

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28
)	Washington, D.C.
vs.)	September 16, 2021
)	11:00 a.m.
THOMAS E. CALDWELL, ET AL.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF STATUS HEARING VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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

2 DEPUTY CLERK: All rise.

3 THE COURT: Good morning, everyone. Please be
4 seated.

5 COURTROOM DEPUTY: Your Honor, this is Criminal
6 Case No. 21-28, United States of America versus Defendant
7 No. 1, Thomas Edward Caldwell; Defendant No. 2, Donovan Ray
8 Crawl; Defendant 3, Jessica Marie Watkins, Defendant 4,
9 Sandra Ruth Parker; Defendant 5, Bennie Alvin Parker;
10 Defendant 7, Laura Steele; Defendant 8, Kelly Meggs;
11 Defendant 9, Connie Meggs; Defendant 10, Kenneth Harrelson;
12 Defendant 11, Roberto A. Minuta; Defendant 12, Joshua James;
13 Defendant 13, Jonathan Walden; Defendant 14, Joseph Hackett;
14 Defendant 15, Jason Dolan; Defendant 16, William Isaacs;
15 Defendant 17, David Moerschel; and Defendant 18,
16 Brian Ulrich.

17 David Fischer for Defendant Caldwell, Carmen
18 Hernandez for Defendant Crawl, Shelli Peterson for Defendant
19 Watkins, John Machado for Defendant Sandra Parker, Stephen
20 Brennwald for Defendant Bennie Parker, Peter Cooper for
21 Defendant Steele, David Wilson for Defendant Kelly Meggs;
22 Stanley Woodward for Defendant Connie Meggs, Bradford Geyer
23 for Defendant Harrelson; Jenifer Wicks for Defendant Minuta,
24 Joni Robin and Chris Leibig for Defendant James,
25 Thomas Spina for Defendant Walden, Angie Halim for Defendant

1 Hackett, Eugene Rossi and Natalie Napierala for Defendant
2 Isaacs, Michael Van Der Veen for Defendant Dolan, Scott
3 Weinberg for Defendant Moerschel, and Attilio Joseph Balbo
4 for Defendant Ulrich.

5 Defendants Jessica Watkins, Kelly Meggs, and
6 Kenneth Harrelson are appearing live in the courtroom.
7 All other defendants are appearing virtually.

8 And, Mr. Crawl, could you please mute your line.

9 MS. HALLER: Jean-Claude, for the record,
10 Julia Haller for Connie Meggs.

11 COURTROOM DEPUTY: Okay. Thanks.

12 THE COURT: Good morning again, everybody. I hope
13 everybody is well.

14 To those defendants who are present, good morning
15 to you all.

16 All right. So we're here for a status conference.
17 It's been about 30 days or so since our last conference
18 where we had everybody together, and the purpose of today is
19 to see where we are in terms of status of the case and where
20 we go and to make sure we're on track at least for that
21 first trial date.

22 So why don't we start with the status of
23 discovery. Ms. Rakoczy and -- Ms. Rakoczy and the
24 government filed a rather lengthy description of where
25 things stand in terms of the discovery in this case that's

1 specific to these defendants, but also, more importantly,
2 what the status is of the larger scope, larger universe of
3 discovery that will involve setting up some defense-specific
4 databases.

5 And so I assume counsel has read all of this, but
6 I'm not going to assume that the defendants themselves have
7 read all of this, and maybe, you know, haven't even seen
8 this document. So, Ms. Rakoczy, it may be useful, just for
9 the benefit of the defendants, to just provide a summary of
10 where things are with respect to discovery so that they have
11 some sense of where things are in terms of producing things
12 to their counsel.

13 MS. RAKOCZY: Yes, Your Honor.

14 We continue to make good progress on the discovery
15 front. And I'm hearing a little bit of feedback, so if
16 counsel have trouble understanding me, I trust they'll pipe
17 up. I'll try to speak slowly so that the feedback doesn't
18 override what I'm saying.

19 THE COURT: I'm not hearing any, Ms. Rakoczy, but
20 if everybody could please make sure their line is mute, and
21 let's make sure our line is mute, too.

22 MS. RAKOCZY: Yes, Your Honor.

23 Since we were last before the Court -- and I think
24 that helped the feedback issue.

25 Since we were last before the Court, the

1 government has provided ongoing discovery in the instant
2 case. We have provided additional FBI reports and
3 Grand Jury subpoena returns. Due to the fact that it is an
4 ongoing investigation, we've provided some new reports and
5 subpoena returns that were generated since the last time we
6 made productions along that front.

7 We've provided interview reports from interviews
8 that were conducted with certain law enforcement officers at
9 the Capitol on January 6th. We've provided some cell site
10 analysis that's in draft format that we hoped might be
11 useful to the defense in understanding what the location
12 data from certain defendants' cell phones show.

13 We have provided something that we hope will be
14 somewhat helpful in wading through all the Capitol
15 surveillance footage, which is a set of still shots that an
16 FBI analyst had put together for this case, showing the
17 defendants' movements, and it captures time stamps and
18 camera angles, tracking most of the defendants' movements
19 through the Capitol. And we were hoping that while it may
20 not show everything that the defense would look at, it at
21 least identifies at least a general overview of the
22 defendants' movements through the Capitol, which we hope
23 will help the defense to narrow in on the certain camera
24 angles and time frames that might be most relevant to their
25 conduct. And we've provided some additional materials from

1 certain search warrants that were carried out for some of
2 the defendants who were arrested in the later stages of this
3 case.

4 We have also engaged in several reverse proffers
5 with defense counsel and defendants and some less formal
6 phone conversations with defense attorneys to point them to
7 where some of the most pertinent discovery can be found
8 amongst the materials. We have a few more reverse proffers
9 scheduled later this morning and in October and our door
10 remains open to talk either informally or more formally
11 through a reverse proffer with either the defendants or
12 their counsel to help understand these discovery materials.

13 And so this investigation is certainly ongoing,
14 but there are still a few outstanding items of discovery
15 that we'll need to provide as the investigation goes on.
16 But we're doing, I would say, pretty well in the instant
17 case in getting most of the discovery into the hands of
18 defense counsel.

19 The biggest item that we're working on producing
20 right now, which I think is one of the last major items of
21 discovery in the case-specific discovery, is the scoped
22 search warrant returns. And we've talked about this
23 somewhat extensively with the Court, but obviously a lot of
24 digital devices and accounts were seized in this case.

25 We have provided the whole of these accounts to

1 all the defendants under an agreement amongst all the
2 defendants that they were willing to do that, under the
3 understanding that those materials were marked as highly
4 sensitive, but the goal there was to get that evidence into
5 the hands of the defendants and the attorneys as early as
6 possible.

7 But now we are completing the scoping of those
8 warrants, so the pulling out of just what the government had
9 deemed as relevant under the terms of attachment B of the
10 search warrants and we're going -- we've produced some of
11 those scoped search warrant returns through the FBI reports,
12 those that were small enough in size to load into Sentinel,
13 which is the FBI's report, data report storage system, those
14 have been provided to the defense.

15 But some of the cell phone extractions that -- the
16 scoped versions of the cell phone extractions and the iCloud
17 extractions are too large, so we're loading those on to hard
18 drives to provide to the defense. And we think that might
19 be a very useful thing for the defense, because it will help
20 them to key in on what the government at least has
21 identified as being most relevant in those areas of
22 discovery.

23 THE COURT: Ms. Rakoczy --

24 MS. RAKOCZY: So that's the case-specific
25 discovery.

1 THE COURT: Can I -- if I can just interrupt you.

2 A quick question on the scope of material,
3 Ms. Rakoczy. When that's being produced, is it being
4 produced in a searchable format, given the volume of
5 material? Is it being produced in a searchable format or on
6 a database that is itself searchable or is it just being
7 produced as raw data?

8 MS. RAKOCZY: It's being produced somewhat as raw
9 data, but the cell phones are being produced with a program
10 called Cellebrite, and that program has a search function,
11 and that's with respect to the cell phone extractions.

12 With respect to something like a Facebook search
13 warrant return, those come back in PDF documents. So those
14 are keyword searchable.

15 And so the answer is that each of these types of
16 digital data extractions come in a slightly different
17 format, but each of them is searchable in some way. We have
18 not loaded them into some monster omnibus program that can
19 search across all of each search warrant return. So you
20 have to sort of load up each one and do the keyword searches
21 that you'd like to do, but you can search through them.

22 THE COURT: Okay.

23 MS. RAKOCZY: And just to be upfront with the
24 Court, it's not that we, the government, have anything
25 better. We're also doing the same thing. We're loading up

1 individual defendant's cell phone extraction and searching
2 through each one by one. If we had something, we would
3 produce it.

4 And I think -- I know, obviously, we're going to
5 turn to the office-wide discovery. Right now, I know the
6 office is tackling how to produce all of the digital search
7 warrant returns across all 600 cases to the Defense Bar.
8 And I don't know the answer to exactly what software program
9 will be used for that bucket of evidence, but it's possible
10 that when we move in that direction, that may have an
11 answer. It may also be that those also need to be produced
12 through individualized programs like Cellebrite or PDF or
13 what have you.

14 THE COURT: So I think you actually anticipated my
15 next question, which was whether the search warrant returns
16 will be put into the relativity side of the two databases,
17 and sounds like that's still an open question.

18 MS. RAKOCZY: It's certainly one that I don't know
19 the answer to just yet.

20 There are these two platforms -- and it makes
21 sense to talk about that.

22 So across all 600 of the Capitol breach cases, a
23 bunch of evidence has been recovered. The government has
24 built, for its own processing and discovery productions, two
25 data platforms, and we're now making essentially instances

1 or versions of that available to the defense as well. So
2 what the government is using and has to search through this
3 evidence and produce it in discovery, we're also going to
4 give an equivalent version to the defense now.

5 The two platforms, one is called Relativity, and
6 that's being used for documentary evidence. So Grand Jury
7 subpoena returns, FBI reports, other documents that are sort
8 of full of words that can be keyword searched for going into
9 Relativity.

10 There's also in this case, though, a lot of
11 digital evidence. There are many, many video files from
12 Capitol surveillance video, there are body-worn camera files
13 from the police officers who were there that day, some of
14 the police officers who were there that day, there's audio
15 files from radio communications. And so Relativity is not a
16 great platform for that. And so the government has worked
17 out a contract with Axon, who is the company who provides a
18 service called Evidence.com, and that is going to be used to
19 provide more of the digital video and audio discovery in
20 this case.

21 My understanding is that the defense instances are
22 platforms of both the Relativity document side and the
23 Evidence.com video and audio side, having created and exist,
24 the Evidence.com platform should be made available to the
25 defense by either tomorrow or a week from tomorrow, is the

1 latest estimate, and when that goes live for the defense, it
2 will have 2,000-plus hours of law enforcement body-worn
3 camera footage available, and that's the first digital
4 dataset that will be produced from the office-wide discovery
5 through Evidence.com. My understanding is with respect to
6 the Relativity document database, a government platform
7 exists and we're using that to make government productions
8 already. The digital platform for -- the Relativity
9 platform for the defense exists, but we are still engaged in
10 contract modifications in order to make that available to
11 the defense. And so that's still forthcoming, but I think
12 the estimate is still that by late September or early
13 October, we hope that the defense's instance of Relativity
14 will be up and running.

15 In the meantime, we're not just waiting for that
16 to exist, we are starting to do office-wide productions from
17 the government's version of the Relativity database, we're
18 just providing it via services like USAfX, which is the
19 government's digital cloud-based file sharing system, rather
20 than putting into Relativity. But we will, when the
21 defense's instance of Relativity is up and running, make
22 that stuff available through the defense's instance of
23 Relativity as well.

24 And the main example of that is, last Friday our
25 discovery team released about 850 pages of reports from the

1 U.S. Capitol Police internal investigations, looking into
2 whether any law enforcement officers on January 6th acted in
3 ways that might be considered inappropriate. And so about
4 850 pages of reports, redacted reports from those
5 investigations were released to the AUSAs in these cases,
6 and the next day, Saturday, we made those reports available
7 to the defense counsel in this case.

8 And so until the discovery database, the
9 Relativity database for the defense is up and running,
10 we will continue to make productions in a slightly different
11 way. And then when the system is up and running, everything
12 that had been produced will be there in there for the
13 defense.

14 THE COURT: Okay.

15 MS. RAKOCZY: And so the --

16 THE COURT: Go ahead, Ms. Rakoczy.

17 MS. RAKOCZY: I'm sorry, Your Honor.

18 THE COURT: No. Go ahead.

19 MS. RAKOCZY: The question mark is the digital
20 search warrant returns across all 600-plus cases.

21 So many, if not most, of the defendants had cell
22 phones or social media accounts that were searched pursuant
23 to search warrants, and that dataset is a complicated one to
24 produce and share in a mass format, because each different
25 dataset, as I was explaining earlier, sort of comes in it

1 with a different set of technology. So cell phones are
2 extracted using one tool, social media returns come back
3 often in a PDF or other tools. And so it's going to be hard
4 to find one format to do that. They also have mixed media.
5 So there are text messages that come in a -- they're sort of
6 documentary, but then there are, obviously, also video and
7 audio files, and those are more digital.

8 So I don't know the answer to the question of
9 whether they're all going to be produced in either
10 Evidence.com or Relativity or whether they're going to be
11 kind of split up between the two databases or whether
12 there's maybe a third way that's better to produce and
13 search those items. And so that is a piece that I think is
14 going to take a little bit longer to get right.

15 THE COURT: Okay.

16 Just a few questions as follow-up, just one
17 detailed question, and that is: With respect to the
18 Evidence.com, Axon database that will contain largely video
19 and audio files, is that going to be searchable in some way?
20 From your report, it suggests that there was some coding
21 that the U.S. -- that the Department of Justice is doing
22 when it is uploading videos and audio that would enable
23 defense counsel, for example, to search for all video
24 related to a particular area on the Capitol grounds, for
25 example.

1 MS. RAKOCZY: Yes, Your Honor.

2 There is a way to tag files within Evidence.com.
3 And so the defense, as they review, could tag. And
4 depending on how the Defense Bar works this out, I think
5 there could be an ability to share tags.

6 But the government, as it has been reviewing this
7 evidence, has also been engaging in its own categorizing or
8 attempts to make sense of the vast amount of data, and it's
9 my understanding that we'll be sharing whatever we've come
10 up with with the defense, with the understanding that we may
11 not have tagged or flagged everything that the defense could
12 think might be relevant, but we're certainly trying to. And
13 whatever tools we've developed to try to more easily digest
14 this data, we're going to be sharing with the defense.

15 So the system has some of its own tools that the
16 Defense Bar may be able to use in sorting through it, and
17 then we have developed, the government has developed some of
18 our own tools that we've been using to catalog and tag and
19 sort through and we'll be trying to share those materials
20 with the defense as well.

21 THE COURT: Okay.

22 Yeah. I mean, look, to state the obvious, turning
23 over thousands of hours of video is not terribly
24 user-friendly, unless there's some way in which people can
25 review those videos and sort through them. And if the

1 government is building a back end of this that would enable
2 their defense counsel, for example, to search for videos
3 related to a particular time or a particular location, it
4 would seemingly be -- or even particular individuals, you
5 know, I think, obviously, if that's happening, then
6 disclosing the ability to search based on those kind of
7 parameters would really be important and critical in
8 ensuring that everybody understands how to use this database
9 and use it effectively.

10 MS. RAKOCZY: Yes, Your Honor.

11 It is my understanding that that is what we are
12 trying to do, and it is probably also important to stress to
13 the Court that the government in this case has already
14 provided about 250 gigabytes' worth of data from U.S.
15 Capitol Police surveillance footage from the Capitol. And
16 then as I was saying earlier, we provided still shots that,
17 I think, helped to isolate some of the most important camera
18 angles and time frames.

19 And then with respect to the law enforcement
20 body-worn-camera footage, we have already provided a good
21 number of the officers' cameras' footage that would be most
22 relevant to the defendants at issue here.

23 And obviously, we understand why the defense would
24 want to do a broader search and they may well have a sense
25 of something they're looking for that we can't anticipate

1 and that's why we're making the office-wide database
2 available.

3 But I think -- I'm hopeful that there won't be a
4 ton of searching that these defense counsel will have to do,
5 because we have already in this case been trying to produce
6 that already as we've been going along in this case.

7 THE COURT: Okay.

8 And is the U.S. Attorney's Office -- and maybe
9 this is a better question posed to Ms. Peterson -- is there
10 any plan to provide trainings to defense counsel about how
11 to use these databases?

12 I mean, a large part, particularly in this case,
13 we've got lawyers, either solo practitioners or small firms,
14 who, perhaps, they've not had experience with these kind of
15 databases before, and if they have, maybe it's not that
16 extensive.

17 But is there a plan, place, or thoughts about
18 doing something like that to ensure that people will be able
19 to be trained or at least get some instruction on how to
20 work these databases?

21 MS. RAKOCZY: I had understood that that was in
22 the works.

23 Ms. Peterson may know more than I do, but I think
24 the Court's concern is one that's obviously shared by and
25 anticipated by some of the folks who are leading these

1 larger efforts.

2 THE COURT: Ms. Peterson, do you have any further
3 insight on that?

4 MS. PETERSON: I hate to go out too far on a limb
5 here, but, yes, that certainly is the plan, it's the hope.
6 But until we actually have some evidence and a database to
7 use and know how to use it ourselves, it's very difficult to
8 train anyone else on it, and we're not at that point yet.

9 But we do have a plan to try to figure out how to
10 get licenses to all of the attorneys so they can use these
11 systems and then hopefully to get some training so people
12 can effectively use it.

13 THE COURT: Okay.

14 MS. PETERSON: I think it's important for us to
15 look at this more realistically at this stage of the game.
16 There is -- and perhaps I'm jumping the gun, but I don't
17 believe that there is any conceivable way we can be ready
18 for a trial in January in this case, given where we are on
19 the discovery process at this point, in addition to the
20 complications of getting the discovery in our hands and then
21 figuring out how to actually view it and share it and then
22 training all of the CJA lawyers and retained counsel and
23 everyone else involved in these cases.

24 We then have the complicating factor, for those of
25 us who have clients who are in custody, of trying to share

1 the information with the clients, and that is not going to
2 be an easy task.

3 The Court may be aware that right now, the jail is
4 in a posture where they have very limited numbers of laptops
5 that are available for all of the residents in the facility,
6 and it is a four-to-six-week wait, at a minimum, before one
7 can get the discovery after it's been sent to the jail, and
8 then there is a limit on the amount of time that any
9 particular client can have to review their discovery. And
10 then the sheer vastness of the discovery that's about to be
11 dumped on the defense, it's impossible for us to be able to
12 get it in any meaningful manner to our clients for their
13 review.

14 THE COURT: So, Ms. Peterson, I guess you've
15 touched on the two questions I was going to raise and
16 address to Ms. Rakoczy.

17 First is, what, if anything, is happening with
18 respect to getting retained -- excuse me, detained
19 defendants -- we have three in this case and there are many
20 others in other cases -- access to this material?

21 I mean, will there be, for example, dedicated
22 terminals at the jail that would allow defendants to have
23 access to these databases. You know, it's just not
24 realistic to think a lawyer can bring a laptop over to one
25 of the visiting rooms -- I have no idea how good the WiFi is

1 in those visiting rooms -- and connect up to the database
2 and be able to sort of show some materials that might or
3 might not be relevant to their clients. That's sort of
4 question one.

5 And then question two is what all this means for
6 our trial schedule.

7 MS. PETERSON: Yeah.

8 THE COURT: So, Ms. Rakoczy -- why don't we start
9 with the government -- to the extent Ms. Rakoczy has
10 anything to say about that, then I'll ask you, Ms. Peterson.

11 MS. PETERSON: Fine.

12 MS. RAKOCZY: I understand both from talking to
13 Ms. Peterson and then talking to some in our office who are
14 leading the discovery efforts, that there is a real problem
15 with getting access to the detained defendants.

16 And I know that I think our office and the Federal
17 Public Defender Service are in talks of trying to brainstorm
18 ideas and come up with a proposal to make to the jail in the
19 next couple weeks. But I do think it's been a real problem
20 for the detained defendants especially to get access to the
21 data.

22 But, frankly, even from talking to attorneys in
23 this case who represent non-detained defendants, very few of
24 the attorneys live in the same place as their clients, and
25 so I think it's been a problem across the board.

1 And so I think I share Ms. Peterson's concerns
2 that I think a January trial date is looking less and less
3 realistic. I think it's important for the Court to have
4 each defendant, through their counsel, weigh in on this
5 issue, but I would be surprised if more than a handful of
6 defense attorneys still really actually want to push
7 forward.

8 And, you know, I know the government is still
9 getting materials out, so I know we bear some of the
10 responsibility here, but we are trying, in every conceivable
11 way, to get as much materials in the hands of the defense
12 attorneys as quickly as possible. I just think that this is
13 a very, very large case with a tremendous amount of data,
14 and I just think for everyone to get through it, it's been a
15 real challenge, and to get it in a meaningful way to the
16 defendants so that they can also understand the evidence,
17 it's been a legal challenge. And so it does really feel
18 like January 31st is becoming ever more unrealistic.

19 MR. SPINA: Your Honor, may I say something
20 relative to the discovery, although we've moved past that to
21 something else?

22 THE COURT: Hang on, Mr. Spina.

23 I'm going to turn to individual counsel once we
24 get through some of these preliminaries here.

25 MR. SPINA: Yes, sir.

1 THE COURT: Look, I have to say the following,
2 which is -- it is -- I'm not prepared to move that
3 January 31st trial date today, but I will say this: That
4 I've got three held defendants in this case. And, you know,
5 they will have been held nearly 11 months, if not more, by
6 that point.

7 And while I appreciate that there is -- this is an
8 unprecedented case and the volume of material here that has
9 been collected by the government is unprecedented, you know,
10 not all of it relates to these defendants, and, in fact,
11 much of it does not.

12 And while I suppose it's easy in theory to say,
13 well, this may be relevant and this is not relevant, you
14 know, Rule 16 does talk about materiality. And while it may
15 be easier and safer, from the government's standpoint, to
16 produce everything, you know, Rule 16 doesn't require the
17 production of everything.

18 And certainly when I'm weighing, you know, Speedy
19 Trial rights of detained defendants in particular, you know,
20 the government's desire to produce everything and defense
21 counsel's desire to have everything, even if it's remotely
22 material, is just something I've got to take into account.
23 And so the fact that there's video that hasn't been loaded
24 from a certain perspective or a certain side of the Capitol
25 that has absolutely no connection to this at all, doesn't

1 seem to me to be a reason to slow down our trial schedule.

2 Now, you know, logistically, I recognize and I do
3 appreciate that it may not be so easy to segregate out and
4 separate what's relevant and material in this case from the
5 rest of the mass of what you have, I understand that. But,
6 you know, as I said, I've got three defendants who are held
7 at the government's request. If the government wants to
8 walk back from that, then, you know, that changes the
9 equation. But, you know, I've just got to keep their
10 liberty interests and their interests in a speedy trial in
11 mind here. And, you know, I'm not at a point yet where
12 I'm going to make any decisions, but rest assured it's in
13 the back of my mind.

14 So at least with respect to the three defendants
15 who are held and who would otherwise be going at the end of
16 January, I think government counsel and those defense
17 counsel ought to be thinking about whether there are ways to
18 ensure that what it is that those defense counsel need to be
19 ready gets in their hands sooner than others, and that there
20 ought to be a priority for those who are scheduled for trial
21 and those who are detained.

22 That's just my observation; I'm just one judge on
23 this court. But, you know, if the goal here is to get every
24 single scrap of evidence in the hands of defense lawyers
25 before we have a trial, that's going to take a very long

1 time, and certainly, in the interest of those who are held,
2 I don't think we can wait that long.

3 MS. RAKOCZY: We hear the Court's concerns, but we
4 do encourage the Court to seek the feedback from the counsel
5 for those defendants who are detained, because while,
6 obviously, their liberty interests are paramount, they also
7 want to have the best chance of mounting an effective
8 defense.

9 And I agree that not every scrap of evidence from
10 the 600 other cases that are pending is going to wind up
11 being relevant or probative, but certainly, you know, the
12 dozen or so people who were most close to these defendants
13 at the east Rotunda doors as they entered, we might want to
14 take a look at any videos filmed by those people, you know,
15 messages in the phones of defendants who may have
16 communicated with our defendants, if we can do a
17 cross-search for that and find that evidence that may be
18 relevant.

19 And it is not the easiest to try to seek out and
20 identify those other defendants whose body of evidence might
21 be most relevant. We are trying, on the government end,
22 we're trying to form groups with other attorneys who have
23 defendants who are located in similar locations to these
24 defendants so that we can more quickly look through those
25 defendants' cell phone holdings and social media account

1 holdings, and that's the best way that we can think of to go
2 about this, and we assume the defense will do the same when
3 they're given access to the evidence.

4 But I think it would be prudent, because you just
5 don't know whether Defendant A, who was standing next to our
6 group, but when they entered, might have taken his phone out
7 and captured one of these defendants saying something that
8 might be pertinent. And they might not have, but the fact
9 that they might have is the thing that gives the government
10 counsel in this case anxiety, and I think that's the reason
11 why a lot of defendants might not want to go to trial until
12 they've reviewed that body of evidence.

13 And so we do really think that this is the right
14 way to go to ensure that our discovery obligations are met
15 and that the defendants have all of the material evidence,
16 and we think that counsel's in favor of having, if
17 necessary, you know, a slightly later trial date, a couple
18 months later, we have the April date, we think that that
19 would be the most prudent course.

20 And even balancing it against the very weighty
21 liberty interest of the detained defendants, we think that
22 is the right thing to do, we think that in the grand scheme
23 of this case, it would not be an unconstitutional delay or
24 even really an unfair delay in light of the vast amount of
25 discovery and evidence that is at issue here, and we just

1 think that that's the most prudent course to make sure that
2 nothing is missed and someone lacks a key piece of evidence
3 for their case.

4 THE COURT: Okay.

5 Well, look, as I said, I'm not prepared today to
6 make any decisions about that. I just wanted to share with
7 you my thoughts about the importance of that trial date in
8 doing what we can, at least with respect to the three held
9 defendants in this case, and that is a small universe of the
10 overall number of defendants who've been arrested, and a
11 fraction -- even a small fraction of even those who remain
12 charged in this case.

13 Obviously, I'll look forward to hearing from
14 Ms. Peterson, Mr. Wilson, and Mr. Geyer about their clients
15 who are held and who are present here today, but, you know,
16 just know that I am concerned about a lengthy pretrial
17 detention period, and I for one don't think that every
18 single scrap of evidence that's been collected needs to be
19 uploaded and presented before we can have trials in these
20 cases, because, as I said, otherwise, we won't be having a
21 trial in any of those cases probably till 2023, and I just
22 don't think that's acceptable for those who have been held.

23 Okay. Let's just talk about a few more things
24 before I turn to individual defense counsel.

25 I want to just talk quickly about motions. There

1 are some motions that remain pending. Obviously, there are
2 still the motions that I have not ruled on with respect to
3 Counts 1 and 2, and there's additional briefing scheduled
4 for that that is forthcoming in the next few weeks.

5 There are a series of other motions that were
6 filed by Mr. Meggs, Mr. Harrelson, Mr. Crawl, Ms. Meggs, and
7 Mr. Minuta, just to name a few. There are some other
8 counsel who have asked for some more time.

9 There is a deadline, and I just want to confirm
10 with the government that that least with respect to those
11 motions that I've just identified, that the government will
12 be filing oppositions to those motions by September 30th,
13 which is the opposition date that we've set, and that the
14 replies for those particular motions will be due
15 October 14th. Is that consistent with how everybody's
16 operating in terms of the motions schedule with respect to
17 those pending motions?

18 MS. RAKOCZY: Yes, Your Honor, for the government.

19 THE COURT: Okay.

20 And so just -- Mr. Meggs -- Mr. -- counsel for
21 Mr. Meggs, Mr. Harrelson, and Mr. Crawl, Ms. Meggs, and
22 Mr. Minuta, your reply dates for those motions, at least as
23 of right now, is October 14th.

24 Next thing I want to just raise at this point is,
25 if we are going to have a trial at the end of January, you

1 all ought to start thinking about what voir dire is going to
2 look like. Maybe it's a little too soon to be thinking
3 about this, but I just want everybody to know that if we are
4 going to try a case at the end of January and you want to
5 send out a questionnaire to the potential jury panel, I have
6 asked generally for information about timing. What that
7 would mean is that we would be asking for a special jury
8 panel, or at least what we call a special jury panel in this
9 courthouse, and those summonses need to go out eight to ten
10 weeks before trial. So if you back up that time frame,
11 we're looking at right before Thanksgiving to send out
12 summonses for any jury that's going to be impaneled in the
13 last week of January.

14 So if you all wish to have a questionnaire in this
15 case, and maybe you've got thoughts about whether one would
16 be useful, and, frankly, you know, whether there is a
17 standard January 6th defendant questionnaire, I don't know
18 whether there are thoughts about using such a document, it
19 ought to be something we think about.

20 I mean, I think this case probably has a higher
21 profile than most, and so maybe there are specific questions
22 to this case that really would not be relevant to other
23 January 6th defendant matters, but I just want everybody to
24 be aware of the timing of that. So that regardless of when
25 this case goes to trial, we need at least to build in an

1 eight- to ten-week time period to get out summonses if we
2 intend to include a jury questionnaire with those summonses,
3 okay?

4 Ms. Rakoczy, has the government thought about that
5 issue at all and had any conversations to date about either
6 a standard jury questionnaire or a questionnaire that might
7 be specific to this case?

8 MS. RAKOCZY: We definitely think this would be a
9 case that would be appropriate for a questionnaire and the
10 special jury panel.

11 I don't know yet if the government has started
12 drafting one that would be Capitol breach case-wide, but I
13 do think this case would definitely call for such a
14 questionnaire.

15 THE COURT: Okay.

16 Well, look, we're not up against the deadline yet,
17 but I wanted to just put that down as a marker today so that
18 everybody keeps that in mind as we move forward.

19 Just a couple more matters before I turn to
20 defense counsel:

21 In terms of -- I have not yet issued a Pretrial
22 Order with respect to the January 31st trial date, and
23 I want to just ask the government whether it is prepared at
24 this point and knows whether it might call experts in its
25 case, and, if so, I just need to think about that in terms

1 of thinking about a Pretrial Order if and when it's
2 appropriate to enter one.

3 MS. RAKOCZY: I would ask for a little more time
4 to make a final decision.

5 THE COURT: Okay.

6 MS. RAKOCZY: I think at this point we'd be
7 leaning against any expert witnesses, but if I could have
8 just a few more weeks to think about that.

9 THE COURT: Sure. Of course.

10 I think those are all the issues I wanted to raise
11 with the government. So let me now turn -- and before I
12 conclude, Ms. Rakoczy, is there anything else that you
13 wanted to raise that we haven't covered?

14 MS. RAKOCZY: No, Your Honor. Thank you.

15 THE COURT: Okay.

16 So let me then turn to individual defense counsel,
17 and we'll go down the list as we have in the past, feel free
18 to raise any issues that are specific to your clients.

19 With respect to Ms. Watkins, Mr. Meggs, and
20 Mr. Harrelson, I'll ask Ms. Peterson, Mr. Wilson, and
21 Mr. Geyer to just give me their preliminary thoughts about a
22 January 31st trial date for their clients. As I've said,
23 those are the three that would almost certainly be included
24 in the early group if we have a trial at the end of --
25 January 31st.

1 I ought to also just make the following
2 observation for everyone's benefit, particularly those of
3 you who are not regular practitioners in this Court: I have
4 no idea what this world is going to look like in January,
5 but what I can tell you right now is that we have fairly
6 strict procedures in place to hold trials in this
7 courthouse, those procedures include limitations on how many
8 trials can happen in the courthouse at once, where those
9 trials are taking place, and the number of defendants that
10 we can have in a particular courtroom, which is why when we
11 set this trial date when we did, it was with that in mind,
12 because I know what these limitations look like and how hard
13 it is going to be to set a trial date involving this many
14 lawyers, this many potential defendants, if we still are
15 going to be living with the restrictions that we're living
16 in right now. If I were to guess, we'll certainly have
17 those restrictions in place through the end of the year and
18 perhaps into the start of next year.

19 And so, you know, just as an example, you know,
20 where I am right now in the Ceremonial Courtroom, which is
21 our largest courtroom, which is where we have been
22 conducting our voir dire for our jurors, even in a
23 single-defendant case, you know, right now if we were to
24 follow all of the restrictions that we have in place, our
25 individual courtrooms cannot accommodate multi-co-defendant

1 cases. A multi co-defendant case would have to be tried in
2 this Ceremonial Courtroom. You know, maybe we could squeeze
3 two defendants into a regular courtroom, but we would
4 probably be compromising some social-distancing
5 restrictions.

6 So if we have three or more, what that means is
7 not only will we be using the Ceremonial Courtroom, it also
8 means that I am ending up blocking off every single other
9 case that is scheduled to go to trial, because we can't
10 conduct jury voir dieres in other courtrooms. Maybe there
11 may be some way to do that, but the current way in which
12 we're doing it in which we bring 30 jurors into this
13 Ceremonial Courtroom in two stages, that's how we've been
14 doing it. And if a judge is in the Ceremonial Courtroom for
15 four weeks, that means I'm bumping every other judge and
16 every other trial and every other defendant in this
17 courthouse.

18 So when I'm setting trial dates, it's with an eye
19 toward those other considerations that I think all of you
20 either need to be, A, know of, and b, mindful of. And so
21 I just want everybody to be aware of that, which is why --
22 part of the reason why when I set the date when I did, it
23 was with an eye towards actually starting trial then and not
24 having a whole lot of flexibility in moving that date back.
25 But anyway.

1 Why don't we now turn to defense counsel. And let
2 me start with Ms. Fischer on behalf of Ms. Caldwell and then
3 we'll go down the list.

4 MR. FISCHER: Thank you, Your Honor.
5 David Fischer on behalf of Mr. Caldwell.

6 We have no issues.

7 THE COURT: Thank you, Mr. Fischer.

8 Ms. Hernandez on behalf of Mr. Crowl.

9 MS. HERNANDEZ: Your Honor, I have several issues
10 related to discovery in this sense: With respect to two
11 counts, I'm concerned that we don't have discovery or that
12 we need to. As the Court indicated, there may be a smaller
13 universe of discovery that we could focus on, rather than
14 the larger discovery.

15 But the 1361 count, destruction of property, which
16 is Count 3, the government has indicated that our clients
17 are aiders and abettors of some unknown group of people, and
18 they have not identified who those principals are. So in
19 terms of discovery, I'm concerned that there's a universe of
20 discovery that we're not focused on because we don't know
21 who these principals are.

22 With respect to just the Count 1 and 2, I'm
23 concerned that we're going to get a superseding indictment
24 at some point, and I say for it for this reason: Person
25 One, who's alleged to be the leader of the Oath Keeper, is

1 quoted all over Count 1. Person Ten and Person Nineteen are
2 supposed to be the operations leaders of the events of
3 January 6th. This is -- I'm quoting from the indictment.
4 Person Three is supposed to be the person who's handling the
5 QR -- QR -- call it QVC group -- the QRF group. They have
6 not been indicted, as far as -- they have -- I mean, we know
7 who Person One is.

8 There's also the news report that the government
9 has searched the phone for the "Oath Keepers' lawyer," a
10 woman named Kellye SoRelle, and supposedly it's in
11 connection with the investigation of January 6th. If those
12 four people are going to be added as co-conspirators and
13 we're going to get a whole lot of new discovery between now
14 and January, that's a problem. Even if they're not named as
15 co-conspirators, under the evidentiary rules for
16 co-conspirators' statements, we're looking at -- at least
17 I'm looking at a universe of discovery that I have no clue
18 what I'm looking for or what's out there.

19 And given that these people are supposed to be key
20 personnel in this Oath Keepers group --

21 THE COURT: If I can just interrupt, let me say
22 two things; one is, to the extent the government has not
23 identified who these folks are, you know, you ought to ask,
24 and if you need a bill of particulars to identify those
25 co-conspirators, file one. But I don't think there ought to

1 be any secret as to who the unindicted co-conspirators are,
2 at least those who are named -- who are not named as
3 defendants in the indictment or are simply identified as
4 Co-conspirator One or Person One, et cetera. I don't think
5 there ought to be any real secret about that.

6 Two --

7 MS. HERNANDEZ: My concern --

8 THE COURT: Two, in terms of evidence relating to
9 those folks, look, you know, if they're indicted, they're
10 indicted, and we'll take that up when that happens.

11 But insofar as who the government considers to be
12 a co-conspirator and, therefore, whose statements might
13 constitute a co-conspirator statement, again, you know,
14 that's something you ought to ask the government, if they
15 haven't given you an answer, then let me know that and maybe
16 it's something I need to compel.

17 But, you know, the bottom line is, whether
18 somebody gets indicted or not is really not the key
19 question. The key question is who the government considers
20 to be part of the conspiracy and whether you've got evidence
21 related to any statements that person has made. If there's
22 evidence that comes in later, you know, that's a different
23 issue that I can't do anything about today.

24 MS. HERNANDEZ: Well --

25 THE COURT: But I think I ought to at least, in

1 the interim, address your concerns about co-conspirator
2 statements and preparing for any co-conspirator statements.

3 MS. HERNANDEZ: Right.

4 Well, the thing is, these four people are clearly,
5 one would think, co-conspirators, because they're all over
6 the indictment.

7 But what I don't know that we have, I don't
8 believe we have, is their social media postings or whatever
9 other evidence may be in there.

10 THE COURT: I guess I'll turn to Ms. Rakoczy.

11 I mean, has the government, to the extent it is
12 able, identified co-conspirators who are not named in the
13 indictment or who have not pleaded, are there such people,
14 and if there are, has any evidence relating to those folks
15 been turned over?

16 MS. RAKOCZY: Yes, Your Honor.

17 I think we would agree that the individuals who
18 Ms. Hernandez is referring to would be properly viewed as
19 unindicted co-conspirators and we have provided some level
20 of information about those people.

21 I would think that it would be obvious from the
22 materials, the discovery materials that have been provided,
23 but I'm happy to talk to any of the defense counsel who are
24 having trouble deciphering that to walk them through that.

25 I think there could be evidence with respect to

1 some of those individuals that we might someday seek to
2 introduce at a trial, and if there is such evidence,
3 we would be aiming to provide it in the next six weeks.
4 I mean, we would definitely try to provide that well in
5 advance of any trial so that there would be ample time to
6 review it and assess it before we went to trial.

7 THE COURT: Okay.

8 And then in terms of the aiding and abetting on
9 the destruction of property -- and, again -- and I think the
10 government's theory is aiding and abetting as part of a
11 larger group of people who were attempting to go through --
12 I forget -- through the doors of the Capitol that were
13 damaged -- you know, Ms. Hernandez, if you're looking for
14 the individual names of other people who were there, again,
15 you know, direct that to Ms. Rakoczy, and to the extent that
16 she's able, she'll be able to presumably identify who those
17 people are, and if there's information relating to them and
18 videos that those folks took or didn't take, you know,
19 you'll have access to it, okay?

20 MS. HERNANDEZ: Okay.

21 And, Your Honor, I --

22 THE COURT: Go ahead.

23 MS. HERNANDEZ: Well, I mean, the government has
24 been responsive when a question is asked. My concern is
25 that if we're talking -- which the Court started reviewing

1 the amount of discovery that's been produced and that may be
2 produced before trial, it seems to me that with respect to
3 the principals in the destruction count and with respect to
4 these four or five individuals that the government indicates
5 are unindicted co-conspirators, that's a whole lot of
6 discovery that is still pending and we don't know the volume
7 of it.

8 So I'm concerned --

9 THE COURT: Well -- okay.

10 MS. HERNANDEZ: That's the concern I have.

11 And if they already have, in their mind,
12 identified them as unindicted co-conspirators, then they
13 should be producing that. I guess if I have to file a
14 motion, I will, but it seems to me they should be producing
15 that discovery at this point.

16 THE COURT: Okay.

17 So I heard Ms. Rakoczy say two things; one is that
18 some of it has been produced already, and Ms. Rakoczy will
19 correct me if I am wrong; and, two, to the extent that it
20 hasn't been produced, it will be produced.

21 And what I hear her saying between the lines is,
22 is that there are likely ongoing investigations as to some
23 of these folks, and perhaps the government is not yet
24 prepared to disclose that evidence right now. And if it
25 ultimately decides that it's something that they seek to

1 introduce at trial or they think is material to any defense
2 preparation in this case, then that'll be disclosed.

3 So am I missing anything here?

4 MS. RAKOCZY: No, Your Honor. That's correct.

5 And with respect to the destruction of property
6 issue, I think that we have identified the conduct at issue.
7 We've provided all of the video of that incident and damage
8 information from the architect of the Capitol that's in our
9 possession at this time.

10 As the Court stated, there could be additional
11 individuals who are at that door who have now become charged
12 defendants and whose cell phones or otherwise we've now
13 obtained -- we, the government, have obtained and searched
14 through, and that's part of the ongoing office-wide
15 discovery project, is to try to identify and help for
16 ourselves and help the defense identify who those defendants
17 are so that everyone can take a look at any evidence
18 recovered from those defendants that might help to show
19 different camera angles or pick up different statements that
20 might help get a bigger, more fulsome picture of what
21 occurred at those doors.

22 But I don't think there's really any question
23 about the nature of the damage that we're asserting here or
24 who generally committed the damage. I don't know that we're
25 required to name a precise principal. I think that the

1 conduct at issue and the theory has been articulated through
2 the indictment and through the discovery materials, but I am
3 happy to talk to any of the defendants if they have certain
4 follow-up from that.

5 THE COURT: Okay.

6 MS. HERNANDEZ: And the other --

7 THE COURT: Ms. Hernandez, is there anything else
8 or can I move on to Ms. Watkins and Ms. Peterson?

9 MS. HERNANDEZ: I think you can move on.

10 Your Honor, I don't mean -- you can always move
11 on, Your Honor, obviously.

12 Concerns about *Jencks* and experts, I guess I would
13 ask the Court to enter an order sooner rather than later,
14 just because if the government is going to identify experts,
15 then that means we need some time to identify and file our
16 own experts.

17 THE COURT: Understood.

18 MS. HERNANDEZ: I'm just concerned about the
19 broadness of this case and the amount of work that remains
20 before a January trial date.

21 THE COURT: Well, understood.

22 I mean, that's why I raised the issue about
23 experts with Ms. Rakoczy today, and so she's sort of on
24 notice that the government needs to give some thought to
25 that question.

1 As far as *Jencks* goes, you know, we're still many
2 weeks out from a trial, and my Pretrial Order usually
3 requires the government to make *Jencks* disclosures in
4 advance of trial, to the extent that's feasible, and so
5 that'll be reflected in a Pretrial Order, okay?

6 MS. HERNANDEZ: Thank you, Your Honor.

7 THE COURT: All right.

8 Ms. Peterson, with respect to Ms. Watkins.

9 MS. PETERSON: Yes, Your Honor.

10 I believe that I've already expressed my concerns
11 about a January trial date. I don't believe it's feasible
12 just -- in large part because she is in custody, and,
13 therefore, I have no ability to get the discovery to her in
14 a timely fashion and in a comprehensive fashion.

15 We have had discussions. Obviously, I share the
16 Court's concerns that because she's in custody that her
17 trial rights are more important than those of people who are
18 not in custody, because her liberty is stake; however, she
19 also has a right to effective representation of counsel, and
20 there's no way that I believe that I can give her that in a
21 January trial date, given the status of the current
22 discovery and the limitations of sharing any of that at the
23 D.C. jail.

24 THE COURT: Okay.

25 Thank you, Ms. Peterson.

1 Mr. Machado on behalf of Ms. Parker.

2 MR. MACHADO: Yes. Thank you, Your Honor.

3 Your Honor, this morning we filed a motion to
4 extend time to file motions; I'm sure the Court will get to
5 it in short order.

6 The only other point that I would make,
7 Your Honor, just because I don't think that it's been spoken
8 out loud, but our preference, at least on behalf of
9 Ms. Sandra Parker, I'll let Mr. Brennwald speak as far as
10 Bennie Parker is concerned, but we have no desire to be part
11 of the January trial.

12 And so to the extent that the Court may decide to,
13 as an option, to just go down the indictment list of who is
14 and who isn't going to be going to trial at what times, it
15 is our preference -- I just want to state it now -- to have
16 it at a later time, just so we can fully review discovery
17 and just because of my calendar concerns as well.

18 But just wanted to make sure that that's out there
19 so that when the Court is deciding how to divvy up who is
20 going to go when, the Court understands that we're happy to
21 not be as part of the first group.

22 THE COURT: Okay.

23 All right.

24 Mr. Brennwald on behalf of Mr. Parker.

25 MR. BRENNWALD: Thank you, Your Honor.

1 I don't have any issues.

2 I didn't think that we were part of the January
3 trial; I thought we were part of the April trial. I do have
4 a -- and I've told the Court at the hearing a couple months
5 ago, that I have a conflict civil trial that they will not
6 move in Baltimore, they don't care, it's in February, so --
7 but I don't think we're going to be part of the January
8 trial. But other than that, I have no issues.

9 THE COURT: Okay.

10 Mr. Cooper on behalf of Ms. Steele.

11 MR. COOPER: Good morning, Your Honor.

12 I concur with everything that's been said thus far
13 by defense counsel. I don't have any specific issues to
14 bring to the Court's attention at this point in time.
15 I know where the Court is should I need Court's assistance
16 on anything.

17 THE COURT: Thank you, Mr. Cooper.

18 Mr. Wilson on behalf of Mr. Meggs.

19 MR. WILSON: Thank you, Judge.

20 Just briefly, I do share some of Ms. Peterson's
21 concerns.

22 You know, I understand that there is a giant
23 universe of discovery, and in all likelihood, very little of
24 it is directly relevant to at least my client, Mr. Meggs.
25 The problem that we have is how do we make that

1 determination as to what is and what isn't, if we at least
2 don't have the ability to try to parse through it.

3 With respect to the trial dates, I suppose if the
4 government would consider speaking with us about what
5 potential release conditions might be appropriate, instead
6 of taking the position of absolutely not with respect to
7 pretrial release, I do think there are conditions that could
8 certainly warrant release that might alleviate some of the
9 time constraints that we have. Obviously, the Court knows
10 I've tried to get my client out. But I do think that if the
11 government would be willing to discuss those issues with us,
12 that might alleviate some of the pressure.

13 And one other matter is, I had recently filed a
14 motion to sever, obviously, based upon a statement of
15 Ms. Watkins or some statements, the Court has denied that.
16 And I understand the ruling. And I also understand that if
17 a particular statement is, in fact, a co-conspirator
18 statement, it comes in and another defendant isn't
19 necessarily able to cross-examine on that statement.

20 The question I have for the Court is, is the
21 Court's ruling, does that constitute a determination that
22 the statements at issue by Ms. Watkins are, in fact,
23 co-conspirator statements, or is that something that still
24 we can raise, because I intended to raise that in a motion
25 in limine prior to the trial?

1 THE COURT: The short answer is no, it's not a
2 ruling on whether it's a co-conspirator statement. It's a
3 ruling on severance, based upon the assumption that the
4 statement is a co-conspirator statement, I think that's how
5 it was characterized in the motion.

6 MR. WILSON: Yes, Judge.

7 I was trying to get ahead of the issue, but that's
8 accurate.

9 THE COURT: Okay.

10 Yeah. Look, I mean, you know, this is a
11 complicated case for a whole host of reasons, but one that
12 might end up becoming apparent is the issue of
13 co-conspirator statements.

14 And, you know, ordinarily, we go to trial, and in
15 the course of a trial, the government is able to establish a
16 prima facie conspiracy, and courts often don't need to worry
17 about whether a co-conspirator statement is admitted.

18 I mean, in theory if the government doesn't
19 establish its conspiracy, you can direct the jurors to
20 ignore those statements. That seems a little unrealistic in
21 this case. And so one of the features in this case pretrial
22 that we may need to include is some kind of pretrial
23 determination about conspiracy and scope of conspiracy and
24 co-conspirator statements just to avoid that potential
25 thorny issue.

1 Anything else, Mr. Wilson, at this point?

2 MR. WILSON: No, sir. That's all I have.

3 Thank you.

4 THE COURT: Ms. Haller and Mr. Woodward on behalf
5 of Ms. Meggs.

6 MR. WOODWARD: We share our colleagues concerns,
7 Your Honor, but we don't have any specific issues with
8 respect to Ms. Meggs.

9 THE COURT: OKAY.

10 Mr. Geyer and Mr. Moseley on behalf of
11 Mr. Harrelson.

12 MR. GEYER: Good morning, Your Honor. Yes.

13 As you know, I've been on the case for a little
14 more than a week, maybe ten days thereabouts, and I feel as
15 if -- I kind of knew this coming into it, but I feel like
16 everything is pointing at Mount Everest and handing me a
17 shovel and saying, start digging.

18 To me, the trial date at the end of January is not
19 achievable, there's just too much.

20 The government, by the way, has been terrific.
21 Mr. Nestler and Ms. Rakoczy, they got me access to the -- at
22 least one of the databases yesterday, thank you for that,
23 that has the newest discovery information on it. I'm going
24 to get the zip drive, I believe, by the middle of October.

25 I'm hearing references to databases today with

1 iClouds and telephone calls and body cameras, and all of
2 this contains *Brady* information -- or I should say -- is
3 likely to contain *Brady* information.

4 And I think that this compressed time to have all
5 these ticking time bombs and they're related to potentially
6 having *Brady* in there, that we have the right to have. You
7 know, I've never -- I've only been able to get through the
8 most recent indictment. There's five indictments. There
9 were -- I'm sorry -- six in total, five amendments. There
10 were changes made on each one. And it wasn't always the
11 case that the charges got stricter. Sometimes it reflected
12 changes that were made that may be *Brady* information for
13 certainly my client.

14 My client is under lockdown 24 hours a day.
15 I'm sorry, he gets about five and a half hours out,
16 I believe, per day. I've met him for a total of about five
17 minutes at the last hearing. He looked terrible to me. He
18 hasn't had a haircut, he has a beard that is, you know -- he
19 can't get a shave or a haircut.

20 Some of this is under seal and I don't know how
21 far the seal exists, but I'm concerned about his medical
22 information. I've shared it with a physician; the physician
23 shares my concerns. But the physician doesn't want to jump
24 into this maelstrom. It's too much to ask; there's too much
25 electricity around this.

1 And so, you know, we talk about liberty interests.
2 I mean, yeah, I'm concerned about that, too, but my client's
3 getting prejudiced twice. You know, he's being put into a
4 trial --

5 THE COURT: Well, let me --

6 MR. GEYER: -- just a few months away.

7 THE COURT: All right.

8 Well, let me just interrupt you, Mr. Geyer.

9 MR. GEYER: Sure.

10 THE COURT: I mean, look, your client, I think, is
11 now on his third counsel. And everybody has a right to have
12 their own lawyer, and I understand that, the lawyer of their
13 choosing, so some of this is specific to him, let's put it
14 that way, in terms of access to defense preparation and
15 access to evidence.

16 All that said, you know, I hear you, I'm sensitive
17 to these issues and I just wanted to get your position, and
18 I think you've been heard. And, you know, I think we'll
19 figure out at the next status conference exactly what I'm
20 going to do, okay?

21 MR. GEYER: That's fair.

22 Thank you, Your Honor.

23 THE COURT: All right.

24 Anything else you'd like to raise at this point,
25 Mr. Geyer?

1 MR. GEYER: No, Your Honor. That's it.

2 THE COURT: Ms. Wicks on behalf of Mr. Minuta.

3 MS. WICKS: Thank you, Your Honor.

4 The only thing specific to him and myself is just,
5 I continue to have a conflict with the January date.

6 THE COURT: Okay.

7 MS. WICKS: And I join in the concerns about the
8 amount of discovery, hoping that an April trial date is
9 realistic.

10 THE COURT: All right.

11 Ms. Robin on behalf of Mr. James.

12 MS. ROBIN: Thank you, Your Honor.

13 It's our impression that Mr. James should not be
14 part of the first trial, in large part because he's not
15 incarcerated.

16 But also, I do want to make it clear it's our
17 position that we simply can't be ready to effectively
18 represent him on a January 31st trial date, and that's based
19 largely on the volume of the discovery that has been
20 produced and is yet to be produced.

21 I will say, just to touch on briefly, in terms of
22 discovery about unnamed co-conspirators, I'm not aware of a
23 single unnamed co-conspirator's cell phone productions being
24 produced. I'm aware of an interview with two alleged
25 unnamed co-conspirators, but apart from that, I'm not aware

1 of any.

2 Now, it's very easy that I could be overlooking
3 discovery with respect to unnamed co-conspirators, in large
4 part because it's -- the discovery is simply not organized
5 in that fashion to readily identify discovery associated
6 with Unnamed Co-conspirator, for instance, One, but I would
7 continue to have significant concerns about a January 31st
8 trial date.

9 THE COURT: All right.

10 Thank you, Ms. Robin.

11 Mr. Spina on behalf of Mr. Walden.

12 MR. SPINA: First, I would echo what's been said
13 before about the cooperation, that at least I've received
14 from both Ms. Rakoczy and Troy Edwards relative to
15 discovery. They've been very helpful in pointing me to the
16 20-minute time segment which is related to my client.

17 I would also echo Ms. Robin's comments about the
18 January trial date, and we're on bond, as being
19 unmanageable, from a practical standpoint.

20 With respect to the discovery, we've been talking
21 about video. What I believe is most important from my
22 perspective is not just the video but audio. So I'm
23 anticipating that the production of the body cams from the
24 respective officers would have audio, because the Capitol
25 cameras don't have audio.

1 Audio is important to me because there's some
2 dialogue going on at the moment of entry. What is the
3 government's ability and plan, especially when you have this
4 many people speaking at one time, you're going to have
5 multiple audios, I think, or, like, if we all spoke at one
6 time, everybody would -- you couldn't really decipher who
7 was saying what.

8 Does the government have a plan to extract the
9 audios from the respective body cams of each of the
10 respective Capitol police officers that are standing in the
11 doorway? Is there a mechanism to address the audio?

12 THE COURT: I'm not sure I follow, but I'll ask
13 Ms. Rakoczy.

14 MR. SPINA: Audio --

15 THE COURT: No, no.

16 I understand what audio is and I understand --
17 I'm not sure what you mean by "extract the audio." I mean,
18 to the extent --

19 MR. SPINA: Well, if --

20 THE COURT: Hang on, Mr. Spina.

21 To the extent body cam has been introduced at
22 detention hearings, for example, the audio has always been
23 available on those body cams. Those body cams capture both
24 audio and video. I think there is -- depending upon the
25 agency, there may be some delay between when the video

1 starts and when the audio begins, and I don't know if that's
2 true here, but those -- that footage ought to have audio.

3 But, Ms. Rakoczy, I'll turn it over to you if you
4 have any further information or want to respond in any
5 further way.

6 MR. SPINA: Judge, if I may be just a little bit
7 clearer.

8 What I was saying was, if two officers are
9 standing next to each other and they're both speaking, does
10 the body cam capture each individual audio of each
11 individual officer or is there multiple voices coming
12 through the same microphone? That's what I was wondering.

13 But you seem to have answered it, that it's per
14 officer.

15 THE COURT: Ms. Rakoczy, I mean, do you want to
16 provide more detail?

17 But, I think, Mr. Spina, you should assume that
18 these body cams are a lot like the video you take on an
19 iPhone. You know, if there's multiple people talking while
20 you're filming a video, those people's voices will be
21 captured.

22 So if an officer is speaking and there's an
23 officer standing next to him that's also speaking and that
24 person is within range, that audio is going to be captured.

25 But, Ms. Rakoczy.

1 MS. RAKOCZY: That's correct, Your Honor.

2 There's a microphone attached to each individual
3 officer's camera. So it will capture whatever is within
4 range. So if two officers are right next to each other,
5 each of their body cameras will capture similar audio.
6 There may be multiple voices captured. It's really whatever
7 is around that particular camera at the time.

8 And so sometimes it can be hard to hear because --
9 especially in the setting inside the Capitol, there were
10 lots of voices speaking, and so there's lots of audio
11 captured. But I don't know that we have -- I mean, there
12 are some level of audio-enhancing tools that exist in the
13 world, I don't know that we have any ones that are
14 particularly better than anyone else's and that would be the
15 type of thing that would have to be separately requested.

16 MR. SPINA: I just wanted to raise the audio
17 issue. That's all.

18 THE COURT: Thank you, Mr. Spina.

19 Ms. Halim on behalf of Mr. Hackett.

20 MR. HALIM: Thank you. Good afternoon,
21 Your Honor.

22 On behalf of Mr. Hackett, I don't have anything
23 additional to raise at this time.

24 THE COURT: Thank you.

25 Mr. Rossi on behalf of Mr. Isaacs.

1 MR. ROSSI: Yes, Your Honor. I have a few things
2 to add, not too much.

3 I agree with all the counsel that say that the
4 January trial date is unrealistic, I agree with Ms. Rakoczy
5 that it is unrealistic.

6 The second thing I want to bring up is the whole
7 *Brady* obligation, and I want to echo what Ms. Robin and
8 Ms. Hernandez said.

9 I've got to respectfully disagree with
10 Ms. Rakoczy. When it comes to *Brady* information, you can't
11 wait until a few weeks before trial to disclose the *Brady*
12 information.

13 At an initial appearance, Rule 5(f), you're
14 reminded of the obligation. The United States Attorney's
15 Manual encourages *Brady* be disclosed immediately.

16 And here's my concern: In the indictment, there's
17 Person One, who we all know who it is. There are other
18 persons. They are unindicted conspirators. There's
19 probably going to be statements under Rule of Evidence 801.
20 We need to know ASAP, yesterday, who those people are, what
21 those statements are going to be, so we can make a motion
22 maybe to keep out those statements.

23 But more important, Mr. Isaacs, who fortunately is
24 not detained, Mr. Isaacs' argument, of course, is there's no
25 grand conspiracy to which he entered, and the best argument

1 is that all these people, Person One, Two, Three, infinity
2 that are unindicted conspirators, and I hope they are
3 indicted eventually, if he doesn't know them -- and
4 Mr. Robin has brought up a point, if there's no cell phone,
5 email, or any communications between my client, Mr. Isaacs,
6 and those other unindicted conspirators, that's classic
7 *Brady*, it should be disclosed yesterday --

8 THE COURT: All right.

9 MR. ROSSI: Not a few weeks before trial.

10 THE COURT: All right.

11 Well, Mr. Rossi, let me -- I'll just -- I think
12 you've said a couple of things there.

13 The first has to do with co-conspirator
14 statements. And, as I said, if there's any doubt in any
15 lawyer's mind on this call who the unindicted
16 co-conspirators are, Ms. Rakoczy has said she will tell you,
17 okay? So if you don't know who Person Ten is, for example,
18 give her a call, send her an email, and she'll say it's
19 so-and-so. And then if you want to know whether you've got
20 the audio -- if you've got the cell phone information from
21 that person, if the government gathered it, ask Ms. Rakoczy.

22 The government is not -- I have not heard her
23 suggest that she's withholding or holding any of that back.
24 So there was not -- you know, I don't think there was any
25 suggestion in her response that the government is going to

1 hold back and disclose *Brady* on the eve of trial.

2 I mean, this prosecutor's office ought to know
3 better than others that this Court doesn't tolerate late
4 disclosure of *Brady*. There's a Local Rule that makes that
5 explicit, that *Brady* needs to be disclosed once the
6 government learns of it, and it's not something that is to
7 be held until trial.

8 So I'm not --

9 MR. ROSSI: What I heard -- may I say something,
10 Your Honor, please?

11 THE COURT: Sure.

12 MR. ROSSI: May I say something?

13 I heard that -- and maybe I misheard it,
14 I apologize. I heard that Ms. Rakoczy was going to let us
15 know about conspirator statements several weeks before
16 trial.

17 THE COURT: No, that's not what she said.

18 MR. ROSSI: My point -- I'm sorry?

19 THE COURT: That's not what she said, but -- what
20 she said was to the extent that there may be evidence that
21 hasn't yet been disclosed with respect to co-conspirators,
22 and the government intends to introduce it at trial, she
23 said that that's likely to be done within four to six weeks.
24 That's what she said.

25 MR. ROSSI: Well, I make a request now that she

1 tell all counsel, not just me and Ms. Napierala, who these
2 persons are, the unindicted conspirators.

3 THE COURT: Well, as I said, Mr. Rossi, if you
4 don't know who they are, send her a letter or an email and
5 she'll identify who those people are.

6 MR. ROSSI: Okay.

7 That's my only comments.

8 THE COURT: Okay.

9 On behalf of Mr. Moerschel, Mr. Weinberg and
10 Kibria.

11 MR. WEINBERG: Judge, we have no additions to
12 raise.

13 THE COURT: Thank you, Mr. Weinberg.

14 And then on behalf of Mr. Ulrich.

15 MR. BALBO: Yes. Thank you, Your Honor.

16 As the Court is aware, you've recently approved
17 our motion for additional time to file motions, and that is
18 much appreciated.

19 We'll be scheduling a reverse proffer with the
20 government which will hopefully resolve the further focusing
21 our inquiry of discovery.

22 No other issues, but I would echo what Mr. Machado
23 was saying earlier: We are not on the January trial date.
24 To the extent the Court was inquiring about willingness of
25 defendants to take that date, we respectfully decline.

1 THE COURT: Okay.

2 Well, look, you know, it was certainly not my
3 intention that anybody that's been added as recently as
4 Mr. Ulrich has to put them in a January trial. So I don't
5 think that's anything you need to be concerned about,
6 Mr. Balbo, even if we were to proceed in January.

7 So we've gone through everyone.

8 Hang on, everybody.

9 Bear with me for one second.

10 Sorry for that, everyone. I wanted to consult
11 with our Courtroom Deputy about the schedule moving forward.

12 We currently have the second trial that's set to
13 start in April 19th. If, and this is an "if" at this point,
14 if that trial becomes the first trial, in other words, we
15 vacate the January date and the April date becomes the first
16 trial, I want to set down then today a second trial date so
17 everybody holds those dates on their calendars.

18 So I'm going to ask everybody to hold -- and this
19 ought not to be a problem for most, I hope, given that this
20 would only -- absent some exceptional circumstances, involve
21 defendants who are not held -- hold July 11th through that
22 first week in August.

23 Hang on for a second, everyone. Let me scratch
24 that.

25 Let's just -- right now, let's hold January [sic]

1 11th through August the 5th for that second trial, unless
2 anybody knows right now that that is undoable and you've got
3 some conflict in that time period that you simply cannot
4 adjust.

5 MR. ROSSI: Your Honor, you said January or July?

6 THE COURT: If I said January, I meant to say
7 July. July 11th, to run for four weeks, through the end of
8 August, that first week in August, August 5th, as a second
9 or, I guess, third trial period.

10 MR. ROSSI: Thank you, Your Honor.

11 THE COURT: Okay?

12 Is there anything else that anybody needs to
13 raise?

14 Let's do one more thing. Today is September 16th.
15 Let's set something down in 30 days for another hearing.
16 Can everybody be available at 11:00 a.m. on October the
17 14th? And only if you have an intractable conflict will I
18 consider a change in that date.

19 MS. PETERSON: I'm sorry, could the Court repeat
20 that again?

21 THE COURT: October 14th at 11:00 a.m.

22 MS. HERNANDEZ: Your Honor, will that be virtual
23 again so we can join if we're not in town?

24 THE COURT: It will be virtual unless you want to
25 be here.

1 MS. HERNANDEZ: Thank you, Your Honor.

2 MR. ROSSI: That's good for Mr. Isaacs,
3 Your Honor.

4 THE COURT: All right.

5 Well, hearing no dissent, October 14th at
6 11:00 a.m. will be our next status conference.

7 What I will ask all of the counsel for the held
8 defendants to do by that date is, Ms. Peterson, Mr. Wilson,
9 and Mr. Geyer, is to confer with your clients, please make
10 sure you have an opportunity to talk with them before our
11 next status conference, and if you are prepared to move from
12 the end of January and they are prepared to move from
13 January -- our current trial date at the end of January,
14 that's January 31, and move it to our April trial date, then
15 I'll want that to be known on the record. So I'll ask each
16 of you to make sure you have consulted with your clients
17 before then, okay?

18 Unless there's anything else, thank you all very
19 much, be well, and we'll look forward to seeing everybody in
20 about 30 days.

21 MR. COOPER: Your Honor, I do have something
22 briefly.

23 THE COURT: Mr. Cooper.

24 MR. COOPER: Your Honor, I filed a motion to
25 reconsider Ms. Steele's conditions of release. I guess

1 I'm just inquiring of the Court when we should handle that
2 issue.

3 THE COURT: Well, I issued a Minute Order
4 yesterday that asked the government to indicate to me
5 whether they were going to oppose by tomorrow. And if they
6 don't oppose, it's easy. If they are going to oppose,
7 they're going to give me a date by which they'll file
8 something.

9 MS. RAKOCZY: Your Honor, if I may be heard.

10 We oppose the request, but we don't have anything
11 to add beyond what we have put in papers and in arguments
12 about the issue of Ms. Steele's -- the (g) factors with
13 respect to the danger presented by Ms. Steele.

14 THE COURT: Okay.

15 And everybody else can sign off if you'd like;
16 this only concerns one defendant.

17 MS. RAKOCZY: Your Honor, just before everyone
18 signs off --

19 THE COURT: Okay.

20 MS. RAKOCZY: -- I know we still have pending
21 motions, but just for speedy trial purposes, does the Court
22 find that this matter is tolled in the interests of justice
23 until the next hearing?

24 THE COURT: Yes, I can make that finding, because,
25 as you've noted, Ms. Rakoczy, there are motions that I think

1 everybody has joined have not been resolved, but,
2 nevertheless, I'll exclude time under the Speedy Trial Act
3 until our next date of October the 14th.

4 MS. HERNANDEZ: I'm sorry, Your Honor. This is
5 Carmen Hernandez.

6 Did the Court set another hearing date on the 1512
7 motion or just wanted papers on that?

8 THE COURT: No, I have not set any further
9 hearings on motions.

10 So we set October 14th for our next status
11 hearing.

12 We'll exclude time under the Speedy Trial Act
13 through then, as the interests of justice outweigh the
14 interests of the defendants and the public in a speedy
15 trial. Specifically, the exclusion of that time is
16 warranted in light of the extraordinary volume of discovery
17 that's been discussed and described in this case, much of
18 which has not yet been made available to the defense and to
19 defendants, and so the exclusion of time is warranted to
20 allow the government to make that discovery available to the
21 defense and for the defense to receive and review and
22 consider that discovery in preparing their defenses.

23 I think that's it.

24 Anything else?

25 Everybody else can sign off; let's just deal with

1 the motion on behalf of Ms. Steele.

2 So, Ms. Rakoczy, I think what I heard you saying
3 is that the government intends to oppose but not ask to file
4 anything; is that right?

5 MS. RAKOCZY: That's correct, Your Honor.

6 THE COURT: Well, I'll take that into
7 consideration then and I'll issue a ruling on the motion,
8 Mr. Cooper, okay?

9 MR. COOPER: Very well. Thank you, Your Honor.

10 THE COURT: Thank you all very much.

11 (Proceedings concluded at 12:37 p.m.)
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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: September 24, 2021 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR

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