IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,	)
	)
Plaintiff,	) Criminal Action
	) No. 21-cr-175
vs.	)
	) JURY TRIAL
Ethan Nordean,	) Day 19
Joseph R. Biggs,	)
Zachary Rehl,	) Washington, DC
Enrique Tarrio,	) January 23, 2023
Dominic J. Pezzola,	) Time: 1:30 p.m.
	)
Defendants.	)

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

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* * * * * * * *AFTERNOON SESSION* * * * * * * *

THE COURTROOM DEPUTY: We are back in the record in criminal matter 21-175, United States of America versus Ethan Nordean, et al.

THE COURT: All right. Welcome back, everyone. Why don't I just hear very briefly on the issue of -- that's come up about the banner. I don't know that I -- I don't know if the parties have had a chance to check. It may have come up one or two times, I'm not sure. But in any event, let me hear from whoever from the defense wants to -- Mr. Jauregui.

MR. JAUREGUI: Jauregui for Tarrio.

Judge, I mean, I'm going to look at the transcript later tonight, but I am sure that Mr. Quested said at least three times, "the BLM banner." I know that the government had represented to the Court earlier that they had instructed Mr. Quested in his pretrial preparation about Your Honor's rulings regarding the BLM banner.

Unfortunately, he chose to ignore Your Honor's ruling and bring it up time and time again, and he brought it up in response to my questions that had nothing to do with the banner. I wasn't asking him about the banner, at all. He just inserted it in there intentionally. He really wanted it to get out there, and he got it out multiple times with me and with Ms. Hernandez.

And now, we're in a situation where we're highly

prejudiced by this statement about the BLM banner. It's already in the minds of the jury, and we can't even fix it with some kind of curative instruction or motion to strike because it would only further reinforce it in the jury's mind.

So, for all the foregoing reasons, Judge, we move for a mistrial.

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

MR. MULROE: Your Honor, I think the transcript will control as to what the defendant -- or, excuse me, what the witness said and how many times he said it. For what it's worth, my recollection was that there was one fleeting mention of the acronym BLM. I think he referred to a BLM flag or a BLM banner. I certainly didn't hear it any other times beside that. So, I think that the suggestion that this happened repeatedly and gratuitously is just certainly not how we took the testimony.

I think that Your Honor's reaction to it just before lunch was some -- you can tell me if I'm wrong -- but some surprise. It didn't seem like everyone in the courtroom had even caught that it had happened. So, I think that shows how fleeting and minor this was. It's not something, I don't think, that the jury latched onto. Even if they had, I don't think it's anything that causes the defendant the type of prejudice that would warrant a mistrial.

You know, the events of December 12th were something that the testimony on direct certainly focused on to some extent. It was something that each of the cross-examinations, I think, or at least many of them, returned to, and there was probing cross-examination about the events of the 12th. So --

It's natural that the event was going to come up, but I think, by and large, the witness rightly heeded the cautionary instruction the government gave him, to just stay away from any details of what was on the flag. He did that in all except, as I said, the one minor time that I can recall.

And so we ask that the mistrial motion be denied.

THE COURT: Okay.

MS. HERNANDEZ: Your Honor --

THE COURT: I'm sorry?

MS. HERNANDEZ: Sorry. He did it to me when I asked about Bertino, whether he had -- because in direct, he had said he had helped Bertino, assisted --

THE COURT: Correct.

MS. HERNANDEZ: I asked him about Bertino, and his response was, Well, I didn't see the whole thing because I was over at the BLM flag burning, or some words to that effect. I think he did it, like, twice, and I don't believe -- I believe the question was narrow enough that he did it gratuitously.

THE COURT: Okay. All right. I understand the argument.

1 Look, I don't think -- my impression is not that the
2 witness did -- I think the question of whether a mistrial is
3 warranted is entirely, it seems to me, apart from the question
4 of whether the witness was doing this gratuitously. I did not
5 sense that he was doing that.
6 And I got to say, given the testimony in both direct
7 and cross, all that has come out about, you know, the posture
8 of these different groups -- again, both on direct and cross
9 about, "Well, you all see yourselves opposed in some way to
10 BLM," in terms of the Proud Boys. You know, to be quite
11 honest, I understand better the argument now that this
12 really -- like, the net additional value, potentially
13 prejudicial value of the fact that Mr. Tarrio -- it happened to
14 be a BLM banner and it happened to be taken from the church,
15 given kind of all the evidence that has even just come in so
16 far about the sort of way these two groups were perceived as
17 adversaries, I'm not sure, frankly, there's even that much
18 prejudice on top of, again, what both sides have elicited about
19 the adversarial nature of the two groups.
20 That being said, I ruled the way I ruled, and I think
21 it's helpful, for example, not to have, you know, the video
22 images of this display that. So I got to say, it -- however
23 many times, I'll take a look at the transcript and I'll rule
24 definitively when I just can see how many times it was
25 mentioned. But I don't think we're near -- given, again, the

1 context of this and the context of all the testimony that's
2 been elicited, I don't think we're anywhere near mistrial
3 territory.
4 Again, largely because, I think, the -- the fact that
5 the two groups were adversarial in nature has come out both
6 through direct and cross pretty clearly, and I'm not sure how
7 much extra prejudice there really is to Mr. Tarrio or the
8 defendants, if it did come out that it happened to be a BLM
9 banner, at this point.
10 But, my ruling was my ruling. And, look, you all
11 can -- I understand the point about a curative instruction at
12 this point. It seems kind of -- I can understand why you would
13 not want one, I'll put it that way.
14 So, you all can think about that, and I'll rule first
15 thing tomorrow definitively when I see how many times it came
16 up.
17 MR. JAUREGUI: Your Honor, Jauregui for Tarrio again.
18 Judge, one complicating issue that I can foresee -- and I know
19 Your Honor likes us to bring these things up ahead of time --
20 is whether or not Your Honor is going to rule that the
21 government is going to be able to introduce all those Parler
22 posts we were objecting to, because it does have to do
23 specifically with the banner.
24 And we would like the opportunity, if Your Honor
25 decides to allow the government to introduce those Parler

posts, to perhaps recross Mr. Quested on, specifically, the BLM banner. It's very, very important. We may have to recall him specifically for that purpose.

THE COURT: Well, I don't know why. I mean, there's going to be -- explain to me why --

MR. JAUREGUI: Sure.

THE COURT: I mean, actually, I think it -- you know, one thing that went through my mind over lunch was it might determine, maybe, if you think the jury really heard those things, and it's a big deal to you, I was actually thinking you might even consent to those Parler posts coming in. Because part of them do say -- kind of explain why, right? Part of it is an explanation. So I take it from your answer that you're not interested in that. But --

MR. JAUREGUI: No, Your Honor.

THE COURT: Go ahead.

MR. JAUREGUI: But he is an eyewitness to the banner being brought forth.

THE COURT: Right.

MR. JAUREGUI: He is an eyewitness as to who actually burned the banner. These are important points, you know, if we're going to let the jury know that it is, in fact, a BLM banner.

THE COURT: Well, look, I'll take that up when the time comes.

MR. JAUREGUI: All right.

THE COURT: Let's put it that way.

I do think, one other thing I wanted to note was -- and I think it's important -- you know, the government didn't have the ability to talk to the witness about the testimony over the weekend, and I think that's another thing that, I think, they may well have instructed him, as they said they did, before his testimony began about this.

But it's not -- again, it's sort of a detail that I think -- I can see the witness very easily, over the weekend, just losing track of this, and there would have been no opportunity to really reinforce it. But -- but, I'm going to make the point that the government, particularly with witnesses -- with law enforcement witnesses, but any of its witnesses, if it can please reaffirm that before calling the witnesses, it will instruct them about this limitation, I think that would be appropriate.

MR. MULROE: Yes, Your Honor.

THE COURT: All right. There we are on that.

Anything before we bring the witness back? I reviewed the rule you mentioned as we were breaking, Mr. Mulroe. I think it does authorize you to do what you purport to want to do in terms of if there was material used to refresh recollection, that the government does have the ability to move it into evidence, you know. So, I think you can

proceed as the rules suggest, and we'll go from there on your redirect.

So let's bring in the jury, Ms. Harris, and we'll continue.

(Bench discussion:)

THE COURT: Mr. Jauregui, do you object or does any defendant object if -- to give the government the brief opportunity to reinstruct the witness on the point we just discussed?

MR. JAUREGUI: No objection, Judge.

THE COURT: All right.

MR. PATTIS: Judge, just to be clear, you're prohibiting defense counsel from standing up and saying: You are aware, sir, that the government, with malice aforethought, to stifle the Spirit of 1776, selectively culled this evidence in such a way as to prejudice our clients' fair trial rights? You're not permitting questions along those lines?

THE COURT: Okay. We'll take that up separately in a moment. But, let me just have the -- I think it's -- we'll allow the government to do that.

(Jurors are now in the courtroom.)

(Open court:)

THE COURT: All right. Welcome back, ladies and gentlemen.

You all -- counsel may be seated.

(Bench discussion:)

THE COURT: All right. Mr. Jauregui.

MR. JAUREGUI: Judge, I think the government needs to instruct the witness outside the presence of the jury.

THE COURT: Of course. Of course. And I think the question, given that we -- well, let me put it this way:

Mr. Pattis, do you see yourself going near these topics such that this may come up?

MR. PATTIS: No.

THE COURT: All right.

MR. PATTIS: I have six topics. I expect to be 10, maybe 15 minutes, depending on the length of the answers.

THE COURT: All right. Maybe it would be appropriate if we break after that, and maybe there's a period where the government can do it. But, if you don't think you're going to go near this area, we'll just continue.

MR. PATTIS: And I'll withdraw my earlier suggestion about a line of inquiry, judging by the look on your face.

THE COURT: Well, we can talk about that at some other time.

(Open court:)

THE COURT: All right. Counsel, you may proceed.

CROSS-EXAMINATION

BY MR. PATTIS:

Q. Welcome back, Mr. Quested. How are you?

A. I'm fine. Thank you.
Q. We're nearly done. I've got six areas I wanted to ask you about.
Can you turn to your left and look at the demonstrative exit there? That's an overview of the Capitol grounds on the morning of January 6, with certain breach points located, correct?
A. Yes.
Q. And you've offered testimony about what took place in the area of Breach 1, an area we're referring to as the Peace Circle, correct?
A. Yes.
Q. There was also scaffolding on the westward side of the building that morning, correct?
A. Yes.
Q. And can you point -- with the Court's permission, stand and point to the jury where the scaffolding was.
A. It's where Breach 3 is.
Q. Now, you would agree, sir, that in the course of the day, January 6, you managed to climb up the scaffolding, you, yourself, correct?
A. Well, technically, no. We -- the scaffolding was above, and then I -- there's, like, a set of steps, and I was helped up onto a set of balustrades, but I didn't climb the scaffolding. I emerged on top of the scaffolding because --

Q. Do you recall giving the final question and answer to the House Committee on January 6th?

"I guess, walk us through, then, the rest of your time. Did you ever go past the Lower West Plaza of the Capitol?

Answer -- and this is your answer, sir -- "I did. So we managed to climb up the scaffolding, which was hard because -- but I got help from the crowd. I got to the right-hand side of the viewing gallery."

A. Yes.

Q. That was your testimony --

A. Well, technically --

Q. -- before the January 6 -- that was your testimony, sir, before the House --

A. Yes.

Q. -- January 6 --

A. I was being a little bit more precise, yeah.

Q. I would like to turn your attention to the garage -- the garage meeting. I believe you testified that you arrived in the area of the Phoenix Hotel, correct?

A. Yes.

Q. And you went and retrieved some of your belongings from the hotel, correct?

A. What?

Q. You retrieved some bags from the hotel?

A. Yes.

Q. And then you left the area of the hotel and went to a parking garage?
A. Yes.
Q. That garage was very close to the hotel, correct?
A. Yes.
Q. What you did is you left the hotel, went a block down and turned a right and took an immediate left to get to the hotel -- the garage?
A. Yes.
Q. And at the garage, you saw a man you knew to be Kenny from Long Island?
A. Yeah. I mean, I think that Kenny's truck was down there, yep.
Q. You saw Kenny?
A. I don't recall -- I don't know Kenny's last time.
Q. It's fair to say --
A. His truck was there --
Q. You started to say Mr. --
A. -- so, I assume he was there, yes.
Q. You started to say "Mr." What last name would you have used if you's continued in that vein?
A. I don't know Kenny's last name.
Q. Okay. But why would you -- if you -- had you ever known it? Do you think you'd forgotten it?
A. I don't know if I knew his name.

Q. You're not keeping his name from the jury for some reason, are you?
A. No. Why?
Q. You're aware -- you testified that he was a contractor, correct?
A. Yeah.
Q. Did he tell you for whom?
A. No.
Q. Did he tell you how many people he was beholden to?
A. No.
MR. MULROE: Objection.
THE COURT: Sustained.
BY MR. PATTIS:
Q. You mentioned that on -- withdrawn.
You know that on January 4th, Mr. Tarrio flew from the South to land at the Regan International Airport in Virginia. Were you aware of that on the 5th?
A. Yes.
Q. And he told you he'd been picked up by the police.
A. Yes.
Q. Were you aware that he'd been followed there by Metropolitan Police officers?
A. Yeah. Mr. Tarrio said he was aware of the -- his police tail when he went to the bathroom in DCA.
Q. Did you play any role in letting the Metropolitan Police

know that he had arrived that day?
A. No.
Q. Do you know who did?
A. No.
Q. Now, I would like to turn to a third area, and that is things that you observed on the morning of January 6 when you got to the Washington Monument area.
You're aware that black and yellow were colors that the Proud Boys associated themselves with?
A. Yes.
Q. And you testified earlier that people were dressed not that day in their colors, but in other hues?
A. Yes.
Q. But there was a group of Proud Boys there who had distinctive markings, weren't there?
A. Yes.
Q. These were the fellows with bright orange caps and/or markings on their hands or arms, correct?
A. Yes.
Q. These were from Arizona, you testified, correct?
A. Yes.
Q. And, in fact, you testified earlier about an ax handle or ax handles. You only saw one ax handle that day in the hand of a Proud Boy, didn't you?
A. Yes.

Q. And that was a man by the name of Billy Chrestman, correct?
A. Yes.
Q. And you knew him to be associated with either the Arizona or Kansas City Proud Boys; isn't that right? You knew that.
A. I didn't know it at the time.
Q. What?
A. Subsequently I learned that, yes.
Q. Okay. Among the things that the Proud Boys were chanting as they went from the Washington Monument area down to the Capitol was -- excuse my language -- "Fuck antifa. Where is antifa?"
A. Yeah.
Q. You didn't hear them say, "Stop the Steal."
A. No.
Q. In fact, you were unaware of any plan of theirs to stop the steal, by force or otherwise, as they marched down to the Capitol that day; isn't that true?
A. Yes.
Q. And you remain unaware of that, don't you?
A. Yes.
Q. Now, one of the things they chanted was "1776."
A. Yes.
Q. And you sigh and raise your eyebrows. As a British subject, that's a sore point, isn't it?
A. Well, you could ask how well it's going, if you --

Q. I like it here just fine, and so do you. You've stayed for 30 or 40 or maybe 50 years.

A. Yeah. Great Britain is facing it's own challenges. Let's just put it frankly.

Yeah, it was a point I would discuss with the crowd as well, like, because, you know, obviously being a British subject amongst a boisterous crowd shouting "1776," I wondered whether I should take it personally.

Q. Well, now, but, you know, you said sometimes some of the members of the Proud Boys said things to you, and they would comment on your British accent, correct?

A. Yep.

Q. And rib you about it, correct?

A. Yeah.

Q. In fact, question your loyalties and so forth, but not in a way that led you to feel menaced; isn't that correct?

A. Sure. Yes.

Q. Now, final area, sir. I think I heard you say to the jury something along the lines of the following: It's hard to deny the grievances of white, middle class people whose jobs have been eviscerated in the Midwest by globalism, or words to that effect. Did I hear that correctly?

A. Yes.

Q. And that's views that you associated with the Proud Boys, correct?

A. Yes.
Q. Is that an extremist point of view, in your point of view?
A. I don't think the fundamental grievance is extremist, no.
Q. And you would agree, sir, based on your research in the United States about the things that divide us, despite our commonality, is great anxiety about the future, correct?
A. Yes.
Q. And that anxiety was nowhere on better display than on January 6, in the nation's capital, the day the Electoral votes were to be certified, correct?
A. I think it's the epitome.
Q. And the president of the United States was standing on the Ellipse and telling the American people, "The vote was stolen," correct?
A. Yes.
Q. "If you don't fight like hell, you're not going to have a country anymore," correct?
A. Yes.
Q. And do you recall how many people voted for him that election?
MR. MULROE: Object to relevance.
THE COURT: Overruled.
A. 7 million people less than Joe Biden.
BY MR. PATTIS:
Q. Yeah, 70 (sic) million people. Do you know how many of

them turned up for that rally?

A. 50 to 60,000.

Q. Is it a crime to believe the sitting president of the United States when he makes an assertion, sir?

A. No.

MR. PATTIS: Thank you.

THE COURT: All right. Any redirect by the government?

REDIRECT EXAMINATION

BY MR. MULROE:

Q. Good afternoon, Mr. Quested.

A. Good afternoon.

Q. Let's go back to the end of last week, the cross-examination by Mr. Smith. Now, do you remember that he, at various times, refreshed your recollection using passages from the transcript of your interview with the House Committee?

A. Yes. Yes.

MR. MULROE: May we have the screen just for the witness, please?

And, Ms. Rohde, I'll ask you to pull up Government Exhibit 1301. And let's go to the third page of that to start.

THE COURTROOM DEPUTY: You said 1301?

MR. MULROE: This will be a new exhibit that we're offering. Apologies, Ms. Harris.

BY MR. MULROE:

Q. You recognize what's on the screen as being part of what he showed you to refresh your memory?

A. Yes.

Q. If we could go out of the call-out and just scroll up to the previous page.

Is that part of the same exchange with the interviewer?

A. Yes.

Q. And --

MR. SMITH: Your Honor, objection. May we have a sidebar?

(Bench discussion:)

MR. SMITH: Your Honor, can you hear me?

THE COURT: Yes.

MR. SMITH: Okay. So, the rule that Mr. Mulroe is attempting to invoke is Rule 612, which says -- his Rule 612.

THE COURT: I know what it says.

MR. SMITH: Yep. So, Mr. Mulroe is not introducing the statement that the witness used to refresh his recollection. He's attempting to admit pages of testimony that were not the statement that were used by this witness. This rule doesn't apply. The government is permitted to use this statement that the witness used, which is what Mr. Mulroe just put up on the screen, and now he's attempting to scroll to another statement, a different one. That's not what this rule

allows the government to do.

THE COURT: Mr. Mulroe?

MR. MULROE: Your Honor, this is all part of the same writing that Mr. Smith showed the witness. It's all a short passage on the same topic. So, we're certainly not introducing the entire transcript. We're introducing the small portion that relates to the subject on which Mr. Smith refreshed his memory.

THE COURT: So, is the next -- the page before -- is the page before the next -- are these two pages that are adjacent to each other?

MR. MULROE: Your Honor, the entire exhibit that we've marked is three contiguous pages, really -- I mean, a half a page and then a page and then another few lines.

THE COURT: Okay. So it's page -- the page we have right now is page 40. What's the next -- I'm just trying to get a sense of where --

MR. SMITH: Your Honor, the statement we introduced was on page 41.

THE COURT: Okay. 39 -- I see 39. And let me see 40. All right. And then did you notice any changes?

MR. SMITH: So, Your Honor, when the defense in Nordean has attempted to introduce context from the surrounding statements, the government has objected and shut down Nordean's attempt to introduce anything but the nearest direct sentence.

And now what the government is attempting to do is expand the scope of what the defense used. This is just...

THE COURT: So, Mr. Mulroe, tell me -- I'm going to pull up the rule right now, but I don't know that it -- does it permit you to use -- you agree -- do you agree with Mr. Smith that he only used page 41?

MR. MULROE: Your Honor, I would have to look at the transcript to see what he showed him. But I think the rule refers to in terms of a writing. That writing is multiple pages long. The rule expressly contemplates that you could carve out what was related to it and what wasn't.

MR. SMITH: Except I did not show the witness, Your Honor, any page except for 41. The only page the witness was showed was page 41. That is the writing. The witness did not review page 39, page 40, page 42.

THE COURT: All right. Understood. Just looking at the -- and it's Rule 106(b); correct?

MR. SMITH: No, Your Honor. Rule 612.

THE COURT: Sorry.

MR. SMITH: 612, yeah.

THE COURT: Sorry.

Well, it does say, "any portion that relates to the witness's testimony," Mr. Smith.

MR. SMITH: That's actually -- that's actually any portion of the writing, Your Honor, but --

THE COURT: Right.

MR. SMITH: -- the portion of the writing that this witness reviewed was page 41.

THE COURT: I understand that, but that's not what the -- this says, "any portion that relates to the witness's testimony." That's slightly broader. That's slightly broader than what you're saying. The point is, it doesn't -- it could be that this other -- these other portions do relate to the witness's testimony. So, let me take a look at --

Mr. Mulroe, describe to me what the first two pages are.

MR. MULROE: Your Honor, he's asking about the interactions.

THE COURT: Right.

MR. MULROE: Can you hear me?

THE COURT: Yes, I can.

MR. MULROE: How the Proud Boys were interacting with law enforcement on January 12th.

THE COURT: Right.

MR. MULROE: And then looking at the middle page, it says that "there was chants of black and blue." This is line 14 and 15.

THE COURT: Right. Right.

MR. MULROE: Those did not succeed in letting the Proud Boys go through. And then here's where the context is

1 important, and it's a question. "And when those chants didn't
2 work, did that affect..."
3 It says, "The level of frustration increased, but
4 they never crossed the line."
5 And then, "Did you notice any changes in the way they
6 talked after that?"
7 "No. I would have to wait for January 6 for that
8 line to be crossed."
9 MR. SMITH: So, Your Honor, the only point that we
10 elicited from this witness is about moving forward -- the
11 changes in the way the Proud Boys talked to law enforcement
12 after December 12. Page 40 is about what they saw on -- was
13 about this witness's feelings about December 12th. This is a
14 different subject.
15 MR. MULROE: Your Honor, after that -- this is the
16 point: After that -- after page 41, does not refer to after
17 December 12th as a whole. It refers to after the chants were
18 unsuccessful.
19 THE COURT: Let me see the prior page.
20 MR. MULROE: Okay. "The level of frustration
21 increased, but they never crossed that line."
22 Then the next page, "Did you notice any changes about
23 the way they talked about law enforcement after, as well?"
24 "No. I would have to wait for January 6."
25 Clearly, what the witness was referring to here was

after December 12th, because the witness is interpreting this to be the difference between their opinion on December 12th and January 6.

THE COURT: Mr. Mulroe, what's your interpretation of "after"?

MR. MULROE: After the chants didn't work.

THE COURT: Well, he's saying --

MR. MULROE: Because he never saw them between December 12th and January 6.

THE COURT: But aren't you both -- again, right. But either way it's the same thing. In other words, whether it's after the chants or after the entire event, he's saying he doesn't -- on the last page, he's saying that it wasn't until January 6 for the line -- that he didn't notice -- the answer is "no" to either, isn't it?

MR. SMITH: We agree, Your Honor. So we don't understand what --

THE COURT: Let me hear Mr. Mulroe.

MR. MULROE: Your Honor, we just think the jury should be able to see the context in the entire portion of the writing that was used to refresh his recollection. That's what the rule is for.

THE COURT: But I don't think -- we're going beyond whether it relates to it. The question was about law enforcement afterward; after, I think.

MR. MULROE: Correct.

THE COURT: The question was about the changes to law enforcement after the rally.

MR. MULROE: Correct.

THE COURT: And so I don't think -- you could ask him about -- anything about the rally. I mean, that was part of your direct, but I don't think you get in all the rest of it. I think the rule -- the subject was fairly about what happened after the rally, and this was his testimony about after the rally. So, you get this page, if you want it, but -- and you can ask him about the other stuff. I just don't think you get the testimony.

MR. MULROE: Yes, Your Honor.

(Open court:)

BY MR. MULROE:

Q. Mr. Quested, do you see the page that's on the screen before you there?

A. Yes.

Q. Do you recognize that as the part of your transcript that Mr. Smith refreshed your recollection with?

A. Yeah.

MR. MULROE: Your Honor, we would move to admit page 3 of Exhibit 1301.

THE COURT: All right. It will be admitted.

MR. MULROE: May we publish that page to the jury,

please?

THE COURT: Permission to publish.

BY MR. MULROE:

Q. So, I think that you told Mr. Smith last week that you would have to "wait for January 6 for the line to be crossed."

Now, tell the jury, what line is that?

A. Well, the rhetoric that was coming from the crowd changed enormously once the barrier -- that first barrier came down. And, you know, the line being crossed is, at that point, there was a direct confrontation with the police.

Q. Even prior to the barrier coming down, had you heard members of the Proud Boys' marching group shouting things as the officer were putting their riot gear on?

A. Yes.

Q. In terms of December 12th to January 6th, were you spending very much time with the Proud Boys in the intervening period?

A. Between the 12th and the 5th? No.

Q. Were you looking at their private communications with one another in that period?

A. No.

Q. Do you know what they were talking to each other about in their chat groups during that period?

A. No. I was a member of a couple of public chat groups, but that was it.

Q. Let's come back to the public chat groups in a moment.

MR. MULROE: We can take the exhibit down, Ms. Rohde.
BY MR. MULROE:
Q. Mr. Smith also showed you a transcript page about whether the Proud Boys were the first or if they were some of the first ones to cross the barrier. Do you remember that?
A. Yes.
MR. MULROE: And if we could have the screen for just the witness, Ms. Rohde. 1302, please.
BY MR. MULROE:
Q. You recognize that page as the one that he showed you to refresh your recollect?
A. Yes.
MR. MULROE: Move to admit 1302.
THE COURT: It will be admitted.
MR. MULROE: And we can publish. And, Ms. Rohde, if you would zoom in on lines 11 through 16.
BY MR. MULROE:
Q. And when Mr. Smith showed this to you, he drew a line up to line 12, right, and asked you to read that far?
A. Yes.
Q. And after line 12, did you clarify to the Committee where the Proud Boys were within the group of people going over the barriers?
A. Yes.
Q. Where were they?

A. They were just behind.
Q. And you said "If they weren't the first ten people, they were" -- where?
A. The next ten people.
MR. MULROE: We can take that Exhibit down. And, Ms. Rohde, if we can have Nordean Exhibit 305 on the screen. And you can bring that to the 3 minute, 30 second mark and pause it there.
(Pause.)
MR. MULROE: Court's indulgence just a moment.
(Pause.)
BY MR. MULROE:
Q. So we've got Nordean Exhibit 305 at 3 minutes, 30 seconds.
Do you remember Mr. Smith playing some of this video and asking you questions about what it showed?
A. Yes.
Q. About the people going across that barricade and what you witnessed of it?
A. Yes.
Q. Now, Mr. Smith played it up to this mark. Let's play another 30 seconds of this video.
MR. MULROE: Ms. Rohde, if you would play to 4 minutes.
(Video played.)
Mr. Quested, did you hear the voice say, "The Proud

Boys are rushing the Capitol"?
A. Yes.
Q. Is that consistent with what you observed in the Peace Circle?
A. Yes.
Q. Mr. Smith asked you if the Proud Boys were well organized, in your view.
Was there a difference in what you perceived as a level of organization between December 12th and January 6th?
MS. HERNANDEZ: Objection. Relevance to what he "perceived."
MR. SMITH: And, Your Honor, foundation. I think the government just established that he had no communications with the Proud Boys between December 12th and January 6.
THE COURT: They're overruled, if he's answering based on his perceptions of those days.
A. Sorry. Would you repeat the question?
BY MR. MULROE:
Q. If you compare what you saw the Proud Boys on December 12th with what you saw the Proud Boys in January 6, was there any difference in what you could perceive as their level of organization and marching together?
A. Yeah. They seemed to be more organized, especially with their marching.
Q. On which day?

MS. HERNANDEZ: Objection, Your Honor.

THE WITNESS: On January 6th.

THE COURT: Overruled.

BY MR. MULROE:

Q. More organized on January 6?

A. Yes.

Q. Mr. Smith asked you about a moment when Mr. Nordean had a fist in the air. I think you described it as a halt command. Do you remember that?

A. Yes.

Q. Had you seen that earlier in the day as the Proud Boys were marching?

A. Yeah. It's used extensively.

Q. Now, earlier on the march, after the Proud Boys would halt, would they then turn around and go home?

A. No.

Q. What would they do?

A. They would wait for further instruction.

Q. Would they then proceed?

A. If the -- if they were moving forward, yeah, they would continue with the -- they would continue the way they were instructed by Mr. Nordean or Mr. Biggs.

Q. And that group that was being instructed, did that include the guys with armor?

A. Yes.

Q. Did that include Mr. Chrestman with the bat?
A. Yes.
Q. Could that include the man with the ax handle?
A. Yes.
Q. I'm sorry. It was Mr. Chrestman with the ax handle.
A. Mr. Chrestman had the ax handle, yep.
Q. Someone else with the baseball bat?
A. Yes.
Q. Did that include -- was that --
MR. SMITH: Objection. Vague. Did what include? What is being asked of the witness in connection with Mr. Nordean --
THE COURT: The objection is sustained, just as to vagueness.
BY MR. MULROE:
Q. Mr. Quested, the group of people, Proud Boys and others that Nordean and Biggs were leading, were there times when that group was chanting, "Whose house? Our house"?
A. Yes.
Q. Were there times when that group was chanting, "Whose Capitol? Our Capitol"?
A. Yes.
Q. Were there times when that group was chanting "1776"?
A. Yes.
Q. Going back to Peace Circle now, after Mr. Nordean put his

fist in the air, did he halt or did he keep going?

A. I wasn't --

MS. HERNANDEZ: Objection, Your Honor. The best evidence are the videos.

THE COURT: Overruled.

BY MR. MULROE:

Q. Did Mr. Nordean turn around and go home after the Peace Circle breach?

A. No.

Q. Where did he go?

A. He continued up to where the Breach 2 was.

MR. MULROE: Let's have 492FX, please. I believe this is in evidence. And, Ms. Rohde, we'll start that at the 32-second mark.

(Video played.)

We'll play just a few seconds and then pause it after the call-out.

(Video played.)

Now, who do you see at the front of that line that's illustrated in a silhouette?

A. Mr. Nordean.

Q. Does he have his fist up in the air there?

A. No.

Q. Does he appear to be telling anyone to halt there?

A. No.

Q. What's he doing there?
A. He's walking forward, towards the front of the protesters.
Q. Are there men behind him?
A. Yes.
Q. Do they all have their hands on each others' shoulders?
A. Yes.
Q. Is Mr. Nordean --
MR. PATTIS: Objection. Leading.
THE COURT: Sustained.
BY MR. MULROE:
Q. Is this group that we see on the screen walking toward the Capitol or away from the Capitol?
A. Towards the Capitol.
Q. Did you ever see Mr. Nordean tell anyone to halt at the black fence?
A. No.
Q. Did you ever see Mr. Nordean tell anyone to halt after the black fence --
MR. METCALF: Objection, Your Honor. Again, leading.
THE COURT: Sustained.
BY MR. MULROE:
Q. Did you or did you not see Mr. Nordean tell anyone to halt at the black fence?
MR. JAUREGUI: Objection. Leading.
THE COURT: Overruled.

THE WITNESS: I did not.

BY MR. MULROE:

Q. Did you or did you not see Mr. Nordean tell anyone to halt after the black fence had been destroyed?

A. I did not.

Q. Ms. Hernandez asked you about whether Zachary Rehl seemed jovial to you, and you said, "He seems jovial."

Do you remember that?

A. Yes.

Q. Do you --

A. On the 12th.

Q. I'm sorry?

A. On the 12th.

Q. On the 12th.

Did he seem jovial on the 6th?

A. No.

MS. HERNANDEZ: Objection. Beyond the scope.

THE COURT: Overruled.

BY MR. MULROE:

Q. Your opinion of Mr. Rehl as "jovial," is that based in any way on anything you saw that he posted to his Parler account?

MS. HERNANDEZ: Objection. Objection. Beyond the scope.

THE COURT: He can ask -- he can answer the question.

THE WITNESS: Sorry.

THE COURT: It's okay.

THE WITNESS: Didn't mean to interrupt.

THE COURT: You may proceed, sir.

THE WITNESS: I didn't -- I wasn't following Mr. Rehl's Parler account.

BY MR. MULROE:

Q. Did you ever see his private chats?

A. No.

Q. Some of the counsel asked you -- I think Mr. Smith asked you whether the Proud Boys, on January 6, appeared to be hiding something from you. Do you remember that?

A. Yes.

Q. And as far as you could tell, they were not hiding anything, I think you testified?

A. No.

Q. Did any of them let you look through their phones?

A. No.

MR. METCALF: Objection as to relevance, Your Honor.

THE COURT: It's overruled.

BY MR. MULROE:

Q. Did any of them show you a chat group called the Ministry of Self-defense?

MR. METCALF: Objection. Argumentative.

THE COURT: It's overruled.

THE WITNESS: No.

BY MR. MULROE:
Q. Did any show you a chat group called Boots on Ground?
A. No.
Q. Let's talk a little more about Telegram for a moment. You were asked about a channel called Enrique's House of Propaganda; is that right?
A. Yes.
Q. And, Mr. Quested, I think you may have used these terms a moment ago. Are you aware of the difference between public Telegram groups and private Telegram groups?
A. Yes.
Q. Tell the jury about that.
A. Public Telegram group is open for anyone to join. A private Telegram group is by invitation only.
Q. Do you know whether Enrique's House of Propaganda was public or private?
A. It was public.
Q. And in terms of your attentiveness to the messages in this group, were you the administrator of the group?
A. No.
Q. Did you invite people into the group?
A. No.
Q. Did you have any control over the content of the group?
A. No.
Q. Did you establish any rules for the group?

A. No.
Q. Do you know about how many people were in that group, Enrique's House of Propaganda?
A. Yes. Several thousand.
Q. And were you personally engaging in any back-and-forth discussion with any of those several thousand people in the group?
A. No.
Q. Mr. Roots showed you a series of clips and asked whether they showed Dominic Pezzola to be have been present in the marching group. Now, Mr. Quested, those clips that he showed you, did those show the whole marching group or only part of the marching group?
MR. METCALF: Objection, Your Honor.
THE COURT: Overruled.
BY MR. MULROE:
Q. Were the clips the whole marching group or just part of the marching group?
A. Each shot is a snippet of the marching group.
MR. MULROE: Ms. Rohde, if we could have 493B, please, at the 16-second mark.
MR. PATTIS: B as in boy, sir?
MR. MULROE: B as in boy.
BY MR. MULROE:
Q. Recognize anyone you know in this portion of the video,

Mr. Quested?
A. Yes.
Q. Who's that that I've just drawn a red line to?
A. Mr. Pezzola.
Q. The person you know as Pezzola, or Spaz?
A. Yes.
Q. I think Mr. Roots asked you about whether you wore a protective vest on January 6. Did you wear any protection on the 6th?
A. Yes.
MR. MULROE: And, I'm sorry. I should have asked Ms. Harris, could we publish the previous exhibit, 493B, to the jury?
THE COURTROOM DEPUTY: This one hasn't been admitted yet.
MR. MULROE: I'm sorry?
THE COURTROOM DEPUTY: 493B hasn't been admitted yet.
BY MR. MULROE:
Q. Mr. Quested, let me ask you first --
MR. MULROE: Apologies, Madam Deputy.
BY MR. MULROE:
Q. -- is this film one that you took on the Mall on January 6 of the Proud Boys' marching group?
A. Yes.
Q. Does it fairly and accurately depict them?

A. Yes.

MR. MULROE: Move to admit 493B.

THE COURT: All right. Without objection, it will be admitted. And permission to publish.

BY MR. MULROE:

Q. And I've drawn a red line again. Tell us again, Mr. Quested, who is that person?

MR. JAUREGUI: Objection. Asked and answered.

THE COURT: Overruled.

A. Mr. Pezzola.

BY MR. MULROE:

Q. Where does he appear relative to the front or the back of the group?

A. He's towards the front.

MR. MULROE: We can take the exhibit down.

BY MR. MULROE:

Q. Back to protective equipment. Mr. Quested, remind us, did you wear a vest or any other protective gear on January 6?

A. I didn't wear a vest, but I did have a mask in my bag which I tried to use, but it was very ineffective.

Q. Why didn't you wear the full protective vest?

A. Because I didn't want to carry 30 pounds up -- marching up and down the Mall, like we did before. I felt that the confrontation was going to be happening in the evening, as has happened before.

Q. If you had known what was going to happen on January 6 --

MS. HERNANDEZ: Objection.

MR. PATTIS: Objection.

THE COURT: Sustained.

BY MR. MULROE:

Q. Mr. Jauregui asked you some questions about the garage and whether an attorney meeting happened there. Mr. Quested, do you have any reason to think that Stewart Rhodes was part of Enrique Tarrio's legal team?

MR. ROOTS: Objection.

THE COURT: The witness may answer.

A. No, I did not have any reason to believe Mr. Rhodes was giving legal advice. I thought the concept was to talk to Mr. -- Ms. SoRelle.

BY MR. MULROE:

Q. And during Mr. Jauregui's cross, I think that you used the terms "War Boys" and "Rally Boys."

Did I hear that right?

A. Yes.

Q. Mr. Quested, would you happen to know the name of the podcast that Mr. Tarrio and Mr. Nordean and Mr. Biggs all had together?

A. That's the War Boys podcast.

Q. Mr. Jauregui asked you a series of questions about antifa on December 12th. Now, I think during the cross you used the

phrase "Kids on BLM plaza."
A. Yes.
Q. Do I recall that correctly?
A. Yes.
Q. Mr. Quested, tell the jury in your own words, who were the people that the Proud Boys seemed to view as antifa on December 12th?
MS. HERNANDEZ: Objection.
MR. PATTIS: As to form. Speculative.
THE COURT: The witness can answer, if he knows based on his observations.
A. Can you repeat the question, please?
BY MR. MULROE:
Q. Who were the people that the Proud Boys group, on December 12th, seemed to believe were antifa?
A. The kids who were on the BLM plaza.
MS. HERNANDEZ: Objection.
MR. PATTIS: That's too vague, Your Honor.
THE COURT: Overruled. Overruled.
BY MR. MULROE:
Q. Tell us a little more about those kids.
A. The kids were -- there was public --
MS. HERNANDEZ: Your Honor, could we have a sidebar?
(Bench discussion:)
MS. HERNANDEZ: First, Your Honor, the government has

asked him about what the Proud Boys believed. I don't think he can testify as to what the Proud Boys believed about the people they were confronting. And then we're going into this area of who -- like, they're young kids, BLM matter. It's not relevant, and under Rule 403, it -- it's unduly prejudicial.

And the theory behind admitting December 12th is that the Proud Boys turned on the police. It has nothing to do with who they were confronting on December 12th.

THE COURT: All right.

Mr. Mulroe?

MR. MULROE: Your Honor, this is not anything that we elicited on direct examination. This is all squarely in response to the line of, really, argument on cross that there were brutal, organized hordes of antifa who were attacking the Proud Boys. And we're entitled to rebut that and give the jury an accurate picture of what that evening looked like.

THE COURT: I mean, I take your point about, you know, we're in a place where both sides have been asking him, based on his observations, Well, what happened here? What happened there? So, he -- to the extent he can -- he can answer the question. I think it's fair.

Mr. Pattis?

MR. PATTIS: I mean, Mr. Biggs did not ask questions in that form, and we objected early on and throughout -- consistently -- the trial to speculative anything that seems to

attribute a group mind to the Proud Boys as an independent entity.

And so whether the door was opened by other defendants, we would claim that Biggs is prejudiced by this. The government's representation has been that the Proud Boys are not on trial, but discrete defendants are. And now we're into an area where group attributes are being offered for their probative value as to these defendants, and we object to this entire line of questions.

THE COURT: All right. Again, I think Mr. --

MS. HERNANDEZ: Sorry, Your Honor. The bottom line is that he described Bertino being stabbed very -- you know, injured very badly by someone, and he didn't say it was like a boy -- a young boy, now we're being told. This whole area, I mean, it's one thing to describe something. It's another thing to ascribe motive to a group of people.

THE COURT: Well --

MS. HERNANDEZ: And I would say, Your Honor, my client was not present --

THE COURT: Okay. Ms. Hernandez --

MS. HERNANDEZ: -- at the time Mr. Bertino was injured.

THE COURT: Okay. I think we, again, have -- the -- this entire event is -- I've ruled is -- let me put it this way: This is the circumstances surrounding the -- both the

Bertino stabbing and the banner burning, so it's relevant. And he can flesh out based on what his observations were.

And I take Mr. Pattis' point. He may have -- some of his observations may be based on what he observed the entire Proud Boys group doing and what he -- how he observed them as collective. I don't think there's anything inappropriate about that.

So, Mr. Mulroe, you may proceed.

MS. HERNANDEZ: I'm sorry, Your Honor. Could you ask, then, that the question be narrowed to who -- I mean, who he's talking about? Because as I said, my client was not in the area at the time. I don't --

THE COURT: I understand. And the fact that your clients either were there or were not there or did something or did not do something, you could have -- you know, number one, you could have, and many of you did, explore and nail down on your cross. And you'll have plenty of opportunity to make that point, but that's not the point the government is making.

Mr. Mulroe, you may proceed.

MR. PATTIS: Judge?

THE COURT: Yeah, what is it Mr. Pattis?

MR. PATTIS: We're not moving to sever, but we're getting close. This whole line of inquiry about what the Proud Boys, as an entity, does is cloaking this case in something like guilt by association after a representation was made that

the government was not going to proceed as to the Proud Boys as though they were a party.

And -- and I -- I see you're frustrated and I appreciate your caring for the jury and I'll be brief.

I don't think there was a suggestion that there was a horde of vicious -- or however Mr. Mulroe characterized people. I feel that Mr. Biggs is being prejudiced by this line of inquiry, and we have objected and continue to do so.

THE COURT: All right. Very well.

Mr. Mulroe, you may proceed asking the witness, based on his observations, what the collective group or, and if appropriate, any particular person was doing that day.

BY MR. MULROE:

Q. Mr. Quested, you were just about to tell us about the kids at BLM Plaza. So, tell us about that group.

A. Yeah. They were taunting the Proud Boys across the police line. They were -- they were, you know, saying -- they were taunting them to come and -- you know, they were -- they were smacking their ass and saying, "Come and get it," things like that. Like, it was, you know, provocative.

Q. What was the response of the Proud Boys group to that?

A. It irritated them.

Q. And the video that we saw where Mr. Bertino and Mr. Tarrio were near what we called the buffer zone and Mr. Bertino was shouting, is that who he was shouting at?

A. Yes.
Q. And the police were separating them?
A. Yes.
Q. What did the Proud Boys group seem to want to do, as far as you could tell?
MR. PATTIS: Objection.
MS. HERNANDEZ: Objection.
THE COURT: The witness can answer based on his observation, if he knows.
MR. METCALF: Then one more objection as to form.
THE COURT: The witness may answer the question if he knows based on his observations.
A. Yeah. It was evident. We filmed Mr. Bertino and others saying, "Give us an hour and we'll sort this out."
They wanted to engage him in violence.
Q. Mr. Jauregui asked you about whether antifa stabs, do you remember that?
A. Yes.
Q. Did you see the person who did the stabbing on the night of the 12th?
A. No.
Q. Do you have any reason to think the person who did the stabbing was antifa?
MR. SMITH: Objection. Goes to state of mind of another person.

THE COURT: Overruled.

A. I have no idea who stabbed Mr. Bertino.

BY MR. MULROE:

Q. Did you see the confrontation that resulted in the stabbing?

A. No.

Q. Do you have any idea who started that confrontation?

A. No.

Q. I think that you or Mr. Jauregui used the phrase "no real danger" in relation to December 12th. Do you happen to know what happened to the person that did the stabbing?

A. Subsequently I do, yeah.

Q. You learned after the fact?

A. Yeah.

Q. All right. Say no more.

Mr. Pattis asked you, and you and Mr. Pattis discussed Mr. Biggs and Mr. Nordean being in tactical control. Do you remember that?

A. Yes.

Q. Tell us a little bit more what that term means. What is "tactical control"?

A. Well, tactical control means reacting to the situation on the ground, rather then the strategic control, which is to plan. Strategy involves planning and tactics involves reacting.

Q. So, tactics and strategy are two sort of distinct ways of

exerting control?

A. Absolutely, yes.

Q. So, telling a group when to stop and when to go, would that be tactical or strategic?

A. Tactical.

Q. Leading the group forward in a stack formation with hands on shoulders, would that be --

MR. JAUREGUI: Objection. Leading.

THE COURT: Sustained.

BY MR. MULROE:

Q. If one were leading a small group of people, would that either be tactical or would that be strategic?

A. Tactical.

Q. What about bringing a group of people together and setting criteria for membership in the group, would that --

MR. PATTIS: Scope. Objection. Scope.

MR. JAUREGUI: Objection. Asking for expert testimony.

THE COURT: Sustained.

BY MR. MULROE:

Q. Is setting the overall objective of an event strategic or tactical?

MS. HERNANDEZ: Objection.

MR. JAUREGUI: Asks for expert testimony.

MS. HERNANDEZ: This is opinion testimony.

THE COURT: All right. Ms. Hernandez, I understand your objection. It's overruled.

Witness can answer.

BY MR. MULROE:

Q. Setting the overall objective, Mr. Quested, is that tactical or is that strategic?

A. Strategic.

Q. Mr. Pattis and Mr. Jauregui both asked you whether you have sold your film project yet.

A. Yep.

Q. Mr. Quested, are you hurting for work?

A. No.

Q. Finally, Ms. Hernandez asked you about the role of the documentarian. So, Mr. Quested, are you sitting in that witness stand as a documentarian or as a witness?

A. I'm sitting here as witness.

Q. And did you answer the questions that the government posed to you?

A. Yes.

Q. Did you answer the questions that the defense posed to you?

A. Yes.

Q. And they asked you this, I'm going to ask you again: Are you here on anyone's side, one side or the other?

A. No.

MR. MULROE: Nothing further.

THE COURT: All right. Let me have a sidebar with counsel.

(Bench discussion:)

MR. PATTIS: On the kids question, may I have a brief recross?

THE COURT: No. No. This was squarely within the scope of his direct and his cross, the questions about this. There's -- no.

MR. PATTIS: Judge, there are kids who are -- from my perspective, at 67, everybody is a kid under 50, and I don't want the impression left that these were a bunch of elementary school kids sucking on lollipops. They were teenagers, and I think we're entitled to bring that out. And on Biggs' behalf we didn't open this door, and now we're left with the contents of a room and a misleading impression. I would ask Mr. Mulroe to consider clarifying the age of the children, if I can't.

THE COURT: What happened that day and his observations were squarely within both the direct and the cross, and I'm not going to allow any recross on it.

(Open court:)

THE COURT: Sir, you may step down. Thank you for your testimony.

THE WITNESS: Thank you.

THE COURT: All right. Do we have -- is it appropriate next to address the matter Mr. Roots has raised,

outside the presence of the jury?

MR. McCULLOUGH: Yes.

THE COURT: All right. Very well.

Ladies and gentlemen, we're going to take -- well, at least a quick break from you. We'll see whether it's a quick break for all of us in a moment. We'll have you all out here as soon as we can.

(Whereupon the jurors leave the courtroom.)

THE COURT: All right. You all may be seated. Just wait one moment for Ms. Harris.

And before I hear from Mr. Roots, let me just get a sense from the government, given where we are. So we have this witness. Who do you anticipate -- how long do you expect this witness's direct to be, and who do you anticipate the next witness being? Just so I can try to know how the railway station is -- you know, where the cars are on the railway train.

MR. McCULLOUGH: Thank you, Your Honor.

So we anticipate this witness on direct may go approximately 40 minutes, maybe 45 minutes, depending on, kind of, overall pace here.

We do have another witness who is available to testify today, at the end of day, depending how quickly we move. We did move faster than we anticipated this morning, which is great, and so we do have another witness. That

witness would be a Capitol Police officer, Shae Cooney, who would be available if we are through cross-examination of Special Agent Klapec before the end of the day.

Should that not be the case, the government would proceed tomorrow morning with -- either way the government anticipates its first witness tomorrow to be -- kind of newly called, would be Matt Greene.

THE COURT: Would be -- I'm sorry?

MR. McCULLOUGH: Matt Greene.

THE COURT: All right. So not -- part of the reason I am asking is the Parler posts witness would not be even the next witness at this point?

MR. McCULLOUGH: That is correct, Your Honor. I think we would -- full stop. That's correct. We'd love to kind of discuss that at the end of today, if we can, but --

THE COURT: Okay. That's fine. All right.

So, Mr. Roots, let me hear you, sir. If you would like to -- wherever you -- wherever is your pleasure to address this issue.

MR. ROOTS: Yes. Thank you, Your Honor.

This -- the government is seeking to introduce, through this next witness, who I understand is the FBI agent who executed the search warrant on Mr. Pezzola's residence in Rochester, New York, a document that no -- as I described in the motion, it's a document no one knows who wrote, as far as

we know. It's not alleged that any Proud Boys leadership on trial here wrote it. It's without a byline, without a source. It's without much -- anything involving authenticity. There's nothing in the government's allegations that Mr. Pezzola even read the document.

And I guess they are just trying to introduce it because it has some weird -- the unfair prejudice of it is, you know, there's stuff about masturbation. There's stuff about, you know -- well, the document, it speaks for itself.

THE COURT: You attached it. I read it.

MR. ROOTS: The probative value is almost nothing other than it has the word "Proud Boy" on it. But no one knows who wrote it, and as far as I know, even the people here don't know who wrote it, so the authenticity chain is not strong. There's not a lot of probative value, and whatever probative value there is vastly outweighed by the unfair prejudice.

THE COURT: Doesn't the government get to -- so a couple of things just spring to mind before I hear from the government. You know, one of the things your client is -- his relation -- as far as I understand the evidence to be generally, his relationship to the Proud Boys was different than -- you know, than the other defendants. And don't they have a lot of wide latitude to prove his connection to the group? You know, don't they have a lot of wide latitude to do that?

And wouldn't it -- I mean, taking all the things you're saying -- even considering all the things you're saying, isn't this just fair -- and I'll -- I'll address them in one second.

But I think -- it strikes me that this is just them -- a piece of evidence they can use to tie him to the Proud Boys that they -- that they have wide latitude to introduce.

And let me just say, the other thing about the prejudice, you know, it's interesting. It's -- I read it very carefully. It does have that one passage you mentioned. It also has a lot of, like, you know, things that have been the subject of the trial so far, even; and things that might well surprise people who think they disagree with the Proud Boys in a bunch of areas, where actually -- you know, again, whether this is true or not true, you know --

MR. ROOTS: Agree.

THE COURT: -- I certainly don't know and I know you're not saying you do.

But to the extent to which the government's witness -- I mean, the jury might consider this, some of the things are not necessarily -- yeah, they may not agree with everything in the document, but they also -- you know, if they happen to be left-of-center people, they might see views in here like legalizing drugs and abolishing prisons that they

1 would say, Actually, we do -- that does strike a chord with us.
2 So the prejudice point, I take your point on that one
3 piece that's kind of strange, and so I'm going to ask the
4 government what they -- whether they intend to highlight that,
5 what they intend to do with the document, if anything, other
6 than introduce it as a connection between your client and the
7 Proud Boys.
8 But what's your response to all of that?
9 MR. ROOTS: Well, it is not even contested that
10 Mr. Pezzola joined the Proud Boys in December of 2020. That's
11 not contested. There are plenty of patches and little buttons
12 and things that establish that.
13 This document is a -- you know, it's a document with
14 a lot of stuff in there. I agree, some of it is -- it paints
15 the Proud Boys as being a socially liberal organization, very
16 tolerant of homosexuality, et cetera.
17 THE COURT: Right. Not concerned with race.
18 MR. ROOTS: Yeah. Yeah. There's some of it, it
19 certainly doesn't -- it almost helps us counteract some of
20 those narratives, agreed. But the real question is: What is
21 the purpose of why they are introducing it?
22 And, again, the authorship of it is highly
23 questionable. It almost certainly didn't come from Proud Boy
24 leadership structure, that we know of. It might have come --
25 well, I don't even want to say -- perhaps a local structure of

some kind.

THE COURT: Right.

MR. ROOTS: But in any case, it doesn't add much, and there are some unfair, prejudicial aspects to it.

THE COURT: All right. You know -- all right.

Let me hear from whoever from the government wants to address this.

MR. McCULLOUGH: Thank you, Your Honor. Jason McCullough for the United States.

So, look, I can think Your Honor has it right. I mean, I think with respect to the passage on the "no wanks" issue, the government does anticipate that it will say, Look, there are some kind of childish things or some kind of juvenile humor throughout this, but it's not intending to highlight that.

The point of this is, as you said, to draw the connection between Dominic Pezzola and the Proud Boys group, which is one of the issues within the trial, as well as Dominic Pezzola's -- I mean, this is a document that's found in Dominic Pezzola's house, so it is -- kind of this authenticity question and those questions, this is one of the few documents that Dominic Pezzola had.

And he also wrote a two-and-a-half page, kind of handwritten statement as to why he wants to join the Proud Boys. Those two documents kind of exist in parallel, and one

1 informs the other in terms of what Dominic Pezzola had in his
2 head in terms of why he wanted to join the Proud Boys, how he
3 wanted to contribute, how he saw himself fitting into it. I
4 think it's kind of fairly straightforward here, and it's not
5 the government's interest here in kind of highlighting any of
6 the juvenile natures of the documents.
7 So --
8 THE COURT: How will this just -- how will this
9 witness -- I mean, is this witness going to go through, point
10 by point, and describe what's in here?
11 MR. McCULLOUGH: So, I do anticipate that the -- that
12 this witness would read portions of this. So, we'd kind of
13 first, you know, kind of how -- "How is the Station 1
14 captioned?"
15 It says, "Proud Boys meet-up. Stations of the
16 Congregation."
17 We would turn to page 4, noting the bold language in
18 page 4, which says --
19 THE COURT: I'm sorry. Could you just start again?
20 MR. McCULLOUGH: Yes. Of course. Of course.
21 THE COURT: Page 4 you started with?
22 MR. McCULLOUGH: So page 1 has a caption that says
23 "Proud Boys meet-up. Stations of the Congregation."
24 THE COURT: Right.
25 MR. McCULLOUGH: Page 4, in the bolded language,

notes that this is: The above reading is all that's required for a Proud Boys meet-up. So it describes kind of what is going to take place at a Proud Boys meet-up.

We would then turn back to the first page, and he would just read a few of these passages that are in the lower case, which is basically kind of how they start their meetings, in this Western chauvinism chant, which the jury has heard before. And it's kind of important in terms of being relevant to, kind of, things that they've heard before in terms of Proud Boys chanting and the Proud Boys being Western chauvinists.

And then we briefly touch on, Your Honor, Station 2. Just asking the question, you know: Does this appear to be lyrics from a song? Appear to be a children's song? Because, frankly, I think the defense will bring that out, that this is all kind of a juvenile episode.

And then we'll turn to Station 3, and the First Second, Third, and Fourth Degree, and just briefly kind of summarize or have him -- frankly, not summarize, but read through those. And then I think that is fundamentally the -- you know, the extent of what we would be, kind of, covering with this witness.

THE COURT: I mean, it does -- I think it does obviously, like, connect, you know, Mr. -- I do think you have a long -- a lot of leeway to connect the defendants, especially someone for whom -- even if the representation is before me

that he doesn't contest that, you know, he was a member, you have a lot of leeway under the case law to demonstrate that however you would like.

I mean, I do think -- and, again, your point would be this, connected with the document -- the other document you're describing, sort of overall are reflective of his intent, regardless of -- because the way you're describing this, you're describing as a most -- sort of as if these things are all true and accurate about the way the Proud Boys operate. Maybe they are, maybe they're not, and maybe that's what -- maybe, you know, the -- maybe there will be cross about: No, this is not the way this works at all.

But it all -- it all connects to, in your view, Mr. Pezzola's state of mind in terms of what -- at least what he thought he was joining, and connect it with his statement that you mentioned.

MR. McCULLOUGH: That's correct, Your Honor. You mentioned "intent." I actually -- I see it as kind of knowledge and state of mind, which is, I think, what you mentioned at the end, which I think is right. That's the issue here, is what was -- what is Dominic Pezzola's knowledge. What is his state of mind as he is joining this group and being invited into this special chapter by the chairman of the organization? What did he think? What did he understand? How did he think he would advance within that organization?

1 That's kind of squarely a question here before the
2 jury about, kind of, what were Dominic Pezzola's motivations?
3 THE COURT: Yep. And if there's cross on this, that
4 it's inaccurate, it's not -- doesn't reflect -- whatever. It
5 doesn't reflect Mr. Tarrio's views, doesn't reflect the overall
6 Proud Boy organization. You all can have at it and go for it.
7 Yeah. I think that's fair.
8 MR. METCALF: Your Honor, if I may?
9 Steven Metcalf for Dominic Pezzola.
10 To that point specifically, there's no one here to
11 authenticate this document in -- or, lay the foundation that
12 this document has not been changed or altered, or how old this
13 document is with regards to this document even being
14 admissible. I ask Your Honor, as an alternative, if Your Honor
15 is going to allow this document to come in, that it be redacted
16 as far as two portions go.
17 Number one would be for the Fourth Degree. And
18 that -- basically, the basis of that would be the prejudicial
19 effect of engaging in a major conflict would have.
20 The second part I would ask would be what has now
21 been referred to as the "no wanks" issue. I would ask that
22 that entire paragraph be redacted as well.
23 THE COURT: The no -- I'm sorry. The no what issue?
24 MR. METCALF: Wanks, w-a-n-k-s.
25 THE COURT: Oh, yeah. Right. Very well.

MR. PATTIS: It's a British locution.

THE COURT: Yeah, it really is. The Brits have really had their -- had the spotlight on them more than I would have thought in this trial.

MR. METCALF: I never anticipated having to go through the authenticity of it. But, Your Honor, it's not signed. It's not dated. We have no idea how old it is. We have nobody to authenticate, be able to lay the foundation as to whether or not this document is accurate and hasn't been altered.

THE COURT: If you heard what I was saying before, Mr. Metcalf, it doesn't matter. It was found in your client's home adjacent to another -- or -- and, also, another document was found laying out his views on sort of, like, joining the Proud Boys, et cetera. So, the fact that we don't know -- like, to your point, so, it's coming in for his intent and knowledge in his joining the Proud Boys. Now, whether -- and for -- and to prove up a connection between the two of them.

It's not a question of the foundation and the authenticity are -- the agent will testify, presumably, this was found there -- this is the document that was found there. There's not -- you know, there's not any more testimony that needs to be laid, at least in theory, to connect the document to your client and to -- and to demonstrate its relevance.

Mr. Pattis?

MR. PATTIS: Judge, it's been my lifelong desire and ambition to cross-examine an FBI agent about masturbation, but I think you have got to agree that that's a side issue in this case, and I would join in the request for redaction.

THE COURT: Right. I mean, I guess that's the one thing that strikes me as -- Mr. McCullough, that's one of the things you want to go through with this witness about, the -- that particular thing? I mean, actually, I got to say --

MR. McCULLOUGH: Your Honor -- Your Honor -- Your Honor, just to be clear, no. So the -- but -- no. No.

THE COURT: Okay.

MR. McCULLOUGH: But I am -- so, Your Honor, I think this is -- it's interesting, because I would say there are a number of -- there is some juvenile humor in this or, you know, kind of off-color humor in this because I would expect that they would say: This isn't a serious document. Look at this crazy no wanks thing.

And so I have no interest in going -- well, put it this way: I had no interest, when I walked in here to court this morning, to even say "no wanks" into a microphone in a federal courtroom. I did not anticipate that happening here. I was just going to mention that this is a -- the document has some juvenile humor in it and some crude language in it.

THE COURT: I don't know whether it's -- I don't know what it is. I don't know whether it's humor or not. But, if

you're not -- I mean, if you're not going to have -- elicit testimony about this from the witness, we can talk about whether you all think, ultimately, that should be redacted or not, I guess. But, I don't think it's a reason not to go forward, have the witness describe it -- again, not that portion -- and to go forward.

And so I'll take under advisement the idea that before it goes back with the jury, that that might be redacted. But as far as just moving forward today with testimony about it, I'm going to allow that.

MS. HERNANDEZ: Your Honor, from the codefendant's point of view, it's my understanding that the government is going to try to use this document to claim that Mr. Pezzola acted as he did on January 6 to go up the ladder -- the degree ladder in the -- in the Proud Boys hierarchy. He's a Second-Degree person.

THE COURT: Okay.

MS. HERNANDEZ: But -- and I asked the government this -- I recall, when I wanted to introduce the permits, the Court wanted to know whether there was any evidence that my client was aware of the demonstrations that day, and there was evidence. I don't know -- and I asked the government this: Where is the evidence that that's what Mr. Pezzola was doing that day? Assuming that in order to go up the ladder you have to do X, Y, and had Z, where is the evidence?

Is somebody going to testify in this case that that was Mr. Pezzola's intent on that day, or is there some other evidence that that was what he was doing? Because if not, then this is going to be sort of let's throw some dirt at the wall and hope it sticks.

THE COURT: But this is -- that's an inference they can argue, and you can say, No, that's -- they don't have it -- or, not you, but his lawyers can argue, No, no, no, that's not what's happening at all.

MS. HERNANDEZ: Well, as I say, I recall the Court wasn't even going to let me mention permits until I showed that there was some basis for my client to have some connection to the permits. So I don't think it's enough for the government to say: Oh, look, this is here. Unless they have some evidence to link that to Mr. Pezzola's conduct that day, I think it is just going to be highly prejudicial, and try to --

There's no evidence that any of the other defendants knew that that was Mr. Pezzola's intent that day, or any evidence that Mr. Pezzola intended to somehow gain some stripes that day by doing whatever.

THE COURT: You know, Ms. Hernandez, I think you make a good point in this sense: Look, this is a case that both sides, all right, are going to be arguing about circumstantial evidence, right? And so, maybe you -- I mean, we didn't really have to cross this -- we didn't really have to cross this

barrier on your point because very quickly, when there was -- I think the government said, Well, is there any evidence -- or maybe I did say, Well, is there any evidence, and you all said, Yes, there is.

Now, if there hadn't been -- you're raising, like, if there hadn't been, would I be able to still do this? And I never had to really cross that barrier because, in fact, there was that evidence, right? And I agree with you. I --

MS. HERNANDEZ: My recollection was you weren't going to let me mention it in opening statement unless I could show to you that Mr. Rehl had actually mentioned that he was planning to attend speeches on January 6.

THE COURT: No.

MS. HERNANDEZ: So, I understood the Court was going to preclude evidence altogether.

THE COURT: No.

MS. HERNANDEZ: So, what's good for the goose should be good for the gander, or vice versa.

THE COURT: I agree with you, Ms. Hernandez, but let me say a few things.

The reason that whole area was such a fraught area in terms of the evidence was the question of -- because some of it could be -- the concept of protesting could be used in a way that, I think, interacts with the statute in a way that the statute doesn't allow. We haven't gotten to jury instructions

yet. But, anyway, that's the reason I was also focused on it. But I think -- and as I said to you, I think what I would have done if you hadn't been able to come back and say that, I don't know. But, I think it's a good -- good for you to keep me on my toes and make the point. I think it's fair. I think it's very fair.

Here, though, I mean, part of the connection they're trying to draw is with specific conduct on that day and how it connects back with this. I mean, I think it's a fair inference for them to argue and for you all, to varying degrees -- Mr. Pezzola's lawyers in particular -- to argue, "No, no, no, that's not what was happening." But I think it's -- especially in a case where, look, both sides are going to be arguing the circumstantial evidence here, I think it's -- I think it's fair.

So, let's -- as I said, I'll take up -- I think the question of whether we end up redacting that part, I'll take that under advisement before it goes back to the jury. As long as the government doesn't -- just moves past that and is not eliciting that one particular thing that I think is ultimately -- what are you all referring to it as?

MR. PATTIS: No wanks.

THE COURT: No wanks.

MR. METCALF: And then, Your Honor, also, the Fourth Degree, and the major conflict as well, as part of our

application.

THE COURT: No. But that -- okay. No. That's what we're talking about. I think that's all --

MR. METCALF: It's two sections.

THE COURT: No. No. Okay. But I'm denying you as to that for sure.

MR. METCALF: Okay.

THE COURT: The no wanks thing, again, we can talk about as whether --

MR. METCALF: No wanks is in its own category.

THE COURT: Yeah. So, let's bring in the witness and -- I'm sorry. Let's first -- let's first bring in the jury and the witness -- but, hold on.

Does the government -- Mr. McCullough, you have confusion on your face, and I want to make sure I haven't confused you.

MR. McCULLOUGH: No confusion. No confusion.

THE COURT: All right. I think we can bring in the witness --

MR. McCULLOUGH: I want to take a five-minute break and then we can plow all the way through.

THE COURT: Fair point. Let's take --

MS. HERNANDEZ: Your Honor, for the record, I don't think the Court should exclude the references to the "wanks." I mean, if that's who they are, drinking, wanking --

MR. McCULLOUGH: No wanking.

THE COURT: Not wanking. Get it right, Ms. Hernandez. Gees.

MS. HERNANDEZ: Not wanking, whatever. If we're going to go there, let's lay it out.

THE COURT: All right. Let's take --

MS. HERNANDEZ: I'm not joking. I'm not joking. I think if we're going to go there, then let it all hang out.

THE COURT: Well, Ms. Hernandez, I think the point was to not let it all hang out.

MS. HERNANDEZ: Whatever I said, it wasn't intentionally funny.

THE COURT: All right. We're going to take ten minutes. And for the Court reporter, let's come back at 3:15, and have both the jury in the box and the witness on the stand.

MR. McCULLOUGH: Understood. Thank you, Your Honor.

(Recess.)

THE COURTROOM DEPUTY: We're back on the record in criminal matter 21-175, United States of America versus Ethan Nordean, et al.

THE COURT: All right. Very well. Welcome back, ladies and gentlemen.

Government, you may call your next witness.

MR. McCULLOUGH: Your Honor, the government calls Special Agent Timothy Klapec.

THE COURTROOM DEPUTY: Mr. Klapec, will you please stand and raise your right hand.

TIMOTHY KLAPEC,

having been first duly sworn, was examined and testified as follows:

THE COURT: You may proceed.

MR. McCULLOUGH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. Special Agent Klapec, would you please introduce yourself to the jury and spell your last name?

A. Sure. I'm FBI Special Agent Timothy J. Klapec. My last name is spelled K as in kilo, L as in lima, A as in alpha, P as in Paul, E as in echo, and C as in Charlie.

Q. And, Special Agent Klapec, we will both be reminded of this multiple times throughout our testimony, but if you'll try to stay towards the microphone, and I'll do the same. The acoustics are imperfect in here, unfortunately.

You mentioned that you're employed by the FBI.

A. That's correct.

Q. That's the Federal Bureau of Investigation?

A. Yes.

Q. How long have you been with the FBI?

A. 18 years.

Q. You currently assigned to a particular office?

A. Yes. I work out of the Rochester Resident Agency, which is part of the FBI Buffalo Division.
Q. FBI Buffalo, that's Buffalo, New York?
A. That's correct.
Q. And what are your -- just generally, your responsibilities as a Special Agent?
A. Basic investigative activities. These would include interviews of subjects, witnesses, victims, physical surveillance, collection of evidence. Collection of evidence through legal process include subpoenas, search warrants, and handling of confidential human sources.
Q. And are you familiar FBI's procedures on conducting searches and seizing evidence?
A. Yes, I am.
Q. You've received training on that?
A. Yes, I have.
Q. And are you also familiar with the process of obtaining a search warrant?
A. Yes.
Q. Can you briefly describe the process of obtaining a search warrant to the jury?
A. So the investigative agent would gather the relevant facts to establish probable cause to obtain the search warrant. Once a draft had been completed, that would be submitted to the United States Attorney's Office. A AUSA would be assigned to

that particular case. There would be a back-and-forth collaboration between the agent and the AUSA to get a final draft which, ultimately, would be submitted to a federal judge to determine whether the probable cause threshold had been met for that particular search warrant. And it would be up to that judge to sign and approve the search warrant.

Q. So the last step there that you mentioned is that the judge would review, sign, and approve the search warrant; is that right?

A. That's correct.

Q. And once the judge has approved the search warrant, can -- the FBI can just go and take whatever it wants?

A. No. There's specified items to be seized that are outlined in the search warrant itself. So, it has to be within the confines of what's been specified in the search warrant.

Q. We're going to turn briefly to the procedures on seizing and securing evidence. You're familiar with those?

A. Yes, I am.

Q. So when you are conducting a search warrant, evidence that's identified for seizure, is that photographed?

A. Yes, it is.

Q. Is that documented by the FBI?

A. Yes.

Q. And is that evidence then identified in some particular way?

A. Yes, it is.
Q. Tell us about that.
A. So after the photos have been taken of the evidence items, it's then placed into bags. These bags are marked with a case file number. An item number for the evidence item is identified. There would be a description of where that item was found, and a specific description of the location where it was found.

From there, that item would be secured in the bag with evidence tape, agent would initial over the evidence tape and date, then be taken to the FBI office. In this case, the Rochester Resident Agency, we have an evidence control room. It's a secure room with an evidence control technician that controls access to and from the room. So, agents, task force personnel can't just access that room willy-nilly, whenever they want.

A chain of custody form goes along with the evidence. So whenever that evidence changes hands, there's a record by time, date, group as to who had possession of that evidence at that time.

Q. I want to turn you specifically to this investigation, your testimony here today. Were you involved in an investigation of an individual named Dominic Pezzola?
A. Yes, I was.
Q. And were you involved in the search that was conducted on a

residence associated with Dominic Pezzola?
A. That's correct.
Q. And that was executed on January 15th, 2021; is that right?
A. Yes.
Q. And without providing the address, can you just describe the location, including the city and state, where the location was?
A. It was a two-story, single-family residence with white siding and attached carport located in the city of Rochester, New York.
Q. And you said you executed that search warrant on January 15th, 2021?
A. That's correct.
Q. Were you part of the group of agents who executed that search warrant?
A. Yes, I was.
Q. How many agents were participating in the search?
A. There were approximately seven personnel total.
Q. Is that a common number to execute a search of a family residence?
A. It would be very routine for a dwelling of that size.
Q. And who was present at the residence at the time of the search?
A. When we approached the residence, Dominic Pezzola's common-law wife was present, as well as two teenaged daughters.

Q. How did you and the other agents gain access to the residence?

A. We knocked, announced our presence. His wife responded to the door. We explained, you know, the reason we were there. We showed her a copy of the search warrant, and she worked with us to help triage the residence for locations where we're most likely to find what we were looking for, to kind of streamline the process.

Q. And you said to "triage." Can you explain what the nature of your interactions were?

A. Yeah. She was a little upset, obviously, based on the events that transpired. And we want to make it as painless as possible for the family, as far as we don't want to root through a lot of unnecessary locations, particularly like teenage girls' bedrooms, things of that nature.

So we asked, with her consent, to show us, you know, specific locations where the subject most likely had items related to him, where they were located, and we focused primarily on those locations.

Q. And through your training and experience and those interactions, was the FBI able to conduct a thorough search of the residence?

A. Absolutely.

Q. Now, prior to conducting the search, do you familiarize yourself with the search warrant?

A. Yes, I did.
Q. And did it -- can you briefly describe the items that were permitted for seizure under the search warrant?
A. Yes. So it's a pretty extensive list, but, essentially, we're looking for evidence of intention to unlawfully enter the Capitol building on or about January 6. Evidence that there was a plan or planning to disrupt an official proceeding at the Capitol building. Items that might have been worn, as far as clothing, on that date. Items that might have been used to breach the Capitol building on that date.

Any and all electronic media. So, essentially, anything that was capable of storing data. Things that would be reference to the subject's state of mind on or around the time that this happened. And lastly, anything that would indicate affiliation between Dominic Pezzola and the Proud Boys.
Q. And through the course of the search, did the FBI recover items that were eligible for seizure under the warrant?
A. Yes, we did.
Q. Have you had a chance to review the items that have been marked for purposes of this trial as Government Exhibits 23 through 29?
A. Yes, I have.
Q. And that was last week, here in D.C.; is that correct?
A. That's correct.

Q. Did you have a chance to inspect the packaging of those items?
A. Yes, I did.
Q. Did you see any evidence of tampering with the packaging of those items?
A. No.
Q. Did you have an opportunity to open up those items and inspect the items inside as well?
A. Yes, I did.
Q. And did you identify any evidence of tampering with those items themselves?
A. No.
MR. McCULLOUGH: So, Your Honor, permission to approach the witness. I'm happy to ask you each time. Your preference.
THE COURT: You may approach the witness. And in conjunction with the evidence you're seeking to admit, you may repeatedly approach the witness.
MR. McCULLOUGH: Thank you, Your Honor.
BY MR. McCULLOUGH:
Q. Special Agent Klapec, I'm going to hand you what's been marked as Government Exhibit 23. It's 1.B.15.
Have you had a chance to examine what's inside that package prior to today?
A. Yes, I have.

Q. And can you give us a brief description of the item itself?
A. This is a spiral bound notebook.
Q. I'm going to ask you to go ahead and open it up and look inside without showing it to the jury.
MR. HULL: Your Honor, another gentleman with a soft, nice voice. Keep it up a little bit, if you could.
THE COURT: All right. And the prosecutor indicated -- one thing we -- our house rules here are, is that everyone keep their mouth close to the microphone. The other is that everyone keep their voices up. We have a lot of people here who want to hear. So, I'm going to have a sign made, but until then, if you -- if you would.
THE WITNESS: Yeah. Apologies.
BY MS. McCULLOUGH:
Q. Does that appear to be the same notebook that was recovered from the residence of Dominic Pezzola on January 15th, 2021?
A. Yes, it does.
MR. McCULLOUGH: Your Honor, we move for admission of Government Exhibit 23.
MR. METCALF: Objection as to foundation, Your Honor.
THE COURT: Overruled. The document will be admitted.
BY MS. McCULLOUGH:
Q. Special Agent Klapec, I'm going to retrieve that from you.
A. Here you go.

Q. Special Agent Klapec, does this include any handwriting within it?
A. Yes, it does.
Q. Does this include a three-page memorandum -- a three-page statement in handwriting?
A. That's correct.
Q. Special Agent Klapec, I think you had us at that page, and I stopped you.
Thank you.
Special Agent Klapec, would you just read the first sentence of this statement?
MR. METCALF: Objection. Hearsay.
THE COURT: Overruled.
A. "There are many reasons why I want to join the Proud Boys."
BY MS. McCULLOUGH:
Q. And does this then continue to list approximately two and a half pages of various reasons that the author was discussing joining the Proud Boys?
A. That's correct.
Q. I'm going to read the first paragraph to you, and then ask you to follow along as I read it. Do you understand?
A. Yes.
MR. METCALF: Your Honor, objection. The document speaks for itself. And a continuing objection to foundation and hearsay.

THE COURT: Overruled.

MS. HERNANDEZ: Your Honor, could we have a limiting instruction?

THE COURT: We'll take that up outside the presence of the jury.

BY MR. McCULLOUGH:

Q. "There are many reasons why I want to join the PBs. First of all..."

MR. METCALF: Our objection is to form.

THE COURT: Overruled.

BY MR. McCULLOUGH:

Q. I'll start again.

"There are many reason why I want to join the PBs. First of all, I'm a patriot. I love my family, my country, my flag, my freedom, and all of which are under attack by radical socialists. I'm a first-generation American. My family came here from Italy in the '60s. I'm just starting to see success with my business, but now it's being threatened with unconstitutional lock downs and a tyrannical governor.

"I'm willing to fight until my last breath to make sure my children and their children don't inherit a communist country. I've also seen what happens to the supporters on our side, and I'm willing and able to help protect them. I took an oath to support and defend the Constitution from all enemies, and it doesn't expire."

Did I read that correctly?

A. Yes, you did.

Q. Continuing on with the next paragraph.

"What can I contribute? My time in the Marine Corps has embedded traits like loyalty, commitment, and honor into my character. I have been in subordinate and leadership positions, so I know how to lead and to follow. I'm a physically fit 43-year-old male who owns his own business. My schedule is very flexible, and I can be anywhere I'm needed at any time. I've been in many tense situations during my lifetime, and I know how to keep my composure under pressure."

Did I read that correctly?

A. Yes, you did.

Q. And asking you, Special Agent Klapec, Dominic Pezzola was approximately a 43-year-old male at the time?

A. That's correct.

Q. And it's your understanding that owned his own business?

A. Yes.

Q. Is this written from the perspective of someone that was likely Dominic Pezzola?

MR. METCALF: Objection as to state of mind of someone else.

THE COURT: It's -- the objection to the question is sustained, although I'm not sure it's the state of mind of someone else. But, objection -- the counselor shall ask a

different question.

MR. McCULLOUGH: And that objection is just to the last question; is that correct?

THE COURT: Correct.

MR. McCULLOUGH: Okay.

BY MR. McCULLOUGH:

Q. I'm just going to continue on.

"In the civilian world, I have been in the construction industry for most of my life. I have picked up skills with everything from electrical to flooring installations. I know what it means to have" -- "I know what it means to have to work with a team to accomplish a mission. In my time with the Marine Corps, my MOS was 0351. Infantry assaultman or super grunt they would call us, basically because we were attached to a rifle platoon and always ended up humping the most gear.

"As an 0351, we specialized in demolitions and antiarmor munitions. I was awarded sharpshooter badges, and we practiced Marine Corps martial arts. I've also been a boxer since the age of 14. These things have taught me a lot of discipline throughout my lifetime."

Did I read that correctly?

A. Yes.

Q. Move on to the next paragraph.

MR. METCALF: Your Honor, I would continue to object to the form of the question as leading. We consented to the

document coming in.

THE COURT: Sustained as to leading.

MR. McCULLOUGH: Your Honor, just -- I'm asking the question: "Did I read it correctly, yes or no?"

That is -- that's --

THE COURT: Well, correct. But -- let me have counsel pick up the telephone, please.

(Bench discussion:)

THE COURT: I mean, Mr. McCullough, you're right that the final question is that way. But you are reading the document and then just having him say, "Did I read that correctly."

Is there any reason you can't just have the witness read the document?

MR. McCULLOUGH: Your Honor, I'm happy to have him read it. That's fine.

THE COURT: I mean, I think that's the proper way to do it.

MR. McCULLOUGH: That's fine.

THE COURT: You know, can you read --

Mr. Pattis?

MR. PATTIS: Biggs joins in that because this is inappropriate vouching and falls --

THE COURT: Fine. Fine.

MR. PATTIS: -- on the credibility of the

prosecution.

THE COURT: He can ask the witness to read the document. That's all we're going to go. All right.

Ms. Hernandez?

MS. HERNANDEZ: Thank you, Your Honor. I'm not sure. Maybe the Court already ruled on this, but why is this document being read word for word? The Court is admitting it into evidence. It's like any other piece of evidence. You don't get to, like, go over and over and over.

THE COURT: We've had all sorts of -- this is fine for the prosecutor to ask questions about the document, and if that's -- "would you please read that paragraph," I don't find that -- that's not objectionable.

MS. HERNANDEZ: Yeah, I understand. But it appears like they're going to read the entire three pages. If it's just one paragraph or one phrase --

THE COURT: We could have gotten through most of it if we weren't at sidebar here.

(Open court:)

BY MS. McCULLOUGH:

Q. Special Agent Klapec, I'm going to ask that you continue with our reading of the document. So, I'll focus you just on the top line here, which starts with, "As for..."

Do you see where that is?

A. Sure. Yes.

Q. If you'd please read that next paragraph from there.
A. "As far as career and life goals, I own a very successful commercial flooring company. My employees and I are highly skilled and very good at what we do. I would like to keep working so I can finish raising my daughters, send them off to college with as little debt as possible, and try to save to quietly and comfortably retire with my wife.

"Ultimately, if we're not in a civil war, I would like to open a dog sanctuary. I've always been quite the dog person."

Q. Moving now to the next paragraph. You'll read that?
A. "With today's political climate, unfortunately, I see things getting worse before they get better. I truly believe this is a battle between good and evil, freedom versus tyranny, capitalism versus communism. I love this country. There's nowhere else for us to go in this world to live and raise our" -- "to live and raise our families as free men. That's why I believe it is 100 percent upon us patriots to stand up and take back our God-given liberties, just like our founders did.

"I'm not a violent man, and I don't want to see this country tear itself apart, but those on the other side have made it clear that they hate us and want to destroy us and our way of life. That's why, when and if the time comes, I'm willing to stand first on the line to protect who I love and

what we stand for."

Q. Thank you, Special Agent Klapec.

This handwritten letter/statement began with "There are many reasons why I want to join the PBs," is that right?

A. That's correct.

Q. Did the FBI recover any items related to the PBs, or the Proud Boys, during its search?

A. Yes, we did.

Q. All right. Show you what's been marked as Government Exhibit 29, also 1.B.16.

Special Agent Klapec, have you had an opportunity to review that prior to today?

A. Yes, I have.

Q. Can you give us a brief description of the item itself?

A. This is a black tactical vest, particularly a plate carrier, so it has protective plates on the interior. It contains two name tags on it. One says "Proud Boys." The other says --

Q. I'm going to stop you right there.

A. Okay.

Q. Just before you publish anything to the jury, I'm going to ask you to just open it up and look inside.

A. Sure.

Q. Thank you.

And before you take it out, if you'll just take a look

at it, and just please tell the jury whether that seems to be in the same condition it was when it was recovered on January 15, 2021?

A. It appears to be the same condition.

MR. McCULLOUGH: Move to admit Government Exhibit 29.

MR. METCALF: No objection, Your Honor.

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

BY MS. McCULLOUGH:

Q. Please go ahead and pull that out of the bag.

And you were beginning to just describe this as a ballistic vest; is that right?

A. That's correct.

Q. Does it appear to be a functional ballistic vest?

A. Based on the weight, I would say.

Q. Why do you say "Based on the weight"? What does that mean?

A. That the plates, by weight, are pretty durable. I would indicate that these would probably work.

Q. Special Agent Klapec, does this have some Velcro patches on it?

A. Yes, it does.

Q. Can you tell me what the Velcro patches say?

A. One says "Proud Boys." The other one says "Spazzo."

Q. Does it have any other identifying patches on it?

A. There's a subdued American flag, and there's also a

United States Marine Corps flag.

Q. You mentioned the Velcro patches that are on the front of that ballistic vest?

A. Yes.

Q. Did the FBI recover any additional patches during the search of Dominic Pezzola's residence?

A. Yes, we did.

Q. Similar in kind?

A. Yes. Pretty identical.

Q. I'm going to hand you what's been marked as Government Exhibit 28, 1.B.11.

You had an opportunity to examine that prior to today?

A. Yes, I have.

Q. And what's inside Government Exhibit 28 -- what's been marked as Government Exhibit 28?

A. These are uniform tags stating "Proud Boys" and "Spazzo."

Q. And go ahead and open that up, please.

And ask you, now that you've got that open, do those patches appear to be in the same condition that they were when they were seized from the residence of Dominic Pezzola on January 15th, 2021?

A. Yes, they do.

MR. McCULLOUGH: Move Government Exhibit 28 into evidence.

MR. METCALF: No objection.

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

BY MR. McCULLOUGH:

Q. How many additional patches are there?

A. I have five.

Q. And I think you said before what these patches say on them?

A. Some of them say "Proud Boys." The others say "Spazzo."

Q. Did you identify any other Proud Boys items within the house of Dominic Pezzola?

A. Yes, we did.

Q. Handing you what's been marked as Government Exhibit 24.

Have you had a chance to look at this prior to today?

A. Yes, I have.

Q. And what is inside Government Exhibit 24?

A. This is a Proud Boys T-shirt.

Q. Go ahead and open it up.

Does it appear to be the same T-shirt that was seized from the residence of Dominic Pezzola?

A. Yes.

MR. McCULLOUGH: Move to admit Government Exhibit 24.

MR. METCALF: No objections.

THE COURT: All right. It will be admitted. And permission to publish.

BY MR. McCULLOUGH:

Q. Special Agent Klapec, holding up the black T-shirt in front

of you. What does the front of the T-shirt say?
A. It says, "Proud Boys FAFO."
Q. And based on your investigation, do you have an understanding as to what "FAFO" means?
A. Yes, I do.
Q. And what does it mean?
A. I'm not sure of the exact sensitivities of everybody in the room, so I'm going to kind of censor myself here. It stands for "F around and find out." The first letter is an expletive.
Q. And I'm turning it around. The back of the T-shirt, what is written on the back of the T-shirt?
A. "Battle of Washington, D.C., December 12th, 2020."
Q. Special Agent Klapec, you seized a Proud Boys T-shirt; is that right?
A. That's correct.
Q. Why would the FBI seize a Proud Boys T-shirt?
A. As I stated earlier, specified within the search warrant was any affiliation with the Proud Boys.
Q. And why is affiliation with the Proud Boys relevant to an investigation?
MR. METCALF: Objection. Speculative.
THE COURT: Overruled.
THE WITNESS: So, in this case, there were -- federal crimes were outlined in the search warrant. One of those was conspiracy. So, clearly on January 6, there were probably tens

of thousands of people in Washington, D.C., on that day engaged in First Amendment-protected activity. There was a smaller number that engaged in federal criminal activity that day, a number of whom were Proud Boys.

And we had linked the subject, Dominic Pezzola, to other Proud Boys whom he traveled down to D.C. with that day. We believe that it's important to identify connections with the Proud Boys as you would in any investigation, any groups -- any groups working in concert. You need to identify --

MR. JAUREGUI: Objection. At this point it's a narrative.

THE COURT: All right. Overruled.

A. It's important to identify what rules those individuals played within an organization, any hierarchy of the structure of the organization, and any command and control over the organization.

BY MR. McCULLOUGH:

Q. Special Agent Klapec, I'm going to show you government exhibit -- I'm going to hand you Government Exhibit 27. That's 1.B.8.

Have you had a chance to examine that prior to today?

A. Yes, I have.

Q. And can you give us a brief description of what's inside that package?

A. This is a Proud Boys decal.

Q. Go ahead and open that up and look inside.

And ask you, does that decal appear to be in the same condition it was when you seized it?

A. Yes, it is.

MR. McCULLOUGH: Permission to move Government Exhibit 27 into evidence.

MR. METCALF: No objection.

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

BY MS. McCULLOUGH:

Q. Showing you the decal on the ELMO now.

Special Agent Klapec, can you just tell me any of the objects that appear in the decal?

A. Within the logo, there appears to be brass knuckles.

Q. And within the brass knuckles, is there any lettering?

A. Yes, there is.

Q. What is that letter?

A. So we have the aforementioned "FAFO," and also "uhuru."

Q. Do you have an understanding based on the investigation what "uhuru" means?

A. Yes, I do.

Q. And what is "UHURU"?

A. It's my understanding it's a Swahili term that means freedom.

Q. And the decal also says "Proud Boys" on it; is that right?

A. That's correct.
Q. Special Agent Klapec, was there any Proud Boys literature identified in the residence?
A. Yes, there was.
Q. I'm going to hand you what's been marked as Government Exhibit 25.
Have you had a chance to look at that prior to today?
A. Yes, I have.
Q. And what is -- what's inside that package?
A. This is a Proud Boys document.
Q. And I'm going to ask you to go ahead and open that up and look inside.
Is that a multipage, typewritten document?
A. Yes, it is.
Q. And does that appear to be in the same condition as it was when it was seized at the residence of Dominic Pezzola on January 15th, 2021?
A. Yes.
MR. McCULLOUGH: Move Government Exhibit 25 into evidence.
THE COURT: All right. Subject to the objections also stated, it will be --
MR. METCALF: I also want to add foundation as well.
THE COURT: Subject to the objections already stated, it will be admitted -- or, over those objections, it will be

admitted.

MR. McCULLOUGH: And, Your Honor, just for the record, the objection as to foundation, overruled?

THE COURT: The objection as to foundation is overruled.

BY MR. McCULLOUGH:

Q. I'm going to put this up on the ELMO, Special Agent Klapec. And looking at the first page of the document; is that right?

A. That's correct.

Q. Can you just read the top two lines on this?

A. "Proud Boys meet-up. Stations of the Congregation."

Q. Turn you to page 4 of the document. And just to orient you, this is at the bottom of page 4, and ask that you read the paragraph that begins -- the paragraph at the top of the screen that you see.

A. "The above reading is all that's required of Proud Boys meet-up. The following stations are encouraged, but not mandatory."

Q. And continue reading.

A. "Station 1 should be printed out and brought to all meet-ups. The following stations are not mandatory, and are just notes to help understand the organization."

Q. And then the final paragraph.

A. "Note: The secret handshake obviously can't be printed out here. This will be made available to your chapter upon contact

with the elders. Talk to a Third Degree in the New York chapter" -- "NYC chapter."

Q. We're going to turn back to page 1. I'm going to ask you to read the bolded type, the top two paragraphs.

A. "Before the meetings begin, clear the area of all women and of men who are not at least First Degree. If doors cannot be closed, the Proud Boys assemble to an area that is as secluded as possible. This area is protected by two main guards who are assigned to monitoring the perimeter. The following is to be read aloud by the brother in charge."

Q. And then what follows is some lower-case text; is that right?

A. Yes.

Q. I'm going to ask that you continue reading the lower-case text and skip the all-caps text that intervenes.

MS. HERNANDEZ: I'm sorry, Your Honor. If we're going to read parts, can we read the whole thing?

THE COURT: Objection is overruled.

BY MS. McCULLOUGH:

Q. I'm just asking you begin reading where it begins with "Brothers."

A. "Brothers, we are about to open this council in the First Section. All persons not having received the honors of membership in the First Degree shall please retire from the chamber. The doors shall now be closed and the guards assume

their positions. Bothers, do you vouch that all present are in possession of First-Degree membership?"

Q. And continuing on.

A. "Repeat after me: I am a Western chauvinist who refuses to apologize for creating the modern world."

Q. Continuing on to page 2, and just reading the top paragraph, please.

A. "New members, raise your hands. Welcome, gentlemen, to the greatest fraternal organization in the world. What happens at this meeting is only to be discussed among other Proud Boys, and only if they are your degree or higher. You are our brother now. We have your back as you have ours. We don't care what race you are or what sexual" -- I'm sorry -- "or what your sexual preference is. The only prerequisite of this organization is that you are a man and you recognize the West is the best."

Q. And the document continues with a suggestion of a -- reading a passage from Pat Buchanan's *The Death of the West*; is that what it says?

A. That's correct.

Q. And that section of the document, that was identified as Station 1; is that correct?

A. Yes.

Q. I'm going to take you to Station 2 now.

Do you see that on the screen, Station 2?

A. Yes.
Q. And if you'll just read the top all-caps text there.
A. *Proud of Your Boy*. It is healthy to sing our anthem at least once a night, but this isn't always possible. Ideally, we seek out venues that have a jukebox with this song available."
Q. And do you have any familiarity of the lyrics of the song that are listed below that?
A. Yes.
Q. And what is -- what are the lyrics?
A. It's from a children's cartoon movie, *Aladdin*.
Q. And focusing your attention on Station 3. How is Station 3 captioned?
A. Station 3, "How to perform the three degrees."
Q. And under the section identified in all caps as "First Degree," do you see that?
A. Yes.
Q. I'm just going to ask you to read the first paragraph of that.
A. "All that's required here is that the Proud Boy publicly declares the following: I'm a Western chauvinist who refuses to apologize for creating the modern world."
Q. Let's move down to Second Degree.
Do you see that all-cap section, it says, "Second Degree"?

A. Yes.
Q. Read what the document sets forth beneath Second Degree.
A. "Five Cereals. The counter, a brother not involved in the fight who counts each cereal, after determining its validity, leads this ritual. Before the punching starts, the prospect has to repeat his First-Degree oath: I am a Western chauvinist who refuses to apologize for creating..."
Q. Continues on to the following page.
A. "...who refuses to apologize for creating the modern world."
"Then the counter says, 'You will now list five breakfast cereals.' While the prospect recites the cereals, five Proud Boys must pound him. Shots to the head and below the belt are discouraged, but not against the rules. The Proud Boy receiving his licks is not meant to fight back, but doing so does not negate his Second Degree. After the beating, the brother gets a hug from the counter as he says, 'Welcome aboard,' and everyone says 'Proud of Your Boy' several times."
Q. I'm going to stop you right there. I'm going to move you down to the section that says, "Third Degree."
Do you see where it says, "Third Degree"?
MR. SMITH: Judge, we object. We don't understand the relevance to the cereals and this food stuff and what we're doing right now.
THE COURT: Your objection is relevance?

MR. SMITH: Yes. And 403.

THE COURT: All right. It's overruled.

MR. SMITH: Character evidence.

I'm sorry. Thank you.

THE COURT: It's overruled.

BY MR. McCULLOUGH:

Q. Underneath "Third Degree" -- do you see where it says "Third Degree" on the page?

A. Yes, I do.

Q. Read the next paragraph.

A. "You need the words 'Proud Boy' tattooed anywhere on your body, and you must preserve the tenets of your First and Second Degree. There are no rules on how the words must look, though the norm is to pursue the traditional tattoo font of yore."

Q. Then, do you see where it says, "Fourth Degree"?

A. Yes, I do.

Q. And can you please read the paragraph beneath "Fourth Degree"?

A. "This degree is loosely defined as 'engaging in a major conflict for the cause.' Being arrested is not encouraged, although those who are immediately become Fourth Degrees because the Court has registered a major conflict. Serious physical fights also count, and it's up to each chapter to determine how serious conflict must be to determine Fourth."

Q. Special Agent Klapec, are there -- is there also some

juvenile humor in this document?

A. Absolutely.

Q. And is there also references in this document to the kind of attire that a Proud Boy should wear?

A. That's correct.

Q. Something like the last page of this, where at the top it says, "We hate flip flops and cargo shorts"? Do you see where it says that?

A. Yes.

Q. And that kind of language and that kind of discussion is also found in this document; is that right?

A. That's correct.

MR. McCULLOUGH: No further questions, Your Honor.

THE COURT: All right. Very well.

Cross-examination?

MR. SMITH: We have no questions, Your Honor.

THE COURT: All right. Mr. Biggs?

MR. HULL: Your Honor, we have just a few.

THE COURT: All right. Very well.

MR. HULL: One moment, Your Honor.

CROSS-EXAMINATION

BY MR. HULL:

Q. Special Agent Klapec, my name is Dan Hull. I represent Joseph Biggs, along with this -- Joseph Biggs is over here -- and along with this tall gentleman with the ponytail.

You've worked for the FBI how long?
A. 18 years.
Q. 18 years. And how many searches do you think you've been involved with, just very roughly?
A. Somewhere in the neighborhood of 30 to 40 searches.
Q. 30 to 40. And they generally involve about seven people?
A. Correct.
Q. Seven to eight, depending on --
A. Depending on the size of the residence.
Q. Okay. And you're asked any time that you do -- seize evidence, to basically gather evidence of a crime, correct?
A. That's correct.
Q. And I think you told me -- and correct me if I'm wrong -- that -- you told us all, that the crime here had something to do with an advance on the Capitol on January 6, 2021, correct?
A. Yes.
Q. Okay. And I just want to ask you just a few questions about how some of the items that you seized had anything to do with the crime. And before I ask you that, I want to ask you, were there other items that you seized that you weren't presented with by the government today?
A. Yes, there were other items.
Q. Can you give us a summary of the types of or groups of items that you seized as well?
A. There was electronic media, like smart phones and a thumb

drive.

Q. Anything else?

A. There were some commercial-grade fireworks.

Q. Commercial-grade fireworks?

A. Correct.

Q. And you're from the Rochester area yourself? That's where your -- work out of that field office; is that correct?

A. That's where I'm assigned.

Q. Okay. I'm just going to ask you, and I want to make sure I get the number of the exhibit correctly. Introduced, marked as -- I want to make sure I got this right. It's Exhibit --

(Off-the-record discussion with government counsel.)

BY MR. HULL:

Q. Exhibit 1103C is the Proud Boys meet-up or the Stations of the Congregation, correct?

MR. McCULLOUGH: Your Honor -- Your Honor, we -- we object to -- Court's indulgence, Your Honor. Just a quick --

THE COURT: All right.

MR. McCULLOUGH: I do not like going to the phone, but just very quickly.

THE COURT: All right.

(Bench discussion:)

MR. McCULLOUGH: I believe this document is identical, but this document was actually sourced from a different place. So I just, you know --

MR. HULL: I'll just skip the Word document.

MR. McCULLOUGH: Yeah. That's my point, is I think Government Exhibit 25 is the exhibit he were just working with, so --

MR. HULL: 25. All right.

THE COURT: Proceed with that document, Counsel.

MR. HULL: I apologies. I didn't get the right number and the right document. I think I have a nonconforming document here, and the Department of Justice has been kind enough to hand me the right one. And this is Document 26 -- Exhibit 26 -- 25, for the record.

(Open court:)

BY MR. HULL:

Q. And you just went through this. It's the Stations of the Congregation, and you read -- you know, we read part of it out loud.

Have you ever been in a fraternity or club?

A. No.

Q. You never have. But you're aware that, you know, Americans and boys had clubs -- fraternities, different kinds of clubs, things like that, correct?

A. Correct.

Q. Are you also aware that the Proud Boys have, you know, slightly different -- that they are a decentralized organization.

A. That's correct.
Q. You know that much about them. You also know that they tend to be a relatively new organization, say 2016, 2017, something like that?
A. That's accurate.
Q. All right. And in the course of making up rules, either broadly, nationally, or locally, they tend to experiment from time to time with the kinds of rules they want to have as a new organization.
That make sense to you?
A. That's possible. I don't know how rigid their structure is with those kind of things. It's not really my position to make an assessment how accurate that is.
Q. Just with respect to 25 -- to Exhibit 25 that we're talking about here, how is any of this evidence of a crime?
A. So, actually, I think there's things in there that, you know, play to the state-of-mind aspect of the subject.
Q. Well, like what kinds of things? What would you have in mind?
A. I'm not sure if we actually even read it.
Q. Read it? Do you recall from looking at the document --
A. I recall it from my memory.
Q. Okay. So, you're familiar with this document. You've read it before --
A. Yes.

Q. -- even though you didn't read it all today; is that right?
A. Correct.
Q. Okay. And part of the document refers to -- let's take one thing -- about, sort of, an oath: I refuse to apologize for the Western world, and I am a -- and I'm paraphrasing here -- a Western chauvinist.
Do you recall that?
A. Yes, I do.
Q. Do you have any idea or notion from your familiarity of the document what that means?
A. They define it themselves as aggressive or excess patriotism.
Q. Okay. So it doesn't have anything to do with chauvinists in the sense of antifeminism or anything like that. Would you agree with me on that?
A. In their world, it does not.
Q. Okay. And also, there was -- you were taken through a few of the rituals that they had with respect to the Second Degree and Third Degree and Fourth Degree. You recall that?
A. Yes, I do.
Q. Okay. On the Second Degree, I believe that that involved a tattoo; is that correct?
A. That's not correct.
MR. McCULLOUGH: Objection. Misstates.
BY MR. HULL:
Q. Do you remember what the Second Degree was?

A. Second Degree was the ritual.
Q. Was what?
A. The ritual.
Q. The ritual. And what is the ritual again? Can you go through that with us?
A. It was previously stated. It was read to the courtroom. Essentially, the new, you know, recruit is beat into the organization. He has to recite five different breakfast cereals.
Q. That's the cereal thing. Excuse me. Thanks for correcting me.
So, you agree with me that part of this is to get a group of people together and go through an initiation of sorts, correct?
A. That's accurate.
Q. Okay. Would you also agree with me that there is some limits on the amount of violence or kinds of discomfort or injury that you could cause to a member?
MR. McCULLOUGH: Objection. Calls for speculation.
THE COURT: He can answer --
BY MR. HULL:
Q. Based on your understanding.
THE COURT: He can answer it based on the contents of the document.
A. It was a little ambiguous. You know, it said that blows to

the head and below the belt were discouraged, but not prohibited. So, it seems like there's some discretion there.

BY MR. HULL:

Q. Okay. So, some of the documents seem to suggest that there would be some leeway or instruction about how to do this; in other words, "let's not go crazy."

Would you agree with me?

A. That's probably accurate.

Q. Okay. Do you know who wrote this document?

A. No, I do not.

Q. Do you know when it was written?

A. No.

Q. Do you know where it comes from?

A. No.

Q. But you're familiar with the document?

A. That's a document that we found in Dominic Pezzola residence, so I'm familiar with that document.

Q. Well, you know it came from there, but did you ask any other questions about it?

A. No.

Q. Okay. That wasn't part of the scope of your job in connection with the search and seizure of Mr. Pezzola's apartment -- or house, rather?

A. It was part of the scope because we specified in the search warrant to identify any items that would suggest an affiliation

with the Proud Boys.

Q. Okay. So you seem to be pretty familiar with the kinds of thing that it does and the ways it might go to state of mind of the people who had the document, but, yet, you don't seem to know exactly how it was authored, when it was authored, or who authored it. Would you agree with me on that?

A. Yeah, I don't know those specifics.

Q. Okay. On the -- there's some testimony about the -- excuse me if I get this wrong -- the *Aladdin* song. Do you recall that, the *Aladdin* song from --

A. Yes.

Q. It's from a Walt Disney musical, is it not?

A. I don't know if it's Walt Disney or not.

Q. All right. And you have some background or have done some study with resect to the origin and, sort of, the Proud Boys culture, or would have by now, having done the search and seizure, correct?

A. To some extent.

MR. McCULLOUGH: Object to foundation.

BY MR. HULL:

Q. I'll ask it this way: Part of what you did was to find documents that went to state of mind; isn't that correct?

A. I'm sorry. Can you restate the question?

Q. State of mind was part of the purposes of your finding -- I think you said early on -- and, excuse me --

A. Yes.
Q. -- let me ask a better question or lay it down a little bit better.
You said you were looking for things that were evidence of a crime, but also evidence of the state of mind of Mr. Pezzola or, you know, people associated with him, correct?
A. That's correct.
Q. All right. Did you do any study after you did the seizure or before, at any time, about how the *Aladdin* musical fit into the Proud Boys culture?
A. So, I did. I don't know how truthful that was.
Q. Right.
A. So, it's hard for me to assign, like, what that even means.
Q. Did you know the Proud Boys were started by a comedian?
A. Yes.
Q. Did you know that the Proud Boys started by a comedian who was born in England, has Canadian citizenship, and had a television show, or a number of them, for a while?
MR. McCULLOUGH: Objection. Relevance.
MR. HULL: State of mind.
THE COURT: Well, it's -- I'm going to sustain the objection.
BY MR. HULL:
Q. Do you know whether or not the Proud Boys are -- well, in your mind, are they an entirely serious organization? Is this

an organization for just a very -- one serious purpose, for fun, or a mixture of things?

A. I believe they're a mixture.

Q. Do you know how many years the Proud Boys have been in existence?

A. I don't have an exact date when they were founded.

Q. Okay. Let's go to the other document you looked at. I forget -- what was the number of that? It was the exhibit -- I think the first exhibit you looked at.

Do you have the number? 23?

23, I think, was the exhibit you looked at that was the notebook that Mr. Pezzola had. That was the first thing that you talked about here today. I just want to ask you a few more questions, and I'll sit down.

There's a number of things that he talks about biographically in that notebook; why he became a Proud Boy, some of his thoughts. I won't go over every single one of them, but it has to do with, you know, he's a certain age. He has a family. He's a first- or second-generation immigrant from Italy. That he has a business. That he has certain concerns about where the country is going culturally, politically. You know, all of that.

Are any of those statements or the things that he says in there -- in that journal, if you will, are any of those evidence of a crime?

A. In and of themselves, they're not evidence of crime. It does speak to state of mind.

Q. State of mind in what way, sir?

A. So, essentially, he outlines a skill set -- a skill set that involves boxing; martial arts that he learned through the United States Marine Corps; tactical experience he gained through the Marine Corps; leadership he learned through the Marine Corps, not only to be a leader, but also to be a follower and take orders.

At the end he says, "While I'm not a violent man," basically, that he is prepared to stand in front to do what he has to do to protect what he believes in. So, I believe he offered his skill set and services to the Proud Boys.

Q. Okay. Well, so it has to do with his state of mind and his skill set and the way he fits into the Proud Boys.

Do you know how long he had been a Proud Boy or associated with the Proud Boys at the time that was written?

A. He'd -- overall, he'd only been in the Proud Boys a short period of time.

Q. Short period of time. So do you have an idea -- just, you know, January 6, 2021, let's assume that was written sometime before that.

Do you have any kind of understanding now of when Mr. Pezzola became a Proud Boys?

MR. McCULLOUGH: Asked and answered.

THE COURT: Overruled.

A. It was approximately two months.

BY MR. HULL:

Q. Two months. So he was a Proud Boy for two months. So, presumably, that document -- or, that journal, would have been -- he's a newbie, and he would have written that at some point in the first couple of months of his affiliation or membership in Proud Boys; is that right?

A. You know, that's kind of speculation on my part. I don't know how long he had been thinking about joining.

Q. I don't want you to speculate.

A. No.

Q. But, does that make sense to you?

A. It's possible. It's possible.

Q. Did you know that Mr. Pezzola was -- in addition to being in the Marines and having some kind of training in, you know, firearms, the things he did in the Marines, and also certain kinds of martial arts, that he was a Golden Gloves champ? Did you know that?

A. Yes.

Q. Okay. And I think in the Rochester area?

A. That's correct.

Q. Did you know he was a Golden Gloves champ for a number of -- excuse me, a participant in Golden Gloves for a couple of years running, correct?

A. Yes.
Q. All right. And would you agree with me that from looking at the document of this new member of the Proud Boys, that this is kind of a determined, goal-oriented, serious man who wanted to do the best for his family, his community, and the organization that he was joining? Does that make sense to you?
A. If you take what's written there at face value, that's how it's presented.
MR. HULL: I have no further questions.
THE COURT: All right. Very well.
CROSS-EXAMINATION
BY MS. HERNANDEZ:
Q. Good afternoon.
MR. McCULLOUGH: Court's indulgence, Your Honor. I think the -- Mr. Hull ran off with one of the exhibits.
BY MS. HERNANDEZ:
Q. Good afternoon, Special Agent. My name is Carmen Hernandez, and I represent Mr. Rehl, one of the defendants in the case.
Did I understand you to say that you believed that most of the people who came to Washington on January 6 came here to exercise their First Amendment rights?
A. That's correct.
Q. Okay. The prosecutors read some parts of this document. Let me ask you, first, there's a lot of stuff in here. Some of

it sounds a little silly, perhaps?

A. Are we talking about the document on the stations of the Proud Boy?

Q. Yes. Would you agree with me, some of it sounds a little silly?

A. Yes.

Q. Okay. But, nonetheless, this is a document you found when you did the search, correct?

A. That's right.

Q. And the government asked you to read certain parts of the document or read certain parts to you, and you indicated whether you had seen it or not seen it, correct?

A. Yes.

Q. Is it up on your screen or -- oh, it's not?

Can you -- I'm going to ask him some questions. Can you put it up on the screen, please? Is that a copy? I just want him to have a copy.

MR. McCULLOUGH: I can give him a copy.

MS. HERNANDEZ: Yeah, give him a copy, please. Thank you.

BY MS. HERNANDEZ:

Q. So one of the things that wasn't read, which I found admirable, is Station Number 4. Will you read that -- the first two paragraphs of that, please? Or would you prefer for me to read it and you just --

A. If you can give me a moment to find it.
Q. Sure.
A. Station Number 4. You'd like me to read this in its entirety?
Q. If you could. You can just read the first two paragraphs, it's fine. It just seemed a pretty moving part of this document.
A. So it says, "Our politics. We are not a political group. We are a fraternal brotherhood like the Elks Lodge or the Shriners. We are a multiracial group that is socially liberal and welcomes gay members. Again, our only nonnegotiable rule is you're a Western chauvinist who refuses to apologize for creating the modern word.

"Much confusion revolves around the world 'chauvinist,' as women tend to assume it means sexist. It means a person displaying aggressive or exaggerated patriotism. Almost all members are pro-Trump, but there are exceptions; our Pope being one of them."

Q. And do you know, are they talking about the Catholic Pope?
A. No.
Q. You don't know?
A. They're not talking about the Catholic Pope.
Q. Oh. What Pope are they talking about?
A. They're referring to another individual associated with their founder as a Pope.

Q. Okay. All right. The next paragraph.
A. "We disavow Nazis and don't want them at our meet-ups. We disavow racists and don't want them at our meet-ups. We allow weak, beta male versions to join because our fraternity is about helping men improve their lives, and that includes all men. If, however, a Proud Boy refuses to step up to the plate, he doesn't heed our advice and try it, he doesn't assimilate and engage with the group, he'll be asked to leave."
Q. And then Number 1 below that, "Abolish prison," that's another one of their tenets or -- is that correct?
A. That's correct.
Q. And following "abolish prison," on the next page it says -- go ahead. Could you read it, please?
A. "Give everyone a gun."
Q. No, not -- "There are too many men..."
Number 1, "Abolish prison."
A. I apologize.
"There are too many men in prison right now. We need to fix this mass incarceration problem. This obviously doesn't mean bust open the gates right now. It means we need to start going in the opposite direction. Recognize the people we are putting in cages are human beings. The following points lend themselves back to this one."
Q. And then Number 3, "Legalize drugs," could you read that, please?

A. "The drug war is a failure. Take away the profits from drugs, you take away gangs, and soon prisons are losing their best customers."

Q. And at the same time, you have -- you were talking about some things that appear to be a little silly. For example, the Second Degree Station, they're literally talking about breakfast cereals, are they not?

A. Yes.

Q. So on the page after that, one of the things they're supposed to do during this whatever initiation is, "You will now list five breakfast cereals."

Is that what it says there?

A. Yes.

Q. It's -- and did you -- in your investigation, is this supposedly for real?

A. That's what they do.

Q. So they actually stand there and have to, like -- I don't know, Cornflakes and Lucky -- you know, whatever?

A. Yeah. While beating them.

Q. And then they have this little paragraph --

MR. McCULLOUGH: Your Honor, we would have been happy to introduce this paragraph, as we talked.

THE COURT: Yes.

MR. JAUREGUI: I'm going to object to that speaking objection from the government.

THE COURT: Hold on. Let me have counsel pick up the phone.

And, Ms. Harris, if we can take the screen down, please.

(Bench discussion:)

MR. JAUREGUI: Judge, I'm going to object to counsel for the government not objecting and --

THE COURT: Well, he's not the first one. So, I understand. And all counsel are admonished to not speak on the objections. I've heard -- believe me, I've heard the defense do this more than once, and I haven't said a word. But, there's been a lot of -- there's been a lot more than just one word, your objection. Anyway --

MR. JAUREGUI: But in this case, there wasn't even an objection, Your Honor.

THE COURT: Pardon me?

MR. JAUREGUI: In this case, there was not an objection.

THE COURT: Well, is there an objection, Mr. McCullough? I mean, is there?

MR. McCULLOUGH: I object to not having the opportunity to introduce this on direct. To then have them -- to have them litigate and tell me I can't introduce this on direct and --

MR. SMITH: Your Honor, the prosecutor is yelling in

the courtroom, and I think I was admonished for doing exactly what Mr. Hull is doing, except more flamboyantly by --

THE COURT: Mr. Smith, you made your point.

MS. HERNANDEZ: Your Honor, I said I did not object, that I thought if they were going to introduce it, they should introduce it all. So, I'm not sure what Mr. McCullough is objecting to.

THE COURT: Look, I'm going to overrule the objection and allow Ms. -- I mean, I'm not sure what the point of this is, but if Ms. Hernandez wants to do this, I'm going to let her do this. No other defendant is objecting, so, obviously, it doesn't matter.

And, Mr. McCullough, you can ask whatever questions you would like about it on redirect.

(Open court.)

MS. HERNANDEZ: Thank you, Your Honor.

BY MS. HERNANDEZ:

Q. So, in the category of somewhat silly, there apparently is a paragraph about the number of times the Proud Boys are allowed to -- I think the term is "masturbate" during a month; is that correct? Is that what the "no wanks" paragraph is about?

A. Yes.

Q. And I term it a bit silly. Would you agree with me on that?

A. Yes.
Q. Now, there's these First Degree, Second Degree, Third Degree, which describes, supposedly, what is supposed to happen or what they have to do in order to achieve these degrees, correct?
A. That's correct.
Q. Let me ask you a question.
Were you -- did you investigate in any way, shape, or form how -- whether there are ways around these provisions or whether they must be followed to the T?
A. No.
Q. For example, if I asked you, is it possible, for example, to become a Fourth Degree by doing community service rather than engaging in a major conflict, do you know whether that's accurate or not?
MR. McCULLOUGH: Objection. Calls for speculation.
MS. HERNANDEZ: It's a good faith basis for the question, Your Honor.
THE COURT: The agent just said he did not --
MS. HERNANDEZ: I asked whether he's aware that that's a possibility.
THE WITNESS: I'm not aware of any such possibility.
BY MS. HERNANDEZ:
Q. I'm sorry?
A. I'm not aware of such possibility.

Q. You're not aware. But, did you -- did you go around and question -- let me back up.

Were you part of the investigation in this case?

A. Yes.

Q. So, did you interview a number of persons arrested in connection with January 6?

A. So, not everybody that had to do with January 6 were Proud Boys.

Q. Right. But the question to you is: Did you interview a number of January 6 defendants?

Just -- I'm breaking down the question.

A. Yes. But not all of them were Proud Boys --

Q. I -- I --

A. So, they might have been a January 6 defendant, but not a Proud Boy. So this wouldn't be relevant to them.

Q. So you did interview some January 6 defendants, correct?

A. Yes.

Q. Did you interview any Proud Boy -- any January 6 defendants who were also Proud Boys?

A. No.

Q. You did not?

A. I did not.

Q. Okay. Do you know whether any other FBI agents did?

A. Yes.

Q. Okay. Any in your office, or just not you?

A. Not me.
Q. Okay. So, again, a number of these provisions, like the "no wanks" provision, you don't know whether that's a strict requirement or whether that's tongue in cheek or --
A. I have no idea what that's about.
Q. Okay. And do you know whether this particular document was -- applies only to the -- whatever -- the Rochester Proud Boys chapter or other chapters?
A. I have no way of knowing if this applies to a local chapter or nationwide.
Q. Okay. And so, therefore, you don't know whether any of the other defendants are aware of any of these provisions in this?
A. I can say that from other reporting, I know that the degrees, how they're described here is roughly accurate to what I've heard in other places. But, a lot of this, I have nothing to compare it too.
Q. And did you say Mr. Pezzola was married?
A. So, I believe they would be considered a common-law wife. I don't think he was legally married.
Q. But he had children -- there were children living in the home?
A. Yeah. There were teenage children that he had in common with the same woman.
Q. And that statement that you read or that the government read early on, that they found about his service and his

dedication to America, do you -- were you able to confirm that he is, in fact, a veteran?

A. He served the United States Marine Corps. As far as defining a veteran as somebody who is deployed in combat overseas --

Q. You don't know?

A. -- I don't believe that's --

Q. And did you -- okay. Let's --

And did you know whether Mr. Pezzola was --

MS. HERNANDEZ: I'm going to stop there. I'm not going to ask you any more questions. Thank you so much.

Thank you. Thank you, Special Agent --

BY MS. HERNANDEZ:

Q. Oh, one last question.

You're a special agent. Would you agree with me that all FBI agents, that's the title, "special agent"? That's the general rank, "special agent"?

A. That's the title.

Q. That's the title, "special agent"?

A. Yes.

Q. It's not that -- I'm sure -- I'm not saying you're not special or that you mother doesn't think you're special, but that's the title to every -- that's the basic FBI agent title, correct?

A. Correct.

MS. HERNANDEZ: Thank you.

CROSS-EXAMINATION

BY MR. HASSAN:

Q. Good afternoon, Agent.

A. Good afternoon.

Q. My name is Nayib Hassan, and along with my colleague, Sabino Jauregui, we represent Mr. Tarrio.

Special Agent, let me ask you, what -- what department are you employed with?

A. Federal Bureau of Investigation.

Q. Okay. And prior to that, do you have any legal experience? Or, what's your education?

A. I have a bachelor's degree in national relations.

Q. Okay. Are you the lead agent on this case?

A. No, I'm not.

Q. And who is the lead agent on this case?

A. Lead agent on this case -- so, from our office, that agent is retired now. Lead agent on the overall investigation is a Washington Field Office agent.

Q. And do you know the name of that agent?

A. I believe so.

Q. And is that agent here, present in the courtroom today?

A. Yeah, I believe so.

Q. And would that be Mr. Hannick that's sitting in the courtroom today?

A. That's my understanding.
Q. Okay. Let me ask you a series of questions regarding the document that was established in Exhibit Number 25 by the government. That's the Proud Boys meet-up up. Stations of the Congregation. Okay?
A. Okay.
Q. You don't know when that document was created, correct?
A. I do not know when it was created.
Q. And you don't know how this document got into Mr. Pezzola's hands?
A. I don't know specifically how it got there, no.
Q. You don't know if this document was altered by Mr. Pezzola, or anybody else for that matter, correct?
A. That correct.
Q. You don't know if that document is a true meeting layout of the Proud Boys, correct?
A. I'm sorry. Could you say again?
Q. You don't if that document is a true meet-up layout of the Proud Boys, correct?
A. I don't know.
Q. You don't know if this document was downloaded from the internet?
A. I don't know that.
Q. You don't know if the document was altered by Mr. Pezzola himself?

A. I don't know that.
Q. You don't know if this document is still adopted and followed by the Proud Boys organization, correct?
A. I do not know.
Q. In fact, you don't know anything about this document other than the fact that you retrieved it from Mr. Pezzola's house, correct?
A. That's correct.
Q. You don't know if this document has been altered by New York City or New York Rochester Proud Boys, correct?
A. I do not know.
Q. So, in fact, you don't know if that's adopted by Mr. Tarrio and/or the four other individuals that are here on trial today, correct?
A. That's correct.
Q. Now, I noticed a lot of my colleagues, as well as the government, asked you to read portions of that document, correct?
A. That's correct.
Q. And during the course of your investigation in this case, is that the only thing that you were a part of the investigation, going to Mr. Pezzola's household?
A. No.
Q. Okay. You were part and parcel and you became aware of issues that arose on January 6 here at the Capitol, correct?

A. Correct.
Q. And during the course of your investigation, did you come across a document that was titled "Constitution and Bylaws of the Proud Boys"?
A. No, I did not.
Q. So, in fact, the Constitution and the Bylaws of the Proud Boys, a document, you don't know anything about that document?
A. No.
Q. So that document which reflects a Proud Boys is inconsistent --
MR. McCULLOUGH: Your Honor --
THE COURT: Continue, Counsel.
BY MR. HASSAN:
Q. If that document is inconsistent with the meet-up document, pretty much we have an inconsistency, correct?
A. Yeah. So, the document referred to I know nothing about. I've never heard of it before. If it's inconsistent with this particular document, that could be. I have knowledge of it.
Q. Okay. And when we talked about the Fourth Degree and how a Proud Boy becomes a Fourth Degree, I believe my colleague, Ms. Hernandez, asked you regarding doing good deeds, correct?
A. I don't think that was exact question.
Q. Well, a way of becoming a Fourth Degree would be doing good deeds in the community, correct?
A. I don't know of that. All I know is what is said in here.

It doesn't say anything about good deeds. You know, if there's something out there that says something like that, maybe that's the case.

Q. Okay. But you don't know, correct?

A. I don't know.

Q. Because all you have is a document that you found in the house, right?

A. Right, I only have this document.

Q. Okay. Let me ask you a series of questions.

This shirt that you used your gloves for to pick up, this document, do you know where Mr. Pezzola picked up this document -- this T-shirt?

A. No, I do not.

Q. You don't know if this was purchased on the internet?

A. I do not know.

Q. This nice, great decal that the government presented in their exhibits that says "FA" -- "FAFO, Uhuru, Proud Boys," you don't know where Mr. Pezzola picked this up, correct?

A. I do not know.

Q. In fact, this can easily be made on a printer -- at a home printer, correct?

A. Could be.

Q. I would imagine that you brought his printer here today to see all of his devices in his house, correct?

A. I don't believe there was a printer.

Q. Did you go through any paperwork, anything like that, to see if there was any type of paper like this (indicating)?
A. I don't recall seeing anything like that.
Q. Okay. Did you try to locate that, or you were just looking for memorabilia that had Proud Boys associated with it?
A. Yeah. So, if there was something that was blank paper, you know, we wouldn't have paid attention to it.
Q. Of course. The only thing that you were looking for is things that showed Proud Boys insignia, correct?
A. That was part of what the search warrant authorized.
Q. Okay.
A. Not exclusively.
Q. This is not stitched in, correct? This -- on the T-shirt itself, there's nothing stitched in, correct?
A. No.
Q. Okay. In fact, you found nothing in the house that connects Mr. Pezzola to Mr. Tarrio, correct?
A. So, in and of itself, you know, these evidence items connect him to the organization of which Mr. Tarrio belonged. But a far as a direct connection, one-on-one, those do not speak to that relationship.
Q. Okay. So, my question is: There's nothing connecting these items that can easily be reproduced with Mr. Tarrio, correct?
MR. McCULLOUGH: Asked and answered.

THE COURT: Sustained.

MR. HASSAN: Nothing else, Judge.

CROSS-EXAMINATION

BY MR. METCALF:

Q. Good afternoon, Special Agent. My name is Steven Metcalf. I represent Dominic Pezzola. How are you today?

A. Fine. How about yourself?

Q. Not bad. Thank you for asking.

So, on January -- I'm just going to cut right to it. I know you had a long day, and we're approaching 5 o'clock. So I will try to be as quick as I possibly can.

January 15, 2021, at approximately 11:45 a.m., you went to Mr. Pezzola's house; is that correct?

A. That's correct.

Q. And you were with how many other agents? Seven?

A. It was about seven total.

Q. Including yourself?

A. Yes.

Q. So six other agents?

A. That's correct.

Q. And at the time, Mr. Pezzola was not at his home; is that correct?

A. That's correct.

Q. And that's because, in fact, Mr. Pezzola had already turned himself in at that time; is that correct?

A. That's correct.
Q. Were you part of him facilitating him surrendering himself?
A. That was a different team.
Q. Okay. But -- so, you were not part of him surrendering himself or facilitating any of that action; is that correct?
A. No.
Q. But it's fair to say that at the time, there was nobody looking for Mr. Pezzola, and that was already being taken care of?
A. Yeah. Once that was taken care of, that was a trigger for us to execute the search warrant.
Q. And his daughters were at the home still when you guys executed the search warrant?
A. That's correct.
Q. And his wife -- or, common law wife, as you referred to her, Lisa, she was there?
A. That's correct.
Q. And did she -- did she open up the doors for you guys?
A. Yes, she did.
Q. And was she cooperative throughout the course of this search?
A. She was very cooperative.
Q. Okay. And she was polite as well?
A. Yes.
Q. And, essentially -- so, you started your search at

11:45 a.m. Do I have it correct in my mind that you guys checked out at about 2:30, 2:38 p.m.?

A. 2:38 p.m. --

Q. Same guys?

A. Correct.

Q. Okay. And, basically, you talked about your -- or, within the scope of what you were searching for that day, is you were looking for any affiliation at all that you could find in the house that had to do with the Proud Boys; is that correct?

A. Yes. As specified in the search warrant.

Q. Okay.

MR. METCALF: So, now, I would like to have the witness shown Exhibit 62. Should I just show him our copy or do you have --

THE COURTROOM DEPUTY: Is this Government's Exhibit 62 or your Exhibit 62?

MR. METCALF: Government Exhibit 62. Thank you.

Is there a hard copy?

THE COURT: Mr. Metcalf, is that in evidence?

THE COURTROOM DEPUTY: No, it's not.

MR. METCALF: Yes, Your Honor.

THE COURTROOM DEPUTY: No, it's not. 62 is not in evidence. It hasn't even been identified.

(Off-the-record discussion between government counsel and Attorney Metcalf.)

MR. METCALF: Oh, I'm sorry. It's 23. I had it -- the picture is 62. 23, Government's Exhibit 23.

THE COURTROOM DEPUTY: Yes, that's in evidence.

MR. METCALF: Your Honor, can I have this shown to the witness?

THE COURT: You may.

MR. METCALF: Thank you.

I don't mind just showing it to him. Thank you.

I didn't realize Jason was going to do it for me. Thank you.

MR. McCULLOUGH: Happy to do it for you, Mr. Metcalf.

THE COURT: It's Mr. McCullough, Counsel.

MR. METCALF: Mr. McCullough. Thank you.

BY MR. METCALF:

Q. So, now, throughout the course of your search -- withdrawn.

When did you find this notebook? Was it more towards the beginning or the end? Do you recall?

A. It was more towards the end.

Q. So, now, at the end of your search, did you actually sit there and read what was in there?

A. Yes. Somebody leafed through this and was looking for relevance, you know, because obviously, at the beginning, there's a lot of content in here that, you know, we would not seize this. Had it not been for coming upon these three pages, we would have not taken this.

Q. So, the first page, at the beginning it says, "There are many reasons why I want to join the Proud Boys."

Right? Are you on that page?

A. Yes.

Q. I want you to take a look down to the second sentence. "I am a first-generation American. My family came home" -- "came here" -- excuse me -- "from Italy in the '60s."

Where is relevance or a crime in that sentence? Is there --

A. There's nothing in that sentence that's a crime.

Q. I'm going to keep going.

"I just started to see success with my business, but now it's being threatened with unconstitutional lock downs."

Is it a crime to actually state a political opinion?

A. Absolutely not.

Q. Do you see anything wrong with that sentence that I just read?

A. No.

Q. Let's keep going down.

"What can I contribute?"

Now, I actually want to go back, before I go to "What can I contribute?"

This letter is not made out to Mr. Tarrio, is it?

A. No.

Q. Is it made out to Mr. Nordean?

A. No.
Q. Is it made out to Mr. Biggs himself?
A. No.
Q. Is it made out to anybody?
A. There's no salutation on it.
Q. Is it dated?
A. No.
Q. Throughout the course of your investigation, did you ever figure out or investigate what Dominic's handwriting looks like?
A. No.
Q. So, he could have dictated this letter, right?
A. Possibly.
Q. Someone else could have actually wrote it for him, right?
A. Maybe.
Q. Maybe? Is it possible that someone else could have wrote it for him --
A. It's possible.
Q. -- thinking that that was his beliefs? That's possible, right?
A. It's possible.
Q. Or he could have wrote it himself, right?
A. Yeah.
Q. He talks about being 43 years old at the time and owning a business, right?

A. Right.
Q. Okay. But other than that, your investigation has not linked this document to any of these other defendants; is that correct?
A. That's correct.
Q. Because it was still in his house, in a notebook, correct?
A. Correct.
Q. And there was no mailing envelopes anywhere near this? Nothing made out to any of these defendants at any specific address?
A. No.
Q. So as far -- I'm going to go back. Withdraw.
Now, look at the paragraph that talks about "What can I contribute? My time in the Marine Corps" -- I can't read this -- "has embedded traits like loyalty, commitment, and honor into my character. I have been in subordinate and leadership positions, so I know how to lead and to follow. I am a physically fit 43-three-year-old."
What's the crime there?
A. There's no crime.
Q. Okay. So you're reading this, and you're finding relevance, right? That's what you just testified to. You're searching for relevance to your investigation, right?
A. Umm.
Q. But you're looking for that affiliation to the Proud Boys,

right?
A. Yes.
Q. Is this the first -- was that the first time that you read this document, on January 15th, 2021, when you went to Mr. Pezzola's home?
A. Yes, that's the first time I saw it.
Q. At the end of this page, it talks about how he's been in the construction industry for most of his life; is that correct?
A. Yes.
Q. He talks about the skills that he obtained -- still on the bottom of the first page -- the skills he obtained from being in construction throughout the course of his life; is that correct?
A. Yes.
Q. All right. So let's go to the second page.
First sentence, he talks about working with a team, right?
A. Yes.
Q. Then he talks about his time with the Marine Corps, right?
A. That's right.
Q. Can you read that paragraph out again? Top of the page. "In my time..."
A. "In my time with the Marine Corps, my MOS was 0351. Infantry assaultman or super grunt they call us, basically

because we were attached to a rifle platoon and always ended up humping the most gear. As 0351, we specialized in demolitions and antiarmor munitions. I was awarded sharpshooter badges. We practiced Marine Corp martial arts. I've also been a boxer since the age of 14. These things have taught me a lot of discipline throughout my lifetime."

Q. There's no crime there, right?

A. No crime per se.

Q. In what you just read --

A. No.

Q. -- is there a crime in anything that you just read? Is there a confession in anything that you just read?

A. No.

Q. I think that's a beautiful life story. I mean, is that relevant to committing any crime?

A. There was relevance here.

Q. Okay. The affiliation to Proud Boys was the scope of what you were looking for; is that correct?

A. Correct.

Q. And this goes to the scope of the affiliation to the Proud Boys; is that fair to say?

A. It goes to affiliation of the Proud Boys and --

Q. Does it go to the --

A. -- a state of mind.

MR. McCULLOUGH: Your Honor, excuse me.

THE COURT: Counsel -- Counsel, you have to let the witness answer the question.

MR. METCALF: All right.

BY MR. METCALF:

Q. My question calls for a yes or no.

Does that go to the scope of the affiliation to the Proud Boys?

A. Yes.

Q. Throughout the course of your investigation, did you find that being a Proud Boy was a crime?

A. No.

Q. I'm going to move on to --

MR. METCALF: Your Honor, can I approach the witness and take the notebook back?

THE COURT: You may, sir.

MR. METCALF: Thank you, Your Honor. Thank you.

BY MR. METCALF:

Q. This, I believe, has been marked as the Government's Exhibit 24.

This also goes to the affiliation with the Proud Boys; is that fair to say?

A. That's correct.

Q. And you don't know if Mr. Pezzola ever wore this shirt before; is that fair to say?

A. That's fair.

Q. You don't know if Mr. Tarrio gave him this shirt; is that correct?
A. I do not know.
Q. You don't know if Mr. Nordean purchased this shirt for him; is that correct?
A. That's correct.
Q. You don't know if Joe Biggs gave it to him as a gift; is that correct?
A. I have no idea.
MR. METCALF: I now ask Your Honor that the witness be shown Government Exhibit 25, the Proud Boys meet-up literature.
MR. NEEDLER: May I hand it to him?
THE COURT: You may. Thank you, sir.
MR. METCALF: Thank you.
BY MR. METCALF:
Q. You're familiar with this document because we just discussed it, correct?
A. Correct.
Q. When, throughout the course of your search, did you find this document? Was it beginning or end?
A. More towards the beginning.
Q. And where did you find this document?
A. There's a room we labeled as Room D, as in delta, called it Dominic's room. Predominantly everything in there belonged to

him.

Q. And you made that -- okay. So -- withdrawn.

Regardless of your conclusion of you believing that everything in that room belonged to him, that room was still accessible to other people that lived there; is that correct?

A. That's correct.

Q. There was no specific locks on that door that could barrier other people out; is that correct?

A. Yeah, that's correct.

Q. All right. So, was that the first time that you saw this document, the day of the search warrant?

A. That's correct.

Q. And at that time, you sat there and read this document?

A. Yes.

Q. Were you reading this document with other agents?

A. I think more than one of us reviewed this document, correct.

Q. So, first time you're reading it, right, and you and the agents are going through it. And then after you read that document is when you ended up finding the notebook that we just discussed; is that correct?

A. That's accurate.

Q. Now, are you familiar with *Letters from an American Farmer*, published in 1782?

A. No.

Q. By John Hector St. John de Crèvecœur. Now, he --

MR. McCULLOUGH: Objection. Foundation.

MR. METCALF: There's going to be a question here, much shorter than were the questions that Mr. McCullough asked of this witness.

THE COURT: All right. I'll let you complete the question and then we'll see if there's an objection.

MR. METCALF: Thank you.

BY MR. METCALF:

Q. Now, are you familiar that there's a long history and tradition of people who actually do patriotic writings?

A. Yes.

Q. And in these patriotic writings, they voice, or write, about their own political opinions, correct?

A. Yes.

Q. And there's nothing wrong with that in America; is that correct?

A. That's correct.

Q. In fact, that's why we have certain amendments, correct?

A. Correct.

Q. And in reviewing what you've found in Mr. Pezzola's notebook, these two and a half pages, you believe that he was trying to explain his own political opinion in there -- or, that's fair to say, that he was trying to explain his own political opinion in those two and a half pages?

MR. McCULLOUGH: Objection. Called for speculation.

THE COURT: The witness can answer the question, if he believes he can answer it.

A. That was part of it.

BY MR. METCALF:

Q. Thank you.

Okay. So, now, going back to this Proud Boys meet-up.

So, you and the agents are sitting around and you're reading this document now, for the first time; is that correct?

A. Correct.

Q. You guys have a couple of laughs at it?

A. No.

Q. Well, I did when I first read it. So, you mean to tell me you guys are sitting there talking about cereal for the first time and what it takes to get initiated into the Proud Boys and you didn't laugh at all?

A. I was already familiar with that initiation process.

Q. Okay. But you never -- in getting familiar with it, you never saw this particular document?

A. Not this particular document, no.

Q. Did you see other documents that are similar in nature than this document?

A. I'd seen reporting from other sources that described that initiation process.

Q. Okay. But, was it an actual written-out document that

could seem to be written out like a contract?
A. Not like this, no.
Q. Okay. And, now, was that document signed by Mr. Pezzola?
A. Did you say "signed"?
Q. Yes.
A. No. No.
Q. Is Mr. Pezzola's name on there?
A. No, it's not.
Q. In fact, is there any date on that document at all?
A. No.
Q. And then there's no mention that this document was addressed or meant to be sent to Mr. Tarrio; is that correct?
A. That's correct.
Q. And I could say the same for each of the defendants, Nordean, Biggs, so on so forth, there's no writing or indication as to Mr. Pezzola wanting this document to go to anybody else; is that fair to say?
A. That's correct.
Q. Did you know about the "no wanks" -- since it's out there, did you know about the "no wanks" provision of the Proud Boys --
A. No.
Q. -- before this day?
A. Nope.
Q. So you found out that there's a section entitled "No

Wanks," which means a Proud Boy cannot ejaculate more than 30 feet from a woman, and you guys didn't have a laugh about that?

A. No.

Q. Do you see that being a crime? The "no wanks" provision, was there a crime in there?

A. No.

Q. Was there a crime in any of this document at all? In and of itself, anything that spoke to a crime?

A. In and of itself, no.

Q. So, it goes back, then, again, to the scope of why you were at Mr. Pezzola's house was to find any affiliation to the Proud Boys; is that correct?

A. That was one purpose, among others.

Q. Okay. So Fourth Degree, throughout the course of your investigation, if someone went -- was in the military or went to war, could that consider them a Fourth Degree? Yes or no?

A. I don't -- I don't know. Because the way it's defined, it says, "engaging in a major conflict for the cause."

Q. Okay. So --

A. So, I don't know how we're defining "the cause."

Q. Okay. Throughout the course of your investigation, have you found anyone who has military experience or prior military experience being able to utilize that to become a Fourth Degree member?

A. I'm not aware of that personally.

Q. Agent, name five cereals real quick. Go.
A. Wheaties.
MR. McCULLOUGH: Objection.
THE COURT: Sustained.
BY MR. METCALF:
Q. Reese's Pieces or Quaker Oats, which one do you like better?
MR. McCULLOUGH: Objection.
THE COURT: Sustained, Counsel.
BY MR. METCALF:
Q. Now, the "no wanks" provision, throughout the course of your investigation, who did you find out enforces this provision? Anybody?
A. No. I know nothing about it.
Q. Do you know what the repercussions are if someone breaks this provision?
A. I know nothing about this.
MR. METCALF: I have nothing further, Your Honor.
THE COURT: All right.
Any redirect?

REDIRECT EXAMINATION

BY MS. McCULLOUGH:
Q. Special Agent Klapec, why were you at Dominic Pezzola's house searching his residence?
A. We were executing a federally authorized search warrant.

Q. And were you investigating Dominic Pezzola for an incident at the Capitol?
A. That's correct.
Q. That's an incident at the Capitol on January 6?
A. That's correct.
Q. Did you have information to believe that Dominic Pezzola had committed crimes at the Capitol?
A. Yes.
Q. You were asked a couple of questions about First Amendment-protected activity. Based on the videos that you reviewed, do you understand Dominic Pezzola to have engaged in First Amendment-protected activity at the Capitol?
A. His activities went beyond First Amendment-protected activity.
Q. Smashing a window is not a First Amendment-protected activity, correct?
A. Correct.
MR. METCALF: Your Honor, I move to have that stricken. Calling for a legal conclusion.
MR. ROOTS: And facts not in evidence.
THE COURT: Overruled.
BY MR. McCULLOUGH:
Q. You were asked a couple questions about the two-and-a-half-page letter/statement?
A. Yes.

Q. The biographical details in that statement, do those generally align with what you understood to be Dominic Pezzola?
A. Absolutely.
Q. And when someone writes a two-and-a-half-page handwritten letter and subsequently commits crimes --
MR. METCALF: Objection, Your Honor.
BY MS. McCULLOUGH:
Q. -- is the handwritten --
THE COURT: Hold on. Counsel, let the counsel ask the question first.
BY MR. McCULLOUGH:
Q. In your training and experience, if someone writes a two-and-a-half-page handwritten letter and then subsequently commits crimes, can that two-and-a-half-page letter be relevant to the conduct of that crime?
MR. METCALF: Your Honor, objection. It's a hypothetical that calls for a date that's not even in existence, so you can't --
THE COURT: All right.
MR. HULL: Biggs joins.
THE COURT: Overruled -- no. I'm sorry. Sustained as to the question. Sustained.
BY MR. McCULLOUGH:
Q. Can a two-and-a-half-page handwritten letter be relevant to the investigation of a crime?

A. Yes.
Q. Why?
A. It can speak to state of mind.
Q. You were asked a number of questions about the 11-page document related to the Proud Boys. Do you remember that?
A. Yes.
Q. You were asked a number of questions about other items that are in the document. Do you remember that?
A. That's correct.
Q. Does one of the items in the list of ten, towards the end of the document, include "shut down the government"? Does that sound familiar?
A. Yes, it does.
Q. Turning you to Number 10. What does that say?
A. "We have no respect for the institutions that we're all our -- our hard-earned wages. We don't expect another man to handle our freedom and determine our destiny. We may not be anarchists. We always want the government brought down to the absolute minimum."
Q. Turn you to the last page of the document, the final few sentences.
Do you see at the bottom of that, it says, "It's an incredible time to be proud of who you are"?
A. Yes, I do.
Q. Can you read that for us?

A. "It's an incredible time to be proud of who you are. We tried shame and apologies. It didn't work. It's more than just a time to say no. It's time to fight."

MR. McCULLOUGH: No further questions.

THE COURT: All right. Very well.

Can I have counsel pick up the phone for a moment?

(Bench discussion:)

THE COURT: We'll just give Mr. McCullough a moment to put in the headset.

So, Ms. Hernandez, you'd asked for a limiting instruction before. I don't know if the parties have -- well, you haven't a chance to think about it between now and -- between then and now. I don't think -- the handwritten statement, I think if it comes in as a -- if a party opponent -- I actually don't think there's a limiting instruction for that that's appropriate.

But, I do think the other document, the Government's Exhibit 25, what -- the document that we've been talking about, I do think an instruction on that to say, you know, they can consider that document as evidence of Mr. Pezzola's knowledge and state of mind, and for nothing else, is appropriate. I don't know if the parties are going to be in alignment on this, or we can talk about it, pick it up tomorrow, if the parties think that's appropriate.

Mr. Pattis?

MR. PATTIS: I would agree that it can go to his state of mind, but not to knowledge. Knowledge assumes that it reflected what's not in evidence thus far. He may believe that it reflects what comes from the Proud Boys, and that might go to his state of mind, but I don't think it can go to his knowledge.

THE COURT: Well, all right. If the parties are not -- let me just say this: We can do this first thing tomorrow morning. I'll just ask the parties to think about this overnight, what they think. Well, whether an instruction is appropriate on the handwritten document. Again, my feeling is it is not. And whether -- and whether -- and what the instruction for this later document should be. And I'll give it -- I'll give it first thing tomorrow.

Yes?

MR. PATTIS: And I don't know if the -- Mr. McCullough suggested in his questions this was going to be a document reflecting on Mr. Pezzola's state of mind on January 6. There was no evidence that it was written after or before January 6. It was seized on the 15th, and I don't think the government is entitled to the benefit of the inference that it was written beforehand.

THE COURT: Well --

MR. PATTIS: Nothing in the surrounding circumstances.

THE COURT: Okay. Well, whether it -- I'm not sure

how that plays into the question of what instruction would be or would not be appropriate. I mean, if it's a party opponent statement, there's no instruction, right? And they can argue whatever inference, and you all can argue whatever inferences you'd like.

We're not in agreement right now, so I'm just going to dismiss the jury for the day and we'll pick it up first thing in the morning. All right.

(Open court:)

THE COURT: All right. Ladies and gentlemen, we're going to let you go for the evening. Thank you very much.

Let me -- before everyone gets up, let me just make sure I -- you know, I haven't been -- you all have been instructed on these so many times, including when you filled out your questionnaire and when you came back for jury service, when you came back for jury selection, and when you were then sworn as jurors. I'll just remind you, please avoid media coverage of this case and anything to do with January 6. Of course, don't do your own investigation in any way, and, of course, no talking about your jury service.

Thank you very much. We'll see you tomorrow.

(Whereupon the jurors leave the courtroom.)

THE COURT: All right. Everyone may be seated.

You may step down, sir. You may step down.

All right. So, I think homework for tomorrow is to

think about that limiting instruction, what the parties think is appropriate regarding those two documents. The government has indicated who their next witness will be, so we'll take up that person after we -- after we hash this out about the jury instruction.

Now, I'll just -- let me just give you all a preview on the Parler stuff. I'm not going to -- I want to get you all out of here. So, I'll just say that -- just -- I will articulate the basis for this, for some of these rulings, tomorrow or whenever we get to this witness.

But, I've sustained the government's objections to the following exhibits -- to the defendants' objections to the following exhibits: So, 638, -41, and -45, those are the Tarrio posts. So, I think I've indicated -- I've indicated why before, but I'll do it later. They are the Tarrio posts related to the flag burning, but I'll talk about it later.

In addition, the Nordean 601-7, which is regarding the COVID, again, I'll talk about -- I'll give the reasoning later.

And then 602-19, which is the one, Ms. Hernandez, you had raised repeatedly. So I've sustained the objection to those.

I'll just note, the government also had 601-31, to which this -- the Rumble podcasts. There was no objection, but I think what -- at least what one defendant had said was, We

1 think there may be a rule of completeness issue. I don't
2 think -- so I can't -- that's not teed up for me to rule on
3 because I don't think the government had indicated what portion
4 of the podcast is going to be played.
5 So, I just ask the parties if that's -- whenever that
6 is going to be teed up, if there is a rule of completeness
7 issue, for the parties to talk about it and tee the issue up
8 for me so I can rule one way or the other. But, I don't think
9 I had -- there's no objection to the podcast. I just don't
10 have a way to rule on what is coming in within the podcast.
11 MR. HASSAN: Judge, can we get some clarity? What
12 are the numbers for Mr. Tarrio, as far as the Parler post?
13 THE COURT: There's 638, -41, and -45. I think those
14 are the ones you objected to that are about -- and, again, I've
15 talked about why I think -- I don't think it aligns with what
16 I've admitted, that episode of the flag burning, number one.
17 And to the extent there is relevance to them, I think that the
18 inference that the jury may draw that, gee, just because
19 Mr. Tarrio did this crime and bragged about it, that the jury
20 might impermissibly assume that because he has taken credit in
21 some of the other things the government is going to introduce
22 for January 6, that he must have done that.
23 And I think -- again, against the backdrop of me
24 admitting the flag burning for a limited purpose, I'm ruling it
25 out, at least on 403 grounds.

MR. HASSAN: Appreciate it, Judge.

MS. HERNANDEZ: Your Honor, may I ask the Court a question?

THE COURT: Yes.

MS. HERNANDEZ: Did the Court say, on the handwritten Pezzola, you believe that was a coconspirator statement, so you weren't going to give a limiting -- oh --

THE COURT: No.

MS. HERNANDEZ: -- I wasn't sure.

THE COURT: No. I said it's a statement of party opponent, at a minimum. And I don't think that there's -- I don't think an instruction, then, is warranted in that case. I mean, it's --

MS. HERNANDEZ: I mean, I think the argument would be that it comes in -- no question if it's an admission of a party opponent, it comes in against Pezzola. The question is whether it comes in against the codefendants.

THE COURT: But I don't think -- right. And I think in situations, as far as I've -- this is, in part, based on our lengthy discussions in the motion in limine phase. In a situation like that, it comes in -- of course, it comes in as to -- sort of because it's Mr. Pezzola's statement. And then the jury can make of it what it will regarding what that might say about the broader conspiracy. There's just -- no limiting instruction is given. It's obviously -- I mean, it's his

statement, so, you know, it comes in directly as to him.

However it builds the greater conspiracy case, the jury can sort of take that as it will. There's no limiting authority in that instance. Look, if you have authority to the contrary, I'll look on it.

MS. HERNANDEZ: Your Honor, I know the Court has ruled on this before. That photograph the government has selected out for my client, I know the Court allowed it in for opening statements and, like, to put it throughout some of the government exhibits.

I have real concerns when it's put in the Parler exhibits because I think the jury is familiar with a profile picture, you know, where you select your picture, you put it up. And I don't believe -- I know that that picture is not a profile picture. I don't know if the government has the actual profile picture that Mr. Rehl put up in his Parler account or anything like that.

And if it does, I would like to see it because I'm concerned the jury -- again, I know the Court's ruling, I understand for exhibits. I think there's a difference between putting it on the exhibit, like they put it around the Capitol, they want to put him here and there, versus something that a jury is ordinarily familiar with, the profile picture that you would put on your Facebook account or your Twitter.

THE COURT: I don't think -- look, I think it would

be very easy for the government to just, through a witness, say, Well, that's not -- you know, that's not his Parler thing. It worked for you, frankly.

MS. HERNANDEZ: I'll ask it then.

THE COURT: Look, that thing, in particular on the Parler stuff, it's so -- I know this is not exactly -- but the prejudicial -- the point of prejudice that you have raised, the point thing is so small, you can't see -- I mean, at that --

MS. HERNANDEZ: I understand.

THE COURT: When it's used in conjunction with things like the Parler slides or other slides where there's a bigger exhibit, it's truly, like, you cannot see what in the world that is.

MS. HERNANDEZ: My concern, obviously, is that when people go into the jury room, we don't know what they notice, and at that point I can't do anything about what they're thinking. That's my concern. And I do think the Parler exhibits already say who -- you know, already identify the particular defendants. So, there's -- again, I think there's less need for a photograph. I'm just raising that, and I'll probably make the objection.

THE COURT: Okay.

MS. HERNANDEZ: Or, I'm going to make the objection. Period. And I understand the Court's ruling. And I may ask -- when the witness gets on the stand, I'll clarify that that's

not his profile picture.

THE COURT: For whatever it's worth. Sure.

MS. HERNANDEZ: Thank you.

THE COURT: All right.

MR. HULL: Your Honor, as I recall, you were going to make a decision this Wednesday -- correct me if I'm wrong -- about witness cross order for the defendants subject to --

THE COURT: Well, I said if someone raised it again, I would consider it, given how things have gone between last time and then. That's what I said.

MR. HULL: Okay. Is it possible that you would accelerate that decision by one day?

THE COURT: No.

MR. HULL: We'll wait until Wednesday. Thank you.

THE COURT: All right.

Anything else?

MR. SMITH: One more issue. We noted a couple days ago that there was an indication on the docket sheet that a motion to quash had been dismissed for some kind of procedural defect. Was the Court able to figure out what that was about or --

THE COURT: I can tell you that it was nothing that I did. In other words, there may have been something filed, but the clerk's office rejected it for some procedural reason. I'm pretty sure that's the case, but that's all I know.

MR. SMITH: The reason we're asking is we just need to know -- if it relates to one of Mr. Nordean's subpoenas, we need to know what the briefing schedule is on the motion.

THE COURT: I don't have a motion in front of me.

MR. SMITH: Oh, so there's no motion to quash?

THE COURT: I don't believe so.

MR. SMITH: Okay. Okay. Thank you.

THE COURT: Look, if I stand corrected, maybe, since we've been here, but I am unaware of a motion being -- that motion that you're referring to, I think, being pending. I could be wrong. I'll take a look.

MR. SMITH: Okay. Thank you, Judge.

THE COURT: All right.

MS. HERNANDEZ: Your Honor, if I don't get an answer from the government on the exhibits that I want to introduce and the Rule 106 documents, you may have that issue before the Court tomorrow morning.

THE COURT: What's -- what Rule 106 issue is that?

MS. HERNANDEZ: I sent them -- with respect to two items that they're going to be introducing, I told them I wanted a document -- under Rule 106, I wanted that introduced. I sent it yesterday. I expect that they will respond.

THE COURT: With this Capitol Police officer?

MS. HERNANDEZ: I don't know who -- I'm not sure who's going to be the next witnesses.

THE COURT: I think they indicated the next witness was a Capitol Police officer, earlier today.

MS. HERNANDEZ: With the Capitol Police officer, I may want the demonstration map, and that -- and I've asked them for their position on that. They haven't -- they haven't come back to me on it, so --

THE COURT: All right. Mr. McCullough, I'm not sure that's a rule -- I'm not sure.

MS. HERNANDEZ: No. No. I mean two different issues. Two different issues.

THE COURT: Okay. All right.

What can the government tell me about what present awaits me tomorrow morning?

MR. McCULLOUGH: I don't think any presents, Your Honor. Not because we don't all like you. I think it's just -- I don't think this is a live issue for tomorrow morning. I understand the Rule 106 to relate to the Parler posts, which we're not going to be dealing with tomorrow. And then the Capitol permits, I don't know how that's going to come up with the witness that we have tomorrow.

THE COURT: Well, Ms. Hernandez was saying she would -- if -- in theory, she may seek to question or introduce -- question the witness or introduce these documents through a Capitol Police officer, I think is what she's saying.

MR. McCULLOUGH: We're anticipating a civilian

witness tomorrow.

THE COURT: All right. A civilian witness tomorrow.

MR. McCULLOUGH: Correct.

THE COURT: All right. Very well. We'll see everyone at 9 o'clock.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings.

Dated this 24th day of January, 2023

_____

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
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