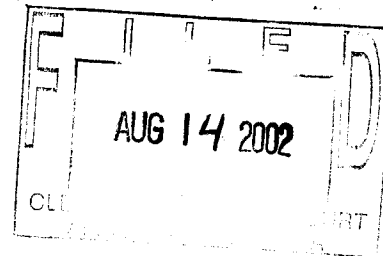


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)
)
 v.) Criminal No. 01-455-A
) The Honorable Leonie M. Brinkema
 ZACARIAS MOUSSAOUI,)
)
 Defendant.)

MOTION BY THE UNITED STATES FOR AN ORDER PRESCRIBING
PROCEDURES FOR DETERMINING ELIGIBILITY OF PERSONS REQUESTING
TO VIEW THE CLOSED CIRCUIT BROADCAST OF THE TRIAL PROCEEDINGS

On August 2, 2002, the President signed into law legislation that directs the Court to order closed circuit televising of the Moussaoui trial proceedings for viewing by September 11 victims.¹ Section 203 of Public Law No. 107-206 crafts a limited exception to the general prohibition, codified in Federal Rule of Criminal Procedure 53, on the televising of court proceedings. Congress has essentially provided for an extension of the courtroom, by technological means, to enable September 11 victims to have access to the trial. The legislation does not specify the locations that will have closed circuit television (CCTV) sites. Instead, it directs the Court to order closed circuit televising to "convenient locations the trial court determines are reasonably necessary."

The legislation defines the class of victims who are eligible to view the CCTV broadcast as follows:

- (1) persons who suffered direct physical harm as a result of the terrorist acts that occurred in New York,

¹ Pertinent portions of the legislation are attached at Tab A.

Pennsylvania, and Virginia on September 11, 2001, and were present at the scene of the terrorist acts when they occurred, or immediately thereafter; or

(2) the spouse, legal guardian, parent, child, brother, or sister of, or who as determined by the court have a relationship of similar significance to, an individual described in paragraph (1) who died, is seriously injured, is incapacitated, is incompetent, is under 18 years of age, or has a disability that requires assistance of another person for mobility.

Therefore, those survivors who were physically injured during the terrorist attacks and the immediate family members of those killed or severely injured are eligible to view the closed circuit broadcast of the trial.

In implementing the mandates of the CCTV legislation, the United States respectfully suggests that the Court should first prescribe procedures for determining the eligibility of individuals who request to view the CCTV broadcast of the Moussaoui trial. Because the United States Attorney's Office for the Eastern District of Virginia maintains a victim database and is committed to ensuring that victims of September 11 are fully accorded their statutory rights, the office's Victim Witness Unit would welcome the opportunity to assist the Court with the application process.

Background

In the last several months and in anticipation of the passing of the CCTV legislation, the Victim Witness Unit has attempted to identify individuals who may be eligible to view the closed circuit broadcast but are not in the victim database that has been compiled pursuant to 42 U.S.C. § 10607(b) (1). The Victim Witness Unit made such an attempt for two reasons: (1) to be prepared to send

potentially eligible viewers information about the CCTV broadcast, including any Court-approved application form, and (2) to be prepared to verify information contained in completed applications. At the request of the Victim Witness Unit, federal victim-witness coordinators around the country contacted individuals in the victim database and requested names, addresses, and telephone numbers of other immediate family members or of individuals with a significant relationship to the victim who was physically injured or killed. Less than half of the individuals on the database have provided information about other eligible viewers. Some of those contacted refused to provide information, others did not return messages left for them, and still others could not be reached by telephone. Therefore, although the number of individuals in the victim database has increased significantly (from approximately 3500 to 6000), there are many eligible CCTV viewers who have not yet been identified.

Proposed Application Process and
Procedures for Determining Eligibility

With the Court's permission, the Victim Witness Unit of the United States Attorney's Office will assist the court in conducting the application process. The Victim Witness Unit respectfully proposes that the Court prescribe the application procedures described below.

1. The Mailing of Information Concerning the CCTV Broadcast and an Application Form to All Victims and Survivors in the Victim Database Maintained for the Moussaoui Case.

The Victim Witness Unit proposes notifying by letter the approximately 6,000 individuals in the victim database of the

passing of the CCTV legislation and the eligibility requirements for viewing the CCTV broadcast of the Moussaoui trial. The notification letter would have as enclosures an application form and an envelope addressed to the Victim Witness Unit with prepaid postage. The notification letter would advise the recipient that the application form must be completed and returned to the Victim Witness Unit by a date certain if the recipient is interested in viewing the CCTV broadcast. The envelope addressed to the Victim Witness Unit would facilitate the prompt return of the completed application.

A proposed application form is attached at Tab B. The application requests information needed to determine whether the applicant qualifies as a victim under the definition provided in the CCTV legislation. The proposed application form asks the applicant to specify the victim category under which the applicant qualifies for access to the CCTV broadcast, i.e., related to a deceased victim, sustained physical injury, or related to a physically injured victim. For those applicants who are related to a deceased or physically injured victim, the application requires the applicant to provide the name of the deceased or injured victim and to specify the applicant's relationship to the deceased or injured victim. If the applicant indicates a relationship of similar significance to a deceased or injured person, the application requires a description of the relationship and an explanation as to why the relationship is of similar significance to that of a spouse, a legal guardian, a parent, a child, or a

sibling. For those asserting a physical injury or a relationship to someone who sustained a physical injury, the application requires a description of the physical injury.

In Section 3 of the Application, the location of the sites have not been included in the column with the header "CCTV Sites." If the Court intends to select the site locations prior to the commencement of the application process, the Court may wish to have site locations listed in the application to determine the level of interest at each site. If, however, the Court intends to select the sites after it has an opportunity to gauge the level of interest at particular locations from returned applications, then Section 3 should ask the applicant to identify the geographic location where a CCTV site would be most convenient to the applicant. Alternatively, Section 3 could list the locations the Court is certain will have sites, and also ask the applicant to suggest another site if the ones listed are not convenient to the applicant.

The Victim Witness Unit fully anticipates that any application form authorized by the Court will reach more than just the individuals in its victim database for the Moussaoui case. September 11 victim organizations have often posted on their websites or e-mailed to their members correspondence the United States Attorney's Office has sent to the victims in its database. Therefore, such organizations will probably post the application form on their websites or e-mail the application form to their members. In addition, victims who receive the CCTV notification

letter and the application form are likely to provide photocopies of their application form to family members or other victims who are not in the victim database. Indeed, the notification letter sent by the Victim Witness Unit should encourage the recipient of the letter to disseminate the application form or the Victim Witness Unit's toll-free number to victims and survivors who did not receive an application by mail.

The United States Attorney's Office will not mail any application to the individuals in its victim database unless and until the Court has issued an order prescribing the application procedures and has approved and/or modified the proposed application form.

2. The Processing of Returned Applications by the Victim Witness Unit and Transmittals of Unverified or Questionable Applications to the Court.

The Victim Witness Unit proposes to the Court that it be permitted to approve applications after it has verified that the applicant meets the victim definition set forth in the CCTV legislation. The Victim Witness Unit proposes that the Court maintain the sole authority to reject applications. The Victim Witness Unit proposes the following procedures for determining the eligibility of applicants.

Upon receiving a completed application, the Victim Witness Unit will review the application to determine whether the application on its face meets the criteria for eligibility. If the Victim Witness Unit believes the applicant is ineligible to view the trial, it will transmit the application to the Court for a

judicial determination of eligibility. All transmittals of applications to the Court will be made by the Victim Witness Unit as an under seal ex parte submission.

If the Victim Witness Unit determines that the applicant meets the statutory definition of victim based on the assertions contained in the application, it will attempt to verify the information provided in the application. Generally, if the applicant is in the victim database and the contents of the application satisfy the victim definition in the CCTV statute, the Victim Witness Unit will deem the applicant eligible to view the CCTV broadcast. The only exception to this general rule is an applicant who claims a relationship to a deceased or physically injured victim of a significance similar to that of a spouse, legal guardian, parent, child, or sibling. For those applications, the statute requires the court to determine that the relationship is of "similar significance" to the other familial relationships specified in the definition. Therefore, the Victim Witness Unit will transmit to the Court for its consideration any application asserting a relationship of "similar significance". However, before submitting the application to the Court in an under seal ex parte filing, the Victim Witness Unit will attempt to verify the applicant's relationship to the physically injured or deceased victim.

If the applicant asserts sufficient facts to meet the definition of victim under the CCTV statute but is not in the victim database, the Victim Witness Unit will attempt to verify the

information contained in the application. The verification of information may be accomplished by various means. For example, if the applicant claims a familial relationship to a deceased victim, the Victim Witness Unit staff may call family members of the deceased victim who are in the victim database to verify the applicant's relationship to the deceased victim. If the applicant claims he was physically injured but is not in the victim database, the Victim Witness Unit staff may attempt to call the applicant's employer to verify that the applicant sustained a physical injury. If the Victim Witness Unit verifies information provided by an applicant who meets the statutory definition of victim (other than having a relationship of "similar significance" to a deceased or injured victim), the Victim Witness Unit will determine that the applicant is eligible to view the CCTV broadcast. For any applicant who is not in the victim database and whose information the Victim Witness Unit is unable to verify, the Victim Witness Unit will forward the application to the Court for a judicial determination of eligibility. Such submission, like all others, will be made under seal and ex parte.

Upon determining that an applicant is eligible to view the CCTV broadcast pursuant to the procedures described above, the Victim Witness Unit will notify the applicant in writing that the applicant has been approved to view the CCTV broadcast. As for those applications submitted to the Court for a judicial determination of eligibility, the Victim Witness Unit will notify the applicant of the court's ruling on the application. The names

UNITED STATES PUBLIC LAWS
107th Congress - Second Session
Convening January, 2002

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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 107-206 (HR 4775)

August 2, 2002

**2002 SUPPLEMENTAL APPROPRIATIONS ACT FOR FURTHER RECOVERY FROM AND RESPONSE TO
TERRORIST ATTACKS ON THE UNITED STATES**

An Act Making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2002, and for other purposes, namely:

TITLE I--SUPPLEMENTAL APPROPRIATIONS
CHAPTER 1
DEPARTMENT OF AGRICULTURE
Office of the Secretary
(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for "Office of the Secretary", \$18,000,000, to remain available until expended: Provided, That the Secretary shall transfer these funds to the Agricultural Research Service, the Animal and Plant Health Inspection Service, the Agricultural Marketing Service, and/or the Food Safety and Inspection Service: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the entire amount shall be available only to the extent an official budget request that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.

Agricultural Research Service
SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", \$8,000,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the entire amount shall be available only to the extent an official budget request that includes designation *821 of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and Facilities", \$25,000,000, to remain available until expended.

Cooperative State Research, Education, and
Extension Service
EXTENSION ACTIVITIES

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may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended.

<< 8 USCA § 1356 >>

SEC. 202. Section 286(e)(3) of the Immigration and Nationality Act (8 U.S. C. 1356(e)(3)) is amended--

(1) by striking "is authorized to" and inserting "shall"; and

(2) by striking "authorization" and inserting "requirement".

SEC. 203. (a)(1) During fiscal year 2002 and each succeeding fiscal year, notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crimes associated with the terrorist acts of September 11, 2001, to watch trial proceedings in the criminal case against Zacarias Moussaoui, the trial court in that case shall order, subject to paragraph (3) and subsection (b), closed circuit televising of the trial proceedings to convenient locations the trial court determines are reasonably necessary, for viewing by those victims.

(2)(A) As used in this section and subject to subparagraph (B), the term "victims of crimes associated with the terrorist acts of September 11, 2001" means individuals who--

(i) suffered direct physical harm as a result of the terrorist acts that occurred in New York, Pennsylvania and Virginia on September 11, 2001 (hereafter in this section "terrorist acts") and were present at the scene of the terrorist acts when they occurred, or immediately thereafter; or

(ii) are the spouse, legal guardian, parent, child, brother, or sister of, or who as determined by the court have a relationship of similar significance to, an individual described in subparagraph (A)(i), if the latter individual is under 18 years of age, incompetent, incapacitated, has a serious injury, or disability that requires assistance of another person for mobility, or is deceased.

*833 (B) The term defined in paragraph (A) shall not apply to an individual who participated or conspired in one or more of the terrorist acts.

(3) Nothing in this section shall be construed to eliminate or limit the district court's discretion to control the manner, circumstances, or availability of the broadcast where necessary to control the courtroom or protect the integrity of the trial proceedings or the safety of the trial participants. The district court's exercise of such discretion shall be entitled to substantial deference.

(b) Except as provided in subsection (a), the terms and restrictions of section 235(b), (c), (d) and (e) of the Antiterrorism and Effective Death Penalty Act of 1996 (42 U.S.C. 10608(b), (c), (d), and (e)), shall apply to the televising of trial proceedings under this section.

SEC. 204. Title II of Public Law 107-77 is amended in the second undesignated paragraph under the heading "Department of Commerce, National Institute of Standards and Technology, Industrial Technology Services" by striking "not to exceed \$60,700,000 shall be available for the award of new grants" and inserting "not less than \$60,700,000 shall be used before October 1, 2002 for the award of new grants".

SEC. 205. None of the funds appropriated or otherwise made available by this Act or any other Act may be used to implement, enforce, or otherwise abide by the Memorandum of Agreement signed by the Federal Trade Commission and the Antitrust Division of the Department of Justice on March 5, 2002.

<< 33 USCA § 857-19 NOTE >>

SEC. 206. Public Law 106-256 is amended in section 3(f)(1) by striking "within 18 months of the establishment of the Commission" and inserting "by June 20, 2003".

APPLICATION TO VIEW CLOSED CIRCUIT BROADCAST OF MOUSSAOUI TRIAL

1. **Name of applicant:** _____ (Please Print)
Address: _____

Telephone: (Work) () _____ (Home) () _____ (Cell) () _____

2. **To assist the Court in determining your eligibility, please check the appropriate box if you:**

are the spouse, legal guardian, parent, child, brother, or sister of, or have a relationship of similar significance to, an individual who died from direct physical harm sustained at the scene of the September 11, 2001 terrorist acts when they occurred or immediately thereafter.

Go to Part A.

were present at the scene of the September 11, 2001 terrorist acts when they occurred, or immediately thereafter, and suffered direct physical harm as a result of the terrorist acts.

Go to Part B.

are the spouse, legal guardian, parent, child, brother, or sister of, or have a relationship of similar significance to, an individual who

(1) suffered direct physical harm at the scene of the September 11, 2001 terrorist acts when they occurred or immediately thereafter, and

(2) is under 18 years of age, incompetent, incapacitated, has a serious injury, or disability that requires assistance of another for mobility.

Go to Part C.

Part A (Related to Deceased Victim)

Please provide the full name of the person who was killed. _____

Your relationship to the deceased victim:

- | | |
|--|----------------------------------|
| <input type="checkbox"/> spouse | <input type="checkbox"/> child |
| <input type="checkbox"/> legal guardian | <input type="checkbox"/> brother |
| <input type="checkbox"/> parent | <input type="checkbox"/> sister |
| <input type="checkbox"/> other of similar significance | |

If you marked other, please describe your relationship to the deceased victim and explain why it is a relationship of similar significance to another relationship listed above.

Part B (Physically Injured Victim)

Where were you when you sustained your physical injury? _____

Where were you employed when you sustained your physical injury? _____

Briefly describe your physical injury. _____

Part C (Related to Physically Injured Victim)

Please provide the full name of the person who was physically injured. _____

Check which box(es) applies to the physically injured person:

- is under 18 years of age
- is incompetent
- is incapacitated
- has a serious injury
- has a disability that requires assistance of another for mobility

Where was the injured person when he/she sustained physical injury? _____

Where was the injured person employed when he/she sustained physical injury? _____

Briefly describe the physical injury. _____

Your relationship to the physically injured victim:

- spouse
- child
- legal guardian
- brother
- parent
- sister
- other of similar significance

If you marked other, please describe your relationship to the physically injured victim and explain why it is a relationship of similar significance to another relationship listed above.

3. CCTV Sites You Plan On Attending

CCTV Sites	How often you would like to attend (rarely, occasionally, frequently, daily)

4. Special accommodations

Do you need any special accommodations (e.g., wheelchair access, closed captioning, sign language interpretation, etc.)?

If so, please specify. _____

5. Verification

I verify that the above-information is true to the best of my knowledge and belief.

Signature		Date	
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