

CHADBOURNE
& PARKE LLP

Abbe David Lowell
direct tel (202) 974 5678
adiowell@chadbournel.com

1200 New Hampshire Avenue NW, Washington, DC 20036

tel (202) 974-5600 fax (202) 974-5602

3/18/05

March 18, 2005

**VIA FACSIMILE AND FIRST CLASS
MAIL**

The Honorable Paul L. Friedman
U.S. District Court for the District of
Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: **United States v. Walter Anderson, CR 05-66 (PLF)**

Dear Judge Friedman:

Following the denial of our motion to impose conditions of release for Mr. Anderson and our hearing last week, we requested reconsideration, especially on the issue of finding conditions to satisfy the Court's concerns because the law authorizes pretrial detention only when there is "no condition or combination of conditions of release will reasonably assure [the defendant's] appearance at trial." United States v. Simpkins, 826 F.2d 94, 94-95 (D.C. Cir. 1987) (emphasis added). With that in mind, we have been consulting with Kroll Inc.-- the world's leading security service -- and with others. We request the Court to consider that there are indeed such conditions.

In light of the government's position, we wanted to reiterate that conditions of release (or detention) are not supposed to be punitive or to provide an unfair advantage to the government. 18 U.S.C. § 3142(c)(B); see United States v. Rose, 791 F.2d 1477, 1480 (11th Cir. 1986) (quoting United States v. Powell, 639 F.2d 224, 225 (5th Cir. 1981) ("the purpose . . . is to secure the presence of the defendant; . . . not to enrich the government or punish the defendant"). Moreover, there is no requirement that the conditions be fail safe. As the D.C. Circuit has emphasized, "Section 3142 speaks of conditions that will, 'reasonably' assure appearance, not guarantee it." Xulam, 84 F.3d at 444; see also United States v. Alston, 420 F.2d 176, 178 (D.C. Cir. 1969) ("The law requires reasonable assurance but does not demand absolute certainty"). Nevertheless, we believe there are conditions that are close to fail safe and leave little room for any legitimate concern. In effect, we are proposing to turn Mr. Anderson's home into a prison, but one which will allow him the ability to prepare an adequate defense.

CHADBOURNE
& PARKE LLP

Ltr. to Hon. Paul L. Friedman of March 18, 2005

With respect to this additional factor of trial preparation, we would like the Court to again consider the following: (1) under the best of circumstances, this case will be difficult to prepare; there is not only the sheer amount of documents and information to review, but there is also the nature of the material; the government informed us that it has roughly 95 boxes of materials it seized from Mr. Anderson's home that can neither be imaged nor copied; they cannot part with this but it would be essential for us to work with Mr. Anderson to review it; similarly, we need to have forensic professionals involved to also meet with us and our client; these tasks cannot be done in the present circumstances¹; (2) continued detention puts extraordinary pressure on Mr. Anderson to seek trial before he or counsel may be ready; as the Court noted, the government has had over a three year head start; this is the type of case (e.g., quantity of documents, need for experts, etc.) that requires a good deal of time; in addition, there are issues from charging defects to searches that will require more than ordinary pre-trial motions practice; it can interfere with Mr. Anderson's ability to adequately prepare to have the pressure of unnecessary (under the availability of conditions) pre-trial detention; (3) in a related area, Mr. Anderson would like us to be his trial counsel, and wherever possible a criminal defendant's right to counsel of choice should be granted; his pre-trial detention which would lead to his need to go to trial sooner than our first scheduling order envisioned would then create a potential conflict in my own trial schedule; this result does not have to occur. See United States v. Bodmer, 2004 WL 169790, at *3 (S.D.N.Y. Jan. 28, 2004) (Scheindlin, J.) (considering the complexity of the case and the importance of the defendant's uninterrupted access to trial counsel in authorizing pre-trial release); United States v. Ruedlinger, 1997 WL 445819, at *4-5 (D. Kan. May 22, 1997) (same).

whm

So, for the reasons set out above and the requirements of the law, we propose the following conditions of release. The expenses that any of these conditions create will be born by his family or friends and not be a burden to the government:

¹ As one example, today I had a one and a half hour opportunity to meet with our client. Normally, that would provide a substantive session for an attorney and a client. Instead, this is what happened: (1) it took 20 minutes to get to the facility, (2) it took nearly 15 minutes to be cleared and escorted to an 8' x 8' cubicle, and (3) it took 25 minutes for the facility to get Mr. Anderson and me together. This left 25 minutes for a meeting, without accounting for the time it took to be cleared out of the facility, the 30 minutes to get back in traffic and I was still late to another proceeding because I had to spend the time I did with Mr. Anderson.

CHADBOURNE
& PARKE LLP

Ltr. to Hon. Paul L. Friedman of March 18, 2005

- (1) that Mr. Anderson be placed on house arrest; Mr. Anderson lives on the seventh floor of an apartment condominium; there is only one door leading in and out of the apartment and there is a balcony that poses little risk of being an effective escape route as it is on the seventh floor;
- (2) whenever he leaves (e.g., medical visits or any other reason approved by the Court or Pre-Trial Services), he will be accompanied by an off-duty, armed police officer, corrections officials or the equivalent;
- (3) Kroll will install cameras that will monitor the interior of the apartment near the door and the balcony; Kroll and Pre-Trial Services will be able to monitor Mr. Anderson through the cameras placed in his home;
- (4) Kroll will further restrict Mr. Anderson's ability to flee by placing a so-called "polar bear" tracking device on his ankle; the device cannot be removed by Mr. Anderson and is the same type of device that the U.S. military placed on captured accused war criminals in Bosnia; the device is impervious to water and any number of other counter-measures, and can be used to track Mr. Anderson with pin-point accuracy anywhere he may go;
- (5) as a further deterrent to his flight, Mr. Anderson will post a \$100,000 retainer with Kroll to track him and return him to Court in the event that he flees;
- (6) to provide further assurance as to his whereabouts, Mr. Anderson will submit to random voice recognition calling decided by Pre-Trial Services; in addition, Pre-Trial Services can contact the off-duty police officer monitoring Mr. Anderson to verify his location at any time;
- (7) we ask that the Court permit Mr. Anderson to leave the house only for medical reasons and to meet with his lawyers, and even then only with the permission of Pre-Trial Services and when he is accompanied by an off-duty D.C. police officer;
- (8) indeed, if the Court does not feel these measures are sufficient, we could arrange through Kroll for there to be an armed, off-duty officer as described above posted outside Mr. Anderson's door twenty-four/seven; and
- (9) the other conditions that Pre-Trial Services normally apply (e.g., no contacts, no passport, no travel documents, no commission of any offenses) would also apply.

meeting for business purposes which are absolutely necessary
able legal

CHADBOURNE
& PARKE LLP

Ltr. to Hon. Paul L. Friedman of March 18, 2005

Regardless of whether Mr. Anderson is a flight risk -- a proposition Mr. Anderson vigorously denies² and would like to address to the Court if the Court is not satisfied with this suggestion -- the proposed conditions provide more than a reasonable assurance that Mr. Anderson would appear at trial. The conditions also would provide him with the unfettered access to counsel that will be necessary to secure his right to effective assistance of counsel, his choice of counsel and, ultimately, a fair trial.

The government may oppose these conditions or any conditions other than pre-trial detention in a jail with less than adequate access for trial preparation, but an objective consideration of this proposal should give the Court more than the assurances required in the law ("the least restrictive" that will reasonably assure his presence.

Respectfully,

A handwritten signature in black ink, appearing to read "Abbe David Lowell", written over the typed name.

Abbe David Lowell

cc: Susan B. Menzer, Esq. (via facsimile)
Karen E. Kelly, Esq. (via facsimile)

² As just one point, the government's claim that Mr. Anderson has access to \$20 million in some Swiss bank account is not only wrong, but the government has documentation from Swiss authorities that confirm that the statement they made to this Court is not accurate.