

Bush administration withholds evidence in case of Zacarias Moussaoui

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In the latest twist in the case of Zacarias Moussaoui—the only person under arrest in the United States on charges related to the September 11 terror attacks—US District Court Judge Leonie Brinkema postponed his trial indefinitely on February 12 to allow the Bush administration to file an appeal to support its right to withhold evidence from the defense.

Brinkema ruled February 1 that the government must allow lawyers for Moussaoui to question a key witness in the case, Ramzi bin al-Shibh, an alleged paymaster for Al Qaeda who is in US military custody at an undisclosed location. Bin al-Shibh is an unindicted co-conspirator in the Moussaoui case, and was repeatedly cited as the key link between Moussaoui and Al Qaeda when Attorney General John Ashcroft first announced an indictment of Moussaoui in December 2001.

At the time, bin al-Shibh was a fugitive. He was captured by Pakistani police and FBI agents in Karachi and handed over to the US last summer, and has been under continuous interrogation since then. The Justice Department has leaked information obtained from bin al-Shibh to the press, in an effort to bolster its case against Moussaoui, but the defense has not been allowed to question bin al-Shibh, directly or indirectly.

If Brinkema's order is upheld on appeal, and the government still bars access to bin al-Shibh, the judge would have no choice but to throw out the charges against Moussaoui. The Bush administration may very well be seeking to provoke such an outcome, since it would immediately re-arrest Moussaoui and turn him over to a military tribunal, where his right to cross-examine witnesses would be subject to approval by the Pentagon.

Ashcroft has made several thinly veiled threats to transfer the case from the federal courts to the military, even though Moussaoui was arrested in August 2001, before the September 11 terrorist attacks and before the military tribunals were established by a presidential order.

Moussaoui, a French citizen of Moroccan ancestry, was indicted in December 2001 on charges of conspiring with

other Al Qaeda members to hijack the planes that crashed into the World Trade Center towers and the Pentagon. The government is seeking the death penalty. Moussaoui has proclaimed his allegiance to Osama bin Laden but denied any involvement in the September 11 attacks. He was arrested a month before the suicide hijackings when his behavior raised suspicion at a Minnesota flight school.

In court papers, Moussaoui argued that bin al-Shibh's testimony could exonerate him, making access to bin al-Shibh essential for his defense. The Justice Department lodged an appeal to the 4th Circuit Court of Appeals, the same right-wing bastion that recently handed the government an unprecedented ruling permitting it to detain a US citizen, Yaser Hamdi, indefinitely without trial as an "enemy combatant."

When Moussaoui was first indicted, the administration claimed the indictment was a vital victory in the battle against terrorism, proving America's commitment to the pursuit of justice. The defendant, Ashcroft proclaimed, was a central figure in the September 11 conspiracy—the so-called twentieth hijacker, who would have been aboard one of the crashed planes if he had not been already detained on immigration charges.

But the longer the case has dragged out over the past 18 months, the more it has become apparent that the White House has decided it cannot afford to allow the trial to proceed, because a public hearing might reveal high-level US government complicity in the World Trade Center and Pentagon attacks.

While granting the government's request for a postponement, Brinkema rejected a complementary prosecution motion seeking to halt all pre-trial proceedings. Instead, she ordered the two sides to submit by February 20 a list of what classified information they plan to use in the trial.

Nevertheless, this is the third major delay in the case. Moussaoui was scheduled to go on trial last October. Brinkema granted a postponement until January 6. She then postponed the trial again to June 30, saying that a

“miscarriage of justice” could result if the two sides lacked adequate time to prepare.

Oral arguments at the appeals court in Richmond, Virginia are not expected until May or June, and it is unclear when a decision will be issued. If the government loses the appeal, it may go to the Supreme Court, halting the case for many more months. In the meantime, Moussaoui remains in solitary confinement, allowed out of his cell for just two hours a day.

The Justice Department insists that allowing Moussaoui any access to Bin al-Shibh, who was captured in Pakistan last October and is under US interrogation in an undisclosed location, would endanger US intelligence operations. It wants to secretly interrogate Bin al-Shibh for at least two years.

Apart from violating the basic rights of both Moussaoui and Bin al-Shibh under American and international law, this objection is implausible for several reasons. Any pre-trial questioning of Bin al-Shibh by Moussaoui or his court-appointed lawyers would be conducted under strictly controlled conditions that would hardly permit any exchange of terrorist secrets between the two.

Furthermore, it is impossible for anything remotely resembling a fair trial to be conducted without Moussaoui having a full opportunity to benefit from any exculpatory evidence that Bin al-Shibh might provide. Judging by Moussaoui’s indictment, the prosecution’s main piece of evidence is an August 2001 wire transfer of \$14,000 from bin al-Shibh to Moussaoui.

An unnamed “senior government official” told the *Washington Post* yesterday, “The stakes here are huge. They are nothing less than the continuing ability of civilian courts to be an option in the war on terrorism.” If the appeals court backs Brinkema in ruling for Moussaoui, “every future terrorism defendant could tie up prosecutions with demands for access to other captured guys,” he said.

In fact, it was the Bush administration that first suggested that bin al-Shibh’s testimony was critical to the Moussaoui case. The Bush administration is clearly intent on setting a precedent that in cases of alleged terrorism it can avoid all the normal procedural obstacles of a trial in open court by transferring the defendant to military custody and using a tribunal which can operate in secret with military officers serving as judges, prosecutors and defense attorneys.

This has the full support of the American media, which has covered up the police-state character of the measures being proposed by the Bush administration in the cases of Moussaoui, Yasser Hamdi and Jose Padilla. The *Post*, in an editorial January 27, called on the Bush administration to end the “experiment” of a public trial of Moussaoui in federal court, and transfer him to military custody. In other

words, star chamber proceedings are to be the norm for those arrested on charges of terrorism, while constitutional rights should be considered an experiment which has failed.

One reason for the White House’s concern, according to leaked accounts of Bin al-Shibh’s interrogation, is that his testimony may well establish that Moussaoui, despite his Al Qaeda sympathies, was not involved in the September 11 operation. He was considered too excitable and unreliable, an estimate borne out by the conduct which led to his arrest.

But the administration’s determination to prevent bin al-Shibh being subpoenaed also suggests that he may know secrets about September 11 that would embarrass the Bush administration, particularly on the eve of its planned war against Iraq. Any unwanted revelations could undermine the White House’s exploitation of the September 11 outrage as the justification for embarking on unparalleled military aggression.

During the pre-trial hearings, Moussaoui has accused the government of covering up its fore-warning of the September 11 attacks. Before last August 12, when the judge sealed all his handwritten submissions to the court, preventing them from becoming public knowledge, he issued a series of motions demanding the dismissal of the case on the grounds that he was being framed-up in order to protect the government.

There is little doubt that Moussaoui’s charges have substance. French intelligence officials have let it be known that they warned their US counterparts in considerable detail about Moussaoui’s Al Qaeda ties after his August 2001 arrest. French security agencies reportedly had Moussaoui under surveillance from 1994.

As the *World Socialist Web Site* has previously documented [“The strange case of Zacarias Moussaoui: FBI refused to investigate man charged in September 11 attacks ”], the strange case of Zacarias Moussaoui is one of many indications that US authorities had ample warning that a major terrorist operation was under way in the United States, yet did nothing to prevent it or actively blocked investigations.

As the Moussaoui case becomes ever more curious, the record increasingly suggests that senior administration officials are seeking to suppress evidence that they permitted a terrorist attack to proceed—whether aware of its full dimensions or not—in order to provide a pretext for wars in Central Asia and an assault on democratic rights at home.



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