

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CR No. 22-15
	)	Washington, D.C.
vs.	)	October 3, 2022
	)	9:30 a.m.
ELMER STEWART RHODES III, ET AL.,	)	
	)	Day 4
Defendants.	)	Morning Session
	)	

TRANSCRIPT OF JURY TRIAL OPENING STATEMENTS PROCEEDINGS  
BEFORE THE HONORABLE AMIT P. MEHTA  
UNITED STATES DISTRICT JUDGE

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

2 COURTROOM DEPUTY: All rise.

3 This court is in session. The Honorable  
4 Amit P. Mehta presiding.

5 THE COURT: Please be seated, everyone.

6 COURTROOM DEPUTY: Please be seated, everyone, and  
7 come to order.

8 Good morning, Your Honor. This is Criminal Case  
9 No. 22-15, United States of America versus Defendant No. 1,  
10 Elmer Stewart Rhodes III; Defendant 2, Kelly Meggs;  
11 Defendant 3, Kenneth Harrelson; Defendant 4,  
12 Jessica Watkins; and Defendant 10, Thomas Edward Caldwell.

13 Kathryn Rakoczy, Jeffrey Nestler, Alexandra  
14 Hughes, Troy Edwards, and Louis Manzo for the government.

15 Phillip Linder, James Lee Bright, and  
16 Edward Tarpley for Defendant Rhodes.

17 Stanley Woodward and Juli Haller for  
18 Defendant Meggs.

19 Bradford Geyer for Defendant Harrelson.

20 Jonathan Crisp for Defendant Watkins.

21 And David Fischer for Defendant Caldwell.

22 Defendants Rhodes, Meggs, Harrelson, and Caldwell  
23 are present in court for these proceedings.

24 Defendant Jessica Watkins is not yet present.

25 THE COURT: Good morning, everyone. I hope

1 everybody had a nice weekend.

2 Mr. Crisp, your client is not present. There you  
3 are. Are you prepared -- she should be up any minute now.

4 MR. CRISP: For the preliminary matters, yes,  
5 Your Honor.

6 THE COURT: Okay. Great. Thanks. So  
7 Ms. Watkins' presence is waived for these preliminary  
8 matters per her counsel.

9 So there were a number of motions filed over the  
10 weekend, into late last evening. Let me just take all of  
11 those up for -- I'm not going to take them up in the order  
12 in which they were filed but in the order in which I hope  
13 that they will make some logical sense.

14 So the first motion was Mr. Meggs' motion for a  
15 bench trial at ECF 364. Does the government -- let me just  
16 ask, does the government consent to Mr. Meggs's bench  
17 trial -- bench trial by Mr. Meggs?

18 MS. RAKOCZY: Your Honor, this issue was addressed  
19 extensively by the Court this summer, and I think at the  
20 time that it was raised, it was being contemplated for all  
21 defendants, the government was amenable to consenting to it.

22 The Court did note some concerns, citing some case  
23 law, including the Supreme Court's case in -- or *Patton*  
24 *versus United States*, 50 Supreme Court 253.

25 THE COURT: Right.

1 MS. RAKOCZY: That's about the interest not just  
2 the defendants or the government has but the public has in  
3 the interests of justice in cases having tried to the jury.  
4 So we just would echo those concerns given this stage,  
5 particularly in light of the jury having been sworn.

6 THE COURT: Ms. Rakoczy, this is -- I don't mean  
7 to be difficult, but simple yes-or-no answer on this point,  
8 which is does the government provide its consent to  
9 Mr. Meggs' request for a bench trial today?

10 MS. RAKOCZY: I think if put that way, we would  
11 say we would defer to the Court. We do have some concerns.  
12 We do not consent.

13 THE COURT: Okay. So if the government is  
14 deferring to me, I'm not quite sure what that means as far  
15 as the rule goes, but whatever it may mean, the motion is  
16 denied. The request is coming now here on the day of trial  
17 and so, in that sense, perhaps it is late. But beyond that,  
18 Supreme Court has said, this is *Patton versus United States*  
19 281 United States 276, Supreme Court wrote, "Trial by jury  
20 is the normal, and with occasional exceptions, the  
21 preferable mode of disposing of issues of fact in criminal  
22 cases above the grade of petty offenses. In such cases, the  
23 value and appropriateness of jury trial have been  
24 established by long experience and are not now to be denied.

25 "Not only must the right of the accused to a trial

1 by a constitutional jury be zealously preserved, but the  
2 maintenance of the jury as a fact-finding body in a criminal  
3 case is of such importance and has such a place in our  
4 traditions, that before a waiver can become effective, the  
5 consent of the government counsel and the sanction of the  
6 Court must be had, in addition to the express and  
7 intelligent consent of the defendant. And the duty of the  
8 trial court in that regard is not to be discharged as a mere  
9 matter of rote, but with the sound and advised discretion  
10 with an eye to avoid unreasonable or undue departures from  
11 that mode of trial or from any of the essential elements  
12 thereof and with a caution increasing in degree as the  
13 offenses dealt with increase in gravity." That excerpt from  
14 *Patton* was restated by the D.C. Circuit in *Dixon versus*  
15 *United States*, 292 F.2d 768.

16 And so the bottom line is that the Court does have  
17 discretion ultimately in deciding whether to grant a bench  
18 trial or not. And as the Supreme Court has said, jury  
19 trials are the norm and they should only be deviated with  
20 occasional exceptions, and particularly as the seriousness  
21 of the matter increases a court should be more skeptical of  
22 granting a bench trial in those circumstances. So for those  
23 reasons, in addition to a couple of reasons I'm about to  
24 state, the motion is denied.

25 As far as I understand, the reason Mr. Meggs wants



1 a bench trial is because he believes the jury we've  
2 ultimately selected is not fair or biased and even perhaps  
3 the panel at large is not fair and is biased. I will  
4 momentarily explain to everyone why that is not the case.  
5 So the justification for a bench trial, I would say, is  
6 unwarranted.

7 And, finally, what Mr. Meggs is ultimately asking  
8 for is essentially a hybrid bench and jury trial at this  
9 juncture because four defendants have not asked for a waiver  
10 of the jury trial.

11 There's a case out of the Middle District of  
12 Pennsylvania called *United States versus Cardenas Borbon*,  
13 C-a-r-d-e-n-a-s B-o-r-b-o-n, 629 F.Supp.2d 445-2009. And  
14 the case is actually a post-trial case, but nevertheless the  
15 District Court explained its reasons for not granting a last  
16 minute bench trial of a single defendant in a  
17 multi-co-defendant case.

18 And what the Court said in part is completely true  
19 and applicable in this case. So what the Court wrote there,  
20 and I adopt this reasoning in full. "In contrast, Borbon's  
21 request, if granted, would have significantly impeded the  
22 jury process because it would have created a substantial  
23 risk of juror confusion. Borbon would have proceeded to  
24 trial in the company of three co-defendants, none whom  
25 requested a bench trial. The government refused to consent

1 to Borbon's request if it would have resulted in severance  
2 of his case.

3 "Under these circumstances, jurors would have been  
4 required to hear evidence about Borbon's case but prevented  
5 from adjudicating his guilt. Such a proceeding would have  
6 engendered unwarranted evidentiary speculation regarding  
7 both Borbon's role in the conspiracy vis-à-vis his  
8 co-defendants and his individual criminal responsibility.

9 "The risk of juror confusion could not have been  
10 remedied effectively with a curative instruction. To the  
11 contrary, such action would have simply called attention to  
12 Borbon's unique trial posture and spawned further jury  
13 selection. The Court was particularly concerned that  
14 heightened scrutiny of Borbon's status would have led  
15 inexplicably to improper inferences on evidentiary  
16 evaluation and would have tainted resolution of the ultimate  
17 issue of guilt or innocence.

18 "Moreover, a joint bench and jury proceeding would  
19 have involved multiple fact-finders creating the potential  
20 for different conclusions regarding issues of witness  
21 credibility and reliability of evidence. Such disparities  
22 would have created a risk of inconsistent verdicts between  
23 Borbon and his alleged co-conspirators, thereby jeopardizing  
24 the judiciary's overarching interest in fair and equitable  
25 criminal proceedings.

1           "Lengthy, complex trials require careful judicial  
2 administration to ensure that all parties have opportunity  
3 to raise evidentiary objections and that jurors are  
4 accurately instructed about the law. Requiring the Court  
5 and jury to act as concurrent fact-finders would erect  
6 difficult hurdles to effective trial management and fetter  
7 the Court's ability to conduct the trial in a manner that is  
8 efficient and fair to all." So I think that was Judge  
9 Conner's decision out of the Middle District of Pennsylvania  
10 squarely on point and I adopt his reasoning in full here.

11           There was also filed by the defendants a  
12 supplement and renewed joint motion to transfer venue. That  
13 motion will be denied. The defendant's motion and  
14 supplement cites the same three surveys that we discussed in  
15 the past, doesn't really advance the ball. The motion also,  
16 and to be specific, *Haldeman* has clearly stated that the  
17 Court can rely on voir dire over any surveys that are  
18 presented, which is precisely what this Court has done. The  
19 motion also cites a host of media articles, not clear to me  
20 what purpose they serve because I was actually here, I don't  
21 need media articles to know what transpired.

22           The defendants' motion suggests that the jurors  
23 will not pay attention to the Court's instruction to ignore  
24 media. I find it hard to believe that the presumption of a  
25 motion would be that the jurors would not follow

1 instructions, but, nevertheless, every single juror that has  
2 been seated was asked before they were seated whether they  
3 had reviewed -- or viewed any media before, during the  
4 process of jury selection when there was heightened media  
5 scrutiny or review of this case, and not one of them said  
6 that had been exposed. My sense is this is a very diligent  
7 group of citizens, all of whom are going to abide by the  
8 Court's instruction and, therefore, I have no fear that they  
9 will do that.

10           The defendants have presented some final numbers  
11 that they think support their position. They do not. The  
12 defendants note that we went through 94 jurors during voir  
13 dire, 47 of whom were deemed qualified. They note that the  
14 Court struck 30 of the 47 on the defendant's strike list,  
15 meaning that 17 who responded affirmatively to "bias  
16 questions," including question 22 were deemed to be  
17 qualified. And also note that of the 72 that the defendants  
18 had identified on the objection list, five are now on the  
19 jury. Mr. Meggs' motion actually noted that there was one  
20 juror as to whom the Court had denied a peremptory because  
21 that juror's wife is employed by the Department of Justice.

22           So here are the actual numbers which we calculated  
23 over the weekend. We went through what the numbers were  
24 prior to voir dire. Here's what they are who were  
25 identified after voir dire.

1           Of those who were qualified after voir dire, one  
2 answered question 11 affirmatively, that's 2 percent of all  
3 those who were qualified. 22, question 22 only ten had  
4 answered that question affirmatively. That is 21 percent of  
5 those who were identified. Question 44, 27, that was the  
6 question about having observed the January 6th Committee  
7 proceedings. 27 answered that affirmatively, 57 percent.

8           And here's the real key questions. Question 45,  
9 whether they had sort of bias with respect to January 6th,  
10 only five qualified after the voir dire and answered that  
11 question. That's 11 percent. Question 46, that was the  
12 question about -- that was the question about whether you've  
13 heard about the Oath Keepers. 25 of those who were  
14 qualified said they had. So it's about half.

15           And so of the qualified group, Question 47, which  
16 was, do you have such views about the Oath Keepers or  
17 preconceptions that you can't be fair and impartial, only  
18 four, that is 9 percent, answered that question.

19           Question 48, this was the question had you ever  
20 heard of any of the defendants. Only three of the qualified  
21 group, that's 6 percent, had ever heard of any of these  
22 defendants, and zero, exactly zero, had said that they had  
23 such strong views about these defendants that they would not  
24 be able to fairly judge this case.

25           With respect to the impaneled jurors, these are

1 our final 16 jurors, exactly zero of them had answered  
2 Question 11 affirmatively. That is actually zero percent.

3 Question 22, only two of them on our panel had  
4 actually answered that question affirmatively. That is 13  
5 percent.

6 Question 44, nine of them had actually watched the  
7 January 6th Committee hearings.

8 Question 45, this was those who had such strong  
9 feelings about January 6th that they could not be fair and  
10 impartial. Zero. None. Zero percent.

11 Question 46, number who had actually heard of  
12 these -- excuse me, heard of the Oath Keepers. Nine of the  
13 16, 56 percent, but of that number, how many said they could  
14 not be fair and impartial based upon what they heard? Zero.

15 Number of jurors who had ever heard of any of  
16 these defendants. Zero.

17 Number of defendants [sic] consequently who could  
18 not be fair and impartial based upon knowledge of these  
19 defendants? Zero.

20 So what we have here is a jury that, by and large,  
21 has no preconceived bias or prejudice as to both  
22 Oath Keepers or any of these defendants. Not a single one  
23 of them.

24 The only question that elicited anything more than  
25 two responses was the question about the committee hearings,

1 but as all of you will recall, the vast majority of people  
2 who came before the Court had very little recollection of  
3 those hearings, let alone followed them to the extent that  
4 people presumed that they would have.

5 And Question 46, where nine people had heard of  
6 the Oath Keepers, but, again, a lot of them barely knew  
7 anything about the group and the organization.

8 And then Question 22, which has been flagged as a  
9 "prejudicial" question or -- again, only two had said  
10 anything about that, had said that they had concerns about  
11 people's safety.

12 So what that means is that voir dire has done its  
13 job. Both between voir dire and the strikes that were used  
14 in this case, it's absolutely done its job.

15 The defendants have also said that five of the  
16 individuals that were on their strike list were now on the  
17 jury. They are Juror 1140, Juror 0952, Juror 1262,  
18 Juror 0481, and Juror 0299.

19 Juror 1140 answered one question yes. That was  
20 Question 46; that is, they had heard of the Oath Keepers.  
21 But everything else was no.

22 Juror 0952 also answered yes to the question, did  
23 they know the Oath Keepers, but everything else was answered  
24 no.

25 I'll skip over 1262 for a moment.

1 Juror 0481 answered all questions no except for  
2 the question about Oath Keepers. Did the person know of  
3 them or have heard of them.

4 And Juror 0299 had answered both 46 yes and 22  
5 yes, but answered everything else no.

6 Juror 1262, this is the person that's been flagged  
7 in Mr. Meggs' motion as the person as to whom the Court did  
8 not accept a strike or add an additional strike. The  
9 defense had requested it because the juror's wife is  
10 employed by the Department of Justice in the Civil Division  
11 in the Federal Programs Branch. That in and of itself is  
12 certainly not sufficient to strike the individual.

13 There is a case that I've become familiar with out  
14 of the Seventh Circuit -- it's not something that's been  
15 adopted by the D.C. Circuit -- in which the Seventh Circuit  
16 said it was an error for the trial court not to strike a  
17 juror who actually had worked in the prosecutor's office  
18 that was prosecuting the case based upon a presumption of  
19 inherent bias or latent bias. That clearly is not  
20 applicable.

21 The gentleman who was actually seated on the jury,  
22 I think, works in IT; his wife works in the Civil Division  
23 of the Department of Justice. So it's completely and far  
24 removed from that.

25 That particular juror, 0268, answered one question



1 yes, one question. And that was question 22, and that was  
2 his concern. And this was the extent of the colloquy.

3 Question 22 asks whether -- and this is with the  
4 particular juror.

5 "Question 22 asks whether you had any concern for  
6 safety of yourself, close family, or family members on  
7 January the 6th. Can you tell us about that?"

8 His answer was, "Yeah. I was just concerned for  
9 my spouse. I know we were far away because we lived in  
10 Northwest D.C., but it still was worrisome when she was here  
11 in D.C. and I was out in Dulles working."

12 The Court asked following: "Okay. And you know  
13 the events of that day were sort of removed from that. And  
14 let me ask you: Is there anything about the concern you had  
15 for your spouse that day that would affect your ability to  
16 be fair and impartial if you were selected as a juror?"

17 The prospective juror's answer was: "I don't  
18 believe so."

19 So the motions insofar as they request a bench  
20 trial, change of venue, what have you, those motions are  
21 denied.

22 There's a motion filed by Mr. Meggs to conduct a  
23 deposition of John Siemens pursuant to Federal Rule of  
24 Criminal Procedure 15. That motion is denied insofar as  
25 it's requesting -- seeking a request to continue the trial

1 to take Mr. Siemens' deposition. We can take up the issue  
2 of whether there may be a day where Mr. Siemens' deposition  
3 or time can be taken. But we are certainly not delaying  
4 this jury trial. Frankly, the motion to take the deposition  
5 comes too late, although Mr. Meggs is indicating he only got  
6 the memo regarding Mr. Siemens' name recently. At a  
7 minimum, his first name was first floated, at least publicly  
8 in this case, when there was a request by Mr. Rhodes' new  
9 counsel to delay trial. And that was filed about two weeks  
10 ago. So that name has at least been in the public record  
11 for two weeks without any request for a deposition in the  
12 interim two weeks.

13 Mr. Linder.

14 MR. LINDER: Yes, sir, if I could supplement the  
15 record on that.

16 Mr. Siemens -- or Colonel Siemens has been a  
17 witness we've known about for some time. However, he's  
18 elderly. While he could travel as recently as six or eight  
19 weeks ago, he can no longer travel. He has serious health  
20 problems. He's not quite bedridden, but he can't travel.  
21 So we need to make some kind of arrangements to either  
22 depose him or allow him to testify by Zoom.

23 THE COURT: Okay. Well, that's something we can  
24 take up --

25 MR. LINDER: That's a new development.

1 THE COURT: Okay.

2 Well, that's something we'll take up. But, again,  
3 we're not going to use it as a basis for continuing the  
4 trial.

5 MR. LINDER: Sure.

6 THE COURT: I will note the extent to which  
7 there's been a proffer about why we need Mr. Siemens'  
8 testimony, I am quite confident that there will be ample  
9 testimony in this case about the Oath Keepers' provision of  
10 security. I mean, I have no doubt that the very first  
11 witness the government calls is going to be cross-examined  
12 about the Oath Keepers providing security.

13 So the notion that Mr. Siemens has some sort of  
14 unique knowledge about the Oath Keepers' provision of  
15 security, nobody has been paying attention if that's the  
16 argument. But we'll see where that comes out.

17 Now, there were a number of motions filed  
18 regarding preclusion of statements in opening, and the first  
19 was Mr. Meggs' motion to preclude a marital statement that  
20 we had talked about some time ago. Mr. Meggs has suggested  
21 that the government hasn't made a sufficient proffer, that  
22 the marital privilege doesn't apply. Mr. Nestler, is that a  
23 statement you intend to use in opening?

24 MR. NESTLER: Yes, Your Honor.

25 THE COURT: All right.

1 Do you have anything more to add about your  
2 proffer?

3 MR. NESTLER: Yes, Your Honor.

4 As we indicated to defense counsel, we have a  
5 Cellebrite extraction. It's an Excel spreadsheet that shows  
6 that Mr. Meggs sent the message to something called family  
7 chat and that on that chat at the time he sent the message  
8 were Connie Meggs and Zachary Meggs.

9 Mr. Woodward has told us that he disagrees with, I  
10 guess, that Cellebrite report. But we have not seen any  
11 facts or heard any other evidence or heard about any experts  
12 from the defense side who would say anything otherwise.

13 THE COURT: Okay.

14 Mr. Woodward, would you like to add anything to  
15 your motion?

16 MR. WOODWARD: Your Honor, as indicated in our  
17 motion, the Cellebrite report to which the government refers  
18 indicates that Mr. Meggs' son was on the chat at the time  
19 that it was extracted from his phone, which occurred months  
20 after the messages in question were sent.

21 The Cellebrite report also indicates that people  
22 can come and go from the chat and that people did, in fact,  
23 come and go from the chat. So our ask is that the  
24 government be required to show that at the time the specific  
25 message in question was sent, that Mr. Meggs' son was on the

1 chat. They haven't done that; and so, therefore, we ask --

2 THE COURT: Well, let me ask you this: Is there  
3 anything on the Cellebrite report that indicates Mr. Meggs'  
4 son exited the chat?

5 MR. WOODWARD: There is. There is circumstantial  
6 evidence in the sense that there are communications as  
7 between Mr. Meggs and his wife that suggest that no one else  
8 is on the chat.

9 There is -- the sufficiency of the spreadsheet, we  
10 submit, is inadequate to make a definitive finding that  
11 somebody is or is not on the chat. It's just not a good  
12 report. I don't believe that's the government's fault.  
13 I believe this is a flaw in Cellebrite and the forensic  
14 extraction from these phones.

15 THE COURT: On what basis? I mean, you're just  
16 throwing that out there. What's wrong with the report.

17 MR. WOODWARD: The report is an extraction at the  
18 time, again, at the time that the phone was analyzed.

19 THE COURT: Right.

20 MR. WOODWARD: The SMS technology is not as  
21 sophisticated as we now see in either iMessage discussions  
22 or WhatsApp discussions or signal discussions with which the  
23 Court has become familiar.

24 And so we don't have the level of specificity in  
25 the messages that we do with other message platforms for

1 this specific chat.

2 And so Mr. Nestler is right; I don't know that  
3 I'm going to be in a position to prove that Mr. Meggs' son  
4 did not -- or did -- did not receive the chat. It's sort of  
5 a "chicken or the egg" problem. It's not clear to us that  
6 he did receive the chat, and the government should have to  
7 proffer that before it can use the statement and certainly  
8 before it can use the statement in its opening.

9 THE COURT: Okay. Thank you, Mr. Woodward.

10 MR. NESTLER: May I briefly respond, Your Honor?

11 THE COURT: Sure.

12 MR. NESTLER: Contrary to Mr. Woodward's  
13 representations, Zachary Meggs sent a message on that same  
14 chat 17 minutes after Kelly Meggs' comment. So not only  
15 is there an indication that Zachary Meggs left the chat, he  
16 actually contributed to the chat just 17 minutes later.

17 THE COURT: So it is true that with respect to at  
18 least this privilege, the Supreme Court has said that the  
19 burden is actually on the party that's seeking to pierce the  
20 privilege, to establish that the privilege is inapplicable.

21 It's not clear to me what the standard is. But I  
22 suspect, like most standards, when it comes to privileges,  
23 it's by a preponderance of the evidence. And I think the  
24 government has met its burden here.

25 Here is the chronology that is unrebutted by

1 Mr. Meggs' presentation based upon the Cellebrite extract.

2           The thread was started with Kelly, Connie Meggs  
3 and their adult children, both the daughter and son, on  
4 October 3rd of 2020. The extraction shows that the daughter  
5 removed herself from the thread some 27 days later, on  
6 October 30th of 2020. So the actual Cellebrite extraction  
7 report shows when somebody leaves the chat.

8           That same afternoon, that is, October 30th at 2020  
9 in the afternoon, Mr. Meggs added his adult daughter back  
10 into the chat. So it actually shows not only when somebody  
11 leaves the chat, it shows when somebody is added back in.  
12 And he renamed the chat "Family Chat."

13           Two days later, apparently not wanting to be in  
14 this chat, the adult daughter removes herself a second time  
15 from the chat.

16           On November the 3rd at 6:54 p.m., this is  
17 approximately one hour prior to the statement in question --  
18 it is exactly one hour prior to the statement in question --  
19 Mr. Meggs' younger son sends a message about USF banning a  
20 club. I assume that's the University of Southern Florida.

21           Mr. Meggs, that is, his father, Kelly Meggs,  
22 responds one minute later to his younger son's comment.

23           At 7:10, Connnie Meggs also responds to the  
24 younger son's message.

25           And then the message that's at issue happens at

1 7:54. This is Mr. Meggs' statement about, I think, words to  
2 effect of wanting to go on a killing spree.

3 His wife the next minute answers, responds and  
4 basically says, Shut up.

5 Six minutes after that, Ms. Meggs makes a  
6 different statement, another statement about, essentially to  
7 the effect of it's surprising that people would want to  
8 continue to -- or do support then-candidate Biden.

9 Five minutes after Ms. Meggs' statement,  
10 Kelly Meggs responds that Mr. Trump or President-Then Trump  
11 had the lead in Florida, so Florida was essentially locked  
12 up because a bunch of the red counties had come in.

13 Six minutes later, Zach Meggs -- that is, the  
14 adult son -- responds, "You guys are so behind. WTF."

15 So within, I guess it's 17 minutes, as Mr. Nestler  
16 said, after Mr. Meggs' statement, his son responds, clearly  
17 suggesting he was on the chat at the time. There's no  
18 evidence that he exited the chat at the time, unlike the  
19 evidence showing that the daughter actually did exit the  
20 chat twice.

21 So to the extent that there's any suggestion that  
22 the Cellebrite report wouldn't have captured the exiting of  
23 Zach Meggs in the chat, from the chat, is simply not borne  
24 out by the evidence.

25 So that motion is denied, and the government will



1 be able to refer to that statement in its opening.

2 MR. WOODWARD: Your Honor --

3 THE COURT: Yes.

4 MR. WOODWARD: -- just for the record, you're also  
5 overruling our objection based on the 403.

6 THE COURT: Yes, also based on 403 as well. The  
7 statement is not -- I mean, it's prejudicial, but it's not  
8 substantially more prejudicial than probative. The  
9 statement clearly bears on Mr. Meggs' state of mind, not  
10 only in early November, but arguably going forward  
11 concerning the election and its results and provides  
12 state-of-mind evidence as to his joining of the conspiracy  
13 and the purpose of the conspiracy.

14 All right. Then there's ECF 361, which is  
15 Mr. Meggs' motion to preclude use of opening -- excuse me,  
16 certain statements in opening.

17 Mr. Woodward, I don't what to quite -- I'm sorry.  
18 Wrong one. That's the one I just denied. 361 is the one  
19 I just denied.

20 365, motion in limine to preclude out-of-court  
21 statements. Mr. Woodward, I don't know what to quite make  
22 of this in the sense that we'd talked about this some time  
23 back, and I thought we were either, A, going to get all this  
24 resolved or, B, bring it up in time for me to resolve this  
25 before opening, but here we are this morning.

1           Mr. Nestler, are there any statements that you  
2 intend to include in your opening that would be covered by  
3 any of the three categories that have been identified here?

4           MR. NESTLER: I don't believe so. I have showed  
5 all of the statements I intend to include in my opening to  
6 defense counsel, both in court last Thursday and then again  
7 on a Webex over the weekend. If defense counsel believes  
8 any of those statements are covered, they can let us know,  
9 but I'm not sure which statements they're referring to.

10          THE COURT: Okay.

11          Mr. Woodward, are there particular statements that  
12 you think are covered by any of these three categories?

13          MR. WOODWARD: Yes, Your Honor, to the extent that  
14 some of the statements the government intends to use in its  
15 opening, the question would be whether they would be  
16 admissible as against one of the defendants or all of the  
17 defendants, and if they're admissible only as to one of the  
18 defendants and this was in opening, we would ask for a  
19 limiting instructions so I think issue the defendants would  
20 have is --

21          THE COURT: Let me interrupt.

22          I'm not going to give any limiting instructions  
23 during opening in terms of how evidence is going to be  
24 presented. I mean, opening is just that, it's opening.  
25 It's not evidence. The jury will be told it's not evidence,

1 and ultimately if the evidence is introduced, I'll give the  
2 limiting instruction then. But I have never -- I don't know  
3 any judge that provides limiting instructions with respect  
4 to an opening.

5 MR. WOODWARD: Then I don't believe there are any  
6 issues we need to take up before opening.

7 THE COURT: Okay. So we'll take this up at a  
8 break.

9 There is also ECF 163; this is a motion to  
10 reconsider evidence regarding Jeremy Brown's possession of a  
11 hand grenade. There had been a motion in limine filed  
12 earlier that I denied and apparently there's now some DNA  
13 evidence.

14 Mr. Nestler, is this evidence you intend to  
15 reference in or, Mr. Manzo, is this going to be referenced  
16 in opening?

17 MR. NESTLER: Yes, Your Honor.

18 THE COURT: All right.

19 Mr. Manzo.

20 MR MANZO: Thank you, Your Honor.

21 This evidence was turned over.

22 THE COURT: I'm sorry to interrupt.

23 Has Mr. Brown been charged with possession of the  
24 hand grenades in his Florida case?

25 MR. MANZO: Yes. And he's on track for a December

1 trial now.

2           The DNA evidence was turned over in March of this  
3 year. It's not new evidence. Based on extensive evidence  
4 presented to the magistrate judge in this courthouse, the  
5 judge found probable cause for the very subject offenses  
6 that Mr. Brown is now indicted for. In short, we presented  
7 evidence that Jeremy Brown had explosives in a certain  
8 location. We searched that location and we found the  
9 explosives.

10           We do not dispute the FBI report. It's something  
11 that I think the parties can consider later on. But we note  
12 that it's about the tape on the hand grenades. Hand  
13 grenades are often taped for safety reasons. We don't know  
14 when that tape was put on. But we do know that the hand  
15 grenades were found in the RV that Mr. Brown took to D.C.  
16 We know that one of the cooperators in this case relayed a  
17 conversation he had with Kelly Meggs, where Kelly Meggs  
18 said, Mr. Brown has grenades, so the evidence is still the  
19 same. And, again, we've turned over this report back in  
20 March. It's not new evidence.

21           THE COURT: Is the government's, any of its  
22 forensic evidence tied back to Mr. Brown with respect to the  
23 hand grenades?

24           MR. MANZO: For the hand grenades, no.

25           THE COURT: Okay.

1           MR. MANZO: For the other weapons, I believe  
2 there's fingerprints. We're not planning on eliciting  
3 testimony on that. Our presentation of Mr. Brown's grenades  
4 will be fairly brief. It will be the recovering agent  
5 talking about recovering the grenades, and that's pretty  
6 much it.

7           THE COURT: Okay.

8           Mr. Geyer.

9           MR. GEYER: Good morning, Your Honor.

10          THE COURT: Good morning.

11          MR. GEYER: This originally came to my attention  
12 when the Court last heard it and I was concerned that a  
13 proper factual basis hadn't been presented to the Court.

14                 It took me some weeks to find the information and  
15 the government was very kind to get that information for me.

16                 The bottom line is the guns that he's referring  
17 to, the vast majority of those were legal. The ones that  
18 were not were in closed boxes that were inside the house  
19 that I believe are owned by his, Jeremy Brown's brother, who  
20 had took his own life tragically. I believe that's the  
21 lineage on those firearms.

22                 The theory, the government's theory is that these  
23 hand grenades must have been in that RV. It's a very  
24 heavily used RV by Jeremy Brown and his family, including  
25 his dog. And that --

1 THE COURT: This is these are the dog's hand  
2 grenades defense?

3 MR. GEYER: There was actually extensive testing  
4 for dog, animal fibers, and they also went back and took  
5 samples of the carpet to try to tie that to the -- to try to  
6 come up with something to tie these hand grenades to  
7 Mr. Brown, and they came up with bupkis, Your Honor.  
8 There's no match.

9 And for the hand grenades to be in that heavily  
10 used RV for nine months with reversible tape, hurricane  
11 tape, where you can see from the photographs that the sticky  
12 side is clearly accessible by the air, there would be some  
13 skin follicle or hair from the dog or hair from the Brown  
14 family or even, quite frankly, hair from other people who  
15 they, if they thought they had any avenue to tie it to the  
16 Browns or his associates, they would have run those DNA  
17 tests. They came up with nothing.

18 It's way -- it's far in excess in terms of  
19 prejudice, and, frankly, it's not probative at all.

20 THE COURT: Okay.

21 MR. GEYER: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Geyer.

23 Okay. The Court will not -- I'm not going to  
24 change my mind about the admissibility of his evidence. You  
25 know, let's just recap here. Mr. Brown is an alleged

1 co-conspirator. The allegation is he came to Washington,  
2 D.C. in an RV as part of a group of Oath Keepers who came to  
3 Washington on January the 6th. The allegation is or the  
4 belief is that he had hand grenades or some kind of  
5 explosives in his RV when he came to Washington. That is  
6 based upon the statement of a cooperator who said something  
7 to Mr. Meggs to the effect of -- I can't remember what the  
8 exact statement is, but Mr. Brown has -- what's the exact  
9 statement?

10 MR. NESTLER: Actually it's Mr. Meggs told the  
11 cooperator that Mr. Brown had explosives in the RV.

12 THE COURT: Right, that's what it was.

13 Mr. Meggs told a cooperator that Mr. Brown had  
14 explosives in the RV. Clearly Mr. Meggs' statement is  
15 relevant, it bears on his state of mind, it bears upon --  
16 it's arguably a statement in furtherance of the conspiracy  
17 and, therefore, a co-conspirator statement.

18 This evidence corroborates what Mr. Meggs said.  
19 Although the explosives, these hand grenades, were found  
20 nine months later, they were found in the RV that Mr. Brown  
21 apparently drove to Washington, D.C. We were -- as we  
22 discussed last time, these are not over-the-counter hand  
23 grenades, if there is such a thing. These are Army issued  
24 or -- hand grenades. Mr. Brown himself was a former member  
25 of the Army or Marines.

1 MR. MANZO: Army, Your Honor.

2 THE COURT: Army.

3 And a decorated one at that. But nevertheless,  
4 he's a former member of the Army.

5 The hand grenades were in the RV.

6 Mr. Brown has been charged with possession of  
7 that, so at a minimum, there's been probable cause to  
8 establish his possession of those hand grenades, and  
9 apparently the government thinks they can prove his  
10 possession of them beyond a reasonable doubt because he  
11 continues forward to trial notwithstanding his DNA results.  
12 So to the extent there's a question here of admissibility  
13 and possession, certainly by a preponderance of the  
14 evidence, the government has met that burden.

15 It's clearly probative as a corroborating  
16 statement Mr. Meggs made, and it's also independently  
17 corroborative in the sense that Mr. Brown himself is a  
18 co-conspirator and, therefore, his possession of an  
19 explosive device is relevant to the conspiracy and it's not  
20 more probative than -- excuse me, more prejudicial than  
21 probative.

22 The fact of the DNA test, while undoubtedly  
23 helpful to disabuse a juror of the notion that these belong  
24 to Mr. Brown, and, you know, the question of who knows how  
25 they got there and who they belong to, but ultimately



1 I think that is a question that goes to weight. And if,  
2 Mr. Geyer, you wish to have the FBI analyst called who  
3 conducted the DNA testing and the government -- well, let's  
4 put it this way. If you want to have that person called,  
5 presumably the government will facilitate it. If they  
6 don't, you let me know and I'll put that person under  
7 subpoena, because if that's evidence you want to introduce  
8 in your case, I will certainly allow that if the government  
9 doesn't introduce it in theirs.

10 Okay. There is one last motion that had been  
11 filed during jury selection last week, and I don't know  
12 whether it will impact at all our openings or not, but  
13 Mr. Rhodes had filed a motion in limine at 348 asking that  
14 the government not use certain terms in its presentation of  
15 evidence. Let's just stick with the opening for now.

16 The words are anti-government, militia, organized  
17 militia, extremist, extremism, racist, racism, white  
18 supremacism, white supremacist, white nationalism, or white  
19 nationalist. Other than the word militia, I'm not sure --  
20 I think you all are going to refer to themselves at least as  
21 part of the militia.

22 MR. BRIGHT: May I clarify, Your Honor?

23 That was specifically included because the fact is  
24 that the Oath Keepers never held themselves out as a  
25 militia. Obviously we've addressed this with the Court.

1           Regarding other motions that we filed, including  
2           our brief on the Insurrection Act and the explanation of  
3           militias therein, that is supported as recently by the  
4           *Heller* decision.

5           They did not hold themselves out ever as an actual  
6           militia, whether it be state sanctioned or otherwise. Yes,  
7           Mr. Rhodes advocated in the concept of the body militia, all  
8           people that fell within the 17 to 45 range. But they never  
9           themselves referred to themselves in a militia for those  
10          very, very specific reasons.

11          THE COURT: Well, it is true that the defense  
12          theory is going to be that they were part of a militia, that  
13          is, the militia that is available for call-up.

14          MR. BRIGHT: By all able-bodied men of the United  
15          States.

16          THE COURT: Correct.

17          MR. BRIGHT: That would be correct.

18          THE COURT: So the idea that the word militia is  
19          not going to be used to refer to -- that the government  
20          won't be able to use the term militia seems to me odds with  
21          what your defense is going to be.

22          Now, they may not have referred to themselves as a  
23          militia but they certainly viewed themselves individually to  
24          be part of a militia.

25          MR. BRIGHT: Then perhaps we could modify that,

1 Your Honor, to just say that the Oath Keepers themselves  
2 were not a formal militia.

3 THE COURT: Okay. Well, let me hear from  
4 Mr. Nestler as to what, if any of these words he intends to  
5 use in his opening.

6 MR. NESTLER: The only word is militia.

7 THE COURT: Okay.

8 MR. BRIGHT: I understand, Your Honor. I was  
9 still asking for a motion in limine, but I think the others  
10 are self-explanatory. And I think the Court should grant it  
11 at a minimum in terms of those.

12 THE COURT: I've heard the government say they  
13 aren't going to use any of these.

14 If what you're really concerned about is whether a  
15 witness is going to refer to the Oath Keepers this way, that  
16 is a separate question that I think we need to revisit.  
17 Because if a witness comes in, particularly a cooperating  
18 witness who has certain views about the organization and  
19 their time in the organization, that's a different question.

20 MR. BRIGHT: I absolutely agree with you,  
21 Your Honor, and we'd like to take it up at the time that  
22 that comes about.

23 THE COURT: Mr. Crisp.

24 MR. CRISP: I don't mean to confuse the issue, but  
25 it's probably going to come up.

1           I will clearly be asserting that my client was  
2 part of a militia, but this would be the Ohio state, as  
3 opposed to --

4           THE COURT: Right.

5           MR. CRISP: So there may be times when we're not  
6 all on the same page. I just wanted to make sure we're  
7 there. Thank you.

8           THE COURT: Right.

9           MR. BRIGHT: Your Honor, there was one other  
10 motion. You said that this was the last motion that had  
11 been filed. There is a separate motion that was filed over  
12 the weekend by our defense team regarding an addendum to the  
13 motion to compel certain CHS materials.

14           THE COURT: I may have missed it. I'm sorry.  
15 There was just -- is that anything that's relevant to the  
16 openings this morning?

17           MR. BRIGHT: I think we can address it after  
18 openings, Your Honor.

19           THE COURT: I'm sorry. I thought I caught them  
20 all, and I just --

21           MR. BRIGHT: There aren't very many motions filed  
22 in this case, so I can understand that.

23           THE COURT: I'm sorry I missed that one. When we  
24 get a break, I'll take a look at that.

25           MR. BRIGHT: Thank you very much, sir.

1           THE COURT: We're going to be in openings through  
2 the morning and into the afternoon, so we'll have time to  
3 deal with this.

4           Is there anything else we need to take up before  
5 we bring our jurors in?

6           MR. NESTLER: Not from the government, Your Honor.

7           MR. FISCHER: Your Honor, briefly, this is --  
8 Mr. Edwards and I had communicated over the weekend.

9           Your Honor, the Court in its omnibus order at  
10 ECF 288, the government, in response to a motion -- I have  
11 copies I can pass up to the Court.

12           But in its motion ECF 214, the government had  
13 requested that the Court preclude the defense arguments  
14 regarding evidence pertaining to the actions of other  
15 rioters or charges in case dispositions.

16           The defense did not object to it because the  
17 defense was under the impression that what the government  
18 was asking you to do was to keep out these random cases in  
19 January 6th and not try to compare -- the government's  
20 motion talked about selective prosecution, and so the  
21 defense was under the impression that the government was  
22 simply wanting to make sure that we were not bringing up how  
23 other people were treated or if they were treated unfairly  
24 comparatively.

25           The government seems to be of the impression that

1 the Court's order also precludes the defense from asking  
2 questions regarding defendants involved in the Oath Keepers  
3 case and also co-conspirators, unindicted co-conspirators.

4 And so I certainly plan on asking lots of  
5 questions regarding individuals who were connected to this  
6 case and why they were not charged and when they were  
7 charged and the circumstances under which they were charged.

8 So the Court basically signed a boilerplate  
9 motion, and I just wanted to clarify the defense takes the  
10 position that the Court's order does not cover individuals  
11 who are clearly connected within this investigation.

12 Thank you, Your Honor.

13 THE COURT: Okay.

14 I don't know if the government would disagree with  
15 that, but --

16 MR. NESTLER: Yes, Your Honor.

17 So whether another individual has been charged or  
18 not charged is not relevant to this case, Your Honor already  
19 indicated --

20 THE COURT: Hang on. I didn't understand  
21 Mr. Fischer to be saying that he would get into whether  
22 they'd been charged or not except to the extent that perhaps  
23 somebody testifies, and that would be the subject of  
24 cross-examination for impeachment.

25 MR. NESTLER: We agree that if a witness

1 testifies, their own charging status is, of course, relevant  
2 for their bias.

3 THE COURT: Right.

4 MR. NESTLER: But I believe Mr. Fischer wants to  
5 ask FBI agents about whether certain individuals have been  
6 charged or not charged and what charges they face.

7 THE COURT: Is that accurate, Mr. Fischer?

8 MR. FISCHER: Well, Your Honor, I'll give the  
9 Court an example.

10 Mr. Caldwell, the government's theory is that he  
11 coordinated the North Carolina QRF. Nobody in the  
12 North Carolina QRF or anybody connected to the 40-plus  
13 North Carolina Oath Keepers that came to Washington has been  
14 charged, including the people who asked -- allegedly asked  
15 Mr. Caldwell to provide a boat for the QRF who were asking  
16 Mr. Caldwell directions on how to get to Washington, D.C.,  
17 who were the commander or the leading officers of the  
18 North Carolina group.

19 So basically the individuals --

20 THE COURT: So can I ask, Mr. Fischer, I mean, I  
21 get your point. I think the question is -- let me ask,  
22 first, is this anything that's going to impact your opening?

23 MR. FISCHER: No, Your Honor.

24 THE COURT: Okay. All right.

25 So, I mean, ordinarily, you know, what -- I mean,

1 it's the prosecution, the U.S. Attorney's Office, the  
2 Department of Justice, that makes decisions about whether to  
3 prosecute or not, whether to bring charges.

4 An FBI agent might have knowledge of that.  
5 Certainly an FBI agent can't testify as to why a  
6 particularly charging decision was or wasn't made.

7 I guess if you think it's fair game to ask whether  
8 somebody has been charged or not, I'd like to -- if you can  
9 find some case law that would allow that. I mean, I'm not  
10 saying it's not possible. But, I mean, we are really  
11 getting into an area of sort of prosecutorial discretion,  
12 and there may be a whole host of reasons why somebody has or  
13 has not been charged.

14 MR. FISCHER: Well, I think, Your Honor, I think  
15 the very fact that the entire 40-plus people from  
16 North Carolina, including their leaders, including the  
17 individuals who are asking Mr. Caldwell to do the things  
18 that the government is claiming is part of the conspiracy,  
19 the fact that none of those individuals has been charged  
20 with a crime, to me, I don't see how that doesn't come in.  
21 It shouldn't come in under the --

22 THE COURT: Well, you would agree with me that it  
23 wouldn't be appropriate, for example, for you to argue that,  
24 well, Mr. Caldwell didn't commit these crimes because  
25 somebody else hasn't been charged for these crimes. You



1 don't think you could get up to the jury and argue that,  
2 could you?

3 MR. FISCHER: Well, it goes to whether the FBI,  
4 law enforcement, believes there was actually crimes that  
5 were committed.

6 THE COURT: Well -- but -- I'm sorry to interrupt  
7 you, but, again, that's an issue of prosecutorial discretion  
8 whether somebody is charged or not and whether an agent  
9 believes a particular person has committed a crime.

10 And I'll tell you, you know, be careful about what  
11 you ask because you might get an FBI agent to say, Yeah,  
12 I thought he committed the following crimes.

13 MR. FISCHER: Well, Your Honor, I guess I'll  
14 address the top. I'm not going to bring it up in my opening  
15 argument.

16 THE COURT: Yes. Let's talk about it. It's an  
17 interesting issue. And if there's any -- I'd like to look  
18 and see if there's any case law on it, and we can talk about  
19 it some more.

20 MR. FISCHER: I'll save that homework for  
21 Wednesday.

22 THE COURT: Okay. We're not sitting Wednesday,  
23 right?

24 Right. So nobody is allowed to file a motion on  
25 Wednesday.

1           So just so everybody's clear, I'll swear the jury  
2 in this morning. All 16 of them, my understanding is, have  
3 returned. So we had called in five who were qualified but  
4 didn't show up. We'll dismiss those folks as soon as this  
5 jury is sworn in. I'll read my preliminary instructions,  
6 which you all have approved. And that should take  
7 15 minutes, and then we'll roll into openings.

8           Mr. Nestler, you're still at about 1:15?

9           MR. NESTLER: Yes, Your Honor.

10          THE COURT: And Mr. Linder?

11          MR. LINDER: 45 minutes.

12          THE COURT: Okay.

13          MR. LINDER: I don't know if you wanted to break  
14 for lunch between his and mine.

15          THE COURT: I'll just have to see where we are  
16 timing-wise. I mean, it's 10:00. No, we won't break for  
17 lunch.

18          MR. LINDER: Try and get the first two in?

19          THE COURT: Yeah. I mean, we may take a break,  
20 but I don't think we'll break for lunch.

21          And then --

22          MR. LINDER: I would actually request a break  
23 between the two because the jurors will have been sitting  
24 for an hour.

25          THE COURT: Of course. Of course. We'll break

1 between the two.

2 MR. WOODWARD: We're not going to reserve,  
3 Your Honor.

4 THE COURT: Mr. Crisp?

5 MR. CRISP: 30 minutes, Your Honor.

6 THE COURT: 30 minutes.

7 MR. CRISP: 30 minutes, yes.

8 THE COURT: Mr. Geyer, you're still going to  
9 reserve?

10 MR. GEYER: Yes, Your Honor. Thank you.

11 THE COURT: Mr. Fischer, I'm sorry. I was looking  
12 at that table.

13 MR. FISCHER: Your Honor, about an hour, hour and  
14 10 minutes. And I will be going after Mr. Linder, and  
15 Mr. Crisp will be third.

16 THE COURT: Okay.

17 (Pause)

18 THE COURT: Mr. Douyon tells me that a couple of  
19 jurors have alerted him to the following.

20 Juror 1140 said as he or she was driving in, heard  
21 an NPR story or not -- heard on NPR the word "Oath Keepers"  
22 and then turned it off or moved away from the channel.

23 Another juror, whose number we're trying to get,  
24 saw a headline and that's it.

25 Does anybody feel the need to bring these folks in

1 for further questioning?

2 MR. CRISP: What was the latter?

3 THE COURT: That they saw a headline, and that was  
4 it. I don't know what the headline was but that's all I've  
5 been told.

6 MR. CRISP: No, I don't think so, Judge.

7 THE COURT: Does anybody on the defense side think  
8 we need to bring them in for further questioning?

9 MR. FISCHER: No, Your Honor.

10 MR. CRISP: No, Your Honor.

11 THE COURT: Okay. If you'd like to step out,  
12 that's fine.

13 And, Mr. Crisp, if I've already started, don't  
14 worry about it.

15 (Pause)

16 THE COURT: All right. So just to clear the  
17 record, the other juror -- this is the one who saw the  
18 headline, 0481 -- tells us that he saw it on an Apple  
19 newsfeed. And it said, "Founder of Oath Keepers trial  
20 starts today," and then didn't do anything more than that,  
21 okay?

22 All right. Are we ready to bring them in?

23 COURTROOM DEPUTY: Jury panel.

24 THE COURT: Okay. Please be seated, everyone.

25 All right. Ladies and gentlemen, welcome back.

1 It's nice to have all of you with us. And thank you for  
2 being here this morning. And I hope everybody had a nice  
3 weekend, notwithstanding the wet weather.

4 So we're going to get started this morning.  
5 I apologize for getting a little -- starting a little later  
6 than I had hoped. We had some preliminary matters that we  
7 needed to handle this morning, but we've cleared those away  
8 and we are ready to start.

9 So I'm going to ask you all to rise one more time  
10 and raise your right hands, because we do need to have you  
11 sworn in one more time.

12 COURTROOM DEPUTY: Please raise your right hands.

13 (Jurors placed under oath.)

14 COURTROOM DEPUTY: Thank you. Please be seated,  
15 everyone.

16 THE COURT: All right.

17 Ladies and gentlemen, so just to give you a sense  
18 of what's going to happen now, I'm going to have about 15  
19 minutes of preliminary instructions. Those instructions  
20 will cover both how the trial will operate and some just  
21 general legal principles that you'll be applying through the  
22 course of the case, and in particular, during your  
23 deliberations. After those have concluded we will start  
24 with the government's opening, and then we will turn to the  
25 defense for their openings, if they wish. We'll take a

1 break probably around mid-morning and we'll go tell lunch  
2 and then continue after lunch, okay?

3 All right. So before we begin the trial, I want  
4 to explain some of the legal rules that will be important in  
5 this trial. These remarks are not meant to be a substitute  
6 for the detailed instructions that I will give at the end of  
7 the trial, but they are intended to give you a sense of what  
8 will be going on in the courtroom and your responsibilities  
9 as jurors.

10 When you took your seats, you probably noticed at  
11 each of you had a notebook and pen or pencil waiting for  
12 you. That is because I permit jurors to take notes during  
13 trial if they wish. Whether or not you take notes is  
14 entirely up to you. Many people find that taking notes  
15 helps them remember testimony and evidence. Others find it  
16 distracts them from listening to the witnesses.

17 You will not be able to take your notebooks with  
18 you as you come and go. You will be able to consult with  
19 your notebooks during your deliberations. At all other  
20 times, however, the notebooks will remain locked in the  
21 courtroom during recesses and overnight. At the end of  
22 trial after you have delivered your verdict, your notebooks  
23 will be collected and the pages torn out and destroyed. No  
24 one, including me, will ever look at any notes you have  
25 taken, so you may feel free to write whatever you wish.

1           You have probably noticed that there are 16 of you  
2 sitting in the jury box. Only 12 of you will retire to  
3 deliberate in this matter. That means four of you are  
4 alternate jurors. We have alternate jurors in the event  
5 that a juror is unable to continue his or her service for  
6 whatever reason. Before any of you even entered the  
7 courtroom, we randomly selected the alternate seats. I will  
8 not disclose who the alternate jurors are until the end of  
9 my final instructions. As any seat might turn out to be an  
10 alternate seat, it is important that each of you think of  
11 yourselves as regular jurors during this trial and that all  
12 of you give this case your fullest and most serious  
13 attention.

14           At the beginning of the jury selection process, I  
15 asked the parties to identify themselves and to announce the  
16 names of their possible witnesses. We did that in  
17 connection with the questionnaire. If at any time during  
18 this trial, you suddenly realize that you recognize or might  
19 know any witness, lawyer, or someone who is mentioned in the  
20 testimony or evidence or anyone else connected in this case  
21 in any way, you should raise your hand immediately and ask  
22 to speak with me.

23           Now, I will briefly provide you with some  
24 additional details about this case. This is a criminal case  
25 that began when the grand jury returned an indictment

1 against the defendants, Mr. Elmer Stewart Rhodes III,  
2 Mr. Kelly Meggs, Mr. Kenneth Harrelson, Ms. Jessica Watkins  
3 and Mr. Thomas Caldwell. The indictment is just a formal  
4 way of charging a person with a crime in order to bring him  
5 or her to trial.

6 The indictment in this case contains conspiracy  
7 charges and other charges. The indictment alleges that the  
8 defendants agreed to oppose by force the lawful transfer of  
9 Presidential power following the 2020 U.S. Presidential  
10 election, and in so doing, that the defendants violated  
11 three conspiracy -- separate conspiracy laws.

12 The first conspiracy charge is Count 1, seditious  
13 conspiracy, which charges that the defendants entered an  
14 agreement to try to stop the lawful transfer of power by  
15 opposing by force the authority of the government of the  
16 United States or to use force to prevent, hinder, and delay  
17 the execution of any law of the United States.

18 The second conspiracy charge is Count 2,  
19 conspiracy to obstruct an official proceeding, which charges  
20 that the defendants entered an agreement to obstruct an  
21 official proceeding, that is, Congress's session on  
22 January 6th, 2021, to certify the Electoral College votes.

23 And the third conspiracy charge is Count 4,  
24 conspiracy to prevent members of Congress from discharging  
25 their duties.



1           With regard to the other charges, Count 3 of the  
2 indictment charges all five defendants with obstruction of  
3 an official proceeding, meaning Congress's session on  
4 January 6th to certify the Electoral College votes.

5           Count 5 charges Defendants Kelly Meggs, Kenneth  
6 Harrelson and Jessica Watkins with destruction of government  
7 property for the alleged damage to property at the U.S.  
8 Capitol on January 6th.

9           Count 6 charges Jessica Watkins with committing an  
10 act to obstruct, impede or interfere with law enforcement  
11 officers lawfully carrying out their official duties  
12 incident to a civil disorder for allegedly interfering with  
13 police officers inside the Capitol on January 6th.

14           Finally, Counts 7, 8, 9, and 10 charge Defendants  
15 Stewart Rhodes, Kelly Meggs, Kenneth Harrelson and  
16 Thomas Caldwell with obstruction of justice for tampering  
17 with documents or proceedings.

18           These charges are based on the allegation that  
19 these defendants, after January 6th, deleted certain content  
20 from their cell phones or social media accounts or, in the  
21 case of Stewart Rhodes, encouraged or instructed other  
22 people to delete the content to prevent the grand jury from  
23 obtaining that content.

24           All five defendants have pleaded not guilty to all  
25 charges in the indictment.

1           Now, you should understand clearly that the  
2 indictment that I just summarized is not evidence. You must  
3 not think of the indictment as any evidence of the guilt of  
4 any of the defendants or draw any conclusion about the guilt  
5 of the defendants just because they have been indicted. You  
6 should not speculate about whether other individuals have  
7 been charged with crimes. During this trial, the only issue  
8 for you to decide is whether the government has proved each  
9 of these five particular defendants guilty beyond a  
10 reasonable doubt.

11           Now, I will turn to briefly explain some of the  
12 procedures we will follow and some of the rules of law that  
13 will be important in this case. As I explain how the trial  
14 will proceed, I will refer to the government or to the  
15 defense or to the defendants. When I mention the  
16 government, I am referring to Ms. Rakoczy, Mr. Nestler,  
17 Mr. Manzo or Ms. Hughes, who are all prosecutors with the  
18 U.S. Attorney's Office for the District of Columbia.

19           When I mention the defendants or the defense, I am  
20 referring to Mr. Rhodes, Mr. Meggs, Mr. Harrelson,  
21 Ms. Watkins or Mr. Caldwell, or to one or more of their  
22 attorneys, Mr. Linder, Mr. Bright, Mr. Tarpley,  
23 Mr. Woodward, Ms. Haller, Mr. Geyer, Mr. Crisp or  
24 Mr. Fischer, or a combination of some defendants or lawyers.

25           Both sides have a number of other individuals

1 assisting them with this case including paralegals, clerks  
2 or other lawyers. And in the case of the government, FBI  
3 agents. Those individuals will sometimes be sitting at the  
4 table with the other lawyers and sometimes in the benches  
5 behind them.

6           To make the presentation of evidence more  
7 efficient for you, these other individuals, and sometimes  
8 even one of the prosecutors or defense lawyers, will be  
9 doing work related to this case outside of the courtroom.  
10 Do not make any assumptions or hold against a party the fact  
11 that you sometimes see them or members of their team here in  
12 the courtroom and sometimes do not.

13           After I finish these preliminary instructions, as  
14 the first step in this trial, the government and the  
15 defendants will have an opportunity to make opening  
16 statements. The defendants may make an opening statement  
17 immediately after the government's opening statement, or  
18 they may wait until the beginning of the defendants' case,  
19 or they may choose not to make an opening statement at all.  
20 You should understand that the opening statements are not  
21 evidence. They are only intended to help you understand the  
22 evidence and the lawyers -- that the lawyers expect will be  
23 introduced.

24           After the opening statement or statements, the  
25 government will put on what is called its case-in-chief.

1 This means that the government will call witnesses and ask  
2 them questions. This is called direct examination. When  
3 the government is finished, each defendant's lawyers may ask  
4 questions. This is called cross-examination. When the  
5 defense is finished, the government may have brief redirect  
6 examination. After the government presents its evidence,  
7 the defendants may present evidence, but they are not  
8 required to do so.

9           The law does not require a defendant to prove his  
10 or her innocence or to produce any evidence. If, however,  
11 the defense does put on evidence, the defendants' lawyers  
12 will call witnesses to the stand and ask questions on direct  
13 examination. Government counsel will cross-examine and the  
14 other defense counsel will cross-examine, and that  
15 defendant's lawyer, that is the defendant who calls the  
16 witness, may have a redirect examination. When each  
17 defendant is finished, the government may offer a rebuttal  
18 case, which would operate along the same lines as its  
19 case-in-chief.

20           At the end of all the evidence, I will instruct  
21 you once more on the rules of law that you are to apply in  
22 your deliberations when you retire to consider your verdict  
23 in this case. Each side will have a chance to present  
24 closing arguments in support of its case. The statements of  
25 the lawyers in their closing arguments, just as in their

1 questions and in their opening statements, are not evidence  
2 in the case. They're intended only to help you understand  
3 the evidence and what each side claims the evidence shows.

4           Finally, at the end of closing arguments, I will  
5 have a few additional instructions for you before you begin  
6 your deliberations.

7           Now, I want to briefly describe my  
8 responsibilities as the judge and your responsibilities as  
9 the jury.

10           My responsibility is to conduct this trial in an  
11 orderly, fair, and efficient manner, to rule on legal  
12 questions that come up in the course of trial, and to  
13 instruct you about the law that applies to this case. It is  
14 your sworn duty as jurors to accept and apply the law as I  
15 state it to you.

16           Your responsibility as jurors is to determine the  
17 facts in this case. You and only you are the judges of the  
18 facts. You alone determine the weight, the effect, the  
19 value of the evidence, as well as the credibility or  
20 believability of the witnesses. You must consider and weigh  
21 the testimony of all witnesses who appear before you. You  
22 alone must decide the extent to which you believe any  
23 witness.

24           During this trial, I may rule on motions and  
25 objections by the lawyers, make comments to lawyers,

1 question the witnesses, and instruct you on the law. You  
2 should not take any of my statements or actions as any  
3 indication of my opinion about how you should decide the  
4 facts. If you think that somehow I have expressed or even  
5 hinted at any opinion as to its facts in this case, you  
6 should disregard it. The verdict in this case is your sole  
7 and exclusive responsibility.

8           The lawyers in this case may object when the other  
9 side asks a question, makes an argument or offers evidence  
10 that the objecting lawyer believes is not properly  
11 admissible. I will respond by saying either sustained or  
12 overruled. If I sustain an objection to a question asked by  
13 a lawyer, the question must be withdrawn and you must not  
14 guess or speculate what the answer to the question would  
15 have been. If I overrule an objection, the question may  
16 stand and the witness may answer.

17           Now, every defendant in a criminal case is  
18 presumed to be innocent. This presumption of innocence  
19 remains with the defendant throughout the trial unless and  
20 until he or she is proven guilty beyond a reasonable doubt.  
21 The burden is on the government to prove the defendant  
22 guilty beyond a reasonable doubt and that burden of proof  
23 never shifts throughout the trial. If you find that the  
24 government has proven beyond a reasonable doubt every  
25 element of the particular offense with which a defendant is

1 charged, it is your duty to find him or her guilty of that  
2 offense.

3 On the other hand, if you find that the government  
4 has failed to prove any element of a particular offense  
5 beyond a reasonable doubt, you must find the defendant not  
6 guilty of that offense.

7 You are not permitted to discuss this case with  
8 anyone until this case is submitted to you for your decision  
9 at the end of my final instructions. That means that until  
10 the case is submitted to you, you may not talk about it even  
11 with your fellow jurors.

12 Let me repeat that. You may not talk about the  
13 case even with your fellow jurors. This is because we don't  
14 want you to make decisions until you've heard all the  
15 evidence and the instructions of law.

16 In addition, you may not talk about the case with  
17 anyone else. It should go without saying that you may not  
18 also read about the case electronically through any blog,  
19 posting, or other communication, including social networking  
20 sites, such as Facebook or Twitter, until you've delivered  
21 your verdict and the case is over. This is because you must  
22 decide the case based on what happens here in the courtroom,  
23 not on what someone may or may not tell you outside the  
24 courtroom.

25 You, of course, may tell family and friends that

1 you're serving as a juror, and you may even tell them that  
2 you're serving as a juror in a criminal case. But I ask you  
3 to say nothing more than that. When the case is over, you  
4 may discuss any part of it you wish with anyone, but until  
5 then, you may not do so.

6           Although it is a natural human tendency to talk  
7 with people with whom you may come in contact, you must not  
8 talk to any of the parties, their attorneys, or any  
9 witnesses in this case during the time you serve on this  
10 jury. If you encounter anyone connected with the case  
11 outside the courtroom, you should avoid having any  
12 conversation with them, overhearing their conversation, or  
13 having any contact with them at all.

14           For example, if you find yourself in a courthouse  
15 corridor, elevator, or any other location where the case is  
16 being discussed by attorneys, parties, witnesses, or anyone  
17 else, you should immediately leave the area to avoid hearing  
18 such discussions. If you do overhear a discussion about the  
19 case, you should report it to me as soon as you can.

20           Finally, if you see any of the attorneys or  
21 witnesses involved in the case and they turn and walk away  
22 from you, they're not being rude; they're merely following  
23 the same instruction I have given to them.

24           It is very unlikely, but if someone tries to talk  
25 to you about the case, you should refuse to do so and



1 immediately let me know by telling the Courtroom Deputy or  
2 the marshal. Don't tell your fellow jurors. Just let me  
3 know, and I'll bring you in to discuss it.

4 Because you must decide this case based only on  
5 what occurs in the courtroom, you may not conduct any  
6 independent investigation of the law or the facts in this  
7 case, nor should you read or view any news stories about  
8 this case that you come across. This used to only mean that  
9 you could not contact any research in books or newspapers or  
10 read news articles or view stories on television or visit  
11 the scene of the alleged offense.

12 In this electronic age, it also extends to the  
13 Internet. It means you cannot research or investigate any  
14 issue on any website; ask any questions to anyone via email,  
15 text, or social media; or otherwise communicate about the  
16 case. It also means that you must avoid reading or viewing  
17 any stories online about this case. That includes tweets or  
18 other social media postings about the case.

19 To help you avoid seeing any news about the case,  
20 you should change the settings for push notifications on  
21 your cell phone, as well as your news subscription alerts  
22 and RSS feeds or Twitter feeds. If you happen to get a push  
23 notification about the case, you should not review the  
24 linked story.

25 I want to explain a little bit further on why

1 there is a ban on Internet communications, research, and  
2 review of news stories concerning the case. Unfortunately,  
3 courts around the country have occasionally experienced  
4 problems with jurors ignoring this rule, sometimes resulting  
5 in costly re-trials.

6           Generally speaking, these jurors have not sought  
7 to corrupt the process; rather, they have been seeking  
8 additional information to aid them in, undoubtedly, what is  
9 a heavy and solemn responsibility. Nonetheless, there are  
10 sound reasons for this rule.

11           In the first place, obviously, not everything one  
12 sees online is true. This includes not only persons  
13 responding to whatever postings you may make about the case,  
14 but also can involve established websites. For example, a  
15 mapping site might not reflect the way a location appeared  
16 at the times that are at issue in the case. Furthermore,  
17 even items that are technically true can change their  
18 meaning and significance based on context.

19           Both sides are entitled to have the chance to not  
20 only dispute or rebut evidence presented by the other side,  
21 but also to argue to you how that evidence should be  
22 considered within the factual and legal confines of the  
23 case. Any secret communications, research, or review of  
24 news stories by a juror robs them of those opportunities and  
25 can distort the process, sometimes with negative results.

1           It is for those reasons that I instruct you that  
2 you should not use the Internet to communicate about the  
3 case, to do any research about the case, or review any news  
4 stories about the case, including any social media postings.

5           If you do happen to come across a news story or  
6 social-media posting, whether in print, on television, or  
7 online, and you happen to view or read some of it in a  
8 substantial way, please do not share that fact with your  
9 fellow jurors, please alert the Courtroom Deputy about it so  
10 I can discuss it with you outside the presence of your  
11 fellow jurors.

12           What do I mean by "substantial way"? If, for  
13 example, you inadvertently happened upon a headline about  
14 this case, but read no further, I do not consider that  
15 substantial, then you do not need to report it to the  
16 Courtroom Deputy.

17           Finally, we have two terrific court reporters  
18 here, one in the morning and one in the afternoon, taking  
19 down testimony. But you will not have a transcript with you  
20 during deliberations. You must rely on your memory and, if  
21 you take them, your notes as an aid to that memory.

22           So I ask you to pay close attention, and we will  
23 begin with the opening statement by the government.

24           Mr. Nestler.

25           MR. NESTLER: Good morning, ladies and gentlemen.

1 My name is Jeff Nestler. With my colleagues, we represent  
2 the United States of America.

3 Ever since our government transferred Presidential  
4 power from George Washington to John Adams in the year 1797,  
5 we have had a core Democratic custom of the routine and  
6 peaceful transfer of power. On January 20th,  
7 Inauguration Day, every four years, our Constitution bestows  
8 upon a person the power of the Presidency.

9 These defendants tried to change that history.  
10 They concocted a plan for an armed rebellion to shatter a  
11 bedrock of American democracy.

12 They banded together to do whatever was necessary,  
13 up to and including using force to stop the transfer of  
14 power from President Donald Trump to President-Elect  
15 Joe Biden on January 20th of 2021.

16 Two weeks before Inauguration Day on January 6th,  
17 they got their opportunity. On that day, as required by the  
18 Constitution itself, Congress met inside of the  
19 Capitol Building to formally count the electoral ballots and  
20 declare the winner of the 2020 Presidential election.

21 These defendants seized upon that opportunity to  
22 disrupt Congress from meeting inside the Capitol Building.  
23 If Congress could not meet, it could not declare the winner  
24 of the election. And that was their goal, to stop, by  
25 whatever means necessary, the lawful transfer of

1 Presidential power, including by taking up arms against the  
2 United States Government.

3           You will hear evidence during this trial that  
4 these five defendants reached an agreement with each other  
5 and with others to stage an arsenal of firearms, including  
6 multiple semiautomatic rifles, just across the Potomac River  
7 in Arlington, Virginia, and to physically prevent members of  
8 Congress from meeting to certify the election, as they  
9 descended upon D.C. to attack not just the Capitol, not just  
10 Congress, not just our government, but our country itself.

11           I will start by introducing to you each of the  
12 five defendants who are on trial today.

13           The first is Stewart Rhodes. He's seated over  
14 here. He's easily recognizable, often wearing a cowboy hat  
15 and an eye patch over his left eye. He's the founder and  
16 leader of a group called the Oath Keepers. And he has an  
17 impressive pedigree, one he used to recruit and flatter his  
18 followers. He's a graduate of Yale Law School. He's a  
19 former Army paratrooper and a former congressional staffer.

20           Rhodes focused on recruiting former members of the  
21 military and law enforcement to his cause. The term  
22 "Oath Keepers" itself derives from soldiers' oaths to defend  
23 the Constitution against all enemies and the idea that oath  
24 must be kept for life.

25           But Rhodes' philosophy perverts the constitutional

1 order. He preaches to his followers that they should  
2 disobey orders that he says are unconstitutional.

3           Stewart Rhodes, with his law degree, was careful  
4 with both his words and his actions. You will hear that he  
5 sometimes spoke in code or shorthand. He sometimes sent  
6 messages from other people's phones. And on January 6th of  
7 2021, like a general overlooking a battlefield, he remained  
8 outside the Capitol Building surveying and communicating  
9 while his troops stormed inside.

10           Next is defendant Kelly Meggs, the leader of the  
11 Florida chapter of the Oath Keepers. He's the gentleman  
12 third from the left over here with the gray suit and the  
13 white hair slicked back.

14           At 6-foot-4, he stands out in a crowd. To others,  
15 he went by the nickname "Okay Gator 1."

16           After Kelly Meggs is Kenneth Harrelson, the fourth  
17 person over on the row over there, wearing the black shirt.  
18 Harrelson was Meggs' number two in the Florida chapter of  
19 the Oath Keepers. Like Rhodes, he's a veteran of the Army.  
20 And to others, he went by the moniker "Okay Gator 6."

21           Next is Jessica Watkins, the woman sitting second  
22 from the left. She's the leader of the Ohio chapter of the  
23 Oath Keepers, and she also led her own militia called the  
24 Ohio State Regular Militia. Like Rhodes and Harrelson,  
25 she's a veteran of the Army.

1           Finally, there's Thomas Caldwell, sitting over  
2 here in the gray suit with a red tie. He's an affiliate of  
3 the Oath Keepers, not technically a dues-paying member of  
4 the organization. And he lived on a farm in Berryville,  
5 Virginia, more than an hour outside of D.C.

6           You'll hear that he was in charge of coordinating  
7 the teams with the firearms stationed in Arlington on the  
8 other side of the Potomac River. These teams were the  
9 Quick Reaction Force, or QRF, as they called it.

10           Like Rhodes and Harrelson and Watkins, Caldwell's  
11 also a veteran of the military, but of a different branch,  
12 the Navy. And based on that water experience, he planned to  
13 use boats to get the guns across the Potomac River and into  
14 D.C. Due to his service in the Navy, others referred to him  
15 as commander or C-A-G, CAG.

16           While each defendant on trial before you today was  
17 a member or affiliate of the Oath Keepers organization, the  
18 organization itself is not on trial. Many members of the  
19 organization throughout the country, even if very upset  
20 about the results of the Presidential election, did nothing  
21 wrong.

22           But you're going to hear the phrase "Oath Keepers,  
23 Oath Keepers" again and again during this trial, because  
24 these defendants refer to themselves as Oath Keepers. And  
25 they used their status in the organization to coordinate

1 with one another and to try to gain credibility, both within  
2 their organization and with the outside world.

3 And these defendants used their training and  
4 knowledge and experience they gained in the United States  
5 Armed Forces to further their ability to succeed in plotting  
6 to oppose by force the government of the United States.

7 The evidence in this trial will show that the  
8 defendants entered into a conspiracy. As Judge Mehta will  
9 explain when he provides you with the formal legal  
10 instructions at the end of the trial, a conspiracy is simply  
11 an agreement by two or more people to join together to  
12 accomplish some unlawful purpose.

13 You will use your common sense to know that the  
14 evidence proves the existence of a conspiracy during this  
15 trial. When people agree to enter into a criminal  
16 conspiracy, they don't usually put it in writing or even say  
17 it out loud exactly what they're going to do.

18 Each person might enter into the conspiracy at a  
19 different point along the way, and they don't usually spell  
20 out each person's role in furthering the goals of the  
21 conspiracy. But the bottom line is that all of the  
22 conspirators still reach a mutual understanding.

23 As I said, the evidence will show that the  
24 defendants conspired with each other and with many people  
25 who are not on trial before you today.



1           The other members of the conspiracy, those who are  
2 not defendants in the courtroom today, are called  
3 conspirators. And Ms. Rakoczy and Ms. Rohde are going to  
4 pull up on the board here, a posterboard, that we're going  
5 to refer to several times during this trial.

6           You're going to hear evidence from and about many  
7 of these conspirators. There are simply too many names to  
8 cover at this stage. But notice the role that these five  
9 defendants played in this conspiracy, leaders.

10           During the trial when we show you evidence from or  
11 about other conspirators, we'll try to use this chart to  
12 highlight where those conspirators fit into the larger  
13 scheme. But your job is to evaluate the evidence as to  
14 these five defendants. As Judge Mehta will tell you at the  
15 end of the trial, you can use evidence about what a  
16 particular conspirator did or said to find these defendants  
17 guilty.

18           THE COURT: Ms. Rakoczy, as you walk that back,  
19 could you flip it so I can take a quick look at it? Just  
20 flip it so I can take a quick look at it.

21           Okay. Fine, thank you.

22           MR. NESTLER: I'll start by briefly explaining  
23 these defendants' attack on the Capitol and providing an  
24 overview of the conspiracy.

25           On January 6th of 2021 at around 2:35 p.m., the

1 crowd on the east side steps of the United States Capitol  
2 parted as a group of 14 people, dressed similarly in  
3 military style combat gear, moving similarly in military  
4 style formation with their hands on the person in front,  
5 marched up the stairs towards the doors of the Capitol.  
6 You'll hear how that formation is called a stack or a column  
7 formation.

8 (Video played)

9 MR. NESTLER: Harrelson, Meggs and Watkins are in  
10 red, and the rest of the conspirators are there in white.  
11 As they approached, the crowd cheered for them, yelling,  
12 "Oath Keepers, Oath Keepers." They were the leaders.

13 As I said, by design, the Oath Keepers  
14 organization is made up of mostly military and police,  
15 former members of military and police. They did not go to  
16 the Capitol to defend or to help. They went to attack.  
17 They were at the Capitol to use their numbers and their  
18 physical force to intimidate the elected representatives who  
19 were working inside doing their constitutional duty. This  
20 is the patch that Defendant Kelly Meggs wore on his back.  
21 "I don't believe in anything, I'm just here for the  
22 violence."

23 And violence, ladies and gentlemen, is what they  
24 used.

25 To take just a few examples, this is Defendant

1 Kelly Meggs ordering his troops to surge forward towards the  
2 Capitol's doors.

3 Then conspirator William Isaacs, he's over here on  
4 the chart, part of the Florida team under Kelly Meggs and  
5 Kenneth Harrelson, at the doors of the Capitol.

6 (Video played)

7 MR. NESTLER: He tried to push past two police  
8 officers bravely trying to hold the conspirators at bay  
9 outside of the doors. Once inside the building, Defendant  
10 Jessica Watkins, leading a group of conspirators, tried to  
11 force their way past the line of riot police, protecting the  
12 Senate Chamber itself.

13 (Video played)

14 MR. NESTLER: "Push, push, push. Get in there.  
15 They can't hold us."

16 Shortly afterwards, conspirator Joshua James, over  
17 here on the chart, the leader of the Southeast contingent,  
18 here's a man so well trusted by Rhodes, that Rhodes called  
19 him to be by Rhodes' side in Texas after January 6th. James  
20 not only pushed his way into the Rotunda but violently tried  
21 to pull police officers out of it.

22 (Video played)

23 MR. NESTLER: "Get out of my Capitol."

24 Ladies and gentlemen, one of the things  
25 conspirators do when forming their agreement is to

1 communicate with one another. Now, to plan an attack of  
2 this magnitude, of course, the defendants communicated  
3 broadly and publicly, as well as in secret.

4 The defendants in some ways planned their  
5 conspiracy in plain sight. They used the Oath Keepers'  
6 website to send public messages, including two open letters  
7 that Stewart Rhodes wrote to President Trump. Rhodes gave  
8 speeches and interviews, alive and on podcasts and TV shows,  
9 to rally his supporters.

10 Some of the defendants, like Meggs and Watkins and  
11 Caldwell, use social media like Facebook and Parler to  
12 recruit and get their messages out.

13 Many of the conspirators also communicated with  
14 one another on certain sites that required password access  
15 or special invitations or links to log-in, like Zello, a  
16 walkie-talkie app, or GoToMeeting, a conference calling app,  
17 or rocket.chat, the members-only messaging board on the  
18 Oath Keepers website.

19 For especially secure communications, the  
20 defendants used platforms with strong end-to-end encryption.  
21 That means that messages exist only on the users' phone,  
22 they don't exist in the cloud or on a server somewhere. And  
23 these apps include ProtonMail and Signal. ProtonMail for  
24 emails, and Signal for group messaging and direct messaging.  
25 In fact, most of the messages you're going to hear about and

1 see during this trial come from Signal messages.

2 Of course, the conspirators sometimes spoke on the  
3 phone, including making phone calls through that Signal app,  
4 which are not tracked or logged by their phone carriers like  
5 Verizon or T-Mobile.

6 And, finally, for certain communications that  
7 needed to be especially secure, the conspirators met live or  
8 in their lingo, F2F, face to face. You'll hear about  
9 several of those meetings that took place in November and  
10 December and into January.

11 Now, I will discuss Congress and its work, the  
12 2020 Presidential election in November, and Rhodes' call to  
13 his followers to take action following the election.

14 As residents from all over the district, you may  
15 have seen the Capitol building way off in the distance with  
16 the Statue of Freedom perched atop its dome almost 300 feet  
17 in the air, or perhaps you live or work close by or even  
18 just saw it as you came into the courthouse this morning.

19 Many people don't know or don't think about the  
20 work of our government that actually takes place inside of  
21 that building.

22 During this trial, you will learn more about our  
23 national legislature, Congress.

24 Congress has two parts, the House of  
25 Representatives and the Senate. Back on January 6th of last

1 year, the person in charge of the House of Representatives  
2 was Speaker of the House Nancy Pelosi. The person formerly  
3 in charge of the Senate was the Vice President of the  
4 United States, Mike Pence.

5           The United States Constitution, the document that  
6 controls our entire government, requires the House of  
7 Representatives and the Senate to meet together as a single  
8 group once every four years for the sole purpose of  
9 reviewing and counting the ballots that formally declare the  
10 winner of the Presidential election, the person who will be  
11 sworn in on Election Day.

12           And building off of the Constitution a federal law  
13 specifies exactly when and how that session works. It must  
14 occur on January 6th. It must start at 1:00 p.m. It must  
15 take place in the House of Representatives' Chamber within  
16 the Capitol Building. The Vice President of the  
17 United States must be the person to preside over the  
18 session. And under that law, Congress's session cannot end  
19 until Congress counts all the battle and formally declares  
20 the winner.

21           And finally, the Constitution says that the winner  
22 of the election, the person who will be sworn in as  
23 President of the United States on Inauguration Day, January  
24 20th, two weeks later, is the person that Congress says, at  
25 the end of its session, is the winner.

1           That is a weird quirk that many people do not  
2 realize. The winner of the Presidential election is not the  
3 person the TV stations announce on election night or the  
4 person the newspapers write the headlines about the next day  
5 or even the person who's just called the President-Elect and  
6 has all sort of office and staff. Under the Constitution,  
7 it is not official until Congress says so. And Congress has  
8 to say so on January 6th in the Capitol Building. The  
9 Constitution and federal law require it.

10           Now, during the trial, we'll often use a calendar  
11 to help you keep track of important days. Mr. Manzo is  
12 going to hold up the calendar now just to give you a sense  
13 of what it looks like. It's a calendar.

14           Now, the 2020 Presidential election took place on  
15 Tuesday, November 3rd of 2020. And by Saturday, November  
16 7th of 2020, most major news outlets were declaring or  
17 projecting that Joe Biden would be the winner of the  
18 election. That meant, of course, that Donald Trump had lost  
19 the election or was projected to lose the election.

20           Stewart Rhodes kicks into gear. He would do  
21 whatever was necessary to make sure that power did not  
22 transfer.

23           On November 5th, Rhodes wrote to the regional  
24 leaders of the Oath Keepers, including Kelly Meggs, "We must  
25 refuse to accept Biden as a legitimate winner. We aren't

1 getting through this without a Civil War. Too late for  
2 that. Prepare your mind, body, spirit."

3 Two days later, he provided the group with a  
4 step-by-step plan for how the people of Serbia overtook  
5 their government following an election many people in that  
6 country believed was stolen.

7 These steps included, and he laid out what he  
8 called a step-by-step procedure, swarming the streets,  
9 gathering millions in the capitol, encouraging military and  
10 police to align with the people in the streets, and  
11 storming -- the word he used, quoting the original -- the  
12 Parliament.

13 The parallel to what these defendants actually  
14 tried to accomplish is staggering, right down to their  
15 storming of the American version of Parliament: Congress.

16 A few days later, Rhodes even posted this  
17 step-by-step plan on the Oath Keepers website, and what he  
18 termed a, quote, call to action, to his followers.

19 On November 9th, Rhodes delivered instructions to  
20 his followers. They would have to take up arms and fight to  
21 prevent the transfer of Presidential power.

22 I told you that Rhodes, with his Yale law degree,  
23 was careful with his own words, and he told the conspirators  
24 they needed to be careful with their words, too.

25 Rather than say out loud their plan, which was to



1 use any means necessary, including force, to stop the  
2 transfer of power, they used a code, or shorthand, the  
3 Insurrection Act.

4           According to Rhodes, saying those magic words,  
5 "The Insurrection Act," would give him and his  
6 co-conspirators plausible deniability.

7           In Rhodes' own words, as secretly recorded by one  
8 of his increasingly alarmed followers on a GoToMeeting  
9 conference call on November 9th of 2020, Rhodes said that  
10 using those words to discuss their plan would give them  
11 "legal cover."

12           (Audio played)

13           MR. NESTLER: That was the groups' official  
14 position, according to Rhodes. That their QRFs, their  
15 armed, quick reaction force, guarding the arsenal of all the  
16 guns for the rest of the conspirators, would have legal  
17 cover if they were mentioned as part of the Insurrection  
18 Act.

19           You see following a 2020 Presidential election  
20 Stewart Rhodes publicly asked Donald Trump on multiple  
21 occasions to invoke the Insurrection Act, to help  
22 President Trump stay in power after his term of office  
23 ended. President Trump never did. It never happened.

24           You'll know that about the phrase "Insurrection  
25 Act" was just legal cover for a plan to use force, because

1 Rhodes said the real plan on that secretly recorded  
2 GoToMeeting call. Fight against the government no matter  
3 what.

4 (Audio played)

5 MR. NESTLER: And the defendants did just that on  
6 January 6th, even though President Trump never invoked the  
7 Insurrection Act, these defendants did use force to drive  
8 the members of Congress out of the Capitol, occupy the  
9 building and stop for a time Congress's joint session that  
10 is a critical part of the transfer of power process.

11 Now, listening to Rhodes' instructions on that  
12 November 9th GoToMeeting conference call were defendants  
13 Meggs, Harrelson, and Watkins, and they immediately heeded  
14 his message to recruit others and to prepare to fight, to  
15 use force no matter what.

16 That very same day, Kelly Meggs transmitted  
17 Rhodes' message to the Florida chapter of the Oath Keepers.  
18 "Anybody not in the call tonight. We have been issued a  
19 call to action for D.C. This is the moment we signed up  
20 for."

21 For her part, Jessica Watkins wrote messages to  
22 her Ohio militia group. She invited her recruits to what  
23 she called a basic training class, and explained, "I need  
24 you fighting fit by inauguration."

25 You'll note, ladies and gentlemen, that the

1 messages we're going to show you today and during the trial  
2 have not been altered from the original so you might see  
3 some typos or grammar issues, like the spelling here of the  
4 word "inauguration."

5           A few days later, the weekend of November 14th of  
6 2020, a group that included Rhodes and Watkins met with  
7 Caldwell at Caldwell's home in Berryville, Virginia. The  
8 group prepared a Quick Reaction Force, the QRF, an arsenal  
9 of firearms at the ready. And they all drove into D.C. that  
10 weekend.

11           You'll hear how Rhodes and Meggs and Watkins were  
12 together in D.C. prepared to activate their plan to use  
13 force to stop the lawful transfer of Presidential power.  
14 The opportunity didn't present itself. But the conspirators  
15 learned valuable lessons and formed bonds with each other,  
16 shaping their plans moving forward into December and  
17 January.

18           Now, in December of 2020, Rhodes and his  
19 followers, including these defendants, grew more desperate  
20 to take action to prevent the transfer of Presidential  
21 power.

22           Going into December, Rhodes' rhetoric turned  
23 increasingly violent and desperate. He told his followers  
24 that if President Trump did not act to stay in power, it  
25 would be up to them to do so.

1 Rhodes delivered a fiery speech at a rally in D.C.  
2 on December 12th of 2020.

3 (Video played)

4 MR. NESTLER: Rhodes published these two open  
5 letters to President Trump, imploring President Trump to  
6 act. During an interview, Rhodes called Senators  
7 "traitors." He said that his group would have to  
8 "overthrow, abort, or abolish Congress." And he pointed out  
9 that January 6th is, quote, in his words, "a hard  
10 constitutional deadline."

11 But President Trump did not act as Rhodes wanted.  
12 And, again, the opportunity for Rhodes and his  
13 co-conspirators to activate their troops, to activate their  
14 weapons, to stop the transfer of the power of the presidency  
15 did not present itself.

16 Like Rhodes, Kelly Meggs told his own followers in  
17 Florida that the time for talk was over. They needed to  
18 take action.

19 Indeed in December of 2020, Meggs, who had been  
20 functioning as a de facto leader of the Florida chapter,  
21 formally took over. And you'll hear during the trial how  
22 the prior leader was all talk. Not Meggs. He was a man of  
23 action. He wrote on the Signal message board to his  
24 followers in Florida on December 22nd: "It's easy to chat  
25 here. The real question is who's willing to die." The time

1 for talk was over.

2 Now, the evidence will show that these defendants  
3 knew that January 6th was important under the law. They  
4 knew that if they didn't stop Congress on January 6th, it  
5 would be much harder, if not impossible, to prevent the  
6 transfer of power on January 20th. That's why the  
7 defendants made their stand January 6th.

8 Like many agreements, the conspiracy started out  
9 with a broadly defined goal: Stop the transfer of  
10 Presidential power and, if necessary, use force.

11 With time, as their options dwindled and it became  
12 more and more likely that Presidential power would be  
13 transferred on January 20th, these defendants became more  
14 and more desperate and more and more focused on that date  
15 that Rhodes referred to as the hard, constitutional  
16 deadline, January 6th.

17 Meggs wrote to his group on December 23rd:  
18 "We need to surround the Capitol all the way around with  
19 Patriots screaming so they hear us inside. Scare the hell  
20 out of them with about a million surrounding them should do  
21 the trick."

22 He even told his group that an Oath Keepers flag  
23 would be flying in front of the Capitol on January 6th. The  
24 obvious implication, ladies and gentlemen, the Oath Keepers  
25 would be taking the Capitol.

1           On Christmas Day, Kelly Meggs wrote to the group:  
2       "We need to make those Senators very uncomfortable."

3           Now, Rhodes was a member of dozens of Signal chats  
4       and often cycled among them, popping into any given chat for  
5       an hour or two. He followed up Meggs' Christmas message  
6       with his own, telling others: "I think Congress will screw  
7       him over. The only chance we or he has is if we share the  
8       shit out of them and convince them it will be torches and  
9       pitchforks time if they don't do the right thing. But  
10      I don't think they will listen. And he needs to know that  
11      if he fails to act, then we will. He needs to understand  
12      that we" -- meaning him and his group -- "will have no  
13      choice."

14           Thomas Caldwell similarly explained that he was  
15      planning to start a Civil War on January 6th if Congress  
16      tried to go forward with its certification of the vote.  
17      After an associate wrote to him that if President Trump did  
18      not win on January 6th, he would personally start a  
19      Civil War, Caldwell responded, he would start the night of  
20      the 6th if necessary. The meaning, ladies and gentlemen, if  
21      Congress did not act, Caldwell would, and violently.

22           Now, before getting into the specifics of how each  
23      defendant and their respective groups planned to be in D.C.  
24      here on January 6th, you should know something. There is  
25      evidence that you will hear that they had more than one

1 reason to be here in D.C. on January 6th in addition to  
2 attacking Congress. And that's true.

3 They talked about attending President Trump's  
4 rally at the Ellipse on morning of January 6th. Okay. So  
5 did thousands of other people.

6 They talked about providing security for VIPs that  
7 day. Okay. Well, that's a little suspect because they  
8 weren't licensed, insured, trained, or even paid for their  
9 alleged security work, but even being bad security guards  
10 isn't itself illegal.

11 But the defendants also agreed to do whatever was  
12 necessary, including using force, to make sure that  
13 Presidential power was not transferred. That is why the  
14 evidence will show they're guilty.

15 Humans are, of course, complicated. They often do  
16 things for more than one reason. Let's say someone skipped  
17 work to go a Nationals game with their kid. They did that  
18 because they needed a break from their colleagues; they  
19 already worked a lot this week; they wanted to spend time  
20 with their kid; and they wanted to see the Nats make a run  
21 at the pennant, but not this year. All of those reasons can  
22 be true at once.

23 As Judge Mehta will tell you at the end of trial,  
24 a defendant's unlawful intent is not excused because he  
25 simultaneously has another purpose for his conduct. If one

1 of those motives is illegal, his conduct is still against  
2 the law.

3           You will also hear, incidentally, that the  
4 conspirators' role in providing security put them front and  
5 center at these type of events, in prime position to act  
6 upon the goals of their conspiracy.

7           As you will see from the evidence of these  
8 defendants' planning and coordination in the lead-up to  
9 January 6th, they were preparing for this unlawful goal.

10           During this portion of the trial, you will hear  
11 evidence of the extensive efforts these defendants and other  
12 conspirators undertook, including training; recruiting;  
13 gearing up, including with firearms, body armor, helmets,  
14 tactical gear; making travel plans, booking hotels; and  
15 coordinating within each team and then with the other  
16 geographic teams and nationally.

17           We'll start with the Ohio and North Carolina  
18 groups. Watkins led the Ohio group, specifically, three  
19 other Ohioans, whom she brought to D.C. and managed,  
20 including leading two of them into the Capitol Building  
21 itself.

22           Caldwell, meanwhile, coordinated with both Watkins  
23 and with the North Carolina group of the  
24 Quick Reaction Force, including the person down here,  
25 Paul Stamey, a leader of the North Carolina group.



1           For instance, on December 30th of 2020, Caldwell  
2 spoke with Stamey and then relayed that message that Stamey  
3 had told Caldwell back to Watkins.

4           "North Carolina would be bringing 40 people on a  
5 bus to D.C.," and Stamey, "committed to being the  
6 Quick Reaction Force and bringing the tools."

7           Now, you'll hear, of course, that tools likely  
8 meant the high-powered weapons. And, memorably, Caldwell  
9 told Watkins that Stamey would "schlep weaps for the group,"  
10 meaning bring the weapons.

11           As I mentioned earlier, the southeast contingent  
12 from Georgia and Alabama planned with each other and with  
13 other groups. For instance, Joshua James, the leader of  
14 this contingent, asked the national leaders on December 31st  
15 for a farm location for the weapons.

16           Then, as in a military-like hierarchal  
17 organization, James passed the message to one of his  
18 subordinates. He wrote, "We're working on a farm location.  
19 Some are bringing long rifles, some sidearms. I'm bringing  
20 a sidearm."

21           Let me move to the Florida group. From Florida,  
22 Meggs and Harrelson and others in their group conducted  
23 training on firearms.

24           Meggs, even boasted about the training in a  
25 message he sent to other leaders on the morning of

1 January 5th when he was on his way to D.C. He told them,  
2 "We are ready. Should be in D.C. by noon."

3 Note the use of the word "we," referring to Meggs  
4 and the rest of the group.

5 Accompanying this very message, Meggs sent a link  
6 to a video. Video was set to rock music. And it featured  
7 Meggs, Harrelson, and others firing AR-15-style rifles at  
8 human-shaped targets at a range, which they filmed during  
9 their training on firearms.

10 (Video played)

11 MR. NESTLER: The video also featured  
12 Joseph Hackett and Kelly Meggs' wife, Connnie Meggs, two  
13 additional members of the conspiracy who forcibly breached  
14 the Capitol with them on January 6th.

15 When you see this full video during the trial --  
16 this is just a snippet of it -- you'll see other  
17 conspirators in there as well, including defendant  
18 Jessica Watkins.

19 Now, in late November, the Florida chapter,  
20 including Kelly Meggs, also received a training on  
21 unconventional warfare. It was delivered by a  
22 co-conspirator in the Florida group named Jeremy Brown, who,  
23 for January 6th, caravans to D.C. in a recreational vehicle,  
24 or RV, alongside Meggs and Harrelson in their own trucks and  
25 vans.

1           You'll hear evidence that Meggs told other  
2 individuals that Brown had explosives in his RV. And, sure  
3 enough, the FBI later recovered grenades from Jeremy Brown's  
4 RV.

5           Kenneth Harrelson, for his part, took on more of a  
6 leadership role coming into December of 2020. For the month  
7 between November 3rd, Election Day, and December 1st, he was  
8 an attendee in ten different GoToMeeting conference calls  
9 focused on Oath Keepers.

10           But for the months starting in December, he became  
11 an organizer of 11 different meetings with names like  
12 D.C. planning call, Florida D.C. op planning chat,  
13 D.C. discussion, and Warrior Wednesdays with Gator 6. And  
14 recall that Gator 6 was his Oath Keepers name.

15           Finally, in the lead-up to January 6th,  
16 Kelly Meggs told Stewart Rhodes and others that Harrelson  
17 would serve as "the ground team leader for the group in  
18 D.C."

19           Now, apart from each geographic group, you'll also  
20 hear evidence of how the group's groups planned together,  
21 and especially with Caldwell, for staging that  
22 Quick Reaction Force, or QRF.

23           It was staged at the Comfort Inn hotel located in  
24 Arlington, Virginia, just across the Potomac River.

25           Caldwell specifically chose this site because of

1 its proximity to Route 66 and easy access into D.C.

2           You'll see message after message from Caldwell  
3 about organizing the QRF at the hotel and figuring out ways  
4 to get that arsenal of firearms across the river from  
5 Virginia into D.C.

6           You'll see maps, routes, discussions, including  
7 about using a boat, to go across the river.

8           For his part, Kelly Meggs told others that he  
9 would have a "heavy QRF 10 minutes out."

10           Meggs even sent the other conspirators a map of  
11 what he called the QRF rally points in D.C. to account for  
12 entry into the city for both driving and boating. "1 if by  
13 land," he wrote, "2 if by sea."

14           You will see evidence, including surveillance  
15 video from the Comfort Inn, showing conspirator after  
16 conspirator depositing and retrieving cases and bags to hold  
17 semiautomatic rifles, other firearms, and ammunition.

18           You'll see Kelly Meggs, Kenneth Harrelson,  
19 Jessica Watkins, Thomas Caldwell, and then other  
20 conspirators, including Jeremy Brown from Florida, the man  
21 with the grenades I just mentioned; conspirators from  
22 North Carolina, including Paul Stamey, the guy who said he  
23 would be schlepping the weaps; and then conspirators from  
24 Arizona, including Ed Vallejo. I'll discuss more about  
25 Mr. Vallejo in a minute.

1           You will hear evidence that these defendants  
2 staged their weapons of war in Virginia, where the firearms  
3 laws are different than they're here in D.C. But rather  
4 than showing that these defendants were law abiding, it  
5 shows they were calculating. They needed access to their  
6 manpower and their firepower. If they were stopped by the  
7 police in D.C., they would lose both. Because as Rhodes put  
8 it, they would be arrested and have their guns confiscated.

9           In Rhodes' own words at that point, they wouldn't  
10 be any good to the cause because then they would be, quote,  
11 "rotting in jail."

12           They did discuss bringing weapons, though. Rhodes  
13 and others advised conspirators about blade length laws for  
14 knives in D.C. Watkins was armed with a chemical irritant  
15 spray when she entered the Capitol Building.

16           And Meggs advised others that he would bring "an  
17 OK flag on a nice thick piece of wood."

18           Rhodes, for his part, spent a significant amount  
19 of money to amass his own arsenal. In the weeks after  
20 December 30th of 2020, he spent tens of thousands of dollars  
21 on firearms equipment and tactical gear. And of course,  
22 every one of these defendants drove rather than flew to the  
23 D.C. area so they could bring their weapons of war with  
24 them.

25           As the sun set on D.C. on the night of January 5th

1 of 2021, the conspirators were in and around the city with  
2 ready access to their firepower.

3 Let's turn to these defendants' efforts on  
4 January 6th to attack the Capitol and stop Congress's work.

5 On January 6th, Rhodes and Meggs and Harrelson and  
6 Watkins and Caldwell saw that time was slipping away. Vice  
7 President Pence announced that he would not stop the  
8 certification. President Trump did not invoke the  
9 Insurrection Act. These defendants needed to take matters  
10 into their own hands. They needed to activate the plan they  
11 had agreed on. Do whatever was necessary, including using  
12 force, to stop the transfer of power.

13 Let's start around 1:00 p.m. This is a layout of  
14 D.C. showing where most of the group started. At the  
15 Ellipse behind the White House.

16 At 1:25 p.m., Rhodes sent a message on Signal to  
17 the group: "Pence is doing nothing. As I predicted."

18 He was calling his followers to the Capitol and  
19 telling them that the vice president is not doing what he  
20 wanted and so they have to take matters into their own  
21 hands.

22 Just after Rhodes sent that message, Watkins  
23 yelled to her group, "Move." And you'll hear that and see  
24 that on the video. And then the conspirators started moving  
25 out towards the Capitol.

1           Rhodes continued to urge the group to go to the  
2 Capitol to take action. He told them, "All I see Trump  
3 doing is complaining. I see no intent by him to do  
4 anything. So the patriots are taking matters into their own  
5 hands." That's what Rhodes told the followers that they  
6 were. Patriots.

7           Recall, ladies and gentlemen, that Rhodes' talk  
8 about the Insurrection Act was legal cover. He would  
9 instruct his troops to do whatever was necessary to prevent  
10 the transfer of power regardless of whether President Trump  
11 took any action.

12           Rhodes told his troops they would take their place  
13 in history. "The founding generation stormed the governor's  
14 mansion. That's where we are now."

15           When another user asked if the people storming the  
16 Capitol -- their words, storming the Capitol -- were pissed  
17 off patriots -- patriots or just instigators in disguise,  
18 Rhodes assured him in response that they were quote, "Actual  
19 patriots. Pissed off patriots."

20           Now, during this time Jessica Watkins was using  
21 Zello on her phone. I mentioned earlier Zello is a  
22 walkie-talkie app, and you're going to hear more about Zello  
23 during this trial. A reporter actually got access to this  
24 Zello channel, it was called "Stop the Steal, J6" and the  
25 reporter recorded it. You're going to hear clips of that

1 recording during the trial. As other people passed Watkins'  
2 information about other rioters' movements and about the  
3 police's response and Congress's response, and then she  
4 passed information back about her group and her group's  
5 plan.

6 (Audio played)

7 MR. NESTLER: "Sticking together and sticking to  
8 the plan."

9 (Audio played)

10 MR. NESTLER: She was going to be a little busy.

11 Of course she was going to be a little busy,  
12 storming the Capitol and stopping Congress from certifying  
13 the election.

14 A few minutes later, Caldwell himself arrived at  
15 the Capitol grounds. He sent a text to Watkins, "Where are  
16 you? Pence has punked out. We are screwed."

17 Watkins and her group continued to march to the  
18 Capitol. Meanwhile, Ed Vallejo, that Oath Keeper from  
19 Arizona who was also a member of the conspiracy, was back at  
20 the QRF hotel in Arlington, monitoring the situation. He  
21 was awaiting word from Rhodes or Meggs to bring that arsenal  
22 of firearms into D.C.

23 On a Signal message to the group, he reminded them  
24 that he was "back at the hotel and outfitted," with two  
25 trucks available and, of course, that arsenal of weapons.



1           Vallejo, by the way, on a podcast on the morning  
2 of January 6th, while sitting in that very same hotel in  
3 Arlington, guarding that arsenal of firearms, had explained  
4 the groups' intentions. "The American people," he said,  
5 "are going to be told today that we have liberty and justice  
6 for all or they're going to be told 'fuck you,' okay. And  
7 if they're told fuck you, that's going to be the declaration  
8 of a guerilla war."

9           If President Trump did not do -- and Vice  
10 President Pence and Congress did not do what this group  
11 wanted, somehow prevent Congress's certification of the  
12 vote, then these conspirators would take that as a  
13 declaration of guerilla war. And what does that mean? That  
14 means they would use force, including that arsenal of  
15 weapons, to accomplish their goal.

16           Now, Vallejo had reminded Rhodes and the rest of  
17 the group that he was ready at 2:24 p.m., but he didn't get  
18 an immediate response. Here 14 minutes later, he wrote  
19 again, "QRF standing by at the hotel. Just say the word."

20           Now, by this time, ladies and gentlemen,  
21 Stewart Rhodes himself was on the Capitol Grounds,  
22 coordinating by phone, voice calls, text messages, Signal  
23 messages with various members of the group and various  
24 conspirators.

25           There's Rhodes with his distinctive cowboy hat

1 using his phone.

2 Rhodes told the others where he was located,  
3 sending a photo from the west side of the building. And  
4 just before 2:30 p.m., Watkins and Meggs and the rest of  
5 their group entered the restricted area of the Capitol  
6 Grounds on their way to actually breaching the building.

7 There's Watkins on the bottom left with other  
8 co-conspirators.

9 And there's Kelly Meggs in the middle with the  
10 rest of that group.

11 Then Rhodes and Meggs had a phone call for about a  
12 minute and a half. It's a phone call rather than a message  
13 so you won't have the actual text or the audio what was  
14 said. And you should know it's actually a three-way call,  
15 because Michael Greene, the conspirator that Rhodes  
16 personally appointed the operations leader in D.C., he's  
17 over here, nickname Whip, was talking to Stewart Rhodes  
18 before and after they conferenced Meggs in on that three-way  
19 call.

20 Within two minutes of Meggs ending that call,  
21 Meggs broke from the huddle he was having with his  
22 contingent of conspirators from Florida and Ohio. He then  
23 led the conspirators in that stack formation up the stairs  
24 of the Capitol Building and then forcibly inside the  
25 building itself.

1           At 2:40 p.m., the members of that stack, including  
2 Meggs and Harrelson and Watkins, pushed their way past the  
3 Capitol Police officers through the blaring alarms and into  
4 the halls of the Capitol Building.

5           Now, over the prior half hour or so within the  
6 building, the United States Secret Service had been  
7 evacuating Vice President Pence, the Capitol Police were  
8 still in the process of trying to evacuate the Senators and  
9 Representatives and their staff members and their families  
10 and the other public servants whose job it was to be inside  
11 the building that day.

12           You will hear from people who were there, who will  
13 tell you what it felt like when they heard the heavy  
14 metallic locks of the Chambers' doors engage when police  
15 officers with rifles had to escort them to safety in their  
16 own place of work.

17           This diagram will help orient you to the layout of  
18 this massive building, the Capitol Building. The Senate is  
19 there on the top side, which is the north side. And the  
20 House of Representatives is on the bottom or the south side.  
21 The Rotunda is the large circle in the middle. These  
22 defendants entered from the east side up those stairs just  
23 east of the Rotunda.

24           The Rotunda is the exact same place where, just an  
25 hour earlier before these defendants forced their way into

1 the building, where the Senate clerks were carrying the  
2 formal Electoral College ballots. That's what's inside  
3 those leather-bound boxes. From the Senate Chamber to the  
4 House Chamber, north to south, to begin the solemn joint  
5 session of Congress required by the Constitution.

6 Now, there were 14 conspirators in this stack that  
7 forced their way into the building around 2:40 p.m. That  
8 included Meggs and Harrelson and Watkins. And after they  
9 forced their way into the Rotunda, they split into two,  
10 7 and 7. Watkins led a group of seven members north towards  
11 the Senate, while Meggs and Harrelson led a group of seven  
12 south towards the House of Representatives. During the  
13 trial, we'll try to address each of those subgroups  
14 separately to help keep track of everything that's going on.

15 We'll start with the group headed towards the  
16 Senate led by Jessica Watkins. She was still communicating  
17 on Zello, that walkie-talkie app she had on her phone.

18 (Audio played)

19 MR. NESTLER: That was Watkins' Ohio  
20 co-conspirator Donovan Crawl, who stated on that video that  
21 he took that, "We" -- notice the we -- "took over the  
22 Capitol."

23 And then on the Zello recording, that was user  
24 Freedom Dozer, the leader of the Illinois chapter of the  
25 Oath Keepers, who was giving Watkins reconnaissance and

1 advice from afar, telling Watkins to continue, that she was  
2 doing "everything we trained for."

3 Now, seven of the conspirators, including Watkins,  
4 tried to push their way down a hallway towards the Senate  
5 Chamber. There, a line of riot police from the Metropolitan  
6 Police Department bravely kept the horde at bay, protecting  
7 the Senate Chamber that was just a few feet behind them.  
8 The door to the Senate Chamber is in the yellow frame in the  
9 background behind those police officers.

10 Simply entering the building was not enough for  
11 these defendants. Congress had merely paused its work.  
12 Watkins and her group needed to do more, they needed to  
13 actually get to the Senators.

14 Watkins, with her group behind her, stormed down  
15 that hallway. She had the power of the mob with her. She  
16 yelled, "Push, push, push. Get in there, they can't hold  
17 us."

18 And everyone around her pushed and pushed. And it  
19 was a clash between an invading Army and the police officers  
20 trying to serve and protect that sacred chamber.

21 You'll hear how the air was heavy with pepper  
22 spray and smoke. You'll hear how the people around Watkins  
23 were compressed like a trash compacter, as Watkins tried to  
24 force forward and forward and force the police backwards.

25 Meanwhile, ladies and gentlemen, the other group

1 of seven conspirators who entered the Rotunda went south  
2 towards the House of Representatives. This group included  
3 Kelly Meggs and Kenneth Harrelson.

4 That's Kenneth Harrelson there on the right next  
5 to conspirator Jason Dolan. They're both screaming,  
6 "Treason" as they storm their way into the Rotunda.

7 (Audio plays)

8 MR. NESTLER: "Treason, treason, treason." Those  
9 chants were directed at members of Congress, the people that  
10 were inside the building, doing their work, their  
11 constitutional duty.

12 These conspirators stationed themselves just south  
13 of the Rotunda, outside of a suite of offices belonging to  
14 Speaker of the House, Nancy Pelosi.

15 You'll hear during the trial that Kelly Meggs had  
16 a keen interest in Speaker Pelosi.

17 On election night back on November 3rd of 2020, he  
18 told his wife and co-conspirator, Connie Meggs, that if he  
19 went on a killing spree about the election results, Pelosi  
20 would be first.

21 And then on the evening of January 6th, after  
22 Meggs told an associate that "We busted in," notice the word  
23 again, we, meaning him and his group, the associate said he  
24 was hoping to see "Nancy's head rolling down the front  
25 steps."

1 And what did Kelly Meggs confirm in response?

2 "We looked for her."

3 Now, outside of Speaker Pelosi's suite of offices,  
4 Meggs and Harrelson and their group encountered a Capitol  
5 police officer named Harry Dunn. You will hear evidence  
6 during the trial that this group's presence was decidedly  
7 not helpful to Officer Dunn.

8 There were a lot of them. They were dressed in  
9 combat gear. They appeared to be coordinated. Officer Dunn  
10 was alone, holding a rifle, exhausted from all he had  
11 already been through that day, and he had to immediately  
12 size this group up, including Kelly Meggs at 6-foot-4.

13 Now, Kelly Meggs was not in the Capitol to help  
14 the Capitol police officers, and Kenneth Harrelson was not  
15 there to help police officers. And any evidence you hear or  
16 see to suggest that is simply an after-the-fact  
17 justification, a way for these defendants, people who held  
18 themselves out as pro law and order, pro military, pro  
19 police, to craft a story that they were on the side of  
20 righteousness that day. They were not.

21 While he was in the building, Harrelson even felt  
22 with his hands the body armor of a Capitol police officer  
23 and then told other members of the group he was testing the  
24 armor to know if it could stop bullets from a rifle.

25 In short, Meggs and Harrelson and the conspirators

1 forced their way into the Capitol to disrupt Congress's  
2 session, not to help anybody but themselves.

3 Now, the members of the Southeast contingent from  
4 Georgia and Alabama also headed Rhodes' call to race to the  
5 Capitol to help. And you will see the southeast contingent  
6 over here led by Joshua James who goes by Hydro, and other  
7 members of this group. Here's Robert -- Roberto Minuta just  
8 under Joshua James.

9 Minuta, as he sped to the Capitol in response to  
10 Rhodes' request, broadcast his message out. He said, "Head  
11 into the Capitol. Patriots storm the Capitol Building.  
12 There's violence against patriots by the D.C. police."

13 Again, these defendants' narrative, these  
14 conspirators' narrative was that they were patriots.

15 They were not.

16 The Southeast contingent ran from the west side of  
17 the building to the east side of the building using that  
18 same military-style formation with their hands on each  
19 other's shoulders.

20 One member of the group even had at his side a  
21 German Shepherd named Warrior.

22 This team eventually breached the Capitol on the  
23 east side through those exact same doors that the other  
24 conspirators had used about a half hour earlier.

25 And that's where you'll see Joshua James, the



1 leader of the Southeast contingent, screaming at the police  
2 officers in the Rotunda, "Get out of my Capitol," while he  
3 forcibly tried to pull them out of the building.

4           Meanwhile, Rhodes was outside of the building. As  
5 I said earlier, he was like a general, surveying his troops  
6 on a battlefield, talking, watching, coordinating. Rhodes'  
7 own words were captured on a video on the west side of the  
8 building at the exact same time that his conspirators,  
9 fellow conspirators, Meggs, Harrelson, Watkins, and others,  
10 were forcing their way into the building.

11           (Video played).

12           MR. NESTLER: He said, "Members of Congress need  
13 to be shitting their pants," because of him and his group.

14           And in the end, it was, "Sic semper tyrannis."  
15 That's Latin for "Thus always to tyrants. It's what  
16 Johns Wilkes Booth yelled as he assassinated  
17 President Abraham Lincoln.

18           And you'll see evidence that Rhodes was on the  
19 phone all the while sending messages to the other  
20 conspirators, applauding the unfathomed attack on the  
21 Capitol.

22           Caldwell for his part was on the west side of the  
23 Capitol. He climbed up to an area called the lower west  
24 terrace on the stage that had been built for the  
25 inauguration that was supposed to happen in just two weeks.

1 And Caldwell made comments captured on video about Speaker  
2 of the House Nancy Pelosi, the same person that Kelly Meggs  
3 said, "We" -- notice the "we" -- "had looked for." This is  
4 Thomas Caldwell.

5 (Video played)

6 MR. NESTLER: That's Caldwell, yelling at members  
7 of Congress inside the building doing their jobs, their  
8 constitutional duty, were traitors.

9 Now, having successfully interrupted the  
10 certification of the Electoral College vote, many of the  
11 conspirators, including Meggs and Harrelson and Watkins,  
12 left the building and immediately began discussing next  
13 steps with Rhodes.

14 They gather around Rhodes on the grounds of the  
15 Capitol, still within the secured, restricted area of the  
16 building, awaiting Rhodes' directions.

17 Finally, let's turn to the defendants' actions  
18 after they stopped Congress's session.

19 Immediately after they attacked the Capitol and  
20 sent members of Congress fleeing from their chambers, the  
21 defendants were united. They were boastful. They were  
22 proud.

23 They were prepared to continue their efforts, even  
24 escalating their use of force, to accomplish their goal of  
25 preventing the transfer of power that was set to occur in

1 just two weeks. On the afternoon and evening of  
2 January 6th, see what they said to each other.

3 Rhodes wrote that patriots had "sent a message,  
4 and you ain't seen nothing yet."

5 Meggs wrote to the group: "We aren't quitting.  
6 We are reloading."

7 When an associate asked what they would do if  
8 Congress resumed its joint session later that night --  
9 recall, ladies and gentlemen, Congress was required to meet  
10 to vote and certify the election.

11 Meggs responded that his group would go back.

12 Ed Vallejo, that Arizona member of the conspiracy  
13 guarding some of the guns at the QRF hotel in Arlington and  
14 who was now with the other conspirators back at the hotel,  
15 wrote to the leadership group of the Oath Keepers: "We have  
16 only begun to fight."

17 And sure enough, earlier the next morning,  
18 5:46 a.m., he informed that same group that he was "headed  
19 back into D.C. to probe their defense line."

20 Harrelson, for his part, had taken a video of  
21 himself and Meggs and Watkins and the rest of the  
22 conspirators breaching the east side doors at 2:40 p.m.  
23 This is just a clip. You're going to see the whole thing  
24 here during the trial.

25 (Video played)

1 MR. NESTLER: That's Harrelson recording himself  
2 and his group. He sent that video to Kelly Meggs later that  
3 night.

4 Meggs sent that video out to the group, apparently  
5 as proof of what they had accomplished. And Meggs added a  
6 descriptive and colorful and boastful caption to accompany  
7 the video link he sent out. "Florida okay takes the  
8 Capitol."

9 And that's what they did. This group took the  
10 Capitol.

11 Watkins, for her part, was also boastful about  
12 what we, her words, her group had accomplished. She said,  
13 "We were in the thick of it. Stormed the Capitol. Forced  
14 our way into the Senate and House, got teargassed, and  
15 muscled the cops back like Spartans."

16 To her followers on Parler, that social messaging  
17 site that you're going to hear about during the trial, she  
18 wrote, "When vice President Pence 'turned on America,'  
19 that's when we patriots took the Capitol."

20 Caldwell, for his part, similarly admitted his own  
21 actions and those of the group. He wrote to another man on  
22 the night of January 6th that he "rolled with the  
23 Oath Keepers."

24 And Caldwell said that when he heard that  
25 "Vice President Pence fucked us," his words, he said, "Let's

1 take the damned Capitol."

2 And after describing how he was part of the mob  
3 surging forward, climbing the scaffolding, Caldwell boasted,  
4 "I said, 'Let's storm the place and hang the traitors.'  
5 Traitors, of course, Caldwell's words, for members of  
6 Congress.

7 Caldwell followed up by explaining the night of  
8 January 6th that if they'd had their arsenal of guns with  
9 them at the building, they would have killed 100  
10 politicians. But he complained that the members of Congress  
11 escaped. In his words, they "ran off and were spirited away  
12 through their underground tunnels like rats," those same  
13 members of Congress who were inside of the building doing  
14 their jobs.

15 Ladies and gentlemen, almost as quickly as these  
16 defendants were bragging about what they had accomplished  
17 and that they had accomplished their mission of stopping  
18 Congress from certifying the Presidential election results,  
19 they realized that Congress did actually resume its session  
20 very late at night on January 6th and continued meeting  
21 until about 4:00 a.m. on January 7th. So these defendants'  
22 successes were temporary. They also then realized just how  
23 much trouble they were in.

24 Rhodes was having dinner in Virginia when he got  
25 word that the police were looking for people involved in the

1 attack on the Capitol. He sped out of the restaurant and  
2 drove through the night to Texas, and he gave his cell phone  
3 to another person so that he couldn't be tracked on his cell  
4 phone.

5           Watkins, who was back home in Ohio, then drove all  
6 the way back to Virginia to Caldwell's farm in Berryville.  
7 And in a text message, Caldwell encouraged Watkins to lie  
8 about what they had done.

9           And on Facebook, Caldwell had initially sent  
10 several incriminating messages, but then he unsent them.  
11 And you'll hear about what that means to unsend something on  
12 Facebook. That means that he can remove them from both his  
13 own Facebook account and the recipient's account.

14           For his part, Rhodes specifically instructed  
15 everyone to delete their incriminating messages.

16           He had an associate pass this message to his  
17 followers: "You all need to delete all of your comments  
18 regarding who did what."

19           This is January 8th.

20           "Delete your self-incriminating comments or those  
21 that can incriminate others.

22           "Hunt down any comment you made that can be used  
23 against you, other Oath Keepers, or the org and delete  
24 them."

25           He continued: "Do not chat about Oath Keepers

1 members allegedly doing anything at the Capitol. Go dark on  
2 that. Do not discuss."

3 And remember, ladies and gentlemen, he's  
4 addressing a group of mostly military veterans who have just  
5 committed a crime against the very United States government  
6 they had sworn an oath to defend and protect. So he spoke  
7 to them in their language, military language.

8 "Let me put it in infantry speak, he said: Shut  
9 the fuck up."

10 In early February of 2021, Meggs and Harrelson  
11 deleted all of their old Signal messages off of their cell  
12 phones. And you'll know that because there was one series  
13 of messages -- Harrelson deleted it from his own phone, but  
14 Meggs didn't -- in which they discussed the need to delete  
15 their other incriminating Signal messages about weapons and  
16 using force against the government.

17 Meggs tells Harrelson: "Is there any way we can  
18 clear out the messages in our chats? I don't think it would  
19 be a bad idea, clear out all the talk of hiding the tools  
20 and shit."

21 Of course, "hiding the tools" means getting rid of  
22 the guns, those same guns he had as part of the arsenal at  
23 the QRF hotel.

24 Harrelson said, "We can delete the old and start  
25 anew."

1           And Meggs said, " Let's do that, as long as you  
2 think it deletes everything. I don't want the boys to have  
3 anything to look at if you know what I mean."

4           "The boys," of course, meaning the government, the  
5 FBI agents who would be arresting them in the coming days,  
6 and ultimately the grand jurors who would be considering the  
7 evidence against them. Remember that hiding evidence from  
8 the grand jurors is one of the crimes that these defendants  
9 are charged with.

10           Now, during the trial, you'll hear from an expert  
11 in the recovery of digital data from cell phones and about  
12 how these defendants deleted critical content from their  
13 phones. That's why you'll see comparatively fewer messages  
14 from Kenneth Harrelson. Starting the night of January 6th,  
15 he deleted not only the messages stored on his own phone but  
16 Signal messages that he had sent to other people and that  
17 were stored in other people's phones, because Signal, like  
18 Facebook, lets a person unsend or delete a message in some  
19 circumstances.

20           Meanwhile, in the days after he fled home to  
21 Texas, Rhodes said it was not over. He continued to plot to  
22 stop the transfer of power.

23           Even on January 10th, after Congress had certified  
24 the election, Rhodes met with someone to ask him to pass a  
25 message to President Trump. "It's still not too late. Take



1 action."

2 Now, a man who was present for that meeting on  
3 January 10th and who was also alarmed by what Rhodes was  
4 doing and advocating secretly recorded Rhodes' words.

5 (Audio played)

6 MR. NESTLER: Because, ladies and gentlemen, these  
7 defendants were fighting a war. And they won a battle in  
8 that war on January 6th when they forcibly drove Congress  
9 out of the Capitol and derailed the certification of the  
10 Electoral College vote. But they planned to continue waging  
11 that war to stop the transfer of power prior to  
12 Inauguration Day. Thankfully, their plans were foiled.

13 On January 17th, the FBI began arresting these  
14 defendants and their conspirators in the plot.

15 Now, let's talk briefly about your job as -- about  
16 the charges these defendants face as a result of their  
17 actions and your job as jurors.

18 Judge Mehta will provide you with lengthy formal  
19 instructions at the end of the trial and that is the law you  
20 need to apply, but there are a few things you should know  
21 about the trial and the evidence as you're going to see it  
22 over the next few weeks.

23 First, because of the volume of the evidence and  
24 the number of witnesses and the number of defendants and the  
25 number of messages and the overall length of the trial,

1 we've done our best to break our presentation up into  
2 smaller, more digestible pieces. That way it will be easier  
3 to keep track of why something is relevant and how it fits  
4 into the bigger picture.

5           Towards the end of each segment we're going to  
6 present, you'll hear from at least one FBI agent who will  
7 summarize and explain that evidence. Like how certain  
8 messages, phone records, hotel records, financial records,  
9 video clips, photographs and physical items like firearms  
10 and gear all fit together with one another.

11           For this reason a few of the FBI agents might  
12 actually testify more than once so that each time they  
13 testify they can focus on a different aspect of the  
14 conspiracy and the investigation.

15           The second thing you should know and think about  
16 as you hear the evidence is the charges against these  
17 defendants. This will help you focus on the importance of  
18 certain pieces of evidence. You will hear evidence that  
19 these defendants agreed to oppose by force the lawful  
20 transfer of power following the 2020 Presidential election.

21           There are three related conspiracy charges. The  
22 first conspiracy charge is seditious conspiracy. That count  
23 charges that the defendants entered an agreement to try to  
24 stop the lawful transfer of power by opposing, by force, the  
25 authority of the government of the United States of America

1 or to use force to prevent the execution of the laws of the  
2 United States.

3 The second conspiracy charge is that the  
4 defendants entered an agreement to obstruct an official  
5 proceeding. That proceeding is Congress's joint session on  
6 January 6th of 2021 to certify the Electoral College votes.

7 The third conspiracy charge is that the defendants  
8 agreed to prevent members of Congress from discharging or  
9 fulfilling their duties.

10 Now, with respect to the other non-conspiracy  
11 charges, the defendants obstructed the official proceeding,  
12 they prevented Congress from meeting; they destroyed  
13 government property, that's for damage to the doors to the  
14 Capitol Building as they forced their way inside the  
15 building.

16 Defendant Jessica Watkins interfered with police  
17 officers when she tried to push past them in the hallway,  
18 connecting the Rotunda to the Senate.

19 And, finally, the defendants deleted incriminating  
20 evidence and hid it from the grand jury or they instructed  
21 others to do so.

22 As Judge Mehta will explain, we, the government,  
23 bear the burden to prove to you beyond a reasonable doubt  
24 the defendants intent. And ordinarily a person's intent  
25 cannot be proved directly because there's no way of knowing

1 what a person is actually thinking.

2 But in this case, ladies and gentlemen, the  
3 evidence will show that in some situations the defendants  
4 have actually made it easy for you. They said out loud and  
5 in writing what they planned to do. Use any means  
6 necessary, up to and including using force, to stop the  
7 transfer of power.

8 They were prepared in November, they were prepared  
9 in December, and when the opportunity finally presented  
10 itself on January 6th of 2021, they sprang into action.

11 These defendants attacked the Capitol Building,  
12 Congress, and government itself. They agreed to and  
13 actually did obstruct the peaceful transfer of power from  
14 one President to the next, that unbroken tradition, dating  
15 back 224 years, to our country's first transition from  
16 President Washington to President Adams.

17 Now, once you've heard all this evidence, ladies  
18 and gentlemen, my colleague, Ms. Rakoczy, will stand in  
19 front of you and ask you to reach the only verdict  
20 consistent with the evidence; that Stewart Rhodes is guilty,  
21 that Kelly Meggs is guilty, that Kenneth Harrelson is  
22 guilty, that Jessica Watkins is guilty, and that  
23 Thomas Caldwell is guilty.

24 Thank you.

25 THE COURT: Okay. Thank you, Mr. Nestler.

1 Ladies and gentlemen, we are going to take our  
2 morning break now. It's about 10 of 12:00. We'll take  
3 about 15 minutes and we'll try and resume at 12:05.  
4 Thank you very much.

5 (Jury exited the courtroom.)

6 THE COURT: Okay, everyone. Please be back and  
7 seated by 12:05 so we can get started on time. Thank you.

8 (Recess from 11:50 a.m. to 12:05 p.m.)

9 DEPUTY CLERK: All rise.

10 THE COURT: Please be seated, everyone.

11 All right. So, Mr. Linder.

12 MR. LINDER: Yes, sir.

13 THE COURT: The floor will be yours, and then  
14 we'll take our lunch break after Mr. Linder's done.

15 Counsel, none of you should feel compelled to  
16 stand by the podium. If you'd like to move around a little  
17 bit, I'm fine with that. Okay.

18 COURTROOM DEPUTY: Jury panel.

19 (Jury entered the courtroom.)

20 THE COURT: Okay. Have a seat, everyone.

21 Welcome back, ladies and gentlemen.

22 So we've finished the first part of our morning  
23 and now we will hear from Mr. Linder on behalf of  
24 Mr. Rhodes.

25 Mr. Linder, the floor is ours.

1 MR. LINDER: Thank you, Your Honor. May it please  
2 the Court.

3 Good afternoon, ladies and gentlemen, if you  
4 didn't know before today, you now know, after watching the  
5 presentation and everything else, you're in one of the most  
6 important jury trials in, I think, recent modern day  
7 history, and definitely one of the most anticipated jury  
8 trials to take place since January 6th. So here we go.

9 The things that are going to be discussed are  
10 many, and they're serious. We're dealing with things like  
11 free speech issues, the peaceful transfer of power,  
12 whether -- you're going to hear about an Insurrection Act,  
13 whether a president can invoke that Insurrection Act or not  
14 and whether it's legal to do and what terms.

15 You're going to hear about attorney-client  
16 communications and the extent of those and if they're legal  
17 or not. You're going to hear a lot of legal issues and a  
18 lot of big themes in this case. And so I appreciate you  
19 being here.

20 And most importantly, our clients, five of them  
21 over here, are looking at significant prison sentences if --

22 MR. NESTLER: Objection.

23 THE COURT: Sustained. Ladies and gentlemen,  
24 you'll disregard that last statement.

25 MR. LINDER: Therefore, it's important for you to

1 realize your importance as the jury, your role in this case.

2 This means you're ability to listen to and  
3 evaluate what probably will be six weeks worth of evidence,  
4 six or seven, and then when the Judge gives you the law at  
5 the end to be able to remember that evidence and to apply it  
6 correctly to the facts that are presented in this case.

7 Let me begin by thanking each and every one of you  
8 for participating in the jury selection process. Many of  
9 you had to make two trips down here, some three. You've  
10 divulged personal information to us, you filled out  
11 questionnaires, you answered questions from us and the Judge  
12 in front of the media over here. So we appreciate your  
13 participation. You allowed us to get what we think is a  
14 fair and impartial jury, and so we look forward to working  
15 with you over the next six or seven weeks.

16 The Judge mentioned this in his introduction  
17 before in voir dire when you guys sat through that  
18 introduction, I'm going to mention it again here. Serving  
19 on a jury -- or next to serving in the military, serving on  
20 a jury is the most important right we have in this country.  
21 I know you'll take your job seriously. We cannot do this  
22 process without you. The American jurisprudence process  
23 would not exist without juries, and even though it's not the  
24 most perfect, it's not a perfect legal system, it's the best  
25 legal system in the world. So thank you for being a part of

1 it.

2 THE COURT: Mr. Linder, let me interrupt you.

3 Whoever has their phone on, please leave the  
4 courtroom.

5 Mr. Linder, go ahead. Apologies.

6 MR. LINDER: Thank you.

7 As you all know Washington, D.C. is a special  
8 place. It is the birthplace of and continued beacon of the  
9 world for freedom and equality. It's an example of how  
10 citizens are supposed to govern themselves in a peaceful and  
11 democratic society.

12 In its 250 years of existence it has faced many  
13 challenges to this structure. Many people consider January  
14 6th to be one of those times. If you're one of those who  
15 believes that January 6th was one of those times that tested  
16 this country, we believe that once you see and hear the  
17 evidence, that what we the defense will bring you, you'll  
18 understand that our clients had no part in the bulk of that  
19 violence that occurred in Washington, D.C. on January 6th.

20 At the end of the case, based on what you saw in  
21 the opening at the end of the case, we all expect, and you  
22 would expect it also, the government is going to ask you to  
23 find our clients guilty, in layman's terms, of trying to  
24 force -- trying to use force to prevent Joe Biden from  
25 becoming the President, amongst other things. They're going



1 to show you all kinds of allegedly inflammatory texts and  
2 videos. You've seen snippets of that here today.

3 In total, we expect the government to show you a  
4 couple hundred texts, maybe 300 texts, a few hours of video,  
5 of all of the events that occurred.

6 However, the evidence we will present you will  
7 fill in all the gaps. You will hear from different  
8 witnesses that there are hundreds of thousands of text  
9 messages between these defendants and other related  
10 defendants. There are scores, if not hundreds of hours of  
11 video. The government has just given you a snippet, and the  
12 government is going to bring you what they want to show you.  
13 We're going to bring you evidence and witnesses to fill in  
14 those gaps, and give you a full picture of what really  
15 happened that day and how our clients fit into that picture.

16 We anticipate bringing you more evidence than the  
17 government does to help put things into context.

18 I'm certain they'll object to some of it, but  
19 that's what we expect.

20 MR. NESTLER: Objection.

21 MR. LINDER: My belief is the government is going  
22 to bring you these texts and videos just like they did in  
23 opening as an attempt to alarm and anger you. They will say  
24 they've met at the end of the case, they'll say we want you  
25 to convict them because we've met the burden of proof, but

1 you know subconsciously, if you hate someone or you're  
2 angered against them, that can change in your mind. You  
3 can't do that. The Judge is going to ask you to hold  
4 yourself to the burden of proof, we're going to ask you to  
5 hold yourself to the burden of proof. You may not like some  
6 of the things you see and hear that our clients did but at  
7 the end of the day, the evidence is going to show you that  
8 my client, Mr. Rhodes, and many of these others, did nothing  
9 illegal that day, even though it may look inflammatory, they  
10 did nothing illegal.

11           The burden of proof is beyond a reasonable doubt.  
12 Every element of every count. It's the highest burden of  
13 proof we have in our legal system. And the reason is  
14 because liberty is at stake. If you convict somebody of a  
15 crime, they can never be -- they can go to jail, they can't  
16 get that back. It's very important that you hold the  
17 government to the burden of proof and don't let what they're  
18 going to give you, the inflammatory text and the  
19 inflammatory videos influence you. You got to look at it in  
20 a factual basis.

21           I would like to tell you that the story of the  
22 Oath Keepers role in the events of January 6th that you've  
23 heard for the last 20 months and what the government is  
24 going to try to tell you today is completely wrong. I  
25 anticipate the evidence that comes forth is this trial will

1 be different than anything you've heard today from either  
2 the government or the media in the last year and a half.

3 Arguably, one of the wisest men in ancient history  
4 is considered to be King Solomon. He's attributed with a  
5 lot in the book of Proverbs. That's where we get one of our  
6 jury instructions. Proverbs Chapter 18, verse 17, basically  
7 says, "The first to come forward and testify seems right  
8 until another comes forward and cross-examines." There's a  
9 reason that jury instruction is in there.

10 The government gets to go first. The government  
11 gets to spend three weeks putting on evidence, just like  
12 what you saw in this video, before we get to go. That's why  
13 you cannot deliberate after Day 1 or Day 2 or during lunch  
14 or anything else. You've got to wait until you get to the  
15 end. You've got to wait until you've heard the full story.

16 My belief is that when the government presents  
17 their case over the next three weeks, much like what you saw  
18 in the video today, you will see nothing new, nothing you  
19 haven't seen in the media before, nothing you haven't read  
20 about. There's going to be nothing there that surprises  
21 you.

22 What's important to ask yourselves is: What  
23 did you not see? What exculpatory evidence might be out  
24 there? That's the stuff we're going to bring you.

25 You may have even heard that Stewart Rhodes has

1 agreed or did agree to waive his Fifth Amendment privilege  
2 and testify on live TV. Congress didn't take him up on  
3 that. He's going to do that before you, ladies and  
4 gentlemen, in this trial. You're going to get hear from  
5 Stewart Rhodes himself about who he is, about the  
6 Oath Keepers, what their role is, and what their role was on  
7 January 6th.

8           Once you have a more complete version of the  
9 evidence, which will largely come in the second half of the  
10 trial, you'll understand why Congress didn't want him to  
11 testify at that point. But they can't prevent him from  
12 testifying in this case. His testimony --

13           THE COURT: Mr. Linder --

14           MR. LINDER: -- and the evidence he's going to  
15 bring forward --

16           THE COURT: -- if I could just --

17           MR. LINDER: Yes, sir.

18           THE COURT: Could we avoid the references to what  
19 the media and Congress --

20           MR. LINDER: Yes, sir.

21           THE COURT: It's not relevant. Thank you.

22           MR. LINDER: Yes, sir.

23           Once you see the second half of the case and we  
24 put it all in perspective, you'll then have a true picture  
25 of what was really going on on January 6th and our client

1 clients' roles in that, if any.

2 The search for the truth involves reaching a  
3 proper verdict, and that is looking at all of the evidence  
4 that's going to be presented in the case.

5 The theme -- our theme in this case is that  
6 government mischaracterization linked to government  
7 overreach. And what I mean by that is you take a handful of  
8 text, you take a handful of things you don't understand, you  
9 take some things that look bad, and you put them together  
10 and you come to an incomplete conclusion or an incorrect  
11 conclusion, mischaracterization. We want to bring you the  
12 full picture.

13 Our clients are in jail and indicted largely  
14 because of the mischaracterization --

15 THE COURT: Mr. Linder, no, please.

16 Ladies and gentlemen, you'll ignore that last line  
17 from Mr. Linder, please.

18 MR. LINDER: Our clients sit indicted before you  
19 today largely because of the mischaracterization of the text  
20 messages and the videos and things taken out of context by  
21 the government.

22 What some of the government's witnesses are going  
23 to present over the next few weeks we believe are going to  
24 characterize Stewart Rhodes and the Oath Keepers as a  
25 paramilitary group, an anti-government group, a racist

1 group, a violent group, a sexist group, and a homophobic  
2 group.

3 MR. NESTLER: Objection.

4 THE COURT: Mr. Linder, can you approach, please?

5 (Bench conference )

6 THE COURT: I really didn't want to interrupt your  
7 opening. I really didn't. But you all just filed a motion  
8 in limine telling the government they couldn't do it, and  
9 you said they weren't going to do it. So you can't  
10 object --

11 MR. LINDER: But you didn't rule on it.

12 THE COURT: Well, I did rule on it in the sense  
13 that government said they weren't going to say anything to  
14 that effect other than they're members of the militia.

15 Look, you can't refer to potential sentences. You  
16 can't tell them that your clients are locked up in jail.  
17 That's all off. You can't do that. All right? So let's  
18 stick within the four walls and the evidence, all right?

19 MR. LINDER: All right.

20 (Open court)

21 THE COURT: Ladies and gentlemen, you will  
22 disregard the last statements that counsel made, please.

23 MR. LINDER: What you're going to hear, what the  
24 government is going to try to prove to you is our clients  
25 tried to use force to forcibly overthrow the government,

1 prevent the lawful transfer of power.

2           The evidence is not going to show you -- the real  
3 evidence is not going to show you that. The real evidence  
4 is going to show our clients were there to do security for  
5 events that were scheduled on the 5th and the 6th and  
6 security that they've done for 13 years, all throughout  
7 their history. And their events there on the 5th and 6th  
8 were going to be consistent with their history to protect  
9 speakers in areas around the country that can go to  
10 political speeches.

11           They're not a violent group. Rhodes is extremely  
12 patriotic. The evidence is going to show you he's extremely  
13 patriotic. He loves his country.

14           He's a constitutional expert. As the government  
15 said, he went to Yale Law School. He studied the  
16 Constitution. He understands how it works, and he believes  
17 in our government.

18           The evidence the government is going to bring you  
19 is not going to show that. The evidence we're going to  
20 bring you is going to show that. The witnesses we're going  
21 to bring you is going to show that.

22           The witnesses we're going to bring are going to  
23 show that Stewart Rhodes meant no harm to the Capitol that  
24 day. Stewart Rhodes did not have any violent intents that  
25 day.

1           The Oath Keepers are basically a peace-keeping  
2 force, and you're going to hear evidence of that from the  
3 members when they come forward and testify. They were  
4 created a long time ago. And they're comprised of former  
5 military, current military, law enforcement officers,  
6 paramedics, and firefighters -- all people that swore an  
7 oath to protect people and take care of people.

8           The government told you that. The witnesses are  
9 going to come forward and tell you that. In their 13 years  
10 of history, you will not hear one instance where they've  
11 gotten crossed with the law, had one arrest, one violent  
12 outburst, anything.

13           The government is going to try to portray this  
14 January 6th as standard operating procedure and this QRF as  
15 kind of a one-off event and this is what they did to try to  
16 overthrow the Capitol. We're going to bring you evidence to  
17 the contrary, that they've done speaking events and security  
18 events for decades, for 13 years, never had one issue.

19           They've done hundreds of events. They've worked  
20 hurricane disaster relief. They've worked in the  
21 Ferguson Courthouse and different places where there were  
22 riots. The Oath Keepers make themselves available at places  
23 like this where there's controversy and to make themselves  
24 available to help keep peace in the streets.

25           You're going to hear this term "QRFs." They



1 talked about it. The government is going to try to tell  
2 you -- or they're going to tell you that they put this QRF  
3 outside in Virginia so they could bring these weapons in and  
4 bring them in by boat and they could bring them in to take  
5 over the Capitol.

6 The evidence we're going to bring you is going to  
7 dispel that line of questioning from the government, that  
8 theory from the government.

9 The QRF was a defensive. It's  
10 Quick Reaction Force, reaction, not offensive. Reaction is  
11 defensive in nature.

12 They could lawfully bring their weapons to  
13 Virginia, and they did so. They stored them there where  
14 they could. They didn't bring anything into the District  
15 because it will illegal to bring them into the District.  
16 They knew that.

17 You will hear that when the Oath Keepers and  
18 Mr. Rhodes and his associates go to any event that they  
19 work, they follow the law. They research those laws. They  
20 know what they can do and can't do. And they work with  
21 local law enforcement and coordinate with them. And they  
22 did that in this case.

23 You'll hear that they were working security for  
24 permitted events and that they had contacted several law  
25 enforcement officials here, and it was all coordinated.

1           The QRFs were not to be used as an offensive  
2       force. Reactive and defensive only.

3           In defensive, if Trump called them in. And this  
4       is where we're going to talk about the Insurrection Act.

5           You're going to hear evidence of the  
6       Insurrection Act and what it is. And the Insurrection Act  
7       is basically a body of laws that started in 1792 by  
8       Congress, modified several times through --

9           MR. NESTLER: Objection.

10          THE COURT: Mr. Linder, I'll just ask you to  
11       remain within the parameters of what we discussed pretrial.

12          MR. LINDER: Sir?

13          THE COURT: Remain within the parameters of what  
14       we discussed pretrial.

15          MR. LINDER: Okay.

16          You're going to hear that the Insurrection Act is  
17       going to be discussed and that Stewart Rhodes, and as the  
18       government just played on their videos and their PowerPoint  
19       presentation, that he used, talked about that  
20       Insurrection Act. And the President had -- whether or not  
21       he believed the President had the ability to invoke the  
22       Insurrection Act.

23          Stewart Rhodes' testimony and the testimony of  
24       others will say that he believed in good faith that  
25       then-President Trump could invoke the Insurrection Act and

1 that the President could invoke the Insurrection Act  
2 lawfully and the President could ask them to do whatever the  
3 President wanted to do, which would be, Hey, bring guns in  
4 here or help me put down a riot or do whatever it is.

5           Stewart's good-faith reliance on that is why he  
6 did what he did. They brought guns to Virginia, left them  
7 there. They went in and worked their permitted speaking  
8 events. But they were ready. Like any military, they were  
9 ready to react at President Trump's request, they were ready  
10 to defend speakers if they needed to defend speakers.  
11 They've done it hundreds of times across the country. And  
12 so that's what you're going to hear.

13           The government wants to bring you this narrative  
14 that they came in here to support President Trump, prevent  
15 Biden from becoming President, and that was their mission.  
16 And it was not. It was not their mission.

17           The bulk of the evidence you're going to see is  
18 going to be to the contrary of what the government has told  
19 you this morning. The bulk of the evidence, when you see --  
20 when they take 200 text messages out of 50,000 text messages  
21 and a few hours of video out of hundreds of hours of video  
22 and weeks of time in these people's lives, as opposed to the  
23 one day, you will then see that one day put into context.

24           What were they really there to do? What was their  
25 purpose? And you're going to find that out. And you're

1 going to find out that it's different than what the  
2 government has told you here in opening. It's going to be  
3 different than what they put on in their case-in-chief.

4 We expect that you're going to hear from  
5 co-defendants in this case potentially that have pled and  
6 entered pleas as the government puts on witnesses. We're  
7 going to hear -- and then we're going to be able to  
8 cross-examine those witnesses.

9 You know, they've got witnesses or defendants that  
10 came in and pled to these charges and are going to try to  
11 offer testimony against our clients; however, when you --  
12 when we get to cross-examine them, you're going to see how  
13 these pleas, not necessarily were coerced but where their  
14 statements were exaggerated. There are misstatements under  
15 sworn plea documents about the involvement of our clients in  
16 some of these things.

17 One that we -- we understand that  
18 William Todd Wilson, we expect to see him come in here and  
19 testify. And in William Wilson's plea, he indicated that  
20 Stewart Rhodes on the night of January 6th got on the phone  
21 with someone in a hotel room and said, "Put me in touch with  
22 the President," trying to implicate, trying to connect  
23 Stewart with President Trump.

24 Why did he say that? We don't know. But you're  
25 going to hear that that phone call doesn't exist. Yet he

1 swore to it in court. And so when he comes in here to  
2 testify, we're going to be able to cross-examine him about  
3 that.

4 And you're going to see where the government's  
5 case starts to have holes. They've got co-defendants that  
6 have pled and offered testimony that's not exactly true,  
7 that's exaggerated.

8 You're going to see, when you take the 200 text  
9 messages and add several more to it, how the picture is not  
10 quite what you saw in opening today.

11 You're going to get a different picture of this  
12 case than what the government has sold you here in opening.

13 Understand that Stewart Rhodes, if you rationally  
14 and reasonably believe that the Insurrection Act, if invoked  
15 legally by President Trump, applied to him and the  
16 Oath Keepers, which he'll testify that he believed it  
17 applied to him, he's done nothing wrong.

18 His trip to D.C., the bringing of guns to Virginia  
19 was completely lawful. They were not an overt act in  
20 furtherance of a conspiracy.

21 The rampant texting and open letters for Trump to  
22 invoke the Insurrection Act is nothing more than free speech  
23 and bravado, not an overt act in furtherance of a  
24 conspiracy.

25 Had Stewart decided to storm the Capitol himself

1 on Trump's failure to invoke the Insurrection Act, then we'd  
2 have a different situation altogether.

3 But the government -- in all the stuff the  
4 government is going to bring you, they're going to try tell  
5 you that Stewart coordinated an attack on the Capitol, that  
6 he ordered an attack on the Capitol, and that this was his  
7 plan all along.

8 Yet they're never going to be able to show you one  
9 text message, one communication, or one credible witness,  
10 other than one co-defendant who's not credible, one credible  
11 witness who's going to say Stewart Rhodes had a plan;  
12 Stewart Rhodes wanted to do this; Stewart Rhodes asked us to  
13 go in.

14 Now, a few people did go in. But you'll hear text  
15 messages or you'll see text messages from him later saying,  
16 when that happened, well, they were off the mission.

17 Yes, you'll see him outside texting with people,  
18 but not like Mr. Nestler says where he's like a general  
19 outside the building while everybody else goes in. He's  
20 texting with lots of people about where they were working  
21 security details, where people were.

22 But you're also going to hear, probably from the  
23 FBI and other witnesses, the communications were awful that  
24 day. People would, the cell towers were overwhelmed, people  
25 would text, wouldn't get them for an hour. People couldn't

1 make phone calls.

2           So there's really a lot of that stuff that you see  
3 that the government may not give you an accurate  
4 representation on, but we will. We'll bring witnesses.  
5 We'll explain what was happening that day and who he was  
6 communicating with that day and what was going on that day.

7           The government -- or the evidence is going to show  
8 that in addition to all these text messages and videos, that  
9 they've interviewed hundreds of witnesses, civilian and law  
10 enforcement. Every one of the witnesses will corroborate  
11 there was no plan. Stewart didn't have a plan. We were  
12 there to work security.

13           I'm just going to ask you to keep your eye on the  
14 evidence. Don't let the inflammatory videos, the text  
15 messages, don't let them get you mad. Our clients are on  
16 trial here. Their liberty is at stake. The government has  
17 the burden of proof, and I'm going to ask you to hold the  
18 government to that burden of proof.

19           And remember the judge's instructions. You can't  
20 start really thinking about this case or deliberating about  
21 this case until the end, until you've seen all the evidence.  
22 Give us an opportunity to put on our evidence at the end,  
23 and then the judge will give you the opportunity to apply  
24 the law of that evidence.

25           Thank you very much.

1 THE COURT: Okay. Thank you, Mr. Linder.

2 Okay. Ladies and gentlemen, we are going to take  
3 our lunch break. This morning, just given the way I expect  
4 the rest of the openings to go, it makes sense to break for  
5 lunch now.

6 So it's 12:30 now. We'll get started again back  
7 at 1:30. Thank you very much for your time and your  
8 attention this morning.

9 Just the same reminders that I will give you  
10 regularly: No media research, no review of media, no  
11 independent research; please, no communicating amongst even  
12 yourselves about the case until you have the opportunity to  
13 do so after all the evidence is in.

14 Thank you very much. We'll see you shortly.

15 COURTROOM DEPUTY: All rise for the jury.

16 (Jury exited the courtroom.)

17 THE COURT: Okay, everyone. You can have a seat  
18 for a second.

19 You know, I'm more than happy to give counsel rope  
20 in openings and even in closings, but there are some lines  
21 that you can't go over in opening. You cannot refer to the  
22 fact that your clients are in jail or at least probably not  
23 a good idea to do that.

24 Probably not a good -- you cannot suggest to the  
25 jury about any amount of time they may be facing if they are



1 convicted. That is a no-no.

2 And I'll ask you all to avoid discussions or  
3 commentary about what's happened in media and in Congress,  
4 because I will say this: If you get into it in your  
5 openings and certainly if you get into it in  
6 cross-examination, you are potentially opening the door to  
7 evidence you do not want to have admitted in this case. So  
8 just be mindful of that, okay?

9 Thank you, everyone. We'll see you at 1:30.

10 COURTROOM DEPUTY: All rise.

11 (Recess from 12:33 p.m. to 1:30 p.m.)  
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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that  
the foregoing is a correct transcript from the record of  
proceedings in the above-titled matter.

Date: October 3, 2022



William P. Zaremba, RMR, CRR

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