

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00175
Plaintiff,)	
)	
vs.)	
)	
ETHAN NORDEAN, JOSEPH R. BIGGS,)	Washington, D.C.
ZACHARY REHL, ENRIQUE TARRIO and)	March 29, 2023
DOMINIC J. PEZZOLA,)	1:47 p.m.
)	
Defendants.)	
)	
* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 56
AFTERNOON SESSION
BEFORE THE HONORABLE TIMOTHY J. KELLY,
UNITED STATES DISTRICT JUDGE

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Aaron

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Blake Endale

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EXHIBITS RECEIVED IN EVIDENCE

Government's Exhibit No. 1712

Page 15891

Government's Exhibit No. 1713

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Government's Exhibit No. 1714

Page 15902

Government's Exhibit No. 1723

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Government's Exhibit No. 1718

Page 15920

Government's Exhibit No. 1719

Page 15921

Defendant Rehl's Exhibit No. 11-H

Page 15973

1 THE COURTROOM DEPUTY: We are back on the record
2 in Criminal Matter 21-175, the United States of America
3 versus Ethan Nordean, et al.

4 THE COURT: All right. I have two matters that I
5 thought it would make sense to raise now.

6 One is, very quickly, Ms. Hernández, tell me the
7 relevance -- I've seen the back-and-forth about the exhibits
8 for your witness next. Tell me what is the relevance of
9 these underlying documents. I mean, I understand the
10 relevance of the permits themselves, and I don't think this
11 is something we need -- one way or another need to spend a
12 lot of time on right now.

13 If I exclude the supporting documents, you all
14 could just fix -- I mean, you're not going to have the
15 witness, presumably, go through those supporting documents.
16 So this can be fixed on the back end in terms of what
17 exhibit is actually admitted. But --

18 MS. HERNANDEZ: Well, I would ask the other way
19 around, that they all be admitted and then, if the Court
20 wants to exclude something later, you can, because the other
21 way I don't know how you do it without the witness.

22 THE COURT: I guess -- well, all I meant was we
23 don't have a logistical issue. But just tell me the
24 relevance of the supporting documentation.

25 MS. HERNANDEZ: Well, my first objection is, to

1 quote Mr. McCullough, they didn't file the objection on
2 time, your Honor.

3 Did I quote it properly?

4 THE COURT: Ms. Hernández, we have a process in
5 place to try, as best we can, to deal with big-ticket items
6 ahead of schedule. Correct. That doesn't mean -- I've
7 entertained objections all day today that weren't teed up
8 before me. So --

9 MS. HERNANDEZ: Well, they've had these for --
10 remember, they had these when Officer -- Inspector Loyd
11 testified.

12 THE COURT: Right. Tell me what the relevance of
13 the underlying documents is.

14 MS. HERNANDEZ: So the relevance is, these
15 documents -- I'm sorry. I'm seeing you through the
16 Plexiglass, and it's -- so the relevance is these are
17 documents that were produced by the Government. They are
18 maintained in the normal course of business. They inform
19 the permit process, because someone submits a document, a
20 response goes back, there's this back-and-forth. And these
21 are the documents maintained by this -- by the office before
22 they issue.

23 And some of them, depending on what they are, you
24 know, they state a number of people or the -- there's a
25 back-and-forth about what you're going to do or not do.

1 Actually, I'm not exactly sure what documents they want
2 excluded.

3 THE COURT: They want to exclude everything except
4 the permit itself.

5 MS. HERNANDEZ: Well, that's just not appropriate,
6 because the application identifies who's doing it, how many
7 people --

8 THE COURT: Is all of that information on the
9 permit itself?

10 MS. HERNANDEZ: No. I don't believe all of it is.

11 THE COURT: What's not?

12 MS. HERNANDEZ: Well, I'd have to --

13 THE COURT: And why is that relevant?

14 MS. HERNANDEZ: As I said, it informs the permit
15 process. Because there are questions that go back and forth
16 between the U.S. Capitol Police office and the person
17 wanting the permit which, you know, asks to clarify certain
18 things.

19 THE COURT: Right. And why is that relevant?

20 MS. HERNANDEZ: Because it informs the permit
21 process. What exactly is it that the Government -- that the
22 agency wants --

23 THE COURT: Okay.

24 MS. HERNANDEZ: -- why are they -- it informs the
25 permit process, your Honor. These are normal documents

1 maintained in the normal course of business. It provides
2 the -- a lot of -- like, for example, this one document says
3 it allows handheld signs and placards, but not other things.

4 It -- the estimated number of participants is on
5 this followup document rather than on the permit itself.

6 THE COURT: The underlying documents are out. You
7 haven't articulated a theory of relevance to the case --

8 MS. HERNANDEZ: They are --

9 THE COURT: -- so they're out.

10 MS. HERNANDEZ: Okay. Well, I object, and I
11 object to this being done in the middle of trial when I have
12 no ability to address the issue.

13 The Government doesn't give you a reason. They're
14 just saying they don't want them in. They tell you after
15 lunch. I just saw the email a few minutes ago. I don't
16 think it's a proper way -- I think it impacts on my Sixth
17 Amendment right to present a defense.

18 THE COURT: All right. If you can articulate
19 between now and when your witness comes up a basis for
20 relevance that I accept, then I'll admit them. But -- and I
21 don't think -- again --

22 MS. HERNANDEZ: It's not fair, your Honor.

23 THE COURT: Ms. Hernández, I'm speaking. Please.
24 Please. Please. I've indulged a lot of talking over me,
25 but I'm not going to do it today.

1 You haven't articulated a basis for relevance, and
2 that is your duty as the party offering the evidence. So
3 I'm going to exclude the nonpermit portions of the
4 documents. If between now and when the witness takes the
5 stand you have a basis for relevance that I'll accept,
6 then -- I'll hear you then. But I'm not going to hear you
7 anymore about it now.

8 MS. HERNANDEZ: Well, I need to put something on
9 the record. It violates my client's due process rights to
10 require me on the fly to explain to the Court why they are.
11 These are documents that are maintained in the normal course
12 of business by this office. They are part and parcel. They
13 were produced as a single document for each permit. There's
14 no indication that this document is more important than the
15 other.

16 And I object to the Court requiring me on the fly,
17 standing up here, to try to explain what the relevance is
18 when they have had these documents since -- since Inspector
19 Loyd testified. And Inspector Loyd, if I'm not mistaken,
20 was the first witness the Government put on.

21 THE COURT: Ms. Hernández -- okay. You've made
22 your record. I'll just say, number one -- I guess you
23 weren't listening because I did say that between now and
24 when the witness comes on, if you can articulate a basis, I
25 would hear you.

And number two, I don't think it violates your client's Sixth Amendment rights to ask you to articulate a theory of relevance for a piece of information you want to put before the jury. So --

MS. HERNANDEZ: When I came in from lunch, I'm
being asked to --

THE COURT: I'm not asking to hear from you anymore, Ms. Hernández. I'm not asking to hear from you anymore. You may return to your seat.

MS. HERNANDEZ: Well, I would like to put on the record --

THE COURT: You may return to your seat. You may
return to your seat.

MS. HERNANDEZ: I'd like to put on the record --

THE COURT: I'm sorry. You're not hearing me.
You may return to your seat. Thank you.

Let's go to the phones.

(Whereupon, the following proceedings were had at sidebar:)

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

THE COURT: Let's bring in the witness and the
jury, Ms. Harris.

MR. PATTIS: If I may step out for a minute before
the witness and the jury come back.

THE COURT: Yes, sir.

(Thereupon, the witness entered the courtroom and
the following proceedings were had:)

THE COURTROOM DEPUTY: Jury panel.

(Whereupon, the jury entered the courtroom at 2:06
p.m. and the following proceedings were had:)

THE COURT: Everyone may be seated.

Mr. Mulroe, you may proceed.

MR. MULROE: Thank you, your Honor.

(AARON, DEFENSE WITNESS, PREVIOUSLY SWORN.)

CONTINUED CROSS-EXAMINATION

BY MR. MULROE:

Q. Welcome back, sir.

Now, before lunch, we were talking about what was

1 going on on the Capitol grounds. And I think we got up past
2 that short black fence and onto the lower west terrace, kind
3 of at the base of the building. Correct?

4 A. I believe so.

5 Q. And there came a time out there that police were using
6 crowd control measures. You told us about that?

7 A. Yes.

8 Q. And you kept thinking that this was surely going to end
9 soon. Right?

10 A. Yes.

11 Q. But you did have the power to walk away. Right?

12 A. Yes. I just hadn't received any information back about
13 what to do, so I wasn't sure what I should do.

14 Q. You thought that maybe it might be helpful for you to
15 observe and report back to the FBI; is that what you're
16 suggesting?

17 A. To observe, yes.

18 Q. And you took some photos throughout the course of the
19 events. Right?

20 A. Yes.

21 Q. And you took some videos?

22 A. A few. Yeah.

23 Q. And you provided some of those to the FBI?

24 A. Yes.

25 Q. And there were photos and videos that you did not

1 provide to the FBI. Correct?

2 A. They flashed my phone, so they should have had
3 everything on it.

4 Q. You didn't delete any photos to save room on your phone?

5 A. I don't recall.

6 MR. MULROE: The Court's indulgence one moment.

7 BY MR. MULROE:

8 Q. Now, on that day, you were there with other guys from
9 your chapter. Right?

10 A. Yes.

11 Q. And you had a little bit of influence over these guys,
12 didn't you?

13 A. No. They wouldn't listen very much.

14 Q. Well, you were the one who told them to come to the
15 Washington Monument in the morning. Correct?

16 A. I told them that because that's what the chapter -- I
17 was the one the chapter president had relayed that to. So I
18 then shared.

19 Q. And they accepted that from you?

20 A. Yes.

21 Q. And certainly Ryan Ashlock respected you and listened to
22 you. Correct?

23 A. I would have to ask him.

24 Q. Well, you remember a time when you suggested to Ryan
25 Ashlock that he should come back a little bit from the front

1 lines?

2 A. Yes. And he didn't listen that time.

3 Q. He did or he didn't?

4 A. Did not.

5 Q. There was a time when he did listen to you, though,
6 didn't he?

7 A. Yeah. He was -- at that point, he was covering his
8 eyes, and I had to take him by the arm and lead him back
9 out.

10 Q. And he was just a first degree. Correct?

11 A. Yes.

12 Q. And he was under your wing so you could sort of mentor
13 him. Correct?

14 A. See if I could get him to calm down.

15 Q. If you had told Ryan Ashlock to leave, he might have
16 listened to you, wouldn't he have?

17 MR. SMITH: Objection. Speculation.

18 THE COURT: Sustained.

19 BY MR. MULROE:

20 Q. You never suggested to any of the guys that you were
21 with that you should leave, did you?

22 A. I was trying to get the guys to come down from the
23 front, but they were scattered.

24 Q. In your mind, you thought you all were making history.
25 Isn't that right?

1 A. I don't recall if I had that thought.

2 MR. MULROE: May we have, just for the witness,
3 Exhibit 1702, Page 44. If we could scroll down to the
4 middle of the page.

5 BY MR. MULROE:

6 Q. Take a look, sir, at lines -- starting at 10. See if
7 that refreshes your memory.

8 MR. SMITH: Your Honor, on this point, we're
9 objecting on the history -- the relevance to the -- making
10 history.

11 THE COURT: I'll overrule that objection.

12 BY MR. MULROE:

13 Q. Did you have a chance to look at the document on the
14 screen?

15 A. Yes.

16 Q. Does that refresh your memory about whether you believed
17 that you were -- that anyone who does that to the Capitol
18 has literally made history?

19 A. Yes.

20 Q. That's what you believed, wasn't it?

21 A. If it's there, then that's what I thought at the time.

22 Q. And you compared what was going on at the Capitol to the
23 civil rights movement from the '60s. Correct?

24 A. Yeah. We're still hearing about some of that stuff
25 today. Yes.

1 Q. Okay.

2 A. Just like the Challenger explosion. We still hear about
3 it. It's history.

4 MR. MULROE: We can take the document down.

5 BY MR. MULROE:

6 Q. So to be 100 percent clear, out there on the Capitol
7 grounds, you were not acting at the direction of the FBI.
8 Correct?

9 A. No.

10 Q. You were acting as an independent human being who would
11 make your own decisions. Right?

12 A. Attempting to do what I thought I might have -- what
13 they might want at that time.

14 Q. But you were not there as an agent of --

15 A. No.

16 Q. -- the United States Government in any formal sense.
17 Correct?

18 A. No.

19 Q. You were there as a Proud Boy, weren't you?

20 A. Yes.

21 MR. MULROE: Can we have 1712 just for the
22 witness, please. And we'll go to the 47-second mark. Maybe
23 just a split second more.

24 (Whereupon, segments of Government's Exhibit No.
25 1712 were published to the witness only.)

1 BY MR. MULROE:

2 Q. Sir, do you see yourself at the 47-second mark of this
3 exhibit?

4 A. Yes.

5 Q. And this is out there on the Capitol grounds during the
6 riot?

7 A. Yes.

8 MR. MULROE: Move to admit 1712.

9 MR. SMITH: No objection.

10 THE COURT: It will admitted and permission to
11 publish.

12 (Whereupon, Government's Exhibit No. 1712 was
13 entered into evidence.)

14 MR. MULROE: Just keeping it paused there for a
15 moment.

16 BY MR. MULROE:

17 Q. This is you on the right side of the screen. Correct?

18 A. Correct.

19 Q. And you're holding up your phone there. Correct?

20 A. Yes.

21 Q. And you're filming or taking a photo, aren't you?

22 A. Yes.

23 Q. And that is not one of the videos that you provided to
24 the FBI, is it?

25 A. I'm sorry?

1 Q. That's not one of the videos that you provided to the
2 FBI, is it?

3 A. They scanned my phone. They should have been able to
4 get it at that time.

5 Q. That wouldn't be one that you deleted beforehand to save
6 room on your phone?

7 A. I don't recall.

8 MR. MULROE: Let's go --

9 THE WITNESS: I think I still have a photo on my
10 phone somewhere from that angle.

11 MR. MULROE: Let's go back to the beginning,
12 please, and play the video.

13 (Whereupon, segments of Government's Exhibit No.
14 1712 were published in open court.)

15 MR. MULROE: Pause for a moment, please. Pause
16 for a moment.

17 BY MR. MULROE:

18 Q. Now, briefly, on the map behind you, do you see the
19 sticker that says Breach 3?

20 A. Yes.

21 Q. And that's a staircase there going up to the next level
22 of the Capitol. Correct?

23 A. Yes.

24 Q. And that's what we see here in the video?

25 A. Yes.

1 MR. MULROE: Let's play the video.

2 (Whereupon, segments of Government's Exhibit No.
3 1712 were published in open court.)

4 MR. SMITH: Your Honor, we would object to
5 cumulative.

6 MR. MULROE: Pause for a moment.

7 MR. SMITH: Cumulative.

8 THE COURT: Overruled.

9 MR. MULROE: Continue.

10 (Whereupon, segments of Government's Exhibit No.
11 1712 were published in open court.)

12 MR. MULROE: We can stop the video there at the
13 one-minute-11-second mark.

14 BY MR. MULROE:

15 Q. Sir, you told the FBI that you mostly stayed toward the
16 back of the crowd. Correct?

17 A. Back and left during most of the flash-banging and stuff
18 like that.

19 Q. The video that we just saw showed members of that crowd
20 pushing their way up those stairs. Correct?

21 A. Yes. It was -- there was a lot of pressure coming from
22 everyone around, pushing.

23 MR. MULROE: Can we have, just for the witness,
24 1713. And let's keep that paused but skip to the 58-second
25 mark.

1 (Whereupon, segments of Government's Exhibit No.
2 1713 were published to the witness.)

3 BY MR. MULROE:

4 Q. That's Chris Kuehne there with the helmet on?

5 A. Yes.

6 Q. And that's you standing right next to him?

7 A. Yes.

8 Q. And you're up close to the base of that scaffolding.

9 Correct?

10 A. I am. It's to the left side of all of that.

11 Q. That scaffolding that we just saw the crowd try to push
12 its way up into?

13 A. Yes.

14 MR. MULROE: Move to admit 1713.

15 MR. SMITH: No objection.

16 THE COURT: It will be admitted. And permission
17 to publish.

18 (Whereupon, Government's Exhibit No. 1713 was
19 entered into evidence.)

20 MR. MULROE: And we'll play that one from the
21 beginning, please, Ms. Rohde.

22 (Whereupon, segments of Government's Exhibit No.
23 1713 were published in open court.)

24 MR. MULROE: We can pause it there and we can take
25 that exhibit down.

1 BY MR. MULROE:

2 Q. Now, sir, while you were out there near the scaffolding,
3 you saw Chris Kuehne pass a fire extinguisher to someone.
4 Correct?

5 MR. SMITH: Objection. Scope, relevance, 403.

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

8 THE COURT: Mr. Mulroe, relevance and scope?

9 MR. MULROE: Again, I think if the testimony is
10 that the Proud Boys didn't do it, it's relevant what the
11 Proud Boys he was with did.

12 MR. SMITH: Your Honor, the testimony was not that
13 they didn't do it generally. The testimony was about one
14 thing he observed, the initial breach. He said they didn't
15 inspire that breach. He made it clear multiple times that's
16 what he's referring to. He didn't say they didn't do it
17 generally.

18 THE COURT: Mr. Mulroe, I think that's -- there's
19 a point there.

20 MR. MULROE: I'll move on.

21 (Whereupon, the following proceedings were had in
22 open court:)

23 THE COURT: The objection is sustained.

24 BY MR. MULROE:

25 Q. Now, there came a time, sir, when you went up those

1 stairs. Correct?

2 A. Yes.

3 Q. And made your way towards the building?

4 A. Yes. I paused for a while at the top of the stairs,
5 just observing the scene and thinking about all the chaos I
6 was witnessing.

7 Q. And you were near Billy Chrestman when you went up the
8 stairs?

9 A. I don't recall.

10 Q. You don't recall --

11 A. I know that I was near Chris.

12 Q. You don't recall hearing what Billy said on the way up
13 the stairs?

14 MR. SMITH: Objection, your Honor. This is the --
15 403. Your Honor has ruled.

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

18 MR. SMITH: Your Honor, this is --

19 THE COURT: Wait.

20 Mr. Mulroe, isn't this the same issue?

21 MR. MULROE: Well, if he says no, then I'll move
22 on.

23 THE COURT: Apart from the foundation, what's
24 the -- I understand asking him about what he did and all the
25 rest. But in this point, especially at this point in the

1 narrative, what is the relevance of asking about what his
2 associates did or said?

3 MR. MULROE: Well, the relevance, your Honor, is
4 that on the way up those stairs, Billy Chrestman was
5 thanking the people of the crowd around him, saying, Thank
6 you for helping us. Thank you for helping us Proud Boys.
7 And he's never reported that to the FBI. The video shows
8 it, but he's never reported it. So I think that goes to his
9 credibility. But again, if he says --

10 MR. SMITH: He can --

11 MR. MULROE: -- no, I didn't hear anything, your
12 Honor --

13 THE COURT: Mr. Smith, please.

14 Why would he report that? I mean, you know that a
15 particular person said that, that he would report that?
16 That's what your argument is?

17 MR. MULROE: Well, so he sends the text to the FBI
18 saying Proud Boys didn't do this or inspire. And then, in
19 subsequent interviews, he backs off that and says, I
20 actually saw Billy do this; I saw Billy do that.

21 Again, I don't know whether he heard it or not.
22 But if he heard Billy thanking the crowd for helping the
23 Proud Boys, I think that's material.

24 MR. SMITH: Your Honor, in the scope, we've never
25 asked about Billy Chrestman or all these constellation of

1 individuals who are not in this case --

2 THE COURT: I get it, Mr. Smith. Okay? But
3 there's bias and there's credibility and there's basically
4 things that undermine the point that you had him testify on
5 direct for.

6 And I take your point about -- your earlier point,
7 and I sustained the objection.

8 So, Mr. Mulroe, what say you to that? You know,
9 his prior statement and even his direct testimony -- I'm not
10 sure he said anything one way or the other about sort of
11 what was going on afterward and who was responsible for it.

12 I mean, does that really impeach his initial --
13 his testimony about what initially -- his initial, you know,
14 point about how this all got started?

15 MR. MULROE: Well, it's a small point. I'm
16 inclined to withdraw it and move on. I would say, though,
17 to the extent his post-event reporting to the FBI was
18 incomplete in material ways, I think that just goes to his
19 credibility as a general matter. But I'm happy to move on.

20 THE COURT: I would say to you, in theory, you
21 might be right. But I haven't been -- I don't have that
22 reporting and I don't have a way of teeing all that up. So
23 if you'll move on, then we won't have to worry about it.

24 MR. MULROE: Yes, your Honor.

25 (Whereupon, the following proceedings were had in

1 open court:)

2 BY MR. MULROE:

3 Q. So, sir, there came a time when you decided you were
4 going to go in the building. Right?

5 A. Yes.

6 Q. And you knew that was wrong?

7 A. I thought that it would be acceptable if it was to
8 prevent worse acts from happening inside, that I could
9 justify going in there.

10 Q. You knew that going into the building was illegal and,
11 because you knew that, you hesitated before you went in.
12 Correct?

13 A. I didn't have those exact thoughts. I just had
14 originally thought that this is as far as I need to go.

15 Q. And because you knew it was wrong to go in the building,
16 you tried to give Chris Kuehne an excuse not to --

17 MR. SMITH: Your Honor, scope, relevance. We
18 just -- rule -- the law of the case.

19 THE COURT: All right. All right.

20 The objection is sustained.

21 BY MR. MULROE:

22 Q. But you did go in together, didn't you?

23 A. Yes.

24 Q. You knew very well that the FBI had not given you
25 authorization to break the law in this way?

1 A. I did not receive authorization prior.

2 Q. And, later on, you explained to the FBI what you
3 believed was a justification for going in the building.
4 Correct?

5 A. Correct.

6 Q. And please tell me if I'm mischaracterizing this, but
7 your justification for going in the building was that you
8 knew there was a lot of valuable artwork inside and you
9 thought that if you went in there, you might be able to
10 rescue the antiquities from the rioters who might steal or
11 damage them. Is that basically right?

12 A. That sounds very weird. A comment had been made
13 where -- I believe it was Enrique Colon who said, I hope
14 they're not destroying items of historical significance or
15 historical artifacts.

16 And that's when I was, like, Oh, well, I -- you
17 know, I didn't like the image of paintings from the 1700s
18 being ripped off or something. I've never been in the
19 Capitol prior, so I didn't know if that stuff was in there,
20 but I assumed it might be.

21 Q. And you thought that you and the guys you were with
22 might be able to --

23 A. Stop people from damaging it.

24 Q. And protect the antiquities?

25 A. Yeah.

1 Q. Before you went inside, you saw people being forced out
2 of one of the doors. Correct?

3 A. A side door. I saw some people exit it, and it was
4 closed behind them.

5 Q. You say exit, but previously you've used the word
6 "forced" to describe the way people were expelled from that
7 building. Isn't that right?

8 A. Yeah. I may have said those words before.

9 Q. So you understood that the police were forcibly trying
10 to remove rioters from the building?

11 A. Yes. It looked like they had lost control.

12 Q. And you understand -- you understood at the time that
13 there were far more rioters than there were police officers.
14 Correct?

15 A. Yes.

16 Q. And you understood that, by going in that building, you
17 were going to make that disparity even worse?

18 A. Not by acting disrespectfully.

19 MR. MULROE: Can we have, just for the witness,
20 Exhibit 1714. And if we could play that without sound,
21 maybe start about halfway through.

22 (Whereupon, segments of Government's Exhibit No.
23 1714 were published to the witness.)

24 MR. MULROE: Pause there.

25

1 BY MR. MULROE:

2 Q. You saw yourself and Chris just walk by?

3 A. Yes.

4 Q. And this video shows the scene on the upper west terrace
5 shortly before you went inside?

6 A. Not shortly. I think it was a little while before I
7 went inside, actually. But I'm not sure about the timeframe
8 exactly.

9 Q. This was the time when you were up there on the terrace,
10 though. Correct?

11 A. Yes.

12 MR. MULROE: Move to admit 1714.

13 MR. SMITH: No objection.

14 THE COURT: It will be admitted and permission to
15 publish.

16 (Whereupon, Government's Exhibit No. 1714 was
17 entered into evidence.)

18 MR. MULROE: Let's turn the sound on and play that
19 from the beginning, please.

20 (Whereupon, segments of Government's Exhibit No.
21 1714 were published in open court.)

22 BY MR. MULROE:

23 Q. Sir, you saw those officers in the video?

24 A. Yes, I did.

25 Q. And they're all wearing helmets?

1 A. Yes, they are.

2 Q. And they're wearing face shields?

3 A. Yes, they are.

4 Q. They're wearing gas masks?

5 MR. SMITH: Objection. Relevance. Cumulative.
6 Waste of time.

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

9 THE COURT: Mr. Mulroe, I see what you're doing
10 here. I just don't see what it has to do with his direct.

11 MR. MULROE: It's impeachment, your Honor. And
12 Mr. Smith's direct took this witness all the way into the
13 building and portrayed him as being somebody who was trying
14 to deescalate. I'm entitled to rebut that. I mean, these
15 were the circumstances that he walked right past and decided
16 to enter that building.

17 THE COURT: All right. You convinced me.

18 MR. SMITH: Your Honor, multiple questions about
19 what they're wearing. Your Honor, this is cumulative.

20 THE COURT: I'll give him a little bit of leeway.

21 (Whereupon, the following proceedings were had in
22 open court:)

23 BY MR. MULROE:

24 Q. Officers had gas masks?

25 A. Yes.

1 Q. And they were carrying batons?

2 A. I believe so.

3 Q. And you heard the crowd chanting, "You're on the wrong
4 side"?

5 A. I did hear that just now.

6 Q. And you and Chris walked right past that line of
7 officers, walked right by them?

8 A. Along in front of them.

9 Q. And your testimony to this jury is that after getting
10 past all those barricades and making your way to the upper
11 west terrace, you saw those police in the riot gear lined up
12 shoulder to shoulder, and you decided that what would help
13 the situation was if you and Chris could find your way into
14 the building that they were trying to force people out of?

15 A. No.

16 Q. Your feet weren't hurting you anymore at that point,
17 were they?

18 MR. PATTIS: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: I had had Ibuprofen. Things were
21 feeling a little better at the time.

22 BY MR. MULROE:

23 Q. And then you entered the building. Correct?

24 A. No. I don't recall that scene exactly. And I'm sitting
25 here trying to remember seeing police up there and I just

1 can't right now, unfortunately. I apologize.

2 But when we decided to go in, there were people
3 who had already been streaming in for a while. The line of
4 cops was not there when we decided to go in.

5 Q. Let's --

6 A. I don't even recall the police retreating from that
7 scene.

8 Q. Let's explore the timing of your going inside.

9 So you sent texts to the FBI that afternoon on the
10 6th, told them that you entered the building about 30
11 minutes after it was breached. Does that sound right?

12 A. That's what I believed at the time.

13 Q. And that -- well, you say that's what you believed at
14 the time. That's false, isn't it?

15 A. I'm not 100 percent sure.

16 MR. MULROE: Let's have Exhibit 112, please, which
17 I believe is in evidence.

18 MR. SMITH: Objection. Scope, relevance, 403.

19 THE COURT: Overruled.

20 MR. MULROE: Let's play for a few moments,
21 Ms. Rohde.

22 MR. PATTIS: The number again, please, sir?

23 MR. MULROE: This is 112.

24 MR. SMITH: Your Honor, the foundation hasn't been
25 laid with this witness.

1 THE COURT: The -- if I could have counsel.

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

4 MR. SMITH: Your Honor, he didn't say he had
5 witnessed this while watching this.

6 THE COURT: First of all, it's in evidence
7 already. I understand the reason -- the foundation issue.

8 But, Mr. Mulroe, what questions are you going to
9 ask him that you're going to be able to lay a foundation
10 for?

11 MR. MULROE: Here's the steps, your Honor: We're
12 going to show the first rioters entering the building,
13 pointing out the timestamp of 2:12, 2:13.

14 We are then going to show him entering the
15 building and show the timestamp that is approximately 12
16 minutes later, not 30 minutes as he has claimed. So that's
17 impeaching him and impeaching his credibility.

18 MR. SMITH: 30 minutes after what, your Honor?

19 MR. MULROE: 30 minutes after the first rioter
20 breached the building.

21 THE COURT: But --

22 MR. SMITH: So what --

23 THE COURT: Mr. Smith, hold on.

24 How is that impeaching him? When did he -- when
25 did he say that? On direct? Is that what you're saying,

1 Mr. Mulroe?

2 MR. MULROE: He said it in the exact same text
3 exchange he had with the FBI. That was the source of "the
4 Proud Boys did not do this" line. So this is all going to
5 minimizing -- he's trying to minimize his involvement and
6 minimize his culpability and those of his associates.

7 MR. SMITH: Your Honor, we just ask that you look
8 at the text message which shows that Mr. Mulroe is not
9 accurately representing what the witness told the FBI. He
10 did not say he entered only 30 minutes after the building
11 was first breached. He said the Capitol. He's not
12 referring to this entrance, your Honor, in the text.

13 This is just shoehorning in the video of breaking
14 windows, which he did not see.

15 THE COURT: Again, I'm not worried about 403 here
16 because you've seen the video. The video is in evidence.
17 But I guess, Mr. Mulroe, we have to -- there it is. Okay.
18 So...

19 (Displaying text.)

20 MR. SMITH: Your Honor, it's not clear what breach
21 he's referring to there. It says 30 minutes after.
22 Mr. Mulroe is saying here was a breach of one sector. This
23 is arbitrarily choosing. That doesn't impeach the witness.
24 It's just displaying information he hasn't seen.

25 THE COURT: I have given, starting with defense, a

1 lot of leeway to impeach witnesses with things when -- even
2 when the question of whether it truly impeaches was close.

3 So, Mr. Mulroe, I'll give you a little leeway to
4 do this. I don't know how much value, frankly, there is one
5 way or the other, though.

6 MR. MULROE: Thank you, your Honor.

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

9 BY MR. MULROE:

10 Q. Just keeping 1723 up for a moment. Sir, this is a
11 message that you sent the FBI on the afternoon of the 6th?

12 A. Yes.

13 MR. MULROE: Move to admit 1723.

14 MR. SMITH: No objection.

15 THE COURT: It will be admitted. And permission
16 to publish.

17 (Whereupon, Government's Exhibit No. 1723 was
18 entered into evidence.)

19 BY MR. MULROE:

20 Q. Here you said, "We entered the building 30 minutes after
21 the building was breached." Correct?

22 A. Correct.

23 MR. MULROE: Let's go back to 112, please. If we
24 can skip to about 45 seconds. Play.

25 (Whereupon, segments of Government's Exhibit No.

1 112 were published in open court.)

2 BY MR. MULROE:

3 Q. Do you see that window break?

4 A. Yes.

5 Q. Do you see the board come through?

6 A. Yes.

7 MR. MULROE: If we could pause there.

8 BY MR. MULROE:

9 Q. Sir, the timestamp up in the upper left is about 2:13
10 p.m. Correct?

11 A. Yes.

12 MR. MULROE: Let's have Exhibit 113, please.

13 (Whereupon, segments of Government's Exhibit No.
14 113 were published in open court.)

15 MR. MULROE: Let's pause there.

16 BY MR. MULROE:

17 Q. Do you see yourself come through that door?

18 A. Yes.

19 Q. That timestamp is 2:25 p.m.?

20 A. Yes. What was the previous timestamp again?

21 Q. If I told you the previous one was 2:13 p.m., does that
22 sound about right?

23 A. Okay.

24 Q. That's about 12 minutes, right, not 30 minutes, like you
25 told the FBI?

1 A. Yeah. I was confused about the times. It seemed like
2 it had been longer.

3 MR. MULROE: Let's keep playing that.

4 (Whereupon, segments of Government's Exhibit No.
5 113 were published in open court.)

6 BY MR. MULROE:

7 Q. Do you see yourself filming a video again here?

8 A. Yes.

9 Q. Is it possible that is one of the videos that you
10 deleted from your phone?

11 MR. SMITH: Objection. Misstates the testimony.

12 THE COURT: Overruled.

13 MR. MULROE: Let's pause it.

14 BY MR. MULROE:

15 Q. I'll ask you this question, sir: You didn't give that
16 video to the FBI, did you?

17 A. I don't recall having done so.

18 Q. Now, when you gave an interview to the FBI about a week
19 after the riot, on January 13th, the FBI asked you whether
20 the doors, when you entered, looked like they were broken
21 open or forced open or if they were just open. And you told
22 them they were just open. Correct?

23 A. It looks that way to me right now, too.

24 Q. You didn't see fit to mention that the windows on either
25 side of that door had been smashed out and had people

1 climbing through them?

2 A. I didn't think about it.

3 Q. Once you were inside, you went to several different
4 parts of the building. Correct?

5 A. Yes.

6 Q. As you moved from place to place, you saw the police
7 retreating. Correct?

8 A. When I interacted with the guy with the chair, yes.

9 Q. And that's a word you've used, "retreating," as what the
10 police did. Correct?

11 A. I may have. I don't recall. But if it's in my
12 testimony, then I did.

13 Q. And you've also used the word "fleeing" to describe what
14 the police were doing. Correct?

15 A. It's possible.

16 Q. Let's firm that up.

17 MR. MULROE: Can we have, just for the witness,
18 1702, please, Page 54, bottom. Actually, the top of 55,
19 please.

20 MR. SMITH: Your Honor, we'll object on relevance,
21 scope and 403.

22 THE COURT: Very well. Overruled.

23 BY MR. MULROE:

24 Q. Does that refresh your memory of what the police were
25 doing in your words?

1 A. Yes.

2 Q. "Fleeing" is accurate. Correct?

3 A. Yeah. Well, at the time, there were cops at the top of
4 those stairs, when the one guy was in the tug of war, and I
5 remember the doors coming down when I --

6 Q. We'll --

7 A. -- put my hands on him. And so --

8 Q. Apologies for interrupting. We'll get to the doors in a
9 moment.

10 A. All right.

11 MR. SMITH: Your Honor --

12 THE COURT: Hold on. The witness is explaining
13 his answer.

14 You may proceed, sir.

15 THE WITNESS: And once the doors started going
16 back up, because it had been stopped by the guy who I had
17 put my hands on his shoulder of -- I think that's why they
18 went up; I could be wrong -- I noticed that even that other
19 officer had taken that moment to turn and run and had gotten
20 a distance. And then the person in question that -- with
21 the chair, he angrily threw the chair down the stairs in the
22 direction of the cops.

23 BY MR. MULROE:

24 Q. So the answer to the question of whether the police were
25 fleeing is yes?

1 A. Yes.

2 Q. They were fleeing because they felt threatened by this
3 crowd. Correct?

4 A. That's a good assessment.

5 Q. This crowd that vastly outnumbered them?

6 A. Yes.

7 Q. This crowd that you were a part of?

8 A. Yes.

9 Q. And there were times when the officers would move away
10 and then you and other members of the crowd would move in
11 that same direction after them. Correct?

12 A. Following the crowd, yes. That's what -- how the crowd
13 would react. Yes.

14 Q. And one of those times involved that big metal gate that
15 I think you were starting to tell us about. Is that right?

16 A. I believe so.

17 MR. MULROE: Could we have 178, which I believe is
18 in evidence.

19 BY MR. MULROE:

20 Q. Do you recognize the scene where the metal gate is?

21 A. Vaguely, yeah.

22 MR. MULROE: Let's play the video. We'll pause
23 that at 41 seconds.

24 (Whereupon, segments of Government's Exhibit No.
25 178 were published in open court.)

1 MR. MULROE: Pause that.

2 BY MR. MULROE:

3 Q. This guy in the goggles is the guy who you all picked up
4 in the morning and marched with you all day. Right?

5 A. Yes.

6 Q. And this is you on the left side?

7 A. Yes.

8 MR. MULROE: Let's play it until 52 seconds.

9 (Whereupon, segments of Government's Exhibit No.
10 178 were published in open court.)

11 BY MR. MULROE:

12 Q. Now, sir, this video has no sound. Correct?

13 A. Correct.

14 Q. But when you were there inside the Capitol, you were
15 hearing things and not just seeing things. Correct?

16 A. I believe so. Yes.

17 MR. MULROE: Ms. Harris, I apologize. Is 478
18 in evidence?

19 THE COURTROOM DEPUTY: Yes, it is.

20 MR. MULROE: Let's have 478, please.

21 MR. SMITH: Your Honor, we would object on scope
22 at this point. Scope. 403. Cumulative.

23 THE COURT: Overruled.

24 MR. MULROE: Let's play the video.

25 (Whereupon, segments of Government's Exhibit No.

1 478 were published in open court.)

2 BY MR. MULROE:

3 Q. Sir, that's what you were seeing and hearing after the
4 police fled. Correct?

5 A. Pretty much. Yeah. A lot of chaos.

6 MR. MULROE: Go back to 178, please. And start
7 this at the 15-second mark. We'll pause it at 24 seconds.

8 (Whereupon, segments of Government's Exhibit No.
9 178 were published in open court.)

10 BY MR. MULROE:

11 Q. This is the same big metal gate that we just saw you
12 standing next to. Correct?

13 A. Yes.

14 Q. And, sir, you'd agree with me that the people on the far
15 side of the gate are trying to slide furniture underneath
16 it?

17 A. Yes.

18 Q. You'd agree with me that the police are trying to clear
19 those obstructions out of the way?

20 A. Yes.

21 MR. MULROE: Let's play the video and then pause
22 it at 32 seconds.

23 (Whereupon, segments of Government's Exhibit No.
24 178 were published in open court.)

25

1 BY MR. MULROE:

2 Q. Do you see this officer on the left trying to hold or
3 push down that gate?

4 A. Yes.

5 MR. MULROE: Let's play it until 46 seconds.

6 (Whereupon, segments of Government's Exhibit No.
7 178 were published in open court.)

8 BY MR. MULROE:

9 Q. You'd agree with me, sir, that the police wanted that
10 gate closed?

11 MR. PATTIS: Object to the form. Vouching.

12 THE COURT: Overruled.

13 BY MR. MULROE:

14 Q. The police wanted that gate closed, didn't they?

15 A. From this point of view, yes. I wasn't considering that
16 when I walked up and put my hands on the other guy's
17 shoulder.

18 Q. That gate would have helped keep those officers safe
19 from the crowd that was --

20 MR. SMITH: Objection. Testifying. Relevance.
21 Scope.

22 THE COURT: Overruled.

23 MS. HERNANDEZ: Foundation.

24 BY MR. MULROE:

25 Q. The gate would have kept the officers safer --

1 MS. HERNANDEZ: Foundation.

2 THE COURT: Overruled as to the objection.

3 BY MR. MULROE:

4 Q. You can answer.

5 A. Having seen how many gates are in the video, even if
6 that one had gone all the way down, I don't know if one of
7 the others would have. But it appears that the cops wanted
8 it closed.

9 Q. But the rioters managed to keep that gate open, didn't
10 they?

11 A. Yes.

12 Q. And you helped them, didn't you?

13 A. No, I did not. I interrupted a guy who was messing with
14 the chair that the cop -- at the same time, at the corner
15 there.

16 MR. MULROE: Let's play the video and pause it at
17 one minute and 21 seconds.

18 (Whereupon, segments of Government's Exhibit No.
19 178 were published in open court.)

20 BY MR. MULROE:

21 Q. And I'll ask you to focus your attention on the left
22 side of the screen.

23 (Whereupon, segments of Government's Exhibit No.
24 178 were published in open court.)

25 MR. MULROE: Play it just a bit longer.

1 (Whereupon, segments of Government's Exhibit No.
2 178 were published in open court.)

3 MR. MULROE: Right there.

4 BY MR. MULROE:

5 Q. Sir, you and Chris moved that chair to the side and you
6 put the larger podium in the path of the gate, didn't you?

7 A. I -- if I recall correctly, I was being instructed at
8 that point.

9 Q. By the FBI?

10 A. No; by Chris to grab that.

11 Q. And so you didn't interrupt somebody from blocking the
12 gate; you yourself helped somebody block the gate. Isn't
13 that right?

14 A. I -- the gate was already blocked at that time. And
15 they had figured out how to stop it from coming down at that
16 point.

17 Q. And that podium was going to help make sure that gate
18 didn't close. Correct?

19 A. I believe that's the reason why I was asked to grab it.

20 Q. I want to ask this question as clearly as I possibly
21 can. Did the FBI tell you to put that podium under the
22 gate?

23 MR. SMITH: Objection. Asked and answered.
24 Argumentative.

25 THE COURT: Overruled.

1 THE WITNESS: No. And we had already discussed
2 the podium incident as well.

3 BY MR. MULROE:

4 Q. You and another Proud Boy put that podium under the
5 gate, didn't you?

6 A. Correct.

7 Q. Now, eventually, you went past that gate and went into a
8 lower level of the Capitol. Correct?

9 A. We did.

10 Q. And that was where you testified on direct that you
11 thought there was an entrance to the House chamber?

12 A. Yeah. I may be wrong. But...

13 Q. You're not an expert on the layout of the Capitol.
14 Correct?

15 A. Correct.

16 Q. And at some point down there, you decided you would
17 leave the Capitol. Correct?

18 A. Yes.

19 Q. And there was something that happened that caused you to
20 decide to leave. Correct?

21 A. Before that something happened, I was already trying to
22 get people to leave.

23 MR. MULROE: Can we have, just for the witness,
24 1718.

25 The Court's indulgence.

1 Ms. Harris, could we have the podium screen
2 activated?

3 Playing for the witness, without sound, what will
4 be marked Government Exhibit 1718.

5 (Whereupon, segments of Government's Exhibit No.
6 1718 were published to the witness.)

7 BY MR. MULROE:

8 Q. Sir, do you recognize this video?

9 A. I believe so.

10 Q. This is one that you took and provided to the FBI?

11 A. Yes.

12 MR. MULROE: I would move to admit 1718.

13 THE COURT: It will be admitted. And permission
14 to publish.

15 (Whereupon, Government's Exhibit No. 1718 was
16 entered into evidence.)

17 (Whereupon, segments of Government's Exhibit No.
18 1718 were published in open court.)

19 BY MR. MULROE:

20 Q. Sir, I think I played the wrong video. That's the one
21 you saw on direct that Mr. Smith showed you. Correct?

22 A. Yes.

23 MR. MULROE: Screen just for the witness, please.

24 (Whereupon, segments of Government's Exhibit No.
25 1719 were published to the witness.)

1 BY MR. MULROE:

2 Q. Do you recognize that as a video you took?

3 A. Yes.

4 MR. MULROE: I'd move to admit what we'll mark
5 1719.

6 MR. SMITH: No objection.

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

9 (Whereupon, Government's Exhibit No. 1719 was
10 entered into evidence.)

11 (Whereupon, segments of Government's Exhibit No.
12 1719 were published in open court.)

13 BY MR. MULROE:

14 Q. And that was what made you realize it was really time to
15 go. Correct?

16 A. That was after the -- that happened after the previous
17 video. And then we -- people were more listening -- well,
18 telling them that it was time to go.

19 Q. And then you did leave the Capitol after that. Correct?

20 A. I did. And -- yeah.

21 Q. Now, after January 6th, as we've discussed, you met with
22 the FBI a few times?

23 A. Correct.

24 Q. And you answered some of the questions that they had for
25 you?

1 A. Yes.

2 Q. And there came a time when it became a matter of public
3 speculation that you might be a confidential --

4 MR. SMITH: Objection. Relevance. Scope. 403.

5 THE COURT: Let's just...

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

8 THE COURT: Mr. Mulroe, given the rulings have
9 been a little unclear here --

10 MR. MULROE: Your Honor, this is the same
11 relevance as the identical line of questioning with defense
12 witness Travis Nugent, who testified last week. If there's
13 people out there putting pressure on him not to cooperate
14 with the Government, that's something that goes to his
15 credibility.

16 MR. SMITH: Your Honor, at that point, we were
17 going to bring up that the Government has been referencing
18 his place of residence during direct examination and it
19 exposes him. The door will be opened to Mr. Mulroe's
20 cross-examination about Kansas City, your Honor. And we
21 will go there if this door is opened. That would be
22 entirely appropriate, because the threats would be coming
23 from this prosecutor's references to his place of residence.

24 THE COURT: Mr. -- he's not going to say that
25 right now. He's -- the question is going to be agnostic.

1 He's just going to be saying that there are people saying he
2 shouldn't be cooperating with the Government. I guess I
3 don't understand.

4 MR. SMITH: Your Honor, that will come from --
5 that will come from the public understanding where this
6 individual was from. And that is -- and that will come
7 from -- into the public understanding where he's coming
8 from. And that goes to this witness requesting that his
9 place of residence not be referenced in this examination
10 because he is being threatened as a result of media
11 attention.

12 THE COURT: But I didn't rule that it was. I
13 didn't rule that it would be.

14 So how can -- I don't understand. You asked
15 me for a ruling and I did not -- I said his address, but I
16 said it was --

17 MR. SMITH: Well, that's fair, too. We would say
18 that was also fair, too, as well, your Honor, that Mr. -- he
19 has requested that references to his place of residence not
20 be played in this trial. It was denied. That is the cause
21 of his fear.

22 THE COURT: We will talk about whether this
23 opens -- I'm not going to make a ruling on that in advance.

24 Mr. Mulroe, if you go here, Mr. Smith may make
25 that request and I'll take it up at that time. So you

1 decide whether you want to go here, at least potentially
2 opening the door. I don't know whether you have or not.

3 MR. MULROE: Yes, your Honor.

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

6 BY MR. MULROE:

7 Q. Sir, there came a time after January 6th where certain
8 members of the public speculated that you might be a
9 confidential human source for the FBI. Correct?

10 A. Yes.

11 Q. And that's been pretty hard on you, hasn't it?

12 A. Yes.

13 Q. Fair to say there are people out there who really don't
14 like the idea of you talking to the FBI about the Proud
15 Boys?

16 A. Yes.

17 Q. Sir, I want to ask you this last question so you can set
18 the record straight. You never wanted --

19 MS. HERNANDEZ: Objection.

20 THE COURT: Overruled. Overruled.

21 BY MR. MULROE:

22 Q. You never wanted to hurt the Proud Boys, did you?

23 A. I didn't want -- if someone was innocent of something
24 that they were being accused of and I had information that
25 could help, then I'd help. If not, I wouldn't. Like, with

1 certain things that one of them openly said to me. You
2 know, I didn't know about those facts at the time. But
3 afterwards, I had no choice but to report it when asked.

4 MR. MULROE: Thank you, sir.

5 No further questions.

6 THE COURT: All right.

7 MR. MULROE: May we have a sidebar, briefly, your
8 Honor?

9 THE COURT: Yes.

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

12 MR. SMITH: Your Honor, we'd like to proceed.

13 THE COURT: We may as well deal with this
14 lingering issue up front, if that's what you intend to go
15 forward with, Mr. Mulroe.

16 MR. MULROE: Yes, your Honor. I know your Honor
17 just reserved ruling a moment ago.

18 I think it is absurd to suggest that me asking
19 these final questions opened the door for Mr. Smith to
20 accuse the Government of putting this witness in danger.

21 The --

22 MR. SMITH: Your Honor --

23 MR. MULROE: -- reason that --

24 THE COURT: Mr. Smith, will you let him speak? I
25 mean, this isn't an issue of federal court; this is issue of

1 things you learn in kindergarten.

2 You may proceed, Mr. Mulroe.

3 MR. MULROE: Thank you, your Honor.

4 So I mean, he says now he's not going to ask the
5 question. But he was very eager to just a few minutes ago.

6 I just want to be perfectly clear that any
7 insinuation that the Government has done wrongdoing or done
8 this witness wrong I think is just false and inflammatory.
9 And it has no bearing on the testimony, no bearing on this
10 witness's credibility and ought to be categorically excluded
11 from redirect.

12 THE COURT: Mr. Smith?

13 MR. SMITH: Your Honor, we'd like to proceed. And
14 we're not going to ask this question.

15 We object to the comment that the Court just made
16 about me, which I think is inappropriate.

17 THE COURT: Mr. Smith, you know inappropriate.
18 That's for sure.

19 Listen, I've --

20 MR. SMITH: I take exception to that as well, your
21 Honor.

22 THE COURT: I'm sure you do.

23 But you don't yield to let me speak. You don't
24 yield to let your fellow defense lawyers speak. You don't
25 yield to let the prosecutor speak. So it's been a problem.

1 That's why I'm chastising you.

2 Now, if you're not going to insinuate the
3 Government created any harm here, then I have nothing to
4 rule on. Is that correct?

5 MR. SMITH: It's not an insinuation; it's the
6 truth. We're not getting into it, your Honor.

7 May we proceed?

8 THE COURT: If you're not getting into that,
9 that's fine.

10 MR. SMITH: Thank you, your Honor.

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

13 REDIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Good afternoon. Just a few questions for you, Aaron.

16 You were asked at the beginning of your
17 cross-examination about the December 12th rally in
18 Washington, D.C.

19 Do you remember that?

20 A. Yes.

21 Q. And did you testify that you let agents know, the agents
22 you were working with, that you would be going to
23 Washington, D.C., on December 12th?

24 A. When they asked me if I was.

25 Q. Did they tell you at that point not to go?

1 A. No.

2 Q. Afterwards, after you attended the rally, did the agents
3 suggest you had done something wrong by attending that
4 rally?

5 A. No.

6 Q. Did the agents indicate that that rally had some
7 connection to the events of January 6th in your
8 conversations with them after?

9 A. No.

10 Q. Did you understand that that rally had some connection
11 to the events of January 6th?

12 A. I thought they were two separate events.

13 Q. The prosecutor asked you -- moving forward to
14 January 6th now, the prosecutor asked you about guidance
15 that someone in the group you went to Washington, D.C., with
16 may have given you about January 6th.

17 Do you remember the question about guidance?

18 A. Vaguely. Could you reiterate it?

19 Q. The prosecutor asked whether someone in the group you
20 traveled with spoke about, quote, "Conflict that was almost
21 certain."

22 Do you remember that comment?

23 A. In the -- are you referring to the messages in the chat?

24 Q. Yes.

25 A. Okay.

1 Q. Do you remember that comment that someone else made:
2 Conflict is almost certain?

3 A. I remember it from seeing it today.

4 Q. Do you have any reason to think that that was a
5 reference to conflict with members of Congress in the
6 Capitol on January 6th?

7 A. No. In acts of self-defense against Antifa, which may
8 have been blown out of proportion by everyone that believed
9 that they were literally going to attack.

10 Q. Is it your understanding that sometimes messages that
11 would be sent in chat groups like that were hyperbolic?

12 MR. MULROE: Object to leading.

13 THE COURT: Sustained as to leading.

14 BY MR. SMITH:

15 Q. Is it or is it not your understanding that some of those
16 messages would be hyperbolic?

17 A. Define "hyperbolic."

18 Q. It means not meant to be taken literally.

19 A. Yes. Kind of like two guys bragging about the size of
20 the fish they're going to go catch the next day when -- you
21 know.

22 Q. So do you recall that the prosecutor asked you about
23 when, during an interview with agents, you may have mixed up
24 the appearance of Ethan Nordean and another Defendant in
25 this case?

1 A. Yes.

2 Q. But -- do you recall that you testified you had a
3 meeting with agents in April of 2021?

4 A. I recall that. April 5th, maybe.

5 Q. And you were -- were you or were you not able to refer
6 to Ethan Nordean as Rufio during that interview?

7 A. I don't remember.

8 MR. SMITH: So I'm going to bring up, just for the
9 witness's review, the April 26th -- the April 5th, 2021,
10 interview.

11 BY MR. SMITH:

12 Q. So can you see the transcript on the page right there?

13 A. Yes.

14 Q. I just ask you to review that section that I've drawn a
15 yellow line next to.

16 A. Okay. Then -- yeah. All right.

17 Q. Do you recall referring to Mr. Nordean as Rufio in your
18 April 2021 interview with the FBI?

19 A. Yes, although I may have been confused if -- by his real
20 name later.

21 Q. Today, do you remember that I -- and during your
22 testimony today, I asked you about a man with a backwards
23 black baseball cap and sunglasses?

24 A. Yes.

25 Q. And is that -- do you understand today, having been on

1 the march, that that person is Ethan Nordean?

2 A. To my best knowledge, yes.

3 Q. Also known to you as Rufio?

4 A. I'm sorry?

5 Q. That person is also known to you as Rufio?

6 A. I believe that's the nickname that I've heard given.

7 MR. SMITH: I'm going to bring up what was marked
8 as Nordean Exhibit 6 and ask to publish that.

9 THE COURTROOM DEPUTY: What was the number again?

10 MR. SMITH: 6.

11 BY MR. SMITH:

12 Q. Aaron, do you recall testifying about this text message
13 that you sent?

14 A. Yes.

15 Q. You were asked a number of questions about the timing of
16 this and your possible motivations.

17 A. Yes.

18 Q. I've drawn a yellow line next to this section. It says,
19 "PB did not do it, nor inspire. The crowd did as herd
20 mentality, not organized."

21 Did you send that text message to the agent
22 because it was true?

23 A. It is what I believed to have witnessed and thought
24 true.

25 Q. Were you lying to the FBI agent?

1 A. No. I may have misunderstood the situation, but I could
2 only speak from what I knew at the time.

3 Q. So the prosecutor asked you some questions about the
4 timing of the text message.

5 Do you remember those?

6 A. Yes.

7 Q. And so I think -- did you testify that 12:00 p.m.
8 Central Time would be 1:00 p.m. Eastern Time?

9 A. Correct.

10 Q. Then the prosecutor -- do you recall that the prosecutor
11 showed you some images, some aerial shots, of a crowd that
12 was developing near the inaugural platform around 1:00 p.m.?

13 A. Yes.

14 Q. And was that kind of aerial shot near what's been marked
15 as Breach No. 3 on that map behind you?

16 A. I believe so.

17 Q. And -- but taking us back to the text message here, when
18 you said, "The crowd did as herd mentality," were you
19 referring -- if you look at the map behind you, were you
20 referring to Breach No. 1?

21 A. Correct.

22 Q. And you testified that you were looking at your phone
23 and -- did you testify that the -- you weren't sure if your
24 message had gone through to the agent at a certain point in
25 time?

1 MR. MULROE: Object to leading.

2 THE COURT: I mean, overruled.

3 THE WITNESS: Yes.

4 BY MR. SMITH:

5 Q. Okay. And do you recall that the prosecutor asked you
6 about your position on when the text was sent over a number
7 of interviews that you conducted with the Government?

8 A. Yes.

9 Q. Was your position consistent across those interviews?

10 A. Yes.

11 Q. Did they ever tell you that -- did they ever ask you
12 whether you had noticed any delay in the delivery of your
13 phone?

14 A. No, they didn't.

15 Q. But I think you testified in cross-examination that you
16 informed an agent about that problem?

17 A. Yes, because they had asked me, you know, about the time
18 consistency. And at the time, I said, Well, this is the
19 first time I've ever questioned the timing and, you know,
20 with my memory and all that.

21 And I kept thinking about it and remembering back
22 to that day, and that's when I remembered seeing the
23 "sending, sending, sending" still going on. And I thought,
24 oh, it must have been because it was being delayed with all
25 the traffic. And that's the only way I could, in my

1 opinion, believe that -- why it wouldn't have gone earlier.

2 Q. Are you telling the truth right now?

3 A. Yes. That is my belief.

4 Q. You're sure about that?

5 A. Yes. I'm not a technical guy, though, so I can't speak
6 to that. But that's what I believe.

7 Q. You testified that you've been working in various
8 capacities for the FBI since 2008?

9 A. Yes.

10 Q. Have the agents you've ever been working with told you
11 you're a liar?

12 MR. MULROE: Object to relevance, character
13 evidence, improper opinion evidence and 403.

14 THE COURT: Overruled.

15 THE WITNESS: No.

16 BY MR. SMITH:

17 Q. And when you met with the agents about January 6th in
18 January and April of 2021, you discussed this text message.
19 Correct?

20 A. I believe it's possible that it was discussed during one
21 or both of those times.

22 Q. Did they suggest that this was a lie that you sent to
23 them?

24 MR. MULROE: Object to relevance.

25 THE WITNESS: No.

1 THE COURT: Overruled.

2 BY MR. SMITH:

3 Q. Aaron, when you sent that message "Proud Boys did not do
4 it, nor inspire," did you mean that nothing wrong had
5 happened at all in what you observed?

6 A. No. I should have been a little more articulate at the
7 time. But I was still kind of surprised by what happened,
8 so that was the best I could articulate at that time.

9 Q. Did you mean that the initial push of the crowd over the
10 barriers was spontaneous?

11 MR. MULROE: Object to leading.

12 THE COURT: Sustained.

13 BY MR. SMITH:

14 Q. Did you or did you not believe that -- did you mean that
15 the initial push of the crowd over the barriers was
16 spontaneous?

17 A. From my perspective, it appeared that way.

18 Q. After you sent that text message to the handler agent,
19 did he tell you that you should leave the area immediately?

20 A. No.

21 Q. Did he tell you to leave at all?

22 A. No.

23 Q. You testified that the agent would want you to tell him
24 about what happened after that breach. Right?

25 A. That was an assumption of mine.

1 Q. You were shown a message that you sent to the agent that
2 day that said, "Shouts of stop the vote."

3 Do you remember that message?

4 A. Yes.

5 Q. Were you referring to the crowd or were you referring to
6 the Proud Boys specifically?

7 A. The crowd in general.

8 MR. SMITH: I'm going to bring up what's been
9 marked as Government Exhibit 427. And I'm going to go to 45
10 seconds.

11 (Whereupon, segments of Government's Exhibit No.
12 427 were published in open court.)

13 BY MR. SMITH:

14 Q. Aaron, do you recognize this scene outside the Capitol
15 Building at the first breach marker on the map behind you?

16 A. Is that the first one?

17 Q. Well, do you recognize this as --

18 A. Yes.

19 Q. So -- the prosecutor was asking you some questions about
20 someone named Billy Chrestman. Do you remember those?

21 A. Yes.

22 Q. And he was asking you about whether you had ever said
23 something about Billy, or one of his associates, kicking
24 down a fence.

25 Do you remember that?

1 A. Billy had made a statement openly to me and others.

2 Q. And did you testify that that wasn't this fence, but
3 another fence?

4 A. I'm not -- from the way Billy worded it, it made me
5 think it was the first one.

6 Q. Okay. So looking on the screen right now, do you see
7 Billy Chrestman here?

8 A. I do not see him at that time.

9 Q. Do you see any of the Proud Boys members who were on the
10 march with you?

11 A. No.

12 Q. I'm going to move over a little bit, pan over to the
13 left here. Do you see Billy Chrestman in any of these
14 photographs --

15 A. No.

16 Q. -- images? Okay.

17 Now I'm going to pan a little bit to the right
18 here. You can see -- it looks like you can see this
19 individual with a red baseball cap and a blue shirt on. Can
20 you see that? I've circled it.

21 A. Yes.

22 Q. Do you know that person?

23 A. Is there one where I could see his face a little better?

24 Q. There is. I can get back to that.

25 But do you recall seeing someone dressed like that

1 with the Proud Boys?

2 A. At that time, no. And not marching with them. I don't
3 recall.

4 MR. SMITH: I'll just play this here.

5 (Whereupon, segments of Government's Exhibit No.
6 427 were published in open court.)

7 BY MR. SMITH:

8 Q. Do these figures in the yellow I've drawn here appear to
9 be pulling the fence down?

10 A. Do they appear what?

11 Q. To be pulling the fence down?

12 MR. MULROE: Object to leading.

13 THE COURT: Sustained.

14 MR. MULROE: I'd also object on foundation and 403
15 if the witness was not in a position to observe the events
16 in these videos.

17 MR. SMITH: Your Honor, he's testified about a
18 number of videos that he wasn't immediately in front of,
19 including some that the prosecution showed.

20 MR. MULROE: I don't think that's right.

21 THE COURT: Mr. Smith, I'm not sure -- let me hear
22 you.

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

25 MR. SMITH: Your Honor, the Government suggested

1 that there was a number of people right behind this crowd
2 right here at this moment.

3 So I'm not following the objection here.

4 THE COURT: Well, I do think -- so, Mr. Mulroe,
5 your objection evaporates if Mr. Smith asks him, Was he
6 adjacent to this. Correct? Because that was the
7 back-and-forth about where he was.

8 MR. MULROE: I would put it just a little bit
9 differently. "Did you see this?" If he was near it, but it
10 was completely obscured to him, I don't think he can testify
11 to that.

12 THE COURT: Sure. I suppose.

13 But why don't you just -- given where he was, I
14 think you'll get the response you probably want. But even
15 if you don't, I guess you're going to argue to me,
16 Mr. Smith, that if his --

17 Look, Mr. Mulroe, he gave that statement about how
18 this all went down. If he couldn't -- even if he couldn't
19 see it, I'm not sure it's improper for Mr. Smith to ask him
20 questions about what he's seeing now and whether he sees
21 anybody he recognizes and all the rest. Isn't that fair?

22 MR. MULROE: I think it's fair.

23 I think there's, you know, lines to draw. I think
24 that the more far from the events the witness was -- he
25 can't just show him any old video and ask him to comment on

1 it. So I think it's a judgment call.

2 THE COURT: Sure. Except that not just his
3 testimony, but the texts -- the reason he's here is because
4 of this moment. And asking him about, Well, do you see this
5 person you marched with or that person or nobody, frankly, I
6 think is probably fair.

7 You may proceed, Mr. Smith.

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

10 BY MR. SMITH:

11 Q. Aaron, I'm going to ask you about this video here.

12 You testified that you were not on this front line
13 but somewhere in the crowd behind these people. Correct?

14 A. Yes.

15 Q. Do you see Billy Chrestman among any of these
16 individuals?

17 A. No.

18 Q. Do you see individuals pulling the fence down?

19 A. Could I see the film in motion?

20 Q. Yes.

21 (Whereupon, segments of Government's Exhibit No.
22 427 were published in open court.)

23 THE WITNESS: Yes.

24 BY MR. SMITH:

25 Q. Do you recognize any of these people as being among

1 those on the march with you?

2 A. No.

3 MR. SMITH: I'm going to play this -- keep playing
4 it at this moment, at 58 seconds.

5 (Whereupon, segments of Government's Exhibit No.
6 427 were published in open court.)

7 BY MR. SMITH:

8 Q. Can you see the individuals in the foreground here that
9 I've drawn a yellow circle over?

10 A. Yes.

11 Q. Is Billy Chrestman among those?

12 A. I do not see him.

13 Q. Do you recognize any of these individuals as among the
14 members of the marching group you were with?

15 A. I don't think I recognize them.

16 (Whereupon, segments of Government's Exhibit No.
17 427 were published in open court.)

18 BY MR. SMITH:

19 Q. Do you see Billy Chrestman in this image?

20 A. No.

21 (Whereupon, segments of Government's Exhibit No.
22 427 were published in open court.)

23 MR. SMITH: I'm going to freeze this right here.

24 BY MR. SMITH:

25 Q. We've panned over to the left. Do you see people still

1 pushing through the fence at this point?

2 A. Yes.

3 Q. Do you see Billy Chrestman there?

4 A. No.

5 Q. The prosecutor asked you some questions about
6 Mr. Chrestman interacting with Ethan Nordean.

7 Do you remember that?

8 A. When he was asking if people could walk along with, I
9 believe, yes.

10 Q. Did you observe Mr. Nordean giving directions to Billy
11 Chrestman?

12 A. I don't recall that. And if I was standing nearby in a
13 video, I may not have known what he was doing or what have
14 you.

15 MR. SMITH: I'm going to bring up Nordean Exhibit
16 301 at three hours and 12 minutes.

17 Permission to publish that.

18 (Whereupon, segments of Defendant Nordean's
19 Exhibit 301 were published in open court.)

20 BY MR. SMITH:

21 Q. Aaron, do you remember being asked about Billy Chrestman
22 approaching Mr. Nordean here?

23 A. Yes.

24 Q. Did you hear what Mr. Chrestman said to Mr. Nordean?

25 A. Earlier when the video was played?

1 Q. No; I mean in -- in real life.

2 A. I don't recall.

3 Q. Do you recall whether Mr. Nordean gave any directions to
4 Mr. Chrestman there?

5 A. Off the top of my head, no. I think I was led to
6 believe, though, that it was okay to have other people walk
7 behind us. Billy talked a lot that day. I can't recall
8 exactly how I got that. I'd have to read my testimony to
9 refresh my memory.

10 Q. I think at one point the prosecutor suggested that --
11 during cross-examination -- that at various points you did
12 not tell anyone they should leave the premises at the
13 Capitol.

14 Do you remember that?

15 A. Correct.

16 MR. SMITH: I'm going to bring up what was marked
17 as Nordean Exhibit 7. We'll play this. This is Nordean 7.

18 Thank you.

19 (Whereupon, segments of Defendant Nordean's
20 Exhibit 7 were published in open court.)

21 BY MR. SMITH:

22 Q. Did you hear yourself at the end say, "Let's go"?

23 A. Yes.

24 Q. What did you mean by that?

25 A. I was just referencing to the people around, Let's go,

1 let's get out.

2 Q. The prosecutor showed you a couple of images where you
3 appeared to be using your phone camera to capture things at
4 the Capitol.

5 Do you remember those questions?

6 A. Yes.

7 Q. And the prosecutor suggested that you deleted them
8 before your phone was copied by the FBI.

9 Do you remember those questions?

10 A. Yes.

11 Q. Did you delete videos before your phone was copied by
12 the FBI?

13 A. I don't recall.

14 Q. The prosecutor showed you an image of you moving a
15 podium in the direction of a screen door that was closing.

16 Do you remember that?

17 A. Yes.

18 Q. Should you have done that?

19 A. Hindsight, now, no.

20 Q. Is your testimony about the text message you sent to the
21 agent -- does that have some connection to your relationship
22 with these Defendants?

23 A. No. Just what I was observing at the time.

24 Are you referring to those early on or those
25 later?

1 Q. I'm asking you whether you sent that text message
2 because you have sympathy for these Defendants.

3 A. No. At the time, I thought it was the Trump supporters
4 that had come from the rally that had taken it down.

5 Q. That had taken what down?

6 A. That first barrier.

7 Q. The prosecutor asked you whether you neglected to
8 mention that there were broken windows near the entrance
9 that you had -- entered into the Capitol.

10 Do you remember that suggestion?

11 A. Yes.

12 Q. You, in fact, told the FBI about those broken windows,
13 didn't you?

14 A. I believe I did read some of that on -- or I think I
15 read some of that on one of the testimony pages that were
16 shown up. Yes.

17 Q. Would you like me to refresh your recollection?

18 A. Please.

19 MR. SMITH: So I'm bringing up the April 5th,
20 2021, interview at Page 67.

21 BY MR. SMITH:

22 Q. Just review that and let me know if that refreshes your
23 recollection.

24 Did you discuss a broken window with the FBI?

25 A. When mentioning exiting out of a window.

1 Q. Right.

2 A. Yes.

3 Q. Did you exit through a window?

4 A. I did exit out of a window.

5 Q. Did you feel the need to hide that information from the
6 FBI?

7 A. No. That's the direction that the officers were guiding
8 us, out the window.

9 Q. You were also asked -- shown some images by the
10 prosecution about a man in fatigues who was carrying a
11 baseball bat. Do you remember that individual?

12 A. Yes. I don't recall his name.

13 Q. And you -- I think the prosecution asked whether you had
14 invited that person along the march.

15 A. He asked if he could join us because he was there alone,
16 and I said yes. But he knew he wasn't supposed to hang
17 around with us. It was just because we had time before
18 10:00.

19 Q. Did you ever see Ethan Nordean or Rufio giving
20 directions to that individual?

21 A. Not to my knowledge. No.

22 Q. Based on your experience walking with the marching
23 group, do you think it would have been feasible for the
24 leaders of the group to exercise complete control over who
25 was in and out of the group?

1 A. Could you rephrase that question?

2 Q. So you were asked a series of questions about whether
3 that individual with the fatigues and carrying a baseball
4 bat walked with the marching group or not.

5 Do you remember that question?

6 A. Yeah.

7 Q. Based on your observations of the marching group that
8 day and the leadership of the marching group, would it have
9 been feasible to exercise complete control over who was
10 walking with them or not?

11 A. That might have been a little better off to do. Yes.

12 Q. So you were asked about whether you were involved with
13 these Defendants in planning events for January 6th, 2021.

14 Do you remember that question?

15 A. Yes.

16 Q. And your answer was?

17 A. No.

18 Q. But were you able to observe, see and hear what the
19 leaders of the marching group were doing as you marched with
20 them along the way?

21 A. For the most part, yes.

22 Q. And is that the foundation on which you are making --
23 you testified that you did not understand the reason for
24 walking towards the Capitol to be to invade the Capitol
25 Building?

1 A. Correct.

2 Q. And is that the basis on which you testified that you
3 don't understand the purpose of walking towards the Capitol
4 to be to interfere with police officers at the Capitol
5 Building?

6 MR. MULROE: Object to leading.

7 THE COURT: Sustained.

8 BY MR. SMITH:

9 Q. Is that or is that not the basis for your testimony?

10 A. Could you --

11 Q. Yeah.

12 You testified that you personally observed some of
13 the leaders of the march along the way towards the Capitol
14 Building. Correct?

15 A. Yeah. When they'd tell us to stop for a photo op.

16 Q. Right.

17 And is it those personal observations of what you
18 saw that day, rather than text messages before January 6th,
19 that led to your testimony that you didn't think the purpose
20 of the march was to interfere with police officers?

21 MR. MULROE: Object to leading.

22 BY MR. SMITH:

23 Q. Is that or is that not your -- the basis?

24 A. That's correct.

25 MR. MULROE: I still object to leading.

1 THE COURT: Overruled.

2 THE WITNESS: That is correct. That's why I was
3 concerned that, you know, we'd be walked till we were tired
4 before we could try to make sure people got back to their
5 hotels safely that night from the rally.

6 BY MR. SMITH:

7 Q. And the prosecutor asked you about your statement
8 that -- to the FBI that you were so tired you weren't --
9 how -- is this group -- are these leaders going to march us
10 around all the night until we confront Antifa?

11 Do you remember making that statement like that?

12 A. Yeah. That's what I was also just referring to.

13 Q. So it was your understanding that there would be some
14 marching in the evening regarding Antifa?

15 A. Yes. Defensively.

16 Q. Is that consistent or inconsistent with your
17 understanding that the purpose of the march did not entail
18 invading the Capitol?

19 A. It is consistent.

20 MR. SMITH: I think that's all my questions, your
21 Honor. Thank you.

22 THE COURT: All right. Very well.

23 Let me hear counsel at sidebar.

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

1 THE COURT: We do have to take a quick, I think,
2 break for the court reporter, regardless. But is there any
3 further request for redirect before I excuse this witness?

4 MS. HERNANDEZ: I wanted to redirect based on the
5 videos that the Government played.

6 THE COURT: And Mr. Roots?

7 MR. ROOTS: Yes. I also want to -- I guess it
8 was -- I would -- with regard to this cross about the video
9 our client was pictured in a picture.

10 THE COURT: You're not going to cross, because the
11 time for that has passed.

12 MR. ROOTS: Well, redirect.

13 THE COURT: Arguably, the time for redirect has
14 passed because I had asked everyone -- told everyone the
15 process was going to be the sponsor of the witness -- in
16 this case, Mr. Smith -- that he would have the last word.

17 And so, Mr. Pattis?

18 MR. ROOTS: Your Honor, if I could say, our client
19 was directly pictured in this cross-examination testimony.

20 THE COURT: Hold on one second.

21 Mr. Pattis?

22 MR. PATTIS: Judge, simply if I were to question,
23 it would be one question going to the fellow with the
24 camouflage. I don't recall if it came up in direct.
25 Mr. Smith asked whether Nordean directed him, but didn't ask

1 about Biggs.

2 If someone else is going to do a direct and they'd
3 fold that in, I don't need to get up, either.

4 THE COURT: We'll take our break and come back.

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

7 THE COURT: Ladies and gentlemen, we're going to
8 take our afternoon ten-minute break. We'll come back and
9 resume at that time.

10 (Whereupon, the jury exited the courtroom at 3:31
11 p.m. and the following proceedings were had:)

12 THE COURT: Sir, you may step down.

13 Everyone can be seated just for one moment.

14 So, look, I'd encourage counsel to speak during
15 our break about this. If we're going to -- I mean, in
16 general, that is how we have run things, that if there was
17 going to be any additional direct, that it happen before --
18 if there was going to be any redirect, that those who were
19 not sponsoring the witness should go first. So in this
20 case, Mr. Smith would have -- would be batting cleanup.

21 If we're talking about one question where it's
22 something that has come up that you just want to ask him one
23 question to exclude your client from, I might entertain it.

24 But I'd also -- I mean, I think part of the
25 question is whether Smith -- Mr. Smith would consent to

1 that.

2 So you all just take the break, discuss whether
3 this is really necessary and we'll -- I'll come back and
4 hear you on it if I need to.

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

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

10 THE COURT: You may be seated.

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

13 MR. PATTIS: Judge, on a personal matter, may I
14 have permission to arrive between 10:00 and 10:15 tomorrow?
15 I broke my glasses and I've located an optometrist, but they
16 don't open until 9:30. They're closing at 6:00, so I'm
17 going to go there and beg, borrow and steal to have them
18 repaired, but I won't be able to be here until 10:15.

19 THE COURT: We'll proceed with Mr. Hull?

20 MR. PATTIS: Yes.

21 THE COURT: Sorry about your glasses breaking.

22 He'll have counsel here. But I can tell, from
23 what Mr. McCullough is asking, that he thinks I should ask
24 Mr. Biggs if Mr. Biggs is fine with that arrangement.

25 Can he hear me?

1 MR. PATTIS: May I have a moment, Judge?

2 THE COURT: Yes.

3 (Mr. Pattis confers with Defendant Biggs
4 privately.)

5 DEFENDANT BIGGS: (Indicating.)

6 MR. PATTIS: That's acceptable to Mr. Biggs,
7 Judge.

8 I've explained to him the situation.

9 THE COURT: And I saw Mr. Biggs give me the
10 thumbs-up.

11 Mr. Biggs, do you want -- Mr. Hull, will you give
12 the phone to Mr. Biggs?

13 Mr. Biggs, it's fine if we proceed for an hour and
14 a half tomorrow morning with you represented by only
15 Mr. Hull and not Mr. Pattis?

16 DEFENDANT BIGGS: Your Honor, that's fine with me.

17 THE COURT: Thank you, sir.

18 MR. PATTIS: Thank you.

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

21 THE COURT: Have the parties -- before we bring
22 the jury back in, have the parties talked about what might
23 have -- I think where we left it was I was wondering --
24 well, I think the question is: What on cross has opened up
25 this issue for another Defendant to redirect, even when they

1 didn't direct?

2 MS. HERNANDEZ: I directed, your Honor.

3 THE COURT: Okay.

4 MS. HERNANDEZ: And I'm just going to redirect on
5 some of the videos that were -- it's fairly short. But he
6 was shown a number of videos with a number of people doing a
7 number of things. And I just want to -- I want to redirect
8 on that with respect to Mr. Rehl. It won't be very long.

9 THE COURT: And these were videos that were shown
10 on cross --

11 MS. HERNANDEZ: Correct.

12 THE COURT: -- for the first time that you did not
13 have the opportunity to, obviously, direct him on?

14 MS. HERNANDEZ: Correct.

15 THE COURT: All right. Mr. Roots? Same question
16 to you.

17 MR. ROOTS: Okay. I really want to ask about two
18 different little things. It won't even take that long.

19 But, number one was when Prosecutor Mulroe asked
20 the witness that, after the third time of meeting with the
21 FBI, he, quote, pushed -- the FBI, quote, "pushed you kind
22 of hard, didn't they?"

23 Okay. And that was to change his story, to try to
24 get the witness to change his story about the time of day
25 that he had sent that, basically, exculpatory text saying

1 that the Proud Boys did not inspire, did not do the first
2 breach.

3 So the FBI really was working hard to try to
4 change -- get that witness to change his story.

5 And I want to ask him: Were there threats? Were
6 there promises of payments? I want to ask that question.

7 THE COURT: Well, that can be your interpretation.
8 Just saying -- all right. That -- and that wasn't -- you
9 didn't have the ability to -- all right. Very well.

10 What's your other topic?

11 MR. ROOTS: The other one --

12 THE COURT: It's got to have come up so that -- on
13 the Government's cross.

14 MR. ROOTS: The other one has already been touched
15 upon, but not hard enough, which is the point that
16 Mr. Pezzola is seen in a picture that was displayed on cross
17 with Mr. Gieswein. And I want the witness -- I want to ask
18 the witness, Who's the scariest person in the picture? And
19 it obviously is Mr. Gieswein with all the body armor and the
20 club in his hand.

21 And by the way, the Government has made a huge
22 deal of that picture several times in this trial. It's the
23 scariest guy -- and the Government has made a big deal:
24 Here's a guy with a baseball bat standing next to my client.

25 And I want to -- again the point has been made,

1 but it hasn't been made strong enough, that you, an FBI
2 informant, got that guy into the walk with the Proud Boys
3 that morning. That's the point I want to make. It sort of
4 has been made, but not as strong as I think it deserves to
5 be made.

6 THE COURT: But that wasn't the testimony. I
7 mean, that wasn't -- the testimony was, the individual said,
8 Can I join? And he said, I don't know; we'll find out. And
9 other people said, You have to go to the back. He didn't
10 initiate it.

11 MR. ROOTS: I think it's pretty clear this guy did
12 actually vouch and get this -- get Mr. Gieswein into the
13 walk.

14 THE COURT: But there's no evidence of that.

15 Look, I don't know how that -- all right. So
16 those are the two things you want to ask.

17 Mr. Pattis.

18 MR. PATTIS: One area, sir. If it occurred on
19 direct, I'll stand corrected.

20 I recall Mr. Smith, in his redirect, asking about
21 the gathering at the Monument that morning and whether the
22 person in camouflage was invited into the group or whether
23 Mr. Nordean took any affirmative steps in effect to include
24 him in the group.

25 I'd like to ask about that and ask the same

1 question of Mr. Biggs. And if Ms. Hernández or Mr. Roots
2 can fold it into their examination, we don't need to pass
3 the baton. That's all I'm interested in.

4 THE COURT: I mean, I think all of that did come
5 up on --

6 MR. PATTIS: That came up on direct?

7 THE COURT: -- cross.

8 MR. PATTIS: I think it came up on cross --

9 THE COURT: No. I think you're right. I think
10 did. I don't think that was part of the direct, that whole
11 issue.

12 Mr. Mulroe, do you have an objection to this?

13 MR. MULROE: Your Honor, if you're inclined to
14 permit it, I don't think we would fight too hard on it. I
15 would suggest, though, that I think the appropriate question
16 on when new counsel can get up after the cross and ask
17 additional questions, it ought to be when there is something
18 particular to their client that has arisen.

19 I do think that some of what we heard from
20 Mr. Roots is things that don't have anything directly to do
21 with Pezzola. And we would just suggest that, moving
22 forward in the future, it certainly would be appropriate
23 for -- if he did not ask any questions and did not direct
24 the witness, certainly he could request that one of the
25 other Defendant's counsel who is conducting redirect could

1 address those issues.

2 But I am just concerned if, after every defense
3 witness, we're going to have this exercise of proffering
4 questions and deciding which ones. I fear that it could be
5 a protracted process.

6 THE COURT: It sounds like there isn't going to be
7 much here.

8 Mr. Roots, I'm not sure -- you know, on your
9 point, again, the question of who's the scariest one -- I
10 mean, look, your client was inserted into the cross with
11 that photo. If you want to ask questions about the photo, I
12 think it's fair.

13 I don't know how much that Person A is
14 scarier-looking in some way than Person B -- I'm not sure
15 how much that's going to get you. But you can ask questions
16 about that photograph, I think.

17 So let's just quickly bring them out and ask these
18 questions and move forward.

19 MS. HERNANDEZ: Your Honor, two things. I've been
20 having Mrs. Rehl waiting. She's got her baby with her. And
21 I understand -- how late is the Court going to go?

22 THE COURT: Oh. Thank you for raising that.

23 So we can go a little bit later. Today is
24 Wednesday. We can go to, say, 5:20. So if that gives us a
25 little more --

1 MS. HERNANDEZ: My understanding is the Government
2 is going to -- once we finish with this witness, we're going
3 to put the sergeant from the U.S. Capitol Police, and there
4 will be cross-examination. So I was just going to ask the
5 Court to allow me to release Mrs. Rehl. She's been here
6 since around 11:30, because the Court had indicated you
7 wanted us to have a third witness on board.

8 And it looks like --

9 THE COURT: I think, given where --

10 MS. HERNANDEZ: -- we're not going to finish today
11 anyway.

12 THE COURT: Is there an objection to that? Given
13 where we are, I think that's probably fair.

14 MR. McCULLOUGH: No.

15 MS. MOORE: No, your Honor.

16 THE COURT: All right. You may do that,
17 Ms. Hernández. Do you need a moment to go tell her?

18 MS. HERNANDEZ: I think someone is going.

19 THE COURT: Okay. Thank you.

20 MS. HERNANDEZ: Thank you.

21 Your Honor, with respect to the sergeant -- and
22 the Court indicated you were only going to allow me to
23 introduce certain documents.

24 I object. I had prepared a direct based on all
25 the documents because, although I know the Government had

1 some concerns about it, they had never actually filed an
2 objection, so I went forward.

3 In particular, there are -- I can go through it.
4 There were certain -- I'm going to ask about it --

5 THE COURT: I don't want to burn the time now.

6 MS. HERNANDEZ: I know. I understand. But you
7 told me you wanted me to --

8 THE COURT: Okay. I'm going to ask you on it
9 before you put your witness on.

10 MS. HERNANDEZ: I mean, there are -- all the
11 documents are documents that are official documents that are
12 either prepared or whatever.

13 Some of the documents have --

14 THE COURT: Okay.

15 MS. HERNANDEZ: -- information on them. The
16 demonstration endorsement sheet, for example, which is the
17 first page, has the whole series of sign-offs by different
18 people at the Capitol.

19 THE COURT: You're going to have to --
20 Ms. Hernández, I don't want to burn time with the jury
21 waiting. I've said I'll hear you before the witness takes
22 the stand. I will do that. But you're going to have to
23 demonstrate relevance --

24 MS. HERNANDEZ: Well --

25 THE COURT: -- and the things you're talking about

1 go to other things. They don't go to relevance.

2 MS. HERNANDEZ: Well, I believe they go to
3 relevance because they show all the sign-offs. The
4 application form itself has -- refers to First Amendment
5 activity, which the permit doesn't --

6 THE COURT: Ms. Hernández, I just said I'm not
7 going to hear you now, is what I said.

8 MS. HERNANDEZ: Oh, I thought you said you wanted
9 me to --

10 THE COURT: I said before the witness comes on,
11 I'll hear you, but we have the jury waiting.

12 MS. HERNANDEZ: I understand. I thought you said
13 you wanted it now.

14 THE COURT: Okay. Misunderstanding. Fair enough.

15 Mr. Pattis, I saw you --

16 MR. PATTIS: If there's going to be a break before
17 the next witness, I wanted to remind the Court about the
18 First Amendment limiting instruction. I didn't know whether
19 there was going to be a break before the next witness.

20 THE COURT: I've got it right here. I'm going to
21 give it as soon as I can. I thought I was going to give it
22 before, but now we have --

23 MR. PATTIS: Thank you.

24 THE COURT: -- this brief redirect.

25 So let's bring the jury back in and try to wrap

1 this witness up.

2 Mr. Pattis, do you want to go last in the theory
3 that maybe someone -- I don't know -- maybe you'll have --
4 maybe someone will be able to ask your question for you?

5 MR. PATTIS: Yes.

6 THE COURT: All right.

7 (Thereupon, the witness entered the courtroom and
8 the following proceedings were had:)

9 THE COURTROOM DEPUTY: Jury panel.

10 (Whereupon, the jury entered the courtroom at 4:02
11 p.m. and the following proceedings were had:)

12 THE COURT: Everyone may be seated.

13 REDIRECT EXAMINATION

14 BY MS. HERNANDEZ:

15 Q. Good afternoon, Aaron. I know it's been a long day.
16 Thank you. I represent Mr. Rehl. Before the Government
17 started asking you questions, I asked you a few questions
18 about Mr. Rehl. You didn't know him. But the Government
19 showed you a number of videos.

20 Does your -- is your testimony still that you
21 didn't recognize Mr. Rehl in any of those videos?

22 That's Mr. Rehl back there. Let me be more
23 precise. On January 6th at any time did Mr. Rehl tell you
24 to do anything or not do anything?

25 A. No.

1 Q. Did you see him knocking over fences or hitting a police
2 officer or throwing stuff at police officers?

3 A. Not to my recollection.

4 Q. Okay.

5 MS. HERNANDEZ: That's all I wanted. Thank you so
6 much. I know it's been a long day.

7 THE COURT: Mr. Roots.

8 Ladies and gentlemen, this is brief redirect
9 examination.

10 Mr. Roots.

11 REDIRECT EXAMINATION

12 BY MR. ROOTS:

13 Q. Thank you, Aaron. My name is Roger Roots. I represent
14 Mr. Dominic Pezzola.

15 MR. ROOTS: I'd like to bring up Government's
16 Exhibit 499-A, which was shown. And I'd like to publish
17 that for the jury.

18 THE COURT: Are you asking the Government to
19 assist you here?

20 MR. ROOTS: Yes.

21 THE COURT: All right.

22 BY MR. ROOTS:

23 Q. Okay. Do you remember looking at that picture earlier?

24 A. Yes.

25 Q. Would you agree with me that the scariest guy in the

1 picture is this gentleman I'm circling right here, this guy
2 with the club in his hand?

3 MR. MULROE: Object to leading and relevance of
4 this witness's opinion.

5 THE COURT: Sustained as to leading and relevance
6 as to that question.

7 BY MR. ROOTS:

8 Q. In your opinion, who's the scariest-looking guy in this
9 picture?

10 MR. MULROE: Object. Relevance.

11 THE COURT: Sustained.

12 BY MR. ROOTS:

13 Q. Do you recognize this guy in the camouflage? Do you
14 remember talking about him?

15 A. Yes.

16 Q. And he has a club or a baseball bat in his hand. Do you
17 recall that?

18 A. Yes.

19 Q. And I believe your testimony was that it was you, a
20 federal informant, who got that gentleman into the walk that
21 day with the Proud Boys?

22 MR. SMITH: Objection. Misstates the testimony.

23 THE COURT: I'm going to sustain an objection to
24 leading.

25

1 BY MR. ROOTS:

2 Q. What was your testimony -- how did that individual get
3 into the walk that morning?

4 A. He approached us and asked if we were a militia or
5 something.

6 And we said: No, we're Proud Boys.

7 And he asked if he could walk with us because he
8 was alone.

9 Q. And he approached you specifically?

10 A. He approached the front of us who are walking. I don't
11 recall if it was me specific.

12 Q. Would you agree it was through you that he was able to
13 get into the walk that morning with the Proud Boys?

14 MR. MULROE: Object to leading.

15 THE COURT: Sustained.

16 BY MR. ROOTS:

17 Q. Was it through you that he was able to get into the
18 march with the Proud Boys that morning?

19 A. That's a good question. I believe it is off of what I
20 said that allowed him to walk with us. But knowing that he
21 had followed through the rest of the day, he didn't listen
22 very well about staying back once we met up with the other
23 Proud Boys.

24 MR. ROOTS: I have nothing further. Thank you.

25 MR. PATTIS: Nothing.

1 THE COURT: All right. Sir, you may step down.
2 Thank you for your testimony.

3 (Witness excused.)

4 THE COURT: Ladies and gentlemen, before we go any
5 further and hear from our next witness, I have an
6 instruction for you.

7 The other day, you heard testimony from Mr. Alonzo
8 about communications discussing potential violence on or
9 about January 6th, 2021.

10 Our law regards mere abstract calls for violence
11 at some future date as protected or permissible speech under
12 the First Amendment.

13 It is for you to determine whether this speech
14 reflects the intentions, plans or state of mind of
15 Mr. Alonzo and not of the Defendants.

16 Very well. Let me get counsel at sidebar.

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

19 THE COURT: Well, Ms. Hernández, I didn't realize
20 the redirect was going to be so brief or I would have heard
21 you before.

22 MS. HERNANDEZ: That's fine, your Honor.

23 I think what I can do is my direct. I have
24 objections. If at the end of the process I have -- I still
25 want to put them on the record, I will. But I think, in the

1 interest of saving time, I think I'll just go forward. This
2 sergeant is scheduled to be on vacation tomorrow.

3 THE COURT: All right. Let me put it this way:
4 If there are -- does the Government still object to these
5 underlying documents coming in as irrelevant? And I think
6 there was another -- hearsay and irrelevant?

7 MS. MOORE: Yes, we do, your Honor.

8 THE COURT: So, Ms. Hernández, I have a sneaking
9 suspicion, especially given that, if you proceed as you say
10 you are going to, as you say, and the question of whether
11 these other documents ultimately make it into evidence -- I
12 doubt -- let me put it this way: We can fight about whether
13 they're hearsay and whether they're relevant. But I don't
14 think, given the situation you've just laid out, the
15 Government would object if I overrule those objections to
16 you admitting them.

17 Is that fair to say?

18 MS. HERNANDEZ: That's fine with me.

19 MS. MOORE: That's fine, your Honor.

20 THE COURT: Very well.

21 So, Ms. Hernández, why don't you proceed.

22 (Whereupon, the following proceedings were had in
23 open court:)

24 THE COURT: Next, ladies and gentlemen, we're
25 going to hear from a witness called by Mr. Rehl.

1 MS. HERNANDEZ: Your Honor, this is probably the
2 first witness I'm calling for the defense. I don't know how
3 it turns out that it's a sergeant from the U.S. Capitol
4 Police, but it appears to be that way.

5 THE COURT: While we're waiting, can I have
6 counsel at sidebar briefly.

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

9 THE COURT: Ms. Hernández, I just wanted to check,
10 while we're waiting, the issue with Mr. Finley is resolved?

11 MS. HERNANDEZ: He's been extended to tomorrow. I
12 will need another order. But we have him scheduled to start
13 at 9:00 a.m. before anybody else.

14 THE COURT: Okay. I just wanted to make sure.

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

17 (Thereupon, Blane Endale entered the courtroom and
18 the following proceedings were had:)

19 THE COURT: You may proceed, Ms. Hernández.

20 MS. HERNANDEZ: Thank you.

21 THE COURT: Actually, you may proceed after
22 Ms. Harris swears the witness.

23 THE COURTROOM DEPUTY: Will you please stand and
24 raise your right hand.

25 BLANE ENDALE, DEFENSE WITNESS, SWORN.

1 THE COURTROOM DEPUTY: Thank you. You may be
2 seated.

3 DIRECT EXAMINATION

4 BY MS. HERNANDEZ:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Sergeant, will you please state your full name for the
8 record.

9 A. Yes. It's Blane Endale.

10 Q. Blane Endale?

11 A. Yes.

12 Q. Thank you.

13 And --

14 THE COURT REPORTER: Could I get a spelling,
15 please?

16 MR. HERNANDEZ: Yes.

17 BY MS. HERNANDEZ:

18 Q. Could you please spell it for the court reporter?

19 A. Yes. It's B-L-A-N-E E-N-D-A-L-E.

20 Q. Thank you.

21 And you're a United States Capitol Police officer.

22 Is that correct?

23 A. I am.

24 Q. And can you tell the ladies and gentlemen of the jury
25 how long you've worked at the U.S. -- as a U.S. Capitol

1 Police officer?

2 A. Since 2003.

3 Q. And you are currently in the special events section; is
4 that correct?

5 A. I am.

6 Q. And what is your position there?

7 A. I am a sergeant with the section.

8 Q. And you've been in that section since, I think, 2017; is
9 that correct?

10 A. That is correct.

11 Q. And what is your -- what are your responsibilities in
12 that section?

13 A. So I oversee special events requests and applications
14 that the coordinators coordinate through our office,
15 basically.

16 Q. And you supervise a number of other people; is that
17 correct?

18 A. I do.

19 Q. And are they also officers, U.S. Capitol Police
20 officers?

21 A. Yes.

22 Q. Okay. So you say you -- these special events are -- can
23 you describe -- what are special events?

24 A. Well, they come in forms: First Amendment activities,
25 VIP notifications, events that happen on the grounds,

1 congressional events.

2 Q. So -- like if a congressmen wants to have a rally or
3 something, does that have to come through your office?

4 A. Yes. It's an application process.

5 Q. Okay. And if a member of the public wants to hold a
6 rally or a demonstration, does that come through your
7 office?

8 A. Correct.

9 Q. And is there an application form? Is that correct? In
10 order to -- that comes to you or to someone in your office?
11 Is that correct?

12 A. Yes.

13 Q. Okay. And that application form is online?

14 A. Yes.

15 Q. And is that what you described as First Amendment
16 activity?

17 A. Correct. If you were looking for a First Amendment
18 activity, you would be filling out that application.

19 Q. Okay.

20 MS. HERNANDEZ: I'm going to mark this as Rehl
21 Exhibit 11-H for identification, your Honor.

22 And this is just for the witness.

23 BY MS. HERNANDEZ:

24 Q. Can you see that? Or would you rather have it in your
25 hand?

1 A. Yes. I can see it.

2 Q. Is that the application form?

3 A. Yes, it is. There's a back page, too.

4 Q. Is that the second page -- I'm sorry.

5 MS. HERNANDEZ: Your Honor. May I just hand a
6 copy to the witness?

7 THE COURT: You may.

8 BY MS. HERNANDEZ:

9 Q. (Tenders documents to the witness.)

10 A. Thank you.

11 MS. HERNANDEZ: I'll put it on the ELMO for the
12 Court.

13 BY MS. HERNANDEZ:

14 Q. Is that the application form?

15 A. Yes, it is.

16 Q. And so a member of the public who wants to apply to
17 have, as you described it, a First Amendment activity, they
18 would fill out this form?

19 A. That is correct.

20 Q. And is this all done electronically on -- like, through
21 the website?

22 A. No. You can actually get the application from the
23 website. But it can be submitted to us by walk-in to our
24 office. It can also be sent via email. Yeah.

25 Q. Are you the first person that gets it or someone in your

1 office gets it and processes it or how --

2 A. I am the person that processes it.

3 Q. Okay. So can you explain to the jury exactly the
4 process? I mean, you don't have to go into a lot of detail,
5 but just generally, if you get one of these applications,
6 can you explain what you would do next?

7 A. Yeah. Sure. So I would receive the application. It
8 will come into our office via fax or email or someone will
9 walk it in.

10 Q. Okay. I'm sorry. Just a second.

11 MS. HERNANDEZ: Your Honor, I'd move this document
12 into evidence.

13 MS. MOORE: Objection. Relevance.

14 MS. HERNANDEZ: And move to publish.

15 THE COURT: Overruled.

16 It will be admitted and permission to publish.

17 (Whereupon, Defendant Rehl's Exhibit No. 11-H was
18 entered into evidence.)

19 MS. HERNANDEZ: Thank you. This is 11-H.

20 BY MS. HERNANDEZ:

21 Q. That will make it easier for the jury to follow when you
22 describe it.

23 A. Okay. So as I was stating, the application is filled
24 out. It comes to the office one of three ways, basically.
25 And once we receive it, I'll check it to see what the

1 request is. And then I will log it in and then -- and I'll
2 assign it to a coordinator for assignment.

3 Q. I'm sorry. And then you said you assign it?

4 A. Yes. I assign it to a coordinator to assign -- to
5 coordinate with the organizer.

6 Q. So -- and that would mean that the coordinator would
7 contact the organizer and get more information about the
8 activity the organizer wants?

9 A. That is correct.

10 Q. And when I -- by that, I mean they might ask how many
11 people they're planning to have. Is that correct?

12 A. That is correct.

13 Q. And what other information would the coordinator
14 request?

15 A. Well, the coordinator is discussing all the information
16 that's actually on the application request. And then, from
17 there, if it's general, they'll continue to talk to the
18 organizer to understand the whole scope of the event or
19 the -- yes, the event. And then, if it falls within our
20 regulations, then they'll relay that information. And if
21 it's not, they'll also relay that information to ensure that
22 what they're requesting is allowed.

23 Q. So, for example, on this form, it requests a date of
24 event, the start time, the end time. Correct?

25 A. Correct.

1 Q. And it also wants, you know, what specific area of the
2 Capitol grounds the person is requesting to have their
3 activity?

4 A. That is correct.

5 Q. And here, it says, i.e. -- and these are just examples,
6 right? -- west front grassy area, Upper Senate Park, Taft
7 Memorial Park, et cetera. A number of different areas.

8 A. Those are examples of some of the areas that we have on
9 Capitol grounds.

10 Q. And it also asks for the -- and let me --

11 MS. HERNANDEZ: This has already been admitted,
12 your Honor, as Mr. Rehl Exhibit 11-A. And if I may publish,
13 please.

14 THE COURT: You may.

15 THE COURTROOM DEPUTY: It's on your laptop?

16 MS. HERNANDEZ: I think Ms. Rohde is pulling it
17 up.

18 THE COURTROOM DEPUTY: No. She doesn't have
19 anything up. There we go.

20 BY MS. HERNANDEZ:

21 Q. So those areas that you were -- that we were just
22 discussing, west front grassy area, Upper Senate Park area,
23 are those on this map also?

24 A. They are.

25 Q. So, for example, this -- 9 and 10, those are particular

1 areas where people are able to have demonstrations?

2 A. They are.

3 Q. And are you the person who assigns -- or is someone in
4 your office the person who assigns which area they're going
5 to do the demonstration or does the person seeking to
6 demonstrate actually request a particular area?

7 A. The organizer requests the area. But it may not be
8 available. And at that point, we offer other areas.

9 Q. Okay. So once you get -- do you get these requests for
10 demonstrations on a regular basis?

11 A. We do. Absolutely.

12 Q. Like every week of the year?

13 A. I can't speak to every -- with -- I would say quite
14 often.

15 Q. Quite often.

16 A. It's most of our work.

17 Q. I'm sorry?

18 A. It's a lot of our work.

19 Q. A lot of your work is Americans asking to come to the
20 Capitol to have demonstrations?

21 A. Yes.

22 Q. And then once you send this document to the coordinator,
23 what's the next -- and the coordinator gets the information
24 necessary on 11-H, what next?

25 A. So once they receive all the information, they'll

1 complete a file on it, and if they have any questions, then
2 they'll come and they'll relay that information to me. Once
3 the file is completed and they say that it's good and it's
4 within our regulations, the file is completed and then it's
5 sent to me for review.

6 At that point, I'll review it and I'll go over the
7 request to make sure that all the -- if there's any
8 questions still, you know, that haven't been answered, I
9 will then have the coordinator go back to the organizer, get
10 the additional information, and then basically I review it.

11 MS. HERNANDEZ: I'm sorry. Can we go back to
12 11-H?

13 THE COURTROOM DEPUTY: 11-H?

14 MS. HERNANDEZ: Ms. Rohde has that. I'm sorry.
15 She doesn't. Okay.

16 BY MS. HERNANDEZ:

17 Q. So among other things, on this form, the information
18 that's requested is whether it's going to be a rally, a
19 vigil, a demonstration of some kind. Correct?

20 A. Correct.

21 Q. Or whether there's going to be a march?

22 A. That is correct.

23 Q. Whether there's going to be photography and filming?

24 A. That is correct.

25 Q. And what does this mean, road race? Sometimes people

1 actually run races near -- at the Capitol?

2 A. Yes. It's considered foot races.

3 Q. I see.

4 And is that in connection with some sort of
5 demonstration or activity of some kind or --

6 A. It's an actual event.

7 Q. Musical presentation. They might have a musician on
8 hand?

9 A. Correct.

10 Q. And then "other" is just a broad category that they can
11 add whatever it is they want?

12 A. Correct. Well, the request -- it will be determined
13 based off of what their actual event or activity is and
14 whether or not it falls within our guidelines.

15 Q. Okay. And then on Page 2 of this 11-H, it asks things
16 like, Are you going to have handheld signs? Is that
17 correct?

18 A. That is correct.

19 Q. Or banners?

20 A. That is correct.

21 Q. Whether they're going to have a podium?

22 A. That is correct.

23 Q. And let me ask you, does the Capitol staff provide the
24 podium or does -- do the demonstrators have to bring their
25 own podiums or other --

1 A. The organizers are required to bring their own stuff.

2 Q. Okay.

3 A. The Capitol does not supply anything for them.

4 Q. And then one possibility is that they might want to
5 distribute literature?

6 A. That is correct.

7 Q. Set up a stage?

8 A. That is correct.

9 Q. Press riser, lighting equipment --

10 THE COURT REPORTER: I didn't --

11 MS. HERNANDEZ: I'm sorry. A press riser,
12 R-I-S-E-R.

13 BY MS. HERNANDEZ:

14 Q. A press riser, what is that? Just a series of steps
15 that the press can stand on to observe?

16 A. Yeah. It's basically a stage for press. It's like a
17 small stage.

18 Q. Okay. And lighting equipment?

19 A. That is correct.

20 Q. Tables, chairs?

21 A. That is correct.

22 Q. And when they ask whether electrical -- when the form
23 asks whether electrical power will be required, is that so
24 that the organizers can set up, like, a speaker system or
25 something like that?

1 A. Yes.

2 Q. And they even asked for a number of buses and the number
3 of people they're going to be bringing. Correct?

4 A. That's correct.

5 Q. As you say, this is a regular activity at the Capitol?
6 Let me rephrase that.

7 Your office and yourself processes these
8 applications on a regular basis?

9 A. That is correct.

10 Q. And then once you've done your end of the job, finding
11 out all the information you need, where does that form go?

12 A. Are you speaking about this form or the file?

13 Q. Well, explain to me -- instead of me asking you, what
14 happens once you've processed and you've hit the end of the
15 road as far as the information you need? What do you do
16 next?

17 A. Once the file has been completed and they're within the
18 regulations, then the file gets moved up through the
19 process.

20 Q. And when you say the file, do you know what kind of
21 forms are included in the file?

22 A. So in the file, their application, along with any notes
23 taken by the coordinator, to include a 303 and a 1563, which
24 is the permit, and then an internal document and any notes
25 regarding the conversations, as I stated previously.

1 Q. So does that include what is referred to as a special
2 attention memorandum, for example?

3 MS. MOORE: Objection. Relevance.

4 THE COURT: Ms. Hernández, I'll hear you at
5 sidebar.

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

8 THE COURT: Ms. Hernández, I overruled the
9 objection as to the blank form to give you a little leeway
10 here.

11 But this is not relevant.

12 MS. HERNANDEZ: Well, your Honor, the sergeant is
13 the one who introduced the concept of a file. I thought the
14 application would go up the ladder. But she's the one who
15 introduced the notion of a file. That's why I started to
16 question what the file entailed.

17 And again, these are all -- my understanding is
18 they're forms maintained in the regular course of business.

19 THE COURT: It doesn't matter whether a form is
20 maintained in the regular course of business. It is utterly
21 irrelevant to our proceeding.

22 So I've given you a little bit of leeway here, but
23 none of this is relevant. The relevance is there were
24 permits issued; and you will be able to make whatever hay
25 you want with that. But this whole delving into their

1 processing, no one has explained to me the relevance of it.

2 MS. HERNANDEZ: Well, if the permits themselves
3 are going to come in, it makes sense to explain to the jury
4 how we got from Point A to Point B.

5 THE COURT: A little bit, yes. But delving into,
6 like, every jot and tittle of the process strikes me as
7 overkill.

8 MS. HERNANDEZ: All right, sir. Thank you.

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

11 BY MS. HERNANDEZ:

12 Q. Sergeant, you described a file gets generated for each
13 application. Correct?

14 A. Correct.

15 Q. And that file includes various documents that the U.S.
16 Capitol Police deem necessary to the application process?

17 A. Correct.

18 Q. Okay. And then once you've compiled that file, does
19 that go up to some -- to the -- to some police authority or
20 the chief? What happens next?

21 A. So once it gets reviewed by myself or my commander
22 and/or -- and the commander, it moves on to what we call
23 IICD.

24 Q. I'm sorry. What you call what?

25 A. What we call IICD.

1 Q. IICD.

2 A. Yes. It's the next step in the process.

3 Q. And what does IICD stand for?

4 A. I believe the Interagency -- I don't recall the exact --
5 I know the acronym. I can't remember it off the top of my
6 head.

7 THE COURT: Sergeant, can you just make sure you
8 keep your mouth close up to the microphone and your voice up
9 so we can all hear.

10 THE WITNESS: Sure. Sorry about that.

11 THE COURT: It's okay.

12 BY MS. HERNANDEZ:

13 Q. So let me see if I understand.

14 So are there security questions that are addressed
15 during this I -- what -- I'm sorry. What's the acronym?

16 A. IICD?

17 Q. Yes.

18 A. I can't speak on that. That's not in my purview.

19 Q. Okay. So is there -- do you know whether it goes to the
20 assistant chief of police or the chief of police for their
21 signature?

22 A. Yes, it does. It goes to --

23 Q. So somewhere along the line, you've done your work,
24 you've had your coordinators do their work, and then you
25 pass it up along and it ends up in the hands of the chief of

1 police. And when we talk about the chief of police, we're
2 talking about chief of the U.S. Capitol Police?

3 A. That's correct.

4 Q. Okay. And they've done, if you know, sort of security
5 or background checking --

6 MS. MOORE: Objection. Relevance.

7 BY MS. HERNANDEZ:

8 Q. -- in order to pass on it. Correct?

9 THE COURT: The witness can answer if she knows.

10 THE WITNESS: Okay. Can you repeat the question?

11 BY MS. HERNANDEZ:

12 Q. Right.

13 So when it goes to the chief of police or through
14 that ladder of authority, are they doing some sort of
15 background check or security check or something like that
16 before they sign off on it?

17 A. I'm assuming they do an assessment of some sort.

18 Q. Okay. So now I want to go to January 6th activities, if
19 you -- if we could.

20 You were -- I believe you were asked to bring some
21 documents with you, which we've received, relating to the
22 permits that were issued for January 6th. Do you agree with
23 me? Do you agree with me?

24 A. I believe my department has sent that in.

25 Q. Are you familiar with the permits that were issued on

1 January 6th for demonstrations at the U.S. Capitol?

2 A. I am.

3 Q. Okay. And if I showed you -- I assume you don't know
4 them off the top of your head. Or do you?

5 A. I believe I do.

6 Q. Oh, okay. So go ahead and tell me --

7 A. Well, please tell me which ones you're talking about.

8 Q. Okay. So do you know in total how many demonstration
9 permits were granted for January 5th, 6th, that time of...

10 A. For the 5th, off the top of my head, I don't recall.

11 Q. But for the 6th?

12 A. There were six.

13 Q. There were six. Okay.

14 So --

15 MS. HERNANDEZ: Ms. Rohde, can you help me pull
16 them up?

17 The first one here -- and that's just the way they
18 were produced -- is a request by a gentleman named -- or an
19 organization named Bryan Lewis. And that's 11 -- Rehl
20 Exhibit 11-B.

21 THE COURTROOM DEPUTY: What number?

22 MS. HERNANDEZ: 11-B, as in boy.

23 Does the Government agree to introduce the
24 permits, the six permits?

25 MS. MOORE: (Nods head in the affirmative.)

1 MS. HERNANDEZ: Your Honor, we're going to go
2 through the six permits. The Government has no objection to
3 their introduction. So I'd ask that, as we discuss them,
4 they be published to the jury.

5 THE COURT: All right. And there's no objection
6 from the Government. Correct?

7 MS. MOORE: That's correct, your Honor.

8 THE COURT: So these six permits will be admitted,
9 and you will be granted permission to publish them if -- the
10 one thing I'd just ask, Ms. Hernández, we don't -- I don't
11 believe Ms. Harris has any -- we just need exhibit numbers
12 as we go.

13 MS. HERNANDEZ: Right. This is 11-B, as in boy.

14 THE COURTROOM DEPUTY: Are all six going to be in
15 there?

16 MS. HERNANDEZ: No. They're each going to have --
17 they're each 11, with a different letter.

18 THE COURTROOM DEPUTY: Just make sure you identify
19 each one.

20 THE COURT: I'm sorry?

21 THE COURTROOM DEPUTY: Just make sure you identify
22 each one before.

23 THE COURT: I will.

24 BY MS. HERNANDEZ:

25 Q. And I'm referring to Bryan Lewis because that's

1 identified on the permit as the --

2 MS. HERNANDEZ: Can we enlarge this?

3 BY MS. HERNANDEZ:

4 Q. So that's identified on the permit as the sponsoring
5 person and/or organization. Is that correct? Sergeant?

6 A. Bryan Lewis. Yes.

7 Q. Correct?

8 A. Correct.

9 MS. HERNANDEZ: And this is 11-B, as in boy.

10 BY MS. HERNANDEZ:

11 Q. And again, this is a demonstration that this person or
12 this activity wanted for January 6th between the hours of
13 8:30 and 5:00 p.m., I think that is. Correct?

14 A. 8:30 and 5:00 p.m. Correct.

15 Q. And this particular permit was granted for the grassy
16 area 9?

17 A. Grassy area No. 9 is what you said? I'm sorry.

18 Q. Yeah. Is that what this says right here?

19 A. Yes.

20 Q. Okay. And that's one of the areas that we saw on that
21 map?

22 A. That is correct.

23 Q. Okay. All right. So --

24 MS. HERNANDEZ: Can we go to the next page?

25

1 BY MS. HERNANDEZ:

2 Q. I'm sorry. And this particular person claims they're
3 going to have 50 people, and they have been authorized --
4 because this is the permit itself. Correct?

5 A. That is correct.

6 Q. So they've been authorized to bring handheld signs and
7 placards?

8 A. Correct.

9 Q. One bullhorn?

10 A. Correct.

11 Q. And when it says no marshals will be utilized for this
12 event, is that -- what does that mean, if you could explain?

13 A. The organizer -- all the information that was written on
14 there was what the organizer said that they were going to
15 have.

16 Q. Okay. And which the Capitol Police special events
17 section authorized. And they also say they're not
18 requesting electrical power?

19 A. That is correct.

20 Q. Okay.

21 MS. HERNANDEZ: So let's move on to demonstration
22 permit 11-C -- C, as in Charlie, Ms. Harris.

23 BY MS. HERNANDEZ:

24 Q. And this organization refers to itself as Jesus Lives.
25 Correct?

1 A. That is correct.

2 Q. And they are asking for -- well, they've been authorized
3 two different dates and two different areas. Am I correct
4 here?

5 A. That is correct.

6 Q. So on the 5th they've been authorized grassy area 1?

7 A. That is correct.

8 Q. And if you turn around, if you can, can you tell where
9 grassy area 1 would be on that map, if you can tell? I
10 don't know if you can.

11 A. Yes.

12 Q. Could you point to it, please?

13 A. (Witness indicates.)

14 Q. I see. So that's right in front of the Capitol. Am I
15 right?

16 A. Correct. It's on the west front of the Capitol.

17 Q. On the west front of the Capitol.

18 So on January 6th -- so is the west front the area
19 that faces the Supreme Court or the other area?

20 A. No. It's the other one.

21 Q. I see.

22 So on January 6th -- on January 5th, when this was
23 authorized, were the scaffolding already started in that
24 area for the inauguration, if you recall?

25 A. Yes. Scaffolding was already up.

1 Q. Okay. But anyway, that's for the grassy area, and
2 that's for the 5th of January for this group called Jesus
3 Lives. Correct?

4 A. Correct.

5 Q. And then the permit also authorized this group on
6 the 6th to be in area 15, which is another area of the
7 Capitol. Do you know generally where it is?

8 A. Yes.

9 Q. You're good.

10 A. Yes.

11 Q. Where is it -- 15?

12 A. So it's down here.

13 Q. Okay.

14 A. It's where the --

15 Q. So it's outside that grassy area?

16 A. Definitely. It's further out. It's over by the
17 reflecting pool, closer to Third Street.

18 Q. I see. Is that near the Peace Circle?

19 A. No.

20 Q. Peace Circle is on the other --

21 A. Peace Circle is here. And then the -- Union Square area
22 15 is further down past -- it's closer to Third Street.

23 Q. Okay. Thank you.

24 And Third Street is near where we are now?

25 A. Correct. Well --

1 Q. Where the courthouse is. When I say "we."

2 A. Yes. It's on Third Street. Well, one of the entrances
3 are.

4 MS. HERNANDEZ: I'm sorry. Could we go down on
5 this document?

6 BY MS. HERNANDEZ:

7 Q. And these people indicated that they were going to have
8 a banner, a stage, a podium, a solar generator, solar
9 panels, sound system, camera, tripods, all sorts of things.
10 Correct?

11 A. Correct.

12 Q. That's what they requested, and the Capitol Police
13 authorized it?

14 A. That is correct.

15 Q. Okay.

16 A. What is on this document. Yes.

17 Q. Okay.

18 MS. HERNANDEZ: If we could move on to
19 demonstration project D, 11-D, as in David.

20 BY MS. HERNANDEZ:

21 Q. And this one is called -- the sponsoring organization
22 for this one is One Nation Under God?

23 A. That is correct.

24 Q. And they have, again, the 8:00 a.m. on January 6th is
25 when they start their -- they're authorized to have their

1 demonstration?

2 A. Correct.

3 Q. And where is grassy area -- grassy area 8 is where
4 they're allowed to have their demonstration?

5 A. Correct.

6 Q. On the map behind you, where would be grassy area 8?

7 A. So it's all the way at the top, but it's actually not on
8 this. It's not depicted on this board.

9 Q. So it's --

10 A. It would be over here.

11 Q. Okay. Thank you.

12 And that's more towards the east side of the
13 Capitol?

14 A. It is on the east side of the Capitol. Correct.

15 MS. HERNANDEZ: And can we bring this down,
16 please.

17 BY MS. HERNANDEZ:

18 Q. Anyway, this -- again, they were authorized to bring
19 whatever equipment they have. The jury will have copies of
20 this so we don't need to go through all the --

21 MS. HERNANDEZ: I didn't mean for you to take it
22 down. I meant to take the page down. But that's okay.

23 Could we go to -- no, I'm sorry. Can we go back
24 to 11-D, One Nation Under God. And could we go down,
25 please. Go down to the next page.

1 BY MS. HERNANDEZ:

2 Q. So this particular -- I believe this particular group
3 indicated that they were going to have -- they had confirmed
4 the presence of -- that some congresspeople were going to be
5 present. Do you see that in this document?

6 A. (No response.)

7 THE COURT: Can you point the witness to a part of
8 the document?

9 MS. HERNANDEZ: I believe it's on -- it's one of
10 the documents that has not been admitted, your Honor.

11 If I could show this only to the witness, she
12 might be able to identify it, your Honor. This would be
13 part of 11-D, as in David.

14 BY MS. HERNANDEZ:

15 Q. And that's the application form that corresponds to One
16 Nation Under God; is that correct? If you could tell. It
17 shows the Capitol ground area 8, was what they were looking
18 for.

19 A. That's what it appears to say. Yes.

20 Q. And this indicates that they had some congressmen that
21 were coming, Mel Brooks, Andy Biggs, CJ --

22 MS. MOORE: Objection. Relevance, hearsay.

23 THE COURT: Let me have you at the phone.

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

1 THE COURT: Ms. Hernández, aren't we back where we
2 were originally here?

3 MS. HERNANDEZ: Well, the point -- your Honor,
4 this particular entity is demonstrating -- if we were able
5 to introduce the application form, they would indicate
6 they're challenging the election and they've got
7 congresspeople that are coming to the election. I think
8 that's relevant to this case.

9 THE COURT: I don't think it is relevant to this
10 case.

11 So you can do all you want with the permit. But
12 I'm going to exclude this as irrelevant. No one has
13 articulated to me what in the world the relevance of this
14 is.

15 MS. HERNANDEZ: Your Honor, these gentlemen are
16 charged with violations -- very serious violations of the
17 law because they came to the Capitol to demonstrate. Some
18 went beyond what a demonstration is.

19 But my client did not attack anyone, did not
20 destroy any property. And there were demonstrations
21 authorized for that day to challenge the election results
22 and there were congresspeople who lent their names to these
23 demonstrations. And these are -- I'm sorry. These are
24 documents that are maintained in the normal course of
25 business. It's part of the application form, which she's

1 already identified.

2 And it's -- and this document is -- was provided
3 in discovery. It's not something I generated.

4 THE COURT: None of that has anything to do with
5 them being relevant. So the objection will be sustained.

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

8 MS. HERNANDEZ: So I would make, your Honor, this
9 whole packet -- I think she can identify -- I know the Court
10 is not admitting it, but I want it identified for the
11 record, the entire document, which starts at CAPD -- the
12 Bates number is CAPD_001705. So I would move the -- I just
13 want the entire document noted for identification.

14 THE COURT: It will be marked for identification.

15 MS. HERNANDEZ: Thank you.

16 THE COURT: Correct. If you'll --

17 THE COURTROOM DEPUTY: What number is it?

18 THE COURT: Ms. Hernández, you will have to
19 provide that --

20 THE COURTROOM DEPUTY: What number is this marked?

21 MS. HERNANDEZ: This is 11-D, as in David. The
22 organizer was One Nation Under God.

23 THE COURT: You will just have to provide the
24 documents to Ms. Harris so we have a record of them, what
25 you have marked for identification.

1 MS. MOORE: Ms. Hernández, I believe just the
2 permit is D.

3 MS. HERNANDEZ: D, as in David.

4 MS. MOORE: But I think that needs to be a
5 different number, because the permit is in already as D.

6 MS. HERNANDEZ: Double-D.

7 THE COURT: Very well.

8 MS. HERNANDEZ: I just wanted to refer back.

9 And I will provide you all the documents.

10 BY MS. HERNANDEZ:

11 Q. So 11-E -- I'm sorry. Going back to 11-D, as in David,
12 the permit itself, which the Court admitted, the permit
13 itself does not provide any explanation of what the purpose
14 of this particular group is, does it?

15 THE COURT: The witness --

16 BY MS. HERNANDEZ:

17 Q. It's three pages, I believe.

18 THE COURT: The witness has to be able to see the
19 entire document.

20 So I know you're not controlling it, Ms. Rohde.

21 But one way or the other, if the witness is going
22 to answer that question, they have to be able to see the
23 whole document.

24 THE WITNESS: Can you repeat your question,
25 please?

1 BY MS. HERNANDEZ:

2 Q. So the application form itself does not include the
3 purpose of this organization's demonstration. Is that
4 correct?

5 A. That is correct.

6 Q. Yes?

7 A. Correct.

8 MS. HERNANDEZ: Your Honor, I know the Court --
9 I'd like to provide the -- if the Court will allow me -- the
10 witness the entire file that we have on this, which includes
11 the 11-DD, double-D, so she can have it while I ask her some
12 questions.

13 THE COURT: Why don't you ask her questions and
14 see if she can answer them and see if there's an objection,
15 and then we'll proceed from there.

16 BY MS. HERNANDEZ:

17 Q. So sometimes some of these application files include
18 what is referred to as a special attention memorandum. Are
19 you familiar with that?

20 A. Can you tell me the number --

21 Q. The form number?

22 A. -- the form number, please?

23 Q. CP-303.

24 A. I'm familiar with it.

25 Q. I'm sorry?

1 A. I'm familiar with it.

2 Q. Okay. And that document is part of what you referred to
3 earlier as the file on a particular application, that 303?

4 A. Correct.

5 Q. And that would have -- or does it have additional
6 information about who the speakers might be and what the
7 purpose of the demonstration is?

8 A. That is correct.

9 Q. So for this one, which is -- we were talking about,
10 which is D, One Nation Under God, obviously, you can't
11 remember what was written on that, can you?

12 A. No.

13 MS. HERNANDEZ: I'd like to show the witness this
14 document and see if that refreshes her recollection about
15 this form 303 that goes along with the One Nation Under God.

16 MS. MOORE: Improper refreshment.

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

19 THE COURT: Ms. Hernández, if you want to refresh
20 her memory, you have to ask her a question. And the
21 question has to be a particular question, not just, Do you
22 know anything about the form? It has to be, Do you know
23 whether the form deals with X or Y or whatever? And if she
24 says, No, I don't know, then --

25 MS. HERNANDEZ: I thought I asked her whether it's

1 the purpose, and she said she doesn't recall.

2 THE COURT: Then if she says -- then you ask her,
3 just for the record -- so we're not back -- then the
4 question is: Would seeing the application refresh your
5 memory about X? And if she says yes --

6 MS. HERNANDEZ: I thought I did that, your Honor.
7 But I'll redo it.

8 THE COURT: But it has to be about something
9 particular.

10 MS. HERNANDEZ: Okay.

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

13 BY MS. HERNANDEZ:

14 Q. So are you able to remember whether that form 303 for
15 the One Nation Under God permit -- what it said about the
16 purpose of the event?

17 MS. MOORE: Objection. Relevance, hearsay.

18 THE COURT: So here we go. I'll hear you at
19 sidebar.

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

22 THE COURT: Ms. Hernández, tell me why the
23 purpose -- why the purpose behind the permit is relevant.

24 MS. HERNANDEZ: So the permit is for a
25 demonstration for election fraud in swing states on

1 January 6th. There are confirmed members of Congress to
2 appear at this. And it has, you know, stage, podium,
3 speakers and all sorts of other things referenced. And it's
4 a document that ends up being approved. It's a special
5 attention memorandum attached to the approval of the
6 demonstration permit for One Nation Under God.

7 THE COURT: Again, I guess I'll take a stab at
8 events because, again, you're not making an argument to me
9 about relevance, but I think -- let me put it this way: I
10 don't understand why a congressmen being present is relevant
11 or anything. If the purpose of the protest was for election
12 fraud, you can just --

13 Let me ask the Government whether just the overall
14 purpose of protesting election fraud, whether you think
15 that's relevant, just that point only.

16 MS. MOORE: I don't. And I think it's also
17 hearsay. The document clearly states "The spokesperson
18 advises." So she's trying to elicit hearsay through this
19 document.

20 THE COURT: Well, okay. But isn't this, at the
21 minimum, a business -- isn't this a business record?

22 MS. MOORE: It is. But I still don't think it's
23 relevant. There's been no showing that these Defendants had
24 any knowledge about any of this.

25 THE COURT: Well --

1 MS. HERNANDEZ: That's not accurate. There's been
2 evidence that a number of these Defendants believed that
3 they were coming to -- for demonstrations related to
4 election fraud. There was evidence that Mr. Tarrío was
5 supposed to speak at one of them. There's a Telegram post
6 from January 4th where my client asks about, Where is
7 Mr. Tarrío supposed to speak?

8 THE COURT: I think the narrow question of that is
9 all about -- Ms. Hernández, just ask her, Does she know one
10 way or the other whether this was related to election fraud?
11 And if she says no, then you can refresh her recollection
12 with this.

13 I think that's -- to the extent it's relevant,
14 it's relevant for only that.

15 MS. HERNANDEZ: Thank you.

16 (Whereupon, the following proceedings were had in
17 open court:)

18 BY MS. HERNANDEZ:

19 Q. Do you recall whether this One Nation Under God permit
20 and demonstration related to a demonstration for election
21 fraud in swing states?

22 A. I don't recall.

23 Q. If I show you CP-303, might that refresh your
24 recollection?

25 A. Yes.

1 MS. HERNANDEZ: With the Court's permission.

2 (Tenders document to the witness.)

3 BY MS. HERNANDEZ:

4 Q. And if you'd like to look at additional documents from
5 that file, I can provide them to you. Does that refresh
6 your recollection about the purpose of that -- of the
7 demonstration that One Nation Under God was presenting?

8 A. Yes.

9 Q. And what is the purpose of that demonstration?

10 A. It says, Demonstration for election fraud in swing
11 states.

12 Q. I'm sorry?

13 A. It says, Demonstration for election fraud in swing
14 states.

15 Q. Okay. And that corresponds to the permit that was given
16 to that entity by the U.S. Capitol Police. Correct?

17 A. That is correct.

18 Q. Okay.

19 MS. HERNANDEZ: I'd move this document into
20 evidence, your Honor.

21 MS. MOORE: Objection.

22 THE COURT: Sustained.

23 BY MS. HERNANDEZ:

24 Q. Are you familiar with a form that goes along with these
25 permits, a demonstration permit assessment?

1 MS. MOORE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MS. HERNANDEZ:

4 Q. We're talking about the same One Nation Under God.

5 MS. MOORE: Same objection.

6 THE COURT: The objection is sustained.

7 BY MS. HERNANDEZ:

8 Q. So -- I'm sorry.

9 MS. HERNANDEZ: Can you bring up Rehl 11-F, as in
10 Frank? I believe this should be published.

11 BY MS. HERNANDEZ:

12 Q. So this is another demonstration permit that was
13 authorized by the U.S. Capitol Police for January 6th.
14 Correct?

15 A. Yes.

16 Q. And like the others, it lists a number of props and
17 equipment that the demonstrators were allowed to bring to
18 their demonstration that day. Correct?

19 A. To that area, yes.

20 Q. Yes. And --

21 MR. HULL: Voices up a bit, your Honor, please.

22 THE WITNESS: I apologize.

23 THE COURT: You heard the man, Sergeant. Just try
24 to keep your voice up.

25 And Ms. Hernández, you, too.

1 MS. HERNANDEZ: Thank you.

2 BY MS. HERNANDEZ:

3 Q. So these are the things that they were allowed to bring:
4 screens, generators, metal bike racks. Electrical power was
5 not requested. So those are things that were authorized by
6 the Capitol Police to be brought to the area 7. Is that
7 correct?

8 A. That is correct.

9 Q. And where is area 7, generally?

10 A. It's not on this picture. It's on the other side of the
11 Senate office buildings.

12 MS. HERNANDEZ: Could we go to Demonstration G --
13 11-G, please.

14 BY MS. HERNANDEZ:

15 Q. And this is another permit for January 6th?

16 A. That's correct.

17 Q. And this is Women for a Great America?

18 A. That is correct.

19 MS. HERNANDEZ: Can you bring that page down a
20 little, please.

21 BY MS. HERNANDEZ:

22 Q. And this one is for grassy area 10. Can you point to
23 grassy area 10 on this map?

24 A. You don't have the full picture on here.

25 Q. But part of area 10 is on there?

1 A. That is correct.

2 Q. And --

3 A. It's on the right side in the corner, right here. The
4 green area at the top of the square. But it doesn't show
5 the full picture.

6 Q. All right. So this is area 10. Is that correct?

7 A. That is correct.

8 Q. So you only see a little bit of it on that particular
9 map?

10 A. Correct. It's at the corner right side, on this side.

11 Q. And this -- and that's the U.S. Capitol right there --

12 THE COURT: Ms. Hernández, I cannot hear you.

13 MS. HERNANDEZ: I'm sorry.

14 BY MS. HERNANDEZ:

15 Q. That's the U.S. Capitol in the middle. Correct? This
16 building right there?

17 A. Correct. In the white.

18 Q. Right. Thank you.

19 MS. HERNANDEZ: So if we can go back to 11-G,
20 Women for a Great America, please.

21 BY MS. HERNANDEZ:

22 Q. So these people, again, were authorized to bring
23 different props, a battery-powered Bluetooth speaker and
24 that type of thing. Correct? Correct?

25 A. Correct. For that.

1 Q. And they were going to be there Tuesday, January 5th,
2 through Sunday, January 10th?

3 A. That's correct. But during those -- the timeframes
4 notated on the form.

5 Q. And those times are, like, 7:00 to 10:00 at night?

6 A. 2200. Correct.

7 Q. So what happens on a situation like that? At 10:00,
8 they dismantle everything and then they have to come back
9 the following day?

10 A. That is correct.

11 Q. Okay. But at least this demonstration was authorized
12 for the 5th, 6th, 7th, 8th, 9th and 10th. Correct?

13 A. Correct.

14 MS. HERNANDEZ: That's all I have for now, your
15 Honor. I guess I'm going to -- we'll argue other things.

16 THE COURT: All right.

17 MS. HERNANDEZ: Thank you very much for coming
18 here and testifying.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Any other direct
21 examination?

22 MR. PATTIS: Nothing from Biggs.

23 THE COURT: I see Mr. Roots.

24 MR. ROOTS: Thank you very much.

25

1 DIRECT EXAMINATION

2 BY MR. ROOTS:

3 Q. Just a quick question. If these permits -- these
4 permitted events, were they capped in terms of the
5 attendance?

6 A. Were they capped? Yes --

7 Q. Were they capped?

8 A. -- at 50 per location.

9 Q. Per event?

10 A. Per event.

11 Q. Was there any -- is it normal that there's any
12 enforcement for that? How would a group that's organizing
13 one of the events enforce that?

14 A. Well, they're advised of that from the beginning when
15 they're coordinated with us.

16 Q. Is there any penalties for the organizers if 51 people
17 show up?

18 A. That's done on an operational level. So there could be
19 penalties. Yeah.

20 Q. In your experience, do these event organizers have very
21 good ways of tracking the specific numbers of attendees?

22 MS. MOORE: Objection. Relevance, speculation.

23 THE COURT: Overruled. The witness can answer if
24 she knows.

25 THE WITNESS: Can you repeat the question?

1 BY MR. ROOTS:

2 Q. In your experience, have you seen event organizers
3 typically keep specific track of precisely how many people
4 are attending their events?

5 A. Sometimes, yes.

6 Q. How could they do that? With turnstiles or something?

7 A. I couldn't hear you. I'm sorry. Can you repeat that?

8 Q. Would they control the numbers through turnstiles?

9 A. No. It depends on who they invite. So if they know the
10 invitations, who they've allowed them -- to come, then
11 that's how they determine it, and that's what they relay to
12 us.

13 Q. These events were not -- they didn't specify that they'd
14 be cordoned off from the public, were they?

15 A. I'm sorry. I can barely hear you.

16 Q. Oh, let me give you an example. Let's say an event up
17 there on the grassy area in the north -- in the upper right
18 corner there. Let's say there was an event permitted there.
19 I think you said there was an event. Correct?

20 A. In area 10?

21 Q. Yeah.

22 A. Yes.

23 Q. Do they cordon off and fence out the place, the event?

24 A. Who?

25 Q. The organizers of that permit event, Women for Great

1 America.

2 A. No. They do not cordon it off.

3 Q. So the public could wander in, generally?

4 A. They could. It's an open area.

5 Q. As far as attendees who are there on January 6th to
6 attend the Trump speech, would they be likely to be
7 interested in several of these events at once?

8 MS. MOORE: Objection. Speculation.

9 THE COURT: Sustained.

10 BY MR. ROOTS:

11 Q. Do you envision that someone who attends a Trump speech
12 might want to later attend more than one of these permitted
13 events?

14 MS. MOORE: Same objection.

15 THE COURT: Sustained again.

16 BY MR. ROOTS:

17 Q. Well, let me ask you this question: If you were an
18 attendee of women -- of the event for Women for Great
19 America and you had an interest in also checking out the
20 Latinos for Trump permitted event, you would walk freely
21 from one to the other, wouldn't you?

22 MS. MOORE: Objection. Speculation.

23 THE COURT: I mean -- overruled, I think, as to
24 the question.

25 THE WITNESS: Okay. I'm sorry. Can you repeat

1 that?

2 BY MR. ROOTS:

3 Q. On January 6th, with so many permitted events, it would
4 be expected that people might move from one event to
5 another, wouldn't they?

6 MS. MOORE: Objection. Speculation.

7 THE WITNESS: I can't speak on that.

8 THE COURT: Sustained as to speculation.

9 BY MR. ROOTS:

10 Q. Have you ever seen another date with so many permitted
11 events around the Capitol?

12 MS. MOORE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: I don't recall at the moment, to be
15 honest with you.

16 BY MR. ROOTS:

17 Q. So people would -- okay. There have been times when
18 there were multiple permitted events around the Capitol.
19 Correct?

20 A. Yes.

21 Q. And --

22 A. That would be fair to say.

23 Q. -- is it your experience that people walk freely from
24 one to the other?

25 A. I don't know whether they walk -- they're not -- I mean,

1 if they're part of a demonstration in one area, they're not
2 supposed -- they're not supposed to be going to another
3 demonstration if they're permitted. So I don't know, to be
4 honest with you. I can't -- and I can't say what people do
5 out there.

6 Q. Okay. If someone was attending the Women for Great
7 America up there on the east -- I guess it would be the
8 southeast grass area, and they wanted to check out the event
9 in the west, they would walk in the closest -- they would
10 form the closest line, wouldn't they?

11 MS. MOORE: Objection. Speculation.

12 THE COURT: Sustained.

13 BY MR. ROOTS:

14 Q. I guess what I'm asking is, people walking from one side
15 of the Capitol to another to attend a permitted event would
16 probably cut through the grassy areas?

17 A. I mean, it's possible. I mean, are we speaking about
18 one in particular? I don't --

19 Q. I'm just asking generally. The people who are going to
20 be there to speak or attend these events generally -- would
21 you say that, for the most part, they're all in -- well,
22 actually -- at least one was an anti-Trump event. Correct?

23 A. Unless I see the information, I don't recall which is
24 which, to be honest with you. They were all First Amendment
25 activities in my eyes.

1 Q. Would people be normally walking through the Capitol to
2 attend one event after attending another?

3 A. Walking through -- you mean the building?

4 Q. Through the building.

5 A. Okay. Repeat your question. I'm sorry. I'm confused.
6 We're talking about outside. Now we're going in. I
7 apologize.

8 Q. Let's say, in the past, if you're attending an event in
9 the northeast and you were interested in an event in the
10 southwest of the Capitol, did people ever walk through the
11 Capitol?

12 MS. MOORE: Objection. Speculation, relevance.

13 THE COURT: It has to be sustained. Sustained.

14 MR. ROOTS: I think I'll stop there.

15 Thank you very much. No further questions.

16 THE COURT: All right. Any redirect from the
17 Government? I guess that's -- no. It's cross from the
18 Government, is what it is.

19 CROSS-EXAMINATION

20 BY MS. MOORE:

21 Q. Good afternoon, Sergeant.

22 A. Good afternoon.

23 MS. MOORE: Ms. Rohde, could you pull up Rehl
24 Exhibit 11-A, please.

25

1 BY MS. MOORE:

2 Q. This map shows certain areas where people are permitted
3 to demonstrate around the Capitol. Fair to say?

4 A. That's correct.

5 Q. And those areas are referenced by numbers 1 through 23.
6 Correct?

7 A. That is correct.

8 Q. And the map has different colors for different areas
9 related to their ability to have demonstrations in those
10 areas. Right?

11 A. Yes.

12 Q. And red -- and there's a --

13 MS. MOORE: Ms. Rohde, if you could zoom in on the
14 legend, please.

15 BY MS. MOORE:

16 Q. And red indicates that those are areas where no
17 demonstrations are permitted. Correct?

18 A. Correct.

19 Q. And that covers the Capitol Building?

20 A. Definitely. And all office buildings as well.

21 Q. And there's also yellow areas on the map, and that
22 indicates that those areas can't be impeded at any time.
23 Right?

24 A. That is correct.

25 Q. Okay. And green means that a demonstration could occur

1 there. Right?

2 A. That is correct.

3 MS. MOORE: If you could zoom out, Ms. Rohde.

4 BY MS. MOORE:

5 Q. But on January 6th, not all of the demonstration areas
6 were available for demonstrations. Right?

7 A. That is correct.

8 Q. For instance, area 1 was not available for
9 demonstrations that day. Correct?

10 MS. HERNANDEZ: Objection.

11 THE COURT: Overruled.

12 BY MS. MOORE:

13 Q. Area 1 was not available for demonstrations on
14 January 6th?

15 A. That's correct. It was not.

16 Q. And that's the kind of lower grassy area we see on the
17 map behind you?

18 A. Correct. All of that. Area 1.

19 Q. Okay. And looking back at Rehl Exhibit 11, the only
20 areas where there were permitted demonstrations were 7,
21 which is over here, 8, 9, 10, 11, and 15 down here. Right?

22 A. That is correct.

23 Q. None of the other areas were permitted for
24 demonstration. Correct?

25 A. That is correct.

1 MS. MOORE: Then Ms. Rohde, if you could please
2 bring up Rehl Exhibit 11-B quickly.

3 MR. PATTIS: B, as in boy?

4 MS. MOORE: Yes.

5 If you could scroll up just a little bit,
6 Ms. Rohde.

7 BY MS. MOORE:

8 Q. This indicates that the number of participants is
9 limited to 50. Right?

10 A. Correct.

11 Q. And if you could go -- looking at the sixth bullet here,
12 it indicates that the volume of any sound of the
13 demonstration has to be kept to a minimum and directed away
14 from congressional office buildings. Right?

15 A. That is correct.

16 MS. MOORE: Ms. Rohde, if you could go to the
17 second page, please. And if you could scroll down some,
18 please, to sub-bullet F.

19 BY MS. MOORE:

20 Q. And that indicates that, as a condition of getting the
21 permit, no weapons are permitted. Correct?

22 A. That is correct.

23 MS. HERNANDEZ: Objection. Beyond the scope.

24 THE COURT: Overruled.

25

1 BY MS. MOORE:

2 Q. And all of the other permits that we looked at would
3 have those same conditions about size and noise and the lack
4 of weapons. Right?

5 A. That is correct.

6 MS. MOORE: Ms. Rohde, could you bring up Rehl
7 11-A again, please. If you could zoom in.

8 BY MS. MOORE:

9 Q. So looking at this map, have I circled the Pennsylvania
10 walkway?

11 A. You did.

12 Q. Okay. And are demonstrators permitted to demonstrate on
13 a sidewalk, in general?

14 MS. HERNANDEZ: Objection. Foundation.

15 THE COURT: You can ask the witness -- overruled.

16 BY MS. MOORE:

17 Q. Are demonstrators allowed to demonstrate on a sidewalk?

18 A. Yes, on -- where there's no restrictions and they're not
19 impeding the walkways or the sidewalks.

20 Q. But they would need a permit for that?

21 A. Yes, if they're -- yes.

22 Q. And there were no such permits for this area on
23 January 6th?

24 A. No.

25 Q. Okay. In fact, area 1 was completely closed on

1 January 6th. Right?

2 MS. HERNANDEZ: Foundation.

3 THE COURT: The witness can answer the question if
4 she knows.

5 THE WITNESS: That is correct. The area --
6 area 1 -- all of the yellow area included in area 1 is
7 considered area 1. So that means everything is closed.

8 BY MS. MOORE:

9 Q. And I think you mentioned that the yellow means that on
10 the Pennsylvania walkway, it couldn't be impeded at any
11 time. Right?

12 A. That's correct.

13 MS. MOORE: Ms. Rohde, could you pull up
14 Government's Exhibit 1001, please. And if we could go to 12
15 minutes and 18 seconds.

16 BY MS. MOORE:

17 Q. Do you see the video on the screen?

18 (Whereupon, segments of Government's Exhibit No.
19 1001 were published in open court.)

20 MS. HERNANDEZ: Objection. Scope.

21 THE COURT: Overruled.

22 BY MS. MOORE:

23 Q. And this is showing the Pennsylvania walkway?

24 A. It appears that, yes.

25 MS. MOORE: If you could play it, please,

1 Ms. Rohde.

2 (Whereupon, segments of Government's Exhibit No.
3 1001 were published in open court.)

4 MS. HERNANDEZ: Objection, your Honor. Scope and
5 move to strike.

6 THE COURT: I'll hear you at sidebar.

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

9 THE COURT: Ms. Hernández?

10 MS. HERNANDEZ: Yeah.

11 THE COURT: The scope of her direct testimony was
12 what permits were issued, where they were for and the like.

13 MS. HERNANDEZ: Right.

14 THE COURT: But I'm really struggling to see how
15 the Government doesn't get to point out that permits were
16 not issued for particular places.

17 MS. HERNANDEZ: Well, first of all, the scope of
18 her testimony is that she works in one particular office
19 that processes part of the thing and sends it up the ladder.

20 I wasn't allowed to get into multiple reports or
21 documents which showed that there were demonstration
22 projects to protest at the Capitol.

23 THE COURT: No. I permitted --

24 MS. HERNANDEZ: How are we going to -- there's
25 another one that also I didn't get into. How we get from

1 there to an actual demonstration, I don't believe this
2 officer can -- I mean, she can tell us.

3 THE COURT: I'm sorry. I would have permitted
4 you, like I permitted you on the other one, to elicit the
5 purpose of those other demonstrations if she knew, and you
6 could refresh her recollection.

7 But again, nothing --

8 MS. HERNANDEZ: That's fine. I object and the
9 Court has ruled. That's fine.

10 THE COURT: No. But if there were other ones that
11 you wanted to elicit the purpose of, obviously, I would have
12 let you do that. But the point is, here -- let me just ask.

13 What are you going to ask her about this?

14 MS. MOORE: I'm going to ask her about the
15 location, if it appears to be a march, if there was a permit
16 for that, if they're impeding, which is permitted -- or also
17 not permitted based on the location, based on the video, in
18 accordance with the permits that day.

19 THE COURT: Why isn't this within the scope?

20 MS. HERNANDEZ: Because --

21 THE COURT: She's testifying as to there were
22 permits. You got her to say, Here's where there were
23 permits for and --

24 MS. HERNANDEZ: She processes documents. She's
25 not out on the Mall or anywhere else where these

1 demonstrations are or whether they were even there on
2 January 6th or anything. This is way beyond the scope. If
3 the Court wants to rule on it -- you know, you've ruled.

4 THE COURT: All right.

5 MS. HERNANDEZ: I don't want to waste everyone's
6 time.

7 THE COURT: Okay. You may proceed.

8 MS. HERNANDEZ: In my opinion, it's way beyond the
9 scope.

10 THE COURT: Let me just say this: At a minimum --
11 I don't know about every single question the Government has
12 said there. But again, on direct, she testified and
13 identified places on January 6th that were permitted and
14 places that were not.

15 So I think this is within the scope of her direct
16 to point out that this -- there was no permit here.

17 We'll see where things go after that. But that's
18 within the scope.

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

21 BY MS. MOORE:

22 Q. So looking back at this, does this appear to depict a
23 march?

24 A. Definitely.

25 Q. And there were no permits for marches on the Capitol

1 grounds on January 6th. Correct?

2 A. That's correct.

3 Q. And fair to say there's more than 50 people depicted
4 here?

5 A. Definitely.

6 Q. And the permitted demonstrations were limited to 50
7 people?

8 A. That is correct.

9 MS. MOORE: Can you keep playing and then stop at
10 13:14, please.

11 (Whereupon, segments of Government's Exhibit No.
12 1001 were published in open court.)

13 MS. HERNANDEZ: Objection. Beyond the scope, your
14 Honor.

15 THE COURT: Overruled.

16 (Whereupon, segments of Government's Exhibit No.
17 1001 were published in open court.)

18 BY MS. MOORE:

19 Q. Looking at this scene at 13:14 here, is the Pennsylvania
20 walkway impeded here?

21 A. It appears that way, yes.

22 Q. And based on the color of it, yellow on the map we
23 looked at in Rehl Exhibit 11-A, that's not permitted.
24 Correct?

25 A. That is correct.

1 MS. MOORE: Ms. Rohde, if you could go to
2 Government's Exhibit 404G, please.

3 BY MS. MOORE:

4 Q. Before we start, does this appear to depict the west
5 plaza kind of close to the building?

6 A. Yes, it does.

7 MS. MOORE: And if you'll quickly pull up Rehl
8 Exhibit 11-A, please, Ms. Rohde.

9 MS. HERNANDEZ: Objection, your Honor. Way beyond
10 the scope.

11 THE COURT: Overruled.

12 BY MS. MOORE:

13 Q. Does it appear that that's the -- did I circle this kind
14 of, like, yellow two areas on the top of area 1 on this map?

15 A. Correct.

16 Q. And that's the same area we just saw on the video?

17 A. Yes. It's the lower west terrace.

18 Q. Thank you.

19 MS. MOORE: And Ms. Rohde, if you could go back to
20 404G, please, and play through 17 seconds.

21 (Whereupon, segments of Government's Exhibit No.
22 404G were published in open court.)

23 BY MS. MOORE:

24 Q. So there's more than 50 people here. Fair to say?

25 A. Yes.

1 Q. And so this wouldn't be allowed even if there had been a
2 permit for this area. Correct?

3 A. Correct.

4 Q. Also, this area is impeded, fair to say, at this point?

5 A. Yes.

6 Q. Which is also prohibited based on its yellow color on
7 Rehl Exhibit 11-A?

8 A. Correct.

9 MS. MOORE: Ms. Rohde, could you pull up
10 Government's Exhibit 401-T, please.

11 BY MS. MOORE:

12 Q. Looking at this, where is this located?

13 MS. HERNANDEZ: Objection, your Honor. Beyond the
14 scope.

15 THE COURT: Overruled.

16 BY MS. MOORE:

17 Q. Are you able to tell where on Capitol grounds this is?

18 A. Yes. This is the top of the -- on the top of the west
19 front.

20 Q. The terrace outside the building?

21 A. Correct.

22 MS. MOORE: Ms. Rohde, could you pull up
23 Government's Exhibit 425, please. If you'll play it
24 through --

25 (Whereupon, segments of Government's Exhibit No.

1 425 were published in open court.)

2 MS. HERNANDEZ: Objection. Beyond the scope.

3 THE COURT: Overruled.

4 (Whereupon, segments of Government's Exhibit No.

5 425 were published in open court.)

6 THE COURT: Ms. Moore -- can I see counsel at
7 sidebar.

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

10 THE COURT: Ms. Moore, this is within the scope.
11 But I mean, I think -- isn't there a way to do this quicker
12 rather than playing all this video again and just saying --
13 identifying the location?

14 MS. MOORE: Yes, your Honor. This is --

15 MS. HERNANDEZ: Your Honor, I don't believe this
16 witness even knows what date these things are happening. I
17 mean, she's being led through this. But there's been no
18 foundation.

19 THE COURT: The question of what -- where -- the
20 locations are within the scope. She can testify as to
21 whether -- where areas were permitted or not. I just think
22 we're burning a lot of time running through all this video,
23 unless there's a reason that I don't know.

24 MS. MOORE: This is the last video. I'm happy to
25 just stop it here and we can continue on with the

1 questioning.

2 THE COURT: All right.

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

5 BY MS. MOORE:

6 Q. The scene we just saw in this video was the upper west
7 terrace and then the area right outside the Capitol
8 Building. Fair to say?

9 A. That's correct.

10 MS. MOORE: Then, Ms. Rohde, if you'll pull up
11 Rehl Exhibit 11-A again.

12 BY MS. MOORE:

13 Q. That would be this area that we just saw in both of
14 those two -- the photo and the video?

15 A. That is correct.

16 Q. And for the record, I've just drawn a circle kind of
17 above the stairs on the, like, inlay of the left side of the
18 Capitol on the west side. And that's red on this map.

19 Correct?

20 A. Yes.

21 Q. And so that means demonstrations are never permitted
22 there. Right?

23 A. Absolutely.

24 Q. Is breaking Capitol property ever a permitted
25 demonstration activity?

1 MS. HERNANDEZ: Objection, your Honor. Beyond the
2 scope.

3 THE COURT: Sustained.

4 BY MS. MOORE:

5 Q. So you mentioned there were six permits for January 6th.
6 Were the Proud Boys the organizers for any of those?

7 MS. HERNANDEZ: Objection.

8 THE WITNESS: No.

9 MS. HERNANDEZ: Beyond the scope.

10 THE COURT: Overruled.

11 BY MS. MOORE:

12 Q. Was Zachary Rehl the organizer for any of those?

13 MS. HERNANDEZ: Objection. Beyond the scope.

14 THE COURT: Overruled.

15 You may answer the question.

16 THE WITNESS: I couldn't hear you.

17 BY MS. MOORE:

18 Q. Was Zachary Rehl the organizer for any of those permits?

19 A. No.

20 Q. Was Enrique Tarrío?

21 A. No.

22 Q. Was Joseph Biggs?

23 A. No.

24 Q. Was Ethan Nordean?

25 A. No.

1 Q. Was Dominic Pezzola?

2 A. No.

3 MS. MOORE: Thank you. No further questions.

4 REDIRECT EXAMINATION

5 BY MS. HERNANDEZ:

6 Q. Do you have to be an organizer to attend a rally at the
7 Capitol or outside the Capitol?

8 A. No.

9 Q. So all these names that were mentioned to you that
10 weren't on -- the organizers, that doesn't mean they
11 weren't, as Americans, allowed to go to the Capitol that day
12 to have a -- to participate in demonstrations organized by
13 others. Is that correct?

14 A. That's correct.

15 Q. And when these permits are granted for 50 people, do
16 sometimes more people show up?

17 MS. MOORE: Objection. Speculation.

18 THE COURT: She can answer if she knows based on
19 her experience.

20 THE WITNESS: Okay. Can you repeat that?

21 BY MS. HERNANDEZ:

22 Q. So these demonstrations -- these permits are granted for
23 a certain number of people. Correct?

24 A. Correct.

25 Q. And that's -- the organizer says, I'm going to bring

1 this many people?

2 A. Correct.

3 Q. But in D.C., when a demonstration happens, a lot of
4 people show up that may not have been tied to the particular
5 organizer. Would you agree with me on that?

6 A. Yes. It's possible.

7 Q. So were you involved in the demonstrations against the
8 confirmation -- in the permits that were granted to
9 demonstrate against abortion rights or for abortion --

10 MS. MOORE: Objection. Speculation, scope.

11 MS. HERNANDEZ: I've asked her if she was
12 involved, your Honor.

13 THE COURT: Well, it's sustained on scope.

14 BY MS. HERNANDEZ:

15 Q. Sergeant, we weren't able to -- you had never spoken to
16 me until you got on the stand today. Correct?

17 A. That is correct.

18 Q. And were you told that I requested to have -- to
19 interview you before you appeared?

20 A. Yes.

21 Q. And you declined?

22 A. I did.

23 Q. Okay. And did you meet with the prosecutors before you
24 testified?

25 A. For a brief moment, yeah.

1 Q. You did meet with them?

2 A. Yes.

3 Q. Now, we've been talking about -- are you familiar
4 with -- did -- let me back up.

5 There were many more demonstrations scheduled for
6 January 6th, were there not?

7 MS. MOORE: Objection. Scope.

8 THE COURT: I didn't -- I didn't hear the whole
9 question.

10 BY MS. HERNANDEZ:

11 Q. There were many more demonstrations scheduled for
12 January 6th in and around Washington, D.C. Correct?

13 MS. MOORE: Objection. Scope.

14 THE COURT: I'll overrule the objection. If the
15 witness knows.

16 THE WITNESS: I don't know.

17 BY MS. HERNANDEZ:

18 Q. Were you aware that the president -- then-president of
19 the United States, Donald Trump, was having a huge
20 demonstration on the Ellipse?

21 MS. MOORE: Objection. Scope.

22 THE COURT: I'll overrule. If the witness knows.

23 THE WITNESS: I do recall that. Yes.

24 BY MS. HERNANDEZ:

25 Q. And there were hundreds of thousands of people who

1 attended that rally on the Ellipse. Correct?

2 A. As far as the numbers, I'm not sure --

3 Q. There were --

4 A. -- but there were people.

5 Q. -- large numbers -- I'm sorry.

6 A. There were people that attended that rally.

7 Q. Large numbers. Very large numbers? Hugely numbers, as
8 then-President Trump might have said?

9 A. If that's what you're saying, yes.

10 Q. And people -- when they go to demonstrations in
11 Washington, D.C., they tend to go towards the main
12 monuments, like the Capitol, the Washington Monument, the
13 Ellipse. Is that correct?

14 MS. MOORE: Objection --

15 BY MS. HERNANDEZ:

16 Q. In your experience.

17 MS. MOORE: Objection. Relevance and scope.

18 THE COURT: I mean, sustained as to relevance and
19 speculation.

20 BY MS. HERNANDEZ:

21 Q. The persons that were shown to you in that video, do you
22 know whether they were coming from the Trump rally?

23 A. I don't know where they were coming from. No.

24 Q. And in fact, you don't know whether there's been
25 evidence that people from the Trump rally showed up at the

1 Capitol that day, do you?

2 MS. MOORE: Objection. Relevance as to what she
3 knows.

4 THE COURT: Sustained.

5 MS. HERNANDEZ: Your Honor, she showed videos of
6 people -- if -- I don't have to say it out loud, but she was
7 shown pictures -- videos of people at the location.

8 THE COURT: She's answered a question: I don't
9 know where they were coming from.

10 MS. HERNANDEZ: I know. The question I asked
11 is --

12 BY MS. HERNANDEZ:

13 Q. If people were coming from the rally towards the
14 Capitol, they would have come in the direction of the videos
15 you were shown. Is that correct?

16 MS. MOORE: Objection. Speculation.

17 MS. HERNANDEZ: It's not speculation. It's
18 whether she knows.

19 BY MS. HERNANDEZ:

20 Q. If they were coming from the rally towards the Capitol,
21 they would have been walking in that direction of the videos
22 you were shown. Correct?

23 A. If they were coming from --

24 Q. The Ellipse. Near the White House.

25 A. -- from the west and they were walking towards the east,

1 they would be coming, yes. But it can -- yes. Yes.

2 Q. And those yellow areas, it says you're not supposed to
3 impede. But people walk in those yellow areas. Correct?

4 A. Yes.

5 Q. So if you happen to have a large number of people and
6 they're all walking in those yellow areas, that's
7 permissible?

8 MS. MOORE: Objection. Which yellow areas?

9 THE COURT: Well, the witness can answer as to the
10 yellow areas.

11 THE WITNESS: So if they're walking in the yellow
12 areas -- what was your question?

13 BY MS. HERNANDEZ:

14 Q. So you said the yellow areas show areas that are not
15 supposed to be impeded. Correct?

16 A. Correct.

17 Q. But that means you can walk on those areas?

18 A. You can.

19 Q. And if there happen to be hundreds of people that may or
20 may not be associated with each other, and -- they are
21 permitted to walk in those areas, in the yellow areas?

22 A. They are.

23 Q. We talked about the permits. Are you also aware that
24 there were many other demonstrations scheduled for -- on or
25 around the Capitol on January 6th?

1 MS. MOORE: Asked and answered.

2 THE COURT: Overruled.

3 BY MS. HERNANDEZ:

4 Q. Correct?

5 A. Yes. I know of them. I don't know all of them, and I
6 don't know anything that didn't happen on our grounds.

7 Q. I'm sorry. You said you did know of them?

8 A. I know that there were other events. But as for who
9 they are or what they were, the names of them, I do not
10 know. The only thing I know is what was happening on
11 Capitol grounds.

12 Q. And do you have access to information from the
13 Metropolitan Police Department intelligence branch?

14 MS. MOORE: Objection. Scope.

15 THE COURT: How does this --

16 MS. HERNANDEZ: There's a --

17 THE COURT: If I could have counsel on the phones,
18 please.

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

21 THE COURT: Ms. Hernández, how is this within the
22 scope?

23 MS. HERNANDEZ: Your Honor, the Government chose
24 to introduce demonstrators even though their own witnesses
25 have said that -- or I mean, the gentleman who was on the

1 stand indicated that he believed a lot of people showed up
2 from the Trump rally.

3 This document that I have in front of me is a
4 document produced by the United States which I told the
5 Government I would be questioning about. It's a 13-page
6 document prepared by Homeland Security --

7 THE COURT: Oh, my God. No, no, no.

8 MS. HERNANDEZ: If the Court will allow me, I will
9 explain.

10 THE COURT: The witness testified as to areas that
11 were in -- permitted and not permitted. And I allowed the
12 Government to show video of areas that described, was this
13 permitted? Was it not permitted?

14 But now this is way beyond.

15 MS. HERNANDEZ: This is a list, just for the
16 record, of 13 pages, as I say, of multiple demonstrations
17 that have been identified that were going to take place on
18 and around the Capitol on January 6th and the dates before.

19 And I think it's relevant and that the Government
20 opened the door.

21 THE COURT: I don't. So it's beyond the scope.

22 (Whereupon, the following proceedings were had in
23 open court:)

24 MS. HERNANDEZ: Judge, I'd like to mark this
25 document as Rehl Exhibit 11-I for identification.

1 THE COURT: Very well.

2 BY MS. HERNANDEZ:

3 Q. So originally we spoke about one of the rallies was for
4 Bryan Lewis. Do you remember that?

5 A. Yes.

6 Q. One of the permits? And the purpose of the Bryan Lewis
7 demonstration was to urge Congress to nullify votes from
8 states that made illegal changes to voting rules during
9 their elections.

10 Do you remember that? Or do you recall whether
11 that was their purpose?

12 MS. MOORE: Objection. Relevance and scope.

13 THE COURT: Overruled.

14 THE WITNESS: If it says that, then yes. I can't
15 recall exactly what all of them said.

16 BY MS. HERNANDEZ:

17 Q. So let me show you form 303.

18 THE COURT: Can I have counsel at sidebar?

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

21 THE COURT: Look, we now have a jury issue. This
22 is -- I know there's a juror who once we get to this time
23 has trouble getting to --

24 MS. HERNANDEZ: I'll stop, your Honor.

25 THE COURT: No. I mean, I'm --

1 MS. HERNANDEZ: I'll stop. This lady has to leave
2 for vacation or something tomorrow. So I'll stop. I mean,
3 I don't want to inconvenience the juror.

4 THE COURT: Look, if you have a couple of
5 questions on the purpose --

6 MS. HERNANDEZ: That's fine.

7 THE COURT: Or we can figure out a stipulation or
8 something. Very well.

9 MS. HERNANDEZ: Thank you.

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

12 MS. HERNANDEZ: Your Honor, I know you have plans
13 for tomorrow and I know jurors have plans for tomorrow, your
14 Honor. I'll stop.

15 THE COURT: All right. Very well. Ladies and
16 gentlemen, we're done for the day.

17 Ma'am, you may -- Sergeant, you may step down.

18 And as always, no media on this case or
19 January 6th, number one. No independent investigation.
20 Please do not discuss the evidence with anyone.

21 You are excused for the day.

22 (Whereupon, the jury exited the courtroom at 5:37
23 p.m. and the following proceedings were had:)

24 THE COURT: Sergeant, you may step down.

25 (Witness excused.)

1 THE COURT: Everyone may be seated.

2 We do have -- there are some days when I know,
3 when we push it past 5:30, that -- I can't recall, but
4 originally the issue was I know there was a juror that has a
5 childcare issue.

6 And I wanted to try to give you, Ms. Hernández,
7 time to finish up. But we got where we are. Maybe the
8 parties can work out a stipulation if there's some
9 additional testimony that we didn't get to, given the -- the
10 witness's schedule.

11 In any event, anything the parties want to raise
12 before we begin at 9:00? I know -- who are the next
13 witnesses we have on deck -- tapped for tomorrow? I guess I
14 know two of them. Is there a third we have on tap for
15 tomorrow as well? I think I know two of them.

16 MS. HERNANDEZ: Yes. I have two other witnesses
17 scheduled after Mr. Finley and Mrs. Rehl.

18 THE COURT: Okay. And -- two after that?

19 MS. HERNANDEZ: Mrs. Finley -- sorry --
20 Mr. Finley, Mrs. Rehl and two other witnesses. And there
21 are others.

22 THE COURT: Okay. I understand. I just want to
23 make sure.

24 And has the Government been informed -- you don't
25 have to tell me. Have they been informed of these

1 witnesses?

2 MS. HERNANDEZ: They've been informed of these
3 witnesses since last week, I believe.

4 THE COURT: All right. Why don't you --

5 MS. HERNANDEZ: We've been juggling their presence
6 because of everything that's been happening, but they've had
7 the list.

8 THE COURT: Understood.

9 Can you give us the good-faith order in which you
10 plan to call them?

11 MS. HERNANDEZ: I would like to put Mr. Finley on
12 first, just because we've been dragging him. And I'm going
13 to need another order, because he's scheduled to report
14 tomorrow.

15 And then I have told him that I have been using
16 Mrs. Rehl, unfortunately for her, as -- I've been moving
17 witnesses around in order to accommodate the Court's
18 schedule. So I expect that, after Mr. Finley, I will have
19 either Henry McGill or Mr. Guffrey, and then Mrs. Rehl. But
20 again, I'll take a look at the order when I go back.

21 I would ask the Court, however, your Honor -- it's
22 very unfair to me for the Government to object to documents
23 that they've had in their possession. I had a whole
24 examination prepared, and I had to change it and adjust it
25 because they brought it up at lunchtime -- I mean, after

1 lunch, after we came back from lunch. That's very unfair to
2 me, who's prepared an examination based on what I believed
3 were business records that would come in.

4 THE COURT: I mean, I am -- let's put it this way:
5 I think if -- well, I'm sympathetic to that point, although,
6 again, I think, in fairness, if someone had convinced me --
7 if anyone had convinced me of the relevance of this, I would
8 have come out a different way.

9 That's why I'm saying -- that's why I say to you,
10 if there are things that you think are relevant that we can
11 figure out a way for you to get in, and that I would agree
12 with you on, and that -- given the witness and where
13 things -- how things played out with the witness, if there's
14 a way that they can come in, I mean, I'm open to that.

15 MS. HERNANDEZ: Again, I think it's very unfair.
16 I couldn't listen to the testimony of the CHS because I was
17 juggling my papers around in order to be prepared for this
18 witness.

19 I believed they were all the relevant. They are
20 definitely not hearsay because they're all business records.
21 And as you could tell, the witness recognized them.

22 So I just think it's very unfair to do it in the
23 manner in which we've been conducting -- in which the Court
24 has been conducting the trial.

25 And the Court's view of the scope has been very

1 stringent when the Government's witnesses were on; and now,
2 your Honor, you're just letting them -- I expect that when
3 Mrs. Rehl gets on, they're going to try to play the videos
4 again. It's ridiculous that they continue to play the
5 videos over and over again. I'm sorry for using the term
6 "ridiculous."

7 But from this point -- you know, I can barely
8 introduce a document that's a business record, and the Court
9 lets them play the same videos that have been played 17
10 times through every witness. It's just very unfair from
11 this end, your Honor.

12 And we're -- we are struggling to keep up. And
13 the Government has a whole slew of resources, and we don't.
14 We have to run around at the last minute and -- trying to
15 meet what the Government decides to put on.

16 I will say I was never -- those exhibits that were
17 used for cross-examination were not produced or identified
18 for me.

19 THE COURT: Right. And no order I've ever ordered
20 upon either side would have required their disclosure before
21 cross-examination.

22 MS. HERNANDEZ: No. You have ordered them that,
23 at least before they start cross-examination, they provide
24 them. I didn't have them. At least -- at a minimum you
25 have said at least before they -- you start

1 cross-examination, give them over. That didn't happen.

2 THE COURT: And what cross-examination materials?

3 MS. HERNANDEZ: The cross-examination of this
4 witness, when she played multiple videos.

5 THE COURT: The videos? Okay.

6 MS. HERNANDEZ: The videos that she played.

7 THE COURT: Right. Okay.

8 MS. HERNANDEZ: Maybe I could have objected on --
9 on relevance, on 403, on other grounds.

10 But -- I mean, I'm just telling the Court that,
11 from this end, it does not look that there's fair play.

12 THE COURT: I'm sorry you feel that way.

13 I'll see you all at 9:00 tomorrow.

14 (Proceedings concluded.)
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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 29th day of March, 2023.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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