

~~TOP SECRET//HUMINT//ORCON//NOFORN//MR~~

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U.S. Department of Justice

United States Attorney
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December 18, 2007

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US Court of Appeals
4th Circuit

Hon. Karen J. Williams, Chief Judge
United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

Hand-delivered via Court Security Officer

Re: United States v. Zacarias Moussaoui
Fourth Circuit Docket No. 06-4494
District Court Case No. 01-455-A

Dear Chief Judge Williams:

We write to provide further information regarding our investigation into recordings of relevant enemy combatants, as we indicated in our letter dated December 12, 2007, and in our Response to Appellant's Motion for a Limited Remand ("Response").

In the Response, we told the Court that we learned that one videotape was made in [REDACTED] See Response, at 16. We have been investigating this matter, but have so far been unable to locate a videotape from [REDACTED] or even confirm that it still exists. We continue to pursue the matter.

Our investigation has revealed, however, [REDACTED]

We also reviewed a transcript of an English translation of the interrogation. [REDACTED]

[REDACTED] but these statements are entirely consistent with the substitution

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for [REDACTED] We attach for the Court's *ex parte* review copies of both the transcript of [REDACTED] interrogation, and the [REDACTED] substitution.²

On a separate note, regarding the prosecution team's lack of awareness of videotapes before September 13, 2007, *see* Response, at 16 n.10, it appears that a former prosecutor in this case, Robert A. Spencer, may have been told in late February or early March 2006 about videotapes of Abu Zubaydah's interrogations and their destruction. Mr. Spencer, who was one of three AUSAs constituting the prosecution team in March 2006, does not recall being told this information, but another Eastern District of Virginia AUSA, who was not on the prosecution team, recalls telling him on one occasion. The other AUSA, who learned about the videotaping of Zubaydah in connection with work he performed on a Department of Justice project unrelated to the Moussaoui case, recalls bringing the matter to Mr. Spencer's attention in Mr. Spencer's capacity as Chief of the Criminal Division, not because of any issue of which the AUSA was aware in the Moussaoui case.

The Government will promptly apprise the Court of any further developments.

Sincerely,

Chuck Rosenberg
United States Attorney

By:



David J. Novak
David Raskin
Assistant United States Attorneys

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¹ Moussaoui did not seek access to [REDACTED] until May 17, 2005 — after he had pleaded guilty — for the purpose of using him as a defense witness. The District Court resolved the motion, as it had with the other enemy combatant witnesses, by ordering the Government to offer a substitution for [REDACTED] testimony.

² We have provided defense counsel with a copy of this letter and the [REDACTED] substitution, but not the transcript.

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cc: Justin Antonipillai, Esq.
Barbara Hartung, Esq.
Appellate Counsel for Zacarias Moussaoui
(without transcript)

Hon. Leonie M. Brinkema
United States District Judge
Eastern District of Virginia

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