

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT GILLESPIE,

Defendant.

Criminal Action
No. 1:22-060

Washington, DC
December 22, 2022

9:03 a.m.

TRANSCRIPT OF JURY TRIAL - DAY 4 - **MORNING SESSION**
BEFORE THE HONORABLE BERYL A. HOWELL
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

1
2 **THE DEPUTY CLERK:** The matter before the court
3 criminal case number 22-60, *United States of America versus*
4 *Vincent Gillespie.*

5 Counsel, please come forward and state your names
6 for the record, starting with the government.

7 **MS. SCHESNOL:** Good morning, Your Honor.
8 Jacqueline Schesnol and Carolina Nevin representing the
9 United States with, Josephine Roberts and Ray Evans at
10 counsel table.

11 **THE COURT:** Yes, good morning.

12 **MS. SCHESNOL:** Thank you.

13 **MR. WATKINS:** Good morning, Your Honor. Tim
14 Watkins, Federal Defender Office, District of Massachusetts
15 for Vincent Gillespie, who is at counsel table this morning.
16 With me is Forest O'Neill-Greenberg and Aziza Hawthorne from
17 my office.

18 **THE COURT:** Okay. Good morning.

19 Let me just start before we bring the jury in. Is
20 all the jury here?

21 **THE DEPUTY CLERK:** I have to check.

22 **THE COURT:** Just check. Don't bring them in yet.
23 Let me just --

24 **MR. WATKINS:** Your Honor, I'm having a little
25 difficulty hearing you.

1 **THE COURT:** Okay, Mr. Watkins.

2 So given Ms. Schesnol's email last night about a
3 revision to Count 1, let me just share with you a couple
4 additional thoughts I had about the charging conference.
5 And I'm going to give you some extra copies of things, but I
6 want to just put it on the table before we continue. So I'm
7 just going to put my current thinking on the table, and then
8 I'll hear from you later because I don't want to keep the
9 jury waiting.

10 One, usually, just to start, I do not send the
11 indictment back to the jury. I don't see any reason for
12 that, and that's why the jury instructions are sent back to
13 the jury which recounts what the charges are. No reason to
14 talk about the indictment.

15 **MR. WATKINS:** I'm still having trouble, I'm sorry,
16 hearing. I just want to hear.

17 **THE COURT:** Okay. The mic is on.

18 So I don't send the indictment back. Usually, I
19 repeat the charges in the indictment in the jury
20 instructions which are sent back. So in comparing the
21 parties' proposed jury instructions and the indictment, I
22 see that Count 1 doesn't repeat the charge. The proposed
23 jury instructions actually did not repeat what the charge
24 was in Count 1.

25 So the proposed jury instruction seems more

1 limited. But to start with the jury instructions and the
2 circulation draft, which has on Page 2 a provision about
3 minimizing the effect of having an indictment, I'm removing
4 that because there's no reason to talk about an indictment,
5 they're not going to see an indictment. So that just
6 highlights an indictment so I'm removing that. So that's
7 number one.

8 Number two, on the Count 1, I propose repeating
9 more closely to what the charge was in the actual
10 Indictment, rather than what the proposed jury instructions
11 reflected. And so it would -- and my circulation draft of
12 the proposed jury instructions basically lifted from what
13 the parties had proposed, which is in that proposed jury
14 instructions seemed to focus only on Sergeant Riley and the
15 touching of Sergeant Riley.

16 When the original charge in the Indictment is
17 broader and it is not just an assault, resisting, opposing,
18 impeding, intimidating or interfering with an officer
19 assisting United States officers but also the United States
20 officers, which would then encompass not just the grabbing
21 of the arm of Sergeant Riley but all of the other conduct in
22 the tunnel that was the pushing, rushing and use of the
23 shield; which was in the original indictment, and I don't
24 know why it was left out of the proposed jury instructions.

25 So I am going to hand to you -- so that's one

1 point. So you're going to see the revised Count 1 that you
2 don't have to react to now because I know you all have a lot
3 of other things on your mind, but I want you to have a copy
4 of it to be considering and have my thoughts about why I
5 think this is more appropriate.

6 I do agree with Ms. Schesno1, and having looked at
7 the case law, that Count 3 should only be that the defendant
8 did such acts voluntarily and intentionally with no specific
9 intent requirement at all required.

10 But it also led to another issue on the verdict
11 form, which is that Count 5, which is whether or not the
12 defendant acted with, you know, made physical contact with
13 or acted with the intent to commit another felony. We have
14 to ensure that the jury is unanimously deciding on which of
15 those acts occurred.

16 So I do believe we need specific interrogatories
17 with respect to Count 1. We need a specific interrogatory
18 on Count 1 to ensure that the jury unanimously is, you know,
19 if they find a guilty verdict on Count 1, that it is based
20 on a unanimous finding; that it was because there was
21 physical contact made with an officer of the Metropolitan
22 Police Department; and/or that the defendant acted with an
23 intent to commit the offense charged in Count 2; and/or that
24 the government proved the defendant acted with the intent to
25 commit the offense charged in Count 8, because Element 5

1 says, For purposes of this element, another felony refers to
2 the offense charged in Count 2 or 8. And we need to know
3 that they unanimously decided on which of those occurred.

4 So I think we need specific interrogatories on
5 that. I'll hear argument about it later, but I'm going to
6 have my law clerk distribute to you what I think should
7 be -- is a revised Count 1.

8 And it may mean that we also need another
9 interrogatory, that I've ran out of time to put into the
10 proposed verdict form, about whether they decide to convict
11 on Count 1, if they do decide to convict on Count 1, whether
12 it was because of other resisting, impeding or assaulting
13 U.S. Capitol police officers with the pushing, the rushing,
14 the shield.

15 So there might be yet a fourth interrogatory that
16 I'll -- I wanted to at least get this -- my thinking to you
17 about how I think both the verdict form and Count 1 needs to
18 be revised. And we'll talk about it later because I know
19 you all have a lot going on right now.

20 Okay. So with that, are we ready to proceed with
21 the continuation of Mr. Gillespie's cross-examination?

22 **MS. SCHESNOL:** Yes, Your Honor.

23 **THE COURT:** All right. So let's make sure the
24 jury's here and we'll bring the jury out.

25 Mr. Gillespie, could you please take the stand?

1 Thank you.

2 Ms. Schesnol, all I have to say is your note last
3 night made me take a much closer scrutiny of Count 1.

4 **MS. SCHESNOL:** I apologize it was so last minute.

5 **THE COURT:** That's the nature of the beast.

6 **MS. SCHESNOL:** Thank you for understanding.

7 (Jury entered the courtroom.)

8 **THE COURT:** Good morning, ladies and gentlemen.

9 We're going to continue with the cross-examination of
10 Mr. Gillespie.

11 Ms. Schesnol, please proceed.

12 **MS. SCHESNOL:** Thank you, Your Honor.

13 **CROSS-EXAMINATION OF VINCENT GILLESPIE (CONT'D.)**

14 **BY MS. SCHESNOL:**

15 **Q.** Good morning, Mr. Gillespie.

16 **A.** Good morning.

17 **Q.** Yesterday you testified on direct that your
18 interest or concern about election fraud began back with the
19 2012 election. Do you recall that?

20 **A.** Yes.

21 **Q.** After the 2012 election, you didn't go to the
22 United States Capitol to protest or voice your objections.
23 Correct?

24 **A.** That's correct.

25 **Q.** And you didn't go to the Massachusetts State House

1 to voice any objections or concern in 2012. Correct?

2 **A.** That's correct.

3 **Q.** And you didn't register to vote after that, did
4 you?

5 **A.** No.

6 **Q.** After the 2014 mid-term election, you didn't go to
7 the United States Capitol to voice your concerns or to
8 protest about the 2014 election. Correct?

9 **A.** Correct.

10 **Q.** You didn't go to the Massachusetts State House.
11 Correct?

12 **A.** Correct.

13 **Q.** And you didn't register to vote after that, did
14 you?

15 **A.** Correct.

16 **Q.** After the 2016 election, did you go to the
17 U.S. Capitol to voice your dissatisfaction or to protest the
18 2016 election?

19 **A.** No.

20 **Q.** And that was because the person you wanted to win
21 the 2016 election actually did. Correct?

22 **A.** No. I don't know what your question is saying.

23 No matter -- I'm telling you if the Democrat -- if
24 the Republicans had stolen one of the elections, there might
25 be a little bit less impetus in me, but I would be very,

1 very much against that. And I might possibly even come to
2 protest in the Capitol if the Republicans had done that
3 possibly.

4 **Q.** But your concern about the fraud in the 2012
5 election didn't elicit you engaging in any protests, did
6 you?

7 **A.** I don't remember who won that election. I guess
8 it was a -- I think it was a democrat. I don't remember who
9 won that election but, you're right, I didn't protest. I
10 did take action but I didn't protest.

11 **Q.** And yesterday you testified that the only reason
12 you wanted to get inside the United States Capitol on
13 January 6, 2021 was to protest the stolen presidential
14 election of 2020. Correct?

15 **A.** Yes.

16 **Q.** When the outcome of the 2020 election was
17 announced in early November 2020, you didn't protest then,
18 did you?

19 **A.** No.

20 **Q.** You didn't write any strongly-worded email to your
21 member of Congress, did you?

22 **A.** No.

23 **Q.** You didn't file a lawsuit, did you?

24 **A.** No.

25 **Q.** And you didn't protest by carrying a sign at the

1 Trump rally, did you?

2 **A.** I don't understand. I didn't go to a Trump rally
3 at that time. Do you mean the later Trump rally?

4 **Q.** Yes, I apologize. On January 6, 2021, here in
5 D.C., you didn't protest by carrying any sign at that Trump
6 rally. Correct?

7 **A.** I did not carry any sign.

8 **Q.** And at no time did you stand out on a street
9 corner voicing your concerns over the 2020 election prior to
10 January 6, 2021. Correct?

11 **A.** That's correct.

12 **Q.** So the only time you protested was on January 6,
13 2021. Correct?

14 **A.** Yeah, yeah. I think that's correct, yes.

15 **Q.** And that protest was going to be inside the United
16 States Capitol building. Correct?

17 **A.** "Was going to be," at what time are you referring
18 to that it was going to be?

19 **Q.** When you were trying to get inside the United
20 States Capitol building through the Lower West Terrace
21 tunnel doors on January 6, 2021, that's where you wanted to
22 protest, inside the United States Capitol on January 6th.
23 Correct?

24 **A.** That was my intention when I was inside the
25 tunnel.

1 **MS. SCHESNOL:** So I'd like to play for you
2 snippets of Exhibit 601, which is already in evidence. So
3 may those portions be published, Your Honor?

4 **THE COURT:** Yes, they will.

5 **BY MS. SCHESNOL:**

6 **Q.** Can you see that on your screen?

7 **A.** I see a still right now from the video, from the
8 AP video.

9 **Q.** And it is published. So we're playing at just
10 before 30 seconds into Exhibit 601.

11 (Video played.)

12 **BY MS. SCHESNOL:**

13 **Q.** So just there, you said, "We were starting to push
14 against them." Did you hear that?

15 **A.** Yes.

16 **Q.** By "them" you meant the police. Correct?

17 **A.** Yes.

18 **MS. SCHESNOL:** Playing again.

19 (Video played.)

20 **THE COURT:** Excuse me just one second. Okay. You
21 need to replay that because the volume is very low. For the
22 record, the jury was indicating they could not hear.

23 **MS. SCHESNOL:** I appreciate that. I believe it's
24 on its loudest volume. We'll start again. Thank you.

25 (Video played.)

1 **BY MS. SCHESNOL:**

2 Q. So we're stopping at 55 seconds. Just there, you
3 said, "We were almost overpowering them." Correct?

4 A. Yes.

5 Q. And again, by "them" you meant the police. Right?

6 A. Yes.

7 **MS. SCHESNOL:** We're going to play that again.

8 (Video played.)

9 **BY MS. SCHESNOL:**

10 Q. Did you hear -- we're stopping at 59 seconds -- "I
11 think we could have won it." Did you hear that?

12 A. Yes.

13 Q. By "won it" you meant the battle for the United
14 States Capitol. Correct?

15 A. No.

16 Q. You mean won the fight with the battle with the
17 police?

18 A. I mean we think we could have succeeded in getting
19 in.

20 Q. Getting into the United States Capitol. Correct?

21 A. Yes.

22 **MS. SCHESNOL:** Playing it again.

23 (Video played.)

24 **MS. SCHESNOL:** Stopping at 1 minute and 12
25 seconds.

1 **BY MS. SCHESNOL:**

2 **Q.** "Flood in." You meant you hoped that thousands of
3 people would flood into the United States Capitol building.
4 Correct?

5 **A.** You're saying thousands but I was hoping, when I
6 was in the tunnel, that many people would come in to
7 protest.

8 **Q.** Well, there were thousands of people out on the
9 west side of the Capitol. Weren't you hoping that they
10 would all flood in?

11 **A.** I was hoping that a good number would come in.

12 **Q.** Because you were upset about the 2020 election.
13 Correct?

14 **A.** Yes.

15 **Q.** And you felt it was your civic duty to help save
16 the country. Right?

17 **A.** Something like that.

18 **Q.** And so wouldn't the more people who flood in, the
19 better?

20 **A.** I did -- I did hope that a good number of
21 people -- that many people would come into the Capitol to
22 protest.

23 (Video played.)

24 **MS. SCHESNOL:** Stopping at 1 minute, 13 seconds.

25

1 **BY MS. SCHESNOL:**

2 Q. "So there's nothing they can do." By "they" you
3 mean the people who work inside the Capitol. Right?

4 A. No.

5 Q. You mean the police?

6 A. Yes.

7 Q. So if there was nothing the police could have done
8 and they're out of the way, then you would have been inside
9 the Capitol. Right?

10 A. Yes.

11 Q. And so the people who work inside the Capitol, you
12 would have been in there. Right? You would have -- you
13 would have won it. Right?

14 A. I don't understand. You're not being clear.

15 Q. Well, once the police were out of the way, you
16 could have gotten inside of the Capitol building. Right?

17 A. Yes.

18 Q. And you could have taken it over. You could have
19 taken over the Capitol. Right?

20 A. No. I mean that was not my intention.

21 Q. Okay. Well, let's keep listening.

22 (Video played.)

23 **BY MS. SCHESNOL:**

24 Q. "Take it over. Take it over." You mean take over
25 the Capitol building. Right?

1 **A.** No, there's a number of things at this point.

2 **Q.** Take over the Senate Chamber?

3 **A.** No, there's a number of things at this point.

4 If you listen to the actual words, at this
5 point -- this is the second paragraph that I spoke. There's
6 an earlier paragraph and the second paragraph. I'm only
7 using the word "they" here. If you listen, there's only --
8 in the first paragraph, there's -- the pronoun is I/we.

9 In this paragraph, it's only they. And I had
10 misunderstood the question that was asked. I was answering
11 a different question than what he asked. The question that
12 I heard was -- the question that I was answering was --
13 which is different from the question he asked.

14 The question I was answering is, if some
15 protesters other than me got in in the future what -- this
16 is what I say, if you look at the actual words, what would
17 you hope they would do?

18 **Q.** You are telling us today, under oath --

19 **A.** Yes.

20 **Q.** -- that when a reporter asked you, What would you
21 have done if you had gotten in, that you weren't answering,
22 Take it over, take it over for yourself and the good many
23 people you wanted to flood in? You were talking about some
24 future riot at the Capitol?

25 **A.** Not a future riot, no. But I -- if you look at

1 the actual words, this is actually what I'm saying. You
2 have the transcript. You have the transcript.

3 It starts, What I hope they would do. I had -- at
4 this point, as I testified on direct examination, at a
5 certain point while I was in the tunnel --

6 (Video played.)

7 **MS. SCHESNOL:** I'm sorry. I apologize. I
8 apologize.

9 **BY MS. SCHESNOL:**

10 **Q.** Let's listen to the actual words.

11 **MR. WATKINS:** Judge, I'm going to object at this
12 point. This transcript was not provided as a trial exhibit.
13 We would have objected to some of the language that was
14 included there. I don't think it's appropriate at this
15 point, unless the Court wants to take a break so that we can
16 discuss whether the transcript that's on here is accurate.

17 **THE COURT:** And is the transcript that we're
18 seeing now that had been blurred out, the transcript -- the
19 transcript of what is said on the screen?

20 **MS. SCHESNOL:** No.

21 **THE COURT:** Missing words?

22 **MS. SCHESNOL:** Right. Would you like us to
23 discuss this on the phone?

24 **THE COURT:** Sure.

25 (Sidebar discussion.)

1 **THE COURT:** I'm sorry. So this was blurred and
2 now I'm seeing the transcript. Are these the words that
3 Mr. -- have you checked that what the words at the bottom
4 are actually what he's saying? Is it accurate?

5 **MS. SCESNOL:** So yes. But let me go back to the
6 first part.

7 The words that were blurred were not a
8 "transcript" of the dialogue. It was the way the AP
9 characterized what was going on.

10 **THE COURT:** Oh, I see. It wasn't a transcript.

11 **MS. SCESNOL:** Exactly.

12 **THE COURT:** So these words, are these the
13 transcript or is this AP characterization?

14 **MS. SCESNOL:** This is the transcript.

15 And Mr. Gillespie just testified that what I was
16 saying wasn't correct if we listen to the actual words. So
17 I think it's fair game to ask him if these are the actual
18 words, if he's hearing what's on this screen.

19 **THE COURT:** Okay. So maybe Mr. Watkins' objection
20 was based on him seeing words on the bottom that he thought
21 was the AP characterization, because that's actually what I
22 thought when I saw the words. But now you're saying that
23 this is actually transcribed of what's being said.

24 So, Mr. Watkins, did I understand your objection
25 correctly?

1 **MR. WATKINS:** Yes.

2 **THE COURT:** Now is your objection withdrawn
3 because this is actually the transcribed words?

4 **MR. WATKINS:** No, it's not at all.

5 It is a transcript of the words, and I understand
6 that that is what the government is trying to put in here.
7 I would note, as part of their exhibit list, they never
8 included a video that had the transcript of the words. I
9 had my eye out for it because I know Mr. Gillespie and we --

10 **THE COURT:** You've had this in discovery. You've
11 seen this and these transcribed words.

12 **MR. WATKINS:** Yes.

13 **THE COURT:** Have you checked the accuracy of the
14 transcript and do you have any -- is there any objection to
15 the accuracy of the transcription?

16 **MR. WATKINS:** Yes. That is the point. There is a
17 question of the accuracy of the transcript.

18 **THE COURT:** In what way? What specific words that
19 you think were mistranscribed in the transcript?

20 **MR. WATKINS:** Judge, in specific pronouns that are
21 ascribed to Mr. Gillespie, as you're going to hear about
22 whether it's "they" or "I" in the transcript.

23 **THE COURT:** He actually said "I" and the
24 transcript says "they".

25 **MR. WATKINS:** The opposite way around.

1 **THE COURT:** He said "they" and the transcript says
2 "I"?

3 **MR. WATKINS:** Correct.

4 **THE COURT:** And is it on this page right now?

5 **MR. WATKINS:** Not yet. I think it's coming up.
6 Judge, I have to say, I'm not sure that that's the only
7 correction to it because it wasn't identified as an issue.
8 It wasn't identified as an exhibit that the government was
9 going to put in so I did not focus on it.

10 This is the first time, after, well, weeks and
11 weeks, that I understood that the government was going to
12 try to play a transcript along with this.

13 **MS. SCHESNOL:** Your Honor, it wasn't my intention
14 until Mr. Gillespie just said that what I was saying was
15 wrong. So I feel like he opened the door to this. If not,
16 we can go back to the other video and I can play it over and
17 over and over. And the jury can hear it multiple times.

18 **THE COURT:** Well, why isn't it, Mr. Watkins, just
19 fair game if you think that some of the transcription is
20 wrong? You can listen to it. The transcription is not
21 going to be introduced into evidence. The jury is going to
22 listen to this tape, I'm sure. They'll hear it for
23 themselves.

24 **MR. WATKINS:** If the transcript is not going into
25 evidence, there's no reason to put it up on the screen. By

1 having it on the screen, it gives them the imprimatur that
2 it's correct, that someone has --

3 **THE COURT:** No, it's a demonstrative and it's
4 helpful and you can subject it to cross-examination. I'm
5 going to overrule the objection. But I think I am going to
6 explain to them why sometimes it was blurred and what was
7 blurred was not the transcript. What was blurred was AP
8 characterization and that this is different. I mean, I
9 think -- although maybe, it doesn't matter to them.

10 **MR. WATKINS:** Judge, I would also ask that you
11 instruct the jury, before we hear anymore, that this
12 transcript is disputed, that it's not agreed.

13 **THE COURT:** You can do whatever dispute you want
14 on redirect examination. Okay? I'm not going to do that.

15 (Sidebar discussion concluded)

16 **THE COURT:** The objection is overruled.

17 Ladies and gentlemen, sometimes when you're
18 hearing things, the parties will use what's called a
19 demonstrative to assist you in understanding what's being
20 heard. The words at the bottom are such a transcript
21 demonstrative. But what you hear will prevail over any
22 transcription that you see as a demonstrative.

23 All right.

24 **MS. SCHESNOL:** Thank you, Your Honor.

25

1 **BY MS. SCHESNOL:**

2 Q. So there was a dispute whether or not what the
3 question was, whether it was "I" or "they." So let's go
4 through this together.

5 (Video played.)

6 **BY MS. SCHESNOL:**

7 Q. Did you see where the reporter said, "What would
8 you have done if you had gotten in?"

9 **MR. WATKINS:** I'm going to object specifically
10 here, Your Honor, to the transcript.

11 **THE COURT:** I can't hear you myself now,
12 Mr. Watkins. Why don't you use the -- if you're doing a
13 speaking objection, use the phone. You're objecting? Okay.

14 (Sidebar discussion.)

15 **THE COURT:** Let's hear what you have to say. Why
16 are you objecting?

17 **MR. WATKINS:** I just wanted to point out that this
18 is the disputed portion of the transcript. Again, I'm
19 objecting that it's going up on the screen without the
20 chance to look through it and present in an effective way
21 our own --

22 **THE COURT:** Why is this -- because it has one --
23 because the reporter's question is asked twice and the
24 transcription only puts the words up once?

25 **MR. WATKINS:** No. It's the "I" versus "they"

1 aspect of it that is coming up specifically.

2 **THE COURT:** Well, on redirect, you can go back and
3 drill down onto what he said.

4 (Sidebar discussion concluded)

5 **THE COURT:** Objection overruled.

6 **BY MS. SCHESNOL:**

7 **Q.** Let's listen to it and we'll look at the words.
8 And if something is wrong, you will tell us. We're at 50
9 seconds into the video.

10 (Video played.)

11 The reporter said, "What would you have done if
12 you had gotten in?"

13 **A.** And my response was I didn't hear him at that
14 moment.

15 **Q.** Okay. But it's accurate that, even if you
16 misunderstood on January 6, 2021, that is the question that
17 was posed to you?

18 **A.** Yes.

19 **Q.** And it's correctly transcribed on this video.
20 Correct?

21 **A.** Yes.

22 **Q.** So in response to "What would you have done if you
23 had gotten in?"

24 (Video played.)

25

1 **BY MS. SCHESNOL:**

2 **Q.** Was that transcription correct? I hoped they
3 would flood in so there's nothing they can do?

4 **A.** Yes.

5 **Q.** And by "they" you mean the people who are outside
6 the Capitol. Correct?

7 **A.** No. I mean, that's ambiguous. I mean, all of the
8 people outside the Capitol? No. The protesters --

9 **Q.** You were hoping a good many people would flood in.
10 Correct?

11 **A.** Yes. Yes.

12 **Q.** And when you say, So there is nothing they can do,
13 I believe you've already testified by "they" you meant the
14 police. Correct?

15 **A.** Yes.

16 **Q.** Okay.

17 (Video played.)

18 By "Take it over. Take it over," you mean the
19 Capitol building. Correct?

20 **A.** Yes.

21 **Q.** And then you say, "Own it for a few days."

22 (Video played.)

23 So "own it for a few days." By "it" you mean the
24 Capitol building. Correct?

25 **A.** Yes.

1 Q. And then the last thing --

2 A. Yes, but you're leaving out -- I mean, I'm talking
3 about other people. I'm not talking about me. And I'm not
4 talking about past tense.

5 Q. So you're telling us today, under oath, that when
6 you said those words on the grounds of the United States
7 Capitol January 6th, 2021, you weren't talking about wanting
8 to flood into the Capitol at that time?

9 A. At what time are you talking about exactly?

10 Q. On January 6, 2021?

11 A. That's 24 hours.

12 Q. Some time between 4:10 and 4:30 p.m.?

13 A. Okay. Yes. And the answer to that question is,
14 No, that's not what I intended. I mean, am I going to get
15 to clarify this with --

16 **THE COURT:** Your attorney will have an opportunity
17 to do redirect examination.

18 **THE WITNESS:** Okay.

19 **BY MS. SCHESNOL:**

20 Q. When you said that "You can't let stand what
21 happened in this election," you were upset about the 2020
22 presidential election. Correct? We've established that?

23 A. Yes.

24 Q. And your way of protesting that was to get into
25 the United States Capitol at some time between 4 p.m. and

1 4:30 on January 6, 2021 to own it for a few days, to take it
2 over, because you can't let stand what happened in this
3 election. Correct?

4 **A.** I need to know exactly what you mean. Are you
5 saying that's what I'm saying? Are you saying that's what I
6 was intending when I went into the tunnel? I don't know
7 what you mean.

8 **Q.** This is what you said. Correct?

9 **A.** What I said was that this is what I -- it's
10 exactly what I said. This is what I would hope they would
11 do. That's what I said. I was talking --

12 **Q.** And --

13 **A.** That's what I said. This is what I would hope
14 they would do.

15 **Q.** And "they" you mean someone other than yourself?

16 **A.** Yes. And I also mean something someone other
17 than -- I'm not talking about that past time. I'm talking
18 about if -- the question I heard, which is not the question
19 that was asked, but the question I was answering was, if
20 some people could get into the Capitol at this point or
21 something to this effect, what would you hope they would do?

22 **Q.** But you wanted to get into the Capitol between 4
23 and 4:30 on January 6, 2021. You testified to that. Right?

24 **A.** Yes.

25 **Q.** So by the flood in and take it over and own it for

1 a few days, you were talking about yourself and a good many
2 people at that time. Right?

3 **A.** No. You're combining two different things. The
4 flood in and take it over, there, I was talking about the
5 past tense. And that is in the first paragraph and there's
6 different pronouns there.

7 In the second -- in the second paragraph, I'm only
8 using the word "they" and I'm talking about if some people
9 could get in at this point, what would you hope they would
10 do.

11 **Q.** But you wanted to get in?

12 **A.** That's what the actual words say. That's what the
13 actual words say.

14 **Q.** But you wanted to get in at that point. Right?

15 **A.** No. At this point? At the time of this
16 interview?

17 **Q.** But wasn't this interview within minutes of you
18 getting kicked out of the tunnel?

19 **A.** Fifteen, 20 minutes.

20 **Q.** You're still on the grounds of the United States
21 Capitol. Correct?

22 **A.** Yes.

23 **Q.** And your testimony was the whole reason you were
24 trying to get past the police in the Lower West Terrace
25 tunnel was to get inside the Capitol and protest. Right?

1 **A.** When I was in the tunnel, yes.

2 **Q.** So let's look -- just watch it in its entirety --

3 **A.** You're combining two different things. The flood
4 in is the past tense. That is referring to what I had been
5 hoping would happen.

6 The -- what's in the second paragraph is what I
7 was saying where I would hope others -- if others got in.
8 If others got in what they would do.

9 **Q.** If others got in with you?

10 **A.** No. I've said this over and over.

11 **Q.** Well, let's just watch the whole thing.

12 **A.** Yeah.

13 **Q.** And then you can explain it on redirect.

14 (Video played.)

15 And your testimony is by "they take it over and
16 own it for a few days" meant people other than you?

17 **A.** Yes, it did, actually.

18 **MS. SCHESNOL:** I have no other questions.

19 **THE COURT:** Redirect?

20 **REDIRECT EXAMINATION OF VINCENT GILLESPIE**

21 **BY MR. WATKINS:**

22 **Q.** Good morning, Mr. Gillespie.

23 **A.** Good morning.

24 **Q.** When was the -- how long after did you first see
25 that video, the AP video? How long after January 6th was

1 that?

2 **A.** I'm not sure but it was a year. I don't know.
3 Maybe a year later.

4 **Q.** It was after you had been charged in this case?

5 **A.** Yes. Yes.

6 **Q.** And when you first looked at it, did you remember
7 being down there and talking with the AP reporter?

8 **A.** I did have a recollection of the -- of the
9 interview. I did remember that I was interviewed.

10 **Q.** When you looked at it, did you remember saying all
11 of the things that you said on that video that you see you
12 said?

13 **A.** No. No. No.

14 **Q.** Are there some portions that you remember better
15 than others?

16 **A.** Yes.

17 **Q.** What are some of the things that you remember
18 saying?

19 **A.** I do remember saying about the 15 or 20 people.
20 If there were 15 or 20 people we could have gotten in.

21 **Q.** As far as owning it for two or three days, was
22 that something you remember saying at that time?

23 **A.** No.

24 **Q.** So when you're testifying today about it, are you,
25 like, testifying as if your state of mind at that time in

1 what you were trying to get at?

2 **A.** I'm sorry. Say that again. What?

3 **Q.** So if you don't remember it, why are you
4 testifying about why you said those things back then?

5 **A.** Well, it's on -- you mean those two sentences,
6 those two phrases? I mean, it's on video so I said it. You
7 know, I can't say I didn't say it. But I have no
8 recollection of saying it.

9 But what I can do is surmise. I can look at what
10 happened before and I can figure out why I probably said
11 that.

12 **Q.** So you're just backfilling to a certain extent to
13 try to figure out why you would have said those things at
14 the time?

15 **A.** Yeah. Yeah. Yeah.

16 **Q.** Looking back at your state of mind when you were
17 doing that AP video, what had you been through physically as
18 a result of going into that tunnel?

19 **A.** Well, I was -- I was beat hard in the head at
20 least three times with a police baton. I mean hard, as hard
21 as -- you know as violent -- I was pepper sprayed in the
22 eyes, so my eyes were really burning.

23 The whole thing was just a shock. It was also
24 just psychologically just a shock.

25 **Q.** Were there other emotional feelings that you were

1 feeling at the time that you gave that AP video?

2 **A.** There were. After the -- after I got -- after I
3 was hit in the head three times, as I think I previously
4 testified, it just seemed so -- it just seemed uncalled for
5 and wrong, unjustified.

6 And so there was a certain sense of indignation
7 that arose over that. And also over the way we were
8 treated, the way I was treated. Just, we were trying to do
9 something good and it was just so bluntly stopped. I don't
10 know what the right adjective is.

11 So there was a sense of indignation and then also
12 there was -- I didn't know what to make of it. I was just
13 trying to figure out. I didn't even know if, I didn't know
14 what to think of what had just happened. So I didn't
15 know --

16 **Q.** Mr. Gillespie, do you think your physical and
17 emotional condition when you made that AP video had an
18 influence on the things that you said now that you look back
19 at it?

20 **A.** I do. I do. But should I finish explaining?

21 **Q.** When you were in the tunnel --

22 **A.** Yes.

23 **Q.** -- were you expecting that people would own the
24 Capitol?

25 **A.** No. No. Not at all. I didn't, no.

1 **Q.** Mr. Gillespie, let me finish the question.

2 Did you expect and hope that people would own the
3 Capitol for two or three days when you were in the Lower
4 West Terrace?

5 **A.** No.

6 **MR. WATKINS:** That's all I have.

7 **THE WITNESS:** Can I? No, never mind.

8 **THE COURT:** Mr. Gillespie, you're excused. Take
9 your seat at the table.

10 Mr. Watkins, do you have any other witnesses?

11 **MR. WATKINS:** No, the defense would rest.

12 **THE COURT:** And does the government have a
13 rebuttal case?

14 **MS. SCHESNOL:** No, Your Honor.

15 **THE COURT:** All right. So we have finished the
16 evidentiary portion of the trial. I now need to speak to
17 the lawyers.

18 (Sidebar discussion.)

19 **THE COURT:** All right. So are you all prepared to
20 move into summation?

21 **MS. SCHESNOL:** Yes, Your Honor.

22 **MR. WATKINS:** Judge, without knowing what the
23 instructions are now going to be, I'm a little bit
24 uncomfortable. Much of my closing was predicated on the
25 instructions as we understood that they were going to be

1 this morning after yesterday's --

2 **THE COURT:** Okay. So we'll finish the charging
3 conference, and I will excuse the jury for a few minutes
4 while we have that.

5 (Sidebar discussion concluded.)

6 **THE COURT:** Ladies and gentlemen, there are a
7 couple legal matters that we need to take up, so I'm going
8 to excuse you probably for about 10 or 15 minutes.

9 (Jury left the courtroom.)

10 **THE COURT:** All right. So let's turn to the
11 revision to Count 1.

12 **MR. WATKINS:** I'm sorry, Judge, I am having --

13 **THE COURT:** Thank you, Mr. Watkins, I'll move the
14 microphone closer to my mouth.

15 I start with Count 1 in the superseding
16 indictment. So the record is clear, Count 1 of the
17 superseding indictment reads as follows: On or about
18 January 6, 2021, within the District of Columbia, Vincent
19 Gillespie did forcibly assault, resist, oppose, impede,
20 intimidate and interfere with an officer and employee of the
21 United States and of any branch of the United States
22 government, including any member of the uniformed services
23 and any person assisting such an officer and employee, that
24 is, an officer from the Metropolitan Police Department while
25 such person was engaged in and on account of the performance

1 of official duties and where the acts in violation of this
2 section involved physical contact with the victim and the
3 intent to commit another felony.

4 And I usually, in my instructions, just simply
5 lift the charge and put it in the instructions. And I
6 understood from the joint pretrial statement that the
7 parties had modified that somewhat to make it more readable
8 and to delete some irrelevant information, like, any branch
9 of the United States government, including any member of the
10 uniformed services, and I thought that was perfectly
11 appropriate.

12 As I took a closer look, I see that what is
13 covered in Count 1 is actions of assaulting, resisting,
14 opposing, et cetera, with respect to officers of the United
15 States, meaning U.S. Capitol police officers as well as
16 persons assisting such officers, meaning the Metropolitan
17 Police Department.

18 And that the joint pretrial statement proposal
19 that had originally been put in the circulation draft
20 basically focused just on the Metropolitan Police Department
21 officers and left out the whole other part of the charge,
22 which is justified.

23 I mean, the evidence in the case with multiple
24 police, MPD and USCP officers, in the tunnel seems to be
25 overly restricted for reasons that make no sense.

1 So Count 1 in the revision has -- is more in
2 keeping with what the charge in the indictment in Count 1
3 is. And I will listen to objections too, you know, or any
4 other revisions you want to make to it.

5 **MS. SCHESNOL:** Your Honor, the government
6 appreciates and agrees with the newly proposed language for
7 Count 1. We think it is more accurate as to the law and the
8 facts.

9 **THE COURT:** While Count 1 in the charge uses the
10 word "victim," I didn't use that characterization in the
11 proposed instructions. I just called the person an officer.
12 I don't think that makes much of a difference.

13 Mr. Watkins?

14 **MR. WATKINS:** Thank you, Your Honor.

15 The revision of that and the language we do not
16 object to. We do object to the modification that the
17 defendant did such acts voluntarily and intentionally and
18 altering it so that intent to injure is no longer an aspect
19 of the third element.

20 **THE COURT:** Do you have the case law that --
21 because I've looked this morning at this issue and, based on
22 my review of the case law, it is not a requirement that
23 there has to be a specific intent to inflict serious bodily
24 injury on the victim.

25 **MR. WATKINS:** Judge, I will tell the Court that I

1 sent the --

2 **THE COURT:** Excuse me just one second.

3 So I'm looking at *U.S. v. Gutierrez*, an 11th
4 Circuit case from 2014, and the D.C. Circuit case, *U.S.*
5 *v. Arrington*, from 2002. That specific intent requirement
6 is not required. All that was required is that the defendant did
7 such acts voluntarily and intentionally.

8 **MR. WATKINS:** Judge, we drafted these jury
9 instructions some three weeks ago in accordance with the
10 Court's pretrial order. I know we did much legal research
11 about all of the charges when we did that to make sure that
12 they were all supported.

13 My memory -- and I do want to back up. Since
14 yesterday's charging conference, of course, I have been
15 working on Mr. Gillespie's direct examination all yesterday
16 afternoon and then trying to prepare for the closing this
17 morning because I know the Court wanted to continue on. It
18 was very late in the evening that Ms. Schesnol brought up
19 this particular issue.

20 So with those caveats, I've had zero time to look
21 into this particular issue. My memory is that we looked at
22 a 10th Circuit jury instruction on assault on a federal
23 officer. And we also looked at a previous case here on a
24 January 6th case from the District of Columbia, where the
25 government and the defendant submitted a substantially

1 similar charge.

2 I believe we cited that in our pretrial
3 memorandum. But again, I would have to take some time to go
4 back and recreate what we did three weeks ago when we all
5 agreed that that was the proper instruction here.

6 Setting aside that -- and I do believe that the --
7 there is legal support for that as to -- I'll go into that
8 in a minute. The more fundamental issue is that, because we
9 agreed on that, we have constructed our defense as for that
10 particular charge around that jury instruction that there
11 needed to be an intent to injure.

12 The Court's heard that, I think, from the opening
13 on through certainly throughout my direct of Mr. Gillespie.
14 To now take that out as a requirement there, simply means
15 that we have created a defense of relying on something
16 that's now going to be taken away from us.

17 And simply, I would certainly have done things
18 much differently had I known that the instruction was going
19 to be changed on -- (inaudible) -- or that the instruction
20 was going to be different.

21 So I think that is really the fundamental problem
22 is that we relied on a joint request for a jury instruction.
23 We constructed our defense on that and have gone forward.
24 To go now and essentially pull the rug under and talk about
25 a different wording of that element is simply -- massively

1 unfair, so much so that I think I would be moving for a
2 mistrial if the Court, indeed, thought that that is so wrong
3 that it needed to be adjusted at the very last minute here.

4 **THE COURT:** So, essentially, what you're saying is
5 I have to give an incorrect --

6 **MR. WATKINS:** Judge, I'm sorry.

7 **THE COURT:** You're saying I have to give an
8 incorrect legal instruction on the law?

9 **MR. WATKINS:** I don't think.

10 **THE COURT:** Of 18 U.S.C. 111 --

11 **MR. WATKINS:** I am not saying --

12 **THE COURT:** Because the defense put forward a
13 defense that isn't -- that was based on a misunderstanding
14 of the law?

15 **MR. WATKINS:** Not --

16 **THE COURT:** And -- well, I guess on a reliance on
17 what the government said?

18 **MR. WATKINS:** Correct. That is where it is. A
19 reliance -- again, I believe it's supported. I will need to
20 take a couple of hours to go back and recreate our -- how we
21 decided that that indeed was the law. That's -- that it's
22 supported in the law.

23 But I -- this was -- up until yesterday afternoon,
24 this was the jury instruction that everyone agreed on. The
25 government agreed yesterday and affirmed it again yesterday

1 that that was the instruction that was to be given by the
2 Court and the Court indicated in its circulation draft.

3 That's what we relied on during Mr. Gillespie's
4 testimony and what I intend to rely on today as we do the
5 closing arguments. That's why -- I can't speak for the
6 Court, but that is why jury instructions are done in advance
7 so that we can work those kinds of issues out so that the
8 parties know what they're dealing with as they a construct a
9 defense or the prosecution.

10 **THE COURT:** All right. Let me hear from
11 Ms. Schesnol.

12 It was in your proposed pretrial statement. So
13 should I just give an incorrect instruction on the law
14 because everybody's relied on that?

15 **MS. SCHESNOL:** No, Your Honor.

16 And I have fallen on the sword. I continue to
17 fall on the sword. This is my first 111(a) case. I made a
18 mistake. And in preparing closing last night, that's when I
19 recognized it.

20 I am embarrassed that I made the mistake in the
21 first place, and I'm embarrassed that it took me until 10:00
22 last night to notice it. It's actually quite humiliating to
23 stand before you. But as an officer --

24 **THE COURT:** So where did you get this? Maybe --
25 because I presume that all the parties checked that -- and

1 you have citation here to *United States v. Webster*, it's a
2 APM case.

3 **MS. SCHESNOL:** In trying to recreate how I made
4 the mistake in the first place, my best guess as to how I
5 made the mistake in the first place is the *Webster* case had
6 a 111(a) and (b) charge. And in their proposed jury
7 instructions, I think -- I can't say for sure -- I think
8 that is probably where I got it from. Again --

9 **THE COURT:** Because that was use of a deadly
10 weapon.

11 **MS. SCHESNOL:** Correct.

12 **THE COURT:** Which is different.

13 **MS. SCHESNOL:** It is, Your Honor.

14 **THE COURT:** It's one of the three forms of
15 conduct --

16 **MS. SCHESNOL:** Yes.

17 **THE COURT:** -- covered by 111(a) and you're not
18 charging 111(b).

19 **MS. SCHESNOL:** Correct.

20 **THE COURT:** And you're not charging simple
21 assault.

22 **MS. SCHESNOL:** Correct.

23 **THE COURT:** You're charging the third form, which
24 only requires that the defendant acted voluntarily and
25 intentionally.

1 **MS. SCHESNOL:** Correct.

2 And, again, I am embarrassed and I apologize that
3 I made this mistake in the first place. I did not intend to
4 cause confusion but, when I realized I was wrong, I had to
5 bring it to the Court's attention. Because we don't want
6 you giving an incorrect statement of the law to the jury.

7 **THE COURT:** All right.

8 Well, Mr. Watkins, do you need additional time to
9 rethink how you're going to do your summation, in which case
10 we can give you additional time?

11 **MR. WATKINS:** Your Honor, the damage is done
12 already by our presentation during trial where we relied on
13 that instruction about how we were going to construct a
14 defense. So at this point there's nothing that can cure
15 that --

16 **THE COURT:** But you're not telling me, are you,
17 that Mr. Gillespie testified only in a manner to fit a
18 defense, are you? Didn't he testify fully and truthfully?

19 **MR. WATKINS:** I construct my questions to focus on
20 particular things. I construct our cross-examinations to
21 bring out particular facts that are supportive so that when
22 we can -- at closing argument when we argue to the jury,
23 that we know what the law is and what the important facts
24 that fit the law is.

25 We now are at a point of the trial where I've done

1 that. I focused on that intent to injure and repeated it
2 multiple times during trial to put it into the jury's mind
3 that that's what I would be arguing. And now I'm not going
4 to be permitted to argue that particular argument that was
5 in the joint jury instructions and, up to yesterday, was
6 going to be the law of the case.

7 **THE COURT:** And that argument, as I take it, was
8 that, on reflection, Mr. Gillespie can now firmly testify
9 that he had no intent to specifically harm any law
10 enforcement officer when he was pushing, rushing --

11 **MR. WATKINS:** I'm sorry, Judge.

12 **THE COURT:** When he was pushing, rushing and using
13 a shield and grabbing onto the arm of different officers?

14 **MR. WATKINS:** That's correct. That's what I would
15 be arguing to the jury. That, without Mr. Gillespie's --
16 without them finding Mr. Gillespie's intent to injure, that
17 the jury cannot come back with a guilty verdict on that.

18 And that was the law up until yesterday -- that
19 was the rule up until yesterday in the joint jury
20 instructions that were approved by the Court.

21 Judge, if the issue is that Court is worried about
22 instructing on the record on law that it believes is
23 incorrect, the government can dismiss the charge and we can
24 go forward on other charges. The government has other
25 remaining charges that it can convict Mr. Gillespie on.

1 That is a remedy that is also available to the government at
2 this point.

3 I understand Ms. Schesnol's embarrassment about
4 it, and that's one way we can cure this is to simply dismiss
5 Count 1 and go forward on the remaining counts.

6 **THE COURT:** Ms. Schesnol? Is that the appropriate
7 remedy for the error in the government's proposed
8 instructions?

9 **MS. SCHESNOL:** I don't believe so, Your Honor.

10 **THE COURT:** Why not?

11 **MS. SCHESNOL:** I believe that --

12 **THE COURT:** Should I grant a mistrial instead?

13 **MS. SCHESNOL:** I don't think that's appropriate
14 either, as Your Honor astutely surmised that Mr. Gillespie's
15 testimony was hopefully wholesome and truthful and not
16 crafted to meet a certain element. Again, I don't think
17 either dismissing the count or granting a mistrial is
18 appropriate.

19 While I take 100 percent responsibility for this,
20 it was a joint pretrial statement. And the defense
21 certainly could have done their own research and brought it
22 to attention. I do take full responsibility, though, and we
23 are officers of the Court and we can't instruct the jury on
24 an incorrect statement of the law.

25 Perhaps a remedy would be Mr. Gillespie can take

1 the stand again and add to -- add to his testimony if it was
2 crafted to meet the elements, the incorrect elements as they
3 were listed.

4 **THE COURT:** Mr. Watkins?

5 **MR. WATKINS:** No. No. We are not going to put
6 this -- I'm sorry, Your Honor.

7 Having Mr. Gillespie testify again and having me
8 change my questions and the tone of the direct
9 examination -- I suppose what the Court would have to say
10 is, simply ignore everything that you heard yesterday and
11 this morning, and we're going to start all over again as if
12 Mr. Gillespie never testified; that's inappropriate.

13 **THE COURT:** Well, I think that's hyperbole. I do
14 trust that when the defendant testifies, he's testifying
15 fully and truthfully and not just crafted to deny certain
16 intent requirements that he thinks are what is the
17 applicable law incorrectly.

18 All right.

19 To the extent that you have requested a mistrial
20 based on this, I'm denying it.

21 To the extent that you're asking me to add in a
22 specific intent to commit bodily harm requirement in Element
23 No. 3 in Count 1, which is not legally required and, in
24 fact, legally in error based on my research, I am not going
25 to do that either.

1 I am going to try and instruct the jury to the
2 best of my ability, based on my understanding of the law, as
3 to what the correct legal instructions are in this case.

4 Which leads next to the verdict form.

5 **MR. WATKINS:** Judge, before we move on, the
6 language is "intent to injure." That was the language,
7 "intent to injure," not intent to commit bodily harm. I
8 just want to be clear for the record that that's what --

9 **THE COURT:** All right. Okay.

10 Let's turn to the verdict form, which I think in
11 Count 1 requires special interrogatories to ensure unanimity
12 on the appropriate elements or aspects of elements.

13 So do you have any suggestions about the verdict
14 form or do you want to go back to the simple, circulated
15 verdict form that didn't have special interrogatories for
16 Count 1?

17 **MR. WATKINS:** We would object to the special
18 interrogatories. We would want to go back to simply be
19 Count 1.

20 **THE COURT:** Okay.

21 With no special interrogatories at all; is that
22 right, Mr. Watkins?

23 **MR. WATKINS:** I'm sorry?

24 **THE COURT:** No special interrogatories on Count 1?

25 **MR. WATKINS:** On Count 1, no.

1 **THE COURT:** Okay. And is that the government's
2 view as well?

3 **MS. SCHESNOL:** Yes, it is, Your Honor. The
4 government concurs.

5 **THE COURT:** All right. So we'll go back to the
6 original verdict form circulated yesterday.

7 Mr. Watkins, do you want additional time to revise
8 your summation?

9 **MR. WATKINS:** No, Your Honor.

10 **THE COURT:** Okay. Then is the government ready to
11 proceed with its summation?

12 **MS. SCHESNOL:** Yes, we are, Your Honor.

13 **THE COURT:** All right. Let's bring the jury back.

14 (Jury entered the courtroom.)

15 **THE COURT:** Ladies and gentlemen, we're now at the
16 stage of the trial where the lawyers will give their
17 summations starting with the government, then
18 Mr. Gillespie's counsel and then the government has an
19 opportunity for a rebuttal summation before I give you your
20 final instructions.

21 Ms. Schesnol.

22 **MS. SCHESNOL:** Thank you, Your Honor.

23 The Lower West Tunnel was the site of a battle,
24 literally a battle for our democracy. And the defendant,
25 Vincent Gillespie, was a part of the mob, an avalanche of

1 rioters who descended on the Capitol on January 6, 2021.

2 There is no doubt, let alone any reasonable doubt,
3 that the defendant, as part of the mob, had a collective
4 objective of stopping the function of our government.

5 Why? Because he was mad. He's still mad about
6 the outcome of the 2020 presidential election. So he and
7 the mob took control of the Capitol from MPD, the Capitol
8 Police and other law enforcement.

9 Luckily for our democracy, the defendant and his
10 fellow rioters ultimately did not succeed. After several
11 hours, finally authorities were able to get control back of
12 the Capitol. And in the wee hours of January 7th, 2021,
13 Congress certified the 2020 presidential election.

14 The evidence has shown that the defendant was not
15 at the Capitol to "protest." He was intending to
16 participate in a riot, to stop an official proceeding. We
17 know this from the defendant's own words. We just watched
18 this Associated Press video moments ago. He was pumped up.
19 You saw him. He wanted to burst through the doors to take
20 it over because, We can't let what happened in this election
21 stand.

22 Now that he's on trial, he sat here on the witness
23 stand and said, I don't exactly remember saying those things
24 but I'm going to speculate about what I meant. And
25 conveniently, his speculation threads a needle so fine that

1 it squirms him right out of the charges. Don't fall for
2 that.

3 He said what he said on January 6, 2021, just
4 after coming out of the tunnel after battling with police.
5 He told you he wanted to get into the Capitol. His
6 statements on the video were immediately after the thrill of
7 the battle and after he was congratulated by fellow rioters.

8 But now the defendant asks you, Don't believe your
9 own eyes. Don't believe your own ears. He's had the
10 opportunity in the last nearly two years to think about
11 precisely what he could say to convince you not to believe
12 your own eyes and ears.

13 Let's talk about the charges. We've a lot of
14 exhibits, a lot of numbers. I want to just really briefly
15 describe to you what the different exhibit series numbers
16 mean. So if you're in the jury room and you want to find a
17 certain exhibit and you're, like, we have this big binder
18 and all of these videos and we don't know where to look, at
19 least I'll give you a starting point that is hopefully
20 helpful.

21 The exhibits are divided up into series. The 100
22 series are all of the official proceeding documents and
23 video and that's what Officer Mark Gazelle testified to.

24 The 200 series are the general maps, some area
25 closed signs, these great big maps of the Capitol that we

1 have in front of you on poster board and the "Area Closed"
2 sign. Those are the 200 series.

3 The 300 series were exhibits used with the Secret
4 Service agent who testified, Lani Hawa.

5 The 400 series are all CCTV videos. So just to
6 refresh your recollection, the CCTV videos mean these were
7 the Capitol cameras so they don't have audio. You had the
8 one in the tunnel, that's the one you saw the most and then
9 you had a couple of dome cameras that showed the wide shots
10 of the crowd on the West Lawn of the Capitol.

11 The 500 series are those Safeway documents that we
12 kind of took a left turn to talk about those yesterday with
13 Agent Adams. You heard that that had to do with the
14 jurisdictional issue about interstate commerce.

15 The 600 series are all open-source videos, meaning
16 they were -- like, the Associated Press video we talked so
17 much about, videos taken, videos or pictures taken by other
18 people that FBI was able to get off the internet.

19 700 series, body-worn camera. We heard from MPD
20 Officer Ak. He testified about his own body-worn camera.
21 Sergeant Riley, he talked about his body-worn camera. And
22 we saw a few other officers' body-worn camera who captured
23 the events in the tunnel and then those captured by Sergeant
24 Riley before they went out into the tunnel area at about
25 2:40 in the afternoon.

1 The 800 series, items found in the defendant's
2 home. You have pictures of those. And then in these bags,
3 you have the actual items in the event you want to see
4 those. Those are all in the 800 series.

5 The 900 series are videos that made up of some
6 combination of these videos that are in the other series.
7 So 903, we spent a lot of time with yesterday with
8 Agent Adams, which is both the CCTV and the body-worn camera
9 synced up so you could see the same events from two
10 different angles. That's one example.

11 Last but not least, the 1,000 series are the
12 stipulations that the parties have reached, and we read
13 those into the record. So hopefully that helps in your
14 deliberations. If you're looking for a specific exhibit, at
15 least you know what series to start at.

16 With regard to the charges, Count 1, assault,
17 resisting or impeding certain officers. The defendant
18 fought his way through the crowd ditching his friends along
19 the way who were, like, um, I'm out. I'm not going any
20 further but not Mr. Gillespie.

21 He had landmark places he wanted to go to on the
22 Capitol grounds. He had these objectives and his objective
23 got him into the Lower West Terrace tunnel, the site of a
24 bloody battle.

25 You saw images and you heard Agent Adams testify

1 that the defendant essentially had to fight to get to the
2 fight. The defendant even testified how densely-packed the
3 west side of the Capitol was and that he had to work pretty
4 hard to get to where the action was. And once he was there,
5 what did he do? He used a big police riot shield to charge
6 at them more than once.

7 If you watch the video slowly, you will see that
8 that happened on more than one occasion. We have the
9 body-worn camera and the testimony of Officer Ak, as well as
10 the testimony from Sergeant Riley, that the defendant was
11 not deterred.

12 He wasn't deterred by pepper spray. He wasn't
13 deterred by getting hit by other rioters who were aiming
14 their crutches and other weapons at the police ended up
15 hitting the defendant. That didn't deter him either.

16 MPD and Capitol Police were in the Lower West
17 Terrace tunnel to protect the Capitol. They were doing
18 their job that day. They were doing their federally --
19 their federal job or assisting a federal agent in the job to
20 protect the Capitol from Gillespie and people like him.

21 He clearly used force when he rammed them with the
22 shield. He told you he pushed and pushed. And when that
23 didn't work, he grabbed Sergeant Riley with two hands and
24 tried to pull Sergeant Riley out into the crowd. I think,
25 on cross of Sergeant Riley, sort of some minimization about

1 that it was only about seven seconds. But Riley told you,
2 it felt like an eternity.

3 Now, whether or not the defendant had the
4 intention to impede, resist, oppose or assault law
5 enforcement officers before he got to the Lower West Terrace
6 tunnel doesn't matter. You won't find anything in your jury
7 instruction that this has to be premeditated.

8 But once he was in the tunnel, he knew what he had
9 to do if he wanted to get to his next landmark, to his next
10 objective. He had to overpower them. He had to go through
11 them to get into the Capitol. There is an abundance of
12 evidence that the defendant is guilty beyond a reasonable
13 doubt as to Count 1.

14 Count 2, civil disorder, you saw the videos. It
15 was a civil disorder all right, and the defendant
16 obstructed, impeded and interfered -- or interfered with law
17 enforcement who were doing their job that day during the
18 civil disorder. You saw all the videos. You can watch them
19 again if you'd like. You'll have them in the jury room.

20 And this civil disorder took place and affected
21 either commerce or a federally-protected function. You will
22 have on your verdict form, if you find the defendant guilty,
23 you then go on to choose, was it commerce? Did it affect
24 commerce or a federally-protected function? The government
25 submits you can find that it was both.

1 So the commerce, that was the Safeway stuff.
2 There's the invoice, it's Exhibit 504, that trucks from
3 Pennsylvania were planning to come into the District.
4 That's where the distribution center is in Pennsylvania.
5 But then when you look at it in conjunction with the email
6 exhibit, you will see that there were no workers at Safeway
7 stores after 4 p.m., so there was no one there to accept the
8 shipments from Pennsylvania.

9 And/or a federally-protected function. Capitol
10 Police being assisted by MPD were engaged in a federal
11 function, to protect the Capitol and the people inside. One
12 of the people inside was Vice President Mike Pence.

13 You heard from Agent Hawa that the Vice President
14 was visiting the Capitol to certify the electoral. And it's
15 a federal function to protect the Vice President, his wife
16 and daughter, again, an abundance of evidence that the
17 defendant is guilty beyond a reasonable doubt as to Count 2.

18 I'm going to cluster Counts 3 through 7. These
19 are all, essentially, variations on trespassing charges, and
20 you will have -- you will have jury instructions that are
21 very detailed with you. But what I want to call to your
22 attention is, if you first look at Counts 3, 4 and 5, those
23 specifically talk about the defendant's disorderly,
24 disruptive and violent conduct on a restricted building or
25 grounds.

1 So what made the Capitol restricted on January 6,
2 2021? It's that the Vice President was there visiting. So
3 any place the Vice President goes, he comes restricted. And
4 it just so happens that on January 6, 2021, since he was
5 overseeing the counting of the electoral college votes, the
6 Capitol building and grounds became restricted.

7 Then -- and there is no doubt the defendant could
8 not be there. You heard from Captain Summers. There were
9 bike racks all around the perimeter. There were "Area
10 Closed" signs all around the perimeter.

11 As much as the defense would like you to believe
12 that those bike racks and signs magically disappeared into
13 thin area so the defendant wouldn't have seen them when he
14 arrived at the Capitol, the government suggests that is just
15 unbelievable.

16 As a matter of fact, on redirect, Capitol Summers
17 said, afterwards when we were cleaning up, we found the lawn
18 littered with bike racks everywhere. But for the sake of
19 argument, if you want to take the defendant's word for it,
20 he didn't see a bike rack, he didn't see a sign, he did
21 finally admit under cross-examination that he knew that he
22 didn't have the right to be in the Lower West Terrace
23 tunnel. The police didn't want him there.

24 Sirens were blaring. Police were using pepper
25 spray. Are we really supposed to believe he thought he was

1 allowed to be there? I think he made a comment about, Well,
2 no one asked me to leave. I mean, it's absurd. The police
3 are using pepper spray and pushing the rioters back. But he
4 thought he had a right to be there. Bologna. He knew he
5 was on restricted grounds.

6 So then let's turn to Counts 6 and 7. These are
7 very similar to the other counts that we've just talked
8 about, except they're specific to the Capitol building. So
9 it didn't matter if Vice President was visiting or not.
10 Because the conduct occurred at the Capitol building, that's
11 where Counts 6 and 7 come in.

12 Again, these go to disorderly conduct, acts of
13 physical violence. You will have definition for all of
14 those. But, I mean, you didn't leave your common sense at
15 the door when you came in here. You know what it means to
16 be disorderly. You know what it means to be disruptive.
17 You know what it means to engage in violent conduct.

18 And we saw it. We saw it in the defendant's
19 videos. I mean, he ultimately admitted to it on the stand.
20 He pushed the officers. He pulled the officers. He did
21 everything he could to get through them, to meet his goal,
22 to get into the Capitol and stop the certification because
23 we can't let what happened in this election stand.

24 He was mad about the presidential election, and he
25 was taking matters into his own hands. There's an abundance

1 of evidence that the defendant is guilty beyond a reasonable
2 doubt for Counts 3 through 7.

3 Finally, we'll turn to Count 8, obstruction of an
4 official proceeding. The defendant attempted or did
5 obstruct the official proceedings of Congress.

6 You'll have a jury instruction that a person acts
7 with the awareness that a natural effect of his conduct --
8 that would be -- a natural result of one's conduct is what
9 would occur.

10 The defendant saw battles taking place at the
11 Lower West Terrace tunnel, and he wanted to get closer
12 because he was still -- he was mad then and he is still mad
13 now about the 2020 election and he had an objective: We
14 cannot let stand what happened in this election.

15 His friends peeled off one by one but he kept
16 going. He accomplished his objective. Seeing the
17 hand-to-hand combat, he wanted to take part in it. And he
18 testified that he was so upset about the 2020 election that
19 he, "Wanted to do something more."

20 He thought, "Something had to be done." And if he
21 "Got into the Capitol," he could take a stand because he has
22 a "sense of responsibility" to do what the politicians and
23 the courts couldn't do.

24 It is absurd to believe that the defendant just
25 wanted to get in and peacefully protest inside of the

1 Capitol. That makes no sense. We can't let stand what
2 happened in this election. He knew that, once the votes
3 were certified, it was over. Trump wouldn't be President
4 anymore.

5 Now, under our Constitution, a person charged with
6 a crime doesn't have to defend himself, doesn't have to
7 testify. The burden lies with the government at all times.
8 But once the defendant sits here in this witness stand and
9 takes an oath to tell the truth, you get to judge their
10 credibility.

11 And Chief Judge Howell's jury instructions will
12 give you jury instructions that you've got to consider that
13 the defendant has an interest in the outcome of this trial.
14 We ask you to keep that in mind when you assess the
15 defendant's credibility.

16 On recross of the defendant it was said that he
17 was kind of backfilling in what he meant on the video.
18 Backfilling? More like BS-ing. The defendant also
19 testified he doesn't remember saying some of the things on
20 the videos. So he sat here today speculating as to maybe
21 what he meant.

22 It is very convenient how his speculation, now two
23 years later when he's on trial, that his speculation was
24 just so narrow and so fine to thread the needle that he
25 would ask that you wouldn't find him guilty of these

1 charges. It's ridiculous. The video speaks for itself.
2 Believe your eyes. Believe your ears.

3 The defendant is a grown man and he's no dummy.
4 He's the executor of his aunt's estate. He set up two
5 different websites, one for his deceased sister and one for
6 alternative cures.

7 This is a man who appealed a parking ticket to the
8 Massachusetts State Supreme Court, who's brought multiple
9 lawsuits representing himself, a man who attended college
10 and earned a highly-advanced technical degree in mechanical
11 engineering.

12 He is writing a book. This man is no dummy. He
13 wants you to believe that he didn't know what was going on
14 inside the Capitol on January 6, 2021? He's no dummy. He
15 knew exactly what was going on.

16 Use your common sense. Use your logic. Use your
17 eyes and your ears to judge the defendant's testimony. Did
18 he tell the truth or did he have a very convenient answer
19 for the things that didn't suit his new narrative as he
20 calmly sits before you two years later?

21 He told you that he came to D.C. because he
22 thought it would be relaxing. But he also said he was going
23 to come, go see some sites, go to some nice restaurants, but
24 he also said the plan was to come just the day, not stay
25 overnight, didn't want to spend money for a hotel. How is

1 it relaxing to drive on a 10-hour trip each way to come to
2 D.C. to relax?

3 The defendant came here with a purpose. Judging
4 the defendant's credibility on the stand, he didn't even
5 want to admit he knew there was a second set of double doors
6 in the Lower West Terrace tunnel. He wants you to believe
7 that the Capitol was a pleasant environment; that it was
8 enjoyable.

9 Well, maybe it was enjoyable for him. There was
10 nothing enjoyable about it for Captain Summers. She was
11 scared. She watched everything unfold from the Command
12 Center or the Communication Center hearing distress calls
13 from her fellow officers and staffers. She was doing
14 everything she could to get reinforcements to come and help
15 Capitol Police and MPD.

16 There was nothing enjoyable about January 6 for
17 Inspector Hawa from the Secret Service or her colleagues,
18 who were so scared for the safety of the Vice President they
19 had to move him to a secure location for hours.

20 There was nothing enjoyable about January 6 for
21 Officer Mark Gazelle, who was so concerned about the safety
22 of the Senators that he had to use the gavel to calm
23 everyone down and eventually evacuate Senators from the
24 chamber where they couldn't reconvene until 8 at night.

25 There was certainly nothing enjoyable about

1 January 6 for Officer Ak. You saw his testimony on the
2 stand. He's still affected by what happened. He was
3 scared. Rioters were throwing objects at him and his fellow
4 officers, spraying them with bear spray, charging them with
5 their own shields, moving them further and further back into
6 the tunnel.

7 And there was definitely nothing enjoyable about
8 January 6 for Sergeant Riley. Sergeant Riley heard his
9 commander say at 2:40 in the afternoon, we will not lose the
10 U.S. Capitol. He took that to heart and he steadied himself
11 and he was the first one at those doors and he rallied his
12 troops to come out and defend the United States Capitol
13 building.

14 He put himself -- he was on the front line by the
15 time the defendant came along. Sergeant Riley was right
16 there with his troops protecting our United States Capitol
17 building. And what did he get for that? Grabbed by the arm
18 in an attempt to force him off the line to drag him into the
19 crowd. And he told you, he was scared.

20 When the defendant talks about this being
21 enjoyable, there was unity, how pleasant it was to be with
22 like-minded people, he's the only one who felt that way. No
23 one else you heard from in trial; that's an alternate set of
24 facts that belie all of the evidence you've seen in this
25 trial otherwise.

1 The Lower West Terrace tunnel was neither a joyous
2 or happy place on January 6, 2021. The tunnel was the site
3 of an actual battle for our democracy.

4 And then the defendant was indignant about how he
5 was treated. He couldn't believe that the police used force
6 to get him out of the tunnel. Like, we're supposed to feel
7 sorry for him? It was uncalled for that the police used
8 force to get him out when he was trying to break into the
9 United States Capitol building?

10 Believe your eyes. Believe your ears. The
11 defendant knew what he was doing on January 6th. He wanted
12 to stop the official proceedings of the counting of the
13 electoral votes. Win it. Flood in. Take it over. Own it
14 for a few days. We can't let stand what happened in this
15 election.

16 Those were the intentions of the defendant on
17 January 6, 2021, the intention to take over the Capitol by
18 any means necessary and overturn the outcome of the 2020
19 presidential election. The defendant has committed all
20 eight charges that he -- all eight crimes that he is charged
21 with. Find him guilty.

22 **THE COURT:** Thank you, Ms. Schesnol.

23 Mr. Watkins.

24 **MR. WATKINS:** Thank you. I will be using the
25 computer from here at counsel table.

1 **THE COURT:** Do you want to -- you're going to give
2 your summation from counsel table?

3 **MR. WATKINS:** No. No.

4 Sorry. I'm alerting the clerk, yeah, she has it
5 all set.

6 **THE COURT:** Okay.

7 **MR. WATKINS:** Thank you, Your Honor.

8 Good morning, ladies and gentlemen. As previewed
9 in opening statement this is about Mr. Gillespie -- about
10 what Vincent Gillespie's intent was at various stages
11 throughout the morning and afternoon of January 6th.
12 Because, as you heard during this relatively short trial,
13 there is really not very much dispute about Mr. Gillespie's
14 actual activities on January 6th.

15 There is no way to dispute he traveled down to
16 Washington, D.C. the night before. Arrived there at
17 daybreak with friends to go down to the rally to support
18 President Trump and his alleged fraud claims. Then later on
19 he followed thousands of others as they went down to the
20 Capitol grounds.

21 It's also undisputed for about 15 minutes during
22 that day he did some very unpretty -- to most of us in this
23 room -- unfathomable things.

24 But the fact that there are few, if any, disputes
25 about Mr. Gillespie's activities is not the end of the

1 story. Because he's charged by the government with criminal
2 offenses, and each of those requires, as the judge is going
3 to tell you once we are finished here, some specific and
4 exacting standards about Mr. Gillespie's knowledge about his
5 intent, before you can find him guilty of the crimes he is
6 charged with.

7 I want to use my time this morning to explain how
8 those two concepts, knowledge and intent, play out, given
9 the evidence you have heard, and through the glass of those
10 specific and exacting standards.

11 I want to explain why the lack of proof, of some
12 of those requirements, means Vincent Gillespie is entitled
13 to a verdict of not guilty as to each and one of the
14 charges.

15 I want to talk a bit about knowledge, because
16 knowledge plays a big part in many of the charges that the
17 government's alleged. Counts 3, 4, 5, 7, each one of them
18 charged some variation of entering in a restricted area or
19 prohibited area. They required that Mr. Gillespie know --
20 all right? That he know that he wasn't to be in a place
21 that he was. Put another way, it's not a crime to be in an
22 area that someone or some entity is deemed off limits. Of
23 course, because it's a criminal offense, he has to know --
24 he has to know to be put on notice that that is restricted.

25 So what did the government provide you? Well, it

1 was the repeated mantra about why the area was restricted,
2 because coronavirus, because of the upcoming inauguration
3 and the presence of the Vice President. Sure. All of those
4 things were authorized and those were lawful to make the
5 area public restricted.

6 As of early on in that day, noon, 1:00, anybody
7 could see that they were not permitted to go in the area via
8 the bike racks, via the signs in some places, snow fencing.
9 But that only carries the government so far here, doesn't
10 it? Because there were -- there was a point during the
11 afternoon as you seen where the pesky facts about what was
12 happening there get in the way as far as the issue of
13 whether Vincent Gillespie knew he wasn't supposed to be
14 there.

15 Captain Summers primarily testified about how
16 things evolved. There was other video evidence that you
17 could see the time lapsed photographs and some of the other
18 things that the government put in here. But as the day
19 developed and the lines were breached and as people started
20 pouring in, those signs, that notice, they got obliterated
21 with the people coming in.

22 As Captain Summers told you, really creating
23 unfettered access to the access grounds there -- we saw that
24 in a couple exhibits. I am just going to put them up
25 briefly. I was going to put them up briefly but they are

1 not there. You can take a look at Exhibits 1101 -- they
2 will be in the jury room are to you there -- 1101, if you
3 remember, was the video, the speeded-up video the defense
4 put in that showed that particularly that Peace Circle video
5 shown there that people were going back and forth; that's
6 important for a couple of things.

7 Ms. Schesnol said and you've heard some testimony,
8 Oh, those bike racks were everywhere. Those signs were
9 everywhere. Take a look. I wish we had better cameras and
10 better angles, but those are the ones we had at the time
11 Mr. Gillespie was up there.

12 But take a look. I think you will be able to see
13 about whether the bike racks were in place whether the signs
14 were all over the place on the ground. You will have a
15 chance to look. It's not true. And I think that what the
16 government is saying is that Mr. Gillespie had to know --
17 the leftover trash of the sign that is where he was put on
18 notice.

19 Again, take a look also at 1102-A and 1102-B,
20 which is the comparison, what was happening at noon and 1,
21 versus what was happening a little later on in the day. See
22 the throngs of the people. Put yourself in the place of
23 someone that was walking up there with no other kind of
24 knowledge about what was going on there and what they might
25 think or what we might think if we were in that place --

1 **MS. SCHESNOL:** Objection, Your Honor.

2 **THE COURT:** That's a golden rule, okay, but I am
3 going to overrule it right now.

4 **MR. WATKINS:** You can see the camera angle that is
5 there and whether those people that you see on the video had
6 unfettered access and whether anyone there unreasonably
7 believed they had unfettered access, including
8 Mr. Gillespie, who told you during his cross-examination and
9 on cross that there was nothing to indicate that he could
10 not go on to the grounds, he and his friends. And it is
11 entirely consistent with what you see in those videos that
12 there is no sign at all.

13 Of course, it's easy to think for those of us who
14 spent time in D.C. and for you all who lived here that, of
15 course, there are going to be times where someone can't go
16 on up there and maybe it would be obvious on that day that
17 they shouldn't.

18 But remember the testimony that we heard from
19 Vincent Gillespie the last time he was in Washington, D.C.
20 was when he was in his teens, where he thought this was a
21 series of events that the President had sponsored down
22 there. Because it's very easy to think from our own point
23 of view, I wouldn't have gone up there given all the events
24 out there. But that is not the issue here. It's whether
25 Mr. Gillespie was on notice, whether he knew, as the

1 government is saying, absolutely knew, that he could not be
2 there.

3 I would suggest once you look at that and think
4 about what was going on that day, the government has not
5 proved that Mr. Gillespie had a knowledge beyond a
6 reasonable doubt that would make him guilty of entering,
7 remaining or being in a restricted area; and that is crucial
8 to those counts. Again, it's Counts 3, 4, 5 and 7. Each
9 one of them, I think you are going to see, has that aspect
10 to it. And if it's not there, that's not guilty.

11 So knowledge is also essential to Count 8, which
12 talks about the obstruction of Congress, the obstruction of
13 an official proceeding.

14 The government has said from the minute he left
15 Athol, Mr. Gillespie knew exactly what he wanted to do.
16 Ms. Schesnol told you it was his purpose leaving Athol at
17 either point he was going to disrupt the congressional
18 certification down at the Capitol.

19 You got a substantial glimpse into who
20 Mr. Gillespie is, the life he leads during his testimony
21 yesterday and then again today. He's brutally honest. He
22 is an open book. He says things that even are not
23 helpful --

24 **MS. SCHESNOL:** Objection, vouching.

25 **MR. WATKINS:** I'm sorry?

1 **MS. SCESNOL:** Objection, vouching.

2 **THE COURT:** I'm going to overrule it, but I
3 understand the objection.

4 **MR. WATKINS:** I'm sorry, Judge. I didn't hear the
5 objection.

6 **THE COURT:** The objection was vouching. I'm going
7 to overrule it.

8 **MR. WATKINS:** You get to make your own
9 determination and the jury instructions are true. I would
10 suggest that watching Mr. Gillespie up on the stand he was
11 brutally honest about the things that he said even when it
12 wasn't in his favor to do so.

13 He opened the book on his hermitic life up in
14 Athol and his obsession with the projects he was doing he
15 just simply couldn't be bothered anymore to keep up with
16 news about an issue he already made up his mind. And now,
17 because of that, he was unaware. He didn't know. He knew
18 vaguely that something had to happen in order for the
19 election results to be made permanent, but didn't know the
20 details about it and certainly did not know about it when he
21 traveled down on January 6th.

22 Was there anything in his demeanor, the way he
23 answered questions, both on direct and from Ms. Schesnol's
24 cross, that made you question that essential truth that he
25 told you that he simply didn't know?

1 I want to veer off this for a moment because there
2 is a little bit of a danger on this count. January 6 has
3 become a bit of a day of infamy, for good reason, about what
4 happened; and that was a year ago. Things have developed.
5 It is very easy to sit here now and say, everybody knew.
6 Who didn't know that that's what Congress was doing on that
7 particular day. Am.

8 Of course it's not now. It's what Mr. Gillespie
9 knew on that day that really matters and understood on that
10 day what really matters. So let's go back to old days where
11 the electoral college was really kind of a -- an
12 afterthought to the election once the results are decided.
13 For me, anyway, it became a -- it was an automatic kind of
14 thing. Yeah, things were happening down there but November
15 3rd was it; that's what happened.

16 I went to law school. If you quiz me on the
17 Twelfth Amendment before this case, I would have failed on
18 it. From picking the jury, you folks are smart. And I'm
19 sure some of you do follow those kinds of issues and do
20 follow the statutes. But I think many, if not most people,
21 don't know what the details of the electoral college
22 certification, whether the President or the Senate or
23 someone else, where the electoral college is held. Is the
24 electoral college someplace? I don't know if many of us
25 could answer that particular question.

1 So is it so unreasonable, back on January 4th or
2 5th, when Mr. Gillespie decided he was going to go down to
3 Washington, D.C., that he didn't know that was connected
4 with it? Perhaps he would, if he had a TV and been -- had
5 internet access and was diving into these issues on a daily
6 basis, he could have learned that. But that's not the
7 testimony and that's not the evidence here.

8 Wouldn't there have been some evidence of that?
9 We talked about Agent Adams at some length about the things
10 that they were looking for, you know, to show that
11 knowledge. What did they come up in Athol? It was a metro
12 car from that day. It wasn't stories printed off from the
13 internet. It wasn't -- there was simply nothing to indicate
14 that Vincent Gillespie had that kind of knowledge that this
15 was what was going on and there's no evidence of this
16 purpose that the government has been offering you from the
17 beginning of the case other than they say so.

18 I think there was some suggestion also that
19 because he went to the rally that was also a reason he would
20 have known. Ms. Schesnol, I think, tried on
21 cross-examination to talk about what the president was
22 saying at that rally. You heard what Mr. Gillespie said.
23 Did it ring true? Did it make sense to you that he was so
24 far away from the stage that he couldn't hear any of the
25 speakers? Did you hear his annoyance about that? That's

1 what he went down there to listen to and could not. Did
2 that strike you as made up; that that's something he
3 concocted; that he did know the president had said, Go on
4 down. Go on down and show the legislators? I suggest it
5 makes perfect sense.

6 When you talk about it, listen and think about the
7 things Mr. Gillespie has said and how it fits in with the
8 evidence that the government has put before you too. I
9 think you are going to find that it is entirely plausible if
10 not certain that Mr. Gillespie did not know that the
11 certification was taking place that day.

12 That knowledge is absolutely required. Absolutely
13 required for that count. The government doesn't prove that
14 to you beyond a reasonable doubt, Mr. Gillespie is entitled
15 to a not guilty charge on the Count of interfering,
16 obstructing with the congressional certification that was
17 going on that day.

18 So more generally on the knowledge issue. I
19 invite you to look through the jury instructions and the
20 count about where knowledge plays an issue. Really think
21 hard about whether the government has proved those as to
22 each and every one of them. It might differ somewhat but
23 the basic -- the basic evidence is the same.

24 You've heard it from Mr. Gillespie. Very little
25 to disprove it. You've seen what -- you've seen

1 Mr. Gillespie. You've seen who he is and how he testifies.
2 You absolutely get to make your own determination about
3 his -- how he testified and whether it's truthful or not.
4 We'll talk about some of the reasons why I think you should
5 believe him later on as I go through some of these issues,
6 further issues here.

7 I next want to move to the concept of intent,
8 because that goes to some of the other charges. It's
9 relevant to Count 1, which is the assault charge. There is
10 also Counts 5 and 7, which repeat, in some senses, mirror
11 what happens in Count 1.

12 And this is pretty basic to criminal law. It's
13 very basic to criminal law that a person has to have that
14 criminal intent to do certain things in charges. Different
15 charges require different things that need to be proven for
16 intent.

17 One of the key requirements is intentional conduct
18 to go after officers, to go after -- go after officers
19 that -- sorry -- go after officers here at the Capitol. The
20 videos from the Lower West Terrace tunnel, along with
21 Mr. Gillespie's own testimony, substantially doubt whether
22 he had the requisite intent.

23 Before I go into that, let me just get one thing
24 straight. There is absolutely no question that the fear and
25 anxiety inflicted on the Capitol Police, the Metropolitan

1 Police was real, heartfelt and justified. It is absolutely
2 clear that some, even many of those in and around the tunnel
3 and other places in the Capitol, were bent on mayhem and had
4 the ends-justify-the-means mentality.

5 I think we can all empathize the hurt that Captain
6 Summers felt, the anguish that Mustafa Ak felt and Sergeant
7 Riley testified. The ends justifying the means wasn't
8 Mr. Gillespie. He wasn't out there training for
9 insurrection. He had not been to a protest action ever in
10 his adult life. He didn't have any weapons. He had no
11 protective gear.

12 I am here to tell you, trying to injure or harm
13 somebody, that was out of the question. Isn't that what we
14 saw on the videos? Take a look at 702 and 703. Absolutely.
15 They are what they are. It's Vincent rushing into the
16 police and Mr. Gillespie pulling on the arm of Sergeant
17 Riley.

18 Look deeper down as you consider this idea of
19 intent about exactly what was going on there. Because 15
20 minutes at the tunnel, right, we went through that in some
21 detail, both the government and us. It's a total of about
22 15 second where he rushes and then grabs Sergeant Riley's
23 arm. The rest of it is getting pushed into the scrum and
24 pushing himself as well into the scrum and shout things from
25 the sidelines there.

1 And to top it off, as you heard on the issue of
2 intent, Mr. Gillespie -- even while he was there questioning
3 what it was he was doing, what it was he was up to, whether
4 it was worth it what he was doing, these are the kinds of
5 things that you want to consider as you think whether this
6 was intentional conduct.

7 I think what you are going to see is that that
8 intent simply isn't there beyond a reasonable doubt. The
9 reason is simple. He didn't intend harm to anyone. He
10 wanted to come down and protest, thought this was the way to
11 do it.

12 I want to also talk about Count 6, which also
13 requires an intent -- it is similar to Count 8, an intent to
14 disrupt a congressional session. So much of that is
15 parallel. And much of what I talked about is there.
16 Mr. Gillespie went down to the Capitol knowing very little
17 about how -- what Congress was doing. Did not know that
18 Congress was even sitting on that particular day.

19 Again, is that totally implausible? No. What you
20 heard, by the time Mr. Gillespie and his friends got down
21 there, Congress was actually not sitting anymore. Right?
22 He was there at 3:30, 4:00, during that time period when
23 Congress had already stopped doing what they are doing.

24 So as a practical matter, Congress wasn't even in
25 the building, so was there any outward sidebar to

1 Mr. Gillespie that by being down there, by going to that
2 Lower West Terrace tunnel he was obstructing Congress,
3 getting in the way of a congressional proceeding? I think
4 once you think about his testimony, once you think about
5 where things were at that time, you'll determine that
6 Mr. Gillespie did not have that intent. Or Count 6, frankly
7 pretty technical, requires that Mr. Gillespie be in the
8 Capitol building.

9 As you heard from, really, all the testimony,
10 Mr. Gillespie never actually made it into the building.
11 Almost, it's true he had never been able. Whether it's a
12 lack of intent to disrupt or the fact he never made it into
13 the Capitol at all, the government's proved by his charge
14 fails, and Mr. Gillespie is entitled to a not guilty verdict
15 on that count as well.

16 I want to move to civil disorder, which is a bit
17 of an orphan, frankly, as you've already gathered, a bit of
18 a complicated offense with several features to it. There is
19 a knowing element in that but the real key to this charge is
20 whether the government has proven a connection between what
21 Mr. Gillespie was doing down there, his commerce, some kind
22 of federally-protected function, hence talking about Safeway
23 and what Safeway did.

24 Again, as you read through the instructions and
25 the exhibits are there, take a look at the email about

1 Safeway. As I pointed out, that was -- had -- that had to
2 do with Mayor Bowser's curfew order, Mayor Bowser's order
3 that day, and that is what Safeway responded to. Similarly,
4 a federally-protected function.

5 Is there some connection from what Mr. Gillespie
6 did to that? Parse through it. It's difficult. I suggest
7 the answer is going to be, No, you can't find that beyond a
8 reasonable doubt. But please look through it and think hard
9 about what was going on, what was in Mr. Gillespie's mind
10 and what his intent was.

11 So Ms. Schesnol's gone on at some length about all
12 the reasons why Mr. Gillespie's testimony is bologna. I
13 want to talk a little bit about why you should believe
14 Vincent Gillespie. And the real question is, Could you make
15 this stuff up the way he testified? More apparently, if he
16 had to lie, would you make this stuff up?

17 One of the things you can consider, as you
18 consider whether somebody's testifying truthfully, is
19 details. Right? Isn't that something somebody is kind of
20 vague about what happened? You might question, Is that
21 really what happened? Can I rely on that?

22 Mr. Gillespie gave you details and wanted to keep
23 coming back to the details, as much as anybody would want to
24 ask him. He talked about things that made sense. The
25 speaker tower and his annoyance about it; and that was the

1 reason why he decided, and his friends decided, to leave.
2 Talking about the bathroom issue. Doesn't that have a ring
3 of truth to all of us that had been to large kinds of
4 congregations of people? There are those kinds of issues
5 going on. Given the circumstances of that January 6th
6 rally, they got tied up there for a long, long period of
7 time.

8 Where he went and how he went. He was quite
9 specific all along, and maybe even to his detriment
10 sometimes, but he is here to tell you the truth. In those
11 details there are things that you can take into account
12 about whether you should believe his testimony and where it
13 comes into conflict with what the government's theory.

14 And Mr. Gillespie, again, I submit, he was
15 brutally honest up there. If you are trying to pull one
16 over on a Washington, D.C. jury, are you going to volunteer
17 your views on vaccination, views on Donald Trump and
18 election fraud?

19 Are you going to talk about your misgivings as you
20 went through about whether what you did was right or wrong?
21 These are things that he had to say to try to pull one over
22 on you? In fact, it's quite the opposite, isn't it? And
23 these are reasons why I suggest at the end of the day you
24 believe Vincent Gillespie and the things that he said.

25 If you were trying to pull one over on a jury,

1 would you talk about -- I remember things differently from
2 what was in that video? I can see that this is why he is
3 doing the video, but I remember it differently. Not that he
4 is trying to pull one over, he is trying to get the truth
5 out as he remembers it and trying to get the truth out
6 because he was the one that was there and he's the one that
7 is going to be able to tell you what happened.

8 Finally, you saw him. I think you can get a sense
9 of Mr. Gillespie. You may not like his views and
10 fundamentally disagree with his views, but that's not what
11 is at issue today. In fact, you have to kind of fight about
12 that -- against that, I believe; because he's entitled to,
13 really, your neutral consideration here while your here in
14 the courtroom.

15 What you can see from Mr. Gillespie on the stand,
16 he is earnest about what he knows. He wants to tell you
17 what he knows, and he's willing to do so no matter what the
18 consequences of telling what he knows.

19 So let me talk a little bit about the government's
20 theories and some of the things I would suggest you should
21 look out for as you're deliberating here. The government
22 did promise in their opening and again at the closing that
23 it was going to show that Mr. Gillespie's purpose, the
24 minute he left Athol, was to storm the Capitol and disrupt
25 Congress' certification.

1 Did they give you the kind of evidence that would
2 really support that, that that was the fundamental goal that
3 Mr. Gillespie had? I don't think so. I think if that were
4 the case, you would have seen so much more. You would have
5 seen more of the kinds of things we might expect from
6 someone that truly was going down there, no holds barred,
7 ends justify the means kind of person. You would have seen
8 the evidence of that. You would have seen evidence planning
9 beforehand and followup after hand. You simply don't see
10 any of that.

11 Lacking knowledge -- lacking proof of planning and
12 knowledge and intent, being the government is often resorted
13 to "they" during trial. We heard it all along. Some of the
14 witnesses talking about the mob, they, them, all along.
15 Ms. Schesnol repeated again, today, people -- Mr. Gillespie
16 and people like him.

17 We saw it all through trial the compilation videos
18 where there was evidence of things happening at other parts
19 of the Capitol and grounds where Mr. Gillespie never was and
20 had no idea about. Sped-up videos and other videos about
21 time periods where Mr. Gillespie simply wasn't even at the
22 Capitol.

23 We saw during Sergeant Riley's assignment of
24 collective malice and intent to everybody that was outside
25 that Lower West Terrace; isn't that what we heard?

1 Everybody there was responsible for anything that happened?
2 But that's not the law. It's an easy trap to fall into and
3 in some sense it's how we get to the times that we are where
4 we put everybody, the "them," into the bucket, the "they"
5 into the bucket, and everybody is responsible for
6 everything. That's not how the criminal law works.

7 It's a distraction. It's wrong to take what
8 people on the east side of the Capitol, other people even in
9 the Lower West tunnel were doing, and assign that to
10 Mr. Gillespie. You know exactly from the video what
11 Mr. Gillespie was doing, and it was not the deeds of others.

12 Justice really demands an individualized
13 determination here. The government has to prove that
14 Mr. Gillespie has acquired knowledge beyond a reasonable
15 doubt. That, here, means he's not guilty of committing the
16 acts on restricted grounds, even though some other people
17 did go in there over those barriers despite these signs.
18 And not guilty of the kinds of intent that other people,
19 obviously, had to do the kinds of mayhem at the Lower West
20 Terrace and where others were.

21 And it's certainly not sufficient to find him
22 guilty on Count 8, because other people were down there with
23 the an aim of stopping the election. That is not
24 sufficient. It is Mr. Gillespie that you have to
25 concentrate on. And I caution you to stay away from the

1 "they" and "them" and "everybody did it" and therefore that
2 must be his intent as well.

3 I do want to say a verdict of not guilty as to
4 Mr. Gillespie does not mean you approve of his conduct. I
5 absolutely can and should continue to ask the hard questions
6 about how so many people like Mr. Gillespie became caught up
7 in an event that became so very -- (inaudible) --

8 Mr. Gillespie, as you saw in the evidence at
9 trial, did not come out unscathed. His life has been
10 upended by those few minutes in the Capitol. He sits here
11 in the courtroom, far from his home, fighting for his
12 liberty.

13 What a verdict of not guilty does mean, is that
14 you as jurors have risen above the fray, to continually
15 examine the government's case, as you took the oath to do at
16 the beginning of this trial.

17 As Judge Howell will tell you at the beginning of
18 the trial [sic], your decision must be careful honest and
19 impartial.

20 The burden of the government is beyond a
21 reasonable doubt. A powerful standard. Probably? That's
22 not enough. Very likely? Not enough. Clear? That's not
23 enough. It's beyond a reasonable doubt is the standard by
24 which the government has to prove each and every charge,
25 each and every element of those charges. We've observed

1 that you have all been listening quite clearly to the
2 evidence and we, Ms. Forest Greenberg and Ms. Hawthorne, ask
3 you to come up with the only verdict commensurate of beyond
4 a reasonable doubt, that is not guilty as to each and every
5 one of the charges alleged in the indictment.

6 With that I thank you for your time.

7 **THE COURT:** Thank you, Mr. Watkins.

8 We're going to take a 10-minute break right now.
9 I know you all had a break, but we haven't had a break since
10 about 9, and I think I need a break.

11 So we're going to take a 10-minute break, ladies
12 and gentlemen. Do not talk about the case yet. The time is
13 coming soon when you will be able to.

14 (Jury exited the courtroom.)

15 (Recess.)

16 **THE COURT:** Are we ready to bring the jury in?

17 **MS. SCHESNOL:** Yes, Your Honor.

18 **THE COURT:** Let's do it.

19 I'm going to immediately go to final instructions
20 after your rebuttal summation.

21 (Jury entered the courtroom.)

22 **THE COURT:** All right. We will now proceed with
23 the government's rebuttal summation.

24 **MS. SCHESNOL:** Thank you, Your Honor.

25 The argument that Congress wasn't in session by

1 the time the defendant got to the Lower West Terrace, it's
2 irrelevant. Congress couldn't reconvene until the entire;
3 building and grounds were clear; that was the testimony you
4 heard from Officer Mark Gazelle.

5 He specifically talked about the Lower West
6 Terrace tunnel in that 4:10 to 4:26 time period. Congress
7 couldn't come back into session while Vincent Gillespie was
8 on the Capitol building and grounds. And the Lower West
9 Terrace is part of the Capitol building. The tunnel is part
10 of the building. He didn't have to cross into the doors to
11 be in the Capitol building on the Capitol building.

12 There was, again, this talk about restricted
13 grounds. I don't want to belabor it too much. Even if you
14 want to believe the defendant that he saw no bike racks or
15 Area Closed signs, how could he possibly believe that he was
16 allowed to scamper up construction scaffolding? It's
17 ridiculous.

18 Certainly, he knew he could not be in the Lower
19 West Terrace. Why else would the police have been trying to
20 get everyone out to the extent that they were using their
21 own chemical spray and beating and pushing back the rioters?

22 There was a point made that the defendant didn't
23 have a weapon. We agree. That's why he's not charged with
24 committing a crime with a weapon. And he didn't need a
25 weapon when he had his bear hands.

1 We've talked a lot about the defendant's
2 credibility. You were asked to think about, Could you make
3 this stuff up? Well, if you're a smart man and you're on
4 trial, yeah, you are going to make certain stuff up.

5 Doubtful he made up the fact that the speaker at
6 the Trump rally, the actual physical speaker, wasn't working
7 or that the -- they made a bathroom stop. No, there is no
8 reason to be untruthful about that. But there's reason to
9 be untruthful about the elements of the crime with which
10 he's charged.

11 It was said, Mr. Gillespie was trying to get the
12 truth out. Nope. He was trying to get out of the truth and
13 out of these criminal convictions. This is a smart man with
14 a chemical engineering degree.

15 He's smart enough and has the wherewithal to sit
16 on the stand and say to me that I am conflating what he
17 wants to say. He's no dummy. He understands that he has to
18 be very careful about what he says and doesn't say on the
19 witness stand.

20 And when he didn't like my questioning of him on
21 cross, he would say, Oh, I don't remember if that was my
22 testimony, his own testimony from an hour earlier. You can
23 use that when you judge his credibility.

24 There was talk about Mr. Gillespie doesn't know
25 about the Twelfth Amendment. Mr. Watkins said, I didn't

1 know about it either. None of us did. That's not
2 important. Gillespie didn't need to know, the defendant
3 didn't need to know about the Twelfth Amendment. He needed
4 to know that Congress was meeting to certify the
5 presidential election and he did.

6 You weren't born yesterday. You can trust your
7 own eyes and ears and not fall for a charade. The defendant
8 isn't on trial because he went to a rally. Lots of people
9 go to rallies. And he's not on trial because of the
10 feelings he had about the 2020 election. He's not alone in
11 that.

12 This is about his actions, because when he went on
13 to the restricted grounds of the Capitol and assaulted
14 police and tried everything he had to use all his strength
15 to get past them to get into the Capitol to interrupt the
16 official proceedings and delay them from reconvening.

17 The defendant wants you to believe the only reason
18 he was fighting those police officers to get into the
19 Capitol was to protest. It was the only reason, to protest.
20 He didn't protest at the rally. He hasn't protested on any
21 of the street corners in D.C. He didn't write his Congress
22 members. He hasn't gone to any other protests.

23 How convenient? He was just going to protest at
24 the United States Capitol building on January 6th, 2021 when
25 the certification was taking place, because he was there to

1 do more than protest. He was there to stop the counting of
2 the electoral votes because he was mad about the outcome and
3 someone had to do something.

4 When someone protests, the point is to be heard.
5 You want your protests heard. Someone has to do something
6 about this. But then the defendant also wants you to
7 believe he didn't know anyone was working inside the Capitol
8 that day. He didn't know Congress was in session. He
9 didn't know anyone was in there.

10 Well, then why would he want to get into the
11 Capitol to protest? That makes zero sense. He wants you to
12 get inside the Capitol to stop the counting of the votes so
13 that the person he wanted to be President would stay
14 President.

15 Otherwise, you could go protest in an empty
16 forest. What's the difference if you thought the Capitol
17 was empty? Makes no sense that's where he'd go protest when
18 he didn't know anyone was in there or claims he didn't think
19 anyone was in there.

20 Because none of us are mind readers, the
21 government has never said that Vincent Gillespie left Athol,
22 Massachusetts with a plan to assault police officers and
23 stop the electoral vote. As a matter of fact, he didn't
24 even know who he came with, how he got here or if he even
25 went to the rally before he took the witness stand and

1 testified. So to characterize it as the government has been
2 telling you that the defendant left Athol with that intent
3 is a mischaracterization.

4 And none of these crimes had to be premeditated.
5 None of them. The defendant was upset about the 2020
6 election then. He still is now. Maybe he did leave Athol
7 with the intent to stop the certification. Don't know. But
8 we know he had the intent. And if he didn't form it before
9 he got to the Capitol grounds, he formed the intent when he
10 saw it was possible.

11 He saw that what he wanted to have happen could
12 come to fruition. He said on the stand, "I'm really going
13 to do something. I'm going to really get involved. The
14 government has been unable to deal with this. Politicians
15 have been unable to deal with this. Courts unable. All the
16 proper bodies haven't been able to deal with this. Falling
17 on us citizens to take a stand."

18 With that there came a sense of responsibility and
19 importance. There was another thought. "This was the only
20 chance we were going to have because I had to be gone by
21 6 p.m. My ride was leaving. If I was going to do something
22 with the other protesters, we had to do it right now. And
23 for all of those reasons it felt very important."

24 So we know that, at the very latest, he formed the
25 intent when he saw it was possible, when he saw he could

1 make it happen. I'll give you an example in real life.
2 Years ago I went down to Nats stadium where the Nationals
3 play. There was a big blood drive. I was going to donate
4 blood. That was my intention when I went there.

5 Well, as a thank-you to the blood donors, any of
6 us who wanted to go on a tour of Nats stadium could go. I
7 got to go in the press room. I got to see the locker room,
8 and I even got to go out on the field.

9 When I took the metro out to Nats stadium, it
10 wasn't my intention to go in the press room or on the field.
11 I didn't know that was an option. When did my intent form?
12 When I saw that it was possible. Of course the difference
13 is, I was invited onto the field and it was authorized, but
14 that's when the intent became -- came to fruition, when it
15 was possible and the same is true of the defendant.

16 This isn't some who-done-it? It's not like the
17 game of Clue where you have to figure out that it was
18 Colonel Mustard in the library with a wrench. We know
19 exactly who did what. The defendant, Vincent Gillespie, at
20 the Capitol with his bare hands and sheer will committed
21 these crimes.

22 Well, I'd like to play the AP video for you
23 again -- here we go. I thought we were having some
24 technical difficult.

25 (Video played.)

1 What you guys need to know and no one is going to
2 listen to this. Don't find the defendant guilty because I
3 say so. Do it because the law and the evidence and the
4 facts demand it. Find him guilty not because of what I said
5 here today but because of what the defendant did and said on
6 January 6th.

7 When he said in the video, "No one is going to
8 listen to this," show him that you listened. You listened
9 to the words he spoke on January 6th, and find him guilty on
10 all counts.

11 Thank you.

12 **THE COURT:** All right, ladies and gentlemen. Now
13 is the time where it is my duty and responsibility, as the
14 trial judge, to give you instructions as to the law that
15 applies to this case and to the evidence that has been
16 presented, and it is your sworn duty to base your verdict on
17 the law as given in these instructions and upon the evidence
18 that has been admitted in this trial.

19 I see a number of you are -- still have your pens
20 ready to take notes, but I'm going to provide each of you
21 with a copy of these instructions so you do not need to take
22 notes. Just listen.

23 During your deliberations, you may, if you want,
24 refer to these instructions. While you may refer to any
25 particular portion of the instructions, you are to consider

1 the instructions as a whole. You may not follow some and
2 ignore others of the instructions.

3 If you have any questions about the instructions,
4 you should feel free to send me a note. I will give you
5 instructions on how to do that at the end of these
6 instructions. The copy of these instructions given to you
7 will be returned to me when you render your verdict in the
8 case.

9 As I stated in my preliminary instructions to you
10 at the beginning of the trial, my function is to conduct
11 this trial in an orderly, fair and efficient manner, to rule
12 on questions of law and to instruct you on the law that
13 applies in this case. It is your duty to accept the law as
14 I instruct you. You should consider all the instructions as
15 a whole. You may not ignore or refuse to follow any of
16 them.

17 Your function as the jury is to determine what the
18 facts are in this case. You are the sole judges of the
19 facts. While it was my responsibility to decide what is
20 admitted as evidence during the trial, you alone decide what
21 weight, if any, to give to that evidence. You alone decide
22 the credibility or believability of the witnesses.

23 As human beings, we all have personal likes and
24 dislikes, opinions, prejudices and biases. Generally, we
25 are aware of these things, but you also should consider the

1 possibility that you have implicit biases, that is, biases
2 of which you may not be consciously aware. Personal
3 prejudices, preferences or biases have no place in a
4 courtroom where our goal is to arrive at a just and
5 impartial verdict.

6 All people deserve fair treatment in our system of
7 justice, regardless of any personal characteristics such as
8 race, national or ethnic origin, religion, age, disability,
9 sex, gender identity or expression, sexual orientation,
10 education or income level or any other personal
11 characteristic.

12 You should determine the facts solely from a fair
13 consideration of the evidence. You may not take anything I
14 may have said or done as indicating how I think you should
15 decide this case. If you believe that I have expressed or
16 indicated any such opinion, you should ignore it.

17 The verdict in this case is your sole and
18 exclusive responsibility. If any reference by me or any of
19 the attorneys to the evidence is different from your own
20 memory of the evidence, it is your memory that should
21 control during your deliberations.

22 During your deliberations, you may consider only
23 the evidence properly admitted in this trial. The evidence
24 in this case consists of the sworn testimony of the
25 witnesses, the exhibits that were admitted into evidence and

1 the facts and testimony stipulated to by the parties.

2 During the trial, you were told that the parties
3 had stipulated, that is, had agreed to certain facts, and
4 you should consider any stipulation of fact to be undisputed
5 evidence.

6 When you consider the evidence, you are permitted
7 to draw from the facts that you find have been proven, such
8 reasonable inferences as you feel are justified in light of
9 your experience. You should give any evidence such weight
10 as, in your judgment, it is fairly entitled to receive.

11 The statements and arguments of the lawyers are
12 not evidence. They are only intended to assist you in
13 understanding the evidence. Similarly, the questions of the
14 lawyers are not evidence.

15 Every defendant in a criminal case is presumed to
16 be innocent. This presumption of innocence remains with the
17 defendant throughout the trial unless and until the
18 government has proven he is guilty beyond a reasonable
19 doubt. This burden never shifts throughout the trial. The
20 law does not require the defendant, Vincent Gillespie, to
21 prove his innocence or to produce any evidence at all.

22 If you find that the government has proven beyond
23 a reasonable doubt every element of a particular offense
24 with which Mr. Gillespie is charged, it is your duty to find
25 him guilty of that offense. On the other hand, if you find

1 the government has failed to prove any element of a
2 particular offense beyond a reasonable doubt, it is your
3 duty to find Mr. Gillespie not guilty of that offense.

4 As I mentioned during preliminary instructions I
5 gave you at the very beginning of the trial, the government
6 has the burden of proving Mr. Gillespie guilty beyond a
7 reasonable doubt as to each element of each charge against
8 him.

9 In civil cases, by contrast, it is only necessary
10 to prove a fact is more likely true than not or in some
11 cases the truth is highly probable. In criminal cases, such
12 as this one, the government's proof must be more powerful
13 than that. It must be beyond a reasonable doubt.

14 Reasonable doubt, as the name implies, is a doubt
15 based on reason, a doubt for which you have a reason based
16 upon the evidence or lack of evidence in the case. If after
17 careful, honest and impartial consideration of all of the
18 evidence, you cannot say that you are firmly convinced of
19 Mr. Gillespie's guilt, then you have a reasonable doubt.

20 Reasonable doubt is the kind of doubt that would
21 cause a reasonable person, after careful and thoughtful
22 reflection, to hesitate to act in the graver or more
23 important matters of life. However, it is not an imaginary
24 doubt nor a doubt based on speculation or guesswork. It is
25 a doubt based on reason.

1 The government is not required to prove guilt
2 beyond all doubt or to a mathematical or scientific
3 certainty. It is their burden to prove guilt beyond a
4 reasonable doubt.

5 There are two types of evidence from which you may
6 determine what the facts are in this case, direct evidence
7 and circumstantial evidence. When a witness, such as an
8 eyewitness, asserts actual knowledge of a fact, that
9 witness's testimony is direct evidence. On the other hand,
10 evidence of facts and circumstances from which reasonable
11 inferences may be drawn is circumstantial evidence.

12 I'm going to give you an example. Assume a person
13 looked out a window and saw that snow was falling. If he
14 later testified in court about what he had seen, his
15 testimony would be direct evidence that snow was falling at
16 the time he saw it happen.

17 Assume, however, he looked out a window and saw no
18 snow on the ground and then he went to sleep and saw snow on
19 the ground after he woke up. His testimony about what he
20 had seen would be circumstantial evidence that it had snowed
21 while he was asleep.

22 The law says that both direct and circumstantial
23 evidence are acceptable as a means of proving a fact. The
24 law does not favor one form of evidence over another. It is
25 for you to decide how much weight to give to any particular

1 evidence whether it is direct or circumstantial. You are
2 permitted to give equal weight to both.

3 Circumstantial evidence does not require a greater
4 degree of certainty than direct evidence. In reaching a
5 verdict in this case, you should consider all of the
6 evidence presented, both direct and circumstantial.

7 One of the questions you were asked when we were
8 selecting this jury was whether the nature of the charges
9 would affect your ability to reach a fair and impartial
10 verdict. We asked you that question because you must not
11 allow the nature of the charges to affect your verdict. You
12 must consider only the evidence that has been presented in
13 this case in reaching a fair and impartial verdict.

14 The weight of the evidence is not necessarily
15 determined by the number of witnesses testifying for each
16 side. Rather, you should consider all the facts and
17 circumstances in evidence to determine which of the
18 witnesses you believe.

19 You might find that the testimony of a smaller
20 number of witnesses on one side is more believable than the
21 testimony of a greater number of witnesses on the other side
22 or you might find the opposite.

23 The lawyers in this case sometimes objected when
24 the other side asked a question, made an argument or offered
25 evidence that the objecting lawyer believed was not proper.

1 You must not hold such objections against the lawyer who
2 made them or the party they represent. It is the lawyer's
3 responsibility to object to evidence that they believe is
4 not admissible.

5 If, during the course of the trial, I sustained an
6 objection to a lawyer's question, you should ignore the
7 question and you must not speculate as to what the answer
8 would have been.

9 Now, in determining whether the government has
10 proved the charges against the defendant beyond a reasonable
11 doubt, you must consider the testimony of all the witnesses
12 who have testified. You are the sole judges of the
13 credibility of the witnesses. You alone determine whether
14 to believe any witness and the extent to which a witness
15 should be believed.

16 Judging a witness's credibility means evaluating
17 whether the witness has testified truthfully and also
18 whether the witness accurately observed, recalled or
19 described the matters about which the witness testified.

20 As I instructed you at the beginning of the trial,
21 and again today, you should evaluate the credibility of
22 witnesses free from prejudices and biases. You may consider
23 anything else that, in your judgment, affects the
24 credibility of any witness. For example, you may consider
25 the demeanor and the behavior of the witness on the witness

1 stand, the witness's manner of testifying, whether the
2 witness impresses you as having an accurate memory, whether
3 the witness has any reason for not telling the truth,
4 whether the witness had a meaningful opportunity to observe
5 the matters about which he or she has testified, whether the
6 witness has any interest in the outcome of this case, stands
7 to gain anything by testifying or has friendship or
8 hostility toward other people concerned with this case.

9 In evaluating the accuracy of a witness's memory,
10 you may consider the circumstances surrounding the event,
11 including the time that elapsed between the event and any
12 later recollection of the event and the circumstances under
13 which the witness has asked to recall details of the event.

14 You may consider whether there are any
15 consistencies or inconsistencies in a witness's testimony or
16 between the witness's testimony and any previous statements
17 made by the witness. You may also consider any
18 consistencies or inconsistencies between a witness's
19 testimony and any other evidence that you credit.

20 You may consider whether any inconsistencies are
21 the result of lapses in memo, mistake, misunderstanding,
22 intentional falsehood or differences in perception.

23 You may consider the reasonableness or
24 unreasonableness, the probability or improbability of the
25 testimony of a witness in determining whether to accept it

1 as true and accurate. You may consider whether the witness
2 has been contradicted or supported by other evidence that
3 you credit.

4 If you believe that any witness has shown him or
5 herself to be biased or prejudiced, for or against either
6 side in this trial or motivated by self interest, you may
7 consider and determine whether such bias or prejudice has
8 colored the testimony of the witness so as to affect the
9 desire and capability of that witness to tell the truth.
10 You should give the testimony of each witness such weight
11 as, in your judgment, it is fairly entitled to receive.

12 A police officer's testimony should be evaluated
13 by you just as any other evidence in the case. In
14 evaluating the officer's credibility, you should use the
15 same guidelines that you applied to the testimony of any
16 other witness. In no event should you give any greater or
17 lesser weight to the testimony of any witness merely because
18 he or she is a police officer or a law enforcement officer.

19 The defendant's testimony should be evaluated by
20 you, just as any other evidence in the case. In evaluating
21 the defendant's testimony, however, you may consider the
22 fact that the defendant has an interest in the outcome of
23 this trial.

24 As with the testimony of any other witness, you
25 should give the defendant's testimony as much weight as, in

1 your judgment, it deserves. Someone's intent or knowledge
2 cannot be proved directly because there is no way of knowing
3 what a person is actually thinking. But you may infer
4 someone's intent or knowledge from the surrounding
5 circumstances.

6 You may consider any statements made or acts done
7 by defendant Vincent Gillespie and all other facts and
8 circumstances received in evidence, which may indicate his
9 intent or knowledge.

10 You may infer but are not required to infer that a
11 person intends the natural and probable consequences of acts
12 he intentionally did or did not do. It is entirely up to
13 you to decide what facts to find from the evidence received
14 during this trial.

15 You should consider all the circumstances and
16 evidence that you think are relevant in determining whether
17 the government has proved beyond a reasonable doubt that
18 this Defendant, Vincent Gillespie, acted with a necessary
19 state of mind.

20 Now I'm going to review the charges.

21 At the beginning of the trial, I gave you
22 preliminary instructions that generally stated the different
23 types of charges that the government has brought against
24 Mr. Gillespie.

25 He is charged with committing offenses charged in

1 eight separate counts. I will read those charges to you now
2 and then explain the definitions of terms used in the
3 charges and the elements of each charge. When no formal
4 definition is provided for a term, please rely on your
5 everyday understanding of the word.

6 Again, keep in mind that you will have a copy of
7 these instructions when you deliberate so you need not write
8 this down.

9 Now, before discussing the charges, I will define
10 the term "knowingly." I am going to define that term for
11 you because this term will appear in many of the charges. A
12 person acts "knowingly" if he realizes what he is doing and
13 is aware of the nature of his conduct and does not act
14 through ignorance, mistake or accident.

15 In deciding whether the defendant acted knowingly,
16 you may consider all the evidence, including what the
17 defendant did or said.

18 Count 1, assaulting, resisting or impeding certain
19 officers. Count 1 charges that, on or about January 6, 2021
20 in the District of Columbia, Vincent Gillespie did forcibly
21 assault, resist, oppose, impede, intimidate or interfere
22 with an officer and employee of the United States; that is
23 an officer of the United States Capitol Police or any person
24 assisting officers of the United States, that is, an officer
25 from the Metropolitan Police Department while such officer

1 was engaged in the performance of official duties and/or the
2 acts in violation of this section involved making physical
3 contact with the officer or acting with the intent to commit
4 another felony in violation of 18 U.S.C. Section 111(a)(1).

5 To find defendant guilty of this offense, you must
6 find that the government proved each of the following
7 elements beyond a reasonable doubt:

8 One, the defendant assaulted, resisted, opposed,
9 impeded, intimidated or interfered with an officer from the
10 Metropolitan Police Department or United States Capitol
11 Police.

12 Two, the defendant did such acts forcibly.

13 Three, the defendant did such acts voluntarily and
14 intentionally.

15 Four, the person assaulted, resisted, opposed,
16 impeded, intimidated or interfered with was a person
17 assisting officers of the United States who were then
18 engaged in the performance of their official duties or was
19 an officer of the United States engaged in the performance
20 of official duties.

21 Five, the defendant made physical contact with a
22 person assisting officers of the United States who were then
23 engaged in the performance of their official duties or acted
24 with the intent to commit another felony. For purposes of
25 this element, "another felony" refers to the offenses

1 charged in Count 2 or Count 8.

2 The defendant acted forcibly if he used force,
3 attempted to use force or threatened to use force against
4 the officer. A threat to use force at some unspecified time
5 in the future is not sufficient to establish that the
6 defendant acted forcibly. All the acts alleged, assault,
7 resist, oppose, impede, intimidate and interfere with are
8 modified by the word, forcibly. Thus, before you can find
9 the defendant guilty, you must find beyond a reasonable
10 doubt that he acted forcibly.

11 The term "assault" means any intentional attempt
12 or threat to inflict injury upon someone else when coupled
13 with an apparent present ability to do so. A finding that
14 one used force or attempted or threatened to use it is not
15 the same as a finding that he attempted or threatened to
16 inflict injury.

17 In order to find that the defendant committed an
18 assault, you must find beyond a reasonable doubt that the
19 defendant acted forcibly and that the defendant intended to
20 inflict or intended to threaten injury. The terms resist,
21 oppose, impede, intimidate and interfere with carry their
22 everyday, ordinary meanings.

23 You were instructed that officers of the
24 Metropolitan Police Department were acting in their official
25 capacities, in their official duties, to assist federal

1 officers of the United States Capitol Police and in
2 protecting the U.S. Capitol Complex on January 6, 2021.

3 It is not necessary to show that the defendant
4 knew that the person being forcibly assaulted, resisted,
5 opposed, impeded, intimidated or interfered with was, at
6 that time, assisting federal officers in carrying out an
7 official duty, so long as it is established beyond a
8 reasonable doubt that the victim was, in fact, assisting, a
9 federal officer, acting in the course of his duty and that
10 the defendant intentionally forcibly assaulted, resisted,
11 opposed, impeded, intimidated or interfered with that
12 officer.

13 Count 2, civil disorder. Count 2 charges that, on
14 or about January 6, 2021, in the District of Columbia,
15 Vincent Gillespie did commit or attempt to commit an act to
16 obstruct, impede or interfere with officers who were
17 lawfully carrying out their official duties incident to a
18 civil disorder in violation of 18 U.S.C. Section 231(a)(3).

19 To find the defendant guilty of this offense, you
20 must find that the government proved each of the following
21 elements beyond a reasonable doubt:

22 One, the defendant knowingly committed an act with
23 the intended purpose of obstructing, impeding or interfering
24 with law enforcement.

25 Two, at the time of the defendant's actual act,

1 law enforcement officers were engaged in the lawful
2 performance of their official duties instant to and during a
3 civil disorder.

4 And, three, the civil disorder, in any way or
5 degree obstructed, delayed or adversely affected either
6 commerce or the movement of any article or commodity in
7 commerce or the conduct or performance of any
8 federally-protected function.

9 If you find defendant, Vincent Gillespie, guilty
10 of this offense, you must also answer two questions that
11 follow Count 2 on the verdict form asking whether the jury
12 unanimously agrees that the government has shown, one, that
13 the civil disorder obstructed, delayed or adversely affected
14 commerce or the movement of an article or commodity in
15 commerce; or, two, that the civil disorder obstructed,
16 delayed or adversely affected the conduct or performance of
17 a federally-protected function.

18 You may find that the civil disorder affected both
19 commerce and the conduct of a federally-protected function.
20 In that case you will answer both of the questions that
21 follow Count 2.

22 Alternatively, you may find that the government
23 has only shown that the civil disorder affected either
24 commerce or a familiarly-protected function. In that case,
25 you will answer yes to only one of the two questions that

1 follow Count 2.

2 Committing or attempting to commit this offense
3 are not separate offenses but alternative ways in which the
4 government alleges that defendant, Vincent Gillespie,
5 committed this same offense in Count 2. You need not
6 conclude that he both committed and attempted to commit the
7 acts described in the above paragraph.

8 I will instruct you as to both the commission of
9 the offense and the attempted commission of the offense
10 below. You may consider these two alternatives in any order
11 you wish.

12 The term "civil disorder" means any public
13 disturbance involving acts of violence by groups of three or
14 more persons which, A, causes an immediate danger of injury
15 to another individual, B, causes an immediate danger or
16 damage to another individual's property, C, results in
17 injury to another individual or D, results in damage to
18 another individual's property.

19 The term "commerce" means commerce or travel
20 between one state, including the District of Columbia and
21 any other state, including the District of Columbia. It
22 also means commerce wholly within the District of Columbia.

23 The term "federally-protected function" means any
24 function, operation or action carried out under the laws of
25 the United States by any department, agency or

1 instrumentality of the United States or by an officer or
2 employee thereof.

3 The term "department" includes executive
4 departments. The Department of Homeland Security, which
5 includes the United States Secret Service, is an executive
6 department.

7 The term "agency" includes any department,
8 independent establishment, commission, administration,
9 authority, board or bureau of the United States.

10 The term "law enforcement officer" means any
11 officer or employee of the United States or the District of
12 Columbia while engaged in the enforcement or prosecution of
13 any criminal laws of the United States or the District of
14 Columbia.

15 For the U.S. Capitol police and Metropolitan
16 Police Department on January 6, 2021, the term "official
17 duties" means policing the U.S. Capitol building and grounds
18 and enforcing federal law and D.C. law in those areas.

19 Attempt, in Count 2, Vincent Gillespie is
20 alternatively charged with attempt to commit the crime of
21 civil disorder. As I mentioned, attempting to commit this
22 offense is not a separate offense but an alternative way in
23 which the government alleges that defendant, Mr. Gillespie,
24 committed this same offense in Count 2.

25 In order to find the defendant guilty of attempt

1 to commit civil disorder, you must find that the government
2 proved beyond a reasonable doubt each of the following two
3 elements:

4 One, the defendant intended to commit the crime of
5 civil disorder as I have defined that offense above, and
6 two, the defendant took a substantial step toward committing
7 civil disorder.

8 With respect to the first element of attempt, you
9 may not find the defendant guilty of attempt to commit civil
10 disorder merely because he thought about it. You must find
11 that the evidence proved beyond a reasonable doubt that the
12 defendant's mental state passed beyond the stage of thinking
13 about the crime to actually intending to commit it.

14 With respect to the substantial step element, you
15 may not find the defendant guilty of attempt to commit civil
16 disorder merely because he made some plans to or some
17 preparation for committing that crime. Instead, you must
18 find that the defendant took some firm, clear, undeniable
19 action to accomplish his attempt to commit civil disorder.

20 However, the substantial step element does not
21 require the government to prove that the defendant did
22 everything except the last step necessary to complete the
23 crime.

24 Count 3, entering and remaining in a restricted
25 building or grounds. Count 3 charges that, on or about

1 January 6, 2021 in the District of Columbia, Vincent
2 Gillespie did unlawfully and knowingly enter and remain in a
3 restricted building and grounds, that is any posted,
4 cordoned off or otherwise restricted area within the United
5 States Capitol and its grounds where the Vice President was
6 temporarily visiting without lawful authority to do so in
7 violation of 18 U.S.C. Section 1752(a)(1).

8 To find the defendant guilty of this offense, you
9 must find that the government proved each of the following
10 elements beyond a reasonable doubt.

11 One, the defendant entered or remained in a
12 restricted building or grounds without lawful authority to
13 do so, and two, the defendant did so knowingly. The term
14 "knowingly" has the meaning I have described to you at the
15 beginning of the charges.

16 The term "restricted building or grounds" means
17 any posted, cordoned-off or otherwise restricted area of a
18 building or grounds where a person protected by the Secret
19 Service is or will be temporarily visiting.

20 The term "person protected by the Secret Service"
21 includes the Vice President and the immediate family of the
22 Vice President.

23 Count 4, disorderly and disruptive conduct in a
24 restricted building or grounds. Count 4 charges that, on or
25 about January 6, 2021 in the District of Columbia, Vincent

1 Gillespie did knowingly and with intent to impede and
2 disrupt the orderly conduct of government business and
3 official functions, engage in disorderly and disruptive
4 conduct in and within such proximity to a restricted
5 building and grounds, that is any posted, cordoned off and
6 otherwise restricted area within the U.S. Capitol and its
7 grounds where the Vice President was temporarily visiting
8 when and so that such conduct did in fact impede and disrupt
9 the orderly conduct of government business and official
10 functions in violation of 18 U.S.C. Section 1752(a) (2).

11 To find the defendant guilty of this offense, you
12 must find that the government proved each of the following
13 elements beyond a reasonable doubt.

14 One, the defendant engaged in disorderly or
15 disruptive conduct in or in proximity to any restricted
16 building or grounds.

17 Two, the defendant did so knowingly and with the
18 intent to impede or disrupt the orderly conduct of
19 government business or official functions.

20 And, three, the defendant's conduct occurred when
21 or so that his conduct in fact impeded or disrupted the
22 orderly conduct of government business or official
23 functions.

24 The term "restricted building or grounds" and
25 "knowingly" have the same meanings as I've already described

1 to you in the instructions for Count 3 and for all the
2 charges.

3 Disorderly conduct occurs when a person is
4 unreasonably loud and disruptive under the circumstances or
5 interferes with another person by jostling against or
6 unnecessarily crowding that person. Disruptive conduct is a
7 disturbance that interrupts an event, activity or the normal
8 course of a process.

9 Count 5, engaging in physical violence in a
10 restricted building or grounds. Count 5 charges that, on or
11 about January 6, 2021 in the District of Columbia, Vincent
12 Gillespie did knowingly engage in any act of physical
13 violence against a person or property in and within such
14 proximity to a restricted building and grounds, that is any
15 posted, cordoned-off and otherwise restricted area within
16 the U.S. Capitol and its grounds where the Vice President
17 was temporarily visiting when and so that such conduct did,
18 in fact, impede and disrupt the orderly conduct of
19 government business and official functions in violation of
20 18 U.S.C. Section 1752(a) (4).

21 To find defendant guilty of this offense, you must
22 find that the government proved each of the following
23 elements beyond a reasonable doubt.

24 One, the defendant engaged in an act of physical
25 violence against a person or property in or in proximity to

1 a restricted building or grounds, and two, the defendant did
2 so knowingly.

3 The term "act of physical violence" means any act
4 involving an assault with intent to harm or injure or other
5 infliction of death or bodily harm on an individual or
6 damage to or destruction of real or personal property.

7 In connection with bodily harm, the act must
8 consist of force capable of causing physical pain or injury
9 to another person. The terms "restricted building and
10 grounds" and "knowingly" have the same meanings described in
11 the instructions above.

12 Count 6, disorderly and disruptive conduct in a
13 Capitol building. Count 6 charges that, on or about January
14 6, 2021 in the District of Columbia, Vincent Gillespie
15 willfully and knowingly engaged in disorderly and disruptive
16 conduct within the United States Capitol grounds and in any
17 of the Capitol buildings with the intent to impede, disrupt
18 and disturb the orderly conduct of a session of Congress and
19 either house of Congress and the orderly conduct in that
20 building of a hearing before or any deliberation of a
21 committee of Congress or either house of Congress in
22 violation of 40 U.S.C. Section 5104(e) (2) (D).

23 In order to find the defendant guilty of this
24 offense, you must find that the government proved each of
25 the following elements beyond a reasonable doubt.

1 One, the defendant engaged in disorderly or
2 disruptive conduct in any of the United States Capitol
3 buildings. Two, the defendant did so with the intent to
4 impede, disrupt, or disturb the orderly conduct of a session
5 of Congress or either house of Congress and, three, the
6 defendant acted willfully and knowingly.

7 The term "United States Capitol buildings"
8 includes the United States Capitol located at 1st Street,
9 Southeast in Washington, D.C.

10 The terms "disorderly conduct" and "disruptive
11 conduct" have the same meanings as defined above. A person
12 acts willfully if he acts with an intent to do something
13 that the law forbids, that is to disobey or disregard the
14 law.

15 Willfully does not, however, require proof that
16 the defendant be aware of the specific law or rule that his
17 conduct may be violating.

18 The term "knowingly" has the same meaning
19 described in the instructions above.

20 I instruct you that, for the purposes of Count 6,
21 the orderly conduct of a session of Congress or either house
22 of Congress includes all the actions of the joint session of
23 Congress at the times it was convened on January 6, 2021 to
24 certify the electoral college vote for the 2020 presidential
25 election.

1 Count 7, act of physical violence in the Capitol
2 grounds or buildings. Count 7 charges that, on or about
3 January 6, 2021 in the District of Columbia, Vincent
4 Gillespie willfully and knowingly engaged in an act of
5 physical violence within the United States Capitol grounds
6 and in any of the Capitol buildings in violation of 40
7 U.S.C. Section 5104(e) (2) (F).

8 And I should say, when I refer to U.S.C., it's
9 shorthand for United States Code, which codifies all federal
10 laws.

11 In order to find the defendant guilty of this
12 offense, you must find that the government proved each of
13 the following elements beyond a reasonable doubt:

14 One, the defendant engaged in an act of physical
15 violence in the United States Capitol grounds or any of the
16 Capitol buildings; and, two, the defendant acted willfully
17 and knowingly.

18 I've already defined the term "act of physical
19 violence" for you in connection with Count 5, and it has the
20 same meaning here. The term "U.S. Capitol grounds" includes
21 all squares, reservations, streets, roadways, walks and
22 other areas as defined on a map entitled Map Showing Areas
23 Comprising United States Capitol Grounds dated June 25, 1946
24 approved by the architect of the Capitol and recorded in the
25 Office of the Surveyor of the District of Columbia, Book

1 127, Page 8.

2 You are instructed that the West Front of the
3 United States Capitol, including the Lower West Terrace is
4 part of the United States Capitol grounds for purposes of
5 this count.

6 The terms "willfully and knowingly" have the same
7 meanings described in the instructions above.

8 The last count, Count 8, obstruction of an
9 official proceeding. Count 8 charges that, on or about
10 January 6th, 2021 within the District of Columbia and
11 elsewhere, Vincent Gillespie attempted to and did corruptly
12 obstruct, influence and impede an official proceeding; that
13 is, a proceeding before Congress, specifically Congress'
14 certification of the electoral college vote as set out in
15 the Twelfth Amendment of the Constitution of the United
16 States and, 3 United States Code Sections 15 through 18 in
17 violation of 18 U.S.C. Sections 1512(c)(2) and 2.

18 Included with this charge is that defendant aided
19 and abetted others to commit this offense. Attempting or
20 aiding and abetting others to commit this offense are not
21 separate offenses but alternative ways in which the
22 government alleges that defendant, Vincent Gillespie,
23 committed this same offense in Count 8.

24 I will first explain the elements of the
25 substantive offense along with its associated definitions,

1 and then I will explain how to determine whether defendant
2 attempted the offense and whether the defendant aided and
3 abetted the offense.

4 In order to find -- in order to find the defendant
5 guilty of corruptly obstructing an official proceeding, you
6 must find that the government proved each of the following
7 four elements beyond a reasonable doubt.

8 One, the defendant attempted to or did obstruct or
9 impede an official proceeding.

10 Two, the defendant intended to obstruct or impede
11 the official proceeding.

12 Three, the defendant acted knowingly with
13 awareness that the natural and probable effect of his
14 conduct would be to obstruct or impede the official
15 proceeding. And, four, the defendant acted corruptly.

16 The term "official proceeding" includes a
17 proceeding before the Congress. The official proceeding
18 need not be pending or about to be instituted at the time of
19 the offense. If the official proceeding was not pending or
20 about to be instituted, the government must prove beyond a
21 reasonable doubt that the official proceeding was reasonably
22 foreseeable to the defendant.

23 As used in Count 8, the term "official proceeding"
24 means Congress' joint session to certify the electoral
25 college vote. The term "knowingly" has the same meaning

1 described in the instructions above.

2 To act corruptly, the defendant must use unlawful
3 means or have a wrongful or an unlawful purpose, or both.
4 The defendant must also act with consciousness of
5 wrongdoing. Consciousness of wrongdoing means with an
6 understanding or awareness that what the person is doing is
7 wrong or unlawful.

8 While the defendant must act with intent to
9 obstruct the official proceeding, this need not be his sole
10 purpose. A defendant's unlawful intent to obstruct a
11 proceeding is not negated by the simultaneous presence of
12 another purpose for his conduct.

13 Now, all attempts to obstruct or impede an
14 official proceeding involve acting corruptly. For example,
15 a witness in a court proceeding may refuse to testify by
16 invoking his constitutional privilege against self
17 incrimination, thereby obstructing or impeding the
18 proceeding but he does not act corruptly.

19 In contrast, an individual who obstructs or
20 impedes a court proceeding by bribing a witness to refuse to
21 testify in that proceeding or by engaging in other
22 independently unlawful conduct with the intent to obstruct
23 or impede an official proceeding does act corruptly.

24 Attempt, in Count 8, Vincent Gillespie is
25 alternatively charged with attempt to commit the crime of

1 obstruction of an official proceeding. In order to find the
2 defendant guilty of attempt to obstruct or obstruction of an
3 official proceeding, you must find that the government
4 proved beyond a reasonable doubt each of the following two
5 elements:

6 The defendant intended to commit the crime of
7 obstruction of an official proceeding, as I have defined
8 that offense above, and the defendant took a substantial
9 step toward committing obstruction of an official
10 proceeding.

11 With respect to the first element of attempt, you
12 may not find the defendant guilty of attempt to commit
13 obstruction of an official proceeding merely because he
14 thought about it. You must find that the evidence proved
15 beyond a reasonable doubt that the defendant's mental state
16 passed beyond the stage of thinking about the crime to
17 actually intending to commit it.

18 With respect to the substantial step element, you
19 may not find the defendant guilty of attempt to commit
20 obstruction of an official proceeding merely because he made
21 some plans or some preparation for committing that crime.
22 Instead, you must find that the defendant took some firm,
23 clear, undeniable action to accomplish his intent to commit
24 obstruction of an official proceeding.

25 However, the substantial step element does not

1 require the government to prove that the defendant did
2 everything except the last step necessary to complete the
3 crime.

4 You may find Vincent Gillespie guilty of the crime
5 charged in Count 8 without finding that he personally
6 committed each of the acts that make up the crime or that he
7 was present while the crime was being committed.

8 Any person who in some way intentionally
9 participates in the commission of a crime or acts intending
10 to facilitate the commission of a crime by another can be
11 found guilty either as an aider an abettor or as a principle
12 offender. It makes no difference which label you attach.
13 The person is as guilty of the crime as he would be if he
14 had personally committed each of the acts that make up the
15 crime.

16 To find that the defendant aided and abetted in
17 committing a crime, you must find that the defendant
18 knowingly associated himself with the commission of the
19 crime, that he participated in the crime as something he
20 wished to bring about and that he intended by his actions to
21 make it succeed.

22 Some affirmative conduct by the defendant in
23 planning or carrying out the crime is necessary. Mere
24 physical presence by Vincent Gillespie at the place and time
25 the crime was committed is not, by itself, sufficient to

1 establish his guilt. However, mere physical presence is
2 enough if it is intended to help in the commission of the
3 crime. It is not necessary that you find that Vincent
4 Gillespie was actually present while the crime was
5 committed.

6 The government is not required to prove that
7 anyone discussed or agreed upon a specific time or method of
8 committing the crime. The government is not required to
9 prove that the crime was committed in the particular way
10 planned or agreed upon, nor need the government prove that
11 the principal offender and the person alleged to be the
12 aider and abettor directly communicated with each other.

13 I've already instructed you on the elements of the
14 offense with which Vincent Gillespie is charged in Count 8.
15 With respect to the charge of obstruction of an official
16 proceeding, regardless of whether Vincent Gillespie is an
17 aider and abettor or a principal offender, the government
18 must prove beyond a reasonable doubt that Vincent Gillespie
19 personally acted knowingly, corruptly and with the intent to
20 obstruct or impede the official proceeding.

21 Now, I'm going to turn to your deliberations and
22 various logistical matters. I'm almost at the end.

23 When you return to the jury room, you should first
24 select a foreperson to preside over your deliberations and
25 to be your spokesperson here in court. There are no

1 specific rules regarding how you, as the jury, should select
2 a foreperson. That is up to you.

3 However, as you go about the task, be mindful of
4 your mission to reach a fair and just verdict based on the
5 evidence. Consider selecting a foreperson who will be able
6 to facilitate your discussions, who can help you organize
7 the evidence, who will encourage civility and mutual respect
8 among all of you, who will invite each juror to speak up
9 regarding his or her views about the evidence and who will
10 promote a fair and full consideration of that evidence.

11 The attitude and conduct of jurors at the
12 beginning of their deliberations are matters of considerable
13 importance. It may not be useful for a juror, upon entering
14 the jury room, to voice a strong expression of an opinion on
15 the case or to announce a determination to stand for a
16 certain verdict.

17 When one does that at the outset a sense of pride
18 may cause that juror to hesitate to back away from an
19 announced position after a discussion of the case.
20 Furthermore, many juries find it useful to avoid an initial
21 vote upon retiring to the jury room. Calmly reviewing and
22 discussing the case at the beginning of deliberations is
23 often a more useful way to proceed.

24 Remember that you are not partisans or advocates
25 in this matter but you are judges of the facts. Each count

1 charges a separate offense against the defendant Vincent
2 Gillespie. You should consider each offense and the
3 evidence which applies to it separately. And you should
4 not -- and you should return separate verdicts as to each
5 count unless I instruct you to do otherwise.

6 The fact that you may find the defendant guilty or
7 not guilty on any one count should not influence your
8 verdict with respect to any other count. At any time during
9 your deliberations you may return your verdict of guilty or
10 not guilty with respect to any count.

11 The verdict must represent the considered judgment
12 of each juror and, in order to return a verdict, each juror
13 must agree on the verdict. In other words, your verdict on
14 each count must be unanimous.

15 You will be provided with a verdict form for your
16 use when you have concluded your deliberations. The form is
17 not evidence in this case and nothing in it should be taken
18 to suggest or convey any opinion by me as to what the
19 verdict should be.

20 Nothing in the form replaces the instructions of
21 law I have given to you and nothing in it replaces or
22 modifies the instructions about the elements which the
23 government must prove beyond a reasonable doubt. The form
24 is meant only to assist you in recording your verdict.

25 The question of possible punishment of the

1 defendant in the event of a conviction is not a concern for
2 you and should not enter into or influence your
3 deliberations in any way. The duty of imposing sentence in
4 the event of any conviction rests exclusively with me. Your
5 verdict should be based solely on the evidence in this case
6 and you should not consider the matter of punishment at all.

7 I would like to remind you that, in some cases,
8 there may be reports on the internet, television, radio and
9 newspaper concerning this case or other reporting related to
10 the events at the U.S. Capitol on January 6, 2021. You may
11 be tempted to read, listen to or watch it, and you must not
12 do so because you must decide this case solely on the
13 evidence presented in this courtroom.

14 If any publicity about this trial or related
15 events inadvertently comes to your attention, do not discuss
16 it with other jurors or anyone else. Just let Ms. Gumiel
17 know and I will speak to you briefly about it.

18 As you retire to the jury room to deliberate, I
19 also wish to remind you of an instruction I gave you at the
20 beginning of the trial. During your deliberations, you must
21 not communicate with or provide any information to anyone by
22 any means about this case.

23 You may not use any electronic device or media,
24 such as a phone, Smartphone, iPhone, computer, tablet, the
25 internet or any internet service, any text or instant

1 messaging service, any internet chatroom, blog or social
2 media service, such as Facebook, LinkedIn, YouTube, Twitter
3 or Instagram to communicate to anyone any information about
4 this case or to conduct any research about this case until I
5 accept your verdict.

6 In other words, you cannot talk to anyone on the
7 phone, correspond with anyone or electronically communicate
8 with anyone about this case. You can only discuss the case
9 in the jury room with your fellow jurors during
10 deliberations. I expect you will inform me if you become
11 aware of another juror's violation of these instructions.

12 You may not use electronic means to investigate or
13 communicate about the case because it is important you
14 decide this case based solely on the evidence presented in
15 this courtroom. Information on the internet or available
16 through social media might be wrong, incomplete or
17 inaccurate, and you are only permitted to discuss this case
18 with your fellow jurors during deliberations because they
19 have seen and heard the same evidence as you have.

20 In our judicial system it is important that you
21 are not influenced by anything or anyone outside of this
22 courtroom. Otherwise, your decision may be based on
23 information known only by you and not by your fellow jurors
24 or the parties in the case, and this would unfairly and
25 adversely impact the judicial process.

1 Now, during the trial, I have permitted those
2 jurors who wanted to do so to take notes. You may take your
3 notes with you to the jury room and use them during your
4 deliberations if you wish. As I told you at the beginning
5 of the trial, your notes are only to be an aid to your
6 memory.

7 They are not evidence in the case. They should
8 not replace your own memory of the evidence. Those jurors
9 who have not taken notes should rely on their own memory of
10 the evidence. The notes are intended to be for the
11 notetaker's own personal use.

12 I will be sending into the jury room with you all
13 of the exhibits that have been admitted into evidence. You
14 may examine any or all of them as you consider your
15 verdicts. Please keep in mind that any exhibits that were
16 only marked for identification but were not admitted into
17 evidence will not be given to you to examine or consider in
18 reaching your verdict.

19 And when you go back to your jury room, it's going
20 to take us a few minutes to collect everything to deliver to
21 you, so it won't be immediate as soon as you get to the jury
22 room.

23 If it becomes necessary during your deliberations
24 to communicate with me, you may send a note by the court
25 security officer, who will be stationed outside the jury

1 room. It will be signed by your foreperson or by one or
2 more members of the jury.

3 No member of the jury should try to communicate
4 with me except by a signed note, and I will never
5 communicate with any member of the jury on any matter
6 concerning the merits of this case, except in writing or
7 orally here in open court.

8 Bear in mind that you are never, under any
9 circumstances, to reveal to any person, not any member of
10 the courthouse staff, the court security officer or me in a
11 note how jurors are voting until after you have reached a
12 unanimous verdict.

13 This means you should never tell me in writing or
14 in open court how the jury may be divided on any matter, for
15 example, 6-6 or 7-5 or in any other fashion, whether the
16 vote is for conviction or acquittal or on any other issue in
17 the case.

18 That concludes my final instructions. So I will
19 direct the jury to start their deliberations in the jury
20 room. We have ordered -- okay. Lunch should be there for
21 you. Hopefully Ms. Gumiel will check on that because we
22 provide lunch for juries during deliberations.

23 So you are all excused. As I said, just give us a
24 couple minutes to pull all of the exhibits together.

25 (Jury exited the courtroom.)

1 **THE COURT:** Yes, Mr. Watkins?

2 **MR. WATKINS:** Thank you, Judge.

3 In the First Circuit, we'd be required to
4 reiterate our objection to the instructions at this time.
5 So I'd like to do that, if I may.

6 **THE COURT:** Okay. Fine.

7 **MR. WATKINS:** Again, the objection on Count 1 is
8 changing now. The assault, the third --

9 **THE COURT:** Excuse me.

10 **MR. WATKINS:** Sorry.

11 **THE COURT:** That's okay.

12 **MR. WATKINS:** To change the instruction on Count 1
13 from the jointly-submitted third element, which would
14 include the intent to injure, that portion is in the charge.
15 I think the question is -- later on in the charge, as far as
16 definitions, the question would be whether it modifies all
17 of the elements of the -- or all of the different needs.

18 I would submit that it is a plausible reading of
19 the statute to include it as an element and the intent to
20 injure as to all of them. I know the Court has denied it,
21 but the Court has stated it as, and asked me whether we
22 should go forward on an incorrect reading of the law.

23 And we submit it's not an incorrect reading, that
24 the Court could go forward as we jointly suggested. And the
25 fact that the Court did not then change the instruction at

1 the last minute impacted our presentation of the case, it
2 certainly impacted my closing argument which was predicated
3 on many of those --

4 **THE COURT:** Let me just address this for a second
5 because, until we actually have --

6 **MR. WATKINS:** Judge, I'm really sorry --

7 **THE COURT:** That's okay. Thank you for keeping
8 me -- it's very important you can hear me. Thank you for
9 reminding me that I need to be closer to the microphone.

10 I just want to make sure the record is totally
11 clear on the timing because, frankly, until we have a
12 charging conference, the final jury instructions and legal
13 instructions to be presented to the jury is not finalized.

14 So I appreciate that what -- that your position,
15 as you relied on what the government proposed and that what
16 you thought had been agreed to in the joint pretrial
17 statement, but and that's what you prepared for for three
18 weeks. But until we have a charging conference, that
19 reliance is always subject to review by the Court and
20 modification depending on how all the evidence comes in and
21 so on.

22 So I just want to make it clear for the record
23 that the charging conference was held yesterday. There
24 was -- I accepted what the parties had provided. But when
25 prompted by a change, a suggestion by the government and

1 took another look at it is when I realized that what the
2 parties had proposed was not, in my mind, consistent with
3 the elements of the charge.

4 But reliance on that for three weeks when there
5 hadn't been a final decision at a charging conference, I
6 think is not -- is a trial strategy but it's not cause for a
7 mistrial.

8 **MR. WATKINS:** And just to be clear, as the Court
9 has indicated, the Court wanted those instructions as part
10 of a joint pretrial memo and then we had a pretrial
11 conference after that. At least, in my mind, in my
12 practice, by the time we get to that point, if there's no
13 dispute, which there was not, it is -- I take it to the
14 bank, as it were, that that is how I am preparing for the
15 elements of the charge, because that's what we do as we
16 prepare for trial. I know the Court --

17 **THE COURT:** Even after the pretrial conference,
18 defense was making suggestions on changes to the
19 instructions and a number of which were accepted. So, um --
20 I know that change -- I'm not saying that the changes
21 proposed by the defense were as significant for the
22 defense's trial strategy as you've described it now as the
23 change to Count 3, the element of -- the element in Count 1,
24 Element 3.

25 Go on.

1 **MR. WATKINS:** Judge, with the permission of the
2 Court, perhaps I could turn the rest of the objections over
3 to Ms. O'Neill-Greenberg.

4 **THE COURT:** Uh-huh.

5 **MR. WATKINS:** Thank you.

6 **THE COURT:** This is actually not the practice here
7 but it's interesting.

8 **MS. GREENBERG:** I'm just going to note the
9 additional objections. As to Count 8, we object to the
10 addition that the certification of the electoral college is
11 an official proceeding. As to count --

12 **THE COURT:** You don't think that that's a legal
13 determination? You think that that's something that the
14 government has to prove beyond a reasonable doubt as an
15 element?

16 **MS. GREENBERG:** It's not something we specifically
17 stipulated to, Your Honor. It's something that we included
18 in our Motion to Dismiss. It's something that we didn't
19 want included in the jury instructions so, yes.

20 Sorry -- it's not something we stipulated to in
21 the official proceeding stipulation. It's not something
22 that we agreed is a legal conclusion.

23 **THE COURT:** So do you think that -- I'm sorry.
24 I'm not understanding the objection. So my question was, do
25 you think that that is something then that the government

1 has to prove beyond a reasonable doubt that a joint session
2 of Congress is an official proceeding within the meaning of
3 the statute?

4 **MS. GREENBERG:** Yes, that's why we didn't include
5 it in our stipulation.

6 **THE COURT:** How would the government prove that?

7 **MS. GREENBERG:** I don't have the statute in front
8 of me, Your Honor, but I think there is an argument that
9 what Congress intended for an official proceeding isn't what
10 the electoral college certification process is. And I think
11 that the definition of that is up to interpretation by the
12 jury.

13 **THE COURT:** So the jury gets to get the statutory
14 language and definition and decide whether it is or isn't as
15 opposed to a judge deciding that as a legal matter of
16 statutory interpretation?

17 **MS. GREENBERG:** Our position is that the jury
18 would have to have evidence actually defining what the
19 official proceeding is. It's something we didn't want to
20 stipulate to. It's something we object to in --

21 **THE COURT:** Well, you keep saying that and
22 repeating it without giving me any detail about what it is
23 you were anticipating or thinking or wanting. It's
24 pretty -- you know, it's okay.

25 **MS. GREENBERG:** As to the --

1 **THE COURT:** It's a pretty useless objection if
2 you're not saying what it is that you would prefer or you
3 think is required.

4 **MS. GREENBERG:** We think it would have been a
5 factual -- that the jury would have to decide that the
6 electoral college certification was an official proceeding.
7 We think that's something that the jury should decide is not
8 a legal conclusion.

9 **THE COURT:** And they would decide that how?

10 **MS. GREENBERG:** Whether the evidence -- whether
11 they had the evidence in front of them that they could
12 conclude that or not.

13 **THE COURT:** Well, that is what I'm asking you
14 because whether something is an official proceeding is you
15 have to look at the statutory language, the statutory
16 definition, perhaps the legislative history.

17 So that is, by definition, a legal determination
18 that I made in denying the Motion to Dismiss that count.
19 And so -- when I ask you what kind of evidence and how the
20 jury would decide that, just to say you would give them the
21 definition and the statutory language and the legislative
22 history, that would be the government's -- they would have
23 to --

24 The government would produce all those things. We
25 would put it in front of the jury. They would look at the

1 legislative history, do all of the analysis that I did in
2 the denial of the Motion to Dismiss. Does that make any
3 sense to you?

4 **MS. GREENBERG:** I mean, it's just -- it's going as
5 deep as you would have to on the jurisdictional elements as
6 well. But the fact that you put this in as a legal
7 conclusion means it's not something we spoke to the jury
8 about. But we object to that on Count 8.

9 **THE COURT:** Okay.

10 **MS. GREENBERG:** As to Counts 2, 3, 4, 5, 6, 7 and
11 8, we object to not including the specific knowledge
12 determination or knowledge instruction, excuse me, for each
13 element. And then --

14 **THE COURT:** Because referring to the definition of
15 "knowingly" --

16 **MS. GREENBERG:** Yes.

17 **THE COURT:** -- in one section was insufficient to
18 your mind?

19 **MS. GREENBERG:** Given the fact that our defense is
20 predicated mostly on intent and knowledge, redefining it for
21 each charge that requires it, um, is something that we
22 wanted.

23 **THE COURT:** Why not highlighting it as so
24 important at the very beginning of the discussion of all of
25 the charges? Why isn't that highlighting of it more helpful

1 to you than not?

2 **MS. GREENBERG:** I think, when you're reading
3 each -- when the jury has the jury instructions with them
4 and they are going through the elements in each charge, it's
5 informative to have it right there in front.

6 I'm not suggesting that this jury isn't very
7 educated and intelligent and can go up but when you are --
8 the reason the elements are listed in each charge is because
9 it's for each charge. And so the definition of "knowledge"
10 in each charge would be explicitly helpful. So we just
11 object to it not being included for each charge.

12 Then for Counts 8 and Count 2, we just renew the
13 objection we made earlier to including the specific
14 instructions for attempt and aiding and abetting.

15 **THE COURT:** And what would -- what would you
16 prefer, not to tell them what aiding and abetting means or
17 attempt means?

18 **MS. GREENBERG:** It's our understanding that the
19 government alleged, as the evidence came in, what was
20 charged were completed acts, not attempts, not aiding and
21 abetting. So it is just confusing to the jury.

22 **THE COURT:** We'll see.

23 **MS. GREENBERG:** Thank you.

24 **THE COURT:** All right. Thank you.

25 Does the government want to make its record and

1 respond?

2 **MS. SCHESNOL:** The government doesn't have
3 anything to add.

4 **THE COURT:** All right.

5 Okay. So you're going to have to look at all of
6 the evidence that's going to be submitted, sign off on a
7 sheet of what's being done. We're going to have the jury
8 instructions copied, 12 copies, you can look at that, and
9 the verdict form without -- that everybody approved at the
10 charging conference yesterday. That will all be submitted
11 to the jury.

12 Make sure, if you go anywhere, that you leave your
13 contact information with Ms. Gumiel. I do have other
14 matters this afternoon and they're criminal matters with
15 detained defendants, so you're going to have to move
16 everything off your desks. No paper clips. No nothing like
17 that.

18 (Recess was taken at 12:41 p.m.)

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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter,**
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

February 16, 2023

DATE

/s/

Lorraine T. Herman

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BY MR. WATKINS: [1]
28/21

BY MS. SCHESNOL:
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