

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

UNITED STATES OF AMERICA )  
 )  
 v. ) Criminal No. 01-455-A  
 )  
 ZACARIAS MOUSSAOUI )  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

ORDER

The United States has filed a Motion for Protective Order Regarding Cockpit Voice Recorders Pursuant to 49 U.S.C. § 1154 ("Motion for Protective Order") (Docket # 399) seeking a protective order to seal any proceedings in which any cockpit voice recordings are played. On August 20, 2002, we ordered the United States to provide us with copies of the two cockpit recordings at issue and transcripts of those recordings for an in camera review. The United States promptly complied, and we have since reviewed the recordings and transcripts.

From that review, we find that neither recording appears to contain information that is not available to the United States through other evidence. Moreover, even if the recordings are relevant to an issue in dispute, any probative value may be "substantially outweighed by the danger of unfair prejudice" to the defendant. See Fed. R. Evid. 403. Given the United States' concern that the recordings not be publicly disseminated and our concern that the recordings appear to have marginal evidentiary

value while posing unfair prejudice to the defendant, we find merit in standby counsel's argument that unless the United States demonstrates a legitimate reason why these recordings are essential to an issue in dispute in either the guilt or penalty phase of this case, these tape recordings should not be admitted at trial. For these reasons, it is hereby

ORDERED that the United States explain the non-cumulative relevance of these recordings to any issue in dispute, and why any probative value outweighs the danger of unfair prejudice. Until the Court decides whether these recordings may be used as evidence in this case, Gannett Satellite Information Network, Inc.'s Motion to Intervene for the Limited Purpose of Opposing the Government's Motion for Protective Order Regarding Cockpit Voice Recorders (Docket #431) is not ripe for resolution. Therefore, we will continue to DEFER ruling on it.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; and counsel for Gannett.

Entered this 13<sup>th</sup> day of September, 2002.

/s/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia