

**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 2 11 2001



AFFIDAVIT OF DAVID E. MCCRAW

DAVID E. MCCRAW, being duly sworn, does depose and say:

1. I am Counsel for The New York Times Company (“The Times”), the publisher of The New York Times. I make this affidavit upon my own knowledge and in support of Movant-Intervenor’s Motion for Clarification or Modification of Protective Order.

2. Over the past year, The Times has published a series of in-depth stories analyzing the operations of the New York Fire Department, the New York Police Department, the Police Department of the Port Authority of New York and New Jersey (the “Port Authority”), and other emergency agencies at the scene of the World Trade Center on September 11, 2001. Those articles have raised troubling questions about whether confusion and communication failures within and between the agencies needlessly caused the deaths of scores of emergency workers that day.

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3. As part of its research for these stories, The Times on March 26, 2002 requested that the Port Authority release the following items: (1) tapes and transcripts of all radio transmissions from Port Authority staff and police officers from 8:45 a.m. to noon on September 11; (2) written reports by the Port Authority about September 11; and (3) daily reports by the Port Authority police concerning the recovery operations at the World Trade Center. A copy of The Times's letter to the Port Authority is attached as Exhibit A hereto.

4. Subsequently, The Times learned that the Port Authority had recovered a tape of New York Fire Department radio transmissions (the "FDNY Tape") from September 11 in the wreckage of 5 World Trade Center. The Times requested the FDNY Tape from the Port Authority. (The items requested on March 26, along with the FDNY Tape, are collectively referred to herein as the "Requested Materials.")

5. The Port Authority is a public entity jointly created by the States of New Jersey and New York. Because the freedom-of-information statutes in the two states vary, the Port Authority adopted a separate Freedom of Information Policy and Procedure (the "FOIL Policy") based on the two statutes to facilitate orderly disclosure of information by the agency. A copy of the FOIL Policy is attached as Exhibit B hereto.

6. In response to the requests by The Times, the Port Authority refused to release the Requested Materials and subsequently affirmed that denial when The Times appealed to the Port Authority's General Counsel, Jeffrey S. Green. By letter dated June 7, 2002, Mr. Green advised The Times that copies of the Requested Materials had been provided to the prosecution in this case. Mr. Green concluded that the Requested Materials "are under protective order . . . and not releasable by rule of court." Mr. Green enclosed an e-mail from David Novak, Assistant United

States Attorney, in support of the denial. A copy of the letter from Mr. Green to The Times, with the e-mail from Mr. Novak, is attached as Exhibit C hereto.

7. I later spoke to Mr. Green by phone about the requests. He told me that the FDNY Tape was being withheld solely on the basis of the Order in this action and would be released if this Court permitted it. He said the Port Authority had not yet resolved whether other materials would be released if the Court ruled that the Requested Materials were not subject to the protective order that is at issue on this motion.



David E. McCraw

Sworn to before me on this
23rd day of September, 2002



Notary Public

ROSIE CUBERO
Notary Public, State of New York
No. 31-5005508
Qualified in New York County
Commission Expires Dec. 7, 2002