

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28
)	Washington, D.C.
vs.)	March 23, 2021
)	4:30 p.m.
THOMAS E. CALDWELL, ET AL.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF STATUS CONFERENCE VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Good afternoon, Your Honor.

3 This is Criminal Case No. 21-28, the
4 United States of America versus Defendant No. 1,
5 Thomas Edward Caldwell; Defendant No. 2, Donovan Ray Crawl;
6 Defendant No. 3, Jessica Marie Watkins; Defendant No. 4,
7 Sandra Ruth Parker; Defendant No. 5, Bennie Alvin Parker;
8 Defendant No. 6, Graydon Young; Defendant No. 7, Laura
9 Steele; Defendant 8, Kelly Meggs; and Defendant No. 9,
10 Connie Meggs.

11 Kathryn Rakoczy and John Crabb for the government.

12 David Fischer for Defendant Caldwell.

13 Carmen Hernandez for Defendant Crawl.

14 Michelle Peterson for Defendant Watkins.

15 John Machado for Defendant Sandra Parker.

16 Steven Brennwald for Defendant Bennie Parker.

17 Robert Foley and Desiree Wilson for Defendant
18 Young.

19 Peter Cooper for Defendant Laura Steele.

20 And David Wilson on behalf of Kelly Meggs and
21 Connie Meggs.

22 The defendants are not present for this hearing.

23 THE COURT: All right. Counsel, good afternoon to
24 all of you.

25 First and foremost, let me thank you, all, for

1 being available on such short notice. I appreciate it.

2 I did think, however, that the issue I want to address today
3 was an emergent one, and I didn't want to let this go much
4 longer, and certainly not as long as until our next hearing,
5 which I think is not scheduled until the first week in
6 April.

7 Also, the defendants are not present for this
8 hearing. And I did do a little bit of looking, and I'm
9 comfortable that the absence of the defendants for this
10 hearing and for these purposes is not something that
11 violates their due-process rights. And just given the
12 logistical challenges of having to gather all the defendants
13 given different places they are in, it just was not
14 something that we were going to be able to do on such short
15 notice to have everybody available.

16 So let me turn to the matter at hand: You know,
17 I called this hearing because of a couple of recent media
18 events that implicate this case. The first was a story that
19 ran on *60 Minutes* on Sunday evening; it featured a lengthy
20 interview with the former Acting U.S. Attorney for the
21 District of Columbia, Michael Sherwin.

22 During the interview, Mr. Sherwin expressly
23 referred to this case, and he described and characterized
24 some of the government's evidence against these defendants.
25 He also speculated about the additional charges, including

1 naming the charge of sedition, though that particular
2 comment was not specific to this matter.

3 The second media event was a story that appeared
4 yesterday in a *New York Times* news article that was titled,
5 "Justice Dept. Said to Be Weighing Sedition Charges Against
6 Oath Keepers." That article attributed two anonymous
7 sources that the Department of Justice is evaluating
8 sedition charges in this case; and specifically, the article
9 named three of the defendants in this case.

10 Let me just say at the outset that I was
11 surprised -- and I'm being restrained in my use of
12 terminology -- surprised, to say the least, to see
13 Mr. Sherwin sitting for an interview about a pending case in
14 an ongoing criminal investigation. Whether his interview
15 violated Justice Department policy is really not for me to
16 say, but it is something I hope the Department of Justice is
17 looking into.

18 As for the *New York Times* story, I found it
19 troubling that sources within the Department of Justice were
20 detailing the possibility of additional charges in a pending
21 criminal case in an ongoing criminal investigation. I have
22 little doubt that anonymously divulging internal Department
23 deliberations is contrary to Department policy.

24 No matter how much press attention this matter
25 gets, let me be clear that these defendants are entitled to

1 a fair trial, not one that is conducted in the media.
2 They're also entitled to defend against the charges that are
3 actually brought against them, not speculation about what
4 might or might not be coming. The fact is, these types of
5 statements in the media have the potential of affecting the
6 jury pool and the rights of these defendants, and the
7 government, quite frankly, in my view, should know better.

8 I called this hearing this afternoon to make clear
9 to everyone that this case will not be tried in the media.
10 If there are further public comments or stories of the kind
11 that we have seen in the last 48 hours, I will not hesitate
12 to consider a gag order.

13 I also will not hesitate to sanction any attorney
14 that violates our Local Rules for making statements about
15 this pending criminal case or pending criminal
16 investigations.

17 I will recommend to everyone that they read Local
18 Criminal Rule 57.7, which places some parameters around what
19 public comments counsel, both government and defense, can
20 make about a pending criminal investigation or a pending
21 criminal case. I intend to enforce that rule vigorously.

22 Let me finally just say to government counsel that
23 are here and present and that have entered an appearance in
24 this case that: I know none of you are responsible for the
25 public statements, and so please don't take what I've said

1 here to be critical of you personally. But the Department
2 of Justice needs to understand that these types of public
3 statements can jeopardize the integrity of a criminal case
4 and affect the rights of a criminal defendant, and it is my
5 job to ensure that these defendants receive a fair trial.
6 So let this hearing serve as notice on the Department of
7 Justice that I will not tolerate continued publicity in the
8 media that I believe affects the fair trial rights of these
9 defendants.

10 So those are my preliminary remarks. That's all I
11 really have to say about the matter, but I will give both
12 sides an opportunity to be heard, if any side wishes to
13 comment further.

14 So why don't we start with government counsel.
15 I don't know whether any of them -- or which counsel,
16 whether it's Ms. Rakoczy or who will be leading on behalf of
17 the government.

18 MS. RAKOCZY: Thank you.

19 Kate Rakoczy on behalf of the United States.

20 And with me today, both in the room and calling in
21 over Zoom and phone, are all of the counsel of record for
22 this case for the government, as well as three supervisors
23 for the United States Attorney's Office, Greg Maisel,
24 Joseph Cooney, and John Crabb. We are here today to answer
25 any of the Court's questions or concerns.

1 I can speak on behalf of the prosecutors and
2 agents and analysts who are immediately investigating and
3 prosecuting this matter. John Crabb, who's the chief of our
4 office's criminal division is here to address any questions
5 you might have about the United States Attorney's Office's
6 response to the media events that the Court referenced
7 earlier.

8 THE COURT: Ms. Rakoczy, I appreciate having the
9 supervisors available. I'm grateful, and welcome to all of
10 you.

11 I guess I am curious what, if anything, you can
12 share with me that you think would be appropriate about what
13 steps the Department of Justice is taking in light of these
14 media stories?

15 MS. RAKOCZY: I will allow Mr. Crabb to address
16 the Court's questions.

17 THE COURT: All right. Thank you, Ms. Rakoczy.
18 Mr. Crabb.

19 MR. CRABB: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

21 MR. CRABB: Your Honor, we understand and we share
22 the Court's concerns about the media contact and disclosures
23 that have been made; in particular, the two that the Court
24 mentioned: The *60 Minutes* interview from Sunday and the
25 article in the *New York Times* from last evening.

1 And the Department has already taken steps with
2 respect to both of those, if I may address them separately.

3 THE COURT: Please, go ahead, Mr. Crabb.

4 MR. CRABB: I'm sorry?

5 THE COURT: Please, go ahead.

6 MR. CRABB: First, with respect to the *60 Minutes*
7 interview which was given by the former Acting
8 U.S. Attorney, as the Court's already alluded to, the
9 Department of Justice has rules and procedures that govern
10 contact with the media and interviews.

11 As far as we can determine at this point, those
12 rules and procedures were not complied with with respect to
13 that *60 Minutes* interview; therefore, that matter has been
14 referred to the Department of Justice's Office of
15 Professional Responsibility to review.

16 There's nothing more at this point I can say about
17 that, but that's the steps that have already been taken.

18 THE COURT: Okay.

19 All right. Why don't you finish up, Mr. Crabb,
20 and I may have some additional questions.

21 MR. CRABB: Yes, Your Honor.

22 With respect to the other media issue involving
23 the *New York Times*, as the Court has mentioned, we have no
24 reason to believe that anyone on the trial team was
25 responsible for those disclosures; nevertheless, we

1 understand how serious that is.

2 And with respect to the article in the *New York*
3 *Times* that the Court has alluded to, we will be making a
4 referral to the Office of Professional Responsibility with
5 respect to that article and for them to examine and
6 determine where that information came from.

7 THE COURT: Mr. Crabb, can you help me understand
8 what guardrails are in place -- and, frankly, I think the
9 public would benefit from this -- to understand what
10 guardrails are in place with respect to public comment by
11 prosecutors about criminal matters, particularly
12 high-profile criminal matters, because, I, frankly, think it
13 would benefit the public to understand how unusual it is,
14 frankly, to have the kind of comments that have been made in
15 the last 48 hours about a case like this.

16 MR. CRABB: Yes, Your Honor.

17 We understand and share the Court's concerns that
18 there could be publicity that would prejudice the defendants
19 that would be improper and could make it difficult for
20 someone to have a fair trial; therefore, there are a number
21 of sets of different guardrails that guide prosecutors with
22 respect to contact with the media, in particular, as the
23 Court has said, a high-profile matter like this.

24 First, we have our own internal rules in the
25 Justice manual, formally known as the -- not the attorney's

1 manual, the USAM, now called the Justice Manual, and that
2 has provisions which lay out the rules for media contact.

3 And in general, it's the U.S. Attorney's
4 discretion to decide what would be appropriate, if it's in
5 the interest of law enforcement, with the understanding that
6 nothing should be done to prejudice the defendant's right to
7 a fair trial.

8 In addition, as the Court's already referred to,
9 there's a Local Rule, which we are familiar with and follow.
10 And, of course, there are bar rules which we are all subject
11 to.

12 THE COURT: All right.

13 Well, Mr. Crabb, I will -- I appreciate you
14 updating me about the steps the Department's taken.

15 And what I'll ask you to do, and I'll ask your
16 colleagues to do who've entered appearances in this case, is
17 to keep me updated about any progress on that front; and if
18 there are any developments that can be shared publicly, I'd
19 like to be kept abreast of those developments moving
20 forward.

21 MR. CRABB: Absolutely, Your Honor.

22 THE COURT: Okay.

23 Thank you, Mr. Crabb. I don't have anything
24 further or any further inquiries to the government.

25 MR. CRABB: Thank you, Your Honor.

1 THE COURT: Let me turn to defense counsel, and
2 I'll give you the opportunity to be heard on any of these
3 issues, if you wish.

4 I don't, unfortunately, have a list in front of
5 me, so I'm going to go by the order that you all are
6 appearing in front of me on my Zoom screen.

7 So we'll start with Ms. Peterson, who's occupying
8 the upper right-hand box.

9 MS. PETERSON: Thank you, Your Honor.

10 I have nothing to add other than if it becomes
11 appropriate at some future point for this to become subject
12 of a motion, we'll file it at the appropriate time.

13 THE COURT: All right. Thank you, Ms. Peterson.
14 Mr. Wilson.

15 MR. WILSON: Judge, I have seen neither the
16 *60 Minutes* interview, nor have I seen the *New York Times*
17 article, so I don't know if it implicates either of my
18 clients by name. If it does and if there's something we
19 think needs to be raised with the court, we shall; but at
20 this point, I think we're okay.

21 THE COURT: Okay.

22 Mr. Fischer.

23 MR. FISCHER: Your Honor, respectfully, we do hope
24 that the Department has taken care of this issue.

25 My client is extremely concerned, because, quite

1 frankly, he has borne the brunt of the media coverage, the
2 adverse media coverage. And as I pointed out in some
3 filings that we had when Your Honor considered
4 reconsideration of detention, there were some inaccurate
5 statements that were highly prejudicial as well.

6 So, Your Honor, I do hope -- and I understand the
7 trial team was not involved and that's great, but I do hope
8 they take appropriate action; and if we have to file the
9 appropriate motions, we will. Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Machado.

12 MR. MACHADO: Yes, Your Honor.

13 At this point, we don't have any further comment.
14 If something arises, we'll let the Court know.

15 THE COURT: All right.

16 Mr. Brennwald.

17 MR. BRENNWALD: Yes, Your Honor.

18 I will note for the record that -- I'm sure this
19 is applicable to others as well: I've been contacted --
20 I was contacted multiple times by *60 Minutes* for comments,
21 to appear on camera, to do interviews. I've been contacted
22 by a host of other networks, CNN, everything else, I'm sure
23 a lot of us have. And the appropriate answer that we've
24 given is: We don't have any comment at this point.

25 I know that a lot of defense lawyers are using the

1 media, not just in this case, other cases, too, to do
2 whatever they're doing. We have thought better of it, and I
3 hope the government will do the same.

4 THE COURT: Thank you, Mr. Brennwald.
5 Mr. Cooper.

6 MR. COOPER: Your Honor, I have little to add to
7 my colleagues; I'm not going to pile on.

8 I will also echo Mr. Brennwald and say that I,
9 too, was contacted by *60 Minutes* with respect, I guess, to
10 their investigation. And I gave them the same answer, that
11 it wasn't appropriate to comment on an open case.

12 But I appreciate the Court's keeping an eye on
13 this; and like I said, we've got nothing to else to add at
14 the point in time.

15 THE COURT: Thank you, Mr. Cooper.
16 Mr. Foley.

17 MR. FOLEY: Good afternoon, Your Honor.

18 At this time, we have nothing by way of commentary
19 to add, but thanks for the opportunity.

20 THE COURT: All right.

21 Ms. Hernandez.

22 MS. HERNANDEZ: Good afternoon, Your Honor.

23 I, too, was contacted by *60 Minutes* multiple times
24 to appear on air and provide comments.

25 And I apologize to the Court if the Court found my

1 comment to the *New York Times* out of line. I felt that in
2 light of what was said and in light of the questions from
3 the reporter about my client in particular, I had to protect
4 him and respond to what was said by Mr. Sherwin.

5 I believe that there's Supreme Court case law
6 that, in spite of our Local Rules, would allow -- I mean,
7 I thought the comments by Mr. Sherwin were very prejudicial.

8 Thank you, Your Honor, for having this hearing
9 today so promptly.

10 THE COURT: Well, let me just say this,
11 Ms. Hernandez:

12 I did not find it problematic that you responded.
13 Frankly, it is the natural thing for a defense lawyer to
14 want to do in that circumstance, and, I think, is -- you
15 know, look, illustrates the danger it creates, which is,
16 one, if the government begins making these sorts of
17 statements to the media, whether attributed or anonymously,
18 it is not surprising that defense counsel may be moved to
19 want to respond publicly as well, and that's exactly the
20 situation we all want to avoid here.

21 All right. Have I identified all defense counsel
22 or have I missed anyone?

23 Okay. Great.

24 All right. Well, I appreciate everybody making
25 yourself available this afternoon on such short notice.

1 Many of you have hearings upcoming, so we'll see you in a
2 next few days.

3 And so until we see you at the next hearing, take
4 care, everybody, stay healthy, and be safe.

5 Thank you, everyone.

6 MS. HERNANDEZ: Your Honor, on my hearing on
7 Friday, I have a sentencing in front of Judge Nichols at
8 3:00, so I just wanted to alert the Court I have two hours.
9 That may be -- the Court may look forward to my only having
10 two hours.

11 THE COURT: We should probably shorten the time,
12 then, Ms. Hernandez.

13 We'll see you on Friday.

14 Thanks, everyone.

15 (Proceedings concluded at 4:51 p.m.)
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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Please note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

Date: March 23, 2021 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR

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