

II. Previous Court Decisions Which Concern Sealing Documents

3. The Court has the inherent power to seal materials submitted to it. See *United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); see also *Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). “The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Rule 12.2(b), F.R.Cr.P. provides that, in relation to the filing of the mental health expert notice, the Court may “make other appropriate orders.”

The public’s legitimate interest in knowing the identities of mental health experts and their diagnoses prior to commencement of the penalty phase is minimal. Indeed, Rule 12.2 contemplates the filing of information relative to mental health expert opinions in a manner that would shield it from public view. See Rule 12.2(c)(2), F.R.Cr.P., (providing that report of mental health evaluations “must be sealed”). While the Rule does not specifically provide for the sealing of the Expert Notice, it would be appropriate here given the intense publicity that all filings generate, including, most recently, even proposed jury questionnaires.

The Government will not be prejudiced in any way by the sealing of this pleading, since it will receive it.

III. Period of Time to Have the Document Under Seal

4. The materials to be filed under seal would need to remain sealed until the conclusion of jury selection in this case.

5. Upon trial in this case, the sealed materials will be automatically unsealed and handled as such.

WHEREFORE, the Defendant respectfully requests that an Order be entered allowing the document attached to his motion to be placed Under Seal. An appropriate Order is attached.

Respectfully submitted,
ZACARIAS MOUSSAOUI
By Counsel

/s/

Gerald T. Zerkin
Senior Assistant Federal Public Defender
Kenneth P. Troccoli
Anne M. Chapman
Assistant Federal Public Defenders
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

Edward B. MacMahon, Jr., Esq.
107 East Washington Street
P.O. Box 903
Middleburg, VA 20117
(540) 687-3902

Alan H. Yamamoto, Esq.
643 South Washington Street
Alexandria, VA 22314
(703) 684-4700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November 2005, 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, by placing a copy BY HAND in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia and by FACSIMILE upon same to 703-299-3982 (AUSA Spencer), 804-771-2316 (AUSA Novak) and 212-637-0099 (AUSA Raskin).

/s/
Edward B. MacMahon, Jr.