

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 22-15
)	Washington, D.C.
vs.)	April 8, 2022
)	10:07 a.m.
ELMER STEWART RHODES III, ET AL.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES VIA ZOOM

For the Government:	Kathryn L. Rakoczy
	Jeffrey S. Nestler
	U.S. ATTORNEY'S OFFICE
	555 Fourth Street, NW
	Washington, D.C. 20530
	(202) 252-7277
	Email:
	kathryn.rakoczy@usdoj.gov
	Email:
	jeffrey.nestler@usdoj.gov

APPEARANCES CONTINUED:

For Defendant

Elmer Stewart Rhodes III:

Phillip A. Linder
BARRETT BRIGHT LASSITER LINDER
3300 Oak Lawn Avenue
Suite 700
Dallas, TX 75219
(214) 252-9900
Email:
phillip@thelinderfirm.com

For Defendant

Kelly Meggs:

Jonathon Alden Moseley
JONATHON MOSELEY
ATTORNEY AT LAW
5765-F Burke Centre Parkway
#337
Burke, VA 22015
(703) 656-1230
Email: contact@jonmoseley.com

For Defendant

Kenneth Harrelson:

Bradford L. Geyer
FormerFeds LLC
2006 Berwick Drive
Cinnaminson, NJ 08077
(856) 607-5708
Email:
Bradford@formerfedsgroup.com

For Defendant

Jessica M. Watkins:

Jonathan W. Crisp
CRISP AND ASSOCIATES, LLC
4031 North Front Street
Harrisburg, PA 17110
(717) 412-4676
Email: jcrisp@crisplegal.com

APPEARANCES CONTINUED:

For Defendant

Roberto A. Minuta:

Alfred Guillaume, III
LAW OFFICE OF
ALFRED GUILLAUME III
6305 Ivy Ln.
Suite 700
Greenbelt, MD 20770
(301) 377-2158
Email: ag3law@gmail.com

William Lee Shipley, Jr.
LAW OFFICES OF
WILLIAM L. SHIPLEY
841 Bishop Street
Suite 2201
Honolulu, HI 96813
(808) 521-3336
Email: 808Shipleylaw@gmail.com

For Defendant

Joseph Hackett:

Angela Halim
FEDERAL COMMUNITY
DEFENDER OFFICE
601 Walnut Street
Suite 501 West
Philadelphia, PA 19106
(215) 928-1100
Email: angie_halim@fd.org

For Defendant

David Moerschel:

Scott Weinberg
BROWN, SUAREZ, RIOS & WEINBERG
265 E. Marion Avenue
Suite 114
Punta Gorda, FL 33950
(941) 575-8000
Email: scott@bsrwlegal.com

For Defendant

Brian Ulrich:

Attilio Joseph Balbo
BALBO & GREGG,
ATTORNEYS AT LAW, P.C.
P.O. Box 1297
Richmond Hill, GA 31324
(912) 459-1776
Email: aj@balbogregg.com

APPEARANCES CONTINUED:

For Defendant

Thomas E. Caldwell:

David William Fischer, Sr.
FISCHER & PUTZI, P.A.
7310 Governor Ritchie Highway
Empire Towers, Suite 300
Glen Burnie, MD 21061-3065
(410) 787-0826
Email:
fischerandputzi@hotmail.com

For Defendant

Edward Vallejo:

Matthew J. Peed
CLINTON & PEED
1775 Eye Street, NW
Suite 1150
Washington, D.C. 20006
(202) 919-9491
Email: matt@clintonpeed.com

Pretrial Services Officer:

Christine Schuck

Court Reporter:

William P. Zaremba
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
E. Barrett Prettyman CH
333 Constitution Avenue, NW
Washington, D.C. 20001
(202) 354-3249

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 P R O C E E D I N G S

2 COURTROOM DEPUTY: All rise. The Honorable
3 Amit P. Mehta presiding.

4 THE COURT: Please be seated, everyone.

5 COURTROOM DEPUTY: Good morning, Your Honor.
6 This is Criminal Case No. 22-15, United States of America
7 versus Elmer Stewart Rhodes III.

8 Defendant No. 2, Kelly Meggs; Defendant No. 3,
9 Kenneth Harrelson; Defendant 4, Jessica Watkins;
10 Defendant 6, Roberto Minuta; Defendant 7, Joseph Hackett;
11 Defendant 8, David Moerschel; Defendant 9, Brian Ulrich;
12 Defendant 10, Thomas Edward Caldwell; and Defendant 11,
13 Edward Vallejo.

14 Kathryn Rakoczy and Jeffrey Nestler for the
15 government.

16 Phillip Linder for Defendant Rhodes.

17 Jonathan Moseley for Defendant Meggs.

18 Bradford Geyer for Defendant Harrelson.

19 Jonathan Crisp for Defendant Watkins.

20 Alfred Guillaume and William Shipley, Jr., for
21 Defendant Minuta.

22 Angela Halim For Defendant Hackett.

23 Scott Weinberg for Defendant Moerschel.

24 A.J. Balbo for Defendant Ulrich.

25 David Fischer for Defendant Caldwell.

1 And Matthew Peed for Defendant Vallejo.

2 Defendants Rhodes, Meggs, Harrelson, Watkins, and
3 Vallejo are appearing in person.

4 Defendants Minuta, Hackett, Moerschel, Ulrich, and
5 Caldwell are appearing remotely for this proceeding.

6 THE COURT: Okay. Good morning again, everyone.
7 Good to be with everybody.

8 Okay. So we're here for a status conference to
9 see how things move forward. Why don't we begin with the
10 status of discovery and turn to government counsel, who I
11 actually don't see on the screen, maybe they're on a
12 different feed.

13 MS. RAKOCZY: Good morning, Your Honor. This is
14 Kate Rakoczy on behalf of the United States.

15 THE COURT: Oh, there you are, Ms. Rakoczy.
16 Good morning.

17 MS. RAKOCZY: Yes, Your Honor.

18 With respect to discovery since we were last
19 before the Court in this particular case, the government has
20 provided additional discovery materials. We have provided a
21 significant amount of materials that might be described as
22 civilian witness *Jencks* materials. I use the word *Jencks*
23 broadly because not all of the people whose materials we
24 turned over will testify at trial. But civilian witnesses
25 who've been interviewed in connection with this

1 investigation, some of whom might testify at a trial. We've
2 turned over the bulk of those materials.

3 We've turned over the grand jury transcripts and
4 exhibits of all civilian witnesses who testified through
5 January 12th of 2022, the date of the last -- of this
6 indictment. So that means at this point in time, the
7 defense has access to the grand jury transcripts and
8 exhibits for all of the witnesses who've testified before
9 the grand jury, law enforcement, and civilian, through
10 January 12th, 2022.

11 We provided a number of FBI memoranda of
12 interviews, documenting interviews of civilian witnesses,
13 recordings, where available, and transcripts, where
14 available, from those interviews. And so a number of the
15 civilian witness materials have been turned over.

16 Additionally, there were a number of witnesses, a
17 small number of witnesses from whom the government obtained
18 electronic evidence in the form of data from devices or from
19 social media or email accounts, either through consent or
20 legal process, and the government has turned over a handful
21 of evidence along those lines.

22 So at this point in time, the defense does have a
23 significant amount of the materials that would constitute
24 witness interviews and related materials, civilian witness
25 interviews and materials.

1 There are a small number of civilian witness
2 interviews or materials that we have not turned over at this
3 point in time due to either security concerns or for fear of
4 interfering with the ongoing investigation. But that is a
5 very small universe of documents, and we do plan to provide
6 that well in advance of the trial.

7 Additionally, the government has provided a number
8 of reports from the FBI files for the ongoing investigation.
9 I believe we are now current through the beginning of
10 February in terms of the FBI's files and having provided the
11 discoverable materials from those files. We're doing
12 another pass now and hope that in the coming weeks we'll be
13 current through now, through the beginning of April. And we
14 anticipate that beyond this point, there will not be very
15 many reports generated from the ongoing investigation.
16 There will no doubt be a few, and we'll provide those on a
17 rolling basis, but we're anticipating that we're coming to
18 an end of that process as well.

19 With respect to electronic evidence in terms of
20 devices and accounts, I think I said things along these
21 lines at our last hearing. But at this point in time, the
22 devices and accounts that have been seized and searched for
23 all of the charged defendants in this case and the related
24 cases have been provided, with the exception of two devices
25 that were seized during the arrest of Mr. Rhodes. There

1 were a number of devices seized during the arrest of
2 Mr. Rhodes and a search of the premises where he was staying
3 and a vehicle he was using, but I think only two of those
4 devices actually have data that needs to be reviewed by law
5 enforcement, and the FBI's completing its review of those
6 two devices. It's a laptop and an Apple iPhone. And so we
7 hope to get that to the defense soon as well.

8 So I think with respect to case-specific
9 discovery, Your Honor, we're coming to an end of that.
10 There is an ongoing investigation. So to the extent that
11 information continues to be gathered, we will provide that
12 on a rolling basis. But we are slowing in that aspect of
13 this. And we are also very mindful of the trials that are
14 upcoming, and so we are not -- we are trying to limit the
15 amount of additional information that comes in and that
16 might be discoverable and relevant to this case.

17 I did want to note, Your Honor, I know we'll turn
18 to trial readiness and the recent motion to continue by the
19 defense as we go forward in this hearing. But while I have
20 an opportunity to address it, I did want to give some scope
21 or context to the electronic evidence that the government
22 has provided, because I do think it helps the Court to
23 concretely understand the level of evidence that we're
24 dealing with and how the government is sympathetic to the
25 defense's need to get through this and to the time that that

1 takes, because the government has been spending the last
2 year and several months going through this data ourselves.

3 So the government estimates that from the charged
4 defendants and then from uncharged witnesses and subjects
5 whose electronic accounts and devices have been looked at,
6 I think that the government has seized and reviewed close to
7 200 devices and accounts, it's probably more like 180 or
8 190, but this is a very significant number of accounts and
9 devices. Some 50 or 60 of those devices wound up not having
10 evidence that the government deemed relevant, and nothing
11 was seized from those devices and accounts.

12 But there are approximately 130 to 150 devices and
13 accounts from which the government has seized data and
14 determined that that data is relevant and provided a copy to
15 the defense. As I mentioned, there are a few outstanding
16 ones that we need to wrap up and provide to the defense, but
17 there are not that many at this point.

18 Our estimate is that the size of the data from
19 those devices and accounts -- from the evidence from those
20 devices and accounts that the government has deemed relevant
21 or potentially relevant is approximately 180 gigabytes of
22 data.

23 That's a little bit hard to wrap your mind around,
24 I think, if you're not a technical person. So by way of
25 example, if you take a look at one of the videos that the

1 government has submitted to this Court, a video that one of
2 the defendants filmed while entering the Capitol, it's a two
3 and a half minute video, that's about 17 megabytes in size.
4 180 gigabytes is about 180,000 megabytes of data.

5 So if everything that we seize was a video of
6 about two and a half minutes in length, that would mean that
7 what the government has seized, indeed, as potentially
8 relevant and given to the defense would constitute 10,500
9 videos.

10 Now, obviously not everything that we've seized
11 from these devices is videos. A lot of what we have seized
12 and identified as relevant is a photo or a message, and
13 so it's actually much smaller. So when you think about the
14 number of concrete, discrete items of evidence that the
15 defense would have to view in terms of messages, videos, and
16 photographs, it's even more than, say, 10,500 videos.

17 And we articulate that to the Court to just give a
18 sense of the scope of what we're dealing with of potentially
19 relevant evidence that the government has seized and flagged
20 for review and consideration and that we've then given to
21 the defense that they, in turn, used to seize and review and
22 investigate and prepare for trial.

23 Similarly, among these items of electronic
24 evidence that the government has seized and reviewed, we've
25 identified for the defense about 15 or 16 Signal message

1 chats that we have determined -- or we've categorized as
2 significant planning and coordination chats.

3 We put those all into an Excel spreadsheet that we
4 gave to the defense, I think, in October. And that
5 spreadsheet has 45,000 rows. So that means there's 45,000
6 messages in these combined 16 threads that the government
7 has flagged for the defense and the government is treating
8 as important evidence and has suggested that the defense
9 treat that as important evidence.

10 And I think that just helps to give the Court some
11 sense of the scope of what we're dealing with here. That's
12 an Excel spreadsheet that we provided to the defense in
13 October. But even in October getting through 45,000
14 messages is a lot, on top of everything else that we've
15 given the defense to review. And so we just wanted to put
16 that out there to give some sense of the scope and scale of
17 what we're dealing with in this case and why the government
18 understands that, in good faith, the defense needs a lot of
19 time to go through this.

20 Turning now, Your Honor, to the global discovery
21 aspect of this, we will be filing, I understand, in the
22 not-too-distant future, something in writing that our
23 discovery team has put together or is putting together, that
24 gives much more detail on the status of global discovery.

25 But a significant amount of materials have been

1 made available through the two platforms that the
2 government -- that are defense platforms that the government
3 is pushing evidence to, both the Relativity platform and the
4 Evidence.com platform. There are probably hundreds of
5 thousands of files in both of those two platforms at this
6 time, and so there's a lot of discovery that is out there.

7 I think in terms of understanding where we are
8 with global discovery, it's maybe more helpful to talk about
9 some of the things that are still outstanding in the
10 building of the global discovery database. And I think the
11 two main things that the government is still working on and
12 should be making very significant progress on in the next
13 two months or so are the FBI files for all of the
14 individuals who have been charged or at least identified for
15 significant investigation in this case.

16 There are, I understand, I think about 380,000
17 files from the FBI investigations, the FBI case files that
18 have been opened into subjects or charged defendants in
19 these cases. The government is working its way through
20 those files, getting them processed and reviewed and
21 uploaded into the Relativity databases so that the defense
22 can go through them themselves.

23 And that process is ongoing, we're making
24 significant progress, but I think it's -- I think we're
25 really just beginning to release that data to the defense

1 instance of Relativity. And so I think a lot of progress
2 will be made on that in the coming month or two, but that is
3 a significant dataset that we understand the defense will
4 want to have the ability to go through as they prepare for
5 trial.

6 The other significant part of global discovery
7 that the government is really starting to make very
8 significant progress on now, but really just now, are the
9 digital devices of all the defendants across these cases
10 involving what happened at the Capitol on January 6th.

11 And I understand that there are maybe roughly 1400
12 to 1500 devices and accounts that have been seized and
13 reviewed and data has been seized from them that are
14 being -- in the process of being uploaded to Relativity.
15 I think that there are about 600 that have been processed
16 and put into the government's instance of Relativity, but
17 only maybe 130 that have been pushed over to the defense
18 side.

19 I understand that now that the government has
20 figured out a way to break down and standardize and process
21 the data of all these different kinds of devices, which has
22 been a real hurdle to figure out how to work with all these
23 different media and put them into Relativity, I understand
24 that they're going to move much more quickly, and I think
25 that the processing estimate is maybe about 80 of these

1 devices and accounts will be pushed over to the defense
2 database per week, maybe more.

3 So that is very good progress. And I think that
4 means within the next four to six weeks, a good chunk of
5 this data is going to be available to this defense. And I
6 do want to flag that that is about four to six weeks. And
7 as we approach the July date and a lot of deadlines in the
8 Court's pretrial scheduling order, we are getting to a point
9 in time where we understand why it will be challenging for
10 the defense to effectively utilize that data, while
11 simultaneously prepping for the July date.

12 So I think that is a relatively complete overview
13 of where we stand, both in terms of case-specific discovery
14 and global discovery.

15 THE COURT: Thank you, Ms. Rakoczy, for that
16 overview.

17 Do you have a sense of, to the extent to which the
18 government will be presenting evidence and witnesses in its
19 case-in-chief, can you estimate what percentage of that
20 evidence has been turned over thus far?

21 MS. RAKOCZY: I think the bulk of that has been
22 provided so far, Your Honor.

23 There are only a handful of electronic evidence
24 from devices or accounts of subjects who potentially could
25 testify at a trial that haven't been turned over. And then

1 there may be a small number, I think maybe 10 to 12 civilian
2 witnesses whose statements have not been turned over but we
3 anticipate will be in the next few weeks, hopefully.

4 So I think the bulk of those materials, when you
5 consider everything we turned over in the last week or two
6 in terms of both electronic evidence from accounts and all
7 the civilian witness materials, I think the bulk of that has
8 been turned over.

9 THE COURT: Okay.

10 All right. Why don't -- before we turn to defense
11 counsel, does the government have views on defendants it
12 would like to see in the first trial group?

13 MS. RAKOCZY: I think it depends a little bit on
14 what the defense attorneys say about who can be ready. We
15 understand the Court's concern for making sure that the
16 detained defendants, and in particular, the detained
17 defendants who've been detained the longest, have the
18 opportunity to be in that first trial if they'd like to be.

19 And so with our understanding that Mr. Meggs and
20 Ms. Watkins and Mr. Harrelson would be, if they want to be,
21 among those three, it would be in a first trial.

22 We have talked amongst ourselves and talked with
23 defense counsel about the fact that it would probably make
24 sense, just in terms of evidence presentation, for
25 Mr. Hackett and Mr. Moerschel to be in that trial grouping

1 as well, because the evidence is somewhat overlapping for
2 those defendants.

3 We are mindful of everyone's desire to get this
4 tried in a maximum of two trials. And so if some number of
5 the defendants in that group cannot be ready for that trial
6 and the Court permits them to not be part of that first
7 trial, there are other defendants who we might propose to go
8 in that first trial.

9 You know, for example, we've talked to
10 Mr. Fischer, Mr. Caldwell has been in this case for a while,
11 and there's some level of overlapping evidence where it
12 would make sense for Mr. Caldwell to be in that grouping if
13 one of the five who I first mentioned cannot be. If we go
14 beyond there, we might have alternate thoughts, but I think
15 we're -- that's the general outline that we were thinking
16 for a first trial, assuming that Mr. Meggs and Ms. Watkins
17 and Mr. Harrelson are all in that first trial.

18 THE COURT: Okay.

19 All right. Well, that's helpful to get your
20 perspective on that.

21 All right. Why don't we then turn -- unless
22 there's anything else from the government, let's turn to
23 defense counsel, any issues anybody wants to raise or any
24 matters they'd like to discuss that are sort of more global
25 in nature. There are some issues toward the end involving

1 specific defendants for whom motions have been filed,
2 including issues relating to counsel, which I intend to save
3 toward the end.

4 So why don't we just start at the top with
5 Mr. Bright and Mr. Linder.

6 MR. LINDER: Yes, sir. Phillip Linder for
7 Mr. Rhodes. Mr. Bright is in another hearing at this time,
8 so I'll cover it.

9 I believe Ms. Rakoczy's statement of the evidence
10 was very accurate, I appreciate her doing that for us. It
11 is a lot of evidence, Your Honor. I mean, I've only been on
12 this case since January, but it is a lot. And we hired --
13 Mr. Bright and I hired an associate a month ago just to work
14 on evidence in this case. And so we've -- there is just a
15 lot to process. I think the stuff that Ms. Rakoczy has
16 recently turned over has been the most relevant to us, the
17 grand jury testimony, witness statements, the FBI 302s,
18 things like that. But we've just received that and it takes
19 a while to go through it.

20 Even though -- and in your order, Your Honor,
21 where you mentioned that some of these things don't have --
22 we don't have to go -- some of it's not relevant to
23 individual defendants.

24 We, as defense counsel, as you're aware, we have
25 to go through a lot of it, we have to look at it. There may

1 be a lot of it that's not relevant at the end of the day,
2 but I can't, in good faith, go to trial if I haven't laid a
3 hand or looked at some part of the evidence, all of it, on
4 some level or had an associate go through it to make sure
5 I don't need it. So there's a lot here.

6 THE COURT: So let me just say the following. All
7 of you may know that before taking the bench, I spent my
8 career doing what you all are doing right now. There wasn't
9 a day in my professional life where I prosecuted anybody;
10 all I did was defend people. So I understand the position
11 each of you find yourself in quite well, perhaps more than
12 most judges do.

13 I recognize the level and the degree and the
14 mountain of evidence everybody's facing. Do not think for a
15 moment I don't understand that. However, cases come down
16 to -- every single case that I've ever been involved in,
17 whether it's a white-collar case involving millions of pages
18 of documents, to a robbery case involving one defendant,
19 comes down to a handful of material, okay? It comes down to
20 a discrete universe of evidence that really matters, and
21 that's what you all need to figure out what it is and
22 identify and be prepared to address at trial.

23 Now, you know, I understand you've been given
24 terabytes and gigabytes of information. I would bet the
25 vast majority of it is not at all relevant to a single one

1 of these defendants. I cannot imagine a video of something
2 that happens on the other side of the Capitol building hours
3 later from when these gentlemen and Ms. Watkins entered the
4 building has any relevance to your defense. Now, you can
5 spend time hunting those videos down, trying to look at them
6 and identify something, that's fine, but I cannot imagine,
7 I cannot fathom how that's going to be at all relevant to
8 what you need to do it defend these folks.

9 And given, in particular, the fact that this case
10 is about the state of mind of these people, what's on those
11 videos isn't going to reveal what's their state of mind.
12 The videos will speak for themselves.

13 What's going to matter is what's in these chats,
14 what's in the social media, what is in these witness
15 interviews, and what's being said to the grand jury. That's
16 what's going to matter. It's going to matter what they said
17 to one another, it's going to matter what people overheard,
18 and it's going to matter what ultimately the jury concludes
19 about what their intent was. That's what this case is
20 about. It's what's their intent.

21 And when you think about it and look at it through
22 that lens, I assure you the vast majority of what you all
23 are concerned about can be put to the side because it has
24 absolutely no relevance on that key issue.

25 I mean, does anybody disagree with that? I mean,

1 every one of these folks have been charged with an intent
2 crime; to conspire and to intend to do something, whether
3 it's seditious conspiracy or to interfere with the
4 congressional proceeding. Tell me how the thousands and
5 thousands of hours of videos and social media postings from
6 people who are not at all related to this case has any
7 bearing or relevance to what is in anybody's mind.

8 MR. LINDER: Your Honor, I will start.

9 And you are correct. With all due respect, you
10 are correct; however, when the government gives you 10,000
11 videos, there's no description of what these videos are, you
12 have to click on them and open them.

13 You may click on and open it and realize, well,
14 this is not relevant, it's two hours later, but you have to
15 go through them and click on it to realize it's irrelevant.

16 THE COURT: No, you don't.

17 I mean, my understanding is the videos are
18 identified by camera, time stamp, and location, okay? So if
19 you have that information -- and correct me if I am wrong,
20 that's my understanding, Ms. Rakoczy will tell me if I'm
21 wrong -- you ought to be able to identify the key places and
22 times where your clients were and would be captured on video
23 on January the 6th.

24 MR. GEYER: Your Honor, this is Brad Geyer. Maybe
25 I can shine some light on this issue for the group.

1 THE COURT: And, by the way, I think a lot of
2 these videos you've had for a very long time. Not you,
3 Mr. Linder, because you're recent to this, but some of the
4 defense counsel who've been in this case for over a year.

5 MR. GEYER: As a practical matter, Your Honor, we
6 only had constructive access over the materials on, for
7 instance, Evidence.com, which is 23,580 videos, for the last
8 two months at most.

9 The January 6th defendants that are currently
10 incarcerated pretrial have only had access to that in the
11 last 30 days to 45 days. They have been reviewing the
12 evidence.

13 And it is not a simple matter to find actual
14 fields of view associated with cameras, or cameras
15 associated with their geolocations. This is somewhat of a
16 hunt and peck.

17 And what was described to me yesterday is they
18 literally go through and put four-digit numbers in, finding
19 the different cameras. And they built the entire structure.
20 They did that based on a map that was in the back of an
21 Abraham Lincoln -- a book that they found in the prison
22 library.

23 We will be in a position in the not-too-distant
24 future to be able to document every single moment, every
25 single interaction of the Oath Keepers from the moment they

1 got to the Ellipse to the moment they left the Ellipse.
2 This includes up to and including in front of the Columbus
3 Door, on the steps, inside the video [sic], in relation to
4 coming to the defense, heroically, of Officer Dunn inside
5 the Capitol.

6 So had we had this information -- if two sets of
7 counsels ago back in May had had this information, they
8 would have been able to establish to the Court's
9 satisfaction that not only did our defendants not engage in
10 any violence, not breach the door, not break the windows,
11 but now we can see -- in the last 45 days, we can look at it
12 in high-definition video that's been provided to us now
13 since the new year, where we could actually identify the
14 people who actually broke the windows.

15 THE COURT: Okay.

16 So, Mr. Geyer --

17 MR. GEYER: And when you start --

18 THE COURT: Hang on.

19 You've told me exactly what you're going to
20 present in your defense.

21 You've now told me that you're in a position --

22 MR. GEYER: We don't have information on --

23 THE COURT: Hang on.

24 You've now told me that you're in a position to
25 chart out through videos, or soon will be, the movements of

1 these defendants during -- on the day of January the 6th.

2 You know, it sounds like you are well along the
3 way of identifying what videos matter, where they are, and
4 what camera angles and body-cam footage really is at issue
5 here.

6 And, look, you know, if -- as I said, you can try
7 and look at every single video here and spend whatever time
8 you want looking at stuff that's not relevant and tell me
9 that it really makes a difference. But you're not going to
10 convince me of that, you're just not.

11 And, you know --

12 MR. GEYER: Your Honor, those individuals, as an
13 example -- and we've had internal correspondence about
14 this -- the two individuals who are just two of the
15 individuals -- there's about 50. Two of these individuals
16 can be clearly seen on the video breaking a window. One of
17 them comes through and actually uses some kind of military
18 move to pull an officer down.

19 THE COURT: Can I tell you something? If your
20 defense is based upon who's breaking the window, I'm telling
21 you right now, you're looking at the wrong place.

22 The government has never alleged that any one of
23 these people broke a window. That has never been an
24 allegation. There's never been an allegation that any
25 single defendant took to a window and broke it and entered

1 the Capitol building that way. So if your defense is built
2 upon pointing the finger at somebody else who broke into the
3 Capitol building through a window, let me tell you, you're
4 looking in the wrong place. It's just not what the
5 government's case is.

6 And, Ms. Rakoczy, tell me if I'm wrong, but you've
7 never alleged that anybody's broken a window. And, in fact,
8 the destruction of property claim -- count, it's not a
9 direct count, it's an aiding-and-abetting count. The
10 government's very charge doesn't assert that any particular
11 defendant in this case damaged any property directly, as far
12 as I'm aware.

13 Am I wrong about that, Ms. Rakoczy?

14 MS. RAKOCZY: No, Your Honor.

15 MR. GEYER: So -- but, Your Honor, I don't have --

16 THE COURT: So I've been sitting here without
17 having had access to any of this evidence for the last year
18 plus and I know that and you -- and you're telling me that
19 you don't understand that at this point?

20 MR. GEYER: I understand that they're held
21 accountable on an aiding-and-abetting theory and that's one
22 of the bases that was used to argue for their continued
23 detainment, when my client, for instance, has a clean prior
24 record and no passport. And there were questions raised
25 about what happened in front of that door, where I suspect

1 the Court, when this information's been made known to the
2 Court, the Court may conclude that that's new information
3 that warrants their release.

4 The government can't have it both ways.

5 THE COURT: Mr. Geyer -- hang on, Mr. Geyer.
6 You've had a pending motion for your client's release now
7 for month, for months.

8 MR. GEYER: Right.

9 THE COURT: You want to put that motion before me,
10 put it before me, but, you know, that's neither here or
11 there.

12 MR. GEYER: I've been trying to get through the
13 mountain of discovery, Your Honor.

14 THE COURT: It's neither here nor there right now.
15 That's not a motion that's before me, Mr. Geyer.

16 And as I said, this is -- you know, I cannot
17 impress upon all of you enough, unlike a lot of the other
18 defendants who've been charged in this case, in the
19 January 6th cases, those cases really are genuinely and
20 primarily about what those people did at the Capitol that
21 day and what they did once they went inside.

22 This case obviously has to do with that,
23 undoubtedly true. But it is as much, if not more so, about
24 what was said before January 6th, what was done in the days
25 leading up to January 6th, what was done on that date, and

1 importantly, what was done after, okay?

2 So I don't think anything that was done before
3 January 6th is captured in a video. Nothing after
4 January 6th is captured in a video. It's all in the chats.
5 It's in the social media. That's where you need to be
6 looking.

7 I mean, that's what's going to tell a jury, not
8 me, I'm not the trier of fact, a jury, whether these folks
9 engaged in a seditious conspiracy or engaged in a conspiracy
10 to interfere with Congress. That's what they're charged
11 with.

12 And if people don't understand that, read the
13 indictment.

14 MR. LINDER: Your Honor, I agree.

15 And with all due respect, the chats and the social
16 media stuff is what we've been trying to get ahold of.
17 Ms. Rakoczy gave a whole bunch of it to the other lawyers in
18 October, November, she just stated, not January of last
19 year, and it takes a while for the government to put all
20 that together.

21 We have gotten an expert, we have recently been
22 submitting our electronic devices and downloads to this
23 expert. But this -- all these chats and social media stuff
24 has only been in the last few months. I agree that's the
25 most relevant, but this is not stuff they had a year ago.

1 THE COURT: Well, look, Mr. Linder, you are in a
2 different position and I made that clear.

3 MR. LINDER: I understand.

4 THE COURT: Your client and Mr. Vallejo are in a
5 very different position than everyone else.

6 Neither you nor Mr. Peed had access to anything
7 until January at the earliest. And even then it undoubtedly
8 took weeks for the government to make real substantive
9 evidence available to you.

10 So I understand the position that you're in,
11 I understand the position Mr. Peed is in. But all these
12 other defendants got these, you know, 45,000 lines in a
13 Signal chat back in October. So if they're tried in July,
14 it's nine months. I think I could sit down and read 45,000
15 lines in nine months. I'm not saying that's the only
16 evidence, but that's going to be a big part of the
17 government's case.

18 MR. CRISP: May I jump in? This is Jonathan
19 Crisp.

20 I would note for the record that I was on this
21 case as of the end of January, effectively the beginning of
22 February for Ms. Watkins, and I'm still receiving and just
23 received a number of files yesterday.

24 THE COURT: You know, Mr. Crisp, I've got to tell
25 you, you know what, every defendant has a right to hire who

1 they want to hire. But I've now got defense lawyers popping
2 in months before a trial is supposed to start, okay? And at
3 some point, you know, the excuse of I just hired a new
4 lawyer isn't going to cut it. You come into this case
5 knowing when the trial date is, you've got to be ready for
6 the trial date. So don't come complaining to me that I just
7 entered an appearance in January. There was a trial set in
8 April. So if you didn't think you were going to be ready
9 for that April trial, you shouldn't have entered an
10 appearance in the first place.

11 MR. CRISP: Your Honor, I don't believe I was
12 complaining. I think I was making a note for the record.
13 So I wanted to make sure the Court was aware that -- you had
14 indicated that certain attorneys --

15 THE COURT: Trust me, I'm aware of when people
16 have entered their appearances and what's happening.
17 I'm aware.

18 MR. MOSELEY: Your Honor, Jon Moseley.

19 THE COURT: Mr. Moseley.

20 MR. MOSELEY: I would rather others make this
21 point, but it's a point that I think may need to be
22 for-the-record consideration that, first of all, who broke
23 the window or damaged property is going to be relevant to
24 whether these Oath Keepers aided and abetted them, including
25 if they ever had contact with them and they weren't even in

1 the area when the window was broken.

2 So I think that it is necessary to know who
3 they -- I mean, we have this big dispute about whether or
4 not the government has to tell us before trial, but we have
5 to have witnesses to put on at trial and say, it would be
6 utterly -- it would be metaphysically impossible for these
7 Oath Keepers who are not in the vicinity to aid and abet
8 people they never knew, who damaged any property.

9 And if that's the --

10 THE COURT: So, Mr. Moseley, that's a great trial
11 argument, and you've just made it. I suspect the video and
12 the evidence is already there and you could put on that case
13 tomorrow.

14 But let me tell you something. If I were you and
15 if I was everybody else on this call, it's not what I would
16 be focusing on.

17 If these folks are ultimately convicted of
18 seditious conspiracy and interfering with -- conspiring to
19 interfere with a congressional proceeding, the fact that
20 they also get acquitted or convicted of aiding and abetting
21 and the destruction of property, it's the tail wagging the
22 dog. Focus on what matters.

23 MR. MOSELEY: All right.

24 But, Your Honor, also --

25 THE COURT: Mr. Moseley, look, let me tell you

1 something. You and I are going to have a longer
2 conversation about what's going to happen with your client
3 after everybody's done.

4 So let me turn to Mr. Bright, because I don't know
5 that he's actually had a chance to finish -- excuse me,
6 Mr. Linder, whether he's had a chance to finish, and then
7 I'll turn to Mr. Geyer and see if he's got anything more to
8 say and then we'll go down the line.

9 MR. LINDER: Your Honor, yes, thank you.

10 I wanted to say that, yes, I am a recent addition
11 to this case. But we've been working together as a team.
12 We kind of have a joint defense agreement between all of us.
13 A lot of these lawyers have been -- they've gone through all
14 this for months before me and there's a lot there. And,
15 yes, we're getting through it, they've gotten through it.
16 But the stuff you're talking about, the chats and the social
17 media, that is the most relevant and I agree is the newer
18 part of the discovery we've received, including the grand
19 jury testimony and the evidence like that that Ms. Rakoczy
20 has just given us in the last several weeks. That is the
21 most relevant evidence and that's the newest stuff we have.

22 The original stuff everybody got was all the
23 videos, so people spent a lot of time with that last year.
24 So just in kind of standing up for the team, they've been
25 going through this for a long time, but it's relevant

1 evidence that we agree that we need for trial is the newest
2 evidence that everyone received. And so we're all working
3 together as a team on this.

4 And so now with Mr. Meggs' situation, that's going
5 to change that. And we'll see what the Court wants to do
6 after this, but that changes the dynamic of the joint
7 defense agreement and what we're going to do. His new
8 counsel, if he gets one, may or may not want to be part of
9 this. So that changes the dynamic.

10 And so we are making progress, we're not trying to
11 delay to delay. But the -- there's just a lot of people
12 doing -- and, for instance, I have an investigator, we've
13 located 12 or 15 witnesses for Mr. Rhodes, but they're in
14 six states across the country. So trying to coordinate
15 interviewing them and doing things, that's a separate issue
16 in addition to the discovery that we've been given. So
17 we've got multiple irons in the fire trying to prepare for
18 trial. So on behalf of Mr. Rhodes, we do need a
19 continuance, but I think the team --

20 THE COURT: Well, as I said, Mr. Linder, your
21 client doesn't need to go in July.

22 MR. LINDER: Okay.

23 THE COURT: You've got a September trial date.
24 You told me when you got involved in this case that you'd be
25 ready for July, but I understand now if that's not something

1 you can do. But you've got a September trial date and I
2 remember it very clearly, you told me you'll be ready for a
3 September trial date.

4 MR. LINDER: And we will. I expect to be ready in
5 September.

6 THE COURT: All right.

7 So Mr. Rhodes is going to be in the September
8 trial date, as I would have expected. Mr. Vallejo will be
9 in the September trial as I would have expected. So, you
10 know, that's two folks for September.

11 Now the question is who else is going to go in
12 July. Mr. Meggs would have been in that group. And unless
13 he wants to go pro se and defend himself, he's not going to
14 be in July. And so we'll see where we are.

15 Let's see. So let's just go -- Mr. Geyer, is
16 there anything else you'd like to add?

17 MR. GEYER: Well, I'd like to say for the record,
18 you know, I believe it's impossible to be ready by July.

19 I'd also like to express the strong opinion that
20 the group of ten defendants stay together. There's a number
21 of problems that crop up when you bifurcate the group that
22 way. I think that Ms. Halim may be referencing some of
23 those issues today.

24 Again, I think I'm entitled to this information.
25 I think the government's obligated to turn it over to me.

1 I think that's why when Ms. Rakoczy talks about the 600
2 devices that she's 130 into and getting ready to move those
3 over to the platform where they can be reviewed and 470 on
4 deck, the reason she's racing to get those to me is so that
5 I can review those prior to trial so we can have a result
6 that everybody feels comfortable about. Why are they moving
7 mountains to get this information reviewed and turn it over
8 to us if they're not required to turn it over and I'm not
9 entitled to review it prior to a trial?

10 THE COURT: Okay.

11 MR. LINDER: And, Your Honor, may I address one
12 other thing before I step off?

13 THE COURT: Okay. Go ahead, Mr. Linder.

14 MR. LINDER: Mr. Geyer mentioned it briefly but --
15 and I know this is not a popular idea right now, but to
16 bifurcate the trial does cause problems with the defendants.

17 Without revealing trial strategy, per se, we've
18 been working together. There are some defendants that may
19 want to testify that would be precluded from testifying if
20 they were in the second group and not in the first group.
21 And we can't go into who may do that and who may not.

22 But I know Ms. Rakoczy would like to try this case
23 one time. I think having two trials may be unfair to some
24 of the defendants, whether they're in the first group or
25 second group, for a myriad of reasons.

1 The second group would have the trial
2 transcripts --

3 THE COURT: Hang on.

4 MR. LINDER: Yes, sir.

5 THE COURT: I'd like to try this case one time,
6 too. But somebody needs to tell me where I can have a case
7 in which 11 defendants, with their counsel, and government
8 counsel, can fit into one room with a jury and have such a
9 case be tried.

10 Now, I've lived in Washington, D.C. for over
11 20-plus years. I'm not aware of a single courtroom,
12 including our Ceremonial Courtroom, that has the capacity to
13 do that.

14 Now, I guess we could go over to the Convention
15 Center and set up, you know, a room over there, but
16 I'm not sure the Marshals would be okay with that, and I
17 don't know how the heck we'd even do it. And I'm open to
18 the idea of trying 11 defendants at once, but I don't know
19 where it could happen.

20 MR. LINDER: And we have talked about that amongst
21 ourselves. I am unaware of the surroundings there. I don't
22 know if there's a neighboring county that has a law school
23 or an auditorium or somewhere where we could try this.

24 But trying it together makes a lot of sense for
25 the defendants. I know it's a little more work for the

1 Marshals. But the Marshals don't deserve the fair trial,
2 our clients do. The Marshals may have to work a little
3 harder, but our clients deserve a fair trial.

4 THE COURT: You're going to get a fair trail, it
5 just may not be all at once.

6 MR. LINDER: I understand.

7 But the group --

8 THE COURT: I'm happy to hear from Ms. Halim, I've
9 gotten her letter. I'm not aware of any case law that says
10 it is a violation of due process to split up a large number
11 of defendants into multiple trials. I'm not aware of any
12 case that stands for that proposition.

13 MR. LINDER: And I agree, Your Honor.

14 But just for practical purposes, if one four-week
15 trial goes first, the second group would be entitled to all
16 of those transcripts of all of those witnesses from the
17 first trial. That's a lot of work for the court reporter to
18 get that all ready.

19 Then the second group has a different trial
20 advantage over the first group. The first group may be
21 denied some defense testimony from the second group because
22 they're in the second group.

23 There's just a lot of logistical issues that can
24 be overcome if there was some way to try it together.

25 THE COURT: But, Mr. Linder, you've been doing

1 this for a long time.

2 MR. LINDER: Yes, sir.

3 THE COURT: Those issues aren't unique to this
4 case. This is an issue in multi-co-defendant cases across
5 the country. This one just happens to have 11 defendants
6 and probably a little higher profile than most.

7 So, you know, I understand, I have some sympathy
8 for the situation you all find yourselves in. But unless
9 somebody's got a solution, and I'm open to hearing your
10 thoughts. But, I mean, I don't know how I can construct a
11 courthouse or a courtroom that can accommodate 11
12 defendants, their counsel, government counsel, the public --
13 let's not forget the public has got to have access to this
14 trial.

15 MR. LINDER: I don't know if there's auditoriums
16 there at the law schools or in the neighboring counties it
17 could be held in.

18 We've -- I've done a lot of multi-defendants
19 trials and some up to eight defendants here. We've never
20 split them up before, but that's unique to me.

21 THE COURT: I might be able to do eight. I could
22 maybe do eight if I could get the Ceremonial Courtroom.
23 I can't do 11. I can't do 11.

24 MR. LINDER: Thank you for letting me put my
25 concerns on the record. That's all I wanted to say about

1 the trial.

2 THE COURT: It's fair.

3 As I said, I'm open to people's suggestions, but I
4 don't know quite what to do about the physical restrictions
5 we have.

6 All right. Mr. Crisp, I'll turn to you.

7 MR. CRISP: Thank you, Your Honor.

8 As to the points you had made earlier, it is my
9 understanding in terms of when the trial date was set that
10 it was actually done prior to my entry -- or after my entry
11 of appearance, because I would take note and exception to
12 the note that I was aware that this was going to be an April
13 trial date.

14 As to the other points, I would ask for a
15 September trial date based on, in large part, that time
16 frame and the preparedness for trial. I won't rehash what's
17 been argued already, but for that reason, I would articulate
18 a September request for trial for Ms. Watkins.

19 THE COURT: Okay.

20 I mean, if memory serves, I set the April trial
21 date in Caldwell last year. Am I misrecollecting that?

22 MR. CRISP: When I look through the docket --
23 I could be mistaken. When I look through the docket,
24 I believe I had it set two days after my entry of
25 appearance, which would have been January 24th. So if it

1 was set at a different time, then I was not tracking that
2 upon the time that I entered my appearance.

3 THE COURT: Ms. Rakoczy, do you remember when I
4 set the first trial for April, when that happened?

5 MS. RAKOCZY: I think it would have been in the
6 fall, Your Honor.

7 I do think whenever we had our first status,
8 I think after the recent indictments, so I believe that
9 would have been maybe January 28th, it was decided that the
10 April date would just be for the defendants in United States
11 versus Donovan Crawl, et al. So around the time --

12 THE COURT: Right. That's right. That's my
13 recollection. That we had April on the calendar last year
14 when it was just United States versus Caldwell.

15 The April trial date was going to be the first
16 trial date. We then had July as the second trial date.
17 When the cases were split up in January, we said, okay, the
18 April trial date will be for those defendants who are not
19 detained in Caldwell -- excuse me, which became Crawl, and
20 those counsel said we can't go in April, so I kicked that
21 date. And July became the first date and has always been
22 the first date in this case.

23 In any event, okay, Mr. Guillaume and Mr. Shipley?

24 MR. GUILLAUME: Your Honor, I'll address the Court
25 first. And then if I misstated anything, Mr. Shipley,

1 please correct me.

2 Your Honor, on behalf of Mr. Minuta, there, of
3 course -- we're in a bit of a unique position, as I'm sure
4 the Court will address toward the end of this hearing.

5 Without going into any further detail about that,
6 we would also request a September trial date. You know,
7 again, not to rehash everything that's already been said,
8 but just focusing exclusively on what Your Honor mentioned
9 with respect to chats, social media, video, and grand jury
10 testimony, I think those things that we have received and
11 been sent very recently and especially with the entry of new
12 counsel, who I'm not aware had received these things --

13 THE COURT: You know, I've got -- Mr. Guillaume,
14 I'll just say this right now and Mr. Minuta is on the line,
15 I'm not sympathetic to the fact that you've got new counsel,
16 okay?

17 New counsel would have known with eyes wide open
18 when these trial dates are set, okay? And Mr. Guillaume has
19 been in this case since Mr. Minuta has been arrested.

20 And, you know, you cannot come into court and tell
21 a judge that his schedule needs to be changed because I
22 hired a new lawyer. And if that new lawyer isn't prepared
23 to go to trial when those trial dates are set, you want to
24 think twice before you enter your appearance.

25 MR. GUILLAUME: Judge, just respectfully, I did

1 come in second to Ms. Wicks who retired. I came in in
2 November of 2021, but I do understand the point Your Honor
3 is making.

4 THE COURT: That's right. I had forgotten that --
5 all right. That's right.

6 In any event, that comment was not directed at
7 you.

8 MR. GUILLAUME: Okay. I apologize.

9 I lost my train of thought there for a second.

10 Just focusing on those particular world of
11 evidence that Your Honor previously mentioned, with or
12 without new counsel, you know, we've made our position
13 previously known to the Court with respect to the September
14 trial date, and it sounds like the government is in
15 agreement that Mr. Minuta is going to be in that second
16 trial group but it's not necessarily, the decision hasn't
17 been -- a final decision hasn't been made.

18 So for the reasons previously stated by
19 co-counsel, and Mr. Shipley, I'm sure, will have his own
20 reasons in a moment, we would also request the united trial.
21 I understand there's logistical concerns of the Court,
22 I don't have an answer for that, Your Honor, but I just
23 wanted to put our position on the record, and also note
24 that, you know, again, we would like to be in that second
25 trial group. Thank you.

1 THE COURT: Okay.

2 MR. SHIPLEY: Your Honor, if I can address the
3 issue.

4 I certainly was aware of the trial date when I
5 agreed to come into this case. And I've not taken any
6 position yet with regard to the September trial date in the
7 abstract. But what I would note is, in listening to the
8 government, you know, I heard phrases like, we're coming to
9 the end of that process; now that we've figured it out,
10 we've turned over and provided evidence. These are all
11 Rule 16 obligations. We're -- the government is 15 months
12 into this process and it hasn't complied with Rule 16.

13 And the government can't tell you when it's going
14 to comply with Rule 16. And, in fact, I think something
15 that was not detailed is, this past week, there was a -- the
16 global document production No. 13 went out, and that is, as
17 described by an AUSA in a different case, a massive volume
18 of MPD and USCP reports. This is the kind of stuff that, in
19 my 22 years as a prosecutor, you got out before you indicted
20 the case or you got out when you indicted the case, not 15
21 months later.

22 We are not at the end of the discovery process.
23 I don't know how we prepare for a trial when there's more
24 discovery on the way.

25 We could represent to the Court that we're

1 prepared --

2 THE COURT: Mr. Shipley I've got to tell you, you
3 know, the government made a decision in this case to push
4 out every single piece of paper to every single defense
5 counsel. That's a decision they made. That is well beyond
6 the scope of their Rule 16 obligations, well beyond the
7 scope of their Rule 16 obligations, okay? All they need to
8 do is produce and make available information that is
9 relevant to the defense.

10 And I can understand why they've taken the route
11 that they have, but, you know, as I said, as I've said
12 repeatedly, what matters in this case is not some video or
13 some report of an officer that is entirely irrelevant. The
14 evidence that matters is what you've already got and many of
15 you have had for months.

16 MR. SHIPLEY: Your Honor --

17 THE COURT: Mr. Shipley --

18 MR. SHIPLEY: -- I understand the Court's point of
19 view.

20 THE COURT: -- I'm going to move on.

21 Ms. Halim.

22 MS. HALIM: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MS. HALIM: As I previewed for the Court in the
25 letter that I sent over this morning, I will be filing a

1 motion for a joint trial, along with the request to adjourn
2 the July 11th, 2022, trial date. I'm not going to repeat or
3 rehash anything that others have said already today, I'll
4 save that and the Court will get it in the filing when I
5 submit it as to how it prejudices Mr. Hackett to have
6 multiple trials as opposed to one trial.

7 So for right now what I'll focus on is saying,
8 I understand the Court's concern regarding logistics. I do
9 believe thinking outside the box is necessary here. There's
10 a lot of brain power and a lot of knowledge and a lot of
11 experience on this Zoom call right now. I will get on the
12 phone with the government, I'll get on the phone with the
13 Marshals, I'll figure out what the logistics are that we
14 need to iron out to make it possible to move off-site,
15 because I think what I'm hearing is the courthouse just does
16 not have the space to accommodate -- and I think it's 10,
17 Your Honor, 10 defendants, not 11 at this point. And that
18 will be outlined in the motion that I submit.

19 The other thing that I wanted to raise is the
20 upcoming pretrial motion deadline that is set for
21 April 15th. I am prepared and have some motions to file
22 pursuant to Rule 12 on Mr. Hackett's behalf. However,
23 because my discovery review is still ongoing, it's
24 incomplete at this point, I'm not confident that I'm in a
25 position to assess whether or not suppression motions are

1 appropriate by next Friday. And so I'm asking the Court to
2 amend that portion of the Scheduling Order so that the
3 suppression motions would be due --

4 THE COURT: Can I ask -- and maybe I'm just
5 mistaken here, but you've got standing to move to suppress
6 evidence that was collected from your client, right?

7 MS. HALIM: Correct.

8 THE COURT: If there was a phone taken that you
9 believe was improperly obtained from a different defendant,
10 you don't have standing for that.

11 So I guess I don't quite understand why at this
12 point you're not aware of the evidence that is suppressible.
13 I'm not talking about motions in limine, there's a later
14 deadline for that. Why the universe of evidence that is
15 potentially suppressible, for which you have standing to
16 suppress, is not evident.

17 MS. HALIM: Because the decision on whether to
18 file a suppression motion is dependent on understanding the
19 totality of the evidence. Because it's not just about
20 whether there was a Fourth Amendment violation, it's a
21 decision to be made, do you want to suppress that evidence.
22 And I can't make that assessment until I've got a better
23 understanding of the totality of the evidence and of the
24 government's case.

25 I don't believe -- candidly, I'll tell the Court,

1 I don't think that there are going to be suppression motions
2 on behalf of Mr. Hackett; however, I also know that there is
3 a very large quantity of material that I have yet to get
4 through, and I would be remiss if I didn't raise to the
5 Court that I think it's a decision better made after I've
6 gotten more headway into all materials in the government's
7 case.

8 THE COURT: Okay.

9 All right. Anything else?

10 MS. HALIM: Not at this time.

11 THE COURT: Okay. Thank you.

12 Mr. Weinberg, on behalf of Mr. Moerschel.

13 MR. WEINBERG: Good morning, Judge.

14 Your Honor, I'll just reiterate the arguments of
15 my other counsel. I know the Court has heard this from
16 everybody, but it is a lot of discovery to go over.

17 Mr. Moerschel is currently out of custody. We
18 really would like a joint trial. We feel that a joint trial
19 would allow all of the defendants to, in case they wanted to
20 testify, to basically help each other throughout that trial.

21 I know that the courthouse in Washington isn't big
22 enough, but there's some other options, I believe, that
23 could be used: First, the national museum building; there
24 could be some hotel conference --

25 THE COURT: So can I ask you a question?

1 MR. WEINBERG: Yes.

2 THE COURT: So say we take it over to the national
3 museum building which is up a few blocks, are you all going
4 to fund the building of holding cells there?

5 MR. WEINBERG: Well, Your Honor --

6 THE COURT: What am I going to do about that?
7 I've got five defendants in front of me who I've ordered, or
8 another judge has ordered, held. Typically what has
9 happened to those folks is, during a break, during lunch,
10 they get put back in a holding cell.

11 The only buildings that I'm aware of in this city
12 that have holding cells are courthouses.

13 MR. WEINBERG: Well, Judge, I think if the Court
14 would think outside the box, there is other ways to detain
15 defendants. I mean, I'm sure portable holding cells are
16 available. Trailers could be used in the parking lot.
17 If there's a will, there's a way, Your Honor, in that
18 situation. I'm sure the Marshals would have to approve, but
19 I think there's other ideas to hold defendants at an
20 off-site building.

21 THE COURT: Okay.

22 MR. WEINBERG: So for those reasons, Judge,
23 Mr. Moerschel would be asking to be put in the September
24 group. I think the September group gives him his best
25 chance to defend himself, Your Honor.

1 THE COURT: Okay.

2 Mr. Balbo on behalf of Mr. Ulrich.

3 MS. HALIM: Your Honor?

4 THE COURT: I don't know who just raised her hand.

5 MS. HALIM: Your Honor, this is Angie Halim --

6 THE COURT: Yes. Hi.

7 MS. HALIM: -- on behalf of Mr. Hackett.

8 I just remembered one point that I did want to
9 raise to the Court if I could speak at this time.

10 THE COURT: Sure. Go ahead.

11 MS. HALIM: Thank you.

12 This is regarding the government's preliminary
13 proposal as to the first grouping of defendants. If the
14 presumption is that the three defendants in custody proceed,
15 then the government suggests that Mr. Hackett and
16 Mr. Moerschel sort of are more factually overlapped with
17 those folks.

18 I do object to that particular grouping for this
19 reason. I think that the fact that four of those five
20 defendants are from Florida is a relatively arbitrary fact.
21 It doesn't -- it's not relevant to the bottom line or the
22 ultimate issue that the jury has to decide; however, when a
23 trial is presented with the optics of just five defendants,
24 four of whom do, in fact, come from Florida and who were
25 geographically closer than the other defendants, lumping

1 those together creates an impression of cohesion, which, in
2 the bigger picture, the scope of the bigger picture, I think
3 is misleading.

4 Part of the reason for making a push for a joint
5 trial is because what we have here is actually a disparate
6 collection of individuals, not a cohesive group of people
7 co-conspiring to effectuate a common mission. And if we
8 divide the trials up into separate groupings, we could lose
9 the ability --

10 THE COURT: So here's the thing, Counsel. And I
11 don't know that I want to keep having this discussion, but
12 we were all together in January, we were all together again
13 probably February and then maybe in March, I don't recall
14 the exact dates. This is the first time you all as a group
15 have come forward and said we'd like to all be tried
16 together.

17 It will not surprise any one of you that there are
18 other defendants in this courthouse who are before me, that
19 they would like trials. So what would happen is if I put
20 all ten of these defendants in a single trial, what is
21 currently scheduled to be a four-week trial would turn into
22 an eight- to ten-week trial potentially, which would mean,
23 what am I supposed to do with all the other defendants who
24 are waiting for their trial in October and in November, some
25 of whom are held.

1 MS. HALIM: Your Honor, with all due --

2 THE COURT: You know, there's not -- you all have
3 to understand. There's a massive domino effect when you --
4 in the current environment when you ask a judge to move a
5 trial, a massive domino effect. And there are other
6 interests that I need to be thinking about and am thinking
7 about in getting people and their cases tried. These are
8 not the only defendants before me, and I made that clear in
9 my order.

10 MS. HALIM: I do understand and I'm very
11 sympathetic to that point, but two four-week trials is the
12 same as one eight-week trial from a timing standpoint.

13 THE COURT: It's not. It's not, because that
14 means everything I've scheduled for October gets bumped,
15 right?

16 MS. HALIM: Understood.

17 THE COURT: I'll ask my Courtroom Deputy to send
18 you my docket, and everything in October gets bumped.

19 MS. HALIM: Lastly, Your Honor, with respect to
20 just raising this now, I hope that the Court can appreciate
21 that a decision of this magnitude, whether or not
22 Mr. Hackett requests a joint trial or whether he goes along
23 with multiple trials, is something that took a great deal of
24 time and effort to determine whether or not -- what was in
25 his best interest, and that required getting through more

1 discovery. And that is the reason for bringing it to the
2 Court's attention now, not back in January.

3 And with that, I don't have anything else at this
4 time. Thank you for letting me go out of turn.

5 (Pause)

6 MR. GEYER: Your Honor, if I can make one comment
7 that is actually good news that I think, perhaps, people
8 will welcome.

9 May I speak just for a moment?

10 THE COURT: Only if it's good news.

11 MR. GEYER: I think it might be, actually,
12 Your Honor.

13 So I can't speak on behalf of any other defendants
14 who are incarcerated but I can speak on behalf of mine and
15 I have -- I believe that it may turn out to be a position,
16 when they're formally asked, that incarcerated defendants --
17 well, let me just put it in terms of my incarcerated
18 defendant -- my defendant has indicated to me that he would
19 waive speedy trial through the end of the year, if
20 necessary, in order to get what he views to be a fair trial.

21 THE COURT: All right. Let me make this clear to
22 everybody right now, because I'll share with you what the
23 schedule is, okay? And I'll tell you when you're all
24 available for a two-month trial, okay?

25 This case is scheduled to begin when, September --

1 the second trial is scheduled to begin September 26th, okay?
2 I've carved out four weeks for that trial.

3 What that means is I then have a trial starting as
4 soon as this one is over involving four -- three other held
5 defendants, United States versus Schwartz. Two of those
6 defendants have been held as long as these gentlemen have,
7 okay?

8 After that trial, I have scheduled the case in
9 Crawl, where those defendants, although on release, have
10 been pending trial for well over a year.

11 I've got January 6th trials -- or, actually, I've
12 got a drug conspiracy trial in January, a second January 6th
13 trial in Crawl in February.

14 So if you all want to wait until April for a
15 two-month trial, if we could find room for one, but that's
16 not going to happen, okay? These trial dates are going to
17 stick.

18 Mr. Balbo for Mr. Ulrich.

19 MR. BALBO: Yes, good morning, Your Honor. Here
20 for Mr. Ulrich.

21 I would join with co-counsels' request for unified
22 trial for all the reasons that have been expressed. I don't
23 think I will be able to articulate it any better than they
24 have.

25 When it comes to the discovery and evidence issue,

1 Your Honor, I appreciate the arguments that you made about
2 much of it may not be relevant to prepare for the defense of
3 the case.

4 The question that I would have is that some of the
5 other evidence that Ms. Rakoczy said would still be
6 forthcoming, such as FBI reports, 302s, I'm particularly
7 interested in statements of any other co-defendants,
8 co-conspirators, unindicted co-conspirators that they may
9 still have.

10 I guess I would like to know, one, what is still
11 out there of that set; and, two, when would that information
12 be provided? Because I agree with the Court that from an
13 evidentiary standpoint, that is the most compelling,
14 important evidence that is there. I just don't know if we
15 have all that up to this date. I know that Ms. Rakoczy, in
16 her review, said that she provided everything up through
17 February. Is that everything at that point? And if so,
18 what else is still out there? Those are the things I'm
19 concerned about, Judge.

20 THE COURT: Ms. Rakoczy, if you've got more
21 specifics about those questions.

22 MS. RAKOCZY: Yes, Your Honor.

23 With respect to FBI reports, it is virtually
24 everything that is discoverable through February. The
25 exceptions are, as I think I had mentioned at the outset,

1 there are a very small number of witnesses whose statements
2 we have held back for either security concerns or concerns
3 about interfering with the pending investigation.

4 I do anticipate, though, that we would provide
5 that by early May at the latest, because obviously we are
6 mindful of the trial date. But there are a few witness
7 statements that we've held back that we do think are
8 relevant and discoverable and we do plan to provide those in
9 the next few weeks.

10 THE COURT: Does that answer your question,
11 Mr. Balbo?

12 MR. BALBO: It does.

13 So I understand that the government still has some
14 information that -- and I understand that they have reasons
15 why maybe some of this investigation is still going on.

16 But those are concerns that could change the
17 landscape, Judge, depending on what is provided and when
18 it's provided. So I would just like to bring that to the
19 Court's attention.

20 THE COURT: Okay.

21 Well, if there's something that gets delivered to
22 your doorstep at the eleventh hour that impacts your
23 preparation, I'll take it up at that point.

24 Mr. Fischer on behalf of Mr. Caldwell.

25 MR. BALBO: Excuse me, Your Honor. Before you do

1 switch, would the Court consider or would we be able to into
2 an agreement with the government that maybe there could be a
3 timeline as to when statements of co-defendants or any
4 co-conspirators, any of those FBI reports would be provided?

5 And I understand that normally discovery is an
6 ongoing obligation and if something comes to them late,
7 that's one thing. But information they've had maybe for
8 months, is there a way we could have a mark in a wall or
9 included in a Pretrial Order that those items would be
10 provided?

11 THE COURT: Well, look, I mean, you know, I've
12 got -- my Pretrial Order contains deadlines for the
13 government to identify -- to turn over *Jencks* material, turn
14 over -- it's probably closer in time than I probably should
15 have made it but I can always adjust that.

16 MR. BALBO: With respect, Your Honor. And I do
17 know that some of those deadlines are close to the trial
18 date. If the Court would be inclined to maybe consider
19 maybe updating those dates, because I know the Court doesn't
20 want to have last-minute requests for continuance. Maybe
21 this would be a way to prevent that, Your Honor.

22 THE COURT: Look, if there are dates on this
23 pretrial schedule that you would like to see moved up
24 instead of moved back, I'm happy to consider that.

25 MR. BALBO: Thank you, Your Honor. I'll look at

1 it and put something together, Judge. Thank you.

2 THE COURT: Okay. Thank you.

3 Okay. Mr. Fischer.

4 MR. FISCHER: Thank you, Your Honor.

5 If the Court will please, first of all, on behalf
6 of Mr. Caldwell, we would join other counsel in requesting a
7 joint trial and also Mr. Caldwell would like to be in the
8 September trial date.

9 Your Honor, just a couple of points.

10 THE COURT: Mr. Fischer, if I could just interrupt
11 you for a moment, because I don't know if you're intending
12 to be on video or if you're on the phone, because I don't
13 see him.

14 Oh, he's with Mr. Balbo.

15 MR. BALBO: Your Honor, this is A.J. Balbo.
16 He's in my office.

17 THE COURT: All right. Well, you're faking me
18 out, Mr. Fischer. I usually look for you standing alone or
19 with your client.

20 MR. FISCHER: Thank you, Your Honor. I just
21 happen to be driving through the Savannah, Georgia, area, so
22 I'm at Mr. Balbo's office.

23 But, Your Honor, I'll make a couple of points.
24 First of all -- and I understand that the Court would assume
25 that since most of this -- a bulk of the discovery has been

1 disclosed for some time now, that the Court's inclination
2 would be that the attorneys maybe have been dilatory in
3 reviewing this discovery.

4 Your Honor, I think the Court, perhaps, does not
5 appreciate the impact that the addition of Stewart Rhodes as
6 a defendant in this case has had.

7 And I'll phrase it like this, Your Honor, I'll use
8 this analogy. It would be like the discovery is a haystack.
9 And if we were to look at one portion of the haystack which
10 I was doing on behalf of Mr. Caldwell which was focusing on
11 a certain set of the bulk of discovery, because, quite
12 frankly, Your Honor, this entire defense team would never
13 get through all this discovery, it's impossible.

14 So what Your Honor was saying is we should focus
15 on the part that is relevant. Well, I have been focusing on
16 the part that was relevant, but then Mr. Rhodes's addition
17 into the case has now introduced an entire different section
18 of the haystack that has to go through -- that all the
19 attorneys have to go through. And that's a main reason why
20 I need additional time to be able to try this case
21 effectively.

22 Secondly, Your Honor, respectfully, this Court --
23 this case is a little bit unique in a lot of ways, but it is
24 particularly unique in this way. Most of the evidence --
25 again, the Court correctly stated it's state-of-mind-type

1 evidence. In particular, with Mr. Rhodes being in the case,
2 the government's theory has changed. In fact, Mr. Caldwell,
3 you'll obviously recall, used to be on the top of the
4 indictment, he's now, of course, on the near bottom and the
5 government's theory has changed.

6 And as a result, there could be some *Crawford* --
7 we're concerned there are *Crawford* issues and confrontation
8 issues, because, for example, the main part of the Rhodes
9 case against or involving Mr. Rhodes's addition is this
10 GoToMeeting, which is a recording, a very lengthy recording
11 where Mr. Rhodes makes a lot of statements, and there are
12 various other social media postings and Signals and chats.

13 THE COURT: So, Mr. Fischer, if I could interrupt
14 you.

15 I mean, look, those are not confrontation issues.
16 Those are not testimonial statements. Those are not
17 statements elicited by law enforcement. You don't have a
18 right to confront co-conspirator statements.

19 And so if what you're saying is that somehow the
20 introduction of Signal chats and the like gives rise to
21 confrontation issues, unless there's some evidence that
22 somehow law enforcement was eliciting the questions --
23 I mean, the responses surreptitiously in those chats,
24 there's no confrontation issue.

25 MR. FISCHER: Well, Your Honor, maybe not in the

1 pure sense as the Court just stated, but...

2 THE COURT: That's the only confrontation sense
3 I'm aware of.

4 MR. FISCHER: Well, Your Honor, in this case as,
5 I believe, one of the prior attorneys noted, there is the
6 joint defense agreement that we've been operating under; we
7 are under the assumption that there will likely be at least
8 one or more defendants who will likely testify.

9 And without a joint trial, these statements and
10 the statements and these messages and these records, without
11 a joint trial, we will not have the ability of the
12 defendants who made those statements to be able to
13 potentially testify or to have their attorneys at least
14 challenge the government or put the statements in context.

15 And it's very important because a lot of these
16 statements and these recordings, looked at in the abstract,
17 can look highly incriminating. But when the correct
18 interpretation or the interpretation I believe the
19 defendants have of these statements were to make their way
20 before a jury, that would be highly, highly important for
21 the defendants.

22 So from a confrontation issue, I guess,
23 Your Honor, I guess it's a situation you could -- I could
24 recharacterize it as to put it in correct context for the
25 defendants; otherwise, a lot of these recordings and these

1 statements could be out there with myself not having had any
2 chance to rebut them. Thank you, Your Honor.

3 THE COURT: I see the issue. Okay.

4 Mr. Peed.

5 MR. PEED: Good morning, Your Honor.

6 On the global issues, I have one comment. But
7 I have a hearing before Judge Moss that's starting, so
8 I want to make sure to get out what I wanted to say
9 specifically to Mr. Vallejo.

10 I want to file a bond motion for him by Monday.
11 I was wondering if the Court just set a schedule now for the
12 response and the hearing for that.

13 THE COURT: If the government wants to get its
14 response in by the 18th. Is that doable, Ms. Rakoczy?

15 MS. RAKOCZY: Yes, Your Honor.

16 MR. PEED: Thank you, Your Honor.

17 THE COURT: Theoretically do a hearing.

18 MR. PEED: I'm open that whole week, Your Honor.

19 THE COURT: 4:00 p.m. on the 21st. We'll have to
20 bring Mr. Vallejo here if we can't do it remotely.

21 COURTROOM DEPUTY: We can do it at 3:30 with the
22 facility.

23 MR. PEED: Thank you, Your Honor. That works.

24 THE COURT: I think we should done with the
25 Pretrial by then. I don't know.

1 Why don't we just say tentatively 3:30. And I'm
2 supposed to have a Pretrial in a case that starts the
3 following week. So hopefully that'll be done by then.

4 MR. PEED: Thank you, Your Honor.

5 THE COURT: So 3:30 on the 21st; it will be a
6 remote hearing.

7 MR. PEED: Thank you, Your Honor.

8 And the Court's already indicated that Mr. Vallejo
9 would come in a second group after September. I did want to
10 make one comment very briefly just -- I share the Court's
11 view of the evidence and the charges, except for the
12 indictment is a little bit unclear about what actually was
13 supposedly done after the 6th that was criminal.

14 So my concern -- listening to everyone and
15 listening to the Court's characterization of the indictment,
16 my concern is just figuring out what the conspiracy is after
17 the certification. The certification happened at 3:00 in
18 the morning, but the indictment has two lines about it going
19 forward after that.

20 So I assume they're saying people were seeing
21 stuff happening on the 6th and desiring to continue that
22 kind of behavior even after the certification.

23 And so in my own understanding of the case, it
24 does seem relevant to know at least what people saw on TV
25 during those events, and since we don't have that, you know,

1 it's kind of a proxy for that as what would have been
2 happening in reality, because I agree it's about what's in
3 the minds of these 11 people, but...

4 THE COURT: I'm not sure what you mean about what
5 they saw on TV. I mean, they were there for some portion of
6 it.

7 MR. PEED: Well, Mr. Vallejo, for example, never
8 went into D.C.

9 THE COURT: Right. Other than Mr. Vallejo.
10 And Mr. Caldwell never went into the building.

11 MR. PEED: So there's a text where he says "We'll
12 be back in the morning to do it all again," and I think the
13 government is going to try to make something criminal out of
14 that text.

15 So I just have a question in terms of what the
16 government's theory is for what was seditious about
17 after-the-post-certification events. And if I understood
18 the government's theory, I might share the Court's view of
19 the irrelevance of some of these videos. But, you know, to
20 some extent, I think what people on the outside were seeing
21 will have informed what was in their minds and what their
22 statements meant, and that's my question and concern. Of
23 course, I've spent a lot of time on this, so thank you.

24 THE COURT: You're free to ask Ms. Rakoczy
25 anything else you might want to ask her.

1 And I don't know how the government would know
2 what somebody else saw on TV, but I'm not -- I guess I'm not
3 following that line entirely, but be that as it may.

4 Okay. So let's do the following. Mr. Meggs, can
5 I just ask you -- and we'll talk about this a little bit
6 more in a little bit -- but what is your intention with
7 respect to new counsel?

8 DEFENDANT MEGGS: Should I use this microphone?

9 THE COURT: Please. You can use that, Mr. Meggs.
10 Thank you.

11 DEFENDANT MEGGS: At this time, I'm not sure.

12 THE COURT: Let me put the question, perhaps, more
13 concretely, which is that: Have you decided that you wish
14 to retain new counsel as opposed to proceeding on your own,
15 that is, without a lawyer?

16 DEFENDANT MEGGS: Again, I haven't decided that
17 yet. This all just happened a few days ago, so...

18 THE COURT: Fair enough. Fair enough. Okay.

19 All right. Here's what we're going to do.
20 Our July trial group will consist of the following
21 defendants: Mr. Watkins, Mr. Harrelson, Mr. Hackett,
22 Mr. Moerschel, and Mr. Caldwell. The September trial group
23 will consist of Mr. Rhodes, Mr. Vallejo, Mr. Minuta,
24 Mr. Meggs, and Mr. Ulrich.

25 I'm not quite sure what -- I'm going to put a star

1 next to Mr. Meggs because his situation is a little bit
2 more -- is more fluid than everybody else's.

3 I would like to have all defense counsel who are
4 prepared to go in the July trial date for a status
5 conference on May the 6th at 1:00 p.m., if all of you are
6 available, and on May the 6th at 2:30 p.m. for everyone
7 else. Do those dates and times work?

8 MR. LINDER: They work for us, Your Honor, counsel
9 for Mr. Rhodes.

10 MS. HALIM: Yes, Your Honor.

11 THE COURT: Okay.

12 Hearing no dissenters, then we'll fix those as our
13 next dates.

14 So with respect to those defendants who are going
15 in July, is there a position on speedy trial through the
16 trial date and tolling it through the trial date? This
17 would be for Ms. Watkins, Mr. Harrelson, Mr. Hackett,
18 Mr. Moerschel, and Mr. Caldwell.

19 MS. HALIM: Your Honor, on behalf Mr. Hackett, he
20 is willing to waive speedy trial through the July 11th trial
21 date.

22 And if I could at this time, just as a
23 housekeeping matter, inquire, the May 6th status conference
24 and also the May 17th motions hearing that's on the
25 schedule, will those be conducted remotely or in person?

1 THE COURT: I think the -- well, certainly the
2 6th, we'll do remotely. The 17th, I will likely want it to
3 be done in person just because I think a motions hearing of
4 this magnitude probably makes some sense in person.

5 And I'm glad you raised that, Counsel. You know,
6 I think I've said this previously but I want to reiterate
7 it, which is that, with respect to motions, to the extent
8 any defendant wants to join another defendant's motion,
9 please just file a notice on the record indicating you're
10 joining in some other defendant's motion. Obviously that
11 can happen after the deadline, so you're having a look to
12 see what's been filed. I just don't want there to be any
13 question for the appellate record, if there's a need for
14 one, as to what motions individual defendants have joined.

15 Insofar as those of you who are in the September
16 trial group and motions that you'd like to have made with
17 respect to the indictment, I would urge you to file your
18 motions now. And I say that because, you know, if you're
19 going to raise issues with respect to charges that affect
20 everyone, better to get your arguments in sooner rather than
21 later before I've made a decision on them, okay?

22 MR. CRISP: Your Honor, I did want to jump in
23 here. I tried to make a note of it, but apparently I was
24 unable to get through.

25 I am currently scheduled to be in trial the first

1 week of May in the Middle District of Pennsylvania for
2 another defendant that was set for a special trial term. So
3 I may have to have one of my associate attorneys who's not
4 entered in this case attend in my absence should the case
5 not be concluded by Friday.

6 THE COURT: Okay. That's fine, Mr. Crisp. Just
7 let us know if somebody is going to sub in for you.

8 MR. CRISP: Thank you, Judge.

9 THE COURT: Okay.

10 Yes, so the question was still outstanding in
11 terms of speedy trial for Ms. Watkins, Mr. Harrelson,
12 Mr. Moerschel, and Mr. Caldwell.

13 MR. CRISP: As to Ms. Watkins, Judge, Jonathan
14 Crisp again. We'll waive speedy trial through the current
15 July trial term.

16 THE COURT: Okay.

17 On behalf of Mr. Harrelson.

18 MR. GEYER: Yes, Your Honor. Brad Geyer for
19 Mr. Harrelson. We're willing to waive speedy trial through
20 the trial date. Thank you.

21 THE COURT: Okay.

22 On behalf of Mr. Moerschel, Mr. Weinberg.

23 MR. WEINBERG: Yes, Your Honor, we would waive
24 speedy trial.

25 THE COURT: Okay.

1 And then Mr. Fischer on behalf of Mr. Caldwell.

2 MR. FISCHER: Your Honor, we would waive speedy
3 trial.

4 And if I could just briefly -- just one issue,
5 Your Honor. To be able to be -- to have an opportunity to
6 be prepared for the July trial date, Mr. Caldwell, we would
7 really need to be able to have access to his actual cell
8 phone.

9 It's hard to describe, Your Honor. I can just
10 tell you the cell phone data that has been turned over, and
11 the government, we're still talking about trying to get it
12 in a form that we can get it to an expert. But it would be
13 extremely helpful, and I would say necessary for our
14 defense, for Mr. Caldwell, at a minimum, to be able to have
15 access, to go through his cell phone and to have me there to
16 look at it, which would basically save me --

17 THE COURT: Let me interrupt you, Mr. Fischer.

18 I'll just say the following, which is, that's
19 something I urge you to take up with Ms. Rakoczy, you know,
20 whether you and the government can reach some agreement that
21 would allow Mr. Caldwell and you to have access to his
22 original phone, which might involve stipulations as to chain
23 of custody or waiving any issues with respect to chain of
24 custody and the like. I'll leave that to you. And if
25 that's some agreement that you all can come to, all the

1 better, it seems to me, okay?

2 MR. FISCHER: Thank you, Your Honor.

3 THE COURT: All right.

4 So I'll find that it is in the interests of
5 justice and it outweighs the interests of the public and the
6 Defendants Watkins, Harrelson, Hackett, Moerschel, and
7 Caldwell to toll time through July the 11th, which is the
8 start of that trial date.

9 I do find, based upon the complexity of the case,
10 the exclusion of time is warranted, as well as the
11 additional time is necessary for the government to complete
12 discovery and for the defense to continue to review which
13 discovery they've received and prepare their defense.

14 With respect to the other defendants, that is,
15 Mr. Rhodes, Mr. Vallejo, Mr. Minuta, Mr. Meggs, and
16 Mr. Ulrich, positions on tolling through the September trial
17 date?

18 MR. LINDER: Yes, Your Honor. On behalf of
19 Mr. Rhodes, we will not object to the speedy trial; we'll
20 toll it till the next trial date in September.

21 MR. GUILLAUME: On behalf of Mr. Minuta, we'd also
22 toll speedy trial through September.

23 THE COURT: On behalf of Mr. Meggs?

24 MR. PEED: Same for Mr. Vallejo.

25 THE COURT: Same for Mr. Vallejo.

1 What about for Mr. Meggs?

2 MR. MOSELEY: Do you want him to answer or --

3 THE COURT: Well, look, for Mr. Meggs, in a sense,
4 you know -- well, let me ask him.

5 Mr. Meggs, are you prepared to toll speedy trial
6 through the September trial date of September 26th?

7 DEFENDANT MEGGS: Yes.

8 THE COURT: Okay. Thank you, sir.

9 And then for Mr. Ulrich?

10 MR. BALBO: No objection on behalf of Mr. Ulrich,
11 Your Honor.

12 THE COURT: All right. Thank you.

13 So then for those defendants, I will toll time
14 through September 26th. I do find that due to the
15 complexity of the case and the volume of discovery, the
16 number of defendants, that tolling of time is warranted
17 through the 26th.

18 I also find that it's in the interests of justice,
19 which is outweighed by the interests of the public and the
20 government -- excuse me -- and the defendants in a speedy
21 trial to toll time through that period in order to give the
22 government time to continue to produce discovery and for the
23 defense to receive, review, and consider that discovery in
24 preparing their defenses. Okay.

25 All right. So I think that takes care of all the

1 issues that apply globally to everyone. Is there anything
2 else anybody wants to raise as a global matter before I turn
3 to -- I think there's only counsel for Mr. Minuta and
4 counsel for Mr. Meggs that need to hold back.

5 MS. RAKOCZY: Your Honor, for the government, if
6 we may, we did want to say on the record and for the benefit
7 of all defendants being able to hear it, in light of the
8 Court's finalizing these trial dates and the fact that we
9 have our next status on May 6th, the government would say
10 that for any defendants who may still be considering a
11 potential plea offer with the government, I think we will
12 need to set that next status hearing of May 6th as a
13 deadline of sorts for guilty pleas.

14 I think that the way to articulate it is that by
15 May 6th, if a defendant wishes to accept a plea offer, we
16 need to at the least have signed paperwork and a date on the
17 calendar by May 6th. If somebody has signed the paperwork,
18 you know, and it's on the calendar for the following week or
19 shortly thereafter, that would be fine, but I think all the
20 parties need have a sense of who this -- who is going to
21 trial if we're going to be having these trial dates and
22 discussing it on May 6th.

23 THE COURT: Ms. Rakoczy, look, it's not for me to
24 say one way or another what the government does with pleas.
25 But I think just one point of clarification, which is that,

1 the May 6th, is that applicable to all defendants or only
2 those defendants who are going in July?

3 MS. RAKOCZY: Yes, Your Honor, that'll be
4 applicable for all defendants, because I think all
5 defendants, as they are making decisions about who needs to
6 be tried with whom, both the government and the defendants,
7 I think, need to know what the universe of defendants in
8 this case who are going to trial is.

9 THE COURT: Okay.

10 MR. GEYER: Your Honor, this is Brad Geyer.
11 May I make a comment?

12 THE COURT: Sure.

13 MR. GEYER: Thank you.

14 Since we're talking about deadlines, can we take
15 it for certain that we will have all the discovery that
16 we're entitled to by that May 6th deadline? Ms. Rakoczy
17 mentioned these 470 co-defendant files, other co-defendant
18 files, all *Brady* information.

19 THE COURT: Well, to be clear, I don't think
20 that's what she said.

21 It's not co-defendant files. Those are files of
22 other individuals who are charged in the January 6th cases.

23 Is that right, Ms. Rakoczy?

24 MS. RAKOCZY: Yes, Your Honor, that is correct.

25 And I do not believe that global discovery will be complete

1 by May 6th.

2 MR. GEYER: So just to clarify for the record.
3 So we're not going to have all the material information for
4 our defense and the government will not have complied to its
5 Rule 16 obligations by May 6th; is that correct?

6 MS. RAKOCZY: From the government's perspective,
7 that is not correct.

8 I think that in terms of the question of the
9 global discovery databases that are being built, I do not
10 think that that will be entirely complete by May 6th.

11 I do think, and we can articulate further for the
12 Court, the government on this case is taking efforts to go
13 through the materials that are in the global discovery and
14 identify and provide to the defense and flag for the defense
15 materials that are relevant and discoverable to these
16 defendants in those global materials, and that is an effort
17 that we are taking to make sure that we comply -- in this
18 particular case, that the attorneys in this case comply with
19 our specific discovery obligations.

20 There will be additional materials, though, that
21 will be available in that database after May 6th.

22 THE COURT: Okay.

23 MR. GEYER: So is that a yes or no?

24 THE COURT: Well, I don't think it's a simple
25 answer, Mr. Geyer, in the sense that, as I observed earlier,

1 you know, the global discovery is well beyond the scope of
2 Rule 16 for any particular case or any particular defendant.

3 And what Ms. Rakoczy has said is that in this
4 case, the government is accelerating its efforts to make
5 sure that everything is produced to these defendants in a
6 timely manner, which does not necessarily mean that all of
7 the global material will necessarily be available by May the
8 6th, okay?

9 MR. GEYER: Thank you, Your Honor.

10 MR. LINDER: Your Honor, may I make one comment?

11 THE COURT: Sure.

12 MR. LINDER: In light of the plea deadline, if --
13 just kind of thinking outside the box.

14 If a couple of defendants were to enter pleas and
15 the number of defendants going to trial was reduced to
16 eight, would the Court consider trying all of them together
17 on the September trial date? Because I believe all of the
18 defendants, I think, at this point, want a joint trial, if
19 it can be had. So I'm just kind of throwing that out there
20 as a thought.

21 THE COURT: Look, let's put it this way: There
22 are space constraints. If we get to a point where there are
23 a number of defendants left that are consistent with those
24 space constraints, then I will consider doing what you all
25 would like me to do.

1 MR. LINDER: Thank you.

2 THE COURT: But that is not in any way should be
3 interpreted as an observation or a comment about what any
4 particular defendant ought to do in this case.

5 MR. LINDER: Understood.

6 THE COURT: So let me be clear: I'm just making
7 an observation about logistics, not about what any
8 particular defendant should or shouldn't do with respect to
9 how they proceed, okay?

10 MR. LINDER: Thank you.

11 THE COURT: Okay, everyone. So we'll excuse
12 everybody other than counsel for Mr. Minuta and counsel for
13 Mr. Meggs, and then we'll see everybody in about a month.

14 DEFENDANT RHODES: Mr. Linder, can you call me at
15 the jail? I'm in COVID lockdown. I can't make phone calls.
16 You have to call me.

17 MR. LINDER: All right.

18 (All defendants exited besides Mr. Meggs.)

19 THE COURT: Okay. Why don't we start with
20 Mr. Minuta. Is he still on? Oh, there he is. Okay. And
21 Mr. Guillaume.

22 There was a -- I think it was filed under seal,
23 but there's nothing in here that's not something that could
24 be said on the public record, which is that Mr. Shipley has
25 entered his appearance in this case. You've requested,

1 Mr. Minuta -- on behalf of Mr. Minuta, Mr. Guillaume to
2 remain as CJA counsel for Mr. Minuta to assist in trial
3 preparation and be trial counsel.

4 I mean, let me ask you this, Mr. Shipley: Are
5 you -- and I should -- are you a member of the District Bar
6 here in D.C.?

7 MR. SHIPLEY: Yes, I am, Your Honor, as of the
8 4th, earlier this week, and that was kind of -- had
9 something to do with the timing of my entry; I was waiting
10 for that to come through. I was advised by the Clerk's
11 Office that I actually missed the deadline in March by one
12 day, so I had to wait until April.

13 THE COURT: Okay. So you're not in a position
14 where you need local counsel to sign papers and the like.
15 It sounds like you are a member of the Bar.

16 MR. SHIPLEY: Yes, correct, I don't need -- it's
17 not a PHV situation, correct.

18 And the reason I raised this, Your Honor, and I
19 raised this with Mr. Guillaume, was based on your comments
20 in the March status conference when I think Mr. Fischer
21 asked if the Court would have a problem with retained
22 counsel asking for a second counsel to be appointed. And so
23 when that -- and your response was you wouldn't have a
24 problem with that arrangement. So that's why I've gone
25 about it this way, and that's why I talked to Mr. Guillaume

1 about that opportunity, and he addressed it with the Federal
2 Defender.

3 THE COURT: So, look, I'd have to go back and look
4 at precisely what I said. I mean, I do recall Ms. Halim,
5 I think, asking about paralegal assistance. I don't
6 specifically remember anybody asking about a second counsel,
7 including a retained counsel.

8 I mean, look, there's something fundamentally
9 inconsistent about having somebody have both a retained
10 lawyer and a CJA-appointed lawyer, right? You know, you get
11 a CJA-appointed lawyer because that person doesn't have the
12 means to afford their own lawyer and not able to retain one.

13 Well, for whatever reason, Mr. Minuta is able to
14 retain you, Mr. Shipley. And so there's something
15 inconsistent about having Mr. Guillaume stay on as trial
16 counsel when Mr. Minuta apparently has the ability to fund
17 his own defense.

18 And so, you know, I'm disinclined to allow it to
19 happen. Maybe I'm prepared to think about a period of time
20 where Mr. Guillaume can continue to serve and assist in
21 terms of transition. But in terms of spending taxpayer
22 dollars for a second lawyer who would be there to support a
23 retained lawyer, I'm not inclined to think that that's
24 appropriate.

25 MR. SHIPLEY: Again, Your Honor, the only reason I

1 suggested to Mr. Guillaume and we raised it was based on
2 what I understand you to have said at the prior hearing.
3 And I did discuss that with the other attorneys in a Zoom
4 call and everybody had that same recollection. So that's
5 all I can offer.

6 I understand your point today. I wouldn't have
7 made the proposal but for your comments.

8 THE COURT: Okay.

9 Well, you know, I can certainly -- I don't
10 remember everything I've said.

11 MR. SHIPLEY: Understood.

12 THE COURT: I mean, I can go back and take a look.
13 But my current thinking now that I'm actually being
14 presented with the issue is as I've just indicated, which
15 is, you know, I think there is something -- there's
16 something inconsistent, at a minimum, with the CJA Act to
17 have a retained counsel back-up or co-counsel with somebody
18 who's funded under the CJA Act.

19 So I think I'm not inclined to allow Mr. Guillaume
20 to remain as co-counsel fully, particularly through trial in
21 this case, especially since Mr. Minuta is in that second
22 trial group. You know, I think I'll allow it -- I'd be
23 prepared to fund Mr. Guillaume for, say, 60 days, to provide
24 sort of a bridge period and ensure that Mr. Minuta has the
25 support and the benefit of Mr. Guillaume's time and wisdom

1 on this case.

2 But I think beyond that, Mr. Shipley, it's your
3 case and Mr. Minuta's retained you and I think that's the
4 way we'll proceed, okay?

5 MR. GUILLAUME: Your Honor, if I may, this is
6 Alfred Guillaume.

7 I serve at the pleasure of this Court, Your Honor.
8 And whatever the decision the Court has made, I'm more than
9 willing to, obviously, abide by it. And I don't want to
10 cause any confusion at all in this case; it's already
11 complicated enough.

12 So I wanted to make the Court aware that that was
13 my understanding as well. Mr. Shipley and I talked about
14 it. But even if that's what you said verbatim, Your Honor,
15 I serve at this Court's pleasure. So I'm more than happy to
16 assist counsel and bring him up to speed and get him all the
17 discovery and everything that he needs.

18 THE COURT: Okay.

19 Well, look, if I had said something to that effect
20 that's caused people to take steps, I apologize. You know,
21 I think sometimes I may have said something that I didn't
22 fully think through.

23 You know, if any of this causes Mr. Minuta to
24 rethink how he wants to proceed, then, you know, I'm open to
25 reconsidering, but I think that's my position.

1 MR. GUILLAUME: Thank you, Judge. Understood.

2 THE COURT: Thank you, Counsel.

3 All right. Is there anything then we need to
4 discuss on behalf of Mr. Minuta?

5 MR. SHIPLEY: Nothing further, Your Honor.

6 THE COURT: Okay. Thank you, everyone.

7 Mr. Shipley, you are free to leave if you'd like.

8 MR. SHIPLEY: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Okay. So that leaves Mr. Moseley, also here with
11 Mr. Meggs, who's present in the courtroom.

12 I know there was some back and forth, Mr. Moseley,
13 about whether any or all of this discussion ought to be --
14 whether it ought to be a matter of public record or not and
15 I think at the end of the day I've concluded it should.

16 You know, I have considered the *U.S. v. Hubbard*
17 factors here in assessing whether this portion of the
18 proceedings should be made public, and I think it should.
19 There is obviously a public need and interest in the
20 information that's about to be discussed. There has been
21 public reporting about your circumstances; in fact, there
22 have been a number of articles about it, Mr. Moseley, so at
23 least that aspect of this is now in the public record.

24 I don't know if the government is formally
25 objecting to a sealed proceeding. I don't know. Are you,

1 Ms. Rakoczy?

2 MS. RAKOCZY: No, Your Honor. We defer to the
3 Court.

4 THE COURT: Okay.

5 So I mean, there's no opposition, but,
6 nevertheless, I think --

7 MR. MOSELEY: Well, of course, I've registered my
8 opposition to the Clerk, because I think it's --

9 THE COURT: Well, Mr. Moseley, I'm actually not
10 done.

11 MR. MOSELEY: Oh, I'm sorry.

12 THE COURT: That's okay.

13 So the fact that the government isn't opposing is
14 a factor, but I'm not sure it's a -- it's not a dispositive
15 one.

16 You know, in terms of the strength of the privacy
17 interests asserted, as I said, Mr. Moseley obviously has
18 some privacy interests here. I don't plan to get into
19 anything that sort of would impede on that privacy interest.
20 I'm only going to discuss what is already in the matter of
21 public record, in the press. And then in terms of the
22 possibility of prejudice to those opposing disclosure,
23 nobody's opposing, but I think there is some prejudice,
24 frankly, to the public interest in doing a full under-seal
25 hearing. And then obviously what we're about to talk about

1 affects Mr. Meggs' status in this case and the public has an
2 interest in understanding that.

3 So, look, the bottom line is, I need to confirm,
4 and Mr. Meggs has essentially done that, that he is aware of
5 recent developments with respect to Mr. Moseley's bar status
6 in the State of Virginia.

7 Mr. Meggs, are you aware of that?

8 DEFENDANT MEGGS: Yes, Your Honor.

9 THE COURT: And are you aware that, as a
10 consequence of that, what is soon to happen is that, under
11 our Local Rules, an order of temporary suspension against
12 Mr. Moseley and his ability -- which will prevent him from
13 continuing his representation of you in this case -- will
14 likely be issued.

15 DEFENDANT MEGGS: I am now.

16 THE COURT: Okay.

17 So let me just be clear.

18 So what I'm saying to you is, because of the Bar
19 discipline that your lawyer has had in Virginia, he has an
20 obligation, which I believe he's fulfilled, to notify the
21 Bar of this Court. This Court has its own separate Bar that
22 is just sort of an admission policy.

23 Under our Local Rules, under the rules of this
24 Court, when a lawyer is disciplined in the manner that your
25 counsel has been, what the rules say is that once, it's

1 called our disciplinary committee, becomes aware of that
2 discipline elsewhere, it is required to issue an order of
3 temporary suspension and a Show Cause Order. That temporary
4 suspension order will mean that Mr. Moseley will no longer
5 be able to practice before this Court and, therefore,
6 represent you while that order is in effect, all of which is
7 to mean that Mr. Moseley, in short order, will not be
8 permitted to practice and represent you in this case. So
9 I want to make sure you are now aware of that.

10 DEFENDANT MEGGS: Yes, Your Honor.

11 THE COURT: Okay.

12 So, Mr. Meggs, as a consequence of that, you are
13 now soon to be in a position where you will be without
14 counsel. And the question is for you, and I think you said
15 earlier and it was reasonable, that you haven't had enough
16 time to think about it, that's fair.

17 But I do think at some point we do need to make a
18 decision or you need to make a decision about how you want
19 to proceed, and there's really three options. They are as
20 follows, which is: If you have the resources, you can
21 retain your own counsel; if you qualify, because you don't
22 have the resources, we can -- the Court will appoint you
23 one; and the third option is, you have a right to proceed
24 without counsel.

25 Now, I would caution every defendant to do -- not

1 to do that, but I'm just throwing that out there. And if
2 ultimately it's something you wish to do, we'll have a
3 longer discussion about whether that's a wise course. But
4 those are your options.

5 And I think the question is just sort of how much
6 time you think you need to figure out a way forward.

7 DEFENDANT MEGGS: I think the biggest issue for me
8 right now is I don't have the ability to contact any
9 attorneys. Anybody that I have to contact has to be on a
10 phone list that takes seven days to get put on a phone list.

11 So even if I want to talk to somebody about
12 representing me, I have to get their phone number from
13 somewhere that I can't access because I'm not allowed to
14 have Internet or any access while I'm incarcerated.

15 There's no Internet access in there. I don't have
16 a phone book. I don't have any access to attorneys. And
17 even if I said, hey, I want to hire somebody today, I can't
18 call them. So I can't even try to defend myself at this
19 point. And I think I should be included to have an
20 opportunity to properly prepare for my defense.

21 THE COURT: Absolutely.

22 DEFENDANT MEGGS: And I know that there is a
23 provision for that.

24 THE COURT: Well, Mr. Meggs, let me ask you this.
25 And I'm not suggesting a course for you, but you tell me

1 whether this is at all feasible.

2 Your wife is somebody who, presumably, you are in
3 touch with and can call.

4 DEFENDANT MEGGS: Correct.

5 THE COURT: Whether she can assist in identifying
6 potential counsel that might be interested and available to
7 represent you and we could work it that way.

8 And then to the extent you need to have a
9 conversation with that lawyer or a Zoom call with that
10 lawyer, you know, I can assist in trying to make sure that
11 that happens. But I understand the difficulty of the
12 position you're in.

13 MR. MOSELEY: Your Honor, that sounds helpful.

14 Can you set up, without the need for extradition
15 by you, some way to make that as straightforward as possible
16 that -- I mean, that sounds like a good line of thinking.
17 So if we can do that without him having to have the same
18 problem of getting your attention as being able to contact
19 out, that might be very helpful.

20 THE COURT: Well, look, you know, I can send an
21 email and say, this is the situation. I'd appreciate if
22 Mr. Meggs would be given a little bit of flexibility in
23 terms of outgoing phone calls or having videoconferencing
24 with prospective counsel.

25 DEFENDANT MEGGS: Thank you.

1 THE COURT: But I find that unless there's an
2 immediate matter, sometimes these sort of general requests
3 get lost in the ether.

4 But I'll make it and I'll ask. And if at the end
5 of the day it's not happening for Mr. Meggs, you know,
6 Mr. Moseley -- you could get in touch with Mr. Moseley and
7 Mr. Moseley could contact chambers and we can do what we can
8 to make sure that that can be facilitated.

9 MR. MOSELEY: And I hope at that point it would --
10 you know, it would be merely just providing a message, not
11 be construed as maybe representing him if at that point
12 that's a problem.

13 I will say that he has somebody that he might call
14 right now, that -- the only person I know who is willing to
15 take these cases and is now suddenly available, I've
16 recommended him and given him the phone number by text, was
17 his son. But if he has somewhat of an immediate need to
18 call somebody, that's --

19 THE COURT: Mr. Moseley, I leave to you to talk to
20 Mr. Meggs about possible successor counsel.

21 I don't know what the reasons were or what the
22 circumstances were for the change from Mr. Wilson, I don't
23 know whether Mr. Wilson would be available and willing, and,
24 as importantly or more importantly, whether that's an option
25 you would consider. That's another thought. As I said, I

1 don't know what's -- I'm just throwing that out there as a
2 possibility if that's even feasible.

3 But, look, the bottom line is, at some point,
4 Mr. Meggs, we need to figure out what's going to happen and
5 get you counsel.

6 So let's do this. Why don't we plan to come back
7 in two weeks and see where we are.

8 DEFENDANT MEGGS: And can we do that by video or
9 do I need to be present?

10 THE COURT: Yeah, we can do it by video.

11 DEFENDANT MEGGS: Okay.

12 THE COURT: We can do it by video.

13 DEFENDANT MEGGS: Your Honor, and another thing
14 is, you saw yesterday the difficulties we do have at the
15 facility sometimes and getting things that we're supposed to
16 have.

17 THE COURT: Right. No, I know.

18 DEFENDANT MEGGS: And I would also say that having
19 Evidence.com has been a big help for us, but -- and I meant
20 to bring this up earlier, I don't know if I'm allowed to
21 speak in trial -- I don't know how this works, so, you know.

22 If the government is going to bring just generic
23 witnesses in that were there that day, doesn't their data,
24 their videos, their recordings become part of the evidence
25 that has to be gone through? And we haven't seen any of

1 that evidence. There's no -- we haven't had an opportunity
2 to go through any other evidence other than the CCTV footage
3 and the body cams. That's it.

4 THE COURT: Right.

5 DEFENDANT MEGGS: We don't have any access to
6 anything else, and I think that's imperative for us to have.

7 THE COURT: Yeah, and I can understand the
8 frustration.

9 A couple observations: One is -- this isn't a
10 satisfying response -- the government's under no obligation
11 to make discovery available to any defendant, not just you,
12 but any defendant at a facility, okay? What's happened in
13 this case is unique and to my knowledge has never happened
14 before, which is that electronic devices are being made
15 available to incarcerated defendants for the purpose of
16 reviewing discovery. That's one.

17 But, two, and more importantly, you know, your
18 counsel has at least two ways of getting additional
19 discovery to you; they can send electronic discovery on a
20 storage device to you that can be put into a laptop and you
21 can review that material, you can ask to get -- to review
22 that material on the laptop, those laptops are available.
23 The other option is the lawyer can come to the jail and sit
24 down with you and start going through the discovery. And I
25 don't know if either of those two things have happened.

1 DEFENDANT MEGGS: They have happened, except for
2 one issue: The jail will not allow the -- our attorneys to
3 bring in a laptop that has access to the Internet so that we
4 can go through discovery.

5 So it would be something they would already have
6 to go through, know that they're going to be needing that
7 discovery, get it downloaded on something, and then bring it
8 into us, which means they're going to have to download the
9 entire file, which sometimes, like you've mentioned already,
10 they're massive amounts of files and then it takes three or
11 four hours just to unzip them on the laptop.

12 THE COURT: Right.

13 DEFENDANT MEGGS: So without the access to
14 directly be able to get on to the Internet, it makes it
15 pretty difficult for them.

16 So if there's a possibility that maybe you could
17 put an order in that our attorneys would be allowed to get
18 us on the Internet with them present, maybe that would be
19 something that would help us.

20 It would allow us to -- from my understanding,
21 some of the stuff that we've seen on Evidence.com on our
22 version does not match what the attorneys are looking at,
23 so, therefore, we're basically speaking two different
24 languages trying to find how it fits together.

25 THE COURT: Okay.

1 Well, I'll raise both of those issues, both your
2 representation and the issue of counsel being able to bring
3 in laptops with Internet access to assist in reviewing
4 evidence. I wasn't aware of that, but I'll ask.

5 DEFENDANT MEGGS: Thank you, Your Honor.

6 THE COURT: All right.

7 So I think I'd suggested putting a date down here
8 for us to return to see where things stand. And as I said,
9 Mr. Meggs, if you qualify, the other option is to find
10 court-appointed counsel.

11 So why don't we plan, if there's availability with
12 the jail, to come back -- wait to see if Mr. Douyon can
13 confirm availability -- at 10:30 on April 22nd.

14 Ms. Rakoczy, does that work for you? Mr. Moseley?

15 MS. RAKOCZY: Yes, Your Honor.

16 MR. MOSELEY: That's fine.

17 And I will try to clarify this, but it might be
18 good on the record to make sure he understands the
19 difference between court-appointed counsel and a public
20 defender just so he can have that as part of his decision.

21 THE COURT: I'm sorry, Mr. Moseley. Hang on.
22 My Courtroom Deputy was just saying we can't do 10:30.
23 We can do 9:00 a.m. Are you all available at 9:00 a.m.?

24 MS. RAKOCZY: Yes, Your Honor.

25 MR. MOSELEY: Sure.

1 What's that date?

2 THE COURT: April 22nd.

3 I didn't hear that last part, Mr. Moseley, about a
4 public defender or...

5 MR. MOSELEY: I just think it would be important
6 to make sure on the record that he understands that there's
7 a difference between -- everyone talks about a public
8 defender broadly speaking, but the court-appointed attorneys
9 that are private counsel who are willing to work under
10 government funding and then there are public defenders who
11 are employees of the Public Defender's Office and he might
12 want to be thinking about that as an outlet.

13 THE COURT: Look, talk to Mr. Meggs about that.
14 It's actually -- you know, you're right, it's an option that
15 ordinarily is not available -- it would not ordinarily be
16 available in this case because this Public Defender's office
17 is going to be conflicted out of appointing anybody from
18 their office to represent Mr. Meggs because they represented
19 Ms. Watkins for a period of time.

20 But, you know, the January 6th cases have been
21 such that we've been going to Public Defender Offices
22 throughout the country.

23 And there are a lot of very good public defenders
24 out there, Mr. Meggs, and those public defenders would not
25 be -- would not have the conflict that this office does. So

1 if that's an option and something you would consider,
2 assuming you qualify, and I think, in theory, I could --
3 well, I shouldn't get over my skis. You know, I could ask
4 Mr. Kramer to start looking into that possibility, okay?

5 DEFENDANT MEGGS: Yes, Your Honor.

6 THE COURT: So, Mr. Moseley, talk to Mr. Meggs,
7 see what he'd like to do. I'll get a message to the jail to
8 try and facilitate any calls or videoconferences with
9 prospective counsel, and we'll take it from there, okay?

10 MR. MOSELEY: All right.

11 And, Your Honor, if I could, I know you're
12 concluding, but I just want to share with the Court that we
13 have not been -- we have been trying to find many lawyers
14 not in civil cases but other cases and have not had -- you
15 know, the issue has not been the Court finding other
16 attorneys. I want to assure the Court that it has not been
17 hard at all in terms of finding other lawyers. And maybe a
18 silver lining will be that someone will hear about this and
19 step up. Who knows.

20 THE COURT: Okay. Well, we'll see. Hopefully,
21 we'll have some clarity in a couple weeks.

22 All right. Thank you, everyone.

23 COURTROOM DEPUTY: All rise.

24 This Court stands in recess.

25 (Proceedings concluded at 12:06 p.m.)

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that
the foregoing is a correct transcript from the record of
proceedings in the above-titled matter.

Date: June 24, 2022



William P. Zaremba, RMR, CRR

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