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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, ex rel.  
ERVIN and ASSOCIATES, INC.,

Civil Action No. 96-1258

PLAINTIFFS,

vs.

Washington, D. C.  
June 20, 1996  
2:04 p.m.

THE HAMILTON SECURITIES GROUP,  
INC.,

DEFENDANT.

**FILED**

JUL 1 0 2000

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

TRANSCRIPT OF SEALED HEARING  
BEFORE THE HONORABLE CHARLES R. RICHEY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

MARK NAGLE, ESQ.  
DANIEL M. HAWKE, ESQ.  
WAYNE G. TRAVELL, ESQ.

FOR THE DEFENDANT:

(none)

OFFICIAL COURT REPORTER:

Laura M. Beasley  
4800-H U.S. Courthouse  
Washington, D. C. 20001  
(202) 371-1843

Computer-Aided Transcription of Stenographic Notes

SEALED PROCEEDINGS

1  
2 THE CLERK: This is Civil Action 96-1258, United States  
3 ex rel Ervin and Associates versus Hamilton Securities Group,  
4 Inc., et al.

5 Present for the plaintiffs, Wayne Travell, Mark Nagle,  
6 Daniel Hawke.

7 MR. NAGLE: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 Is plaintiff's counsel here?

10 MR. TRAVELL: Yes, Your Honor.

11 Wayne Travell for plaintiff Ervin and Associates.

12 With me is Daniel Hawke, my partner, also of counsel  
13 for the plaintiff.

14 THE COURT: All right. Let me speak to the  
15 United States, if you don't mind.

16 MR. TRAVELL: Thank you, Your Honor.

17 THE COURT: Mr. Nagle, if I may inquire, Section 3730  
18 of the statute may be somewhat ambiguous in its requirements;  
19 I am not certain.

20 Quoting from subsection two, it says that: "The  
21 Complaint and a written disclosure of substantially all material  
22 evidence and information the person possesses shall be served on  
23 the government pursuant to Rule (4)(d)(4) of the Federal Rules  
24 of Civil Procedure. The Complaint shall be filed in camera,  
25 which was done here, shall remain under seal for at least

1 60 days, and shall not be served on the defendant until the  
2 Court so orders." Well, I did order that.

3 "The government may elect to intervene and proceed with  
4 the action within 60 days after it receives both the Complaint  
5 and the material evidence and information," end of quote.

6 I am reading from subsection two of Section 3730, as  
7 I said.

8 MR. NAGLE: Yes, Your Honor.

9 THE COURT: Now, I wonder -- my question to you is:  
10 Have you received any or all of the substantial -- have you  
11 received substantially all material evidence and information  
12 they possess?

13 MR. NAGLE: Your Honor, I believe the best answer  
14 I could give to the Court's question is that we have not  
15 received substantially all at this time. We have, however,  
16 received information beyond what is reflected in the four  
17 corners of the Complaint itself.

18 THE COURT: Good. All right, then.

19 Have you discussed this with plaintiff's counsel?

20 MR. NAGLE: I have, admittedly on a fairly preliminary  
21 basis at this point, Your Honor, yes.

22 THE COURT: Oh, sure, sure. Obviously.

23 Well, let them come up here with you because I want to  
24 flesh this out if the Court possibly can.

25 MR. NAGLE: Yes, sir.

1 THE COURT: When are you going to make available, as  
2 required by statute, substantially all of the information and  
3 evidence you possess?

4 MR. TRAVELL: Your Honor, it's been available since the  
5 first day. Given Mr. Nagle's schedule -- he was out of town  
6 last week at a judicial conference --

7 THE COURT: He was only there three days.

8 MR. TRAVELL: I have written to Mr. Nagle's office the  
9 day the suit was filed and several times since offering to meet  
10 and turn over all information we have.

11 THE COURT: Tell me how many pages of information you  
12 have.

13 MR. TRAVELL: It may be several thousands of pages,  
14 Your Honor.

15 THE COURT: Really? How many thousand? Several is  
16 more than --

17 MR. TRAVELL: Two or three thousand, Your Honor.

18 The Court should understand that much of the  
19 information which supports the qui tam allegations has been  
20 provided to us by employees at HUD.

21 My client just this week got an anonymous package,  
22 which was apparently sent out from the Office of General Counsel  
23 of HUD, which supports allegations not only in this Complaint  
24 but in a Complaint that has been filed also in this court, which  
25 is apparently before Judge Bryant, alleging certain

1 constitutional violations.

2 THE COURT: Not a qui tam action?

3 MR. TRAVELL: No, sir. This is the qui tam action as  
4 purely a civil action, sir.

5 So the allegations that we have made are supported by  
6 voluminous evidence not only in the form of written documents  
7 that have been provided to us, but also in the form of anonymous  
8 telephone calls which have been recorded and things of that  
9 nature.

10 THE COURT: Let me say this. What you are saying --  
11 if it is several thousand pages, you are reminding me of the  
12 criticism I have of lawyers generally: When it comes to a trial  
13 by jury, they put in hundreds of exhibits and the jury is only  
14 going to look at three or four of them. I wish somehow or other  
15 we could teach lawyers that; and even in bench trials, they dump  
16 everything on the judge and only maybe a handful are really  
17 relevant. Mr. Nagle knows that because he has been experienced  
18 and is an able lawyer.

19 How long would it take you, sir, to telescope the  
20 intelligent review by Mr. Nagle and the United States of what  
21 really are the critical pieces of evidence so he can make an  
22 informed decision? Don't just dump on him.

23 MR. TRAVELL: Your Honor, my client has, again from the  
24 outset, offered to meet in person with the U. S. Attorney to  
25 help the U. S. Attorney understand what our allegations are

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1 about and help the U. S. Attorney understand what it needs in  
2 order to make its judgment. We can give the U. S. Attorney's  
3 Office as much or as little as they want. We can do that  
4 tomorrow, given Mr. Nagle's schedule, of course.

5 THE COURT: Well, he is a very busy man. I don't want  
6 to impair his other duties.

7 Mark, what is your situation? I just don't want him to  
8 dump on you, but, by the same token, you are entitled to all  
9 this information.

10 MR. NAGLE: Your Honor, we appreciate the Court's views  
11 in that regard.

12 Counsel for the relators has indicated that they are  
13 willing to meet, at our convenience. We are happy to meet with  
14 counsel and with their client and explore the material  
15 dimensions of the allegations in this Complaint. We could do  
16 that next week.

17 We could move, I would think, expeditiously to take the  
18 other necessary investigative steps based upon what we learn in  
19 next week's meeting. That may include a review of all of the  
20 several thousand pages of material that counsel has referred to  
21 or it may not.

22 But at this point, Your Honor, we are prepared to move  
23 forward to talk with the counsel for the relators and with the  
24 relator himself, that is the principal of the corporate party  
25 here, and then determine within the government what additional

1 investigative steps we need to take to get to the point where we  
2 can make what the statute requires us to make, which is an  
3 informed election to intervene or not --

4 THE COURT: Right.

5 MR. NAGLE: -- within the time period allowed by the  
6 statute.

7 THE COURT: Sixty days.

8 MR. NAGLE: Yes, Your Honor.

9 THE COURT: Well, that 60 days dates from the date of  
10 the Complaint.

11 When were you served, sir?

12 MR. NAGLE: June 7th, Your Honor.

13 THE COURT: All right.

14 MR. NAGLE: I count the 60 days as running August 5,  
15 Your Honor, if I have counted on the calendar correctly.

16 THE COURT: All right. You said you could make them  
17 available to Mr. Nagle's office tomorrow?

18 MR. TRAVELL: That's correct, Your Honor.

19 THE COURT: And that includes everything, including the  
20 transcript of the wiretaps or whatever there is that you  
21 mentioned.

22 MR. TRAVELL: Well, they are essentially voice-mail  
23 messages that have been sent to my client.

24 THE COURT: All right. Have you got copies of that?

25 MR. TRAVELL: We actually have them with us today,

2  
1 Your Honor. Those things can be provided to Mr. Nagle right  
2 away.

3 THE COURT: All right. Get all of them.

4 I would counsel and urge you to give him what you  
5 consider to be the most relevant, material documents. You have  
6 got to give him all because the statute says "all material  
7 evidence and information."

8 MR. TRAVELL: That is correct, Your Honor.

9 THE COURT: But do him the courtesy, as officers of  
10 this court, to mark those which you consider major and  
11 material --

12 MR. TRAVELL: Yes, sir.

13 THE COURT: -- and relevant so that their office  
14 doesn't have to spend unnecessary time. I need him for other  
15 things -- not that I don't think this is a bona fide claim, for  
16 this.

17 Deliver them to --

18 You are going to be here tomorrow, are you not?

19 MR. NAGLE: Oh, yes, Your Honor.

20 THE COURT: You can receive them tomorrow.

21 MR. NAGLE: By all means, Your Honor.

22 THE COURT: Deliver them to Mr. Nagle's office before  
23 4:00 p.m. tomorrow.

24 And I think probably, Mr. Nagle, it would be in the  
25 public interest to have a control date as to when you would



2  
1 report back to the Court.

2 Madam Clerk, if you would be so kind to share a  
3 calendar with Mr. Nagle.

4 THE CLERK: Yes, sir, Your Honor.

5 THE COURT: He can just look at mine there on the  
6 bottom. See, you have got June. July.

7 Can we see him in early July? That will give him time  
8 enough if the plaintiffs do what I ordered them to do.

9 Please make it the first two weeks.

10 MR. NAGLE: Your Honor, I will be away from the city  
11 July 3rd through 8th, and then in a conference in Washington  
12 through the end of the week beginning July 8th.

13 THE COURT: Well, let's have it then on the 1st at  
14 11:30 a.m., just as a control date, and then you can give me an  
15 informed report. This is only the 20th.

16 MR. NAGLE: I understand.

17 THE COURT: And you can get your machinery in motion to  
18 tell me where you stand.

19 MR. NAGLE: Fair enough, Your Honor.

20 MR. TRAVELL: Absolutely.

21 THE COURT: Thank you very much.

22 MR. TRAVELL: Thank you, Your Honor.

23 THE COURT: You are fortunate to have such an able man  
24 here on the other side

25 MR. TRAVELL: I look forward to working with Mr. Nagle

3  
1 on this, Your Honor

2 THE COURT: He will do a good job.

3 MR. TRAVELL: Thank you.

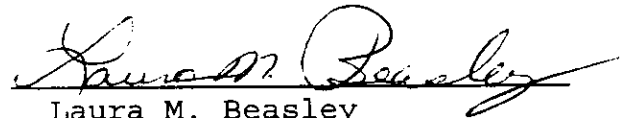
4 THE COURT: Thank you. You will be excused.

5 (The above matter was concluded.)  
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CERTIFICATE OF REPORTER

This record is certified by the undersigned reporter to be the official transcript of the above-entitled matter.



Laura M. Beasley  
Official Court Reporter