. In 1998 and 1999, bin al-Shibh allegedly lived in Hamburg, Germany with September 11 hijacker Mohammed Atta, and later spent time with Moussaoui in London. He is also alleged to have sent various amounts of money to Atta and others of the hijackers, as well as approximately \$14,000 to Moussaoui, shortly before Moussaoui registered for flight training in Minnesota.¹ Though bin al-Shibh was still at large when the indictment was issued, he was captured in Pakistan in September 2002. Because of the central role accorded bin al-Shibh in the prosecution’s account of the September 11 conspiracy, testimony from bin al-Shibh could be key to inculcating, or — as Moussaoui insists — exonerating Moussaoui from involvement in the plot. Bin al-Shibh has been held in an undisclosed location since his capture. According to press reports he has admitted to sending money to Moussaoui. But he also reportedly told CIA interrogators “that no one trusted the unhinged Moussaoui for such an important mission [as the September 11 attacks] and that Moussaoui was never made part of the 9/11 conspiracy.”²

¹ See Attorney General Transcript News Conference regarding Zacarias Moussaoui, December 11, 2001, announcing the indictment of Moussaoui, available at http://www.fas.org/irp/world/para/docs/mous_indict.html (accessed February 12, 2003). The Transcript web page includes a link to the Indictment, issued that day. Other court documents in the Moussaoui case can be found at <http://news.findlaw.com/legalnews/us/terrorism/cases/index.html> (accessed February 12, 2003).

² “Under interrogation, Bin al-Shibh has reportedly given the CIA some valuable information, but also one highly unwelcome tidbit: Al Qaeda thinks Moussaoui is as crazy as we do.” Jonathan Turley, “Sanity and Justice Slipping Away,” *Los Angeles Times*, February 10, 2003.

As with the “enemy combatant” cases, the government maintains that making bin al-Shibh available to attorneys working with Moussaoui, let alone putting him on the witness stand, would upset the delicate dynamics of bin al-Shibh’s interrogation, and risk revealing sensitive confidential information at trial.³

The prosecution has appealed Judge Brinkema’s Order to the Fourth Circuit Court of Appeals, and, on February 12, 2003, the court granted the prosecution’s request that the trial proceedings be stayed until the appeal is decided.⁴

Recently some government officials have begun to signal that if this issue is not resolved in the government’s favor, they might remove the case from the federal court and transfer it to a military commission. Under the rules of the proposed military commissions, Moussaoui’s rights, among other things, to cross-examine witnesses, obtain access to “secret evidence,” and to be tried in public could all be denied. There are now strong indications that if the Fourth Circuit upholds Judge Brinkema’s Order, the government will pursue the military commission option.⁵

RICHARD REID

On October 4, 2002, Richard Reid pleaded guilty in Federal District Court in Boston to all charges, including attempted murder and attempted use of a weapon of mass destruction. Reid had been arrested on December 22, 2001, after failing to ignite an explosive hidden in his shoe on a Miami-bound flight from Paris. In changing his previous not-guilty plea, he continued to boast of his allegiance to Osama bin Laden; and prosecutors stressed they had not entered into any agreements with Reid to induce the guilty plea.⁶

On January 30, 2003, Judge William G. Young sentenced Reid to life imprisonment. A defiant Reid “asserted his attempt to blow up a trans-Atlantic jetliner with explosives hidden in his shoes was the act of a soldier in a war against those who attack Islam.” Judge Young responded: “You are not an enemy combatant — you are a terrorist.” He added:

³ “Moussaoui Granted Access to Suspect,” Reuters, February 1, 2003.

⁴ Philip Shenon, “Judge Grants the Government a Delay of Moussaoui’s Trial,” *New York Times*, February 13, 2003. The original Order and the government’s appeal have not been made public. The request for the stay is available at <http://news.findlaw.com/hdocs/docs/moussaoui/usmouss20703pmot.pdf> (accessed February 12, 2003).

⁵ See Philip Shenon and Eric Schmitt, “Threats and Responses: The 9/11 Suspect; White House Weighs Letting Military Tribunal Try Moussaoui, Officials Say,” *New York Times*, November 10, 2002; See also Andrew Cohen, “A Secret Trial for Moussaoui?,” *CBS News.com*, November 7, 2002, available at <http://www.cbsnews.com/stories/2002/11/07/news/opinion/courtwatch/main528515.shtml> (accessed January 27, 2003). See also Jonathan Turley, “Sanity and Justice Slipping Away,” *Los Angeles Times*, February 10, 2003; “The Moussaoui Experiment,” *Washington Post*, January 27, 2003.

⁶ See Greg Frost, “Shoe-Bomber Pleads Guilty, Admits Bin Laden Link,” Reuters, October 4, 2002; Associated Press, “U.S. Prosecutors Submit Videos Simulating ‘Shoe Bomb’ Damage,” *Wall Street Journal*, January 17, 2003.

To give you that reference, to call you a soldier gives you far too much stature.... [W]e do not negotiate with terrorists. We hunt them down one by one and bring them to justice.⁷

Judge Young concluded that “all this war talk is way out of line” in a court of law.⁸

⁷ “Shoe Bomber Leaves Behind A Legacy,” CBS News.com, January 31, 2003, available at <http://www.cbsnews.com/stories/2002/10/04/attack/main524340.shtml> (accessed February 12, 2003).

⁸ Juliette Kayyem, “The Sentencing of ‘Shoe Bomber’ Richard Reid: Its Larger Significance for Terrorism Cases and the ‘War on Terrorism’ in General,” Findlaw.com, available at http://writ.news.findlaw.com/commentary/20030203_kayyem.html (accessed February 12, 2003).