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~~SECRET~~ order of 9/13/00 <sup>1</sup>

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES, ex rel.	.	Docket No. CA 96-1258
ERVIN AND ASSOCIATES, INC.,	.	
	.	
Plaintiffs,	.	Washington, D. C.
	.	June 2, 1999
vs.	.	2:00 p.m.
	.	
THE HAMILTON SECURITIES GROUP,	.	<b>FILED</b>
INC., et al.,	.	
	.	
Defendants.	.	SEP - 6 2000
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.....	.	NANCY MAYER WHITTINGTON, CLERK U.S. DISTRICT COURT

TRANSCRIPT OF STATUS CALL  
BEFORE THE HONORABLE STANLEY SPORKIN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: ANTHONY M. ALEXIS, AUSA  
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For Ervin and Associates: WAYNE G. TRAVELL, ESQUIRE  
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Official Court Reporter: GORDON A. SLODYSKO  
4806-A U. S. Courthouse  
Washington, D. C. 20001  
(202) 273-0404

Computer-Aided Transcription of Stenographic Notes

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For Ervin and Associates:	WAYNE G. TRAVELL, ESQUIRE Venable, Baetjer and Howard 2010 Corporate Ridge, Suite 400 McLean, VA 22102
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MR. ALEXIS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ALEXIS: Your Honor, this is United States ex rel. Ervin versus Hamilton, and it was a status.

THE COURT: Yes.

MR. ALEXIS: I'd like to make a fuller record of where we are and what's going on in this particular matter.

THE COURT: All right.

MR. ALEXIS: So that everyone is basically on the same page. And if I could briefly go over what's happened.

I know the defendant has filed a motion to unseal the complaint. You should realize that --

THE COURT: That's not before me right now.

MR. ALEXIS: It's not before you today?

THE COURT: Do you have a copy of it? Whose case is this? Do you know anything about it, Rheenie?

MR. ALEXIS: It's not before you today, but I know I got a copy of the motion filed.

THE COURT: Can we get a copy of it? All right.

MR. ALEXIS: It's my understanding from talking to agency -- not the agency counsel, but the counsel to the Inspector General, Judith Hetherton, that Storch & Brenner, the Special Master, has asked for an investigation regarding the compliance of discovery by the defendant in that particular

1 case because a particular backup tape or a particular piece of  
2 evidence that encompasses a several month, and in my case a  
3 very, very key period in my case was missing. They stated that  
4 it never existed, and what they didn't realize, there was prior  
5 counsel in the record who had made representations that it did  
6 exist and specifically what was on it, and gave snippets, etc.  
7 So, in response to that, the Special Master has asked for an  
8 investigation.

9 THE COURT: Well.

10 MR. ALEXIS: It's a key situation to me, and it's not  
11 one that I take lightly. And the reason why --

12 THE COURT: You've got a good Special Master there.

13 MR. ALEXIS: You know, I can't fault the Special  
14 Master on anything.

15 THE COURT: And if the Special Master asked for  
16 something, they're very knowledgeable people.

17 MR. ALEXIS: Well, it's my understanding that he felt  
18 a little duped at what happened. I mean, you have to get it  
19 actually from the agency counsel, who was more intimately  
20 involved.

21 THE COURT: Right.

22 MR. ALEXIS: But let me explain, Your Honor, if I can,  
23 what this case kind of stems on. Hamilton Securities gets a  
24 financial contract from HUD in order to serve as their  
25 financial advisor --

1 THE COURT: Right.

2 MR. ALEXIS: -- in how to dissipate -- not dissipate,  
3 but how to dispose of or handle the assets. As you know, HUD  
4 just sits on tons and tons, billions of dollars of paper. A  
5 young lady goes to Hamilton to get a job, Hamilton says, "We  
6 can't give you a job, but we can get you a job at HUD." They  
7 dress up her 171, they get her an interview at HUD. After she  
8 gets an interview at HUD, she gets the job, after HUD makes a  
9 possible waiver of a requirement that she have a CPA degree.

10 Within that same period, and there's a key period of  
11 time, she turns around and she is evaluating the bid as to  
12 whether Hamilton, which helped her get the job at HUD, should  
13 get the financial service contract, what's known as the  
14 crosscutter. She's not cooperating. She's in Denver. I want  
15 to serve a CID, a Civil Investigative Demand, to actually  
16 compel her deposition and get her testimony.

17 Hamilton, to the extent that they would have any  
18 admissions or would shed light on how she was actually placed  
19 there and how they got this contract -- and this is key to  
20 us -- that's the particular backup tapes that are missing, that  
21 we no longer have access to, to the key period, 1995 to May of  
22 1996, in which a decision was made to actually let this  
23 particular contract. And the contract was specifically awarded  
24 to Hamilton. And you should know that Hamilton actually wrote  
25 part of the contract. And then they bid on something that they

1 wrote. And we're trying to find out whether she provided  
2 inside information to Hamilton. And that's key to us.

3 Similarly, there's other aspects of the investigation  
4 that still needs to continue. And I've spoken to counsel for  
5 the relator, and they have no objection to an additional 90  
6 days. And I would request 90 days. But in addition to the 90  
7 days, one of the things that's still going to have to be ironed  
8 out -- and I can explain the 90 days. You know, my prediction  
9 is I'll file the CID and I'll serve it on Kathy Rock and her  
10 attorney, and then they'll probably do some type of a motion to  
11 quash, and then I'll probably have to do a subpoena  
12 enforcement. So I'm talking about 90 days in anticipation that  
13 there's probably going to be a little bit of satellite  
14 litigation over that CID.

15 THE COURT: But I thought this case, though, was  
16 really much more extensive than how the contract -- I thought  
17 the case involves tipping off of some of the big Wall Street  
18 merchant banks as to how to bid for certain contracts. Isn't  
19 that really what's involved in this case?

20 MR. ALEXIS: That's part of it. But I think the first  
21 step is figuring out how Hamilton was there, who placed  
22 Hamilton there and how was Hamilton placed there, and what were  
23 their motives.

24 THE COURT: Yeah, I know, but still, I don't know if  
25 that's related to the other part of the case, which it seems to

1 me that if Hamilton were tipping off people, you know, giving  
2 inside information. It seems to me it's a big case if it's  
3 doable. I don't know if it's makeable. But if it's not --

4 MR. ALEXIS: It is a big case, but I can't get anyone  
5 into play until I have someone. And I think my someone is  
6 Ms. Rock.

7 THE COURT: My only point is, do you have the right  
8 people in your agency who are doing the investigation? It  
9 seems to me to be going on for an awful long time. It would  
10 seem to me that somebody ought to be able to, you know, focus  
11 on what the case -- what the big part of the case is. And I'm  
12 only giving back to you what's been told to me over a long  
13 period of time.

14 MR. ALEXIS: Yes.

15 THE COURT: But apparently, there's some big bucks  
16 involved here, about people having the inside track on getting  
17 these contracts. I don't know. As the relator, am I right on  
18 that, that that's really the -- your aspect of the case, that  
19 part?

20 MR. TRAVELL: Yes, Your Honor. Wayne Travell, for the  
21 relator. That's absolutely true, Your Honor. I do think that  
22 Mr. Alexis -- if I may approach the podium, Your Honor.

23 THE COURT: Sure. Yeah.

24 MR. TRAVELL: I do think that Mr. Alexis's point in  
25 understanding how it was set up --

1 THE COURT: I understand that.

2 MR. TRAVELL: -- on the HUD level is an integral part  
3 of it. But it is a small part of the overall case.

4 THE COURT: I don't know how integral it is. I don't  
5 know if they're even related between the two, as to whether the  
6 other side -- how the information -- what is your case all  
7 about? What was the point of your case? That somehow they  
8 were getting information from Hamilton concerning these  
9 offerings?

10 MR. TRAVELL: That's correct, Your Honor. Our  
11 allegations are that Hamilton was in cooperation with the Wall  
12 Street merchant banks --

13 THE COURT: Yeah.

14 MR. TRAVELL: -- and was able to tip them with inside  
15 information which allowed huge blocks of these mortgage notes  
16 to be sold at a fraction of their value. Some of the bids,  
17 which are hundreds of millions of dollars, are won by -- I  
18 believe there's one bid that was a \$60,000 margin to the  
19 winner. So the margins are extremely close in terms of bidding  
20 on these huge blocks of information. In several cases, the  
21 real winner was not awarded the contract, and we know it  
22 because Hamilton's admitted that much. They actually awarded  
23 the contract to one of their favorite merchant banks, and not  
24 to the real winner.

25 THE COURT: Was there a quid pro quo?



1 MR. TRAVELL: We believe there is, Your Honor.

2 THE COURT: You don't know where it's at, though?

3 MR. TRAVELL: Well, that's one of the things I think  
4 the investigation is trying to crack.

5 THE COURT: Well, I don't even think they have touched  
6 the surface on that, though. That's the problem.

7 MR. TRAVELL: Your Honor, I have to defer to Mr.  
8 Alexis on that aspect of it.

9 THE COURT: Where is this -- don't give me anything  
10 you can't give me. In other words, I'll understand if you  
11 don't want to. The question I have is, how do you get -- how  
12 did this theme come to you, this -- that this is what was going  
13 on, the scenario? How did that come to your attention?

14 MR. TRAVELL: Your Honor, we had gotten a tip, some  
15 inside information at one point, that -- we've related the  
16 story before about the man in the lobby. On the day and the  
17 time when the final bids were due, there was a man in the lobby  
18 who apparently, after all the competitive bids were in, came up  
19 and made the last and winning bid. And we've gotten  
20 information that he was passed information from inside so that  
21 they would know what the bid should be. And we believe --  
22 that's the direct information that was done by a tipster.

23 With respect to just the circumstances and the  
24 evidence surrounding how the bids were awarded, we presented to  
25 the Court in a hearing earlier this year charts and graphs

1 which showed how three Wall Street merchant banks completely  
2 dominated all of the note sale auctions after the initial note  
3 sale auction.

4 The investigation that is currently being undertaken  
5 by the U. S. Attorney, we're not given complete access to that  
6 information --

7 THE COURT: I understand that.

8 MR. TRAVELL: -- because of litigation we have against  
9 the Government in this courthouse.

10 THE COURT: Right.

11 MR. TRAVELL: But from what we've gathered, as I said  
12 earlier, one of the critical issues is to the extent that  
13 Hamilton was manipulating HUD and its employees, how they did  
14 that. Because Hamilton was able to get influence over the  
15 agency that no contractor should have. And that gave it the  
16 ability to dispose of, at one point, billions of dollars of  
17 Government assets.

18 THE COURT: Of course, what did they do with all of  
19 the money they made? They dissipated it, because there's  
20 nothing left.

21 MR. TRAVELL: We understand that Hamilton at one  
22 point, just from its Government contracts, was paid in excess  
23 of \$42 million, I believe.

24 THE COURT: How did they dissipate all that money?

25 MR. TRAVELL: That's a good question.

1 MR. ALEXIS: There was -- well, I mean -- we haven't  
2 been able to trace proceeds, but there is an argument that the  
3 quid pro quo was not necessarily cash from the Wall Street  
4 players in this, but how about cutting us in on future ventures  
5 that we may have.

6 THE COURT: Let me tell you what you've got to do  
7 here. What you've really got to do, because this thing is  
8 dragging on --

9 MR. ALEXIS: Yes, Your Honor.

10 THE COURT: Get a team together of some very  
11 knowledgeable people. You might have to bring them in from the  
12 outside. There's a big pool of people over there at the  
13 Securities and Exchange Commission that you could use. And I  
14 don't know whether you're permitted to go outside of the SEC to  
15 bring in some of the people they used to have. But you've got  
16 to get some people that are knowledgeable in Wall Street and  
17 how these things work and get into that end of it. And I don't  
18 know whether HUD has that -- the Inspector General has those  
19 skills. I don't know. I really -- I think it's dragging on.  
20 And the longer you wait, the harder it's going to be to  
21 reconstruct things, because what you're going to have to do is  
22 reconstruct your market.

23 I know this area, and I know what you have to do. But  
24 what concerns me in sitting here and passing on these 90 days,  
25 and now you're telling me you're looking at some part, small,

1 but I agree with you that it's an important part, but I think  
2 that that's -- you've still got to get -- I'm not suggesting  
3 not to do it, but you still haven't gone out to start looking  
4 at this other stuff. Otherwise, you'll be here for the next  
5 ten years.

6 MR. ALEXIS: Yes, Your Honor.

7 THE COURT: I think you've really got to get a team  
8 together that's knowledgeable in this area of the law and can,  
9 you know, can go into it and see whether these allegations are  
10 true or not. I don't know how you're going to do it, but  
11 you've got to get -- I don't know, is the Inspector General  
12 carrying this on, or do you have anybody from Justice working  
13 on this?

14 MR. ALEXIS: OIG from HUD is carrying it on. The  
15 Department of Justice antitrust section was involved, but,  
16 obviously, there is an antitrust angle and I'm not too sure  
17 that -- I mean, it's not really an antitrust case.

18 THE COURT: Are these securities? Can you get the SEC  
19 involved? Are they securities?

20 MR. TRAVELL: Your Honor, that was a question we had  
21 initially.

22 THE COURT: What are they? What are they, student  
23 loans? What are they?

24 MR. TRAVELL: No. These are FHA loans, mortgage  
25 loans.

1 MR. ALEXIS: Defaulted loans. In many cases,  
2 defaulted loans.

3 MR. TRAVELL: Some of them are in the default, some  
4 are performing. But they're pools of mortgage.

5 THE COURT: Are they traded? Are they bought and  
6 sold?

7 MR. TRAVELL: Well, in these cases, they were  
8 auctioned. Yeah. They were sold at auction, Your Honor. I  
9 mean, mortgage notes can be securitized and sold on the market,  
10 as the Court is well aware. In this particular instance, I  
11 believe these were pooled and sold at auction.

12 THE COURT: Somebody ought to go over to the SEC and  
13 see if they will come in and investigate that. See if they'll  
14 do that for you.

15 MR. ALEXIS: In the enforcement section?

16 THE COURT: Yeah. I'd go over and see those people  
17 over there and see what they'll do, because you really need  
18 expertise in this field.

19 MR. ALEXIS: Okay.

20 THE COURT: Otherwise, you're not going to get to the  
21 key of this case.

22 MR. ALEXIS: To the nub. Okay. Well, I will  
23 actually --

24 THE COURT: All right? I'll give you the 90 days.  
25 What date is that, Barbara?

1 THE DEPUTY CLERK: September the 8th. 7th or 8th.

2 THE COURT: September 8th, at what time?

3 THE DEPUTY CLERK: At 4:30.

4 THE COURT: 4:30, September 8th. Okay?

5 MR. ALEXIS: Thank you, Your Honor.

6 MR. TRAVELL: Thank you, Your Honor.

7 THE COURT: Good luck. And if there's something  
8 before me, I'll schedule it. I didn't know there is that  
9 motion to open it up.

10 Let me ask the plaintiffs, are you prepared to go  
11 ahead with your -- if this thing -- you know, if the Government  
12 declines, are you able to -- have you got the wherewithal to do  
13 it?

14 MR. TRAVELL: That's a very serious question, Your  
15 Honor. If I may approach, Your Honor.

16 THE COURT: Yeah.

17 MR. TRAVELL: When the qui tam suit was filed in June  
18 of 1996, Ervin was a thriving company. We are litigating, as  
19 the Court may be aware, an action in this court before Judge  
20 Bryant alleging that our First and Fifth Amendment rights were  
21 violated, because once we filed our suit against HUD alleging  
22 corruption and favoritism and violation of our First Amendment  
23 rights, all of our contracts were cut off. The Government is  
24 currently holding over a million dollars of money that Ervin  
25 earned by June of 1996 and have cut off all work except for, I

1 think last year we did \$250,000 worth of work, whereas in prior  
2 years we had done \$9 million worth of work.

3 As the case progresses, our ability to have the  
4 wherewithal to prosecute the case becomes more and more  
5 seriously compromised.

6 THE COURT: All right. All right. Thanks.

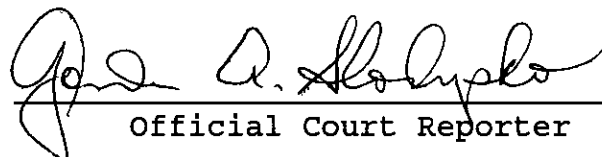
7 MR. ALEXIS: Thank you, Your Honor.

8 THE COURT: All right. Next case.

9 (Proceedings concluded at 2:25 p.m.)  
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11  
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13 CERTIFICATE OF REPORTER

14 I certify that the foregoing is a correct transcription from  
15 the record of proceedings in the above-entitled matter.

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17 Official Court Reporter  
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