

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)
)
Plaintiff,) Criminal Action
) No. 21-cr-175
vs.)
) JURY TRIAL
Ethan Nordean,) Day 49
Joseph R. Biggs,)
Zachary Rehl,) Washington, D.C.
Enrique Tarrio,) March 16, 2023
Dominic J. Pezzola,) Time: 1:45 p.m.
)
Defendants.)

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

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* * * * * P R O C E E D I N G S * * * * *

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

THE COURT: All right. Few quick things before we bring the jury back.

So, here's the -- I saw what you emailed regarding the interest of justice. Let me read the instruction, make sure everyone is okay with it. It will be at the end of this witness's testimony.

Through this last witness, you have heard statements made by Mr. Biggs on a podcast, and statements made by Mr. Nordean that were captured on video and were recovered from his phone. You may consider Mr. Biggs's statements as evidence of his state of mind at that time, and not the state of mind of any other defendant. And you may consider Mr. Nordean's statements as evidence of his state of mind at the time, and not the state of mind of any other defendant.

Any objections to that?

MR. SMITH: I object. It's prejudicial to Nordean, because I have no -- I don't think the jury needs to be instructed that the drunk statement was something that Ms. Hernandez needs an instruction about, and I think it's just slime -- it's just more prejudice, so I do object.

THE COURT: Okay.

1 Ms. Hernandez, what's your -- you still -- would you
2 still like the part of it that mentions Mr. Nordean's
3 statements?

4 MS. HERNANDEZ: Yes, I do. I hadn't talked to Mr. --
5 I don't want, although, to go against my cocounsel. Yes, I
6 understand those are only coming in. The truth is, I think
7 those statements are ridiculous because he's so drunk, but,
8 yes, I want them.

9 Actually, Your Honor, I was going to ask the Court:
10 There are multiple statements in the Skull and Bones --

11 THE COURT: We're not talking about those now.

12 MR. SMITH: Your Honor, I think the solution would
13 be, we can have it both ways by just rephrasing it to say: You
14 heard statements by individual defendants in video clips.
15 Those statements can only be -- should be considered for the
16 state of mind of those individuals who made the statements.

17 THE COURT: Well, you're welcome to talk about it,
18 and I'll take it up -- I'll take it up once you've had a chance
19 to talk about it.

20 MR. SMITH: Okay.

21 MS. HERNANDEZ: I'm sorry. May I just have a moment?

22 THE COURT: Go ahead.

23 MS. HERNANDEZ: I mean, I didn't know this was coming
24 up. We've been talking about this for days.

25 THE COURT: No, I'm sorry, I'm not going to give you

1 that opportunity because we have to get the jury in, and moving
2 on. We're not going to talk about it. We're not going to be
3 able to resolve it in two seconds.

4 The second thing is: Is there any reason to think
5 that what I was able to look at in terms of my calendar, is to
6 be able to give you all an extra hour tomorrow, from 1:30 to
7 2:30, if you all can do that. In other words, we were going to
8 stop at 12:30. I know you all probably had travel plans, but I
9 would like to be able to give you an extra hour, if I can,
10 particularly since I've accommodated Mr. Smith with regard to
11 his calling a witness, and I know the government is trying to
12 wrap up here.

13 Mr. Hassan?

14 MR. HASSAN: Judge, on behalf of Tarrio, I knew I was
15 going to be out of town tomorrow. I have to leave early.
16 Mr. Jauregui has a flight, and I believe his flight is
17 scheduled right after 4. So he's pretty much across the street
18 from here, to the airport. I can provide the Court with his
19 scheduled flight.

20 We normally schedule, like, 2 o'clock. So at
21 2 o'clock, I know it's going to be interfering with the flight
22 schedule. And he had already moved it once, if the Court
23 recalls. So, the Court had already accommodated. We moved it
24 back -- he moved it back, and now, pretty much --

25 So, he's -- right now -- Judge, he's in the attorney

1 lounge right now, so if you want me to reach out, I will.

2 THE COURT: We'll table it, pick it up at the end of
3 the day, after 5 o'clock, when I have to release the jury.

4 But, is the government -- I assume the government
5 would be available then?

6 MR. KENERSON: We'll be available, Your Honor. And
7 our final witness will be brief, and depending on the cross, I
8 expect we'll be rested by then.

9 THE COURT: That's my hope, that we can get that
10 done. So talk to Mr. Jauregui, if you'll inform him, and we'll
11 try to pick that up on the other side.

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

13 THE COURT: About the schedule?

14 MR. METCALF: Yes.

15 THE COURT: Okay.

16 MR. METCALF: Your Honor, I just want to let you know
17 that those of us who are out of town and have a practice,
18 literally, when Your Honor says, We're going to stop at this
19 time, I walk out of the courtroom and make arrangements, like,
20 that next -- literally, that next break.

21 So on Monday, for example, when Your Honor said that
22 we were not sitting on Friday, I went out in the hallway, and I
23 probably scheduled about four or five different things with my
24 office, immediately on the spot. So I just want Your Honor to
25 know that when we do hear these things, we make arrangements

1 according to what Your Honor states on the record, and then we
2 try to -- because our schedules are just that crazy, where we
3 have to operate in a certain way.

4 THE COURT: Mr. Metcalf, I understand. That's why I
5 tell you the scheduling things as soon as I know them. But you
6 are in trial, and the trial has to take precedence over other
7 matters. And, so, I'm asking everyone to check their schedules
8 and confirm that they could be here a couple hours tomorrow so
9 we can try to get through the government's case.

10 Mr. Smith?

11 MR. SMITH: Thank you, Your Honor.

12 Did the Court have an opportunity to look at the
13 one --

14 THE COURT: Yes. I'll get to that in one moment.

15 Mr. Roots?

16 MR. ROOTS: Your Honor, I literally -- just to back
17 up what Mr. Metcalf just said, I literally, two hours ago, just
18 committed to a conference call at 1 o'clock tomorrow.

19 THE COURT: Well, again, the good thing is, I guess,
20 that Mr. Pezzola has two lawyers. So, I would ask you -- look,
21 just at the end of the day, we'll confer about it. I wanted to
22 put it on the table.

23 Mr. Pattis?

24 MR. PATTIS: I have an appearance at 10:30 before
25 another Judge with inestimable wisdom and discretion. I

1 believe that case has been continued. I just wanted to make
2 you aware of that.

3 THE COURT: It has. It has.

4 All right. And the last thing is Mr. Smith's request
5 to -- on these particular statements. Why don't I -- here's --
6 here's what I've decided: I do think -- so, this is an unusual
7 situation, but I do think the statement "what the F" and the
8 statement -- and Mr. Rehl's predecessor statement are rendered
9 relevant because of the other statements that are already in
10 evidence.

11 You know, I don't see how -- and that's sort of the
12 reason behind the 106 ruling I already made. If that is the
13 case, then the question is -- if they're relevant, then the
14 question is: What's the hearsay issue? And I do think "what
15 the F" is not -- it's not -- it's not hearsay. There's no
16 truth assertion.

17 So if that is -- and if that is admitted -- if that
18 is admitted because it's not -- there's no -- there's no
19 hearsay bar to that statement, then Mr. Rehl's antecedent
20 statement would only be coming in for the effect on Nordean.
21 Again, not for the truth of the matter asserted.

22 Now, you might say, if you were the government, and
23 argue 403, Judge. And maybe, in many cases, I would agree with
24 you. But I think given what the government has already put at
25 issue here, then these subsequent statements that all link back

1 to the original statement, I think Mr. Smith gets to do this.
2 Their relevance is underscored by all the rest of it.

3 That is slightly different than a 106 analysis, but I
4 think it is the right analysis here. And it's sort of
5 backstopped by the fact that on 106, I already -- I'd already
6 indicated, probably under Rule 106 analysis, it would come in.
7 So I think they both pass relevance. They both pass the
8 hearsay bar.

9 And I think it's -- and then given the fact that I've
10 already made that ruling under 106, and given the, kind of,
11 oddness of the way the evidence has come in here with this
12 particular witness being the designated "Telegram witness" over
13 a given period of time, it makes sense to just let him do that.

14 And the government, obviously, on redirect, if you
15 want to reemphasize all the things that you've already sort of
16 introduced -- I know you didn't do it with him because of my
17 ruling, but if you want to go into that, you'll be able to do
18 that.

19 But I think they both get over relevance, and I think
20 they get over -- again, the only reason they get all the way
21 over relevance, in my view, and past the 403 bar, is because of
22 all the other things that the government has already introduced
23 in this series. So, that's my ruling.

24 Mr. Smith, you can ask a few questions on that, and
25 then we'll go.

1 MR. SMITH: One or two. Okay. Thank you, Your
2 Honor.

3 THE COURT: Hold on one second.

4 Mr. Mulroe?

5 MR. MULROE: Just something really brief on that, a
6 separate issue. I think that part of the government's concern
7 about this is its commentary on an affidavit that was the basis
8 of the prior charging document in this case. So, without
9 having that affidavit in front of me, he's commenting on
10 allegations that are separate from, and, I believe, different
11 from the ones we've put in at trial. On redirect I'm going to
12 elicit that this was part of the prior set of charges, not the
13 ones being tried on.

14 THE COURT: I don't see why you couldn't do that.
15 But, again, this is -- look, if you want an instruction or
16 something about it's not in for the truth, I would give it, but
17 my suspicion is you won't want it. But that seems fair.

18 Mr. Hassan?

19 And while you're do --

20 Well, Mr. Hassan?

21 MR. HASSAN: Judge, I didn't want to inconvenience
22 the Court, but I just wanted to bring to the Court's attention
23 that Mr. Jauregui's flight is scheduled at 2 o'clock tomorrow.
24 He's leaving through Southwest Airlines, which only has about
25 one flight leaving out of here a day, Judge. So that's pretty

1 much a flight that he has for tomorrow. It's not like other
2 airline companies that we can get on other flights, through
3 American Airlines, whatever it might be.

4 THE COURT: Are you representing to me that that's a
5 nonrefundable flight?

6 MS. HERNANDEZ: Judge, I mean --

7 THE COURT: Are you representing two things: That
8 that's a nonrefundable flight, and that there are no other
9 airlines that service Washington Metro to Miami Metro?

10 MS. HERNANDEZ: Judge, I can represent that he made
11 those flights based to the Court's prior ruling, based on the
12 Court --

13 THE COURT: I understand what you're saying. I'm not
14 hearing anything that's an insurmountable problem.

15 Mr. Mulroe?

16 MR. MULROE: Your Honor, I just want to raise a
17 potential evidentiary issue that may come up through
18 Ms. Hernandez's cross-examination. She has been interested in
19 Telegram charts involving the person we're calling Danny Mac,
20 and I understand she's going to want to offer what I believe is
21 a six-page exhibit made up of messages between Zachary Rehl and
22 Danny Mac.

23 We may be fine with some of this or part of this or
24 all of this, but I requested a proffer from Ms. Hernandez on
25 Tuesday of what she believed the relevance was and whether she

1 wanted to put the whole thing in or just parts of it, and did
2 not ever hear back.

3 So I am concerned that there is hearsay in here, and
4 it's hearsay that is likely to mislead and confuse the jury,
5 because there's statements by Danny Mac about how many
6 informants within the Proud Boys and how much the FBI pays them
7 and things like that.

8 Again, I don't know what she wants with it, so I
9 wanted to raise it.

10 THE COURT: Ms. Hernandez, why didn't you talk to the
11 government about this when they requested it?

12 MS. HERNANDEZ: Well, first of all, Your Honor, as
13 the Court may recall, this was teed up to be introduced before.
14 I was in the middle of cross-examining him, and the government
15 objected on the scope, and so I sat down.

16 THE COURT: Right. And that's exactly why you should
17 have.

18 MS. HERNANDEZ: Okay. If the Court wants me to
19 answer?

20 THE COURT: No. No. You need to be at the podium
21 because --

22 MS. HERNANDEZ: I know. But, you interrupted me, so
23 I'll wait until the Court --

24 THE COURT: I'm done.

25 MS. HERNANDEZ: Okay. So he sent it to me Tuesday.

1 I believe that's the evening I told the Court where I lost
2 power. I stayed in the courthouse to file my objections. And
3 then I went home, and I didn't get power until past midnight.
4 I have the -- and so the next day we came in here, and we've
5 been in here all the time.

6 So that's where we are.

7 THE COURT: You knew, though, that it was an issue
8 from the moment they objected, and you said: I'll come back.

9 And the whole point of punting it at that point was
10 for you to be able to consult with the government.

11 MS. HERNANDEZ: The objection was in scope, because
12 the agent was only -- these text messages were post-January 6,
13 so the objection was on scope, and he only was here to talk
14 about January 5th. There was no objection on hearsay. And, in
15 fact, there was cross-examination, I believe by Mr. Pattis,
16 about some of the substance that was in there about how many --
17 how many people were there.

18 So, the first time -- and then this has been pending
19 all along. The first time he raised that is he said -- he
20 didn't raise it when he first sent the messages. He raised it
21 on Tuesday. I explained to the Court, I was -- I lost -- I had
22 no electrical power. I had no access to the internet until the
23 morning of Wednesday, I guess.

24 THE COURT: Ms. Hernandez, also, I have repeatedly
25 ordered that anything to do with the CHS, you were to front

1 with me beforehand, correct?

2 MS. HERNANDEZ: Your Honor, we had this discussion.
3 In fact, we had this discussion two weeks ago. In fact, I
4 think earlier this week, when we were talking about these
5 exceptions, the Court noted that I had -- we had this
6 discussion about this particular gentleman. And in the middle
7 of the discussion, the Court said: Don't use his name anymore.

8 So all of this was before the Court.

9 THE COURT: Right.

10 MS. HERNANDEZ: I thought we were all aware that this
11 was coming up.

12 THE COURT: Ms. Hernandez, I'm not going to allow you
13 to do it, because -- if -- because you -- we've been around and
14 around this. And I have -- if there's anything I've said to
15 all counsel, is: If you want to do something with -- in CHS
16 land, again, nothing -- nothing -- anything regarding CHS, I
17 want it fronted with me so that I can rule on its admissibility
18 and deal with it ahead of time.

19 And, now, you are going to begin your
20 cross-examination here and launch into something that the
21 government had already objected to.

22 MS. HERNANDEZ: On hearsay grounds. And as he said,
23 not on everything. On some items. He's not objecting to the
24 whole thing. He's objecting to some of it on hearsay grounds.
25 This gentleman's name has already come out. The record will

1 reflect the discussions we had a month ago, whenever it was.
2 And the record will reflect the discussions we had earlier this
3 week. His name came up. I mentioned his name. Mr. Mulroe did
4 not get up and say a word.

5 By the time we were before Your Honor talking about
6 the issues with respect to this particular witness, what was
7 coming in and what was not coming in, Mr. Mulroe did not say a
8 word.

9 So how it becomes -- and, in fact, as the Court has
10 indicated, my recollection is, it's the person who objects who
11 has to come up and bring it to the Court's attention.

12 THE COURT: No. I've said anyone who wants to use --
13 to go into CHS matters has to raise it with me beforehand.
14 Maybe the government won't object. If they don't object,
15 that's fine.

16 MS. HERNANDEZ: Your Honor, this issue of this
17 particular witness was before the Court --

18 THE COURT: Exactly.

19 MS. HERNANDEZ: -- just this week, when we were
20 talking about this gentleman.

21 THE COURT: All the more reason for you to have teed
22 it up.

23 MS. HERNANDEZ: I don't have any problem with it.
24 They're trying to object. I recall about a month ago, when the
25 Court chastised me because it was my -- I was trying to object.

1 So, now -- I know what the rule is. If the government wants
2 it, it gets in. If the defense wants it, we have to tee it up.
3 The record will reflect whatever it is.

4 THE COURT: No. Yeah, it sure will.

5 If the government objects to something that -- I've
6 been very clear with everyone on both sides. If somebody wants
7 to raise something CHS related, all I ask is that it get teed
8 up according to my trial procedures in advance, so we don't
9 have any inadvertent information come before the jury and the
10 public.

11 MS. HERNANDEZ: We discussed this this week, when you
12 were taking up the matter of this witness. I mentioned this
13 person's name. You, in fact, brought up the fact that this was
14 still pending; that is, that I had got cut off on
15 cross-examination. We mentioned it. The government did not,
16 at that time, say a word.

17 They're the ones, if they're going to object -- the
18 fact that we're bringing up this person's name and that it was
19 going to be brought up during this cross-examination has been
20 before the Court for weeks.

21 THE COURT: Mr. Smith, you may proceed.

22 We'll bring in the witness and the jury.

23 MS. HERNANDEZ: I'm sorry, Your Honor. One last
24 thing.

25 Is the Court saying I can't bring it up because it's

1 a CHS?

2 THE COURT: I'm saying this: That if the government
3 objects, and on -- if the government objects I'm going to
4 sustain the objection.

5 MS. HERNANDEZ: They're objecting on hearsay grounds,
6 not on CHS grounds. And they said it was not to everything.
7 Just to some items.

8 THE COURT: We'll see what happens. You will bear --
9 the party who is --

10 Well, Mr. Mulroe, go ahead.

11 MR. MULROE: Your Honor, to be clear for the record,
12 our objection is at least on hearsay, on relevance, and on 403,
13 given that she's not proffered the relevance of any of this
14 stuff.

15 I want to note, though, that I think that when the
16 government is forced to object, particularly on CHS-related
17 matters in the presence of the jury, it prejudices the
18 government. So, Your Honor has ruled on this. I don't think
19 we should need to go through the motions of her attempting to
20 put it in and me stand up to object.

21 THE COURT: There's some things to which you already
22 said you're not going to object, so we'll see how far it goes.

23 MR. MULROE: It's one document, though. It's a
24 single exhibit.

25 THE COURT: You said there was some questions she may

1 ask that you wouldn't object to.

2 MR. MULROE: If she offers the exhibit, we're going
3 to object. I offered to her on Tuesday morning, if you want to
4 take parts of this exhibit, maybe we wouldn't object to those,
5 but I just don't know what those are going to be.

6 THE COURT: Well, we're just going to roll forward.
7 I've given the parties the opportunity to attempt to work these
8 things ahead of time, and we're just going to -- I'll deal with
9 them as they come. But it's -- and I will say, I'll amend what
10 I said before: If the government -- if we're not talking about
11 CHS equities here, then that's a separate matter. That doesn't
12 mean the parties shouldn't have attempted to work this out and
13 that either -- if the government was going object or
14 Ms. Hernandez, whichever side.

15 I think the -- so, I'll amend what I said before
16 about CHSs, if we're really not talking about a core CHS issue.
17 But, I'll just take it up as we go forward. It sounds like you
18 all have not had the opportunity to -- or, neither side has
19 tried to smooth the waters. So it will be bumpy, but we'll go
20 ahead.

21 Yes, Mr. Pattis?

22 MR. PATTIS: I stayed away from the Mac issue because
23 I assumed it would be covered.

24 Would you give me permission to reopen after
25 consultation with the government?

1 MR. MULROE: We object, Your Honor.

2 THE COURT: Covered by what?

3 MR. PATTIS: I thought Ms. Hernandez -- I'm hearing
4 now for the first time, having completed my cross-examination,
5 that it's improperly preserved. I was unaware of discussions
6 with the government, and didn't, frankly, pay attention.
7 Because my understanding was: She had the right to reopen the
8 cross-examination on the Mac topic, so I ignored it.

9 THE COURT: So -- no. You don't need additional
10 cross. She has that right to go down this road, and I'll deal
11 with the objections as they come. I'll deal with the
12 objections as they come. I misunderstood the nature of the
13 objection and -- in terms of whether it was just anything on
14 the CHS or on a particular document. I'll take it up as it
15 comes. I'm going to make the best call that I can, and we'll
16 move forward.

17 Let's bring in the jury and the witness.

18 (Pause.)

19 THE COURT: And, Ms. Hernandez, if now, while we're
20 waiting, while Mr. Smith is doing this, if you want to engage
21 the government, if the government wants to engage you to see if
22 this can't be smoother, I invite you to do that.

23 MS. HERNANDEZ: I can only hold about three thoughts
24 in my head, this is the problem here. The government sends
25 these emails when they're in court in the morning. And I know

1 they have multiple people. And so Mr. Kenerson was
2 cross-examining, so Mr. Mulroe is open, but there's only one of
3 me.

4 THE COURT: Fair enough. And, Ms. Hernandez, as I
5 said, I was mistaken to the extent -- I was mistaken -- this is
6 not a CHS issue, in sum, and I accept that.

7 (Pause.)

8 THE COURT: Look at all this time we have,
9 Ms. Hernandez.

10 MS. HERNANDEZ: Excuse me, Your Honor?

11 THE COURT: Look at all this time we have
12 Ms. Hernandez. It's wasted time. And, Mr. Mulroe, for that
13 matter.

14 MS. HERNANDEZ: I'm not joking about how many -- when
15 I'm running on four hours of sleep a night, I'm not joking
16 about how many ideas I can keep in my head at once.

17 (Whereupon the jurors enter the courtroom.)

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

19 We have a few remaining questions from Mr. Smith, and
20 then we'll proceed to counsel for Mr. Rehl.

21 PETER DUBROWSKI,

22 CROSS-EXAMINATION (Contd.)

23 BY MR. SMITH:

24 Q. Good afternoon, Agent.

25 A. Afternoon.

1 Q. I'm back to ask you a question about one government
2 exhibit, and then I'm done. So, I asked you some questions
3 about Mr. Nordean's fear of arrest. Do you remember those?

4 A. Yes.

5 Q. Okay. I'm going to put up an exhibit -- a government
6 exhibit that was in evidence, but it wasn't covered in your
7 direct, and ask you some questions about this one.

8 This is Government Exhibit 516-1.

9 A. Yes.

10 Q. Let me -- oh, so you recognize the chat MoSD
11 Leaders-January 9th?

12 A. Yes.

13 Q. And you understand those to be messages from Ethan Nordean?

14 A. Yes.

15 Q. Okay. So, these chats say, from Rufio Panman: Everyone
16 needs to shut the F up. There's too many videos and pictures
17 and words being shared.

18 Right?

19 A. Yes.

20 Q. Okay. So, Agent, you've testified that the text messages
21 themselves -- excuse me -- the Telegram messages themselves
22 were extracted using a program called Cellebrite, right?

23 A. Yes.

24 Q. I'm going to bring up what's been marked as Nordean
25 Exhibit 102, and this is page 403 -- PDF page 403.

1 Now, Agent, I'm going to draw a yellow line next to two
2 messages from Rufio Panman. The first one says: Everyone
3 needs to shut the F up. There's way too many videos and
4 pictures and words being shared.

5 Right?

6 A. Yes.

7 Q. Do those appear to be the same messages that we're looking
8 at in the government exhibit?

9 A. Yes.

10 Q. Okay. Now, I'm going to draw your attention to two
11 messages just above that, and I've drawn a yellow box next to
12 it.

13 Can you see the first one from some -- from Captain
14 Trump?

15 A. Yes.

16 Q. Who is Captain Trump again?

17 A. That's Mr. Rehl.

18 Q. Okay. Can you read that message from Captain Trump?

19 A. "This FBI affidavit for Biggs, it's, of course, a steaming
20 pile of dog shit that tries to make it seem like the Capitol
21 shit was planned."

22 And then a link.

23 Q. Okay. And what is -- can you see what Mr. Nordean's
24 response is to Mr. Rehl's comment that he found an affidavit
25 that tries to make it seem like the Capitol shit was planned?

1 A. The message reads, "What the fuck?"

2 Q. Okay. And then after that message from Mr. Nordean, "What
3 the fuck," we see these messages that were in the government
4 exhibit?

5 A. Yes.

6 Q. Okay. And I'm just going to ask you one question, and it's
7 a general question.

8 What is an affidavit?

9 A. An affidavit is a sworn statement.

10 Q. So, if you see a ref -- now, I'm not asking you about a
11 specific affidavit for Mr. Biggs, but if you were to see a
12 reference to "affidavit for Biggs that tries to make it seem
13 like the Capitol shit was planned," what type of affidavit
14 would you -- is that an affidavit that's filed in a court
15 proceeding?

16 MR. MULROE: Objection.

17 THE COURT: Sustained.

18 BY MR. SMITH:

19 Q. Would it be public if it's being referenced to there?

20 A. I assume it would have to be public if this educational
21 institution had it, yes.

22 MR. SMITH: Okay. That's all. Thank you very much.

23 THE WITNESS: Thank you.

24 THE COURT: All right.

25 Counsel for Mr. Rehl.

1 CROSS-EXAMINATION

2 BY MS. HERNANDEZ:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. It's good to see you back in D.C.

6 A. Thank you.

7 Q. So, I'm Carmen Hernandez. I represent Zachary Rehl, whose
8 name you we've been talking to the ladies and gentlemen of the
9 jury about, correct?

10 A. Yes.

11 Q. And a lot of other attorneys, apparently, like Mr. Rehl's
12 name because they keep on bringing it up.

13 One of the last things you were talking about -- or,
14 testifying about with Mr. Pattis was this document, 1776
15 Returns?

16 A. Yes.

17 Q. And I believe it was introduced.

18 MS. HERNANDEZ: Is there an exhibit number for the
19 document? It's the last exhibit that Mr. Pattis --

20 MR. JAUREGUI: 528-1.

21 MS. HERNANDEZ: I'm sorry?

22 MR. JAUREGUI: 528-1.

23 BY MS. HERNANDEZ:

24 Q. Government Exhibit 528-1.

25 And are you familiar with this document itself?

1 A. The --

2 Q. The 1776 Returns.

3 A. Yes, I am.

4 Q. And, I'm sorry. Ms. Harris, can you just bring up the
5 front page?

6 Ms. Rohde, can you just bring up the front page?

7 MR. MULROE: Your Honor, I object on scope. This was
8 covered last time.

9 THE COURT: Let me hear you at sidebar.

10 (Bench discussion:)

11 THE COURT: All right. First of all, I want to let
12 all counsel know that, unfortunately, we received word --
13 Ms. Harris let me know that one of the jurors couldn't
14 rearrange their schedules for tomorrow afternoon. So,
15 Mr. Jauregui, your plane ride is safe for tomorrow afternoon.

16 Second --

17 MS. HERNANDEZ: Your Honor, are you still sitting
18 until 12:30?

19 THE COURT: We'll stop at 12:30. Correct. Correct.
20 All right.

21 Why isn't this beyond the scope here?

22 MS. HERNANDEZ: Well, for one, this witness testified
23 about a number of posts referencing 1776, the post-January 6
24 posts, Mr. Nordean's drunken rants about 1776. I believe the
25 Tarrío posts from January 6, about the Winter Palace. The

1 last -- the last bit of testimony with Mr. Pattis was about
2 1776 Returns, about this very document.

3 THE COURT: But, Mr. Pattis can't open the door to
4 your cross, right?

5 MS. HERNANDEZ: Right. But as I said, the Nordean
6 posts -- well, I'm not sure that's accurate. But, the Nordean
7 videos were about 1776. The Tarrío posts from January 6 was
8 about the Winter Palace.

9 THE COURT: What do you plan to do with him? What
10 are you doing?

11 MS. HERNANDEZ: I want to ask some questions about
12 the document.

13 THE COURT: What about the document?

14 MS. HERNANDEZ: Your Honor, I would rather -- well,
15 I'm going to ask him what about the document has come true, if
16 anything.

17 THE COURT: I'll give you -- I'll give you a little
18 leeway to ask that question.

19 MS. HERNANDEZ: Thank you.

20 (Open court:)

21 MS. HERNANDEZ: I think there's a French saying: The
22 more things change, the more they remain the same.

23 Objection.

24 A. I'm sure there is.

25 Q. We were talking about this document, 1776 Return.

1 Ms. Rohde, can you please bring it up?

2 MS. HERNANDEZ: And I believe this is in evidence,
3 Your Honor, so I ask it be published.

4 THE COURT: Very well.

5 MS. HERNANDEZ: Thank you.

6 BY MS. HERNANDEZ:

7 Q. So, just to link it up with your direct testimony, you
8 introduced some videos of Mr. Nordean discussing 1776.

9 A. He uses that term, yes.

10 Q. Okay. And I believe you also introduced a Telegram or a
11 Parler post where Mr. Tarrío mentioned Winter Palace?

12 A. In my previous testimony, yes.

13 Q. And there were other posts about 1776 that you testified to
14 earlier today.

15 A. Yes. There was one other one.

16 Q. Okay. And you said you are familiar with the document?

17 A. Yes.

18 Q. So the document appears to be some sort of plan for
19 January 6 and occupying some Senate office buildings on
20 January 6, correct?

21 A. Yes.

22 Q. Not the Capitol itself?

23 A. Not the Capitol itself.

24 Q. Can you go to page 2 on this, please, Ms. Rohde.

25 And can we make it larger?

1 Thank you.

2 BY MS. HERNANDEZ:

3 Q. So, again, these were some targeted buildings?

4 A. Yes.

5 Q. And it's not the Capitol at all?

6 MR. MULROE: Objection. 403. Cumulative. Waste of
7 time.

8 THE COURT: I'm going to sustain on scope.

9 BY MS. HERNANDEZ:

10 Q. Did you do any investigation to see whether any of these
11 plans set out here about having appointments at the -- at these
12 buildings and any of these things were carried out on
13 January 6?

14 A. This document wasn't the focus of my investigation, no.

15 Q. And did you see -- in the Telegram posts that you reviewed,
16 did you see any discussion about carrying out this particular
17 plan?

18 A. No.

19 Q. And you saw no discussion of Mr. Tarrio sending this
20 document to Mr. Rehl?

21 A. Just like I said the first time I was here, I do not have
22 evidence that this document was transmitted further, no.

23 Q. Transmitted further to any of these defendants?

24 A. Yes.

25 Q. Thank you.

1 So, thank you, Ms. Rohde. You can take that down,
2 please.

3 You testified to a couple of posts in which Mr. Rehl is
4 allegedly having conversations with some persons who are not
5 defendants in this case.

6 Would you please bring up 547-7.

7 And I believe this has been introduced in the
8 government's case. It's Government Exhibit 547-7.

9 BY MS. HERNANDEZ:

10 Q. I'm sorry. Before we go on to this, you said this document
11 was not the focus of your investigation.

12 Do you know if this was a particular agent at the FBI
13 who was investigating this document?

14 A. No, I do not.

15 Q. Okay. So 547, this Zachary Rehl group text, that does not
16 involve these defendants, correct?

17 A. No. I mean, other than Mr. Rehl, to be careful.

18 Q. Yes. Precision. Precision. Precision.

19 And do you know who this gentleman Damon is?

20 A. I believe we've identified him, but I don't have a last
21 name readily available.

22 Q. Do you know whether he's a Proud Boy?

23 A. I do not off the top of my head.

24 Q. Would you say he's not a Proud Boy?

25 MR. MULROE: Asked and answered.

1 MS. HERNANDEZ: That's a different question, Your
2 Honor. One is an affirmative.

3 THE COURT: Right. It's asked and answered.

4 MS. HERNANDEZ: Can you please bring up 547-8.

5 And can you bring it down?

6 Go back.

7 BY MS. HERNANDEZ:

8 Q. Do you know who the other --

9 Go to the top, please.

10 Do you know who the plus four are? Do you know the
11 names of the plus four?

12 A. They're all identified. If you showed me the extraction, I
13 could read them off.

14 Q. No. That's fine.

15 But, there are four other people -- only four other
16 people in this messaging group, correct?

17 A. Yes.

18 Q. And do you know whether any of them are Proud Boys?

19 A. Off the top of my head, no.

20 Q. Is there anything you could look at that would refresh your
21 recollection as to whether they are or are not?

22 A. I mean, we could look at the extraction, and then I could
23 review the case files and run searches, but I don't have a
24 cheat sheet prepared.

25 Q. You don't have anything with you right now that could

1 answer -- could help you answer that question?

2 A. No. No.

3 Q. Okay. But the one thing you can say affirmatively is: You
4 don't know whether they're Proud Boys or not?

5 A. Yes.

6 Q. And other than on these chats, you don't see them on any of
7 the other Telegram chats that you've come here to discuss,
8 correct?

9 A. Correct.

10 Q. Now, a number of the Telegram chats that you had -- you
11 provided testimony about --

12 I'm sorry. You can take it down. Thank you.

13 There are several chats and messages that you discussed
14 today, correct?

15 A. Yes.

16 Q. And some of them involve what I believe you referred to as
17 the Elders?

18 A. Yes.

19 Q. And the Elders are a group of Proud Boys who are -- they're
20 national in scope; is that correct?

21 A. Yes.

22 Q. I mean, they're not just from one geographic location?

23 A. That's right.

24 Q. Whereas, most of the other Proud Boys chapters involve,
25 like, the Philadelphia Proud Boys or the North Carolina Proud

1 Boys or something like that?

2 A. Most of the other chapters are geographically bounded, yes.

3 Q. And these gentlemen, you referred to them as the Elders,
4 and they tend to -- strike that.

5 Their messaging chat is named Skull and Bones?

6 A. Yes.

7 Q. And Mr. Rehl is not part of that group, correct?

8 A. He is not.

9 Q. He's not an elder?

10 A. No.

11 Q. And he's not in the Skull and Bones chat group?

12 A. Correct.

13 Q. I can't recall whether you've testified to this. This
14 group, do they establish policy for the entire Proud Boys
15 network?

16 A. From my reading of the chats, they are involved in national
17 decision-making. For example, they have to vote on new
18 chapters. I'm not sure that I could say that they set policy,
19 though.

20 Q. Because, in fact, generally, the Proud Boys clubs are --
21 have autonomy. That's what -- how they describe it?

22 A. They discuss chapter autonomy, true.

23 Q. By that, what do you understand that to mean from your
24 review of the texts?

25 A. That within certain limits, individual chapters govern

1 themselves.

2 Q. So they decide when to demonstrate or when to have a rally;
3 is that correct?

4 A. When you start talking about rallies, I think it gets more
5 complicated since there was, obviously, national implications
6 there, but --

7 Q. Okay. They decided when they were going to drink?

8 A. Yes. They set their own schedules in that regard.

9 Q. A number of the chats --

10 You can take it down.

11 MR. MULROE: Ms. Harris has to take it down.

12 MS. HERNANDEZ: Ms. Harris, thank you.

13 BY MS. HERNANDEZ:

14 Q. A number of the chats sometimes -- they seem to be in the
15 morning hours?

16 A. Yes.

17 Q. By that -- I see you smile -- after midnight?

18 A. Yes.

19 Q. Did you have any indication or do you have any indication
20 that some of these chats, especially in the morning hours,
21 might be fueled by having been over-served some liquor?

22 A. The chats are the chats. I don't have anything further on
23 that.

24 Q. You don't -- you don't have an opinion on that?

25 A. Based on the chats, no.

1 Q. But you do see a number of these chats that are posted
2 after midnight?

3 A. Yes.

4 Q. And you can't, or can you, generalize whether those
5 after-midnight chats tend to be a little more either aggressive
6 or have a lot more choice language? Like, you know, the Fs and
7 all the other words that they like to use, the expletives?

8 A. I can't make a generalization.

9 Q. Can you bring up -- Ms. Rohde, please, can you bring up
10 510-52.

11 And this is -- this is in the Ministry of Self-Defense
12 Main 2, and it's January 7th?

13 A. Yes.

14 Q. Do you know -- and the only person here who is sitting
15 at -- in this courtroom is Captain Trump, which is Mr. Rehl,
16 correct?

17 A. Yes.

18 Q. And do you know as you sit there, whether these three other
19 gentlemen are -- were in D.C. on January 6th?

20 A. I know -- whether they were there? I know Eddie George and
21 Mr. Fink. I would need to consult, frankly, Ms. Miller on
22 this. But, I don't know off the top of my head.

23 Q. Okay. That's fine.

24 Now, this last one by Mr. Rehl, another about 2:48 in
25 the afternoon on January 7th, do you know whether he was still

1 in D.C., or was he traveling back at that point?

2 A. I'm not familiar with his travel at that point.

3 Q. Okay. Do you know -- so, what he's talking about here, he
4 says: I'm proud as fuck what we -- and I apologize for the F
5 word -- I'm proud of what we accomplished yesterday, but we
6 need to start planning, and we are starting planning for a
7 Biden presidency.

8 A. Yes.

9 Q. So, at least on January 7th, Mr. Rehl has accepted the fact
10 that Mr. Biden will be sworn in as president of the
11 United States, correct?

12 A. I don't know what he believed, but this is what the chat
13 says.

14 Q. And what it's expressing is that he expects a Biden
15 presidency?

16 A. Yes.

17 Q. He's not saying -- this is January 7th. Mr. Biden has yet
18 to be sworn in?

19 A. Yes.

20 Q. He's not saying: I'm going back and preventing Biden from
21 taking office?

22 A. He didn't say that, no.

23 Q. And he's not saying: I'm going to make sure that Donald
24 Trump stays in office?

25 A. No.

1 Q. He's not saying: I'm going to come back to D.C. and
2 prevent this happening -- prevent the transfer of power from
3 taking place?

4 A. No.

5 Q. Is this one of the few places where he seems to refer to --
6 let me be more precise.

7 In the text messages that you've brought to us and
8 testified about, there aren't that many times when the members
9 of the chats actually mention the presidency and Mr. Biden in
10 the same paragraph?

11 A. I think that's fair -- of the chats that we've talked
12 about.

13 Q. So this is -- would you say this is significant? One day
14 after January 6, Mr. Rehl is acknowledging the presidency of
15 Mr. Biden?

16 A. Not sure I can opine on significance, but I agree that
17 that's what he's doing here.

18 Q. Okay. He also says here: I'm proud about what we
19 accomplished yesterday.

20 Let me ask you a question, and it may -- you may or may
21 not know the answer.

22 Obviously, there were a lot of people in D.C. on
23 January 6?

24 A. Yes.

25 Q. Outside the Capitol?

1 A. Yes.

2 Q. And I believe your testimony and the testimony of other
3 government witnesses -- we've seen a lot of videos of what
4 happened that day?

5 A. Um-hum.

6 Q. And most -- yes?

7 A. Yes. I'm sorry.

8 Q. Most of those videos -- not all, but many of them are sort
9 of a bird's-eye view?

10 A. No --

11 MR. MULROE: Object to scope.

12 THE COURT: Sustained.

13 MS. HERNANDEZ: It's going to -- I need a couple of
14 questions to bring it back to this.

15 THE COURT: It's sustained. But, ask your next
16 question, please.

17 BY MS. HERNANDEZ:

18 Q. So let me see if you agree with this: If you were on the
19 ground -- from what you've reviewed -- again, obviously, you're
20 testifying about what you've reviewed, and what you've reviewed
21 are a number of Telegram messages, correct?

22 A. Yes.

23 Q. But you've also reviewed videos because -- you've also
24 reviewed videos, correct?

25 A. To the extent they're involved in the chats, yes.

1 Q. To the extent they're embedded -- there's a link. For
2 example, a couple of videos were played today while you were
3 here?

4 A. Yes.

5 Q. So if there was a video link or something, you would have
6 looked at it?

7 A. By and large, yes. I can't guarantee I've -- yes.

8 Q. -- looked at everything.

9 So what I'm trying to get at is: If you were on the
10 ground on January 6, from the videos you've reviewed, it could
11 be that depending on your vantage point, you didn't see
12 everything that was going on.

13 Would you agree with me on that?

14 MR. MULROE: Objection. Scope. And calls for
15 speculation.

16 THE COURT: Sustained.

17 MS. HERNANDEZ: Your Honor, it goes to the sentence:
18 I'm proud as fuck what we accomplished yesterday.

19 THE COURT: The objection is sustained.

20 BY MS. HERNANDEZ:

21 Q. In your review of Telegram messages from January 6, the 509
22 chat, is that a MoSD chat group?

23 A. Yes.

24 Q. And did you review -- did you come across -- which of the
25 MoSD groups is that?

1 A. It is the Leaders chat.

2 Q. Did you review any messages where Mr. Rehl appeared not to
3 be aware that the person who broke the window was a Proud Boy?

4 A. I recall chats immediately surrounding the riot where
5 people were trying to identify that person. I would need to
6 see a specific chat, though.

7 Q. I'm sorry. Could you please bring up 509-36.

8 And I don't know if this is in, Your Honor, so I ask it
9 be shown only to the witness.

10 THE COURTROOM DEPUTY: It's not an exhibit.

11 MR. MULROE: No objection to this.

12 BY MS. HERNANDEZ:

13 Q. So this is -- so are you familiar with this chat?

14 A. This was the one I had in mind.

15 Q. With this message?

16 A. Yes.

17 MS. HERNANDEZ: So, I'll move this in, Your Honor.

18 THE COURT: It will be admitted, and permission to
19 publish is granted.

20 MS. HERNANDEZ: Thank you.

21 BY MS. HERNANDEZ:

22 Q. So this starts around 4 p.m. And Johnny Blackbeard is
23 Mr. Stewart; is that correct?

24 A. Yes.

25 Q. And he starts out by saying he saw a picture of one of our

1 guys inside the Capitol?

2 A. Yes.

3 Q. And then the next -- the response is: Noice.

4 Is that a typo or does that mean something different
5 that you understand?

6 A. I read that as "nice."

7 Q. Oh, nice. I wasn't sure if it was "noice."

8 A. Either "nice" or "nice" with a twang on it.

9 Q. And then Noblebeard is Bertino?

10 A. Yes.

11 Q. And then Noblebeard -- the next response is: I did not see
12 a video of anyone I knew breaking the windows or entering the
13 building?

14 A. Yes.

15 Q. And Mr. Rehl says: Na. It was just pissed off normies.
16 Once we showed up and started chanting everyone went nuts, and
17 that was that.

18 A. Yes.

19 Q. And then YutYut Cowabunga -- who is Mr. Donohoe?

20 A. Yes.

21 Q. And Mr. Donohoe was in D.C. on January 6th?

22 A. Yes.

23 Q. And he says: Definitely a video of one of our guys
24 smashing out the window with a stolen police riot shield?

25 A. Yes.

1 Q. So, it appears, in any event, from what is written here,
2 that Mr. Rehl wasn't aware that whoever stole the shield and
3 broke the window was a Proud Boy?

4 A. At least from this chat, yes.

5 Q. Okay. And have you seen any chat before this where
6 Mr. Rehl indicates that he knew Mr. Pezzola was the person
7 alleged to have done this?

8 A. Not that I can recall. Given the timing, that would
9 surprise me.

10 Q. That would surprise you?

11 A. It's just very close in time to the events.

12 Q. To the events of January 6?

13 A. Yes.

14 Q. And 4:02. The allegation is the window was broken about
15 2:13 in the afternoon.

16 If you know, Mr. Rehl had left the Capitol building
17 around 3:13 in the afternoon?

18 A. I'm not the guy to talk to about that.

19 Q. You don't know those details.

20 You were played that on direct and you were asked to
21 discuss it --

22 Could you please pull up 602-53, Ms. Ms. Rohde. And,
23 again, thank you for your assistance.

24 And bring it down, please, to the last item on this
25 page.

1 BY MS. HERNANDEZ:

2 Q. And Mr. Rehl, in this chat, in Government Exhibit 602-53,
3 it says: It all started over a USA chant. I love this
4 country. The silent majority is no longer silent.

5 Is that correct?

6 A. Yes.

7 Q. Could you play the -- and that is sent at 3:22:45?

8 A. Yes.

9 Q. And that's on Parler?

10 A. Yes.

11 Q. I'm sorry, Ms. Rohde, could you please play the --

12 (Video played.)

13 Can you stop it.

14 So this is the video embedded right above this statement
15 where he says: This all started with a USA chant?

16 A. Yes.

17 Q. If you know, this is what the government has been -- what
18 government witnesses have been identifying as the first breach?

19 A. I believe that's right.

20 Q. And, again, this breach was around 12 -- before 1 p.m.?

21 A. Yes.

22 Q. And when this is happening, Congress is still in session?

23 MR. MULROE: Object to scope.

24 THE COURT: Sustained.

25 MS. HERNANDEZ: Can you keep on playing it, please.

1 (Video played.)

2 Can you stop it, please. Thank you.

3 BY MS. HERNANDEZ:

4 Q. You don't see Mr. Rehl in that group yet?

5 A. No.

6 Q. Keep on playing.

7 (Video played.)

8 Thank you.

9 Could you make out any of the things others were saying
10 in that video, other than the USA chant?

11 A. I mean, there's a great deal of yelling. I can't pull out
12 specifics for you, though.

13 Q. Can you distinguish any of the voices or anything?

14 A. That's -- no, I cannot.

15 Q. Thank you.

16 So at least with that posting that he puts there, where
17 it says, "It all started with USA chants," that appears to be
18 accurate?

19 A. There are definitely USA chants in this video.

20 Q. And this is one of the first breaches, according to the
21 evidence that's come in?

22 A. Yes.

23 Q. With respect to the voices, did you listen to -- some of
24 these Telegram messages that you reviewed involved Mr. Rehl
25 speaking?

1 A. Yes. There are voice notes from Mr. Rehl.

2 Q. So are you somewhat familiar with his voice?

3 A. Somewhat. Although, the grand majority of what I reviewed,
4 of course, were texts.

5 Q. You were reviewing written messages?

6 A. Yes.

7 Q. The last time you were here, I had started to ask you some
8 questions about -- let me back up.

9 The last time you were here, you testified, at length,
10 about confidential human sources?

11 A. Yes.

12 Q. In fact, we had a slight question and answer about how they
13 get paid or not get paid, correct?

14 A. Yes.

15 Q. And you sort of gave us a little bit of an overview of how
16 the bureau -- Federal Bureau of Investigations uses
17 confidential human sources and that type of thing?

18 A. Yes.

19 Q. And at the time -- and I believe other attorneys also asked
20 you about specific confidential human sources?

21 A. Yes.

22 Q. And one of the things I wanted to ask you about was this
23 one human source who had certain conversations with Mr. Rehl.
24 I don't know if you're familiar with, they -- he had
25 conversations with Mr. Rehl on Mr. Rehl's Apple phone?

1 MR. MULROE: Object that the question. Contains
2 facts not in evidence as to the "human source."

3 THE COURT: Sustained.

4 BY MS. HERNANDEZ:

5 Q. Do you recall testifying that there was at least one human
6 source that you were questioned about?

7 A. Yes.

8 Q. And trying to stay away from the name, but if you recall,
9 he was a gentleman from New Jersey -- from the New Jersey Proud
10 Boys?

11 A. Yes. Yes.

12 MS. HERNANDEZ: I don't know whether the Court wants
13 me to mention the name or not, since he objected to the --

14 MR. MULROE: No objection to that.

15 THE COURT: Very well.

16 BY MS. HERNANDEZ:

17 Q. And that gentleman's name was Danny Mac?

18 A. I thought we were referring to someone else.

19 Q. You thought we were referring to Kenny from Long Island?

20 A. Yes.

21 Q. Okay. You're familiar with Cellebrite reports?

22 A. Yes.

23 Q. So let me just show you -- and this is just for Special
24 Agent -- is that sort of the front page of an extraction report
25 from Cellebrite?

1 A. Yes.

2 Q. And, again, we've been throwing this word around.

3 Cellebrite is just a program that's used to extract phone
4 information?

5 A. Yes.

6 Q. Okay. And if you look further down -- I don't know if you
7 can see it -- from what you have on there on the screen, can
8 you tell whose report this is or for which phone report this is?

9 A. This would appear to be sourced from Mr. Rehl's device.

10 Q. And you get that from this name (indicating)?

11 A. Yes.

12 MS. HERNANDEZ: Your Honor, I would like to at least
13 move into evidence the first page.

14 THE COURTROOM DEPUTY: What's the number,
15 Ms. Hernandez?

16 MS. HERNANDEZ: Rehl Exhibit 51.

17 MR. MULROE: Object on relevance, 403, and hearsay.

18 THE COURT: I'll have to hear you at sidebar.

19 (Bench discussion:)

20 THE COURT: Why isn't this hearsay?

21 MS. HERNANDEZ: Only if I'm offering it for the
22 matter asserted. But, he has identified the name, the number,
23 and this is a report that I received from the United States of
24 America in discovery. It's -- it was extracted by the
25 United States of America. I'm not sure what the hearsay

1 exception is. I think he can identify it.

2 THE COURT: It's your burden to identify the hearsay
3 exception, of course, if you want to try to admit the document.
4 It's a document with statements, and I don't even see the
5 statements up on the computer for me to even rule on. I don't
6 even know what to say about this.

7 MS. HERNANDEZ: I haven't moved the statements in.
8 I'm just moving the fact that this is a Cellebrite report. And
9 he just said that -- Amanda Campbell is Mr. Rehl's wife. I can
10 bring that out. And he knows that from his review of the
11 records in this case, and the other person in this conversation
12 is Danny Mac.

13 So I haven't moved any of the statements in yet. I'm
14 just trying to establish that this is something he recognizes.

15 THE COURT: But you -- you did move in the first
16 page, and the first page has statements, doesn't it?

17 MS. HERNANDEZ: Right. I'll move in the -- I'll move
18 in just the top -- I'm just trying to establish the -- I'm not
19 trying to move in the statement itself.

20 THE COURT: Ms. Hernandez, if at the end of the day
21 you just -- just seems to me you are trying to get in that they
22 had contact. I mean, why can't -- I don't think the government
23 would object if you just said: Does the record reflect that
24 he -- they had contacts over some period of time?

25 I mean, if we're not talking about statements, why

1 can't you just do it that way?

2 MS. HERNANDEZ: I'm doing it a step at a time, Your
3 Honor. And I'm trying to establish -- the first thing is that
4 he recognizes the name of -- as I say, because it doesn't say
5 "Mr. Rehl," he recognizes that's Mr. Rehl in it because of the
6 knowledge of the case.

7 THE COURT: All right. Is there any objection to the
8 first page of this being admitted?

9 MR. MULROE: Your Honor, if it's just the first half
10 of the first page that she's showing, I don't think so, but I
11 do think it's irrelevant. If she's not going to then try to
12 move in statements -- we're going to object to any of the
13 statements.

14 THE COURT: Yeah. I mean --

15 MS. HERNANDEZ: I will try to move in other things.
16 But for what's being moved in right now, I'm just moving in the
17 first half, which has the identifying information and the
18 Cellebrite cover page.

19 THE COURT: Well, actually, it also has, for example,
20 a phone number that I don't know which should be in evidence,
21 so I'm going to -- I'm not going to admit it because it has
22 information -- also, I don't know if you want that
23 identifying -- that other identifying information out there for
24 your client.

25 I mean, do you want it in the public record, phone

1 numbers and emails like that?

2 MS. HERNANDEZ: We can always redact that, Your
3 Honor. I'm trying to establish that there is a Cellebrite
4 report that the United States did, and he's familiar enough
5 with Mr. Rehl's phone records to be able to say that that's his
6 phone record, even though it's not in his name, because it is
7 his wife's name, and I can go into that.

8 MR. MULROE: Your Honor, she's already established
9 that.

10 THE COURT: I don't understand why you need to move
11 this in.

12 MS. HERNANDEZ: Because under *Wainwright* I get to put
13 in the evidence that I believe. And under compulsory process,
14 and under the Sixth Amendment, I get to put in the evidence
15 that I believe is admissible and appropriate.

16 THE COURT: If it's admissible and appropriate,
17 right. Well, for example, I don't find that --

18 MS. HERNANDEZ: Your Honor, you've allowed the
19 government to introduce --

20 THE COURT: Ms. Hernandez -- Ms. Hernandez, that's
21 enough. Ms. Hernandez, we're not going to talk about the
22 government here. We're going to talk about your ability to get
23 in what you want to get in through the Rules of Evidence.

24 MS. HERNANDEZ: Right. So, I guess the defense -- I
25 don't know about the defense.

1 But, from now on, I'll demand that the government --
2 I won't stipulate to anything.

3 THE COURT: Ms. Hernandez, here's what you're going
4 to do: You're going to answer my questions and you're not
5 going to speechify. I'm not going to admit this right now
6 simply because there is this person who you've been referring
7 to, a CHS, his phone number is displayed.

8 MS. HERNANDEZ: We can redact that.

9 THE COURT: Redact it now.

10 MS. HERNANDEZ: I will.

11 (Open court:)

12 BY MS. HERNANDEZ:

13 Q. So I've redacted -- and by that I mean I've crossed out
14 some names and some phone numbers.

15 A. Yes.

16 Q. And just to preserve the privacy of people.

17 The question I want -- this is an extraction report from
18 Cellebrite?

19 A. It appears to be, yes.

20 Q. And from your review of these -- of the information on
21 here, it is an extraction report for Mr. Rehl?

22 A. Yes.

23 Q. Or for a phone -- which kind of phone for Mr. Rehl?

24 A. What I can get from here is that it's a native message from
25 an account associated with a G-Mail address.

1 Q. Okay. And this particular Cellebrite report appears to
2 be -- have two parties. Does this particular appear to have
3 two participants?

4 A. Yes.

5 Q. And the one at the bottom, referencing Z. Rehl, is
6 Mr. Rehl?

7 A. Yes.

8 Q. And the one at the top is the person we just spoke about
9 named Danny Mac?

10 A. It appears to be, yes.

11 MS. HERNANDEZ: So, Your Honor, I just want to move
12 this page -- this top page as Rehl Exhibit 50, I believe it
13 was.

14 THE COURTROOM DEPUTY: It's 51.

15 MS. HERNANDEZ: 51.

16 MR. MULROE: I just have to inspect the redaction
17 briefly, please.

18 (Pause.)

19 MS. HERNANDEZ: Mr. Mulroe is a better colorer than I
20 am.

21 MR. MULROE: No objection to the top portion of the
22 page where she's folded it over.

23 THE COURT: Very well. It will be admitted, and
24 permission to publish.

25 BY MS. HERNANDEZ:

1 Q. And this report gives you 50 between two dates; is that
2 correct?

3 A. Yes.

4 Q. And how does that work when the Cellebrite report includes
5 two dates? Do you know how that comes about?

6 A. You mean, the start time and the -- a lot of the activity
7 time?

8 Q. Yes. Yes.

9 A. My understanding is: The start time is the first instance
10 of activity in this thread in the report, and the last activity
11 time is the last one in the report.

12 Q. And this is an extraction report from an Apple G-Mail
13 account?

14 A. These appears to be native messages from an account
15 associated with a G-Mail address.

16 Q. Does that mean it would be email messages back and forth?

17 A. I'm not in a position to say based on what I have here.

18 Q. Okay. Let me show you -- and this is just for your --

19 MS. HERNANDEZ: And these pages are not redacted.

20 Your Honor, may I just approach the witness so he can take a
21 look at them?

22 THE COURT: You may approach.

23 BY MS. HERNANDEZ:

24 Q. (Hands document to witness.)

25 A. Thank you.

1 (Pause.)

2 Q. And those just appear to be -- without identifying the
3 content, can you just describe what's in your hands?

4 A. It's a few pages of text communications between these two
5 individuals (indicating).

6 Q. Okay. And between -- and the communications fall during
7 those dates somehow. By "those dates," I mean the dates on
8 this Exhibit 51, which is sometime between July 24th, 2020 and
9 February 17th, 2021?

10 A. Yes.

11 Q. Okay. And are you familiar with this Danny Mac, in terms
12 of him being a Proud Boy?

13 A. Frankly, no, I am not.

14 Q. So, were you able to read any of these -- read to yourself
15 the messages?

16 A. In this moment just now --

17 Q. Yeah.

18 A. -- I flipped through them. I didn't pay close attention to
19 the content.

20 Q. Let me show you one of the pages, and this would be page 5.

21 (Pause.)

22 A. Okay.

23 Q. And if I could take that back. Thank you.

24 MS. HERNANDEZ: And, Your Honor, if I could put this
25 page 5 of this -- of Exhibit 51, pages 1 through 5. I just

1 want to put page 5 for the agent's review, not to be published.

2 THE COURT: All right. Very well.

3 BY MS. HERNANDEZ:

4 Q. Did Mr. Mac indicate that he's the one who created the name
5 The Bloody East for purposes of Proud Boys?

6 MR. MULROE: Objection to hearsay. Relevance.

7 THE COURT: Sustained.

8 MS. HERNANDEZ: It's not being offered for the truth
9 of the matter asserted. Just for state of mind.

10 THE COURT: The objection is sustained.

11 BY MS. HERNANDEZ:

12 Q. Is there any information on there that would allow you to
13 state whether this gentleman is a CHS, and whether he was being
14 paid by the FBI?

15 MR. MULROE: Same objection.

16 THE COURT: Sustained.

17 MS. HERNANDEZ: The question is whether there's any
18 information on there. I'm not asking him to confirm or --

19 THE COURT: Right. The objection is sustained.

20 BY MS. HERNANDEZ:

21 Q. You're not personally familiar with this particular CHS,
22 correct?

23 MR. MULROE: Asked and answered.

24 THE COURT: Overruled.

25 A. I have reviewed no reporting whether this person is a CHS.

1 BY MS. HERNANDEZ:

2 Q. But at the beginning of this examination, you have reviewed
3 reports about other CHSs?

4 A. Yes.

5 Q. How many others?

6 A. A limited universe in preparation for my first round of
7 testimony.

8 Q. And "limited universe."

9 Were you once a lawyer? What is a limited universe?
10 More than five?

11 A. I would say, fewer than a dozen.

12 Q. Fewer than a dozen.

13 When you say you "reviewed them" in preparation for your
14 testimony, you said, for your first round of testimony in this
15 case?

16 A. Yes.

17 Q. And how did -- how did it come about that review of those
18 reports was relevant to your testimony?

19 MR. MULROE: Objection to scope.

20 BY MS. HERNANDEZ:

21 Q. If you can tell us.

22 MR. MULROE: Objection to scope and relevance.

23 THE COURT: Sustained on both counts.

24 BY MS. HERNANDEZ:

25 Q. When you reviewed those reports, was that as part of your

1 preparation in general for this case?

2 MR. MULROE: Same objection.

3 THE COURT: Same ruling.

4 BY MS. HERNANDEZ:

5 Q. Before you came to testify the first time and today, you
6 prepared; is that correct?

7 A. Yes.

8 Q. And your preparation entailed what?

9 A. Reviewing chats and exhibits. Meeting with the government.
10 Stuff that normally goes into preparing to testify.

11 Q. Right. And the reason you -- let me back up.

12 So, you had a lot of information, and that's why you
13 were called to testify, correct?

14 MR. MULROE: Objection to the relevance, why he
15 thinks he was called to testify.

16 THE COURT: Sustained.

17 BY MS. HERNANDEZ:

18 Q. You were called to testify about certain items in this
19 case, correct?

20 A. Yes.

21 Q. And your testimony was based on information that you had
22 previously gathered. And by that I mean previously, before you
23 started preparing for your testimony?

24 A. Yes.

25 Q. But, nonetheless, before you came in to testify you

1 reviewed some of the materials you already were familiar with?

2 A. Yes.

3 Q. And you did that so that you would be readily able to
4 answer questions put to you?

5 A. Yes.

6 Q. Okay. And the -- what you reviewed in order to be prepared
7 was the Telegram messages for all these different chat groups?

8 A. Yes.

9 Q. And Parler messages for all these different -- Parler
10 messages?

11 A. Certain Parler messages, yes.

12 Q. And Parler is sort of like Twitter?

13 A. Yes.

14 Q. And you said "certain." And "certain" means Parler
15 messages of these defendants?

16 A. Yes.

17 Q. And a few other people?

18 A. Yes.

19 Q. Okay. And did you also review reports from other agents?

20 A. Yes.

21 Q. Like Nicole Miller?

22 A. I reviewed three-oh -- I reviewed certain interviews.

23 Q. You reviewed -- you started to say, "302."

24 302s are reports FBI agents prepare after they interview
25 a witness?

1 A. Yes.

2 Q. That's just the number of the form?

3 A. That's just the number of the form, yes.

4 Q. You reviewed 302s.

5 Did you also review messages?

6 MR. MULROE: Asked and answered.

7 BY MS. HERNANDEZ:

8 Q. Did you also review text messages between you and other
9 agents?

10 A. No.

11 Q. No?

12 A. I mean, I reviewed my own material.

13 Q. You reviewed messages that you had sent and received?

14 A. Yes.

15 Q. Okay. Did you review other -- did you review testimony
16 also? Like, transcripts of other persons' testimony?

17 A. No.

18 Q. Did you review any transcripts from the January 6
19 committee -- Congressional Committee?

20 A. No.

21 MR. MULROE: Objection. Scope, relevance, and 403.

22 MS. HERNANDEZ: It goes to --

23 THE COURT: He can answer this question.

24 A. No.

25 BY MS. HERNANDEZ:

1 Q. And among the reports that you reviewed, you just told us,
2 were reports of less than a dozen confidential human sources?

3 A. I'm sorry. Less than a dozen reports, total.

4 Q. Oh, less than a dozen reports, not a dozen confidential
5 human sources?

6 A. No. Less than a dozen reports, period.

7 Q. Do you know how many confidential human sources that
8 comprised?

9 A. Yes.

10 Q. How many?

11 A. Two.

12 Q. Okay. But one of them was not Danny Mac?

13 A. No.

14 Q. And were those -- those are confidential human sources that
15 had something to do with the Proud Boys?

16 MR. MULROE: Object to scope. Relevance. 403.
17 Cumulative.

18 THE COURT: Sustained as to scope and cumulative.

19 BY MS. HERNANDEZ:

20 Q. Did you decide, yourself, to review those documents, or did
21 one of the prosecutors ask you to review those documents?

22 MR. MULROE: Object to relevance, scope, and
23 cumulative.

24 MS. HERNANDEZ: It goes to --

25 THE COURT: Sustained as to all three.

1 MS. HERNANDEZ: Your Honor, I think I'm entitled --

2 THE COURT: The objection is sustained.

3 MS. HERNANDEZ: Your Honor, I would like to put
4 something on the record.

5 (Bench discussion:)

6 MS. HERNANDEZ: I think I'm entitled under the Sixth
7 Amendment, the due process clause, to explore this witness's
8 knowledge of the case as he testifies in this courtroom. I'm
9 not asking him for details beyond just some basic information.

10 THE COURT: You can do that according to the Rules of
11 Evidence, relevance, and the scope of his testimony.

12 MS. HERNANDEZ: Relevance would include what he
13 reviewed before he came here. I asked him plenty of questions
14 on that.

15 THE COURT: I understand that. I'm going to continue
16 to rule as I rule. You may proceed.

17 (Open court:)

18 BY MS. HERNANDEZ:

19 Q. Did you make a list of the documents you reviewed in
20 preparation for court?

21 A. No.

22 Q. But you would have a memory of what you did review?

23 A. Yes.

24 Q. And have you testified before today?

25 A. No -- well, I mean -- I'm sorry. The first time I

1 testified.

2 Q. And, so, when you decided to review documents, were you led
3 by your own personal desire to become acquainted with what
4 your -- the scope of your testimony, or was there some list
5 that was given to you, or did you speak to someone to sort of
6 give you advice as to what you should or should not familiarize
7 yourself with?

8 A. There was no -- I'm sorry. I'm --

9 THE COURT: You may proceed.

10 A. There was no list given to me. It was a combination of
11 feeling I was well read and working with the government to
12 prepare for the specific testimony I was going to give.

13 BY MS. HERNANDEZ:

14 Q. When you're talking about the government, you're talking
15 about these prosecutors?

16 A. Yes.

17 Q. And some of the FBI case agents or just the prosecutors?

18 A. At that point, it was just with the prosecutors. I
19 certainly worked with the other case agents on the
20 investigation for other reasons.

21 MS. HERNANDEZ: Okay. Thank you for being here.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to take a quick break for the court reporter.

25 Sir, you may step down.

1 Ms. Harris, if you would do the honors.

2 (Whereupon the jurors leave the courtroom.)

3 THE COURT: All right. You all may be seated.

4 I just want to put on the record, the juror a -- some
5 of you saw this, some of you did not. Mr. Jauregui saw it.
6 She signaled -- and I happened to be looking in that direction
7 when she did -- to me, she's hot. And it has been hotter in
8 here. So, I'll just -- I just, on the record, want to ask
9 Ms. Harris if she will see if we can -- I think when we started
10 it was too cold, and somehow now it's too hot.

11 MR. PATTIS: I assume the Court was wanting to make
12 Miami counsel feel at home since they may not get home.

13 THE COURT: Please, ladies and gentlemen, we can't
14 all be talking at once. And I -- it's beyond me that people
15 who have been in federal court enough to know better, that we
16 cannot all get along on this front.

17 Ms. Harris -- first of all, Ms. Harris, will you --
18 oh, I even -- well, maybe -- does it feel like it just kicked
19 in? Does anyone else feel this?

20 All right. I see some people nodding.

21 MS. HERNANDEZ: It's supposed to get to 61 degrees
22 this afternoon. I think that's why it kicked in.

23 THE COURT: Ms. Harris, if you can look into that.
24 The juror made a motion with her hand like she was hot.

25 THE COURTROOM DEPUTY: A couple of them informed me,

1 and I told them I would put a request in when we take our
2 break.

3 THE COURT: Let's take our ten-minute break. It's
4 3:16. We'll be back at 3:26.

5 (Recess.)

6 (Whereupon jurors enter the courtroom.)

7 THE COURTROOM DEPUTY: We are back on the record in
8 criminal matter 21-175, United States of America versus Ethan
9 Nordean, et al.

10 THE COURT: Counsel, you may proceed.

11 MR. JAUREGUI: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. JAUREGUI:

14 Q. Great to see you again, Agent.

15 A. Good afternoon.

16 Q. You remember me and who I represent?

17 A. Yes.

18 Q. Great.

19 Last time you were here we discussed some exhibits in
20 great detail. Do you remember that?

21 A. Yes.

22 Q. And we found some embarrassing errors, defects, and some
23 important omissions in some of them, correct?

24 A. We found inconsistencies.

25 Q. Inconsistencies?

1 A. Yes.

2 Q. Okay. And to make sure we don't have any more
3 inconsistencies, did you review with the government the
4 exhibits that you testified about today to make sure that they
5 were accurate and correct?

6 A. My understanding is that process happened, yes.

7 Q. Okay. You weren't involved in that process?

8 A. I was not.

9 Q. You, again, did not create any of the exhibits in this
10 case?

11 A. I did not.

12 Q. Okay. You did not check the underlying data to make sure
13 it was accurate?

14 A. I reviewed all of the data, but I was not involved in
15 making these exhibits.

16 Q. Okay. And do you know who made the exhibits?

17 A. I do not.

18 Q. And do you think that these exhibits provide all the
19 relevant information and the important context for the jury to
20 make a good decision in this case?

21 MR. MULROE: Objection.

22 THE COURT: Sustained.

23 BY MR. JAUREGUI:

24 Q. Are you now a lead case agent in this case?

25 A. I am one of the six primary case agents in this case.

1 Q. Okay. Is there a lead case agent?

2 MR. MULROE: Objection. Cumulative. He asked this
3 last time.

4 THE COURT: Sustained.

5 BY MR. JAUREGUI:

6 Q. You are not the lead case agent?

7 A. No.

8 Q. Okay. And you don't know who did the phone extractions on
9 which these exhibits were based on, correct, the ones that
10 you've testified today?

11 A. Yes. I do not.

12 Q. You do not. Thank you, Agent.

13 And you testified earlier today about some Nordean
14 videos that were orphan files, correct?

15 A. Yes.

16 Q. Now, would it be fair to say, Agent, that you don't have
17 the technical or educational background to testify why files
18 are orphan files or anything of the sort?

19 A. Yes.

20 Q. In this case, the expert would be Kate Cain, the computer
21 forensic expert?

22 A. Yes.

23 Q. Thank you.

24 Now, I would like to pull up, please, Ms. Harris, if
25 Ms. Kazinski could have access to the computer there.

1 I would like to pull up Exhibit 510-50, that's already
2 in evidence.

3 Actually, if we could pull up, please, first, 509-37,
4 government exhibit. Should already be in evidence.

5 BY MR. JAUREGUI:

6 Q. Do you see that exhibit, Agent?

7 A. Yes.

8 Q. And you testified about that exhibit earlier today?

9 A. Yes.

10 Q. And I think you even read from YutYut Cowabunga?

11 A. Yes.

12 Q. Could you read that for me one more time?

13 A. "If you Philly dudes don't welcome me and the Beard, we are
14 going to burn it down in Minecraft."

15 Q. Okay. There's an important message missing from this
16 exhibit, right, that gives context to this exhibit?

17 A. I do not know.

18 Q. Would it be fair to say, there's a message at 6:07:16 from
19 YutYut Cowabunga?

20 A. That's before this exhibit?

21 Q. Correct.

22 A. I don't know.

23 Q. You don't know.

24 Did you review the extraction of these chats to
25 determine what comes before this?

1 A. I didn't make decisions about what was or was not a
2 complete exhibit.

3 Q. Okay. If I show you the exhibit -- not the exhibit -- the
4 extraction, would that refresh your recollection as to what
5 this chat message at 6:08:12 as to -- you know what the context
6 of it is?

7 A. I -- I know there are other chats in both directions of
8 this exhibit, sure.

9 Q. Okay. Do you know what they're talking about, of what
10 they're going to burn down? Are they talking about the Capitol
11 or are they talking about something else?

12 A. No. They're talking about visiting Philly.

13 Q. Any specific place in Philly?

14 A. I don't know.

15 Q. Okay. You know for a fact it has nothing to do with the
16 Capitol, any government buildings, anything like that, correct?

17 A. It doesn't appear to, no.

18 Q. Let's go next to Government Exhibit, already in evidence,
19 514-61.

20 Do you remember testifying to this exhibit?

21 A. Yes.

22 Q. Okay. Are there any messages missing from this exhibit?

23 A. Not that I'm aware of.

24 Q. There are no messages in the middle of this exhibit that
25 have been deleted or kept out by the government in this case?

1 A. Not that I'm aware of.

2 Q. Did you look at the extraction of this exhibit to determine
3 whether there are missing messages in this exhibit?

4 A. I have certainly reviewed this extraction, but I don't have
5 a, you know, immediate recollection of it.

6 Q. If we pull it up for you, would that refresh your
7 recollection?

8 A. Sure.

9 MR. JAUREGUI: Ms. Harris, just for the witness,
10 please.

11 BY MR. JAUREGUI:

12 Q. Would it be fair to say, while she's bringing this up, the
13 message starts at 6:56:54?

14 A. Yes.

15 Q. Okay. You have the extraction there in front of you?

16 A. I have an extraction, yes.

17 Q. Please use the time of 6:56:54 to orient yourself as to
18 whether there are missing messages in the middle of this
19 exhibit.

20 A. This document has two messages.

21 Q. And, in fact, there's a message between the first --
22 there's two messages that are missing between 6:56:54 and
23 7:08:04; is that right?

24 A. This has two additional messages.

25 Q. The first message, at 7:01:39, that says: Nighttime mask

1 flag waves and charity events are still a go-to.

2 Correct?

3 A. Yes.

4 Q. So that means they're going to go out and have charity
5 events, right?

6 A. The message says what it says.

7 Q. But that was not included in this exhibit for the jury,
8 correct?

9 A. No.

10 Q. And then there's a second message, one at 7:05:15, again,
11 in the middle of this exhibit, that says, "Thanks."

12 That's all. So not included in this exhibit for the
13 jury, correct?

14 A. Yes.

15 Q. Okay. Thank you. You can put that down.

16 The next one you have is 512-19. Now, you would agree
17 with me that that's -- that's a significant error, omission, or
18 defect in this exhibit?

19 A. I'm not sure what that means.

20 THE COURTROOM DEPUTY: Could you give me the number?

21 MR. JAUREGUI: 514 -- no. I'm sorry. 512-19.

22 BY MR. JAUREGUI:

23 Q. You think that missing messages on an exhibit that's
24 supposed to be complete is not a big deal?

25 A. I know "completeness" is a term of art. I was not involved

1 in that process.

2 Q. Understood.

3 512-19 should already be in evidence already, please.

4 Okay. If we can scroll down a little bit.

5 Have you reviewed the entire exhibit there?

6 A. Yes.

7 Q. Are there any forwarded messages in this exhibit?

8 A. This exhibit doesn't show forwarded messages.

9 Q. Okay. Would it be -- the exhibit -- I'm sorry.

10 The message in the exhibit at time 2:12:07, would it
11 surprise you to know that was a forwarded message that was not
12 something that this Turtle guy wrote?

13 A. No. Given that at the bottom, it appears something he's
14 copying in from something else. So that's not particularly
15 surprising.

16 Q. But it does not say it is a forwarded message for the jury,
17 correct?

18 A. It does not have the words "forwarded message."

19 Q. Actually, it doesn't have the name of the person, which is
20 a Leo Kuznetsov, correct?

21 A. I don't know who sent it. But, to the extent this is a
22 forwarded message, it doesn't.

23 Q. Actually, this message is not from this chat. It's
24 actually forwarded from another chat; isn't that right, Agent?

25 A. Again, this has no information about forwarding.

1 Q. And we're not providing the jury that information, correct?

2 A. I am, again, not involved in that.

3 Q. I understand. I'm not blaming you at all, agent. I
4 understand.

5 Let's go to 500-97 now.

6 You reviewed this exhibit, as well, and you testified to
7 it and it was entered in through you?

8 A. Yes.

9 Q. Do you know what -- who they're talking about in this
10 exhibit?

11 A. No, not off of these messages.

12 Q. Okay. Would it be fair to say that they're talking about
13 Biggs getting arrested?

14 A. I do not have messages outside of these four in front of
15 me.

16 Q. Would it be fair to say the messages that came before this
17 talks about Biggs getting arrested; isn't that right?

18 A. I am not sure about that.

19 Q. If I showed you the extraction, would that help?

20 A. Sure.

21 Q. Ms. Harris, just for the witness.

22 Got it.

23 Would it be fair to say, they're talking about Biggs
24 getting arrested?

25 A. There is discussion about Biggs getting arrested earlier in

1 this chat, yes.

2 Q. Let's move on to the next one, then, that requires context.
3 515-6.

4 You also testified as to this one?

5 A. Yes.

6 Q. And this is the one that Mr. Smith was able to illuminate
7 the jury on Rufio talking about the piling -- steaming bag of,
8 I guess, shit for the arrest on the affidavit, correct?

9 MR. MULROE: Objection. Mischaracterizes the
10 testimony.

11 THE COURT: Sustained.

12 BY MR. JAUREGUI:

13 Q. If we can go to Exhibit 514-61.

14 A. Yes.

15 Q. Mr. Mulroe is right. This is the message that had Mr. Rehl
16 talking about the affidavit, correct?

17 A. I don't think so, no.

18 Q. No. Which one was it?

19 A. I don't know the exhibit number off the top of my head, but
20 I don't believe this is the chat that Mr. Smith did his
21 objection on.

22 Q. We're getting the numbers all confused. My apologies. The
23 numbers are so similar. It's actually Exhibit 516-1.

24 A. Yes.

25 Q. This is the one (indicating), correct?

1 A. This is the one.

2 Q. Right. And in this one, again, the jury did not have
3 context as to what the exhibit actually meant, "steaming pile
4 of shit," about the affidavit, correct?

5 A. The exhibit did not include that message from Mr. Rehl.

6 Q. Now, let's go to Exhibit 600-64, please. Thank you
7 Ms. Harris. That's government's exhibit. Should be already in
8 evidence.

9 Now, this is the one that you testified to my client
10 standing in front of the Capitol, correct?

11 A. Yes.

12 Q. Do you know when that video was produced?

13 A. I don't.

14 Q. Okay. And that video was actually created by a reporter;
15 is that right?

16 A. I'm not sure Ms. Harris was operating in that capacity, but
17 yes.

18 Q. It actually says here: Video by Amy Harris?

19 A. Yes.

20 Q. And as part of your investigation, you looked at these
21 Parler messages and the Telegram messages to determine when
22 certain videos and messages were sent, correct?

23 A. Yes.

24 Q. Would it refresh your recollection to see the -- see when
25 the video message was sent to Enrique Tarrío -- it's a text

1 message. I've been corrected by Ms. Kazinski.

2 Could you please tell the members of the jury when that
3 video was sent to Enrique Tarrio?

4 A. December 14th, 2020.

5 Q. Agent, isn't it true that that video is the introduction to
6 Enrique Tarrio's podcast?

7 A. I have no idea.

8 Q. Have you ever -- I mean, you testified as to various
9 podcasts, correct?

10 A. Yes.

11 Q. And you actually testified in detail about Biggs's Podcast,
12 correct?

13 A. Yes.

14 Q. You didn't review Tarrio's podcast?

15 A. No.

16 Q. So you have no knowledge that that's how his podcast
17 begins?

18 A. I have no knowledge one way or the other.

19 Q. Thank you.

20 Now, was Enrique at the Capitol on January 6?

21 A. No.

22 Q. Was he at the Capitol on January 7th?

23 A. No.

24 Q. Did he ever return to the Capitol after his arrest?

25 A. I don't know his full travel plans, no.

1 Q. Understood.

2 But, based on your part of the investigation, you have
3 no knowledge of him ever being at the Capitol after his arrest?

4 A. That's correct.

5 Q. Thank you.

6 Ms. Kazinski, if we could please bring up 500-94.

7 In this exhibit that you already testified to, they're
8 announcing an official ban on rallies for a minimum of three
9 months, correct?

10 A. That's the discussion.

11 Q. And Enrique says: I'll type it up tomorrow.

12 Correct?

13 A. Yes.

14 Q. Let's go to Exhibit, please, 510-51.

15 And on 1:42:28, could you please tell us what Enrique
16 says there?

17 A. He says: But we're going to be the fuck dolls of the
18 government for a little.

19 Q. He's basically saying that the Proud Boys are "going to be
20 the fuck dolls of the government," correct?

21 A. It appears that way.

22 Q. Okay. Basically, they're going to be the scapegoats for
23 what happened on the 6th, correct?

24 A. I disagree with that characterization.

25 Q. Okay. Would you agree with me that a "fuck doll" is a

1 replacement for the real thing?

2 MR. MULROE: Objection.

3 BY MR. JAUREGUI:

4 Q. Would it be fair to say, a fuck doll is a replacement for
5 the real thing, for a man or woman? It is a replacement. A
6 poor replacement, I might add.

7 A. Sure.

8 Q. The government, in asking you to talk about Exhibit 510-52,
9 asked you if Enrique ever rebuked what happened on January 6.
10 Do you remember that?

11 A. Yes.

12 Q. Would it be fair to say, Enrique did review what happened
13 on January 6?

14 A. What are you referring to?

15 Q. Well, you're aware that Enrique gave several interviews on
16 January 6, correct?

17 A. I'm aware that that happened, yes. In the evening.

18 Q. And Enrique said certain things during those interviews;
19 isn't that right?

20 A. I'm not familiar with those interviews.

21 Q. Have you ever seen those interviews?

22 A. Not front to back. I'm sure I have seen them, but videos
23 weren't the focus of my investigation.

24 Q. Did Enrique ever say -- did Enrique ever say that he didn't
25 think anybody would ever -- or, that he thinks it was stupid to

1 go inside the Capitol, anything to that effect?

2 A. I don't know.

3 Q. If I showed you Government Exhibit 497F, would that help to
4 refresh your recollection?

5 A. I'm not sure I have a recollection to be refreshed here,
6 but I'm happy to see it.

7 MR. MULROE: Object to scope.

8 THE COURT: Sustained.

9 BY MR. JAUREGUI:

10 Q. You testified earlier with Ms. Hernandez, in Exhibit
11 602-53, that, basically, January 6 happened all of -- because
12 of a USA chant, correct?

13 A. I recall that chat.

14 Q. And actually, he wrote that the silent majority are the
15 ones that rose up, correct?

16 A. Is that in here?

17 Q. We can pull it up.

18 602-53, please. Government Exhibit.

19 A. Just down to the bottom.

20 Yes.

21 Q. The "silent majority" are regular Americans, correct?

22 A. I don't know what Mr. Rehl meant using that term.

23 Q. You've never heard the term "silent majority"?

24 A. I have. I just don't know what was in Mr. Rehl's head.

25 Q. What do you interpret silent majority to be?

1 MR. MULROE: Object to relevance of his
2 interpretation.

3 THE COURT: If he can answer -- sustained as to his
4 interpretation.

5 BY MR. JAUREGUI:

6 Q. Is the silent majority Proud Boys?

7 A. It may include them. I don't know what Mr. Rehl meant.

8 Q. Okay. Doesn't mean tools, correct?

9 A. What do you mean?

10 Q. Never mind.

11 509-40, please.

12 On 9-22-12, could you please read that for me?

13 A. Mr. Stewart says: I don't think there ever was really a
14 plan. I know I had no input, if there was. We were caught off
15 guard for sure.

16 Q. And he's a leader, correct, of MoSD?

17 A. He was part of the operations team, yes.

18 Q. Could you please read, at 9:23:38, YutYut Cowabunga.

19 A. "Well, for starters, there was only, like, 20 MoSD guys
20 even there."

21 Q. 9:24:38?

22 A. "Everybody bailed."

23 Q. Okay. We can pull that down now.

24 Agent, I know Enrique Tarrío had various communications
25 with Lieutenant Shane Lamond, correct?

1 A. Yes.

2 Q. And you actually testified to that before, correct?

3 A. Yes.

4 Q. And in this scope of what you've testified today, that
5 communication continued, correct?

6 A. I don't know.

7 Q. You don't know?

8 A. I didn't testify to anything about that this time.

9 Q. No. But I'm talking about the time -- the way I see it,
10 you started testifying in Exhibit 500-35, which was on
11 November 7th, 2020, correct?

12 A. Was that from my first --

13 Q. No. Today.

14 A. Which exhibit?

15 Q. Exhibit 500-35.

16 Can we pull that?

17 What's the date of that exhibit?

18 A. This exhibit was not shown.

19 MR. MULROE: It's not in evidence, Your Honor.

20 THE COURT: It's not in evidence.

21 MR. JAUREGUI: My apologies. I thought it was.

22 BY MR. JAUREGUI:

23 Q. Did Enrique Tarrío communicate with Lieutenant Shane Lamond
24 on January 6, 7th, 8th, 9th?

25 A. I don't know.

1 Q. And when you testified earlier, we introduced just one
2 Telegram chat exhibit with Lieutenant Shane Lamond, correct?

3 A. I don't recall which were admitted, but I recall looking
4 over two with you.

5 Q. Would it be fair to say that Enrique Tarrio had two
6 different chat exhibits with Lieutenant Shane Lamond?

7 A. I would need to be refreshed.

8 Q. Do you remember if he had text messages with Lieutenant
9 Shane Lamond?

10 A. Again, I would need to be refreshed.

11 Q. Sure. We'll do it.

12 Ms. Kazinski, please do the Telegram first.

13 MR. MULROE: Objection. Scope. To the extent this
14 is before January 6.

15 THE COURT: Let's just quickly have sidebar.

16 (Bench discussion:)

17 THE COURT: I understood you to have asked -- we're
18 talking about January 6, correct?

19 MR. JAUREGUI: Yes, Judge, I did talk about
20 January 6.

21 THE COURT: That's what you were about to proceed
22 with?

23 MR. JAUREGUI: I can limit it to that. So far, the
24 government has asked questions, I thought, about November 7th.
25 My apologies. A lot of the exhibits I have from the government

1 is February 3rd. So I could just limit it from January 6 to
2 February 3rd. It's no problem.

3 THE COURT: What are you going to be eliciting about
4 this?

5 MR. JAUREGUI: Judge, last time, they tried to make
6 Lamond look like a dirty cop. They weren't giving him any
7 information that nothing was going on, when actually, it's
8 quite the opposite. His cooperation continued. He actually
9 even helped turn some people in. And not only that, but Lamond
10 also had multiple communications with my client during this
11 period.

12 MR. MULROE: Your Honor, I raised the scope objection
13 and suspected, and I now know I'm right, he's attempting to
14 show communications extracted in Lamond's phone. This
15 testimony was limited to the phones of subjects in this
16 investigation.

17 So, he tried to put in material from Lamond's phone
18 during the first time, and Your Honor properly did not allow
19 that on foundation grounds. We would raise the same foundation
20 objection. This agent never reviewed Lamond's phone.

21 MR. JAUREGUI: Judge, he actually testified that he
22 did review Lamond's phone. And we actually introduced that
23 into evidence, the chat that Mr. Mulroe very effectively then
24 examined him on -- I'm sorry -- redirected him on and tried to
25 make the messages between my client and Lamond look unsavory.

1 THE COURT: I have a memory of what Mr. Mulroe is
2 saying is right. The things that you introduced were things
3 from Tarrio's phone, not from Lamond's phone. And when you
4 tried to do that, they did object on scope, and I did sustain
5 because he never reviewed any extractions from Lamond's phone.

6 MR. JAUREGUI: I can ask him, and that might clear
7 up --

8 THE COURT: You already asked. I do remember.

9 MR. JAUREGUI: Judge, I remember him saying he viewed
10 Lamond's extraction.

11 THE COURT: He does not -- this is exactly -- you
12 both did some things with regard to the other -- you know, with
13 regard to things that popped up on Tarrio's phone, but that's
14 exactly what happened. Then, I --

15 MR. JAUREGUI: If I can proffer, I have two different
16 Telegram chat messages between Lamond and my client, and so
17 text messages -- I don't know if it's from Tarrio's phone or
18 Lamond's phone now, but I can ask Ms. Kazinski, she'll tell me
19 in 30 seconds.

20 MR. MULROE: Tarrio's phone was seized on January
21 4th, so only content on Tarrio's phone would be before
22 January 6.

23 THE COURT: Let's ask the question. It will be the
24 same result before, if, indeed, that's right.

25 MR. JAUREGUI: Understood, Your Honor. Understood,

1 Your Honor.

2 (Open court:)

3 BY MR. JAUREGUI:

4 Q. Agent, would it be fair to say, you reviewed multiple
5 extractions in this case?

6 A. Yes.

7 Q. Have you reviewed Lieutenant Shane Lamond's extractions?

8 A. Again, as I said last time, I have not reviewed Shane
9 Lamond's extractions. Those are being handled by a different
10 FBI investigation.

11 Q. Thank you.

12 Did you ever review Jeffrey Carroll's extraction?

13 A. No.

14 Q. Did you know who Jeffery Carroll is?

15 A. No.

16 Q. Did you review John Donohue's extraction?

17 A. No.

18 Q. Did you review Jen Rivera extraction?

19 A. No.

20 Q. How about Caroline Montanez extraction?

21 A. I want to be really clear. I don't know if there are
22 extractions to review because I don't know who any of these
23 people are.

24 Q. These guys are all law enforcement involved --

25 MR. MULROE: Object to counsel testifying.

1 THE COURT: Sustained.

2 BY MR. JAUREGUI:

3 Q. How about Robert Glover?

4 A. No.

5 Q. Do you remember testifying last time regarding Lieutenant
6 Shane Lamond and his conduct? Do you remember that?

7 A. I remember chats that we put in, yes.

8 Q. Did you do any subsequent investigation in this case to
9 determine whether or not Shane Lamond had communicated that
10 information up the chain of command?

11 MR. MULROE: Object to scope and relevance.

12 THE COURT: Sustained.

13 MR. JAUREGUI: During this time period.

14 THE COURT: Well, overruled.

15 A. One more time.

16 BY MR. JAUREGUI:

17 Q. Sure.

18 Did you review any evidence to determine whether Shane
19 Lamond passed up any information he gathered from Enrique
20 Tarrío with other law enforcement agencies or up the chain of
21 command?

22 A. No.

23 Q. Did anybody do that, Agent?

24 A. There is another FBI investigation into Mr. Lamond. I'm
25 not a part of it. I don't have insight into it. I wouldn't be

1 able to answer.

2 Q. Thank you, Agent.

3 Who is the FBI agent assigned to Lieutenant Shane
4 Lamond's case, so I can call him as a witness?

5 MR. MULROE: Object to relevance. And counsel knows
6 how to make a discovery request.

7 THE COURT: Sustained as to relevance.

8 BY MR. JAUREGUI:

9 Q. We were talking earlier about some CHSs. I think you spoke
10 with Ms. Hernandez about that?

11 A. Yes.

12 Q. I would like to pull up an exhibit to show you, please.

13 If I could have the video, please, Ms. Harris.

14 THE COURTROOM DEPUTY: If you could have what?

15 MR. JAUREGUI: The video?

16 THE COURTROOM DEPUTY: Okay.

17 MR. MULROE: Object to scope, if we're playing videos
18 from past time periods.

19 THE COURTROOM DEPUTY: What number is this?

20 THE JAUREGUI: This is going to be Government
21 Exhibit 490A, timestamp 1:05.

22 Permission to publish, Your Honor.

23 THE COURT: I'm going to sustain as to scope. Let me
24 just -- hold on. Let me hear you at the phone.

25 (Bench discussion:)

1 MR. JAUREGUI: As Your Honor recalls, I tried to get
2 into this with this agent when he was here. I was shut down at
3 that time. I would argue, Your Honor, this is not a scope --

4 THE COURT: This is the 5th?

5 MR. JAUREGUI: The 5th, Your Honor. We're in the
6 time period of which this agent has testified. These dates
7 were picked by the government, inside the scope. And he knows
8 who this guy is because he interviewed him. All I'm going to
9 show him is a screenshot to show proximity, like I told Your
10 Honor, and that's it.

11 THE COURT: Who is this?

12 MR. JAUREGUI: Kenny Lizardo.

13 MR. MULROE: This agent has not interviewed
14 Mr. Lizardo.

15 THE COURT: Putting that aside, it is testimony
16 formerly within the scope?

17 MR. MULROE: It was within the testimony -- scope of
18 his last testimony, January 5th.

19 MR. JAUREGUI: I couldn't get it in at that moment.
20 It was objected vigorously. I almost got in trouble. And Your
21 Honor remembers, I said: Judge, he said he knew about Ken
22 Lizardo. I was ready to pounce, but I didn't want to get in
23 trouble. I now have a good opportunity.

24 THE COURT: You already got, if I recall -- in other
25 words, the question of he was with him, like, all that is

1 already in evidence, correct? The agent said it?

2 MR. JAUREGUI: He did say it.

3 THE COURT: I'm going to sustain as to scope. This
4 isn't adding factually to anything you have in evidence, and
5 I'll sustain as to scope.

6 (Open court:)

7 BY MR. JAUREGUI:

8 Q. Agent, Kenny Lizardo picked up my client from jail on
9 January 5th, correct?

10 MR. MULROE: Object to scope.

11 THE COURT: Sustained.

12 BY MR. JAUREGUI:

13 Q. Was he with my client all day on the 5th?

14 MR. MULROE: Same objection, Your Honor.

15 THE COURT: Counsel, it's sustained.

16 BY MR. JAUREGUI:

17 Q. You reviewed the Telegram chats of Kenny Lizardo?

18 A. No, I don't believe I did.

19 Q. You're aware that Kenny Lizardo was part of the MoSD Main?

20 A. Yes.

21 I'm sorry. To clarify, I don't think I've ever
22 looked at an extraction. I've certainly seen chats with
23 Mr. Lizardo in them.

24 Q. You know he was part of MoSD Main?

25 A. Yes.

1 Q. You know Kenny Lizardo was part of Boots on the Ground,
2 correct?

3 A. Yes.

4 Q. And Kenny Lizardo was part of MoSD Ops?

5 A. Ops, yes.

6 Q. He was also part of the Noble MoSD Vetting chat, correct?

7 A. Now we're getting into ones I don't know off the top of my
8 head.

9 Q. How about the Operation Street Sweepers?

10 A. Same. I don't know that off the top of my head.

11 Q. You know for a fact he had direct messages with Tarrio,
12 correct?

13 A. Can't recall those directly.

14 Q. Okay. Now I would like to play for you --

15 (Audio played.)

16 Sorry about that.

17 This is already in evidence. It's
18 Government's 515-4A. Let me just pull it up here.

19 (Audio played.)

20 Agent, would you agree with me that that's a
21 disgusting speech by President Trump?

22 MR. MULROE: Objection.

23 THE COURT: Sustained.

24 BY MR. JAUREGUI:

25 Q. It was Trump, on the 6th, that told -- who told the

1 supporters to go to the Capitol, wasn't it?

2 A. Mr. Trump gave a speech where he said that.

3 Q. Yeah. And at 12:17, he told his supporters: The radical
4 left is stealing this country, and you're going to lose it if
5 you don't fight like hell.

6 Correct?

7 A. I don't have the speech memorized, but that sounds correct.

8 Q. And then, at around 1 o'clock, his supporters went, and
9 there was a riot at the Capitol, correct?

10 A. The first breach of the Capitol happened at about
11 1 o'clock.

12 Q. And he had been lying about the election for months,
13 correct, that the election was stolen?

14 A. I -- the facts around the election are not inside of my
15 investigative purview.

16 Q. Do you ever watch the news when you're at home?

17 A. I watch it a lot.

18 Q. Do you remember that Trump lied, started filing all these
19 frivolous lawsuits saying that the election was stolen?

20 MR. MULROE: Object as to scope.

21 MR. JAUREGUI: During that time period.

22 THE COURT: Overruled on scope.

23 A. There were a lot of lawsuits about the election, yes.

24 BY MR. JAUREGUI:

25 Q. And they were dismissed, correct?

1 A. Almost without exception, yes.

2 Q. It even made it up to the Supreme Court, correct?

3 A. I think one of them did, yes.

4 Q. And once Trump realizes, Uh-oh, I may be in trouble, he
5 creates this disgusting statement, doesn't he?

6 A. I have no information about how this speech was created.

7 Q. Trump is probably at Mar-a-Lago in Palm Beach right now,
8 correct?

9 MR. MULROE: Object to foundation.

10 THE COURT: Sustained.

11 BY MR. JAUREGUI:

12 Q. The one that's on trial here is Enrique Tarrio, not Trump,
13 correct?

14 A. Mr. Tarrio is a defendant in this case, yes.

15 Q. Now, this is the case with the most evidence in the history
16 of the United States, correct, Agent?

17 A. I don't --

18 MR. MULROE: Object to scope and foundation and
19 relevance.

20 THE COURT: Sustained as to foundation, at least.

21 BY MR. JAUREGUI:

22 Q. Would you agree with me that there's thousands upon
23 thousands upon thousands of hours of videos in this case?

24 A. Yes.

25 Q. Untold documents in this case?

1 A. There's a lot of documents in this case.

2 Q. Thousands upon thousands of witnesses?

3 A. I think we've only called 20.

4 Q. In the whole case?

5 A. I can't put a number on it.

6 Q. You know your witness list was not 20 people, right?

7 A. I don't know that.

8 Q. And with all that evidence, all those resources, all you
9 have is Telegram and Parler, right, Agent?

10 A. I think there's a lot of stuff in this case other than
11 Telegram and Parler, but that's what I'm here to talk about.

12 Q. As to Enrique, all you have is Telegram and Parler?

13 MR. MULROE: Objection. Scope.

14 THE COURT: Objection (sic) as to scope and relevance.

15 MR. JAUREGUI: Does that mean "sustained"?

16 THE COURT: Sustained.

17 BY MR. JAUREGUI:

18 Q. Today you testified as to Telegram exhibits for my client?

19 A. I'm sorry. One more time.

20 Q. All you've testified regarding my client are Telegram
21 messages, correct?

22 A. All I've testified to are Telegram and Parler, yes.

23 Q. You have no evidence whatsoever of my client communicating
24 with anybody on the ground on January 6; isn't that right,
25 Agent?

1 MR. MULROE: Object to scope. If he means during the
2 riot, that was yesterday.

3 THE COURT: The question was: On January 6.

4 So, overruled as to scope.

5 BY MR. JAUREGUI:

6 Q. Okay.

7 A. Wait. Overruled? So --

8 THE COURT: You may answer the question.

9 A. Yes, sir. My recollection is: There is some messages from
10 Mr. Tarrio. I believe they're empty, but that's -- that's
11 Agent Miller's sweet spot. I can't recall that directly.

12 BY MR. JAUREGUI:

13 Q. We know Agent Miller. All we have is some Parler posts
14 from my client celebrating that his team won; isn't that right?

15 A. He certainly was celebratory.

16 Q. And his team were what he considered patriots, correct?

17 A. I don't know what Mr. Tarrio was thinking.

18 MR. JAUREGUI: Thank you very much, Agent.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Mr. Metcalf?

21 MR. METCALF: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. METCALF:

24 Q. Good afternoon, Agent. How are you?

25 A. Good.

1 Q. I only have about 3- to 400 questions for you. Let's just
2 try to get through this.

3 A. Yes, sir.

4 Q. I just want to talk about your testimony today. I do not
5 want to talk about your testimony last time. So let's keep it
6 nice and easy.

7 Today you spoke about Telegram chats, correct?

8 A. Yes.

9 Q. Parler chats?

10 A. Yes.

11 Q. Showed a couple of videos of two defendants, right?

12 A. Yes.

13 Q. Now, have you ever -- have you ever looked at Telegram on a
14 actual phone?

15 A. Yes.

16 Q. Is there a button that you could actually press that
17 could -- that will scroll all the way down to the newest
18 message?

19 A. My recollection is -- hum -- I'm actually -- I'm not sure
20 about that.

21 Q. I've never done it, that's why I'm asking.

22 A. Yes.

23 Q. But my understanding is: If you haven't looked at your
24 phone in quite some time -- let's say you went to bed, you
25 slept a good eight hours. Then, all of a sudden, there's 100

1 messages on Telegram that you didn't read. You could literally
2 hit a button and go right to the newest message?

3 A. That sounds right. I couldn't describe the button in
4 detail, but I understand that function.

5 Q. Do you believe that it's on Telegram?

6 A. Yes.

7 Q. So someone could go -- there could be hundreds of messages
8 that are sent, and someone could just choose to press one
9 button and go right past?

10 A. And go to the newest message.

11 Q. And then choose what to do from there?

12 A. Yes.

13 Q. Either not read them or go back up?

14 A. Certainly.

15 Q. So the Telegram chats that we spoke of today, we spoke
16 about Skull and Bones, and we spoke the about MoSD Leaders chats.

17 A. Yes.

18 Q. Neither of them Mr. Pezzola was in after January 6; is that
19 correct?

20 A. Skull and Bones, Leaders -- no.

21 Q. The text messages that we spoke about, I believe those were
22 in regards to Rehl. Mr. Pezzola was not on any of those; is
23 that correct?

24 A. Correct.

25 Q. The videos that we spoke about -- or, that were shown

1 today, Mr. Pezzola was not on any of those; is that correct?

2 A. Except for the one video from Mr. Rehl's phone, I'm not
3 sure about that. There were a lot of people on that, and I'm
4 not super familiar with that. The other individual ones, no.

5 Q. But of the Parler messages that were spoken of today,
6 Mr. Pezzola was not on any of those, correct?

7 A. Correct.

8 Q. So, essentially, everything you spoke about today from
9 January 6 and past January 6, Mr. Pezzola was not on any of
10 that; is that correct?

11 A. There were references to his arrest --

12 Q. I'm not talking about references. Let me rephrase.

13 What you spoke about and testified about today --

14 A. Yeah.

15 Q. -- there is not a single message, either written or spoken,
16 that came from Mr. Pezzola; is that correct?

17 A. Yes.

18 MR. METCALF: Thank you so much, Agent. I hope that
19 we can get you out of here before 5 o'clock. Take care.

20 THE WITNESS: Thank you.

21 THE COURT: Redirect examination from the government?

22 MR. MULROE: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MULROE:

25 Q. Agent, I would like to start with a somewhat technical one.

1 So, Ms. Rohde, if he we could have 601-41, which is in
2 evidence.

3 Mr. Smith asked you about this and asked about the times
4 of the posts. Do you recall that?

5 A. Yes.

6 Q. And he mentioned time zone. So, let me ask you: Not just
7 for this exhibit, but for the exhibits as a whole, are these
8 exhibits in different time zones or have they been standardized
9 to one time zone?

10 A. My understanding, these have been standardized to EST.

11 Q. "EST" being Eastern Time?

12 A. Eastern Time.

13 Q. Mr. Smith asked you quite a few questions about planning,
14 or a plan, do you recall that?

15 A. Yes.

16 Q. Are these defendants charged with seditious planning?

17 A. No.

18 Q. Have there been messages that you've reviewed relating to
19 the groups' mission?

20 A. Yes.

21 Q. Ms. Rohde, if we could have 505-20, please.

22 Sorry. 505-20.

23 MR. JAUREGUI: Judge, I'm going to object. Outside
24 the scope.

25 (Bench discussion:)

1 MR. JAUREGUI: Judges, this is from January 4th.
2 This is outside the scope. We couldn't get into any of this
3 stuff.

4 THE COURT: Mr. Mulroe?

5 MR. MULROE: Your Honor, I think that Mr. Smith's
6 cross-examination reached back and asked about whether there
7 was evidence of, you know, whether these people were all part
8 of the same jointly undertaken activity. So I think to rebut
9 that, we should not be limited to a narrow time period. It's a
10 topic that's within the scope.

11 THE COURT: No. In fairness, he asked about specific
12 exhibits and whether they showed a plan. He wasn't saying: Is
13 there no evidence of a plan under the sun, under any exhibit?

14 So I'm going to sustain the objection.

15 (Open court:)

16 MR. MULROE: Could we have the screen for the
17 witness?

18 And, Ms. Rohde, if you would show me, briefly,
19 510-39. Let's publish that, please.

20 THE COURTROOM DEPUTY: Is that in?

21 MR. MULROE: I thought that was in.

22 THE COURTROOM DEPUTY: Not 510-39.

23 BY MR. MULROE:

24 Q. Agent, are you seeing the exhibit on the screen?

25 A. Yes.

1 Q. Is this one of the chats you received?

2 A. Yes.

3 Q. Is this from the evening of January 6?

4 A. Yes.

5 MR. JAUREGUI: Judge, objection. Scope.

6 (Bench discussion:)

7 THE COURT: Why isn't Mr. -- Mr. Mulroe, what about
8 the same objection?

9 MR. MULROE: This is within the time period. It's
10 the evening of January 6.

11 MR. JAUREGUI: But it's not just the time period,
12 Judge. We asked questions about the exhibits that were
13 introduced during direct. Now they're going outside the scope
14 of direct.

15 THE COURT: I think to the extent they can -- they're
16 within the timeframe to rebut something, I think that's fine.
17 So I'm going to give them -- they're within the timeframe. The
18 evening of January 6 was the relevant timeframe.

19 MR. JAUREGUI: Judge, I would also object to the
20 mention of the BLM march in this exhibit.

21 THE COURT: Well, but they're not talking about
22 anything bad. They're just -- this is -- it's kind of a side
23 point. No one is saying anything bad about it, and they're
24 talking about seeing this other guy at this thing. So I don't
25 see that -- if you -- we can talk about if it's really worth

1 redacting it, but I think it's fine to use it here. There's no
2 bad reference to it. It's not even clear -- it says: A BLM
3 march.

4 Who even knows what it is? Your client is talking
5 about having attended BLM marches.

6 MR. JAUREGUI: Judge, the problem is: The Viking guy
7 is the symbol for January 6. You know, this is the Viking guy
8 that's been all over the news. He was just on Tucker Carlson.
9 This is extremely prejudicial under 403.

10 THE COURT: No. No. No. You've got a statement of
11 a coconspirator. I'm going to allow this. I understand your
12 argument, but I'll allow it.

13 MR. JAUREGUI: Yes, sir.

14 (Open court:)

15 MR. MULROE: Move, again, to admit 510-39.

16 THE COURT: It will be admitted, and permission to
17 publish.

18 BY MR. MULROE:

19 Q. Walk use through this message, please.

20 A. This is on January 6, '20. Pedro Q-tip Homelander says
21 they saw the Viking guy at a BLM march.

22 At 4:20:31, with that Turtle user name, says: This.

23 And then Bertino says: Who cares? Fuck it. We
24 accomplished our mission today, even if they helped, LOL.

25 Q. If we could have the screen for the witness.

1 And could I have 509-35?

2 THE COURTROOM DEPUTY: This is already in.

3 MR. MULROE: Ms. Rohde, if you could scroll down to
4 the bottom.

5 BY MR. MULROE:

6 Q. All right. Agent, I'm going to move on to another,
7 different topic.

8 Thank you, Ms. Rohde.

9 Mr. Jauregui, just a moment ago -- just a moment ago was
10 asking you questions about whether the jury has been denied the
11 opportunity to see context. Do you remember those?

12 A. Yes.

13 Q. And he showed you some extractions on your screen, correct?

14 A. Yes.

15 Q. Your understanding is that they've got access to all these
16 extractions?

17 A. Yes.

18 Q. Did Mr. Jauregui offer any of his own exhibits --

19 MR. SMITH: Objection. Argumentative, Judge.

20 MS. HERNANDEZ: And -- I'm sorry, Your Honor.

21 THE COURT: Sustained as to this next question, as to
22 any --

23 (Bench discussion:)

24 MS. HERNANDEZ: He's treading very close to the
25 defendants' rights not to testify and not to put on a case. I

1 would ask why they didn't bring some evidence forward.

2 MR. JAUREGUI: Not only that, but it's shifting of
3 the burden, Your Honor.

4 THE COURT: I sustained the objection. I sustained
5 the objection.

6 (Open court:)

7 BY MR. MULROE:

8 Q. Agent, one of the pieces of context was a message from
9 Zachary Rehl expressing a colorful viewpoint about a particular
10 FBI affidavit. Do you recall that?

11 A. Yes.

12 Q. In your experience, are defendants usually happy when they
13 learn about allegations against them?

14 MR. SMITH: Objection.

15 THE COURT: Sustained.

16 BY MR. MULROE:

17 Q. I'm going to show you 600-64.

18 And this was the dramatic video of Enrique Tarrío in
19 front of the Capitol.

20 A. Yes.

21 Q. Mr. Jauregui asked you whether you knew that this was also
22 used as the intro to a podcast. Do you recall that?

23 A. Yes.

24 Q. On January 6, at 11:14 p.m., was Mr. Tarrío posting a
25 podcast?

1 A. No.

2 Q. Did any podcast follow this video when he posted it?

3 A. No.

4 Q. What followed this video?

5 A. The word "Premonition."

6 Q. Mr. Jauregui asked you about whether you were aware of any
7 other photos documenting Enrique Tarrio near the Capitol. Do
8 you recall that?

9 A. Yes.

10 Q. Could I have the screen just for the witness, please.

11 I'll ask Ms. Rohde to display for the witness 1145.

12 MR. JAUREGUI: Judge, I'm going to object. It's
13 outside the scope.

14 (Bench discussion:)

15 MR. JAUREGUI: Judge, I didn't ask about any photos.

16 THE COURT: Mr. Jauregui, you asked the question:
17 Did he ever return to the Capitol?

18 MR. JAUREGUI: I asked if he was on the Capitol on
19 the 6th, 7th, or 8th, if he ever returned. I did.

20 THE COURT: Yes. See how this is now within the
21 scope of the redirect?

22 MR. JAUREGUI: I don't even know when this photo is
23 from, Judge.

24 THE COURT: Well, given the -- first of all, does the
25 government have a proffer on when it was -- when it was taken?

1 MR. MULROE: Your Honor, I can proffer this
2 photograph was published by a newspaper shortly -- I mean,
3 around the time Enrique Tarrio was turning himself in on the
4 previous charges, it was described as being taken just before
5 that. I think that, circumstantially, there's a bunch of
6 evidence to conclude this was taken after January 6, you know,
7 given his treatment of the Capitol and given the shirt and it
8 talks about freeing the Proud Boys.

9 MR. JAUREGUI: Judge, I would object. This is
10 outside the scope, outside of this witness's personal
11 knowledge. This witness has no knowledge when this photo was
12 taken.

13 THE COURT: Is he going to be able to say he's seen
14 the photo before?

15 MR. MULROE: Judge, he can recognize this photo.

16 MR. JAUREGUI: Judge, we don't even know if this
17 photo has been Photoshopped.

18 THE COURT: I don't see how -- given the "Free the
19 Proud Boys" and the question, how is this not evidence? As
20 long as he can recognize who it is and where it is, how is this
21 not evidence that rebuts the -- you know, the insinuation you
22 tried to lay that he never return to the Capitol?

23 MR. JAUREGUI: Well, Judge, first of all, we don't
24 know when the photo was taken. When we asked the government
25 point plank, they couldn't answer. We have no idea when the

1 photo was taken. It's outside the scope. It's 403. It's got
2 a picture of what -- he's got a picture with "Free the Proud
3 Boys by Any Means Necessary," with a march to the Capitol.

4 This is not probative of anything important in this
5 case as to what happened on January 6. This photo could have
6 been taken in March, for all we know.

7 THE COURT: It says, "Free the Proud Boys."

8 How could it be taken in March?

9 MR. JAUREGUI: It could be taken in March.

10 THE COURT: After the 6th?

11 MR. JAUREGUI: Correct.

12 THE COURT: My point is, you asked the question: Did
13 he ever return?

14 MR. JAUREGUI: I said: Did he ever return to the
15 Capitol on the 6th, 7th, 8th, the days --

16 THE COURT: Then you say -- said: Or ever.

17 This is fairly within the government to ask questions
18 about this. If he can lay the foundation that appears to be a
19 true and accurate photograph of the defendant adjacent to the
20 Capitol, I think that's fair.

21 MR. JAUREGUI: Judge, he's in the city. He's not at
22 the Capitol, first of all.

23 THE COURT: He's very close to the Capitol. Good
24 try.

25 All right. You may proceed.

1 (Open court:)

2 BY MR. MULROE:

3 Q. Agent, you recognize the person depicted in the photo?

4 A. Yes.

5 Q. Do you recognize the location depicted on your screen?

6 A. Yes.

7 Q. Does it appear to be a true and accurate photo of that
8 person at that location?

9 A. Yes.

10 MR. MULROE: Move to admit, Your Honor.

11 MR. JAUREGUI: Judge, haven't laid the foundation as
12 to the date, or that he can authenticate.

13 THE COURT: Overruled.

14 MR. MULROE: Move to admit 1145.

15 THE COURT: It will be admitted. Permission to
16 publish.

17 BY MR. MULROE:

18 Q. Agent, who is in the photo?

19 A. Mr. Tarrio.

20 Q. Where is Mr. Tarrio posed in the photo?

21 A. In front of the Capitol.

22 Q. Ms. Rohde, is it possible to zoom in on the upper left
23 part, where his hand is?

24 Do you see what he has in his right hand?

25 A. That would appear to be a lighter.

1 Q. And where is he holding it?

2 A. Directly over the Capitol Dome.

3 Q. Ms. Rohde, if we could zoom in -- or at least move the
4 frame shot so the whole shirt is visible.

5 What is that?

6 MS. HERNANDEZ: Objection. Hearsay.

7 THE COURT: Overruled.

8 BY MR. MULROE:

9 Q. What does Mr. Tarrio's shirt say?

10 A. "@freetheProudBoysbyanymmeansnecessary."

11 Q. Thank you. We can take that down.

12 Mr. Pattis asked you whether you're a sports fan and
13 whether fans celebrate after their team has won the game. Do
14 you recall that?

15 A. Yes.

16 Q. Now, Agent, do the players also celebrate at the end of the
17 game?

18 A. Yes.

19 Q. Did you ever see players light up cigars after a big win?

20 A. Yes.

21 Q. Do they sometimes celebrate right on the field?

22 A. Yes.

23 Q. Exhibit 403G, please.

24 For the jury.

25 (Video played.)

1 Ms. Hernandez asked you about vantage points, and she
2 showed you a Parler post of the breach at Peace Circle. Do you
3 recall that?

4 A. Yes.

5 Q. What kind of vantage point of the action did Zachary Rehl
6 have?

7 MS. HERNANDEZ: Objection, Your Honor. The defense
8 objected to that and the Court sustained it.

9 THE COURT: Sustained as to the objection.

10 BY MR. MULROE:

11 Q. Ms. Hernandez asked you about late-night messages. Do you
12 recall that?

13 A. Yes.

14 Q. Whether it might be the booze talking?

15 A. Yes.

16 Q. Could we have 544-4, please.

17 Read us the top message.

18 A. "The reason why it feels like a waste is because instead of
19 all these politicians getting scared and realizing they need to
20 answer for this fraud, they are all turning on Trump and
21 cucking. They are doubling down over their actions. Everyone
22 should have showed up armed and took the country back the right
23 way."

24 Q. What time does Zachary Rehl send that message?

25 A. 1:05 p.m.

1 Q. Several of the attorneys asked you about the concept of
2 1776. Do you remember that?

3 A. Yes.

4 Q. Can we have 530-5, please.

5 I don't think we saw this in your time earlier, but what
6 are we looking at?

7 A. These are direct text messages between Mr. Tarrío and
8 Mr. Bertino.

9 Q. On the evening of January 6?

10 A. Yes.

11 MR. JAUREGUI: It's outside the scope. He already
12 testified to this.

13 THE COURT: Sustained.

14 MR. MULROE: I think it was Mr. Bertino's testimony,
15 but I'll move on.

16 BY MR. MULROE:

17 Q. We showed earlier this morning 500-674. Could I briefly
18 have that again, Ms. Rohde?

19 Remind us, what was the context? In other words, what
20 was going on in the chat at the time Enrique Tarrío sent
21 Whispers 1776 to Skull and Bones on December 26?

22 A. Mr. Tarrío was presenting the Ministry of Self-Defense as a
23 chapter to the Elders for a vote.

24 Q. Did the founding fathers ever go to war against antifa?

25 MR. JAUREGUI: Judge --

1 THE COURT: Let's let him ask the question.

2 BY MR. MULROE:

3 Q. Washington, Jefferson, the others, did they have go to war
4 against --

5 MR. PATTIS: Objection, Your Honor.

6 THE COURT: Sustained as to the objection.

7 MR. MULROE: Let's pull up 602.52.

8 BY MR. MULROE:

9 Q. Mr. Pattis asked you about this exhibit --

10 A. Yes.

11 Q. -- I think. When you -- "When government fears its people,
12 you have freedom. When people fear government, you have
13 tyranny."

14 I think he told you that was Thomas Jefferson, correct?

15 A. That is my recollection.

16 Q. Had you seen that quote elsewhere in the Parler evidence?

17 A. Not that I can think of off the top of my head.

18 Q. Let me show you 600-63.

19 MR. JAUREGUI: Judge, objection. This is cumulative.
20 We've already seen this through Agent Miller.

21 THE COURT: Overruled.

22 MR. MULROE: If you could publish that.

23 BY MR. MULROE:

24 Q. And whose Parler account do we have here?

25 A. This is Mr. Tarrio.

1 Q. What's the quote in the bottom message?

2 A. "When the people fear the government, there is tyranny.
3 When the government fears the people, there is liberty."

4 Q. And what do we see depicted in the photo of the first post?

5 A. These are members of Congress and staff huddling behind the
6 walls in the Gallery during January 6.

7 Q. Any of those people wearing red coats?

8 MS. HERNANDEZ: Objection.

9 MR. JAUREGUI: Objection.

10 THE COURT: Sustained. Sustained.

11 MR. MULROE: Nothing further, Your Honor.

12 THE COURT: All right. Very well.

13 Sir, you may step down.

14 And let me speak to counsel at sidebar.

15 (Bench discussion:)

16 THE COURT: So, Mr. Mulroe or whoever wants to talk
17 about this from the -- on the government's behalf, it seemed --
18 actually, this should be addressed to all counsel.

19 We can either bring this -- the next -- if the
20 government has their witness, we can bring and start -- all
21 right. Everyone is nodding -- or, I was going to say, if you
22 all know of areas where it's going to get bumpy with the next
23 witness, we could spend the time trying to iron those out.
24 But, I'll see what the position of the various parties is.

25 MR. MULROE: I think the government is inclined to

1 keep rolling.

2 THE COURT: What's the basic contours of the
3 testimony that's coming?

4 MR. MULROE: This final witness is a Capitol Police
5 officer who stayed on the East Side of the Capitol, and is
6 going to testify to fairly narrow facts about his experience
7 there.

8 MR. SMITH: This is Nordean. We would like to
9 proceed. And, Your Honor, if we could go to 5:30, or even
10 later.

11 THE COURT: Unfortunately, for -- there's a juror who
12 has to leave at 5. So, that's the reason.

13 Ms. Hernandez?

14 MS. HERNANDEZ: Your Honor, I would like to move for
15 a mistrial on that last question by Mr. Mulroe about antifa.
16 That is just inflammatory. Irrelevant. The Court sustained
17 the objection. This is not the first time the government tried
18 to introduce into the case very volatile, inflammatory -- it
19 is -- the government is prohibited from appealing to the
20 passions of the jury and creating inflammatory situations.
21 There's absolutely no relevance to that statement that he
22 asked, and it's just intentional.

23 THE COURT: There was a lot of -- I'm not saying --
24 let's put it this way: I gave Mr. Pattis a lot of opportunity
25 to talk about -- and -- no. No. No, not about antifa. But

1 about red coats and the founding fathers and all that. So --

2 MR. PATTIS: A lot of opportunity -- I didn't hear.
3 The phone was being transferred. I might beg to differ with
4 that, Judge.

5 THE COURT: Very well. But, I'll deny the motion for
6 a mistrial, and we'll roll on.

7 (Open court:)

8 THE COURT: Government may call its next witness.

9 MS. MOORE: United States calls Marc Carrion.

10 MARC CARRION,
11 was called as a witness and, having been first duly sworn, was
12 examined and testified as follows:

13 THE COURT: You may proceed, Ms. Moore.

14 MS. MOORE: Thank you.

15 DIRECT EXAMINATION

16 BY MS. MOORE:

17 Q. Good afternoon, Officer.

18 A. Good afternoon.

19 Q. Could you please state your name and spell your last name
20 for the jury?

21 A. My name is Marc, M-A-R-C; last name Carrion, C-A-R-R-I-O-N.

22 Q. And this room doesn't have the best acoustics. If you
23 don't mind pulling the microphone closer to yourself.

24 By whom are you employed?

25 A. United States Capitol Police.

1 Q. And how long have you been with the Capitol Police?

2 A. A little over 15 and a half years.

3 Q. And what's your title there?

4 A. Private first-class.

5 Q. Do you work for a particular group or squad there?

6 A. I work for the House Division, which is a section of all
7 the four main branches.

8 MS. HERNANDEZ: Can we have a sidebar?

9 (Bench discussion:)

10 MS. HERNANDEZ: I'm sorry, Your Honor. I've been
11 told that this officer, in other trials, has burst into tears
12 in the middle of his testimony. We're concerned that -- I'm
13 not sure at what point this happened, but we're concerned about
14 the inflammatory and passionate nature of that. So I would
15 like to prevent it from happening.

16 And I believe this testimony may be cumulative. I'm
17 not sure what we haven't -- what we have yet to hear about
18 the -- any of the events at the Capitol. And I really would
19 like to prevent an outburst of tears.

20 THE COURT: Look, this isn't -- I don't know what --
21 I don't know what to say. There's nothing I haven't -- there's
22 been nothing objectionable done, and I think we can only take
23 the evidence as it comes here.

24 MS. HERNANDEZ: I'm just telling the Court that
25 apparently, it's happened in other trials. I'm just alerting

1 the Court. If that's going to be a problem, I think the
2 government needs to take some action in advance.

3 THE COURT: Witnesses are permitted to express
4 emotion. I don't know what to tell you. If someone goes
5 through -- I mean, this isn't --

6 MS. HERNANDEZ: I just -- I mean, there have been
7 times in the past there were -- I believe it was
8 Mr. McCullough, asked one witness, did he think he was going to
9 make it home, several times, over objection. The Court
10 sustained it. "Did you think you were going to make it home
11 that night?"

12 THE COURT: In the context of that witness's
13 testimony, I sustained that objection. We'll see what develops
14 here.

15 MS. HERNANDEZ: I'm just suggesting --

16 THE COURT: I'll be alert to it, Ms. Hernandez.

17 MS. HERNANDEZ: You know, if it's a mistrial, they've
18 brought on themselves that creates --

19 THE COURT: Ms. Hernandez, I'll be on the lookout for
20 it.

21 Let's proceed.

22 (Open court:)

23 BY MS. MOORE:

24 Q. Turning your attention to January 6, 2021.

25 Were you working that day?

1 A. Yes.

2 Q. Approximately what time did you report to the Capitol?

3 A. Approximately 8 a.m., for roll call.

4 Q. What was your assignment that day?

5 A. That morning I was part of the CDU Squad, a Soft Squad --
6 and "CDU" means Civil Disturbance Unit -- and I was part of the
7 Soft Squad. And as part of the Soft Squad, I was basically
8 dressed as I am today, and it's the exterior gear that I'm
9 wearing. And basically, our main function is to create, or
10 set, a perimeter.

11 The other part of our CDU Squad is called the Hard
12 Squad, and those are the officers that are in riot gear.
13 They're wearing the helmet, the protection that we like to call
14 "turtle gear."

15 Q. Where were you set to work that morning?

16 A. On the East Front of the Capitol.

17 Q. And we have a big blowup map behind you. If you wouldn't
18 mind, if you could just point out kind of where you were
19 stationed, if you can reach it.

20 A. This is the West Front, and this is the East Front
21 (indicating).

22 Q. Where there other officers with you out on the East Front?

23 A. Yes.

24 Q. What were you all doing?

25 A. We were basically manning the perimeter on the East Front

1 behind the bike racks. We were separating the restricted area
2 from the unrestricted area.

3 Q. And were there multiple perimeters that were set up that
4 day?

5 A. Yes.

6 Q. Was there a primary perimeter?

7 A. Yes.

8 Q. Were you part of that?

9 A. Yes.

10 Q. And you mentioned that there were bike racks set up. Are
11 bike racks always set up around the Capitol?

12 A. No.

13 Q. Why were they set up that day?

14 A. It was because of the event, the certification of the
15 election.

16 Q. And on the morning of the 6th, while you were out on the
17 East Front, was there anything that kind of drew your attention
18 while you were performing that duty?

19 A. Yes. So, about 8:30, I believe, is approximately when we
20 responded to the East Front to take our assignment. And I was
21 actually kind of shocked that there was such a large group
22 already present that morning at 8:30 in the morning.

23 Q. What were the groups doing that were present out there?

24 A. There was two groups. There was one group -- there was one
25 group in the -- what we call the Senate Egg, and then another

1 group in the House Egg. This area is the Senate Egg
2 (indicating).

3 THE COURT: Sir, the tricky part is we don't have a
4 mic to follow you. If you point, and if you move away from the
5 mic, just boom your voice and do some pointing and come back to
6 the mic.

7 A. So this top portion is the Senate Egg. The Senate side is
8 on the north side of the Capitol here (indicating). This is
9 the House Egg (indicating), and that is closer to the House
10 division side.

11 BY MS. MOORE:

12 Q. So just for the record, when you were describing the Senate
13 Egg, was that the circular object kind of on the top left
14 portion of the demonstrative?

15 A. Yes. We call it the Senate Egg because it's a grassy area
16 that, from an aerial view, looks like the shape of an egg.

17 Q. And where were those two groups on those eggs?

18 A. So, the group on the Senate Egg we identified as a
19 pro-Trump group, based on what they were wearing, the signs
20 they were holding, and the chants that they were saying.

21 On the House Egg was a church group, based on the
22 hymns and songs, and a choir group.

23 Q. Besides the contents of what the groups were saying, was
24 there any difference in their demeanor?

25 A. The pro-Trump group was what I like to call "lively" in the

1 morning. For 8:30 in the morning, they were very -- they are
2 chanting. They were gathering together once in a while. They
3 would shake the bike racks.

4 The church group was more peaceful. Very low key.

5 MS. MOORE: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. MOORE:

8 Q. So, I've handed you a drive that contains Government
9 Exhibit 165A, 438C, -D, and -E, and 440B.

10 Are you able to recognize that drive?

11 A. Yes.

12 Q. How do you recognize that?

13 A. By my name.

14 Q. Did you sign the drive?

15 A. Yes. I signed the back of it.

16 Q. After viewing the contents of it?

17 A. Yes.

18 Q. And are the videos contained on that drive fair and
19 accurate depictions of the East Front of the Capitol and the
20 area surrounding the Rotunda door from January 6?

21 A. Yes.

22 MS. MOORE: Your Honor, I would move to admit
23 Government's 196A, 438C, -D, and -E, and 440B.

24 THE COURT: All right.

25 MS. HERNANDEZ: Relevance, Your Honor, with respect

1 to the time and whether our clients -- according to the
2 testimony so far.

3 THE COURT: I understand your relevance objection.

4 MS. HERNANDEZ: I'm sorry, Your Honor?

5 THE COURT: I understand your relevance objection.

6 MR. JAUREGUI: Judge, also, I would object on
7 cumulative grounds.

8 THE COURT: Unfortunately, let me talk to counsel at
9 sidebar.

10 (Bench discussion:)

11 THE COURT: Ms. Moore, just give me a brief -- I
12 haven't seen these, of course, and no one has keyed up an
13 objection.

14 What do they show and why are they relevant?

15 MS. MOORE: Your Honor, they show the East Side of
16 the Capitol, and then the area in front of the Rotunda doors.
17 When Joseph Biggs enters the Capitol the second time, he enters
18 through those doors. So it shows the rioters on the East Front
19 breaking through the barricades, and then breaching the door
20 that Mr. Biggs then enters very shortly after that breach.

21 THE COURT: Then we also have some other -- there's
22 been some other tools, evidence, outside that door, as well.

23 MS. MOORE: That's correct, Your Honor. Yes.

24 THE COURT: I'll overrule the objection. If there's
25 specific objections to something that comes up -- but I'll

1 admit them, at least conditionally now, and we'll take up if
2 there's some objection to some specific part of it.

3 MR. SMITH: Your Honor, there is one specific
4 objection. We believe Officer Carrion may make a reference to
5 pipe bombs at the DNC headquarters when he's asked why he
6 didn't walk towards the West Side to help fellow officers. We
7 would object to references to the pipe bombs. We think that if
8 the officer is going to explain why he moved to one place, he
9 can just say, There was an event at the other end of the --
10 there was something he had to respond to.

11 We are objecting on 403 grounds to all references to
12 the pipe bombs.

13 THE COURT: Do you know, Ms. Moore, what he's going
14 to say? Will he say that?

15 MS. MOORE: I don't. And Mr. Smith has known we were
16 planning on calling this witness for weeks now, and if we had
17 known, I could have instructed him not to say that.

18 THE COURT: So it is what it is at this point.

19 Mr. Smith, she can't instruct him.

20 MR. SMITH: Your Honor, it's the form of the
21 question. They've asked this witness in every case: Why did
22 you not go to the West Side to help your fellow officers?

23 The only purpose of that question is to elicit that
24 testimony, so we're objecting to that.

25 THE COURT: All right. Ms. Moore, the way it's said

1 there -- let me put it this way: If you ask him in a leading
2 fashion and there's an objection, if you just lead him around
3 that, then I'm sure there will be no objection.

4 MS. HERNANDEZ: Your Honor, also, this evidence is
5 cumulative. We've already had a lot of videos of the East
6 Side, of the reentry by Mr. Biggs and whoever else is in the
7 picture.

8 THE COURT: That objection is overruled.

9 (Open court:)

10 THE COURT: You may proceed.

11 MS. MOORE: Ms. Rohde -- and are these admitted
12 exhibits?

13 THE COURT: Yes. Conditionally admitted.

14 MS. MOORE: Ms. Rohde, could you please bring up
15 Government Exhibit 438C.

16 BY MS. MOORE:

17 Q. And before we start playing, can you just kind of orient us
18 to what we're seeing?

19 A. So this is a view taken basically looking from the Senate
20 Egg, towards the East Front (indicating).

21 Q. Approximately where were you that morning?

22 A. I was closer behind the ambulances, closer to that
23 (indicating).

24 Q. And were you stationary or were you moving around?

25 A. A little bit of both.

1 Q. And, Ms. Rohde, if you could play the exhibit, please.

2 (Video played.)

3 Stopping there, at 7 seconds.

4 You mentioned earlier that there were bike racks in
5 place. Were you able to see them here in this video?

6 A. Yes.

7 Q. Can you show us where?

8 A. (Indicating.) And then in front of all -- (indicating)
9 everybody at this point is behind the bike racks.

10 Q. And are there officers lined up at the bike racks?

11 A. Yes (indicating).

12 Q. Ms. Rohde -- oh, great. Thank you. Can we play the rest
13 of the clip, please.

14 (Video played.)

15 Do you carry a radio?

16 A. Yes.

17 Q. And what are -- what's your radio used for during the
18 course of your duties?

19 A. To transmit any messages or locations or anything we see
20 that's going on that day.

21 Q. And who would be transmitting those messages that you would
22 receive?

23 A. Other officers or our officials.

24 Q. And did you hear any radio calls during the course of the
25 day that caused you to take any actions?

1 A. Yes.

2 Q. Can you tell us about that?

3 A. We had two radio calls that called out as bomb threats.

4 MS. HERNANDEZ: Objection, Your Honor.

5 MR. JAUREGUI: Objection, Judge.

6 THE COURT: Overruled.

7 BY MS. MOORE:

8 Q. Was there another radio call that you got with regards to
9 the West Front of the Capitol?

10 A. As far as the West Front goes, we heard that the
11 perimeter -- the outer perimeter was breached. We heard
12 officers saying that they needed more --

13 MR. JAUREGUI: Your Honor, we'll object. Hearsay.

14 THE COURT: Overruled.

15 MS. HERNANDEZ: I'm sorry, Your Honor. Could we have
16 a sidebar?

17 THE COURT: No, not right now.

18 You may proceed.

19 BY MS. MOORE:

20 Q. And what, if any, reaction did you have to hearing that the
21 West Front of the Capitol had been breached?

22 A. That the position that we were in, we can't see on the
23 other side of the Capitol, so all the information that we're
24 receiving is from our radio. So we -- we can't see anything on
25 the West Front. So, when we heard that the officers on the

1 West Front, through our radio, were having issues, and that
2 they were being overrun, those of us on the East Front were
3 scanning the crowd, making sure that, basically, nothing
4 happens on our end as well, since we were responsible for the
5 East Front.

6 Q. So you mentioned you were responsible for the East Front.
7 Did you go and help officers on the West Front once you heard
8 that breach taking place?

9 A. As much as had taken place, we couldn't, because then that
10 would be abandoning our duties and responsibilities to the East
11 Front of the Capitol.

12 Q. Did you hear any other radio transmissions that day
13 relating to a lockdown at the building?

14 MS. HERNANDEZ: Relevance, Your Honor. Objection.
15 (Bench discussion:)

16 THE COURT: What's the relevance? Where are we
17 going, Ms. Moore?

18 MS. MOORE: I think he'll testify that radio
19 transmission -- that a lockdown of the building took place.
20 That the two doors would be open, the law library door and the
21 Memorial door, which were on the East Front, which I will
22 explain. After the rioters breached the bike racks, he went to
23 try to protect those doors, while they were still open.

24 THE COURT: Just explaining what he was doing that
25 day.

1 MS. HERNANDEZ: There's not a single statement that
2 relates to what our clients did. This original montage of
3 videos, our clients weren't there that day. And given the
4 sensitivity of what we've been arguing about to the Court as to
5 what we understand his testimony in other cases, and the manner
6 which he delivered that testimony, I think it's cumulative
7 evidence.

8 What possibly are we hearing today that hasn't been
9 said by multiple other officers? This would be cumulative,
10 unduly prejudicial, possibly, and overview summary testimony.
11 We've already heard that.

12 I'm really concerned about -- I mean, we haven't
13 objected to any officers testifying, but this is where -- the
14 way we're going to end the trial, I mean, the last question
15 from Mr Mulroe was about antifa, and then the next question is
16 about bombs. It's nothing to do -- it's just not right.

17 THE COURT: Ms. Hernandez, I'm going to overrule
18 those objections.

19 MS. HERNANDEZ: Our clients had nothing to do with
20 any bombs, Your Honor, and the government knows that.

21 THE COURT: We'll talk about whether you want that
22 struck or whether --

23 MS. HERNANDEZ: We do.

24 THE COURT: We'll talk about it, but we're not going
25 to talk about it burning the time. Right now, we have

1 five minutes.

2 MS. HERNANDEZ: I understand. I'm really concerned
3 he'll bust out crying.

4 THE COURT: We'll talk about it in five minutes.

5 (Open court:)

6 BY MS. MOORE:

7 Q. I think I asked you if you heard a radio transmission about
8 the building being locked down.

9 A. Yes. Inspector Lloyd, who is the -- who is our top police
10 official of the Capitol building, called for the lockdown as
11 soon as he heard the breaches on the West Front.

12 Q. Ms. Rohde, could you please play for the jury Government
13 Exhibit 361.

14 (Audio played.)

15 Is that the transmission you were just referencing that
16 Inspector Lloyd put out?

17 A. Yes.

18 Q. What is a "lockdown"? What does that mean?

19 A. Nobody in or out, basically.

20 Q. And were there any exceptions to the doors that were being
21 locked down on the Capitol?

22 A. Yes. If officers, basically, needed to get out or members
23 of the Congress or any dignitaries needed to escape, for an
24 escape route, they could use the doors on the East Front, where
25 we were.

1 Q. The law library and the Memorial door?

2 A. Correct.

3 Q. If you wouldn't mind, could you just show us where those
4 doors are?

5 A. Memorial door is on the -- is right below the front stairs,
6 the House side. This side is the Senate side and this is right
7 below what would be the law library door (indicating).

8 MS. MOORE: Just for the record, the witness
9 indicated the Law Library doors on the left side of the stairs
10 on the top of the building, and the Memorial doors under the
11 staircase, towards the right.

12 BY MS. MOORE:

13 Q. Were you stationed near either of those doors that day?

14 A. I was -- I was centered more on the Plaza area, but closer
15 towards the Memorial door.

16 Q. Okay. And as the afternoon continued, did anything happen
17 to those bike racks that we saw kind of cordoning off an area?

18 A. Yes. Eventually --

19 MS. HERNANDEZ: Cumulative. Objection.

20 THE COURT: Overruled.

21 A. Yes. They were eventually breached.

22 BY MS. MOORE:

23 Q. Can you tell us about that?

24 A. When we were on the East Front, we heard a call of a large
25 group headed north around the Capitol, so -- this is the north

1 of the Capitol (indicating). They were coming from that
2 (indicating), from west to east. And as they approached around
3 the Capitol, the group that was on the Senate Egg, they saw the
4 other group coming around the north side of the Capitol.

5 And from my vantage point, I was on the south of the
6 East Front. I looked north, and I could see -- the first thing
7 I saw were flags coming around the Capitol. And I looked over
8 to the Senate Egg, where the pro-Trump group was, and it was --
9 it was basically excitement, and they joined together.

10 And that's when all the bike racks started falling
11 and they started kicking them over, climbing over, and then
12 rushed towards the Rotunda door.

13 Q. Ms. Rohde, could you please pull up Government
14 Exhibit 438D. And if you'll play it and stop at 7 seconds.

15 (Video played.)

16 Stop there.

17 Can you orient us to what we're looking at?

18 A. We're basically on the Senate side, the Senate Egg area,
19 and we're looking at the Plaza area.

20 Q. Are there rioters that have --

21 MS. HERNANDEZ: Relevance, Your Honor. I don't
22 believe defendants are in this area.

23 THE COURT: Overruled.

24 BY MS. MOORE:

25 Q. Have rioters already breached those bike racks at this

1 point?

2 A. Yes. You can see an officer already trying to stop one
3 here (indicating).

4 Q. And, Ms. Rohde, if you could skip ahead to 1 minute,
5 please. And then we'll play this for a little bit.

6 (Video played.)

7 If you could pause there. Great.

8 MS. HERNANDEZ: Objection. Relevance. Rule 403.

9 THE COURT: All right. Ladies and gentlemen, it's
10 4:59, so we're going to go ahead and -- it's 5 o'clock,
11 actually. Just turned. We'll see you all tomorrow morning.
12 Just so -- two -- well, one thing we'll cover first thing
13 tomorrow, but just my usual reminder: Please avoid all media
14 coverage regarding January 6 or this case specifically, no --
15 don't conduct any independent investigation, and don't discuss
16 the evidence with anyone.

17 We'll see you tomorrow at 9 o'clock.

18 (Whereupon the jurors leave the courtroom.)

19 THE COURT: Officer, you may step down.

20 THE WITNESS: Thank you, Your Honor.

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

22 So, let's just go ahead and chat about this now.

23 Ms. Hernandez, I've overruled this objection -- let
24 me start with this: If the witness -- I don't know what you
25 want me to do, that a witness may show emotion on the stand.

1 There's nothing improper about it. And even if there were, it
2 hasn't happened yet. So, I guess, that's number one.

3 And, number two, I've overruled -- I mean, we're --
4 I've overruled the cumulative, 403, relevance objection
5 already, so --

6 MS. HERNANDEZ: I've been waiting to see where our
7 clients come in. The whole -- up until now, there's not even
8 been -- I was thinking, Well, maybe there's going to be someone
9 who they can point to. So if our clients are not here, and
10 we've already gotten -- although we tried to avoid the
11 reference to the bombs, which have nothing to do with our
12 clients -- and this is the -- a lot of the government witness,
13 Your Honor.

14 I'm sorry, but they are putting this witness on
15 knowing -- this is not the first time this witness has
16 testified in January 6.

17 THE COURT: Apparently not. I didn't know, but you
18 all do.

19 MS. HERNANDEZ: No. I've been told. This is not the
20 first time this particular witness has testified in a January 6
21 case. In each case, he has blurted out the reference to the
22 bombs. Our clients have nothing to do with this. In each
23 instance, he has burst into tears.

24 I feel for the person. I'm a very compassionate
25 person. I -- you know, I respect police officers, but that's

1 not the way to end this case. The question -- remember -- I'm
2 sorry, Your Honor, but the question from Mr. Mulroe about
3 antifa was completely intentionally improper. And then we go
4 into --

5 THE COURT: Let's go into this witness.

6 MS. HERNANDEZ: If Your Honor will allow me.

7 Then we go this gentleman, and this witness
8 referenced bombs. Our clients have nothing to do with it. If
9 we did, we would have to eat it. We're going to end with a
10 witness crying on the stand. It's one thing if it happens, but
11 they know it because it's happened before.

12 Yes, the Court has the ability to control the number
13 of witnesses and the evidence that's going to come in. There's
14 nothing -- as of this moment, nothing that has been introduced
15 that is relevant to our clients that hasn't -- and everything
16 that has come in has already been more than amply touched on.
17 So it's not just that it's cumulative. It's cumulative with
18 high potential for prejudice.

19 THE COURT: You know, I'll hear from the government.
20 As Ms. Moore said at the podium at the time, tough part about
21 the bomb is, again, you know, she's on the stand now, and they
22 can't -- but it would have been the easiest thing in the world
23 to raise and say: Hey, we're concerned about this. Can you
24 lead him around it? Can you instruct him, don't mention it?

25 The government said: We would have done that.

1 MS. HERNANDEZ: I didn't know about it.

2 THE COURT: No. No. No. Ms. Hernandez, now you're
3 talking over me. We are where we are on that. But, again, I
4 can only address the situations as they arise. That would have
5 been an easy way, if you had a concern, and the government
6 agreed they would have led it around them. We are where we
7 are.

8 MS. HERNANDEZ: Your Honor, I did not know about it
9 because they put him on, the government of the United States of
10 America, whether these prosecutors or other prosecutors have
11 put this particular officer on the stand in other cases. So,
12 they are on notice about what happened. I can't believe
13 that -- they're on notice.

14 Mr. McCullough is looking at me like -- I don't know.
15 But somebody in the U.S. Attorney's Office knows this. My
16 understanding is that this is the testimony that was given in
17 the Oath Keepers trial. I'm just -- I don't see how -- I'm
18 just trying to prevent a situation where our clients are unduly
19 prejudiced beyond repair.

20 I'm just trying to protect my client's right to a
21 fair trial under the Sixth Amendment. That's all I'm asking
22 the Court to do, to prevent a problem from happening. And it
23 would be one thing if we needed the testimony because no other
24 witness had testified about it. Then we would -- you know, but
25 that's not the case.

1 I'm asking the Court to balance fairness at this
2 point and say: No more.

3 MR. SMITH: Nordean joins.

4 THE COURT: I believe --

5 MR. ROOTS: Pezzola joins.

6 THE COURT: All right. Let me hear from government
7 in response.

8 MS. MOORE: First, with regards to whether or not
9 he's going to cry on the stand, I have no knowledge, one way or
10 the other, whether he's cried in trials before or whether he
11 will here. And like Your Honor said, if a witness shows
12 emotion, that's perfectly reasonable and appropriate given the
13 subject matter of his testimony.

14 Moreover, to the point of this witness, we've
15 presented zero officer witnesses that have provided any
16 information about the East Front of the Capitol. So, to the
17 extent there is an argument that this is cumulative, I think
18 that that's just not, you know, found in the record.

19 We will have one witness testifying about what
20 happened on the East Front. He's --

21 THE COURT: I'm sorry -- Ms. Moore, I'm sorry.

22 Please, for the hundredth time, when counsel is
23 speaking and they have the floor, no one else on this side of
24 the bar should be speaking, let alone speaking at a volume that
25 I can hear you.

1 Ms. Moore.

2 MS. MOORE: Thank you.

3 And like Mr. Mulroe said previously, this witness has
4 a narrow subject matter of testimony. It's just with regards
5 to the breach of the Rotunda doors, which Mr. Biggs enters when
6 he reentered the Capitol for a second time. He's just
7 providing context over that.

8 And Mr. Biggs will feature in some of the videos that
9 this witness is going to introduce. And it's just -- at that
10 point, we're painting a picture to explain what happened up to
11 the point that that door is breached and Mr. Biggs enters it.

12 THE COURT: If I recall the evidence correctly, there
13 were other individuals linked to Mr. Nordean who go around the
14 Capitol and play a role in this door being breached.

15 Am I correct in that?

16 MS. MOORE: That's correct. I think Loehrke and
17 Haffner are also at the door. You'll see them at the doors
18 spraying officers, who were these officer in that door, as
19 they're attempting to protect from this hoard of rioters, which
20 Mr. Nordean -- and then these other individuals joined, and
21 then eventually breached this door.

22 THE COURT: If you wanted to put a week's worth of
23 evidence on about the East Door, I would be very sympathetic to
24 the argument that this is cumulative.

25 Mr. Jauregui, let me hear from you.

1 MR. JAUREGUI: Thank you, Judge.

2 We already heard from the Secret Service agent. I
3 think her testimony was -- Hawa, Hawa -- was about the East
4 Front. The only purpose of this testimony is to have the agent
5 to cry on command, to say how traumatized he is from being
6 pepper sprayed, how hurt he is, how much he was in danger, and
7 to unduly prejudice our clients, to inflame the passions of the
8 jury. Strong finish at the end with emotion, that's what the
9 government is doing in this case.

10 And his voice was cracking at the end there. He was
11 getting ready to cry on command. It's going to happen. We
12 told Your Honor he was going to talk about bombs. He talked
13 about bombs in an unresponsive way. He wasn't even answering
14 the question, really. He was dying to get the word "bomb" out
15 of his mouth. You know it's going to happen tomorrow.

16 MS. MOORE: I'm offended at the insinuation that we
17 instructed the witness to, quote, cry on command.

18 And with regard to Ms. Howa testifying on the East
19 Front, all she testified was the vice president met with her.

20 The point is, the government's prepped this witness,
21 and they knew he was going to say the bomb because he's
22 testified. And they prepped him. They know they didn't put
23 him on the stand without having prepped him.

24 Again, I have much feeling for every one of these
25 officers who -- who went through this trauma, and they lost

1 fellow officers. You know, I very much feel for them. I am
2 the child of a police officer. I am very sympathetic.

3 I am just telling the Court that I also -- as an
4 officer of this Court, I represent a defendant who is innocent
5 until proven guilty, and he should be convicted on the facts
6 and not on the emotion.

7 This case is emotional enough, Your Honor, as the
8 Court knows. It's emotional enough without throwing in antifa
9 and crying officers and bombs.

10 THE COURT: Look, broadly speaking, I just can't
11 imagine -- I mean, look, I hear your arguments, but I think the
12 government gets to prove its case. So I'll think about it
13 overnight, and we'll see where we are tomorrow morning. But, I
14 really don't see a reason why the government --

15 MS. HERNANDEZ: A lot of the things I'm going to say,
16 Your Honor, if there's a mistrial brought on by this type of
17 evidence, it will have been knowingly, because now we've made a
18 record. And if it's done knowingly, the case is over and
19 doesn't get retried.

20 THE COURT: Ms. Hernandez, let me just make something
21 clear. If the witness happens to cry, that's not grounds for a
22 mistrial, in my book. You all -- I understand you may make
23 that motion, but there's nothing improper about a witness
24 showing emotion about an event -- an emotional event that
25 happened to the witness. There just isn't.

1 So, I understand your views. You all protect --
2 you'll have your record, however you want it. But I don't see
3 anything improper about it.

4 I'll see everyone at 9 o'clock tomorrow.

5 Was there anything -- oh, if you will remind me, I
6 didn't give -- the one thing I was going to give them before,
7 but we wanted to roll and get as much ground covered today as
8 we could, the instruction. I have it here. The instruction
9 you wanted on the other things, I have it. I just -- I didn't
10 want to use time.

11 MS. HERNANDEZ: Your Honor, I would also ask that you
12 strike the testimony about the bombs because our clients had
13 nothing to do with that.

14 THE COURT: I'll think about that. Look, it's --
15 whether the government or you want to make clear on direct or
16 cross that, like, your clients had nothing to do with it, I
17 think we're -- I think to strike it would end up emphasizing it
18 more than it even needs to be. But the government can consider
19 what they think about that. We can talk about it.

20 MS. HERNANDEZ: And admonish Ms. Mulroe not to
21 introduce antifa, BLM into the case unnecessarily.

22 THE COURT: I'm not going to admonish Mr. Mulroe.
23 We'll see you all tomorrow morning at 9 o'clock.

24 * * *

25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 17th day of march, 2023

Janice E. Dickman, CRR, CMR, CCR
Official court reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001

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