

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00175
Plaintiff,)	
)	
vs.)	
)	
ETHAN NORDEAN, JOSEPH R. BIGGS,)	Washington, D.C.
ZACHARY REHL, ENRIQUE TARRIO and)	February 28, 2023
DOMINIC J. PEZZOLA,)	9:10 a.m.
)	
Defendants.)	
)	
* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 40
MORNING SESSION
BEFORE THE HONORABLE TIMOTHY J. KELLY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JASON B.A. McCULLOUGH, ESQ.
	ERIK M. KENERSON, ESQ.
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4 District of Columbia
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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

Jeremy Bertino

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EXHIBITS RECEIVED IN EVIDENCEPAGE

Defendant Pezzola's Exhibit No. 252

11146

1 THE COURTROOM DEPUTY: This is Criminal Matter
2 21-175, United States of America versus Defendant 1, Ethan
3 Nordean; Defendant 2, Joseph R. Biggs; Defendant 3, Zachary
4 Rehl; Defendant 5, Enrique Tarrío; and Defendant 6,
5 Dominic J. Pezzola.

6 Present for the Government are Jason McCullough,
7 Erik Kenerson, Conor Mulroe and Nadia Moore.

8 Present for Defendant 1 is Nicholas Smith; present
9 for Defendant 2 are John Hull and Norman Pattis; present for
10 Defendant 3 is Carmen Hernández; present for Defendant 5 are
11 Nayib Hassan and Sabino Jauregui; present for Defendant 6
12 are Steven Metcalf and Roger Roots.

13 Also present are Defendant 1, Mr. Nordean;
14 Defendant 2, Mr. Biggs; Defendant 3, Mr. Rehl; Defendant 5,
15 Mr. Tarrío; and Defendant 6, Mr. Pezzola.

16 THE COURT: All right. Good morning to everyone.

17 On the list of preliminary things we need to
18 address before we restart, I just wanted to address the
19 instruction issue regarding the guilty pleas.

20 I received all the filings from both sides. And
21 let me just let you all know where I am and then hear what
22 you all think. It's sort of something, I think, that kind
23 of splits this down the middle to some degree and to some
24 degree pushes off, I think, part of this.

25 As I looked at what the parties have proposed

1 here, it seems to me that on both sides it seems to go
2 beyond a pure limiting instruction. In other words, what I
3 think -- because the proposal suggests that, later on, the
4 jury will be given an instruction about how to consider a
5 cooperator's testimony, so I think a lot of the things,
6 Mr. Roots, that you -- some of the things, anyway, that you
7 think should be baked into this end up being covered by that
8 later instruction.

9 In other words, you should, I think -- and I
10 pulled it since the Government had referenced it. You know,
11 it has a lot of -- the form instruction has a lot about how
12 the jury should scrutinize the testimony of someone who's
13 entered into this, whether they have a motive to be telling
14 the things that are -- saying things that are not the truth,
15 et cetera.

16 So here's how I think -- so I think if I take out
17 that additional paragraph, Mr. Roots, that you wanted, but I
18 also take out what the Government had wanted about -- which
19 is also part of this later instruction -- about, "Well, the
20 Government is permitted to enter into this kind of
21 agreement," we're kind of left with the only dispute between
22 the parties as to whether that second sentence can say "the
23 witnesses' acknowledgment of their role in the alleged
24 offense," or the offense. That's taken right from
25 *Tarantino*. So I think that's the way to say it. We'll add

1 "alleged" if you would like.

2 So going with the Government on that, but not
3 including what you want, Mr. Roots, and not including the
4 Government's statement that they wanted, you're left with
5 this -- and I'll read it for everyone to hear -- as a
6 proposal to give the jury after Mr. Bertino's testimony is
7 complete:

8 "You have heard testimony that certain witnesses,
9 namely Matthew Greene and Jeremy Bertino, pled guilty to
10 certain charges relating to January 6. The evidence
11 regarding their guilty pleas was admitted for limited
12 purposes relating to those witnesses' credibility or those
13 witnesses' acknowledgement of their role in the alleged
14 offense.

15 "You may not use the fact that either witness
16 entered a guilty plea, nor the fact that I accepted those
17 pleas, as evidence of the guilt of any Defendant on trial in
18 this case.

19 "I will instruct you further at the end of trial
20 regarding your consideration of testimony from a witness --
21 regarding your consideration of testimony from a witness
22 with a plea agreement."

23 So I think that's a neutral way of saying: You
24 can consider it for A, but not for B, and you're going to
25 get a later instruction about -- that at least touches on, I

1 think, some of the things, Mr. Roots, you were getting at
2 with what you wanted here; in other words, your overall
3 consideration of the credibility of someone who pleads
4 guilty to that -- who has a plea agreement.

5 How does that sound to you, sir?

6 MR. ROOTS: Well, I was thinking about this this
7 morning. I think the overarching point is, it is normally
8 the defense that wants the guilty plea in evidence because
9 it attacks the credibility of the witness.

10 So it's normally our side that wants the guilty
11 plea.

12 THE COURT: Right.

13 MR. ROOTS: So -- but it has arisen by practice --
14 these prosecutors over the years have learned this, and they
15 have learned when they put a cooperating witness on the
16 stand, they learned that that cooperating witness is often
17 attacked based on the guilty plea, so they preliminarily
18 introduce the guilty plea themselves to counter what they
19 know the defense will attack.

20 THE COURT: Correct.

21 MR. ROOTS: So this has arisen.

22 So we want -- generally, we want the guilty plea.
23 What is the purpose of putting the guilty plea in there?
24 Well, we want it in there to attack the credibility of the
25 witness.

1 But this language that says "and to acknowledge
2 the witness's role in the offense," that should not be in
3 the case law. It has arisen, unfortunately, in the case law
4 on appeals where I think, from what I see, the courts of
5 appeals will say that's error, but harmless error in most
6 cases, but that that should not play a role, because the
7 witness -- the prosecution has a right to put on all
8 evidence of the witness's, quote, acknowledgement of the
9 offense -- acknowledgement of the facts, of their role in
10 the offense. That should not be done through a plea
11 agreement.

12 So we object to that.

13 THE COURT: I mean, I took that -- I take your
14 point about *Tarantino*. But *Tarantino* literally stands for
15 the proposition -- I don't have it in front of me -- but
16 that language that it is permissible -- it is permitted that
17 the plea agreement can be admitted for -- not only relating
18 to credibility, but to show those witnesses' acknowledgement
19 of their role in the offense. That's literally what
20 *Tarantino* says.

21 So you may disagree. And, as we've discussed, the
22 question of who gets to introduce the plea agreement first
23 is different in this circuit than it is in other circuits.
24 And the law has developed differently in other circuits
25 regarding kind of the contours of this.

1 You may disagree, but I don't see how I get around
2 the fact that *Tarantino* says that's permissible. So if I'm
3 going to lay out in a limiting instruction, Jury, you can
4 consider it for A; you cannot consider it for B, I don't see
5 how I cannot say that, given that our Court of Appeals has
6 said that's a permissible use.

7 MR. ROOTS: Yeah. In this case, the facts are
8 much worse than *Tarantino*, because the prosecution
9 emphasized that the sitting judge -- remember, these jurors
10 don't know any judge in the world except you, your Honor,
11 and they, I'm sure, look up to you with great admiration.

12 The sitting judge has already proved the
13 conspiracy allegations in this case. This is very
14 prejudicial.

15 THE COURT: This is -- look, I guess I agree with
16 you insofar as it does underscore why I understand your
17 wanting this kind of instruction and not waiting to the end
18 of the case to hear about, Well, you know, people who plead
19 guilty may well have a motive to not tell the truth and
20 blah, blah, blah, blah, blah.

21 So I hear what you are saying. I think what
22 you're saying underscores the fact that I want to give
23 you -- you've requested an instruction. I will give you an
24 instruction. I don't think it means that the instruction
25 can't reflect what our circuit has said is permissible and

1 impermissible.

2 So, you know, we don't have to decide it now,
3 because I suspect it may be after lunch before we finally
4 wrap up with Mr. Bertino. But that's where I am on it. In
5 other words, I think some of the things both sides wanted
6 here is really more about sort of, Jury, how should you
7 consider a witness's testimony who has a plea agreement?
8 And there's an instruction for that that kind of touches on
9 some of the things you wanted to bring out now.

10 I think the key now kind of goes -- underscores
11 the point you're making, Mr. Roots, which is you want to
12 make sure there is no confusion about what the jury can
13 consider this for and what it cannot consider it for. And
14 so I want to give that instruction.

15 But that's how I see the law as reflected by
16 *Tarantino*, at least in this circuit. They can consider it
17 for those two reasons. I'll add the word "alleged" in
18 there. You had wanted that. That seems fair. The
19 Government agrees to that. I'll take out what the
20 Government wanted about the Government is permitted to do
21 something and then not include that later language.

22 And again, we can argue later on about if you want
23 to add -- with regard to jury instructions, I'm always going
24 to ask: Do you have another case in which that jury
25 instruction was used? And I'm going to be very reluctant to

1 want to use something that isn't tried and tested.

2 But in any event, I can hear from you then on
3 that.

4 MR. ROOTS: One last point is that *Tarantino* and
5 these other cases mentioned, that they upheld it on appeal
6 because of the overwhelming weight of the evidence
7 otherwise. So it was clear in those cases that the
8 conspiracy was -- the allegations were very strong.

9 Here, we're dealing with two witnesses who have
10 taken the stand who thought they were innocent. And they
11 were convinced by either prosecutors, or maybe their own
12 lawyers, that they should plead guilty.

13 THE COURT: Mr. Roots, I don't want to cut you
14 off. I'm not disagreeing with you that that's a difference
15 between *Tarantino* and this case to some degree. Again, to
16 me, what that says is, yes, even in a case like this -- I
17 mean, that is an argument for me giving an instruction. And
18 so I'm going to give the instruction.

19 I don't know what else to do other than give the
20 instruction that says: Jury, you can consider it for these
21 purposes, but not for those purposes.

22 You know, I think that's the only thing I can do,
23 and I'm going to do that for you.

24 Mr. Kenerson, you had your hand up like you wanted
25 to be heard.

1 MR. KENERSON: I did. Just briefly, your Honor.
2 Thank you.

3 We appreciate the Court's consideration of this
4 issue. We have no -- obviously, we understand the Court's
5 ruling. We wanted that language in, but I have no
6 objection, given where the Court has come out, to how the
7 Court has teed this up.

8 One thing I just wanted to point out about
9 *Tarantino* and plain error is that the language from
10 *Tarantino* about the admissibility of a plea agreement is
11 separate from the plain error language. I think Mr. Roots
12 has made the argument that it is error to admit the plea
13 agreement for the purposes of showing the witness's
14 acknowledgement of his role in the offense.

15 What *Tarantino* says is the plea is equally,
16 obviously, admissible to show the witness's acknowledgement
17 of his role in the offense and to reflect on his
18 credibility.

19 That is -- that would indicate it is not error to
20 admit it for those purposes. When plain error came up in
21 *Tarantino*, it was with respect to the fact that no
22 instruction was given.

23 So here, the Court is, I think as you noted,
24 giving an instruction. So the plain error aspect of it I
25 don't think is applicable under these circumstances.

1 THE COURT: I should have mentioned, I think
2 that's right.

3 And it just goes to underscore that I think -- I
4 will give the instruction. You all can think about whether
5 you want any further tweaks.

6 I'm not going to give it if -- Mr. Roots, you're
7 the one requesting it -- if you're unhappy. Well, let's put
8 it this way. I mean, I know you want more. But I don't
9 want you to -- if you think I'm doing something that's going
10 to hurt you, I'm not going to do it. But if you want the
11 instruction as I laid it out, I'll give it.

12 MR. ROOTS: We want the instruction, but we want
13 to preserve the record because we would challenge that
14 *Tarantino* language. I believe that's bad law and it should
15 be overturned.

16 THE COURT: Well, that's fair. And that's above
17 my pay grade, as you can appreciate.

18 Ms. Hernández?

19 MS. HERNANDEZ: Your Honor, you said you would
20 withhold the instruction until after lunch so the rest of us
21 can discuss this. Is that correct?

22 THE COURT: If you'd like, that's fine.

23 MS. HERNANDEZ: Yeah. Thank you.

24 THE COURT: So just to be clear, if you're looking
25 at what the parties filed back and forth, maybe the easiest

1 thing to do, just so you have it, just teeing off the
2 Government's response, which is 672, it would be the
3 Government's response with the sentence that begins: The
4 Government is permitted to enter into this kind of plea
5 agreement -- deleted -- and then it would also have the word
6 "alleged" when it mentions the witnesses' acknowledgement of
7 their role in the alleged offense.

8 So with those changes, it would be the
9 Government's proposal and not what Mr. Roots -- and not the
10 additional paragraph that Mr. Roots had suggested at this
11 time.

12 Then again, you know, the broader issues go to
13 something we'll take up with final instructions regarding
14 how the jury is to consider testimony from someone who has a
15 plea agreement.

16 The only other thing I saw that we could -- at
17 least I could hear the parties on briefly is the issue that
18 I guess the Government raised regarding the next witness.
19 The way -- my thought on this is just that if the only way
20 the cost of this fence has been -- if the only evidence they
21 have is, you know, a large number that encompasses -- I
22 mean, there are limits to this. I don't think they could
23 put on evidence of the fence as it goes all the way around
24 the Capitol.

25 But if there's a larger segment of the fence that

1 they have an estimate for and they can make clear, Well,
2 your client was -- Mr. Smith, your client was touching or
3 arguably -- I know your position is he wasn't responsible
4 for a dime of it -- but he had his hand over here and the
5 fence that they have the assessment for went from place A to
6 place B, and your client was only touching a segment that's
7 one-fifth of that or one-tenth of that or whatever that is,
8 that you're going to be able to cross that person, or cross
9 witnesses. And the Government will argue maybe that, like,
10 your client should be -- well, they're going to have to come
11 up with a factual basis, but if there was a factual basis to
12 argue your client was connected to some greater portion of
13 that fence.

14 But all they have is an estimate regarding a
15 greater portion of the fence. So even putting aside, you
16 know, what they could theoretically tag your client with
17 *Pinkerton* or something else -- I don't know how they can
18 slice that any finer other than to put it on and say: Well,
19 even if you agree that your client is only responsible for
20 the portion he had his hand on, that that's only one-tenth
21 of the fence or one-fifth or whatever the percentage of this
22 fencing that that would implicate.

23 MR. SMITH: Your Honor, thank you.

24 I think our position is that if the Government
25 can't show with evidence that a Defendant is responsible for

1 causing damage in a particular segment, because it's all or
2 nothing, then I think the Government is stipulating there's
3 no causation of damage. If they're saying the entire fence
4 had to be replaced and there is no segment-by-segment
5 replacement, then they seem to be saying that regardless of
6 Mr. -- what Mr. Nordean did or didn't do individually, the
7 entire fence had to be replaced. So then I don't understand
8 what the causal argument is for damage.

9 THE COURT: Well, couldn't the argument be --
10 again, I guess I should let the Government have a word in
11 edgewise here. But in theory, the Government could say,
12 Well, our theory is, depending on how the rest of the
13 evidence comes in, your client is only responsible -- yes,
14 there's a bill that says the fence costs X. But, you know,
15 your client had -- we think he's responsible for one-tenth
16 of that fence, and so one-tenth of X is Y. And that's what
17 we're attributing -- that's what we're arguing your client
18 is responsible for.

19 MR. SMITH: Well, I think the response to that
20 would be: If the Government is saying the entire fence has
21 to be replaced and there's no segment-by-segment
22 replacement --

23 THE COURT: You're saying that. I didn't say
24 that. But maybe they are. But in the scenario I laid out,
25 I wasn't suggesting that.

1 MR. SMITH: Well, so the exhibit they're using, or
2 proposing to use, your Honor, has a \$32,000 bill for over
3 600 linear feet of fencing. So if their position is, we
4 need to show this because there isn't any segment-by-segment
5 replacement, we had to replace the entire 600 feet of fence,
6 then the question becomes: How does the Government
7 establish Mr. Nordean's causation on one segment of the
8 fence if, necessarily, the Government had to replace the
9 entire fence regardless of Mr. Nordean's actions?

10 The 1361 crime requires causation; the Defendant
11 caused property damage. So if the entire fence is later
12 replaced, whether or not Mr. Nordean exists at all -- and
13 that's the Government's position -- then I don't know
14 what -- is it Rule 29? I don't really know what the
15 proper --

16 THE COURT: Yes. I don't know that that's their
17 position or not. But if it was their position, maybe your
18 argument isn't that it should be admitted; your argument is
19 that you're going to have a good Rule 29 motion. And maybe
20 you will.

21 Why don't I give the Government a word in edgewise
22 to let us know whether Mr. Smith is right, whether I'm right
23 or what your theory of how you're proceeding here is.

24 MR. MULROE: Thank you, your Honor. Conor Mulroe
25 for the United States.

1 I think your Honor had it right at the beginning.
2 I think that the points Mr. Smith is raising, you know,
3 could be the subject of a Rule 29 argument or of his closing
4 arguments.

5 But with respect to the testimony and evidence of
6 this witness, Mr. McIntyre, from the Architect of the
7 Capitol, he's going to testify to and sponsor exhibits about
8 what this fence cost to purchase. And so, to be clear, the
9 exhibit that we'd like to put in is the original purchase of
10 the fence when the Architect of the Capitol first obtained
11 it in 2008 -- the length of that fence actually is 328
12 linear feet.

13 So the entire fence was destroyed. It has not yet
14 been replaced because it's only used every four years for
15 the inauguration.

16 The figures that we do have to establish the value
17 of this fence are the original purchase order from 2008, at
18 which time the fence cost \$32,000 to buy.

19 And I think that, you know, how much of that these
20 Defendants are accountable for, from zero to everything, is
21 a matter of facts and arguments that are separate from this
22 witness.

23 So I just don't think that the entire exhibit and
24 the entire \$32,000 figure can be excluded because, as your
25 Honor identified, that's the only way to establish it.

1 There's no slicing of this.

2 THE COURT: Is the fence -- is it -- when it was
3 bought, is it in meaningful segments?

4 MR. MULROE: It's in segments.

5 I think the segments are approximately 4 feet
6 long. The witness will testify to that.

7 THE COURT: Okay. So --

8 MR. MULROE: I think it's about 4 feet. So to
9 preview -- sorry to interrupt.

10 THE COURT: Right. So I just think, if that's the
11 case, you're going to be able to look -- I mean, Mr. -- you
12 know, any particular Defendant who is going to have the
13 argument that, Well, I touched this segment.

14 You know, \$32,000 divided by -- you're going to
15 have -- well, I was told there would be no math if I became
16 a judge. But you all understand that if -- you're going to
17 be able to do the math and say, Look, my client only
18 touched -- even if you credit -- and I know you all are
19 going to contest this -- but you all are going to be able to
20 contest that a huge chunk of that fence that your clients
21 never touched is not attributable to them, run the numbers
22 and say, At most, ladies and gentlemen, even if you do
23 credit the Government's theory, the segment my client had
24 his hand on is only worth whatever that number is.

25 MR. SMITH: Thank you, your Honor.

1 THE COURT: So we'll --

2 MR. PATTIS: 328, Judge. I just did the math for
3 you.

4 THE COURT: Thank you so much.

5 THE COURT REPORTER: Who was that, please?

6 THE COURT: That's Mr. Pattis, wearing his
7 additional mathematician's hat.

8 If there's nothing further, then I think we've
9 dealt with -- Mr. Hull.

10 MR. HULL: Good morning, your Honor. This won't
11 take long. Can I use the microphone?

12 THE COURT: Yes, sir.

13 MR. HULL: Dan Hull for Joe Biggs.

14 About ten days ago, we discussed about the
15 practice of doing a jury admonition or instruction with
16 respect to social media and the press, like, maybe every two
17 days.

18 January 6th is stubborn. It stays in the news. I
19 think the last thing that happened, and there will probably
20 be something else, was the submission from McCarthy to
21 Tucker Carlson of the 41,000 hours.

22 And I think that -- you know, things pop up on
23 people's phones. It can be the one you used before, the
24 model one. Every two days.

25 THE COURT: I'll do it again. I'll do it again

1 this week.

2 Yes, Mr. Metcalf.

3 MR. METCALF: Thank you, your Honor. An issue
4 just arose yesterday that I've been discussing with the
5 Government.

6 I just came into access of an audio message that
7 the witness who's testifying left on Mr. Pezzola's wife's
8 Telegram account -- or on her phone.

9 I provided that message over to the Government.
10 I'm going to need him to authenticate it. So I don't want
11 this to become an issue in front of the jury.

12 What I would ask is, can I play that message and
13 have the witness be able to say that that's his voice and
14 authenticate it outside the presence of the jury so I can
15 know how to proceed? Meaning --

16 THE COURT: You're saying you know it's him.
17 Right?

18 MR. METCALF: Yes.

19 THE COURT: You don't expect any other answer
20 than, Yes, this is me. Right?

21 MR. METCALF: I don't. But what happens if
22 there -- if there is, then I can move -- I could play it a
23 different way, meaning, if I need to impeach him with it,
24 then I can proceed that route. But I don't see him
25 answering it in any other way.

1 THE COURT: Okay. Then I don't see why this can't
2 be done in front of the jury. I really don't.

3 MR. METCALF: Okay.

4 THE COURT: It's his voice. I mean, I don't know
5 if there are any other objections or problems surrounding
6 this. But I don't see why you can't do that.

7 I mean, I guess the question would be -- there
8 might be some other objection. I don't know. But I don't
9 see why you can't --

10 What's the Government's view? I don't know the
11 content of the message or whether it's relevant or anything.
12 Is the Government going to object if Mr. Metcalf proceeds
13 the way he is laying out?

14 MR. KENERSON: I think -- Mr. Metcalf sent this to
15 us before lunch yesterday. And we had thought we would get
16 to it yesterday. We obviously didn't. And I will be candid
17 in saying I was focusing on other things last night.

18 There could be hearsay issues depending on the
19 uses to which Mr. Metcalf is putting it. It does not seem
20 to me, based on my review of the message, like he's offering
21 it for its truth. I guess I would ask if the Court -- ask,
22 through the Court, if Mr. Metcalf could give a relevance
23 proffer.

24 THE COURT: Mr. Metcalf, can you give us a proffer
25 of relevance -- I guess, first of all, what it says and why

1 it's relevant and how you plan to use it?

2 MR. METCALF: Okay. So it's a 2-minute,-11-second
3 auto message that Mr. Bertino left on the Telegram of Lisa
4 Magee, who is Dom's wife, or common-law wife, however you
5 want to refer to her with regards to an actual marriage
6 ceremony.

7 But for all intents and purposes, this is Dom's
8 wife. She was in communication with Mr. Bertino after
9 Mr. Pezzola was arrested.

10 Now, the first 45 seconds of it talks about how
11 Mr. Pezzola was picked up, things along those lines.

12 I don't plan on using the first 45 seconds or
13 asking about the first 45 seconds.

14 I want to say about 45 seconds in, though, he does
15 say how he supports Mr. Pezzola, how he's a standup guy. I
16 plan on asking him about those two statements, supporting
17 and how he's a standup guy.

18 Then he goes into what this Court has constantly
19 allowed in as hearsay exceptions as a co-conspirator
20 statement where he says, I hope you know that everything
21 that happened on that day was not a part of a plan; it was
22 all done spontaneous. Things along those lines.

23 The next thing -- he then goes on to say that he's
24 still -- that he prays for Mr. Pezzola.

25 And I think at the end of it he says that he

1 wants Mr. Pezzola to know that he's still proud of his boy.

2 So those are the main segments of it that I wanted
3 to ask him about and see where he goes with that that I
4 believe are relevant and are co-conspirator statements.

5 THE COURT: All right. Look, why don't we do
6 this. Why don't you -- Mr. Metcalf, when you -- you'll be
7 handling the cross-examination for this witness?

8 MR. METCALF: Yes.

9 THE COURT: We're going to at least hit our first
10 break here before I think you have a chance to use that
11 statement.

12 MR. METCALF: Well -- okay.

13 THE COURT: Well, Mr. Hassan has to complete --

14 MR. METCALF: I don't plan on being long with my
15 cross, your Honor. That's why, if I do jump up there, and
16 I'm going, I could get into this relatively quickly. I
17 mean, this guy has been being crossed for days now.

18 THE COURT: I hear you. And I want to move past
19 it.

20 Let me ask Mr. Kenerson. Hearing that, what's the
21 Government's position going to be?

22 MR. KENERSON: I don't think it's a co-conspirator
23 statement. But, you know, I tend to think it probably would
24 be in line with what the Court has allowed in terms of state
25 of mind of a co-conspirator.

1 I'm not sure we have the same interpretation of it
2 as Mr. Metcalf, but that's probably an argument for the
3 jury.

4 THE COURT: Fair enough.

5 Let's proceed. Let's bring in the witness and the
6 jury.

7 MR. METCALF: Thank you.

8 THE COURTROOM DEPUTY: Jury panel.

9 (Thereupon, Jeremy Bertino entered the courtroom
10 and the following proceedings were had:)

11 (Whereupon, the jury entered the courtroom at 9:42
12 a.m. and the following proceedings were had:)

13 THE COURT: Everyone may be seated.

14 Welcome back, ladies and gentlemen.

15 Mr. Hassan, you may proceed.

16 (JEREMY BERTINO, GOVERNMENT WITNESS, PREVIOUSLY SWORN.)

17 CONTINUED CROSS-EXAMINATION

18 BY MR. HASSAN:

19 Q. Good morning, Mr. Bertino.

20 A. Good morning.

21 Q. Yesterday we had dropped off and we were talking about
22 some of the offensive language that's used within the Proud
23 Boys chats. Correct?

24 A. I don't remember specifically.

25 Q. Well, we were talking about some of the offensive

1 language that's used and that nobody rebukes that offensive
2 language. Is that correct?

3 A. I don't know if it was offensive language or just
4 statements being made. But somewhere around there, Yes.

5 Q. Well, we talked about freedom of speech. Correct?

6 A. Correct.

7 Q. And that you guys pride yourself in your freedom of
8 speech. Correct?

9 A. That was one of the major tenets of the organization.
10 Yes.

11 Q. And one of the things that you, as well as other
12 members, prided themselves is the ability to be open about
13 yourselves. Correct?

14 A. Correct.

15 Q. Before we get into that topic, however, you had
16 conversations with Ms. Hernández yesterday prior to my
17 commencing of questioning you. Correct?

18 A. Correct.

19 Q. And during the questioning of Ms. Hernández, you
20 discussed how much money you raised as a result of your
21 injuries. Correct?

22 A. I think so. Yes.

23 Q. And when you discussed that, you had mentioned that you
24 had raised \$30,000. Do you remember that number?

25 A. I think I said somewhere around 40.

1 Q. Okay. Would the number be more accurate as far as
2 \$60,000?

3 A. It could have been. It could have been.

4 Q. Could it be more?

5 A. I don't know the specific amount that was raised.

6 Q. I mean, this is an account that you opened. Correct?

7 A. Yeah. It came through in different -- in different
8 increments, so it wasn't all at one shot. Yes.

9 Q. Yeah. And in fact, you posted updates on that online
10 database, those -- GiveSendGo. Correct?

11 A. Posted updates about how I was doing?

12 Q. Correct.

13 A. Yes.

14 Q. As the money was coming in. Correct?

15 A. I believe so. Yes.

16 Q. So \$30,000 is quite possibly the wrong number. It's
17 more accurate to be \$60,000.

18 A. It could have been. I thought I remembered it being
19 somewhere around 40, but that could be --

20 Q. Anything regarding any of your testimony you gave
21 Mr. Smith, Mr. Pattis, Ms. Hernández that you want to
22 correct today?

23 A. No.

24 Q. But \$60,000 would be more accurate as far as the number?

25 A. I'd have to see for sure that that was the number. But

1 if you are looking at it and that's what you're seeing...

2 MR. HASSAN: Ms. Rohde, if we can pull up Exhibit
3 501-39, which has already been previously published.

4 Ms. Harris, if we can publish that for the jury.

5 Thank you, Ms. Rohde.

6 BY MR. HASSAN:

7 Q. And if we can go to your statement at 7:12:25. And
8 Noble Beard is yourself. Correct?

9 A. Correct.

10 Q. And you use an expletive there. Correct?

11 A. I did.

12 Q. And you called Mr. Tarrio the N-word. Correct?

13 A. I did.

14 Q. And you did that on multiple occasions. That wasn't the
15 only time?

16 A. Possibly. Yeah.

17 Q. I mean, in fact, you called Tarrio the N-word over 36
18 times?

19 A. I would have to see every single one, but it's very
20 possible. It was a common nickname that was used for him.

21 Q. And we understand that he's Afro-Cuban. Correct?

22 A. Yes.

23 Q. You also used not only that term, but you also used
24 words --

25 MR. HASSAN: And my apologies to the jury, my

1 apologies to the Court --

2 BY MR. HASSAN:

3 Q. -- but you also called him a faggot on multiple times.

4 Correct?

5 A. Yes. Yes.

6 Q. You also called him a brown faggot over 15 times.

7 Correct?

8 A. Yes.

9 Q. Let me ask you something. That's a derogatory term,
10 isn't it?

11 A. Yeah. It could be, taken that way, out of context, yes.

12 Q. Well, did he rebuke you for making those statements?

13 A. No. He actually accepted it as --

14 Q. Mr. Bertino, did he --

15 MR. KENERSON: Can the witness please answer the
16 question?

17 MR. HASSAN: He can answer yes or no and follow
18 through.

19 THE COURT: Yes. You can pose your next question,
20 sir.

21 BY MR. HASSAN:

22 Q. Mr. Bertino, yes or no, did he rebuke you when you made
23 those statements?

24 A. No.

25 Q. Yes or no, did he condemn you when you made those

1 statements?

2 A. No.

3 MR. HASSAN: Ms. Rohde, if we can pull up 501-40.

4 BY MR. HASSAN:

5 Q. Message, 7:15:32: Do you have any idea how our guys are
6 going to respond to that if they don't expect it?

7 That's from John Stewart. Correct?

8 A. Correct.

9 Q. And then --

10 MR. HASSAN: We have that published. Thank you,
11 Ms. Harris.

12 BY MR. HASSAN:

13 Q. We also have, at 7:15:40, from John Stewart: We could
14 have -- and my apologies for the word -- a fucking riot.
15 Correct?

16 A. Correct.

17 Q. Tarrío doesn't say "fucking riot." Correct? "Go
18 crazy"?

19 A. No.

20 Q. Follows through at 7:15:56 and says: They're not gonna
21 punch cops.

22 Correct?

23 A. Correct.

24 Q. He's trying to keep everybody calm. Correct?

25 A. I think he was just stating his opinion on what he

1 thought was going to happen.

2 Q. I mean, there's multiple individuals in this chat.

3 Correct?

4 A. Yes.

5 Q. And in fact, he says himself: It'll be calm. Correct?

6 A. Yes.

7 Q. You follow through and you also make some pretty
8 outlandish statements afterwards. Correct?

9 A. That's correct.

10 Q. And John Blackbeard says: We're on razor's edge,
11 brother.

12 Correct?

13 A. Correct.

14 Q. But in fact, Tarrio never responds to those outlandish
15 statements, never reinforces going wild or anything like
16 that. Correct?

17 A. Not immediately. I don't know if he did later. But I
18 can only see what's on here.

19 Q. Well, you've had the opportunity to review all these.
20 Correct?

21 A. I've had an opportunity to review documents, yeah. I
22 haven't looked any further than that.

23 MR. HASSAN: Ms. Rohde, if we can scroll up to the
24 bottom of the document.

25

1 BY MR. HASSAN:

2 Q. Noble Lead, 7:16:49: I'll make a general statement
3 right before.

4 Outlandish statement?

5 A. No.

6 Q. You make a statement: Maybe it's a shot heard around
7 the world and the normies will fuck up the cops.

8 A. I did.

9 Q. Does he make anything supporting your statement
10 whatsoever subsequent to that?

11 MR. HASSAN: And we can scroll up, Ms. Rohde. We
12 can scroll up to the bottom so Mr. Bertino can try to
13 refresh his recollection.

14 THE WITNESS: I don't see anything. There's one
15 missing message from him. I don't know what that is. But
16 no, he didn't.

17 BY MR. HASSAN:

18 Q. It was you that basically made those outlandish remarks.
19 Correct? You and John Stewart?

20 A. I did make a comment that I regret, for sure.

21 Q. And was it Enrique's job to basically condemn everything
22 that you said?

23 A. Well, I mean, not really. But at the same time, if you
24 want control over a situation and you see it getting out of
25 hand, you should step in if you're the leader.

1 Q. Well, you let it. Right?

2 A. I'm sorry?

3 Q. You let it. This is part of MOSD. Correct?

4 A. I believe --

5 Q. Did you make any statements to correct yourself?

6 A. No. I think it was all leadership in there.

7 Q. You, in fact, never corrected anything. Correct?

8 A. I did not.

9 Q. You guys believed in freedom of speech. Why should he
10 come back and say, Hey, don't say that?

11 A. He wasn't -- he didn't have to. Absolutely not.

12 MR. HASSAN: Ms. Rohde, if we can pull up 509-2,
13 also published.

14 THE COURT REPORTER: Also published?

15 MR. HASSAN: "Admitted." And it will be
16 published.

17 BY MR. HASSAN:

18 Q. This chat, this New MOSD, this is created by Charles.
19 Correct?

20 A. I believe so.

21 Q. And in fact, here, January 4th, 5:20, Enrique is in
22 custody. Correct?

23 A. I believe he was still in custody at that point. Yes.

24 Q. Things had gone into chaos. Correct?

25 A. I think we were trying to keep it from going into chaos.

1 Yes.

2 Q. Well, you had previously stated at the moment that
3 Tarrio -- that Enrique got arrested, things went into chaos
4 at that moment in time. Correct? Because nobody knew
5 anything.

6 A. I don't know when this is as far as what time or when
7 everybody kind of lost control or didn't know what was going
8 on. I think this was at the time when we were -- he had
9 just been arrested and we were trying to get everyone under
10 control.

11 Q. Well, Boots on the Ground was created by you. Correct?

12 A. Correct.

13 Q. And that was on January 5th. Correct?

14 A. Correct.

15 Q. And January 5th, things were already in chaos. Correct?

16 A. January 5th?

17 Q. January 5th.

18 A. Yeah. I'd say there was definitely some chaotic -- it
19 was a chaotic time, not knowing what was going on.

20 Q. Correct. Nobody knew what was going on. Correct?

21 A. Yeah. We didn't know when Enrique would be getting out.

22 Q. You make statements in here regarding, Take charge on
23 the ground. Correct?

24 A. Correct.

25 Q. And then you also say: We can help back here with

1 information. Correct?

2 A. That's correct.

3 Q. Basically, you're attempting to lead at this point in
4 time?

5 A. No. I think I told somebody else to take charge on the
6 ground and, if we got any information about where he was or
7 when he was getting out, that I would help with the
8 information from where I was.

9 Q. So if you're telling people to take charge, you're
10 taking lead. Correct?

11 A. That's one way of looking at it, I guess. Yeah.

12 Q. I mean, you just told us right now -- your own statement
13 was you told somebody to take lead on the ground?

14 A. Yes. I was basically telling someone else, Take the
15 power; here you go.

16 Q. Nordean didn't tell you to do this. Correct?

17 A. No.

18 Q. Biggs didn't tell you to do this?

19 A. I don't think so.

20 Q. Zack didn't tell you to do this?

21 A. No.

22 Q. And of course, Enrique didn't do it because he's in
23 custody. Correct?

24 A. Correct.

25 Q. Subsequent to this, you opened up Boots on the Ground.

1 Correct?

2 A. I don't know when the timeline was of when it was
3 created versus when this was created or when these messages
4 were said. But around that time.

5 Q. It was on January 5th that you created Boots on the
6 Ground. Correct?

7 A. Yes.

8 Q. And you weren't told to open up that chat. Correct?

9 A. I think somewhere there was a message saying, Hey, we
10 got to get a group together -- got to get a chat so that
11 everybody on the ground can communicate. And I took the
12 initiative and created one.

13 Q. Where was this message?

14 A. I don't remember. I do remember getting that message,
15 somebody saying, Hey, we need a group for everyone that's on
16 the ground.

17 Q. It's a ghost message that we haven't seen?

18 A. It has not been shown in here. That's correct.

19 Q. The Government didn't show it to you?

20 A. I don't think I've ever seen it. No.

21 Q. You didn't see it during your direct testimony.
22 Correct?

23 A. No.

24 Q. Because we, in fact, haven't seen it.

25 A. That's correct.

1 MR. HASSAN: Ms. Rohde, if we could pull up
2 509-24.

3 And this has already been published. Ms. Harris,
4 if we can publish it for the jury. It's already been
5 admitted. If we could pull up the message at 9:27:48.
6 Right there. You're on it. And if we could pull up all the
7 way to the top of the document really quick.

8 BY MR. HASSAN:

9 Q. This message is in New MOSD. Correct?

10 A. Correct.

11 Q. And it's on January 5th. Correct?

12 A. Correct.

13 Q. And your statement is, at 9:27:48 -- your own statement,
14 Mr. Bertino, Noble Beard the Immortal, says: If Enrique has
15 a better idea, he needs to say it soon.

16 Correct?

17 A. Correct.

18 Q. And then the followup message at 9:27:53, you tag him?

19 A. Yes.

20 MR. HASSAN: Ms. Rohde, if we can scroll
21 throughout the whole document.

22 BY MR. HASSAN:

23 Q. We saw a statement at 9:27:48. Correct?

24 A. Correct.

25 Q. And at 10:03:31, 30 minutes later, we still don't have a

1 response from Enrique. Correct?

2 A. That's correct.

3 Q. And in fact, you tagged him because you wanted him
4 making a statement. Correct?

5 A. Yeah. I just said, if he had a better idea, he should
6 share it.

7 Q. But in fact, he didn't chime in at all. Correct?

8 A. Not up to 10:03, he didn't. I don't know if he did
9 later.

10 Q. As you said, when they were arrested -- when he was
11 arrested, everything went into chaos. Correct?

12 A. Yes.

13 Q. Enrique never discussed with you any plan for
14 January 6th. Correct?

15 A. Never?

16 Q. Well, he discussed with you going and speaking on
17 stages. Correct?

18 A. Yes, he did.

19 Q. And he discussed regarding speaking on stage prior to
20 Trump going. Correct?

21 A. Correct.

22 Q. After that, it's your statement here today that there
23 was no stages at Washington, D.C.?

24 A. There was one stage, I believe, that Trump was speaking
25 on. I think all the rest of them got canceled.

1 Q. You weren't made aware at any point in time that Enrique
2 was supposed to go speak at the Latinos for Trump stage?

3 A. I don't remember that.

4 Q. The Government never made you aware that Bianca
5 Gracia -- do you know that name?

6 A. I've heard the name before.

7 Q. That Bianca Gracia handed over Tarrío a VIP pass to go
8 speak on stage?

9 A. I did not know that. No.

10 Q. You didn't know that there was still a stage around on
11 January 6th for Tarrío to go speak at?

12 A. I was not aware of it. No.

13 Q. Assuredly, that would have played a part in regards to
14 any plans. Correct?

15 A. I'm sorry. Could you repeat --

16 Q. Surely, if Enrique was going to go speak at a stage,
17 that would play a part. Correct?

18 A. If he would and he would have told us, then yeah, I
19 would be able to verify that. But I can't verify it because
20 I don't know.

21 Q. He may have not communicated with you, because you had
22 just distanced yourself when you weren't going to go speak
23 on the stage. Correct?

24 A. I was definitely less involved in the planning. Yeah.

25 Q. Correct. So you distanced yourself from everything that

1 was going on?

2 A. I don't think I distanced myself. I just wasn't
3 involved directly with the planning of the operation at that
4 point.

5 Q. So in fact, you don't know anything that was going on on
6 January 6th subsequent to you not speaking on stage?

7 A. That's pretty accurate. I don't know what the plan was.
8 Yeah.

9 MR. HASSAN: Ms. Rohde, if we can pull up 530-5.

10 And this has already been previously published and
11 admitted. If we can publish it.

12 BY MR. HASSAN:

13 Q. This is a text message between you, Mr. Bertino, and
14 Enrique. Correct?

15 A. It is.

16 Q. And during these statements, it says, We made this
17 happen.

18 It's you saying, We made this happen. Correct?

19 A. Correct.

20 Q. You, Mr. Bertino, understood it as Proud Boys. Correct?

21 A. Yes.

22 Q. You don't know what Enrique understood it as. Correct?

23 A. Understood my statement as?

24 Q. Yes.

25 A. I don't know how he took it. No.

1 Q. He could have interpreted it as patriots. Correct?

2 A. His interpretation -- I can't testify to what his
3 interpretation was.

4 Q. He could have interpreted it as Americans. Correct?

5 A. He could have interpreted it as a lot of things. Yes.

6 Q. There were many people that felt the exact same way that
7 you did that weren't on the Capitol on January 6th.

8 Correct?

9 A. I don't know what you mean.

10 Q. Well, we had a divided country. Is that fair to say?

11 A. Fair to say. Yes.

12 Q. And many people that weren't there on January 6th felt
13 the exact same way, but yet they weren't on the ground on
14 January 6th. Correct?

15 A. I could say that's -- that could be a fairly accurate
16 statement. Yes.

17 Q. So in fact, when he [sic] says "we," it doesn't mean
18 Proud Boys; it could mean a number of things. Correct?

19 A. It could mean a number of things. Again, I can't
20 testify to how he took it. I can only testify of how I said
21 it.

22 Q. Let me switch over really quickly --

23 MR. HASSAN: We can take that down now. Thank
24 you, Ms. Rohde, again.

25

1 BY MR. HASSAN:

2 Q. We talked yesterday about how many times you discussed
3 this case with the Government. Correct?

4 A. I think that's been covered multiple times. Yes.

5 Q. And last night, did you go back and think about how many
6 times you discussed the case with the Government? Did that
7 number increase? Did that number decrease?

8 A. No. I think it's probably similar. Still around ten or
9 so.

10 Q. Ten or so?

11 A. Total. Yeah.

12 Q. The first time you met with them was regarding a search
13 warrant. Correct?

14 A. The first time I met with them?

15 Q. Correct. The first time they went to your house.

16 A. I wasn't there when they went there.

17 Q. Well, they went with a search warrant. Correct?

18 A. Yes.

19 Q. And then you met with them. Correct? You met with them
20 in a car? That's what you told Mr. Pattis.

21 A. I was pulled into a car. Yes.

22 Q. The second time that you meet with them is on March 8th.
23 Correct?

24 A. The -- no.

25 Q. The second time that you meet with the Government?

1 A. No. It all happened the same day.

2 Q. Okay. So you went from the car straight over to the
3 Government's office --

4 A. No.

5 Q. -- with your attorney?

6 A. No. No. March 8th was the day the house was raided.

7 It's the same day, when I was at work, that they took me out
8 of the car and put me into their truck. So it was all -- it
9 happened on the same day.

10 Q. And then there's a subsequent date where you meet with
11 Mr. Kenerson. Correct?

12 A. Correct.

13 Q. And you meet with an agent, Nicole Miller. Correct?

14 A. Correct.

15 Q. And you meet with another government official named
16 Crane?

17 A. I don't remember the exact name.

18 Q. You met with a task field officer, Katherine Bowles?

19 A. Correct.

20 Q. Mr. Kenerson was there for that meeting. Correct?

21 A. He was.

22 Q. And he gave you various instructions as far as saying
23 the truth there. Correct?

24 A. Saying what?

25 Q. As far as being truthful. Correct? At that meeting?

1 A. I don't remember that specifically.

2 Q. Well -- he didn't talk to you about how important it was
3 to be truthful during that meeting?

4 A. I don't know. I mean, it was a lot said. So if you've
5 got the transcript that can show me where he said that, I
6 can testify to whether he said it or not. But --

7 MR. HASSAN: Judge, if I can just have a minute.

8 THE COURT: Yes, sir.

9 BY MR. HASSAN:

10 Q. You're telling me that this -- this prosecutor here
11 didn't tell you the importance about being truthful during
12 that meeting, is what you want us -- what you want to lead
13 us to believe?

14 MR. KENERSON: Objection. Asked and answered.

15 MR. HASSAN: No, Judge.

16 THE COURT: Overruled.

17 THE WITNESS: That's not what I said. I just said
18 I can't verify to what he -- exactly what he said unless I
19 can read it and say, yes, that was said that day. I don't
20 remember off the top of my head.

21 BY MR. HASSAN:

22 Q. I'm not asking you what he exactly said. I'm asking,
23 did he generally tell you to be truthful during that meeting
24 and the importance of it?

25 A. There was probably some discussion about that. Yes.

1 Q. During that meeting, they gave you the ability to look
2 at documents. Correct?

3 A. I believe so. Yeah.

4 Q. And during the course of the meeting, as we previously
5 discussed here, they gave you a document, reference, the
6 1776 document. Correct?

7 A. Yes.

8 Q. And you've had multiple times to see the document here
9 in court. Correct?

10 A. I have not seen the whole document here in court. No.

11 Q. Well, you've seen parts of the document. Correct?

12 A. I don't believe it's ever actually been shown to me in
13 court. No.

14 Q. Well, you had the ability to see it on March, correct,
15 in your meeting with the Government?

16 A. I did get a brief look at it. Yes.

17 Q. And when you had the opportunity to look at it, they, in
18 fact, told you that Tarrío created the document. Correct?

19 A. I believe they did say something to that the effect,
20 that he created it. Yes.

21 Q. And then, subsequent to that, they told you, Well, they
22 created it -- he created it and he made some redactions or
23 made some assistance. Correct? He created it with
24 assistance? Is that --

25 A. That sounds familiar.

1 Q. Still during this meeting was Mr. Kenerson. Correct?

2 This same prosecutor that's sitting next to you -- sitting
3 next to me? Correct?

4 A. Was he --

5 Q. In the room?

6 A. Yes.

7 Q. And Agent Nicole Miller was there. Correct?

8 A. Yes.

9 Q. Agent Nicole Miller is actually the one that made the
10 statement that says that Tarrío created the document.

11 A. I believe so.

12 Q. Well, in fact, you don't know if Mr. Tarrío created the
13 document?

14 A. I don't know.

15 Q. And in fact, they misled you that he created the
16 document. Correct?

17 A. Again, I don't know if he created it, so I can't say
18 that they misled me.

19 Q. And you don't know if he created it with assistance.
20 Correct?

21 A. I don't know that for sure.

22 Q. You don't even know if he even opened up the document?

23 A. I don't know that for sure.

24 THE COURT REPORTER: Did you say you or he opened
25 the document?

1 MR. HASSAN: He opened the document.

2 BY MR. HASSAN:

3 Q. Did Mr. Kenerson at any point in time rebuke or condemn
4 the statements made by Ms. Miller?

5 A. I don't know. Not that I remember.

6 Q. Did he condemn the statements made by Ms. Miller
7 regarding Tarrío -- regarding Enrique looking at the
8 document, creating the document or modifying it with
9 assistance?

10 A. I don't recall that. But I'd have to look at the
11 transcripts to be able to verify one way or another.

12 MR. HASSAN: Judge, it's already been admitted for
13 evidence purposes.

14 If we can play Nordean 506 on the defense table,
15 the time period between 1:15:49 and 1:16:49.

16 Ms. Harris, you can let us know when you're ready
17 to go.

18 (Whereupon, segments of Defendant Nordean's
19 Exhibit No. 506 were published in open court.)

20 MR. HASSAN: We can stop.

21 BY MR. HASSAN:

22 Q. Did Mr. Kenerson at any point in time condemn what
23 Ms. Miller said?

24 A. Somebody did. I don't know who it was. Somebody said
25 an opposite statement to that.

1 Q. And -- during that recording?

2 A. That's what I heard. Yeah. They said he was sent it,
3 or something like that.

4 Q. Do you want to listen to it again?

5 A. Sure.

6 MR. HASSAN: We can play it again.

7 (Whereupon, segments of Defendant Nordean's
8 Exhibit No. 506 were published in open court.)

9 THE WITNESS: Right there.

10 (Whereupon, segments of Defendant Nordean's
11 Exhibit No. 506 were published in open court.)

12 MR. HASSAN: We can pause it.

13 BY MR. HASSAN:

14 Q. What's the last statement you hear there, Mr. Bertino?

15 A. That he created it. But somebody did rebuke the
16 statement in between then, when they said, He was sent it
17 but he had access to it.

18 Q. Mr. Bertino, the last statement that you heard there, He
19 created it with assistance. And that's directed by
20 Ms. Miller. Correct?

21 A. Correct. But you asked me if anybody rebuked it, and I
22 said they did, because I just heard them rebuke it.

23 Q. Was there any other followup statements?

24 A. It didn't play any longer, so I don't know.

25 Q. Mr. Bertino, you're testifying to whatever they tell you

1 so that you can get a realized benefit from your testimony
2 here today. Correct?

3 A. No. If I wanted to come in here and lie, I would have
4 come in and said something a lot more slam-dunk to get out
5 of trouble. I think that would be a lot easier to come up
6 here and lie and say, yeah, Enrique called me the night
7 before, said, we're storming the Capitol tomorrow. I think
8 that would have had a lot more benefit for me than what I'm
9 actually going through now.

10 So --

11 Q. What you're actually going through. Right?

12 A. Correct.

13 Q. Because you don't want to expose -- you don't want to --
14 March 18th, you lied to the Government. June 9th, you lied
15 to the Government. June 22nd, you lied to the Government.
16 During your Senate House Committee [sic], you lied to the
17 Government. You came in here and you also lied to us about
18 possessing guns and in possession of a gun. Because you
19 were shown a picture of you actually holding a gun.

20 Correct?

21 A. Correct.

22 Q. Mr. Bertino, you quit on the Army. Correct?

23 A. Correct.

24 Q. You quit on the Navy. Correct?

25 A. I did.

1 Q. You quit on your first marriage?

2 A. Yes.

3 Q. You quit on your second marriage?

4 A. I guess you can consider a mutual divorce twice as
5 quitting, if you'd like to characterize it as that. But...

6 Q. You quit on your first one, quit on your second one?

7 A. I guess that would be a matter of an opinion.

8 Q. And now, when things got tough, you quit on the guys.

9 Correct?

10 A. No.

11 Q. In fact, you would say anything here today to basically
12 get you out of custody. Correct? Because you don't care.
13 You don't want to go to jail. Correct? Like you previously
14 said on multiple occasions?

15 A. No. Like I said, if I was going to come in here and say
16 anything, there were plenty of things I could have said. I
17 could have created plenty of lies to make this a lot easier,
18 and I could have gotten probably out of all the trouble in
19 the world. But I didn't.

20 Q. Plenty more lies than you've already told us already?

21 A. No.

22 Q. Yeah. Because you've been a liar. You were a liar
23 then, you're a liar now, and you've been a perpetual liar
24 throughout the whole process.

25 MR. HASSAN: I have no further questions, Judge.

1 MR. KENERSON: Was that a question?

2 MR. HASSAN: No. That wasn't a question. He
3 doesn't need to answer it. We already know.

4 THE COURT: Counsel's testimony --

5 MR. KENERSON: Move to strike the last --

6 THE COURT: Counsel's testimony will be stricken,
7 the last nonquestion.

8 Very well. Mr. Metcalf.

9 MR. KENERSON: Your Honor, can we get on the
10 phones briefly?

11 THE COURT: Yes.

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

14 MR. KENERSON: Judge, just in thinking further
15 about this issue Mr. Metcalf raised, I think I wasn't
16 appreciating in my head the timing of when that statement
17 was made. I'm actually not sure it would fall within the
18 Court's ruling on at least the time of statements of intent
19 of co-conspirators. I mean, I know that we've already said,
20 go forward with this with Mr. Metcalf. I will defer to
21 everyone on that. But just as a general matter, that is our
22 position on the Court's ruling.

23 THE COURT: What is -- if Mr. Metcalf can refresh
24 me. As I know the Defendants will recall, I certainly
25 haven't said that statements that could reflect on a

1 co-conspirator's state of mind -- that can, of course, occur
2 after the conspiracy is complete. What is the date on this,
3 Mr. Metcalf?

4 MR. METCALF: February 2nd, 2021.

5 THE COURT: On the other hand -- yes. Well, let's
6 put it this way: It's certainly a far cry from a
7 circumstance where --

8 What's the Government's position? Are you just
9 pointing that out or do you think that that changes the
10 outcome?

11 MR. KENERSON: I think -- if the Court will give
12 me just one moment.

13 I think it potentially could. So, you know, there
14 is obviously some -- there's going to be some point in time
15 where the relevance cuts off. And I don't know -- the Court
16 hasn't said how much -- the parties haven't really put a
17 time on it there. But the circumstances of this, obviously,
18 are Mr. Bertino talking to the Defendant's wife almost a
19 month after the event, and in connection with the Defendant
20 having been arrested.

21 So, you know, the circumstances are much less
22 likely to reflect an actual state of mind than statements
23 made closer in time to confidants.

24 THE COURT: True. Although there's nothing -- I
25 mean, I think that is all fair.

1 On the other hand, the specific statements we're
2 talking about here honestly are -- there's nothing new and
3 different than what we've already really heard.

4 I mean, this is all consistent with what he has
5 maintained during that timeframe. So we don't -- other than
6 those circumstances, we really don't have any reason to
7 think, Oh, it really doesn't reflect something different.
8 Isn't that fair, Mr. Kenerson?

9 MR. KENERSON: It certainly is.

10 I think what the difference is, and what I suppose
11 the defense would argue the difference is, between that
12 statement and March of 2022 is he's not making it to law
13 enforcement. He's making it in a situation where they would
14 argue it's more indicative of the truth. That would be more
15 along the lines where we would be able to interpose a
16 self-serving hearsay objection.

17 THE COURT: Right. My point is, I agree with you.
18 I hadn't even brought that up. But that certainly weighs in
19 favor of it.

20 But even apart from that, it's not like another
21 reason why I think it's fair -- I can fairly admit it as
22 evidence of intent, is that we actually don't have any other
23 independent reason to think it doesn't. In other words,
24 it's consistent with everything we know about what his
25 mindset was at that time. I haven't heard anything that

1 suggests this is different from kind of what we've heard
2 before he pled guilty, what he would have -- the positions
3 he took with the Government before he ultimately entered a
4 plea.

5 MR. KENERSON: Understood.

6 THE COURT: So let's -- for all those reasons,
7 Mr. Metcalf, you may proceed.

8 MR. METCALF: Thank you.

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

11 CROSS-EXAMINATION

12 BY MR. METCALF:

13 Q. Mr. Bertino, good morning. How are you?

14 A. Doing great. Good morning.

15 Q. I've been waiting for days to be able to speak to you.

16 I take it by now you know who I represent.

17 Correct?

18 A. I believe so. Yes.

19 Q. I'm Steven Metcalf. With Roger Roots, we represent
20 Dominic Pezzola.

21 A. Okay.

22 Q. All right. So being that I'm going to be the last one
23 on the defense speaking to you, I'm going to try to not go
24 through all the stuff that you've had to -- all the
25 questions you've had to endure the last couple of days. I'm

1 going to try to get right to the point. All right?

2 A. Okay. Sounds good.

3 Q. So you joined the Proud Boys in 2018. At that time, you
4 were in North Carolina. Correct?

5 A. Yes, sir.

6 Q. Then you moved to South Carolina. What timeframe was
7 that? Was that 2020?

8 A. Yes.

9 Q. All right. So now you've basically shopped around for
10 different chapters of the Proud Boys. We've got Georgia,
11 North Carolina, South Carolina. Is that correct?

12 A. I didn't try to join Georgia. I just reached out to
13 Georgia to have them maybe reach out to North Carolina to
14 figure out why it was taking so long to get an email back.

15 Q. Okay. So North Carolina, South Carolina. Those are the
16 only two chapters that you were part of?

17 A. That's correct.

18 Q. And then you became a vice president of South Carolina?

19 A. That's correct.

20 Q. When -- what timeframe was that? Because all I have is
21 about -- that was for two months or so. Do you know the
22 timeframe you were vice president of South Carolina?

23 A. It was shortly after I moved into the -- into South
24 Carolina. So -- I think I moved there in May. So I think
25 it was June, July, maybe a little bit of August while I was

1 there.

2 Q. Okay. So before the election, then, in November of
3 2020?

4 A. I believe so. Yes. I can't -- again, I can't remember
5 exactly what months it was. But...

6 Q. Okay. So when you went to -- when you came to D.C. for
7 the election and you were here with Tarrio, were you still
8 the vice president of the South Carolina chapter?

9 A. I don't think so. I think they had already removed me
10 as the vice president. I can't remember.

11 Q. Okay. Then what -- so then -- why were you removed?
12 Let's start there. Why were you removed as the vice
13 president of the South Carolina chapter?

14 A. Because the chapter was over an hour and a half away,
15 and it was hard for me to make meets out that way. So they
16 decided to replace me as the vice president -- put a
17 different vice president in that could be there at the
18 meetings more.

19 Q. So when you say "they," who is "they"? Is this other
20 members of South Carolina or was this national that we're
21 talking about?

22 A. That was the other members of the South Carolina
23 chapter.

24 Q. Okay. Now, at that point in time, were you the one who
25 was also putting -- were you setting up group chats for the

1 South Carolina members?

2 A. I don't think so.

3 Q. Did the South Carolina chapter have its own type of
4 communication system similar to the Telegram messages that
5 this jury has seen?

6 A. Yes.

7 Q. And how many members would you say were part of those
8 communications? If you had to approximate.

9 A. I think the chapter had maybe 30 or 40 guys in it.

10 Q. Now, of those guys, how many of those guys ended up in
11 the MOSD chats?

12 A. I don't know for sure how many of those guys were in
13 there.

14 Q. A handful?

15 A. I don't know if any -- if I added any of them. I don't
16 know if somebody else did.

17 Q. Okay.

18 A. But I don't think I added anybody directly from that
19 chapter.

20 Q. So you personally did not add anybody in the South
21 Carolina chapter to any of the national, quote-unquote,
22 chats. Right?

23 A. That had to do with MOSD?

24 Q. Yes.

25 A. I do not believe that I added anybody from the South

1 Carolina chapter as my picks for the MOSD. That's correct.

2 Q. And you did not have anybody from the South Carolina
3 chapter as anybody who joined -- or was added to Boots on
4 the Ground. Is that correct as well?

5 A. I don't know.

6 Q. So it would be rare for someone who just joined, or was
7 a part of the South Carolina chapter, to get added to MOSD.
8 Is that fair to say? It's not common. Right?

9 A. For?

10 Q. For somebody in your South Carolina chapter to be added
11 by you to an MOSD chat. Do you understand my -- does that
12 question make sense? Did you add -- do you know anybody you
13 added from South Carolina to MOSD?

14 A. I do not.

15 Q. Okay. So -- and there's nobody that you could think of
16 personally that you added to any of those MOSD chats or the
17 Boots on the Ground chats?

18 A. I only added the nine people that were on that list.
19 And I do not believe any of them were from the South
20 Carolina chapter.

21 Q. Okay. And at that time, what would you say your
22 position was, if you were no longer the vice president of
23 the South Carolina chapter?

24 A. Just a member.

25 Q. Okay. So you were a member. But you were still able to

1 add people to the MOSD chats, the same way that you did with
2 Mr. Pezzola. Is that correct?

3 A. I was only able to add the nine people that I originally
4 added to the MOSD chat. And that was the only nine people
5 that I could add. That was the original setup. I didn't
6 add more people to MOSD than that.

7 Q. All right. Understood.

8 So now -- you spoke to -- you spoke to Tarrío a
9 lot. Did you trust -- before -- so let's just focus on when
10 you're here in Washington for the election. At that point
11 in time -- did you trust Tarrío at that point in time? You
12 believed that your friendship evolved to that --

13 A. Yes.

14 Q. -- of a trusting relationship?

15 A. Yes.

16 Q. And do you believe that he trusted you as well?

17 A. I thought he did. Yeah.

18 Q. And then -- there was a couple -- a series of events.
19 We heard about a printer. We heard about a couple of
20 different things where you felt that you should have been
21 involved in that you did not know that ultimately led to
22 that relationship breaking down. Is that fair to say?

23 A. I would say. Yeah.

24 Q. Okay. So now -- did the private chats and text messages
25 between you and Tarrío ultimately stop at a certain point in

1 time that you can recall?

2 A. Yes. I believe -- when he went to jail, I couldn't text
3 him directly anymore.

4 Q. So then you stopped communicating with him directly at
5 that point in time. Right?

6 A. For a while, yes. And then I texted -- I did
7 communicate a little bit with him while he was in jail the
8 first time, for the burning of the banner. But after he got
9 out, we talked a little bit, but it wasn't very long before
10 he was arrested again. So...

11 Q. So then -- I know you probably thought about this last
12 night, because I thought about it. The questions were going
13 back and forth -- or you were questioned a bunch of times.
14 Did you feel betrayed by Enrique Tarrio? At the end of the
15 day, is that -- is that a word that you would use, that you
16 felt betrayed by him?

17 A. Yes.

18 Q. Okay. Now, I'm trying to put a timeline together. And
19 I keep going back to this. March 8th -- so this was already
20 touched on a little bit today. March 8th is when you first
21 met with the Government, and that's when you first spoke
22 with them. Correct?

23 A. Not the first time I had spoken with them, but that was
24 the first time I met with my attorney with them. Yes.

25 Q. Okay. So then what were your communication -- when were

1 your communications with them before March 8th?

2 A. I received a phone call while I was in Miami visiting
3 Enrique a few -- maybe a week or two after January 6th. I
4 then spoke to the same field agent and asked her to look
5 into my stabbing incident. She said she didn't have
6 anything for me on that.

7 The next communication that I had was the day that
8 they raided the house and they put me into the truck to have
9 a discussion with me.

10 Q. Okay. So that day, is that March 8th, 2022?

11 A. March 8th, 2022. Yes.

12 Q. So the phone call that you had after January 6th when
13 you were in Florida, that was in 2021?

14 A. Yes.

15 Q. So there was almost a whole year that went between that
16 first phone call, the next phone call with the stabbing
17 incident, till your house getting raided?

18 A. It was more than a year, actually. It was January to
19 the next March.

20 Q. Okay.

21 A. Correct.

22 Q. And so what did that first call consist of, then? Run
23 me back -- run that through me -- or run that again for me,
24 please, because I don't remember the details of that phone
25 call.

1 A. It was just a reachout call saying that she was an agent
2 with a special task force in Charlotte and she wanted to
3 talk to me.

4 And at that point, I said I really didn't have
5 anything to say other than can you look in to see who
6 stabbed me and figure out why they haven't been charged and
7 see if you can get back to me with that? That was pretty
8 much the context of the conversation.

9 Q. Did you hire an attorney at that point?

10 A. No.

11 Q. So March 8th, your house gets raided. That's when you
12 first speak to them. You had an attorney, though, at that
13 point?

14 A. Yes.

15 Q. So you see -- did you see March 8th, 2022, coming enough
16 for you to hire an attorney before that?

17 A. No, no. I hired the attorney after -- between
18 March 8th, when they raided the house, and when I met with
19 them. That's when I hired the attorney, in between that.

20 Q. Okay. This is where I'm getting confused. We have a
21 240-page transcript of your meeting in March, except it
22 doesn't have a date on it. The house gets raided on
23 March 8th, 2022.

24 A. Yes.

25 Q. When did you sit down with the Government and give them

1 this statement?

2 A. It was maybe March 18th, I believe, maybe ten days
3 later.

4 Q. Okay. So ten days after your house gets raided --

5 A. Somewhere around that timeline, yes.

6 Q. -- all the guns are found, you hire an attorney, and
7 then you go sit down with them. So this first meeting that
8 ultimately ended to this transcript was March 16th, about
9 eight days later?

10 A. I think I said March 18th, about ten days later.

11 Q. Okay.

12 A. Somewhere around there. I think that's the date. I'm
13 sure we can check it and figure out what date it was if
14 we --

15 Q. Understood.

16 So then a little bit longer than a month later,
17 that's when you went to go and testify in front of the House
18 Committee. Is that correct?

19 A. That's -- April, yes.

20 Q. April 26th, 2022, is when you sat down and testified in
21 front of the Select Committee. Is that correct?

22 A. Yes.

23 Q. And then, after that, you met with the Federal
24 Government on June 9th, 2022?

25 A. Yes.

1 Q. And you met with them again on June 22nd, 2022?

2 A. Yes.

3 Q. Then approximately a couple of days after that, that's
4 when you ended up moving. And Ms. Hernández spoke to you
5 about that receipt for your rent. Is that accurate?

6 A. It was probably the next month. Yeah. It was within
7 July I ended up moving. Yes.

8 Q. Was the Government still paying your rent after that?

9 A. No.

10 Q. So it was just a one -- one-month scenario?

11 A. It was witness relocation. Yes.

12 Q. Okay. And the witness relocation did not include
13 additional months of them paying for your rent. Is that
14 correct?

15 A. That's correct. It was just to initiate the move to get
16 me out of the place where we were.

17 Q. So in front of the Select Committee -- I know there's a
18 whole bunch of different times you're saying that you lied,
19 then you lied again, then you didn't want to lie, now you
20 want to tell the truth, now you found God -- do you pray
21 often, Mr. Bertino?

22 A. I do.

23 Q. Do you pray every day?

24 A. As much as I can. Yeah.

25 Q. When did you find God? Was God always in your life

1 before this or after -- just after?

2 A. Well, when you find God, you figure out that he's always
3 been there; you just weren't looking for him.

4 Q. Okay. Well, when did you find God?

5 A. He found me probably the day I was stabbed, to be honest
6 with you, is the day I realized that he was in my life.

7 Q. Okay. So December 12th of 2020?

8 A. Yes.

9 Q. So, now, when you were in front of the Select Committee,
10 you described the Proud Boys as a fraternity, like a bowling
11 league. Do you remember that?

12 A. Probably something around that nature of a description.
13 Yes.

14 Q. Well, do you remember saying that? Yes or no.

15 A. Not that direct word, but I could have used that
16 analogy. Yes.

17 Q. Okay. Is that a yes, that you did say that? Because if
18 you're not going to give me a straight answer, then I am
19 going to have to ask you, is there anything that I could
20 show you to refresh your recollection? Or are you going to
21 say yes, that that is something that you said?

22 A. If you want me to say yes, that's exactly what I said,
23 then show me a transcript. If not, I can tell you that I
24 probably said something like that.

25 MR. METCALF: Your Honor, could I have just one

1 second to just step back? I left the transcript on the
2 table.

3 THE COURT: Yes, sir.

4 MR. METCALF: Thank you.

5 BY MR. METCALF:

6 Q. Mr. Bertino, I don't want you to just say something
7 because I ask you to say something. I want you to tell the
8 truth. I know that as hard as that is, that is the way that
9 this operation is going to work.

10 So is there anything I can read -- I could show
11 you to refresh your recollection as to whether or not you
12 specifically said or described the Proud Boys as a
13 fraternity, something like a bowling league --

14 A. Yes. If you --

15 Q. -- that will refresh your memory?

16 A. If you can show me the transcript that says I said that,
17 yes, then, I will testify that I said that.

18 MR. KENERSON: Can we be heard on the phones
19 briefly?

20 THE COURT: Yes.

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

23 THE COURT: Yes, Mr. Kenerson.

24 MR. KENERSON: The objection that I would have
25 here is that it's not inconsistent with anything he said

1 previously. So what he said to the Select Committee is
2 neither here nor there.

3 THE COURT: Mr. Metcalf, why not just ask him
4 whether he can directly -- a question like this directly, so
5 you don't get into all these hearsay issues?

6 Hearsay, of course, it can be his only
7 statement -- it can be hearsay, but if you ask him directly,
8 "You think that the Proud Boys are a bowling league," he's
9 going to say yes. And then you don't have to worry about
10 any of this. I mean, if he says no, that's a whole
11 different matter. Right now, you're refreshing his
12 recollection, which you can do regardless.

13 So I think rather than asking him about his prior
14 statements, if you just asked preliminarily, in the present
15 tense, you're going to move through this much quicker,
16 unless he starts fighting you on something.

17 MR. METCALF: Understood, your Honor.

18 THE COURT: All right.

19 (Whereupon, the following proceedings were had in
20 open court:)

21 BY MR. METCALF:

22 Q. Okay. Mr. Bertino, I will rephrase my question here.

23 Is it a fair description to describe the Proud
24 Boys as a fraternity? Yes or no.

25 A. Yes.

1 Q. Is it also a fair description to describe the Proud Boys
2 as a bowling league or something like that? Yes or no.

3 A. I wouldn't say they were a bowling league. But
4 something similar to a bunch of men together.

5 Q. Okay. Did you ever describe it as a bowling league?
6 I'm trying to make this easy here.

7 A. I believe I said something like a bowling league.

8 Q. Yes. A bowling league or something like that. Is that
9 a fair description to describe the Proud Boys?

10 A. I did say that. Yes.

11 Q. Thank you.

12 Is it fair to say that 99 percent of what you saw
13 in the organization was a bunch of guys who liked to crack
14 jokes on each other who also shared the same political
15 opinion? Is that a fair statement to describe the Proud
16 Boys as well?

17 A. I believe that 99 percent was an exaggeration. But the
18 majority of what the organization was, a bunch of guys
19 cracking jokes on each other, for the majority of the time
20 that I was there, that's all it was.

21 Q. But -- so 99 was an exaggeration?

22 A. Correct.

23 Q. We know you like to exaggerate a lot.

24 But now you're saying majority. So majority could
25 be 51 percent. You're going to have to give me a little bit

1 better of a number than that. If it's not 99 percent, what
2 number would you describe it as of what you saw? What you
3 saw.

4 A. I can't give a number. I mean, if you want me to break
5 down the numbers, I would have to go through and do ratios.
6 I don't know if we want to go into that.

7 Q. More than 51 percent but less than 99 percent is what
8 you're saying?

9 A. Correct.

10 Q. Okay. So now -- one interesting thing I learned about
11 you is that you're from Rochester, New York. Right?

12 A. Originally, yes.

13 Q. You lived there until when? Approximately 2008, 2009?

14 A. Somewhere around there. Yes.

15 Q. And that's the same area that you found out Mr. Pezzola
16 is from?

17 A. I did.

18 Q. Actually, the same city you guys grew up in?

19 A. Same neighborhood, yes.

20 Q. Same streets?

21 A. Yes.

22 Q. You guys went to the same parties?

23 A. Yes.

24 Q. Knew the same people?

25 A. Correct.

1 Q. So we're going to get into that.

2 Now, did you know -- do you still have family or
3 anyone close in the New York area --

4 A. I do --

5 Q. -- that you communicate with?

6 A. I do have -- I have people that live there still.

7 Q. Okay. So let's think about when Mr. Pezzola came to
8 your house, December 29th, December 30th of 2020. Right?

9 A. Somewhere around there, yes.

10 Q. Or did he get there on New Year's Eve? It was December
11 31st at approximately 2:00 he got there. Right?

12 A. Somewhere around that timeframe. I don't remember the
13 exact day he got there.

14 Q. All right. So you still had people in New York that you
15 were speaking to around that time. Right?

16 A. Yes.

17 Q. And did you talk to them about how New York was
18 completely closed down as far as restaurants go, bars go?
19 Did you ever have any communications with them about that?

20 A. I don't remember that specifically.

21 Q. But this is COVID time we're talking about. Right?
22 When Mr. Pezzola came down to your house?

23 A. Correct.

24 Q. Right?

25 A. It was COVID time.

1 Q. And you knew that restaurants were closed in New York at
2 that time. Right?

3 A. I know there was definitely restrictions in New York at
4 that time. Correct.

5 Q. Okay. Did you have anybody in New York that you spoke
6 to who told you how heavy these restrictions were in
7 New York specifically?

8 A. I don't -- again, I don't recall that exact
9 conversation. But it's definitely something I probably
10 could have heard.

11 Q. Okay.

12 A. Correct.

13 Q. Now, South Carolina, though, you guys -- was it still a
14 little bit open at all at that time?

15 A. Yes, for the majority --

16 Q. You could still go get -- go to a bar at that point in
17 time, right, if you wanted to?

18 A. Correct.

19 Q. You could still go to a restaurant if you wanted to?

20 A. Correct.

21 Q. All right. So now Mr. Pezzola is in Upstate New York.
22 He's all the way up in New York. And him and Casper decide
23 to stop by your house. Right?

24 A. I don't think that's the exact reason they came down
25 there. But they came down there to visit with guys from

1 Charlotte and, while they were there, they stopped by to
2 check on me and deliver the shield.

3 Q. There we go. Okay.

4 So it's actually more than Charlotte. Right?
5 They're taking a road trip. Do you know they stopped in
6 Philadelphia?

7 A. I didn't know that.

8 Q. Okay. But then they stopped in Charlotte. Right?

9 A. Correct.

10 Q. Then they came and stopped by your house to deliver a
11 shield that was for Mr. Tarrio. Is that correct?

12 A. Yes. That's accurate.

13 Q. And then they never went back -- they never actually
14 made it to Florida. I don't know where that came from. But
15 they have never made it to Florida, to the best of your
16 understanding. Correct?

17 A. I don't even know if that was part of the plan.

18 Q. Okay. So now -- do you know if they went to a bunch of
19 restaurants before they made it to your house?

20 A. I don't remember -- recall.

21 Q. But the purpose was not specifically to go to your
22 house, as you said. Right? It's -- they were doing other
23 things and stopped by your house. Is that fair to say?

24 A. I don't know what their plan -- their lunch plans were
25 beforehand. But --

1 Q. I'm not talking about lunch.

2 A. Okay.

3 Q. You just said that they were doing other things besides
4 coming to your house, meaning the plan was not to just go to
5 your house. Is that fair to say?

6 A. That is correct. Yes.

7 Q. All right.

8 A. Yes.

9 Q. And during that time or -- withdrawn.

10 Dominic came there with Casper. Right?

11 A. That's how I knew him, Casper. Yes.

12 Q. Okay. Joe Young, also known as Joe Young. Do you know
13 his actual name or --

14 A. I didn't --

15 Q. -- what you refer to as his government name?

16 A. I did not know his government name.

17 Q. Okay. And Reaper was supposed to come. Right?

18 A. I think so, yes.

19 Q. Reaper couldn't come because he had COVID. Right?

20 THE COURT REPORTER: Couldn't come?

21 BY MR. METCALF:

22 Q. Could not -- rephrase.

23 Reaper could not come to your house at that time
24 because he had COVID --

25 A. I don't recall that --

1 Q. -- correct?

2 A. -- being a reason.

3 Q. But Reaper --

4 THE COURT: Sir, just -- I need you to let the
5 witness continue answering before you jump in, just for the
6 court reporter's sake.

7 MR. METCALF: Understood.

8 BY MR. METCALF:

9 Q. But Reaper was supposed to come and did not. Is that
10 correct?

11 A. I do recall something like that. Yes.

12 Q. All right. So now Mr. Pezzola -- do you know Reaper's
13 government name?

14 A. I do not.

15 Q. Does Ryan Avery ring a bell? Or you just know him as
16 Reaper?

17 A. I just know him as Reaper.

18 Q. Okay. So now Casper and Mr. Pezzola are at your house.
19 And that lasted about an hour?

20 A. Somewhere around there, yes.

21 Q. And during that hour, this is when you guys started to
22 realize this whole scenario about your connection to
23 Rochester. Right?

24 A. Yes, sir.

25 Q. And you actually called up Jason Fluet -- or you both

1 knew Jason Fluet. Right?

2 A. Correct.

3 Q. He's the individual who ended up dying from a snowmobile
4 accident in 2018. Right?

5 A. Tragically, yes.

6 Q. And that was a friend -- a good friend of yours and a
7 good friend of Pezzola's. Right?

8 A. That's correct.

9 Q. And then at the time you called Stan Jones, who's
10 somebody who knows both of you. Is that correct?

11 A. That's correct.

12 Q. And you also called up Mr. Tarrio. Right? On FaceTime.
13 Showed him -- say, Hey, boys, they got the shield. Do you
14 remember that?

15 A. Yeah. Now that you're saying that, I do kind of recall
16 calling -- I do recall calling him. Yes.

17 Q. Okay. So then, after that hour conversation, you then
18 add Mr. Pezzola to the MOSD chats. Right?

19 A. I don't know specifically what date and time I added
20 him.

21 Q. We'll get to that.

22 But you added Mr. Pezzola. We've talked about
23 this for the last three days.

24 A. Uh-huh. I did.

25 Q. All right. But Mr. Pezzola did not fill out any of the

1 forms, right, that you could tell? You showed the chart.
2 Mr. Pezzola did not fill out any form to enter the MOSD
3 chats. Correct?

4 A. That is apparent now. Yes. I didn't know that was the
5 case --

6 Q. All right. So that means that he --

7 THE COURT: Mr. Metcalf, we're going to pause now
8 to give the court reporter a break for ten minutes. But
9 again, you have to let the witness finish. The court
10 reporter cannot type two different people -- cannot capture
11 two different people speaking at the same time.

12 MR. METCALF: Understood, your Honor.

13 THE COURT: We'll take -- Ms. Harris, if you would
14 escort the jury out. We'll come back in about ten minutes
15 for the court reporter's sake.

16 (Whereupon, the jury exited the courtroom at 10:40
17 a.m. and the following proceedings were had:)

18 THE COURT: Everyone may be seated.

19 Mr. Bertino, you may step down.

20 And we will be in recess for ten minutes.

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

23 THE COURTROOM DEPUTY: Jury panel.

24 (Whereupon, the jury entered the courtroom at
25 10:53 a.m. and the following proceedings were had:)

1 THE COURTROOM DEPUTY: You may be seated.

2 (Thereupon, the Court entered the courtroom and
3 the following proceedings were had:)

4 THE COURTROOM DEPUTY: We're back on the record in
5 Criminal Matter 21-175, United States of America versus
6 Ethan Nordean, et al.

7 THE COURT: Mr. Metcalf, you may proceed.

8 MR. METCALF: Thank you, your Honor.

9 BY MR. METCALF:

10 Q. All right. So after January 6th, 2021, do you remember
11 speaking with Lisa, Dominic's wife?

12 A. Yes.

13 Q. You spoke with her on what? Telegram?

14 A. I think so. Yes.

15 Q. All right. I want to talk about a couple of those
16 discussions.

17 Do you remember speaking to her about sentencing
18 guidelines?

19 A. I don't specifically remember the conversation that I
20 had with her.

21 Q. Okay. If I -- would that conversation or parts of that
22 conversation refresh your recollection as to what was said
23 and by whom?

24 A. Yes.

25 MR. METCALF: So I'm going to have this premarked

1 as Pezzola Exhibit 141.

2 At this time, your Honor, I do not intend on
3 moving it into evidence, but I'd ask that I could show it to
4 the witness and approach --

5 THE COURT: All right.

6 MR. METCALF: -- so the witness can see and only
7 the witness.

8 THE COURT: Is there any objection?

9 MR. KENERSON: If he's using it to refresh, no.

10 THE COURT: That's what he said.

11 THE COURTROOM DEPUTY: Can I get a quick
12 clarification from Mr. Metcalf?

13 You said Pezzola 141?

14 MR. METCALF: Yes.

15 THE COURTROOM DEPUTY: Because I'm showing that as
16 something else on your exhibit list, 141.

17 MR. METCALF: I didn't have this as an exhibit --
18 oh, 141 is something else?

19 THE COURTROOM DEPUTY: You already have 141 on
20 your list, and this is what you have. So I can --

21 MR. METCALF: Can I change --

22 THE COURTROOM DEPUTY: -- give you the last
23 number -- do you want me to give you the next number?

24 MR. METCALF: Yes, please. Thank you, Ms. Harris.

25 THE COURTROOM DEPUTY: You're welcome.

1 Your next number is 251.

2 BY MR. METCALF:

3 Q. Okay. So I'm going to show you, Mr. Bertino, what is
4 being marked for identification as Pezzola's Exhibit 251
5 that consists of five pages.

6 MR. METCALF: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes.

9 Mr. Bertino, if you'd review the document as
10 Mr. Metcalf asks and let him know when you're done reviewing
11 it.

12 THE WITNESS: Yes, sir.

13 MR. METCALF: Thank you.

14 (Tenders document to the witness.)

15 BY MR. METCALF:

16 Q. Mr. Bertino, that's not all the messages that I know
17 about, but that is five pages of messages. If you could
18 just review those five pages and let me know when you're
19 done.

20 A. Will do.

21 Q. Take your time.

22 A. I've took a brief look at them.

23 Q. Okay. First page. Do you see -- actually, let me
24 rephrase.

25 Do you remember speaking with Lisa about

1 sentencing guidelines with regards to Mr. Pezzola?

2 MR. KENERSON: Objection. Relevance.

3 THE COURT: Let me have counsel at the phones,
4 please.

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

7 MR. METCALF: Your Honor, can you hear me?

8 THE COURT: I can.

9 MR. METCALF: So I'm just wanting -- I want a
10 little leeway here, because, after sentencing guidelines, he
11 does go into money and he goes into how good attorneys are
12 going to cost anywhere from 150 to \$200,000 and that there
13 was approximately -- there was a conversation about how just
14 Mr. Pezzola's first bond hearing cost about \$20,000.

15 So I am going to question -- or I intend on
16 questioning him about money as a motive as to the reasons
17 why he ultimately entered into this plea. And he had
18 knowledge of the sentencing -- or he at least looked into
19 the sentencing guidelines way before he was even arrested.
20 So it just goes to that narrative which, ultimately, goes
21 all to credibility, which is relevant.

22 THE COURT: Mr. Kenerson?

23 MR. KENERSON: So I don't know where to start.

24 So I guess, first, I don't see the relevance of
25 what he told Mr. Pezzola's wife about what he researched as

1 to Mr. Pezzola's guidelines in terms of how that affects
2 Mr. Bertino's credibility when he entered his plea some year
3 and a half after this point.

4 As to money, I don't see how whatever the cost
5 of -- whatever they thought the cost of Mr. Pezzola's lawyer
6 might be is relevant. Mr. Bertino, as I'm sure the Court
7 can take judicial notice of, has a Federal Public Defender.
8 So whatever a lawyer might cost for Mr. Pezzola has no
9 bearing on Mr. Bertino's credibility. And the cost of a
10 lawyer should not come in front of the jury anyway, I don't
11 think.

12 MR. METCALF: Your Honor, if I may.

13 THE COURT: Yes.

14 MR. METCALF: This all goes to his state of mind
15 and it goes to the evolution of this case.

16 If your Honor remembers, Pezzola was not charged
17 with seditious conspiracy at first. He was then superseded
18 into this document. So he saw the evolution of
19 Mr. Pezzola's case from the inception of Mr. Pezzola's case
20 to where it became when he actually got arrested. And that
21 is absolutely relevant. And also, it goes to his state of
22 mind.

23 I'd ask for a little leeway to just inquire. Then
24 I can move on.

25 THE COURT: Well, I don't think -- I mean,

1 Mr. Kenerson makes a good point. When we talk about state
2 of mind, I thought we were talking about state of mind
3 regarding the offense, not all these sort of ancillary
4 things.

5 I don't think -- what's the pending question? How
6 are you trying to do this, Mr. Metcalf?

7 MR. METCALF: I'm just asking him if he talked
8 about guidelines with her at a certain period of time. So
9 it goes to the timeline. So we're in January of 2021.

10 THE COURT: Right.

11 MR. METCALF: And the evolution of how this case
12 then went to a seditious conspiracy, because it wasn't
13 seditious conspiracy at first. So he was tracking it,
14 seeing the guidelines, and then saw how it got worse, and
15 that's the timeframe he ultimately got arrested. Does that
16 make sense?

17 So January 2021, he's tracking Pezzola's case. He
18 has in his mind what he thinks the guidelines are. He has
19 in his mind what it's going to cost to pay for an attorney
20 to represent him.

21 This is all relevant because it goes to someone's
22 state of mind. And it does go as to why you accept
23 responsibility on a case that we don't think has a basis for
24 it. So he's watching the evolution of this happening and
25 seeing where it got to. It was his, ultimately, testimony

1 that allowed for Mr. Pezzola to get superseded into this
2 indictment.

3 THE COURT: When you say discussing the
4 guidelines, we're talking about Mr. Pezzola's guidelines?

5 MR. METCALF: Yes.

6 THE COURT: Then we get into a question of whether
7 it's proper for them to have -- to put what Mr. Pezzola's
8 guidelines are or are not -- I mean, I know you're saying
9 it's different, that the guidelines were different back then
10 in terms of what he was charged with.

11 But then, all of a sudden, you're eliciting that
12 in front of the jury, what your own client's guidelines are?

13 MR. METCALF: No. They're not even close to being
14 accurate. If he took one charge, they could be accurate.
15 But that has nothing to do with the enhancements or how
16 these guidelines actually do work.

17 How about I don't ask him specifics, but just ask
18 him about talking to her about what the guidelines were?

19 THE COURT: For Mr. Pezzola?

20 MR. METCALF: Yes. At that time, just to talk to
21 him about -- or question him about his -- him looking into
22 Pezzola's case. I'll be very vague and broad.

23 THE COURT: Looked into the guidelines and he
24 looked into how much Mr. Pezzola was paying for a lawyer?
25 Is that it?

1 MR. METCALF: Yes.

2 THE COURT: Is that what this reflects?

3 MR. METCALF: Yes.

4 THE COURT: Mr. Kenerson, is there an objection to
5 just those two things? I think Mr. Metcalf at least
6 arguably articulated a basis for that, to allow him to
7 elicit he looked into those two things.

8 MR. KENERSON: I mean, I think the potential for
9 jury confusion here is high, especially when we go into the
10 guidelines, which, as Mr. Metcalf notes, are not remotely
11 correct.

12 THE COURT: He's going to say -- he's not going to
13 elicit the details, just, you know, you discussed with her
14 how much it would cost for Mr. Pezzola to have a lawyer and
15 what Mr. Pezzola's guidelines were.

16 MR. KENERSON: Obviously, we'll -- the Court will
17 rule how the Court rules. The guidelines seem to be at
18 least closer to relevant, the fact he looked into them, than
19 the cost of a lawyer, which really seems neither here nor
20 there.

21 One thing we would note as well, in Mr. Metcalf's
22 kind of timeline that he laid out, I think he's alleging
23 that what he said was Mr. Bertino's, quote-unquote,
24 "testimony" allowed Mr. Pezzola to be superseded into this
25 case. But the superseding indictment that had Pezzola on as

1 a Defendant in this case was returned before the search on
2 Mr. Bertino's house. So that factually is not accurate.

3 THE COURT: Mr. Metcalf, you can ask just whether
4 he discussed with her and does that recollection -- just
5 without going into the details, which I think could be
6 misleading, you discussed what Mr. Pezzola's kind of -- what
7 kind of guidelines he was looking at and that, you know, it
8 had cost him -- and that he had to pay a significant sum for
9 a lawyer. Something like that.

10 MR. METCALF: Your Honor, could I get into just --

11 THE COURT: Actually, I do think -- let me back
12 up.

13 I do think the lawyer part -- I mean, given that
14 he's not paying for a lawyer, how is that relevant?

15 MR. METCALF: Because it goes to his state of mind
16 as to what a case like this would cost. So if it costs --
17 his words -- 150,000 to \$200,000 at the inception of this
18 case, which does not have seditious conspiracy, then that
19 goes to his frame of mind as to what a case of this
20 magnitude would cost.

21 And then add to that -- it just allows me the
22 foundation and the groundwork to basically make the argument
23 during my closing that going into that seditious conspiracy
24 charge would have been a thought process, and reasonably --
25 and so that 150 to \$200,000 for an attorney --

1 THE COURT: The problem is --

2 MR. METCALF: -- and that matters when --

3 THE COURT: -- it can't be his motive. It can't
4 be his state of mind at the time he committed the crime and
5 it can't be his state of mind when he accepted
6 responsibility, because he already had a lawyer. So who
7 cares whether he had some misimpression between A and B?

8 MR. METCALF: I do, because it goes to credibility
9 and it goes to the reasons why he accepted this plea in the
10 first place. So I agree it doesn't go to January 6th or
11 things like that. But it does go to why he ultimately made
12 a decision.

13 And then there's also the issue of the public
14 defender and him getting a public defender. If it has to do
15 with attorneys, that's ultimately not -- him not having and
16 exercising his Sixth Amendment counsel of choice. There's a
17 couple of different issues that I could tap-dance around if
18 I'm able to just ask one or two basic questions that will
19 get honed in on and explained in a way that makes sense.

20 THE COURT: I don't think the money -- there's no
21 articulable reason -- in other words, he may have had a
22 misimpression. If this had a bearing on when he pled
23 guilty, why he pled guilty, fine. But he had a lawyer for
24 free at that time. So it couldn't have affected his
25 decision. Right?

1 MR. METCALF: It could have affected his decision
2 as to why he went with the public defender and -- why can't
3 I just ask him about it?

4 THE COURT: So as to why he went with a public
5 defender, who cares? What does it matter? He had a lawyer
6 for free.

7 MR. METCALF: It matters a lot, though. It
8 goes -- it -- ultimately, at the end of the day, your Honor,
9 I'm asking a question that goes to his credibility.
10 Credibility is always relevant. His decision to go to a
11 public defender and/or pay for one is of relevance as to his
12 frame of mind in making a decision, taking that plea and
13 ultimately taking the stand here today.

14 And each one of these times, he met with the
15 Government.

16 THE COURT: Mr. Metcalf, you haven't articulated a
17 basis for this.

18 You can ask him about whether he spoke with her
19 about the potential guidelines for Mr. Pezzola, what he was
20 facing, without going into them, because it sounds like it
21 would be misleading. And it's certainly misleading given
22 the delta between whatever he was charged with at that time
23 and whatever he's facing right now.

24 You may proceed along those lines.

25 MR. METCALF: Wait. Wait. I need to get back on

1 the phone.

2 Your Honor, I just want to make sure I understand
3 your Honor's decision -- I mean, your Honor's ruling. I can
4 go into if he discussed the guidelines with Lisa, but I
5 cannot go into money or what it took for him to -- or what
6 Mr. Pezzola is paying? Is that what your Honor just ruled?

7 THE COURT: Correct. Because there's no way it
8 could have affected his decision to plead guilty, because he
9 had a lawyer for free when he pled guilty. So he wasn't
10 facing a situation where he was going to have to pay a dime.

11 MR. METCALF: Well, that did come into his mind
12 and would have come into his mind at the time of him
13 deciding whether or not to go to a public defender.

14 THE COURT: Mr. Pattis?

15 MR. PATTIS: Only for what it's worth, the public
16 defenders get a bad rap. Was he influenced to plead guilty
17 because he thought it was futile because he couldn't have
18 his counsel of choice? I don't know if that's what
19 Mr. Metcalf is saying. That's the best argument I've seen
20 in there.

21 THE COURT: Okay. But I think that's pretty
22 tenuous. I understand the point you're making, but I think
23 that's tenuous.

24 Correct. You can ask him about whether he --
25 again, without getting into the particulars, whether he

1 discussed -- you had a conversation with Ms. Pezzola about
2 the potential guidelines that he was facing at that time.

3 MR. METCALF: Yes. Thank you, your Honor.

4 THE COURT: Very well.

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

7 BY MR. METCALF:

8 Q. So at the time that you were speaking with Ms. Magee,
9 Lisa Magee, Mr. Pezzola's wife, do you remember speaking
10 with her -- or did you have a conversation with her about
11 what Mr. Pezzola's guidelines were at that time?

12 A. I believe --

13 Q. I'm not asking for specifics. Just a yes or a no, if
14 you had a discussion with her about Mr. Pezzola's
15 guidelines.

16 THE COURT: Actually, if I recall, the witness has
17 the document to refresh his recollection. Correct?

18 MR. METCALF: Yes.

19 THE COURT: So the question is: Does that refresh
20 your recollection as to whether you had that conversation?

21 MR. METCALF: Thank you.

22 BY MR. METCALF:

23 Q. Does this document refresh your recollection as to
24 whether or not you had a discussion with Ms. Magee about
25 Mr. Pezzola's guideline range at that time?

1 A. It does.

2 Q. And does this document refresh your recollection as far
3 as the timeframe as to when these discussions occurred? I
4 can direct your attention to the second page, middle of the
5 page.

6 A. On this page, it does have a date, but it doesn't
7 reference what date the first page happens on. So I don't
8 know exactly what date that happened on.

9 Q. So is it fair to say, though, that most of the --
10 withdrawn.

11 Your discussions with Lisa during this timeframe
12 were for a short period of time. Is that fair to say?

13 A. I only have one date to reference. So I can only say
14 that it was on one day that I know that I talked to her.
15 But I don't think it was very lengthy.

16 Q. Okay. Is it fair to say that essentially you spoke with
17 her for approximately two weeks, if not less?

18 A. I have no way to corroborate that. But based off this
19 document, there's nowhere to show me how long it was.

20 Q. Okay. So let's forget about this document.

21 You had text messages with Lisa. Correct?

22 A. Yes.

23 Q. You also had just one or two phone calls with her. Is
24 that fair to say?

25 A. I don't remember how many phone calls. But I think it

1 was -- it wasn't -- we didn't communicate for very long.

2 Q. Okay. Not very long.

3 Is it fair to say that those communications lasted
4 less than a month?

5 A. Possibly.

6 Q. Okay. So now -- and this is all Telegram
7 communications -- and the way you communicated with her was
8 by Telegram. Is that fair to say?

9 A. I don't know if that's -- yeah. That looks like
10 Telegram.

11 Q. Do you remember any other way that you communicated with
12 her?

13 A. No. I think that was the only way.

14 Q. Okay. So now do you remember on -- approximately how
15 many times would you say that you had a phone call with her?

16 A. I don't remember.

17 Q. Was it less than five?

18 A. Probably.

19 Q. Okay. So -- but there were a couple of conversations
20 that you did have with her?

21 A. Possibly. Yes. I don't remember exactly how many, but
22 yeah. I think I talked to her on the phone.

23 Q. Okay. Do you remember telling her that Mr. Pezzola
24 saved your life on December 12th and you were thankful for
25 that? Do you remember telling her specifically that

1 Mr. Pezzola saved your life on December 12, 2020?

2 A. I don't remember saying that.

3 Q. No? Okay.

4 Did you -- during this same timeframe, did you
5 also communicate with a Nicole Roberson?

6 A. I don't know.

7 Q. Screen name Avva, A-V-V-A?

8 A. Yes.

9 Q. Yes. Okay. Were you in a relationship with
10 Ms. Roberson?

11 A. No.

12 Q. So there was no intimate relationship that you had with
13 Nicole Roberson?

14 A. I was not in a relationship with her. She was not my
15 girlfriend. No.

16 Q. Okay. Was there any times that you were intimate with
17 her?

18 A. Yes.

19 MR. KENERSON: Objection to the relevance. And
20 scope.

21 MR. METCALF: Your Honor, he just answered the
22 question as well. So I don't think -- I'll move on.

23 THE COURT: No. I'd like to hear you.

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

1 THE COURT: I don't want to -- I mean, I don't
2 want to suggest I know what you're going to say as to
3 relevance, but I want to know why it was relevant.

4 MR. METCALF: Because that's one of the next
5 witnesses on the Government's witness list. I just found
6 out there's a recording of them of an intimate nature that
7 he was engaging with her.

8 THE COURT: But okay. What does that have to
9 do -- okay. So what? I mean, what does that have to do
10 with why he -- how does that go to Mr. Bertino's
11 credibility?

12 MR. METCALF: I don't know, your Honor. I'm
13 actually -- I just found out this information. I did not
14 think that it was actually going to be answered in the form
15 of yes. So now it gives me a basis to look into whether or
16 not there was anything improper, potentially, with this
17 other witness and/or Mr. Bertino.

18 THE COURT: Right. But you have to know that -- I
19 mean, you have to know why the question is relevant
20 beforehand. You haven't been able to articulate for me why
21 it's relevant. So I'm going to just have you -- have the
22 answer stricken.

23 MR. METCALF: No, your Honor. No. First off, I
24 just learned about an intimate relationship between a
25 cooperating witness and another Government witness.

1 MS. HERNANDEZ: Two cooperating witness.

2 MR. METCALF: I apologize. Both of them.

3 Now the relevance goes to whether or not that
4 relationship had anything to do with his decision-making and
5 cooperating, his decision in actually taking a plea and then
6 ultimately was he pressured or coerced into ultimately
7 entering into this agreement as a result of this
8 relationship, and that that goes to his credibility?

9 THE COURT: Right. It could. I mean, he's not
10 having -- it wasn't with a prosecutor or an agent.

11 I mean, Mr. Kenerson, what's your view about
12 what --

13 MR. METCALF: Your Honor, I could also add another
14 fact as well.

15 I'm also learning that Mr. Tarrío had a
16 relationship with this individual and there could be a huge
17 bias here as to this individual then having a relationship
18 with Mr. Tarrío as well.

19 So there are numerous different things that now
20 make the scope of this relevant.

21 THE COURT: Mr. Kenerson?

22 MR. KENERSON: I fail to see the relevance. I
23 think just the fact that someone may have been intimate with
24 someone else does not provide a good-faith basis to think
25 that person influenced their decision in any way, shape or

1 form. To the extent it might be relevant, it is extremely
2 outweighed by just confusing the jury, wasting time,
3 everything.

4 THE COURT: So Mr. Metcalf, is your plan to move
5 on anyway?

6 MR. METCALF: It was. I mean, I potentially was
7 going to ask one question about whether or not he is jealous
8 of Mr. Tarrio because of his relationship with the same
9 individual.

10 THE COURT: You can -- fine. I think you can
11 ask -- if you have a good-faith basis for that question.
12 Then we'll move on.

13 MR. METCALF: Thank you.

14 (Whereupon, the following proceedings were had in
15 open court:)

16 BY MR. METCALF:

17 Q. Mr. Bertino, I'll be quick with this one. You know that
18 Mr. Tarrio had an intimate relationship with Ms. Roberson as
19 well. Is that correct?

20 A. I had heard that he was seeing her. Yes.

21 Q. Okay. Is -- I'll just straight-up ask you, Mr. Bertino:
22 Do you have any resentment towards Mr. Tarrio's relationship
23 with her?

24 A. No.

25 Q. Okay. Just --

1 A. No.

2 Q. Fair question. All right.

3 So going back to -- actually, I'm going to move
4 on. Going back to Lisa, Mr. Pezzola's wife, do you remember
5 sending her an audio message at any point?

6 A. It looks like there was one in here. Yes.

7 Q. Okay.

8 MR. METCALF: I ask that Pezzola Exhibit 1 -- what
9 has been marked for identification as Pezzola Exhibit 140 be
10 played for the witness.

11 Ms. Harris, is 140 also taken as well?

12 THE COURTROOM DEPUTY: Yes.

13 MR. METCALF: So then I'm going to have to mark
14 this, then, as -- the last one was 251?

15 THE COURTROOM DEPUTY: 252 is next.

16 MR. METCALF: Can I mark this as 252, please?

17 THE COURTROOM DEPUTY: Yes.

18 MR. METCALF: Thank you.

19 THE COURT: So what is our exhibit number now,
20 Ms. Harris?

21 THE COURTROOM DEPUTY: 252.

22 MR. METCALF: I believe it's Pezzola 252.

23 THE COURTROOM DEPUTY: For what he's about to
24 play.

25 THE COURT: Pardon me?

1 MR. METCALF: For what he's about to play.

2 You said you're about to play something?

3 THE COURT: Yes. 252.

4 Any objection from the Government?

5 MR. KENERSON: Not additionally to what was
6 previously stated.

7 THE COURT: It will be admitted and permission to
8 publish it.

9 (Whereupon, Defendant Pezzola's Exhibit No. 252
10 was entered into evidence.)

11 MR. METCALF: Thank you, your Honor.

12 (Whereupon, segments of Defendant Pezzola's
13 Exhibit No. 252 were published in open court.)

14 BY MR. METCALF:

15 Q. Mr. Bertino, is that your voice?

16 A. Sounds like it.

17 MR. METCALF: Okay. I'd ask that we fast-forward
18 to 40 seconds into this video, please.

19 Just for the record, your Honor, I'm asking that
20 from second 40 until 2 minutes and 11 seconds is being
21 played for the witness right now. I'd ask that that be
22 played.

23 (Whereupon, segments of Defendant Pezzola's
24 Exhibit No. 252 were published in open court.)

25

1 BY MR. METCALF:

2 Q. Mr. Bertino, do you remember making that message?

3 A. I don't remember it, but I obviously did.

4 Q. You sent that to Lisa Magee, Dom's wife?

5 A. I did.

6 Q. Do you still believe he's a man of honor?

7 A. I don't know if I have any personal feelings about him
8 right now.

9 Q. But at that time, did you believe those sentiments when
10 you said them --

11 A. Yeah, I did.

12 Q. -- man of honor?

13 So then after, Mr. Pezzola came to your house and
14 you guys spoke for, what, approximately an hour, an hour and
15 a half. Right?

16 A. Something like that. Yes.

17 Q. Then within a couple of days, you ultimately added him
18 to the MOSD chats. Is that correct?

19 A. Yes.

20 Q. Okay.

21 MR. METCALF: I ask that at this time --

22 BY MR. METCALF:

23 Q. But you don't remember what date you added him?

24 A. I do not.

25 MR. METCALF: Can we go to Government's Exhibit

1 505-10.

2 THE COURTROOM DEPUTY: That hasn't been identified
3 or admitted. 505-10?

4 MR. METCALF: Yes. And I'd ask that it be
5 published.

6 THE COURT: Are you asking to admit it, sir?

7 MR. METCALF: No, your Honor. I believe that this
8 exhibit has already been admitted.

9 THE COURTROOM DEPUTY: No, it has not.

10 MR. METCALF: It has not been? Okay.

11 Can we go to 503-1. Actually, 503-10. I'm sorry.

12 Can this be published?

13 BY MR. METCALF:

14 Q. I'm showing you the Main MOSD. Do you see this, what's
15 on your screen in front of you?

16 A. I do.

17 Q. And what's the date?

18 A. December 28th, 2020.

19 Q. And is Mr. Pezzola -- do you see his face on the top as
20 one of the individuals who's in that group?

21 A. I do not see a picture of him. No.

22 Q. So it must have been after December 28th that you added
23 Mr. Pezzola. Is that correct?

24 A. I don't know. It says there's others, so -- I mean,
25 just -- his picture is not there; I don't know if that means

1 he's not -- there or not.

2 Q. Okay. Do you remember adding Mr. Pezzola to the Main
3 MOSD chat?

4 A. I do not specifically remember the moment I did. No.

5 Q. Do you remember actually adding him to that chat
6 specifically?

7 A. I know that I added him to the prospect chat and then
8 the regular chat. I don't know if this was the exact chat
9 that was the Main. It might have gone through a couple of
10 different changes. But I remember adding him to the
11 prospect chat and putting his name as one of my recruits, as
12 you could say.

13 Q. Okay. So then is the MOSD Op chat, is that the prospect
14 chat?

15 A. I don't know.

16 Q. Okay. And do --

17 A. I think it's -- sorry.

18 Q. I wanted to let you finish. What was that?

19 A. I don't know. I think it said MOSD Prospects, if I
20 remember correctly, but...

21 MR. METCALF: Can we show the witness 505-10?

22 What was the one I just had up? Was that 505-1? 503-10?

23 THE COURT REPORTER: Counsel, previously it was
24 503-10.

25

1 BY MR. METCALF:

2 Q. Okay. I'm showing you what's been marked as 505-10. Do
3 you see this that's on your screen?

4 A. I do.

5 Q. Okay. And the date of this?

6 A. January 2nd.

7 Q. 2021. Correct?

8 A. Yes. 2021. Correct.

9 Q. Okay. Is this around the same time that you believe
10 that Mr. Pezzola could have been added to this chat
11 specifically?

12 A. It would have had to have been before, probably, January
13 6th. So yeah. That's probably around the same time.

14 Q. Okay. But it's fair to say -- do you know when this
15 actual chat was created?

16 A. I do not know the specific date. No.

17 MR. METCALF: Can we show him 505-1?

18 BY MR. METCALF:

19 Q. Do you see this -- what's marked on your screen right
20 now?

21 A. Yes. I do see it.

22 Q. Okay. What's the date on that?

23 A. December 31st, 2020.

24 Q. Okay. And that appears to be the date that this chat
25 specifically was created. Right?

1 A. Yes.

2 Q. And it was created by Mr. Tarrio. Is that correct?

3 A. Correct.

4 MR. METCALF: All right. Can we show him 505-5?

5 BY MR. METCALF:

6 Q. Now -- I'm showing you what's been marked 505-5. Can
7 you take a look at the date on that? January 1st. Correct?

8 A. 2021. Yes.

9 Q. All right. And do you see Mr. Pezzola's face on -- as
10 one of the faces on this day?

11 A. I do not see a picture of him up there. No.

12 MR. METCALF: Can we show the witness 505-7,
13 please.

14 BY MR. METCALF:

15 Q. Same date, different timeframe. Correct?

16 A. January 1st, 2021, at 6:08. Yes.

17 Q. Is Mr. Pezzola on this chat at that time?

18 A. I don't see his picture at the top.

19 MR. METCALF: Can we show him 505-8.

20 BY MR. METCALF:

21 Q. What's the date on this chat right here or -- on this
22 exhibit, 505-8? That's the Government's Exhibit 505-8.

23 A. January 2nd, 2021.

24 Q. Okay. And do you see Mr. Pezzola on the chat at this
25 time?

1 A. I don't see his picture up there. No.

2 MR. METCALF: Okay. Can we show the witness
3 505-9.

4 BY MR. METCALF:

5 Q. And what is the timeframe here on this, 505-9?

6 A. January 2nd, 2021, between 5:54:27 and 6:01.

7 Q. Okay. So Mr. Pezzola had to have been added to this
8 chat specifically at some point after January 2nd at 6:01
9 p.m. Is that fair to say?

10 A. That's fair to say. Yes.

11 MR. METCALF: Can we show the witness Exhibit
12 507-7.

13 BY MR. METCALF:

14 Q. Showing you what has been marked as Government's Exhibit
15 507-7, do you see the date on that?

16 A. I do.

17 Q. Do you see what -- the timeframe that this is?

18 A. January 2nd, 2021, 5:11:04 to 5:41:56.

19 Q. Okay. And let's start from the beginning. This is --
20 the invite at the top at 5:11, is that specifically to
21 Mr. Pezzola?

22 A. I don't know because it doesn't -- it has just the
23 number, so I can't verify if that's him. But --

24 Q. Okay. So 5:19 and 12 seconds, what does the message say
25 and indicate in there?

1 A. Welcome, Spazz.

2 Q. Okay. So this would appear to be around the timeframe
3 that he was added to MOSD, the Main line. Is that accurate
4 or -- is that fair to say?

5 A. That could be. Yes.

6 Q. So January 2nd is when, approximately, you added
7 Mr. Pezzola to the MOSD chats. Is that fair to say?

8 A. That's what this -- that's what this says right here.
9 Yes.

10 Q. Okay. And then what I showed you before, at 505-10, the
11 MOSD Op chat --

12 MR. METCALF: Can we show the witness back to
13 505-1.

14 BY MR. METCALF:

15 Q. Even though the MOSD Op chat was created on December
16 31st, Mr. Pezzola was not added to certain MOSD chats until
17 January 2nd. Is that fair to say?

18 A. The one I just saw, yes.

19 Q. And then we went through this one as well, MOSD Op as
20 well. Correct?

21 A. I did not see him in there.

22 Q. Do you remember we went --

23 MR. METCALF: Can we go back to 505-9.

24 BY MR. METCALF:

25 Q. The bottom of this page says 6:01. Mr. Pezzola is not

1 on this chat. Is that correct?

2 A. That's correct.

3 Q. Then we went to --

4 MR. METCALF: 505-10, please.

5 BY MR. METCALF:

6 Q. You see Mr. Pezzola now on this chat. Correct?

7 A. Yes.

8 Q. So MOSD Op, Mr. Pezzola was not added till January 2nd.

9 Is that correct?

10 A. Yes. That's correct.

11 Q. And then we showed the other one, which is the MOSD Main
12 chat. Mr. Pezzola also was not added until January 2nd. Is
13 that correct?

14 A. That's what it looks like. Yes.

15 MR. METCALF: Can we go to 510-1.

16 BY MR. METCALF:

17 Q. Do you remember when Boots on the Ground was created?

18 A. I believe it was somewhere around January 4th.

19 Q. Okay. Is January 5th more of an accurate date,
20 specifically 1:22 p.m.? Does that sound correct?

21 A. That could be. I don't remember off the top of my head
22 the exact date and time.

23 Q. Okay. So we'll go back to that.

24 A. Okay.

25 Q. This chat right now that you're looking at, that's MOSD

1 Main 2. Correct?

2 A. Correct.

3 Q. January 4th, 2021?

4 A. Correct.

5 Q. Mr. Pezzola is not in this group at this time. Is that
6 correct?

7 A. There's no picture of him up there, so I would have to
8 assume that he's not in there.

9 MR. METCALF: Can we go to 510-2.

10 BY MR. METCALF:

11 Q. Do you see his picture there?

12 A. I do.

13 Q. And what's the date on this?

14 A. January 4th, 2021. 6:38 p.m. is the starting message.

15 Q. So do you know the date that this -- the Main 2 was
16 created? Main 2 was created on 1-4; is that correct?

17 A. It seems to be. Yes.

18 Q. And then Mr. Pezzola was added shortly thereafter.

19 Right? Based on 510-2 that's in front of you.

20 A. I can't see when he's invited.

21 Q. But you see his picture up top. Right?

22 A. Yes.

23 Q. And that would indicate, based on all the Government's
24 hard work, that Mr. Pezzola was in this chat at that time.

25 Is that correct?

1 A. That's what the picture would show, that he would be in
2 there. If that's what that is relevant to, then yes.

3 Q. So MOSD Op, Mr. Pezzola was not added till January 2nd.
4 That's the first one we just went over. Right?

5 A. Correct.

6 Q. MOSD Main, he was not added until January 2nd. That's
7 the second one we went over. Correct?

8 A. Correct.

9 Q. This one, he was not added until January 4th. Is that
10 correct?

11 A. Correct.

12 Q. And Mr. Pezzola was not in any of the national
13 leadership chats. Is that correct?

14 A. I do not believe so.

15 Q. Okay. So now the only one left is Boots on the Ground.

16 MR. METCALF: Can we go to 512-3, please.

17 BY MR. METCALF:

18 Q. Take a look at this. It's Boots on the Ground. The
19 date on top is January 5th, 2021. Is that correct?

20 A. Yes.

21 Q. Okay. And then if we scroll down, at 5:20, 20 seconds,
22 Spazzo - 2nd, it says, Just arrived. Is that correct?

23 A. Correct.

24 Q. Okay. So Boots on the Ground it seems Mr. Pezzola was
25 not in until January 5th. Is that correct?

1 A. I don't know. "Just arrived" doesn't mean -- I don't
2 know if it means he just arrived in D.C. or if he just
3 arrived in the chat. I can't --

4 Q. Fair to say.

5 MR. METCALF: All right. Let's go to 512-1.

6 BY MR. METCALF:

7 Q. Do you see Mr. Pezzola there?

8 A. I do not.

9 Q. Okay. What timeframe are we talking about here at the
10 top? 1:22; is that correct?

11 A. That's correct.

12 MR. METCALF: Can we scroll all the way down to
13 the bottom of this, please.

14 BY MR. METCALF:

15 Q. And 1:26 is at the bottom. Right?

16 A. Correct.

17 Q. Okay. So we know here, by deductive reasoning, that he
18 was not in this chat at 1:26 on January 5th. Fair?

19 A. Okay. Yes.

20 MR. METCALF: Let's go to 512-2, then.

21 BY MR. METCALF:

22 Q. Do you see Mr. Pezzola here?

23 A. I don't see his picture at the top.

24 Q. Okay. Let's scroll all the way down to the bottom.

25 Still January 5th. Correct?

1 A. Could you go back up to the top so I can verify?

2 Yes. Still January 5th.

3 MR. METCALF: Can we just scroll all the way down
4 to the end, please.

5 BY MR. METCALF:

6 Q. Bottom -- last entry, 2:11. So we know that Mr. Pezzola
7 was not part of this group chat until 2 -- at 2:11 on
8 January 5th. Correct?

9 A. Correct.

10 MR. METCALF: All right. So now let's go to
11 512-3.

12 BY MR. METCALF:

13 Q. Now you can see Mr. Pezzola. Correct?

14 A. Correct.

15 Q. And you see 5:20:20; is that correct?

16 A. Correct.

17 Q. So now it would seem, in doing this deductive reasoning,
18 that Mr. Pezzola was added or joined this chat around this
19 time on January 5th --

20 A. Sometime in between --

21 Q. -- fair?

22 A. Sometime in between 1:22, I believe the last one left
23 off at, and 5:19.

24 Q. Thank you.

25 MR. METCALF: We can take it down.

1 BY MR. METCALF:

2 Q. All right. So four groups that Mr. Pezzola is a part
3 of: MOSD Op, MOSD Main, MOSD Main 2 and Boots on the
4 Ground. Right? Those are --

5 A. Correct.

6 Q. -- the four that we went through.

7 The earliest he was added was January 2nd, 2021,
8 and the latest he was added of those four groups was
9 January 5th, around that timeframe. Is that correct?

10 A. Correct.

11 Q. So Mr. Pezzola was part of these MOSD chats for only a
12 couple of days, at most, before January 6th. Is that
13 correct?

14 A. It seems to be that way. Yes.

15 Q. All right. And he did not fill out any of the forms, as
16 we've discussed a whole bunch of times, to get into any of
17 those groups. Correct?

18 A. I don't see that he -- his name was on the list of forms
19 that were filled out.

20 Q. Okay. So he -- if he did not fill out those forms,
21 essentially, Mr. Pezzola never agreed to fit in or fuck off.
22 Is that correct?

23 A. Again, I don't know if he filled out the form or if he
24 didn't. I just know that his name is not on the list of
25 forms that Enrique received.

1 Q. Okay. So, Mr. Bertino, you have no evidence that
2 Mr. Pezzola filled out a form to join any of this. Is that
3 accurate?

4 A. I do not have any evidence. Correct.

5 Q. Okay. And if there is no form that was filled out by
6 Mr. Pezzola, then he never agreed to that mentality to fit
7 in or fuck off. Is that fair to say?

8 A. That would be a matter of opinion. I don't know if --
9 what he agreed to and what he didn't. I just know he didn't
10 fill out the form.

11 Q. If you don't fill out a form and that form is never
12 submitted, then you do not agree to the language of that
13 form. Is that fair to say?

14 A. I don't know, because I didn't ask him if he didn't
15 agree to it or not. I don't know what he agreed to and what
16 he didn't. I just know that there was no form.

17 Q. Okay. So Mr. Pezzola agreed to the "no wanks"
18 provisions of the form. Right? Did Mr. Pezzola agree to
19 the "no wanks" provision of the form by not submitting it?

20 MR. KENERSON: Objection. Misstates.

21 MR. METCALF: I'm asking -- it's in the form of a
22 question. I'm asking if he agreed to a provision of that
23 form.

24 THE COURT: Overruled.

25

1 BY MR. METCALF:

2 Q. You can answer the question.

3 A. Are you asking me if "no wanks" was on that form or not?

4 Q. I'm asking you, if Mr. Pezzola did not fill out a form,
5 did he agree to the policy of the Proud Boys that has to do
6 with the no wanks?

7 A. I don't know if he agreed to no wanks or not.

8 Q. Okay. But you know that the no wanks is part of the
9 Proud Boy policy, or was part of their agreement. Fair?

10 A. It was a suggestion.

11 Q. It was in their paperwork, their bylaws, their contracts
12 with people. Correct?

13 A. I didn't ever fill out a form that said that I had to --
14 that I couldn't wank. So...

15 Q. So you never got disciplined for violating the no wanks
16 provision?

17 A. Nobody asked me if I violated it or not.

18 Q. Okay. So -- did you fill out the form to get into the
19 MOSD chats?

20 A. I did.

21 Q. All right. Is the "no wanks" provision part of that
22 form?

23 A. I don't recall it being on the form.

24 Q. Is the fit in or fuck off part of the form?

25 A. I believe so. Yes.

1 Q. All right. So you got the fit in or fuck off. But the
2 no wanks, that's a completely different deal?

3 A. I don't think that that was part of the deal to get into
4 the MOSD.

5 Q. All right. So you were asked questions by Attorney
6 Hernández about you taking the pain pills after January 12th
7 and your stabbing. Right?

8 A. Yes.

9 Q. Were you also on antibiotics at that time?

10 A. Yes. I believe I was.

11 Q. I heard that you mentioned about doing another cycle
12 around that time, and I didn't first get what that was.

13 Were you on steroids at that time?

14 A. I was, before I got stabbed.

15 Q. So steroids, pain pills, OxyContin, antibiotics.
16 Correct?

17 A. I wasn't actually doing them -- after I got home from
18 the hospital, I was not doing any testosterone.

19 Q. Okay. So you were doing it up until that point in time?

20 A. Correct.

21 Q. Were you doing OxyContin before January -- I mean,
22 December 12th or only after you got stabbed?

23 A. Only after I was stabbed.

24 Q. Did you finish your steroid cycle right before you were
25 stabbed?

1 A. No.

2 Q. How far before you were stabbed did you finish your last
3 steroid cycle?

4 A. I didn't finish it. I was in the middle of it.

5 Q. Okay. So you were still taking it. So when we saw that
6 video of you yesterday yelling at the crowd, you were on
7 steroids at that time. Is that fair to say?

8 A. I was taking testosterone. Yes.

9 Q. You were taking steroids or you were taking
10 testosterone? What are we --

11 A. Testosterone.

12 Q. -- talking about?

13 THE COURT: Please, please, for the court
14 reporter's sake, wait till the witness finishes, then ask
15 your question.

16 And if the witness will wait until the question is
17 asked.

18 BY MR. METCALF:

19 Q. And you were injecting into your body?

20 A. I was.

21 Q. Any other drugs? Were you taking cocaine at the time?

22 A. Not at the time I was stabbed. No.

23 Q. How about after you were stabbed?

24 A. I did once. Yes.

25 Q. What about before you were stabbed?

1 A. Yes, I did.

2 Q. How many times?

3 A. Ever?

4 Q. That's a pretty broad question. I see your point there.

5 Did you frequently use cocaine up until the point
6 that you were stabbed on January -- on December 12th, 2021?

7 A. I wouldn't say frequently. I did it once in a while.

8 Q. What's "once in a while" to you?

9 A. Every couple of months, maybe, if that.

10 Q. Okay. Not every couple of weeks?

11 A. No.

12 Q. So every couple of months you would use cocaine while
13 you were injecting testosterone. Is that correct?

14 A. I don't think the two ever overlapped. No.

15 Q. So you never did cocaine while you were doing a cycle of
16 steroids. Is that what you're saying?

17 A. Yes.

18 Q. So you always made sure that your cycle of steroids was
19 completed before you chose to sniff a line. Is that
20 accurate?

21 A. No. I don't think that was accurate. I only did
22 testosterone for a few months before the stabbing. And
23 again, it was very infrequent that I ever used cocaine.

24 Q. Okay. But you did use it occasionally before
25 December 12th and after December 12th. Is that fair to say?

1 A. Only once after and probably -- leading up to that,
2 maybe three times that year before.

3 Q. Are you familiar with what -- with the term
4 straw-purchasing or straw-buying? Are you familiar with
5 that term?

6 A. I am.

7 Q. And that term has to do with having somebody else
8 purchase either a house or, let's say, a gun for somebody
9 who is not able to do so because they would not pass a
10 background check. Is that fair to say?

11 A. I understand what that means. Yes.

12 Q. Okay. Did you have a straw-buyer or a straw-purchaser
13 purchase those firearms that were shown to you yesterday?

14 A. No.

15 Q. And so who purchased all those firearms that were shown
16 to you as part of the exhibits that you were holding with
17 the kids?

18 A. Well, the one that I was holding and the kid was the --
19 the AR-15 was a friend's. And the AR-22 that my daughter
20 was holding was my girlfriend's.

21 Q. And your girlfriend purchased them and your friend
22 purchased the other one?

23 A. Yes.

24 Q. Is there ever a point in time that you spoke --
25 withdrawn.

1 You never spoke to Mr. Pezzola about ever bringing
2 an AR-15 or a shotgun anywhere at all. Is that fair to say?

3 A. I would say that's pretty fair to say.

4 Q. So there was never a discussion with, actually, anybody,
5 specifically Mr. Pezzola, about bringing any firearms or
6 your firearms that you had access to to D.C. in November or
7 December or January. Is that correct?

8 A. I would say that's correct. We were pretty adamant not
9 to bring firearms.

10 Q. So you wanted to save the country on January 5th,
11 January 6th. And the way that you wanted to do so at the
12 time is you wanted to come to D.C. and speak on a stage.
13 Right?

14 A. For January 6th?

15 Q. Yes.

16 A. That was the only way I was going to come. Yes.

17 Q. And you weren't going to come to Washington with a
18 12-gauge Mossberg. Right?

19 A. No.

20 Q. And you were not going to come to Washington with an
21 AR-15. Right?

22 A. No.

23 Q. And there was never discussions about that ever, at all,
24 with anybody. Is that correct?

25 A. That's correct. I have never said that I was going to

1 bring guns to D.C. That's correct.

2 Q. So if you were going to come to D.C., if your body was
3 able to make it here, your intentions were to speak on a
4 stage. Correct?

5 A. That's the only -- yes. That's the only reason I would
6 have come.

7 Q. And then when Mr. Tarrio was arrested on January 4th,
8 everything kind of fell out of whack. Correct?

9 A. Correct.

10 Q. There's no plan; there's no agreement; no one knows
11 what's going on. Correct? Everyone just knows that they're
12 coming to D.C. for January 6th. Is that fair to say?

13 A. I did not know the plan. That is very fair to say.

14 Q. Okay. So if there was a plan that was created on
15 January 6th as people were walking around, you had no
16 knowledge of that plan. Correct?

17 A. That's correct.

18 Q. And in fact, at that time, on January 6th, and the days
19 after that, your position was that there was no plan amongst
20 the Proud Boys. Right?

21 A. Yes. I did -- again, I did not know of a plan. So that
22 was my position.

23 Q. All right. And you left that message on Lisa's phone.
24 There was no plan. It was all spontaneous. Correct?

25 A. I did.

1 Q. And you said Mr. Pezzola is a standup guy. And you
2 believed it, you said, at that point in time. Correct?

3 A. I did.

4 Q. You said that you were going to pray for him. Do you
5 still pray for him?

6 A. I do.

7 Q. Do you pray for his children?

8 A. I do.

9 Q. Do you pray for his wife?

10 A. I do. I pray for everyone that I can.

11 Q. And included in your prayers, you pray for Mr. Pezzola?

12 A. I do.

13 Q. On a -- still to this day?

14 A. I pray for people all the time. Yes.

15 Q. Do you pray for Mr. Pezzola still to this day? Yes or
16 no. I'm not asking about all people or a bunch of people.
17 I'm asking you, because you said in your recording that you
18 will pray for him. Do you still pray for Mr. Pezzola as you
19 sit here right now? Yes or no.

20 A. I pray -- yes. I have prayed for him. Yes. I've
21 prayed for everyone involved.

22 Q. Does your trucking company specialize in halting [sic]
23 lies to the Federal Government by any chance?

24 A. Does my trucking company --

25 Q. Halt lies? All those lies that you've told, March,

1 April, June, was that part of your trucking company, halting
2 all those lies over to the Federal Government? Is that part
3 of what your trucking company specializes in?

4 A. No.

5 Q. Okay. But you still pray for these men?

6 A. I do.

7 Q. And you believed so much so to tell Mr. Pezzola's wife
8 that there was no plan, to let her know that that's how you
9 truly felt at that time. Is that correct?

10 A. Yes.

11 Q. Same city in Rochester you ended up that you grew up
12 with as Mr. Pezzola?

13 A. We did grow up in the same city. Yes.

14 Q. Went to the same parties that had the same people in it?

15 A. We were at a same party once. Yes.

16 Q. And you guys -- but you guys never knew each other.
17 Right?

18 A. We did not. No.

19 Q. And Mr. Pezzola came to your house and spent an hour
20 with you at your house. Correct?

21 A. He did.

22 Q. And that's the extent of every conversation -- or most
23 of the conversations that you had with Mr. Pezzola?

24 A. I talked to him after January 6th.

25 Q. Okay. But you remember meeting him -- you actually

1 testified the first day that you were here, you said, I
2 remember meeting Mr. Pezzola only on one occasion.

3 A. That's correct. That I remember. Correct. Yes.

4 Q. Okay. But on December 12th, when you were stabbed, you
5 then found out -- it's your testimony that you then found
6 out that Mr. Pezzola helped get the guys off of you who
7 stabbed you. Is that correct?

8 A. He helped restrain the guy. He was one of the guys in
9 the crowd that was holding the guy down. Yes.

10 Q. And you're still proud of your boys, you indicated on
11 that recording.

12 A. You said am I?

13 Q. Yes.

14 A. No. I am not proud. Not of what happened, no.

15 Q. You said that you would back up Mr. Pezzola. Is this
16 you backing Mr. Pezzola up?

17 A. This is me just telling the truth.

18 Q. Yeah. After your company's contract in halting the lies
19 to the Federal Government expired.

20 MR. METCALF: I have nothing further, your Honor.
21 Thank you.

22 MR. KENERSON: Was that a question?

23 THE COURT: It wasn't. And it will be stricken.

24 Mr. Kenerson.

25 MR. KENERSON: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. KENERSON:

Q. Good -- are we in the afternoon yet? We're very close.
Good close to afternoon, Mr. Bertino.

A. Good close to afternoon.

Q. Let me ask you straight up: Did you enter a guilty plea
to seditious conspiracy just because the FBI told you that
Enrique Tarrío created 1776 Returns with some help?

A. No.

Q. Do you believe you're guilty of seditious conspiracy?

A. I do.

Q. Mr. Smith asked you a number of questions about an
agreement to use force, suggesting you didn't have one. Do
you remember those questions?

A. I do.

Q. Now, when you entered your guilty plea in this case, you
had the elements of the offense read to you, did you not?

A. I did.

Q. Any hesitation on your part as to whether your conduct
met those elements?

A. No.

Q. Mr. Pattis asked you about your plea agreement where it
says "analogous to treason." Do you remember that question?

A. I do remember that.

Q. Did that give you pause when you read it?

1 A. No.

2 Q. Why not?

3 A. Because I understood that that was the closest -- that
4 was the closest thing on the books to seditious conspiracy,
5 which was treason.

6 Q. Did you have any hesitation in entering your guilty plea
7 as a result of reading that?

8 A. I did not.

9 Q. Tell me about the agreement to use force. Where is
10 your -- what -- where did your understanding that the
11 agreement involved the use of force come from?

12 A. It was a regular topic of conversation in all the chats
13 that we were in, that I was in. It was common knowledge
14 that, if everything else failed, there was nowhere -- there
15 was no other option but to go into a civil war or
16 revolution. This was the constant topic of conversation all
17 the time in the majority of the chats that I was in around
18 that time.

19 Q. You also said that you've not been arrested on these
20 charges. Correct?

21 A. That's correct.

22 Q. Could you tell us how that works?

23 A. Well, I don't really know how it works other than --

24 MR. JAUREGUI: Objection, Judge. It calls for a
25 legal conclusion.

1 THE COURT: Sustained, I guess, as to the specific
2 question.

3 BY MR. KENERSON:

4 Q. Well, let me ask it this way, Mr. Bertino: At the time
5 that you agreed to plead guilty in this case, had charges
6 been filed against you at that point?

7 A. No. I agreed to plead guilty prior to the charges being
8 filed.

9 Q. Does that include gun charges?

10 A. It does.

11 Q. So at the time you entered your guilty plea, you had
12 been -- or at the time you agreed to plead guilty, you had
13 been charged with neither seditious conspiracy nor with the
14 gun charges?

15 A. That's correct.

16 Q. Did you plead guilty for any reason other than the fact
17 that you are guilty?

18 A. No.

19 Q. You were asked about the number of meetings that you had
20 with the Government. Do you remember a lot of those
21 questions?

22 A. I do.

23 Q. Remind us. March 2022, why were you not fully
24 forthcoming with the FBI?

25 A. There's a number of reasons, but I was trying to -- I

1 was trying to protect myself and protect everyone else from
2 getting into any trouble. I mean, this is probably the
3 number one reason why I wasn't honest; I was trying to shape
4 things so that we looked innocent. You know, I believed the
5 narrative that we were all telling ourselves about it, but
6 it wasn't true. So --

7 Q. What was the narrative?

8 A. Well, that it was all spontaneous and there was -- you
9 know, I mean, that's what -- that's what we were putting out
10 to everyone. That's what everyone was putting out. But,
11 you know, looking back at it, I know that's not true. So
12 that's how I know I lied.

13 Q. Do you recall Mr. Smith, and I think some of the other
14 defense counsel as well, asking you questions about the 1776
15 Returns document?

16 A. I do.

17 Q. And he asked you -- and I think other counsel as well --
18 asked you questions insinuating that the agent telling you
19 about it changed your mind about January 6th?

20 MS. HERNANDEZ: Objection as to insinuating, your
21 Honor.

22 THE COURT: Overruled.

23 BY MR. KENERSON:

24 Q. You were asked some questions insinuating that the agent
25 telling you about it changed your mind about January 6th.

1 Do you remember those questions?

2 A. I do.

3 MR. PATTIS: Objection. Mischaracterizes the
4 evidence, Judge.

5 THE COURT: Overruled.

6 THE WITNESS: I do.

7 BY MR. KENERSON:

8 Q. I think your testimony was that it changed your mind
9 about Mr. Tarrio. Is that your testimony?

10 A. That's correct.

11 Q. Why did it change your mind about Mr. Tarrio?

12 A. Again, I always knew that he played things close to the
13 chest. I didn't think he would play something this big
14 close to the chest and not give me the opportunity to make
15 my own decision of whether to be in or out.

16 Q. Was it that document alone, the 1776 Return document,
17 that caused you to say, "Wow," as we heard played?

18 A. No. I think it was a combination of that and the fact
19 that he had messaged me "the Winter Palace," which tied into
20 that. It was a combination of both.

21 Q. Why did that word, the Winter Palace, once you saw them
22 combined in those two documents -- why did it strike you
23 like that?

24 A. Because I knew that he had obviously been reading that
25 document, and that's why he referenced it when he talked to

1 me about it.

2 Q. Did you even know what the Winter Palace was at the time
3 that you first met with agents?

4 A. I did not.

5 Q. What's your understanding now of what that term refers
6 to historically?

7 A. It refers to the storming of the Russian capital
8 building during the Russian Revolution.

9 Q. Do you have any memory of Mr. Tarrio using that phrase
10 in conversation with you prior to the text messages on
11 January 6th, 2021?

12 A. No.

13 Q. And I think you said, on cross-examination by
14 Mr. Pattis, that you're not a big reader. Do you remember
15 that testimony?

16 A. I did.

17 Q. Was Russian history a big topic of conversation among
18 the Proud Boys?

19 A. No.

20 Q. Mr. Smith also asked you whether you changed -- whether
21 seeing that document changed your mind about January 6th.

22 Do you remember that?

23 A. Yes.

24 Q. Once -- upon seeing that document, did you immediately
25 kind of raise your hand and said: You got me; we committed

1 seditious conspiracy?

2 A. No.

3 Q. In fact, I think you testified with Mr. Pattis that you
4 lied to Congress about the Proud Boys' roles in January 6th
5 in April of 2022. Correct?

6 A. Yes.

7 Q. You also mentioned in June that you were being more
8 forthcoming, but still holding back information then. Is
9 that your testimony?

10 A. Correct. Yes.

11 Q. So to step back, was it just the 1776 Returns document
12 that caused you to stop holding back?

13 A. No.

14 Q. What did?

15 A. I had to put myself back into the mindset of where I
16 was. I had to really take a look at everything that I said
17 and I did that day and everything that happened, tie them
18 all together and realize that I had actually committed this
19 crime. And I decided to become a man right there on the
20 spot, be a man and take responsibility for my actions. And
21 that's what I did.

22 Q. In those meetings that you had starting in March of
23 2022, did anyone from the Government or the FBI tell you
24 what to say?

25 A. Never.

1 Q. Did anyone ever suggest what you should say?

2 A. No.

3 Q. Did you ever feel pressured at those meetings to say
4 something untrue?

5 MS. HERNANDEZ: Leading.

6 THE COURT: Sustained.

7 BY MR. KENERSON:

8 Q. Did you or did you not at those meetings ever feel
9 pressured to say something untrue?

10 MR. METCALF: Same objection. Leading.

11 THE COURT: It is leading. Sustained.

12 BY MR. KENERSON:

13 Q. Did you feel pressure one way or the other as to what
14 you should say at those meetings?

15 A. No, I did not.

16 Q. I think you testified on cross-examination with
17 Mr. Smith that you could sense at some point that members of
18 the Government knew you were holding back. Do you remember
19 that?

20 A. Yes.

21 Q. Were you?

22 A. Yes.

23 Q. You were asked some questions about your memory of the
24 events between your stabbing and January 6th.

25 Do you remember those questions?

1 A. I do.

2 Q. Were you able to jog your memory at all about those
3 events?

4 A. I was.

5 Q. How were you able to do that?

6 A. I was able to read some documents, read things, and --
7 it took a lot of time and a lot of concentration to just try
8 to remember back and forth through those days as much as I
9 possibly could.

10 Q. When you say "documents," what types of documents?

11 A. Chats, things that I had said on chats and in text
12 messages that I didn't remember that I had said.

13 Q. Ms. Hernández asked you -- and I think Mr. Metcalf as
14 well -- about moving expenses.

15 Do you remember testifying about that?

16 A. I do.

17 Q. First of all, did you get any cash directly?

18 A. No.

19 Q. Now, I think you mentioned on cross-examination that you
20 saw a screenshot of your deposition being used during
21 congressional hearings.

22 Do you remember that?

23 A. Yes.

24 Q. Did you like that?

25 A. No.

1 Q. Why not?

2 A. The last thing I wanted was my face involved with
3 anything else anywhere, politically or not, with any
4 criminal cases or anything. I just didn't want to be seen
5 as that person anymore.

6 Q. Now, at the time that that screenshot aired, were you
7 living in the residence you are currently living in?

8 A. I don't remember -- I think so.

9 Q. Well, let me ask: When that screenshot aired, was that
10 before or after you got money to move?

11 A. I think it was -- give me a second to think about it.

12 I think it was before, actually. Yeah. It was
13 before, because that was one of the big reasons, now that I
14 remember, was why we had to move.

15 Q. Now, the address you were living in at that point, had
16 that address been made public?

17 A. Yes.

18 Q. After your screenshot aired, were you monitoring what
19 was being said online?

20 A. Yes.

21 Q. What types of things were you seeing?

22 A. I saw a lot of threats, a lot of disparaging things from
23 people on both sides, both sets of foot soldiers, you could
24 say, from both Antifa and --

25 MR. PATTIS: Objection, Judge. Hearsay.

1 THE COURT: Overruled.

2 THE WITNESS: Both Antifa and right-wing Proud Boy
3 supporters. There was a lot of stuff that was coming out
4 online call me a rat, calling for my head, that sort of
5 thing.

6 BY MR. KENERSON:

7 Q. How, if at all, did seeing those threats online factor
8 into your decision to want to move?

9 MS. HERNANDEZ: Objection. Characterization.

10 THE COURT: Let's just go to the phones briefly.

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

13 MS. HERNANDEZ: Your Honor, Mr. Kenerson
14 characterized what the witness answered as threats. But
15 that's not what he said. He said he had seen a lot of
16 comments online.

17 THE COURT: Mr. Kenerson, will you, for the
18 record -- the reason I didn't sustain the hearsay objection
19 was because I think this is all to just explain why he felt
20 he needed to move rather than for the truth of any reason.

21 Mr. Kenerson, will you rephrase along those lines
22 and move forward?

23 MS. HERNANDEZ: And, your Honor, then also, if
24 we're -- if he continues to go there, then we're into the
25 hearsay area.

1 THE COURT: Go where?

2 MS. HERNANDEZ: If he continues to ask this line
3 of questions. As your Honor said, you allowed the answer
4 because it was not going to be -- it was about what -- why
5 he did -- how he felt or whatever. But if he starts going
6 into this area of threats, then we've crossed the line into
7 hearsay.

8 THE COURT: I don't think he's -- but I don't
9 think we would. But I don't think Mr. Kenerson is doing
10 that.

11 In other words, all of this stuff is just for him
12 to explain why he felt he needed to move, and Mr. Kenerson's
13 last question doesn't elicit any particular message. It
14 just says, I mean -- whether -- your objection was to
15 characterizing them as threats?

16 MS. HERNANDEZ: Yes.

17 THE COURT: If he just says "these comments you
18 saw online," we can move forward.

19 MS. HERNANDEZ: Yes, your Honor.

20 Also, it is my understanding that the decision
21 whether to move him or not was the Government's decision. A
22 defendant doesn't get to choose. So this line of
23 questioning is probably not within -- it's out of line. As
24 I say, in my experience, it doesn't matter how threatened a
25 defendant feels. It is the Government that does its own

1 threat analysis and decides. The decision whether he should
2 be moved or not was made by someone in the U.S. Attorney's
3 Office, not by this Defendant.

4 THE COURT: Mr. Kenerson, do you have a response
5 to that?

6 MR. KENERSON: I do have two quick responses:
7 One, just on -- I am not looking to elicit the specific
8 statements of any threats. But even if they were to come
9 out -- and I think some of them already have -- they're not
10 hearsay. They're not being offered for the truth, but for
11 the effect on Mr. Bertino as the listener. So that's number
12 one.

13 Number two, I do think it's in -- it is extremely
14 probative. Defense counsel cross-examined him on the
15 Government paid \$12,000 to move you. They've suggested,
16 though he has not answered that way, that we are still
17 paying for him, that he felt a need to move because he was
18 threatened.

19 At the end of the day, I asked the question of --
20 whether or not to move him and give him the money is the
21 Government's prerogative at the end of day. But whether he
22 puts in that request and thinks he needs to is completely
23 relevant for redirect.

24 MS. HERNANDEZ: Your Honor, he has been asked
25 multiple times whether he's continued to be paid, and he has

1 said no. And that's been the end of that line of
2 questioning.

3 THE COURT: I don't know how much more there is
4 here. You didn't like his characterization.

5 So, Mr. Kenerson, if you'd just say -- I'll
6 sustain it as to just saying those comments. What was your
7 question that you left off with, Mr. Kenerson?

8 MR. KENERSON: I think it was, did those -- did
9 the threats that you see factor into your decision to
10 request to move quickly? Or something along those lines.

11 THE COURT: All right. If he doesn't -- if you
12 don't call them threats, is there any objection to the
13 question, Ms. Hernández?

14 MS. HERNANDEZ: I just think this line of
15 questioning -- as I said, it's inappropriate because it's
16 the Government that makes the decision. And the witness
17 just said that one of the primary reasons why he asked to be
18 moved or why this came about is because of the January 6th
19 Committee's decision to publish his face or whatever.

20 And I think it starts to get prejudicial
21 because -- for the Defendants to the extent that the jury
22 might believe that somehow these Defendants made any threats
23 to him.

24 THE COURT: Well, look, he's allowed to rebut and
25 explain why he had to move. They're allowed to do that.

1 Mr. Kenerson, you may proceed. I assume it's not
2 more than a few more questions?

3 MR. KENERSON: It shouldn't be. No.

4 THE COURT: What did you say, Mr. Kenerson? Your
5 last -- what did you say, Mr. Kenerson.

6 MR. KENERSON: Sorry. No. I said it shouldn't.

7 Just to be clear, I think that what the witness's
8 testimony was was that he saw comments calling him a rat and
9 calling for his head. I think it's a fair characterization
10 that those are threats. But if we don't want to say
11 "threats," I'm going to use those words.

12 THE COURT: All right. Very well.

13 (Whereupon, the following proceedings were had in
14 open court:)

15 BY MR. KENERSON:

16 Q. Mr. Bertino, when you saw comments online calling you a
17 rat and calling for your head, did that factor into your
18 decision to request to move quickly?

19 A. Yes.

20 Q. And I think you testified on cross-examination that the
21 date that you started to receive the funds was late June or
22 early July. Is that right?

23 A. Yes. I believe we moved in July.

24 Q. So that was after the June 22nd interview with the FBI?

25 A. Yes.

1 Q. I'm going to ask you a couple of questions about the
2 statements that some members of the defense asked you about
3 your prior interviews. All right?

4 A. Okay.

5 Q. Mr. Smith asked you about your statement on June 9th,
6 2022, about having been to 100 rallies, having never seen
7 conservatives act out in violence like that. And that's why
8 you didn't think this would happen.

9 Do you remember him asking you about that?

10 A. I do.

11 MR. KENERSON: I want to see if we can bring up, I
12 think, just for the witness -- this would be Exhibit 1215.

13 BY MR. KENERSON:

14 Q. Mr. Bertino, do you see that we're looking at a
15 transcript of your June 9 interview?

16 A. Yes.

17 MR. KENERSON: And can we go to Page 33 of that
18 transcript.

19 BY MR. KENERSON:

20 Q. And I'll focus you on Line -- starting at Line 21. Let
21 me know when you've read this page.

22 MS. HERNANDEZ: Excuse me. Objection, your Honor.

23 THE COURT: Let's have a sidebar.

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

1 MS. HERNANDEZ: I don't believe that the witness
2 needed his memory refreshed or -- I'm not sure exactly where
3 we're going with looking at this.

4 THE COURT: Mr. Kenerson, what are we doing here?

5 MR. KENERSON: So --

6 THE COURT: I --

7 MR. KENERSON: We're not refreshing recollection.
8 We are definitely not refreshing recollection.

9 We are doing two separate things here. One, we
10 are exploring under what I think, had we not had the Court's
11 and Mr. Smith's blessing to explore Rule 106 -- we asked for
12 Rule 106 at the time Mr. Smith brought this out, number one.

13 Number two, I think it's a prior consistent
14 statement made prior to the \$12,000 for moving.

15 THE COURT: What is the statement?

16 MR. KENERSON: So where we are now is the
17 statement that he made that Mr. Smith impeached him with.
18 Mr. Smith -- let me grab my notes and then move away from
19 the microphone.

20 Mr. Smith impeached him with Page 33 of the
21 transcript, Line 21, through Page 34, Line 13. I was just
22 going to have him read that that's what Mr. Smith impeached
23 him with.

24 I was then going to go through -- to Page 37 of
25 that same transcript and ask him to read and then ultimately

1 move into evidence Page 37, Line 10, through Page 38, Line
2 14.

3 MS. HERNANDEZ: So, your Honor -- --

4 THE COURT: Ms. Hernández, hold on.

5 I can't even see what the -- all right. You know
6 what? Here's what we're going to do. I've required the
7 defense to try to tee these things up ahead of time, I
8 think, appropriately.

9 How many of these do we have, Mr. Kenerson, where
10 we're going to be going through what Mr. Smith or some other
11 Defendant did and sort of arguing about whether you can move
12 a particular portion of this into evidence, either through
13 106 or for purposes of -- either -- or because it's a
14 consistent statement?

15 MR. KENERSON: Three total. One where I can make
16 a 106 argument. But all three I would make the prior
17 consistent statement.

18 THE COURT: We're going to break for lunch 15
19 minutes early. I'll give you some opportunity to confer
20 with the defense on this, just because -- look, we're going
21 to be going around in circles here trying to navigate this.
22 And I want at least both sides to have this teed up so that
23 we don't have to burn this time in front of the jury.

24 And if you would, at some point during the -- when
25 we're -- over lunch, if you'll email chambers kind of --

1 just so you can point me to where we're going to be talking
2 about so I can know where we are. Then we can hopefully
3 save time on the other side of lunch.

4 MS. HERNANDEZ: Your Honor, just for the record,
5 as the Court just said, you've required the defense to tee
6 this up.

7 We've been required to do it way in advance of
8 court time. I mean, we've had to do it days before.

9 THE COURT: For many of you, it was one day.

10 MS. HERNANDEZ: Or one day.

11 But the point is, Mr. Smith cross-examined at
12 least two days ago. And we have had no notice of this. So
13 they should be precluded.

14 And I just -- I'll respond to whatever he puts up,
15 because I don't believe this complies with prior consistent
16 statement for the reasons that I've already -- you know, the
17 reason for his lying --

18 THE COURT: Ms. Hernández -- Ms. Hernández, I'm
19 not ruling on it now. I'm going to give you an opportunity
20 to consult about it and for the Government to just email me
21 the clips so we know what we're talking about when we come
22 back.

23 MS. HERNANDEZ: Thank you, your Honor.

24 MR. KENERSON: Can I ask about the notice issue?

25 Mr. Smith had said when we had that colloquy: I do not care

1 if the Government puts in any single portion of any of the
2 statements. That was what he said at the time.

3 MR. SMITH: Your Honor, we actually -- we're
4 willing to cooperate with the Government and look through
5 the statement they would like to put in during the lunch
6 break. And I think your Honor's suggestion was appropriate,
7 that the parties could discuss this and then, if there's a
8 few lines the defense wants to agree with, we could agree.
9 Right?

10 THE COURT: We'll see. We'll see.

11 But I do recall Mr. Smith saying, at least as to
12 106, he would be -- you know, he didn't want -- in fairness,
13 he didn't want his cross to be mucked up with 106 and he
14 would be open to including statements on that basis.

15 I'll give you all the extra 15 minutes. When we
16 come back, this could be sorted out.

17 (Whereupon, the following proceedings were had in
18 open court:)

19 THE COURT: Ladies and gentlemen, we are going to
20 take an early and slightly longer lunch break than we have
21 been. So we're going to take a break from now through 1:30.
22 We'll see you back then at that time.

23 (Whereupon, the jury exited the courtroom at 12:15
24 p.m. and the following proceedings were had:)

25 THE COURT: Sir, you may step down.

1 (Witness excused.)

2 THE COURT: Let me just say, if we get to 1:30 and
3 the parties think it would be productive to have a little --
4 you know, another five or ten or 15 minutes to chat about
5 this, email chambers and I'll delay coming out to give you
6 all the opportunity to continue chatting.

7 So we'll see you all back here at 1:30.

8 And I should have said this before. The other
9 thing is the instruction. Ms. Hernández, you wanted some
10 time over lunch --

11 MS. HERNANDEZ: Yes, Judge.

12 THE COURT: -- to review the instruction?

13 MS. HERNANDEZ: Thank you.

14 THE COURT: Very well.

15 THE COURTROOM DEPUTY: This honorable Court stands
16 in recess until the return of Court at 1:30.

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

19 (Morning session concluded.)
20
21
22
23
24
25

CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 28th day of February, 2023.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
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