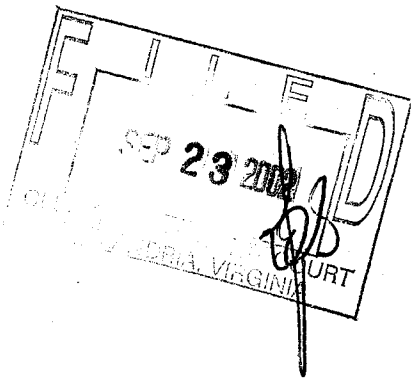


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | Criminal No. 01-455-A |
| | ) | **UNDER SEAL** |
| ZACARIAS MOUSSAOUI, | ) | |
| | ) | |
| Defendant. | ) | |

**REPLY ON BEHALF OF THE JOINT INQUIRY OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE AND THE HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE TO THE RENEWED MOTION OF THE UNITED STATES FOR CLARIFICATION**

Practically on the eve of a hearing tomorrow (Tuesday, September 24, 2002), the United States served upon the Joint Inquiry on Friday afternoon (September 20, 2002) a renewed motion for clarification concerning the applicability of Local Criminal Rule 57 to the testimony of Federal Bureau of Investigation witnesses at Tuesday's hearing. No clarification is necessary. At this Court's hearing on August 29, 2002, the defendant and the Court were perfectly clear on two important matters. First, the defendant waived any objection to public congressional testimony by government witnesses. Second, the Court stated its understanding that the testimony sought by the Committees "would, in fact, really not violate rule 57." Transcript ("Tr.") at 22. The Court also declined the request of the United States to extend the application of the Court's February 2002 protective order, a question that the United States does not ask the Court to revisit.

Nevertheless, the Department of Justice seeks an order that it will use to instruct FBI witnesses not to respond to questions concerning the FBI's conduct of its investigation of

Zacarias Moussaoui prior to September 11, 2001 – the subject of Tuesday's hearing. The proposed order submitted by the United States would provide: "ORDERED, Local Criminal Rule 57 applies to Department of Justice personnel who are testifying at public congressional hearings, including, but not limited to, all statements such personnel make in response to questions asked by Members and staff at such hearings." In light of the proffered interpretation of the Rule by the Department of Justice – which differs from that of the Court – the order sought by the United States would substantially shut down the opportunity of the full Congress and the public to understand the important issues involved in the FBI's handling of the Moussaoui investigation prior to September 11. The relief sought by the United States would, in effect, amount to an injunction blocking a proceeding of the Congress that no Court has ever issued.

In our reply, we will first provide information about matters since the Court's August 29 hearing that may be useful in understanding the context of the present motion. Second, we will describe why the Court's reasons for denying the original motion of the United States establish adequate and clear guidance for the Department of Justice. Third, we will briefly augment our prior discussion about the proper interpretation of Rule 57 in light of the history of the rule and the separation of powers. For these reasons, we respectfully submit that the renewed motion be denied. We are prepared, of course, to appear before the Court, but believe the motion for clarification may be denied without a further hearing.

1. Matters Occurring Since the Court's August 29 Hearing

Following the Court's August 29 hearing, the Committees held their tenth closed hearing. They also completed plans for beginning a series of public hearings that the Committees had long promised the Congress and the public that they would hold. The first public hearing took place

on September 18 and featured an extensive review of warning signs about an al-Qa'ida attack within the United States that had been received by the Intelligence Community. The following day, the Committees heard from present and former high-ranking consumers of intelligence. On September 20, they examined the Intelligence Community's knowledge of two hijackers of the Pentagon flight and the interaction between intelligence officials and law enforcement personnel about them.

On September 18 and 20, the Staff Director of the Joint Inquiry presented in public session statements summarizing the Joint Inquiry Staff's investigation to date about the subject of that day's hearing. Each of the statements had first been submitted to the Intelligence Community for review of national security issues and to the Department of Justice for consultation on issues relating to law enforcement. The staff statement presented at the opening hearing on September 18 contained several paragraphs relating to the FBI's investigation of Mr. Moussaoui. One of the paragraphs described and quoted from a CIA message dated August 24, 2001. In the course of the consultation, the Department of Justice asked the Joint Inquiry to omit from the public staff statement one item of information, which we agreed to do for the purpose of the September 18 hearing. For the September 20 hearing, the Department articulated a personal security concern that was resolved by the manner of receiving testimony from two Executive Branch witnesses. Thus, for both hearings, the Department and the Committees resolved matters in the traditional manner for the Executive and Legislative Branches, namely, by direct accommodation.

Following this Court's August 29 hearing and order, the Department of Justice advised that it might be returning to this Court to seek judicial guidance. The motion of the United States

describes a letter sent by facsimile on September 11, 2002 from the Joint Inquiry's General Counsel to the Department of Justice with a list of documents. The list together with a draft of the cover letter had been previously sent to the Department. As described in the renewed motion of the United States, the cover letter stated that there was a substantial likelihood that questioning of FBI witnesses at a public hearing may be directed at matters raised by the documents on the list. All of the documents are communications among FBI personnel prior to September 11, 2001. Nine days after its September 11, 2002 receipt of the list (which, as noted, had been previously communicated), the United States served its renewed motion.

2. The Reasons Stated by the Court on August 29 Provide Clear Guidance

At the beginning of the August 29 hearing, the Court called Mr. Moussaoui to the lectern to determine whether he "object[ed] to the public inquiry that's going . . . into the way in which this case has been investigated, going into information that may, in fact, be directly relevant to your trial." Tr. at 5. In a colloquy with government counsel that immediately followed, the Court stated that any doubt "as to the ability of the defendant to get a fair trial vis-a-vis public knowledge about his case, I think, is undermined, because the defendant understanding that danger is prepared to have the [protective] order lifted and, and take the consequences of that." *Id.* at 8-9. While expressed in terms of the protective order, the basic point established by the Court's questioning of the defendant was that he had made a knowing choice in favor of open congressional exploration of information about the FBI's handling of his case.

The Court also denied the motion of the United States for clarification concerning Rule 57 for the reasons it stated from the bench. Importantly, the Court did not anticipate that the rule would limit the expected testimony of FBI witnesses in response to congressional inquiry. The

Committees had advised the Department of Justice of the purpose of the branch of the inquiry directly related to the FBI's investigation of Mr. Moussaoui.[1] The Court was advised of the proposed scope in the pleadings filed before the August 29 hearing. With that knowledge, and undoubtedly with an appreciation for the significant separation-of-powers concerns that would be implicated by a judicially imposed limitation on the constitutionally committed power of the United States Congress to conduct this investigation, the Court ruled that it did not "intend in any way to interfere with what Congress is interested in getting, because it's my understanding what you want to get would, in fact, really not violate Rule 57." *Id.* at 22.

The United States contends that the documentary record of FBI communications between the Minneapolis Field Office and FBI Headquarters contain a "plethora of information" covered by Rule 57. Renewed Mot. at 6. It thus seeks for the second time "[a]n order from this Court

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[1] Our previous submission, quoting from Joint Inquiry letters to the Department of Justice, advised the Court and Mr. Moussaoui that (Reply at 2):

> at upcoming public hearings the committees will examine "F.B.I. activity concerning Zacarias Moussaoui from August 15, 2001, when an intelligence investigation was opened, through September 11, 2001." The committee leaders made clear that "[o]ur purpose, of course, is not to consider the guilt or innocence of Mr. Moussaoui, which is a matter for the Judicial Branch, but to examine the counterterrorist efforts of U.S. Government personnel and the organizations and authorities under which they operate." Motion, Exhibit A, Enclosure 1, at 1. In response to a request for additional information about the committees' prospective hearings, the Joint Inquiry's Staff Director added this in an August 5, 2002 letter to the Assistant Attorney General for the Criminal Division:
>
> > The examination will include information relating to the initiation of the investigation; the substance and process of communications between and within the FBI Minneapolis Field Office and Headquarters; how, what, and why decisions were made by those entities and their personnel; the substance and process of communications among components of the Intelligence Community; and the legal framework within which these various actions and decisions occurred.
>
> Motion, Exhibit A, at 2.

adopting the government's interpretation of Rule 57," which it candidly admits would "limit the nature of the Department witnesses' responses to particular questions prior to the defendant's trial." *Id.* at 10.

The renewed motion of the United States does not, and cannot, contend that the Joint Inquiry is proposing to question government witnesses concerning topics outside the previously disclosed scope of its investigation. Documents such as "internal FBI reports" from August 2001, Renewed Mot. at 7, "communications between FBI Minneapolis and FBI Headquarters," *id.* at 8, all fall well within the parameters of the Joint Inquiry's proper investigation.

Furthermore, the guidance already provided by the Court adequately apprises government witnesses of the kind of statements plainly prohibited by Rule 57. At the August 29 hearing, the Court advised the government that a parenthetical remark in FBI Director Robert Mueller's proposed unclassified testimony "is not informational," "adds nothing to the discourse," Tr. at 16, "adds no light to what they did or didn't do," *id.* at 20, represented "the kind of rhetoric that is absolutely inappropriate," was "an editorial comment about the merits of the case," and "is not necessary to anything [Congress is] investigating." *Id.* at 21. The Committees are seeking no such testimony. Conversely, the Committees are seeking, within the powers of Congress and for important public purposes, testimony about matters which are informational, add to the discourse, shed light on what was done and not done (and the reasons for that), and are manifestly necessary to the efforts of Congress to understand what is necessary to provide for an intelligence system that is better prepared to secure our nation's safety.

No further admonition is necessary to assure that government witnesses not use public hearings "as a vehicle to try to poison the public community about Mr. Moussaoui," *id.* at 27,

which is no one's intention and about which the Court has been clear and direct. Neither can any greater clarity be added to the Court's admonition that "nor should [Rule 57] be used as a means to hide any errors or mistakes that might have been made." *Id.* at 27.

All of the documents provided by the FBI to the Joint Inquiry concerning the FBI's conduct of its investigation of Mr. Moussaoui prior to September 11, 2001, from which the illustrative list provided to the Department of Justice was drawn and about which questions may be asked, provide historical facts about what government officials heard, observed, reasoned, recommended, and acted on (or did not act on) prior to September 11. These facts concern how and why government personnel defined and appraised the investigatory issues presented by the information that was available to them prior to September 11 about Mr. Moussaoui. They are central to assessing how intelligence and law enforcement units and personnel responded to those issues, and the legal framework in which they arose. The facts relevant to the Committees' hearings do not call for expressions of current judgment from government witnesses about the defendant's guilt or innocence or the government's plans for presenting its case. These are no part of the Committees' inquiry.

3. Rule 57 Does Not Govern Congressional Proceedings

As explained above, this Court's distinction between informational responses and truly gratuitous editorial comments adequately disposes of the motion of the United States for clarification. But in the event the Court readdresses the underlying question of whether Rule 57 imposes any limits on testimony by government witnesses before the Congress, or to preserve the point for the record, the following is submitted to supplement our reply to the initial motion of the United States.

As this Court has recognized, Rule 57(E) explicitly provides that "[n]othing in this Rule is intended . . . to preclude the holding of hearings or the lawful issuance of reports by legislative . . . bodies." The history of this legislative exception -- which traces virtually word-for-word from an American Bar Association standard promulgated in the 1960's -- confirms that it is designed precisely to deal with the situation presented here, where attorneys otherwise subject to the prohibitions on extrajudicial statements are called to testify in a public legislative proceeding. Second, a local rule like Rule 57 cannot prohibit Congress from obtaining information to which it is entitled under federal statute and the Constitution. A local rule must be "consistent with . . . Acts of Congress and nationally applicable rules of practice, procedure and evidence." *Stern v. United States District Court for the District of Massachusetts*, 214 F.3d 4, 13 (1st Cir. 2000), *cert. denied*, 531 U.S. 1143 (2001); *see* 28 U.S.C. § 2071(a); Fed. R. Crim. P. 57(a)(1). Moreover, "[e]ven if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose." *Stern*, 214 F.3d at 13; *see McCargo v. Hedrick*, 545 F.2d 393, 402 (4th Cir. 1976). If Rule 57, contrary to the Court's expressed understanding, prohibited witnesses before Congress from answering questions that they would otherwise be legally obligated to answer, or otherwise curbed the inherent investigative powers of the Congress, the rule would necessarily be invalid. *See Stern*, 214 F.3d at 16-17 (invalidating local rule that attempted to curb grand jury's investigative powers by requiring advance judicial approval of subpoenas to attorneys).

Local Rule 57, like similar local rules adopted by other federal district courts to limit trial publicity, originates from an ABA Standard recommended by the Reardon Committee after concerns arose over prejudicial publicity in the press coverage of the Sam Sheppard murder trial in

the 1960's. *See Hirschkop v. Snead*, 594 F.2d 356, 365-66 & n.9 (4th Cir. 1979). The final paragraph of the Reardon Committee's recommended standard 1-1 is virtually identical to Rule 57(E). *See* Attachment 1 hereto. The Reardon Committee's report explains that this "provision, dealing with the holding of hearings by legislative, administrative, or investigative bodies, is necessary because any statement made in such a hearing by an attorney would be an 'extra-judicial statement' that might fall within the earlier prohibitions of the canon if the hearing were held in public." Standards Relating to Fair Trial and Free Press, Recommended by the Advisory Committee on Fair Trial and Free Press at 94 (Dec. 1966). This explanation of the legislative exception makes it clear that the general rule governing extra-judicial statements does not apply to attorneys testifying before a legislative entity.[2]

The Judicial Conference subsequently recommended that each United States District Court adopt a local rule on trial publicity and included in its recommended rule a paragraph virtually identical to that recommended by the Reardon Committee and subsequently adopted as Local Rule 57(E). *See* Report of the Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue, 45 F.R.D. 391, 406 (1968). The Judicial Conference indicated that its recommendations were based in large part on the report of the Reardon Committee. 45 F.R.D. at 399.

Finally, as explained in our prior filing, an interpretation of Rule 57 that conflicts with Congress's ability to obtain information pertinent to its oversight and legislative responsibilities would raise serious separation of powers concerns. *See Application of United States Senate*

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[2] While the Committee suggested that legislative bodies give serious consideration to closing or postponing hearings relating to the activities of a defendant awaiting trial, it also recognized that the matter was not a proper subject for professional regulation. *Id.* at 94.

*Select Committee on Presidential Campaign Activities*, 361 F. Supp. 1270, 1280 (D.D.C. 1973). In response to a request by government prosecutors for the Court to impose conditions on the publication of testimony before a congressional committee, the Court wrote that "it is clear that the court could not go beyond administering its own affairs and attempt to regulate proceedings before a coordinate branch of government." *Id.* Thus, even if Rule 57 were ambiguous on the point (which it is not), such ambiguity would have to be resolved in favor of congressional investigatory prerogatives. Accordingly, Rule 57 neither requires nor permits the Department of Justice to withhold responsive answers to this congressional inquiry.

## CONCLUSION

For the foregoing reasons, the renewed motion of the United States for clarification concerning the applicability of Rule 57 to hearings of the Joint Inquiry of the Congressional intelligence committees should be denied.

Respectfully submitted,

/S/

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Tentative Draft



AMERICAN BAR ASSOCIATION PROJECT ON
MINIMUM STANDARDS FOR CRIMINAL JUSTICE

STANDARDS RELATING TO

# *Fair Trial and Free Press*

Recommended by the

ADVISORY COMMITTEE ON FAIR TRIAL AND FREE PRES

Paul C. Reardon, *Chairman*
David L. Shapiro, *Reporter*

*December 1966*

in the absence of such restraint, no steps that can be taken will effectively ensure the preservation of the right to a fair trial.

There need be no basic incompatibility in the application of the first and sixth amendments separately or in tandem. It remains for all concerned to make a sincere effort to prove that fact—an effort which will require sustained cooperation and interchange. For that price, all of our rights and liberties can be made the more secure.

This is our spirit and this our hope as we respectfully submit these recommendations.

## PART I. RECOMMENDATIONS RELATING TO THE CONDUCT OF ATTORNEYS IN CRIMINAL CASES

### 1.1 Revision of the Canons of Professional Ethics.

**It is recommended that the Canons of Professional Ethics be revised to contain the following standards relating to public discussion of pending or imminent criminal litigation:**

**It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.**

**With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.**





**From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:**

**(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the defendant, except that the lawyer may make a factual statement of the defendant's name, age, residence, occupation, and family status, and if the defendant has not been apprehended, may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;**

**(2) The existence or contents of any confession, admission, or statement given by the defendant, or the refusal or failure of the defendant to make any statement;**

**(3) The performance of any examinations or tests or the defendant's refusal or failure to submit to an examination or test;**

**(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;**

**(5) The possibility of a plea of guilty to the offense charged or a lesser offense;**

**(6) The defendant's guilt or innocence or other matters relating to the merits of the case or the evidence in the case, except that the lawyer may announce the circumstances of arrest, including time and place of arrest, resistance, pursuit, and use of weapons; may announce the identity of the investigating and arresting officer or agency and the length of the investigation; may make an announcement, at the time of the seizure, describing any evidence seized; may disclose the nature, substance, or text of the charge, including a brief description of the offense charged; may quote from or refer without comment to public records of the court in the case; may announce the scheduling or result of any stage in the judicial proc-**

ess; may request assistance in obtaining evidence; and, on behalf of his client, may announce without further comment that the client denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and while the matter is still pending in any court, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect judgment or sentence or otherwise prejudice the due administration of justice.

Nothing in this Canon is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

**1.2 Rule of court.**

In any jurisdiction in which Canons of Professional Ethics have not been adopted by statute or court rule, it is recommended that the substance of the foregoing section be adopted as a rule of court governing the conduct of attorneys.

**1.3 Enforcement.**

It is recommended that violation of the standards set forth in section 1.1 shall be grounds for judicial and bar association reprimand or for suspension from practice and, in more serious cases, for disbarment or punishment for contempt of court. It is further recommended that any attorney or bar association be allowed to petition an appropriate court for the institution of contempt proceedings, and that the court have discretion to initiate such proceedings, either on the basis of such a petition or on its own motion.





## PART II. RECOMMENDATIONS RELATING TO THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND JUDICIAL EMPLOYEES IN CRIMINAL CASES

**2.1 Rule of court relating to disclosures by law enforcement officers.**

It is recommended that the following rule be promulgated in each jurisdiction by the appropriate court:

Release of information by law enforcement officers.

From the time of arrest, issuance of an arrest warrant, or the filing of any complaint, information, or indictment in any criminal matter within the jurisdiction of this court, until the completion of trial or disposition without trial, no law enforcement officer subject to the jurisdiction of this court shall release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the defendant, except that the officer may make a factual statement of the defendant's name, age, residence, occupation, and family status, and if the defendant has not been apprehended, may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement given by the defendant, or the refusal or failure of the defendant to make any statement;

(3) The performance of any examinations or tests or the defendant's refusal or failure to submit to an examination or test;

vail over more restrictive rules governing the release of information about juvenile or other offenders. The problem of the treatment of juvenile cases is one of considerable complexity and was viewed by the Committee as falling outside the scope of its assignment. Many states prohibit the identification of juvenile offenders, and these prohibitions have generally been complied with by the media.[23]

The second provision, dealing with the holding of hearings by legislative, administrative, or investigative bodies, is necessary because any statement made in such a hearing by an attorney would be an "extrajudicial statement" that might fall within the earlier prohibitions of the canon if the hearing were held in public. Although it would not be appropriate for a proposed canon of professional ethics to provide when hearings may be held, the Committee does wish to express its concern over the problem. The holding of an open investigative or other extrajudicial hearing relating to the activities of a particular defendant who is under indictment and awaiting trial can pose and has in fact posed a serious threat to the fairness of that trial.[24] Thus the Committee believes that whenever such a case arises, serious consideration be given to the following alternatives in connection with any contemplated extrajudicial hearing: (1) postponing the hearing until after the trial; (2) holding the hearing in closed session and releasing the transcript only after trial.

The final provision of section 1.1 permits an attorney to reply to charges of misconduct that are publicly made against him. This provision not only seems desirable in a situation in which the attorney himself is the target of a public accusation, but also may be constitutionally necessary in light of the decision in *Wood v. Georgia*.[25] In this case the Supreme Court held that a sheriff's reply to charges made against him in

23. See ADVISORY COUNCIL OF JUDGES OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, GUIDES FOR JUVENILE COURT JUDGES ON NEWS MEDIA RELATIONS (1965), and particularly the discussion of the Standard Juvenile Court Act and other provisions at pp. 11-15. See also analyses of questions 1, 2 of the Questionnaire for Newspaper Editors, Appendix C, *infra*.

24. See, *e.g.*, Delaney v. United States, 199 F.2d 107 (1st Cir. 1952); United States v. Florio, 13 F.R.D. 296 (S.D.N.Y. 1952).

25. 370 U.S. 375 (1962).





connection with a grand jury investigation was a protected exercise of the right of free speech.

### 1.2 Rule of court.

**In any jurisdiction in which Canons of Professional Ethics have not been adopted by statute or court rule, it is recommended that the substance of the foregoing section be adopted as a rule of court governing the conduct of attorneys.**

*Commentary*

This section recommends that, in jurisdictions in which the Canons of Professional Ethics have not been adopted by statute or court rule, the substance of section 1.1 be promulgated as a rule of court governing the conduct of attorneys. The status of the canons is not entirely clear in many states and in a number of federal district courts. In a number of jurisdictions, the canons have not been expressly adopted by statute or rule or by an integrated bar, and in an additional few the canons are only "commended" to attorneys.[26] The Committee believes it essential that there be no question about the status of the proposal, and therefore recommends that it be made a rule of court in any jurisdiction where there might otherwise be some doubt of its enforceability. The authority of the court to adopt a rule governing the conduct of attorneys with respect to pending or imminent criminal litigation seems beyond question.

### 1.3 Enforcement.

**It is recommended that violation of the standards set forth in section 1.1 shall be grounds for judicial and bar association reprimand or for suspension from practice and, in more serious cases, for disbarment or punishment for contempt of court. It is further recommended that any attorney or bar association be allowed to petition an appropriate court for the institution of contempt proceedings, and that the court have discretion to initiate such proceedings, either on the basis of such a petition or on its own motion.**

26. The principal source of information on the status of the Canons of Ethics in the various states is BRAND, *supra* note 2.

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

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
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| v. | ) | Criminal No. 01-455-A |
| | ) | **UNDER SEAL** |
| ZACARIAS MOUSSAOUI, | ) | |
| | ) | |
| Defendant. | ) | |

CERTIFICATE OF SERVICE

I certify that on September 23, 2002, a copy of the attached Reply on Behalf of the Joint Inquiry of The Senate Select Committee on Intelligence and The House Permanent Select Committee on Intelligence To the Renewed Motion of the United States for Clarification, was delivered by hand, via the United States Marshal's Service to:

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I further certify that on the same day a copy of the same attached Reply was sent by facsimile and regular mail to:

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I further certify that on the same day the attached Reply was filed in Court and a copy was sent by facsimile to:

The Hon. Leonie M. Brinkema
United States District Judge

/S/

Michael Davidson