

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

2006 MAR 14 PM 5:53

U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA)
)
v.)
)
ZACARIAS MOUSSAOUI,)
)
Defendant,)
)
ALL PLAINTIFFS NAMED IN)
21 MC 97, 21 MC 101, and 03 CV 9849)
)
Victim Intervenors.)

Criminal No. 01-455-A

VICTIM INTERVENORS' PROPOSED PROTOCOL AND CATEGORIES OF EVIDENCE SOUGHT FROM THE UNITED STATES GOVERNMENT

We write on behalf of thousands of victims of the September 11th terrorist attacks whose motions to intervene were granted in the above referenced action. As directed by the Court in its Order of April 7, 2006, the Victim Intervenors submit this suggested protocol for the production of certain documents and have attached as Exhibit 1 a list of the specific categories of materials sought. As we stated during the hearing, Victim Intervenors have no intention of interfering with the government's prosecution of Zacarias Moussaoui or the Court's orderly administration of this historic and important litigation. In the event that our suggested protocol imposes some unforeseen burden, Victim Intervenors remain available to discuss the most expeditious and convenient means through which these materials may be produced.

I. Identical Access to All Evidence Ordered to be Released to the Media-Intervenors

Victim Intervenors are aware of the websites which contain copies of the transcripts and exhibits which have been fully published to the jury. Therefore, we have sufficient access to these materials at present. In speaking with the Court's Public Information Officer, Edward Adams, however, we have learned that copies of audiotapes and videotapes that are produced into evidence and played to the jury are not available on any website and are given, on a rotating basis, to certain members of the media which distribute the tapes in a pool to various media outlets. The Victim Intervenors do not presently have access to these materials and request that the government provide, as the Court has ordered, the same access to the Victim Intervenors that it has provided to the media. We suggest that the government send via Federal Express copies of all video and audio that it introduces into evidence and plays for the jury within 7 days after the government rests its case in chief, to the following address:

Michael Elsner, Esq.
Motley Rice LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9000

Costs associated with this production will be borne by the Victim Intervenors. A Federal Express billing number will be provided privately for shipment purposes.

II. All Evidence Presented to the Jury

At the conclusion of the trial, consistent with the Court's Order, Victim Intervenors request that the government either mail or make available for production in Washington, DC or in Alexandria, VA a complete set of all evidence presented to the jury. Such documents shall include all documents submitted into evidence and partially

shown to the jury and those documents presented to the jury pursuant to the silent witness rule. For ease of reference, Victim Intervenors request that the government produce copies of any exhibit lists created and filed in the case by the government, defendant and/or the Court.

In the event that the production of documents to Moussaoui's lawyers was done electronically or if an electronic version of the production exists, Victim Intervenors prefer that the documents be produced electronically on CD ROM's or DVD's. We would prefer documents formatted in Adobe's Portable Document Format (PDF), though Tagged Image Files Format (TIFF) is also acceptable. For indices and other data sets that are electronically available, please provide this information as delimited ASCII text files with a data dictionary.¹ Victim Intervenors request that the evidence presented to the jury be produced within 10 days after the completion of closing arguments.

III. Evidence Produced to Defense Counsel During Discovery but not Admitted into Evidence

It is difficult in the abstract and without the benefit of having the opportunity to review the full scope of the government's production to provide as detailed a response as we would like with respect to the categories of materials that Victim Intervenors seek access. Nevertheless, our best effort to create a comprehensive list of the respective categories is attached as Exhibit 1. Victim Intervenors have provided listings of some of the specific documents sought below each general category. These lists are not exhaustive and were prepared simply to direct the government to certain specific documents. In the event that the government has an index of those documents turned

¹ If producing the documents in these formats will present too great a burden for the government, Intervenors will endeavor to work with the Government to come up with a format acceptable to both parties.

over to defense counsel in production, it may be possible to narrow the categories of materials and provide even greater specificity.

Victim Intervenors request that the government either mail or make available for production in Washington, DC or in Alexandria, VA a complete set of all documents that fall within the categories listed in Exhibit 1. In the event that the production of documents to Moussaoui or his lawyers was done electronically or if an electronic version of the production exists, Victim Intervenors prefer that the documents be produced electronically on CD ROM's or DVD's. We would prefer documents formatted in Adobe's Portable Document Format (PDF), though Tagged Image File Format (TIFF) is also acceptable. For indices and other data sets that are electronically available, please provide this information as delimited ASCII text files with a data dictionary. In the event that the government provided translations of certain documents to defense counsel, the Victim Intervenors request the same courtesy. Victim Intervenors propose that the government begin producing these materials no later than 14 days after the jury returns a verdict, and that the government complete its production, absent extenuating circumstances, no later than 45 days document production commences.

If the government prefers to simply produce to the Victim Intervenors copies of all documents turned over to Moussaoui's defense counsel rather than determine which documents produced are responsive to specific categories of documents requested, Victim Intervenors would prefer that protocol.

As the Court noted during the hearing on April 7, 2006, the prosecution and defense counsel reached numerous agreements on redactions and substitutions or

summaries of certain documents to protect SSI and classified information from public view. Victim Intervenors request the production of these redacted documents, substitutions and summaries at the conclusion of the case as those documents are not classified and are not SSI.

In addition, the government made certain decisions to waive SSI with respect to certain exhibits and evidence and/or determined that certain documents were no longer classified or properly designated SSI simply due to the passage of time. For example, even though the TSA contended that the Dulles screening video depicting the 9/11 hijackers on Flight 77 was SSI in a letter to Motley Rice LLC, the video was played and used in open court in the Moussaoui case. *See* Testimony of Robert Cammaroto, pp. 1854-62 (March 22, 2006) and copies of the video and still shots of the video were published to the jury as Exhibits NT00211, NT00211.1-NT00211.7, respectively.

At some point before Mr. Cammaroto's testimony, the government informed defense counsel that it was using this video, previously designated as SSI. Victim Intervenors request the production of all documents where the government decided that a document or item was no longer classified or SSI or decided to waive its SSI determinations. Victim Intervenors request the production of these materials even in those instances in which the document or item was not presented into evidence. For those documents, the government must have determined that the release would not continue to "expose vulnerabilities" in aviation security which Mr. Cammaroto said was the "acid test" for SSI. *See*, Testimony of Robert Cammaroto, p. 28, lines 1-6 (March 21, 2006).

The spirit of the Court's Order and the sentiments Judge Brinkema displayed during our hearing on April 7, 2006 make clear that the following collections of materials should be produced to the Victim Intervenors at the conclusion of the case. Victim Intervenors remain available at the government's convenience to discuss these requests and suggested protocol.

Dated: April 14th, 2006

Respectfully submitted,

By: _____ /s/
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By: _____ /s/
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ATTORNEYS FOR VICTIM INTERVERNORS

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of April 2006, I caused true and correct copies of the foregoing Proposed Protocol and Categories of Evidence Sought from the United States Government, upon counsel for the parties as follows:

By Federal Express

Gerald T. Zerking, Esq.
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Office of the Federal Public Defender
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By Federal Express

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107 East Washington Street
Middleburg, Virginia 20117

By Federal Express

Robert A. Spencer, Esq.
David Novak, Esq.
David Raskin, Esq.
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314-5794

By Federal Express

Alan H. Yamamoto, Esq.
643 South Washington Street
Alexandria, Virginia 22314

/s/

Kathleen J. ~~Ho~~lmes

EXHIBIT 1

VICTIM INTERVENORS' PROPOSED CATEGORIES OF EVIDENCE SOUGHT FROM THE UNITED STATES GOVERNMENT

Pursuant to the Court's Order of April 7, 2006, the Victim Intervenors hereby submit a list of categories of documents sought from the United States government. The following categories hereby include:

1. Copies of all witness lists, exhibit lists, discovery productions lists, lists of codes for each produced exhibit prefix, databases, lists of exhibits or materials to be potentially used by the prosecution or the defense in the examination of witnesses and copies of all correspondence explaining the origin of certain collections of documents.

2. Please produce copies of all PowerPoint presentations, graphs, videos, audiotapes, exhibits, reports or other items which were designated for use by the government or the defense with any witness. For example, see exhibits GX OG-10 and GX OG-117.

3. Copies of all materials which relate to the financing of Al Qaeda.

4. Copies of all documents related to charities or non-governmental organizations "NGO's" in Afghanistan and throughout the world that have allegedly provided support to Al Qaeda.

5. All documents concerning threats, warnings or fatwa's issued by Osama bin Laden.

6. All documents concerning the terrorist training camps in Afghanistan.

Such documents shall include, but shall not be limited to:

- a. Documents containing information reflecting the organization of the training camps as alleged in the Moussaoui indictment;
- b. Documents containing information about the Khalden Camp;

- c. Documents containing information concerning training camps attended by the 19 hijackers and Ramzi Binalshibh, Zacarias Moussaoui and Zakariya Essabar;
- d. Video, audio or written wills or last testaments of training camp attendees;
- e. All camp training materials and computer hard drives;
- f. All financial information concerning funding for and operation of the training camps;
- g. All documents concerning the travel patterns and payments for travel of camp attendees.

7. All documents from the U.S. government's PENTBOMB investigation produced to the defendant or his counsel.

8. Copies of all correspondence, communications and/or exchanges between the FAA, TSA, CIA, NSA, DOD, DOT and/or any other government agency and the Air Transport Association, International Air Transport Association, Airlines, Airport Operators or Aviation Security Screening Companies. Responses to this request shall include but shall not be limited to:

- a. Spring of 2001, unclassified CD ROM presentation to the air carriers and airports including Logan, Newark and Dulles, concerning aviation security threats;¹
- b. Aviation Security Audits;
- c. Inspector General Audits of aviation security;
- d. Documents concerning the 9/11 Commission including all FAA written or oral testimony to the 9/11 Commission regarding Aviation Security and threats to civil aviation foreign and domestic;
- e. All unclassified briefings prepared by Patrick McDonnell to the airlines concerning possible or potential threats to security;²
- f. Copies of three intelligence assessments authored by Matthew Kormann in the late 1990's that were declassified for use in the Moussaoui case;³
- g. Robert White's security briefing conducted at the headquarters of the Air Transportation Assoc. headquarters in 1998;⁴

¹ 9/11 Commission Staff Monograph on Aviation Security.

² Testimony of Mr. McDonnell, p. 102 ln. 5-11, March 14, 2006. These briefings should be produced even if the government has attempted retroactively to classify them under some mosaic theory. The Court has rejected retroactive classifications of materials.

³ Testimony of Mr. Kormann, p. 115 ln 5-9, March 14, 2006.

⁴ Testimony of Robert White, p. 156 ln 1 – 157 ln 22, March 14, 2006.

- h. Harry Samit's briefing or notes about his briefing to an FAA investigator in Minneapolis. In addition, please provide the August 31, 2001 Letterhead Memorandum "LHM" about a possible plot to hijack civilian aircraft;
- i. All briefings, reports or notes of meetings or interviews by Harry Samit of the FBI.

9. Copies of all Security Directives, Information Circulars and Civil Aviation

Security Intelligence published assessments prepared by the FAA, TSA or Homeland

Security and distributed to the Airlines, Airport Operators and/or Aviation Security

Screening companies including but, not limited to:

- a. All Aviation Information Circulars and Security Directives issued in 2001;
- b. September 1998 Assessment "UBL/WIF Threat to Civil Aviation;
- c. August 1999 Intelligence Note "UBL/WIF Hijacking Threat;
- d. February 2000 Assessment "Prospects for Another Sustained Hijacking to Free Incarcerated Terrorists;"
- e. Exhibit ST-3 – February 6, 2001, Senior Executive Intelligence Brief (SEIB) re threat of Sunni extremist terrorist attacks against U.S. facilities represented the most significant spike in threat reporting concerning this group since the time of the millennium;
- d. On May 23, 2001, a SEIB re release of prisoners including Sheikh Omar Abdel Rahman saying operatives might opt to hijack an aircraft or storm a U.S. embassy abroad;
- e. May 26, 2001, SEIB said threat reports surged in June and July of 2001 reaching an even higher peak of urgency; attack on the G-8 summit in Genoa;
- f. June 12, 2001 SEIB – CIB report re KSM recruiting people to travel to US to meet with colleagues there so they might conduct terrorist attacks on UBL's behalf;
- g. In late June of 2001, CIA terrorist threat advisory indicated a high probability of near-term 'spectacular' terrorist attacks resulting in numerous casualties;
- h. June 25, 2001, SEIB titled "Bin Laden and Associates Meeting Near-Term Threats" – reported multiple attacks being planned by UBL including 'severe blow' against U.S.;
- i. End of June 2001, AQ intelligence report warned that something 'very, very, very, very big was about to happen;
- j. June 30, 2001, SEIB titled 'Bin Laden Planning High-Profile attacks' reported UBL operatives expected near-term attacks to have dramatic consequences of catastrophic proportions;
- k. "The intelligence reporting at the end of June consistently described the upcoming attacks as occurring on a calamitous level, indicating that they

would cause the world to be in turmoil and that they would consist possibly of multiple – but not necessarily simultaneous – attacks.

10. All documents concerning security level alerts and how airlines were informed of such alerts.

11. All documents concerning aviation security including, but not limited to, the following:

- a. All documents concerning CAPPS;
- b. All documents concerning the Checkpoint Operations Guide “COG;”
- c. All documents concerning approved security programs “ACSSP;”
- d. All documents concerning the fact that the FAA set the minimum security standards and the airlines were free to increase security beyond the base-line standards set by the government;
- e. Appropriate method to x-ray carry-on luggage and passengers;
- f. All documents concerning pre-boarding screening procedures and guidelines applicable to the pre-boarding activities of the flights hijacked on September 11th;
- g. All documents concerning interviews of airline, airport operators and security screening employees related to the September 11th attacks;
- h. All audits, investigations, studies and reports concerning aviation security;
- i. Cockpit door reinforcements or changing the locks on the cockpit doors;
- j. Prevention of weapons or materials that could be used as weapons onto an aircraft;
- k. Calibration of magnetometers;
- l. Creation, Implementation and dissemination of Aviation Emergency Amendments, Security Directives and all other warnings given to the airlines, airport operators, and aviation security screeners;
- m. Airline complaints concerning the costs of implementing security improvements and security directives.

12. Copies of all documents collected by the 9/11 Commission and Joint Congressional Inquiry Into the September 11th Attacks which were produced to Moussaoui or his counsel. Such documents shall include but, shall not be limited to, those documents produced from citations in the 9/11 Commission Staff Monographs Number 3 and 4 and the Revised Aviation Monograph released on August 26, 2004.

13. Copies of all interviews, testimony, notes, e-mails concerning the following listed individuals. Such materials should include but, shall not be limited to any testimony provided to the 9/11 Commission and the Joint Congressional Inquiry Into the September 11th Attacks which were produced to defense counsel or Mr. Moussaoui.

The individuals include:

- a. Claudio Manno, Deputy Asst. Administrator for Security and Hazardous Materials at the FAA;
- b. Lynne Osmus, Assistant Administrator for Security and Hazardous Materials at the FAA;
- c. Larry Wansley, former Director of Corp. Security for American Airlines;
- d. Ed Soliday, former Vice President of Corporate Safety, Security and Quality Assurance for United Airlines;
- e. Cathal Flynn, Associate Administrator for Civil Aviation Security for the FAA from 1993-2000;
- f. Patrick McDonnell, Director of Intelligence for the FAA until August 2001;
- g. Matthew Kormann, Liaison Officer, Transportation Security Intelligence Service;
- h. Robert White, Manager of the Liaison Division at the Office of Intelligence at the TSA;
- i. John Howley, Intelligence Analyst at the TSA;
- j. Harry Samit, FBI;
- k. Carla Martin, TSA Lawyer;
- l. Any current or former employee of the airlines, airport operators or aviation security screening companies.

14. Copies of all videos and photographs produced to defendant and his counsel. These documents shall include and shall not be limited to the following:

- a. Complete copy of the Dulles security screening video on the morning of September 11th and all slides or stills from the video;
- b. Copies of all security screening videos from any airport or photographs from any airport;
- c. Complete copy of the Flight 93 cockpit voice recorder audiotape.

15. All documents concerning warnings or threat assessments to hijack or attack civil aviation. *See*, Order of Judge Brinkema dated January 24, 2006; Docket

Number 1477. Such records shall include:

- a. All documents concerning Niaz Khan or the April 2000 walk-in to the FBI Newark office as described in the Joint Congressional Inquiry Into the September 11th attacks on p. 211;⁵
- b. All materials related to the Air France Hijacking in 1993;
- c. All materials related to the Bojinka plan by Ramzi Yousef to simultaneously explode 12 American flagship carriers over the Pacific Ocean and the back-up plot to intentionally crash a plane into the CIA headquarters;
- d. All documents concerning the Indian Airlines Flight 814 hijacking in December 1999;
- e. All Nippon Airways (ANA) hijacking on January 20, 1997;
- f. Federal Express hijacking on April 7, 1994;
- g. November, 1998, Kurdish plot to attack Ataturk Tomb.

16. All documents concerning the travel and activities of the September 11th hijackers, Ramzi Binalshibh, Khalid Sheik Mohammed, Zacarias Moussaoui and Zakariya Essabar from 1990 through September 11th 2001. Such documents shall include the following:

- a. All e-mails sent and/or received by any of the September 11th hijackers;
- b. All banking documents, wire transfer records, Western Union records, UPS records and/or any other documents describing how the hijackers received or transferred funds;
- c. All interactions between the hijackers and Imams at various mosques and/or with employees of the Saudi Embassy and or any charitable organizations or NGOs;
- d. All telephone and cell phone records including any assessments as to the identity of any of the numbers called or the numbers from which calls were placed;
- e. All travel receipts and timelines depicting the locations of the persons identified above at various times from 1990 through September 2001;
- f. A description, photographs and receipts of all weapons purchased by the 9/11 hijackers to conduct their operations. Such items shall

⁵ *See also*, Motion filed by Zacarias Moussaoui "9/11 WTC Strike!!!" filed on August 20, 2003; Docket No. 1027

- include all knives, utility tools, pepper spray, mace, razor blades, wires, guns or any other potential weapons that may have been used to hijack the airplanes on the morning of September 11th.
- g. Any and all reports cables, slides, talking points, memoranda or other documents discussing the September 11th hijackers and persons listed above;
- h. All employment documents whether accurate or not;
- i. All hard drives from computers;
- j. Post Office Box information.

17. Electronic and searchable copies of all FBI 302's produced to the defendant. Mr. Spencer last stated that 160,000 302's had been produced to defendant and his counsel.⁶ Such materials shall include information on Jamal Al Fadl and Abdul Hakim Murad.

18. Any and all documents concerning how the terrorist hijackings were conducted on the morning of September 11th. These documents shall include but shall not be limited to:

- a. The method of seizing control of the aircraft;
- b. All information concerning knowledge by the passengers on board that the planes may be crashed into buildings;
- c. All reports describing the flight patterns or paths of the hijacked aircraft including altitudes, speeds and maneuvers;
- d. The means by which the hijackers passed through security screening at the various airports;
- e. All documents provided by the airlines, security screening companies and airport operators to the government which were produced to Moussaoui and/or his counsel.

19. Notes of all meetings or interviews conducted with any current or former employee of any of the airlines, security screening companies and airport operators or their lawyers concerning the September 11th attacks, security screening procedures, threat assessments, security directives, information circulars or any other subjects related to the Moussaoui case.

⁶ See Transcript of Hearing on April 7, 2006, p. See also. Docket Entry 339.

20. All documents concerning the following listed individuals that were produced to Mr. Moussaoui or his counsel. Such items shall include all reports, notes, confessions, interrogations, interviews, subpoenas, warrants and supporting affidavits concerning the following individuals:

- a. Jamal Al Fadl
- b. Ramzi Binalshibh
- c. Khalid Sheik Mohammed
- d. Ramzi Yousef
- e. Abdul Hakim Murad
- f. Khallad
- g. Riduan Isamuddin (a/k/a Hambali)
- h. Mustafa Ahmed al-Hawsawi
- i. Ahad Sabet
- j. Yazid Sufaat
- k. Abu Zabaydah
- l. Mohamed bin Moisaalih
- m. Mohammed Manea Ahmad al-Qahtani
- n. Faiz Abu Baker Bafana
- o. Sheik Salman al-Ouda
- p. Sheik Safar al-Hawali
- q. Saleh al-Hussayen
- r. Sulaiman Abu Ghaith
- s. Essam Aranout
- t. Adel Bateerjee
- u. Mohammed Hayder Zammar
- v. Richard Reid
- w. Any person held as a material witness in connection with the September 11th attacks.

21. Documents concerning information about all persons the government contends are members of the September 11th conspiracy alleged in the indictment of Zacarias Moussaoui. Such materials shall include information which reflects all meetings, communications, or activities participated in by these alleged co-conspirators including electronic intercepts of conversations among alleged co-conspirators.

22. Any and all materials produced under agreement with any foreign government, including but not limited to, a French dossier on Moussaoui's upbringing in Southern France and later contacts with Islamic radicals.