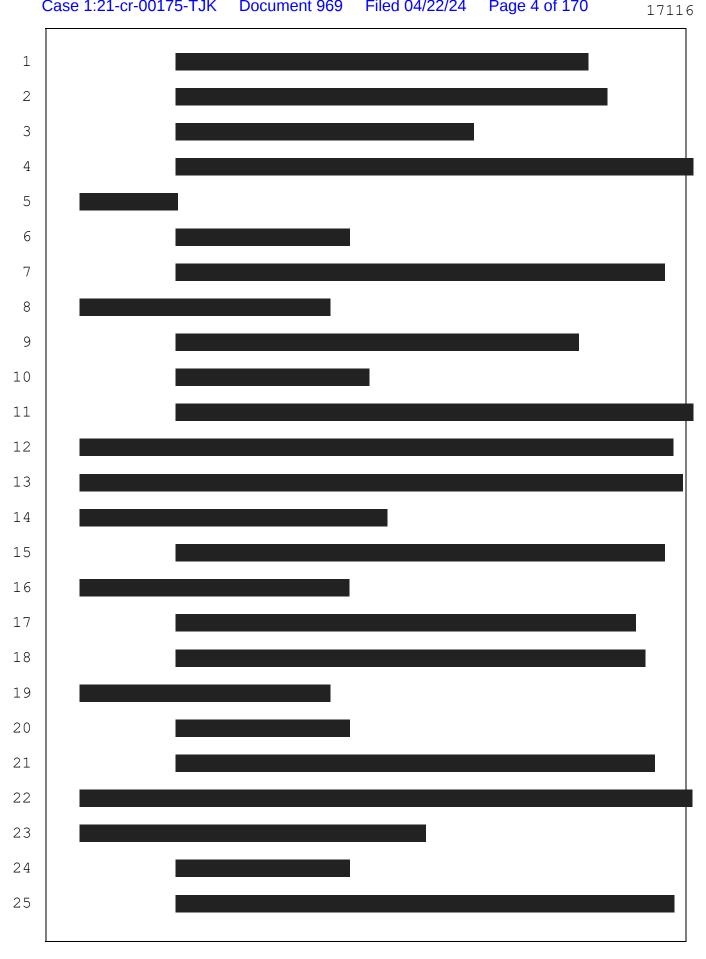
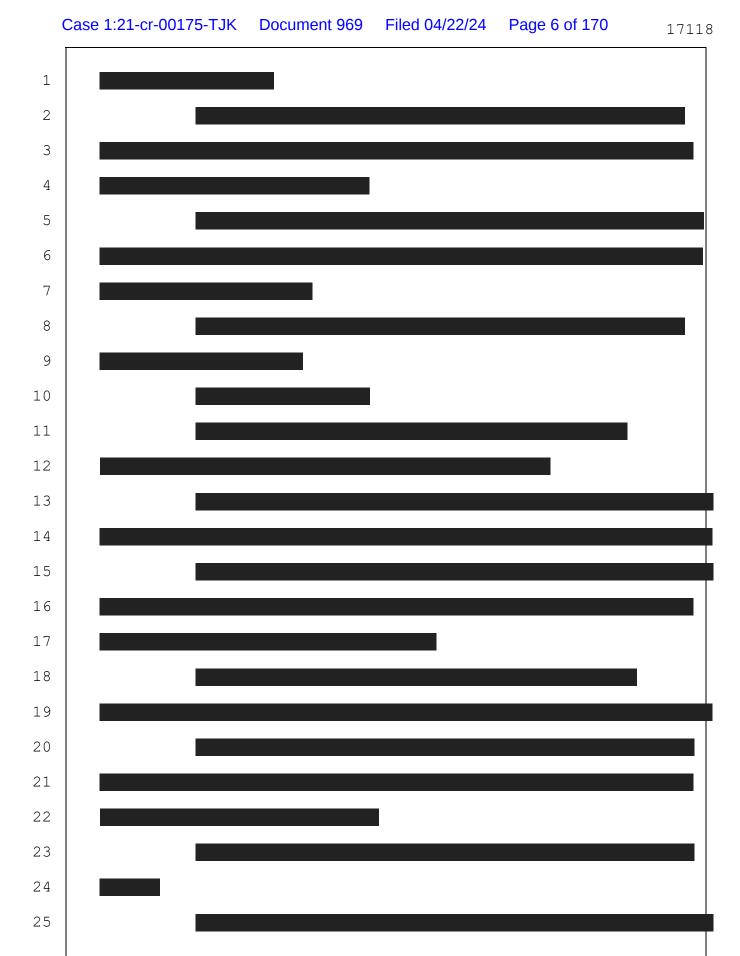
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                    IN THE UNITED STATES DISTRICT COURT
                       FOR THE DISTRICT OF COLUMBIA
2
 3
       United States of America,
 4
                          Plaintiff,
                                        ) Criminal Action
                                        ) No. 21-cr-175
 5
       VS.
                                        ) JURY TRIAL
 6
       Ethan Nordean,
                                        ) Day 60
                                        ) PUBLIC
       Joseph R. Biggs,
 7
       Zachary Rehl,
       Enrique Tarrio,
                                        ) Washington, DC
 8
       Dominic J. Pezzola,
                                        ) April 5, 2023
                                        ) Time: 1:45 p.m.
 9
                          Defendants.
10
                         TRANSCRIPT OF JURY TRIAL
11
                                HELD BEFORE
                   THE HONORABLE JUDGE TIMOTHY J. KELLY
12
                       UNITED STATES DISTRICT JUDGE
13
                           APPEARANCES
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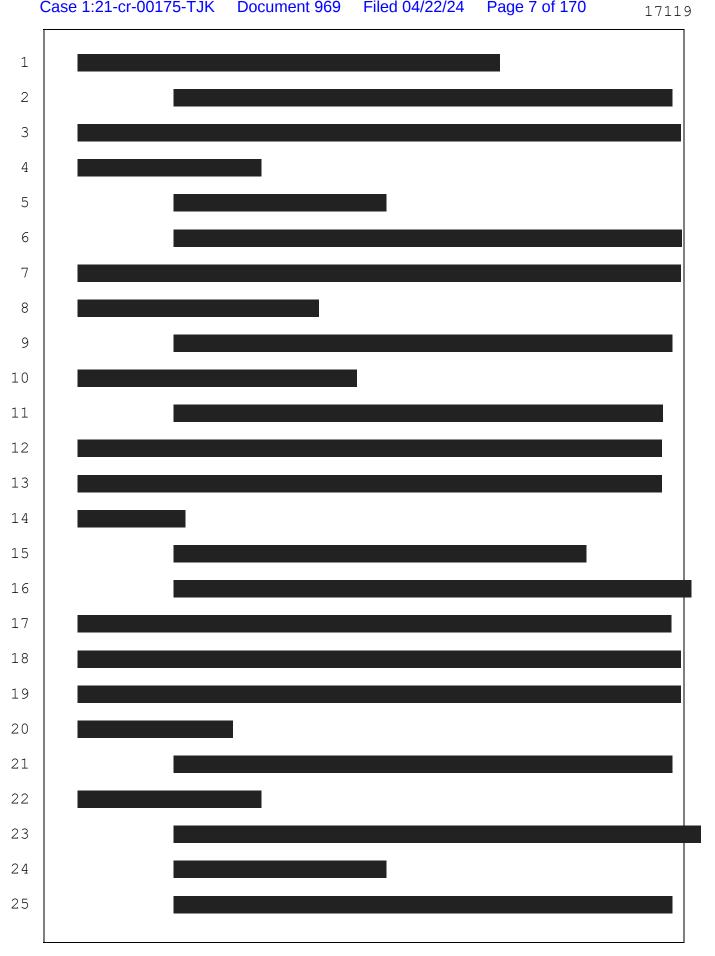
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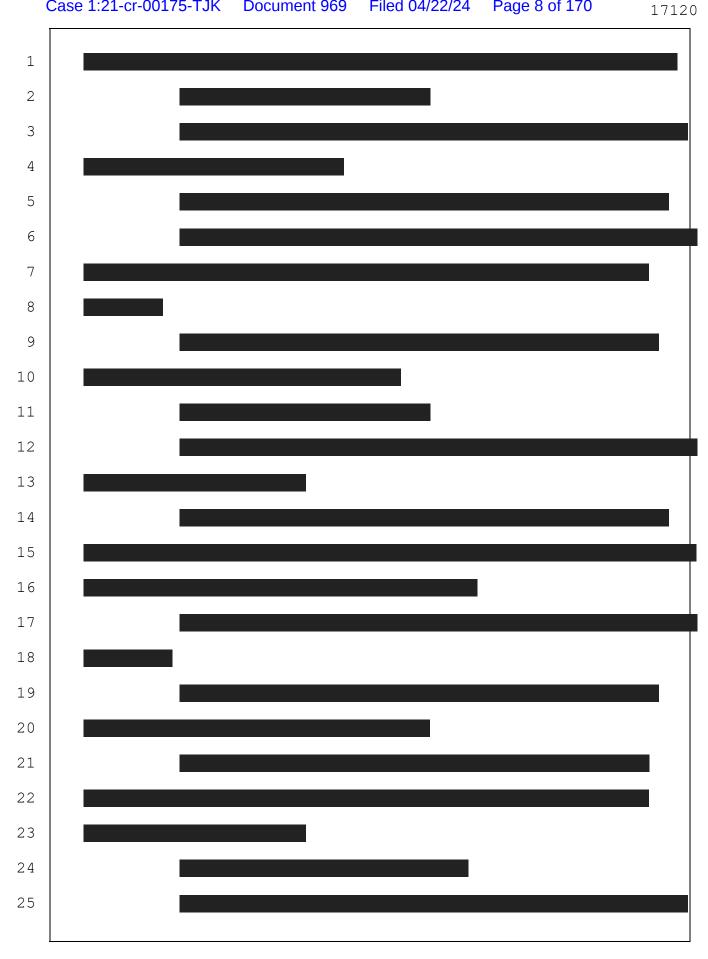


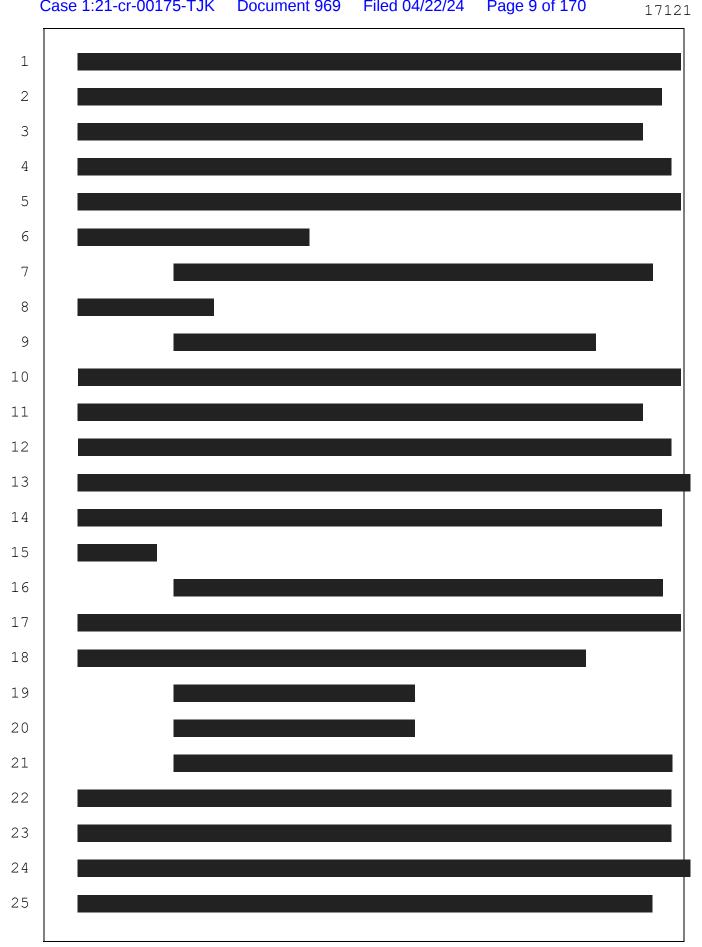






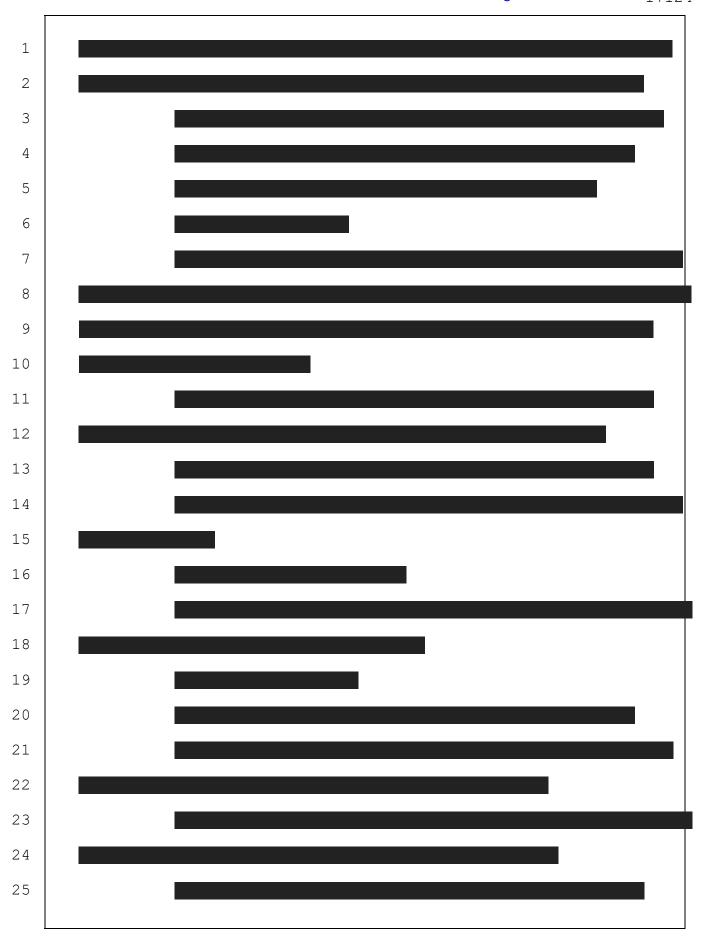


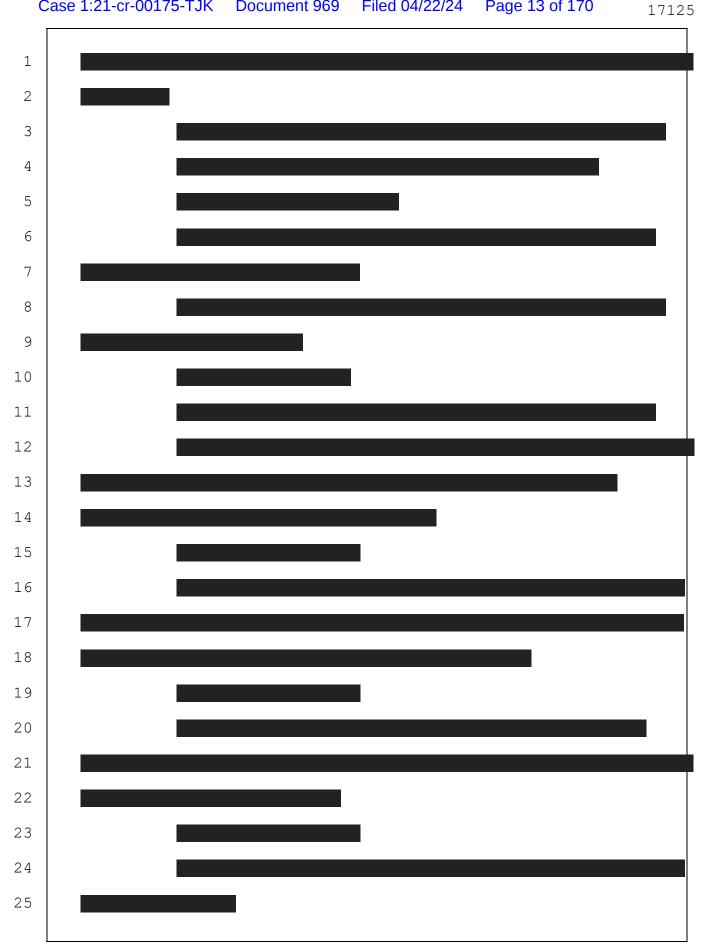


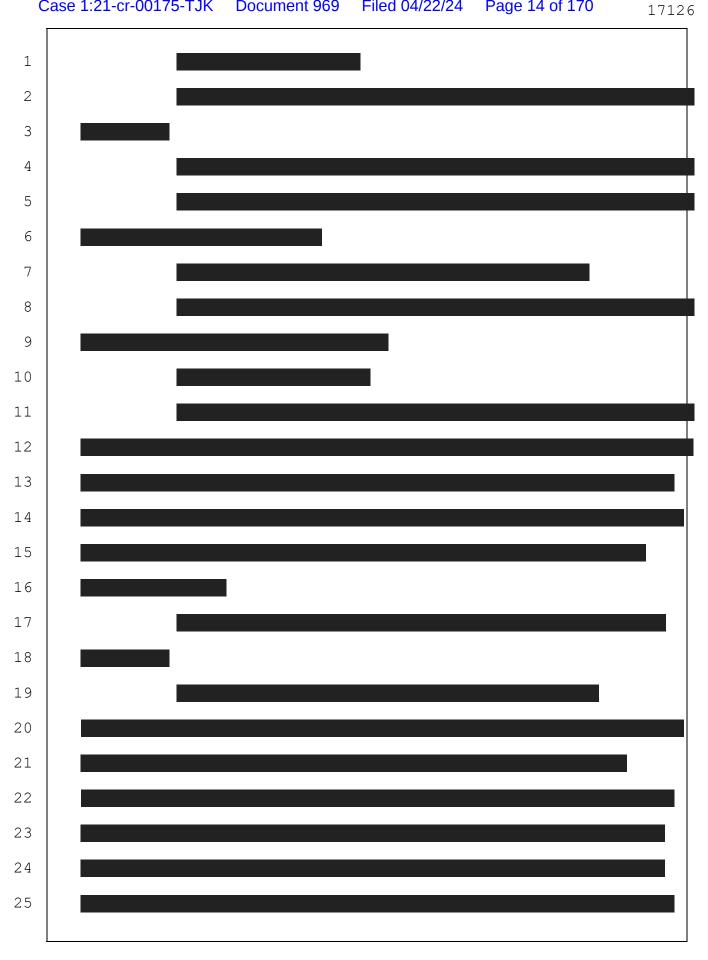


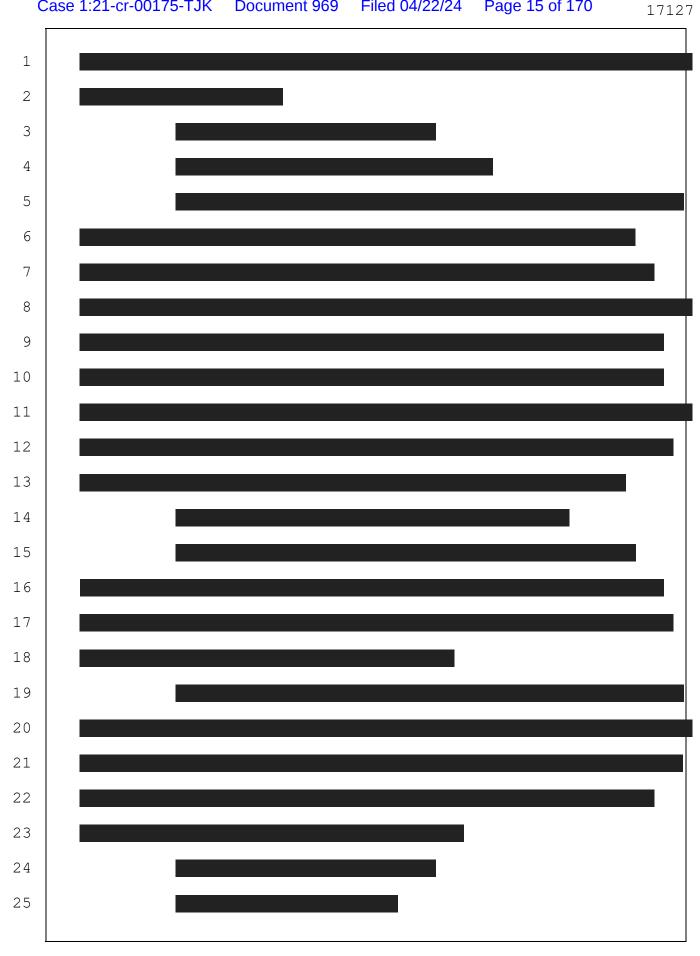






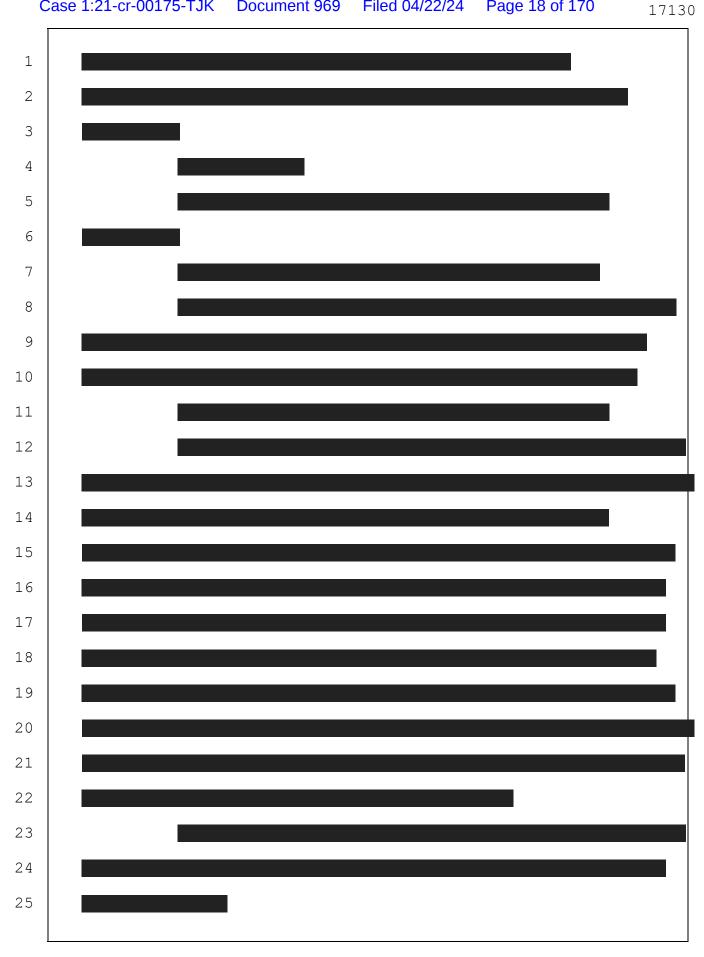




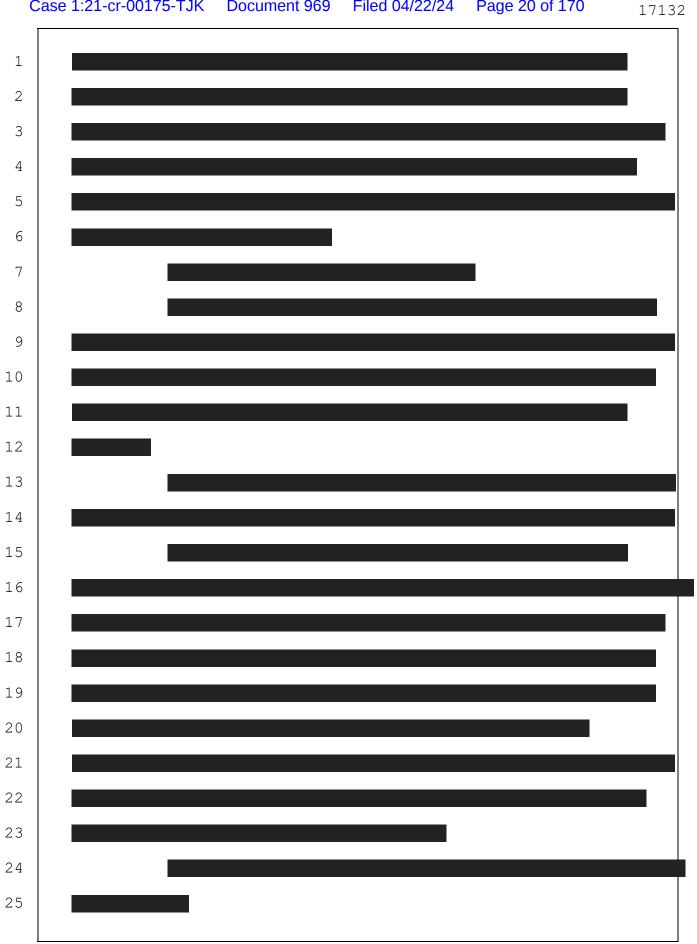


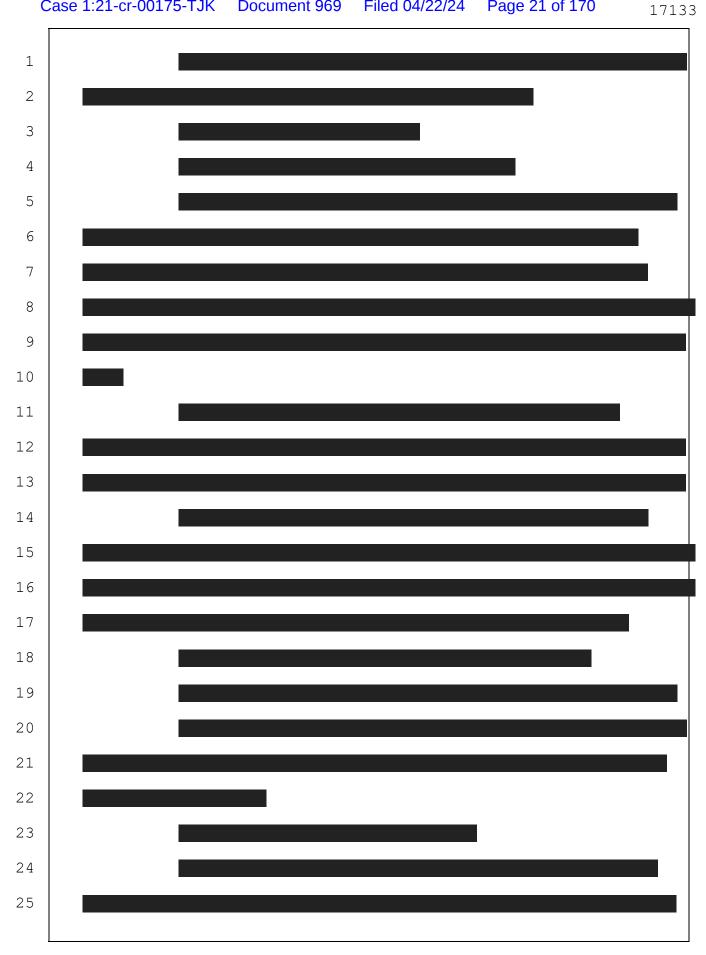


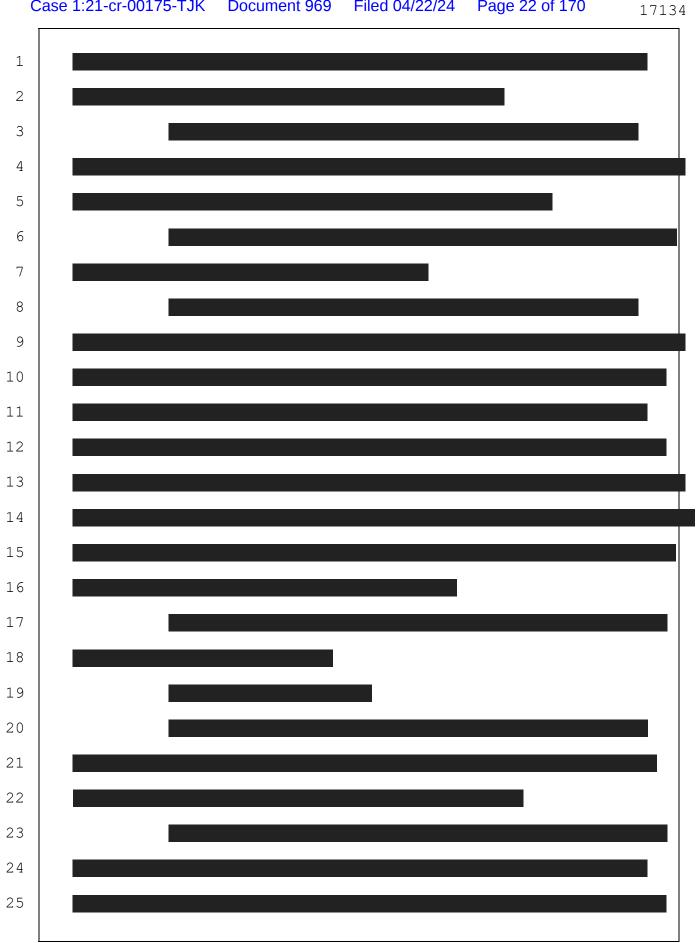




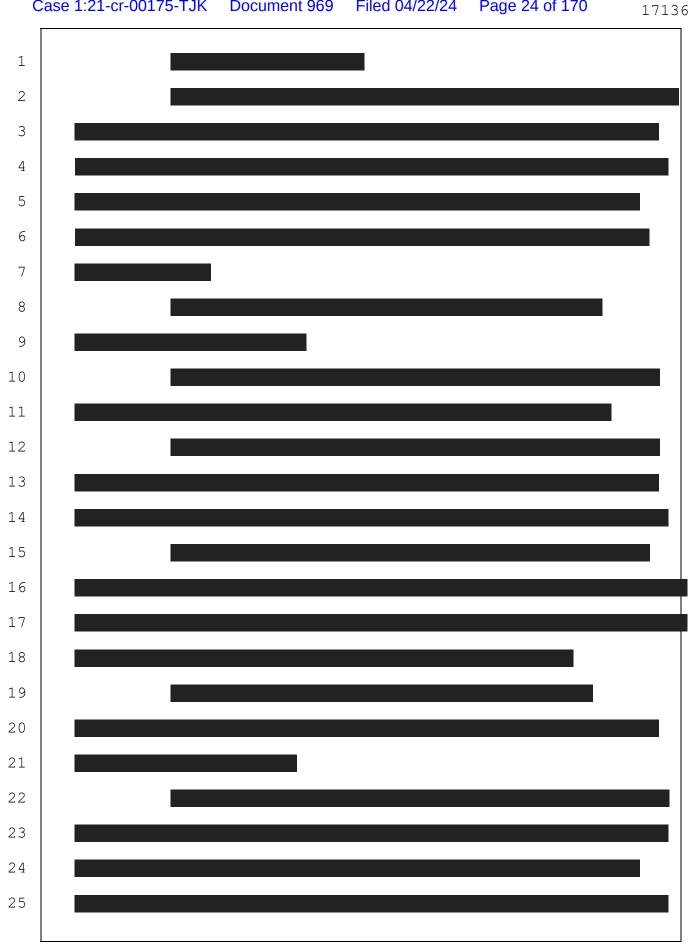


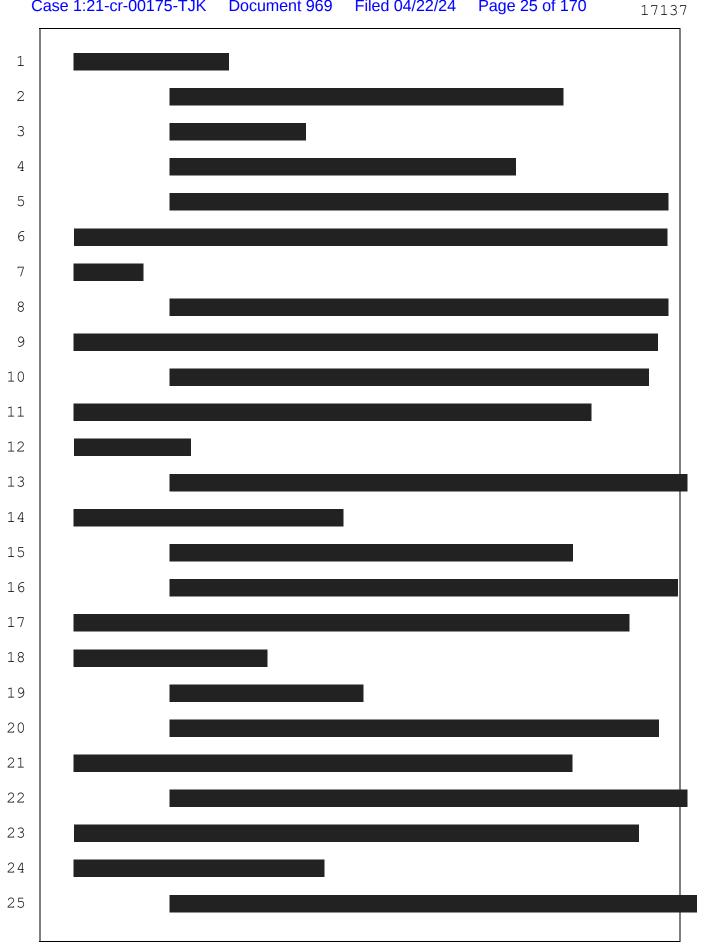




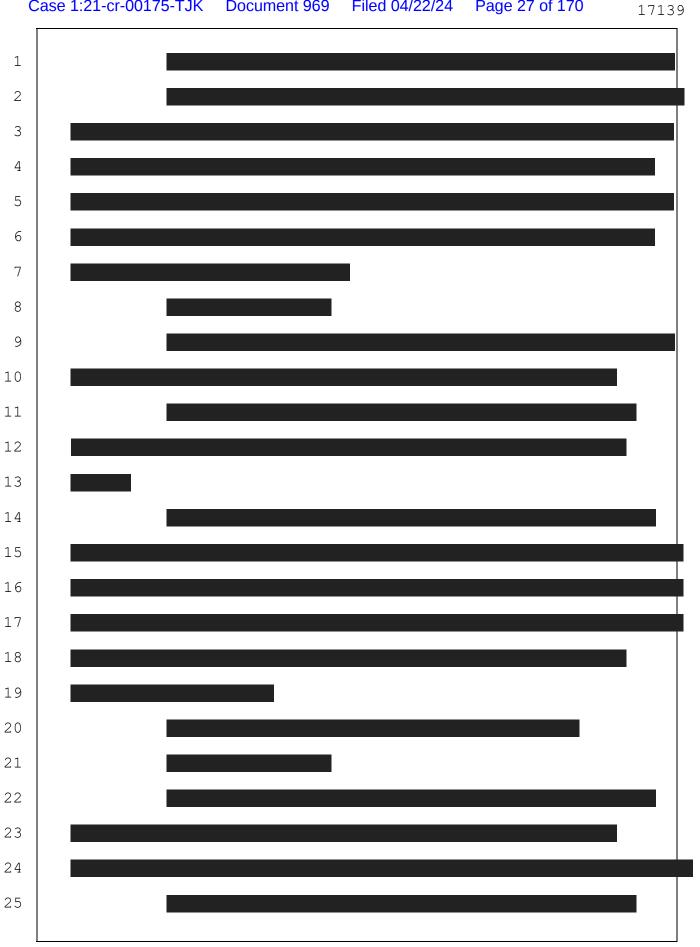




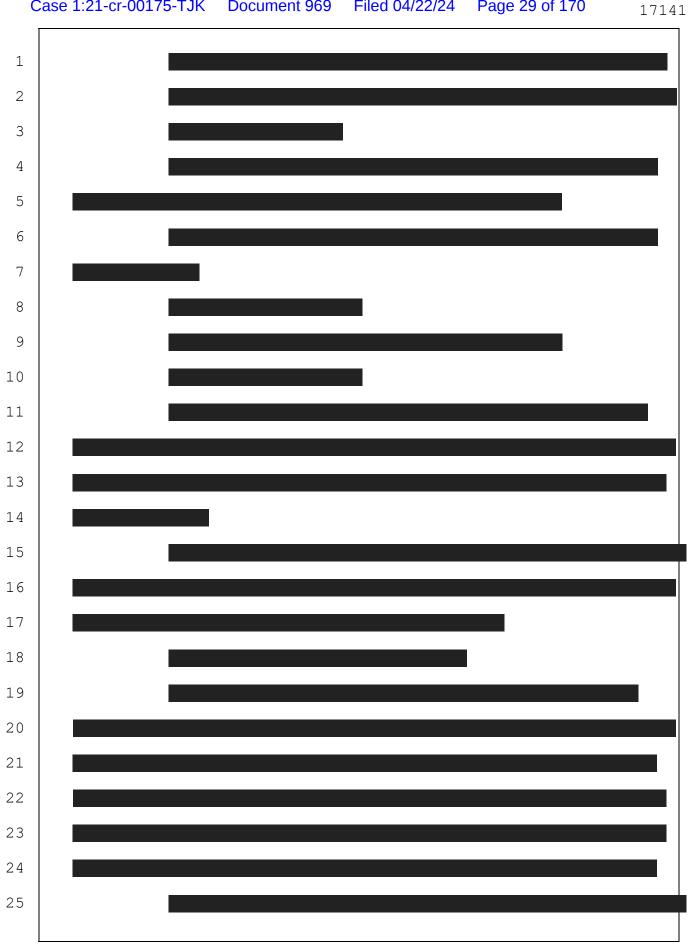


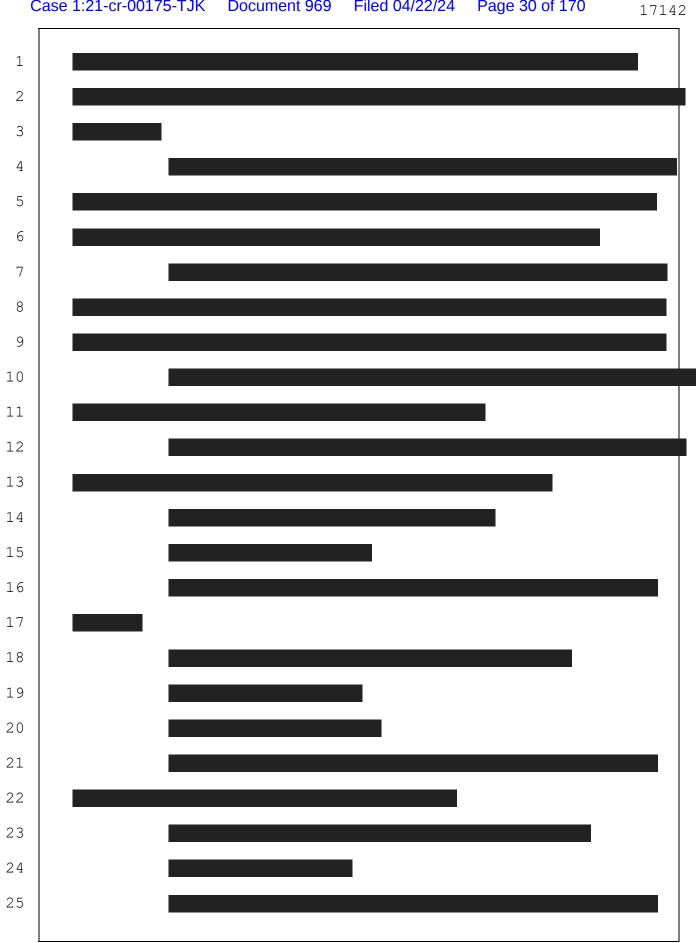




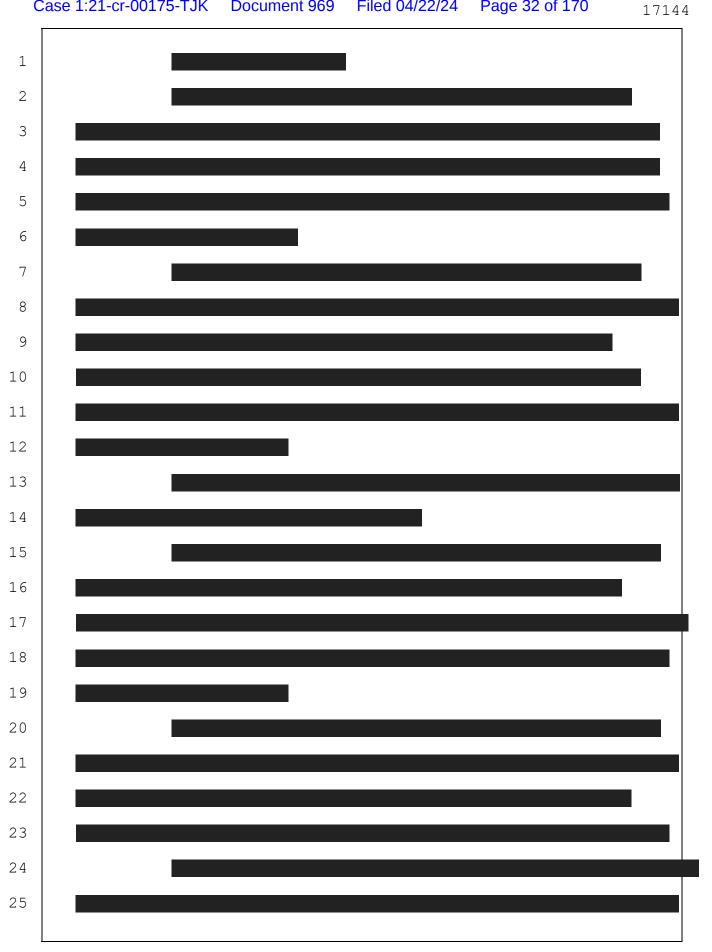


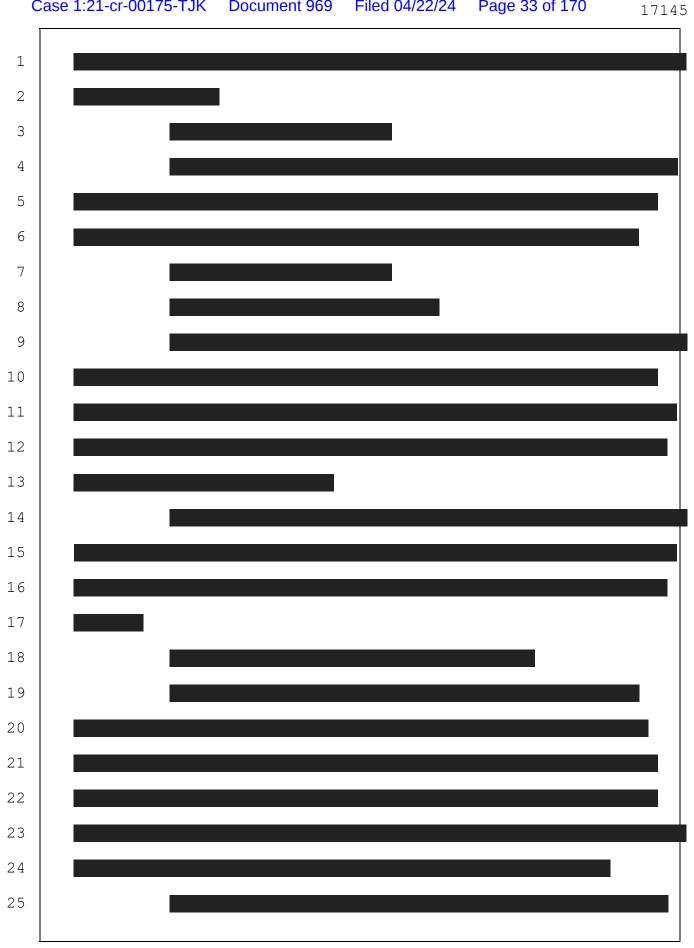


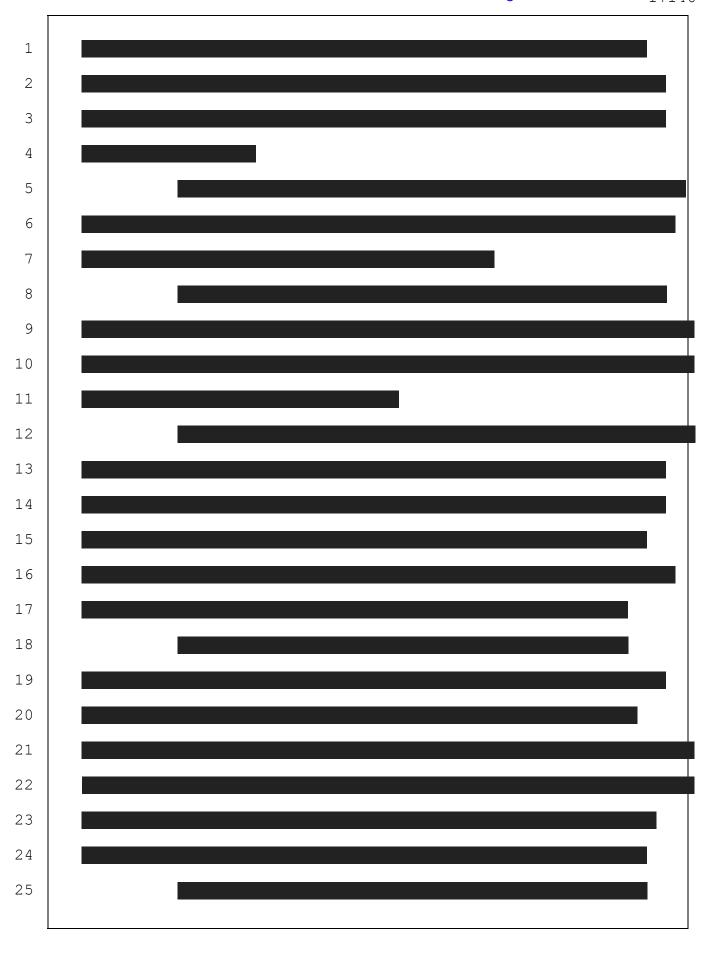




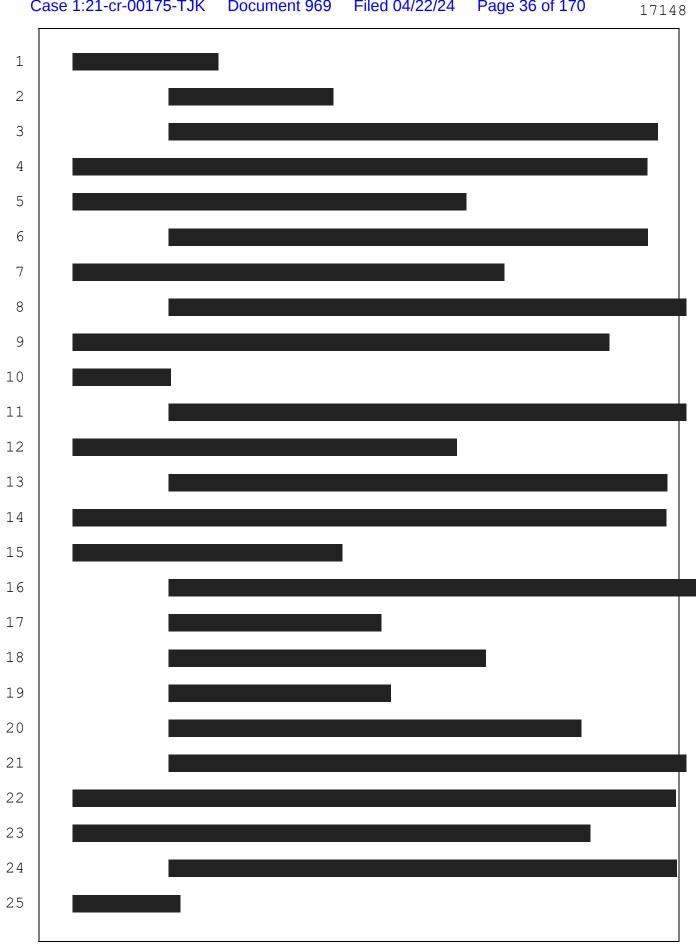










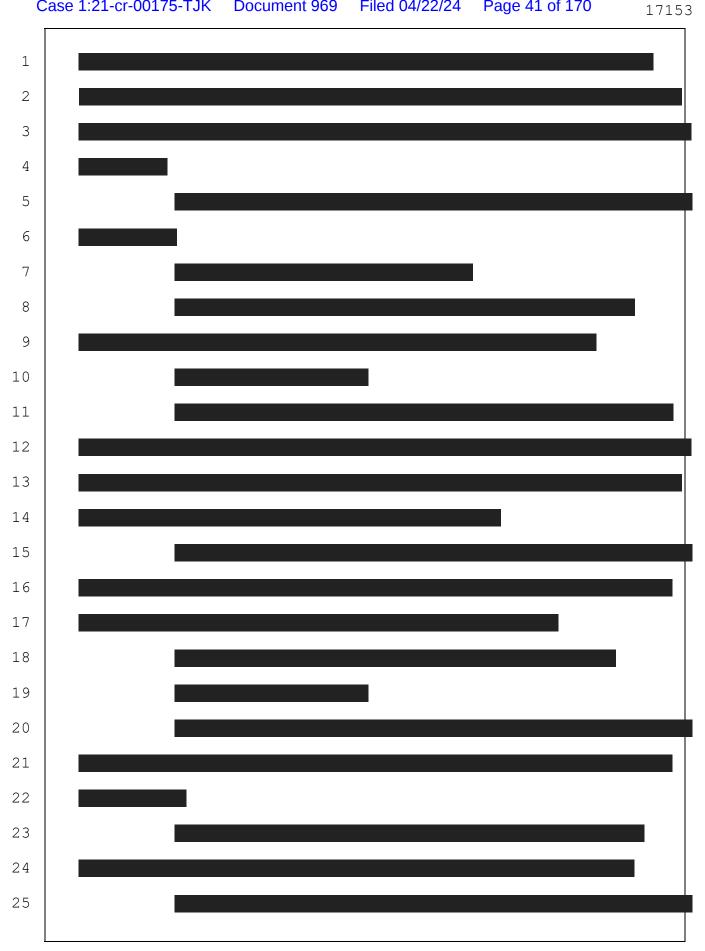


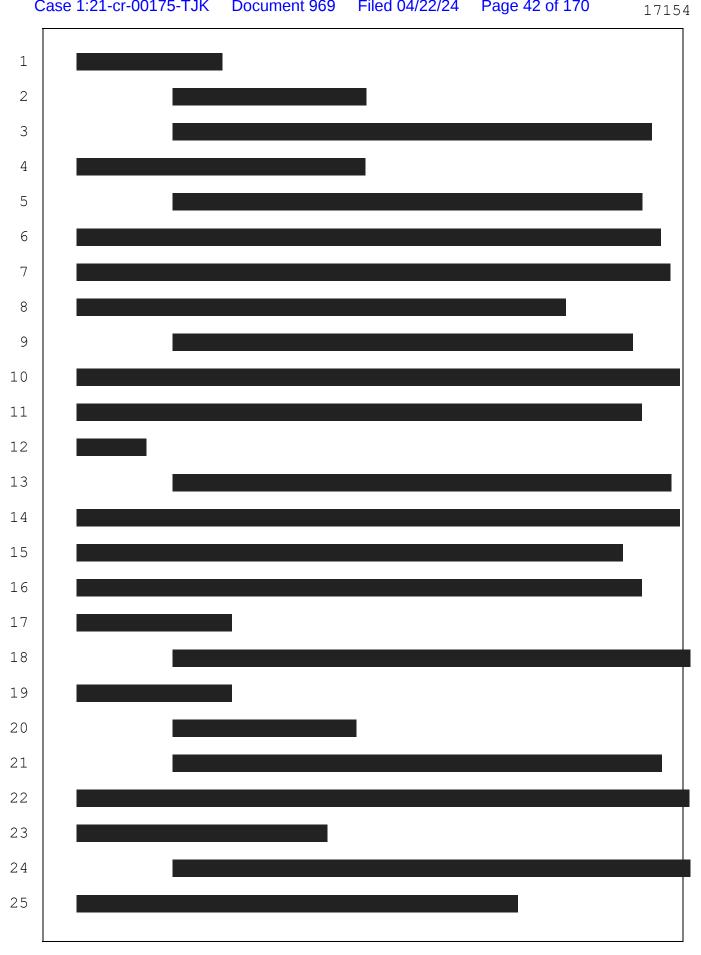






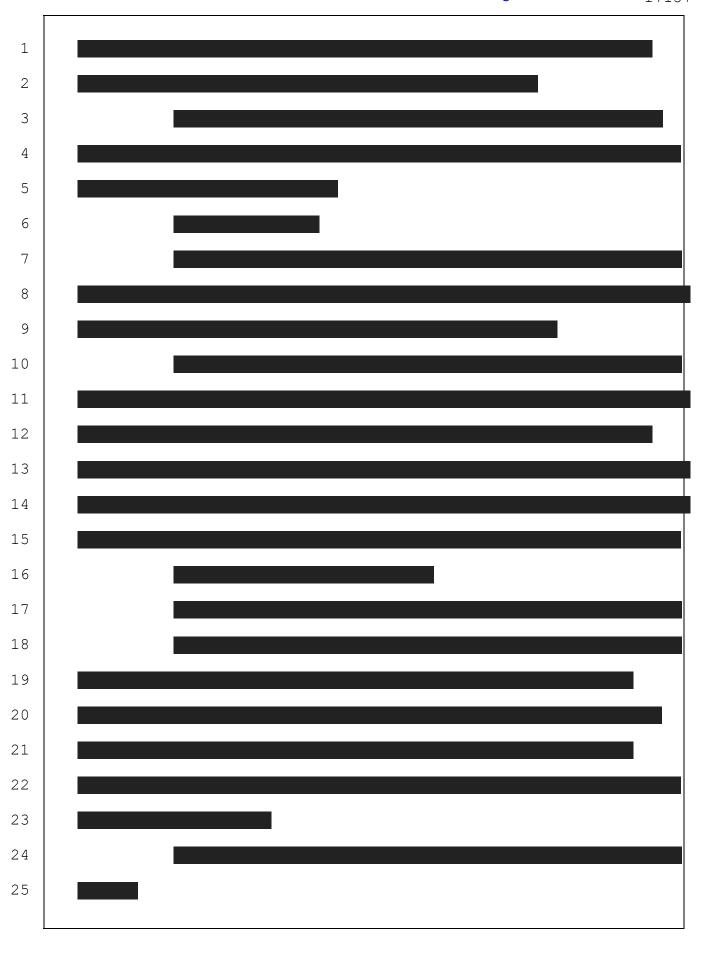




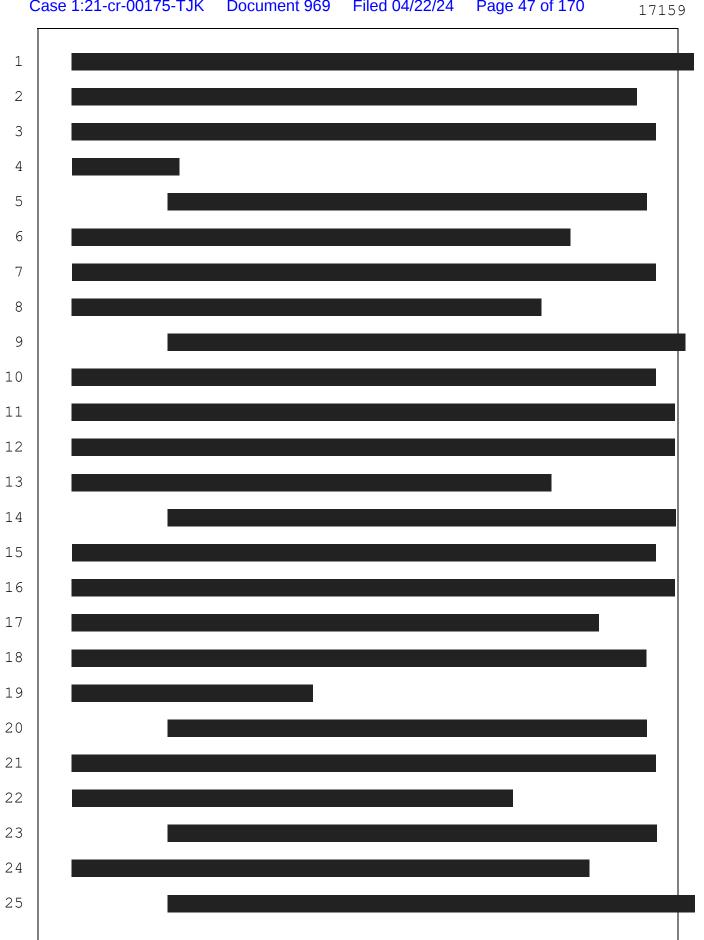


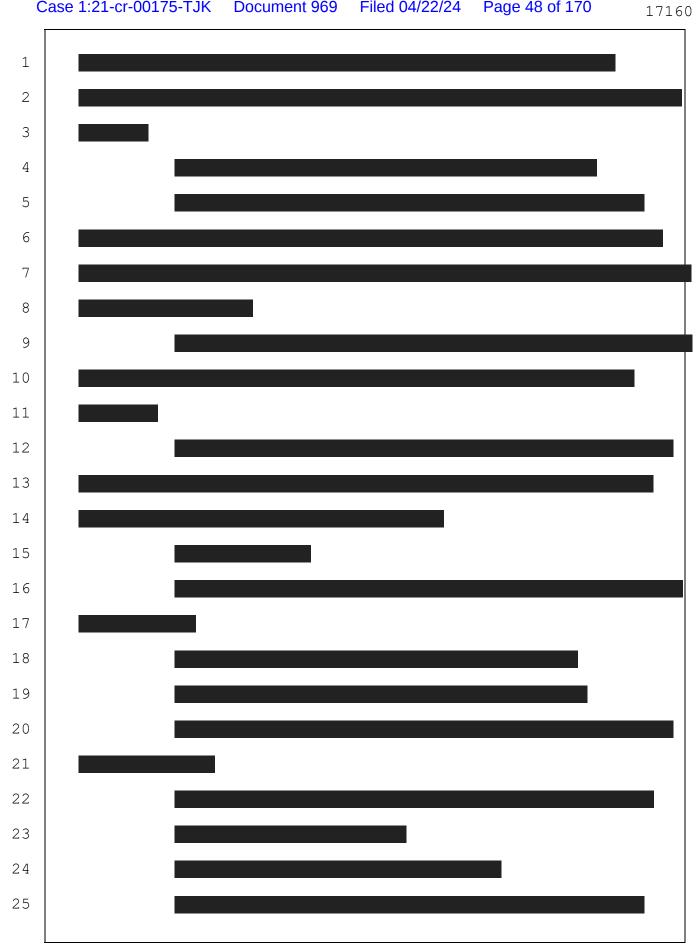


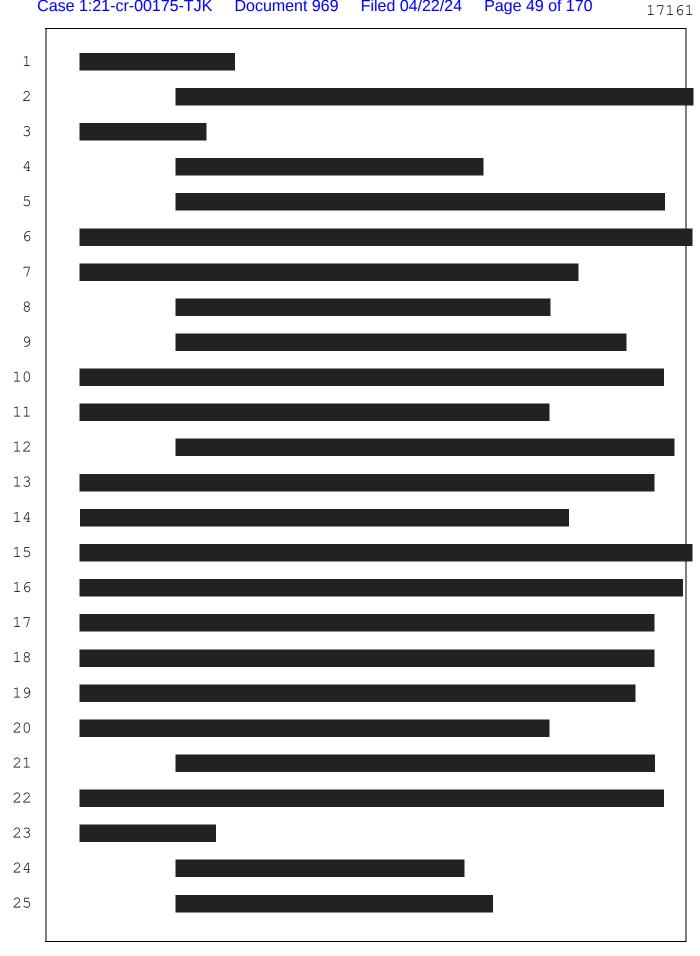


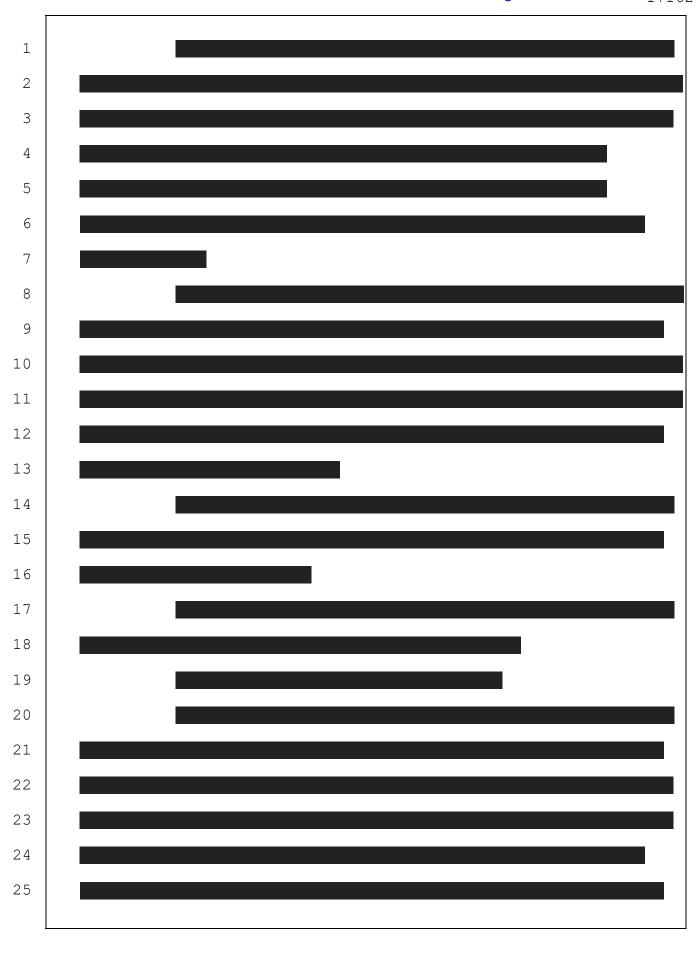




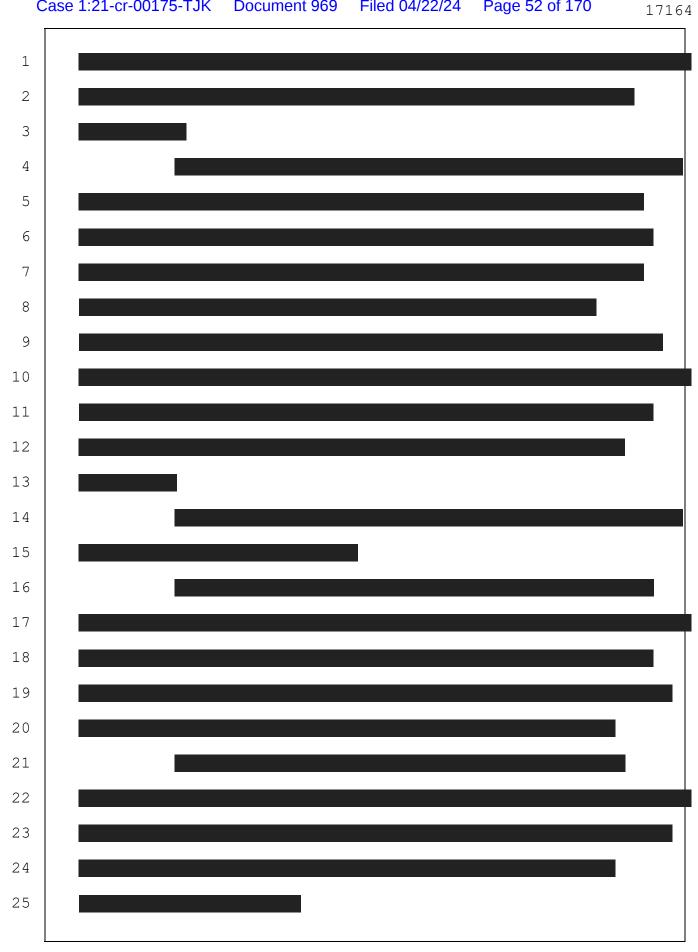


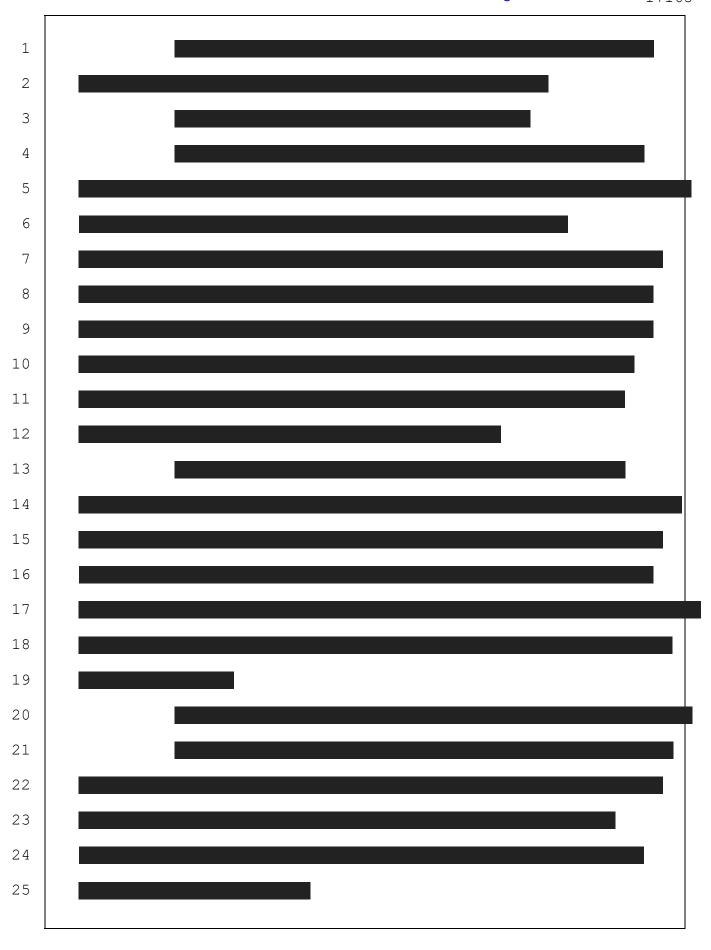




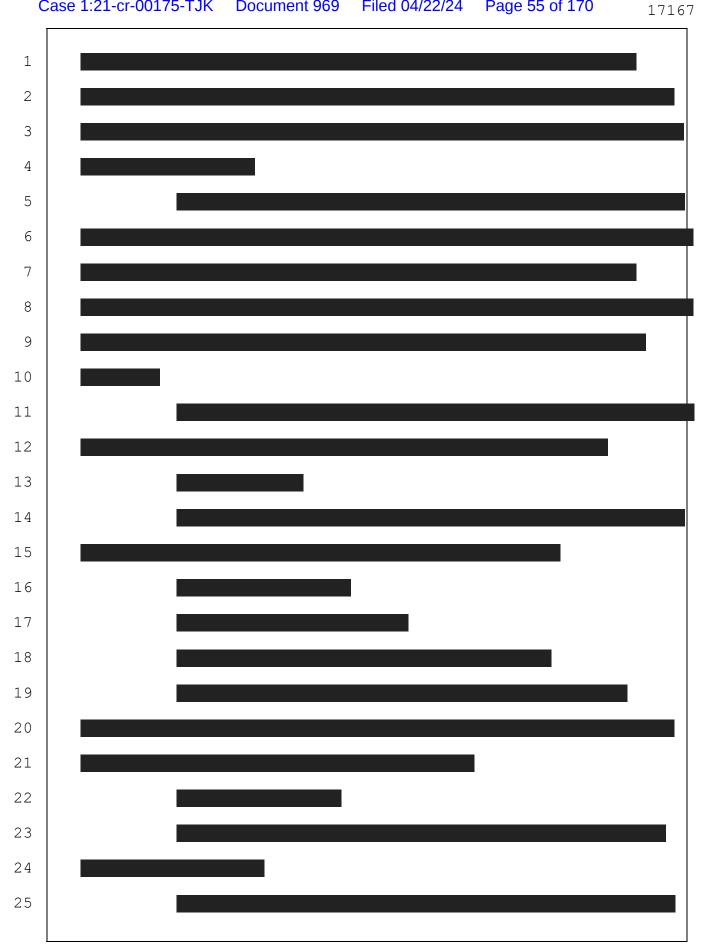


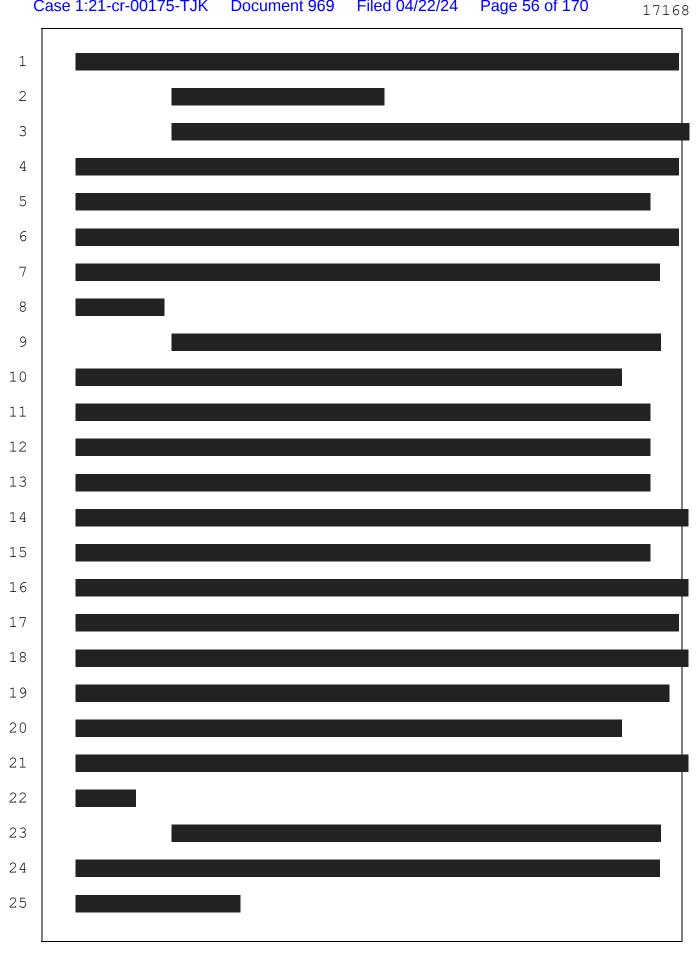




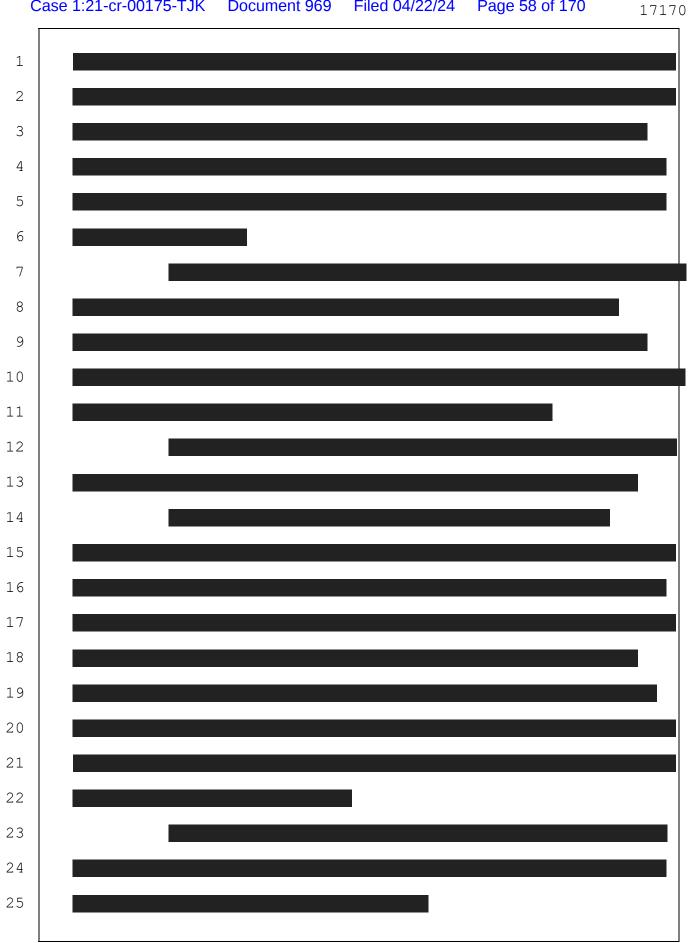




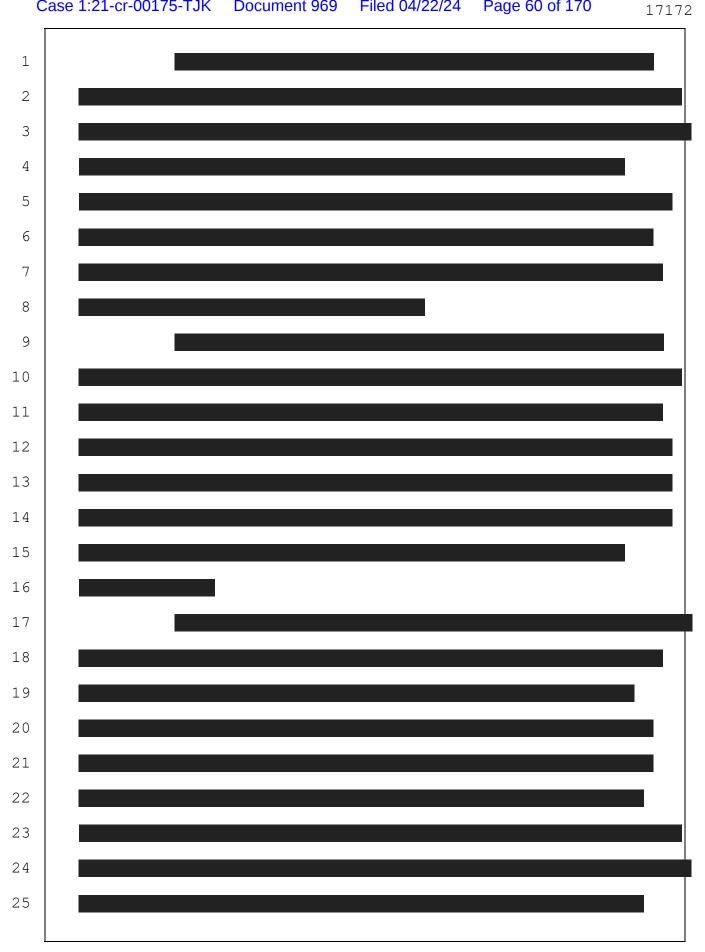






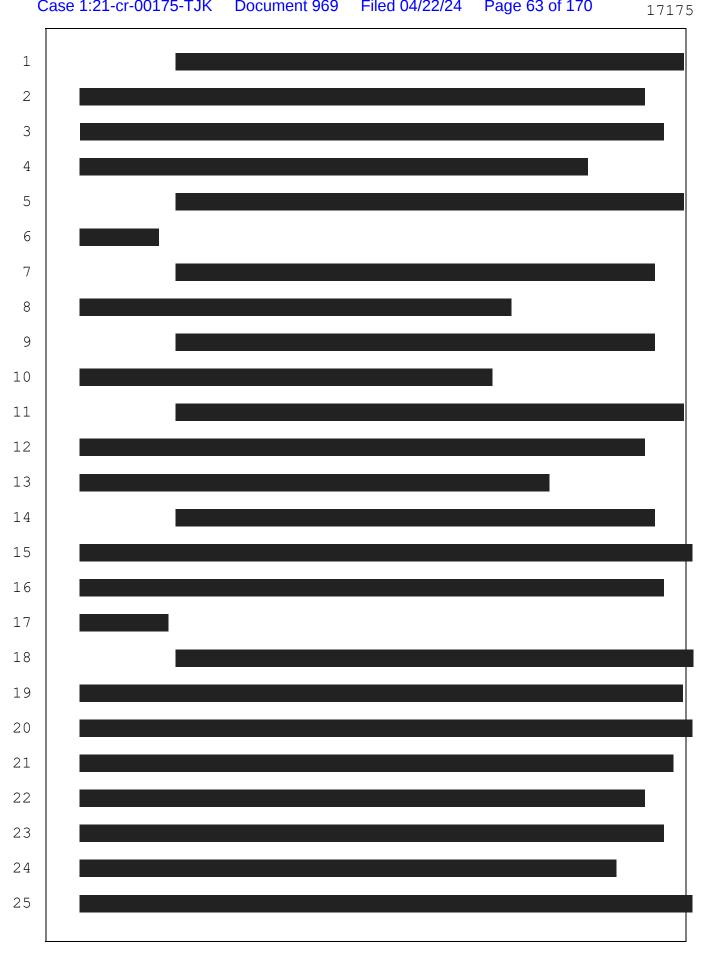




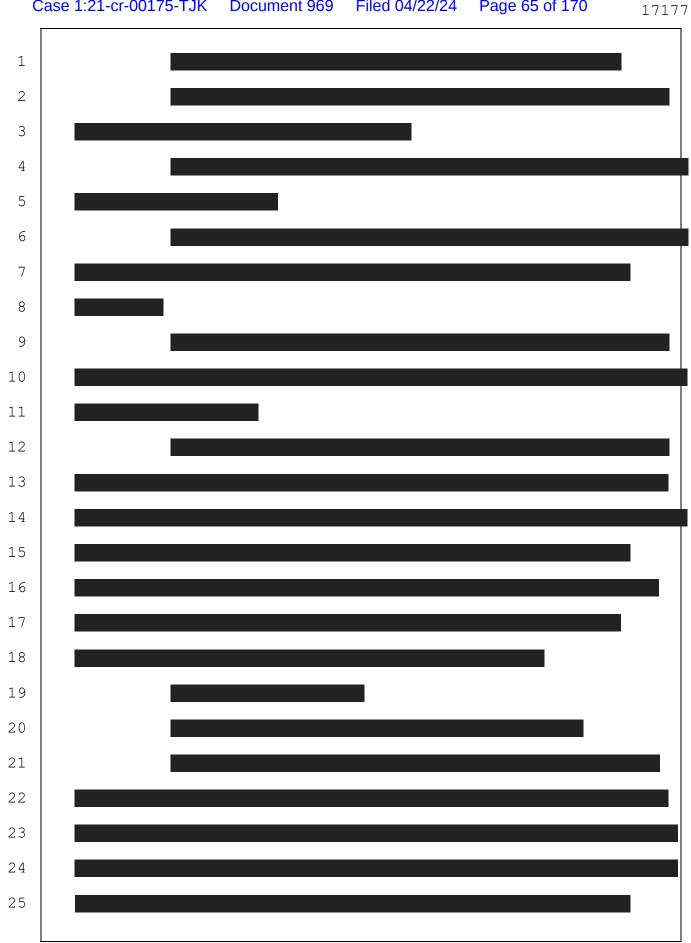


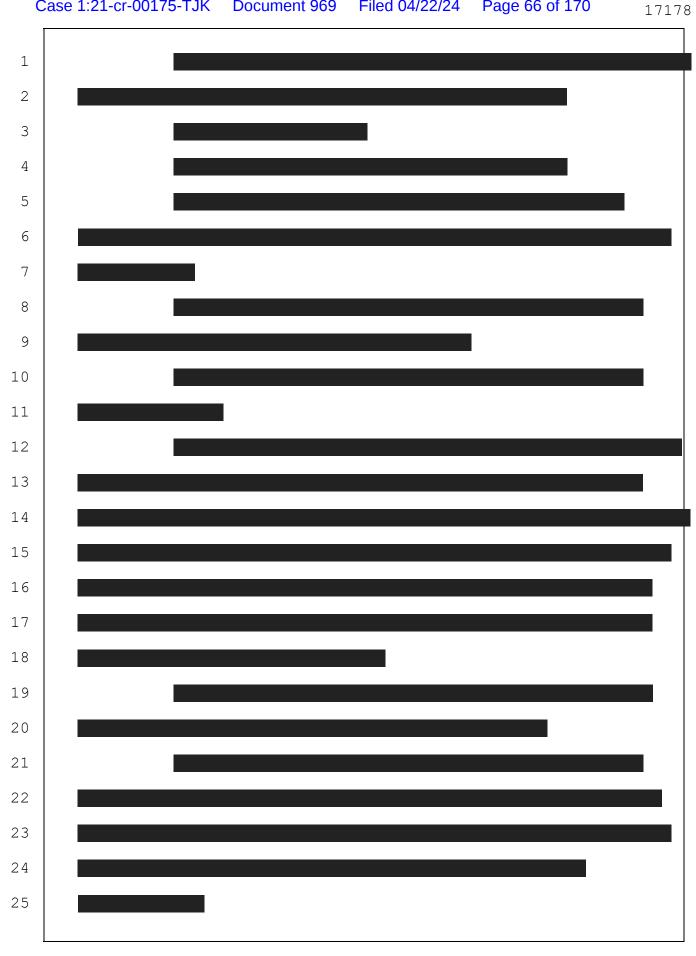


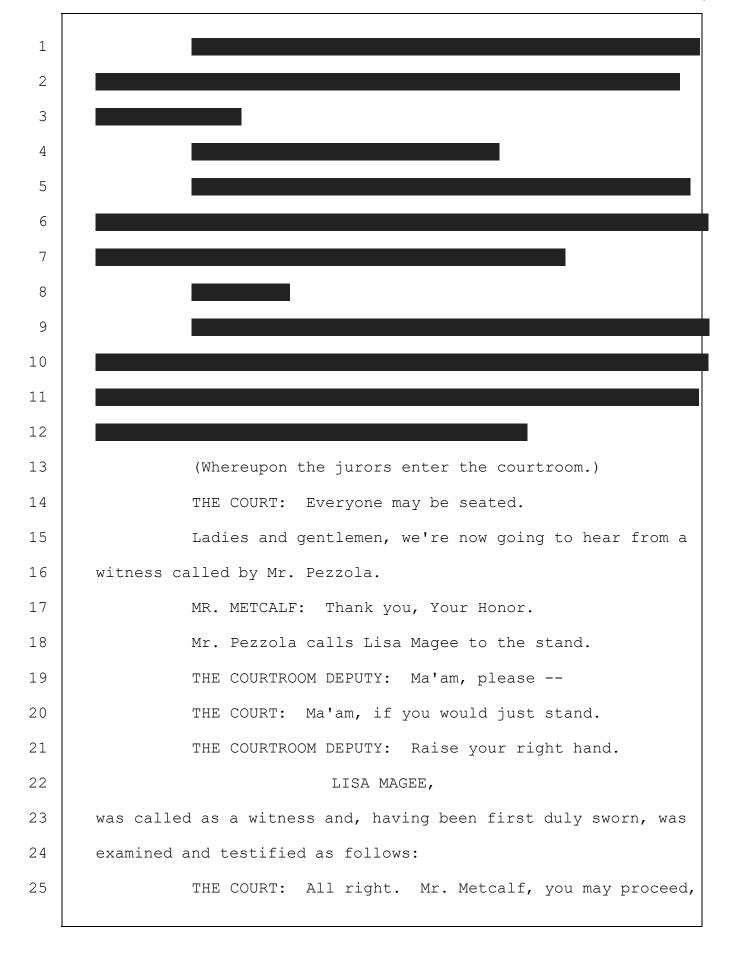












```
1
       sir.
2
                 MR. METCALF:
                               Thank you.
 3
                            DIRECT EXAMINATION
 4
       BY MR. METCALF:
 5
           Can you spell -- or, state and spell your name for the
 6
       record, please.
7
           Lisa Magee. L-I-S-A. M-A-G-E-E.
       Α.
 8
       Q. Now, before the judge has to tell me this, because he does
 9
       basically every time, he's always going to say try to speak
10
       into the microphone and try to be projected in that -- in that
       sense and for us not to talk over each other.
11
12
              So, if you get frustrated at me, just let me finish what
13
       I have to say first. Is that okay?
14
           Okay.
       Α.
15
       Q. All right. Sorry I had you waiting all day, but you're
16
       here now.
17
              So, how old are you, Lisa?
18
           I'm 40 years old.
       Α.
19
           And we've obviously met before, right?
       Q.
20
          Yes, we have.
       Α.
21
           And throughout the time of us meeting, I come to learn that
22
       you've raised a family with Mr. Pezzola; is that correct?
23
           Yes, I have. We have two daughters together.
       Α.
```

And how old are your daughters?

They are 18 and 22.

24

25

Q.

Α.

```
1 Q. What's your oldest daughter's name?
```

A. Maria.

2

3

- Q. Your youngest?
- 4 A. Angelina.
- 5 Q. They both go to school?
- A. They -- yes. They both go to school. Maria is currently attending a trade school to become an aesthetician and Angelina
- 8 just started her second semester of community college.
- 9 Q. Now, how long have you been with Mr. Pezzola for?
- 10 A. A little over 22 years.
- 11 Q. How did you meet him?
- 12 A. We met in 2001. I was working at a -- as a waitress at the
- 13 time. A friend of mine from work was having a birthday party,
- Dominic happened to be at the birthday party because her
- boyfriend at the time was a childhood friend of Dominic's.
- 16 They had grown up together. She introduced us at the party and
- we hit it off. He asked me out on a date and I agreed to go.
- 18 Q. So did you meet him from friends and the restaurant, or
- 19 were those two, kind of, events commingled into one?
- 20 A. I had seen him come into the restaurant a couple times, in
- 21 passing, said hi here and there. But I kind of had this thing
- 22 | that I wouldn't date customers, type thing. But since I was
- introduced to him outside of that environment, I decided to --
- and got to have a more intimate conversation, get to know him a
- 25 little better. So I gave him a shot.

```
1
           Okay. So then, in learning about Dominic -- I mean, he
       must -- both of you must have been young at that point.
2
 3
              How old were you at that point?
           I had -- I was 18, just about to turn 19 years old.
 4
 5
       was 23 at the time.
 6
       Q. Oh, wow.
 7
              And what did you learn about him?
           I learned that he was a single father in the midst of
 8
       Α.
 9
       trying to obtain custody of his -- our oldest daughter, Maria.
10
           Who is now 22, right?
       Q.
11
       A. Who is now 22 years old.
12
                 So he was a single father. He was in the Marine Corp
13
       and he worked in a family business.
14
       O. And you also had -- he had some hobbies, right? At least
15
       in high school that I've learned of.
16
       A. Yes. Dominic was an avid boxer throughout high school.
17
       I've seen lots of photographs of that in looking at yearbooks.
18
       In high school he won the Mission Bouts for Aquinas Institute,
19
       which is a college preparatory school in Rochester, New York.
20
                 After high school, he proceeded to box at a local
21
       boxing --
22
       Q. Wait just one second. I want to show you -- you mentioned
23
       photographs.
24
                 MR. METCALF: Can I have this screen shared with the
25
       witness, please?
```

```
1
       BY MR. METCALF:
2
           Lisa, I'm showing you what I have marked for identification
 3
       as Pezzola Exhibit 256.
 4
              Do you recognize this photo?
 5
           I do recognize that photo.
       Α.
 6
       Q. What is that photo of?
 7
           That is a photograph of Dominic in training at Montgomery
       Α.
       Boxing Club in Rochester, New York.
 8
 9
           Okay. And where is he?
10
          He is the second person. With a backwards baseball cap on.
11
       Q. And then I'm going to show you also -- excuse me, which
       one -- I'm going to show you the second page to what has been
12
13
       marked as Pezzola Exhibit 256.
14
              Do you see that photograph?
15
           I do.
       Α.
16
       Q. And what is that photograph of?
17
           That is a photograph of him sparring. I believe that's
       actually after he had sparred, helping out his boxing coach,
18
       Ms. Peek.
19
20
                 MR. METCALF: Your Honor, at this time I move for
21
       these two pages to be marked in as evidence and produced as
22
       Pezzola 256.
23
                 MR. McCULLOUGH: No objection.
```

THE COURT: They will be admitted and permission to

24

25

publish them.

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1 BY MR. METCALF:
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2

3

4

5

6

7

8

9

10

Q. All right. So we're going to work backwards. Let's just stay with this photograph.

Where is Mr. Pezzola on this one?

And you can actually write on the screen. Look (indicating). See how you can do that?

- A. This is Dominic here (indicating).
- Q. Now, the female in this, I've heard her name come up from time to time.

Are you familiar with her?

- A. I am familiar with Ms. Peek. Her name is Gloria Peek. She
- is the first African-American, lesbian boxing coach who
- actually went on to coach individuals in the Olympics in boxing.
- 14 Q. And she was Dominic's coach, as well?
- A. She was Dominic's coach. They all called her mama. And he
- highly respected her and her wisdom and coaching and training,
- and guidance in life in general.
- 18 Q. She just recently passed, right?
- 19 A. I've heard a rumor that she passed. She had been
- 20 struggling with a brain tumor. I'm not sure if she had passed,
- 21 but I had heard that she was, um, struggling very hard for her
- 22 life.
- Q. Did you hear from Dominic that something happened to her or
- 24 | didn't -- or did he find out later on or eventually if she did
- 25 pass?

- 1 A. I'm not sure if he found out or not if she passed. I know
- 2 that he had gotten information kind of through the grapevine
- 3 that she was battling a very bad brain tumor and was likely
- 4 going to pass.
- Q. And this is the first photograph that we just spoke about.
- 6 Can you circle Dominic for us, please?
- 7 A. (Indicating.)
- 8 Q. So now this is during his high school, these two
- 9 photographs; is that fair to say?
- 10 A. I would say that these are right after he graduated high
- 11 school.
- 12 | Q. Okay. So he still continued boxing after high school?
- 13 A. Yes.
- Q. And that's when he went on for the golden gloves; is that
- 15 right?
- 16 A. Yes.
- 17 Q. Now, at this time was he still -- was he working in the
- 18 family business at that time?
- 19 A. At that time he was actually an apprentice electrician for
- 20 Tambe Electric. However, Dominic has very large hands, so it's
- very hard for him to fit his fingers into tiny spaces with
- 22 electrical. So it was quite dangerous for him. So he
- 23 | transitioned to working in -- with his father in the flooring
- 24 business, the family business.
- 25 | Q. Okay. How long did he do that for?

- A. I believe he was an apprentice with them for a little over a year and a half.
 - Q. Okay. And then how long did he work with his father for?
- 4 A. He worked with his father for approximately 15 years.
- Q. Oh, wow. And then after that, did he open up his own
- 6 business? Or what did he do from there?
- 7 A. He did. After leaving -- working for his father, he opened
- 8 up his own flooring -- commercial flooring company and ran a
- 9 crew himself.
- 10 Q. Now, just in addition to the two children, you guys have
- 11 three dogs; is that right?
- 12 A. Yes. We have Bella, Mason, and Meila. Pictured there is
- 13 Mason.

- 14 Q. I'm sorry. I didn't get a chance to say that I was showing
- 15 this to you. I asked -- Lisa, I'm going to show you what has
- 16 | now been marked for identification as Pezzola 257. This is,
- again, going to be two pages. Do you recognize this photo?
- 18 A. I do. I took that photo.
- MR. McCullough: No objection to the admission and
- 20 publication.
- MR. METCALF: I ask they be produced then, Your
- Honor.
- 23 THE COURT: It will be admitted and permission to
- 24 publish it, sir.
- MR. METCALF: Thank you.

```
1 BY MR. METCALF:
```

- 2 | Q. So this is Mason?
- 3 A. This is Mason, yes.
- 4 Q. Now, above -- is that Dominic's favorite dog, or is that
- 5 your favorite dog?
- 6 A. That is Dominic's boy. That is the only other male in our
- 7 household, besides Dominic.
- Q. Now, above Dominic on his head, hanging on the wall, what's
- 9 in there?
- 10 A. That --
- 11 Q. Is that -- sorry?
- 12 A. That was our first family dog, Cyrus.
- 13 Q. Cyrus?
- 14 A. (Nods.) And he died of cancer about seven years ago.
- 15 Q. I'm sorry, Lisa. I didn't mean to bring that back.
- There's tissues, if you need. And if you need anything else to
- 17 drink -- or, any water, just let me know.
- 18 Is this also Mason in this photograph?
- 19 A. Yes, that is Mason. He's a little snuggle baby.
- 20 Q. Now, you mentioned -- I just want to go back a little bit.
- 21 You mentioned that at the time you met Mr. Pezzola, he was --
- 22 he was fighting for custody of Maria.
- 23 A. Yes.
- Q. So from the time you met Mr. Pezzola -- and then you
- 25 | eventually moved in with him together; right?

```
1 A. Yes. Our --
```

- Q. How long of a timeframe would you say that would be, that
- 3 was?
- 4 A. Within -- from us starting dating to me moving in was about
- 5 four months. Our relationship progressed very quickly and --
- 6 Q. Did he have custody at the time you moved in?
- 7 A. At the time I moved in, he did not have custody of his
- 8 daughter.
- 9 Q. How long did it take then, eventually -- after you moved in
- 10 with Mr. Pezzola, how long did it take before he got custody of
- 11 | Maria and you guys started raising her together?
- 12 A. Approximately six weeks after I moved in, Dominic was
- granted residential custody of Maria.
- Q. So by the time he got custody of Maria, she must have been
- 15 | less than a year, if I'm doing my math right.
- 16 A. Yes. She was approximately nine -- nine or ten months old.
- 17 Q. And then you've been helping -- you've been raising her
- 18 | with Dominic since then?
- 19 A. Yes. She is --
- 20 Q. And she's 22 now?
- 21 A. She's 22 now. She is my daughter, our daughter.
- 22 THE COURT: Ma'am, there's some water there, if you
- 23 want it.
- 24 THE WITNESS: Thank you.
- 25 BY MR. METCALF:

- Q. With Dom's business, did he work late hours? How would
- 2 he -- how would you describe his work habits?
- 3 A. Dominic would work day and night to provide for myself and
- 4 our daughters, sometimes 70, 80 hours a week. There were times
- 5 that he didn't get home until 3, 4 o'clock in the morning to
- 6 finish -- so that he could finish a job, sleep for four hours
- 7 and then start a new job the next day.
- 8 Q. So when COVID hit, this must have been a difficult time?
- 9 A. It was extraordinarily difficult.
- 10 Q. Did Dom stop working?
- 11 A. Yes. The majority of his contracts were pulled. He did a
- 12 lot of work in hospitals and schools, and, so, because of the
- 13 | lockdowns, he was not able to go to work. They weren't putting
- contracts out, and his business greatly suffered.
- 15 Q. And at the time -- I would like to actually direct your
- 16 attention to March -- or, May 30th of 2020. What was going on
- in the City of Rochester around that time?
- 18 A. May 30th of 2020, there was a Black Lives Matter protest
- 19 which turned very violent in our -- the city we live in. I
- 20 worked downtown at the time, in the courthouse, and we were
- 21 actually sent home early that day because of safety concerns.
- 22 Q. So did you work -- did you work at the Hall of Justice or
- 23 | did you work at the City Court?
- 24 A. I worked at the City Court.
- Q. You worked at the City Court. And is the City Court

- 1 located in the Public Safety Building in Rochester?
- 2 A. It is not. So the way the buildings are set up, it's --
- one is -- this is Public Safety, here is City Court, and then
- 4 here is the County and Supreme Court (indicating). And they're
- 5 all connected by an outdoor -- like, big patio.
- 6 Q. Okay. And let's not just focus on that day. Let's focus
- 7 on around that timeframe. What else was going on around
- 8 Rochester, as far as riots are concerned or anything that
- 9 stuck -- that sticks out?
- 10 A. There were lots of things going on around that time.
- 11 Diners -- at the Ox and Stone, it's a restaurant. It's called
- 12 | the east end of the city that we live in, it's where --
- 13 basically all the restaurants and bars and stuff. Diners were
- actually attacked by protesters. They came by and smashed all
- 15 their plates, destroyed the restaurants.
- 16 Q. While people were sitting and actually eating their dinner?
- 17 A. While -- yes, yes.
- 18 | Q. So this was going on around -- basically around the whole
- 19 city, from what I could tell, at the time?
- 20 A. Yes.
- 21 Q. And eventually restaurants, bars, everything eventually
- 22 started to close, right?
- 23 A. Yes.
- Q. All right. So going back to May 30th, then. You're in the
- 25 | City Court, and that protest that you speak of, did it happen

1 close to where you were working?

- A. Yes. I would say it's within 1,000 feet of the building I was working in.
- 4 Q. And what happened at your job then at that point in time?
- 5 A. We received a phone call to leave work early, that there
- 6 was protests going on and that they were turning violent.
- 7 There were police cars being burned, people's personal vehicles
- 8 | were being set on fire, as well as a construction trailer that
- 9 was right outside of the courthouse I was working at was set on
- 10 fire.
- 11 Q. What ended up becoming the significance of that
- 12 | construction truck?
- 13 A. It was for the Foy Construction, which is a company that
- Dominic had contracted work from and ultimately -- he was
- actually supposed to be working that job in the courthouse, but
- 16 because of the riots, that job was shut down for quite some
- 17 time.
- 18 Q. All right. So what is it that you did at the courthouse?
- 19 What was your job and responsibilities?
- 20 A. I was the supervisor of the pretrial release of the Monroe
- 21 | County Bar Association. So I would go into the jail at 6 a.m.,
- 22 interview inmates, collect all of their pertinent information,
- go back to my office, run their background checks, confirm the
- 24 information they gave to me was true and accurate, and then I
- 25 | would return to the court and give release recommendations to

- 1 the judge that was doing arraignments that day.
- 2 Q. And so why would Dom be -- was Dom contracting to do
- 3 | flooring for the courthouse as well? Is that what you're
- 4 saying?
- 5 A. Yes.
- 6 Q. Okay. So I looked up May 30, 2020, and I think that was a
- 7 Saturday?
- 8 A. Yes.
- 9 Q. That's why you were working on Saturday?
- 10 A. Yes. We do Saturday morning arrangements for individuals
- 11 who are arrested on Fridays and overnights.
- 12 | Q. Now, the trailer that you speak of -- I'm going to ask now
- that the witness is shown what I have marked for identification
- 14 as Pezzola 258.
- 15 Let me know when you see the article.
- 16 A. I see the article.
- 17 Q. Is this article having to do with what you just described,
- 18 that incident with the truck?
- 19 A. Yes.
- 20 Q. And how -- how far would you say this is from your house?
- 21 A. Approximately six to seven miles. I actually live on the
- 22 | same road this occurred on. It stretches from one end of the
- 23 city to the other. It begins as Lake Avenue, turns into State
- 24 Street and then proceeds into Exchange Boulevard.
- 25 Q. So it's six to seven miles basically on the same road?

- 1 A. Yes.
- 2 Q. So you --
- 3 A. It may not even be that far of a distance.
- 4 Q. So you could take the same road -- at the time you could
- 5 have taken the same road from your house to work?
- 6 A. Yes.
- 7 Q. It was one straight path?
- 8 A. Yes.
- 9 Q. And Dominic is -- was Dominic aware of this incident and
- 10 what was going on at the time, to your knowledge?
- 11 A. He was aware of the incident. He actually sent me a text
- message asking me if I was okay. I said to him that, yes, I am
- okay. They're sending us home early. I will be heading home
- 14 shortly.
- Q. So now at this point in time, in your lives, did you see
- 16 | changes in Dominic?
- 17 A. Yes. Dominic was somebody who always went to the gym, went
- 18 to work, was a very active person. Due to the lockdowns, you
- 19 know, he was stuck at home. He started drinking very heavily
- and would inundate himself with Fox News day and night.
- 21 Q. And before -- before COVID was Dominic into politics?
- 22 A. Barely.
- 23 Q. And then during this time, he became involved -- or,
- 24 interested in politics?
- 25 A. He became consumed by politics.

- 1 Q. So what did you tell him to do then?
- 2 A. I told him to find some friends and get a hobby.
- 3 Q. Oh, man.
- 4 A. Yeah.
- 5 Q. If you could only go back to that moment in time.
- 6 Did Dominic then go get friends and a new hobby?
- 7 A. He did.
- 8 | Q. Is that why we're sitting here today?
- 9 A. It is.
- 10 Q. So, you became aware that he started applying for the Proud
- Boys or to be a member of the Proud Boys; is that fair to say?
- 12 A. Yes, it is.
- Q. Approximately what timeframe did you learn this or did you
- find out that he was applying for the Proud Boys?
- 15 A. It was at the end of November.
- 16 | Q. Of 2020?
- 17 A. Of 2020, yes.
- 18 Q. So about two months before January 6?
- 19 A. Not even two months.
- 20 Q. So 11-14-2020 -- I never forget that date because 11-14 is
- 21 actually my birthday. On that day did Mr. -- did Dom come to
- 22 D.C.?
- 23 A. He did. He actually talked to me about wanting to come
- down and attend the rally that was going on down here in D.C.
- 25 | I thought --

- Q. At that time, at that time was he part of the Proud Boys?
- 2 A. He was not.
- 3 Q. So he comes to D.C. You didn't have any reason to think
- 4 anything of it, right?
- 5 A. No, I did not.
- 6 Q. And what did you find out that he did in D.C., in November?
- 7 A. In November, he ended up running into, I believe, a Proud
- 8 Boy named Dick Sweats. He got his contact information. They
- 9 spoke a little bit.
- 10 Q. So you know Dick Sweats. I thought it was Dick Sweats or
- 11 Dick Sweats?
- 12 A. Dick Sweats, I believe.
- Q. So Dominic met a guy who calls himself Dick Sweats. Is
- 14 | that -- did he go by any other name?
- 15 A. Not that I know of. And I thought that his name was quite
- 16 ridiculous.
- 17 Q. Okay. So you're not on any chats or anything, like any
- 18 Telegram chats or anything like that?
- 19 A. No.
- 20 Q. So you don't know about people's handling names or anything
- 21 like that?
- 22 A. No clue.
- Q. But that's the name that you knew that Dom met in November
- 24 when he came to D.C. --
- 25 A. Correct.

Q. -- of 2020?

groups.

1

3

4

5

6

7

15

21

2 So then what happened after that?

- A. After that Dominic showed interest in joining the Proud
 Boys. He explained a little bit to me about how they would
 attend rallies and protect people, just normal citizens from
 being harmed and attacked and bullied by other people and other
- Q. And would he start going to meetings, going out drinking
 with some of these guys? Like what was going on then in
 November, to your recollection?
- A. To my recollection, he had gotten in contact with them

 about how to go about joining and becoming a Proud Boy. He

 ultimately did get in touch with somebody, I don't know who,

 and ultimately ended up joining and becoming a Proud Boy.
 - Q. Now, he goes back to D.C. on December 12th, 2020, right?
- 16 A. Yes.
- 17 Q. What happens there?
- A. At that time he had become a Proud Boy. And while he was there, he ended up being photographed by *The Washington Post* and being put on the front page of their newspaper.
 - Q. How did you find out about that?
- 22 A. He showed me a photograph.
- 23 Q. Do you remember what you said to him?
- 24 A. "You're a fucking idiot."
- 25 Q. Did you ever see or hear of information about how he got

- 1 initiated into the Proud Boys, the whole punching while you say
- 2 five cereals?
- 3 A. Yes. I actually saw a video of his initiation into the
- 4 Proud Boys and him being punched and having to name five
- 5 cereals.
- Q. Did you say the same thing to him then that you said to him
- 7 when you heard about *The Washington Post*?
- 8 A. I told him they looked like a bunch of 17-year-old boys in
- 9 a fraternity acting like children.
- 10 Q. So, now anything else about the December 12th, 2020 trip at
- all that you remember?
- 12 A. I am the person -- Dominic is not very savvy with
- technology, so I actually booked his hotel room and booked his
- 14 rental car for the trip.
- 15 Q. So then he took -- he takes another trip at the end of
- 16 December, right by New Year's, right?
- 17 | A. Yes.
- 18 Q. What do you know about that trip?
- 19 A. He decided to go on that trip because another Proud Boy had
- 20 contracted COVID. And during that trip --
- Q. Well, first, why did he go on that trip? Was it really to
- 22 give a shield? Was it to get out? Was it --
- 23 A. No, it was to get out of New York. Everything was locked
- down. You couldn't do anything in New York. Anything. And he
- 25 | wanted to just get out of New York and go down south where

- 1 everything was still open. You could go to a restaurant, you
- 2 could go to a bar, you could go to the gym and workout. And we
- 3 weren't afforded those things in New York at the time.
- 4 Q. Then you come out to find out and learn of an individual by
- 5 the name of Bertino, right?
- 6 A. Yes.
- 7 Q. And you found out that Dom went to -- he stopped at
- 8 Bertino's house during this trip, right?
- 9 A. Yes.
- 10 Q. Do you know how long he was even there for?
- 11 A. Less than an hour, from my understanding.
- 12 Q. And he came back at least a couple of days later, right?
- 13 A. Yes.
- Q. Do you remember when he came back?
- 15 A. It was after the new year.
- 16 Q. So then after the new year, before January 6th, do you
- 17 remember when he left to go to D.C. for January 6?
- 18 Did he leave on the 5th?
- 19 A. Yes, he left on the 5th.
- 20 Q. So between him coming home and leaving for D.C., do you
- 21 remember your father coming by the house?
- 22 A. Yes. My father came over in the morning on -- I believe it
- was the 4th, it could have been the 3rd, to drop off Christmas
- 24 presents because we weren't able to attend Christmas at his
- 25 | home that year. My stepmother wasn't feeling well, so we

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1 didn't go.
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- Q. So at that time, did you or your factor voice any concern to Dominic about trips to D.C.?
- 4 A. Yes. Dominic was talking about -- to my dad about the
- 5 Proud Boys and possibly coming down here to D.C. on the 6th.
- To which my father said to him, You have a wife and two girls,
- you need to keep your ass at home. There's going to be however
- 8 | many people there, I don't think it's a good idea for you to
- 9 go, you have a responsibilities here at home.
- To which Dom --
- 11 Q. Did Dom respond to that?
- 12 A. He did. He said, You're right. I understand where you're
- coming from and you're right, I'm not going to go.
- Q. So then at this point in time, you're not -- are you still
- working at the courthouse at this point in time?
- 16 A. I was not. I had left my job at the courthouse because I
- was attending graduate school and it was just becoming too much
- 18 to try and juggle both.
- 19 Q. So at this point in time, January 2021, you're back in
- 20 school?
- 21 A. Yes.
- 22 Q. And is this around final time? Or what time of the year
- 23 | was this?
- 24 A. For me this was right after finals and we were on our
- intersession break, but I still had a ton of schoolwork. I try

- 1 to get ahead on things, and I took intersession classes, so I
- 2 had about a week break.
- 3 Q. My real question is this: January 6th comes, are you at
- 4 home?
- 5 A. No.
- 6 Q. Where did you go?
- 7 A. I went out with my friends.
- 8 Q. And so you had a girls' night out?
- 9 A. We had a girls' night out. We went to the casino and we --
- 10 Q. And that's when Dom left to go to D.C.?
- 11 A. Yes. Up until I decided to have a girls' night out, he was
- 12 | planning on staying home. Once he found out that I was going
- to be leaving for the evening, he was, like, well, I'm just
- 14 going to go then.
- 15 Q. Let me ask you: Do you still love Dominic?
- 16 A. Very much.
- 17 Q. Would you lie for him?
- 18 A. No.
- 19 Q. Why wouldn't you lie for him?
- 20 A. I don't see a reason to lie for him. I would never put
- 21 | myself in a position to perjure myself and not be home to care
- 22 for my children.
- MR. METCALF: Thank you, Lisa. I appreciate it.
- 24 THE COURT: All right. Mr. McCullough.
- Mr. McCullough, do you think there's a need to visit

```
1
       on the phone?
2
                 MR. McCULLOUGH: Your Honor, I don't believe so, no.
 3
       No.
 4
                 THE COURT: Okay.
 5
                            CROSS-EXAMINATION
 6
       BY MR. McCULLOUGH:
7
          Ms. Magee, thank you very much. Good afternoon.
       A. Good afternoon.
 8
 9
       Q. I don't know how much you've heard about the trial, but
10
       it's 4 o'clock and we'll get you out of here today.
11
              So just -- hopefully, that's a relief, as you can
12
       appreciate.
13
       A. Yes.
14
       Q. You've been with Mr. Pezzola for a long time?
15
       A. Yes.
16
       Q. And part of being with Mr. Pezzola is that you have grown
17
       to see the character of the man that you're with, correct?
18
       A. Yes.
19
                 THE COURT: Mr. McCullough, could you just keep your
20
       voice up. I'm sorry. I know --
21
                 MR. McCULLOUGH: Of course. Of course.
22
       BY MR. McCULLOUGH:
           And you've seen Dom as someone that is in the Marine Corps?
23
24
       A. Yes.
25
       Q. And I think you've said that during Dom's time in the
```

```
1
       Marine Corp, you were only apart for about two weeks of that
2
       whole time; is that right?
 3
       A. Yes.
 4
       Q. And then Dom left the Marine Corp and started his own
 5
       business, worked for his own business?
 6
       A. Yes.
7
          Through all of these experiences, you've seen Dom's work
       ethic?
 8
 9
       A. Yes.
10
       Q. Is that yes?
11
              And, I'm sorry.
12
       A. Yes. Sorry.
13
       Q. I apologize.
14
       Α.
          Yes.
15
           And you've seen Dom's, you know, loyalty to the causes that
16
       he believes in?
17
       A. Yes.
18
       Q. And, so, when he is -- whether that's being a Marine or
19
       whether that's dedicating himself to his business, he's a guy
20
       that commits himself to it, correct?
21
           I would say depending.
       Α.
22
       Q. Sure. And so you described --
23
                 MR. METCALF: Your Honor, can she finish the answer?
24
                 THE COURT: I didn't think -- did you have more to
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your answer, ma'am?

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1
                 THE WITNESS: I did.
2
                 THE COURT: Okay. You may.
 3
                 THE WITNESS: I would say it would -- it's dependent
 4
       upon the situation at that time, in terms if he would stay
 5
       loyal to something through and through.
 6
       BY MR. McCULLOUGH:
7
       Q. So, Mr. Pezzola, he would work 70, 80 hours to make his
       business go. He would commit himself to it, correct?
 8
 9
       A. Yes.
10
       Q. You mentioned, kind of, the fight for custody for his
11
       daughter?
12
       A. Yes.
13
       Q. He committed himself to that, correct?
14
       A. Yeah. It was his child, yes.
15
           And, I mean, these are the things -- these are the things
16
       that make Mr. Pezzola who he is to you, correct?
17
       A. Correct.
18
       Q. His commitment to the things that he believes in, correct?
19
           The commitment to his children and myself, yes.
       Α.
20
           The commitment to his job?
       Q.
```

22

23

24

25

Α.

Q.

Α.

Q.

Yes.

Yes.

A. Yes.

The commitment to his family?

And the commitment to the oath that he took as a Marine?

```
1
           So, Mr. Pezzola took an oath to defend the Constitution,
2
       correct?
 3
       Α.
           Correct.
 4
       Q. And that was part of his being a Marine?
 5
       A. Yes.
 6
       Q. Mr. Pezzola's -- Mr. Pezzola's -- Mr. Pezzola shared with
7
       you that his oath didn't end when he left the Marines, correct?
 8
                 I believe that's true, actually, for all service
 9
       members that take that oath.
10
       Q. And as you said, after Mr. Pezzola -- when Mr. Pezzola got
11
       into 2020, he was paying more attention to politics, correct?
12
       A. Yes.
13
       Q. And you saw Mr. Pezzola become increasingly focused on the
14
       battle between good and evil, correct?
15
                 MR. METCALF: Objection as to form. It's a little
16
              In fact, very vague.
       vaque.
17
                 THE COURT: Overruled.
18
                 But, Mr. McCullough, can you keep your voice up
19
       again, please.
20
       BY MR. McCULLOUGH:
21
       Q. And I'll rephrase. I'll rephrase.
22
              If it's -- as Mr. Pezzola became increasingly focused on
23
       politics, you understood him to be increasingly focused on kind
24
       of the split that was becoming apparent in the country,
```

correct?

- 1 A. Yes.
- 2 Q. And he viewed the country as kind of falling into two
- 3 sides, correct?
- 4 A. I don't know in terms of whether he saw it falling into, as
- 5 | you put it, good and evil, just that there was a divide going
- 6 on.
- 7 Q. And Mr. Pezzola believed that the country was on the brink
- 8 of civil war. Did he share that with you?
- 9 A. I don't recall.
- 10 Q. And you saw as Mr. Pezzola got further along in 2020, he
- 11 traveled to Washington, D.C. for a rally in November, correct?
- 12 A. Correct.
- Q. And he traveled to D.C. for a rally in December again,
- 14 correct?
- 15 A. Correct.
- 16 Q. And then he mentioned that he had become a Proud Boy,
- 17 | correct?
- 18 A. Yes.
- 19 Q. And Mr. Pezzola began traveling with the Proud Boys,
- 20 correct?
- 21 A. Yes. To the rallies that you mentioned in D.C. and then I
- 22 know he had approximately six or seven, like, meet-ups with the
- 23 | Proud Boys, but I'm not sure where those exactly took place.
- Q. And, in fact, Mr. Pezzola was becoming more committed to
- 25 the Proud Boys, correct?

- 1 A. To an extent, yes.
- Q. And you mentioned Mr. Pezzola's trip down to the Carolinas?
- 3 A. Um-hum.
- 4 Q. And you're aware of a purpose -- one of the purposes of
- 5 that trip, correct?
- 6 A. Yes.
- 7 Q. And one of the purposes of that trip was to deliver the
- 8 shield to Mr. Bertino, correct?
- 9 A. Yes.
- 10 Q. Just -- we'll have Special Agent Needler hold up for the
- 11 witness Exhibit 72, already in evidence.
- 12 And, Ms. Magee, have you ever seen this shield before?
- 13 A. That particular shield, no.
- 14 Q. Okay. And, Ms. Magee, you would agree that that is kind of
- a black and yellow shield, correct?
- 16 A. Yes.
- 17 Q. Made of wood?
- 18 | A. Yes.
- 19 Q. It's kind of an art project, if you will, correct?
- 20 A. Yes.
- Q. And Mr. Pezzola drove approximately 600 miles, correct, to
- 22 deliver that shield to Mr. Bertino?
- 23 A. I have no idea what the distance is.
- Q. Drove all the way down to North Carolina?
- 25 A. Correct.

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Q. From Rochester, New York, correct?
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- 2 A. Correct. But the purpose of that trip was not just to
- deliver the shield to Mr. Bertino. The purpose of that trip
- 4 was to actually just get out of New York and have a little mini
- 5 vacation. So happened that the individual that was actually,
- from my understanding, supposed to deliver the shield to
- 7 Mr. Bertino fell ill with COVID and was unable to go. So
- 8 Dominic said, Hey, yeah, I want to get the hell out of New York
- 9 anyway for a while, so...
- 10 Q. Mr. Pezzola stepped up, correct?
- 11 A. Yes.

- 12 Q. And, I mean, that's what Mr. Pezzola does, correct?
- 13 A. Depending on the situation, yes.
- Q. When the situation -- when help is needed, Mr. Pezzola is
- going to step up, and he's going to deliver, correct?
- 16 A. If he's able to, yes.
- 17 Q. And so, when Mr. Pezzola wanted to get out of the -- of the
- 18 | area, he didn't go to, kind of, neighboring Pennsylvania to get
- 19 out, correct?
- 20 MR. METCALF: Objection as to speculation.
- 21 THE COURT: Overruled.
- MR. METCALF: And relevance.
- THE COURT: Overruled.
- BY MR. McCULLOUGH:
- Q. Ms. Magee, you kind of mentioned COVID policies.

- 1 A. Um-hum.
- 2 Q. My understanding is that COVID policies were fairly
- 3 restrictive in New York, correct?
- 4 A. Not fairly; very.
- 5 Q. Neighboring Pennsylvania, the policies were much less
- 6 restrictive, correct?
- 7 A. I have no idea what Pennsylvania's policies were at the
- 8 time.
- 9 Q. Policies -- pardon me.
- 10 A. Sorry.
- 11 Q. That was entirely my fault. My apologies. The policies in
- 12 | Maryland were less restrictive, correct?
- 13 A. I don't know.
- 14 Q. Or New Jersey were less restrictive?
- 15 A. I was -- my personal knowledge really was only on -- to the
- restrictions that were in where I was living.
- 17 Q. So, Mr. Pezzola then decided to deliver that shield all the
- 18 | way down to Mr. Bertino, correct?
- 19 A. Yes.
- 20 Q. You mentioned this incident that -- you mentioned the
- 21 incident that had taken place in May of 2020?
- 22 A. Yes.
- 23 Q. That sounds like it hit fairly close to home for you?
- 24 A. It did.
- Q. And I can imagine that it was fairly scary?

- 1 A. It was -- it was very frightening. Very frightening.
- 2 Q. And you said that Mr. Pezzola called to check on you,
- 3 correct?
- 4 A. Yes.
- 5 Q. You also mentioned this other incident where diners were
- 6 attacked, correct?
- 7 A. Yes.
- 8 Q. Those were people that were eating somewhere that were
- 9 attacked, correct?
- 10 A. Yes. At the time, where we lived, you couldn't sit inside
- 11 | the restaurants, so they actually lined tables up along outside
- of the restaurants, kind of along the sidewalk area. And
- that's, like, really the only way you could go out to dinner at
- 14 the time.
- 15 Q. Those events were happening, and you and Mr. Pezzola were
- 16 | experiencing them, correct?
- 17 | A. Yes.
- 18 Q. And they were -- they angered you?
- 19 A. They did anger me. They angered me, they petrified me,
- 20 they made me fearful.
- 21 Q. And Mr. Pezzola was committed to defending against that,
- 22 correct?
- 23 MR. METCALF: Objection as to knowing Mr. Pezzola's
- 24 mindset at a specific point in time.
- 25 THE COURT: Overruled.

- 1 A. Can you repeat the question?
- 2 BY MR. McCULLOUGH:
- 3 Q. The question is that Mr. Pezzola was there to protect you,
- 4 correct?
- 5 A. I would assume so.
- 6 Q. And so, when you're scared or angry, Mr. Pezzola is going
- 7 to make sure that he is there to protect you, correct?
- 8 A. Not necessarily. If he's able to, but that's not always
- 9 the case.
- 10 Q. Now, Ms. Magee, you -- there's a notebook that was
- 11 recovered in your home.
- 12 A. Okay.
- Q. Do you -- holding it up for you. Do you recognize -- I'm
- 14 | showing -- this is Exhibit 23, already in evidence. Just going
- 15 to hand this up to you. You do not need to put on gloves.
- MR. METCALF: This is Exhibit 23, Government 23?
- MR. McCULLOUGH: Government Exhibit 23, correct.
- 18 MR. METCALF: Thank you.
- 19 BY MR. McCULLOUGH:
- 20 Q. Ms. Magee, I'll just ask you if you recognize that
- 21 notebook.
- 22 A. This is the notebook that Dominic used when he was taking a
- college math course. My daughter could really use these notes
- 24 right now. She's struggling.
- 25 Q. I'm familiar with this -- this exercise.

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1 THE COURT: I'm sorry -- I didn't hear.
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- 2 MR. PATTIS: Objection to counsel testifying about
- 3 | what he could or couldn't use.
- 4 THE COURT: Sustained. But you may -- you may
- 5 proceed, Mr. -- Mr. McCullough.
- 6 MR. McCULLOUGH: I'll strike my comment. My
- 7 apologies to Mr. Pattis.
- 8 BY MR. McCULLOUGH:
- 9 Q. And if you'll turn to the yellow tab there. Do you
- 10 recognize that handwriting?
- 11 A. Yes. That is Dominic's handwriting.
- 12 Q. That's Dominic's handwriting?
- 13 A. Yes.
- 14 Q. And I'll ask you to just turn one page back before that.
- Do you recognize that handwriting?
- 16 A. That is my handwriting.
- 17 Q. I'm sorry. That is your handwriting?
- 18 A. Yes.
- 19 Q. I'll ask you to turn one page after the handwritten notes
- 20 by Mr. Pezzola.
- 21 I'll ask you if you recognize that handwriting?
- 22 A. That is my handwriting.
- Q. Okay. So let's look at the pages between.
- 24 A. I saw this, but I never read it.
- 25 Q. So, just directing your attention to some of the statements

```
1
       within that notebook, on the first page of that notebook,
2
       Mr. Pezzola describes why he wants to become a Proud Boy; is
 3
       that right?
 4
           I'm a slow reader. Give me a second.
 5
       Q. Absolutely.
 6
              (Pause.)
 7
       A. Yes.
       Q. Mr. Pezzola described being willing to fight until his last
 8
 9
       breath to make sure his children and their children don't
10
       inherit a communist country, correct?
11
                 MS. HERNANDEZ: Objection, Your Honor. Hearsay.
12
                 THE COURT: Overruled.
13
           That's what it states here.
14
       BY MR. McCULLOUGH:
15
       Q. And at the bottom of the second page, Mr. Pezzola described
16
       his view. He said -- he wrote: Ultimately if we are not in a
17
       civil war, I would like to open a dog sanctuary.
18
              Do you see where it says that?
19
       A. I do see where it states that.
20
       Q. He goes on to write: I truly believe this is a battle
21
       between good and evil, freedom versus tyranny, capitalism
22
       versus communism.
23
                 MR. METCALF: Your Honor, I don't see the relevance
24
       if she didn't read this document. She already indicated that
25
       she has no knowledge of this document. Lack of foundation as
```

```
1
       well.
2
                 THE COURT: Let me hear you, Mr. McCullough.
 3
                 (Bench conference:)
 4
                 THE COURT: Mr. McCullough, I understand what she
 5
       testified to on direct, but she also said she's never read this
 6
       in her life.
 7
                 MR. McCULLOUGH: So, Your Honor, this is my last
       question on this; if I could just get an answer on it. I think
 8
 9
       the point is that her -- I've established that her handwriting
10
       is on the page before this and the page after, Your Honor.
11
       I think the jury can evaluate whether or not it's credible.
12
                 THE COURT: What is your question?
13
                 MR. McCULLOUGH: Whether -- I'll ask her to read that
14
       and tell me whether he's ever shared those views with her
15
       before.
16
                 THE COURT: Well, I think have you a good faith basis
17
       to just ask the question: Has he shared those views with you?
       So I'll overrule the objection, if that's all we're doing here.
18
19
                 MR. McCULLOUGH:
                                  Um-hum.
20
                 (Open court.)
21
       BY MR. McCULLOUGH:
22
       Q. Sorry, Ms. Magee. Pardon me. Dom -- strike that. I fell
23
       into some of Mr. Metcalf's phraseology.
24
              Had Mr. Pezzola ever shared with you his views that the
25
       country was on the brink of civil war?
```

- 1 A. I don't recall him saying that to me, no.
- 2 Q. Did he ever describe this concept of the country falling
- into a battle of good versus evil?
- 4 A. Not to me, no.
- 5 Q. Or freedom versus tyranny?
- 6 A. Not to me, no.
- 7 Q. And so, when Mr. Pezzola left for Washington, D.C., to go
- 8 to -- on January 5th --
- 9 A. Um-hum.
- 10 Q. -- you didn't know what was in his head, correct?
- 11 A. I had no idea. I don't possess the power of telepathy, so,
- 12 no.
- Q. You just knew that he was going to Washington, D.C. with
- 14 the Proud Boys, correct?
- 15 A. I knew that he was going to Washington, D.C. I assumed it
- 16 was with the Proud Boys.
- 17 Q. And his relationship with the Proud Boys -- I think you
- 18 | alluded to it, but you were frustrated with that relationship
- 19 with the Proud Boys, correct?
- 20 A. I was frustrated with the amount of drinking Dominic was
- 21 doing, yes.
- 22 Q. Mr. Pezzola was not somebody who had done much drinking
- 23 before, correct?
- A. He drank. But he went from drinking a couple of beers to
- 25 drinking entire bottles of bourbon.

```
1 Q. Mr. Pezzola had changed in that way?
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- 2 A. He had.
- 3 Q. When Mr. Pezzola returned from Washington, D.C., were you
- 4 frustrated with him?
- 5 MR. METCALF: Your Honor, out of scope. We're going
- 6 way past the timeline that was established on our direct.
- 7 THE COURT: Over -- overruled as to scope.
- 8 A. Can you repeat the question?
- 9 BY MR. McCULLOUGH:
- 10 Q. I'll even withdraw the question.
- 11 When Mr. Pezzola returned from Washington, D.C., he
- 12 | didn't stay for long, did he?
- 13 A. No.
- Q. Mr. Pezzola was there on -- at the house that you share on
- 15 Friday, January 8th, correct?
- 16 A. Yes.
- 17 Q. But he left the following day, on Saturday, January 9th,
- 18 | correct?
- 19 A. Yes.
- 20 Q. And you were unable to get in touch with Mr. Pezzola using
- 21 his regular cell phone, correct?
- MR. METCALF: Your Honor, objection. Same scenario,
- 23 out of scope.
- 24 THE COURT: Sustained.
- 25 BY MR. McCULLOUGH:

```
1
           Mr. Pezzola had gotten rid of his cellular phone following
       the events in Washington, D.C.?
2
 3
                 MR. METCALF: Same objection, Your Honor.
                 THE COURT: Sustained as to scope.
 4
 5
                 MR. McCULLOUGH: I have no further questions.
 6
                 THE COURT: All right. Mr. Metcalf, any redirect?
 7
                 MR. METCALF: Just very short.
                 THE COURT: Sure.
 8
 9
                           REDIRECT EXAMINATION
10
       BY MR. METCALF:
11
       Q. Lisa, sorry. I have to ask, before I get you out of here:
12
       When Dom went to North Carolina, did he drive?
13
           I believe so, yes.
14
       O. You sure it wasn't the other individual he went with who
15
       did the driving?
16
           I don't know.
       Α.
17
       Q.
           Do you remember his truck being gone?
          No. His truck was home.
18
       Α.
19
       Q. Did he have any other vehicle then?
20
       A. No.
21
       Q. So then someone would have had to have picked him up for
22
       that trip?
23
       A. Yes.
24
       Q. And did you then later learn about the different stops
25
       that -- who was the other individual that was with him? Was it
```

```
1
      Rhoney?
2
      A. No. No.
                     I don't believe his name is -- went by the name
 3
      Rhoney. I believe he went by the name of Casper.
 4
      Q. Yeah, Casper. That's correct.
 5
              Okay. Did you come to find out that Casper had a bunch
 6
      of different people, friends and family, throughout the course
7
      of that trip that they made stops at?
      A. Yes.
 8
 9
           How many of those stops did you learn about?
10
           I don't recall. I believe there was several.
      Α.
11
                 MR. METCALF: Thank you, Lisa. I really appreciate
12
      it.
13
                 THE WITNESS: Thank you.
14
                 THE COURT: All right. Ma'am, you may step down.
15
       Thank you for your testimony.
16
                 THE WITNESS: Thank you.
17
                 THE COURT: And, Mr. McCullough, we have an exhibit
18
      here.
             Thank you.
19
                 Can I have counsel at sidebar briefly?
20
                 (Bench conference:)
                 THE COURT: All right. Consistent with what we
21
22
       talked about before, I'm going to release them for the day.
23
      Madam Clerk will do as we talked about -- oh, then we'll get
24
       to -- I'm sorry. That's right, the stipulations.
25
                 We'll do that, then we'll dismiss them. Then we'll
```

```
1
       talk about your expert.
2
                 MR. METCALF: Same scenario -- set up as yesterday,
 3
       where it was placed on the --
 4
                 THE COURT: Absolutely. The exact same situation as
 5
       Mr. Pattis. I will simply tell them that -- I'm not going to
 6
       repeat what a stipulation is, I'm just going to tell them there
 7
       are some stipulations that have been reached between
 8
       Mr. Pezzola and the government and Mr. Metcalf will present
 9
       them to you. All right.
10
                 MR. METCALF: Thank you.
11
                 (Open court:)
12
                 THE COURT: All right. Ladies and gentlemen, we have
13
       a few move stipulations in this case that have been reached
14
       between Mr. Pezzola and the government, and so Mr. Metcalf will
15
       present those to you now.
16
                 Just like yesterday, you're going to have copies of
17
       these going forward, but he will present them and read them to
18
       you.
19
                 MR. METCALF: Thank you, Your Honor.
20
                 THE COURT: And, Madam Clerk, if we can get the Elmo
21
       on the screen -- the screen for the jury and the public.
22
                 Perfect. Well, almost perfect. Now it's perfect.
23
       Okay. Thank you.
24
                 MR. METCALF: This is defendant Pezzola's Joint
25
       Exhibit 1. Contains a stipulation regarding Pezzola's
```

1 witnesses, Aaron Sauer and Arthur Lashomb. The government and defendant Dominic Pezzola hereby 2 3 agree and stipulate that, Number 1, Mr. Pezzola traveled from 4 New York to Washington, D.C. with Aaron Sauer, Arthur Lashomb 5 and Matthew Greene on January 5th, 2021. 6 Number 2, on the night of January 5th, 2021, 7 Mr. Pezzola stayed in the same hotel room as Aaron Sauer, Arthur Lashomb, and Matthew Greene. 8 9 Number 3, on the morning of January 6, 2021, Pezzola 10 Sauer, Greene, Lashomb left the hotel at the same time and 11 walked to the Washington Monument where they arrived at 12 approximately 10 a.m. 13 Number 4, between 11:15 a.m. and 11:20 a.m., Pezzola, 14 Sauer, Greene, and Lashomb left the march and walked around 15 different blocks in Washington, D.C. 16 Number 5, at approximately 12:50 p.m., Pezzola, 17 Sauer, Greene, Lashomb walked back into the crowd involved in 18 the march headed towards the Peace Circle. 19 Number 6, shortly thereafter and prior to the breach 20 of the police barricades at the Peace Circle, Pezzola, Sauer, 21 Greene, and Lashomb joined the demonstrators at the Peace 22 Circle. 23 Number 7, Sauer and Lashomb did not have any contact

Thank you.

with any other defendants in this case.

24

25

1 THE COURT: All right. Very well. 2 Thank you, Mr. Metcalf. 3 All right. Ladies and gentlemen, it's 4:35. And as far as testimony goes, we're going to end the day. I'll be 4 5 discussing a few other matters outside the -- outside your 6 presence with the lawyers. So we'll see you tomorrow morning. 7 As always, please do not -- my handy reminder for you 8 all: Please avoid all media coverage regarding January 6th and 9 this case in particular. Do not contact -- do not conduct any 10 independent investigation and do not discuss the evidence in 11 the case with anyone, including amongst yourselves. 12 Thank you very much. We'll see you tomorrow morning. 13 (Whereupon the jurors leave the courtroom.) 14 THE COURT: Everyone may be seated, please. 15 (Pause.) 16 THE COURT: Okay. All right. So I will hear from 17 you, Mr. Metcalf, on the expert issue. And I'll just stick --18 before we do that, I'll just -- I think the question after that 19 would be -- and part of the answer to what I'm about to say 20 will be how I resolve the expert question. 21 But putting that aside for the moment, the question 22 before that to the parties would be how to chop up tomorrow, in 23 what order and how the parties want to proceed with all the 24 different tasks at hand, so 25 But, Mr. Metcalf, let me hear -- hear from you on

this point first. And you heard -- you heard -- I mean, I expressed where I was earlier.

MR. METCALF: Absolutely. I heard you loud and clear, Your Honor.

The moment that demonstrators got to the west side terrace, that -- that's a very unique point in time in this entire case. It's a unique perspective because there's so many different angles that are captured of that specific ten minutes that is actually extremely vital to Mr. Pezzola, and I'll get into that.

This is not about self-defense. As many times as we want to keep making it and bringing it back to self-defense, we acknowledge we have not prevailed on that argument. This is something bigger, deeper, and it all goes to questioning the validity of a lot of these elements.

We can just think about intent. Counts 10, Counts 8, Counts 9, intent in getting into the conspiracy. All of this links up. This one chain of events that is set off when demonstrators first really meet with the police is vital information that the jury should hear. They should hear this information because there's a huge hole right there.

In that ten-minute scenario, there's a huge, huge hole that needs to be completely filled up. This chain of events that I'm talking about and this particular individual, again, limited timeframe, just around that time, west side

terrace, same area where Mr. Pezzola is alleged to have robbed a Capitol shield.

Now, during the course of this trial we got different pictures -- this is during the course of the trial, Your Honor. January 15th, it's been on the record a couple different times, we got about 15 photographs of Mr. Pezzola becoming in possession with this shield. And there's a different story to be told.

I should be able to tell that story to negate or have the jury be able to question intent of -- this is just the robbery count.

THE COURT: Right.

MR. METCALF: Just robbery. So without me even going into how the assault ties into this angle, how then Pezzola's actions afterwards go towards him being part of a conspiracy, him having to ultimately try to obstruct officials. All of this stems from this point in time. This is the point in time crucial for Mr. Pezzola.

The jury is going to be asked to make a bunch -- as we're going through these jury instructions, the jury is going to have to make some inferences here, Judge, and there's inferences that have -- reasonable inferences that the jury is going to have to make. They're going to have to infer circumstantially whether or not -- what Mr. Pezzola's intent was with regards to that one count.

1 THE COURT: Um-hum. 2 MR. METCALF: So I should be able to present an 3 entire defense and I should be able to elicit certain 4 information from this individual that talks about the police 5 formation at that time. 6 It talks about the leadership. It talks about the 7 leadership tactics and orders that are given from leadership down to these officers. 8 9 I'll give you a prime example. Officer Lloyd we've 10 heard about, but we haven't heard about his pointing -circular motions pointing back and then shots directly 11 12 thereafter. I should be able to present this evidence to allow 13 this jury to infer --14 THE COURT: Infer that your client acted in 15 self-defense? 16 MR. METCALF: No. THE COURT: The defense of others? 17 18 MR. METCALF: No. 19 THE COURT: Okay. Then what? 20 MR. METCALF: He did not have the intent to steal or 21 rob anybody. 22 THE COURT: Because he was intending self-defense or defense of others? 23 24 MR. METCALF: No. Listen. No, Your Honor. 25 doesn't have to be self-defense. It's circum -- the totality

1 of these circumstances and what was going on at that time 2 became chaos like that (snaps fingers), and then all of a 3 sudden it happened in a different area. It has to be explained. 4 Because it goes from where Pezzola is, and then if 5 you're looking at it from above, there's another incident that 6 happens about 20 feet over this way (indicating). So there are 7 certain different times where things erupt, people erupt. Ryan Samsel is getting aggressive --8 9 THE COURT: Ryan Samsel --10 MR. METCALF: -- the guy in the blue sweatshirt is 11 getting involved. 12 THE COURT: But Ryan Samsel -- can I just -- just to 13 pause for a moment. 14 The Ryan Samsel episode is outside the very tightly 15 constrained boundaries of time and place that you're talking 16 about, right? 17 MR. METCALF: Nope. Not until you actually see what 18 these videos show. They show John Blackbeard (sic) getting 19 shot in the face. Ryan Samsel is actually on the ground 20 wrapping his face up. 21 THE COURT: Sure. But --22 MR. METCALF: And then he gets -- it's a different 23 scene than the first breach. It all leads to the second scene, 24 same scenario that I'm speaking about. 25 Ryan Samsel gets a little bit aggressive. Guy in the

blue sweatshirt, still don't know who he is, he gets aggressive. Guy in tan jacket gets aggressive. Then Quaglin comes in with his jacket that has the American flag on it, that whole scenario, you see these guys in different videos up close as to what's going on. You see the lineup. You see the formation. You see the guys from different angles.

THE COURT: Mr. Metcalf, just tell me, what's the difference between what you're describing and suggesting that, in fact, what was happening was self-defense or defense of others?

MR. METCALF: Okay. So self-defense --

THE COURT: What is the difference -- in other words, how does this -- whatever evidence you are -- want to have this witness talk about, how -- first of all, the evidence itself, facts are in evidence and available to you either way. So this is expert testimony. And so I guess my question is: What would this witness testify to that would negate one of the elements of the offense in a way that would not be self-defense or defense of others? Because I think it's very natural. I understand the theory that, well, Mr. Pezzola grabbed the shield because -- and I understand how that could negate -- how that could provide a theory of self-defense, that could be a self-defense theory. He -- you know, he grabbed the shield because he didn't want to be hit.

The problem is, again -- and I know you've acknowledged this, but I just want it noted. We litigated this and I ruled on it -- what seems like quite a long time ago. In fact, it seems like quite a long time ago because it was a long time ago. So, I guess my point is, what is different? What are you telling me -- how could this be a defense or negate one of the elements of the crime if it's not that? Because at a minimum, even if you can articulate to me some very dancing-on-the-head-of-a-pin answer, it certainly feels like the effect of a juror just hearing this evidence would be an invitation to a defense that I've excluded.

MR. METCALF: Your Honor, confusion mitigates intent. Chaos mitigates intent. There is a whole bunch of different things that are going on around these circumstances that when freeze-framed and explained, when actually shown, demonstrate a different picture.

When Mr. Pezzola falls back, people fall on top of him. When you actually can see what's going on, he doesn't have possession of it. There are different scenarios that can be inferred here as far as whether or not the officer dropped that shield, whether or not someone grabbed it before he did, when he grabbed it. This goes to the force element. This goes to intent to rob and use force. It's a totality of the circumstance kind of scenario where you have to bring all these things into place in order to be able to come to that

conclusion. I'm not saying -- I get what --

THE COURT: Isn't that -- isn't that -- I mean, to the extent you're arguing to me, there are facts here that we want to argue from that mitigate -- that suggest, no, in fact, he didn't -- you know, the government hasn't proved this element, because, look, it kind of -- similar to the way

Mr. Smith has sort of gone -- you know, frankly, both sides have. In terms of looking at the -- looking at these scenes from all points of view, from all -- and sort of, I referenced the Zapruder film the other day to someone who was young enough to not have any idea what I was talking about.

But the point is to very closely, frame by frame, look at the different angles and say, look, the government hasn't proven it because, look, that shows, for example, he didn't even mean to grab the shield or whatever. I guess my point is that's all -- those are all facts. And you had and may be have the ability to put witnesses on and -- or, through the cross-examination of the government's witnesses, as many of you did, to say, look, look what happened here, he actually fell back and didn't even intend to grab the -- the shield.

MR. METCALF: It's all the circumstances that lead up to that point, Your Honor.

THE COURT: Right. I guess, again, my point is what does an expert have to do with any of that?

MR. METCALF: So he explains the formation. Okay?

```
1
       Going right off the introduction, demonstrators and police
2
       lines -- it's not just one police line. There's two police
 3
       lines. Okay? There's a word, a specific terminology for the
 4
       front line of the officers and the back line. I didn't even
       know that the back line was linebackers until I started dealing
 5
 6
      with him. Then there's a different formation from up above
7
       that we have shown.
 8
                 No one is going to be able to explain that formation
 9
       and then the -- where the leadership is placed, where the
10
       leadership then gives orders to them as to what to do and how
11
       it's a deviation from policy. These officers are --
12
                 THE COURT: Okay. So tell me. Okay. I grant you
13
       that we haven't had a witness who -- well, in theory we haven't
14
      had a witness who could do that, but you have to tell me why
15
      that's relevant.
16
                 MR. METCALF: Because --
17
                 THE COURT: I'm sorry to do this to you, but --
18
                 MR. METCALF: Judge --
19
                 THE COURT: Yeah.
20
                 MR. METCALF: -- it's relevant because it goes to
21
      various different elements of crimes that Mr. Pezzola is
22
       charged with.
23
                 THE COURT: Tell me what the various elements are.
24
      That's why we're here.
25
                 MR. METCALF: So Number 10, we'll talk about Count
```

10, specifically the use of force, the force component, then intent with robbery, so that's Number 10. Number 8 and 9, assault also has to go with this, so we can talk about the intent of assault for Counts 8 and 9. Then if we go even further into the indictment, we can talk about how this ultimately is going to link Dom to him leaving this area using this shield and how this was all part of a master plan to ultimately get in the building, work his way upstairs and try to obstruct Congress and be a part of every single conspiracy count.

So, asking me what it's relevant to, I had to chuckle because I could place this to five different scenarios based on this one chain of events. So if they are -- if officers are trained to specifically not do something, which is not rile up the crowd even more, they're specifically trained to find the agitators, take them out of the equation, physically, they can do that, or you have a man from a vantage point shoot down, but shoot down --

THE COURT: Okay. You don't have to scream. We're all right here.

MR. METCALF: Okay. Shoot down, but shoot not above the face, not above -- don't do a head shot. So now you have someone who could explain the formation, the actual indications as to how they signal each other, as to how it's supposed to go when you have a formation such as that, meaning where the

vantage points are going to go, who it's going to go towards.

Meaning if you're going to shoot, which is the circular

movement (indicating), you're going to shoot over there, they

have in their mind who they're shooting at, the agitators.

Now, if non-agitators are being shot and then agitators are being shot, and then a non-agitator is being shot and then of the first five shots, four of them are head shots, somebody has to be able to explain, this is how it's supposed to go. Every single shot --

THE COURT: Okay. We're right here. Again, this isn't -- you have a judge here, not a jury, just argue --

MR. METCALF: Understood, Your Honor, but this is essentially an important point for the scenario for what I'm ultimately going to be framing up with Mr. Pezzola because after this it's Mr. Pezzola, or I get another investigator -- I mean, we have an Officer Hanak who sat here the whole trial, and I tried to move that way.

So I'm trying to make this as simple and as condensed as possible. He can break down the entire formation and explain the very specific indications that I'm indicating to Your Honor, how there has to be a leader, how that leader has to ultimately give an order to a specific individual and what they are supposed to do and what they're not supposed to do. Then the leader is going in the crowd and seeing what's going on with people and not changing anything, not helping -- there

are a couple of people who try to get help, but when Black gets shot in his face, Johnny (sic) Black gets shot in his face and he's got a hole in his face and people trying to wrap his face, and Inspector Lloyd comes over, there becomes a point in time where they try to take him away and it looks like they're trying to arrest him. That then agitated the crowd immensely, it sparked it -
THE COURT: How does agitating the crowd -- how does that negate whether he committed robbery?

MR. METCALF: It shows that the police deviated from policy -
THE COURT: No, no, no, no, no.

MR. METCALF: -- at that instance and that instance created a storm of chaos where other people were actually

MR. METCALF: -- at that instance and that instance created a storm of chaos where other people were actually banging into him, on top of him. People are laying on top of you and there's a shield on top of you and officers are pushing -- or, getting pulled and then there's an actual team that's -- or, there's a movement that's -- that officers are supposed to take him out and they're using different force, going in conflicting ways, and all of this is going on and three people end up on top of you and by you and then a shield is there, it goes to negate intent.

THE COURT: But -- okay. So I guess my question is this: If it -- if it's a question of, as you have just teed it up, that people fell on him and kind of the physics of what

happened, why is it relevant why the people fell -- I grant you that just like, again, we were talking about the fence and the like, that the circumstances -- the physical circumstances of what was going on there is relevant. If you can imagine all sorts of scenarios where someone, because of the physical way they interact with you, negates your intent to do a particular thing, but, again, why does it matter why that happened? The fact is if it did happen -- it did happen, and you can -- you can do that. But I guess I'm having trouble understanding how it negates his intent regarding the riot shield.

MR. METCALF: Judge, one thing the jury is not going to able to consider unless they have someone like this on the stand is what's called a rescue circle. A rescue circle is where officers in the front line, the scrimmage line are actually --

THE COURT REPORTER: Please slow down.

MR. METCALF: When they -- when officers see an officer go down, past the certain point, right -- so they create the line for a reason. When officers go down and they see an officer going down, they then create what's called a rescue circle. This rescue circle is that force that was contradicting the force where Pezzola was at that specific time. That has to be considered -- as allowing this jury to actually infer or come to a conclusion when they're considering the counts of robbery. Right then and there, that one example

shows why this witness is necessary. And then that -- in conjunction with everything else I've explained to you and the whole scenario that's going on around them, allows for a jury to make the inferences that it needs to make in order to come to a reasonable conclusion as to all these counts, especially with regard to Mr. Pezzola.

There is going to come a time where this shield -- so this chain of events happens here and it happens quickly, but that shield stays with Pezzola and that becomes a big scenario that ultimately is going to be considered as to whether or not he was part of a conspiracy in three different ways.

THE COURT: Right. I get --

MR. METCALF: And whether or not he was ordered and he agreed and that's how they were going to do the force. Was it foreseeable? Like, you got to grant me something here with regards to relevance, like this is relevant to every layer of this case.

THE COURT: I get how factually, whether he committed robbery and whether he then had the shield and how -- just as a matter of fact, the things that flow from that are important to your defense in explaining how he came on to the shield. I get it. But, again, what I don't understand is how the circumstances in which he got the shield -- how expert testimony that is not about -- look, he got the shield because he wanted to defend himself, which, you know -- well, that's

not that. How -- how this expert testimony explains either a defense that's not self-defense or negates one of the -- in other words, you mentioned the rescue circle, you said?

MR. METCALF: Yes.

THE COURT: Okay. So let's say -- I don't know what that is. But explain to me -- in other words, if that explains or if that provides background context as to why there were a set of officers where they were or something like that and physically made it so that -- you know, I think you started to say people were on top of him or whatever it was. Okay. But, again, what I don't understand is why does it matter that it was a rescue circle? What is -- why can't -- why can't you just point out there were these officers there. They -- whatever they were doing, they fell on top of him, and that was the reason he grabbed the shield. Assuming that's not self-defense or some other, you know, involuntary reason.

I guess I just don't understand why an expert and all these elaborate explanations for all the things that were going on. I do understand why it could in theory be a part of a self-defense defense, but I -- I'm just struggling to understand the relevance.

Not the relevance -- I understand -- to be clear, I understand why it's an important -- that negating the robbery is downstream too important to negating the other charges against your client. That linkage is very clear. But how does

1 this expert testimony negate the -- in the first place, negate 2 the robbery? In other words, even if it were -- I mean, even 3 if it were -- yeah, I guess that's --MR. METCALF: I'll try to make it easy. 4 5 THE COURT: Please. 6 MR. METCALF: Let's talk about the inferences with 7 regard to police deviating from policy. That inference should 8 be allowed to be considered with regards to these circumstances. 9 THE COURT: But I --10 MR. METCALF: I don't get how I'm being confusing 11 here. They -- the police actually created a more dangerous 12 environment than what was there before they started acting in 13 the manner that they did. I should be able to explain that 14 with an expert, as to exactly what was going on. And the 15 government should have a fair crack at that expert to be able 16 to say, No, it wasn't. 17 This -- the circumstances -- if we're just talking 18 about the robbery, the circumstances surrounding the robbery 19 happen so quick that every fact matters. I can't explain a 20 formation with a nonexpert. I can't explain the leadership 21 roles and what they're supposed to do without a nonexpert. I 22 can't explain what a rescue circle is and how this particular 23 rescue circle is involved with Mark Ode. That cop who took the 24 stand said, I was pulled. The jury should be able to infer

from that information that behind him was a botched rescue

25

circle, or an attempted rescue circle that ultimately somehow diverged with the people standing next to Mr. Pezzola, where he couldn't go forward anymore and ended up going back.

They should be able to hear that information to make a decision as to force, the use of force, the threat of force that Mr. Pezzola is alleged to have done and his intention at that time. It's all -- it's one event, one causal link leading to another causal link and they should have the whole picture for this very short period of time.

I'm not saying, hey, let's take this expert and go through a walk throughout -- three, four hours. I'm talking ten minutes to explain a scenario that went from what the heck is going on to complete chaos, and then ultimately led to the next breaches.

So it's important for this jury to understand the full context of it from somebody who can explain what was going on with regards to whether or not there was deviation from policy --

THE COURT: But again, that -- you know, actually, of all the things you've said, at times you've said -- they need to explain, for example, that it was a whatever circle.

Okay. Even if I were to buy that, would I -- what really is outside -- it seems to me there's a circle of different things you've thrown out that this expert could talk about.

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1
                 What to me seems the most clear that's outside the
      bounds is deviation from policy. In other words, what -- that
2
 3
       truly -- now, that is -- or, at least deviation from law would
 4
      be a self-defense -- a possible self-defense theory because
 5
       the -- they would need to be defending themselves from unlawful
 6
       force. But it doesn't have anything to do -- in other words --
 7
                 MR. METCALF: Your Honor, I'm not actually saying
       that. If there's a deviation from policy --
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 9
                 THE COURT: It doesn't matter --
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                 MR. METCALF: -- it starts something over here, the
       chain of fact -- the chain links to where I am that created a
11
12
       ridiculously dangerous circumstance. That's relevant.
13
                 THE COURT: But what does it matter if it's a
14
      deviation from policy?
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                 If the -- if the police caused this in some way, they
16
       caused it. Who -- why does it matter that it's a deviation
17
       from policy or it's unlawful or it violated this part of the
18
      manual?
19
                 MR. METCALF: Because it stirred up and created that
20
      entire circumstance.
21
                 THE COURT: It would have done that regardless --
22
                 MR. METCALF: Nope. That -- that is assumption that
23
       I would not make.
24
                 People are standing there. People -- Johnny (sic)
25
       Black gets shot in his face. You got a bunch of agitated
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1 people there. They already made it this far, right? They've already got up the stairs. They're there. They're pissed off. 2 3 Police are trained to control the situation under those circumstances and instead of controlling the situation 4 5 and doing what they should do, which is nonlethal head shots, 6 they end up doing lethal head shots to the point where someone 7 gets shot right in the face, they're trying to bandage him up, 8 they then start getting riled up and saying various different 9 things to police, leads -- words lead to pushes to shoves, 10 leads to complete mayhem. 11 If Pezzola was standing in a different area, it would 12 not have worked out that way. And you can't just say he would 13 have just ended up with a shield if he was actually 100 feet 14 back. 15 THE COURT: Right. And again, I guess --16 MR. METCALF: So the circumstance created a scenario. 17 Now, I'm not saying self-defense because I'm saying it goes 18 towards formulating the intent to use force against an officer, 19 to actually rob an officer of their property. That's what I'm 20 talking about. 21 THE COURT: And so it was chaos and as a result he 22 wasn't trying to rob. So just -- I mean, explain -- it was

wasn't trying to rob. So just -- I mean, explain -- it was chaos -- I just -- I'm sorry. I don't understand your argument, Mr. Metcalf. I'm going to confess.

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Can I hear briefly -- look, I think -- let's do this:

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       Let me hear briefly from the government. I'll hear from you
       again -- Mr. Pattis, it's Mr. Metcalf's expert.
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 3
                 MR. PATTIS: He's a friend and he's a co-defendant.
      Can I briefly -- two, three sentences?
 4
 5
                 MR. METCALF: Yeah. I must not be articulating
 6
      myself, so I would ask if he can.
 7
                 THE COURT: Here's what I'm going to say: I'm going
 8
       to hear briefly from the government. If you want to -- if you
 9
      want to submit something overnight, I'll take a look at it and
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       I'll give you final ruling tomorrow morning. But I just -- I'm
11
       struggling.
12
                 I don't rule out -- first of all, given that
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       self-defense is off the table, that's an obvious potential
14
      basis here. But it's not there. Hold on. Just let me
15
      explain.
16
                 And then, I'm not -- I want to make sure I'm seeing
17
       every single way in which this expert could possibly give
18
       relevant testimony. So, I am hesitant to just say no. But, I
19
       don't -- I haven't heard an articulable reason for expert
20
       testimony. All the things you're saying -- I mean, I think the
21
       government has -- you haven't been prohibited from eliciting
22
       that there were circumstances there that -- factually, right,
23
       that might have led your client to react in some way or
24
      whatever.
25
                 I'm just having a hard -- you know, as you described,
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1 the projectile is coming down and all the rest. You've 2 elicited that, that's all in evidence. What I'm trying to 3 figure out is what's the extra -- if it's not --4 MR. METCALF: I'll give you five. This is what this 5 witness does and then I'll stop. 6 Number one, police formation. Number two, the 7 leadership setup. Number three, the leadership tactics which is -- involves demands being given to these officers. 8 9 ultimately goes into number four; that's deviating from trained 10 procedures and protocol. Number five, it then shows the 11 crowd's reaction to certain events that are happening around them. 12 13 Those five scenarios cannot be articulated in the way 14 that they have to be by a nonexpert. 15 THE COURT: Okay. My -- I guess as you just laid it 16 out there, my reaction is the crowd's reaction, they're 17 reacting to factual things that are happening in front of them. 18 It doesn't -- and it doesn't -- whether the -- whatever tactics 19 were going on, whatever the -- all the rest of it, they're not 20 really reacting to that. They don't even know that, right? 21 They're reacting to what is in evidence. 22 So, anyway. Let me hear from the government. 23 MR. METCALF: The expert can explain as part of the 24 protocol how certain people are supposed to be removed, if they

get to a certain level, as part of their procedure.

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So, for example, before shots start going off, if there's a main agitator who is really pushing the limits, like maybe how Chris Quaglin was at one point. But before everything started going around as far as the shots, like if there's one person out there and he's an agitator who is causing a lot of different problems, they're trained as to how to remove him quickly or how to make him be the target of the next projectile, if that's the choice that they're going to do. But this has to be explained --THE COURT: So, hold on. So this is the -- now you're -- now we're -- this is the difficulty, is now you're articulating something just as a factual point. That's totally different. You're saying, well, if the police had done their job and actually taken out the particular person, they should have in some way -- I don't really know what "take out" means in this context, but if they had done something more and --MR. METCALF: Remove from the crowd. THE COURT: -- removed person A, B, or C, then your client wouldn't have -- wouldn't have committed robbery, or that somehow negates --MR. METCALF: Your Honor, the robbery component here has to mean -- we at least have to consider that the intent component of robbery was formulated in a very split second

or -- that's going to be our position.

It wasn't like he walked up the stairs and said, I am going to steal a riot shield because that's the next thing I'm going to be able to do. Right? Not part of any plan.

Circumstantially happened in the moment. So that means intent had to be formulated almost immediately upon a certain situation happening.

So now I've tried to dissect and figure out where that situation could be. And in dissecting it, there are various different components and all these components and these deviations from this policy created a snowstorm right around Mr. Pezzola at that specific time. And but for him being at that exact spot, this set of events would not have happened the way that it did and he probably wouldn't have ended up with a riot shield.

So it has to be all of the surrounding circumstances surrounding that fall and him actually getting possession of the shield I believe should be examined, should be explained, and should be presented in a way where the jury can make reasonable inferences going forward.

THE COURT: All right. Let me hear from the government.

And as you all know, it's been a long day. And,
Mr. Metcalf, if you want to submit something overnight that I
look at, I'm happy to receive it.

Mr. Kenerson, if you are taking the laboring war for

1 the government here. 2 MR. KENERSON: Yes. Thank you, Your Honor. I'll --3 I'll -- mic was off, I apologize. I will try to be brief in 4 response. 5 So, Mr. Metcalf just laid out five -- I think what he 6 said were the five most important things, or something like 7 that, to come from this expert's -- purported expert's 8 testimony, and then there was also this idea of a rescue circle 9 that came up quite often. 10 Outside of deviation from policy, nothing in those 11 five points he laid out, nor rescue circle, was in the notice. 12 So, I understand that the Court did not rule with us on 13 lateness of notice, but I think that the way this has evolved 14 today, we are talking about a sufficiency of notice issue as 15 well, at least with the testimony as proffered by Mr. Metcalf. 16 So, that's number one. 17 The notice said that there would be testimony about 18 deviation from policy. It said there would be testimony --19 THE COURT: I just need everyone to cease 20 conversations while I'm hearing from an attorney. 21 MR. KENERSON: -- about deviation from standards. 22 But a lot of the specifics that Mr. Metcalf just went into were 23 not in the notice. The Court has it, they can -- they can look

With respect to this idea that there's somehow --

at it tonight. But I do want to flag that as an issue.

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even if we assume for the sake of argument that the police instigated this chaos and that chaos instigated by police is what led to Mr. Pezzola being in a position to take the shield, I share the Court's skepticism with the notion that police instigating it, even if we assume that is true, somehow negates what happened later.

THE COURT: Well, when he says -- you're saying later, but I think it sounds like the proffered -- it's all about a very small band of time.

MR. KENERSON: Correct. By later I did mean a matter of seconds.

But, yes, they instigated and then sometime after it's instigated, according -- again, assuming, arguendo, they instigated it sometime thereafter, a matter of seconds, is when this happens. And as I understand the argument, it seems to be that if he were 100 feet back, he would not have wound up with the shield, and that -- that may well be true.

But, you know, if -- if -- put it out of the officer realm. If Mr. Pezzola is over at the Washington Monument and the police instigate something which causes someone to run away from the Capitol towards the Washington Monument, Mr. Pezzola runs into that person and robs him of his wallet, that doesn't absolve him of that robbery in any way, shape or form, or any more than this. Even if you assume that he took an opportunity, essentially, that doesn't negate the intent to

1 steal aspect of it, even if that formed quickly. 2 One thing I do want to note on -- just on the 3 self-defense issue, because I think the Court has raised that 4 it -- it could see how this may fit into a self-defense 5 situation. And if we are correct, the Court did preclude it 6 with no opposition having been filed by Mr. Metcalf. 7 One of the things that the Court said -- if you recall, we did bring this up again. I think that Mr. Metcalf 8 9 and Roots wanted to open on self-defense, and we discussed it 10 at the time. The Court said it was going to preclude it. 11 Court did say --12 THE COURT: Well, Mr. Kenerson, in fairness to them, 13 they're conceding that this isn't -- they're not trying to 14 fight that battle. 15 MR. KENERSON: I understand, I understand. I'm just 16 noting the Court did say it would hear from them again and 17 would need a good reason. It sounds like they are not pursuing 18 that for some reason at this point. 19 (Off-the-record discussion between government 20 counsel.) 21 MR. KENERSON: So, it sounds like they're not 22 pursuing it. I just want to -- that's my understanding, that 23 they are not pursuing it. If they're -- so, that's that. 24 THE COURT: All right. Here's what I -- here's what 25 I would say: Look, I'll -- I mean, Mr. Metcalf, Mr. Kenerson

is right to a degree, at least, that while I am -- I think -- because I think this is what the law is, that if the timing is not the problem for you in terms of when you provided notice -- but, I mean, it is -- I'm not -- it is a legitimate point that they got a notice, the notice -- and the notice is -- says some things, and I feel like we're kind of snaking around today in terms of what exactly the basis is and what the point and the basis of the expert testimony would be. So, look, I will -- I will consider whatever anyone files on this point by midnight tonight and will take it up first thing tomorrow morning and I'll do some thinking about it.

Look, I do think it's -- I'm trying, before I preclude the expert, to make sure I really think there's no avenue here and -- but I -- but I don't see it, or at least I don't see it in the sense that it's -- to the extent that it's something that's proper for an expert to testify about. But we -- we will see.

MR. PATTIS: Your Honor --

THE COURT: Mr. Pattis, I'm not going to open up -really, we -- I've tried to keep this -- if you -- let me put
it this way: If you talk to Mr. Metcalf and he puts your
thoughts into filing tonight, I'll look at it.

MR. PATTIS: Let me say by way of objection, not being able to speak, State-Created Danger doctrine, take a look at that. That's the answer to the whole thing.

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                 THE COURT: So I'll look at that. Let's talk about
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       tomorrow.
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                 This is what I think, at least how I start -- how we,
       I think, should start, is, look, I'll -- we should -- we'll
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       quickly take up this expert issue and see where that goes.
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                 Then we would have at least until later in the
 7
       morning, a block of time we could do some more jury instruction
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       and get as far as we can on that. Whether I -- putting the
 9
       expert aside, what -- what else -- and putting the expert aside
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       and then assuming we might want to reserve some more time for
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       the under-seal matter, but then also are there any other things
12
       the parties think we should plan on trying to knock out
13
       tomorrow and in what order?
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                 MS. HERNANDEZ: How late is the Court going tomorrow,
       Your Honor? Tomorrow, the first day of --
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16
                 THE COURT: Say again?
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                 MS. HERNANDEZ: I believe tomorrow is the first day
18
       of Passover, or today, actually --
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                 THE COURT: Actually, I think it was yesterday. It
20
       was technically yesterday, but today is the day when Seders are
21
       celebrated.
22
                 MS. HERNANDEZ: Yeah.
23
                 THE COURT: So, I -- I can go -- I mean, tomorrow,
24
       you know -- well, it depends -- I'm not going to keep the
25
       jury -- I'm not going to keep the jury past five o'clock.
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1 there's -- depending on our ability -- I mean, we could stay a little bit later after that if we need to knock out other --2 3 MR. METCALF: Your Honor, I'll cut right to the I don't think we have anything to fill up until 5 4 5 o'clock tomorrow because if I don't go with this expert, my 6 next witness is Dominic Pezzola. Dominic Pezzola is not going 7 to testify right away. There's going to be other evidence that comes in before he testifies. 8 9 THE COURT: What other evidence? 10 MR. METCALF: There's also defendants who could also 11 testify. There's also a couple of other, I think, pieces of 12 evidence that have to get put on. I don't want to speak on 13 their behalf, but ultimately I've been last this entire trial. 14 So, Mr. Pezzola would like to execute being last at testifying. 15 THE COURT: Okay. But we all agreed that we would 16 wait until all the other evidence was in and then -- and then 17 you all would decide on that question. So my point is -- fine. 18 Let's just assume the expert -- whether it's -- in or out, what 19 are we doing after the expert? 20 MR. PATTIS: We've asked the government to make 21 available two of the officers we interviewed the other day from 22 the Metropolitan Police Department. We also are waiting to 23 interview with a third who has counsel, represent -- choice of 24 counsel issues that apparently a conflict arose yesterday, and

I don't know if that's been resolved. And then I believe -- I

25

don't want to speak for anyone else. I believe there are
other --

MR. JAUREGUI: Your Honor, Jauregui for Tarrio. We have a stipulation with the government that we're going to present to the jury. We've created some exhibits that we've already provided to the government. We have a few issues that we need to argue about. If Your Honor would like, I can email you the exhibits tonight and then we can have a brief argument tomorrow and then we'll be ready to go, after Mr. Metcalf.

THE COURT: All right. So is it fair to say, putting aside for a moment the expert, and -- well, the expert and then we have these late -- the witnesses, Mr. Pattis, you indicated. Are there any -- and then putting stipulations. Are there any other live witnesses that are in play that we're talking about?

MS. HERNANDEZ: I hope -- I'm trying to get my investigator to come in to testify. He's been busy on another case. I think he would be available tomorrow afternoon. There are some disputes with the government as to the scope of his testimony.

THE COURT: All right. And Mr. -- all right. Okay.
And Mr. Roots?

MR. ROOTS: Several issues. We have another expert, and that is the window expert. This is the world's foremost authority on windows. He has installed over 20,000 panes of glass. He is in Ohio, and he's ready to fly here and testify

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       as an expert on that.
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                 THE COURT: Okay.
 3
                 MR. ROOTS: Also we have not given up on Ray Epps.
                 THE COURT: All right. Understood. So, what does --
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 5
       all right. So I had -- I had thought we might be in a position
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       to at least rest, not in terms of your clients testifying or
 7
       not, but rest in terms of all the other evidence tomorrow. You
 8
       understand what I mean. But it sounds like that's not in the
 9
       cards.
10
                 Mr. Kenerson, you wanted to say something.
                 MR. KENERSON: I would like to note on this window
11
       expert, we have repeatedly informed counsel for Mr. Pezzola
12
13
       that we have received no notice, still. So we're objecting.
14
                 THE COURT: Well...
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                 MR. ROOTS: Could I say, that's simply not true.
16
                 THE COURT: Well, I'm not going to referee that.
17
       It's -- the truth or falsity of that is like the -- like
18
       whatever the case law says on proving different methods of
19
       liability. The answer is out there, and you all will let me
20
       know about it.
21
                 So, all right. Look, tomorrow we're going to -- it
22
       sounds like -- is it possible, from the government's
23
       perspective, that a couple of these, call them Mr. Pattis --
24
       the witnesses that Mr. Biggs wants to call could be available
25
       tomorrow?
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MR. McCULLOUGH: Yes. So, Your Honor, just to -maybe just to summarize what the government's understanding of
where we are is -- it's sounding grammatically incorrect, but
I'll go with it. My understanding is that we've got the
stipulation from team Tarrio, that we've got the expert from
team Pezzola, which will be resolved, two live witnesses. Then
with respect to the two officer witnesses, they are available
tomorrow to testify, and so if they are to be called, they'll
be here at 9 o'clock tomorrow. And they're available to be
called.

THE COURT: I mean, does it make sense, if the stipulation -- Mr. Jauregui, if the stipulation is not verbate at present, does it make sense -- and the experts for Mr. Pezzola, at least one of them, I'll rule on tomorrow, and the other one is -- you all advise me where the situation is regarding the notice and whatnot. Does it make sense to just skip over that and go right to these other two witnesses that we know are going to be called that we can knock out?

MR. PATTIS: We may or may not call them. I mean, we interviewed them the other day. We were hoping to talk to the third. There's a disagreement among the defense about the course to take. We would like them available. If we don't call them, we do need to have a fallback plan.

THE COURT: You need to have a?

MR. PATTIS: Fallback plan.

THE COURT: Right.

MR. METCALF: And, Your Honor, if Your Honor denies our Steven Hill expert application, then I would seek to put Agent Hanak on the stand for me to be able to create this record factually. So that would require -- it would be the same exact videos that I've already noticed them on, and I would just then need to wait for the 36 hours and everything along those lines. But I would ask that he be made available.

Your Honor, at some point the jury needs a full picture.

THE COURT: Sure.

MR. METCALF: And this will be explained as to circumstances on the ground at that specific time. We've only showed portions.

THE COURT: I guess I would say this: It is not like -- you know, I could say, well, goodness gracious, some of that came in, I thought, in the government's case, and you could cross, but you have the right to put it on yourself and do what you want to do with it factually.

So I would say this: Talk to the -- obviously, obviously, evidence in the case is going to bleed over past tomorrow. So I would say engage the government on that question. It doesn't strike me -- I think it was a similar situation where the government made someone available for the defense to -- I think, maybe I'm wrong -- to go through some

1 particular videos that the defense wanted. Am I misremembering 2 that? 3 MR. McCULLOUGH: I think in this case, Your Honor, if that's what you're referring to --4 5 THE COURT: Yes. 6 MR. McCULLOUGH: -- I think we made the U.S. Capitol 7 Police --MS. HERNANDEZ: That didn't work out too well. 8 9 MR. McCULLOUGH: We made the U.S. Capitol Police 10 Officer available to introduce the permits. I do understand 11 that in the Oath Keepers case that a circumstance like that was 12 kind of worked out. I think we would just seek a -- kind of a 13 proffer of what it is that we're seeking to put in through 14 Special Agent Hanak, so that Special Agent Hanak can, to the 15 extent he needs to, focus on the videos so he knows what it is 16 he's about to be asked about. 17 THE COURT: So, look, engage with that. I think 18 it's -- you know, if Mr. -- if part of my pushback on this 19 expert has been, look, I don't know that it's an expert --20 look, I understand the importance of that moment to Defendant 21 There's no question about it. And if he wants to put 22 on a witness to say, Look, look, what's happening here, you 23 know A, B, and C is happening, the way other defendants have 24 done that, it strikes me that's a reasonable thing. So you all 25 engage on that. Send me whatever you want on the expert

tonight.

It sounds like you should have the -- those other witnesses available as the other -- the witnesses Mr. Pattis mentioned in case we need to chew up time.

MR. McCULLOUGH: Yes. And the last one, Your Honor, is -- I think it's been raised, but Ms. Hernandez has a investigator that I understand is going to be available tomorrow afternoon, and so I think we would -- I think there are kind of two exhibit issues that are teed up with respect to that individual, but otherwise I -- I have --

THE COURT: I have to resolve.

MR. McCULLOUGH: -- the evidentiary issues we would ask you to rule on, which we would tee up overnight, consult further with Ms. Hernandez and tee them up for you. But I think those are fairly discrete issues. And then it would seem like we could proceed with that.

Look, I do think that we are -- from our perspective, we are -- we are close. I mean, I think there's -- no one likes to be done, you know, kind of. It's just kind of difficult to kind of hold hands and jump off the cliff, but I think we seem to be there, Your Honor. I mean, based on what we can tell. And I think that we should try to drive hard tomorrow to the extent we can and see if we can get to a position where we are at least resting some of the defendants' cases so we can move into next week with a game plan to get to

1 closings. 2 THE COURT: I'm sorry, counsel. What's -- what's 3 going on? What's going on here? 4 MS. HERNANDEZ: I'm sorry, Your Honor. We're trying 5 to figure out some --6 THE COURT: We're going to -- we're going to break --7 look, we're going to break in a moment, so you can all do that 8 because that is what -- what is most productive right now, is 9 for you all to be talking, but it's not appropriate to be 10 getting up. We're all trying to have a conversation about how 11 to move forward. I understand you all need to do that. I 12 understand we're tired, it's the end of the day. But goodness 13 gracious. All right. All right. Just, please. 14 MS. HERNANDEZ: Question. The Court said you were 15 going to do some time for sealed matter. What is the Court 16 contemplating --17 THE COURT: Well, again, I think the question is --18 let's -- part of my answer to your question was going to be 19 driven by how much we have lined up. I think it does make 20 sense, again, maybe with regard to -- let me put it this way: 21 If there's some new aspect of the under-seal matter that we 22 need to discuss tomorrow, obviously I will let you all know and 23 we will do that. If -- but otherwise, now that I'm hearing 24 what I'm hearing here, I think it makes sense to just press 25 ahead, get as many witnesses done as we can, and we can -- and

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       then for reasons I had discussed, I -- there may be additional
       information that could inform the ultimate resolution of that.
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       So, I think the best thing is to just press ahead tomorrow
       and -- now that I'm hearing where we are on witnesses, let's
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 5
       press ahead and get as much done as we can.
 6
                 MS. HERNANDEZ: It's just that a lot of our defense
 7
       issues are up in the air, depending on this ruling or that
 8
       ruling, depending on interviews with officers and that type --
 9
                 THE COURT: I get it.
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                 MS. HERNANDEZ: That's why it's kind of difficult to
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       say where we are.
                 THE COURT: I understand.
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13
                 Mr. Pattis?
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                 MR. PATTIS: From Team Biggs, we would like to know
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       what the charge is going to be prior to the weekend so we can
16
       use that to prepare our arguments.
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                 THE COURT: Well, that's another -- that's another
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       piece of this, too. That's why we'll start -- I'm going to --
19
       we're going to go -- look, Mr. Pattis, here's -- here's where I
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       think that will fall. We are going to -- we will -- we've gone
21
       through a third, just by pages, anyway, a crude measure, but a
22
       measure, of the 45 pages. A third each day. We'll go through
23
       the -- so we'll start tomorrow and do the remaining third.
24
       Doesn't mean we'll have everything resolved, but it means I'll
25
       have heard from you on all of it.
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have that in advance.

And then we'll talk about -- I mean, what I thought I can do, it's something I can do even though we do not -- you know, actually as I was thinking this over lunch, I thought, oh, maybe we could have something on video or audio either on Friday or Monday. But we can't, as I thought it through, because the whole point of that is that the court staff is off.

But that doesn't mean I can't at least receive -we'll be at the end of it tomorrow and I can have as a goal to
try to circulate to all of you something as early as possible,
whether that's -- I can spend Friday doing that, if it bleeds
into Saturday. But Friday or Saturday getting you that so you

So even though we don't have -- so, we can't do that.

That -- you know, there are -- maybe the parts of it that you are interested in aren't affected by this, but we -- as we know, there are other parts of it that require the parties to -- you know, I'm thinking 404(b) and some other things that I think will require the parties to -- sort of punt it back to the parties on the details. So some of that is still going to be in limbo. I don't think that's what you really care about, but fair enough.

So I -- from my perspective, I think of using Friday to try to get as far as I can on that and, hopefully, you know -- again, we're going to have -- we're not going to be complete, but it will probably be complete probably for the

1 purposes of you crafting a closing. 2 All right. So that's where we'll begin. Tomorrow, 3 9 o'clock. So we won't -- unless there's some -- just for 4 planning purposes, unless there's something I don't know about 5 that we need to discuss, we'll -- we won't do anything sealed 6 tomorrow and try to make as much ground as we can on witnesses. 7 MS. HERNANDEZ: I think --8 THE COURT: And stipulations and all the rest. 9 MS. HERNANDEZ: I think, from the defense side, we 10 definitely would like to resolve the charge as far as -- as 11 much as we can tomorrow because -- take up as much time with 12 that as anything else because that's probably the most 13 important aspect at this point. 14 THE COURT: We will get as far as we can, but we're 15 going to do -- we're going to do the last third of it and 16 then -- and then if the parties don't have, for example, the 17 things we've kind of hit and said, well, the parties should 18 discuss that. If there's nothing for us to consider, then 19 there's no -- we won't be able to make progress. 20 So we'll spend as much time as we think is productive 21 going through the rest of the document. And I don't -- I don't 22 know that we're going to be any more productive any further on 23 that. 24 Mr. McCullough, you look confused.

MR. McCULLOUGH: No.

That's my I'm-about-to-ask-a-

```
1
       question face. And, my apologies, just -- next Friday, are we
2
       sitting?
 3
                 THE COURT: Sorry. Next Friday?
                 MR. McCULLOUGH: My -- I'm calculating whether next
 4
 5
       week is a three-day week or a four-day week.
 6
                 THE COURT: The 14th?
 7
                 MR. McCULLOUGH: Correct.
                 THE COURT: Oh, it's a three-day?
 8
 9
                 MR. McCULLOUGH: Well, that's -- if we are not
10
       sitting Friday, it's a three-day week. I'm just trying to do
       the kind of estimation in terms of when we land this.
11
12
                 THE COURT: It's a good question. So by then I
13
       had -- I have right now a full -- I have right now a full day
14
       planned on other matters. However, given where we are, I
15
       will -- we will move things around on that.
16
                 So, my guess is we will have -- and this means --
17
       yeah, part of it is a pretrial conference in another matter
18
       that I'm going to -- I've been waiting and hoping I wouldn't
19
       have to pull the plug on, but I'm going to do that.
20
                 So, I think the parties should try to plan on at
21
       least a half a day, and I'll do my best to clear up as much
22
       time as I can.
23
                 MS. BALLANTINE: Just very briefly, Your Honor. I
24
       have a trial attorney at this table who begins another trial in
25
       District Court on Monday, the 17th. And she is committed to
```

1 this case through the duration of it. But to the extent that 2 you have any ability to give us a full day on Friday, I would be very grateful because we have had to negotiate this nonstop. 3 THE COURT: Look, I -- again, that's the first Friday 4 5 where I was pretty confident we wouldn't need to be in, but --6 and I've just been trying to adapt as we go. 7 So I hear what you are saying, Ms. Ballantine, and I think, given the situation, I'm going to do everything I can to 8 9 clean up and create as much time as I can. 10 MS. BALLANTINE: Thank you, Your Honor. 11 THE COURT: Yes. MS. HERNANDEZ: Just so the Court understands, as far 12 13 as defendants testifying, Mr. Rehl has not yet decided what he's going to do. But that would probably be -- that decision 14 would have to be made, I guess, by Tuesday. I mean, if he 15 16 testifies, I'm saying I think that would be -- he would be 17 testifying Tuesday. 18 THE COURT: What we decided was that -- I mean, what 19 we decided before was that I would receive all the evidence 20 from all the defendants non -- that is not their testimony and 21 then they would decide. 22 So the question is whether we're going to -- when 23 we're going to hit that point. I guess I had hoped we would 24 hit that point tomorrow, but that may be -- may not be

possible, given what I'm hearing here.

```
1
                 But I agree with you. It seems to me we can shoot to
2
      hit that point on Tuesday and then -- and then, you know,
 3
       obviously your clients will either decide to do so or I'll have
       the appropriate colloquy with them and we'll go forward.
 4
 5
                 MS. HERNANDEZ: I'm just telling that to the Court in
 6
       case this Friday issue -- because I think we probably need more
7
       than a day for closing arguments.
 8
                 THE COURT: You know, Mr. Pattis has said, too.
 9
      We'll see. We'll see.
10
                 But, we'll -- you know, we'll take that up when we're
11
       close.
12
                 But, look, bottom line is, given what I'm hearing
13
      now, I can -- I'll adjust things -- I'll adjust my schedule for
14
      the 14th as appropriate.
15
                 MS. HERNANDEZ: Is the government putting on a
16
       rebuttal case?
17
                 THE COURT: How can they decide that until they see
18
      your case?
19
                 I mean, what is the government -- can the government
20
      make any representations one way or the other about that?
21
                 MR. McCULLOUGH: We have no representation to make at
22
       this time.
23
                 THE COURT: All right. See you all
24
       tomorrow at 9 o'clock.
25
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CERTIFICATE OF OFFICIAL COURT REPORTER I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability. Dated this 6th day of April, 2023 Janice E. Dickman, CRR, CMR, CCR Official Court Reporter Room 6523 333 Constitution Avenue, N.W. Washington, D.C. 20001

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