

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) 1:01cr455 (LMB)  
 )  
 ZACARIAS MOUSSAOUI )  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

ORDER

The Court is aware of numerous requests by representatives of the media for copies of the trial exhibits admitted into evidence, while the trial is in progress. That request cannot be granted for two reasons. First, the Court, and the parties, are seriously concerned about ensuring the integrity of the proceedings and avoiding any contamination of the jury. The practice in this court is not to publish to the jury the entire text of every exhibit at the time it is entered into evidence. Instead, the admitted exhibits are sent into the jury room when the jury begins its deliberations. If the exhibits are supplied to the media there will inevitably be publication of these exhibits and possible public comment about them. Such publication of the exhibits and comment on them before the jury begins its deliberations, if viewed by a juror, could improperly taint the jury, and at the very least would delay trial proceedings while the Court conducted extra voir dire of the jurors about such exposure. See, e.g. United States v. Hankish,

502 F.2d 71 (4th Cir. 1974) ("When highly prejudicial information may have been exposed to the jury, the court must ascertain the extent and effect of the infection, and thereafter, in its sound discretion, take appropriate measures to assure a fair trial"). See also Sheppard v. Maxwell, 384 U.S. 333 (1966) (granting writ of habeas corpus where trial court failed to temper publication of prejudicial information).

Second, as a practical matter the request cannot be granted. The Court is obligated to protect the integrity of the exhibits admitted into evidence. If control of the evidence is compromised, the potential for a mistrial increases. See e.g., United States v. Lentz, 383 F.3d 191 (4th Cir. 2004). Only a portion of the expected exhibits are in electronic format, the remaining exhibits will be presented in print or other non-electronic format. Moreover, some exhibits may be declassified only for the limited purpose of being discussed in court and shown to the jury without unrestricted public access. Because the courtroom deputy is the only person responsible for maintaining the admitted evidence, she will simply not have the time to segregate the evidence and make copies of the nonsensitive exhibits for the public while the trial is in progress. Given the volume and character of the anticipated evidence, the court staff, which must be able to concentrate on the trial, cannot take the time to make these documents

available.

Counsel for both sides agree with the Court's conclusion that access to the exhibits during the trial threatens their rights to due process. In addition, counsels' resources are also totally focused on conducting the trial. The burden of requiring them to provide an extra copy of all trial exhibits so that those exhibits could be available publicly would place an unreasonable burden on their limited resources and would not resolve the due process problem.

Accordingly, it is hereby

ORDERED that none of the exhibits entered into evidence will be made available for public review until the trial proceedings are completed, at which time requests for these materials will be considered.

The Court will not entertain any request for reconsideration of this decision.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 14<sup>th</sup> day of February, 2006.

/s/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia