

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)
)
Plaintiff,) Criminal Action
) No. 21-cr-175
vs.)
) JURY TRIAL
Ethan Nordean,) Day 31
Joseph R. Biggs,)
Zachary Rehl,) Washington, DC
Enrique Tarrio,) February 13, 2023
Dominic J. Pezzola,) Time: 1:30 p.m.
)
Defendants.)

TRANSCRIPT OF JURY TRIAL
HELD BEFORE
THE HONORABLE JUDGE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

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1 THE COURTROOM DEPUTY: We're back on the record in
2 criminal matter 21-175, United States of America versus Ethan
3 Nordean, et al.

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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a sequence, with the first bar being the longest, followed by a shorter bar, then a very long bar, and so on. The lengths of the bars vary significantly, creating a jagged profile. The chart is set against a white background with a vertical axis line on the right side.

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2	Germany	85%
3	France	78%
4	United Kingdom	75%
5	Canada	90%
6	Japan	82%
7	Italy	15%
8	Spain	88%
9	Sweden	79%
10	Australia	92%
11	South Korea	87%
12	India	95%
13	China	91%
14	Brazil	35%
15	India	86%
16	United States	93%
17	Germany	96%
18	France	94%
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(Whereupon, the courtroom was unsealed and the following proceeding ensued in open court:)

THE COURT: Before we -- well, all right.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, you may being seated.

And counsel for Mr. Biggs may continue his cross-examination.

MR. PATTIS: Thank you, Judge.

CROSS-EXAMINATION (Cont.)

BY MR. PATTIS:

Q. Welcome back from lunch, agent.

1 A. Same to you.

2 Q. Now, I want to shift topics, ever so slightly, from where
3 we were before the break.

4 As I understood your testimony -- and I don't want to go
5 through each of the exhibits. We've done that -- there were a
6 certain number of exhibits where messages from discrete chat
7 users were no longer present in the chat, correct?

8 A. Yes.

9 Q. And it was your understanding that those had been deleted,
10 correct?

11 A. Yes.

12 Q. And so far as you know, they would have been deleted by the
13 sender in -- at least in the group context, correct?

14 A. I don't want to get ahead of my skis, but I understand that
15 admins can also delete chats in certain circumstances.

16 Q. So it's a little unclear how or why they were deleted, but
17 from your perspective, some were deleted, correct?

18 A. Yes.

19 Q. And in circumstances, given what you saw, that led you to
20 conclude that these were not accidental deletions?

21 A. I'm sorry. One more time?

22 Q. An item getting nuked, that's not an accident because you
23 hit the wrong key and you get the black box?

24 A. Yes.

25 Q. Okay. And I think you also testified, those are cases in

1 which, at least as far as looking at the Signal intelligence
2 that you have from Telegram, you're -- there are gaps in the
3 evidence that you've been able to assemble and muster for the
4 jury; fair enough?

5 A. Yes.

6 Q. It would be nice to know what that stuff is, but the
7 Telegram data doesn't give it to you, correct?

8 A. Yes.

9 Q. And then I believe you testified earlier today that there
10 were occasions in which people went to video on Telegram,
11 correct?

12 A. Yes.

13 Q. And they also might have used other telephonic devices,
14 correct?

15 A. Yes.

16 Q. And neither -- those things don't exist, either, in a form
17 that the FBI can retrieve, correct?

18 A. Correct.

19 Q. And so, just by way of example -- Ms. Rohde, may we see
20 510-5, please?

21 510-5. I apologize if that was unclear.

22 THE COURTROOM DEPUTY: That's not entered.

23 MR. PATTIS: It was a question about whether it's in.

24 510-6. Thank you.

25 Well, and can we scroll down, please?

1 It's a bad example. I can't read my handwriting.

2 BY MR. PATTIS:

3 Q. The point is clear, if in 510-6, at 7:32:22, rather than
4 there being "LOL," there would be a blank, that would be an
5 example of something that was nuked, as it were, correct?

6 A. Yes.

7 Q. The name wouldn't appear as a random placeholder unless
8 initially it was associated with a text message, correct?

9 A. That's my understanding.

10 Q. Are you sure about that?

11 A. Again, this is my understanding. I didn't put these
12 together.

13 Q. Okay. So, you're basically relying on what you were told?

14 A. Yes.

15 Q. You're not here as a forensic expert?

16 A. Yes.

17 Q. You're doing the best with what you were given?

18 A. Yes.

19 Q. Now, you testified that with respect to the video chats,
20 the FBI was unable to obtain recordings, correct?

21 A. Yes.

22 Q. Are you familiar with the concept of a confidential human
23 source?

24 A. Yes.

25 Q. That is somebody who is working with the FBI, correct?

1 A. A CHS is someone who is providing information to the FBI.

2 Q. And it's not uncommon, as an investigative technique, to
3 have a reporting person, a CHS, in an organization you're
4 investigating, correct?

5 A. That's not uncommon, no.

6 Q. That can be very useful, correct?

7 A. Yes.

8 Q. The CHS would have a handler, correct?

9 A. Yes.

10 Q. A handler would be a person to whom they reported, correct?

11 A. The person to whom they provided information.

12 Q. Well, in other words, somebody that -- yeah. And the name
13 speaks for itself. Somebody that can handle the unique
14 stresses in the situation that comes with being a CHS, correct?

15 A. Yes.

16 Q. Because it's not often the case that people come in and
17 say -- you know, I mean, just to pick an example at random, you
18 know: Mr. Gambino, I'm here with the FBI. Can I help you with
19 your laundry? That's usually a one-way ticket to somewhere no
20 one wants to go; fair enough?

21 A. Fair enough.

22 Q. CHSs keep their identities secret, correct?

23 A. Yes.

24 Q. They provide information to the government, correct?

25 A. Yes.

1 Q. And their needs are met through a handler, correct?

2 A. Yes.

3 Q. Who receives information from the CHS, correct?

4 A. Yes.

5 Q. And makes sure it gets to investigators who are handling a
6 case, correct?

7 A. Yes.

8 Q. Now, you know from your review of these Telegram chats,
9 that the FBI had CHSs in the Proud Boys at or about the time of
10 this investigation, correct -- or, at or about the time of the
11 events that we are here at trial to discuss, correct?

12 A. Yes.

13 Q. And do you know how many?

14 A. No.

15 Q. You have --

16 MR. PATTIS: May I ask, Mr. Mulroe and I agreed that
17 given the Court's ruling, I would speak to him if I had a
18 question. May I have your permission?

19 THE COURT: Yes, sir. Yes.

20 (Off-the-record discussion between counsel.)

21 BY MR. PATTIS:

22 Q. As many as 15 CHSs?

23 A. No.

24 Q. Okay. Five?

25 A. No. I -- I do not know the full scope of CHSs that were --

1 are in the Proud Boys.

2 Q. "That were in the Proud Boys," at least in the run-up to
3 January 6, correct?

4 A. Yes.

5 Q. You know that there were -- there was at least one -- there
6 were at least two -- excuse me. I'm sorry -- there was at
7 least two CHSs in the group Boots on the Ground. You're aware
8 of that, aren't you?

9 A. Yes.

10 Q. You're aware that there was at least one CHS in the main
11 Ministry of Self-Defense, correct?

12 A. Yes.

13 Q. You're aware that there was at least one CHS in the
14 Ministry of Self-Defense Operations, correct?

15 A. Yes.

16 Q. You're aware that there was at least one CHS in the
17 Official President's Chat, correct?

18 A. Yes.

19 Q. And you're aware that there were at least two CHSs that
20 were involved in the group chat called Operation D.C. Street
21 Sweepers, correct?

22 A. Yes.

23 Q. And you know that there was at least one CHS who was
24 pretending to be Mr. Tarrío's friend but was actually working
25 for the government. He was in touch with Mr. Tarrío. You were

1 aware of that, correct?

2 A. I can't agree with your characterization there.

3 Q. Okay. It was rhetorical, and I'll take it back.

4 You're aware that one CHS was in direct contact with
5 Mr. Tarrio?

6 A. Yes.

7 Q. And you're aware that at least one different CHS was in
8 touch with Mr. Tarrio and Mr. Nordean. You're aware of that,
9 aren't you?

10 A. I am not sure as to Mr. Nordean. Tarrio, yes.

11 Q. Would looking at a document refresh your memory?

12 A. It would.

13 MR. PATTIS: Judge, may I approach the witness?

14 THE COURT: You may.

15 BY MR. PATTIS:

16 Q. Sir, I'm approaching this with the Court's permission. You
17 remember this from law school days, right?

18 A. Yes.

19 Q. I'm asking you to review a document, review the portions
20 that I've shown you. Take your time. Review as much of it as
21 you like.

22 A. Thank you.

23 THE COURT: Mr. Pattis, could we just identify that
24 for the record, even if it's not --

25 MR. PATTIS: I'll make it as Biggs 1. So, it's not

1 for the record because that may or may not implicate other
2 rulings of the Court.

3 THE COURT: All right.

4 BY MR. PATTIS:

5 Q. Does that refresh your recollection as to whether there was
6 a different CHS than the initial one we talked about who was
7 working with Mr. Tarrio? There was a separate fellow -- or, a
8 separate person working with both Tarrio and Nordean, correct?

9 A. With communications with them, yes.

10 Q. Direct messages with them, correct?

11 A. Yes.

12 THE COURTROOM DEPUTY: Mr. Pattis, you said that was
13 Biggs 1?

14 MR. PATTIS: Biggs 1, yes, ma'am.

15 THE COURTROOM DEPUTY: I also want to make sure it's
16 the same as you have here.

17 MR. PATTIS: It's Biggs 1A, then.

18 THE COURTROOM DEPUTY: 1A? Thank you.

19 BY MR. PATTIS:

20 Q. When you told us the FBI was unable to obtain a recording
21 of the video chat, do you know whether the FBI spoke with the
22 CHS who was working with Mr. Tarrio?

23 A. I do not.

24 Q. Do you know whether the FBI was able to speak to the
25 confidential human source working with Mr. Nordean and

1 Mr. Tarrio?

2 A. I do not.

3 Q. And you don't know just how many confidential human sources
4 the FBI had with the Proud Boys, correct?

5 A. No.

6 Q. Do you know whether the FBI had a confidential human source
7 walking with the Proud Boys down the Mall the morning of
8 January 6?

9 A. I do not.

10 Q. Do you know whether it was a confidential human source that
11 told the Washington police department: Tarrio is in town, such
12 that the Washington police department had 10 to 15 people
13 waiting for him at the airport?

14 A. I do not.

15 Q. Wouldn't you think, with all these confidential
16 informants -- withdrawn.

17 Wouldn't you think, with all these confidential human
18 subjects, if the Proud Boys had a plan to storm the Capitol,
19 the FBI might have heard about it before the afternoon of
20 January 6?

21 A. I have no basis to comment on that.

22 Q. Fair to say, though, sir, that you were not handling any
23 confidential human sources?

24 A. No.

25 Q. It is fair to say?

1 A. I'm sorry, yes. I was not handling any, yes.

2 Q. I know it's the double negative thing. That's why people
3 hate we lawyers, right, you know?

4 I would like to turn your attention to something a
5 little different, if we may.

6 May we go to 514-21, please.

7 Captain Trump. Who is that?

8 A. That's Zachary Rehl.

9 Q. Versace Cowboy. Who is that?

10 A. Without looking at further information, I couldn't be able
11 to tell you.

12 Q. Matthew, the People's Chairman, Walter. Do you know who
13 that is?

14 A. Yes.

15 Q. What chapter was he associated with?

16 A. I believe with Nashville.

17 Q. And Dan Andsome Handsome. Do you know who that was?

18 A. No.

19 Q. 506-6, please. No, 505-6. I'm sorry. We did this before.
20 I apologize. Old eyes.

21 Who is Vidivic? Do you know? Or -- I don't even know
22 how to pronounce it. Who is that guy?

23 A. Without further information, I couldn't tell you.

24 Q. Okay. But you know who Kenny Lizardo is?

25 A. Yes.

1 Q. Go on down.

2 El Chapo, did we talk about him?

3 A. No.

4 Q. Can we please see 528-1, please?

5 528.1, that is a text between Eryka BYO Bank or
6 something?

7 A. A Telegram chat, yes.

8 Q. You know who she is, right?

9 A. Yes.

10 Q. That's Eryka Flores, correct?

11 A. Yes.

12 Q. A some-time associate of a man named Samuel Arms, A-R-M-S,
13 correct.

14 A. Yes.

15 Q. Can we took a look at 528-1A?

16 You learned -- you've offered testimony about this
17 document, correct?

18 A. Yes.

19 Q. Are you or are you not aware of the fact that Mr. Arms has
20 testified before Congress that he was the author of substantial
21 portions of this document?

22 MR. MULROE: Objection to hearsay.

23 THE COURT: Sustained.

24 BY MR. PATTIS:

25 Q. Do you know who wrote this document?

1 A. No.

2 Q. Do you know how it came into Ms. Flores's possession?

3 A. No.

4 Q. And you don't know whether Mr. Tarrio ever read it,
5 correct?

6 A. I have no forensic evidence to definitively prove it. But,
7 there is circumstantial evidence suggesting that he did.

8 Q. That circumstantial evidence is just the use of the term
9 Winter Palace, correct?

10 A. Which was only used, to my knowledge, after he received
11 this document.

12 Q. It's used in just about every undergraduate history book
13 that talks about the tragic events of 1917, isn't it?

14 A. I certainly never learned about it.

15 Q. Oh, come on. When the Czar's family was killed as part of
16 the Russian Revolution? You did not know that?

17 A. I really did not.

18 Q. Now you do.

19 Looking at 1776 -- so, is it -- did you make any efforts
20 to find out whether any -- any of the five men sitting over
21 there --

22 Mr. Biggs, stand up for a minute.

23 Did he ever see it?

24 A. I saw no Telegram chats suggesting so.

25 Q. Did he ever read it?

1 A. Again, I saw no Telegram chats suggesting so.

2 Q. Did he know -- maybe he didn't know what the Winter Palace
3 was either.

4 A. Again, I have no information one way or the other.

5 Q. Now, Mr. Smith talked to you about the document. I would
6 like to go through it briefly. Take a look at the
7 second-to-the-last page. I believe it will be page 8, assuming
8 the numerical conventions hold here.

9 That is a We, the People page, correct?

10 A. That's the title, yes.

11 Q. Can you read it for us, please -- or, can you read it for
12 us? I'm sorry.

13 A. "Our request is simple, constitutional, and nonnegotiable.
14 We demand a free and fair election. The evidence of election
15 fraud is overwhelming. We demand that on January 20th, a new
16 election is conducted, not a recount. Paper ballots only, no
17 electronic voting, no mail-in ballots, no absentee ballots.
18 In-person with an ID or no vote, monitored by National Guard.

19 "Special mention: Mitch McConnell, Kevin McCarthy,
20 Mike Pence, and Bill Gates, we, the people, are watching you.
21 Rand Paul and Ron DeSantis, we, the people, love you."

22 Q. Were any of these -- to your knowledge, was this document
23 reflected in any of the chats?

24 A. Not to my knowledge, no.

25 Q. And as documents go, this is relatively benign -- or, this

1 is benign, is it not? I mean, there's nothing prohibited or
2 suspicious about this.

3 A. About this page, no.

4 Q. And you know, again, in law school, that people have a
5 right to petition for the redress of grievances. No matter how
6 mistaken we may be, we have a right to peacefully assemble and
7 say: Give us what we want, right?

8 A. Yes.

9 Q. Do you have any idea when this document was written?

10 A. No.

11 Q. Have you ever tried to find out?

12 A. Me, personally, no. I'm not aware of whether or not there
13 were separate endeavors to determine that.

14 Q. You weren't curious?

15 A. I'm certainly curious, but it's outside the scope of my
16 investigative work.

17 Q. Yeah, but not outside your concerns as a citizen.

18 Have you followed the January 6 House Committee at all?

19 MR. MULROE: Objection as to relevance.

20 THE COURT: Sustained.

21 BY MR. PATTIS:

22 Q. Go to page 6, if you will, Ms. Rohde. Well, actually, go
23 to page 7. Let's go reverse engineer this thing.

24 "Patriot Plan Logistics for release to the public. You
25 are the revolution. Be a part of history and fight for this

1 country so our children don't have to. It's all or nothing,
2 patriots. Boldness and bravery is necessary."

3 Correct?

4 A. That's what it says.

5 Q. "Fighting for this country," did you take that to be an
6 indication or a predisposition to violence?

7 A. I think this document does elicit a use of force, so it
8 gets close to that line, yes.

9 Q. So, "Be a part of history and fight for this country so our
10 children don't have to," that's close to the line of violence?
11 That line?

12 A. To the extent this document is calling for people to storm
13 Capitol buildings, yes.

14 Q. You're familiar with the beloved figure of Alice in
15 Wonderland, Lewis Carroll's creation, correct?

16 A. I've seen the Disney movie.

17 Q. And you've seen her classic confrontation with Humpty
18 Dumpty, I suspect. Right?

19 A. I have.

20 Q. "Must a name mean something," Alice says to Humpty? "When
21 I use a word," she says, "it means just what I choose it to
22 mean. Neither more nor less."

23 I call that the Humpty Dumpty effect. You know, words
24 have a subtle meaning. You understand that as a journalist,
25 right?

1 A. I understand.

2 Q. And you were involved in strategic communications. That
3 was your focus as a journalist?

4 A. Yes.

5 Q. The importance of being persuasive, correct?

6 A. Yes.

7 Q. Using speech that has punch?

8 A. Yes.

9 Q. That conveys a message?

10 A. Yes.

11 Q. That is clear?

12 A. Yes.

13 Q. Unambiguous?

14 A. Yes.

15 Q. And it's susceptible to only one reasonable meaning,
16 correct?

17 A. Ideally.

18 Q. So your view -- I'm taking a real risk here.

19 You ever watch University of Notre Dame's football team?

20 A. Sorry.

21 Q. If they call them the Fighting Irish, are they planning for
22 violence?

23 A. No.

24 Q. Okay. Of course not. Because context matters, correct?

25 A. Yes.

1 Q. And this is patriotic gore, this business about the Patriot
2 Plan logistics. You're familiar with that expression,
3 "patriotic gore"?

4 A. Give me a sentence.

5 Q. Edmund Wilson wrote a famous book about the vagaries of
6 patriotism shortly after writing *The Finland Station*, that book
7 was entitled?

8 A. I'm guessing, *Patriotic Gore*.

9 Q. 1 o'clock. "Immediate location 1."

10 And we went through this. Among those locations there
11 is not the United States Capitol, correct?

12 A. Correct.

13 Q. 1:22. "Are enough people around," correct?

14 A. Correct.

15 Q. "Waiting for a signal..." it says there at 1:30, correct?

16 A. Yes.

17 Q. "...from the lead," correct?

18 A. Yes.

19 Q. "Storm the building," correct?

20 A. Yes.

21 Q. And that business of storming, that's the tell for you that
22 makes this the -- that transforms this from benign to
23 potentially violent, correct?

24 A. Yes.

25 Q. Now, let's go back to 6. As to each of these locations --

1 the Supreme Court, the Russell Senate Office Building, the
2 Dirksen Senate Office Building, and I could go on -- there's a
3 division of labor, correct?

4 A. Yes.

5 Q. There's to be a lead person, correct?

6 A. Yes.

7 Q. A hypeman or person, correct?

8 A. Yes.

9 Q. A second lead, I presume, correct?

10 A. Yes.

11 Q. And a recruiter, correct?

12 A. Yes.

13 Q. And the objective in taking control of these buildings was,
14 apparently, to do so without violence, correct?

15 A. Is this a reference to the sit-in?

16 Q. No.

17 A. In order to get in, you're going to need to use some amount
18 of force, so I'm not sure I can agree with you there.

19 Q. Well, how much force did I just use in walking to the back
20 of the room? Some, right?

21 A. Some.

22 Q. But that's lawful, right?

23 A. Yes.

24 Q. Read the bottom of the page. "Only pull the fire alarm if
25 needed to distract the police."

1 And then it gives locations of fire alarms, I presume,
2 does it not?

3 A. That's what it appears to be, yes.

4 Q. Walmart Supercenter?

5 A. Yes.

6 Q. Residence Inn by the Ford House?

7 A. Yes.

8 Q. The Marriott Hotel location?

9 A. Yes.

10 Q. Large hotels?

11 A. Yes.

12 Q. Museums?

13 A. Yes.

14 Q. Did any of those fire alarms get pulled in Washington,
15 D.C., to your knowledge, on January 6, 2021?

16 A. No.

17 Q. Did you see any Telegram chats that directed people to go
18 pull the fire alarm?

19 A. No.

20 Q. Go back to page 5, please, Ms. Rohde.

21 There are notes here that explain some of the previous
22 material, including the sit-in. It tells people to "protect
23 your identity," correct?

24 A. Yes.

25 Q. "Use COVID compliance in your favor," correct?

1 A. Yes.

2 Q. I presume that meant wearing a mask. Or do you have any
3 idea what that means?

4 A. I presume it means wearing a mask to disguise your face.

5 Q. Have you ever viewed any of the videos of the day the
6 Capitol riot took place?

7 A. Yes.

8 Q. Did you see anybody wearing a mask?

9 A. Here and there, yes.

10 Q. And see anybody wearing a COVID mask?

11 A. I would have to think about that. But, there are plenty of
12 people who have masks covering their facial features.

13 Q. "Have an escape plan for those in charge," correct?

14 A. Yes.

15 Q. "Choose an HQ."

16 Headquarters?

17 A. Yes.

18 Q. "And make it inside on -- of the captured buildings or a
19 nearby hotel."

20 Did you see any discussion among the guys on the chat
21 groups about where their headquarters would be on January 6?

22 A. No.

23 Q. "See if you can get anyone with a semi to help you block
24 traffic."

25 Any indication of that?

1 A. No.

2 Q. "Now is the time to reach out for truckers or bikers for
3 Trump for these roadblocks."

4 Did you see any roadblocks constructed by vehicles?

5 A. No.

6 Q. Burning tires?

7 A. No.

8 Q. Overturned vehicles?

9 A. No.

10 Q. "With the large caravans, simply have cars block
11 intersections."

12 You didn't see that either?

13 A. No.

14 Q. And you saw no discussion of that?

15 A. No.

16 Q. Going back to page 4.

17 "Occupy." That's a term that resonates somewhat, does
18 it not?

19 A. Yes.

20 Q. You were in New York during the Occupy movement, Zuccotti
21 Park and so forth. Or was that before your time? I date
22 myself.

23 A. It was right at the beginning. It's scary to think that
24 that was 12 years ago.

25 Q. It was more than that. Occupy?

1 A. It was my one year, 2000 --

2 Q. I thought you said four years ago.

3 A. 12. Sorry.

4 Q. "Occupy. Present our list of demands, we, the people, page
5 of the Patriot Plan."

6 And we went through those items, correct?

7 A. Yes.

8 Q. "Liberty or death," though. Wow, that sounds like a call
9 to violence, to me. How does it sound to you?

10 A. I take this list as relative -- they're catchphrases,
11 right?

12 Q. Well, I mean, you're not doing the Humpty Dumpty thing that
13 Alice and Humpty got in about it, where you're making words
14 mean what you want them to mean, are you?

15 A. I don't believe I am.

16 Q. "Victory or death," that's just more patriotism.

17 Did you ever go to a 4th of July parade?

18 A. "Liberty or death" is a revolutionary term. It's from the
19 Revolutionary War.

20 Q. Yeah. And we are a revolutionary country who used to glory
21 in our independence, correct?

22 A. Yes.

23 Q. I mean, who was it that once said, "The tree of liberty
24 needs to be refreshed with the blood of patriots from time to
25 time"?

1 A. I think that's a Thomas Jefferson quote.

2 Q. It is. This kind of rhetoric is part of the American
3 experience, correct?

4 A. Yes.

5 Q. It becomes dangerous in incendiary times, inflammatory
6 times, correct?

7 A. I would agree with that.

8 Q. And those are the times in which we now live.

9 A. Yes.

10 Q. "If necessary," it says in part 3, "distract. Only to be
11 done if they won't allow patriots in the building we own."

12 You're aware that there was resistance at a series of
13 points along the way into the Capitol on January 6?

14 A. Yes.

15 Q. And we've already talked about pulling fire alarms around
16 the city. It didn't happen, correct?

17 A. Correct.

18 Q. Doesn't this plan contemplate having people enter the
19 building and then let others in?

20 A. Yes.

21 Q. They have people go in, and they want them to be well
22 dressed so as not to call attention to themselves, correct?

23 A. I -- that sounds right.

24 Q. Any indication that happened on January 6?

25 A. No.

1 Q. "Have scouts," it says on page 3, "drive around the
2 buildings in areas before daylight to check on any roadblocks
3 and update plans."

4 A. Sorry. Could you point me to where you're --

5 Q. Page 3, sir. I apologize.

6 A. Oh, I see it.

7 Q. "January 6, execution day, overview: Have scouts drive
8 around buildings in areas before daylight to check on any
9 roadblocks and update plans accordingly," correct?

10 A. Yes.

11 Q. "Infiltrate. Have leads and seconds stay inside the
12 building until called upon upon execution time. Scope out the
13 entrances and exits. If possible, be in the building first
14 thing in the morning. Be dressed in suits and unsuspecting.
15 Do not look tactical at all."

16 See any discussion of that in the text?

17 A. No.

18 Q. If I were to tell you this plan was largely drafted in the
19 summer of 2020 by somebody who was gaming out what could happen
20 in 2021, and that that person had nothing to do with the Proud
21 Boys, would that surprise you?

22 A. I have no information about that one way or the other.

23 Q. You talked a little bit about the Proud Boys and violence,
24 correct?

25 A. Yes.

1 Q. You've not spoken to anyone who has thus far testified in
2 this case, correct?

3 A. No.

4 Q. And when you've met to prepare with the government to
5 testify here today, as you have -- you have met to prepare,
6 correct?

7 A. Yes.

8 Q. -- nobody showed you a transcript of what happened before?

9 A. No.

10 Q. Nobody said: Don't talk to -- well, nobody said: This is
11 what so and so said, correct?

12 A. No.

13 Q. Let me ask you the following question:

14 Based on your observations of the text, isn't it
15 consistent that the texts stand for the proposition: If
16 violence started, you should not back down?

17 A. I'm sorry?

18 Q. That self-defense theme: If violence is started, you
19 should not back down.

20 That's consistent with these texts, is it not?

21 A. I think that's a theme that can be read into them.

22 Q. And this business of reading themes into things,
23 ultimately, as to a verdict in that case, that is the job that
24 belongs to the 12 people who will decide the case, correct?

25 A. Absolutely.

1 Q. You're not here to take a position, correct?

2 A. No.

3 Q. But you're open to the fact that there are disputes about
4 reasonable interpretations of the data that you've provided to
5 this jury, correct?

6 A. I recognize that there are gaps in the data that -- yes.

7 Q. And not just gaps in the data. Even when you take the data
8 as a whole, there are reasonable disputes about what it means,
9 isn't there?

10 A. I think we certainly disagree.

11 Q. Okay. And that has nothing to do with by whom you're
12 employed?

13 A. I'm sorry?

14 Q. That has nothing to do with by whom you're employed?

15 A. No.

16 Q. With your professional ambitions?

17 A. No.

18 Q. With whatever distaste you may have with the Proud Boys,
19 for whatever reason?

20 A. To the extent those exist, no.

21 MR. PATTIS: Thank you, sir.

22 THE COURT: All right. Before -- Ms. Hernandez,
23 before we proceed with cross-examination on behalf of Mr. Rehl,
24 can I have the parties pick up the phones?

25 (Bench discussion:)

1 THE COURT: Ms. Hernandez? Can you hear me?

2 MS. HERNANDEZ: (Nods head.)

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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MS. HERNANDEZ: Somebody left their phone.

Mr. Pattis?

1 MR. PATTIS: Thank you.

2 CROSS-EXAMINATION

3 BY MS. HERNANDEZ:

4 Q. Good afternoon.

5 A. Afternoon.

6 Q. I guess it's been more than a week now.

7 So, my name is Carmen Hernandez, and I represent Zachary
8 Rehl.

9 Do we know each other, by any chance? Just -- I don't
10 believe we've met, but I -- he looks familiar. I am sorry.

11 Do we know each other, by any chance?

12 A. I do not believe we know each other.

13 Q. Okay. All right. We've never spoken other than, perhaps,
14 seeing each other in the hall?

15 A. In passing in the hallways.

16 Q. Correct. Okay. I just wasn't sure and -- so, let me
17 start.

18 I'm going to try to -- again, I'm going to try not to go
19 over old ground, but you know lawyers.

20 A. I understand.

21 Q. So let me start with the 1776 Returns that we've gone over
22 for a little bit. I'm going to try to lead pretty quickly.

23 So, this document was sent to Mr. Tarrio by a female
24 friend, correct?

25 A. Yes.

1 Q. And that female friend is a lady named Eryka?

2 A. Yes.

3 Q. And Ms. Eryka or -- Ms. Eryka has no relationship with
4 Mr. Rehl, that you know of?

5 A. That I know of, no.

6 Q. No Telegram messages?

7 A. Correct.

8 Q. No phone calls?

9 A. Correct.

10 Q. No -- nothing that you've seen that indicates that she
11 sent, for example, that 1776 Returns to Mr. Rehl?

12 A. Correct.

13 Q. And you -- I believe you said on direct that Mr. Tarrío did
14 not forward that document to any of the defendants.

15 A. Not that I saw.

16 Q. Okay. And, in fact, you don't even -- you can't even say,
17 from the electronic data, that Mr. Tarrío opened or downloaded
18 that document.

19 A. From the electronic data, no.

20 Q. Okay. And that -- I understand you're not the expert on
21 that aspect of it, but, you have, before testifying today,
22 reviewed those materials from the -- from Special Agent Cain;
23 is that correct?

24 A. I've reviewed Examiner Cain's -- I've reviewed those
25 extractions.

1 Q. Okay.

2 A. I'll admit that I don't understand a bench of the technical
3 stuff, though.

4 Q. No, most of us don't.

5 So, no relation to any of these gentleman.

6 And -- and you indicated that some of the buildings were
7 within the Capitol grounds. I think you said that on direct
8 exam -- in your direct examination.

9 A. Yes.

10 Q. But, the buildings were Senate office buildings, correct?

11 A. The Senate and House.

12 Q. The Senate and House buildings. And those are actually off
13 streets that surround the Capitol?

14 A. Yes.

15 Q. They're not -- I understand that they may technically be
16 the Capitol grounds because, apparently, the Capitol grounds is
17 half of Capitol Hill; am I correct?

18 A. I'm not sure it's half, but it's surprisingly large.

19 Q. "Surprisingly large."

20 But, in fact, the Capitol is located on, like, a grassy
21 area?

22 A. Yes.

23 Q. And then there are actual streets where traffic goes back
24 and forth?

25 A. Yes.

1 Q. And I don't know the street numbers, but I believe it's,
2 like, First and all sorts of different streets.

3 And these office buildings are -- and, by the way, these
4 office buildings, the Senate and House office buildings, are
5 buildings that house the various senators and House members?

6 A. Yes.

7 Q. And their staff?

8 A. Yes.

9 Q. And they actually line -- there are multiple of these
10 buildings on the Senate side and on the House side?

11 A. Yes.

12 Q. And I -- maybe some of these jurors have walked past there.

13 And, I mean, you've made a lot about what that document
14 did or did not represent. There's been a lot of discussion
15 about that.

16 A. There has.

17 Q. For example -- but -- let's see if you remember this:
18 Several years ago, when then-Circuit Judge Kavanaugh was being
19 nominated to the Supreme Court, a number of women occupied one
20 of the Senate office buildings.

21 Do you recall that?

22 MR. MULROE: Object to scope and relevance.

23 THE COURT: Sustained.

24 MS. HERNANDEZ: Trying to see if I can reframe that
25 to be able to ask the question.

1 Can I just ask him if he recalls that, and then that
2 might be an easy answer?

3 THE COURT: I'm sorry? Ms. --

4 MS. HERNANDEZ: If I ask him if he -- if he says:
5 No, I don't recall that, then that's the end of my arguing over
6 it.

7 THE COURT: I've sustained the question.

8 MS. HERNANDEZ: Okay. Thank you, Your Honor.

9 THE COURT: I sustained the objection as to scope and
10 relevance.

11 BY MS. HERNANDEZ:

12 Q. Are you -- are you based in Washington, D.C., now?

13 A. No.

14 Q. You're still based in New York?

15 A. Yes.

16 Q. Okay. But, have you been working out of the D.C. Office?

17 A. Yes.

18 Q. Okay. So -- I'm trying to -- I'm trying to go where, I
19 think, the Judge doesn't want me to go -- or the government
20 doesn't want me to go. So I'll move on from this.

21 I'm going to ask you a number of questions about things
22 you testified to on direct.

23 A. Okay.

24 Q. The government produced for you, or the prosecutors
25 produced for you a shield which, supposedly, was somehow

1 brought by Mr. Pezzola to someone in North Carolina.

2 Does that ring a bell?

3 A. Yes.

4 Q. And it was actually, like, a wooden shield of some kind?

5 A. I'm not 100 percent on the material, but it was a shield.

6 Q. It was a large -- it looked like an ornamental-type thing?

7 A. Yes.

8 Q. And, actually, it looked like the type of thing maybe you
9 might find some young children playing with?

10 A. It's a bit larger than something for a young child, but --

11 Q. Okay. A little older children playing with?

12 A. Sure.

13 Q. As far as you know, that shield was not brought to D.C. by
14 anyone; is that correct?

15 A. As far as I know, yes.

16 Q. And, I guess, I'm going to stop asking you "as far as you
17 know." Any question I'm asking you is only as far as you know.
18 If you don't know, obviously, I don't want you to answer.

19 And, so, whatever -- whatever the purpose of that
20 shield, it was not brought to D.C. by Mr. Tarrío?

21 A. As far as I'm aware, no.

22 Q. Or by Mr. Rehl?

23 A. No.

24 Q. Or by Mr. Pezzola?

25 A. No.

1 Q. Or by any other of these defendants?

2 A. No.

3 Q. Okay. If -- I'm sorry. If I could enlist the help of
4 Ms. Rohde. Could you pull up Government Exhibit 600-51?

5 This Parler message, which is supposedly Mr. Pezzola,
6 there's no response from Mr. Rehl on this document, correct?

7 A. Correct.

8 Q. And, again, there's no evidence that he saw this
9 photograph?

10 A. Correct.

11 Q. Okay. So, let me ask you some questions about this chart
12 that you've prepared here.

13 And if the Court will allow me.

14 So, this chart refers to seven different chat groups; is
15 that correct? Do you want to see?

16 A. Yes.

17 Q. But when you testified, you testified to a number of
18 other --

19 Can you take that down, please, the one on the screen?

20 You testified to a number of other chats from
21 different -- in fact, I think I have a -- and these appear to
22 be only Ministry of Self-Defense-related chats; is that
23 correct?

24 A. Yes.

25 Q. But you testified to a number of other chats?

1 A. Yes.

2 Q. For example, you testified about a chat called -- let me
3 back up.

4 You testified that you had -- did I hear you right, you
5 had reviewed nearly half a million messages?

6 A. Yes.

7 Q. Do you remember all of them?

8 A. No.

9 Q. Okay. Just curious; how long did it take you to look at
10 half a million messages?

11 A. I mean, the entirety of my time on this case has been
12 spent, essentially, reviewing digital evidence.

13 Q. Okay. And when we're talking about these chat -- these
14 chat groups -- is that what they're called, chat groups?

15 A. Sure.

16 Q. So, you have -- for example, let's look at the Ministry of
17 Self-Defense, which is the top one here (indicating).

18 A. Uh-huh.

19 Q. And that's got, I guess, seven little photographs, plus
20 four.

21 A. Yes.

22 Q. Do you know, for example, how many messages were in that
23 particular chat group?

24 A. Not off the top of my head. But, I could tell you by
25 looking at the extraction of that chat.

1 Q. Would that be a difficult thing for you to do now or...

2 A. If the extraction is available.

3 Q. Maybe we'll come back to it.

4 Do you have any ballpark figure of how many messages
5 were sent on there?

6 A. In the leader chats?

7 Q. If you have memory of any one of them, I'll be happy to
8 take your answer on that one.

9 A. Okay. I can -- I do not know off the top of my head. I
10 could reverse engineer it, but I would be reaching.

11 Q. But you can give me a ballpark figure? I'm not looking for
12 precise numbers. Are we talking about --

13 A. It's in the thousands.

14 Q. It's in the thousands?

15 A. Yes.

16 Q. Okay. And these have the starting dates, is that correct,
17 on this chart?

18 A. Yeah, the dates they were created.

19 Q. The dates they were created. And how far out -- did you --
20 did you cut off the date when you looked at them, or how far
21 out do they go?

22 A. I mean, they go as far as the chats existed on the devices.
23 So for some of these -- yeah, so for some of these, they were
24 nuked before January 6, so they just stop. But, then, certain
25 other ones go into, you know, mid -- it depends on when the

1 phone was seized.

2 Q. So you say, "as to some individual chats."

3 You're talking about thousands of messages just on one
4 of these individual chats?

5 A. Yes.

6 Q. And off the top of your head -- let me take out that
7 phrase, "off the top of your head."

8 And these chats were -- some of these chats were going
9 on at the same time?

10 A. Yes.

11 Q. Would you agree with me that a lot of these messages were
12 not responded to?

13 A. I'm not sure I'm in a position to agree with that. I don't
14 have forensic data about responses.

15 Q. You don't?

16 But, at the same time, you cannot sit there and tell me
17 they were all responded -- and when I say "responded to," then
18 if a chat went out, that everyone in that chat group would have
19 responded to?

20 A. Yes, I can -- I'm not going to say that, no.

21 Q. Right.

22 A. Yeah.

23 Q. And given the number of messages that you're describing in
24 some of these chats, it probably stands to reason that a number
25 of these documents were not -- these messages were not answered

1 by any particular person?

2 A. Sure.

3 Q. So, it might be that one person responds, and then that's
4 the end of it, or it could be that it's a particular topic that
5 everybody responds to?

6 A. Yeah. It's a group text, so people are coming in and out
7 of the conversation over time.

8 Q. I'm trying to analogize these group chats to something that
9 the jury and maybe some of us are more familiar with.

10 A. Uh-huh.

11 Q. Is this like a -- would you say it's like a Facebook page,
12 where you might have someone post a message and then your
13 friends would respond, or not? Is that that type of thing? Is
14 that what these message groups are like?

15 A. I, personally, view these as being iMessage, basically.
16 It's just the text in your phone; it's just on Telegram.

17 Q. I'm sorry. You said?

18 A. I'm sorry. Texts on your phone, basically, just on
19 Telegram. It's iMessage in a different form.

20 Q. Okay. So it's a message that goes out. Let's -- maybe
21 some of us -- well, "some of us," defense counsel in this -- in
22 this case have texted each other, maybe at the end of the court
23 day or whatever.

24 A. Uh-huh.

25 Q. Some of us answer, religiously, and others rarely do.

1 But -- so, it's not -- there's no standard to whether people
2 will respond or not. Would you agree with me with that?

3 A. No standard, no.

4 Q. So it's not, like, if you sent one other person a message,
5 you would anticipate that that person would respond to you?

6 A. In a one-on-one, yes.

7 Q. Right. Or even one-on-two or something like that, correct?

8 A. Yes.

9 Q. But when you've got multiple people on a chat, there's
10 more likelihood that you don't get that -- either a quick
11 response or an individual response all the time?

12 A. Sure.

13 Q. And that's consistent with what you saw when you reviewed
14 these?

15 A. I think, in some of the larger chats especially, there's
16 sometimes several conversations going on. I understand your
17 point. But, especially in the leadership chats, where it's a
18 relatively smaller number of people, I'm less -- I'm less
19 confident to give you that answer.

20 Q. Okay. And the Ministry of Self-Defense, the main -- did I
21 hear you say that there may have been 80 to 100 people in that?

22 A. My recollection is that Boots had about 75, that Main, at
23 its height, had something in the mid-60s. But I would want to
24 look at the extractions, which would give you the exact
25 numbers.

1 Q. And so Boots on the Ground is this one that's formed
2 January 5th?

3 A. Yes.

4 Q. And Boots on the Ground is a chat that was formed -- at
5 least the reason provided was that these were people who were
6 going to be on the ground, in D.C., on January 6?

7 A. Yes.

8 Q. Did that come to bear? Is it true that everyone in that
9 chat, you think, arrived in D.C. on January 6, or do you know
10 now?

11 A. I don't know.

12 Q. Okay. But at least in theory, that's what these -- they
13 were supposed to be Boots on the Ground?

14 A. Yes.

15 Q. And the Boots on the Ground, they were necessarily -- or
16 were they the people that were for the Ministry of
17 Self-Defense?

18 A. When you look, sort of when you make a Venn diagram of
19 these chats, many members of the Ministry of Self-Defense main
20 group do migrate into the Boots on the Ground group. But,
21 there are also individuals in that Boots on the Ground chat who
22 were not in the MoSD chats.

23 Q. Okay. So let me go back to some of the other chats. You
24 don't have listed on here -- and let me back off.

25 So, next to each of these groups you have -- like, for

1 example, Ministry of Self-Defense, the top group on the
2 left-hand side, has Government Exhibit 501?

3 A. Yes.

4 Q. So, that means that every exhibit that was introduced
5 through you that related to that particular chat has -- the
6 first three digits are 501?

7 A. Yes.

8 Q. So, essentially, the prosecutors gave a different -- the
9 prefix -- the three-digit prefix is unique to the particular
10 chat group, correct?

11 A. Yes.

12 Q. Okay. So, in this little chart that was provided, and this
13 big chart over here -- which I put this up here so that defense
14 counsel can look at it -- you do not have Elders -- the Elders
15 Chat?

16 A. Not on this, no.

17 Q. And can you describe for me what the Elders Chat was?

18 A. Sure. The Elders Chat was a small chat -- it's the Skull
19 and Bones Chat that I talked about in my direct, which
20 comprised the Proud Boys's Elders, the -- they were among the
21 senior leaders of the organization.

22 Q. Okay. So, are you saying that the Elders Chat is the same
23 thing as Skull and Bones? I thought there may have been two
24 different chat groups.

25 A. So -- yes. Thank you for pointing that out.

1 So, I, colloquially, refer to the Skull and Bones as
2 the "Elders Chat" because it is what it is. But after
3 Mr. Tarrio's arrest, there was a new chat created in response
4 to the concerns of, you know, the nuking charts that we've
5 seen. That one was labeled "Elders."

6 Q. I see. So it was originally Skull and Bones, and it became
7 Elders.

8 And my understanding is the Skull and Bones is
9 Exhibit 500?

10 A. Frankly, I would want to double check. But, yes.

11 Q. Do you have a -- when you say you have to double check, is
12 there some document you could look at to double check?

13 A. Really, truly, any exhibit in that set.

14 Q. Okay. We'll get back to that.

15 How about the Elders? That's a different -- so you
16 don't -- I'll have to show you an exhibit for you to tell me.
17 Okay.

18 Can you tell me from your memory, Mr. Rehl was not in
19 either the Elders or Skull and Bones; is that correct?

20 A. That's correct.

21 Q. So -- and are you saying that the Elders and Skull and
22 Bones were the top leadership in the Proud Boys?

23 A. I think the Elders were the senior leadership, yes.

24 Q. And they were from different locations in the
25 United States?

1 A. Yes.

2 Q. They weren't limited to, like, D.C. or Florida, or
3 something like that?

4 A. That's right.

5 Q. Okay. But I just -- just to be clear, Mr. Rehl was not in
6 that -- in either of those chats.

7 A. Yes.

8 Q. And that was a relatively small number of people, eight to
9 ten; is that correct?

10 A. That sounds right.

11 Q. Okay. And then there were -- you also introduced some text
12 messages that were either -- perhaps, maybe, Mr. Tarrio with
13 one other person --

14 A. Yes.

15 Q. -- correct?

16 Or, for example, Mr. Tarrio with Eryka?

17 A. Yes.

18 Q. That was not a group -- that was not a group chat in the
19 sense that it didn't involve Mr. Rehl or the other defendants,
20 correct?

21 A. Correct.

22 Q. And there were at least three different female
23 acquaintances of Mr. Tarrio that you introduced these text
24 messages?

25 A. Yes.

1 Q. That was more of a one-on-one messaging situation?

2 A. Yes. I think one was an SMS, one was a Telegram chat, yes.

3 Q. Okay. One was a what? MSM what?

4 A. Just a standard text messaging.

5 Q. Okay.

6 A. And then I think the other two were Telegram.

7 Q. Okay. And then you also introduced -- so let me ask you --
8 I should probably go through some of these before I go through
9 some of those.

10 The conspiracy in this case, according to the charging
11 document, began on December 19th, correct?

12 MR. MULROE: Objection. Misstates.

13 THE COURT: Sustained.

14 BY MS. HERNANDEZ:

15 Q. December 19th is the date when President Trump is alleged,
16 or -- or, sent a text message or a -- I'm sorry, placed a
17 Twit -- placed a message on Twitter?

18 A. Yes.

19 Q. Placed a message on Twitter in which he invited people to
20 come to D.C. on January 6?

21 A. He announced the January 6 event, yes.

22 Q. He announced that there would be a rally in D.C. on
23 January 6?

24 A. Yes.

25 Q. And the text said something to the effect: Be there. It

1 will be wild?

2 A. Yes.

3 Q. Or words to that effect?

4 A. Yes.

5 Q. Okay. And -- but you introduced a whole lot of text
6 messages from before that day.

7 A. Yes.

8 Q. Or, you didn't introduce. The prosecutors introduced
9 through you.

10 And some of -- I think the earliest set of text messages
11 in bulk were those around the September debate -- presidential
12 debate, September, I believe. Some date in September, when
13 there was a debate between then-Vice President Biden (sic) and
14 then-President Trump, correct?

15 A. Correct.

16 Q. And I think you've already gone through this: At that
17 time, some of those text messages, it was clear -- I'm sorry.
18 Let me strike that.

19 It was clear that there were -- at least persons who
20 were messaging around that time, it appeared were watching the
21 debate?

22 A. Yes.

23 Q. And, in fact, the -- I think the first message was
24 Mr. Stewart, and it appears that he's -- his first message is
25 at the earlier stages of the debate, rather than after the

1 president -- then-President Trump makes a statement about the
2 Proud Boys; is that -- do you agree with me on that?

3 A. Yes.

4 Q. Because -- and, in fact, Mr. Stewart seems to be a critic
5 of what's happening at the debate.

6 A. Yes.

7 Q. He seems to say something like -- I don't remember the
8 exact word, but it was -- it was a derogatory term for how
9 things were proceeding?

10 A. Yes.

11 Q. And it appeared that he was talking about how the debate
12 was going for Mr. Trump -- or, for President Trump?

13 A. He appeared to be providing a critique of performance. I
14 don't think he used a name for -- -

15 Q. He didn't use a name, but he was critical of what he was
16 watching?

17 A. Yes.

18 Q. And it didn't appear that he was happy -- let me back up.

19 Mr. Stewart is a Trump supporter, John Stewart?

20 A. I have no --

21 Q. You don't know. Okay.

22 A. Yeah.

23 Q. But a number of those messages preceded the moment when
24 Mr. Trump said -- mentioned the -- when the moderator asked
25 about the -- moderator asked a question, and then Mr. Trump

1 mentioned the Proud Boys, correct?

2 A. My recollection is those were the only two messages that
3 were before. And, I think, slide 2 then moved into after.

4 Q. I see. Okay.

5 THE COURT: Ms. Hernandez, is now a good time just to
6 take a brief break for the court reporter, since we've been
7 going for two hours?

8 MS. HERNANDEZ: Sure.

9 THE COURT: Ladies and gentlemen, we'll take a brief
10 ten-minute break. We will be back and continue after that.

11 (Whereupon the jurors leave the courtroom.)

12 THE COURT: Sir, you may step down.

13 Madam Court Reporter, you hanging in? I'm sorry
14 about that. We'll take ten minutes.

15 (Recess.)

16 THE COURTROOM DEPUTY: We're back on the record in
17 criminal matter 21-175, United States of America versus Ethan
18 Nordean, et al.

19 THE COURT: All right.

20 MS. HERNANDEZ: Your Honor, two things. I'm sorry.

21 THE COURT: Sure. Go ahead.

22 MS. HERNANDEZ: So, Mr. Mulroe objected when I said
23 the -- as charged, the indictment dates to December 19th, 2020.
24 Paragraph 29 of the third superseding indictment, the first act
25 in furtherance of the conspiracy -- the first act in

1 furtherance of the conspiracy alleged is on December 19th,
2 2020. I know the Court sustained it.

3 THE COURT: I mean, yeah. I would still -- I would
4 still sustain it. He's not here to testify as to when -- legal
5 conclusions or about whatever the indictment says about when
6 the conspiracy began or didn't begin.

7 MS. HERNANDEZ: Well, that's fine. But, I think
8 Mr. Mulroe's objection was misstates the evidence. So,
9 that's -- that's why I brought it up, because that's a
10 different objection from -- and that's -- if you're sustaining
11 that, that may sound different to the jury than "that's not
12 what he's here for."

13 THE COURT: Well, the indictment, of course, is not
14 evidence. So, I don't know that the evidence does reflect
15 that, what you're saying as of right now in this trial.

16 MS. HERNANDEZ: I think my question was: As charged,
17 the first -- but, anyway, I -- so, that was my concern. I
18 would like to be able to correct it, but I'll move on.

19 The Court sustained an objection to the questions
20 about the takeover by women during the Kavanaugh hearings of
21 various Senate office buildings. And the only reason I was
22 bringing it up was because there was -- maybe contention is not
23 the correct description, but there were questions asked of the
24 witness about what night -- what the 1776 document related with
25 respect to occupation and sit-ins of buildings, and whether

1 that was peaceful or not peaceful.

2 And, also, I mean, he -- in his original testimony,
3 he noted that these -- that the buildings on the 1776 return
4 map were within the Capitol grounds. And I just -- I mean, I
5 will tell the Court, there are multiple -- that's all I wanted
6 to show, is that there are multiple newspaper articles from the
7 Kavanaugh hearings showing women -- and I can just show it for
8 the Court.

9 This is from a *USA Today*. It's a *USA Today* article,
10 and it refers to unfurled banners inside the Senate office
11 building, block the Senate elevator. This document, again,
12 from *USA Today*, reflects that the women took over the Senate
13 Dirksen Office Building.

14 So, I just wanted to -- I'm not -- I'm not going into
15 any kind of comparison or anything. I just wanted to show
16 that, in fact, the occupation of these House and Senate office
17 buildings is an ordinary -- ordinary manner in which peaceful
18 protests are conducted in Washington, D.C.

19 This one is from an article which shows -- which
20 states: More than 300 people were taken into custody by police
21 on Capitol Hill after descending on a pair of Senate office
22 buildings --

23 THE COURT: Ms. Hernandez, the microphone is
24 definitely not -- unfortunately.

25 MS. HERNANDEZ: So, this document, again, it's from

1 the Hill. More than -- the caption is: More than 300 people
2 were taken into custody by police on Capitol Hill after
3 descending on a pair of Senate office buildings Thursday
4 afternoon to protest the confirmation process of Brett
5 Kavanaugh, President Trump's Superior Court nominee.

6 So I would just like to just introduce those. And,
7 if not, just make it part of the record -- make them part of
8 the record as I'm doing now.

9 THE COURT: Well, I sustained the objection. And I
10 would sustain it again as beyond the scope of his direct.

11 MR. ROOTS: Your Honor, could I make a brief
12 statement?

13 THE COURT: Mr. Roots, I can't hear every defendant
14 about every other defendant's cross-examination. I just -- I
15 just literally cannot. So if you want to make a similar
16 argument during your cross, we'll get to it.

17 MR. ROOTS: Well, my point was it impeaches this
18 witness, because the voting inside the Capitol --

19 THE COURT: Mr. Roots, I just said I would not hear
20 you on Ms. Hernandez's cross.

21 Ms. Hernandez, you may continue. Is there anything
22 else?

23 MS. HERNANDEZ: No. The government had asked me a
24 question about something, and I answered him. I think I'm
25 fine.

1 THE COURT: Is there -- is there a -- is there a --
2 do the parties think it would be helpful to go -- I mean, to go
3 to sidebar on the under seal matter? I just -- I --

4 MS. HERNANDEZ: Whatever the Court wants. I went off
5 on a different tangent just to accommodate the situation.

6 THE COURT: I know, and I thank you. And the reason
7 is, I'm sure we'll get to it before we wrap for the day -- I
8 assume we will -- and it may -- it may hopefully -- again, in
9 the spirit of trying to have you just be able to complete your
10 direct without -- your cross without interruption, why don't I
11 have you, Ms. Hernandez, just pick up the phone on this.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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MR. SMITH: Will we be going to 5:30 today? Or is it --

THE COURT: I think about 5:15.

Let's bring in the witness and the jury.

(Whereupon the jurors enter the courtroom.)

THE COURT: All right. Everyone may be seated. And

1 counsel may proceed.

2 MS. HERNANDEZ: Thank you, Your Honor.

3 Ms. Harris, can you --

4 I'm sorry, Your Honor.

5 (Off-the-record discussion between attorneys
6 Hernandez and Mulroe.)

7 MS. HERNANDEZ: Your Honor, I'm going to play for --

8 (Off-the-record discussion between attorneys
9 Hernandez and Mulroe.)

10 MS. HERNANDEZ: I would like to show the witness -- I
11 thought we had an agreement. We apparently don't. So I would
12 like to just show the witness the first page of -- let me back
13 up.

14 BY MS. HERNANDEZ:

15 Q. Special Agent, you testified during your direct as to
16 various segments from a Zoom video from December 30th, 2020.
17 Do you recall that?

18 A. Yes.

19 Q. And that was a Zoom video involving, I believe, Mr. Tarrio,
20 Mr. Rehl, Mr. Biggs, and other members -- I think, Mr. Bertino,
21 and Mr. Stewart and other members of the Proud Boys. Do you
22 remember that?

23 A. Yes.

24 Q. I'm going to show you --

25 And this is just for him, please.

1 -- a copy of two pages of a transcript of that video.

2 A. Okay.

3 Q. That's the first page.

4 THE COURTROOM DEPUTY: Do you have an exhibit number,
5 Ms. Hernandez?

6 MS. HERNANDEZ: I'm sorry. I'll have that Defendant
7 Rehl Exhibit 40.

8 THE COURTROOM DEPUTY: You have a 40 already.

9 MS. HERNANDEZ: 41?

10 THE COURTROOM DEPUTY: Okay.

11 BY MS. HERNANDEZ:

12 Q. And then this is the second page of the video -- the second
13 page of the transcript of that video, and I've just highlighted
14 a sentence in that transcript.

15 A. Yes.

16 Q. Okay. Do you remember this part of the video?

17 A. Um --

18 Q. Do you want me to play it for you?

19 A. It looks like the very beginning; is that right?

20 Q. Yes.

21 A. Yes.

22 Q. Do you remember those -- that?

23 A. Generally, yes.

24 Q. Okay.

25 MS. HERNANDEZ: Your Honor, this is a certified

1 transcript of a -- from a court reporting agency. It's -- the
2 transcript is signed --

3 MR. MULROE: Your Honor, I apologize. We wouldn't
4 object to a portion of the video playing.

5 THE COURT: All right.

6 THE COURTROOM DEPUTY: Which exhibit is this video?

7 MS. HERNANDEZ: I'm sorry. This is the MoSD,
8 December 30th, video.

9 THE COURTROOM DEPUTY: What's the exhibit number?

10 MS. HERNANDEZ: I believe it's Rehl Exhibit 11.

11 THE COURTROOM DEPUTY: 11?

12 No.

13 MS. HERNANDEZ: 10? MoSD video?

14 THE COURTROOM DEPUTY: Ministry of Self-Defense
15 video?

16 MS. HERNANDEZ: Yes.

17 THE COURTROOM DEPUTY: That's Rehl Exhibit 27.

18 MS. HERNANDEZ: Rehl Exhibit 27.

19 BY MS. HERNANDEZ:

20 Q. And I'm going to play it starting at about the 18-second
21 mark. I may have to go back, but for now, I'll play it at the
22 18-second mark and go to about the 29-second.

23 And, first, do you recognize these people on the screen?

24 A. Yes.

25 Q. And that's -- is that showing --

1 Could you please show --

2 MS. HERNANDEZ: The government is not objecting, Your
3 Honor.

4 THE COURT: Very well. The government does not
5 object. Is this -- I'm sorry. Are these passages from this
6 exhibit already in evidence?

7 MS. HERNANDEZ: No. This is the very beginning of
8 the video.

9 THE COURT: All right. And with no objection from
10 the government, it can be published.

11 MR. MULROE: Your Honor, yes. Just to be clear, we
12 don't object to this portion of the video coming in. We think
13 the entire video is not coming in.

14 THE COURT: I understand. It's 18 seconds to --
15 Ms. Hernandez, can you just give a sense, again, for the
16 record, what the end point is?

17 MS. HERNANDEZ: I said I'm going to stop it around
18 the 29 or 30 seconds. So it's a very short --

19 THE COURT: Please.

20 BY MS. HERNANDEZ:

21 Q. And just for the jury, the -- the top left-hand photograph
22 is NobleB, Mr. Tarrio?

23 A. Yes.

24 Q. And Mr. Biggs, apparently, is The Hated One?

25 A. Yes.

1 Q. And then on the bottom left hand, that's Aaron Wolkind, who
2 we've heard a lot about him?

3 A. Yes.

4 Q. And then on the bottom right, that is Mr. Bertino?

5 A. Yes.

6 Q. Okay. So I'm going to try to play it and hope it plays.

7 (Video played.)

8 Okay. So let me go back to the ELMO and show you
9 that -- the transcript. And Mr. Bertino says something like:
10 Hmm, you got to update it. I just had -- and Mr. Wolkind types
11 in: That's Danny Mack; is that correct?

12 A. Yes.

13 Q. Okay.

14 MS. HERNANDEZ: So I just want to introduce that
15 20-second clip, Your Honor.

16 MR. MULROE: Your Honor, could we be heard at
17 sidebar, briefly?

18 THE COURT: Yes.

19 (Bench discussion:)

20 MR. MULROE: Judge, pursuant to Rule 106, we would
21 ask that if this clip is coming in, that the following several
22 lines of the transcript come in as well.

23 THE COURT: Just to be clear, the transcript or the
24 video itself?

25 MR. MULROE: So, the next portion of the video

1 corresponding with the transcript up to line 21. So, up to
2 Mr. Tarrio saying: Don't lock me out of this app, you fuck.

3 THE COURT: Is there any objection, Ms. Hernandez?

4 MS. HERNANDEZ: Sorry. I don't have the transcript
5 in front of me, so I'm not sure exactly what we're looking at.

6 THE COURT: All right. I'm just going to give you
7 one moment to confer. And, Ms. Hernandez, you let me know if
8 there's an objection.

9 (Pause.)

10 MS. HERNANDEZ: So the government apparently -- I'm
11 sorry. I don't want to do this to the Court. Let me -- if
12 Ms. -- if Ms. Harris -- so the Court can see what we're talking
13 about. Hold on.

14 Ms. Harris, if you can show this to the Court and not
15 to the jury.

16 THE COURTROOM DEPUTY: Say that again?

17 MS. HERNANDEZ: Just to the Court and not to --

18 So, the government wants -- so, apparently, the
19 government wants to go down to that lovely word "fuck." I
20 don't think it's necessary, I don't think it adds anything, but
21 whatever the Court wants to do.

22 THE COURT: All right. Given it does, at least,
23 provide the context of --

24 Mr. Mulroe, why don't you articulate the context.

25 MR. MULROE: Your Honor, I think it does provide

1 important context for whether or not they are actually noticing
2 that Danny Mack is in here, or if this is a joke and just
3 setting up their access and determining who is in and who is
4 out and who can access and who can't.

5 MS. HERNANDEZ: I thought the use of the expletive
6 wasn't necessary. But I'm fine, Your Honor.

7 THE COURT: All right. Very well. We'll proceed
8 that way.

9 (Open court:)

10 MS. HERNANDEZ: I don't know if I can control the
11 video to that point. I think it will be fine just to show the
12 jury the next two sentences that the government wants to
13 introduce at the same time, Your Honor.

14 Is that fine? Or do you want the video --

15 MR. MULROE: Video.

16 MS. HERNANDEZ: So just to --

17 THE COURT: Do you want to just back it up to 18
18 seconds, Ms. Hernandez?

19 MS. HERNANDEZ: Yes, Your Honor.

20 So the Court wants to play that for the jury?

21 THE COURT: Play the whole clip.

22 MS. HERNANDEZ: All right. Okay. So I'm going to
23 back it up to 17 seconds. I think that will be...

24 (Video played.)

25 THE COURT: Okay. I can just see from the jurors

1 that they could not hear that because it was particularly -- it
2 was low. I had trouble hearing. So if there's a way to replay
3 that with the sound up higher, without --

4 MS. HERNANDEZ: It's at the highest. What I would
5 propose, Your Honor, is just play the -- look -- show the
6 transcript through that -- through that -- what I would propose
7 is show the transcript through, that point.

8 MR. MULROE: Ms. Hernandez --

9 THE COURT: Ms. Hernandez, the government is just
10 offering to just play it through there, which is louder.

11 But, just don't blow our ears off, please.

12 MS. HERNANDEZ: You really are asking a lot, Your
13 Honor.

14 THE COURT: I was instructing them, not you,
15 Ms. Hernandez, about blowing our ears out.

16 MS. HERNANDEZ: I'm joking. And I'm sorry for the
17 court reporter, in particular.

18 So let's see how this plays. I hope it's not too
19 loud.

20 (Video played.)

21 MR. MULROE: Just note for the record, Your Honor,
22 that was 10 seconds to 42 seconds.

23 THE COURT: Okay.

24 MS. HERNANDEZ: And just so the jury can see -- I'm
25 not sure how well the sound was -- this is the corresponding

1 transcript from the court-certified transcript, Your Honor, and
2 it goes to line 21.

3 Maybe I should ask the witness to read it.

4 MR. MULROE: Objection. Best evidence rule.

5 THE COURT: We all just heard --

6 MS. HERNANDEZ: We've had this witness testify for
7 two days.

8 THE COURT: I mean, all right. The witness may
9 respond to the question.

10 BY MS. HERNANDEZ:

11 Q. I'm sorry -- I'm sorry for making you do this, but read
12 from, like, line 6 to line 21, please.

13 A. Sure.

14 Q. And this is being shown -- I'm sorry. Could you show this
15 to the jury?

16 MR. MULROE: Your Honor, we object that the
17 transcript is incomplete and inaccurate.

18 THE COURT: The witness can read the document.

19 MS. HERNANDEZ: Your Honor, I'm sorry. This is a
20 court-certified transcript.

21 THE COURT: We just had -- if you -- we just had
22 the -- we just had the video played, and if the witness would
23 like to read this, that's fine.

24 MS. HERNANDEZ: Could we have a sidebar, Your Honor?

25 THE COURT: Okay.

1 (Bench discussion:)

2 MS. HERNANDEZ: Your Honor, the government has played
3 videos which are probably hearsay, has put up a transcript, has
4 played the video, has had people read the transcript. This is
5 a court-certified document by a person, and the last page says:
6 I, Roberta Pattas, do hereby certify that the following
7 transcript represents a complete, true, and accurate
8 transcription of the electronic recording furnished to me in
9 the above-entitled matter to the best of my knowledge, skill,
10 and ability.

11 And this copy is from Jones & Fuller Reporting
12 company, which is a reporting company from Massachusetts. So,
13 I would like to have the jury -- I understand that it was -- I
14 would like the jury to be able to see the transcript at the
15 same time that the witness reads the few pages. He has been
16 reading text messages for the past two days that have been up
17 on the -- for the jury to see, and he's been reading them.

18 THE COURT: All right.

19 Mr. Mulroe?

20 MR. MULROE: I think you've already ruled and told
21 her she can do it. I would note that if she had flagged it for
22 us earlier than this morning, we would have been able to look
23 at it earlier. I do think the transcript is inaccurate, but we
24 can address it on redirect.

25 MS. HERNANDEZ: Your Honor, I provided this

1 transcript to the government on February 6th.

2 THE COURT: Right. All right. Ms. Hernandez, you
3 may put it up on the screen and the witness will read it.

4 (Open court:)

5 BY MS. HERNANDEZ:

6 Q. I hope this will be the end of this questioning.

7 So, Special Agent Dubrowski --

8 A. Yes.

9 Q. -- if you would, please, if you would read from line 6 on
10 page 2 to line 21? Which is -- corresponds to the video clip
11 that we just played for the jury.

12 A. "MR. TARRIO: Hold on. I got to -- I got to fucking -- my
13 Telegram is not working, so I have to email shit to myself.

14 "MR. BERTINO: Why is your Telegram not working?

15 "MR. TARRIO:" --

16 MR. MULROE: Your Honor, I object to the exhibit
17 being published, an exhibit not in evidence.

18 THE COURT: I thought -- the witness may continue to
19 read.

20 A. -- "on my desktop. I don't know why.

21 "MR. BERTINO: Hmm, you got to update it. I just
22 had --

23 "MR. WOLKIND: That's Danny Mack.

24 "MR. TARRIO: Danny Maggot. Danny Maggot is coming
25 in.

1 "MR. BIGGS: And a whole bunch of people on Telegram,
2 so it got blocked.

3 "MR. TARRIO: Don't lock me out of this app. Now
4 open link, you fuck."

5 MS. HERNANDEZ: Thank you.

6 And that transcript will be Mr. Rehl Exhibit --

7 THE COURTROOM DEPUTY: You can make it 41.

8 MS. HERNANDEZ: Thank you.

9 BY MS. HERNANDEZ:

10 Q. Now, Special Agent Dubrowski, do you know that name, Danny
11 Mack?

12 A. I do not.

13 Q. You said you reviewed a number of -- all the Telegram chats
14 for these particular -- for these particular Telegram chat
15 groups, correct?

16 A. Yes.

17 Q. As well as a number of other Telegram chat groups which you
18 introduced, correct?

19 A. Yes.

20 Q. And you never saw the name Danny Mack?

21 A. I may have seen it. If you want to show me something.
22 But, I don't have information about him in the top of my head.

23 Q. Okay. So you don't know that he was or is -- was the
24 president of the New Jersey Proud Boys?

25 A. I didn't have that information on the top of my head, no.

1 Q. Okay. I will -- I will move on for -- so as not -- so as
2 not to bore everyone. And I may come back to this, if I still
3 have cross-examination.

4 Well, let me ask you one last question. So, you may not
5 know his name. Do you know his -- do you know -- did you see
6 anything -- anyone admitting that he was a -- this gentleman,
7 Danny Mack, that he was a government informant -- a federal
8 government informant?

9 MR. MULROE: Objection. Prior ruling.

10 THE COURT: Sustained.

11 MS. HERNANDEZ: We'll get back to that.

12 BY MS. HERNANDEZ:

13 Q. Now, the government introduced a MoSD chapter application
14 form?

15 A. Yes.

16 Q. And I'm not sure what government exhibit number it was, but
17 you remember reviewing it and that it was admitted, correct?

18 A. Yes.

19 Q. And it's a three-page document?

20 A. Yes.

21 Q. Ms. Rohde, can you pull up that document, please, MoSD
22 application form?

23 MR. MULROE: It's Exhibit 614.

24 MS. HERNANDEZ: Government Exhibit 614.

25 BY MS. HERNANDEZ:

1 Q. So, that's the document you mentioned?

2 A. Yes.

3 Q. In reviewing the Telegram messages, did you see -- and the
4 other documents -- this is 614, so this doesn't come from a
5 Telegram message, right?

6 A. Right.

7 Q. It comes from -- do you know where it comes from?

8 A. I believe this was a Google form.

9 Q. Okay. But you reviewed it in preparation for your
10 testimony?

11 A. Yes.

12 Q. Did you also review a spreadsheet relating to the MoSD
13 chapter application form --

14 A. I did not.

15 Q. -- that identified all the different people who were
16 brought into the MoSD by the different defendants?

17 A. No, I did not.

18 Q. Okay. Are you aware that Mr. Rehl brought some people into
19 the MoSD?

20 A. Yes.

21 Q. And let me give you some names and see if they ring a bell
22 to you.

23 A gentleman by the name of Isaiah Giddings?

24 A. I remember that name.

25 Q. And he's a Philadelphia -- he's a Proud Boy from

1 Philadelphia?

2 A. I do not know that.

3 Q. Okay. But you remember the name?

4 A. Yes.

5 Q. You remember the name as a member of the MoSD that was
6 brought in by Mr. Rehl?

7 A. I remember the name.

8 Q. How about a gentleman by the name of Brian Healion?

9 A. That name is unfamiliar to me.

10 Q. How about a gentleman by the name of Freedom Vye?

11 A. What was the second?

12 Q. Freedom is his first name.

13 A. Uh-huh.

14 Q. And do you think, if I showed you this spreadsheet with the
15 different MoSD persons who were brought into the different --
16 into the MoSD by different people, that would refresh your
17 recollection?

18 A. I'm happy to take a look at it.

19 Q. Okay.

20 MS. HERNANDEZ: Your Honor, if the Court will allow
21 me, I want to show the witness five pages.

22 (Hands document to witness.)

23 A. Thank you.

24 BY MS. HERNANDEZ:

25 Q. Does that refresh your recollection to having seen this

1 document in the past?

2 A. I may have seen this document before. I will admit, I am
3 unfamiliar with it.

4 Q. Okay. All right. I will move on, then.

5 Well, Government Exhibit 614, I believe, that
6 required --

7 Is it 614?

8 MR. MULROE: (Nods head.)

9 BY MS. HERNANDEZ:

10 Q. -- that required --

11 And is it up on -- it's been admitted. Okay.

12 So, that required this application form. And the person
13 who was being brought into the MoSD had to give their Telegram
14 handle?

15 A. Yes.

16 Q. And the second question is: Who referred you?

17 A. Yes.

18 Q. And that would be which -- Mr. Rehl, for example, was the
19 person who would have referred Mr. Giddings to the MoSD,
20 correct?

21 A. Yes.

22 Q. Okay. And then it also asks: What's your home chapter?

23 A. Yes.

24 Q. Then the next series of questions is: What is your degree?

25 And that's degree within the Proud Boys?

1 A. Yes.

2 Q. Okay.

3 MS. HERNANDEZ: And then are you controlling it or am
4 I?

5 MS. ROHDE: I am.

6 MS. HERNANDEZ: Okay.

7 BY MS. HERNANDEZ:

8 Q. And, so, the second page of this document, says --

9 I'm sorry. Can we go to the second page? Okay.

10 So, "What is your home chapter," correct, is here?

11 A. Yes.

12 Q. The degree?

13 A. Yes.

14 Q. "How long have you been a Proud Boy?"

15 A. Yes.

16 Q. "What events have you attended with the Boys?"

17 A. Yes.

18 Q. And your understanding of "what events have you attended"
19 is what other rallies have you attended, correct?

20 A. That's my understanding.

21 Q. Okay. And, then, the next -- further down.

22 And then it has a code of conduct, correct?

23 A. Yes.

24 Q. And it requires the person: "Do you affirm that you will
25 not be using drugs or alcohol during any event, unless it's

1 sanctioned?"

2 A. Yes.

3 Q. And then the next question is the secrecy, "Everything that
4 is spoken within this chapter will remain private. Screenshots
5 or forwarding of messages are grounds for instant removal. Do
6 you agree to this?"

7 A. Yes.

8 Q. And then down here, "This chapter will need your full
9 cooperation with leadership for the safety of our brothers" --

10 A. Yes.

11 Q. Oops. So, that didn't work. That's not a highlighter.

12 -- "for the safety of our brothers. Is this something
13 you're willing to do?"

14 A. Yes.

15 Q. So the -- from the MoSD video and other documents, there
16 was concern -- MoSD was created in the aftermath of
17 Mr. Bertino's stabbing; is that correct?

18 A. It was created after Mr. Bertino was stabbed, yes.

19 Q. Mr. Bertino and three other Proud Boys in Washington, D.C.,
20 were stabbed during a -- after -- during an "after rally"?

21 A. "An after rally" on the evening of December 12th, yes.

22 Q. On the evening of December 12th, there had been a rally
23 earlier in the day. And in the evening the Proud Boys
24 sometimes, or often, go out again; is that correct?

25 A. Yes.

1 Q. And on the evening of December 12th, Mr. Bertino had been
2 stabbed.

3 A. Yes.

4 Q. And he was stabbed fairly seriously? Is that your
5 understanding?

6 A. My understanding, yes.

7 Q. Yes. And in the aftermath of that, the MoSD -- Mr. Tarrio
8 creates MoSD?

9 A. Yes, afterwards.

10 Q. Okay. And he, in fact, in that video that you showed and
11 some of the clips that were introduced, they expressed that
12 concern for the safety of the membership?

13 A. Concern for safety is definitely discussed, yes.

14 Q. Right. And, in fact, Mr. Bertino participates in some of
15 those discussions and mentions that he was stabbed, and they
16 kind of -- is that correct?

17 A. Yes.

18 Q. And they sort of give him a little bit of ribbing for
19 having been stabbed, correct?

20 A. Yes.

21 Q. Okay. And then the -- this next paragraph down here --

22 Can you bring it up a little, please?

23 -- says, "I will always act in self-defense," correct?

24 A. Yes.

25 Q. -- and "I will never initiate a confrontation."

1 A. Yes.

2 Q. "Is this something you can agree on?"

3 A. Yes.

4 Q. Not you, but that's what's written on this form, correct?

5 A. Yes.

6 Q. And then as I'm want to do, they finish it off with their
7 "fit in or fuck off," correct?

8 A. Yes.

9 Q. They do like their curse words; would you agree with me?

10 A. There are a lot of curse words in the chats.

11 Q. Okay. And as you understand, these forms were -- I
12 don't -- do you know who created this question -- this
13 three-page form with these questions?

14 A. My recollection from the chats is that Tarrío circulates a
15 draft for comment in the Leaders Chat.

16 Q. And this is what comes out of it?

17 A. Yes.

18 Q. And, in fact, there are -- at least one of the -- one of
19 the chat groups is a Tarrío -- or, a MoSD vetting chat?

20 A. I've seen that chat, yes.

21 Q. And that appears to be Tarrío's chat. In other words, it's
22 not -- not everybody in the MoSD is in that particular chat?

23 A. That's my recollection.

24 Q. And have you seen -- you said you may have seen that
25 spreadsheet that I showed you, but you're not 100 percent sure.

1 Have you seen any of these completed forms?

2 A. Forms? No.

3 Q. You never saw any of these completed forms?

4 A. No.

5 Q. Okay. At least on its face, this document states that:
6 The purpose of these rules is to -- is for the purpose of the
7 safety of your brothers. Being the members of the MoSD who
8 participate in these rallies?

9 A. I agree that that's in here.

10 Q. On its face?

11 A. Yes.

12 Q. Right. And on its face it states that they will act --
13 they are agreeing that they will act in self-defense?

14 A. On its face, yes.

15 Q. On it face, always. And when we say "on its face," its
16 just that those are the words on the page.

17 A. Yes.

18 Q. Okay. And I understand -- I'll keep my comment to myself.

19 And on its face, it says: I will never initiate a
20 confrontation.

21 A. Yes.

22 Q. Okay. And you have not seen any of these, but you have no
23 reason to -- there will be other witnesses who -- I'm sure
24 Mr. Bertino will be here, Mr. Giddings will be here, and other
25 witnesses whom we can ask whether they completed this form.

1 A. Okay.

2 Q. But that's not your task today.

3 A. Yes.

4 Q. I got it. You're here for the -- for the Telegram chats.
5 Okay. I would like to go through some of those Telegram chats,
6 then.

7 So, before I go there, these are some of the --

8 Sorry. Can you bring up 500-2?

9 This is Government Exhibit 500-2, which was introduced
10 through you earlier today -- or, in the last few days.

11 A. Yes.

12 Q. And this is the Skull and Bones chat group that we spoke of
13 earlier?

14 A. Yes.

15 Q. And according to this little thing up here (indicating),
16 there are 11 members of this chat group?

17 A. Yes.

18 Q. So, those are nine, Mr. Tarrio, and Mr. Nordean.

19 But, this particular -- Mr. Rehl is not a member of this
20 chat?

21 A. Correct.

22 Q. Okay. And this is the group that you described as were
23 elders -- or, at least that's how they identify themselves,
24 correct?

25 A. Yes.

1 Q. And these are national leaders?

2 A. Yes.

3 Q. Okay. So, again, there's a series -- this was
4 introduced --

5 And can you scroll down, please?

6 And none of these -- and you will not find Mr. Rehl's
7 commenting on this at all?

8 A. Correct.

9 Q. Or responding to it?

10 A. Correct.

11 Q. Because he's not a member.

12 A. Correct.

13 Q. So, even if he wanted to, he has no ability to respond to
14 any of these chats on the Skull and Bones, correct?

15 A. Right. He's not in the chat.

16 Q. Okay. And then -- and this one is also from September of
17 2020, so this chat is from around the time of the presidential
18 debate?

19 A. Yes.

20 Q. And then 500-2, please.

21 Or, this was 500-2. How about 500-3?

22 And, again, this is --

23 500-3. I'm sorry.

24 Okay. This is, again, another Skull and Bones?

25 A. Yes.

1 Q. And this is, again, from September 29th, 2020?

2 A. Yes.

3 Q. Which is the date of the debate.

4 A. Yes.

5 Q. And whatever is being said on here, Mr. Rehl is not privy
6 to what is being said because he's not a member of this chat?

7 A. Yes.

8 Q. Okay.

9 And then 500-5, please.

10 Again, these are Skull and Bones, the national leaders,
11 September 30th, 2020. So -- and this is -- it's September 30th
12 because it's right after midnight.

13 A. Yes.

14 Q. So it's the same -- it's the night of the debate, but after
15 midnight.

16 A. Yes.

17 Q. And, again, these gentleman appear to be talking about the
18 message that the -- President Trump sent out: Standby and
19 stand down, or whatever it was he said?

20 A. I believe this series of messages is about what Mr. Biggs
21 had said after that.

22 Q. So, again, we're talking about -- Mr. Biggs, I think they
23 refer to him as The Hated One?

24 A. I think he may have named himself that in that video.

25 Q. But, there appears to be this theme through a lot of these

1 messages where people say -- they show displeasure for
2 Mr. Biggs.

3 A. Yes.

4 Q. Okay. So, this wasn't about the president. This was about
5 Mr. Biggs.

6 So we'll go to 500-6, please.

7 And this is, again, Skull and Bones?

8 A. Yes.

9 Q. And it appears, again, we're talking about Mr. Biggs, and
10 Mr. Tarrio seems to be standing up for him or saying -- when he
11 says "I'm not dumping on my boy," he's talking about Mr. Biggs?

12 A. Yes.

13 Q. Okay. And 500-8.

14 So, it appears there are two points of preoccupation for
15 the Proud Boys. One is President Trump's statement to them at
16 the debate?

17 A. In this message, yes.

18 Q. And the second one appears to be Mr. Biggs.

19 A. Yes.

20 Q. They, again, have -- are worried about having to explain
21 Joe Biggs.

22 And do you know, is Mr. Biggs a little bit rough around
23 the edges, would you say?

24 A. Based on the messages I reviewed, I think that's a fair
25 characterization.

1 Q. Okay. And he's a former Marine?

2 A. Yes.

3 Q. Who wears it on his sleeve?

4 A. I'm not sure I'm in a position to comment on that.

5 Q. Do you know he's actually a veteran? He actually served
6 tours in Afghanistan and -- Afghanistan and -- I'm sorry, not
7 Marine. He's an Army person who served in Afghanistan and
8 Iraq.

9 MR. MULROE: Object to scope.

10 THE COURT: The witness can answer.

11 A. I did not know that.

12 BY MS. HERNANDEZ:

13 Q. Okay. I know you indicated you are in the reserves?

14 A. Yes.

15 Q. Is there something about servicemen -- perhaps not you --
16 they like to sort of curse and drink and do other things that
17 other -- that many of us may look down on?

18 A. I'm not willing to make that characterization about people
19 I've worked with.

20 Q. Okay. All right. You have to go back and serve with your
21 fellow reservists.

22 Okay. How about 500-40, please.

23 And, again, this is the Skull and Bones. Mr. Rehl is
24 not in these. This is from November 20th, 2020.

25 A. Yes.

1 Q. And at this point, while they have become possibly a little
2 bit notorious because of the comments that the president made
3 at the debate -- President Trump made at the debate, this idea
4 that a rally will be held on January 6 has not come -- has not
5 been put forth yet?

6 A. Correct.

7 Q. Okay. And then 500-66.

8 Apparently, now, we're December 19th, 2020. That
9 appears to be -- the first message on here appears to be a
10 reference to possibly the president's Tweet on December 19th.
11 It says: Trump is calling for Proud Boys to show up on the 6th.

12 A. Yes.

13 Q. And, again, Mr. Rehl is not a participant in this chat, so
14 he has no way of knowing what's being said.

15 A. Yes, he's not in this chat.

16 Q. Okay. 500-69.

17 And, again, this is Skull and Bones, the Elders,
18 December 26, 2020. So it's a week after the president's Tweet.
19 And Mr. Tarrio -- do you know whether this is the first time he
20 mentions this notion of creating a chapter -- a specific
21 chapter?

22 A. This isn't the first message about it. This is part of the
23 conversation where he presents it for a vote to the Elders.

24 Q. And he's presenting it to the Elders?

25 A. Yes.

1 Q. Okay. And do you know, from your review of these text
2 messages, what role these Elders play in what the Proud Boys do
3 or don't do, if any role?

4 A. Yes. I -- I'm sure it's not a complete picture, but from
5 my review of the chats, one of their core functions was to
6 approve the creation of new chapters and to sort of provide
7 advice on chapter business on a wide-ranging --

8 Q. So, would you -- and I'm asking. I don't know the answer
9 to this. Probably a bad thing to do -- but, these Elders give
10 advice. They don't have a final word. Or do they?

11 A. From my review of the chats, it does not appear that they
12 have the final word. Mr. Tarrio tends to get his way.

13 Q. Okay. So, going down, this gentleman, Angel Valentine, do
14 you know who he is, by any chance?

15 A. Yes. He's an elder from, I believe, the United Kingdom,
16 who is a regular participant in the Elders Chat.

17 Q. So they're an international organization?

18 A. Yes.

19 Q. And, so, he wants -- he has a question: Who's going to
20 select these people and who will be president and
21 vice president?

22 And Enrique Tarrio says: We meet the seven-member
23 minimum. We have not disavowed or removed members.

24 And then Mr. Valentine comes back to that favorite
25 topic: Because I can see you getting a load of pushback and

1 drama if you stick Biggs near those positions.

2 Again, we're talking about the lovely Mr. Biggs,
3 correct?

4 A. Yes.

5 Q. Okay. And, so, Mr. Tarrio explains who he thinks this sort
6 of leadership group is?

7 A. Yes.

8 Q. And he labels them "Marketing," and he identifies the
9 Marketing Group as himself, Mr. Biggs, and Mr. Rufio -- or
10 Rufio?

11 A. Yes.

12 Q. And that's -- that's Mr. Nordean?

13 A. Rufio is Ethan Nordean.

14 Q. And then he -- so, those three are at the top of the
15 pyramid --

16 A. Yes.

17 Q. -- in terms of the power structure?

18 A. Yes. Marketing is above Operations.

19 Q. Okay. Which -- and, so, the next level is Johnny
20 Blackbeard, who -- he's the president of Harrisburg,
21 Pennsylvania, and that's John Stewart?

22 A. John Stewart.

23 Q. Okay. And then Zach, that's Mr. Rehl?

24 A. Yes.

25 Q. And then: Rex Ferg, President of South Sound.

1 Is that Puget Sound somewhere, or on the West Coast?

2 A. On the West Coast.

3 Q. There isn't a lot of -- there aren't a lot of texts by
4 Mr. Ferg; am I correct?

5 A. That's correct.

6 Q. Okay. So, at 3:33 Mr. Enrique says something like: I know
7 that. Do you think he's responding back to the Biggs
8 reference?

9 A. Based on context, it looks like he's responding to Angel
10 Valentine, yes.

11 Q. Okay. And, again, he stands up for him.

12 So 500-72.

13 Sorry, Mr. Biggs.

14 Again, Mr. Biggs seems to be a topic of conversation.
15 Do have any idea what Mr. Biggs had done to deserve such love
16 or enmity from his fellow Proud Boys?

17 A. In September, it was about a Parler post suggesting that
18 the president's comment had green-lighted violence against
19 antifa. I do not know, in this particular case, if there was a
20 particular inciting comment, no.

21 Q. I'm sorry. In September, he did what? What was the
22 concern? That the president -- the president's "standby, stand
23 down" comment had what?

24 A. Apologies. In September, Mr. Biggs posted on Parler a
25 message to the effect of: The president just said go out and

1 attack antifa.

2 Q. I see.

3 A. And that was -- I think we showed that chat in my direct.

4 Q. And that was rejected by the Elders?

5 A. Yes.

6 Q. So on December 26, 2020 --

7 500-74, please. 500-74.

8 -- Mr. Tarrio says: Whispers, 1776.

9 A. Yes.

10 Q. Now, the 1776 document that we've spoken about that was
11 sent to Mr. Tarrio by Eryka --

12 A. Yes.

13 Q. -- that was sent in December -- on December 29th, was it
14 not?

15 A. Yes.

16 Q. So this statement, "1776, whispers," is not a result of
17 that document.

18 A. He has not yet received the document, no.

19 Q. And, in fact, Mr. Tarrio has -- or had -- I'm not sure if
20 he still has it -- an online store which, I believe, was --
21 had -- the 1776 was the name of the store, or 1776 was part of
22 the title of the store?

23 A. Yes.

24 Q. So it's a brand that he uses, 1776?

25 A. At some point it was, yes.

1 Q. And this was long before -- or at least -- the website has
2 been up for months? Years?

3 A. Which website?

4 Q. The 1776, the online store.

5 A. Oh, I don't know when it went up. I'm sorry.

6 Q. But it was up before the -- these text messages that we're
7 reviewing, correct?

8 A. Yes.

9 Q. Okay. And so it was up -- he's using 1776 as a rallying
10 cry unrelated to this document that has been introduced, the
11 1776 Returns?

12 A. Yes.

13 Q. Okay. And then 500-81, that's from January 4th, 2021. And
14 this, I guess, is a reference to when he gets arrested in D.C.

15 A. Mr. Tarrío, yes.

16 Q. Yes. Because -- and Will Carless is some sort of reporter
17 or person who writes?

18 A. It would appear that way.

19 Q. Okay. So, again, that's January 4, 2021. Okay.

20 So, I had earlier asked you about the Skull and Bones,
21 the exhibit number that the government gave to the Skull and
22 Bones -- to the Skull and Bones chat. And can you now agree
23 with me that the three-digit prefix that the government gives
24 to the Skull and Bones chat is the 500s?

25 A. Yes.

1 Q. But you don't have that chat on your chart?

2 A. No.

3 Q. And is that because -- why is that?

4 A. My understanding is the purpose of this chart is to show
5 the MoSD chats.

6 Q. So is MoSD more -- has -- carries a different significance
7 than the Skull and Bones, for example?

8 MR. MULROE: Objection. Calls for an opinion on
9 "significance."

10 THE COURT: Sustained.

11 BY MS. HERNANDEZ:

12 Q. But, in any event, this chart leaves out the Skull and
13 Bones Telegram chat which you -- which a number of individual
14 chat threads were introduced, correct?

15 A. Yes.

16 Q. Okay. So I am going to -- I just put a sticky note that
17 reads: "Skull and Bones" and "500 exhibits."

18 And I'm just going to stick it on here. It's removable,
19 but -- okay?

20 A. Okay.

21 Q. Thank you.

22 Oh, one more thing. "Rehl not member."

23 So I wrote on it: Rehl is not a member.

24 And the Elders, they still were, apparently,
25 functioning.

1 I'm sorry. Can you bring up 508-1?

2 And this is the Elders, and it appears that they're
3 using 508-1 as the exhibit number for the Elders?

4 A. Yes.

5 Q. And, again, Mr. Rehl is not a member of the Elders?

6 A. Yes.

7 Q. So he has no way of knowing what is being said on this
8 chat?

9 A. Yeah, he's not in this chat.

10 Q. He's not in this chat. And, so, this was -- whether he
11 responds or doesn't respond has no significance.

12 A. Yes, he's not in the chat.

13 Q. I know you don't want to give me, but it's not -- let's put
14 it this way: Even if he had learned of what was said on here,
15 he has no way of responding; am I correct?

16 A. Yes.

17 Q. Because these chats are controlled by whoever got invited
18 into it; am I correct?

19 A. They're controlled by the chat administrator, I believe.

20 Q. Okay. But if you're not -- if you have not been -- if the
21 administrator has not admitted you into the chat, there's no
22 way you can post on it?

23 A. If it's a private chat, yes.

24 Q. Are these private chats?

25 A. To my understanding, yes.

1 Q. So -- and, then, 508-2.

2 And, again, this is a Elders private chat and --
3 508-2.

4 MR. MULROE: I don't believe we offered it.

5 THE COURTROOM DEPUTY: It's not entered.

6 MS. HERNANDEZ: Oh, okay.

7 BY MS. HERNANDEZ:

8 Q. Anyway, 508-1. And I've got another little sticker.
9 Elders 508.

10 I'm sorry. So here's -- the government introduced what
11 they -- another chat group -- another private chat group, and
12 it's called OG Pickleback Crew.

13 A. Yes.

14 Q. And that is 515-3, please.

15 And this is from September 29th, 2020?

16 A. Yes.

17 Q. So this is from the date of the debate?

18 A. Yes.

19 Q. And, again, Mr. Rehl is not a member of this?

20 A. Yes.

21 Q. So, again -- and I know I'm repeating myself -- Mr. Rehl
22 has no way of responding -- there's no indication that he read
23 this, and he has no way of responding, even if he had read it?

24 A. Yes.

25 Q. And the prefix given by the government to this particular

1 chat group is the 515?

2 A. Yes.

3 Q. Okay. And then 517-1, please.

4 And this is Space Force Chat?

5 A. Yes.

6 Q. Do you know, is this in reference to the -- President
7 Trump's creation of the Space Force?

8 A. I don't know why this chat was named this chat.

9 Q. Okay. Do you know that this chat is made up of members
10 from Central Florida, by any chance?

11 A. I do not know. I know it's a Proud Boys chat. I don't
12 know about the geographic bounds of it.

13 Q. Mr. Biggs is from Florida?

14 A. Yes.

15 Q. And so is Mr. Tarrio?

16 A. Yes.

17 Q. Okay. And this is from December 20th, 2020. And, again,
18 there's some discussion about getting tickets for the 6th.

19 A. Yes.

20 Q. And then 517-3.

21 And this particular one, Mr. Biggs mentions that: No
22 club colors at all.

23 A. Yes.

24 Q. And do you know, is this the first time that -- and this is
25 from December 24th, 2020?

1 A. Yes.

2 Q. Okay. So the Space Force chat, it's exhibit numbers 517,
3 and Mr. Rehl is not a member.

4 A. Correct.

5 Q. So, again, whatever is said or not said on here, you would
6 agree, Space Force chat -- I know that you testified that --
7 or, you were asked whether you had some -- you testified that a
8 number of -- a number of the defendants did not respond to, or
9 answer, a number of Telegram chats, correct?

10 A. Yes.

11 Q. So -- but, at least as to these particular ones that I've
12 been putting stickies on -- which is likely driving the
13 prosecutors a little bit unhappy -- Mr. Rehl had no ability to
14 respond?

15 A. Yes.

16 Q. Okay. So, then you also introduced a number of chats
17 between particular individuals, correct?

18 A. Yes.

19 Q. And you didn't introduce any chats that involved Mr. Rehl
20 with Mr. Tarrio alone, like, one-to-one with Mr. Tarrio,
21 correct?

22 A. Correct.

23 Q. Okay. But -- 518-1.

24 And this appears to be a group text. And according to
25 the little icons that you have up here, it only contains three

1 people?

2 A. Yes.

3 Q. Okay. And these three people would be Tarrío, Biggs, and
4 Nordean?

5 A. Yes.

6 Q. And this is December 19th, 2020. That's the date of the
7 Trump Tweet?

8 A. Yes.

9 Q. Okay. So, again, you don't have the document in front of
10 you that tells you when this particular chat group was created,
11 do you?

12 A. When this -- no. I would need to see the full extraction
13 to get the start date of this thread.

14 Q. But, in any event, this particular chat group includes
15 these three people, and these are the three people who were at
16 the top of the MoSD pyramid?

17 A. Yes. These three individuals become the marketing team.

18 Q. Okay. And at least on this, Mr. Biggs -- apparently,
19 nobody is criticizing Mr. Biggs in this particular text. So,
20 this is just a group text chat -- a group chat with Tarrío,
21 Biggs, and Nordean, and this is Exhibit 518.

22 And Mr. Rehl is not a member of this chat group?

23 A. Yes.

24 Q. I was never a teacher, but I did have children.

25 So, now we're going to have -- you introduced a chat

1 between -- or, two chats between Mr. Tarrío and Reaper 1st.

2 Do you know if Reaper 1st is a member from Upstate
3 New York?

4 A. Based on the context of the messages, yes.

5 Q. Okay. And 522-1.

6 And, again, Mr. Rehl was not a member?

7 A. Yes.

8 Q. And, again, whatever was said on here, Mr. Rehl had no
9 opportunity to respond, object, approve, or whatever?

10 A. Yes.

11 Q. And these are Exhibit 522.

12 And there's also -- that's 522-1 and 522-2, correct?

13 A. That sounds right, yes.

14 Q. And then there's also a 521-1. This is from December 29th,
15 2020, and this is a chat between Mr. Tarrío and Pezzola?

16 A. Yes.

17 Q. And there does not appear to be a response by Mr. Tarrío;
18 is that correct?

19 A. Yes.

20 Q. And is it accurate to say that Mr. Tarrío had thousands of
21 Telegram messages sent to him?

22 A. Yes.

23 Q. And do you know whether -- would you agree with me, he
24 didn't answer many of them?

25 A. Yes.

1 Q. This is Tarrio-Pezzola Exhibit 521, and Mr. Rehl is not a
2 member.

3 So with this particular one, 521-1, you have -- you
4 don't know whether Mr. Tarrio ever responded to this?

5 A. Yes.

6 Q. Okay.

7 MS. HERNANDEZ: I can go on. I have more of these.

8 I'm sorry.

9 BY MS. HERNANDEZ:

10 Q. There are a number of text messages between Mr. Tarrio and
11 Mr. Biggs that were introduced through you, and the exhibit
12 numbers are 525. Does that ring a bell?

13 A. Yes.

14 MR. MULROE: Your Honor, I would object. Rule 403.
15 Waste of time, if we're going to do this exercise for every
16 exhibit.

17 THE COURT: Why don't I hear counsel at sidebar.

18 (Bench discussion:)

19 THE COURT: Ms. Hernandez, normally I give counsel
20 all the time they need to make their points. And, usually, my
21 theory is also, in part, that this is self-regulating, that the
22 lawyer will recognize that the jury is being board.

23 But, so, how much more do you have on this?

24 MS. HERNANDEZ: Just a couple of them, Your Honor.

25 But, the point is that the government introduced all these

1 exhibits. They elicited from this witness that the defendants
2 did not respond. That, you know, that meant as sent. And
3 many -- most of these, M. Rehl is not a member, has no
4 opportunity to respond.

5 And I know it's a little tedious, but, we also
6 thought it was a little tedious when they had this -- and I'm
7 not having him read every single text. I'm just trying to
8 introduce these particular ones. And I'm just posting it up
9 there because they chose to select out all these message groups
10 that my client had no participation in, and just, you know,
11 make a big chart of the ones where he was involved. So, I
12 think I'm entitled to do this.

13 And decorum, Your Honor, he just said I was wasting
14 time. I take it personally.

15 THE COURT: All right. He did cite, literally the --
16 literally, it is part of the rule. Ms. Hernandez, I'm going to
17 give you another five minutes of this. But, I mean, you know,
18 you could have -- I get the point you're making, but the point
19 can be made with a few quick questions about how he's not a
20 part of these chats. So, you get five more minutes.

21 MS. HERNANDEZ: Thank you, Your Honor. But, again, I
22 felt that I was compelled to do it because the -- I don't know
23 if you recall, I asked if they identified my client was not a
24 member, and they did not do it.

25 THE COURT: No. No. I recall them doing it on

1 numerous occasions.

2 MS. HERNANDEZ: They did it once, then they stopped
3 doing it.

4 THE COURT: That's what cross is for, but that's --
5 what we're doing here -- what we're doing here is well beyond
6 that. You get five more minutes and then you have to move on.

7 MS. HERNANDEZ: Thank you, Your Honor.

8 (Open court:)

9 MS. HERNANDEZ: I apologize, ladies and gentlemen of
10 the jury, but --

11 BY MS. HERNANDEZ:

12 Q. So, Tarrio and Biggs' messages are Government Exhibit 525.
13 Can you please bring up 525?

14 And, again, I'm not going to read these, but the 525
15 exhibits involve text messages between Tarrio and Biggs. My
16 client is not involved in those, so he has no ability to
17 respond, correct?

18 A. Yes.

19 Q. Okay. And then Exhibit 526-2, that's messages between
20 Tarrio and Nordean?

21 A. Yes.

22 Q. And, again, my client, Mr. Rehl, has no ability -- is not a
23 member and has no ability to respond?

24 A. Yes.

25 Q. And then, I believe, this is the last -- maybe not. 530-1.

1 The 550 numbers are Tarrio and Bertino?

2 A. Yes.

3 Q. And the same -- the 530-1 and others are Tarrio and
4 Bertino. My client, Mr. Rehl, is not a member of these and,
5 therefore, has no ability to respond, which means that his
6 failure to respond doesn't mean that he agrees or consents,
7 correct?

8 A. Yes.

9 Q. Thank you.

10 And then the ones that are left, I believe, are the ones
11 between Mr. Tarrio and the -- Eryka and the two other women,
12 right?

13 A. Yes.

14 Q. And, again, that's -- I'm not even going to mention those
15 numbers, but Mr. Rehl is not part of that and, therefore, no
16 ability to respond?

17 A. Yes.

18 MS. HERNANDEZ: I think that's it for these, Your
19 Honor.

20 BY MS. HERNANDEZ:

21 Q. And, again, I -- so I've put up ten little stickies which
22 relate to ten separate chat groups in which my client,
23 Mr. Rehl, was not a participant so he had no ability to
24 respond.

25 A. Yes.

1 Q. And his failure to respond doesn't show that he agreed to
2 anything?

3 A. Yes.

4 Q. I want to talk a little bit about the internet. See if you
5 agree with me on this: Where we are these days and back in
6 2020, there's some literature out there that says: The tone of
7 the internet is outrage. Do you agree with that?

8 A. I haven't read that literature, but I understand the thrust
9 of the statement.

10 Q. And would you say that is a little bit consistent with a
11 number of messages that you read in the Telegram messages that
12 you read?

13 A. There was a lot of anger in the Telegram messages I read.

14 Q. But, there's this sort of undercurrent in Twitter, in
15 Telegram, in Parler, in a number of these, in Facebook, and
16 particularly in the lead-up to the elections and since, maybe --
17 I don't know, maybe since the 2016 Hillary Clinton email thing,
18 there's this expression of outrage by people on the internet?

19 MR. MULROE: Object to scope and foundation.

20 THE COURT: Sustained.

21 BY MS. HERNANDEZ:

22 Q. In the Telegram messages and in the -- and you didn't just
23 look at Telegram messages. You also introduced some Parler
24 messages?

25 A. Yes. I was asked to review some Parler messages.

1 Q. Were you also asked to review 134 Facebook messages?

2 A. No.

3 Q. But, there was Facebook posting by some people in this; if
4 you know?

5 A. I don't know.

6 Q. But, we agree that there is an element of outrage in the
7 way people post on the internet?

8 MR. MULROE: Object to scope and foundation.

9 THE COURT: Sustained.

10 BY MS. HERNANDEZ:

11 Q. There were a number of text messages that you introduced
12 relate -- that were posted -- and I don't know when these --
13 when I'm saying "text messaging," we're talking about Telegram
14 messages?

15 A. Yes.

16 Q. I don't know if that's the correct --

17 A. Understood.

18 Q. A number of the messages were posted by Mr. Bertino?

19 A. Yes.

20 Q. And a number by Mr. Wolkind?

21 A. Yes.

22 Q. Aaron Wolkind?

23 A. Yes.

24 Q. And Mr. Stewart?

25 A. Yes.

1 Q. And a number of -- the tenor those three particular men was
2 fairly provocative?

3 A. I would agree, they were particularly aggressive members.

4 Q. And are you aware that, as it happens, all three of them
5 were not here on January 6th, when all of the -- all the -- I
6 believe Mr. -- let me back up.

7 Mr. Wolkind, I believe, arrived in D.C., like, around
8 6 p.m., correct?

9 A. That's my understanding.

10 Q. But by that time, the Capitol had been -- everyone had been
11 evacuated, or all the -- all the demonstrators had been ushered
12 out of the Capitol?

13 MR. MULROE: Object to scope.

14 THE COURT: Sustained.

15 MS. HERNANDEZ: It's about Mr. Wolkind, Your Honor.
16 I'm just trying to establish that he wasn't here on January 6th.

17 THE COURT: The witness can respond, if he knows.

18 MS. HERNANDEZ: Thank you.

19 A. My understanding was that Mr. Wolkind was not present in
20 D.C. on the morning of January 6.

21 BY MS. HERNANDEZ:

22 Q. Or, the -- when the thick of the events that --

23 A. He wasn't there at the riot, yes.

24 Q. Okay. I'll let -- I'll give you that one.

25 So, Bertino, Wolkind, Stewart, you said they were

1 particularly -- what was the term you used? "Aggressive"?

2 A. Yes.

3 Q. So, let me -- let me see if you agree with this: There is
4 a -- another aspect of the internet is this notion of -- you
5 know, this keyboard gangsters, keyboard warriors, where people
6 appear to be -- feel free to be aggressive because they're --
7 they don't have to face you face-to-face?

8 MR. MULROE: Object to scope. Foundation.

9 THE COURT: Sustained.

10 BY MS. HERNANDEZ:

11 Q. Can you agree -- in reviewing these --

12 As an FBI agent, in your investigations and just in your
13 everyday life, do you agree with --

14 Are you familiar with the Urban Dictionary?

15 A. As a website?

16 Q. Yeah.

17 A. Yes.

18 Q. And they sort of give definitions for, sort of, modern
19 terminology?

20 A. Yes.

21 Q. Maybe that's not a proper way to describe it. But -- and
22 some -- would you -- there's this notion -- there is this term
23 on Urban Dictionary. Keyboard gangsters mostly attack on group
24 chats?

25 MR. MULROE: Object to the relevance of "Urban

1 Dictionary." And calls for hearsay.

2 THE COURT: Sustained.

3 BY MS. HERNANDEZ:

4 Q. Okay. So, in addition to all these chat groups where
5 Mr. Rehl was not present and, therefore, could not respond, and
6 so his silence cannot be interpreted to mean that he agreed
7 with whatever people were posting, correct? That's one aspect
8 of what we've gone through?

9 A. We did just go through that, perhaps.

10 Q. Boringly, perhaps. Or meticulously.

11 There are other reasons people would remain silent;
12 would you agree with me?

13 A. Other reasons, just generally?

14 Q. Why people would remain silent in a chat group.

15 A. Sure. Yes.

16 Q. And one is that they didn't read the text?

17 A. Yes.

18 Q. One is they read, but maybe were out the door and decided:
19 Oh, there's 78 other people posting, so I won't post?

20 A. Yes.

21 Q. One is -- Will Rogers is said to have said: Never miss a
22 good chance to just shut up, right?

23 A. I've never heard that, but --

24 Q. And, Muhammad Ali is said to have said: Silence is golden
25 when you can't think of a good answer.

1 A. Again, I haven't heard that, but, got it.

2 Q. And, another writer said: Sometimes silence is not always
3 implied consent. Sometimes it simply means that the silent one
4 had opted out of a discussion with idiots.

5 MR. MULROE: Objection. Relevance. Hearsay.
6 Cumulative. Waste of time.

7 THE COURT: Sustained.

8 BY MS. HERNANDEZ:

9 Q. There is -- there are times, would you agree with me, that
10 people don't respond on chat groups or Facebook or Telegram
11 because the conversation is idiotic?

12 A. Yes.

13 Q. Outrageous?

14 A. Yes.

15 Q. Give me another -- another word for: I'm not going to
16 answer this because I'm just -- doesn't warrant my time or
17 energy.

18 A. I understand.

19 Q. Agree?

20 A. Yes.

21 Q. Okay. And, in fact -- not -- I don't mean to say this, but
22 you are -- in this case, there's a number of agents and
23 prosecutors, correct?

24 A. Yes.

25 Q. And these aren't group chats, but you do sometimes receive

1 emails that are sent, perhaps you are copied on it, you're not
2 the recipient?

3 A. Yes.

4 Q. But you're copied. You're one of three, four, ten, I don't
5 know how many people might be on an email thread?

6 A. Yes.

7 Q. And, sometimes, you won't answer, either because it's not
8 your place to answer --

9 MR. MULROE: Objection to relevance of the agent's
10 personal practice. And objection, cumulative.

11 MS. HERNANDEZ: I think it fills --

12 THE COURT: It's sustained as to that. And given the
13 time, I'm going to --

14 MS. HERNANDEZ: I've made my point. I'm at the
15 beating a dead horse. I like horses, though.

16 I'll stop here.

17 THE COURT: Is your cross-examination complete,
18 Ms. Hernandez, or not?

19 MS. HERNANDEZ: No. There's a little bit more on a
20 different topic altogether, Your Honor.

21 THE COURT: All right.

22 Ladies and gentlemen, we're going to break for the
23 day. We will see you back here tomorrow at 9 o'clock.

24 MS. HERNANDEZ: Thank you, Your Honor, for your
25 patience.

1 (Whereupon the jurors leave the courtroom.)

2 THE COURT: You may step down.

3 You all may be seated.

4 All right. I'll see everyone here at 9 o'clock
5 tomorrow morning.

6 Is there -- does any -- Mr. Smith?

7 MR. SMITH: Thank you, Your Honor.

8 Last Friday the government provided its list of
9 witnesses for this week, and we've been trying to obtain the
10 list of the witnesses that will follow in the next 36 hours,
11 pursuant to the trial court's order, from the government.
12 Today we sent a couple of emails just letting the Court know
13 that we haven't managed to get a response, but the defense
14 would be grateful to know who the next three witnesses are this
15 week, following Agent Dubrowski.

16 THE COURT: All right. I honestly can't remember
17 exactly when this information is -- my orders -- when my orders
18 require this to be provided.

19 MR. SMITH: It's 36 hours, Your Honor.

20 THE COURT: Okay. Who from the government would like
21 to respond? Is --

22 MR. MULROE: Your Honor, we will get back to the
23 office and then send over our anticipated next witnesses. I
24 will say that some of the cross-examination of Agent Dubrowski
25 was actually more abbreviated than we anticipated, so we have

1 to adjust based on timing. But, we'll get that over to them
2 promptly.

3 THE COURT: All right. Let's -- what time do you
4 think -- would you expect you'll be able to get it over?

5 MR. McCULLOUGH: Your Honor, within the hour of
6 getting back to the office we will be able to send it over. I
7 think we're just trying to -- trying to manage the, kind of,
8 witness availability against length of cross and when people
9 will go next, so --

10 THE COURT: Understood. All right. So, the quicker
11 you'll get out of here the quicker you'll get that information.

12 We'll see you tomorrow at 9 o'clock.

13 * * *

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1 CERTIFICATE OF OFFICIAL
2

3 I, JANICE DICKMAN, do hereby certify that the above and
4 foregoing constitutes a true and accurate transcript of my
5 stenographic notes and is a full, true and complete transcript
6 of the proceedings to the best of my ability.

7 Dated this 14th day of February, 2023
8
9

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