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THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

US DOMINION INC. : 21C-08-063 EMD
and :
SMARTMATIC USA CORP. :
 : 21C-11-028 EMD
vs. :
 :
NEWSMAX MEDIA :

* * *

Status Conference
Courtroom 7E, March 8, 2024

* * *

BEFORE: THE HONORABLE ERIC DAVIS, J.

TRANSCRIPT OF STATUS CONFERENCE
March 8th, 2024

1 Appearances:

2 STEPHEN SHACKELFORD, ESQ.
3 DAVIDA BROOK, ESQ.
4 Susman Godfrey, LLP
5 Attorneys for Dominion

6 ROSEMARY PIERGIOVANNI, ESQ.
7 Attorney for Dominion

8 KATE HARMON, ESQ.
9 Attorney for Smartmatic

10 ERIK CONNOLLY, ESQ.
11 Attorney for Smartmatic

12 NICOLE WRIGLEY, ESQ.
13 Attorney for Smartmatic

14 BENNETT MOSKOWITZ, ESQ.
15 Attorney for Newsmax

16 KEVIN GUERKE, ESQ.
17 Attorney for Newsmax

18 JOSEPH CACACE, ESQ.
19 Attorney for Newsmax

20 HOWARD COOPER, ESQ.
21 Attorney for Newsmax

22 DOUGLAS HERRMANN, ESQ.
23 Attorney for Newsmax

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PLAINTIFF'S WITNESSES

- - -

WITNESS: D C RD RC

(none presented.)

DEFENSE WITNESSES

- - -

WITNESS: D C RD RC

(none presented.)

1 THE CRIER: You may be seated.

2 THE COURT: Good morning.

3 So, I see some familiar faces.

4 Just one thing. There was a letter sent
5 yesterday, and it says, "Both by File &
6 Serve and hand delivery." So, everybody
7 knows what my chambers rules are, right,
8 which is, I don't do hand deliveries.
9 You can PDF them to me, just include
10 opposing counsel. That's the best way
11 for me to immediately act on your
12 request.

13 So, the same thing will be with
14 briefs. You will send me a PDF of your
15 brief, not the exhibits. We'll get the
16 exhibits off of File & Serve. But the
17 way I know your brief has been filed is,
18 I get a PDF from you as opposed to two
19 hand delivered copies. We have too many
20 trees dying terrible deaths.

21 And what we've found is our clerks
22 almost always use File & Serve to pull
23 up exhibits, so having boxes and boxes

1 of exhibits -- and then what we'll do is
2 print the ones that we really need
3 sometimes.

4 So, if you have an important item,
5 I do allow electronic communication with
6 me. So what you do is, you send it to
7 me and you carbon copy Brian and Lisa
8 and opposing counsel and it's okay. I
9 know that may be strange in some
10 jurisdictions, but I have entered the
11 21st century, and I do accept things
12 that. And it helps me because,
13 otherwise, I'm reading it this morning
14 and I could have been reading it
15 yesterday. So, that's just to give you
16 a hint.

17 And it's amazing how -- I have
18 another case and I've told them that a
19 number of times, and they still -- I'll
20 find out that it's been filed by the
21 other side saying, "We haven't had a
22 chance to respond to this." And I'm
23 like, "Respond to what?"

1 those judges that says, "no" because I
2 don't know your case. I don't
3 micromanage cases. And since both
4 parties have asked for that time, I will
5 grant it.

6 So don't stress that you're going
7 to trial in September/October, because
8 if both parties say, look, we can't
9 properly present this to a jury if we go
10 to trial -- now, if one side says I can,
11 and the other side says I can't, then
12 I'll have to go through a balancing test
13 and make a determination as to whether I
14 will move it or not. But if both
15 parties agree, then I'll do it.

16 So, what I want is -- the quid pro
17 quo for that is I want it in the first
18 half of 2025. I don't want it extended
19 out until a long time. So, this is a
20 2020 situation that is now 2024, and
21 you're talking about 2025. And I know
22 it's big, and there's a lot of things
23 going on, but certain things are static,

1 and we'll talk about that in the second
2 case. There's a difference in the
3 second case.

4 But I haven't seen anything that
5 shows that there are new changing events
6 in the Dominion/Newsmax that would
7 warrant another year or so. And I'm not
8 going to not give you a trial date. I
9 want a trial date. So I don't know if
10 you guys have talked. Has anybody
11 talked about when they would be able to
12 do this?

13 MS. BROOK: Yes, Your Honor.

14 THE COURT: And you have to put
15 your name on the record.

16 MS. BROOK: Davida Brook, of Susman
17 Godfrey, on behalf of the Dominion
18 plaintiffs.

19 The parties did meet and confer
20 this week to talk about their mutual
21 availability for continuing the trial
22 date. And while not necessarily
23 speaking for Newsmax, based on what the

1 Court has explained to us this morning,
2 I think that the right period would be
3 May of 2025.

4 MR. COOPER: Good morning, Your
5 Honor. Howard Cooper for Newsmax. I
6 agree.

7 THE COURT: Okay. So you need four
8 weeks in May --

9 MS. BROOK: Yes, Your Honor.

10 THE COURT: -- to pick the jury in
11 April?

12 In other words, if I start you on
13 May 1, we're not going to pick on May 1.
14 Usually, we try to pick ahead of time.
15 I mean, I don't know how long -- I don't
16 think the jury will take as long as a
17 six-week trial, but four weeks is still
18 a lot of time. I think on the last one,
19 we lost a majority of the people to the
20 time. We didn't necessarily -- people
21 hadn't made a decision as to whether a
22 person was responsible or not
23 responsible. The biggest problem was

1 they couldn't do six weeks. So it does
2 take some time, but that would mean
3 picking in April.

4 Let me just look at the calender,
5 because Lisa will be in charge of
6 getting you the time. That's in my
7 criminal calendar. So I will have to
8 talk to the President Judge, but I'm
9 sure she will be fine.

10 So we want to finish before Labor
11 Day. So can we start the trial on
12 April 28th? I know it sounds different,
13 but if you look on the calendar for
14 2025, Monday is the 28th, but then four
15 weeks would put you at -- we would lose
16 people that are thinking of the holiday,
17 because who knows when they leave on the
18 week of the 30th.

19 So I was thinking Memorial Day is
20 the 26th, so we would be done on the
21 23rd. We might run into a little bit of
22 a problem, but if we start and then pick
23 the jury the week before, the Thursday

1 before we start, I will get permission
2 from the President Judge to do that.

3 MR. COOPER: May I ask Your Honor
4 what a typical trial day is?

5 Is it all day or a half-day or a
6 combination?

7 THE COURT: Well, I go all the
8 time. So, you can ask some people in
9 here that know me, who have worked with
10 me actually, it's the jury I worry
11 about. So, generally, what I
12 consider -- I tell the jury we start at
13 9:00 and we end at 4:30. There's
14 usually a break in the morning, an hour
15 and 15 minutes for lunch, and then a
16 break in the afternoon, and then we do a
17 hard stop at 4:30.

18 So even if it's -- thinking of
19 somebody who's not around anymore --
20 Ronald Reagan testifying and he still
21 has 15 minutes to go, he comes back the
22 next morning. We stop at 4:30. The
23 jury has to get home. The staff, after

1 4:30, our staff is working outside of
2 their hours, and they don't get paid
3 overtime. So whenever you guys go over
4 4:30, they're doing that because they
5 love this job, not because they get
6 extra money. That's how good our people
7 are.

8 So my thing is to start at 9:00,
9 and will probably get to the jury --
10 usually there's something that's going
11 on, so you have to figure that somewhere
12 between 9:00 and 9:30 we'll actually
13 bring the jury in, depending on what
14 happens overnight and then we go. I'm
15 pretty gung ho, and I think it's fair.
16 I think the jury expects that, too.
17 They're thinking like why am I here if
18 I'm here for a half-day? Can't we do
19 this in two weeks instead of four? Why
20 do I have to spend four weeks of my
21 life doing this?

22 And it's usually 15 minutes in the
23 morning, and 15 minutes in the

1 afternoon. And by the way, that's how I
2 calculate the timing when you're
3 wondering how I do it. I start it at
4 9:00 to 4:30, and I do 15, 15, and an
5 hour and-a-half, because we'll lose a
6 little bit of time. That's how I come
7 up with two hours that I take away from
8 the 7 and-a-half hour day, if you were
9 wondering about the math behind the
10 miracle.

11 So, I'll grant the request, and I
12 will talk to the President Judge.
13 Absent some type of issue, expect to do
14 it that way.

15 MS. BROOK: Your Honor, may I make
16 one comment for the record?

17 THE COURT: Sure.

18 MS. BROOK: We thank the Court for
19 granting the request. I do just want to
20 say on the record that Dominion did
21 agree to this, albeit reluctantly, for
22 the reasons the Court suggested, which
23 is that we thought we needed discovery

1 in order to best present our case to the
2 jury. I'm not going to go into the
3 details of that.

4 I will say though that our view is
5 this extension in order to take the
6 discovery that was previously sought
7 under the original CMO, should not be
8 used as an excuse by Newsmax to propound
9 new discovery requests on Dominion or
10 bring new motions that should have been
11 requested or sought under the Court's
12 previously entered CMO.

13 THE COURT: Well, didn't you have a
14 proposed CMO? I thought I had one,
15 right?

16 MR. COOPER: I was just going to
17 say, Your Honor, if you look at a
18 February 5th, 2024 letter to you --

19 THE COURT: I have it here.

20 MR. COOPER: -- there are dates
21 that are proposed. I was simply going
22 to suggest -- and it's hard for me to
23 respond to a broad comment like that

1 without conferring with counsel. But I
2 was just going to suggest that the Court
3 give us some time to confer about
4 whether we should be adjusting any of
5 these dates.

6 THE COURT: Well, keep it within
7 the scope of what you agreed to. That's
8 all I'm asking.

9 MR. COOPER: Of course.

10 THE COURT: I mean, I have this
11 letter with this. So, obviously, we
12 have the special magistrates. We call
13 them "special masters," but we have Mr.
14 Elsifon to help you with those things.

15 But, yeah, things that have been
16 done shouldn't be redone. I mean,
17 that's usually when things have
18 concluded. But there were some fact
19 depositions, fact discovery dates that
20 were kicked out. I mean, if you have to
21 adjust them a month or something because
22 of May, but I don't see this as some
23 type of concession.

1 MS. BROOK: Thank you, Your Honor.

2 THE COURT: And you know I will do
3 what I can to turn things around in the
4 timeframe if we have to.

5 The other thing I want to ask in
6 this case is, you know, a lot of things
7 are -- and this is not your fault, it's
8 my fault and I know there are different
9 issues. I know Smartmatic is not
10 Dominion, but this is Newsmax, and
11 Newsmax with two different plaintiffs.
12 So, sometimes certain things are coming
13 over, and it takes me a second to figure
14 out, wait, this is the Dominion case as
15 opposed to Smartmatic. Is there pending
16 before me, not before the master, that
17 you need me to address other than when
18 you send in the -- well, you can't send
19 me the stip until I get you the
20 confirmation from the President Judge.
21 So you guys can talk. You can talk
22 about that.

23 But is there anything outstanding

1 that you need from me, any exceptions or
2 anything that I've sat on that you're
3 aware of?

4 MS. BROOK: There is one pending
5 exception, Your Honor, that was brought
6 by Newsmax.

7 THE COURT: Okay.

8 MS. BROOK: And I have the docket
9 numbers for it here in my files if
10 that's helpful. That is the one I
11 believe that's open, Your Honor, in the
12 Newsmax case.

13 THE COURT: Okay. What is that?

14 MS. BROOK: They brought --

15 THE COURT: Any transaction number
16 will get me there.

17 MS. BROOK: I don't know actually
18 if I have the transaction number. I
19 might have spoken out of turn, but we
20 can get it for you.

21 MR. COOPER: I can give you the
22 title, if that helps, and the
23 transaction number.

1 MR. GUERKE: Your Honor, I have the
2 transaction number.

3 THE COURT: Sure.

4 MR. GUERKE: It's 71848903.

5 THE COURT: All right. And just so
6 you know this is e-filed. So I will
7 take care of that and try to get it out
8 within a week. I go into a trial -- I
9 pick the jury next Thursday and I go
10 into a week of trial, so I will try and
11 get to that right away.

12 And then is there anything that you
13 are aware of that needs to be --

14 MR. COOPER: No, Your Honor.

15 THE COURT: Okay. So I will get to
16 that exception, okay.

17 Yes, I have it.

18 Okay. I will take care of that for
19 you. Is there anything else?

20 MS. BROOK: No, Your Honor.

21 MR. COOPER: Not from Newsmax, Your
22 Honor. Thank you.

23 THE COURT: So, now going to the

1 next request with Smartmatic and
2 Newsmax. The reason I wanted everybody
3 in this is because I now have a lot of
4 time left in October, and I'm concerned
5 in that case. And I'm concerned not
6 because people aren't working hard, not
7 because anybody is taking an
8 unreasonable position. I'm not -- in
9 fact, the letter updates me, although
10 I'm not sure about the answers. This
11 recent letter with the part about
12 Holland & Knight.

13 I'm concerned that there are things
14 changing in that case that would make it
15 difficult to present well to the jury in
16 June. I know Smartmatic wants a trial
17 date, so I'm not going to kick them out,
18 but I do have a trial date now for four
19 weeks in October that I can give you.
20 So it wouldn't be like if I moved this
21 from June to, say, 2025, it wouldn't be.
22 If I moved it, I would not move it
23 beyond that date. So, I don't know if

1 you would consider that. I'm sure
2 Newsmax floated it to you. And you were
3 supposed to be ready in October, so I
4 don't think you can object to it.

5 MR. COOPER: Your Honor, we
6 proposed it.

7 THE COURT: Okay.

8 MR. COOPER: We had anticipated
9 that the Court might grant the joint
10 request. I don't know whether Your
11 Honor wants to hear on our motion --

12 THE COURT: Not yet. I'm going to
13 talk to you. I know what your position
14 is about the damaged model, the new
15 things that are coming out about the
16 Philippines. There may even be another
17 location in Venezuela also. I
18 understood.

19 So, you wouldn't oppose October,
20 you understand?

21 MR. COOPER: We're affirmatively
22 moving for that, Your Honor.

23 THE COURT: All right. Let me hear

1 from --

2 MS. HARMON: Good morning, Your
3 Honor. Kate Harmon, on behalf of
4 Plaintiffs Smartmatic.

5 We have considered the -- in the
6 context of what was put before Your
7 Honor today, but Smartmatic is not
8 prepared to agree to a trial, to the
9 trial that has been vacated --

10 (Asked to speak up and repeat by
11 court reporter.)

12 THE COURT: Maybe you need to come
13 up. Maybe that microphone is not
14 working.

15 This is supposed to be the
16 high-tech courtroom. I've learned some
17 things. Thank God we learned them
18 before the other trial. Like, if you
19 don't move around enough, the lights
20 turn off. Can you imagine?

21 And I have to keep reaching back
22 and hitting something, I can't remember
23 where it is. But it's spooky to be in

1 the middle of a trial, and all of a
2 sudden, the lights go off.

3 MS. HARMON: For a number of
4 reasons, we are not prepared to agree
5 to the trial setting, including the
6 availability of all of our experts.
7 They have blocked off their calendars
8 for the June timeframe, and all of our
9 -- we have three other pending
10 litigations related to the defamation
11 campaign. And all of those dates flow
12 from the June trial date in this case,
13 because we wanted to make sure that we
14 weren't jamming up our experts in other
15 cases related to this case.

16 THE COURT: Well, one trial date
17 doesn't because the one the New York
18 doesn't even have a trial date, which is
19 stunning to me. I never see a case
20 resolved until I give it a trial date.
21 So I always give trial dates first and
22 then back everything out, and then I
23 don't move them unless I feel there's a

1 need to. But it can't be the one in New
2 York.

3 MS. HARMON: Your Honor, I was
4 referring -- and I apologize -- to the
5 discovery deadlines and those cases that
6 were flowing. And the experts will be
7 otherwise focused in September and
8 October on -- additionally, a number of
9 our experts are professors that will be
10 back in school and teaching at that
11 time. And there has been delays of
12 international travel, surgeries, and
13 things of that nature by our experts
14 just to accommodate the June trial
15 setting. So we have logistical issues
16 that are prejudicial.

17 THE COURT: Can I express what I'm
18 seeing as opposed to -- I was just
19 talking to the special master about
20 this. I look to see where the issue is
21 on discovery, as to who it was.

22 So, in the last case, where
23 everything got jammed in and everyone

1 was wondering is Judge Davis insane,
2 he's going to do summary judgment one
3 month before, and he can't possibly do
4 that, the plaintiff in that case was not
5 the party that was being sought to
6 compel. They were not the party that
7 constantly had the motions to compel,
8 they were the opposite.

9 They were like we're doing
10 everything we possibly can to keep this
11 trial date. I can name a lot of
12 exceptions on the defendant moving to
13 compel you, and I'm getting things like
14 this letter from you, which shows --
15 again, I can't prejudice parties here.
16 And if it's going to take time to dig
17 things out, whether it's valid or not,
18 that's prejudicing the defendant here.

19 There, what we were concerned about
20 and it ended up being a problem was that
21 the defendant may not have been as
22 forthcoming. But it was always the
23 plaintiff that was moving to compel the

1 defendant there. And here it seems to
2 be the opposite to me and that's what
3 worries me, and that's why I brought
4 everybody together. Normally, this is a
5 no-go for me.

6 If I see the plaintiff is saying
7 here is a million documents. I am ready
8 today. Come on over and look at the
9 documents. That's how I used to do it.
10 Because people will tell you in this
11 courtroom, I'm like hang yourself. You
12 can have everything. I'm not going to
13 hold back anything. The only thing I'm
14 holding back is work product and
15 attorney/client. Relevance, you decide
16 relevance. I'd rather give you two
17 million documents and you miss the most
18 important document, than give you 50
19 documents and you see the one that's the
20 most important. That's how the
21 plaintiff was working in that case and
22 the defendant was the one who was always
23 holding back.

1 Here, I feel like it's the
2 opposite. I mean, even this letter that
3 you sent me, you're not taking the
4 position like come on and look and we'll
5 use confidentiality. You're always
6 saying we're not going to let you have
7 it, and that's a problem for the
8 defendant. It's not a problem for me,
9 but it's a problem for the defendant.
10 And it's my consideration that it's a
11 different situation.

12 That's why I wanted to talk to you
13 first before I talked to the defendant
14 here. Because the exceptions keep
15 coming in as motions to compel that
16 Newsmax is doing it, not Newsmax is
17 withholding something from us. There
18 has been some, but the ones that have
19 come to me -- and I mean, I may be wrong
20 on the number, but when I see "ninth
21 motion to compel" or something, that's a
22 lot. And if Plaintiffs want to keep
23 trial dates, they have to give up stuff

1 and especially because you chose this.
2 Defendant didn't choose to file for this
3 suit.

4 Also, I don't even know have we
5 decided what law applies in this case at
6 this point?

7 MS. HARMON: We have not, Your
8 Honor.

9 THE COURT: That's a big issue.
10 The other thing about moving the
11 briefing up so close to the trial date
12 and the Dominion was we all knew it was
13 New York law. There is a big difference
14 between Florida law and New York law. I
15 know about it and hopefully you guys
16 know about it, too. But there are
17 difference defenses in Florida that are
18 available in New York that may be
19 available in Florida, and I haven't
20 ruled on it yet.

21 So, I mean I'm not as sure I can
22 turn in rough in 9 days, and your
23 briefing is now moving up. So, that's

1 why I was bringing everybody in. And I
2 thought a reasonable situation here is
3 to give you something that's only three
4 or four months later and not a year
5 later, which I understand.

6 But my concern, to be as straight
7 forward as I can, is that I'm getting
8 the feeling that you're taking
9 positions -- which I am not saying is
10 either right or wrong, I'm not saying
11 that. But it's like digging it out and
12 the goal here is, we're not afraid of
13 what we have, here it is, and we're
14 going to win because we told the truth,
15 you didn't tell the truth and we're
16 going to win this trial.

17 And I feel like even this -- I
18 mean, I don't even know who wrote this.
19 I couldn't understand, "The response did
20 not set forth any information the DOJ
21 would be willing to disclose regarding
22 the DOG investigation, therefore, it
23 does not support affirmative

1 disclosure." And it says, "While DOJ
2 cites there is authority prohibiting the
3 DOJ from disclosing information about
4 ongoing investigations, there is no
5 authority under which DOJ can direct."

6 I wasn't asking DOJ to direct you
7 to produce something. I was asking the
8 DOJ to say whether they cared that you
9 give information that you have. I'm
10 not saying -- I mean, the DOJ can make
11 their own objection as to if somebody
12 tries to get discovery from them. I'm
13 sure they can protect themselves.

14 My thing was, the representation to
15 me was we've been told by DOJ not to
16 disclose something. And the question
17 is, are you still going to take that
18 position or not?

19 I understand they don't have the
20 ability to tell you what to do and what
21 not to do. I mean, nothing in this
22 represented to me that you violated the
23 law. But I knew that before I asked

1 you to send the letter. What I was
2 asking was to see does the DOJ care
3 whether you had information you have
4 that you could give to Newsmax, and this
5 sounds like we didn't move the ball at
6 all on this or maybe I'm wrong.

7 MS. HARMON: Your Honor, as I
8 understand the consultation, the DOJ
9 said that they take no position. And
10 that is what the expected response was.

11 And I think the language that was
12 included there was meant to just point
13 out the contrast between the sort of
14 compulsory nature of the DOJ, related to
15 government entities versus the DOJ's
16 complete inability to take an
17 affirmative position on the disclosure
18 of information about an investigation in
19 a civil matter.

20 THE COURT: Right. But DOJ was
21 taking an affirmative position. They
22 were saying don't disclose information
23 that may hurt the investigation, and

1 that was the reason why you weren't
2 complying with discovery requests.

3 This just basically says they don't
4 take the position. Does that mean they
5 don't care whether you do or you don't
6 provide the information?

7 Before I thought they cared whether
8 you provided it.

9 MS. HARMON: As I understand it,
10 the requests for confidentiality has not
11 been altered at all.

12 THE COURT: All right. Anything
13 else?

14 MS. HARMON: Your Honor, just to
15 address a couple of points.

16 There has only been one exception
17 filed in this matter by Newsmax. I know
18 there are others in the Dominion matter,
19 but for purposes of this Smartmatic
20 litigation, there has only been one
21 litigation. And that was the one that
22 Your Honor denied.

23 I just wanted to make a statement

1 for the record that Smartmatic has
2 produced over 2 million documents. We
3 have been forthcoming in our production
4 here. And Newsmax has sought a lot of
5 discovery from us that has been outside
6 the scope of what's permissible. And
7 Newsmax has received adverse rulings
8 about that from the special master,
9 which I don't think is indicative of
10 Smartmatic withholding improperly
11 anything.

12 I think we have been very
13 forthcoming with all of our information,
14 with our witnesses, with the corporate
15 representatives we've put forward. So
16 we have been doing everything that we
17 can to get this matter to trial. I just
18 wanted to make that statement for the
19 record.

20 THE COURT: I don't think you're
21 picking up what I'm saying. I'm seeing
22 documents coming to me that are from
23 multiple motions to compel. Whether the

1 special master compelled the production
2 or not wasn't my point -- then with an
3 exception. But I'm seeing the documents
4 and I see the orders that come from them
5 that somebody may not have filed an
6 exception. What I'm saying is that I'm
7 surprised at the number.

8 Now, if it's because they're
9 requesting things aren't discoverable,
10 that's one thing. But I'm just saying
11 that it's strange to me. That's all I'm
12 saying.

13 MS. HARMON: I understand, Your
14 Honor. Thank you.

15 THE COURT: Okay.

16 MR. COOPER: May I, Your Honor?

17 THE COURT: Sure.

18 MR. COOPER: Good morning again,
19 Your Honor. Let me just briefly
20 address the DOJ letter, Your Honor. And
21 Your Honor heard this during argument a
22 few weeks ago.

23 The letter, the company the grand

1 jury subpoenaed to Smartmatic had, as
2 Your Honor recalls, an aspirational
3 request that said "Do not disclose."

4 It then was followed by a sentence
5 that said, "If you seek to disclose,
6 please give us a call." And I believe,
7 logically, at least, that was what must
8 have led Your Honor to say "Why don't
9 you go ask and give them a call." I
10 don't have a hard copy of that letter.
11 I read it on my phone last night.

12 But DOJ taking the position that
13 they are neutral about what Smartmatic
14 does, I would suggest Your Honor vest
15 Smartmatic with the decision making now.
16 And they did not say in that letter --
17 and I don't know how what was written
18 possibly translates to a "don't do it."

19 Secondly, Your Honor, I just want
20 to say that we have currently initiated
21 a two-week procedure, which is not the
22 easiest thing to do, but we are going
23 after this material, which leads me to

1 the main point of why we're here. Which
2 is, as a practical matter and as a
3 matter of fairness, we cannot be ready
4 to defend Newsmax in June. And it is
5 not through anyone's fault. No one
6 could possibly have seen that a few days
7 before the end of discovery on
8 November 29th, 2023, that COMELEC would
9 ban Smartmatic from the country because
10 it's implicated in criminal wrongdoing.

11 And we have set both the motion to
12 amend the CMO, Your Honor -- I believe
13 we filed within a matter of 3 weeks of
14 that happening. I think the date was
15 December 22nd actually, which was the
16 last day of limited discovery that had
17 been agreed to that would take place
18 after December 8th.

19 We have done everything we can to
20 get this information, which with respect
21 to the damages claim, this multi-billion
22 dollar damages claim, is critical.

23 I have never heard of a defamation

1 plaintiff going to trial while they have
2 a federal grand jury investigation
3 hanging over their head, and they are
4 facing other proceeding in the
5 Philippines where they have now been
6 banned.

7 And you don't have to take my word
8 for it, Your Honor. We cite in our
9 papers, which I do not intend to repeat
10 at all, but at Page 61 of their petition
11 to the Philippines Supreme Court, still
12 pending, that they filed at the end of
13 December, beginning of January, they say
14 that the action taken by COMELEC has had
15 and will have devastating
16 consequences -- and I'm summarizing
17 here, this isn't a quote -- devastating
18 consequences for Smartmatic good will
19 and reputation. And in particular with
20 regard to governmental bodies who pick
21 election machines and pick vendors to
22 supply services. That's what this case
23 is about.

1 THE COURT: No. That's what the
2 damages is about.

3 MR. COOPER: Yes. That is core to
4 Newsmax's defense is what I should have
5 said, Your Honor, from Newsmax's
6 perspective. It's that there is this
7 multi-billion dollar damages claim,
8 which we believe is without merit for a
9 number of reasons and we will be moving
10 for summary judgment on it, but for this
11 reason, as well.

12 And I think I said this to you
13 during our telephonic hearing that the
14 special master, when we presented this
15 evidence, called it "powerful stuff,"
16 and that what we were asking for is the
17 opportunity to go after powerful stuff.

18 We have asked for a small set of
19 interrogatories, a small set of document
20 requests, to reopen certain depositions,
21 and to take some third party discovery.
22 And we've asked -- with the hope that
23 the Dominion case would be moved -- we

1 have asked to what amounts to a 120-day
2 continuance.

3 Right now everything is so jammed,
4 Your Honor, that if we were allowed the
5 discovery that we seek, we couldn't get
6 it done. We wouldn't be able to assess
7 its impact on summary judgment motions,
8 which by the way, Smartmatic asked us --
9 they want 180 pages for summary judgment
10 motions.

11 THE COURT: I thought I ruled on
12 this one. That's one of the ones I did
13 rule on.

14 MR. COOPER: I don't know if I have
15 seen it yet. I don't know where it
16 ended up.

17 In any event, Your Honor, you
18 mentioned your practice of assigning a
19 trial date up front. And this may be
20 the most practical thing of all, if the
21 parties are going to have any meaningful
22 settlement discussions in this case, and
23 I don't know whether that's possible,

1 it's certainly something we're open to,
2 we need rulings from the Court on
3 summary judgment, including on things
4 like whether Florida law applies,
5 whether New York laws applies. There
6 are going to be multiple Daubert
7 hearings, Your Honor. We have damages
8 experts that -- whatever they are using
9 as the federal name, obviously, whatever
10 the Delaware equivalent is of the
11 Daubert hearing.

12 THE COURT: We call them "Daubert
13 hearings."

14 MR. COOPER: We call them "Lanigan
15 hearings" in Massachusetts.

16 THE COURT: We're arrogant, but
17 we're not that arrogant. The US Supreme
18 Court --

19 MR. COOPER: It's all relative,
20 Your Honor.

21 So in any event, Your Honor, every
22 ounce of practicality in this case
23 dictates that being on the receiving end

1 of a multi-billion dollar claim, having
2 done everything as diligently as we
3 can -- I mean, it's kind of ironic we're
4 being criticized for not propounding
5 discovery requests. When we've done it
6 informally, we've faced only roadblocks
7 from Smartmatic. But when were we
8 supposed to propound discovery requests?
9 Discovery has been closed since
10 December 8th.

11 So by the time this major event
12 happened in the Philippines and the
13 ripple effect started to carry around
14 the world -- because all of these
15 countries, they monitor everything
16 that's going on with every vendor to see
17 where they're having problems, which
18 frankly, is one of their damages
19 theories in this case.

20 So, you know, to get back
21 oppositions like, well, we're not giving
22 that to you, it doesn't relate to the
23 ability of the machines and their

1 functionality and whatever, that's not
2 what this is about. This is about a
3 basic fundamental defense in terms of
4 whether we will be able to argue to the
5 jury that as of a certain date,
6 Smartmatic is liable proof. What is
7 being said about them now in terms of
8 participating in a commercial bribery
9 scheme, is a lot of worse than anything
10 they accuse Newsmax of saying.

11 I won't belabor it, Your Honor. I
12 do want to give you one illustration
13 though as to why this can't all be done
14 over the next 12 weeks.

15 So one of the things that we're
16 fighting with Smartmatic about is they
17 have a software system that they've
18 used for several years, it's a CRM,
19 Customer Management Relations software,
20 where their salespeople, from all over
21 the globe, have instructions in their
22 training to input on a realtime, moment
23 to moment basis what's going on with

1 their efforts to get contracts.

2 So, just by way of example, if
3 they're in Uzbekistan, and the
4 salesperson has a meeting with the
5 government officials who are deciding
6 what vendor to hire, they report back.

7 The information we have from their
8 CRM is a year old at this point, and
9 they are not giving us access to the CRM
10 so that we can update it. When we got
11 access to the information that was a
12 year old, it took weeks for our expert
13 on CRM matters to go through it.

14 Now, we have this event that took
15 place on November 29th -- I should add
16 parenthetically that prior to that, just
17 a couple of months, was the Bautista
18 indictment and the release of that
19 affidavit, which has been publicly said
20 to include executives from Smartmatic
21 and three different companies which
22 include Smartmatic entities, including
23 the plaintiffs in this case, which was

1 widely publicized that resulted in
2 COMELEC taking the action that it did.

3 We don't have anything from them
4 where we get to say -- and Your Honor
5 referred to the million documents -- why
6 they are not saying to us, here, log
7 onto the CRM system. Have at it. I
8 mean, we should not be fighting about
9 these things, and we're not the ones
10 delaying.

11 So, I appreciate Your Honor hearing
12 me. I know a lot of that is in the
13 papers. I am happy to answer any
14 questions. But fairness and
15 practicality dictate a short
16 continuance, and 120 days is not a
17 significant continuance. And
18 respectfully, Your Honor, we will be
19 struggling to get it done even within
20 that timeframe if we're going to
21 continue to get fights from the
22 plaintiff.

23 Thank you.

1 MR. CONNOLLY: May I be heard, Your
2 Honor, briefly?

3 THE COURT: So, I will let it go
4 this time, but in the future understand
5 the one ranger, one riot rule, which is,
6 when one party starts the argument --
7 like, for instance, if there's an
8 objection made, there's not going to be
9 a bunch of people versus a bunch of
10 people. It's one person who is doing
11 the witness, and one person who's doing
12 the cross. They are the only people to
13 talk.

14 I will let you this time, but once
15 Ms. Harmon got up on the issue, that's
16 really the person who should carry it.
17 But go ahead, put your name on the
18 record.

19 MR. CONNOLLY: Kate Harmon -- just
20 kidding. Erik Connolly, on behalf of
21 Smartmatic.

22 I need to just correct a few things
23 very quickly, Your Honor. With respect

1 to the CRM data, we already agreed to
2 provide them an updated copy of the CRM
3 data. We haven't hid a thing. We gave
4 them a copy of the CRM data in the
5 course of discovery. We've agreed to
6 give them an updated version of the CRM
7 data. We are not hiding the CRM data.

8 We have produced almost 3 million
9 documents. We have entered and
10 responded to hundreds of document
11 requests. We've had hours and hours and
12 hours of testimony on damages. We
13 haven't hid a thing. And even now we
14 have agreed that we will update on a
15 rolling basis our damages discovery. We
16 are hiding nothing from them with
17 respect to updating the damages
18 discovery.

19 This COMELEC issue is a complete
20 red herring. If there was a
21 jurisdiction in the world that is going
22 to tell us we're not going to do
23 business with you because the COMELEC

1 ruling, they are going to get that
2 document because we have already agreed
3 that we will continually update that
4 information.

5 The reason you don't see anything
6 in the record right now that a
7 jurisdiction in the world cares about
8 what COMELEC did is because no
9 jurisdiction in the world has indicated
10 that they care about what COMELEC has
11 done. But if it comes up, if we all of
12 a sudden get a communication from Bosnia
13 that says we won't do business with you
14 because of the COMELEC ruling, they are
15 going to be the first ones to get that
16 document from me. So I'm not hiding a
17 thing from them. We've got 90 days.

18 If the special master orders
19 additional productions, if they are
20 asking for things that are actually
21 reasonable and discoverable, I will get
22 it to them right away. We have no
23 reason to delay this. We've had this

1 trial date forever.

2 We were the victim of a campaign
3 three and-a-half years ago. We should
4 keep this trial date. We should all
5 roll up our sleeves. We should go fast.
6 If anyone agrees with any of the
7 discovery that they're asking for, we
8 will produce it to them, they will have
9 time to digest it, and we can keep this
10 trial date. We can't just change this
11 trial date. We really have scheduled
12 the rest of our litigation for this
13 client around this, so we should keep
14 this date. It's sacrosanct.

15 THE COURT: Okay. Just one point
16 that was made, and I hope everybody
17 understands, you do have a continuing
18 obligation to update discovery. So
19 that's not a concession, that's a
20 requirement. And we know what happens
21 with me if you don't do that.

22 So, I'm a firm believer in what I
23 call an "open kimono," okay? That means

1 that this is a truth-seeking exercise.
2 This is not a criminal case.
3 Everything, if it's not produced, you
4 can't use it. I won't let you use it in
5 the trial.

6 And, again, there's a difference
7 between me rolling up my sleeves and
8 working with you, and me presenting a
9 case to a jury, and that's what I have
10 to think about. So, just so you
11 understand, I'm taking that into
12 consideration as well.

13 But what Ms. Harmon first
14 addressed, I'm still having trouble with
15 this letter you sent me.

16 MR. CONNOLLY: Are you referring to
17 the response on the DOJ?

18 THE COURT: Yes. To me it sounds
19 like you can now disclose it. I mean, I
20 don't know if that's what the intent
21 was.

22 But to me, before it was the DOJ
23 took the position not to do it. Now

1 they're saying "we don't take a
2 position as to whether you can do it or
3 not." That seems the opposite to me of
4 what was represented to me and what I
5 read from Holland & Knight, the redacted
6 document.

7 (To the court reporter.)

8 I'm sorry. I have a problem with
9 talking away, so you'll get used to me.
10 And don't be afraid to let me know. I
11 also down talk sometimes where I turn my
12 head down and people can't hear.

13 So, that didn't make sense to me.
14 I mean, not that all lawyers make sense
15 to me. But that almost said turn it
16 over. And why can't you come up with
17 some type of confidentiality agreement
18 that makes it for the attorneys' eyes
19 only or whatever? But that's different.
20 That seem like a different
21 representation that was made to me at
22 the hearing. And it may just be the way
23 it was written, but it seems different

1 than what was told to me.

2 MR. CONNOLLY: So, I wish I was a
3 criminal attorney, I am not. They seem
4 like they have a more enjoyable life.
5 But when the investigation began, there
6 was a strong confidentiality disclaimer
7 that was provided.

8 We then did, as you requested that
9 we do, which is, we contacted them for
10 an update on it, they took a
11 non-position. When I got that same
12 communication, it meant nothing to me as
13 well. It seemed like it didn't make any
14 sense, so we went back to Holland &
15 Knight and they said that is the
16 standard response.

17 It does not change what we were
18 told at the beginning of the
19 investigation with respect to the
20 confidentiality of anything that can be
21 considered a criminal investigation by
22 the DOJ. So from the Holland & Knight
23 perspective, the letter didn't change

1 the original information.

2 Now, I think Your Honor has a very
3 good suggestion in terms of the AEO,
4 attorneys' eyes only, sort of
5 designation that might be the
6 compromise. Give me until -- today is
7 Friday, I will have this resolved by
8 Monday in terms of whether or not there
9 is anything to produce and the volume of
10 it. And we will get that compromise
11 with defense counsel by Monday.

12 THE COURT: Again, maybe Holland &
13 Knight -- I do a little bit of criminal.

14 MR. CONNOLLY: I know you do.

15 THE COURT: So when someone keeps
16 explaining to me criminal -- I don't
17 know if you've realized that I kind of
18 sound defensive like when someone
19 describes to me what an indictment is.
20 I kind of have a good idea of what a
21 criminal case involves. I probably do
22 more than even the Holland & Knight
23 people do. But this is different. This

1 does not sound like the same position.

2 The initial position is, we don't
3 want you to disclose anything, you can
4 hurt the investigation. This response
5 is, look, we take no position as to what
6 you do. That's a big difference to me.

7 Now, maybe it just wasn't
8 communicated correctly in the letter.
9 It could be that the DOJ has not
10 changed its position, is what you're
11 saying Holland & Knight told you. But
12 that's not what the letter says. This
13 letter says something different to me,
14 and that's why I brought it up.

15 MR. CONNOLLY: Your Honor, I think
16 that is fair. I'm not going to lose my
17 trial date over an issue -- I do not
18 want to lose my trial date over whether
19 or not I have to give some communication
20 with the DOJ.

21 Therefore, what I am saying is by
22 Monday, I will have this worked out in
23 terms of what can and cannot be

1 produced. I will work with Holland &
2 Knight to make sure it is locked down.
3 But I do not want to risk my trial date
4 over something this minor in terms of
5 the scope of discovery. I'm not talking
6 about a large volume of materials I'm
7 going to have to turn over, if I turn
8 over anything.

9 THE COURT: All right.

10 Let me take a brief recess. But,
11 again, just so everybody understands --
12 and I kind of started this out, let's
13 not pick up nuances. When I said you
14 can stipulate and agree to anything you
15 want but don't mess with my trial date,
16 that's a big difference than what is
17 being expressed.

18 And you have to understand I don't
19 do it for settlement purposes. I'm
20 saying nothing will get resolved without
21 a trial date. Whether you guys settle
22 or not is not my -- I mean, it is my
23 business, but I'm not going to get

1 involved in that. I haven't gotten
2 involved in internal settlement in any
3 case. I mean, I may advise you guys to
4 go back and talk. But the way you
5 resolve a case, either through summary
6 judgment, trial, or a settlement, you
7 have to have a trial date. Especially
8 in a big case. You would be surprised.

9 In a smaller case, they would
10 actually resolve it. But in a big case
11 where actually it's not as life or death
12 as people make it sound, if I don't get
13 a date, nothing is going to happen.
14 Nothing gets filed.

15 So let me take a short recess.

16 THE CRIER: All rise. This
17 Superior Court State of Delaware, New
18 Castle County stands in recess.

19 THE COURT: Don't leave. I will be
20 back in 5 minutes.

21 - - -

22 (Whereupon this Court took a 5-minute
23 recess.)

1 THE CRIER: Everyone may be seated.

2 THE COURT: There's one thing I
3 forgot to do. I forgot to ask the
4 parties what other open matters there
5 were in the Smartmatic matter because I
6 have the one pending, 71848903, which I
7 will look at.

8 So, I am going to grant -- I am
9 going to move the trial date. I know if
10 that upsets Smartmatic, I am offering
11 you that date. If that does not work
12 because your professors are not
13 available, then we'll get another date.

14 But I'm telling you it's a
15 concern -- it's twofold. One, I'm not
16 privy to all of the information, so this
17 isn't one of those things like Judge
18 Davis doesn't know what he's talking
19 about. But my understand about
20 Smartmatic is a lot of its business is
21 done over seas as opposed to in the U.S.

22 In fact, I think as I remember
23 reading the pleadings initially, there's

1 only one jurisdiction in the U.S. that
2 was called to the 2020 election. That
3 doesn't mean it doesn't cause damage
4 over seas. I'm just saying that's how I
5 know the difference between the
6 different machines or where they're
7 used. Therefore, over seas information
8 is necessary. This is not Smartmatic's
9 fault that in November this event
10 occurred, but it does have an impact on
11 damages.

12 The other issue that is more of a
13 Court concern is the Florida law issue.
14 It's one thing to turn around in 9 days
15 something that everybody has agreed to.
16 And I've had a chance to even narrow
17 some of the issues of the other requests
18 that I made during that case down where
19 there were open issues. But I haven't
20 decided -- and I think, if I remember
21 correctly, I think it's the neutral
22 report doctrine that's available in
23 Florida or that may be available in

1 Florida. And under the statement, it
2 would appear that Florida may be the
3 jurisdiction, so there's an issue there.
4 I'm not saying I have ruled on it, I'm
5 just saying that makes Florida
6 important.

7 And before I've actually had some
8 additional briefing done, I didn't get
9 any requests from the parties to make an
10 initial ruling which could have helped
11 on your summary judgment briefs. But I
12 am concerned about my ability to present
13 the case to the jury, as well as this
14 over seas issue. And I don't think 120
15 days -- this is not a situation where I
16 am saying to you I'm taking away a month
17 and you have it two years from now.

18 I don't think 120 days is
19 unreasonable. Now, it may be
20 unreasonable witness-wise, and you will
21 have to get back to me on that, but I am
22 offering you up something before the
23 election. And if Newsmax objected to

1 that, I'd overrule it. But they were
2 supposed to try their case in October,
3 late September/October of this year,
4 and so it's available and they're
5 agreeing to it.

6 And I know this doesn't make you
7 happy but I am concerned that this case
8 won't be as ready to present to the jury
9 as it could be. And it is going to be
10 make me a little bit longer. And you've
11 scrunched me to -- if I looked at the
12 latest briefing schedule -- to 30 days
13 for when to reply, to when the case
14 starts. It's close to 30 days. I can't
15 remember without looking at it.

16 But the first briefs are going to
17 be filed on the 15th. And I couldn't
18 figure out nobody picked up. I wouldn't
19 want people writing those bries and
20 filing them today, if I was holding a
21 hearing today. At least wait until
22 Monday. Kill their weekend.

23 But if you picked up on those

1 things with me, I don't think this is an
2 unreasonable moving of the date. I
3 would, if I didn't have something
4 available. If I wasn't making myself
5 available to Smartmatic in September, I
6 can see why there would be more of a
7 concern. And I do get the point about
8 the professors and everything but I
9 teach, and I know there are ways you
10 can get around that. You can Zoom. You
11 can do a pre-taped class. You can do a
12 lot of things.

13 So, I am going to continue the
14 trial date, but I am not continuing it
15 to another year unless it's Smartmatic
16 that tells me. Otherwise, you get the
17 month. And if we have to tweak it a
18 little, let me know. But I have that
19 month with October open.

20 I think the relevant dates where
21 there was a pretrial conference on the
22 24th and the jury was supposed to be
23 picked on the 26th. That, we might want

1 to look at because I can get permission
2 from the Court, but that's the judicial
3 retreat held by the Supreme Court. But
4 I'm sure they would let me come and pick
5 the jury. If I tell them I have to do
6 it, they will let me do it. I have
7 plenty of CLE's, that's not my problem.
8 And then the trial was from 9/30 to
9 10/25. So the pretrial was the 24th,
10 and the jury was selected on the 26th,
11 and the trial ran from the 30th to the
12 25th. And that's available to you if
13 you want it.

14 And you can ask around, I don't
15 move trial dates but I have a concern
16 here, because I have to weigh the
17 prejudice of the weight. If anybody
18 want to see how I approach things, I
19 look to see who is asking and what the
20 reason is, and what prejudice it visits
21 on the other side if they don't agree.
22 If they agree, I move it. But in this
23 case, I do see that Smartmatic as being

1 prejudiced, but I can limit that by
2 giving it just a short continuance.

3 I also see that with this new
4 issue -- and I may be off, but it seems
5 to be relevant and it could impact
6 damages. It does not impact the
7 elements. It does not impact whether
8 the statement was made, was published,
9 whether it was true, actual malice.
10 That's all 2020. That's all keyed into
11 that. But it does go to damages. I
12 mean, one of the things here is the
13 damages and I don't want to prejudice.

14 I also need some clarification. I
15 read this letter differently than people
16 represented to me. The statement that
17 "DOJ also advised that it takes no
18 position on whether Smartmatic or
19 Smartmatic executives, employees may
20 disclose any of the information sought
21 by the motion to compel filed by
22 Newsmax," seems different to me than the
23 representation made that the DOJ does

1 not want certain things disclosed
2 because they could be harmful to their
3 investigation.

4 I think both that and when I read
5 the transcript from the special master
6 and what I heard, that seems different
7 than what was presented. Because I
8 overruled the exception on the same
9 reasoning.

10 I'm not going to interfere with a
11 criminal investigation over some damage
12 issue or whatever. We can always delay
13 a trial. We can do a lot of things. I
14 mean, people could go to prison. They
15 can have things happen to them, and I'm
16 not here -- you know, we're not going to
17 do that to them because it's a
18 difference of liberty as opposed to
19 money. And maybe corporations don't
20 think that way, but come back at 1
21 o'clock and you will see the difference.
22 I have a sentencing calender at 1
23 o'clock.

1 So I am going to grant a limited
2 extension, but I'm not going to move it.
3 And I'm not going to move it again. So,
4 if they come in and say whatever --
5 anything that happens, we have a special
6 master. The Daubert hearings are going
7 to be heard by the special master. We
8 have the resources here to get you to
9 trial on that date, and I'm not giving
10 it another date. If two weeks thing
11 doesn't pan out, that's your problem,
12 all right?

13 Unless I get a signal from the
14 special master that one party is acting
15 in bad faith about discovery, I'm not
16 changing that trial date if they pick
17 that date. I'm not forcing it, but they
18 need to get back to my assistant on
19 that.

20 Just to reiterate on stipulations.
21 If you're not moving the trial date,
22 please operate as if I have granted the
23 stipulation. I think the only time I

1 didn't in the other case was when they
2 wanted another 150 page reply brief.
3 And I said isn't enough, enough. Can we
4 narrow it? I gave them a lot, but I
5 didn't give them that much. But that is
6 like the only thing I said "no" to in
7 that case.

8 So, if you don't -- like I said,
9 don't think, oh, I haven't heard from
10 Judge Davis, we better turn this in.
11 It's like, no. If you both stipulate --
12 like if it's a Friday, and you can't do
13 it on a Friday because somebody is going
14 to a funeral, so can we have it on
15 Monday? Assume that it can get to
16 Monday. Go to the funeral. There are
17 more important things in the world than
18 this. So don't panic.

19 And if you see something like where
20 I'm having a hearing -- you know, I'm
21 glad you put the stipulation to go to
22 the 15th. I'm not sure if it was
23 triggered by me or not, but I had to

1 send an email saying, guys, you know,
2 we're going to be in court. There may
3 be some reason to hold a day.

4 So, I am going to grant in part the
5 request. It is not an indictment
6 against any party in this case. It is a
7 concern by me as to whether I can turn
8 around certain information so that we
9 can properly present things to the jury,
10 including on the summary judgment, which
11 may take more work because I have to
12 make preliminary decisions on the law
13 and then I have to do the law that
14 applies.

15 And, two, I'm afraid that the
16 damage arguments, the ability of Newsmax
17 to properly present its defense on
18 damages might be impinged but no more
19 than 120 days.

20 So with that, though, Ms. Harmon,
21 are there any outstanding matters that
22 you're aware of that the Court needs to
23 follow up on, or Mr. Connolly?

1 MR. CONNOLLY: Your Honor, thank
2 you very much. I appreciate that.

3 The only other item that we had
4 pled for Your Honor, and we put it in
5 the letter, is the timing of the opening
6 briefs for summary judgment. Newsmax
7 has just recently been producing over a
8 hundred thousand documents, and there is
9 another batch of documents that they
10 still haven't given us that should have
11 been produced last year.

12 And so we asked if we could move
13 the timing of the opening brief from --
14 and you were generous to move it back to
15 the 15th, so that we wouldn't have to do
16 it today, otherwise, I would be losing
17 my mind -- to the 29th so we would have
18 a little bit more time to try to digest
19 the late production.

20 THE COURT: The 29th is fine.

21 MR. CONNOLLY: Thank you. And we
22 can work out with counsel the rest of
23 the briefing schedule consistent with

1 what we have down previously. So thank
2 you.

3 THE COURT: Yes. And we're trying
4 to educate the Court. So even if, let's
5 say, after you file your opening brief
6 something comes in, just come back to
7 the court and let me know and we will
8 work with it.

9 I think we did that in the other
10 case, too. Cell phones discovered, and
11 videos on it that haven't been produced.
12 You never know.

13 Anything open on your end?

14 MR. COOPER: No, Your Honor. Thank
15 you.

16 THE COURT: All right. So I will
17 get you the exception. You have until
18 the 29th at least to talk to each other.
19 Get back to us on the October trial
20 date, and then we will keep it blocked
21 open. And then I will go get permission
22 from the President Judge to do the May
23 trial for you guys, all right?

1 MR. CONNOLLY: Thank you.

2 THE COURT: All right.

3 THE CRIER: All rise. This court
4 stands adjourned.

5 (Hearing concluded.)

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