

Marshall Ellis

From: James, Mike (USADC) [REDACTED]
Sent: Sunday, February 27, 2022 8:57 PM
To: Marshall Ellis
Subject: RE: [EXTERNAL] FW: HORN Status Conference on 9/2.

Importance: High

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Good evening Mr. Ellis. I'm back in town and I've had an opportunity to look into the question. I believe AUSA Seth Adam's earlier response correctly states the Department of Justice's response in the matter.

MICHAEL G. JAMES
Assistant United States Attorney
[REDACTED]
Office of the United States Attorney
Eastern District of North Carolina
(on detail to the USAO-D.C.)
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
[REDACTED]

From: Marshall Ellis [REDACTED]
Sent: Friday, February 25, 2022 12:47 PM
To: James, Mike (USADC) <[REDACTED]>
Subject: RE: [EXTERNAL] FW: HORN Status Conference on 9/2.

No problem at all. Thank you and safe travels.

-Marshall

From: James, Mike (USADC) [REDACTED]
Sent: Friday, February 25, 2022 12:41 PM
To: Marshall Ellis <[REDACTED]>
Subject: Re: [EXTERNAL] FW: HORN Status Conference on 9/2.

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Thank you. I will look into it. I am preparing to travel right now so it may not be until Monday that I have a response.

Sent from my iPhone

On Feb 25, 2022, at 12:17 PM, Marshall Ellis <[REDACTED]> wrote:

Mike,

In preparation for Tuesday's status conference, I wanted to revisit an issue with this case that I brought to Mr. Meinero's attention in September of last year. See our exchange from then below.

As you know, Mr. Horn's story has remained consistent in that he was at the Capitol on January 6 for purely journalistic reasons—not to participate in an attempt to overturn the results of the election. In reflecting on Mr. Meinero's response a bit more, I think the law might entitle us to more of an answer as to why the decision was made to charge Mr. Horn with crimes when other individuals who were there for journalistic reasons have not been so charged.

At the moment, I believe there are *at least* two reporters who were inside the Capitol that day that have not been charged. If that is true and remains the case, Mr. Horn may potentially have grounds to pursue dismissal of his charges by raising, for example, a selective prosecution claim, etc.

To assist us with determining whether he has such grounds, I believe *Brady* might require that we receive more information from the government as to what went into the decision to charge Mr. Horn. According to the attached regulation, specific procedures must be followed before a member of the Department charges any "member of the news media for any offense that he . . . is suspected of having committed in the course of, or arising out of newsgathering activities." 28 CFR § 50.10(f).

I can certainly put this request on the record and even raise it by motion if needed. But, as I know is the custom in the Eastern District of NC, I wanted to first see if we could resolve this discovery issue without the court's involvement.

Thank you,
-Marshall

Marshall H. Ellis

Attorney at Law

Board Certified Specialist in Federal and State Criminal Law

Office: [REDACTED]

Fax: 252.335.4223
[REDACTED]

301 East Main Street
Elizabeth City, NC 27909

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From: Meinero, Seth Adam (USAEO) [REDACTED]
Sent: Tuesday, September 14, 2021 6:50 PM
To: Marshall Ellis [REDACTED]
Cc: Charles Haskell [REDACTED]
Subject: RE: HORN Status Conference on 9/2.

>>Warning! The source of this email is from outside of the firm.<<

Hi, Marshall:

My abject apologies for not getting back to you sooner. I've been incredibly busy with a case I indicted last week, and I was also awaiting further word from supervisors on your inquiry regarding the Department of Justice's news-media policy. We're all really busy!

You can tell Mr. Horn this: the Attorney General recently issued a memorandum on ["Use of Compulsory Process to Obtain Information from, or Records of, Members of the News Media."](#) This memorandum and the applicable regulations relating to members of the news media, including 28 C.F.R. sec. 50.10, are binding upon all Department attorneys. Like all other components within the Department, the U.S. Attorney's Office for the District of Columbia is ensuring that these policies – in Mr. Horn's case and all others handled by its prosecutors – are scrupulously followed. Likewise, the Department institutes training, accountability, and disciplinary measures that reinforce the importance of adherence to such requirements. Department attorneys who fail to comply with the relevant policies can be subject to discipline and administrative sanction.

On another topic, the plea offer expires this Thursday, and we have a status memo due with the court on Friday. Does providing this info make any difference in your discussions with Mr. Horn about a pretrial disposition? Let me know.

Thanks!

/// SETH ADAM MEINERO ///

Trial Attorney

Detailed to the United States Attorney's Office for the District of Columbia

Federal Major Crimes Section

555 4th St., N.W.

Washington, DC 20530

[REDACTED]

From: Marshall Ellis [REDACTED]
Sent: Wednesday, September 1, 2021 5:01 PM
To: Meinero, Seth Adam (USAEO) [REDACTED]
Cc: Charles Haskell [REDACTED]
Subject: RE: HORN Status Conference on 9/2.

That sounds fine to me. I will relay that message to Mr. Horn.

And thank you regarding the other question. Any information pertaining to that determination that you can share with me would be helpful to my representation of Mr. Horn.

From: Meinero, Seth Adam (USAEO) [REDACTED]
Sent: Wednesday, September 1, 2021 2:41 PM
To: Marshall Ellis <[REDACTED]>
Cc: Charles Haskell [REDACTED]
Subject: RE: HORN Status Conference on 9/2.

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Marshall:

Thanks for your position on the continuance and tolling STA. If you *really think it's possible it could lead to a disposition*, we'll keep open the offer for another two weeks. Are you amenable to that?

Regarding the basis for DOJ's Policy and Statutory Enforcement Unit determination that Mr. Horn is not a member of the news media, I'll get back to see what information I can share.

/// SETH ADAM MEINERO ///

Trial Attorney

Detailed to the United States Attorney's Office for the District of Columbia

Federal Major Crimes Section

555 4th St., N.W.

Washington, DC 20530

[REDACTED]

From: Marshall Ellis <[REDACTED]>
Sent: Wednesday, September 1, 2021 1:25 PM
To: Meinero, Seth Adam (USAEO) <[REDACTED]>
Cc: Charles Haskell <[REDACTED]>
Subject: RE: HORN Status Conference on 9/2.

Hey Seth Adam,

I'm doing well and hope you are also.

Mr. Horn has not informed me of a change of opinion regarding the plea offer. Mr. Horn has *no objection* to continuing this matter for 60 or even 90 days and tolling speedy trial. I agree with all of your points regarding the discovery issues and the fact that there are other detained defendants whose cases should be tried sooner than ours. Regarding the plea offer, my only thought would be that, if you don't want to set a trial date tomorrow, perhaps the offer could technically just remain on the table a little longer until our next hearing? I realize that's totally the government's call, but that would be my only request in addition to what you propose.

Finally, in talking with Mr. Horn, he brought to my attention part (f) of the attached regulation. Am I correct in assuming that this regulation is the source of authority regarding the committee to which you informed me that the government had submitted Mr. Horn's case for First Amendment review prior to making the decision to charge him?

And I'm free to talk after 4 this afternoon if you'd like. Not sure if we even need to but totally up to you.

Thank you,
-Marshall

Marshall H. Ellis

Attorney at Law

Board Certified Specialist in Federal and State Criminal Law

Office: [REDACTED]

Fax: 252.335.4223

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Elizabeth City, NC 27909

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Marshall Ellis

From: James, Mike (USADC) [REDACTED]
Sent: Tuesday, January 17, 2023 10:53 AM
To: Marshall Ellis
Cc: Charles Haskell
Subject: US v. Horn - Opportunity to confer with supervision

Importance: High

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Mr. Ellis,

I hope all is well with you. You've requested an opportunity to confer with supervision on why you think your client should be afforded member of the media status. I've conveyed your request. Are you available on Friday, January 20 at either 10 am or 3:30 pm?

Michael G. James
Assistant United States Attorney
Office of the United States Attorney
Eastern District of North Carolina
150 Fayetteville Street
Suite 2100
Raleigh, NC 27601
[REDACTED]

Marshall Ellis

From: Murphy, Sonia (USASPC) <[REDACTED]>
Sent: Thursday, May 4, 2023 1:02 PM
To: Marshall Ellis; James, Mike (USANCE); Lal, Arvind (USADC)
Cc: Charles Haskell; Murphy, Sonia (CIV)
Subject: RE: Stephen Horn's Material for PSEU Consideration

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Marshall –

Unfortunately, we do not have any further information to share.

Best regards,

Sonia W. Murphy

Trial Attorney, U.S. Department of Justice
Detailed to the U.S. Attorney's Office for the District of Columbia
[REDACTED]

From: Marshall Ellis <MEllis@hrem.com>
Sent: Tuesday, May 2, 2023 5:02 PM
To: Murphy, Sonia (USASPC) [REDACTED]; James, Mike (USANCE) [REDACTED]; Lal, Arvind (USADC) [REDACTED]
Cc: Charles Haskell [REDACTED]; Murphy, Sonia (CIV) [REDACTED]
Subject: [EXTERNAL] RE: Stephen Horn's Material for PSEU Consideration

Thank you for the update. Would it be possible for Mr. Horn to receive some sort of explanation regarding PSEU's decision? We, particularly Mr. Horn himself, worked hard to put this material together for your office's consideration and were obviously hopeful a different decision would be reached. While disagreeing with the decision, we will certainly respect it, but it would at least be nice to know the "why" behind it.

Thank you,
-Marshall

Marshall H. Ellis

Attorney at Law
Board Certified Specialist in Federal and State Criminal Law

Office: [REDACTED]

Email: [REDACTED]

301 East Main Street
Elizabeth City, NC 27909

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From: Murphy, Sonia (USASPC) <[REDACTED]>
Sent: Monday, May 1, 2023 12:40 PM
To: Marshall Ellis <[REDACTED]> James, Mike (USANCE) <[REDACTED]>; Lal, Arvind (USADC) <[REDACTED]>
Cc: Charles Haskell <[REDACTED]> Murphy, Sonia (CIV) <[REDACTED]>
Subject: RE: Stephen Horn's Material for PSEU Consideration

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Marshall,

Thanks for your patience.

PSEU has reviewed the information submitted and has declined to alter its decision.

Best regards,
Sonia W. Murphy
Trial Attorney, U.S. Department of Justice
Detailed to the U.S. Attorney's Office for the District of Columbia
[REDACTED]

From: Marshall Ellis <[REDACTED]>
Sent: Monday, April 3, 2023 11:20 AM
To: Murphy, Sonia (USASPC) <[REDACTED]> James, Mike (USANCE) <[REDACTED]> Lal, Arvind (USADC) <[REDACTED]>
Cc: Charles Haskell <[REDACTED]> Murphy, Sonia (CIV) <[REDACTED]>
Subject: [EXTERNAL] RE: Stephen Horn's Material for PSEU Consideration

Thank you!

From: Murphy, Sonia (USASPC) <[REDACTED]>
Sent: Monday, April 3, 2023 7:32 AM
To: Marshall Ellis <[REDACTED]> James, Mike (USANCE) <[REDACTED]> Lal, Arvind (USADC) <[REDACTED]>
Cc: Charles Haskell <[REDACTED]> Murphy, Sonia (CIV) <[REDACTED]>
Subject: RE: Stephen Horn's Material for PSEU Consideration

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Good Morning Counsel –

Confirming receipt.

We'll be in touch.

Best regards,
Sonia Murphy

From: Marshall Ellis <[REDACTED]>
Sent: Friday, March 31, 2023 5:36 PM

To: James, Mike (USANCE) [REDACTED] Murphy, Sonia (USASPC) [REDACTED]; Lal, Arvind (USADC) [REDACTED]
Cc: Charles Haskell [REDACTED]
Subject: [EXTERNAL] Stephen Horn's Material for PSEU Consideration

At long last as promised, attached are a number of files pertaining to Stephen Horn's journalistic activity prior to January 6, 2021. The first file is a directory/table of contents for the remaining files in the compressed folder. Our apologies for it taking longer than expected to get this material to the government.

Mr. Horn respectfully requests that these materials be submitted to your Policy and Statutory Enforcement Unit (PSEU) for reconsideration of whether he should be charged given his status as a journalist prior to, during, and continuing after January 6, 2021.

Thank you very much, and I hope you all have a good weekend.

-Marshall

Marshall H. Ellis

Attorney at Law

Board Certified Specialist in Federal and State Criminal Law



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Elizabeth City, NC 27909

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