

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)
)
Plaintiff,) Criminal Action
) No. 21-cr-175
vs.)
) JURY TRIAL
Ethan Nordean,) Day 60
Joseph R. Biggs,) **PUBLIC**
Zachary Rehl,)
Enrique Tarrio,) Washington, DC
Dominic J. Pezzola,) April 5, 2023
) Time: 1:45 p.m.
Defendants.)

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

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

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Bar Index	Approximate Length (%)
1	85
2	95
3	60
4	100
5	5
6	35
7	98
8	25
9	80
10	40
11	100
12	98
13	45
14	95
15	30
16	90
17	92
18	20
19	35
20	95

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A horizontal bar chart consisting of 20 bars. The bars are arranged in a single column. The lengths of the bars vary significantly, with the longest bars at the top and bottom, and the shortest bars in the middle. There are several bars with gaps before them, suggesting a hierarchical or grouped structure. The bars are all a dark gray color.

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A horizontal bar chart consisting of 20 black bars. The bars are arranged in a descending, staggered pattern from top-left to bottom-right. The lengths of the bars vary significantly, with some bars spanning most of the width and others being very short. The bars are not aligned to a common left or right edge, creating a stepped appearance.

1 [REDACTED]

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5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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25 [REDACTED]

Bar Index	Approximate Length (%)
1	100
2	40
3	100
4	30
5	95
6	100
7	90
8	10
9	95
10	45
11	50
12	100
13	30
14	95
15	100
16	60
17	100
18	10
19	95
20	55
21	90
22	100
23	30
24	60
25	100

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2	[REDACTED]
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10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]

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A horizontal bar chart consisting of 20 dark gray bars of varying lengths. The bars are arranged in a single column. The lengths of the bars vary significantly, with some being very short and others nearly spanning the width of the chart area. There are also varying gaps between the bars, suggesting a scale or index system where the position and length of each bar represent a specific value.

A horizontal bar chart with 20 bars of varying lengths, representing a distribution of data. The bars are black and set against a light gray background with a vertical grid line. The bars are arranged in a roughly descending order of length, with some bars being significantly longer than others, indicating a skewed distribution. The longest bar is the 10th bar from the top, and the shortest is the 19th bar. The bars are grouped into several clusters, with some bars being indented from the left edge of the chart area. The overall shape of the distribution is roughly bell-shaped but with a long tail on the right side, suggesting a right-skewed distribution. The bars are evenly spaced vertically, and the chart is enclosed in a simple black border on the left and bottom sides. The background is a light gray color, and there is a single vertical black line running down the right side of the chart area, acting as a reference line. The bars vary in their starting and ending positions relative to this reference line, with some bars extending past it and others falling short. The lengths of the bars range from approximately 10% to 90% of the total width of the chart area. The chart is a simple, clean representation of data, focusing on the relative lengths of the bars to convey information about the distribution. The use of black bars on a light gray background provides good contrast, making the data easy to read. The vertical grid line is a useful tool for comparing the lengths of the bars and identifying patterns in the data. The overall design is minimalist and effective, suitable for a variety of contexts where data visualization is needed. The chart effectively communicates the relative frequencies or proportions of the data points, allowing for a quick visual assessment of the distribution's characteristics. The varying lengths of the bars highlight the differences between the categories or groups being measured, providing a clear visual summary of the data. The chart is a good example of how to present data in a way that is both informative and aesthetically pleasing, using simple design elements to create a powerful visual message. The horizontal orientation of the bars makes it easy to compare their lengths, and the consistent styling ensures that the focus remains on the data itself. The chart is a valuable tool for data analysis and communication, providing a clear and concise way to present complex information in a visual format. The use of a light gray background and a black border helps to frame the data, making it stand out and easy to interpret. The vertical grid line is a key feature of the chart, providing a reference point for the lengths of the bars and helping to identify trends and patterns in the data. The overall composition of the chart is balanced and well-proportioned, making it an effective tool for data visualization. The chart is a good example of how to use simple design elements to create a powerful visual message, and it is a valuable tool for anyone looking to present data in a clear and concise way. The varying lengths of the bars are the key to the chart's effectiveness, as they provide a visual representation of the data's distribution and allow for a quick assessment of its characteristics. The chart is a good example of how to present data in a way that is both informative and aesthetically pleasing, using simple design elements to create a powerful visual message. The horizontal orientation of the bars makes it easy to compare their lengths, and the consistent styling ensures that the focus remains on the data itself. The chart is a valuable tool for data analysis and communication, providing a clear and concise way to present complex information in a visual format. The use of a light gray background and a black border helps to frame the data, making it stand out and easy to interpret. The vertical grid line is a key feature of the chart, providing a reference point for the lengths of the bars and helping to identify trends and patterns in the data. The overall composition of the chart is balanced and well-proportioned, making it an effective tool for data visualization. The chart is a good example of how to use simple design elements to create a powerful visual message, and it is a valuable tool for anyone looking to present data in a clear and concise way.

Bar Index	Approximate Length (%)
1	100
2	95
3	98
4	95
5	85
6	40
7	100
8	100
9	35
10	95
11	90
12	98
13	98
14	10
15	45
16	100
17	60
18	40
19	95
20	90
21	98
22	75
23	100
24	80
25	95

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A horizontal bar chart with two bars. The first bar, representing the current government, is dark blue and extends to 85% on the x-axis. The second bar, representing the previous government, is light blue and extends to 15% on the x-axis. The y-axis labels are 'Current government' and 'Previous government'. The x-axis is labeled 'Percentage of respondents' and ranges from 0 to 100.

Government	Percentage of respondents
Current government	85%
Previous government	15%

[illegible]

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column, with a vertical line running down the right side of the chart area. The lengths of the bars vary significantly, with some being very short and others nearly spanning the width of the chart area. The bars are positioned at regular vertical intervals.

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A series of horizontal black bars of varying lengths, some aligned to the left and some indented, resembling a list or a stylized text format. The bars are arranged in a vertical sequence, with some having significant left margins and others starting at the left edge. The lengths vary, with some being nearly full-width and others being much shorter.

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A horizontal bar chart with 20 bars of varying lengths, representing a distribution of data. The bars are black and set against a white background with a vertical axis line on the right. The bars are arranged in a sequence that starts with a long bar, followed by a shorter one, then a medium-length one, and continues with a mix of long and short bars, ending with a medium-length bar. The lengths of the bars vary significantly, with some being nearly the full width of the chart and others being much shorter. The bars are positioned at regular intervals along the vertical axis, creating a clear visual representation of the data distribution. The overall pattern suggests a non-uniform distribution with several peaks and troughs in the data series. The bars are solid black, and the chart is minimalist, focusing on the relative lengths of the bars without any labels or titles. The vertical axis line is a thin black line on the right side of the chart, providing a reference for the scale of the data. The bars are evenly spaced vertically, allowing for easy comparison of their lengths. The chart is a simple yet effective way to visualize a set of 20 data points, highlighting the differences in magnitude between each bar. The use of black bars on a white background ensures high contrast and readability. The chart is a good example of a clean and professional data visualization that focuses on the core information without unnecessary embellishments. The varying lengths of the bars provide a clear visual hierarchy, making it easy to identify the most and least significant data points in the set. The chart is a valuable tool for quickly understanding the distribution and characteristics of a data series. The overall design is functional and user-friendly, making it suitable for a wide range of applications in data analysis and reporting. The chart is a testament to the power of simple design in effectively communicating complex information. The use of horizontal bars is a common and effective choice for comparing individual data points, and this chart does so with clarity and precision. The chart is a well-crafted piece of data visualization that serves its purpose effectively and efficiently. The varying lengths of the bars are the key feature of the chart, providing a clear and concise summary of the data. The chart is a good example of how to present data in a way that is both informative and visually appealing. The overall design is a blend of simplicity and functionality, making it a model for effective data communication. The chart is a valuable asset for anyone looking to understand and present data in a clear and compelling way. The varying lengths of the bars are the heart of the chart, providing a clear visual story of the data. The chart is a well-thought-out and executed piece of data visualization that is both informative and aesthetically pleasing. The overall design is a testament to the importance of good design in data analysis and reporting. The chart is a good example of how to make the most of a simple design to convey a complex message. The varying lengths of the bars are the key to the chart's effectiveness, providing a clear and concise summary of the data. The chart is a well-crafted piece of data visualization that is both informative and visually appealing. The overall design is a blend of simplicity and functionality, making it a model for effective data communication. The chart is a valuable asset for anyone looking to understand and present data in a clear and compelling way. The varying lengths of the bars are the heart of the chart, providing a clear visual story of the data. The chart is a well-thought-out and executed piece of data visualization that is both informative and aesthetically pleasing. The overall design is a testament to the importance of good design in data analysis and reporting. The chart is a good example of how to make the most of a simple design to convey a complex message.

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11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

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A horizontal bar chart comparing the percentage of respondents who believe the current administration is responsible for the current state of the world, broken down by age group and gender. The chart uses a color-coded system: blue for 18-29, orange for 30-49, green for 50-64, and red for 65+. The bars are grouped by age group, with each group containing four bars representing different gender categories. The x-axis represents the percentage, ranging from 0% to 100%.

Age Group	Gender Category 1	Gender Category 2	Gender Category 3	Gender Category 4
18-29	~85%	~80%	~75%	~70%
30-49	~80%	~75%	~70%	~65%
50-64	~75%	~70%	~65%	~60%
65+	~70%	~65%	~60%	~55%

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Bar Index	Approximate Length (%)
1	95
2	98
3	35
4	45
5	92
6	15
7	100
8	90
9	100
10	10
11	100
12	45
13	55
14	95
15	35
16	90
17	15
18	100
19	90
20	15
21	75
22	100
23	95
24	85
25	60

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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with a vertical axis line on the right side. The lengths of the bars vary significantly, with some being very short and others extending almost to the right edge of the chart area. The bars are grouped into several clusters, with some having one or two shorter bars indented from the left. The overall distribution appears to be skewed towards the right, with a few long bars and many shorter ones.

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Bar Index	Approximate Length (0-100%)	Offset (0-100%)
1	100	0
2	20	0
3	45	15
4	100	15
5	95	0
6	92	0
7	45	15
8	60	15
9	100	15
10	98	0
11	100	0
12	98	0
13	40	0
14	100	15
15	100	0
16	10	0
17	75	15
18	92	15
19	95	0
20	95	0
21	100	0
22	88	0
23	100	15

A horizontal bar chart consisting of 20 rows of black bars. The bars are arranged in a staggered, symmetrical pattern, resembling a wave or a series of steps. The top row has a short bar on the left. The second row has a longer bar on the left. The third row has a bar on the left. The fourth row has a short bar on the left. The fifth row has a long bar on the right. The sixth row has a long bar on the left. The seventh row has a medium bar on the left. The eighth row has a long bar on the right. The ninth row has a long bar on the left. The tenth row has a short bar on the left. The eleventh row has a long bar on the right. The twelfth row has a long bar on the left. The thirteenth row has a medium bar on the left. The fourteenth row has a long bar on the right. The fifteenth row has a long bar on the left. The sixteenth row has a short bar on the left. The seventeenth row has a long bar on the right. The eighteenth row has a long bar on the left. The nineteenth row has a medium bar on the left. The twentieth row has a short bar on the left.

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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column. The first bar is the longest, followed by a bar of slightly less length. The third bar is shorter, and the fourth is even shorter. The fifth bar is the longest again, followed by a bar of medium length. The seventh bar is the shortest. The eighth bar is medium length, and the ninth is the longest. The tenth bar is medium length, and the eleventh is the longest. The twelfth bar is medium length, and the thirteenth is the longest. The fourteenth bar is medium length, and the fifteenth is the longest. The sixteenth bar is medium length, and the seventeenth is the longest. The eighteenth bar is medium length, and the nineteenth is the longest. The twentieth bar is medium length.

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10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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A series of horizontal black bars of varying lengths, some aligned to the left and some indented, creating a visual structure. The bars are arranged in a way that suggests a list or a sequence of items, with some items having sub-points or further details. The overall effect is a clean, minimalist design that uses negative space and alignment to organize information.

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A horizontal bar chart with two bars. The first bar, representing the current government, is dark blue and extends to 95% on the x-axis. The second bar, representing the previous government, is light blue and extends to 5% on the x-axis. The y-axis labels are 'Current government' and 'Previous government'. The x-axis is labeled 'Percentage of respondents' and ranges from 0 to 100.

Government	Percentage of respondents
Current government	95%
Previous government	5%

A horizontal bar chart consisting of 20 dark gray bars. The bars are arranged in a single column, with varying lengths and starting positions. The first bar is the longest, starting at the left edge and extending almost to the right edge. The second bar is shorter and starts further to the right. The third bar is the shortest, starting at the left edge. The fourth bar is medium-length and starts further to the right. The fifth bar is long, starting at the left edge. The sixth bar is long, starting at the left edge. The seventh bar is long, starting at the left edge. The eighth bar is long, starting at the left edge. The ninth bar is long, starting at the left edge. The tenth bar is long, starting at the left edge. The eleventh bar is long, starting at the left edge. The twelfth bar is long, starting at the left edge. The thirteenth bar is long, starting at the left edge. The fourteenth bar is long, starting at the left edge. The fifteenth bar is long, starting at the left edge. The sixteenth bar is long, starting at the left edge. The seventeenth bar is long, starting at the left edge. The eighteenth bar is long, starting at the left edge. The nineteenth bar is long, starting at the left edge. The twentieth bar is long, starting at the left edge.

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A horizontal bar chart consisting of 20 dark gray bars. The bars are arranged vertically, with varying lengths and starting positions. The first bar is short and starts at the left margin. The second bar is longer and starts with an indentation. The third bar is the longest, spanning nearly the entire width. The fourth bar is medium-length and starts at the margin. The fifth bar is long with an indentation. The sixth bar is long and starts at the margin. The seventh bar is the longest, spanning almost the full width. The eighth bar is long with an indentation. The ninth bar is medium-length and starts at the margin. The tenth bar is short and starts at the margin. The eleventh bar is long with an indentation. The twelfth bar is long and starts at the margin. The thirteenth bar is long with an indentation. The fourteenth bar is long and starts at the margin. The fifteenth bar is short and starts at the margin. The sixteenth bar is long with an indentation. The seventeenth bar is short and starts at the margin. The eighteenth bar is medium-length with an indentation. The nineteenth bar is long with an indentation. The twentieth bar is long and starts at the margin. The twenty-first bar is short and starts at the margin. The final bar is long and starts at the margin.

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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column. The lengths of the bars vary significantly, with some being very short and others nearly spanning the entire width of the chart area. The bars are not contiguous, with several bars having gaps before them, suggesting a grouped or nested structure. The bars are all black and have a uniform thickness.

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Bar Index	Start Offset (approx. %)	End Position (approx. %)
1	0	85
2	0	80
3	15	92
4	0	97
5	0	100
6	0	95
7	0	97
8	0	83
9	15	91
10	0	100
11	0	93
12	0	100
13	0	97
14	0	45
15	15	100
16	0	96
17	0	100
18	0	93
19	0	95
20	0	83
21	15	100
22	0	93
23	0	100
24	0	83
25	0	96

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Bar Index	Approximate Length (0-100%)	Offset from Left (%)
1	95	0
2	75	0
3	65	15
4	90	15
5	100	0
6	80	0
7	95	0
8	95	0
9	95	0
10	100	0
11	90	0
12	88	0
13	65	0
14	88	15
15	100	0
16	95	0
17	95	0
18	100	0
19	25	0
20	100	15
21	95	15
22	95	0
23	88	0
24	95	0
25	40	0

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A horizontal bar chart consisting of 20 bars. The bars are arranged in a single column, with some bars starting at the left margin and others indented. The lengths vary significantly, with some bars being nearly full-width and others being quite short. The bars are all in a dark gray color.

Age Group	Number of NRA Members (Approximate)
1	95
2	98
3	100
4	35
5	95
6	100
7	95
8	100
9	95
10	15
11	95
12	90
13	30
14	95
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16	35
17	55
18	80
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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column. The first bar is the longest, nearly spanning the width of the chart area. The second bar is slightly shorter. The third bar is significantly shorter, starting with an indentation. The fourth bar is the shortest, also starting with an indentation. The fifth bar is the longest again, nearly full-width. The sixth bar is slightly shorter. The seventh bar is the longest, nearly full-width. The eighth bar is slightly shorter. The ninth bar is the longest, nearly full-width. The tenth bar is slightly shorter. The eleventh bar is the longest, nearly full-width. The twelfth bar is the shortest, starting with an indentation. The thirteenth bar is the longest, nearly full-width. The fourteenth bar is slightly shorter. The fifteenth bar is the longest, nearly full-width. The sixteenth bar is the shortest, starting with an indentation. The seventeenth bar is the longest, nearly full-width. The eighteenth bar is slightly shorter. The nineteenth bar is the longest, nearly full-width. The twentieth bar is the shortest, starting with an indentation.

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A horizontal bar chart titled "Percentage of respondents who believe that the current government is responsible for the economic crisis in the United States." The x-axis represents the percentage of respondents, ranging from 0 to 100. The y-axis lists various countries. The bars are colored in a light blue/teal shade. The data is as follows:

Country	Percentage of respondents
United States	75
France	65
Germany	60
Italy	55
Spain	50
United Kingdom	45
Canada	40
Japan	35
China	30
India	25
Brazil	20
South Africa	15
Russia	10
Other countries	5

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A horizontal bar chart comparing the percentage of respondents by age group for men and women. The x-axis represents the percentage from 0 to 100. The y-axis lists age groups: 18-24, 25-34, 35-44, 45-54, 55-64, 65-74, 75-84, 85-94, and 95-104. For each age group, there are two bars: a blue bar for men and a red bar for women. The data is as follows:

Age Group	Men (%)	Women (%)
18-24	100	100
25-34	100	100
35-44	100	100
45-54	100	100
55-64	100	100
65-74	100	100
75-84	100	100
85-94	100	100
95-104	100	100

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(Whereupon the jurors enter the courtroom.)

THE COURT: Everyone may be seated.

Ladies and gentlemen, we're now going to hear from a
witness called by Mr. Pezzola.

MR. METCALF: Thank you, Your Honor.

Mr. Pezzola calls Lisa Magee to the stand.

THE COURTROOM DEPUTY: Ma'am, please --

THE COURT: Ma'am, if you would just stand.

THE COURTROOM DEPUTY: Raise your right hand.

LISA MAGEE,
was called as a witness and, having been first duly sworn, was
examined and testified as follows:

THE COURT: All right. Mr. Metcalf, you may proceed,

1 sir.

2 MR. METCALF: Thank you.

3 DIRECT EXAMINATION

4 BY MR. METCALF:

5 Q. Can you spell -- or, state and spell your name for the
6 record, please.

7 A. Lisa Magee. L-I-S-A. M-A-G-E-E.

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
11 sense and for us not to talk over each other.

12 So, if you get frustrated at me, just let me finish what
13 I have to say first. Is that okay?

14 A. Okay.

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 A. I'm 40 years old.

19 Q. And we've obviously met before, right?

20 A. Yes, we have.

21 Q. 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 A. Yes, I have. We have two daughters together.

24 Q. And how old are your daughters?

25 A. They are 18 and 22.

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

2 A. Maria.

3 Q. Your youngest?

4 A. Angelina.

5 Q. They both go to school?

6 A. They -- yes. They both go to school. Maria is currently
7 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,
14 Dominic happened to be at the birthday party because her
15 boyfriend at the time was a childhood friend of Dominic's.
16 They had grown up together. She introduced us at the party and
17 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
23 introduced to him outside of that environment, I decided to --
24 and got to have a more intimate conversation, get to know him a
25 little better. So I gave him a shot.

1 Q. Okay. So then, in learning about Dominic -- I mean, he
2 must -- both of you must have been young at that point.

3 How old were you at that point?

4 A. I had -- I was 18, just about to turn 19 years old. And he
5 was 23 at the time.

6 Q. Oh, wow.

7 And what did you learn about him?

8 A. I learned that he was a single father in the midst of
9 trying to obtain custody of his -- our oldest daughter, Maria.

10 Q. Who is now 22, right?

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 Q. 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 Q. Lisa, I'm showing you what I have marked for identification
3 as Pezzola Exhibit 256.

4 Do you recognize this photo?

5 A. I do recognize that photo.

6 Q. What is that photo of?

7 A. That is a photograph of Dominic in training at Montgomery
8 Boxing Club in Rochester, New York.

9 Q. Okay. And where is he?

10 A. 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
12 one -- I'm going to show you the second page to what has been
13 marked as Pezzola Exhibit 256.

14 Do you see that photograph?

15 A. I do.

16 Q. And what is that photograph of?

17 A. That is a photograph of him sparring. I believe that's
18 actually after he had sparred, helping out his boxing coach,
19 Ms. Peek.

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.

24 THE COURT: They will be admitted and permission to
25 publish them.

1 BY MR. METCALF:

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

4 Where is Mr. Pezzola on this one?

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

7 A. This is Dominic here (indicating).

8 Q. Now, the female in this, I've heard her name come up from
9 time to time.

10 Are you familiar with her?

11 A. I am familiar with Ms. Peek. Her name is Gloria Peek. She
12 is the first African-American, lesbian boxing coach who
13 actually went on to coach individuals in the Olympics in boxing.

14 Q. And she was Dominic's coach, as well?

15 A. She was Dominic's coach. They all called her mama. And he
16 highly respected her and her wisdom and coaching and training,
17 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.

23 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.

5 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.

14 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
21 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?

1 A. I believe he was an apprentice with them for a little over
2 a year and a half.

3 Q. Okay. And then how long did he work with his father for?

4 A. He worked with his father for approximately 15 years.

5 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,
17 again, going to be two pages. Do you recognize this photo?

18 A. I do. I took that photo.

19 MR. McCULLOUGH: No objection to the admission and
20 publication.

21 MR. METCALF: I ask they be produced then, Your
22 Honor.

23 THE COURT: It will be admitted and permission to
24 publish it, sir.

25 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.

8 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.
16 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.

24 Q. So from the time you met Mr. Pezzola -- and then you
25 eventually moved in with him together; right?

1 A. Yes. Our --

2 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
13 granted residential custody of Maria.

14 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:

1 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
14 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
17 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.

25 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 --
3 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
14 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.

24 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?

2 A. Yes. I would say it's within 1,000 feet of the building I
3 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
14 Dominic had contracted work from and ultimately -- he was
15 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,
23 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
13 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
12 message asking me if I was okay. I said to him that, yes, I am
13 okay. They're sending us home early. I will be heading home
14 shortly.

15 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
20 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
11 Boys or to be a member of the Proud Boys; is that fair to say?

12 A. Yes, it is.

13 Q. Approximately what timeframe did you learn this or did you
14 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
24 down and attend the rally that was going on down here in D.C.

25 I thought --

1 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.

13 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.

23 Q. But that's the name that you knew that Dom met in November
24 when he came to D.C. --

25 A. Correct.

1 Q. -- of 2020?

2 So then what happened after that?

3 A. After that Dominic showed interest in joining the Proud
4 Boys. He explained a little bit to me about how they would
5 attend rallies and protect people, just normal citizens from
6 being harmed and attacked and bullied by other people and other
7 groups.

8 Q. And would he start going to meetings, going out drinking
9 with some of these guys? Like what was going on then in
10 November, to your recollection?

11 A. To my recollection, he had gotten in contact with them
12 about how to go about joining and becoming a Proud Boy. He
13 ultimately did get in touch with somebody, I don't know who,
14 and ultimately ended up joining and becoming a Proud Boy.

15 Q. Now, he goes back to D.C. on December 12th, 2020, right?

16 A. Yes.

17 Q. What happens there?

18 A. At that time he had become a Proud Boy. And while he was
19 there, he ended up being photographed by *The Washington Post*
20 and being put on the front page of their newspaper.

21 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.

6 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
11 all that you remember?

12 A. I am the person -- Dominic is not very savvy with
13 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 --

21 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
24 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.

14 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
23 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

1 didn't go.

2 Q. So at that time, did you or your factor voice any concern
3 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.
6 To which my father said to him, You have a wife and two girls,
7 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.

10 To which Dom --

11 Q. Did Dom respond to that?

12 A. He did. He said, You're right. I understand where you're
13 coming from and you're right, I'm not going to go.

14 Q. So then at this point in time, you're not -- are you still
15 working at the courthouse at this point in time?

16 A. I was not. I had left my job at the courthouse because I
17 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
25 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
13 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.

23 MR. METCALF: Thank you, Lisa. I appreciate it.

24 THE COURT: All right. Mr. McCullough.

25 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 Q. Ms. Magee, thank you very much. Good afternoon.

8 A. Good afternoon.

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:

23 Q. And you've seen Dom as someone that is in the Marine Corps?

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 Q. Through all of these experiences, you've seen Dom's work
8 ethic?

9 A. Yes.

10 Q. Is that yes?

11 And, I'm sorry.

12 A. Yes. Sorry.

13 Q. I apologize.

14 A. Yes.

15 Q. 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 A. I would say depending.

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
25 your answer, ma'am?

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
8 business go. He would commit himself to it, correct?

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 Q. 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 A. The commitment to his children and myself, yes.

20 Q. The commitment to his job?

21 A. Yes.

22 Q. The commitment to his family?

23 A. Yes.

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

25 A. Yes.

1 Q. So, Mr. Pezzola took an oath to defend the Constitution,
2 correct?

3 A. 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 A. Yes. 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 vague. In fact, very vague.

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,
25 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.

13 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.

24 Q. And, in fact, Mr. Pezzola was becoming more committed to
25 the Proud Boys, correct?

1 A. To an extent, yes.

2 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
15 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.

21 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.

24 Q. Drove all the way down to North Carolina?

25 A. Correct.

1 Q. From Rochester, New York, correct?

2 A. Correct. But the purpose of that trip was not just to
3 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,
6 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.

14 Q. When the situation -- when help is needed, Mr. Pezzola is
15 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.

22 MR. METCALF: And relevance.

23 THE COURT: Overruled.

24 BY MR. McCULLOUGH:

25 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
16 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.

25 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
12 of the restaurants, kind of along the sidewalk area. And
13 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.

13 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.

16 MR. METCALF: This is Exhibit 23, Government 23?

17 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
23 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.

1 THE COURT: I'm sorry -- I didn't hear.

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.
15 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.

23 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 A. I'm a slow reader. Give me a second.

5 Q. Absolutely.

6 (Pause.)

7 A. Yes.

8 Q. Mr. Pezzola described being willing to fight until his last
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 A. 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
8 question on this; if I could just get an answer on it. I think
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. So
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?
18 So I'll overrule the objection, if that's all we're doing here.

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
3 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.

13 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?

24 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?

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.

14 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?

22 MR. METCALF: Your Honor, objection. Same scenario,
23 out of scope.

24 THE COURT: Sustained.

25 BY MR. McCULLOUGH:

1 Q. Mr. Pezzola had gotten rid of his cellular phone following
2 the events in Washington, D.C.?

3 MR. METCALF: Same objection, Your Honor.

4 THE COURT: Sustained as to scope.

5 MR. McCULLOUGH: I have no further questions.

6 THE COURT: All right. Mr. Metcalf, any redirect?

7 MR. METCALF: Just very short.

8 THE COURT: Sure.

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 A. I believe so, yes.

14 Q. You sure it wasn't the other individual he went with who
15 did the driving?

16 A. I don't know.

17 Q. Do you remember his truck being gone?

18 A. No. His truck was home.

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?

8 A. Yes.

9 Q. How many of those stops did you learn about?

10 A. I don't recall. I believe there was several.

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:)

21 THE COURT: All right. Consistent with what we
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.

2 The government and defendant Dominic Pezzola hereby
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,
8 Arthur Lashomb, and Matthew Greene.

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
24 with any other defendants in this case.

25 Thank you.

1 THE COURT: All right. Very well.

2 Thank you, Mr. Metcalf.

3 All right. Ladies and gentlemen, it's 4:35. And as
4 far as testimony goes, we're going to end the day. I'll be
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

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

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

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

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

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

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

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

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

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

12 THE COURT: Right.

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

19 The jury is going to be asked to make a bunch -- as
20 we're going through these jury instructions, the jury is going
21 to have to make some inferences here, Judge, and there's
22 inferences that have -- reasonable inferences that the jury is
23 going to have to make. They're going to have to infer
24 circumstantially whether or not -- what Mr. Pezzola's intent
25 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
8 down to these officers.

9 I'll give you a prime example. Officer Lloyd we've
10 heard about, but we haven't heard about his pointing --
11 circular motions pointing back and then shots directly
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.

17 THE COURT: The defense of others?

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
23 defense of others?

24 MR. METCALF: No. Listen. No, Your Honor. It
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
8 Samsel is getting aggressive --

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

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

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

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

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

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

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

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

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

2 THE COURT: Isn't that -- isn't that -- I mean, to
3 the extent you're arguing to me, there are facts here that we
4 want to argue from that mitigate -- that suggest, no, in fact,
5 he didn't -- you know, the government hasn't proved this
6 element, because, look, it kind of -- similar to the way
7 Mr. Smith has sort of gone -- you know, frankly, both sides
8 have. In terms of looking at the -- looking at these scenes
9 from all points of view, from all -- and sort of, I referenced
10 the Zapruder film the other day to someone who was young enough
11 to not have any idea what I was talking about.

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

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

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

25 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
5 know that the back line was linebackers until I started dealing
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

1 10, specifically the use of force, the force component, then
2 intent with robbery, so that's Number 10. Number 8 and 9,
3 assault also has to go with this, so we can talk about the
4 intent of assault for Counts 8 and 9. Then if we go even
5 further into the indictment, we can talk about how this
6 ultimately is going to link Dom to him leaving this area using
7 this shield and how this was all part of a master plan to
8 ultimately get in the building, work his way upstairs and try
9 to obstruct Congress and be a part of every single conspiracy
10 count.

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

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

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

1 vantage points are going to go, who it's going to go towards.
2 Meaning if you're going to shoot, which is the circular
3 movement (indicating), you're going to shoot over there, they
4 have in their mind who they're shooting at, the agitators.

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

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

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

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

1 are a couple of people who try to get help, but when Black gets
2 shot in his face, Johnny (sic) Black gets shot in his face and
3 he's got a hole in his face and people trying to wrap his face,
4 and Inspector Lloyd comes over, there becomes a point in time
5 where they try to take him away and it looks like they're
6 trying to arrest him. That then agitated the crowd immensely,
7 it sparked it --

8 THE COURT: How does agitating the crowd -- how does
9 that negate whether he committed robbery?

10 MR. METCALF: It shows that the police deviated from
11 policy --

12 THE COURT: No, no, no, no, no.

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

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

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

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

16 THE COURT REPORTER: Please slow down.

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

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

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

12 THE COURT: Right. I get --

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

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

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

4 MR. METCALF: Yes.

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

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

22 Not the relevance -- I understand -- to be clear, I
23 understand why it's an important -- that negating the robbery
24 is downstream too important to negating the other charges
25 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 --

4 MR. METCALF: I'll try to make it easy.

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
25 from that information that behind him was a botched rescue

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

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

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

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

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

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

1 What to me seems the most clear that's outside the
2 bounds is deviation from policy. In other words, what -- that
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
8 that. If there's a deviation from policy --

9 THE COURT: It doesn't matter --

10 MR. METCALF: -- it starts something over here, the
11 chain of fact -- the chain links to where I am that created a
12 ridiculously dangerous circumstance. That's relevant.

13 THE COURT: But what does it matter if it's a
14 deviation from policy?

15 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

1 people there. They already made it this far, right? They've
2 already got up the stairs. They're there. They're pissed off.

3 Police are trained to control the situation under
4 those circumstances and instead of controlling the situation
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
23 chaos -- I just -- I'm sorry. I don't understand your
24 argument, Mr. Metcalf. I'm going to confess.

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

1 Let me hear briefly from the government. I'll hear from you
2 again -- Mr. Pattis, it's Mr. Metcalf's expert.

3 MR. PATTIS: He's a friend and he's a co-defendant.
4 Can I briefly -- two, three sentences?

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
10 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
13 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,

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
8 is -- involves demands being given to these officers. That
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
12 them.

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

1 So, for example, before shots start going off, if
2 there's a main agitator who is really pushing the limits, like
3 maybe how Chris Quaglin was at one point. But before
4 everything started going around as far as the shots, like if
5 there's one person out there and he's an agitator who is
6 causing a lot of different problems, they're trained as to how
7 to remove him quickly or how to make him be the target of the
8 next projectile, if that's the choice that they're going to do.

9 But this has to be explained --

10 THE COURT: So, hold on. So this is the -- now
11 you're -- now we're -- this is the difficulty, is now you're
12 articulating something just as a factual point. That's totally
13 different.

14 You're saying, well, if the police had done their job
15 and actually taken out the particular person, they should have
16 in some way -- I don't really know what "take out" means in
17 this context, but if they had done something more and --

18 MR. METCALF: Remove from the crowd.

19 THE COURT: -- removed person A, B, or C, then your
20 client wouldn't have -- wouldn't have committed robbery, or
21 that somehow negates --

22 MR. METCALF: Your Honor, the robbery component here
23 has to mean -- we at least have to consider that the intent
24 component of robbery was formulated in a very split second
25 or -- that's going to be our position.

1 It wasn't like he walked up the stairs and said, I am
2 going to steal a riot shield because that's the next thing I'm
3 going to be able to do. Right? Not part of any plan.
4 Circumstantially happened in the moment. So that means intent
5 had to be formulated almost immediately upon a certain
6 situation happening.

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

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

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

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

25 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
24 at it tonight. But I do want to flag that as an issue.

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

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

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

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

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

18 But, you know, if -- if -- put it out of the officer
19 realm. If Mr. Pezzola is over at the Washington Monument and
20 the police instigate something which causes someone to run away
21 from the Capitol towards the Washington Monument, Mr. Pezzola
22 runs into that person and robs him of his wallet, that doesn't
23 absolve him of that robbery in any way, shape or form, or any
24 more than this. Even if you assume that he took an
25 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
8 recall, we did bring this up again. I think that Mr. Metcalf
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. The
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

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

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

18 MR. PATTIS: Your Honor --

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

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

1 THE COURT: So I'll look at that. Let's talk about
2 tomorrow.

3 This is what I think, at least how I start -- how we,
4 I think, should start, is, look, I'll -- we should -- we'll
5 quickly take up this expert issue and see where that goes.

6 Then we would have at least until later in the
7 morning, a block of time we could do some more jury instruction
8 and get as far as we can on that. Whether I -- putting the
9 expert aside, what -- what else -- and putting the expert aside
10 and then assuming we might want to reserve some more time for
11 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?

14 MS. HERNANDEZ: How late is the Court going tomorrow,
15 Your Honor? Tomorrow, the first day of --

16 THE COURT: Say again?

17 MS. HERNANDEZ: I believe tomorrow is the first day
18 of Passover, or today, actually --

19 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. If

1 there's -- depending on our ability -- I mean, we could stay a
2 little bit later after that if we need to knock out other --

3 MR. METCALF: Your Honor, I'll cut right to the
4 point. I don't think we have anything to fill up until 5
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
8 comes in before he testifies.

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

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

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

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

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

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

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

1 as an expert on that.

2 THE COURT: Okay.

3 MR. ROOTS: Also we have not given up on Ray Epps.

4 THE COURT: All right. Understood. So, what does --
5 all right. So I had -- I had thought we might be in a position
6 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.

11 MR. KENERSON: I would like to note on this window
12 expert, we have repeatedly informed counsel for Mr. Pezzola
13 that we have received no notice, still. So we're objecting.

14 THE COURT: Well...

15 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?

1 MR. McCULLOUGH: Yes. So, Your Honor, just to --
2 maybe just to summarize what the government's understanding of
3 where we are is -- it's sounding grammatically incorrect, but
4 I'll go with it. My understanding is that we've got the
5 stipulation from team Tarrio, that we've got the expert from
6 team Pezzola, which will be resolved, two live witnesses. Then
7 with respect to the two officer witnesses, they are available
8 tomorrow to testify, and so if they are to be called, they'll
9 be here at 9 o'clock tomorrow. And they're available to be
10 called.

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

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

24 THE COURT: You need to have a?

25 MR. PATTIS: Fallback plan.

1 THE COURT: Right.

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

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

11 THE COURT: Sure.

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

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

20 So I would say this: Talk to the -- obviously,
21 obviously, evidence in the case is going to bleed over past
22 tomorrow. So I would say engage the government on that
23 question. It doesn't strike me -- I think it was a similar
24 situation where the government made someone available for the
25 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
4 that's what you're referring to --

5 THE COURT: Yes.

6 MR. McCULLOUGH: -- I think we made the U.S. Capitol
7 Police --

8 MS. HERNANDEZ: That didn't work out too well.

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 Pezzola. 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

1 tonight.

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

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

11 THE COURT: I have to resolve.

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

17 Look, I do think that we are -- from our perspective,
18 we are -- we are close. I mean, I think there's -- no one
19 likes to be done, you know, kind of. It's just kind of
20 difficult to kind of hold hands and jump off the cliff, but I
21 think we seem to be there, Your Honor. I mean, based on what
22 we can tell. And I think that we should try to drive hard
23 tomorrow to the extent we can and see if we can get to a
24 position where we are at least resting some of the defendants'
25 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

1 then for reasons I had discussed, I -- there may be additional
2 information that could inform the ultimate resolution of that.
3 So, I think the best thing is to just press ahead tomorrow
4 and -- now that I'm hearing where we are on witnesses, let's
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.

10 MS. HERNANDEZ: That's why it's kind of difficult to
11 say where we are.

12 THE COURT: I understand.

13 Mr. Pattis?

14 MR. PATTIS: From Team Biggs, we would like to know
15 what the charge is going to be prior to the weekend so we can
16 use that to prepare our arguments.

17 THE COURT: Well, that's another -- that's another
18 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
20 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.

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

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

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

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

22 So I -- from my perspective, I think of using Friday
23 to try to get as far as I can on that and, hopefully, you
24 know -- again, we're going to have -- we're not going to be
25 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.

25 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?

4 MR. McCULLOUGH: My -- I'm calculating whether next
5 week is a three-day week or a four-day week.

6 THE COURT: The 14th?

7 MR. McCULLOUGH: Correct.

8 THE COURT: Oh, it's a three-day?

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
11 the kind of estimation in terms of when we land this.

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
3 be very grateful because we have had to negotiate this nonstop.

4 THE COURT: Look, I -- again, that's the first Friday
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
8 think, given the situation, I'm going to do everything I can to
9 clean up and create as much time as I can.

10 MS. BALLANTINE: Thank you, Your Honor.

11 THE COURT: Yes.

12 MS. HERNANDEZ: Just so the Court understands, as far
13 as defendants testifying, Mr. Rehl has not yet decided what
14 he's going to do. But that would probably be -- that decision
15 would have to be made, I guess, by Tuesday. I mean, if he
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
25 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
4 the appropriate colloquy with them and we'll go forward.

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. All right. See you all
24 tomorrow at 9 o'clock.

25 * * *

1 CERTIFICATE OF OFFICIAL COURT REPORTER

2
3 I, JANICE DICKMAN, do hereby certify that the above and
4 foregoing constitutes a true and accurate transcript of my
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6 of the proceedings to the best of my ability.

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