

Washington, DC 20530

Dear Colleagues:

For your filing and routing convenience, I am writing as attorney for Mr. Kelly Meggs in the combined group criminal case of USA v. THOMAS CALDWELL, Case No. 1:21-cr-00028, in the U.S. District Court for the District of Columbia.

I appreciate your work and assistance in taking the lead working with defense counsel for Defendants facing charges concerning events on or related to January 6, 2021.

I am very much aware that this case (really one giant case being tried in groups) is unprecedented and extremely challenging and burdensome for the U.S. Attorney's Office, the Department of Justice, and investigative agencies primarily the Federal Bureau of Investigation.

I am mindful that the size of this undertaking is gigantic, although mostly because the Government has chosen to pretty much ignore the 50 or so people it identifies as having dangerous or deadly weapons (mostly construction materials or tools from the assembly of the inauguration platform) and those who planted pipe bombs. Never before has the Government tried to prosecute hundreds of minor, insignificant trespassing and peaceful, First Amendment protestors. So the problem is more or less self-created.

Rather than focusing on the 100 or so people that the U.S. Government claims assaulted police (estimating from the 165 people the government says are charged with assaulting, hindering (?) or impeding (?) law enforcement – of which 50 the government claims used weapons – and those who planted the pipe bombs, the Government has chosen to undertake a Stasi secret police terror campaign of ordinary, innocent U.S. citizens. So, the size and scope of this project is not accidental.

I am also mindful that this is one of the first large-scale prosecutions in the new smart-phone era where there is a tremendous amount of video and photographs compared with almost any other large-scale prosecution in history. Smart phones are changing the world, and we are now seeing this coming true on a huge scale.

I do understand including from work I have done that it is as much work for the Government to process and produce all of this material as it is for defense counsel to review it.

Nevertheless, from what I have seen in *Nordean*, the majority of information that we are receiving is junk or meaningful only to other defendants not our particular client.

I spent 7 hours – fortunately doing other things with the recording in the background -- of police radio chatter from January 5 and 6, 2021, consisting mostly of

discussions of getting their police cruiser's gas tanks topped off and getting delivery of warm meals at key collection points. The only marginally interesting part of those 7 hours was the chronic misidentification of random people as "Proud Boys" who clearly aren't (description of their dress and arm bands don't match). The tendency of police to lump everyone milling about in to Oath Keepers and Proud Boys who clearly were not either of those groups was enlightening.

What we are not getting is information that defense counsel analyze from their view of the case and defense plans as being actually exculpatory, meaningful, and useful.

I appreciate your emails seeking an agreement concerning the certain information I asked about from the U.S. Capitol Police.

I think that what I am asking about is both narrower in some ways than what you suggest and in other ways broader.

I don't think that I need all documents relating to pipe bombs, for example.

First, I assert that the U.S. Capitol Police is not just an observer or bystander or source of information, nor even an investigative agency like the FBI.

In this, case I believe that the U.S. Capitol Police and the U.S. Congress are your complaining victims. Yes, all prosecution vindicates the public interest, but there is primarily a complaining victim. I assert that the U.S. Congress and the USCP are the actual alleged victims that the U.S. Attorney's Office is representing in these prosecutions.

Second, the U.S. Capitol Police is the agency through with the Joint Session of Congress was recessed at 2:18 PM on January 6, 2021, as shown in the Congressional Record. They are not just observers who hold some data. They are the central actors.

The U.S. Capitol Police actually was the cause of the Joint Session of Congress pausing. The USCP actually invoked Rule I, clause 12(b) to recess the Congress by advising the presiding officer (McGovern I think at that moment) of a threat.

So what did the USCP advise the presiding officer?

Therefore, the USCP is not just a repository of documents.

The USCP is the one and only agency in the universe who caused the Joint Session of Congress to recess on January 6, 2021. So... **WHY?**

Everyone knows that the Oath Keepers did not trigger the disruption of the Joint Session of Congress. You know it. I know it. Everyone knows it but they want to continue with their fantasy.

Therefore, these disclosures are not optional.

These disclosures are the quintessential, gold-standard, top-shelf exculpatory documents and information that the Government is obligated to disclose under *Brady v. Maryland*, 373 U.S. 83 (1963).

Just ask Mike Nifong. Seriously.

So I cannot accept an agreement to produce some documents on an optional basis with no understanding that the disclosures are obligatory.

Any documents or communications that the recess of the Joint Session was triggered by discoveries of pipe bombs is a complete and total exoneration of these Oath Keeper Defendants.

Not merely exculpatory. But a complete exoneration.

And evidence of malicious prosecution, that the Government knew ahead of time that there was no probable cause to indict any of these Defendants under Counts I or II of the various indictments.

Therefore, I cannot be satisfied by a voluntary production that gives the appearance that the Government can withhold or disclose whatever it feels like producing.

The documents must be produced, even without me asking, on a mandatory basis.

But I do not need everything concerning pipe bombs in general. I think that means anything concerning the investigation of the pipe bombs after January 6 can be excluded, unless it is a report about why the Joint Session of Congress was recessed at 2:18 PM.

What these Defendants are entitled to and need is any documents, communications, tape recordings, radio messages, etc. which identify why the U.S. Capitol Police advised the presiding officer of the U.S. House of Representatives at 2:18 PM on January 6, 2021.

It was not because of the Oath Keepers standing outside the Columbus doors on the East side of the U.S. Capitol building singing the National Anthem along with the crowd just before 2:40 PM.

Congress meets all the time with hundreds of thousands of people in the building.

We all know that the Oath Keepers and other demonstrators did not plan to or come to Washington, D.C. to obstruct or stop the certification of the Joint Session of Congress for the resolution of disputes over the Electoral College votes.

There is no such thing as a “hold over” President. The Constitution says that the term of the President and Vice President ends at noon on January 20.

No one unless they were beer-ed up or mental midgets would think that stopping the certification of the Joint Session would help Donald Trump continue as President.

Well, yes from my time at the U.S. Department of Education I do realize that our public schools no longer teach civics or the Constitution. But no one is that dumb, to think that having no President at all would achieve their goals.

Nevertheless, the U.S. Attorney’s Office badly misleading the Grand Jury into indicting these Defendants in Counts I and II of having a goal that is not credible.

Why would anyone want to disrupt the certification of the Electoral College, making Nancy Pelosi President at 12:01 PM just after noon on January 20? That makes no sense at all.

Therefore, again, why did the U.S. Capitol Police tell the presiding officer of the House and then the Senate that a threat required the recess of the Joint Session?

The required disclosures under *Brady v. Maryland* are that the discovery of pipe bombs caused the USCP to tell the presiding officer to recess the Joint Session. Even ambiguity about the reasons why would create reasonable doubt leading to acquittal.

Any information that shows that the Joint Session was recessed for any other reason, or for multiple divergent possible reasons (being reasonable doubt), then the Oath Keepers singing the national anthem outside the Columbus doors just before 2:40 PM is *Brady* material that exonerates these Defendants.

Therefore, to your inquiry:

- a) Not everything about pipe bombs is necessary, such as the status of the investigation, leads, after January 6, 2021, etc. That would be interesting but not relevant to the defense of these Defendants like Kelly Meggs.
- b) However, anything about the threat or perceived threat between 12:50 PM and 2:40 PM from the discovery of pipe bombs is not just requested but obligatory as production. I don’t want a non-obligatory accommodation.
- c) I asked for:

Any and all documents, communications, reports, letters, text messages,

emails, or other records relating to, discussing or reporting on whether or not the Joint Session of Congress and/or the House of Representatives or U.S. Senate separately, on January 6, 2021, should recess.

d) I also asked for:

Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on the U.S. Capitol Police officially advising Members of Congress to evacuate the U.S. Capitol building on January 6, 2021.

e) I also asked for:

Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting the reasons why the Joint Session of Congress should (if written beforehand) or did (if written after the fact) recess on January 6, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathon Moseley". The signature is fluid and cursive, with a long horizontal stroke at the end.

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