

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

V.

Docket No. 02 CR 395 (JGK)

AHMED ABDEL SATTAR,  
MOHAMMED YOUSRY  
and LYNNE STEWART,

Defendants.  
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**MEMORANDUM IN SUPPORT OF MOTION  
FOR INVESTIGATION AND HEARING**

The Magistrate Judge ordered search warrant affidavits sealed. However, after indictment, all such matters came under this Court's jurisdiction. This is shown by the government's letter of April 30, 2002, which requested the right to make limited disclosure of the very warrant application at issue here.

In a case involving Ms. Stewart's alleged unauthorized disclosures, this matter raises significant and sensitive issues. Protective orders play an important role in safeguarding rights. In *Alderman v. United States*, 394 U.S. 165, 184-85 (1969), the Court noted that such orders play a key role in fourth amendment litigation with national security overtones, and said "We would not expect the district courts to permit the parties or counsel to take these orders lightly."

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Protective orders play a vital role in protecting litigants' rights, and do no harm

to the first amendment. See, e.g., *United States v. McVeigh*, 119 F.3d 806 (10<sup>th</sup> Cir. 1997)(collecting cases from several circuits).

Yet, the passive voice discussion of the government's June 3, 2002 letter masks rather than illuminates the course of events. It fails to say who caused the disclosure, by what conduct and when. It fails to account for the fact that once this case was indicted, these very prosecutors gained control of the files and actively sought sealing orders. The government's letter seeks to deflect blame by its studied vagueness, calling to mind the playwright's wry comment, "What bliss to sin by proxy and do penance by means of someone else."

In addition, the affidavit contains material derived from electronic surveillance, and is therefore protected by 18 U.S.C. §§2511, 2520.

FBI warrant applications are adversary documents, designed to present just one side. The disclosed affidavit admits that it is a partial recital of alleged relevant events. It would not be correct to say that the defense is free to comment on what is now in the public domain, because doing so would require us to make further disclosures of sealed material.

These are early days in a long litigation. We should begin as we mean to go on. Judge Keenan, in *United States v. Myerson*, 1988 WL 687143 (S.D.N.Y. 1988), faced an analogous issue. Drawing on such cases as *In re Grand Jury Investigation (Lance)*, 610 F.2d 202 (5<sup>th</sup> Cir. 1980), he ordered a full investigation. At the end of the day, he

found the government's explanations adequate, but the point is that he insisted on those explanations. We ask the same relief.

Dated: Washington, DC  
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