

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 22-15
)	Washington, D.C.
vs.)	March 4, 2022
)	1:08 p.m.
ELMER STEWART RHODES III, ET AL.,)	
)	
Defendants.)	
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TRANSCRIPT OF STATUS CONFERENCE 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 COURTROOM DEPUTY: All rise.

3 This Court is in session; the Honorable Amit P.
4 Mehta presiding.

5 THE COURT: Please be seated, everyone.

6 COURTROOM DEPUTY: Your Honor, this is Criminal
7 Case No. 22-15, the United States of America versus
8 Defendant No. 1, Elmer Stewart Rhodes; Defendant No. 2,
9 Kelly Meggs; Defendant No. 3, Kenneth Harrelson; Defendant
10 4, Jessica Watkins; Defendant 6, Roberto A. Minuta;
11 Defendant 7, Joseph Hackett; Defendant 8, David Moerschel;
12 Defendant 9, Brian Ulrich; Defendant 10, Thomas Edward
13 Caldwell; and Defendant 11, Edward Vallejo.

14 James Bright and Phillip Linder for Defendant
15 Rhodes.

16 Jonathan Moseley for Defendant Meggs.

17 Bradford Geyer for Defendant Harrelson.

18 Jonathan Crisp for Defendant Watkins.

19 Alfred Guillaume for Defendant Minuta.

20 Angela Halim for Defendant Hackett.

21 Scott Weinberg for Defendant Moerschel.

22 A.J. Balbo for Defendant Ulrich.

23 David Fischer for Defendant Caldwell.

24 And Matthew Peed for defendant Vallejo.

25 Defendants Kelly Meggs, Harrelson, and Watkins are

1 appearing in court, in person for this hearing.

2 Defendant Rhodes, Minuta, Hackett, Moerschel,
3 Ulrich, and Caldwell are appearing via videoconference or
4 teleconference.

5 And Edward Vallejo is not present for these
6 proceedings.

7 THE COURT: Okay. Good afternoon again,
8 everybody.

9 All right. We're back here for a status
10 conference to see where things are and how we're going to
11 proceed.

12 Let me ask Mr. Peed. Your client is not present.
13 Let me ask whether you either waive his presence for the
14 purposes of the hearing or we can obviously do this for him
15 once we're able to connect him to our hearing today.

16 MR. PEED: I haven't been able to speak with him,
17 Your Honor, so I don't want to waive his presence for the
18 hearing. I mean, I would like to be here and listen in,
19 Your Honor, but I would wouldn't want to waive his
20 appearance.

21 THE COURT: All right.

22 Well, let's do this. I mean, let's go forward,
23 you're here, and then we can reschedule something for
24 Mr. Vallejo to ensure that he has heard everything that gets
25 discussed here this afternoon.

1 Okay. So let's start, if we will, with just a
2 quick update from Ms. Rakoczy on the status of discovery,
3 and particularly the case-specific discovery and whether
4 there's more to push out to these defendants.

5 MS. RAKOCZY: Yes, Your Honor. Thank you.

6 The government is concluding the case-specific
7 discovery process. The government, since we last met, has
8 produced some additional FBI reports that relate to the
9 investigation, some additional search warrant returns from
10 digital devices that the government has scoped and tagged
11 that discovery, which it is seizing pursuant to attachment B
12 of the warrants and we've produced those versions of digital
13 discovery to the defense.

14 We do have a few small remaining number of
15 outstanding devices to complete that process for the charged
16 defendants. There are two devices from Defendant Beeks, who
17 is in the related case of 21-CR-28. And there were a few
18 devices seized at the time of the arrest of Mr. Rhodes that
19 remain -- that need to be processed still as well. So
20 that's the status of the electronic discovery.

21 There are also --

22 THE COURT: Ms. Rakoczy --

23 MS. RAKOCZY: -- a handful of --

24 THE COURT: Ms. Rakoczy, can I interrupt you for a
25 moment?

1 MS. RAKOCZY: Yes, Your Honor.

2 THE COURT: Mr. Rhodes' devices, I suspect, folks
3 are anxious to get their hands on those. Do you have a time
4 estimate as to when that material might become available?

5 MS. RAKOCZY: I do not, Your Honor, because the
6 devices need to go through a filter process before they can
7 be reviewed by the government. I anticipate that that means
8 it will still be a few weeks before that process is
9 complete.

10 I would note that Mr. Rhodes' cellular telephone
11 was processed -- seized pursuant to a search warrant,
12 searched, and processed back in May of last year. And a
13 significant portion of that data has been made available,
14 but the remainder of that data will be made available,
15 hopefully, next week to the defense.

16 And that is a significant device. These were some
17 remaining devices that had not been searched that were
18 seized pursuant to a warrant at the time of the arrest, as
19 well as Mr. Rhodes' personal cell phone device, which will
20 be searched again. But, as I said, that had previously been
21 searched from May 3rd backwards, and so there should not be
22 a great deal of new information from that device.

23 THE COURT: Got you. Okay.

24 All right. I interrupted you. Why don't you go
25 ahead and continue, please.

1 MS. RAKOCZY: Yes, Your Honor.

2 There are a handful of electronic devices and
3 accounts that were seized and searched, either pursuant to
4 consent or search warrant, from uncharged subjects of this
5 investigation or witnesses to this investigation that
6 we will be providing, hopefully, within the next week or two
7 as well.

8 And then we're in the process of completing review
9 of FBI case files for subjects -- for uncharged subjects of
10 this investigation, as well as civilian witness *Jencks*-type
11 materials, whether they be memoranda or recorded interviews,
12 transcripts of interviews or transcripts of grand jury
13 testimony that we hope to provide either late next week or
14 early the following week to the defense.

15 There are probably a very small handful of
16 civilian witness statements that will not be included in
17 that production because they either were obtained recently
18 and need to be reviewed or there are overriding concerns
19 stemming from the pending investigation or security concerns
20 that will cause us to hold back just a very small number of
21 those for a short additional period of time.

22 But the bulk of the materials that would be
23 considered civilian witness *Jencks* materials for these
24 trials, whether for witnesses who will testify or for
25 witnesses who would either potentially be relevant for the

1 defense or just generally relevant, we hope to provide
2 within the next two to three weeks, which we hope will
3 greatly facilitate the preparation of the defense for trial
4 in these matters.

5 And then aside from that, there are just a few
6 fall discovery odds and ends. But I do think that we are on
7 track to wrap up the case-specific discovery within the next
8 few weeks, with the exception of some of the devices that
9 are taking a little bit longer, because of the filter
10 process and technological issues, and anything that -- any
11 interviews that might still be being conducted. As the
12 ongoing investigation wraps up, obviously we will provide
13 those on a rolling basis.

14 THE COURT: Okay. That's a helpful overview of
15 where things stand.

16 And then in terms of the databases, my
17 understanding is that both of them are up. Evidence.com has
18 been available for some weeks, and, in fact, may be
19 available directly to some of the detained defendants
20 from -- at least at the D.C. jail. And then Relativity is
21 online and available to defense counsel who have obtained
22 licenses.

23 In terms of the -- and obviously I understand it's
24 an ongoing process to the extent new evidence is being
25 collected, but do you have a sense of how -- or where that

1 process is in terms of populating that database?

2 MS. RAKOCZY: Your Honor, we filed a status report
3 in this case and the related cases a couple of weeks ago
4 that goes into far greater detail --

5 THE COURT: Right.

6 MS. RAKOCZY: -- and was -- the material there was
7 authored by individuals with far greater knowledge than
8 myself.

9 I think the most significant update is that
10 there -- I think the two main buckets of discovery that,
11 I think, everyone is eager to be able to review are scoped
12 data from electronic devices and social media accounts or
13 email accounts, electronic accounts, from all of the
14 defendants in these matters, and then the FBI investigative
15 files and any memoranda of interviews or other significant
16 information in evidence from all of these defendants who are
17 charged throughout the Capitol breach cases.

18 And those two buckets of data are currently being
19 processed, reviewed, and uploaded to the two platforms. And
20 I hope -- I don't have a timeline for that, but my sense is
21 that that is data that's actively being reviewed and
22 processed and fed into the platforms currently.

23 And so I do think that within -- over the course
24 of the next month or two, I think a good chunk of that
25 information will be made available and should be reviewable.

1 And so we are hopeful that with respect to these
2 trials and these matters, obviously the first one is now set
3 to begin in July, on July 11th. We are hopeful that that
4 information will be accessible well before that date and
5 with enough time for the defense counsel to review that data
6 and to prepare for trial.

7 I would also note that the government on this team
8 is also working to review that data to flag for the defense
9 things that might be particularly relevant to this case.
10 And we've been doing that throughout. And we will continue
11 to do so in the next few weeks in the hopes of aiding that
12 review, because obviously we are aware that a lot of that
13 data is contained in that -- in these platforms.

14 THE COURT: Just one point of clarification.
15 I thought I heard you say that the scoped data from devices
16 from the defendants in this matter is still awaiting
17 uploading into Relativity.

18 Did I hear that correctly when you said "these
19 defendants," as in the defendants in this case, or do you
20 mean more broadly for January 6th defendants collectively?

21 MS. RAKOCZY: I meant more broadly.

22 THE COURT: Okay.

23 So the scope -- to the extent data has been scoped
24 for defendants in this case, that's already been provided,
25 other than some of the devices that you described earlier?

1 MS. RAKOCZY: Correct, Your Honor.

2 There are only a handful of devices for the
3 defendants in these cases, both this case and the related
4 cases before Your Honor, that have not been provided to
5 defense counsel in this case.

6 Those devices will also be made available to all
7 of the defense attorneys in all 750-plus cases. And then
8 the devices of those defendants will, in turn, be made
9 available to the defense attorneys in this case, and that's
10 the purpose of having these discovery platforms in the
11 global discovery process.

12 THE COURT: Okay.

13 All right. That's helpful. Thank you.

14 All right. So what I'd like to do from here is
15 let's talk about trial schedule. And then I'll turn to each
16 defense counsel to hear if they want to add anything. And
17 then I've got some individual issues with some individual
18 defendants that I want to raise.

19 So we currently have a trial date, an initial
20 trial date in this matter, set for July 12th -- excuse me,
21 July 11th. And then I think we've reserved, if memory
22 serves, a second trial date in October. Am I recalling that
23 correctly?

24 MS. RAKOCZY: I believe, September --

25 MR. LINDER: September 26th, Your Honor.

1 THE COURT: September 26th. Okay. Great.

2 So, Ms. Rakoczy, either the government's thoughts
3 or whatever thoughts you may have in connection with also
4 discussing the case is the case with various defense
5 counsel.

6 What are your thoughts on that first trial and who
7 might be in it? At least recognizing right now, I think we
8 have nine defendants. And I am uncertain as to what our
9 capacity limits are going to be, and I don't think we're
10 going to be able to try all nine defendants at once.

11 MS. RAKOCZY: We do understand that, Your Honor.
12 Nine defendants would be lot, although -- potentially not
13 undoable. We have 10 defendants, actually, Your Honor, at
14 this time.

15 THE COURT: Right. Okay.

16 MS. RAKOCZY: But either way, both is a
17 significant number.

18 I think from the government's perspective, because
19 of the fact that the situation with the ongoing pandemic is
20 a little bit in flux right now and I think that the
21 marshal's and the Court's protocols for how many defendants
22 might be reasonable to place in one trial may be a little
23 bit evolving, and because we are in active negotiations and
24 discussions with some defendants about their thoughts on
25 whether they would like to resolve this case short of trial,

1 it would be our hope that we postpone selecting the jury
2 trial groupings between July and September until a status
3 hearing in, say, 30 days from today. We think that that
4 would be productive and would allow the Court to make a more
5 informed decision about whom to place in which trial
6 groupings, and the government certainly as well, that would
7 be our request, that we could have about 30 days, 30 to
8 45 days, to see where we are, both in terms of the pandemic
9 and the number of defendants that is the ceiling for one
10 trial, and also so we can have a better sense of, frankly,
11 how many defendants we are likely to have.

12 (Telephone beeping)

13 THE COURT: I don't know. That's happened a few
14 times.

15 Sorry about that, everybody; I hope your ears were
16 not shattered. I noticed Mr. Fischer jumped back, so I'm
17 particularly concerned about him.

18 Okay. Well, that -- look, I gathered that would
19 be the answer today. I will say the following, which is,
20 I'm happy to put this out 30 days. That'll bring us to
21 early April. That'll put us about 60 days out -- I'm sorry,
22 90 days from the trial.

23 But I do expect that at that point, we're going to
24 have to decide who's going to be in that trial or not. And
25 that's not meant to suggest to any defendant whether you

1 ought to resolve this case or not; that's entirely up to you
2 obviously. But at some point, we're going to need to make a
3 decision about who's going to be in that first group.

4 In the interim, I've been making inquiries about
5 whether we can reserve our Ceremonial Courtroom for the
6 length of the trial, which would enable us to -- am I
7 getting --

8 COURTROOM DEPUTY: We don't know yet.

9 THE COURT: We don't know yet.

10 We'll have an answer on that question, hopefully,
11 in short order.

12 But if we did hold the trial in the Ceremonial
13 Courtroom, it would enable us to expand the number of
14 defendants that could be tried at one time, and we'll get
15 that information to you all as soon as we have it available
16 to us.

17 MS. RAKOCZY: Your Honor, I apologize for
18 interrupting, but I was told that the public line may have
19 cut out.

20 (Pause)

21 COURTROOM DEPUTY: Your Honor, I believe it's now
22 reconnected.

23 THE COURT: It's now reconnected. Okay.

24 I don't know when it was disconnected, but I'll
25 just repeat what I said for the benefit of anybody that may

1 be listening, and that is:

2 It is my expectation that by the time we are
3 together next in early April, that we'll have to make a
4 decision about who will be in that first trial. None of
5 that is meant to pressure any defendant or to suggest to any
6 defendant that they need to enter a plea before that date;
7 that's a decision left between each defendant, their
8 counsel, and the government. But this is just, frankly, as
9 an administrative matter, we need to make a determination as
10 to who's going to go in July and how many people are going
11 to go in July and do that in short order. Okay.

12 Next thing on my list is to turn to the defense
13 counsel.

14 And is there anything else from the government
15 before I do that?

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

17 THE COURT: All right.

18 And as we go down the list, I'd like each counsel
19 to just let me know or confirm that you have -- now have
20 access to both databases, which would mean you have your
21 license in hand both for Evidence.com and Relativity.com.

22 If I remember correctly, at the last hearing,
23 there were a few who did not have access to Evidence.com,
24 and a greater number who were still working to get access to
25 Relativity. So if, in your presentations, you would just

1 address those two inquiries.

2 So why don't we start with Mr. Bright and
3 Mr. Linder on behalf of Mr. Rhodes.

4 MR. LINDER: Yes, Your Honor.

5 THE COURT: And if I can just -- and obviously
6 bring up anything else you'd like. It's not just limited to
7 those two subjects.

8 MR. LINDER: Sure. Thank you.

9 As far as Relativity, we have not been able to get
10 our license yet. And there are some other defense counsel,
11 when you get to them, that will say they've had issues
12 getting on to that also. We -- yeah, it's just been
13 difficult trying to get access to that.

14 Now, Ms. Rakoczy is providing us all the discovery
15 she can, but we don't have access to that platform.

16 As she mentioned, there's still devices that our
17 client hasn't run yet. So we've got issues with the time of
18 how -- if we think we're going to be ready in July or not;
19 I know we're going to push to do that. But not having
20 access to this platform yet has been kind of a burden.

21 And we are bringing an associate to start Monday
22 to just work on -- Mr. Bright and I are -- to work just on
23 this case. So hopefully that can resolve itself sooner
24 rather than later. But we're kind of in that kind of
25 quandary right now.

1 THE COURT: So, Mr. Linder, when you say you've
2 not yet received your license, have you applied for it and
3 it's in somebody else's hands or have you not put in an
4 application yet?

5 MR. LINDER: No. I believe our paralegal put in
6 an application, it just hasn't made its way all through the
7 process yet.

8 And you'll hear from other defense counsel here
9 who've had the same issue.

10 THE COURT: Okay.

11 MR. LINDER: I think a couple others who have the
12 same issue.

13 THE COURT: All right.

14 And this is just for my own information, because
15 what I plan to do after this is collect all the names of
16 counsel who have not yet received their licenses and make an
17 inquiry to figure out what the status of that is and get
18 back to you all.

19 So have both you and Mr. Linder -- I'm sorry, you
20 and Mr. Bright applied separately for licenses?

21 MR. LINDER: Just my paralegal, Your Honor.

22 THE COURT: Just your paralegal.

23 MR. LINDER: We work in the same office suite.

24 THE COURT: Okay.

25 MR. BRIGHT: Despite the appearance, Your Honor,

1 Mr. Linder and I are actually about 30 feet apart right now.

2 THE COURT: Okay.

3 It may be helpful, as we go through this, and I'm
4 asking for the information now, for those of you who do not
5 have your licenses to just email my Courtroom Deputy as to
6 whose name the license was put in. I'm not going to
7 necessarily assume the license was applied for and in the
8 name of counsel; it's possible it may be the law firm or
9 only the paralegal. But in any event, if you would just
10 email the name of the license application it went in on,
11 that way we can specify exactly which licenses are still
12 outstanding and get that information.

13 Okay. Anything else you want to add, Mr. Linder?

14 MR. LINDER: Not on that issue, Your Honor.

15 THE COURT: Okay.

16 Anything else other than the platform issue?

17 MR. LINDER: No.

18 Just the timing, the scheduling. But I think your
19 desire and Ms. Rakoczy's desire to kind of address that in a
20 month would work.

21 I know that the defense -- the group here, we talk
22 frequently, and there are some of us who have concerns about
23 being able to really be ready by July 11th, being that we
24 still have, as Ms. Rakoczy has informed this Court -- it may
25 be another month before we even have the rest of the

1 evidence, and that's put us near April, and that's only
2 90 days out from the trial. And we don't know, once we
3 review that, then which witnesses we're going to have to go
4 out and talk to.

5 In addition, most of us would like to have our own
6 clients' devices run by our own experts before the trial,
7 and I think we have that right. And so once the government
8 finished doing that, we need them back and be able to run
9 them.

10 So there's just some timing issues, but
11 I understand the Court would like to wait a month, so that
12 doesn't bother me in the least.

13 THE COURT: Okay.

14 Let me just say this now, which is that if this --
15 at least the first phase of this case doesn't get tried in
16 July, it's not going to be tried for a while.

17 You know, as a result of these prosecutions and
18 other trials, there is, on my calendar, nothing available
19 for a four-week trial until December.

20 MR. LINDER: Well, we've got the September --

21 THE COURT: So there's -- I should qualify that to
22 say that I've got the October -- I mean, the September
23 dates, those are set aside.

24 MR. LINDER: Right.

25 THE COURT: But other than those dates, there's

1 nothing available for a four-week trial until December at
2 the earliest.

3 MR. LINDER: I understand.

4 MR. BRIGHT: If I can confer, discussions that
5 Mr. Linder and I have had with the others, based on the
6 timeline that the government has laid out and everything
7 Mr. Linder has mentioned, I don't see for us why the
8 September 26th date wouldn't be -- would be a problem.
9 I think those two extra months, those extra 60, roughly a
10 bit more than that, days would be more than sufficient for
11 us.

12 THE COURT: Okay.

13 And, look, I am -- I'll just tell you. I am more
14 sensitive to the concern for counsel for Mr. Rhodes and
15 Mr. Vallejo, who've been in this case for far less time than
16 the others. I appreciate also that even the others have not
17 had access to all the evidence and it's been a rolling
18 production and taken some time. But, you know, the other
19 defendants who were in the Caldwell case have certainly had
20 a head start. So I'm just making that observation.

21 Okay. Let me turn next to Mr. Moseley on behalf
22 of Mr. Meggs.

23 MR. MOSELEY: Well, on the scheduling issue,
24 I know that it's his personal desire not to delay, but
25 I can't disagree with the analysis that others have.

1 I think his vote as an individual would be to go to trial as
2 soon as possible, but the concerns that we have are the
3 same.

4 I am personally focused, I think, on wanting to
5 try to streamline and solve any problems we have that are
6 causing the delay, rather than focus just on a date, so that
7 we don't end up where there's more -- you know, the problem
8 doesn't get fixed or things like that. But I think we did
9 have a good discussion about this, and like it or not, that
10 may be the right way to look at it.

11 If I can make just a -- two tiny little things.
12 We do have our request for Mr. Meggs' iPhones back and other
13 things. Some things were delivered, but it's been 10
14 months. I think it would be, I think, good preparation for
15 everybody, as, Mr. Linder, I think, mentioned, that instead
16 of going through the filter of all this processing and
17 everything, if we can look at his Signal chats and text
18 messages and everything else directly, that would be a great
19 benefit to our trial preparation, rather than waiting for it
20 to come through this rather busy pipeline through the phone.
21 So we do have outstanding requests for that back up for ten
22 months, and I think a lot of other people do, too.

23 THE COURT: So, Ms. Rakoczy, let me ask. I mean,
24 to the extent that individual counsel have requested access
25 to the data on their clients' phones or other devices, is

1 the government prepared to simply, you know, image those
2 devices and turn that over wholesale so that defense counsel
3 doesn't have to wait for the filter process and the scoping
4 process? I mean, that doesn't seem like an unreasonable
5 demand -- or request.

6 MS. RAKOCZY: Your Honor, the government provided
7 the complete, unfiltered, unscoped forensic extraction from
8 all the defendants' cell phones to the defendants very early
9 on and basically as soon as the devices were processed.

10 So for some of the defendants arrested early on,
11 I believe there were production in June and July of that
12 data. And then as defendants were arrested later, we've
13 been trying to provide those on a rolling basis to
14 defendants who've been arrested later. And so in terms of
15 having that data, I believe the defense has that.

16 THE COURT: Okay.

17 MS. RAKOCZY: In terms of the actual physical
18 devices themselves, we have turned over -- we've turned back
19 a number of devices that we've been requested to return.
20 With respect to the cellular telephones from which we have
21 derived significant evidence, we have to date asked to
22 retain those devices because of the potential need to either
23 reprocess, in the event that there have been technological
24 advancements that would help us to extract data that wasn't
25 previously extractable, or to maintain our ability to,

1 without any challenges, introduce the evidence from these
2 devices and make sure we can properly authentic them at the
3 time of trial.

4 THE COURT: Okay.

5 Look, I mean, I think it's -- let me sort of make
6 two observations; one is, it certainly makes sense to me
7 that the government would want to hold on to the actual
8 physical device for chain-of-evidence purposes and the like.
9 At the same time, the government certainly has the
10 capability of imaging those devices and turning them over to
11 defense counsel. And it sounds like most of you should have
12 those, perhaps with the exception of Mr. Vallejo and
13 Mr. Rhodes' counsel.

14 If the request is to actually have the physical
15 device and mirror that device, you know, that's something
16 you're going to have to negotiate with the government; and
17 if I need to get involved, I'll get involved.

18 But I don't think it's -- it's not the least bit
19 unusual, it seems to me, to mirror any seized device and for
20 defense to operate off of the mirrored -- what's been
21 mirrored, as opposed to the actual device itself, and it
22 makes a lot of sense, for a whole host of reasons, to do it
23 that way.

24 MR. LINDER: Your Honor, may I speak on behalf of
25 Mr. Rhodes on this issue?

1 THE COURT: Sure.

2 MR. LINDER: When we -- and I've done a lot of
3 these, as most of these lawyers have, where you have this
4 cell phone data.

5 When this case is primarily being prosecuted based
6 on communications of my client, Mr. Rhodes, with these other
7 co-defendants via instant messaging, text, whatever, all
8 from his phone, it makes sense for us to be able to have it
9 back to do our own analysis of it, have our expert do that,
10 and for us to be able to -- and we would stipulate to a
11 chain of custody and return the phone after we did -- we
12 don't have any problems doing that. But when that is the
13 bulk -- that's the government's case against my client, is
14 his communications with his co-conspirators or co-defendants
15 or whatever you want to call them, everybody here.

16 So I think we need the device back, we need to be
17 able to have it analyzed, I need to go have my client look
18 at it, rather than a stack of paper from a cell drag report,
19 and him to tell me, I used this here, this here. And if --
20 can I have a real-time communication timeline from his
21 phone, that you can't see that when you're looking at paper
22 records. It's a lot more effective to have the device, to
23 go through that with my client, than look at a stack of
24 papers.

25 THE COURT: Well --

1 MR. MOSELEY: Your Honor?

2 THE COURT: Hang on.

3 You know, I don't understand the government to
4 have produced to you a stack of papers. I understand
5 they've produced to you a mirror image of what is contained
6 on the device; in other words, it should be -- I may be
7 mistaken, but that's what I understood Ms. Rakoczy to
8 suggest, is that there was a mirror image of the device
9 provided to most defense counsel, other than, perhaps, you,
10 at this point, Mr. Linder and Mr. Peed.

11 MR. LINDER: I've never -- maybe I'm confused.

12 Mr. Peed and I have talked about Cellebrite
13 before. It's been mirroring phones for the government.

14 The Cellebrite reports are downloadable paper
15 stuff of what's contained on the phone. I've never received
16 a mirror-copied phone that I could use that looks like my
17 client's phone. If somebody is going to give me that,
18 that's great. I need to be able -- I could have a phone
19 that I could go with my client, he could have the apps on
20 it, the messages, and all the stuff, and we could go through
21 it.

22 If the government wants to give me another phone,
23 that's great, but I mean, I need a device or I think my
24 client has a right to have a device or his device or one
25 that's a mirrored copy of that that we could use to go

1 through.

2 MR. MOSELEY: Your Honor --

3 THE COURT: Hang on for a second.

4 Ms. Rakoczy, could you just help clarify for me
5 what's been provided?

6 It wasn't my expectation that you would sort of
7 take a blank phone and put all the data on a blank phone.
8 But I would have thought you were saying is that, on a hard
9 drive, essentially the data that was on the phone was put on
10 to a hard drive and that you could then access that data in
11 that manner?

12 MS. RAKOCZY: I am far from a technical expert,
13 Your Honor. But what has been produced are the data that
14 was forensically extracted from the phone in a file that's
15 called a UFDR file. That file is readable through a program
16 called Cellebrite, so we also provided a copy of that
17 software to the defense, and that's the way that they're
18 reviewing it.

19 I believe that a defense technical expert could do
20 whatever they'd like to do with that UFDR report, whether
21 they want to look at it in Cellebrite or produce it in some
22 other fashion.

23 But I am relatively confident that if for some
24 reason the UFDR production is something that's one step away
25 from an exact mirrored forensic image, I'm confident it was

1 produced from such a thing and that such a thing also exists
2 in the FBI CART holdings, and could also be produced to the
3 defense.

4 But I thought that the UFDR file was essentially a
5 forensic mirrored or extraction, it's just a version that is
6 readable in a program called Cellebrite.

7 THE COURT: Okay.

8 All right. Well, look, I guess the bottom line is
9 that I will leave it all to you to sort this out. It's
10 helpful to have the issue highlighted. But, you know, if --
11 hopefully, it's something you all can get resolved in short
12 order and certainly by the next status conference.

13 All right. Mr. Moseley, anything else you'd like
14 to add before I turn to Mr. Geyer?

15 MR. MOSELEY: Well, other than -- it's probably --
16 this is getting into the weeds and this is probably
17 premature, because I do think we do have to brief it and
18 we're trying to diagnose and list all the concerns.

19 But the main issue at present is that we don't
20 have the ability -- and, again, I'm trying to emphasize that
21 I blame software salesmen for the government on this. But
22 if we don't have the ability to go in and look and say, this
23 file is what I want to look at, as opposed to downloading a
24 gigantic folder, then trying to uncompress it, then we find
25 there are transmission errors over the Internet, and it's

1 not openable.

2 And it's not something where if I'm home I can
3 say, okay, here's the data I want to look at direct to that
4 file or that message. It's not comparable.

5 And we will brief -- you know, I think we briefed
6 the Court on some of those things. As I said, I don't want
7 to end up at any arbitrary trial date and say, oops, we're
8 still not ready. So I do think we will need to brief them.

9 But I just want to comment that it's not like we
10 can go to a computer and say, this file interests me, I want
11 to just open that file. It's not coming through like that.

12 THE COURT: All right.

13 Well, if you want to brief something, you need to
14 do it soon. I mean, I just -- you know, it's a little bit
15 of a surprise to me that, at least with respect to those
16 defendants who have received the kind of data that
17 Ms. Rakoczy has described, that we haven't worked through
18 these issues sooner.

19 I understand there's still more devices, et
20 cetera. But for those of you who have had this data for
21 some number of months, you know, this is something that you
22 should have raised with me sooner or raised with Ms. Rakoczy
23 sooner. Maybe you have and it's only coming to my attention
24 for the first time, but be that as it may.

25 Ms. Rakoczy, can you tell me what your current

1 access is to Evidence.com and Relativity, whether you've
2 secured licenses from both platforms?

3 MR. MOSELEY: We have Evidence.com, and I believe
4 that Kelly Meggs and others are looking at it even in the
5 CTF, the D.C. jail, and that we're producing some good
6 results.

7 I'm not -- I think that I had sent in a Relativity
8 application. I'm going to redo that just to make sure. And
9 it strikes me, but I'm not sure I see it in my sent folder.
10 So I will do that again, but I've been focused mostly on
11 that and trying to absorb that.

12 THE COURT: Okay.

13 If you haven't put your license request in, please
14 do so. I mean, I just -- I'm not going to be sympathetic to
15 pleas for more time because you haven't had access to the
16 database because you haven't put your request in for a
17 license. I'm just not. I mean --

18 MR. MOSELEY: Right, but I have to exploit what
19 I've got and analyze this too and then turn to the next
20 extraction.

21 THE COURT: No. I understand that. I understand
22 that. But the first step is getting the license.

23 Okay. Mr. Geyer on behalf of Mr. Harrelson.

24 MR. GEYER: Yes, good afternoon, Your Honor.

25 I'm on both Relativity and Evidence.com. Both

1 seem to be operating satisfactorily.

2 There's an issue with -- well, I mean, it all has
3 to be populated, but assuming it gets populated in a
4 reasonable amount of time, it seems like it's somewhat
5 functional.

6 The way that the -- and I don't want to get out in
7 front of Ms. Rakoczy, because I mentioned this yesterday
8 about the names of the officers are deleted. So when you're
9 listening to tape recordings of interviews of officers, you
10 just can't even make heads or tails out of it. It's a big
11 mess. It's hard to know what your point of reference is,
12 it's hard to know whether a whited-out reference refers to a
13 new character that's introduced to the story or an old one.
14 It's really unworkable.

15 And this is really important for the defense,
16 because, as we all know, based on the investigations that
17 were done, there were police officers who were inviting
18 participants into restricted areas. This is
19 well-documented. And unfortunately, a lot of this I didn't
20 find from the government submissions, I had to go and hunt
21 to find it and have people in the public, members of the
22 public, bring it to my attention.

23 For instance, in the front of the east steps,
24 there's an officer that has a very loud conversation,
25 bellowing it out to the entire group that's clustered in

1 front of the front steps, saying that he's going to check
2 with his supervisors to see about getting permission to let
3 everybody up on the front steps. And then Pastor Bill takes
4 his bullhorn and he bellows it out to the entire other
5 crowd. And then another pastor, another plant, bellows that
6 out all over the crowd.

7 We have full facial scans of these people. For
8 some reason, no one even knows they exist. The government
9 doesn't have any interest in who they might be. So the
10 problem is we have plenty of time so long as the government
11 is going to help me get the information about who it was
12 that pre-texted, escorted, ushered by clients out of the
13 steps and then set up an ambush in front of the Columbus
14 door, and had the doors open from the inside. They're
15 well-aware of this.

16 And I apologize that this is just coming to my
17 attention. I learned about this the night before, the eve
18 of a detention hearing, where the French videos, which
19 remains under seal, with full facial scans of people who are
20 extraordinarily culpable, doing all kinds of things that are
21 clearly illegal, from breaching barriers --

22 THE COURT: So, let me, if I could interrupt you,
23 Mr. Geyer.

24 I mean, look, I think the -- I'm not sure what the
25 ask is here, other than, you know, you're demanding

1 information from the government, and if you're not getting
2 it, you'll have to let me know that, okay?

3 MR. GEYER: Yes.

4 And, by the way, in fairness to the government,
5 I only just started to bring this to their attention in an
6 effort to confer. I don't know what their position is. For
7 all I know, they're going to give me a blank check and help
8 me identify these people so we can get them in to be
9 witnesses.

10 But, you know, so long as we get assistance with
11 reviewing the geofencing information, we actually get cell
12 phone information from other charged defendants, some of
13 whom are dealt with very leniently with large gaps between
14 their identification around January, not charged until
15 November or December, very, very strange, some charged
16 misdemeanors who were extraordinary culpable, as long as we
17 get assistance, yeah, we're good for July --

18 THE COURT: Okay.

19 MR. GEYER: -- and we'll be ready.

20 THE COURT: All right.

21 Okay. Let me turn to Mr. Crisp then on behalf
22 of -- for Ms. Watkins.

23 MR. CRISP: I do have access with Relativity, as
24 well as Evidence.com.

25 I would note that I was not included in one of

1 the -- in the other attorneys who were recent newcomers to
2 the game here. I've only been in about 30 days, give or
3 take. But other than that, we have had a chance and we did,
4 in fact, have an opportunity to tour the Capitol recently as
5 well.

6 At this point, we do have what I believe to be are
7 mirror-image copies of the devices, and I'm confirming that
8 with my internal IT guy. Right now, things are, from a
9 recent entry, progressing, and I'm comfortable with where
10 things are at this point.

11 But I don't know if I would want to request a July
12 or September, but that doesn't seem like an issue we need to
13 address at the present moment. So thank you.

14 THE COURT: Thank you, Mr. Crisp.

15 Mr. Guillaume on behalf of Mr. Minuta.

16 MR. GUILLAUME: Good afternoon, Your Honor.

17 I have access to Evidence.com, and I'm just
18 waiting on a confirmation. I have received an indication
19 that they've received my application for license for
20 Relativity. And I need to, apparently, just file some
21 more -- send a return email and then I'll be on that in a
22 matter of days or no time at all.

23 Your Honor, just with respect to the scheduling,
24 I would echo some of the other comments, in particular,
25 Mr. Rhodes' attorney, with respect to my client and the

1 potential trial date. Although we are working diligently to
2 be prepared for July, you know, if the Court were to decide
3 to hold this case or at least have Mr. Minuta as part of
4 this case in September, we obviously would not object to
5 that. With that being said, we are working diligently
6 toward the July date, and I guess we'll kind of cross that
7 bridge when we come to it.

8 As far as just something else, Your Honor,
9 I wanted to flag for the Court, and maybe this is a
10 conversation better had for the next call, but some of the
11 attorneys were talking with respect to whenever we do have
12 the trial, the potential -- and the Court probably does not
13 have answers to this now -- to have paralegals and/or other
14 assistants in court with the defense team and how that will
15 look. And I know Your Honor probably doesn't have any
16 specific input now, but it's an issue that we've been
17 discussing and I think one that I would be requesting on
18 behalf of my client, we're going to need to have some
19 paralegal either in the courtroom or readily accessible
20 during trial.

21 THE COURT: Sure.

22 MR. GUILLAUME: So that --

23 THE COURT: I would have anticipated that,
24 Mr. Guillaume. And that'll be one of the things that we'll
25 be looking into in determining sort of our max capacity, if

1 we can get that Ceremonial Courtroom for the time that we
2 need it, because I understand that all of you may not have
3 the facility with trial software and the like that you can
4 operate those things individually.

5 So it wouldn't surprise me for there to be
6 paralegals, although, you know, and maybe you've thought
7 about this already, but to the extent that you can share a
8 paralegal or two to operate whatever trial software that you
9 want to use, that might limit, reduce the number of people
10 that we have in the courtroom.

11 MR. GUILLAUME: Yes. Thank you, Your Honor.

12 THE COURT: All right.

13 Ms. Halim on behalf of Mr. Hackett?

14 MS. HALIM: Good afternoon, Your Honor.

15 I have had access to Evidence.com for several
16 months now. I'll be candid with the Court, I did not find
17 it useful. I myself was not able to find an efficient way
18 to review the massive quantity of digital evidence that's on
19 Evidence.com; it's mostly the videos.

20 I spoke with Ms. Rakoczy some bit ago, and she
21 informed me that all of the material that is on Evidence.com
22 will be on Relativity. So I sort of abandoned Evidence.com
23 because it was unworkable, as it wasn't searchable; there
24 was no easy way to find relevant videos beyond just clicking
25 and playing massive files.

1 THE COURT: I'm sorry to interrupt you.

2 Maybe -- that's different than my understanding of
3 how this is set up. I thought all the video evidence would
4 only be on Evidence.com. Is that -- because I understood
5 that Relativity was not a platform that could maintain all
6 of the video evidence. Am I mistaken about that?

7 MS. HALIM: Perhaps I'm mistaken. I was of the
8 understanding that Relativity was going to encompass both he
9 video as well as the global discovery production.

10 And that leads me to my second point, which is
11 that I have had some trouble getting my Relativity license.
12 I escalated this week with both the contacts at the
13 Defenders, as well as individuals at Deloitte. So as of
14 this morning, I was provided my log-in credentials but I've
15 not had yet had the opportunity to go in and make sure that
16 it works. So I haven't used Relativity yet, but I do have
17 log-in credentials now and a license.

18 And perhaps if Ms. Rakoczy or someone else could
19 clarify, I was under the impression that I was going to be
20 able to view sort of everything on Relativity, a one-stop
21 shopping, so to speak.

22 MS. RAKOCZY: Your Honor, if I may, I think --
23 I apologize if I confused Ms. Halim. But I don't think
24 that's right, that everything on Evidence.com will be on
25 Relativity.

1 I think the bulk of what is on Evidence.com and
2 exclusively on Evidence.com is body-worn camera footage and
3 Capitol surveillance footage, and that I do not believe will
4 be accessible on Relativity.

5 I do believe that the scoped devices, I believe
6 that the entirety of that data will be available on
7 Relativity, including some video and image files, because
8 I think there's just less of it than in the mass amount of
9 body-worn camera footage and Capitol surveillance footage
10 and other large bodies of video.

11 So a lot of the data that would be most easily
12 digestible by searching through a tool like Relativity will
13 be available on Relativity. But I do not think that things
14 like the Capitol surveillance video or the body-worn camera
15 footage will be available through Relativity. I think we've
16 attempted to provide tools to help sort through that data on
17 Evidence.com and we're happy certainly to work on this team
18 of attorneys to try to help the defense in identifying
19 relevant items on Evidence.com. But I do think it's
20 incorrect to say that everything on Evidence.com will be on
21 Relativity. I think that those two platforms exist because
22 some things are better hosted on Evidence.com.

23 MS. HALIM: And thank you for that. I'm sure that
24 it was my mistake.

25 And I will say the government, for the most part,

1 had been very helpful as it pertains to answering questions
2 in a very timely and prompt manner and is pointing me in
3 useful directions.

4 That being said, the pace and the quantity, the
5 volume of the productions, utilizing different methods of
6 producing the volume of material, I just want to flag for
7 the Court that although I have been keeping up with
8 inventorying and indexing what's coming in, I haven't
9 necessarily had an opportunity to click on it, view it
10 myself to make sure that it downloaded properly, that the
11 content is there.

12 I mean, it's been several months of literally just
13 getting almost daily, certainly weekly productions. We get
14 productions through USAFx, which is a file-sharing system,
15 which puts the onus on the recipient to then download that
16 material. Most of it can't go -- well, much of it can
17 download directly to a hard drive and computer, but a lot of
18 it, because of the volume, has to be external hard drives.
19 That's one source of information.

20 The Evidence.com, which I now realize I do have to
21 go back to and find a workable way to get through all that
22 material, I have not yet experienced the Relativity
23 database. I am very hopeful that it's going to be a
24 user-friendly platform to quickly get through a lot of
25 materials. I'm signed up for a training session next

1 Tuesday, March 8th, and so I certainly will bring to the
2 Court's attention immediately if I have any problems.

3 But I just want to flag for the Court that
4 although we have had access to the discovery because the
5 government is producing it and I believe in good faith,
6 I have no reason to suggest otherwise, but just because of
7 the massive volume and the difficulties with the different
8 types of materials, just because we've had it doesn't mean
9 we've necessarily had an opportunity to really review it at
10 length.

11 I'd also like to touch briefly on the Cellebrite
12 cell phone extractions, the mirroring process, so to speak,
13 that USCR process that Ms. Rakoczy referenced earlier, it is
14 a complete copy of a cell phone, like in some way, but
15 you're taking a very interactive electronic device and
16 basically converting that into text or code that can be read
17 by the Cellebrite program.

18 So as Mr. Rhodes' counsel said, it is like having
19 a stack of paper to go through a cell phone, and that's not
20 easy. Whether you're looking at it on your computer or
21 whether you're looking at it on a piece of paper, it's very
22 different from being on a device where you click on the
23 message app, for example, and you get messages.

24 You know, with the Cellebrite reports, you have to
25 search for the message and then there's a lot of

1 deciphering, who's the sender, who's the recipient.

2 So I just say all of that to flag for the Court
3 that, yes, we have a lot of materials, we have had a lot of
4 materials for a long time, but it has been, and I don't
5 think I'm using hyperbole to say, it's been a full-time job
6 just navigating what we have, where it's from, what it
7 pertains to, is it global, is it case-specific.

8 And so I will keep the Court apprised if I believe
9 there are any issues with getting to the meat and the
10 substance as I prepare for trial. But that could be a
11 potential reason that the Court hasn't heard about all of
12 this before, is that even though we've had it, it's not
13 been -- it's not necessarily been digested.

14 THE COURT: Okay.

15 Understood. All right. Let me turn to
16 Mr. Weinberg on behalf of Mr. Moerschel.

17 MR. WEINBERG: Good morning, Your Honor.
18 Scott Weinberg for Mr. Moerschel.

19 Judge, we have access to Evidence.com. I've been
20 in contact with Deloitte; they sent me an email on Tuesday;
21 that they're going to get my account started, so I've filed
22 the licensing paperwork, just waiting for the response.

23 Judge, I would just only echo the other concerns
24 of the other attorneys before we spoke. There is a lot of
25 discovery.

1 I will be ready for July if the Court sets us for
2 July. I'd also be ready and would prefer the September
3 date. But either way, we'll be ready. And that's all
4 I have, Your Honor.

5 THE COURT: Okay.

6 Mr. Ulrich?

7 I'm sorry, Mr. Balbo on behalf of Mr. Ulrich?

8 MR. BALBO: Yes. Good afternoon, Your Honor.

9 I would echo what co-counsel has said in this
10 case, my colleagues.

11 I am signed up with Evidence.com. I've been
12 making my way through Evidence.com. Relativity.com, my
13 application is pending. I was told that I will have access
14 in time for a training session which is scheduled for next
15 week.

16 The government has been responsive. Ms. Rakoczy
17 has been very responsive whenever I've sent her requests.
18 In fact, I'm sending back one of the hard drives they had
19 sent before just because I have everything updated that has
20 been posted to USAfx.

21 I do find that it is difficult when the government
22 updates USAfx, it's difficult to ascertain what is the new
23 material, and then sometimes you end up re-downloading
24 things that you've downloaded before, and that makes the
25 process more cumbersome.

1 So that's why I'm sending her that hard drive back
2 so maybe I can get a fresh copy, make sure I have everything
3 up to this point.

4 I do think the big issue, Judge, is the ability to
5 have full functionality with Relativity.com database. I am
6 concerned that other defense counsel have mentioned that
7 it's not necessarily populated with everything yet. I think
8 that if it's fully functional, I think that that would solve
9 much of our problems, that we can search for what applies to
10 our respective clients. So that is, I think, the greatest
11 issue.

12 I understand the government has an ongoing duty to
13 turn over discovery, but I am concerned that we're hearing
14 about another one to two months with some additional
15 information, so that gives me some pause as to how much is
16 still left out there.

17 If the Court directs us to go to trial in July,
18 I guess I would echo what Mr. Weinberg said, that we can be
19 ready to go there, but I am just concerned about how much
20 discovery might still be outstanding and whether or not
21 Relativity will have the full functionality to make our
22 searches more efficient, Your Honor. Those are the concerns
23 that I have.

24 THE COURT: Okay. Thank you, Mr. Balbo.

25 Mr. Fischer on behalf of Mr. Caldwell.

1 MR. FISCHER: Thank you, Your Honor.

2 I do have a number of issues to bring up based
3 on -- the group has had some meetings, and I'm going to
4 raise some issues on behalf of the group.

5 I'd first point out that I have applied for my
6 licenses. I've been on Relativity. Your Honor, I've gone
7 through -- basically -- Your Honor, I would basically say,
8 it's difficult, I'm listening to the attorneys speak and
9 I've heard the attorneys in the other case, and I think it's
10 been very difficult for counsel to put into words how
11 difficult this discovery process is.

12 And I know the Court probably looks at this, and
13 typically when lawyers complain about voluminous discovery,
14 it's, you know, we have busy trial calendars and lots of
15 discovery and cases. But this is not a situation where the
16 defense attorneys are dragging their feet.

17 Your Honor, if this was a situation 15 years ago
18 where we used to have boxes and boxes of discovery dropped
19 off at our office and we had paper copies and we had DVDs to
20 look at, all the discovery would be reviewed, and we'd be
21 ready for trial, I'd be ready for trial tomorrow.

22 Your Honor, Mr. Caldwell, among other things, he
23 actually is a former computer software developer. And he
24 finds what the government's turning over -- they're turning
25 over lots of stuff, they're being very cooperative,

1 Ms. Rakoczy is being very responsive, we have no problems
2 with her responsiveness.

3 But to give the Court an example, the cell phones.
4 It comes over on Cellebrite. Every time we have to download
5 or try to look at my client's cell phone data, it takes two
6 to three hours for it to load up on a computer. And we've
7 tried three different computers. I bought a computer just
8 to try to put it up. I've gone to Best Buy, and the
9 Geek Squad can't get it down any faster. And this is for
10 most of the discovery.

11 And I have a feeling, Your Honor, the attorneys --
12 a lot of attorneys don't necessarily want to basically
13 confess to, perhaps, the obvious -- maybe the issues that
14 we're having because they don't want to, perhaps, look
15 technologically -- as technologically ignorant as I am, but
16 I actually have a computer software developer, former, as my
17 client, and we are finding it extremely difficult.

18 You get -- you have things sent over on USAfx.
19 So to give the Court another example --

20 THE COURT: So, Mr. Fischer, you'll forgive me for
21 interrupting.

22 Some of your colleagues have expressed these same
23 sentiments, and so I understand them. And I guess the
24 question is what all of this is going to mean. I don't know
25 that I can resolve that today.

1 But if -- because I've actually got the other case
2 that's supposed to start at 2:00 and it's now 2:05. And so
3 if there are things you want to raise with me that no one
4 else has raised, I'm happy to hear that.

5 MR. FISCHER: Thank you, Your Honor. I will move
6 along.

7 On the issue -- and I want to be -- if I could be
8 very brief on the need why we need to have Mr. Caldwell's
9 cell phone. Because this is a conspiracy allegation, we
10 need to know things like when Mr. Caldwell, to any extent,
11 was on a telegraph app, on a Signal app, these are not
12 things that we can find out through a copy of the phone, we
13 need the actual phone to find out that information. That's
14 not part of the discovery, number one. We don't get
15 voicemails, we don't find out whether voicemails were
16 answered or not answered, which is very important to see if
17 he was in contact with certain people the government is
18 characterizing as co-conspirators.

19 I'd also point out, Your Honor, through discovery,
20 we're also concerned that -- we're concerned that my
21 client's phone -- that it may have been -- being wiretapped
22 without a warrant. And we believe that that's the case
23 based on information that we have reviewed in discovery
24 regarding my client's wife's cell phone, that it may have
25 been wiretapped without a warrant, and we need

1 Mr. Caldwell's phone to make a determination as to whether
2 that took place. So those are additional concerns.

3 Your Honor, finally I would make the final point
4 in talking with counsel. Your Honor, we have -- in this
5 trial group, I think we have two court-appointed attorneys,
6 and I believe the rest of the attorneys are, like myself,
7 privately retained. For all intents and purposes, even the
8 defendants who have privately retained attorneys, for all
9 intents and purposes, are indigent because, quite frankly,
10 there's no way that any person could pay the potential legal
11 bills in a case like this.

12 Your Honor, I think if the Court wants to have a
13 trial date, and I don't see how July is really practical for
14 my client and these other attorneys, but if the Court wants
15 a trial date as quickly as possible, I believe there needs
16 to be a discussion regarding, perhaps, funding for
17 paralegals, for a technical expert, perhaps even additional
18 attorneys that are court-appointed to be involved to help
19 the defense team.

20 And I know I talked with the two -- with Ms. Halim
21 and Mr. Guillaume about this, and we raised that issue and
22 I think that's something that we're concerned about, is
23 getting more resources, if we really want to have the
24 ability to have this trial take place in an expeditious
25 fashion.

1 THE COURT: So, Mr. Fischer, let me just say the
2 following, which is that: You are not going to have any
3 obstacle from me if that's something you need and something
4 you're seeking.

5 What I would urge you to do is to get in touch
6 with Mr. Kramer, our Federal Public Defender, and talk to
7 him about what can be done and what can be worked out.

8 You know, it's a little bit outside of my -- I
9 sort of approve the vouchers, but the whole -- the process
10 of who gets appointed, how many get appointed, you know, for
11 what purposes, all of that sort of operates at the first
12 level with him and his office.

13 So what I would urge you all to do, either
14 individually or more likely collectively, is to approach him
15 sooner rather than later and tell him what your needs, what
16 your clients' circumstances are financially and make the
17 case for why CJA funds ought to be made available for this
18 team. And, you know, with his blessing, you know, you're
19 not going to get any pushback from me for that, okay?

20 MR. FISCHER: Thank you, Your Honor; I appreciate
21 the Court's comments.

22 THE COURT: Okay.

23 All right. Let me finally turn to Mr. Peed on
24 behalf of Mr. Vallejo.

25 Mr. Peed.

1 MR. PEED: Good afternoon, Your Honor.

2 I have licenses for both Evidence.com and
3 Relativity; however, there's some sort of mismatch on my
4 Evidence.com account, where no discovery pops up. I think
5 maybe my account is linked to a prior case or something.

6 Relativity has so many steps of verification that
7 each -- there's been a series of one of them not working,
8 and I've been working with technical people. So while
9 I have a license and I have successfully set up the token as
10 one of the issues, I still have not actually gotten into it,
11 but I expect that to be something we can work out with the
12 technical people. That's the status of those two.

13 I appreciate the Court's comments about the
14 relatively late entry of Mr. Vallejo and Mr. Rhodes, and so
15 I would certainly ask to be in at least the September date.

16 THE COURT: Okay.

17 All right. Before we adjourn with respect to
18 everyone, I've got some individual matters to take up with a
19 couple of the defendants.

20 It occurred to me that I don't think I've actually
21 issued a Pretrial Order for the July trial, and I intend to
22 do that by Monday. As to who it applies to, obviously, that
23 remains to be seen, but you all ought to be thinking --
24 moving forward with these dates in mind.

25 The most immediate date that is upcoming is a date

1 for additional Rule 12 motions. And so as was the case in
2 Caldwell, in the earlier case, regardless of which trial you
3 are slotted into, that Rule 12 date, at least as it relates
4 to any global motions, that would be, for example, motions
5 seeking to dismiss any charges or requests with respect to
6 suppression, et cetera, although that may be in a different
7 category, but basically bottom line is that, you know, you
8 don't want to be -- if you end up in a second trial group,
9 I'd urge you to think about what motions you want to file
10 sooner rather than later, because you don't want to be on
11 the end of a decision that I've already made with respect to
12 another motion and not had your opportunity to say your
13 piece. So I'll get that order out by Monday after I've had
14 a chance to chance reflect on the dates. So that will be
15 forthcoming, okay?

16 All right. I just need to -- I need Mr. Rhodes,
17 I need Mr. -- I'm sorry, Mr. Bright and Mr. Linder and
18 Mr. Geyer and Mr. Moseley to just hang on. Everybody
19 else -- oh, sorry, we need to set a next date.

20 MR. PEED: Your Honor, may I make a --

21 THE COURT: Now that the other trial -- I'm sorry?

22 MR. PEED: I just wanted to make a proposal or a
23 request based on what the Court just said about suppression
24 motions and the timetable.

25 From what I understand of the quantity of evidence

1 here, it certainly would be easier for the defense to make a
2 suppression-type motion, with more of a focused proffer from
3 the government of its trial evidence, which, of course, I'm
4 sure will be something that will be in real-time rolling
5 forward.

6 So, you know, I think motions to dismiss, I would
7 propose to the Court, sort of separate those from
8 suppression motions and entertain at least a possibility of
9 future suppression motions as the government's case becomes
10 more focused.

11 THE COURT: Look, I say this to defense counsel in
12 all cases, and I understand the fluid nature of defenses and
13 motions that might need to be filed as a result of things
14 the government does or, frankly, things that occur to the
15 defense later in time.

16 My point is simply this, which is that, to the
17 extent that there are, much like we had in Caldwell, motions
18 challenging the legal sufficiency of charges challenging the
19 constitutionality of statutes, challenging the indictment in
20 other respects, you know, those aren't
21 evidence-dependent-type motions.

22 So I would urge you all to be thinking about those
23 collectively and make those motions collectively, because,
24 as I said, you know, you don't want to be somebody who's on
25 the back end of one of these motions and I've already ruled

1 and I'm unlikely to change my mind, okay?

2 How does April 7th at 1:30 p.m. -- hopefully that
3 works for everyone.

4 JC, do we have time with -- well, I guess we're
5 going to have them here, so it won't matter.

6 MR. BRIGHT: I function from the presumption that
7 that's Eastern Time, correct, sir?

8 THE COURT: Yes, Eastern Time. Yes, Mr. Bright.

9 MR. BRIGHT: Absolutely no problem, Your Honor.

10 THE COURT: Okay.

11 MR. CRISP: Your Honor, this is Jonathan Crisp.

12 I'm scheduled for trial that week in other federal
13 District Court trials in Pennsylvania, so I would not be
14 available during the week of the 4th through the 7th of
15 April.

16 THE COURT: I'm sorry, you're in trial what week?

17 MR. CRISP: The 4th -- the days of 4 through 7
18 April, Judge.

19 My understanding is you said 7 April.

20 THE COURT: Yeah, I did.

21 How about -- I can adjust my schedule around a
22 little bit. How about 10:00 a.m. on the 8th of April?

23 MR. LINDER: That's fine for us, Your Honor.

24 THE COURT: Okay. So 10:00 a.m. on the 8th of
25 April.

1 Mr. Crisp, if your trial runs on to that date,
2 you'll just have to let me know and we'll figure out what to
3 do from there.

4 MR. CRISP: I may have a -- I was going to say, if
5 I could have the Court's permission to have a proxy from my
6 office, another attorney who's working but not entered his
7 appearance, that probably would be fine.

8 THE COURT: That would be fine by me.

9 MR. CRISP: Okay.

10 THE COURT: As long as whoever that is has the
11 authority to speak on your behalf.

12 So everyone other than the three counsel that
13 I just identified is free to leave. Nice to see everybody.
14 We'll see you in about a month.

15 MS. RAKOCZY: Your Honor?

16 MR. BALBO: May I ask a quick question,
17 Your Honor, before we leave?

18 A.J. Balbo for Mr. Ulrich.

19 I believe you addressed this once before. Just
20 out of an abundance of caution, those of us who are in the
21 Caldwell case, all of those motions and the Court's rulings,
22 those all carry over to the Rhodes case; is that correct?

23 THE COURT: That is correct. That's correct.

24 Hang on.

25 (Pause)

1 THE COURT: Sorry, I'm just checking on speedy
2 trial tolling.

3 I'm told we're only tolled through today. Do any
4 defense counsel object to tolling through the next status
5 hearing on April the 11th?

6 MR. LINDER: No, Your Honor.

7 MR. FISCHER: No, Your Honor.

8 THE COURT: Okay.

9 Hearing no objections, I will find that -- and
10 exclude time through April the 8th, as the ends of justice
11 outweigh the interests of the public and the defendants in a
12 speedy trial; specifically, as has been stated quite
13 robustly during this hearing, the government continues to
14 provide discovery to the defense, and the defense continues
15 to make efforts to review that discovery and to share that
16 discovery with their clients and to prepare for trial, and
17 for all of those reasons, as well as to ensure the effective
18 assistance of counsel for trial, the exclusion of time will
19 be -- I will exclude time through April the 8th.

20 Okay. Thank you, everybody.

21 Counsel for Mr. Rhodes, Harrelson, and Meggs,
22 please just hang on and we'll get wrapped up in a moment.

23 Okay. Mr. Linder and Mr. Bright, just quickly two
24 things on behalf of Mr. Rhodes. The first concerns his
25 place of detention. You had asked last time we were

1 together to have him remain in Oklahoma, and what I said to
2 you -- and the government at the time said it did not
3 object.

4 What I said at the time was that I would sort of
5 defer to our Marshals Service on that. And I have made
6 inquiries with them about this multiple times. And what
7 I can tell you is that I am not going to be in a position to
8 grant the request that he stay where he is. And as I said,
9 I'm deferring to our Marshals Service and their reasons for
10 wanting them where they'd like him to be. So that's not
11 something I'll be able to do. And to the extent that there
12 is an order in place to keep him there, I'm going to lift
13 that order, okay?

14 MR. LINDER: Understood.

15 THE COURT: In terms of an issue --

16 MR. LINDER: Ms. Rakoczy and I have spoken about
17 that issue also.

18 THE COURT: I'm sorry, Mr. Linder?

19 MR. LINDER: Ms. Rakoczy and I have spoken about
20 that issue also. We understand.

21 THE COURT: All right. Terrific.

22 One other issue that implicates Mr. Moseley.
23 We had talked about his representation of Mr. Rhodes in
24 connection with the January 6th commission, and perhaps more
25 broadly prior to his arrest. And I know both lawyers on

1 behalf of Mr. Meggs and Mr. Rhodes filed essentially
2 waivers.

3 That's helpful, but I'm not fully -- I would like
4 a more thorough and comprehensive record made of this. And
5 that's for my own purposes. This not a suggestion that
6 either counsel has done anything more than what's required.

7 But as I have done in the past with respect to
8 conflicts that have arisen in this case, there is --
9 I'm going to rely on a conflicts counsel to reach out to
10 government counsel, to defense counsel, who are implicated
11 in all of this -- not implicated, that's the wrong word, but
12 who are -- as to whom this is relevant, and discuss the
13 issues with you, and then, perhaps, have a conversation with
14 your clients to satisfy themselves that they have -- that
15 the clients are fully advised about potential conflicts that
16 might arise as a result of Mr. Moseley's prior
17 representation, maybe even concurrent representation, it's
18 not clear to me the scope of what he's doing, of Mr. Rhodes.
19 So expect phone calls from Andrew Wise of Miller & Chevalier
20 and Mary Lou Soller of Miller & Chevalier as early as next
21 week so that process will move forward, okay?

22 So that's it on behalf of Mr. Rhodes.

23 And if Mr. Linder and Mr. Bright wish to sign off,
24 you are welcome to do so. Thank you, gentlemen.

25 MR. LINDER: Sure.

1 THE COURT: All right.

2 Mr. Geyer, there is a pending motion for review of
3 your client's bond status. Last we were together, you had
4 indicated you wanted to put that on hold, and I just want to
5 make sure that that's still the case?

6 MR. GEYER: Thank you for asking me, Your Honor;
7 I very much appreciate that.

8 What I would propose is that, I've been trying to
9 pull together information for supplemental discovery
10 requests that involves a lot of work reviewing video that,
11 as I mentioned before, only recently came to my attention,
12 and I'm hoping to get some consensus among the defense
13 counsel for judicial economy purposes, among others, and
14 then also try to come up with some kind of a consensus with
15 the government before I file anything. After I'm able to
16 file that, I would take a look at whether I should raise
17 that with the Court again --

18 THE COURT: Okay.

19 MR. GEYER: -- if the Court would be favorably
20 disposed to consider a motion then.

21 THE COURT: Okay.

22 That's fine, Mr. Geyer. I just wanted to make
23 sure that that was not -- that I wasn't supposed to be doing
24 something I'm supposed to do.

25 Okay. Now, that was the only issue I wanted to

1 raise with you, Mr. Geyer, on behalf of Mr. Harrelson.

2 So that leaves Mr. Moseley, and there are a couple
3 of pending motion that Mr. Moseley's filed. The first was
4 the motion for subpoena that we talked about last time we
5 were together. And, Mr. Moseley, you said to me that you
6 were going to file a reply. I don't think one was filed.
7 And so I guess the question to you is, is that still a
8 motion you need for me to consider or are you in a different
9 place than when that motion was filed?

10 MR. MOSELEY: Well, I'm in a different place at
11 least in terms of the fact that it was for a different date.
12 So those would all probably have to be re-done.

13 And so I guess the best thing to do is, because
14 really I don't know at this point what the date is going to
15 be, to call them -- I probably should refile all of that.

16 THE COURT: Okay.

17 All right. Well, I leave it to you to do that
18 then and I'll take that up in due course.

19 The other pending motion that you filed is a
20 motion relating to grand jury evidence, and -- or I
21 shouldn't say grand jury evidence but grand jury minutes,
22 grand jury instructions, essentially anything that's not
23 grand jury testimony is how I interpreted the scope of that
24 motion.

25 You know, I read the motion, Mr. Moseley. And,

1 you know, I'm not convinced that you've made the case, the
2 very high standard of substantial need for the type of grand
3 jury records that you're seeking.

4 I mean, to the extent that there's suggestions of
5 evidentiary discrepancies between what's been alleged or
6 what's on the public record, it seems to me all of that sort
7 of just goes to your defense and isn't necessarily
8 supportive of any -- or indicative of any wrongdoing by
9 government counsel before the grand jury. You know, the
10 disclosure of those type of records is quite rare.

11 I understand that you're getting most of the
12 testimony, in fact, much earlier than in my own pretrial
13 order will provide for, and so it seems to me at this
14 juncture I'm not prepared to grant the motion, okay?

15 All right. Thank you, all. Unless there's
16 anything else, we'll be adjourned and see everybody in about
17 30 days.

18 Thank you, everyone.

19 (Proceedings concluded at 2:24 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: April 5, 2022



William P. Zaremba, RMR, CRR

<p>COURTROOM</p> <p>DEPUTY: [4] 5/2 5/6 16/8 16/21</p> <p>MR. BALBO: [2] 43/8 54/16</p> <p>MR. BRIGHT: [4] 19/25 22/4 53/6 53/9</p> <p>MR. CRISP: [5] 34/23 53/11 53/17 54/4 54/9</p> <p>MR. FISCHER: [4] 45/1 47/5 49/20 55/7</p> <p>MR. GEYER: [5] 31/24 34/3 34/19 58/6 58/19</p> <p>MR. GUILLAUME: [3] 35/16 36/22 37/11</p> <p>MR. LINDER: [21] 13/25 18/4 18/8 19/5 19/11 19/21 19/23 20/14 20/17 21/20 21/24 22/3 25/24 26/2 27/11 53/23 55/6 56/14 56/16 56/19 57/25</p> <p>MR. MOSELEY: [7] 22/23 27/1 28/2 29/15 31/3 31/18 59/10</p> <p>MR. PEED: [4] 6/16 50/1 51/20 51/22</p> <p>MR. WEINBERG: [1] 42/17</p> <p>MS. HALIM: [3] 37/14 38/7 39/23</p> <p>MS. RAKOCZY: [19] 7/5 7/23 8/1 8/5 9/1 11/2 11/6 12/21 13/1 13/24 14/11 14/16 16/17 17/16 24/6 24/17 28/12 38/22 54/15</p> <p>THE COURT: [75]</p> <p>0</p> <p>08077 [1] 2/18</p> <p>0826 [1] 2/5</p> <p>1</p> <p>10 [3] 5/12 14/13 23/13</p> <p>10:00 [2] 53/22 53/24</p> <p>11 [1] 5/13</p> <p>1100 [1] 3/5</p> <p>114 [1] 3/9</p> <p>1150 [1] 3/22</p> <p>11th [4] 12/3 13/21 20/23 55/5</p> <p>12 [2] 51/1 51/3</p> <p>1230 [1] 2/14</p> <p>1297 [1] 3/13</p> <p>12th [1] 13/20</p> <p>15 [3] 1/4 5/7 45/17</p> <p>17110 [1] 2/9</p> <p>1775 [1] 3/22</p> <p>1776 [1] 3/14</p> <p>19 [1] 61/6</p> <p>19106 [1] 3/5</p> <p>1:08 [1] 1/6</p> <p>1:30 [1] 53/2</p> <p>2</p> <p>20001 [1] 4/5</p>	<p>2006 [1] 2/17</p> <p>202 [3] 1/14 3/23 4/5</p> <p>2022 [2] 1/5 61/10</p> <p>20530 [1] 1/13</p> <p>20770 [1] 2/23</p> <p>21-CR-28 [1] 7/17</p> <p>21061-3065 [1] 2/4</p> <p>214 [1] 3/19</p> <p>215 [1] 3/5</p> <p>2158 [1] 2/24</p> <p>22-15 [2] 1/4 5/7</p> <p>22015 [1] 2/14</p> <p>252-7277 [1] 1/14</p> <p>252-9900 [1] 3/19</p> 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