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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

JEFFREY POWERS, et al.,	)	Case No. LA CV 22-08357-DOC
	)	(JEMx)
Plaintiffs,	)	
	)	Los Angeles, California
vs.	)	
	)	Friday, April 5, 2024
DENIS RICHARD MCDONOUGH,	)	
et al.,	)	(3:01 p.m. to 3:27 p.m.)
	)	
Defendants.	)	

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TRANSCRIPT OF STATUS CONFERENCE RE DISCOVERY DISPUTES  
BEFORE THE HONORABLE DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE

Appearances:	See next page.
Court Reporter:	Recorded; CourtSmart
Courtroom Deputy:	Karlen Dubon
Transcribed by:	Jordan Keilty Echo Reporting, Inc. 9711 Cactus Street, Suite B Lakeside, California 92040 (858) 453-7590

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1 Los Angeles, California; Friday, April 5, 2024 3:01 p.m.

2 --o0o--

3 (Call to Order)

4 THE COURT: Well, first of all, good afternoon.

5 And let me call and run CourtSmart. The case of Jeffrey

6 Powers versus Denis Richard McDonough, 22-08357.

7 And just remain seated, but make your appearances.

8 I certainly know who you are.

9 MR. SILBERFELD: Good afternoon, your Honor.

10 Roman Silberfeld for the Plaintiffs.

11 THE COURT: Pleasure.

12 MR. ROSENBERG: Good afternoon, your Honor. Brad

13 Rosenberg --

14 THE COURT: Pleasure.

15 MR. ROSENBERG: -- from the Department of Justice.

16 I also have, with the Court's permission, Leah Wolfe on our

17 iPad again.

18 THE COURT: Great.

19 MR. ROSENBERG: She is the person with whom you

20 spoke yesterday.

21 THE COURT: And, first of all, my apologies for it

22 being so late in Washington, D.C., Leah. But thank you for

23 joining us. It's very gracious of you.

24 And then, Counsel?

25 MR. KNAPP: And good afternoon, your Honor. Cody

1 Knapp, also with the Federal Government.

2 THE COURT: Okay.

3 MR. GUADIANA: Good afternoon, your Honor.

4 Earnest Guadiana on behalf of Bridgeland Resources.

5 THE COURT: Okay.

6 MR. MCCORMICK: Good afternoon, your Honor. Also

7 Sean McCormick with Bridgeland Resources.

8 THE COURT: I don't expect you to read the dockets  
9 every moment, but I've allowed intervention by counsel, and  
10 we docketed that this morning at some point. So, it's on  
11 the docket.

12 So, if you've got Leah on the phone, there must be  
13 a reason. Why don't I turn this over to you first before I  
14 make any statement?

15 MR. ROSENBERG: Sure. Do you want me to stand or  
16 sit or no preference? I'm happy --

17 THE COURT: I'd almost come down there. I -- I  
18 don't mind the informality on my part if it's easier for me  
19 to talk to her.

20 MR. ROSENBERG: No, no. I just -- I just -- I  
21 don't -- I just wasn't sure how the Court wanted to operate.

22 THE COURT: This could make you uncomfortable, but  
23 there's no reason for discourtesy to her. Do you have her  
24 on your iPad?

25 MR. ROSENBERG: I do have her on my iPad. I can

1 pass my iPad to you if you prefer.

2 THE COURT: Oh, why don't I come down.

3 MR. ROSENBERG: Okay.

4 THE COURT: I'll come down to you. I'm going to  
5 make this efficient. Why don't you come on over? Look over  
6 our shoulders.

7 MR. ROSENBERG: Okay. So, I think we have made --

8 THE COURT: Well, let's prop her up.

9 MR. ROSENBERG: Oh, sure.

10 THE COURT: Hi, Leah.

11 MR. ROSENBERG: I guess the screen here we can  
12 manage to make --

13 THE COURT: Well, they should be taking you out  
14 for dinner or drinks in Washington, D.C., because it's got  
15 to be -- it's 6:15.

16 MR. ROSENBERG: Well, I will say that Leah has  
17 been working around the clock. You know, we're not 100-  
18 percent there in terms of solving this problem, but we have  
19 made a substantial amount of -- of progress. There's one  
20 key piece that we are still waiting on a decision.

21 Candidly, it's -- it's a funding issue, figuring out how  
22 we're going to pay for the processing of the emails. It is  
23 being discussed within the relevant federal agencies. That  
24 process has -- you know, has been taking place for the past  
25 24 hours or so.

1 THE COURT: Yeah. Thank you.

2 MR. ROSENBERG: It's -- okay.

3 THE COURT: Yes.

4 MR. ROSENBERG: But, other than that, we -- Mr.  
5 Silberfeld and I have also, you know, conferred before  
6 today's hearing, and we do have, you know, subject to this  
7 funding issue, a proposed path forward.

8 THE COURT: Okay. Now, do me a favor. Will --  
9 would you get a document out and put up on the screen for a  
10 moment.

11 You weren't counsel at the present time. Leah,  
12 you were not involved in this. So, nobody's in trouble.  
13 Okay. But I want you to read what I'm reading because at  
14 one point I was really hopeful of a settlement. I asked if  
15 the secretary would come out. I understand he's busy. He  
16 couldn't come out.

17 Would you bring this down to me, that hard copy  
18 for just a moment and put this up on the board.

19 A very nice gentleman came out, and his name is  
20 Hipolit or something like that. And you can look over my  
21 shoulder.

22 UNIDENTIFIED SPEAKER: I can see it on the screen,  
23 Judge.

24 THE COURT: And, so, on September 18th, Leah, so  
25 you know by way of background, the secretary couldn't come,

1 but he sent Richard Hipolit, Deputy General Counsel Veterans  
2 Programs performing the delegable duties of the General  
3 Counsel Department of Veterans Affairs VA, and the highest  
4 ranking official within the VA's Office of General Counsel.  
5 That's pretty impressive.

6 MS. WOLFE (via Zoom): It is.

7 THE COURT: Yeah. I'm not chiding in any way.  
8 That's pretty impressive. And he brought a letter that  
9 basically said the Secretary -- you can't -- you can't see  
10 this, can she?

11 MR. ROSENBERG: She can. She has the camera on.

12 THE COURT: Okay.

13 MR. ROSENBERG: It might be a little small.

14 THE COURT: Can you see that? I've underlined it.  
15 And what it says is:

16 "The Secretary, nevertheless,  
17 considers this lawsuit a very high  
18 priority for the Department of Veteran's  
19 Affairs."

20 When I got you on the phone yesterday, that's kind  
21 of odd for the Court to get you on the phone, but the case  
22 has been around since 2012. They settled in 2015. I've  
23 said in my writings I think it's of the utmost urgency, and  
24 I think it's going to start July 23rd or a couple of weeks  
25 after at the very most. And for the first time yesterday, I

1 heard that there was a glitch or a problem, and it was  
2 represented to me that first you didn't have the capacity,  
3 you know, to process this information. But I know that if I  
4 farm this out to Daniel Garrie, who I'm going to get on the  
5 phone in just a moment -- in fact, I'm going to do it in  
6 your presence -- I've been told he can do it in two weeks.

7           So, let's get him on the phone. No. Hold on.  
8 Bear with me because I want you to hear my side of what's  
9 happening, and I appreciate you immensely. You're not -- no  
10 problem.

11           I also know I've got a \$369,000,000,000 agency.  
12 So, when I'm told by imminent esteemed counsel who's right  
13 here -- see him -- that he doesn't have any money -- you see  
14 the smile on my face? Yeah. And when I hear I've got a  
15 priority problem -- do you see the smile on my face?

16           Now, I don't want to try the case again, but I'm  
17 -- I'm prepared to do so. And, so, we're all going to be in  
18 trial on July 23rd or maybe a few weeks after, depending  
19 upon the processing time. But we're going to get Daniel on  
20 the phone right now. Call Daniel Garrie. And I want you to  
21 hear personally -- and, by the way, I -- I work in a -- not  
22 -- I know some of the folks in a different walk of life,  
23 let's say, than what I do here. And this information --

24           MR. GARRIE (telephonic): Hello?

25           THE COURT: Hi, Daniel. Daniel, how soon can you



1 process this information? I've got Leah. Can you -- you  
2 can't see Leah, but she's right here.

3 MR. GARRIE: I mean, like I said, if they get us  
4 the disks, we could spin them up within, I don't know -- I  
5 mean, once getting the disks, half a day would be  
6 processing, would be done in max two weeks.

7 THE COURT: Now, he's dealing with 20 --

8 MR. GARRIE: What?

9 THE COURT: You're dealing with 20 million  
10 terabytes right now on another case, aren't you, without  
11 mentioning it?

12 MR. GARRIE: Yes, your Honor.

13 THE COURT: Yeah. So, I'm not real impressed with  
14 three -- three point five. See what I mean? And I'm not --

15 MR. GARRIE: Yeah.

16 THE COURT: -- too concerned, actually, Leah, with  
17 the funding problems. You won't believe that because I  
18 think I take priority. Now, help me.

19 MR. GARRIE: Well --

20 THE COURT: No, hold on. We're talking to Leah,  
21 Daniel. Just listen for a moment. Help me, because he can  
22 do it -- he can do it in-house, Leah.

23 MS. WOLFE: I hear you.

24 THE COURT: Okay.

25 MS. WOLFE: I hear you, and I just want to take a

1 second to kind of level set a bit on where we are because I  
2 think we kind of jumped in the middle yesterday.

3 THE COURT: Yeah.

4 MS. WOLFE: And, so, to -- to sort of clear it up,  
5 DOJ, I think like a lot of the firms or other corporations,  
6 we have limited in-house processing abilities.

7 THE COURT: Right.

8 MS. WOLFE: So, that's the -- the conversion part,  
9 right. What we do have is what we kind of colloquially call  
10 the mega contract. It's a big contract. It's outside  
11 vendors who specialize in doing this kind of technical work.

12 THE COURT: Sure.

13 MS. WOLFE: We and our partner agencies can tap  
14 into that on a case-by-case basis when the need arises. One  
15 of those needs is something like this --

16 THE COURT: Sure.

17 MS. WOLFE: -- where because of the breadth of  
18 information potentially at issue, the number of VA  
19 custodians who are implicated, the like almost decade of  
20 time frame involved, the VA collected essentially, you know,  
21 four terabytes of data almost.

22 THE COURT: Uh-huh.

23 MS. WOLFE: And that just blows out of the water  
24 the in-house processing capability, and that's when we would  
25 call in folks on this vendor contract, the mega contract.

1           We have an affirmative obligation to use those  
2 vendors as the Government. I mean, there's contracting  
3 reasons for that, but there's also practical reasons because  
4 they've already been cleared. They meet the security  
5 requirements under things like FedRAMP and FISMA.

6           THE COURT: Well, let me stop you right there.  
7 I've got --

8           MS. WOLFE: They meet the requirements for --

9           THE COURT: Let me stop you. I've got folks you  
10 can work with who have -- who have security clearances you  
11 can't even dream about right now without mentioning them. I  
12 could get you highest security level that would dazzle you  
13 right now.

14           MS. WOLFE: It's -- it's not just the security,  
15 though, your Honor. It's also the fact that when we are  
16 tapping into the contract, Government contracting I'm sure  
17 you know is not necessarily a quick or streamlined process.  
18 And, typically, to get the funds moved, all of that behind-  
19 the-scene budget work, administrative work, requires, you  
20 know, that four-week lead time. And I think we talked about  
21 that a little bit yesterday.

22           THE COURT: Yeah.

23           MS. WOLFE: So, what we've been doing --

24           MR. GARRIE: Your Honor --

25           MS. WOLFE: -- since we talked yesterday --

1 THE COURT: Hold on.

2 MS. WOLFE: -- is --

3 THE COURT: Hang on. Hang on. Daniel?

4 MR. GARRIE: I was going to say I served as an  
5 expert witness for the Northern District of California on  
6 some of the more high-profile cyber security cases. So, I  
7 would think a protective order would suffice to assure the  
8 security of the information. There was nothing -- I -- I  
9 would be surprised if the Court -- anything more than a  
10 protective order would be necessary.

11 THE COURT: Okay. So, Leah, go on.

12 MS. WOLFE: So, when we tap into this, just like I  
13 said, we have that lead-up time that's just (audio glitch)  
14 processing, pieces moving into place. So, we have been  
15 working behind the scenes since we got off the phone  
16 yesterday to basically break down that lead time. And we  
17 have assurances from our budget folks and leadership that as  
18 soon as we have that green light on the funding for the VA  
19 to tap into the existing contracts, we will begin processing  
20 right then. So, we can start that process. We have the  
21 data staged. We can look at it. We can work on what order  
22 we want to deal with these custodians. We're ready to go  
23 once we have that final piece in place. We will work  
24 diligently. We will --

25 THE COURT: Oh, I know you will, Leah. You --

1 Leah, you don't have to tell me. I believe you'll work  
2 diligently on your part.

3 MS. WOLFE: And --

4 THE COURT: This case -- we're losing -- Leah,  
5 we're losing people, and I don't know if it has anything to  
6 do with the street -- on the streets right now -- in huge  
7 numbers. Many of those are veterans. And this case has  
8 been around so long that I can't imagine why this isn't, you  
9 know, the case, frankly, that has the utmost priority. And  
10 that's why I wanted Mr. McDonough to come out. I know he  
11 came out here to have a grand opening of 53 units. I'm  
12 kidding you a little bit, but this involves potentially much  
13 more for settlement purposes or, you know, his  
14 representation. I would accept it, and I accepted it  
15 graciously through Mr. Hipolit.

16 But what I can't hear -- and I really appreciate  
17 you. Let me tell you how much I appreciate you again.  
18 Thank you and thank you. But it's not satisfactory for me  
19 to get off the phone with your good faith, which I believe  
20 in, and have some unnamed person making this decision and  
21 holding up my litigation, because I need to clear one month  
22 of trial work. I need to move about 20 cases with other  
23 attorneys and call them on the phone, and I was about to do  
24 that for July 23rd, and now I think I'm going to do it about  
25 three weeks later. And I can't start making those moves and

1 then inconvenience counsel, you know, and reinstate that.  
2 Do you see what I mean? And I thought the case might  
3 settle. I don't care if it does or not, but I thought, you  
4 know, Gee, Dave, don't -- don't -- don't move all these  
5 folks around. Let's see if they settle because they settled  
6 once. But, apparently, I have esteemed counsel on both  
7 sides who don't want to, which is fine with me. I need your  
8 help because I don't want to bear down on you in any way.  
9 And I want to thank you repeatedly, but I don't know who's  
10 making this final decision. I don't care about your budget  
11 director. And guess who I've got graciously staying with me  
12 until I have a decision? Okay. Go enjoy the weekend --

13 MR. GARRIE: We'll be there on Monday too. I  
14 spoke with Judge Smith. So, we're good.

15 THE COURT: Yeah.

16 MS. WOLFE: I couldn't hear you. I'm sorry.

17 THE COURT: Daniel, again?

18 MR. GARRIE: I said we'll be there on Monday. We  
19 -- I spoke with Judge Smith. Not a problem.

20 THE COURT: Yeah. So, my special masters are  
21 coming back also, and they're going to have a conference  
22 call with these folks at 4:00 o'clock, and then they're  
23 going to be back in court at 4:30 to tell me how that's  
24 going.

25 But, Daniel, in light of this conversation, do you

1 and Judge Smith need to have that conference call at 4:00  
2 with them?

3 MR. GARRIE: You know, we have a -- I have a  
4 suggestion for counsel --

5 THE COURT: Oh, no. They have a proposal --

6 MR. GARRIE: -- every person can join --

7 THE COURT: Daniel -- Daniel, hang on. They --

8 MR. GARRIE: -- and --

9 THE COURT: -- have a proposal that's probably  
10 going to think I'm going to spring them out of court, which  
11 I'm not. Okay. So, let's hear that proposal first.

12 MR. ROSENBERG: So, first of all, Judge Carter, I  
13 am prepared to come back on Monday.

14 THE COURT: Oh, you have no choice, but thank you.

15 MR. ROSENBERG: I know, I know. I just want to  
16 make clear that I'm happy to come back to try to continue to  
17 work this process.

18 You know, once we have the funding in place -- and  
19 I am optimistic that -- I was hoping that we would have that  
20 decision by this hearing, but once we have the funding in  
21 place, we can begin the processing of the data.

22 THE COURT: And when we have that funding in  
23 place, I imagine you'll be going back to D.C.

24 MR. GARRIE: I -- I -- we are on the same page.

25 THE COURT: Excellent. So, we need that funding

1 in place, and I don't want to chase anybody else, you know,  
2 in some department, calling them up, wasting your time or  
3 mine.

4           And, so, Leah, you've been wonderful, period. And  
5 I hope you go enjoy your evening. And, so, we'll check back  
6 Monday at 4:00 o'clock. Okay? And I can make that earlier  
7 since it's 7:00 o'clock in D.C. So, would it be -- I can  
8 reconvene at 3:00 o'clock, Leah, if you'd like to or even  
9 2:00.

10           What would be good for you?

11           MS. WOLFE: I'm -- I'm fine with the 7:00 p.m.  
12 Actually, Judge, that's great for me.

13           THE COURT: Well, you should run the agency then.  
14 You're very gracious. Okay. So, we'll see you then at 4:00  
15 o'clock with our funding hopefully in place.

16           Now, remember, I promise you, if it wasn't Daniel,  
17 I can name some other heads in this industry that would make  
18 your head spin in terms of security clearances. Okay. They  
19 do a lot of counter-terrorism work overseas, for the  
20 judiciary, et cetera. And if not Daniel, I can find people  
21 who can process this and give you the capacity and outsource  
22 this just almost immediately, and security clearances won't  
23 be one problem.

24           So, it's a conscious --

25           MR. GARRIE: I don't think it has anything to do



1 with the security clearance, your Honor. I deal with the  
2 DOJ.

3 THE COURT: I know you do. Don't say --

4 MR. GARRIE: I've done some of the most high-  
5 profile cases in the country.

6 THE COURT: I know.

7 MR. GARRIE: I --

8 THE COURT: Daniel -- Daniel -- Daniel --

9 MR. GARRIE: -- there's no security issue here.

10 THE COURT: They don't need to know that.

11 MR. GARRIE: Okay.

12 THE COURT: They don't need to know that.

13 So, I know you can outsource it. I know we've got  
14 the capacity for outsourcing. I know that Daniel can do  
15 this very easily. They're not steering business his way,  
16 but he can get this for you. So, it's a conscious decision  
17 about budget again, and your budget is of no importance to  
18 me now. I want that very clear, a \$369,000,000,000 industry  
19 with this pending for so long. And the idea that I get from  
20 your top echelon what a priority this is, and that's my  
21 frustration with this. Okay. The case is going to trial  
22 either on July 23rd or about three weeks later. I -- we'll  
23 be deciding that after I talk to counsel. So, we'll talk to  
24 you at 4:00 o'clock, okay, on Monday?

25 MS. WOLFE: Yes, your Honor.

1 THE COURT: Okay. And -- and goodnight. You have  
2 a wonderful weekend.

3 MS. WOLFE: Thank you.

4 THE COURT: Now, let me help -- Counsel, let's let  
5 Leah go.

6 MR. ROSENBERG: Should I let her go?

7 THE COURT: Yeah. And thank you, Leah. Bye-bye.  
8 I'll just stay here for a moment.

9 Now, tell me what your proposal was so I'm not  
10 rude.

11 MR. ROSENBERG: So, we -- Mr. Silberfeld and I  
12 spoke. So, let's assume the funding comes into place. I --  
13 I'm optimistic. I was hoping to have that decision today --

14 THE COURT: Yeah.

15 MR. ROSENBERG: -- so I wouldn't have to come back  
16 on Monday. But we are where we are. DOJ can start the  
17 processing of those documents. We can produce them on a  
18 rolling basis to Plaintiffs. We think -- oh, my apologies.

19 THE COURT: Daniel, you still there? Hold on. I  
20 want him to hear this. Call Daniel Garrie.

21 (Pause.)

22 MR. GARRIE: Hello?

23 THE COURT: Daniel, hold on. You're still in  
24 court. You're still on the phone. I just want you to hear  
25 these representations.

1           Go ahead.

2           MR. ROSENBERG: Yeah. So, and we -- Mr.  
3 Silberfeld and I spoke before the hearing, and we have a  
4 proposal that we -- you know, subject to the funding issue,  
5 which I was hoping would be resolved before today's hearing,  
6 but it is being worked on -- the proposal would preserve the  
7 trial date and allow us to continue to move this litigation  
8 forward. Once the funding is in place, DOJ through its  
9 contractor will begin the processing of the data. We  
10 believe that we can complete that processing within a three  
11 to four-week time frame.

12           The parties will agree to extend the discovery  
13 cutoff for the document production purposes until June 30th.  
14 They would not notice -- they would not serve any additional  
15 written discovery. So, the idea here is that we would close  
16 out the written discovery that's currently outstanding on  
17 both sides.

18           THE COURT: Okay.

19           MR. ROSENBERG: But Plaintiffs, I believe, would  
20 want to reserve their right to notice depositions of  
21 individuals based on the documents that are produced.

22           THE COURT: Uh-huh.

23           MR. ROSENBERG: And the Defendants would want to  
24 use the extra discovery window time to take the depositions  
25 of the named Plaintiffs.

1 THE COURT: And I can move my class certification  
2 date. I can move your discovery dates. I can move my  
3 pretrial dates. I can even move the trial date a couple of  
4 weeks. Now, I -- I may want to just because of now checking  
5 my calendar because it's been in flux so long, but now  
6 you've got me in a box. Okay.

7 But probably to the second week of August, that's  
8 -- that's the latest I think the more I look at it.

9 MR. ROSENBERG: Yeah, that's -- like there --

10 MR. SILBERFELD: I can tell the Court we have  
11 witness problems in August.

12 MR. ROSENBERG: I have kid moving into college  
13 problems in August, depending on the dates. I mean --

14 THE COURT: Hold on.

15 MR. GARRIE: Congratulations you're moving a kid  
16 into college.

17 MR. ROSENBERG: Well, it's -- it's --

18 THE COURT: Yeah, good luck.

19 MR. ROSENBERG: -- third year, but if he makes it.

20 THE COURT: Well, I've got my own problems now  
21 with this calendar. Okay. It's gone too long. So, I'll  
22 work with you. I'll be a gentleman about that, but -- and  
23 the -- and you need about a month. So, remember --

24 MR. GARRIE: I have a couple of questions about  
25 the proposal. We can discuss them at our 4:00 o'clock

1 hearing. One question I have is what happens if the email  
2 production or the written production of discovery identifies  
3 other repositories and custodians who should reasonably be  
4 included but you weren't aware of them for whatever -- well,  
5 I can talk to them, your Honor, off -- offline.

6 THE COURT: Let's hear some of the --

7 MR. GARRIE: I don't want to take your time. I  
8 know you're busy.

9 THE COURT: No, I'm not busy. Let's hear some of  
10 the questions now so they're prepared and I hear them also.

11 MR. GARRIE: So, one of the questions I have is  
12 since neither side nor counsel hasn't actually seen what's  
13 in the emails. One concern I have is that the emails  
14 identify other custodians who you may not have been aware  
15 of. Does that make sense? And then you have to go and  
16 collect those, and you've run out -- like, hopefully you're  
17 -- like, we don't have to have another budget crisis to get  
18 to make sure that those people can be done in a timely  
19 fashion, if that makes sense, Counsel.

20 THE COURT: I'm going -- And, I'm going to  
21 (indiscernible) that. What happens if I got apex problems?

22 MR. GARRIE: Well, that's the real -- that's what  
23 I was going to allude to, but I just figured I'd start with  
24 the experts issue. But, yes, your Honor.

25 THE COURT: Okay. And we just don't know until we

1 see this and counsel can examine it, let alone privilege or  
2 apex problems.

3           Okay. Now, first of all, all the witnesses at  
4 this trial, whenever this is going -- and right now, it's  
5 still July 23rd -- but if you have problems in August, you  
6 told me a month, and this case could well go through August.  
7 So, I'm a little dense about why we have a problem the  
8 second or third week of August starting, because we would --  
9 if we started July 23rd, you told me you needed basically a  
10 month.

11           MR. SILBERFELD: For the Plaintiffs' case to go  
12 first, we would be done by the first week in August, on the  
13 -- on the current schedule.

14           THE COURT: Well, how many -- how many days?

15           MR. SILBERFELD: I think we can try the case in  
16 five to seven days tops.

17           THE COURT: Well, let's just say seven days, but  
18 that's two weeks.

19           MR. SILBERFELD: Right.

20           THE COURT: In other words, Mondays I've got  
21 calendar with --

22           MR. SILBERFELD: Sure.

23           THE COURT: -- you know, 20, 30 cases. And you're  
24 going to need to rest. So, that's two weeks. So, let's  
25 just take July 23rd to -- that would take us through what,

1 August 11th?

2 MR. SILBERFELD: Or 7th, something like that,  
3 yeah.

4 THE COURT: Well, and there's always the defense,  
5 isn't there?

6 MR. ROSENBERG: Yeah, I would anticipate it, yeah.

7 THE COURT: Absolutely.

8 MR. ROSENBERG: Yeah.

9 THE COURT: And how long would that defense take?

10 MR. ROSENBERG: Probably about the same amount of  
11 time.

12 THE COURT: Sure. So, it doesn't make sense what  
13 you're saying about being tied up in August the second or  
14 third week because you're already tied up in August in  
15 litigation. So, let's try again.

16 MR. SILBERFELD: I just have witness problems in  
17 the second half of August.

18 THE COURT: Let me be clear. Let me be absolutely  
19 clear with you. Am I clear? You've told me you needed a  
20 month between the two of you. I'm giving you that month.  
21 But you just told me you have seven days, five to seven.  
22 I'm going to take seven to be careful. That's two weeks.  
23 Now, you calculate it. From July 23rd, what date does that  
24 take me to?

25 MR. SILBERFELD: I think we finish around August

1 7th.

2 THE COURT: Yeah, absolutely, through that week.  
3 Okay. And I have to make sure you're holding up and lucid  
4 and I don't push you too hard. I need two weeks.

5 Okay. The next weeks is August 11th. Now, what's two  
6 weeks from that? That's a Monday.

7 MR. ROSENBERG: 25th.

8 THE COURT: Yeah. See, and you just told me you  
9 have all these things planned in August. In other words,  
10 you were about to miss them. You understand that.

11 MR. ROSENBERG: Yes.

12 THE COURT: And I don't want to do that to you.  
13 So, let's start again. Let's start talking about a  
14 realistic date where I'm not hurting your family, okay, and  
15 you don't have witness problems, and I don't care about your  
16 witness problems. You get them in. But I want to be  
17 working with you when we set this date.

18 MR. SILBERFELD: Well, we can start sooner.

19 THE COURT: Absolutely, and I was about to say  
20 that.

21 MR. SILBERFELD: I'm happy to start sooner.

22 THE COURT: If you two want to start in June, I'm  
23 -- I can move to June. And let's have that conference in a  
24 little while, because he just had a heart attack. Did you  
25 see him?



1 MR. ROSENBERG: No, I'm --

2 THE COURT: He got white.

3 MR. SILBERFELD: It looks pretty good.

4 MR. ROSENBERG: I'm thinking through  
5 possibilities.

6 THE COURT: Oh, possibilities. Well, let me get  
7 out a calendar also and see what patent case I have to move  
8 and if I've got a criminal case which takes priority over  
9 your case, which it does.

10 MR. ROSENBERG: Sure.

11 THE COURT: I've got to make a lot of phone calls,  
12 but if you want to start in June, I'm all for it. But just  
13 be careful because now we've got this --

14 MR. ROSENBERG: We have this --

15 THE COURT: -- problem.

16 MR. SILBERFELD: Yes.

17 MR. ROSENBERG: Right.

18 THE COURT: We don't know what's there, and I'm  
19 not -- once I start moving my calendar, there isn't going to  
20 be any reason that I'm calling 20 or 30 other counsel back  
21 and moving it back. Understood?

22 MR. ROSENBERG: Sure.

23 THE COURT: So, we have to be really careful with  
24 each other. I'll make sure you get to your --

25 MR. ROSENBERG: That's the one -- that's the one

1 thing.

2 THE COURT: Okay. Yeah, I promise you. We're not  
3 going to interfere with that one, okay.

4 Listen, Daniel, why don't you talk to them at 4:00  
5 o'clock. Okay?

6 MR. GARRIE: All right. Sounds good.

7 THE COURT: And I'll go back into session  
8 afterwards. Okay.

9 MR. GARRIE: Thank you, your Honor.

10 THE COURT: Okay. Thank you very much.

11 I think that's enough for now unless you folks  
12 have something else you want to say?

13 MR. ROSENBERG: For Monday, I get confused on time  
14 zones. Which courthouse should I be in and at --

15 THE COURT: Here.

16 MR. ROSENBERG: -- what time? Here?

17 THE COURT: Yeah.

18 MR. ROSENBERG: Okay.

19 THE COURT: I'm coming here to make it easier for  
20 all of you.

21 MR. ROSENBERG: And what time?

22 THE COURT: What time would you like?

23 MR. ROSENBERG: Any -- any time, your Honor. You  
24 know, I -- I will note --

25 THE COURT: I have no idea what's happening with

1 the next case. We want to try 3:00 o'clock so you can get  
2 out of here earlier?

3 MR. SILBERFELD: Monday at 3:00 o'clock?

4 THE COURT: Yeah, Monday at 3:00?

5 MR. ROSENBERG: 3:00 p.m. gives us a little bit  
6 more time as well to try to work this through.

7 THE COURT: How about Monday at 3:00 o'clock?

8 MR. ROSENBERG: Monday here, 3:00 p.m.

9 THE COURT: Perfect. Okay. Now, is there  
10 anything else that we need to talk about that's relevant  
11 until you talk to Daniel Garrie and Judge Smith at 4:00  
12 o'clock? I know you're going to come back and talk to me no  
13 matter what. I want you to talk to --

14 MR. SILBERFELD: Right. Until the funding issue  
15 gets resolved, I -- other than talking a little bit, your  
16 Honor --

17 THE COURT: We're here until it does. In other  
18 words, trust but verify.

19 MR. SILBERFELD: Yeah.

20 THE COURT: And I know all the good intentions are  
21 there, and I want that on the record. And, first of all,  
22 let me compliment you and thank you, but you're not  
23 controlling this. Somebody with a name and a face who I  
24 don't know is controlling this.

25 Okay. We'll see you at 4:00 o'clock. Well,

1 you'll be in conference at 4:00 o'clock, we'll see you about  
2 4:30.

3 (Proceedings adjourned.)  
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1 I certify that the foregoing is a correct  
2 transcript from the electronic sound recording of the  
3 proceedings in the above-entitled matter.

4  
5 /s/Jordan Keilty 4/10/2023  
6 Transcriber Date

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