

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

UNITED STATES OF AMERICA, )  
 ) Criminal Action  
 ) No. 21-00175  
Plaintiff, )  
 )  
vs. )  
 )  
ETHAN NORDEAN, JOSEPH R. BIGGS, ) Washington, D.C.  
ZACHARY REHL, ENRIQUE TARRIO and ) April 6, 2023  
DOMINIC J. PEZZOLA, ) 1:55 p.m.  
 )  
Defendants. )  
 )  
\* \* \* \* \*

**REDACTED** TRANSCRIPT OF JURY TRIAL - DAY 61  
**AFTERNOON SESSION**  
BEFORE THE HONORABLE TIMOTHY J. KELLY,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: JASON B.A. McCULLOUGH, ESQ.  
ERIK M. KENERSON, ESQ.  
CONOR MULROE, ESQ.  
NADIA MOORE, ESQ.  
UNITED STATES ATTORNEY'S OFFICE  
FOR THE DISTRICT OF COLUMBIA  
555 Fourth Street, Northwest  
Eleventh Floor  
Washington, D.C. 20530

FOR THE DEFENDANT NICHOLAS D. SMITH, ESQ.  
NORDEAN: DAVID B. SMITH, PLLC  
1123 Broadway  
Suite 909  
New York, New York 10010

APPEARANCES, CONT'D:

FOR THE DEFENDANT  
BIGGS: JOHN D. HULL, IV, ESQ.  
HULL MCGUIRE, P.C.  
1420 N Street, Northwest  
Washington, D.C. 20005

NORMAN A. PATTIS, ESQ.  
PATTIS & SMITH, LLC  
383 Orange Street  
First Floor  
New Haven, Connecticut 06511

FOR THE DEFENDANT  
REHL: CARMEN D. HERNANDEZ, ESQ.  
7166 Mink Hollow Road  
Highland, Maryland 20777

FOR THE DEFENDANT  
TARRIO: NAYIB HASSAN, ESQ.  
LAW OFFICES OF NAYIB HASSAN, P.A.  
6175 Northwest 153rd Street  
Suite 209  
Miami Lakes, Florida 33014

SABINO JAUREGUI, ESQ.  
JAUREGUI LAW, P.A.  
1014 West 49th Street  
Hialeah, Florida 33012

FOR THE DEFENDANT  
PEZZOLA: STEVEN METCALF, II, ESQ.  
METCALF & METCALF, P.C.  
99 Park Avenue  
Sixth Floor  
New York, New York 10016

ROGER ROOTS, ESQ.  
LAW OFFICES OF ROGER ROOTS  
113 Lake Drive East  
Livingston, Montana 59047

1       REPORTED BY:                   LISA EDWARDS, RDR, CRR  
2                                   Official Court Reporter  
3                                   United States District Court for the  
4                                   District of Columbia  
5                                   333 Constitution Avenue, Northwest  
6                                   Room 6706  
7                                   Washington, D.C. 20001  
8                                   (202) 354-3269  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E XDirectCrossRed.WITNESSES FOR THE DEFENSE:

Steven Hill

Jaclyn Kosinski

EXHIBITS RECEIVED IN EVIDENCE

Government's Exhibit No. 445E

Government's Exhibit No. 1750

Defendant Pezzola's Exhibit No. 182

Defendant Tarrio's Exhibit Nos. 170-1 through  
170-46

Joint Exhibit No. 3

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
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]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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]



Rank	Country	Percentage
1	United States	92%
2	Canada	78%
3	Germany	55%
4	France	100%
5	United Kingdom	45%
6	Italy	95%
7	Spain	40%
8	Japan	85%
9	China	70%
10	India	88%
11	Brazil	30%
12	Russia	98%
13	South Korea	95%
14	Australia	90%
15	Sweden	100%
16	Switzerland	100%
17	Netherlands	85%
18	Belgium	95%
19	Austria	95%
20	Portugal	90%
21	Poland	45%
22	Czech Republic	50%
23	Greece	90%
24	Ukraine	95%
25	South Africa	90%

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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]

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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]

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Row Number	Bar Start (approx. %)	Bar End (approx. %)
1	0	25
2	25	100
3	0	100
4	0	85
5	25	65
6	25	95
7	0	15
8	25	98
9	0	95
10	0	100
11	0	60
12	25	100
13	0	98
14	0	85
15	0	92
16	0	35
17	25	100
18	0	98
19	0	98
20	0	95
21	0	88
22	25	95
23	0	60
24	25	98
25	0	100

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(Whereupon, the courtroom was duly unsealed.)

(Thereupon, Mr. Hill entered the courtroom and the following proceedings were had:)

THE COURT: Mr. Metcalf, it just may take a moment to unseal the overflow room.

MR. METCALF: Okay.

THE COURT: I'd just ask you to pause for one moment.

MR. METCALF: Will do.

THE COURTROOM DEPUTY: Okay. We're good.

THE COURT: You may proceed, Mr. Metcalf.

MR. METCALF: Thank you.

(STEVEN HILL, DEFENSE WITNESS, PREVIOUSLY SWORN.)

CONTINUED DIRECT EXAMINATION

BY MR. METCALF:

Q. Good afternoon, Mr. Hill. How are you doing?

A. Good. Thank you.

Q. Thanks for sticking around.

So I want to show you a different video from a

1 slightly similar angle.

2 MR. METCALF: Can we show the witness Pezzola 182?

3 (Whereupon, segments of Defendant Pezzola's  
4 Exhibit No. 182 were published to the witness.)

5 BY MR. METCALF:

6 Q. Mr. Hill, have you seen this video or does this video  
7 look familiar to you?

8 A. Yes. I've seen this.

9 MR. METCALF: Your Honor, I'd ask that this be  
10 admitted and published.

11 MR. MULROE: No objection.

12 THE COURT: It shall be admitted. And permission  
13 to publish.

14 (Whereupon, Defendant Pezzola Exhibit No. 182 was  
15 entered into evidence.)

16 MR. METCALF: Thank you, your Honor.

17 BY MR. METCALF:

18 Q. This is going to be quick. I want to focus on the first  
19 five seconds. Okay? And ultimately I want to go back to  
20 the same individual that we've somewhat spoken about, the  
21 guy with the blue sweatshirt. Okay?

22 MR. METCALF: So if you'd play for just the first  
23 five seconds, please.

24 (Whereupon, segments of Defendant Pezzola's  
25 Exhibit No. 182 were published in open court.)

1 MR. METCALF: Can you go back one second, please.  
2 Now I'm going back to three seconds.

3 BY MR. METCALF:

4 Q. What happened in that first five seconds of this video?

5 A. Well, the gentleman that's laying down -- you circled  
6 him in red -- was struck by what appeared to be a pepper  
7 ball round. You can see the puff of smoke.

8 Q. Okay. Did that look more white?

9 A. Yes. Yes.

10 Q. Now, this individual right here, do you see who I just  
11 circled there?

12 A. Yes, sir.

13 MR. METCALF: Can you play the next second or two.

14 (Whereupon, segments of Defendant Pezzola's  
15 Exhibit No. 182 were published in open court.)

16 BY MR. METCALF:

17 Q. Do you see his face there?

18 A. I do.

19 Q. What does it appear to be on his face?

20 A. So this is the gentleman that was standing up a little  
21 higher on the stage earlier when the munition from the  
22 FN 303 struck him in the face. That's a wound.

23 MR. METCALF: Okay. So I want to go back to  
24 Pezzola 171, please.

25

1 BY MR. METCALF:

2 Q. All right. Let's do a little bit of an overview,  
3 because we just jumped back and forth. So you viewed a  
4 whole bunch of these videos.

5 MR. METCALF: Before we play -- I'll let you know  
6 when to play.

7 BY MR. METCALF:

8 Q. You've viewed a whole bunch of these videos. You've  
9 compared and contrasted them with each other. Right?

10 A. I have. Yes.

11 Q. And you've looked at these -- one scene from various  
12 different angles?

13 A. Yes.

14 Q. And that's what we basically did here today?

15 A. Correct.

16 Q. All right. Now, let's start from the signal that Loyd  
17 gave.

18 A. All right.

19 Q. At the time he gave that signal, how was the crowd  
20 basically acting before he gave the signal?

21 A. So you were -- you're seeing the crowd as pushing  
22 against the officers, officers pushing back. The officers  
23 are doing a good job at keeping line integrity. A little  
24 bit of both --

25 MR. MULROE: Object to improper expert testimony.

1 THE COURT: Sustained.

2 BY MR. METCALF:

3 Q. Without giving your opinion, can you explain in detail  
4 how the situation was prior to Loyd giving that circle  
5 signal?

6 A. Yes. So as you can see in the video, you can see the  
7 demonstrators are pushing against the police officers; the  
8 police officers are pushing against the demonstrators. You  
9 can also see there are -- it's a shoving match. No one is  
10 punching or swinging. They're pushing and shoving back and  
11 forth.

12 Q. And does that change drastically after he gives the  
13 signal?

14 A. Absolutely.

15 MR. MULROE: Object to leading.

16 THE COURT: Sustained.

17 BY MR. METCALF:

18 Q. After that signal is given, what then happens with the  
19 whole -- with the whole crowd?

20 A. So after the signal is given, you see less lethals  
21 launched into the crowd. And in a few moments after this  
22 timeframe, the crowd gets angrier and angrier -- angry  
23 because of what they've seen.

24 Q. And then it ultimately leads to Joshua Black getting  
25 shot in the face?



1 A. It does and --

2 MR. MULROE: Object to leading.

3 THE COURT: Sustained.

4 BY MR. METCALF:

5 Q. And then -- so after the signal -- we went through a  
6 couple, but after the signal, how many shots would you say  
7 happened, if you had to guess, between the signal and Joshua  
8 Black getting shot?

9 A. There are at least ten rounds that are fired, probably  
10 more.

11 Q. And you could see and hear these shots?

12 A. Yeah. I have a high-decibel hearing loss, so I really  
13 have to listen to it on headphones, but I've listened to  
14 this many times.

15 Q. Okay. And then after -- and how long of a time period  
16 would you say it took from the signal to Black getting shot,  
17 approximately?

18 A. Five, six seconds. I mean, it's relatively quick.

19 MR. METCALF: Okay. Let's go through Pezzola 131  
20 and start at 35 seconds.

21 THE COURT REPORTER: Excuse me. Is this 171 or  
22 131?

23 MR. METCALF: This is 171.

24 (Whereupon, segments of Defendant Pezzola's  
25 Exhibit No. 171 were published in open court.)

1 MR. METCALF: Pause.

2 I think we missed it. Can you go back to 35  
3 seconds, please? Actually, go to 30 seconds.

4 (Whereupon, segments of Defendant Pezzola's  
5 Exhibit No. 171 were published in open court.)

6 BY MR. METCALF:

7 Q. So let's recap this now from this angle.

8 MR. METCALF: Play.

9 (Whereupon, segments of Defendant Pezzola's  
10 Exhibit No. 171 were published in open court.)

11 MR. METCALF: Stop.

12 BY MR. METCALF:

13 Q. You saw Inspector Loyd do the signal there. Right?

14 A. I did, yes.

15 Q. And we're at 37 seconds. I want you to -- let's  
16 visually -- and let's also try to hear as best we can.

17 A. Right.

18 MR. METCALF: Can you play at 38 seconds, please.

19 (Whereupon, segments of Defendant Pezzola's  
20 Exhibit No. 171 were published in open court.)

21 BY MR. METCALF:

22 Q. Did you just hear that?

23 A. Yes.

24 Q. That was at 43 seconds.

25 A. Yeah.

1 MR. METCALF: Can you play.

2 (Whereupon, segments of Defendant Pezzola's  
3 Exhibit No. 171 were published in open court.)

4 MR. METCALF: Stop.

5 BY MR. METCALF:

6 Q. Did you just hear that?

7 A. I did.

8 Q. That was at 48 seconds.

9 MR. METCALF: Actually, let's go back to 43  
10 seconds. Let's see if we see the bullets. Or go to 42  
11 seconds. Let's see if we see this one at 42 seconds.

12 (Whereupon, segments of Defendant Pezzola's  
13 Exhibit No. 171 were published in open court.)

14 MR. METCALF: Play again.

15 (Whereupon, segments of Defendant Pezzola's  
16 Exhibit No. 171 were published in open court.)

17 BY MR. METCALF:

18 Q. Did you see that one?

19 A. I did not.

20 MR. METCALF: Can you go to 41 seconds and slow it  
21 down, please.

22 (Whereupon, segments of Defendant Pezzola's  
23 Exhibit No. 171 were published in open court.)

24 THE WITNESS: There. Right there. Yes.

25

1 BY MR. METCALF:

2 Q. Did you see that?

3 A. I did. Yes.

4 Q. Okay. That's 43 seconds.

5 MR. METCALF: Let's go back to 48 seconds -- or  
6 let's go to 47 seconds and stop at 50. Regular speed.

7 (Whereupon, segments of Defendant Pezzola's  
8 Exhibit No. 171 were published in open court.)

9 MR. METCALF: Stop.

10 BY MR. METCALF:

11 Q. Did you hear that one?

12 A. Yes.

13 Q. Now we're at 50 seconds.

14 MR. METCALF: Keep going.

15 (Whereupon, segments of Defendant Pezzola's  
16 Exhibit No. 171 were published in open court.)

17 BY MR. METCALF:

18 Q. Did you hear that one?

19 A. Yes.

20 MR. METCALF: Keep playing.

21 (Whereupon, segments of Defendant Pezzola's  
22 Exhibit No. 171 were published in open court.)

23 BY MR. METCALF:

24 Q. Did you hear that one?

25 A. Yes.

1 Q. Now, before that shot, what did you hear?

2 A. You can hear somebody in the background calling in the  
3 shot, telling him, you know, go -- basically, shoot at the  
4 guy with the gray jacket and the baseball hat or  
5 something -- some type of --

6 Q. Did you hear "gray hair" right there?

7 A. And gray hair. Yes.

8 MR. METCALF: Can you go to 1:03 and play to 1:05.  
9 I just want to make sure we get that right.

10 (Whereupon, segments of Defendant Pezzola's  
11 Exhibit No. 171 were published in open court.)

12 MR. METCALF: Stop.

13 BY MR. METCALF:

14 Q. Now, after you heard "the gray hair," you saw a shot.  
15 Right?

16 A. Yes.

17 Q. After -- immediately thereafter -- so now we're at 1:07,  
18 1:08 -- another shot you heard. Right?

19 A. Right.

20 MR. METCALF: Now play.

21 (Whereupon, segments of Defendant Pezzola's  
22 Exhibit No. 171 were published in open court.)

23 BY MR. METCALF:

24 Q. Okay. Did you hear a shot there? Did you hear a shot  
25 at 1:17?

1 MR. METCALF: Let's go back. 1:16 --

2 BY MR. METCALF:

3 Q. I'm going to play from 1:16 to 1:22. I want you to --

4 let's listen to how many shots we hear in six seconds.

5 Ready?

6 (Whereupon, segments of Defendant Pezzola's

7 Exhibit No. 171 were published in open court.)

8 BY MR. METCALF:

9 Q. How many shots did you hear in that short timeframe?

10 A. Yeah. Four or five shots. But I --

11 Q. This was --

12 A. -- I'm much better with my earplugs. Sorry.

13 Q. But this is the timeframe that Black is shot, then.

14 Right?

15 A. It is, yes.

16 Q. And he was shot at 1:22 in this video.

17 A. Yes.

18 MR. METCALF: Go back to 1:22.

19 (Whereupon, segments of Defendant Pezzola's

20 Exhibit No. 171 were published in open court.)

21 MR. METCALF: Stop there.

22 BY MR. METCALF:

23 Q. This is Black being shot there. Is that --

24 A. That is --

25 Q. -- correct?

1 A. Yes. That's right.

2 Q. Okay. So 35 seconds is when Inspector Loyd gives the  
3 signal. We are at 1:22. So we are less than a minute after  
4 that signal.

5 A. Right.

6 Q. How many shots would you say that you can see or hear,  
7 approximately?

8 A. There's more than ten.

9 Q. And of those shots that you have been able to trace by  
10 slowing these videos down, how many of those shots hit  
11 people in the face?

12 A. Five. Five or six of them.

13 Q. And after that -- this is the same area that Mr. Pezzola  
14 ended up coming into possession with the shield?

15 A. Correct.

16 Q. And approximately how much time after this scene that we  
17 just showed did Pezzola come into contact with the shield?

18 A. I believe it's under 30 seconds. It's relatively fast.

19 MR. METCALF: I appreciate it, Mr. Hill. Thank  
20 you.

21 MR. MULROE: The Court's indulgence just one  
22 moment.

23 THE COURT: Very well.

24 CROSS-EXAMINATION

25

1 BY MR. MULROE:

2 Q. Good afternoon, Mr. Hill.

3 A. Hi. How are you?

4 Q. Good. Thanks.

5 So you testified, when you were introducing  
6 yourself, about your career, impressive career. Thank you  
7 for being with us today.

8 A. Thanks.

9 Q. And you mentioned that part of your duties when you were  
10 in law enforcement included protecting -- I think your  
11 phrase was "high-risk people." Is that right?

12 A. High-risk articles and people. Yes.

13 Q. High-risk articles and people.

14 So high-risk people would include people who,  
15 because of their position, are at a greater risk of sort of  
16 targeted violence. Correct?

17 A. Yes. Yes.

18 Q. They include -- the vice president of the United States  
19 would be one such person?

20 A. Correct.

21 Q. Members of Congress would be --

22 A. I've protected both of them. Yes.

23 Q. And then your knowledge of what happened at the Capitol  
24 on January 6th is based primarily on videos you've reviewed.

25 Is that right?



1 A. Based on what?

2 Q. Primarily on videos that you've reviewed. Correct?

3 A. No. No. So --

4 Q. Your testimony here to this jury was based purely on  
5 videos that you reviewed. Correct?

6 A. My testimony today has been based primarily on video.

7 Q. And you'd agree that what is depicted in those videos is  
8 an extremely volatile situation. Correct?

9 A. It is.

10 Q. You understood that, prior to the videos Mr. Metcalf  
11 showed you, rioters had used force to make their way onto  
12 restricted Capitol grounds?

13 A. I had seen --

14 MR. METCALF: Your Honor, objection as to scope.  
15 My testimony started at this area.

16 MR. MULROE: I think what happened before is  
17 relevant to the actions that the officers took.

18 THE COURT: Sustained. Sustained. But --  
19 sustained for now.

20 BY MR. MULROE:

21 Q. Well, let me ask the question this way, Mr. Hill: You  
22 understand that a number of different things happened prior  
23 to the events that are in the videos that Mr. Metcalf showed  
24 you?

25 A. Yes, sir.

1 Q. Let's look at some of the videos from that timeframe.

2 MR. MULROE: Ms. Rohde, could we have, just for  
3 the witness, Government 225.

4 And I'll ask Madam Deputy, when you have the book  
5 open, can you just let me know whether 225 is in evidence  
6 yet?

7 With the Court's indulgence, I'll just move the  
8 speaker real quick so we have the sound.

9 THE COURT: Yes, sir.

10 MR. MULROE: I apologize. Is Government 225 in?

11 THE COURTROOM DEPUTY: Yes. Yes, sir.

12 MR. MULROE: Thank you.

13 If we could then publish to the jury Government  
14 Exhibit 225 starting at the one minute, 33-second mark.

15 (Whereupon, segments of Government's Exhibit  
16 No. 225 were published in open court.)

17 BY MR. MULROE:

18 Q. So, Mr. Hill, do you recognize the perspective of this  
19 video kind of being the same as the videos that you were  
20 commenting on earlier?

21 A. It is.

22 Q. Taken from elevated position --

23 A. An elevated position.

24 Q. Basically at the Capitol Building looking down onto the  
25 west plaza?

1 A. You're correct.

2 Q. And let me ask you this: Is it your position that it  
3 was impossible for members of that crowd to turn around and  
4 leave?

5 MR. METCALF: Objection, your Honor. Calls for  
6 speculation and expertise as well.

7 THE COURT REPORTER: I can't hear you, sir.

8 MR. METCALF: Calls for an expert opinion and also  
9 it calls into question speculation.

10 THE COURT: Mr. Mulroe, let me just hear you all  
11 at sidebar to set some ground rules here.

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

14 THE COURT: Mr. Mulroe, we all jumped up and down.  
15 He wasn't testifying as to conclusions. And, you know,  
16 after a little rocky start in the beginning, he basically  
17 did testify as to facts: This was here; that was there.

18 I gave you the leeway in terms of scope because I  
19 think you're right; you must provide the greater context in  
20 which the jury is going to evaluate what happened here.  
21 Fine. But, like, his position about whether people could  
22 leave or not leave, I think that is beyond what we allowed  
23 in terms of drawing conclusions.

24 MR. MULROE: Your Honor, I can move on. What I  
25 was shooting at here is actually impeachment. His expert

1 notice stated that his position was that it was impossible  
2 for people to escape. I think that's just self-evidently  
3 false. So I think --

4 THE COURT: But then I didn't qualify him as an  
5 expert. So again, I think it's fair for you to point out  
6 whatever facts you want and -- just like Mr. Metcalf did.  
7 But let's keep it to that.

8 MR. MULROE: Yes, your Honor.

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

11 BY MR. MULROE:

12 Q. So looking at the video, Mr. Hill, these people are  
13 basically all facing towards the Capitol Building and not  
14 away from the Capitol Building. Correct?

15 A. That's correct.

16 Q. And it does not appear, from what we can see in this  
17 frame of the video, that anyone is trying to make their way  
18 back from whence they had come and leave the scene.

19 Correct?

20 A. It looks like pretty much the whole crowd is heading  
21 towards -- or facing the direction of the Capitol Police  
22 officers, with the Capitol being right behind them.

23 Q. And at this point, Mr. Black had not yet been injured.  
24 Correct?

25 A. That's correct.

1 MR. MULROE: Let's play just a bit of the video,  
2 Ms. Rohde.

3 (Whereupon, segments of Government's Exhibit  
4 No. 225 were published in open court.)

5 BY MR. MULROE:

6 Q. Now, Mr. Hill, in your review of the videos or in your  
7 preparation for testimony generally, have you ever attempted  
8 to count the number of people who were present on the west  
9 plaza around this timeframe?

10 A. Just rough estimates. Yes, sir.

11 Q. Are you able to give the jury a rough estimate of sort  
12 of the ratio of members of the crowd compared to members of  
13 law enforcement?

14 A. Right. So there are close to 500 people there. There  
15 are 50, 60 police officers.

16 Q. Badly, badly outnumbered?

17 A. Correct. Right.

18 Q. And again, at this point, as we saw in the video, the  
19 crowd was quite loud?

20 A. They were loud. They were yelling and chanting.

21 Q. They were members of the crowded who were sort of  
22 engaging with law enforcement, shoving?

23 A. There were a couple of them in that -- that pocket.

24 Q. And the crowd was quite angry.

25 A. Well, they were angry. Yes.

1 Q. And this is prior to Mr. Black's injury. Correct?

2 A. Not like they were after he got hit.

3 Q. I want to play for you Government's Exhibit 398 that I  
4 believe is in evidence.

5 THE COURTROOM DEPUTY: It's in. Yes.

6 MR. METCALF: Your Honor, unfortunately, I have to  
7 object to the scene as far as scope goes. Timeframe.

8 THE COURT: I'm going to overrule. I'm going to  
9 overrule that objection.

10 MR. MULROE: If we could publish 398, please. And  
11 play when you're ready, Ms. Rohde.

12 (Whereupon, segments of Government's Exhibit  
13 No. 398 were published in open court.)

14 BY MR. MULROE:

15 Q. So in the radio clip, there was a reference to less than  
16 lethal or -- you understand that also to be less lethal?

17 A. The correct term is "less lethal." And that's correct.

18 Q. Less lethal. So that would be describing the  
19 projectiles that we saw being fired during your direct  
20 testimony?

21 A. Right. The FN 303 and the pepper balls are considered  
22 less lethal.

23 Q. And we heard the line in the radio clip about "Identify  
24 agitators." Correct?

25 A. Correct.

1 Q. And that does not suggest that they were firing  
2 indiscriminantly into the crowd, but that they were  
3 selecting particular individuals who they believed were  
4 appropriate targets of the less lethal. Correct?

5 A. They were selecting three individuals.

6 MR. MULROE: Let's have Government 226, which --  
7 sir, you correct me if I'm wrong, but I believe this will be  
8 the same video that you were describing as Pezzola  
9 Exhibit 171.

10 MR. METCALF: Right.

11 BY MR. MULROE:

12 Q. Does it appear to be the same video here?

13 A. It looks like it. Yes, sir.

14 Q. And the perspective of the video is above the ground  
15 level. Correct?

16 A. It is.

17 Q. And some distance back from the ground level?

18 A. It's about 40 meters.

19 Q. And based on what you testified --

20 A. Yes.

21 Q. -- the less-lethal projectiles were being fired from  
22 approximately the same spot where this video was being  
23 filmed from?

24 A. You're right. Correct.

25 Q. So it's some distance back from the crowd?

1 A. Right.

2 Q. And nothing at all that we've seen in these videos gives  
3 you any reason to think that the officers were just firing  
4 at random into the crowd. Correct?

5 A. That's correct.

6 Q. And there's no way to tell from the video what part of  
7 the body the officers would have been aiming for. Correct?

8 A. You could only see where they're hitting. You can't see  
9 where they're aiming. You're correct. There's no laser  
10 designator or anything like that.

11 Q. And I'll ask you the same question here that I asked  
12 about the previous exhibit, Government 225. But in terms of  
13 the direction that members of the crowd by and large are  
14 facing, it is toward the officers and towards the Capitol  
15 Building rather than away. Correct?

16 A. Yes. A majority of them are looking in the direction of  
17 the officers right here with the skirmish line. A number of  
18 them are looking up at the less lethal and pointing at the  
19 less lethal site of the team facing the direction of  
20 Capitol.

21 MR. MULROE: If we could skip to the one-minute,  
22 20-second mark.

23 (Whereupon, segments of Government's Exhibit  
24 No. 226 were published in open court.)

25



1 BY MR. MULROE:

2 Q. I don't want to just retread everything Mr. Metcalf  
3 asked you, but here we have Mr. Black. Correct? I've  
4 circled an individual in the --

5 A. Yes.

6 Q. -- roughly in the center of the screen.

7 A. Yes.

8 MR. MULROE: And if we could just play a couple of  
9 seconds.

10 BY MR. MULROE:

11 Q. And you tell us whether this is the portion of the video  
12 where he sustains the injury to his cheek.

13 A. Okay.

14 (Whereupon, segments of Government's Exhibit  
15 No. 226 were published in open court.)

16 THE WITNESS: That was it. Yes.

17 BY MR. MULROE:

18 Q. All right. So about one minute and 23 seconds into  
19 Government 226. Correct?

20 A. Correct. Yes.

21 Q. All right. And you said that it was about 37 seconds  
22 into this video that what you described as the signal, the  
23 hand circle, took place from the officer?

24 A. That sounds about right. Yeah.

25 MR. MULROE: So Ms. Rohde, let's go back to the

1 very beginning of this video. And so at zero minutes, zero  
2 seconds -- obviously, prior to 37 seconds.

3 (Whereupon, segments of Government's Exhibit  
4 No. 226 were published in open court.)

5 BY MR. MULROE:

6 Q. So no signal has been given at this time. Correct?

7 A. It's not been given. And you cannot -- you can't see  
8 the commander yet.

9 Q. And likewise, Mr. Black hasn't been shot through the  
10 cheek at this point?

11 A. Right. That's right.

12 MR. MULROE: Let's play the video and we'll play  
13 it to 39 seconds, please.

14 (Whereupon, segments of Government's Exhibit  
15 No. 226 were published in open court.)

16 BY MR. MULROE:

17 Q. All right. Again, he has not yet taken a pepper ball to  
18 the face. Correct?

19 A. Not a pepper ball. What he took to the face was the  
20 FN 303. Different than the pepper ball.

21 Q. No projectile to --

22 A. He's not taken a projectile to the face. That's  
23 correct.

24 Q. And thank you for correcting me.

25 But whatever it was hasn't happened yet?

1 A. It has not happened yet.

2 Q. The crowd, however, is engaging pretty forcefully with  
3 police officers at this --

4 A. Yeah, you'll --

5 Q. -- point. Correct?

6 A. -- notice the crowd --

7 THE COURT REPORTER: Counsel, I'm not getting the  
8 end of your question.

9 MR. MULROE: I apologize, Madam Court Reporter.

10 BY MR. MULROE:

11 Q. The crowd is engaging pretty forcefully with police  
12 officers at this point. Correct?

13 A. There is a lot of pushing and shoving. The crowd is  
14 pushing and yelling and carrying on. That's correct.

15 Q. And you understand that, in terms of layout of the  
16 scene, these officers are forming a line that separates the  
17 members of the crowd from the Capitol Building. Correct?

18 A. That's their skirmish line. That's the purpose of it.  
19 Yes, sir.

20 Q. And here, in the very front, engaging with the officers,  
21 is Mr. Black. Correct?

22 A. The red baseball hat and the camouflage. That is him.

23 Q. Now, you pointed out a couple -- few individuals who had  
24 projectiles hit them. So I just want to ask you about each  
25 of those.

1 MR. MULROE: Ms. Rohde, if we could go to 36  
2 seconds of the same exhibit, so just back a few seconds.

3 BY MR. MULROE:

4 Q. And I'm circling in the bottom center of the screen a  
5 guy who has got a black baseball cap with maybe an orange  
6 brim -- I don't know if it's the Orioles, but let's take a  
7 look at him. And we'll play for a few seconds.

8 (Whereupon, segments of Government's Exhibit  
9 No. 226 were published in open court.)

10 BY MR. MULROE:

11 Q. I'll pause it there. Do you see the hat pop off his  
12 head?

13 A. Yes. I saw a yellow projectile knock the hat off his  
14 head.

15 Q. And just so we can follow him through the frame, he's  
16 the one carrying this colorful flag. Correct?

17 A. Yes, sir, he is.

18 Q. He has got sort of a furry hood on the coat that he's  
19 wearing?

20 A. Right.

21 Q. So let's watch and see where, if anywhere, he goes.

22 MR. MULROE: If we let this play another ten  
23 seconds or so.

24 (Whereupon, segments of Government's Exhibit  
25 No. 226 were published in open court.)

1 MR. MULROE: Pause there.

2 BY MR. MULROE:

3 Q. So looking at his hat and his flag at about 52 seconds,  
4 he has removed himself from the front line and retreated  
5 maybe 10, 15, 20 feet back after being hit. Correct?

6 A. That had to hurt. So yes, he did move away.

7 Q. The projectile appears to have had some deterrent effect  
8 on him?

9 A. The purpose of the projectile is to deter people.

10 MR. METCALF: Let's go to one minute, 19 seconds.

11 BY MR. MULROE:

12 Q. And we have seen this guy in the blue hoodie, correct,  
13 I've circled in the middle?

14 A. Yes. That's right.

15 Q. If we play a few seconds, we'll see whether he is hit.

16 (Whereupon, segments of Government's Exhibit  
17 No. 226 were published in open court.)

18 MR. MULROE: We'll pause there.

19 BY MR. MULROE:

20 Q. And catching the very end of it, but did you see that,  
21 after taking the projectile, he turned around and began  
22 walking away?

23 A. That's the second time he was hit. And that's correct.  
24 He turned and he moved back into the crowd about five feet.

25 Q. He gets hit twice. Right? We saw the second one?

1 A. That's correct. Yes, sir.

2 MR. MULROE: Let's go to 47 seconds.

3 (Whereupon, segments of Government's Exhibit  
4 No. 226 were published in open court.)

5 BY MR. MULROE:

6 Q. And I'll direct your attention to -- where is he now?

7 MR. MULROE: Maybe play one more second for me,  
8 Ms. Rohde. A little more. A little more.

9 Can we go back to 1:45.

10 (Whereupon, segments of Government's Exhibit  
11 No. 226 were published in open court.)

12 MR. MULROE: The Court's indulgence just one  
13 moment.

14 My apologies. Can we go to 48 seconds, zero  
15 minutes, 48.

16 (Whereupon, segments of Government's Exhibit  
17 No. 226 were published in open court.)

18 BY MR. MULROE:

19 Q. So I'm going to direct you, Mr. Hill, to this guy --  
20 it's a little blurry -- but on the left side of the screen,  
21 red cap and kind of a beige large coat he seems to be  
22 wearing.

23 A. Yes, sir.

24 MR. MULROE: Let's play that.

25 (Whereupon, segments of Government's Exhibit

1 No. 226 were published in open court.)

2 MR. MULROE: Pause there.

3 BY MR. MULROE:

4 Q. And I think you pointed out on direct that he takes one  
5 kind of to the brim of the hat or sort of the head and  
6 shoulders area?

7 A. Yeah. In the face. Yeah.

8 Q. And then let's take a look at what he does after that.

9 MR. MULROE: Ms. Rohde, if you could play.

10 (Whereupon, segments of Government's Exhibit  
11 No. 226 were published in open court.)

12 MR. MULROE: Pause.

13 BY MR. MULROE:

14 Q. So the guy with the red hat, after being hit, sort of  
15 shelters himself and, like the others, moves away from the  
16 front of the action. Correct?

17 A. He does move away. Yes.

18 Q. And are you aware, in your review of videos generally,  
19 what that guy did after that?

20 A. I'm not sure where he went. No.

21 Q. You don't know about him in the Capitol Building?

22 A. No. I'm not sure where he went. I've been focusing on  
23 this part; lately, anyway.

24 MR. MULROE: Let's go back to the radio, briefly,  
25 Government's 366, please, which I believe is in evidence.

1 And if we may publish that.

2 (Whereupon, segments of Government's Exhibit  
3 No. 366 were published in open court.)

4 BY MR. MULROE:

5 Q. So again, in the radio clip we hear targeting of  
6 particular individuals in a crowd. Correct?

7 A. Yes. Somebody different than we just saw.

8 MR. MULROE: Let's have 229, please, Ms. Rohde,  
9 which I believe is in evidence.

10 MR. METCALF: I'm sorry. What was the last  
11 exhibit?

12 MR. MULROE: The radio clip was 366.

13 MR. METCALF: Thank you.

14 MR. MULROE: And right now we're pulling up 299 --  
15 229. I'm sorry. 229.

16 Ms. Rohde, we'll play that until 29 seconds.

17 (Whereupon, segments of Government's Exhibit  
18 No. 229 were published in open court.)

19 BY MR. MULROE:

20 Q. So in the radio clip we heard a moment ago there was  
21 reference to a man with a gas mask and American flag shirt  
22 that appeared to be this guy who is grabbing an officer by  
23 the throat?

24 A. That's correct.

25 MR. METCALF: Objection as to that question, your



1 Honor. We ask that the answer be stricken. There's no way  
2 for this individual to be able to make that conclusion.

3 THE COURT: Overruled. He can answer the  
4 question.

5 BY MR. MULROE:

6 Q. I'll ask you the question this way: The man that we see  
7 grabbing an officer by the throat, is he wearing an American  
8 flag shirt and a gas mask?

9 A. He is. Yes.

10 MR. MULROE: Let's play that until about 42  
11 seconds.

12 (Whereupon, segments of Government's Exhibit  
13 No. 229 were published in open court.)

14 BY MR. MULROE:

15 Q. And it's at this part of the video that we see  
16 Mr. Pezzola jump into that fray and grab a shield. Correct?

17 A. To do what? I see Mr. Pezzola coming into the fray.  
18 Correct.

19 Q. And he's bringing himself there. Right?

20 A. I'm sorry?

21 Q. He's bringing himself there. Correct?

22 MR. METCALF: Objection as to what another person  
23 is doing. And the --

24 THE COURT: No.

25 MR. METCALF: -- form of that question.

1 THE COURT: That's overruled.

2 THE WITNESS: Mr. Pezzola is coming into the  
3 crowd.

4 BY MR. MULROE:

5 Q. Right. He's not being --

6 A. He's pushing in like everybody is that's around him.

7 Q. He's not being shoved from behind, as far as you can  
8 tell, against his will?

9 A. I don't know. A lot of people were being pushed from  
10 behind. If you look at the camera crews, the camera crews  
11 are pushing to get in there. So I don't know that I could  
12 say he's not being pushed. But he is moving in towards the  
13 police officer who is bending over.

14 Q. And I'll ask you the same question I've asked a couple  
15 of times before, but we don't see any substantial portion of  
16 this crowd attempting to escape from the scene, do we?

17 A. Not --

18 MR. METCALF: Objection as to the characterization  
19 and the word "escape." Calls for a legal definition.

20 THE COURT: Overruled.

21 THE WITNESS: So not around the camera circle.  
22 You see other people in the crowd kind of turning and  
23 looking away. But everybody within that camera circle is  
24 diving in for a great shot or whatever they're planning on  
25 doing.

1 BY MR. MULROE:

2 Q. A couple more radio clips.

3 MR. MULROE: 370, please.

4 (Whereupon, segments of Government's Exhibit  
5 No. 370 were published in open court.)

6 BY MR. MULROE:

7 Q. The crowd is being combative, consistent with the videos  
8 that we've seen?

9 A. He's describing that. Yes, sir.

10 MR. MULROE: 372, please.

11 (Whereupon, segments of Government's Exhibit  
12 No. 372 were published in open court.)

13 BY MR. MULROE:

14 Q. And again, that description, fighting with officers on  
15 the line, essentially is just what we saw in the videos.  
16 Correct?

17 A. Yeah, so --

18 MR. METCALF: Your Honor, now we're definitely out  
19 of the scope. The timeframe on that last one was 1:30.

20 THE COURT: Overruled.

21 THE WITNESS: Okay. So yeah, as -- that's what I  
22 was about to say, is that's 15 minutes after the entire --  
23 you know, the entire push. So, you know, this crowd has  
24 continued to go back and forth with police officers, but  
25 once that gentleman gets hit, this crowd erupts and starts

1 going after the officers.

2 BY MR. MULROE:

3 Q. I'm going to do one more video that I will ask for, just  
4 for the witness, 445E.

5 And I'll note for the record this is a clip  
6 from --

7 MR. METCALF: Pezzola 200.

8 MR. MULROE: Pezzola 200. Thank you, Mr. Metcalf.

9 (Whereupon, segments of Government's Exhibit  
10 No. 445E were published to the witness.)

11 BY MR. MULROE:

12 Q. Do you recognize the scene here, Mr. Hill?

13 A. Yes, I do.

14 Q. Part of what you saw before during your direct  
15 testimony?

16 A. Yes. That's correct.

17 MR. MULROE: We'd move to admit 445E.

18 MR. METCALF: No objections.

19 THE COURT: It will be admitted. And permission  
20 to publish it.

21 (Whereupon, Government's Exhibit No. 445E was  
22 entered into evidence.)

23 MR. MULROE: Ms. Rohde, before we play it, let's  
24 just keep it still on the screen.

25

1 BY MR. MULROE:

2 Q. So we see people giving some medical care to Mr. Black  
3 here. Correct?

4 A. That's correct.

5 Q. And these people giving him this care are right up next  
6 to him. Correct?

7 A. They are, yes.

8 Q. And they've got a very good view of his injury?

9 A. Well, his injury is covered. That's actually a lousy  
10 view. There's a better view of it when you actually see the  
11 projectile inside his mouth. But they've covered it with  
12 Quick Clot, and so that's why you can't see it as well.

13 Q. Certainly these people have a better view of Mr. Black  
14 than people who were behind them in the crowd, though.  
15 Correct?

16 A. Oh, I'm -- I'm sure of that. Yeah.

17 Q. And these people all appear to be in control of their  
18 actions?

19 A. Yeah. So the gentleman on the left was the one  
20 screaming, "They shot him in the fucking face. They shot  
21 him in the fucking face."

22 He was very irate. And then he turns and he  
23 starts working on this guy.

24 And then -- well, anyway. And then we get more  
25 reaction.

1 Q. So these people who are giving him some medical care are  
2 not flying into a rage and stealing shields from police  
3 officers, are they?

4 MR. METCALF: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: Yeah. So these guys have stopped  
7 what they're doing. There's a lull in the action. They're  
8 rendering aid in what they believe is proper for a gunshot  
9 wound. And they're doing a good job.

10 MR. MULROE: Let's play the video. Ms. Rohde,  
11 I'll ask you at a certain point to pause it.

12 (Whereupon, segments of Government's Exhibit  
13 No. 445E were published in open court.)

14 MR. MULROE: Let's pause it there.

15 BY MR. MULROE:

16 Q. So the officer on the left side of the screen in the  
17 hard gear is now crouching down next to Mr. Black?

18 A. Yes, he is.

19 Q. And it might be obscured in this shot, but he's got his  
20 left hand on Mr. Black's shoulder?

21 A. Correct.

22 Q. It looks like he's talking to him?

23 A. It looks like they're conversing. Yes.

24 Q. Sir, when you were in law enforcement, you made arrests.  
25 Correct?

1 A. Hundreds.

2 Q. When you were in law enforcement, you sometimes had the  
3 opportunity to render aid to people who needed medical  
4 attention?

5 A. A lot.

6 Q. And just looking at this video, you don't know what that  
7 officer in the riot gear is doing right at this moment, do  
8 you?

9 A. Right here at this minute, I don't know what he's doing.

10 MR. MULROE: Let's play a bit more.

11 (Whereupon, segments of Government's Exhibit  
12 No. 445E were published in open court.)

13 MR. MULROE: Let's pause it.

14 BY MR. MULROE:

15 Q. So one of the members of the crowd has shoved himself in  
16 between Mr. Black and the officer and people are shouting,  
17 "He's one of ours. He's one of ours." Correct?

18 A. The officer grabbed Mr. Black's collar and was pulling  
19 him towards their line. So yes, that was -- I believe  
20 Samsel was the guy's name.

21 Q. Your view of the video was that the officer was grabbing  
22 him and pulling him?

23 A. By the collar, yes. Yeah. He's actually pulling him  
24 towards the police lines when Samsel puts his arm over him  
25 and separates them.

1 Q. And so if, assuming -- if they were attempting to arrest  
2 Mr. Black, that would be interfering with his arrest,  
3 wouldn't it?

4 MR. PATTIS: Objection.

5 MR. METCALF: Objection, your Honor. Calls for a  
6 hypothetical answer. And that's essentially what we're  
7 trying to avoid here today.

8 THE COURT: I'm going to sustain the -- I'm going  
9 to sustain the objection.

10 BY MR. MULROE:

11 Q. Mr. Hill, I think you used the phrase "an awful lot of  
12 damage" to describe Mr. Black's injury. Did I get that  
13 right?

14 A. You did.

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

16 BY MR. MULROE:

17 Q. So unlike some of those other individuals who we  
18 highlighted, Mr. Black did not retreat from the west  
19 terrace, did he?

20 A. He stayed in that area. Yes.

21 Q. We have skipped ahead in Government 445E to the  
22 four-minute, one-second mark.

23 MR. MULROE: I'll ask Ms. Rohde to play from  
24 there.

25 (Whereupon, segments of Government's Exhibit



1 No. 445E were published in open court.)

2 BY MR. MULROE:

3 Q. Mr. Black remained at the Capitol for some time after  
4 this, didn't he?

5 A. I believe he did. Yes.

6 MR. MULROE: May we have, just for the witness,  
7 Government Exhibit 1750.

8 (Whereupon, segments of Government's Exhibit  
9 No. 1750 were published to the witness.)

10 BY MR. MULROE:

11 Q. Do you recognize Mr. Black there?

12 MR. METCALF: Your Honor, I'm sorry to do this,  
13 but I have to go -- object on scope grounds as well.

14 THE COURT: Well, let me just address it on the  
15 phones briefly.

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

18 THE COURT: Mr. Metcalf, I've tried to police  
19 scope in various ways here. But the whole point of this --  
20 that you used was to show how badly he was injured. The  
21 Government is now rebutting that by saying, Look, he didn't  
22 run off to go get medical attention. In fact, he made his  
23 way all the way to the Senate floor, it looks like. So I  
24 think they get to do this, to rebut kind of the point you  
25 were trying to make.

1                   You may proceed, Mr. Mulroe.

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

4 BY MR. MULROE:

5 Q. Would you recognize Mr. Black in the photo?

6 A. I do.

7 MR. MULROE: We move to admit 1750.

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

10                  (Whereupon, Government's Exhibit No. 1750 was  
11 entered into evidence.)

12 BY MR. MULROE:

13 Q. And so here we have him still up and about on two feet.  
14 Correct?

15 A. He still is on two feet.

16 Q. In fact, he is right there on the Senate floor, isn't  
17 he?

18 A. He absolutely is.

19 MR. MULROE: No further questions. Thank you,  
20 Mr. Hill.

21 THE WITNESS: Sure.

22 THE COURT: Any redirect, Mr. Metcalf?

23 MR. METCALF: Yes, your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. METCALF:

2 Q. Mr. Hill, while I'm trying to pull up a couple of  
3 videos, do you remember, in your review of the videos --  
4 after Mr. Black was shot, do you remember ever seeing  
5 Mr. Pezzola checking his head or feeling his head?

6 A. Yes, he did. I do.

7 Q. In the movement that he made, did it seem as if he was  
8 feeling his head to see if he had been hit?

9 MR. MULROE: Object to foundation.

10 THE COURT: Well, sustained as to foundation.

11 BY MR. METCALF:

12 Q. You've paid attention specifically to a lot of different  
13 videos that show the whole interaction that happened, that  
14 brief interaction where Mr. Pezzola got the shield. Right?

15 A. I did.

16 Q. And you freeze-framed these videos?

17 A. Right.

18 Q. And you've stopped them time after time?

19 A. Yes.

20 Q. And we paused them and we zoomed in on them?

21 A. Yes, sir.

22 Q. And we zoomed out?

23 A. We did.

24 Q. And we tried to do everything we could to figure out  
25 exactly what was going on second by second?

1 A. Right.

2 Q. And do you recall seeing Mr. Pezzola looking down at any  
3 point after that blood was on the floor?

4 A. Yes, I do.

5 Q. Do you recall Mr. Pezzola at certain points ducking  
6 down?

7 MR. MULROE: Your Honor, I'd object on best  
8 evidence rule.

9 MR. METCALF: I can play the videos, your Honor.  
10 I just am looking to pull them up.

11 THE COURT: If you'd like to do that, Mr. Metcalf,  
12 that would be fine.

13 BY MR. METCALF:

14 Q. Do you recall seeing Mr. Pezzola, after Mr. Black was  
15 shot, pointing at the officers?

16 A. Yes.

17 MR. MULROE: Same objection.

18 THE COURT: I think -- are you about to play a  
19 video?

20 MR. METCALF: Yes. I'm just -- since this got  
21 brought up, I had to pull up a different video. And I'm  
22 actually going through getting the specific timeframe. So I  
23 just need the Court's indulgence for a moment.

24 THE COURT: You have my indulgence, sir.

25 MR. METCALF: Thank you.

1 BY MR. METCALF:

2 Q. Do you recall Mr. Pezzola pointing at the officers after  
3 Mr. Black was shot at all?

4 A. Yes, I do.

5 MR. MULROE: Same objection.

6 THE COURT: I'm sorry. I thought you were going  
7 to bring up the video and ask him a question about the  
8 video. So when you asked for my indulgence, I thought you  
9 meant to just give you a moment to tee that up.

10 MR. METCALF: Yes. So while I'm teeing it up, I  
11 wanted to still ask a couple of questions. So I did that  
12 one poorly.

13 Just one second.

14 I'd ask that the witness be shown Pezzola 182.

15 (Whereupon, segments of Defendant Pezzola's  
16 Exhibit No. 182 were published to the witness.)

17 BY MR. METCALF:

18 Q. Do you remember going through this video?

19 A. Yes, sir.

20 THE COURT: This is in evidence, correct?

21 MR. METCALF: This is in evidence, yes, your  
22 Honor.

23 THE COURT: So it may be published.

24 (Whereupon, segments of Defendant Pezzola's  
25 Exhibit No. 182 were published in open court.)

1 BY MR. METCALF:

2 Q. Now, if you could, could you circle where the blood was  
3 that was on the floor, approximately?

4 A. I mean, it's down under these guys right here.

5 Q. And that appears to be Mr. Samsel. Right?

6 A. Yes.

7 Q. And that's the individual who stuck his -- put his arm  
8 in between Mr. Black and the officers?

9 A. That's correct.

10 MR. MULROE: Objection. Leading.

11 THE WITNESS: That's right.

12 MR. METCALF: Was that an objection?

13 THE WITNESS: That's correct.

14 THE COURT: The objection was leading. So  
15 sustained as to the leading.

16 BY MR. METCALF:

17 Q. What did Ryan Samsel do when the officers picked up  
18 Mr. Black?

19 A. Yeah. So he steps in between them, places his arm over  
20 the officer's arm.

21 Q. What do other people around him do after that?

22 A. The same thing. They're trying to pull Mr. Black away  
23 from the police officer.

24 Q. And then are there other individuals who are not holding  
25 Mr. Black but are in close proximity as well?

1 A. They're pushing forward. Yes, sir.

2 Q. And then are there a lot of words that exchange between  
3 those individuals and police?

4 A. They're more upset about this than anything --

5 MR. MULROE: Object to foundation.

6 THE COURT: Let me talk to you at sidebar, please.

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

9 THE COURT: Mr. Metcalf, it's sort of the same --  
10 Mr. Metcalf, whether this is foundation or the best evidence  
11 rule, if you're just asking about this without showing him  
12 the part you're asking about, regardless of whether either  
13 of those things technically apply, the Government is just  
14 going to go back and say -- and ask to do recross, because  
15 you're sort of asking him questions without linking it up to  
16 the video. And I'm going to have to let them go back and do  
17 this again.

18 So again, why don't you just show him the video  
19 you're asking him about and then ask him the questions.

20 MR. METCALF: Will do.

21 MS. HERNANDEZ: I'm sorry, your Honor. Will we be  
22 taking a break soon? Just a bathroom break.

23 THE COURT: We will be taking -- Mr. Metcalf, how  
24 much longer do you think you have? I'm not trying to rush  
25 you. I just want to know.

1 MR. METCALF: Less than five minutes.

2 THE COURT: So at the end of this, we will take a  
3 break.

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

6 MR. METCALF: Can we play the first 12 seconds of  
7 this, please. This is Pezzola 182.

8 (Whereupon, segments of Defendant Pezzola's  
9 Exhibit No. 182 were published in open court.)

10 BY MR. METCALF:

11 Q. Have you identified Mr. Pezzola in this video?

12 A. Oh, let's see here. I just saw him. So yes. Here is  
13 Mr. Black, and that's Mr. Pezzola's hat right there.

14 MR. METCALF: Can we play that back? Can we go  
15 back five seconds, please?

16 (Whereupon, segments of Defendant Pezzola's  
17 Exhibit No. 182 were published in open court.)

18 MR. METCALF: Stop there.

19 BY MR. METCALF:

20 Q. Can you describe what Mr. Pezzola is doing?

21 A. Yeah. So he was -- first he was covering his head and  
22 looking around, ducking, as if he's protecting his head with  
23 his hands.

24 MR. METCALF: Can we go to Pezzola 171, please.

25 (Whereupon, segments of Defendant Pezzola's



1 Exhibit No. 171 were published in open court.)

2 MR. METCALF: Let's go to a minute and 40 seconds.

3 (Whereupon, segments of Defendant Pezzola's

4 Exhibit No. 171 were published in open court.)

5 MR. METCALF: Stop there. Can you play from 1:35  
6 to 1:40, please?

7 (Whereupon, segments of Defendant Pezzola's

8 Exhibit No. 171 were published in open court.)

9 MR. METCALF: Stop.

10 BY MR. METCALF:

11 Q. Mr. Hill, what was the crowd doing at this point in  
12 time? This side of the crowd.

13 A. They were surging back and forth. So as you can see,  
14 Mr. -- well, here, Mr. Black is being treated initially.  
15 But the crowd is looking up at the guys that are shooting  
16 the less lethal.

17 Q. Okay. So they were -- and were they using anything  
18 or -- how did you know that they were looking up at them  
19 besides just their head movements?

20 A. Yeah. So not just looking up at them, but a number of  
21 people were pointing up at them like this and a number of  
22 them were extending their middle fingers at the guys. They  
23 were yelling at the less lethal guys.

24 Q. Now, when they were up -- when the officers were up at  
25 that elevation, should it matter that a couple of shots were

1 good if a couple of shots were bad?

2 MR. MULROE: Object to relevance, improper opinion  
3 testimony.

4 THE COURT: Sustained.

5 BY MR. METCALF:

6 Q. At the time that Mr. Black was shot, was he being -- was  
7 he specifically being aggressive?

8 A. He was not.

9 Q. Were others around him being aggressive?

10 A. I would actually say around him, no. The guy in the  
11 blue shirt was not aggressive. They're yelling at officers,  
12 but nobody was touching officers at that point in that  
13 general area that those pepper -- or those 303 rounds were  
14 coming in at.

15 Q. But a couple of feet over, there were a couple of people  
16 who would be considered agitators --

17 A. Yes.

18 Q. -- or being aggressive?

19 A. Further to the left of this we had people who were very  
20 aggressive with the police officers.

21 Q. But Mr. Black was not at the time he was shot?

22 A. The whole time of this video, Mr. Black was just -- the  
23 most he was doing was just pushing up against shields.

24 Q. And Mr. Pezzola, during that time, didn't seem to be an  
25 aggressor or agitator --

1 A. That's correct.

2 MR. MULROE: Objection. Leading.

3 THE WITNESS: He was not.

4 THE COURT: Sustained as to leading.

5 BY MR. METCALF:

6 Q. At that time -- before Mr. Black was shot, did  
7 Mr. Pezzola seem to be an agitator or someone who was willing  
8 [sic] up the crowd?

9 A. No.

10 Q. Was it only after Mr. Black was shot that Mr. Pezzola  
11 started pointing towards police?

12 A. Yes.

13 MR. METCALF: I have nothing further. Thank you,  
14 Mr. Hill.

15 THE WITNESS: Thank you.

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

18 THE WITNESS: Thank you, your Honor.

19 (Witness excused.)

20 THE COURT: Ladies and gentlemen, we'll take our  
21 ten-minute afternoon break and continue in a moment.

22 Madam Deputy, if you'd bring them to the jury  
23 room.

24 THE COURTROOM DEPUTY: Yes.

25 (Whereupon, the jury exited the courtroom at 3:22

1 p.m. and the following proceedings were had:)

2 THE COURT: Everyone may be seated.

3 Okay. Before we take our break, do we think we're  
4 going to get -- so we'll now do -- I keep wanting to call it  
5 the stipulation, because you started talking about it that  
6 way -- the exhibits, the Tarrío law enforcement exhibits?

7 MR. JAUREGUI: Yes, your Honor. We're ready to go  
8 next if your Honor allows it.

9 I did want to make brief argument as to the --

10 THE COURT: All right.

11 MR. JAUREGUI: -- thing your Honor had ruled out.

12 THE COURT: Let's take the break for her. We'll  
13 come back in ten. I'll hear you on that and we'll go  
14 forward.

15 MR. JAUREGUI: It will be just a few minutes.

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

18 THE COURT: Before I hear from you, Mr. Jauregui,  
19 can we just maybe do a little sort of scheduling here?

20 So -- and I say that just in case -- how long do  
21 we expect, Mr. Jauregui, the reading of your exhibits to be?

22 MR. JAUREGUI: Judge, I think it should be fairly  
23 short. Maybe 30 minutes, 35 minutes. I mean, it's --  
24 depending on how many exhibits you allowed in, it's -- well,  
25 let's say we do a minute per exhibit. It's, I guess, 46

1 minutes.

2 THE COURT: I'm sorry. At a minute per exhibit,  
3 it would be what?

4 MR. JAUREGUI: 46 exhibits. Because there's 46  
5 exhibits.

6 THE COURT: Right. So maybe about 45 minutes?

7 MR. JAUREGUI: Maybe even less, you know.

8 THE COURT: What, Mr. Pattis?

9 MR. PATTIS: I was doing the math and commenting  
10 how well Mr. Jauregui was going to do on your rulings.

11 THE COURT: Well, actually, there's only -- I  
12 mean, I think I ruled three in and four out already, so he's  
13 almost batting .500.

14 Okay. So we think -- so, long story short, do we  
15 think we will get to Ms. Hernández's investigator today?

16 MR. McCULLOUGH: Your Honor, we do. And I think  
17 we'd like to. And I know we're doing a 5:00 day today. But  
18 let's -- I think we're prepared to power through. I  
19 understand that Ms. Hernández is as well.

20 THE COURT: We'll get as far as we can.

21 MS. HERNANDEZ: I --

22 THE COURT: I mean, I've seen the two things  
23 you've teed up, so I am going to have to talk to you about  
24 that. But I --

25 MS. HERNANDEZ: My investigator has been here

1 since lunchtime, which is fine, obviously.

2 THE COURT: Is there a lot she can do that's not  
3 the two documents that have been brought to my attention?

4 MS. HERNANDEZ: Me? Are you talking to me, sir?

5 THE COURT: Yes.

6 MS. HERNANDEZ: I'm sorry.

7 THE COURT: Your investigator. Does your  
8 investigator have a lot of testimony that is unconnected to  
9 the complaint and the video?

10 MS. HERNANDEZ: He has a little bit of other  
11 testimony that I think we have no -- the photograph.

12 You have no objection to the photograph?

13 MR. McCULLOUGH: No.

14 MS. HERNANDEZ: And then the -- and then he's  
15 going to testify about the video and the voices on the  
16 video.

17 THE COURT: That looks like it's news to the  
18 Government. All right.

19 Mr. Jauregui, what --

20 MR. McCULLOUGH: It's -- I think it's the FT/STC  
21 video.

22 MS. HERNANDEZ: That's correct. He knows about  
23 it.

24 THE COURT: Okay.

25 MR. McCULLOUGH: We like that video.

1 MS. HERNANDEZ: We would have other materials  
2 before the Court has to resolve that other issue, your  
3 Honor.

4 THE COURT: Okay. Yeah. I mean -- okay. Fine.

5 Mr. Jauregui, why don't I hear you on what you  
6 want to be heard on so we can --

7 MR. JAUREGUI: Yes, your Honor.

8 THE COURT: -- so we can proceed with your  
9 witness.

10 MR. JAUREGUI: Thank you, Judge.

11 Just brief argument on those exhibits.

12 THE COURT: Yes.

13 MR. JAUREGUI: Judge, I'll concede as to No. 18  
14 that your Honor ruled out.

15 What I'd like to argue about is Slide 44, 47 and  
16 48.

17 THE COURT: Yes.

18 MR. JAUREGUI: Judge, our argument would be, based  
19 on 804, we think that in this case, since the declarant is  
20 unavailable, Shane Lamond, because he is asserting a  
21 privilege, and he is exempt from testifying, that is a  
22 hearsay exception. We would also argue that it's a  
23 statement against interest.

24 The Government has --

25 THE COURT: Are we talking about 44 now? Or all

1 of them?

2 MR. JAUREGUI: On all three, your Honor. On all  
3 three.

4 We would also argue that it's a statement against  
5 interest. As your Honor recalls, the Government did a very  
6 good job, through their FBI agent, implying that Shane  
7 Lamond was somehow acting improper, providing information to  
8 my client.

9 So we would argue that it's both a declarant  
10 unavailable and it's also statement against interest, which  
11 is basically a reasonable person in the declarant's position  
12 would have made it only if the person believed it to be  
13 true, which is a hearsay exception.

14 And a third ground that I would move under is a  
15 government or a business records exception for these  
16 communications between Shane Lamond and the other law  
17 enforcement officers. It's a business record. And it comes  
18 in that way as a text message.

19 So I would make those three arguments for the  
20 admission of these contested slides, your Honor.

21 THE COURT: Okay. Mr. Mulroe, is this you or is  
22 this Mr. McCullough?

23 MR. MULROE: It's me, your Honor.

24 THE COURT: Okay.

25 MR. MULROE: Is there any one or several or all of



1 those that you're interested in hearing? I'm happy to  
2 respond to all of them.

3 THE COURT: Why don't you just -- it's only three  
4 of them, so...

5 MR. MULROE: Okay.

6 THE COURT: I mean, why don't you respond to all  
7 three.

8 MR. MULROE: Right.

9 So I think I would note just across the board that  
10 we're, in my view, dealing with multiple layers of hearsay  
11 here. So this is things that Enrique Tarrío told to  
12 Lieutenant Lamond that Lamond is then relaying to others.

13 So I think that they would need to satisfy some  
14 exception at both steps. And I don't think they've  
15 persuasively shown one at either step.

16 Just because the witness is unavailable, you still  
17 need to meet one of the criteria from -- is it 804? I think  
18 that these are not statements against interest. I mean,  
19 these are messages that Lieutenant Lamond is sending to one  
20 of his superiors within the Metropolitan Police Department  
21 that are not the seemingly improper ones that we went  
22 through on the redirect of Agent Dubrowski. I mean, these  
23 are kind of just ordinary police business that he's passing  
24 information along. So I don't see that it's against his  
25 interest in any meaningful way.

1           Likewise, I don't think that these are business  
2 records.

3           THE COURT: No. Emails and texts are not business  
4 records.

5           MR. MULROE: All right. So check --

6           THE COURT: You can move past that.

7           MR. MULROE: And apologies -- it's been a long  
8 day -- but what was the last one?

9           MR. JAUREGUI: You've covered them all. Declarant  
10 unavailable and statement against interest.

11          THE COURT: Right. Right. Declarant unavailable,  
12 statement against interest and business records.

13          Yeah. Mr. Jauregui, I admire your -- I admire why  
14 you want to -- I mean, I would also say this: The entire --  
15 on top of all of those problems, or maybe related to them,  
16 is that the whole point of these messages coming in, as you  
17 have argued to me before, is that they're not -- it's not  
18 really for the truth of the matter asserted. Right? It's  
19 to show their relationship and then, by extension, why would  
20 someone who is making this reporting be also plotting to  
21 overthrow the government? Long story short. And so I --  
22 and I accept that.

23          That doesn't mean, of course, that you couldn't  
24 have an alternate theory of getting any of this stuff in.  
25 So it doesn't mean that, if there was something that you had

1 an exception for the truth, that you could use it for the  
2 truth of the matter asserted. You could still do that.

3 But I think the Government is right on those. And  
4 so while I thought the -- while I anticipated Government  
5 objections to the others, I thought -- I could see why you  
6 wanted them and I think they still come in the for  
7 reasons -- for other reasons. So I'm going to stick by my  
8 ruling.

9 So 7, 8 -- does the Government want to be heard on  
10 7, 8 and 19?

11 MR. MULROE: No. I think we've voiced our  
12 objection. We're happy to live with your ruling. Thank  
13 you.

14 MR. JAUREGUI: Thank you, your Honor. We had it  
15 set up already anyway, just in case. So we're ready to go  
16 to keep things running smoothly.

17 THE COURT: All right. Let's just talk for a  
18 moment just because, as it gets later, we'll all be tired.

19 Have the parties talked about -- really, I  
20 guess -- I guess, really, we can table the issue of later in  
21 the week. But my thought is to come in on Monday -- I  
22 mean -- not Monday -- on Tuesday. Whatever we're going to  
23 do -- and frankly, we can communicate about this even  
24 over -- through the chambers email, if we need to, about  
25 exactly what we're going to tee up Tuesday at 9:00.

1           My thought is we come in Tuesday at 9:00 and we  
2           try to use that time -- maybe we do any followup on the  
3           instructions that are lingering at that point. I mean,  
4           you'll have my turnaround of the draft, but there will still  
5           be some things at issue. Maybe we'd use a couple hours to  
6           do that and then we start matters before the jury around  
7           11:00, the way we have.

8           Maybe there's nothing more to tee up than that.  
9           But I just wanted to see if anyone had any thoughts apart  
10          from that.

11          Mr. Pattis?

12          MR. PATTIS: In the Court's view, is there a  
13          realistic possibility that we don't close until the 17th?

14          THE COURT: Don't close?

15          MR. PATTIS: Give closing arguments. Charge and  
16          close.

17          THE COURT: You mean, assuming we are not sitting  
18          the 13th and 14th?

19          MR. PATTIS: Yes.

20          THE COURT: Well, look, you all are -- obviously,  
21          the big delta here is if any Defendants testify and, if so,  
22          how many. So -- and I've gotten some -- you know, it is  
23          certainly -- and as we've talked about, it is your clients'  
24          rights to decide when to do that at the end -- as we  
25          decided, at the end of all the evidence.

1 But that's the huge -- that, and I guess whether  
2 the Government has a rebuttal case. But the -- that  
3 question, I think, seems -- you know, you can imagine that  
4 lengthening the trial significantly.

5 MR. McCULLOUGH: Your Honor, I think you've teed  
6 it up. I think that we'll all have a chance to now think  
7 about it, and we can perhaps revisit it in kind of -- we can  
8 revisit it at 5:00 today, or even by email tomorrow.

9 THE COURT: Yeah. As I said, we've got two days  
10 where we don't have court staff, but that doesn't mean you  
11 all can't be conferring, letting me know your thoughts --  
12 letting the chambers email account --

13 MR. McCULLOUGH: If anything is true, it's that we  
14 know how to find the chambers email account.

15 THE COURT: Yes. I think that's right.

16 MR. McCULLOUGH: But I think if we're ready to --

17 THE COURT: Let's go ahead and proceed, then.

18 Madam Courtroom Deputy, if you would bring in the  
19 jury, please.

20 THE COURT: Let me just tell the parties, what I  
21 plan to tell the jury at the end of the day -- because at  
22 least the one juror knows that he may have this conflict, so  
23 he may be wondering -- I'm just going to tell them, look --  
24 if you all agree: We're getting close to the end and we're  
25 still working through what the schedule will be. And

1 between -- sometime on Friday and Monday, the courtroom  
2 deputy will reach out to you to let you know what it will  
3 be, something like that.

4 Any objection to that?

5 MS. HERNANDEZ: Sorry. So is the Court thinking  
6 that you would make that decision just on emails?

7 THE COURT: What decision?

8 MS. HERNANDEZ: Whether to -- on the juror's  
9 availability -- on the juror that may not be available.  
10 Because we've --

11 THE COURT: No, no. We'll -- we're not going  
12 to -- if -- we will all talk about that.

13 MS. HERNANDEZ: Okay.

14 THE COURT: No, no. My point is to let them know  
15 the schedule next week, I think -- because the juror has  
16 reported this, you know, commitment, and so I just want to  
17 say something about it.

18 THE COURTROOM DEPUTY: Jury panel.

19 (Whereupon, the jury entered the courtroom at 3:53  
20 p.m. and the following proceedings were had:)

21 THE COURT: Everyone may be seated.

22 Ladies and gentlemen, we're now -- you will now  
23 receive some evidence on behalf of Mr. Tarrio.

24 MR. JAUREGUI: Thank you, your Honor.

25 May I proceed, Judge?

1 THE COURT: You may, sir.

2 MR. JAUREGUI: Could you please introduce yourself  
3 to the jury.

4 MS. KOSINSKI: My name is Jaclyn Kosinski.

5 MR. JAUREGUI: And, Jaclyn, are you part of the  
6 Tarrio defense team?

7 MS. KOSINSKI: I am. I'm an intern for Tarrio  
8 defense team, but I'm actually a law student.

9 MR. JAUREGUI: And did you work to create some  
10 exhibits in this case?

11 MS. KOSINSKI: Yes, I did.

12 MR. JAUREGUI: And did the Government help you to  
13 make sure that there weren't any mistakes or any kind of  
14 errors on these exhibits?

15 MS. KOSINSKI: Yes, they did.

16 MR. JAUREGUI: I'm going to -- just for the  
17 witness, please --

18 THE COURT REPORTER: Judge, I don't believe the  
19 witness has been sworn.

20 THE COURT: I guess that's right. Thank you --  
21 thank you, Madam Court Reporter.

22 JACLYN KOSINSKI, DEFENSE WITNESS, SWORN.

23 THE COURTROOM DEPUTY: Thank you.

24 DIRECT EXAMINATION

25

1 BY MR. JAUREGUI:

2 Q. Do you have the exhibits there on the screen?

3 A. I do not.

4 MR. JAUREGUI: Can we show the exhibits to the  
5 witness? I think they're on the desk over here. Thank you.

6 THE COURTROOM DEPUTY: You're welcome.

7 BY MR. JAUREGUI:

8 Q. Okay. Do you see Tarrio Exhibit 170-1?

9 A. Yes.

10 Q. And this is part of a series, 170-1 all the way up to  
11 170-46. Did you help create these exhibits?

12 A. Yes.

13 MR. JAUREGUI: Okay. At this time, I move into  
14 evidence Tarrio Exhibit 170-1, 2, 3, 4, 5, 6, 7, 8, 9 -- do  
15 I need to all of them, Judge? Or just 170-1 all the way to  
16 46.

17 MR. MULROE: No objection.

18 THE COURT: They will be admitted. And permission  
19 to publish.

20 (Whereupon, Defendant Tarrio's Exhibit Nos. 170-1  
21 through 170-46 were entered into evidence.)

22 MR. JAUREGUI: Thank you.

23 BY MR. JAUREGUI:

24 Q. Okay. Could you please read this exhibit to the jury,  
25 Ms. Kosinski.



1 A. Yes. So these are messages between Enrique Tarrio and  
2 the Metropolitan Police --

3 MR. JAUREGUI: It went blank. Madam Clerk, it  
4 went blank.

5 THE COURT: It may be your connection. One  
6 connection or the other.

7 MR. JAUREGUI: There we go.

8 BY MR. JAUREGUI:

9 Q. Could you please read to the jury Tarrio Exhibit 170-1.

10 MR. JAUREGUI: It's some kind of weird connection.

11 BY MR. JAUREGUI:

12 Q. Okay. Go for it, Ms. Kosinski.

13 A. Yes. So like I was saying, these are messages between  
14 Enrique Tarrio and the Metropolitan Police Department  
15 Lieutenant Shane Lamond. This occurred on October 24th,  
16 2019.

17 Shane Lamond sent Tarrio a message at  
18 10:49:08 a.m. saying: Enrique, what's going on, brother? I  
19 hope all is well with you. I have a question to ask you.  
20 Are you able to give me call sometime?

21 And Enrique responded at 1:49:24 a.m., saying:  
22 Now good?

23 Q. I'm going to show you now Tarrio Exhibit 170-2. If you  
24 could please read that for the jury.

25 A. So these are also messages between Enrique and the --

1 Lieutenant Shane Lamond. It occurred starting on November  
2 4th, 2019.

3 Shane sent a message at 11:39:52 a.m. saying:  
4 Hey, Enrique. No changes from when we talked? You planning  
5 on heading in tomorrow?

6 Enrique responded the following day at 7:52:29  
7 a.m. saying: Judiciary Square station. Like, seven of us.  
8 All cool?

9 Shane responded at 7:54:26 a.m. saying: Copy.  
10 Thanks. I've got my guys around if you need anything.

11 Shane sent another message at 7:59:22 a.m. saying:  
12 You wearing your Fred Perry's?

13 Enrique Tarrío responded at 7:59:44 a.m. saying:  
14 Negative.

15 Q. I'll show you the next one, Tarrío Exhibit 170-3.

16 A. These are messages between Enrique Tarrío and the --  
17 Lieutenant Shane Lamond on January 16th, 2020.

18 Shane sent a message at 5:19:23 p.m.: Enrique,  
19 how are you? I hope you had a great new year. Are you or  
20 your group coming to VA on Monday for lobby day?

21 Enrique responded at 5:49:45 p.m.: Yes, sir.  
22 I'll be there, and I believe we have a small group of my  
23 guys coming.

24 THE COURT REPORTER: Coming?

25 THE WITNESS: Coming. Or going. Apologize.

1 BY MR. JAUREGUI:

2 Q. Tarrio Exhibit 170-4.

3 A. And these are messages between Enrique and the --  
4 Lieutenant Shane Lamond starting on February 10th, 2020, and  
5 going on to February 11th, 2020.

6 Shane sent a message at 4:01:01 p.m.: Hey,  
7 brother. Any of your guys plan on attending the March for  
8 Life in Richmond on the 13th?

9 Enrique responded at 4:01:37 p.m.: I'll find out,  
10 but I haven't heard anything.

11 Shane sent a message at 4:01:44 p.m.: Thanks.

12 And the following day, Enrique responded at  
13 10:38:08 a.m.: They don't have any plans of attending as of  
14 now.

15 Q. Exhibit 170-5, please.

16 A. These are messages between Enrique and Lieutenant Shane  
17 Lamond on February 20th, 2020.

18 Shane sent a message at 6:26:50 a.m.: Morning,  
19 brother. What time are you heading over to courthouse this  
20 morning? Are you moving as a group or going over  
21 individually?

22 Enrique responded at 7:17:51 a.m.: We're leaving  
23 the house in, like, ten.

24 Enrique sent another message at 7:18:17 a.m.: We  
25 have a small group.

1 Enrique sent another message at 7:18:51 a.m.:  
2 Going to hold some flags outside and then go into the  
3 courthouse for the sentencing.

4 Shane responded at 7:19:11 a.m.: Copy. Thank  
5 you. About how many in group? I'm going to have a  
6 plainclothes detective in front of courthouse making sure no  
7 counter-demonstrators show up.

8 Enrique responded at 7:25:46 a.m.: About six to  
9 nine of us. We're in regular clothes, no markings.

10 THE COURT REPORTER: For the record, could you  
11 please slow down, ma'am?

12 BY MR. JAUREGUI:

13 Q. Okay. This is Exhibit 170-6.

14 A. These are messages between Enrique and Lieutenant Shane  
15 Lamond on February 28th, 2020.

16 Shane sent a message at 10:38:28 a.m.: Hey,  
17 brother. Was your group at CPAC yesterday or did  
18 individuals go there on their own? Some D.C. Antifa  
19 shithheads tracked Gavin and posted it all over social media,  
20 but they also said PB were up there.

21 Enrique responded at 11:36 a.m.: Only Proud Boys  
22 here is myself and no more.

23 Enrique --

24 THE COURT REPORTER: And no more?

25 THE WITNESS: No more. Or "one more." Sorry.

1 Enrique sent another message at 11:36:15 a.m.:

2 Actually, three of us total.

3 Enrique sent another message at 11:36:38 a.m.:

4 Besides my face, they wouldn't know the other two.

5 Shane sent a message at 11:36:12 a.m.: I got you.

6 Appreciate it. Let me know if you have any issues, but they

7 are pulling one Antifa guy's pass.

8 BY MR. JAUREGUI:

9 Q. Okay. I'm going to go now to 170-7. You've never  
10 testified in court before, have you?

11 A. No, I have not.

12 Q. Okay. Slow down a little bit so that the court reporter  
13 can get everything down. Okay?

14 A. All right.

15 Q. Please read for the jury 170-7.

16 A. These are messages between Tarrío and Lieutenant Shane  
17 Lamond on May 30th, 2020.

18 Enrique sent a message at 9:01:55 p.m.: They're  
19 using many channels on Telegram not only to organize, but to  
20 dox police officers.

21 And he sent a link.

22 And then Shane responded at 9:07:57 p.m.: Thank  
23 you. We saw this earlier today.

24 Q. This one, Tarrío Exhibit 170-8, what does this say?

25 A. It says: The Black Lives revolution. And then, in

1       parentheses, it says: BLM. Overview updates of the BLM  
2       protest in 2020. Directory of local protest channels @comms  
3       directory -- and then the link.

4       Q. Let's proceed to 170-9.

5       A. These are messages between Enrique and Lieutenant Shane  
6       Lamond on June 5th, 2020.

7               Shane sent a message at 2:42:59 p.m.: Hey,  
8       Enrique. Just wanted to check with you to see if any of  
9       your people are planning on going to D.C. or Richmond for  
10      the protest.

11             Enrique responded at 2:44:27 p.m.: I'll check,  
12      but I've issued a stay-at-home for the entire org with these  
13      events.

14             Enrique sent another message at 2:44:44 p.m.:  
15      D.C. I can pretty much say are staying completely away.

16      Q. Let's move on to 170-10.

17      A. These are messages between Enrique and Lieutenant Shane  
18      Lamond on June 5th, 2020.

19             Shane sent a message at 2:47:55 p.m.: I figured  
20      that would be the case. Probably a good move. Thanks,  
21      brother.

22             Enrique responded at 2:48:55 p.m.: It would just  
23      make a huge mess and probably put us on some stupid list.

24             Shane responded at 2:49:47 p.m.: No list with us,  
25      but if anything happened, would definitely be some bad press

1 for your org.

2 Shane sent another message at 2:50:55 p.m.:

3 Sincerely, though, I really appreciate you communicating and  
4 working with me. Makes things go smoother and hassle free  
5 whenever you want to plan something in D.C.

6 Q. Okay. Let's move on to 170-11.

7 A. These are messages between Enrique and Lieutenant Shane  
8 Lamond on June 26th, 2020.

9 Shane sent a message at 2:28:27 p.m.: One thing I  
10 forgot to ask you. Any other big names planning on coming?

11 Enrique responded at 2:29:19 p.m.: Not with us or  
12 that I know of. And as far as other groups go, haven't  
13 heard anything.

14 Q. Okay. Let's go to 170-12.

15 A. These are messages between Enrique and Lieutenant Shane  
16 Lamond on July 2nd, 2020.

17 Shane sent a message at 10:08:08 a.m.: Looks like  
18 word is getting out about you all coming to town. Got that  
19 from a contact at a security company here in D.C.

20 And he sent an attachment.

21 Enrique responded at 12:55:23 p.m.: Well, Oak  
22 should not have put the bar thing on there. He has a small  
23 audience, so hopefully it doesn't turn into anything big --  
24 or into a big thing.

25 Shane Lamond at 1:15:54 p.m. responded saying:

1 Copy that. Just wanted to send for your awareness.

2 Enrique sent a message at 1:16:39 p.m.: Just  
3 landed.

4 Q. Okay. And Exhibit 170-13. Is this the attachment?

5 A. Yes, it is.

6 Q. Okay. And could you read that for the jury. I'm sorry.  
7 I know it's a little long.

8 A. On June 25th, 2020, the Telegram channel administered by  
9 Proud Boys elder, Joseph Oakman, made a post announcing an  
10 upcoming Proud Boys gathering on Independence Day in  
11 Washington, D.C.: Encouraging followers to come join your  
12 favorite very Proud Boys this 4th of July weekend in D.C. as  
13 we party and celebrate the nation.

14 Oakman ominously cautioned that things could get a  
15 little spicy, so if you're coming, understand that. Then  
16 urging supporters to come and party with over 100 of your  
17 favorite boys.

18 Our headquarters will be one of the only  
19 conservative bars in town, Oakman informed, stating, I'm not  
20 going to put the name out here, but a simple search will  
21 narrow down the options. Hope to see you all there.

22 The post was subsequently shared by the official  
23 channel of the Proud Boys' Michigan chapter and has so far  
24 reached 250 views.

25 On June 30th, the Michigan Proud Boys Telegram



1 channel also announced a July 18th afternoon rally at the  
2 Ohio State House under the motto, Stand up for America,  
3 posting the following invitation and event flyer: Come one,  
4 come all. Please share this in all patriot channels and  
5 chats. Many different patriot groups will be at the rally.  
6 All Proud Boys are welcome. Any Proud Boys in the Midwest  
7 who want to travel for this, hit me up and I can help you  
8 and your boys with all the details.

9 Q. Okay. Let's move on to 170-14.

10 A. These are messages between Enrique and Lieutenant Shane  
11 Lamond on September 22nd, 2020.

12 Shane sent a message at 9:42:55 p.m.: Hey,  
13 brother. You going to be in Portland on Saturday with your  
14 guys?

15 Enrique responded at 9:43:04 p.m.: Yes, sir.

16 Enrique sent another message at 9:43:15 p.m.:  
17 It's my event.

18 Shane sent a message at 9:44:27 p.m.: I gotcha.  
19 Be safe out there. I know the counters will definitely be  
20 out.

21 Q. Let's go on to 170-15.

22 A. These are messages between Enrique and Lieutenant Shane  
23 Lamond on September 23rd, 2020.

24 Shane sent a message at 4:47:17 p.m.: Hey,  
25 brother. I'm working on that request for you. Should have

1 a contact in Portland for you later today.

2 Enrique responded at 5:14:12 p.m.: Thanks.

3 Shane sent another message at 6:22:33 p.m.: Just  
4 heard back from the guy in Portland. His name is Jeremy  
5 Chedester. Desk/cell. He said call desk first as his cell  
6 doesn't work in the office.

7 Q. Okay. 170-16.

8 A. These are more messages between Enrique and Lieutenant  
9 Shane Lamond on October 8th, 2020.

10 Shane sent a message at 11:42:52 a.m.: From a LE  
11 source: Now the boogaloo boys are trying to rally other  
12 groups with them to protest at the Michigan State Capitol  
13 and governor residence. They are calling it a unite rally.  
14 They are inviting the Proud Boys, Antifa and BLM.

15 Shane responded at 11:43:04 a.m.: Have you heard  
16 anything about -- or sent: Have you heard anything about  
17 this?

18 Enrique respond at 12:00:23 p.m.: Do you have a  
19 date? I'm on the phone with Michigan prez. He says he  
20 knows nothing of this.

21 Shane sent a message at 12:01:13 p.m.: No date  
22 for it, but the operation went down last night. I will see  
23 if I can get the proposed date now.

24 Shane sent another message at 12:17:26 p.m.: Just  
25 got the date: October 17th.

1 Enrique responded at 12:28:29 p.m.: Confirmed  
2 they knew nothing of the event. And they don't plan on  
3 attending anything that has to do with Antifa or whatever  
4 this boogaloo thing is.

5 Q. Do you want to have a little water before the next one?

6 A. Okay.

7 Q. Please continue with 170-17.

8 A. These are messages between Enrique and Lieutenant Shane  
9 Lamond on October 13th, 2020.

10 Enrique sent message at 9:14:04 a.m.: In town at  
11 the Supreme Court.

12 Shane responded at 9:45:56 a.m.: Copy. How long  
13 you going to be in town?

14 Enrique responded at 9:49:46 a.m.: Tomorrow a.m.

15 Q. Okay. Let's move on to 170-18, please.

16 A. These are messages between Enrique and Lieutenant Shane  
17 Lamond on October 21st, 2020.

18 Enrique sent a message at 8:13:10 p.m.: I don't  
19 feel like I'm going to be too safe.

20 Shane responded at 8:15:10 p.m.: If you receive  
21 any threats, let me know and I will contact [sic] with you  
22 my Miami-Dade contacts.

23 Q. Okay. Let's move on to the next exhibit, 170-19.

24 A. These are messages between Enrique and Lieutenant Shane  
25 Lamond on October 29th, 2020.

1           Shane sent a message at 9:25:11 a.m.: Hey,  
2 brother. Are you aware of any plans by your group to hold a  
3 rally at Freedom Plaza this Saturday?

4           Enrique responded at 9:38:19 a.m.: Let me ask. I  
5 haven't heard anything.

6           Enrique sent another message at 9:40:32 a.m.:  
7 Negative.

8 Q. Okay. Let's move on to 170-20. Slow down the pace a  
9 little bit.

10 A. These are messages between Enrique and Lieutenant Shane  
11 Lamond on November 2nd, 2020.

12           Shane sent a message at 12:22:50 p.m.: Hey,  
13 brother. Tied up on a conference call right now, but will  
14 call you back when I'm free. You in town now?

15           Enrique responded at 12:25:11 p.m.: Yes, sir.  
16 We're doing a small pop-up event in front of CNN.

17           Shane sent a message at 12:25:26 p.m.: Copy.  
18 When is that taking place?

19           Enrique responded at 12:25:32 p.m.: 2:00 p.m.

20           Shane Lamond sent a message at 12:25:50 p.m.:  
21 Copy. I appreciate the heads-up. Any idea on size of your  
22 group?

23           Enrique sent a message at 12:26:24 p.m.: With  
24 black Republican club. Only me and another guy will be the  
25 only PBs. Not in our gear.

1 Enrique sent another message at 12:26:35 p.m.:

2 Ehh, I'd say no more than 20.

3 Shane sent a message at 12:27:31 p.m.: Perfect.

4 I'm going to let SOD know for their awareness so they don't  
5 freak out. We will have a unit or two there to monitor and  
6 we def have to catch up for drinks before you leave.

7 Q. Okay. Let's move on to 170-21.

8 A. These are messages between Enrique and Lieutenant Shane  
9 Lamond on November 3rd, 2020.

10 Shane sent a message at 10:26:23 p.m.: People  
11 walking in the middle of road.

12 Enrique responded at 10:26:47 p.m.: Just brought  
13 everyone in.

14 Q. Let's move on to Exhibit 170-22. Could you please read  
15 this one.

16 A. These are messages between Enrique and Lieutenant Shane  
17 Lamond on November 5th, 2020.

18 Shane sent a message at 8:13:58 p.m.: Hey,  
19 brother. I'm hearing chatter that you are heading to  
20 Michigan. Any truth to that?

21 Enrique responded at 8:16:23 p.m.: I was, but I'm  
22 canceling that trip.

23 Q. Okay. This -- Exhibit 170-23, what is this one?

24 A. These are messages between --

25 Q. Grab a little water.

1 A. Excuse me.

2 -- between DOD Dave Engel -- it's Department of  
3 Defense -- and Metropolitan Police Department Lieutenant  
4 Shane Lamond on November 7th, 2020.

5 Shane sent a message at 3:20:21 p.m.: Still no  
6 issues here. Some chatter about PB mobilizing and calling  
7 for violent action. Spoke with my source. Totally fake  
8 news and taken out of context. Source is aware of  
9 gatherings in Michigan and Phoenix, but calling for peaceful  
10 protest.

11 Q. Okay. 170-24, please.

12 A. These are messages between Enrique and Lieutenant Shane  
13 Lamond on November 8th, 2020.

14 Shane sent a message at 7:59:22 a.m.: Morning,  
15 brother. I'm sure you are tracking this. You attending?

16 And Shane Lamond sent a message at 7:59:32 a.m. of  
17 a file.

18 Enrique sent a message at 9:45:58 a.m.: I was  
19 invited. I don't know if I can make it. I have a family  
20 thing that day.

21 Q. Okay. What's this exhibit, 170-25?

22 A. This is the message that was sent in the previous slide  
23 from Lamond to Enrique. And it says: Million MAGA March on  
24 Washington, D.C., Saturday, November 14. #MillionMAGAMarch.  
25 Let's fucking go. Keep the pressure on the GOP. Joe Biden

1 did not win. The election is not over.

2 And it has like a little poster that says Million  
3 MAGA March.

4 Q. Okay. Let's move on to the next exhibit, 170-26.

5 A. These are messages between Enrique and Lieutenant Shane  
6 Lamond on November 8th, 2020.

7 Shane sent a message at 9:56:59 a.m.: Would you  
8 give me a heads-up if anyone else from your group decide to  
9 attend?

10 Enrique responded at 9:57:34 a.m.: I'm pretty  
11 sure my guys will be in attendance.

12 Shane sent a message at 10:06:09 a.m.: Copy. You  
13 are welcome to pass my information to one of them if they  
14 need anything while they are up here.

15 Enrique sent a message at 10:06:50 a.m.: I will,  
16 Bruv.

17 Shane sent a message at 10:37:23 a.m.: Thank you.

18 Enrique responded -- or sent a message at 4:54:54  
19 p.m.: I might be going.

20 Q. Okay. Can you tell us what this exhibit is, 170-27?

21 A. So this is a group chat with Metropolitan Police,  
22 Guillermo --

23 Q. "Guillermo."

24 A. Guillermo Rivera, Carolyn Montagna, Robert Glover,  
25 Assistant Chief Jeffrey Carroll and Lieutenant Shane Lamond

1 on November 8th, 2020.

2 Shane sent a message at 10:39 a.m.: Just got a  
3 heads-up that ET will not be here next weekend for the  
4 Million MAGA March, but some of the PBs will very likely  
5 come.

6 Q. Okay. 170-28, please.

7 A. These are messages between Dave Engel and Lieutenant  
8 Shane Lamond on November 8th, 2020. Dave sent a message at  
9 3:02:39 p.m.: Copy. I think next Saturday could get very  
10 interesting.

11 Shane responded at 3:21 p.m.: Agreed. Already  
12 got word that some of the PBs will likely be in attendance.

13 Q. Okay. Let's move on to the next one, 170-29.

14 A. These are messages between Enrique and Lieutenant Shane  
15 Lamond on November 9th, 2020.

16 Shane sent a message at 12:53:30 p.m.: Hey,  
17 brother. Do you know roughly how many of you will be here  
18 Saturday?

19 Enrique responded at 2:12:13 p.m.: 150 to 200.

20 Shane responded at 5:19:44: Organizers of march  
21 are consolidating. Both groups are meeting at Washington  
22 Monument and then marching to SCOTUS. Also have Women's  
23 March from Freedom Plaza to SCOTUS.

24 Q. Okay. Let's look now at 170-30.

25 A. These are messages between Virginia State Police Officer



1 Ben Tyler and Lieutenant Shane Lamond on November 9th, 2020.

2 Shane sent a message at 2:26:58 p.m.: Didn't want  
3 to put this in email, but just spoke with ET. He is coming  
4 this weekend and he expects approximately 150 to 200 PBs for  
5 Saturday's event.

6 Q. Okay. Let's move on to the next one, 170-31.

7 A. These are messages between Enrique and Lieutenant Shane  
8 Lamond on November 10th, 2020.

9 Enrique said at 11:15:33 a.m.: You think we'll  
10 have good separation?

11 Shane responded at 11:25:51 a.m.: Yes. That's  
12 why I keep hitting you up for your plans. I don't want you  
13 to think I/we are keeping tabs on you guys, but the more  
14 details we have about your plans, the better we can plan to  
15 keep separation between the groups.

16 Shane sent another message at 11:38:04 a.m.:  
17 Forgot to ask you. Are you still thinking 150 to 200?

18 Enrique responded at 11:40:59 a.m.: I think so.

19 Q. Could you please help me here with 170-32.

20 A. These are messages between Enrique and Lieutenant Shane  
21 Lamond on November 13th, 2020.

22 Shane sent a message at 8:39:49 a.m.: You staying  
23 at Phoenix again?

24 Enrique responded at 8:40:59 a.m.: Yep. I'm  
25 about to take off.

1 Q. Let me show you 170-33.

2 A. These are messages between Assistant Chief Jeffrey  
3 Carroll and Lieutenant Shane Lamond on November 14th, 2020.

4 Jeffrey said at 9:51:37 p.m.: Any idea when the  
5 Proud Boys are leaving the city from social media?

6 Shane sent a message at 9:52:43 p.m.: I will  
7 check again with my source, but on Friday he said most on  
8 Sunday, a few leaving Monday. Not sure if they are  
9 participating in Straka demo tomorrow, but I will find out.

10 Jeffrey sent a message at 9:52:59 p.m.: Thanks.

11 Shane sent another message at 10:27:52 p.m.: Just  
12 talked to him. They are all leaving tomorrow and not  
13 attending the Straka event.

14 Q. Okay. Let's move on to the next one, 170-34.

15 A. These are messages between Virginia State Police Ben  
16 Tyler and Lieutenant Shane Lamond on November 17th, 2020.

17 Ben sent a message at 8:49:23 p.m.: Have you  
18 talked to Enrique? Do they have any plans for this weekend?

19 Shane sent a message at 8:50:53 p.m.: No. They  
20 are laying low. No plans for this weekend. There's gonna  
21 be another Trump rally in D.C. on December 12. They may  
22 come back for that. Won't be as big as last weekend,  
23 though.

24 Q. Okay. Let's move on now to 170-35.

25 A. These are messages between Enrique and Lieutenant Shane

1 Lamond on November 18th, 2020.

2 Shane sent a message at 10:05:27 a.m.: Morning,  
3 brother. Are you all planning on coming to D.C. on December  
4 12th for the Million MAGA March II?

5 Enrique responded at 10:19:24 a.m.: Yes, sir.

6 Q. Okay. Exhibit 170-36, please.

7 A. These are more messages between Enrique and Lieutenant  
8 Shane Lamond, December 12th, 2020. Shane sent a message at  
9 8:01:10 p.m.: What are you expecting for 12/12? Same  
10 numbers as before or more? I'm hearing NYC and Miami Antifa  
11 are planning on coming.

12 Enrique responded at 8:04:26 p.m.: My guess is  
13 that you see those numbers lose to double.

14 Q. Okay. Let's move on to 170-37. Who are these messages  
15 between?

16 A. This is the group chat between the Metropolitan Police  
17 Department Guillermo Rivera, Carolyn Montagna, Robert  
18 Glover, Assistant Chief Jeffrey Carroll and Lieutenant Shane  
19 Lamond. It was on December 3rd, 2020.

20 Shane sent a message at 7:14:30 a.m.: GM, all.  
21 Sorry to be the bearer of bad news, but I heard from my PB  
22 source, while he doesn't have a concrete number, he said we  
23 can expect to see close to double what we had last time for  
24 12/12.

25 Q. Okay. We're almost at the end.

1 170-38. Will you please read that for the jury.

2 A. These are messages between Enrique and Lieutenant Shane  
3 Lamond on December 7th, 2020. Shane sent a message at  
4 2:29:09 p.m.: You have any info on the event planned  
5 Saturday night after the march?

6 Enrique responded at 2:29:32 p.m.: March at 6  
7 p.m. I don't know the location yet.

8 Q. Okay. 170-39. Who are these messages between?

9 A. This is the Metropolitan Police group chat: Guillermo  
10 Rivera, Carolyn Montagna, Robert Glover, Assistant Chief  
11 Jeffrey Carroll and Lieutenant Shane Lamond on December 7th,  
12 2020.

13 Shane sent a message at 2:43:04 p.m.: Just got a  
14 heads-up that there is another march being planned for 12/12  
15 at the 800 [sic] hour. No further info at this time on  
16 location, route or numbers, but I will keep working on it.  
17 I have a feeling this is going to be a big pro-Trump march  
18 so they may try to go to BLM Plaza.

19 Q. Okay. Let's move on to Exhibit 170-40.

20 A. These are messages between Virginia State Police Ben  
21 Tyler and Lieutenant Shane Lamond on December 11th, 2020.

22 Shane sent a message at 11:33:13 p.m.: They got  
23 their numbers, though. About 500 PB showed up.

24 Q. Okay. Let's move on to the next one, 170-41.

25 A. These are messages between Enrique and Lieutenant Shane

1 Lamond on December 12th, 2020.

2 Shane sent a message at 3:43:27 p.m.: Hey,  
3 brother. What's the plan for the rest of the day?

4 Enrique responded at 5:31:28 p.m.: 6 to 7 p.m.,  
5 Harrington's. Then we're going to march. Don't know the  
6 route yet.

7 Q. Okay. Let's move on to the next exhibit, 170-42,  
8 please.

9 A. These are messages between Assistant Chief Jeffrey  
10 Carroll and Lieutenant Shane Lamond on December 15th, 2020.

11 Jeffrey sent a message at 2:39:33 p.m.: Shane,  
12 have you received any information that would lead you to  
13 believe the Proud Boys are going to be here for  
14 inauguration?

15 Shane responded at 2:40:50 p.m.: My source told  
16 me months ago they would probably be here for inauguration,  
17 but nothing lately. I'm meeting with him this afternoon, so  
18 I will confirm.

19 Shane sent another message at 5:52:28 p.m.: Just  
20 confirmed that Proud Boys are not planning on coming to D.C.  
21 for inauguration at this time.

22 Q. Let's move on to 170-43. Who are these messages  
23 between?

24 A. These are between Assistant Chief Jeffrey Carroll and  
25 Lieutenant Shane Lamond on December 15th, 2020.

1           Jeffrey sent a message at 6:04:43 p.m.: How about  
2           never come to D.C. again? Can he ID those people in the  
3           flyers?

4           Shane sent a message at 6:04:55 p.m.: He's  
5           claiming that he doesn't recognize them and said that he had  
6           close to 1,000 members here and doesn't know all of them.

7           Q. Okay. Let's move on to 170-44.

8           A. This is the Metropolitan Police Department group chat  
9           again, Guillermo Rivera, Carolyn Montagna, Robert Glover,  
10          Assistant Chief Jeffrey Carroll and Lieutenant Shane Lamond,  
11          and it was on December 19th, 2020.

12          Shane sent a message at 3:32:39 p.m.: From my  
13          source about January 6th: If we do, it will be extremely  
14          small and not in colors. No night march.

15          Q. Okay. Very well. 170-45.

16          A. These are messages between United States Capitol Police  
17          officers Jack Donohue and Lieutenant Shane Lamond on  
18          January 1st, 2021.

19          Shane sent a message at 1:02:58 p.m.: Enrique and  
20          his exec staff are coming dressed in all black, but I think  
21          dressed up, not like Antifa.

22          Q. Okay. And then, lastly, 170-46.

23          A. These are messages between the United States Capitol  
24          Police Officer Jack Donohue and Lieutenant Shane Lamond on  
25          January 4th, 2021.

1 Jeffrey sent a message at -- that's messed up.

2 Jeffrey sent a message at 9:21:55 a.m.: FYI. Tarrio may be  
3 saying at Phoenix Park Hotel.

4 Shane sent a message at 9:24 a.m.: Yes. That's  
5 confirmed. Supposed to be arriving later today.

6 Q. So you said that's messed up. What's wrong in the  
7 exhibit?

8 A. It says from Jeffrey Carroll. But it's supposed to be  
9 Jack Donahue.

10 Q. I see. Okay.

11 Well, thank you very much, Ms. Kosinski, for  
12 helping us with this exhibit, and throughout the trial. We  
13 couldn't have done it without you.

14 MR. JAUREGUI: I have no further questions, Judge.

15 THE COURT: All right. I assume there's no other  
16 questions.

17 MR. MULROE: No, your Honor.

18 THE COURT: All right. Thank you very much. You  
19 may step down.

20 (Witness excused.)

21 THE COURT: Let me speak to counsel at sidebar.

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

24 MS. HERNANDEZ: Your Honor, Mr. McCullough and I  
25 have been discussing the scope of my investigator's direct

1 testimony, and I wonder whether we could just -- some of it  
2 depends on how the Court would rule on the Johnson exhibits.  
3 And if -- depending on that, maybe we will only have a  
4 stipulation. So maybe we should argue that first.

5 THE COURT: So why don't I release them and we  
6 can -- no. Do you think --

7 MS. HERNANDEZ: I think that's a good idea.

8 THE COURT: Well, but how much -- you thought it  
9 might be a stip -- Mr. McCullough, the only reason I said  
10 that is what Ms. Hernández seemed to think is, without those  
11 two exhibits, it might be a stipulation. And I think it is  
12 likely we would be proceeding without those two exhibits --  
13 let's put it that way -- without prejudging anything. So  
14 that's the only reason I say that.

15 I guess it depends on how likely you really think  
16 that's the case.

17 MR. McCULLOUGH: Well, perhaps, your Honor, we  
18 should send the jury back for five minutes and --

19 THE COURT: All right.

20 MR. McCULLOUGH: -- resolve this and then let's  
21 kind of wrap this up. I think that would be the ideal way  
22 to proceed here. Because if there is going to be any  
23 testimony, they will still be here and we've got enough time  
24 to get it in.

25 THE COURT: But is there -- are you close to a



1        wording of a stipulation that would resolve it?

2                MR. McCULLOUGH: It's my understanding we are.

3        Yes.

4                THE COURT: Oh, okay. Then I take it back. Fine.

5        Okay. Let's do that, then.

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

8                THE COURT: Ladies and gentlemen, I'm going to  
9        surprise you here. We're going to send you back just for a  
10       brief -- at least a brief moment while we discuss something  
11       outside your presence. We might have some more evidence for  
12       you today. So that's what we're going to do.

13                Madam Clerk, if you would do that. We'll work out  
14       some things.

15                And we expect to have you back before we quit,  
16       which will be at 5:00.

17                (Whereupon, the jury exited the courtroom at 4:31  
18       p.m. and the following proceedings were had:)

19                (Discussion had off the record amongst counsel.)

20                THE COURT: Everyone -- everyone may be seated.  
21       But if Mr. McCullough and Ms. Hernández need a moment to  
22       continue potentially fruitful discussions, we'll give them  
23       that.

24                I was giving you the opportunity to have a  
25       conversation, which it sounded like it could have been -- it

1 might have been fruitful.

2 MS. HERNANDEZ: So how does the Court -- yes.  
3 We've had the conversation about the stipulation. It needs  
4 to be printed. But I think one of us needs to leave the  
5 room to get it printed. Or I need to leave the room.

6 MR. McCULLOUGH: No.

7 MS. HERNANDEZ: Oh, okay.

8 THE COURT: You could also --

9 MS. HERNANDEZ: Ms. Rohde is going to do it.

10 THE COURT: All right.

11 MS. HERNANDEZ: So what we need to argue over is  
12 the exhibits that I want -- what the Government teed up for  
13 the Court. So I don't know how the Court wants to --

14 THE COURT: I'll hear from you, Ms. Hernández.

15 MS. HERNANDEZ: Okay. So, your Honor, there is --  
16 there are two items. One item is an online video of this  
17 gentleman, Paul Johnson -- he has a middle name I can't  
18 remember now -- who essentially -- and Mr. Johnson is in a  
19 number of the videos that the Government has already  
20 introduced. He's a gentleman with a black hat, a black  
21 hoodie, a black megaphone in his hand. He's there at about  
22 the same time as the Defendants are.

23 He is very aggressive, yelling at police officers,  
24 inciting the crowd.

25 And he is one of the first people who breaks

1 through that first breach and knocks over the fence and  
2 stuff.

3 There is a video online of this gentleman on the  
4 evening, I believe, of January 6th taking credit --  
5 explaining what he did and taking credit for what he does.

6 My position -- and I found that video by --  
7 there's a link in the criminal complaint that was filed by  
8 the United States that links to that video. That's where I  
9 find the video.

10 So in terms of the criminal complaint, the primary  
11 purpose of the criminal complaint -- well, there's two  
12 purposes, obviously. I believe it's admissible, at least  
13 portions of it. The fact -- the affidavit, not the  
14 complaint, not the charge, but the affidavit in support of  
15 the complaint has certain statements under oath, I would  
16 submit, by a party opponent that I would like to introduce.  
17 That's one purpose of introducing that document.

18 The other purpose is to show the authenticity or  
19 the foundation for the online video. That online video --  
20 there's an assertion by the FBI agent under oath that this  
21 online video is this Mr. Johnson admitting responsibility.  
22 And in fact, the complaint has several -- maybe the  
23 entirety -- the complaint quotes what Mr. Johnson says on  
24 his -- online.

25 So I'm not trying to introduce the charge. I'm

1 not trying to introduce what the Government charged him  
2 with. In fact, he is -- that's the complaint. He --  
3 currently he is charged in the indictment with Mr. Samsel.  
4 I'm sure the Court has heard that name before. So --

5 THE COURT: The case was pending in front of me  
6 for quite a while.

7 MS. HERNANDEZ: Okay.

8 THE COURT: So yes.

9 MS. HERNANDEZ: So currently, Mr. Johnson is  
10 the -- he originally had been charged along -- through a  
11 complaint. Currently he's in a superseding indictment with  
12 Mr. Samsel in a case that's pending for trial.

13 I'm not trying to introduce the charges. I'm just  
14 trying -- the only -- the primary -- I said two purposes for  
15 the complaint, one of them being the reference to the --  
16 sort of the authenticity of the -- or the foundation for  
17 introducing the admission by Mr. Johnson.

18 I have contacted Mr. Johnson's attorneys, who are  
19 federal -- assistant federal defenders in the Eastern  
20 District of Virginia. They indicated they would assert the  
21 Fifth Amendment on behalf of Mr. Johnson.

22 And so I believe he's an unavailable witness for  
23 purposes of the Federal Rules of Evidence and that the  
24 statement he makes is an admission against penal interest,  
25 because he certainly is talking about knocking over fences

1 and yelling at cops and all sorts of other things.

2 THE COURT: Mr. McCullough, I'll hear you in  
3 response.

4 I guess I would start -- it seems to me helpful to  
5 start with the video first and why -- and whether -- I  
6 hadn't been thinking about this issue of the Fifth  
7 Amendment. But he's unavailable. I don't know if that  
8 counts -- I mean, he would have to be unavailable, number  
9 one, to admit it as a statement against interest. But go  
10 ahead.

11 MR. McCULLOUGH: Yes, your Honor. I think -- I  
12 kind of laid out the position in the email, but it's just a  
13 sequence that just -- you just can't string it together.  
14 Right?

15 So you're absolutely right. Under 804 -- I'm  
16 going to get it wrong -- 804(b)(3), he's got to be  
17 unavailable. I think he's got to come in here and basically  
18 take the Fifth. I don't think he can kind of take that  
19 representation at this point.

20 But even if we get past that -- let's just set  
21 that to the side -- there's no foundation to admit this  
22 video. There's no authenticity to admit the video. That  
23 would be bootstrapped by the complaint.

24 So then you're going to a statement of a party  
25 opponent in order to bootstrap the foundation authenticity.

1 Let's say -- and we've laid out our position as to why that  
2 doesn't work.

3 But let's say you get past that gateway. Then  
4 you're talking about the statement being basically a  
5 statement against penal interest. And, you know, to do  
6 that, it's got to satisfy the two factors in 804(b)(3), one  
7 of which is that, you know, kind of someone wouldn't make  
8 the statements because it would expose them to criminal  
9 liability and, two, that it is circumstances that would be  
10 trustworthy.

11 And kind of -- this passing-on-the-street  
12 interview with somebody who is in the midst of kind of  
13 celebrating the day's events with others is not the kind of  
14 circumstance that lends itself to a complete and accurate  
15 recitation of the facts that would kind of overcome, you  
16 know, all of the basic premise of the hearsay rules that,  
17 you know, it is something that you can rely on.

18 And so -- there's just kind of so many things upon  
19 that. And then, your Honor --

20 THE COURT: Well, that's why I thought of this as  
21 an interesting just --

22 MR. McCULLOUGH: It's a fun law school --

23 THE COURT: -- Rubik's cube of these things.  
24 That's why I thought, actually, the video -- I thought it  
25 was more -- it was -- kind of pointed at the answer first.

1           So if the video -- because the video is -- so it  
2           sounds like -- right. If it is a precondition for the video  
3           that it be supported by corroborating circumstances that  
4           clearly indicate its trustworthiness, regardless of all the  
5           rest of it -- and so I guess -- I'll hear from Ms. Hernández  
6           again on that. But I don't see how you -- that strikes me  
7           as, regardless of all the other layers, a particular problem  
8           here.

9           And if the video is out, then the question is,  
10          what is the -- at least one of the two bases for the  
11          criminal complaint are out, or at least are not present.

12          MR. McCULLOUGH: I just -- yeah. I just don't  
13          think either of these things come in. And I think, as we  
14          set forth, it kind of -- then you get to relevance, which is  
15          kind of low probative value, and 403, which is just kind of  
16          the potential confusion here, by introducing the statements  
17          of somebody that's not even been really featured in this  
18          trial. I acknowledge this person has been circled and  
19          pointed out one or two times in the case.

20          But now we're going to hear this person's  
21          statements as though -- to kind of say, Well, it wasn't  
22          these guys, but this guy who's taking responsibility for the  
23          whole thing.

24          So I think just the risk of confusion, low  
25          probative value here is significant.

1 THE COURT: Okay. Ms. Hernández, do you want to  
2 be heard in response to any of that?

3 MS. HERNANDEZ: Yes, your Honor. It's kind of  
4 hard to respond to the Government's suggestion that this  
5 video lacks evidentiary foundation.

6 At Page 8 of a criminal complaint filed -- at Page  
7 8 of the affidavit in support of a criminal complaint filed  
8 in this courthouse, the affidavit is signed under oath by an  
9 FBI agent, a special agent of the FBI.

10 The complaint obviously was filed by an AUSA, or a  
11 federal prosecutor, with -- in support of this document.

12 And this is what the complaint says about the  
13 video: Your affiant has reviewed this video and has  
14 determined that Johnson made the following statements while  
15 speaking to another individual outside the Hilton Garden Inn  
16 Hotel at blah, blah, blah address.

17 THE COURT: So the affidavit is about the video,  
18 too? I mean, this is all about the video?

19 MS. HERNANDEZ: Correct. The affidavit -- and  
20 again, the affidavit has multiple purposes. But it does --  
21 it provides a foundation, I would submit to the Court. And  
22 I cannot see how the United States of America would  
23 challenge that this is -- this gentleman who -- and it's  
24 being used to file a criminal complaint; it was used to  
25 arrest him; it was -- it was filed in this court. It is the



1 beginning of the charges.

2 Again, I know the Court has had multiple rulings  
3 on when the Government can charge and what the Government  
4 can charge. I don't care what the Government charges in  
5 this case -- in the Johnson case. I'm relying on a sworn  
6 statement by an FBI agent that was utilized to get an arrest  
7 warrant and to start criminal proceedings against him. And  
8 it isn't just a -- so it isn't just it's attached to it, but  
9 there's an actual introductory paragraph that says he has  
10 reviewed the video and has determined.

11 Of course, in the first few pages of that  
12 affidavit, it's a standard affidavit that I'm sure the Court  
13 has seen in many cases, in particular in all these  
14 January 6th cases, where the FBI agent relates how -- you  
15 know, all the steps he has taken to locate, identify this  
16 particular person and how he knows this person is this  
17 particular person.

18 So it's hard for me to see how there's a lack of  
19 evidentiary foundation on this -- for introduction of the  
20 video. It fits, I would say, the catch-all -- at a minimum,  
21 it fits the catch-all exception to the hearsay rules. You  
22 know, again, I don't see how it can be deemed unreliable  
23 based on -- I don't see how the United States can stand --  
24 how a Department of Justice attorney can stand before the  
25 Court and say, Hey, what that -- what my colleague filed in

1       this courthouse before another judge is -- it was a  
2       magistrate judge, but it's -- it lacks evidentiary  
3       foundation.

4               THE COURT: All right.

5               MS. HERNANDEZ: This case does have a lot of  
6       twists and turns.

7               THE COURT: So, I mean, I think the difference is,  
8       of course, that the Rules of Evidence don't apply to these  
9       affidavits. And also, in this context, it's just being  
10      offered for what he said, not for the truth of the matter  
11      asserted, which is what you are trying to use it for here.

12              So I think, look --

13              MS. HERNANDEZ: Sorry.

14              THE COURT: -- working backwards, working  
15      backwards, in order for the statement to come in, either  
16      through the video or as recounted in this document, there  
17      has to be a hearsay exception that applies.

18              You've relied on, you know, statement against  
19      interest and you've talked about there are a number of boxes  
20      you have to check there, one of them being unavailability,  
21      one of them being kind of the other descriptor of the  
22      statement.

23              But I do think that Mr. McCullough is right to  
24      point out that one of the other boxes you have to tick is  
25      supported by corroborating circumstances that clearly

1 indicate its trustworthiness if it is offered in a criminal  
2 case.

3 So I don't see how -- I mean, I would be, I think,  
4 the first judge in the history of America to conclude that a  
5 video kind of posted on YouTube where someone is speaking on  
6 the street would satisfy that.

7 And then the residual exception you fell back on,  
8 too -- again, equivalent circumstantial guarantees of  
9 trustworthiness -- there are absolutely none of those.

10 So I just think I can't --

11 MS. HERNANDEZ: Your Honor --

12 THE COURT: -- admit it. I'm sorry,

13 Ms. Hernández --

14 MS. HERNANDEZ: I'm sorry. I apologize --

15 THE COURT: -- I'm ready to rule, and that's why I  
16 asked you if you wanted to be heard again.

17 MS. HERNANDEZ: And there --

18 THE COURT: I'm sorry. What is that?

19 MS. HERNANDEZ: There is no such requirement for  
20 trustworthiness above the Federal Rule of Evidence 803 --  
21 the trustworthiness is provided by the statement against  
22 penal interest.

23 THE COURT: No.

24 MS. HERNANDEZ: That's what the -- that's where  
25 the trustworthiness comes in.

1           THE COURT: Actually, no. I'm looking at --  
2           literally, at the rule. So Ms. Hernández, I've heard you on  
3           it. So this is called me ruling.

4           So under (3) (A), it also -- that lays out the sort  
5           of fact that it's against interest. And then, (B), is  
6           supported by corroborating circumstances, blah, blah, blah,  
7           blah, blah. And there are no such circumstances here. In  
8           fact, it's quite the opposite.

9           So if the statement can't come in, if the video  
10          can't come in, then that partially knocks the point of the  
11          affidavit out as well, because the affidavit is merely, at  
12          least in part, regurgitating the statement.

13          And so whatever other value the complaint and the  
14          affidavit have I would exclude as irrelevant and -- even if  
15          having some marginal relevance -- under 403.

16          MS. HERNANDEZ: I'm sorry, your Honor.

17          What rule of -- you're saying the second part of  
18          the --

19          MR. McCULLOUGH: 804 --

20          THE COURT: 804(b) (3) (B). Correct. I'm not  
21          hearing from anyone else. We are now proceeding to bring in  
22          the jury and we will read the statement -- we will read the  
23          stipulation.

24          MS. HERNANDEZ: To the (B), your Honor, I think  
25          the --

1 THE COURT: I've already ruled, so you can --

2 MS. HERNANDEZ: In case I didn't say it, for the  
3 record, the corroborating circumstances are the fact that it  
4 was filed by the Department of Justice in an affidavit to  
5 seek -- and was used by -- I think it's more than  
6 corroborating -- that an arrest warrant was issued by a  
7 judge, a federal magistrate in this district.

8 And the corroborating circumstances are the videos  
9 of him shouting -- what he says is consistent with the  
10 videos that the Government has introduced in this case. So  
11 they're self-authenticating in that fashion. What he says  
12 he did is consistent with the videos that have --

13 THE COURT: All right. It's the circumstances  
14 surrounding the statement. And the circumstances  
15 surrounding the statement here are just a video posted to  
16 YouTube of him speaking.

17 And to the extent that you think it's consistent  
18 with the other video evidence in the case, there are mounds  
19 of video evidence in the case for you to put on to do  
20 whatever you'd like with this gentleman's conduct that day.  
21 In fact, it may already -- all that video may already be  
22 part of the record in the case. It probably is. Whether it  
23 is or isn't, it certainly is available to you.

24 MS. HERNANDEZ: Well, I don't believe --

25 THE COURT: So I don't want to be --

1 MS. HERNANDEZ: -- that's accurate.

2 THE COURT: I don't want to -- I've ruled.

3 MS. HERNANDEZ: I'm just responding to what the  
4 Court said.

5 THE COURT: Okay. Very well.

6 MS. HERNANDEZ: Your Honor, I think this is a  
7 violation of my client's Sixth Amendment right to present a  
8 complete defense.

9 THE COURTROOM DEPUTY: Jury panel.

10 (Whereupon, the jury entered the courtroom at 4:51  
11 p.m. and the following proceedings were had:)

12 THE COURT: Everyone may be seated.

13 We will now have a stipulation presented that has  
14 been agreed to by Defendant Rehl and the Government.

15 MS. HERNANDEZ: Your Honor, I believe the Court  
16 has -- the way it has proceeded with these stipulations is  
17 the jury can see it at the same time it's read.

18 THE COURT: Correct.

19 MS. HERNANDEZ: And I believe this will be Joint  
20 Exhibit 3. And by that -- it's an exhibit that's jointly  
21 submitted by the Government and Mr. Rehl or the Defendants.  
22 I don't know what the -- the stipulation regarding Zachary  
23 Rehl.

24 The Government and Defendant Zachary Rehl hereby  
25 agree and stipulate that Mr. Rehl enlisted in the U.S.

1 Marine Corps on October 14th, 2008, and he was honorably  
2 discharged on May 30th, 2012.

3 In 2010, Mr. Rehl was meritoriously promoted from  
4 private first class (E-2) to lance corporal (E-3). He was  
5 later promoted to the rank of corporal (E-4).

6 3. He earned the Marine Corps good conduct medal  
7 after three years of honorable and faithful service without  
8 any disciplinary infractions. His unit was awarded the Navy  
9 unit commendation.

10 4. As a traffic management specialist, part of  
11 Mr. Rehl's responsibilities included the shipment of  
12 materials, supplies and equipment to Marines overseas.

13 5. Mr. Rehl suffered a lower back injury during  
14 his time on the traffic management team. Mr. Rehl also  
15 suffered a shoulder injury while engaged in a training  
16 exercise on an obstacle course. Mr. Rehl's various injuries  
17 led to his honorable medical discharge in May of 2012.  
18 That's honorable.

19 6. Mr. Rehl attended Temple University using what  
20 are commonly referred to as GI benefits. He earned a  
21 bachelor of business administration degree on July 29th,  
22 2016. He earned a master's degree in innovation management  
23 and entrepreneurship from Temple University in 2017 with a  
24 3.5 grade point average.

25 Mr. Rehl did not attend the rally in Washington,

1 D.C., on November 14th, 2020.

2 On the evening of January 5th, 2021, Mr. Rehl was  
3 not in attendance at the Airbnb with Mr. Nordean and  
4 Mr. Biggs.

5 No. 9. Mr. Rehl was not present in the location  
6 of the west plaza area of the Capitol when Mr. Donohoe threw  
7 two water bottles at a line of law enforcement officers at  
8 1:25 p.m. as depicted in Government's Exhibits 160Bx and  
9 440Ax. At that time, Mr. Rehl was present in a different  
10 area, at the rear of the west plaza of the Capitol. A video  
11 recovered from Mr. Rehl's phone is in evidence at  
12 Government's Exhibit 400L. The metadata associated with  
13 this video indicates that it was taken at 1:25 p.m.

14 No. 10. Mr. Rehl was not present on the upper  
15 west terrace between 2:11 and 2:13 p.m. during the incident  
16 described during the trial as Breach -- quote, unquote,  
17 Breach 4 when the window of the Capitol was shattered. At  
18 that time, Mr. Rehl was present in the west plaza of the  
19 Capitol. A video recovered from Mr. Rehl's phone is in  
20 evidence at Government's Exhibit 400P, as in Paul. The  
21 metadata associated with this video indicates that it was  
22 taken at 2:13 p.m. on January 6th, 2021.

23 And the stipulation is signed by myself, on behalf  
24 of Mr. Rehl, and by counsel for the Government,  
25 Mr. Kenerson, McCullough, Ms. Moore and Mr. Mulroe.



1           And my understanding, your Honor, is this will go  
2           to the jury as an exhibit.

3           THE COURT: It is Joint -- as you mentioned, it is  
4           Joint Exhibit 3. So you will have a copy of this, as you  
5           will have all admitted evidence in the case.

6           MS. HERNANDEZ: Move its admission into evidence,  
7           your Honor.

8           THE COURT: And it will be admitted.

9           (Whereupon, Joint Exhibit No. 3 was entered into  
10          evidence.)

11          MS. HERNANDEZ: Thank you.

12          There is some slight additional testimony by my  
13          investigator, which I think maybe --

14          THE COURT: Given where we are -- given where we  
15          are, I think --

16          MS. HERNANDEZ: Thank you. I don't want to be the  
17          cause of keeping the jury here.

18          THE COURT: I understand.

19          Ladies and gentlemen, we are -- I can report to  
20          you that the end is in sight. Our schedule for next week --  
21          first of all, as I think we had mentioned to you already,  
22          we're not sitting tomorrow and we're not sitting on Monday.

23          We will -- here's what I can tell you about the  
24          schedule for next week, because sometimes, as these things  
25          start to wrap up, there is a little bit more that we need to

1 do outside your presence.

2 We'll start on Tuesday at 11:00 the way we have  
3 been for the last few days.

4 As far as the rest of the week goes, if -- I'm  
5 going to be -- we'll be conferring and we will let you know  
6 at the beginning of the week what the rest of the week will  
7 look like. I think that's all I can tell you right now.

8 Things are in flux. But as soon as we know, we  
9 will let you know.

10 But what we do know is we'll begin on Tuesday with  
11 evidence for you around 11:00.

12 So with that, we'll excuse you for the day and for  
13 the long weekend. I hope you enjoy the long Easter weekend.  
14 We'll see you next week.

15 THE JURY: Thank you.

16 (Whereupon, the jury exited the courtroom at 4:58  
17 p.m. and the following proceedings were had:)

18 THE COURT: I'm sorry, Ms. Hernández -- you all  
19 may be seated.

20 I thought that that would obviate the need for any  
21 testimony. But I guess I --

22 MS. HERNANDEZ: I'll discuss it over the weekend.  
23 But it would be on a different issue.

24 THE COURT: All right. So -- fair enough. I  
25 just -- I didn't think we could launch into something

1       totally unexpected with three minutes until 5:00.

2               MS. HERNANDEZ: And I agree wholeheartedly, your  
3       Honor.

4               THE COURT: All right. Very well. It --

5               MS. HERNANDEZ: But this -- the Court's decision  
6       probably cut a large chunk of the defense presentation and  
7       the cross-examination so -- for what it's worth.

8               THE COURT: All right. So we will -- you all --  
9       we have some time for you all to talk about what might be  
10      left. And we can pick up with that if there is anything --  
11      I shouldn't say "left"; the investigator never got on the  
12      stand.

13              But -- Mr. McCullough.

14              MR. McCULLOUGH: And I was just going to inquire  
15      through the Court whether -- I guess -- my understanding is  
16      that we're looking at this one final witness from  
17      Ms. Hernández on behalf of Mr. Rehl. And then we are -- my  
18      understanding is that all other defense counsel are at this  
19      point finished but for the Defendants. And I just wanted to  
20      make sure, for all of our planning purposes, that we kind of  
21      have that conversation together.

22              THE COURT: All right. Will each Defendant let me  
23      know whether that is correct?

24              MR. ROOTS: That's not correct for Mr. Pezzola,  
25      your Honor.

1 THE COURT: We'll talk about that in one moment.

2 Mr. Pattis?

3 MR. PATTIS: It is as to Biggs.

4 THE COURT: All right.

5 MR. JAUREGUI: It is as for Mr. Tarrio.

6 MR. SMITH: So, your Honor, we can't say because  
7 the Government recently disclosed that there were undercover  
8 MPD officers that we need to interview. So we're  
9 interviewing one more tomorrow. And -- yeah.

10 THE COURT: So with that caveat -- that's  
11 something we've all known is in play.

12 And, Ms. Hernández, your investigator and that  
13 would be it?

14 MS. HERNANDEZ: Yes. Yes, your Honor. There are  
15 some motions that I will be filing just to preserve some  
16 issues that relate back to motions that were previously  
17 filed in connection with witnesses that are unavailable to  
18 me.

19 THE COURT: Okay. Okay. But --

20 MS. HERNANDEZ: Just renewing some motions on  
21 that.

22 THE COURT: Trying to be practical about bodies --  
23 there won't be anyone else?

24 MS. HERNANDEZ: Correct. Correct.

25 THE COURT: Okay.

1 MS. HERNANDEZ: The issue of whether Mr. Rehl will  
2 testify or not is --

3 THE COURT: Right. We're not talking about that  
4 now. I get that you all have preserved that, and we're  
5 going to address that at the end -- at the end of all the  
6 other evidence.

7 Mr. Roots?

8 MS. HERNANDEZ: I'm sorry, your Honor.

9 I do think -- I know Mr. Kenerson sent something  
10 over today. I do think there's going to be some time to  
11 discuss how we deal with those text messages -- the  
12 Parler -- the Telegram messages that the Court introduced on  
13 all those multiple reasons. We might be able to do it in a  
14 concise way. But I'm concerned that it's a bit of a mess.

15 THE COURT: Look, I understand. And what I've  
16 said already is -- just on jury instructions, writ large, is  
17 I'm going to try to turn you around something tomorrow or  
18 maybe Saturday, but hopefully tomorrow, that represents --  
19 but I know there are going to be a few things that you all  
20 are going to be working on. So I understand some of this is  
21 a work in progress along the lines you have discussed.

22 So just --

23 MS. HERNANDEZ: And the last thing: I had  
24 mentioned a multiple conspiracy instruction. I am not -- I  
25 will not be requesting that.

1 THE COURT: Thank you for letting us know that.

2 Mr. Roots?

3 MR. ROOTS: Yeah. We still are trying to get the  
4 expert on window valuation, Mr. -- what's his name? -- Duffy  
5 Hoffman.

6 And by the way, irregardless of the claims by the  
7 Government of notice or whatever, I want to say that this  
8 would be a rebuttal witness to some shocking testimony that  
9 the Government put on about valuation of the window damage  
10 in Count 7. And that is specifically they misled the jury  
11 about how to evaluate the damage to a window. Mr. Conor  
12 cross-examining a witness representing the Architect of the  
13 Capitol -- Conor Mulroe -- asked the witness, you know, Do  
14 you evaluate damage to a window like you would at my house?  
15 The witness was allowed, over my objection, to say, no,  
16 that's not the way you evaluate that.

17 THE COURT: Okay. Mr. Roots, I don't know what  
18 you mean by a rebuttal witness. This is your case and you  
19 are free, within the rules of evidence, to put on your case.  
20 So I'm not -- period.

21 Why don't I just hear -- this is the notice that  
22 you filed today. Correct?

23 MR. ROOTS: Yes. And I did see -- your clerk  
24 indicated I filed that wrong. I'm not the best at picking  
25 out the tabs for filing. But we will refile that.

1 THE COURT: Okay.

2 Mr. Kenerson, why don't you just give me a preview  
3 of the Government's position, and I will look at this. Let  
4 me just --

5 Before we do this, that's your one additional  
6 witness. Correct, Mr. Roots?

7 MR. ROOTS: No. Potentially -- again, we have the  
8 emerging issues with regard the CHS questions.

9 THE COURT: Let's put that -- I know you filed  
10 that motion, so -- okay. Fair enough. That's in play.

11 Anything else?

12 MR. ROOTS: We have a process server on Ray Epps.  
13 We are not giving up on Ray Epps. Ray Epps is dodging  
14 service.

15 THE COURT: So if he's here on Tuesday, maybe we  
16 will hear from him.

17 Mr. Kenerson, what can you tell me about the  
18 Government's position on the window expert?

19 MR. KENERSON: It would be an understatement to  
20 say the Government has received insufficient notice in this  
21 case.

22 THE COURT: Mr. Kenerson, could you just use the  
23 microphone, please. I don't know whether it's this trial or  
24 just the microphones in this case. I'm not -- we'll never  
25 know. Mr. Kenerson, go ahead.

1 MR. KENERSON: I'm unsure -- it would be an  
2 understatement to say the Government has received  
3 insufficient notice. We have received no notice. We've  
4 received the person's name. We've received their CV. And  
5 the Court will see, when it reads what Mr. Roots filed this  
6 morning, that that's essentially the sum and substance of  
7 the notice he filed this morning as well, in addition to  
8 claims about outrageous questions that he just repeated that  
9 Mr. -- he alleges Mr. Mulroe asked.

10 So there's been nothing even approaching  
11 compliance with Rule 16 expert notice as it relates to this  
12 person. So we oppose and would be moving to preclude on  
13 that basis.

14 THE COURT: Okay. If you all could tee that up  
15 for me.

16 Look, it sounds like we're going to be in a  
17 position to at least be -- have the evidence -- again,  
18 Defendants aside -- but to have either the evidence  
19 concluded or I will be able to rule one way or the other on  
20 whether there is more evidence that needs to be admitted on  
21 Tuesday or at the latest Wednesday.

22 Mr. Roots?

23 MR. ROOTS: Your Honor, we could not be expected  
24 to submit the name of an expert witness on window valuation  
25 when we did not anticipate such a startlingly false claim



1 and a misleading claim, and it came up --

2 THE COURT: You didn't anticipate the Government  
3 would try to prove its case?

4 MR. ROOTS: They misled the jury with testimony --  
5 and I objected to it -- that was absolutely misleading the  
6 jury about how to evaluate damage to a window.

7 THE COURT: Okay.

8 MR. ROOTS: We did not anticipate that. How could  
9 we have submitted the name of an expert witness so far in  
10 advance, months ago, when, in fact, we did not know that  
11 they would just falsify before the Court --

12 THE COURT: I --

13 MR. ROOTS: -- how to evaluate the damage to a  
14 window?

15 THE COURT: Let me put it this way: Mr. Kenerson,  
16 when do you plan on filing that motion?

17 MR. KENERSON: I --

18 MR. JAUREGUI: Judge, any chance I could be  
19 excused?

20 THE COURT: You're excused.

21 MR. JAUREGUI: Thank you so much.

22 MS. HERNANDEZ: I'm standing in for him and  
23 Mr. Tarrío consents.

24 THE COURT: Very well.

25 Mr. Tarrío, you consent? I see Mr. Tarrío

1        nodding.    Yes.

2                MS. HERNANDEZ:    I think he preferred to have --

3                THE COURT:    Mr. Jauregui, go.    Go.

4                DEFENDANT TARRIO:    I consent, your Honor.

5                THE COURT:    Thank you.

6                (Thereupon, Mr. Jauregui retired from the  
7        courtroom and the following proceedings were had:)

8                MR. KENERSON:    If the Court will hear from us  
9        orally, we'd file the motion now and be happy to provide  
10       supporting documents.    If not, we will file it at some point  
11       tomorrow.

12               THE COURT:    I just think, if you file something  
13       briefly tomorrow --

14               MR. ROOTS:    Can I point to the jury instructions a  
15       little bit?

16               THE COURT:    Not now.    No.

17               I mean, what were you -- I don't understand --

18               MR. ROOTS:    Quote:    "Base your determination only  
19       on the evidence."    So the Government was allowed to put on  
20       false evidence and we are not allowed to rebut it?

21               THE COURT:    No, no.    That's not at all correct.

22               First of all, we have -- and your side has used,  
23       to its -- both sides have -- the wonder of cross-examination  
24       through which hopefully the truth emerges.    And then you  
25       absolutely have the right to put on whatever fact or expert

1 evidence you would like in your case.

2 I'm not precluding anything. But the question at  
3 least initially here is whether providing notice, like,  
4 literally today is something --

5 MR. ROOTS: December.

6 THE COURT: But they're saying they didn't get it  
7 until today.

8 MR. ROOTS: Mr. Smith has a text -- an email to  
9 them that was December 29th.

10 THE COURT: All right. So this is more reason why  
11 we're going to conclude our proceedings here today and I  
12 will -- and I will see what the representations of the  
13 parties are in this regard.

14 Mr. Pattis.

15 MR. PATTIS: I thought we were going to revisit  
16 the topic of the --

17 THE COURT: No topic is not going to -- all --

18 MR. PATTIS: No, no. The timing question, about  
19 what to do about the juror who might be unavailable.

20 THE COURT: Oh, okay.

21 MR. PATTIS: Maybe I misrecall what you said, and  
22 I may be wrong, but I'd like to have some clarity on that,  
23 if possible.

24 THE COURT: Absolutely.

25 So I thought what Mr. McCullough said was that the

1 parties could use, either internally or between them, a  
2 little time to think about that. That's why I told them we  
3 would get back to them.

4 So I'm not -- to be clear, I'm not going to make  
5 any determination on that without consulting all of you.  
6 And I thought the request was maybe give us tomorrow, maybe  
7 give us Monday to either internally, within your camps or  
8 across your camps, to discuss what you think the best course  
9 of action is in that regard.

10 And so my thought was we would show up Tuesday  
11 and -- well, if you all agreed on a course and then I agreed  
12 with you, you could inform me before then and we could  
13 inform them of the schedule. I'm not -- if that were to  
14 happen. If not, we could at least all show up on Tuesday  
15 and discuss it first thing.

16 MR. McCULLOUGH: Your Honor, we -- the  
17 Government's position is that we should not take any action  
18 to release the juror at this point. However, what would be  
19 appropriate at this point, given the way that things are  
20 shaping up, would be to advise that juror that it is  
21 possible that closing arguments could occur next week and  
22 ask whether the individual is able to shift their  
23 commitment.

24 THE COURT: Okay.

25 MR. McCULLOUGH: I think that that would be an

1 appropriate inquiry of the juror and -- to allow them to  
2 evaluate whether they can change their plans.

3 THE COURT: And what I will do, then, if the  
4 parties agree, is have the courtroom deputy reach out to the  
5 juror like it's a scheduling issue, like any other  
6 scheduling issue, and say exactly what you're saying, which  
7 is: Look, it may be that that's the timing of things; do  
8 you have any ability to shift things around? And see what  
9 the response is.

10 Does anyone object to that? I mean, I think  
11 that's the only -- I mean, it is a thing. Had I thought  
12 about it today, we could have done it today, but there were  
13 a number of balls in the air today.

14 Does anyone object to that? I wouldn't be the one  
15 to do it. I would have the courtroom deputy do it tomorrow.

16 MS. HERNANDEZ: The only thing, as long as the  
17 juror understands that his decision one way or the other  
18 would not necessarily affect the Court's decision to keep  
19 him on. And I don't know if that needs to be said to him.  
20 But that's, I think, our position.

21 THE COURT: Well, can we -- I mean, can we  
22 definitively say that?

23 MS. HERNANDEZ: I would hope so. I think our  
24 position would be we've had a lot of delays, jurors not  
25 coming in -- you know, being sick, and we haven't dismissed

1       anybody.

2               Let me ask the Court -- maybe it will inform the  
3       Court's --

4               THE COURT: We did dismiss one person, which is --  
5       I had forgotten when I looked at the jury the other day.  
6       But right at the beginning.

7               MS. HERNANDEZ: This might inform this decision:  
8       My understanding of the state of the evidence is only  
9       this -- my investigator or -- I don't know whether  
10      Mr. Roots's expert -- that would be the end of the evidence  
11      on Tuesday.

12              And then, at that point, the Court would want a  
13      decision from the Defendants themselves whether they take  
14      the stand.

15              THE COURT: Right.

16              MS. HERNANDEZ: So what I want to know is the  
17      following: Let's say my client decides he wants to take the  
18      stand. Does he have to take the stand Tuesday or would he  
19      be taking the stand Wednesday? You know, what is the  
20      Court's -- that's what -- and maybe the Court needs time to  
21      consider what we're doing.

22              THE COURT: Mr. McCullough?

23              MR. McCULLOUGH: Your Honor, the Government's view  
24      is -- and this is -- this was Part 2 of what I was intending  
25      to raise -- is that the Government would like a

1 representation from the defense counsel as of Sunday evening  
2 as to whether Defendants still intend to testify.

3 And those -- that does not commit someone to  
4 testify, but rather just removes -- so for our planning  
5 purposes -- for our planning purposes, for the jury's  
6 planning purposes, for the Court's planning purposes, Sunday  
7 evening to give an indication as to who still effectively is  
8 in the hopper for potentially taking the stand.

9 THE COURT: I mean, I think that's -- all in all,  
10 that's a pretty reasonable request, because we -- again,  
11 you're not committing to do it. But if you know you're not  
12 going to, take yourself out of play because, again, that's a  
13 potentially -- talk about, you know, knowing -- being  
14 prepared for cross. That's --

15 MS. HERNANDEZ: Do you want to sleep one day this  
16 weekend?

17 THE COURT: Look, we all need to know. It's not  
18 just --

19 MS. HERNANDEZ: The only -- I guess the only  
20 wrinkle in that is that's a decision that the Defendant  
21 needs to -- you know, that's the one -- one of the few  
22 decisions that the Defendant has to make on the record, I  
23 think, pretty much.

24 THE COURT: Of course. And so I'm going to -- but  
25 I think -- I do need defense counsel to make that

1 representation to the Government, whether their Defendant is  
2 still in play to testify, yes or no, by Sunday evening.

3 MR. METCALF: Your Honor, can we ask for Monday  
4 morning, just because Sunday is Easter? And --

5 THE COURT: It is, and that stinks. But I don't  
6 know any other way around it, given our schedule here and  
7 given the amount of time they would need.

8 MR. METCALF: Well, that's why I was asking for  
9 Monday morning.

10 THE COURT: Right. And I just -- I can't give  
11 that to you. So you're going to have to have these  
12 discussions tomorrow and Saturday. I know that's an  
13 imposition. I don't love it. But I don't know any other  
14 way around it.

15 And again, it doesn't commit your client -- if, at  
16 the end of the day, he decides not to take the stand, fine.  
17 But I think they need a good-faith representation by that  
18 time.

19 MR. METCALF: I'm pretty firm on my decision. I  
20 just want to figure out how to go forward.

21 THE COURT: As Ms. Hernández pointed out, it's not  
22 your decision, actually. But go ahead.

23 MR. METCALF: I'm pretty firm on my ability to  
24 speak to my client and him already having made a decision.  
25 So I'm good with that. I just want to figure out



1 scheduling.

2 So can we circle back to, if Rehl does choose to  
3 take the stand, would that be on Wednesday?

4 THE COURT: Right. Or Tuesday. Tuesday or  
5 Wednesday.

6 MR. METCALF: Tuesday or Wednesday.

7 THE COURT: If we run out of -- it sounds like,  
8 with --

9 MS. HERNANDEZ: I think we expect to be running  
10 out of witnesses on Tuesday.

11 THE COURT: Well, does that include the MPD  
12 witnesses we've been talking about?

13 MS. HERNANDEZ: Oh, right.

14 MR. PATTIS: We're meeting with the Government  
15 tomorrow at 11:30 to interview the last person and we should  
16 be able to inform the Government over the weekend.

17 THE COURT: So here's what we're going to do:  
18 We're not going to have witness dead time. So you all know  
19 better than I do about -- you'll know tomorrow about what  
20 the status is with these other witnesses.

21 I am going to need the first -- you know, the  
22 first Defendant in -- the Defendants -- if we are done with  
23 the evidence, whenever that is, Tuesday or Wednesday, I'm  
24 going to turn to the Defendants and start having the  
25 colloquy about whether they're going to testify.

1 MR. PATTIS: Judge, I'll represent now Mr. Biggs  
2 is not testifying. And I've told that to the Government.

3 THE COURT: That is helpful for all of our  
4 planning purposes.

5 My point is I will -- once we are done and there's  
6 no more evidence, yes, I'll pivot -- whenever that is. If  
7 it's Tuesday -- again, you guys will be better positioned  
8 than me, it sounds like tomorrow, to know when exactly that  
9 will be. But when that is, yes, I'll pivot to your clients  
10 and start -- I'll start inquiring, and if they're going to  
11 testify, they're going to testify and we'll move forward.

12 Mr. Roots.

13 MR. ROOTS: Your Honor, I should let the Court  
14 know that I have previously committed to working with  
15 Attorney John Pierce in a trial, the Alberts trial, in front  
16 of Judge Cooper. That trial is scheduled to begin on the  
17 11th, which I believe is, what, next -- anyway --

18 THE COURT: That is Tuesday.

19 MR. ROOTS: Yeah. And I want to say, I've agreed  
20 with Mr. Pierce he will handle jury selection in that trial.

21 Anyway, but I am -- I never -- we've delayed that  
22 trial out and out and out several times, and I never thought  
23 we would get to the point where it is now overlapping and it  
24 really likely almost certainly will overlap. So as much as  
25 I -- it looks like I'm fighting to extend trial here, I want

1 the Court to know there may come a time when I might have to  
2 talk to Mr. Metcalf and Mr. Pezzola and your Honor about --  
3 I don't know -- maybe stepping out for whatever the closing  
4 arguments are.

5 THE COURT: Well, let's put it this way: This  
6 trial, especially given your client is represented by  
7 another attorney, is not going to yield to another trial  
8 that hasn't yet even begun. Of that much I am sure.

9 If there's something where your client and you and  
10 Mr. Metcalf are comfortable with you slipping out to be part  
11 of another proceeding, as we have in general, I guess I  
12 wouldn't object to that.

13 But we're not going to -- I mean, with all respect  
14 to Judge Cooper, God bless him, we're not going to -- I'm  
15 not going to schedule any part of this proceeding around  
16 another trial schedule.

17 So, you know, and it may be that even -- I mean,  
18 we've paused -- not paused. But I have let counsel -- I've  
19 excused counsel for other -- for a status, for things like  
20 that.

21 As far as trial goes, I don't know. I haven't had  
22 this come up. That's an entirely other matter. Again, you  
23 have -- he has -- Mr. Pezzola has another lawyer. So -- but  
24 whether you really want to be on the hook in two trials at  
25 the same time, I don't know. I haven't come across that.

1 And actually, I would have thought you might have mentioned  
2 it before the day before we're going to be in --

3 MR. ROOTS: I never thought this would happen.  
4 But it's obviously going to happen.

5 THE COURT: Mr. McCullough?

6 MR. McCULLOUGH: My understanding is that  
7 Mr. Roots appeared in Judge Cooper's courtroom this week and  
8 declared ready for trial for next week -- so -- and as far  
9 as I understand it, he did not identify this issue to Judge  
10 Cooper.

11 I may not be -- I don't have a transcript. I only  
12 get reports. But, your Honor, I am also flabbergasted at  
13 the idea this would be raised in this courtroom as a  
14 potential issue in this proceeding.

15 THE COURT: Well, in fairness to Mr. Roots, he  
16 didn't raise it as, "Judge, I'm going to need you to work  
17 around my trial." And if he had, I would have told him what  
18 I've already told you, and that is that I'm not going to do  
19 that.

20 So, you know, that's something -- if that's a  
21 conflict that you think is a problem, again, you need to  
22 raise that with Judge Cooper.

23 MR. ROOTS: By the way, Judge Cooper is well aware  
24 of my situation here.

25 THE COURT: Okay. Fair enough.

1                   We'll see you Tuesday at 9:00. Everyone have a  
2                   good long weekend.

3                   (Proceedings concluded.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

I, LISA EDWARDS, RDR, CRR, do hereby  
certify that the foregoing constitutes a true and accurate  
transcript of my stenographic notes, and is a full, true,  
and complete transcript of the proceedings produced to the  
best of my ability.

Dated this 6th day of April, 2023.

/s/ Lisa Edwards, RDR, CRR  
Official Court Reporter  
United States District Court for the  
District of Columbia  
333 Constitution Avenue, Northwest  
Washington, D.C. 20001  
(202) 354-3269