

No. 23-719

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**In the Supreme Court of the United States**

DONALD J. TRUMP,

*Petitioner,*

v.

NORMA ANDERSON, ET AL.,

*Respondents.*

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**On Writ of Certiorari to the Colorado Supreme Court**

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**JOINT APPENDIX VOL. II OF IV (JA555-JA1001)**

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JA555  
DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO  
1437 Bannock Street  
Denver, CO 80203

Case Number 2023CV032577, Division/Courtroom 209

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CERTIFIED STENOGRAPHER'S TRIAL  
TRANSCRIPT  
TRIAL DAY 3: November 1, 2023

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NORMA ANDERSON, MICHELLE PRIOLA,  
CLAUDINE CMARADA, KRISTA KAUFER,  
KATHI WRIGHT, and CHRISTOPHER CASTILIAN,  
Petitioners,

v.

JENA GRISWOLD, in her official capacity as Colorado  
Secretary of State, and  
DONALD J. TRUMP,  
Respondents,

and

COLORADO REPUBLICAN STATE CENTRAL  
COMMITTEE, and DONALD J. TRUMP,  
Intervenors.

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The trial in the above-entitled matter, commenced on  
Wednesday, November 1, 2023, at 8:20 a.m., before the  
HONORABLE SARAH B. WALLACE, Judge of the  
District Court.

JA556

This transcript is a complete transcription of the proceedings that were had in the above-entitled matter on the aforesaid date.

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MORNING SESSION,  
WEDNESDAY, NOVEMBER 1, 2023

WHEREUPON, the court convened at 8:20 a.m., and the following proceedings were had:

\* \* \* \* \*

THE COURT: Good morning. Everyone may be seated. Do we need to talk about any preliminary matters, or can we get to the next witness?

MR. OLSON: I think we can get to the next witness, Your Honor.

MR. GESSLER: Nothing from us, Your Honor.

MS. RASKIN: I would just like to renew our motion to exclude testimony from yesterday. I would like to renew our motion to exclude the testimony of Mr. Magliocca, 702.

THE COURT: And that — that motion is denied on the basis of my previous written ruling. Anything from the Secretary?

MR. KOTLARCZYK: No preliminary matters for the Secretary, Your Honor.

THE COURT: Great. Let's call your next witness.

MR. MURRAY: Your Honor, would you like entries of appearance first?

THE COURT: Yes. Thank you.

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MR. MURRAY: For petitioners, Jason Murray, Eric Olson, and Sean Grimsley, Martha Tierney, Mario Nicolais, and Nikhel Sus.

JA557

THE COURT: Thank you.

MR. GESSLER: Your Honor, on behalf of President Trump, I have to look around to see who's here today. Myself, Scott Gessler, Jacob Roth. Next to me, Jonathan Shaw and Chris Halbohn.

MS. RASKIN: Jane Raskin, Mike Melito, Nathan Moelker and Robert Kitsmiller on behalf of the Republican State Central Committee.

MR. KOTLARCZYK: And good morning, Your Honor. Michael Kotlarczyk on behalf of the Secretary of State, joined with Jennifer Sullivan from the Attorney General's Office and Deputy Secretary of State, Christopher Beall.

THE COURT: Great. Thank you. And thank you, Mr. Murray.

MR. MURRAY: Of course. Petitioners call Professor Gerard Magliocca to the stand.

THE COURT: Professor Magliocca.

GERARD MAGLIOCCA,

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

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DIRECT EXAMINATION

BY MR. MURRAY:

Q. Good morning, Professor. Could you introduce yourself, please.

A. Yes. I'm Gerard Magliocca.

Q. How do you spell your last name?

A. M-a-g-l-i-o-c-c-a.

Q. Where do you work?

A. I teach at the Indiana University, Robert H. McKinney School of Law.

Q. Now, you're here as an expert today. What topics are you here to testify about?

JA558

A. I am here to give expert testimony on the history of Section 3 of the Fourteenth Amendment.

Q. How long have you been at Indiana University McKinney School of Law?

A. 22 years.

Q. And in those 22 years, has your scholarship had any particular focus?

A. Yes. I focus mainly on constitutional history.

Q. Are you a member of any professional organizations related to constitutional history?

A. Yes. I'm a member of the Supreme Court Historical Society, the American Society of Legal

[p.11]

Historians, and I'm on the board of editors of the Journal of American Constitutional History.

Q. Can you give us a general overview of what kinds of published works you have in the area of constitutional history?

A. Well, I've written five books and something in the neighborhood of law review articles on various constitutional history subjects.

Q. Have you written any books specifically about the Fourteenth Amendment or its history?

A. Yes. About ten years ago, I wrote a biography of Congressman John Bingham, who was the main drafter of Section 1 of the Fourteenth Amendment as a member of the Joint Committee on Reconstruction.

Q. Have you written any academic articles or journals related to the history of the Fourteenth Amendment?

A. Yes. I have four articles that cover different aspects of the history of Section 1, Section 2, and Section 3 of the Amendment.

Q. Do you have any other articles about 19th century history?

A. Well, yes, several. I mean, some of them cover the period of Jacksonian democracy. Some cover the period in the late 19th century, sort of around the

[p.12]

Populist period or the Gilded Age, and others of my — my books also focus on different aspects of those subjects.

Q. You mention that you've written on the subject of Section 3 of the Fourteenth Amendment. Tell us about that.

A. Yes. So in 2020, I drafted a paper on Section, and that paper was posted to the Social Science Research Network, which is the place where professors post their draft papers to share with the public, in December of 2020.

Q. Was that later published?

A. Yes. That was published in 2021 in Constitutional Commentary, which is a peer-reviewed journal run out of the University of Minnesota.

Q. Before you posted your article about Section 3 on SSRN in December of 2020, give us a sense of the state of the existing scholarship on Section 3 of the Fourteenth Amendment.

A. There really wasn't any.

Q. How, if at all, has that changed since then?

A. Well, it's changed quite a bit, especially in the last few months.

Q. Have you written any other articles about Section 3?

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A. Yes. I have a draft paper that is going to be coming out in the Journal of Constitutional History that's — or Constitutional Law that is kind of run out of the University of Pennsylvania. That was given as a talk at a symposium in January on the Fourteenth Amendment.



JA560

Q. Can you tell us whether any of your work on Section 3 has ever been cited by courts?

A. Yes. My original article was cited by the United States Court of Appeals for the Fourth Circuit, as well as a Federal District Court in Georgia.

Q. Has your work on Section 3 ever been cited by any government agencies?

A. Yes. The Congressional Research Service cited the article in an analysis of Section 3 that they did.

Q. Have you ever given expert testimony on Section 3 of the Fourteenth Amendment?

A. Yes, I have. I gave expert testimony on the history of the Amendment in an administrative proceeding in Georgia that was addressing the eligibility of Representative Taylor Greene.

Q. I want to pull up Petitioners' Exhibit 162.

What is this?

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A. This is my CV.

Q. Is it current?

A. Yes.

Q. I don't want to talk about every entry here, but just briefly, can you summarize your educational background for us.

A. Yes. I received my undergraduate degree from Stanford and my law degree from Yale.

Q. If you go to the second page, just tell us briefly which of the books on your CV relate to 19th century history or constitutional history.

A. All five of the ones that have been published.

Q. And is this entry here the biography you were referring to about John Bingham?

A. Yes, it is.

JA561

Q. And if we go down to “Book Chapters, Law Review, Articles and Essays,” we see a few entries related to Section 3 of the Fourteenth Amendment.

Were those the forthcoming article and the previously published article —

A. Yes.

Q. — that you mentioned earlier?

A. Yes.

Q. And briefly, on page 4, can you just [p.15]

highlight for us on this page of your CV some of the articles here that relate to 19th century history or the history of the Fourteenth Amendment.

A. Sure. The one at the top is about Section 2 of the Fourteenth Amendment.

Then also the one, let’s see, going down a little bit — okay, “Why did the Incorporation of the Bill of Rights Fail in the Late 19th Century” is a 19th century historical piece.

And then also the one that’s entitled “Indians and Invaders: The Citizenship Clause and Illegal Aliens” focuses on Section 1 of the Amendment, on the citizenship clause of Section 1.

And the paper on the legal tender cases, “A New Approach to Congressional Power, Revisiting the Legal Tender Cases” is about the Supreme Court decisions on the constitutionality of paper money that were rendered in the 1860s and 18- — well, up into the 1880s.

“Constitutional False Positives in the Populist Moment” was about constitutional development in the late 19th century, basically focusing on the 1890s.

“Cherokee Removal and the Fourteenth Amendment” was talking about the Trail of Tears and then how that had

JA562

an influence on some of the thinking behind Section 1 of the Fourteenth Amendment.

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Q. If we go to the next page of your CV, you have a list of recent professional activities.

Do any of those relate to the history of the Fourteenth Amendment?

A. Yes. So the podcast on Section 4, which I haven't written a whole article about that, but I did write about that in one — a piece of one article. I did a podcast with Eric Foner, who is basically America's leading historian on Reconstruction, earlier this year.

And then the symposium piece is the one I mentioned earlier. That's my draft paper about another aspect of Section 3.

And then the — there was a presentation about the Section 3 article last fall. And then I gave a talk last year about my biography of Bushrod Washington at John Marshall's house, which was rather fun.

Q. And on the last page, I'm not going to highlight all of these, but did some of these also relate to Section 3 of the Fourteenth Amendment?

A. Yes. I did a podcast with Professor Dan Hemel in January of 2021 about Section 3. That was, of course, in the immediate aftermath of January 6, 2021.

Q. And what about this entry about John Bingham with Kurt Lash?

A. Yeah. So that was a podcast I did with

[p.17]

Professor Lash for the National Constitution Center about John Bingham's career that was part of a series of events that commemorated the 150th anniversary of the ratification of the Fourteenth Amendment in 2018.

JA563

Q. When you're doing your historical scholarship on the Fourteenth Amendment, what kinds of sources do you consider?

A. Well, I mean, I'm trying to look at primary sources because that's the best way to try to get at the truth of what happened. So I'm always most interested in looking at those.

Q. What are the — what are the types of primary sources that you would look at in your scholarship?

A. Well, they kind of run the gamut, but you could look at congressional debates and reports. You can look at presidential documents.

You can look at judicial cases. You can look at contemporary newspapers, contemporary books, basically any kind of source that would be a sort of firsthand account of what occurred in a particular time period.

Q. I'm pulling up Petitioners' Exhibit 144. What is this exhibit?

A. This is an index of the materials that I  
[p.18]  
considered for my expert report.

Q. And if we walk through this index, we see some cases. There's some citations to law review articles, some statutes, citations to Congressional Record, et cetera.

Are those the sorts of materials that you would review in your historical scholarship outside the courtroom?

A. Yes, they are.

Q. Tell us a bit about the historical methodology that you used in forming your opinions in this case.

A. Well, I mean, the first thing you want to do is make sure that the sources you're looking at are true and accurate. I mean, usually that's pretty straightforward

because they are official government records of one sort or another.

You know, for example, there was an official compilation of presidential documents assembled at the end of the 19th century, and I have a set in my office that I found in an antique shop one time. And so I refer to that just to make sure, if I see a document online, that I can look it up to make sure it's a real document and not — there's not some error in transcription or something.

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For newspapers, it's a little more challenging. I mean, there are some sort of trustworthy databases of old newspapers. One's run by the Library of Congress.

You can also cross-check newspapers because typically an article would be reprinted more than once, or at least the sort of substance of the article would be reprinted in another newspaper. So you can try to make sure that whatever you're looking at is, in fact, an accurate rendition of whatever the article is discussing.

Q. As a historian, what do you do if there is some kind of ambiguity or mismatch among different historical sources?

A. Well, look, the first thing you're looking at is kind of what is the context of the source.

Now, for example, in the case of the Fourteenth Amendment, you would be more interested in what supporters of the Amendment had to say than you would be about what an opponent of the Amendment would have said, in the same way that if you were looking at a judicial opinion, you'd be more interested in what the Court said rather than what any dissenting opinions said to understand what the opinion was about.

Also, you would look at who the speaker or

[p.20]

author was. Now, in — some people are just more authoritative than others in their exposition of the Fourteenth Amendment. And, you know, at the top of the list or near the top would be John Bingham, I mean, not just because I wrote a book about him, but because he was centrally involved in all elements of the Fourteenth Amendment's proposal and ratification and implementation. And this has been recognized by the Supreme Court many times and by scholars many times.

Q. Can you tell us whether or not the historical methodology that you've just laid out was the method that you used in forming and presenting your opinions in this case?

A. It was.

MR. MURRAY: At this time, petitioners move to admit Professor Magliocca as an expert in the history of Section 3 of the Fourteenth Amendment.

MR. GESSLER: Your Honor, we have no objection to Professor Magliocca's expertise.

Obviously we renew and endorse the 702 motion, Your Honor.

THE COURT: Professor Magliocca will be admitted as an expert in the history of Section 3 of 14 — of the Fourteenth Amendment.

MR. MURRAY: Thank you, Your Honor.

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Q. (By Mr. Murray) Let's start by setting the stage for the adoption of Section 3.

What does the historical record tell us about why Section was put into the Fourteenth Amendment in the first place?

A. Well, the main thing that prompted Section 3 was that they wanted to keep officials who had left to join the

JA566

Confederacy from returning to office unless they showed that they deserved a second chance to return to office.

So basically there were elections held throughout the South in 1865 after the war ended, and many of the same people who had been in office before the war and had left to join the Confederacy were returned to office. And some of them showed up to the new Congress and essentially said, "Okay, we're here to take our seats now," as if nothing had happened.

And Congressional Republicans were very upset at this idea. They felt that this was wrong. And so there was a proposal by the Joint Committee on Reconstruction to do something to exclude people like that from positions of authority unless they demonstrated some repentance or, you know, deserved forgiveness.

Q. Does the historical record tell us anything about whether that was intended as punishment

[p.22]

for insurrectionists?

A. Yes. I mean, it was not intended as punishment. There was — a number of senators discussed the fact that this was simply adding another qualification to office because of the events that had occurred.

Q. What does the historical record tell us about the role that the oath plays in Section 3?

A. So the oath plays a central role, not just in the text, but in the rationale for Section 3 in two respects.

I mean, the first is it was a way of limiting the scope of the provision. They didn't want to disqualify all former Confederates from office or from serving. They wanted to focus that on the people they thought were most responsible for Secession and the Civil War, and the oath was a way to do that.

Now, secondly, senators said if you had sworn an oath to support the Constitution and you had broken it by engaging in insurrection and joining the Confederacy, it was a kind of moral perjury — that was the term that some people used — that you had engaged in and you were just untrustworthy to hold office again unless you demonstrated some reason why you should be allowed a second chance.

[p.23]

Q. What, if anything, does the historical record tell us about whether Section 3 was limited to the events of the Civil War or not?

A. It was not limited to the events of the Civil War, and we know that because, first, the language was general. It just referred to insurrection or rebellion, and secondly, there were senators in the debate that made pointedly clear that they thought it also should apply to any future insurrection that might occur.

Q. When did the Fourteenth Amendment get ratified?

A. 1868.

Q. In the years after its ratification, walk us through some of the ways that Section 3 got enforced to exclude from office those who had been engaged in insurrection or rebellion in violation of their oath.

A. Okay. So this happened in different forms. In some states that were under martial law, the Union Army did the enforcing.

In southern states that were no longer under martial law, state officials and state courts did the enforcing.

Individual Houses of Congress also sometimes did the enforcing if someone was a member elect

[p.24]

and then there was a question raised about whether they could be seated because of some involvement with the



JA568

Confederacy. And then the individual House of Congress, the House or the Senate, would have to decide if the person could be seated or not.

And then finally, in 1870, Congress passed a — or created a federal civil action to enforce Section 3 by allowing U.S. attorneys to bring a writ of quo warranto to oust officials who were in office illegally because of Section 3.

Q. You mentioned state courts enforcing Section 3. Tell us a little bit more about that history.

A. Yeah. So in 1869, there were cases in North Carolina and Louisiana that addressed enforcement of Section 3 of the Fourteenth Amendment against state officials pursuant to state enforcement mechanism.

So in North Carolina there were two officials who were removed from office as ineligible, and in Louisiana they didn't remove the person because of a procedural reason, but they said that it could have been had the procedural posture been correct.

Q. Were those cases in North Carolina and Louisiana before or after the enactment of federal implementing legislation in 1870?

A. They were before. They were in 1869.

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Q. Tell us a bit about the history of amnesty under Section 3 and Congress's power to remove the disability by a two-thirds vote.

A. Right. So as soon as the Fourteenth Amendment was ratified, applications poured in from people who were disqualified seeking a waiver.

Basically you would apply to your member of Congress, and then what Congress did initially was pass a series of measures that would simply give amnesty to people by name, right? There would be a list of names, all

of these people get amnesty if you could get a two-thirds vote of each House to pass the legislation.

After a couple of years, Congress decided to create a more general amnesty that did not involve individual names. And that was enacted in 1872 and gave amnesty to nearly all of the people covered by Section 3, except for a few hundred who were sort of considered the worst of the worst, including Jefferson Davis, the former President of the Confederacy.

Q. And what does that history of amnesty tell you about the historical understanding of whether congressional legislation was needed to enforce the disability of Section 3?

A. Well, it tells me that people didn't think it was needed. Now, that goes along two dimensions.

[p.26]

First, the people who were applying for amnesty must have thought that they needed it right away.

And why did they think that? Probably because the Amendment had been ratified, and states were in a position to enforce the Amendment if needed.

Secondly, Congress granted amnesty to these individuals, in some cases, before any enforcement legislation was enacted. And in a sense, they were removing a disability that existed. Because the Fourteenth Amendment had been ratified, they couldn't remove something that didn't exist.

Q. I want to pull up the language of Section 3, and I want to first highlight the phrase "insurrection."

Have you studied the historical meaning that the word "insurrection" would have had at the time of ratification of the Fourteenth Amendment?

A. Yes, I have.

Q. What did insurrection mean at that time?

JA570

A. Well, according to the historical sources, an insurrection was any public use of force or threat of force by a group of people to hinder or prevent the execution of the law.

Q. What were some of the historical sources that you looked at that informed your understanding of

[p.27]

insurrection as a public use of force to — or threat of force to prevent execution of the law?

A. Well, I looked at historical examples of insurrections that occurred before the Civil War as informed by some presidential documents about them.

I looked at dictionaries, I looked at judicial decisions, and I looked at an authoritative treatment of the law of war that was issued during the Civil War.

Q. You mentioned historical examples. Tell us a little bit more about what historical examples informed the understanding of insurrection during Reconstruction.

A. Sure. Well, there were two notable insurrections early on in American history. One was the Whiskey Insurrection, which is also known as the Whiskey Rebellion, and that happened in 1794 in Pennsylvania.

It was a tax protest by farmers who were angry at a new federal tax on distilleries that had been put in as part of Alexander Hamilton's financial scheme for the Federal Government.

And during that time, armed farmers basically attacked federal tax collectors, who tried to collect the tax, or used intimidation to prevent them from doing so.

[p.28]

Eventually President Washington called out the militia to sort of restore the legal authority of the government on tax collection, and a few people were prosecuted, but President Washington pardoned them all.

JA571

Q. How many, roughly, armed farmers were involved in the Whiskey Insurrection?

A. In the hundreds.

Q. You mentioned that there was another example you looked at. Tell us about that.

A. Yes. The second example was called Fries's Insurrection. That was in 1799. That was in a different part of Pennsylvania. It was a different group of farmers that were upset about a different tax.

This time it was a federal property tax, and they used intimidation to prevent the tax assessors from the Federal Government to come in and do the property assessments that would have been necessary to collect the tax.

Q. And what was the scale of the violence involved in Fries's Insurrection?

A. Well, there was no actual violence. There's no record of anybody being killed. And again, you're talking about, you know, hundreds of armed farmers who were sort of behind the sort of resistance to this tax.

[p.29]

Q. If there was no actual violence, in what sense was it understood to be an insurrection?

A. Well, it involved the threat of violence; that is, there was violent intimidation of the federal tax officials, I mean, and that — that did — did the trick, at least from the point of view of the farmers, for some period of time.

Q. What relevance did the Whiskey Insurrection and Fries's Insurrection have to the historical understanding of the meaning of insurrection during Reconstruction?

A. Well, these were well-known examples. I mean, probably the Whiskey Insurrection was a little better known because it was referred to in the 39th Congress. I mean, you can find books written about the Whiskey Insurrection in the run-up to the Civil War.

And also one of the leading cases on sort of discussing insurrection arose out of Fries's Insurrection in — it was a case from 1800, so all of this would have been background that people would have been familiar with at the time.

Q. These weren't obscure examples?

A. No, not at all.

THE COURT: I'm sorry, Professor. So when you say that it informs what an insurrection was at a

[p.30]

time, is that because, like, case law called them insurrections or . . .

THE WITNESS: Well, yes, in part. The, case of Fries, for example, which arose out of Fries's Insurrection, described it that way, as did President Adams' pardons of the individuals who were involved.

THE COURT: Okay.

THE WITNESS: Uh-huh.

Q. (By Mr. Murray) And you've already touched on this, but did either of these examples rise to the level of a full-scale war or rebellion?

A. No.

Q. You also mentioned that you looked at some dictionary definitions. Tell us what we're looking at here.

A. This is Webster's Dictionary from 1828.

Q. This is on page 785 of your appendix.

How did Webster's Dictionary define insurrection at that time?

A. Webster's defined it as "a rising against civil or political authority, the open and active opposition of a number of persons to the execution of law in a city or state."

Q. And did — did Webster's say anything about any difference between insurrection on the one hand

[p.31]

and rebellion on the other?

A. Yes. It said that a rebellion was basically an attempt to overthrow the government or create a new government.

I mean, people, to some degree, used those terms interchangeably because, as I said, the Whiskey Insurrection is sometimes called the Whiskey Rebellion, but this definition defined them more historically, or different — differentiated them more historically.

Q. Was this the only example of a dictionary definition that you found informative?

A. No.

Q. I want to pull up page 747 of your appendix.

What is this?

A. This is a dictionary from 1848 by the Reverend John Boag, who was a noted English lexicographer.

Q. And why did you look there?

A. Well, because it is another — he was a noted person, I mean, not as famous as Noah Webster, obviously, but — and — but it had a definition of insurrection within it.

Q. How did the definition in this dictionary compare to what we just looked at in Webster's

[p.32]

Dictionary?

A. It is essentially identical.

Q. You also mentioned that you looked at cases defining insurrection.

Tell us first a bit about how those cases came up.

A. Right.

So prior to 1862, there was no crime of insurrection. So the only time that cases discussed insurrection came in treason cases when judges were instructing juries, giving

them a charge on treason, and invariably they would discuss what an insurrection was in those charges.

Q. If we go to page 750 of your appendix, is this one such charge?

A. Yes.

Q. And tell us the circumstances of this charge.

A. Okay. So this is a charge to a grand jury in the United States Circuit Court in Missouri in 1861. The way things worked then, Supreme Court Justices would participate in trials to some extent. And so this grand jury charge was presided over by John Catron, who was an Associate Justice of the Court at that time.

Q. If we go to page 752 — and I apologize,  
[p.33]

sometimes these historical sources are a little bit hard to read. But can you tell us how Justice Catron defined insurrection?

A. Yes. He said that “The conspiracy and the insurrection connected with it must be to effect something of a public nature concerning the United States,” and that included “overthrowing the government, or to nullify and totally hinder the execution of some U.S. law or the U.S. Constitution, or some part thereof, or to compel its abrogation, repeal, modification, or change by a resort to violence.”

Q. And how does that inform your opinion here?

A. Well, I mean, that is an authoritative statement of law in 1861, close to the time when the Fourteenth Amendment was ratified. And it is consistent with the dictionary definitions just seen, in saying that an overthrow of the government was not required to have an insurrection.

And it’s consistent with the examples of the Whiskey Insurrection and Fries’s Insurrection where there was no

attempt to overthrow the government. There was an attempt instead to resist the execution of law.

Q. Was this instruction by Justice Catron an isolated example in the case law?

[p.34]

A. No.

Q. Tell us a bit more about that.

A. Well, there are other treason cases from before the Civil War that have very similar language. The one I mentioned earlier was a case they called Case of Fries, which was about Fries's Insurrection, and then another called United States vs. Hanway from the 1850s.

Q. How did the charges in the Case of Fries and Hanway compare to Justice Catron's charge here?

A. They're essentially identical.

Q. You said you also looked at sources related to the laws of war.

I want to pull up page 553 of your appendix.

Tell us what we're looking at here.

A. So this is the legal code that was, you know, issued to the Union Army during the Civil War.

Q. And why did you look at the — at this source by Francis Lieber?

A. Yeah. So a couple of reasons. First is, it was the authoritative sort of law of war that applied during the Civil War.

And secondly, Francis Lieber was probably the leading legal scholar of his day, and so he's a particularly authoritative author or speaker on these

[p.35]

kinds of questions.

Q. On page 594 of your appendix, walk us through what Frances Lieber said constituted an insurrection.



JA576

A. He said that “Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws.”

Q. And how, if at all, in this source did insurrection contrast to Civil War or rebellion?

A. Well, Lieber described a rebellion as simply a very large insurrection, although he then went on to say that often it involved an attempt to overthrow the government or to set up a separate government.

Q. And again, how does this discussion by Francis Lieber inform your opinion as to the understanding of insurrection during Reconstruction?

A. Well, it’s consistent with all the other sources that I looked at.

Q. Can you tell us whether or not you saw any serious disagreement during Reconstruction about the meaning of the phrase “insurrection”?

A. No, I did not.

Q. How have today’s historical scholars addressed the definition of insurrection?

A. Well, of the ones who have addressed it  
[p.36]

recently, they have been in agreement basically with the opinion that I’m offering and these sources that you’ve seen; in particular, the draft paper by Professor William Baude and Professor Michael Stokes Paulsen and the work, again, in a draft paper by Professor Mark Graber at the University of Maryland.

Q. If we go back to the language of Section 3, I want to now turn our attention to the phrase “insurrection or rebellion against the same.”

How, if at all, does the language “against the same” affect your opinion as to the historical understanding of Section 3?

JA577

A. Well, that the language limits the definition of an insurrection, for Section 3 purposes, to one that is against the Constitution of the United States.

Q. And so how does that limit or change the definition of insurrection?

A. Well, it eliminates a certain class of insurrections from things that would be considered for purposes of Section 3.

So the most obvious example would be an insurrection against state or local law. That would not be a Section 3 insurrection because it does not involve the Constitution of the United States.

[p.37]

Q. Does the historical record tell us anything about why Section 3 would be limited to a particular type of insurrections, namely, those against the Constitution?

A. Okay. Well, one is, again, they were concerned to limit the scope of the provision, right, and this is a way of doing that.

And then second, there's a thought that since the oath was central to both sort of the limitation and the rationale, the oath that you take is to the Constitution of the United States. It's not to the United States generally. And so it makes sense to think that the insurrection we're concerned about, or rebellion, would be one against the Constitution that you swore an oath to support.

Q. I want to draw our attention now to the language "shall have engaged in insurrection or rebellion."

Does the historical evidence shed light on what it means to have engaged in insurrection or how that would have been understood historically?

A. Yes. I mean, during Reconstruction, engage in insurrection was understood broadly to include any

JA578

voluntary act in furtherance of an insurrection against the Constitution, including words of incitement.

[p.38]

Q. What sorts of historical sources did you look at in forming that opinion?

A. Well, I looked at judicial decisions. I looked at opinions of the United States Attorney General. Those were sort of the two leading sources that I looked at.

Q. I want to pull up page 788 of your appendix.

Tell us what we're looking at here.

A. This is an opinion by the United States Attorney General in 1867 interpreting the Military Reconstruction Acts of Congress.

Q. Okay. And what's the historical significance of this opinion of the U.S. Attorney General interpreting the Reconstruction Acts?

A. Okay. This will take a minute to explain.

So in 1867, Congress passed a series of measures that placed most of the former Confederacy under martial law, and in doing so, Congress ordered that these states hold new elections for conventions that would write new state constitutions and would ratify the Fourteenth Amendment.

Now, as part of the direction as to how these elections were to be run, Congress said that people who would be disqualified from office by the language of

[p.39]

Section 3 of the Fourteenth Amendment should not be allowed to vote in the elections for these new conventions, and the Union Army was tasked with enforcing this provision.

Q. So just to back us up a little bit, this is May of 1867. Was that after Congress had submitted the Fourteenth Amendment for ratification?

JA579

A. Yes. It was in the period between the submission of the Amendment to the states and its ratification. So the statute refers to the proposed Section 3 of the Fourteenth Amendment.

Q. And to be clear, how did the language of the Reconstruction Acts compare to the language of the proposed constitutional Amendment in Section 3?

A. It was identical.

Q. Did this opinion of the U.S. Attorney General have any kind of legal effect?

A. Yes, it did. The opinion was approved by the Cabinet. We have the Cabinet minutes on that. And then was the basis for instructions that were issued to the Union Army commanders in the former Confederacy as to how they were to implement Congress's directive on these elections.

Q. What form did the instructions to the Union Army take in terms of implementing the opinion of

[p.40]

the Attorney General on the Reconstruction Acts?

A. Basically they were instructions issued by the Secretary of War. Also, Ulysses S. Grant was involved because he was the General of the Armies at the time.

Q. Can you tell us whether or not those instructions included the language of this opinion?

A. They did.

Q. So how would you characterize the historical significance of these opinions by Andrew Johnson's Attorney General?

A. Well, they are an authoritative interpretation by the Attorney General of the United States on the language that ended up being ratified in Section 3 of the Fourteenth Amendment.

Q. Who was the Attorney General at the time?

JA580

A. Stanbery.

Q. I want to direct our attention to page 800 of your appendix.

Walk us through what Attorney General Stanbery said about what it means to have engaged in insurrection.

A. Well, he described it as some direct, overt act done with the intent to further the rebellion.

And then later he said that the act had to  
[p.41]

be voluntary, because there was some concern about people who were drafted into the Confederacy, that they not come under the disqualification because they had not acted voluntarily.

So basically a direct, overt act done with intent to further the rebellion that was voluntary.

Q. There's a discussion here of "mere acts of common humanity."

Charity can't be considered as participating in the rebellion, or forced contributions can't be seen as participation, correct?

A. Correct.

Q. Did the opinion of the Attorney General identify any other conduct in furtherance of insurrection or rebellion that would be considered outside the scope of Section 3?

A. No.

Q. What does this source tell you about whether or not someone would have needed to have taken up arms in order to have been understood to have engaged in insurrection at this time?

A. It was not required.

Q. Let's go to page 804 of your appendix.  
Tell us what we're looking at here.

A. Well, this is a second opinion that the

[p.42]

Attorney General issued because, remember, the Army had never organized an election before, so the Union Army commanders requested additional guidance from the Attorney General as to how to do this. So a second opinion was issued.

Q. Does this second opinion have any historical significance?

A. Yes. Again, it was — it was approved and used as a basis for instructions to the Union Army commanders.

Q. If we go to page 815, walk us through what this second opinion of the Attorney General tells us about what it meant to have engaged in insurrection.

A. Well, again, here it says that “it must be an overt and voluntary act done with the intent of aiding or furthering the common unlawful purpose, namely, the insurrection,” and then that “voluntary contributions, even such indirect contributions as arise from a loan of money or the purchase of bonds, would count for disqualification.”

Q. And so again, what does that tell us about whether or not Section 3 was understood to apply only to those who took up arms against the Union?

A. It did not apply only to those who took up arms.

[p.43]

Q. Later in that page, what did Attorney General Stanbery say about speech?

A. Well, he said that “Disloyal sentiments, opinions, or sympathies would not disqualify, but when a person, has, by speech or by writing, incited others to engage in rebellion, he must come under the disqualification.”

Q. Now, we’ve seen this discussion in the Attorney General’s opinion about a voluntary act in furtherance of the rebellion.

JA582

Tell us how early judicial cases compare to this discussion in the Attorney General's opinion.

A. They are consistent.

Q. If we go to page 203 of your appendix, what is this case?

A. This is Worthy vs. Barrett, one of the North Carolina cases that I referred to earlier.

Q. And when was this case decided?

A. 1869.

Q. On the second page, what does the Worthy Court say about what constitutes engaging in rebellion?

A. Well, "A voluntary act by personal service or by contributions, other than charitable, of anything that was useful or necessary."

[p.44]

Q. How did that compare to what we just looked at from Attorney General Stanbery?

A. It's essentially the same.

Q. Were there any other cases addressing this language at this time?

A. Yes. There was a federal case in North Carolina in 1871, United States vs. Powell, that again said that a voluntary act in furtherance of insurrection or rebellion was the definition of engaged in insurrection.

Q. Were there any cases at this time that disagreed with Attorney General Stanbery's opinion that words of incitement were enough to have engaged in insurrection?

A. Not that I'm aware of, no.

Q. In your report, you also discuss some pre-Civil War cases on the law of treason. Why did you look at those cases?

A. Well, as I mentioned earlier, the only time that judges discussed insurrection before the Civil War came in treason cases, so naturally I wanted to look at those.

Q. Do those cases, those treason cases from before the Civil War, shed any light on this question of whether or not someone needed to have personally taken up

[p.45]

arms in order to have levied war against the government or engaged in insurrection?

A. Yes. They made clear that you do not need to take up arms to be engaged in levying war. You could do so by encouraging or instigating an insurrection.

Q. And did those cases specifically address this issue of instigation or incitement?

A. Yes, they do.

Q. And you touched on this a minute ago, but walk us through kind of what those cases said about incitement.

A. Well, I mean, basically they said that just because you had not been on the scene of the — of the violent event or that you had sort of not — not taken up arms, that that didn't matter. That what mattered was basically you could be engaged in an overt act supporting treason if you instigated, incited, encouraged that activity.

Q. During Reconstruction, did — and during the Civil War, did Congress ever address this issue of disqualifying insurrectionists?

A. Yes. So as I mentioned earlier, if a member elect showed up to the House of Representatives or the Senate, there could be a challenge about whether that person was involved in the Confederacy, and then each

[p.46]

House of Congress would have to assess whether that involvement disqualified them.

Q. Let's turn to page 463 of your appendix.

What is this historical source?

A. This is "Hinds' Precedents" of the House of Representatives, which is an authoritative source of



decisions by individual Houses of Congress running through the 18th and 19th centuries.

Q. Why did you look at Hinds' Precedents?

A. Well, this is where you would look for precedents from individual Houses of Congress as opposed to, say, legislation or judicial precedents.

Q. Tell us a bit about the case of John Young Brown.

A. Yes. So John Young Brown was a member elect to the House of Representatives from Kentucky, and when he arrived in 1868, he was challenged on the ground that he had given aid to the Confederacy.

Q. Let's look at page 465 of your appendix, and I want to pull up some language here.

What are we looking at here?

A. This is essentially a letter to the editor that Mr. Brown wrote early during the Civil War in which he advocated violence against Union troops that might enter Kentucky.

[p.47]

Q. And was there any argument in the case of John Young Brown that he had done anything to aid the rebellion, other than this letter to the editor?

A. No. This was all that he was accused of doing.

Q. How did Congress decide the case of John Young Brown?

A. They did not seat Mr. Brown.

Q. On what basis?

A. That he had been involved with the Confederacy and was disqualified.

Q. Now, you said this case was in 1867, correct?

A. Yes — 1868.

Q. 1868?

Was that before or after Section 3 had been ratified?

JA585

A. It was a little bit before Section 3 was ratified, so it was not a Section 3 enforcement strictly speaking.

Q. So on what basis did Congress say that Mr. Brown was disqualified?

A. Well, they — the House has broad power to disqualify or refuse to seat members elect, especially in that era, and so basically they said that he had given

[p.48]

aid to the Confederacy, through this editorial.

Q. If the case of Mr. Brown was not a case applying Section 3 itself, why did you look at it in informing your understanding as to the scope of Section 3?

A. Well, because this decision was taken in the year that the Fourteenth Amendment was ratified, and it concerned the kind of conduct that would be considered disqualifying. So it seemed like informative, as an example, for what people might have been thinking about when the provision was subject to ratification.

Q. Did you look at any other congressional cases of disqualification or exclusion?

A. Yes.

There was one other case in 1867 of Philip Thomas. Mr. Thomas was a senator elect from Maryland, and he had given \$100 to his son before his son went off to join the Confederate Army, and he was challenged on the grounds that he had given aid to the Confederacy by doing that.

Q. Had he done anything other than give \$100 to his son when his son was leaving to join the Confederate Army?

A. No.

Q. How did Congress address the case

[p.49]

of Philip Thomas?

JA586

A. They did not seat Mr. Thomas.

Q. On what basis?

A. That he had given aid to the Confederacy. That was disqualifying.

Q. Same question as with Mr. Brown. Was that a Section 3 case?

A. No, it was not because it came in 1867, a year before the Fourteenth Amendment was ratified.

Q. And did you still consider that to be relevant in understanding the historical backdrop to Section 3?

A. Yes, for the reasons I just identified, that it happened while Section 3 was pending before the states and concerned what kind of conduct would be considered disqualifying from office.

Q. You've — you've mentioned historical sources discussing "a voluntary act in support of insurrection by words or deeds."

Did the issue of inaction ever come up? Were there any cases where an individual was charged for having abdicated a duty to protect the Constitution?

A. No.

Q. So does the historical evidence kind of tell us anything one way or another about whether they

[p.50]

saw any kinds of inaction as potentially being covered by Section 3?

A. No.

Q. If we step back and look at all the historical sources that you've just discussed, what do those sources tell us about whether or not an individual is disqualified, or was understood to be such at the time, without having taken up arms against the government himself or herself?

JA587

A. Well, the answer is, you could be disqualified without having had taken up arms against the government in the period of the Civil War.

Q. I want to move now to a discussion of offices and officers.

Set the table for us a little bit about how those terms come up in Section 3.

A. Sure.

Well, Section 3 says that “No person shall hold any office, civil or military, under the United States” — or under any state — “if they had taken an oath as an officer of the United States,” among other things, “to support the Constitution of the United States and then have engaged in insurrection against the same.”

Q. So to be clear, first you have to have taken an oath as a qualifying official or officer of the

[p.51]

United States and then engaged in insurrection?

A. Correct.

Q. And if you’ve done that, if you’ve taken an oath as an officer and engaged in insurrection, then what kinds of offices or positions are you disqualified from at that point?

A. Right. That’s — right. So the first portion describes the offices, and the second portion describes the officers.

Q. Have you looked at historical evidence bearing on the question of whether the office of the presidency was understood to be an office under the United States such that a disqualified individual could not take that office?

A. I have.

Q. And what is your opinion on that question?

A. My opinion is that during Reconstruction, the presidency was considered an office under the United States for purposes of Section 3.

JA588

Q. And have you looked at historical evidence addressing whether or not the President during Reconstruction was considered as an officer of the United States?

A. I have.

Q. And what is that opinion?

[p.52]

A. My opinion is that during Reconstruction, the President was considered an officer of the United States for purposes of Section 3.

Q. In addressing the meaning of officer and office, what kinds of historical evidence did you look at?

A. So I looked at congressional debates and reports. I looked at presidential documents. I looked at opinions of the United States Attorney General. I looked at judicial decisions, contemporary newspapers, were the main ones.

Q. Did historical sources at this time define, in the context of Section 3, what it meant to be an officer of the United States?

A. Yes, they — yes, they did.

Q. And what did they say you had to do in order to be an officer of the United States?

A. Well, the main thing was that you had to have taken an oath to support the Constitution, that that — again, the oath was central to the text and the purpose, and it was also considered pivotal to the question of whether you were an officer or not.

Q. If we go back to the North Carolina Supreme Court's decision in Worthy, was this one of the cases on this issue that you were mentioning earlier?

[p.53]

A. Yes.

Q. What did the Worthy Court's decision tell us about who was an officer?

A. Well, the Court said that it "did not know how better to draw the distinction between an officer and a mere placement," let's say an employee, "than by making his oath the test."

And then went on to say that every officer is required not only to take an oath of office but an oath to support the Constitution of the state and of the United States.

Q. Did Attorney General Stanbery ever address this issue as well?

A. Yes, he did, in one of his opinions that we looked at earlier.

Q. If we go back to the first opinion of the Attorney General on page 797 of your appendix, walk us through what Stanbery said about officer of the United States under the language of Section 3.

A. Well, he said that the term was to be used in its most general sense and without any qualification, and that the oath was central to determining whether someone was an officer or not.

Q. And how did Attorney General Stanbery's opinion that officer is used without any qualification

[p.54]

relate to your opinion as to whether the presidency was understood to be covered at this time?

A. Well, there was no qualification for the President of the United States.

Q. I want to ask you briefly about an argument that's been made in this case, that the President's oath under Article II "to preserve, protect and defend the Constitution of the United States," is not, for purposes of Section 3, an oath to support the Constitution of the United States.

JA590

Are you familiar with that line of argument?

A. Yes, I am.

Q. Have you seen any historical evidence that bears on the question of whether the President's oath to defend the Constitution would have been understood to fall under Section 3?

A. I have.

Q. I'm pulling up page 869 of your appendix, and I apologize, this is another one of those hard-to-read historical sources.

But what are we looking at here?

A. This is a grand jury charge that was issued by a Federal Circuit Judge in Tennessee in 1870, and it was reprinted in a newspaper.

[p.55]

Q. Well, why are we looking at a newspaper here?

A. Well, because in those days, grand jury charges were often reprinted in newspapers as a kind of exercise in public education, as well as just to tell people what — what was going on in the courts.

Q. And who originally identified this historical source?

A. I did.

Q. Okay. What did this charge tell us about oaths in Section 3?

A. Well, Judge Emmon said: The oath which shall have been taken need not be in the precise words of the Amendment, quote, "to support the Constitution of the United States."

He went on to say that there were slight differences in the forms of the oaths that people took, but the important thing was whether they include, you know, substantially, even if not literally, an obligation to the federal power. And that the jury was not to consider the argument that,

in effect, the wording of the oath was not — did not include the word “support.”

Q. How does that relate to your opinion that the oath that the President swears to defend the Constitution is covered by Section 3?

[p.56]

A. It leads me to the conclusion that it is covered because the difference in wording is irrelevant.

Q. Did you also consider any presidential proclamations in addressing whether the President was considered to be an officer of the United States at this time?

A. I did.

Q. And tell us a bit about those proclamations.

A. Well, these are proclamations that were issued by President Andrew Johnson, who was the President at the time that the Fourteenth Amendment was ratified, in which he explained how he had the authority to create provisional governments in the Confederacy following Lee’s surrender to Grant.

Q. If we look at page 442 of your appendix, is this one of those proclamations?

A. Yes, it is.

Q. Tell us a bit about the context here.

A. Yes. Well, the President is issuing, in effect, an executive order — they called it a proclamation then usually — where he’s establishing a government in one of the former Confederate states. And he justifies that on the grounds, in part, that he is the chief civil executive officer of United States.

[p.57]

Q. And remind us what year this was.

A. This is 1865.



JA592

Q. Before — shortly before Section 3 of the Fourteenth Amendment was adopted?

A. Yes.

Q. Was this an isolated example of President Andrew Johnson?

A. No. He issued the same proclamation for different states throughout the Confederacy, and these proclamations were widely reprinted in newspapers at the time because they were setting forth the terms of the governments that were to govern in several states of the United States.

Q. Was Andrew Johnson the only President in the 19th century to refer to himself as an officer of the United States?

A. No. President John Tyler, in the 1840s, referred to himself as the chief executive officer. And President James Buchanan, who was Lincoln's predecessor, referred to himself as the chief executive officer under the Constitution.

Q. In your report, you also talk about examples of how this issue came up in Congress. Tell us a bit about that.

A. Yes. Well, there were references to the

[p.58]

President as either the executive officer of the United States or an executive officer of the United States in Congress multiple times during the Congress, either that proposed the Fourteenth Amendment or the one that oversaw its ratification.

Q. I want to look at page 488 of your appendix, an excerpt from the Congressional Globe.

What are we looking at here?

A. This is a speech by John Bingham in 1868 in which he describes the President as the executive officer of the United States.

JA593

Q. And remind us what John Bingham's role was in the adoption of the Fourteenth Amendment.

A. Well, he was the principal drafter of Section 1 of the Amendment, and he was a member of the Joint Committee on Reconstruction, which was sort of the pivotal committee that essentially assembled the proposal of the Fourteenth Amendment more generally.

Q. Tell us about some of the other contexts in which this issue of the President as an officer of the United States came up at this time.

A. Yes. Well, it was also addressed in President Johnson's impeachment trial, which occurred in 1868, shortly after this speech that Bingham gave, in which the President's own lawyer described him as an

[p.59]

executive officer of the United States.

Q. Was that an isolated reference in Congress at the time?

A. No. There were many other references to the President as — different formulations, whether executive officer of the United States, the executive officer of the United States, in one case mere executive officer of the United States, by various members of Congress, including Bingham on at least one other occasion.

Q. Let's look at page 811 of your appendix.

This is from a second opinion of Stanbery on the Reconstruction Acts. And what did he say on that issue?

A. Well, he said that the President, who was his boss, is simply an executive officer.

Q. Did anyone at the time specifically address the question of whether Section 3 covered the office of the President?

A. Yes.

Q. How did that come up?

JA594

A. That came up during the Senate debate on the Section 3 language.

Q. I'm pulling up page 477 of your appendix, excerpts from the Congressional Globe from that time.

[p.60]

Walk us through how that issue came up in the debate about Section 3.

A. So a question was posed as to why the President or the Vice President was not specifically mentioned among the offices listed in Section 3, and Senator Lot Morrill of Maine, who was a supporter of the Fourteenth Amendment said: Well, let me call the senator's attention to the words "hold any office, civil or military, under the United States."

And then the response to that was, in effect: Oh, yes, I'm sorry about that. Never mind.

I mean, when I first saw this excerpt in 2020 when I was researching the original article, it was very exciting because you rarely get such a clear statement of legislative history, right? Normally, legislative history is about things that you're not particularly interested in or they're more vague in their phrasing.

This is about as specific as you can get.

Q. Were you the one who dug this up?

A. Yes.

Q. Did anyone come back later in the debate and say: Actually you were wrong, we are excluding the presidency from Section 3?

A. No.

[p.61]

Q. Talk to us a bit about how Jefferson Davis came up in the debates around Section 3.

A. Well, there was a consensus at the time that Jefferson Davis was ineligible to be President because of

Section 3. And when Congress considered granting amnesty to individuals, an objection to granting amnesty to everyone was that, “Well, that would give Jefferson Davis amnesty, and that meant that he could then be President of the United States,” which people thought was just unacceptable.

Q. And when specifically did that issue of kind of amnesty including Jefferson Davis come up in these debates?

A. Well, it came up more — I mean, it was discussed a little bit during the time that the Fourteenth Amendment was under ratification, pending, but it really came up more when the debate on amnesty heated up in the 1870s, around the time of the General Amnesty Act in 1872, and then again in a debate in 1876, when they were thinking about giving amnesty to the remaining few hundreds of people who had not been given amnesty in 1872.

Q. In the discussions about amnesty that might allow Jefferson Davis to become the President again, describe kind of the tone of the supporters of

[p.62]

Section 3 at that prospect.

A. Well, they thought it was kind of preposterous that Jefferson Davis could be eligible to be President of the United States, and they insisted that the only way that could happen is if he were given amnesty.

Q. Can you tell us whether the historical purpose that you’ve identified behind Section 3 tells us anything about whether or not the President was understood to be excluded.

A. Well, yes, in the sense that it would have been odd to say that people who had broken their oath to the Constitution by engaging in insurrection were ineligible to every office in the land except the highest one.

JA596

Q. Did the debates ever talk about kind of high office versus sort of lower-level officials in the context of Section 3?

A. Yes. There were references in the Senate to the fact that, in part, the idea of Section 3 was to go after people who were the most responsible for Secession and the Civil War, and that tended to include higher-level officials. They were seen as basically more blameworthy for what had happened than, say, your lower-level official.

[p.63]

Q. I want to ask you just a few final questions.

Last Friday, Trump served an expert report in this case by Robert Delahunty. Have you had a chance to review that expert report?

A. I have.

Q. Describe for us your level of familiarity with the people who today are recognized as experts on Section 3.

A. I'm very familiar with them.

Q. When was the first time you had ever heard of Robert Delahunty?

A. When I learned that he would be an expert witness in this case.

Q. How would you characterize Robert Delahunty's contributions, if any, to the scholarly debate on the history of Section 3?

A. I don't know of any.

Q. Is Robert Delahunty someone that you would consider to be an expert in this history?

A. No.

Q. Robert Delahunty cites an article, a law review article —

MR. GESSLER: Your Honor, I'm going to object to this entire line of questioning. This was not

[p.64]

part of his expert report, and it's totally improper.

MR. MURRAY: Your Honor, we got his expert report at midnight on Friday, and I understood that we were able to do short rebuttal or response to that since we did not have a chance to respond in writing.

MR. GESSLER: Your Honor, he may contend with Professor Delahunty's arguments if he sees fit, but he is not an expert on Professor Delahunty's expertise. He is not here to render an opinion on whether he's a better expert than Professor Delahunty is a better — or Professor Delahunty is a better expert.

So I understand some experts think they're — well, I won't say any more. Thank you, Your Honor.

THE COURT: The Court will sustain the objection to the extent that I agree, I don't think it's proper for one witness to comment on the other witness's expertise. That's what you do on cross-examination.

However, I will allow the professor to talk about his response to the opinions of — Professor Delahunty, is that the correct name?

MR. GESSLER: Yes, ma'am.

MR. MURRAY: Thank you, Your Honor.

Q. (By Mr. Murray) One of the sources that Professor Delahunty relies on is an article by

[p.65]

Professors Blackman and Tillman on the question of whether or not the presidency is an office under the United States.

Is that an article that you're familiar with?

A. I am.

Q. Can you situate that article in the broader scholarly debate surrounding the history of Section 3?

JA598

A. Well, I mean, of the draft papers that have considered the question of whether the President is an officer of the United States for purposes of Section 3, and there aren't that many, I would say that their position so far is in the minority.

Q. Tell us who some of the other scholars are who have addressed this issue and disagreed with the Blackman and Tillman position.

A. Yeah. So there's the draft paper by Professors Baude and Paulsen that I mentioned earlier, the draft paper by — a draft paper by Professor Graber that I referenced earlier.

There's another draft paper by John — and I — Villalopos [phonetic], I believe, is the correct pronunciation of his name, and they all take the view that the President is an officer of the United States for

[p.66]

purposes of Section 3, as I do.

Q. I want to ask you about a few other sources that are cited in Mr. Delahunty's expert report. I want to pull it up on the screen here, Petitioners' Exhibit 227.

If we go to page 10, there's a discussion of the presidential election of 1872 and the candidacy of Horace Greeley, which I think was also referenced in opening statements.

Have you reviewed this portion of Mr. Delahunty's report?

A. Yes, I have.

Q. And tell us what you understand to be the argument about Horace Greeley in 1872.

A. Well, I understood the argument to be that Horace Greeley ran for President in 1872 as the Democratic nominee, and no one objected to that on the grounds that he was ineligible to do so under Section 3, and that,

therefore, that might mean that Section 3 does not apply to the presidency.

Q. Do you agree with that argument?

A. No.

Q. Why not?

A. Horace Greeley was not a Confederate. He was a loyal supporter of President Lincoln during the [p.67]

war. He was a supporter of Radical Republican policies during Reconstruction early on. He was a supporter of the conviction of Andrew Johnson in the impeachment trial in 1868.

Section 3 had nothing to do with him.

Q. Didn't anybody kind of criticize him for southern sympathies though?

A. Yes. But, I mean, that was just sort of political rhetoric that people were putting out. And, you know, there's a distinction between that and the sort of legal ineligibility that would attach to Section 3.

Now, for example, John Bingham gave a speech in 1872, a campaign speech against Greeley. He was campaigning for Grant's reelection, and he expressly distinguished Horace Greeley, whom he opposed, but basically he could be President if he won, from Jefferson Davis, who he said could not be President because of Section 3 of the Fourteenth Amendment unless Davis got amnesty.

So it was pretty clear. Davis was a Confederate; he was ineligible. Greeley was not a Confederate; he was eligible.

Q. And let's — I know you've said that Horace Greeley was not a Confederate, and so wasn't covered by Section 3. But let's assume for the sake of



[p.68]

argument that he was otherwise covered by Section 3.

What, if anything, does the state of amnesty by the time of the 1872 election tell us here?

A. Well, if Greeley had been covered by Section 3, he would have received amnesty under the General Amnesty Act that was enacted in the spring of 1872, so it wouldn't — Section 3 couldn't have applied to him anyway while he was running for President.

Q. Does the example of Horace Greeley tell us anything here?

A. No.

Q. There's also a discussion in Mr. Delahunty's report citing to an article by Professor Kurt Lash about earlier drafts of Section 3 of the Fourteenth Amendment and whether those shed any light on whether the presidency is covered.

Are you familiar with those arguments?

A. Yes.

Q. And what is your opinion on those arguments from a historical standpoint?

A. Well, they're inconclusive, right? That is to say, you can't draw a conclusion from early drafts as to what the final draft means unless somebody says: The reason we're changing the draft from this to that is because of something.

[p.69]

So nobody made any such commentary about the differences between early drafts and the final draft.

I mean, it would be nice if we had more information about the drafting and ratification of the Fourteenth Amendment, but we have what we have. And so, therefore, you really can't draw any conclusion about the final draft from any of the earlier drafts.

JA601

Q. Is there any indication that you've seen in any of the congressional debates about Section 3 that anyone intended to exclude the President or the presidency?

A. No.

Q. I want to turn to page 30 of the report.

There's a discussion here of three sources identified by Professors Blackman and Tillman that they cite to suggest the President is not constitutionally an officer of the United States.

Did you review that portion of Mr. Delahunty's report?

A. I did.

Q. Were those historical examples persuasive to you?

A. No.

Q. Why not?

A. Well, a couple of reasons. I mean, first

[p.70]

of all, they all arise a decade after the ratification of the Fourteenth Amendment.

They are not about Section 3. That's a second reason.

Now, a third is, I don't know who David McKnight was. I mean, he — but put another way, he's not Noah Webster or Francis Lieber, so he doesn't have the same sort of authority. So the statement in his treatise is of, you know, only very limited importance.

The other two statements came out of the Senate impeachment trial of Secretary of War, William Belknap. He was accused of corruption, among other things.

And the thing is that in — first of all, that was a trial that was not about the President. So the statements by the senators that the President was not an officer of the United States were a kind of dicta, basically, that had nothing to do with the trial that they were involved in.

JA602

Now, let's contrast that with the statements about this issue in the impeachment trial of Andrew Johnson, right?

Now, that happened in 1868 when the Fourteenth Amendment was ratified. That was about the President. He was on trial. People did say that he was

[p.71]

an officer of the United States. His own lawyer said it, as well as members of the — of Congress.

And it was an actual issue in the trial, and the reason for that is that President Johnson was accused of committing a high crime and misdemeanor by refusing to follow an act of Congress because he thought it was unconstitutional. Okay. So set aside what you think of that argument.

Part of making that argument meant saying: Well, he wasn't a judicial officer, and only judicial officers can set aside laws because they are unconstitutional. He's only an executive officer.

So that was part of the reason why people were describing him as an executive officer or the executive officer. So it was actually related to the issues under discussion in a way that, of course, these statements that you see here in the Secretary of War's trial some years later were not.

So I just think, overall, it's not persuasive evidence on the question.

Q. I want to briefly ask you about Professor Delahunty's argument that Section 3 is too ambiguous for courts to decide without congressional implementing legislation.

[p.72]

Do you have a view on that issue from a historical matter — standpoint?

JA603

A. Well, yes. First of all, we see examples of people applying Section 3 and interpreting it at the time, right? And so in the end, it's really no different than a lot of other legal standards which are broad, and you have to figure out how to apply them to a particular set of facts. But that's what we do with standards like that.

Now, it would be nice if we had more examples, more cases to guide us, but I had a colleague, you know — she's no longer with us now — but when people would say, "Why don't we have more information before we make a decision," she would just look at you and say, "Alas," you know, like, we have what we have. We have to — we have to work with what we have.

But there's no reason to think that we can't work with what we have.

Q. Do you agree with Mr. Delahunty's argument that the phrase "insurrection" was ambiguous at the time?

A. No. I mean, we've gone through quite a bit of material to define what insurrection was and, you know, that doesn't mean we know how it should be applied to every set of facts, but it's — there's quite a bit of material that defined what an insurrection was as of

[p.73]

Reconstruction.

Q. Do you agree with Mr. Delahunty's argument that the phrase "engaged in insurrection" does not include speech?

A. No, I do not agree with that.

Q. Mr. Delahunty cites the Second Confiscation Act in making that argument.

Can you explain to us what the Second Confiscation Acts were and kind of what you understand that argument to be.

A. Sure.

JA604

The Second Confiscation Act was a criminal statute enacted in 1862 that defined insurrection by listing a series of terms including “to set afoot, to incite, to engage.”

And then my understanding is the argument is: Well, Section 3 did not include the word “incite” in — in its terminology in the way that the Second Confiscation Act did, so, therefore, maybe incite was not included by Section 3.

Q. Do you agree with that argument from a historical perspective?

A. No.

Q. Why not?

A. Well, first of all, I mean, there’s a

[p.74]

difference between a criminal statute, which is what the Second Confiscation Act was, and the provision of Section 3, which is creating a new qualification for office. So the comparison is not that close.

Secondly, there’s no explanation in the debates on Section 3 as to why the word “incite” was not included. So again, it’s like you can’t really draw conclusions from a prior version, right, as compared to the final version unless you know something about why there’s a difference.

Thirdly, constitutional provisions are not statutes. They are not as specific as statutes. They’re written in general language. That was well understood at the time.

Chief Justice Marshall explained this in his opinion for the Court in *McCulloch vs. Maryland*, that you can’t make constitutions as specific as statutes because then they would be incredibly long, incredibly hard to understand for average people.

JA605

So, you know, constitutional provisions like Section 3 were written in general terms.

Q. What, if any, conclusion do you draw from the fact that Section 3 does not specifically mention incitement?

A. I don't draw any particular conclusion  
[p.75]

from it. I draw conclusions from the other sources that interpreted Section 3, mainly the Attorney General's opinions.

Q. My last question for you is, if we step back and evaluate Professor Delahunty's historical methodology laid out in his report as a whole, what is your opinion as to the reliability of his historical method?

MR. GESSLER: Your Honor, we will object again.

THE COURT: Sustained.

Q. (By Mr. Murray) Professor Magliocca, you discussed earlier the types of historical methodologies that scholars in history typically follow when they are deciding historical questions, correct?

A. Yes.

Q. And can you tell us whether or not, in your view, Mr. Delahunty followed those prescribed methodologies?

MR. GESSLER: Your Honor, objection again. And further we would note that Mr. Magliocca has not been — I'm sorry, Professor Magliocca has not been proffered as an expert on historical methodologies.

THE COURT: Sustained. He can talk about his methodologies, but you can cross-examine

[p.76]

Professor Delahunty on his.

MR. MURRAY: Understood, Your Honor.

We don't have any more questions. Thank you.

THE COURT: Cross-examination.

You may proceed. Thank you.

JA606

MR. GESSLER: Sure.

CROSS-EXAMINATION

BY MR. GESSLER:

Q. So you've been on the witness stand before, correct, in the Georgia case —

A. Yes.

Q. — if I remember correctly?

Okay. Have you been a witness in any other instances?

A. No.

Q. Okay. So do you know how this works with me asking a few questions?

A. Uh-huh.

Q. And thank you for being here today.

So I want to ask a little bit about sources.

You'd agree with me, with respect to the Fourteenth Amendment and Section 3, that there's recently, within the past few years, a substantial amount

[p.77]

of new scholarship on that issue?

A. Yes.

Q. Okay. And you mentioned that your view that the Tillman and Blackman viewpoint is in the minority, correct?

A. Yes.

Q. Okay. And you would agree with me that when courts make decisions on interpretation, they don't count up the number of professors on one side of an issue versus the number on the other side and make their decision on that basis?

A. Well, no, it's not the only factor.

Q. Well, it's probably not even one factor. They look at the strength and the quality of the underlying arguments, correct?

JA607

A. Yes.

Q. Okay. Now, you're — you and I had chatted just very briefly, and you're familiar with Professor Blackman, correct?

A. Yes, I know him, and I like him.

Q. And you two have mutual admiration for one another and mutual respect for one another's scholarship?

A. Yes.

Q. And you still have some pretty sharp disagreements on the meaning and application of

[p.78]

Section 3. Is that fair to say?

A. Yes.

Q. Okay. And it's fair to say that you two will continue to have discussions, continue to disagree, perhaps sometimes resolve your disagreements as part of the scholarly and analytical process?

A. Probably later today.

Q. He may even be listening to your testimony today.

A. Could be.

Q. Okay. And then you'd agree with me that people will — that scholars such as yourself and others will continue to analyze the historical record and sometimes modify your opinions based on what you find, correct?

A. Yes.

Q. Okay. And, in fact, there's one instance where Professors Baude and Paulsen quoted the historical record of the case of Jefferson Davis.

Do you — are you familiar with that?

A. Yes. Q. Okay. And Professors Tillman and Blackman looked at the history very closely and said the actual record, this record written by — with respect to Justice Chase's ruling was incorrectly recorded.



[p.79]

Do you remember that?

A. Well, they've made the argument that it was incorrectly recorded.

Q. Okay. And so what they did is they compared an 1869 version from an American Law Review to an 1894 version and said: Look, the 1894 was essentially — that sentence with respect to Section 3 was inserted, we believe, incorrectly?

A. Well, yes. Now, that's a bit more complicated in the sense that, I mean, first of all, it's not clear that it was inserted incorrectly. Because if you look at newspaper commentary at the time, I mean, there was somewhat of a mixed set of views about what Chief Justice Chase was saying in that case or thought about it.

Secondly, it was actually pretty common practice back then for comments to be inserted in official reports years after the fact.

In my book on Bushrod Washington, he would revise his reports or he had someone who helped him edit them, you know, years after the fact to change them.

And so today — they didn't have an official set of reporting systems the way we do now, right? So today that would seem, well, improper or very odd, whereas back then it was more common.

[p.80]

So yes, but they've made that argument as you've described it.

Q. And so the point I'm trying to make — and I'm assuming you'll agree with me, but I'll ask you if you agree with me — that there's still substantial debate about the accuracy or the quality of the historical record, in some instances, with respect to Section 3?

A. Yes.

JA609

Q. Okay. And you'd agree that you have a pronounced point of view, and some other scholars have different points of view on that issue?

A. Yes.

Q. Okay. Now, my understanding and — is that you have not rendered an opinion, nor have you been asked to render an opinion on the meaning of the word "incitement"?

A. That's correct.

Q. Or "incite" or any variant of that?

A. Right.

Q. And so your argument is that insurrection can include words of incitement?

A. Yes.

Q. But you're not necessarily defining what incitement is?

[p.81]

A. Correct. I'm not a First Amendment expert.

Q. Okay.

MR. GESSLER: Excuse me one moment.

Q. (By Mr. Gessler) And is it — just to understand sort of your definition of insurrection, in order to engage in insurrection, in your view, that requires — does that require an overt and voluntary act?

A. Well, an overt or a voluntary act would constitute engaging in insurrection. I mean, whether inaction could be — was just not something that was addressed, so the history doesn't tell us the answer to that.

Q. Okay. Could someone engage in insurrection with an involuntary act?

A. No.

Q. Okay. Could someone engage in insurrection with a secret act?

JA610

A. Well, no, in the sense that there had to be some public action that was being — that was involved probably in the sense that there was a public use for — or public purpose to the insurrection.

Q. Okay.

A. So, yeah, I would — I would tend to think not.

[p.82]

Q. So you'd agree with me that it requires an overt and voluntary act?

A. Well, an overt and voluntary act would qualify, yes.

Q. Okay. And that someone has to have a specific intent?

A. Well, that's a question on which the sources don't give us a clear answer. The Attorney General's opinions do refer to intent.

On the other hand, the cases don't. The cases, to some degree, could be understood as saying that awareness or knowledge is sufficient.

The reason I say that is because let's say you had a sheriff, okay, in a southern state. They're the sheriff before the Civil War, they maintain the same position during the Civil War and after the Civil War. So they're doing the same job the whole time. All that's changed is, you know, they were — they were under the United States, they were under the Confederacy, they're under the United States.

It's not clear there if there's any intent involved, but they would have been disqualified because they had served prior to the war, now they're serving during the war, now they're still there after the war.

It is clear that they were aware of the

[p.83]

insurrection, right? But they were just doing the same job in the same way. So it's less clear as — that that would constitute intent.

Q. So let me ask you, I mean, because there's a couple branches of Section 3, right?

A. Uh-huh.

Q. There's the "aid and comfort to the enemies" branch, and there's the "engage in insurrection or rebellion"?

A. Yes.

Q. Okay. So are you saying it's unclear whether or not that sheriff engaged in insurrection or —

A. No. That sheriff was deemed to have engaged in insurrection.

Q. Okay.

A. My point was that you can't say that there was any specific intent involved there —

Q. Okay.

A. — that we know of.

Q. Because he was exercising civil authority under the government of the Confederacy?

A. In the same way that he did before and afterwards, yes.

Q. Okay. Are you familiar with Professor Kurt — well, you are familiar with

[p.84]

Professor Kurt Lash. You two, I think, have either written an article together or served on a panel?

A. We did a podcast together, yes.

Q. Okay. And he recently wrote an article sort of talking about the historical record of Section 3, correct?

A. Yes.

JA612

Q. And you'd agree with me that he uncovered some — some aspects or some items within the historical record that were relatively new to scholarship?

A. Well, yeah, I think every draft paper is able to do that, yes.

Q. And — and that's just part of the advancement of scholarship, each draft paper adds new information?

A. Right.

Q. Okay. And have you been in correspondence or spoken with Professor Lash since he wrote his paper?

A. I have, yes.

Q. Okay. And that's a collegial relationship similar to the one you share with Professors Tillman and Blackman; would that be fair to say?

A. Yes.

Q. Okay.

MR. GESSLER: Could you excuse me one [p.85]

second, Your Honor.

(A pause occurred in the proceedings.)

Q. (By Mr. Gessler) Let me just ask you one more question, or just another set of questions on the First Amendment issues, the word with incite.

So did I correctly hear you saying that you're not here today as an expert on the First Amendment?

A. Correct.

Q. Okay. So you have not, for purposes of today — maybe at some other point — sort of done an analysis of what incitement means or the historical record about that?

A. No. I mean, there were no First Amendment cases from the Supreme Court until well after Reconstruction, so that's — that's part of the reason why.

JA613

Q. Okay. So basically the historical record you've looked at predates modern First Amendment law?

A. Correct.

MR. GESSLER: Okay. All right. I have no further questions. Thank you very much.

THE COURT: Any redirect?

MR. MURRAY: Very briefly, Your Honor.

[p.86]

#### REDIRECT EXAMINATION

BY MR. MURRAY:

Q. You were asked about Professor Kurt Lash. Do you remember that?

A. Yes.

Q. Have you reviewed Professor Lash's draft paper on Section 3?

A. Yes.

Q. Can you tell us whether anything in that draft paper changed or affected your opinion on what would — what insurrection would have been understood to mean at the time of Reconstruction?

A. No. He didn't really address that very much.

Q. Can you tell us whether or not anything in Professor Lash's paper changed your opinion as to what kinds of conduct was sufficient to have engaged in insurrection?

A. No. He didn't really address that much either.

Q. Can you talk to us just very briefly about what the time period was that Professor Lash looked at?

A. Well, I mean, he was mostly looking at to, although he did talk about a few other things, including the Horace Greeley example that

[p.87]

Professor Delahunty also referred to in his expert report.

JA614

Q. Can you tell us whether or not, in your opinion, the time period he looked at in his article was sort of the whole body of historical evidence?

A. Well, I mean, mostly but not identically, right? That is, in other words, the time period that we're really all looking at is pretty much between 1865 and 1872, when Congress passed the General Amnesty. I mean, there may be one or two things after that but very little.

So his paper covers, you know, much of that period, though not — I would say not certain things that came kind of towards the latter end of that period.

MR. MURRAY: Thank you, Your Honor.

THE COURT: Does the Colorado Republican Party have any questions for Professor Magliocca?

MS. RASKIN: We have no questions. Thank you.

MR. KOTLARCYK: No questions from the Secretary, Your Honor.

THE COURT: Okay. Professor Magliocca, thank you so much for your testimony.

THE WITNESS: Thank you.

MS. TIERNEY: Good morning, Your Honor.

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Our next witness is Hilary Rudy, and she is not in the courtroom yet. She is walking over at this very moment.

THE COURT: Okay. Why don't we take our break then a little bit early and reconvene at 10:15.

MS. TIERNEY: Okay. Thank you.

(Recess taken from 9:54 a.m. until 10:15 a.m.)

THE COURT: You may be seated.

MS. TIERNEY: Are we ready to go?

THE COURT: Yeah. Oh, I'm sorry. I didn't even see you there.

Will you raise your right hand, please.

HILARY RUDY,

JA615

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

THE COURT: Great.

DIRECT EXAMINATION

BY MS. TIERNEY:

Q. Good morning. Could you introduce yourself, please.

THE COURT: I cannot hear you very well, so if you could —

MS. TIERNEY: Can you hear me better now?

THE COURT: Yeah.

MS. TIERNEY: Okay. Here we go. I'll

[p.89]

lean in.

Q. (By Ms. Tierney) Could you introduce yourself, please.

A. Yes. Good morning.

My name is Hilary Rudy. I'm the deputy elections director in the Colorado Secretary of State's Office.

Q. And how long have you held that position at the Colorado Secretary of State's Office?

A. Since 2013.

Q. And did you hold a different position or different positions before that position at the Colorado Secretary of State's Office?

A. I did. Prior to that, I held a couple of different positions in the legal team.

Q. And so when did you first start working at the Secretary of State's Office?

A. I began working as a full-time staffer in 2006.

Q. And how many different Secretary of States have you served with?

A. Including my internship in 2005, seven.



JA616

Q. And what political affiliation were those Secretaries of State? Were they mixed? Or all one, the other?

[p.90]

A. Mixed, both Republican and Democratic Secretaries.

Q. And you've not spoken to anyone on our legal team prior to your testimony today or in preparation for today, correct?

A. That's correct.

Q. And have you testified in your role as deputy elections director for the Secretary of State previously?

A. I have.

Q. How many times?

A. I don't know the exact number, but several.

Q. In your present role, what are your duties generally?

A. Generally speaking, I oversee the teams within the elections division that provide support, training, and oversight to the county clerk. So that would be the teams that oversee ballot access, the legal team, the statewide voter registration system, county support, training. Primarily the public-facing and county-facing portions of the Division.

Q. Okay. Can you describe generally what role the Secretary of State's Office has in the administration of elections in Colorado?

[p.91]

A. Yes. So in Colorado, the Secretary of State is the chief election official for state and federal elections.

And our role is to certify the content for state and federal offices to the ballot, to certify it to county clerks, to oversee the county clerks in each of Colorado's 64 counties in running elections, to ensure that they comply with all of the legal requirements, to provide training and

JA617

support in that, and just to generally ensure that they have what they need to run the elections and then certify the results for statewide contests.

Q. Okay. I'm going to ask you a couple questions about some of those roles.

But first, in your — in the Secretary of State's role in administering elections, what role do the courts play in that process?

A. So the Secretary makes decisions with respect to candidate access to the ballot, with respect to certifying results, with respect to a lot of things around the election.

And there is a role for the courts when somebody wants to protest a candidate's qualifications, protest the outcome of an election. There's a role for courts at various parts throughout the elections calendar

[p.92]

to basically make a decision if somebody is protesting a determination made by the Secretary of State.

Q. And once a court makes a decision, what does the Secretary of State's Office do with that decision?

A. Well, once a court has made a decision, then the Secretary's Office conforms to that decision.

So if a court decides that the Secretary decided incorrectly at the outset, then the Secretary's Office will correct that. Or if the Secretary's decision is affirmed, then we will move forward with whatever that determination was.

Q. And is there a particular statute that people challenging a decision of the Secretary of State often use to present issues to the court?

A. Well, there are a number of statutes that allow for a challenge of the Secretary's decision throughout the — throughout Title 1 of the Colorado Revised Statutes.

JA618

But depending on how near we are to particular elections deadlines, typically Section 113 is used to challenge something that needs to be cited quickly.

Q. Okay. And for demonstrative purposes, I'm going to pull that statute up and ask you some questions

[p.93]

about it.

MS. TIERNEY: Could you pull up Colorado Revised Statute 1-1-113.

Q. (By Ms. Tierney) And I, in particular, just want to start with Section 1.

First, let me ask you, how familiar are you with Colorado Revised Statute 1-1-113?

A. I'm fairly familiar. I don't have it memorized, but I'm aware generally of what it says.

Q. And you're a lawyer by training, correct?

A. I have a law degree, but I don't practice.

Q. All right. In the — in 1-1-113, I just want to ask you a couple of questions about some of the provisions in Section 1.

So do you see Section 1 there on the screen?

A. Yes.

Q. So it says: "When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a . . . party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to

[p.94]

commit . . ."

I wanted to ask you how your office —

MS. TIERNEY: Yes, Mr. Gessler?

JA619

THE COURT: Well, first —

MR. GESSLER: I'm waiting for the question.

THE COURT: — you have to finish the question.

Q. (By Ms. Tierney) I wanted to ask you how your office has interpreted the “committed or is about to commit” language?

MR. GESSLER: Your Honor, we would object as to testimony on legal interpretation of a statute.

THE COURT: And I'm going to overrule it because I don't think she's testifying as to what it does, just how it has historically been interpreted by the Secretary of State. I'm the one that's going to have to decide how it — what the actual effect of the statute is.

Q. (By Ms. Tierney) Do you need me to repeat the question, or do you remember it?

A. If you could repeat it once for me, thanks.

Q. I was asking how your — the Secretary of State's Office has interpreted the language, “has

[p.95]

committed or is about to commit a breach or neglect of duty or other wrongful act”?

A. In general, the Office has interpreted this to mean that if the Office has made a decision with which any of the parties listed in the statute disagrees with respect to conducting an election, that that means they have the right to challenge that decision in court and receive a quick decision.

Q. Okay. And in your experience, have people using 1-1-113 to make challenges done so both before an act has been taken and after an act has been taken? So the “about to commit” language versus — and the committed language?

JA620

A. I can't think of specific examples, but generally speaking, yes, I think leading to an election, that has happened, yeah.

Q. Okay. Take you back to my question about what role the Secretary of State's Office has in the administration of elections.

You described a broad, broad role, and are those duties and powers of the Secretary of State set forth in statute?

A. Yes. Generally speaking, they're set forth in Section 1-1-107 of the Colorado Revised Statutes. There's also a provision in Article 1.5, which

[p.96]

discusses the Secretary's authority specifically with respect to federal elections.

Q. Okay. Now, I'm going to turn to ask you some more questions about ballot access generally. You testified that that is one of the functions of the Colorado Secretary of State's Office.

So more specifically, what role does the Secretary of State's Office play in candidate ballot access?

A. So our office is the filing office for state and federal offices for individuals seeking access to the ballot, seeking to run for office in Colorado.

So we receive that paperwork, we verify the information on the application as required under state law, and then ultimately there is a deadline by which our office must certify all contests to the ballot, both candidates and measures.

Q. So specifically what role does the Secretary of State play in certifying that content for the ballot?

A. Can you tell me what you mean by that?

Q. So do candidates submit information to you that then you use to certify the content for the ballot?

JA621

A. Yes. So the law requires candidates submit specific paperwork depending on how they're

[p.97]

accessing the ballot: whether that's by petition, through assembly, or whatever the nominating process is.

And based on the legal requirements for that paperwork, then we will verify the information on the paperwork and then set the ballot.

Q. And what is the deadline for the ballot certification for the presidential primary for Colorado in ?

A. I believe it's January 5.

Q. Is the process for ballot access — explain the process for ballot access for presidential candidates for the presidential primary in Colorado.

A. So for the presidential primary election, what the law requires is that candidates access the ballot through one of three methods.

The first is through party nomination, so they would submit a candidate acceptance, a letter from the party saying they're a bona fide party candidate, and a filing fee.

If they choose to submit a petition, they would submit their petition. But before they can circulate a petition, they need to submit the statement from the party that they're a bona fide party candidate, circulate the petition. And then with their petition submission, they would also need to submit the acceptance

[p.98]

of nomination form for the petition.

And then the third option is to submit a writing affidavit of intent and a filing fee.

Q. Has Colorado always had a presidential primary?

A. No.

Q. Can you explain when we didn't have one and when we got one?

JA622

A. So Colorado had a presidential primary for several years until around 2000, and then it was eliminated in the law.

And then in 2016, a citizen initiative passed, reestablishing the presidential primary and reestablishing it with some specific processes around our current mail ballot model.

Q. And where in the law is the process for presidential primary candidates to be placed on the Colorado presidential primary ballot?

A. It's in Article 4. I don't recall the specific statute citation.

Q. Okay. I'm going to have a copy of that statute brought up just for demonstrative purposes, and that's Statute — Colorado Revised Statute 1-4-1204.

Do you see that statute there?

A. Yes.

[p.99]

Q. And does that — just to be clear, does that statute apply to other ballot access candidates?

A. No. This is the statute specific for presidential primary elections.

Q. Okay. So this part of the statute deals with how a candidate gets their name on the ballot, correct?

A. That's correct.

Q. And you walked through the various processes in your testimony a moment ago.

What is the Secretary of State's view of whether it may exclude candidates from the ballot who are constitutionally prohibited from assuming office?

A. It's the Secretary's position that if we have affirmative knowledge that a candidate is ineligible for office, then we will not certify them to the ballot.

JA623

Q. Let's talk just a little bit about state legislative candidates and how the Colorado Constitution applies to them, and then we'll talk about the presidential candidates and the U.S. Constitution.

What are the constitutional eligibility requirements for state legislative candidates?

A. Well, there's a residency requirement that the candidate reside within their district for the requisite amount of time. There's an age requirement,

[p.100]

and then obviously a Colorado residency requirement.

If it's a partisan office, which state legislative office is, then they must also be affiliated with their party nominating them or unaffiliated for a specific period of time.

Q. And has the Secretary of State's Office kept state legislative candidates off the ballot due to ineligibility in the past?

A. Yes.

Q. About how many times?

A. I couldn't say with any certainty. I mean, it's not unusual for us to correspond with a candidate and ask for additional information to determine if they have additional information to prove an eligibility requirement like residency, but it's — it has happened that a candidate doesn't reside within their district or hasn't been affiliated with the party for the right amount of time.

Q. And what process does the Secretary of State's Office undertake to verify the qualifications for those state legislative candidates?

A. When our office receives the candidate paperwork, we verify the information on that form with the information in the statewide voter registration system.



[p.101]

Q. And if the Secretary of State's Office determines that a state legislative candidate's records in the statewide voter registration database show that the person meets the eligibility criteria, what happens next?

A. Then they are qualified to the ballot and will be certified by the deadline for certification.

Q. And what happens in that case if someone disagrees with the Secretary of State's decision on candidate eligibility?

A. In that case, if someone disagrees with that decision, then they can challenge that decision in court.

Q. And is that the Colorado Revised Statute 1-1-113 process we just discussed?

A. Generally speaking, yes.

THE COURT: Ms. Rudy, would you mind moving the microphone just a little bit closer to you. Thank you.

Q. (By Ms. Tierney) How frequently are those decisions of eligibility challenged, like how frequently is your office responding to those 1-1-113 or other challenges of candidate eligibility?

A. I think generally in almost every election in which we're certifying candidates or measures to the

[p.102]

ballot, we expect we may be challenged based on our decision to certify or not certify a candidate to the ballot.

Q. Okay. So if your office determines that a candidate's records in the statewide voter registration database show that the person is not eligible because they don't reside in the district or they're not of the proper age or some other defect, what actions does the Secretary of State take?

A. Generally, especially in the case of residency, we correspond with the candidate to see if they have

JA625

additional information that establishes that they do meet the eligibility requirement in order to determine whether to qualify them or not qualify them to the ballot.

Q. So — and after you engage in the correspondence or dialogue, what happens if you are not satisfied, after you've engaged in that dialogue, that the candidate meets the qualifications?

A. I would say that if it's unclear in any way, we're going to escalate to the administration and seek guidance before we make a final decision.

But in cases where it's very clear, we'll go ahead and exclude the candidate from the ballot.

Q. And again, if someone disagrees with the  
[p.103]

Secretary of State's decision to keep a candidate off the ballot, what can they do?

A. They can challenge that decision in court.

Q. And after a court proceeding, whether it's 1-1-113 or another proceeding, what does the Secretary of State's Office do if a court determines that a candidate is eligible?

A. Then we'll certify that candidate to the ballot.

Q. And conversely, if someone disagrees with the Secretary of State's decision to put a candidate on the ballot, do they also have the same recourse to challenge that decision?

A. Yes.

Q. And that's a similar proceeding in court?

A. It's similar, yes. Yeah.

Q. And what does the Secretary of State do after a court proceeding if the Court determines that a candidate is ineligible?

A. Then the Secretary would not certify the candidate to the ballot.

JA626

Q. Has the Colorado Supreme Court provided guidance to the Secretary of State on candidate eligibility in terms of past decisions?

A. I think likely, yes, that's happened, but  
[p.104]

I can't recall specifically.

Q. Okay. Are you familiar with court — Colorado Supreme Court decisions interpreting Colorado's ballot access laws?

A. Yes, generally.

Q. And is it fair to say that they've weighed in many times on ballot access determinations?

A. I think, yes, generally speaking, I think typically we see that weigh-in on citizen initiatives in particular.

Q. Okay. Let's turn to presidential candidates now.

What is the process to verify the qualifications for presidential candidates?

A. Our office looks at the information provided in the affidavit itself. And if the affidavit is complete and we have no affirmative knowledge that any of the information is incorrect, then we would qualify that candidate to the ballot.

Q. And —

THE COURT: And is this the statement of intent, the affidavit you're referring to?

A. Yes, Your Honor, the statement of intent.

Q. (By Ms. Tierney) How many times has the Secretary of State's Office kept a presidential candidate

[p.105]

off the ballot?

A. I don't have a specific number. I — it definitely has happened, and particularly for the general election.

Q. And what does the Colorado Secretary of State's Office do with a constitutionally ineligible candidate?

JA627

A. What do you mean by that?

Q. Do you not certify them to the ballot in that case?

A. Yes, that's correct, if there's information that they are not constitutionally eligible.

Q. Do you remember a ballot access case involving a Mr. Hassan?

A. Yes.

MS. TIERNEY: I'm going to pull up Exhibit P-107.

This exhibit has been stipulated, so I would move it into admission.

THE COURT: 107 is admitted.

(Exhibit was admitted into evidence.)

Q. (By Ms. Tierney) Do you recognize this document?

A. Yes.

Q. And what is this?

[p.106]

A. This is a letter that our office sent to Mr. Hassan after corresponding with him about access to the general election as an unaffiliated candidate for President.

Q. And what year was this?

A. This was in 2011.

Q. And how did it come about that Mr. Hassan was kept off the ballot?

A. Mr. Hassan began corresponding with our office, seeking access as an unaffiliated candidate for President, but notified us that he was not going to fill out the paperwork because he did not want to check the box that he was not a natural-born U.S. citizen.

He didn't want to commit perjury, but he did want to seek access and was — was looking to set up lawsuits challenging that provision in the Constitution.

Q. And did — what did the Secretary of State's Office determine regarding Mr. Hassan's eligibility?

JA628

A. Mr. Hassan told us affirmatively that he failed to meet one of the constitutional qualifications. He also refused to file the required paperwork.

And so our office advised Mr. Hassan that if he was, in fact, ineligible and did not file the correct paperwork, that he could not be a candidate for

[p.107]

that office.

Q. I'm going to direct your attention to the third paragraph in this letter.

A. Yes.

Q. Could you read that first sentence for me.

A. "The Secretary of State is responsible for ensuring that only eligible candidates are placed on the ballot and must give effect to applicable federal and state law unless a court has held such law to be invalid."

Q. And is that still the position that the Secretary of State's Office takes today in?

A. It is.

Q. And can you describe generally what that first sentence in that letter means?

A. Well, as I said, the Secretary's Office is responsible for certifying qualified candidates to the ballot and for overseeing the conduct of elections for those candidate races.

And so our office is responsible for ensuring that we verify, to the extent the law requires us to, eligibility of candidates before placing their name on the ballot.

Q. And based on that statement, can you confirm that the Secretary of State's Office considers

[p.108]

both federal and state qualifications when determining whether a candidate is eligible?

A. We do.

Q. And what position does the Secretary of State's Office take on whether it is the final arbiter of eligibility?

A. The Secretary's Office is never the final arbiter of eligibility because the Secretary's decision to either certify a candidate or not can be challenged in court.

Q. And did the — did Mr. Hassan take his case to court?

A. As I recall, he did.

Q. And do you recall the outcome of that case?

A. Generally, the outcome of that case was the court affirmed his ineligibility.

Q. His ineligibility, yeah.

And so once the Court affirmed his ineligibility, what did the Secretary of State's Office do?

A. We did not place Mr. Hassan's name on the ballot for the 2012 presidential election.

Q. Is the process you outlined for presidential candidates generally the same process for

[p.109]

other federal candidates seeking ballot access for congressional or senatorial seats?

A. Generally speaking, it's the same for congressional or senatorial seats.

We're also required by law to verify residence, party affiliation for partisan candidates.

Q. And aside from Mr. Hassan, have there been other federal candidates disqualified based on constitutional requirements, to your knowledge?

A. To my knowledge, I can't recall.

Q. Let's walk through, you — you testified a few minutes ago about the general process for presidential primary candidate ballot access. I'm going to have — we're going to look at Exhibit P-158.

JA630

MS. TIERNEY: Which has also been stipulated into evidence, and we'll — we'll look at page 2 of that exhibit.

Q. (By Ms. Tierney) Do you see that document?

A. Yes.

Q. And do you recognize it?

A. Yes.

Q. What is it?

A. It's the Major Party Candidate Statement of Intent for the Presidential Primary.

Q. And I'd like to ask you some questions

[p.110]

about the form itself first, before we talk about the candidate who's filled it out.

Who created this form?

A. Our ballot access team within the elections division.

Q. And how long has this particular form been in use by the Secretary of State's Office?

A. This form has been in use since the 2020 presidential primary paperwork deadlines, and this particular version of it since June.

Q. And I see at the bottom — are you looking at the bottom right of the form?

A. Yes. That's correct.

Q. And does it indicate there when it was last revised?

A. It does, although it's cut off on the screen that I see.

Q. Oh, okay. Well — there you go.

A. Uh-huh.

Q. Can you see when it was last revised?

A. Yes.

Q. When was it?

A. June of 2023.

Q. And why are these forms revised?

A. Well, in this case, our office suite had

[p.111]

changed, and so we needed to update the suite number to ensure we could receive our mail properly.

And we also had transitioned to a “.gov” domain since the 2020 elections; we needed to update the email address. And we updated the year at the top of the form.

Q. And were those the only changes to the form, to your knowledge?

A. To my knowledge, yes.

Q. And so this is the — aside from the email address and the suite number, this was the same Major Party Candidate Statement of Intent for Presidential Primary that was used in the 2020 cycle?

A. Yes.

Q. At the top of the form — let me ask you a general question about forms.

What role does the Secretary of State’s Office play in creating forms that are used by candidates for ballot access?

A. The Secretary’s Office creates all forms that are used for candidates for state and federal office for ballot access.

Q. All right. Turning back to the form itself.

At the top of the form, do you see where

[p.112]

it says, “Office Information”?

A. Yes.

Q. And what is the significance of that language?

A. Well, generally at the top of each of our ballot access forms, we include information about the office being sought so that the candidate is aware they’re completing the correct paperwork, but also for our staff in terms of processing that paperwork and verifying qualifications.



JA632

Q. And so underneath that “Office Information,” it says, “Year of Presidential Primary Election: 2024.”

You see that?

A. Yes.

Q. So, presumably, that year was also changed on this form, right?

A. Yes, that’s correct.

Q. And then it lists the “Political Party” for the candidate?

A. Yes, that’s correct.

Q. And then there’s a section for “Qualifications for Office.”

Do you see that?

A. I do.

[p.113]

Q. And what are the qualifications listed here?

A. The qualifications listed here are: “Age of 35 Years”; “Resident of the United States for at least 14 years”; and “Natural-born U.S. Citizen.”

Q. And do you know where those qualifications came from?

A. From the U.S. Constitution.

Q. And are you aware there are other qualifications for the President that are contained in the U.S. Constitution?

A. Yes.

Q. I’m going to turn your attention to about halfway down the form, there’s some — oh, it might not be blue in yours, it’s blue in mine.

There’s a bolded word that says, “Signature”?

A. Yes.

Q. And underneath that, there is a — it says, “Applicant’s Affirmation.”

Can you read that affirmation?

JA633

A. "I intend to run for the office stated above and solemnly affirm that I meet all qualifications for the office prescribed by law. Furthermore, the information provided on this form is, to the best of my

[p.114]

knowledge, true and correct."

Q. And how does a candidate submitting the form confirm that affirmation?

A. A candidate would sign that affirmation and have that signature notarized.

Q. And how does the Secretary of State's Office view that affirmation when considering a candidate's qualifications?

A. Can you tell me what you mean by that?

Q. Well, that affirmation states that the person meets "all qualifications for . . . office."

So does the Secretary of State's Office interpret that to mean more qualifications that are listed on the form?

A. Well, qualifications listed on the form aren't intended to be an exhaustive list of qualifications, but we do require that every candidate affirm that they meet every qualification for office regardless of whether it's listed on the form.

Q. So is it fair to say that that affirmation is like a catchall affirmation?

A. I would say that's fair, yes.

Q. And do you have similar catchall affirmations for other nonpresidential candidates on their candidate statement of intent?

[p.115]

A. Every candidate would sign an affirmation that they meet all qualifications for the office they're seeking.

Q. If a candidate checks the boxes on the form under "Qualifications for Office" and signs the affirmation, what,

JA634

if any, additional inquiry does the Secretary of State's — make?

A. Our office isn't going to further investigate that affidavit. It's on its face complete and accurate and so, based on that, would certify a candidate to office — or, I'm sorry, to the ballot.

Q. And as you've testified a moment ago, a Colorado voter could challenge that determination of the Secretary of State, correct?

A. Yes, that's correct.

Q. Are you familiar with the Twenty-Second Amendment to the United States Constitution?

A. I mean, generally. I haven't read it recently.

Q. Okay. Well, can you state generally what your knowledge of it is?

A. It would be helpful to see it.

Q. Yeah, yeah.

Well, I'll just represent it to you, because generally what it says is a President can't hold

[p.116]

more than two terms as President.

Has the — do you have any questions or do you accept my description of the Twenty-Second Amendment?

Has the Secretary of State ever received a statement of intent for a presidential candidate who has already served two terms as President?

A. Not to my knowledge.

Q. From, say, Barack Obama or George W. Bush?

A. No, not to my knowledge.

Q. And what would the Secretary of State's Office do in that situation?

A. Well, I think that knowing that both of the potential candidates you named have served both terms, I think

JA635

that the ballot access team would escalate that within the office to the administration for additional guidance.

But likely, we would not certify that candidate to the ballot.

Q. When you say elevate to the administration, give me just a little description of what that means.

A. Sure.

So when the ballot access manager or the ballot access team receive paperwork and there are questions about whether an eligibility provision is met

[p.117]

and it's not clear, we will escalate that through our legal team within the elections division to the Deputy Secretary of State for additional guidance.

Q. Okay. You testified a few moments ago about how sometimes if there are eligibility questions, you engage in dialogue with the candidate.

Would you engage in dialogue with George W. Bush or Barack Obama on that point?

A. I think we would seek some guidance from the Deputy Secretary before corresponding.

Q. Okay. All right. Let me ask you some specific questions about the pieces of this form that were filled out by the candidate.

Who submitted this particular form?

A. Donald Trump.

Q. And when did the Secretary of State's Office receive this form?

A. If we could scroll to the top.

Q. Oh, sorry.

There you go.

A. We received it on October 11 of 2023.

Q. And turning to the "Applicant's Affirmation" down at the middle of the page, who signed the form?

JA636

A. It appears to be Donald Trump.

[p.118]

Q. And is the signature properly notarized there?

A. It is.

Q. In your reading of this form, has the candidate verified the "Applicant's Affirmation" at the middle of the page there, that affirmation that you read?

A. Yes.

Q. And what did your office do when you received this form?

A. Our office — the ballot access team escalated a question to the Deputy Secretary because there's ongoing litigation with respect to this applicant's qualifications.

Q. And so has your office taken any action with regard to certifying this candidate to the ballot or not?

A. We have not. We're not at the certification deadline. And it is our practice that when there is an ongoing legal challenge to our office's determination about a candidate's qualification, that we wait for that outcome.

Q. Okay.

MS. TIERNEY: Let's turn to page 3 of that exhibit, which is the next page. There we go.

Q. (By Ms. Tierney) Do you recognize this  
[p.119]

document?

A. Yes.

Q. And what is this?

A. This is the State Party Presidential Primary Approval form.

Q. And what's the purpose of this form?

A. The purpose of this form is for the state party to advise our office that the candidate seeking party nomination is a bona fide party candidate.

JA637

Q. And who created this form?

A. The ballot access team within the elections division.

Q. And how long has this form been in use by the Colorado Secretary of State?

A. Since 2020.

Q. And was it similarly revised this year?

A. Yes. We would have revised the suite number and the email domain as well on this form, and the date.

Q. And at the top, where it says, "Party Contact Information," what is shown there?

A. That's the contact information for both of Colorado's major political parties.

Q. Okay. And so that contact information may also have been changed since 2020, correct?

[p.120]

A. Yes. That's correct.

Q. Has the same form been used by the Secretary of State's Office regardless of the political party of the Secretary of State?

A. Yes. This form has only been used — this will be its second presidential primary in use.

Q. Okay. And the last presidential primary, who was the Secretary of State?

A. Wayne Williams. Is that right? Am I correct?

Q. Just to confirm, who has the authority to revise or edit this form?

A. The ballot access team within the elections division.

Q. Okay. Now let's talk about the content of this form in terms of who filled it out.

MS. TIERNEY: One moment, Your Honor.

Q. (By Ms. Tierney) I'm going to just ask you a clarifying question on the presidential primary in 2020: Who was the Secretary of State then?

A. Jena Griswold was Secretary in 2020.

JA638

Q. Okay. Okay. Who submitted this form that you see on your screen?

A. Donald Trump.

Q. The — if you look at the bottom of the —  
[p.121]

well, let me ask you about that.

Why do you say Donald Trump submitted this form?

A. That's the candidate listed.

Q. And so the information at the bottom of the form is — what is the information at the bottom of the form?

A. It appears it was submitted by the — the campaign representative for Mr. Trump and signed by the state party chair.

Q. And so does the candidate actually submit this form as well?

A. It's submitted by the candidate's campaign, typically.

Q. Okay.

A. Yes.

Q. But not submitted by the state party?

A. No.

Q. Okay. And at the — if we look at the bottom half of the page, it says, "State Party Use Only."

Do you see that?

A. Yes.

Q. And it — can you tell us who is the party official that submitted this form?

A. Dave Williams.

[p.122]

Q. And what is his official job title?

A. Chair of the state party.

Q. I asked that because it — that was not a trick question and maybe you can't see it, but it does say that on the bottom of the form, so well done.

JA639

A. It's cut off on my screen. I see it now, yes.

Q. Okay. Has this particular form been modified by any of the persons filling it out from its original template?

A. It does not appear to have been.

Q. Okay. And what did your office do when you received this form?

A. We placed this with the other candidate paperwork for this candidate.

Q. What happens if a candidate doesn't submit this form?

A. Then we communicate with the candidate that this form is required before we can certify them to the ballot for the presidential primary.

Q. And you testified a few minutes ago about — that the state party has to approve that the candidate is a bona fide candidate.

Do you remember that testimony?

A. Yes.

[p.123]

Q. What does it mean to be a bona fide candidate?

A. I don't know what that means to the party.

From our perspective, it means that the party approves that that candidate represents the party.

Q. Okay. What position is the Secretary of State's Office taking in this litigation?

A. It is the Secretary of State's Office position that the paperwork is complete and final, but there is a challenge to this candidate's qualification. And so our office will not certify this candidate to the ballot until the Court makes its decision.

Q. And if this proceeding ultimately results in a determination that Mr. Trump is eligible to be a candidate for the Colorado presidential primary, what will the Secretary of State's Office do?



A. The Secretary's Office will certify the candidate.

Q. And similarly, if the outcome of this litigation is that the case is dismissed without further guidance from the Court, what will the Secretary of State's Office do?

A. I can't speculate as to that. I think we need to wait for the Court's outcome before we make a decision.

[p.124]

Q. Okay. Ms. Rudy, are you aware of any threats that the Secretary of State's Office has received regarding election activity?

MR. GESSLER: Your Honor, I'm going to object to this. It's well beyond the scope of what we were notified as to her testimony, and it's frankly irrelevant to this case.

THE COURT: What's the relevance?

MS. TIERNEY: Well, the Secretary of State's Office, I think, has a lot of knowledge about threats to election officials in the state, and I think the relevance here is that those threats can be tied and I will try to tie them to the January — some of the January activity.

THE COURT: I'm going to sustain the objection. That's outside the scope of this hearing.

MS. TIERNEY: As a housekeeping matter, Your Honor, I want to move to admit P-158, which is the document on the screen, which was stipulated into evidence. I just didn't move it.

THE COURT: Okay. I'm sorry. What was the number?

MS. TIERNEY: P-158.

THE COURT: Exhibit 158 is admitted.

(Exhibit 158 was admitted into evidence.)

[p.125]

MS. TIERNEY: May I have just one moment?

THE COURT: Uh-huh.

(A pause occurred in the proceedings.)

JA641

MS. TIERNEY: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. GESSLER:

Q. Good morning, Ms. Rudy.

A. Good morning.

Q. How are you today?

A. Good. Thanks.

Q. Good.

So I'm going to ask you a few questions. I believe I have cross-examined you at least a few times in the past two decades or so, so I'll just — if you don't understand a question that I have, please just ask me.

THE COURT: And make sure to speak into the microphone, Mr. Gessler.

MR. GESSLER: Certainly.

Q. (By Mr. Gessler) If you don't understand a question I have, just please ask me to repeat it.

Let me start with — in preparation today.

So you did not speak to any members of the petitioners' attorney, correct?

[p.126]

A. That's correct.

Q. Okay. Did you speak about your testimony with anyone in the Secretary of State's Office?

A. I did.

Q. And who is that?

A. Deputy Secretary Beall.

Q. And tell me what your conversation was with him.

A. In what respect?

Q. Describe the conversation. What topics did you discuss?

A. We generally discussed the topics that I could expect to speak about today and —

JA642

Q. Okay. Did you talk to him about the Secretary's position or lack thereof of a position with respect to this litigation?

A. We discussed this litigation, and we discussed my testimony today, yes.

Q. Okay. And as part of that discussion, did you have a discussion with him as to what position you would describe with respect to the litigation?

A. What do you mean by "what position . . . with respect" —

Q. Well, you testified —

A. — "to the litigation"?

[p.127]

Q. — earlier that the Secretary is going to, you know, wait for the Court's outcome. You also testified as to the meaning of the form.

Did you discuss either of those two issues with Secretary — with Deputy Secretary Beall?

A. I generally shared with him what my answers to those questions were, yes.

Q. And when you gave your answer — your thoughts as to what those answers were, did he tell you what the — what perhaps his position was or his thoughts on that or what the Secretary's thoughts were?

A. Apart from saying that he agreed with the position that I was stating, no.

Q. Okay. Did you have any conversations with the Secretary herself on this issue?

A. I did not.

Q. Okay. Did you have any conversations with — with the director of elections, Judd Choate?

A. I did not talk with Judd about this, yes.

JA643

Q. Okay. Okay. Did Mr. Beall inform you as to what the topics were going to be for the — for your testimony today?

A. Yes. Mr. Beall and counsel.

Q. Okay. And did he walk through — did you provide all of your answers that you anticipated giving

[p.128]

today, did you provide those answers to Mr. Beall as well?

A. Yes.

Q. Okay. Did he ask you to change your opinion in any way?

A. He did not.

Q. Okay. Okay. Let me ask you, you had testified a little bit earlier about the three methods for presidential — for a major party presidential candidate to get on the ballot.

Do you remember that?

A. Yes, in a presidential primary.

Q. Okay. And you said to get on the — for a — to get on the ballot for a presidential primary, there was the party nomination process, the petition process, and then the affidavit-plus-fee process, correct?

A. That's correct.

Q. So I will tell you, I — my read, I didn't quite understand what — what do you mean by the party nomination process?

A. That's the process of filing the candidate affidavit, the party — party form of bona fide party candidate, and the application fee.

Q. Okay. How is that different from the

[p.129]

filing of the affidavit of intent and the fee?

A. The third affidavit of intent and the fee is for a write-in candidate.

JA644

Q. Okay. For a write-in candidate for the party nomination?

A. That's correct.

Q. Okay. Let me ask you this:

So the — and I was just wondering, so the form — and we may bring it up — but the form that — the statement of intent form, that was created in 2020, correct?

A. That's correct.

Q. Okay.

A. Well, 2019, ahead of the 2020—

Q. In prepara- —

A. — primary.

Q. In preparation.

Was there any rule or regulation setting that — the contents of that form?

A. No.

Q. Okay. And you said earlier that the ballot access team has authority to modify that form —

A. That's —

Q. — correct?

A. — correct.

[p.130]

Q. Did the ballot access team create that form?

A. They did.

Q. Okay. And did they have full authority to create that form?

A. They did.

Q. Okay. And so that's — that form is essentially created by the ballot access team, correct?

A. Yes, that's correct.

Q. Okay. And I want to chat with you about the qualifications, too.

So there's a — I want to chat with you about the congressional form.

Are you familiar with the fact that the congressional form also requires a person to check three boxes for eligibility?

A. I've not recently looked at the congressional form. If I could see an example of it, that would be helpful.

Q. Okay. Because I'm afraid of the technology, I'm going to see if I can describe this to you.

I'm going to represent to you that one of the boxes that the candidate checks says, "Inhabitant of State."

[p.131]

Does that refresh your memory, or do you still need to see the form?

A. It would be helpful if I could see the form.

Q. Fair enough.

MR. GESSLER: Your Honor, can we take about a minute break? I would like to just pull up that form, please.

THE COURT: Sure. While your team is finding that form, can you —

MR. GESSLER: Just continue the — sure.

THE COURT: — move to another topic and then come back.

MR. GESSLER: Okay. Just let me . . .

Q. (By Mr. Gessler) All right.

THE COURT: There we go.

MR. GESSLER: We have it.

Q. (By Mr. Gessler) All right. Do you see that form in front of you, Ms. Rudy?

A. Yes.

Q. Okay. And that's —

THE COURT: So this is the write-in form?

MR. GESSLER: This will work.

Q. (By Mr. Gessler) I want you to take a look at the write-in form.

[p.132]

A. Okay.

MR. GESSLER: That works fine.

Q. (By Mr. Gessler) And the second box says, "Inhabitant of Colorado," correct?

A. The second box under "Qualifications for Office" says that, yes.

Q. Okay. And in order to — does that mean that the person has to be an inhabitant of Colorado at the time they fill out that form?

A. We verify that they are at the time they fill out that form, yes.

Q. That they are an inhabitant of Colorado at that time?

A. Yes.

Q. Okay. And is that the — would you agree with me, then, that that's the Office's interpretation of federal requirements to qualify for the ballot, that they have to be an inhabitant of Colorado?

A. I don't think that's the sole qualification for that office.

Q. I understand.

But it's the Office's interpretation that that's one of three required qualifications for them to be on the ballot; is that correct?

A. Yes.

[p.133]

Q. Okay. And would it be fair to say, then, for the presidential candidate form, it's the Office's interpretation that to qualify, the candidate has to fill out the three requirements: Specifically that they're a natural-born citizen, 14-year resident, and 35 years of age?

JA647

A. Yes. The form must be fully completed, each of the boxes checked, and the affidavit affirming that they meet all qualifications for office must be signed and notarized.

Q. Okay. And the statutory basis for those three requirements is — is there a statutory basis for those three requirements in Colorado law that you can point to?

A. Are we talking about the presidential form now?

Q. Presidential form.

A. Yes. There is a statute that tells us that we give effect to the federal qualifications for office.

Q. Okay. And — and is that the same statute that you rely on for this — the qualifications for this write-in form?

A. If you could bring the statute back up again, please.  
[p.134]

Q. You had said there was a federal statute — I'm sorry, there was a state statute.

Can you tell me what state statute that is?

A. I don't recall the specific citation, but all of the qualifications and requirements for the presidential primary are contained within Article 12 — I'm sorry, within Part 12 of Article 4.

Q. Okay.

A. Beginning with 1-4-1201.

Q. Okay. So it's the 1-4-120- — the 1201, the 12 series of statutes that set forth the statutory basis for those requirements?

A. That's correct.

Q. Okay. And then — and then for these three requirements for the write-in candidate, I'm going to — for the United States Representative candidate, where it says: At least — I think that says 25 years old, inhabitant of Colorado, and then the third item.

Is there Colorado statute that requires you to include — requires the Office to include those three as well?



JA648

A. I don't recall off the top of my head, but the provisions for becoming a candidate in Colorado for Congress or Senate are set out in a different area of the [p.135] law.

Q. Okay. Is it the Office's practice that you need a state statute to include those three, or you can just — or you look only to the U.S. Constitution?

A. The Office is required to certify eligible candidates to the ballot, and so wherever those eligibility requirements are set out is where we look.

Q. Okay. And so that's the Office's attempt — or I should — that's the Office's approach in establishing what the qualifications are for a candidate: Creating that form with those three boxes?

A. Again, that's not intended to be an exhaustive list of qualifications for office. But yes, we list the primary qualifications for office, and then each candidate signs an affidavit that they meet every qualification for office.

Q. Okay. So there could be more qualifications for this affidavit of intent for a write-in designation that's — that are not on this form?

A. There could be.

Q. Okay. And you're saying that's — so that's the intent, and it has been the intent of the Office since you've been there?

A. Yes.

Q. Okay. And — and the basis for saying

[p.136]

that that's the intent is the — is the affidavit write-in, that's — what's the evidence that you are relying upon to say it's the intent: Is it your memory, or are you able to point to something else?

JA649

A. I've worked in the Office for 17 years, and that's been the practice since I have worked there.

Q. Okay. The practice has been for the form to not necessarily include — the form itself to not necessarily list all of the requirements for an officeholder; is that correct?

A. That's correct. In the past, the form required the candidate to list their qualifications for office. The inclusion of checks — checkboxes was intended to help candidates out to identify their specific qualifications.

Q. Okay. Can you identify any other forms in the Office that have requirements but that are not — but they are — that do not list all of the requirements on the form itself?

A. As I sit here now, no. Our office produces quite a number of forms.

Q. Okay. And you produce those forms to be able to provide guidance for a candidate, correct?

A. We produce those forms to provide guidance for candidates, campaigns, parties, voters. Our office

[p.137]

produces quite a number of forms.

Q. Do you produce those forms to be binding legal authority as well?

A. I'm sorry, what do you mean by that?

Q. Do you produce those forms to be binding legal requirements for candidates as well?

A. Binding —

Q. So is the information required to be filled out required for candidates under law?

A. In order to gain ballot access in Colorado, a candidate must complete fully their paperwork before they submit it.

JA650

Q. Okay. Let's talk about going behind the paperwork.

So you're familiar with the controversies involving the natural — the natural-born citizenship for President Barack Obama when he ran in 2021; is that correct?

A. I read the news.

Q. Okay. Did that rise to the level for the Office to investigate whether President Barack Obama was, in fact, a natural-born citizen?

A. Our office never received any formal complaints or request to consider that information.

Q. Okay. So that wasn't quite my question.

[p.138]

You earlier said that if you have affirmative knowledge that a candidate does not meet certain requirements, you will keep that candidate off the ballot, correct?

A. Correct.

Q. Okay. And so if someone comes to you and says, "I have evidence that this candidate is not 35— is not 35 years old," will you keep that candidate off the ballot?

A. We would escalate that to the Deputy Secretary for guidance.

Q. Okay. And do you know what the criteria are that the Deputy Secretary of State would follow for that guidance?

A. If we have affirmative information that a candidate is ineligible, it is the Office's view that the Secretary can refrain from putting that candidate on the ballot.

Q. Okay. So if I — if someone were to come up and say, "I have affirmative evidence, here's — here's evidence that the — this particular candidate is not 35 years old," what do you do with that evidence?

JA651

A. I can't speculate as to a hypothetical, not knowing what that evidence is. That — that would have to be the discussion with the Deputy Secretary.

[p.139]

Q. Okay. And then the Deputy Secretary would make that decision as to the quality of the evidence?

A. The Deputy Secretary, the Secretary would advise the Division as to the best manner to proceed.

Q. Okay. And the Division would follow that advice, correct?

A. That's correct.

Q. Okay. So the Deputy Secretary of State or Secretary would instruct the Division on how to — how to proceed, correct?

A. That's correct.

Q. Okay. And — so the Secretary and Deputy Secretary themselves would sort of personally — would evaluate that — evaluate the quality of the information that you received, correct?

A. The ballot access team would seek that guidance from the Deputy Secretary, that's correct.

Q. Okay. And do you know whether or not the Deputy Secretary of State and the Secretary of State would then evaluate the quality of that information?

A. Again —

Q. I'm going to ask you to hold off for a sec because we have sirens. It's been the pattern and practice in this courtroom.

Do you need me to repeat my question?

[p.140]

A. Please.

Q. Okay. So do you know the criteria that the Secretary or the — and the Deputy Secretary of State would use to evaluate the quality of that information?

JA652

A. Again, I can't speak to a hypothetical situation.

Q. I'm not asking you to speak to a hypothetical situation.

I'm asking if you know what criteria they use to evaluate that information?

A. Well, since we're not in the situation where we're applying those criteria, I can't speak to what criteria they would use.

Q. Okay.

MR. GESSLER: Now, let's go back to the — that write-in candidate form, please.

Q. (By Mr. Gessler) Okay. So if I fill out — let's say I decide to write for — have a temporary bout of insanity and I decide to run for U.S. Congress as a write-in candidate. And I fill out the form and I say, "I am not an inhabitant of Colorado, but I will become an inhabitant at the time I'm elected."

Would you allow me to run, would the Office allow me to run for office?

A. We would escalate that to the Deputy

[p.141]

Secretary to have a discussion.

Q. Okay. I'm going to represent to you that the U.S. Constitution requires, explicitly requires a member of Congress, as a qualification, to hold office at the time they are elected.

With that information, is — does that change your answer?

A. Again, I can't speak to hypotheticals. We would escalate that for a discussion with the Deputy Secretary before making a decision.

Q. Okay. And it's the Secretary or the Deputy Secretary that would make that decision?

JA653

A. We would seek their guidance before making a final determination, yes.

Q. Okay. For Hassan, if I remember correctly, you testified that Hassan never submitted the paperwork, the statement of intent.

Correct?

A. Yes, that's my recollection.

Q. And that was a statement of intent for a write-in candidate, correct?

A. I don't recall specifically. Would it be possible to pull the letter back up?

Q. Sure.

I will represent to you that he was for a  
[p.142]

write-in candidate.

Will you accept that representation, or would you like to take a look at the letter?

A. I mean, I would prefer to take a look —

Q. That's fine.

A. — but I will accept that.

MR. GESSLER: Could we pull that letter up, please.  
P-107.

Q. (By Mr. Gessler) Just tell us if you need to scroll down.

A. Yes. Could you scroll down to the second paragraph, please.

I don't see that it's for a write-in candidate. Honestly, I don't recall.

Q. Okay. Do you recall him being an unaffiliated candidate?

A. Yes. He was an unaffiliated candidate for the presidential election in November of 2012.

Q. Okay. And he refused to submit the paperwork, correct?

A. That's correct.

Q. Okay. So that did not — as a result, you did not actually have to evaluate the paperwork because it was never submitted to your office, correct?

A. We did not have to evaluate the paperwork,  
[p.143]

but we corresponded with him with respect to his qualifications.

Q. Okay.

MR. GESSLER: No further questions, Your Honor.

THE COURT: Do you have some questions?

MS. RASKIN: I do have some questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MS. RASKIN:

Q. Good morning, Ms. Rudy. I'm Jane Raskin. I represent the Colorado Republican Party.

I just want to go back and make sure I understand the procedure you described your office is following.

When it — in connection with a presidential primary election, it receives paperwork under what I think you described as the party nomination process —

A. Yes.

Q. — right?

So in that instance, as I understand it, you typically will receive the — the Major Party Candidate Statement, the one you went over earlier. I think it was Exhibit 2 — 158.

[p.144]

And that contains as an attachment, as I understand it, a document that's called the State Party Presidential Primary Approval?

A. We receive, for presidential primaries for major party candidates, the candidate statement of intent, the

JA655

party approval form stating that the candidate is a bona fide party candidate, and the filing fee.

Q. Okay. So you now have those two documents in hand, say.

What do you do — and those forms, as — as you have described, contain an affirmation by the candidate that he satisfies the requirements of law for the office he's seeking access to the ballot for, right?

A. Yes.

Q. And they include specifically three boxes for the candidate to check, to which he affirms that he's years old and a natural-born citizen and he's lived in the country for 14 years, right?

A. That's correct.

Q. So you get that document and you get the companion document, which is the party's certification that he's bona fide candidate of the party.

What do you do to verify the candidate's affirmation that he is, in fact, qualified to hold the

[p.145]

office for which he's seeking access to the ballot?

A. The ballot access team doesn't do any investigation beyond the — the review of the paperwork to ensure it's accurate and complete, and to review the party paperwork to ensure that the "Approved" box, as opposed to the "Disapprove" box, is checked.

Q. And if those boxes are all checked, the paperwork is in order, you certify that candidate for inclusion on the ballot, correct?

A. Well, it depends on where we are in the timeline. We don't certify candidates to the ballot until January 5.

Q. Okay. So you may get the paperwork early, but you wait until shortly before the certification date to actually complete the certification?



JA656

A. We certify on the certification deadline.

Q. Okay. And I assume that is, in part, to allow time for other interested parties to challenge the form if they want to, as you've described?

A. What is in time? I'm sorry, I don't understand.

Q. So during the period of time after which you've received the major candidate statement and the party certification that the candidate's bona fide a candidate of the party, you have said that other people,

[p.146]

whether it's a competing candidate or another party or another elector, can come in and make a complaint. Either informally, say, "Hey, look, I think this guy, you know, wasn't born in the United States." Or, alternatively, can actually file a petition under 113.

Right?

A. That's correct.

Q. So before you certify the ballot, you have this time period where those issues may be raised and may be resolved?

A. Those issues may be raised, but there are also other deadlines within that time period before certification for petitions and for the affidavit for write-in. Those deadlines come a little bit later.

Q. No, I understand.

But I'm just talking at this point about the process for a candidate nominated by a major party.

A. I understand, but you asked why we wouldn't certify until the deadline.

Q. Oh, I see — oh, so in other words, what you're saying is, you certify all of the candidates the same day?

A. That's correct.

Q. So the others may implicate that decision even if you already have the major party candidate; is

[p.147]  
that . . .

A. Only major parties may be certified for the presidential primary ballot.

But there are multiple ways to be placed on the ballot, and those deadlines differ, so we certify all candidates for both major party presidential primaries on the same date.

Q. Okay. So let's go back to the point at which you receive the paperwork, and understanding you don't certify it until the deadline.

If nobody comes in with any, what you've described, I think, is affirmative information that there's something incorrect in the certification form, and no one has filed a 113, and you ultimately reach the certification date, it's the Secretary's duty to certify that candidate to the ballot, correct?

A. That's correct.

Q. Okay. So when you were discussing earlier that you got some forms and you verify the info as required by state law, you were talking about candidates for state office, right?

A. We review every form that our office receives. State law requires us to verify information for state candidate forms, and for presidential primary elections, we review the information on the affidavit

[p.148]  
itself.

We're also required to verify that the party has completed the party approval form and has approved the candidate as a party representative.

Q. Right.

But for federal candidates, as opposed to state candidates, you don't have an equivalent process to check any databases to determine residency or where the

person was born or things of that nature, as you do with state candidates?

A. For presidential candidates, that's correct.

Q. Okay. So when you testified earlier that — I think what you said was that the Secretary is never the final arbiter of whether a candidate is eligible to be listed on a ballot.

That's not the case if there is no challenge made to the — the request to be included, correct?

A. There's always an opportunity for the Secretary's determination to be challenged in court; and in that case, the Court is the final arbiter.

Q. Sure, there's an opportunity.

But if nobody places a challenge, nobody complains, nobody files a 113, then the final decision is

[p.149]

made by the Secretary?

A. That's correct.

Q. Okay. Just one more question.

Has your office, to your knowledge, ever refused to certify a candidate for inclusion on the presidential primary ballot, understanding that it has been an issue for a short period of time?

A. Well, there are candidates that we've corresponded with, you know, ahead of the election who failed to complete the paperwork.

We've corresponded with a candidate ahead of this primary election, and they've failed to complete the proper paperwork.

Q. Has there ever been an instance in which a candidate has completed the paperwork that your office has created that you have disqualified in a presidential primary election?

A. Not to my knowledge.

JA659

MS. RASKIN: That's it. Thank you very much.

THE COURT: Mr. Kotlarczyk, proceed.

MR. KOTLARCZYK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KOTLARCZYK:

Q. Just a couple areas I wanted to follow up

[p.150]

on, Ms. Rudy.

You testified about Section 113 on your direct.

Do you recall?

A. I do.

Q. And you were asked some questions about when there are — when the official charged with the duty has committed or is about to commit a breach or neglect of duty or other wrongful act.

Do you recall those questions?

A. Yes.

Q. And you were asked specifically about when a — when it might arise when a 113 will be brought before a Secretary — before an election official, including possibly the Secretary, has committed a breach or neglect of duty.

Do you recall that?

A. Yes.

Q. In the context of certifying a ballot on a certification date, is it — do you have an understanding as to whether Section challenges arise before the — before an election official exercises their duty to certify ballot contents, or whether the challenge would come afterwards?

A. There are a lot of provisions in the

[p.151]

candidate statutes that allow a challenge to a candidate's qualification. If — if that candidate, for example, goes on petition, there are very specific provisions that allow challenges to the Secretary's determination.

JA660

So typically, those challenges arise under — under the statute that the candidate has followed to achieve ballot access.

Q. And are sometimes challenges brought to whether a candidate will be listed on a ballot prior to a ballot certification deadline?

A. Yes.

Q. And can those challenges be brought under — or have those challenges been brought under Section?

A. Yes. I believe some have.

Q. You were — you've also been asked some questions about instances where the Secretary of State's Office has not — has or has not certified a candidate to the — a presidential candidate specifically to the ballot.

Do you recall those questions?

A. Yes.

Q. Do you recall in 2012— and so we're talking before primary ballots; this would be a general

[p.152]

election ballot — do you remember a candidate with the last name of Wilson?

A. Yes, generally.

Q. Do you recall a dispute around Mr. Wilson and whether he would be placed on the presidential ballot as an unaffiliated presidential candidate?

A. Yes. As I recall, Mr. Wilson failed to complete part of the paperwork properly, and we communicated with him and ultimately chose not to place him on the ballot based on his failure to fully complete the paperwork.

Q. Okay. And what about in 2016— which, again, this would have been for the general election, not for the primary — a candidate by the name of Denamore [phonetic]?

A. Yes.

JA661

Q. Could you tell the Court what you remember about that situation?

A. Similar to Wilson, Denamore, as I recall, did not fully complete the paperwork even after our office corresponding with them and we did not certify them to the ballot.

Q. And I believe you just testified a few moments ago about an instance that occurred in this election cycle for the presidential primary ballot.

[p.153]

Could you describe a little more the circumstances around that?

A. Yeah. We received candidate paperwork for Joseph Maldonado. And the paperwork was not on the correct form. We hadn't updated and published the form yet. It wasn't properly notarized. It wasn't signed by the candidate himself.

And so we returned the filing fee to that — that person and advised them that in order to seek access to the ballot, they needed to complete the proper paperwork and — and that included the party — the party approval paperwork as well.

Q. Okay.

MR. KOTLARCZYK: Your Honor, that was it for my questioning.

I know the Court had some areas designated that wanted to hear from a representative from the Secretary of State's Office on. This is the only will-call witness any party has listed from the Secretary of State's Office, so I wanted to be sure that the Court had any opportunity to ask Ms. Rudy any questions.

THE COURT: Why don't we finish redirect. And if my question isn't addressed, then we'll — I could ask it.

MR. KOTLARCZYK: Thank you, Your Honor.

[p.154]

MR. GESSLER: And, Your Honor, I'm going to have one or two follow-up questions. I think we, respectfully, may have gone out of order based on the posture of the parties, but if I could just have an opportunity after Ms. Tierney is done, I would appreciate that.

THE COURT: Why don't you do yours so that then she can —

MR. GESSLER: That's fine.

THE COURT: — wrap up with the redirect.

RECROSS-EXAMINATION

BY MR. GESSLER:

Q. Ms. Rudy, just very quickly.

For Mr. Wilson, Denamore, and Maldonado, all of those were rejected based on their failure to complete the proper paperwork; is that right?

A. Yes, that's correct.

Q. Okay. In your experience, has there ever been a presidential candidate who has completed the proper paperwork, yet been kept off the ballot by your office?

A. As I sit here today, I can't think of a specific example, no.

Q. Okay.

MR. GESSLER: Thank you.

[p.155]

REDIRECT EXAMINATION

BY MS. TIERNEY:

Q. Ms. Rudy, you have answered some questions about — from Mr. Gessler about the forms in the Office. I just want to follow up on that briefly.

He asked you who generally drafts the forms, and I think you said the ballot access team.

Those forms are then reviewed by somebody else in your office for compliance with the law, correct?

JA663

A. Our legal team may take a look at the forms if there are substantive legal changes to those forms, so if qualifications have changed or if it's the first instance of a form. But if we're updating addresses, things like that, it — it will just be the ballot access team.

Q. But the first time a form is created or if substantive changes are made, there is a further review of the form beyond the ballot access team?

A. Yes, that's correct.

Q. You also — just want to follow up on the — the — confirming that your office, as you testified on direct examination, follows both state and federal law when determining candidate eligibility?

A. Yes, that's correct.

Q. And even if the federal qualifications may  
[p.156]

not be spelled out elsewhere in state statute, correct?

A. Yes, that's correct.

Q. And on direct examination, we also had a colloquy about the Twenty-Second Amendment and what your office would do if George W. Bush or Barack Obama submitted a statement of intent. And you testified at that time that you would escalate that.

What — and Mr. Gessler, I think, asked you some questions about what that — what “escalating” means.

In that situation, when you would escalate that question, if it were to be determined by the Office that the — George W. Bush or Barack Obama was ineligible based on federal constitutional qualifications, would you keep them off the ballot?

A. If that was the determination, yes.

Q. And conversely, if, for some reason, somebody — you kept them off the ballot and somebody challenged that eligibility or the Secretary's determination to keep



JA664

them off the ballot and a court decided that they should be placed on the ballot, what would your office do?

A. We would certify the name to the ballot.

MS. TIERNEY: I have nothing further.

[p.157]

#### EXAMINATION

BY THE COURT:

Q. So, Ms. Rudy, you can — if you don't know the answer to this, it's totally fine.

But what would you do if — well, first of all, is it your understanding that if the Secretary of State's Office, the ballot access team all the way up to the Secretary of State, wanted to add a checkbox for — to address the Twenty-Second Amendment so it said, you know, You haven't been — you haven't been President more than two terms, would that be within — is your understanding something that the Secretary of State's Office could do?

A. Yes.

Q. And then my other question is similar.

If — if Barack Obama were to — or President Clinton were to submit a statement of intent and check all the — well, check the boxes that are on there, regardless of what they are, and sign it, and nobody filed a lawsuit, in your estimation — well, just what would the process be given that presumably whoever's reviewing that would know that President Clinton had already been President twice?

A. Again, it's hard to speak to hypotheticals, but certainly the ballot access team would

[p.158]

escalate that through the legal team to the Deputy Secretary for guidance. But given that that is an objective, knowable fact, it is unlikely that we would certify that candidate's name to the ballot.

JA665

THE COURT: Okay. Did anybody have any follow-up questions to mine?

MR. GESSLER: Of course, Your Honor.

FURTHER EXAMINATION

BY MR. GESSLER:

Q. Ms. Rudy, I just want to ask you a question.

So — so the Court asked you a question, and you said — with respect to the term limit. And you said if it's an objective, knowable fact, you would feel comfortable or you would predict that it would be likely that the Office would not allow that person to appear on the ballot.

Is that correct?

A. In the situation that we discussed, yes, that's correct.

Q. Right. And because the two-term limits, that's an objective, knowable fact, correct?

A. Yes. We know that they've served two terms.

Q. Right. So you know this case is about the [p.159]

Fourteenth Amendment, correct?

A. That's correct.

Q. And is it your understanding that Congress can remove any disability to holding office under the Fourteenth Amendment?

A. I understand that.

Q. Okay. And would you agree with me that sitting here today, even if a court, whether in Colorado or elsewhere, were to hold that President Trump was disqualified, even in that highly unlikely situation, would you agree with me that it is not an objective, knowable fact as to whether or not Congress would, in the future, remove that disability?

MS. TIERNEY: Objection, Your Honor. I don't think the witness can testify to that.

JA666

THE COURT: I'll let her testify to the extent she knows the answer, but she's not designated as an expert on the subject.

A. I really can't speak to how our office would handle that situation.

Q. (By Mr. Gessler) Okay. Let me ask you this:

Would you agree with me that it's not an objective, knowable fact, sitting here today, how Congress will react in any way between now and the

[p.160]

presidential election in 2024?

A. I would say that, as with any area of law, it's impossible to know how a legislative body will act looking into the future.

Q. Okay.

A. I can't speak to how they will behave.

MR. GESSLER: Great. Thank you very much.

THE COURT: Does anybody else have any follow-ups?

MR. KOTLARCZYK: No, Your Honor.

MS. TIERNEY: No, Your Honor.

MS. RASKIN: No, Your Honor.

THE COURT: Okay. Great.

Thank you so much for your testimony, Ms. Rudy.

THE WITNESS: Thank you.

THE COURT: Am I correct in understanding that Ms. Rudy was the petitioners' last witness?

MS. TIERNEY: Your Honor, we — thank you, Your Honor.

We have one witness who is testifying out of order on Friday. That's Mr. Heaphy.

THE COURT: Okay.

MS. TIERNEY: And we also have some exhibits that we are reworking to submit, the January 6

[p.161]

findings in particular, so that we are submitting only those Your Honor has found to be admissible to clean up the record a little bit.

And then we may want to highlight additional documents that are already admitted into evidence that we might submit.

But other than those three items, Mr. Heaphy, the January 6 findings, and some additional highlighting, we are completed.

THE COURT: Okay. Mr. Gessler, do we have anything we need to discuss before you call your first witness?

MR. GESSLER: Yes, Your Honor.

We would like to move for a directed verdict. We understand that Mr. Heaphy is going to be testifying on Friday, but it's our understanding that he's testifying at the request of this Court specifically for the admissibility of the January 6th Report, and for purposes of our directed — our motion for directed verdict, we will assume that the January 6 Report is fully admissible.

And so we would like to move for directed verdict and have the opportunity to make that case, Your Honor.

THE COURT: Okay. Are you prepared to do

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it right now?

MR. GESSLER: I am, indeed.

THE COURT: Well, good.

MR. GESSLER: Thank you, Your Honor.

So we move for directed verdict under Rule 50 here, and we are moving on very focused grounds. Specifically with respect to the — whether or not President Trump incited anything under the Brandenburg standards under the First Amendment.

JA668

And so basically for purposes of this, we are accepting everything that the petitioners have provided in evidence, as well as we're accepting for — obviously for limited purposes, the admissibility of the January 6 Report.

So I just want to walk through the evidence, what you've received, apply what our very straightforward and well-established legal standards, and we believe this case warrants dismissal at this point because petitioners have not made out their case on this issue.

So as the Court knows, there have been a number of arguments raised with respect to Section 113 and 1204. This directed motion is not involving that.

There have been a number of arguments we've presented with respect to the interpretation

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of Article 3— I'm sorry, Section 3 of the Fourteenth Amendment. This directed motion is not focused on that.

What it is focused on is the Brandenburg standards, the definition of incitement.

Our argument under Section 3 is that President Trump has to engage in an insurrection. Petitioners have argued that incitement can constitute engage. Although for overall purposes, we don't accept that, we disagree with that argument, for purposes of the directed motion, we will operate on that premise.

So the evidence that the Court has received so far and in totality has been the January 6 Report or portions of the January 6 Report.

It received evidence from Officer Hodges, and he testified to activities, the violence and things that happened at the Capitol. He did not testify to President Trump's actions.

Representative Calwell [sic], he testified to activities that happened at the Capitol as well, from his

perspective. He did not testify to President Trump's activities beyond simply saying he heard the speech. And Representative Calwell, of course, testified to things in prior — in prior years.

Mr. Pigeon testified — again, very similar to Officer Hodges — activities at the Capitol.

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You have Professor Banks, who testified as to what President Trump's authorities were to mobilize the National Guard on January 6. He did not testify to President Trump's actions at all.

You have Professor Magliocca, who testified as to the meaning of Section 3. He did not testify to President Trump's actions. And importantly, he did not testify as to the meaning of intent or the applicability of the Fourteenth Amendment, so his testimony for purposes of this motion is — is not relevant.

And you heard from Ms. Rudy, who testified as to the Secretary of State's authority. Of course, much different than President Trump's actions.

So basically there's two — two things: One is information from the January 6 Report, and the second is Professor Simi's — Professor Simi's testimony with respect to far right-wing extremists.

Neither one of those shows that President Trump, in any manner, in any way, incited an insurrection, incited violence, incited a riot. Not at all. Under the well-established Supreme Court standards of *Brandenburg v. Ohio*.

This case is entirely, petitioners' case is entirely a case about President Trump's speeches, his

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speech, his Twitter, to video. That's the entire body of their evidence, and that's the entire body of evidence from the January 6 Report.

They don't allege that President Trump was — you know, had meetings with the Proud Boys or Three Percenters. They don't allege that he, you know, carried a knife or a rifle or marched at the head of a column towards the Capitol. They don't argue that he engaged in any of those sort of physical overt actions.

It is all speech. That's the entire body of their case.

And if you remember, the petitioners sort of had this chart up here towards the end of Professor Simi's testimony, and he talked about this speech and that speech — oh, there it is, over in the corner there. All of that stuff that President Trump did. And, of course, they sort of have a pejorative: Memory A, the punch in the face or the body slam or the stand back and stand by.

But those are all things that President Trump said. Every one of them is about him saying something or not saying something. He didn't condemn activities in Georgia or Charlottesville. He didn't — didn't say something. So it's all speech.

We've submitted the speech standards under

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Brandenburg v. Ohio, but I'm going to talk briefly — I don't want to be too pedantic, but I'm going to talk about some of the applicability, okay? And particularly Professor Simi's testimony.

So Professor Simi was very clear. He testified that he was not opining about President Trump's intent. He said: I'm not in President Trump's head. I don't know what his intent is.

JA671

He said, What I can say is that I think his behavior is characteristic of communications with right-wing, far-right-wing extremist groups. And he was very clear that President Trump's speech was interpreted in a particular way by these right-wing extremist groups.

And as you remember, I questioned him. You know, we had all these sort of fight or flight in the streets from figures, political figures other than President Trump.

And I asked him: Well, were those right-wing extremist communications?

And he was very clear: It depended. It depended upon the relationship, the patterns of behavior and things like that as to how right-wing extremists would interpret the comments.

So really his testimony was, President Trump said stuff and right-wing extremists

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interpreted it in a certain way. And specifically when he said right-wing extremists, he referred to those three groups.

He also said that — so the characteristics of these communications are in common with normal political speech. He talked about the communication methods. You know, what he called doublespeak and front door/back door.

And I'm sure he made us all feel uncomfortable that when we go in for a job interview versus when we talk to our significant other, we are engaging in doublespeak, or maybe front stage/back stage, I don't — but one of those methodologies. So he testified about that.

But the important thing he said was that all of these forms of communication, all these methods of communication, you know, call-and-response and things



JA672

like that, are common in political discourse, are commonly used in political discourse.

And the difference with far right-wing extremists is that they're — is that they couple it with violence. That was — that was sort of what he said.

And, of course, he was very clear that many of these people interpreted President Trump's comments.

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So that's the — that's how Professor Simi testified.

So let's apply that to the law. Okay. And — and I will talk about a few things.

So the *James v. Meow Media, Inc.*, that's 300 F.3d 683. And that's in the Sixth Circuit.

And in that case, the — the argument was that basically there was sort of an ongoing process of developing a method of communication and that after a while, the person hearing the communications was the — was conditioned to respond in a certain way.

Now, the Court was very clear, and I'll quote it, said: "This glacial process of personality development is far from the temporal imminence that we have required to satisfy the Brandenburg test."

So you have to have the temporal instance — or imminence.

So all of the stuff that Professor Simi talked about does not meet First Amendment standards. All the prior conversations, the years, the pattern of development, that has been explicitly rejected, rejected by the courts.

It has to be imminent, okay? And it can't be communication that — whether — even if it advocates — and we're not — none of these

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communications advocate it, which I'll get to that — but it has to be imminent.

JA673

And so Professor Simi's framework of this pattern of behavior, it may apply to how people received those communications, but it doesn't constitute First Amendment standards. And we think those standards are very, very clear.

The Court also said that — that the mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it, absent some showing of a direct connection between the speech and imminent illegal conduct.

So even if speech advocates something, even if it encourages it, the tendency to encourage it is itself not an absent reason — absent a showing of a direct connection between the speech and the imminent illegal conduct. So there has to be a direct connection.

So President Trump saying, "Come on January 6, will be wild," that is not a direct connection between the speech and imminent illegal conduct. And that's, we submit, pretty straightforward case law.

Now —

THE COURT: And I'm sorry, that's still the —

MR. GESSLER: James v. Meow Media. And  
[p.170]

they have a number of citations in there. The pincite is page 698, Your Honor.

And they cite Ashcroft v. Free Speech Coalition and McCoy v. Stewart in the quotation block that I'm referring to.

But it's a great case. I suggest it for everyone in the audience to read.

The second case — and I'm not going to be awfully pedantic. I don't want to provide an entire legal brief here. But I am going to talk about a couple things.

Two more cases: *Hess v. Indiana*, and I believe we cited, that's a U.S. Supreme Court case from 1973. And there, there has to be “. . . evidence, or rational inference from the import of the language, that [the] words were intended to produce, and likely to produce, imminent disorder . . .” Okay?

They —

THE COURT: So, Mr. Gessler, would you just slow it down —

MR. GESSLER: Certainly, Your Honor.

THE COURT: — a little bit.

MR. GESSLER: I'm mindful of time. I guess that's why I'm talking quickly.

THE COURT: No, I'd rather you slow it

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down so I can actually absorb what you're reading —

MR. GESSLER: Fair enough, Your Honor.

THE COURT: — versus —

MR. GESSLER: Let me —

THE COURT: If you could start again with *Hess v. Indiana*.

MR. GESSLER: The *Hess v. Indiana*, that's 414 U.S. 105. Okay?

And *Hess* says there have to be a couple things: There has to be intent; in other words, words have to be intended to produce, and they have to be likely to produce imminent disorder. And they could not be punished by the state on the ground that they had a tendency to lead to violence.

So the — so you have to look at the import of the words, their direct meaning, not a particularized, coded meaning.

And, in fact, Professor Simi never testified that President Trump intended; in fact, he disavowed any testimony of President Trump's intent.

JA675

And Professor Simi was very clear that the words used, no matter who's using them, whether it's the term "fight" or something else, have an impact on the listener depending upon the circumstances. It's all contextual.

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Here's the last case, and I think this case is really dispositive here. And the case is *Nwanguma v. Trump*. *Nwanguma v. Trump*. And that's spelled N-w-a-n-g-u-m-a, v. Trump. And that's 903 F.3d 604.

And this is why this case is so dispositive. This was a rally involving President Trump, the same one who's here today. And he spoke at this rally.

And this is described in the case.

And President Trump spoke for about 35 minutes. And Nwanguma, she attended the rally with the intention of peacefully protesting, okay?

And her behavior precipitated directions from President Trump to the crowd on five different occasions during that speech. For her and a few of her colleagues to "get 'em out of here." That's what he said: "Get 'em out of here."

And you, the Court, heard video of how President Trump delivers those comments, types of comments, not this video in particular. They said, "Get 'em out of there."

And in response, what happened is the crowd, members — this is quote, ". . . members of the audience assaulted, pushed and shoved plaintiffs . . ."

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and one of them was actually punched in the stomach. And the argument was that the — that this implicitly encouraged the use of violence.

Now, President Trump said a few other things. He said once, after his five "get 'em out of here," he said: But don't hurt 'em. Actually, the case doesn't say "but." It

says, “Don’t hurt ‘em,” is what President Trump said. Okay?

And what the Court did, a couple things. The Court said even if the “get ‘em out of here” could have viewed as implicitly encouraging unwanted physical touching, so the Court didn’t accept that it implicitly — didn’t rule that it implicitly said.

Even accepted, the charge in Kentucky law that this case was — was inciting to riot, so it was incitement and riot, both of which we urge are lesser standards than here, but certainly incitement.

And the Court said the notion that Trump’s direction to remove a handful of disruptive protesters from among hundreds or thousands in attendance could be deemed to implicitly incite a riot is simply not plausible.

Even in those circumstances — and this is, Your Honor, why I was very careful to submit a very specific hypothetical to Professor Simi when I was asking

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him questions.

I asked him: Well, if President Trump were to say five times, “get ‘em out of here,” and this crowd, even if it were filled with right-wing extremists and then later — and said it five times as opposed to only one time, the “don’t hurt ‘em” — so I went through this — I went through this exact hypothetical.

And even Professor Simi, he hedged a little bit and he said: Well, it still sort of depends on context, okay? And — and so he — even he wasn’t quite willing to say: Yes, that was an incitement to violence.

But the Court here is very clear. That is not an incitement. Here, it says, “incitement to riot,” okay, and the Court focuses on the “incitement” prong of that.

JA677

Even there, the Court was very clear, that is not incitement.

And then the Court specially went on and said: “. . . especially where any implication of incitement to riotous violence is explicitly negated by the accompanying words, ‘don’t hurt ‘em.’ If words have meaning, the admonition ‘don’t hurt ‘em’ cannot be reasonably construed as an urging to ‘hurt ‘em.’”

So what the Court did there is the  
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Court — and I don’t want to say the Court rejected Dr. Simi’s thesis, because the Court didn’t say, Well —

THE COURT: Did Dr. Simi testify in this case?

MR. GESSLER: No. I’m sorry, Professor Simi. Did I say “Doctor”?

THE COURT: Well, you said “Doctor” and then I said “Doctor,” and I’m sure —

MR. GESSLER: He may be a doctor, too.

THE COURT: — I’m sure he has a doctorate.

MR. GESSLER: I don’t believe he did. But — I don’t believe he did.

But what I’m saying is, Professor Simi has said, Well, the words can be reasonably interpreted there.

The Court doesn’t accept that framework for a First Amendment analysis, which is what controls here.

So I’m not saying he’s wrong. I mean, right-wing extremists have — they very well may usually do that.

But I’m saying from a constitutional objective standard, what the Court does is the Court looks at the objective words. Okay?

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The Court went on as part of its ruling and it said: “. . . the fact that audience members reacted by using force does not transform Trump’s protected speech into

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unprotected speech. The reaction of listeners does not alter the otherwise protected nature of speech.”

So in other words, the courts, and we, look at the objective meaning, the plain language of terms. We do not look at how those terms may be interpreted by the audience. Okay?

And they later said in that same case, “It is the words used by the speaker that must be at the focus of the incitement inquiry, not how they may be heard by a listener.”

So, again, we look at the words itself. Okay?

And then — and the case sort of cites the substantial amount of case law. I’m not going to cite all that because I do want to keep this motion short.

So we’re not talking a difficult leap of faith to understand the applicability of *Nwanguma v. Trump*.

In fact, I would submit that the petitioner — or the plaintiffs in *Nwanguma v. Trump* used — I don’t know — exactly know what the argument,

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but I’m assuming very similar arguments to petitioners here because they talked about the objective use of the words. The Court rejected how they’re interpreted by listeners. You have to look at the words themselves.

In that case, the, you know, “get ‘em out of here,” even that, the Court was unwilling to accept as incitement. And the Court was very explicit, saying that it was negated.

And, of course, we have other courts talking very much about the incitement, and we cited some of that in our motion, even particularly provocative, directive language, very foul language in the cases directed at audiences and even that far more — far closer in time than what we have here was treated as not imminent.

JA679

So under the imminence standard, absolutely nothing that President Trump said prior to January would constitute incitement. And the most they've been able to come up with is the "will be wild" tweet. That's the most they have been able to come up with.

THE COURT: Well, what about the Ellipse speech?

MR. GESSLER: I'm getting there.

THE COURT: Okay.

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MR. GESSLER: I'm fixing to get there.

THE COURT: Okay.

MR. GESSLER: But I said prior to January 6.

THE COURT: Oh, I'm sorry, I missed that.

MR. GESSLER: Okay.

So what I'm saying is, that's a pretty easy analysis. Under the imminence prong, none of that stuff counts.

Which brings the petitioners' case to one item, which is the Ellipse speech. And absolutely nothing in there, nothing in there, none of Trump's, President Trump's words were a call to violence.

And look, if the Nwanguma court says: Big crowd, protesters in there, crowd angry, "get 'em out of here" five times, direction to the crowd, focused on that person or those few plaintiffs, demanding that they be removed, "get 'em out of there," if the Court doesn't accept that as a call to riot, as incitement, there is no way that when President Trump says, "We need you to fight for our country, we need you to march down on the Capitol," there is no way that is incitement.

And then, of course, the peaceful and patriotic. Now, look, the petitioners have seemingly developed an argument that: Well, he didn't explicitly



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say, “be peaceful and patriotic.” President Trump merely said, “I know you’ll go down there peacefully and patriotically.”

But he emphasized “peacefully” and he emphasized “patriotically” in that speech. And under the same —

THE COURT: When you say “emphasize,” you mean, in what way?

MR. GESSLER: Well, he — he made strong words, he talked about it vociferously, and it was towards the end of the speech in the penultimate “what we are here to do today. I am with you, I am going to go down there with you, peacefully and patriotically.”

And — you know, and so he created a common sense of purpose as the, you know, penultimate culmination of his speech. That’s why it was towards the end.

And so that certainly negates as well any violent intent.

So the words themselves, the objective meaning and objective use of the words, there is no call to violence. And everything that Trump says, “fight,” is a common, common political metaphor meaning a political fight.

And Trump, on multiple occasions, says:

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We’re going to go down there and we’re going to give our Representatives courage, we’re going to demand that Vice President Trump — Pence do the right thing. And obviously I’m paraphrasing.

I’m happy to repeat the speech if the Court wants, but you have it in front of you, a transcript. And you can look at those words. And under an objective meaning of those words, none of them, none of them are incitement.

Then the last argument that they make is that President Trump failed to do enough to stop the riot once

it started. Okay? So they have sort of three — within the world of speech, the evidence, they sort of have three components:

First component is all the stuff in advance of January 6. Doesn't meet the imminence test.

Second component they have is the January 6 speech, and they say that's what incited. And even their own evidence, even quoting from the January 6 Report, the January 6 Report says the violence started well before President Trump finished his speech. So that part of the violence, he certainly didn't incite with the January 6 speech.

And then their argument is, Well, he failed to stop the ongoing violence. And that's

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inaction, which has never been held to cause incitement.

And even — and it's not an overt, voluntary act. There's no evidence of that. And even this Court has required specific intent. And there's no intent that President Trump's absence — what they call an absence; I mean, we dispute that factually. There's tweets in there where he says, Be peaceful, stay peaceful, and then a video. I mean, three communications.

And, of course, they say that's not enough. And under the Brandenburg standards, though, it's not even close to enough. That's not incitement.

So that's our motion for directed verdict, Your Honor. The Court has not yet ruled on these First Amendment issues, and obviously we're asking the Court to rule on it at sort of what I always call half-time motions.

But it has been pretty thoroughly briefed, and the reason I waited was to see what evidence. I mean, maybe they had evidence that Trump was on the phone with Proud Boys, saying, Go — I mean, maybe they were to

bring some evidence in there that, you know, he was sitting in a room and they were plotting out, you know, where people were going to stand and do it, but there's none of that. It's all speech.

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And so even on the grounds of speech, what President Trump did that day is not incitement under very well-established First Amendment principles, Your Honor.

THE COURT: Are you prepared to respond now, or do you need a few minutes to regroup or —

MR. MURRAY: Your Honor, we're happy to start now, but I think, you know, given the time, it might be better to give us a few minutes over lunch.

THE COURT: So this is where I am, is that I'd like to rule after lunch. And we did start 20 minutes late today, so I think Mr. Gessler spent about 15 minutes.

So if you think you can respond at the same amount of time, we would just probably break at 12:30 to 1:30 for lunch.

MR. MURRAY: That's fine, Your Honor. Thank you.

THE COURT: Okay.

MR. MURRAY: As we just heard from Professor Magliocca, to have engaged in insurrection means any voluntary act by word or deed in furtherance of the common unlawful purpose of the insurrection.

The Fourteenth Amendment is not limited to incitement. It includes any voluntary conduct including specific acts of encouragement that further that common

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end.

President Trump was not just a part of the insurrection on January 6. He was the leader of the insurrection. He summoned the mob with repeated

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tweets identifying January 6 as the time to descend on the Capitol.

We've seen from both the written evidence and the testimony of Professor Simi the effect that Trump's statements and tweets in advance of January 6 had on mobilizing violent extremists to come to the Capitol ready to fight.

And he did that using violent language. Just hours after he tweeted, "Come to DC, will be wild," he retweets from a right-wing extremist website a video chanting, "Fight for Trump," over the course of over a minute just to be sure that his supporters would have no doubt what his intentions were.

Second, his lies gave the mob their common purpose. Beginning well before the election and leading up to it, he repeated claims that the only way he could lose the election was if it was stolen. And immediately on election night, he began repeating those same claims, even after court after court rejected his lies and even after advisor after advisor told him there was no basis for those claims of fraud.

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He created a false and desperate expectation in his supporters that the only way, by January 6, they could overturn the results of what they thought were a stolen election was through force and violence.

Third, he incited the mob with his speech at the Ellipse. And President Trump repeatedly wants to suggest that his speech was all about being peaceful and patriotic, but here's what we know.

We've introduced findings from the January 6 Report showing that President Trump had been briefed well in advance of his speech on the Ellipse on the fact that tens

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of thousands of his supporters refused to go through the magnetometers because they were armed.

Despite knowing that, Trump used violent language, referring to “fight” or some version of that 20 times. He told his supporters: They get to go by a very different set of rules because fraud was involved.

That is an implicit call to violence that based on a long-standing pattern of call-and-response that he had developed among his supporters, he knew and his supporters knew were intended as a command to go beyond the normal rules of political engagement.

He told them, “You do not take back our country with weakness,” and he repeatedly painted a

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target on the backs of Vice President Pence and members of Congress.

And he told the mob, not only that they should go to the Capitol, commanding them to go, but told them he would be right there with them because he knew that telling them that would encourage them to go to the Capitol prepared for violence. That’s classic incitement.

The cases that President Trump cites are fundamentally distinguishable. The Nwanguma case was a case where Trump simply said, “Get ‘em out of here,” with no violent rhetoric. The plaintiffs in that case identified no other context that suggested that his words were likely to be taken as a command to violence at the time.

That is not what we have here. We have months of contacts showing what Trump was telling his supporters to do on January 6 and why they were supposed to be there.

JA685

And nobody in that case said, “Fight like hell,” and, “Fight, fight, fight.” This is a fundamentally different situation.

Fourth, Trump incited the mob during the attack with his 2:24 tweet against Mike Pence. This was an hour after he learned that the Capitol was under

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violent attack and that members of Congress and the Vice President’s lives were in danger and he told them: Mike Pence didn’t have the courage to do what needs to be done. USA demands the truth.

In context, “USA demands the truth” means: The mob that is pounding on the doors of the Capitol demand the truth. They are not going to stand for the certification. They’re going to stop it.

At the very least, a reasonable fact finder could draw these inferences about what Trump intended in issuing that tweet.

And fifth, Trump refused to summon a federal law enforcement response to stop the mob or to call the mob off until it was clear they were not going to be successful in disrupting the certification.

The evidence we’ve introduced, including findings from the January 6 Committee, make clear that it was — that after 4:00, it was clear that the certification was not going to be disrupted. Members of Congress had reached safety. Reinforcements had arrived through no effort of President Trump’s, and the insurrection was starting to wind down.

And it was at that point, and that point only, after three hours of watching TV, that President Trump finally told his supporters to go home.

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Now, President Trump's defense is that this is just inaction, this isn't action. But it's a very well-established principle of law that inaction can support a finding of wrongful conduct when there is an affirmative duty to act.

When does an affirmative duty to act arise? Well, number one, when there's a legal duty to act.

President Trump swore an oath, the most powerful oath anywhere in the Constitution, to preserve, protect, and defend the Constitution. That is a legal duty to act.

And you also have a legal duty to act when you've set the events in motion, and certainly we've seen that President Trump did that here.

And we're prepared to provide additional authority in our proposed findings of fact and conclusions of law demonstrating that these are the kinds of circumstances where there is a duty to act.

But what else does his inaction show? It shows that he intended the results of the insurrection, that he intended that the insurrection achieve its ends, because when everybody is telling you you have to do something and you're the most powerful person in the world and you do nothing, that tells us you want them to

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succeed.

I'm pulling up Plaintiffs' Exhibit 78, some of the findings from the January 6 committee.

And if we go to page 150 — excuse me, page 46, Finding 150, which the Court has previously said was admissible.

Evidence from the Committee's investigation showed that the President, when told that the crowd was chanting, "Hang Mike Pence," responded that perhaps Vice President Pence deserved to be hanged. And

JA687

President Trump rebuffed pleas from Leader McCarthy to ask that his supporters leave the Capitol, stating: Well, Kevin, I guess these people are more upset about the election than you are.

What clearer evidence of specific intent to incite and aid an insurrection could you ask for?

President Trump's defense is that the First Amendment protects his conduct here. But we've seen that his conduct was not just incitement, his conduct was speech adjacent to criminal conduct. Mobilization, organization.

We've also seen that his conduct falls within the words of the Fourteenth Amendment. And so Trump's argument appears to be that the First Amendment displaces the Fourteenth Amendment, but there's no legal

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authority for that at all. And as we've laid out in the opposition to President Trump's antiSLAPP motion, that simply cannot be right.

The Fourteenth Amendment does not impose any criminal penalty. It simply provides an additional qualification for office, and there is nothing unconstitutional about enforcing that qualification even if the insurrection activity comes by word.

But in any event, the standard for incitement is clearly met here.

Number one, President Trump advocated, explicitly or implicitly, unlawful violent action. We've seen that he called for the crowd to fight, to fight like hell, to go by a very different set of rules.

We've also heard evidence providing context for what those words meant to Trump and to his supporters through a long-standing pattern of call-and-response in



JA688

which he could speak in coded language because his supporters would understand exactly what his coded language meant. That was the testimony you heard from Professor Simi.

And I would direct the Court's attention to the 7th Circuit case in *United States v. White*, 610 F.3d 957 [sic], in which the Court said that threats or incitement need not be in explicit terms; they can be

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also in coded language that is intended and understood as a command to violence.

And that's exactly what we saw with President Trump's speech on the Ellipse, and that's exactly what we saw in his tweet on 2:24.

And, of course, the second prong of the incitement standard is that the speech was likely to incite imminent lawless action.

And of course that was true here. Of course, you have a crowd of tens of thousands of people, half of whom refused to go through the magnetometers because they were armed or carrying prohibited items. Those are from the findings in the January 6 Report that we've introduced.

This is like summoning a mob out in front of someone's house where everyone has pitchforks and torches, and you don't say, "Go burn down the house," but you give a speech that makes it pretty clear to everybody exactly what you're telling them to do. That's classic incitement.

So then Trump's last defense is, he didn't intend it. He incited insurrection accidentally.

But, of course, intent can be inferred from circumstances and from conduct, and the Court doesn't have to check their common sense at the door when

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determining what Trump intended by his words and his deeds. And you have to look at the whole context and not just take one word of a speech out of context.

We heard Professor Simi testify about Trump's long-standing pattern of encouraging and praising political violence and cultivating a relationship with violent extremists.

There's a reason we haven't seen political violence on this magnitude in the US in response to speeches by President Obama or President George Bush or Nancy Pelosi or Mitch McConnell. Other leaders don't talk this way, and they don't keep talking this way when they see how their violent supporters respond to the words they utter.

Now, we saw Trump retweeting the warning by a Georgia election official, Gabriel Sterling, about how someone was going to get killed as a result of his violent rhetoric and his refusal to call off his supporters, and we saw that his response to that explicit warning was to double down. And that's not the action of someone who is concerned about violence.

How else do we know what Trump intended? He thought Vice President Pence deserved it. Finding 150 that we've previously looked at.

We also saw his tweets after the attack on

[p.192]

January 6: These are the things that happen when an election is unceremoniously ripped from his victims. He was praising the violence, "Remember this day forever," because he was in league with the insurrectionists.

And we saw what he was saying even years later, that fraud allowed suspending all rules, including the Constitution of the United States. That was his mental

state on January 6, and that was his mental state even years later.

He has violated his oath. He engaged in insurrection. Thank you.

MR. GESSLER: Do you want any more argument from me, Your Honor? I'm not insulted if you say no.

THE COURT: I think we should — oh, you want to say something?

MR. KOTLARCZYK: If I may, Your Honor.

THE COURT: Well, Mr. Kotlarczyk, you have said so little, unlike some other folks, that I'm going to give you a chance.

MR. KOTLARCZYK: Your Honor, it's just nice to say something other than my name and "no questions."

Just very briefly, Your Honor.

[p.193]

Rule 50 is inconsistent with a 113 action. The idea behind a 113 is we get an expedited resolution of this process, we get it all bundled up, and it goes up on appeal for the Supreme Court to consider whether they want to hear it or not.

I think if you consider how this could play out if the Court were to entertain a Rule 50, is if the Court were to grant the Rule 50, we could end up in the Supreme Court on the three-day expedited appeal.

Supreme Court could say, Actually — you know, after allowing for briefing and all that, say: Actually, you know what, we think the district court erred, it should not have granted the Rule 50. Let's go back down.

We then have a whole half of this case we would still have to try, and all of a sudden January 5 is looking really close when the Secretary is going to have to make a certification decision.

JA691

So I would point the Court to Rule 81 of the Colorado Rules of Civil Procedure, which say that when a special statutory proceeding — which 113 undoubtedly is — provides its own procedures and the Rules of Civil Procedure are inconsistent with the special statutory proceeding, the Court should follow the procedures of the special statutory proceeding and not

[p.194]

those of the Rules of Civil Procedure.

Rule 50 talks about a directed verdict. There's not a verdict at the end of a 113 action, Your Honor. There's an order directing substantial compliance with the election code.

So we just think that this Rule 50 motion is procedurally improper and should be denied on that ground.

Thank you.

THE COURT: Okay. I'm going to take it under advisement and hopefully have something to say in response when we reconvene at 1:30 today.

And, Mr. Gessler, you'll be prepared with your first witness?

MR. GESSLER: Yes, Your Honor.

Last housekeeping thing.

For tomorrow, we have a witness who needs to start at 1:00, so if we can just do that as part of the planning process, I want to give you that well in advance.

(Siren interruption.)

THE COURT: Well, you've gotten it three times already today, your —

MR. GESSLER: That's a notice to pay particular attention to what I'm saying, Your Honor.

[p.195]

THE COURT: Okay. Okay. We will — why don't we just make it 1:35, we'll be back.

MR. GESSLER: Okay.

(Recess taken from 12:32 p.m. until 1:40 p.m.)

THE COURT: You may be seated.

So turning to the motion for directed verdict, motion for directed verdict may be granted only when the evidence considered in the light most favorable to the opposing party compels a conclusion that reasonable persons could not disagree as to the evidence or to the inferences which could be drawn from the evidence and when no evidence has been presented that could sustain a verdict against the moving party.

The Court must consider the evidence and the reasonable inferences from the evidence in the most favorable way to the nonmoving party.

Here, in this case, I tend to agree with — Mr. Kotlarczyk is correct that this — it would be inappropriate to grant a Rule 50 motion given the expedited proceedings.

However, even if it was appropriate, I would deny because the motion brings up significant legal issues, many of which have never been decided by any court.

[p.196]

For instance, essentially one of President Trump's arguments is that the First Amendment displaces the Fourteenth Amendment, or at the very least, the Court needs to interpret the Fourteenth Amendment with a First Amendment overlay.

The petitioners argue that I should apply the Fourteenth Amendment on its face and that it is not subject to or somehow a lesser amendment than the First Amendment.

JA693

There is clearly a conflict. On the one hand, you have people in the 1800s being disqualified for writing a letter to the editor. Clearly speech. On the other hand, you have a body of law holding the standards for finding incitement are very high and the speech needs to be very specific.

The Court is not prepared today to reconcile those two bodies of law.

Similarly, on the one hand, Intervenor Trump argues the Court cannot look at statements that are in a glacial pace to find incitement.

However, the petitioners argue that I can look at those statements for context and to infer intent and the plan for incitement they contend was caused by the January 6 speech.

Trump argues that the January 6 speech

[p.197]

does not meet the standard of incitement, but then I have Professor Simi stating that based on the relationship that was built, the words were coded. Petitioners argue and have cited cases that the Court will look at coded languages when determining incitement.

To be clear, I'm not deciding any of these issues. I'm denying the motion for directed verdict because in order to grant the motion for directed verdict, I would have to decide many legal issues that I am simply not prepared to decide today.

Further, I think I will be better informed to decide the legal issues when I have more of a factual context, which I expect I will have after the presentation of intervenors' case.

So I will address the First Amendment issues brought up in your motion for directed verdict when I make my final findings of facts, conclusions of law, and all the other

legal arguments that I need to decide between now and then.

Is the intervenors, I think we were going to start with President Trump? Are they ready to call their first witness?

MR. GESSLER: Yes, Your Honor, we are.

Would you like a quick entry of appearance, or is this morning's entry adequate for you?

[p.198]

THE COURT: Do we have new people who need to enter their appearance?

MR. GESSLER: Yes, we do, Your Honor.

So on behalf of President Trump, Mr. Geoffrey Blue will also be here today.

THE COURT: Okay.

MR. GESSLER: And he and Mr. Shaw will be handling our witnesses today, Your Honor.

THE COURT: Oh, I'm sorry, because we heard from Mr. Blue yesterday. You mean just they hadn't entered an appearance today?

MR. GESSLER: Yes, Your Honor.

THE COURT: And then what about — are you calling the witness today that had the issue with the lawyer needing to be —

MR. SHAW: Yes, Your Honor.

Mr. Jesse Binnall is on, and I believe he was admitted — it was not clear to me whether he was admitted just by the Supreme Court and waited for you to admit him or whether you have already admitted him.

THE COURT: I think that — he hadn't filed a motion, but I think he subsequently filed — he did it in exactly the backwards order. He got approval from the Supreme Court and then he filed a motion, but I believe that he has been approved by the Supreme Court

[p.199]

and that we have granted the motion.

MR. SHAW: Great. So he is on the WebEx.

THE COURT: Okay. And so is he — is it — your very first witness the one that he's representing the witness himself?

MR. SHAW: Yes, Your Honor.

THE COURT: Okay.

The witness is going to be on WebEx?

MR. SHAW: Yes, Your Honor.

THE COURT: Okay. We need to turn the screen around so the court reporter can see the witness speak.

Will you call your first witness.

MR. SHAW: Yes. We would call Kashyap Patel.

(Appearing via WebEx.)

THE COURT: And, Mr. Patel, can you hear us?

THE WITNESS: Yes, ma'am, I can.

THE COURT: Okay. We're going to need to turn up some volume majorly. I could hear you but just barely.

THE WITNESS: I'll endeavor to speak up, Your Honor.

THE COURT: Okay. So that amount, which

[p.200]

you probably thought were shouting, was just about the perfect amount, so definitely speak up.

THE WITNESS: Will do.

MR. SHAW: Did you want to swear the witness, Your Honor?

THE COURT: Yeah.

KASHYAP PATEL,

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

THE COURT: Great.



JA696

DIRECT EXAMINATION

BY MR. SHAW:

Q. Mr. Patel, thank you for interrupting your visit with your family to be with us today.

Let's briefly discuss your background.

Am I correct that you're a recovering lawyer?

A. Yes.

THE WITNESS: And, Your Honor, thank you for letting me appear remotely. I really appreciate the accommodation. I have not practiced law in maybe close to a decade.

Q. (By Mr. Shaw) Well, did you ever practice law? You imply you did. When did you practice law?

A. When I first graduated law school in 2005,  
[p.201]

I served as an Assistant Public Defender in and for Miami-Dade County, and later went on to serve as an Assistant Public Defender for the Southern District of Florida.

And thereafter, I transitioned to the Department of Justice's National Security Division, where I served as a terrorism prosecutor, and served one more counsel role thereafter on Capitol Hill.

Q. Okay. And when you were at — and when you were at the Department of Justice, did you also serve as a legal liaison to the Department of Defense?

A. Yeah. My duties while being a terrorism prosecutor, I was the selected representative to be the DOJ liaison to a Joint Special Operations command embedded with Special Forces units to work on collaborative global targeting operations.

THE COURT: So is there any way to get him to be a little bit louder without making him doing whatever he just did?

JA697

MS. BILA: That's what I was trying to do, Your Honor.

THE COURT: Yeah.

MS. BILA: And it doesn't seem as if I'm able to without the feedback.

THE COURT: So, Mr. Patel, if you can just [p.202]

kind of lean in —

THE WITNESS: Yeah.

THE COURT: — it will be good. You're — I can hear you, but it's kind of going in and out.

THE WITNESS: Yes, ma'am.

THE COURT: Perfect.

Q. (By Mr. Shaw) Okay. How long were you at the Department of Justice?

A. Approximately four years.

Q. Okay. And when did you leave the Department of Justice?

A. When I left the Department of Justice, I went on to serve as senior counsel and the National Security Advisor to the House Permanent Select Committee at the United States Congress, where my duties were to run the counterterrorism platform oversight operations and also serve as the lead chief investigative counsel for the investigation into Russian active measures.

Q. Okay. And am I correct in thinking you were with the House from about 2017 to 2019?

A. Yes, that's correct, just about early 2019.

Q. Okay. And then where did you go after — or in early 2019?

A. Thereafter, I transitioned to the White [p.203]

House's National Security Council.

JA698

And I would shortly, after going over to the White House, become the Senior Director for Counterterrorism, where I ran the counterterrorism policy platform for then-President Trump, along with the hostage portfolio, counter-narcotics, counter-human trafficking, and a slew of other counterterrorism-related matters.

Q. Okay. And how long did you stay in that position?

A. On and off for two years, over two years. The role was broken up by one temporary duty assignment where I served as the Deputy Director of National Intelligence over at the Office of the Directorate of National Intelligence, where our duties were to oversee the 17 intelligence organizations, along with providing the presidential daily briefing to the President and his Cabinet.

I would return to the White House after four or five months at ODNI, and I would finish the administration's term as Chief of Staff over at the Department of Defense.

Q. And who were you supporting as Chief of Staff?

A. At the time, it was Acting Secretary of Defense, Christopher C. Miller.

[p.204]

Q. And when did you finish up your term as Chief of Staff to the Acting Secretary of Defense?

A. We both had our terms expire on January 20, 2021, at high noon.

Q. And what do you do now?

A. I have a multiple — roles. I'm a consultant. I have a national security practice. I'm the senior fellow at the Center for Renewing America and National Security.

I serve on the board of TMTG Technology Company. I'm the Senior Advisor to President Trump for national security defense and intel. And I also have a 501(c)(3) charity, where I serve as the President of the Kash

JA699

Foundation, where we have multiple lines of efforts giving away money to those in need.

Q. Okay. I'd like to focus on your time as Chief of Staff to the Acting Secretary of Defense.

And I'd like to show you what's been marked as Exhibit Number 1027, which I believe is either already in or has not been objected to.

MR. SHAW: Is there any objection to that?

MR. GRIMSLEY: I believe it's in, but there's no objection.

THE COURT: Okay. 1027 is admitted if it hadn't already been.

[p.205]

(Exhibit was admitted into evidence.)

MR. SHAW: Okay. Could you put that up, please, Joanna.

Colin, can you let me in? Thank you.

Q. (By Mr. Shaw) Okay. So looking — can you see — can you see Exhibit 1027, sir?

A. I don't think so, unless I'm —

THE COURT: I can't see it, either.

MS. BILA: One second.

A. Now I see it.

Q. (By Mr. Shaw) Okay. Great. If you need it to be scrolled, just let us know.

But do you know what that document is?

A. It's a part of one of the Department of Defense's timelines we created encapsulating our involvement in and around the events of January 6, 2021.

Q. Okay. If you would look at the third bullet point under the heading "Sunday, January 3, 2021."

A. Yes.

JA700

Q. Okay. It reads: "A/SD and CJCS meet with the President: The President concurs in the activation of DCNG to support law enforcement."

Do you see that?

A. Yes, I do, sir.

Q. What does the abbreviation A/SD stand for [p.206]

in DOD parlance?

A. Acting Secretary of Defense.

Q. And that would be Acting Secretary of Defense Miller for whom —

A. Yes, sir.

Q. — you were working at the time?

A. Yes.

Q. What about CJCS?

A. It's the Chairman of the Joint Chiefs of Staff. And at the time, it was Chairman Mark Milley.

Q. And what do you understand DCNG to mean?

A. That is the abbreviation for the Washington, DC National Guard Bureau. Every state has its own National Guard, and since DC is a federal complex, they have their own National Guard.

Q. Okay. So what do you understand this entry to be conveying?

A. We had a meeting at the White House, as indicated by the timeline, on January 3 about events wholly unrelated to this regarding national security.

And at that meeting, President Trump brought up the possibility of utilizing National Guard forces for the upcoming voting confirmation process, and that bullet point refers to his authorization, which we captured in this timeline.

[p.207]

Q. And the purpose — was the purpose of that to support local authorities and law enforcement?

A. The purpose of National Guard has always been, my understanding, is to support local law enforcement when a request is made through their chain of command, which would be the governor, or the mayor since it's Washington, DC, or the Capitol Police Chief since we're talking about the Washington — the Capitol Building itself in those grounds in Washington, DC.

Q. Okay. Now, I'd like to show you Exhibit 1031, which has also been previously admitted.

MR. SHAW: So, Joanna, if you could put that up, and let's start with the cover page.

Q. (By Mr. Shaw) Sir, do you recognize this as the November 16, 2021 report of the Department of Defense Inspector General regarding his review of the Department of Defense's role, responsibilities, and actions to prepare for and respond to the protests and its aftermath at the U.S. Capitol campus on January 6, 2021?

A. I do.

Q. Okay. And since it was prepared November 16, 2021, that would have been during the Biden administration, correct?

A. That is correct.

[p.208]

Q. Okay. Were you interviewed for that report?

A. I was not.

Q. Okay. All right.

MR. SHAW: Joanna, if you could put up page 15 now, please. It's actually the numbered page 15, so it may be different than the 15 on the document.

There you go. Thank you.

JA702

Q. (By Mr. Shaw) So let me direct your attention to Table 1, starts on page 15, and then we'll carry on to page 16, which we'll get to in a minute.

Do you recognize that as a chronology of significant events leading up to January 6?

A. Yes, in general.

Q. Okay. And let me direct your attention to the second entry for December 31, 2020.

Do you see that entry?

A. Yeah, I got it.

Q. Okay. Does it discuss a DC RFA to the DCNG for January 5 through 6, 2021, for — and I'm paraphrasing — traffic control and crowd control at metro stations and response capability?

A. Yes, I see that. That's what's reflected there.

Q. Could you please explain what you

[p.209]

understand that entry to mean.

A. An RFA is a request for assistance, which is the formal verbiage when an appropriate level officer or Secretary submits a request for National Guard assistance.

And as is documented here, that RFA went specifically to the Washington, DC National Guard for the very specific duties of performing traffic control at intersections and crowd control at metro stations.

When the requests for National Guard are provided, they are also, as is notified here, granted with specificity as to what they're requesting, not just generally people. And that's encapsulated by this bullet point here.

And M.G. Walker at the time was Major General Walker, the head of the Washington, DC National Guard.

Mr. McCarthy was the Secretary of the Army at the time. The Secretary of the Army controls the entire

JA703

National Guard org structure for the United States of America.

Q. And this RFA, or request for assistance, was that coming from the DC local government?

A. Yeah. That's what all those letters stand for.

[p.210]

Q. Okay. And so if I understand that correctly, the DC local government was requesting a limited number of DC National Guard members.

Is your recollection about 340; is that — is that right?

A. Specifically, it was 346. The request came in through Mayor Bowser's office, who was mayor of Washington, DC at the time, and the specific request was not just with numbers, but what their assistance was to be utilized for, which was our practice when receiving a request. We needed to know how to arm, kit, and man our troops.

And in this instance, they would not be armed, if I recall correctly. They would be wearing the bright yellow vest and assisting in traffic duties and possibly wearing protective gear, but that would be about it, from my recollection.

MR. SHAW: Okay. Now, if you could switch to page 16, Joanna.

Q. (By Mr. Shaw) And I would direct your attention to the second entry for January 3, 2021, sir.

A. I got it.

Q. And that entry reads, "Mr. Miller and General Milley attend a White House meeting. At the end of the meeting, the President asked about election

[p.211]

protest preparations, and Mr. Miller tells him, quotes, we've got a plan and we've got it covered."

Do you see that?



JA704

A. Yes, sir.

Q. Okay. Do you understand that to be the same January 3 meeting discussed in the Department of Defense timeline we reviewed a few minutes ago?

A. It's one and the same.

Q. And did you attend that meeting?

A. I did.

Q. Okay. Did you attend in your capacity as the Acting Secretary's Chief of Staff?

A. I did.

Q. Was it common practice for you to attend meetings at the White House when the Acting Secretary attended?

A. Almost every one.

Q. Do you remember where that meeting took place?

A. In the Oval Office.

Q. Can you tell us what was discussed at that meeting?

A. Mostly no, because it was involving a matter of national security that I'm not at liberty to discuss here, but it had nothing to do with these events.

[p.212]

And then at the back end, as this timeline notates, there was a discussion briefly about National Guard forces and the upcoming protest.

Q. And so according to the timeline we just looked at, the Acting Secretary told the President, "We've got a plan, and we've got it covered."

Was there any other —

A. Yes.

Q. — or any further detail discussed at that meeting?

A. Yeah. I don't remember exactly the verbiage, but having — as you walk through prior to January 3, specifically on December 30 and 31, requests for National Guard coming in, our practice under the law, as we

understood it, was we needed presidential authorizations for it.

During this conversation, the President authorized 10- to 20,000 National Guardsmen and women to be utilized, if necessary, around the country to provide assistance to local law enforcement.

Q. So as of that January 3 meeting, was there any doubt in your mind that the President was on board with DOD using whatever National Guard resources were needed in its discretion?

MR. GRIMSLEY: Objection. Leading.

[p.213]

A. No, he authorized it.

THE COURT: Sustained.

Why don't you ask the question again, please.

MR. SHAW: Sure.

THE COURT: And, Mr. Patel, you need to — before answering, if there's been an objection — which you may not have heard — you need to let me rule, okay?

THE WITNESS: I'm sorry, ma'am, I didn't hear that. Okay.

THE COURT: I think you need to — in order for him to hear your objection, you're going to have to move the speaker over so he can —

MR. SHAW: The mic, she means.

Q. (By Mr. Shaw) Did you have any doubt, as you left that January 3 meeting, that the President was on board with DOD using whatever National Guard resources were needed in its discretion?

MR. GRIMSLEY: Objection. Leading.

THE COURT: Sustained. Try again.

Q. (By Mr. Shaw) At the conclusion of that January 3 meeting, what was your impression of the President's position on the use of the National Guard?

JA706

MR. GRIMSLEY: Objection —

A. We had all —

[p.214]

MR. GRIMSLEY: Objection. Calls for speculation to the President's intent.

THE COURT: He can — he can respond to the extent he had an impression.

Objection —

THE WITNESS: Yes, Judge.

THE COURT: — overruled.

THE WITNESS: Sorry.

A. My understanding from that meeting was that the President had authorized the National Guard troops we needed, and under the law as we understood it for National Guard purposes, we had Step 1 of a two-step process.

And so we had everything we needed — because this is what we do all the time — to go execute Step 2 of the plan while leaving, which is why Secretary of Defense Chris Miller said, “We’ve got a plan, and we’ve got it covered.” That’s what we do. We do reps and sets.

Q. (By Mr. Shaw) To your knowledge, did anyone at DOD over the coming days or certainly at — let me strike that.

To your knowledge, did anyone in DOD leadership over the coming days ever suggest more or different authority was needed from President Trump in

[p.215]

order to utilize the National Guard troops?

MR. GRIMSLEY: Objection. Lacks foundation.

MR. SHAW: I asked about his knowledge, Your Honor.

THE COURT: Overruled.

You can answer if you have an answer.

JA707

A. Under our practice, we would consult with the Office of the General Counsel at the Department of Defense, along with the White House Counsel's Office, for any legal requirements we might need.

But from my perspective and my conversations with the Secretary of Defense and the Chairman and the Secretary of the Army, we had what we needed to initiate under the law the first 0, 1, 2, 3 phases, as we call them, for the employment, deployment, and activation of the National Guard.

Q. (By Mr. Shaw) At that meeting, did you understand President Trump to have limited DOD's authority to deploy National Guard troops in support of the civil authorities in any way?

A. No. Just that the number was 10- to 20,000, so if by chance we needed more, we would have gone back to the Commander in Chief.

Q. Let's go back to Exhibit 1031, page 16,  
[p.216]

which I think we were already on.

And let me direct you to the third entry from the bottom, which reads: January 5, 2021 — I'm sorry.

Okay. "January 5, 2021, during the evening, the President calls Mr. Miller to discuss the upcoming rallies. Mr. Miller told us that the President told him to, quotes, do what's required to protect the American people."

Do you understand that to be referring to deploying National Guard troops?

A. Yes.

Q. Was there anything else you can think of that might have been referring to?

A. No, because Secretary of Defense Christopher Miller and I spoke about that conversation and we —

MR. GRIMSLEY: Objection. Hearsay.

JA708

THE COURT: Sustained.

Q. (By Mr. Shaw) When you and Secretary Miller spoke about that conversation, was it in order to take a course of action?

A. We didn't need to take a further course of action. We had already implemented our processes under the President's authorization under the law as we

[p.217]

operated.

So this was just another presidential statement, but we didn't need it. We had what we needed.

Q. Were detailed operational plans for deployment of the National Guard discussed with the President?

A. No. That's — I can't think of a time where we ever would do that.

Q. Why not?

A. While the President is the Commander in Chief of the armed forces, the duties through multiple, what we call fragos, fragmentary orders and the like, are delegated down to the SecDef, which is the National Command Authority, down to further delegations to the Secretary of the Army.

The President is — we go to the President for authorizations we need and keep him abreast of any issues we think important that rise to his attention, but we have career professionals in place to perform those logistical preparatory works, such as activating the National Guard and running drills.

Q. Between January 3 and January 6, were you personally paying attention to the National Guard issue?

A. Yes.

Q. In what way?

[p.218]

A. Well, as the individual charged with not just being the Chief of Staff for the Assistant Secretary of Defense but for the entire Department of Defense, and his office, I was directly responsible underneath the Secretary to ensure any orders he gave were followed.

And I was in, maybe not every single meeting, but probably close to all of them regarding National Guard forces, their employment, deployment, and activation.

Q. Did you attend meetings with law enforcement agencies at which the topic was discussed?

A. I think I was at the FBI Washington field office one time with then-acting — or then- — excuse me, then-Deputy Director Mark D’Antuono, if I recall correctly.

Q. Were you aware of and following communications with the local authorities about the subject of the National Guard?

A. What we did, because the Secretary of the Army is our point person, Secretary McCarthy was the direct liaison in the field with law enforcement and Mayor Bowser’s office. That was our established practice. That was the established practice going back to the summer of 2020 specifically and before that, and that was his job.

[p.219]

So there was no need for us to directly engage. We had our appropriate military personnel and their staffs coordinating directly with local law enforcement.

Q. Okay. And so just to close this out, to your knowledge, did any senior DOJ leader ever state, in words or substance, that they felt they needed more or different authorization from President Trump before they could deploy National Guard troops to keep the peace on January 6?

A. No.

JA710

Q. Okay. So Department of Defense, based on what you're telling us, felt they had authority to use National Guard troops, and President Trump had been clear that he wanted DOD to do what was necessary to protect the American people.

So why didn't we have 10,000 National Guard troops suited up and armed, guarding the Capitol on the morning of January 6?

A. Well, there's a multitude of reasons, but namely under the law as was — as the Department of Defense was operating under pursuant to guidance by the Office of General Counsel and the White House Counsel's Office and probably the last hundred years of National Guard authorities, step one was a Commander in Chief's

[p.220]

authorization, which we had.

Step two was a request by the governing body, the local governing body, which is usually governor. But in this instance, it's the mayor since it's Washington, DC, and/or the heads of the Capitol Police Bureau because we're talking about the Capitol Building.

Absent those requests, we were under the advisement of our legal counsel's offices that we could not activate the National Guard.

We could and did everything we could up to the legal limit to try to begin the processes of getting these folks ready in case that request came in. And what I mean by that is people forget the National Guard is very part-time military. They're doctors, they're lawyers, they're teachers, they're husbands, they're wives, they're fathers, in the community. We have to go get them.

And then after the request is made, we can do that and bring the authorities in that we have in the Office of the

JA711

Secretary of Defense to bear. But absent the request, we could not fully launch that process.

Q. Did part of the process involve reaching out to the local authorities to see if they wanted National Guard involvement?

[p.221]

MR. GRIMSLEY: Objection. Leading.

THE COURT: Overruled.

A. Normally, no. Normally, the request would come in.

But in this instance, the Secretary and I, along with others, felt this matter was important enough that we ordered the Secretary of the Army, after that authorization came in on January 3, to begin engagements with Mayor Bowser and the Capitol Police, who he had already been speaking to on other matters that we've discussed here.

And we wanted to make them aware that the President authorized 10- to 20,000 National Guard, and we wanted to ask them if they had a request. It was sort of a — it was a proactive, preemptive measure. If they needed it, we could begin that big lift; that is, moving thousands of human beings across the country.

Q. (By Mr. Shaw) And why is — what is your understanding of why DOD is reluctant to deploy National Guard without a request from local authorities?

A. My understanding is historically, how the Department is operated is they do not want to deploy uniformed military officers into and around the United States without the appropriate legal authorities because one of the bedrock principles of having a



[p.222]

civilian in charge of the military is that there is no military sort of hijacking of local governmental offices and powers.

And I think that's the way, from my understanding, that the departments — Department of Defense has operated its National Guard with that history in mind.

Q. And if the local authorities explicitly tell DOD that they don't want the National Guard deployed, what would DOD's reaction be?

A. We, under the advice of our general counsel's office, the White House Counsel's Office, along with other agencies and departments who all agreed, that absent a request, we would not move the National Guard process forward because we had — or our lawyers had made the determination that based in history and law and precedent, that that would not be an appropriate maneuver for the Department to undertake unilaterally.

Q. So the Secretary of the Army had reached out to local authorities, both in the DC government and at the U.S. Capitol Police. What was the response?

A. I'm paraphrasing, but I think the documents have been made public. Mayor Bowser wrote a letter herself approximately January 4 or 5 — I don't have the exact day — declining further requests for

[p.223]

National Guard services outside of the 346 National Guardsmen we had already sent her.

And as far the Capitol Police go, it's encapsulated in multiple people's timelines, including the Chiefs — or excuse me, testimonies from the Chiefs of the Capitol Police and the Capitol Police timeline itself, where the Sergeant at Arms declined the chief of police's request for a National Guard request.

JA713

And, thus, those two were our answers, as we understood it, from the two governing authorities as far as January 5 and into January 6 from a timeline perspective.

Q. Okay.

MR. SHAW: Could you put up Exhibit 1028, please.

And I believe this is another one to which there's been no objection, but I do not believe it's yet been admitted, so I would like to move that this one be admitted if it hasn't yet been.

MR. GRIMSLEY: No objection.

THE COURT: 1028 is admitted.

(Exhibit 1028 was admitted into evidence.)

Q. (By Mr. Shaw) And, Mr. Patel, I would ask you if you recognize this letter?

A. I do.

[p.224]

Q. And what is it?

A. It's a letter from — excuse me, if you can just scroll down. One second. I just want to confirm the bottom.

MR. SHAW: If you could scroll down.

A. Okay, thank you.

It's the letter I referenced from Mayor Bowser, I believe on January 5, to the Department of Defense, where she specifically stated, "We would not be requesting any additional National Guardsmen and Women."

And that was her letter to us. That was the declination of a request, and so we were on standby.

Q. (By Mr. Shaw) Okay. Did there come a time when the local authorities asked that the National Guard troops be deployed?

JA714

A. When you say “local authorities,” can I just ask for clarification: Do you mean the mayor or — or line-level agents?

Q. Well, if that’s an important distinction from your perspective, why don’t you explain what you mean.

A. Well, sure. We always listen to our operators in the field, our partners in the field; here, police officers, both at Metropolitan Police Department,

[p.225]

which is DC, and the Capitol Police Department. We’ve known these folks for a long time, worked with them for decades.

And so we always have these personal relationships where we’re getting our own communications, saying — and a lot of those folks said, you know, We would really like National Guard assistance, but there’s a chain of command.

And as this letter speaks to the top of the chain of command for the mayor and, conversely, the Capitol Police timeline, and the Chiefs’ testimony speaks for them, there was a declination by the commanding authorities respectively, even though the will of the folks doing the work on the ground was slightly different.

Q. Okay. Well, did there come a time when the commanding authorities for the — for DC local government and/or the Capitol Police requested National Guard support?

A. It was on the afternoon of January 6, and I believe you have the timeline which has some of the delineation specifically.

MR. SHAW: Well, let’s — let’s put up that timeline.

Q. (By Mr. Shaw) And you can point us to

[p.226]

anything on there that you think is useful.

JA715

MR. SHAW: So if you put up page 16 —

Q. (By Mr. Shaw) Which timeline do you want? Do you want the DOD timeline?

A. There's another one with times on it, but I can — I think the D- —

MR. SHAW: Go to the other timeline.

A. Yeah, the DOD one. Sorry. If you just scroll down a little.

MR. SHAW: Scroll down.

A. Yeah, there you go.

So that is the — not everything that happened, of course, but some of the highlights that were happening during the day.

And you can see specifically at 1422, at 2:22 in the afternoon, the Secretary of the Army had a phone call with Mayor Bowser and her deputy mayor and MPD leadership to assess and discuss the current situation on the ground. There was no forthcoming request at that time.

And then Mayor Bowser, later in that afternoon, would make such a request. And as soon as that request was made, it was relayed back to the Office of Secretary of Defense, but we had already preemptively delegated authorities out to expedite the process.

[p.227]

But what most people don't understand is, we can't just have thousands of men and women ready immediately to deploy and employ and activate.

So once we got that go, we had, thankfully, already staged to the limit of the law where we could, and so we probably cut the time down by half. And essentially what ended up happening was the fastest cold start of the United States Military domestically since World War II.

JA716

So while we always wish to have done it faster, the timeline in which we did it was pretty amazing given what the men and women had to do on the ground.

Q. (By Mr. Shaw) Some people now say that the National Guard should have been deployed earlier.

Was any delay in deploying the National Guard attributable, in your mind, to a need for additional or different authority from President Trump?

A. No.

Q. Why not?

A. Well, the President has a piece of it, and we had that piece. And so as I said, we — we acted on that piece proactively, went to the Mayor, went to the Capitol Police. We discussed the responses.

You know, Monday morning quarterback, of  
[p.228]

course, we — we wish we had gotten those requests earlier and, you know, things like no-climb fence structures could have been put in ahead of time. But those authorities — I think it's important to note that the head law enforcement authority of the day was DOJ, not the Department of Defense.

It should never be the Department of Defense domestically. And them, along with DHS and the Capitol Police, have measures, such as no-climb fences, that they could have installed, and, you know, I don't know why; those questions have to be asked of them.

Q. Okay. And given President Trump's statement to Acting Secretary Miller the evening before that he should do what's required to protect the American people, was there any doubt in your mind about what President Trump wanted done?

A. No.

MR. GRIMSLEY: Objection. Leading.

JA717

THE WITNESS: Sorry.

THE COURT: Sustained.

Q. (By Mr. Shaw) Given that statement, were you uncertain about what needed to be done or what President Trump wanted done?

A. No. I knew exactly what needed to be done, and we did it.

[p.229]

Q. Was there, to your knowledge, any uncertainty among DOD leadership about what the President wanted done?

A. No.

Q. Did anyone in senior DOD leadership or anyone at all at DOD, to your knowledge, convey to the President any request that afternoon for more or additional authority or authorization or say there was a problem that required his attention to get National Guard troops deployed?

A. To my knowledge, no, but we wouldn't have needed to have done that. We had the 20,000 authorization, so anything inside of a numbers count for 20,000 — just to give you an example, the DC National Guard comprised of 2,500 soldiers, give or take 50. So we would bring in the rest from other regions in the country.

But even the amount of soldiers we put into Washington, DC, it was the largest uniformed occupation of DC since the Civil War. So I didn't think we were going above 20,000.

Q. Did you testify before the January 6 Select Committee?

A. I did.

Q. Were you questioned in a public hearing?

[p.230]

A. No. They declined my request for a public hearing.

JA718

Q. And what sort of hearing were you questioned in?

A. What we call closed-door. Attorneys, members of the Committee, my counsel. That's it.

Q. Was your testimony public when given?

A. No.

Q. Did you tell them what you've told us today about the President and the deployment of National Guard troops?

A. I believe so.

Q. Did the Committee ever call you to testify about those issues in public session?

A. No.

Q. Did you ever review the Committee's final report?

A. In large part, but not — I don't think I could say I read every single page.

Q. Okay. Did you look to see if you were mentioned in the report?

A. With me and my counsel — a little background. We had an agreement with the Committee that my testimony — since I was the first individual subpoenaed by the January 6 Committee, we felt it

[p.231]

appropriate that the transcript should be made public at some point.

And after months-long negotiations, they refused to do so and published their final report, and to my memory, it had been excluded. And our counsel took that up with the January 6 Committee staff as to why the agreement had been violated, and I think on the eve of the dissolution of the Committee, my transcript was the last one released.

MR. SHAW: I have no further questions for you, sir. Thank you very much.

JA719

CROSS-EXAMINATION

BY MR. GRIMSLEY:

Q. Good afternoon, Mr. Patel.

A. Hello, sir.

Q. I started my career as a federal public defender as well, so . . .

I want to start with the day, January 6.

You were not at the White House on January 6?

A. I believe the entirety of the day, we were in the Pentagon.

Q. You were at the Department of Defense, correct?

A. Yes, the Office of the Secretary of

[p.232]

Defenses.

Q. And you didn't speak with President Trump on January 6?

A. I'm sorry?

Q. You did not speak with President Trump on January 6?

A. I don't believe I did.

Q. You did not attempt to reach out to President Trump that day?

A. I don't recall doing that.

Q. President Trump, to your knowledge, did not try to reach out to you or others at the Department of Defense?

A. He did not — well, try, I'm not sure, but he may have spoken to other DOD leadership that day.

Q. To your knowledge, though, you have no knowledge of any such communication?

A. I don't believe so.

Q. You are aware that President Trump knew of the attack on the Capitol by 1:21 p.m. on the afternoon of January 6, correct?



JA720

A. Well, I'm not really sure when he knew of it. We didn't exchange communications on it.

Q. Well, you reviewed the January 6 report; is that correct, sir?

[p.233]

A. Some of it, yes.

Q. And you saw in the January 6 report, Finding 315, that the Committee found that President Trump knew the attack was underway as of 1:21 p.m. that evening?

A. Well, that's what the Committee found, but that doesn't mean that's what I said or I —

Q. You have no — you have no reason to dispute that, though, do you, sir?

A. The — well, I don't know what your reference — can you show me that piece?

Q. Yes.

Can you see my screen. Or no?

A. I see you, sir. I don't see . . .

Q. How about now?

A. Okay. Okay.

Q. And you see there Finding — it's actually: 316 "By 1:21 p.m., President Trump was informed that the Capitol was under attack."

Do you see that?

A. I see it.

Q. You have no basis to dispute that, do you, sir?

A. Nor confirm it. I will just accept what is written.

[p.234]

Q. And you said you had no communications that you recall with President Trump that day?

A. As best as I can recall.

Q. And you don't know who President Trump may have spoken to that day, do you?

A. No.

JA721

Q. You don't know — so you can't say that President Trump reached out at any point in time to DHS that day while the Capitol was under attack?

A. "To DHS." Like the Secretary, or just anyone over there?

Q. Well, to your knowledge, during the attack, President Trump didn't make any calls to DHS, FBI, DOJ, MPD, Capitol Police, correct?

A. When you say "any" — yeah, "any calls," I'm not sure.

If leadership was called, I would have been notified because we would have been on the call.

Q. But leadership was not called; you were not notified of any such call by President Trump to any of those other federal law enforcement authorities?

A. That I'm aware of.

Q. And during the attack, President Trump didn't attempt, to your knowledge, to speak with Secretary of Defense Christopher Miller?

[p.235]

A. I don't — maybe there was a phone call, but I'm not sure. We were — we were occupied executing the deployment of the National Guard.

Q. Sir, you have no basis for saying that there was a call between President Trump and Christopher Miller that day?

A. I don't know that there was or there wasn't.

Q. Now, there was nothing preventing President Trump from sending out a tweet between 1:21 p.m. and 4:17 p.m. telling supporters who were at the Capitol to go home, was there?

A. I don't know —

MR. SHAW: Objection. Foundation.

A. — how his Twitter account works.

JA722

THE COURT: I'm sorry, I couldn't hear your objection.

MR. SHAW: Objection. Foundation.

MR. GRIMSLEY: I'll rephrase.

Q. (By Mr. Grimsley) There's no authority you're aware of, sir, that would have prevented President Trump from sending out a tweet between 1:21 p.m. and 4:17 p.m. telling the people to go home from the Capitol?

A. Not being the social media genius, I guess  
[p.236]

he could tweet.

Q. And you're aware of no authority that would prevent him from doing that, correct?

A. No, but I'm not the legal expert.

Q. Well, you testified earlier a little bit about the history of the Department of Defense and how they utilize the DC National Guard, and you said — I wrote it down: All the time and decades, they had done it this way.

Did you say that?

A. Yes, I've — that's what the record reflects.

Q. Prior to November 9, 2020, you had never worked at the Department of Defense?

A. That's not true.

Q. When did you work at the Department of Defense, sir?

A. That was my third tour at DOD over my government career.

Q. You had never been in the position of Chief of Staff to the Secretary of Defense before, had you?

A. No, I only served that role once.

Q. You had never been responsible for deploying the National Guard?

[p.237]

A. Prior to what date?

JA723

Q. November 9, 2020.

A. I had not, no, right.

Q. So you were at the — you were at the Defense Department as Chief of Staff from November 9, 2020, and that was after the election, correct?

A. Yes.

Q. That was after the election had been called by media outlets for President Biden, correct?

A. I think most media had.

Q. And then you stayed at the Department of Defense only until January 20, 2021, right?

A. Yes.

Q. So you had less than three months in the position Chief of Staff at the Department of Defense, correct?

A. Yeah.

Q. Now, I want to talk about your testimony about 10- to 20,000 troops being authorized.

You testified during direct that you attended a meeting in the Oval Office on, you say now, January 3, where President Trump, you say, authorized 10- to 20,000 National Guard troops.

Is that right?

A. Yeah, it's about — it's about January 3,  
[p.238]

but I think the timeline is accurate on it.

Q. And then you said — you also testified that after the meeting, DOD, somebody reached out to Mayor Bowser and Capitol Police saying, We've got all these people we can deploy, do you want them?

A. That would have been the Secretary of the Army, yeah.

Q. So you didn't do that, did you?

A. No. We gave the instruction.

JA724

Q. You didn't witness the Secretary of the Army do that, did you?

A. Witness him do what? Sorry.

Q. Reach out to anybody at the Mayor's office or the Capitol Police.

A. No, I didn't witness him. He went and then reported back to us.

Q. He reported back to you that he actually had talked to them?

A. Yeah. That's how the chain of command works.

Q. Finally, you testified that Mayor Bowser and the Capitol Police rejected the offer, and you point to that January 5 letter.

Right?

A. For Mayor Bowser, yes.

[p.239]

Q. I want to dig into each one of those, first starting with the meeting where you say 10- to 20,000 troops were authorized.

A. Okay.

Q. And you said definitively that it was on January 3. I think you even pointed to a bullet point at one point saying it was January 3.

Is that correct?

A. Yeah, in the timeline.

Q. Well, let's pull that up.

And this is Exhibit 1027.

This is the timeline?

A. Yep.

Q. And you pointed to that third bullet on January 3, correct?

A. I think counsel did, but yeah, okay, sure.

JA725

Q. And you've already testified that you provided testimony, and it was deposition testimony to the January 6 Committee?

A. Yes.

Q. That was under oath?

A. Yeah.

Q. Much closer in time to the actual events than we are here today?

A. Yeah.

[p.240]

Q. And you had actually brought with you to that deposition the DOD timeline.

Do you remember that?

A. Well, there's multiple DOD timelines that I brought, yes.

Q. Yes. But this was one of them, and you brought another one, too, correct?

A. At least one other, yes.

Q. And you remember you were asked about when a meeting or — when a meeting took place where you said that 10- to 20,000 troops were authorized?

A. Right, yeah.

Q. Do you remember what you said?

A. Not off the top of my head.

Q. I want to take you to page 43 of your deposition.

A. Uh-huh.

Q. And go to line 12.

A. Yeah.

Q. Sorry. Go to 38. Go to line 2.

A. Yeah.

Q. And you're discussing there an article from Vanity Fair; is that right?

A. They were asking about it.

Q. And according to the article: "We're

[p.241]

like, ‘We’re going to provide any National Guard support that the District requests,’” Miller responded. “And [Trump] goes, ‘You’re going to need 10,000 people.’ No, I’m not talking bullshit, he said that.”

A. Okay.

Q. And then you answer: Oh, so you remember stuff like that.

So going off just memory — and we can go back to the article when you bring it up — there was a meeting with the President of the United States, Acting Secretary Miller, and some others. And then you couldn’t even remember who else was at the meeting, could you?

A. I could definitely tell you, as I did them, what Cabinet officers were there. I thought that was the important thing.

Q. Yeah, but I think you talked about the Joint — Chairman of the Joint Chiefs of Staff being there earlier today?

A. Yeah.

Q. Yeah. And you were asked these questions in your deposition.

Did you remember the Chairman of the Joint Chiefs of Staff even being at that meeting?

A. Yeah.

Q. No. What does it say here:

[p.242]

“And some others I can’t recall off the top of my head”?

A. So you’re specifically pointing to a line of questioning about the article. The article doesn’t encapsulate the broadness of your question.

I specifically stated at least five other times in that deposition that the Chairman of the Joint Chiefs of Staff

JA727

was present, along with the Secretary of Defense, the Chief of Staff, the President of the United States, myself and White House Counsel, and others.

Q. Let's go to page 43 of your deposition, line 12:

"Do you remember if General Milley was at that conversation?"

"Sorry, which one?"

"The January 5, this conversation regarding the 10,000 troops."

"To the best of my memory, we usually were in the Oval Office meetings with a number of folks, so it was — he could have been. I just don't recall."

Were you asked that question and did you give that answer?

A. Yeah, for a January 5 meeting.

Q. So you're saying that there was a January 3 meeting and a January 5 meeting now where

[p.243]

10,000 to 20,000 troops were discussed?

A. No. I'm saying there was multiple meetings in the Oval Office during that week and before, and this individual is reading, again, from either an article or a date he picked.

As I said in the previous document you showed me, I said specifically it was January 4th or 3rd or 5th at that time; that was the best I could recall.

Q. So you had the timeline then. This was at the end of 2021. You were talking about dates.

You couldn't remember whether it was the 3rd, the 4th, the 5th; and now you're saying definitively it was the 3rd that corresponds to that bullet point?

A. I'm saying there was a meeting on the 3rd definitively. I'm saying you can't correspond it to a specific bullet point because you're citing media articles



JA728

that this prosecutor was asking me about at a specific time and setting.

Q. I want to go back to the timeline, sir.

There's no mention of 10- to 20,000 troops anywhere in that timeline, is there?

A. No.

Q. There's no mention of 10- to 20,000 troops anywhere in that IG report you discussed, correct?

[p.244]

A. Not that I'm aware.

Q. Well, you looked through it both before your deposition and presumably today, no?

A. I looked through some of the timeline. I didn't read the entire 600-page IG report.

Q. Well, you think your lawyers or the people asking you questions would have looked for that if it were in there?

A. You can ask them.

Q. They didn't ask you about that, though, did they?

A. I'm not going to tell you what I talked to my lawyers about.

Q. Okay. Now — well, Mr. Trump's lawyers are not your lawyers, right?

A. No.

Q. Did you prepare with them?

A. I prepared with my counsel.

Q. You didn't talk to them at all?

A. My counsel had discussions with them.

Q. So let's look at that third bullet point, January 3, 2021.

You say that, that bullet point:

“President concurs in activation of the DC National Guard to support law enforcement.”

[p.245]

That refers —

A. Yes.

Q. — to 10- to 20,000 troops?

A. In part, yeah.

Q. Well, you know that the DC National Guard doesn't have 10- to 20,000 troops?

A. Right. Thank you for making my point.

Q. Yeah. And it says, "the activation of the DC National Guard," not other National Guard units, correct?

A. Yeah.

Q. And there was a request, though, that had come in on December 31, as you can see in that timeline, for DC National Guard assistance, right?

A. 346 people for traffic control.

Q. Traffic control, and there was a 40-person quick reaction force as well, right?

A. Yeah, the QRF is staged off-site.

Q. And that's mentioned on December 31, 2020, that entry, the request?

A. I don't see the QRF in this timeline, but if it's there in a different place, it's there.

Q. And you see then that January 3, after that, refers to the President concurring in the activation of the DC National Guard, and the 340 troops

[p.246]

and 40 quick reaction force would have been with the DC National Guard?

A. Yeah.

Q. And then January 4, it talks about 340 troops and a quick reaction force as well?

A. Uh-huh.

Q. You see that?

JA730

No mention —

A. Yeah.

Q. — of 10- to 20,000 National Guard troops?

A. No.

Q. Now, is there any documentation anywhere that you can point to at all, official documentation saying that 10- to 20,000 troops were authorized?

A. I don't have it on me, but it's in the internal DOD memorandums delegating authorities to the Secretary of the Army, the DC National Guard, and our Adjutant Generals and the Major General in charge of the entire National Guard force. I don't have those memorandums.

Q. Where is that document, sir?

A. It's not one document. They're at the Department of Defense.

Q. And was that produced to the January 6 Committee?

[p.247]

A. I asked them to get it. They didn't get it.

Q. You've seen no public documentation anywhere at any point in time that's out and available to the public that says 10- to 20,000 troops were authorized?

A. When you say "documentation," by whom?

Q. By anyone.

A. I've seen lots of media articles saying that that is exactly what happened.

Q. Well, you've seen media articles quoting yourself, sir.

A. I'm not the only one they quote. You asked the question if I've seen it in anyone and anywhere, and I've seen it with dozens of people and scores of articles.

Q. Do you have any of those articles on you, sir?

A. No, but if you've got the Internet, we can look it up.

JA731

Q. Now, you remember the Vanity Fair article we talked about?

A. In part.

Q. I'm showing you what's been marked as Exhibit 292.

[p.248]

Do you see that article there, sir?

A. Yes, sir.

Q. Is that the Vanity Fair article?

A. Yeah, I'll take your word for it. I can't — it's kind of like —

MR. SHAW: Objection, Your Honor. This was not timely disclosed to us as a cross-examination exhibit.

MR. GRIMSLEY: I believe it was. We have it marked as an exhibit.

MR. SHAW: This was not on the list given to us by the deadline on Sunday. We received it this morning apparently.

MR. GRIMSLEY: Well, you all have supplemented the exhibit list quite a number of times shortly before, so —

THE COURT: This is for impeachment. Overruled.

Q. (By Mr. Grimsley) Now, there was a reporter from Vanity Fair who was actually embedded with you all for some period of time in the transition?

A. Yeah.

Q. And that reporter then wrote an article that was published shortly after the Biden administration took over; is that right?

[p.249]

A. I'll let the article reflect the date. I don't have it off the top of my head.

JA732

Q. And there is a discussion of when there was a meeting where you say 10- to 20,000 people were — were authorized, January 5?

A. That's what it says Christopher Miller said, according to that report.

Q. Yeah. And you read that article, and you didn't correct them at all, did you?

A. I didn't read the article. When?

Q. When the Vanity Fair article came out with your name in it about you with a guy embedded, you didn't read the Vanity Fair article?

A. I had my Office of Communications read the article, but we — we get 1,000 articles a day. No, I can't read them all. I'm sorry.

Q. You get 1,000 articles a day about you from Vanity Fair?

A. Not me, but I'm not the important part. I've got bigger functions to do at the Department of Defense, like Operation Warp Speed, the no-fail mission, withdrawing out of Afghanistan, saving American hostages, and securing our border. I don't care what Vanity Fair says.

Q. Well, sir, you, to be fair, were not at

[p.250]

the Department of Defense when the Vanity Fair article came out?

A. I don't know. You keep showing me a piece of the article, I have no idea when it came out.

Q. Well, the reason January 5 is kind of important is Mayor Bowser sent her letter on the 5th, didn't she?

A. Okay.

Q. And you say that there was this meeting where stuff was authorized, 10- to 20,000 troops, there's no record of it. You then — somebody went from the Department of Defense to Mayor Bowser's office to the Capitol Police

JA733

requesting if they need some assistance. And then on January 5, Mayor Bowser writes a letter back.

Right?

A. You say there's no record of it, but okay.

Q. Okay.

A. The rest is there.

Q. Writes a letter back on January 5.

Do you know what time of day she wrote that letter back, sir?

A. I don't.

Q. Let's look at Exhibit 1031.

In the DOD IG report, it says that she wrote the letter at 2:27 p.m.

[p.251]

Do you have any reason to dispute that?

A. No.

Q. And in the Vanity Fair article we just looked at, it says in the evening — where you say 10- to 20,000 troops were authorized, it was in the evening of January 5?

MR. SHAW: Objection. Mischaracterizes the testimony.

A. Also, it's Christopher Miller in the article, not me.

THE COURT: Hold on.

THE WITNESS: Sorry.

THE COURT: Overruled.

A. The paragraph you showed me in Vanity Fair was Christopher Miller speaking.

Q. (By Mr. Grimsley) Yeah. And it says, "On the evening of January 5. . . ."?

A. Right. Then it says, "Miller recalled"; "Miller said." It doesn't say I said.

Q. So you think Mr. Miller's talking about a different meeting?

A. I don't know. You can ask him.

JA734

Q. Is there any record, public record that you've seen documenting a request or an offer from President Trump or the Department of Defense to

[p.252]

Mayor Bowser or the Capitol Police of 10- to 20,000 troops?

A. We would not have made the request. We would have presented them with the authorization, which we did through the Secretary of the Army.

Q. And it's — there's no record of that in any of the timelines we looked at, sir, 1031, 1027?

A. Of Secretary Army going there?

Q. Yeah. And offering 10- to 20,000 troops.

A. I don't know if that's in the timeline or not, but he went there and reported back to us, and that's why we didn't mobilize.

Q. There's no record of that, though, in the timeline, correct, sir?

A. In the timeline — yeah, the timeline speaks for itself. But it's not exhaustive. That was never the purpose of the timeline.

Q. So it's not exhaustive, but you put in stuff about 340 troops but not 10- to 20,000 troops?

A. No, because at the time, that was the specificity with numbers at which we had for actual deployment.

Q. Now, you've said that this meeting took place now on January 3, maybe it's on January 5, there's two meetings.

[p.253]

But you've also been out there talking about how there was a meeting on January 4, haven't you, sir?

A. Yeah. As I've said, I've testified to the best of my ability. We had a lot going on. If I'm off by a day, you

JA735

know, sue me. But I'm telling you what happened to the best of my ability.

That doesn't change the fact that the authorization came in before and it was relayed to the appropriate officials in DC and the Capitol Police. It was declined, and we acted when their request finally came in on January 6.

So if you want to argue with me about January 3, 4, and 5, I guess we can keep doing this.

Q. Well, sir, it's kind of important because you're pointing to a timeline and saying it was on January 3. Then there's an article saying it was January 5. Then there's something else saying it's January 4. You on interviews. And then there's a letter that's sent on January 5, which you say is a response to a request or an offer from DOD.

So the timing does matter, sir.

MR. SHAW: Objection.

Q. (By Mr. Grimsley) Doesn't it?

MR. SHAW: Objection. That question

[p.254]

mischaracterizes testimony and mischaracterized the article. It was argumentative.

THE COURT: You can redirect on all those. Overruled.

A. Maybe it's important to you. That's why you're asking about it.

Q. (By Mr. Grimsley) Do you recall what Secretary Miller said about whether there had been 10,000 troops ordered to be deployed?

A. There were never 10,000 troops ordered to be deployed.

Q. Just authorized?

A. Right.



JA736

Q. But you do recall that Christopher Miller said there was no such order?

A. I don't — I don't understand what you're asking. When would Christopher Miller, this Acting Secretary of Defense — if you can point me to a time saying this statement about an order for 10,000 people.

Q. I'm going to show you the January 6 report. This is page 95 of the report.

A. Uh-huh.

Q. And there's a finding specifically on this issue:

“Some have suggested that President Trump

[p.255]

gave an order to have 10,000 troops ready for January 6th. The Select Committee found no evidence of this. In fact, President Trump's Acting Secretary of Defense Christopher Miller directly refuted this when he testified under oath.”

“Committee Staff: To be crystal clear, there was no direct order from President Trump to put , troops to be on the ready for January 6th, correct?”

“No” —

A. Right.

Q. — “Yeah. That's correct. There was no direct — there was no direct order.”

A. That's absolutely right. There was no order because that would have been unlawful as we understood it.

There was an authorization. There is a huge difference.

Q. Okay. Now, sir, you're the current — what's your current job for President Trump?

A. I'm a Senior Advisor for National — for National Security and Defense.

Q. And how long have you been in that position?

JA737

A. About a year.

[p.256]

Q. You're advising President Trump on what he might do during a second administration?

A. On policy and other matters.

Q. And are you paid by the Trump organization?

A. No.

Q. Nothing?

A. The Trump organization does not pay me.

Q. Sorry. Are you paid by President Trump or any representative of his?

A. I can work with my counsel on who exactly pays me, but I don't think those are — either of those two are them.

Q. Does any organization affiliated with President Trump currently pay you?

A. Yes.

Q. What?

A. It's one of his PACs.

Q. What PAC?

A. I believe it's Save America.

Q. How much does President Trump's Save America PAC pay you per month?

A. 15,000.

Q. How much has President Trump's Save America PAC paid you since you began working?

[p.257]

A. It's been maybe a year, maybe just under, so whatever that adds up to be.

Q. Over \$200,000?

A. If it's over a year, yeah, but I don't think so. I would have to check the math.

Q. And you'd get a position in the second Trump administration, do you think?

JA738

A. I don't know.

Q. Have you discussed that with him?

A. Not really.

Q. Now, you have written a few books, haven't you?

A. A children's book and a new book, yes.

Q. And the children's book is actually about President Trump?

A. Yes, in part.

Q. And what's the name of that book?

A. It's a series called "The Plot Against the King."

Q. And Trump is the "King," "King Donald"?

A. Yeah. It takes place in medieval times. It's about Russiagate for kids.

Q. And the first book, the villain is Hillary Queenton?

A. Yeah.

[p.258]

Q. King Trump is accused of being a shifty knight — or accused by a shifty knight of —

A. Right.

Q. — cheating to get the throne.

You're in the story, you're a wizard who protects —

A. Yes.

Q. — Donald Trump?

A. I think it's more portrayed as protecting the truth, but, sure, it's a children's book. Go for it.

Q. And Trump said he wants to put that book in every school in America?

A. I think he posted about it, yes, if that's what you have the quotes to being.

Q. And you actually have a website, fightwithkash.com?

A. It's one of my websites.

Q. And you sell swag on that site?

A. I do it for charitable giving.

JA739

Q. And I just want to look at some of those.

And you sell various swag, I think you sell OMB, or “Orange Man Bad,” swag there?

A. Yeah, when you say “swag,” merchandise.

Q. Merchandise.

A. Yeah.

[p.259]

Q. What does “Orange Man Bad” stand for?

A. It’s just one of the things you see on the media describing President Trump, so we thought it would be a good way to make money and give it away. We’ve given away hundreds of thousand of dollars to children and veterans and active-duty military in need.

Q. And “Orange Man Bad” refers to liberals who don’t like President Trump, right?

A. I think that’s one way — well, you can tell me, I don’t know.

Q. And you wrote another book called “Government Gangsters”; is that right?

A. I did.

Q. And “Government Gangsters” is about your view that there’s a cabal or deep state out there that is trying to ruin our country?

A. It’s not my view. In the book, it’s outlined per their actions.

Q. And you write the book about the deep state, right?

A. In part.

Q. Is this proceeding part of the deep state?

A. No. It’s a law enforcement proceeding.

Q. Am I part of the deep state?

A. I don’t know. I don’t really know you.

[p.260]

Q. Is the Judge part of the deep state?

JA740

A. I think the Judge is beyond reproach, but if you want to get into it, we can.

Q. Frankly, sir, you think that all liberals or liberal leadership are evil, right?

A. That's — that's outrageous. I worked more in the Department of Justice for Deputy Attorney General Sally Yates than I ever did in a Republican administration. We've meted out wonderful cases in the National Security Administration. I worked as a public defender for eight years executing due process.

So if you want to make that globalization because the cameras are on, you can go right ahead. But I don't believe that.

(Video playing.)

Q. (By Mr. Grimsley) And that was you in an interview, sir?

A. Yeah, talking about specific leadership, not everybody.

Q. Now, you also serve currently on the board of directors for the Trump Media Group; is that right?

A. I do.

Q. And how long have you served in that position?

A. Probably a year and change, maybe.

[p.261]

Q. And the Trump Media and Technology Group owns and runs Trump's social media platform, Truth Social?

A. I think, yeah, in part.

Q. And how much are you paid as a director on the board of directors for Trump Media and Technology Group?

A. Zero.

Q. Who else is on that board with you?

JA741

A. If I could just ask my counsel if I'm allowed to publicly relay that. I don't know if that documentation is public or not. If I am, I'm happy to tell you.

Q. I'll tell you that it's in the Secretary of State filings from Florida.

A. Okay. If it's public, then it's myself, Dan Scavino, Donald Trump, Jr., and I think former President Trump, I think, if my memory serves me.

Q. And former President Trump is the chairman of the board?

A. I think that's his title.

Q. Devin Nunes is President and CEO, correct?

A. Yeah.

Q. How often do you all meet?

A. As needed.

[p.262]

Q. When is the last time you met?

A. Maybe a month ago. I'm not really sure.

Q. Now, you had testified on direct that the FBI could have sent troops out to protect the Capitol on January 6; is that right?

A. Well, not troops, but 1811 agents, federal law —

Q. So federal law enforcement officers, right?

A. Right.

Q. And the FBI reports ultimately up to the President?

A. To the DOJ as Attorney General, and then to the President.

Q. So up to the President, though?

A. Well, every Cabinet Secretary does.

Q. And you're not aware of the President making any phone calls to DOJ to authorize release to the FBI or FBI agents on January 6?

A. No. What my concern was, was that Director Christopher Wray was on none of the leadership calls and that DOJ had been designated the lead law enforcement agency for January 6 and was not taking the appropriate preemptive measures to secure the Capitol grounds.

[p.263]

So we were working internally to try to get them there, but unfortunately they never did. The — us, the DOD, did not have that primary role.

Q. And Christopher Wray is one of the members of the deep state that you identify in “Government Gangsters,” right?

A. I think Christopher Wray is one of the members, as a director of the FBI, that we’ve caught lying, so yes, in part.

Q. And who are the other members of the deep state that you’ve identified in “Government Gangsters”?

MR. SHAW: Objection, Your Honor. At some point, this is just irrelevant.

THE COURT: Why don’t you move on, Mr. Grimsley.

MR. GRIMSLEY: Thank you.

Nothing further, Your Honor.

THE COURT: Does the Colorado Republican Party have any questions?

MS. RASKIN: No, Your Honor, we do not.

MR. KOTLARCZYK: Not for the Secretary, Your Honor.

THE COURT: Any redirect, Mr. Shaw?

MR. SHAW: Just a couple of quick questions, Your Honor.

[p.264]

THE COURT: Okay.

JA743

REDIRECT EXAMINATION

BY MR. SHAW:

Q. Mr. Patel, to your mind, is there anything inconsistent with the President telling you on January 3 that he thought that he was authorizing 10- to 20,000 troops and then telling you on January 5 that you're going to need 10,000 troops?

A. No.

Q. To your understanding, would Department of Defense typically, when it reaches out to local authorities, offer a specific number of troops? Or would it offer to provide what local authorities need?

A. Well, that's part of the conversation. We would say: Here's the — here's the cap so far. What are you having? A Super Bowl? A parade? A protest? What are you anticipating? What's the threat analysis, intelligence landscape? And then we work back and forth.

And if it superseded the threshold, we'd go back and get the appropriate authorization.

So there's always a back-and-forth.

MR. SHAW: I don't have any further questions for you, sir. Thank you very much for your time.

THE WITNESS: Thank you.

[p.265]

THE COURT: Mr. Patel, thank you for your testimony today. You're released.

THE WITNESS: Thank you, Your Honor.

MR. SHAW: So our next witness is also on WebEx, Your Honor.

THE COURT: Okay.

MR. SHAW: We just need to get her lined up, unless the Court wants to take a short break.

THE COURT: Well, is she on standby?

MS. BILA: She's logging in right now, Your Honor.



JA744

MR. SHAW: She's logging in right now.

THE COURT: Okay. Great. Let's just do at least the direct of her unless — yeah, let's at least get her started.

And who is this witness?

MR. SHAW: This would be Katrina Pierson, Your Honor.

THE COURT: Okay.

MR. SHAW: P-i-e-r-s-o-n.

MR. OLSON: Your Honor, while we're waiting, there's one issue.

We've been informed that somebody is live-streaming the Court proceedings on the Internet without permission to record it and sort of doing

[p.266]

commentary as it goes. They're beyond the scope of who's there.

I mean, I don't know how to get in touch with them, but maybe an admonition, and if they're watching, that they can't do that without permission might be appropriate.

THE COURT: And we know that they're not part of the expanded media coverage?

MR. OLSON: Yes, yes.

THE COURT: Do we know what organization it is?

MR. OLSON: It appears to be an individual, Your Honor, but there were like 7,000 people watching them.

Ms. Tierney informed us it is now 8600. It's Ashley Epp.

THE COURT: Ashley Depp?

MR. OLSON: Epp, E-p-p.

THE COURT: Well, so I — I want to make it clear that there are very specific statutes and rules in place in the state of Colorado for videotaping proceedings, and there's a process. It only applies to actual media outlets,

JA745

and you need to request and be granted permission to record any proceedings.

So to the extent that there's anybody

[p.267]

currently recording proceedings, you are in violation of the Court's orders, and if you continue to do so, you will be in further violation of the Court's orders.

MR. SHAW: Your Honor, I assume you don't mind if I don't show up on the video feed.

THE COURT: No, that's fine.

MR. SHAW: Okay.

THE COURT: But is Ms. Pierson on?

MS. BILA: Doesn't appear yet. She has said she is logging in.

THE COURT: Okay.

Any word on status?

MS. BILA: She's trying.

MR. SHAW: We live in an age of miracles.

Okay. I believe she's on the screen.

THE COURT: Do we have a way of making her be the

—  
MR. SHAW: Now we're taxing my technological capabilities.

So, Joanna, do we have a way of making her central?

MS. BILA: I believe she'll go central once she starts speaking.

THE COURT: Ms. Pierson, can you hear us?

THE WITNESS: Yes, I can hear you.

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THE COURT: There we go.

Ms. Pierson, can you raise your right hand, please.

KATRINA PIERSON,

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

JA746

DIRECT EXAMINATION

BY MR. SHAW:

Q. Ms. Pierson, would you please tell us a little bit about your background.

A. Yes. I'm originally from Texas. I have a biology degree from UT Dallas. I worked in healthcare for about 14 years, wrapping that up as a neuroscience administrator for a Level I trauma hospital. And then made my way into politics.

Q. And how did you make your way into politics?

A. I started out on the ground as a grassroots organizer here locally in Texas and became one of the original founders of the Tea Party movement, which grew into a broader array of political activities at the local level, the state level, and the federal level.

And then began to do larger events, in electing congressmen, senators, and ultimately United States President.

[p.269]

Q. And who is that United States President?

A. Donald John Trump.

Q. How did you first become aware of Mr. Trump as a political figure?

A. Well, a little-known fact about Mr. Trump is that he had spoken to Tea Party rallies about five years before he actually ran for President. So I've known about him for a while.

I saw him in South Carolina in 2015 or — at the end of January, and I told him that I heard a rumor that he was thinking about running. And I told him then that if he did, I would help him, and he would win.

And that's how it all began.

Q. And what happened next in terms of your involvement with his campaign?

JA747

A. Well, from there, I saw him a couple of times, and then over the summer when he officially filed, he began calling me after my media appearances. I had been doing national television for about seven years at that point.

He would just call and thank me for his support, ultimately asked me to join his 2016 campaign as his spokesperson, so I officially joined the team in 2015 as one of the Trump originals.

Q. So you served as the campaign spokesman  
[p.270]

for the first Trump campaign; is that correct?

A. That's correct, the national spokesperson.

Q. And did you serve in that role through the election?

A. I did, yes.

Q. Did you then enter the administration in any capacity?

A. I did not. I was offered Deputy Press Secretary but decided to stay out to help the President's outside super PAC before being called in to the reelection campaign.

Q. In what capacity did you join the reelection campaign?

A. Just as senior advisor. I helped to oversee comms, media, and coalitions.

Q. And what do you mean by "coalitions"?

A. Coalitions is basically grassroots. Different organizations and entities that have a common purpose typically get together for one cause, and we call those coalitions.

Q. Did you have any responsibility for vetting people who wanted to be officially associated with the campaign?

A. There was actually a process for vetting because each coalition, the bigger ones, had boards, and

[p.271]

individuals who wanted to be formally associated with the campaign had to go through a vetting process to serve on one of those boards.

The vetting process did not extend outside those boards, but to — those who were officially associated with the campaign did have to go through vetting.

Q. And what was the purpose of vetting people who wanted to be officially associated with the campaign?

A. Well, in politics, every group has their, what we call fringe, and they seemed to — a lot of them seemed to come out and join the MAGA movement, many for their own purposes, and we just needed to make sure that we weren't elevating those people in official capacities.

So we were very tight on our vetting process for members who were officially associated with the campaign.

Q. Can you stop those people from supporting the candidate?

A. No. I wish we could.

Q. But what can you do?

A. Well, all you can do is to — excuse me — to make sure that, you know, they are not formally associated or affiliated.

If they are, we take measures to — excuse

[p.272]

me — to even issue a cease and desist at some point. Or if you catch them, you know, using the name, whether it's on TV or social media, you take those steps and call a producer and you say, "This person is not affiliated with us, please don't associate them with us."

You go out of your way to try and prevent them from taking, you know, any platform or stage with any of your principals.

JA749

Q. Is it easy to — to police the — the people who are affiliated with the campaign?

A. It's — it's easy when, you know, you have a set system in place. Typically in a campaign, there are processes and protocols in place.

Can you catch everything all the time? No, but it is specifically designed for that reason, just to make sure that you are protecting your principals.

Q. So what did you do after the 2020 election?

A. I went home. I went home back to Texas. I had just lost an aunt, my mother's only sister, I hadn't seen my family in several years, so I had gone home.

Q. What did you do for a living at that point?

A. Well, at that point, they were still, you

[p.273]

know, challenging some of the results, waiting for recounts and such, so through the remainder of December, I was still advising communications coalitions and such for the campaign.

But I do have my own media company where I do engage with press, do communications, as well as broadcast television.

Q. In that connection, did you do any work for a group called Women for America First?

A. I did not do any work for them. I do know them, and they reached out to me with some of the grievances that they were having during their planning of continued protests.

Q. What is the group, Women for America First?

A. That's a group that's run by Amy Kremer with the help of her daughter, Kylie Kremer, and I've known them for more than a decade, and that's one of the reasons why they reached out to me with their grievances.

JA750

Q. Was that one of the fringe groups that you worked to keep away from the President and his campaign?

A. No. In fact, it's quite the opposite. As I mentioned, I have worked with them for years. They're pros. I knew they were doing what they were supposed to be doing, and I trusted that they would continue to — to

[p.274]

be pros and — which is likely why they reached out to me for help.

Q. Were they part of something — sorry, excuse me. Strike that.

Was there a group part of what has sometimes been called the Stop the Steal movement?

A. So it depends on how you're asking that question, if I may. There was a hashtag with "Stop the Steal" that was made up of a much broader coalition of really anybody who wanted to participate. And then there was a separate physical entity called Stop the Steal that was an organization run by Ali Alexander.

So I would say that they were a part of the broader coalition hashtag group, but not the actual Stop the Steal organization.

Q. Did everybody in the broader coalition get along and agree with each other?

A. No. Anytime you're dealing with grassroots, any professional will tell you it's like herding cats, and no, they were essentially fighting each other, and it was pretty intense.

Q. Can you elaborate on that a little bit?

A. Well, there's different ways to approach what was happening at the time. There — a lot of people were upset. There were emotions involved, and, you know,

[p.275]

some groups were using more inflammatory rhetoric than others.

You know, for example, you have the Ali Alexander/Alex Jones faction who are typically known for being over the top in their rhetoric, whether it be conspiracy or just outright chaos.

And then you have those like on the Kremers' side who were just wanting to follow the constitutional process, which is what we've done forever, and encourage people to do what they can in their states to talk to their legislatures.

There was even some discussion about some of those states having recall statutes. I mean, actually following the process that was given to us by our founders.

Q. Did the Kremers' group, Women for America First, create something called the March for Trump?

A. Yes. That was their — so let me back up a little bit.

Because this broader coalition that was fighting with each other, the Kremers then decided to split off from that group because they were just out of control, and they went on their own path and did bus tours, because that's what they had done for years, and their bus tour was called March for Trump.

[p.276]

Q. And where geographically was that bus tour located?

A. I wouldn't know. There's — there was a schedule, I recall, just going across the country. But I don't recall. You may have it, but I don't recall —

Q. I didn't mean specifics.

What I was going for, was it sort of a nationwide or across-the-country —

A. Yes.



Q. — thing?

A. Yes, it was across the country.

Q. And was it your understanding that it was supposed to culminate in a — I guess a demonstration at the Ellipse on January 6?

A. Yes, that's correct. They had did two previous events the same way, except the Ellipse was not a part of the process for the first two events that they held.

Q. Did Ms. Kremer or the Kremers ask you to help out with the January 6 event in any way?

A. So when I was speaking with the Kremers, it was more of them, you know, filling me in on what had been going on, what was happening, less of helping.

I wasn't asked to help, really, until Caroline Wren had reached out to me after the fact and

[p.277]

asked to help because she didn't feel like she was receiving the support that she needed.

Q. Who was Caroline Wren?

A. Caroline Wren is a fundraiser. She was a fundraiser for Republicans, and she was fundraising for President Trump at the time.

Q. And what was the issue that she brought up with you?

A. She had grievances with the Kremers. She insisted that they weren't being team players. She was very upset with them.

She knew that I knew them personally, so she reached out to me to see if I could help sort of mediate what she was trying to do.

Q. And what was Ms. Wren trying to do?

A. Well, initially, she said that they were blocking her speakers from talking or not wanting to work together and just being complicated and difficult.

JA753

And then when I spoke to the Kremers about that, they informed me that the people that she wanted to work with were the Ali Alexanders and those crew.

So when I reached back out to Caroline, I agreed with the Kremers, and I told her that it's a nonstarter.

Q. And by a "nonstarter," what do you mean?

[p.278]

A. Meaning that these two groups were not going to be working together. And the problem was, there were so many people who wanted to speak, and the Kremers had permits for January 5 and 6.

So in an attempt to try and quell all of the chaos in a very diplomatic way, working with Caroline Wren, who was representing her people, and Amy Kremer and Kylie, who were representing their people, came to an agreement to split up those days so that everybody had an opportunity to exercise their constitutional rights.

Q. Was President Trump expected or at least be considered — strike that.

Was there an expectation or a hope that President Trump would speak at the event on the Ellipse on the 6th?

A. I think it's always a hope and an expectation when you're in DC at that time to at least see President Trump, and the fact that he, you know, flew over one of the rallies and drove past another, I think it was fair for people to want to see him in some capacity. But not necessarily to speak until he actually tweeted about it.

Q. And when was that?

A. I don't recall the specific date.

[p.279]

Q. And so if I understand what you're saying, the dates were split up with the Kremers and their group getting

one date, which was the 6th, and Ms. Wren and her group getting — getting the 5th; is that correct?

A. That's correct.

Q. And which date was — did the President decide he was going to speak on?

A. On January 6.

Q. So the President announced that he would be speaking to the Kremer group; is that right?

A. That's correct.

Q. And what was the reaction among the — the other group that you thought — well, what was the reaction among the other faction?

A. Well, they were very upset, but as soon as he tweeted that he was going to, you know, see you there, I just told everyone involved that whatever they were planning was not happening.

We just needed to figure out, you know, at what capacity he was going to be, if he was going to be speaking. I didn't know at that point what was happening, but I told everybody that if the President is now going to be involved, then everybody's plans are scrapped.

The people who were moved to the 5th did

[p.280]

not take it very well, primarily because Caroline continued to let them believe that they were going to be speaking on the 6th and — because they had been tweeting and posting pictures, talking about sharing the stage with the President.

So I knew that she was misleading the people that were moved to the 5th. So it's fair to say that they were not happy.

Q. And what about the people on the 6th, what was the situation with them?

JA755

A. Well, it was very similar because I could not guarantee anyone a spot on the President's stage because, again, once the President is involved at an event, it becomes his event.

And I expressed that to the Kremers as well. They were a little, you know, hurt about it because they had their own people who have been very supportive of the President who wanted to speak, and I just could not guarantee that they were going to be able to speak.

So they were a little disenheartened because everybody wanted to, you know, share with the President that day, but they understood because that's just how it is when a President is involved. And they just waited for instruction.

[p.281]

Q. So did you take it upon yourself to try to vet the — the group that would be appearing on the 6th at this point?

A. Well, at that point, as soon as I learned that Caroline wanted to put Alex Jones, Ali Alexander, Roger Stone on the stage on the 6th, I immediately began raising red flags because she was telling me that this was approved and it was fine, and I knew that couldn't have been right.

So my initial response was to flag it for the Chief of Staff.

Q. When you say the "Chief of Staff," who do you mean?

A. Mark Meadows.

Q. And what did you tell Mr. — did you reach out to Mr. Meadows?

A. I did. I texted him and asked him to call me because I felt like things were getting a little out of hand —

Q. And approximately —

A. — and I needed guidance.

Q. — when was this?

A. That was, again, I don't recall the specific date, but it was maybe January 2, 2 or 3, somewhere in there.

[p.282]

Q. Okay. And what was your concern at this point?

A. Well, at this point, she had led me to believe that somebody in the White House had approved that, and I just — I couldn't accept that.

So I reached out to the Chief of Staff to raise that flag. And he did call me, and I expressed to him my concerns about it. And then I was shocked because he, first of all, didn't even know who Caroline Wren was, and then told me that no one had been spoken to about January 6 and he hadn't approved anything.

And so I was a little taken back by that, and that's when he asked me to just take this — this thing over to make sure that it goes off well. And that's when I got more formally involved.

Q. Okay. So let me see if I — if I understand this correctly.

A. Uh-huh.

Q. So you had seen an — indications that Ms. Wren was announcing or telling people that her people would be appearing on the stage with President Trump on the 6th; is that what you're saying?

A. That is correct.

Q. And you thought that was not acceptable; is that right?

[p.283]

A. It was not acceptable because she even leaked it to a conservative media outlet that actually ran her list of people. I even tried to get them to retract it, but they refused.

JA757

Q. And your understanding is that she was telling these — the media and others that — that this had been approved by the White House?

A. Yes.

Q. And that was what led you to contact Chief of Staff Mark Meadows; is that right?

A. That's correct.

Q. And that was on or around the 2nd, correct?

A. That's correct.

Q. Okay. And so Mr. Meadows responded, if I understand you correctly, by saying that nobody at the White House had approved this, to his knowledge, and he asked you to step in and sort things out.

Is that correct?

A. That's correct.

Q. Okay. So what did you do?

A. Well, I went in to — I don't know, I guess I call it campaign mode at that point. The Chief of Staff had asked me to take it over, and that's exactly what I did.

[p.284]

I told everyone, meaning Caroline Wren and Amy Kremer and their crew, to tell everyone that no one is speaking.

We tried to get together and come up with a reasonable list to submit to the White House, and Caroline just kept pushing for people that I just didn't think were appropriate. And then when she kept pushing and I told her to tell me who approved this at the White House, because I told her that I was going to call the White House, she had mentioned that Scavino knew.

So I was very upset with Dan Scavino. I just couldn't believe that he would approve something like that. So I reached out to the Chief of Staff once again and said, "I'm

JA758

done.” I said, “I’m not going to participate in embarrassing the President, and I’m just out.”

And when I told him that she said that Scavino approved, he said, “Well, then you should probably reach out to Dan.”

And that’s what I did, I reached out to Dan and found out that that was also a lie, and then I felt bad for getting mad at Dan Scavino.

Q. Well, let me just back up for a moment.

A. Uh-huh.

Q. Who was Dan Scavino?

[p.285]

A. Dan Scavino, I think at that point, was Deputy Chief of Staff. He was doing social media for the President, but I think there at the end, he was Deputy Chief of Staff.

Q. Okay. So you were being told by Caroline Wren that her people were being approved by the White House, and you initially thought that there might be some truth to that, so you reached out to Mr. Meadows; is that right?

A. Yes.

Q. And he — and you thought Dan Scavino was the person that was approving this?

A. That’s correct.

Q. And Mr. Meadows put you in contact with Mr. Scavino; is that right?

A. Well, he asked me to reach out to Dan, and I reached out to Dan, yes.

Q. Okay. And when was that?

A. That was either the 2nd or the 3rd. This was all happening very quickly, in a matter of a couple of days, so all of this happened around the 2nd and 3rd and 4th.

JA759

Q. Okay. So if the 3rd was a Sunday, would that — would it have been a Sunday or the Monday that you talked with Mr. Scavino?

[p.286]

A. I believe it would have been Sunday because when he told me with all certainty that that just was not true and he hadn't approved anything from anyone, he suggested that I meet with the President the following day, which would have been that Monday before he left for the Georgia rally.

Q. Okay. And where were you when you had this conversation with Mr. Scavino?

A. At home in Texas. I was really bedridden because I had hurt my back. My age is catching up with me.

Q. So — so did you go to Washington, DC on the Monday?

A. I did. I managed to get on a flight that next morning. I felt like it was important enough to actually sit down with the President to find out exactly what he expected to come from the rally on the 6th, and so I flew right in and went to a meeting.

Q. Okay. Now, if Mr. Meadows and Mr. Scavino — well, let me ask you this:

Did you express your concerns about these speakers to Mr. Meadows and Mr. Scavino?

A. Oh, absolutely. I expressed my concerns to anyone who would listen.

Q. Okay. What did you tell Mr. Meadows and

[p.287]

Mr. Scavino were your concerns about these speakers?

A. I mean, I think Alex Jones, I mean, the name itself is a problem. I think I believe I sent some — either some tweets or some articles where there was some incendiary language that Ali Alexander was specifically using.



JA760

I had seen some video clips of some of the previous rallies or protests that he was speaking at, and it was very inflammatory as well.

So I just sort of listed off a couple of my concerns, and they just essentially agreed with me, and, I mean, it's a problem.

And then that's why Dan was like, "Just come sit with the President and figure out what he wants." And the primary reason you do that is because once the President makes a decision, it's done. At least that's how it should be.

Q. Okay. And just — I got your concerns with some individual speakers.

But more — more generically, what was your concern about having the kind of speakers you disapproved of on the stage with the President?

A. So there — I had mentioned before that there were two previous events leading up to the one at January that the Kremers had informed me that there

[p.288]

were issues.

For example, you know, there were media reports after the first — I think they called it the "Million MAGA" whatever they called it, and there were reports of fights or violence that had been there. You know, we had just spent, you know, several years of Trump supporters being attacked.

Then there was also a situation regarding Alex Jones himself, who tried to rush the stage at one of their previous events, and my concern was whether they tried to cause any problems or — you know, these guys don't care. They just, they want attention, they want notoriety, they just want the chaos, and I was just concerned with

JA761

emotions being high and the number of people that were likely going to be there, that we needed to be on alert.

Q. So if I understand you correctly, you just wanted to keep these kind of troublemakers off the stage with the President; is that your — is that what I'm understanding?

A. Not only did I not want them on the stage, I didn't want them anywhere around. I just think that those — those actors are really bad actors. They're in this for, you know, their own personal, selfish reasons, and they just don't care about the damage that they

[p.289]

cause.

Turns out I was right.

Q. Okay. So you had had this discussion with Mr. Meadows, and did he share your concerns?

A. He did. I mean, I think that's why he told me to just take it over.

Q. Okay.

A. You know, it was just too much to even deal with at that point, so . . .

Q. And you had a similar discussion with Mr. Scavino; is that correct?

A. That's correct.

Q. And did he share your concerns?

A. He did, yes.

Q. And so he — did he help you set up a meeting with the President for the next day?

A. Yes. Dan set me up to go see the President that afternoon, the following afternoon.

Q. Okay. So where was the meeting you had with the President?

A. It was in the President's dining room, which is right off the Oval Office.

Q. Okay. And about what time was that?

JA762

A. That was probably around 3:00, 3:30, because I know he was leaving for the Georgia rally after

[p.290]

the meeting.

Q. Okay. And about how long did that meeting last?

A. Maybe a half hour, maybe 45 minutes. I think I was out of there by 4:00, so . . .

Q. Okay. Can you describe the scene?

A. If — it's — it's a small room with a long table. There are two entries coming into the President's dining room: One from the Oval, one from the hallway. And the President was sitting at the head of the table working on papers. He had folders and he was making calls.

I came in and sat to his right. So the entry from the Oval Office and the hallway were out of my field of vision because I was facing him at the head of the table.

And then at that point, I believe Max Miller had come and sat across from me. Bobby Peety had come in through the hallway door because I turned and saw him. I knew they were getting ready to go to the rally.

And then there was just people that come in and out, whether they're bringing the President something or picking up something to — to finish off for the day.

[p.291]

Q. Okay. Who were the main participants in the — in the meeting?

A. Myself, the President, and Max Miller sat across from me. We were the only ones at the table.

Occasionally people would come in through the hallway and make comments. I don't remember who all came through. It was just a typical day at the White House.

Q. Okay. Who was Max Miller?

JA763

A. Max Miller worked for advance for the President. I don't know his title there at the end, though.

Q. Okay. And if I understand what you've been saying earlier, the — from your perspective, the purpose of the meeting was to get the President's input on — on who he wanted at the event on the 6th and, you know, what kind of event he wanted; is that fair?

A. That's fair.

Q. Okay. Did you come in there with, I don't know, an agenda, talking points, anything like that?

A. I did make an agenda for the meeting, just to make sure that I covered the points that I wanted to cover.

Anytime you meet with the President, you can get off topic and talk about other things. So it was

[p.292]

my way of having my little bullets to make sure that I was able to communicate clearly what I thought.

Q. Did you wind up using that set of talking points in that meeting?

A. I didn't use all of the talking points. I use it as a guide in our discussion. But I did express my concerns.

Q. Okay. And what was the President's reaction to your expression of concern?

A. Well, it's — it actually was not as difficult as I thought because I thought I was going to have to run through everything. I didn't have to because the moment that I showed him a list of people that, you know, wanted to speak, he just didn't want everybody to speak.

And so before I could even get to my concerns, he had already essentially nixed everyone from the list, including his family, so that told me, as someone who knows him and his mind and his heart, that he was looking for more of an official event.

JA764

So it was — it was more of a, you know, hybrid of an official event. He was speaking at the Ellipse on White House grounds as the President, but he still wanted the rally feel because he just wanted music so people could sing and dance and be happy, like a

[p.293]

rally. So it just turned into a hybrid event, which actually made me relieved.

Q. So did you discuss with them any of the people that you were specifically concerned about?

A. I did. I waited until the end because he himself looked through a list and just ultimately decided that he didn't want anybody to speak.

So by the end, he just decided that the permit holder could speak, I could introduce them. He wanted elected officials to speak. Again, that official feel of that part of his event.

And then at the end, because he was just — he just seemed shocked that everybody wanted to speak, and I just had to keep explaining to him, “Of course, everybody wants to be on your stage.”

And so at the end, I did ask him specifically if he wanted Rudy Giuliani. He said, “No, he needs to be preparing.”

I said, “Did you want Roger Stone?” And he said, “No.”

And I asked, “Do you want Ali Alexander?” And his response was, “Who?” So he didn't even know who Ali was at that point.

And I had never brought up Alex Jones because, again, that was just a nonstarter.

[p.294]

That was just my way of confirming that Caroline had been lying, and I was just relieved now that I have the

JA765

President's decision that I can now take back to everyone and hopefully shut it all down.

Q. So what else was discussed during this meeting?

A. After that, he had asked me, you know, if people were going to the Capitol because the previous marches, he wasn't aware of, and he was kind of frustrated that nobody had told him about the previous marches because wherever his people are, he wants to be there.

That's just something that's always been a thing for him, even when he was initially assigned Secret Service. I remember the first couple of times, he just walked straight to the crowd to take pictures and selfies and sign autographs. Secret Service had a heart attack.

So, you know, he did the flyover and the driveby on the first two. This time, he expressed wanting to speak to them and asked me if they were going to the Capitol.

I let him know that there were some groups that were going to the Capitol, that had been planning to go to the Capitol, and I had told him there were some that weren't, but the one thing that both groups agreed

[p.295]

on is they wanted to see him.

And he said, "Well, you know, are we expecting any trouble?"

And I said, "Well, there have been some incidents at some of the previous rallies."

And he said, "Well, we should call the National Guard."

And Max Miller said, "Well, we should only call the National Guard, you know, if we expect a problem."

And he said, "No, we need to call the Guard to make sure there isn't a problem," and then he looked up and said, "Let's get 10,000 National Guard."

JA766

And I don't know who was standing behind me, but he was speaking to somebody. He goes, "That's it." He goes, "Let's just have 10,000 National Guard, and then that way, we won't have any problems."

Q. Did you give any testimony to the January 6 Select Committee?

A. I did, yes. I spent a total of probably around 19 to 20 hours through interviews, as well as sworn testimony.

Q. Did you give public testimony?

A. I did not.

Q. So was it — it was in private session?

[p.296]

A. Yes, that's correct.

Q. During your interviews in a private session, did you discuss the — the matters we've talked about today?

A. Yes.

Q. Did you talk specifically about your meeting with the President?

A. Absolutely, yes.

Q. Did you talk about his willingness and decision to exclude problematic speakers from the event on the Ellipse?

A. Yes.

MR. OLSON: Objection. Leading and mischaracterize testimony.

THE COURT: Sustained.

Q. (By Mr. Shaw) Did you talk about your discussion with him about excluding people like Ali Alexander from the speaker list?

A. Did I discuss it with the Committee?

MR. OLSON: Objection. Leading.

Q. (By Mr. Shaw) Yes.

A. Yes.

THE COURT: Sustained.

JA767

Try to not ask leading questions.

Q. (By Mr. Shaw) Did you talk about the —  
[p.297]

about his mentioning 10,000 National Guard troops?

MR. OLSON: Leading.

THE COURT: Sustained.

Why don't you ask her what you talked — what she talked about.

MR. SHAW: Well — well, I've already asked, did — did she testify about the matters we've discussed today, and she said yes. So I guess that covers that.

Q. (By Mr. Shaw) Did the Committee call you to testify at any public hearing?

A. No.

Q. To your knowledge, does the Committee's report include any of the information you provided about those topics in its findings?

A. Not to my knowledge.

MR. SHAW: I have no further questions for you at this time. Thank you.

THE COURT: Ms. Pierson, we are going to take a break, so can you make sure you're available again in 15 minutes, at 4:10 in Colorado?

THE WITNESS: Yes, Your Honor.

THE COURT: We're in recess.

(Recess taken from 3:55 p.m. until 4:10 p.m.)

[p.298]

THE COURT: You may be seated.

So we're getting all sorts of complaints, like I have any control, that people can't hear on C-SPAN, so . . .

But I have trouble hearing you, Mr. Shaw, so if everybody can try to speak up. I think the issue is that maybe only the lawyers are on — are — actually have the microphone, but anyway, we'll do what we can do.



JA768

Are you still there, Ms. Pierson?

THE WITNESS: Yes, Your Honor, I'm here.

THE COURT: Great.

So you're still under oath.

And it looks like you should be able to see Mr. Olson;  
is that correct?

THE WITNESS: Which one is — yes.

THE COURT: He'll be asking you questions.

THE WITNESS: Yes, yes, yes.

THE COURT: He'll be asking you questions, okay?

THE WITNESS: Thank you.

MR. OLSON: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. OLSON: Great. Thank you very much.

[p.299]

#### CROSS-EXAMINATION

BY MR. OLSON:

Q. Good afternoon, Ms. Pierson.

A. Good afternoon.

Q. I want to talk with you about, you mentioned a  
couple times Ali Alexander and Alex Jones.

Do you sometime refer to them as "the crazies"?

A. I absolutely do.

Q. Okay. And you know that — or you said that Trump  
likes the crazies, right?

A. Yes, and I also defined "crazies" as being those who  
viciously defend him in public.

Q. Right. Which includes Alex Jones and Ali  
Alexander, right?

A. You could put them in that group, I suppose.

Q. Great.

Now, Trump went on Alex Jones' radio show shortly  
after he announced his candidacy for President, right?

A. I don't know. It's possible.

JA769

Q. Okay. Trump gave Alex Jones a VIP pass to his selection at the Republican National Committee — at the Republican Convention when he was the Republican nominee, correct?

[p.300]

A. Not that I'm aware of.

Q. Okay. But you still have a great deal of loyalty to Trump, don't you?

A. Define "loyalty."

Q. Well, you would never betray him, would you?

A. Well, I wouldn't betray anyone.

Q. You call yourself one of "the believers," right?

A. Absolutely.

Q. Okay.

A. Everybody on the 2016 primary campaign were the believers, yes.

Q. Okay. And you view your job in that role as protecting the President, right?

A. You protect your principal regardless of who it is, yes.

Q. Yeah, so your job is to protect — your job is to protect the President, right?

A. Yes.

Q. Now, I want to talk about this claimed conversation about the National Guard.

Now, was Kash Patel in that conversation?

A. No.

Q. Okay. Was the Chairman of the Joint

[p.301]

Chiefs of Staff in that conversation?

A. No.

Q. Was Mark Meadows in that conversation?

A. No.

JA770

Q. Okay. Was any senior leadership from the Department of Defense in that conversation?

A. Not that I'm aware of.

Q. Okay. But Max Miller was in that conversation, right?

A. Yes.

Q. Okay. And you said that day, that you and Max Miller killed the National Guard, right?

A. That is incorrect.

Q. Let me show you a tweet — or a text message exchange between you and Mr. Miller.

MR. OLSON: Plaintiffs' Exhibit 265, Your Honor. I need to share my screen first.

I'm sorry, Ms. Pierson.

THE WITNESS: I've got nothing but time.

MR. OLSON: And I guess I need permission to share my screen.

Thank you very much.

THE COURT: We're getting better at this as we proceed, so . . .

MR. OLSON: I'm still getting the same

[p.302]

message.

THE CLERK: Try now.

MR. OLSON: Yes.

Q. (By Mr. Olson) Do you see on the screen, Ms. Pierson, a text of Monday, January 4, 4:08 p.m.?

A. Yes.

Q. Okay. And if we go down to the bottom, you can see — and I'll call it out so you can see it:

There's a GPO stamp saying it's authorized — "Authenticated U.S. Government Information."

Do you see that?

A. Yes.

JA771

Q. And I'll represent to you this is from Mr. Miller's phone that he turned over as part of the January 6 investigation.

And you'll see at the top, it's Monday January 4.

Do you see that?

A. Yes.

Q. And then because — do you have an iPhone? Do you know how it works, the text colors?

A. I do, yes.

Q. Okay. So if this is from his phone, your statements are on the left in gray and his are on the

[p.303]

right in blue, right?

A. Correct.

Q. Okay. So he says to you, "You did a great job killing some of those speakers."

What you talked about earlier, right?

A. Correct.

Q. And now let's go down, and you say, "Hallelujah, praise the Lord Jesus, amen."

Mr. Miller says, "Haha, question, but man, he thinks a million people are coming."

Right? You had that exchange?

A. Yes, I see it.

Q. And then you say, "I tried to help manage expectations."

And then he says, and I'll highlight it here: "You did, and just glad we killed the National Guard."

Do you see that?

A. I see that.

Q. And then you heart-emoji'd that statement, right?

A. Yes.

Q. You didn't say, "No, we didn't," did you?

A. No.

JA772

Q. You just said, “Didn’t get a picture”?

[p.304]

A. Yes.

Q. Right?

And then this text exchange goes on for a little bit. We’ll come back to it in a little bit.

But now I want to turn to the security concerns that you mentioned in your direct testimony.

But I was kind of surprised because I didn’t hear you say that the security concerns you were worried about were risks to Trump supporters. That was your security concern, wasn’t it?

A. That was one of my concerns, yes.

Q. Well, in your interview with the January 6 Committee — which that transcript’s been made public, right; you know that?

A. That’s correct.

Q. No one’s keeping it a secret, are they?

A. Not that I’m aware of.

Q. Okay. The only security concern you mentioned was security concerns to Trump supporters, right?

A. I think — I believe I mentioned concerns generally, but when they asked for an example, that is one that I gave.

Q. Well, let’s look at that, Ms. Pierson.

I’m going to pull up your interview that

[p.305]

you had with representative of the January Committee, this public interview.

Now, but before I do that, before you did that, you knew that it was unlawful to provide false information to Congress, right?

A. That is correct.

Q. Okay. So you’re under oath here today.

JA773

You had a similar obligation at that time, right?

A. That is correct.

Q. Okay. So I'm pulling up page 124 of Exhibit 264, and I'm going to bring the screen out.

Is that big enough for you to read?

A. Yes, it is.

Q. So the question that you were asked was, talking about the National Guard. It says:

“What specifically did you tell the President or Mr. Miller about security concerns that you had for that day — for the day?”

Right? Do you see that?

A. Yes.

Q. And then if we go down, you have two paragraphs of answers.

A. Uh-huh.

Q. And you talk about some physical assaults [p.306]

there were, conflicts between Black Lives Matter and those other guys, I don't even remember who they all were, countless reports —

A. Yes.

Q. — of people being attacked at some of these marches or rallies or whatever you want to call them.

Now, were you referring here to the November and December rallies you talked about briefly?

A. Yes.

Q. The ones where Trump either visited in a motorcade to express his support and then the other one, he flew over in Marine One and did two laps, right, around —

—

A. Yes.

Q. — over the protest and everyone —

A. I don't know how many laps, but he flew over —

Q. Yeah.

A. — yes.

Q. But everyone in the protest thought that was pretty great that the President expressed support that way, didn't they?

A. Yes.

Q. Okay. And then so going back to your [p.307]

answer, you say:

“There is high potential that on top of all the previous encounters that specifically Trump supporters have run into with being attacked pretty much anywhere.”

Right?

A. Uh-huh.

Q. Did you —

A. Correct.

Q. — identify any other concern, security concern, other than Trump supporters?

A. I spoke to the Committee investigators on more than one occasion, so I had expressed all of my concerns, yes.

Q. Okay. That wasn't quite my question, Ms. Pierson.

Are you telling us that there's a written record of you telling people under oath that you expressed concerns about the security of the Capitol?

A. I didn't have anything to do with the Capitol, so I don't know what you're referring to.

Q. Okay. I'm just asking what you testified to.

Have you ever testified under oath that — or being in trouble for lying like you are to Congress,

[p.308]

that you had security concerns about the Capitol?

A. I had concern — security concerns about the rally.

JA775

Q. Okay. So that's a no, you have never told anyone that you had security concerns about the Capitol, did you?

A. I mentioned the bad actors who had previously caused concerns at other capitols.

And why I was concerned generally and specifically, if you go to the next line where you highlighted, it says:

“So there was concern that, you know, people would come and try to start trouble.”

And that was my concern. That is a general concern.

MR. OLSON: Your Honor, I move to strike as nonresponsive.

THE COURT: Overruled.

Q. (By Mr. Olson) But can you — I want to ask a very simple question, Ms. Pierson:

Have you ever testified that you had a security concern about the Capitol where you mentioned the Capitol?

A. I don't recall specifically because my concerns were general.

[p.309]

Q. Okay. Now, did the White House tell anyone publicly that Trump was going to call on people to march with him to the Capitol on the Ellipse speech?

A. Did the White House say publicly that he was? I'm not aware.

Q. Okay. In fact, you knew that Ms. Kremer did not have a permit to march to the Capitol, right?

A. That is correct.

Q. And that because of that, if the National Park Service found out about a march to the Capitol, she would get in trouble, right?

A. That is what she expressed to me, yes.

Q. Yeah. And, in fact, you've never seen a permit to march to the Capitol, have you?



JA776

A. I have not. I was not involved in the permitting process.

Q. And you've never seen any written proof at the time that any agency outside of the White House knew of Trump's plan to tell the crowd to march to the Capitol, do you?

A. I'm not aware of the White House plans.

Q. Okay. But you've never seen anything yourself?

A. No.

Q. Okay. Now, on — I want to turn to events

[p.310]

later in the day on January 6.

In the moment, what you said was, "Trump asked for a Civil War," right?

A. Note that I'm aware of.

Q. Well, let's look at your texts.

And what I want to do, this is a text between you and Brad Parscale. It's Exhibit 263.

Do you see that?

A. I do, yes.

Q. And you see the date here, I'll just highlight one.

Is it big enough for you to read, by the way?

A. Yes, sir.

Q. Okay. So this is January 6 in the evening, right?

A. Correct.

Q. And there's — it goes back and forth. I want to give a little context to make sure we get your text exactly right.

What Mr. — and who is Mr. Parscale at this time?

A. He's the former 2020 campaign manager.

Q. Right. But he had a pretty good idea of how Trump communicated to his supporters, right?

[p.311]

MR. SHAW: Objection. Foundation.

A. I can't speak for Brad Parscale.

JA777

THE COURT: Overruled.

Q. (By Mr. Olson) Well, Mr. Trump put him in charge of his campaign, right?

A. Actually, he fired Brad Parscale.

Q. Well, a lot of people have been fired by Mr. — by Mr. Trump.

But at some point, Mr. Trump put Mr. Parscale in charge of his campaign, right?

A. Correct.

Q. Okay. And so what Mr. Parscale says to you on January 6 is:

“That was a sitting President asking for a Civil War.”  
Right? That’s what he says?

A. That’s what he says.

Q. And then you talk about — you say:

“Lincoln actually suspended habeas corpus.”

And it’s kind of hard to follow the thread because it looks like you’re each texting to each other — this happens to all of us, right — you’re texting while someone else is responding, so it doesn’t always match up. But I want to make sure you see the

[p.312]

full exchange.

“A sitting President asking for a Civil War.”

You respond:

“This one?”

And then you say:

“Lincoln actually suspended habeas corpus.”

And then Mr. Parscale says:

“Well, he better be right.”

And then let’s turn to see what you say on the next page. You say:

“He asked for a Civil War.”

You see that?

JA778

A. Do you see what I said after that? “Don’t overdramatize.”

Q. Right. But you said, “He asked for a Civil War,” right?

A. Responding to Brad Parscale, yes, that’s correct.

Q. Yeah. Now, we can all agree that President Lincoln never asked for a Civil War, did he?

A. Did he ask for it? Or did he actually do it?

Q. Ask for it.

[p.313]

A. What’s your question?

I don’t know. I wasn’t around back in Lincoln’s time.

Q. Okay. But the “he” you’re referring to right here, when you say, “He asked for Civil War,” that is Trump, right? What you’re saying is Trump asked for a Civil War, right?

A. No. What I’m saying is Brad was overdramatizing by saying he asked for a Civil War. You have to read the entire text, sir.

Q. Well, that’s what we’re doing.

A. Well, you’re not doing it because you stop at, “He asked for a Civil War.” You completely ignore the rest of the text in that line.

Q. I’m just — I’m just putting your words in context.

A. But you can’t put my words in context —

Q. Excuse me —

A. — unless you’re —

Q. Excuse me —

A. — using —

Q. Ms. Pierson —

A. — the actual text.

Q. I’m sorry, I didn’t mean to interrupt, but I want to make sure we’re efficient.

[p.314]

And I'm showing everybody your text, we're talking about your whole text. If there's anything else you want me to show, I'm happy to do it.

But you said on January 6, "He asked for a Civil War, don't overdramatize," right?

A. Yes.

Q. Okay.

A. In response to his text.

Q. Now, also on January 6, while the insurrection was underway, you knew full well that the mob's purpose was to come for the Capitol, right?

A. I don't know that I would know their purpose. I wasn't in on their plans.

Q. Well, you said —

A. But it was pretty clear, watching it unfold, what was happening.

Q. Right. But you said on January 6 that the mob came for the Capitol, right?

A. Do you have that to show me?

Q. Sure.

A. I would need to see the context.

MR. OLSON: This is Exhibit 258, Your Honor.

Q. (By Mr. Olson) And this is a text with you and Taylor Budowich.

[p.315]

And I'm pronouncing that name right? Or can you pronounce so I get it right?

A. Yes. That's correct.

Q. "Budowich"?

A. That's correct.

Q. Okay. And you're texting back and forth during the insurrection on January 6, right?

A. During the protest, that's correct.

JA780

Q. Is — and Taylor, at 2:08, says to you:  
“Get out of the city, night is going to be tough.”

Do you see that?

A. I do see that, yes.

Q. And then you respond, there’s another text on the next page, but the first part of your text is:

“I don’t think they’ll riot.”

And then you say:

“They came for the Capitol.”

Do you see that?

A. And then I say:

“So crazy.”

Q. Yeah.

A. Yes, I see it.

Q. And — and then I want to talk about a text exchange you had with Mr. Miller.

[p.316]

And within hours of these events occurring, you knew pretty quickly that police officers were injured and someone had been killed, right, in this attack on the Capitol?

A. I wouldn’t have known until it was reported.

Q. But you knew that day, right, like most Americans, that someone had been killed?

A. Yes, later that evening, yes.

Q. Okay.

A. I did hear.

Q. And so the next day, after you knew that someone had been killed and many police officers had been injured, you were making jokes about the insurrection, weren’t you?

A. I don’t recall.

Q. Well, let’s look at —

A. It was all —

JA781

Q. — what you said.

A. — so surreal.

Q. This is back on your text exchange with Mr. Miller. And if we see here, again you're in gray on the left?

A. Uh-huh.

[p.317]

Q. And this is — this is a picture that you sent, where you say:

“Definitely not a Trump supporter, no chance.”

And now I want to talk about the exchange on January 7 in the morning, right?

So the morning after the Capitol was attacked, you sort of posted a meme, right:

“2020 is finally over. That was the craziest year ever. 2021, but wait, there's more.”

And remind me, that's an infomercial guy, Bob somebody, what's his name?

A. I don't remember his name, but yes.

Q. He's the guy that sells you stuff on late night TV, right?

A. Yes.

Q. Okay. So this is what you said, unprompted to Mr. Miller.

And then the next day — or sorry, the text consider — exchanges, and he says:

“Never too soon.”

And then you send the picture of — now — of someone carrying out a Capitol — you say — and you say:

“You have to admit that seeing Nancy

[p.318]

Pelosi's lectern being carried out, carried away by a Trump supporter is pretty damn funny.”

Right?

A. Yes, it was hysterical.

JA782

Q. And this was less than 24 hours after our Capitol had been attacked, after a speech by Mr. Trump, right?

A. That's correct.

MR. OLSON: No further questions.

THE COURT: Mr. Shaw, do you have any redirect?

MR. SHAW: No, Your Honor, I have no further questions.

THE COURT: Thank you for your testimony, Ms. Pierson. You are released.

THE WITNESS: Thank you, Your Honor.

MR. OLSON: Actually, Your Honor, can we move in a couple of exhibits, I'm sorry.

It's the text exchange, is Exhibit 265 and 263.

THE COURT: Any objection?

MR. SHAW: No, Your Honor.

THE COURT: 263 and 265 are admitted.

(Exhibits 263 and 265 were admitted into evidence.)

[p.319]

MR. BLUE: Your Honor, our next witness is — sorry, Amy Kremer. I had to get my head around it.

And she's on the East Coast. She is available now if you would like to — would like to proceed, but she would prefer to go first thing in the morning because it's now 6:30 her time.

THE COURT: And you have another —

MR. BLUE: No.

THE COURT: — witness?

MR. BLUE: No, she would be the only — we would be breaking if we did not bring her up, call her now.

THE COURT: We have — you have a pretty long witness list, and I just want to make sure that we're going to wrap up and take into account that Mr. Heaphy also needs to testify.

JA783

So I'm willing to go to 5:30 as — as planned, but I just want to — I don't want to be told tomorrow or Friday that we're not going to finish because we are breaking early on a bunch of days.

MR. BLUE: Your Honor, I understand. We think we'll be — we'll be able to finish by then, but if you're concerned about it, I do not mind putting her on now.

THE COURT: I really leave it to you  
[p.320]

because I have no idea how long you'll take or — with any of your witnesses.

MR. BLUE: So can you just give me two minutes and I'll get back to you?

THE COURT: Okay.

MR. OLSON: I just want to confirm with Mr. Gessler since he is lead counsel, but I'm pretty sure he's fine with this. But let me check.

(A pause occurred in the proceedings.)

MR. SHAW: Your Honor, if we could go off the record for a moment?

THE COURT: I'm not sure what that means given that we're on TV, but okay.

(Discussion off the record.)

MR. BLUE: Your Honor, we're not concerned about finishing. We should be able to finish the four fact witnesses tomorrow that we have left: Kremer, Bjorklund, van — Flein — thank you — Flein, and Buck, Congressman Buck.

And then that should be easily done tomorrow. And then on Friday, we expect to have our expert in the morning. And we would be done at that point.

THE COURT: Okay. I'm sorry, you said Flein, Bjorklund, Buck, and —



[p.321]

MR. BLUE: Kremer.

THE COURT: Kremer.

So are you not calling Congressman Nehls?

MR. BLUE: No, we actually have — we're not going to be calling Congressman Nehls, and we're not calling Mr. van der Veen.

THE COURT: Oh, okay. Well, sounds like we should be in good shape, then.

MR. BLUE: Yeah, I think we'll be in fine shape.

THE COURT: Okay. So we will recess for the day and reconvene tomorrow at 8:00 a.m.

MR. BLUE: Thank you, Your Honor.

(WHEREUPON, the within proceedings were adjourned at the approximate hour of 4:39 p.m. on the 1st day of November, 2023.)

\* \* \* \* \*

JA785

DISTRICT COURT  
CITY AND COUNTY OF DENVER  
STATE OF COLORADO  
1437 Bannock Street  
Denver, Colorado 80203

Case Number 2023CV032577, Courtroom 209

CERTIFIED STENOGRAPHER'S TRIAL  
TRANSCRIPT

TRIAL DAY 4: November 2, 2023

NORMA ANDERSON, MICHELLE PRIOLA,  
CLAUDINE CMARADA, KRISTA KAFER,  
KATHI WRIGHT, and CHRISTOPHER  
CASTILIAN,  
Petitioners,

v.

JENA GRISWOLD, in her official capacity as  
Colorado Secretary of State, and  
DONALD J. TRUMP,  
Respondents,

and

COLORADO REPUBLICAN STATE CENTRAL  
COMMITTEE, and DONALD J. TRUMP,  
Intervenors.

The trial in the above-entitled matter commenced  
on Thursday, November 2, 2023, at 8:01 a.m.,  
before the HONORABLE SARAH B. WALLACE,  
Judge of  
the District Court.

This transcript is a complete transcription of  
the proceedings that were had in the

JA786

above-entitled matter on the aforesaid date.

Stenographically reported by:

Lisa A. Knight, RDR, CRR, RSA

[p.2]

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[p.3]

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[p.5]

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PROCEEDINGS

THE COURT: We're on the record in 2023-CV-32577, Norma Anderson versus Jena Griswold and Intervenor, Colorado Republican State Central Committee and Donald J. Trump.

May I have entries of appearance.

JA790

MR. GRIMSLEY: Good morning, Your Honor. For Petitioners, Sean Grimsley, Eric Olson, Nikhel Sus, Jason Murray, Martha Tierney, and Mario Nicolais.

MR. BLUE: Good morning, Your Honor. Geoff Blue on behalf of Intervenor, Donald J. Trump. With me is Scott Gessler, Jacob Roth, and Justin North and Joanne Miller.

MS. RASKIN: Good morning, Your Honor. Jane Raskin on behalf of the Republican State Central Committee. And with me are Mick Melito, David Moelker, and Robert Kitsmiller.

THE COURT: Great.

MR. KOTLARCZYK: Good morning, Your Honor. Michael Kotlarczyk from the Attorney General's Office on behalf of Respondent Jena Griswold, in her official [p.9] capacity as Secretary of State. With me at counsel table is Deputy Secretary of State Christopher Beall.

THE COURT: Okay. Thank you. You're having technical problems, Mr. Blue?

MR. BLUE: Yeah. I have multiple monitors that I use, and apparently the computer is trying to put my second monitor up there. So I need to turn off that. And I did it so long ago, I don't remember how I did it, so it's going to take me a few minutes.

THE COURT: Okay.

(Pause.)

MR. BLUE: All right. I think we're good, Your Honor.

THE COURT: Okay.

MR. BLUE: And before we start, Your Honor, I just want to give you — we have three witnesses today. We're going to start with Ms. Kremer, and we have Tom — four witnesses today. I'm sorry. Four witnesses.

THE COURT: It just keeps [p.10] growing.

JA791

MR. BLUE: Yeah. No. We have Ms. Kremer and we have Mr. Van Flein and then we have Mr. Bjorklund and then Congressman Buck today.

THE COURT: Okay.

MR. BLUE: We actually expect to be done fairly early in the afternoon: 2 or 3 o'clock.

THE COURT: Okay. And then is the Colorado Republican Party going to be calling any witnesses?

MS. RASKIN: Your Honor, we haven't made an absolute final decision, but I think it likely we will not.

THE COURT: Okay.

MR. BLUE: We have our expert tomorrow morning, Mr. Delahunty. He'll be on first thing tomorrow.

THE COURT: And will the Plaintiffs have any — will the Petitioners have any rebuttal case?

MR. GRIMSLEY: We're not sure yet at this point, Your Honor, but we are scheduling Mr. Heaphy for 1 o'clock tomorrow [p.11] afternoon, or thereabouts.

THE COURT: Okay. On that, it sounds like we're going to have time. I think it might make sense, if people want to do closings, to do closings on Friday, if the parties want to. So why don't we talk about that after your expert.

MR. BLUE: Okay.

THE COURT: Because we previously talked about doing closings after the fact or not at all.

MR. BLUE: We talked about doing them ten days from now, on Wednesday, the 15th. Your Honor, if you remember, part of the reason for doing the closings then, though, was to give you your 48 hours.

THE COURT: Yeah.

MR. BLUE: And we're not doing our findings of fact and conclusions of law until next Wednesday, so you would be way was to give you that ability.



THE COURT: Yeah. But at the same time, I thought that the general [p.12] consensus was that the parties could waive the 48-hour requirement.

So why don't we readdress that sometime later today. If that's no longer the parties' position, then I think it would make sense to do the closings later. But there's a chance, I guess, theoretically, I — well —

MR. BLUE: And I'm not the one doing the closings, so that would be Mr. Gessler having that conversation.

THE COURT: Okay. I'm not trying to rush people, but just thinking if we have time reserved and people still have a view that we can waive the 48-hour requirement, that it might make everybody happier just to be done with me for the time.

So anyway, is — it looks — this “Kremer” or “Kremerer”?

MR. BLUE: Kremer. The Intervenor, Donald J. Trump, calls Amy Kremer.

THE COURT: Okay. Ms. Kremer, can you hear us?

THE WITNESS: Yes, ma'am, I [p.13] can.

THE COURT: Will you raise your right hand, please. AMY KREMER, having been first duly sworn to state the whole truth, testified as follows:

DIRECT EXAMINATION BY MR. BLUE:

Q. Good morning, Ms. Kremer. How are you doing?

A. Good morning. I'm good. How are you?

Q. Doing well. Thank you. So could you please start with telling us a bit about your history in politics.

A. Yes. I am — I started — I'm one of the founders of the modern-day Tea Party back in 2009. I've never been in politics before. I'm a former flight attendant. And I got engaged then, and we came together over Twitter and started the modern-day Tea Party movement.

JA793

Tea Party Patriots was actually founded in my kitchen. And I was with [p.14] Tea Party Patriots for a while. And then I left and joined the Tea Party Express and spent — I guess I was there until 2014-2015.

And we just — I mean, honestly, the Tea Party movement started, you know, we were opposed to government spending with the Bush administration. And then Obama got elected, we were fighting Obamacare. Government taking over healthcare. And we just mobilized people across the country.

Q. And then — so after the Tea Party — you worked with the Tea Party. What did you do next?

A. Then in 2016, I started Women for Trump. I was one of the earliest supporters out there, doing press and rallying the troops for President Trump as a grassroots activist. And we did that in 2016.

Q. And then after President Trump was elected, what happened? What did you do next?

A. So then in 2019, I founded Women for America First. And that was to focus on policy and the legislative agenda [p.15] and pushing the America First agenda.

Q. And who runs Women for America First?

A. I do. We have a board.

Q. And who else is a part of it?

A. Jennifer Hulse and then Kylie Jane Kremer.

Q. And does Women for America First have any social media accounts?

A. We do.

Q. And who runs those?

A. There's a number of us that run them.

Q. So different people have access to those? Is that what you're saying?

A. Yes.

JA794

Q. And did there come a time that you worked with an organization called Angel Families?

A. Yes. It wasn't the organization, but in 2019, when President Trump was — wanted to declare an emergency and use the funds for a border wall, and the government was shut down and everybody was talking about the effect on, you know, the government workers. They're [p.16] going to run out of their healthcare, paychecks, and whatnot.

And there are a number of Angel Families. And Angel Families are families who lost a family member to an illegal immigrant.

So we gathered the Angel Families and went to Washington, D.C., to give President Trump some support. And we just want the border secure. And so we

—

Q. All right. I'm sorry. I didn't want to go that far. I just wanted to finish up with your — where you've been in politics leading up to the election.

A. Oh, I'm sorry.

Q. No. That's okay.

A. Okay.

Q. All right. So let's move to the election of 2020. And can you tell us kind of what happened and how you started getting involved after the 2020 election.

A. Yeah. So 2020 was a crazy year, as we all know, from COVID. And so nothing seemed normal. And then the night of the election, I think Trump was winning big. [p.17] And then you go to bed and wake up the next morning, and it's totally flipped.

And so it was obvious something was going on. These states stopped counting. And there were a number of states that stopped counting. And there was something going on. And people knew it across the country.

JA795

And so we started — nobody was doing anything. The campaign wasn't doing anything. The RNC wasn't doing anything. I mean, there was nobody. And so I did what I do, and that's mobilize people and bring people together.

And so I came together with a group of people, a coalition, and we — people started going to their state and showing up, standing together, and demanding election integrity.

Q. And at that point — at some point did you decide that you needed to head to Washington, D.C.?

A. Yes. Well, it was obvious that there was something going on. And so Washington, D.C. — you know, people can go [p.18] to their state capitols, but not everybody can go to Washington D.C. But a lot of people wanted to go to Washington, D.C.

We could not get a permit for the Saturday after the election. We couldn't get one that quick. And so we applied for a permit for Saturday, November 14th — so a week and a half later. And we had a rally that Saturday.

Q. And who was the organizing force behind that rally on November 14th?

A. It was Women for America First.

Q. So your organization; right?

A. Yes.

Q. And what was the plan for that rally?

A. The plan was — it was pretty simple. Like I said, we were working with this coalition. And we wanted everybody involved and engaged.

And so we were going to have a rally at Freedom Plaza. And then we were going to march to the Supreme Court and have a stage there, where we had

speakers there. And that would — ay the end of that program, [p.19] that was it.

MR. BLUE: Hold on just a second, Ms. Kremer.

Your Honor, do you want us to wait until we get a better — have her picture up? Or can we just continue?

THE COURT: Oh. You know, I don't —

MR. BLUE: My assumption is she has a bandwidth issue on her end, but I don't know.

THE COURT: It's weird.

(A discussion was had off the record regarding technology issues.)

THE COURT: Ms. Kremer, for some reason, the screen that the court reporter is looking at doesn't have you — a picture of you, and so she can't read your lips, which is part of the whole process.

So we're going to continue, but if you could talk slowly and articulate, then we'll see if we can proceed. If she's still having trouble, we may have to take a break and figure out what's going on.

THE WITNESS: Okay. Yes, [p.20] ma'am. Thank you.

MR. BLUE: Oh. Apparently there was a setting on my computer that was — that tells you how technically savvy I am, or not.

THE COURT: Is there a way where you could make it so she is the primary...

(A discussion was had off the record regarding technology issues.)

BY MR. BLUE:

Q. So, Ms. Kremer, you dropped off again for some reason, so we'll see what happens.

A. I can see y'all fine.

JA797

Q. It's that the court reporter doesn't see you, is what the issue is. But we'll work through this.

A. Okay.

Q. Okay. So we just talked about the plan. You said there was a coalition of people, of groups, involved in the November 14th rally. Correct?

A. Correct.

Q. Can you tell us who was in that [p.21] coalition?

A. There was Brandon Straka, Ali Alexander, Tea Party Patriots, Moms for America. I'm trying to think who else. Scott Presler was involved.

Q. So it's fair to say then that there was a fairly large coalition of groups and people; right?

A. Yes. It was a large coalition. Eagle Forum was one.

Q. And so when you went — so you started at Freedom Plaza. Who were your speakers at Freedom Plaza that day?

A. Oh, my gosh. Well, our team, and then the influencers and coalition that we — that we had brought together.

So I think it was, like, an hour-and-a-half program. And you think you're going to be short on speakers, but we always have way more.

Q. And then after Freedom Plaza, I think you said that you marched down to the Supreme Court of the United States. Is that correct?

A. Yes, we did. [p.22]

Q. And you had more speakers there; correct?

A. Correct.

Q. Now can you describe the rally at Freedom Plaza.

A. Yeah. I mean it was huge. And people came from everywhere. And these are patriotic, freedom-loving citizens that really just dropped everything in their lives,

at a moment's notice, to come to Washington, D.C., because they felt like the election had been stolen.

So there's a lot of love there. Love of God, love of country, love of each other, and a lot of patriotism. And so it was very joyful. Singing, dancing, that sort of thing.

Q. And was there any violence that occurred during the rally at Freedom Plaza?

A. No.

Q. And so y'all marched down to the Supreme Court. And can you similarly describe the crowd as they marched up to the Supreme Court.

A. I mean, the crowd was very [p.23] happy, like I said, and people dancing and singing and whatnot. And we got to the Supreme Court, same type of atmosphere.

I mean, these are happy people. They're there because they want to be — they want to be there. And they're extremely happy. And they love this country. So it was the same atmosphere at the Supreme Court.

Q. So it was the same atmosphere from Freedom Plaza, during the march, and at the Supreme Court as well; correct?

A. I didn't march up there with the group. I went after the group. So I can't say what, you know, the — but, yes, these are — when they got there, it was the same type of atmosphere.

Q. Great.

THE COURT: I'm sorry. This is in, like, mid-November?

MR. BLUE: November 14th, Your Honor.

And if we could play Exhibit 1025, please.

(Pause.)

[p.24]

BY MR. BLUE:

JA799

Q. Ms. Kremer, we're having some technological difficulties again, so hold with us.

A. It's okay.

(Video played.)

Q. So, Ms. Kremer, you just saw that video; correct?

A. Yes.

Q. Okay. Can you tell us what's happening there?

A. Well, that video is actually from December 12th, the second rally that we had. But, I mean, it's the same — same type of atmosphere. There were just more people December 12th. And we didn't have the flyover.

But that, what we were watching, was Faye Kaegel [phonetic], who was with Women for America First, singing the national anthem. And they're singing along, and all of a sudden here comes Marine One, the President. And as you saw that, he flew over twice. And the crowd loved it. They went nuts.

[p.25]

Q. And you didn't take that video, did you?

A. No.

Q. But you were there when that was happening; correct?

A. Yes. One of my team members took it.

Q. And that is a fair — that's a fair and accurate representation of what was occurring at that time; correct?

A. Yes.

MR. BLUE: Your Honor, I'd like to move admission of Exhibit 1025.

THE COURT: Any objection?

MR. GRIMSLEY: I question the relevance of it, but we'll let it in.

THE COURT: 1025 is admitted.

(Exhibit 1025 was received into evidence.)



JA800

THE COURT: But I just want to make clear: So that was on December 12th; is that right?

MR. BLUE: Yeah. And we'll reference back to it when we get to the December 12th rally, because we'll be talking [p.26] about that in a few minutes.

THE COURT: Okay.

BY MR. BLUE:

Q. Now, Ms. Kremer, do you know a man named Vernon Jones?

A. I do.

Q. And can you tell us who he is?

A. Yes. He is a politician here in Georgia who is a Democrat, and then left the party and became a Republican. He ran for governor here in the state of Georgia. He was in the state legislature before that.

Q. And did he speak at the rally at the Supreme Court on November 14th?

A. Yes, he did.

Q. And was there anything specific that he said that you thought was relevant or notable?

MR. GRIMSLEY: Your Honor, objection.

We tried to get in other speeches from the Ellipse that day, on January 6th, including from Rudy Giuliani and John Eastman. The other side objected strenuously. That was far more relevant, [p.27] I think, to what President Trump was doing, since he was referencing those two.

So we'll object to any reference to other speeches.

THE COURT: Sustained, unless we want to open up the door to other speeches.

MR. BLUE: Well, what we're asking to have put in the record would just go to the state of mind of the crowd and what was happening in the crowd.

JA801

MR. GRIMSLEY: As would the Rudy Giuliani and John Eastman speeches, Your Honor.

THE COURT: Yeah. I think you can ask her what the state of the mind of the crowd was without having her repeat what the speeches said, which is clearly hearsay.

And you've objected, and I've sustained your objections on what other people said at the January 6th rally.

MR. BLUE: Okay. Thank you, Your Honor.

BY MR. BLUE:

Q. So, Ms. Kremer, did anything [p.28] notable happen as the November 14th rally was wrapping up?

A. Well, so we were at the Supreme Court. And as the speeches were going on, Congressman Louie Gohmert was there, and he kept bringing up new members of Congress: Lauren Boebert, Nancy Kopelmer [phonetic], and a few others popped up.

And it was November, and so the sun was starting to go down. And the Supreme Court Police kept saying, "You need to wrap it up. You need to wrap it up." And he finally said, "You need to wrap this up because Antifa is over there at the church, and we're not going to be able to keep y'all separated. And you need to get out of here before dark."

And so we wrapped it up because we wanted people to be safe.

MR. GRIMSLEY: Your Honor, I would move to strike the testimony about what she was told by an officer. That is being offered for the truth of the matter asserted.

THE COURT: Sustained.

[p.29]

BY MR. BLUE:

JA802

Q. So, Ms. Kremer, when you — was there a specific reason — without referencing anybody else, was there a specific reason you were trying to wrap it up before dark?

MR. GRIMSLEY: Same objection, Your Honor.

THE COURT: We'll see if she can answer without just saying what people told her.

A. We wanted — I mean, this was our rally. Our name was on the permit. And we wanted to know that people were safe. We didn't want to put our supporters in a dangerous situation. And we knew there were agitators, and so we wanted everybody to get out of there.

And that was simply it. It was to keep our supporters safe.

Q. And when you wrapped up, what happened? Did you go back to your hotel at that point?

A. Yes. People —

Q. And did — go ahead.

A. I was going to say, people [p.30] dispersed and, I mean, I guess went to the train station, hotel, buses, whatever. We went back to the hotel.

Q. And which hotel were you in?

A. We were in The Willard.

Q. And did something happen back at the hotel that night?

THE COURT: Okay. I'm just getting a little bit confused here.

Are we talking about November —

MR. BLUE: We're still on November 14th.

THE COURT: Okay. Sorry.

MR. BLUE: Yes. Fair enough, Your Honor.

MR. GRIMSLEY: And, Your Honor, I'd object to the relevance of what happened back at The Willard hotel on

November 14th. It has nothing to do with Trump or any of the issues in this case.

THE COURT: I have no idea one way or the other, but I'm going to let her testify.

MR. BLUE: Thank you, [p.31] Your Honor.

BY MR. BLUE:

Q. So can you — Ms. Kremer, I'll repeat the question.

Can you tell us what happened at The Willard hotel that night?

A. Yes. The Willard hotel was attacked by Antifa and Black Lives Matter. They were throwing Molotov cocktails into Cafe du Parc, the cafe/restaurant that is there in the hotel. And then they shut down the hotel because then they started shooting fireworks at the building.

So The Willard shut down. And nobody could go in or out. And so it was that way for a number of hours, probably three or four hours.

Q. And are you aware of any violence perpetrated by any of the members — any of the people who attended the November 14th rally?

A. No, I'm not.

Q. So after the November 14th rally, it's my understanding that y'all did a bus tour. Is that correct?  
[p.32]

A. Yes.

Q. And what was the name of that bus tour?

A. March for Trump.

Q. And where did you go?

A. We started out in south Florida, and we ended up in Washington, D.C., on December 12th, for the next rally. We went to a number of the swing states. I can't remember the exact route.

Q. And who organized that?

JA804

A. Women for America First. My team.

Q. And was the coalition that was involved in the November 14th rally, were they involved in the bus tour?

A. So, no, they weren't.

Some of them were, and supported us and came to our events and whatnot. But that core group of Ali Alexander, that — we stopped working with him right after that very first rally —

Q. And why is that?

A. — so he was not — I'm sorry.

Q. I'm sorry. I talked over you. [p.33] I shouldn't do that. Please finish what you were saying.

A. We stopped working with him right after that first rally. And he —I mean, we cut off all communication because he was out online attacking us and whatnot.

So we just went and did our thing. We went and did what we know to do. And that is to mobilize people, rally people across the country. That's what Tea Party is for us. That's what we did with Tea Party Express. I don't even know how many bus tours we did.

Q. And over that time, did you hold rallies in various cities during that tour?

A. Yes, we did. As I said, we went through a number of those states, and we held rallies in those states.

Q. And can you describe the crowds at those rallies?

A. I mean, it was — you know, it's the same type of atmosphere like we just saw on the Freedom Plaza rally. The people come there. They're happy. They want to be [p.34] part of this. And they love their country. And they love President Trump. And they really believed that the election was stolen, so they wanted to have their voice heard.

JA805

Q. And are you aware of any violence by any members — any people who came to your rallies as supporters during the bus tour?

A. There was nothing perpetrated by our supporters, but there was — there were incidents where we were attacked.

Q. And can you give us a few examples of those?

A. Yeah, so —

MR. GRIMSLEY: Your Honor, may I just have a standing objection to the relevance of attacks on them by other organizations?

MR. BLUE: Your Honor, this is going to be relevant to kind of how — first of all, it's relevant to the crowds and what the expectation is of the people attending the rallies. So that's very relevant.

And to the security — any security concerns were not about the people [p.35] who were attending the rallies, but the other people who were counter-protesters.

THE COURT: Okay.

MR. GRIMSLEY: I'm not sure it would be relevant in any event. But if that were true with regard to the January 6th rally, I might see the relevance, but to rallies predating January 6th, I don't.

THE COURT: My assumption is that it's a precursor to what happened on January 6th and that — I don't know — maybe that's why people brought weapons, so they could defend themselves. We'll find out.

But I'm going to let the Intervenors put their case on. So you may have a standing objection. And I'm going to let them put their case on.

So it's overruled.

MR. GRIMSLEY: And I will stop standing then.

BY MR. BLUE:

JA806

Q. All right. So, Ms. Kremer, continue, please.

A. I'm sorry. I forgot where we were.

[p.36]

Q. You had talked about various attacks on the — on your supporters — on the supporters who were coming to your rallies, and you were talking about what those were.

A. Yeah. So we did a rally in Nashville, one of the suburbs outside of Nashville. And we had four security guys with us. And they would stand — I mean, they were doing what they needed to do.

And so there was a guy standing, like, in the back of the crowd, and one of our security guys noticed he had a Molotov cocktail. And so Greg, our security detail, I guess tackled him, got the Molotov cocktail away from him. And they arrested him. The police arrested him.

So he was going to throw that into the crowd. That same rally, there was somebody that ran over Greg's foot, and Greg maced him. And then he hit a car, and the police came and arrested him.

We were in Nashville another time — and this was before Christmas — and we were doing a can food drive at a shopping [p.37] center parking lot. And here comes somebody with a sharpened screwdriver to stab us. And, again, our security detail handled it.

I mean, they tried to run us — you know, a number of times they tried to run us off the road, so — all over the country. But we had our security detail and a car in front and back, and so, I mean, we were —nothing ever happened from that. But those are the kind of things that happened.

Q. Thank you.

And, again, did your — did the supporters who were at the rallies engage in any violence?

JA807

MR. GRIMSLEY: Objection. Foundation.

A. No, not to my knowledge.

BY MR. BLUE:

Q. Thank you.

THE COURT: Overruled.

MR. BLUE:

Q. And so let's move on to December 12th. December 12th, y'all ended up in Washington, D.C., again; is that correct?

A. That's correct.

[p.38]

Q. And can you just — and that was going to be another rally. Can you describe what the plan was for that rally?

A. It was the same plan as November 14th, that we got a permit for Freedom Plaza. We were going to march to the Supreme Court. We had a stage at the Supreme Court. Do the same type of program, some of the same speakers. I think we had new speakers too. And that was it.

Q. And were any of the former members of the November 14th coalition who you had cut ties with, did any of them speak at the December 12th rally?

A. No, they did not. I mean, I wanted at that point to keep ourselves away from the crazies, the agitators, like Ali Alexander and Alex Jones. And so we had cut ties. We were having nothing to do with them. And they were not — we didn't invite them to speak.

Q. And what kind of people came to the December 12th rally?

A. The same type of people that were there before. Exactly the same. Some [p.39] of the same people were there. And then, of course, new people.



JA808

But again, just freedom-loving Americans. I mean, people came — you know, single people, married people. Sometimes three generations: the grandparents, the parents, and the children. I mean, it's a family-friendly type of atmosphere. And so it was the same type of people. Joyful crowd.

Q. And did you take any precautions with your buses in — on December 12th?

A. Yeah, so, I mean, we were concerned because we knew that Antifa was — again, they were there. They were trying to instigate, agitate. And because of what they did the night of — we didn't have a bus on November 14th, and they attacked the hotel.

So my concern was that — December 12th, we had two buses with us. And these are big buses that are very expensive. And my concern was that the buses would be attacked and vandalized.

So we actually parked the buses in Arlington, I believe, so that they would [p.40] be safe and not right there in the open for attack.

Q. Great. Thank you.

And was there any violence at the rally on December 12th?

A. No, there was not.

Q. And we showed a video earlier, which was Exhibit 1025, that was from that rally. And that was a good representation of the crowd during the rally on December 12th?

A. Yes. That was December 12th. And it was an amazing day.

Q. And did anything happen as you were leaving the rally — as you were leaving Washington, D.C., later that week?

JA809

A. Yeah, so we were — we were actually going to do — we were going to take a big card to Metro PD to say thank you for your service. And on the way there, the bus was attacked. Somebody started throwing burritos at the bus and attacking us.

And so one of our security guys got out and handled it. And then we were on our way.

Q. So I want to jump forward now [p.41] — well, let me just — after December 12th, you continued the bus tour; isn't that right?

A. Yes. We did continue the bus tour. We took a break there and traveled to the West Coast. Some of the team did not go home, because we're in the middle of Christmas. So we did a couple of events, went to the West Coast, took some days off, and then started off from the West Coast.

Q. And at that point — at what point did you decide to head to Washington, D.C., for January 6th?

A. Well, we had planned, like, in November, as this was all happening — even before, I think, our November 14th rally, you know, we looked at the dates and said we need to be in D.C. on these three dates.

I mean the day we were there, November 14th. And then we picked December 12th, the Saturday, because we wanted as many people to come on the weekend as we could. And I think it was — December 14th was the day that the states were going to certify their slate of electors, and so we picked December 12th. [p.42]

And then January 6th was the day that the electoral college certification would happen.

So we had decided that — I mean, we knew that this movement — it was a movement, and we knew that those were the three dates. And so that's when it was decided.

JA810

Q. And who was in charge of organizing the rally on January 6th, when you first started planning it?

A. So when we first started planning it, it was — we were going to do the exact same thing. What we did worked. And it was two beautiful days, you know, with great events. And so we were going to do the same thing: Back at Freedom Plaza; march up to the Supreme Court; hold an event, you know, at the Supreme Court, maybe with speakers, and then wrap it up.

But —

Q. And so — I'm sorry. When you first started planning it, was President Trump expected to speak?

A. No.

Q. And then did there — let's [p.43] step back a bit. I'm sorry.

So before President Trump agreed to come speak at the rally, where was it planned to be held?

A. Originally it was going to be at Freedom Plaza, just like the other two.

Q. And then —

A. But then —

Q. And then at some point there came a time that President Trump agreed to speak; isn't that correct?

A. Yes. They — Trump's campaign reached out and said, "Would you mind moving your January 6th rally to the Ellipse and possibly having the President speak?"

Well, of course. I mean, absolutely. But — and it was a security thing, you know. And, I mean, I would — common sense, I mean, that — Freedom Plaza, there was no way the Secret Service was going to let him come there. There are open buildings and whatnot all around. But I think it was — we moved it to the Ellipse because they could control that environment, and he was safer

JA811

there. So we just applied [p.44] for the permit for the Ellipse.

Q. And how did the organization or the planning for the speech change when it was — after President Trump agreed to speak?

A. So before I committed to doing it, I went to my team and said, “Okay. We have an opportunity. They want to move to the Ellipse. And it’s possible that President Trump is going to come speak. But I want everybody to, you know, weigh in on it.”

Because if you do something with the White House, we’re probably, you know — they’re going to take control and whatnot, and Secret Service. And I just need to know my team’s on board.

And they’re like, “Absolutely. Why would we not.”

And so what happened was, logistically, it was different because we had a much bigger stage. The National Park Service required flooring. And, you know, then they — the Secret Service, I guess the magnetom — I can’t even say it.

Q. Metal detectors?

[p.45]

A. Yeah, the metal detectors.

So logistically, it was different, but — and so what we did was when Caroline Wren had come to me — Justin Caporale, with the Trump campaign, actually came to me first and asked me to talk to Caroline about — Caroline. And I said we would. And then we agreed to move it to the Ellipse. We did the permits.

And then all of a sudden, Caroline is trying to take over our event and put these wacko speakers up there that we had already cut out, the Ali Alexanders and Alex Jones of the world.

JA812

And so it was a power struggle. And Caroline thought it was her event. I mean, she tried to hijack our event. At the end of the day, that's what it was.

Q. And let me just stop you and direct you a little bit more.

THE COURT: And if you could just try to speak a little bit slower, that would be great, since the court reporter can't see you.

THE WITNESS: Okay. Sorry.

[p.46]

BY MR. BLUE:

Q. So was the — Ms. Pierson's testified earlier, so we don't need much detail, but could you tell us how this dispute was resolved with Caroline Wren?

A. Right. So when she — Caroline stepped into a hornet's nest. She had no idea what she was getting into with all these different people. And it was just a mess and people arguing. And so Katrina was brought in to smooth everything out and try to get everybody on the same page.

And so the morning, actually, of — go ahead.

Q. And so at some point she went — it's your understanding that she went to the White House to resolve the speaker issue; correct?

A. Right.

So we said, you know, "Alex and Ali are not speaking." And she's insisting, "Yes, they are."

And so what we did is Katrina combined — because they had one list and we had one list. And Katrina combined the list. [p.47] And she went and met with the President, with the list.

Q. Thank you.

And when you're talking about "Katrina," you're meaning Katrina Pierson; right?

JA813

A. Yes, Katrina Pierson.

Q. And what happened — we don't need to go into too much detail, but what is your understanding of what happened at the White House with regard to the list?

MR. GRIMSLEY: Objection. Hearsay.

THE COURT: Sustained.

MR. BLUE: Okay.

BY MR. BLUE:

Q. So did you go to the speech — let's talk about the speech and the rally on January 6th. Were you there?

A. Yes, I was.

Q. Could you describe what it was like?

A. It was cold as hell, number one. But it was the same type of atmosphere. You know, people had come from all over the [p.48] country. And they were concerned because they believed the election had been stolen.

And, I mean, same type of thing. You know, it was very, very uplifting, patriotic, and just full of love. I mean, happy people dancing and just waiting to see their President.

Q. And what kind of people were there?

Were there individuals? Families?

What kind of people were at this event?

A. I mean, I would say — I mean, all — you know, many types of people. We had elderly people there. We had blue collar workers there. We had professionals there. There were donors there. It was, you know, just a wide variety of people that were there.

Q. And were you there for President Trump's speech?

A. Yes.

Q. And can you describe the reaction of the crowd while he was speaking?

[p.49]

A. Well, these people love President Trump, and so they couldn't wait to see him. And, I mean, they're cheering for him. And, you know, when he does these speeches, he plays off the crowd. And they're very reactive.

And so it was the same type of thing. It's the same type of thing that you would see at a Trump rally.

Q. And were you seeing any anger in the crowd?

A. No. No. I mean, no, not at all.

Q. And as you were listening to President Trump, did you get — did you get the feeling that he was telling people to storm the Capitol?

A. Absolutely not. Absolutely not.

Q. And when he talked about fighting, what was your understanding of what he meant?

Was he looking for physical fighting or was he looking for political?

A. No. He was, like —[p.50] metaphorically. You know, political. I mean, we say "Fight like hell" all the time or, you know, "Never back down," "Continue to fight." I mean, that is not physical fighting. That's metaphorical.

Q. And so as President Trump was making his speech — I want to kind of do this again — and making the statements about fighting, how was the crowd reacting to that?

A. I mean, I can't remember specifically, but I'm sure they — cheering him on; you know, agreeing with him and encouraging him, that sort of thing.

Q. And then after President Trump finished speaking, what was the emotion of the crowd that you could see?

JA815

A. I mean, people were happy. They came there, you know — the President was there. They came there to see their President. Many people never have been to Washington, D.C., so it was like a highlight of their life. And people were just happy that — the whole event, it was a fantastic event, and lots of love.

Q. Okay. We're going to play a [p.51] few videos for you here.

MR. BLUE: Could you pull up 1023, please.

(Video played.)

BY MR. BLUE:

Q. So Ms. Pierson [sic], have you seen that video before?

A. Ms. Kremer.

Q. I'm sorry. Ms. Kremer. I apologize. Have you seen that video before?

A. Yes, I have seen that video.

Q. And do you know who took that video?

A. One of my colleagues.

Q. And were you there?

Did you see that scene, with the "YMCA" playing?

A. I wasn't right there when the video — where they took that video, but yes, I was there at the Ellipse. That was after it was over and people were leaving.

Q. And was that an accurate representation of the mood of the crowd as [p.52] they were leaving?

A. Yes. Absolutely. Very happy.

MR. BLUE: I'd move to admit Exhibit 1023.

MR. GRIMSLEY: No objection.

THE COURT: 1023 is admitted. (Exhibit 1023 was received into evidence.)

THE COURT: I think we've lost —

MR. BLUE: She's back.

Can we do 1022 now.



(Video played.)

BY MR. BLUE:

Q. So, Ms. Kremer — we had to turn the volume off on one of the computers so we didn't get the echo.

That is — that's another video of the people leaving the rally on January 6th; isn't that correct?

A. I didn't see another video. It didn't come up on my screen. I'm sorry.

Q. All right.

THE COURT: I saw it. And I will take judicial notice that was a video of [p.53] January 6th.

MR. BLUE: So we don't want to play it again.

MR. GRIMSLEY: If you could play it again, that would be great, so she can see it.

MR. BLUE: You want to see it? All right.

THE COURT: So I'm just wondering — and I don't profess to be technical at all, but it seems like it works better when — on Joanna's computer than yours. Is there any way to just have —

MR. BLUE: It actually is on her computer, and it's being cast into the WebEx from her computer.

(A discussion was had off the record regarding technology issues.)

MR. BLUE: We just won't enter that exhibit. We have the other video that you saw. We don't need this video. They're basically the same, so...

THE COURT: I was just thinking, moving forward —

MR. BLUE: Well, I don't have [p.54] any more exhibits, so this solves the problem, by dropping that exhibit.

MR. GRIMSLEY: What was that exhibit number?

MR. BLUE: 1022.

BY MR. BLUE:

JA817

Q. Ms. Kremer, just to finish up here. It was — can you again describe the mood of the crowd as they left the Ellipse on January 6, please.

A. People were happy. They — I mean, it was a fantastic event. They got to hear their President. And they love him. And so it was just a happy, joyful occasion. And you could see it on people's faces.

Q. Great. Thank you very much.

MR. BLUE: I have no more questions, Your Honor.

THE COURT: Cross-examination?

MR. GRIMSLEY: Yes, Your Honor. Briefly.

CROSS-EXAMINATION BY MR. GRIMSLEY:

Q. Good morning, Ms. Kremer.

A. Good morning.

[p.55]

Q. Is it still morning for you?

A. Yeah, for another hour.

Q. At the Ellipse, for the speech, you were actually standing at the stage; right?

A. Right. I was standing off to the right of the stage.

Q. And it was pretty cold.

A. Very cold.

Q. And you wanted to get out of there, basically, once the speech was done.

A. Yes.

Q. And you did get out of there once the speech was done. You went back to the hotel, The Willard?

A. Yes. But I was one of the last ones there.

Q. But you didn't march to the Capitol or go along with the people who were marching to the Capitol in that Exhibit 1022 that we, in this courtroom, saw. But you did not?

JA818

A. No, I did not march to the Capitol.

Q. I'd like to show you [p.56] Exhibit 165, starting at 1:43 in the video, and see if you saw this.

(Video played.)

Q. Now, Ms. Kremer, were you able to hear what they were saying there?

A. I've never seen that video before. And when you're asking me what and who was saying, the people that were holding the camera or the crowd?

Q. The people holding the camera, the people in the crowd around them. Have you seen that video before?

A. I have not seen that video before.

Q. That video is from the Ellipse during the speech; correct?

A. If you say so.

Q. Now you were standing on the side of the stage, so you weren't out beyond where the magnetometers were, were you?

A. No, I was not.

Q. And you didn't have good visibility into who was out there beyond the magnetometers, did you?

A. At that time, no. But when [p.57] I spoke on the stage, I could see it was a sea of people and American flags and Trump flags as far as I could see. But did I see their faces? No.

Q. And there were people — well, you recall the setup. There was some people inside the magnetometers and some people outside the magnetometers that didn't come in?

A. Yes. That's correct.

Q. And from your vantage point, you couldn't tell whether those individuals outside the magnetometers were armed?

A. No.

JA819

Q. You had talked about some wackos, I think you referred to them. Alex Jones and Ali Alexander?

A. Yes.

Q. And why do you call them “wackos”?

A. I mean, they just — you know, Ali — they’re flamethrowers; you know, bombastic bomb throwers — and I mean metaphorically — and agitators. They want to get everybody riled up.

[p.58]

And so I’m not like that. I don’t like that. And I just didn’t want them to be part of it.

Q. You do know that even if they didn’t speak that day, both of them encouraged their supporters to come to the Ellipse speech on January 6th.

A. Okay. I mean, I assume they did. But they were also trying to undercut all of our efforts, so — holding events at the same time in another location. And so, I mean, I don’t know what they were doing.

Q. And you have no idea whether and to what extent their supporters were standing outside the magnetometers and were armed, do you?

A. No.

Q. And you have no idea whether President Trump had been in communication with Ali Alexander or Alex Jones prior to the Ellipse speech, do you?

A. No, I don’t. But I know that he chose for them not to speak on the stage that day.

Q. Well, he had originally wanted [p.59] them to, but then there was a reconciliation and the decision was made that they wouldn’t speak, but —

A. I don’t think he wanted —

MR. BLUE: Hold on just a second, Ms. Kremer.

Go ahead. Finish your question, and then I will do my objection.

JA820

BY MR. GRIMSLEY:

Q. Somebody wanted them to speak that day, and there was a reconciliation at some point; right? There was a decision made that they wouldn't speak?

MR. BLUE: So, Your Honor, I just want to make sure that the question is not that President Trump wanted them speak, but that somebody did.

Is that correct?

BY MR. GRIMSLEY:

Q. Somebody, to your knowledge, did. Maybe you don't know who. Correct?

A. Caroline Wren wanted them to speak. She was working with them. It was Caroline Wren. And when Katrina merged the list and went to the President, he said no.

[p.60]

Q. All right. You're familiar with a group called the Proud Boys?

A. I am now.

Q. The Oath Keepers?

A. I am now.

Q. The Three Percenters?

A. I am now.

Q. You don't know whether and to what extent any individuals from those groups were present at the Ellipse that day, do you?

A. I have no idea.

Q. And they could have been standing outside the magnetometers, armed and ready to go to the Capitol; right?

A. I mean, I guess they could have.

Q. I'd like to play Exhibit 1022, which was the exhibit that counsel, during direct, attempted to play. Hopefully

JA821

you can see it this time. And I want you to listen around 20 seconds in, what you can hear some people say.

A. Okay.

(Video played.)

Q. Did you hear the person yell [p.61] “1776” and then “whoop”?

A. Yes.

Q. Now, you weren't there marching the Capitol. You were going back to The Willard or already back at The Willard at that point?

A. Yes, I went back to The Willard.

Q. So you don't know what that person meant when that person says “1776 whoop,” and while somebody is carrying a Don't Tread on Me flag?

A. No.

Q. Now you had said that individuals at these rallies were patriotic, freedom-loving citizens. And I think you may have referred to them in one of your Tweets as happy warriors.

I'd like to show you Exhibit P-94, a clip from that.

MR. GRIMSLEY: P-94-A, please.

(Video played.)

BY MR. GRIMSLEY:

Q. Were the individuals attacking the police officers in that video patriotic, freedom-loving citizens and happy warriors?

[p.62]

A. I would say those that were doing that, no.

Q. Okay.

MR. GRIMSLEY: Let's play 94-B, please.

(Video played.)

BY MR. GRIMSLEY:

JA822

Q. Were the individuals you saw there attacking the Capitol and chanting “Hang Mike Pence” patriotic, freedom-loving citizens and happy warriors?

A. I would say no, they weren’t. But, I mean, I can’t speak to who was there and what everybody was doing. I mean, it’s the first time I’ve seen that video.

Q. You were at The Willard at that time, huh?

A. Yes.

MR. GRIMSLEY: Let’s play 94-C, please.

(Video played.)

BY MR. GRIMSLEY:

Q. Ms. Kremer, the individuals you saw in that video, were those patriotic, freedom-loving citizens and happy warriors?

[p.63]

A. I can’t speak to everyone in that crowd, but the people that were — that breached the Capitol, no, they were not happy warriors.

Q. And they were not patriotic, freedom-loving citizens either, were they?

A. No.

Q. And that’s true of everybody who breached the Capitol; correct?

A. What’s the definition of a “breach”? Because people went into the Capitol, and they were invited in. The doors were open, and they were invited in.

Q. Did it look like, in that video that you just saw, P-94-C, that any of those individuals had been “invited in”?

A. No.

Q. So all of those people you just saw in P-94-C, you would agree are not patriotic, freedom-loving citizens or happy warriors?

JA823

MR. BLUE: Objection, Your Honor. Calls for speculation.

MR. GRIMSLEY: She was asked [p.64] many questions about the mood of the crowd and who was there and grandmas and grandpas and —

THE COURT: Overruled.

MR. BLUE: Your Honor, if I just may, just to make a record on that in response, please.

She was — she has made very clear that she was at The Willard when these videos were taken and not there when those videos were taken; whereas, when — the previous questions were about a rally and other rallies that she was actually present at.

THE COURT: Overruled. She can answer. If she's not able to answer, then she won't.

BY MR. GRIMSLEY:

Q. So you were back at The Willard. You were watching this on TV. Not these videos in particular, but you were watching on TV what was happening at the Capitol, weren't you?

A. I mean, we had the TVs on, and they started covering it on the news. And, [p.65] I mean, I wasn't sitting there glued to the TV because we didn't — we didn't know what all was going on and how bad it was. And then when they started reporting on that, yes, we were watching.

Q. And you were pretty much glued to the TV once they started reporting on it; right?

A. I mean, I was sitting in a room with a TV, but there were people coming in and out. I mean, our entire team were there. You know, we ordered food. So I wouldn't say

I was glued to the TV, no.



JA824

Q. But to be honest, you were aghast at what you saw happening at the Capitol, weren't you?

A. Yes, I was.

Q. It was an awful, awful attack on the seat of our democracy.

A. Yes.

Q. And you saw in that last set of videos that at 2:24, President Trump sent out a Tweet referring to Mike Pence. Did you see that in the video?

A. Yes.

[P.66]

Q. And you heard the individual who you've acknowledged is not a patriotic, freedom-loving citizen reading that Tweet over a bullhorn to the crowd?

A. Well, I didn't see him read —speaking through a bullhorn. I mean, I don't know if that — if it was added to it. I wasn't there. I didn't see it. But somebody was saying that.

Q. And the individual over the bullhorn, at least from what it looked like on the video, if it wasn't doctored, was reading off Vice President Pence —President Trump's Tweet about Vice President Pence.

MR. BLUE: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. GRIMSLEY:

Q. And because you were at The Willard, you had absolutely no idea how the crowd reacted to hearing or reading President Trump's 2:24 p.m. Tweet about Vice President Pence?

A. No. I mean, I wasn't there, so [p.67] I didn't — I couldn't speak to that.

Q. You have to agree that if somebody sent a Tweet like that, as President of the United States, at 2:24 p.m.,

knowing that the Capitol was under attack, that's a despicable thing to do.

MR. BLUE: Objection, Your Honor. Argumentative.

MR. GRIMSLEY: They went into President Trump's intent.

THE COURT: Overruled.

A. I can't speak to what the President did.

BY MR. GRIMSLEY:

Q. But you would agree that it's a despicable thing to do, to send out a Tweet like that if you know the Capitol is under attack and Vice President Pence is in the Capitol building.

A. Can I see the Tweet again, please?

Q. Yes. It will just take a minute to pull it up.

A. I'm sorry.

Q. No. That's perfectly fine.

[p.68]

MR. GRIMSLEY: Pull up P-94-B, and just pause it.

MR. BLUE: Excuse me. She asked to see the Tweet.

MR. GRIMSLEY: 49-B has the Tweet on it.

MR. BLUE: Oh, okay. I thought you were just going to do a video. Sorry.

MR. GRIMSLEY: No.

BY MR. GRIMSLEY:

Q. So there's the Tweet, Ms. Kremer.

A. Okay.

Q. And you agree that if you knew the Capitol was under attack at 2:24 p.m., as the Commander in Chief — and you also knew that Vice President Pence was in the Capitol — that this is a despicable Tweet to send out.

A. Well, I don't know when the President learned about what was going on at the Capitol, number one. And I don't know if he knew that Pence was there or not.

JA826

He was stating what he believed — I mean, those were his beliefs. Those were [p.69] his beliefs, and he stated it. You may not like it, but that's what he put out.

Q. Now, you personally — we've already said this — believe that the attack on the Capitol that day was a horrifying event. Right?

A. Yes.

MR. GRIMSLEY: And if you could pull up P-267, please.

BY MR. GRIMSLEY:

Q. And this is a Tweet, I think, from you on January 6th at 6:24 p.m.

A. Right.

Q. And you say, "I think today signified the end of the Republican Party."

A. Right.

Q. And you have a photo of the crowd basically heading into the Capitol; right?

A. I have a photo with a sea of people. I don't know that they were heading into the Capitol, but there was a sea of people.

Q. Why did you say, "Today signified the end of the Republican Party"? [p.70]

A. Because actually that day —the RNC had done nothing through this entire time, the two months, eight weeks, whatever it was. The RNC had done nothing. They had not reached out to us for support. They had, you know, not come to speak at our rallies —absolutely nothing — but yet they were fund-raising off of election integrity.

And then that day, which was a big day, Ronna McDaniel — no one was there from the RNC. They were

JA827

on Amelia Island at the Ritz Carlton for their winter retreat.

So people already are mad at the Republican Party. And I said, “You know, I think today signified the end of the Republican Party.”

Q. So your view is it was a bad day for the Republican Party not because there was an attack on the Capitol, but because the RNC wasn't there?

A. I think there are two different things. I mean, I can think — I can think that it was a horrible attack on the Capitol, and the RNC has nothing to do with that.

Q. Now, you, to this day, believe [p.71] that anyone who thinks there was an insurrection on January 6th is an idiot.

A. There was no insurrection.

MR. GRIMSLEY: Pull up P-273, please.

BY MR. GRIMSLEY:

Q. And is this a Tweet from you on January 1st, 2022?

A. Yes.

Q. It's a jitter. I didn't even know that was a thing, so I apologize.

A. Yes.

Q. And you say, “There was no insurrection on January 6th. And if you think there was, you're an idiot. The ‘insurrection narrative’ is nothing more than psychological warfare being perpetrated on the American people by the Deep State to distract from the coup that happened on November 4th, 2020.”

Did you write that?

A. I did write that.

Q. So your view is there was no insurrection on January 6th, but there was a coup on November 4th, 2020, because [p.72] President Trump was not elected President.

JA828

A. There was no insurrection on January 6th. There was a riot on January 6th. There was no insurrection.

Q. Okay. You weren't there?

A. Excuse me?

Q. You were not at the Capitol that day?

A. No.

Q. What about the coup on November 4th, 2020? What are you talking about there?

A. I was talking about, metaphorically, they stole an election. So metaphorically, they were taking out a sitting President.

Q. Who stole the election, exactly?

A. We don't know who stole the election. I mean, it happened in a number of states. And we don't know.

Q. Shadowy figures?

A. I can't speak to that. We don't know.

Q. Do you know how they stole the [p.73] election?

A. I mean, there were a number of things that happened with the election that were inconsistent. Officials breaking the laws. And it would be — you know, different states have different laws. Different things happened in different states.

So you would have to speak specifically to that state. And I'm not an expert on these state laws.

MR. BLUE: Excuse me, Your Honor. I have to object. We're getting way beyond the direct examination now.

MR. GRIMSLEY: This is bias.

THE COURT: Yeah, this goes to credibility.

MR. GRIMSLEY: Absolutely.

THE COURT: He can continue.

BY MR. GRIMSLEY:

Q. You're not an expert on state laws, but courts are; right?

A. I would hope so.

MR. GRIMSLEY: Pull up Finding 164 in Plaintiffs' Exhibit 78. So 78.51.

[p.74]

BY MR. GRIMSLEY:

Q. Do you see a set of findings there?

A. I do. I can't read them.

MR. GRIMSLEY: If you could blow up Finding 164, please.

MR. BLUE: Your Honor, again, this is way beyond the direct. And she was talking about — basically her testimony today was talking about the people that were coming to the rallies and what she was seeing.

We are now getting into all sorts of other areas. And I know you said this is credibility, but I'm not sure how —

THE COURT: Well, she testified at the beginning of her testimony that the reason that they were having all the rallies was because the election had been stolen. So it's not actually beyond the scope of the direct.

Plus, I gave you free reign to ask her about anything you wanted, and he can probe into that both for bias and to show prejudice and credibility.

[p.75]

MR. BLUE: Thank you, Your Honor.

MR. GRIMSLEY: Your Honor, sorry. I'm going to march over to this table to ask this question because, for some reason, it's not showing up on my screen.

BY MR. GRIMSLEY:

Q. You see Finding 164? And this is from the January 6th Committee.

A. Yes.

Q. Its final report. It says, "In total, the Trump campaign and allies of President Trump filed 62 separate

JA830

lawsuits between November 4, 2020, and January 6, 2021, calling into question or seeking to overturn the election results. Out of 62 cases, only one case resulted in a victory for President Trump or his allies, which affected relatively few votes, did not vindicate any underlying claims of fraud, and would not have changed the outcome in Pennsylvania. 30 of the cases were dismissed by a judge after hearing on the merits.

“In every state in which claims [p.76] were brought, one or more judges specifically explained as part of their dismissal orders that they had evaluated the plaintiffs’ allegations or supposed proof of widespread election fraud or other irregularities and found the claims to be entirely unconvincing.”

You have no basis for disputing that finding, do you, ma’am?

A. I’m not a lawyer. I don’t play one on TV. But I will say that a number of cases were thrown out on technicalities, and they never got to the evidence part of the hearing or they weren’t heard. Here in Georgia, there was a lawsuit filed. And when it was finally put on the calendar, it was too late. So it was irrelevant.

Q. How many of the 62 cases referred to in Finding 164 were thrown out on technicalities?

A. I don’t know.

Q. And do you understand that all of these 62 cases had been decided prior to January 6th?

[p.77]

A. If you say so.

But, again, the Georgia case, it wasn’t even heard. So...

4 Q. There were Georgia cases that were heard, though, weren’t there?

A. Excuse me?

Q. There were cases in Georgia that were heard, weren't there?

A. I'm not sure, but I know the main case was not heard.

MR. GRIMSLEY: Pull up Plaintiffs' Exhibit 271, please.

BY MR. GRIMSLEY:

Q. And do you see this is a Tweet that you sent out just last week?

A. Yes.

Q. In fact, I think it would have been Saturday. So less than a week ago; right?

A. Yeah. Yeah, it was right after Pence dropped out of the presidential race.

Q. And you say, "Question on Pence. Do you think he was in on the coup to remove President Trump?"

You wrote that; right?

[p.78]

A. I did write that.

Q. You can't possibly believe that's true.

A. I don't think Pence was ever on Team Trump. You can go back to 2018, and I was in the media raising hell because Vice President — all this Russia collusion story was going on, and he wasn't defending the President. He was part of the campaign, and he wasn't defending him. And I was on CNN saying, "Where in the hell is the Vice President?"

So I don't know what Pence was doing. I have no idea. But on January 6th, we didn't want to overturn an election or overthrow the government. All we wanted was for the evidence to be laid out and heard, where they could test it.

And what we were asking for Mike Pence to do was to delay for ten days so that the states could get their



stuff together and then, you know, have the certification. Just a delay. And he chose not to do that.

Q. Well, do you know whether he, [p.79] in fact, had constitutional authority to do such a thing?

A. I believe he did.

MR. GRIMSLEY: If you could, please pull up —

A. And that's why they —

MR. GRIMSLEY: — Plaintiffs' 252.

THE COURT: I'm sorry, Ms. Kremer. Were you finished with your answer?

BY MR. GRIMSLEY:

Q. And I apologize if you were not.

A. No. Go ahead.

THE COURT: Okay.

BY MR. GRIMSLEY:

Q. This is Plaintiffs' 252. This is a Tweet from you, re-Tweeting something from President Trump, on January 5th, 2021.

And the Donald J. Trump Tweet says, "The Vice President has the power to reject fraudulently chosen electors." And then you re-Tweet, "Just do the right thing @VP."

[p.80]

A. Right.

Q. Your basis for believing that President — or Vice President Pence had the power to reject fraudulently chosen electors was because Donald Trump told you that.

MR. BLUE: Objection. Misstates the exhibit.

THE COURT: She can answer. Overruled.

A. We just wanted Pence — what we were asking for is to delay it for ten days to give the states the time to get stuff together, and then at the certification, lay all the evidence out there.

JA833

If the evidence was there and it couldn't, you know, be certified, then you proceed from there.

BY MR. GRIMSLEY:

Q. No, I understand that's what you're saying, ma'am. I'm asking about why you had the belief that that was within Vice President Pence's authority to do that.

And I'm pointing you to this Tweet, Plaintiffs' 252. And you have Donald J. Trump on January 5, 2021, saying, [p.81] "The Vice President has the power to reject fraudulently chosen electors." And then you re-Tweet that. Correct?

A. I did re-Tweet that, yes.

Q. And you're not a lawyer. The reason you believe that Vice President Pence had the ability to reject fraudulently chosen electors was because President Trump told you that.

A. No, President Trump didn't tell me that. And I don't have the U.S. Constitution in front of me, but I believe that he had the authority to delay the electoral — to delay the certification.

Q. You did your own constitutional analysis?

A. I didn't do my own constitutional analysis. But I read and discussed a number of things with people. And that is why, in the dark of night, with a big omnibus bill, they changed the law so that this wouldn't happen again.

Q. They changed the law to make clear that the Vice President did not have the ability to do what you're suggesting.

[p.82]

A. So you're saying that he didn't have the ability to delay for ten days?

Q. Let's move on.

When you heard the next day, or after that, that attackers at the Capitol were chanting "Hang Mike

JA834

Pence,” did you regret having sent the Tweet that is Plaintiffs’ 252?

A. No.

Q. Now you’ve said that, I think in your interview before the January 6th Committee, that you didn’t like, personally at least, to use language like “Freedom or death,” that type of kind of inflammatory language that you attributed to people like Ali Alexander.

A. Did I say that?

Q. Do you remember testifying about that?

A. Can you show me where I testified about that?

MR. GRIMSLEY: Could you go to page P-241, page — I’m sorry — Exhibit Plaintiffs’ 241, page 27.

[p.83]

BY MR. GRIMSLEY:

Q. So this is a bit of a long — if you could go — starting at line 12. And we don’t have to read it out loud. I’ll let you read that. And let me know when you’re done with that. Line 12 to 25.

A. Okay. Hold on. It’s running off my...  
(Document[s] reviewed.)

Okay. Where do you want me to read to?

Q. From lines 12 to 25.

A. Yes. Okay. I’ve read them.

Q. Okay. Let’s go to the next page and blow up the top.

And if you could — well, so on the next page, you were asked: “Okay. All right. So the type of language he would use, I think he said ‘victory or death,’ that —”

You said: “Yes, that language.”

And you’re talking about Ali Alexander here?

A. Yes.

Q. And the question then is:

[p.84]

JA835

“Yeah, using language like that gave you a concern about, as you said, inciting. And I guess it wasn’t the way you spoke about things, I guess. Is that right?”

And your answer: “Yeah, I’m not — I’m not like that. And, I mean, I guess I would probably be — I’m passionate. I’m very passionate, and, I mean, I can get people fired up. But I’m not going to go out there and say ‘victory or death.’ I mean, that’s just — to me, that’s ridiculous. And you don’t know if somebody is going to take it seriously. Right? Literally. So I’m not a fan of that.”

Did you give that answer in your interview?

A. I did.

Q. And you were concerned that — from the page before, that rhetoric like that could incite people to violence?

A. I don’t think that is helpful. Yes.

Q. And you actually said “inciting” on the page before.

A. Right.

[p.85]

Q. So rhetoric like that can incite people to violence?

A. If that’s what I said.

Q. Now you’d be especially worried if somebody as powerful and as popular as the President of the United States used rhetoric like that, wouldn’t you?

A. I mean, a number of people use rhetoric like that. I personally do not.

Q. But given your concerns that such rhetoric could be viewed as inciting violence, you’d be quite concerned that somebody who had the biggest bullhorn probably in the history of the world saying things like that.

JA836

A. I would never be concerned about President Trump inciting violence. He wouldn't do that. That's not how he is.

Q. Let's go to Plaintiffs' 148, page 49, the Tweet at the bottom.

And you see there on December 26, 2020, "If a Democrat presidential candidate had an election rigged and stolen, with proof of such acts at a level never seen before, the Democrat [p.86] senators would consider it an act of war and fight to the death."

Do you see that?

A. I do.

Q. That's the type of rhetoric that would concern you could incite violence?

A. I mean, he was using that metaphorically there, "fight to the death." Just like we're going to fight for freedom or whatever.

I don't think he was inciting violence there.

Q. Well, he didn't say "freedom." He said "death."

A. Right. And I'm saying, he was saying metaphorically.

But, look, there have been many things that the President of the United States has said that I didn't agree with. So I'm not going to agree with everything he says. But I do not think he would ever incite violence or get his people to do that. That's just not him. That's not the way he is.

Q. Well, you're not inside his [p.87] mind, are you, ma'am?

A. I'm not inside of his mind. But I know him.

Q. And you've not been a part of every conversation that he's been a part of?

A. No.

Q. Now put aside President Trump.

JA837

Do you know that in the lead-up to January 6th, some organizers of the January 6th rally were using language like “victory or death,” the very language you said you wouldn’t use?

A. Can you show me that? Are you saying our people? Who is saying that?

Q. Let’s look at Plaintiffs’ 254, please.

And you see that that is a Tweet from Women for America First from January 2nd, 2021. And it’s re-Tweeting news about Senator Cruz circulating a letter calling for the rejection of electoral college results until a 10-day emergency audit can be conducted to examine unprecedented allegations of voter fraud.

Do you see that?

[p.88]

A. Yes.

Q. Read what your organization said as it re-Tweeted.

A. It says, “Victory or death. William Barret Travis @Ted Cruz.”

MR. GRIMSLEY: No further questions.

THE COURT: Any redirect?

MR. BLUE: Yes, Your Honor.

Could we go back to Exhibit 148, page 49, please. Could you blow up the bottom one, please, so we could read it better.

REDIRECT EXAMINATION

BY MR. BLUE:

Q. Ms. Kremer?

A. Yes.

Q. Isn’t President Trump in this Tweet talking about how Democratic senators would react?

A. Yes.

JA838

Q. And he is not telling his supporters to react this way?

A. Right.

Q. Now you had strong views on the [p.89] 2020 election, about whether it was stolen, don't you?

A. I do.

Q. And you were the organizer of a bunch of rallies leading up to January 6th and on January 6th, weren't you?

A. Yes.

Q. And you did everything in your power to keep all those things peaceful, didn't you?

MR. GRIMSLEY: Objection. Leading.

THE COURT: Sustained.

BY MR. BLUE:

Q. How did you make sure — what did you — how did you want your rallies to go forth? What was your plan for them?

A. We are — all of my rallies — I mean, I've never had any violence, from Tea Party days up through this point. I mean we are peaceful, happy warriors. And that's just not who we are —

Q. Thank you.

A. — so I wanted it to stay that way.

[p.90]

Q. Thank you, ma'am.

MR. BLUE: No more questions.

MR. GRIMSLEY: And one housekeeping matter. We'd like to move to admit Trump's Exhibit 1022, which they had tried to play and then we played in our cross-exam.

MR. BLUE: We won't object.

THE COURT: 1022 is admitted.

(Exhibit 1022 was received into evidence.)

JA839

THE COURT: Did anybody else have any questions for Ms. Kremer?

MS. RASKIN: We have none, Your Honor.

MR. KOTLARCZYK: No, Your Honor. Thank you.

THE COURT: Ms. Kremer, thank you so much for your testimony today. You are released.

THE WITNESS: Thank you, ma'am. Have a good day.

MR. BLUE: So, Your Honor, our next witness is Tom Van Flein. He will be remote as well.

[p.91]

THE COURT: Why don't we — so you can get set up and make sure he's actually there, we'll take our morning break a little bit early and reconvene at 10:55 — 9:55.

MR. BLUE: Great. Thank you very much, Your Honor.

(Recess taken.)

THE COURT: Before we proceed, it's my understanding that there continues to be streaming of these proceedings by individuals or entities who have not received permission from the Court.

I am reading from Chief Justice Directive 2303, put out by the Colorado Supreme Court, which specifically says that "Unless a court grants express permission or unless otherwise governed by this directive, no proceeding may be published, livestreamed, or recorded other than for the official court record."

I have given express permission to every single entity who made a timely request, and that was an actual media entity. So to the extent that those who are watching [p.92] are doing so in violation of this court order, I, again, reiterate that is not — it is prohibited under Colorado law.



JA840

Okay.

MR. BLUE: I was surprised to hear that again. I thought it would have been taken care of.

THE COURT: Yeah, well...

MR. BLUE: Go figure.

Apparently I'm no longer connected to WebEx. Do you see me in the room?

(A discussion was had off the record regarding technology issues.)

MR. BLUE: We're going to try it this way, Your Honor.

THE COURT: Okay.

MR. BLUE: We'll see what happens.

THE COURT: Yeah. I mean, I see them.

MR. BLUE: Yeah, I see him up there. He just won't be able to see me.

THE COURT: Okay. And he actually — [p.93]

MR. BLUE: I guess maybe he can from that camera.

THE COURT: Yeah, if he sees what I see, he can see you, so ...

MR. BLUE: Okay. Great.

THE COURT: Who is the witness?

MR. BLUE: Mr. Van Flein.

THE COURT: Mr. Van Flein, can you hear me?

THE WITNESS: I can hear you, Your Honor.

THE COURT: Okay. And we can hear you as well. Just make sure to speak up. Okay?

THE WITNESS: Yes.

THE COURT: Can you raise your right hand.

TOM VAN FLEIN, having been first duly sworn to state the whole truth, testified as follows:

DIRECT EXAMINATION

BY MR. BLUE:

Q. Thank you for making time for us today, Mr. Van Flein.

A. Absolutely.

[p.94]

Q. And just try to be — stay fairly close to the microphone so the court reporter can hear you, if you don't mind.

A. All right. And I'll try to speak up.

Q. Thank you very much. Thank you, sir.

So, Mr. Van Flein, can you tell us what your job is currently.

A. Currently I am general counsel and chief of staff for Congressman Gosar from Arizona.

Q. And how long have you been in that position?

A. Since approximately 2012.

THE COURT: I'm sorry. You said Congressman Gosar?

THE WITNESS: Congressman Gosar, yes. G-o-s-a-r.

BY MR. BLUE:

Q. G-o-s-a-r, is that what you said?

A. I did. Yes.

Q. Thank you.

On January 6th, were you in [p.95] Washington, D.C.?

A. I was.

Q. And at some point did you go to the Ellipse for the rally that was there?

A. I did. I did get to the rally about 8:30 in the morning.

Q. And why were you going to the rally that day?

A. Well, we had been invited to attend. And it was merely to show support at a rally, basically, and listen to the speakers. There was obviously an electoral count

proceeding later that afternoon, and this rally was, I think, done in anticipation of that, to highlight what was going on in Congress that afternoon.

THE COURT: I'm sorry, Mr. Van Flein. You said "we had been invited." Were you — did you attend with somebody else that you were referring to?

THE WITNESS: I did. I went with Congressman Gosar. And my wife was there as well.

BY MR. BLUE:

Q. And had the rally started when [p.96] you arrived?

A. No. We got there prior to — as people were setting up. We were backstage for a while as the guests and speakers were showing up, and they were doing pre-rally setup still and getting ready. I don't think it started until a little bit after 9:00, and we were there by 8:30.

Q. And how late did you stay?

A. I stayed there until approximately 10:40, I would say.

Q. And so did you see President Trump speak?

A. No. I saw most of the speakers up until him. I maybe missed one prior to him.

Q. Can you describe the rally for us, in terms of what the crowd looked like to you?

A. To me, the crowd looked like a typical, middle-aged...

It was raining and cold that day, but people were in a good mood. People were singing. People were listening to

music. They were broadcasting music over the [p.97] loudspeakers. It was pretty festive.

Q. Thank you.

And did you take any videos that day?

A. I did.

Q. And did you take a video of Vernon Jones speaking?

A. I believe I did. Yes.

Q. Okay.

MR. BLUE: Could we play Exhibit 1082.

MR. SUS: Objection. Your Honor. This is irrelevant for the same reasons previously raised with respect to other speakers at the January 6th rally.

MR. BLUE: Your Honor, we're not presenting the video to show Vernon Jones speaking. It actually shows the crowd as he's speaking. And the point is to see the crowd.

MR. SUS: Same objection, Your Honor.

THE COURT: Well, I'm going to let it in, but, you know, I may revisit the Eastman/Giuliani —  
[p.98]

MR. BLUE: Like I said, this is not about showing the speaker.

THE COURT: I understand.

I've overruled the objection.

BY MR. BLUE:

Q. Just a minute here, Mr. Van Flein. We're working through the technology to get the video up.

A. All right.

(Video played.)

Q. So, Mr. Van Flein, in that video, you panned around to the crowd. Was that a good — was what the crowd looked like in that video a good representation of what you saw when you were there that day?

A. It is a perfect representation of what I saw.

Q. And can you describe, again, for us how you viewed the crowd that you saw in the video?

A. The crowd that I saw and was next to —

JA844

THE COURT: You're going to have to speak up or get closer to the microphone, Mr. Van Flein. Sorry.

[p.99]

THE WITNESS: Okay.

A. The crowd that I saw, that I walked through on my way there and walked through on the way out and was next to, was just that way. They were cheering. They were chanting "USA." Sometimes they broke out in singing or praying. And it was, like I said, more like a festival than a rally. There was no anger.

BY MR. BLUE:

Q. And did you see any hate or anger among the crowd at all?

A. Not when I was there.

Q. And at any point — and you said you left the rally around 10:45. Is that correct? Did I get that time right?

A. Give or take, yeah. Give or take. That's pretty accurate.

Q. And then you walked back to the Capitol; is that correct?

A. We actually got a ride back. We left — we walked over to where the Department of Interior Building was and then got a ride to the Rayburn Building, actually; not the Capitol.

[p.100]

Q. And did you see anything notable on the way back to the Capitol?

A. On the way back, no. Things were still very calm. There were, you know, isolated groups of people walking. I think some going still in the direction of the rally, to attend the rally; some going the opposite direction. But on the streets at that moment, there was nothing.

JA845

Q. And did you see anybody with BLM shirts at any time on that — during that morning?

A. I did. Later on that morning, I walked over to Capitol Hill Starbucks and was walking back. I was on the south side of Independence Avenue. And on the north side, there were a couple gentlemen wearing BLM T-shirts — or shirts, rather. Maybe not T-shirts, but BLM shirts. And they seemed aggravated and loud.

Q. And were they kicking signs or anything along those lines?

A. They did, indeed. And they were chanting loudly. And just seemed visibly agitated. And that was — they [p.101] were — by the time I saw them, we were by the — approximately by the Jefferson Library of Congress, which is right across the street from the Capitol.

Q. Thank you.

MR. BLUE: Your Honor, I have no more questions for this witness. But we would like to move admission of 1082.

THE COURT: Any objection?

MR. SUS: Was 1082 the speech?

MR. BLUE: The video we just saw, yeah.

MR. SUS: On the understanding that this would allow the other speeches from the January 6th rally, Your Honor. We believe that if this speech comes in, then the other speeches should come in as well.

THE COURT: I'm not going to rule on that, but I will offer the — I will admit 1082, not for the truth of what's being said, but for the reaction of the crowd.

(Exhibit 1082 was received into evidence.)

MR. BLUE: Thank you, Your Honor.

[p.102]

CROSS-EXAMINATION

BY MR. SUS:

JA846

Q. Good afternoon, Mr. Van Flein.

A. Good afternoon.

Q. So there were thousands of people at the Ellipse rally; is that fair to say?

A. That is fair to say.

Q. And you had no way of knowing what each one of those thousands of people were doing throughout the day, did you?

A. No.

Q. And you had a limited vantage point. You were only able to tell what the people in your immediate area were doing at any given moment; right?

A. Absolutely.

Q. And about how long were you at the Ellipse rally?

A. Approximately two hours.

Q. And what was the time frame there?

A. Roughly 8:30 to 10:30 or 10:45, in that range.

Q. Okay. And you testified that [p.103] the crowd that you saw at the Ellipse rally, at least from your vantage point, was peaceful. Is that accurate?

A. That is accurate.

Q. Are you aware that the Secret Service confiscated hundreds of weapons from rally attendees that passed through security that day at the Ellipse rally?

A. I'm aware that that was debunked. It is my understanding that that was not true.

Q. Well, let me show you some findings from the January 6th Select Committee.

MR. SUS: Can we pull up Exhibit 78, Finding 107.

BY MR. SUS:

Q. Can you see that on your screen?

A. Yes.

Q. So do you see that the list of confiscated weapons included 242 canisters of pepper spray?

JA847

A. I see that.

Q. Do you see that it includes 269 [p.104] knives or blades?

A. I see that as well.

Q. 18 brass knuckles?

A. I see that.

Q. 18 Tasers?

A. I see that.

Q. 30 batons or blunt instruments?

A. Yes.

Q. 17 miscellaneous items, including scissors, needles, or screwdrivers.

Do you see that?

A. I do.

Q. And were you also aware that the — are you aware that the Secret Service observed members of the crowd wearing tactical gear, such as ballistic helmets, body armor, and military-grade backpacks?

A. That may be. I saw none of that. I will say, as for the

Finding 107 here, the only thing that is concerning are the brass knuckles, which are contraband, and the gas masks. Why anyone would bring a gas mask suggests they had some advanced knowledge that there might be tear [p.105] gas or some chemical to be sprayed.

But as far as pepper spray, a knife, a Taser, these are commonly used by many people, particularly women, in Washington, D.C., for self-defense and whatnot. None of that is illegal or wrong.

Q. So you acknowledge that if people had gas masks there, they probably had some forewarning that there would be tear gas there, deployed that day?

A. Yeah, I would find that concerning. I found it concerning that members of Congress were not warned



JA848

of these findings. Apparently this was known as much as a day or two in advance, and none of —I don't think I would have had Congressman Gosar at a rally if we knew there was a potential for violence.

Q. Now, Mr. Van Flein, you said you didn't see President Trump speaking that day. Did you?

A. Not live. I caught some of it in my office. We had to go to the office. We were preparing for the objections under the Electoral Count Act of 1887. And so we [p.106] still had some work to do for that, which is why we had to get back to the office.

The electoral counting is done alphabetically by state, and Arizona was one of the first ones to be called. So we had to be ready to go by 1 o'clock.

Q. Understood. Okay.

So I want to show you some of the crowd's reactions to President Trump's speech at the Ellipse.

MR. SUS: Could we pull up Exhibit 165, starting at time marker 1:43.

(Video played.)

BY MR. SUS:

Q. Mr. Van Flein, did you see that video?

A. Yes, I just did.

Q. Did you hear members of the crowd yell, "Storm the Capitol," "Invade the Capitol building," "Take the Capitol"?

A. Yes.

It sounds like they've been speaking with Ray Epps. That's exactly what he said.

Q. And did that appear to be a [p.107] video from the Ellipse on January 6?

A. It did. Absolutely.

Q. But you didn't hear anything like that at the Ellipse rally that day when you were there?

A. No.

As you mentioned earlier, there were thousands of people, perhaps a hundred thousand people there. It wouldn't shock me if there's somebody who's a moron who would say something like that in a crowd of a hundred thousand.

But overwhelmingly that crowd was peaceful and patriotic and attending a rally for their President.

Q. So, Mr. Van Flein, do you know Ali Alexander?

A. I've met Ali. Yes, I have.

Q. And do you know that Mr. Alexander founded an organization called Stop the Steal, LLC?

A. I don't know the legal structure, but I'm aware it was Stop the Steal.

Q. You know that Mr. Alexander [p.108] organized Stop the Steal rallies after the 2020 election?

A. Yes, I'm aware of that.

Q. And you told ProPublica in 2021 that you were in regular contact with Mr. Alexander in the period after the 2020 election, didn't you?

A. Yes. He organized probably at least three Stop the Steal rallies in Phoenix, Arizona.

Q. And was that with Representative Gosar?

A. I'm not sure if all of them were with Representative Gosar, but I think Representative Gosar spoke at least once or twice at those rallies, along with other elected officials.

Q. You told ProPublica that, "Ali was very talented and put on some very good rallies on short notice, and that they had a, quote, 'great turnout.'"

Is that right?

A. Yes.

This is about Arizona. He is talented.

[p.109]

JA850

Q. Okay. About how many communications did you have with Mr. Alexander between election day 2020 and January 6th, 2021?

A. I do not know that.

Q. Would you say, if you had to ballpark it, dozens?

A. Are we talking, like, phone calls, text messages, and in-person meetings? All communications?

Q. All of the above.

A. I would say at least a dozen.

Q. At least a dozen.

Are you aware of the violent rhetoric that Mr. Alexander used in Stop the Steal rallies leading up to January 6, 2021?

A. I'm aware of fiery rhetoric by many people who speak — in all political spectrum. And they probably said some fiery rhetoric as well.

Q. Let me give you some examples — did you finish your answer?

A. Yes.

Q. Okay. Let me give you some examples. Did you know that during a Stop the Steal rally outside of the Georgia State [p.110] Capitol in November 2020, Mr. Alexander urged the crowd to, quote, storm the Capitol with him?

A. Yeah, I was not aware of that.

Q. Did you know that in a different Stop the Steal rally in front of the Georgia governor's mansion in November 2020, Mr. Alexander goaded the crowd by saying, "We'll light the whole shit on fire"?

Are you aware of that?

A. No.

Q. Did you know that Mr. Alexander told the crowd at a Stop the Steal rally at the U.S. Capitol on January

JA851

5th, 2021, that, “We must rebel. I’m not even sure we’re going to leave D.C. We might make this Fort Trump”?

A. Where is — can you read that again?

Q. Sure.

The quote is from January 5, 2021. And Alexander said, “We must rebel. I’m not even sure I’m going to leave D.C. We might make this Fort Trump.”

[p.111]

A. Again, I’m not sure I understand what he’s saying there, but — we must make what for Trump?

Q. Did you know that Mr. Alexander was part of a group chat in which he communicated with Proud Boys leader Enrique Tarrío and Oath Keepers leader Stewart Rhodes between election day 2020 and January 6, 2021?

A. I am not part of that chat, so I’m not aware of it.

Q. Did you know that Mr. Alexander was in contact with those two individuals?

A. I was not aware.

Q. Did you know that on the morning of January 6, 2021, at 3:13 a.m., Mr. Alexander Tweeted, “First official day of the rebellion”?

MR. BLUE: Excuse me, Your Honor. This is — I apologize.

We are way beyond the scope. I’ve been kind of letting it go because I understand that we’re trying to kind of allow things to happen, but we are way beyond the scope. And this sounds purely like an [p.112] attempt to get all sorts of statements made by Mr. Alexander in front of you, as opposed to actually asking questions that he’s going to give an answer to that’s going to help the Court.

MR. SUS: Your Honor, if I may. I will connect it up to January 6 with the next question.

JA852

THE COURT: Okay. I'll allow one more question. But I agree, that this is going a bit far afield.

MR. SUS: Okay.

BY MR. SUS:

Q. But, Mr. Van Flein, you were unaware of that Tweet by Mr. Alexander?

A. Yeah. I'm not aware of that. I think you should probably ask him those questions.

Q. You were in communication with Mr. Alexander on January 6th, weren't you?

A. I would say "probably." We had to confirm, you know, where we were going to be and stuff like that.

Q. In fact, you exchanged more than a — I'm sorry. Were you talking?

[p.113]

A. Yeah. I was just going to say, I don't know specifically what we said unless I — unless you have a, you know, printout of a text message or something. But I'm sure I was in contact with him that morning.

MR. SUS: Mr. Hehn, please pull up Exhibit 167.

BY MR. SUS:

Q. So, Mr. Van Flein, I'll represent to you that this is a compilation of text messages to and from Mr. Alexander that was publicly released by the January 6th Select Committee.

And if we zoom in on the bottom corner here, you'll see that there's a GPO seal, showing that this is an authenticated U.S. government record.

Do you see that?

A. I do.

MR. BLUE: Excuse me, Your Honor. I still don't see the connection to the direct exam.

JA853

MR. SUS: This is about Mr. Van Flein's communications on January 6th with an individual who was involved in [p.114] organizing rallies that day.

THE COURT: Yeah, I'm just going to — let me see what happens with this, and then you can move to strike if no connection is made. Okay?

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

BY MR. SUS:

Q. So let's look at the text messages.

And just to note here that some of the text is garbled and the commas appear as apostrophes. So we'll try our best to read it. And, Mr. Van Flein, if you have any trouble, just let me know.

THE COURT: But these aren't texts with Mr. Van Flein, are they?

MR. SUS: They are.

THE COURT: Oh. Okay.

BY MR. SUS:

Q. So if we could go to page 34.

MR. BLUE: Excuse me, Your Honor. I don't see how they are —

THE COURT: I think we're just looking at the first —

[p.115]

MR. BLUE: Oh, okay. His name is coming up now. Okay.

MR. SUS: Yeah.

BY MR. SUS:

Q. So we're on page 34. And there's a text at 5:36 a.m. on January 6th. And Mr. Alexander texted you. "Nonspeaking members of Congress need to be there by 8:30. We don't have a shuttle. I will make sure they have security escorts walking back to the Capitol when it is time for session."

Do you see that?

A. Is that from me?

Q. That is from Mr. Alexander to you.

A. Okay.

Q. And you two were communicating that morning about members of Congress attending the Ellipse rally that day; is that right?

A. That's what this appears here.

I will object that these are my text messages. I was never notified. I was never subpoenaed for this. I was never given a chance to object to the disclosure of this [p.116] text message. I don't know if it's authentic. I'm not authenticating this, because this is the first I've ever seen this.

Q. So, Mr. Van Flein, as I mentioned and as I represented to you, this is authenticated information released by the January 6th Select Committee, and it's been stamped by an official GPO seal. So this is an official government record.

A. What I'm telling you is the communications are not authenticated. I didn't authenticate this. I don't know if this is accurate. I don't care who put a stamp on there.

This information, this text message, if it is authentic, was not obtained lawfully. I was never served with a subpoena and —

Q. Do you deny that —

THE COURT: Mr. Van Flein, we're going to move on because he is allowed to ask you questions about this document. Okay. And we understand that you didn't release these records, but they apparently [p.117] were released by Mr. Alexander.

BY MR. SUS:

Q. So, Mr. Van Flein, going back to what the text message says. You two were communicating here about

JA855

members of Congress attending the Ellipse rally that day. Is that about right?

A. Yes.

Q. So members of Congress needed security escorts because there was a potential for violence on that day; isn't that right?

A. There's a potential for violence every day, when you're an elected official. There are many leftists and others who make threats to members of Congress. And other people make threats to members of Congress.

So having security — we have security briefings regularly. You have to go through security just to go into the Capitol and go into any of the office buildings. So dealing with potential violence is something that all elected officials have to be aware of.

[p.118]

Q. So let's go to page 35, to the text message at 5:37 a.m.

Mr. Alexander wrote to you here, "We want 30 members minimum."

And you responded, "Okay."

Do you see that?

A. I see this.

Q. Okay. And then to the next text, also on page 35, at 5:46 a.m. You wrote to Mr. Alexander, "The objections are getting signed. They want a wet signatures instead of autopen. The doc can be signed quickly."

Do you see that?

A. I do.

MR. BLUE: Objection, Your Honor. Now we're getting into issues about the actual certification of the votes as opposed to the rally, which is what he talked about.



JA856

MR. SUS: So, Your Honor, my understanding was there was a one-touch rule with these witnesses. And we get to ask all questions we want of the witnesses, particularly relating to the events of [p.119] January 6th, while they're on the stand.

We aren't able to recall the witnesses, so we believe that this is fair game. And it's also within the scope of direct because Mr. Van Flein testified about his activities on January 6th and his connection to the rally that day and Representative Gosar's activities that day.

THE COURT: He also specifically testified that he had to get back to the office to work on exactly what these text messages are about.

So I'm going to overrule the objection. And you can address any of these things on redirect. Okay?

MR. BLUE: Thank you, Your Honor.

BY MR. SUS:

Q. So, again, you were referring in this text message to Representative Gosar's objections to the counting of Arizona's electoral college votes that day.

Is that right?

A. This is correct.

Q. And let's go to page 35 again, [p.120] at 5:48 a.m. on January 6th.

Mr. Alexander texted you, "Can we send an e-mail to the entire House Freedom Caucus if they all need to be at the Ellipse? POTUS wants force."

Do you see that?

A. I see that.

Q. And you responded, "Will ask now."

Do you see that?

A. Yes, I see this.

Q. So, Mr. Van Flein, is it fair to say you were coordinating with Ali Alexander on January 6?

A. I was in communication with Ali, yep.

Q. And these text messages show that he asked you to do things and then you did them.

A. Well, I'm not sure if that e-mail ever went out. I said I would ask. I might have contacted the executive director for the Freedom Caucus; I may not have. But I don't know if that's a fair statement.

The text says, "Will ask now." [p.121] Whether I did ask now, I'm not sure I did.

Q. So you may have just lied to him. Is that what you're suggesting?

A. No. What I'm saying is there's a lot going on that day, and I can't always get to everything that people want me to get to.

Q. So, Mr. Van Flein, I want to skip past the rally and talk about when you were at the Capitol building. You started texting with Mr. Alexander again, didn't you?

MR. BLUE: I renew our objection, Your Honor. We are way beyond direct. Just because he happened to go to the — just because he mentioned that he was going back to the Capitol for the counting of the electoral votes, that wasn't the substance of the testimony.

The substance of his testimony was about what happened at the Capitol — I mean at the Ellipse and the rally. And now we are way beyond that.

THE COURT: Are you going — are you planning on asking him questions about the siege of the Capitol?

[p.122]

MR. SUS: Both the siege and the electoral vote objections, which he had already testified about.

And, Your Honor, we would submit that his testimony about the knowledge of violence that day and the attack that day is relevant and within the scope of direct.

And, in fairness, we have no ability to recall this witness and ask him these questions.

MR. BLUE: Your Honor, first of all, let me address the second piece first. They rested their case and didn't call him. And if they had called him, then the one-touch rule would have made it for us to talk to him at that point. It doesn't give them the opportunity to come now.

The second piece is that, again, this was all about what happened at the Ellipse. We're talking about the rally that was coordinated by Amy Kremer and what happened there. And we're not talking —never once did we raise a question about the attack on the Capitol later on that day.

And so he's trying to get in [p.123] all sorts of additional information that didn't even — doesn't even touch his direct testimony.

MR. SUS: So, Your Honor, as a practical matter —

THE COURT: Well, first of all, was he on your witness list?

MR. SUS: He was not on our witness list, no.

THE COURT: Okay. So you weren't going to call him. So the one-touch rule doesn't have any application.

And I'm going to apply the —they gave a limited — very, very limited direct of Mr. Van Flein. You may ask him questions about the electoral count because he, you know, has — he has opened the door when he testified that he had to rush back to go deal with those issues. But he's not going to talk about whatever his reaction may or may not have been to the siege of the Capitol.

MR. SUS: Understood, Your Honor.

[p.124]

BY MR. SUS:

JA859

Q. So I want to talk about Representative Gosar's objections that day to the counting of electoral college votes.

Representative Gosar's objection was based on concerns of alleged voter fraud; is that right?

A. I would say "election irregularities."

Q. You supported and worked on that objection, didn't you?

A. Yes, I did.

Q. And you did so because you think the 2020 election was stolen from President Trump.

A. No, that is not true.

Q. You don't think the election was stolen from President Trump?

A. No, I don't know if that's true. All I — what I worked on was there were reports from elected officials in Arizona, from county and state legislators, indicating that there were multiple irregularities. I don't know if it resulted in stealing the election from Trump.

[p.125]

Q. You're aware that President Trump has claimed that the election was stolen from him, aren't you?

A. I am aware. Yeah, I am aware of that.

Q. So you disagree with President Trump?

A. No. He has his opinion.

MR. BLUE: Objection, Your Honor. Again, we're — we started talking about electoral votes and now we're talking about what President Trump thinks.

THE COURT: I'm going to overrule it. But let's move on, please.

BY MR. SUS:

Q. Last question, though, on this: Representative Gosar won reelection on the same ballot as the presidential ballot for 2020; isn't that right?

JA860

MR. BLUE: Objection, Your Honor. Now we're talking about Representative Gosar's reelection.

MR. SUS: So, Your Honor, this is about the —

THE COURT: He just testified [p.126] that there was voting irregularities, and that's why they were objecting on the Floor of Congress. And his boss was elected in the exact same election. And he can ask him whether he thought that that was also —there was the — whether there was irregularities in that election as well.

MR. SUS: Thank you.

BY MR. SUS:

Q. Mr. Van Flein, do you need me to repeat the question?

A. I believe you asked if Congressman Gosar was elected in the 2020 election as well. And he was.

Q. And did Representative Gosar object to his own reelection on the basis of alleged voter irregularities?

A. No. He did not have any concerns that his election was contaminated with any election irregularities. Most of his voting counties at that time — at that time it was Yavapai, Mohave County, and Yuma County and La Paz County — none of those counties, even in the presidential election, concerns were implicated. It was Maricopa [p.127] County and Pima County where the elected officials in Arizona had the most concern.

In addition, Congressman Gosar got re-elected, I think, by 20-some points in that election, maybe 25 points. It was not close at all; whereas in a close race, any election irregularities can be outcome—determinative.

And in the case of Mr. Biden and President Trump or President Biden and Mr. Trump — however you want to look at that — the election is far closer.

And if there was election irregularity within a 15,000-vote spread out of 2 or 3 million votes cast, it's a lot easier — or a lot more concerning. But when you win by 20 points, it's not as urgent or concerning.

Q. Understood.

President Trump carried the state of Arizona in 2016; isn't that right?

A. To my knowledge, yeah.

Q. And did Representative Gosar object to President Trump's victory in that state in 2016?

[p.128]

MR. BLUE: Objection, Your Honor.

THE COURT: I'm going to sustain the objection. Let's move on, please.

MR. SUS: That was my final question. Thank you, Your Honor.

THE COURT: Any redirect?

MR. BLUE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. BLUE:

Q. Mr. Van Flein, counsel asked you about the — one of the January 6th Committee findings. Do you remember that?

A. With the Exhibit 107?

Q. Was that Exhibit 107?

THE COURT: I think it was Exhibit 78, Finding 107.

MR. BLUE: Exhibit 78, Finding 107.

BY MR. BLUE:

Q. Do you think the January 6th Committee's findings are credible?

A. No. The work that I saw was very incomplete and

—

[p.129]

THE COURT: Counsel —

BY MR. BLUE:

Q. Hold on.

You're going to have to get closer and speak up, if we're going to hear you.

A. The answer to that question is: I don't think the January 6th Committee was initiating an investigation in good faith. It started with a preordained conclusion, which is not a good way to start an investigation. And they selected evidence that they wanted, in my opinion.

Q. And when you say "they selected evidence that they wanted," why is that a problem?

A. Well, a fair investigation, you would want to consider all evidence and not discard or not even bother to investigate evidence that could run counter to the theory that you started with. Actually, a real investigation wouldn't even start with a theory. It would just start with gathering facts and see where they went.

They started with a conclusion [p.130] and looked for evidence to support that conclusion. That's my fundamental disagreement with how that committee did its job.

Q. Thank you very much, Your Honor — Mr. Van Flein.

MR. BLUE: No more questions, Your Honor.

So I think he's done?

THE COURT: I don't know. I mean, you — if he — you really opened up a whole new thing with this — what his opinions on the January 6th Committee. So if they want to ask him about what the foundation is for those opinions, I'm going to let them.

MR. BLUE: Okay.

THE COURT: I don't know if they want to or not.

MR. SUS: Briefly, Your Honor.

RE CROSS-EXAMINATION

BY MR. SUS:

Q. Mr. Van Flein, what visibility did you have into the process of the January 6th Select Committee?

A. Say that again?

[p.131]

Q. What visibility did you have into the process of the January 6th Select Committee?

A. The visibility I had was what was ever made public. I was not a member of that committee or a member of staff, so I'm only aware of what was made public.

Q. So you have no personal knowledge of the inner workings of that committee?

A. The inner workings? No, I was not on the committee or the committee staff.

Q. Thank you.

A. I will say, for example, that they missed the FBI report that had already gone over this issue —

THE COURT: Mr. Van Flein —

MR. SUS: Your Honor, I would move to strike that answer.

THE STENOGRAPHER: I can't hear him anyway, so...

THE COURT: Mr. Van Flein, we can't hear you. And there wasn't a question pending.

THE WITNESS: Okay. Sorry, [p.132] Your Honor.

THE COURT: Now you want to ask another question? MR. BLUE: Well, I was going to follow up on what he wanted to talk about.

THE COURT: Fine. As long as it's personal knowledge. I'm not really interested in hearing about rumor.

FURTHER EXAMINATION

BY MR. BLUE:



JA864

Q. Mr. Van Flein, you were starting to talk about an FBI report; is that correct?

A. Correct.

And I was mentioning the FBI report because, to me, the FBI had already investigated whether there was any coordination between President Trump and any of the rally organizers, in terms of planning violence or promoting violence or even expecting violence. And they issued a report — Reuters did an exclusive story —

MR. SUS: Objection, Your Honor. This has nothing to do with the January 6th report, and it's completely [p.133] beyond the scope of everything we've discussed today.

THE COURT: It's also hearsay. He's talking about some report that I have never seen and nobody has presented as evidence in this case.

THE WITNESS: It's an August 20, 2021, story by Reuters. They have the report from the FBI saying there's no evidence that the Capitol attack was coordinated by anybody; that it was more or less a spontaneous situation on the ground.

And the January — my point is that the committee never even references this report and findings by the top law enforcement agency in the United States. That was intended to determine the very issue this Court is looking at right now, and that is whether President Trump or some of his people coordinated the violence. And the FBI said no.

That's an August 20, 2021, report and story by Reuters called "Exclusive: FBI finds scant evidence United States Capitol attack was [p.134] coordinated."

BY MR. BLUE:

Q. And so because —

THE COURT: I'm striking all of that testimony.

JA865

If the Intervenors want to put on this evidence of an FBI report, I'm more than happy to consider it, but I'm not going to hear testimony from this gentleman about what some newspaper article said — I've excluded all newspaper articles in this case — and about a report that isn't before the Court.

So I'm striking all that testimony. I'm more than happy to look at the report itself, if the Intervenors want to put that on as evidence.

MR. BLUE: All right. Thank you, Your Honor.

And we have no more questions.

THE COURT: Okay. Anything from the Secretary of State?

MR. KOTLARCZYK: Nothing, Your Honor.

THE COURT: Anything from the [p.135] Colorado Republican Party?

MS. RASKIN: No, Your Honor.

THE COURT: Thank you so much for your testimony, Mr. Van Flein. You are released.

THE WITNESS: Thank you.

MR. BLUE: Your Honor, Mr. Gessler is going to call Mr. Bjorklund here. Joanna Bila is keying up the exhibits for him right now. It may just take a minute or two.

THE COURT: Okay. And am I correct that this will be the last witness this morning?

MR. BLUE: Yes, ma'am.

THE COURT: So it sounds like we'll have a longer break before Congressman Buck testifies?

MR. BLUE: Yeah. He's planning to testify at 1 o'clock.

THE COURT: Okay.

MR. GESSLER: Your Honor, if I may step out to get Mr. Bjorklund.

THE COURT: Oh. He's here. Great. Thank you.  
[p.136]

Mr. Bjorklund, will you please raise your right hand.

TOM BJORKLUND, having been first duly sworn to state the whole truth, testified as follows:

DIRECT EXAMINATION

BY MR. GESSLER:

Q. Good morning, Mr. Bjorklund.

A. Good morning.

Q. Could you please state and spell your name for the record, please.

A. Yes. My name is Tom Bjorklund. And that's B-j-o-r-k-l-u-n-d. Tom spelled like T-o-m.

Q. Okay. Thank you.

And do you live here in Colorado?

A. Forgive me. I'm going to turn this off. I apologize.

Q. Sure.

A. Yes, I do.

Q. Okay. And what do you — what job, or your advocacy, what position do you hold?

A. I'm the owner of Tactical Data [p.137] Solutions, a data company, and a small investment company called Rocking Horse Winners. And I serve as the State Party —

Republican Party Treasurer.

Q. Are you here today on behalf of the Republican Party?

A. No, I'm not here on behalf of the Republican Party.

Q. Okay. Have you had any conversations about the substance of your testimony with Mr. Dave Williams, who is the chair of the Republican Party?

A. No, we have not.

JA867

Q. Okay. I'm going to take you back to the events of January 6th, 2021, and a few days leading up to that.

When did you first learn about a rally being held in Washington, D.C., on January 6th?

A. It was probably mid-December, I heard about it from my brother.

Q. Okay. And did you — and what — and did your brother express an opinion about the January 6th rally?

A. Yeah. Well, he just said that [p.138] there was going to be a big rally for Donald Trump, and he asked if I'd like to meet him up there. He's from Minnesota.

And so I told him I'd think about it, and decided to go.

Q. Okay. And when did you decide that you wanted to go?

A. Well, as soon as he mentioned it, I wanted to go, but it was just a matter of logistics, trying to figure out if I could make it work.

THE COURT: Mr. Bjorklund, would you just move a little bit closer to the mic.

THE WITNESS: Yes. Thank you.

THE COURT: Great. Thank you.

BY MR. GESSLER:

Q. Had you been to a rally involving President Trump before?

A. No, not a campaign rally. I went to the Western Conservative Summit, and he was speaking there.

Q. Okay. And had your brother, to your knowledge, been to a rally involving President Trump?

[p.139]

A. Not that I know of.

Q. Okay. And did your brother express an opinion as to why he wanted to go?

JA868

A. Yeah. He's a big Trump supporter, and he just wanted to go and support the President.

Q. Okay. And — so, I'm sorry, when did you decide you wanted to go, roughly?

A. Well, I decided I wanted to go as soon as he asked me, but I just didn't know if I could go. So about a week before is when I finally decided that, hey, I'm going to commit to going.

Q. A week before what?

A. A week before the 6th. So, yeah, like late December. Yeah.

Q. Okay. And why did you want to go?

A. My main reason was I wanted to see my brother.

Q. Okay. And —

A. And go camping.

Q. I'm sorry?

A. And go camping.

[p.140]

Q. And go camping as well.

A. Yeah.

Q. Okay. So when you're thinking of leaving, what did you do to prepare to —before you left?

A. Just, you know, got the camping trailer ready. And I contacted — well, some people said they were going up there, and I contacted them. Decided I'd like to maybe have somebody to ride along with, and asked them if they knew anybody that wanted a ride.

Q. So you drove up there; is that correct?

A. Yes, we drove up.

Q. Did you wind up driving with anyone?

A. Yeah. There was a gentleman named — introduced me to named Travis — and I don't remember his last name, but he needed a ride. And so I told him I would include him in.

Q. Okay. Did you have any conversations with any of your — did you tell your family members that you were leaving?

[p.141]

Did you have any conversations with them?

A. Yeah. I told —

MR. SUS: Objection. Hearsay.

THE COURT: It is hearsay. I'm not sure what the point is, but — or if it's offered for that. Why don't you — let's —

MR. GESSLER: I think we need to hear his answer before an objection is proper, Your Honor.

THE COURT: Not necessarily. It's asking him what somebody — what he told other people out of court. But I'm going to — I'll allow it.

MR. GESSLER: Okay.

A. Yeah. I told my family that I was going up to go to Trump's speech on January 6. And I told — I think I posted it on Facebook, that I was going to go up there.

BY MR. GESSLER:

Q. Okay. And did you have any conversations with your son about whether you were heading to Washington, D.C.?

A. Yes. I told my son I was going.

[p.142]

Q. And what was the substance of those conversations?

A. The main thing, he was concerned about my safety. You know, he was just worried about me.

Q. And why — were you concerned about your safety?

A. Definitely.

Q. And why is that?

JA870

A. Well, I had seen videos of, you know, Beverly [sic] Betty, or whatever her name is. She's an activist for pro-life causes. And somebody in Antifa stabbed her in the back and tried to kill her.

And then I saw a Portland riot. And they followed some Trump supporters and they shot them in the back. Killed him. I saw Rand Paul get attacked by Antifa, Black Lives Matter.

MR. SUS: Objection, Your Honor. Relevance.

THE COURT: What is the relevance?

MR. GESSLER: It goes to his state of mind and the motivation for some [p.143] actions that he took in going up to January 6th.

THE COURT: And why is his state of mind relevant?

MR. GESSLER: If you give me a few more questions, Your Honor, I think I'll tie it up. And if opposing counsel seeks to strike, we can deal with it then, Your Honor.

THE COURT: I'll let you proceed, Mr. Gessler.

MR. GESSLER: Okay.

BY MR. GESSLER:

Q. So based on the concerns you had, did you or your son — did you take any action for preparations before you left?

A. Yeah. My son offered me —it's called a plate carrier. It's a body armor.

Q. Okay.

A. And he wanted me to wear it in case I got shot by Antifa or stabbed or something.

Q. Okay. And what's your son's occupation?

A. He works for the Lone Tree [p.144] Police Department.

Q. Okay. And — okay. Did you, in fact, take that — you called it a plate carrier or body armor?

JA871

A. Yeah.

Q. Did you take that or load it in your vehicle?

A. Yeah, I took it with me. And I put it in the back of the truck, in the backseat.

Q. Okay. How long did it take you to get to Washington, D.C.?

A. Oh, we drove straight through. I left the Denver area, and I picked up Travis, and then we drove straight through. It was about 24 hours or 25 hours, something like that.

Q. Okay. And when you got to D.C., where did you stay?

A. I stayed at a campground maybe 20 minutes from the D.C. area.

Q. Okay. I'm going to play for you a video.

MR. GESSLER: Could you do 1000, please.

[p.145]

BY MR. GESSLER:

Q. I want you to take a look at this video, Mr. Bjorklund.

A. Okay.

(Video played.)

Q. Did you take that video?

A. I did.

Q. So I will submit to you that it may seem like a boring video, but I'm going to ask you: Why did you take this video? What's going on in there?

A. I just saw all these giant buses with Donald Trump stuff. I was actually concerned about the campground, and so I felt kind of relieved that my — the people right behind our camper was a bunch of Trump voters and supporters or whatever. People — old people like her.



JA872

Q. Is this a video of the campground where you stayed?

A. Yes, it is.

Q. Okay. And did you meet any of the people in the campground?

A. Yeah. We went over and said hello. And my brother went over right away [p.146] when he saw their buses, and he met the owner of the buses, and they invited us to a barbecue.

Q. Okay. And can you describe the people that you met.

A. Average age, about 60-plus; and just very friendly. Like tourists. And I guess they paid this gentleman that owned these buses to come out and see Donald Trump speak.

And so we had a big barbecue. Very friendly. And, yeah, it was a good — kind of a good time.

Q. Okay.

A. And we were hungry.

MR. GESSLER: Your Honor, I'd move to admit Exhibit 1000, please.

MR. SUS: No objection.

THE COURT: 1000 is admitted.

(Exhibit 1000 was received into evidence.)

BY MR. GESSLER:

Q. Okay. And can you describe, sir, the — you said there's a big barbecue. Can you describe the atmosphere?

[p.147]

A. Yeah. It was just — we were just having fun. It was a big party. And he had gazillions of burgers. And I actually helped flip some burgers for him while he ran around, the owner of the buses.

JA873

We talked about his business model and stuff like that, which is something I'm always interested in.

Q. And to your knowledge, why — I mean, why were all these people there in Trump buses?

MR. SUS: Objection, Your Honor. Calling for speculation and hearsay.

THE COURT: If he has an understanding as to why people were there, he can testify as to that.

A. Yeah, there was a — it was a tour bus caravan, and they were all just there to see Donald Trump's speech. And that was pretty much it.

BY MR. GESSLER:

Q. Okay. So is it fair to say you slept overnight, then, at that location that you videoed?

[p.148]

A. Yeah. Behind that is my camping trailer. Yeah.

Q. Okay. And what day was that video taken?

A. That was on January the 5th.

Q. Okay. So tell me about the next morning of January 6. I'm assuming at some point you woke up.

A. (Nodded head up and down.)

Q. And then what did you do at that point?

A. Yeah, I got up. And we just took all of our gear and equipment and other things and then I locked it in the back of the truck, because my camper is a popup, like a tent, and so I didn't feel like things were secure there, so I just crammed everything into the truck and locked it up. And then we took my brother's car to the D.C. area.

Q. Okay. Let me back up just one second.

So when you say you took your brother's car, did you, at some point while you're traveling from Denver to Washington, D.C., meet up with your brother?

[p.149]

JA874

A. Yeah. He actually met me at the campground. I set up the tent and everything, and then they arrived after I did all the work.

Q. So you didn't travel with him. He met you there.

A. Yeah.

Q. Okay. So the body armor that you had brought with you, what did you do with that?

A. I left it in the truck.

Q. And why did you leave it in the truck?

A. It was kind of heavy. And it's just — I just felt like it wasn't going to add to any type of warmth, which was my main concern. It was pretty cold that morning.

And I just felt like I wasn't there to cause trouble. And I thought if I wore body armor, it would maybe make me a target. And so I decided to leave it.

Q. Okay. And then when — so you got in your brother's car. What did you all — was there anyone with you, you and your brother?

[p.150]

A. Yeah. My brother brought a friend — or I guess somebody who worked for him and who was a huge Trump supporter. And his name was Scott. And —

Q. I'm sorry. What was his name?

A. I think it was Scott. Yeah. Sorry.

And, yeah, we just got in the car. We actually did some repairs to the trailer because it kind of bounced around. But, anyway, they did that. They're in construction, so they helped me fix some stuff. And then we got in the car and left.

Q. Okay. And where did you go?

A. We drove directly to the Capitol. And we found a small parking lot right by the — it's called The Tides Pond or The Tides Pool, I think is what it's called. And we parked right there.

JA875

There was maybe a 25-car lot. It wasn't very big. And it was just lined up. And it was right across — directly across from the Washington Monument — the big, tall Washington Monument.

Q. Had you been to D.C. before, [p.151] prior to this?

A. Never been to D.C., no. That was the first and only time.

Q. Okay. And then where did you go after you parked?

A. We tried to connect with some people that I had gotten in touch with. And they were all over the map and it was hard to find them, so we just hung out by the big Washington Monument.

Q. Okay. And when you say “we hung out,” who was “we”?

A. Just my brother, his friend Scott, and myself.

Q. Okay.

A. I'm sorry. It was Steve. I apologize. It was Steve.

Q. Okay. And why did you go to the Washington Monument area?

A. I guess just that big, tall thing was calling to us.

So we hung out there. And there was a lot of people there. And it looked like the Ellipse area was really packed, and we just — I don't really like [p.152] big crowds so I didn't — we just hung out by the Monument.

Q. So is it fair to say you were there to listen to President Trump's speech?

A. Oh, yeah. We were there definitely to listen to speeches, yeah.

Q. Okay. And from your position near the Washington Monument, did you think that you were able to listen to the speech?

JA876

A. Yeah. They had big microphones — speakers set up so we could hear what was going on. And then we listened to some of the speeches and —

Q. Okay.

MR. GESSLER: Can you play Exhibit 1001, please.

(Video played.)

BY MR. GESSLER:

Q. Did you take that video?

A. I did.

Q. Okay. And how did you take that video?

A. With my iPhone and — yeah, I just panned around. I'm obviously not a very good photographer.

[p.153]

Q. And is that sort of where you were standing to listen to the speeches?

A. Yeah. That's exactly where we were.

Q. Okay. And do you know who was speaking in the background there?

A. I think that was Donald Trump Jr., I'm pretty sure —

Q. Okay. Yeah.

A. — if I remember.

MR. GESSLER: And I'd like to move to admit Exhibit 1001, please, Your Honor.

MR. SUS: No objection.

THE COURT: 1001 is admitted.

(Exhibit 1001 was received into evidence.)

BY MR. GESSLER:

Q. And can you describe what the crowd was like or the people in the crowd.

A. Very friendly. There were —it was diverse. There was a lot — there was actually a big line of people that said Asians for Trump, and they were really super nice. And, you know, we were talking to [p.154] them.

JA877

Everybody was there having a good time, listening to the speeches.

Q. Okay. What was the temperature like outside?

A. It was freezing cold. It was windy. And, yeah, it was very cold.

Q. Okay. Can you give us a sense of how big the crowd was there at the Ellipse?

A. I'm guessing, like, if you looked at the whole crowd, maybe 350,000.

Q. Okay. Let's look at Exhibit 1002, please.

(Video played.)

Q. Did you take that video?

A. I did.

Q. So what's going on in there?

A. Well, we — all these motorcycles pulled up, and I thought it was pretty cool, so I took out my camera and started filming. They're on Harleys.

And then the horses came up. And I believe that was Park Police. And my brother was saying, "God bless you guys." And there was a woman there; you can hear her [p.155] in the background. And people were just kind of, you know —

THE COURT: Mr. Bjorklund, would you just mind orienting for me where you were versus where the speeches were happening?

I know you said you could hear them on speakers, but, like, how far were you from where the action was happening?

THE WITNESS: Yeah. The speeches were kind of boring, and so we just decided to walk across the street from the Washington Monument. And we went over to —

JA878

I think there's a World War II museum. There was a monument there, and we wanted to see that. So we just walked over there to take a look.

And then that's where the Park Police were. So it was very close to where we were actually at. You could see the monument right there where we had been standing.

THE COURT: And how far was the monument where you were in the original video from where the speeches were taking place?

[p.156]

THE WITNESS: It was probably a hundred yards or couple hundred yards, maybe. A couple football fields.

THE COURT: So a few football fields?

THE WITNESS: Yeah.

THE COURT: Thank you. Sorry. I'm just not oriented.

MR. GESSLER: I was planning on going there next.

THE COURT: Sorry.

MR. GESSLER: No. No. No. This is fine. I want to make sure: Do you have a good understanding, Your Honor?

THE COURT: I'm highjacking your direct.

MR. GESSLER: He's an open book — Mr. Bjorklund.

But I want to make sure: Do you have a sense of comfort having a sense of where he was?

THE COURT: And was the crowd continuous from the Monument to where the speeches were taking place?

THE WITNESS: Yeah. It was [p.157] very packed. It was less so by the Monument. I think most of the crowd wanted to be closer to Donald Trump. And, you know, I wanted to be more away from the crowd.

THE COURT: Go ahead. Sorry, Mr. Gessler.

MR. GESSLER: Oh, no, problem, Your Honor.

JA879

Your Honor, I'd move to admit Exhibit 1002.

MR. SUS: No objection.

THE COURT: 1002 is admitted.

(Exhibit 1002 was received into evidence.)

BY MR. GESSLER:

Q. Okay. And then after sort of looking at the — I'll call it motorcade and the horses, did you move back to listen to the speech?

A. Yeah. We went back — we wanted to hear Donald Trump, so — and there were, like, a whole string of people before. So we went back across the street because we wanted to hear Donald Trump's speech.

MR. GESSLER: Okay. Can you [p.158] play Exhibit 1003, please.

(Video played.)

BY MR. GESSLER:

Q. So is that you in the video?

A. Yeah. That's a selfie.

Q. So it looks like — as though you have a hoodie on and a cap. Why are you wearing the hoodie like that?

A. Actually, I didn't have enough layers. And so we found a vendor, and I bought that hoodie at the — at one of the vendor tables. It was really cold, so I put that on.

Q. Okay. And was that a — who was speaking?

A. That was Donald Trump speaking — or Senior.

Q. I'm sorry?

A. Senior. The President.

Q. Okay. And how would you describe the crowd and the crowd's reaction?

A. It was entertaining. We were laughing because he was saying some really funny things. So we were just cracking up. It was hard to hear that stuff that he was — [p.159] throughout the speech saying things that we



JA880

were — just made us laugh. We were just having fun, hanging out.

Q. When you say “we were having fun, hanging out,” who are you referring to when you say that?

A. Well, my brother, Steve. And we just talked to all the people around. Everybody was pretty happy and just being there, listening to the speech.

Q. Was there sort of laughter in addition to yourselves?

Were other people sort of laughing at what —

A. Definitely.

Q. — some of what President Trump said?

A. Yeah. Definitely. It was very entertaining.

Q. Okay.

MR. GESSLER: I'd move to admit Exhibit 1003, Your Honor.

MR. SUS: No objection.

THE COURT: 1003 is admitted.

(Exhibit 1003 was received [p.160] into evidence.)

BY MR. GESSLER:

Q. Okay. Now, did you listen to the entire speech?

A. No. Near the end — he said that we were going to go down to the Capitol. And he said, you know, he wanted us to go down to the Capitol and, you know, peacefully make our voices heard, or something to that effect.

And then we decided, well, let's go find a bathroom. And that was pretty much our main mission at that point.

Q. And did you succeed in that mission?

A. Yeah. We found a public restroom, and then we went back to the car and — so, yeah.

Q. So you said you looked for a bathroom and then went back to the car. How long did that take, roughly?

JA881

A. Probably 15, 20 minutes, 30 minutes, something like that.

Q. Okay. Okay. And from the car, did you all make a decision to, in fact, go [p.161] to the Capitol?

A. Yeah. We went to the — we went to the car. My brother was complaining that his knee was hurting, and so he said he'd like to — he wanted to go. And I was kind of of the same opinion, like we can —you know, we've seen the speech and let's take off. It's really cold.

And so my brother — he heated up the car, and then Steve said he really wanted to see the Trump speech down at the Capitol. And he was really adamant. He said he didn't drive all the way from Minnesota to miss out on Trump's, you know, speeches.

So then my brother said he would stay in the car, smoke cigarettes; and he said he would wait around for us, and he understood if we wanted to go.

So I just went along with Steve, and we started walking towards the Capitol.

Q. Okay. Let's go to Exhibit 1004.

I'm sorry. This is a photo, Exhibit 1004. I may have to ask you to back [p.162] up in your testimony.

What's that a photo of?

A. Just the crowd looking at the — I think they're headed — they're looking at the Ellipse. And I just wanted to kind of get a sense of the crowd. This was after we, I think, came back from the bathroom. So, yeah.

Q. Okay. Did you take this photo?

A. I did.

Q. Okay.

MR. GESSLER: I'd like to move to admit this Exhibit 1004.

MR. SUS: No objection.

JA882

THE COURT: 1004 is admitted.

(Exhibit 1004 was received into evidence.)

THE COURT: You said this was at the Ellipse still?

THE WITNESS: Yeah. I think it's looking towards the Ellipse, I believe. Yeah.

THE COURT: From the Washington Monument?

THE WITNESS: Yes.

[p.163]

BY MR. GESSLER:

Q. Let me ask you again: Was this during the speech or was this after you had gone to the car and come back?

A. I believe it was after. I think that's — yeah. Oh, actually it might have been during the speech because there was still a lot of people there.

Q. Okay. Can you orient us? Was this before you started walking to the Capitol?

A. Yes.

Q. Okay. Let's go to Exhibit 1005, please. This is another photo. Did you take this photo?

A. Yeah. These were taken insuccession, so...

Q. Okay. So is it fair to say this is another photo of the crowd?

A. Yeah.

Q. Looking towards the Ellipse?

A. Yeah.

Q. Okay.

MR. GESSLER: I'd move to admit this photo, Your Honor.

[p.164]

MR. SUS: No objection.

THE COURT: 1005 is admitted.

(Exhibit 1005 was received into evidence.)

BY MR. GESSLER:

Q. And finally Exhibit 1006, please. Okay.

JA883

So this is a different type of photo than what we just saw. Did you take this photo?

A. Yeah, I did.

Q. And what's going on? Describe how you took the — you know, what was going on when you took the photo? And what's in the photo, please?

A. I took a picture of the Capitol and just — there was some people going down that direction, so I snapped a picture. I thought it was — I just wanted to get a picture of the Capitol.

Q. Okay. And when did you take this photo in relation to the other stuff you've talked about?

A. I believe that was right before we started heading down there.

[p.165]

Q. Okay. So you've already been to the car at this point; is that correct?

A. Yeah. Yeah.

Q. And you're starting to walk down to the Capitol?

A. Uh-huh.

Q. Okay. And this is what you saw?

A. Yep.

Q. Okay.

MR. GESSLER: Your Honor, I'd move to admit Exhibit 1006, please.

MR. SUS: No objection.

THE COURT: 1006 is admitted.

(Exhibit 1006 was received into evidence.)

BY MR. GESSLER:

Q. Okay. Let's look at Exhibit 1007, please.

(Video played.)

Q. Okay. Did you take that video?

A. Yes, I did.

JA884

Q. And when did you take that video in relation to the last photo we saw?

A. That was immediately following [p.166] that last photo. And we just were heading down to the Capitol building.

Q. Okay.

MR. GESSLER: I don't know if there's any more detail to ask beyond that, Your Honor.

BY MR. GESSLER:

Q. I mean, can you describe — were you talking to people on the way?

A. Oh, yeah. We were talking to different people. And there were some newspapers that were out, and we were — we had picked up some of them, and we were handing them out to people.

And that was Steve's idea. There was a bunch of newspapers, so he grabbed them. I told him to save me one.

Q. Okay. And in your conversations with people, can you sort of describe the atmosphere, their behavior.

A. Yeah. We were just casually going towards the Capitol building. And we were, you know, hoping to hear Donald Trump speaking down at the Capitol.

Q. Okay.

[p.167]

MR. GESSLER: I move to admit Exhibit 1007, Your Honor.

MR. SUS: No objection.

THE COURT: So that was 1007?

MR. GESSLER: Yes, ma'am.

THE COURT: 1007 is admitted.

(Exhibit 1007 was received into evidence.)

BY MR. GESSLER:

Q. So this is a photo. Did you take this photo?

JA885

A. Yeah. I kept just trying to get a sense of the big crowd coming behind us. And we were pretty late, and that crowd was still coming. So that was a huge crowd.

So the Capitol would be directly behind me. And I'm looking at the Washington Monument.

THE COURT: What do you mean when you say you were "kind of late" or "pretty late"?

THE WITNESS: Well, we spent a lot of time looking for a bathroom after Donald Trump said to go down to the Capitol.

And then we went to the car and we warmed up, which took a while. And then [p.168] we — yeah, so it was — I mean, we weren't in a big rush to get down there.

BY MR. GESSLER:

Q. Do you have an estimate of time, you know, what time this was roughly after the — in relation to the speech or time of day?

A. I'm thinking that it was around 12:20, something like that. 12 o'clock. Noon.

Q. Okay. I'm going to represent to you that that there's a fact in this case that President Trump's speech ended around 1:10.

A. Oh.

Q. Does that help you orient us to what time this —

A. Yeah, I guess it was closer to 2 o'clock.

Yeah, I was on Mountain Time. Sorry. All my pictures have Mountain Time on them.

Q. Okay. So what time do you think this was, roughly?

A. It was probably around [p.169] 2 o'clock —

Q. Okay. Okay.

A. — Eastern Time.

Q. Okay.

JA886

MR. GESSLER: Your Honor, I'd move to admit Exhibit 1008.

MR. SUS: No objection.

THE COURT: 1008 is admitted.

(Exhibit 1008 was received into evidence.)

BY MR. GESSLER:

Q. Let's look at Exhibit 1009, please.

So this is another photo. Did you take this photo?

A. Yeah. It was following that first one. I just zoomed in on the crowd and the Washington Monument.

Q. Okay. So at this point, your back is to the Capitol; is that correct?

A. Yes.

Q. Okay. And then you're facing the Washington Monument?

A. Um-hmm.

Q. Okay. And this is what you [p.170] saw; correct?

A. Yep.

Q. Okay.

A. That's all those people heading to the Capitol.

Q. Okay.

MR. GESSLER: I'd like to move for the admission of Exhibit 1009.

MR. SUS: No objection.

THE COURT: 1009 is admitted.

(Exhibit 1009 was received into evidence.)

BY MR. GESSLER:

Q. Okay. Let's move to Exhibit 1010, please.

(Video played.)

Q. So did you take that video?

A. I did.

Q. Okay. And just tell me what that's a video of.

JA887

A. That was a video, that we were getting really close to the crowd that was at the Capitol building. And I just did a pan around. And then — that's what that was.

Q. Okay. And, again, who were you [p.171] with at the time?

A. I was with Steve.

Q. Okay. And were you talking to people in the crowd?

A. Yeah. Yeah, we were just small talk all the way down there.

Q. Okay. And can you describe sort of the atmosphere or people's reactions or emotional state?

A. Yeah. Some people were talking about the votes that were going on inside. You know, I heard a couple of people had radios and — like, AM radios, and they were listening to speeches or whatever. But people were just generally talking.

Steve obviously doesn't like Mike Pence.

Q. So when you say "Steve obviously doesn't like Mike Pence," you heard someone in there say, "I hate Mike Pence"?

A. Yeah. That was Steve.

Q. Okay. And then let's look at Exhibit 1011, please

—

MR. GESSLER: Oh, I move to admit Exhibit 1010, Your Honor.

[p.172]

MR. SUS: No objection.

THE COURT: 1010 is admitted.

(Exhibit 1010 was received into evidence.)

(Video played.)

MR. GESSLER: Let's start that video over. I want to make sure that, Your Honor, it doesn't seem that there's sirens in the video. Those are in the background.



JA888

(Video played.)

BY MR. GESSLER:

Q. Okay. Did you take that video?

A. I did.

Q. Okay. Now I'm going to ask you some questions. So are you closer to the Capitol than the last video?

A. Yeah. We — on our way there, we heard these explosions. And Steve said, "Hey, they're lighting off fireworks." And so we were looking in the sky. We were looking for, you know, fireworks, but we didn't see any fireworks.

We thought that it was in honor of Trump speaking, and we thought we were [p.173] late to the speech. So we kind of just got closer to the crowd. And then I shot that video. And then a guy with a bullhorn telling people to get — to go closer to the Capitol and that — you know, we say "Back the Blue," and he used in expletives about our uniformed police officers.

Q. So when you say you said that you Back the Blue, what do you mean when you said that?

A. We are — I mean, pretty much the crowd, I believe, and myself, you know, we respect law enforcement.

Q. I'm sorry. Say that again.

A. We have a respect for law enforcement.

Q. Okay. You have to lean into the mic to talk.

A. Okay.

Q. And so there's a person — we heard a person with a megaphone. You spoke with that person?

A. No, I didn't — well, perhaps. I mean, not really. He was yelling things at us, and I just kind of told him where to go.

[p.174]

Q. So you yelled back at him?

JA889

A. Yeah.

Q. Okay. And maybe without describing any expletives or anything, can you give a little more detail what you yelled back at him?

A. Yeah. He was yelling for us to go into the crowd. And that's where we saw there was tear gas. And he mentioned that they were tear gassing us, and he was telling people to go into the crowd.

And I said, "Screw you," is what I said, so...

Q. Okay. So did you go closer to the crowd at that point?

A. No.

Q. Okay. And why not?

A. I don't like crowds.

Q. Okay. And you said there was tear gas and whatnot?

A. Yeah.

Q. What did you see?

A. I saw the — at that point, we realized they weren't fireworks; they were police officers, and they were shooting into [p.175] the crowd and big explosions going off right in the middle of a bunch of people.

And this guy is yelling, "Go into the" — you know, "Go over there." And I'm, like, that's stupid.

Q. Okay.

A. So...

MR. GESSLER: I'd move to admit Exhibit 1011, Your Honor.

MR. SUS: No objection.

THE COURT: 1011 is admitted.

(Exhibit 1011 was received into evidence.)

BY MR. GESSLER:

Q. Okay. Let's go to Exhibit 1012.

(Video played.)

JA890

Q. Okay. Did you take that video?

A. I did.

Q. Now where were you in relation to the Capitol at this point?

A. I was on the — I'm not sure the directions there, but I was on the — beside the Capitol. I went opposite of what that guy was yelling — and he told us we were going the wrong way — but I went — [p.176] there was some, it looks like, temporary bathrooms that were set up. And we walked over that way. And I just was coming around the side of the Capitol.

Q. Okay. So I'm going to orient you. So you're walking earlier with the Washington Monument behind you and the Capitol in front of you. And when you said you went to the side of the Capitol, did you go to your right or left?

A. I went to the right. Um-hmm.

Q. Okay. And so you're wrapping — walking around the Capitol at this point?

A. Yeah. And I'm behind the temporary bathrooms they had set up.

Q. Okay. And then you heard a —well, it sound like there was a big bang in there.

What's going on with that?

A. Yeah. They were still shooting flash-bangs and tear gas into the crowd, and so I didn't want to be there.

Q. Okay. At this point did you see any violence? Anyone hurting anyone else?

[p.177]

A. Only the Capitol Police —that's all I could see from where I was at —just shooting, you know, flash-bangs and stuff at people.

JA891

Q. Okay. And from what you could see from where you were, you know, what were people in the — that you were able to see or in the crowd doing at that point?

A. A lot of them were in disbelief. And they were, you know, just saying, “I can’t believe they’re shooting at us.” And people were just talking about what was — you know, what was going on.

And I just, you know, felt like they just — they obviously don’t want us in that spot.

Q. Okay. Were people in your area of the crowd moving towards the Capitol? away? stationary?

What were they doing as far as movement goes?

A. Most people were just standing there. They weren’t moving towards the Capitol. You know, I avoided the big crowd. So, you know, they were shooting. They [p.178] clearly didn’t want people over there, so I didn’t go over there.

And I was — and at that point, I lost Steve somehow. I don’t know where he went. I turned around, and he was gone.

Q. Okay. So at this point you were alone?

A. Yeah.

Q. Okay.

MR. GESSLER: Your Honor, I’d move to introduce Exhibit 1012.

MR. SUS: No objection.

THE COURT: Exhibit 1012 is admitted.  
(Exhibit 1012 was received into evidence.)

BY MR. GESSLER:

Q. Okay. Let’s go to Exhibit 1013, please.  
(Video played.)

Q. Did you take this video?

A. I did.

Q. Okay. And where were you at this point?

JA892

A. That was just directly in front [p.179] of those temporary bathrooms.

Q. Okay. Still — how about in relation to the Capitol?

A. It's — yeah, near the scaffolding. So it was, again, on the right side of the Capitol. And I looked — I tried to get a view of the scaffolding where a lot of people were. And so I just took that video.

Q. Okay.

MR. GESSLER: Your Honor — well, first, let me move to admit Exhibit 1013.

MR. SUS: No objection.

THE COURT: 1013 is admitted.

(Exhibit 1013 was received into evidence.)

MR. GESSLER: Your Honor, I'm probably about ready to move into a different section of testimony. And I don't think there's any way we'll finish — it's highly unlikely we'll finish Mr. Bjorklund before noon.

If I may suggest, as a humble suggestion only, that perhaps we could break [p.180] now. We could have Congressman Buck testify at 1 o'clock. We could resume Mr. Bjorklund after that. And I'm confident we will be out well before — probably well before 4 o'clock, maybe even before 3 o'clock today.

THE COURT: Okay. You don't think that you can finish your direct examination by noon?

MR. GESSLER: I can try. I think it's probably unlikely. So that why I just wanted to make a suggestion, Your Honor.

THE COURT: I'm fine with breaking from — we will break from 11:30 to 1:00. We'll hear Congressman Buck, and we'll then resume with Mr. Bjorklund.

Is that okay with you, Mr. Bjorklund?

THE WITNESS: Sure.

THE COURT: Any objection?

MR. GRIMSLEY: No, Your Honor. Just one quick issue to raise related to something that was suggested earlier.

THE COURT: Okay.

[p.181]

MR. GRIMSLEY: We had talked about the possibility of doing closing arguments tomorrow. And it's the Petitioners' view that we should put them off until a later date, once the findings of fact and conclusions of law have been submitted, because I think at that point in time, the arguments of both parties will have been fully joined.

And Your Honor may have questions on some of the legal issues and some of the findings of fact at that point. And we believe at that point in time, it would be good to have the closing arguments.

We just effectively had closing arguments yesterday. And I don't know if that would be too much more robust or fulsome than that if we had them again tomorrow. And I'm not sure they would incorporate all of the legal issues that you would want perhaps to hear on. So it would be our position to put it off.

THE COURT: And, Mr. Gessler, how about you?

MR. GESSLER: I think that [p.182] makes sense, actually, Your Honor. We don't have any objection to that at all.

THE COURT: An agreement?

MR. GESSLER: I will note that I think opposing counsel has been able to cooperate pretty well on this case. I hope we have.

MR. GRIMSLEY: It's actually true. You don't see it behind the scenes, but I think it's been true.

THE COURT: Ms. Raskin, are you okay with that as well?

JA894

MS. RASKIN: Absolutely fine with that.

THE COURT: Mr. Kotlarczyk?

MR. KOTLARCZYK: That's fine with the Secretary, Your Honor.

THE COURT: Okay.

MR. GRIMSLEY: And one last thing, Your Honor, just on the that Reuters report. I was a little stunned to hear that there was some August 2021 FBI report.

That was just a Reuters article, not a report — just to let you know — quoting unnamed sources. Just as [p.183] that shouldn't come in, nor should The Washington Post article from January 30th, 2021, saying that the FBI had found coordination amongst groups come in, so...

MR. GESSLER: I don't think we have a big objection to that.

It certainly explains Mr. Van Flein's state of mind, but we're not looking to insert that for the truth of the matter asserted, Your Honor.

THE COURT: Okay. Well, I think I struck that testimony.

So we will reconvene at 1:00 p.m. with Congressman Buck. And I just ask that we be ready to go with him, from a technical standpoint.

MR. GESSLER: That's another reason why I thought it would be a good reason to break now, so we can wrestle with the technology before 1 o'clock, to make sure we're good.

THE COURT: I think the key is just not to have Mr. Blue's computer involved. But I say that with no real knowledge.

[p.184]

MR. BLUE: I wouldn't disagree with you.

JA895

THE COURT: Okay. So we'll be back at 1 o'clock. We're off the record.

(Recess taken.)

THE COURT: Congressman Buck, can you hear me?

THE WITNESS: Yes.

Oh. You heard me? Great. Okay.

THE COURT: Yeah. Could you raise your right hand, please.

CONGRESSMAN KEN BUCK, having been first duly sworn to state the whole truth, testified as follows:

DIRECT EXAMINATION

BY MR. GESSLER:

Q. Good afternoon, Representative Buck.

A. Good afternoon.

Q. Thank you for being here.

I'm going to ask you some questions, as you well know, but I'd like to start with just a little bit about your current position and your background.

[p.185]

So could you tell the — for the record, your current position.

A. Yeah. I'm a United States Congressman for the 4th Congressional District of Colorado.

Q. And how long have you been a congressman?

A. Almost nine years. Eight years and ten months.

Q. Okay. And when were you first elected into Congress?

A. I was elected in November of 2014.

Q. Okay. And what did you do prior to that?

A. Before that, I was the elected district attorney in the 19th Judicial District, which is Weld County.

Q. And how long did you serve in that position?

A. I served as district attorney for ten years.



JA896

Q. Okay. And then prior to being elected as district attorney, what did you do?

[p.186]

A. I actually worked for Hensel Phelps Construction Company in a nonlegal position for two-and-a-half years.

And before that, I was with the U.S. Department of Justice for 15 years; 3 years in Washington, D.C., and 12 years in the U.S. Attorney's Office in Denver.

And I also taught at the University of Denver Law School in the evenings. I'm not sure if the title was adjunct professor, but it was something along those lines. I was a — I taught at the graduate law program, and I also taught for the law school criminal procedure.

Q. Okay. Thank you very much.

So I want to direct your attention to the events around January 6th and the electoral vote, the electoral count.

Where were you on the afternoon — in the afternoon of January 6th?

A. I was on the Floor in the U.S. House.

Q. Okay. And why were you there? What was going on?

A. There was a procedure to [p.187] certify the votes from the November 2020 election.

Q. Okay. And had you done that before, as a congressman?

A. Yes. So I'm trying to think.

For the 2016 election — I was not here for the 2012 election, so 2016. And that was my second time, 2020.

Q. Okay. And can you describe what the process is that Congress follows for the electoral vote count.

A. Sure.

So the vice president presides, and he orders the envelopes to be opened. And the clerk in the House

JA897

opens the envelopes. It's a joint hearing. The Senate is in the House chambers, and we have a joint hearing. The envelopes are opened, and the electoral votes from each of the states in alphabetical order is announced.

Q. Okay.

A. That's how it's supposed to work generally, I guess.

Q. Okay. And what role does the — does Congress play?

[p.188]

Are you merely bystanders to that? Or does the Congress play a role in that process?

A. It depends who you ask. In my opinion, we have a very ministerial function of sitting there and opening envelopes.

I assume that at the time the Constitution was written, it was meant to make sure that the votes were opened in public so that the public would have some assurance of the integrity of the votes being counted.

But we are not counting votes, and we are not opening envelopes. We are sitting there.

Q. Okay. And now is there a process for objections?

A. There is a process for objections based on the statute passed around the time of the Civil War, where people can make objections.

Again, my understanding is that the statute is there in case there is a dispute of electors — certified electors coming from a state capitol.

[p.189]

Q. Okay. So I want to go back to January 6th, 2017. Were there any objections on the Floor at that time?

A. Yes, there were. There were six or seven objections made to different states' electoral count.

Q. And can you describe what happened.

A. I can.

Jim McGovern from Massachusetts — a congressman from Massachusetts, stood up and objected to the votes. I think it was Alabama. And then there were five other objections — clear objections to particular votes.

Then the last objection, the seventh one, Maxine Waters from California — I don't know if she objected, but she just asked if a senator will agree to object with her.

So the only way that a proper objection can be made is if a House member and a senator both object. And in '16 — and in years past, frankly — there have never been, to my knowledge, a senator who has [p.190] objected. At least in this century, no senator has objected with the House member in the — in '16, into '17. January 6 of '17, no senator agreed to object.

Q. So all the objections were from House members?

A. All the objections were from House members. And they were not heard because it wasn't properly made.

Q. Okay. If a senator — just from a process standpoint, if a senator agrees to the objection, then what happens?

A. Then — this is based on memory; I'd have to have the rules in front of me. But by memory, the objection then is recognized. The Senate goes back to their chambers. The House — there's, I think, an hour of debate, a half hour from each side. And then there's a vote on whether the objection should stand or not. And then the Senate comes back and convenes with the House. And the next envelope is opened, and the process is continued.

JA899

Q. Okay. Let's go to January 6th, 2021. Were there — when you were on the [p.191] House Floor, were there any objections?

A. Yes.

Q. Okay. Can you describe what happened?

A. Yeah. I know Paul Gosar objected to — he's from Arizona — a congressman from Arizona. He objected to the Arizona electoral count. And the Vice President asked if — Vice President Pence asked if there was a senator who agreed. And I believe it was Ted Cruz who agreed on that.

And the objection was proper. And so the Senate then went back to their chambers to debate, and the House started the process of debating that.

Q. Okay. So were you in the House as part of that debate?

A. I was in the House. It was unclear to me whether I would be speaking or not.

It was during COVID, and so the House had rules on how many seats had to be between each member when they're on the House [sic]. There were actually members in the gallery, so it was — people were very spread [p.192] out.

But my guess is there are only — probably half the members were actually in the House, on the House Floor, at the time. Most members were back in their offices.

Q. Okay.

A. Or at least — maybe not most, but a large number of members were back in their offices.

Q. Okay. And did anything unusual happen that day?

A. Oh, yeah. It was unusual.

Q. I'm trying to give you open-ended questions.

Can you describe what happened?

JA900

A. Sure.

The — so I — we have — we're permitted to have phones on the House Floor. I was not getting a signal, so I didn't know what was going on outside the House Floor.

But the first thing that I knew, a police officer — uniformed officer came — actually, no. I think the first thing that happened was a security detail escorted Speaker Pelosi off of the dais. And [p.193] she was escorted out. And then, of course, everybody is murmuring about what happened.

And then it may have been Jim McGovern who took over, but a Democrat member of the majority took over and was acting Speaker at that point.

A few minutes later, a police officer came to the microphone and said that tear gas had been dispersed. And we were advised that there was tear gas — or gas masks, I guess, under our seats, and we should deploy those gas masks, which seems a little odd, because we continued to have the debate.

But she may have also said that the Capitol had been breached. I'm not sure if she said that, but there was clear indication that there was a danger at that point.

I can remember within seconds of that happening a member from the Democrat side, up in the balcony area of the gallery, yelled out, "This is your fault."

And I'm sitting there, without any context for what's going on because [p.194] I don't have anything, a text from my staff, or the ability to go online and figure out what was going on.

Q. Okay. And then did you — so were you actually debating while wearing gas masks?

A. No. I don't think anybody put their gas mask on. And at that time, it was more of milling around and

JA901

trying to figure out, you know, what the threat was and what would happen next.

Q. Okay. And then did the security — did the Capitol Police or security respond in any way to a perceived threat?

A. Yes. So after that and after a few minutes of that — maybe longer, maybe 10, 20 minutes — a police officer came back to the podium and said that we would be clearing the House Floor. And that's when I saw officers, both uniformed and plain clothes, take positions.

I sit typically — in that day, I was sitting near the center aisle. And for some context for the Court, that's the aisle [p.195] the President walks down to give the State of the Union address. And it typically divides the two parties.

But I was sitting close to the aisle. And that center door has — there are big wood doors on the outside, but then the doors on the inside — there is glass above the door on the inside.

Q. Okay. And so what did the security police do?

Were they security or police? How should I describe them?

A. They are uniformed — they are sworn officers.

Q. Okay.

A. So, yes, police.

Q. So what did they do?

A. Well, they took up positions. And as members started leaving, I actually took my coat off. There were some — my jacket off. There were some members who were moving furniture over to block the door. And the officers, I know at one point, had drawn their weapons.

My memory also is: After the [p.196] members had moved some furniture over, there was a popping sound. And it was the glass over the door. And someone had

JA902

popped that glass. And that's when — maybe that's when the officers drew their weapons. It's hard to — in a room like that, it's hard to tell exactly what that noise came from.

I could see the glass, and so I knew, but it almost sounded like a bullet at first. And so the officers had drawn their guns and were securing that door.

Q. Okay. Now did you personally feel threatened?

How did you feel about — perceive what was going on?

A. Well, you know, I had felt kind of stupid afterwards because at the time, I took my jacket off, and I was there to help the police officers. I had no idea whether there were ten people in the building or a thousand people in the building.

So when we started to — when the police started to clear the building — at the same time, there were police officers behind the wall of the — the front wall of [p.197] the House chambers. There were police officers who were clearly milling around and securing the other entrances to the House. And I could see that from my seat.

But I — when we started to clear, I put my jacket back on. I was one of the last to leave the House Floor. And the officers actually came over to me — I was down in the middle aisle at this point, and they said, "It's time to go."

Nobody was, you know, yelling or screaming, but it was clear that it was a very serious situation.

Q. Okay. And what was your view of the sort of capabilities of the Metro Police — I'm sorry, of the security officers?

A. The Capitol Police, you know, they — there were probably six, seven of them that were there at that one

JA903

door. And they — it appeared to me, with their weapons and unknown threat to me at that point, that they were in control of the House Floor based on the number of officers, probably 30 to 40 officers around the House — well-armed [p.198] officers.

Q. Okay. And what was your perception as to — let me ask you this: Was anyone that you saw shot?

A. No. In fact, I didn't even hear the shot. But the shot would have occurred while I was there because, like I said, I was one of the last to leave the House Floor.

But I understood later that a lady had tried to breach the House chambers through the Speaker's lobby coming in over the door, and she was shot and killed.

Q. Okay. So from your perspective, the way the security officers were operating, what did they — were you able to infer any sense of what their protocols are based on their behavior?

A. Yeah, I think based on my experience in law enforcement and what I saw them doing, their goal/their function was to make sure that there wasn't a hostage situation, to make sure that no members were going to be hurt or taken by whatever the mob was.

[p.199]

Obviously they have earpieces in. They're aware of what's going on. But they were there to secure the Floor until the members left. And as soon as the members left, I could see the officers leaving the House at that point.

Q. Okay.

A. The House Floor, I should say.

Q. And why do you think they left the House Floor?

A. Because I don't think — I think the threat that they were — and, again, this is — I'm speculating, but the threat that they were there to minimize was the



JA904

threat of injury to members and staff. And once that had been accomplished, they were withdrawn.

Q. Okay. Are you aware of any sort of breaches or occupations of the Capitol prior to this event?

A. During the summer of 2020, there were riots. And the rioters had attempted to break through the barricades, and, in some cases, had broken through the barricades. Much smaller groups of people.

[p.200] But clearly they were, you know, protesting. And the goal was to breach the Capitol at that point.

There was also an instance in 2016 — I believe it was June of 2016 — where there was a mass shooting. And I don't remember which one. It may have been a school shooting. The Democrats wanted the —the Republicans were the majority. The Democrats wanted to have gun control bills heard. Speaker Ryan refused to bring those to the Floor, and the Democrats occupied the Floor at that time.

The Speaker ordered that the C-SPAN coverage of the Floor end. And they — the Democrats began to livestream from their phones. There was some — it wasn't really a fight, though there was certainly some intimidation, some pushing and shoving around, whether the Democrats would control the Republican side of that — of the Chamber.

We had a couple — at least one Navy SEAL, a couple of veterans who ended that pretty quickly when they went over to [p.201] the microphones. And so the Dems stayed on their side to engage in that protest.

Q. Was the House able to continue its duties that day?

A. No. It was shut down.

JA905

Q. Okay. Let me ask you the — if you're aware of how the police reacted when there were outsiders who came in to the Capitol, I think you had testified, in 2020.

A. Yeah. I don't think they ever breached the Capitol. The protesters were typically protesting in the evenings around the Capitol. The barricades — and they're fairly weak barricades — that were set up. They're kind of — they look almost like the — something that you put your bicycle in in a rec department or something. They weren't, you know, very sturdy barricades.

But some of the protesters may have breached that particular perimeter, but, to my knowledge, they never got into the Capitol.

Q. Okay. Okay. Let me turn your attention to after the events of January 6th.

[p.202]

So are you aware of the January 6th Select Committee that was — that ultimately conducted a form of an investigation into the events of January 6th?

MR. NICOLAIS: Objection, Your Honor. This is beyond the scope of what the congressman was provided for. Specifically, he was provided to testify about his experience as a sitting member of Congress at the Capitol on January 6th, 2021.

MR. GESSLER: Your Honor, I think we had verbally as well told the Court that we'd have two congressmen — obviously one, we can't — who are going to testify about Congressional procedures, including the January 6th Committee.

That's an event here. And you've specifically asked for evidence about the January 6th Committee. That's why Mr. Heaphy is going to be testifying, although he was not placed on the Petitioners' witness list.

So that's in response to that as well.

JA906

THE COURT: We have two options [p.203] here. We can either take Mr. Nehls' declaration, and I can admit that into evidence, which would then deprive the Petitioners a chance to cross. Or we can allow Mr. Buck to testify about something that wasn't disclosed, and you can cross-examine.

Which is your preference?

MR. NICOLAIS: If I can have just a moment, Your Honor.

THE COURT: Sure.

(Pause.)

THE COURT: Just one moment, Congressman Buck.

THE WITNESS: Judge, I don't have a preference, if you're asking me the question.

THE COURT: I wasn't. But I'm assuming you're willing to testify about this additional subject.

THE WITNESS: Of course.

MR. NICOLAIS: Your Honor, I think we're fine if the congressman wants to testify about that, as long as we're able to ask him about post-January 6th events as [p.204] well.

THE COURT: I'm not sure what post-January 6th events.

MR. NICOLAIS: They would probably revolve — reference January 6th. As long as we had some leeway in asking him questions.

THE COURT: It's hard for me to rule on giving you leeway when I have no idea what that will be. But let's proceed with his testimony and play it by ear.

MR. GESSLER: Just so you know, our position, Your Honor, we're going to ask Representative Buck about the January 6th Committee and its processes. And we certainly agree that's fair game for cross-

JA907

examination. But any events after January 6th that even reference January 6th, we'll probably object if it goes beyond the scope of our direct, certainly, Your Honor.

THE COURT: Well, I'm just going to rule as the objections come.

MR. NICOLAIS: Fair enough. In that case, we would accept Congressman Nehls' declaration instead.

[p.205]

THE COURT: Let's hear what Congressman Buck has to say. And you're going to get a fair chance to cross-examine him.

BY MR. GESSLER:

Q. Representative Buck —

THE COURT: Before we go —before we move on to that, I'd like to ask him just one question about his prior testimony.

MR. GESSLER: Sure, Your Honor.

THE COURT: So, Congressman Buck, could you see — when you were in the Chambers and you said that, you know, the police officers were all putting up barricades, et cetera, and you — could you see what was going on in the hallway? Or were you kind of just in a vacuum at this point, in the sense that you see them seeming to prepare for something, but don't know what's going on outside the room?

THE WITNESS: Yeah, that's what I mentioned earlier. I felt kind of stupid taking my jacket off and getting ready for a fight because I didn't realize until I got [p.206] back — actually, we were moved to a committee room after we were brought off the Floor.

I have young staff, and I was concerned about them. And so I came back to my office rather than the secure committee room, and I saw on TV what was going on.

And I thought, “Oh, my goodness. There are a lot of people out there.”

THE COURT: Thank you.

BY MR. GESSLER:

Q. Congressman Buck, if I may ask you: How did you get from the Capitol back to your office?

A. There’s a series of tunnels underneath the Capitol building that connect — the House offices, the Senate offices, the Library of Congress are all connected with a series of tunnels. And that’s how the police escorted us, through those tunnels.

Q. Okay. Thank you. So let’s turn to the January 6th Committee. To your knowledge, how does the — how are members of committees through the normal process chosen?

[p.207]

A. So what happens is — I can give the January 6th as an example. But the Speaker announces that there will be a January 6th Committee. There will be X number of Democrats — I don’t know if it was eight or nine Democrats on the committee. There will be, I think she said, five Republicans on the committee.

And at that point, she started naming the Democrats — within, you know, a week or ten days, she started naming the Democrats for the committee. And the leader — Republican leader at the time — we were the minority at the time — the Republican leader, Kevin McCarthy, named five Republicans.

I know three of the names. Jim Jordan, Jim Banks, and Kelly Armstrong were named to that committee. Speaker Pelosi then denied Jim Jordan and Jim Banks and said they would not be seated on the committee.

And at that point, the minority leader, Kevin McCarthy, withdrew all five names and refused to have

anybody from the Republican Party sit on the committee.

[p.208]

The next move, Speaker Pelosi announces that Liz Cheney would co-chair the committee. Obviously Liz Cheney, a Republican, would co-chair the committee.

And within a couple of weeks after that, Adam Kinzinger then was named to the committee by Speaker Pelosi. So there were this group of Democrats — seven, eight, nine — and two Republicans who were seated on the committee.

Q. Okay. And do you know Representative Cheney or Kinzinger?

A. I know them both very well.

Q. Okay. And your thoughts of them?

A. Well, my thoughts in terms of the January 6th —

Q. Let me ask you this: What's your relationship with them?

When you say you know them, if you have a relationship with them?

A. We'll, I've had a long relationship with Liz Cheney. I worked for Dick Cheney on the Iran-Contra investigation back in 1986 and '87. I knew Liz before she ran for Congress [p.209] from Wyoming and was, you know, in contact with her pretty consistently as she served here in Congress.

Adam less so. I was on the Foreign Affairs Committee, he was on the Foreign Affairs Committee, so we saw each other during committee work and had some conversation, but he was not a particularly close friend or colleague.

Q. Okay. So they were appointed to the January 6th Committee.

JA910

To your knowledge, what were their views towards the January 6th events when they were on the committee?

A. So after January 6, Speaker Pelosi — understand the time frame. We've got January 6, and then January 20th is the inauguration for the new president.

Between January 6 and January 20th, Speaker Pelosi announced an impeachment proceeding against President Trump. And there was actually a vote on the Floor. Both Liz Cheney and Adam Kinzinger voted for impeaching President Trump.

I think of the 200 some-odd [p.210] Republicans, maybe 10, 12 voted for impeachment. So it was a fairly small minority. 5 percent of the overall conference voted for impeachment. And they were 2 of the Republicans who voted for impeachment.

Q. Okay. Let me go back to Liz Cheney. I mean, you talked about contact. Do you consider her a friend?

Or how would you describe that?

A. You know, Harry Truman said, "If you want a friend in D.C., get a dog."

I think that Liz and I were, you know, acquaintances; and we, you know, shared stories on occasion. I've never been to her house to eat; she's never been to my house. We haven't seen much of each other, but certainly had a friendly history together.

Q. Okay. So she and Adam Kinzinger were on the Floor. Based on the vote for impeachment as well as any other knowledge you have, did they represent the opinions of the large majority of the caucus?

A. On what subject?

[p.211]

Q. With respect to the events of January 6th.

JA911

A. Well, I don't think they represented the views of most of the Republican conference because most of the Republican conference — 95 percent of the Republican conference did not vote for the impeachment of President Trump and they did.

So in the sense of where they were on January 6th, I think they stood out alone.

Q. Were there other Republicans then who had different perspectives or viewpoints than Representatives Cheney or Kinzinger that did not serve on the committee?

A. Well, the five Republicans who Leader McCarthy assigned to the committee did not serve on the committee and did not share the views of Liz Cheney or Adam Kinzinger.

Q. Okay. I'm going to represent to you that Representative Swalwell testified earlier, and that there was a text from him referring to Representatives Cheney and Kinzinger in which he was saying that [p.212] Representative Cheney and Kinzinger — he was happy that they were on the Democrats' team with respect to the January 6th Committee.

Is that an accurate description from your point of view?

A. You know, I would have a tough time answering that question. They were clearly — they shared the view on impeachment of President Trump for the actions that occurred on January 6th.

I would say that when it came to most of the votes that were before the House, they did not share the views of the Democrats and how they voted on other subjects. But clearly on the January 6th issue, they were — had similar views.



JA912

I don't know. You know, I don't think any Democrat wants to be known as being on a Republican team or the other way around.

Q. Okay. Okay.

Did you perceive any problems — let me ask you this: Were there any other Republicans that served on that January 6th Committee besides Representatives Cheney and [p.213] Kinzinger?

A. No.

I actually called Kevin McCarthy, because of my background as a prosecutor, and I asked Kevin if I could get his permission to seek to serve on that committee because I thought it was important that witnesses were cross-examined and documents were challenged.

And Kevin told me that he did not want me serving on that committee, and he didn't want anybody else serving on the committee — any other Republican serving on that committee.

Q. Why was it important for witnesses to be cross-examined and documents to be challenged?

A. Well, you know, in my experience as a prosecutor, if the defense attorney isn't present and the defendant isn't present, it's not a real fair trial.

In this case, you need to have both sides — you need to have the adversarial system working in order to get accurate and full, complete information for an issue like [p.214] the January 6th investigation.

Q. Did you think that Representatives Cheney and Kinzinger would sort of fulfill that role of — you know, fulfill that role of ensuring that the adversarial process was carried out?

A. Right. I think they both do their best to be fair, but I do think that they were more aligned with a — the result that the Democrats were looking for than, for

JA913

example, Jim Jordan or Jim Banks or Kelly Armstrong would have done.

So I think that it was not as adversarial, and it was not as challenging for the evidence as it would have been if the five members appointed by Leader McCarthy or others in the conference were allowed to sit on that committee.

Q. Do you think you would have fulfilled that role had you been on the committee?

A. I would have done my best. I think that it would take more than one person because there were so many documents, so much evidence that was considered. But [p.215] certainly I would have done my best.

I worked, as I mentioned before, for Dick Cheney on the Iran-Contra investigation. We had an adversarial system. And we had a minority report on the Iran-Contra investigation on areas where we didn't agree.

There is no minority report in this — in the January 6th investigation because there was no minority. It was one viewpoint that was shared.

Q. So when — let me ask you that. So Speaker Pelosi, did she — when she rejected or refused to allow certain appointments by Representative McCarthy, in your experience in Congress, was that a normal event?

A. It was not normal in the history of Congress. Speaker Pelosi, on one or two other occasions, had removed members from committees. I know that Marjorie Taylor Greene was not allowed to sit on committees because of statements that she had made before winning her seat for Congress. And I know that Paul Gosar was removed from [p.216] committees.

In the past, it has typically been the party of the person who is alleged to have committed some wrongdoing that removes the person from committee

seats. And I'm not sure in relation to January 6th whether those events occurred before or after.

But the typical process is for the minority party to be able to assign individuals/members to the committee assignments.

Q. Okay. So you said it's never happened in the history of Congress. Did I hear you correct there?

A. Well, I'm not —

Q. To your knowledge?

A. Yeah, to my knowledge, certainly in recent history, it has not happened.

Q. Okay. So observing the January 6th Committee procedures, were, in fact — was, in fact, the evidence that was submitted to the committee subjected to the adversarial process?

[p.217]

A. No.

Q. And why is that? If you could give me a little bit more of a description rather than a two-letter word "no."

THE COURT: Why don't you start with how you know that.

THE WITNESS: How do I know it wasn't?

THE COURT: Um-hmm.

A. Well, I had the opportunity to observe some of the hearings. I have had the opportunity to read parts of the report. And I've had the opportunity to talk to some of the people who were alleged to have done things in the report and heard their side of the story. And they were never questioned.

For example, Jim Jordan was up for the speakership recently. And I went through with him some of the allegations in the January 6 report and then heard his side of the story. Those were not included in the January 6th report.

JA915

And based on the makeup of the committee, the — there wasn't — there wasn't inquiries that I would certainly have [p.218] wanted to make.

For example, what was Speaker Pelosi's role in not having the National Guard present or at least assembled to be present? And what was the Sergeant at Arms' role in that?

There are some areas that I think would have been important to look at to be able to judge President Trump's actions and nonactions in this case.

BY MR. GESSLER:

Q. Do you know if there were any members on the committee who subpoenaed or produced evidence for witnesses that were supportive or sympathetic to the proposition that January 6th was not an insurrection and was not caused by President Trump?

A. So I'm aware that Leader McCarthy — when he made the statement that we would not be assigning Republicans to the January 6th Committee after Speaker Pelosi had denied the assignments to Jim Jordan and Jim Banks, Leader McCarthy said he was going to have a separate investigation, and that investigation would be our side of the story.

[p219]

And there were some witnesses who were — who testified, and there were some documents produced. Not through subpoena but produced. And had those been part of the January 6th report, I think the report would have been more complete.

Q. I'm sorry. The report would have been more?

A. Complete.

Q. Okay. Is it fair to say it would have been more balanced?

JA916

A. I think if you're looking for balance — yes, I think it would have presented both sides.

Q. Okay. Let me ask you about that separate committee real quick.

Did that committee have any subpoena power?

A. It did not.

Q. Did it have any ability to compel the production of documents?

A. It did not.

Q. Or witnesses?

A. No.

Q. Okay.

[p.220]

THE COURT: You're talking about the January 6th Committee?

MR. GESSLER: No, Your Honor. I'm talking about the separate report that Representative Buck referred to that Speaker [sic] McCarthy had created.

BY MR. GESSLER:

Q. Let me just clear up the record, Representative Buck.

A. It's not Speaker McCarthy at the time; it was Leader McCarthy.

Q. I'm sorry. Leader. Yes.

I want to help clear up the record a little bit. So your testimony was that Minority Leader McCarthy had sort of established a separate committee. Correct?

A. I wouldn't call it a "committee" because there were no Democrats on his effort, just as there were — well, I shouldn't say "no Republicans."

There were no Democrats on his effort. There were, I think, Jim Banks and a few others — Kelly Armstrong — were on this other group that was formed to investigate.

JA917

Q. Okay. Let me go back to the [p.221] January 6th Committee.

You said there was no minority report produced by the January 6th Committee. Is that correct?

A. Yes.

Q. Okay. And why is that important?

A. Well, because it provides the other side of the story. It provides context for what one side is alleging. And it is important to have the — I believe the full picture in a situation like the January 6th investigation.

Q. Okay. You had said when you spoke with Representative Jordan that there were things that he said that were much —that were either much different or provided a much different context than what appeared in the January 6th report.

Can you explain that in a little more detail?

A. Sure.

MR. NICOLAIS: Objection, Your Honor. This is hearsay.

THE COURT: Yeah.

[p.222]

MR. GESSLER: Your Honor, we're not introducing anything for the truth of the asserted — for the truth of the matter asserted.

We're introducing information that shows the January 6th Committee had one perspective, and that the perspective that Representative Jordan provided was much different.

So we're using this to demonstrate the incompleteness and one-sidedness. Not one side is true versus the other.

I mean, we have other argument about that. But I'm not looking to get into the contents of either side. It's the difference between the two that matters.

JA918

MR. NICOLAIS: Your Honor, the congressman already testified to the difference. We don't need to get into what Jim Jordan said.

THE COURT: Well, he said that — if I recall, he said that Jim Jordan had a different perspective on something, but I don't think we've heard the details of what [p.223] it is.

So, Congressman Buck, you can tell — if you wouldn't mind just telling the Court what type of disputes Mr. Jordan had rather than just repeating what Mr. Jordan said.

THE WITNESS: Sure.

A. One example would be the report stated that Jim Jordan refused to testify.

Jim's statement was that he was — he received a subpoena, and they were in the process of negotiating a date for his testimony, and then the committee staff never got back to his staff. So he says he was willing to testify. The report says that he was unwilling to testify.

It was — there were a few issues like that. He sent a Tweet — no, I'm sorry — he sent a text to Mark Meadows — I believe it was January 2nd. And in the text, the allegation in the report is that Jim Jordan advocated for the decertification.

And Jim's statement to me was that he attached a Law Review article or a legal analysis, I guess it was — it wasn't a [p.224] Law Review article — a legal analysis to Mark Meadows, Chief of Staff, to examine, in terms of whether they could.

So he says he wasn't advocating, but he was providing information to the White House on that subject.

JA919

MR. NICOLAIS: Your Honor, I'll renew my objection to hearsay and move to strike, because he said Jim Jordan says this, Jim Jordan says that.

THE COURT: I'm going to accept the testimony just for the limited purpose that there were things that maybe Mr. Jordan would have liked to have told the House Committee that he wasn't able to.

MR. GESSLER: Thank you, Your Honor.

BY MR. GESSLER:

Q. Representative Buck, let me ask you: Why do you know so much detail or why were you so interested in discrepancies between the committee report? And why did you spend so much time learning about that from Representative Jordan?

A. Jim Jordan was a candidate for [p.225] Speaker. He was actually the Speaker nominee for the Republican Party in the recent Speaker issue that was going on in the last few weeks.

Q. Okay. And so it's fair to say you spoke with him at length about these issues as part of that process?

A. He came to my office one evening in the middle of his time as Speaker nominee, and we sat down for about an hour, an hour ten minutes.

Q. Okay. To your knowledge, were any of the witnesses before the January 6th Committee cross-examined?

A. I don't know that the concept of cross-examination is really part of what the committee process is. There are questions from Republicans, questions from Democrats typically in a committee process. It is not as clear as in a courtroom that one side is cross-examining.

Q. Okay. To your knowledge — in your view and based on your observations attending the committee meetings, were questions placed to witnesses that were



an [p.226] effort or seeking to elicit testimony that was — that ran contrary to the thesis that President Trump caused an insurrection?

MR. NICOLAIS: I'm going to object, Your Honor, because Mr. Gessler has characterized it as Congressman Buck attending the committee. I don't believe Congressman Buck was on the committee.

THE COURT: Congressman Buck, when you talked about attending hearings, were you referring to the public hearings?

THE WITNESS: I didn't attend. I saw some public hearings on television, but I was not in attendance personally.

THE COURT: So is that what you were questioning him about, when he —

MR. GESSLER: His observations, yes.

THE COURT: You can answer.

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

BY MR. GESSLER:

Q. I don't know if I can. I will try, though.

THE COURT: Maybe if you could [p.227] do it a little less leading, it would also be good.

MR. GESSLER: I'm sorry. A little less?

THE COURT: Leading.

MR. GESSLER: A little less leading. Yes, Your Honor.

BY MR. GESSLER:

Q. Congressman Buck, from your observations of the committee process, do you think there were — can you describe the — whether in — whether the questions that were asked, whether they were postured and how they were postured to arrive at a full investigation?

A. Sure. I think that the questions were typically questions that would demonstrate President Trump's

JA921

involvement and culpability in January 6th or elicit answers that would demonstrate his involvement and culpability in the events of January 6th.

As an old trial lawyer, I looked at — listened to a lot of those questions and, probably as most trial lawyers, thought I was [p.228] Clarence Darrow and I could have asked a better question or I could have made — you know, I would have made an objection on hearsay or something at the time.

So I tended not to watch a whole lot of what happened because it didn't seem to me that the process was set up in a way that would sort of elicit the whole truth in those hearings.

Q. Are you aware of any allegations that the committee altered evidence or altered exhibits that it received and then produced to the public?

A. I have heard of those allegations. I have not seen the documents and could not give you a judgment on whether I think those were accurate allegations or not.

Q. Okay.

A. Remember, this is the world of politics. And truth is not closely aligned with political views all the time.

Q. Okay. Well, let me ask you this then: When you say “this is a world of politics,” do you think that the committee report was — meets the description you [p.229] just — meets the description you just described about the relationship of politics and truth?

A. Sure. The purpose of that report was — there was a political purpose to that report, as there is with almost everything in Congress.

And the political purpose was ultimately to win elections and to paint the one side in as bad a light as possible. And that's why, typically, there is a minority report in an investigation like this, so that both sides can

JA922

say, “But this is really what happened. And here are the documents, and here are the phone calls, and here’s the testimony that supports it.”

Q. And it’s your view that that did not happen in this case?

A. It’s my view that the people who would have been most challenging to the evidence and testimony were not seated either by Speaker Pelosi or Leader McCarthy ultimately on the committee.

Q. Okay. With respect to the January 6th report, have you — what’s your [p.230] view on it, from a political standpoint in Congress?

A. Well, I voted to certify the election. I thought what happened on January 6th was obviously bad. It was a riot in the Capitol building. It was meant to disturb a proceeding.

And I felt that the parts of the report that I saw described those things. It went beyond that in other areas. And that’s where I think the cross-examination, in terms of the President’s culpability, would have been important.

Q. And with a deficiency — and why do you think it would have been important?

A. Because I think that in order to be able to judge someone’s — it’s like going into a courtroom as a prosecutor, not having a defense counsel or a defendant. I think in order to be able to judge someone’s culpability, you’ve got to be able to hear both sides of the story.

And in this case, there was not another side. There were people who voted to [p.231] impeach the President because they made a judgment that he had been involved in the January 6th events. And the other side was not present, for one reason or another — was not present to be able to portray the other side of the story.

JA923

Q. Thank you very much, Congressman Buck. I appreciate your testimony today.

MR. GESSLER: I have no further questions.

MR. NICOLAIS: Your Honor, can we have a short break just to discuss some issues?

Obviously this went beyond the scope of what we originally prepared for. We're looking for five or ten minutes.

THE COURT: Sure. Given —I think we're ahead of schedule generally. Let's just take a 15-minute break before cross-examination.

Does that work for you, Congressman Buck?

THE WITNESS: The bells are going to go off soon for voting, but [p.232] I certainly would be available after votes. But hopefully votes are delayed. And I will do my very best to be here.

THE COURT: Why don't we make it 10 minutes then, so we can hope to get you done. But we'll work with your schedule. Okay?

THE WITNESS: Thank you very much.

THE COURT: So we'll reconvene at 5 after 2:00.

(Recess taken.)

THE COURT: Do we know if Congressman Buck is still good or has he gone to vote?

There he is.

Are you still able to testify?

THE WITNESS: I am. Yes.

THE COURT: Okay.

MR. NICOLAIS: Your Honor, before we begin, I want to get this right, to try to make sure we have a full, fair, and accurate process.

I would like to actually ask that we can split our cross-examination. We [p.233] had one attorney preparing to ask Congress Nehls specifically about

JA924

questions. And he was here — number 7 on the witness list —to testify about the selection process for January 6th and go through all of that.

We would like that attorney to cross-examine Congressman Buck on that, and then I'll cross-examine him on what he was actually brought here to testify about and January 6th and what he went into there.

Is that acceptable to Your Honor?

MR. GESSLER: I'm not going to object to that, Your Honor.

THE COURT: Yeah, I think that makes sense, since we — there's been a lot of moving parts here with the witnesses. And it is an expedited proceeding, so I understand that it's been hard to get people to testify.

MR. NICOLAIS: Thank you, Your Honor.

THE COURT: So, Congressman Buck, we're going to do something a little bit unusual.

[p.234]

As you know, as a lawyer, the rule is usually that just one person can do the cross-examination. But since the Petitioners weren't aware until today that you were going to testify about the January 6th Committee, they're going to have one person ask you questions about the January 6th Committee and then another person ask you about the — what they knew to be the subject of your testimony, which was the events of January 6. Okay?

THE WITNESS: Great. Thank you, Your Honor.

THE COURT: So we're starting with Mr. Grimsley.

CROSS-EXAMINATION

BY MR. GRIMSLEY:

Q. Good afternoon, Congressman Buck. How are you?

A. Good afternoon. I'm fine. Thank you.

JA925

Q. You're not familiar with what the predicate requirements for satisfying Colorado Rule of Evidence 803(3) are, are [p.235] you?

A. I would have to read it to be able to tell you that.

No, I'm not, as I sit here right now.

Q. Yeah. It's an exception to the general rule prohibiting hearsay that applies to reports of government investigations.

You're not familiar, as you sit here today, with what the requirements of that provision are?

A. I'm not.

Q. Now I want to ask you about the process for coming up with and appointing the members of the Select Committee.

You know originally the Democrats had sought to create an independent, bipartisan commission to investigate the attack?

A. I believe Democrats and some Republicans sought that, yes.

Q. But the legislation failed in the Senate because of the filibuster. There weren't enough Republican votes in the Senate to overcome the filibuster, so they couldn't [p.236] establish that bipartisan commission; correct?

A. I'm unaware of what happens in the Senate, but I am aware — I believe it passed in the House.

Q. It did pass in the House, because there is not a filibuster in the House.

But you know that it got out of the House and never came back to the Senate; right?

A. I do know that there was not an independent commission formed. Yes.

Q. And you had mentioned, you know, votes a little bit before. I think you talked about the impeachment votes.

JA926

After the bipartisan commission was struck down in the Senate, then there was House Resolution 503 passed to create the Select Committee. Do you recall that?

A. I remember a vote on the Select Committee, yes.

Q. And, you're right, not a whole lot of Republicans voted for it. I think it was just 2. But there were 19 Republicans [p.237] who just didn't vote at all because I think they didn't want to have their vote on the record.

Do you recall that?

A. I don't recall the reason for them not voting. And I don't recall the specific numbers.

Q. All the Democrats voted for HR 503, though.

A. I take your word for it.

Q. And the Select Committee that was established by HR 503 was originally designated so that Speaker Pelosi would appoint 13 members, 5 of whom would be nominated or appointed after consultation with then-Leader McCarthy.

Is that your understanding?

A. That is typically how it works. Yes.

Q. And, in fact, before even Leader McCarthy nominated five individuals, Speaker Pelosi said she was going to appoint Republican Liz Cheney to the Select Committee; correct?

A. I don't remember whether that [p.238 happened before or after, but I do remember Speaker Pelosi making that announcement.

Q. So that would have meant that there would have — instead of eight Democrats and five Republicans being on the committee, there would have actually been seven Democrats and six Republicans, given that Liz Cheney is a Republican. Correct?

A. Well, there would have been eight appointed by the Democrat side and five appointed by the Republican

JA927

side. One of them — one of the Democrat appointees would have been a Republican.

Q. But just doing nose counting, it would have been seven Democrats and six Republicans, unless, for some reason that I can't possibly fathom, the Republicans had appointed a Democrat. Correct?

A. When Speaker — Leader McCarthy made his appointments, there was not a Democrat in that group.

Q. So after Speaker Pelosi said at least that she was going to appoint Liz Cheney, Leader McCarthy nominated five Republicans for the committee. And those [p.239] included Representative Rodney Davis, Representative Jim Jordan, Representative Kelly Armstrong, and Representative Troy Nehls, along with Representative Jim Banks.

Does that sound right?

A. That does sound right, yes.

Q. And Nancy Pelosi did not reject all five names, did she?

A. That's correct.

Q. She only rejected two of the names, and that was Representative Jim Jordan and Representative Jim Banks?

A. That's correct.

Q. Now you do understand — then after she rejected those two, then as I think you said, Leader McCarthy pulled all the nominations down. Right?

A. He withdrew the nominations, yes.

Q. Speaker Pelosi said, "Three of your five are totally fine, and you just need to nominate two others besides Representatives Jordan and Banks." Isn't that right?

A. I don't know if she said that, [p.240] but that was certainly what occurred.

Q. Now you've been a prosecutor?



A. Yes.

Q. You would not appoint a material witness to a case to sit in judgment of that case, would you?

A. I believe that would be a conflict.

Q. And you do understand that while you may not agree, there were many who believe that Representative Jim Jordan was potentially a material witness to the events that happened on January 6th. Correct?

A. I believe many people would draw that conclusion, yes.

Q. And, in fact, he's admitted that he had conversations with President Trump on the day of the attack.

A. I believe there were two conversations with President Trump and two others with Rudy Giuliani on that day.

Q. And Rudy Giuliani and President Trump refused to testify before the January 6th Committee, didn't they?

A. I don't know. I wouldn't be [p.241] surprised if President Trump did. I don't know — I know some witnesses that refused to testify were — there were court proceedings to compel their testimony, but I'm not sure — or to hold them in contempt of Congress. But I'm not sure about Rudy Giuliani.

Q. But at the end of the day, when some of the very most important evidence in the case is going to be what did President Trump say on the day of January 6th and the attack, especially while it was happening, you're not going to seat somebody who has that information to judge the case; correct?

A. Well, if you're asking me or are you asking — obviously Speaker Pelosi felt that way.

Q. I'm asking you, as a former prosecutor, who spoke at length about how the system is supposed to work: Do

you put a material witness who has material information in charge of deciding a case?

A. This is not a court proceeding.

25 The January 6th investigation was not a court [p.242] proceeding. And so what you're asking me, as a prosecutor, would not apply to my experience here in Congress.

I do think that everybody that was seated had evidence because they were all sitting in the Chamber at the time — I'm not sure all of them, but many of them were sitting in the Chamber at the time of the January 6th.

So I wouldn't have an eyewitness to a crime on a jury any more than I would have what you call a "material witness."

But this is not a jury situation. This is a Congressional investigation.

Q. Well, two questions there. First, you had brought up, I think on your direct, kind of your view of cross-examination and the adversarial process and how that's really the way to get at the truth.

But the fact is: This is a Congressional investigation, and they just work a little bit differently than court cases. Right?

A. Much differently.

[p.243]

Q. And then as far as the witnesses and all members of the House being a witness, you're certainly right, that all members of the House were witnesses, at least those who were there that day to the attack on the Capitol. But not all of them had material information about conversations they had had with the President on that day. Correct?

A. That's correct.

JA930

Q. And then Representative Banks was the other person that Speaker Pelosi said could not serve.

And do you recall that Representative Banks issued a press release shortly after he was nominated by Speaker — Leader McCarthy?

A. I do not recall that.

MR. GRIMSLEY: Can we put up Exhibit 184, please. P-184.

BY MR. GRIMSLEY:

Q. And we're going to share the screen here, Congressman. Hopefully you can see it.

(Pause.)

[p.244]

Q. Sorry. It just takes second.

MR. GRIMSLEY: And if you could blow up the document.

BY MR. GRIMSLEY:

Q. Can you read that? If not, I can blow it up further.

A. I don't see any document at this point.

(Pause.)

I've got it now.

Q. Okay. Great.

Do you see that? It's a press release from — and this is, I'll represent to you, taken from Representative Banks's congressional website.

A. I'm reading it right now — do you want me to read the document?

Q. You can read it if you'd like, or I can just ask you some questions about it.

I was going to go to the third paragraph starting, "If Democrats..."

A. I see that paragraph. Yes.

Q. He says, "If Democrats were serious about investigating political [p.245] violence, this committee

JA931

would be studying not only the January 6th riot at the Capitol, but also the hundreds of violent political riots last summer, when many more innocent Americans and law enforcement officers were attacked. And, of course, the committee would not overlook the Good Friday murder of U.S. Capitol Police Officer Billy Evans that was perpetrated by a far-left extremist.”

He then goes on to say in the last paragraph, “Even then, I will do everything possible to give the American people the facts about the lead-up to January 6th, the riot that day, and the responses from Capitol leadership and the Biden administration. I will not allow this committee to be turned into a forum for condemning millions of Americans because of their political beliefs.”

What possible involvement could the Biden administration have had with the events of January 6th?

A. I think you’re going to have to ask Mr. Banks.

Q. Do you see, yourself, that [p.246] President Biden’s administration could have any involvement whatsoever with January 6th?

A. I’m unaware of any.

Obviously their administration was being formed and would be taking over on January 20th. There is a transition period at the Department of Justice, Department of Defense. But I am unaware of any activities that the Biden administration had regarding January 6th.

Q. And you agree that if a committee is constituted to investigate a specific event like January 6th, while a member may want other things investigated, it’s not appropriate to bring those things into discussion.

A. No, I don’t think that’s the case at all.

In a political investigation, it is often brought in what is not happening, what this witness is not testifying

JA932

about, or the witnesses that were not allowed to be called. Because, again, it isn't purely a search for the truth; it is a political exercise that is being engaged in to create [p.247] information for elections. That's what the political system is about.

Q. You didn't talk to Speaker Pelosi or any members of the Select Committee who told you that the purpose of their investigation was electioneering, did you?

A. Have I spoken to — no, I have not spoken. But I have been present for nine years in this place. And it's one of the reasons I'm looking forward to not coming back.

Q. I wish that was breaking news here. We can announce it though, I think.

So I want to ask you a little bit about the actual process that the investigative team went through in coming to the conclusions in the January 6th report.

You don't dispute that the January 6th Committee's investigative staff was led by former U.S. attorney?

A. I'm unaware of who led that study.

Q. You don't dispute that the investigative staff included roughly 20 lawyers?

[p.248]

A. I don't — again, I don't have any knowledge of the staff that was put together.

Q. And the only reason I'm asking you this, sir, is I think that President Trump's lawyers have brought you in here to impugn the integrity and the reliability of this report. So I want to make sure I understand what you know about the process for creating it. Okay?

A. (Nodded head up and down.)

Q. You don't dispute that some of the lawyers on the investigative staff were Republicans.

A. Again, I have no knowledge.

JA933

Q. You don't dispute that as part of the investigation, the committee and investigative staff interviewed or deposed more than 1,000 witnesses?

A. I know they deposed many. I'm not sure of the exact number.

Q. You don't dispute that the January 6th Committee and investigative staff collected more than 1 million documents?

A. Again, no knowledge. I wouldn't dispute it.  
[p.249]

Q. You don't dispute that the January 6th Committee and investigative staff reviewed hundreds of hours of video evidence?

A. Again, no knowledge.

Q. You don't dispute that the January 6th Committee and investigative staff reviewed more than 60 federal and state court rulings related to the 2020 election?

A. I have no knowledge of how many court proceedings they reviewed.

Q. You don't dispute that the January 6th Committee and investigative staff presented testimony from more than 70 witnesses at 10 live public hearings, do you?

A. Again, I have no knowledge of how many witnesses were called.

Q. You don't dispute that during the investigation, more than 30 witnesses invoked their Fifth Amendment right against self-incrimination?

A. I do not know that number.

Q. You don't dispute that others, including President Trump, refused to testify, asserting executive privilege?

A. I do know that — I had read [p.250] stories about President Trump. I have no knowledge of others who have testified or refused to testify.

JA934

Q. And actually President Trump was asked to testify, and he simply refused; didn't he?

A. The stories that I read indicated that he asserted executive privilege. I'm not sure if there were any other reasons for him not to testify.

Q. He could have come in and cleared all this up. He could have testified before the committee; right?

There's nothing that prevented him from doing so.

A. Look, I don't know that he could have cleared all of this up, as you characterize it. I think that there were a lot of things that happened outside of his scope of knowledge.

There were certainly communications from trials that had occurred in the District of Columbia that a group of people from one of the three groups that was organizing this rally had every intention to move up to the [p.251] Capitol.

I'm not sure the President knew that or didn't know that. But certainly there was activities outside of his scope of knowledge that were occurring during this time frame.

Q. But he certainly — if he wasn't involved with that or didn't know anything about it or hadn't coordinated with them could have come down to Congress and said, "I didn't do it."

A. Well, actually, the way Washington, D.C., is set up and the way the Constitution is set up, Congress is on a hill. And he would have to come up to Congress to testify, but — because the legislative branch is the superior branch, and that's why we overlook the White House. But...

Q. I am very sorry. He could have come "up" to The Hill.

JA935

A. He certainly could have come up to The Hill to testify, yes.

Q. And back to the process. You don't dispute that the [p.252] majority of people who were interviewed by the committee and who testified were Trump administration officials and other Republicans?

A. I don't know whether that — it was a majority or not.

Q. You know that there were a lot of Republicans, though, that testified.

A. I do know that, yes.

Q. And there were a lot of people from within the Trump administration?

A. I'm aware that, yes. There were people from the Trump administration; from the Trump White House, in particular.

Q. And you don't dispute that a majority of the people who testified — not just behind closed doors, because we've heard about these secret deposition transcripts — but at public hearings, the 70-or-so witnesses were mostly Republicans and individuals from the Trump administration.

A. I do not dispute that.

Q. Now, for the depositions and interviews behind closed doors before the public hearings — first, as a prosecutor, if [p.253] you're doing an investigation and you're interviewing a lot of different people for that investigation, you're certainly not going to make the interviews public until your investigation is done, are you?

A. I'm not sure what you're saying.

If I'm a prosecutor in a grand jury, I'm not allowed to make it up public under Rule 6(e).

Q. It's a bad question. I apologize.



JA936

If you're a prosecutor and you're doing an investigation and you're out there with your law enforcement agents interviewing people and trying to come up with what happened and figuring it out, you don't release the transcripts of those interviews to the public until you've finished your investigation because doing so might compromise the investigation; right?

A. Certainly it might taint other testimony of other witnesses.

Q. So that's why it's not unusual, if there's an investigation — in this case, [p.254] a Congressional investigation — to wait until the very end of the investigation to release those types of transcripts.

A. You're talking about the private transcripts?

Q. Yes. Sorry.

A. Yeah, my only experience, in terms of Congressional investigations, other than watching the January 6th investigation from a distance, was the Iran-Contra investigation. I was a staffer on that.

We did not release the transcripts at the time that those transcripts were made. We put a report out, a minority report, and released the transcripts sometime later, if at all. Some of them were obviously classified and were not released.

Q. And that's typical; right?

If there are transcripts that have in them classified information, you have to weigh the balance between keeping classified information classified and letting the public see it. And you can err on the side of keeping it classified. Right?

[p.255]

A. Well, actually we don't make that distinction. The Executive Branch makes that decision. And it is not

JA937

based on the balance of interest; it's based on protecting humans and sources and methods.

Q. Now, as far as the interviews and depositions that were behind the scenes during the investigation, you don't dispute that people who were deposed were sworn and deposed under oath; and that people who were interviewed were advised that under 18 USC, Section 1001, they cannot provide materially false or misleading information or otherwise be subject to felony prosecution.

You don't dispute that those things went on.

A. My experience in Congressional hearings is that witnesses are put under oath.

Q. And when they're not, if they're interviews, is it your experience as well that they're told that providing materially false or misleading information to 24 Congress is a felony offense?

A. Yes. And typically sign a [p.256] statement to that effect.

Q. And you don't dispute that except for a few documents implicating national security concerns — the confidential ones we were talking about — the January 6th Committee posted every document, every recorded interview and deposition and every exhibit cited in the January 6th Committee's final report on its official public website?

A. Yeah.

What they didn't post were the questions that weren't asked. And they didn't post the documents that weren't subpoenaed. And they didn't post the interviews that didn't occur.

But in terms of posting everything that they had, yes.

Q. Can you think of any witness that somebody believed had material information for purposes of the

JA938

investigation that was not permitted to come and give a deposition or interview?

A. I don't think typically people come and volunteer information. I can think [p.257] of, for example, Jim Jordan who the staff did — according to Jim — I have no personal knowledge of this, but according to Jim, did not — the committee staff did not follow up and ask him the questions. And therefore his — the section of the report on Jim, he alleges, is misleading.

Q. Well, to be fair, this proceeding is not about Jim Jordan. And Jim Jordan's involvement in the insurrection I is not at issue here.

So can you think of any other witness besides Jim Jordan who you think had information they wanted to provide but wasn't able to?

A. I am not aware of how the committee went about choosing witnesses and other potential witnesses that did not give testimony.

Q. Are you aware of any witness that any Republican passed to the investigative staff saying that that individual had material information that the investigative staff did not reach out to?

A. I am aware that it was either [p.258] the Chief of the Capitol Police or the Sergeant at Arms testifying in Leader McCarthy's investigation. And I'm not aware of whether that — those witnesses testified in the January 6th investigation in public or private.

Q. And the McCarthy investigation that you're talking about was the Shadow Committee that conducted an investigation, the committee consisting of the five members that Leader McCarthy had originally nominated for the January 6th Select Committee?

A. I don't know about your characterization of "shadow," but it was a group that Leader McCarthy

JA939

tasked with looking into a group of members looking into the events of January 6th.

Q. And they actually issued a report. Do you recall that?

A. I do not recall ever seeing the report. I remember a press release about a report.

Q. You weren't interested in looking at the report?

A. I am not interested in looking [p.259] at the report, no.

Q. And are you aware of anything in that report from those five Congress people that contradicts anything in the January 6th report?

A. I have no basis to have compared the two.

Q. Now, you don't dispute that the final report of the committee and the findings contained therein were unanimously approved by all members of the Select Committee?

A. I have no reason to dispute that.

Q. And you don't dispute that if a member of the committee disagreed with any finding, that member could have objected?

A. Again, I don't know what their procedures were.

Q. And you mentioned a minority report earlier. Those are common, but they're not required; correct?

A. There is no — typically in the legislation that creates a committee, there is a provision for a minority report. [p.260] I don't know if there was in this legislation or not. I don't recall.

Q. But just because there's a provision that allows for a minority report, a minority report is not required if, at the end of the day, everybody agrees on what the truth is.

A. Of course. Of course.

JA940

Q. Can you — I've asked you about people that may have had relevant information that weren't allowed to provide it.

Can you identify any document that you believe was relevant to the January 6th investigation that the committee did not consider?

A. I'm not aware of that.

Q. And you were asked some questions about the public hearings and how witnesses were questioned in those hearings.

You don't have any idea how the witnesses were questioned during their depositions or interviews?

A. I know the procedure, because I've been involved in an investigation in the House during my time as a congressman. [P.261] I don't know if those procedures were followed by the January 6th Committee.

Q. Now you raised the impeachment — the second impeachment and the vote in the House, I think, on your direct examination.

A. Yes, I did mention it.

Q. You do know that the second impeachment — the vote for the article of impeachment was the most bipartisan vote for impeachment in the history of the United States, do you not?

A. I'm trying to think of how many impeachment votes we've had.

Q. Five.

A. Okay. It was certainly more —in my experience, it was more bipartisan than the first impeachment of President Trump. There was 1 Democrat who voted with the Republicans on the first impeachment; and this vote, there were 10 or 12 Republicans who voted with the Democrats on the impeachment.

JA941

Q. I'll represent to you that it was all of the Democrats and 10 Republicans in the House voted for impeachment. And that [p.262] was more people from the President's party than had ever voted on impeachment before.

Does that sound about right?

A. I accept that. Yes.

Q. And then after the article of impeachment was sent over to the Senate, the Senate voted in the most bipartisan fashion for conviction of any of the, I think, three trials in the history of the United States.

MR. GESSLER: Your Honor, I would object to this.

We certainly talked about the January 6th report. This is about Congress's actions and historical bipartisanship. Well beyond the scope.

MR. GRIMSLEY: Well, I think 80 percent of his testimony was beyond the scope of his disclosure.

MR. GESSLER: That comment notwithstanding — and we certainly understand the perspective of the Petitioners — it's still beyond the scope of the direct.

THE COURT: I'll sustain the objection.

[p.263]

THE WITNESS: Judge, may I interrupt for one moment, please?

THE COURT: Yes.

Do you need to leave?

THE WITNESS: I don't.

Five minutes ago, we had a 15-minute vote called. As is typical in 8 Congress, that means I have 30 minutes left.

And I just wanted to ask the Court if I could, in about 10 or 15 minutes, leave to go walk over to the Capitol.

THE COURT: Yeah. Just tell us when you need to, and we will accommodate your schedule.

JA942

THE WITNESS: Thank you.

MR. GRIMSLEY: Well, I had about five more minutes on the Senate's trial of President Trump, so I will not be asking those, it seems.

So I'll turn it over to my colleague, Mario Nicolais.

CROSS EXAMINATION

BY MR. NICOLAIS:

Q. Congressman, let me start just by saying it's good to see you again. And [p.264] thank you for your eight years and ten months worth of service. And I'm sure you're counting days at this point.

A. I am. Hour

Q. I do not blame you.

Congressman, I want to focus mostly on January 6th and events of that and some of your comments about it.

You had said that you were on the Floor of the House of Representatives maybe roughly around 2:00 p.m. that day.

A. I don't recall the time, but it was afternoon. I know that.

Q. Okay. And you said you were discussing an objection to the certification. Is that right?

A. I believe that the debate had started on the certification, and the Speaker was presiding. I remember she was in the chair and was removed. And that would indicate that she was presiding on the debate, because the Vice President oversees the counting. So he had withdrawn from the House Floor at that point.

Q. Okay. And the objection that [p.265] day there was being discussed involved concerns about voting irregularities or voting fraud in the 2020 election.

A. And, in particular, in Arizona. Yes.

Q. Okay. Now you said that it was unusual — something unusual happened that day, and that you were

JA943

interrupted. And there was — an officer came up and spoke with you, and that you knew that there was danger at that point.

Was that your testimony?

A. Yeah, the officer didn't speak to me. The officer addressed the House Floor at that point.

But, yes, I believe what she said was that the House had been breached and that tear gas had been deployed and that we had tear gas masks underneath our seats.

Q. And then you later testified that officers had drawn guns while they were on the House Floor.

A. That's my memory. Yes.

Q. And later you testified that there were shots fired, but you didn't hear [p.266] it.

A. That's correct.

Q. And you testified that there was a mob outside.

A. I testified that when I got back to my office and looked at the TV, that there were many more people in the building and outside the building than I had believed when I was inside the House Chamber.

Q. But you used the term "mob outside."

A. Okay. I — a large number of people, yes.

Q. Okay. You also testified about — you know, that there was a disturbance in the summer of 2020. Was that right? You testified about that?

A. Yes.

Q. Were there ever guns drawn on the House Floor during those — during that event?

A. The protesters in 2020 never breached the Capitol building. And I don't believe there were guns drawn on the House Floor.

[p.267]

Q. Were there ever shots fired in the Capitol, to your knowledge, during that event?



JA944

A. No, not to my knowledge.

Q. What about in 2016?

You said that Congress was shut down because of a mass shooting. I believe that's what you testified to; right? Not in Congress, but elsewhere that was going on.

A. Yeah, I believe it was a school shooting.

The Democrats were trying to bring gun control legislation, and they occupied the Floor, prevented work from being done in 2016. I think it was June of 2016.

Q. Okay. Was there ever any physical danger at that point, do you believe, during that event?

A. If you're asking if there was pushing and shoving, my memory is that there was some typical testosterone acts, but there was certainly no weapon drawn. There was no assault in that sense.

Q. That was between members of Congress pushing and shoving?

[p.268]

A. That was members of Congress sort of more intimidating than really actually pushing and shoving.

Q. Okay. But there were no guns drawn on that day either.

A. That's correct.

Q. And there were no shots fired on that day either.

A. That's correct.

Q. So going back to January 6th.

After there were guns drawn and shots fired, you were evacuated from the House Floor by the USCP.

A. That's correct.

Q. And so you were not able to finish the objection process at that time.

A. That's right. It was delayed.

Q. And when did you finish that objection process?

JA945

A. A few hours later. I don't recall exactly the time frame, but a few hours later, we came back to the House Floor and started — finished hearing the Arizona debate and voted. And then the Senate returned, and we continued the [p.269] process.

Q. Would it — does it sound right that it was about roughly 11:00 p.m. that you voted to certify the election? So you voted against the motion to object certification?

A. I'm sorry?

Q. Does 11:00 p.m. sound roughly right?

A. Yeah, 11:00 p.m. sounds right.

And I voted to certify. So I'm not sure what the — you're saying I voted against the motion to decertify. Yes.

Q. Let me see if I can clarify.

You voted against the objections.

A. That's correct.

Q. Okay. And then was the electoral vote certified on that day, on January 6th?

A. I think it was in the morning of January 7th that the hearing was concluded.

Q. So does it sound roughly right that around 3:00 a.m. on January 7th it was certified?

[p.270]

A. That does sound right, yes.

Q. Okay. Congressman, this August you appeared in an interview on MSNBC with Andrea Mitchell; right?

A. I've appeared a number times. I'm not sure which one.

Q. Well, I'll tell you what. Why don't I play a clip, and maybe that might help you remember.

A. Great.

MR. NICOLAIS: If you would pull up 206, starting at 1:04.

JA946

I'm going to go ahead and ask Mr. Hehn to go ahead and play that. And from 1:04 to about 1:37.

(Video played.)

BY MR. NICOLAIS:

Q. And that was you — correct? —Congressman?

A. Yes, it is.

Q. Do you remember that interview?

A. I don't recall the specific interview, but it was me.

Q. Okay. Fair enough. Fair enough.

[p.271]

So you were saying that the President — you agreed that, "Yeah, I think he does need to call on people to stop violence. To stand down."

Do you believe former President Trump supporters act sometimes with violence based on his statements?

MR. GESSLER: Objection, Your Honor. Well beyond the direct. Nor is this seeking bias evidence. He's asking Representative Buck's opinion on other people's actions.

MR. NICOLAIS: Your Honor, these are consistent statements with the findings of the January 6th report.

THE COURT: I'm going to overrule the objection.

BY MR. NICOLAIS:

Q. Do you want me to repeat the question, Congressman?

A. Yes, please.

Q. You believe — based on what you were saying there, you believe former President Trump supporters listen to President Trump when he gives them a command.

[p.272]

A. That's a long answer.

So I think — I'm sorry.

JA947

Q. Feel free. Go ahead. Assume it's an open-ended question.

A. Yeah, I struggle with it.

So I think that if President Trump says, "It's your duty to vote, it's your duty to vote," I think that his supporters will listen to that and follow those instructions.

I think if President Trump says, you know, "I want you to go kill somebody," I don't think that his political supporters — being political supporters and not otherwise engaged — would go kill somebody.

So I think it depends on what the order is. And I think it depends on the legality of the order. And I think it depends on the context of the order.

Q. If President Trump, say, asked violent attackers to go home, do you think they would listen to him?

MR. GESSLER: Your Honor, I am, again, going to object.

I mean, our direct exam was [p.273] pretty darn specific to events that happened in the Capitol on January 6th. And —

THE COURT: I'm going to sustain the objection. He basically — Congressman Buck hasn't really said there's anything he disagrees with about the January 6th report. So I'm not sure the fact that he has consistent thoughts is really impeachment.

MR. NICOLAIS: Okay. I'll move on, Your Honor. I can move on.

BY MR. NICOLAIS:

Q. Congressman Buck, yesterday you released a video announcing that you weren't going to seek reelection. Is that right?

A. That is correct.

JA948

Q. And in that video, you said, “Too many Republican leaders are lying to America claiming the 2020 election was stolen, describing January 6th as an unguided tour of the Capitol, and asserting that the ensuing prosecutions are a weaponization of our justice system.”

Did you say that in that video?

A. I did.

[p.274]

Q. And did you also say, “These insidious narratives wreak widespread cynicism and erode America’s confidence in the rule of law”?

Did you say that as well?

A. I did.

Q. What are the lies and insidious narratives regarding the 2020 election and January 6th that you’re talking about?

MR. GESSLER: Your Honor, do I need — may I object again?

This is maybe salacious political material, but it’s beyond the scope of the direct. It’s not for bias. And if we want to avoid this becoming a circus, we should not go into this testimony.

THE COURT: What’s the relevance?

MR. NICOLAIS: Your Honor, it’s relevant because there are questions about January 6th in his statements about January 6th.

Furthermore, he said that the objections were about voter fraud and voter irregularities that they discussed on [p.275] January 6th, all of which was brought up during direct examination.

We should have the ability to go ahead and cross him about his opinions about all of these.

JA949

And, I mean, I think, you know, it's — if they didn't want to hear from the congressman about this, maybe they shouldn't have called him.

MR. GESSLER: Your Honor, if they wanted to listen to Representative Buck's opinions about what happened on January 6, if they wanted to listen to Representative Buck's opinions on election fraud, if they wanted to make this case about whether election fraud occurred or not, they could have brought a different complaint, and they could have endorsed Representative Buck as a witness.

The direct exam was on — and we've worked very hard to prevent this from becoming a circus. The direct exam was on the events that happened in the Capitol on January 6th, on that one day, and Representative Buck's experience and — with [p.276] respect to the process of the January 6th Committee.

Now Mr. Nicolais's colleague has done the cross-exam with respect to the latter half of the testimony, which we didn't object to. And so this part of the cross, my guess, is supposed to be on the events that happened in the Capitol that Representative Buck saw on January 6.

We did not turn this into a circus with respect to Representative Swalwell, his political activities, his opinions, his behaviors, which we easily could have.

If this is for — this is not bias testimony, and this is well beyond what we're here for today.

THE COURT: I'm going to sustain the objection. I think that — I'm not sure what — I think it's outside the scope of the direct.

So why don't you move on to your next topic, if you have one.

MR. NICOLAIS: Sure, Your Honor.  
[p.277]

JA950

BY MR. NICOLAIS:

Q. Congressman Buck —

THE COURT: Hold on.

Congressman Buck, do you need to go?

He's muted now.

We can't hear you anymore.

MR. NICOLAIS: Congressman Buck, we've had an issue before, where you hit "mute," then the clerk has to unmute you.

THE COURT: How are you for time, Congressman Buck?

THE WITNESS: I've got about five minutes left.

MR. NICOLAIS: Okay. Well, I'll try to see if we can go quickly.

BY MR. NICOLAIS:

Q. Congressman Buck, you testified about speaking with Jim Jordan about his speakership nomination. Right?

A. Correct.

Q. And two weeks ago, on October 17th, you appeared on the television show The Lead with Jake Tapper to discuss that issue as well; is that right?

[p.278]

A. Yes.

Q. And do you remember saying on that show, to Jake Tapper, that "And I think that if we have a presidential candidate who now is leading, who denies that he lost the election and was obviously behind what happened on January 6th..."

Do you remember saying that to Jake Tapper in that interview?

A. I don't remember it, but I don't dispute that I said something like that.

JA951

Q. Well, I tell you what. Let me see if we can refresh your memory a little bit.

MR. NICOLAIS: If you can pull up 269, and start from 0 to 042.

MR. GESSLER: I would object to this on the same grounds as before. And I will continue to do so.

If we want to litigate these issues through Representative Buck's opinion, I think we need additional time in this case.

But that's not why we're here. That's not why we called him as a witness. [p.279] If Mr. Nicolais had wanted to go into this area, he could have interviewed Representative Buck and asked him questions along these lines.

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

BY MR. NICOLAIS:

Q. Were you talking about Speaker — the nomination of Speaker Jordan at that time with Jake Tapper?

MR. GESSLER: Objection, Your Honor. We'll renew it for the same reasons.

MR. NICOLAIS: They brought up — Your Honor, they brought up the discussion of — the congressman testified to this during direct, about — speaking about the nomination of Jim Jordan. And, in fact, that's when he talked to him about all the information that he got about the January 6th report.

I think we can ask him about things that he said around that nomination period.

THE COURT: Just because he [p.280] said multiple things during a conversation doesn't make them, one, relevant to this case, or; B, not outside the scope of the direct.

MR. NICOLAIS: Okay.

THE COURT: So objection sustained.



JA952

BY MR. NICOLAIS:

Q. Congressman, again, I just want to repeat that you had used the phrase “mob” to describe the people outside the building earlier during the direct.

Do you remember saying that?

A. Yes.

Q. And do you remember me asking you about that?

A. Yes.

Q. Have you recently used that term to refer to the people outside on January 6th?

THE COURT: More recent than today?

BY MR. NICOLAIS:

Q. Have you used it — did you use it yesterday?

[p.281]

THE COURT: Sorry.

MR. NICOLAIS: I’m sorry, Your Honor.

BY MR. NICOLAIS:

Q. Did you use the term “mob” to refer to the people outside the building yesterday?

A. Yeah, I did a number of interviews yesterday, and I may have used the term.

It is my feeling of what was going on at the time.

THE WITNESS: And, Judge, I apologize, but I’ve got to run, if that’s okay at this point.

MR. NICOLAIS: I have one more question.

THE COURT: He’s going to have a redirect, so hold on.

Is there any way, Congressman, that you can come back to finish your testimony?

THE WITNESS: I look forward to it. Yes.

THE COURT: Okay. So, [p. 282] Congressman Buck, will you just correspond with Mr. Gessler about how that’s all going to work?

JA953

THE WITNESS: Okay. Great. Thank you very much, Judge.

THE COURT: Thank you so much for your testimony. And we will — it doesn't sound like they have much more, but I think we will need you to come back and finish it.

THE WITNESS: Okay. Thank you.

MR. NICOLAIS: Thank you, Congressman.

Thank you, Your Honor.

MR. GESSLER: Do I have time for one question or

—

THE COURT: Oh, I think — you are released.

MR. GESSLER: My redirect is one question.

THE COURT: I know. But I don't think he was really done.

MR. GESSLER: That's fine, Your Honor.

THE COURT: Let Mr. Gessler [p.283] know when you're available again after the vote.

Thank you. So you can leave.

MR. GESSLER: Your Honor, we'll re-call Mr. Bjorklund to the stand.

THE COURT: Mr. Bjorklund, you're still under oath.

THE WITNESS: Thank you.

THE COURT: Thank you for being so accommodating.

THE WITNESS: Sure.

TOM BJORKLUND, having been previously first duly sworn to state the whole truth, continued to testify as follows:

DIRECT EXAMINATION (Cont.)

BY MR. GESSLER:

Q. Hello again, Mr. Bjorklund.

A. Hello.

JA954

Q. We're going to pick up where —overlap — one moment. We have a tech-break minute.

(Pause.)

Q. Okay. So you can see the screen there?

A. Yes.

[p.284]

Q. Okay. So we had just finished talking about Exhibit 1013. And I'm going to ask that Exhibit 1013 be played again, just to refresh your memory, so we can get back into your testimony.

A. Okay.

(Video played.)

Q. So you remember that video?

A. Yes, I do.

Q. Okay. And if I remember correctly, you said you were towards the side of the Capitol, working your way around the Capitol?

A. Yeah. Going back to our car.

Q. Well, now —

A. Yeah. I believe.

Q. I'm sorry.

Were you headed back to your car or were you still headed around the Capitol at that point?

A. I believe that one was on the way back to the car. I think that's where we left it when we —

Q. I will represent to you that your earlier testimony was that you were [p.285] still walking around the Capitol at that point.

A. Oh, okay. Oh. Yeah. I'm sorry. Yeah.

Q. Okay.

A. Yeah. I'm sorry. Yeah.

Q. Okay. Did you ever go around the entire Capitol towards the — well, what's called the front of the Capitol

but is actually sort of the side opposite the Washington Monument?

A. Yes.

Q. Okay.

A. Yeah. Sorry. That's when I was —

Q. Tell me sort of your — what happened from basically — roughly where that video was to around the Capitol.

A. Well, that right there, they were, you know, firing tear gas in and flash-bangs. And people were chanting "USA." And obviously I stayed on the side. I didn't go into the big crowd.

But, yeah, I was headed back to the — going around the Capitol, the side of [p.286] it.

Q. Okay. And what did you see as you walked around the Capitol, if anything notable?

A. Just a lot of, you know, people with flags. There didn't seem to be a lot of movement. There was a guy with a bullhorn chanting — or telling people to "Go in" or "Move forward," and you know, telling people — I noticed that — there was him and there was another person on the other side of this crowd, too, doing the same thing. They had bullhorns. I noticed there was bullhorns on both sides. And people were trying to herd the crowd into that — into where they were firing flash-bangs and tear gas.

Q. And were people in the crowd moving in?

A. From where I saw — I mean, people were dispersing when tear gas and flash-bangs were going off. But I didn't get — I didn't go into that — into the middle of that, so I didn't — I don't know from that point.

From my vantage point, I don't [p.287] know. The people that I saw mostly were just standing there. And I just felt like the police just didn't want people standing

JA956

there and hanging around where they were at. I didn't know why, but I just knew that they weren't very happy about it.

Q. Okay. Let's go to Exhibit 1014, please.

(Video played.)

Q. Okay. So that's another video.

Where are you right now?

Did you take this video?

A. I did. This is my video. And this is the U.S. House of Representatives on the front of the Capitol. So if you're facing the front of the Capitol, it would be on the left side of that.

Q. Okay. And if you're facing the Capitol, what's to your back?

A. Street car — police cars. There was, like, a pull-through; you know, like a road.

Q. Okay. Where is the Washington Monument — I'm just trying to orient ourselves. Where's the Washington Monument [p.288] in relation to this?

A. Sure. It would be on the opposite side of that building. So I had already come around where those trees are. Actually, I came right through those trees and around.

And there's a little parking lot there, and there was a whole bunch of police cars. And I walked right through them. And there was a whole bunch of police that were — they were grabbing duffle bags and stuff.

And I said, "Hi, guys." And they didn't stop and chat. And they — but they — I walked right through the center of them and right through their cars.

I mean, they were grabbing stuff out of their cars and stuff. And I just went right through their cars, and they didn't say anything to me at all.

JA957

Q. When you said “hi” to them, did they say anything to you?

A. Nope. Didn’t say hi back.

I just said, “Hi, guys.” And they didn’t say a word.

[p.289]

Q. I mean, did they hear you?

How close were you?

A. Oh, yeah. No. I was maybe from me to the recorder.

Q. I’m sorry. From you to?

A. From me to the madam here. 15 feet — I don’t know. 10 feet.

Q. Thank you.

When you say “From me to this other person” —

A. Yeah.

Q. — it’s sort of hard to see in the record.

A. Oh. My apologies.

Yeah, I’d say I probably came within 5 feet of the guy. He just walked right by me with a duffle bag.

Q. Okay. And are there any police officers in that photo?

A. Yeah. There are — this is —when I first rounded the corner, the police officers are in green. And you can see some with the orange — the yellow on their vests.

They were actually staggered —there was more of a formation than there is [p.290] in this view, but they were staggered, like, on one stair and then down the next stair and then up on the same level stair.

And they were staggered in a, like, V formation across that — all the way across. And you can see they’re kind of still there, but they were starting to break formation.

Q. Okay. When you say “across there,” can you be —

JA958

A. Uh-huh. So right where those balconies kind of jut out — I think those are balconies. They might be staircases. I don't know.

Q. Are you talking towards the left side of the photo or right side of the photo?

A. All the way across.

Q. Okay.

A. They were from one side of that little — where those fancy lamps are, they were, like, staggered, going all the way across that.

Q. Okay. So were they sort of forming a line across?  
[p.291]

Would people have to cross that line to get up the stairs?

A. Yeah. And there wasn't anybody going up there until — there's one guy that kind of went up to one of the police officers and asked if he could go up and look in the window.

Q. Did you hear that exchange?

A. Oh, yeah. I was right there. I was really close by.

MR. SUS: Objection. Hearsay.

MR. GESSLER: The question, "Can I go up to the window?" is not introduced for the truth of the matter asserted. It doesn't assert anything as truthful. It's simply a witness to a question.

THE COURT: The objection is overruled.

BY MR. GESSLER:

Q. Okay. How did the police react to that question?

A. One officer looked over his right shoulder at the other officer, and that officer shrugged. And he said, "Sure. Go [p.292] ahead."

Q. And then what happened after that?

JA959

A. Then they — the police marched off. They walked off the line. And they just went to the left — at this picture, they went to the left. That direction.

Q. And then what did people do?

A. They all just started going up the stairs.

Q. Okay. Did you walk up the stairs?

A. I did.

Q. And what did you see up there?

A. Well, the first thing that I did is I went between the columns, and I went to the left side of the building. And then I put my hand on the Capitol. And I prayed for our country.

Q. Okay. And then after that, what did you — before I ask that next question...

MR. GESSLER: Your Honor, I'd like to introduce Exhibit 1014.

MR. SUS: No objection.

[p.293]

THE COURT: 1014 is admitted.

(Exhibit 1014 was received into evidence.)

4 BY MR. GESSLER:

Q. So after you did — so what happened — what did you see that happened after that?

A. There were people beating on the windows on the right side over there, by the doors.

And so the doors are — you can kind of see the black, like, void there next to that lamp. On that side is some windows. And they were just banging on the windows, and they were yelling, "Let us in."

Q. How many people were banging on the windows?

A. Maybe three.

Q. Okay.

A. Yeah, probably — maybe four.

Q. Four people?



JA960

A. Yeah.

Q. Okay. And how many people —is that an accurate representation of the number of people that were up there at the [p.294] time, those four people were banging on the windows?

A. Well, at this point, in this picture, there isn't anybody up there. It wasn't until the officer said that we could go up there, then people went up there.

Q. Okay.

A. And then they immediately started banging on the windows —

Q. Okay.

A. — with their fists, like banging and making a lot of noise.

Q. Okay. Did you bang on any of the windows?

A. No.

Q. Okay. What did you see happen after that then?

A. I saw a guy — kind of a scruffy-looking guy — he had a beard and long hair — and he had a metal baton, and he telescoped it out. It was a folding, telescopic, metal baton.

And then he walked right up to the doors — and these windows are, like, probably 2 1/2 inches thick — and he just [p.295] whacked. And all it did was put a little tiny — like a marble would hit it, and it just put a little divot in the window. And then he just kept whacking that window.

And —

Q. Let me interrupt you for just a second.

Which window exactly was he hitting?

A. On the doors. The doors. They were shut, and they have — they were locked. I mean, he — they tried that because they were trying to open them.

Q. Okay.

JA961

A. And he whacked the window.

And then I went — I was over to the right. I was on that right balcony. And then two gentlemen, they had flags. And they took a flag, and they covered over the other guy. And then I heard them smashing the windows.

Q. Which windows did you hear them smash?

A. To the right of that door, there's probably two windows. And I think [p.296] one of those was a break room or something, because I looked — I saw right through the window. It looked like some kind of — like a break room or something that you would have at the office.

Q. Okay. Did you say anything?

A. Yeah. I said, "Dude, not cool."

Q. Okay. Did anyone else in the crowd say anything?

Or what was the crowd's reaction at that point?

A. Well, right before that, a young man came up to me and said that — he said, "Where's your mask?"

And I said, "I'm not afraid of COVID."

And he said, "No. To hide your identity."

And I said, "I'm not doing anything that I need to worry about hiding."

Q. Okay. How did the — how did people in the crowd or the crowd react to those — I guess you said one person breaking a window and another covering him with a [p.297] flag. How did the crowd respond to that?

A. Well, they looked at me, because I was clearly not happy. And then I started to leave and other people started to leave.

Q. Okay.

A. They started walking down. You could tell they were visibly not happy about the — smashing the windows.

JA962

Q. Did you see anyone entering the Capitol?

A. Yes.

Q. Describe that situation.

A. At one point they broke through the window in the break room, and they went through that window. And then within, I don't know, maybe three minutes, the big doors opened.

And they were these big, metal, heavy doors with the 2-inch-thick glass on the doors — or at least 2 inches. And they — inside, I could see the metal detectors, and they were going off. And they were, like, beeping.

And so then I saw them going [p.298] in, and I saw other people coming out.

Q. Okay. Now where were — so that group of police, where were the police at this time?

A. They had already left. They were nowhere around.

Q. Okay. Did you go in the Capitol?

A. No.

Q. And why not?

A. Well, it was tempting. But I saw the metal detectors going off, and I thought, "We're not supposed to go in there."

And so these guys were going through. A gentleman came out. He looked like a professional, maybe — just nice haircut, and he had a young man with him.

And I said, "Did you take a nice tour?"

And he said, "It's really cool in there. You should go in."

And I said, "Dude, there are cameras in there. And I don't think they want us in that building."

[p.299]

Q. Okay. Let's go to the next exhibit, please.

(Video played.)

JA963

Q. Now is that video after you came back down the stairs?

A. Yeah. And I'm standing by the police cars.

Q. Okay. Why did you stand by the police cars?

A. I just felt like that was probably a safe place to be, rather than near where they were, you know, breaking windows. I didn't want any part of that.

Q. Okay. What were the people like around you at that point?

A. Steve actually ended up finding me and meeting up with me through texts or something. We communicated somehow. And I told him where I was. And he came around, and he just stood by me.

And we were standing there by the police cars and making commentary about the people and just, you know, talking about the general crowd and...

Q. Okay.

[p.300]

MR. GESSLER: I'd like to move to introduce Exhibit 1015, Your Honor.

MR. SUS: No objection.

THE COURT: 1015 is admitted.

(Exhibit 1015 was received into evidence.)

BY MR. GESSLER:

Q. Let's go to Exhibit 1016, please.

(Video played.)

Q. So what's going on there?

A. So this was very close to where a bunch of people had come running down the stairs. And they said that they were shooting people inside the Capitol.

Q. And what was your reaction to that?

A. I didn't believe them. I thought that was really stupid. And I just — and then they said it was a little

JA964

girl. And I was like, “Oh, yeah. Right. There’s a little girl in the Capitol, and they shot her.”

Q. And so why didn’t you believe it?

[p.301]

A. It just seemed absurd. I mean, people are — they’re milling about. They’re nonviolent, you know, other than people breaking the windows. I didn’t see any weapons. And the police told us that we could go up.

Now, they didn’t — nobody asked if they could go in that I know of, but the police said that we could go up to the windows.

And then I just had a hard time believing that, you know, Back the Blue Trump supporters are going to, you know, go in and do anything that they need to be shot. And I didn’t believe that the police would shoot anybody. I thought that that was absurd.

Q. Okay.

MR. GESSLER: Your Honor, I’d like to —

BY MR. GESSLER:

Q. And did you take this video here?

A. Yes, I did.

Q. And that was what was going on around you at the time?

[p.302]

A. Uh-huh.

MR. GESSLER: I’d like to introduce Exhibit 1016 into evidence.

MR. SUS: No objection.

THE COURT: 1016 is admitted.

(Exhibit 1016 was received into evidence.)

MR. GESSLER: Your Honor, you have a look on your face like you want to ask a question.

THE COURT: No.

JA965

MR. GESSLER: Okay. I want to make sure we're giving you full information.

BY MR. GESSLER:

Q. Let's go to Exhibit 1017, please.

Now what's this a photo of?

A. So this is a gentleman I saw that I really liked his outfit. We were actually leaving. Steve and I said, "Let's get out of here" because we got — I had gotten a text from Muriel Bowser, the mayor, and she said that — it said that they requested that everybody leave the Capitol.

And right before that, my [p.303] brother had radioed and said that the — that Donald Trump said the BP has fallen and not to cause any trouble.

Q. Okay. So —

A. And then he was standing there. I saw him, and he just — he was very happy. He was just a really super nice guy.

And I asked him — I said, "I like your outfit. Can I take a picture?" And I had already taken this picture of him. He didn't know I took it. But he said, "Sure." And then he posed for my picture.

Q. Okay. Let's go to the next exhibit, please.

Okay. Is that the same person?

A. Yeah, that's the same guy.

Q. Now why did you want to take a picture of him?

A. I just — I really liked his outfit. I thought it was really funny, actually, even down to the shoes. He's got red stripes on his left shoe and blue stripes on his other shoe. And then just the whole — you know, his whole — like the way he was put together. And I thought it was [p.304] funny, you know, the pitchfork and he had the 1776 flag, or whatever.

JA966

But a very young, you know, vibrant guy and very friendly. Just super nice guy. I could tell, I just liked him instantly.

Q. Okay. Did you chat with him at all?

A. Yeah. I just I said, "Hey, that's a pretty cool outfit."

And, you know, he said, "Thanks."

And I asked if I could take a picture. Other people were talking to him too. But he was just standing there. That's all he did, was he just stood there the whole time. He didn't — I didn't see him leave or anything.

Q. Okay.

A. But we were on our way out. We were splitting.

MR. GESSLER: Your Honor, I would like to introduce Exhibits — which one is that? 1016 and 1017 — I'm sorry, -17 and -18, Your Honor.

[p.305]

MR. SUS: No objection.

THE COURT: 1017 and 1018 are admitted.

(Exhibits 1017 and 1018 was received into evidence.)

BY MR. GESSLER:

Q. Okay. So you said that you received a call from your brother.

A. Um-hmm.

Q. What exactly was that about?

A. Well, he said he wanted to —he wanted me to, like, text or, you know, tell him what was going on.

My phone was down to, like, 5 percent at this point. It had very, very little battery life left. And so I was — that's probably — partly why I was so sparing in the pictures and things, because even when we arrived, I think I started at 50 percent, and my phone was rapidly going down.

JA967

But he had said that, yeah, Trump — he said Trump said to be peaceful. And that's what he commented. And somebody else from not even there said, "Oh, that's a [p.306] really tall order." You know. And that guy was not even at the Capitol, as far as I could tell, because he kept asking for information on what was going on, that same guy, same voice.

Q. When you say the "same voice," what do you mean by that?

A. We had this app called Zello. And it was like a walkie-talkie. And there was probably 60 people that were on it. And we were just talking back and forth, like what was — it was part of our caravan. We used that to caravan over.

And it was part of that USEIP group that put that all together. And they invited me to join them since I was going to drive up there.

Q. Okay. Now you said you got a text from Mayor — the D.C. mayor. Is that correct?

A. Yeah. It was, like, an emergency broadcast type of text. It just came across my phone, and it said, "Please leave the Capitol."

Q. Okay. So what did you do then?  
[p.307]

A. Left the Capitol.

Q. Let's go to Exhibit 1019.

(Video played.)

MR. GESSLER: I'm sorry. That's sideways, Your Honor. Is there any way we can turn it around or — okay.

BY MR. GESSLER:

Q. Can you describe what's going on in here?



JA968

A. So this is — we were on our way out. And that was the same scene. That's why I got confused when I came in,

because this is almost exactly like the other one, because I was actually leaving at that point. And so I just wanted to get a sense of the crowd and what was going on.

Q. Okay. So in relation to the Capitol, is it fair to say you were retracing your steps?

Where were you exactly?

A. Yeah. We were retracing — actually, we had come — I had, like, cut through the trees when I went through, but then we actually came back around on the [p.308] sidewalk. And then we were headed — we wanted to get into the middle of The Mall so we could find out way back to the Washington Monument and find our car.

Q. Okay.

A. And I just took that quick — you know, and my videos get shorter. And obviously I'm not a very good photographer, but that was just a quick snap — sense of what was going on.

Q. Okay. At this point here, did you see any violent behavior? Or how was the crowd behaving?

A. None, really. They were — everybody was just milling around. People were walking around the side that we had just come from, and other people were going and — you know, just coming and going, walking around, like, you know — and I didn't hear any more flash-bangs or tear gas or anything, so — but we were leaving because we got a text to say to leave.

Q. Did you see any police at that point?

A. No, I didn't see any police at [p.309] all from here on out.

Q. Okay. Let's go to Exhibit 1020.

JA969

MR. GESSLER: And while we're doing that, Your Honor, I'd move for admission of Exhibit 1019.

MR. SUS: No objection.

THE COURT: Exhibit 1019? Is that the right number?

MR. GESSLER: Yes, ma'am.

THE COURT: Exhibit 1019 is admitted.

(Exhibit 1019 was received into evidence.)

MR. GESSLER: Okay. Can you play that, please.

(Video played.)

BY MR. GESSLER:

Q. And what's happening in that video?

A. Well, this is the first time I got as close as I did to the bleachers in the big crowd. But we were — that was us just leaving.

And I just took that video because I thought I saw those people up [p.310] there. And, you know — and originally we actually thought that Trump was going to be speaking in that area when we heard fireworks. We thought Trump was going to be up on that — there was, like, a platform up there.

But, you know, when we saw the flash-bangs and stuff — so, I mean, that's — I just wanted to get a view of that. By this time, it was obvious that Trump was not going to show up and give a speech.

MR. GESSLER: Your Honor, I'd move to introduce Exhibit 1020.

MR. SUS: No objection.

THE COURT: Exhibit 1020 is admitted.

(Exhibit 1020 was received into evidence.)

BY MR. GESSLER:

Q. So what did you do after that?

JA970

A. We just hoofed it back to the Monument. We listened to our — you know, the comms. There was somebody talking about — their father was elderly and needed a ride, and he was worried about him because [p.311] he couldn't walk, and he was worried about him walking back with the — I remember that part.

But, yeah, it was right in there. And we were just on our way back to the — back to the car.

Q. Okay. And then did you go directly to the car?

A. Yeah — well, yeah, we went to the car and had a little rally with my brother, who was waiting for us at the car. And it was just Steve and I going back.

Q. I'm sorry. When you say "Steve and I going back," going back where?

A. Back to the car, to the Washington Monument. We went to the Monument; and from there, we went to our car, which was across from the Monument.

Q. Okay. I'd like to turn to Petitioners' Exhibit 207.

MR. GESSLER: Could you bring that up, please.

BY MR. GESSLER:

Q. Okay. So I'm showing you what's been marked as Exhibit — Petitioners' [p.312] Exhibit 207. I want you to go to the second paragraph. And it says a newspaper reported that you were driving to Washington and that you announced that you were to "Go into the fray."

A. Um-hmm.

Q. And it says that you announced that in a Facebook post —

A. Yep.

Q. — that you were driving to "Go into the fray."

Did you, in fact, write that on a Facebook post?

A. Yes, I did.

Q. And what did you mean by that?

JA971

A. I went — we were concerned about Antifa and Black Lives Matter, you know, attacking people. And, you know, it's something that I consistently saw at Trump rallies or anything where there was Trump involved.

There were violent, left-wing radicals trying to hurt people. And I was concerned about that. But I decided to go anyway.

[p.313]

Q. So when you were referring to “the fray,” what were you referring to there?

A. Just that I expected that we were going to encounter people that were violent towards the group.

Q. Okay. So I'd like you to —

MR. GESSLER: Let's go to this page. Third page of the exhibit there. Scroll down a little bit further. Okay. Right there.

BY MR. GESSLER:

Q. So if you look at that, it says that you said that you saw people in black bloc coming down The Mall path carrying Trump flags upside down. You knew something was up.

And then it goes on to say, “But still the people who blindly followed agent provocateurs' instructions should have known better. Everything about that moment screamed this is a setup.”

Do you see that?

A. Yep.

Q. Did you write that?

A. I did.

[p.314]

Q. What did you mean by that?

JA972

A. Well, I saw people that were —like the guys with the bullhorns, and they were trying to push people into the Capitol and trying to make people — herd them in.

And so that was my observation of that point, where they had the bullhorns. And there were people that had — like that guy that asked me why I wasn't wearing a mask, he seemed out of place. He didn't seem like a Trump guy.

And then there were other people that I felt like that just — there was actually — I met a gentleman named — he called himself Jaden X. And he had been —when I was standing in front of the police cars, he was on my right-hand side. And there was kind of a small crowd around him. And Steve asked me — he goes, "What's that guy doing?"

I said, "That guy is Antifa."

And he goes, "How do you know?" He goes, "What do you think they're saying?"

I said, "I don't know. I'm going to go find out."

[p.315]

So I walked over there. And this guy was saying that he had video of a woman getting shot. And I asked him, "Can I see it?"

And he said, "I just played it for these guys, and I have to go." And everybody else there was like — they were shocked. They were all talking about what they had witnessed.

And he said, "I have to go, but take a picture of my phone. And I will post this to Twitter." And he said, you know, "You can find the video on Twitter." He said, "It probably won't be up very long, but you can witness it on Twitter."

JA973

So I took a picture of his phone. And it said Jaden X. And it had words like “revolutionary” and, you know, all of that.

And so I went back to my friend, Steve, and I said, “Yep, he’s Antifa.”

Q. Okay.

A. And that’s what I was talking about with the black bloc.

[p.316]

And he didn’t have any Trump gear. And he — I had just a weird feeling about him.

Q. Okay. And then towards the bottom, it says, “But when it became apparent what was transpiring at the Capitol, including a large trail of blood that I had to step over, I decided to leave.”

Did you write those words?

A. I did.

Q. And is there anything you want to add to the fact — to the statement that you said, “when it became transparent what was transpiring at the Capitol” — we’ll get to the trail of blood in a second — “I decided to leave”?

A. Well, vandalism.

Q. Okay.

A. You know, things that I didn’t come there for and things that I didn’t agree with.

It was very clear to me that this wasn’t what — you know, what was planned. And I just felt like, you know, people were just acting stupidly. And [p.317] I really felt like — I really felt like this actually was counterproductive to what Trump was trying to do.

Q. Okay. Now you say there that it included a large trail of blood that you had to step over.

What’s that about?

JA974

A. So right where that gentleman was standing with the pitchfork and the flag and the stars and stripes, right down below him was a sidewalk. And it went up to the side of the Capitol.

And there were these pretty good-sized — maybe silver-dollar size, maybe bigger — splashes of blood. And it went from the — it went from the curb all the way up to the side of that Capitol building. There was, like, a ramp for wheelchair access. And that had blood all the way up to that. And it was quite a lot of blood.

And then there was a man standing there, and he said he got video of a young girl being wheeled out on a stretcher. And it was at that point that I believed somebody did get shot.

[p.318]

And he had video — he showed me — of the gurney coming out. And this girl — and his comment was, “What? She was, like, 95 pounds, and they shot her. And this is in our United States Capitol.”

Q. Okay. And was that one of the things that — when you say it became apparent what was transpiring, is that one of the reasons you left?

A. Definitely.

And right before that, that Jaden X — and there was another man with a — he had a blue hoodie on and his hat on backwards. And he was telling people to go in and take revenge because somebody had been shot. And he was trying to get people to go into the Capitol.

And that’s when I was like, these guys are just — they’re, like, agent provocateurs. They’re not — this is not intended. This is all wrong.

Q. Okay. So you’ve come here to testify today. Have you done it under subpoena?

A. No. I came on my own.

[p.319]

Q. And why did you come here?

A. I just felt like it was important that the truth get out of what I saw. I don't believe that there was any kind of insurrection. I think this is a ridiculous narrative. And

—

MR. SUS: Objection, Your Honor. Move to strike this characterization. It's irrelevant.

THE COURT: The objection is overruled.

A. Yeah, I just felt like it's kind of an insult to insurrectionists around the world because, you know, Republicans just being mad about an election hardly rises to the level of an insurrection.

And I wanted to just make that clear, that that's a political narrative. And I recognize that I probably was in an area that I shouldn't be. And I felt like I didn't care.

BY MR. GESSLER:

Q. Didn't care about what?

A. That — what the consequences are, because I think the truth is more [p.320] important.

Q. When you say "the consequences are," the consequences of what?

A. Well, you know, I guess there was grassy areas that I wasn't supposed to walk on that I did.

And, you know, I didn't have any — there were no signs or anything. But, you know, after the fact, they've arrested people that were in the area that I was. And I feel like I'm a little bit nervous about that.

Q. And why are you nervous about that?

A. Because I just feel like they're trying to take revenge on people who disagree.

And, you know, the whole narrative that there's an insurrection is so absurd that — but I know that people



JA976

are married to that position, and they want to make an example of people like me just for walking on the grass.

And —

Q. So what do you — you earlier [p.321] testified you don't care about the consequences.

When you say — what consequences are you concerned about?

A. Well, I've seen a lot of video of people, like, getting their doors kicked in and FBI showing up and, you know, pulling people out of the their houses and putting handcuffs on them.

And, you know, I don't want that for me or my family. But the truth needs to come out because, in polite words, it's BS.

Q. Okay.

MR. GESSLER: I have no more questions, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. SUS:

Q. Good afternoon, Mr. Bjorklund.

A. Good afternoon.

Q. You're the treasurer of the Colorado Republican Party; is that right?

A. Yes, I am.

Q. And you understand that the [p.322] Colorado Republican Party is a party to this lawsuit?

A. Yes, I do. I understand that.

Q. And you understand that President Trump is a party to this lawsuit?

A. Yes, I do.

Q. And you're here today testifying as a witness on behalf of President Trump; is that right?

JA977

A. I'm testifying as a witness to the truth. That's why I'm here.

Q. But you appeared on President Trump's witness list. You understand that; right?

A. I've never — I'm not a party to seeing the witness list. I don't know what — who is on the witness list.

Q. You're a supporter of President Trump, aren't you?

A. I am mildly a supporter.

Q. You went to his rally at the Ellipse, didn't you?

A. Yeah. I went to see my brother.

Q. Do you think the 2020 election [p.323] was stolen from President Trump?

A. I don't have any proof of that. I don't know.

Q. You're aware that President Trump has stated that the 2020 election was stolen from him.

A. Yeah, I'm aware that he stated that.

Q. So do you think he's wrong?

A. It's a possibility that he's right and it's a possibility that he's wrong.

Q. So you can't say one way or the other whether President Trump is right about the 2020 election being stolen?

A. For sure, no, I can't say that.

Q. Are you a member of a group called the U.S. Election Integrity Plan founded in Colorado in November 2020?

A. No, I am not.

Q. Were you ever a member of that group?

A. No, I was not.

Q. You were never affiliated with that group?

A. They put me on their chat room [p.324] because we were all traveling to the Capitol. And I wanted to go on a

JA978

caravan, and I asked if they knew somebody that — you know, just to share a ride.

Q. So you don't share that group's views that the 2020 election was stolen?

A. I don't know what all their views are. I don't know.

Q. You were just part of their chat because they added you?

A. They added me because I testified to the Colorado House of Representatives. And they had asked me to join their chat, especially when I told them that I was going to see my brother at the Capitol, and I kind of just wanted some company.

MR. GESSLER: Your Honor, I don't mean to interrupt the cross-exam —although I guess it's good because there's noise in the background — Representative Buck said he would be available at 4 o'clock my time, but it has to be quick. I wanted to give everyone notice.

[p.325]

THE COURT: Okay. Thank you.

BY MR. SUS:

Q. Let's talk about your experience on January 6th.

A. Okay.

Q. So you traveled from Colorado to D.C. for the rally on the Ellipse on the 6th; is that right?

A. Yes, I did.

Q. And you drove from Colorado to D.C.; is that right?

A. I drove a big pickup truck hauling a gigantic trailer. Right.

Q. That's about an 1800-mile drive, isn't it?

A. It's a long drive. Yep.

Q. Twenty-four, twenty-five hours. Is that what you testified?

JA979

A. Yeah. That's about right. Twenty-five — probably twenty-five. Maybe even twenty-six hours. It was a long drive.

Q. And you'd never been to D.C. before?

A. Never.

Q. So let's talk about the Ellipse [p.326] rally.

It's fair to say there were thousands of people there.

A. Hundreds of thousands.

Q. So you actually testified there were 350,000 people there.

A. It's just a guess, but, yeah, very —

Q. That's just a guess, though.

A. Sure.

Q. Okay. You had no way of knowing why each one of those thousands of people were at the Ellipse rally, did you?

A. No, I wouldn't have any way of knowing. I mean, I assume he asked people to show up to his last speech, and that's why they were there. That's why I was there.

Q. Okay. And you had no way of knowing what each one of those thousands of people were doing throughout the day, did you?

A. Of course not.

Q. And by the same token, you have no way of knowing what each person at the Capitol building was doing throughout the day [p.327] on January 6th? Did you?

A. No, I wouldn't know — yeah, I certainly didn't have an insight into everybody.

Q. And you didn't know why each person was at the Capitol building that day.

A. Right. I imagine they're on a spectrum.

Q. Now you testified that the crowd you saw at the Ellipse rally was joyful and happy. Is that right?

JA980

A. Yep. For sure.

Q. Did you know that the Secret Service confiscated hundreds of weapons from rally attendees who passed through security at the Ellipse rally?

A. I didn't know that, no.

Q. Let me show you some findings from the January 6th Select Committee on this point.

MR. SUS: If you could pull up P-78, Finding 107.

BY MR. SUS:

Q. Do you see that on your screen?

A. Um-hmm.

[p.328]

Q. And so this shows that the confiscated weapons includes 242 canisters of pepper spray. Do you see that?

A. Oh. I see. Uh-huh.

Q. 269 knives or blades. Do you see that?

A. Yeah.

Q. 18 brass knuckles?

A. Um-hmm.

Q. 18 Tasers. Do you see that?

A. Yeah. Yeah.

Q. 30 batons or blunt instruments. Do you see that?

A. Um-hmm.

Q. 17 miscellaneous items like scissors, needle, or screwdrivers. Do you see that?

A. Sure. Um-hmm.

Q. Do you know members of the crowd were wearing tactical gear, like ballistics helmets, body armor, military-grade backpacks?

A. I saw that. Sure. Um-hmm.

Q. So you saw that. That's consistent with your memory of the events.

[p.329]

A. Yes. Uh-huh.

JA981

Q. Okay. Do you have any reason to dispute these — do you have any knowledge to dispute these figures here?

A. I don't have any knowledge of what they confiscated. I wasn't a part of their confiscation effort.

Q. Does that seem like — do these seem like items that people bring to a rally that's joyful and happy?

A. Yes.

Q. Okay.

A. Especially when — in light of the other rallies that I've seen in Seattle and other rallies that they went to to support Donald Trump, and they were attacked — violently attacked and some people were murdered.

And so, yeah, I think that most people were concerned about the violence that were perpetrated on people just because they supported Donald J. Trump.

Q. All right. I want to show you some of the crowd's reactions to President Trump's rally at the Ellipse.

[p.330]

MR. SUS: Let's pull up Exhibit 166.

(Video played.)

BY MR. SUS:

Q. Mr. Bjorklund, did you hear the members of the crowd yell, "Storm the Capitol," "Invade the Capitol building," "Take the Capitol"?

A. I didn't hear anybody say, "Take the Capitol."

Q. I'm sorry, Mr. Bjorklund. My question was: In the video I just played for you —

A. Oh.

Yes, sir. I heard that in the video. Uh-huh.

Q. But your testimony is you didn't hear that when you were at the Ellipse rally?

A. No. I was by the Washington Monument. I wasn't probably near that far down. Definitely not that close.

JA982

Q. But you agree that the image here is — appears to be from the Ellipse rally on the 6th?

[p.331]

A. Yeah, it appears to be. Um-hmm.

Q. Okay. So does this look like a — does a joyful crowd talk about storming the Capitol, taking the Capitol, invading the Capitol building?

Is that joyful and happy?

A. I don't know. I have no idea.

Q. Okay. So let's take a look at some of the videos and photos that you have provided in this case and that we went over.

MR. SUS: If we could pull up Exhibit 1007, which has already been admitted. And go ahead and play.

(Video played.)

MR. SUS: You can stop the video right there.

BY MR. SUS:

Q. So, Mr. Bjorklund, this is after Trump's speech; is that right?

A. Yes, it is.

Q. And you watched President Trump's whole speech? You stayed to the end?

A. No, not quite.

Q. Okay. So would you say this is [p.332] after 1 o'clock?

A. Yeah.

Q. Okay.

A. Yeah.

Q. And the video shows folks walking away from the Ellipse, away from the Washington Monument towards the Capitol building.

A. Right down The Mall. Um-hmm.

Q. And that's what you did, too; right?

A. Yes.

JA983

Q. You were at the Ellipse and walked toward the Capitol building.

A. That is correct.

Q. Okay.

MR. SUS: Let's pull up Exhibit 1010, which has been previously admitted.

(Video played.)

MR. SUS: All right. Let's stop the video.

23 BY MR. SUS:

Q. So, Mr. Bjorklund, did you hear the man say, "Pence defies Trump" in the [p.333] video?

A. Actually I — no, I didn't hear that part. I heard the other part.

MR. SUS: Can we pull it back to 25-second mark?

A. Sorry.

MR. SUS: All right. Stop.

(Video played.)

BY MR. SUS:

Q. Did you hear that?

A. Yeah.

Q. Okay. And this is — so this is after 1 o'clock. Like this is probably 1:10, 1:15 — right? — because this is after the previous video that we had seen.

A. Yeah. That's probably about right.

Q. All right. So the man says, "Pence defies Trump."

MR. SUS: Can you continue playing the video.

(Video played.)

MR. SUS: All right. Stop.

BY MR. SUS:

Q. So the man said, "Pence defies [p.334] Trump. I hate Pence." Is that right?

A. Yeah.

Q. And are you aware that Vice President Pence had announced by this point that he would not delay or



JA984

overturn the election results, as the President had urged him to do at that point?

A. Yeah, it's possible. There were people that had radios — like, AM radios and stuff. And they were playing just what was going on. People were commenting about — like, Lauren Boebert speaking or different people. But we didn't — I didn't have any direct — I didn't have any direct knowledge of that.

Q. Understood.

MR. SUS: So let's pull up Exhibit 1018, which was previously admitted.

BY MR. SUS:

Q. And I just want to quickly confirm: That man is holding a pitchfork in the picture; is that right?

A. Yeah.

Q. Okay.

MR. SUS: Let's pull up [p.335] Exhibit 1015. And let's just pause it right there.

BY MR. SUS:

Q. So this is another video that you recorded on the Capitol ground; is that right?

A. Yes.

Q. And this is the east side of the Capitol building? Is that what you previously testified?

A. I'm not — I'm sorry. I don't — let me think about the map for a second.

It's on the front side of the Capitol. I don't know if that's east or west or — I don't really know.

Q. Let me ask you: Is it the same side that faces the Washington Monument or is it the other side?

A. It's the other side.

Q. Other side.

A. I thought it was the back, because I came — clearly I went through the front because it was the most

JA985

prominent pictures I know. I thought that was the front. And this turns out to be the front of [p.336] the Capitol.

Q. And so I will represent to you that the video files you produced, some of them had digital timestamps on them. And this video said it was from 12:23 Mountain Time, 2:23 Eastern Time.

Does that sound right to you?

A. Yeah, that is. Yeah, it does. Um-hmm.

Q. So you had said that you had been exposed to tear gas, and you had seen flash-bangs when you were at the Capitol. Is that right?

A. Yes, I saw tear gas — or I coughed a little bit, so I assume the —tear gas. And there were flash-bangs. And that was on the other side of the Capitol with all the bleachers.

Q. How much earlier did that occur in relation to this video?

How much longer before this video were you exposed to the tear gas?

A. I'm going to guess, like, 30 minutes maybe.

Q. Okay. So after there were [p.337] flash-bangs and tear gas deployed, you continued to stay at the Capitol grounds. You didn't leave.

A. I didn't go where the police didn't want us.

Q. Okay. And so looking at the video, do you see the crowd bunching up on the stairs there in front of the Capitol building?

A. Yeah. It looks like they're getting ready to take a big picture.

Q. Are you aware that the doors at the top of those stairs were breached by the mob just one minute after this video was shot, at 2:24 p.m.?

A. No knowledge of that whatsoever.

MR. SUS: Let's pull up Exhibit 23, page 682.

JA986

BY MR. SUS:

Q. This is a finding from the January 6th report. Do you see that?

A. Uh-huh.

Q. Okay. And you have no reason to dispute that finding?

[p.338]

A. I don't know. I don't have any — I don't have enough knowledge to dispute it if I wanted to.

Q. Understood.

MR. SUS: Okay. And let's go back to the video, 10:15, and let's play the video.

(Video played.)

MR. SUS: Let's pause the video.

BY MR. SUS:

Q. Did you hear the people chanting "Our House"?

A. Yes, I did.

Q. Did you hear people chant that throughout the day?

A. Down there at the Capitol, I heard people chanting that, yes.

Q. Okay. And you had testified earlier that you didn't go inside because you understood the police didn't want you to go inside. Is that correct?

A. Yeah. When I saw those metal detectors and the people smashing windows, obviously I didn't want to be a part of that.

[p.339]

Q. And so, again, this was from 2:23 p.m.

Are you aware that at 2:28 p.m., about five minutes later, the mob breached the police line on the west side of the Capitol?

A. Describe the "west side of the Capitol."

JA987

Q. On the opposite side of the building from where you were.

A. Oh. That's the west?

I didn't have any clue. I wasn't anywhere near what that — I don't have any knowledge of that.

Q. And, Mr. Bjorklund, you testified that the crowd that day, at least the ones you observed, respect law enforcement. Is that what you said?

A. Yes.

Q. So I'm going to show you some body camera video from a police officer that's already in evidence.

MR. SUS: If we could please pull up Exhibit 15.

MR. GESSLER: Your Honor, I apologize for interrupting. It's about [p.340] three minutes to 4:00.

Could we pause this just a second so Representative Buck can finish?

Again, I apologize. I'm not trying to break up your cross.

THE COURT: We kind of told Congressman Buck that we would work with is schedule.

MR. SUS: Understood.

THE COURT: And I apologize to you, Mr. Bjorklund. Would you mind just waiting out in the hall until we finish up with Congressman Buck?

I think — what are we looking at? Ten minutes, probably?

MR. SUS: For me? For Buck?

MR. GESSLER: Three or four minutes from us on redirect, Your Honor.

THE COURT: Mr. Nicolais, how long do you think we have with Mr. Buck?

MR. NICOLAIS: Your Honor, I don't see foresee more than five minutes.

THE COURT: Okay.

JA988

So, Mr. Bjorklund, we'll probably call you back in maybe 10, [p.341] 15 minutes. Thank you for your cooperation.

(Pause.)

THE COURT: Mr. Sus, do you have an estimate of how much longer you have with Mr. Bjorklund?

MR. SUS: I'd say five to ten minutes, at the absolute most.

THE COURT: Okay. Great.

(Pause.)

THE COURT: Welcome back, Congressman Buck. You're still under oath.

THE WITNESS: Thank you.

THE COURT: You sounded a little bit soft, so speak up.

THE WITNESS: Will do.

THE COURT: Perfect.

CONGRESSMAN KEN BUCK, having been previously first duly sworn to state the whole truth, continued to testify as follows:

CROSS-EXAMINATION (Cont.)

BY MR. NICOLAIS:

Q. That's one more hour down, Congressman.

I'll be very brief. Before, when you were testifying during your direct [p.342] examination, you said the mob meant to disturb a proceeding.

Do you remember saying that?

A. Yes.

Q. And what proceeding was that?

A. It was the electoral vote count on the House — on the Floor in the Capitol building.

Q. And you repeated that again yesterday. In fact, you said, "I think going to the courts is one thing. Trying to move the mob from The Mall up to the House Floor

and interrupting the Congressional proceedings, whole different issue.”

Do you remember saying that yesterday?

A. Yeah, I said that in relation to some of the members of Congress sending out social media messages to that regard.

Q. I’m sorry. I’m referring to an interview you gave yesterday with Andrea Mitchell.

You said that you were referring to that as a — talking about members of Congress?

[p.343]

A. Yes.

Q. I’ll tell you what. I don’t remember you actually saying that. So I would like to —

MR. NICOLAIS: If you don’t mind, Your Honor, if we could bring up P-311 and start from 1:15 to 2:50 — actually, you can start with 2:34 — well, maybe — start with 1:15 to 2:50.

MR. GESSLER: Your Honor, I’ll object to this. This is a different video than the one we saw earlier. Again, well outside the bounds of the direct, well outside the bounds of what Representative Buck has discussed. And I’ll incorporate my earlier objections, Your Honor.

THE COURT: Response?

MR. NICOLAIS: This is being offered for impeachment purposes, Your Honor. He just testified he was saying it about Congressional members, and I think that this video will show that it was not.

THE COURT: Well — but I know. But I think the objection is really that the question is about — the premise is outside [p.344] the scope.

MR. NICOLAIS: Oh. Sure.

But I think, very clearly, he just said that he remembered saying during his direct it was meant to

JA990

disturb a proceeding. And the quote is regarding interrupting the Congressional proceedings.

I think that it goes directly to what he said during his direct examination. And it goes to directly what he was brought here to talk about originally, which was what happened on January 6th.

MR. GESSLER: Your Honor, if I may —

THE COURT: Let me just — can I — let me read the — what his testimony — the questions in his testimony was.

(Pause.)

THE COURT: So he's already testified that the mob he was referring to was the mob that tried to disturb the electoral count vote on the — on the Floor in the Capitol building.

And then you said, "And you've said this whole thing about the mob before." [p.345] So I'm missing the connection here.

MR. NICOLAIS: Well, I think the important part here is they're interrupting the Congressional proceedings. Now he just said, in answer to that, when I was asking him about the content — the context, he said — well, he was talking about — and maybe I can clarify with him. I thought he said he was talking about, Well, Congressional members or —

MR. GESSLER: If I may, Your Honor.

The fact that Representative Buck has testified to is that members from the outside referred to as "a mob" interrupted the proceedings.

If Mr. Nicolais wants to try to impeach that point to prove that members of the mob did not — which I don't think he wants to do.

THE COURT: You're trying to get him now to say that he blames President Trump for that, or he said that

in the Andrea Mitchell report. And I already said that was beyond the scope.

[p.346]

MR. NICOLAIS: Oh. I'm sorry, Your Honor. That was a different interview that he gave. That was with Jake Tapper. I'm not trying to introduce that.

This is another interview. But my understanding was he was talking about Congressional members.

If he is testifying that it was — the members of the mob were from outside and they were trying to interrupt the Congressional proceedings, that's accurate, then.

THE COURT: That's certainly what I understand.

Is that your testimony, Congressman Buck? That the mob or members of the outside that were trying to disturb the electoral count?

THE WITNESS: Yes, Your Honor. It was nonmembers that were trying to come into the Capitol building to disturb the electoral count.

MR. NICOLAIS: Okay. If that's what he testified to, I have no further questions, Your Honor.

[p.347]

THE COURT: Okay. Wow. We short-circuited something. Huh?

THE WITNESS: That's great.

REDIRECT EXAMINATION

BY MR. GESSLER:

Q. Congressman Buck, I will try to be mercifully brief.

You were asked, and answered, about trust in the process. And you said you trusted judges. You trusted juries. You trusted the judicial process.

Do you remember testifying to that?



JA992

A. That may have been one of the videos that was played. But, yes, I do trust those institutions to search for the truth.

Q. And why do you trust them?

A. Because I think that's the system of justice that I participated in for 25 years, as a prosecutor, and before that, as a lawyer, and after that, as a lawyer.

I am — I believe we have an adversarial system set up in the courts that does, in fact, search for the truth. There [p.348] wasn't — there were times when I didn't necessarily agree with some of the motions to suppress and the rulings on those motions, but I certainly felt like the defendant's rights were protected, and we were on a search for truth.

Q. Does that trust also apply to Congress?

A. No. No. There — the Congressional proceedings are political, and they are not a search for the truth. They are a search to promote different political views.

The members who are chosen for the committees are chosen because they raised a certain amount of money, because they have engaged in political activities that have been beneficial to the Speaker or to the Leader. And the process is not in any way similar to what happens in courts.

Q. And does your trust apply to the January 6th Committee?

A. I think in the case of the January 6th Committee, it is not only a political committee, but it also is a [p.349] political committee that is lacking the viewpoint of those that did not believe that President Trump committed an impeachable offense on January 6th.

Q. Thank you, Representative Buck. Thank you very much for your time today. And we appreciate you interrupting your schedule.

JA993

MR. GESSLER: I have no further questions, Your Honor.

THE COURT: Any questions from the Colorado Republican Party?

MS. RASKIN: No questions, Your Honor.

MR. KOTLARCZYK: No questions for the Secretary, Your Honor.

THE COURT: Okay.

Thank you so much for your testimony, Congressman Buck. You are released.

THE WITNESS: Thanks very much, Judge.

THE COURT: Let's start back up at 4:20. And hopefully we'll still be done well in advance of 5:00.

(Recess taken.)

[p.350]

THE COURT: Mr. Bjorklund, you're still under oath.

THE WITNESS: Thank you.

MR. SUS: Ready to proceed, Your Honor?

THE COURT: Yes. Please.

TOM BJORKLUND, having been previously first duly sworn to state the whole truth, continued to testify as follows:

CROSS-EXAMINATION (Cont.)

BY MR. SUS:

Q. Mr. Bjorklund, we watched a video of you outside the Capitol at 2:23 p.m.

Do you recall watching that video?

A. Yeah.

Q. And then I told you that five minutes later, the police line on the other side of the Capitol building was breached by violent rioters.

Did you hear me say that?

A. Yes.

JA994

Q. So you also said January 6th wasn't an insurrection. Is that right?

A. Exactly.

[p.351]

Q. And you think Antifa did it.

A. There was no insurrection.

Q. So you think Antifa is responsible for attacking more than 140 law enforcement officers at the Capitol on January 6th.

A. When I was in high school —

Q. It's yes or no question, Mr. Bjorklund.

A. — I read a lot of Louis L'Amour. Louis L'Amour. And he talked about crowds, and that it's very easy to turn a crowd who has some anger issues and turn them. And...

Q. So, Mr. Bjorklund —

A. So I believe it was like somebody with a bridle.

Q. Mr. Bjorklund, you testified earlier that the crowd around you respected law enforcement. Is that right?

A. The ones around me did. Yep.

Q. All right.

MR. SUS: Let's play the video.

(Video played.)

[p.352]

BY MR. SUS:

Q. Is that man Antifa?

A. I have no idea who that man is.

Q. All right.

MR. SUS: Keep playing the video.

(Video played.)

BY MR. SUS:

Q. That man who just attacked a police officer, is that Antifa?

A. I have no idea who that is.

JA995

Q. Is that respect for law enforcement?

A. He seems angry.

Q. I'm going to show you another video.

MR. SUS: Could we pull up admitted Exhibit 20.

(Video played.)

MR. SUS: Let's pause the video.

BY MR. SUS:

Q. Is that respect for law enforcement?

A. Obviously they weren't — they [p.353] weren't respecting their line. No.

Q. Can you point me out Antifa in that crowd?

A. I have no idea which ones are and which ones aren't.

MR. SUS: Keep playing the video, please.

(Video played.)

MR. SUS: Let's pause the video.

BY MR. SUS:

Q. Mr. Bjorklund, do you see the man attacking the police officers in the video?

A. Yeah. I saw him hitting the shield.

Q. Is that respect for law enforcement?

A. No.

Q. Do you see any Antifa in that video?

A. Possibly.

MR. SUS: Please play the video.

(Video played.)

[p.354]

BY MR. SUS:

Q. Mr. Bjorklund, the truth is that none of those people are Antifa. They were a mob sent by Trump to attack the Capitol building. Isn't that true?

A. Not the instructions I got.

Q. Not the instructions you got?

Is that what you said?

JA996

A. Yeah.

Donald Trump said to go down and peacefully make your voices heard. That's what I heard.

Q. You see those people with —

A. They clearly are not doing that.

Q. You see those people with MAGA hats and Trump flags chanting "Stop the steal," attacking police officers, trying to break into the Capitol building to stop the certification of an election?

Why would Antifa do that?

Why would Antifa stop the certification of an election?

MR. GESSLER: Objection, Your Honor. Argumentative.

[p.355]

THE COURT: Please respond to — the objection overruled.

BY MR. SUS:

Q. Why would Antifa break into the Capitol building to stop the certification of the election for Joe Biden?

Aren't they on Joe Biden's side?

Why would they do that?

A. Because it actually derailed a more intelligent plan. This is obviously not an intelligent plan. And the plan that I understood it was, that they were going to challenge electors. They were going to have a legal process.

Q. And then it turned into this, didn't it?

Didn't it turn into this?

A. Yes, as mobs can be turned into — people who are angry can be turned into a mob, just like they did at the Denver — you know, Aurora Police Station where they chained up and threatened to burn the building down.

MR. SUS: Your Honor —

[p.356]

A. And they were not charged with insurrection.

MR. SUS: Your Honor, I have no further questions for the witness. But I will move to admit 166, which is a video of the crowd's reaction to President Trump's speech.

MR. GESSLER: Your Honor, I've lost track of the various objections and whatnot with respect to this particular one, but we would certainly object. This has not been authenticated or validated by this witness. It's not appropriate, based on this testimony, to introduce this as an exhibit.

MR. SUS: So two things, Your Honor. Two witnesses have verified that the scene in that video accurately depicts the Ellipse as those folks — as those witnesses recall them. Mr. Bjorklund and Mr. Van Flein both confirmed that.

And Your Honor also allowed in other video of the crowd's reaction to speeches at the Ellipse. And so this video shows the crowd's reaction from a different time period.

[p.357]

THE COURT: Is this —

MR. SUS: No. No, Your Honor.

Could you pull up 166, please?

MR. GESSLER: And while they're looking for that, I believe certainly all the stuff we sought to introduce, the videos were made by eyewitnesses or an eyewitness validated it.

THE COURT: Is your objection on authentication?

MR. GESSLER: Yes, Your Honor.

THE COURT: Overruled. The exhibit is admitted.

(Exhibit 166 was received into evidence.)

MR. SUS: All right. Thank you, Your Honor.

JA998

REDIRECT EXAMINATION

BY MR. GESSLER:

Q. Mr. Bjorklund, I just have a very brief question.  
So one of the videos —

MR. GESSLER: If we could clear that video, please.

THE COURT: I think it's —

MR. GESSLER: Thank you.

[p.358]

BY MR. GESSLER:

Q. So one of the videos — if you need me to replay it, I will, but one of the videos, there's someone that said, "I hate Pence."

Do you remember?

A. Yeah.

Q. And do you know who said that?

A. Yeah. I believe it was Steve.

Q. And Steve was?

A. He was the gentleman that traveled with my brother to see Donald Trump speak.

Q. About how much time did you spend with Steve on January 6th?

A. Just at the campground, we had dinner. We went to the barbecue. Yeah, just — probably, I don't know, 24 hours maybe.

Q. Okay. During that time, both before and on January 6th, did Steve engage in any violent behavior?

A. Not at all.

Q. Did he express any violent sentiments to you?

[p.359]

A. No.

Q. Okay. Did he have any violent viewpoints or — that you were aware of at all?

A. No. He never — he never mentioned anything about doing violence or doing any harm to anyone.

Q. Okay.

MR. GESSLER: I have no further questions, Your Honor.

THE COURT: Any questions from the Colorado Republican Party?

MS. RASKIN: No questions.

MR. KOTLARCZYK: No questions from the Secretary.

THE COURT: Okay. Let's just —you're released, Mr. Bjorklund. Thank you so much for your testimony.

Let's just talk schedule for a moment. I know that you have Mr. Delahunty. Is that correct?

MR. GESSLER: Yes, Your Honor. One more witness. We've prepared to put him on at the start of tomorrow's proceedings.

THE COURT: I'm just trying to [p.360] figure out when that should be.

MR. GESSLER: And we don't anticipate him — I hope it's not two hours, but I certainly don't think it would be more than two hours.

THE COURT: Okay.

MR. GESSLER: Certainly from our direct testimony.

MR. GRIMSLEY: And then, Your Honor, we have Mr. Heaphy, who we're planning for 1 o'clock remotely tomorrow afternoon.

You asked about rebuttal witnesses earlier. We may direct Mr. Heaphy, in part rebuttal, given the recent attacks on the January 6th Committee report.

THE COURT: Okay.

And then what about the Colorado Republican Party? At one point you were planning on calling witnesses.

MS. RASKIN: Your Honor, we don't plan to call any witnesses.



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THE COURT: Okay. So if we're going to start at 1:00 with Mr. Heaphy, who [p.361] it sounds like will be the last witness, when should we start tomorrow to make sure we get through Mr. Delahunty and have an opportunity for a break?

MR. GRIMSLEY: I think it's probably going to be 8:00, given your estimate of a direct, given our estimate of a cross.

MR. GESSLER: I'm fine starting at 8:00, Your Honor. I hope it's not that long, but —

THE COURT: How about 8:30?

MR. GESSLER: 8:30 works for us too, Your Honor.

MR. GRIMSLEY: 8:30 works for us, too.

THE COURT: Be a little more civilized.

Okay. So we will resume at 8:30 with Professor Delahunty, and then we will do Mr. Heaphy at 1:00. And that sounds like it will conclude the proceedings until closing arguments, which everybody wants to do on the 15th.

MR. GRIMSLEY: Your Honor, as [p.362] Ms. Tierney had said earlier, we will be submitting revised versions of the January 6th findings.

So we will take out ones that you have already said are not admitted. We may take out ones that you ruled are admissible but we don't need.

So we'll submit that. And there may be a few minutes — maybe five to six minutes — of video that we would submit as well. And I think Ms. Tierney referenced that as well.

THE COURT: Okay. I see.

So you're going to offer to admit revised January 6th findings. And then you may want to play some video that hadn't already been played?

MR. GRIMSLEY: Correct.

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THE COURT: Okay. And the parties should also — at some time before the findings of facts, conclusions of law are due, should work together to make sure everybody agrees on what exhibits have been admitted.

And actually — probably it [p.363] would be good if you do that before we end on Friday, so that if other exhibits need to be offered, you can get that taken care of.

MR. GESSLER: Okay. Yeah.

Your Honor, just as a heads-up. I've not spoken with Petitioners about it, but there was an exchange between President Trump and now-President Biden and a moderator during a debate.

There was a snippet that we're going to ask to introduce more of that, a fuller amount of that same video, and perhaps the transcript as well.

So I know we're going to be asking to introduce that. We'll chat with Petitioners about it.

THE COURT: The Proud Boys question?

MR. GESSLER: Yes, ma'am.

THE COURT: Okay. That's it. We can kind of take care of all of that housekeeping after Mr. Heaphy, since my docket is clear for the day. And we can also talk about how you're going to make an actual record in this case, so that if it goes to [p.364] the Colorado Supreme Court, that it exists, which is going to — you're going to have to do things with all these exhibits other than just ask me to admit them. Especially the videos.

MR. GESSLER: Fair enough, Your Honor.

THE COURT: Okay. The Court's in recess.

(Time noted: 4:36 p.m.)