

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1 UNITED STATES OF AMERICA,

) Docket No. 09 CR 849

2
3
4
5 v

) Chicago, Illinois

) November 3, 2009

) 1:30 p.m.

6 TAHAWWUR HUSSAIN RANA,

7 Defendant

8
9 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE NAN NOLAN

10 PRESENT:

11 For the Government:

12 DANIEL J. COLLINS
13 VICTORIA J. PETERS
Assistant United States Attorneys
219 South Dearborn Street
Chicago, Illinois 60604

14 For the Defendant:

15 PATRICK W. BLEGEN
16 JODI GARVEY
Blegen & Garvey
53 West Jackson Boulevard
Suite 1437
17 Chicago, Illinois 60604

18 (TRANSCRIBED FROM DIGITAL RECORDING.
19 PLEASE SUPPLY CORRECT SPEAKER IDENTIFICATION)

20 Court Reporter:

21 Lois A. LaCorte
22 219 South Dearborn Room 1918
Chicago, Illinois 60604
23 (312) 435-5558
24
25

1 THE CLERK: 09 CR 849, United States v Rana.

2 MR. COLLINS: Good afternoon, your Honor, Dan Collins for
3 the United States.

4 MS. PETERS: Good afternoon, your Honor, Vicki Peters on
5 behalf of the United States.

6 THE COURT: Thank you.

7 MR. BLEGEN: Good afternoon, your Honor, Patrick Blegen
8 and Jodi Garvey on behalf of Mr. Rana, who is present in
9 custody.

10 THE COURT: Okay.

11 MR. MALDONADO: Judge, good afternoon, Pretrial Services,
12 Albert Maldonado.

13 THE COURT: Okay, thank you, Mr. Maldonado. Okay, good
14 afternoon, everyone. Good afternoon, Mr. Rana.

15 DEFENDANT RANA: Good afternoon.

16 THE COURT: Sir, you're here for your continued initial
17 appearance. The government has moved for detention pending
18 your trial in this matter. This morning I received the
19 defendant's memorandum in support of Pretrial Services'
20 recommendation for secured release, and about five minutes
21 ago, I received the government's memorandum in support of
22 motion for detention pending trial.

23 Mr. Blegen, did you receive a copy of the government's
24 brief?

25 MR. BLEGEN: I did just a few minutes ago, Judge, maybe

1 at the same time you did or close to that.

2 THE COURT: Right, I did. So but for reading the
3 briefs, are you both prepared to proceed today? Did you want
4 to proceed, because one thought I just had is we could take an
5 hour break and, Mr. Blegen, you could have time to see in the
6 government's memorandum if there is anything you want to
7 respond to or -- I'm kind of up to doing whatever you want to
8 do here today.

9 MR. COLLINS: Judge, could Mr. Blegen and I have a quick
10 moment?

11 THE COURT: Sure, sure, absolutely.

12 (Pause)

13 MR. BLEGEN: Judge, I guess the thought is, I mean,
14 obviously Mr. Rana is in custody.

15 THE COURT: Right.

16 MR. BLEGEN: And I don't want him to be in there any
17 longer than need be.

18 THE COURT: Right.

19 MR. BLEGEN: You had some questions that you wanted
20 answers to the last time we were in court, and I and the
21 government have gotten the answers to some of those so I would
22 like to at the very least give you those answers today.

23 THE COURT: Sure.

24 MR. BLEGEN: But if we could maybe just reconvene in
25 10 minutes so I can have a chance to finish reading the

1 government's pleading.

2 THE COURT: Why don't you take -- I'm offering you
3 definitely more time or if you want -- look, there are two
4 parts to a bond hearing. One are the facts and one is the
5 law. I think I know the law as well as anybody knows the law,
6 but because I haven't really read the government's brief
7 either, I don't know if there are facts in here too which I
8 need to be concentrating on or if it is more the law, which is
9 why I was suggesting we could take an hour. We can also put
10 it over a couple days if you want. Whatever you want to do is
11 fine with me.

12 MR. BLEGEN: Judge, can I just have a moment?

13 THE COURT: Sure.

14 (Pause)

15 MR. BLEGEN: Two issues, Judge. One, I would like to at
16 least take -- can we just take a short break so I can finish
17 reading the government's pleading?

18 THE COURT: Sure, sure, absolutely.

19 MR. BLEGEN: There are issues in there that I think,
20 factual allegations made by the government that aren't set
21 forth in the complaint so I need to look at those at least for
22 a few minutes and then I can maybe have a little time to talk
23 to Mr. Rana. If we could come back in 15 or 20 minutes, I
24 think I can tell you how we would like to proceed.

25 THE COURT: That's just perfect. We will come back at

1 2:00. It's 20 to, we will come back at 2:00, and then if
2 either of you have any questions or any factual issues that
3 you want to bring up regardless if we're going away or we're
4 even in a postponement, you can certainly bring those up.

5 MR. BLEGEN: That's fine, thank you, Judge.

6 THE COURT: Mr. Collins.

7 MR. COLLINS: Well, I just know that one of the issues in
8 terms of considering whether there is any conditions out there
9 or whether there is sufficient security would be an analysis
10 of the information that Mr. Blegen is putting together and
11 there is still additional information that's needed,
12 specifically title reports before we can have any type of
13 consideration of that.

14 THE COURT: And we're going to do that, of course.

15 MR. COLLINS: Okay.

16 THE COURT: I mean absolutely, we would have all of the
17 information, okay?

18 MR. COLLINS: Great.

19 THE COURT: So don't worry on that. Let's figure out
20 what you want to present to the court, okay, what anybody
21 wants to present to the court.

22 MR. BLEGEN: That's fine.

23 THE COURT: We will be back here at 2:00.

24 (Recess)

25 THE CLERK: 09 CR 849, USA v Rana.

1 THE COURT: Okay, we're back on the record. So for the
2 government, please?

3 MR. COLLINS: Dan Collins and Vicki Peters.

4 THE COURT: Okay, thank you. And for Mr. Rana?

5 MR. BLEGEN: Patrick Blegen and Jodi Garvey.

6 THE COURT: Okay. And also for Pretrial?

7 MR. MALDONADO: Judge, Albert Maldonado.

8 THE COURT: Okay. So we took a break for each side to
9 have a few moments to look at each other's memorandum that was
10 submitted today, so Mr. Blegen, you received it the last, so
11 what would you like to do? Tell me what you'd like to do.

12 MR. BLEGEN: Judge, I would like to come back, but I
13 think we can address some of the issues that you had raised
14 the last time we were here.

15 THE COURT: All right.

16 MR. BLEGEN: So we don't have to do that again when we
17 come back.

18 THE COURT: All right.

19 MR. BLEGEN: But I am going to need some time to look at
20 that, and if you will notice in the government's recent
21 pleading they indicated that they want to file another
22 pleading on the issue of whether that terrorism enhancement
23 applies, which would affect the kind of sentence somebody
24 charged with this sort of crime would be looking at if
25 convicted. Obviously, we're nowhere near that yet, but -- and

1 my only request is if we set a new date, can we have a date
2 for any filings regarding it?

3 THE COURT: Sure.

4 MR. BLEGEN: So that we don't run into the same issue
5 again.

6 THE COURT: Right. Okay. Sure, sure. Why don't we
7 take up the other issues first.

8 MR. BLEGEN: You had asked us to look into the MCC, the
9 conditions of confinement there and answer some questions
10 about that. And the government has spoken to the attorney at
11 the MCC and so have I, and so if I say something that they
12 think is wrong, I don't have a problem with them interrupting
13 me. I took notes as best I could.

14 My understanding is that Dr. Rana is on the 11th floor,
15 we are already knew that, in the administrative detention
16 floor or I think they might call it a "Shoe," which is the
17 place where people go who have committed some offense in the
18 MCC, fighting or something like that, and you know, it's
19 partially there for security, but also partially for
20 punishment for something that they have done in the MCC.

21 So he is under, in my view, conditions that you know, he
22 hasn't done anything in the MCC to warrant any punishment, but
23 he is sort of on a floor that deals with those sorts of
24 people. The reason he is there is because of the nature of
25 the charges, but as those charges relate to the reaction that

1 other inmates might have.

2 So I believe the MCC told Ms. Peters that it was somewhat
3 for his own protection or I guess it is for his own protection
4 and so that condition is not going to change and he will
5 almost certainly remain on the 11th floor.

6 MS. PETERS: That is what I was told, Judge, that it's --
7 the "Shoe" is designed not just for people who are considered
8 to be risks because they have committed violent acts within
9 the MCC, but people who the MCC, based upon their assessment
10 of the nature of the charges against the inmate, could be at
11 risk.

12 THE COURT: All right. So what happens to one who is on
13 the 11th floor, how are they treated differently than people
14 who are in the general population?

15 MS. PETERS: Well, they have limited access to telephone
16 calls to family members.

17 MR. BLEGEN: I'm sorry for interrupting, but I know the
18 details of that. They're allowed to get to the phone that can
19 be used for either social or legal calls once every 30 days.

20 MS. PETERS: If I can correct my understanding with
21 respect to that, they have one social call a month. They have
22 to put in a request -- they call it copout -- they have to put
23 in a request or copout to the unit manager requesting a phone
24 call to a family member. They're allowed one a month.

25 With respect to calls to legal counsel, it is not limited

1 to one a month. I was told by Amy Standifer, the lawyer at
2 the MCC, that they do not limit the number of calls to legal
3 counsel when you're in the "Shoe."

4 MR. BLEGEN: And, Judge, that's my understanding as well,
5 but --

6 THE COURT: So that's one difference.

7 MR. BLEGEN: Many inmates call their lawyers from the
8 regular phones because it takes time to set up a legal call.
9 If you have something you need to talk about urgently, you
10 don't really have time. He is, according to Ms. Standifer,
11 permitted to file a copout to get a legal call, but his access
12 to a phone to call his lawyer or his family or anyone else is
13 limited to once every 30 days.

14 MS. PETERS: That's not my understanding. His calls
15 to -- he can call his lawyer every two or three days if he
16 gives a copout to his unit manager. The 30 day limit only
17 applies to calls to family members, social calls.

18 MR. BLEGEN: I think we're saying the same thing except
19 that he could use those social calls to call his lawyer under
20 normal circumstances, which normal MCC inmates do. They often
21 call on the recorded line that they use to call their family
22 or friends or whomever.

23 MS. PETERS: I would agree with that.

24 MR. BLEGEN: Okay.

25 THE COURT: Okay. So that's difference number one.

1 Difference number two?

2 MR. BLEGEN: He is separated from the rest of the
3 inmates, meaning no contact with other inmates and he is in
4 his cell essentially 24 hours a day. He may, if he gets the
5 opportunity, get an hour of exercise per day, but he is in
6 there certainly 23 hours per day. He is handcuffed at any
7 time that he is outside of his cell and there is a, what they
8 call, including meeting with his lawyers, and there is what
9 they call a 3-man hold, I think, which means that any time he
10 goes anywhere, to the shower, to see his lawyer, he has to be
11 moved by three people, one of whom has to be a lieutenant.

12 MS. PETERS: If I can address the handcuff issue just for
13 a moment, Judge, Ms. Standifer said that normally the inmates
14 who are in the "Shoe" are handcuffed with their wrists
15 together in front of them. They recognize that that impedes
16 the inmate's ability when he is meeting with his lawyer to
17 look at documents, hold documents, so Ms. Standifer has said
18 that when Mr. Rana meets with Mr. Blegen, they have agreed
19 that they will, instead of having the traditional handcuffs
20 where his wrists are attached to each other in front of his
21 body, they would just attach his hands, his arms to a belly
22 chain so that his hands would be free to hold documents and to
23 read documents when he is meeting with Mr. Blegen.

24 THE COURT: Okay, next difference between how Mr. Rana
25 as a pretrial person is being handled with other people who

1 are on general population?

2 MR. BLEGEN: Judge, I don't know the exact answer to this
3 yet. I had left a message about it when I thought of it. He
4 does have the opportunity for social visits, but I believe
5 that they're through kind of a phone video system in separate
6 rooms. I don't believe he is permitted contact visits,
7 although I have to say that I'm not a hundred percent sure on
8 that yet. But my experience with the 11th floor is that's how
9 social visits work.

10 THE COURT: Okay.

11 MR. BLEGEN: And I don't know whether this is a
12 difference for other inmates or not, but there are still,
13 there is at least one medical issue that Mr. Rana has that is
14 not addressed. I was told by Ms. Standifer that with regard
15 to being able to see an outside consultant regarding his
16 shoulder, he needs the approval of the doctor in the MCC,
17 which he does not have yet, and also the marshals have to
18 approve it because they are the persons or the organization
19 that would have to take him wherever it is. But Mr. Rana
20 believes he needs a specialist to examine his shoulder, which
21 is causing him a significant amount of pain.

22 MS. PETERS: Your Honor, that would be the procedure
23 whether it's somebody who is in the "Shoe" or not with respect
24 to getting medical attention.

25 MR. BLEGEN: And, Judge, I don't know whether this is --

1 this may be a difference that's obvious, but there is no
2 access to newspapers, television, those sorts of things on the
3 11th floor, as there is in other parts of the jail.

4 THE COURT: What about the law library?

5 MR. BLEGEN: The law library, there is a law library. He
6 has had one opportunity to visit in the time that he has been
7 there since October 18th and my understanding is that he needs
8 to put in a request to get to the law library. He has made
9 multiple requests, he tells me, and has gotten there once.

10 THE COURT: When you were there, were you handcuffed,
11 when you were in the library?

12 DEFENDANT RANA: I think the feet were, I think tied up,
13 not the hands, but the volume was missing, the documentation,
14 the case law which would you would normally acquire was not
15 available. And they said you have to put in a request for
16 that.

17 THE COURT: It appears from the complaint that there are
18 tapes in this case. Now, are they going to allow on the 11th
19 floor that materials are going to be brought into the 11th
20 floor?

21 MS. PETERS: Yes, Judge, I talked to Ms. Standifer about
22 that and digital evidence will be available to him on the 11th
23 floor and he can also keep documentary evidence in his cell on
24 the 11th floor unless, of course, there becomes too many piles
25 of it and then it would be put in storage and would be made

1 available to him. But they do have the ability to let the
2 inmate on the 11th floor have access to the digital evidence
3 and play it.

4 THE COURT: So digital being both tape and the computer?

5 MS. PETERS: CDs, yes.

6 THE COURT: All right. So what do you suggest we do?

7 Both of you, what do you suggest we do with this?

8 MS. PETERS: Your Honor, I don't think there is any
9 question but that Mr. Rana has to remain on the 11th floor.
10 That's the MCC's call. It's a call that they make day in and
11 day out. There is nothing particularly special about Dr.
12 Rana, and I don't think any of us have the ability to overrule
13 their decision about where his safety and the safety of the
14 rest of the institution requires that the defendant be.

15 MR. BLEGEN: Judge, I would suggest that you release him
16 on a secured bond as Pretrial has recommended and that will
17 solve all the problems. But I'm not so sure that Ms. Peters
18 is right that you can't order the MCC to do things because the
19 bond statute itself gives you, you know, the authority to
20 order that he have meaningful access to his attorney and I
21 think there is case law that -- what really troubles me here
22 is that he is on the punishment floor for not having done
23 anything and that's what I think the biggest issue is, is that
24 he is being treated the same as individuals who the MCC thinks
25 have done something wrong. You know, they're taking away

1 their access to the social calls as a punishment so that the
2 person doesn't do whatever he did again, but Mr. Rana hasn't
3 done any of those things, and I think there is a remedy for
4 it. I haven't looked into the law on that yet, but I can.
5 And if we're going to file additional pleadings, I can address
6 that to you, but my hope is that he will be released on bond
7 and we won't have to deal with that issue.

8 THE COURT: Anybody want to say anything else about
9 that?

10 MS. PETERS: No, Judge.

11 THE COURT: So Mr. Blegen, how much time would you like?

12 MR. BLEGEN: Judge, there is just one other issue that I
13 wanted to address.

14 THE COURT: Sure.

15 MR. BLEGEN: I'm not sure if you asked us to look into
16 this or not, but the Pretrial Services report talks about a
17 couple of things. One is the location of Mr. Rana's expired
18 Pakistani passport. The government has that passport. It was
19 part of some search warrants that they executed, correct?

20 MR. COLLINS: Yes.

21 THE COURT: You have it? Okay, good.

22 MR. BLEGEN: And the other issue was the possibility of
23 an unreported asset on Western Avenue.

24 THE COURT: Right.

25 MR. BLEGEN: My understanding of the situation is that

1 that was a property that Mr. Rana used to have in his name as
2 well as a relative's name and the relative was a younger
3 person whose mother had passed away. It has now, I believe,
4 been taken out of Mr. Rana's name and it's solely in that
5 other person's name. And we can, if you need documents to
6 clear that up, I think we can probably get them, but my
7 understanding is it was quit claimed to the younger relative
8 sometime ago.

9 THE COURT: That's the one to Asia, that's the one?

10 MR. BLEGEN: That's the one on Western Avenue, Judge.
11 It's listed in the report.

12 THE COURT: Okay. So can you check recent quit claim
13 filings, Mr. Maldonado?

14 MR. MALDONADO: I'll look into that, Judge.

15 MR. BLEGEN: And maybe if he can't find it, maybe we can
16 try to get the documentation on it.

17 THE COURT: Okay. Any other factual?

18 MR. BLEGEN: Judge, the other thing is you will see in my
19 pleading that we have gathered a significant number of people
20 with what I consider to be a significant amount of property to
21 post for Mr. Rana. And so that was one of the other issues
22 that you wanted us to address and begin sending that stuff to
23 the government, which we have done. We don't have, for
24 example, the title reports for each property yet, but we're in
25 the process of getting that.

1 THE COURT: And so -- I think what -- Mr. Maldonado says
2 that he appreciated the fact that you had CC'd him on anything
3 you're sending to Ms. Bissell, so he has all the information
4 that you have sent to Ms. Bissell so far.

5 I don't think -- I guess I want to just say to you I
6 think where I am right now, I don't think it's the number of
7 any more properties, so I don't think you have to go
8 running -- I don't think frankly, Mr. Blegen, I don't think
9 that's the issue. So I don't think you need to go get more
10 properties is what I'm saying.

11 MR. BLEGEN: I appreciate that.

12 THE COURT: I think what we have got we can deal with
13 here.

14 MR. BLEGEN: Can I ask a question --

15 THE COURT: I do think you have new information in here
16 that's not --

17 MR. BLEGEN: I discussed with the government before you
18 came back out on the bench that these things are not even
19 sworn to by anyone, these new things. I would like to see the
20 evidence behind these, what I would call allegations outside
21 of the complaint. I can't really comment on them until I see
22 that.

23 And if I could ask a question, one of the thoughts -- the
24 government has offered to give some early discovery in
25 exchange for waiving the preliminary hearing. That's not

1 unusual, they do it in cases all the time.

2 THE COURT: Correct.

3 MR. BLEGEN: And I often take that offer. But if the
4 weight of the evidence here is of big concern to the court,
5 then I would suggest that we have a preliminary hearing and
6 whoever testifies for the government can be cross-examined
7 about allegations in the complaint and hopefully these other
8 allegations, because I think, as I said last time, that I
9 don't find the evidence to be particularly strong even on the
10 face of the complaint and I think a preliminary hearing might
11 illuminate the fact that it's not particularly strong.

12 THE COURT: I think that's really a tactical decision
13 you have to make, though, because there is definitely -- I
14 mean, there are the search warrants, the applications for the
15 search warrants. There might be other telephone calls that
16 you don't know about that I don't know about. I don't know
17 any of that.

18 MR. BLEGEN: I understand.

19 THE COURT: So it would seem to me that if we take
20 enough time and you sit down with the government, that at
21 least as to the specifics of what's in this motion, I notice
22 that some of the things -- some of the facts in this motion
23 are not contained in the complaint.

24 MR. BLEGEN: Correct, yes.

25 THE COURT: So you can do your due diligence. I'm just

1 saying to you how much time would you like.

2 MR. BLEGEN: Judge, can I suggest --

3 THE COURT: And Mr. Rana, I know nobody wants to be in
4 jail, but it's important that your lawyers have all the
5 information they need, sir, in order to have a meaningful
6 hearing. So some things are more important to take time on.

7 MR. BLEGEN: Can I suggest that we come back Wednesday or
8 Thursday of next week, Judge?

9 THE COURT: Oh, actually -- it either has to be Tuesday
10 afternoon or the next Monday. I'm teaching at Georgetown for
11 the rest of the week. I'm sorry I won't be here.

12 MR. BLEGEN: Then Tuesday afternoon, Judge.

13 THE COURT: Tuesday afternoon. Open all afternoon.

14 (Pause)

15 THE COURT: Why don't we do 2:00 then a week -- is that
16 a week from today?

17 THE CLERK: Yes.

18 MR. BLEGEN: And Judge --

19 THE COURT: Mr. Blegen, I want to say to you on the
20 conditions at the MCC, I don't know -- I actually don't -- I
21 don't think that is -- I think that's premature at the moment
22 as a reason to not give bond because we don't even know if Mr.
23 Rana has been given his materials. I'm certainly thinking
24 about that, but I don't think I need any more briefing on --

25 MR. BLEGEN: That's fine.

1 THE COURT: -- that's a factor on whether to give bond.
2 That doesn't mean that if I were to detain Mr. Rana that I
3 might not look into other things that could be done at the
4 MCC. I want you to know that, okay? Or since we have five
5 other jails we send people to, I mean, I'm not a hundred
6 percent sure here, okay?

7 MR. BLEGEN: That's fine. I think that would be the
8 appropriate time to take it up is after a bond hearing.

9 THE COURT: After if I enter an order of detention, then
10 we will figure out what are the due process ramifications of
11 conditions at the MCC because I think we're mixing apples and
12 oranges right now. We all have enough on our plate. Okay.
13 So if anybody is going to file anything, okay, you have until
14 5:00 on Friday or I'm not taking it for next Tuesday, okay?

15 MR. BLEGEN: Fine.

16 THE COURT: So and I know the two of you are having what
17 we call in the civil area meet and confers, so please have
18 some meet and confers on topics here, and government, anything
19 you could do to help on -- if Dr. Rana hasn't talked to his
20 family, I mean, I don't know why they couldn't arrange a phone
21 call.

22 MR. BLEGEN: He has had one phone call since he has been
23 there.

24 THE COURT: Frankly, I don't, I don't understand that.
25 I looked at some orders -- I'll go back and look at some

1 orders, but if your office has any -- what other kinds of
2 offenses do they do this to? There aren't that many offenses
3 brought under this statute. What are the other offenses where
4 people have to go to the 11th floor?

5 MS. PETERS: As I understand it, Judge, cases involving
6 people who are charged with child pornography, that sort of
7 thing.

8 THE COURT: They're on the 11th floor?

9 MS. PETERS: They can be.

10 THE COURT: Okay.

11 MS. PETERS: They can be considered a target of other
12 inmates.

13 THE COURT: All right. Okay. So anything that you want
14 to file, Friday by 5:00, okay? Thank you.

15 MR. BLEGEN: Thank you, Judge.

16 * * *

17 I certify that the above was transcribed from
18 digital recording to the best of my ability.

19 /s/ Lois A. LaCorte

20 _____
21 Lois A. LaCorte

_____ Date

22 Official Court Reporter
23
24
25