

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA CR Nos. 1:21-cr-00175-TJK-1  
1:21-cr-00175-TJK-2  
v. 1:21-cr-00175-TJK-3  
1:21-cr-00175-TJK-5  
1:21-cr-00175-TJK-6  
1-ETHAN NORDEAN  
2-JOSEPH R. BIGGS  
3-ZACHARY REHL Washington, D.C.  
5-ENRIQUE TARRIO Thursday, February 2, 2023  
6-DOMINIC J. PEZZOLA, 9:00 a.m.  
Defendants.  
- - - - - x

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TRANSCRIPT OF JURY TRIAL - DAY 25  
\*\*\* MORNING SESSION \*\*\*  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE DEPUTY CLERK: This is Criminal Matter 21-175, United States of America v. Defendant 1, Ethan Nordean; Defendant 2, Joseph R. Biggs; Defendant 3, Zachary Rehl; Defendant 5, Enrique Tarrío; and Defendant 6, Dominic J. Pezzola.

Present for the Government are Jason McCullough, Erik Kenerson, Conor Mulroe, and Nadia Moore; present for Defendant 1 is Nicholas Smith; present for Defendant 2 are John Hull and Norman Pattis; present for Defendant 3 is Carmen Hernandez; present for Defendant 5 are Nayib Hassan and Sabino Jauregui; present for Defendant 6 are Steven Metcalf and Roger Roots. Also present are Defendant 1, Mr. Nordean; Defendant 2, Mr. Biggs; Defendant 3, Mr. Rehl; Defendant 5, Mr. Tarrío; and Defendant 6, Mr. Pezzola.

THE COURT: All right. Good morning to everyone.

Just a few things -- preliminary things before we begin.

One, I looked at some of the case law -- following up on the request -- Mr. Pattis, your request to exclude Special Agent Camiliere from the courtroom, I did look at a bunch of cases. I do think that Rule 615 is a very strict rule and there is generally a pretty high bar in terms of showing that an agent is essential. I take the fact that this is a complex case, but the Government has, as I've been

1       able to see, at least two other agents present. And so  
2       until I get a greater -- I'm happy to receive either legal  
3       authority or more factual authority or factual -- a factual  
4       proffer on her -- on whether she is necessary for the  
5       Government to present its case. I have no doubt she would  
6       aid the Government, but I think, at this point, I -- based  
7       on what I know and my -- based on my review of the case law,  
8       I'm going to exclude her going forward. Again, I'm open to  
9       reconsidering that if the Government wants to give me  
10      authority or another proffer about her -- whether she has  
11      something unique that she adds, but at least for now, that's  
12      my ruling.

13               MR. MCCULLOUGH: And, Your Honor --

14               THE COURT: Is there a -- yeah. All right. Is  
15      there no microphone at that end of the prosecution table?

16               MR. MCCULLOUGH: One.

17               THE COURT: All right. Very well. Mr. -- you may  
18      approach the podium, then, if --

19               MR. MCCULLOUGH: Your Honor, understood. I'm not  
20      making further argument on it. I understand that she will  
21      be excluded from the courtroom. The prosecution team can  
22      continue to speak with her; is that correct?

23               THE COURT: I think that's correct. Yeah, I  
24      don't --

25               MR. MCCULLOUGH: I just wanted to make sure there

1 was no question that we -- outside the courtroom, that we  
2 could resume contact with her now that she's in -- not in  
3 the middle of testimony.

4 THE COURT: I don't think there's any -- the rule  
5 does not call for that.

6 MR. MCCULLOUGH: Correct.

7 MR. PATTIS: Judge, only because I'm new in this  
8 District and sequestration orders seem to differ by  
9 jurisdiction, is the Government permitted to talk to her  
10 about the testimony of other witnesses?

11 THE COURT: Well, they're not seeking to recall  
12 her. I don't think there's a -- and I understand you have  
13 reserved the possibility of doing so. I don't see why they  
14 wouldn't be able to do that. I know that's, I mean,  
15 somewhat counter to the purposes of the rule. What's your  
16 view, Mr. Pattis?

17 MR. PATTIS: To be candid, sir, I've seen it in so  
18 many permutations, I think it's within the discretion of the  
19 Court absent some bright red line law on it. I don't see  
20 bright red line law here. I think what I'll do, sir -- I  
21 misapprehended part of the Government's treatment of her and  
22 I need to speak to Mr. McCullough. We may be able to  
23 resolve this without further Court intervention.

24 THE COURT: Okay. We'll -- I'll let you two do  
25 that.

1           The second thing I wanted to raise really quickly  
2       is, in thinking about yesterday's testimony, there was a  
3       point where, on re- -- and, Ms. Hernandez, this is something  
4       you had objected to yesterday. The agent expressed -- now,  
5       look, this first came up on cross. It wasn't -- if the  
6       Government had asked a question that elicited this, I  
7       certainly would have sustained an objection. But the agent  
8       expressed her views on the conspiracy and the nature of the  
9       conspiracy. And, you know, I -- again, if that had come up  
10      on direct, the Government would not have elicited it, I  
11      would have sustained an objection to it. It came out on  
12      cross, and she started -- with regard to her notes and  
13      clarifying, No, no, no, the notes meant this and not that,  
14      and all the rest. And then, Ms. Hernandez, you objected on  
15      redirect to the Government just, sort of, further clarifying  
16      that. I think -- at the end of the day, I think we would  
17      all agree, the jury cannot consider her testimony -- her  
18      opinion as to the nature of the conspiracy, whether it  
19      existed, and if it existed, what its contours are. So I  
20      would -- so, you know, in retrospect, it's, sort of, a  
21      similar thing to, maybe, some of the other things that we  
22      dealt with yesterday where I think the parties should think  
23      about whether a limiting instruction is appropriate there --  
24      or not even a limiting instruction -- just an instruction to  
25      say, you know, You've seen -- you heard Special Agent

1 Camiliere express views about -- opinions about whether a  
2 conspiracy existed or the nature of that conspiracy. You  
3 should disregard those opinions and, you know, the question  
4 of whether a conspiracy existed or the nature of that  
5 conspiracy is something for you to decide based on the  
6 evidence and the law as I instruct you. Something along  
7 those lines.

8 I don't think, you know -- she also offered  
9 some -- I mean, the line that I've been trying to police is,  
10 sort of, a commonsense description of what's in the posts  
11 from, sort of, opinions and speculation about what was --  
12 about the meanings of the posts. I think, look, you know,  
13 to the extent she went up to that line, I thought the  
14 cross-examination, sort of, made it clear that, you know,  
15 some of the posts could be interpreted as exaggeration. You  
16 all, kind of, made a lot of hay with that. I don't think an  
17 instruction on whatever other opinions she might have  
18 offered really makes sense, because I think it was fairly  
19 blunted by the back-and-forth about, you know, how some  
20 people exaggerate and all the rest, but at least on the  
21 conspiracy issue, it strikes me that an instruction might be  
22 appropriate -- probably is appropriate.

23 So even though no side has asked for it, there was  
24 an objection -- and it -- again, it was originally elicited  
25 on cross. So I'd ask the parties to think about that and



1 I'll -- I'd be inclined to give some kind of limiting  
2 instruction on that because -- to refocus the jury on what  
3 they need to be focused on.

4 Anyone want to comment on that?

5 (Brief pause.)

6 All right. And the third -- all right. On that,  
7 Mr. McCullough?

8 MR. MCCULLOUGH: Yes, Your Honor.

9 THE COURT: All right.

10 MR. MCCULLOUGH: We'll -- I'll tell you what.  
11 We'll take it up with the parties and we'll --

12 THE COURT: All right. Very well.

13 All right. And the third thing, sort of, similar  
14 to that is I just want to make the point, you know, we  
15 have -- I mentioned this before when we had another search  
16 warrant witness in -- before us, you know? I think even in  
17 that witness, we got into a lot -- back and forth about what  
18 both sides, frankly -- I don't know whether it came up first  
19 on cross or not. But I'm going to police -- I mean, as far  
20 as I'm concerned, this is something that could have been  
21 stipulated to. I'm going to give the Government, you know,  
22 the opportunity to put -- to, you know, elicit from the  
23 witness, Look, what was recovered from the search warrant?  
24 And all the rest. I don't think it's appropriate to veer  
25 into -- and describe it and all the rest, but I don't think

1 it makes sense for either side to, sort of, be eliciting  
2 testimony about the, you know -- the -- draw -- opinion or  
3 speculation testimony about what the significance of it  
4 is -- of the evidence is and all the rest. You all are  
5 going to be able to argue that when we get to the closings  
6 in the case. I -- and so that's a line, I think, makes  
7 sense.

8 Mr. Pattis, you seem concerned by that.

9 MR. PATTIS: I do, because prior to the very first  
10 witness testifying in this case, I alerted the Court that we  
11 might object on grounds of speculation if the person went  
12 beyond their percipient observations. And, as I recall, the  
13 Court appreciated the heads-up -- the -- so that a speaking  
14 objection might make sense.

15 The law of the case now is such that percipient  
16 witnesses have been asked by both sides repeatedly about the  
17 meaning of observations. And the defense has objected in  
18 various ways, speculative on, you know -- expert, this,  
19 that, and the other thing, and the Court has permitted it.  
20 I am -- in my recollection. My concern is that the -- what  
21 the Court just -- and I'm trying not to make it sound  
22 personal. The Court has just indicated a -- what I might  
23 characterize as a renewed interest in policing this boundary  
24 10, 12 days into the evidence where the law of the case has  
25 gelled in such a way that percipient witnesses are offering

1 opinion testimony and the -- obviously, we had the issue  
2 that you just discussed with Special Agent Camiliere. I  
3 understand there's an outer limit there, but part of the  
4 defense and the law that we've relied on and come to rely on  
5 in the course of this trial is that there's going -- that  
6 both sides are going to be given some latitude to attack the  
7 evidence as either supportive or not of a conspiracy. So if  
8 the Court -- and I understand the law -- the case doctrine  
9 is discretionary and the Court can look at the evolution of  
10 a case and change its mind. I get all that, but I would ask  
11 the Court to be a tolerant and lenient policeman as he  
12 polices this.

13 THE COURT: I'll just say this. I think the --  
14 it's a different -- it seems to me a little bit of a  
15 different question. For example, witnesses -- when you say  
16 a percipient -- a witness who, let's say, was present on  
17 January 6th in whatever capacity, that witness, it seems to  
18 me, if -- they, based on their observations, can say, Well,  
19 it looked like X was happening or Y was happening. There, I  
20 can see more leeway, right, in terms of offering, you  
21 know -- Based on my observations about what this person and  
22 that person were doing, it looked like they were, you know,  
23 going to the aid of another person or they were -- no, it  
24 looked like to me like they were retreating. Whatever.  
25 That kind of jumping off is, I think -- has always been fair

1 game.

2 I do think what happened with, you know -- the  
3 fact that what ended up happening with Special Agent  
4 Camiliere -- again, it happened on cross in terms of, all of  
5 a sudden, we're stumbling into her talking about, Well, my  
6 opinion of a conspiracy is this. I -- it's -- my point is,  
7 I think, if anything, that just heightens the need for me to  
8 police that going forward so that we don't have testimony  
9 that we all agree is not, you know, ultimately, you know --  
10 is -- is not appropriate testimony. So I hear what you're  
11 saying, Mr. Pattis. And -- now, it's going to be witness by  
12 witness. I'm not going to -- but I think, for example, when  
13 we're talking about a search warrant witness, that's a  
14 very -- in my view, a very different thing.

15 MR. PATTIS: Briefly, sir.

16 THE COURT: Yes.

17 MR. PATTIS: To the degree that we have a right to  
18 challenge the integrity of the investigation, it seems to me  
19 that selections that were made during the search about  
20 what's evident of a crime may or may not be relevant and  
21 what the agent thought they were doing. So I offer that --  
22 if we are attacking in that vein, that may be the target  
23 we're shooting at, and I think that's a permissible target.

24 THE COURT: Sure. And if she -- I mean, she may  
25 well say, Look, we were just there to take what was on --

1 what was listed on the -- on the, you know -- the search  
2 warrant -- there's been no motion to suppress. So it -- she  
3 may say, I was there and I -- it was on the list of items to  
4 be seized and so we seized it.

5 I think you do get a little leeway. I take your  
6 point that you get to challenge the investigation, but I  
7 think, you know -- I think it behooves us all to color  
8 within the lines of appropriate testimony and, again -- I  
9 think, again -- I think what -- it's -- I'm not faulting  
10 anyone, but I think, at the end of the day, given that the  
11 testimony that was elicited on cross -- and, again, from  
12 Special Agent Camiliere where she ended up talking about her  
13 views of the conspiracy, you know, I -- I think that has  
14 impressed upon me the need to police this line for both  
15 sides.

16 Mr. McCullough?

17 MR. MCCULLOUGH: So Your Honor -- and I just want  
18 to be, kind of, crystal clear on this. The defense asked --  
19 and I know you understand this, but I just want -- I want --

20 THE COURT: I've said this 500 -- I've just said  
21 this a bunch of times right now, but go ahead.

22 MR. MCCULLOUGH: It's -- we didn't -- Your Honor,  
23 but just to be clear, we did not stumble into it. The  
24 defense said, effectively, You don't believe there was a  
25 conspiracy? That's what your notes say.

1 And that's how we end up there. And so, Your  
2 Honor -- I don't want to talk --

3 THE COURT: Go ahead.

4 MR. MCCULLOUGH: There is a -- so that's issue  
5 No. 1.

6 Issue No. 2, we've got seizing agents -- right? --  
7 which -- I mean, we're not doing a, you know, gun and drug  
8 case where we care about fingerprints and handling and all  
9 this other stuff. This is pro forma. We just would love to  
10 have had stipulations so we could dispense with this and we  
11 hear about, kind of, Gilligan's Island and all this other  
12 nonsense. Your Honor, seizing agent. They go on for 15  
13 minutes, cross is 7, and we move on. And, you know, we have  
14 seizing agents who have been traversing back and forth  
15 across the country sitting in the courthouse waiting to go  
16 on and we can't get them on because we have, you know,  
17 basically, a factor of 3X for every minute of testimony that  
18 we have for somebody like this.

19 So Your Honor, we are ready to -- to be clear, if  
20 we have the -- a seizing agent get on for one minute, we  
21 have three minutes of cross. So I just -- I want to get to  
22 the point where we can efficiently just, kind of, put this  
23 stuff in, move on. If -- but if we are -- and if we have to  
24 anticipate attacking the credibility of the investigation  
25 and why this coin was seized, we have to be able to do that

1 on direct. So if there's a proffer at this point from  
2 defense that -- like, Look, this stuff is just going to come  
3 in, let's move on; let's, kind of, handle this in the, kind  
4 of, pro forma way that is, kind of, befitting what we're  
5 talking about here, I'd love to do that.

6 MR. PATTIS: With all due respect to the  
7 Government, Judge, I just can't accept that representation  
8 as anything other than gamesmanship. We've got clients who  
9 have been detained --

10 THE COURT: All right. Mr. --

11 MR. PATTIS: -- for months, and the notion that  
12 we're supposed to stipulate away some percentage of their  
13 future liberty -- if the Government wants to talk about  
14 release from detention, we'll be happy to talk about  
15 stipulations, but don't come in here -- I mean,  
16 to suggest --

17 THE COURT: No, no, no, no, Mr. Pattis --

18 MR. PATTIS: -- to suggest --

19 THE COURT: -- address me. Address me --

20 MR. PATTIS: Yes, sir.

21 THE COURT: -- please, not the --

22 MR. PATTIS: But to suggest --

23 THE COURT: -- other -- Mr. Pattis --

24 MR. PATTIS: I am, sir.

25 THE COURT: -- address me and not the other --

1 MR. PATTIS: Yeah, you're right, and I'm sorry.

2 But to suggest that the defense is somehow at  
3 fault for putting up a vigorous defense of men who face  
4 potentially decades in prison and who have been deprived of  
5 their liberty awaiting trial and that somehow we're  
6 dilatory, it's just not well-taken. And I -- I'm happy to  
7 talk to the Government about ways to simplify the  
8 proceeding, but don't expect for a moment the defense to  
9 give an inch when the Government is seeking to take decades.  
10 It's just not going to happen.

11 THE COURT: All right.

12 MR. MCCULLOUGH: And --

13 THE COURT: And, Mr. McCullough, let me just --

14 MR. MCCULLOUGH: And --

15 THE COURT: -- say this. I'm going to police --  
16 all right. I -- if you need to get into -- let me put it  
17 this way. There's a little wiggle room, it seems to me, to  
18 challenge whatever they were doing in terms of the search,  
19 not the overall investigation. I'm going to police on your  
20 case. I don't want to hear about what the significance of  
21 anything was with this witness. They can just testify as to  
22 what they seized and that's it. If you -- and then I'm  
23 going to police on the other side. All right? The defense  
24 going into all sorts of things other than what was seized;  
25 what, you know -- what the conduct -- the conduct in



1       executing the search warrant; and the -- and, you know,  
2       reasonable things around -- in that vein. And if you think  
3       that I've let them do something that you need to, then,  
4       rebut on a redirect, we can talk about it, but I think  
5       that's -- particularly for a witness like this, that's the  
6       way we should proceed. That's how I plan on -- that -- this  
7       is why I brought it to your all attention right now,  
8       because, again, I think -- and I understand what happened  
9       with the other agent was the result of what happened on  
10      cross, but I think it will streamline things if I let you  
11      all know that I'm going to police this -- again, especially  
12      in situations where the person is not offering percipient  
13      witnesses of -- or testimony about what they saw on  
14      January 6th. I think their -- or any particular other, sort  
15      of, percipient witness where, I think, the scope is a little  
16      wider in terms of their being able to make conclusions about  
17      what other people were, you know, seeing and doing and all  
18      the rest.

19               MS. HERNANDEZ: (Indicating.)

20               MR. HULL: (Indicating.)

21               THE COURT: All right. Ms. Hernandez, I see you  
22      up first.

23               MS. HERNANDEZ: Thank you, Your Honor.

24               This is the witness -- the witness on the stand is  
25      a witness who seized items at Mr. Rehl's house. I don't --

1 from my point of view, I don't think there's going to be any  
2 of the line of questioning that has -- is being discussed  
3 now.

4 I do want to say one thing about -- and this isn't  
5 a challenge to what she selected. It's a challenge to the  
6 relevance. This has been made before. The relevance of  
7 these coins -- they're Proud Boy coins. I don't know that  
8 anybody here -- I don't know that the Government needs to  
9 establish that any of these defendants are Proud Boys or are  
10 not -- I don't think that's an issue in dispute. So to the  
11 extent we could streamline, I would like to streamline not  
12 introducing those coins. I'm making that argument. I think  
13 they're not relevant to anything. I don't believe, you  
14 know -- nobody is saying that they tossed them at people on  
15 January 6th or anything like that. So I would just say  
16 that.

17 Other than that, I don't expect to go other than  
18 some very basic questioning. And I hope my co-counsel do  
19 not open the door against my client to other stuff. But  
20 other than that, I'm fine.

21 THE COURT: I mean, you all are going to ask  
22 questions like, you know, Is it a crime to be a member of  
23 the -- right? Is it a crime to possess any of these things?  
24 Is it a crime -- I mean, the tricky part is, now, that does  
25 open at least the Government to explain, well, why, you

1 know -- what the evidence -- what the nature -- what, you  
2 know -- what is the reason for this? And I think that's the  
3 tricky part.

4 MS. HERNANDEZ: I do have another issue --

5 THE COURT: All right.

6 MR. MCCULLOUGH: I just think that's the issue  
7 that we're bumping up against, is if -- Your Honor, we'll  
8 take this as it comes, and we appreciate your comments. I  
9 appreciate Mr. Pattis's comments and respect them and  
10 respect that position. I think this is the tension; right?  
11 If that's what we're anticipating on the other end of it,  
12 then, unfortunately, we've got to do this on the front end,  
13 because that's the way that the case should come in. We  
14 shouldn't be, kind of, responding to -- this is our case in  
15 chief. If we have a basis to say this is why this stuff is  
16 important, because it's going to be attacked on cross, we  
17 should do it. I think -- we are going to take Your Honor's  
18 approach and direction here and try to apply it. I -- we'll  
19 see how it comes out.

20 THE COURT: Yes.

21 Mr. Hull?

22 MR. HULL: May I use the podium?

23 THE COURT: Yes, sir.

24 MR. HULL: Three quick things. It was going to be  
25 just two.

1 First of all, on the matter of stipulations,  
2 Government counsel has been very early-on and very  
3 charitable about coming to us with stipulations about  
4 documents, discussions about that. There has never been any  
5 discussions or offer to discuss anything about stipulations  
6 for seizing agents. And I just want to put that on the  
7 record.

8 The other two things -- one is not too important.  
9 The second thing, I think, is very important. I assumed  
10 that we're still under the regime that we're not going to be  
11 trying on Friday afternoons. I was able to move something  
12 in another January 6th case before one of your colleagues  
13 until, I guess, next week about 1:00 o'clock, and I don't  
14 want to have to move it again. I assume that we'll not be  
15 trying at least next week on the 10th in the afternoon --  
16 early afternoon, if that --

17 THE COURT: The afternoon of the 10th. Correct.  
18 Correct. We -- that's right.

19 MR. HULL: So we'll be knocking off around noon?

20 THE COURT: If we are sitting at all, it will only  
21 be in the morning.

22 MR. HULL: Okay. And the third thing is -- and my  
23 memory may be getting bad in my old age. I don't think it  
24 is. But I thought we were going to do admonitions to the  
25 jury -- or His Honor would -- at the end of every day, about

1 jury security, not talking to one another, not talking to  
2 family, and not, you know, referring to or getting on social  
3 media. And I think that's particularly important with this  
4 jury in this case in this city. We've talked about that  
5 before. I would like it daily, but if Your Honor could just  
6 do it at least at the end of every other day or, certainly,  
7 today before a long weekend, we would appreciate it.

8 THE COURT: All right. I'll take that under  
9 advisement.

10 MR. HASSAN: Judge, just to be clear, just for  
11 scheduling purposes, Mr. Hull talked about the 10th. The  
12 following week, it's my understanding that the Court  
13 suspended Friday; correct? Is that fair? Or -- the  
14 following -- I think that's Presidents' Day weekend, the  
15 17th. Or do we have court on that Friday?

16 THE COURT: As of right now, I'm hopeful we'll  
17 have at least a half day.

18 MR. HASSAN: Thank you, Judge.

19 THE COURT: All right.

20 MR. SMITH: And, Judge, I'm going to -- I know the  
21 Court wants to get going. So I just want to put a pin here  
22 and say that we have one housekeeping issue, but we'll take  
23 it up at the lunch break perhaps.

24 THE COURT: All right. Is that your instruction  
25 or something else?

1 MR. SMITH: It was a -- when Mr. Nordean raised an  
2 objection yesterday, I think, reviewing the record after, it  
3 looked like the Court might have been referring to one issue  
4 and we were referring to something else and we just wanted  
5 to clarify that, not reargue anything, but we can hold that  
6 for later -- for lunch.

7 Thank you, Judge.

8 THE COURT: Okay.

9 MS. HERNANDEZ: Your Honor, I've made this  
10 objection before, but what happened yesterday in court, I  
11 think, brings home the point. I want to object to the  
12 Government using these placards as exhibits. Just so the  
13 Court understands, when the Government uses those placards  
14 as exhibits, we cannot -- the defendants cannot see because  
15 they are facing the jury. And so -- and we -- and the  
16 defendants cannot move. And -- counsel can move, but you  
17 really don't want 10 lawyers moving. So I would ask the --  
18 and they -- and those placards aren't necessary because they  
19 actually have that exhibit on an electronic format so it can  
20 be brought up during the thing. And the reason it -- the  
21 home -- the point was brought home yesterday is also related  
22 to another argument that I have made. Mr. McCullough,  
23 during his cross-examination, got up, picked up the placard,  
24 brought it over, was, like, within inches of the jury,  
25 which, as I've told the Court, I think -- because, as you

1 can see, the placards are right next to the jury box.  
2 There's only a little bit of room between the jurors sitting  
3 on the ground and the jury box. And he picked them up and  
4 he, you know, used them in cross-examination. But -- I  
5 don't believe that proximity to the jury is appropriate, but  
6 more -- I -- so that's one issue. I don't believe the  
7 proximity to the jury is appropriate, particularly given  
8 that I'm in Siberia over here and never get to see the jury  
9 except once every a couple of weeks. And -- but the real  
10 crux of using those things is that we can't see what's  
11 happening and the defendants cannot see what's happening to  
12 the, you know -- if something is being pointed to or what  
13 the jury is looking -- and particularly with those exhibits,  
14 they have an electronic version that can be brought up and  
15 that all the jurors can see and we can see. So I would ask  
16 that those placards, in fact, be taken out of the -- they're  
17 leaning up against the jury box and the -- it's troublesome.

18 THE COURT: All right.

19 MS. HERNANDEZ: And I don't think it's  
20 appropriate.

21 THE COURT: I'd only ask the Government -- I think  
22 it's fine if they use the placards, but if you can bring --  
23 simultaneously also bring it up on the computer screen when  
24 you do use it so that counsel can see -- has a view of the  
25 placard, as well.

1 MR. MCCULLOUGH: Understood, Your Honor.

2 MS. HERNANDEZ: But I really -- and would -- will  
3 he be able to walk that close to the jurors and wave it  
4 around? I think that's inappropriate.

5 THE COURT: If either side wants to use a placard  
6 and put it on the screen with a witness or briefly hold it  
7 up in front of the jury, you may.

8 MR. ROOTS: (Indicating.)

9 THE COURT: Mr. Roots?

10 MR. ROOTS: Your Honor, Roger Roots for  
11 Mr. Pezzola.

12 Mr. Pezzola, and, I believe, all these  
13 co-defendants, are having continuing problems viewing their  
14 discovery at the Alexandria jail. We visited Mr. Pezzola  
15 last night. All these problems that you're aware of with  
16 the laptop, getting the hard drive over there, getting  
17 laptops -- it now is the case that these guys get one hour  
18 twice per week. And Mr. Pezzola is not very computer  
19 literate, frankly. So he needs help. He -- this is almost  
20 a total, you could say, violation of his ability to look at  
21 discovery. He still has not seen any. I would request that  
22 these guys be able to work together -- maybe this weekend  
23 would be a good time. It seems to me that, for example,  
24 some of them are computer literate. They could help  
25 Mr. Pezzola with computers and this kind of thing. If they



1 could work together for -- and work on their defense in the  
2 jail together.

3 THE COURT: All right. Have you raised this with  
4 the facility?

5 MR. ROOTS: We've raised the issue with the  
6 laptop, not the idea of allowing them to work together.

7 THE COURT: All right.

8 MR. SMITH: Your Honor, I apologize. I have  
9 raised that subject with the facility and it's -- the  
10 request has been denied.

11 THE COURT: All right. Let me -- I'll take it  
12 up -- look, I'll -- I'm only taking it up with the marshals,  
13 and they're the intermediary with the facility, but I'll  
14 take it up with them when we're done today and you'll at  
15 least have -- we know you will at least have -- again,  
16 unlimited amount of time if one of you can be there with  
17 your client. But the separate issue, I'll take up with them  
18 and see -- not unlimited, but unlimited during the hours  
19 they're available, that the facility is open.

20 All right.

21 MS. HERNANDEZ: Your Honor, with respect to the  
22 issues with the marshals, one of the options the Court had  
23 offered was that they could be brought to court on days like  
24 tomorrow, for example, as they did in the Oath Keepers case  
25 for one of the defendants. My understanding of the

1 marshals' position is that they can't bring all five  
2 defendants over as -- the Oath Keepers was different because  
3 they were bringing one. Here's what I'm proposing. I'm --  
4 I believe I'm the only defendant who is not using the same  
5 laptop -- the prohibition is that we can't use the same  
6 laptop here as we use at the -- I believe I'm the only  
7 defendant who's not using the laptop -- who's not mixing up  
8 laptops. So I have a laptop only for the courthouse. So  
9 in -- under those circumstances, I would -- if the Court is  
10 going to talk to the marshals, I would ask that Mr. Rehl be  
11 brought to the courthouse tomorrow.

12 THE COURT: Well, look, you have the marshals  
13 right there. If -- I mean, I -- during breaks and whatever,  
14 if you want to engage them, and then I'll see if that's  
15 possible. If --

16 MS. HERNANDEZ: Thank you.

17 THE COURT: If you don't have a situation where --  
18 I mean, that is the problem with the laptop, it --

19 MS. HERNANDEZ: Well, we all have the same  
20 situation. I just think if -- if I can bring him here for  
21 all day, that would be great.

22 THE COURT: All right. So see if that's possible.

23 All right. If there's nothing further, let's  
24 bring the witness in and the jury in.

25 MR. PATTIS: Judge, just -- Mr. Biggs wants to

1 join the Pezzola motion about working with the jail.

2 (Brief pause.)

3 (Elizabeth DeAngelo resumed the witness stand.)

4 (Brief pause.)

5 THE DEPUTY CLERK: Jury panel.

6 (Jury returned to jury box.)

7 THE COURT: Everyone may be seated.

8 Welcome back, ladies and gentlemen.

9 We'll continue with the Government's direct  
10 examination of this witness.

11 MS. MOORE: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. MOORE:

14 Q. Good morning.

15 A. Good morning.

16 Q. Before we left off yesterday, we were looking at some  
17 coins that you had seized?

18 A. Yes.

19 MS. MOORE: Ms. Harris, is the ELMO --

20 THE DEPUTY CLERK: ELMO.

21 BY MS. MOORE:

22 Q. So showing you Government's Exhibit-22C. What is this?

23 A. It's a black-and-gold-colored challenge coin.

24 Q. And what does it have on it?

25 A. It depicts the initials "PB" with a set of laurel leaves

1 surrounding it, and then it reads around the outside "I am a  
2 Western chauvinist who refuses to apologize for creating the  
3 modern world."

4 Q. And just looking at the reverse of the coin, what do we  
5 see?

6 A. It says "Oklahoma." It has the state depicted and then  
7 "Proud Boys" at the bottom.

8 MS. HERNANDEZ: Your Honor, objection to the  
9 introduction of the Proud Boy paraphernalia.

10 THE COURT: All right. Overruled.

11 BY MS. MOORE:

12 Q. Showing you Government's Exhibit-22D. What is this?

13 A. It's another challenge coin.

14 Q. And can you describe it.

15 A. Yes. It appears to be the White House, some fireworks  
16 above the building, some jets -- fighter jets flying in the  
17 sky. There's an individual on what appears to be a scooter,  
18 the year 2020 at the bottom, and then in small print, the  
19 initials "PB" with the laurel leaves surrounding it and then  
20 "Proud Boys" underneath of it.

21 Q. And looking at the reverse of the coin, what do we see?

22 A. It says "PB," the year 2020, the Capitol, "glorious  
23 basterds," and "Independence Day."

24 Q. Showing you Government's Exhibit-22E. What is this?

25 A. It's another challenge coin.

1 Q. And can you describe it.

2 A. It has the initials "WF" and then the numeric III.

3 Q. And then looking at the rear, can you describe it.

4 A. It has the set of laurel leaves with the year 2019. I'm  
5 having a difficult time seeing the lettering. It may be the  
6 glare on the packaging.

7 Q. I'll take it out of the plastic for you. Is that  
8 better?

9 A. Yes. It says "I am awaited, POYB, at West Fest."

10 MS. MOORE: May I approach the witness, Your  
11 Honor?

12 THE COURT: You may.

13 BY MS. MOORE:

14 Q. Looking at Government's Exhibit-92, have you had a  
15 chance to examine what's inside that packaging prior to  
16 today?

17 A. Yes.

18 Q. And can you give a brief description of it.

19 A. Yes. It is, I believe, two phones -- or one Apple  
20 iPhone and one blue phone.

21 Q. Can you open it up for us.

22 A. Yes.

23 Q. Looking just at the iPhone, is that the iPhone that was  
24 seized from Zachary Rehl's home on March 17th, 2021?

25 A. Yes.

1 MS. MOORE: Your Honor, I'd move to admit  
2 Government's Exhibit-92 into evidence.

3 THE COURT: All right. It will be admitted.

4 BY MS. MOORE:

5 Q. And if you could just display it for the jury.

6 A. (Indicating.)

7 MS. MOORE: Ms. Rhode, could you bring up  
8 Government's Exhibit-60, please; just for the witness.

9 BY MS. MOORE:

10 Q. Do you recognize this?

11 A. Yes.

12 Q. And what do you recognize it to be?

13 A. A bedroom in Mr. Rehl's residence that we searched.

14 Q. And is this a fair and accurate depiction of a portion  
15 of Mr. Rehl's house on the day that you searched it?

16 A. Yes.

17 Q. And some items that you seized?

18 A. Yes.

19 MS. MOORE: Your Honor, I'd move to admit  
20 Government's Exhibit-60 into evidence.

21 THE COURT: All right. It will be admitted, and  
22 permission to publish.

23 MS. MOORE: Thank you.

24 BY MS. MOORE:

25 Q. So looking at Government's Exhibit-60, did you seize

1 anything that we see in this photograph?

2 A. We, we did. We seized the two baseball caps that are  
3 sitting on the dresser.

4 Q. And can you describe them?

5 A. Yes. They're black baseball caps with gold embroidery.  
6 One cap has what appears to be laurel leaves printed on it.  
7 And the other cap has a flag with the initials "PB" and then  
8 laurel leaves surrounding that.

9 Q. And the -- just for the record, the hat with the "PB"  
10 and the flag is on the right?

11 A. Yes.

12 THE COURT: I'm sorry. I can hear you all, and we  
13 can't have -- I can't have the witness competing with those  
14 at counsel table.

15 You may proceed.

16 MS. MOORE: Thank you, Your Honor.

17 BY MS. MOORE:

18 Q. And besides participating in this search, did you have  
19 any role in the investigation of Zachary Rehl?

20 A. No.

21 MS. MOORE: Thank you. No further questions.

22 May I approach to retrieve the evidence?

23 THE COURT: You may.

24 THE WITNESS: (Indicating.)

25 MS. MOORE: Thank you.

1 THE WITNESS: You're welcome.

2 THE COURT: All right. Cross-examination by  
3 Mr. Nordean?

4 MR. SMITH: No questions, Your Honor. Thank you.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MR. HULL:

8 Q. Good morning, Special Agent DeAngelo.

9 A. Good morning.

10 Q. My name is Dan Hull. I only have a few questions for  
11 you.

12 A. Okay.

13 Q. I represent Joseph Biggs over there.

14 MR. HULL: Stand up, Joe.

15 BY MR. HULL:

16 Q. Along with Mr. Mr. Pattis. You said a couple of  
17 interesting things yesterday I just wanted to tie down with  
18 you.

19 A. Sure.

20 Q. First of all, you've been with the FBI for six years; is  
21 that right?

22 A. That's correct.

23 Q. Okay. And during those six years, you have been in a  
24 number of roles; correct?

25 A. Can you clarify your question?



1 Q. You've been a presenter or the face of the United States  
2 Government on a couple of occasions in connection with  
3 panels, conferences, that kind of thing?

4 A. Yes.

5 Q. Okay. Can you recall what those are?

6 A. I am currently assigned as the weapons of mass  
7 destruction coordinator for our office, so I have done a  
8 number of presentations for, you know -- in that role. I've  
9 also presented to groups of kids, for Girl and Boy Scouts,  
10 so I've done presentations in that role. So I've done a  
11 number of presentations.

12 Q. And could you keep your voice up a little bit?

13 A. I'm sorry. Sure.

14 Q. No, that's okay.

15 And how about with respect to fire safety?  
16 Haven't you been in conferences in connection with fire  
17 safety? That kind of thing?

18 A. Generally speaking, yes.

19 Q. And also, integrity to agriculture and animal life, as  
20 well?

21 A. Generally speaking, yes.

22 Q. Does that ring a bell? And your name was spelled a  
23 number of different ways in the papers that we received  
24 about you. Your last name is DeAngelo. And could you spell  
25 that and say where the spaces are, if there are.

1 A. Sure. It's D-E-capital-A-N-G-E-L-O. There are no  
2 spaces.

3 Q. Okay. Do you know anything about my client,  
4 Mr. Biggs's, background, anything at all?

5 A. No.

6 Q. Okay. Did you know before March 17th, 2021, anything  
7 about Mr. Rehl's background?

8 A. No.

9 Q. Do you have any conception of -- do you know how long  
10 Mr. Rehl has been incarcerated?

11 A. No.

12 MS. MOORE: Objection.

13 THE COURT: Sustained.

14 (Brief pause.)

15 BY MR. HULL:

16 Q. I think -- you said something interesting yesterday.  
17 You said that there were -- I think you said 9 to 11 agents  
18 in connection with the seizure and arrest of Mr. Rehl on  
19 March 17th, 2021; is that right?

20 A. There were between 9 and 11 personnel in total involved  
21 in the search warrant execution. I can't speak to how many  
22 were involved in the actual arrest.

23 Q. How many were actually present?

24 A. I don't -- I couldn't speculate. I'm not sure to be  
25 exact.

1 Q. Do you know -- does 11 sound to you about the right  
2 amount as opposed to 9? And were some of those -- and some  
3 of those people -- and this is one of my last questions --  
4 were they from a task force in connection with Homeland  
5 Security?

6 A. Yes.

7 MR. HULL: Thanks. That's all the questions I  
8 have.

9 THE WITNESS: Okay.

10 CROSS-EXAMINATION

11 BY MS. HERNANDEZ:

12 Q. Good morning, Special Agent.

13 A. Good morning.

14 Q. My name is Carmen Hernandez and I represent Mr. Rehl.

15 Did -- you were -- was Mr. Rehl in the house when  
16 you did the search?

17 THE COURT REPORTER: (Indicating.)

18 MS. HERNANDEZ: I'm sorry.

19 BY MS. HERNANDEZ:

20 Q. Was Mr. Rehl in the house when you did the search?

21 A. He was not.

22 Q. Is that because someone -- you were not the first team  
23 in the house? I'm -- I understood Mr. Rehl was home that  
24 day when the search took place.

25 A. Mr. Rehl was arrested that day. So he was taken to be

1 processed. He was not present during the search.

2 Q. Correct. But he was in the home when the search  
3 began -- when the officers arrived to do the search?

4 A. When our team arrived, he was home. Yes.

5 Q. But I -- but what you're saying is by the time you  
6 entered, he had already been arrested and taken out of the  
7 home; is that what you just indicated?

8 A. We entered and conducted a protective sweep and met with  
9 his wife, and he was present and being removed from the  
10 house during that time.

11 Q. Okay. So the question I'm asking is, did you -- you,  
12 personally -- see him that day?

13 A. Yes, I did.

14 Q. Okay. That's -- I thought you just said you hadn't. So  
15 you did see him.

16 You entered the house -- the team entered the  
17 house for the search and he was arrested?

18 A. Yes.

19 Q. Okay. And then after he was arrested and taken out of  
20 the home, you conducted the search?

21 A. Yes.

22 Q. His wife remained?

23 A. Yes, ma'am.

24 Q. And I'm going to show you a picture to -- if you could  
25 identify.

1 MS. HERNANDEZ: And this would be Rehl Exhibit  
2 No. 1, Your Honor.

3 Just for the witness.

4 BY MS. HERNANDEZ:

5 Q. Is that the -- is the person on that picture the lady  
6 you met as Mrs. Rehl?

7 A. I honestly didn't spend too much time with Mrs. Rehl.  
8 From what I recall, that appears to be what she looks like,  
9 but I didn't spend a lot of time looking at her that day.

10 MS. HERNANDEZ: Your Honor, I'd move to introduce  
11 the picture.

12 MS. MOORE: Object. Relevance. Foundation.

13 THE COURT: Overruled.

14 MS. HERNANDEZ: Thank you. And I'd ask to  
15 publish.

16 THE COURT: Permission to publish granted.

17 MS. HERNANDEZ: Thank you.

18 BY MS. HERNANDEZ:

19 Q. And I may have misread your report, but I thought you,  
20 in fact, had engaged Mrs. Rehl because she was pregnant at  
21 the time.

22 A. For a brief few minutes, that's correct.

23 Q. And did -- I understood that you offered her something  
24 to drink and offered her medical services if that became an  
25 issue?

1 MS. MOORE: Objection. Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: That's correct.

4 BY MS. HERNANDEZ:

5 Q. So you did have a little bit of contact with her?

6 A. A few minutes, yes.

7 Q. And, in fact, she was fine throughout the search.

8 Nothing -- no medical emergencies arose?

9 A. That's correct.

10 Q. Okay. And you searched the home, but you also searched  
11 a storage locker, am I correct?

12 A. That's correct.

13 Q. And Mrs. Rehl gave you the keys to that storage locker;  
14 is that correct?

15 A. That's correct.

16 MS. HERNANDEZ: Okay. And I just wanted to ask --  
17 could we have the jacket we used yesterday, please.

18 MS. MOORE: (Indicating).

19 MS. HERNANDEZ: Thank you.

20 May I approach, Your Honor?

21 THE COURT: You may.

22 (Brief pause.)

23 THE WITNESS: Sorry.

24 MS. HERNANDEZ: Sorry.

25 (Brief pause.)

1 THE WITNESS: Okay.

2 BY MS. HERNANDEZ:

3 Q. And just a question about the gloves. You do that so  
4 you don't contaminate the evidence?

5 A. Yes.

6 Q. Okay. Could you pull out the jacket, please.

7 A. (Indicating.)

8 Q. And this is a jacket you seized from Mr. Rehl's home?

9 A. Yes.

10 Q. And can you hold it up.

11 A. (Indicating.)

12 Q. Is it just, like, a rain jacket type thing?

13 A. Yes.

14 Q. Just a parka?

15 A. I would describe it as a rain jacket.

16 Q. Something ordinary that you could purchase at any number  
17 of retail stores?

18 A. I would say so.

19 Q. Okay. Thank you.

20 MS. HERNANDEZ: And may I have the --

21 THE COURT: Ms. Hernandez, what exhibit was that,  
22 just for the record?

23 MS. HERNANDEZ: It was Government Exhibit --

24 MS. MOORE: I think it's -- yeah, 21, Carmen.

25 MS. HERNANDEZ: Thank you. That was Government's

1 Exhibit-21, the black jacket. Thank you.

2 And could I have Government's Exhibit-22D, as  
3 in --

4 (Brief pause.)

5 And may I approach, Your Honor?

6 THE COURT: Yes, you may.

7 BY MS. HERNANDEZ:

8 Q. And I believe the one I've shown you is Government's  
9 Exhibit-22D, as in David. And you described --

10 MS. HERNANDEZ: Can you put it on the -- or I  
11 guess I have to put it on the screen. Never mind.

12 I'm going to take it back.

13 THE WITNESS: Would you like the jacket back, as  
14 well?

15 MS. HERNANDEZ: Sure.

16 THE WITNESS: (Indicating.)

17 MS. HERNANDEZ: And I believe this has been  
18 introduced.

19 BY MS. HERNANDEZ:

20 Q. So this is one of the coins you seized from Mr. Rehl's  
21 home; is that correct?

22 A. That's correct.

23 Q. And on this side, it says "glorious" -- appears to be a  
24 misspelling, but B-A-S-T-E-R-D-S, "Independence Day 2020";  
25 is that correct?



1 A. Yes.

2 Q. And do you know whether that "Independence Day" refers  
3 to July 4th?

4 A. I'm not sure what that refers to.

5 Q. So you have no understanding of what this refers to --

6 A. No.

7 Q. -- or relates to?

8 And then on the other side, there are -- there's  
9 the White House and fireworks and planes overhead; correct?

10 A. That's correct.

11 Q. Do you recall whether, in -- on July 4th, 2020, then  
12 President Trump had fireworks and planes flying over the  
13 White House?

14 A. I don't recall.

15 Q. Okay. So if I asked you whether that coin relates to  
16 the 4th of July 2020, you don't know one way or the other?

17 A. That's correct.

18 Q. And would your answer be the same as to the other coins,  
19 what they relate to?

20 A. Yes, I have no knowledge of what any of them relate to.

21 Q. Okay. You also -- and I don't need to bring it out.  
22 You also seized two phones, one of them being an iPhone?

23 A. Yes, that's correct.

24 Q. And those were Government's Exhibits

25 22-something-or-other?

1 MS. MOORE: The phone was 92.

2 BY MS. HERNANDEZ:

3 Q. Oh. The phones were 92. Those are just ordinary  
4 phones; correct?

5 A. That's correct.

6 Q. There's nothing out of the ordinary of those phones?

7 A. From outward appearances. I didn't search the phone, so  
8 I couldn't say if there's anything ordinary or not ordinary  
9 on the phone, but from outward appearances, they appear to  
10 be normal phones.

11 Q. And those phones, you, then, handed over to some  
12 evidence locker and eventually got to the prosecutors in  
13 this case --

14 A. Yes.

15 Q. -- if you know? Okay.

16 You also seized, I believe you said, two baseball  
17 caps?

18 A. That's correct.

19 Q. And that's Government's Exhibit-60?

20 MS. MOORE: (Indicates affirmatively.)

21 BY MS. HERNANDEZ:

22 Q. And those baseball caps, again, they're just baseball  
23 caps?

24 A. Generally speaking, yes.

25 Q. There was nothing out of the ordinary about those

1 baseball caps?

2 A. I wouldn't say so.

3 Q. They're just -- they have some particular logos or  
4 whatever is on it. But the inside of the cap is just like  
5 any other baseball cap?

6 A. Yes.

7 Q. And so -- you didn't recover a firearm from his home,  
8 did you?

9 A. No.

10 Q. Or from the locker?

11 A. No.

12 Q. And you searched on March 17th?

13 A. Yes.

14 Q. Was he ready to have a St. Patrick's Day party that day,  
15 do you know?

16 MS. MOORE: Objection.

17 THE COURT: Sustained.

18 BY MS. HERNANDEZ:

19 Q. Do you know whether there was any significance to doing  
20 the search that day as opposed to any other day?

21 A. No.

22 MS. HERNANDEZ: I believe that's it, Your Honor,  
23 but with the Court's indulgence, one moment.

24 (Brief pause.)

25 Thank you, Agent. I have no other questions.

1 I'm going to retrieve the coins, Your Honor.

2 Is there a --

3 MS. MOORE: No, some of them weren't in the --

4 MS. HERNANDEZ: Okay.

5 MS. MOORE: So you're fine, Carmen.

6 MS. HERNANDEZ: Thank you.

7 Thank you, Judge.

8 Thank you.

9 THE COURT: You may proceed, sir.

10 MR. HASSAN: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. HASSAN:

13 Q. Good morning, Agent.

14 A. Good morning.

15 Q. I represent Enrique Tarrío which is seated in the back  
16 of the courtroom. Have you ever met him?

17 A. No.

18 Q. Never had any exchange with him?

19 A. No.

20 Q. Today and yesterday, you were given some challenge coins  
21 to look at; correct?

22 A. That's correct.

23 Q. You've been in law enforcement how many years?

24 A. Six years, approximately.

25 Q. And during your tenure as -- being in law enforcement, I

1 would imagine you've seen challenge coins --

2 A. Yes.

3 Q. -- in the past?

4 And that's routinely shared and given between the  
5 law enforcement and military community; is that fair to say?

6 A. That's fair to say.

7 Q. Okay. And in giving these coins, it's basically just an  
8 exchange; correct?

9 A. They have different meanings to different people, but  
10 generally it's an exchange.

11 Q. So these challenge coins, as far as just obtaining them,  
12 they pretty much just resemble what's shown on the coin  
13 itself; correct?

14 A. I mean, a challenge could be -- challenge coin can be  
15 printed with a number of different images that have  
16 different meanings to different people.

17 Q. Okay. In regards to my client, you never had any  
18 conversations; correct?

19 A. That's correct.

20 Q. And you never met with him; correct?

21 A. That's correct.

22 Q. You were never given any obligations to meet with him;  
23 correct?

24 A. That's correct.

25 Q. And you never did anything in regards to any search or

1 any findings of Mr. Tarrio himself; correct?

2 A. That's correct.

3 MR. HASSAN: I have no further questions, Judge.

4 THE COURT: Counsel for Mr. Pezzola?

5 CROSS-EXAMINATION

6 BY MR. ROOTS:

7 Q. Hello, Special Agent. My name is Roger Roots and I  
8 represent Mr. Dominic Pezzola, a co-defendant. Have you  
9 ever met Mr. Pezzola?

10 A. No.

11 Q. So you're an FBI special agent?

12 A. That's correct.

13 Q. Are you a case agent in this case?

14 A. I am not a case agent in this case.

15 Q. You -- do you report to case agents in this case?

16 A. I don't report to case agents in this case.

17 Q. Are you aware of the case agents in this case?

18 A. Yes.

19 Q. How many case agents are in this case?

20 A. I couldn't say. At least one; possibly, two; possibly,  
21 more. I'm not sure.

22 Q. How many are in this room right now?

23 A. I couldn't say.

24 Q. Okay. I -- how long were you doing this search at  
25 Mr. Rehl's residence?

1 A. Approximately two-and-a-half to three hours at the  
2 residence.

3 Q. And the search warrant authorized you to search for  
4 memorabilia, things relating to the Proud Boys club?

5 A. That's correct.

6 Q. And you recovered a baseball cap and some coins and  
7 things?

8 A. That's correct.

9 Q. Were you looking for any Proud Boy books or -- of any  
10 kind?

11 A. Generally, that would have been included in the  
12 memorabilia associated with Proud Boys. So those things  
13 were searched for.

14 Q. So in the course of this investigation there at  
15 Mr. Rehl's residence, did you -- you looked at the books  
16 that were there in the house?

17 A. I did not personally look at any books.

18 Q. Did you recall or did -- do you -- did you recall seeing  
19 any book that, maybe, another agent had called The 48 Laws  
20 of Power?

21 A. I don't recall seeing that or hearing about that.

22 MR. ROOTS: Nothing further. Thank you.

23 MS. MOORE: Nothing further. Thank you.

24 THE COURT: All right. Agent, you may step down.

25 Thank you for your testimony.

1 THE WITNESS: Thank you.

2 (Witness steps down.)

3 THE COURT: The Government may call its next  
4 witness.

5 MS. MOORE: The United States calls FBI Special  
6 Agent Anne Borgertpoepping.

7 (Brief pause.)

8 **ANNE BORGERTPOEPPING, WITNESS FOR THE GOVERNMENT, SWORN**

9 THE COURT: You may proceed.

10 MS. MOORE: Thank you.

11 DIRECT EXAMINATION

12 BY MS. MOORE:

13 Q. Good morning.

14 A. Good morning.

15 Q. Could you please introduce yourself to the jury by  
16 stating and spelling your last name.

17 A. Anne Borgertpoepping, B-O-R-G-E-R-T-P-O-E-P-P-I-N-G.

18 Q. And then -- I know it's a little awkward. If you can  
19 just, I guess, bring the microphone a little closer so we  
20 can all hear you.

21 What's your educational background?

22 A. I have a bachelor's in psychology and a master's in  
23 clinical exercise physiology.

24 Q. And what did you do after school?

25 A. I worked for an insurance agency and then I worked in



1 cardiac rehab at a hospital.

2 Q. And what does that mean?

3 A. I helped to rehabilitate patients after open-heart  
4 surgery, heart transplants, diagnosis of heart failure,  
5 things like that.

6 Q. And are you currently employed?

7 A. Yes.

8 Q. By whom?

9 A. The FBI.

10 Q. Is that also known as the Federal Bureau of  
11 Investigation?

12 A. Yes, it is.

13 Q. And what's your title there?

14 A. Special agent.

15 Q. And when did you join the FBI?

16 A. Over two years ago.

17 Q. Do you work in a particular office?

18 A. I do.

19 Q. And what is that?

20 A. The Seattle Field Office.

21 Q. And what are your duties and responsibilities as a  
22 special agent with the FBI?

23 A. I help to investigate violations of federal law.

24 Q. Are you familiar with the FBI's procedures on conducting  
25 searches and seizing evidence?

1 A. I am.

2 Q. And have you received training on that?

3 A. Yes.

4 Q. Are you familiar with the process of obtaining a search  
5 warrant?

6 A. Yes.

7 Q. Can you tell us about that?

8 A. Yes. So initially, an investigation is opened which  
9 allows investigators to use various methods to obtain  
10 evidence regarding a criminal violation. Once investigators  
11 believe they have enough evidence to support a search  
12 warrant, the -- one of the investigators will write an  
13 affidavit or probable cause statement which essentially lays  
14 out the pertinent information and evidence up to that point  
15 in the case. The affidavit is, then, submitted to the  
16 prosecutor's office and presented to a judge. Upon review  
17 and approval of the affidavit by the judge, a search warrant  
18 is issued.

19 Q. And when a search warrant is issued, what can the FBI  
20 seize?

21 A. Items that are listed in the attachments of the warrant.

22 Q. And are there procedures related to securing and seizing  
23 evidence?

24 A. Yes, there are.

25 Q. How about documenting and photographing?

1 A. Yes.

2 Q. And can you describe that a little bit for us.

3 A. We take photographs of the search site. Evidence items  
4 that we plan on taking or others that we see are pertinent,  
5 we document in a collected-item log, and we also provide a  
6 receipt.

7 Q. Were you involved in an investigation of an individual  
8 named Ethan Nordean?

9 A. Yes.

10 Q. And during the course of that investigation, did the FBI  
11 obtain a search warrant to search his house?

12 A. Yes.

13 Q. And were you involved in that search?

14 A. Yes.

15 Q. Was that executed on February 3rd, 2021?

16 A. Yes, it was.

17 Q. And without providing the exact address, can you just  
18 give us a little bit of a description of that location.

19 A. It was a single-story home in Auburn, Washington.

20 Q. And approximately how many agents or personnel were  
21 involved in that search?

22 A. Approximately 12.

23 Q. And is that a typical number to execute a search of this  
24 type in your squad?

25 A. Yes, it is.

1 Q. Were you present when the FBI initially gained access to  
2 the home?

3 A. I was not.

4 Q. And -- but did you at some point later, then, access the  
5 home?

6 A. Yes.

7 Q. Was anyone present at the time?

8 A. Yes.

9 Q. Before -- and who was that? Sorry.

10 A. Ethan Nordean's wife, Cory Nordean.

11 Q. Before conducting the search, did you familiarize  
12 yourself with the items listed in the warrant form that you  
13 mentioned you would be able to seize?

14 A. Yes.

15 Q. And generally speaking, what kinds of things were you  
16 authorized to take?

17 A. Some of the items included devices that could contain  
18 photos, communications, documents, notes, or other evidence  
19 of Ethan Nordean's actions on January 6th, including his  
20 intent leading up to January 6th to unlawfully enter the  
21 Capitol building and obstruct official proceedings, clothing  
22 that Ethan Nordean was wearing on January 6th during the  
23 breach of the Capitol, items that showed his association or  
24 affiliation to the Proud Boys, travel documents, things like  
25 that.

1 Q. And were items seized from Mr. Nordean's home pursuant  
2 to that warrant?

3 A. Yes.

4 Q. Have you had a chance to review the items that have been  
5 marked as Government's Exhibits 11 through 20 and 91?

6 A. Yes, I have.

7 Q. And did you have the opportunity to opening [sic] the  
8 packaging and inspect the actual items?

9 A. Yes.

10 Q. And did you identify any evidence of tampering with  
11 those?

12 A. No.

13 MS. MOORE: All right. Your Honor, may I approach  
14 the witness?

15 THE COURT: You may.

16 BY MS. MOORE:

17 Q. So showing you Government's Exhibit-11, have you had the  
18 chance prior to today to inspect what's inside that package?

19 A. Yes.

20 Q. And can you give us a brief description of it.

21 A. It's a card that says, Seattle Proud Boys.

22 Q. And is that a card that was seized from Ethan Nordean's  
23 home during the --

24 A. Yeah.

25 Q. -- search?

1 A. Yes, it was.

2 MS. MOORE: Your Honor, I'd move to admit  
3 Government's Exhibit-11 into evidence.

4 THE COURT: All right. It will be admitted, and  
5 permission to publish.

6 MS. MOORE: May I approach the witness?

7 THE COURT: Yes.

8 MS. MOORE: Ms. Harris, could we have the ELMO,  
9 please. Thank you.

10 BY MS. MOORE:

11 Q. So looking at Government's Exhibit-11, could you just  
12 describe what we're seeing?

13 A. Yes. It's a card that says "Seattle Proud Boys" with a  
14 rooster that has "PB" on the shoulder, and then that is the  
15 Seattle skyline in the background.

16 Q. And looking at the back of the coin, could you please  
17 read that for us.

18 A. Yes.

19 We are proud Western chauvinists who refuse to  
20 apologize for creating the modern world.

21 The Proud Boys in [sic] an international  
22 men's-only fraternity. We hold that the West is the best.  
23 We support individual freedom, small government,  
24 representative democracy, patriotism, a constitutional  
25 republic, free markets, are pro-free speech, and pro-2A.

1           We welcome members of any race, religion, and  
2           sexual preference. We are a brotherhood of men who drink,  
3           laugh, talk politics, and support one another.

4           Uhuru.

5           MS. MOORE: May I approach the witness, Your  
6           Honor?

7           THE COURT: You may.

8           BY MS. MOORE:

9           Q. So showing you Government's Exhibit-12, have you had a  
10          chance to examine what's inside this package prior to today?

11          A. Yes.

12          Q. And, I guess, can you open it up and just give us a  
13          brief description of what it is.

14          A. It's a hat with a plastic insert and it has two pins on  
15          it. One of the pins is a rooster with a "PB" underneath it;  
16          and the other one says "FAFO."

17          Q. Was this a hat that was seized from Ethan Nordean's home  
18          on February 3rd, 2021?

19          A. Yes.

20          MS. MOORE: Your Honor, I'd move to admit  
21          Government's Exhibit-12 into evidence.

22          THE COURT: It will be admitted, and permission to  
23          publish.

24          MS. MOORE: Thank you. May I approach the  
25          witness?

1 THE COURT: You may.

2 BY MS. MOORE:

3 Q. So looking at this hat -- I think you described it for  
4 us a little bit. You said there's two pins on the hat?

5 A. Yes.

6 Q. Can you describe the pin on the left?

7 A. Yes. It says, FAFO.

8 Q. And are you aware of what that stands for?

9 A. Yes.

10 Q. And what is that?

11 A. Fuck around and find out.

12 Q. And -- sorry. There's a little bit of a glare. But how  
13 about the pin on the right?

14 A. Yes, it was a rooster with PB underneath.

15 Q. And where on the hat is the rooster pin located?

16 A. On the right side of the hat looking at it over a yellow  
17 laurel design.

18 Q. And is there something inside the hat?

19 A. Yes, there's a plastic insert of some kind.

20 Q. Is that the plastic insert?

21 A. Yes.

22 MS. MOORE: May I approach the witness?

23 THE COURT: You may.

24 MS. MOORE: Thank you.

25 BY MS. MOORE:



1 Q. Showing you Government's Exhibit-13. Have you had the  
2 chance to examine what's inside this package prior to today?

3 A. Yes.

4 Q. And could you open it up and, without showing it to the  
5 jury, just give us a brief description of what it is?

6 A. Yes.

7 (Brief pause.)

8 It's a black-and-yellow neck gaiter.

9 Q. That was seized from Ethan Nordean?

10 A. Yes.

11 MS. MOORE: Your Honor, I would move to admit  
12 Government's Exhibit-13 into evidence.

13 THE COURT: All right. It will be admitted, and  
14 permission to publish.

15 BY MS. MOORE:

16 Q. Could you display the gaiter for the jury.

17 A. (Indicating.)

18 Q. Thank you.

19 MS. MOORE: May I approach the witness?

20 THE COURT: Yes, you may.

21 BY MS. MOORE:

22 Q. So showing you Government's Exhibit-14. Have you had  
23 the chance to examine what's inside this package prior to  
24 today?

25 A. Yes.

1 Q. And could you open it up and then just give us a brief  
2 description?

3 A. Yes.

4 (Brief pause.)

5 Black sunglasses and a black case.

6 Q. That was seized from Ethan Nordean's home?

7 A. Yes.

8 MS. MOORE: Your Honor, I'd move to admit  
9 Government's Exhibit-14 into evidence.

10 THE COURT: All right. It will be admitted, and  
11 permission to publish.

12 BY MS. MOORE:

13 Q. Can you display the sunglasses for the jury?

14 A. (Indicating.)

15 Q. Thank you.

16 MS. MOORE: May I approach?

17 THE COURT: You may.

18 BY MS. MOORE:

19 Q. So showing you Government's Exhibit-15, Special Agent.  
20 Have you had the chance to examine this prior to today?

21 A. Yes.

22 Q. And could you open it up and give us a brief description  
23 of it.

24 A. Yes.

25 (Brief pause.)

1                   It's a patch that says "Proud Boys" with a yellow  
2                   laurel.

3           Q.   Was that seized from Ethan Nordean's home?

4           A.   Yes.

5                   MS. MOORE:   Your Honor, I'd move to admit  
6                   Government's Exhibit-15 into evidence.

7                   THE COURT:   All right.   It will be admitted, and  
8                   permission to publish.

9                   MS. MOORE:   May I approach the witness?

10                  THE COURT:   You may.

11           BY MS. MOORE:

12           Q.   So looking at Government's Exhibit-15, can you just  
13           describe what we're seeing.

14           A.   A black-and-yellow patch with the words "Proud Boys" and  
15           the yellow laurel.

16                   MS. MOORE:   May I approach the witness?

17                  THE COURT:   You may.

18           BY MS. MOORE:

19           Q.   Showing you Government's Exhibit-16, have you had the  
20           chance to review this prior to today?

21           A.   Yes.

22           Q.   And can you open it up and give us a brief description  
23           of what it is.

24                   (Brief pause.)

25           A.   It's a black vest with some sort of soft armor in the

1 back.

2 Q. Was that seized from Ethan Nordean's home?

3 A. Sorry. What?

4 Q. Sorry. Was that seized from Ethan Nordean's home?

5 A. Yes.

6 MS. MOORE: Your Honor, I'd move to admit  
7 Government's Exhibit-16 into evidence.

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

10 BY MS. MOORE:

11 Q. Can you show it to the jury and just describe what it  
12 is.

13 A. It's a vest. This is the front. It's Velcro'd in the  
14 front, and then there's an insert in the back here.

15 Q. Sorry. If you could just use the microphone. I'm  
16 sorry.

17 A. It's a vest. This is the front where it Velcros, and  
18 then there's also something inserted into the back here.

19 Q. And what kind of insert is that?

20 A. Soft armor.

21 MS. MOORE: May I approach the witness, Your  
22 Honor?

23 THE COURT: You may.

24 BY MS. MOORE:

25 Q. So I'm showing you Government's Exhibits 17 and then 17A

1 through E. Have you had the chance to review this prior to  
2 today?

3 A. Yes.

4 Q. And could you open it up and give us a brief description  
5 of what it is.

6 (Brief pause.)

7 A. It's a binder that has a yellow-and-black cover with the  
8 rooster and it says "Proud Boys, the West is the best."  
9 Inside it is a Seattle Proud Boys card and Proud Boys  
10 coin -- challenge coins.

11 Q. Was this seized from Ethan Nordean's home?

12 A. Yes.

13 MS. MOORE: Your Honor, I'd move to admit  
14 Government's Exhibits 17 and 17A through E into evidence.

15 THE COURT: All right. They will be admitted, and  
16 permission to publish.

17 MS. MOORE: May I approach the witness?

18 THE COURT: You may.

19 BY MS. MOORE:

20 Q. So looking at Government's Exhibit-17, can you describe  
21 what the -- what's on the cover.

22 A. Yes. It's a yellow insert with a black rooster with  
23 black stars around it, a Proud Boys banner logo. It says  
24 "the West is the best" underneath that.

25 Q. And then just looking at the bottom right, what does it

1 say there?

2 A. Rufio Panman.

3 Q. And opening it up, was this coin in the front of  
4 Exhibit-17?

5 A. The card, yes.

6 Q. Yeah, card. Sorry.

7 And was this the same coin that we -- or card that  
8 we saw before?

9 A. Yes, similar.

10 Q. Looking at Government's Exhibit-17A, can you describe  
11 what this is.

12 A. It's a challenge coin that says "Western warrior" on the  
13 top, "4th degree" in the middle, with four red shapes that  
14 look like people and a black shape in the middle that looks  
15 like it's wearing a polo of some kind. On the bottom, it  
16 says "fornt line every time."

17 Q. And then looking at the back of the coin, can you  
18 describe this.

19 A. It has "PB" in the middle with the laurel symbol around  
20 it. It says, Western chauvinist who refuses to apologize  
21 for creating the modern world -- I am a Western  
22 chauvinist --

23 (Brief pause.)

24 Q. Looking at 17B, can you describe this coin.

25 A. Yes. It's a skeleton holding -- a pirate skeleton

1 holding two firearms. It says "Proud Boys" at the top,  
2 "trigger city" at the bottom of the skeleton, and "Florida  
3 chapter," and then it has the similar laurel symbolism  
4 around it.

5 Q. And looking at the back, can you describe the coin.

6 A. "PB" in the middle; the laurel symbol; and around it, it  
7 says "I am a Western chauvinist who refuses to apologize for  
8 creating the modern world."

9 Q. Looking at 17C, can you describe this coin.

10 A. It's a Proud Boy -- it says "Proud Boys" at the top,  
11 "Arizona" at the bottom, a skull with a hat in the middle  
12 with two firearms on the sides.

13 Q. And how about the back of the coin?

14 A. It says "PB" with a star in red and yellow behind it,  
15 the laurel design again, and says "I am a Western chauvinist  
16 who refuses to apologize for creating the modern world."

17 Q. Looking at Government's Exhibit-17D, can you describe  
18 this coin.

19 A. It has a rooster in the middle with "PB" on the  
20 shoulder, a similar laurel pattern, and it says "the chapter  
21 of legends" at the top, "2020" on the left side, and  
22 "Seattle" on the bottom.

23 Q. How does that chicken compare to the chicken we saw on  
24 the cards?

25 A. It's the same.

1 Q. And looking at the back of the coin, can you describe  
2 it.

3 A. Yes. It says "PB" in the middle with a similar laurel  
4 design around it, and I can't read the outside of it.

5 MS. MOORE: May I approach the witness?

6 THE COURT: You may.

7 BY MS. MOORE:

8 Q. (Indicating.)

9 A. It says around it "I am a Western chauvinist and I  
10 refuse to apologize for creating the modern world."

11 Q. And looking at Government's Exhibit-17E, can you  
12 describe this coin.

13 A. It says "West Fest 4" in the middle.

14 Q. And how about on the back?

15 A. "PB" in the middle with the laurel design around it.  
16 And it says "I am a Western chauvinist who refuses to  
17 apologize for creating the modern world."

18 MS. MOORE: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. MOORE:

21 Q. Showing you Government's Exhibits 18 and 19, can you --  
22 have you seen this before?

23 A. Yes.

24 Q. And can you open it up and give us a brief description  
25 of what's inside.



1 A. Yes.

2 (Brief pause.)

3 Two black-and-yellow polo shirts.

4 Q. And were those seized from Ethan Nordean's home?

5 A. Yes.

6 MS. MOORE: Your Honor, I'd move to admit  
7 Government's Exhibits 18 and 19 into evidence.

8 THE COURT: All right. They will be admitted, and  
9 permission to publish.

10 MS. MOORE: Thank you.

11 BY MS. MOORE:

12 Q. So looking at that first shirt, can you hold it up for  
13 the jury and describe what we're seeing.

14 A. A black-and-yellow polo. On the left side it says  
15 "Washington" with a yellow laurel symbol underneath it.

16 Q. And how about the other polo shirt?

17 A. Also a black-and-yellow polo. This one has that rooster  
18 symbol on it with the "PB" on the shoulder.

19 MS. MOORE: May I approach the witness, Your  
20 Honor?

21 THE COURT: You may.

22 BY MS. MOORE:

23 Q. So showing you Government's Exhibit-20, have you had the  
24 chance to examine this prior to today?

25 A. Yes.

1 Q. And can you open it and give us a brief description of  
2 what it is.

3 (Brief pause.)

4 A. It's a black T-shirt with "Rebel" on the front and a  
5 skull and "RL" on the right sleeve, "Rufio" with stars on  
6 the left sleeve.

7 Q. Was that seized from Ethan Nordean's home?

8 A. Yes.

9 MS. MOORE: Your Honor, I'd move to admit  
10 Government's Exhibit-20 into evidence.

11 THE COURT: All right. It will be admitted, and  
12 permission to publish.

13 BY MS. MOORE:

14 Q. So could you hold up the shirt and describe what we're  
15 seeing.

16 A. A black T-shirt, the word "Rebel" on it over a skull  
17 with two axes. On the right sleeve is an "RL," and on the  
18 left sleeve is "Rufio" with stars around it.

19 Q. You mentioned previously that only Nordean's wife was  
20 home during the search. Was the FBI in telephonic contact  
21 with Ethan Nordean that morning while you were searching the  
22 home?

23 A. Yes.

24 Q. And, at some point, did he come home?

25 A. Yes.

1 Q. How did he arrive home?

2 A. He arrived home in a white car.

3 Q. In addition to having a search warrant, did you also  
4 have an arrest warrant for him that day?

5 A. Yes, we did.

6 Q. And when he arrived home, was he placed under arrest?

7 A. Yes.

8 Q. Was anything visible in the car from the outside that he  
9 had driven up in?

10 A. Yes.

11 Q. And had the FBI spoken with Nordean by phone that  
12 morning?

13 A. Yes.

14 Q. And was the phone an item you were authorized to seize  
15 pursuant to the warrant?

16 A. Yes.

17 Q. And was that phone seized?

18 A. Yes.

19 MS. MOORE: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MS. MOORE:

22 Q. Showing you Government's Exhibit-91. Have you had the  
23 chance to examine what's inside this before?

24 A. Yes.

25 Q. And can you open it up and just give us a brief

1 description of it?

2 A. Yes.

3 (Brief pause.)

4 It's a black phone with a black case with an  
5 American flag.

6 Q. Was that seized from Ethan Nordean?

7 A. Yes.

8 MS. MOORE: Your Honor, I'd move to admit  
9 Government's Exhibit-91 into evidence.

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

12 BY MS. MOORE:

13 Q. Can you just show it briefly to the jury?

14 A. Yes. Black phone (indicating). Black case with the  
15 American flag on the back (indicating).

16 Q. Thank you.

17 And other than participating in this search, were  
18 you substantively involved in this investigation at all?

19 A. No.

20 MS. MOORE: Thank you. No further questions.

21 THE COURT: Counsel, I've got a request to take  
22 our break, maybe, five minutes early for the court reporter.  
23 So we'll take a 10-minute break and we'll continue at that  
24 time.

25 (Jury returned to jury room.)

1 MS. MOORE: Your Honor, may I have just --  
2 permission, while we're on break, just to retrieve all the  
3 evidence?

4 THE COURT: Yes, you may.

5 All right. You all may be seated. And we'll be  
6 in recess for 10 minutes.

7 THE DEPUTY CLERK: All rise. This Honorable Court  
8 stands in recess for 10 minutes.

9 (Brief recess taken.)

10 THE DEPUTY CLERK: We are back on the record in  
11 Criminal Matter 21-175, United States of America v. Ethan  
12 Nordean, et al.

13 THE COURT: All right. Ms. Harris, if you would  
14 retrieve the jury.

15 And we can bring the witness back. Is there  
16 something, Mr. McCullough, you wanted to address now?

17 MR. MCCULLOUGH: Just -- it's just a -- logistics,  
18 just very quickly. So Your Honor, our next witness is en  
19 route. We're, obviously, proceeding apace a little faster  
20 than we anticipated, which we think is great, but our next  
21 witness is in en route at the moment. So I just wanted to  
22 let Your Honor know that our next witness, we anticipate  
23 would be here at noon. She may be here a little bit before  
24 then. So it's very possible we have some slack time. I  
25 just didn't want to have that confusion in front of the

1 jury. So if we're in advance of noon, if you would just ask  
2 the Government whether its next witness is --

3 MR. SMITH: Your Honor, I can tell you right now  
4 that -- I mean, we won't be more than 10 minutes, probably.  
5 So --

6 THE COURT: All right. We'll address it when it  
7 comes. I mean, get your witness here. All right.

8 (Brief pause.)

9 THE DEPUTY CLERK: Jury panel.

10 (Jury returned to jury box.)

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

12 And we'll begin with counsel for Mr. Nordean's  
13 cross-examination.

14 MR. SMITH: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Good morning, Agent Borgertpoepping; is that right?

18 A. Good morning. Yes.

19 Q. I'm Nick Smith. I'm the lawyer for Ethan Nordean, and  
20 I'm going to ask you a few brief questions about the search  
21 that you testified about.

22 And, by the way, we appreciate the professionalism  
23 of the neutral reading of the text that you gave rather than  
24 adding a dramatic flourish. So -- sincerely.

25 So you are familiar with the February 3rd search

1 of Mr. Nordean's home; right?

2 A. Yes.

3 Q. Okay. And you testified that you were not there  
4 initially when some of the searching agents entered the home  
5 but that you arrived later; is that right?

6 A. Yes. It wasn't the searching agents that were first  
7 there, though.

8 Q. Who was first there?

9 A. The arrest team.

10 Q. And is the arrest team part of the 12 agents that you  
11 referenced on direct or is that something different?

12 A. That's different.

13 Q. Can you explain what the size and composition of the  
14 arrest team was.

15 A. It's a separate team called the SWAT team, which is the  
16 special weapons and tactics team, and they perform high-risk  
17 arrests.

18 Q. I don't recall you testifying about that on direct -- or  
19 did you testify about the SWAT team?

20 A. No, the search, but you asked who --

21 Q. Oh, okay.

22 A. -- what the -- so that was them.

23 Q. So how many -- do you know how many members were in the  
24 SWAT team?

25 A. No. They have a separate team leader and everything.

1 Q. Okay. Are they part of the FBI?

2 A. Yes.

3 Q. Do they work out of the same field office as you?

4 A. Yes.

5 Q. And did you coordinate with the SWAT team in determining  
6 when you would arrive at the residence?

7 A. I personally did not, but they did with someone on the  
8 search team.

9 Q. And were you coordinating with that individual on the  
10 search team?

11 A. The search team was all in one location, and so the  
12 coordination between the individuals of the SWAT team and  
13 the person on our team let us know when we could go over.

14 Q. Okay. And so you testified, I think, that Mr. Nordean  
15 wasn't present when the SWAT team arrived; right?

16 A. Yes.

17 Q. Okay. And how many -- so you said you don't recall  
18 how -- roughly how many agents were in the SWAT team?

19 A. I do not know.

20 Q. Would you say it was over a dozen or --

21 A. I do not know.

22 Q. Okay. You do know what firearms the SWAT team typically  
23 uses out of your field office; correct?

24 A. I am not part of the team. So I don't --

25 Q. Oh.



1 A. I don't know.

2 Q. Do you know what -- are you familiar with the protocols  
3 that the SWAT team uses from your field office in  
4 conducting -- I think you called it -- high-risk arrests?

5 A. I'm only familiar with the portion that we, as agents,  
6 have to do prior to arrest, and from that, it's their thing.

7 Q. So at some point, you arrived at the residence just --  
8 to conduct the search; correct?

9 A. Correct.

10 Q. And you were a part of the team that was -- I guess this  
11 is self-explanatory, but I just want to go through it. So  
12 you were part of the team that was searching rooms in the  
13 home; correct?

14 A. Correct.

15 Q. And some of your colleagues on the search team searched  
16 those rooms with you; correct?

17 A. Correct.

18 Q. And some of them were males; correct?

19 A. Some of -- I'm sorry. What?

20 Q. Some of the searching agents were males as opposed to  
21 females; correct?

22 A. Yes.

23 Q. And one of those agents was Rick Hall. Do you know  
24 Agent Rick Hall?

25 A. Yes, I do.

1 Q. Okay. Is he a colleague of yours?

2 A. Yes.

3 Q. Okay. So to your knowledge, those individuals who  
4 conducted the search with you are not unavailable to testify  
5 about the search today; correct?

6 MS. MOORE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. SMITH:

9 Q. Are you -- did -- have you met with the prosecutors  
10 before your testimony today?

11 A. Yes.

12 Q. Did they inquire with you about whether there were any  
13 other agents at the search who would be available to  
14 testify?

15 A. No.

16 Q. Okay. And that would include Agent Rick Hall; correct?

17 A. Did they ask about Rick Hall?

18 Q. Yes.

19 A. No.

20 Q. Okay. Thank you.

21 So how soon after the -- to your knowledge, how  
22 soon after the searching agents entered -- excuse me, the  
23 arresting agents, the SWAT team, entered the home did you  
24 arrive at the scene?

25 A. I recall, maybe, 30 minutes. I'd have to look. I'm not

1 sure.

2 Q. Okay. So you testified that you knew that Mr. Nordean  
3 wasn't present when those arresting agents -- the SWAT team  
4 entered the home; correct?

5 A. That's correct.

6 Q. Okay. But you testified that Mr. Nordean's wife was;  
7 correct?

8 A. Correct.

9 Q. Okay. And when you arrived at the scene, you  
10 familiarized yourself with the search as it had been  
11 conducted up to that point; correct?

12 A. Well, there had been no search up to that point.

13 Q. Oh. So you were one of the --

14 A. We were the --

15 Q. -- first searching agents --

16 A. -- searcher -- the search team -- the search begins when  
17 the search team arrives.

18 Q. So you were one of the first searching agents to enter?

19 A. Yes.

20 Q. Okay. And so did you -- at that point, when you  
21 entered -- did you familiarize yourself with what had  
22 occurred before you entered the house?

23 A. The photographer -- the team lead for the search does an  
24 initial walk-through and then the photography begins.

25 Q. Are you aware that the initial entry of the SWAT team

1 was recorded?

2 A. I am not aware, no.

3 Q. Okay. So you're not aware that the doorbell at the  
4 front of the door of the residence that was searched had a  
5 video camera on it?

6 A. No, I'm not aware.

7 Q. Okay. Are you aware that the SWAT team ripped the  
8 video camera off the front of the door?

9 A. No, I wasn't there, so I don't know what happened during  
10 that time period.

11 Q. How did you enter the home?

12 A. Through the front door.

13 Q. When you entered the front door, did you see a camera  
14 lying on the ground that had been broken?

15 A. I did not, no.

16 Q. Okay. So when the SWAT team entered the home, they  
17 pointed assault rifles at Mr. Nordean's wife; correct?

18 MS. MOORE: Objection. Lack of personal  
19 knowledge.

20 THE COURT: The witness can ask -- answer, if she  
21 knows.

22 BY MR. SMITH:

23 Q. Were you --

24 A. What was --

25 Q. -- aware that --

1 A. -- the question?

2 Q. Were you aware that when the SWAT team entered the home  
3 when the defendant wasn't there, they pointed assault rifles  
4 at his wife?

5 A. I was not there, so I have no idea what happened during  
6 that time period.

7 Q. Okay. Are you aware that -- well, you, shortly  
8 thereafter, entered the home; correct?

9 A. At some point after, yes.

10 Q. Were you able to make a visible impression of  
11 Mr. Nordean's wife in the home?

12 A. No, I had no direct [sic] with Mrs. Nordean that day.

13 Q. Oh, just to clarify, I wasn't asking you whether you had  
14 a conversation. I was asking whether you ever laid eyes on  
15 her in the home.

16 A. I did not see her when I initially entered.

17 Q. Okay. Did you become aware, after you entered, that she  
18 was ordered to get on her knees with the guns pointed at  
19 her?

20 MS. MOORE: Objection.

21 THE COURT: Sustained.

22 THE WITNESS: I --

23 MS. MOORE: You --

24 THE WITNESS: -- don't know what we're talking  
25 about anymore.

1 BY MR. SMITH:

2 Q. Oh, we were talking about the SWAT team.

3 A. I'm not a member of the SWAT team. I was not there  
4 during the SWAT operation.

5 Q. Okay.

6 A. I cannot answer any questions to that.

7 Q. I think you did testify that you were a part of -- I  
8 think you testified about the process of obtaining a search  
9 warrant for the home; right?

10 A. Yes, I did.

11 Q. Okay. So -- and I think you testified about how that  
12 process works a little, the mechanics of it, basically. But  
13 is it correct to say that an agent such as yourself will  
14 submit something called a search warrant application to a  
15 court and then the court reviews it and determines whether  
16 it's going to issue a search warrant for a place?

17 A. Yes.

18 Q. Okay. And are you familiar with that process in  
19 Mr. Nordean's case?

20 A. No.

21 Q. You are not -- you didn't review the search warrant?

22 A. I reviewed the attachments to the search warrant. I did  
23 not participate in writing anything for the search  
24 application or affidavit.

25 Q. Okay. To your knowledge, did this -- did the -- to

1 your -- well, did you -- are you familiar with the  
2 individual who filed the request to obtain a search warrant  
3 for Mr. Nordean's home?

4 A. I do not know.

5 Q. You don't know if it was a member of your field office?

6 A. No.

7 Q. Would that typically be the case when you're obtaining a  
8 search warrant in a district where that field office is  
9 located?

10 A. Yes.

11 Q. Okay. So it was probably someone from your field office  
12 who filed the search warrant?

13 A. I'm not sure. Possibly.

14 Q. Okay. So to your knowledge, did the Government advise  
15 the court that Mr. Nordean had engaged in violence on  
16 January 6th, 2021?

17 MS. MOORE: Objection.

18 THE COURT: Sustained.

19 THE WITNESS: Could you repeat the question,  
20 please?

21 MR. SMITH: No, she --

22 THE COURT: No, you --

23 MR. SMITH: The objection was sustained --

24 THE WITNESS: Oh.

25 MR. SMITH: -- so you don't have to answer.

1 BY MR. SMITH:

2 Q. So after this point, when Mr. Nordean's wife is subdued  
3 and the searching agents entered the home, that is the point  
4 at which the Proud Boys patches and coins were seized;  
5 correct?

6 A. We seized them during the search, yes.

7 Q. Okay. And did there come a time -- now, I'm not talking  
8 about the SWAT team anymore; I'm talking about the searching  
9 team. You're familiar with the protocol they followed  
10 inside the home of Mr. Nordean; correct?

11 A. Yes.

12 Q. Okay. So did there come a time when Ms. --  
13 Mr. Nordean's wife was interrogated?

14 A. I'm -- I think she was talked to, yes.

15 Q. Talked to?

16 Was she handcuffed?

17 A. That, I don't know.

18 Q. Okay. How do you know she was talked to?

19 A. The agents -- they were -- Rick Hall and the other case  
20 agent were in the room with her.

21 Q. Okay. And Rick Hall was the agent who was talking to  
22 her?

23 A. Yes.

24 Q. Okay. Isn't it the case that Mr. Nordean's wife asked  
25 to speak to a lawyer and Rick Hall denied it?



1 MS. MOORE: Objection.

2 THE COURT: Sustained.

3 BY MR. SMITH:

4 Q. You don't know --

5 MR. SMITH: Or so I'm inquiring about her  
6 foundation.

7 MS. MOORE: Objection.

8 MR. SMITH: I hadn't --

9 THE COURT: Okay.

10 MR. SMITH: -- finished the question.

11 THE COURT: Finish your question, counsel.

12 MR. SMITH: Yeah.

13 BY MR. SMITH:

14 Q. Did you have a conversation with Rick Hall after the --  
15 he talked to Ms. Nordean?

16 A. When we were -- later on in the day when we were  
17 preparing for Mr. Nordean to come back.

18 Q. And did he familiarize you with his talking to of  
19 Mrs. Nordean?

20 A. He just said that he -- she had been cooperative in  
21 assisting with talking to Mr. Nordean.

22 Q. In talking to Mr. -- oh. Did he indicate whether she  
23 was questioned about providing passwords to all of his  
24 devices to him?

25 A. I don't recall that.

1 Q. Okay. Do you know how the -- so you testified about a  
2 phone that you seized from Mr. Nordean's home; right?

3 A. Yeah.

4 Q. And you understand that to be Mr. Nordean's phone;  
5 right?

6 A. Yes.

7 Q. Do you understand that the Government has gained access  
8 to that phone?

9 A. Yes.

10 Q. Do you know how the Government gained access to that  
11 phone?

12 A. I'm not sure.

13 Q. You -- so --

14 A. I have no direct interaction with the phone evidence,  
15 seizing it, so I don't know that -- what happened with it.

16 Q. So I think you indicated that you understood that access  
17 was gained to the phone; correct? I think you already said  
18 that you understood that the phone had been accessed;  
19 meaning, the content of the phone was visible.

20 A. I don't think I ever said that.

21 Q. Oh, I apologize. I thought you --

22 A. Yeah.

23 Q. -- said you -- not -- I asked you two questions. The  
24 first was, Do you understand how that happened? And you  
25 said, No. But I think you initially indicated that yes, the

1 content of the phone had been accessed; is that wrong?

2 A. Yeah, I don't think so.

3 Q. Have you --

4 THE COURT: Can I ask both counsel and the witness  
5 to keep your voices up --

6 THE WITNESS: Yes.

7 THE COURT: -- so I can hear them.

8 BY MR. SMITH:

9 Q. So when you -- at the time you entered the home, you  
10 said you entered through the front door; correct?

11 A. Yes.

12 Q. So you would have seen that the front door was busted  
13 open with a battering ram?

14 A. I did not see.

15 Q. You didn't see that it was cracked open?

16 A. No.

17 Q. So you probably -- when you walked through the front  
18 door, you would have entered into a, kind of, you know -- in  
19 a, sort of, classic home, an entryway where you, you know --  
20 the space where people drop their things when they first  
21 enter the home; right?

22 A. Yes.

23 Q. Okay. Did you see that there were black marks on the  
24 ground and wall because flash bangs had been thrown into the  
25 home?

1 A. Yes, I did see that.

2 Q. Okay. And did you see the visible damage to the home  
3 that was caused by the flash bangs?

4 A. I just saw a black mark.

5 Q. Do you know why flash bangs were thrown into the home  
6 when Mr. Nordean wasn't there?

7 A. I was not part of the SWAT operation, so I don't -- I  
8 can't testify to that.

9 Q. Okay. So you indicated that you did search the rooms in  
10 the home; correct?

11 A. I was part of the search team, yes.

12 Q. Right. Do you recall finding a passport in  
13 Mr. Nordean's home?

14 A. I personally did not find it, but I did hear that there  
15 was a passport found.

16 Q. And who did you hear that from?

17 A. Other people on the search team.

18 Q. Was it Rick Hall?

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

20 Q. Okay. And what did they tell you when -- about the  
21 passport?

22 A. That there was a passport found.

23 Q. Did they indicate whether it was the defendant,  
24 Mr. Nordean?

25 A. I don't recall.

1 Q. You don't recall what they said about the passport at  
2 all?

3 A. No, I do not. There's a lot of stuff going on during a  
4 search.

5 Q. For sure.

6 And did you -- did they indicate to you where they  
7 found it?

8 A. I don't recall.

9 Q. Okay. So did there come a time when you learned that  
10 one of the agents searching the home pulled the passport out  
11 of the wife's jewelry box and put it next to where  
12 Mr. Nordean sleeps on his bed?

13 A. I did not know that.

14 Q. Did there come a time when you learned that that  
15 passport did not belong to Mr. Nordean?

16 A. I don't recall.

17 Q. Did there come a time when you learned that the  
18 searching agents indicated that that was a passport of  
19 Mr. Nordean's and he was a risk of flight?

20 A. I don't know.

21 Q. Okay. When you were searching the home, you indicated  
22 some of the returns that you seized, including the T-shirts,  
23 the coins and -- I think there was a -- one of the other  
24 ones was, like, a card showing, like, a statement of what it  
25 means to be a Proud Boy. You testified about those objects;

1 correct?

2 A. Yes.

3 Q. Did you -- I understand you didn't look at the contents  
4 of his phone, but you were able to visibly -- you were able  
5 to see physical objects that were seized from Mr. Nordean's  
6 home; correct?

7 A. Yes.

8 Q. And one of those physical objects was a yellow-and-black  
9 neck gaiter --

10 A. Yes.

11 Q. -- correct?

12 And another one of the physical objects, I think,  
13 was, maybe, something else Mr. Nordean might have worn,  
14 maybe, on January 6th; is that right?

15 A. Yes.

16 Q. Okay. Besides those two items, did you find any  
17 physical indicia of planning on Mr. Nordean's part with  
18 respect to January 6th, 2021?

19 A. Within the home?

20 Q. Within the home.

21 A. No.

22 Q. So you didn't find, for example, any documents or  
23 records that would indicate he had plans for what would  
24 happen on January 6th, 2021?

25 A. No.

1 Q. You didn't find some indication that there was a cache  
2 of weapons that he intended to use on January 6th, 2021?

3 A. No.

4 Q. Anything else that you can think of that would have  
5 triggered your eye, as a searching agent, that would be  
6 relevant to January 6th, 2021, and planning?

7 A. We seized what was pertinent within the home and  
8 allowable by the warrant.

9 MR. SMITH: That's all, Judge. Thank you.

10 THE COURT: All right. Very well.

11 Counsel for Mr. Biggs?

12 CROSS-EXAMINATION

13 BY MR. HULL:

14 Q. Good morning, Special Agent --

15 A. Good morning.

16 Q. -- Borgertpoepping. Did I get it right?

17 A. No, but that's okay. It happens all the time.

18 Q. Try to -- is it Borgertpoepping?

19 A. No. Borgertpoepping.

20 Q. Thanks very much. I grew up in a part of the country  
21 where there's lots of names like that. So I appreciate it.  
22 You're -- you're safe here.

23 My name is Dan Hull. I represent, with  
24 Mr. Pattis, Joseph Biggs, the gentleman who just raised his  
25 hand over there. I only have a couple of questions.

1                   There were other items seized beyond the items  
2                   that you introduced into evidence today; is that correct?

3           A.   Yes.

4           Q.   All right.  And do you recall offhand what some of those  
5                   items were?

6           A.   I do not.

7           Q.   Do you remember your testimony about a couple of the  
8                   items -- actually, there were three:  Patches, challenge  
9                   coins, and a card -- I think it was Exhibit-11 -- which had  
10                  a slogan on it?

11          A.   Yes.

12          Q.   Okay.  And the slogan was -- and I'm paraphrasing --  
13                  "I'm a Western chauvinist and I refuse to apologize for  
14                  building the" -- Western world -- "modern world"; is that  
15                  right?  About --

16          A.   Yes.

17          Q.   Do you agree with that?  The sentiment.

18          A.   To -- agree with what?

19          Q.   The sentiment "I'm a Western chauvinist and refuse to  
20                  apologize for building the modern world."

21                  Did -- let me ask it a different way.  Do you have  
22                  a reaction to it?

23          A.   No, I do not.

24          Q.   Okay.  Do you agree with it?

25          A.   I have no reaction to it.  I haven't thought about



1 whether I agree with it or not. It's --

2 Q. Okay.

3 A. -- just --

4 Q. Fair enough. Fair enough.

5 There was also seized -- and, I think, introduced  
6 into evidence -- a vest; correct?

7 A. Yes.

8 Q. What kind of vest was that?

9 A. A black vest with soft armor in the back of it.

10 Q. Do you know whether it was a bulletproof vest or a  
11 stab-proof vest?

12 A. I would have to look at the inside of it.

13 Q. Okay. Did you know at one time?

14 A. No.

15 Q. Okay. Were there any other vests seized?

16 A. Not that I recall, but I don't know. I would have to  
17 see the list of items seized.

18 MR. HULL: I have no further questions.

19 MS. HERNANDEZ: On behalf of Mr. Rehl, I have no  
20 questions. Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. JAUREGUI:

23 Q. Good morning, Agent.

24 A. Good morning.

25 Q. My name is Sabino Jauregui. I represent Enrique Tarrío.

1 MR. JAUREGUI: If you could please stand, Enrique.

2 BY MR. JAUREGUI:

3 Q. Have you ever met my client?

4 A. I have not.

5 Q. Okay. And did you find any evidence whatsoever in the  
6 home connected in any way to my client? Connected to  
7 Enrique?

8 A. Not that I know of, no.

9 MR. JAUREGUI: Thank you, Agent.

10 CROSS-EXAMINATION

11 BY MR. ROOTS:

12 Q. Hello, Special Agent.

13 A. Hello.

14 Q. My name is Roger Roots. I -- along with Mr. Steven  
15 Metcalf, I represent Defendant Dominic Pezzola.

16 How long total were you there in -- during this  
17 search at Mr. Nordean's residence?

18 A. I'd have to look at the documentation for sure, but I --  
19 approximately three to four hours, probably.

20 Q. Okay. You -- would you describe yourself as a case  
21 agent in the case?

22 A. Yes.

23 Q. You are a case agent?

24 A. Yes, I am.

25 Q. And you mentioned Rick Hall. Is he a case agent?

1 A. Yes, he's a task force officer technically, but he also  
2 works cases, yes.

3 Q. And I believe you said Rick Hall and the other case  
4 agent. Who was that?

5 A. Katherine Murphy.

6 Q. Do you know how many total case agents are on this case?

7 A. I do not.

8 Q. Do you know how many are in this room right now?

9 A. I do not.

10 Q. Is -- are there any others in the room?

11 A. I don't know who is all in the room.

12 Q. During your investigation and your search of the  
13 residence, did you notice any books on the shelves at the  
14 residence?

15 A. I don't recall.

16 Q. You don't recall seeing any books?

17 A. No.

18 MR. ROOTS: No further questions. Thank you.

19 THE COURT: Very well.

20 MS. MOORE: Very briefly.

21 REDIRECT EXAMINATION

22 BY MS. MOORE:

23 Q. Special Agent Borgertpoepping, Mr. Roots just asked you  
24 some questions about whether you're a case agent. Are you a  
25 case agent in general or a case agent on this particular

1 case?

2 A. A case agent in general. I was not a case agent on this  
3 case.

4 Q. And Mr. Smith asked you some questions about SWAT. Do  
5 you remember that?

6 A. Yes.

7 Q. Are there FBI procedures in place regarding when SWAT is  
8 utilized in connection with an arrest?

9 A. Yes, there are.

10 Q. And were those procedures followed in this case?

11 A. Yes.

12 MS. MOORE: Thank you. No further questions.

13 THE COURT: All right. Agent, you may step down.  
14 Thank you very much for your testimony.

15 (Witness steps down.)

16 THE COURT: Let me speak with counsel at sidebar.

17 (Bench conference:)

18 THE COURT: All right. What's the -- Ms. Moore,  
19 what's the status of the next witness at this point?

20 MS. MOORE: I'm told that she'll be here in  
21 approximately five minutes, Your Honor.

22 THE COURT: All right. We will -- so what I'm  
23 going to do -- I'm going to take a -- we'll take a 10-minute  
24 recess and come back. I don't -- I mean, is it -- is  
25 that -- I think that's the only thing to do at this point.

1 So we'll take a 10-minute -- unless -- does any defendant  
2 want to be heard on this?

3 MS. HERNANDEZ: Unless the Court wants to take an  
4 early lunch?

5 MR. SMITH: Judge, we would just ask, during the  
6 defense case, if we need a short break like this, that the  
7 Court give us the same --

8 THE COURT: Sure.

9 MR. SMITH: -- privilege that --

10 THE COURT: I'm not --

11 MR. SMITH: -- and notifying the jury --

12 THE COURT: I'm not in the business of  
13 unnecessarily embarrassing either side.

14 Very well. So let's take a 10-minute recess and  
15 we'll go from there.

16 MR. SMITH: Thank you.

17 THE COURT: All right.

18 (Return from bench conference.)

19 THE COURT: All right. Ladies and gentlemen,  
20 we're going to take -- and I really mean it -- a 10-minute  
21 recess, and we'll come back and we'll hear from the next  
22 witness on behalf of the Government.

23 (Jury returned to jury room.)

24 THE COURT: All right. I can only -- you may be  
25 seated, of course.

1 I hope and pray that's not the first time that we  
2 move faster than either side thinks -- than either side  
3 anticipated. So we'll be back in 10 minutes.

4 THE DEPUTY CLERK: All rise. This Honorable Court  
5 stands in recess for 10 minutes.

6 (Brief recess taken.)

7 THE DEPUTY CLERK: Jury panel.

8 (Jury returned to jury box.)

9 THE DEPUTY CLERK: You may be seated.

10 (Brief pause.)

11 All rise. This Honorable Court is again in  
12 session, the Honorable Judge Timothy J. Kelly presiding.  
13 Please be seated and come to order.

14 We are back on the record in Criminal Matter  
15 21-175, United States of America v. Ethan Nordean, et al.

16 THE COURT: The Government may call its next  
17 witness.

18 MR. MULROE: Your Honor, the United States calls  
19 Shae Cooney.

20 (Brief pause.)

21 **SHAE COONEY, WITNESS FOR THE GOVERNMENT, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. MULROE:

24 Q. Good morning, ma'am.

25 A. Good morning.

1 Q. Please start by introducing yourself to the jury and  
2 saying your name and spelling your last name for the court  
3 reporter.

4 A. Shae Cooney, S-H-A-E; C-O-O-N-E-Y.

5 Q. And Officer Cooney, that microphone in front of you can  
6 adjust and the base can move. So you can place that  
7 wherever you're comfortable, but just make sure that you're  
8 staying nice and close to the microphone and speaking  
9 directly into it. Thank you.

10 Ma'am, where do you work?

11 A. I'm an officer at the United States Capitol Police.

12 Q. Do you have a specific position with the Capitol Police?

13 A. I'm part of the FRU unit, which is the first responders  
14 unit, outside the Capitol Building itself.

15 Q. How long have you been with Capitol Police?

16 A. I start my sixth year this April.

17 Q. And have you always worked in law enforcement?

18 A. No. I, before the job, was a waitress at Chili's.

19 Q. What made you want to join the Capitol Police?

20 A. Both my parents were in law enforcement and my dad was  
21 in the military. So one of the two was going to be probably  
22 what I was going to do.

23 Q. Officer, I want to take you to January 6th of 2021.

24 Were you working that day?

25 A. Yes.

1 Q. Did you have a particular assignment on January 6th?

2 A. When we have certain events going on, usually they'll  
3 bring in our third shift, which is what I'm on, which is  
4 3:00 to 11:00, and we were brought in at 11:00 a.m. that day  
5 to come in early for an event.

6 Q. So you would have been starting at 3:00 p.m., but came  
7 in a bit early because of, you said, an event?

8 A. Correct.

9 Q. What was the event that brought you in early on  
10 January 6th?

11 A. So the Electoral College was ratifying the votes of the  
12 election and they brought in evening officers to back-fill  
13 the day-work officers that would be on the CDU unit that  
14 day.

15 Q. And what's a CDU unit?

16 A. Civil disturbance unit. So anytime we have an event and  
17 they draft officers to be either in our hard gear, they'll  
18 bring in officers early to work post and cover the day work.

19 Q. Now, when your shift starts at 11:00, do you get there  
20 right at 11:00 sharp or when would you typically arrive?

21 A. That day, I arrived around 10:30, had time to get  
22 dressed, grabbed a schedule from the sergeant, and pushed  
23 out the midnight officer around 10:45 and took post around  
24 then.

25 Q. Where was your post?



1 A. So I started on the east front of the Capitol and I  
2 was -- we typically have certain posts that we man, but they  
3 mostly had us just, kind of, standing on the east front that  
4 day.

5 Q. Now, when you described the east front where you took  
6 your post -- Officer, there is a map behind you there. If  
7 you can reach, would you point out to the jury where it was  
8 that you began your shift when you came in on the 6th?

9 A. Right here (indicating).

10 Q. Up where it says Ground Level 1 up at the top of the  
11 demonstrative?

12 A. Correct.

13 Q. Thank you, Officer.

14 Describe, if you would, what the scene was like on  
15 the east front when you took your post. Were there people  
16 gathered there?

17 A. So we had quite a few people there that had come from  
18 the White House just, kind of, hanging out on the east  
19 front. We had it closed to the public. So we had bike  
20 racks surrounding the east front, and they were closed. So  
21 we had officers, kind of, posted at certain points where  
22 they wanted to keep officers in that area because, for  
23 security reasons, we can't lock every bike rack for, like,  
24 fire safety. So certain areas for egress are open, or not  
25 locked, and they had officers posted there.

1 Q. When you say open, do you mean that there were gaps in  
2 the bike racks or just that they weren't --

3 A. Just that --

4 Q. -- attached --

5 A. -- they weren't attached, but they were closed. So they  
6 were at least touching -- each bike rack was touching each  
7 other. They just weren't closed all the way, as in locked.

8 Q. And was that true for the entire security perimeter that  
9 you could see on the east front?

10 A. For the most part, yes.

11 Q. Were any members of the crowd past the barriers when you  
12 started your shift?

13 A. No, they were all behind them.

14 Q. What was the overall demeanor of the crowd?

15 A. At first, it was just, kind of, that they were just  
16 hanging out. Some were chanting. Some groups were just,  
17 kind of, hanging out. And then we just saw more people,  
18 kind of, walking up Constitution and just gathering on the  
19 east front.

20 Q. Officer, as your shift continued, did something happen  
21 that caused you to leave the east front and go to a  
22 different part of the Capitol grounds?

23 A. I was relieved from a motor patrol to go on to my break  
24 that was scheduled at a certain time. I was pushed early to  
25 go inside. And we had a radio call go over that stated the

1 west front had been breached and we need more officers.

2 MR. MULROE: Ms. Rhode, could we play Government  
3 Exhibit-359 that's in evidence.

4 (Brief pause.)

5 And if we could publish that for the jury as well,  
6 please.

7 (Audio played.)

8 BY MR. MULROE:

9 Q. Officer, was that the radio call that you heard?

10 A. Yes.

11 Q. What did you do when you heard that?

12 A. At that moment, I had officers assigned to the House  
13 division gathered on the south side, and I had them follow  
14 me, and we ran onto the upper west terrace south of the  
15 Capitol building to the west front.

16 Q. And these other officers, were you in a command position  
17 over them or were they, kind of, your peers?

18 A. Just my peers.

19 Q. Did you have any supervisory responsibilities that day  
20 or were you just, sort of, a line officer?

21 A. Just a line officer.

22 Q. Officer, you said you ran. Why did you run?

23 A. The panic I heard on the radio justified me getting  
24 there as fast as possible.

25 Q. And where did you run to?

1 A. I ran onto the upper west terrace south, around the  
2 corner to the west front.

3 Q. Could you point out on the map where that was.

4 A. (Indicating.)

5 Q. So for the record, Officer, are you gesturing around the  
6 right side of the building and --

7 A. Correct. So where -- the far end is the House side of  
8 the Capitol, where the far black box is, the House steps.  
9 So I ran westbound around the corner to the west front.

10 Q. What did you find when you reached the west front?

11 A. When we got to the top of the stairs of the west front,  
12 we saw a large group and crowd of people pass the barriers  
13 that were set at First Street along Peace Circle and  
14 Garfield Circle and they had come up the Pennsylvania Avenue  
15 walkway to the lower west terrace of the west front.

16 Q. For the crowd to be past the barriers, was that any of  
17 any concern to you?

18 A. Yes. So once the perimeter is set in around September,  
19 they start building the stage for inauguration, and that is  
20 a restricted area. It is an arrestable offense to cross  
21 that barrier. We take it a little bit more seriously during  
22 that time, and no one is allowed to be back there.

23 Q. When you arrived and saw the crowd pass the barriers, at  
24 that time, was the crowd moving forward or was it going  
25 backward or was it staying in place?

1 A. They were moving forward towards the lower west terrace.

2 Q. Was there anything that stopped or slowed down the  
3 progress of the crowd?

4 A. We had a black fence that was put in place to separate  
5 the chairs that were going to be put in place for  
6 invitationed people for the inauguration. So they had set  
7 up a small black fence that separated part of the stairs at  
8 the very bottom of the lower west terrace before the main  
9 stairs.

10 Q. And did that fence, as far as you could see, have any  
11 effect on the movements of the crowd?

12 A. It stopped them for a short time.

13 MR. MULROE: Ms. Rhode, could we have Government's  
14 Exhibit-160 that's in evidence at the 8-minute mark, please.  
15 And we could just play that for about 10 seconds.

16 (Video played.)

17 BY MR. MULROE:

18 Q. As it plays, Officer, do you recognize the scene that's  
19 on the video screen here?

20 A. Yes.

21 Q. What do we see?

22 A. We see the crowd coming up the Pennsylvania Avenue area  
23 and collecting at the black fence that you see there at the  
24 bottom.

25 Q. What did you do when you saw this?

1 A. At first, a little panic came through, knowing how many  
2 people there were and how many officers we had. We knew  
3 that we weren't going to have enough.

4 Q. And did that panic paralyze you?

5 A. For a second, yes, and then I ran down the stairs to  
6 meet up with the rest of the officers and, kind of, take up  
7 a line between us and the building.

8 Q. Now, when you ran to join the other officers, did you go  
9 to one side or the other or in the middle? Where did you  
10 go?

11 A. I went, at first, to the Senate side of the lower west  
12 terrace where most of the crowd is gathered. To the right  
13 of the screen is where I went to.

14 Q. Could you show us that on the map.

15 A. This area, (indicating.) That area --

16 Q. Are you gesturing in the area where the Breach 2 and --

17 A. Yes.

18 Q. -- Breach 3 --

19 A. Correct.

20 Q. -- stickers are?

21 What made you go to that particular area?

22 A. I saw that most of the crowd was gathering in that area  
23 and that there weren't as many officers to start in that  
24 area. So I thought that was the best place to start first.

25 Q. And did you get very close to the crowd when you went

1       there?

2       A.   Yeah, we stayed onto the steps right before the black  
3       fence to keep some space between us and the crowd, but we  
4       kept moving, kind of, forward and backward for a little bit  
5       to make sure that nobody was beyond the fence.

6       Q.   Tell us, what did you see and hear when you got to those  
7       steps?

8       A.   A lot of yelling; a lot of chanting; screaming at us  
9       because we were there and stopping them from coming forward;  
10      a lot of cursing; and just, kind of, seeing them pretty  
11      angry.

12               MR. MULROE:  Madam Deputy, can we have the screen  
13      for only the witness.

14               And, Ms. Rhode, I'll ask you to pull up  
15      Exhibit-417X.

16               (Video played.)

17               MS. HERNANDEZ:  Objection, Your Honor.  I'm --

18               THE COURT:  All right.  Let me hear counsel at  
19      sidebar.

20               (Bench conference:)

21               MS. HERNANDEZ:  Your Honor, I believe this was a  
22      video I had filed an objection to that has an outline of  
23      Mr. -- of somebody who they claim was Mr. Rehl who this  
24      witness will not be able to identify.  Up until now, the  
25      only time someone is, you know, circled or whatever is

1 because there's a witness on the stand who can identify the  
2 person. I -- if I'm wrong that this is that particular  
3 video -- and, again, this is not a clear picture of Mr. Rehl  
4 and I don't believe it is Mr. Rehl.

5 THE COURT: Mr. Mulroe?

6 MR. MULROE: Your Honor, this is the video that  
7 Ms. Hernandez has in mind. This is the one the Court will  
8 recall we argued about for probably 30 minutes a week or two  
9 ago, and I believe the Court ultimately overruled the  
10 objection and said the video would come in.

11 MS. HERNANDEZ: I don't believe the Court ever  
12 ruled on the objection, Your Honor.

13 THE COURT: Is -- just out of curiosity, did you  
14 just -- we were arguing about it. But did it -- remind me.  
15 It just -- you -- the Government wasn't seeking to admit it  
16 at that time?

17 MS. HERNANDEZ: I don't remember why we took it up  
18 at the time, but I filed an objection, we argued over it,  
19 and I -- my recollection is that the Court did not decide.  
20 And I -- actually, sort of, caught me by surprise that it  
21 came up right now. I mean, I -- I'm not -- the Government  
22 had indicated that it was coming in through this witness. I  
23 think this witness has been moved several times as the  
24 Government brings in its witnesses.

25 THE COURT: Right. Mr. Mulroe, it -- she's,



1 obviously, not going to use this to identify Mr. Rehl; is  
2 that correct?

3 MR. MULROE: Correct.

4 THE COURT: And she's not going to testify as to  
5 any -- the presence of any particular defendant; correct?

6 MR. MULROE: That's correct.

7 THE COURT: And are there other -- remind me. Is  
8 this -- are there other -- there -- outlines or whatever in  
9 this particular one? It's, like -- it --

10 MS. HERNANDEZ: There's an outline of Mr. Biggs  
11 and Mr. Nordean which, I think, are pretty clear that it's  
12 them, and also, Your Honor, I think this is a short video,  
13 maybe, a little bit over a minute, and the Government has  
14 the same video that doesn't have any outlines on it. So it  
15 would not be very difficult to use that same video without  
16 the pre-outlined people.

17 THE COURT: Right.

18 MR. MULROE: Your --

19 THE COURT: Mr. Mulroe, go ahead.

20 MR. MULROE: Your Honor, I just -- the procedural  
21 background here is we had Officer Cooney scheduled to  
22 testify -- it's probably two weeks ago at this point. And  
23 so we provided the list of exhibits we would be offering.  
24 Ms. Hernandez identified this. In the morning is when she  
25 objected to -- and I really do think it was protracted

1 argument at the end of which Your Honor ruled that this was  
2 coming in. I could find the transcript cite. But it is  
3 outlines in the beginning of Nordean and Biggs, and that is  
4 something that she's going to give testimony on. She's not  
5 going to introduce any identification and say who those  
6 people are, but she's going to testify about what those  
7 people were doing. The outline of Mr. Rehl is not one that  
8 we're going to draw any attention to, you know? It may be  
9 that we could even stop the video before it gets to that. I  
10 don't want to promise that, because I don't know where in  
11 the sequence it is from memory, but I do think this issue  
12 has been resolved, Your Honor.

13 THE COURT: And why -- again, without a witness  
14 who's going to say -- and why is it that the Government  
15 can't just proceed on this with your other exhibit and just  
16 pause it and circle the people you want to circle and ask  
17 her about those people?

18 MR. MULROE: Your Honor, it's a chaotic scene.  
19 It's fast-moving. There's a lot going on on the screen.  
20 The highlighting of Nordean and Biggs makes them discernible  
21 in a way that, frankly, we just cannot replicate as  
22 effectively by pausing and circling. So that's the reason  
23 we prepared all these exhibits and the reason we produced  
24 them months ahead of time to the defendants and the reason  
25 we argued about this already two weeks ago.

1 THE COURT: Right.

2 MR. MULROE: We're going to be prejudiced if we  
3 have to use the inferior version of this.

4 MR. PATTIS: Judge, I -- on behalf of Mr. Biggs,  
5 if I may?

6 THE COURT: Yes.

7 MR. PATTIS: I don't recall the ruling; I recall  
8 the argument, and I -- and so I apologize if you have  
9 decided this, but the -- she can't -- she can testify as to  
10 her observations, and this is in the -- on the class of  
11 converting a percipient witness into something more, you  
12 know? I don't why the Government's going to be prejudiced  
13 by this, but we would claim we're prejudiced. She can't lay  
14 a foundation for the item with the outline. That's not a  
15 fair and accurate representation of what she saw. And, as  
16 you have pointed out at any number of times, that's slicing  
17 the bologna awfully thin, and I'll acknowledge that, but  
18 it's bologna nonetheless.

19 THE COURT: All right. Mr. -- but you're not --  
20 let me put it this way. Are you objecting on behalf of  
21 Mr. Biggs to the Mr. -- to the outline of your client or are  
22 you outlining -- are you supporting Mr. Rehl's argument?

23 MR. PATTIS: I'm objecting to the outline of  
24 Mr. Biggs for reasons that Ms. Hernandez has stated, but,  
25 Judge, conceding that I don't recall the ruling. I'm

1       sorry --

2               THE COURT: Right. No, I --

3               MR. PATTIS: I'm sorry about that.

4               THE COURT: You know, I recall -- I didn't have to  
5       make a definitive -- I don't think I made a definitive  
6       ruling because there was no -- we -- you -- but there  
7       wasn't -- the document -- the exhibit wasn't offered, but  
8       I -- as you all recall, I remember I -- my initial reaction  
9       was that this was nothing more than, sort of, the Government  
10      drawing on an exhibit and highlighting certain things and  
11      asking the witness questions about them. The question,  
12      though, is that when it goes back, if there's not -- if  
13      there's -- if it's not -- if there is an objection about  
14      whether that person is Mr. Rehl and -- then I think that --  
15      the question -- the point is I -- it may be a demonstrative,  
16      but I don't know that it go- -- it would go back to the jury  
17      in the form it should be in.

18              MR. MULROE: And, Your Honor --

19              THE COURT: Yeah. Mr. Mulroe?

20              MR. MULROE: If I could just proffer, we're going  
21      to have a separate witness that makes the identification.  
22      And so it's not just going to be hanging out there. And  
23      Ms. Hernandez is going to have a full opportunity to  
24      cross-examine that witness or put on whatever other  
25      challenge she wants to whether or not that's Mr. Rehl,

1 but --

2 MR. HASSAN: Judge --

3 MR. MULROE: -- we're just not doing that --

4 MR. HASSAN: Judge --

5 MR. MULROE: -- at this time.

6 MR. HASSAN: Judge, if I may, I can tell you,  
7 Juror No. 2 and Juror No. 15 are looking directly at  
8 Mr. Mulroe when he's speaking and listening to exactly the  
9 conversation that's going on here, Judge.

10 THE COURT: All right. All right.

11 MR. PATTIS: Judge, as to Mr. Biggs's claim, it is  
12 that this witness can lay a foundation to her observations.  
13 She didn't observe the outline. And I realize that's thin  
14 bologna.

15 MS. HERNANDEZ: Yeah, I don't think -- I think the  
16 witness will not be able to identify any of these people.  
17 That's why they should just play the un-outlined -- again,  
18 they have the -- it's -- 417 is the un-outlined video.  
19 There's very little prejudice that I -- they can see the  
20 chaos. If there's another witness who's going to be able to  
21 identify the different people, then bring them on and --

22 THE COURT: Well --

23 MS. HERNANDEZ: -- that's when you can play them.

24 THE COURT: No, but you -- but -- okay. You don't  
25 object if you have a witness who's going to identify your

1 client?

2 MS. HERNANDEZ: When the witness identifies my  
3 client --

4 THE COURT: Because --

5 MS. HERNANDEZ: -- not -- because --

6 THE COURT: Okay.

7 MS. HERNANDEZ: -- because this -- I -- and,  
8 again, Your Honor, I don't think we've quibbled over other  
9 outlines because it was pretty clear who the people are.  
10 This I don't believe is clear, and I do not believe it's my  
11 client --

12 THE COURT: All right.

13 MS. HERNANDEZ: -- but this --

14 MR. MULROE: Your Honor?

15 MS. HERNANDEZ: -- is a big issue.

16 MR. MULROE: Your Honor?

17 THE COURT: Mr. Mulroe?

18 MR. MULROE: I'll just give you the transcript  
19 cite. It's Page 5317 of the trial transcripts, an  
20 explanation that ends with: To the extent both sides are  
21 going to argue either that it is or is not Mr. Rehl, that  
22 will get sorted out as things go forward. So I'm going to  
23 overrule the objection.

24 THE COURT: Well, I think, you know -- fair  
25 enough. But hearing this now, it sounds like they're not

1 going to object to -- if you use it to someone who will  
2 identify the individuals. So I'm going to ask this witness,  
3 that you use -- that -- I'm going to sustain the objection  
4 as to the -- this witness. I fully expect the exhibit will  
5 come in over no objection when you have someone who's going  
6 to identify them, but I'd ask that you use the other version  
7 of this with this witness. So that's my ruling right now.  
8 And you can pause it and have the person circle the people  
9 using the, sort of, telestrator and do exactly what you were  
10 going to do with this scene. So that's my --

11 MR. MULROE: Yes, Your Honor.

12 THE COURT: That's my ruling.

13 (Return from bench conference.)

14 MR. MULROE: All right. Ms. Rhode, let's have  
15 417, please.

16 (Video played.)

17 BY MR. MULROE:

18 Q. Agent [sic], do you recognize the scene that you see on  
19 the screen?

20 A. Yes. That would be the Senate side, lower west terrace  
21 stairs leading up to the Capitol building.

22 Q. And is that a fair and accurate depiction of what was  
23 going on at those stairs when you arrived?

24 A. Yes.

25 MR. MULROE: Move to admit 417.

1 THE DEPUTY CLERK: Already in.

2 THE COURT: All right. It will be admitted, and  
3 permission to publish.

4 THE DEPUTY CLERK: Already in.

5 MR. MULROE: Ms. Rhode, if we could go to the  
6 beginning, publish that to the jury, and we'll let that play  
7 and we will pause it at certain times.

8 (Video played.)

9 BY MR. MULROE:

10 Q. Officer, I paused the video at the 27-second mark. Let  
11 me ask you, when you were there at the fence, were there  
12 some members of the crowd who were pressed right up against  
13 it?

14 A. Yes.

15 Q. And I'm circling a person on the right with a black  
16 winter hat and a star-pattern cloth over his face and I'm  
17 circling the person in the top left middle of the screen  
18 with a backwards baseball cap and sunglasses, it looks like.  
19 Where were those people relative to the whole crowd gathered  
20 at the fence?

21 A. Right up against the fence.

22 Q. That was the 27-second mark. I'm going to continue it.

23 (Video played.)

24 BY MR. MULROE:

25 Q. Officer, I paused 417 at the 51-second mark. Do you



1 recognize anyone you see on the screen here?

2 A. Yes. So that is me with the ball cap on and the  
3 sunglasses on my hat.

4 Q. Go ahead and circle yourself. You can use the  
5 touchscreen.

6 A. (Indicating.)

7 MR. MULROE: For the record, she has circled the  
8 officer on the right of the screen.

9 I'm going to play it just a few seconds more from  
10 the 51-second mark.

11 (Video played.)

12 BY MR. MULROE:

13 Q. And stopped now at 52 seconds. Officer, who is the  
14 officer who just came to the front with the hat on?

15 A. That is Captain Patton. He is one of the captains for  
16 the Capitol division.

17 Q. And could you see or hear what he was doing at that  
18 time?

19 A. He was telling the crowd, as we were seeing them trying  
20 to hop over the fence, to stop.

21 Q. Did the crowd obey Captain Patton's commands?

22 A. No.

23 Q. And can we still see on the left lower corner the man  
24 with the backwards ball cap and the man with the winter hat,  
25 glasses, and flag bandana?

1 A. Yes.

2 Q. I'm going to resume the video.

3 (Video played.)

4 Officer, what's happening here at the 58-second  
5 mark?

6 A. After we kept repeatedly telling them to stop moving, we  
7 saw the people up front against the fence taking down the  
8 fence and moving past it.

9 Q. Resuming the video.

10 (Video played.)

11 MR. MULROE: And I've stopped at the  
12 1-minute-6-second mark.

13 BY MR. MULROE:

14 Q. Did the crowd ultimately get through the fence?

15 A. Yes.

16 Q. How was it they were able to get through?

17 A. So the fence was not a hard fence to start to rip up,  
18 and we saw them starting to move it back and forward to  
19 unscrew it from the ground and rip it apart.

20 MR. MULROE: I'm going to go back just a little  
21 bit.

22 (Video played.)

23 BY MR. MULROE:

24 Q. Stopped here at the 57-second mark, Officer. Now, as  
25 you and the others were trying to control this crowd, were

1 all of the members of the crowd of equal concern to you?

2 A. Not necessarily. We saw mostly the people up against  
3 the fence were agitating the rest of the crowd and were  
4 yelling at us and screaming throughout the crowd. And so  
5 mostly for -- the front people were the concern for us.

6 Q. Do you see any of those front people who were a concern  
7 on the screen here at the 30 -- at the 57-second mark?

8 A. Yes.

9 Q. Go ahead and point an arrow to them.

10 A. (Indicating.)

11 Q. For the record, on the left side of the screen, is that  
12 that same backwards ball cap and winter hat?

13 A. Yes.

14 Q. Officer, I'm going to show you another angle, 492G  
15 which, I believe, is in.

16 THE DEPUTY CLERK: Yes.

17 MR. MULROE: And so if, Ms. Rhode, we could pull  
18 that up, publish it, and start it at the  
19 two-minute-and-three-second mark. And, Ms. Rhode, if you  
20 could start that playing at four-times speed to account for  
21 the slow motion.

22 (Video played.)

23 BY MR. MULROE:

24 Q. Officer, does this depict the same scene that we were  
25 just looking at?

1 A. Yes.

2 (Brief pause.)

3 MR. MULROE: When we get to the 3:50 mark, if we  
4 could resume the default slow motion speed here.

5 BY MR. MULROE:

6 Q. Can we see the black backwards baseball cap around here,  
7 Officer? (Indicating.)

8 A. Yes.

9 (Brief pause.)

10 MR. MULROE: And when that reaches four minutes  
11 and zero seconds, Ms. Rhode, I'll ask you to -- or 4:25,  
12 I'll ask you to pause.

13 BY MR. MULROE:

14 Q. Do we see anything happening to the fence here in the  
15 video, Officer?

16 A. Yes. They were pulling it backwards and opening up the  
17 fence.

18 MR. MULROE: And I'm going to go back just a  
19 little bit from the 4:25.

20 (Brief pause.)

21 (Video played.)

22 BY MR. MULROE:

23 Q. Can we see people with hands on the fence there?

24 A. Yes.

25 Q. Who do we see with hands on the fence?

1 A. The man with the backwards baseball cap has part of the  
2 fence in his hands.

3 MR. MULROE: If we could have the screen just for  
4 the witness.

5 BY MR. MULROE:

6 Q. Officer, I'll show you 445BX.

7 (Video played.)

8 BY MR. MULROE:

9 Q. Do you recognize this scene?

10 A. Yes.

11 Q. What do we see here? Is it the same as --

12 A. Yes.

13 Q. -- what we've been looking at?

14 A. Correct.

15 MR. MULROE: Move to admit 44- --

16 BY MR. MULROE:

17 Q. I should ask, is this a fair and accurate depiction of  
18 that scene?

19 A. Yes.

20 MR. MULROE: Move to admit 445BX.

21 THE COURT: All right. It will be admitted, and  
22 permission to publish.

23 MR. MULROE: Let's play from the beginning with  
24 the sound on, please.

25 (Video played.)

1 BY MR. MULROE:

2 Q. And having played the video, Officer, I should ask, did  
3 that have certain highlighting in it that was added  
4 digitally?

5 A. Yes.

6 Q. Other than that, a fair and accurate depiction of what  
7 you saw there at the fence?

8 A. Yes.

9 Q. Officer, I'm going to show you just a series of others  
10 now. I'm not going to play them all in full.

11 MR. MULROE: But if we could have the screen just  
12 for the witness. And we'll do a couple seconds of each,  
13 starting with 421B.

14 (Video played.)

15 BY MR. MULROE:

16 Q. Do you recognize this as a scene from the west front?

17 A. Yes.

18 Q. Fair and accurate depiction of that scene?

19 A. Yes.

20 MR. MULROE: Move to admit 421B.

21 MR. PATTIS: Brief sidebar, Judge?

22 THE COURT: All right.

23 (Bench conference:)

24 MR. PATTIS: 445BX contained highlighting that was  
25 prohibited earlier. We didn't object. It, like, frankly,

1 slipped by me. I don't know whether these -- this next  
2 series will contain highlighting. We would renew our  
3 objection, for reasons previously stated, as to 417X.

4 THE COURT: All right. Mr. Mulroe, does this have  
5 the highlighting?

6 MR. MULROE: Your Honor, I don't believe this has  
7 highlighting. We're actually not going to show these.  
8 These are just a series of exhibits that we are  
9 authenticating with this witness for the purpose of using  
10 with later witnesses. We're not going to play them to the  
11 jury now.

12 THE COURT: Okay. Well, let's put it this way.  
13 Mr. -- if this is just for authentication purposes -- I  
14 mean --

15 MR. PATTIS: I have no objection in that case.

16 THE COURT: All right. And we'll cross the bridge  
17 when we get to it on the other issue.

18 All right. Go ahead, Mr. Mulroe.

19 (Return from bench conference.)

20 MR. MULROE: And I'm sorry. Was that admitted?

21 THE COURT: Yes, it will be admitted and -- well,  
22 it will be admitted.

23 MR. MULROE: And let's keep the screen just for  
24 the witness and pull up 437B.

25 (Video played.)

1 BY MR. MULROE:

2 Q. Do you recognize this scene, Officer?

3 A. Yes.

4 Q. Fair and accurate depiction of that same scene at the  
5 black fence?

6 A. Yes.

7 MR. MULROE: Move to admit 437B.

8 THE COURT: All right. It will be admitted.

9 MR. MULROE: Screen just for the witness, 445B.

10 (Video played.)

11 BY MR. MULROE:

12 Q. Same scene?

13 A. Yes.

14 Q. Fair and accurate depiction?

15 A. Yes.

16 MR. MULROE: Move to admit 445B.

17 THE COURT: All right. It will be admitted.

18 MR. MULROE: And then, finally, just for the  
19 witness, 445D.

20 (Video played.)

21 BY MR. MULROE:

22 Q. Officer, is this a fair and accurate depiction of that  
23 same scene at the black fence?

24 A. Yes.

25 MR. MULROE: Move to admit 445D.



1 THE COURT: Admitted.

2 BY MR. MULROE:

3 Q. After the crowd broke through the fence, did it continue  
4 to move forward?

5 A. Yes, it did.

6 MR. MULROE: If we could have just for the witness  
7 445BY.

8 (Video played.)

9 MR. MULROE: And if we could pause it there.

10 BY MR. MULROE:

11 Q. And just for authentication, Officer, is this a fair and  
12 accurate depiction of what happened after the crowd broke  
13 through the black fence?

14 A. Yes.

15 MR. MULROE: We move --

16 THE DEPUTY CLERK: Mr. Mulroe, I just want to -- I  
17 don't have a 445BY. Is this an extra exhibit? Because it's  
18 not on --

19 MR. MULROE: My apologies, Ms. Harris. I think  
20 we'll need to add that to the list, and we can --

21 THE DEPUTY CLERK: B as in "boy," Y as in "young";  
22 correct?

23 MR. MULROE: B as in "boy"; Y as in "young."

24 THE DEPUTY CLERK: Okay. Thank you.

25 MR. MULROE: And we won't publish that just now,

1 but we'd move to admit 445BY.

2 THE COURT: All right. It will be admitted.

3 BY MR. MULROE:

4 Q. Officer, where did the crowd go next after breaking  
5 through the fence?

6 A. After breaking through the fence, they moved towards the  
7 Senate side and the middle side of the lower west terrace.

8 MR. MULROE: If we could have 452 -- which, I  
9 believe, is in evidence -- for the witness and published.  
10 And, Ms. Rhode, let's start that at the 11-second mark.

11 (Video played.)

12 BY MR. MULROE:

13 Q. Officer, did that video show the crowd moving into the  
14 west plaza?

15 A. Yes.

16 Q. And did we hear the crowd shouting there?

17 A. Yes.

18 Q. What kinds of things did the crowd shout over the course  
19 of the afternoon?

20 A. At us, they were screaming at us, calling us names,  
21 shouting out, USA, Trump, MAGA, over and over again.

22 Q. What kind of names were they calling you?

23 A. We were getting called pigs, traitors throughout the  
24 day.

25 Q. And towards the end of the video, we saw individuals

1 with helmets and looked like pads and face shields. Who  
2 were they?

3 A. So those are members of our civil disturbance unit. So  
4 they are in hard gear, is what we call that. And that's  
5 what we had as long -- as well as our soft squad, which is  
6 officers that don't have any gear on.

7 Q. What was the overall demeanor of the crowd once they  
8 came into the west plaza?

9 A. Once they broke through the fence, we saw that they were  
10 growing more agitated, more angry at us, and that's what we  
11 were concerned with when they gathered -- when we formed  
12 that line right there.

13 Q. Were members of the crowd throwing anything?

14 A. Yes.

15 MR. PATTIS: Objection. Relevance, Your Honor.  
16 Members of the crowd.

17 THE COURT: All right. It's 12:30 exactly. So  
18 we'll leave it there for the moment.

19 Ladies and gentlemen, we'll see you after lunch.

20 (Jury returned to jury room.)

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

22 And, Officer, you can step down for now.

23 (Witness steps down.)

24 THE COURT: All right. So I know you all want to  
25 get to lunch.

1           Mr. Pattis, on your objection, I take your point  
2       in many cases, the nature of the objection you're making.  
3       Here -- I mean, it -- if all she can testify to is -- from  
4       her memory is the crowd was doing this and can't, you  
5       know -- and can't delineate -- I mean, it would be one  
6       thing, I think, if -- often, when you've made this  
7       objection, it's been because there has been, let's say --  
8       we're asking about some subset of the defendants. It's,  
9       sort of, unclear, Well, did you mean Mr. Pezzola and  
10      Mr. Rehl or just Mr. Rehl or just Mr. Pezzola? I -- if all  
11      she can say is "the crowd" and you're going to be able to  
12      cross her and say, Actually, you don't have any memory of  
13      any particular person doing any of this stuff, how is  
14      that -- how is -- while her testimony is vague, if that's  
15      her best memory of it and your objection -- part of your  
16      objection was to relevance and the Government has to prove,  
17      for example, civil disturbance, why isn't it at least  
18      relevant for that purpose?

19           MR. PATTIS: The objection was directed to the  
20      "throwing things" comment. One count is that the defendants  
21      perhaps -- aided and abetting the throwing of water bottles.  
22      I don't know how the Government intends to impute a mental  
23      state to the clients on that behalf. And so it was really  
24      directed toward that -- her claim that the crowd was  
25      throwing things. And, clearly, we intend to make a motion

1 at the end of the Government's case if this is all they have  
2 as to that claim, but in -- it seems to me that the Court  
3 could, nonetheless, conclude that while the group  
4 characteristics and states of mind might be imputed to  
5 people who were in the crowd, aiding and abetting someone  
6 else throwing a water bottle is a bridge too far.

7 And secondarily -- and then I'll stop -- this  
8 might involve the disputed area of the tools theory, and I'm  
9 not sure how far the Court is permitted to go -- or is going  
10 to permit the Government to go there. And so I know that  
11 tools in general is admissible. There has to be an outer  
12 limit, however. And to say that members of the crowd were  
13 throwing things seems to me to be a bit much.

14 THE COURT: I guess I understand the point you're  
15 making, and I don't -- my -- let me put it this way. I  
16 don't see how -- if the Government -- if all the Government  
17 has on the questions of the -- on -- as far as the evidence  
18 goes, I don't see how they could get over the hump on  
19 that -- on, you know -- general testimony that someone in  
20 the crowd threw something at that point? I, you know --  
21 that's not -- that's beyond the outer bounds of the tools  
22 theory, for sure. So I didn't -- I don't see the Government  
23 as attempting to meet that burden through that testimony.

24 So I, you know -- I mean, Mr. Mulroe, you tell me  
25 if I'm wrong.

1 MR. MULROE: You're not wrong, Your Honor.

2 THE COURT: See, I -- it's -- I love hearing that.

3 (Laughter.)

4 Anyway, so we'll -- I mean, I expect I'll overrule  
5 the objection. The testimony is good for what it's worth.  
6 On those points, I don't think it's worth very much, but I  
7 do think, again, the Government -- if -- to the extent they  
8 have to prove a civil disturbance, I think it's at least  
9 relevant on that point.

10 Anything further before we break for lunch?

11 MR. PATTIS: We wanted to thank whoever turned the  
12 temperature down in here. We meant to bring it to the  
13 Court's attention that we -- although we're not conspiracy  
14 theorists, it was 10 to 15 degrees warmer in here the last  
15 two days, and we wondered if it was an effort to tire us and  
16 slow us down, but the temperature is beginning to come down  
17 again, so --

18 THE COURT: All right. I hadn't -- all right.  
19 I'll, you know -- I'm glad you're not a conspiracy theorist  
20 on the temperature, Mr. Pattis.

21 All right. Very well. We'll see you at --  
22 Mr. McCullough?

23 MR. MCCULLOUGH: I'm -- so Your Honor, this is our  
24 last witness for the day. I think we've got some additional  
25 direct following the lunch break, obviously. And then we'll

1 have whatever cross comes next, but I did want to -- we  
2 will -- I'm doing this now because, you know, if you want to  
3 have words, we can talk through it, Your Honor. This -- we  
4 are benefiting from the fact that we've moved quickly. We  
5 have -- I'll tell you that this witness -- we have joked  
6 that she has basically run out of the things to do here at  
7 the courthouse because she's been here on so many days.  
8 We're trying to manage this -- people coming in from out of  
9 town. Our next two -- our next witness is an out-of-town  
10 witness who is in -- at the moment, flying home, because we  
11 did not anticipate her -- getting to her. She is part of  
12 our series of Telegram -- this now begins our Tel- --  
13 introduction of the Telegram evidence with Kate Cain,  
14 followed by Peter Dubrowski. So Your Honor, we would -- I  
15 mean, I think we could make use of this afternoon's time, to  
16 the extent that there is any left after the cross, to dig  
17 into the Telegram messages, but that's where we are.

18 THE COURT: Well, let me -- I was going to raise  
19 this at the end of the day. Let me say this. I think it's  
20 a mistake for the Government -- so two things.  
21 Understanding the challenges that you all have along these  
22 lines and that the defendants will have along these lines,  
23 we've got to have another witness in the -- in the, you  
24 know -- in the hopper in case things like this happen. I  
25 mean, I just -- both sides. It's -- I understand the

1 challenges you have, but it's a big case with a lot of --  
2 and I know it's a lot of moving parts on both sides, but  
3 there are -- it seems to me -- and I get that, you know,  
4 you'd like to present your case in a particular order. But  
5 we're not going to have dead time while we wait for  
6 witnesses so that the Government, or the defense, for that  
7 matter, can, sort of, put things on in precisely the order  
8 they would like.

9 So going forward, I really need to have another  
10 witness, whoever that might be. Again, there are a lot of  
11 witnesses -- I know some testimony is more important than  
12 others -- but someone to be able to continue to push things  
13 forward.

14 Number two, the fact that the next -- and I was  
15 going to -- as I -- this point I was going to make at the  
16 end of the day, but the fact that the next witness is a  
17 Telegram witness, I -- I mean, let me put it this way.  
18 Having spent a little bit of time looking at this yesterday  
19 after we broke -- I mean, I'm really -- we should have been  
20 litigating the particulars of this stuff, you know, in  
21 October. I mean, it's -- it's a great volume. I know you  
22 previewed the theories, but it's a fact-intensive -- these  
23 are -- first of all, the evidence is obviously important  
24 evidence for the Government. So this isn't something that  
25 snuck up on us. And given the volume -- it's one thing if



1 we had 10 exhibits, we could deal with. But the volume of  
2 exhibits is such that I wish we had been, you know --  
3 really, this should have been teed up before we even had a  
4 jury in front of me.

5 But putting that aside, look, I don't know --  
6 we'll see what the response from the defendants is tomorrow.  
7 We'll see what the parties propose on Saturday about how  
8 best to proceed on that. But I think, to give you all fair  
9 warning, I, you know -- I think you need to have a  
10 non-Telegram witness ready in case we don't have -- now, it  
11 may be -- I don't know how you're dividing this up in terms  
12 of witnesses, and it may be that we can -- you -- I think,  
13 Mr. McCullough, you suggested, you know, look, if there are  
14 a bunch of these things that aren't -- or the -- let me --  
15 the dispute is fairly straightforward and I can rule  
16 relatively quickly and you're -- you would like to go  
17 forward, kind of, piecemeal, I mean, okay. I mean, I'm not  
18 going to micromanage your case that much.

19 But on the other hand, if that's not the case, I  
20 do think you need to be prepared to have other witnesses if  
21 we're still in the process of working through these 200  
22 exhibits, and it may be that you've got to put some other  
23 people on and we'll get to this on the other side of it. I,  
24 you know -- I just -- we can't be in -- given the time frame  
25 here, we can't be in suspended animation -- the trial can't

1 be in suspended animation until, you know, we've exhausted  
2 the Telegram issue. I mean, it just can't.

3 MR. MCCULLOUGH: Your Honor, I fully agree -- the  
4 Government fully agrees with you that we cannot go into  
5 suspended mode here. The -- I will say, Your Honor, and I  
6 am loath to take that issue, kind of, head on, because I  
7 respect what you just said about, kind of, teeing this up.  
8 Your Honor, we are talking about a -- what is a finite  
9 number of Telegram groups and a -- and then -- so it's --  
10 so, Your Honor, it's not as though we said, Okay. We're  
11 going to use messages from this group, and we said, you  
12 know, Here are the eight groups we're going to use messages  
13 from -- we said, Here are the eight message- -- groups we're  
14 going to use messages from and here are the messages from  
15 those groups that we intend to use. And I -- Your Honor, I  
16 just -- in -- with all genuine respect to this, I cannot  
17 disagree with you more on the prospect that we have not teed  
18 these issues up. I mean, the idea that we have basically  
19 said, Look, this is the evidence that we anticipate putting  
20 in; here is how we plan to do it, we seek engagement  
21 starting as early as September, you know, the -- we've had  
22 the argument about the idea that our -- well, our final  
23 exhibits -- we, then, you know, added a few extras, and so  
24 this is a big problem. We have telegraphed exactly where  
25 we're --

1 THE COURT: So to speak.

2 MR. MCCULLOUGH: We --

3 THE COURT: I'm just --

4 MR. MCCULLOUGH: Yes.

5 THE COURT: Yes.

6 MR. MCCULLOUGH: If -- yes. Fair -- that's good.

7 (Laughter.)

8 We've telegraphed this. We've telegraphed exactly  
9 where this is going, and I -- Your Honor, I mean, we -- it  
10 really -- it just genuinely -- I mean, we can -- look, I --

11 THE COURT: But let me --

12 MR. MCCULLOUGH: -- we can work it in -- we can --

13 THE COURT: I acknowledge you've previewed some of  
14 the overarching theories. Absolutely. I understand. But I  
15 do think that the -- still, as that chart that has now --  
16 you all have made illustrates, there are a lot of different  
17 overlapping theories about how each of these documents could  
18 come in. And the other thing I was going to put on the  
19 parties' radar is, depending upon the outcome of that, you  
20 know, some of them can be used in different ways by the  
21 jury.

22 So it's also going to be the case that we're going  
23 to need a quite detailed and, sort of -- we're going to need  
24 a jury instruction, ultimately -- maybe that can wait until  
25 the final instructions for them -- but that says, it seems

1 to me, that says, Okay. Exhibit-1 can be used in this way;  
2 Exhibit-2 can be used that way; or, you know, it would say,  
3 Exhibits 1, 2, 17, 35 are -- right? So I'm not -- my only  
4 point is it's a little more nuanced than just, is something  
5 in or out? But it's the theory -- it's the -- it's the way  
6 it's admitted or the basis on which it's admitted.

7 So I hear what you are saying, but I -- let me  
8 just say, I think -- and we're going to work through it.  
9 We're going to work through it. But I -- the Government  
10 needs to be prepared in case, you know -- again, I don't  
11 know how you're dividing these things up and whether there's  
12 a way for you to, kind of, dip into the -- dip into the  
13 Telegram stuff in a piecemeal way, but I -- you all need to  
14 have backup witnesses ready in case we are in a place where  
15 we're -- it's not teed up for you to proceed as quickly as  
16 you would like. I mean, I just think that's the reality.

17 MR. MCCULLOUGH: And so, Your Honor -- and  
18 perhaps -- I think this is -- I will not delay us -- I will  
19 not stand between us and lunch and the break and the like  
20 any longer. I will say that we -- we will need to work out  
21 over the course of this next few days what that timing  
22 really looks like, because I, you know -- we would have  
23 hoped that we would have been, kind of, more accelerated  
24 and, kind of, had -- have the sequence come in the way that  
25 we anticipate. And -- and I take your point. It's trial.

1 We get the fact that it's trial. But we will need to know,  
2 Okay, look, we're going to resolve this by Wednesday. Or,  
3 We're going to resolve this --

4 THE COURT: Right.

5 MR. MCCULLOUGH: -- by Tuesday morning, so that we  
6 can say, Okay. Here's our game plan. Because we have had a  
7 couple of moments where -- for instance, the day that  
8 Special Agent Camiliere was planning to testify, and you  
9 know what a large witness that was. That got pulled. We  
10 filled the day. And we, you know -- we were ready to do  
11 that, and we will continue to be ready to do that.  
12 Obviously, I'm standing before you with egg on my face, but  
13 nonetheless, we're happy to do that. But we would like,  
14 a -- kind of, a roadmap so we can figure this out.

15 THE COURT: I think that is a perfectly fair  
16 request, and I think once we get past -- once the defendants  
17 respond on Friday and once I receive the submissions of the  
18 parties about how to proceed on Saturday, I agree with you;  
19 there has to be, for your planning purposes, a, sort of,  
20 game plan that I will enter that lets you know, Okay.  
21 There's -- here's the -- here's the game plan in terms of  
22 timing when we'll have a -- when I'll -- you'll have a  
23 ruling from me -- when the defendants will respond, when we  
24 will hash it out, and when you'll have a ruling so you know  
25 how to plan. That's totally fair and you will get that.

1 MR. MCCULLOUGH: Okay. And I just --

2 THE COURT: That's not, like, two weeks away.

3 I -- if that's part of what you're saying. I get it.

4 Quick. I understand.

5 MR. MCCULLOUGH: I think you're seeing the  
6 expression on my face. I mean, I think, you know, if  
7 we're -- that will severely prejudice the Government after  
8 what we feel like the telegraphing of the Telegram --

9 THE COURT: Well, as I said, I -- the point is  
10 that based on this current timing that we all understand --  
11 for example, Monday morning, I don't think -- we're not -- I  
12 mean, we're -- unless I get a -- something tomorrow that  
13 says, We've all agreed on everything, Monday is going to be  
14 a stretch. So my point is you're going to have to fill some  
15 time. How long that time is, we'll see. It's not on the  
16 order of weeks, obviously. It's in the order of days.

17 MR. MCCULLOUGH: Yeah.

18 THE COURT: But I agree with you. We -- once I  
19 get that from the parties, we'll -- you'll get from me a  
20 roadmap on how quickly and exactly what the status will be.  
21 My point is, like, for example, Monday, I think, is, at a  
22 minimum, going to be an issue because, again, I -- that  
23 timing clearly won't work. So you're going to need to have  
24 somebody to put up on Monday. At a minimum.

25 MR. MCCULLOUGH: Yes. So I --

1 THE COURT: All right.

2 MR. MCCULLOUGH: Understood, Your Honor. And I --  
3 just -- and, again, I -- you've heard me say this. I will  
4 just mention it again. It does require some planning on our  
5 part, given the fact that we do have a -- mostly non-local  
6 witnesses, so that we're -- we've -- and --

7 THE COURT: That's why it's -- it's Thursday and  
8 I'm telling you this.

9 MR. MCCULLOUGH: Yeah, we'll work through it.  
10 We'll work through it. Yep. So we will -- as you said,  
11 Your Honor, we will fill Monday morning and plan to start  
12 with Peter Dubrowski in the afternoon. That was a joke.  
13 That was a joke, Your Honor. We understand.

14 THE COURT: I know you --

15 MR. MCCULLOUGH: We'll work through it.

16 THE COURT: And you have my commitment that once  
17 you get -- once I get what you're going to get to me, I'll  
18 lay out a schedule and we'll -- and, again, whether that  
19 means we have to take half a day, some portion of one of the  
20 days next week to iron it all out, we'll do it, but you'll  
21 have a roadmap.

22 MR. PATTIS: We can assist the Government and  
23 provide an expert on First Amendment and protected speech  
24 and take the witness out of turn.

25 THE COURT: And, Mr. Pattis, you've talked so much

1 about how you're, you know -- stipulations are your thing.  
2 I understand. So maybe that's something you can work on,  
3 too.

4 All right. We'll see you back --

5 MS. HERNANDEZ: I'm sorry. Your Honor, we can  
6 stipulate that Mr. Pattis will do all the cross-examinations  
7 from now until -- that should give you more time.

8 THE COURT: It's 12:49. Let's come back at 2:00  
9 o'clock, given the time we've burned here.

10 THE DEPUTY CLERK: All rise. This Honorable Court  
11 stands in recess until the return of Court at 2:00 o'clock.

12 (Luncheon recess taken at 12:49 p.m.)

13 \* \* \* \* \*

14 CERTIFICATE OF OFFICIAL COURT REPORTER

15 I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify  
16 that the above and foregoing constitutes a true and accurate  
17 transcript of my stenographic notes and is a full, true and  
18 complete transcript of the proceedings to the best of my  
19 ability, dated this 2nd day of February 2023.

20 /s/Timothy R. Miller, RPR, CRR, NJ-CCR  
21 Official Court Reporter  
22 United States Courthouse  
23 Room 6722  
24 333 Constitution Avenue, NW  
25 Washington, DC 20001



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/s/Timothy [1] - 7033:20	19 [2] - 6961:21, 6962:7	2:00 [2] - 7033:8, 7033:11	4th [5] - 6898:14, 6938:3, 6938:11, 6938:16, 6959:13	917 [1] - 6898:19
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