

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

UNITED STATES OF AMERICA

vs.

ZACARIAS MOUSSAOUI,

Defendant.

THE NEW YORK TIMES COMPANY,

Movant-Intervenor.

Criminal No. 01-455-A

SEP 24 2002



**THE NEW YORK TIMES COMPANY'S MOTION FOR LEAVE TO INTERVENE
FOR THE LIMITED PURPOSE OF BEING HEARD IN CONNECTION WITH
CLARIFICATION OR MODIFICATION OF PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT THEREOF**

Comes now Movant-Intervenor The New York Times Company ("The Times") and, for its motion for leave to intervene for the limited purpose of being heard in connection with clarification or modification of the Protective Order entered on February 5, 2002 (the "Order"), respectfully states:

1. This is a criminal prosecution instituted by the United States against Zacarias Moussaoui in connection with the terrorist attacks on the United States on September 11, 2001.

2. In connection with its news reporting concerning the preparedness of emergency workers at the World Trade Center on September 11, The Times has sought, pursuant to the applicable freedom-of-information policy and state law, certain materials created and/or possessed by the Port Authority of New York and New Jersey (the "Port Authority"). The Port Authority has refused to release the materials to The Times on the ground that the Order entered

by this Court prohibits it from doing so because copies of the materials in question have been provided to the government in connection with this proceeding.

3. The Times seeks leave to intervene in this proceeding for the limited purpose of being heard in connection with its motion for clarification or modification of the Order as it relates to the Port Authority and the materials that The Times seeks from the Port Authority in its separate freedom-of-information proceeding.

4. It is well settled that intervention is the appropriate procedural means for a non-party news organization to challenge or seek relief from a protective order, regardless of whether the order was entered in criminal or civil proceedings, and it is equally well settled that a district court must afford such a news organization a prompt opportunity to be heard in such circumstances. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982); *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302-03 (4th Cir. 2000); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253-54 (4th Cir. 1988); *In re Washington Post Co.*, 807 F.2d 383, 390-91 (4th Cir. 1986); *In re Knight Publishing Co.*, 743 F.2d 231, 234-35 (4th Cir. 1984); *see also Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 783 (1st Cir. 1988) (intervention is “the procedurally correct course for third-party challenges to protective orders”) (internal quotations and citation omitted).¹

WHEREFORE, for the foregoing reasons The Times respectfully requests that the Court enter an order granting it leave to intervene for the limited purpose stated herein. Because the

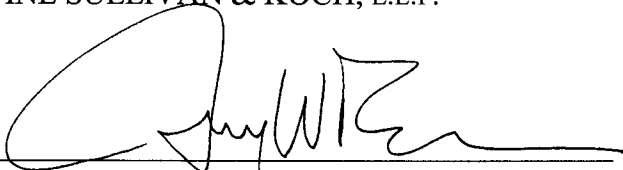
¹ Although not necessarily applicable to the instant motion, in compliance with Local Rule 7(D), counsel for The Times previously has conferred with counsel for the United States, which counsel for The Times understands objects to this motion to intervene. Stand-by counsel for defendant does not object to this motion to intervene. The Times is not able to ascertain the position of the defendant with regard to this motion.

premises for this motion are fully set forth herein, The Times has not filed a separate memorandum of law.

Dated: September 24, 2002

Respectfully submitted,

LEVINE SULLIVAN & KOCH, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of September 2002, I caused true and correct copies of the foregoing Motion for Leave to Intervene to be served by the means indicated, upon counsel and the defendant as follows:

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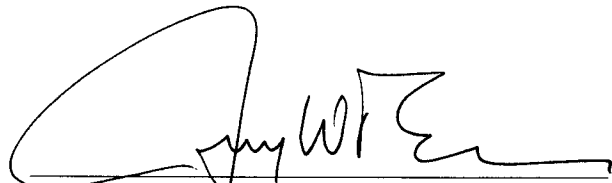
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