OGC 72-1773

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UNITED STATES DEPARTMENT OF JUSTICE Org | IBM

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

TEK:LB
60-235-38

December 1, 1972

Lawrence R. Houston, Esquire
General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Re: United States v. International Business Machines Corporation, 69 Civ. 200

Dear Mr. Houston:

Enclosed is a copy of Pretrial Order No. 4, as amended, entered in the captioned case on October 16, 1972. Because of the obligation which it imposes upon Government personnel I am bringing it to your attention for use in advising personnel in your agency as you may consider necessary.

While it is, of course, unlikely that statements or press releases on the subject of this case would be issued by your agency, conceivably some of your agency personnel might comment on the subject case in responding to a question posed by a newsman or similar interviewer. The Court recently had occasion to admonish an IBM official who had made a comment on the case in responding to a question posed to him at a public meeting. In that instance, the Court indicated that it was incumbent upon house counsel to see that the Court's order was respected by IBM officials.

In the event you have any questions on this matter I will be pleased to discuss them with you.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

By: Lewis Bernstein
Chief
Special Litigation Section

Enclosure

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	69 Civ. 200
INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendant.	)	

PRETRIAL ORDER NO. 4 AS AMENDED

The parties having been heard and the Court being duly advised, in the interest of justice and accurate, objective, dispassionate and fair comment and news reporting of the proceedings in this action, it is hereby

ORDERED that plaintiff and defendant are restricted from disseminating news of any proceedings before this Court or of any matters relating to this action by press release, press conference, or interview with the press without the consent of the Court, except insofar as it is necessary to keep the public informed as to the progress of the case, as to the scheduling of proceedings before the Court and the existence of documents and transcripts on file with the Court, and except as convenience may suggest that quoting from the record is appropriate.

All proceedings before this Court in this action, unless otherwise ordered upon written motion for good cause shown, shall be open to any member of the news media and any member of the public. All information emanating from such proceedings shall be obtained by representatives of the press or by the public by attendance at such proceedings or from the documents and transcripts of the proceedings on file in the office of the Clerk of this Court.

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Plaintiff and defendant may make available to the press or to the public a copy of any document, or permit the inspection of any transcript, which is on file with this Court, and may advise the press or public of the existence of such materials, but are prohibited from commenting on or characterizing such documents or transcripts, or the information contained therein, without the permission of the Court. It is the intent of this provision that the documents and transcripts on file in the office of the Clerk of this Court shall speak for themselves with respect to all proceedings in this action, and it is also the intent of this provision that neither party shall initiate contacts with the press or volunteer information with respect to this action, except insofar as it may be necessary to keep the public informed as to the progress of the case, the scheduling of proceedings before the Court and the existence of documents and transcripts on file with the Court, and except as convenience may suggest that quoting from the record is appropriate.

Except in unusual circumstances, it shall be the responsibility of each party to file with the Clerk of the Court an agenda of the principal matters it intends to discuss at any scheduled pretrial conference. With respect to deposition notices, the parties shall periodically file with the Clerk of the Court a list of persons they expect to depose in the forthcoming period. A telephone contact shall be designated by Department of Justice and by IBM, from whom any representative of the press may obtain answers to question as to deposition schedules and schedule changes, and places of such depositions.

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The provisions and prohibitions of this Order shall apply to all persons who have responsibility for, or who are in any way involved in, the handling of this action, including all potential witnesses employed by either party and all consultants employed by either party.

It is further provided that nothing contained herein shall prohibit the disclosure of any information required to be disclosed pursuant to the provisions of the Freedom of Information Act (5 U.S.C. Section 552).

October 16, 1972

DAVID N. EDELSTEIN
Chief Judge

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