



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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28 July 2003

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President of the United States of America
The White House
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Washington, DC 20500
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Mr. President,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers is dedicated to promoting the independence of judges and lawyers throughout the world.

We are writing to you regarding the recent refusal by Attorney General John Ashcroft to comply with a federal judge's order to make a witness available in the trial of suspected terrorist Zacarias Moussaoui. We are deeply concerned that the Attorney General's disregard for judicial rulings is in direct contravention of well-established national and international principles on the separation of powers and respect for the independence of the judiciary which are pre-requisites for the rule of law in any country.

As you are aware, Mr. Moussaoui was arrested in December 2001 in connection with the 11 September terrorist attacks and was charged with six conspiracy counts, four of which carry the death penalty. In September 2002, Mr. Moussaoui, acting *pro se*, indicated that a crucial aspect of his defense would be access to Mr. Ramzi Bin al-Shibh, who had been arrested in Pakistan and remains in an undisclosed location. Mr. Moussaoui believes that Mr. Bin al-Shibh's deposition is vital to his defense.

On 31 January 2003, US District Judge for the Eastern District of Virginia, Judge Leonie Brinkema ordered the Government to allow Mr. Moussaoui to conduct a videotaped deposition of Mr. Bin al-Shibh. Despite the fact that Judge Brinkema took precautions to ensure that the deposition of the witness by satellite transmission could be monitored and interrupted by US intelligence officials, the Government appealed the ruling to the 4th Circuit Court of Appeals arguing that producing Mr. Bin al-

Shibh would result in the disclosure of classified information. On 26 June, a three-judge panel dismissed the Government's appeal on procedural grounds and on 14 July, the Appellate Court upheld the panel's ruling.

As stated by Judge William W. Wilkins, Jr., the presiding judge of the 4th Circuit Court and a member of the panel that issued the earlier ruling:

"Siding with the Government in all cases where national security concerns are asserted would entail surrender of the independence of the judicial branch and abandonment of our sworn commitment to uphold the rule of law."

In direct defiance of the court order, Attorney General John Ashcroft filed an affidavit refusing to produce Mr. Bin al-Shibh for the deposition.

If, based on the Government's refusal to produce the witness, Judge Brinkema dismisses the indictment, Mr. Massaoui stands to face trial by a military tribunal where his right to a fair trial would be severely compromised.

We wish to remind your Government that the Executive's unprecedented refusal to comply with a court order constitutes an unjustifiable interference with the independence of the judiciary and is a breach of the duty of all branches of Government to respect court rulings. Defying judgements of the courts is, furthermore, a clear violation of the principle of the separation of powers and as such, endangers the rule of law.

The principle of the independence of the judiciary has been a cornerstone of liberal democracies in general and of the United States in particular. It constitutes the basis upon which the fair trial provisions of the *International Covenant on Civil and Political Rights* (ICCPR), to which the United States is a party, are based. In this regard, Article 14 of the ICCPR states that:

*...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, **independent** and impartial tribunal established by law.*

Moreover, the Sixth Amendment of the US Constitution specifically recognises that calling witnesses is an integral part of the right to a fair trial by an independent court. This Amendment provides that:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... **to have compulsory process for obtaining witnesses in his favor**, and to have the assistance of counsel for his defense.*

Furthermore, we would like to draw your attention to the *United Nations Basic Principles on the Independence of the Judiciary*, which were endorsed by the UN General Assembly in 1985. According to the *Principles*, a State must ensure the independence of the judiciary and refrain from interfering, in any way, with the judicial process. The said *Principles* state:

*Principle 1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. **It is the duty of all***

governmental and other institutions to respect and observe the independence of the judiciary.

Principle 4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.

Thus, in light of Constitutional and international provisions regarding the independence of the judiciary and the separation of powers, we urge you to ensure that all branches of Government fully abide by the ruling of the 4th Circuit Court and that fair trial standards in the trial of Mr. Massaoui are respected, including those relating to the production of witnesses.

Please accept the assurances of my highest consideration.

Yours sincerely,

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Acting Secretary-General

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