

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	Criminal Case No: 1:21-CR-00068
)	
JENNY LOUISE CUDD, ET. AL.,)	
)	
Defendants.)	
_____)	

**JENNY CUDD’S REPLY TO
GOVERNMENT’S OPPOSITION TO MOTION FOR TRANSFER**

I. Increased Prejudice

The local Washington D.C. media coverage, after the defense filed the Motion for Transfer, has escalated the necessity for transfer.

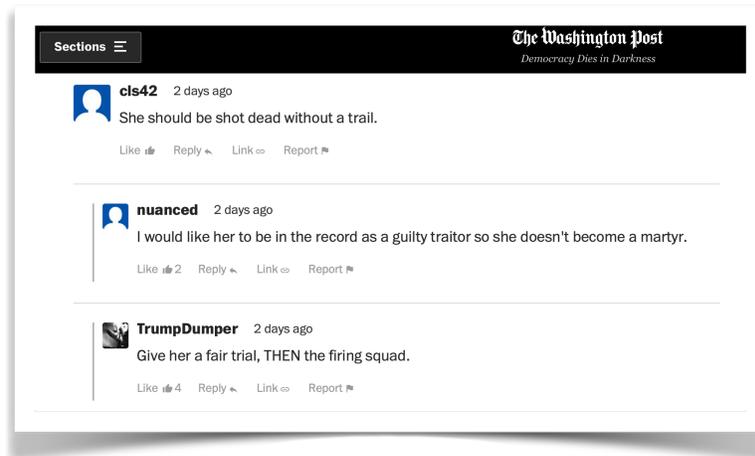
Instead of covering the news of Ms. Cudd’s motion objectively, the local Washington D.C. media interposed their own reinterpretation and biased opinion of the motion and sold it to the public as neutral news, engaging in what has colloquially come to be known as *fake news*.

For example, The Washington Post published a story summarizing the venue motion as Ms. Cudd “saying a more Republican-friendly jury would decide her guilt or innocence more fairly.”¹ Ms. Cudd never asked for “a more Republican-friendly jury” in any pleadings. Ms. Cudd asked for a fair trial by an impartial jury. Ms. Cudd asked for a trial compliant with the constitutional standard of fairness. The Washington Post assumed that this means “a more

¹ Jan. 6 Capitol defendant wants trial moved to west Texas, calls D.C. too anti-Trump, politically correct, The Washington Post (2021), https://www.washingtonpost.com/local/legal-issues/capitol-riot-trial-move-jenny-cudd/2021/03/10/96777110-81ed-11eb-9ca6-54e187ee4939_story.html (last visited Mar 23, 2021).

Republican-friendly jury” and wrote up their biased assumption as an actual report, selling it as an objective story while indicating that those were the words in Ms. Cudd’s motion. (The Washington Post appears to have glossed over the facts section of Ms. Cudd’s memorandum that explained Ms. Cudd is also accused of making negative statements against Republicans.) Without regard for accuracy, the biased story was published online and in the print edition of the Post.

A snippet from the Washington Post’s online comments section illustrates the effect that biased Washington Post reporting is having on its readers.



Not to be outdone, WUSA9 News took it a step further and aired a local television news segment that degradingly and falsely referred to Ms. Cudd as “one of these accused domestic terrorists” who is employing a “tactic” in court to change venue after she “admitted to breaking down the door to Nancy Pelosi’s office.”² In the online reporting of this same story, WUSA9

² Capitol riot suspect says DC hates conservatives and Trump supporters too much to give her a fair trial, WUSA9 (2021), <https://wusa9.com/embeds/video/65-2234bcfa-76f5-48b7-a6ea-fc109acc18c2/iframe?jwsourc=cl> (last visited Mar 23, 2021).

claimed that Ms. Cudd “says DC hates conservatives and Trump supporters.”³ None of these WUSA9 reports are within the realm of reality. Ms. Cudd is not an accused domestic terrorist, she didn’t break down Nancy Pelosi’s door (nor does the government contend that she did), and she never stated in any pleading that “DC hates conservatives and Trump supporters.” What possessed WUSA9 to move forward with such flagrant disregard for truth and objectivity can only be explained as unrestrained bias resulting from loss of decency and self-awareness.

This purposeful stretching of reality and shameless reporting of the altered story as local “news” endangers Ms. Cudd’s trial fairness even more significantly than standard pretrial publicity. Potential jurors are not just being exposed to political hype and constant reminder of the events through the continuous replay of the videos; potential jurors are now being hand-fed fake news about Ms. Cudd and her defense by local news outlets that D.C. residents have grown to trust.

D.C. Circuit’s Senior Judge Silberman has recently addressed the dangers of politically biased news reporting in his dissent in *Christina Tah v. Global Witness Publishing, Inc.*, where he warned of the “enormous political impact” that media bias has on elections and the American people. *Christiana Tah v. Global Witness Publishing, Inc.*, No. 19-7132 (D.C. Cir. March 19, 2021) (Silberman, L., dissenting) (“the media has proven its willingness—if not eagerness” to distort the news). These warnings and Judge Silberman’s analysis apply to jury trials just as much as they do to elections. The danger to Ms. Cudd’s trial with the heightened D.C. media bias against her cannot be understated. Every politically motivated pretrial publicity issue raised in

³ Jenny Cudd says DC hates conservatives, wants Capitol riot trial moved to Texas, WUSA9 (2021), <https://www.wusa9.com/video/news/national/capitol-riots/jenny-cudd-worries-that-dc-hates-conservatives-wants-capitol-riot-trial-moved-to-texas/65-2234bcfa-76f5-48b7-a6ea-fc109acc18c2> (last visited Mar 23, 2021).

Ms. Cudd's Motion for Transfer is rendered even stronger when considered in conjunction with the issues raised in Judge Silberman's dissent.

II. The Government Ignores Community Prejudice

In their opposition to the Motion to Transfer, the government argues that in the 1970s, members of the Nixon administration had to be tried in D.C. despite heavy pretrial publicity. The government ignores the legal issue of community prejudice entirely in this comparison because community prejudice did not exist with respect to these Nixon cases. Neither did the overwhelming political opposition to the candidate for whom these defendants had been employed.

In the 1972 election, Nixon received about 22% of the D.C. vote.⁴ As a reminder, Trump received a little over 4% of the Washington D.C. vote in 2020. In the 1970s, Washington D.C. was not locked down for months, the city was not militarized, and the local media did not continuously refer to the charged individuals as "terrorists." Furthermore, that time did not present political division amongst Americans in the way that we see now, half a century later, with the unique political division that is maliciously instigated by elected politicians, as the defense has presented in our Motion for Transfer.

The government goes on to name various criminal cases with pretrial publicity where a motion for transfer was not granted. Again, the government ignores the issue of community prejudice in their analysis. As a reminder, the defense did not hinge our argument on pretrial

⁴ 1972 Presidential General Election Results, <https://uselectionatlas.org/RESULTS/state.php?year=1972> (last visited Apr 12, 2021).

publicity alone. The defense appropriately argued that the combination of pretrial publicity *and* community prejudice warrant transfer.

These factors aside, the government all of a sudden reduces its characterization of Ms. Cudd's Capitol incident case and compares her case to regular cases, as if this prosecution is somehow commonplace. This was surprising. The government's treatment of the Capitol incident arrestees is unlike any other case in history. In which other incident did the government create a searchable database for the public with each defendant's name, complaint, statement of facts, bond status, and upcoming hearing date?⁵ In which other incident did the government rush to arrest every single participant, regardless of the magnitude of their involvement? In which other incident did the government expense, what appears to be, the entirety of its resources to investigate every incoming public tip? The DOJ has even created for each Capitol defendant their own web page on the DOJ website!⁶ The government's treatment of the Capitol incident is unlike anything in DOJ history. Yet the government casually compares this case to others cases, nothing like it, and all of a sudden minimizes the aggressiveness with which this defendant and others like her were hunted down for misdemeanor prosecution. The government had a role in the community prejudice that permeates D.C. through their aggressive approach to the Capitol investigation and is now attempting to casually downplay their contribution and the resulting prejudice. This is shameful.

Instead of addressing community prejudice in their Response, the government, without proof, simply asserts that it is false and plays it down as if the unprecedented lockdown and

⁵ Capitol Breach Cases, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/usao-dc/capitol-breach-cases> (last visited April 14, 2021).

⁶ CUDD, Jenny Louise, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/usao-dc/defendants/cudd-jenny-louise> (last visited April 14, 2021).

militarization of Washington D.C. is not a big deal, it's but "hyperbole," they claim. As the defense has demonstrated thoroughly in our Motion for Transfer, the community prejudice in Washington D.C. is real and it is substantive.

III. Timing of Motion for Transfer

The parties agree that the D.C. Circuit in the past has "preferred" to wait until voir dire to determine if transfer was necessary. However, this does not render the defendant's motion premature, as the government has characterized. Instead, the motion is entirely timely and consistent with the Federal Rules of Criminal Procedure, which call for the Motion to Transfer to be filed "at or before arraignment or at any other time the court or these rules prescribe." Rule 21(d) of the Federal Rules of Criminal Procedure. The defense has demonstrated that prejudice against the defendant is present and is increasing. This issue is ripe for adjudication.

Respectfully submitted,
By counsel:

/s/

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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on April 16, 2021, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/

Marina Medvin, Esq.

Counsel for Defendant Jenny L. Cudd