

BEFORE THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, .  
Plaintiff, . Case Number 21-cr-32  
vs. .  
GUY WESLEY REFFITT, . March 2, 2022  
Defendant. . 9:12 a.m.  
- - - - -

TRANSCRIPT OF JURY TRIAL  
(MORNING SESSION)  
BEFORE THE HONORABLE DABNEY L. FRIEDRICH  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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

(Call to order of the court.)

COURTROOM DEPUTY: Your Honor, we are in Criminal Action 21-32, United States of America versus Guy Reffitt.

Your Honor, representing Mr. Reffitt, we have Mr. William Welch, and representing the United States, we have Mr. Jeffrey Nestler, and his colleague is not here yet.

MR. NESTLER: She went to the restroom real quick, Your Honor.

THE COURT: I want to run through a couple of matters. I think we have a jury coming in at 9:30.

So just for the record, last night, I reviewed the parties' peremptory challenge sheets, which will be made a part of the record. The juror numbers represented on the sheet correspond to the representations that have been made in terms of the stages of the peremptory strikes. I double-checked the order in which the jurors were seated, both for the 12 jurors and the four alternates, and all are accurate and reflect the proper seats and order of alternates.

And neither side has any objection to the 12 jurors and four alternates that have been selected; correct?

MR. WELCH: No objection, Your Honor.

MR. NESTLER: No objection, Your Honor.

THE COURT: Or, of course, to the jurors who were released; right?

1           MR. WELCH: No objection.

2           THE COURT: And I want to thank both of you for  
3 working cooperatively to get through that problem.

4           I also would like to talk to you about whether it makes  
5 sense -- I'm inclined to make the joint e-mail a part of the  
6 record, obviously not the public record but a part of the record  
7 for appeal.

8           If you all would prefer to submit that in a formal, you  
9 know, notice to the Court, you can do that. I know you're busy.  
10 If you'd prefer that I just make that e-mail a part of the  
11 record, I can do that, but I think it's important because you  
12 both all thoroughly laid out the process.

13          Mr. Welch, what's your preference?

14          MR. WELCH: Your Honor, we're fine with the Court just  
15 making that e-mail a part of the record.

16          THE COURT: Mr. Nestler, do you agree?

17          MR. NESTLER: We agree. I think the bottom part of  
18 the e-mail talks about which jurors are alternates.

19          THE COURT: Sorry. I didn't hear that.

20          MR. NESTLER: The bottom part of the e-mail discusses  
21 which of the four jurors are alternates. So we shouldn't make  
22 that a part of the public record yet.

23          THE COURT: No, no. And none of this will be public,  
24 as I think at least at this stage it would be inappropriate to  
25 do so. But it will be on the court docket.

1           And so Mr. Hopkins, I will have one of the law clerks give  
2           you an e-mail that was provided to the Court last night by the  
3           parties, and we need to put it on the docket in a way that's not  
4           accessible to the public because it reflects juror numbers and  
5           alternate numbers, but it explains what transpired --

6           COURTROOM DEPUTY: I think I may have that, Your  
7           Honor. I think he cc'd me on the same e-mail.

8           THE COURT: Just check with them.

9           COURTROOM DEPUTY: Absolutely.

10          THE COURT: So all right. We covered that.

11          Now, have you all been provided a copy of the seating chart  
12          for the trial? All right. As you can see, it's been changed to  
13          accommodate three individuals from the public, which will  
14          include a member of Mr. Reffitt's family.

15          And Mr. Welch, at any point when the trial starts if the  
16          family member's not here, I'm not going to wait. They need to  
17          be ready to come in to the courtroom and sit in the seat. I'm  
18          not going to hold proceedings up for them to do that.

19          MR. WELCH: All understood, Your Honor. I've already  
20          spoken with Mr. Reffitt's family who are here and explained to  
21          them that if they wanted to make a change because of where they  
22          are sitting, they would need to wait until a recess so they're  
23          not walking effectively through the jury box.

24          THE COURT: Okay. All right. And in addition to a  
25          member of Mr. Reffitt's family, there will be two seats for

1 press and public, obviously first come, first served on the  
2 public seat. And I was able to make this change because court  
3 staff consulted again with experts about relaxing the COVID  
4 protocols in Appendix 8 to the Continuity of Operations Plan  
5 referenced in the Chief Judge's February 15th standing order  
6 Number 2207.

7 This seating plan is consistent with the changes the court  
8 will be making imminently to Appendix 8, and because that plan  
9 will be modified, I was both able and willing to make those  
10 changes. So I'm glad we were able to resolve that.

11 All right. So when the jurors are brought in, I would like  
12 for you all just to confirm with your notes that we have them  
13 seated in the proper order. I will have them sworn in, and I  
14 will give them the preliminary instructions. And you all, I  
15 take it, received modified versions of those instructions.

16 Any objections to cutting the portions that we suggested  
17 cutting? I feel like I've told them a lot about what they can't  
18 do, and it seemed unduly repetitive to say it two different ways  
19 in that set of instructions.

20 So if there's anything in there that you want changed, I'm  
21 happy to consider that. Just let me know. And I know you  
22 haven't had a chance to fully review it, but you'll have a few  
23 minutes to do that before they come in.

24 After I instruct the jurors, the government will make its  
25 opening statement. Will that be you, Mr. Nestler, or

1 Ms. Berkower?

2 MR. NESTLER: I will be handling it, Your Honor.

3 THE COURT: Are you going to be speaking from the  
4 podium?

5 MR. NESTLER: Partially, Your Honor, but I also have a  
6 lapel mic that Mr. Cramer helped me with this morning.

7 THE COURT: I would just encourage you all, given the  
8 problems with the overflow room and the audio feed, I think  
9 every chance you can, you should be at the podium. And try to  
10 speak into the microphone. If I turn my head, you know, six  
11 inches this way, it's not picking up.

12 So I know there was some comments last night, in  
13 particular, about not being able to hear things, and most of  
14 that, of course, was with the husher on. But I think there are  
15 problems in the normal course as well.

16 So I'm going to hold you to your 30-minute estimate. I'm  
17 not going to cut you off right at 30 minutes, but I will give  
18 you a warning and one or two minutes to wind up.

19 Mr. Nestler, no video in the opening; right?

20 MR. NESTLER: Yes, Your Honor.

21 THE COURT: All right. Mr. Welch, do you plan on  
22 giving an opening?

23 MR. WELCH: Yes, I do, Your Honor.

24 THE COURT: All right. So I'm going to omit the part  
25 in the introductory instructions to the jurors about sometimes

1 the defense gives an opening, sometimes it doesn't, because I  
2 know you're going to. Any objection?

3 MR. WELCH: No, ma'am.

4 THE COURT: All right. So as you all know -- you can  
5 have a seat. Thank you.

6 MR. WELCH: Thank you.

7 THE COURT: As you all know, the jurors, perhaps more  
8 than one, who have been selected for this panel expressed  
9 concerns about sitting longer than an hour, and we didn't move  
10 them to the end. So I'm going to be very accommodating with  
11 breaks as needed, and I'm going to tell them if at any point  
12 someone needs a break, raise their hand and we will take a  
13 break. That's the cost of having a juror like that, you know,  
14 in the panel. I don't want anyone uncomfortable and not able to  
15 pay attention because they need a break.

16 So I've told Mr. Hopkins to speak to the jurors and let  
17 them know if they need a break, raise their hand. As you all  
18 can tell, I get in the zone, and I forget about breaks. So you,  
19 too, Mr. Reffitt, if you need a break, all right? I want  
20 everybody comfortable. But I don't think that we're going to  
21 need more than a break every hour, I hope. Maybe every hour and  
22 a half.

23 So the plan, in an ideal world, would be to go to a natural  
24 breaking point for lunch, take an hour for lunch, take a  
25 mid-morning break in between when we start and when we think



1 lunch will be, and take an afternoon break. But given the  
2 composition of the jury, we might need to have a five-minute  
3 break somewhere in there.

4 So government will have Ms. Kerkhoff and your next witness  
5 ready and available today after Mr. Welch's opening?

6 MR. NESTLER: Yes, Your Honor.

7 THE COURT: All right. Can you just tell me roughly  
8 how long you expect your direct of her to be?

9 MR. NESTLER: For Ms. Kerkhoff, probably about an hour  
10 and a half.

11 THE COURT: Is that your witness or Ms. Berkower's?

12 MR. NESTLER: Mine, Your Honor.

13 THE COURT: One thing I noticed last night in going  
14 through the government's exhibits is it appears that your  
15 exhibit list is correct, but the exhibits that are marked in the  
16 binder are not. So for example, 51-A, I think, is supposed to  
17 be a picture of the Capitol, and it's a picture of a firearm.

18 So I either need a new notebook with the exhibits properly  
19 marked, or I need you all to take a look over lunch and  
20 substitute it.

21 I take it Kerkhoff's not testifying about the firearms that  
22 were seized from the home?

23 MR. NESTLER: I'm sorry, Your Honor. Exhibit 51-A is  
24 a photo of a Tippmann PepperBall launcher.

25 THE COURT: I thought, looking at the exhibit sheet --

1       so maybe that's off. I thought 51-A is a Kerkhoff admission of  
2       a photo, left side.

3               MR. NESTLER: Yes, of the Tippmann PepperBall  
4       launcher, which is the less-than-lethal weapon she was using --

5               THE COURT: Oh, she was using? I thought these were  
6       the firearms seized from the defendant.

7               MR. NESTLER: The initial series, Your Honor, are  
8       either physical items or photos of physical items that the  
9       government took. Starting with the 100 series are photographs  
10      from the search warrant and arrest of the defendant.

11              THE COURT: Sorry. I thought these were firearms of  
12      the defendant's.

13              MR. NESTLER: 51 through 54 are the weapons that the  
14      Capitol Police used on the defendant.

15              THE COURT: Understood. All right. I take that back.  
16              We do have the rule about witnesses invoked, 615.  
17      Mr. Welch, you've instructed family members who are going to be  
18      witnesses that they cannot be in this courtroom or the overflow  
19      courtrooms?

20              MR. WELCH: That's correct, Your Honor. And if it  
21      hasn't been formally invoked, I would ask to invoke it now.

22              THE COURT: All right. It has.

23              And Mr. Nestler, same for you with the government  
24      witnesses?

25              MR. NESTLER: The same for the government witnesses,

1 Your Honor, with the exception of Special Agent Ryan, who is  
2 sitting here.

3 THE COURT: Understood. All right.

4 And is Kerkhoff the witness that we had the under seal  
5 motion on, the issue that you're going to confront consistent  
6 with my ruling?

7 MR. NESTLER: I plan to start with leading questions  
8 on direct.

9 THE COURT: Okay. All right.

10 Are there any other logistical issues?

11 MR. NESTLER: Just one thing to put on the record,  
12 Your Honor.

13 This morning when I came into the courthouse, juror number  
14 4 stopped me in the foyer and said, "You're a part of the trial;  
15 right?" And before I could respond or walk away, he said, "We  
16 have to go to the fourth floor; right?" to which I answered,  
17 "Yes."

18 But it might make sense --

19 THE COURT: I will remind them that you all can't  
20 interact with them.

21 MR. NESTLER: Thank you, Your Honor. It might also  
22 make sense to remind members of the press and the public to not  
23 try to speak with the jurors as they're in and out of the  
24 courthouse.

25 THE COURT: I will do that.

1 Anything else, Mr. Welch?

2 MR. WELCH: No, Your Honor.

3 THE COURT: Mr. Hopkins, do we have the jury coming in  
4 at 9:30?

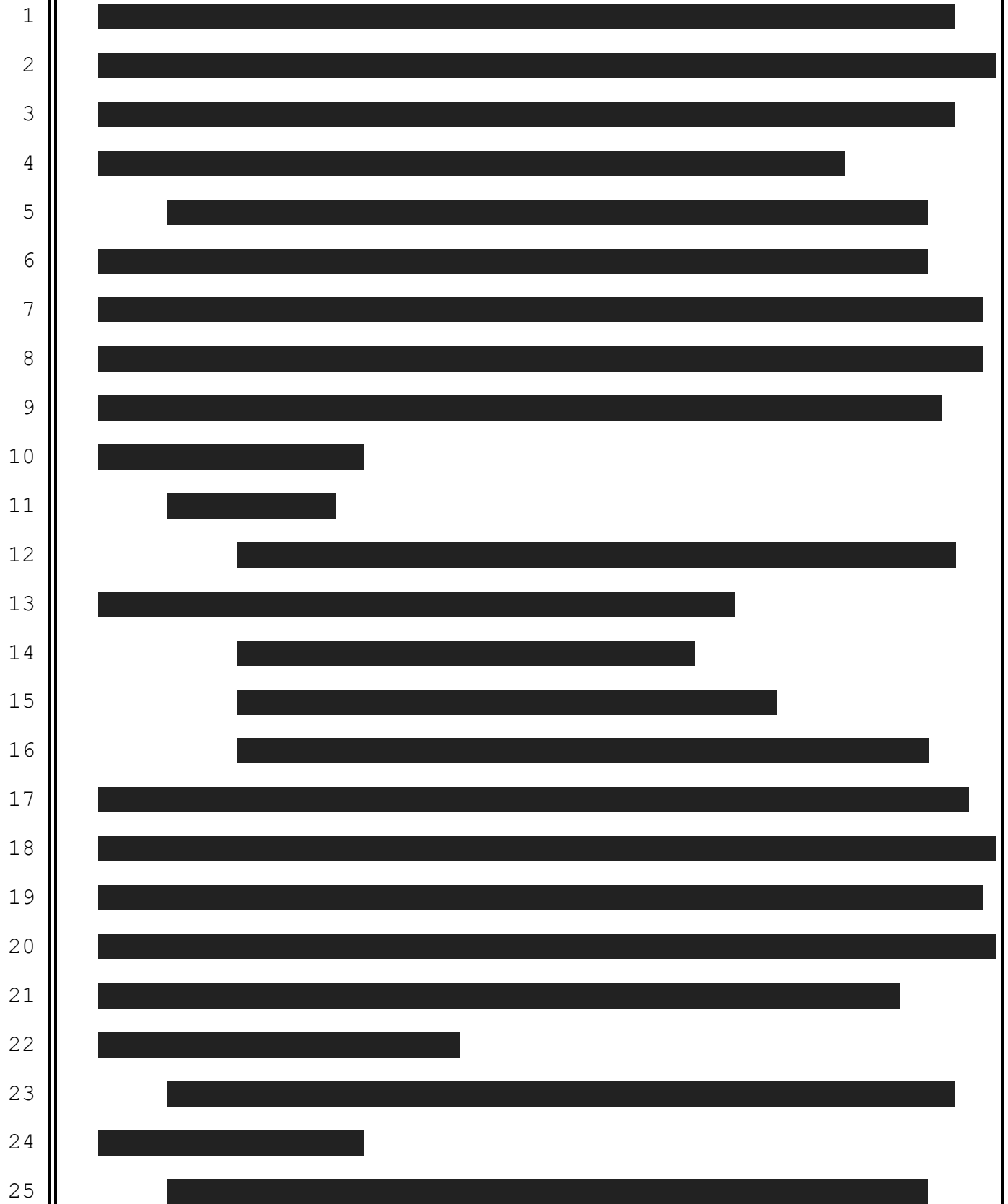
5 COURTROOM DEPUTY: Yes, Your Honor.

6 THE COURT: I imagine it will take a few minutes. I  
7 hope they're all on time, but if not, we will be a little  
8 delayed.

9 Let me talk to counsel just briefly about a confidential  
10 medical issue with a juror.

11 (Sealed bench conference.)

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(End of sealed bench conference.)

THE COURT: All right. So I will take a brief recess, and we will be back to swear in the jury and do preliminary instructions and opening statements.

(Recess taken from 9:28 a.m. to 9:52 a.m.)

(Call to order of the court.)

THE COURT: Good morning again. Before we bring the jurors in, I'm going to remind the members of the press and the public they are not to try to talk to any of the jurors in this matter.

Anything else we need to address, Counsel?

MR. WELCH: No, Your Honor.

THE COURT: All right. I will have Mr. Hopkins bring in the jury.

(Jury entered courtroom.)

THE COURT: Good morning, everyone. I hope you all had a good evening, and I'm very sorry again for keeping you so late yesterday. If I had known it was going to take so long to select a jury, we would have waited until this morning, but I did want to try to get the larger crowd home and not have to come back again today. So thank you for showing up on time, and

1 in a few minutes, you will hear the opening statements of  
2 counsel for both sides.

3 But first, I will have the courtroom deputy swear you in,  
4 and then I will give you some initial preliminary instructions.

5 (Jury sworn.)

6 THE COURT: All right, ladies and gentlemen. Before  
7 we begin the trial, I want to explain how the trial will work,  
8 and I also want to explain some of the legal rules that will be  
9 important in this trial.

10 As an initial matter, the instructions that I give you now  
11 are no substitute for the longer, more substantive instructions  
12 that I will give to you both orally and in writing at the end of  
13 the case. So you will get substantive instructions on the law  
14 at the very end. This is just to give you an orientation as to  
15 how the trial is going to proceed and what your responsibilities  
16 as jurors are.

17 We have notebooks and pencils for each of you. Some jurors  
18 find it helpful to take notes; others find it distracting. It's  
19 entirely up to you whether you take notes or not. If you do  
20 decide to take notes, you should feel free to write down  
21 anything you would like. The notes will be locked in the  
22 courtroom during recesses and overnight and will be destroyed at  
23 the end of the trial.

24 So feel free to write anything you like in the notebooks.  
25 I won't see them; none of the lawyers or the parties or your

1        fellow jurors will see what you write.

2            As you've seen, there are 16 of you. Four of you are  
3        alternates. As I said before, we selected the alternates before  
4        any of you all showed up, and so we know who the alternate  
5        chairs are, but you do not. And as I explained yesterday, it's  
6        not necessarily the last four, 13, 14, 15, and 16.

7            Because any of your seats could be an alternate seat, you  
8        should all think of yourselves as regular jurors and give this  
9        case your fullest and most serious attention.

10          I will apologize in advance, because at the end of the  
11        trial, I will need to dismiss four of you. You will remain on  
12        call, so to speak, in case something should happen to one of the  
13        other 12 jurors who will be deliberating, but it's never a good  
14        feeling for me to have to tell folks who have sat through a  
15        trial that they will not be deliberating unless something  
16        unexpected happens. So again, I apologize in advance.

17          As I told you at the outset, this is a criminal case. The  
18        indictment in this case charges the defendant, Guy Wesley  
19        Reffitt, with four counts relating to Congress's meeting at the  
20        United States Capitol on January 6, 2021.

21          First, he is charged with obstructing an official  
22        proceeding for allegedly interfering with Congress's meeting.  
23        Second, he is charged with being unlawfully present on the  
24        Capitol grounds while using or carrying a firearm. Third, he is  
25        charged with transporting firearms, knowing or intending that



1       they be used unlawfully in furtherance of a civil disorder.  
2       Fourth, he is charged with interfering with law enforcement  
3       officers during a civil disorder. The government has also  
4       charged Mr. Reffitt with obstructing justice based on statements  
5       he made to his children while at home in Wylie, Texas, around  
6       January 11, 2021.

7             Mr. Reffitt has pled not guilty to all of these charges.

8             At the end of the trial, you will have to decide whether or  
9       not the evidence presented has convinced you beyond a reasonable  
10      doubt that the defendant committed these offenses.

11            To prove the offense, the government must prove beyond a  
12      reasonable doubt each of the elements of the charged offenses.  
13      You should understand that the indictment that I just summarized  
14      is not evidence in this case. The indictment is just a formal  
15      way of charging a person with a crime in order to bring him to  
16      trial. You must not think of the indictment as evidence of the  
17      guilt of the defendant just because he's been indicted.

18            At the end of trial, you will have to decide whether the  
19      government has proven each element of the charged offense beyond  
20      a reasonable doubt, and I will explain what those elements are  
21      in more detail at the end of the trial.

22            As I said before, Mr. Reffitt is presumed innocent. That  
23      presumption remains throughout the trial unless and until he is  
24      proven guilty beyond a reasonable doubt. The burden is always  
25      on the government. If the government proves each element of the

1 offense beyond a reasonable doubt, it is your duty to find the  
2 defendant guilty of that offense. But if you find that the  
3 government has not proved one or more elements of the charged  
4 offense, you must find the defendant not guilty of that offense.

5 Throughout the trial, you will hear me refer to the  
6 government and the defense or the defendant. When I refer to  
7 this side of the courtroom (indicating) as the government, that  
8 simply means the prosecution team or one of the lawyers or legal  
9 assistants from the U.S. Attorney's Office. When I refer to the  
10 defense (indicating), that just means the defendant or defense  
11 counsel.

12 This case will proceed in four stages. First, we will  
13 begin with opening statements. The government will begin, and  
14 then we will move to the defense opening statement. The opening  
15 statements are not evidence in this case. They are only  
16 intended to give you a road map of what each side believes the  
17 evidence will show in the case.

18 The next stage of the trial will be the presentation of  
19 evidence. Again, we will start with the government's  
20 case-in-chief. There will be a direct examination of witnesses,  
21 then a cross-examination by the defense, and, if necessary, a  
22 brief rebuttal examination or a brief redirect examination.

23 After the government's case, the defendant may, but is not  
24 required to, put on his own case-in-chief. If the defendant  
25 decides to put on a case, it will follow the same order as the

1 government's case, and the government may choose at the end to  
2 bring a rebuttal case.

3 During the presentation of evidence, the lawyers will be  
4 asking questions. Like their opening statements, the questions  
5 are not evidence. The only evidence in the case is the sworn  
6 testimony of witnesses and the exhibits that will be admitted  
7 into evidence.

8 After the presentation of evidence, I will instruct you on  
9 the rules of law that you are to apply in your deliberations  
10 when you retire to consider your verdict in this case.

11 After legal instructions, we will move to closing  
12 arguments, and they will proceed in the same order as the  
13 presentation of evidence: First the government, then the  
14 defense, and then the government rebuttal argument. The  
15 lawyers' closing arguments, just like their opening statements,  
16 are not evidence in this case. They are only intended to help  
17 you understand the evidence.

18 Finally, at the end, I will give you a few final  
19 instructions, and then you will deliberate.

20 My responsibility during the trial is to run a fair and  
21 efficient trial, to rule on questions of law and evidentiary  
22 questions that arise during this trial, and to instruct you on  
23 the law. Your responsibility as jurors is to accept the laws I  
24 instruct, and you and only you are the deciders of the facts in  
25 this case. You will weigh the evidence. You will judge the

1       credibility and believability of the witnesses.

2               Occasionally, a lawyer might object to a question that  
3       opposing counsel has posed. If I sustain the objection, that  
4       simply means that the question must be withdrawn, and you must  
5       not speculate on what the answer is. If the answer has already  
6       been given and I strike the answer from the record, then you are  
7       to disagree -- disregard the answer. The same is true for any  
8       exhibits that I order stricken.

9               If I overrule an objection, that means that the question  
10       stands, and the witness may answer it, and you may consider the  
11       witness's answer. And please don't fault either side if I  
12       sustain more or fewer of their objections. They're simply doing  
13       their job.

14              During this trial, you should not take any of my statements  
15       or actions as any indication of my opinion about how you should  
16       decide the facts. If you think that somehow I have expressed or  
17       even hinted at an opinion as to the facts in this case, you  
18       should disregard it. The verdict in this case is your sole and  
19       exclusive responsibility.

20              You are not permitted to discuss this case with anyone  
21       until this case is submitted to you for your decision at the end  
22       of my final instructions. This means that until the case is  
23       submitted to you, you may not talk about it, even with your  
24       fellow jurors. This is because we don't want you making  
25       decisions until you've heard all of the evidence and the

1 instructions of law.

2 In addition, as I've said, you may not talk about the case  
3 with anyone else. You also may not write about the case  
4 electronically, through any blog, posting, or other  
5 communication, including social networking sites, until you have  
6 delivered your verdict and the case is over. This is because  
7 you must decide the case based on what happens here in the  
8 courtroom, not on what someone may or may not tell you outside  
9 of the courtroom.

10 You must not give anyone any information about the case  
11 itself or the people involved in the case. You must also warn  
12 people not to try to say anything to you or write to you about  
13 your jury service in the case. This includes face-to-face,  
14 phone, or computer communications. You must also not disclose  
15 your thoughts about your jury service or ask for advice on how  
16 to decide the case.

17 Now, when the case is over, you may discuss any part of it  
18 with anyone you wish, but until then, you may not do so.

19 Although it is a natural human tendency to talk with people  
20 who you may come into contact, as I explained, you must not talk  
21 to any of the parties, their attorneys, or any witnesses in this  
22 case during the time that you serve on the jury. If you should  
23 encounter anyone connected with the case outside the courtroom,  
24 you should avoid having any conversation with them, overhearing  
25 their conversation, or having any contact with them at all.

1           For example, if you find yourself in a courthouse corridor,  
2           elevator, or any other location where the case is being  
3           discussed by attorneys, parties, witnesses, or anyone else, you  
4           should immediately leave the area to avoid hearing such  
5           discussions. If you do overhear a discussion about the case,  
6           you should report that to Mr. Hopkins as soon as you can.

7           Finally, as I said before, if you see any of the attorneys  
8           or any of the witnesses or court staff involved in the case and  
9           they turn and walk away from you, they are not being rude. They  
10          are merely following the same instruction that I gave to them.

11          It is very unlikely, but again, if someone tries to talk to  
12          you about the case, you should refuse to do so and immediately  
13          let me know by telling Mr. Hopkins. Don't tell the other  
14          jurors. Just let Mr. Hopkins know, and I will bring you in the  
15          courtroom to discuss it.

16          You must decide the facts based on the evidence presented  
17          in court and according to the legal principles about which I  
18          will instruct you. Again, you are not permitted during the  
19          course of the trial to conduct any independent investigation or  
20          research about the case. That means, for example, you can't use  
21          the Internet to do research about the facts or the law or the  
22          people involved in the case. Research includes something even  
23          as simple or seemingly harmless as using the Internet to look up  
24          a legal term or view a satellite photo of the scene of the  
25          alleged crime.

1           I want to explain to you why you should not conduct your  
2           own investigation. All of the parties have a right to have the  
3           case decided only on evidence and legal rules that they know  
4           about and that they have a chance to respond to. Relying on  
5           information you get outside this courtroom is unfair because the  
6           parties would not have a chance to refute, correct, or explain  
7           it.

8           Unfortunately, information that we get over the Internet or  
9           from other sources may be incomplete or misleading or just plain  
10          wrong. It is up to you to decide whether to credit any evidence  
11          presented in court, and only the evidence presented in court may  
12          be considered. If evidence or legal information has not been  
13          presented in court, you cannot rely on it.

14          Mr. Reffitt is entitled to a verdict based simply on the  
15          evidence of this case, and when jurors go out and start  
16          researching matters that are beyond the evidence, he is deprived  
17          of that right, and that would not be fair.

18          Moreover, if any of you do your own research about the  
19          facts or the law, this may result in different jurors basing  
20          their decisions on different information. Each juror must make  
21          his or her decision based on the same evidence and under the  
22          same rules.

23          There may be reports on the newspaper, on the radio,  
24          Internet, or television concerning the case while the trial is  
25          ongoing. Again, you may be tempted to read, listen to, or watch

1       it. But you must not do so, because you must decide this case  
2       solely on the evidence presented in this courtroom. As I  
3       mentioned before, if you receive automatic alerts from any  
4       source, you may need to change your push notifications, news  
5       subscriptions, or RSS and Twitter feeds. If any information  
6       about this trial inadvertently comes to your attention during  
7       this trial, do not discuss it with jurors or anyone else.  
8       Again, just let Mr. Hopkins know as soon after it happens as you  
9       can, and I will discuss it briefly with you.

10       Also, should you observe another juror who is not following  
11       the Court's instructions, please let Mr. Hopkins know. He will  
12       bring it to my attention, and we will figure out how to deal  
13       with it.

14       After I submit the case to you, you can discuss it only  
15       after I instruct you to do so, and only in the jury room, and  
16       only in the presence of all of your fellow jurors. It is  
17       important that you keep an open mind and you not decide any  
18       issue in the case until after I submit the entire case to you  
19       with my final instructions.

20       Ms. Wick and, this afternoon, Ms. Herman will be taking  
21       down all of the proceedings, but you will not have a copy of the  
22       transcript when you go back to deliberate. So when you go back  
23       to deliberate, you will have to rely on your memory and on any  
24       notes that you choose to take.

25       So with those instructions, we will begin the opening



1 statements by the government.

2 Mr. Nestler?

3 MR. NESTLER: Thank you, Your Honor.

4 Mr. Hopkins, do you mind turning the monitors on?

5 COURTROOM DEPUTY: Absolutely. Do you want to make  
6 sure the jury can see it, Counsel?

7 MR. NESTLER: Yes. Thank you.

8 Good morning. On January 6 of 2021, the United States  
9 Capitol, the heart of democracy in our country, the massive  
10 white building across the street from where you're sitting right  
11 now, was attacked by a mob in what was the worst assault on the  
12 Capitol since the War of 1812. This mob was determined to  
13 physically prevent Congress from meeting inside the Capitol  
14 building that afternoon.

15 A mob needs leaders, and this man, Guy Wesley Reffitt, of  
16 Wylie, Texas, drove all the way from his home in Texas to D.C.  
17 to step up and fulfill that role. Mr. Reffitt helped lead the  
18 mob up the staircases of the Capitol building to overwhelm the  
19 police, actually invade the building, and drive our elected  
20 representatives physically out of their chambers. In the  
21 defendant's own words, he lit the match that started the fire.

22 On the screen, you will see a screen shot from surveillance  
23 video facing the United States Capitol. Just before 2:00 p.m.  
24 on January 6 of 2021, a mob of hundreds or thousands of people  
25 gathered on the west side of the Capitol there in the middle

1 ground of that photograph. They were already within the  
2 restricted perimeter of the Capitol building. The mob tried to  
3 push forward, but they were blocked by police and the building  
4 and the scaffolding.

5 The defendant, seen here with the arrow, seized the  
6 opportunity to be a leader. He climbed up on the banister to  
7 lead the mob towards the doors of the building. He literally  
8 stood out from the crowd. There he is with the blue jacket on  
9 in front of the crowd with a megaphone, helmet, bulletproof  
10 vest, police-style flex cuffs, and a holstered handgun.

11 The defendant led the mob up these stairs to overwhelm the  
12 Capitol police officers and storm the building. The defendant  
13 was the tip of this mob's spear.

14 Now, as residents from all over of the District, as we  
15 discussed yesterday during jury selection, you may have seen the  
16 Capitol building right off in the distance with the Statue of  
17 Freedom perched atop the dome almost 300 feet in the air, or  
18 perhaps you live or work close by or even just saw it this  
19 morning as you came into the courthouse to do your service as  
20 jurors.

21 But many people don't know or don't think about the work  
22 that actually happens inside of the building itself. During  
23 this trial, you're going to have a short civics lesson on the  
24 first branch of government, the Legislature or Congress.

25 Congress has two parts: The House of Representatives and

1 the Senate. Back on January 6 of last year, the person in  
2 charge of the House of Representatives was Speaker of the House  
3 Nancy Pelosi. The person in charge of the Senate was Senate  
4 Majority Leader Mitch McConnell.

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

11 A federal law specifies exactly when and how that session  
12 must work. It must occur on January 6. It must start at  
13 1:00 p.m. in the afternoon. It must take place in the House of  
14 Representatives's chamber within the United States Capitol  
15 building. The Vice President of the United States must be the  
16 person who presides over that proceeding. And by law, that  
17 session cannot end until Congress counts all of the ballots and  
18 declares the name of the next president.

19 The evidence in this case will show that the defendant  
20 attacked the Capitol on the afternoon of January 6 precisely  
21 because Congress was meeting in joint session at that time. He  
22 planned to light the match that would start the fire. He wanted  
23 to stop Congress from doing its job. And he had two specific  
24 targets in mind: The people in charge of the two houses of  
25 Congress, Speaker Nancy Pelosi and Senate Majority Leader Mitch

1 McConnell.

2 Let's rewind a couple of weeks before January 6 to late  
3 December of 2020. The defendant was living in Wylie, Texas,  
4 just outside of Dallas. You're going to learn during this trial  
5 that the defendant was a member of a group who called themselves  
6 the Texas Three Percenters. The name of Three Percenters comes  
7 from the myth that only 3 percent of American colonists rose up  
8 to fight against the British during the Revolutionary War.

9 Like many people in our country, these Three Percenters  
10 were angry about the results of the 2020 presidential election,  
11 but what makes this defendant stand out are the actions that he  
12 took. In December of 2020, arguing that the legislative branch  
13 has committed treason -- those are his words -- the defendant  
14 messaged his fellow Three Percenters about his plans to drive  
15 across the country and into our nation's capital. The defendant  
16 told members of this group, "The fuel is set" and "we will  
17 strike the match in D.C. on the 6th."

18 The defendant also told his own family about his plans and  
19 what he planned to do and, in his words, that it will be  
20 "something big." You will hear from the defendant's own  
21 teenaged son Jackson during this trial. Jackson had watched the  
22 defendant join the Texas Three Percenters, stock up on  
23 ammunition after the election, and angrily talk about how  
24 Senator Mitch McConnell and Speaker Nancy Pelosi had "ruined  
25 everything."

1           In late December, the defendant messaged his family. You  
2 will see these messages here during the trial. He  
3 said, "Congress has made fatal mistakes this time. What comes  
4 next is about tyranny. The entire house of legislation has  
5 committed unthinkable acts on our people. What's about to  
6 happen will shock the world. That's why I'm going to D.C. "

7           Like many fathers and sons, Jackson and his father often  
8 argued about politics. But this was not an argument, and this  
9 was not about politics. The defendant told his son about the  
10 defendant's plans to commit acts of violence here in D.C.  
11 Jackson will tell you that he hoped to the bottom of his heart  
12 that his father wouldn't actually do anything to Congress, but  
13 that if his father actually did commit violence, Jackson wanted  
14 to have tried to have done something about it.

15           So Jackson will tell you he did what was a wrenching  
16 decision for him. On Christmas Eve of 2020, he sent a tip to  
17 the FBI about his own father and about what his father planned  
18 to do at the Capitol.

19           As the defendant made his plans to come to the Capitol on  
20 January 6, he tried to recruit other members of the Texas Three  
21 Percenters group to join him. One man named Rocky Hardie  
22 agreed. You will hear from Mr. Hardie during this trial.

23           He will explain that starting on January 4 of 2020, he and  
24 the defendant drove across the country, more than a thousand  
25 miles over two days. They drove this entire distance rather

1       than fly so they could bring their guns with them. The  
2       defendant brought an AR-style rifle, specifically a  
3       Smith & Wesson MMP Model 15, and a handgun, a Smith & Wesson  
4       .40-caliber semiautomatic pistol. You're going to see both of  
5       these guns here in this courtroom during this trial.

6               Like the defendant, Rocky Hardie also brought his own  
7       AR-style rifle, and Rocky Hardie also brought his own handgun.  
8       But Mr. Hardie is not on trial here. He is here to tell you the  
9       inside story of what he and the defendant did. He will be  
10      testifying before you pursuant to an immunity agreement, which  
11      means that his statements that he delivers in court cannot be  
12      used against him, but nothing prevents him from being prosecuted  
13      based on other evidence.

14             Mr. Hardie will tell you that he and the defendant  
15      discussed how they knew bringing these guns into D.C. was  
16      illegal, but the defendant thought the risk was well worth it.  
17      The defendant wanted his guns at his disposal while he was doing  
18      what he did at the Capitol.

19             Mr. Hardie and the defendant spent the night of January 5  
20      here in the District at the Melrose Hotel in Georgetown. The  
21      next morning, January 6 of 2021, the defendant dressed for  
22      battle. He called it "full battle rattle," in his words. He  
23      wore a bulletproof vest filled with heavy ceramic plates. He  
24      carried a radio so he could communicate with Mr. Hardie in case  
25      they got lost, which they did, or separated.

1           He wore a helmet with a camera mounted on the top to record  
2 his own actions. He carried thick, plastic, police-style flex  
3 cuffs used to restrain people so he could restrain members of  
4 Congress when he encountered them. You're going to see each of  
5 these items here in this courtroom during this trial.

6           The defendant also carried a megaphone with him during his  
7 assault at the Capitol so the mob could better hear his  
8 commands, but he appears to have dropped the megaphone while  
9 there at the Capitol.

10          Critically, in a holster on his hip the defendant put his  
11 Smith & Wesson .40-caliber pistol.

12          With their rifles assembled and the defendant's car in  
13 their hotel garage and their handguns in holsters on their  
14 bodies, the defendant and Mr. Hardie walked from their hotel,  
15 the Melrose Hotel, down towards the National Mall.

16          The two men first went to The Ellipse and the Washington  
17 Monument, near where President Trump was speaking that morning.  
18 There, the defendant continued to tell people openly what he  
19 planned to do later that day, that he planned to storm the  
20 Capitol, and he encouraged other people to join him. You're  
21 going to hear these words coming straight out of the defendant's  
22 mouth, because they were captured on that camera he was wearing  
23 on his head, on his helmet the entire time.

24          You're going to have to excuse some of the language you're  
25 going to hear me say right now and that you're going to hear

1 during this trial. These are the defendant's words, not my  
2 words. You're soon going to hear them for yourself on the  
3 actual audio recordings.

4 The defendant said, "We're taking the Capitol before the  
5 day is over, ripping them out by their hair, every fucking one  
6 of them." The defendant said, "Dragging them out kicking and  
7 fucking screaming. I just want to see Pelosi's head hitting  
8 every fucking stair on the way out and Mitch McConnell too."

9 The defendant told the people around him, "I'm packing  
10 heat, and I'm going to get more heat, and I am going to that  
11 fucking building, and I am dragging them the fuck out."

12 Finally, when another man asked the defendant what will  
13 happen if the Capitol Police start shooting back, he  
14 responded, "A hell rain of fire comes back, because every one of  
15 my guys are here, and I can assure you, they came in hot. So  
16 did I."

17 Around 1:00 p.m., the defendant walked with the mob from  
18 The Ellipse to the Capitol. This is the precise time that the  
19 Vice President of the United States Mike Pence formally gavelled  
20 in the joint session of Congress as required by the Constitution  
21 and federal law.

22 The defendant arrived on the west side of the Capitol by  
23 around 1:35 p.m. By this time, the senators had temporarily  
24 moved to their own chambers in a different wing of the Capitol  
25 to handle a debate. Vice President Pence was presiding over the



1 Senate. Speaker Nancy Pelosi was presiding over the House.

2 On this day, the west side of the Capitol looked a little  
3 different than it normally looks. That's because there was  
4 scaffolding covered with white tarp, as workers were still in  
5 the process of building the inaugural stage that would host the  
6 inauguration two weeks in the future.

7 By the time the defendant arrived, the mob had formed below  
8 the scaffolding. They were shouting at police officers who  
9 stood midway up the flight of stairs on a landing between the  
10 crowd and the building itself. Behind the officers was a narrow  
11 stairway that led to the doors outside the Senate chamber.

12 Faced with this roadblock to the building, the defendant  
13 took charge. In his own words, he lit the fire of the  
14 surrounding mob. He climbed up on the banister adjacent to the  
15 scaffolding, he took out his megaphone, and he directed his  
16 voice forwards and backwards. Forward between him and the  
17 building, he made demands of the Capitol police officers who had  
18 gathered on the landing above him. He ordered them to stand  
19 down and step aside and let him and the mob into the building.  
20 Backwards to the mob below and behind him, he urged the crowd to  
21 push up towards the building and overtake the officers, and he  
22 showed the mob the way.

23 Capitol police officers have a sworn duty to protect our  
24 senators and elected representatives and to protect the building  
25 itself. That is their mission, as you will hear. These

1 officers were blocking the defendant's access to the building,  
2 and they were carrying what you will hear they call  
3 less-than-lethal weapons, weapons designed to stop or  
4 incapacitate people during a civil disorder.

5 Confronted with this defendant standing on the banister out  
6 in front of the angry crowd that continued to grow behind him,  
7 the officers did their duty. Officer Shauni Kerkhoff launched  
8 pepper balls at the defendant. Designed for use as crowd  
9 control, pepper balls both hurt on impact and also release  
10 pepper gas, which is an irritant.

11 The defendant was not deterred. He stepped forward on the  
12 banister towards the officers. He appeared to be showing off.  
13 Every time he stepped forward, the crowd behind him also stepped  
14 forward.

15 Seeing that the pepper balls were not stopping the  
16 defendant, Officer Kerkhoff called to her partner, Sergeant Adam  
17 DesCamp. He came to assist her and brought a bigger, more  
18 powerful weapon with projectiles designed to have a greater  
19 physical impact, meaning they hurt more. This weapon is called  
20 an FN-303 projectile launcher.

21 But the defendant was not deterred. He continued to walk  
22 up the banister. He kept showing off for the crowd. Every time  
23 he stepped forward, the crowd stepped forward behind him.

24 Sergeant DesCamp then also called for backup, this time  
25 from Sergeant Matthew Flood. Sergeant Flood was using a small,

1 handheld canister of OC spray, commonly called pepper spray. He  
2 sprayed the defendant, which finally had some small effect, but  
3 not enough. The defendant continued to step forward, continued  
4 to move towards the officers, and every time he stepped forward,  
5 the crowd filled in the space behind him.

6 The defendant finally sat down on the banister, but he did  
7 not retreat. In fact, he continued to try to lead the crowd  
8 below and behind him, gesturing repeatedly with his arms up  
9 towards the Capitol for the mob to go up and overwhelm the  
10 officers and take the building. The defendant had shown them  
11 the way.

12 Finally, Sergeant DesCamp, with a large, powerful canister  
13 of OC spray -- it looks like an oxygen tank; you're going to see  
14 it here during the trial -- sprayed the defendant and other  
15 members of the mob that were near him. That finally had the  
16 effect of stopping the defendant's advances, and it gave the  
17 officers some critical time to regroup, but it was not enough.

18 You will hear that, during this entire time, Vice President  
19 Pence was still presiding over the Senate just up the stairs  
20 from where the officers were trying to do their jobs holding the  
21 defendant and the mob back.

22 Over the next 15 minutes, the crowd below the defendant  
23 moved up the stairs, filling in the space the defendant had  
24 gained. Members of the crowd dismantled the tarp protecting the  
25 inaugural scaffolding, and they used it as a shield to protect

1 themselves from the officers' pepper balls and OC spray.

2 The mob pushed further up the stairs between the girders of  
3 the scaffolding and through the scaffolding itself, and then  
4 when their numbers were great enough, the mob physically  
5 overpowered the small number of officers who were trying to hold  
6 that landing.

7 At this time, 2:09 p.m. on January 6, the Senate was still  
8 in session, and Vice President Pence was still in that chamber  
9 performing the role that the Constitution and the federal law  
10 required him to do. It was this mob that ran up these stairs  
11 and broke into the Capitol building, smashing through windows  
12 and doors in the foyer just outside the Senate chamber.

13 The defendant, still on the stairs, tried to push forward  
14 with the rest of the mob, but he was, obviously, still reeling  
15 from the confrontation he had had. But his work was done. In  
16 his words, he had lit the match. He showed the mob behind him  
17 the way to get up, opened the window of opportunity for them to  
18 cut down the tarp, infiltrate the scaffolding, and overwhelm the  
19 police officers trying to hold their line.

20 And the entire time the defendant was doing this, he was on  
21 the stairs of the United States Capitol with a handgun on his  
22 waist.

23 Within the building, the United States Secret Service  
24 evacuated Vice President Pence, and the United States Capitol  
25 Police evacuated the senators and representatives and their

1 staff members.

2 You will hear from the people who were there inside the  
3 building who will tell you what it felt like when they heard the  
4 heavy metallic locks of the Senate chambers doors lock shut,  
5 when they saw the police officers with rifles have to escort  
6 them to safety. Rioters powered into the Senate chamber and  
7 freely roamed the halls of the Capitol building.

8 The defendant, for his part, almost immediately started  
9 bragging about what he had accomplished. Using Telegram, which  
10 is a messaging app. you have on your phone, he wrote to another  
11 Three Percenters, his words, "I was the first percent to light  
12 the fire on the Capitol steps." And then in all caps, he  
13 wrote, "We took the Capitol."

14 And the defendant on Telegram provided a detailed account  
15 of his confrontation with the Capitol police officers, writing  
16 to another person, "She shot me several times in the vest and  
17 realized it wasn't doing any good. I laughed and moved forward.  
18 Then she started shooting my legs. I laughed again and moved  
19 forward. She ran out after 20 plus, and then they pepper  
20 sprayed me with bear spray. That stopped me but fired up the  
21 crowd. They couldn't be stopped after that. I finally made it  
22 to the top of the steps when they broke through the doors. My  
23 job was done then. I had to fall back and get my sight back."

24 The defendant's own words.

25 Once the defendant was home in Texas, he convened a meeting

1 of the Texas Three Percenters to explain his own intent in going  
2 in the Capitol and what he had done, which was, in his own  
3 words, to take out Congress. Because the defendant conducted  
4 the meeting over Zoom, you're going to see a recording of this  
5 Three Percenters meeting here during the trial. I'm going to  
6 give you a preview now. Again, these are the defendant's words,  
7 not my words.

8 Describing what the defendant told others while at The  
9 Ellipse just before heading to the Capitol, the defendant  
10 said, "When this is over, we're going to the Capitol. I'm not  
11 done until we drag them out screaming and kicking. I don't care  
12 if Pelosi's head is hitting every step as I drag her by her  
13 ankles. She's coming out."

14 Then the defendant recounted his own actions for his fellow  
15 Three Percenters members. He said, "I climbed up that banister  
16 and got wrecked. I just kept screaming, "Take the House," and  
17 everybody just started ripping the scaffolding apart. I had my  
18 .40 on my side. They're lucky we didn't shoot them. They  
19 really need to be grateful."

20 The evidence will show that the defendant was speaking the  
21 truth during this meeting. This was not mere puffery or  
22 bluster. The defendant did tell others at The Ellipse he was  
23 headed to the Capitol to drag Nancy Pelosi out by her ankles.  
24 He did then go to the Capitol. He did climb up that banister.  
25 He did keep screaming. The mob did rip the scaffolding apart.

1 And the defendant did have his .40, his Smith & Wesson handgun,  
2 on his side.

3 You are also going to hear evidence about what happened  
4 inside the defendant's house shortly after he got back to Texas  
5 from D.C., about how he was proud of his accomplishments. The  
6 defendant bragged to his family about his role in taking the  
7 Capitol, and he played his helmet camera videos while narrating  
8 the action for his family.

9 The defendant's teenaged son Jackson had seen the images of  
10 the Capitol attack all over the news, and he will tell you he  
11 felt sick knowing his father had been part of it.

12 Following on the heels of Jackson's decision to send a tip  
13 to the FBI two weeks earlier, Jackson made another wrenching  
14 decision. He recorded his own father talking about his crimes  
15 in his own house. During this trial, you are going to hear some  
16 of those recordings with the defendant speaking in the  
17 defendant's own voice about what he had done.

18 According to the defendant, he explains he started the  
19 fire, admits he brought a gun with him to the Capitol, and says  
20 that "we had a right to carry a weapon and take over Congress,  
21 as we tried to do. We went in, and they scurried like rats and  
22 hid."

23 While the defendant was initially proud and boastful,  
24 around January 10, his mood abruptly changed as the fallout from  
25 the attack on the Capitol started to become clear.

1           First, the leader of the Texas Three Percenters told the  
2       defendant he had been taken into questioning by law enforcement.  
3       The defendant frantically messaged the rest of the group to warn  
4       them, in all caps, "This is not a drill." In the defendant's  
5       own words, he wrote, "The shit is now hitting the fan." He told  
6       the rest of the group to purge, his word, all of their  
7       conversations.

8           The second change on this day was that the FBI had started  
9       arresting rioters around the country, and the FBI's arrests were  
10      making big news, both nationally and locally in the Dallas area.  
11      The defendant started telling his children the FBI was after  
12      him, they needed to be careful what they said, who they talked  
13      to. The defendant worried aloud that he was being watched and  
14      that he'd be arrested next.

15          The next day, January 11 of 2021, the situation came to a  
16      boil. The defendant was distressed. He was agitated. You will  
17      hear he was especially worried about what his children would do,  
18      because he knew they did not share his politics and that they  
19      were upset about his actions in D.C. The defendant told his  
20      children, "Don't turn your back on me. Don't betray me. Don't  
21      put the family in jeopardy." He told his son Jackson and his  
22      16-year-old daughter Peyton that if they turned him in "they  
23      would be traitors. And you know what happens to traitors.  
24      Traitors get shot."

25          Jackson was more involved in the argument than Peyton was.



1 She was playing on her cell phone, like many other teenagers  
2 were probably doing around this time. But when Peyton held up  
3 her phone, the defendant told her if that she were recording him  
4 or posting anything about him he would put a bullet through her  
5 phone.

6 Jackson heard these statements from his dad, and Jackson  
7 was scared. Jackson knew that his father had followed through  
8 on his threats about Congress, and Jackson was worried about  
9 what would come next. Jackson knew his father was angry and  
10 determined, and of course, everyone in the family knew that the  
11 defendant had his guns in the house. Jackson will tell you that  
12 his father slept every night with his loaded .40-caliber  
13 Smith & Wesson handgun in his nightstand and wore it on his hip  
14 every day.

15 Let's talk briefly about your job as jurors. Judge  
16 Friedrich will provide you with lengthy formal instructions at  
17 the end of the trial, as she just said, and that is the law you  
18 need to apply. But you should know the five charges against the  
19 defendant so you can know what to look for and listen for as you  
20 hear and see the evidence over the next several days.

21 The first four charges, as the Judge told you, relate to  
22 Congress's meeting at the United States Capitol on January 6 of  
23 2021, to count the ballots and formally declare Joe Biden the  
24 winner of the presidential election. And we expect to prove to  
25 you that the defendant committed all four of these crimes while

1 on the grounds of the Capitol without even going inside the  
2 Capitol building itself.

3 Count 1, the defendant is charged with transporting  
4 firearms for use in furtherance of a civil disorder. That  
5 charge is for bringing his rifle and handgun from Texas into  
6 D.C. to have ready to use during the attack at the Capitol.

7 Count 2, the defendant is charged with obstructing an  
8 official proceeding. That charge is for corruptly interfering  
9 with Congress's meeting, and it also includes attempting to  
10 interfere with the meeting and helping others to interfere with  
11 the meeting.

12 Number 3, the defendant is charged with being in a  
13 restricted area while armed with a firearm. That charge is for  
14 having a gun on the grounds of the Capitol while the vice  
15 president was inside the Capitol.

16 And Count 4, the defendant is charged with interfering with  
17 police officers during a civil disorder. That charge is for  
18 interfering with those officers who were trying to hold the mob  
19 at bay while protecting that crucial landing on the stairs of  
20 the Capitol.

21 The fifth charge you will consider is for obstructing  
22 justice, and the defendant is facing that charge because once he  
23 was home in Texas, when he thought the FBI was going to come for  
24 him next, he threatened his children to stop them from  
25 cooperating with the FBI.

1           As Judge Friedrich will explain, we, the government,  
2       Ms. Berkower and I, have the burden to prove the defendant's  
3       intent to you beyond a reasonable doubt. Ordinarily, a person's  
4       intent cannot be proved directly, because there is no way of  
5       knowing what a person is actually thinking. But in this case  
6       the evidence will show you that the defendant has actually made  
7       it easy.

8           Before coming to D.C., the defendant told his family and  
9       fellow Texas Three Percenters what he planned to do. On the  
10      drive to D.C. with Rocky Hardie, the defendant said what he  
11      planned to do. While at The Ellipse, he told those people in  
12      the crowd near him what he planned to do. He said he intended  
13      to storm the Capitol, stop Congress's proceeding that was taking  
14      place inside, and drag the senators and representatives inside  
15      out by their heels.

16          And on January 6 of 2021, with his bulletproof vest,  
17      helmet, megaphone, flex cuffs, and holstered gun, the defendant  
18      went to the Capitol and did exactly what he said he was going to  
19      do. With the defendant's help and leadership, lighting that  
20      match that would start that fire, the mob actually succeeded in  
21      storming the building and preventing Congress from having its  
22      meeting on that solemn and important day.

23          Once you have heard all of this evidence, Ms. Berkower is  
24      going to stand before you and ask you to reach the only verdict  
25      consistent with the evidence, and that, ladies and gentlemen, is

1       that the defendant, Guy Reffitt, is guilty.

2             Thank you.

3             THE COURT: All right. Mr. Welch?

4             MR. WELCH: Good morning. I would like to speak to  
5       you for a few minutes about what the evidence will show.

6             The evidence will show that Guy Reffitt never assaulted  
7       anyone. He never tried to assault anyone. He did not help  
8       anyone else commit an assault. He never disarmed an officer.  
9       He never tried to. And he did not help anyone else disarm an  
10      officer.

11            Guy Reffitt never interfered with an arrest. He never  
12      tried to. And he did not help anyone else interfere with an  
13      arrest. He was not armed. He did not threaten harm. He was  
14      not aggressive.

15            He was told to get back. He was hit with pepper balls,  
16      weighted plastic impact projectiles, and pepper spray. As soon  
17      as he was pepper sprayed, that was the end of it. He sat down  
18      on the banister. It lasted approximately five minutes.

19            A group of people pulled him off the railing so that he  
20      would not fall over the edge. They used a piece of tarp to  
21      shield themselves and Mr. Reffitt from more pepper spray. They  
22      tried to help Mr. Reffitt decontaminate himself.

23            Guy Reffitt did not go in the Capitol. He did not break  
24      anything. He did not take anything. Guy does brag. He  
25      exaggerates, and he rants. He uses a lot of hyperbole, and that

1       upsets people.

2               The evidence will show that this case has been a rush to  
3 judgment. The trial -- the rush to judgment -- and it's based  
4 on bragging, and it's based on a lot of hype. This trial will  
5 be about fact versus hype, and it will be about truth versus  
6 fiction.

7               THE COURT: All right. Thank you, Mr. Welch.

8               So I think that the tech person wants us to take a brief  
9 break now to adjust the cameras in this courtroom.

10              So ladies and gentlemen, we're going to take a ten-minute  
11 break, and then we will come back and have the government's  
12 first witness. I want to remind you, no conversations about the  
13 case, no research about the case. We will see you back in ten  
14 minutes.

15              Thank you.

16              (Recess taken from 10:52 a.m. to 11:25 a.m.)

17              (Jury not present.)

18              THE COURT: All right, Counsel. I assume you've heard  
19 about the issues with the feed into the other rooms?

20              MR. WELCH: No.

21              THE COURT: Apparently, there's an issue with the  
22 exhibits. And so the tech people are working on it, and we hope  
23 it's fixed, but it's possible that we could start with this  
24 witness and get a message saying it's not working, in which case  
25 we're going to take an early lunch and come back in an hour and

1 start from the beginning. So just keep that in mind.

2 So I will tell the jurors when they come in that we hope we  
3 don't have to take an early lunch, but it's a possibility, and  
4 we are working on fixing the problem.

5 MR. NESTLER: Yes, Judge, that's fine. I have a  
6 couple preliminary matters for this witness.

7 THE COURT: Okay.

8 MR. NESTLER: This witness is going to be Shauni  
9 Kerkhoff. Three issues to flag for the Court. One is, she is  
10 going to be displaying the four less-than-lethal weapons that we  
11 talked about earlier today to the jury as demonstrative  
12 exhibits. Since she is no longer with the Capitol Police, those  
13 exhibits are remaining with the Capitol police officer. His  
14 name is Jerry Buhaj.

15 So we were going to ask the Court's permission to have  
16 Officer Buhaj sit in the front pew, and when Ms. Kerkhoff wants  
17 to describe a weapon and once it's admitted as a demonstrative,  
18 he will be the one to show it to the jury.

19 THE COURT: What is his name again?

20 MR. NESTLER: Jerry Buhaj.

21 THE COURT: Do you all want me to introduce him to the  
22 jurors and see if anyone knows him? Mr. Welch is saying yes.

23 MR. NESTLER: That's fine for the government. We  
24 would suggest that he be in the courtroom when the jurors get  
25 here, but I defer to the Court.

1 THE COURT: That's fine, he can be there.

2 MR. NESTLER: So he will have those weapons with him,  
3 and we have already had them cleared with the deputy marshals.  
4 They have no ammunition in them. They're just the weapon  
5 itself.

6 THE COURT: And will he take them out after this  
7 witness?

8 MR. NESTLER: Yes.

9 THE COURT: Okay.

10 MR. NESTLER: The next issue is the touch screen  
11 monitor. We understand that the witnesses will not have access  
12 to a touch screen at their seat. We've gone over this with the  
13 court staff. But there is the ability to use the touch screen  
14 monitor here at the podium. We're going to use that very  
15 sparingly during our case because we know how inconvenient it  
16 is, but for this witness, we do think it's important, for two  
17 different exhibits, for her to actually display on the touch  
18 screen where something happened.

19 So I will ask the Court's permission while she's testifying  
20 to step down and come to this touch screen where I'm standing  
21 and make a notation.

22 THE COURT: She's going to come to the podium? That's  
23 the only way we can do that?

24 MR. NESTLER: Yes, unfortunately.

25 THE COURT: Any objection, Mr. Welch?

1 MR. WELCH: No, Your Honor.

2 THE COURT: All right.

3 MR. NESTLER: And then she will resume her seat.

4 That's the only touch screen we have available to us.

5 THE COURT: All right.

6 MR. NESTLER: The final thing is, as I indicated  
7 yesterday, Exhibit 210.1 and 210.2 are radio run transcripts.  
8 When I get to 210.1, I will just make a note to the Court and  
9 ask if the Court wants to provide the cautionary instruction  
10 2.310 about transcripts.

11 THE COURT: Do you all have a copy of that?

12 MR. NESTLER: Not to pass up to the Court. I have a  
13 copy in my outline. It's in the Red Book.

14 THE COURT: All right. We should have that. This is  
15 the instruction that says part of this exhibit is being admitted  
16 for the truth and part to show why the officer took the actions  
17 she did?

18 MR. NESTLER: No. This is the instruction that says  
19 that the exhibit is the audio file and that it comes along with  
20 a transcript to help the jury understand the language better but  
21 the transcript is not evidence.

22 THE COURT: But weren't you all going to work on a  
23 joint cautionary instruction relating to the radio feed? Didn't  
24 we talk about that yesterday, about part of it coming in for the  
25 truth and part of it not?



1           MR. NESTLER: Briefly. Could we have the Court's  
2 indulgence, please?

3           THE COURT: All right.

4           (Government and defense counsel conferred.)

5           MR. NESTLER: Yes, Your Honor. If Your Honor at the  
6 same time could please instruct the jury that Officer Kerkhoff's  
7 statements are being introduced for the truth and the other  
8 statements on the radio file are being introduced to explain  
9 Officer Kerkhoff's actions.

10          THE COURT: Mr. Nestler, can you repeat again the  
11 2.310 instruction?

12          MR. NESTLER: Sure. 2.310 generally says that the  
13 transcripts -- the exhibit is the audio file, and the jury is  
14 being provided with a transcript to aid its comprehension in  
15 listening to the audio file.

16          THE COURT: To aid its comprehension?

17          MR. NESTLER: I believe that's the phrase that the Red  
18 Book uses.

19          THE COURT: All right. We will try to check that.  
20 All right. You're going to flag this up front when we get to  
21 that exhibit?

22          MR. NESTLER: Yes.

23          THE COURT: So again, I don't know, it's quite  
24 possible you get about five questions out and we have to stop.

25          MR. NESTLER: We will try.

1           MR. WELCH: And while we're on the subject, I just  
2 wanted to remind the Court and counsel about the Court's order  
3 that while opposing counsel may begin with some leading  
4 questions to address that one issue --

5           THE COURT: Yes.

6           MR. WELCH: -- that there will not be leading  
7 questions throughout this witness's testimony.

8           THE COURT: Mr. Nestler, you're on board; right?

9           MR. NESTLER: Yes, Your Honor.

10          THE COURT: All right. Should we bring in the jury?

11          COURTROOM DEPUTY: Yes, Your Honor.

12          MS. BERKOWER: Your Honor, I can e-mail the Court the  
13 Red Book jury instruction Mr. Nestler just referenced.

14          THE COURT: We have it now. Thank you.

15          (Jury entered courtroom.)

16          THE COURT: Ladies and gentlemen, in just a minute,  
17 we're going to hear the testimony of Officer Shauni Kerkhoff.  
18 Assisting Ms. Kerkhoff will be another witness -- not another  
19 witness, another individual by the name of Officer Jerry Buhaj,  
20 and he's in the courtroom.

21          And if I can ask you, sir, to turn around and take your  
22 mask down.

23          Can any of you please raise your hand if you recognize  
24 Officer Buhaj?

25          All right. Thank you, sir.

1           Also, ladies and gentlemen, we're continuing to have some  
2           technological problems with the feed on the exhibits going into  
3           the overflow room. We hope the problem's been fixed. If it  
4           hasn't, we will get notice that it hasn't been fixed, and  
5           unfortunately, we will have to take an early lunch if that's the  
6           case. So the government will begin with its witness, and if we  
7           have to stop, we will break, and then we will start over when we  
8           come back.

9           We're hoping that's not the case, but we just don't know.

10          All right. Mr. Nestler, are you ready?

11                 MR. NESTLER: Yes, Your Honor. The government calls  
12           Officer Shauni Kerkhoff.

13                 SHAUNI KERKHOFF, WITNESS FOR THE GOVERNMENT, SWORN

14                         DIRECT EXAMINATION

15                 BY MR. NESTLER:

16           Q.    Good morning, ma'am.

17           A.    Good morning.

18           Q.    With the Court's permission, could you please remove your  
19           mask if you're comfortable.

20           A.    I can.

21           Q.    Could you please state and spell your name.

22           A.    Yes. My first name is Shauni, S-h-a-u-n-i, last name  
23           Kerkhoff, K-e-r-k-h-o-f-f.

24           Q.    And that black bar in front of you is the microphone, so if  
25           you want to get a little bit closer to it at points, that would

1 be helpful.

2 A. Understood.

3 Q. And Ms. Kerkhoff, did you work as an officer with the  
4 United States Capitol Police on January 6 of 2021?

5 A. I did.

6 Q. How long were you an officer with the Capitol Police?

7 A. Approximately four and a half years.

8 Q. Are you still an officer with the Capitol Police?

9 A. I am not.

10 Q. Do you work elsewhere in the federal government now?

11 A. I do.

12 Q. Did your leaving the Capitol Police have anything to do  
13 with what occurred on January 6 or this case?

14 A. It did not. I applied to my current position prior to the  
15 6th.

16 Q. Did you leave the Capitol Police in good standing?

17 A. I did.

18 Q. Thank you. What are Capitol police officers sworn to do?

19 A. We're sworn to protect Congress and its buildings.

20 Q. How many divisions are within the uniformed part of the  
21 Capitol Police?

22 A. There are four divisions.

23 Q. Could you please explain what they are.

24 A. Absolutely. Capital Division protects the Capitol; Senate  
25 Division protects the Senate office buildings; House Division

1 protects the House office buildings; and the Library Division  
2 protects the library and the library congressional office  
3 buildings.

4 Q. What was your day-to-day assignment in January of 2021?

5 A. Day to day, I was assigned to the Senate Division.

6 Q. Are you aware of the phrase "collateral assignment"?

7 A. I am.

8 Q. What is a collateral assignment?

9 A. It is an assignment you do in addition to your regular  
10 duties.

11 Q. Did you have any collateral assignments?

12 A. I did.

13 Q. What was your collateral assignment?

14 A. My collateral assignment was the Civil Disturbance Unit,  
15 less-lethal team.

16 Q. Does the Civil Disturbance Unit go by an acronym?

17 A. We do.

18 Q. What is that?

19 A. CDU.

20 Q. What does the Civil Disturbance Unit do?

21 A. So we respond to anything from a peaceful protest to a  
22 riot.

23 Q. And what kind of training do you have to go through to be a  
24 part of the Civil Disturbance Unit?

25 A. The initial training is a 40-hour basic course that

1 officers do out of academy, and then there's continued training  
2 each year.

3 Q. And you mentioned you were a part of the less-than-lethal  
4 team within the Civil Disturbance Unit; is that right?

5 A. That is correct.

6 Q. What is the less-than-lethal team?

7 A. We operate less-than-lethal launchers to deter any type of  
8 activity related to crowd control.

9 Q. Is there a fancy name for people who are a part of the  
10 less-than-lethal team?

11 A. Yes, there is.

12 Q. What is that fancy name?

13 A. That fancy name is called a grenadier.

14 Q. So you were a grenadier?

15 A. I was.

16 Q. Approximately how many grenadiers were there as of  
17 January 6 of 2021?

18 A. Approximately, we had ten officers and sergeants. So  
19 combined it was ten, officers and sergeants.

20 Q. And you were one of them?

21 A. I was.

22 Q. Let's talk about January 6 of 2021. Do you know  
23 approximately what time you arrived for work that day?

24 A. Yeah. It would be my normal time, approximately 6:00 a.m.

25 Q. Who was your partner?

1 A. My partner was Sergeant Adam DesCamp.

2 Q. And on January 6 of 2021, were you doing your regular  
3 assignment in the Senate Division or your collateral assignment  
4 with the CDU?

5 A. I was assigned to my collateral assignment.

6 Q. And how far in advance approximately, do you know, were you  
7 told you were going to be with the CDU that day?

8 A. Unsure of the exact time, but probably a week prior.

9 Q. What were you wearing when you left your offices on  
10 January 6 of 2021 to go out that day?

11 A. I was wearing what I would define as regular duty attire.  
12 So I had my vest, my duty belt on, my hat, sunglasses, and our  
13 grenadier backpack.

14 Q. What's a grenadier backpack?

15 A. It's a backpack essentially with a place to put a launcher  
16 in the back of it and store the extra ammunition that we might  
17 have.

18 Q. And you use the word "launcher"; is that right?

19 A. I do.

20 Q. What is a launcher?

21 A. A launcher is what we refer to as less-lethal weapons. We  
22 call those launchers.

23 Q. Why don't you call them guns?

24 A. Because I want to make a firm distinction between lethal  
25 force and less-lethal force.

1 Q. Were you carrying your firearm with you when you went out  
2 for duty on January 6?

3 A. I was.

4 Q. And so that is lethal force; is that what you said?

5 A. Yes, that is lethal force.

6 Q. When you left your meeting place, you and your partner  
7 Sergeant DesCamp, where did you first go on your assignment?

8 A. We were assigned to the east front of the Capitol.

9 Q. And at this time I'm going to ask Ms. Rohde to pull up just  
10 on the screen in front of you, Ms. Kerkhoff, Exhibit 603.

11 Do you see that on the screen in front of you?

12 A. On this screen right here?

13 Q. Yes.

14 A. I do not.

15 Q. How about now?

16 A. No. I just see a seal of some sort. It's looking like  
17 it's almost there.

18 Q. Can you see Ms. Rohde's screen where you're sitting?

19 A. I can.

20 Q. Do you recognize what is on her screen?

21 THE COURT: Mr. Nestler, the rest of us can't see  
22 either.

23 MR. NESTLER: I'm just authenticating it now.

24 THE COURT: I'm wondering if we're going to be able to  
25 see it. Mr. Hopkins, can you tell?



1           COURTROOM DEPUTY: I see a screen from whatever the  
2 laptop is.

3           THE COURT: I'm not trying to get ahead of ourselves.  
4 I want you to introduce it. I just want to make sure that we  
5 stop if the rest of us can't see it.

6           Mr. Welch, do you have a problem?

7           MR. WELCH: No. I would like to walk around and see  
8 what's being shown.

9           COURTROOM DEPUTY: I think you see what everyone else  
10 is seeing.

11          MR. WELCH: I would like to see what the witness is  
12 seeing.

13          THE COURT: Yes, you should.

14          Ladies and gentlemen, my apologies again. Apparently,  
15 we're continuing to have technology problems.

16          THE WITNESS: I see it.

17          COURTROOM DEPUTY: I have not published it to the jury  
18 yet.

19          THE COURT: I can't see it. All right.

20          MR. NESTLER: May I proceed, Your Honor?

21          THE COURT: You may.

22          BY MR. NESTLER:

23 Q. Ms. Kerkhoff, do you see the screen in front of you?

24 A. I do.

25 Q. This is Exhibit 603. Do you recognize what this is?

1 A. I do.

2 Q. What is it?

3 A. It's a three-dimensional picture of the Capitol building  
4 and its surrounding area.

5 Q. Is this approximately what the Capitol building looked like  
6 on January 6?

7 A. Yes.

8 MR. NESTLER: The government moves to admit  
9 Exhibit 603 into evidence.

10 THE COURT: Any objection?

11 MR. WELCH: No, Your Honor.

12 THE COURT: The exhibit is admitted.

13 (Government Exhibit 603 received into evidence.)

14 MR. NESTLER: And the government requests that it be  
15 published to the jury.

16 THE COURT: It may.

17 BY MR. NESTLER:

18 Q. Okay. Ms. Kerkhoff, the east front, you indicated  
19 earlier --

20 A. Yes.

21 Q. -- which side of the building is that as we're looking at  
22 this screen?

23 A. It's going to be the area opposite of the stage. So it  
24 would be the furthest side in this picture.

25 Q. So on the back side of the building in this picture, you

1       said?

2       A.     Correct, on the back side.

3       Q.     While you were on the east front, what did you observe?

4       A.     We were standing by on the east front.

5             Approximately what time do you -- are you referring to?

6       Q.     Shortly before you left the east front, what were your  
7       observations?

8       A.     There was a large group starting to form along the bike  
9       rack line we had set up on the front.

10      Q.     What did the bike rack line demarcate?

11      A.     One of our security perimeters.

12      Q.     So the people on the east front that you were observing,  
13      were they inside the secured perimeter on the east side or  
14      outside the security perimeter?

15      A.     At that point they were outside the security perimeter.

16      Q.     Did you have a radio with you when you were on assignment  
17      on January 6?

18      A.     Yes, I did.

19      Q.     Is that standard procedure?

20      A.     It is standard procedure.

21      Q.     Prior to coming in to court today, have you reviewed a  
22      snippet of the radio communications that you heard and that you  
23      spoke on on January 6?

24      A.     I have.

25      Q.     Were those radio communications you heard with your own

1 voice and others authentic, as far as you were aware?

2 A. Yes.

3 MR. NESTLER: The government moves to admit into  
4 evidence Exhibit 210.1.

5 THE COURT: Any objection?

6 MR. WELCH: Without objection.

7 THE COURT: All right. The exhibit is admitted.

8 (Government Exhibit 210.1 received into evidence.)

9 MR. NESTLER: At this time the government would ask  
10 the Court to provide the instruction we discussed earlier.

11 THE COURT: All right. So ladies and gentlemen,  
12 recordings of conversations identified by witnesses have been  
13 received into evidence. Transcripts of these recorded  
14 conversations will be furnished for your convenience and  
15 guidance as you listen to tapes to clarify portions of the tape  
16 which are difficult to hear and to help you identify speakers.

17 The recordings, however, are the evidence in the case; the  
18 transcripts are not. If you notice any difference between the  
19 transcripts and the recordings, you must rely only on the  
20 recordings and not the transcript.

21 In addition, if you cannot determine from the recording  
22 that the particular words were spoken, you must disregard the  
23 transcripts as far as those words are concerned.

24 In addition, Officer Kerkhoff's statements about the radio  
25 file are being admitted into evidence for the truth of the

1 matter. However, the other statements on the radio file, the  
2 statements of other individuals, are not being admitted for the  
3 truth of the matter. They are being admitted solely to explain  
4 Officer Kerkhoff's actions that she took that day.

5 MR. NESTLER: Thank you, Your Honor.

6 I'm sorry. We actually just heard from a colleague in the  
7 overflow courtroom they may not be able to see the screen. I  
8 just didn't know if it was possible for court staff to confirm  
9 that they could or could not.

10 THE COURT: Let's confirm that before we stop, but  
11 that was my fear.

12 MR. NESTLER: Thank you, Your Honor.

13 COURTROOM DEPUTY: He is unable to get that portion  
14 working. So they will not be able to see the exhibits  
15 downstairs.

16 THE COURT: All right, ladies and gentlemen.  
17 Unfortunately, members of the public who are in the other  
18 overflow rooms in the courthouse trying to watch this trial  
19 cannot see the exhibits. Therefore, we are going to take a  
20 one-hour lunch break. It is now 11:52. If you could return to  
21 the jury room, Courtroom 12, at 12:55, we should have the  
22 problem solved by then, and we will resume with this witness.

23 (Recess taken at 11:52 a.m.)

24 (Afternoon session of this proceeding was reported by  
25 Lorraine Herman and is bound under separate cover.)

## 1 CERTIFICATE OF OFFICIAL COURT REPORTER

2  
3 I, Sara A. Wick, certify that the foregoing is a  
4 correct transcript from the record of proceedings in the  
5 above-entitled matter.  
6

7  
8 /s/ Sara A. Wick

March 2, 2022

9 SIGNATURE OF COURT REPORTER

DATE