

ETHAN NORDEAN COMPLAINS THAT HE'S NOT BEING TREATED AS BADLY AS A MUSLIM ACCUSED-TERRORIST MASTERMIND

Ethan Nordean and Joe Biggs just argued they should be released pre-trial because – uniquely among 600 January 6 defendants (or even the subset of around 70 who are detained pre-trial) – they can't prepare for trial unless they're at home with access to electronic devices to work with their attorneys.

That was one of the “new” things Nordean attorney Nick Smith and Biggs' attorney John Hull raised to argue they should be released (Nordean also raised the \$1M bail his dad was willing to point up and the reverse panopticon fortress in which Nordean wanted to wait out trial with advance warning of pretrial service officer approach).

Ultimately, the entire hearing was problematic because Nordean's lawyer, Nick Smith, largely succeeded in treating this as an original bail determination, rather than a reopening that would require new information. He succeeded – probably not without cause – in suggesting that DOJ hadn't turned over a video he and Biggs claimed, fairly ridiculously, would prove they had no intent to assault the Capitol (he argued they intended to “go back” to the Ellipse when one of the most damning things about the Proud Boy actions that day is they never really gave heed to the rally that brought thousands of other people to DC).

But Judge Tim Kelly, though he was furious with Nordean for suggesting that he – a Trump appointee – was treating Nordean differently because of politics, nevertheless allowed both

sides to treat this not as an motion to reopen, but as something else, meaning both kept throwing out new information. That led the government to provide information they would have presented if this were a bail determination.

And then they got into a fight over how much of an Eddie Block video each side has, or should have, all while arguing that if Kelly had it all he would liberate the masterminds of the January 6 attack.

Smith and Hull also argued that their clients should be treated like Russell Taylor even though Taylor never entered the Capitol and, in so arguing, ignored the DC Circuit ruling that said everyone should be treated individually.

Ultimately, though, Smith tried to resuscitate an argument that, because after he was arrested, the Northwest Proud Boys nominally replaced him as leader, it's proof he couldn't be dangerous going forward, in spite of the fact that Telegram chats Nordean himself submitted showed that everyone treated Nordean as a leader. And then Hull got up and admitted that both Biggs and Nordean were great leaders.

Yes they were.

There are – far bigger – problems here. Procedurally, this should have been focused on only new news. That's not what happened – both sides were arguing as if this were a new detention dispute. Judge Kelly needs to bracket off debate about new news, especially if, as the government claims, Hull relied on information he had during the initial dispute (though given McCullough's past sloppiness, I don't trust him on this point either).

There are discovery disputes that Judge Kelly needs to put an end to right away – and needs to force DOJ on the record for the entire government.

There are other issues I'll get into in a follow up; but a key point is Smith's claim that poor

white Ethan Nordean is being treated unfairly as compared to others. Smith argued that the one way the public could now that politics weren't involved would be for the same standard to be applied.

One way public knows politics not involved is same standard applied.

Trump appointee Tim Kelly nearly lost his patience by the insinuation that poor Ethan Nordean was being treated unfairly for being a right-wing white man.

But maybe Kelly should take him up on that.

After all, the standard for Muslim men who orchestrated terrorist attacks like the one Nordean did is far harsher than what he has been subjected to. Ethan Nordean says he's suffering from unequal treatment.

He's right.

But only because we don't subject white men who try to prevent the peaceful transfer of power like we would Muslim men.

He wants to be treated equally, like Muslim men accused of disrupting democracy, I can only assume. But that is unlikely to get him released pre-trial, nor should it.

At one point, Nick Smith – presumably intending to complain that his client wasn't treated like some other group of people who didn't apparently mastermind an attack on the US – suggested Nordean's treatment raised Equal Protection issues.

Smith: One way public knows politics not involved is same standard applied.

He makes a great argument that Ethan Nordean should be treated like any other terrorist leader. But that would result in harsher conditions, not lighter ones.