

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28-1
)	Washington, D.C.
vs.)	February 12, 2021
)	4:00 p.m.
THOMAS E. CALDWELL,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF INITIAL APPEARANCE
VIA VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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

2 COURTROOM DEPUTY: Good afternoon, Your Honor.

3 This is Criminal Case No. 21-28-1, the
4 United States of America versus Thomas Edward Caldwell.

5 Kathryn Rakoczy for the government.

6 Thomas Plofchan for the defendant.

7 Christine Schuck on behalf of Pretrial Services.

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

10 THE COURT: Okay. Good afternoon, Counsel.

11 Mr. Caldwell, good afternoon to you. Can you hear
12 me okay, sir?

13 THE DEFENDANT: Yes, Your Honor, I can.

14 THE COURT: Okay. Very good.

15 All right. So we're here this afternoon for a
16 number of purposes, including the arraignment of
17 Mr. Caldwell. There's been an indictment issued since he
18 appeared before the magistrate judge in the Western District
19 of Virginia. There's also a pending bond-review motion.

20 And so let's take it in the following order:

21 We'll start with the arraignment. And then I want to just
22 talk quickly about case status, including the pending motion
23 for protective order that was filed this afternoon and the
24 opposition, and then we'll turn to the bond-review motion
25 after that.

1 So, Mr. Caldwell and Mr. Plofchan, I'm going to
2 ask your client, Mr. Plofchan, to just have his right
3 hand -- or I'll ask the Courtroom Deputy to perform -- or to
4 conduct the arraignment.

5 So, Mr. Douyon.

6 MR. PLOFCHAN: Yes.

7 Your Honor, just to let you know, for some reason,
8 you came up in the screen where Mr. Caldwell was, so I can't
9 see my client. But if you all can see the hands, I can
10 trust that that'll happen. I just can't see him at this
11 point.

12 DEPUTY CLERK: And, Counsel, this is Jean-Claude,
13 the Courtroom Deputy. If you can press "#8" on your screen,
14 you should be able to open up more windows.

15 MR. PLOFCHAN: Very well. Thank you.

16 THE COURT: Did that work for you, Mr. Plofchan?
17 Can you see Mr. Caldwell now?

18 MR. PLOFCHAN: It did, Your Honor. Thank you.

19 THE COURT: Okay. Good.

20 DEPUTY CLERK: Okay.

21 Mr. Caldwell, do you wish to waive the formal
22 reading of the indictment?

23 THE DEFENDANT: No. No, sir, I do not.

24 MR. PLOFCHAN: We do not.

25 DEPUTY CLERK: Okay.

1 Let me -- give me one moment.

2 THE COURT: Well, Mr. Plofchan, let me just make
3 sure: Are you asking for a formal reading or are you
4 waiving a formal reading?

5 MR. PLOFCHAN: Actually, we're waiving the formal
6 reading, Your Honor. We did receive the indictment.

7 THE COURT: Okay. Very good.

8 DEPUTY CLERK: Mr. Caldwell, in Criminal Case
9 No. 21-28-1, you have been charged with the following
10 counts:

11 Count 1, conspiracy, in violation of 18 U.S.C.
12 Section 371;

13 Count 2, obstruction of an official proceeding, in
14 violation of 18 U.S.C. 1512(c)(2);

15 Count 3, destruction of government property, in
16 violation of 18 U.S.C. Section 1361;

17 And Count 4, restricted building or grounds, in
18 violation of 18 U.S.C. 1752(a)(1) and (2).

19 How do you wish to plead?

20 THE DEFENDANT: Not guilty.

21 DEPUTY CLERK: Your Honor, a plea of not guilty
22 will be entered for the defendant.

23 THE COURT: Okay. Very well.

24 Thank you, Counsel.

25 Mr. Caldwell, thank you.

1 All right. Let's turn next to case status. And
2 let's start with the protective order that was filed this
3 afternoon, and there was an opposition filed as well.

4 You know, government counsel, I'm happy to hear
5 from you further about the basis for the protective order.
6 And so if there's anything more you'd like to add, I'm happy
7 to hear it, particularly if you've got a response to the
8 opposition that was filed.

9 MS. RAKOCZY: Yes, Your Honor.

10 We just wanted to make clear that that's actually,
11 in terms of what we are hoping to provide to the defense as
12 initial discovery, includes the source documents from which
13 we are drawing a number of the messages and statements that
14 we are relying on in our indictment and in our opposition to
15 Mr. Caldwell's motion to reconsider his detention status.

16 Those messages include personal identifying
17 information, to include names and phone numbers of the
18 individuals with whom Mr. Caldwell communicated. And then
19 in the context of the records that we are pulling from the
20 co-defendants' accounts, there's the information of the
21 people with whom the co-defendants communicated. We also
22 pulled a number of messages from the accounts of the
23 co-defendants themselves.

24 And we would like to provide all of these records
25 in total and unredacted to provide Mr. Caldwell and his

1 attorney with an opportunity to view those in their complete
2 context so that they can fully understand, and to the extent
3 that they believe, as Mr. Plofchan has asserted, that
4 anything is taken out of context, we want them to have the
5 opportunity to review the entire context.

6 But it's normally our practice to go through, and
7 if we don't have a protective order, to redact all personal
8 identifying information, and that would take time, and we
9 would really like to get the materials to the defense
10 faster.

11 And so we're seeking this protective order in
12 order to try to get a more fulsome sampling or a more
13 fulsome copy, a neat, complete copy of these records to the
14 defense as quickly as possible. And that's really what's
15 driving this request for a protective order.

16 THE COURT: I guess the question that follows,
17 then, is -- I mean, because the protective order is much
18 broader than that. I mean, the protective order, at least
19 as I read it, effectively bars the use of any material,
20 whether it's personal identifying information or not, for
21 any purposes other than in the context of the case. And so,
22 you know, the particular reason that you've articulated for
23 needing a protective order, there's not exactly a thick -- a
24 breadth of this protective order.

25 And so I mean, I can understand the government's

1 desire to want to -- to push all of this material out
2 without having to go through the process of redacting it.
3 And perhaps you can reach some agreement with Mr. Plofchan
4 about doing that. But in terms of the scope of the report
5 as it's presently drafted, it's much broader than that
6 concern.

7 And I'll just highlight a couple of cases that my
8 colleagues have recently drafted but you all may be aware of
9 that sort of talks about the scope of protective orders and
10 what the government needs to show in order to justify them.

11 And, you know, first, is by Judge Bates at
12 314 F.Supp.3d 248; it's called *United States versus Jimmy*
13 *Lee Johnson*. And then there's another decision by
14 Judge McFadden at 355 F.Supp.3d 1, *United States v. Dixon*.

15 In both of those cases, the courts set forth
16 essentially the standards and really do place a burden on
17 the government to not only justify the protective order but
18 to ensure that the protective order sort of fits the reason
19 for the meat of it, and I just don't think the present
20 protective order does that.

21 So --

22 MS. RAKOCZY: Your Honor --

23 THE COURT: -- I guess -- go ahead.

24 MS. RAKOCZY: I apologize for interrupting,
25 Your Honor.

1 THE COURT: No. That's all right.

2 MS. RAKOCZY: We're happy to work with
3 Mr. Caldwell's attorney to craft a protective order that
4 could be narrower.

5 This is the standard protective order that we
6 submit in our cases. And so in the interest of trying to
7 get something on the record so that we could provide
8 discovery as quickly as possible, that's what we chose to
9 file.

10 It's my understanding Mr. Plofchan opposes any
11 protective order whatsoever at this point in time. So we
12 filed what we filed because it is our standard order. We're
13 happy to work to amend that if we can reach an agreement
14 with Mr. Plofchan, but I'm not sure if we will be able to.

15 MR. PLOFCHAN: Your Honor, if I could be heard on
16 this very briefly.

17 THE COURT: Sure.

18 MR. PLOFCHAN: The issue for us is, first, the
19 government came and did a search warrant and took my
20 client's phones and computers. And, therefore, my client
21 had access to all that information that was on his phones
22 and computers. And now the government is saying, we don't
23 want you to use the information that was on your phones and
24 computers. And we want to either have you agree that you
25 won't use it or we want to redact it. Well, my client

1 doesn't have access to the information unless he gets the
2 information from his phones and computers.

3 So to the extent that they're seeking any kind of
4 protective order or anything that was already on my client's
5 material, I don't think there's any basis for it whatsoever.

6 With regard to -- and that was why -- one of the
7 things we objected to. If there was some third-party
8 message and so forth, that may be a different thing, but the
9 government hasn't identified that.

10 More importantly, right now, Ms. Rakoczy indicated
11 that, oh, well, we have the co-defendants or the co- --
12 alleged -- alleged co-conspirators.

13 Well, to the extent that there's a co-conspirator,
14 my client's entitled to that information as well, because it
15 also goes to the issue of whether it's impeachment material,
16 and whether, if they contacted and used a number, and my
17 client is able to show that, hey, that's not my number and
18 I didn't get that text, I don't want to have something
19 inferred to me, then that's a defense that he can rely on.
20 And for them to redact that, or to say that we can't use it
21 in any way, shape, or form we want --

22 THE COURT: Mr. Plofchan, hang on.

23 Let me just sort of share with you my general
24 views about this. And then --

25 MR. PLOFCHAN: Okay.

1 THE COURT: -- maybe the thing here is to let the
2 parties go forward.

3 In terms of personal identifying information --
4 let me back up.

5 You know, the presumption under the Federal Rules,
6 and, frankly, under the due process clause, is that the
7 defendant will receive all the material that the government
8 believes is relevant to assisting in preparation of the
9 defense. I mean, that's what needs to be disclosed under
10 Rule 16.

11 There is no cutout to withhold something from the
12 defendant just because it's personally identifying, unless
13 there's a justification for it.

14 And so if, for example, there's personally
15 identifying information, I'm not saying in this case, but,
16 for example, of a victim, then perhaps there's a
17 justification for withholding that personally identifying
18 information; or if there's a potential threat to a witness,
19 for example, there is a justification for withholding that.

20 But this general notion that something is
21 personally identifying information and, therefore, is
22 personally identifying information, and for that reason and
23 that reason alone, it can be withheld from the defendant,
24 I'm not sure that's accurate and that's correct.

25 You know, the defendant is entitled to the

1 material the government has; and if there's some reason to
2 limit what the government is going to provide him, then the
3 government needs to justify it.

4 Now, in terms of how that material then gets used
5 if it's disclosed to him in full, that may be a separate
6 issue. You know, certainly it can be used in furtherance of
7 the defense, certainly it can be used for any other lawful
8 purposes.

9 But the bottom line is that it's not adequate, in
10 my view, for the government to simply say that it's
11 personally identifying information and, therefore, we're
12 going to redact it, I think there has to be some
13 justification for that, along the lines of what I discussed
14 earlier.

15 And so here's what I would suggest, and I know
16 there's a great volume of material here:

17 Mr. Plofchan, in the interest of pushing this
18 material out to you so you can begin to review it, what
19 I would urge you to consider is to accept this material, at
20 least tentatively, pursuant to sort of the general
21 restrictions laid out in this proposed order, but that we
22 very quickly try and reach some agreement on the material
23 and limits that are appropriate if not, because otherwise
24 what I fear is that it's going to take a little bit of time
25 for you all to negotiate something and it's going to delay

1 you getting the material.

2 If that's something that you'd be prepared to do
3 and I think the government, it sounds like, is prepared to
4 turn this over sooner, rather than report. So, you know, at
5 a minimum, if you accept it in sort of an
6 attorneys'-eyes-only capacity, that would be a helpful
7 start, at least for you to get the material.

8 Mr. Plofchan, you're on mute. I can't hear you.

9 MR. PLOFCHAN: Your Honor, I'm happy, pursuant to
10 this, to initially see it as attorneys' eyes only. And then
11 if the government wishes to identify those particular items
12 they wish there to be further restriction, we can discuss
13 that. But I don't want to come back to the Court for
14 permission, which is what that order implied, permission for
15 me to use it or something along those lines.

16 So if -- and I can propose that if they want to
17 give it to me originally and then they have a certain period
18 of time in which they want to make a further motion on
19 restriction. But absent that motion being made, then I can
20 use it, you know, for any lawful purpose.

21 DEPUTY CLERK: Your Honor.

22 THE COURT: Mr. Plofchan, hang on. It looks like
23 we lost government counsel. So let's just put a pause on
24 this for a moment.

25 MS. RAKOCZY: I'm sorry, Your Honor. I did call

1 in.

2 THE COURT: I'm sorry, are you back, Counsel?

3 MS. RAKOCZY: Yes, Your Honor. I called in. For
4 some reason, the video cut out, so I'm now on the telephone
5 line.

6 THE COURT: All right.

7 Mr. Plofchan, you can continue.

8 MR. PLOFCHAN: So I was saying that if they want
9 to -- I can agree that for the first 30 days, it would be
10 attorneys' eyes only. And then if the government wants to
11 identify specific items that they want to have a further
12 restriction, we can address it at that time. But then if we
13 don't, I want it to be presumed that I can use it for any
14 lawful purpose.

15 I just have a difficulty agreeing to a restriction
16 on something I haven't even seen yet, because I don't know
17 how it will affect my client.

18 Unlike the government, every time I have to come
19 back to the Court to address something, it's using very
20 scarce resources that my client doesn't necessarily have and
21 would like to spend on other aspects of his defense.

22 THE COURT: Okay.

23 Well, government counsel, do you want to add
24 anything here before we kind of move on? I think we've
25 maybe reached a place where at least there's at least some

1 interim agreement as to how we can move forward.

2 MS. RAKOCZY: I think that's right, Your Honor.

3 I think if Mr. Plofchan is willing to agree to
4 what -- I think what he said was, let's say, a 30-day period
5 where this material would be for, in his words, "attorneys'
6 eyes only" and then the government can file a supplemental
7 protective order motion and discuss with Mr. Plofchan if we
8 can work out the terms of maybe a more narrow protective
9 agreement to submit to the Court, then we can provide the
10 initial discovery to Mr. Plofchan as soon as possible.

11 THE COURT: Okay.

12 Well, it sounds like everybody is on the same
13 page; I don't think I need to commit anything to an order.

14 And so I think what we'll do here is, subject --
15 the agreements in -- both parties have agreed for 30 days,
16 that discovery that gets turned over will be for attorneys'
17 eyes only. And in the interim, what you will all do is
18 attempt to negotiate a narrower protective order, and
19 hopefully you can do that.

20 All right. Well, with that, let me, then, turn
21 back to the government and just ask if there is -- so
22 I know -- just quickly in terms of my own edification,
23 I know Ms. Watkins is now before this Court and I know she's
24 before Magistrate Judge Faruqui for a detention hearing.
25 But what is the status of Mr. Crawl?

1 MS. RAKOCZY: Yes, Your Honor.

2 Mr. Crowl had his detention hearing in front of
3 the judge in Ohio in -- approximately, it was about ten days
4 ago now.

5 He was ordered detained and then this matter was
6 indicted, so he did not actually need to have a preliminary
7 hearing out there. It's my understanding that he was turned
8 over to the custody of the marshals for transport here. But
9 I have not received notification that he has arrived yet in
10 this area and he has not had his initial appearance.
11 Ms. Watkins did have hers this afternoon.

12 THE COURT: Okay.

13 Right.

14 And I understand she's -- that detention hearing
15 for Ms. Watkins has been deferred to next week.

16 Okay. Well, that's helpful.

17 All right. Before we turn, then, to the
18 bond-review motion, are there any other issues we ought to
19 take up or is there anything else anybody wants to discuss
20 about case status or any other details anybody wants to
21 bring to my attention or issues that need to be brought to
22 my attention?

23 MR. PLOFCHAN: Yes, Your Honor, if I could.

24 And only because it happened today.

25 And I understand the Court's desire to begin the

1 arraignment, but, as the Court's aware, certain deadlines
2 begin running from the arraignment, unless the Court rules
3 otherwise, I am actually -- after today's hearing, I am
4 going -- the Court doesn't need to know all my personal
5 world, but I've been married 34 years on Sunday and we're
6 going on a vacation as a couple for two weeks. And I would
7 rather not have to worry about some of the triggering
8 motions in the time frames in that two-week period, because
9 I am the lead counsel here in the office.

10 And I didn't know if it might be possible for the
11 Court to grant me an additional two weeks on any of the
12 motions for good cause or any of the time frames that
13 regard, perhaps, a request for bill of particulars or a
14 request for any motion that we might have to dismiss the
15 indictment, et cetera, any time frames that may be
16 applicable.

17 THE COURT: Well, let's put a hold on that until
18 the end of this hearing and we can talk scheduling, because
19 I was going to raise the issue of next-steps timing of --
20 basically, timing of next steps. And to the extent that you
21 intend to file any motions, talk about what those might be
22 and when you might be prepared to file them.

23 And then we obviously should talk about speedy
24 trial. Although given the fact that Mr. Crowl hasn't
25 appeared here, the clock really will not have started. But,

1 nevertheless, we should talk about speedy trial before we
2 adjourn.

3 So let's move, then, to the bond-review motion
4 that's been filed.

5 Let me start with government counsel and I'll hear
6 from you. I've got some questions I'd like to ask, but I'm
7 happy to hear from you.

8 Both parties can assume I've carefully read all
9 the papers. And then, Mr. Plofchan, I've also reviewed the
10 exhibits that were emailed over to me this afternoon. So
11 I've reviewed everything that the parties have submitted to
12 the Court.

13 MR. PLOFCHAN: Thank you, Your Honor.

14 THE COURT: So let me -- government counsel, can
15 you hear us?

16 MS. RAKOCZY: I can. I'm sorry, Your Honor. It
17 sounded a little far apart. I apologize.

18 THE COURT: That's okay.

19 MS. RAKOCZY: Did you want to hear the
20 government's argument first?

21 THE COURT: Yes, please.

22 MS. RAKOCZY: Thank you, Your Honor.

23 Your Honor, Mr. Caldwell was ordered detained by
24 the District Court in the Western District of Virginia when
25 he was first presented, and that he was detained pursuant to

1 Section (f)(2)(B) of the detention statute because of the
2 risk-of-flight concerns here.

3 Mr. Caldwell is charged by way of indictment with
4 a number of serious offenses. And he's charged for his role
5 in the conspiracy to obstruct the congressional proceedings
6 of January 6th of 2021.

7 The government's allegations in the indictment are
8 concerning about the role that Mr. Caldwell played in this
9 conspiracy.

10 Mr. Caldwell is alleged to have played a role in
11 assisting various members of this conspiracy, who came from
12 multiple states across the nation, to descend upon the
13 Capitol for the express purpose of disrupting these
14 congressional proceedings, and he played a significant role
15 in coordinating that.

16 He not only discussed plans through the text
17 messages and Facebook messages that are quoted in the
18 indictment and in our detention memorandum, he arranged for
19 a number of the parties to stay at the same hotel in
20 Northern Virginia, to allow, in his words, "quick access to
21 the city."

22 He coordinated with members of the conspiracy, who
23 came from a different state, in order to serve as what, in
24 his terms, would be a "quick reaction force," and, in his
25 own words -- the role of that quick reaction force would be

1 to have, in his words, "the goodies," which would seem to be
2 the weapons, "in case things go bad and we need to get
3 heavy." Those are Mr. Caldwell's own words.

4 Mr. Caldwell also sent maps to the individuals who
5 were going to serve in that quick-reaction force so that
6 those individuals would have an easy and quick way to get
7 into the city and to the Capitol.

8 Mr. Caldwell discussed with other individuals the
9 possibility of having weapons available as well. He
10 discussed with an individual, who's believed to be
11 affiliated with a separate group called the Three Percenters
12 in discussing how to transport weapons potentially across
13 the Potomac River by boat.

14 The rhetoric in Mr. Caldwell's messages is of
15 grave concern to the government. He talks repeatedly about
16 how there would need to be violence. He talked about how,
17 in his mind, this was the type of thing that they would have
18 to rise to the level of using violent means and weapons in
19 order to "stop this." And by stopping "this," the content
20 of the messages that he exchanges makes clear that what he
21 is trying to stop is the certification of the results of the
22 election and the peaceful transfer of power.

23 From the government's perspective, there are grave
24 concerns --

25 THE COURT: I'm sorry --

1 MS. RAKOCZY: -- about Mr. Caldwell's ability to
2 follow the Court's -- any instructions or any conditions
3 that this Court might set.

4 He uses rhetoric that suggests that he does not
5 respect the rule of law; that he will take action if he does
6 not agree with them.

7 He talks, for example, that how he says this is an
8 ongoing mission of his cause, that, in his mind, this is the
9 beginning, essentially, and that this must continue.

10 And so from the government's perspective, we do
11 not believe there are conditions or combinations of
12 conditions that could assure that he would comply with the
13 Court's orders and that he would return to court.

14 He's also, we would note, as we explain in both
15 the indictment and our detention memorandum, Mr. Caldwell
16 has taken some steps to conceal evidence in this case. He
17 has deleted or unsent certain Facebook messages. He's taken
18 photographs down from social media that evidence his
19 involvement in these crimes.

20 When the co-defendants, Ms. Watkins and Mr. Crowl,
21 came to stay at his residence after the events of the 6th,
22 he offered to essentially stash what he referred to as the
23 saddle rattle, which we are inferring to be the camouflage
24 and protective gear that the individuals in this conspiracy
25 wore during the attack on the Capitol. He also stashed

1 those items at his house. And he, then, encouraged
2 Mr. Crowl and Ms. Watkins to engage in, essentially, evasive
3 measures as they came to his home to make sure that they
4 were not followed.

5 Based on all of this, which is largely
6 Mr. Caldwell's own words, his own photos that he posted to
7 his own cell phone account and social media accounts and
8 then corroborative records that we see in the records of the
9 other co-defendants, records that we see from the hotel
10 where he books rooms for himself and several of his
11 co-conspirators, these show grave concern that Mr. Caldwell
12 cannot be trusted by this Court to comply with any court
13 orders and to return to court, and we believe that the risk
14 to the community is incredibly strong, given the role he
15 played in coordinating this offense.

16 I'm happy to answer any additional questions of
17 the Court.

18 THE COURT: I do have some questions. Thank you,
19 Counsel.

20 I guess the first question I have is, as I read
21 the bail statute, and I think as the bail statute's been
22 interpreted by the D.C. Circuit, the government, under 32 --
23 3142(f), has to sort of establish one of the conditions
24 under 3142(f) in order to establish a hearing, in order to
25 be granted a hearing.

1 And what the D.C. Circuit has said in *U.S. versus*
2 *Singleton* is that unless one of those circumstances is met,
3 detention is not an option. This is *Singleton*, 182 F.3d
4 at 7, at page 8 or 9.

5 And so what -- you know, under that subsection of
6 the Bail Reform Act, which -- you know, typically we see
7 cases here in which there's a crime of violence or usually
8 the person has multiple felonies. But which of the factors
9 under 3142(f) do you claim is sort of the gateway to getting
10 a hearing and a threshold for a detention evaluation?

11 MS. RAKOCZY: Yes, Your Honor.

12 As I believe the Court in the Western District of
13 Virginia found, I believe it was a hold under (f)(2)(B).

14 And we do agree here that there is a serious risk
15 that Mr. Caldwell would obstruct or attempt to obstruct
16 justice in this matter.

17 Given what we already know and what the grand jury
18 has found probable cause to include in the indictment, which
19 is that he has taken steps to conceal and obstruct
20 evidence -- and destroy evidence in this case. He unsent
21 messages that then showed up in the co-defendant's Facebook
22 account, so we know what those messages were.

23 But he tried to take back evidence that discussed
24 his involvement in the crime. He took down photos. He
25 actually says to somebody in a text message that he is

1 taking down photographs from Facebook. And this is after
2 January 6th.

3 He encouraged the co-defendant to stash evidence
4 at his home at the time, and clearly did not believe that he
5 was going to be found out, because he was encouraging the
6 co-defendants to make sure that they weren't followed to his
7 home.

8 And so here we are invoking (f) (2) (B), the risk of
9 obstruction in this matter.

10 THE COURT: But (f) (2) (B), at least as I read the
11 Bail Reform Act, (f) (2) (B) essentially kind of opens the
12 door to potential detention. But then in terms of actual
13 pretrial detention, you have to either establish that no
14 combination of conditions will ensure the safety of the
15 community or that the -- or the person's return to court.

16 MS. RAKOCZY: Uh-huh.

17 THE COURT: And so if I'm hearing what you're
18 saying is that in order -- he qualifies for detention by
19 virtue of his obstructive conduct; but that beyond that, the
20 basis for detention is actually that he poses and continues
21 to present -- pose a danger to the community.

22 Is that a fair understanding of how you see
23 things?

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

25 Both a danger to the community and that his return

1 to court is also a concern, given his disregard for this
2 Court's authority.

3 THE COURT: Okay.

4 Can I just follow-up, then, on some of the factual
5 proffer that you made, and I just have a few questions.

6 You know, it's been suggested, or at least been
7 argued by the defendant and his counsel in the affidavit
8 that his wife submitted, that he's not a member of the Oath
9 Keepers, that he's not a member of this sort of militia
10 organization or this anti-government organization.

11 What is the evidence, in your view, that suggests
12 the contrary?

13 MS. RAKOCZY: Yes, Your Honor.

14 And to be clear, you know, the Oath Keepers is an
15 organization that does collect members from individuals.
16 You can send in a contribution through the website and
17 become a dues-paying member.

18 We do not have evidence that Mr. Caldwell is a
19 "dues-paying member" of the Oath Keepers; however, there are
20 numerous individuals throughout the nation who affiliate
21 with the Oath Keepers by virtue of associating with the
22 belief system that the Oath Keepers put forth, and engaging
23 in conduct that shows that they are with the Oath Keepers.

24 In this particular instance, Mr. Caldwell
25 conspired with members of the Oath Keepers, who are both

1 literal dues-paying members of the Oath Keepers, and
2 Ms. Watkins would be one example in that, and individuals
3 who are affiliates of the Oath Keepers.

4 Affiliates of the Oath Keepers do things like
5 actually wear paraphernalia that has the Oath Keepers
6 insignia on them.

7 And so members of this group that marched up the
8 east side of the Capitol and entered through the central
9 doors into the rotunda, and that, of course, included
10 Ms. Watkins and Mr. Cowl, they were wearing clothing that
11 had patches for the Oath Keepers. Some of them were wearing
12 T-shirts that had the Oath Keepers' name or logo on them.

13 Mr. Watkins -- I'm sorry, Mr. Caldwell coordinated
14 with members of the Oath Keepers like Ms. Watkins and
15 Mr. Cowl in planning this attack. Mr. Caldwell also has
16 associated and coordinated with the founder and leader of
17 the Oath Keepers, an individual who's referred to in the
18 indictment and in our detention memo as Person One.

19 There are messages that are quoted in the
20 indictment and in the detention memo where Mr. Caldwell
21 references the degree to which Mr. -- the leader of the
22 organization is making plans for the events of January 6th.

23 He also -- and we have reference to this in the
24 detention memo -- Mr. Caldwell participated in earlier
25 rallies and events that occurred in November and December of

1 2020 with the Oath Keepers.

2 He actually -- and I'm struggling to recall --
3 I think that we quoted it in our detention memorandum -- but
4 he actually directly communicated with the founder and
5 leader of the Oath Keepers during the march in November 2020
6 that shows that he was participating in that event with the
7 founder of the Oath Keepers, as well as Ms. Watkins and
8 Mr. Cowl.

9 So the evidence shows what we would suggest and
10 what we allege in the indictment and our memo, which he-- a
11 strong affiliation with the Oath Keepers. We cannot say
12 he's a dues-paying member, but he is certainly strongly
13 affiliated with this organization and he actively planned
14 the events of January 6th with several members, including at
15 least one dues-paying member.

16 THE COURT: Okay.

17 And am I correct that at least as of now, the
18 government's position is that it does not have evidence that
19 Mr. -- or at least doesn't have photographic or video
20 evidence that Mr. Watkins actually entered the building,
21 entered the Capitol complex?

22 MS. RAKOCZY: Well, entered the building, yes,
23 Your Honor.

24 MR. PLOFCHAN: Your Honor, Mr. Caldwell.
25 I apologize. You called him "Mr. Watkins" in the question.

1 THE COURT: Oh. I meant Mr. Caldwell. If I said
2 "Watkins," I apologize.

3 MR. PLOFCHAN: Thank you.

4 MS. RAKOCZY: Your Honor, Mr. Caldwell -- the
5 government's allegations are that Mr. Caldwell, we know for
6 certain that he entered into the Capitol grounds, he passed
7 through an area on the west side of the Capitol that was set
8 up for the inauguration platform at the time.

9 We have a photograph included in the complaint,
10 the affidavit in support of the complaint that was initially
11 filed in this matter, that appears to show Mr. Caldwell
12 traveling through essentially a tunnel through the
13 scaffolding on the west side of the Capitol.

14 We also have photographs that Mr. Caldwell posted
15 to his Facebook account of himself on the west side of the
16 Capitol, and then photographs from where he was on the west
17 side of the Capitol, which we believe to be the western
18 terrace on the west side of the Capitol.

19 He discusses in his messages how, around the time
20 that he is -- excuse me, says that he has breached the
21 Capitol, he does say the word "inside" as he's narrating his
22 actions to other individuals. But what we can't say for
23 sure is that by "inside," he means inside the building, as
24 opposed to inside the restricted area on the outside of the
25 building. But he does say words to the effect of "I'm now

1 inside." He was literally inside.

2 And so we do have both photographic evidence and
3 evidence from his messages that allow us to say -- to
4 allege -- with certainty that he got as far as the west
5 terrace of the Capitol building, which is very clearly an
6 off -- an out-of-bounds, off-limits area that day.

7 And the messages suggest that he knew that, given
8 that he described observing some people who he believed to
9 be members of the Proud Boys organization and getting in a
10 scuffle with police as this group is breaching. But he also
11 uses words to say, in messages, in describing his own
12 conduct, that he "assaulted the Capitol" and that he
13 "stormed the Capitol."

14 And so we would allege that the evidence is strong
15 that Mr. Caldwell was in this prohibited area of the Capitol
16 grounds and knew that.

17 We do not have photo or video of him inside the
18 Capitol building at this time. We can't say it doesn't
19 exist certainly, but we mention that we don't have that.

20 THE COURT: Okay.

21 Another question for you -- a few more questions:

22 One of the, I think -- I can't remember if it was
23 a text message or a social media posting, Mr. Caldwell
24 makes -- and I think he does this more than once -- uses the
25 phrase "hunt at night."

1 Does the government have an understanding as to
2 what Mr. Caldwell meant by that term?

3 MS. RAKOCZY: There is a message -- and I'm
4 wondering if I could find it in the indictment, but there is
5 a message where Mr. Caldwell is saying, I believe, to
6 Mr. Crowl, but I'm not 100 percent certain, that he's
7 discussing, I think, in particular, why the hotel that he
8 suggests everyone stays at is a good hotel. And I think he
9 discusses how it would allow them to be in a good location
10 to hunt at night.

11 And I believe at the time that he's referring to
12 the fact that they might need to go on the lookout for
13 members of Antifa. There's a theme that runs through the
14 messages, that there is this concern that they will need to
15 do battle with members of Antifa.

16 THE COURT: Okay.

17 MS. RAKOCZY: I believe that that's quoted in the
18 indictment.

19 THE COURT: Right.

20 There's also a reference to -- on -- it's sometime
21 on or around January 1st, messaging about having to go --
22 "maybe can go do some night hunting." And that's what you
23 think that means?

24 MS. RAKOCZY: From the context of the other
25 statements, that's our inference.

1 THE COURT: Okay.

2 In terms of the search that was performed at his
3 home, there's a suggestion of -- well, let me back up:

4 It's not clear to me whether -- there's a
5 suggestion of a recent purchase of ammunition and a weapon
6 that looks like a cell phone.

7 Can you tell me a little bit more about that, and,
8 in fact, whether any weapons were found at the time of the
9 search, one? And, two, whether you have any reason to
10 believe that he may actually own weapons but that they
11 weren't found at the time of the search?

12 MS. RAKOCZY: Your Honor, I have not much evidence
13 beyond what the Court has, which is that what was discovered
14 was a weapon that is designed to look like a pistol. It
15 was -- words on the gun were effectively that it was
16 designed by a company that's made to look like cell phones.

17 There were also -- it's my understanding that
18 there were invoices for a firearm.

19 THE COURT: Okay.

20 But that item that was a weapon disguised or made
21 to look like a cell phone, was that actually found at his
22 home or just a receipt for it?

23 MS. RAKOCZY: I think it was more that the
24 invoices were found, Your Honor.

25 THE COURT: Okay.

1 And do you have any reason to believe, based on
2 ATF records or anything like that, whether he actually owns
3 firearms that weren't found on the property?

4 MS. RAKOCZY: I don't have that information at
5 this time, Your Honor.

6 THE COURT: Okay.

7 One additional question, and that concerns this
8 document that was recovered from the house called -- that
9 had the words "death list" on it.

10 MS. RAKOCZY: Yes, Your Honor.

11 THE COURT: And apparently -- I mean, you
12 described it as a handwritten document, and it has the name
13 of an election official from another state on that document?

14 MS. RAKOCZY: Yes, Your Honor.

15 THE COURT: Can you describe that for me or -- and
16 I think it would be difficult to get it to me, but can you
17 describe that document for me in any greater detail?

18 MS. RAKOCZY: Yes, Your Honor.

19 I do have a photograph of the document that I
20 could provide to chambers and to counsel, if that would be
21 helpful.

22 But it appears to be a pre-existing, pre-printed
23 notepad that has written on it, in handwriting, the words
24 "death list:"

25 And then underneath it, there is a scribble that's

1 illegible. And then there is a location name given of a
2 particular place in a particular state.

3 And then there is a name of someone, that's the
4 name of the election official.

5 And then an arrow that points down to say -- it
6 says "with," and then it names a relative of that person.

7 THE COURT: It names a relative of the election
8 official?

9 MS. RAKOCZY: Yes, Your Honor.

10 THE COURT: Okay.

11 And can you tell me where that was found?

12 MS. RAKOCZY: Yes, Your Honor.

13 It was recovered from the desk inside of an area
14 that appeared to be an office within the home.

15 THE COURT: And can you tell me whether the
16 election official is somebody who has received some
17 publicity in connection with this past election?

18 MS. RAKOCZY: Yes, Your Honor, the person did.

19 And I'm happy to provide it to counsel and the
20 Court.

21 Candidly, the only reason we didn't name the
22 person was that we just did not -- we were concerned about
23 putting that person's name into the media again.

24 But I'm happy to provide a copy to counsel and the
25 Court.

1 THE COURT: Sure.

2 And I don't want you to provide the name. I don't
3 know that it's appropriate to, at least at this juncture, to
4 disclose that name publicly.

5 But I do think I would like to take -- I would
6 like to see that document.

7 MS. RAKOCZY: Certainly, Your Honor.

8 THE COURT: So if you would provide that to
9 chambers, and a copy to Mr. Plofchan, I would appreciate
10 that.

11 MS. RAKOCZY: Yes, Your Honor.

12 THE COURT: Okay.

13 One last question: Also, the receipt that you
14 referenced and the online purchases of ammunition and the
15 cell phone that looks like a firearm, do you have a date on
16 when those purchases were made?

17 MS. RAKOCZY: I don't, Your Honor, but I'm
18 confident that I could find that out pretty quickly for the
19 Court and counsel.

20 THE COURT: Okay. It would be helpful to have
21 that information as well.

22 Okay.

23 All right. Those are the questions I had,
24 Counsel. Thank you for the information.

25 Mr. Plofchan, I'll turn it over to you.

1 MR. PLOFCHAN: Thank you, Your Honor.

2 As you know -- and I think the Court went down the
3 path under -- detention is only permissible and the
4 government can ask for detention if we're at 3142(f). And
5 yet the Court has a certain (audio disconnected) if there's
6 going to be detention, where the Court has to evaluate the
7 four factors, only three of which I believe are applicable
8 in this case.

9 But one of the first of it is the nature of the
10 offense as charged. And one of the things that I didn't
11 actually include in -- Your Honor, in the -- that the Court
12 indicated that it had read the amendment. And we have
13 correspondence, obviously, from the government that
14 indicates that they can't place my client in the Capitol.

15 More importantly, in their brief in response to
16 the detention hearing on page 18 of 22 -- and this is what
17 is somewhat concerning -- they specifically say, it is of no
18 matter that Caldwell was not physically part of the stack of
19 Oath Keepers that stormed the Capitol January 6th. Like any
20 coach on the sideline, he's allegedly just as responsible.

21 Well, that's not true. And I looked at that as a
22 concession by the government that they have no evidence that
23 for three of the four charges they brought against my
24 client, there's no evidence that he was in the Capitol, that
25 he damaged any property.

1 And we actually -- and I had included it as part
2 of my exhibits --

3 THE COURT: Counsel, if I can interrupt you.

4 I thought about that.

5 And I mean, I guess the question is -- I mean,
6 they've also charged him with aiding and abetting,
7 destruction of government property and -- for example. And
8 so the fact that he actually didn't himself destroy property
9 doesn't necessarily absolve him of that count.

10 MR. PLOFCHAN: They haven't, Your Honor. They've
11 charged him -- they just charged him with destruction.

12 I'm not aware of an aiding-and-abetting charge.
13 That wasn't what he was arraigned for.

14 THE COURT: The indictment does state,
15 Section 1361 -- 18 U.S.C. Section 1361 and 18 U.S.C. 13 --
16 excuse me -- and 8 U.S.C. Section 2.

17 MR. PLOFCHAN: Actually -- and, Your Honor, to be
18 clear, it actually says that on -- in the caption. But in
19 the document itself with regard to the indictment, it
20 doesn't mention anything about 1362. And there's nothing in
21 it that --

22 THE COURT: 18 U.S.C. Section 2. I may have
23 misspoke.

24 At the bottom of page 14, there alleges a
25 violation of 18 U.S.C. Section 1361 and 18 U.S.C. 2.

1 MR. PLOFCHAN: When I look at 18 U.S.C. 1361,
2 I'm not -- the Court's indulgence here, because I'm trying
3 to find -- I started in one room and we came in, so all my
4 material is in there.

5 There is no Section 2 in 18 U.S.C. 1361.

6 THE COURT: No, no, no.

7 I'm sorry. Maybe this is -- this is some of the
8 difficulties with video.

9 18 U.S.C. Section 2. 18 U.S.C. Section 2 is the
10 aiding and abetting statute. And that statute is cited in
11 connection with 18 U.S.C. 1361.

12 I'm not saying there's a Section 1361(2). It's
13 18 U.S.C. 1361 and 18 U.S.C. Section 2.

14 MR. PLOFCHAN: I understand that the Court has
15 drawn that.

16 I'll address it both ways. One is, I don't
17 believe that that was actually charged, and, for certain, I
18 don't know that it was arraigned that way.

19 But more importantly, I don't even think, in terms
20 of aiding and abetting of a destruction of property, the
21 government hasn't identified any property that was destroyed
22 by anyone who's alleged to have been in any kind of
23 arrangement with Mr. Caldwell. They haven't alleged any --
24 there's no specific property identified. Frankly, there's
25 not even a specific agreement identified.

1 But one of the difficulties I have is, I think
2 it's a very imaginative and almost like a creative writing
3 kind of indictment, because one of the -- and the goal that
4 the government's going to have to overcome is that they have
5 to overcome every reasonable theory of innocence, not just
6 what story they want to tell.

7 Because the same language -- and I want the Court
8 to consider this in the context of whether my client's a
9 danger and so forth. The same language about coordinating
10 people to go to the Capitol to participate in what was
11 called the Million MAGA March in November, that they called
12 it an operation and that there was going to be help with
13 maps, meaning that, hey, this is -- you drive down into the
14 Capitol, this is where you can park, et cetera. It's the
15 same language in November and December.

16 The government hasn't identified any language that
17 actually says, you're going to go into the Capitol, you're
18 going to go into the chambers, you're going to go on the
19 ground whatsoever.

20 But I believe --

21 THE COURT: Counsel, can I tell you what -- I'll
22 just get to the heart of the issue and what really concerns
23 me about your client's --

24 MR. PLOFCHAN: Sure --

25 THE COURT: -- conduct and his communications?

1 There's a text message on December 30th with
2 Mr. Watkins in which he alludes to a conversation with
3 somebody who's identified as Person Three, who he said is
4 going to be a quick reaction force. So if the boys don't
5 have to try and schlep weapons on the bus. Okay. He says
6 that on December 30th of 2020.

7 Next day or two days later on January 1st, he
8 sends out an email again or it's another -- he writes to
9 someone else, I think it's Crawl, about another quick
10 reaction force, refers to doing a pre-strike on the 5th,
11 meaning we can do some night hunting. Person Three would
12 have the goodies in case things go bad and we need to get
13 heavy.

14 And then there's the text message with the person
15 who's identified as the Three Percenter on January the 3rd.
16 And your client proposes having a boat stationed across the
17 Potomac River so that all the -- "If all went to shit,"
18 these are his words, "our guys load our weps and Blue Ridge
19 militia weps and ferries them across."

20 So at least on three different occasions, he is
21 discussing and planning to have sort of a quick strike force
22 that's ready to incur the District limits and presumably
23 move toward the target, which is words he used on the 4th,
24 and bringing weapons into the District of Columbia, and
25 bring weapons into this -- and for the purpose of -- or in

1 connection with counting of the electoral votes on January
2 the 6th.

3 I mean, those are really terribly scary and
4 frightening text messages. I guess not only is he planning
5 but he's also helping to plan violence involving (audio
6 disconnected).

7 MR. PLOFCHAN: One of the difficulties I have with
8 this, Your Honor, is that the government obviously has his
9 phone and the context of messages. And that's what I was
10 getting at. And I know the Court is saying you want to
11 address what you're concerned with.

12 But if you use the same language, people who are
13 in logistics, people who have done logistics, they refer to
14 operations.

15 And weapons and so forth, they didn't bring any
16 weapons, and they've never brought weapons in.

17 And then what was their purpose?

18 So even if -- and I think that the government
19 knows that there's context involved, and they haven't
20 included all the context for a reason.

21 But I do want to emphasize this point for
22 Your Honor --

23 THE COURT: Hang on.

24 MR. PLOFCHAN: -- is that the operation of Oath
25 Keepers, they're not a militant, from what I understand, and

1 I've never been able to find that Oath Keepers advocates any
2 violence at all.

3 What Oath Keepers has done is that they have, as
4 retired military or first responders -- and my guy is not a
5 member of Oath Keepers -- but what they have done is they
6 provided hurricane relief down in Florida and Georgia; they
7 have provided security at schools; they have provided
8 security at rallies.

9 And so the idea behind this is that's the nature
10 of an operation.

11 THE COURT: Understood.

12 And if that's all it was, if the language was
13 ambiguous, then I might -- well, I think you'd have
14 something -- you'd have a good point.

15 But your client referred -- I can only assume that
16 the word "weps," which appears at least twice in his text
17 messages, and those are connected to this quick reaction
18 force, refers to weapons.

19 He's planning to have weapons stationed outside
20 the District of Columbia before January the 6th, in the
21 event that things are going to get heavy, to bring in a
22 quick reaction force to supply weapons. I mean, I don't see
23 how anybody can read this in any other way.

24 MR. PLOFCHAN: What's a weapon, Your Honor?

25 I guess that's the question. And that's where I think that

1 the -- it's very difficult in this case, so you have to look
2 at any history of Oath Keepers, you have to do that.

3 So does that mean that -- what did they carry on
4 before? They had their arms and they had restraining
5 devices or billy clubs. That's different. There's nothing
6 that says "firearms." There is nothing that says "grenade
7 launchers." There's nothing that says anything -- you know,
8 anything along those lines.

9 And I have a concern that we don't have the
10 ability to jail people for their rhetoric. And that was
11 something that was used twice -- or three times was
12 mentioned by the government was that, oh, we're concerned
13 about this rhetoric.

14 Now, all of this goes to ultimately the issue, and
15 I think my client believes that he is going to be -- and I
16 agree with him -- that he's going to be exonerated
17 completely in terms of the context of things.

18 But if the Court has a concern in terms of his
19 release, make it a condition: He can't have any weapons.
20 That's not an issue. And the Court can -- you know, he can
21 have pretrial and he can have a condition that he can't be
22 around any weapons, that someone can go and look to make
23 sure he's not around weapons.

24 I don't have an issue with that. The problem is
25 that based on their version of what I think is, again, how

1 they wish to spin something, they're trying to say my
2 client, who has never had any history of harming anyone, who
3 has coordinated not just friends of the Oath Keepers --
4 there were 2 million people or over -- depending on the
5 numbers, there were at least several hundred thousand -- I
6 don't want to exaggerate -- at the November rally, several
7 hundred thousand in December, several hundred thousand. He
8 helped a lot of people with, hey, where do you want to stay,
9 where do you want to -- you know, here's a map, how do you
10 get in and out of the city for parking, what's the best
11 bridge and so forth. That's not an "operation" to overthrow
12 the government or attack the House or the Senate.

13 He was with his wife the entire day that day.
14 He spoke. And the government will have to concede that
15 there's, like, 126 phone calls or text messages within the
16 hour or so things are going down, and virtually all of them
17 are to family and friends showing them at the fountain. And
18 looking around and seeing masses of people, saying, this is
19 great and we're peacefully protesting, et cetera, et cetera.
20 There's nothing to indicate that he went anywhere.

21 I think Ms. Rakoczy, I think she was not really
22 fully candid with the Court, because there's no evidence
23 that that was a barrier that they went through. They
24 actually went underneath the scaffolding, which was open
25 after a choir left. So a choir was there singing for a

1 while, they leave, and then they walk up, and there's no
2 barrier, there's nothing that says they couldn't go up and
3 that. And they never go into the Capitol. They never
4 participate.

5 And they don't have any agreement to destroy. And
6 the government hasn't put on any evidence that there was any
7 agreement with anyone to destroy any governmental property
8 and do anything other than peacefully protest, to the extent
9 that that sent a message to people in Congress.

10 There's -- as a matter of fact, contrary to what
11 she says, it was open, the Capitol was open Monday through
12 Friday, 8:30 to 4:30.

13 THE COURT: Counsel, what do I do about -- what's
14 your -- what do you have to say about the death-list
15 document?

16 MR. PLOFCHAN: Well, we haven't seen it, so I'll
17 tell Your Honor -- and I'll tell you two things that we
18 know; one is, in terms of election officials, we know that
19 Ms. Caldwell worked for the Clarke County election voter
20 registration. We don't know whose document that is.

21 Secondly, we do know that my client, A, does
22 genealogy and was working on things.

23 We also know that he has a list of people that he
24 was trying to call about his father's death.

25 I don't know who the person is. He didn't know

1 who he was. He denies that he has a death list. If there's
2 something -- my client says he's not even -- doesn't even
3 recall the words "death" or "list" being on a piece of paper
4 in his house. But he does know that his father died and
5 that there are people that he was confirming, like, hey, do
6 I let them know about the death or not.

7 And in terms of that, there's not a -- there's
8 nothing to indicate that Mrs. Caldwell doesn't know the
9 person who's this election official in her profession and it
10 was her sheet of paper, because it's not a threat. There's
11 no saying that we're going to kill this person. It's
12 just --

13 THE COURT: Let me ask government counsel whether
14 you've been able to ascertain whether the person listed on
15 that document was someone associated with Mr. Caldwell's
16 wife or was somebody from -- "I've disconnected with the
17 Caldwell family."

18 MS. RAKOCZY: Your Honor, the person who's listed
19 is not an election official in the State of Virginia.

20 I obviously don't have all the information about
21 Mr. Caldwell's life connections to people from other states,
22 but I can definitively say that the person listed is not an
23 election official in the State of Virginia.

24 THE COURT: And do you have any reason to
25 believe --

1 MS. RAKOCZY: And I can send a copy of the note to
2 Mr. Plofchan and to Mr. Douyon.

3 THE COURT: And do you have any reason to believe
4 that the person is related -- is a family member of
5 Mr. Caldwell?

6 MS. RAKOCZY: I do not, Your Honor. I have no
7 reason to believe that that person is related to
8 Mr. Caldwell.

9 THE DEFENDANT: You don't know that they're not.

10 MS. RAKOCZY: I cannot say that they are not.
11 I don't know.

12 THE COURT: Hang on, everybody.

13 Mr. Plofchan, have you received a copy of the
14 document?

15 MR. PLOFCHAN: I have, Your Honor. I'm taking a
16 look at it right now.

17 My initial -- pulling it down now.

18 Your Honor, I think we're all going to be
19 speculating, I'll just tell you that.

20 It appears that this person is somewhere multiple
21 states away, who is rather famous in terms of a certain
22 issue. But there's nothing that indicates that there's any
23 death, direct threat against this person by my client, or
24 that's not just reporting notes from a newscast or anything
25 else.

1 And until I have a chance to talk to my client, I
2 can't provide you anything else. But it certainly doesn't
3 suggest that my -- and I will tell you that this person was
4 arrested -- there were claims this person was arrested by
5 the FBI for election fraud, et cetera, is what I'm seeing.
6 But there's nothing that suggests that my client had -- knew
7 she was, had access to who she was in those regards.

8 I can't tell you anything, based on what the
9 government has told us, other than it doesn't really tell me
10 anything, because, you know, someone's in national news and
11 someone writes notes from an article or something along
12 those lines, I don't think that that creates any --
13 especially without a context, I don't think that creates any
14 concern.

15 But I will say to the Court that in terms of the
16 purpose for today, which is release, since that was multiple
17 states over, as part of your condition, if you have a
18 concern, don't let him travel to those states, don't let him
19 talk to anyone in those states, don't let him have -- he
20 can't make long-distance phone calls.

21 We just went out of the screen. Can you hear me,
22 sir?

23 THE COURT: I can hear you.

24 MR. PLOFCHAN: All right. We don't have video,
25 but if you can still hear me, I'll keep chatting.

1 You know, if you can make whatever conditions you
2 want, if you have a concern about one person -- you know,
3 that person or whatever...

4 But given the presumption of, A, innocence and the
5 presumption in favor of release, if the Court has concerns
6 for conditions, impose the conditions.

7 My client has just been sitting around since the
8 19th of January. He can't participate in his defense, we
9 don't have discovery from the government, and I can't talk
10 to him about anything to provide you any further
11 information.

12 I will tell the Court that I asked the government
13 to tell me and give me these documents and they -- you know,
14 so that I could be prepared for this hearing, and that
15 didn't come forward. So I don't want to say I've been, not
16 Shanghaied, but I think I'm at a little bit of a
17 disadvantage on that specific question.

18 THE COURT: Okay.

19 MR. PLOFCHAN: I do want to just also let you
20 know, Your Honor, that in terms of Oath Keepers, one of the
21 things -- I just wanted the Court, to give you some context
22 because I don't know that I put it in the motion, but Oath
23 Keepers have also -- the organization aspires itself and
24 uses as a model the Guardian Angels out of New York City,
25 the guy with the red berets that were -- Curtis Sliwa. And

1 where they used to go hunting at night, which was to get on
2 the subway and make sure -- as they said, make sure no pervs
3 hit anyone or offended anyone.

4 The Oath Keepers has provided security at
5 political rallies over the last four years, primarily for
6 Republican causes. And most recently, they provided
7 non-weaponized, non-violent security for political rallies
8 to make sure that Antifa or who -- what they classify as BLM
9 protesters did not disrupt the rallies. I don't -- the
10 hunting at night, I believe, is a term of art within the
11 community that talks about the security that they provide at
12 the rallies. And any operation they refer to is security at
13 the rallies, not violence.

14 And there's actually no indication that I've been
15 able to find that Oath Keepers has been an advocate of
16 violence or has participated in any destruction of property
17 as a sanctioned act.

18 Now, my client is going to say that he's not a
19 member of the Oath Keepers. There's no evidence he is;
20 I think the government has conceded that.

21 And they've also conceded that they have no
22 evidence that he was in the Capitol or that he participated
23 in any destruction. And they haven't identified any
24 agreement that there was supposed to be some destruction.

25 That's one of the things that the -- what is

1 woefully missing and would be part of our ultimate motion to
2 dismiss the indictment, is that the indictment is woeful --
3 there's no agreement whatsoever.

4 There's claims of communication and then there's
5 claims of events that happened afterwards. And then they
6 draw wildly specious connections when they miss the entirety
7 of the proper and legal activity that one gets to
8 participate in a political rally. And if that's what you're
9 coordinating, that's what you're coordinating. And there's
10 no evidence of firearms or use of firearms, et cetera.

11 But I think that's all for trial. And I'm not
12 trying to try the case right now, but there are plenty --
13 many -- manifold defenses.

14 But the issue that I think that we have to -- the
15 Court has to address, we're asking the Court to address is
16 to allow my client to be released and he can go back to his
17 home, because the issue is, does he form a danger to
18 everyone in the world?

19 Other judges in the District have said, hey, look,
20 we're going to release you, but you can't come back into the
21 District.

22 If that's a condition, don't let him back in the
23 District. Make him report three times a day to a Pretrial
24 person so that they knew where he is at all times. You
25 know, I'm not -- it becomes difficult in terms of I don't

1 know what it means to not utilize the Internet, because
2 people have to -- that's how they get their phone and so
3 forth. It's called Voice over IP.

4 But if you say, you can't use a social media
5 account, you can't use a Facebook or an Instagram or a
6 LinkedIn or anything like that, that's a condition. You
7 can't leave the state. You can't leave certain counties.
8 You have to wear an ankle bracelet.

9 There are -- the --

10 THE COURT: Okay. I think --

11 MR. PLOFCHAN: -- position of the government that
12 I find so frustrating in this particular case is they claim,
13 oh, there's no reasonable basis to provide security.

14 And it's almost -- given the imagination that
15 they've used to put together this indictment in their
16 briefs, they didn't put any effort into kind of trying to be
17 not necessarily imaginative but creative or pro-release
18 based in terms of what kind of conditions should come
19 forward, which, in my mind, means they don't really care
20 what conditions you impose, if you decide to impose
21 conditions.

22 THE COURT: Counsel, can you hear me?

23 MR. PLOFCHAN: I can hear you, yes, sir.

24 THE COURT: Okay.

25 I'm going to -- well, you know -- well,

1 I understand your position.

2 Let me turn back to government counsel and see if
3 you've got thoughts on where we go from here.

4 MS. RAKOCZY: Your Honor, we're not trying to read
5 anything into Mr. Caldwell's words other than what they
6 actually said.

7 And as the Court noted earlier, there really is no
8 other way to read the messages about having individuals
9 stationed nearby with weapons, other than the fact that
10 there were weapons available, serious weapons available in
11 the event that the activities at the Capitol went badly.

12 And those activities at the Capitol were a planned
13 and very well-coordinated attack on the United States
14 Capitol --

15 THE DEFENDANT: Not true.

16 MS. RAKOCZY: -- to interrupt the congressional
17 proceeding to certify the results of the Electoral College
18 vote.

19 Mr. Caldwell know that that was the plan and
20 actively assisted in making that plan. He wanted weapons to
21 be nearby. He made statements that indicated he was
22 prepared to assist in this effort to have violence be
23 brought upon. This is effort if (audio disconnected).

24 And from the government's perspective, that
25 presents a grave risk to the community that cannot be

1 satisfied by check-ins by phone or periodically going to his
2 house to make sure he doesn't have weapons.

3 So from the government's perspective, we do
4 believe that there are no conditions or combination of
5 conditions that can assure the defendant's return to court
6 and the safety of the community.

7 MR. PLOFCHAN: Your Honor, if I could just --
8 there's no evidence of weapons anywhere. That's the concern
9 I have.

10 There is, to use the government's words, rhetoric.
11 But there's no evidence to support rhetoric or bravado or
12 talk.

13 And every other person who was there seems to have
14 been released on conditions that they can't have a firearm,
15 they can't be -- you know, they can't leave, they can't
16 travel, they can't come into the District, and I think we
17 can use those conditions.

18 THE COURT: Actually, that's not true. And it's
19 not true that everybody's been released.

20 You're right that some people have been released.

21 MR. PLOFCHAN: I apologize, Your Honor.

22 THE COURT: Right. Everyone is not, including the
23 two individuals who've been presented before three different
24 judges now and one of your client's co-defendants.

25 So three different magistrate judges looked at

1 this case, considered the evidence not only against your
2 client but the other two co-defendants, and in each
3 instance, they've held them.

4 And these magistrate judges are people who make
5 detention decisions on a daily basis.

6 MR. PLOFCHAN: That's right.

7 THE COURT: So let's not overstate the case here,
8 okay?

9 MR. PLOFCHAN: I apologize.

10 You're right, Your Honor. I'm guilty of rhetoric
11 in that regard, that it was exaggeration, and I apologize.

12 But a large number of people are released with
13 conditions. And I think -- and I'm not trying to make any
14 case against somebody else, but the facts as admitted by the
15 government are different with my client than they are with
16 Watkins and Crawl, because my client wasn't in the Capitol.
17 And my client, they know wasn't in the Capitol, was with his
18 wife the whole day, has physical limitations, et cetera.
19 And they don't have -- they haven't pointed to any agreement
20 to go into the Capitol and do X. And they haven't pointed
21 to any agreement to go beyond being at the rally.

22 And contrary to, they may want to draw that, they
23 have had all the phones -- and they've all the phones and
24 all of their communication for the last 90 days, their
25 communication. They've had the phones for about -- since

1 the 19th of January. And no one's put out any evidence of
2 yes, this is our agreement, we're going to do this at this
3 day and do this. And we're going to go in and we're going
4 to do -- go down this hall and all that. Nothing that
5 involves my client.

6 THE COURT: I understand.

7 And you know as well as I do that that kind of
8 specificity is not required to establish a conspiracy, but
9 you know that as well as I do.

10 And the question before me is are there conditions
11 that would satisfy me that your client doesn't present a
12 risk to the community, and that's what I'm trying to weigh.

13 All right. I'm going to just take a couple
14 minutes here; I want to reflect on what I want to do next.
15 So I'll ask everybody to just bear with me and I'll be back
16 with you momentarily, okay?

17 MR. PLOFCHAN: Yes, sir.

18 MS. RAKOCZY: Thank you, Your Honor.

19 (Recess from 5:16 p.m. to 5:24 p.m.)

20 THE COURT: Okay, everyone. Can everybody hear me
21 okay?

22 MR. PLOFCHAN: Yes, sir.

23 THE COURT: Okay.

24 MS. RAKOCZY: Yes, Your Honor.

25 THE COURT: All right.

1 Let me begin by saying that I've carefully
2 considered all of the evidence before me, and I'm keenly
3 aware of what the burdens are and the responsibility is
4 here, where the burden lies and what the factors are
5 I should consider.

6 Let me first acknowledge that Mr. Caldwell is, of
7 course, presumed to be innocent. The indictment itself is
8 not -- can you all see me now?

9 MR. PLOFCHAN: No, Your Honor.

10 THE COURT: How about now?

11 No?

12 MR. PLOFCHAN: No, Your Honor.

13 We haven't been able to see you for about 15 to 20
14 minutes, but we can hear you fine.

15 THE COURT: Okay.

16 Sorry about that.

17 This is --

18 All right. Well, everybody can hear me; is that
19 right?

20 MR. PLOFCHAN: Yes, sir.

21 MS. RAKOCZY: Yes, Your Honor.

22 THE COURT: Okay.

23 So, as I said, let me re-start: You know,
24 Mr. Caldwell is presumed innocent, and the default
25 presumption is release and not detention. The default

1 presumption is liberty and not pretrial incarceration.

2 That said, the Bail Reform Act under 18 U.S.C.
3 3142 authorizes pretrial detention under certain conditions.
4 The first condition that needs to be met is that the
5 government has, under 3142(j), satisfied or met one of the
6 criteria set forth -- excuse me, in 3142(f), not (j),
7 3142(f), to warrant a hearing.

8 And as the D.C. Circuit said in the *Singleton* case
9 at 182 F.3d 7, unless one of the circumstances under 3142(f)
10 is satisfied, "detention is not an option."

11 I do find here that the hearing and the
12 satisfaction of holding the hearing, the condition to
13 satisfy holding the hearing has been met here. At a
14 minimum, it's been met under 3142(f)(2)(B); that
15 Mr. Caldwell is a serious risk or presents a serious risk
16 that he will obstruct or attempt to obstruct justice.

17 The government has identified evidence that, after
18 January the 6th, as set forth in the detention memo, that
19 Mr. Caldwell went about deleting communications on social
20 media, deleting Facebook messages, including pictures from
21 social media platforms, and inviting two of his alleged
22 co-conspirators back to his home in Virginia from where they
23 were in Ohio, after they had been identified publicly as
24 having participated in the Capitol incursion. And, in fact,
25 invited them that they can, in fact, "stash" -- "stash

1 evidence" at his property, and, in fact, inviting them or --
2 excuse me, instructing them to make sure that they, I think,
3 sort of drive by a couple of exits and then return to ensure
4 that they're not being followed as they made their way to
5 his home.

6 And so there is evidence that Mr. Caldwell made
7 efforts to destroy the evidence against him and others after
8 their and, arguably, his involvement in these events became
9 public. And so I do think under 3142(f)(2)(B) that there is
10 a basis to hold this hearing.

11 The question, then, becomes whether detention is
12 warranted. And the question, then, is, are there conditions
13 or a combination of conditions that would ensure the safety
14 of the community and Mr. Caldwell's -- and/or Mr. Caldwell's
15 return to court.

16 Let me just say at the outset, I'm not convinced
17 that the government has met its burden even by a
18 preponderance of the evidence that Mr. Caldwell is a flight
19 risk. He is somebody who is 66 years old, has multiple
20 medical conditions, is a longtime resident in Virginia, has
21 no prior convictions. And even given the nature and
22 circumstances of the offense here and even taking into
23 account some of the obstructive behavior, I don't think he
24 rises to the level of a flight risk to warrant his continued
25 pretrial detention. At a minimum, there would be conditions

1 that could ensure his appearance back in court.

2 And, frankly, I've looked at the cases that the
3 Circuit has considered for pretrial detention based on risk
4 of flight, and they often involve people who have either
5 articulated and demonstrated that they are, in fact, going
6 to try and evade law enforcement or have sufficient ties
7 abroad that the concern is that they will try and evade law
8 enforcement and court orders. I don't have those concerns
9 here; they simply aren't present.

10 The question, then, becomes whether the government
11 has established by a clear and convincing evidence that
12 there are no combination of conditions that would ensure the
13 safety of the community.

14 In order to make that assessment, I'm supposed to
15 weigh four factors: The nature and circumstances of the
16 offense charged, the weight of the evidence against the
17 defendant, the history and characteristics of the defendant,
18 and the nature and seriousness of the danger posed by the
19 defendant.

20 Let me start with the third factor, and that's
21 Mr. Caldwell's history and characteristics.

22 All of those -- those factors, or that factor,
23 I should say, does weigh against pretrial detention.

24 As defense counsel has laid out, he's now over
25 60 years old, has multiple health issues. Significantly,

1 has no prior convictions. He is a decorated member of
2 the -- veteran. Has, in fact, worn multiple military
3 medals, worked for the FBI once upon a time. Has held
4 high-level national security clearances. And so his
5 background and his characteristics do not favor detention.

6 There are, then, the nature and circumstances of
7 the offenses charges. The offenses are laid out in the
8 indictment. Let me emphasize, and I cannot say strongly
9 enough, the nature and circumstances of the offenses could
10 not be more serious.

11 What Mr. Caldwell is accused of is conspiring with
12 others to plot an insurrection against the government of the
13 United States, particularly the Congress of the United
14 States, while it was attempting to certify the Electoral
15 College vote.

16 That is an offense which cuts to the very heart of
17 our democracy and the peaceful transition of power. And the
18 fact that Mr. Plofchan [sic] has been found by a grand jury
19 to have engaged in offenses relating to such conduct
20 underscores the nature and circumstances of the offenses
21 charged here are very serious and are of a nature that do
22 favor detention.

23 The weight of the evidence against Mr. Plofchan
24 [sic] I've considered in great detail, and let me just go
25 over it a little bit here.

1 It's quite clear, based upon the proffer that the
2 government has submitted, that Mr. Caldwell engaged in
3 planning and communications with others, not just those who
4 are identified in this conspiracy, this charge, with others,
5 to plan a potential military-like incursion on the Capitol
6 on January the 6th.

7 It started as early as November. There are emails
8 and text messages, for example, in November 23rd, in which
9 he said to Mr. Crowl, I believe we will have to get violent
10 to stop this, we may have to fight next time. So
11 Mr. Caldwell already is contemplating violent conduct.

12 On November 26th, in a text message, he proposes a
13 plan for the MAGA rally that was scheduled for
14 December 12th. There would be "three four-man teams and
15 two-man quick reaction force and two drivers/extractors to
16 double as snipers/stallers and go hunting after dark for
17 these cockroaches who prey on the weak." These are not
18 words of somebody coming to Washington, D.C., simply to
19 engage in peaceful protest but, rather, somebody who's
20 contemplating, as I said, a military-style incursion or at
21 least planning for a potential military action.

22 The evidence shows that in late December, there
23 are contacts with other members of the Oath Keepers. Now
24 whether Mr. Caldwell himself is a member or not, clearly the
25 evidence shows that he communicated with them. And,

1 frankly, it's not really all that critical to my finding
2 whether the Oath Keepers are a peaceful organization or not.
3 What I'm focused here on is Mr. Caldwell's actual conduct
4 and his communications in advance of January the 6th.

5 Notably, on December 30th of 2020, he sends a text
6 message with Ms. Watkins in which he lays out plans for
7 January 6th, but also notes that he spoke with somebody
8 else, a person who's identified as Person Three, who would
9 act as a quick reaction force. So that the boys -- I'll
10 just quote his words -- "So the boys don't have to try to
11 shove weps on the bus."

12 That "weps" clearly refers to the term "weapons"
13 and that he's contemplating that somebody would stay in
14 Virginia on January the 6th and be available to bring
15 weapons into the District.

16 That wasn't the only time he contemplated that
17 there would be a quick reaction force. On January 1st, he
18 wrote Mr. Crowl, included the reference to the Person Three
19 again being a quick reaction force, and notes that Person
20 Three will have the goodies in case things go bad and we
21 need to get heavy.

22 Later on in a communication on January the 3rd --
23 and I found this to be quite astonishing -- he's
24 communicating with somebody who the government identifies as
25 a Three Percenter. Mr. Caldwell proposes that there be

1 somebody stationed by boat across the Potomac River, and
2 that, "If all went to shit, my guys load our weps," again,
3 using the term referring to weapons, "and the Blue Ridge
4 militia weps," referring, apparently, to another group,
5 their weapons, and carry them across the Potomac in case
6 that is needed.

7 Then on January the 4th, sends maps to the same
8 person who's identified to be part of the quick reaction
9 force, and advises that person to walk east from the hotel,
10 the one that's in Virginia, in Northern Virginia, into D.C.
11 "Toward the target," which, I think, is a reference to the
12 Capitol.

13 He is at the Capitol on January the 6th. He's
14 sending text messages with Watkins and others describing the
15 events that have transpired.

16 Now, I recognize that there is no evidence before
17 me that Mr. Caldwell, in fact, entered the Capitol; that he
18 actually destroyed any actual evidence in the Capitol or
19 assaulted any police officer inside the Capitol.

20 But, nevertheless, although that factor and the
21 weight of that evidence clears Mr. Caldwell in a sense, the
22 real concern I have about Mr. Caldwell, and the real danger
23 Mr. Caldwell seems to present, is that he's engaged in
24 active planning with others involving weapons.

25 It is true that there has been no evidence that

1 Mr. Caldwell was -- seemed to have possessed weapons, or any
2 weapon was found upon him. But I would note that as part of
3 the search, there was the receipt for this weapon that was
4 purchased by Mr. Caldwell seemingly online, the receipts
5 that have been presented to me show a purchase on
6 November 22nd, that is shortly in the aftermath of the
7 election, would show him having online purchased a gun that
8 appears to be in the shape of a cell phone that can neatly
9 fit into someone's pocket.

10 There's also an invoice there of Mr. Caldwell
11 having purchased at some point, although we don't know the
12 date, ammunition for certain weapons.

13 So the concern with Mr. Caldwell is less what he
14 specifically did on January 6th, like others, it doesn't
15 look like he actually entered the Capitol building, didn't
16 assault any police officers. But what he did prior to
17 January the 6th is clearly engage in planning and
18 preparation for conduct that others were engaged in and that
19 others participated in, in the incursion that took place at
20 the Capitol and the violence that followed.

21 THE DEFENDANT: Your Honor --

22 THE COURT: I also -- Mr. Caldwell --

23 THE DEFENDANT: I know this is out of order,
24 Your Honor.

25 And I beg your indulgence, sir. But my life hangs

1 in the balance.

2 MR. PLOFCHAN: Mr. Caldwell, I need you not to
3 speak, okay?

4 I understand, and I ask you not to speak.

5 THE COURT: Mr. Caldwell, I understand --
6 I appreciate this is hard, but you also need to understand
7 that your actions --

8 THE DEFENDANT: Your Honor, these things are taken
9 out of context.

10 These Oath Keepers thought they (audio
11 disconnected) --

12 MR. PLOFCHAN: Mr. Caldwell --

13 THE COURT: Mr. Caldwell, I'm going to warn you
14 again that, you know, anything you say on this record --

15 THE DEFENDANT: I'm sorry, Your Honor.

16 THE COURT: -- that's okay -- anything you say on
17 this record can be used against you.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And allow me to continue.

20 The evidence also shows that Mr. Caldwell,
21 apparently, had no regrets about actually what happened on
22 the 6th, even after witnessing firsthand and being present
23 for what happened on the 6th and knowing full well that this
24 simply wasn't a peaceful protest and that it had been become
25 an incursion on the Capitol and an attempt to disrupt what

1 proceeding were taking place at Congress.

2 Mr. Caldwell, instead of expressing any regret,
3 seems to have relished in his role in these events,
4 proclaiming that he "had a good time in storming the castle"
5 in a text message or in a communication that was sent on
6 January the 6th.

7 And then, I think, critically -- this is
8 critically important in my finding that he presents a
9 continued danger to the community: On January the 6th, this
10 is ten days before he's arrested, in the immediate aftermath
11 of this incursion of the Capitol, he sends Mr. Crowl a
12 message that says, "We need to do this at the local level.
13 Let's storm the Capitol in Ohio. Tell me when!"

14 THE DEFENDANT: I didn't send that.

15 THE COURT: No regret, but, rather, a
16 forward-looking statement in which he was ready to prepared
17 to continue the kind of conduct that resulted in the death
18 of one officer, injuries to many officers, and injuries to
19 many others.

20 And then, of course, there's the conduct in which
21 he recognizes what he's done wrong. He's deleting his
22 Facebook posts and other material to cover up his own
23 behavior. He's inviting back some of his co-conspirators to
24 his farm, telling them to avoid being detected as they drive
25 back and they can bring some of the things they wore and

1 they can be stored at his home.

2 I don't know quite what to make of this death-list
3 document that's found with the name of an election official.
4 It's very troubling to me that there is something like that
5 there. But, nevertheless, frankly, even if I put that to
6 the side, all of the other evidence against Mr. Caldwell
7 certainly suggests that he presents a real danger. And that
8 danger, is, as I said, not just to the community, but
9 actually to fundamental fabrics of a democracy that we all
10 cherish.

11 Mr. Caldwell has demonstrated that he's not simply
12 just a peaceful protester, and that he's, rather, somebody
13 who (audio disconnected), engaged in violent acts, and
14 helped plan violent acts in order to upset valid democratic
15 elections. And was, apparently, prepared, even after the
16 violence on January the 6th, to continue engaging in that
17 behavior going forward had he not been arrested.

18 Let me just say that notwithstanding the fact that
19 Mr. Caldwell has no prior criminal convictions,
20 I don't think there are any combination of conditions that
21 will ensure the safety of the community.

22 Things like not having him travel in the District
23 or limiting his travel or even keeping him on home
24 confinement, while they may keep him at a particular
25 physical location, the concern I have about Mr. Caldwell is

1 that there's simply no way to monitor his communications
2 full time.

3 Clearly, he's capable of using social media, both
4 social media that's trackable publicly and messaging apps
5 that are encrypted. So he has the ability and the capacity
6 to know how to communicate with others through encrypted
7 messaging apps that would be undetectable potentially by law
8 enforcement if he continued to engage in this behavior.

9 That is obviously something that can't be
10 monitored closely. And given the extensive planning, given
11 the extensive degree of communications, I don't have any
12 confidence that Mr. Caldwell won't continue to engage in
13 this kind of conduct and this behavior and planning with
14 others if he were to be released.

15 And so for all of those reasons, I do find by
16 clear and convincing evidence that there are no combination
17 of conditions that would ensure the safety of the community
18 and that Mr. Caldwell does present and continues to present
19 a dangerous to the community based upon the evidence that's
20 been protected before me both by the defense and by the
21 government and that I have considered lesser conditions
22 to -- conditions less than detention pretrial.

23 MR. PLOFCHAN: Your Honor, would the Court
24 consider no Internet at the house? He's in home confinement
25 with an ankle monitor; that he can't even use a phone and

1 that his wife would (audio disconnected) to that as well.

2 THE COURT: Counsel, I just -- I think the short
3 answer is: No.

4 As I said, he's demonstrated the ability to
5 communicate with others, not only just publicly but through
6 encrypted messaging.

7 I have -- we cannot monitor his communications
8 24 hours a day, seven days a week. And that is, frankly,
9 the instrument of how he's engaged in the acts that he's
10 accused of: It's through these communications with others.
11 We don't have the resources and the means to have the
12 ability to monitor every single thing he says.

13 And truth be told, his wife was there with him on
14 the day of this insurrection. And I don't want to suggest
15 that she did anything wrong, but she's now in an affidavit
16 (audio disconnected) as his wife, and she would be prepared
17 to do that and has done that. And so I don't have a lot of
18 confidence that she's in a position to adequately monitor
19 his communications either, okay?

20 Let's talk about next steps and where we go from
21 here.

22 Why don't we set a control date on the calendar
23 30 days out.

24 Today is February 12th. Let's set a control date
25 of -- is everybody available on March the 12th at 2:00 p.m.?

1 MS. RAKOCZY: Yes, Your Honor.

2 THE COURT: Okay.

3 Sorry, I think we can only -- I'm just being told
4 we can only schedule from 3:00 to 5:00.

5 So how about 3:00 p.m.?

6 MR. PLOFCHAN: On March the 12th at 3:00 p.m.,
7 yes, sir.

8 THE COURT: Okay.

9 So March the 12th --

10 MS. RAKOCZY: Thank you, Your Honor.

11 THE COURT: -- at 3:00 p.m. we'll reconvene.

12 The question to you, Mr. Plofchan, in terms of
13 motions that you want to file, I guess you have a couple of
14 options. You can either tell me a date by which you want to
15 file them now or we can wait until we have the other two
16 defendants and other two defense counsel before me and we
17 can set a schedule on that date.

18 MR. PLOFCHAN: Your Honor, I would prefer not to
19 commit to having a date on which I have to file, only
20 because I just -- the reality of it is, when I come back,
21 the world will be -- and I'm fully aware of my obligations
22 to Mr. Caldwell. It's just --

23 THE COURT: So, Mr. Plofchan, look, we've got a
24 date on the calendar to come back in 30 days. My
25 expectation is that we'll have Mr. Crowl and Ms. Watkins

1 before me by then. Ms. Watkins already is before this
2 Court.

3 And so I think when we convene on March the 12th,
4 we'll be in a position to set a schedule for at least
5 initial motions.

6 Is that acceptable?

7 MR. PLOFCHAN: Yes, Your Honor.

8 And to the extent that, does that -- will that
9 toll any time in the rules with respect to having to file
10 any motion to oppose or write. That's my issue.

11 THE COURT: We don't have any -- our Local Rules
12 don't have any, at least that I'm aware of --

13 MR. PLOFCHAN: Very well, Your Honor.

14 THE COURT: -- timing in terms of filing motion.
15 So we'll just set a schedule. So I don't think you're going
16 to -- running into trouble with that.

17 MR. PLOFCHAN: Very well.

18 THE COURT: The final issue is whether you've
19 discussed with your client speedy trial and whether he's
20 aware of his rights and whether he's prepared to waive those
21 rights.

22 MR. PLOFCHAN: I have not had that discussion,
23 Your Honor.

24 THE COURT: Well, is the government prepared to
25 make a motion to exclude time under the Speedy Trial Act?

1 MS. RAKOCZY: Yes, Your Honor. The government
2 would make a motion to exclude time under the
3 Speedy Trial Act.

4 We would note that under the Chief Judge's order
5 relating to the pandemic, that there is time excluded under
6 the Speedy Trial Act through, I believe, March 8th. And so
7 we would ask that the Court adopt the findings of the Chief
8 Judge with respect to that issue. And it does seem likely
9 that that order may well be extended after the 8th, given
10 the state of public health currently, but, obviously, we
11 don't know that for sure.

12 The government also would note that we do have an
13 extensive amount of discovery that we will begin providing
14 tonight to defense counsel, and we do believe that
15 it would be in the interests of justice to toll this time,
16 for the limited time between now and the next hearing, for
17 the purpose of defense counsel to begin reviewing those
18 materials.

19 THE COURT: Okay.

20 Mr. Plofchan, do you want to note an objection or
21 are you --

22 MR. PLOFCHAN: I'll note an objection, Your Honor.

23 I understand the Court -- I understand the
24 government's argument, but I'll note an objection for the
25 record.

1 THE COURT: Okay.

2 So I will exclude time under the Speedy Trial Act
3 between today and -- between tomorrow, excuse me, and our
4 next day in court on March the 12th.

5 What that means, Mr. Caldwell, is that you have a
6 right to a speedy trial, that means a trial within 70 days
7 of first appearing in this court. But in terms of how we go
8 about calculating those 70 days, Mr. Caldwell, we're going
9 to exclude, that is, we're not going to include, count, the
10 time between now and the next court date.

11 And the reason for that is twofold. I do find
12 that it's in the interests of justice -- the interests of
13 justice outweigh the interests of the government and the
14 defendant -- excuse me, the public and the defendant in a
15 speedy trial; and specifically, the exclusion of time is
16 warranted in what I suspect is a complex case and a fair
17 amount of discovery that needs to be produced to the
18 defendant and begin reviewing that discovery and prepare a
19 defense, one.

20 Two, I'll adopt the findings of the Chief Judge's
21 standing order that excludes time for reasons of the
22 pandemic through, I believe, March the 15th, given the
23 current circumstances of -- the public-health circumstances.
24 The pandemic simply does not allow us to hold jury trials in
25 a safe manner. So for those reasons stated in the Chief

1 Judge's standing order, I will exclude time through March
2 the 15th or through March the 12th for those reasons.

3 Okay. With that, is there anything else, Counsel,
4 anybody wants to raise before we adjourn?

5 MR. PLOFCHAN: No, Your Honor.

6 MS. RAKOCZY: Your Honor, I would just ask --
7 Mr. Plofchan expressed some concern that his client was not
8 arraigned on the aiding and abetting piece to the count to
9 the indictment that charges 1361 -- 18 United States Code
10 1361.

11 We would just ask that it be clear for the record
12 that Mr. Caldwell has been arraigned on that
13 aiding-and-abetting act of that statute as well.

14 THE COURT: The record will certainly reflect
15 that.

16 I mean, I think it's clear from the indictment
17 that Count 3 charges destruction of property and that it is
18 not just a substantive count of obstruction of property but
19 also aiding and abetting.

20 Just to be safe, we can do it again. So I'll just
21 ask Mr. Douyon to ask whether Mr. Plofchan would like a
22 formal reading of that count; and if he'd like a formal
23 reading, we can do that; otherwise, we can ask Mr. Caldwell
24 to enter his plea as to Count 3 once more.

25 MR. PLOFCHAN: I don't need a formal reading,

1 Your Honor.

2 COURTROOM DEPUTY: And --

3 THE DEFENDANT: Not guilty, Your Honor.

4 THE COURT: Okay.

5 All right. So we'll -- the record will be clear
6 that Mr. Caldwell has been advised that Count 3 charges both
7 destruction of government property and aiding and abetting
8 in the destruction of government property; he's entered a
9 plea of not guilty to that count.

10 Okay, ladies and gentlemen. Anything else?

11 MS. RAKOCZY: Thank you, Your Honor.

12 Nothing for the government, Your Honor.

13 THE COURT: All right. Thank you, all, very much.

14 Mr. Plofchan, anything for you?

15 MR. PLOFCHAN: No, Your Honor. I understand the
16 Court's rationale and decision. I have nothing further
17 today.

18 THE COURT: All right.

19 THE DEFENDANT: Your Honor --

20 THE COURT: Thank you, Mr. Plofchan.

21 THE DEFENDANT: Can I speak to my counsel even
22 with an open mic with you aware of what I'm about to say?

23 MR. PLOFCHAN: No.

24 THE DEFENDANT: Okay.

25 THE COURT: All right. Mr. Plofchan, enjoy your

1 vacation. I will see everybody in four weeks.

2 MR. PLOFCHAN: Thank you, Your Honor.

3 (Proceedings concluded at 5:54 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: February 18, 2021 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR

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