

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	
)	
Plaintiff,)	Criminal Action
)	No. 21-cr-392
vs.)	
)	
Alan Hostetter,)	VIDEO STATUS CONFERENCE
Russell Taylor,)	Washington, DC
Erik Scott Warner,)	
Felipe Antonio (Tony))	
Martinez,)	October 4, 2021
Derrick Kinnison,)	Time: 1:00 p.m.
Ronald Mele,)	
)	
Defendants.)	

TRANSCRIPT OF VIDEO STATUS CONFERENCE
HELD BEFORE
THE HONORABLE JUDGE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For Plaintiff:	Katherine Nielsen
	DOJ-CRM
	Fraud Section
	1400 New York Ave., NW
	Washington, DC 20530
	202-355-5736
	Email: Katherine.nielsen@usdoj.gov
	Risa Berkower
	UNITED STATES ATTORNEY'S OFFICE
	555 4th Street, NW
	Washington, DC 20530
	(202) 252-6782
	Email: Risa.berkower@usdoj.gov
For Defendant	Karren Kenney
Hostetter:	KENNEY LEGAL DEFENSE
	2900 Bristol Street
	Suite C204
	Costa Mesa, CA 92626
	855-505-5588
	Email: Kenneylegaldefensecorp@gmail.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For Defendant Taylor: Dyke Huish
LAW OFFICE OF DYKE HUIISH
26161 Marguerite Parkway
Suite B
Mission Viejo, CA 92692
949-257-3068
Email: Huishlaw@mac.com

For Defendant Warner: Kira Anne West
LAW OFFICE OF KIRA WEST
712 H St, NE
Unit 509
Washington, DC 20002
202-236-2042
Email: Kiraannewest@gmail.com

For Defendant Martinez: Nicholas D. Smith
DAVID B. SMITH, PLLC
7 East 20th Street
Suite 4r
New York, NY 10003
917-902-3869
Email: Nds@davidbsmithpllc.com

For Defendant Kinnison: Nicolai Cocis
LAW OFFICE OF NICOLAI COCIS
25026 Las Brisas Road
Murrieta, CA 92562
951-695-1400
Email: Nic@cocislaw.com

For Defendant Mele: Steven Bailey

Court Reporter: Janice E. Dickman, RMR, CRR, CRC
Official Court Reporter
United States Courthouse, Room 6523
333 Constitution Avenue, NW
Washington, DC 20001
202-354-3267

1 THE COURT: Okay. You want to go ahead and call the
2 case?

3 THE COURTROOM DEPUTY: Yes, Your Honor. We are on
4 the record for criminal case 21-392, *United States of America*
5 *versus Alan Hostetter, Russell Taylor, Erik Warner, Felipe*
6 *Martinez, Derrick Kinnison and Ronald Mele.*

7 Counsel, please identify yourselves for the record.

8 MS. NIELSEN: Good afternoon, Your Honor. This is
9 Katherine Nielson representing the United States, with counsel
10 Risa Berkower.

11 MS. BERKOWER: Good afternoon, Your Honor.

12 MS. KENNEY: Good afternoon, Your Honor. Karren
13 Kinnison on behalf of Alan Hostetter. He's also present over
14 video.

15 MR. HUIISH: Thank you, Your Honor --

16 THE COURT: Let me stop you there. Okay. I can see
17 you. Can you hear me okay, Mr. Hostetter?

18 DEFENDANT HOSTETTER: Yes, sir. I can.

19 MR. HUIISH: Good afternoon, Your Honor. Dyke Huish
20 on behalf of Mr. Taylor. He's seated right here with me. And
21 we can hear you.

22 THE COURT: Okay.

23 MR. COCIS: Good morning, Your Honor. Nick Cocis on
24 behalf of Mr. Kinnison, who is here with me.

25 THE COURT: Okay.

1 MR. SMITH: Good afternoon, Judge. Nick Smith for
2 Felipe Martinez, who is in a different square, I believe, at
3 the bottom of the screen.

4 MR. BAILEY: And, Your Honor, Steven Bailey on behalf
5 of Ron Mele, who is present by video.

6 THE COURT: Okay.

7 MS. WEST: Good afternoon, Your Honor. Kira Anne
8 West for Mr. Erik Scott Warner, who is present in another one
9 of the squares.

10 DEFENDANT WARNER: Good afternoon, Your Honor.

11 THE COURT: Just a minute. I'm not seeing -- oh,
12 there is Ms. West. Okay. Okay. Go ahead.

13 Who was next? Oh, that's everybody. Okay. Okay.
14 Everybody can hear me okay?

15 MS. KENNEY: Yes, Your Honor.

16 MR. HUIISH: Yes, Your Honor.

17 MR. COCIS: Yes, Your Honor.

18 THE COURT: All right. The government want to update
19 me on the status then?

20 MS. NIELSEN: Yes, Your Honor. This is Katherine
21 Nielsen. The government will just, if you don't mind, give you
22 a quick update on the status of this case in discovery. As
23 Your Honor is aware, the government has filed several
24 memorandum on the record to update both parties and the Court
25 as to the status of the discovery in this rather large case --

1 it does include ECF 42, ECF 57, and ECF 68 -- to provide
2 overall information about the status of discovery in this case
3 and the continuing rolling discovery that's being provided to
4 defense counsel.

5 In relation to this case specifically, the
6 government's provided over a terabyte of electronic data
7 specific to the defendants' conduct in discovery, including
8 five tranches: One on June 28th included 46 files of primarily
9 material referenced in the indictment; one on July 2nd, which
10 contained 1782 files, including photos and interview reports;
11 one on July 20th, including recordings of defendants'
12 statements; another on August 20th, including surveillance
13 footage from Capitol police, and; finally, for the four
14 defendants who provided hard drives so far, on September 30th
15 the government provided forensic images of the defendants'
16 devices.

17 Several overall productions that have been made in
18 the past several weeks include reports from the U.S. Capitol
19 police investigation of alleged wrongdoings by officers on
20 January 6. That was provided on USAfx, as well as what was
21 described in our September 24th filing on the record.

22 The government has begun sharing Capitol police
23 surveillance footage on Evidence.Com and documentary evidence
24 on -- will be forthcoming on Relativity. The government has
25 made arrangement in the filings for the FPD to administer those

1 two databases for defense counsel to review some of the
2 discovery in this matter. As a result -- we are, of course,
3 still providing discovery in this case and the investigation
4 still continues.

5 As a result of the fact that we are continuing to
6 provide discovery, continuing to discuss the status of the case
7 with some of our defense counsel, the government would like to
8 move at this time for an additional continuance for 60 days,
9 and to exclude time under the Speedy Trial Act during that
10 time.

11 Again, this would be to allow the government to
12 continue to provide discovery to the defendants, and the
13 defendants to continue to review important discovery in their
14 cases, and also for the parties to engage in potential plea
15 negotiations to resolve some of these matters.

16 The government requests exclusion of time under the
17 Speedy Trial Act from today until the next hearing for several
18 reasons, one of which is in Chief Judge Howell's standing order
19 21-47, which was filed on August 25th of 2021, which tolled
20 time until October 21st, 2021 in all cases that cannot be tried
21 because of safety protocol accommodations.

22 Second, as Your Honor is aware, defendants are
23 charged in the largest criminal case in U.S. history, and one
24 the government is continuing to investigate, in which --

25 THE COURT REPORTER: Counsel, would you please repeat

1 what you just said and speak up a little bit?

2 MS. NIELSEN: Second, the defendants are charged in
3 the largest criminal prosecution in U.S. history, and one the
4 government is continuing to investigate, in which over 600
5 defendants have been charged. This investigation has generated
6 an enormous amount of evidence, including thousands of hours of
7 Capitol surveillance videos and hundreds of documents and
8 digital media, thousands of digital bytes of investigative data
9 has been received, as explained in the discovery memoranda
10 filed with the Court.

11 While the government is working tirelessly to
12 investigate and review this and other evidence and produce
13 discovery to defendants consistent with its Constitutional and
14 statutory obligations, doing so will take time and, thus, the
15 ends of justice are served by tolling time and outweigh the
16 interest of the public and the defendant in a speedy trial.

17 The government has conferred with counsel for
18 Mr. Taylor, Mr. Warner, Mr. Kinnison, Mr. Martinez and Mr. Mele
19 and does not expect any objection from them to this motion.

20 THE COURT: All right. Ms. Kenney, you want to go
21 first?

22 MS. KENNEY: Yes, Your Honor. In light of the
23 discovery that we have received and have been able to view,
24 that, in our opinion, a lot of it is exculpatory. On behalf of
25 Mr. Hostetter, he does want to have a speedy trial set.

1 THE COURT: All right. Do you have motions you're
2 ready to file?

3 MS. KENNEY: I could have those ready, depending on
4 the Court's scheduling order.

5 THE COURT: All right. I'll see what other counsel
6 say. I'm sure other counsel are not going to want to go to
7 trial now.

8 MS. KENNEY: I understand, Your Honor, but I needed
9 to make a record of it.

10 THE COURT: Okay. Fine. I guess the next defendant
11 would be Mr. Huish for Mr. Taylor.

12 MR. HUIISH: Your Honor, thank you very much. I was
13 actually going to go in the opposite direction. Instead of
14 asking for 60, maybe come back in 90 because 60 just doesn't
15 seem long enough.

16 Additionally, the Court may or may not be aware,
17 there's a civil suit that's been filed for all of these
18 defendants for about \$10-million-plus, along with other people,
19 including former President Trump and a handful of other --
20 let's just say dignitaries, which complicates the process
21 because I have to figure out that, as well as this problem, in
22 order to know how to proceed. So I was actually going to go
23 the opposite direction and say let's come back in January,
24 rather than December.

25 THE COURT: I am not familiar with the civil case.

1 Where is it?

2 MR. HUIISH: It is in the District of Columbia as
3 well. It's extensive and names, I believe, every single one of
4 the people here, along with multiple other defendants, claiming
5 injury to or -- I guess it's injury to Capitol police officers
6 as a result of their involvement that day. It's very broad and
7 cites things like the Ku Klux Klan Act and a handful of other
8 things. But it has made my job immediately significantly more
9 difficult because I have to balance both of those variables off
10 in order to know how to proceed.

11 THE COURT: Do you have a civil action number in
12 that?

13 MR. HUIISH: I do. I do not have it in front of me,
14 but I can send it over to your clerk when we're done, if that
15 would be acceptable, Your Honor.

16 THE COURT: Who is the judge in that case?

17 MR. SMITH: Your Honor, the case number is
18 21-cv-2265, 21-cv-2265, and the judge is Amit Mehta.

19 THE COURT: All right. Well, he's got plenty of
20 these cases, too, so I'm sure he knows he's not going to want
21 to do anything other than stay the civil case until this is
22 done.

23 MR. SMITH: Your Honor, in fact, our sentiments
24 exactly. I think we're planning on filing a motion to stay in
25 that matter.

1 THE COURT: If you --

2 MR. SMITH: Excuse me, Your Honor?

3 THE COURT: I couldn't hear that.

4 MR. SMITH: Your Honor, this is Nick Smith for Tony
5 Martinez. I was just going to respond to Your Honor's comments
6 about Judge Mehta likely entering a stay in that case. We said
7 that's exactly right and, in fact, we're going to file such a
8 motion in front of Judge Mehta this week, so --

9 THE COURT: Right. I can't imagine that case would
10 interfere with this.

11 MR. HUIISH: It only interferes in the sense that you
12 must balance both problems against each other when there's a
13 request for so much money. So you have to evaluate both.
14 That's the problem.

15 THE COURT: Okay. I understand.

16 MR. HUIISH: Does the Court desire a copy of the
17 complaint on that?

18 THE COURT: I can look online.

19 MR. HUIISH: Okay.

20 THE COURT: That's why I asked for the number.

21 Okay. I've got your position.

22 For Mr. Warner then, is Ms. -- let's see, Ms. West.

23 MS. WEST: Yes, Your Honor. Good afternoon. I agree
24 with the government and, actually, also defense counsel. I
25 wouldn't be opposed to this case being continued another 60 to

1 90 days. I've spoken to my client about the Speedy Trial Act
2 and he waives it at this time.

3 THE COURT: Okay. For Mr. Martinez, Mr. Smith?

4 MR. SMITH: Yes, Judge. We're seconding Ms. West's
5 position, the Goldilocks position; we think 60 days is just
6 right.

7 THE COURT: Okay. Mr. Cocis for Mr. Kinnison?

8 MR. COCIS: Your Honor, we have no opposition to the
9 case being continued for 60 to 90 days, as well. And
10 Mr. Kinnison is prepared to waive his right for speedy trial.

11 THE COURT: And for Mr. Bigly?

12 MR. COCIS: That might be a different case, Your
13 Honor.

14 THE COURT: Mele.

15 MR. BAILEY: Yes, Your Honor. Steven Bailey.

16 THE COURT: Yeah, Bailey. I guess we still don't
17 have your appearance straight, right?

18 MR. BAILEY: The admission took place today, 10-4.
19 So this week I can file the notice of appearance.

20 THE COURT: Okay.

21 MR. BAILEY: That will straighten up the
22 representation of Mr. Mele. But I have also spoken with the
23 government and I have no objection to 60 days, and I certainly
24 wouldn't object to 90.

25 THE COURT: Okay.

1 MR. BAILEY: Any trial rights would be waived at this
2 point.

3 THE COURT: All right. If you're all available on
4 December 3rd, at 1 p.m., I would like to continue this to that
5 date and make the appropriate findings, over the objection of
6 defendant Hostetter, find that speedy trial was properly
7 invoked.

8 Our Court is having an executive session today at 4
9 and I think the current Chief Judge findings are likely to be
10 extended on the COVID order that's in place now, that would
11 otherwise expire October 31st. If they are not, I will make
12 other findings that would be necessary that I think that will
13 cover this. If they're not, I will set a motions deadline for
14 Hostetter, so that motions can be set so that, in any event,
15 the next time I would see everybody would be December 3rd at
16 1 p.m.

17 With that schedule, is there anything else anyone
18 wants to raise today?

19 MR. BAILEY: Your Honor. That's a Friday, correct?

20 THE COURT: Yes.

21 MR. BAILEY: Okay.

22 MR. COCIS: No, on behalf of Mr. Kinnison, Your
23 Honor.

24 THE COURT: I'm sorry?

25 MR. COCIS: Nothing on behalf of Mr. Kinnison, Your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Honor.

THE COURT: Okay. I'll see you all December 3rd.

MR. BAILEY: Thank you, Your Honor.

MS. KENNEY: Thank you, Your Honor.

MS. WEST: Take care, Your Honor.

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 11th day of October, 2021

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001

This hearing was held by video in compliance with the COVID-19 pandemic stay-at-home orders and is, therefore, subject to the limitations associated with the use of current technology, including but not limited to signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing.