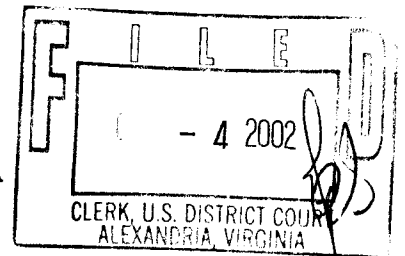


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA)
)
 v.) Criminal No. 01-455-A
)
 ZACARIAS MOUSSAOUI,)
)
 Defendant,)
)
 THE NEW YORK TIMES,)
)
 Intervenor.)

ORDER

The New York Times has intervened in this case for the purpose of clarifying or modifying the Protective Order in this case as it applies to records maintained by the Port Authority of New York and New Jersey. The United States had advised the Port Authority that it opposed release of the materials because it intended to use those materials as evidence at trial in this case.

The United States, by letter dated October 4, 2002 (attached hereto as Exhibit A), has now advised the Port Authority that it will not use most of those materials at trial in this case and its concerns regarding the dissemination of those materials no longer exist. Thus, this portion of the intervenor's motion is moot.

With respect to those documents that the government may use at trial, the parties have agreed to a procedure for identifying those documents and providing a log to the intervenor of the documents that the government objects to the Port Authority

releasing under the Port Authority's freedom-of-information policy. As to these materials, in light of the agreed resolution, the intervenor has advised the Court that it withdraws its motion without prejudice. Accordingly,

IT IS HEREBY ORDERED that the motion of the New York Times (#560) is denied as moot.

Entered this 4th day of October, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

We ask for this:

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October 4, 2002

Jeffrey S. Green, Esq.
General Counsel
The Port Authority of New York & New Jersey
225 Park Avenue South, 18th Floor
New York, NY 10003

RE: Your FOI Reference No. 4098

Dear Mr. Green:

The United States Attorney's Office is aware of the above referenced freedom-of-information request by the New York Times and of your June 7, 2002 decision. Additionally, the government has learned that the New York Times has also made a request for a tape recovered from 5 World Trade Center that recorded transmissions from New York firefighters. This letter is to advise you that this office has decided at this time not to use most of the materials that were included in those requests during the trial of Zacarias Moussaoui (Eastern District of Virginia Criminal Case Number 01-455-A). In other words, the concerns that this office has previously raised with the Port Authority regarding dissemination of most of those materials no longer exist.

Specifically, the government no longer has any objection to your release of the following categories set out in the New York Times's freedom-of-information requests:

- (1) Tapes of all radio transmissions from Port Authority staff and police officers from 8:45 a.m. to noon on September 11, 2001, and any transcripts thereof;
- (2) Any daily reports generated by the Port Authority police department concerning recovery operations at the World Trade Center site; and
- (3) A tape recording of transmissions from New York firefighters recovered from 5 World Trade Center.

The New York Times has also requested any written reports generated or kept by the Port Authority that recount the events of September 11, 2001. This request is broad enough to include a limited number of items that the government may use at trial, but the government believes that most of the documents responsive to this request will not be related to the *Moussaoui* trial. Accordingly, the government has agreed, subject to any objections you may have, to (1) review the responsive documents; (2) advise you as to which documents the government has no objection to

ExhibitA

Jeffrey S. Green, Esq.

October 4, 2002

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releasing; and (3) prepare for you and for the New York Times a log of the documents to which the government objects to public release because they may be used at trial. The government has also agreed to conduct its review within 14 days of receiving the package of responsive documents from your office.

The United States Attorney, of course, expresses no opinion regarding whether any of the materials described in this letter should or should not be released under the applicable provisions of the Port Authority's Freedom of Information Policy. That decision can only be made by the Port Authority. With respect to those documents that the government lists in the log described above, the government respectfully suggests that they were compiled for public safety, law enforcement and official investigatory purposes, and their release will interfere with a judicial proceeding. Additionally, the release of the documents that will be listed in the log could possibly prejudice the defendant's right to a fair trial or impartial adjudication. Accordingly, it appears that their release by you would not be consistent with your freedom-of-information policy.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned Assistant United States Attorney.

Very truly yours,

PAUL J. McNULTY
United States Attorney

By



BRIAN D. MILLER
Assistant United States Attorney