

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

CERTIFIED TRANSCRIPT

JOHN C. EASTMAN,)	
)	
PLAINTIFF,)	
)	
vs.)	SACV NO. 22-00099-DOC-DFM
)	
BENNIE G. THOMPSON, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
ZOOM VIDEO CONFERENCE
SANTA ANA, CALIFORNIA
MONDAY, JANUARY 31, 2022
2:28 P.M.

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1 **SANTA ANA, CALIFORNIA; MONDAY, JANUARY 31, 2022; 2:28 P.M.**

2 **-oOo-**

3 THE COURT: Kelly, first of all, am I on the
4 video?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: Folks, I'm going to wave at you.

7 Can you see me waving? If you can, just wave back
8 or put your thumb up. I appreciate it.

9 First of all, I hope all of you are doing well,
02:28:53 10 and I hope your families are well in this period of time.

11 And we'll call the matter to order, which is
12 SACV 22-00099-DOC, John C. Eastman v. Bennie G. Thompson, et
13 al.

14 And, on behalf of Mr. Eastman, Mr. Eastman, are
02:29:16 15 you present?

16 DR. EASTMAN: Yes, Your Honor.

17 THE COURT: Thank you. I can hear you.

18 Are you also on video, sir? Can I see you?

19 DR. EASTMAN: I am, but it's not showing up. I
02:29:26 20 don't know why. I got the camera on.

21 THE COURT: All right. Thank you.

22 Can you see me and hear me? Obviously, you can
23 hear me.

24 Can you see me?

02:29:36 25 DR. EASTMAN: I can see you as well.

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THE COURT: All right. Thank you.
And your counsel?
MR. BURNHAM: Good afternoon, Your Honor.
Charles Burnham, on behalf of the plaintiff,
Dr. Eastman.
THE COURT: And are you here on the West Coast or
the East Coast at the present time?
MR. BURNHAM: I'm appearing from Maryland,
Your Honor.
THE COURT: Thank you very much.
And on behalf of the Select Committee?
MR. LETTER: Your Honor, this is Douglas Letter,
General Counsel, U.S. House of Representatives.
I'm appearing from Maryland as well.
THE COURT: And, Mr. Plevin, on behalf of Chapman?
MR. PLEVIN: Good afternoon, Your Honor.
Fred Plevin. I'm appearing from San Diego.
THE COURT: All right. Thank you.
Are there any other parties? Or, Counsel, are
there any other associates that wish to make an appearance
today?
All right. Hearing none.
First of all, the Court received all of the
parties' status reports last Wednesday and on Friday.
On Friday, the Select Committee received the first

02:30:40 1 day of documents and the Court received the first privilege
2 log. And I expect to receive the Select Committee's
3 objections to Friday's privilege log on this Wednesday.

4 And I want to begin by expressing my appreciation
02:31:00 5 to all counsel working together to procure an electronic
6 discovery system.

7 Now, just a moment. We have an MIS person who's
8 going to help me for a moment.

9 (Pause)

02:31:13 10 THE COURT: There.

11 Mr. Eastman, I can see you now for the first time.
12 I've got some technical help here.

13 And can you put that up for the gallery, so I can
14 see all of the folks?

02:31:37 15 (Pause)

16 THE COURT: All right. Thank you so much.

17 The subpoena gave a date range for documents from
18 November 3rd, 2020 through January 20th, 2021. The subpoena
19 did not specify a prioritization order but instructed that
02:32:17 20 documents should be "produced sequentially." And that's at
21 Paragraph 18.

22 In its filing last week, the Select Committee
23 requested that Dr. Eastman, quote, "begin his review and
24 production with e-mails dated January 4th, 2021 through
02:32:38 25 January 7th, 2021." And that is in the Defendants' Second

02:32:43 1 Status Report, Docket 58, at 2.

2 So, Mr. Letter, on behalf of the
3 House Select Committee, does it raise separation of powers
4 issues for this Court to order Dr. Eastman to begin with
02:33:00 5 specific dates when this is a congressional investigation?

6 And is it appropriate for this Court to order
7 Dr. Eastman to begin with specific dates when the subpoena
8 included no such specifications?

9 And a third general question in this area is: If
02:33:21 10 this was the Select Committee's intention, why did the
11 subpoena not lay out an order for Dr. Eastman or Chapman to
12 prioritize production of documents?

13 And, please, sir, I'd like to have an answer from
14 you, please.

02:33:36 15 MR. LETTER: Yes, Your Honor.

16 Starting with your first question, Your Honor, I
17 don't believe that it would be a violation of separation of
18 powers in a way if the -- given we are in litigation before
19 this Court and the House of Representatives has asked
02:33:52 20 Your Honor to structure the proceedings that are going on
21 before the Court in a particular way. Obviously, if there
22 were no court proceedings, if this was simply a matter
23 between the House of Representatives and Professor Eastman,
24 that would be a completely different matter. But since this
02:34:15 25 Court has fully seized of this and has made the request --

02:34:18 1 and the House of Representatives has made the request, we
2 don't see any reason why it would violate separation of
3 powers for the Court to structure the proceedings.

02:34:31 4 THE COURT: Since, eventually, we're going to go
5 through all 19,000-plus e-mails and now, apparently, 92,000
6 pages of documents, I'm not certain that it's appropriate to
7 order Dr. Eastman to begin with specific dates, when the
8 subpoena included no such specifications.

02:34:57 9 MR. LETTER: Well, Your Honor, remember that this
10 is not a subpoena to Professor Eastman. This is a subpoena
11 to Chapman. We did not ask Chapman to do any kind of order
12 in review because, remember, from prior hearing, Chapman
13 University -- produced all of the records using three dates.
14 And so it was our understanding -- as I say, the subpoena
02:35:24 15 was to Chapman University, and Chapman had said to us that
16 the return date should be three days later, because they
17 would give us everything. And then we internally -- to be
18 blunt, Your Honor -- we would have started with January 6th
19 and 7th. Those were the two most important dates, as far as
02:35:44 20 our internal analysis. We then would have gone to 4th and
21 5th and then we would have worked backwards from there.

22 THE COURT: But the subpoena did not lay out an
23 order for either Dr. Chapman -- I'm sorry, Dr. Eastman or
24 Chapman to prioritize production of documents; is that
02:35:59 25 correct?

02:36:00 1 MR. LETTER: That's correct, Your Honor.

2 Again, Chapman said it was going to give us
3 everything within three days all at once. We contemplated
4 asking Chapman to do some sort of rolling production; but
02:36:11 5 Chapman made clear that they needed this three days, and
6 they were going to give us everything all at once.

7 THE COURT: I see. Well, before last Friday, this
8 Court and, apparently, the parties knew only that there were
9 approximately 19,000 documents. After counting the pages
02:36:32 10 last week, Dr. Eastman reported that there were in fact
11 21,396 documents, totaling 94,153 pages. And that's at
12 Document 56, for your records, paragraph 5.

13 The report states that approximately 2,500 of the
14 documents are e-mail attachments which were not included in
02:37:01 15 Chapman's original document count.

16 So, Dr. Eastman, what is the exact number of
17 attachments in the set?

18 MR. BURNHAM: My understanding is that -- well,
19 the number of attachments is equal to the difference between
02:37:19 20 Chapman's original page count, as Your Honor has recited,
21 and our ultimate page count of 94,153 over -- spread over
22 21,396 documents.

23 THE COURT: That doesn't answer my question.

24 *(Court Reporter requests clarification for the*
02:37:44 25 *record.)*

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THE COURT: Could you restate, Mr. Burnham?
The Court reporter had trouble hearing you.
MR. BURNHAM: I said, I know Your Honor wants the
number of attachments. If I was in court, I could confer
with my client and let them get it. But I think I'll just
need another moment that I can --
(Overtalking: Unable to report.)
THE COURT: Why don't we take that -- why don't we
take that, right now. I'd like that answer, please.
MR. BURNHAM: Thank you, Your Honor.
(Pause)
THE COURT: And, of course, I'm going to ask --
beside the exact number of the attachments, I'd like to know
how many pages in total are the attachments.
(Pause)
MR. BURNHAM: Okay, Your Honor.
I have the answer to the question at least
partially. Our review, there are 2,399 attachments, spread
over 18,997 e-mails.
THE COURT: Let me repeat that back to you, just
because of the communication difficulties on Zoom.
2,399 attachments; is that correct?
MR. BURNHAM: Yes, Your Honor.
THE COURT: And 18,000 -- and I missed the last
portion.

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MR. BURNHAM: 18,997 individual e-mails.

THE COURT: Thank you.

The Court has now received one day of Dr. Eastman's privilege log. The log was provided to this Court as a PDF document containing a table. So Dr. Eastman and Counsel and Mr. Letter and the House Select Committee, moving forward -- First of all, Dr. Eastman, can the privilege log be provided in Excel spreadsheet format to assist the Court in reviewing the challenged entries?

And Mr. Letter, on behalf of the House Select Committee, can the House Select Committee submit its objections by adding a new column to the Excel spreadsheet that Dr. Eastman submits to the Court?

MR. BURNHAM: Is that a question for Mr. Letter, or can I respond on behalf of Dr. Eastman to the first part of the --

THE COURT: If you'd like to, please.

So, Counsel, can Dr. Eastman --

MR. BURNHAM: Yes, Your Honor.

We can -- we'd be happy to provide it in the form of a spreadsheet. The point is that I'm not sure that ECF would accept an Excel spreadsheet, so perhaps we have to submit that through chambers e-mail.

THE COURT: Well, let me work that out in just a moment. It would just, I think, save a lot of time until

02:43:29 1 the House Select Committee by adding a new column to the
2 Excel spreadsheet that Dr. Eastman submits. It would be
3 extraordinarily helpful in gathering a record.

4 Mr. Letter.

02:43:43 5 (Pause)

6 MR. LETTER: Your Honor, my colleagues are
7 listening in. I've asked them to, please, give me an
8 answer. I'm waiting to hear an answer from the committee
9 staff who would be actually the people doing this.

02:44:01 10 THE COURT: I would suggest to both of you that's
11 easily done, and I would suggest to you that it would save
12 sitting in my court and doing it. And I think that this
13 will take a nanosecond.

14 MR. LETTER: Your Honor --

02:44:14 15 THE COURT: I'm going to step off the bench now.
16 Why don't you two place a call to each other and resolve
17 this, quickly.

18 Thank you.

19 MR. LETTER: Your Honor, I have an answer.

02:44:35 20 (Pause)

21 THE COURT: Okay. Well, thank you very much,
22 Counsel, for consulting with each other.

23 Let me explain in simple terms why, and that is,
24 at the present time, Pacer does not accept Excel files. And
02:51:40 25 this Court needs Excel to streamline and organize my review

02:51:45 1 of the privilege logs and objections.

2 And so, therefore, I need the parties to file the
3 log and objections as a PDF on Pacer and submit the Excel
4 file to the Court via e-mail. And I'm searching for any
02:52:06 5 reason why that can't be done.

6 So, once again, I'll turn to Dr. Eastman and then
7 I'll turn to the House Select Committee.

8 So Dr. Eastman.

9 MR. BURNHAM: It can be --

02:52:13 10 *(Overtalking: Unable to report.)*

11 THE COURT: All right. Thank you very much,
12 Mr. Burnham. It's appreciated.

13 The Committee?

14 MR. LETTER: Yes, Your Honor. We can definitely
02:52:24 15 do that. We can add a new column to the Excel log.

16 THE COURT: All right.

17 MR. LETTER: And if I might, Your Honor, if you're
18 searching for is you want a new column where we indicate
19 whether we're challenging the assertion, we can certainly do
02:52:39 20 that. And if the Court wants an explanation of our
21 challenge, we can put that in Excel. Or if you desire a
22 separate writing with any reason for our challenge, we can
23 do that if and when appropriate. Whatever Your Honor
24 wishes.

02:52:55 25 THE COURT: I do. And I'll make that clear in the

02:52:57 1 order in a few moments, so I try to be polite and search for
2 any reason that this can't be done. Because to begin with,
3 if we get our format correct, it's going to make it very
4 easy over the next weeks to sort through this.

02:53:11 5 I'm going to go back, Mr. Burnham, because you
6 partially answered my question. I'm going to repeat that
7 there're 2,399 attachments with 18,997 individualized
8 e-mails. I would like to know the pages.

9 MR. BURNHAM: I know the total of the pages, but I
02:53:29 10 don't have a breakdown how many pages for the attachments
11 versus --

12 THE COURT: How long would that take you?

13 *(Overtalking: Unable to report.)*

14 THE COURT: How long would that take you to get?

02:53:38 15 MR. BURNHAM: Probably -- Dr. Eastman has been
16 following along, and he can -- he'll be looking at that, I'm
17 sure, as I'm answering Your Honor.

18 The answer as to the number of pages is 94,153.

19 THE COURT: Okay. The privilege log from Friday,
02:54:09 20 Mr. Burnham and Dr. Eastman, appears to go up to page 1651.
21 Is the first Bates-stamped page, the first document or
22 e-mail from November 3rd, 2020? And are you reviewing these
23 pages in chronological order, beginning with November 3rd,
24 2020? And how many pages did you review in total on Friday?

02:54:46 25 MR. BURNHAM: I'll try to take these questions one

02:54:50 1 at a time.

2 THE COURT: Okay. The first Bates-stamped page --
3 the first document or e-mail is the first Bates-stamped
4 page, beginning November 3rd, 2020?

02:55:03 5 MR. BURNHAM: The answer to that question is, yes.

6 THE COURT: Okay. Thank you.

7 Are you reviewing these pages in chronological
8 order, beginning with November 3rd, 2020?

9 MR. BURNHAM: That's the way we started,
02:55:16 10 Your Honor.

11 THE COURT: Okay.

12 MR. BURNHAM: We've had some discussions with the
13 defendants about their preferences, but that's the way we
14 started.

02:55:25 15 THE COURT: Okay. And what I don't know yet,
16 leaving it to the discretion initially of both the
17 Select Committee and you in those private discussions, is if
18 the Court should then continue to expect that these are
19 forthcoming sequentially; in other words, date by date,
02:55:42 20 beginning November 3rd and working forward to January 20th,
21 or whether there's going to be some skipping around. So let
22 me leave that alone for just a moment.

23 According to the log, Dr. Eastman asserts
24 privilege over roughly 244 pages. So based on the privilege
02:56:02 25 log, at a minimum -- at a minimum, 1,407 pages were

02:56:08 1 unprivileged.

2 Mr. Letter, did you receive the unprivileged
3 documents from Dr. Eastman on Friday?

4 MR. LETTER: Yes, we did, Your Honor.

02:56:18 5 THE COURT: Okay. And if so, how many pages did
6 you receive to verify that for the Court?

7 MR. LETTER: I'm hereby asking my colleagues to
8 tell me exactly how many pages, Your Honor. And it's my
9 understanding --

02:56:31 10 THE COURT: Thank you.

11 Mr. Letter, you can cease now. Tell me how many
12 pages you received. If you need to get on the phone, I'd
13 like verification that you received 1,407 pages.

14 MR. LETTER: I'm waiting for an e-mail that should
02:56:43 15 come any second, telling me that --

16 *(Overtalking: Unable to report.)*

17 THE COURT: Let's cease our conversation.

18 MR. LETTER: I believe that is correct.

19 THE COURT: Let's wait and we'll cease our
02:56:52 20 conversation until you can verify that.

21 *(Pause)*

22 MR. LETTER: I was told before that, yes, we
23 received 1 through 1,407. So that would be correct,
24 Your Honor.

02:57:43 25 THE COURT: All right. Thank you so much.

02:57:47 1 Mr. Burnham, how many pages -- or Dr. Eastman, how
2 many pages did you review in total on Friday?

3 MR. BURNHAM: Setting aside a cursory review and
4 getting -- you know, kind of getting our feet wet with the
02:58:04 5 platform, we stopped our formal review, I think, at the
6 conclusion of the privilege log that was submitted.

7 THE COURT: Would you restate that, please.

8 MR. BURNHAM: Setting aside cursory reviews and
9 sort of learning our way around the system, getting the lay
02:58:28 10 of the land type of activity, the end of our formal review
11 coincided with the last document listed on the privilege log
12 that was filed.

13 THE COURT: So does that mean that you reviewed
14 1,651 pages?

02:58:44 15 MR. BURNHAM: That's correct.

16 THE COURT: And that was the total?

17 MR. BURNHAM: That's correct.

18 THE COURT: All right. Thank you.

19 At the rate of 1,500 pages per day, I anticipate
02:59:07 20 that at that rate, it would take approximately 63 business
21 dates to finish going through all 94,153 pages, which is
22 about 13 weeks. I'm balancing the importance of the
23 attorney-client privilege with Congress' urgent need for
24 these documents, if they're forthcoming.

02:59:28 25 So given the current pace with the fact that the

02:59:32 1 review will likely become smoother as the process goes on --
2 and we're in this initial give-and-take, trying to sort out
3 what the Excel Spreadsheet will look like, but it's going to
4 go much smoother -- I'm considering increasing the daily
02:59:49 5 rate to 2,000 pages for every business day or leaving 1,500
6 pages at six days a week instead of five.

7 So I'd ask Dr. Eastman and the Select Committee,
8 what's your preference? And if you would like to have a
9 private off-the-record conversation by telephone for just a
03:00:08 10 moment, I'd invite that between the two of you.

11 MR. BURNHAM: We actually had some discussions
12 about that over e-mail. There's a number of considerations
13 involved in setting the appropriate pace.

14 THE COURT: No, just a moment, Counsel. I will be
03:00:26 15 setting that pace, so I'm asking for your participation and
16 I'd like an answer. And, once again, I'm going to be
17 courteous. I'm going to step off the bench. I would like
18 the two of you to call each other offline, and I'd like an
19 answer. Otherwise, I'll make a decision. So I'll be back
03:00:41 20 in five minutes.

21 Thank you.

22 *(Pause)*

23 THE COURT: Hopefully, all you folks can hear and
24 see me, and I can certainly see and hear you.

03:09:26 25 I see you, Mr. Letter. I don't see Dr. Eastman or

03:09:31 1 his counsel.

2 Dr. Eastman, I can see you. I don't see your
3 counsel, Mr. Burnham.

4 Mr. Burnham? Mr. Burnham?

03:10:03 5 First of all, Mr. Letter, if you can hear me --
6 you're muted right now. I cannot hear you.

7 Mr. Plevin, you're muted right now.

8 Dr. Eastman, you're muted right now.

9 I see Charlie Burnham raising his hand, but I
03:10:20 10 don't see him --

11 THE CLERK: There he is. Give him a second.

12 THE COURT: Okay. We'll get everybody back on.

13 *(Pause)*

14 THE COURT: Mr. Burnham, I can see you now.

03:10:38 15 Can you see and hear me? I'm waving at you.

16 Dr. Eastman, can you see me? I'm waving at you.

17 Thank you. You're muted right now.

18 Mr. Letter, can you see and hear me? I'm waving
19 at you.

03:10:49 20 Mr. Plevin, can you see and hear me? You're muted
21 also.

22 Well, then, Counsel, your response, please, from
23 either Doctor, or -- Dr. Eastman, Mr. Burnham, or
24 Mr. Letter.

03:11:03 25 MR. LETTER: Mr. Burnham and I have consulted. We

03:11:05 1 have been making proposals to each other. We would like to
2 make short presentations to you about this very issue, if
3 that's okay with Your Honor.

4 THE COURT: Please, I would like to hear from both
03:11:16 5 of you before I make a decision.

6 MR. LETTER: Fine, Your Honor.

7 What we've proposed to Mr. Burnham is that the --
8 basically, all of the pages that were introduced to us were
9 things like news articles, et cetera. That's 1,400 pages.

03:11:33 10 So that's basically useless. What we had said to
11 Mr. Burnham, what we proposed is that we're happy to exclude
12 all of that material and to exclude some other material,
13 such as Mr. Eastman's family members, et cetera.

14 THE COURT: Just one moment. Just one minute. I
03:11:52 15 want to go slowly, because I don't understand, yet, the
16 volume of that material. What do you estimate that volume,
17 such as family material or newspaper articles that are of no
18 value, quite frankly, to either of you?

19 MR. LETTER: Judge, remember, we don't have the
03:12:12 20 materials. Only Mr. Burnham can answer that question.

21 *(Overtalking: Unable to report.)*

22 THE COURT: Well, just a moment.

23 *(Overtalking: Unable to report.)*

24 THE COURT: Thank you. Thank you.

03:12:18 25 Mr. Burnham, in other words, excluding family

03:12:22 1 materials, obviously, that's not relevant and excluding
2 newspaper articles that could be counted as pages, but quite
3 frankly are irrelevant to either one of you, can you help me
4 with that answer?

03:12:36 5 And I can't hear you. Mr. Burnham? Mr. Burnham?
6 I can't hear you.

7 THE CLERK: Let me check, Judge.

8 (Pause)

9 THE COURT: No?

03:12:56 10 Mr. Burnham, try again.

11 MR. BURNHAM: Am I muted now?

12 THE COURT: Now you're good. Thank you, sir. I
13 appreciate it.

14 MR. BURNHAM: Excluding news articles and Listserv
03:13:05 15 and mass e-mails and things of that nature would eliminate
16 approximately 30,000 pages --

17 THE COURT: Now, just a moment.

18 MR. BURNHAM: -- of review.

19 THE COURT: Just a moment.

03:13:17 20 MR. BURNHAM: I don't presently have an estimate
21 for family members. We've just been discussing this today,
22 but that would contribute to the 30,000.

23 THE COURT: I want to humbly repeat back the
24 approximation, and that is, 30,000 of the 94,000 approximate
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MR. BURNHAM: I'm not hearing the Court.

THE COURT: I apologize. Let me try again.

Mr. Burnham, can you hear me now?

(Pause)

THE COURT: Let me try, again, in just a moment.

(Pause)

MR. LETTER: Your Honor, I'm just letting you know that I can hear you, so I don't know whether --

THE COURT: All right. Mr. Eastman --

Dr. Eastman, can you hear me? I'm waving at you.

Okay.

DR. EASTMAN: Yes, I can hear you.

THE COURT: Thank you very much for your courtesy.

Mr. Letter, can you hear me?

Mr. Letter?

Okay. You can hear me.

MR. LETTER: Yes, Your Honor.

THE COURT: Mr. Plevin, can you hear me?

MR. PLEVIN: Yes, Your Honor.

THE COURT: Mr. Burnham, can you hear me now?

MR. BURNHAM: I can hear you only very, very faintly, Your Honor. It's very difficult to hear. It was fine until just a moment ago.

THE COURT: Can all of the rest of you hear me clearly?

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Mr. Letter, can you hear me clearly?
MR. LETTER: Yes, I can, Your Honor.
THE COURT: Dr. Eastman, can you hear me clearly?
DR. EASTMAN: Yes, I can, Your Honor.
THE COURT: Okay. Mr. Plevin, can you hear me clearly?
MR. PLEVIN: Clearly, Your Honor.
THE COURT: Mr. Burnham, there has to be something on your end of the line, and you're muted right now. But, possibly, you could unmute.
You're still muted.
(Pause)
THE CLERK: And now we lost him.
THE COURT: And now we lost you.
Now, you're back. I can see your lips moving and there's no sound.
MR. BURNHAM: The only thing I can think, Your Honor --
THE COURT: No, no. Just a moment. I can hear you. Mr. Burnham. Mr. Burnham.
MR. BURNHAM: -- here in the courtroom --
THE COURT: Mr. Burnham, I can hear you perfectly now. So whatever you did, thank you. I can hear you.
DR. EASTMAN: It seems he still can't hear you, Your Honor. Perhaps we take a minute. Let him log off and

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log back in.

THE COURT: Log out. That's a good idea, Dr. Eastman. Let's take the time. I'll come back. And let's see if we can get better communication. Thank you.

How about five minutes for all you folks? And let's get this in order.

(Pause)

THE COURT: All right. Well, thank you. We're back on the record.

And Mr. Burnham, I can see you.

Can you see and hear me now?

MR. BURNHAM: Your Honor, I can see you.

Your Honor, I'm afraid I still can't hear the Court. I can hear Your Honor's clerk, just a minute ago.

THE COURT: Can you hear me now?

THE CLERK: Counsel, can you hear me?

MR. BURNHAM: I'm afraid I'm not getting any audio.

THE COURT: Mr. Letter, can you hear me?

MR. LETTER: Yes, Your Honor.

THE COURT: Can you hear me, clearly?

MR. LETTER: Yes, Your Honor.

THE COURT: Mr. Plevin, can you hear me?

MR. PLEVIN: Yes, I can hear you clearly, Your Honor.

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THE COURT: Dr. Eastman, can you hear me?
(Pause)
THE COURT: Dr. Eastman, can you hear me, sir?
Mr. Burnham, can you hear me?
(Pause)
THE COURT: We're going to take another brief recess and try to figure this out. It's --
I can hear you, Mr. Letter. I can hear you, Mr. Plevin. I could hear Dr. Eastman, who I cannot hear or see at the present time.
And, Mr. Burnham, I can see you, but -- I'm sorry? Can you hear me?
DR. EASTMAN: Your Honor, it's John Eastman. I can hear you, and I've been added back to the panel list. I don't know how I got dropped.
THE COURT: All right. Thank you, Dr. Eastman. I can see and hear you also. Thank you for your courtesy.
And, Mr. Burnham, can you see and hear me?
Mr. Burnham, if -- this has to be on your end. Again, I'm going to take another recess.
DR. EASTMAN: Your Honor, I've just texted him and asked him to just dial in by phone so we can at least have audio.
THE COURT: No, I'm going to see and hear him. There's absolutely no reason -- because I'm being very

03:28:23 1 generous and not ordering your appearance personally in my
2 court at the present time. We'll get this resolved very
3 quickly now, or I'm going to make a different kind of order.

4 (Pause)

03:33:43 5 THE COURT: Let's start again. And let's start
6 with Mr. Burnham.

7 Mr. Burnham, can you see and hear me?

8 All right. Mr. Burnham, can you see and hear me?

9 MR. BURNHAM: Yes, I can see and hear you fine.
03:34:03 10 Excellent.

11 THE COURT: Thank you for your courtesy. I can
12 see and hear.

13 Dr. Eastman, can you see and hear me?

14 DR. EASTMAN: Yes, Your Honor.

03:34:10 15 THE COURT: I can see and hear you also. Thank
16 you, sir.

17 Mr. Plevin, can you see and hear me?

18 MR. PLEVIN: Yes, sir.

19 THE COURT: Thank you for your courtesy.

03:34:18 20 And, Mr. Letter, can you see and hear me?

21 MR. LETTER: Yes, Your Honor.

22 THE COURT: All right. You've indicated to me
23 that almost one-third of the pages that would be produced
24 are not relevant to the investigation. You've stated to me
03:34:39 25 that newspaper articles and subscriptions are amongst those

03:34:44 1 approximately 30,000 pages, without information yet
2 concerning e-mails and correspondence or attachments
3 concerning family members, which may not be relevant and not
4 needed to be produced.

03:35:07 5 So, Mr. Burnham, let me turn back to you, before I
6 make an order and once again, re-ask: Is it your belief
7 that approximately 30,000 pages of the 94,000 pages are in
8 one of two categories: Newspaper articles and/or
9 subscriptions?

03:35:29 10 MR. BURNHAM: Yes, approximately, Your Honor.

11 THE COURT: Approximately. That's fair enough.

12 And concerning family communications, what is your
13 estimate of family communications that would not be
14 relevant?

03:35:43 15 MR. BURNHAM: I don't have an estimate of family
16 communications, but one point I think does need to be made
17 that Your Honor stated a moment ago: Nonresponsive
18 documents involving family or something else didn't need to
19 be produced. The Government -- the Congressional Defendants
03:36:00 20 actually has taken the position that all of the documents
21 need to be produced whether responsive to the subpoena or
22 not or else included on a sort of nonproduction log.

23 THE COURT: Understand that.

24 MR. BURNHAM: And that --

03:36:13 25 THE COURT: You're getting a little bit ahead of

03:36:16 1 me, Mr. Burnham, so let me go through this sequentially.

2 And bear with me.

3 MR. BURNHAM: Understood, Your Honor.

4 THE COURT: The period of time would be about 63
03:36:32 5 business days at 1,500 pages a day. And before I had put
6 forward one of two options for you; that is, that I am going
7 to either increase this to 2,000 pages a day for each of the
8 five business days or move this to six days a week at 1,500
9 pages a day. And I was seeking before we got into this
03:37:02 10 discussion the best input of all of the parties, given those
11 two choices. If, in fact, there is much of the production
12 of these pages that would be irrelevant, as Mr. Letter
13 stated, then the Committee really holds this in their hands
14 to indicate to the Court, as well as you, if there is a
03:37:28 15 stipulation forthcoming from the parties that newspaper
16 articles, subscriptions and family communications are
17 irrelevant and would not be produced.

18 Now, if the Committee takes the position that they
19 want all documents, because there is some distrust, then
03:37:46 20 obviously that's going to lengthen the period of time. So,
21 Mr. Letter, you seem to communicate with other persons, and
22 you're more than welcome to do so, but I'm going to write an
23 order a short time after we terminate this conversation.
24 And I'm looking for your best input and Mr. Burnham's best
03:38:08 25 input before I write that order.

03:38:11 1 So are the parties prepared to stipulate; and if
2 not, I don't know that the Court should be in the position
3 of indicating to the parties with the breadth of this
4 subpoena what is relevant and what is not relevant. But
03:38:28 5 you've seemed to have already reached an agreement that
6 newspaper articles are relevant and family members matters
7 are relevant. That's why I'm asking for any time that you
8 need to take today -- and I'm going to encourage you to get
9 on the phone throughout this process, because once we
03:38:42 10 recess, I will be writing an order, and that will be final.

11 So, Mr. Letter, your position? And Mr. Burnham,
12 your position?

13 MR. LETTER: Yes, Your Honor. Our position is, as
14 I said awhile ago, newspaper articles, et cetera, there's no
03:38:57 15 interest, and that is totally fine. We're also willing to
16 give on family member communications. We're not -- the
17 problem beyond that is we're not moving to have Mr. Eastman
18 make determinations about what's relevant and what isn't
19 relevant. So beyond that, we believe --

03:39:15 20 THE COURT: So let me be very clear. Are you
21 prepared to stipulate that newspaper articles and personal
22 family member matters are not relevant amongst this
23 30,000-plus pages and need not be produced?

24 You're muted. Mr. Letter, I can't hear you.

03:39:35 25 MR. LETTER: I apologize. I apologize,

03:39:36 1 Your Honor.

2 We're willing to stipulate, Your Honor, that those
3 materials do not need to be produced.

4 THE COURT: Mr. Burnham?

03:39:46 5 MR. BURNHAM: Accepted stipulation.

6 THE COURT: All right then. This is going to
7 cause a substantial reduction in the volume of documents
8 produced and probably reduce the time period by at least
9 40 percent. And, once again, I have no idea concerning the
03:40:05 10 volume of family correspondence that would be irrelevant,
11 and I'm accepting that there are approximately 30,000 pages
12 of newspaper articles that are not relevant. This may cut
13 the time, literally, in half.

14 Is your preference 2,000 pages a day or 1,500
03:40:33 15 pages -- I'm sorry, at five business days? Or is your
16 preference 1,500 pages, six days a week?

17 MR. BURNHAM: Can I -- *(audio interference)* for a
18 moment --

19 THE COURT: Certainly. And if you want to talk to
03:40:49 20 Mr. Letter, Mr. Burnham, once again, I'd encourage that.
21 This is time well spent, because I'm looking for both of
22 your guidance, first. And I would encourage these phone
23 calls. Don't worry about the time. You two have been
24 communicating already. And I would encourage that continued
03:41:12 25 communication right now before I make that order.

03:41:16 1 MR. LETTER: Your Honor, from the Committee's
2 perspective, we don't have -- either one that Your Honor
3 orders would be totally fine with us. We do not have a
4 preference on that. Totally fine with either one,
03:41:27 5 Your Honor.

6 THE COURT: Six days a week at 1,500 pages, or
7 five days a week -- business days at 2,000 pages.

8 All right. Mr. Burnham?

9 MR. BURNHAM: Your Honor, I'm waiting for an
03:41:42 10 e-mail from Dr. Eastman.

11 THE COURT: Okay.

12 MR. BURNHAM: He's the laboring oar here.

13 THE COURT: Certainly. Take your time with that.

14 MR. BURNHAM: I'll just put --

03:41:51 15 THE COURT: No, let's wait now before we enter
16 into just conversation that's meaningless. Why don't you
17 two communicate with Dr. Eastman. Take your time with that.
18 And I'm right here. I'm just stepping off the bench, but
19 I'm within five feet away from the microphone.

03:44:18 20 *(Pause)*

21 THE COURT: And I don't see Mr. Burnham, yet.

22 *(Pause)*

23 THE COURT: All right, Counsel. Then once again,
24 to be certain, Mr. Burnham can you hear the Court?

03:53:44 25 MR. BURNHAM: I can hear Your Honor, yes.

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THE COURT: Thank you, sir.

Dr. Eastman, can you hear the Court?

DR. EASTMAN: Yes, Your Honor.

THE COURT: And, Mr. Plevin, can you hear the Court?

MR. PLEVIN: Yes, Your Honor.

THE COURT: Mr. Letter, can you hear the Court?

MR. LETTER: Yes, I can, Your Honor.

THE COURT: Then I welcome input from any of the parties.

MR. LETTER: Your Honor, Mr. Burnham and I have again talked and, apparently, we -- we're in disagreement. What we -- the main thing we care about is adjusting so that Professor Eastman is actually *(audio interference)* to -- by switching the dates that we had mentioned. We've agreed to get rid of a whole lot of chat.

And then as I said, we have no problem either of the alternatives that Your Honor suggested, and that's where -- where the House of Representatives is. We're eager to get rolling on this, with Professor Eastman's cooperation.

THE COURT: Thank you.

Mr. Burnham, your comment.

MR. BURNHAM: Your Honor, there's a counterintuitive aspect to this. Where, as the number of

03:54:56 1 extraneous e-mails is eliminated and the relevant ones are
2 focused on, the more time it's going to take to read more
3 substantive communications and do the necessary privilege
4 analysis. You know, I did some math at a rate of one minute
03:55:12 5 per page of review and the legal analysis. That's 25 hours
6 a day to get to 1,500. So the resolution I would like to
7 see in exchange (*audio interference*) -- but in exchange for
8 voluntarily focusing on certain dates and certain e-mails,
9 we pretty significantly lower, in fact, the quota from 1,500
03:55:35 10 to something else. And Mr. Letter and I didn't quite come
11 to a meeting of the minds on that. We did try. So
12 that's -- that's where we remain.

13 And so to answer the question Your Honor puts to
14 us forward, it's one or the other. We require relatively
03:55:52 15 lower number, six days a week than the other, but we
16 absolutely maintain our position that it's just not going to
17 be reasonable focusing on the critical document anywhere
18 close to 1,500 a day. These privilege
19 (*audio interference*) -- requiring some research. Some are
03:56:07 20 obvious; some of them are not. And this is something that
21 Dr. Eastman, himself, has to be involved in. He knows what
22 he's looking at. We can't hire a contract attorney or use
23 my colleagues, or anything like that. So that's our
24 position. It's certainly to keep the quota no higher than
03:56:25 25 it is. And if anything, to lower it, I'm afraid.

03:56:28 1 THE COURT: All right. I'm wondering what
2 process, Mr. Letter, the Select Committee would be
3 suggesting to exclude the approximate 30,000 pages that
4 Mr. Burnham estimates would be newspaper or subscription
03:56:49 5 material?

6 For example, does the House Select Committee still
7 want a non-privilege log? Or would the House Committee
8 specify certain search terms that would exclude irrelevant
9 information?

03:57:11 10 MR. LETTER: Your Honor, it would be the latter.
11 Our understanding is, these platforms will all be
12 adjusted. These search platforms can be adjusted so that we
13 can (*audio interference*) like newspaper articles, et cetera.
14 And, you know, with those kind of newspaper articles, we do
03:57:27 15 not need a privilege log, any kind of log on those. In
16 order to get this done, we're willing to just have those
17 taken off the table.

18 THE COURT: Okay. Mr. Burnham, if I then stayed
19 with the 1,500 pages or even a lower number, recognizing
03:57:43 20 that this might require more work as the days go by, would
21 this be acceptable to you and to Dr. Eastman?

22 MR. BURNHAM: Staying with 1,500 -- and what was
23 the other condition? I didn't quite catch you.

24 THE COURT: I'll have the Select Committee and
03:58:07 25 Mr. Letter repeat his statement to the Court.

03:58:13 1 MR. BURNHAM: I heard it, Your Honor. I
2 understand the exchange of them taking that off the table,
3 1,500. If that's -- I do think the number needs to be
4 lower, but if Your Honor keeps it at 1,500, we'll
03:58:24 5 *(audio interference)* --

6 THE COURT: I will eventually, but if that does
7 become burdensome, I do recognize that as we go along, I may
8 need to adjust -- I would like to start with 1,500, and I
9 hear a request not to raise that. But in exchange, I'm
03:58:42 10 hearing that the Committee will also stipulate along with
11 you to get rid of this extraneous material and it will
12 probably shorten the process and possibly cut the time
13 period in half. But the Committee somewhat holds that in
14 the palm of their hand with the subpoena and the way it's
03:59:03 15 worded. They're offering a stipulation. You're estimating
16 about 30,000 pages without us even knowing how many personal
17 family matters are involved. So if there were another
18 10,000 pages, hypothetically, that's literally 40,000 pages
19 of extraneous material. And what the Committee, I think,
03:59:22 20 has stated to the Court is that they would specify the
21 certain search terms that would exclude irrelevant
22 information, being newspaper articles, subscription and
23 family matters, and they can adjust.

24 MR. LETTER: Your Honor, this is Mr. Letter.

03:59:38 25 Very, very, briefly that -- I'm told that by

03:59:42 1 the -- (*audio interference*). We appreciate the exact same
2 thing. It wouldn't be search terms.

3 THE COURT: Mr. Burnham? Dr. Eastman?

03:59:58 4 MR. BURNHAM: I agree. The most efficient way to
5 go (*audio interference*), we can cooperate with that. We can
6 proceed along the lines, Your Honor just described, so long
7 as we retain discretion to go through the material in
8 whatever way necessary to be most sufficient to us in terms
9 of dates and order and so on.

04:00:17 10 MR. LETTER: Your Honor, as you know, I'll say one
11 more time, that just seems like an obvious way of defeating
12 what we're -- the subpoena and what we're asking for here.
13 It's quite clear that we're focusing on January 6 and 7 and
14 then going backwards here, January 4 and 5, et cetera. This
04:00:36 15 is not an attempt to cooperate then with what the Committee
16 is trying to do. We understand Professor Eastman's position
17 that certain things may be privileged but, otherwise, I
18 don't think that there's any argument that he can,
19 basically, go about this in a way that stymies the
04:00:58 20 Committee.

21 And just one on other thing -- just one other
22 thing, Your Honor, (*audio interference*) with separation of
23 powers. Remember, that we -- this is because this is in
24 court. Your Honor has set certain terms. For instance, the
04:01:12 25 House will pay for the -- the search, et cetera. And we are

04:01:18 1 not making any argument that any of that is prohibited by
2 separation of powers, so I think this is the same. I don't
3 see -- this is all part of Your Honor's ability to preside
4 over equitable judicial proceedings.

04:01:35 5 MR. BURNHAM: Your Honor, if I can respond.
6 Following the Committee's subpoena that they drafted, we're
7 not (*audio interference*). We're going very much by the
8 letter of the subpoena. And I'll give an example why
9 allowing us that discretion that promotes

04:01:48 10 (*audio interference*). There might be one document that
11 requires three hours of privilege research. It's a
12 complicated question. We can't do that and get through
13 1,500 documents a day. There might be 3-, 4- or 5,000 pages
14 that can be done in two hours. That makes it easier. And
04:02:05 15 so giving us the discretion to just simply follow the term
16 of the Committee's own subpoena will give us the ability to
17 comply with Your Honor's order in the most efficient way and
18 not having to come back to court, filing repeated
19 (*audio interference*). That's all we're seeking to do here.

04:02:23 20 MR. LETTER: And, again, Your Honor, the subpoena
21 was not and is not directed to Dr. Eastman. The subpoena
22 was directed to Chapman. It was going to produce all the
23 documents within three days. And then it was going to be up
24 to us how we would analyze -- go through that -- those
04:02:38 25 materials, so I don't understand why Professor Eastman now

04:02:43 1 gets to decide what he's going to do that's over an extreme
2 long period whereas Chapman is going to give it to us in
3 three days.

04:02:54 4 MR. BURNHAM: Because Chapman was going
5 (*audio interference*) privilege material and nonresponsive
6 material. But that absolutely makes it an apple-and-orange
7 comparison. Chapman was simply going to hand it all over.
8 We are constrained. We can't do that. We simply can't.
9 And there's going to take -- much longer than Chapman
04:03:10 10 (*audio interference*). Simple explanation.

11 MR. LETTER: The last thing I'll say, Your Honor,
12 if Professor Eastman can't do this in a way that is to allow
13 the Committee to carry out its important function, we can
14 just switch back to asking Your Honor to rule on whether
04:03:35 15 Chapman will be enjoined from complying with the subpoena as
16 they wish to do. Again, there's no point in having
17 Professor Eastman defeat the subpoena by taking months to
18 get us the material that Chapman is going to give us
19 directly. There's a legal argument here, and that's the
04:03:56 20 other way to go about this. It completely defeats the
21 subpoena -- Professor Eastman is going to keep going on
22 November 4, November 5, et cetera. We would then need a
23 legal ruling instead.

04:04:17 24 MR. BURNHAM: Your Honor, the last point. If the
25 Congressional defendants are effectively pulling out of the

04:04:21 1 compromise that was struck (*audio interference*) -- that
2 raises the question which I telegraphed in my report.
3 Dr. Eastman retains First Amendment, House Rules,
4 Fourth Amendment's claims. *Those are all that's out there.*

04:04:34 5 Compromise is not something that the Congressional
6 defendants are in a position to maintain. I think we have
7 done everything we can to meet them halfway in the most
8 reasonable way we can.

9 THE COURT: All right. Counsel, any other
04:04:49 10 comments?

11 MR. LETTER: You're not meeting us halfway. You
12 clearly are defeating the subpoena. And we, obviously,
13 can't go along (*audio interference*). There's no point in
14 having Professor Eastman produce the most relevant materials
04:05:08 15 four months from now. That's useless. So then we would

16 urge the Court to -- if you're going to be allowed to do --
17 We entered into a compromise in good faith. And I
18 think that what's happening now is you're defeating the
19 subpoena. And if that's what it comes down to, then we just
04:05:25 20 have to have the legal rulings and go from there. And we
21 hope that Chapman is authorized -- is allowed to comply with
22 the subpoena as they were going to do for their documents.

23 THE COURT: Any further comments?

24 MR. BURNHAM: No, thank you, Your Honor.

04:05:45 25 THE COURT: Would you give me just one moment then

04:05:47 1 and I'll be back with you in just one moment.

2 Thank you.

3 (Pause)

4 THE COURT: I'm going to -- I want to see all the
04:20:51 5 folks up on the screen.

6 Mr. Plevin, I have. Mr. Letter, I have. I don't
7 have Mr. Burnham or Dr. Eastman yet.

8 Now I have Mr. Burnham. And I need Dr. Eastman.

9 (Pause)

04:21:13 10 THE COURT: Okay. Counsel, can all of you see and
11 hear me?

12 I'm waving at you. Okay.

13 Mr. Plevin, can you hear me, to be certain?

14 Drawing an absolute blank. Mr. Plevin?

04:21:38 15 Mr. Plevin?

16 Mr. Plevin, can you hear me?

17 MR. PLEVIN: Yes, Your Honor.

18 THE COURT: Thank you very much.

19 Mr. Eastman, can you hear me?

04:21:57 20 DR. EASTMAN: Yes, Your Honor.

21 THE COURT: Mr. Burnham, can you hear me?

22 MR. BURNHAM: Yes, Your Honor.

23 THE COURT: Mr. Letter, can you hear me?

24 MR. LETTER: Yes, Your Honor.

04:22:03 25 THE COURT: All right. Thank you for your

04:22:05 1 courtesy. The parties --

2 MR. LETTER: I can, Your Honor.

3 THE COURT: The parties have represented that they
4 can reach a stipulation that would substantially reduce the
04:22:17 5 number of pages that need to be reviewed.

6 The parties should submit a written stipulation
7 specifying the procedure for Dr. Eastman to exclude
8 irrelevant pages by 5:00 p.m. Pacific Standard Time, which
9 would be 8:00 p.m. Eastern Standard Time tomorrow, as well
04:22:40 10 as the approximate number of pages that Dr. Eastman
11 anticipates will be excluded.

12 In light of the increased relevance of these
13 remaining documents, the Court will maintain Dr. Eastman's
14 pace at 1,500 pages per business day at the present time.
04:22:59 15 This narrowing should significantly decrease the time needed
16 for review.

17 The Court will address the issue of prioritizing
18 specific dates at a later point.

19 I want to thank all the parties for their courtesy
04:23:16 20 this evening and bid you a good evening.

21 MR. LETTER: Thank you, Your Honor.

22 *(At 4:23 p.m., proceedings were adjourned.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings as audibly heard via Zoom videoconference in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: February 2, 2022

/s/DEBORAH D. PARKER
DEBORAH D. PARKER, OFFICIAL REPORTER