

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 In the Matter of the Application of :
 the New York Times Company To Unseal :
 Wiretap and Search Warrant Materials :
 In: :
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United States v. Brener, 08-cr-533 :
United States v. Suwal, 08-cr-497 :
United States v. Lewis, 08-cr-433 :
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M-50

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

On December 24, 2008, the New York Times Company (the "Times") moved to unseal wiretap applications and related materials associated with the above-captioned cases. On February 19, 2009, after full briefing and oral argument, the Court granted the application. See Opinion and Order, 2/19/09. On February 20, 2009, the Court granted the Government's request to stay execution of the order while it considered whether or not to appeal, and on March 2, 2009, the Government filed a notice of appeal. Although fully apprised of all these proceedings, counsel for Eliot Spitzer waited until March 4, after the Court had ruled and after the Government had appealed, to notify the Court that it wished to move to intervene so that it could seek further redactions of the wiretap materials beyond those agreed to by the Government and the Times. Having now considered Spitzer's papers in support of his motion to intervene and his accompanying motion to alter or amend the Order of February 19, 2009, as well as the Times' papers in opposition, the Court hereby denies both motions.

The motions must be denied, first and foremost, because the Court lacks jurisdiction to grant them. In general, the filing of a notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). While the Court may, nevertheless, continue to exercise jurisdiction over certain specified post-judgment motions by the parties (such as a motion to alter or amend the judgment), see Rule 4, Fed. R. App. P., no such jurisdiction is accorded to motions by non-parties. See Drywall Tapers and Pointers of Greater New York v. Nastasi & Associates, Inc., 488 F.3d 88, 94 (2d Cir 2007).

Even assuming arguendo the Court had jurisdiction to consider the motions, it would still have to deny the motions as untimely. Mr. Spitzer asserts that the need for him to intervene has only become apparent very recently, when his communications with the Government revealed that it did not plan to redact his name from any part of the wiretap materials even though it had agreed to redact the names of other customers of the Emperor's Club. But the Times, from the moment it filed its original motion, had made it clear that it sought the wiretap materials in order to obtain further information about the Emperor's Club investigation as it pertained to Mr. Spitzer; and the Court's Opinion and Order of February 19, 2009, in recognition of this fact, explicitly confirmed that Mr. Spitzer's name would not be redacted. Opinion and Order, 2/19/09, at 4. Thus, there is no reasonable excuse for Spitzer's delay in bringing the

instant motions, and, at this stage, further delay would serve only to prejudice the Times' desire to expedite the appeal so as to obtain disclosure of the materials as promptly as possible.

The Court is not without sympathy for Mr. Spitzer's desire to avoid another round of the salacious coverage that has attended his involvement with the Emperor's Club. Sympathy, however, can neither create jurisdiction nor obviate untimeliness. Spitzer's motions are therefore denied.

SO ORDERED.

Dated: New York, NY
March 19, 2009



JED S. RAKOFF, U.S.D.J.