

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. 22-60
vs.	)	
	)	December 2, 2022
VINCENT GILLESPIE,	)	10:58 a.m.
Defendant.	)	Washington, D.C.

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**TRANSCRIPT OF PRETRIAL CONFERENCE  
BEFORE THE HONORABLE BERYL A. HOWELL,  
UNITED STATES DISTRICT COURT CHIEF JUDGE**

**APPEARANCES:**

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Court Reporter: Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter

Proceedings reported by machine shorthand.  
Transcript produced by computer-aided transcription.

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

1  
2 THE COURTROOM DEPUTY: Matter before the Court,  
3 Criminal Case No. 22-60, United States of America versus  
4 Vincent Gillespie.

5 Counsel, please come forward and state your names  
6 for the record, starting with the government.

7 MS. SCHESNOL: Good morning, Your Honor.  
8 Good to see you, albeit virtually. Sorry to hear you're  
9 under the weather.

10 Jacqueline Schesnol representing the  
11 United States. With me at counsel table is my cocounsel,  
12 Assistant United States Attorney Carolina Nevin, and a  
13 special agent from the FBI, Raymond Adams.

14 THE COURT: All right. Good morning.

15 MR. WATKINS: Good morning, Your Honor.  
16 Tim Watkins, Assistant Federal Public Defender from the  
17 District of Massachusetts on behalf of Vincent Gillespie.  
18 With me at counsel table is Forest O'Neill-Greenberg. Also,  
19 the newest member of our team and also the newest member of  
20 our office in Boston, Aziza Hawthorne, who is in the process  
21 of filing her notice of appearance here but will be helping  
22 during trial.

23 For the record, the defendant Vincent Gillespie is  
24 also at counsel table with us.

25 Good morning.

1 THE COURT: All right. So you are going to have  
2 three defense counsel sitting at counsel table during the  
3 trial?

4 MR. WATKINS: That's correct, Your Honor.  
5 Primarily, it will be me and Ms. O'Neill-Greenberg.  
6 Ms. Hawthorne will be assisting on some specific points in  
7 the trial. She has been doing much of the legal research  
8 that has led up to the point that -- where we are.

9 THE COURT: Okay. So let me just start with one  
10 housekeeping matter, which is -- I mean, part of the reason  
11 I'm proceeding with the pretrial conference today is because  
12 I know you all came down, but I didn't find out that I  
13 tested positive until this morning. So rather than have you  
14 come back next week where I could be safely in the  
15 courthouse, I decided to proceed with this by  
16 videoconference.

17 Does the defendant consent to proceeding with the  
18 pretrial conference with me appearing remotely to avoid  
19 infecting everybody on the trial team?

20 MR. WATKINS: Your Honor, may I inquire of the  
21 defendant just briefly?

22 (Proceeding pauses.)

23 MR. WATKINS: Yes. That's quite all right, Your  
24 Honor.

25 THE COURT: All right. Because it's perfectly

1 fine with me to postpone this until next week.

2 MR. WATKINS: No. I think we should go forward  
3 today. I think we all think we should go forward today.

4 THE COURT: All right. So let me just tell you  
5 what my agenda is for today, and things that I want to cover  
6 in addition to having you all seeing the layout of the  
7 courthouse since -- Mr. Watkins, you are not really familiar  
8 with our courthouse or the layout of my courtroom.

9 I don't know whether we still have the  
10 walkie-talkies there. I can see behind you that we still do  
11 in the courtroom. But in our court -- I don't know whether  
12 they're doing this in Boston -- we're using walkie-talkies  
13 for bench conferences.

14 Are you using that in Boston?

15 MR. WATKINS: We are not. But I have seen it used  
16 here at the courthouse, and I think I have got the hang of  
17 it.

18 THE COURT: Okay. Good. Well, I just wanted to  
19 make sure everybody is familiar with that.

20 Okay. So among the things I wanted to cover today  
21 are some logistical matters, like the length of the trial,  
22 what people are anticipating. I want to make it clear on  
23 the record about the communication of plea offers.

24 I am going to discuss the statement of the case  
25 that I use during voir dire and also in preliminary

1 instructions. I want to talk a little bit about the voir  
2 dire questions. And then -- I think the jury instructions  
3 are not much to talk about at this point. And then I want  
4 to talk about the one last pending government motion  
5 in limine.

6 Is there anything else that the defense wants to  
7 add to the agenda?

8 MR. WATKINS: I am not aware of anything, no, Your  
9 Honor.

10 THE COURT: Anything else that the government  
11 would like to add to the agenda?

12 MS. SCHESNOL: No, Your Honor.

13 THE COURT: All right. So let's just talk about  
14 some logistical matters.

15 Okay. So I am living proof that we still have the  
16 COVID transmission in our area. I was presiding over a  
17 trial earlier this week, so the timing couldn't be better.  
18 You know, I had thought to maybe take the plexiglas down  
19 but, clearly, with this happening and some other COVID cases  
20 in the courthouse, I am keeping up the plexiglas.

21 I do require the jurors and everybody in the  
22 courtroom to be masked unless they're speaking. And I  
23 expect that the lawyers are all fully vaccinated.

24 Is that correct, on the government team?

25 MS. SCHESNOL: Yes, Your Honor. We are all

1 vaccinated. And we have already inquired of all of our  
2 witnesses to ensure that they, too, are vaccinated.

3 THE COURT: Okay. Good.

4 Mr. Watkins, is that true of the defense team?

5 MR. WATKINS: Yes. Everybody on the -- the  
6 lawyers on the defense team have been vaccinated.

7 THE COURT: All right. Is Mr. Gillespie  
8 vaccinated?

9 MR. WATKINS: He is not.

10 THE COURT: All right. So this is what I am  
11 requiring. For people who are not vaccinated, when they --  
12 and if they testify, then they, of course, can remove their  
13 masks. But for people who are not vaccinated, I would like  
14 for them to produce a rapid test -- a negative test the day  
15 they testify. It's sort of a minimal precaution that we're  
16 not all getting exposed when somebody is testifying, even  
17 with the plexiglas.

18 I do not need to see the negative test. As  
19 officers of the Court, I just think I am going to leave it  
20 to the lawyers, as officers of the Court, just to check that  
21 the rapid test was administered and that it's a negative  
22 test. And if it's not, then you'll have to come to me;  
23 we're going to have to figure out what we're going to do.

24 But that is one of the things I want to assure the  
25 jurors. I mean, jurors are still somewhat cautious about

1 sitting in a closed room for hour after hour. I think that  
2 some of these small assurances that we give them about the  
3 precautions we're taking gives them some reassurance, and it  
4 makes them focus on the evidence rather than their safety.

5 With respect to stipulations, I saw, in the joint  
6 pretrial statement, that the government has proposed ten  
7 stipulations.

8 Where are we on the stipulations, Mr. Watkins?

9 MR. WATKINS: Your Honor, I owe Ms. Schesnol a  
10 response to them. I think nearly all of them are going to  
11 be -- are agreed to, perhaps with some slight modifications  
12 of language. There are a couple that will not be agreed to,  
13 and I started to communicate that to Ms. Schesnol.

14 I do expect to have our final position on that  
15 within the next couple of days and communicate it to the  
16 government so that it knows what witnesses it needs to call.

17 THE COURT: Well, could you tell me what are the  
18 stipulations you are not going to agree to so I can figure  
19 out, like, how many witnesses this is going to add to the  
20 length of the trial that starts December 19?

21 MR. WATKINS: Perhaps I will go a different  
22 direction and tell the Court which we have indicated what we  
23 will agree to. There's a question about --

24 THE COURT: No. I actually want the ones you  
25 haven't agreed to so that I know.

1           Stipulations take but a second to get the evidence  
2 before the jury, but it's the stipulations that you haven't  
3 agreed to that I am most interested in.

4           MR. WATKINS: The one that we have not agreed to  
5 is concerning a witness from the Safeway Corporation who  
6 would come in to testify about actions that Safeway took in  
7 response to what was happening at the Capitol. There is  
8 a --

9           THE COURT: Did you say "Safeway," like Safeway  
10 grocery store?

11          MR. WATKINS: Correct.

12          THE COURT: Okay. All right.

13          MR. WATKINS: There is also an open source video,  
14 which is an interview with Mr. Gillespie afterwards, that we  
15 are unlikely to stipulate to at this point as far as -- that  
16 we're unlikely to stipulate. The government will need to  
17 have some kind of witness to introduce that to ensure that  
18 it is what it is.

19          THE COURT: Is this the Associated Press interview  
20 with Mr. Gillespie?

21          MR. WATKINS: That's correct. Correct.

22          THE COURT: Oh, yes. I have seen that.

23          All right. So you really want to focus the jury's  
24 attention on that and make it seem as it's as important a  
25 piece of evidence as it might be by making the government

1 call in a witness to bring even more attention to it?

2 That's an interesting trial strategy, but fine.

3 MR. WATKINS: We may change our mind before --

4 THE COURT: One -- two extra witnesses. What  
5 else?

6 MR. WATKINS: We may change our mind on that  
7 before trial, but where the Court is asking me now, I will  
8 certainly --

9 THE COURT: It's up to you. It's always curious  
10 to me -- and this is where I can really perhaps learn  
11 something about trial strategy in my multiple years as a  
12 trial lawyer I didn't learn. But it strikes me, just at the  
13 outset, that that's an interesting trial strategy. Okay.  
14 Because every time you have a witness come, it really  
15 focuses the jury's attention on it like nothing else.

16 Okay. So what else? What other stipulation?

17 So we're up to two witnesses -- extra witnesses  
18 that might be called.

19 MR. WATKINS: I believe the government is going to  
20 call a witness concerning the United States Capitol Police  
21 closed-circuit video monitoring. I think we would want that  
22 witness to testify as well. So we --

23 THE COURT: About how the CCTV cameras work?

24 MR. WATKINS: Correct.

25 The question in the stipulation was whether they

1 are authentic; that is not going to be an issue. But we  
2 would want a witness to testify, I think -- so far as I can  
3 see it, we have been provided Jencks Act material for her.  
4 She is going to testify at trial.

5 THE COURT: Okay.

6 MR. WATKINS: Body-worn cameras. Again,  
7 authenticity is not going to be an issue. But we do need a  
8 witness to come in and talk about the circumstances of  
9 those. I don't believe that's the aim of the stipulation,  
10 as to prevent that. And as I understand it, the witness  
11 will come in.

12 THE COURT: Okay.

13 MR. WATKINS: I believe -- as far as stipulation  
14 issues, as the Court knows, we've objected to the House and  
15 Senate compilation videos coming in. We will renew our  
16 objection at trial on that. The Court has ruled on that.

17 THE COURT: Right.

18 MR. WATKINS: As far as the stipulations as they  
19 are what they are, that will not be contested.

20 THE COURT: Okay.

21 MR. WATKINS: And I believe -- again, there will  
22 be some language suggestions. I see an Electoral College  
23 certification. We do not expect that we are going to  
24 litigate that particular issue, but there might be some  
25 language that we'd ask the government to put in.

1 THE COURT: Okay. So let me just turn to the  
2 government now. Thank you, Mr. Watkins.

3 Ms. Schesnol, by my count, that's at least four  
4 witnesses, unless stipulations are agreed to. How many  
5 witnesses in addition to those is the government expecting  
6 to call?

7 MS. SCHESNOL: Your Honor, we believe that other  
8 than the Safeway witness -- that all the other witnesses the  
9 government already intended to call will be able to lay the  
10 proper foundation --

11 THE COURT: Right.

12 MS. SCHESNOL: -- for the issues raised by the  
13 defense.

14 THE COURT: I see. Okay. Well, that's a good  
15 clarification. All right.

16 MS. SCHESNOL: So I anticipate seven witnesses. I  
17 will say eight just to be extra super careful, but I believe  
18 seven is realistic.

19 Regarding the Safeway Corporation, if you are  
20 curious -- I thought I saw a quizzical expression. The --

21 THE COURT: Yes, I am curious.

22 MS. SCHESNOL: The charge of civil disorder, the  
23 231 charge, has a component that it affected interstate  
24 commerce. It is the government's contention that the 12  
25 Safeway stores within the District of Columbia had to close

1 early based on the mayor's curfew, and because of that  
2 Safeway lost business. They could not bring in their trucks  
3 from Pennsylvania.

4 I will also advise the Court that we do have a  
5 certificate of authenticity from the custodian of records  
6 for Safeway. So there might be a way that our case agent  
7 can lay the proper foundation and we can admit the  
8 information about Safeway without calling an actual Safeway  
9 employee. But we do have a Safeway employee, if need be.

10 THE COURT: I am curious, and I find that very  
11 interesting, so...

12 MS. SCHESNOL: I have heard that in one other  
13 trial where there was not a stipulation that the jury, in  
14 fact, did find it interesting. So we will all figure it out  
15 together.

16 THE COURT: Yes. I mean, I am sure they will.

17 Okay. So I am very sensitive to the fact that  
18 this is a December 19th date for the trial. I usually have  
19 been able to -- you know, for a single defendant January 6  
20 case, I usually wrap them up within three days, so that's  
21 why I think this is, you know, plainly doable.

22 But what is the government's estimation of how  
23 long you expect the trial to last?

24 MS. SCHESNOL: Your Honor, I agree with you.

25 Potentially -- if past is prologue -- you may remember, I

1       tried the case of Erick Herrera in your courtroom.

2               THE COURT: Right.

3               MS. SCHESNOL: In that case, it took all day  
4 Monday to pick a jury. That being said, the government will  
5 be absolutely prepared with opening statements and a first  
6 witness on Monday in the event that we can pick a jury  
7 rapidly.

8               I believe, even if we do have to put on seven  
9 witnesses, that the government can certainly close by the  
10 end of the day on Wednesday, if not earlier. And then -- I  
11 don't know what the defense plan is for a witness. But even  
12 if they put on a couple of witnesses, I think it's entirely  
13 realistic that we will wrap up Thursday. If the jury needs  
14 Friday to deliberate, my guess is they're going to want to  
15 get out of here as quickly as possible.

16              THE COURT: Right.

17              And remind me -- I mean, I have had so many trials  
18 recently. But for Herrera, did we do the jury selection in  
19 the Ceremonial Courtroom or in my courtroom?

20              MS. SCHESNOL: We did it on your courtroom, Your  
21 Honor.

22              THE COURT: We did it in my courtroom.

23              MS. SCHESNOL: What we did though -- sorry to  
24 interrupt. My recollection is being refreshed.

25              We brought in half the panel into your courtroom,

1 and then we used -- I believe it was Judge McFadden's  
2 courtroom as an overflow courtroom, so they were split up.  
3 The jurors in Judge McFadden's courtroom were watching on a  
4 live video feed.

5 THE COURT: Right. Right. And we're not going to  
6 do that anymore. They're all going to be in my courtroom.

7 MS. SCHESNOL: Okay.

8 THE COURT: Because we're -- you know, based on  
9 what our epidemiologist has told us, you know, with masking  
10 and some of the air filter things we have done in our  
11 courtroom, the social distancing doesn't have to be as great  
12 as the recommendation was at the time of the Herrera trial  
13 last summer. So maybe it will move more quickly.

14 MS. SCHESNOL: May I pose a question to you  
15 regarding that schedule?

16 THE COURT: Yes.

17 MS. SCHESNOL: Because -- as evidenced by what  
18 happened with you this morning, life is uncertain.

19 If for any reason we do not wrap up by the Friday  
20 of that week which, of course, we should, but if, for any  
21 reason, we don't, is the courthouse open the following week?

22 I thought I heard a rumor that the court might  
23 close the week between Christmas and New Years. I am just  
24 planning for logistics.

25 THE COURT: We're usually on recess, so I am going

1 to get the trial done the week of the 19th. I don't see any  
2 reason why it can't be done then.

3 MS. SCHESNOL: Excellent.

4 THE COURT: I am going to start the trial at  
5 9 a.m., and we are going to go to 5:00 or 5:30 in order to  
6 get all of the evidence in. I keep my breaks to ten  
7 minutes, and a one-hour lunch. We're going to get it done.

8 So I am going to -- if I have to think about what  
9 we're going to do, I think -- for the other trials that are  
10 going on, they're taking a break for a week because that is  
11 just impossible for jurors who -- you know, particularly  
12 when the holidays this year are weekend to weekend, I think  
13 it's going to be very, very difficult for people to change,  
14 you know, all sorts of plans. It's also the first year  
15 where the pandemic is really at such a level that I think  
16 lots of people are looking forward to traveling, including  
17 myself. So I think we're all going to -- we're going to get  
18 it done that week.

19 MS. SCHESNOL: That is certainly my preference, so  
20 I am glad we're on the same page.

21 THE COURT: Yes. You have tried a case with me  
22 before; we run it very efficiently. We'll get the evidence  
23 in, and there you go.

24 MS. SCHESNOL: Excellent.

25 THE COURT: How long are you going to need,

1 Ms. Schesnol, for opening?

2 MS. SCHESNOL: I would say 20 minutes. We can say  
3 25 just out of an abundance of caution in case something  
4 happens with the PowerPoint and it takes longer to work out  
5 the technology.

6 THE COURT: All right. And if you are using any  
7 demonstratives during the course of your opening, please  
8 make sure that you have it cleared with defense counsel so  
9 that I could resolve any objections before December 19th.

10 MS. SCHESNOL: Absolutely.

11 THE COURT: Mr. Watkins, could you just let me  
12 know if 25 minutes is sufficient for your opening, if you  
13 decide to give one.

14 MR. WATKINS: I'm sorry, Your Honor? I didn't  
15 hear the last --

16 THE COURT: I'm sorry. If you decide to give an  
17 opening, how long will you need for your opening?

18 MR. WATKINS: It would be similar, 20 to 30  
19 minutes.

20 THE COURT: All right. So I will give 30 minutes  
21 then.

22 Okay. Just to keep things moving along, I have  
23 sort of already reviewed the schedule. We're going to be  
24 starting at 9:00 -- for jury selection at 9:00 for the  
25 beginning of the evidentiary part of the trial. We're going

1 to go until 5:00 or 5:30 for each trial day. We'll take a  
2 ten-minute break in the morning, a ten-minute break in the  
3 afternoon, one hour for lunch.

4 Our cafeteria does have online ordering. I think  
5 it's a real boon for trial counsel because you can order in  
6 the morning and just tell the cafeteria when you want to  
7 pick up your lunch, and then you don't have to wait in any  
8 of the lines. I really suggest you learn how to do that,  
9 and then you can have lunch. Otherwise, if you wait in  
10 line, you might have to forego eating because I really do  
11 try to be punctual. The online ordering really is a great  
12 facilitator for counsel to be able to pick up their lunch.

13 I usually break for lunch at 12:30. So you can  
14 just order to have your lunch ready for 12:30, pick it up  
15 and, you know, have it during the lunch break.

16 I will issue a final pretrial order the week  
17 before the trial, and that will set out the jury selection  
18 procedures that I use. I use a version of the struck  
19 method; it will also have the voir dire questions. I have  
20 been using only two alternates for these trials, and that  
21 seems to have been plenty.

22 Any objection to that, Mr. Watkins?

23 MR. WATKINS: No.

24 MS. SCHESNOL: No, Your Honor.

25 THE COURT: Okay. And, Ms. Schesnol?

1 MS. SCHESNOL: No, Your Honor.

2 THE COURT: All right. Let me just turn to the  
3 communication of plea offers. I do understand from the  
4 joint pretrial statement that the government made one plea  
5 offer in this case where the offer was that: In return for  
6 dismissal of all of the other counts, if the defendant pled  
7 guilty to Count 1, which is the 111(a)(1) count, and  
8 Count 8, the obstruction count -- and the defendant rejected  
9 that offer, which expired on July 14, 2022.

10 So, Mr. Watkins, did you communicate that plea  
11 offer to Mr. Gillespie?

12 MR. WATKINS: Yes, Your Honor. It's actually been  
13 a total of two plea offers over the course of the case.

14 I will let Ms. Schesnol pick up her papers.

15 MS. SCHESNOL: I'm sorry.

16 MR. WATKINS: There have been two, both of which  
17 have been communicated to Mr. Gillespie. He denies the  
18 charges and is ready to go to trial.

19 THE COURT: Okay. Did you, in your communications  
20 with him, Mr. Watkins, fully explain the difference in  
21 penalties he would -- well, you say that there were two plea  
22 offers. I'm interested in what the most lenient plea offer  
23 was.

24 Was the plea offer that's described in the joint  
25 pretrial statement with the plea to Counts 1 through 8 --

1 was that the most lenient plea offer made by the government  
2 in the case, Ms. Schesnol?

3 MS. SCHESNOL: Your Honor, I apologize for not  
4 including that in the pretrial statement.

5 As Your Honor may or may not recall, Mr. Gillespie  
6 was initially charged in a seven-count indictment that did  
7 not include the 1512 charge. The initial plea offer was  
8 extended on April 19th of this year with a very short  
9 deadline of April 29; so it was a ten-day deadline to the  
10 assault charge, the 111(a) charge. And the reason for that  
11 is because we then discovered this Associated Press video  
12 that we believe is the basis for the 1512. And we actually  
13 talked about it on the record at our very first status  
14 conference and indicated that: If that plea to the 111(a)  
15 was not accepted, then we would file a superseding  
16 indictment, which, of course, we did. And the superseding  
17 indictment is Document 18 on the record.

18 THE COURT: Okay.

19 MS. SCHESNOL: And so to be clear, the charge --  
20 the initial offer to the 111(a) did include the appropriate  
21 guidelines. And I believe where it landed with acceptance  
22 of responsibility and no criminal history -- I believe that  
23 landed at -- sorry. Just give me one moment to verify.

24 That would have been a final calculated offense  
25 level of 21, with no criminal history, as a 37- to 46-month

1 range. That was rejected.

2 The government superseded; made a subsequent plea  
3 offer that is referenced in the joint pretrial statement,  
4 which is a final level 22, with a range of 41 to 51 months.

5 If Mr. Gillespie is convicted on all counts, the  
6 government believes that the combined offense level would be  
7 a 25, which has a range of 57 to 71 months.

8 I would add the caveat that because sometimes  
9 things come up in trial that are not expected, sometimes,  
10 after trial, the government moves for other enhancements,  
11 such as obstruction of justice, and things like that. The  
12 government is not guaranteeing that, at the end of trial, it  
13 would be a level 25; but that's what our -- what our  
14 calculations are at this point barring -- barring some  
15 things that come up -- that may or may not come up at trial.

16 THE COURT: All right. Thank you.

17 Let me turn to Mr. Watkins.

18 And so, Mr. Watkins, with respect to both of those  
19 plea offers, the most lenient one being the first one and,  
20 certainly, the second one then, you communicated to  
21 Mr. Gillespie both plea offers; is that correct?

22 MR. WATKINS: I did, Your Honor.

23 THE COURT: And did you also communicate to him  
24 the difference in penalties that was being offered in both  
25 of the plea offers versus the penalties he would face if

1 convicted at trial on all counts?

2 MR. WATKINS: I did do that.

3 Indeed, I went over the guidelines at some length  
4 with Mr. Gillespie about the things that the government  
5 were -- was alleging and how the guidelines could even  
6 change during trial. It could possibly be lower but,  
7 certainly, the government's position I communicated to him.

8 THE COURT: Okay. And he rejected the plea  
9 offers, both plea offers?

10 MR. WATKINS: He's pled not guilty, he denies the  
11 charges. He's ready to go to trial.

12 THE COURT: Okay. So I just need to see  
13 Mr. Gillespie and have his voice on the record.

14 Mr. Gillespie, could you come stand at the podium.  
15 Hello, Mr. Gillespie.

16 THE DEFENDANT: Hello.

17 THE COURT: Hi. You can keep your mask on,  
18 Mr. Gillespie.

19 Is that accurate, that you understand the  
20 difference in penalties between the two plea offers extended  
21 by the government and the penalties you would face if  
22 convicted at trial? And did you reject both those plea  
23 offers after that consultation with your counsel?

24 THE DEFENDANT: We -- we certainly did talk about  
25 it. I don't remember specifically talking about how much

1 more it would -- the penalty would be at trial, but there --  
2 I have no -- I definitely rejected both plea offers.

3 THE COURT: All right. Thank you.

4 You may resume your seat.

5 All right. So now let's turn to the next item on  
6 my agenda, which is talking about the voir dire questions --  
7 well, actually, I need to talk about the statement of the  
8 case. Let me do that first.

9 Thank you to both sides for proposing a statement  
10 of the case. I think I want to simplify it slightly, so  
11 listen to the statement that I plan to use. And this will  
12 be written in my pretrial order, so you will see it in  
13 writing then. If you need me to read it again, I will.

14 This is a criminal case. The United States has  
15 charged Defendant Vincent Gillespie with violating eight  
16 separate federal criminal laws based on his alleged conduct  
17 at the United States Capitol Building on January 6, 2021.

18 Specifically, Mr. Gillespie is charged with  
19 unlawfully assaulting, resisting, or impeding officers; and  
20 acting to obstruct, impede, and interfere with officers  
21 lawfully performing their duties incident to and during a  
22 civil disorder; unlawfully entering or remaining and  
23 engaging in disorderly, disruptive, and violent conduct in a  
24 restricted building or grounds, namely U.S. Capitol  
25 Building; and unlawfully obstructing an official proceeding.

1 Mr. Gillespie denies each charge.

2 Does the government have any objection?

3 It's essentially what you did, but I just made it  
4 a little bit less wordy.

5 MS. SCHESNOL: The government has no objection.

6 MR. WATKINS: Nor does --

7 THE COURT: And, Mr. Watkins?

8 MR. WATKINS: Nor does the defense. We have no  
9 objection to it as stated.

10 THE COURT: Okay. Excellent.

11 You will see this in the final trial order. If  
12 you have any other things you want to say about it, you will  
13 have some time before the trial begins.

14 Okay. Now let's turn to the voir dire questions.  
15 I will generally ask the questions that the parties have  
16 proposed in a format that elicits a yes-or-no answer.

17 And, Mr. Watkins, of course, you have never tried  
18 a case in front of me, but I ask -- and I am sure the judges  
19 in Boston do it, generally, in the same way. I am going to  
20 ask the collective questions, and then I send all of the  
21 jury out of the courtroom. I bring each juror in  
22 individually for individual voir dire, where I start with  
23 the questions that they have checked to which they have an  
24 affirmative or a yes answer. Then the parties have an  
25 opportunity to ask me to follow up with any other questions

1 that they may have, which I will pose to the prospective  
2 jurors.

3 I do expect any for-cause motions to be made  
4 promptly at that time so that I can promptly start clearing  
5 out the courtroom of jurors for whom there is a for-cause  
6 motion. I rule on those promptly, and then they just leave  
7 the courtroom and go back to the jury lounge.

8 So do you have any questions about that,  
9 Mr. Watkins?

10 MR. WATKINS: No, I don't.

11 THE COURT: Okay. So --

12 MR. WATKINS: Your Honor, I should note that there  
13 were a couple of questions that we suggested that the  
14 government is opposing. Is the Court indicating --

15 THE COURT: Yes. I'm going through those now.

16 MR. WATKINS: Oh, I am sorry. And with the  
17 Court's permission, I will ask Ms. O'Neill-Greenberg to come  
18 up. She was really the person instrumental in designing  
19 these questions.

20 THE COURT: Fine.

21 Okay. With respect to the agreed -- I followed  
22 the parties' division of these questions into the  
23 agreed-upon questions; the defendant's proposed alternative  
24 questions to which the government has no objection; the  
25 defendant's proposed background questions; and then disputed

1 questions.

2 So I am just going to start with each of those  
3 categories, starting with the agreed-upon questions.  
4 Question 5 references the Federal Public Defenders rather  
5 than just "defense counsel."

6 Is that necessary?

7 MS. O'NEILL-GREENBERG: No, Your Honor. We can  
8 just list ourselves --

9 THE COURT: Okay. Good. Because I usually don't  
10 say that, just like I don't say when it's CJA appointed; I  
11 don't say "CJA appointed." I just don't do that.

12 And there is a proposed question, I guess the  
13 defendant's -- the defendant's proposed Question 1, which  
14 the government doesn't object to, is very similar to the  
15 jointly proposed Question 10.

16 Defendant's Question 1 asked: Based on the  
17 information I have given you about this case, have you  
18 received, heard, or seen any information from any source  
19 that you recall being specifically about the defendant in  
20 this case, Vincent Gillespie, or the facts and circumstances  
21 specific to this case?

22 This is a much more, you know, pointed question  
23 than the jointly proposed Question 10.

24 So my question, I guess, to both sides is: Why  
25 don't I just use the suggested question -- the defendant's

1 proposed Question 1 and not ask Question 10?

2 MS. SCHESNOL: That's fine with the government,  
3 Your Honor.

4 MS. O'NEILL-GREENBERG: That's fine, Your Honor.

5 THE COURT: And how about for the defense?

6 MS. O'NEILL-GREENBERG: That fine.

7 THE COURT: Is that fine with defendants?

8 MS. O'NEILL-GREENBERG: Yes. That's fine. Thank  
9 you.

10 THE COURT: Perfect.

11 And Question 27 asks: Do you have any moral,  
12 religious, or ethical beliefs that would prevent you from  
13 sitting in judgment on another person?

14 And Question 28 asks: Do you believe your  
15 political views or those of your spouse, partner, or  
16 significant other will affect your ability to serve as a  
17 fair and impartial juror in this case?

18 Do you really think it's necessary to ask about  
19 spouses and partners or significant others?

20 MS. O'NEILL-GREENBERG: I think it's important  
21 only to the extent that those are intimate relationships and  
22 there's probably a lot of discussion about those views  
23 between those relationships in a way that can impact the  
24 juror.

25 THE COURT: Okay. Well, so I will ask defendant's

1 proposed Question 1 instead of Question 10. And I will  
2 add -- I will ask both Question 27 and Question 28 with the  
3 political views about spouses or partners.

4 Okay. Then with respect to defendant's proposed  
5 questions to which the government does not object, I guess  
6 there are seven questions; I am just going to run through  
7 those.

8 Defense proposed Question 2 asks: During the  
9 course of the trial you will hear about a certain location  
10 in Washington, D.C., the U.S. Capitol. Put a mark next to  
11 the question if you, a member of your family, or friend has  
12 any special familiarity -- this seems very repetitive of the  
13 jointly proposed Question 8. Why should I ask the  
14 defendant's proposed Question 2?

15 MS. O'NEILL-GREENBERG: In the same way that  
16 Question 1 is so similar to Question 10, I just -- I took  
17 Question 8 and broke it down in a way that I thought it  
18 would be easier for the juror to read if they're checking it  
19 off. It's very similar.

20 THE COURT: Okay. I am not going to ask your  
21 version of Question 2 because I am already asking  
22 Question 8. I mean, that question prompts a lot of  
23 follow-up, so, you know, we'll see what happens with that.

24 Question 3 asks: Do you or someone you know have  
25 a direct or indirect connection to the events that occurred

1 at the U.S. Capitol on January 6th?

2 That seems sort of exactly what I am asking in  
3 jointly proposed Question 9, which I will ask. So what is  
4 the difference?

5 MS. O'NEILL-GREENBERG: I think that the proposed  
6 Question 3 just gets at a larger swath of people. I agree  
7 it's similar to the jointly proposed one. I would say one  
8 or the other; I am not saying both -- that we would ask  
9 both.

10 THE COURT: Okay. Well, I am going to ask the  
11 jointly proposed Question 9.

12 And then Questions 4 and 5 ask: Have you followed  
13 the news about the events that took place at the Capitol on  
14 January 6th?

15 If you have, do you feel your exposure to this  
16 news coverage has affected your ability to serve fairly and  
17 impartially as a juror at this trial?

18 Which is -- you know, both Questions 4 and 5 --  
19 those seem no different and seem focused on exactly the same  
20 information in Question 11, the jointly proposed  
21 Question 11, which I have used before. It seems to have the  
22 same information that you are trying to get at.

23 So why add more questions to the collective  
24 questions with Questions 4 and 5?

25 MS. O'NEILL-GREENBERG: Again, Question 5 is,

1 obviously, just like a follow-up sub-part to Question 4.  
2 But I think if the juror is reading it and they're thinking  
3 about what to check off, it's just an easier way to break  
4 that down for them to read it and follow it.

5 THE COURT: No. I think it's overly broad. I am  
6 not going to ask those. I am going to just stick with  
7 Question 11, it gets to exactly the same point.

8 Defendant's proposed Question 6 asks: Do you have  
9 such strong feelings or opinions about the events that took  
10 place at the Capitol that it would make it difficult for you  
11 to serve as a fair and impartial juror in this case?

12 And defendant's Question 7 asks: Do you feel that  
13 you have already formed an opinion regarding the guilt or  
14 innocence of the individuals present at the U.S. Capitol on  
15 January 6, 2021?

16 This also seems pretty close to proposed  
17 Question 26. Could you explain what the difference is?

18 MS. O'NEILL-GREENBERG: I think it's similar,  
19 that's correct. I think 6 probably -- 7 is a follow-up to  
20 6. If a juror says yes to 6, then 7 --

21 THE COURT: We'll do follow-up. You will just ask  
22 me to do follow-up.

23 MS. O'NEILL-GREENBERG: That's fine.

24 THE COURT: Okay. I am just going to stick with  
25 jointly proposed Question 26.

1           Okay. Now the defendant has also proposed a whole  
2 bunch of background questions, which seems like a whole  
3 grab-bag of demographic data, which -- you know, like: What  
4 is your marital status? Do you have children or  
5 stepchildren? How many? Your hobbies?

6           I mean, we're not going to be here all week doing  
7 this voir dire. I am telling the defense this right now.

8           I just don't see how any of those questions can be  
9 probative of potential bias. I mean, I do ask some  
10 questions about personal stuff if I get a questionnaire back  
11 from a juror that, basically, has nothing marked. So we  
12 have to get a feel for is this person, like -- did the  
13 person understand the questions? You know, is that the  
14 reason there is nothing marked?

15           So I will ask some version -- it's not going to  
16 be, you know, necessarily how many children, but some  
17 version of demographic query if I feel that we need sort of  
18 more information about the person and how well they're able  
19 to comprehend. But, otherwise, I really don't like to get  
20 into a sort of finishing expedition, you know, about matters  
21 that have very little to do with potential bias, like how  
22 many children do people have.

23           So I am not -- why should I ask any of those  
24 questions?

25           MS. O'NEILL-GREENBERG: I think it's important to

1 get a full understanding of the jurors' background to then  
2 be able to determine if there is a prejudice and also to be  
3 able to exercise peremptories in a meaningful way.

4 That said, Your Honor, I think A and D are  
5 important to know. The other ones, if the jurors brought  
6 something up, like: I was afraid. My children go to school  
7 next to the Capitol, and I'm a -- you know, it makes me  
8 nervous.

9 THE COURT: We're going to find that out.

10 MS. O'NEILL-GREENBERG: Right.

11 THE COURT: We're going to find that out.

12 MS. O'NEILL-GREENBERG: Then that would be more  
13 follow-up, how many children do you have? That kind of  
14 thing. What are their ages?

15 So I agree that some of these could be follow-up  
16 if it's relevant. I think knowing how much school  
17 they've -- what their education is, what their occupation  
18 is, that's just basic relevant --

19 THE COURT: You will know that from the venire  
20 list. I don't necessarily like to waste time on that  
21 because the venire list you will get will have their age,  
22 their occupation, which is sometimes quite indicative of  
23 educational level.

24 MS. O'NEILL-GREENBERG: Yes.

25 THE COURT: Also, how they respond to questions is

1 somewhat indicative of educational level. But I don't know  
2 that educational level is particularly helpful in evaluating  
3 whether somebody can be fair and impartial, to be quite  
4 honest. So, you know, I just think it's irrelevant to  
5 whether somebody can be a fair and impartial juror, how much  
6 education they have.

7 I am generally not going to ask those questions  
8 unless the government, you know -- does the government want  
9 to add to this discussion?

10 MS. SCHESNOL: Your Honor, these were not the  
11 government's proposed questions.

12 What I will add is I think that there is something  
13 very unique that goes on in these January 6th cases, and it  
14 even did happen in the Erik Herrera case where jurors  
15 expressed a concern about this category of defendants  
16 knowing too much about their personal lives.

17 THE COURT: Oh, absolutely. We lost a juror in  
18 the Herrera case --

19 MS. SCHESNOL: Yes.

20 THE COURT: -- because the person was literally  
21 shaking from fear --

22 MS. SCHESNOL: Yes.

23 THE COURT: -- because personal information about  
24 them had been revealed.

25 I am telling you, if defense counsel wants to, you

1 know, yeah, scare this jury -- yeah, figuring out all of  
2 that information about them -- we literally lost a juror who  
3 was shaking because of fear of defendants related to the  
4 January 6th events.

5 MS. SCHESNOL: And that was after we picked the  
6 jury, swore the jury. And so --

7 THE COURT: Exactly.

8 MS. SCHESNOL: -- we started the trial with only  
9 one alternate because we lost that juror immediately. So I  
10 worry that if we pose these questions we'd have a very  
11 difficult time seating our 12 jurors and 2 alternates,  
12 especially the week before Christmas. This just adds one  
13 more thing that would scare off potential jurors.

14 THE COURT: Right. Right.

15 Ms. O'Neill-Greenberg, you are not hoping to scare  
16 off jurors, are you?

17 MS. O'NEILL-GREENBERG: No, Your Honor. But I  
18 will say that if --

19 THE COURT: Have you tried one of these  
20 January 6th-related cases before?

21 MS. O'NEILL-GREENBERG: I have not.

22 THE COURT: Have you or Mr. Watkins?

23 MS. O'NEILL-GREENBERG: I'm sorry? Attorney  
24 Watkins and I --

25 THE COURT: Have you or Mr. Watkins tried a

1 January 6th-related case yet?

2 MS. O'NEILL-GREENBERG: This is our first one.

3 THE COURT: All right. Well --

4 MS. O'NEILL-GREENBERG: But I will say that if a  
5 juror felt so uncomfortable and so scared of a defendant  
6 that that was going to be a real distraction, we would want  
7 to know that as soon as possible to let them leave so  
8 they're not suffering. So, you know, obviously if they were  
9 going to be in that vulnerable state from these kinds of  
10 questions, I think everyone would want to know so that we  
11 could let them go.

12 THE COURT: Well, we do find that out in other  
13 ways, but there is no reason to, you know, basically, query  
14 down to finite, you know, fine details on the record in ways  
15 that it's going to make them nervous that they're going to  
16 be you hunted and stalked online or at their home, which was  
17 one of the concerns expressed by that one particular juror  
18 who we had to excuse.

19 I am not going to ask those questions mostly  
20 because they're not at all probative of impartially. And  
21 the other questions that are asked will be able to elicit  
22 the concern that people have about their own safety about  
23 serving on a January 6th-related case jury.

24 Okay. So that's with respect to the proposed  
25 background questions, which just makes people very nervous

1 in these cases.

2 With respect to the disputed questions proposed,  
3 defendant proposes ten questions, and the government objects  
4 to those.

5 So defense Question 1 asked: Do you have any  
6 difficulties understanding, speaking, or reading in the  
7 English language?

8 It's very repetitive already of the jointly  
9 proposed Question 12.

10 What's different about that?

11 MS. O'NEILL-GREENBERG: Oh. We have two question  
12 12s, Your Honor. Sorry. Well, this question -- the  
13 proposed question doesn't really get at their ability --

14 THE COURT: Yes, it does.

15 MS. O'NEILL-GREENBERG: I think this one is more  
16 specific, but I am just trying to --

17 THE COURT: In what way? In what way is it more  
18 specific?

19 MS. O'NEILL-GREENBERG: Because they're not just  
20 going to be listening to evidence, they are going to --  
21 there is going to be a lot of things that they're going to  
22 be reading, watching. Evidence is come into them a lot of  
23 different ways. Sometimes people are fluent in English, but  
24 then they have difficulty reading, vice versa.

25 THE COURT: Come on. Let's not waste time here.

1 This is not a good sign, Ms. O'Neill-Greenberg.

2 Question 12, which I will probably use because I  
3 use it in all my trials, asks: Do you have any vision,  
4 language, or hearing issues or conditions or any other  
5 physical -- or any other physical or medical issues or  
6 conditions that might interfere with your ability to hear or  
7 understand what the witnesses say in this case, to view  
8 exhibits and photographs, or to give your full attention to  
9 this case?

10 That captures all medical, physical problems. I  
11 have never had any problem with that question. I really  
12 don't even understand how this question, you know, asks  
13 anything different from that. I am not going to ask defense  
14 Question 1.

15 Defense Question 2 -- because it's already asked  
16 in proposed Question 12.

17 Defense Question 2 asks: Do you feel that you  
18 and/or residents of Washington, D.C. were harmed by the  
19 events which transpired at the U.S. Capitol on January 6,  
20 2021?

21 And then defendant's proposed Question 3 asks: If  
22 so, would this belief make it difficult for you to serve as  
23 a fair and impartial juror in this case?

24 Well, I think most Americans think that what  
25 happened on January 6th harmed the entire country, of which

1 Washington, D.C. is a part. So how does that get to whether  
2 or not they can be a fair and impartial juror in this case?

3 MS. O'NEILL-GREENBERG: I think with the follow-up  
4 of 3, Your Honor -- it's not just that they feel they're  
5 harmed, but is it to such a degree that they would -- it  
6 affects their ability to be fair and impartial?

7 I think it's a relevant question given just the  
8 immensity of what happened here and it being so intimate to  
9 the jurors of D.C. and the pervasiveness of the media,  
10 especially right after the Oath Keepers trial. I think it's  
11 important to ferret out any bias that might be existing in  
12 the jurors, which I think is unique in this situation given  
13 that we're here in the Capitol, and it's right where  
14 everything occurred.

15 THE COURT: I think that there are so many other  
16 questions that I am asking that will elicit whether or not  
17 they can be fair and impartial, anything about the case,  
18 that I am not going to ask a question about whether they  
19 think people were harmed. I mean, there was somebody --  
20 people who died because of the events so, clearly, there are  
21 people who were harmed because of what happened on  
22 January 6th. As I said, I think most people think the  
23 entire country was, so I am not going to ask those  
24 questions.

25 Defense Questions 4, 5, and 6 ask your views on

1 making physical contact with law enforcement in three  
2 different ways.

3 Question 4 asks: Do you agree that if one person  
4 uses physical force against another the person who initiated  
5 the force is always at fault?

6 5: If one person uses physical force against  
7 another, do you feel their intent must be to harm them?

8 Question 6 asks: Do you feel that there is never  
9 a legitimate reason for a person to make physical contact  
10 with or use physical force against a law enforcement  
11 officer?

12 And what is your point with that?

13 MS. O'NEILL-GREENBERG: I think an important part  
14 of voir dire is ferreting out --

15 THE COURT: Are you trying to plant in their mind  
16 not once, not twice, but three times that despite this  
17 defendant's denial of the charges against him that he had  
18 contact with law enforcement officers?

19 I mean, that's what it seems like.

20 If the government proposed these questions, I  
21 would expect defense objections to them for planting this  
22 seed of this defendant that did that. So why?

23 Why do you want these questions as a strategy  
24 matter?

25 MS. O'NEILL-GREENBERG: Well, as -- I think it is

1 going to be a relevant aspect at trial, that the government  
2 alleges that Mr. Gillespie did have contact with a law  
3 enforcement officer. And that is an area that contact -- a  
4 regular person's contact with a law enforcement officer can  
5 trigger strong feelings.

6 People have strong feelings about not just  
7 physical contact but that relationship from a regular person  
8 to a law enforcement officer and how people feel about that.

9 And so if there is an area where someone might  
10 have a strong prejudice, I think that's a relevant field of  
11 inquiry for voir dire.

12 THE COURT: Does the government want to respond?

13 The government objects. Why do you object?

14 MS. SCHESNOL: Your Honor, these --

15 THE COURT: Or would you prefer to have three  
16 questions saying they're going to see evidence, this  
17 defendant had physical contact, you know, and initiated  
18 force against law enforcement. So --

19 MS. SCHESNOL: I had a thought about it --

20 THE COURT: Do you want to object to these  
21 questions?

22 MS. SCHESNOL: Well, I do, Your Honor. I hadn't  
23 thought about it from the point of view that you raise.

24 I read these. These strike me as more of setting  
25 up some kind affirmative defense, of a self-defense, or

1 defense of a third party which, thus far, has not been  
2 asserted. And so, if anything, I think it could potentially  
3 plant an idea in potential jurors' minds that it is actually  
4 okay to assault law enforcement officers under certain  
5 circumstances and without potentially having any evidence  
6 that there was some kind of justification. That's how I  
7 read these.

8 THE COURT: Well, yes. I just don't think  
9 prospective jurors are going to even understand these  
10 questions. I mean, you know, D.C. juries are quite  
11 sophisticated, it doesn't matter what education level they  
12 have. I think they're going to be, like, puzzling -- you  
13 know, like, all of the different circumstances that could  
14 arise, whether it could be a contact with law enforcement.  
15 I just think that they're way too confusing, way overbroad.  
16 I am not going to ask those questions.

17 Defense Question 7 asks: Would learning the fact  
18 that someone used physical force -- so this is along the  
19 same series of Questions 4, 5, and 6. Would learning the  
20 fact that someone used physical force against a law  
21 enforcement officer make it difficult for you to be a  
22 completely fair and impartial juror in this case?

23 Again, strategy-wise, you want to be asking -- you  
24 want me, the judge, to be saying it is a fact -- a fact --  
25 that someone -- and the only person on trial here is

1 Mr. Gillespie -- used physical force against a law  
2 enforcement officer?

3 Ms. O'Neill-Greenberg, that's a question you want  
4 me to pose to this prospective jury panel?

5 MS. O'NEILL-GREENBERG: There may be certain  
6 people who -- if they hear that evidence is coming in, that  
7 could be a complete nonstarter for them. That -- they may  
8 have experiences in their own life or been exposed to things  
9 where if they think anything -- there is any kind of contact  
10 with law enforcement -- between regular people and law  
11 enforcement, that that's a completely turnoff for them or a  
12 complete shutdown, especially given the many interactions  
13 that there have been historically and over the past few  
14 years between law enforcement and regular people --

15 THE COURT: Do you think that would be -- that  
16 would make them, you know, an inappropriate juror?  
17 Because it's like saying, I mean, do you -- would learning  
18 the fact that someone murdered another person, do you think  
19 that that would -- if you feel that that's illegal, would  
20 that make it difficult for you to be fair and impartial?

21 I mean, like, what kind of question is that?

22 That is nuts. I am not going to ask that question.

23 I just think that, one, it's not an appropriate  
24 question to ask, particularly in this way of, basically,  
25 calling it a fact when we haven't even gotten to the

1 evidentiary part of the trial, that this defendant used  
2 physical force because it was somewhat clear, no matter how  
3 coy you want to use a word.

4 So I am not -- I find this question to be both  
5 inappropriate, unhelpful, and confusing to the jury and  
6 possibly unfair to the defendant, so I am not going to ask  
7 that question.

8 Okay. The defense Question 8: Every defendant in  
9 a criminal trial is presumed innocent and, therefore, has no  
10 obligation to testify or present any evidence in a case.  
11 Despite this, do you feel that because the defendant has  
12 been charged with a crime that he is guilty?

13 To me, this looks exactly like or very close to  
14 proposed Question 24. So, really, is the defense asking to  
15 use your version of Question 8 rather than proposed  
16 Question 24?

17 Is that what you are asking?

18 I am not going to ask both.

19 MS. O'NEILL-GREENBERG: Nine and 10 are follow-ups  
20 to 8, Your Honor, but they all get at the presumption of  
21 innocence. I don't think asking a question about the  
22 presumption of innocence in two different ways twice, given  
23 the pervasive media coverage, the series of convictions that  
24 have happened in January 6th cases, and the media about  
25 that, there is definitely a lot of information nationally

1 and in the D.C. area about all of the --

2 THE COURT: Don't reargue your venue motion here,  
3 really; don't bother doing that.

4 MS. O'NEILL-GREENBERG: All I am saying is I think  
5 asking it in a few different ways about the presumption of  
6 innocence, especially in a case like this where the media  
7 coverage is so pervasive, and that includes pervasive  
8 coverage of people being convicted in January 6th cases, it  
9 just ensures that all the jurors who are sitting understand  
10 robustly the presumption of innocence.

11 THE COURT: Okay. I think it's really repetitive.  
12 I already ask about that in both Questions 23 and 24; that's  
13 enough repetition in the voir dire questions. I am not  
14 going to add two more to be even more repetitive about it.  
15 I am not asking defendant's Questions 8 or 9.

16 All right. Now let's look at the exhibit list.  
17 The government has submitted one with the joint pretrial  
18 statement. I understand it's not the government's final  
19 exhibit list; is that correct?

20 MS. SCHESNOL: Your Honor, that is correct. It's  
21 not the final list. Even since the date that we filed this  
22 joint pretrial statement, about three weeks ago, we have  
23 made some updates to the exhibit list. Just so the Court is  
24 aware, our exhibit list, as well as all the exhibits, are  
25 put on the USAfx platform and made available to the defense.

1 So as we update our list, they are being updated. If we add  
2 anything else between now and trial, which I presume we  
3 might, especially with discussion about the stipulations --

4 THE COURT: Right.

5 MS. SCHESNOL: -- we will continue to constantly  
6 update the defense. So they have our most recent list as  
7 well as exhibits.

8 If I recall correctly --

9 THE COURT: Okay. Let me just ask that the Friday  
10 before trial if you could submit what is probably pretty  
11 close to your final exhibit list and your witness list, you  
12 know, to the Court so that I know what is coming on Monday.

13 MS. SCHESNOL: Absolutely. We will do that.

14 Thank you.

15 THE COURT: Okay. Now, with respect to the jury  
16 instructions, it looks like the parties really just dispute  
17 two of the instructions which is good. We'll deal with that  
18 at the charging conference; we don't have to take up time  
19 today.

20 The last thing I want to talk about, really, is  
21 the one remaining pending motion, which is sealed, so I am  
22 not going to reveal the contents of the motion. But I do  
23 understand that the defendant didn't feel that it had  
24 sufficient information to respond because the only  
25 information about the contents of that motion was relayed in

1 the motion, the government's motion itself.

2 Has the government produced relevant information  
3 relating to the contents of that motion to the defense at  
4 this point?

5 MS. SCHESNOL: Yes, Your Honor. We did update  
6 that.

7 As Your Honor might be aware, usually the  
8 government tries to submit information as close to trial as  
9 possible in case additional discipline or complaints come up  
10 between the disclosure point and trial.

11 Knowing we had this pretrial conference and that  
12 motion was pending, on Monday or Tuesday of this week --  
13 Tuesday of this week, the government did provide the defense  
14 with the individual's complete disciplinary or personnel  
15 history --

16 THE COURT: Documents?

17 MS. SCHESNOL: -- so that information has been  
18 provided.

19 THE COURT: Okay. I haven't even given -- given  
20 the fact of what the content is -- the underlying  
21 information, raw information, raw data has been now produced  
22 to the defense.

23 Mr. Watkins, I don't -- or Ms. O'Neill-Greenberg,  
24 I don't want to put you on the spot. I don't know when you  
25 got the information. But when are you going to be prepared

1 to respond at this point, do you think?

2 MR. WATKINS: Your Honor, given the pressing  
3 business in this case and other cases, I haven't had a  
4 chance to look through the files that Ms. Schesnol has given  
5 me.

6 THE COURT: Okay.

7 MR. WATKINS: I think we can -- within two or  
8 three days of the beginning of trial, we can nail down  
9 whether we are going to go that particular route. This is a  
10 matter of cross-examination. I think the Court is going to  
11 be able to rule on that as we go to trial.

12 As I indicated in my submission, I certainly  
13 understand that it's a sensitive issue. And I would always  
14 consult with the Court and advise the Court if I was going  
15 to go down any of those particular routes. So I'm not sure  
16 that this is something that needs to be --

17 THE COURT: Okay. Well, let me make sure I  
18 understand what you are saying because --

19 MR. WATKINS: I'm sorry?

20 THE COURT: Let me make sure I understand what you  
21 are saying.

22 You're saying let's go ahead and start the trial,  
23 when that particular witness comes on the stand, we'll  
24 decide then whether -- when we get to cross-examination, I  
25 will alert the Court after direct. When the witness is on

1 cross-examination, I will alert the Court then whether or  
2 not I plan to bring up any of the substance of what's at  
3 issue in the government's motion in limine docketed at  
4 ECF 31.

5 Am I understanding you correctly, Mr. Watkins?

6 MR. WATKINS: Judge, there are two responses.

7 One is, as soon as we form an intention that we're  
8 going to go down that route, I would notify Ms. Schesno  
9 whether it's before trial or during trial.

10 Cross-examination is a dynamic process, of course,  
11 and things may come up, questions may -- the government may  
12 elicit things that make these particular lines of inquiry  
13 relevant at that point. And I simply don't want to  
14 foreclose at this point what we're going to do on  
15 cross-examination, other than know that I must inform the  
16 Court if I am going to go down that route so that the Court  
17 can then rule whether it is admissible at that point or not.  
18 It is not going to be a situation where we're going to be  
19 sandbagging the Court.

20 THE COURT: Well, what is it -- well, I am going  
21 to want to know in advance because, once I finish a trial, I  
22 never want to see the defendant, the trial, anything else  
23 again. I would like to have an opportunity, to the extent  
24 that it's been fronted -- an issue has been fronted by the  
25 government -- to rule, when I have time to think about it as

1       opposed to in a flash, when we're in the course of trial, in  
2       order to make a record that the Court of Appeals can look at  
3       my reasoning and figure out whether they agree with it or  
4       not, or there was an abuse of discretion or not.

5               So you have now gotten all of the underlying  
6       records. And I think that you can tell me why you think  
7       it's relevant, probative for use on cross-examination by  
8       next Wednesday, and you can file your response then to the  
9       government's motion. And then the government can reply by  
10      next Thursday, at 2 p.m. You can file your response,  
11      Mr. Watkins, by 2 p.m. on Wednesday. I can get the  
12      government's response by 2 p.m. the following day.

13             I can either rule on it before trial or be fully  
14      prepared to rule on it at trial so that, also, the  
15      government knows how to deal with it on direct examination.  
16      I can lay out my reading -- I mean, for my -- I am not sure,  
17      given the nature of the information that we're talking  
18      about, even what opening the door would be here,  
19      Mr. Watkins, given that it's so unrelated to anything on  
20      January 6th. I am really -- I would be interested in your  
21      view of how it can ever be probative or relevant on  
22      cross-examination for impeachment so I make sure I don't  
23      miss something or make a mistake; I would like to avoid that  
24      at all costs.

25             I'll determine them in the order we've scheduled.

1 All right. So is there anything else to address  
2 today?

3 MS. SCHESNOL: Your Honor, may I -- I'm sorry,  
4 Your Honor. May I just make a point for the record, just so  
5 things are super clear?

6 THE COURT: Yes.

7 MS. SCHESNOL: What the government provided on  
8 Tuesday was a document listing out certain information; I  
9 won't go into detail here. It is only upon an order of the  
10 Court that the government turns over additional underlying  
11 documents that go to the decisions that are made in  
12 personnel matters. And so it is our position that until the  
13 defense requests those and the Court orders it, we are not  
14 at liberty to turn over those underlying supportive  
15 documents as opposed to the general information about  
16 someone's personnel record. That was also all laid out in a  
17 cover letter to the defense on Tuesday when the initial  
18 information was provided.

19 THE COURT: And no such request has been made by  
20 the defense at this point?

21 MS. SCHESNOL: That's correct, Your Honor.

22 THE COURT: All right. So, Mr. Watkins, I know  
23 you are pressed with other business. You have got a team of  
24 three for a single-defendant case. I think you can find  
25 time to figure out what requests you are going to make and

1 whether you are going to pursue it.

2 My schedule stays in place. But thank you for  
3 that clarification, Ms. Schesnol.

4 All right. Is there anything further to address  
5 today from the government?

6 MS. SCHESNOL: Nothing from the government.  
7 Thank you, Your Honor. Feel better.

8 THE COURT: And, Mr. Watkins,  
9 Ms. O'Neill-Greenberg, anything further from you?

10 MR. WATKINS: No. Thank you, Your Honor.

11 THE COURTROOM DEPUTY: Your Honor? Your Honor?

12 THE COURT: Yes.

13 THE COURTROOM DEPUTY: Your Honor, I'm sorry.  
14 Your law clerk would like to alert you that you have not yet  
15 ruled on the disputed Question No. 10.

16 THE COURT: Let me just find it.

17 MS. SCHESNOL: Your Honor, both parties -- we  
18 thought the indication was Your Honor was not going to ask  
19 that question, but it's better to make sure on the record.

20 THE COURT: I think I probably am not. And so you  
21 will see my final voir dire questions with my final trial  
22 order.

23 All right. If there is nothing further, you all  
24 are excused. Thank you. Have a nice weekend.

25 MS. SCHESNOL: Thank you, Your Honor. Feel

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better.

THE COURT: Thank you.

(Whereupon, the proceeding concludes, 12:03 p.m.)

\* \* \* \* \*

**CERTIFICATE**

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

This certificate shall be considered null and void if the transcript is disassembled and/or photocopied in any manner by any party without authorization of the signatory below.

Dated this 29th day of June, 2023.

/s/ Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter