

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CR No. 22-15
)	Washington, D.C.
)	February 18, 2022
)	3:00 p.m.
ELMER STEWART RHODES, III (1),)	
)	
Defendant.)	
_____)	

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

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Proceedings recorded by mechanical stenography; transcript
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1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Your Honor, this is Criminal
3 Case No. 22-15-1, United States of America versus Elmer
4 Stewart Rhodes, III.

5 Kathryn Rakoczy for the government.

6 James Bright and Phillip Linder for the defense.

7 John Copes on behalf of Pretrial Services.

8 The defendant is present via videoconference for
9 this hearing.

10 THE COURT: Okay. Good afternoon again to
11 everyone.

12 Mr. Rhodes, good afternoon to you, sir.

13 THE DEFENDANT: Good afternoon.

14 THE COURT: So we're back for a continuation of
15 Mr. Rhodes' detention hearing.

16 Where we left off at the last one is that I had
17 asked Pretrial Services to reach out to the proposed
18 third-party custodians and interview them. And so why don't
19 we start there and I'll ask Mr. Copes to put on the record
20 what he's learned.

21 PRETRIAL SERVICES OFFICER: John Copes, Pretrial
22 Services.

23 Pretrial Services Agency for the
24 District of Columbia did a third-party custodian screening
25 of the defendant's cousins, [REDACTED] and [REDACTED]

1 [REDACTED]. And they were found to be suitable third-party
2 custodians, although there is a concern about a further
3 affiliation that Pretrial Services is concerned about. But
4 they were screened and found able to be third-party
5 custodians.

6 THE COURT: Okay.

7 Can you say on the record publicly what that is?
8 If not, we can go off the public record and do that. But if
9 there is a concern, I'd like it hear what it is.

10 MR. LINDER: Not knowing what he's going to say,
11 I'd love to go off the record or go into a separate room
12 from the media. I don't know what he's about to address.

13 THE COURT: I don't either. But I trust that if
14 it's something that's confidential, he'll know whether we
15 need to go off the record or not.

16 MR. LINDER: Okay.

17 THE COURT: Mr. Copes?

18 PRETRIAL SERVICES OFFICER: Yes, Your Honor, it
19 would probably be good to go off the record initially, make
20 sure that --

21 THE COURT: All right. That's fine.

22 Why don't we take a moment, we'll disconnect the
23 public line, I'll ask Mr. Douyon to do that, and ensure that
24 only counsel and Mr. Rhodes and court staff are on the
25 conference here, and then we'll hear from Mr. Copes.

1 And this portion of the transcript will be placed
2 under seal.

3 MR. LINDER: Thank you, sir.

4 (Sealed)

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

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22 [REDACTED]

23 [REDACTED] [REDACTED]

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(Open court)

9

10

THE DEFENDANT: Mr. Linder, are their last names going to be prevented being heard by the media?

11

MR. LINDER: Great question, Stewart.

12

13

14

I would like their last names not to be used in the media, even though Pretrial Services mentioned it earlier.

15

16

Going forward into this hearing, I would like to just use their first names.

17

18

And I would also like to leave their city out of it, if we can, Your Honor, if that's permissible.

19

20

21

THE COURT: What I will ask is that the transcript redact the names of the two third-party custodians that have been mentioned.

22

23

24

MR. BRIGHT: Thank you, Your Honor.

There has been some blowback on witnesses and stuff so far in this case. I appreciate that, sir.

25

THE COURT: I understand.

1 THE DEFENDANT: Thank you, sir.

2 COURTROOM DEPUTY: And this is Jean-Claude,
3 Judge Mehta's Courtroom Deputy.

4 I would like to welcome anyone that may be
5 listening in on the public-access line and remind you that
6 pursuant to Standing Order 2020, you may not record or
7 re-broadcast these proceedings. Thank you.

8 THE COURT: Okay.

9 All right. So we're back on the public record at
10 this point.

11 Let me just ask if either side -- you know, I've
12 reviewed the evidence, I've heard your arguments, and so
13 does either side want to say anything new that hasn't been
14 already said either in writing or at the last hearing?

15 MR. LINDER: No, sir.

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

17 THE COURT: All right.

18 Well, let me go ahead then and render my decision.

19 So all the parties here are in agreement that
20 Mr. Rhodes is subject to a pretrial detention hearing, at
21 least pursuant to 18 U.S.C. 3142(f)(1)(E), which mandates a
22 detention hearing in connection with any felony involving
23 the possession of a firearm.

24 The allegations in the indictment do support that
25 this is a felony that does involve a possession of a

1 firearm, and so Mr. Rhodes is subject to a pretrial
2 detention hearing.

3 The question then is whether there are any
4 conditions or combination of conditions that would assure
5 the safety of the community and the defendant's appearance
6 in court.

7 I should note that this is not a case, I believe,
8 Ms. Rakoczy, in which there's any presumption of
9 dangerousness. Mr. Rhodes has not been charged like some of
10 the others with destruction of government property, which is
11 what has been used in other cases to give rise to a
12 presumption. That's not applicable here.

13 A determination to detain based on dangerousness
14 must be established by clear and convincing evidence, and a
15 determination to detain based on a risk of flight need only
16 be made by a preponderance of the evidence.

17 In considering the hold request, I must consider
18 four factors; one, the nature and circumstances of the
19 offense charged; two, the weight of the evidence against the
20 defendant; three, the history and characteristics of the
21 defendant; and, four, the nature of the danger to any person
22 or the community that would be posed by the defendant's
23 release.

24 Let me just briefly touch on the last factor,
25 because as the D.C. Circuit has reminded us in *Munchel*, the

1 dangerous determination must be framed in terms of future
2 dangerousness. And the question the Court is supposed to
3 ask is what dangerousness as to what possible future
4 conduct, at least for purposes of the bond review. And
5 here, the government's contention is that Mr. Rhodes is a
6 danger essentially to continue to plot and prepare for
7 political violence that undermines the foundations of our
8 democracy. So I'll be viewing the four factors through that
9 lens.

10 Let's begin with the nature and circumstances of
11 the offense. The lead charge against Mr. Rhodes is
12 seditious conspiracy. It is the most serious charge,
13 I believe, that has been brought in any January 6th case.
14 The charge is not merely one of obstructing an official
15 proceeding, but, rather, to delay by force the execution of
16 the laws governing the transfer of power on January the 6th.

17 At a high level, the allegation is that Mr. Rhodes
18 is the founder and leader of a militia group known as the
19 Oath Keepers to devise and carry out a plot to oppose by
20 force the lawful transfer of presidential power.

21 This alleged conspiracy included at least ten
22 others, and the conspiracy is alleged to have a structure:
23 Mr. Rhodes as its leader, but he also had deputies, if you
24 will, to include Mr. Meggs, Mr. James, and Ms. Watkins, each
25 of whom were state-based leaders of the Oath Keepers;

1 Mr. Meggs for Florida; Mr. James for Alabama, I believe; and
2 Ms. Watkins from Ohio.

3 As part of the conspiracy, Mr. Rhodes is alleged
4 to have done, among other things, devised the operations for
5 the group, organized its participants, financed the
6 operations, and purchased tens of thousands of dollars of
7 weapons and weapons equipment, both before and after
8 January 6th.

9 Planning and preparation alleged to have taken
10 place for January 6th is actually -- is quite extensive.
11 It's alleged to have involved months of preparation and
12 planning, including through the use of encrypted
13 communications and regular contact with other members of the
14 conspiracy, some of whom have been charged and some of whom
15 have not.

16 On January 6th, Mr. Rhodes is not alleged to have
17 actually entered the Capitol building, but he is alleged to
18 have authorized, if not outright ordered, two groups of Oath
19 Keepers to enter the Capitol building in a military-style
20 formation. Many of those people were dressed in tactical
21 gear.

22 According to the indictment, a subgroup led by
23 Kelly Meggs entered the Capitol building and began to search
24 for the Speaker of the House. Another subgroup led by
25 Jessica Watkins attempted to move towards the Senate

1 chambers and pushed against a line of officers who
2 eventually were able to repel them with pepper spray.

3 On standby, according to the indictment, through
4 the events of January 6th, was a quick reaction force,
5 what's been termed a quick reaction force. This was
6 essentially a stash of weapons that had been collected and
7 placed across the river in Arlington, Virginia, at a hotel
8 that was essentially meant to be reinforcements at the call
9 if they were required in the District of Columbia.

10 Multiple different conspirators contributed
11 weapons to the QRF. The QRF was never ordered into the
12 District of Columbia by Mr. Rhodes. And this is true even
13 after Mr. Vallejo, who is a co-conspirator, indicated to
14 Mr. Rhodes via, I believe, a Signal chat, that he was
15 standing by and, I assume, ready to enter the
16 District of Columbia if Mr. Rhodes gave the order.

17 After the Oath Keepers left the Capitol that day,
18 they did gather outside the Capitol, they're accused of then
19 gathering for dinner that evening at a restaurant, and then
20 quickly disbursing to their homes upon learning that law
21 enforcement was looking for people who are involved in the
22 Capitol breach.

23 Mr. Rhodes returned to Texas, where he continued
24 his leadership role with the Oath Keepers, and was actually
25 joined by one of his co-conspirators, alleged

1 co-conspirators, Mr. James, in Texas.

2 Those are the general outlines of the conspiracy,
3 and I'll get into some more details about the evidence
4 momentarily. But my observation at this point is to say,
5 look, the danger -- if the conduct alleged is true, the
6 danger that it poses cannot be understated.

7 Mr. Rhodes -- and I will note the Circuit
8 identified a number of these -- or at least two of these
9 characteristics in identifying a greater risk of danger;
10 that is, being part of an organization and acting in concert
11 with others, both of which have been alleged here, and,
12 additionally, a leadership role as part of a concerted
13 organization, and Mr. Rhodes is certainly the top of the
14 leadership chain in the Oath Keepers.

15 The organization in this case is not a small one,
16 it's not a small group of individuals, it's at least 20
17 people, if you include the defendants who are charged in
18 U.S. versus Cowl, although not with sedition, they have
19 been charged with obstruction of an official proceeding.
20 And, as I noted, this was a structured group with deputies
21 in charge, and Mr. Rhodes was the leader of that
22 organization.

23 There was sophisticated and conscious planning
24 with respect to the bringing of weapons to the outskirts of
25 the District of Columbia, even though they were not

1 ultimately used. Whether those are characterized as lawful
2 weapons or not, nevertheless, you are bringing an arsenal on
3 the outskirts of the District of Columbia with the intention
4 to use that arsenal if the circumstances warrant it. And so
5 that certainly enhances the danger that Mr. Rhodes presents,
6 given that he was in charge of that operation and
7 contributed to and directed people to bring arms to the
8 outskirts of the District of Columbia.

9 I'll note, of course, since Mr. Rhodes is charged
10 with a conspiracy, the actions of his co-defendants are
11 attributable to him. So the seriousness of the offense here
12 is magnified by the allegation and the evidence that I'm
13 aware of from other hearings, including text messages
14 involving Mr. Meggs in which he admits to looking for the
15 Speaker of the House while he was inside the Capitol. And
16 then we have the allegations here supported by evidence that
17 other members of the Oath Keepers attempted to make their
18 way to the Senate chamber that day.

19 So when I consider all of those factors and all
20 the outlines of the conspiracy, Mr. Rhodes' role in the
21 conspiracy and what he would be liable for by the actions of
22 his co-conspirators, this factor certainly weighs in favor
23 of detention.

24 Let's talk about the weight of the evidence, and
25 we're going into a little bit of detail here about what that

1 is.

2 Immediately following November the 5th, Mr. Rhodes
3 is accused of making a number of statements that can be
4 viewed as planning and preparation and intention to
5 potentially use force on January the 6th. He's accused of
6 saying that they must refuse to accept President Biden as a
7 legitimate winner, saying that we aren't getting through
8 this without a Civil War, posting a video describing an
9 uprising in Serbia, in which millions gathered in our
10 Capitol and we stormed the Parliament.

11 Mr. Rhodes insinuates that the planning that was
12 done in the Serbian uprising would be planning that ought to
13 be followed here. Among the planning and the steps that are
14 described in that video is storming on the Parliament
15 building and obviously bears some analogy to the storming of
16 the Capitol building that happened on January the 6th.

17 On Christmas Day, Mr. Rhodes is involved in a chat
18 in which he says the President needs to know that the
19 Oath Keepers support him in invoking the Insurrection Act,
20 and if he does, he'll be prepared to support him with boots
21 on the ground nationwide. And he adds that he needs to know
22 that if he fails to act, then we will. He needs to see that
23 we will have no choice.

24 On December 30th, he is interviewed, and he says
25 that if President Biden takes office, "We will have to do a

1 massively bloody revolution against them. That's what's
2 going to happen."

3 In an open letter posted on December 31st, he said
4 that they will have mission-critical gear right outside the
5 District of Columbia, which I assume is a reference to the
6 quick reaction force, and that they may "have to take up
7 arms in defense of our God-given liberty."

8 And that in the Signal chats also on
9 December 31st, he says, "Be prepared for a major let down on
10 the 6-8th. And get ready to do it ourselves." And that's
11 stated in all caps.

12 He goes on on the 6th, "They are going to put the
13 final nail in the coffin of this Republic, unless we fight
14 our way out. With Trump preferably or without him, we have
15 no choice."

16 In the lead-up to January 6th, Mr. Rhodes and his
17 conspirators -- Mr. Rhodes, I don't see you on the screen.
18 Have we lost him?

19 COURTROOM DEPUTY: It looks like we lost him, yes.
20 I'll reach out to the facility. Just one moment.

21 (Pause)

22 THE COURT: I'm going to go off camera until we
23 have Mr. Rhodes back. It may take a minute.

24 (Pause)

25 COURTROOM DEPUTY: And, Counsel, could you please

1 turn on your cameras.

2 THE COURT: All right, everyone. Just waiting on
3 Mr. Bright to return.

4 MR. LINDER: He's walking down the hall to his
5 office. I'm here.

6 THE COURT: Okay.

7 MR. LINDER: I assume you got a call from the jail
8 also, Your Honor?

9 THE COURT: Well, yes.

10 What we've learned, and maybe you have as well, is
11 that there's a power outage at the facility.

12 MR. LINDER: Yes, sir.

13 THE COURT: I don't know whether it's a short-term
14 power outage or a longer-term power outage.

15 MR. LINDER: I would assume it would be short
16 term. Being it's a large correctional facility, I assume
17 they have backup generators. I was up there yesterday, not
18 at that exact facility, but they had severe high winds and
19 snow flurries all afternoon yesterday going into the night.
20 That may have something to do with it.

21 THE COURT: Okay.

22 Well, let's hope it's short-term.

23 And I guess I do wonder whether, even if they do
24 have a backup generator, what that means for the broadband
25 connection --

1 MR. LINDER: True. Good point.

2 THE COURT: -- or WiFi connection. I don't know
3 what they're using.

4 So what I would propose is this. Hopefully
5 everybody is still available. I've got, unfortunately, a
6 Pretrial Conference at 3:30 -- or 3:15. And so instead of
7 keeping everybody on the line now, can we resume at 5:00 and
8 see where we are?

9 MR. LINDER: 5:00 Eastern Time, 4:00 here?

10 THE COURT: Yes.

11 MR. LINDER: That would be great. I can do that,
12 Your Honor. I assume Mr. Bright can, but if not, I can
13 cover it.

14 (Counsel and the Court conferred off the record.)

15 THE COURT: All right.

16 So we'll adjourn for the time being, and we'll
17 obviously reconnect at 5:00. And the media and the press,
18 we'll reconnect the public line at 5:00 obviously and see
19 where we are at that point. Hopefully, we'll be able to
20 reconnect at that hour.

21 MR. LINDER: Thank you, sir.

22 THE COURT: All right. Thank you, everyone.

23 MS. RAKOCZY: Thank you, Your Honor.

24 (Recess from 1:45 p.m. to 5:15 p.m.)

25 COURTROOM DEPUTY: Good afternoon, Your Honor.

1 This is Criminal Case No. 22-15-1, United States of America
2 versus Elmer Stewart Rhodes, III.

3 Kathryn Rakoczy for the government.

4 Phillip Linder for the defense.

5 John Copes on behalf of Pretrial Services.

6 And the defendant is appearing via videoconference
7 for this hearing.

8 THE COURT: Okay. Good afternoon again, Counsel;
9 Mr. Rhodes, good afternoon to you. I apologize for the
10 interruption, obviously beyond our control, and I wish that
11 had not happened.

12 Before I sort of resume where I was, let me just
13 put on the record that the two individuals who were named
14 earlier as third-party custodians or proposed third-party
15 custodians, I have asked that information to be redacted
16 from the public record in the interest of their safety and
17 privacy. So I'll just make that clear on the record.

18 MR. LINDER: Thank you, Your Honor.

19 THE COURT: Okay.

20 I think where I was is I was describing the
21 statement that Mr. Rhodes made on December 31st in a Signal
22 chat, and it was to "be prepared for a major let down on the
23 6-8th. And get ready to go to do it ourselves," all caps.

24 He continued, I think, in either the same chat or
25 a different one, "On the 6th, they are going to put the

1 final nail in the coffin of this Republic, unless we fight
2 our way out. With Trump preferably or without him, we have
3 no choice."

4 The planning, as it's continued up through January
5 the 6th, and that included the use of encrypted messaging
6 apps to plan for the events of that day, as well as the
7 assembly of the quick reaction force. On one of the chats,
8 I guess it's also on December 31st, Mr. Rhodes wrote,
9 "There's no standard political or legal way out of this."

10 Importantly, and I don't have the date on this, he
11 and Mr. Meggs exchanged messages about, "Making Senators
12 uncomfortable." Mr. Rhodes responded to Mr. Meggs that,
13 "Have to scare the shit out of them and convince them it
14 will be torches and pitchforks time if they don't do the
15 right thing." And he also added that if the President
16 doesn't act, "He needs to understand that we will have no
17 choice."

18 That statement is notable, perhaps for the obvious
19 reason that Mr. Meggs is accused of having led a group into
20 the Capitol building at the very time that members of
21 Congress had gathered for the intention of certifying the
22 Electoral College votes.

23 With respect to the QRF that we've talked about,
24 the allegations and the evidence that the government has
25 proffered shows that Mr. Meggs and others from Florida

1 supplied three luggage carts of gun boxes, rifle cases, and
2 suitcases with ammunition; members from Arizona supplied
3 bins of weapons and ammunition; and there was a third group
4 that also provided additional weapons.

5 I'll also note that between January 1st and
6 January 4th, while en route to the District of Columbia,
7 Mr. Rhodes purchased \$15,000 worth of firearms and other
8 equipment. It's not clear, and I don't know if the
9 government has made the affirmative proffer, that whatever
10 Mr. Rhodes bought was made part of the QRF arsenal. But in
11 any event, he did make those purchases en route to the
12 District of Columbia.

13 On January 6th itself, Mr. Rhodes is alleged to be
14 communicating with others who are part of the Oath Keepers,
15 who were there 20-plus strong that day, and communicating
16 with them through encrypted messages.

17 Shortly, I think -- I don't know the exact time,
18 but I think after 2:00, Mr. Rhodes does direct Mr. Meggs to
19 come to the south side of the Capitol building, Mr. Meggs
20 and his group had been at the northeast corner, if memory
21 serves, to link up with him and the operation lead.

22 There was then a telephone call between Mr. Rhodes
23 and Mr. Meggs and the operations leader three minutes before
24 Mr. Meggs' group moves up the stairs and eventually moves
25 into the Capitol.

1 As I mentioned earlier, Mr. Meggs and his group,
2 once they were inside the Capitol building, looked for the
3 Speaker of the House; Ms. Watkins and others in her group
4 pushed to the front of the line -- excuse me. After they
5 entered the Capitol building, made their way through the
6 Rotunda and attempted to walk toward the Senate chamber,
7 where they were essentially repelled by police officers.
8 There was yet another group, a second stack, as the
9 government has called it, that entered later, of Oath
10 Keepers as well.

11 After the events of January -- that afternoon,
12 I should say, a few interesting things happened. Mr. Rhodes
13 and the other Oath Keepers do gather for dinner that
14 evening, and then they disperse at some point thereafter
15 when they are told or learn that law enforcement is looking
16 to arrest people who participated in the acts on the Hill.

17 Mr. Vallejo, there's a text message or a
18 communication of some kind suggesting that he may have gone
19 out for reconnaissance or was prepared to go out for
20 reconnaissance on January the 7th; that is, the day after
21 these events. Ms. Watkins, another co-conspirator, writes
22 in another post-January 6th email, that there's a bug-out
23 plan, which would have Oath Keepers converging to a rural
24 area.

25 As for Mr. Rhodes himself, he, after the 6th,

1 purchases another \$16,000 in gun equipment, including
2 scopes, ammunition, a gun light and the scope mount. And he
3 continues to have communications with people, including
4 planning for next steps, as he puts it in one communication,
5 and then sending messages as late as January 20th to
6 organize local militias and making a reference to a
7 Civil War 2.0. That is the extent of the evidence that the
8 government has accumulated and at least is what's in the
9 indictment and in the record before the Court.

10 You know, the evidence, it seems to me, against
11 Mr. Rhodes is compelling, if not strong. Mr. Rhodes
12 undoubtedly conspired, in the sense that he worked with
13 others.

14 In terms of planning and preparation for January
15 the 6th, he was involved in bringing firearms to the
16 outskirts of the District of Columbia for a potential
17 incursion of the District or to bring them into the District
18 if there was cause for it.

19 And there is quite a bit of communication
20 suggesting that Mr. Rhodes was prepared to -- was
21 encouraging others to prepare for violence, and,
22 specifically, violence on January the 6th. The words he
23 used were not -- they were certainly, excuse me, in some
24 cases, quite provocative, about bloody mess and revolutions,
25 and the like.

1 You know, let me just address the number of --
2 Mr. Rhodes has essentially responded to these allegations
3 with a number of what I'll just call at this point defenses.
4 The first is that much of his language in these
5 communications, some of which I've quoted, I think the words
6 of counsel are that this was overheated rhetoric or words to
7 that effect.

8 I'm the first to recognize that there is expansive
9 protection under the First Amendment for speech. I'm
10 well-aware that even advocating violence by itself is not
11 unlawful, it is actually protected speech unless it calls
12 for imminent action.

13 But Mr. Rhodes is not being accused of just
14 speaking, he is being accused of taking actions, gathering
15 people, and planning and preparing to disrupt the Electoral
16 College certification process, and there are a number of
17 overt acts described in the complaint -- excuse me, in the
18 indictment in furtherance of that conspiracy, not the least
19 of which is that there are two separate groups of Oath
20 Keepers who entered the Capitol building. So if anybody
21 thinks that this is about speech, they are mistaken. It is
22 about the speech and how that bears on Mr. Rhodes' state of
23 mind and the objectives that he and others who are accused
24 in this indictment had on January the 6th and after.

25 Mr. Rhodes has also suggested that the Oath

1 Keepers came to the District of Columbia to provide security
2 and to act if the President invoked the Insurrection Act.

3 I don't think there's any dispute that the Oath
4 Keepers did provide some security that day, and there was
5 nothing unlawful or untoward about that.

6 But the actions on January the 6th did not stop
7 there. It would be a very different situation if the Oath
8 Keepers and Mr. Rhodes simply stayed at The Ellipse where
9 they were providing the security. That's not what they did.
10 They actually went to the Capitol building, along with a
11 large group of other people, and used that opportunity and
12 used that set of circumstances to enter the Capitol
13 building. I think the question can be asked if they were
14 simply there for security purposes, why did Mr. Rhodes
15 summon his people to the Capitol when the Capitol was being
16 entered unlawfully.

17 This issue about the Insurrection Act has been
18 talked about at great length. I'm highly dubious about the
19 legal proposition that's been put forward; that somehow even
20 if the President had invoked the Insurrection Act, that
21 private -- self-designated, private militias could come to
22 the aid or come -- or respond to the call of the President
23 for that purpose. It seems to me to be a highly dubious
24 legal proposition. And in any event, certainly gathering
25 collectively in that way to prepare for such an

1 inevitability or possibility, I should say, in and of itself
2 demonstrates some degree, heightened degree, I would submit,
3 of dangerousness.

4 Then there is the QRF, and what's been put forward
5 is that this is a defensive force and one that had been
6 ready at prior rallies in the District of Columbia. There's
7 an emphasis that's been made by Mr. Rhodes and his counsel,
8 and I think rightly so, that, in fact, the weapons were not
9 brought into the District of Columbia. Perhaps that's to
10 Mr. Rhodes' credit. I'm not sure we quite know the reason
11 for why those weapons never made their way into the District
12 of Columbia, but they did not, and I think that obviously is
13 an important factor and weighs in his favor.

14 That said, it still doesn't diminish the fact of
15 the dangerousness by even just simply putting this quick
16 reaction force together. It demonstrates careful planning
17 and preparation or orchestration of a plan to bring weapons
18 in from various states and have those weapons at the ready
19 in case they are needed. And in terms of what the
20 circumstances would be to bring those weapons in, it seems
21 to me that that would only be defined by Mr. Rhodes, and
22 that is a very concerning circumstance.

23 Importantly, what Mr. Rhodes has suggested is that
24 Mr. Meggs and others that actually went into the Capitol
25 that day had acted on their own; that Mr. Rhodes did not

1 order them in; he did not approve of their going in; and
2 that essentially a suggestion that he was aware that that
3 was going to happen or ordered it to happen is not accurate.

4 Ultimately, that question is going to have to be
5 resolved by a jury, it's not for me to resolve today. What
6 I can resolve and do resolve today is that I think the
7 evidence is quite strong that it is unlikely that Mr. Rhodes
8 did not, at a minimum, know about, if not encourage, if not
9 order Mr. Meggs and others into the Capitol building that
10 day.

11 I say that for a number of reasons. The first is
12 that the Oath Keepers, by all accounts, are a hierarchal
13 organization and an organization that is composed of a
14 number of former military and law enforcement. These are
15 not people who do things without orders, and certainly don't
16 do things without -- of such significance, such as entering
17 the Capitol building, without the blessing of their superior
18 officer, their commanding officer. That may ultimately turn
19 out to be the wrong inference to draw from all of this, but
20 I think it is certainly a reasonable one.

21 Then there is the three-minute phone call that
22 Mr. Meggs has with Mr. Rhodes and the operations leader on
23 the grounds of the Capitol that day. It strikes me as quite
24 the coincidence that as soon as that phone call, which, as I
25 said, lasts three minutes, it's not a short call, that at

1 that point Mr. Meggs and his group immediately, or very
2 shortly after that call ends, turn toward the Capitol
3 building and begin to enter it in the stack formation that's
4 been described.

5 Again, it will be ultimately up to a jury to
6 decide what actually happened on that phone call and whether
7 Mr. Rhodes, who has claimed that he didn't give an order or
8 wasn't aware of it, is correct. But at this point, the
9 evidence is certainly strong to believe, based upon the
10 circumstantial evidence that I've just talked about, at a
11 minimum, Mr. Rhodes would have known Mr. Meggs was helping
12 do this, if, in fact, he did not order it.

13 There are other reasons to believe that Mr. Rhodes
14 was aware of what Mr. Meggs and others were going to do that
15 day.

16 As I said and observed the other day, the
17 suggestion was made that Mr. Meggs and others entered the
18 Capitol in order to provide medical assistance to Ashli
19 Babbitt, who had been shot that day. But as I understand
20 it, the timeline doesn't make any sense, because Ms. Babbitt
21 was not shot until after Mr. Meggs and that first stack of
22 individuals moved toward and entered the Capitol building.

23 Mr. Rhodes notably, if I'm reading this correctly,
24 on January 6th itself in a Signal chat that looks like it
25 went out at 3:41 Eastern Time, if I'm reading this

1 correctly, doesn't distance himself from the Oath Keepers
2 who went in, doesn't distance himself from the activity that
3 is going on at the Capitol building; rather, he celebrates
4 it.

5 He talks about the "Founding generation Sons of
6 Liberty stormed the mansion of the corrupt Royal Governor of
7 Massachusetts, and trashed the place.

8 "They also jumped onboard a ship carrying East
9 India Tea and dumped it in the harbor.

10 "We are actually in a far more deadly situation
11 given the fact that enemies foreign and domestic subverted,
12 infiltrated, and taken over nearly every single office and
13 level of power is this nation.

14 "We have one final chance to get Trump to do his
15 job and his duty.

16 "Patriots entering their own Capitol to send a
17 message to the traitors is nothing compared to what's coming
18 if Trump doesn't take decisive action right now."

19 Certainly, it doesn't sound like the words of
20 somebody who was surprised to learn that his fellow Oath
21 Keepers had entered the Capitol building without his okay or
22 knowledge.

23 What's more, Mr. Rhodes made no effort, it seems,
24 to disassociate himself from the very people who he believes
25 went off script. He dines with them that evening. He calls

1 them to Texas in the aftermath of January the 6th, and
2 Mr. James actually comes to join him.

3 There's also been the suggestion that Mr. Rhodes
4 is no longer a danger, because now that Mr. --
5 President Trump is out of office and he did not invoke the
6 Insurrection Act, that all the activity that Mr. Rhodes
7 engaged in, including the assembly of the QRF, that danger
8 has passed.

9 The problem with that, it seems to me, is much --
10 is that there are a number of statements Mr. Rhodes makes
11 about acting even if the President doesn't act.

12 For example, on December 31st, he says in an Intel
13 Leadership chat, "Be prepared for a major let down on the
14 6-8th. And get ready to do it ourselves."

15 On December 5th, earlier, "He said he needs to
16 know," referring to the President, "that if he fails to act,
17 then we will. He needs to understand that we have no
18 choice."

19 On December 31st, again on January 6th, "They
20 are going to put the final nail in the coffin of this
21 Republic, unless we fight our way out."

22 MS. RAKOCZY: Your Honor, I apologize for
23 interrupting. I saw the defendant disappear from our view.

24 THE COURT: Thank you, Ms. Rakoczy. I didn't see
25 that.

1 Mr. Douyon, can you find out what's happening?
2 Hopefully it's not another power outage.

3 COURTROOM DEPUTY: Yeah, I'll give them a call.

4 THE COURT: Okay. Mr. Rhodes is back.

5 We lost you there for a second, Mr. Rhodes.

6 I'll ask everybody to please go back on mute.

7 I don't know when he went off, but I was reading some of the
8 messages. I will just re-read the one from December 31st.
9 That is, "On the 6th, they are going to put the final nail
10 in the coffin of this Republic, unless we fight our way out.
11 With Trump preferably or without him, we have no choice."

12 And even after December -- excuse me, January the
13 6th, before the President leaves office, Mr. Rhodes writes:

14 "My prediction is that Trump will not invoke the
15 Insurrection Act."

16 He hopes he's wrong. "I pray I'm wrong.
17 But that's my prediction."

18 He says, "If that's the case, and he doesn't use
19 it to drop the damn hammer, then we need to accept reality
20 and stop with the self-delusional nonsense and prepare to
21 walk the Founder's path," which I think reasonably can be
22 construed to mean a path resembling a revolution, which I
23 think in Mr. Rhodes' telling and understanding, would
24 involve potentially taking up of arms.

25 So there are a number of statements that

1 Mr. Rhodes makes both before and after January the 6th that
2 run counter to the notion that he was simply waiting on the
3 President to call for the Insurrection Act to happen, and
4 that once it happened, the intentions that Mr. Rhodes had
5 simply dissipated and, therefore, he's no longer a threat.

6 So for all of those reasons, as I've just
7 described in great detail, I do think that the strength of
8 the evidence favors detention.

9 History and characteristics of the defendant:

10 Mr. Rhodes has no prior criminal history. He has
11 a law degree but no longer is a practicing lawyer. He's
12 founded and has led the Oath Keepers. It's not clear to me
13 that he has employment other than that. He's lived a little
14 bit of an itinerant life, although the last couple of years
15 his residence has been in Texas and people have known him to
16 be there, he hasn't been moving place to place and no one's
17 suggesting that Mr. Rhodes was attempting to conceal his
18 location.

19 Two points that have been discussed concerning the
20 history and characteristics. One concern, Mr. Rhodes' gun
21 purchases that were made both before and after January the
22 6th and gun equipment purchases that the government has
23 alleged and that number in the tens of thousands of dollars.

24 Mr. Rhodes' counsel has said, there's no
25 suggestion that these purchases were unlawful and that

1 Mr. Rhodes sought to conceal them. All of that is true.
2 There's no suggestion that the guns were purchased
3 unlawfully or that Mr. Rhodes attempted to conceal his
4 identity when he bought that equipment.

5 But that's not the concern. The concern to me is
6 not that the fact that Mr. Rhodes has a Second Amendment
7 right or that anyone has a Second Amendment right. What is
8 of concern to me is the quantity and the timing that
9 Mr. Rhodes took when Mr. Rhodes made these purchases; one,
10 large quantity of weapons and equipment on his way to the
11 District of Columbia, and then afterwards making substantial
12 purchases.

13 These are not purchases that I dare say that are
14 consistent with individual self-defense. This is not a
15 purchase of a single weapon or even two or three weapons.
16 It's multiple weapons and multiple equipment, including
17 equipment that is used, I would say, for precise shooting.

18 Mr. Rhodes' counsel has emphasized two other
19 points that they believe demonstrates that he is not a
20 threat.

21 First is that he's cooperated with law enforcement
22 and, in fact, even cooperated with Congress, has, in fact,
23 testified before Congress, has given two interviews to the
24 FBI, he voluntarily handed his phone over when the FBI came
25 with a search warrant for that telephone. That's one.

1 And, two, he's not alleged to have done anything
2 unlawful since, I think, probably around -- the government
3 contends that the conspiracy -- at least the facts of the
4 conspiracy end around January the 20th. But, more
5 importantly, there's been no testimony that Mr. Rhodes has
6 actually taken any overt steps to engage in violent behavior
7 or organize such behavior in many months, in nearly the last
8 year. All of that weighs in his favor, I think, and I've
9 considered it, I've given it great consideration.

10 The second of those factors, which is that he's
11 not done anything in the last year, or at least we are not
12 aware of anything that he's done in the last year, nothing's
13 been presented to me that's happened in the last year, is
14 somewhat mitigated, in my view, by a couple of factors:

15 One is the one I mentioned the other day. One is
16 that all eyes were certainly on Mr. Rhodes shortly after
17 January the 6th, and so it would be smart for him not to
18 engage in overt acts if he wished to avoid further law
19 enforcement scrutiny.

20 But he says as much, and said as much on January
21 the 14th. And there's a Signal chat that was provided to me
22 by the government, Ms. Rakoczy read it for a different
23 proposition, but the rest of it is really eye-opening. This
24 is on January the 14th of 2021. It's titled Executive
25 Summary:

1 "President Trump still can and should use the
2 Insurrection Act, but it's unlikely. Regardless, patriots
3 should prepare or a comms down/blackout environment. Obtain
4 CB and HAM radios, fuel, food, et cetera. Muster now in
5 their county seat. Meet face to face and sort out grid down
6 comms and who will be 'Home Guard' and part of a 'Family
7 Safe' program to stay back and protect families, while also
8 determining who can project out to protect and assist
9 others. Do it now before comms go down."

10 He goes on: "Established protocols in case of
11 lights out/comms down."

12 He goes on: "Beware of false flags and traps that
13 are now being set. Be careful who you listen to and what
14 events you attend. Expect attempts to lure you on to enemy
15 control ground where they have time to set up false flags."

16 Then he goes on to say: "Prepare to walk the same
17 path as the Founding Fathers of condemnation of an
18 illegitimate regime."

19 It's not that that concerns me, it's everything
20 that came before. Mr. Rhodes shows a keen awareness of what
21 needs to be done to avoid scrutiny. In fact, he's telling
22 other people how to do just that: How to avoid
23 communications, how to ensure a black-out environment,
24 establish protocols in case of a lights-out/comms down
25 environment, cognizant of potential false flags and traps

1 being set out there.

2 This is the language and description of someone
3 who is sophisticated and knows how to avoid detection in the
4 kind things he is attempting to do. And that goes also
5 simply by the fact that he uses encrypted communications, it
6 seems, as a regular means of communicating with others,
7 particularly other Oath Keepers.

8 So when I consider the history and characteristics
9 of Mr. Rhodes, I think in the end, it seems to me to be a
10 neutral factor. There are factors certainly that do favor
11 him, but there are also other factors that either neutralize
12 those favorable characteristics -- that neutralize those
13 favorable characteristics, I'll just leave it at that.

14 Finally, the nature of the dangerousness, I think
15 that is a collective factor that is based upon all of what
16 I've said over the last hour or so.

17 I think based upon all the evidence that has been
18 presented to me, the strength of that evidence, the nature
19 of that evidence, Mr. Rhodes' leadership role, the fact that
20 he led an organization that was highly structured,
21 hierarchal organized, and acted in concert on January the
22 6th to have not one but two groups enter the Capitol
23 building, with one group actively seeking out the Speaker of
24 the House and the other trying to enter the Senate, all of
25 that makes Mr. Rhodes still dangerous and presents a clear

1 and convincing danger, in my view.

2 That is not neutralized, in my view, by his
3 cooperating with law enforcement or testifying before
4 Congress or not having had -- alleged to have not done or
5 taken overt acts since late January and last year.

6 As I read in the January 14th Signal chat,
7 Mr. Rhodes is certainly more than capable and sophisticated
8 enough to know that once the events of January the 6th
9 happened, how to avoid detection of what to do, and avoid
10 further scrutiny of his actions.

11 The question still remains whether there are any
12 combination of conditions that would ensure the safety of
13 the community, and I have considered the proposal that has
14 been made by Mr. Rhodes and his counsel to allow him to
15 remain with a third-party custodian, who would be his cousin
16 and his cousin's husband.

17 And even -- that third-party custodian should be
18 even considered, as I indicated the other day, under the
19 strictest of conditions, which would mean house arrest,
20 among other things, and lack of access to the Internet,
21 still leaves me unsatisfied that there are no conditions of
22 release that would ensure the safety of the community.

23 I say that for two reasons: Everything that has
24 been said today and has been put before me demonstrates that
25 Mr. Rhodes is an extremely sophisticated individual. His

1 ability to communicate, organize are his greatest weapons,
2 it seems to me, and there is simply no way court supervision
3 through a third-party custodian or through monitoring can
4 fully ensure that Mr. Rhodes will not continue to engage in
5 that conduct.

6 There is a risk that Mr. Rhodes could have access
7 to encrypted messaging without the knowledge of those who he
8 is in custody of. And given what has been represented to me
9 as a network of individuals that Mr. Rhodes has access to,
10 I am convinced that there really are no combination of
11 conditions that would ensure the safety of the community,
12 including the very strict conditions that have been proposed
13 by defense counsel.

14 I'll just conclude by saying that I don't find
15 that the government has made out its case with respect to
16 risk of flight. To the extent a full record needs to be
17 made here, I don't think the government has shown that
18 Mr. Rhodes, within the last year, has made any efforts to
19 conceal his whereabouts. He's cooperated, as we've
20 discussed, with law enforcement, testified before Congress,
21 he is a recognizable individual, and it seems to me that the
22 government has not made out its burden with respect to risk
23 of flight. It has, however, in my view, made out its burden
24 with respect to dangerousness.

25 So that will be the decision of the Court.

1 Mr. Rhodes will remain detained pending trial in this
2 matter.

3 And what else do we need to discuss this
4 afternoon?

5 MR. LINDER: Your Honor, if I may, since he's
6 going to remain detained, you had graciously granted my
7 earlier motion to leave him close to where we are. Even
8 though they moved him to Oklahoma, it's still a decent
9 facility that I can get to in a few hours. Can I refile
10 another motion or can you continue that order that he stay
11 here so we can prepare for trial?

12 THE COURT: Let me do the following. I will look
13 into it.

14 I actually think this is something I need to be
15 careful about, because -- for two reasons: One is, I don't
16 know what the government's thinking is about having
17 Mr. Rhodes housed in a facility with other co-conspirators.
18 I mean, that seems to me to be something that they ought to
19 be thinking about.

20 Secondly, I also don't want there to be any
21 perception, real or otherwise, that Mr. Rhodes is getting
22 favorable treatment. There are others who I've held
23 detained, they are removed from their counsel, they have all
24 been brought to the District of Columbia. So I don't
25 want -- I want those two considerations to be at the

1 forefront of my thinking about that request.

2 MR. LINDER: Your Honor, and I -- Oh.

3 THE COURT: Mr. Linder, just let me just finish.

4 So if you want to talk to Ms. Rakoczy, see what
5 her thoughts are. If that's something the government would
6 consent to, I think that's an easier situation.

7 But if it's then objected to by the government and
8 left to me, I'll have to make that decision.

9 MR. LINDER: Thank you.

10 And, Your Honor, just to address the favorable
11 treatment, I believe there's -- other than Mr. Vallejo, who
12 hasn't had his motion for reconsideration hearing yet, the
13 other three that are in custody in D.C., I think they all
14 have lawyers that are in D.C. or very near D.C., closer to
15 their clients there than I am to even Mr. Rhodes in
16 Oklahoma.

17 And I told Ms. Rakoczy, and I don't -- I'll let
18 her weigh in, I don't want to put words in her mouth, and
19 I'll tell this Court that if he's left here, somewhere where
20 I can have access to him, we can be ready for trial in July.
21 If he gets moved to D.C., where we have to fly up every time
22 we want to talk to him and do things differently,
23 it would be a lot more difficult to get ready.

24 And I know the Court -- we don't want to delay
25 this case. The Court wants to try in July, we'd like to be

1 ready, and that would make it easier for us to do that.

2 THE COURT: Yeah, look, Mr. Linder, I'm very
3 sympathetic to that quandary, I really am.

4 You know, just on the point about the others,
5 I think you are generally right, that all of them now have
6 more localized counsel, but that wasn't always the case.

7 MR. LINDER: Yes, sir.

8 THE COURT: Mr. Meggs, for example, for a very
9 long time, had counsel in Florida; I think Ms. Watkins now
10 has counsel out in Pennsylvania.

11 So, you know, those are the situations of other
12 defendants. And like I said, I just do not want there to be
13 left an impression that Mr. Rhodes is being treated
14 differently than anyone else.

15 MR. LINDER: I understand.

16 THE COURT: So, you know, I'll leave it to you all
17 to have a discussion in the first instance about what makes
18 sense. And if there's consent, then it's okay by me.
19 If there's not, I'll --

20 MR. LINDER: Ms. Rakoczy, do you feel like you
21 could weigh in on it at this point?

22 MS. RAKOCZY: I think I can, Your Honor, if the
23 Court would indulge us.

24 THE COURT: Sure.

25 MS. RAKOCZY: We did speak about this issue.

1 And the government generally defers to the
2 Marshals Service and the Court as to issues of where the
3 defendants will be housed, barring concerns like that that
4 the Court raised about potential concerns about housing
5 certain co-defendants or co-conspirators together.

6 We do have concerns that, even separate and apart
7 from the government's position, that the Marshals Service
8 could have concerns about housing Mr. Rhodes with the
9 co-defendants in this case at the D.C. jail.

10 And if that were to be the case and he were to be
11 housed at another facility somewhere in the District of
12 Columbia region, that he would not have access to the same
13 discovery materials that the government is attempting to
14 make access to at the D.C. jail.

15 And if that were to be the case, Mr. Rhodes would
16 both be far from his counsel and lack the access to the
17 discovery materials that the inmates at the D.C. jail have
18 had access to.

19 And so in light of all that, the government does
20 not object to a request to house the defendant in a facility
21 where he is currently, not for any special-treatment reasons
22 but just because of the practical reality that he would have
23 even less access to discovery than any other defendants if
24 he were to be moved potentially.

25 MR. LINDER: Thank you.

1 THE COURT: Well, let me do this.

2 In light of that, let me touch base quickly with
3 our Marshal.

4 MR. LINDER: Yes, sir.

5 THE COURT: I don't want to be perceived as
6 ordering something that he is not okay with.

7 So let me email him as soon as we're done to get
8 his reaction to this, and I will let you all know what he
9 says.

10 Until then, we'll make sure Mr. Rhodes remains
11 where he is, but I should be able to get an answer to you
12 all very quickly.

13 MR. LINDER: Thank you, sir. I appreciate you
14 considering it.

15 THE COURT: Of course.

16 Okay. Is there anything else we ought to take up?

17 THE DEFENDANT: Mr. Linder, could you let the
18 judge know we'll be filing an amended brief on that.

19 I only got a chance to read that brief today, and
20 there's some significant factual errors that need to be
21 corrected in the brief that we submitted.

22 MR. LINDER: They don't address things you had
23 addressed in your order, but I am going to file an amended
24 brief to fix a few errors that Stewart and I talked about on
25 the break.

1 THE DEFENDANT: There is one that is directly
2 related to his order, unfortunately, Mr. Linder.

3 MR. LINDER: We'll get that filed by Monday.

4 THE DEFENDANT: Okay.

5 THE COURT: Okay.

6 Well, if you're going to amend the brief and if
7 there's something -- I guess what I'd like you to do is
8 provide to me what the corrections are, and if those
9 corrections end up being material, I'll weigh those.

10 You know, if this is simply a matter of making a
11 record for the Court of Appeals, if you're intending to
12 appeal, then that's a different thing.

13 But as I said, if there is something material that
14 changes, please let me know that so I can take that into
15 account and decide whether that affects my decision in any
16 way.

17 MR. LINDER: I will, Your Honor.

18 THE COURT: Okay.

19 All right. Anything else, Counsel?

20 MR. LINDER: No, sir, not from the defense.

21 MS. RAKOCZY: Not from the government, Your Honor.
22 Thank you.

23 THE COURT: All right. Thank you all very much,
24 be well, and we will see you at the latest, I think, a week
25 from not this Friday but the following Friday. We have a

1 hearing on March the 3rd, I think, is that right,
2 Ms. Rakoczy?

3 MS. RAKOCZY: The 4th, Your Honor.

4 THE COURT: The 4th, Friday the 4th. Okay.

5 All right. Thank you all very much; we'll see you
6 all soon enough.

7 MR. LINDER: Thank you, sir.

8 MS. RAKOCZY: Thank you, Your Honor.

9 MR. LINDER: Have a good weekend.

10 (Proceedings concluded at 5:52 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.

Please note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

Date: March 1, 2022



William P. Zaremba, RMR, CRR

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