

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERNARD ROSS HANSEN and
DIANE RENEE ERDMANN,

Defendants.

Case No.: CR18-0092-RAJ

JOINT DEFENSE MEMORANDUM
RE: STATUS HEARING

This complex case is scheduled for a Status Hearing on Wednesday, April 17, 2019, to address the Defendant’s Motion Asserting Privilege, In Part, and Waiving Privilege in Part Regarding Karr Tuttle Documents. Dkt. 63. Time permitting, the defense would also like to address the following issue(s) with the Court:

1. The Scheduling Order

As repeatedly stated, the volume of discovery in this case is extraordinary. In addition to the 90,000 pages of legal documents¹ that counsel had to review to determine if they should be withheld from the Government pursuant to the attorney-client privilege, discovery includes over 2600 audio files, over 180,000 numbered pages, of which over

¹ Estimating the volume of discovery is difficult because some documents have attachments and some are Excel spreadsheet files with an extraordinary number of sheets and data.

1 60,000 pages are protected and cannot be produced to the client outside the office. Dkt.
2 35 n. 16. The Government has also taken control of over approximately 1,420 boxes from
3 the Nevada warehouse that was the subject of earlier litigation, and has now produced
4 mirror images of servers for the Mint that should reflect not only the transactions that the
5 Mint conducted up to the time of the bankruptcy but also the Trustee's liquidation of the
6 Mint since he assumed control in April 2016. It remains unclear the amount of data that
7 will be on the mirror images of these servers because it will include data going back
8 several years, but it seems to be at least a terabyte of data. The Government has also
9 produced the defendants' hard drives (containing 4198 files—113 gigabytes), including
10 days of surveillance footage of the Mint vaults to be reviewed.
11

12 Moreover, although the Government's index gives the impression that, despite the
13 volume, the discovery is straight forward and easily reviewed, in truth, the discovery
14 production is a rabbit warren. Accordingly, the defense has repeatedly asked the
15 Government for a "reverse-proffer." Although open to the idea, the Government has
16 insisted it should occur at an unknown later time. Meanwhile the defense consulted with
17 a number of experts and resources to best assist it in reviewing, understanding, and
18 investigating the vast discovery including attorney Russell Aoki who is under contract as
19 a Coordinating Discovery Attorney for the Administrative Office of the US Courts,
20 Defender Services Office, to provide litigation support assistance for major criminal
21 cases across the country. Key among other tools to cull through vast and complex
22 litigation, Mr. Aoki advised that in an analogous case, this Court imposed a scheduling
23 order that required preliminary, albeit nonbinding, disclosures of government exhibits
24 and witnesses, as well as charts and summaries. *See, e.g.,* Dkt. 103, *United States v.*
25 *Bontrager and Anderson*, CR 12-61RAJ.
26

27 Thereafter, in early March 2019, having now realized the benefit of this practice to
28 both the government and the defense, the defense asked the government to agree to a

1 revised scheduling order that included a nonbinding preliminary disclosure of witnesses
2 and exhibits so the trial date and pretrial motions dates in particular, could stay on track
3 as hoped. A month or so later, the government advised that it would only agree to do so
4 by August 2 and August 9 if we agreed to disclose the same by August 16 and August 23,
5 which is only two months before the scheduled trial and long after pretrial motions are
6 said to be due.

7
8 Absent the request to narrow the vast evidence intended for trial so the defense can
9 be handled efficiently and cost-effectively, it remains an impossible task for the defense
10 to review the evidence, resolve discovery issues and conduct its own investigation and
11 legal research before the need to file any pretrial motions on May 3, 2019, and thereafter
12 prepare adequately for trial in October.

13 For these reasons, and with hopes the trial date may remain, the defense believes a
14 number of dates should be shifted in the scheduling order and added consistent with this
15 Court's order in *Bontrager and Anderson*, keeping in mind the above facts and the need
16 for adequate time for counsel to fully and adequately review the discovery with their
17 respective clients, as well as any and all factual and legal issues presented, and sentencing
18 consequences so they can effectively prepare for trial and Ms. Erdmann and Mr. Hansen
19 can each make an informed and intelligent decision of how to proceed. *See Proposed*
20 *Revised Scheduling Order* attached at Exhibit 1, pp. 1-4.

21 **2. Discovery Issues**

22
23 The defense requested the government to produce any and all subpoenas issued to
24 the bankruptcy trustee and/or estate, which, in counsel's experience, are typically
25 produced along with the returns and underlying documents. The government advised that
26 per its own unwritten policy, it has no intentions of producing the subpoenas absent an
27 order by this Court. The subpoenas and the returns are key to understanding the
28 development of the government's case against the defendants and the trustee's role in that

1 investigation and therefore, a motion is forthcoming. However, the defense would
2 appreciate guidance from the Court whether discovery motions should be filed as issues
3 unfold or whether the Court prefers such motions at specific times throughout the course
4 of the case that should also be incorporated into a revised scheduling order. Upon further
5 guidance by the Court, the defense will file the requisite motion.
6

7 Respectfully submitted this 16th day of April, 2019.

8
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Certificate of Service

I hereby certify that on April 16, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to counsel for other parties of record.

/s/ Barbara Hughes
Paralegal