

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

Alexandria Division

UNITED STATES OF AMERICA)
)
) Criminal No. 01-455-A
)
)
v.)
)
ZACARIAS MOUSSAOUI,)
)
Defendant)

GOVERNMENT’S MOTION FOR PROTECTIVE ORDER REGARDING
COCKPIT VOICE RECORDERS PURSUANT TO 49 U.S.C. § 1154

The United States respectfully requests the Court to enter a protective order pursuant to 49 U.S.C. § 1154 regarding any Cockpit Voice Recorders (CVR) played at trial in this case.

During trial, the Government intends to introduce into evidence and play the CVRs for Flight 93 and ExecuJet 956, which tracked Flight 93 for a substantial period of time on September 11, 2001.¹ The CVRs will provide valuable information to the jury about the events that occurred on Flight 93. Cf. McCoy v. Southwest Airlines Company, Inc., __ F.R.D. __, 2002 WL 1400955 at *2 (C.D. Ca. June 19, 2002) (describing the importance of the CVR in an air crash investigation). A copy of the tapes and transcripts for both CVRs have been provided to the defendant and standby counsel in discovery.

The use of CVRs during judicial proceedings is strictly controlled by 49 U.S.C. § 1154(a)(4), which provides:

¹The CVRs for Flights 11, 175, and 77 were destroyed, so they will not be played at trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording, the court shall issue a protective order –

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

Although there is little case law discussing this statute, a recent decision in the Western District of Pennsylvania in US Airways, Inc. v. Parker-Hannifin Corp., C.A. No. 99-CV-917 (W.D. Pa.) (June 19, 2002 Order granting WTAE-TV's Petition to Intervene and Motion for Access to Judicial Record) provides guidance. During the US Airways litigation, the CVR recording was played in open court as part of an aircraft animation, and the Court, consistent with § 1154(a)(4)(B), placed the CVR audio under seal. The Court granted WTAE-TV access to a videotape of the animation with the CVR audio redacted.²

Accordingly, the Government respectfully requests the Court to enter a protective order sealing the tapes and transcripts for both CVRs from the public. Such an order will ensure compliance with 49 U.S.C. § 1154.

²A copy of the order in US Airways is attached as Exhibit A.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on the 8th day of August, 2002, a copy of the Government's Motion was provided to defendant Zacarias Moussaoui through the U.S.

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