



**Transcript of Proceedings had in
Alvin Waddy v. City of Chicago; et al.**

Taken On: October 3, 2023

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ALVIN WADDY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 19 L 10035
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

Report of proceedings had at the hearing in
the above-entitled cause before the HONORABLE ANTHONY C.
SWANAGAN, Judge of said Court, at Richard J. Daley
Center, 50 West Washington Street, Room 2208, Chicago,
Illinois, commencing at 11:33 a.m. on October 3, 2023.

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20 On behalf of Cook County State's Attorney's
21 Office.

22
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1 THE COURT: This is Case No. 2019 L 10035, Waddy
2 vs. multiple defendants. And since we have a court
3 reporter, everybody please step up and then take -- More
4 folks on the same case?

5 MR. RAUSCHER: They were consulting.

6 THE COURT: So everybody who is going to speak,
7 please introduce yourself for the sake of the
8 transcript.

9 MR. STARR: Good morning, Your Honor. Sean Starr,
10 two Rs, on behalf of plaintiff, Alvin Waddy.

11 MR. RAUSCHER: Good morning. Scott Rauscher,
12 R-A-U-S-C-H-E-R, also on behalf of plaintiff.

13 MR. STEFANICH: Brian Stefanich, S-T-E-F-A-N-I-C-H,
14 on behalf of the individuals.

15 MR. HENRETTY: Good morning, Your Honor. Lyle
16 Henretty, H-E-N-R-E-T-T-Y, on behalf of the State's
17 Attorney's Office.

18 MR. GAINER: Good morning, Your Honor. Brian
19 Gainer on behalf of Ronald Watts.

20 MR. SULLIVAN: Sean Sullivan for Kallatt Mohammed.

21 MR. FANGMAN: Paul Fangman for the State's
22 Attorney's Office.

23 MR. NOLAND: And good morning, Your Honor. Daniel
24 Noland for the City of Chicago.

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1 MR. STEFANICH: Judge, before we get started, can
2 we go off the record for one second?

3 THE COURT: Sure.

4 (Discussion off the record.)

5 THE COURT: We're back on the record.

6 And who wants to start talking? Should I or
7 does somebody's whose motions are up --

8 MR. RAUSCHER: I would say you do it. We don't
9 have a motion, so --

10 MR. STEFANICH: I would say, yeah, you, Judge.

11 THE COURT: Okay. Well, I'll tell you what I am
12 aware of. I am aware of sort of related motions, one of
13 them to strike the disclosure of State's Attorney Kim
14 Foxx as a trial witness for the plaintiff.

15 And I guess, let me say, I believe it's
16 significant that that motion is filed by both the
17 State's Attorney's Office and by certain individual
18 defendants because I think some of the briefing
19 acknowledges that maybe there's an issue of standing for
20 a nonparty to object to someone's disclosure -- a
21 party's disclosure of a trial witness.

22 Then I think there's a related issue of a
23 motion to quash her subpoena for deposition. And then
24 there is a motion to allow production of -- I think it's

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1 now down to 268 phone calls made by the plaintiff while
2 he was incarcerated. So those are the ones that are on
3 my mind. What am I missing?

4 MR. STEFANICH: You're missing our defendant's
5 motion for a 215 examination.

6 THE COURT: Oh, yes. I do remember that. Okay.
7 And what else am I missing?

8 MR. STEFANICH: I think that's it for today.

9 THE COURT: Okay. Then since the way I read --
10 I'll start with State's Attorney Foxx. I think it is
11 correct that the standing issue means that the State's
12 Attorney's Office not being a party doesn't have any
13 standing to object to her disclosure as a trial witness.
14 So I'm taking this as the interestingly alternatively
15 phrased motion by individual defendants.

16 If I remember the reading correctly, the
17 individual defendants said, We want her stricken, but if
18 she's not stricken, we want the right to take her
19 deposition.

20 Am I remembering right?

21 MR. STEFANICH: That's correct, Judge.

22 THE COURT: Okay. I am going to grant the motion
23 to strike. And I guess relatedly, I'm going to grant
24 the motion to quash her deposition subpoena. A couple

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1 of reasons why.

2 Number one, I think -- I do accept the
3 argument that someone who is in the position of Kim Foxx
4 can be brought in as a witness or a deponent only upon a
5 real showing of need for her testimony, one of the
6 reasons being she's got other stuff to do, which we all
7 pay her for with our tax dollars. She has quite a few
8 things to do.

9 One of the things that I think is also
10 relevant is that I was aware when she made the public
11 comment, just because it was in the news and I was
12 paying attention and I was -- I did notice the
13 plaintiff's citation of her public comment about the
14 reason for getting rid of charges against many of those
15 who were convicted resulting from arrests by some of the
16 individual defendants.

17 But I think this is true for quite a few
18 folks. I'd say more often than not it's true that
19 someone who is the head of a big organization, as big as
20 the Cook County State's Attorney's Office, may speak for
21 the organization, but that doesn't mean that they're the
22 most knowledgeable person about any of the things that
23 the organization does. They're the face of the
24 organization, so it's appropriate for them -- when

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1 something needs to be said on behalf of the
2 organization, for them to speak up and say, "This is
3 what we're doing. This is why we're doing it."

4 But her statement, I didn't notice that it
5 said anything about Mr. Waddy's case in particular. It
6 spoke to some of the cases involving our individual
7 defendants in this case, but it didn't name anybody
8 specifically. No police officer was specifically named.
9 And I cannot believe that she was one who went through
10 the nuts-and-bolts granular analysis of why the State's
11 Attorney did what they did in the first instance.

12 Now, obviously, she's the boss, and so things
13 would have had to have been presented to her and she
14 would have had to have been sure that she was okay with
15 the decision. But the sort of specific knowledge that I
16 would think would be necessary to justify her testifying
17 in this case, I did not see the evidence of that.

18 I did see the plaintiff's argument that the
19 individual defendants might argue that the exoneration
20 of this particular plaintiff and other similarly
21 situated plaintiffs was not something thoroughly thought
22 through by the prosecution and was instead something
23 orchestrated by individual private attorneys.

24 To me, that's -- number one, that's

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1 speculative. But number two, if there is a need for
2 rebuttal of that argument, there's way other -- way
3 more -- way better and way more sources than the State's
4 Attorney herself to provide that rebuttal.

5 I do credit to some degree the point that has
6 been made in this case and in some of the cases cited by
7 the parties as precedent for their arguments that --
8 Well, I guess I -- That's just a rewind to my earlier
9 point that she has other things to do. If she's called
10 in this case, she is likely to be called in many other
11 cases, not only involving these individual parties, but
12 also all sorts of other things.

13 And like I said, I think the thing that's most
14 crucial is that CEOs, board chairmen, people in those
15 positions, they speak for the company, and they learn
16 enough to -- about any individual corporate decision to
17 competently speak for the company, but they don't do the
18 grunt work.

19 And so I think to the extent that a
20 knowledgeable witness would be needed to rebut the
21 argument that has been proposed as something the
22 plaintiffs would need to respond to, I don't think she's
23 the person to do it. So I don't think it's an
24 appropriate burden to place on her or her office to have

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1 her sit for a deposition, and I don't think it would be
2 appropriate for her to testify at trial.

3 Now, I realize I'm not the trial judge, and so
4 even though I have -- I'm ruling that her subpoena for
5 deposition is being quashed, it is obviously the case
6 that you could get in front of a trial judge that says
7 she needs to testify. I guess I couldn't say anything
8 more about that. That will be a bridge that the parties
9 will cross when they come to it. But when I think about
10 what she adds -- what she could add to the case, I don't
11 think her testimony is -- I don't think her testimony is
12 probative enough to justify the imposition that I think
13 it causes.

14 So on those two counts, both the motion to
15 quash her deposition subpoena and the motion to strike
16 her listing as a trial witness for the plaintiffs, I'm
17 granting both of those.

18 I guess next, the phone calls. I'm going to
19 allow the disclosure of -- or the production by the
20 Department of Corrections of the limited number of phone
21 calls that the individual defendants are now asking for.
22 And if I wrote my notes correctly, it's 268 calls.

23 MR. STEFANICH: Judge, I actually have 286.

24 THE COURT: 86. Okay. So that might be me just

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1 transposing nine individuals. Is that right?

2 MR. STEFANICH: Correct.

3 THE COURT: Okay. I got some names, mother,
4 Jonathan Booker, Marcus Gibbs, Leonetta White, John
5 Bradley, Terrence Scott, and some family members. Is
6 that correct?

7 MR. STEFANICH: Correct, Judge.

8 THE COURT: I would -- I don't know if this is
9 appropriate to do, but I'm going to say it anyway.
10 We're not supposed to give advisory opinions, but I
11 guess I have some of this in front of me, and until the
12 request was amended, I wouldn't have allowed just all of
13 the phone -- all of the phone calls that Mr. Waddy made
14 while incarcerated.

15 The big deal as far as that was concerned in
16 my mind is that December 4th is trial, and that would
17 have been too much of a burden, I think, to put on the
18 plaintiffs even if the defendants had sufficient minions
19 to go through those calls and sift and find anything
20 that might have been relevant. I don't think that's --
21 I would not have thought that that would have been an
22 appropriate burden to put on the plaintiff.

23 We now are at a much smaller number of
24 individuals and phone calls. I do understand that there

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1 is some speculative nature to the assertion that this
2 might lead to admissible evidence, but as cases have
3 said, when you're talking about phone calls, you can't
4 really know, unless somebody listens to them, what they
5 can provide in the way of useful evidence.

6 I want to make clear that this is just -- I'm
7 knowing my place, and I'm staying in my place. This is
8 not a discovery ruling -- I mean, this is just a
9 discovery rule. Let me repeat the correct way of saying
10 this.

11 This is a discovery ruling. This is not a
12 trial ruling. So I'm not expressing any opinion about
13 whether anything that's produced in these calls would be
14 admissible at trial. You know, sometimes there's maybe
15 some lack of clarity about what the motion judge thought
16 they were doing. I'm just saying that they can be
17 discovered; nothing about admissibility.

18 So that's my ruling on that.

19 MR. STARR: May I seek a point of clarification on
20 that, Your Honor?

21 THE COURT: Sure. Absolutely.

22 MR. STARR: A couple things. One, I don't believe
23 that -- There was never a subpoena served, so there's
24 not currently a subpoena to IDOC. This was a preemptive

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1 move to tell us they were going to serve a subpoena.

2 THE COURT: Okay.

3 MR. STARR: The lion -- The majority of calls were
4 never talked about. As far as I understand, we never
5 discussed them seeking all the calls. It was always
6 this limited number.

7 THE COURT: Well, something in one of the
8 filings -- Bottom line is, if it's -- if all calls is
9 not an issue, then it's not an issue. I saw maybe it
10 was a preemptive discussion early on about the
11 burdensome nature of all the calls, because I did see
12 something that referred to a whole lot bigger number of
13 people and calls. And so I -- Yeah, like I said, maybe
14 I shouldn't have gone down that path at all because it's
15 sort of a moot point if that's not on the table. But I
16 understood that not to be the case.

17 MR. STARR: Okay. And one other point, Your Honor.

18 THE COURT: Sure.

19 MR. STARR: We would request that the subpoena be
20 returnable to plaintiff, and we can review those calls
21 for relevance. And if they're relevant, we'll turn them
22 over. There is -- There are intimate phone calls with
23 family members that, you know -- that are ten years
24 after the time that Mr. Waddy was incarcerated for the

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1 underlying conviction in this case.

2 And so these are calls that he made with
3 people that he cares about and that he's family members
4 with and that he's associated with that have no
5 bearing -- as our response laid out, have no bearing
6 whatsoever on the case.

7 And so, you know, we think that a potential
8 alternative would be if you can make this -- you can let
9 the subpoena be returnable to plaintiff. We would
10 review the calls in short order and turn them over, the
11 relevant ones, to defendants.

12 THE COURT: Let me -- I understand that point. And
13 before anybody feels the need to jump in, I'm not making
14 a ruling on that request right now. But let me just say
15 why I think it's reasonable to try to exclude from the
16 production or maybe exclude from the possibility of
17 wider disclosure stuff that isn't relevant to this case.
18 I think there's a few ways of doing that.

19 Now, I don't know. Maybe what I'll do is, I'm
20 going to throw out some possibilities and let the
21 parties see if they can agree on anything amongst
22 themselves. But I'm sure you folks are all familiar
23 with various ways that things like this get handled.

24 Number one -- Well, do we have a protective

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1 order in this case at all? I wasn't aware of one, but
2 obviously --

3 MR. STEFANICH: I don't believe there is.

4 THE COURT: Okay. There's lots of the docket that
5 I have not read.

6 It could be that the parties could agree on
7 what things are basically not to be -- out of any of
8 these calls, what things are not to be used by anybody
9 or disclosed anywhere outside of this case. And also,
10 there could be agreement that there are certain things
11 that aren't going to be presented at trial, you know.

12 If I'm recorded about -- I hesitate to even
13 say this when I'm being transcribed. But if I talk to a
14 friend about cheating on my wife, which I never have
15 done -- You know, we're just talking hypothetically, but
16 I can see how that's not the sort of thing that needs to
17 be anywhere. And I don't know if there would be comfort
18 about letting it be disclosed to parties with an
19 obligation for them not to use anything, not to
20 otherwise disclose anything.

21 There's also the possibility that things could
22 be produced to you. You could identify what things --
23 and when I say "you," I mean the plaintiff. You could
24 identify what things you think needed to be kept secret

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1 just because they're private, not because there's any,
2 you know, privilege or anything. But you could do that.

3 And then maybe if there was some
4 dissatisfaction on the part of the individual defendants
5 when they saw what had been produced, the stuff that you
6 wanted to be kept private could be submitted for an
7 in camera inspection, and I could make a ruling on what
8 I thought was fair to be used by the defendants for
9 whatever purposes, because, obviously, I think the cases
10 are clear that if there's anything like an admission
11 that's relevant to stuff at trial, that's nothing that
12 should be kept out of the defendants' hands. But I can
13 certainly see the argument that there's probably all
14 sorts of personal stuff that maybe isn't fair to
15 disclose.

16 Those are just a couple of ideas. I think
17 potentially the parties might be able to agree on
18 something. But if you tell me that you can't, then I
19 can decide what I want to do.

20 But I don't want you to have to answer right
21 this moment. I mean, there's nobody here after you, so
22 if you wanted to take a few moments after we are done,
23 and, off the record, if you wanted to talk about it or
24 if you wanted to continue this for a short time to have

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1 some time to have a larger conversation to see if you
2 can reach some agreement, whatever the parties will be
3 comfortable with, I'm comfortable with.

4 But I guess where I'm going to end up is that
5 I do think some disclosure of those calls is going to be
6 something I will approve, and then I also think that
7 some withholding of things that I don't see having any
8 relevance to this particular litigation I'm going to
9 look for, hope for, or impose, if the parties can't
10 agree, some restriction on that stuff.

11 So I've been talking a lot. Does that make
12 sense to anybody?

13 MR. STARR: It does, Your Honor. And if I can make
14 one more note about this. The Illinois Department of
15 Corrections has zero motivation to protect the privacy
16 of our client.

17 THE COURT: Right.

18 MR. STARR: And Mr. Stefanich and myself are in
19 another case in which a bunch of calls were produced
20 pursuant to a subpoena for call logs. They produced
21 everything. They don't -- They're not discerning the
22 way they should be.

23 So I have another concern that, like, this
24 limited subpoena will lead to the production of all the

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1 calls nonetheless. And that's happened in that case
2 that we're talking about and in another case that I'm
3 litigating as well. So I just want to -- I don't know
4 if there's anything you can put in your order to
5 instruct the IDOC to limit it to the specifics of the
6 subpoena, but my client would appreciate that,
7 Your Honor.

8 THE COURT: Did that work before? Was that tried
9 before? I mean --

10 MR. STARR: I have not --

11 THE COURT: -- I can put whatever in an order, but
12 I don't know that it's going to make any difference.

13 MR. STEFANICH: I guess the only thing I can say,
14 Judge, is we'll issue the subpoena consistent with the
15 Court's order and consistent with our motion.

16 We obviously communicate with the IDOC. In
17 the one case that counsel is talking about, we
18 communicated with the IDOC and told them to produce the
19 call logs. They didn't. I can't control what the IDOC
20 does. I can issue the subpoena and make it as clear as
21 possible.

22 THE COURT: Right.

23 MR. STEFANICH: That's sort of the extent of my
24 capabilities, I guess.

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1 THE COURT: Right. Okay. That's fair. We'll talk
2 about what can go in the order and see if something
3 going in the order is projected to make any difference
4 in what they do.

5 MR. STARR: Appreciate it, Your Honor.

6 THE COURT: Okay. So that aside for the moment, do
7 the parties think that there might be grounds for maybe
8 agreement on what could be narrowed down out of the
9 larger production that maybe we'll get?

10 MR. STEFANICH: So I think it's possible. I think
11 the concern that we have, Judge, is the December 4th
12 trial date. Right? So the idea that I issue the
13 subpoena today. They usually take 10 or 14 days to get
14 it back to us. If it goes to plaintiff, part of their
15 arguments and their response is the time commitment.

16 So if they get to review it first, decide
17 what's relevant, give the relevant stuff to me, we
18 listen to what they deemed relevant and then we're going
19 to be back here litigating what's irrelevant or what
20 they view is irrelevant, I think that's going to put us
21 up real close to the trial date.

22 I think we would be amenable to talking about
23 a protective order. That makes sense to me. We can try
24 to hammer that out. But with the timing issue, I think

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1 both sides are going to need the calls as soon as
2 possible to start their review.

3 THE COURT: I understand that. I guess I'll say,
4 you know, deadlines make people do superhuman things, so
5 I would have confidence that we could get something done
6 in enough time for everybody to know what they're
7 dealing with once you get in front of the trial judge.

8 So with that said, like I said, I won't make a
9 ruling now, now, but I'm going to ask the parties do you
10 want to talk about it now and tell me before we go away
11 today? You want to come back on a short date? I'm here
12 every day. So maybe you want to talk about whether you
13 want to talk about it or come back.

14 MR. STEFANICH: We'll try to work it out today.
15 We're here today, so it makes sense to us.

16 MR. STARR: That works for us as well, Your Honor.

17 THE COURT: Okay. Cool. We can do that.

18 And so the trial date is one thing on my mind
19 as far as the medical examination is concerned. I'm
20 going to deny that. While, you know, on the one hand
21 I'm saying that the parties can do what's necessary to
22 find out what they need to find out and what needs to be
23 withheld as far as the phone calls are concerned, when
24 we're talking medical examinations, I'm assuming nobody

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1 is an M.D. here. There are J.D.-M.D.s, and so maybe
2 some of you would be able to, you know, yourselves do
3 what you need to do to analyze whatever was produced in
4 a medical examination. But 99 times out of a hundred in
5 litigation here, lawyers have to consult with -- they
6 have to find, consult with, and give stuff to doctors.
7 And doctors are on their own timetables, even more than
8 IDOC is, you know, on their own. Doctors are on their
9 own timetables. And I don't see -- So I think it's
10 late, number one.

11 Number two, I didn't gather from the parties'
12 pleadings on the motion that, you know, Mr. Waddy's
13 medical or mental health sort of condition -- I don't
14 think that any examination that could be found now under
15 the time constraints that you have is that significant,
16 significant enough to justify having an examination now.

17 I guess, to me, it's just too late, and I
18 don't really see extreme relevance from that. So I'm
19 going to deny the medical examination. Yeah. Maybe --
20 Maybe -- Well, no. I have to refrain from saying what I
21 would have done under other circumstances. We're under
22 these circumstances, so that one is denied.

23 What else? What did I leave out?

24 MR. STEFANICH: There was one miscellaneous motion

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1 for our reply to the Rule 215 motion just to file it
2 under seal, Judge.

3 THE COURT: Oh, yes. Granted.

4 MR. STEFANICH: I think that's it, Judge.

5 THE COURT: Okay. So maybe for now, you folks are
6 going to talk to see if you think that there could be
7 something worked out about how the phone calls are
8 handled, and I can hang out --

9 MR. STARR: Thanks, Judge.

10 THE COURT: -- until you're done with that
11 conversation.

12 (A brief recess was had.)

13 THE COURT: Back on the record.

14 MR. STEFANICH: Judge, the parties had the chance
15 to confer on the IDOC phone call issue. We were not
16 able to reach an agreement on how the calls should be
17 produced. We have, I guess, two competing proposals
18 that we can tell you about.

19 THE COURT: Okay.

20 MR. STEFANICH: So the defense proposal is that all
21 the calls would be placed under a protective order that
22 the parties would work out and agree to. The IDOC calls
23 would be produced to both parties. The defense and the
24 plaintiff would then listen to them, essentially, at the

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1 same time. The defense would have 14 days to listen to
2 them all and identify the calls that we agree are
3 irrelevant and contain some of the private information
4 that the plaintiff is concerned about.

5 With that identification, we would agree to
6 destroy those calls, not copy them. Obviously, not use
7 them in this litigation. After those 14 days, the
8 plaintiff could come back to the defense and identify
9 further calls that they believe are irrelevant and
10 address some of the concerns that the plaintiff raised.
11 We would then meet and confer about those calls. And
12 then if there's an issue, we can bring it before the
13 Court at that time. So that is the defense proposal.

14 THE COURT: And the plaintiff's proposal?

15 MR. STARR: Yes, Your Honor. Plaintiff's proposal
16 is that the calls -- the subpoena be returnable to
17 plaintiff, one, because they may overproduce and produce
18 all of his phone calls; and two, because, as we stated
19 earlier in court, we think there's private information
20 on there that has no bearing whatsoever, no relevance to
21 the case at hand.

22 So our proposal is to make this returnable to
23 plaintiff. Plaintiff will review the calls that are
24 identified -- previously identified calls, review those

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1 calls; and in 14 days, we will submit the relevant
2 calls, turn them over to defendants. And the calls that
3 we think don't contain any relevant information, we'll
4 provide a detailed log explaining what the calls have
5 without revealing, you know, the intimacies of that
6 detailed information.

7 And if -- After that point in time, if
8 defendants have any issues with our log or want to
9 confer further on the issue, we will confer further on
10 the issue. If we find ourselves at an impasse on any of
11 the specific calls, we would suggest an in camera
12 review.

13 THE COURT: Your proposal doesn't include a
14 protective order?

15 MR. STARR: It can certainly -- It certainly
16 should. Yeah, we could also draft a protective order.

17 MR. RAUSCHER: Yeah. I think it would depend on
18 the calls.

19 MR. STARR: Yeah.

20 MR. RAUSCHER: So I think we'd want to listen to
21 them first. We're not opposed to the idea of a
22 protective order, but we don't think that having a
23 protective order cures the possibility or the
24 probability that there are going to be irrelevant calls

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1 and they just shouldn't get them in the first place.

2 THE COURT: Okay. Let me hear the defense --

3 Again, simultaneous disclosure; 14 days for review; meet
4 and confer; and if there's any disa- -- Oh, protective
5 order first.

6 MR. STEFANICH: Protective order first.

7 Simultaneous production. We'll take 14 days. After
8 14 days, I'm sure there will be phone calls we agree are
9 irrelevant and contain private information. We'll agree
10 to destroy those calls, not copy those calls.

11 Obviously, if they're destroyed, not use them in the
12 litigation.

13 After that 14-day period, the plaintiff
14 can come back to us and say, "We think there's other
15 calls that are irrelevant and contain private
16 information." We'll consider that, meet and confer for
17 an impasse. Then that's when we'd bring it before
18 Your Honor.

19 THE COURT: Okay.

20 MR. SULLIVAN: I think one of -- Speaking for
21 Mr. Mohammed, one of my concerns is the timing of the
22 trial, and the defense proposal, you know, allows work
23 to be going on on both sides in that 14 days. And at
24 14 days, we'll basically be at issue over the calls,

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1 whereas the plaintiff's proposal, we don't even start to
2 know what we're going to be at issue over. And you add
3 that to the two weeks that IDOC takes.

4 THE COURT: How long -- You were about to say --

5 MR. STARR: Well, we offered 14 days. We could
6 potentially do it in ten days, and if we need a few more
7 days, we could ask.

8 But I would add -- And I don't want to rehash
9 any arguments that were in the briefing, but the reason
10 we're here at this juncture is that defendants filed
11 this motion three weeks after the close of fact
12 discovery. They had the call logs for two-plus years,
13 and they could have brought this motion -- a subpoena at
14 any point in time or this motion at any point in time.
15 And so the timing issue is not a byproduct of
16 plaintiff's design. It's a byproduct of the defendants'
17 design. And so we don't think that should be held
18 against us here.

19 THE COURT: I understand that, but I guess me
20 considering the timing issue significant doesn't
21 necessarily mean that I'm holding it against anybody.
22 You know, I know that the mandate from the wisdom of the
23 rule-makers on the Supreme Court and everybody else is
24 generally in favor of disclosure of stuff on terms that

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1 are fair for both sides.

2 And so, yeah, I think -- I do like the idea of
3 both sides being able to review simultaneously. Let me
4 ask a question, though. How long is it going to take
5 for the parties to agree on a protective order?

6 MR. STEFANICH: I don't think it should take too,
7 too long, Judge. We have protective orders in other
8 cases. We just didn't get to it in this case.

9 THE COURT: Okay.

10 MR. SULLIVAN: Certainly well before IDOC --

11 THE COURT: Say that again.

12 MR. SULLIVAN: Certainly well before IDOC produces
13 it.

14 THE COURT: Well, yeah, absolutely that has to be
15 the case.

16 You were about to say something, Counsel?

17 MR. STARR: I just want to, you know, reiterate we
18 have a real concern -- and it's evidenced in other
19 cases, like I said, that I'm litigating currently --
20 where IDOC just overproduces. They don't have any
21 vested interest in our clients, and they don't care to
22 refrain from producing calls that are not part of a
23 subpoena. And so that's a big part of why we're asking
24 it be returnable to us first.

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1 THE COURT: Well, I absolutely understand that
2 concern, and I guess I can anticipate that they're going
3 to overproduce again. There might be -- not that I'm
4 saying that there are, but there might be attorneys who
5 would be standing in front of me whom I wouldn't
6 necessarily trust to make sure the protective order was
7 abided by, but I don't think you're any of those people.
8 I don't recognize any of you as being folks that I don't
9 trust.

10 And I think the protective order to me is a
11 big deal. There may be things that attorneys are going
12 to find out about, but I presume that the protective
13 order is going to make it clear that there are going to
14 be consequences for anybody who discloses things that
15 shouldn't be disclosed while we are doing the review --
16 while the parties are doing the review.

17 And so even though I certainly understand that
18 IDOC is going to give more than is relevant, I will take
19 your suggestion as to what an order should say in order
20 to try to make it clear what we want them to produce.
21 And even if they pay no attention, if it's going to the
22 folks who are standing in front of me, then I do have
23 some faith that a protective order is going to be abided
24 by and that the result is going to be both parties are

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1 going to get to work on figuring out what's what
2 simultaneously, and neither side and nobody representing
3 anybody is going to use anything inappropriately. And
4 things that turn out to be not relevant and not usable
5 in this case are going to be destroyed.

6 So I'm going to take the defense suggestion
7 as to how we should handle the phone calls. I will
8 take the plaintiff's suggestion on what should go into
9 the order to IDOC. And, yeah, we can do things that
10 way.

11 Do you have an idea of what you want to go --
12 what you want to have go into the IDOC subpoena?

13 MR. STARR: Just some sort of limiting instruction
14 regarding, you know, the -- we know how many calls were
15 made; we have the call logs -- maybe a way to identify
16 that this many calls have been made and these are the
17 specific calls, the specific numbers, the specific names
18 in hopes to limit it.

19 THE COURT: I'm fine with that.

20 MR. STEFANICH: I'm fine with that as well,
21 Judge.

22 THE COURT: Anything else? Are we writing orders
23 now?

24 MR. RAUSCHER: We started one.

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1 THE COURT: I'm paid to be here, so I don't have to
2 run away until it's done.

3 (Which were all the proceedings had
4 in the above-entitled cause on this
5 date.)
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