



U.S. Department of Justice

United States Attorney
Eastern District of New York

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July 19, 2007

The Honorable Raymond J. Dearie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Soordhe D.
s/ Judge Raymond J. Dearie
U.S. District Court
7/19/07

Re: United States v. Amr I. Elgindy, et al.
Criminal Docket No. 02 CR 589 (S-2) (RJD)

Dear Chief Judge Dearie:

The government respectfully submits this letter to request that the court unseal various pages of the trial transcript as well as the transcript of an oral argument that took place on September 15, 2004, all of which are attached hereto. I have also attached a chart referencing the trial transcript pages for which we are requesting unsealing. The government has referenced these pages in its appellate brief, due in the in the Court of Appeals for the Second Circuit on July 20, 2007. I apologize for the tardiness of this request.

Respectfully yours,

ROSLYNN R. MAUSKOPF
United States Attorney

By: *[Signature]*
John A. Nathanson
Assistant U.S. Attorney
(718) 254-7492

cc: Clerk of the Court (RJD) (ECF) (w/o enclosure)
Joshua Dratel, Esq. (w/o enclosure)

DATE	TRIAL TRANSCRIPT PAGES
November 8, 2004	778-787
November 17, 2004	2153-2155
November 29, 2004	2894-2896
December 8, 2004	4333-4337
December 9, 2004	4599-4607

UNITED STATES DISTRICT COURT
EASTERN DISTRICT/ OF NEW YORK

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2		:	
3	UNITED STATES OF AMERICA,	:	CR-02-824
4		:	
5	v.	:	U.S. Courthouse
6		:	Brooklyn, New York
7	ELGINDY, et al.,	:	
8		:	
9	Defendants.	:	TRANSCRIPT OF
10		:	TELEPHONE CONFERENCE
11		:	September 15, 2004
12		:	11:10 a.m.

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SEALED TRANSCRIPT

BEFORE:

HONORABLE RAYMOND J. DEARIE, U.S.D.J.

APPEARANCES:

For the Government:

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Brooklyn, New York 11201

BY: KENNETH M. BREEN,
SETH LEVINE,
Assistant U.S. Attorneys
VALERIE SZCZEPANIK, ESQ.

For the Defendants:

Elgindy - BARRY BERKE, ESQ.
ERIC TIRSCHWELL, ESQ.

Royer - LARRY GERZOG, ESQ.
ILISSA BROWNSTEIN, ESQ.

Daws - BENJAMIN JAMES, ESQ.

Court Reporter: Mickey Brymer, RPR
Official Court Reporter
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201
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Proceedings recorded by mechanical stenography.
Transcript produced by Computer-Assisted Transcription.

- SEALED TRANSCRIPT -

1 THE COURT: Good morning. Could you one by one just
2 for the reporter give us your names.

3 MR. BREEN: Ken Breen, Seth Levine and Valerie
4 Szczepanik on behalf of the government.

5 MR. BERKE: Barry Berke, Eric Tirschwell of Kramer
6 Levin on behalf of Amr I. Elgindy.

7 MR. GERZOG: Lawrence Gerzog on behalf of Jeff Royer
8 and Ilissa Brownstein.

9 THE COURT: Is Jim Benjamin around?

10 MR. BENJAMIN: Yes, your Honor, on behalf of Mr. Daws
11 with my colleagues Richard Tabel and Pamela Gurley (phs).

12 THE COURT: Look, the reason I'm calling has to do
13 with the 403 issue. I know some of you are going to be taking
14 off early. I promised you some sort of reaction, that's why
15 I'm calling, not to engage in further argument, but to let you
16 know where I am on it.

17 As often as I read these papers, I keep asking myself
18 the same questions. We don't have to debate the law. It is
19 quite clear. I'm obligated to balance the obvious prejudice
20 of information of this sort against its probative value.

21 I look at the submissions, particularly the
22 government's submission, and I really find it very difficult
23 to measure the probative value. Let me explain to you by way
24 of example how and why.

25 The government alludes somewhat consistently to the

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1 notion of preparations for flight as evidence of obstructive
2 behavior. As I've told you in the past, I have some real
3 doubt -- I have some real questions in my mind about the
4 obstruction case, generally, but I never understood that the
5 obstruction was limited to matters relating solely to the more
6 sensitive portions of the investigation, but to the
7 investigation as a whole, including, of course, examining the
8 suspect trades and so forth. So, I can't assess what the
9 probative value is here because I don't know what other
10 evidence either through Mr. Cleveland or from whatever other
11 source is going to be provided to demonstrate that information
12 from these sensitive files was shared by Mr. Royer with
13 Elgindy, Cleveland, etcetera, etcetera.

14 If, for example, this was a regular occurrence and
15 Royer and then after Royer what's her name, I've forgotten her
16 name?

17 UNIDENTIFIED SPEAKER: Wingate.

18 THE COURT: Yes. -- Ms. Wingate was giving
19 essentially daily or regular briefings about the progress of
20 the overall investigation, meaning the more sensitive aspects
21 as well as the securities aspects of it, then the question
22 might be asked, well, if you've got plenty of evidence to the
23 effect that this is being shared with Elgindy, why do you have
24 to get into the more sensitive aspects and the probative value
25 of it becomes less and less.

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1 UNIDENTIFIED SPEAKER: Your Honor --

2 THE COURT: Hold on a second. I will not get into
3 debates. I will speak to you and you can react in whatever
4 way you want in writing.

5 On the other hand, darn these motions in limine,
6 because I can imagine all sorts of things happening that might
7 tip the balance in favor of admitting this evidence.

8 For example, if the defense were to take the view,
9 particularly Mr. Elgindy, that the information that he
10 developed concerning these companies was the product of his
11 extended and clever and resourceful research and not the
12 result of information gleaned from FBI files and NYSIDs, and
13 real question developed as a matter of fact whether or not
14 these materials were accessed, putting aside the legal issue
15 as to whether or not they are non public, then, clearly, the
16 government might -- I have the impression one of the reasons
17 why the government is suggesting this evidence is because the
18 reference of Elgindy to the effect post arrest that he doesn't
19 contribute to certain charities, make clear inferentially that
20 information concerning that very subject found in the FBI
21 files was in fact relayed to Elgindy.

22 So, it is impossible for me to do a responsible job
23 vis-a-vis 403, as desirable as it is, particularly in an issue
24 as sensitive as this is without knowing more about what you
25 have to prove beyond the 9-11 aspects, obstruction and the

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1 sharing of information between Royer, Wingate and
2 Mr. Elgindy. It is impossible. We've got highly prejudicial
3 information potentially, in my view, although the government
4 stresses they're proceeding as modestly as it possibly can
5 given its own sensitivity to, you know, in for a penny, in for
6 a pound. That's how sensitive this is. So, I need to know
7 more about the probative side of it. If you've got a lot of
8 evidence suggesting that Royer and Wingate were regularly
9 sharing the progress of this securities related phase of the
10 investigation with Elgindy and if the defense isn't going to
11 make a big deal, argue that it came from their legitimate
12 research and not the FBI files, then I think you've got a
13 real, real problem in terms of getting this stuff in. I think
14 it becomes easy.

15 On the other hand, if the tactic of the defense is
16 different, then it becomes more probative, and whether or not
17 it comes in or not depends upon what other evidence you may
18 have to show this sort of access.

19 Am I crazy?

20 MR. BREEN: Your Honor, no. We hear the Court and we
21 can make a submission. We can detail. I can do it now, but I
22 understand you want it in writing.

23 THE COURT: I want you to give me a letter and I want
24 to hear from the other side, because I cannot balance these
25 scales based upon the information I have now. The only thing

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1 you allude to consistently, I will admit, is his preparations
2 for flight. Whether that constitutes an endeavor, by the way,
3 for the obstruction statute is something we can argue about,
4 but I need to know more about it. I had assumed, albeit
5 mistakenly because the indictment certainly accommodates your
6 theory, that the obstruction was essentially and primarily
7 limited to the securities investigation. If I'm mistaken --
8 apparently I am mistaken, because your theory is it includes
9 the overall investigation. So, I need to know more before I
10 can give you a red light or green light. Actually, it is
11 before I can give you a green light, because as of now you
12 have a red light.

13 MR. BREEN: Your Honor, we will present information
14 showing that essentially most of the evidence that is on the
15 obstruction, the information communicated did involve the
16 sensitive aspects of it with Royer, because the investigation
17 didn't progress to the point of looking at specific
18 transactions until Royer already left the FBI.

19 THE COURT: You see, I don't know this. You know,
20 unless you put it in there and I've missed it, I don't know
21 this. If you need in limine ruling from me and I realize
22 everybody wants it for good reason and understandably, I need
23 to put myself, if you will, in a position I would be in as a
24 trial judge when called upon midstream to make this kind of a
25 ruling. It really does implicate the fabric of the evidence

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1 which I haven't heard a word other than reading your briefs.

2 MR. BERKE: Barry Berke. Judge, if I could? I
3 understood your broader question. Clearly, as we understand
4 it, the government is intending to present substantial
5 evidence that Mr. Royer accessed confidential information
6 regarding companies involved in the securities -- some of the
7 41 companies that are part of the securities manipulation and
8 insider trading charge and that evidence will be presented
9 that that information was shared with others, including our
10 client Mr. Elgindy.

11 THE COURT: There is the problem for the defense,
12 because that kind of information one could argue, indeed,
13 evidence could be developed through legitimate investigation.
14 If the point of the matter is that that's not what happened
15 here, FBI -- confidential FBI files were accessed and the only
16 hard proof of that is the more sensitive part of the
17 investigation, you know, then it presents a problem.

18 MR. BENJAMIN: Judge, may I be heard briefly? It is
19 Jim Benjamin.

20 Speaking, obviously, only for Mr. Daws, I don't
21 believe there will be any serious issue at trial about the
22 fact that Mr. Royer accessed the file, the FBI files, and that
23 on a number of occasions that the information that he found
24 was in fact passed directly or indirectly to Mr. Elgindy, and,
25 then, in some cases directly or indirectly to others,

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1 including Mr. Daws. There's no question that happened. It is
2 just voluminous evidence in discovery.

3 The issue at the trial, I believe, with respect to
4 Mr. Daws is whether that was done by Mr. Royer for an improper
5 purpose, for a corrupt motive which was necessary for the
6 government to demonstrate to make out its claim of insider
7 trading securities fraud, that Mr. Royer did it improperly,
8 for a personal benefit, or, alternatively, whether Mr. Royer
9 did it in good faith for legitimate decision.

10 THE COURT: I understand.

11 MR. BENJAMIN: I think it will be not that the
12 information was shared, which it clearly was, but what the
13 motive was.

14 THE COURT: Well, there you go.

15 MR. GERZOG: Larry Gerzog, Judge, on behalf of
16 Mr. Royer.

17 Mr. Benjamin has certainly stated our anticipated
18 defense correctly.

19 THE COURT: Okay. Well, then, Mr. Berke rings in
20 silence.

21 MR. BERKE: No, your Honor. My silence is only
22 because Mr. Benjamin said it so well. I didn't want to take
23 away from it. That is exactly our position.

24 MR. LEVINE: Your Honor, Seth Levine. If I can just
25 ask in light of the defense's statements one clarification

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1 about the Court's thoughts?

2 THE COURT: Yes.

3 MR. LEVINE: That is that one of the issues we have
4 raised in our papers, your Honor, is this issue about whether
5 or not Mr. Royer or Mr. Elgindy were going to be continuing to
6 assert that their actions vis-a-vis acting for the government
7 were appropriate and if, if so, in order to put in context
8 those actions, that to test their state of mind, the fact
9 there was an investigation over matters other than the
10 securities issues and that Mr. Royer --

11 THE COURT: Mr. Levine, I understand you completely.
12 If you think my comments are directed exclusively at the
13 government, you're mistaken. Perhaps I should have made that
14 clear. This is a dynamic. I don't know. I mean, I've gotten
15 some insight now from Mr. Benjamin and his colleagues, but,
16 sure, if the issue is corrupt purpose, then you may argue as
17 you're just about to, that the sharing of certain information
18 clearly could not have been for legitimate purposes.

19 You see, that's exactly my problem. You guys know
20 the case, you know where you're going with it. I am given
21 abstract legal principles we all could agree on, but very
22 little else, and I've got to simply know more if you're going
23 to want a ruling in advance of trial.

24 MR. LEVINE: Thank you, your Honor.

25 THE COURT: I wish you all, for those of you

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1 celebrating, a happy new year and we will talk some more.

2 MR. BREEN: Your Honor, may I raise one other brief
3 issue with respect to the chat log objections? The Court had
4 indicated previously that today was the deadline for
5 submitting to the Court any unresolved chat log objections.

6 THE COURT: Right.

7 MR. BREEN: Unfortunately, Judge, we are still very
8 much in the middle of our efforts to try to work out what we
9 can with the government. In fact, we're hoping to receive
10 today from the government their response.

11 THE COURT: What is your request?

12 MR. BREEN: We would ask for another week to try to
13 work that out before we make our submission to the Court.

14 THE COURT: Any dissent?

15 MR. BENJAMIN: No, your Honor. We appreciate the
16 opportunity to resolve this among ourselves.

17 THE COURT: Granted. Good-bye. Thank you.

18 (Proceedings concluded.)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR-02-589(S-2) (RJD)

-against- : U.S. Courthouse

: Brooklyn, New York

AMR ELGINDY and :
JEFFREY ROYER, :

Defendants. : TRANSCRIPT OF TRIAL

: November 8, 2004

----- X 9:30 a.m.

BEFORE:

HONORABLE RAYMOND J. DEARIE, U.S.D.J.
And a jury

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ERIN WALTER, ESQ.
JOEL ISAACSON, ESQ.

Royer:

LAWRENCE GERZOG, ESQ.
ILISSA BROWNSTEIN, ESQ.

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Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcript.

1 meaning, I think it is more accurate and I think it may just
2 be a lawyer's point but we think it is important.

3 MR. BERKE: I guess there may be some
4 misunderstanding. I didn't understand Your Honor to rule that
5 any of that evidence is coming in. As I understood, and maybe
6 I didn't understand, and I guess that's one of the things we
7 need to clarify, you've overruled our objections, that the
8 fact that there was some investigation comes in, but what the
9 government is talking about are this laundry list of things.

10 THE COURT: We'll get to that.

11 MR. BERKE: They argued in their brief --

12 THE COURT: The letter of September 24th where they
13 outline it.

14 MR. BERKE: If I could be clear, the reason they
15 offer that is to show the consistency between what Derrick
16 Cleveland says about this information and what is in the FBI
17 database. Neither Mr. Royer nor us is disputing whether
18 Mr. Royer in fact told Mr. Cleveland about that, there's no
19 dispute. So, the government's argument as to why they need to
20 introduce all that extraordinarily inflammatory and
21 prejudicial information for which we have obviously, as you
22 know from our briefs, evidence to show it is untrue and to
23 raise those issues of a trial within a trial --

24 THE COURT: Let me interrupt you and put it in
25 context. The government outlined in specific, as I requested

1 them to do, in their letter of September 24th what it is
2 precisely that they anticipate Mr. Cleveland is capable and
3 they anticipate would, if permitted, testify to and it appears
4 on page 18 of that letter, there are eight numbered items. I
5 have a problem with a couple of them. For example, item three
6 reads: The FBI was looking into whether Elgindy had a brother
7 who worked at the Pentagon and left just prior to the attack
8 there.

9 Now, I know the FBI was looking into it but, as I
10 understand it as well, there's absolutely no proof of that and
11 it adds nothing. It adds nothing. The fact -- the critical
12 fact here is that there was an investigation; according to the
13 government's evidence, that the news of that investigation was
14 shared by Royer with Cleveland and a little bit of it with
15 Elgindy. That's the important point.

16 The other thing on paragraph four reads: Elgindy
17 had given money to Middle Eastern charities with ties to Al
18 Qaeda. That last phrase, out, out. No reference to Al
19 Qaeda, we don't need it. The question is there was an
20 investigation, information was relayed to Cleveland.

21 And then, finally, a member of Elgindy's wife's
22 family had reported that Elgindy might have ties to terrorism.
23 I mean, first of all, the quality of that information, in my
24 view, falls on the far side of Rule 403 and, again, it is
25 unnecessary.

1 MR. LEVINE: Can I just -- I understand the Court's
2 403 analysis but just to preview for the Court, we do mention
3 it in the letter one; of the things that we're going to show,
4 Judge, not with this witness but with a witness to come soon
5 is the searches that Royer was running, for example, on the
6 same day he's running -- Mr. Royer is running names, he runs
7 the name of this woman, I know he does it once, he may do it
8 more than once. So, the importance of it is not necessarily
9 that she is reporting a host of things about Mr. Elgindy,
10 including her belief he is a terrorist, he does some other
11 very nasty things, but it is to show that Mr. Royer is looking
12 at this and searching for it and so it may well be the Court
13 probably says I'm not going to let you get into the substance
14 of what was said --

15 THE COURT: That's right.

16 MR. LEVINE -- but the fact of the searches and who
17 that person is and why.

18 THE COURT: If it matters, if it matters, we'll
19 cross that bridge when we get to that witness. I want it
20 clear I don't want any reference to Al Qaeda, I don't want
21 any reference to the Pentagon business and I don't want any
22 reference to Elgindy's wife's family, the rest of it.

23 MR. LEVINE: When you say Elgindy's wife's family,
24 the evidence is going to be that the investigation when it
25 began had two or three critical pieces of information, one of

1 them was the Smith Barney trader who said --

2 THE COURT: I haven't ruled that out of bounds.

3 MR. LEVINE: The second is the family member of
4 Mrs. Elgindy who calls in and gives a very specific report
5 about Mr. Elgindy, her belief in his ties and other activities
6 and Mr. Royer runs that name specifically. So, I understand
7 the Court's concern about not having other people dragged into
8 this but that fact and what's being reported is an important
9 fact in the calculus that we believe these defendants are
10 taking in investigating what in making their decisions on how
11 to react.

12 THE COURT: As I said, the fact that he may have run
13 a name that was associated in the investigation of Mr. Elgindy
14 I think I can live with but the specifics of what she alleged
15 we don't need.

16 MR. LEVINE: Fair enough but if you're saying the
17 specifics we don't need, I would respectfully suggest that at
18 least the government be able to put in that a report was made
19 and that the report was relevant to the investigation. My
20 concern --

21 THE COURT: Are you talking about this witness'
22 testimony?

23 MR. LEVINE: No, sir.

24 THE COURT: Let's just deal with today, okay.

25 MR. LEVINE: Okay. I thought you were talking --

1 THE COURT: I'm concerned that this witness get his
2 marching orders before he gets on that witness stand. I don't
3 know how far into the morning you're going to be before this
4 subject matter surfaces.

5 MR. BREEN: It is actually relatively early, Your
6 Honor. That being said, I spent significant time over the
7 weekend trying to isolate the issues with specific questions.
8 I think with just a little bit of an additional discussion I
9 can -- but just so we're clear, Your Honor, the issues that we
10 think we'll raise with him now, given the judge's ruling, is
11 that, first, that there was a terrorism investigation, the
12 file had been opened; second, that there had been some
13 reports, specifically the reports from Mr. Liviakis and
14 Mr. Tyson, two people that are known to Mr. Elgindy, leaving
15 out the third person who made a report, the relative; in
16 addition, evidence that the investigation focused on
17 Mr. Elgindy's trading on September 10th which involved a
18 liquidation of these accounts and that there was a prediction
19 that was made about the market dropping to 3000.

20 THE COURT: Don't say prediction, just his trading
21 on September 10th. I'm walking a fine line here and I realize
22 I'm keeping you on a very short leash but that's the way I
23 want it done. If things evolve during cross-examination or
24 part of the defense case that changes that dynamic or that
25 equation, okay, I'll hear you but right now I don't want.

1 anything about predictions focused on trading patterns in
2 advance of September 11th, as I said here, that might suggest
3 that individuals had prior knowledge of the attacks.

4 MR. BREEN: The broker asked Mr. Elgindy why it was
5 that he wanted to liquidate the trust accounts.

6 THE COURT: I understand, I've read it a thousand
7 times.

8 MR. BREEN: I don't have to call it a prediction. I
9 can say did Mr. Royer say whether the broker asked why he was
10 going to do it, what was the answer, that the market was going
11 to drop to 3000.

12 THE COURT: No, I don't want it.

13 MR. BREEN: I just want to make sure I understood.

14 THE COURT: Let me get my signals straight here,
15 then you can tell me why I'm wrong.

16 MR. LEVINE: In terms of this line that we have --

17 THE COURT: I'm going to give it some thought. When
18 I come back I'm going to tell you what I'm going to do.

19 MR. LEVINE: Thank you, Judge.

20 MR. BERKE: Judge, I say this for the record, not
21 for you, just so there's never any misunderstanding; we object
22 to this as entirely prejudicial and unfairly prejudices
23 Mr. Elgindy's trial on the white collar charges. That
24 being --

25 THE COURT: Understood.

1 MR. BERKE: -- said, in light of Your Honor's
2 ruling, a couple of things, we obviously -- maybe not
3 obviously but we do object even to the evidence the government
4 wants to introduce on a couple of issues. I'd ask Your Honor
5 to consider a few -- to fine tune it a bit, your ruling. One
6 would be not to say liquidate, just get into selling, the
7 details are not important. We obviously have responses, we
8 don't credit the government's evidence. We think there's
9 evidence to the contrary. So, rather than create that issue
10 with liquidate, just say sell, sell stock.

11 THE COURT: This can't be a Paul Winchell, Edgar
12 Bergen, Charlie McCarthy routine. I can't stand up and
13 literally control every word the guy says.

14 MR. BERKE: I would not object if there was leading
15 in this area.

16 THE COURT: I think there's going to be leading of
17 necessity, right, Mr. Breen?

18 MR. BREEN: Yes, absolutely.

19 MR. BERKE: Judge, now turning to your instruction,
20 I appreciate the care and attention Your Honor has given this.

21 THE COURT: I should really put my eight drafts that
22 have gone from three pages to one paragraph.

23 MR. BERKE: I know. I fear, as I've said, I
24 believe, you know, that given the sensitivity of these
25 issues, the timing, when it is coming up, where we are, that

1 these are the most important sentences that you're going to be
2 hearing in this entire trial, I fear that they will try to
3 parse Your Honor's words to see if Your Honor is trying to
4 suggest something other than otherwise suggested in the
5 instruction. Given that there's more evidence, I ask that
6 Your Honor consider in the charge you are considering, a
7 couple of weeks ago were thinking out loud --

8 THE COURT: Especially when I think out loud.

9 MR. BERKE: Not at all, but Your Honor was
10 considering saying there was no basis to this. We would ask
11 Your Honor to say that to the jury.

12 THE COURT: I can't. I can't. I've gone as close
13 to saying that. I can't say there was no basis to it.
14 Neither one of us knows whether there was any basis to it.

15 MR. BERKE: Your Honor, the --

16 THE COURT: I'd like to.

17 MR. BERKE: I understand.

18 THE COURT: I don't think it is appropriate to
19 mislead them.

20 MR. BERKE: Your Honor, would you consider saying
21 there were never any charges filed?

22 THE COURT: I've said that.

23 MR. BERKE: Well, I wanted to make clear not just in
24 this case so they're not wondering whether there's charges in
25 any other case.

1 MR. BREEN: I don't know whether that would be
2 relevant.

3 THE COURT: Hold on a second.

4 (Pause.)

5 THE COURT: Okay.

6 MR. BERKE: Your Honor, one of the things you were
7 considering saying is that a lot of these investigations went
8 no where and this is one of them.

9 MR. LEVINE: We would beg to differ that it didn't
10 go anywhere.

11 THE COURT: I don't expect you to be satisfied with
12 this but I've gone as far as I can possibly go to take all the
13 controversy -- I, frankly, and this is all self-serving, I
14 don't have a record to protect, but I don't think it is going
15 to be as big a deal as you fear that it may be and I assume
16 that you genuinely feel that way.

17 One of the reasons why I decided to do it this way,
18 actually let some statement come in rather than begin the
19 morning, for example, with I anticipate later today you will
20 hear, because I didn't want to give it any prominence, I
21 wanted to make it an almost off the cuff, casual instruction
22 and to try to signal to them in the way I handle it as much as
23 what I say that this is not a big deal, do it in a manner that
24 is consistent with the evidence that I believe I'm going to
25 let in and no more in the hopes that we leave it at that.

1 I think I can give you this, no charges in this case
2 or any other.

3 MR. LEVINE: The one concern that I have, Judge, is
4 that if you start down that road, the question that may be on
5 the jurors' minds is whether or not the government somehow in
6 initiating this investigation on the subject was not behaving
7 in good faith.

8 THE COURT: Oh, well, then my job is easy if that
9 becomes the tact that the defense takes. In terms of the
10 9/11?

11 MR. LEVINE: Yes, sir.

12 THE COURT: That's why I said what I said when I
13 first came out.

14 MR. LEVINE: Because I think it might be proper to
15 say that even if you're going to say there were never any
16 charges brought, to say the government had a good and proper
17 reason to commence the investigation.

18 THE COURT: I'm not going to do that, as long as
19 there's no insinuation that you didn't and these lawyers are
20 savvy enough not to go down that road.

21 MR. GERZOG: Your Honor, I'm going to ask you to
22 keep that language that you had. The government's concern --
23 this language here, the government's concern that the
24 investigation isn't over or anything like that, this jury
25 doesn't have anything to do with that and your statement to

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, : CR-02-589
5 : (RJD)
6 -against- : United States Courthouse
7 AMR ELGINDY, and JEFFREY ROYER, : Brooklyn, New York
8 : November 17, 2004
9 Defendants. : 10:00 a.m.
10 -----X

11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE RAYMOND J. DEARIE
13 UNITED STATES DISTRICT COURT JUDGE, and a jury.

14 APPEARANCES:

15 For the Government: ROSLYNN MAUSKOPF, ESQ.
16 UNITED STATES ATTORNEY
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18 SETH LEVINE, AUSA
19 VALERIE SZCZEPANIK, AUSA
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24 ERIN WALTER, ESQ.
25 JOEL ISAACSON, ESQ.
For A. Elgindy

LAWRENCE GERZOG, ESQ.
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Proceedings recorded by mechanical stenography.
Transcript produced by CAT.

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1 THE COURT: To a certain extent, the level of
2 information shared between the two speaks to that
3 relationship.

4 MR. BERKE: Yes.

5 THE COURT: Nevertheless, other than allowing
6 the government to elicit from Mr. Cleveland Mr. Royer
7 shared specific details about it without identifying it,
8 I'm not going to allow any more at this point.

9 The other issue of interest is, of course, the
10 ultimate issue and who, if anyone, shared information with
11 Mr. Elgindy that may have motivated some of his actions
12 thereafter.

13 MR. BERKE: Right.

14 THE COURT: This does not really speak to the
15 question of whether or not Royer tells Cleveland that he
16 told Elgindy a little bit about it.

17 MR. LEVINE: Your Honor, the point you were
18 making before that last point was that there was not going
19 to be a challenge by the defense to the nature of the
20 investigation, or that it wasn't, in fact, a good faith
21 investigation, that it wasn't just some whim, I think as
22 the court said.

23 THE COURT: Sure.

24 MR. LEVINE: I don't know that we had a response
25 at and I think it's a very important point.

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1 THE COURT: We'll get a response to it.
2 They are not going to -- let's just get a
3 response to it.

4 MR. BERKE: Judge, two things.

5 We are not challenging that Agent Royer made
6 disclosures to Cleveland on the first point.

7 On this issue, we are not -- it was what it was.
8 We are not attacking the basis because we obviously
9 recognize your Honor's ruling.

10 We don't intend to do that.

11 THE COURT: That would be a total disaster
12 because if that were the case, that would open the door as
13 wide as one could open it.

14 MR. BERKE: I understand it, your Honor. All
15 right, your Honor.

16 Could I just read one issue which we may be at
17 sidebar. I was just handed this by exhibits of 302s, and
18 I know this issue's wide open for later.

19 But the only thing I wanted to say is in my
20 questioning about prior consistent statements, I tried to
21 be careful in asking about whether he said certain things
22 or didn't say certain things about events.

23 I never made a broad brush question about it,
24 you never raised these issues. I was always very specific
25 about the subject matter, which I believe is the way to do

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1 it.

2 And I believe that it does not open the door to
3 bringing in the whole 302s or the other statements because
4 I have never challenged that he has made these statements
5 before.

6 THE COURT: No question about it.

7 MR. BERKE: I say that because I don't know what
8 use it's going to be put in and I don't want to burden the
9 record.

10 MR. BREEN: I intend to ask him when he read the
11 chat logs and create the foundation.

12 And then we intend to call an FBI to testify
13 about the specific --

14 THE COURT: I think Mr. Berke is talking about
15 something else.

16 MR. BREEN: Oh.

17 THE COURT: If there is a prior consistent
18 statement in the 302 that you want to bring out because
19 there has been an insinuation, the whole thing doesn't
20 come in just because of one statement.

21 Right?

22 MR. BERKE: Right, Judge.

23 THE COURT: Let's go.

24 MR. BERKE: Judge, can we treat the last sidebar
25 we have been treating all the sidebars on this subject?

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, : CR-02-0589
5 : (RJD)
6 -against- : United States Courthouse
7 : Brooklyn, New York
8 AMR ELGINDY and JEFFREY ROYER, : November 29, 2004
9 : Defendants. : 10:00 a.m.
10 -----X

11
12 TRANSCRIPT OF TRIAL
13 BEFORE THE HONORABLE RAYMOND J. DEARIE
14 UNITED STATES DISTRICT COURT JUDGE, and a jury
15

16 APPEARANCES:

17 For the Government: ROSLYNN R. MAUSKOPF, ESQ.
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Transcript produced by CAT.

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1 (Jury not present)

2 THE COURT: All right. Mr. Breen what's on your
3 mind.

4 MR. BREEN: I wanted to alert the Court one of the
5 witnesses the government expects to call today is an
6 individual that testified in the bail hearing Michael Mitchell
7 from Gallup. One of the things that he is due to testify
8 about involves an sensitive matter, and I just wanted to alert
9 the Court that I plan to limit it consistent with how we've
10 limited with Derrick Cleveland's testimony, to essentially two
11 leading questions -- three: Were you aware that the San Diego
12 guy Mitchell didn't know the name Mr. Elgindy was under
13 investigation? Did it generally related to terrorism? Did it
14 relate to a contribution to a middle eastern charity.

15 Consistent with the Court's ruling he's been instructed to
16 answer those yes or no, and we don't plan to go into the other
17 things that he could testify about which he won't about it
18 being linked to Al Queda and other things that Mr. Royer told
19 Mr. Mitchell consistent with what Mr. Royer told.

20 Mr. Cleveland, other issues relating to Mr. Mitchell's
21 discussions with Mr. Royer regarding Mr. Royer's discussions
22 with me. He's been given instructions consistent with the
23 Court's ruling to refer to me and I intend to do it in leading
24 questions as a department of justice official, rather than to
25 refer to me by name. There could be some questions that I have

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1 alerted Mr. Gerzog to which things that Mr. Mitchell is
2 thought to have said in some 302s regarding those discussions
3 that Mr. Mitchell doesn't remember now, and I've alerted
4 Mr. Gerzog to that, that he can ask questions in the manner
5 that we have done it so far in the trial.

6 MR. BERKE: Good morning, Your Honor. If I could
7 raise one issue on the first point regarding what is elicited
8 about that terrorism investigation, we would ask that it be
9 limited to simply the fact that the terrorism investigation
0 was disclosed. Our concern is that limiting it to the second
1 point about the Middle Eastern charities gives undue influence
2 to that aspect of whatever Mr. Royer said to Mr. Mitchell. I
3 understand he said a whole lot of other things. I think what
4 is relevant for the government's presentation is that he
5 disclosed the investigation. My concern would be if you only
6 hear about the investigation and Middle Eastern charities, it
7 gives undue importance to the Middle Eastern charities, so
8 when they get to Mr. Elgindy's post arrest statement
9 suggesting that Mr. Royer only said investigation and Middle
0 Eastern charities, I understand it is limited in our request
1 but I would suggest in this case to elicit both those facts as
2 opposed to the fact of just the investigation is misleading in
3 a different way that also prejudices Mr. Elgindy

4 MR. BREEN: Mr. Mitchell was told a very specific
5 thing about the terrorism investigation, and the only specific

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1 thing that he was told about it was that it involved a charity
2 that was linked to Al Queda, that there had been some
3 donations to. We are asking him about something that
4 Mr. Royer thought was important, so it is not undue
5 importance, it is actually due given the statement.

6 THE COURT: I don't have a problem with it. I will
7 perhaps choose the occasion to remind the jury of my earlier
8 instruction, it is coming in such a white bread fashion
9 without any reaction, it is almost rather, in my view,
0 harmless fashion, that maybe I shouldn't even bother to repeat
1 the instruction, but if you like I will do so. Repeating the
2 instruction perhaps brings more attention to it than has
3 already been given. So I throw that out to you.

4 MR. BERKE: I think that at this juncture we would
5 not ask for an additional instruction, for the reason that it
6 may bring additional attention to it.

7 THE COURT: Okay. Where is Ms. Farmer? I hope
8 everybody had a nice -- I won't say rest -- but at least a
9 nice Thanksgiving.

0 MR. BREEN: We did.

1 THE COURT: I hope we are going to get this case
2 over with sooner rather than later but as you all know, our
3 former Chief Magistrate Judge Chrein is being acknowledged
4 today in a formal ceremony for his efforts at 4 o'clock and I
5 know you all have a lot to do but I certainly on behalf of the

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

AMR ELGINDY & JEFFREY ROYER,

Defendants.

CR-02-589 (RJD)

U.S. Courthouse
Brooklyn, New York

December 8, 2004
9:30 o'clock a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

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Court Reporter:

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Liao-direct-Breen

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(Side bar.).

THE COURT: What are you going to bring out? How far are you going with this?

MR. BREEN: Very little; just that the report was made, three managed accounts for the children, he offered to terminate it or asked them to terminate it. That's all I intend.

MR. BERKE: I have to object what Mr. Breen is doing. It indirectly gets in complications the fact Ms. Liviakis and three individuals have firsthand knowledge of terrorism. I don't believe it's necessary. The only thing they need to show is names are in the files as part of this investigation. Their access, this goes far beyond, does in fact as we're concerned tar Mr. Elgindy with allegations unproven and hearsay even with your Honor's instructions. I object to this, say without using the reports, Mr. Breen is getting some information in in the way he's not asking questions, not necessary, terribly prejudicial.

THE COURT: What do you want me to do, turn this into a tiddly-winks trial? I'm trying to put as much cosmetics as I possibly can. Give the government a fair shot at it. I don't know that you have to get into that specific report, that concerns an individual who provided information about possibly terrorism.

MR. BREEN: There's already specific testimony by

Liao-direct-Breen

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1 derrick Cleveland, trading that came from a broker, one of
2 those critical facts we need to prove, to link it to the
3 testimony.

4 THE COURT: What exactly did he say?

5 MR. BREEN: Mr. Cleveland knew one of the people
6 who reported Mr. Elgindy, potential terrorism, Mr. Elgindy's
7 broker and that the investigation regarded Mr. Elgindy's
8 attempts to liquidate his children's accounts. That's what
9 I'm going to get into. To the best of my memory that was his
10 testimony.

11 MR. LEVINE: In addition, which put in the
12 facsimile document from the search that showed the facts,
13 didn't say which brokerage, but liquidated my kids' accounts,
14 it in fact corroborated.

15 MR. BERKE: Mr. Ross is not here for
16 cross-examination on a collateral matter. We don't dispute
17 that Mr. Royer accesses these files, that Mr. Royer
18 provided --

19 THE COURT: I agree. It's concerning activity of
20 Mr. Elgindy, liquidation of the account, that's it.

21 MR. BREEN: Respectfully, this is one of the few
22 specific points Mr. Cleveland testified about. There can't
23 be additional harm to the jury for us to show that
24 information did in fact --

25 THE COURT: You're testing my recollection, to be

Liao-direct-Breen

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1 absolutely honest with you.

2 MR. BREEN: One of them was the fact of trying to
3 liquidate. What you told us not to do, Mr. Ross' report
4 Mr. Elgindy feared the market would plummet. We don't have
5 any intention of bringing that out. This is one of those
6 critical facts that goes to the very nature of the
7 information that was provided.

8 The defense might say they're not contesting it was
9 communicated but they are, something that relates so
10 incredibly close to the testimony. There can't be additional
11 harm. It's already been brought up once through
12 Mr. Cleveland's testimony, yesterday in actual physical
13 document.

14 MR. BERKE: It's extraordinarily prejudicial to
15 bring out the hearsay. The broker himself raises concerns of
16 law enforcement. Not probative at all. Although Mr. Breen
17 keeps saying it, in fact neither myself nor Mr. Gerzog is
18 disputing this information was contained from Royer to
19 Cleveland.

20 MR. GERZOG: That's the point I was going to add.
21 They're saying they needed to corroborate Mr. Cleveland on
22 the point that Mr. Royer gave it to Cleveland. They don't
23 because we know what they don't have any evidence of is
24 who gave it to Mr. Elgindy and this doesn't help them in that
25 regard.

Liao-direct-Breen

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1 THE COURT: I don't like this part coming in.
2 Bring out the fact it's a report of an interview concerning
3 some financial activities of Mr. Elgindy, possible terrorism,
4 leave the broker out.

5 MR. LEVINE: Of what was started yesterday -- your
6 Honor, they're going to argue whatever the information was
7 found in the computers was not so terrible or so concerning
8 Mr. Elgindy decided not to run.

9 THE COURT: That's why I'm allowing it to go this
10 far.

11 MR. LEVINE: The key pointed, the essence of this,
12 really stripped down, the broker said Mr. Elgindy tried to
13 liquidate the accounts on 9-10. That corroborates
14 Cleveland's specific statement --

15 THE COURT: Hearsay.

16 MR. LEVINE: Mr. Royer told it to Cleveland,
17 corroborating Cleveland's statement he heard it.

18 THE COURT: Doing it with hearsay.

19 MR. LEVINE: Goes to the transfer of the
20 information. Without that, the jury doesn't have the story.

21 THE COURT: I'm allowing you to bring out this is
22 report of an interview by the FBI of an individual who gave
23 certain information regarding Mr. Elgindy's accounts and his
24 possible involvement on the terror activities.

25 MR. LEVINE: His attempt to trade on 9-10?

Liao-direct-Breen

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1 THE COURT: No. You can't make this benign. If
2 they want to argue Mr. Royer was a misguided FBI agent
3 shackled by bureaucracy, they'll have to confront this.
4 That's all you need.

5 (Open court.)

6 (Continued on next page.)

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