

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

1)	
2)	
3	UNITED STATES OF AMERICA,)	Criminal Action
4)	No. 22-00015
5	Plaintiff,)	
6)	
7	vs.)	AFTERNOON SESSION
8)	
9	ELMER STEWART RHODES, III,)	Washington, D.C.
10	et al.,)	October 17, 2022
11)	
12	Defendants.)	1:31 p.m.
13)	
14	* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 12
BEFORE THE HONORABLE AMIT P. MEHTA,
UNITED STATES DISTRICT JUDGE

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3670

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EXHIBITS RECEIVED IN EVIDENCEPAGE

Defendant Caldwell's Exhibit 11

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Defendant Caldwell's Exhibit 10

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Defendant Caldwell's Exhibit 118

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Defendant Caldwell's Exhibit 119

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Defendant Caldwell's Exhibit 121

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Defendant Caldwell's Exhibit 120

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Defendant Caldwell's Exhibit 1

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Defendant Caldwell's Exhibit 2

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Defendant Meggs's Exhibit 12

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Defendant Meggs's Exhibit 13

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Defendant Meggs's Exhibit 14

3811

Government's Exhibit No. 5150

3765

1 THE COURT: Please be seated, everyone.

2 MR. WOODWARD: Your Honor, we have a few more text
3 messages that we'd like to preview before the jury comes in,
4 if that's all right. They would be admitted under the rule
5 of inclusion.

6 THE COURT: Is there any objection to them?

7 MR. WOODWARD: Of course there is, your Honor. We
8 would not waste your Honor's time without an objection.

9 As we did on Friday, we have created this
10 presentation. And in the bottom right where you see Exhibit
11 6803, that is a slide that the Government brought in. And
12 where you don't see that, that is a slide that we are hoping
13 to add. So the very first one: "Found this posted last
14 night in another group. Anyone have intel on march permits,
15 locations, and times?"

16 We believe that he or she is referring to the
17 march to the Capitol.

18 "Two permits issued. Stop the Steal 6th. Women
19 for Trump, 5th. Both 1200 to 1700."

20 That's the time.

21 "Locations?"

22 "I assume the Capitol. Let me look."

23 "The official call to action will be issued soon
24 via email. It will have further instructions and details."

25 "Siekerman is aboard" --

1 THE COURT: Hang on. Are all of these objected
2 to?

3 MR. WOODWARD: The ones I'm showing the Court
4 right now.

5 THE COURT: Why am I hearing about this at 1:30
6 before the jury comes in?

7 MR. WOODWARD: I'm sorry, your Honor.

8 THE COURT: Is this something Mr. Fischer wants
9 to --

10 MR. WOODWARD: It would be on my cross. I don't
11 know that we can get another break before my cross.

12 THE COURT: Well, let's see how it goes.

13 MR. WOODWARD: Very good.

14 THE COURT: Agent Hilgeman, why don't you come on
15 back up.

16 (Witness Hilgeman retakes the witness stand.)

17 (Thereupon, Defendants Rhodes, Meggs, Harrelson
18 and Watkins entered the courtroom and the following
19 proceedings were had:)

20 THE COURTROOM DEPUTY: Jury panel.

21 (Whereupon, the jury entered the courtroom at 1:37
22 p.m. and the following proceedings were had:)

23 THE COURT: Please be seated, everyone.

24 Welcome back, ladies and gentlemen. I hope you
25 had a nice lunch hour.

1 We will continue with the cross-examination of the
2 special agent.

3 Mr. Fischer.

4 MR. FISCHER: Thank you, your Honor. If the Court
5 may please.

6 (SYLVIA HILGEMAN, GOVERNMENT WITNESS, PREVIOUSLY SWORN.)

7 CROSS-EXAMINATION

8 BY MR. FISCHER:

9 Q. Agent, the name Paul Stamey has come up a number of
10 times. Is that correct?

11 A. Yes.

12 Q. And you would agree that the FBI on September 9th, 2021,
13 interviewed Mr. Stamey at his attorney's office in North
14 Carolina. Does that sound right?

15 A. Yes.

16 Q. And during that interview, he was asked a number of
17 questions regarding the Quick Reaction Force, regarding
18 whether there was any premeditation or planning for
19 January 6th, the breach of the Capitol, and whether
20 Mr. Caldwell was involved in any type of criminal activity.
21 Would that be fair to say?

22 A. He was asked a number of questions about that time.
23 Yes.

24 Q. And certainly you would agree, if he had provided any
25 incriminating information, you or your --

1 MR. MANZO: Objection.

2 THE COURT: Sustained.

3 BY MR. FISCHER:

4 Q. You also -- you and your agents also interviewed a man
5 named Ranger Doug, Doug Smith. Is that correct?

6 MR. MANZO: Objection, your Honor. Hearsay.

7 THE COURT: I don't know if you're intending on
8 asking the same line of questions or something else.

9 MR. FISCHER: I will, you know -- the question
10 that the Court sustained the objection, I won't ask that
11 question. But I would like to ask the other questions.

12 THE COURT: Okay. Let's see what --

13 BY MR. FISCHER:

14 Q. As to Mr. Smith, the FBI asked similar questions. Is
15 that correct?

16 A. We did.

17 Q. Okay. And also, you were involved with interviewing
18 individuals such as Randy Earp, Livingood, Marlin Brandys,
19 Jeff Morelock, Caleb Berry, Tom Burgess and Todd Kandarlis.
20 The FBI conducted interviews with those individuals as well.
21 Correct?

22 A. The FBI did. Yes.

23 Q. And similar questions were asked as were asked of
24 Mr. Stamey. Is that fair to say?

25 A. I can only speak to the interviews I participated in,

1 which were Mr. Kandaris and Marlin Brandys on that list, I
2 believe.

3 Q. And on that topic, in the pecking order as far as, like,
4 where you are in this investigation, are you in charge of
5 the investigation or do you have a superior or people under
6 you? Could you describe that?

7 A. I would say that I am potentially now the fourth
8 quarterback to take the stand in this investigation.

9 Q. All right. Now, Agent, back to the Comfort Inn. First
10 of all, you would agree that Washington, D.C., has a number
11 of hotels that are within walking distance of the Capitol.
12 Would that be fair to say?

13 A. Yes.

14 Q. They also have Airbnb and rental-type houses on Capitol
15 Hill, in fact, that one could --

16 A. I assume so.

17 Q. Okay. Well, I can testify to that, because I'm staying
18 in one.

19 Agent, on another topic, the FBI -- as part of
20 your investigation, one of the things that drew your
21 attention to Mr. Caldwell was some things on social media he
22 said -- social media he said regarding a prestrike recce on
23 January 5th of 2021. Is that correct?

24 A. I don't believe that was something that called our
25 attention to Mr. Caldwell. No.

1 Q. Well, you certainly -- you're focused on the QRF.
2 Right?

3 A. Yes.

4 Q. So one of the things that you focused on was a January
5 5th, 2021 -- some messages Mr. Caldwell had about a
6 prestrike recce that occurred on that date, January 5th.
7 Right?

8 A. Those were definitely messages that I reviewed. Yes.

9 Q. Okay. And in fact, as a result of reading those
10 messages, you looked -- when you looked at the Comfort Inn
11 video, you were focused on a time on January 5th at around
12 3:24 p.m. when Mr. Caldwell, Mrs. Caldwell, Randy Earp and
13 Paul Stamey left the Comfort Inn at that time. Is that fair
14 to say?

15 A. I verified that they left Comfort Inn at the time --
16 actually, pre that message, yes.

17 Q. And you were able to verify that they arrived back at
18 the hotel at about 4:50? I'm not holding you to that. You
19 don't have your report. But around 4:50 p.m. Does that
20 sound about right?

21 A. Yeah. That sounds right.

22 Q. And also, your agents -- you were able, through your
23 investigation, to review records from Life360. Is that
24 correct?

25 A. That's correct.

1 Q. And that was regarding this January 5th, 2021, prestrike
2 recce. Correct?

3 A. It was actually regarding a number of things, to include
4 individuals who rode on the bus from North Carolina, and
5 Mr. Earp and Mr. Moser and Mr. Livingood.

6 Q. Fair enough.

7 But one of the things you certainly focused on in
8 looking at the Life360 records was the whereabouts of
9 Mr. Caldwell, his wife, Earp and Stamey on January 5th.
10 Does that sound right?

11 A. I recall reviewing records related to that. Yes.

12 Q. And in fact, when the records were returned from Life360
13 via a search warrant, you would agree it turned out
14 Mr. Caldwell himself was actually not on Life360.

15 A. I don't recall that.

16 Q. Well, you do recall that Mr. Earp was on Life360. Is
17 that right?

18 A. I do. Yes.

19 Q. And in fact, you were able to trace the route that the
20 Caldwell party, Mrs. Caldwell and Stamey and Earp -- they
21 drove in a vehicle, presumably went into D.C. and came back
22 to the hotel. Right?

23 A. That is what the information showed. Yes.

24 Q. And in fact, as a result of being able to review the
25 Life360 records, you were able to ascertain that they were

1 doing no surveillance of the United States Capitol Building.

2 Correct?

3 A. I have no idea.

4 Q. Okay.

5 A. That was not something you could tell from those
6 records.

7 Q. Well, if I recall correctly, those records showed the
8 exact route that they took.

9 A. The route is -- that data is based on driving. And so I
10 think it only records things when it gets up to a certain
11 mile per hour, the user. And so time in between that, I
12 don't know what they were doing.

13 Q. Okay. And I'm going to show you --

14 MR. FISCHER: This is for the witness only.

15 BY MR. FISCHER:

16 Q. -- what's been marked as Exhibit 11. You've had a
17 chance to review that before trial.

18 A. I have.

19 Q. Would you agree that --

20 THE COURT: Is this --

21 BY MR. FISCHER:

22 Q. -- this looks like a Signal message?

23 THE COURT: Mr. Fischer, I'm sorry to interrupt
24 you. This is Caldwell 11?

25 MR. FISCHER: This is Caldwell 11.

1 THE COURT: Okay.

2 MR. FISCHER: I apologize, your Honor.

3 BY MR. FISCHER:

4 Q. It appears to be a Signal message with Doug Smith. Is
5 that right?

6 A. Yes. I am familiar with this message --

7 Q. Okay. And --

8 A. -- messages.

9 Q. -- you would --

10 MR. FISCHER: Your Honor, at this time we would
11 move in Caldwell Exhibit 11.

12 MR. MANZO: No objection.

13 THE COURT: Caldwell 11 is admitted.

14 (Whereupon, Defendant Caldwell's Exhibit No. 11
15 was entered into evidence.)

16 MR. FISCHER: If we could publish to the jury,
17 please.

18 BY MR. FISCHER:

19 Q. All right. So, Agent, I'm going to -- at the top it
20 looks like this is -- it appears to be from Mr. Caldwell's
21 phone, and it's involving a Signal message with Doug Smith.
22 Is that correct?

23 A. That's correct.

24 Q. And to be clear, at the time Mr. Caldwell was arrested
25 in January of 2021, the FBI did not have Signal messages at

1 that time. Is that right?

2 A. Not from him. No.

3 Q. Okay. And could you read the Signal message -- first of
4 all, the message that's in green which appears to be from
5 Doug Smith? Read that out, please.

6 A. "How about from the Capitol to the Virginia side of the
7 bridge?"

8 Q. And then Mr. Caldwell gives an answer of three miles.
9 Is that correct?

10 A. Correct.

11 Q. And then read the next section out, please.

12 A. "Just got back from recce with Sharon, Paul and Randy.
13 Everything I told you about bus related is correct. You
14 will be pleased to know the president has provided 80 fresh
15 Porta Potties which are being placed right now."

16 Q. Okay. And that message apparently was sent on January
17 5th at 5:03 p.m. Is that right?

18 A. Correct.

19 Q. And that appears just to be a short time after
20 Mr. Caldwell and his party returned from the prestrike
21 recce. Is that right?

22 A. I do recall that. Yes.

23 Q. Okay. So would you agree that it appears that the
24 purpose of the recce seems to have been Porta Potties?

25 A. I would not agree with that.

1 Q. Okay. I'm going to show you what's been marked as
2 Caldwell Exhibit 10.

3 Do you recognize that document?

4 A. Yes.

5 Q. This appears to be a Signal message involving
6 Mr. Caldwell and a gentleman named Sean Pugh. Is that
7 right?

8 A. Yes.

9 THE COURT REPORTER: Could I get a spelling?

10 MR. FISCHER: It's P-U-G-H.

11 BY MR. FISCHER:

12 Q. Could you read that message to the jury, please.

13 A. "Right. Federal Triangle will be about 12th and
14 Pennsylvania. The White House and Ellipse are 14th and
15 Constitution, one block west and one block south.
16 Practically right there. Just got back from recce. Lots of
17 fresh Porta Potties being placed. Supposed to be a bit
18 windy tomorrow, but sunshine."

19 Q. Okay. Would you agree that that Signal message that
20 Mr. Caldwell sent to Mr. Pugh would suggest the purpose of
21 the recce was regarding toilet facilities?

22 A. He's also providing other information in this message.

23 Q. And that information is?

24 A. "Federal Triangle will be about 12th and Pennsylvania.
25 The White House and Ellipse are 14th and Constitution, one

1 block west and one block south. Practically right there."

2 Q. And let me stop you right there. You would agree that
3 on January 6th of 2021, the president of the United States
4 was scheduled to speak at the Ellipse?

5 A. Correct.

6 Q. And can you tell the jury where the Ellipse is located?

7 A. My understanding is that the Ellipse is located to the
8 west of the White House, right behind the White House there,
9 I think.

10 Q. Now -- that's okay.

11 A. Sorry.

12 Q. That's fine.

13 And I guess that's sort of --

14 A. I think it's in between the White House and the
15 Washington Monument, that stretch.

16 MR. FISCHER: Your Honor, if I didn't do it, I'd
17 move in Caldwell Exhibit 10.

18 THE COURT: It's admitted.

19 (Whereupon, Defendant Caldwell's Exhibit No. 10
20 was entered into evidence.)

21 BY MR. FISCHER:

22 Q. That actually segues nicely to my next point.

23 MR. FISCHER: Ms. Rohde, if you could please pull
24 up Government Exhibit 1509.

25

1 BY MR. FISCHER:

2 Q. Agent, can I ask you, how familiar are you with the
3 geographic and traffic patterns of Washington?

4 A. Not as familiar as I should be after living here for
5 five years.

6 Q. Fair enough. Fair enough.

7 And --

8 THE AUDIOVISUAL TECHNICIAN: Which one?

9 MR. FISCHER: That was 1509.

10 The Court's indulgence.

11 THE WITNESS: I don't often drive here, is my --

12 BY MR. FISCHER:

13 Q. So, Agent, this was the Government's Exhibit 1509.

14 A. Yes.

15 Q. And it appears sort of like a MapQuest-type map that
16 shows, I believe, the route that you indicated from the
17 Comfort Inn, Ballston, to the United States Capitol. Is
18 that right?

19 A. Yes.

20 Q. And you're aware that the route that this maps out takes
21 I-66 across the Teddy Roosevelt Bridge down Constitution
22 Avenue to the United States Capitol. Are you aware that's
23 the route that you mapped out here?

24 A. Yeah. That's the route I take to work every day.

25 Q. Okay. Fair enough.

1 But were you aware -- and this is the map, I
2 believe, you're suggesting that would have been the route
3 the QRF would have taken if -- to go to the Capitol on
4 January 6th. I believe that's what you're indicating.

5 A. What we are showing is the driving distance from the
6 Comfort Inn to the Capitol and -- based on the fact that
7 Mr. Caldwell said it was right off of Route 66.

8 Q. Okay. Well, Agent, were you aware that on January 6th,
9 because of the number of protesters that were going to be in
10 town, that the D.C. local government had implemented
11 vehicular traffic restrictions around the Capitol Mall area?

12 A. I did know that. Yes.

13 Q. Okay. And were you aware those restrictions went on the
14 north -- well, first of all, can I ask you: Do you know the
15 streets in D.C. -- do you know if the streets that have
16 numbers, do they go north and south or east and west?

17 A. I don't know.

18 Q. Okay. And the letters, do you know if they go north or
19 south or east and west?

20 A. I don't know.

21 Q. Fair enough. Again, I'm not giving you a hard time.

22 A. Sorry.

23 Q. I read your résumé. You're much smarter than I am. So
24 just -- let me just say that.

25 But you understand that there were traffic

1 restrictions with -- isn't it true that K Street, which runs
2 east-west and is well north of the Capitol, and Constitution
3 Avenue, those streets were completely blocked. Are you
4 aware of that?

5 A. I don't know that.

6 Q. Okay. Were you aware that the numbered streets,
7 beginning at at least 18th Street to the west side of D.C.,
8 that was blocked also?

9 A. I don't know that either.

10 Q. Were you aware that basically the entire Capitol Mall
11 area was sealed off to vehicular traffic?

12 A. I wasn't aware specifically. But it certainly makes
13 sense.

14 Q. Okay.

15 MR. FISCHER: Ms. Rohde, if I could get you to
16 pull up 22.E.1.

17 BY MR. FISCHER:

18 Q. Could you read what's up on the screen? It's already
19 been admitted in evidence. Can you read that to the jury,
20 please.

21 A. "These maps walk you from the hotel into D.C. and east
22 toward the target area on multiple roads running west to
23 east, including M Street and P Street, two of my favorites.
24 One shows a quick left-hand jog up Wisconsin Avenue, and
25 then you can blast east on P or O. Avoids a lot of crud.

1 CAG."

2 Q. Are you aware of where M and P Street or -- and O
3 Street, are you aware where those streets are?

4 A. Generally.

5 Q. Can you tell the jury where they're at?

6 A. I mean, I know they're in D.C.

7 Q. Hey, that's fair enough.

8 A. I'm sorry.

9 Q. More specifically, Agent, were you aware they're in a
10 place called Georgetown?

11 A. I was not aware of that.

12 Q. Okay. Have you ever been to Georgetown?

13 A. I have been. Yes.

14 Q. Okay. And you would agree that Georgetown is a largely
15 residential area with a lot of shopping and brick streets.
16 Does that sound right?

17 A. Yes.

18 Q. It has a lot of stop signs also.

19 A. A lot of stoplights and stop signs, I believe --

20 Q. Lot of stop --

21 A. -- yes.

22 Q. I'm going to show you what's been marked --

23 MR. FISCHER: Where are we at now? Which exhibit?

24 BY MR. FISCHER:

25 Q. I'm going to show you what's marked as Caldwell 188.

1 Take a look at that for a second. Do you recognize that
2 map?

3 A. Yes.

4 Q. Okay. So you'd agree that's a map of part of
5 Washington, D.C., and part of Virginia on the west side of
6 the Potomac River. Is that correct?

7 A. Yes.

8 MR. FISCHER: If you could zoom this in a little
9 bit here.

10 THE WITNESS: I do see M Street on here.

11 MR. FISCHER: Okay. The Court's indulgence.

12 BY MR. FISCHER:

13 Q. And on your screen up there, can you put where M Street
14 is, like, circle M Street?

15 A. (Complies.)

16 Q. Fair enough.

17 A. Sorry. Is that --

18 Q. That's fine.

19 So, Agent, you'd agree that Mr. Caldwell, the
20 directions he's giving, are coming from the west out here on
21 66 and leading up across the bridge up to M Street right
22 here where I think you circled. Right?

23 A. He's talking about walking. Yes.

24 Q. I'm sorry. He's talking about what?

25 A. He said walking in that text message that you showed me.

1 Q. I think he indicated he walked them through. But it
2 indicates going to M Street from the hotel. So it looks
3 like the way to get to M Street is across a bridge. Right?

4 A. Yep.

5 Q. Okay. And have you heard of the Key Bridge before?

6 A. Yes.

7 Q. Okay. Are you aware that the Key Bridge is, for locals,
8 notorious for some traffic jams?

9 A. I think all of the bridges are notorious for traffic
10 jams.

11 Q. Touché.

12 But certainly you would agree that by going north
13 or slightly northeast into the Georgetown area, Mr. Caldwell
14 would be sending the QRF not exactly in the direction of the
15 Capitol. Right?

16 A. In the general vicinity.

17 Q. Well, do you know where the Capitol -- if I pull this
18 up, do you know where the Capitol is on that map?

19 MR. MANZO: Your Honor, could we get on the phone?

20 (Whereupon, the following proceedings were had at
21 sidebar outside the presence of the jury:)

22 THE COURT: Mr. Manzo?

23 MR. MANZO: I'm just objecting to the Capitol not
24 being on the map. It seems like a trick question here.

25 THE COURT: Well, it's all right. She can answer.

1 If she realizes it's not on the map, it's not on the map.

2 The point is it's not close to Georgetown.

3 (Whereupon, the following proceedings were had in
4 open court:)

5 THE COURTROOM DEPUTY: Mr. Caldwell, can you move
6 this?

7 MR. FISCHER: I'm sorry?

8 THE COURTROOM DEPUTY: Move it in.

9 MR. FISCHER: Oh, I'm sorry.

10 At this time I'd move in Caldwell Exhibit 118.

11 THE COURT: 118 is admitted.

12 (Whereupon, Defendant Caldwell's Exhibit No. 118
13 was entered into evidence.)

14 BY MR. FISCHER:

15 Q. Agent, can you tell us where the Capitol would be on
16 this map or whether it's even on the map?

17 A. So I don't believe it's on this map. I think there were
18 multiple attachments to that email that Mr. Caldwell sent to
19 Mr. Stamey.

20 Q. Could you give us -- let me ask you this: Can you point
21 out where the White House is?

22 A. I don't believe that's on here either.

23 Q. Okay. So if I were to tell you that this is the White
24 House and this is the Ellipse, does that ring a bell?

25 A. Oh, yes. Yep.

1 Q. Okay. Which direction on that map would the Capitol be?

2 A. To the east.

3 Q. Okay. Fair enough.

4 And, Agent, where you just -- where you pointed up
5 here, M Street, where Mr. Caldwell is sending the QRF, you
6 would agree that that's going in a different direction than
7 where the United States Capitol is.

8 A. I don't recall any messages that the QRF were
9 specifically for anything at the Capitol.

10 Q. I'm sorry? Are you -- you're saying the QRF had nothing
11 to do with the Capitol?

12 A. No. I said I didn't see any messages that that would
13 have been the destination of the QRF.

14 Q. Well, you understand the Government's entire theory was
15 the QRF is for the purpose of attacking the United States
16 Capitol. Right?

17 A. That is not my understanding.

18 MR. MANZO: Objection.

19 THE COURT: Sustained.

20 MR. FISCHER: Your Honor, could we get on the
21 phone?

22 (Whereupon, the following proceedings were had at
23 sidebar outside the presence of the jury:)

24 MR. FISCHER: Your Honor, during the opening
25 argument, Mr. Nestler specifically said that this QRF was to

1 attack the Capitol. I have the transcript.

2 THE COURT: Okay. If that's what he said. You've
3 probably got a better recollection than I do. Okay.

4 Mr. Manzo?

5 MR. MANZO: We would disagree with that unless we
6 saw the transcript. And talking about the legal theory of
7 the case --

8 MR. FISCHER: Your Honor, what it says is: You
9 will hear evidence during this trial that these five
10 Defendants reached an agreement with each other to stage an
11 arsenal of firearms, including semiautomatic rifles, just
12 across the Potomac in Arlington and to physically prevent
13 members from coming -- from meeting and certifying the
14 election as they descended upon D.C. to attack not just the
15 Capitol, not just Congress, not just our government, but our
16 country.

17 MR. MANZO: And we would disagree with
18 Mr. Fischer's assertion that the QRF was to attack the
19 Capitol. The QRF was available.

20 THE COURT: I'm sorry?

21 MR. MANZO: The QRF was available and then there
22 was an attack on the Capitol.

23 THE COURT: Well, look, you can ask the question
24 and she'll answer it however she wants.

25 And ultimately, you can clean it up on redirect if

1 you think it's appropriate.

2 (Whereupon, the following proceedings were had in
3 open court:)

4 THE COURT: The objection is overruled.

5 Mr. Fischer?

6 BY MR. FISCHER:

7 Q. Agent, are you aware that the Government's claim in this
8 case -- or their theory in this case is that the purpose of
9 the QRF was to attack the United States Capitol?

10 A. No. The purpose of the QRF was to support an attempt to
11 keep Biden from taking power in whatever form that took.

12 Q. Well, the Electoral College certification was meeting on
13 January 6th at the United States Capitol. Correct?

14 A. Correct.

15 Q. So the QRF wasn't meant to invade the Department of
16 Labor. Right?

17 A. I think the QRF was meant to occupy D.C.

18 Q. And so, Agent, you would agree -- so are you aware that
19 to get from the hotel in Arlington, where this Comfort Inn
20 is, to get to the Capitol, that you can simply take 66 east
21 to Route 1 south to 395 and it drops you off right on South
22 Capitol Street? Were you aware of that route?

23 A. I am aware of taking 66 to Constitution all the way to
24 the Capitol. Yes.

25 Q. Well, fair enough.

1 And you're also aware that the D.C. government has
2 no authority to tell Virginia to close its roads. Right?

3 A. I have no idea.

4 Q. Okay. And I-66 is an interstate. You agree with that?

5 A. Yes.

6 Q. And you've been on 395 before, which is an interstate as
7 well?

8 A. Yes.

9 Q. Okay. So in other words, Mr. Caldwell, instead of
10 directing the QRF down interstate highways up 395 right to
11 South Capitol Street, sent them up to Georgetown?

12 A. Well, he also tried to procure a boat for a potential
13 water landing if those roads were closed.

14 Q. Okay. And that water landing, if I'm not mistaken -- I
15 think Mr. Meggs in one of the messages said something about
16 right by the Lincoln Memorial. Is that correct?

17 A. I think that was the land landing. The Ohio basin, I
18 believe, was the water landing.

19 Q. Okay. Are you aware of how far of a walk it is to the
20 Capitol, or what the mileage is from either the Lincoln
21 Memorial or the other water landing to the United States
22 Capitol is?

23 A. I have walked that myself. Yes. So maybe two miles.

24 Q. Okay. Fair enough.

25 MR. FISCHER: Court's indulgence.

1 I believe I already admitted 118.

2 Your Honor, at this time -- actually, I'm going to
3 have -- if I may mark 119, Caldwell 119.

4 BY MR. FISCHER:

5 Q. Agent, I'm going to put up on the board another map.

6 Do you recognize that map?

7 A. Yes.

8 Q. Does that appear to be a map of the Washington, D.C.,
9 area?

10 A. Yes.

11 MR. FISCHER: Okay. If we could zoom in on that a
12 little bit.

13 Your Honor, at this time, I'd move in 119 for
14 Mr. Caldwell.

15 MR. MANZO: No objection.

16 THE COURT: 119 is admitted.

17 (Whereupon, Defendant Caldwell's Exhibit No. 119
18 was entered into evidence.)

19 BY MR. FISCHER:

20 Q. So, Agent, would you agree where I'm pointing at with my
21 pen here appears to be the United States Capitol?

22 A. Yes.

23 Q. And there seems to be an Interstate 395. Is that
24 correct?

25 A. Yes.

1 Q. Okay. And I-66 in Arlington, right here -- this is 66
2 over here that goes straight up to the Comfort Inn. Is that
3 right?

4 A. Yes.

5 Q. Agent, I'm going to show you some more exhibits.

6 MR. FISCHER: Court's indulgence.

7 BY MR. FISCHER:

8 Q. I'm going to show you what has been marked as -- this is
9 going to be --

10 MR. FISCHER: This is 120, Caldwell 120.

11 BY MR. FISCHER:

12 Q. I believe you have a hard copy of this in front of you,
13 do you not?

14 A. I do see it. Yes.

15 Q. Okay. So you would agree that this appears to be an
16 email from the Voices in My Head email address, which is
17 Mr. Caldwell, to Paul Stamey. Is that right?

18 A. Correct.

19 Q. Timestamped January 3rd, 2021, at about 11:50 p.m. Does
20 that sound right?

21 A. Yes.

22 Q. Okay. And actually, this one, would you agree, was sent
23 just a couple of minutes before the email regarding P Street
24 and M Street and O Street?

25 A. I do recall seeing this series of emails.

1 Q. So can you read this email out to us?

2 A. "More of the old ones you saw first time. Number six is
3 important for Wednesday because it shows which roads are
4 one-way, and I intend to find us parking either, one, 19th
5 Street south of Dupont Circle or, two, Mass Avenue east of
6 Dupont Circle. These circles can get tricky. CAG."

7 Q. Now, if I were to tell you that 19th Street south of
8 Dupont Circle is about three-quarters of a mile or so
9 northwest of the White House, would that sound about right?

10 A. Yes.

11 Q. Okay. And you'd agree that --that Dupont Circle is
12 roughly about three miles, give or take, from the United
13 States Capitol Building?

14 A. I believe it's about two miles from here, so I think
15 that makes sense.

16 Q. Fair enough.

17 I'm -- to be clear, I'm not exactly sure --

18 A. Yes. Yes. No. I --

19 Q. -- but it's -- we'll just say two to three miles at
20 least.

21 A. Yes. That sounds --

22 Q. The jury is from D.C. They know better than we do.

23 So -- and you'd agree the QRF didn't have
24 long-range missiles with it, did it?

25 A. I am not aware.

1 Q. Okay. So it appears from this that Mr. Caldwell was
2 guiding Mr. Stamey to somewhere northwest of the White
3 House. Is that fair to say?

4 A. These are more of the ones that he saw the first time, I
5 believe, referring to the November event.

6 Q. Okay. Well, he also attached three maps as well, which
7 are part of this exhibit. And I believe these are the exact
8 same maps the Government put in. But do you recognize those
9 maps?

10 A. Yes.

11 Q. Okay. And you can see on here there's Dupont Circle?

12 A. Right.

13 Q. All right. And so he's indicating at one part here Mass
14 Avenue east of Dupont Circle. So Mass Avenue east of Dupont
15 Circle. Right?

16 A. Yes.

17 Q. And again, you understand that there were road closures
18 in D.C. So normally you could take Massachusetts Avenue --
19 you know, that was not available to go Massachusetts Avenue
20 all the way down the map. You're aware of that. Right?

21 A. I understand there were road closures in D.C.

22 Q. Fair enough.

23 And you see here's another map. I believe the
24 Government has already -- I think you've already put that in
25 evidence. Is that correct?

1 A. I don't recall seeing this one. But it's possible.

2 Q. Okay. So up here, you'll see the Francis Scott Key
3 Bridge. And that's where it goes to M Street. Is that
4 correct? Right here?

5 A. Yes. Yes.

6 Q. Fair enough.

7 And then one final map. I just won't put it in.
8 The Government has already put that in. So it's 120.

9 MR. FISCHER: At this time, I also will move in
10 120 --

11 BY MR. FISCHER:

12 Q. Well, actually, I'm going to ask you to identify 121,
13 which you'd agree that appears to be the same email the
14 Government had up on the blue and white -- it's already in
15 evidence. Is that correct?

16 A. Correct.

17 Q. You have that in front of you as well --

18 A. I do.

19 Q. -- with the maps?

20 And you'd agree those maps are already in
21 evidence. Is that correct?

22 A. Correct.

23 MR. FISCHER: Your Honor, I'd move in Caldwell 121
24 at this time.

25 MR. MANZO: No objection.

1 THE COURT: 121 will be admitted.

2 (Whereupon, Defendant Caldwell's Exhibit No. 121
3 was entered into evidence.)

4 THE COURTROOM DEPUTY: Are you moving in 120 as
5 well?

6 MR. FISCHER: Yeah. I move in 120 as well, if I
7 didn't do that already.

8 THE COURT: I thought it was admitted. But 120 is
9 admitted as well.

10 (Whereupon, Defendant Caldwell's Exhibit No. 120
11 was entered into evidence.)

12 MR. FISCHER: Ms. Rohde, if I could pull up
13 2006.T.1.292.

14 BY MR. FISCHER:

15 Q. Agent, Ms. Rohde is about to pull up of some of the
16 Government's exhibits from Friday. Here it is.

17 So this exhibit, which was shown, appears to be
18 between Mr. Caldwell and a guy named Adrian Grimes. Is that
19 correct?

20 A. Yes.

21 Q. At the end of it it talks about, you know, "The next
22 step, I guess, is if the Demo-craps throw out the
23 Constitution, it" -- I guess that's "it's" -- civil war."
24 Right?

25 A. Yes.

1 Q. Okay. First of all, isn't it true the FBI has never
2 interviewed Adrian Grimes?

3 A. We took additional investigative steps regarding Adrian
4 Grimes and came to a decision that it probably wouldn't be a
5 very fruitful interview.

6 Q. Okay. So would it be fair to say, then, that it didn't
7 necessarily appear that Mr. Caldwell was going to start a
8 civil war?

9 A. I would take Mr. Caldwell at his words.

10 Q. Fair enough.

11 MR. FISCHER: If we could put up 2006.T.1.335.

12 Court's indulgence.

13 BY MR. FISCHER:

14 Q. In the middle, it says, quote, "If we don't start mowing
15 down masses of these s-balls, they will come for all of us."

16 Do you have any evidence that a bunch of people
17 were mowed down by Mr. Caldwell?

18 A. No, I do not.

19 Q. Fair enough.

20 MR. FISCHER: Let's go to 2007.T.3.8.

21 BY MR. FISCHER:

22 Q. It says something about "We could have burned the
23 Congress to the ground."

24 You would agree that on January 4th or -- I'm
25 sorry -- on November 14th, December 12th of 2020 and on

1 January 6th, neither Mr. Caldwell nor anybody else attempted
2 arson at the United States Capitol, to your knowledge?

3 A. Not to my knowledge.

4 Q. Okay. That's not to say there weren't some bad things
5 that happened on January 6th. I want to be clear. But that
6 didn't happen.

7 Do you have any evidence that Mr. Caldwell took
8 steps to cause harm to Vice President Pence besides making a
9 couple of statements?

10 A. Mr. Caldwell was part of a crowd that caused Mr. Pence
11 to leave the Capitol that day.

12 Q. I understand. But specifically target him on something
13 other -- you know -- let me take that back.

14 On another date besides January 6th, do you have
15 evidence that Mr. Caldwell or Mrs. Caldwell did -- took some
16 affirmative step to cause harm to the vice president of the
17 United States?

18 A. Not that I'm aware of.

19 Q. Okay.

20 MR. FISCHER: If we could go 2001.T.54.1, please.
21 If you'd go back one slide, please. You've got to go --
22 there. Right there. Thank you.

23 BY MR. FISCHER:

24 Q. Diane Tomblin. "Isn't it true" -- first of all, you've
25 had these messages. This is a text message. You've had

1 Mr. Caldwell's messages since at least a couple of weeks,
2 three weeks, after his arrest at least. Is that correct?

3 A. This is a Facebook message.

4 Q. It's Facebook. What's the T stand for? I thought that
5 was text --

6 A. Thread, I believe.

7 Q. What's that? Thread?

8 A. Thread.

9 Q. Okay. Thanks for correcting me.

10 So you obviously have had his Facebook messages
11 since day one. Right?

12 A. I believe it was around -- yeah. It was mid-January, I
13 think, that we got his Facebook.

14 Q. And are you aware that nobody got around to talking to
15 Ms. Tomblin until about -- I think about 30 or 40 days ago?

16 A. We did -- I know that's when we spoke with her. I
17 know -- we took additional investigative steps for all of
18 Mr. Caldwell's contacts where messages were exchanged here.
19 We were able to determine that they did not travel to the
20 Capitol on the 6th and had no other contact with anyone
21 else --

22 Q. Okay.

23 A. -- sitting over here.

24 Q. There was also a reference to a guy named Sean Pugh, I
25 think you said on Friday, who is something about a 3 percent

1 group, something like that?

2 A. Yeah. Based on the message, it appeared he's part of a
3 Three Percent group.

4 Q. And just to be clear, while there may have been some
5 members of the Three Percent group who were at the Capitol
6 on January 6th, Mr. Pugh, in fact, was not at the United
7 States Capitol Building or on the grounds on January 6th.

8 A. My recollection is that he attended the rally at the
9 Ellipse but then did not march to the Capitol.

10 Q. Okay. Fair enough.

11 A burner phone. You talked about a burner phone.
12 Did the phone number for the burner phone, which was (540)
13 931-7979, did that show up in any of the phone records that
14 were pulled by the FBI?

15 A. Not to my knowledge.

16 Q. Okay. So the bottom line is you have no proof that
17 burner phone was ever used in any of this. Is that correct?

18 A. That specific burner phone?

19 Q. Yes.

20 A. Correct.

21 Q. That was the only burner phone you found in
22 Mr. Caldwell's house. Right?

23 A. I'm not even certain that that phone was found in his
24 house. I know that he had written that down.

25 Q. Oh, okay. I'm sorry. It was -- so you didn't -- got

1 you. Thank you.

2 Three GoToMeetings that you looked at. And
3 Mr. Caldwell was not on those GoToMeetings. Right?

4 A. Correct.

5 Q. There were 27 other GoToMeetings that the FBI also
6 reviewed, and Mr. Caldwell was not on those as well. Is
7 that correct?

8 A. To the best of my knowledge, some of those records,
9 participants can log in with just names, no phone number, no
10 email address. Those are harder to track down.

11 Q. Okay. But you would agree you have no evidence that he
12 was on those calls. Right?

13 A. I did not see specific evidence of Mr. Caldwell --

14 Q. And also, you got -- you all at the FBI also looked up
15 ISP addresses and did a pretty thorough analysis of the
16 records. Would you agree with that?

17 A. On some of those. Yes.

18 Q. And to your knowledge, there never was a boat that was
19 in the Potomac that was put there by Mr. Caldwell or any
20 member of the Oath Keepers?

21 A. Not that I'm aware of.

22 MR. FISCHER: Court's indulgence.

23 BY MR. FISCHER:

24 Q. You mentioned a Matt -- I believe Matt Truong came up in
25 one of the -- and Matt Truong has been interviewed by the

1 FBI. Is that right?

2 A. Correct.

3 Q. He's also given grand jury testimony. Is that correct?

4 A. He did.

5 MR. MANZO: Objection.

6 THE COURT: It's overruled.

7 MR. FISCHER: Yeah.

8 BY MR. FISCHER:

9 Q. In fact, through your investigation, you learned that
10 Mr. Truong was the president of the Asian Pacific Americans
11 for Trump. Is that right?

12 A. I know he had an organization of some sort.

13 Q. Okay.

14 A. Yeah.

15 Q. And so he was the president of a fairly large
16 Asian-American group that went to the rally on January 6th.
17 Right?

18 A. I can only comment based on what he told me.

19 Q. Okay.

20 MR. MANZO: Objection, your Honor.

21 THE COURT: Sustained.

22 BY MR. FISCHER:

23 Q. As part of your look into the QRF, you also looked into
24 a November 9th recce, November 9th, 2020, recce that
25 Mr. Caldwell had referenced in social media messages. Is

1 that correct?

2 A. I do remember seeing something about that. Yes.

3 Q. And are you aware that there were 38 pictures that were
4 introduced in evidence earlier in this trial regarding
5 Mr. Caldwell's recce? Were you aware of that?

6 MR. MANZO: Objection as to facts not before the
7 witness.

8 THE COURT: I can't remember whether she was
9 sitting in court or not.

10 BY MR. FISCHER:

11 Q. Were you aware of that?

12 A. I was aware that that happened. I was not in court that
13 day.

14 Q. Fair enough.

15 Well, certainly the FBI looked at Mr. Caldwell's
16 phone to determine what the results of his, quote-unquote,
17 recce, or reconnaissance, were on November 9th of 2020.
18 Right?

19 A. There was review of Mr. Caldwell's device and review of
20 anything we could retrieve from that for the relevant period
21 of time.

22 Q. And you're aware that the 38 photos that were recovered
23 from Mr. Caldwell's phone were of nongovernment buildings
24 and a strip club. Are you aware of that?

25 A. I am not.

1 Q. Okay.

2 MR. FISCHER: Court's indulgence.

3 BY MR. FISCHER:

4 Q. I believe the Government introduced as evidence part of
5 Mr. Caldwell's calendar. Do you recall that on Friday?

6 A. I do.

7 Q. I'm going to show you what's marked as 1 -- I'm going to
8 show you what is marked -- actually -- it's actually Defense
9 Exhibit 1. It's No. 1.

10 I don't know if you can see that.

11 A. I can. Yes.

12 Q. So that appears to be Mr. Caldwell's calendar. Is that
13 right?

14 A. It looks -- it certainly looks like the same calendar.
15 Yes.

16 Q. And so I'll direct your attention to November 9th in the
17 top left.

18 Can you read that to the jury?

19 A. I can. "11-ish" --

20 THE COURT: Hang on a for second. I'm sorry. Is
21 this admitted?

22 MR. FISCHER: I'm sorry. I move to admit Caldwell
23 Exhibit 1.

24 MR. MANZO: No objection.

25 THE COURT: Caldwell 1 is now -- can be published

1 to the jury.

2 (Whereupon, Defendant Caldwell's Exhibit No. 1 was
3 entered into evidence.)

4 THE COURT: And the witness can read from that
5 exhibit.

6 THE WITNESS: "11-ish, piss test." I believe that
7 says, "Spoke to Eric."

8 BY MR. FISCHER:

9 Q. Okay. And I'm going to show you what's been marked as
10 Caldwell Exhibit 2.

11 MR. FISCHER: This is for the witness only, if I
12 may.

13 BY MR. FISCHER:

14 Q. You'll see at the top left it appears to say, "Caldwell
15 cell chats." Correct?

16 A. Yes.

17 Q. Do you recognize this?

18 A. I do.

19 Q. Okay. And you can see if --

20 MR. FISCHER: We'd go ahead and admit Caldwell
21 Exhibit 2, please.

22 MR. MANZO: No objection.

23 BY MR. FISCHER:

24 Q. Agent --

25 THE COURT: Hold on. Caldwell 2 is admitted.

1 (Whereupon, Defendant Caldwell's Exhibit No. 2 was
2 entered into evidence.)

3 MR. FISCHER: If we could publish it to the jury,
4 please.

5 BY MR. FISCHER:

6 Q. Agent, I'm going to direct your attention to the right
7 side of the exhibit. It looks like -- would you agree that
8 on -- it looks like November 6th, 2020, at 12:53 p.m., there
9 is a message that's sent to -- from Matt Combs to
10 Mr. Caldwell. Correct?

11 A. Correct. I believe the time is actually --

12 Q. 12:53 p.m. Is that right?

13 A. That's in UTC. So I -- five hours ahead of that.

14 Q. Okay. So it's 12:53 UTC time.

15 A. Correct.

16 Q. Can you read the message, please?

17 A. "Good morning, brother. I'll be out there Monday
18 morning between 8 to 9 to mow. I've got a couple hours
19 free."

20 Q. Okay. And now can you read the next message under that
21 where it appears that Mr. Caldwell is replying to Mr. Combs?

22 A. "Damn. I got to go to D.C. on Monday and be gone all
23 day. If you come that early, I may be able to see you
24 before I go. Think the grass will be dry enough early in
25 the a.m.?"

1 Q. Now, Agent, regarding this, you will notice that
2 Mr. Caldwell, in the message in the middle, says: "Damn. I
3 got to go to D.C. on Monday." Is that right?

4 A. Yes.

5 Q. This is on November 6th, 2020. Is that right?

6 A. Yes.

7 Q. I'm going to go back to Defense Exhibit 1, the calendar.
8 You will note that the thing -- the notation regarding
9 11-ish, piss test, it says November 9th. Is that right?

10 A. Yes.

11 Q. You'd also agree that the first time the FBI has
12 evidence that Mr. Caldwell met Stewart Rhodes was on
13 November 8th at a Republican rally in the Shenandoah Valley.

14 A. I believe that's correct, if that was the Stop the Steal
15 rally in Virginia.

16 Q. And so the calendar that I just showed you, and that the
17 Government introduced the other part of it in evidence --
18 the calendar I just showed you, this was seized from
19 Mr. Caldwell's home when he was arrested, and it's been in
20 the FBI's possession ever since. Is that right?

21 A. Yes.

22 Q. Okay. Now --

23 MR. FISCHER: Court's indulgence.

24 BY MR. FISCHER:

25 Q. There was a reference that you brought up, I think in

1 your testimony on Friday, regarding hunting. Do you
2 remember that? Or it came up on messages.

3 A. I don't recall talking about -- or testifying about any
4 hunting messages.

5 Q. Okay. I'll move along, then.

6 You indicated you spent about 80 or 90 hours
7 looking over video. I guess my question is: How many hours
8 did the FBI spend in investigating whether Mr. Caldwell has
9 injuries or disabilities that he's claimed?

10 MR. MANZO: Objection, your Honor. Relevance.

11 THE COURT: It's overruled.

12 THE WITNESS: I am not aware of any disabilities
13 or injuries that Mr. Caldwell has.

14 BY MR. FISCHER:

15 Q. Are you aware that there have been multiple courts
16 filings where this claim has been made for the past 20
17 months?

18 MR. MANZO: Objection, your Honor.

19 THE COURT: Hang on.

20 MR. FISCHER: It goes to knowledge, your Honor.

21 MR. MANZO: Relevance.

22 THE COURT: Well, hang on. Get on the phone,
23 please.

24 (Whereupon, the following proceedings were had at
25 sidebar outside the presence of the jury:)

1 THE COURT: So we had this discussion at the
2 pretrial, Mr. Fischer, about what type of evidence you could
3 rely on in terms of establishing his disabilities, including
4 whether you could establish his VA status. And that's my
5 concern about the way the question was formed as opposed to
6 the relevance of it.

7 The Government did try to make the point that
8 Mr. Caldwell didn't seem to be physically impaired on the
9 video. So I don't think there's anything improper or
10 irrelevant about the question. It was just the basis for
11 the question that I thought may be outside the bounds. But
12 I don't remember.

13 MR. FISCHER: Yeah. As the Court knows, there
14 have been numerous public filings that have been made, that
15 the Government and the FBI are undoubtedly aware of, about
16 claims the defense has made going back 20 months. And she's
17 indicating she has no knowledge of it.

18 THE COURT: I understand. So you're talking about
19 court filings, not -- in this case, not sort of disability
20 filings in connection with --

21 MR. FISCHER: That's correct.

22 THE COURT: I see.

23 MR. MANZO: Your Honor, we'd still argue this is
24 irrelevant. Your ruling pretrial was Mr. Caldwell could
25 testify to any injuries that he had, but not bring in any

1 third-party information.

2 THE COURT: I think this is less about the actual
3 fact of what his injuries are and it's more about the scope
4 of -- or the FBI's investigation of something that at least
5 the defense thinks is exculpatory.

6 So I'll allow it.

7 (Whereupon, the following proceedings were had in
8 open court:)

9 THE COURT: The objection is overruled.

10 BY MR. FISCHER:

11 Q. Agent, are you aware that in multiple court filings
12 dating back at least 20 months in this case, that either
13 myself or Mr. Caldwell's prior attorney have referenced
14 injuries and disabilities that he had at the time of
15 January 6th, 2021?

16 A. I don't know that.

17 Q. Okay. Were you aware that Mr. Caldwell signed a HIPAA
18 release which would allow the FBI specifically, and the
19 Government, to interview his doctors and get his VA records?

20 A. No. I was not aware of that.

21 MR. FISCHER: I have nothing else, your Honor.

22 THE COURT: Okay.

23 MR. FISCHER: Agent, thank you.

24 THE COURT: Mr. Bright?

25 CROSS-EXAMINATION

1 BY MR. BRIGHT:

2 Q. Good afternoon, Agent. How are you today?

3 A. Good afternoon. How are you?

4 Q. My name is Lee Bright. I represent Stewart Rhodes.

5 Have you in this case had the opportunity to
6 review the majority of kind of these Signal chat sessions
7 that existed?

8 A. I have reviewed a large number of the Signal chats.
9 Yes.

10 Q. You've had access to all of them, though, that came off
11 Mr. Rhodes's phone and others?

12 A. Yes.

13 Q. And those would include the largest, I would presume,
14 the D.C. Op Jan '21 chat?

15 A. It did include that chat. Yes.

16 Q. Did it include the Jan 5/6 DC OK security chat?

17 A. I've reviewed messaged in that chat also.

18 Q. Did it include the Jan 5/6 DC OK security/VP chat?

19 A. I did review messages in that one also.

20 Q. Did it include the D.C. Op vetting group chat?

21 A. I assume I perused that one also.

22 Q. Okay. Well --

23 A. That one doesn't stick out in my head as much.

24 Q. Perfect. Let's not bother.

25 Would it be fair to say that you've also, then,

1 read the OK FL Hangout chat?

2 A. That chat had, I believe, close to 15,000 messages in
3 it. I did read a number of those, but not all of it.

4 Q. Would it be rational to say that those chats, if they
5 were to be printed out in text form, are almost 5,000 pages?

6 A. I would think it would be even more than that.

7 Q. I've got them printed out, and it's 5,000 pages.

8 A. So yes. I agree with you.

9 Q. Fair enough.

10 Of those chats that I just listed, would you agree
11 with me that those were primary chats that had been alleged
12 between the leadership groups, or most of the major players
13 that are supposedly part of this seditious conspiracy charge
14 for January 6th?

15 A. I think the old leadership chat was also -- had some
16 of --

17 Q. Well, I didn't list that one yet.

18 A. -- had some messages. Okay. Those -- those chats would
19 be pertinent to --

20 Q. But you would agree with --

21 THE COURT REPORTER: I'm sorry. I'm getting a lot
22 of overlap, counsel.

23 Would be pertinent to...

24 THE WITNESS: I'm sorry. Can you reask the
25 question?

1 BY MR. BRIGHT:

2 Q. Yes. Of course.

3 Would you agree with me that -- well, let me back
4 up a second.

5 You've had the opportunity to look at the chats on
6 Mr. Rhodes's phone. Correct?

7 A. Yes.

8 Q. And would it be reasonable to say that there are over
9 218 individual Signal chats?

10 A. I think there were more than 800.

11 Q. Okay. And some of those would have been single time
12 usage?

13 A. Some would have been direct messages and some of them
14 would have been groups, if that's what you mean. Yes.

15 Q. In terms of the group messages, the bulk would have been
16 included in what we just covered. Correct?

17 A. The bulk of the messages in total?

18 Q. Yes. In terms of what's been alleged, planning and all
19 of that. Correct?

20 A. They play a large part. Yes.

21 Q. Okay. And that would also include the old leadership
22 chat that you referenced. Correct?

23 A. Yes.

24 Q. Of the seven chats that we just went through that you
25 said were the bulk of what we're talking about, Thomas

1 Caldwell is not in any of those, is he?

2 A. I only saw Thomas Caldwell in a direct message chat with
3 Mr. Rhodes and then a --

4 MR. BRIGHT: Objection. Nonresponsive, your
5 Honor.

6 THE COURT: She's answering your question. If you
7 want to rephrase it, that's fine.

8 BY MR. BRIGHT:

9 Q. Of the seven chats that I listed, Mr. Thomas Caldwell is
10 not included in any of them. Correct?

11 A. That's correct.

12 Q. Okay. And as a matter of fact, of the major chats, the
13 bulk of 5,000 pages -- not direct messages; chats --
14 Mr. Caldwell is actually only in the old dead chat, and
15 that's for five days of its three-month existence. Correct?

16 A. It relates to the November Million MAGA March op.

17 Q. Right. But it would be correct that that is --

18 A. Yes.

19 Q. -- all he is in.

20 A. Yes.

21 Q. And it was for five days?

22 A. For that op, yes.

23 Q. Okay. But yet Friday and today we've been given a
24 litany of direct chats that Mr. Caldwell was having with
25 other individuals that were completely and totally outside

1 of those chat windows. Correct?

2 A. Can you explain "chat windows"?

3 Q. Sure.

4 A. Sorry.

5 Q. So let's start out with his communications on Facebook
6 with Adrian Grimes.

7 A. Yes. I'm sorry. Yes. For those that -- where the
8 individuals had no contacts with any additional subjects,
9 yes.

10 Q. Right.

11 So multiple of those.

12 He had a side group where he is discussing things
13 directly with Paul Stamey. Correct?

14 A. Yes. And around that time, Mr. Stamey was in some of
15 the chats that you mentioned.

16 Q. Absolutely.

17 But we're talking about Mr. Caldwell. He was
18 having direct chats with Ranger Doug, Doug Smith. Correct?

19 A. Correct.

20 Q. He was having conversations between the three of them,
21 wholly independent of the major leader group chats that
22 we've discussed. Correct?

23 A. Not correct.

24 Q. So which one of the seven group chats that we just went
25 over, where you just said he was not in them, that he's in

1 them now?

2 A. So he wasn't having those conversations wholly
3 independent of those chats. Just because he didn't post
4 messages in those chats doesn't mean it was -- the planning
5 was --

6 Q. Of the seven chats --

7 THE COURT REPORTER: The planning what?

8 THE WITNESS: Was independent.

9 THE COURT REPORTER: Counsel, please let the
10 witness finish her answer so I can make a record.

11 BY MR. BRIGHT:

12 Q. He was not a member of any of the seven major chats on
13 Signal that I just listed a minute ago. Correct?

14 A. Yes. That's correct.

15 Q. Okay. And he was having direct communications with Paul
16 Stamey. Correct?

17 A. Correct.

18 Q. Doug Smith. Correct?

19 A. Correct.

20 Q. Jessica Watkins. Correct?

21 A. Correct.

22 Q. Okay. Now, earlier, you had phrased that -- when asked
23 upon cross by Mr. Fischer regarding what had become a split
24 between the national Oath Keepers and the North Carolina
25 group -- correct? Do you recall that?

1 A. Yes.

2 Q. Okay. And you said that you felt, based on later
3 communications, it had not been a full split. Is that
4 accurate?

5 A. Correct.

6 Q. Okay. I'm going to show you what's already been
7 admitted into evidence as 6903 of the Government's witness
8 [sic].

9 Can you read that aloud, please, ma'am?

10 A. Yes. "I have allied myself with you guys, as you can
11 tell. I think I still have a lot to give, especially if you
12 start operating in my backyard as it were. Let me know
13 whatever you might need. If we have enough time before we
14 have to move in force, would love to get down to work with
15 you or at least visit."

16 MR. BRIGHT: I apologize, your Honor.

17 THE COURT: That's okay.

18 BY MR. BRIGHT:

19 Q. Do you recall a text message directly from Thomas
20 Caldwell where he is pledging his allegiance to the North
21 Carolina group?

22 A. I recall a message that, in substance, yes, says those
23 words. Yes.

24 Q. Okay. And do you recall in substance where he
25 specifically reaches out to Paul Stamey and he states that

1 Ranger Doug had made him do some deep thinking and that they
2 needed to plan something much bigger than what was being --

3 A. I recall that --

4 Q. -- talked about by the national Oath Keepers? Do you
5 recall that?

6 A. I recall the message where he said Ranger Doug has me
7 thinking we should be planning a much bigger op.

8 Q. Okay. And that was between him and the North Carolina
9 Oath Keepers chapter. Correct?

10 A. I believe that was the message from Mr. Caldwell to
11 Mr. Stamey about what Doug Smith had said to him.

12 Q. Doug Smith was the North Carolina --

13 A. Correct, yes.

14 THE COURT REPORTER: North Carolina...

15 I'm sorry. I'm getting so much overlap. For the
16 record, if you could wait until he finishes his question.

17 THE WITNESS: Sorry.

18 THE COURT REPORTER: Doug Smith was the North
19 Carolina...

20 BY MR. BRIGHT:

21 Q. Doug Smith was the North Carolina chapter president.
22 Correct?

23 A. He was.

24 Q. Paul Stamey was the vice president. Correct?

25 A. He was the western state lead.

1 Q. But he was the assistant or vice president of the whole
2 chapter under Doug Smith. Correct?

3 A. I've never heard him referred to that way.

4 Q. Do you recognize this from admission earlier?

5 A. I do.

6 Q. Okay. Could you read it for me, please.

7 A. "I have not joined officially, according to the national
8 organization, but I am very tight with the North Carolina
9 and Ohio contingents and provided materiel and intel support
10 to them during the Million MAGA March."

11 Q. Who is that from and to?

12 A. That is from Tom Caldwell to Matthew Truong.

13 Q. Who is Matthew Truong?

14 A. Matthew Truong, we spoke about with Mr Fischer, is an
15 individual -- Facebook friends at least with Mr. Caldwell
16 who Mr. Caldwell tried to procure a boat from.

17 Q. Not an Oath Keeper?

18 A. Correct.

19 Q. Okay. Mr. Caldwell was never an Oath Keeper, was he?

20 A. De facto Oath Keeper.

21 Q. Was he a registered Oath Keeper?

22 A. Not a dues-paying member.

23 Q. Okay. I'd like to talk to you about what has been
24 discussed here in terms of the weapons that Mr. Rhodes was
25 purchasing. Being that you're an FBI agent, I presume that

1 you're familiar with gun laws. Correct?

2 A. I am familiar that they are different by state.

3 Q. Are you familiar with the gun laws in the state of
4 Texas?

5 A. I am not.

6 Q. Okay. Let's walk through these, because you -- there's
7 been elicited testimony regarding six different purchases of
8 varying items that Mr. Rhodes made leading up to
9 January 5th. Is that accurate?

10 A. Yes.

11 Q. Okay. So the first one, you reference that he went from
12 Granbury, Texas, to a person in Dallas and they met at a
13 Walmart parking lot. Correct?

14 A. I believe so. I believe that was the first one.

15 Q. What were they buying? What was he buying? Do you
16 remember?

17 A. I think that was the 223 and the 56.

18 Q. The 223 and the 308?

19 A. Yes. That one.

20 Q. Okay. You carry a Glock 19 .9-millimeter. Right?

21 A. I do.

22 Q. Okay. But you're not familiar with the 223 or 308?

23 A. I am not.

24 Q. What was your gun prior to the Glock?

25 A. The Glock 23, which was a 40-caliber.

1 Q. So you're familiar with two calibers, but not the other
2 two?

3 A. Correct.

4 Q. Would you be surprised to know that the most common
5 ballistics for an AR-15, or a regular hunting rifle, is a
6 223?

7 A. I will take your word for it.

8 Q. Okay. So to your knowledge, the 223 or the 308 that was
9 purchased, that was done in a parking lot. Correct?

10 A. I believe so. Yes.

11 Q. That's a hand-to-hand transaction?

12 A. Yes.

13 Q. And it was negotiated on gunbroker.com?

14 A. Potentially.

15 Q. Okay. Are you familiar with gunbroker.com?

16 A. I am not.

17 Q. Do you have an account?

18 A. No.

19 Q. Okay. Is it illegal to have an account on
20 gunbroker.com?

21 MR. MANZO: Objection.

22 THE COURT: It's overruled.

23 THE WITNESS: I would assume not. No.

24 BY MR. BRIGHT:

25 Q. Are you familiar at all with what gunbroker.com is?

1 A. No.

2 Q. So would you be surprised, as an FBI agent, to
3 understand that it's an internet site that people nationally
4 buy and sell arms and ammo?

5 A. I would not be surprised by that. No.

6 Q. Okay. Would you be surprised to hear that they also
7 legally buy scopes, other types of munitions, tact gear, all
8 kinds of stuff?

9 A. I imagine that they conduct business legally in all of
10 those things. Yes.

11 Q. Okay. So if that's the case, and Mr. Rhodes was openly
12 using his own gunbroker account, name, to legally purchase
13 these weapons, he wasn't exactly hiding it, was he?

14 A. No, and I don't think we've alleged that.

15 Q. Okay. But we're just clarifying that what's been placed
16 out here individually is an absolutely legal --

17 MR. MANZO: Objection, your Honor.

18 THE COURT: That is sustained.

19 BY MR. BRIGHT:

20 Q. Is there anything that you're aware of that makes this
21 transaction that we're speaking about improper or illegal?

22 A. I do not know about the gun laws in Texas. I don't know
23 if Mr. Rhodes is prohibited from buying anything in Texas
24 under those laws. I have no idea.

25 Q. To your knowledge, it's never been alleged that

1 Mr. Rhodes has done anything illegal regarding these
2 firearms transactions.

3 A. I was just saying that I don't know who is and who isn't
4 allowed to buy what in the state of Texas.

5 Q. Let me rephrase, please. I respect the fact that you
6 don't know, as an FBI agent, the gun laws.

7 But are you aware or have you ever been made aware
8 that an allegation has never been made regarding Mr. Rhodes
9 illegally or improperly purchasing or owning weapons?

10 MR. MANZO: Objection, your Honor.

11 THE COURT: Can we get on the phone, please.

12 (Whereupon, the following proceedings were had at
13 sidebar outside the presence of the jury:)

14 THE COURT: I think it's the way it's phrased. I
15 mean, clearly, his ownership or possession in connection
16 with this case has been alleged to be unlawful. And she may
17 say that. I think if what you're getting at and driving
18 home is that, has this individual purchased or this
19 individual transaction -- is there a charge with respect to
20 this individual transaction? I think that's fair game.

21 Mr. Manzo?

22 MR. MANZO: I agree.

23 THE COURT: All right.

24 (Whereupon, the following proceedings were had in
25 open court:)

1 BY MR. BRIGHT:

2 Q. Are you aware of any charges that come from this
3 singular transaction?

4 A. No.

5 Q. Okay. As a matter of fact, of the six transactions that
6 have been detailed for you, you're not aware of any charge
7 regarding any of those six transactions. Correct?

8 A. Not at all.

9 Q. Okay. As a matter of fact, Mr. Rhodes many times was
10 not actually buying guns, was he?

11 A. I believe that's correct.

12 Q. Okay. There were actually some of these transactions
13 that have been talked about that didn't involve firearms at
14 all. Correct?

15 A. My understanding was that they were at least for parts
16 or accessories to firearms.

17 Q. All right. He was buying parts. Correct?

18 A. Yes.

19 Q. He was buying accessories. Correct?

20 A. Yes.

21 Q. You mentioned the BCG. Do you know what BCG is?

22 A. I believe it stands for bolt carrier group.

23 Q. And do you know what a bolt carrier group is?

24 A. I did Google that one prior to testifying today. And I
25 believe --

1 Q. Sure.

2 A. -- that it is the firing mechanism or includes the
3 firing mechanism for a round.

4 Q. No. It's the bolt that goes into a gun to push the --

5 A. Okay.

6 THE COURT REPORTER: I'm sorry?

7 BY MR. BRIGHT:

8 Q. To push the bullet forward. It's a piece of metal.
9 Correct?

10 A. A component part. Yes.

11 Q. So really nothing problematic about that. It's a part.

12 A. It's a part.

13 Q. Okay. And he was also buying other just parts at times,
14 or scopes. Correct?

15 A. Yes. Correct.

16 Q. Okay. Again, out of the specter that's been created
17 regarding these transactions, one final time, you are not
18 aware of anything that has been charged or alleged out of
19 these transactions?

20 MR. MANZO: Objection, your Honor.

21 MR. BRIGHT: I tailored it exactly as you
22 suggested.

23 THE COURT: It's slightly different. I think
24 she's answered the question. So let's move on.

25 MR. BRIGHT: Okay, sir.

1 BY MR. BRIGHT:

2 Q. Of the rooms that were at the Comfort Inn, how many were
3 in Mr. Rhodes's name?

4 A. None.

5 Q. How many times did we see Mr. Rhodes in the videos that
6 you had surveillance of?

7 A. I did not see him at all.

8 Q. To your knowledge, are you aware of any firearms or any
9 equipment or anything of Mr. Rhodes that was stored at that
10 hotel?

11 A. I did not see any messages that would suggest that.

12 Q. Do you have any messages that you've been made aware of
13 that anyone picked any weapons up from Mr. Rhodes and put
14 them there?

15 A. And put them at the Comfort Inn?

16 Q. Yes, ma'am.

17 A. Not that I'm aware of.

18 Q. Okay. So do you have -- of the parts and the
19 accessories that we've discussed Mr. Rhodes buying when he
20 was coming from Texas to Northern Virginia/the D.C. area for
21 January 5th or 6th, do you have any idea what happened with
22 those weapons or those parts?

23 A. I do.

24 Q. Okay.

25 A. It will be coming in later in this case, but a number of

1 them were retrieved from the storage locker of Joshua James.

2 Q. Okay. But I'm asking if they came to the District.

3 A. Where they went?

4 Q. No. You're not aware of Mr. Rhodes ever bringing in any
5 weapons into the District. Correct?

6 A. Into the District of Columbia, no.

7 Q. Okay. As a matter of fact, of the total number of
8 individuals that have been charged in this case, there's not
9 a single allegation that any of these Defendants brought a
10 firearm into the District. Correct?

11 A. Correct.

12 Q. You're actually aware -- since you've read through 5,000
13 pages of these text messages, you are actually aware that
14 there were extensive discussions where they were instructed
15 by Mr. Rhodes on multiple occasions: Do not bring any
16 weapons or firearms that are illegal into the District.
17 Correct?

18 A. I believe that was so that they wouldn't lose access to
19 those weapons.

20 Q. You're aware -- I'll --

21 A. Yes. I saw those messages.

22 Q. Okay. So sitting here today, after, what, 17, 18 months
23 from when this happened, no one to date, regarding these
24 people, have ever made an allegation that a firearm was
25 brought into the District. Correct?

1 A. Correct.

2 Q. Okay. So the QRFs, what happened with them?

3 A. Can you be more specific?

4 Q. Well, if they weren't brought into the District, what
5 happened to them?

6 A. I believe they were prepared to fight the next day.

7 Q. If they were not brought into the District -- not what
8 you think they were prepared to do. I'm asking what
9 happened with the weapons from the QRF.

10 A. Oh, I see. Sorry. They remained at the hotel, to my
11 knowledge.

12 Q. And when they left the hotel, where did they go?

13 A. I presume that the individuals took them with them.

14 Q. So the armed rebellion was unarmed?

15 A. The armed rebellion wasn't over.

16 Q. It was what?

17 A. It was not over.

18 Q. Okay. It went unarmed, though. The weapons left
19 Northern Virginia. They went back to their original
20 locations. Correct?

21 A. Correct.

22 Q. They were never used. Correct?

23 A. Correct.

24 Q. Okay. What was the date of the Hancock podcast?

25 A. That was the morning of January 6th.

1 Q. What time was it?

2 A. I believe it was about 11:00 a.m. Eastern time.

3 Q. Was Mr. Rhodes on that podcast?

4 A. No.

5 Q. Did Mr. Rhodes approve that podcast?

6 A. I don't know.

7 Q. Did he have any involvement in it at all?

8 A. Not that I'm aware of.

9 Q. Isn't it true, based on your investigation, which I'm
10 sure was thorough, Mr. Rhodes was actually speaking at the
11 Latinos for Trump rally on the Ellipse next to the Supreme
12 Court at the time this podcast was ongoing?

13 A. My understanding was that was on the 5th. But --

14 Q. No, ma'am.

15 A. -- if you say so, I have no reason to doubt that.

16 Q. So it was starting at 10:00 a.m. on the morning of the
17 6th.

18 A. Sure.

19 Q. So it would be reasonable to say if he's speaking at
20 that event, he's not even aware that this podcast is being
21 made by Mr. Vallejo and Todd Kandarlis. Correct?

22 A. I think that is certainly reasonable. Yes.

23 Q. Okay. Todd Kandarlis isn't an Oath Keeper, is he?

24 A. I do not believe he is a dues-paying member either.

25 MR. BRIGHT: If I may, your Honor.

1 THE COURT: Yes.

2 BY MR. BRIGHT:

3 Q. Very, very briefly, are you aware, based on reviewing
4 the history of the Oath Keepers -- I presume you've done
5 that. Correct?

6 A. A bit. Yes.

7 Q. Okay. Could you -- before I ask the question, though,
8 could you explain to me, you know, how deep into the Oath
9 Keepers history you've made yourself aware?

10 A. Probably very minimal.

11 Q. Okay. Are you -- are you aware, though, of previous
12 events in the year of 2020 that they as a group, nationally,
13 attended?

14 A. I have seen many messages about that. Yes.

15 Q. So you are aware that this concept of the QRF was SOP
16 for them, standard operating procedure?

17 A. I know that a type of QRF appeared to be SOP for them.

18 Q. So there could be variances into how they're scheduled,
19 how they're done, but the QRF itself as a concept?

20 A. The concept, sure.

21 Q. Okay. And you would agree with me, then, that when they
22 were someplace like Louisville, Kentucky, protecting
23 businesses for the Breonna Taylor riots, they had a QRF on
24 that occasion. Correct?

25 A. I know I saw messages about that. But I don't really

1 know anything about what they did.

2 Q. All right. So just to make it simple, then, you are
3 aware that that was --

4 A. Yes.

5 Q. -- part of the Louisville mission?

6 A. Yes.

7 Q. And that mission was for personal security details.
8 Correct?

9 A. I do not believe that was for personal -- I believe that
10 was for property security.

11 Q. Okay. For businesses, property. Correct?

12 A. Yes.

13 Q. Nothing illegal about that, was there?

14 A. Not that I'm aware of.

15 Q. Are you aware that there was a QRF in Northern Virginia
16 in a van parked by Arlington Cemetery for the Million MAGA
17 March? Are you aware of that?

18 A. Yes.

19 Q. And you're aware that John Zimmerman testified that
20 there were possibly up to 20 AR-15s and handguns in his car
21 on that occasion. Correct?

22 A. I am aware of that. Yes.

23 Q. Was that illegal?

24 MR. MANZO: Objection, your Honor.

25 THE COURT: Sustained.

1 BY MR. BRIGHT:

2 Q. To your knowledge, was there anything about that QRF
3 whereby charges were brought against anybody?

4 MR. MANZO: Objection, your Honor.

5 THE COURT: I'll sustain it. This raises the same
6 issue we talked about last time.

7 MR. BRIGHT: I'm so sorry?

8 THE COURT: It raises the same issue we talked
9 about last time.

10 MR. BRIGHT: I'll move on, your Honor.

11 BY MR. BRIGHT:

12 Q. Were you aware that there was also an event in D.C.
13 called the Jericho March?

14 A. Yes. In December of 2020.

15 Q. Yes, ma'am. Absolutely.

16 About a -- a rough month after the Million MAGA
17 March. Right?

18 A. Correct.

19 Q. Are you aware, in the same fashion as Louisville, the
20 same fashion as the November Million MAGA March, that the
21 Oath Keepers had a QRF set up outside of the District also?

22 A. I'm only aware of that because of the call to action
23 that Mr. Rhodes put out on January 4th where he said: We
24 will have a QRF like previous D.C.-specific events. So
25 events, plural. So I'm assuming there were multiple D.C.

1 events.

2 Q. Okay. Well, I appreciate that -- you bringing that up,
3 because that was a call to action. Correct?

4 A. Yes.

5 Q. What was a call to action for the Oath Keepers?

6 A. The call to action was dual purpose. I mean, if -- I
7 will let you know from memory, if --

8 Q. That's okay.

9 A. -- that they were going to be providing security for
10 certain individuals, and then Mr. Rhodes said that, like all
11 recent D.C. events, they would have an armed QRF standing by
12 for the -- in case the president called upon them.

13 Q. And that was on their national website. Right?

14 A. Yes.

15 Q. So they weren't exactly hiding the fact that QRFs were
16 what they considered the norm?

17 A. Well, from -- from people who would be visiting their
18 website, I guess.

19 Q. I mean, presumably, the internet can be accessed from
20 almost anywhere in the world. Right?

21 A. Yes. If you're interested.

22 Q. So 7 billion people had access to that website,
23 potentially?

24 A. Sure.

25 Q. And so they were advertising on their website their

1 calls to action. Correct?

2 A. What do you mean by "advertising"?

3 Q. They were publishing.

4 A. Publishing, yes.

5 Q. Okay. And in those publications, they were open about
6 the history of the QRFs and referenced previous ones.

7 Correct?

8 A. Previous D.C. QRFs.

9 Q. Absolutely.

10 A. Yes, which is part of the period covered by this
11 investigation.

12 Q. It is.

13 A. Yes.

14 Q. But at no time that you're aware of on the previous two
15 occasions, and including January 6th, the QRFs were never
16 brought in. Correct?

17 A. Correct.

18 Q. And they always just went home --

19 A. Correct.

20 Q. -- to your knowledge?

21 A. Yes.

22 MR. BRIGHT: Thank you. I pass the witness, your
23 Honor.

24 THE COURT: Thank you.

25 Mr. Geyer?

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CROSS-EXAMINATION

BY MR. GEYER:

Q. Hello, Special Agent. My name is Brad Geyer and I represent Ken Harrelson, who's back in the back corner. How are you doing today?

A. Good afternoon, sir.

Q. Thank you for being here today.

A lot of talk about cases, different colors.

A. Yes.

Q. A lot of older guys walking around without fashion sense. Isn't that true?

A. I think I would agree with that.

Q. Yeah.

When Mr. Cummings was here, he testified that -- I believe he identified the green case, and he showed us all a weapon that was contained in the green case. Are you familiar with that turn of events?

A. I was not present for Mr. Cummings's testimony, but I understand the gist of it. Yes.

Q. Okay. Do you also understand that he was under the impression that, at the end of the investigation, he was going to get that gun back?

A. I am not aware of that either way.

Q. Are you aware that he wasn't charged even though he drove up in the car from Florida with Mr. Harrelson and

1 Mr. Dolan?

2 THE COURT: That objection is sustained. It's
3 sustained. Next question.

4 BY MR. GEYER:

5 Q. When --

6 MR. GEYER: The Court's indulgence.

7 BY MR. GEYER:

8 Q. Now, in March of 2021, there was a search warrant
9 executed at the Harrelson residence. Are you familiar with
10 that?

11 A. I am aware of that.

12 Q. And there was an AR rifle in the safe. Are you aware of
13 that?

14 A. I am generally aware. Yes.

15 Q. Are you aware that it wasn't recovered; it was left in
16 the home?

17 A. I am aware of that. Yes.

18 Q. And you're aware that there was a revolver in the home
19 that was also left in the home?

20 A. I believe so.

21 Q. And are you aware that there was a .9-millimeter that
22 was also left in the home?

23 A. I'm not sure about the specific guns, but I do know that
24 we did not recover any of those from Mr. Harrelson's home.

25 Q. Okay. Also, an Airsoft rifle, an Airsoft pistol and

1 some Airsoft equipment. Is that right?

2 A. I believe so.

3 Q. Isn't that because those weapons were perfectly legal?

4 MR. MANZO: Objection, your Honor.

5 THE COURT: Sustained, Mr. Geyer. Sustained.

6 Next question, please.

7 BY MR. GEYER:

8 Q. Why didn't you recover those weapons?

9 MR. MANZO: Objection, your Honor.

10 THE COURT: That's overruled.

11 THE WITNESS: I was not part of that search. My
12 understanding was -- I -- it may have -- they may not have
13 been within the parameters of the warrant itself. I'm kind
14 of speculating on this. I'm not entirely certain.

15 BY MR. GEYER:

16 Q. So I have -- I actually happen to have the warrant. I
17 can't even believe it, quite frankly.

18 THE COURT: Mr. --

19 BY MR. GEYER:

20 Q. We have an attachment --

21 THE COURT: Get on the phone, please.

22 (Whereupon, the following proceedings were had at
23 sidebar outside the presence of the jury:)

24 THE COURT: Mr. Geyer, I'm not suggesting to you
25 that this examination is not relevant. I just don't know

1 that this is the witness to whom you can properly do it.
2 She was not part of the search. There's no contest that she
3 was -- there's no suggestion that she actually filled out
4 the warrant application. Frankly, I don't even think she
5 testified on direct examination about what was or what was
6 not recovered from your client's home.

7 MR. GEYER: Your Honor, I will defer to your
8 wishes. Thank you.

9 THE COURT: Okay.

10 (Whereupon, the following proceedings were had in
11 open court:)

12 BY MR. GEYER:

13 Q. I think you testified about the purpose of the QRF being
14 to prevent President Biden from taking power. Is that
15 correct?

16 A. That was the ultimate purpose, yes, to support that
17 effort.

18 Q. So your theory is that that's why Ken Harrelson came on
19 the 5th of January, woke up in the morning on January 6th,
20 and spent his day? It was in pursuit of this goal. Is that
21 your testimony?

22 A. My testimony is that that goal was established many
23 weeks prior to January 6th and, in fact, extended beyond
24 January 6th.

25 Q. And are you aware that for the entire morning, up to and

1 including when the crowd in the east part of the Capitol
2 pushed through openings opened by provocateurs and walked to
3 the steps, that he was on a personal security detail?

4 A. If you could provide a time for that. I believe I saw
5 when the east doors were pushed open, at least where Stack 1
6 was, and that was while they were present.

7 Q. Yes. This is actually before that, at 1:57, when the
8 coordinated push-through of the barriers occurred. Are you
9 familiar with that?

10 A. Coordinated --

11 MR. MANZO: Objection to editorializing.

12 THE COURT: Sustained.

13 Mr. Geyer, we've talked about this.

14 BY MR. GEYER:

15 Q. But it's your testimony that his purpose for being there
16 was to ensure that President Biden wasn't installed or
17 didn't take power. Is that right?

18 A. Well, in Mr. Rhodes's words, if President Trump didn't
19 act, then we will. So this is the "we will" part.

20 Q. Okay. I have what has been marked as --

21 MR. GEYER: Let me pull it up. This is Defense
22 Exhibit 2 for identification. I believe we have a
23 stipulation.

24 THE COURT: So this will be Harrelson 2?

25 MR. GEYER: Your Honor?

1 (Whereupon, the following proceedings were had at
2 sidebar outside the presence of the jury:)

3 MR. GEYER: This is Brad Geyer.

4 I believe I have a stipulation with Kate. I
5 intended to put this in through the prior witness. I
6 thought we had a stipulation. But the email traffic got
7 caught in the cloud, apparently.

8 Her entire -- her testimony involves the motives,
9 state of mind of my client. I believe these voting records
10 of the marital household are inconsistent. It's -- it shows
11 apathy.

12 THE COURT: Hang on. I'm not understanding what
13 you're trying to admit, Mr. Geyer.

14 MR. GEYER: It's voting records from the county
15 they live in for Angel Harrelson and Ken Harrelson. And it
16 shows that they never voted in a presidential election and
17 they only voted in 2018.

18 THE COURT: Well, I'm not sure the failure to vote
19 or the decision not to vote is really probative of anything.
20 I mean, he could have not voted for a whole host of reasons.
21 So if you're suggesting that the nonvote of your client --
22 is Angel his wife?

23 MR. GEYER: Yes.

24 THE COURT: You know, if he had voted for Biden,
25 we might be in a different situation. But he didn't vote.

1 So I don't know if that makes a difference one way or
2 another.

3 MR. GEYER: I would argue it shows indifference
4 and apathy. It's somebody that doesn't have the intention
5 to vote. It's very unlikely they'd be so motivated, you
6 know, two months later.

7 THE COURT: I'm not going to let you put it in
8 through -- here. If your client testifies and he wants to
9 say that he was so apathetic he didn't even vote, that's
10 fine. But I don't think it's fair to just simply say he
11 didn't vote and then try and draw any inference. He might
12 not have voted for a whole host of reasons, including that
13 he was working that day or, you know, that he didn't have a
14 chance to get to the polls. It could be for any number of
15 reasons.

16 MR. GEYER: I take it the Government is going to
17 withdraw the stipulation?

18 MR. NESTLER: The stipulation is that these
19 records are authentic. We have no reason to doubt
20 Mr. Geyer's representation that they are authentic. We
21 don't believe it's appropriate to show them to the FBI agent
22 on cross-examination.

23 THE COURT: As I said, I mean, there may be an
24 appropriate time for this, but it's not through this agent
25 at this juncture.

1 MR. GEYER: Okay. Thank you very much, your
2 Honor.

3 THE COURT: Thank you.

4 (Whereupon, the following proceedings were had in
5 open court:)

6 THE COURT: The objection to Harrelson 2 will be
7 sustained.

8 MR. GEYER: Thank you, Agent. I have no more
9 questions.

10 THE WITNESS: Thank you.

11 THE COURT: Ladies and gentlemen, why don't we
12 take our afternoon break. We're approaching the 3:00 hour.
13 So let's plan to resume -- it will be a slightly longer
14 break than usual. Why don't we go until about 3:20 and
15 we'll get started at 3:20. Thank you all very much.

16 THE COURTROOM DEPUTY: All rise.

17 (Whereupon, the jury exited the courtroom at 2:59
18 p.m. and the following proceedings were had:)

19 THE COURT: Agent, you can step down. Thank you.

20 Mr. Woodward, let's take up your issues now. I'll
21 try and take care of this before we begin next.

22 Have a seat, everyone. Thank you.

23 MR. WOODWARD: Thank you, your Honor.

24 So the first slide, this is referring to
25 Government's --

1 THE COURT: Let's do it this way.

2 Mr. Manzo, is there an objection? If there is,
3 what is it?

4 MR. MANZO: Ms. Rakoczy handled this during lunch.

5 MR. WOODWARD: The objection -- I don't want to
6 speak for Ms. Rakoczy; she will clarify -- has to do with
7 the fact that a number of these slides address the security
8 planning and purpose, if you will, on January 6th. And the
9 Government's position is that this witness did not get into
10 planning and purpose related to security.

11 We think she did.

12 There is -- they put in a chat from Mr. Siekerman
13 talking about: We're doing this op call. They made a big
14 deal about these GoToMeeting calls. On the day leading up
15 to the op call, Mr. Siekerman is sending a number of
16 messages concerning the security to be provided on
17 January 6th for both Mr. Stone as well as Mr. Flynn.

18 So --

19 THE COURT: So what's the issue, Ms. Rakoczy?

20 MS. RAKOCZY: Yes, your Honor.

21 So there was one message, message 3, that just is
22 pretty devoid of context. It says something like, "I looked
23 this up somewhere, found this posted last night in another
24 group."

25 And it's just -- I don't know what that's about.

1 That one we object to just because of the lack of context.

2 MR. WOODWARD: We're happy to remove 3. It's just
3 literally the message there. So we're trying to bring as
4 much -- let me rephrase that.

5 We're trying to be as complete and not omit
6 messages. If that satisfies the Government, then 3 can go
7 out.

8 MS. RAKOCZY: It's five hours earlier. That was
9 what was surprising to us.

10 The other 90-ish messages that we object to
11 have -- are all about gathering to do various security
12 detail work, permit protests and things of the like. Not
13 one of them discussed weapons. And so the testimony here on
14 direct was about QRF and they were about travel plans. We
15 do not object to the messages that Mr. Woodward seeks to
16 introduce that address either of those topics.

17 Messages that just talk about there's a rally
18 here, there's a street closure there, we suggest are not
19 responsive to this direct examination.

20 MR. WOODWARD: This is a chat, your Honor, that
21 they introduced through this agent in which Mr. Rhodes was
22 asking whether folks are attendees, speakers or security
23 volunteers.

24 It's -- security, of course, is what we're
25 interested in. Just to be clear, I've also asked the

1 Government whether there's another witness that they would
2 be comfortable with these chats coming in through. And
3 they've said no, that these chats don't come in through any
4 of their witnesses.

5 So this is not an issue we can table for Special
6 Agent Palian or somebody else. They're saying these
7 messages are not coming in under the rule of completeness.

8 MS. RAKOCZY: So two quick points in response:
9 This message that Mr. Woodward is showing is just a direct
10 message between Mr. Rhodes and Todd Kandarlis when Todd
11 Kandarlis says he wants to come and make statements about
12 being rifles and warm bodies to support the president.

13 This is part of that thread. It's not part of a
14 larger thread with other people.

15 With respect to there not being another Government
16 witness for which the Government thinks these would be
17 responsive under the rule of completeness, that is correct.
18 In the defense case in chief, this may be a different story.

19 THE COURT: So it's a little hard to rule on 90
20 slides without having looked at them.

21 But, look, to the extent that there has been
22 testimony about the lead-up to January 6th and its purpose,
23 you know, there has been testimony about the GoToMeetings
24 that I think happened on the 2nd, 3rd and 4th, or maybe it
25 was the 2nd, 3rd and 5th -- you know, I suspect at some

1 point the Government is going to get up, if it's in closing,
2 and say: If this was all about security, why were they, you
3 know, meeting for two hours at a time and so on and so
4 forth.

5 I mean -- and so, you know, if there's an
6 alternative explanation and there are contemporaneous facts
7 to the days leading up to the 6th, it seems to me it's
8 admissible. Whether -- I don't know whether she's reviewed
9 these or not, but they're certainly relevant to rebut what
10 the Government's contention is about what all this planning
11 was about.

12 MS. RAKOCZY: Respectfully, your Honor, the
13 Government disagrees, since none of these messages discuss
14 the QRF or the weapons. We understand if that's the Court's
15 position. But --

16 THE COURT: Sure. I'm not sure you can delink the
17 two, Ms. Rakoczy. I mean, you know, for example, there
18 was -- just take the GoToMeetings. We have no -- that
19 wasn't specific to the QRF. Right? I mean, that was just,
20 you know, sort of left out there, that these folks are
21 meeting and planning and whatever they may be doing in the
22 weeks and days leading up to January 6th.

23 And so it -- that wasn't linked to the QRF. I
24 can't remember if there was other testimony of that quality,
25 but certainly there was that.

1 So, you know, again, I don't know whether all 90
2 come in. I think some of this undoubtedly comes in, or
3 should come in. I don't know whether you all have a few
4 minutes to go through and figure out what's fair game and
5 what isn't.

6 But, I mean, I think as a general proposition, you
7 know, this agent has testified, or at least suggested, that
8 there was some amount of planning in advance of the 6th.
9 And this is responsive to that.

10 MS. RAKOCZY: We understand, your Honor.

11 THE COURT: Okay.

12 MR. WOODWARD: We'll meet with the Government.

13 THE COURT: You've got about 15 minutes. So
14 hopefully you can get it resolved.

15 Thank you, everybody.

16 (Thereupon a recess was taken, after which the
17 following proceedings were had:)

18 THE COURT: Please be seated, everyone.

19 Are we about to take a witness out of turn? Is
20 that right?

21 MR. NESTLER: Yes, your Honor. If the Court is
22 okay with that.

23 THE COURT: Yes. That's fine.

24 I'm sorry. Who's the witness?

25 MR. NESTLER: The witness's name is Micah

1 Loewinger.

2 THE COURT: Okay.

3 MR. NESTLER: His counsel is here from New York
4 and is not available tomorrow or the next day. And so given
5 that counsel and the witness are here, it should be about a
6 25-minute witness.

7 THE COURT: Okay. And is that consistent with the
8 expectation of cross-examination, too?

9 MR. FISCHER: No. We have no --

10 MR. NESTLER: I believe only one counsel is
11 planning to cross. Mr. Crisp.

12 THE COURT: And, Mr. Crisp, I understand you may
13 have some objections to some of the evidence?

14 MR. CRISP: Yes, your Honor.

15 So just by way of background, because the Court
16 probably has no idea, this is the Zello chat recorder, so
17 that -- he's going to testify to the fact that he accessed
18 the Zello chat involving my client, Ms. Watkins. This
19 involves --

20 THE COURT: Zello chat reporter?

21 MR. CRISP: Recorder.

22 THE COURT: Recorder. The person who recorded the
23 call?

24 MR. CRISP: I believe he's a reporter that the
25 worked for *The Guardian*.

1 THE COURT: I thought the other guy recorded the
2 call.

3 MR. NESTLER: Sorry. So the GoToMeeting was
4 already admitted. That was from November 9th.

5 THE COURT: This is the Zello?

6 MR. NESTLER: This is the Zello that we have
7 litigated.

8 MR. CRISP: The chat.

9 THE COURT: Oh, right. Okay.

10 MR. NESTLER: He is a reporter who recorded the
11 call.

12 THE COURT: Okay. I got you.

13 MR. CRISP: That works for *The Guardian*. Right?

14 MR. NESTLER: No. But it's okay.

15 MR. CRISP: Okay. There are articles, one of
16 which I think was published in *The Guardian*, that the
17 Government intends to introduce. They're what are marked as
18 5150 through 5152.

19 If we could pull them up real quick.

20 So my objection is the Government is going to get
21 into the recording, which we've litigated ad nauseam here,
22 and the basis and who's going to say what.

23 The issues I have is that the Government plans to
24 publish -- and I think your Honor can see that -- obviously,
25 I find the titles -- one, I'm willing to stipulate that he

1 published whatever he published as a result of what he did.

2 THE COURT: Mr. Crisp, let me just interrupt you.

3 So, Mr. Nestler, what's the purpose of putting in
4 news articles or trying to put in news articles or portions
5 of news articles?

6 MR. NESTLER: We're putting in only the headline
7 of the news article, to include the headline -- and
8 actually, the version we have has the fact that it was
9 published in *The Guardian* -- to put in the name of the
10 reporter, the date it was published and the headline,
11 because Ms. Watkins the following day sends a message to
12 another individual, Holden Haney, about this article.

13 And so we are not planning to introduce anything
14 about the substance, just that the article was published and
15 what its headline was. And I told Mr. Crisp that we, of
16 course, do not have a problem with a limiting instruction.

17 THE COURT: And what is Ms. Watkins's
18 communication? It's in direct reference to this particular
19 article?

20 MR. NESTLER: Yes.

21 THE COURT: Okay.

22 MR. NESTLER: She says *The Washington Post* has
23 reposted *The Guardian* article about Zello.

24 THE COURT: I see.

25 MR. NESTLER: And so that fact is not coming in

1 through this witness, obviously, but this evidence is coming
2 in through this witness, that he -- this is the first time
3 he publicly said anything about the Zello recording. And so
4 the fact of him saying it on -- this is the first time that
5 was publicly mentioned, that's what's relevant.

6 And again, we're okay with a limiting instruction
7 that this is the type -- or that we're not introducing this
8 for the fact of the matter or the truth of the matter
9 asserted. It's purely the fact that this article was
10 published on this date.

11 THE COURT: Okay. Look, I think the question is:
12 Can you -- is there a stipulation to be reached that could
13 avoid the concerns that Mr. Crisp is raising about some of
14 the characterizations here? I mean, the title is:
15 "Revealed: Walkie-talkie App Zello Hosted Far-Right Groups
16 Who Stormed Capitol. Audio and chat logs show
17 insurrectionists communicated via the app which has avoided
18 proactive content moderation."

19 I mean, look, some of these words are sort of
20 clearly value-laden and can be disputed by both sides here,
21 it seems to me. And so if we could come up with a more than
22 neutral stipulation -- because I think the fact of an
23 article being published and when it was published,
24 et cetera, none of that is in dispute.

25 MR. NESTLER: Yes, your Honor.

1 THE COURT: And so does that work for
2 you, Mr. Crisp?

3 MR. CRISP: It does, your Honor.

4 THE COURT: Okay. Terrific.

5 MR. NESTLER: To be clear, there's also one
6 article he published in October, which first had nothing to
7 do at all with Ms. Watkins or the Oath Keepers, but that's
8 what first clued Mr. Loewinger in to Zello. I was planning
9 to introduce that to explain why he was in this chat that
10 day. And again, just to put up the title. That's going to
11 be 5150. If we could pull that up.

12 This is the article he published in October, which
13 made him aware of what Zello was. And so that's why we're
14 introducing, again, just the headline, not anything about
15 substance.

16 THE COURT: Same objection?

17 MR. CRISP: Again, yes. I don't have any
18 objections, your Honor, to stipulating that he became aware
19 of Zello and, as a result, wrote an article about it and how
20 it attracted groups like the Oath Keepers. My concern is
21 we're dealing with, again, what I would consider to be
22 ostracizing language.

23 So I don't mind saying that --

24 THE COURT: Look, I guess the question is: What
25 could be the substitute? You know, he investigated this

1 issue in the fall of 2020. I mean, I think he has to say
2 that there's some connection that he learned of between the
3 use of Zello and far-right groups, because how else did that
4 explain that he's listening in to Zello on January the 6th?

5 So there has to be a little bit of connective
6 tissue there; and whether it's through this headline or
7 through his own testimony, I think at least that's got to
8 come in to at least give it some context. In a sense, just
9 having the article title come in may be better off than him
10 expounding upon the finding of his writings.

11 MR. CRISP: My concern is, again, we are making
12 this trial more of a political trial as opposed to a trial
13 involving the Oath Keepers.

14 THE COURT: All right. So that's not true. I
15 mean, we've had very little discussion about ideology,
16 politics and the like in this case. I think --

17 MR. CRISP: I'm simply saying, why can't we keep
18 it as Oath Keepers recruiting to avoid "organizations like
19 the Oath Keepers"?

20 MR. NESTLER: As we litigated extensively
21 pretrial, not all of the other people on the Zello chat on
22 January 6th were Oath Keepers. That's part of our theory of
23 the case.

24 THE COURT: Right. I mean, that was part of the
25 reason you wanted to keep it out, that there were others on

1 that Zello chat other than the Oath Keepers.

2 Look, you know, as far as this headline goes,
3 relative to the one I had bigger problems with, this is not
4 such a big deal. I mean, it's not as big a deal. I mean,
5 it's how Zello became a recruitment and organizing tool for
6 the far right.

7 Now, you know, calling it far right has some, you
8 know, value -- some value proposition, I suppose, associated
9 with it. But, again, you know, we've got to give the jury
10 some context for why he's listening in on the call in
11 January. And it can't just be that I was interested in
12 Zello and I happened upon this. I mean, there's got to be a
13 little bit more than that. Not a lot more, but a little bit
14 more than that, it seems to me, to provide some context for
15 it all.

16 MR. CRISP: Again, I still fail to understand why
17 we can't simply say that, you know, which entities were
18 willing to use Zello and why it became a --

19 THE COURT: Can he testify that, in fact, one of
20 the entities that he learned about in October -- mid-October
21 were the Oath Keepers?

22 MR. CRISP: I would be shocked if he can't. I
23 mean, I'll leave that to the Government, because it's their
24 witness.

25 MR. NESTLER: I wasn't planning to get into that

1 with him because, again, he is a reporter, and so we are
2 trying to also be sensitive as to things that he is going to
3 testify about.

4 THE COURT: Right.

5 MR. NESTLER: So I'm just doing things that he did
6 publicly.

7 THE COURT: Look, let's -- I'll leave this in. I
8 will instruct the jury not to take anything from the fact of
9 how the article characterizes the users of Zello and that
10 it's simply being shown to them to provide context for the
11 reporter's testimony and the reason he, you know, later on
12 did the recording. Okay?

13 MR. NESTLER: Yes, your Honor. Thank you.

14 THE COURT REPORTER: For the record, this is 5150.
15 And the other one was what number?

16 MR. CRISP: Well, there's two more. There's 5151
17 and 5152. So those subsequent ones, we are going to engage
18 in a stipulation on the substance of later.

19 THE COURT: So that's it. Right? No more?

20 MR. CRISP: Right.

21 MR. NESTLER: Yes, your Honor.

22 If your Honor would just remind the jury that
23 we're taking this witness out of order.

24 THE COURT: Yes. Of course.

25 MR. NESTLER: Thank you.

1 THE COURTROOM DEPUTY: Jury panel.

2 (Whereupon, the jury entered the courtroom at 3:31
3 p.m. and the following proceedings were had:)

4 THE COURT: Please be seated, everyone.

5 Welcome back. Ladies and gentlemen, we are going
6 to put a pause on Agent Hilgeman's continued
7 cross-examination because of scheduling issues with respect
8 to our next witness. We're going to bring the next witness
9 in and have that witness testify a little bit out of order,
10 and then we'll return to Agent Hilgeman's cross-examination
11 after that witness is done. Okay?

12 MR. NESTLER: Thank you, your Honor. We
13 appreciate the Court's indulgence.

14 The Government calls Micah Loewinger.

15 THE COURTROOM DEPUTY: If you'd have a seat. If
16 you'd please raise your right hand.

17 MICAH LOEWINGER, GOVERNMENT WITNESS, SWORN

18 THE WITNESS: Can I take off my mask?

19 THE COURT: You can, Mr. Loewinger.

20 THE WITNESS: Thank you.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY MR. NESTLER:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

1 Q. Could you please state and spell your name for us.

2 A. My name is Micah Loewinger. M-I-C-A-H,

3 L-O-E-W-I-N-G-E-R.

4 Q. And, Mr. Loewinger, what do you do for a living?

5 A. I'm a reporter.

6 Q. Where do you work?

7 A. I work for a podcast and public radio show called On the

8 Media.

9 Q. And does a certain news organization own On the Media?

10 A. Yes. New York Public Radio.

11 Q. How long have you been working as a reporter connected
12 with New York Public Radio?

13 A. I've worked there since 2015.

14 Q. What city are you based in?

15 A. New York.

16 Q. Did you receive a subpoena compelling you to testify
17 here today?

18 A. I did.

19 Q. Were you willing to testify voluntarily without having
20 received a subpoena?

21 A. No.

22 Q. And why is that?

23 A. I believe strongly in journalistic independence and
24 integrity.

25 Q. Now, Mr. Loewinger, as a journalist, do you have any

1 particular areas of focus?

2 A. Yes. I focus on Internet culture, politics and the far
3 right.

4 Q. And what is a podcast?

5 A. A podcast is a radio show that's distributed through the
6 internet.

7 Q. Are you familiar with something called Zello?

8 A. Yes.

9 Q. What is Zello?

10 A. Zello is a walkie-talkie app.

11 Q. And when did you first become familiar with Zello?

12 A. I first learned about it in 2019.

13 Q. Did you create an account on Zello?

14 A. Yes.

15 Q. Why is that?

16 A. I wanted to learn about the app to see if there was
17 something I could report on.

18 Q. Approximately how many accounts do you have with Zello?

19 A. Between four and seven accounts.

20 Q. Why do you have more than one account?

21 A. Occasionally, I was banned from chat rooms that I was
22 looking into, and so I would need to use a new account on a
23 different device.

24 Q. Were you banned because of what you were saying in those
25 chat rooms?

1 A. No. I did not speak. But as an investigative
2 journalist, part of my job entails reporting and writing
3 about conversations that people may not want me to know
4 about.

5 Q. Did you use a desktop or a cell phone or both to log
6 into Zello?

7 THE COURT: Mr. Loewinger, I just notice you keep
8 moving. You can actually bring that microphone closer to
9 you rather than having to lean forward every time.

10 THE WITNESS: This is more comfortable. Thank
11 you.

12 BY MR. NESTLER:

13 Q. Is this your first time testifying in court?

14 A. Yes.

15 Q. Did you use a desktop or a cell phone or both to log
16 into Zello?

17 A. Both.

18 Q. Let's walk through briefly how one would use Zello.

19 MR. NESTLER: If we could pull up Exhibit 5115,
20 just for the witness, please.

21 BY MR. NESTLER:

22 Q. Have you reviewed these slides previously,
23 Mr. Loewinger?

24 A. Yes.

25 Q. Would referring to them as you're testifying help

1 explain your testimony about how Zello works?

2 A. Yes.

3 MR. NESTLER: The Government would move to publish
4 Exhibit 5115 as a demonstrative.

5 MR. CRISP: No objection, your Honor.

6 THE COURT: Government's 5115 will be shown as a
7 demonstrative.

8 (Whereupon, Government's Demonstrative Exhibit No.
9 5115 was published in open court.)

10 THE COURT: Ladies and gentlemen, a demonstrative
11 exhibit is just what it sounds like. It's a way to
12 demonstrate certain evidence and assist the jury in helping
13 to understand it. This is not evidence, however, that will
14 be admitted for your consideration during deliberations.

15 BY MR. NESTLER:

16 Q. So when you sign up with Zello, is this the general --
17 what the screen looks like?

18 A. I believe so.

19 Q. Do you have to enter an email address?

20 A. Yes. I think so.

21 Q. And create a username?

22 A. Yes.

23 Q. And can you also create a display name?

24 A. I believe so.

25 Q. And is a display name potentially different from a

1 username?

2 A. Yeah.

3 Q. And can you also enter a phone number as part of your
4 account?

5 A. I believe you can.

6 MR. NESTLER: Let's go to the next page, please.

7 BY MR. NESTLER:

8 Q. Let's talk about channels. How does one find a channel
9 on Zello?

10 A. If my memory serves me correctly, you can search for a
11 channel if you know the name of the channel in the app. And
12 you can also click on a link to enter a channel.

13 Q. And once you've selected a channel, how do you listen to
14 what's being said on that channel?

15 A. I believe you add the channel.

16 Q. And if you add the channel, is that also becoming a
17 subscriber to that channel?

18 A. I think so.

19 Q. So if you are not a subscriber to a channel, can you
20 hear what's being said on the channel?

21 A. No. I believe you'd have to be a subscriber to a
22 channel to be able to hear what's being said.

23 Q. Are you familiar with different types of channels on
24 Zello?

25 A. It's been a little while since I reported on this, but

1 yes.

2 Q. Generally, what's your understanding of the different
3 types of channels?

4 A. There are public channels that don't require a password.
5 There are private channels that do require a password. And
6 there are some channels that are -- anyone can -- are public
7 insofar as anyone can join the channel, but they need to
8 receive express permission to be able to listen and talk.

9 Q. Does that have a certain kind of unique Zello name for
10 that kind of a channel?

11 A. I believe the company calls it Zselect.

12 Q. Like "Select," but starting with the letter Z?

13 A. Yes.

14 Q. Once you're subscribed to a channel, can you also see
15 something called a channel log?

16 A. Yes.

17 MR. NESTLER: If we can go to the next page,
18 please, Ms. Rohde.

19 BY MR. NESTLER:

20 Q. Is this approximately what a channel log looks like when
21 looking at the Zello app on a phone?

22 A. I believe so.

23 Q. And then what can subscribers do once they're a member
24 of a channel to communicate?

25 A. They can send an audio message, they can write a text

1 message or they can send a photo or image.

2 Q. And does the Zello log that we're looking at here show
3 approximately how long each person was speaking for if they
4 were sending an audio message?

5 A. Yes.

6 Q. Is that -- the numbers on the right-hand side, that's
7 what that would reflect?

8 A. I believe so.

9 Q. Now, if we go down one more page, if somebody wanted to
10 talk on the channel of which they were a member, would the
11 app look something like this?

12 A. Yes. I believe so.

13 Q. And what are you supposed to do to talk?

14 A. As the app indicates, you hold the button to speak and
15 then stop holding it when you're done speaking.

16 Q. Like a walkie-talkie?

17 A. Yes.

18 Q. Okay.

19 MR. NESTLER: We can take that down now, please,
20 Ms. Rohde.

21 BY MR. NESTLER:

22 Q. So let's talk about a person's access to audio on Zello.
23 If you're logged into Zello, the app, and subscribed to a
24 channel, will that audio from that channel play on your
25 phone?

1 A. Yes.

2 Q. Will the audio play even if your phone is locked?

3 A. Again, it's been a little while since I've written about
4 this. It's my understanding that if you use a certain
5 setting, then, yes, you can hear sound if your phone is
6 locked.

7 Q. Have you ever been subscribed to more than one channel
8 at once?

9 A. Yes.

10 Q. Will -- how does the app, from your experience, handle
11 sort of delivering audio if you're subscribed to two
12 channels at the same time?

13 A. I'm not certain about this.

14 Q. Okay. Did you publish a podcast in October of 2020
15 regarding Zello?

16 A. I did.

17 MR. NESTLER: If we could pull up on the screen
18 Government Exhibit 5150, just for the witness.

19 BY MR. NESTLER:

20 Q. Is this a screenshot of the title page of your podcast
21 from October of 2020?

22 A. It is.

23 MR. NESTLER: The Government would move to admit
24 Exhibit 5150 pursuant to our conversation.

25 THE COURT: Government's 5150 is admitted.

1 (Whereupon, Government's Exhibit No. 5150 was
2 entered into evidence.)

3 THE COURT: Ladies and gentlemen, just for your
4 information, this particular exhibit is being admitted just
5 to provide you with essentially contextual information for
6 this witness's testimony. The headline itself is not any
7 particular evidence and you shouldn't draw any inference
8 from the headline that is before you. All right?

9 MR. NESTLER: Thank you, your Honor.

10 BY MR. NESTLER:

11 Q. What was the title of your podcast segment,
12 Mr. Loewinger?

13 A. "How Zello Became a Recruitment and Organizing Tool For
14 the Far Right."

15 Q. And did your podcast segment win any prizes?

16 MR. FISCHER: Objection.

17 THE COURT: Sustained.

18 BY MR. NESTLER:

19 Q. Okay. Let's talk about January 5th of 2021. What city
20 were you in that day?

21 A. Brooklyn, New York.

22 Q. Were you working?

23 A. I was.

24 Q. Were you working from home or the office?

25 A. I was working from home.

1 Q. Why were you working from home?

2 A. Due to the pandemic, we were working remotely.

3 Q. Did you log into Zello at some point while you were
4 working at home on January 5th?

5 A. I believe so.

6 Q. What device did you use?

7 A. I used my phone.

8 Q. Why did you log into Zello on January 5th?

9 A. I had read reporting that suggested there was going to
10 be a large event in D.C. on January 6th.

11 Q. Did your prior reporting on militia groups and Zello
12 have anything to do with your actions about logging into
13 Zello and being interested in the channels that were
14 occurring around this time?

15 A. Yes.

16 Q. In what way?

17 A. I was familiar with militia groups using Zello during
18 events that they were interested in and wanted to see if
19 there was something I could report on.

20 Q. When you logged into Zello on January 5th, did you end
21 up subscribing to a channel titled Stop the Steal J6?

22 A. I did.

23 Q. Why did you subscribe to that channel?

24 A. The channel shared the name of the Stop the Steal Rally
25 that would happen -- was supposed to happen the next day.

1 Q. How did you subscribe to the channel?

2 A. I believe I just clicked on it and added it.

3 Q. Do you recall hearing any audio that was accessible to
4 you when you were a subscriber of the channel?

5 A. Yes.

6 Q. Approximately how long were you subscribed to that
7 channel?

8 A. I believe I was subscribed for 20 minutes to an hour.

9 Q. Did there come a time when you stopped being subscribed
10 to that channel?

11 A. Yes.

12 Q. How did that happen?

13 A. I remember hearing somebody recognize my username and
14 said: "That's a reporter." And then I could no longer
15 access the channel.

16 Q. Were you blocked?

17 A. I think so.

18 Q. And after you were blocked from the channel, you were no
19 longer a subscriber to it. Is that correct?

20 MR. CRISP: Your Honor, I have to object based on
21 speculation. I would ask that the jury be instructed to
22 disregard his answer as speculative. He says he thinks so.
23 He can't definitively say.

24 THE COURT: It's overruled. He can testify as to
25 what he heard. It's okay. It's overruled.

1 MR. CRISP: He didn't testify to what he heard.

2 He testified to what he thought. He said: I think so.

3 He doesn't know for sure. I don't think he laid a
4 foundation.

5 THE COURT: Okay. So -- I guess the objection
6 will be sustained in terms of what he believes happened. If
7 the Government wants to walk through the timing of it, then
8 that's acceptable.

9 MR. NESTLER: Sure.

10 BY MR. NESTLER:

11 Q. So did you hear anything of note during the short period
12 of time you were a subscriber to this channel on
13 January 5th? Sorry. Anything of substance right before you
14 were no longer having access to the channel? That was a bad
15 question. Let me back up a second.

16 You said you were a subscriber for some short
17 period of time, 20 minutes to an hour. Right?

18 A. Yes.

19 Q. Aside from the comment you heard just before you stopped
20 being a member of the channel, did you hear anything else
21 that was memorable or of note?

22 A. Nothing that I considered newsworthy at the time.

23 Q. And then just before you stopped being a member of the
24 channel, what was it that you heard somebody say?

25 A. I heard somebody recognize my username, call me out as a

1 reporter.

2 Q. And what happened just after that?

3 A. I could no longer hear what was being discussed on the
4 channel.

5 Q. Could you tell, based on your Zello app, whether you
6 were still a subscriber to that channel?

7 A. It didn't appear so.

8 Q. What did that mean to you?

9 A. I interpreted that as being banned.

10 Q. And does Zello, the app, ban people or do people who
11 control channels ban people?

12 A. I'm -- I believe in this case, the people who were
13 running the chat room would have had that privilege.

14 MR. CRISP: Objection as to -- nonresponsive to
15 the compound question. He only answered one part of it.

16 THE COURT: I think that's overruled. I think he
17 answered the question. It's okay.

18 Go ahead.

19 BY MR. NESTLER:

20 Q. Okay. After you believe you were banned from this
21 channel, did you immediately try to log back in?

22 A. No.

23 Q. Why not?

24 A. I didn't want to draw attention to the fact that I was
25 trying to re-enter the chat room.

1 Q. What were you concerned would happen if you logged back
2 in a few minutes later with a different one of your
3 usernames?

4 A. It might appear suspicious and I might be banned
5 immediately again.

6 Q. Okay. Let's fast-forward about a day to January 6th of
7 2021.

8 Were you working from home in Brooklyn that day?

9 A. I was.

10 Q. Did you log into Zello at some point?

11 A. I did.

12 Q. At this point, what do you use? What device?

13 A. I used my PC in my office.

14 Q. How did you access your PC in your office?

15 A. I was using remote software.

16 Q. And did you log into Zello on January 6th with the same
17 account you had used on January 5th or a different account?

18 A. A different account.

19 Q. Why did you use a different account?

20 A. The first account was banned from the chat room and it
21 would be banned even if I tried to use a different device.

22 Q. When you logged into Zello with a different account on
23 January 6th using your computer, did you also subscribe to
24 the Stop the Steal J6 channel?

25 A. I did.

1 Q. When you first subscribed this day, on January 6th,
2 could you hear anything?

3 A. I don't remember hearing anything when I first
4 subscribed.

5 Q. What was your understanding of why you could not hear
6 anything?

7 A. I believe the channel was a Zelect channel.

8 Q. And what does that mean in terms of your ability to
9 hear, because it was a Zelect channel?

10 A. I believe that means a moderator or admin of the channel
11 would have to give me permission to listen and speak
12 explicitly.

13 Q. But nevertheless, you were still a subscriber?

14 A. That's right.

15 Q. What did you do with respect to your Zello app on
16 January 6th and being a member of this channel for which you
17 could not hear anything?

18 A. I more or less stopped paying attention.

19 Q. And remind us, was the afternoon of January 6th in your
20 profession a busy day or a slow day?

21 A. Very busy day.

22 Q. What were you doing generally on the afternoon of
23 January 6th?

24 A. I was watching news coverage on TV.

25 Q. Did you immediately review the Zello audio that your

1 computer was accessing on that day, on January 6th?

2 A. I remember hearing it intermittently in the background
3 at moments, but I did not closely review it.

4 Q. And when did you first closely review that audio that
5 your computer was capturing?

6 A. It was the Friday of that week.

7 Q. So two days after January 6th?

8 A. That sounds right.

9 MR. NESTLER: If we could pull up on the screen
10 just for the witness Exhibit 1073.

11 BY MR. NESTLER:

12 Q. I have in front of you, Mr. Loewinger, Exhibit 1073. Do
13 you recognize what this is?

14 A. I do.

15 Q. What is it?

16 A. This is a video that I made with the sound from the chat
17 room that I captured.

18 Q. So, Mr. --

19 MR. NESTLER: At this time, your Honor, the
20 Government would seek to publish this screen page to the
21 jury and also, eventually, play about five seconds, but not
22 formally move this into evidence. We'll move it into
23 evidence through a separate witness.

24 MR. CRISP: No objection.

25 MR. NESTLER: If we could show the jury, please --

1 and if we could play just the first five seconds, please,
2 Ms. Rohde.

3 (Whereupon, segments of Government's Exhibit No.
4 1073 were published in open court.)

5 BY MR. NESTLER:

6 Q. Is that what you saw and heard -- saw -- in terms -- let
7 me start that again.

8 Is this chat log what you saw when you looked at
9 the chat log on your computer?

10 A. Yes.

11 Q. And is that audio, that first five seconds, is that what
12 you heard when you reviewed the audio from Zello?

13 A. Yes.

14 Q. The fuzzy bar in the top left corner, what is that?

15 A. So I made this video after I published my reporting in
16 *The Guardian* and with On the Media, and I thought that I
17 might continue doing reporting, so I added this blur at the
18 top so that my Zello username wouldn't be visible.

19 Q. So underneath that blur is your Zello username?

20 A. Yes.

21 Q. And do you see where it says, "Stop the Steal J6" at the
22 top left?

23 A. Yes.

24 Q. And how many users did the app indicate were online?

25 A. I believe it indicates there were 65.

1 Q. What do the green circles on the right-hand side
2 indicate, as far as you're aware?

3 A. I believe they indicate these are audio messages.

4 Q. And what does the green arrow next to the green circle
5 indicate?

6 A. The green arrow indicates that this is the audio message
7 being played.

8 Q. And earlier, you indicated that people are able to
9 communicate on the channel without speaking through audio.
10 Is that correct?

11 A. Yes.

12 Q. And I'm circling here at 1:52 somebody named Canadian
13 Dixie.

14 Do you see that?

15 A. Yes.

16 Q. And is that an example of somebody communicating with a
17 text or a post without actually sending audio?

18 A. I think that's right.

19 Q. Let's discuss how you were able to hear audio on your
20 version of Zello after you originally were not able to hear
21 the audio.

22 So you indicated that the channel type was, as far
23 as you knew, a Zelect. Is that right?

24 A. Yes.

25 Q. Is it your understanding that your permissions for the

1 channel changed at some point?

2 A. Yes.

3 Q. And explain your basis for that understanding.

4 A. At the very start of this recording, we heard -- I heard
5 somebody say: "This is an open channel."

6 Q. What did that mean to you that this was now an open
7 channel?

8 A. I interpreted that as the security on the channel had
9 been lifted.

10 Q. And to be clear, that comment was at 1:48 p.m. Is that
11 right?

12 A. I believe so.

13 Q. And you had logged into Zello and subscribed to this
14 channel some period of time before 1:48 p.m.?

15 A. Yeah.

16 Q. And so -- have you ever listened to or accessed any
17 audio on this channel on January 6th prior to 1:48 p.m.?

18 A. I don't think so.

19 Q. Now, once it became an open channel, could any person
20 who had the Zello app listen to what was being said on the
21 channel?

22 A. Based on my understanding of the app, I believe that's
23 right.

24 Q. Did a person have to be a subscriber to this channel to
25 do that or could -- or did any -- let me ask it this way:

1 It said here on the top there were 65 users online.

2 Do you remember that?

3 A. Uh-huh.

4 THE COURT REPORTER: Is that yes?

5 THE WITNESS: Yes.

6 BY MR. NESTLER:

7 Q. Did a person have to be a subscriber to this channel to
8 hear what was being said on the channel?

9 A. That's my understanding.

10 Q. So does this mean that you were one of only 65 people
11 who were able to actually hear what was being said?

12 A. I'm not sure if this 65 refers to the total number of
13 users or just, as this text indicates, the number of
14 subscribers who were online at the moment that I captured
15 this.

16 Q. Understood.

17 So there could be some other number out there of
18 other subscribers?

19 A. Correct.

20 Q. But this is the -- what indicates the users who were
21 online at the time this recording started?

22 A. At the moment that I captured this screen recording,
23 yes.

24 Q. And is it your understanding, based on your use of
25 Zello, that even though it was an open channel, could a

1 moderator still block or ban somebody?

2 A. Yes.

3 Q. Now, you indicated earlier you created this recording.

4 Is that right?

5 A. I did.

6 Q. And how did you create the video portion of this
7 recording?

8 A. I created the video portion using QuickTime.

9 Q. And did you then just let the channel log play for an
10 hour and 46 minutes and 40 seconds?

11 A. I did.

12 Q. Now, at zero seconds, do you see a cursor on the top
13 middle of the screen?

14 A. I see it.

15 Q. Is that -- whose cursor is that?

16 A. That's my cursor.

17 MR. NESTLER: And if we could play this for two
18 seconds, Ms. Rohde.

19 (Whereupon, segments of Government's Exhibit No.
20 1073 were published in open court.)

21 BY MR. NESTLER:

22 Q. Where does the cursor go?

23 A. Evidently, I moved it off-screen.

24 Q. Why did you do that?

25 A. I saw that it was potentially in the way.

1 Q. And did you -- how did you record the audio portion of
2 this file?

3 A. Using a program called Audio Hijack.

4 Q. And after recording both the audio portion and the video
5 portion, how did you merge the two together?

6 A. Using Adobe Premiere.

7 Q. After it was edited or -- sorry.

8 After it was all merged together, did you edit the
9 product in any other way?

10 A. Just adding the blur on the username and adding the logo
11 for On the Media.

12 Q. And was creating and publishing this recording part of
13 your job as a journalist with On the Media?

14 A. Yes.

15 Q. Let's fast-forward a couple of days. On January 13th of
16 2021, did you publish an article in *The Guardian*?

17 A. I did.

18 Q. Regarding this -- what you had learned from this
19 recording?

20 A. That's correct.

21 Q. And then, on January 15th, two days after that, did you
22 publish a podcast on New York Public Radio's On the Media?

23 A. Yes.

24 Q. Now, at some point later, did you upload this file right
25 here, Government Exhibit 1073, to YouTube?

1 A. Yeah.

2 Q. And why?

3 A. I received an inquiry from the Department of Justice
4 asking for a copy of these reporting materials, and I knew
5 there was public interest, and so I put it on YouTube.

6 Q. You did not give a copy directly to the Government?

7 A. No.

8 Q. And this video here, Exhibit 1073, is this the same
9 video you had created and then uploaded to YouTube?

10 A. I believe so.

11 MR. NESTLER: No further questions, your Honor.

12 THE COURT: Mr. Crisp?

13 MR. CRISP: Thank you.

14 CROSS-EXAMINATION

15 BY MR. CRISP:

16 Q. Mr. Loewinger, good afternoon.

17 A. Good afternoon.

18 Q. It's pronounced "Loewinger." Correct?

19 A. That's right.

20 Q. My name is Jonathan Crisp, and I represent Jessica
21 Watkins.

22 A. Hello.

23 Q. I want to talk about how Zello works a little bit more.
24 You said it works like a walkie-talkie. Right?

25 A. That's correct.

1 Q. Did you ever use them as kid, the walkie-talkie?

2 A. I don't recall.

3 Q. Okay. Certainly you would agree with me that, as you're
4 using this app, you're going to be able to hear based on the
5 surrounding noise around you and the volume that you have it
6 playing at. Would you agree?

7 A. The app would pick up ambient volume. Yes.

8 Q. Okay. So if there's a lot of background noise around
9 you and your volume is not high enough to overcome that,
10 you're not going to be able to hear it?

11 A. That's right.

12 Q. Okay. And you said, when you log in, will it always
13 play, even if your phone gets locked out? And you said you
14 believe so. Right?

15 A. It's my understanding. Yes.

16 Q. Okay. How is that your understanding?

17 A. It's been a little while since I've written about the
18 app. If my memory serves me correctly, you can choose to
19 have sound from chat rooms play while your phone is locked.

20 Q. Okay. So that means, if you don't choose that setting,
21 then it won't?

22 A. I'm not certain.

23 Q. Okay. So if I understand what you're saying correctly,
24 then, you're not sure if it will play if your phone is
25 locked or not?

1 A. I believe it depends on what the setting is.

2 Q. Okay. So again, back to my earlier question: It is
3 possible, if the setting is not set to play while it's
4 locked, you wouldn't hear it?

5 A. Yes.

6 Q. Thank you.

7 You were able to identify who the creator of that
8 chat group was. Right? And if I'm mislabeling it a chat
9 group, then please tell me what I should call it. But this
10 Stop the Steal -- is it called a chat group?

11 A. I'm not certain what Zello calls it. But yeah. Chat
12 room, group. It works.

13 Q. We'll go with chat room. So the Stop the Steal chat
14 room, that was created by whom?

15 A. I believe it was created by a user calling themselves
16 1 Percent Watchdog.

17 Q. And was that the voice that we first heard -- or the
18 only voice I think we did hear through your direct
19 testimony -- on that recording?

20 A. Based on my reporting, yes.

21 Q. Okay. Who is 1 Percent Watchdog?

22 MR. NESTLER: Objection.

23 MR. CRISP: Basis, your Honor?

24 MR. NESTLER: Well, outside the scope.

25 THE COURT: It is outside the scope. Get on the

1 phone, please.

2 (Whereupon, the following proceedings were had at
3 sidebar outside the presence of the jury:)

4 THE COURT: What do you expect the testimony will
5 be, Mr. Crisp?

6 MR. CRISP: I really have no idea. We've been
7 trying to see if anybody knows who the identity of this
8 individual is. So we'd like to know if he knows because it
9 certainly may have relevance to testimony later.

10 MR. NESTLER: I don't believe --

11 THE COURT: Go ahead.

12 MR. NESTLER: I don't believe that's an adequate
13 basis for asking the question. Mr. Loewinger is a reporter
14 and has done other reporting, and I'm sensitive to not get
15 into the idea of what his reporting revealed. I only got
16 into the narrow topics of what it is that he heard and
17 published.

18 THE COURT: Yes. I think you've got to have a
19 good-faith basis to believe that he would have the answer to
20 the question. I mean, this isn't discovery.

21 MR. CRISP: It certainly is relevant to the topic
22 at hand because this is the individual that we're going to
23 hear a lot of information from that I would like to be able
24 to identify and know whether or not my client even knew him.
25 He's going to be hugely relevant later on.

1 THE COURT: Well, here's the issue, which is we've
2 got a reporter on the stand, and if you ask him a question
3 that goes beyond the Government's scope here and ask him
4 substantively about somebody who's on a Zello chat and what
5 additional investigation he did, I would have a lawyer who's
6 sitting in the back there jump up and potentially object.
7 And he may not know whether to object or not.

8 So that's my concern.

9 MR. CRISP: He did say he was the administrator of
10 this chat. So if -- they brought in the administrator and
11 the relevance of it based on who this chat group or chat
12 room was.

13 MR. NESTLER: That's actually not correct. I did
14 not bring that out on direct. Mr. Crisp brought that out on
15 cross.

16 THE COURT: I think -- well, in any event, look, I
17 think absent reason to think he knows the answer --

18 MR. CRISP: I have a good-faith basis to think
19 that he does. And I think he may say he doesn't want to.
20 Or he may answer. I have no idea. But I'm inclined to
21 think that he does. If the Government doesn't want to ask
22 this --

23 THE COURT: Is there anything in the article that
24 establishes that he would have -- would know who the person
25 was?

1 MR. CRISP: I haven't read the articles because --
2 I just got the headlines from them because I didn't realize
3 they were relevant until 1:30 this morning. But I can
4 simply ask if he knows.

5 THE COURT: Let's see. Ask. Let's see what he
6 says.

7 MR. CRISP: Thanks, Judge.

8 (Whereupon, the following proceedings were had in
9 open court:)

10 MR. CRISP: May I proceed, Judge?

11 THE COURT: You may.

12 BY MR. CRISP:

13 Q. Sir, I'm going to rephrase the question here a little
14 bit.

15 Do you know who 1 Percent Watchdog is, the
16 identity?

17 A. I do not know the identity.

18 Q. Okay. Thank you.

19 There was a question earlier that we -- that I had
20 objected to in terms of what I deemed to be sort of a
21 multi-pronged question. It was two parts. One was the
22 administrator of the chat room can block you. Right? Do
23 you remember that?

24 A. Yes.

25 Q. I'm sorry. When you nod your head, I need to get an

1 audible response for the court reporter, so I may ask you to
2 do that.

3 And Zello on its own can also do the same. Is
4 that also your understanding?

5 A. I'm not -- I've never witnessed Zello removing someone
6 from a chat room. I think it's possible that Zello could do
7 that. Yes.

8 Q. And I was going to say, not whether you've witnessed it,
9 but certainly it's possible that Zello can do that on their
10 own?

11 A. It's possible.

12 Q. Okay. You also mentioned that you were banned from
13 other chat rooms.

14 Why was that?

15 A. People would address my -- me by my username. They
16 would ask me who I was. And I wouldn't respond.

17 Q. Okay. So these people weren't necessarily individuals
18 that you knew or had any relationship with. Right?

19 A. That's correct.

20 Q. It's fair to say you would create a persona to access
21 these groups?

22 A. Just a username.

23 Q. Okay. The username wasn't your real name?

24 A. No.

25 Q. Okay. So someone other than your actual biological or

1 birth name?

2 A. It was common on the app for the majority of users to
3 use a username that was not their real name.

4 Q. So my question was a little bit different. My question
5 is: You would use a name that wasn't your real name?

6 A. I would use a screen name.

7 Q. Okay. And it wasn't, like, the name you gave here when
8 you just took the oath. Correct?

9 A. It was not my real name.

10 Q. Okay. And your four to seven different accounts, none
11 of them have what you would consider to be your birth name
12 or your given name?

13 A. That's correct.

14 Q. Okay. And you said you were logged on and recorded
15 approximately how much time?

16 A. I'm sorry. I didn't hear that.

17 Q. You said you were logged on and you recorded
18 approximately how long of a period of time?

19 A. I'm sorry. Can you be more specific?

20 Q. The J6 Stop -- the Stop the Steal chat room --

21 A. Yes.

22 Q. -- how long of that time period did you record while you
23 were logged in?

24 A. I don't remember the exact amount that was in the video.
25 But I believe I captured an hour and 40-plus minutes.

1 Q. Okay. Did it continue on beyond that period, to your
2 knowledge?

3 A. I don't recall.

4 MR. CRISP: Court's indulgence, if I may, your
5 Honor.

6 Thank you, sir. I have nothing additional.

7 Thank you, your Honor.

8 THE COURT: Mr. Nestler, any redirect examination?

9 MR. NESTLER: No redirect, your Honor. Thank you.

10 THE COURT: I guess I should have asked. Does
11 anybody else have questions?

12 MR. FISCHER: No cross.

13 THE COURT: No other Defendant? No cross?

14 MR. WOODWARD: Nothing from us, your Honor.

15 THE COURT: Okay. Mr. Geyer?

16 MR. GEYER: No, your Honor.

17 MR. BRIGHT: No, your Honor.

18 THE COURT: Okay. So Mr. Nestler?

19 MR. NESTLER: No redirect, your Honor.

20 THE COURT: All right. Mr. Loewinger, thank you
21 for your time and your testimony. Safe travels back to New
22 York.

23 THE WITNESS: Thank you, your Honor.

24 (Witness excused.)

25 MR. MANZO: We'd recall Agent Sylvia Hilgeman.

1 (Agent Hilgeman retakes the stand.)

2 THE COURT: Mr. Woodward?

3 MR. WOODWARD: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MR. WOODWARD:

6 Q. Good afternoon, Special Agent.

7 A. Good afternoon, sir.

8 Q. We are almost to the end of the day, a fact that I am
9 acutely aware of as I stand between you and the door.

10 My name is Stanley Woodward. I represent Kelly
11 Meggs. I understand that, in this investigation, your
12 expertise, if you will, had been the QRF?

13 A. This is the area I focused on most, yes.

14 Q. And you read for us a number of messages concerning the
15 QRF.

16 A. I did.

17 Q. You did not, however, select the messages that you
18 were -- that were read to the jury. Correct?

19 A. That's correct.

20 Q. Who did select those messages?

21 A. The prosecution team.

22 Q. You did, however, testify that you reviewed those
23 messages for accuracy and you confirmed that those messages
24 reflected what was in the extraction from each of the cell
25 phones you sourced the messages from. A long question. I'm

1 sorry.

2 A. Correct. That is correct.

3 Q. All right. And so the -- Government's Exhibit 6923 --

4 MR. WOODWARD: If we could publish this for both
5 the witness and the jury.

6 BY MR. WOODWARD:

7 Q. This is Slide 42, which has also been annotated as
8 1.S.613.170.

9 You may not remember having read this specific
10 message, but if you could take a look at it.

11 A. I do.

12 Q. All right. And this message purports to be from OK
13 Gator 1 to Stewart Rhodes. Correct?

14 A. Yes.

15 Q. All right. Now, would you have any reason to disagree
16 with me that -- are you familiar with -- new sentence.

17 Excuse me.

18 Are you familiar with Special Agent Palian?

19 A. Yes.

20 Q. He is an agent also working this investigation?

21 A. He is.

22 Q. He's been referred to as the quarterback of the
23 investigation.

24 A. I think he referred to himself that way.

25 (Laughter.)

1 BY MR. WOODWARD:

2 Q. You are making the 4:00 hour just a little bit easier.

3 Thank you.

4 Would it surprise you if I told you that I have --
5 let me just show the jury the following -- an exhibit
6 prepared by Special Agent Palian in which it purports to be
7 the same message sent from Stewart Rhodes? Do you see that
8 exhibit?

9 A. The one that's in front of me right now?

10 Q. Yes, ma'am.

11 A. I do see it. Yes.

12 Q. Any reason to doubt the accuracy or veracity of this
13 information?

14 A. I don't believe so. No.

15 Q. All right.

16 MR. WOODWARD: We would seek to admit this exhibit
17 as KM-12.

18 THE COURT: Okay.

19 MR. MANZO: No objection.

20 THE COURT: KM-12 will be admitted.

21 (Whereupon, Defendant Meggs's Exhibit No. 12 was
22 entered into evidence.)

23 BY MR. WOODWARD:

24 Q. So I'm going to try a little computer wizardry here.

25 MR. WOODWARD: If I -- J.C., if we could publish

1 my screen to the jury as well.

2 BY MR. WOODWARD:

3 Q. I have the messages side by side here. You would agree?

4 A. Yes.

5 Q. All right. And the date is January 2nd, 2021?

6 A. Correct.

7 Q. And the time is 5:49:26 seconds a.m.?

8 A. Yes.

9 Q. And yet on the left-hand side, the message purports to
10 be from OK Gator 1, and on the right-hand side the message
11 purports to be from Stewart Rhodes.

12 A. I see that.

13 Q. Do you know which of those is the correct message?

14 A. I believe that the one on the left is the correct
15 message, but I am not positive, actually, as you show this
16 to me.

17 Q. And so, again, you testified that the --

18 MR. WOODWARD: If we could take my screen down,
19 please, sir. Thank you.

20 BY MR. WOODWARD:

21 Q. -- that it was, in fact, the Government counsel that
22 selected the messages that you showed to the jury. Among
23 others, you reviewed and testified about the D.C. Op Jan 6th
24 '21 chat. Correct?

25 A. Yes.

1 Q. That was one of the chats that was obtained from
2 Mr. Rhodes's phone. Correct?

3 A. That's correct.

4 Q. And you read to the jury a few messages from that chat.

5 MR. WOODWARD: If we could publish this --
6 actually, not yet. If we could publish it to the witness,
7 please.

8 BY MR. WOODWARD:

9 Q. If you see here, there are messages that are sent to
10 this D.C. Op January 6th '21 chat. Do you see these?

11 A. Yes, I do.

12 Q. All right. Would you have any reason -- and you see
13 down at the bottom here where it provides Exhibit 6923?

14 A. I do see that. Yes.

15 Q. And do you have any reason to doubt that that means that
16 this particular message came from the Government's exhibit?

17 A. I have no reason to doubt that.

18 Q. All right. And do you have any reason to doubt -- if
19 you could look at these messages -- that any of these
20 messages are not from the D.C. Op January 6th '21 chat?

21 A. No. I believe I've see all these messages before --

22 Q. All right.

23 A. -- that you're flipping through right now.

24 MR. WOODWARD: Then we would seek to admit this as
25 KM Exhibit 13.

1 MR. MANZO: No objection, your Honor.

2 THE COURT: KM-13 will be admitted.

3 (Whereupon, Defendant Meggs's Exhibit No. 13 was
4 entered into evidence.)

5 MR. WOODWARD: So then if we could publish to the
6 jury --

7 BY MR. WOODWARD:

8 Q. Do you recall reading this message to the jury?

9 A. Yes.

10 Q. And this one?

11 A. Yes.

12 Q. And showing these images to the jury?

13 A. Yes.

14 Q. And do you recall also reading this message to the jury?

15 A. I do not recall that.

16 Q. All right. How about --

17 A. It's possible, though.

18 Q. Do you recall testifying to the jury about this message?

19 A. Yes.

20 Q. And this one?

21 A. Yes.

22 Q. And this one?

23 A. Yes.

24 Q. And this one?

25 A. Yes.

1 Q. And this one here, I believe, was the last message that
2 you testified to the jury about.

3 A. I believe that's correct. Yes.

4 Q. All right. Do you -- I believe you also testified that
5 there were thousands of messages that you reviewed?

6 A. Yes. I think in this chat alone there may have been,
7 you know, over 500 or so.

8 Q. Well, if you wouldn't mind, I'd like to go through a few
9 more of these with you.

10 A. Certainly.

11 Q. Do you remember reading this chat about whether anyone
12 has any intel on march permits, locations and times?

13 A. I remember reading this in the chat. Yes.

14 Q. And any reason to refute that this chat is referring to
15 the march from the Ellipse to the Capitol on January 6th?

16 A. I have no reason to doubt that it refers to the events
17 happening on the 6th. Yeah.

18 Q. And do you recall this chat sent by Kelly Meggs in which
19 he writes that "Two permits were issued: Stop the Steal,
20 6th; Women for Trump, 5th, both 1200 to 1700"?

21 A. I do recall this message.

22 Q. As well as this response in which -- if you could read
23 that for us.

24 A. It is from Blue Skies to the D.C. Op chat: "Do you have
25 locations?"

1 Q. And how did Mr Meggs respond?

2 A. "I assumed Capitol. Let me look again."

3 Q. And someone named Jim -- we don't know who Jim is, do
4 we?

5 A. I believe it's Jim Donaldson.

6 Q. And Mr. Donaldson writes?

7 A. "The official call to action will be issued soon via
8 email. It will have further instruction and details."

9 Q. And generally, do you recall testifying about a Don
10 Siekerman?

11 A. I believe I testified about him briefly. Yes.

12 Q. And Don Siekerman is on the -- on the board?

13 A. He is.

14 Q. Could you read this text from Mr. -- this message from
15 Mr. Siekerman on December 31st?

16 A. Sure. "One thing mentioned last night was how things
17 may play out in D.C. There are a number of various
18 discussions on social media about everything from the left
19 to the right getting ready to start major issues. One thing
20 I will caution everyone on is the use of psyops from both
21 sides, hoping to scare off either side. Else, is going to
22 do..."

23 Is this the next message?

24 Q. Mr. Siekerman continues...

25 A. "While the only social media I use is Parler, I have

1 observed this when someone makes a grandiose statement about
2 what their group/or someone else is going to do. When you
3 look at that person's profile, they just set up the account.
4 There is nothing in the personal profile, et cetera. So
5 take everything we hear with some extra caution and
6 thought."

7 Q. He continues...

8 A. "We do know that CCP bots are active on social media and
9 attempting to stir up issues, as is much of our own 'media.'
10 If you have looked at the StoptheSteal.us website, there are
11 a lot of high-profile state, national elected officials and
12 conservative media folks who will be speaking."

13 Q. And he concludes...

14 A. "While I would not rule out the mayor of D.C. doing
15 something stupid, like trying to shut the protest down, it
16 would not be something that would work in their favor. So
17 let's go forward with the idea that this event will be
18 happening as always. But as always, with contingency plans
19 in case it goes FUBAR on us."

20 Q. He writes "on us."

21 And then Mr. Meggs writes a message on
22 December 31st, 2020. What does that say?

23 A. "Flynn detail on Tuesday. Are we primary detail or
24 backup? Trying to get some guys up early to assist."

25 Q. Any idea who Flynn might refer to?

1 A. He is referring to Michael Flynn.

2 Q. And who is Michael Flynn?

3 A. The retired general, Michael Flynn.

4 Q. Do you know whether General Flynn served in the Trump
5 Administration?

6 A. I believe he did have some position in the Trump
7 Administration. Yes.

8 Q. You don't recall what that position was?

9 A. I don't. I'm sorry.

10 Q. I won't tell on you.

11 Mr. Siekerman continues...

12 A. "We will likely be assisting. Most of these folks have
13 a small detail in place, but need assistance moving through
14 the crowd or ahead of the vehicles. Personally, I am not
15 sure who will be assisting with, but told Flynn may be one.
16 But he is not on the speaker list that I can find. However,
17 that happened the last time also."

18 Q. He continues...

19 A. "Also, realize that nothing is set with these folks. I
20 was on the Flynn detail the last time and things changed on
21 the fly all day. Many reasons: crowds, street closed,
22 different venues, et cetera."

23 Q. Mr. Siekerman continues...

24 A. "So we could be assigned to one person and, due to
25 circumstances, that could change at any point. As all you

1 military/LEO folks know, the best detailed plan survives
2 only until the first contact." Smiley face emoji.

3 Q. Thank you for that.

4 And so Mr. Siekerman is writing about a plan.
5 This is not a message that you read to the jury today or
6 yesterday. Correct?

7 A. It is not.

8 Q. Mr. Siekerman continues and asks about bringing radios
9 along. Do you recall reading this message?

10 A. I've seen this before. Yes.

11 Q. And here Mr. Rhodes appears to jump in. And what does
12 Mr. Rhodes provide?

13 A. "Actually, last time we paired up with First Amend
14 Praetorian" -- I think it might be First Amend- -- well, I'm
15 not sure; I won't speculate on that -- "First Amend
16 Praetorian guard to do PSD for Flynn. Don, Whip, Josh and I
17 (and several other OKs) were all part of that. Like Don
18 said, very fluid and hectic. We also did PSD for a couple
19 other speakers/VIPs at the first D.C. event."

20 Q. PSD, you understand that to mean personal security
21 detail?

22 A. That is what I understand them --

23 Q. And VIP --

24 A. -- to mean.

25 Q. I'm sorry to talk over you.

1 A. This is what I understand them to mean here, yes.

2 Q. And VIP, you understand that to mean very important
3 person?

4 A. Yes.

5 Q. Mr. Rhodes then continues...

6 A. "This time around, we have request for PSD from Ali
7 Alexander (he's had death threats and is asking for a
8 two-man dedicated OK PSD detail), from Bianca (Latinos for
9 Trump), and Marsha, who have their own permitted event on
10 the Mall, and also from a patriot billionaire who is friends
11 with Mrs. Bollinger, another speaker."

12 Q. And Mr. Rhodes continues...

13 A. "We also have requests to provide security for the Jan 5
14 events by VA Women for Trump (Flynn scheduled to appear
15 there) and on Jan 6 for Marsha and Bianca's events and to
16 also help with Jericho March events."

17 Q. And Rhodes continues...

18 A. "Much like last time, we will end up helping at all
19 events. Some will have official paid security and we will
20 be out in crowd acting as additional eyes and ears. Others,
21 like Marsha and Bianca, are looking to us as their primary
22 security. So we will give Latinos for Trump priority."

23 Q. And Mr. Rhodes concludes...

24 A. "Bottom line is those of you wanting to do PSD details
25 will get plenty of opportunities. We may also end up

1 assisting the PSD for Alex Jones again, which was a great
2 feather in our cap."

3 Q. He continues...

4 A. "We worked superbly with both Alex Jones security team,
5 who are awesome guys, and with Praetorian Guard, also
6 awesome veterans, led by SF and SEAL veterans. They love
7 working with us because of our legit, quote-unquote, quiet
8 professional demeanor and skill sets."

9 Q. And so you don't have any reason to disagree that
10 Mr. Rhodes is talking about providing security detail on
11 January 6th. Correct?

12 A. That's what those messages were about.

13 Q. And you testified earlier about a GoToMeeting call that
14 occurred later that -- or, I suppose, that's the next day,
15 on January 1st. Correct?

16 A. Yes.

17 Q. All right. And could you read this message from
18 Mr. Rhodes around the same time as the GoToMeeting event on
19 January 1st?

20 A. "Added Stephen Brown, event producer for Stop the Steal.
21 He requested I add him here. He can help us sort out who is
22 doing what in the creative chaos that will be Jan 5/6. He's
23 a good egg." Thumbs up. Smiley face. "Welcome, Stephen."

24 Q. And here Mr. Rhodes appears to ask Mr. Brown a question.
25 What does Mr. Rhodes say?

1 A. "Stephen, please tell us what you know about which event
2 will be where. We are still unclear."

3 Q. And Mr. Siekerman responds and asks about a map. What
4 does Mr. Siekerman say?

5 A. "Is there a map that we could use of the areas, stages,
6 times? That would really assist our folks, especially if we
7 needed to respond in an emergency."

8 Q. So let me pause there and ask you, do you recall, in all
9 of the messages that you read as part of your investigation
10 ever seeing any transmission of a map of the interior of the
11 Capitol?

12 A. No, I did not.

13 Q. Okay. And here, Mr. Brown provides -- any reason to
14 disagree that Mr. Brown is providing a list of the events
15 that are occurring between January 2nd and January 6th?

16 A. I recall seeing this also.

17 Q. And do you recall seeing this message sent which details
18 what streets will be closed and when, during the events of
19 January 5th and 6th?

20 A. If this was an attachment to the Jan 6 Op chat, I saw
21 it.

22 Q. And do you recall this message from Mr. Meggs?

23 A. I recall seeing this message. Yes.

24 Q. And Mr. Meggs writes that a new police chief is starting
25 today?

1 A. Yes.

2 Q. And that, on Thursday, there will be additional street
3 closures across the city -- excuse me. He says Thursday.
4 But on Tuesday and Wednesday, he writes: "For public
5 safety, with potential intermittent closures in the downtown
6 area."

7 A. Correct. I see that.

8 Q. Do you recall seeing that message?

9 A. Yes.

10 Q. And further writing that his understanding was that
11 Police Chief Robert Contee is planning to facilitate
12 peaceful protests. Do you recall --

13 A. Correct.

14 Q. And this message -- do you recall reading this message
15 earlier to the jury --

16 A. I do.

17 Q. -- in your testimony?

18 But not any of the other ones that preceded this
19 message?

20 A. I believe there were a couple that preceded.

21 Q. Do you recall reading these messages in your
22 investigation?

23 A. Yes.

24 Q. And this one about Mr. Rhodes doing research on private
25 residences or land that we may use?

1 A. Yeah. "In case of truly worst-case situations."

2 Q. That's right.

3 And do you recall this message from Mr. Siekerman?

4 A. Yes.

5 Q. Would you read that for us, please?

6 A. "Just for everyone's knowledge, as of now, but likely to
7 change at any point, all of the various activities that I
8 currently am aware of are occurring right around the
9 Capitol/SOTUS [sic] area, so everything or at least most
10 activities will be within a several block area on both
11 Tuesday and Wednesday."

12 Q. And is the Supreme Court of the United States sometimes
13 referred to as SCOTUS?

14 A. It is.

15 Q. And is the Supreme Court of the United States adjacent
16 to the Capitol Building?

17 A. It is near it. Yes.

18 Q. Mr. Siekerman continues...

19 A. "Unless we find out different or possibly -- will get
20 some other details. We will discuss further at the
21 state/team leaders phone conference tomorrow at 8:30 p.m.
22 Eastern."

23 Q. All right. That would be on January 3rd?

24 A. Yes.

25 Q. And I presume you recall reading this message to the

1 jury?

2 A. Yes.

3 Q. And this one?

4 A. Yes.

5 Q. And I asked you about these maps?

6 A. Yes.

7 Q. And you recall reading this message to the jury?

8 A. I do.

9 Q. How about this one?

10 A. I have read this message before. I did not read it to
11 the jury.

12 Q. Could you read it to the jury?

13 A. "Everyone, tonight or tomorrow, let's take some time to
14 thank our loved ones for putting up with us and our
15 inability not to stop from running to the sounds of battle.
16 Many of us are prior military and first responders and
17 likely our families thought that was behind us and we were
18 just going to ride off together into the sunset. But here
19 we go again. Even though what we do is of utmost importance
20 to our country, holding down the home front is also
21 important. Let them know how important they are. After
22 all, they put up with us."

23 Q. And Mr. Meggs then responds and writes the following
24 message. Could you read that for us, please?

25 A. "We have just picked up Stone's detail for Tuesday as

1 well. We are gonna be rolling in a little earlier."

2 Q. Do you have any idea who Stone is?

3 A. Yeah. That was Mr. Roger Stone.

4 Q. And who is Roger Stone?

5 A. Among other things, I believe he's a close confidant of
6 President Trump.

7 Q. Very good.

8 And do you recall reading this message in your
9 investigation?

10 A. Yes.

11 Q. Mr. Stone then follows up and he writes...

12 THE COURT REPORTER: Mr. Stone?

13 MR. WOODWARD: Thank you, ma'am.

14 BY MR. WOODWARD:

15 Q. Mr. Meggs followed and writes...

16 A. "We got confirmation today. All good."

17 Q. Do you recall reading these messages --

18 A. Yes.

19 Q. -- in your investigation?

20 A. I'm sorry. Yes. Yes, I have.

21 Q. Could you read this message for us, please?

22 A. "Have we offered Lin Wood a security detail? He and
23 family are under threat."

24 Q. Do you know who Lin Wood is?

25 A. I understand that he is also an associate of former

1 President Trump.

2 Q. And do you recall reading this message from Mr. Meggs?

3 Could you read it for us now?

4 A. "Hey, Ohio. Can you guys help with our PSD on Tuesday?
5 We won't have full team yet. We have six to eight. And we
6 have Stone. Wednesday we have 20, so we are good. But
7 Tuesday want in the original op, we are adjusting in the
8 fly."

9 Q. Any -- to your awareness, any Oath Keepers from Ohio
10 come to Washington, D.C., on January 5th and 6th?

11 A. Yes.

12 Q. Anyone by the name of Jessica Watkins?

13 A. Yes.

14 Q. And could you read this message from Ms. Watkins?

15 A. "Roger. We have two of us to offer. Both Oath Keeper
16 vetted and patched."

17 Q. Mr. Meggs responds?

18 A. Yes.

19 Q. What does he say?

20 A. "Will advise same RP as discussed before. Tuesday OK
21 shirts and tan combat or jeans. OK stuff all the way.
22 Wednesday we will be full battle rattle."

23 Q. And Ms. Watkins's responds...

24 A. "Aye. Understood."

25 Q. And again...

1 A. "I'm sure we will work out details on location. I am
2 bringing paper maps for teams to mark locations for key
3 areas."

4 Q. And do you know who Nick Grenier is?

5 A. My understanding is that he is an Oath Keeper from
6 Virginia.

7 Q. Could you read this message from Mr. Grenier?

8 A. "An email I received from someone traveling up: The
9 March to Save America rally's main venue is on the 50-acre
10 Ellipse just south of the White House. As we know, this
11 merges into the Mall around the Washington Monument and
12 heads down to the Capitol, the scene of the 'action.'"

13 Q. And Mr. Grenier continues...

14 A. "Getting tickets, quote-unquote, via the website for
15 this event is to me a fool's errand. The fenced area at the
16 Ellipse will be totally full many hours before 11:00 a.m.
17 In fact, people will be camped out all night just to get in
18 line to get into the Ellipse."

19 Q. As part of your investigation, did you come to learn
20 that members of the Oath Keepers did, in fact, get into the
21 Ellipse?

22 A. Yes.

23 Q. And do you recall reading this message as part of your
24 investigation?

25 A. Yes.

1 Q. And this one again from Mr. Grenier?

2 A. Yes.

3 Q. And this one again from Mr. Grenier?

4 A. Yes.

5 Q. And this one also?

6 A. Yes.

7 Q. And here Mr. Siekerman responds...

8 A. "That is where the president will speak from on Tuesday
9 the 5th only as far as I see from the website. Might have a
10 few more speakers, but most of those will be at Freedom
11 Plaza or between the Capitol/SCOTUS."

12 Q. And if you could read this from Mr. Grenier.

13 A. "Given the uncertainties around moving, maybe it would
14 be preferable, if possible, to have teams stationed in
15 specific areas and minimize individuals' travel deep into
16 the crowded areas or from site to site."

17 Q. And this as well?

18 A. "For those focused on protecting demonstrators, the
19 primary threat to manage will presumably be along the outer
20 edges of the crowds anyway. So maybe having teams encircle
21 the entire area at strategic points."

22 Q. All right. And we're catching up to the messages you
23 read. If you could read this here for us.

24 A. "I am local (Alexandria) and can print and laminate
25 and/or bag some maps if that helps."

1 Q. If you could read this message from Mr. Siekerman.

2 A. "Well, the person coordinating that area is Hydro. Once
3 Whip has all the personnel needed for the close-in PSD,
4 Hydro will be coordinating those teams."

5 Q. Do you know who Hydro is?

6 A. That's Joshua James.

7 Q. And I don't think I asked. Do you know who Whip is?

8 A. Michael Greene.

9 Q. Ms. Watkins responds...

10 A. "I am also bringing laminated maps."

11 Q. And Mr. Grenier responds...

12 A. "Great. Can you please post the map file you are
13 printing, Jessica? Thanks."

14 Q. And Mr. Brown -- do you recall who he was?

15 A. He was added as -- I believe he was introduced as an
16 event coordinator potentially for a number of people, but
17 Ali Alexander specifically.

18 Q. And he asked here for someone to post a map?

19 A. Post any maps in this group.

20 Q. And Mr. Siekerman advises that you should look elsewhere
21 in the chat to see the map.

22 A. I agree with Mr. Siekerman here.

23 Q. And -- but you also agree that there are no maps in this
24 chat, or any other chat, of the inside of the Capitol
25 Building?

1 A. That is correct.

2 Q. Mr. Siekerman then posts a GoToMeeting call for later
3 that day. Do you have any reason to disagree with that?

4 A. I believe I -- this one actually came in through me
5 yesterday.

6 Q. I don't disagree with you.

7 Do you recall reading this message in your
8 investigation?

9 A. Yes.

10 Q. And do you recall that Mr. Grenier on January 3rd does,
11 in fact, post a map?

12 A. A link. Yes.

13 Q. Well, did you visit that link as part of your
14 investigation?

15 A. Yes.

16 MR. WOODWARD: If we could publish this only for
17 the witness, please.

18 BY MR. WOODWARD:

19 Q. Does the map that you see here on the screen look to be
20 the website that is linked in that chat?

21 A. Yeah. And I believe we maybe even saw this one earlier
22 today.

23 Q. And --

24 A. It's a lot of maps.

25 MR. WOODWARD: We would seek to admit a screen

1 shot of this as KM Exhibit 13.

2 THE COURTROOM DEPUTY: 14.

3 MR. WOODWARD: 14.

4 THE COURT: Mr. Manzo, any objection?

5 MR. MANZO: No, your Honor.

6 THE COURT: KM-14 is admitted.

7 (Whereupon, Defendant Meggs's Exhibit No. 14 was
8 entered into evidence.)

9 MR. WOODWARD: If we could publish this -- the
10 screen to the jury.

11 BY MR. WOODWARD:

12 Q. Would you have any reason to disagree that the map that
13 is depicted here is a map of Washington, D.C.?

14 A. It appears to be a map of Washington, D.C.

15 Q. Including the Mall and the Potomac River?

16 A. Correct.

17 Q. All right. Back to the chat. Do you recall reading --
18 I think we'll pick up on the messages that you had read
19 earlier for the jury.

20 A. I do recall this one, yes.

21 Q. And do you recall reading this message?

22 A. I recall reading it in the chat. I did not read it to
23 the jury.

24 Q. Could you read it for the jury?

25 A. "For everyone heading into the city, I know some of you

1 aren't going to like what I'm about to say, but you need to
2 keep it in mind. Local law enforcement is not our friends.
3 A lot of the good ones that believe in the oath they took
4 have quit."

5 Q. And someone named Rook continues...

6 A. "The ones who took their place only care about a
7 paycheck and will do as they are told. Just keep that in
8 mind when deciding what to carry around the city.
9 Personally, I carried an axe handle with a small flag
10 attached to it."

11 Q. But do you recall reading this message in which
12 Ms. Watkins disagrees and writes that the Capitol Police
13 Department are awesome?

14 A. I can't remember if Rook said that it was the Capitol
15 Police or the -- I think he just said local police are not
16 our friends. So I think that is D.C. Metro PD.

17 Q. All right. Your perspective would be the Capitol Police
18 are not local police?

19 A. I think they could be part of local police. They have
20 their own jurisdiction here.

21 THE COURT REPORTER: Sorry. Could or couldn't?

22 THE WITNESS: They could be considered local
23 police. They have their own jurisdiction within the Capitol
24 complex.

25 BY MR. WOODWARD:

1 Q. But you recall reading this message?

2 A. I did not read this to the jury that I recall.

3 Q. Okay. Do you recall -- I think this is the message from
4 Mr. Meggs that you read to the jury concerning the
5 January 3rd GoToMeeting?

6 A. I don't think I read that one to the jury either, but
7 it's just a repost of the invite from Don Siekerman.

8 Q. All right. And then do you recall reading this message
9 from Mr. Rhodes advising the chat not to bring any weapons
10 into the District?

11 A. Anything that could be deemed illegal. Yes.

12 Q. Okay.

13 A. I'm sorry. That could get you into trouble.

14 MR. WOODWARD: Court's indulgence.

15 BY MR. WOODWARD:

16 Q. And the remaining messages we looked at -- we looked at
17 earlier.

18 So again, you did not decide which messages to
19 include in your presentation. Correct?

20 A. That's correct.

21 Q. All right. I presume that --

22 MR. WOODWARD: If we could take my screen down.

23 BY MR. WOODWARD:

24 Q. I presume that you also did not decide which video from
25 the Comfort Inn to show to the jury. Is that correct?

1 A. That's correct. I provided all of the work that I did
2 with that, and the clips were selected.

3 Q. All right. So if I could ask you -- do you recall --

4 MR. WOODWARD: If we could publish to the jury and
5 to the witness, please.

6 (Whereupon, segments of Government's Exhibit No.
7 1510.4 were published in open court.)

8 BY MR. WOODWARD:

9 Q. Do you recall playing this clip for the jury?

10 A. I do.

11 Q. Now, this caption, did that come in the video that you
12 received from the Comfort Inn?

13 A. No.

14 Q. Do you know where that caption came from?

15 A. I believe that was provided by the video -- I'm sorry --
16 the litigation support team.

17 Q. All right. So that was added to the video after you
18 received it from the Comfort Inn?

19 A. Yes. Each camera that we received was labeled, I
20 believe, lobby right, lobby left. There were various labels
21 to the cameras. And they did have a timestamp. But this
22 was not what it looked like on the footage.

23 Q. Okay. And then you also testified that the timestamp
24 was incorrect in various places?

25 A. On the second- and third-floor cameras. Correct.

1 Q. All right. And I'll just play it one more time.

2 (Whereupon, segments of Government's Exhibit No.
3 1510.4 were published in open court.)

4 BY MR. WOODWARD:

5 Q. You also testified that the Government added these
6 arrows to the video?

7 A. Correct.

8 Q. All right. And just me, please.

9 THE COURT REPORTER: I'm sorry. Counsel, I'm
10 sorry. Just for clarity of the record, could I have the
11 notation of the exhibit that was just published.

12 MR. WOODWARD: Thank you for asking. This is
13 Exhibit 1510.4.

14 Then if I could show -- this is just a still image
15 of 1510.4 at the five-second mark. If we could show the
16 jury and the witness.

17 BY MR. WOODWARD:

18 Q. Do you see this pink arrow is pointing to this person
19 here?

20 A. Yes.

21 Q. Okay.

22 MR. WOODWARD: And then just me again.

23 (Whereupon, segments of Government's Exhibit No.
24 1510.4 were published in open court.)

25

1 BY MR. WOODWARD:

2 Q. Do you recall also playing this clip for the jury?

3 A. Yes.

4 Q. And there's these pauses in between the way that the
5 clips are playing. Was that the way that the video was
6 originally provided to you?

7 A. No. The cameras actually came -- they're stationary
8 cameras, I believe. So that would be -- you can see the
9 individuals leaving the frame of one and entering the frame
10 of another. I believe the blackouts here were added to just
11 ease the viewing of the video.

12 Q. So we have multiple clips of the security camera footage
13 that are being stitched together --

14 A. Correct.

15 Q. -- and the blackout is being put in between the
16 different camera angles?

17 A. Correct. The different actual cameras.

18 Q. And again, these arrows were not original?

19 A. Correct.

20 Q. And so I'm going to bring up a freeze frame. This is
21 Government Exhibit 1510.6. We are at the eight-second mark.

22 Do you see this individual here, again, a pink
23 arrow --

24 A. Yes.

25 Q. -- pointing to that person?

1 A. Yes.

2 Q. All right.

3 MR. WOODWARD: Just me, please, J.C. -- or
4 Mr. Douyon.

5 BY MR. WOODWARD:

6 Q. Here, we have Government's Exhibit 1510.12.

7 A. Yes.

8 Q. Do you recall playing this?

9 A. Yes.

10 Q. Oh, sorry. I've got to show it. 1510.12.

11 A. Yes.

12 (Whereupon, segments of Government's Exhibit No.
13 1510.12 were published in open court.)

14 BY MR. WOODWARD:

15 Q. And again, the arrows are not original?

16 A. Correct.

17 MR. WOODWARD: If I could just bring up a freeze
18 frame. This is Government Exhibit 1510.12.

19 BY MR. WOODWARD:

20 Q. At the 26-second mark, we have another pink arrow
21 identifying another person.

22 A. Yes.

23 Q. And would you disagree that the pink arrows appear to be
24 used interchangeably and that these are not all the same
25 people?

1 A. They are definitely not the same person.

2 Q. Okay.

3 A. If I may, I believe they ran out of colors. We're
4 depending on me to identify.

5 Q. And do you recall playing Government 1510.2?

6 A. Yes.

7 (Whereupon, segments of Government's Exhibit No.
8 1510.2 were published in open court.)

9 BY MR. WOODWARD:

10 Q. Did you see the stutter just then?

11 A. The cameras often did that when they were playing
12 straight through.

13 Q. Okay.

14 A. This is not -- trust me, not great quality footage.

15 Q. I didn't need to ask.

16 A. They often did that.

17 Q. What I am --

18 A. I think it's due to the motion detection aspect of the
19 camera.

20 Q. What I am curious about is -- you testified that these
21 cameras are, in fact, 20 minutes ahead of actual time?

22 A. Correct. So if it says 2:34 on here, actual time is
23 2:54.

24 Q. And you also testified that you did not receive any
25 video before 1:00 on January 5th?

1 A. Correct.

2 Q. Any reason you didn't ask for video before 1:00 on
3 January 5th?

4 A. I can only tell you what I was told by the agent who
5 actually obtained that footage. And he -- at the time, that
6 seemed like a reasonable period to request the footage.
7 Again, we didn't know at the time -- this was, you know,
8 mid-January -- what exactly we would be looking for or need
9 here.

10 Q. All right. And so despite the considerable resources of
11 the FBI, we don't have any video before 2:00 on January 5th.

12 Let me ask you: In all of the video that you
13 played for the jury today, do you see Mr. Meggs carrying any
14 items or weapon boxes out of the hotel?

15 A. I see Mr. Meggs accompanying the baggage cart that does
16 have those items on there.

17 Q. He's physically holding the items?

18 A. He's accompanying the baggage cart.

19 Q. He's accompanying it?

20 A. Yes. No one is physically holding items in that clip.

21 Q. I see. He's not pushing the baggage cart, is he?

22 A. He is not. There is only one individual pushing the
23 baggage cart.

24 Q. He's not pulling the baggage cart?

25 A. No.

1 Q. And you don't have any reason to believe that any of the
2 objects on the baggage cart belonged to him, do you?

3 A. I can only tell you what I was told by others.

4 Q. Do you have any reason to believe that the items on the
5 baggage cart belonged to him?

6 MR. MANZO: Objection.

7 THE COURT: Rephrase the question. It's a little
8 open-ended.

9 MR. WOODWARD: I think it can be answered yes or
10 no.

11 THE COURT: Well --

12 BY MR. WOODWARD:

13 Q. Yes or no: Do you have any reason to believe that the
14 items on the baggage cart belonged to Mr. Meggs?

15 A. Based on what I was told by individuals that were with
16 Mr. Meggs at the time, yes.

17 Q. Individuals that worked with Mr. Meggs at the time?

18 A. That were with him.

19 Q. That were with Mr. Meggs at the time?

20 A. Yes.

21 Q. I see.

22 Irrespective of the video that does not exist
23 before 2:00 on January 5th, there's also video that you
24 received that was not played to the jury. Correct?

25 A. Yes.

1 Q. And you testified about one individual --

2 A. It was not played here, but I watched all of it.

3 MR. WOODWARD: Just me, please, Mr. Douyon.

4 And now for everyone. This is Government's
5 Exhibit 1510.12, paused at the five-second mark.

6 (Whereupon, segments of Government's Exhibit No.
7 1510.12 were published in open court.)

8 BY MR. WOODWARD:

9 Q. You testified about Mr. Kenneth Bittner, the gentleman
10 in the green shirt here.

11 A. Yes.

12 Q. And you testified that Mr. Bittner was with the QRF on
13 January 6th. Correct?

14 A. Mr. Bittner was at the QRF hotel on January 6th.

15 Q. He was at the hotel on January 6th. Okay.

16 And do you know what kind of car Mr. Bittner was
17 driving that day?

18 A. Based on the investigation, Mr. Bittner rode to Virginia
19 with Robert Lamar and David ` in a large van.

20 Q. So he did not drive himself to the QRF?

21 A. No. He rode with the individual with the yellow arrow
22 here.

23 Q. And do you know how Mr. Bittner returned to Florida
24 after January 6th?

25 A. Yes. He flew back.

1 Q. And so at no time did Mr. Bittner have his own vehicle
2 at the QRF?

3 A. That's correct. That's my understanding.

4 MR. WOODWARD: Your Honor -- if you could
5 just take that down, please.

6 We'd now like to play additional portions of the
7 podcast that was played this morning. But it's longer than
8 ten minutes. I'm happy to start it.

9 MR. MANZO: He can play it. No objection.

10 THE COURT: How long is it?

11 MR. WOODWARD: It's closer to 15. So it's just
12 going to be --

13 THE COURT: Let's break for the day. I don't want
14 to keep the jury here any longer than 5:00.

15 So we can pick up with it in the morning.

16 MR. WOODWARD: Okay.

17 THE COURT: Okay. Ladies and gentlemen, we've
18 come to the close of our first day this week. Thank you
19 once more for your time and your attention. We are all very
20 grateful.

21 We look forward to seeing you all tomorrow
22 morning.

23 THE COURTROOM DEPUTY: All rise.

24 (Whereupon, the jury exited the courtroom at 4:51
25 p.m. and the following proceedings were had:)

1 THE COURT: Agent Hilgeman, you may step down.
2 We'll see you in the morning. Just a reminder not to
3 discuss your testimony overnight.

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Thank you.

6 (Witness excused.)

7 THE COURT: Counsel, is there anything we need to
8 take up?

9 MR. WOODWARD: I have one matter.

10 THE COURT: Have a seat, everybody.

11 MR. WOODWARD: It's a personal one. We're now
12 within a week of my wife's due date. And so I wanted to
13 flag that for the Court.

14 With the Court's permission, I will give her
15 phone -- I will give Mr. Douyon's phone number to her. I
16 have asked the Government about their position on what to do
17 when the big event comes, because I thought it prudent to
18 put a specific proposal together. So because my wife
19 insisted that I put a specific proposal together, I asked
20 them for five days of leave. That would be days, not
21 business days.

22 THE COURT: I'm sorry?

23 MR. WOODWARD: Let me finish. I think it will be
24 clear. The Government responded and suggested that maybe
25 it's better to wait and see.

1 I'm pretty confident my wife does not follow these
2 proceedings on Twitter, so I don't mind saying that I agree,
3 that I think we can wait and see. If by some miracle we can
4 get her to go into labor on Thursday, then I think I can be
5 back in action next week.

6 The real concern I would have is if she goes to
7 labor on Monday and I'm in the middle of cross or if we're
8 getting ready for the defense case in chief.

9 Again, I think I agree with the Government: We
10 can cross that bridge when we get there. I just want to
11 make sure that I'm transparent about this coming up and so
12 there's no surprises for anybody.

13 THE COURT: Okay.

14 MR. FISCHER: Your Honor, I would say we have no
15 objection to Mr. Woodward's wife going into labor.

16 THE COURT: I'm sure she doesn't either.

17 All right. It might be a useful time just to
18 ask -- I was going to wait till later in the week, but where
19 does the Government see itself in its case in chief?

20 MS. RAKOCZY: Your Honor, I believe we would say
21 we are more than 50 percent done, probably more in the,
22 like, 60 percent range. I think we had anticipated about
23 three and a half to four weeks for our case in chief. We're
24 in the third week, and we do hope that we're on track to
25 rest next week.

1 THE COURT: Okay.

2 MS. RAKOCZY: We're trying, as we go, to cut
3 witnesses and trim things in the hopes of getting done as
4 early as possible next week. But it's a little up in the
5 air right now, depending on how some cross of some civilian
6 witnesses who are upcoming goes, I think.

7 THE COURT: Okay. That's what -- I figured that's
8 probably about where you were.

9 Okay. Look, I mean, we'll -- we'll take it as it
10 comes. I know this has been an issue -- I mean, we talked
11 about this some time ago. We'll take it as it comes.

12 Mr. Woodward, hopefully -- you know -- look, your
13 wife having you present is just of paramount importance.

14 MR. WOODWARD: Thank you, sir. I'll do everything
15 I can to minimize the disruption as much as possible.

16 THE COURT: I don't know that it's up to you.

17 MR. WOODWARD: No.

18 (Laughter.)

19 THE COURT: Mr. Fischer, why don't we take a
20 couple of minutes to talk about the issue you raised over
21 the weekend concerning these grand jury transcripts that
22 you'd like to have admitted. I guess the first question is:
23 Are you seeking to have them admitted in the Government's
24 case or in your case in chief?

25 MR. FISCHER: Your Honor, my intention was to do

1 it through the Government's case through one of their FBI
2 agents.

3 THE COURT: Through the agents?

4 MR. FISCHER: Yes.

5 THE COURT: And what's the Government's position
6 on the admissibility of the statements?

7 MS. RAKOCZY: Your Honor, we do not agree that
8 they are statements of a party opponent in the way that
9 Mr. Fischer proposed introducing them. The two agents who
10 testified in the grand jury, whose transcripts he has
11 segmented, are not going to be Government witnesses in this
12 case.

13 So I know Mr. Fischer just said he plans on
14 introducing them through the agents. I don't know if that
15 means by calling those witnesses in his case in chief or
16 not. But we have some case law we will provide to have to
17 the Court tonight through chambers, if that's okay with the
18 Court, that outlines some further case law beyond what
19 Mr. Fischer discussed in terms of admissions of a party
20 opponent.

21 I think the important distinction here, in terms
22 of grand jury testimony versus something like a search
23 warrant affidavit -- and I think we have some case law that
24 can help bear this out -- the distinction is, with an
25 affidavit, it's typically reviewed by the Government

1 attorneys. There's a time period, and then it is submitted.

2 In grand jury, as you can see from the transcript
3 segments Mr. Fischer prepared, the question is asked,
4 sometimes not even by the Government -- in the case of one
5 of those transcripts, it's a question from a juror, and the
6 witness gives an answer. If that witness were testifying, I
7 think it would be fair impeachment, but I think it's not an
8 admission of a party opponent in those -- in that context.

9 So I think if it's coming in through some
10 Government witness who's not the witness who testified, we
11 would definitely object. If Mr. Fischer is calling those
12 witnesses solely to impeach them, we might also object. If
13 those witnesses are testifying in some other context and
14 it's impeachment, I think we would see that as maybe
15 something we might concede would be then admissible.

16 But in the first two of those possibilities, we
17 would object.

18 THE COURT: Mr. Fischer, if you'd like to be
19 heard.

20 MR. FISCHER: Your Honor, I'm not sure the
21 issue -- well, first of all, in Agent Palian's testimony, we
22 talked about whether Zello -- whether the investigation --
23 there was a belief among investigators and the FBI that
24 Mr. Caldwell was on Zello.

25 And that continued. And the agent denied

1 knowledge of -- of anybody in the investigation under the
2 belief that Mr. Caldwell was on Zello.

3 The party opponent -- it either comes in as -- we
4 believe -- either as the Government as the party opponent or
5 it comes in as a statement that's adopted by the Government
6 where they have a belief -- they're putting their FBI
7 agents -- they are government agents they're putting before
8 the grand jury and they're testifying under penalties of
9 perjury.

10 I can't believe that's not some type of an
11 adoptive statement. They're an authorized agent also of the
12 Government.

13 THE COURT: So, I mean, I'd welcome the
14 Government's case law and welcome case law from you,
15 Mr. Fischer, obviously.

16 I looked quickly at least in D.C., and I don't
17 know whether the Government has cases from D.C. I didn't
18 quite find anything that met this fact pattern of a law
19 enforcement witness testifying before the grand jury and
20 whether that qualifies as an adoptive admission.

21 I mean, there are cases from the circuit -- in
22 particular, *U.S. versus Warren* at 42 F.3d 647 and *U.S.*
23 *versus Morgan* at 581 F.2d 933 -- in which the Circuit has
24 said that a law enforcement's prior sworn statement to a
25 judicial officer can come in as a statement of a party

1 opponent.

2 This is a slightly different fact pattern that I'm
3 hoping to find some case law that would illuminate the
4 particular issue.

5 You know, there are cases, for example, where -- I
6 think I've seen -- where, you know, an FBI agent goes in and
7 provides testimony about what an informant has said in the
8 grand jury and essentially vouches for the informant, and
9 then that may come in as an adoptive admission. But this is
10 a little different than that. So if you've got something,
11 I'm happy to look at it. I'll look at the Government's
12 cases.

13 MR. FISHER: And Your Honor, my understanding is
14 this same issue came up before Judge McFadden in a
15 January 6th case. The exact same issue came up. And Judge
16 McFadden did allow it. But I -- I have a little memo that's
17 written I can submit it to the Court.

18 THE COURT: It doesn't have to be formal. If you
19 want to put it, you know, on the record, just to make the
20 record -- however you all want to do it.

21 I mean, as you know, I'm happy to receive whatever
22 cases, legal briefing you're prepared to give me, and I'll
23 read whatever you submit.

24 MR. FISCHER: Will do. Thank you, your Honor.

25 THE COURT: All right. Anything else before we

1 adjourn from anyone?

2 MS. RAKOCZY: Nothing on behalf of the Government,
3 your Honor.

4 MR. BRIGHT: No, your Honor.

5 MR. WOODWARD: No, your Honor.

6 THE COURT: Okay. Thank you all. We'll see
7 everybody in the morning. Please do not wait for me.

8 (Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 17th day of October, 2022.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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