

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, . Case Number 21-cr-32
Plaintiff, .
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:

For the United States: JEFFREY NESTLER, AUSA
RISA BERKOWER, AUSA
United States Attorney's Office
555 Fourth Street Northwest
Washington, D.C. 20530

For the Defendant: WILLIAM WELCH, III, ESQ.
5305 Village Center Drive
Suite 142
Columbia, Maryland 21044

Official Court Reporter: SARA A. WICK, RPR, CRR
333 Constitution Avenue Northwest
U.S. Courthouse, Room 4704-B
Washington, D.C. 20001
202-354-3284

Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

1	<u>C O N T E N T S</u>	
2	OPENINGS	
3	Preliminary Jury Instructions.....	566
4	Opening Statement by Government.....	576
5	Opening Statement by Defense.....	595
6		
7	TESTIMONY	
8	SHAUNI KERKHOFF	Direct Examination.....
9		602
10	EXHIBITS RECEIVED	
11	Government 603.....	609
12	Government 210.1.....	611
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (Call to order of the court.)

3 COURTROOM DEPUTY: Your Honor, we are in Criminal
4 Action 21-32, United States of America versus Guy Reffitt.5 Your Honor, representing Mr. Reffitt, we have Mr. William
6 Welch, and representing the United States, we have Mr. Jeffrey
7 Nestler, and his colleague is not here yet.8 MR. NESTLER: She went to the restroom real quick,
9 Your Honor.10 THE COURT: I want to run through a couple of matters.
11 I think we have a jury coming in at 9:30.12 So just for the record, last night, I reviewed the parties'
13 peremptory challenge sheets, which will be made a part of the
14 record. The juror numbers represented on the sheet correspond
15 to the representations that have been made in terms of the
16 stages of the peremptory strikes. I double-checked the order in
17 which the jurors were seated, both for the 12 jurors and the
18 four alternates, and all are accurate and reflect the proper
19 seats and order of alternates.20 And neither side has any objection to the 12 jurors and
21 four alternates that have been selected; correct?

22 MR. WELCH: No objection, Your Honor.

23 MR. NESTLER: No objection, Your Honor.

24 THE COURT: Or, of course, to the jurors who were
25 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 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]

19 [REDACTED]

20 [REDACTED]

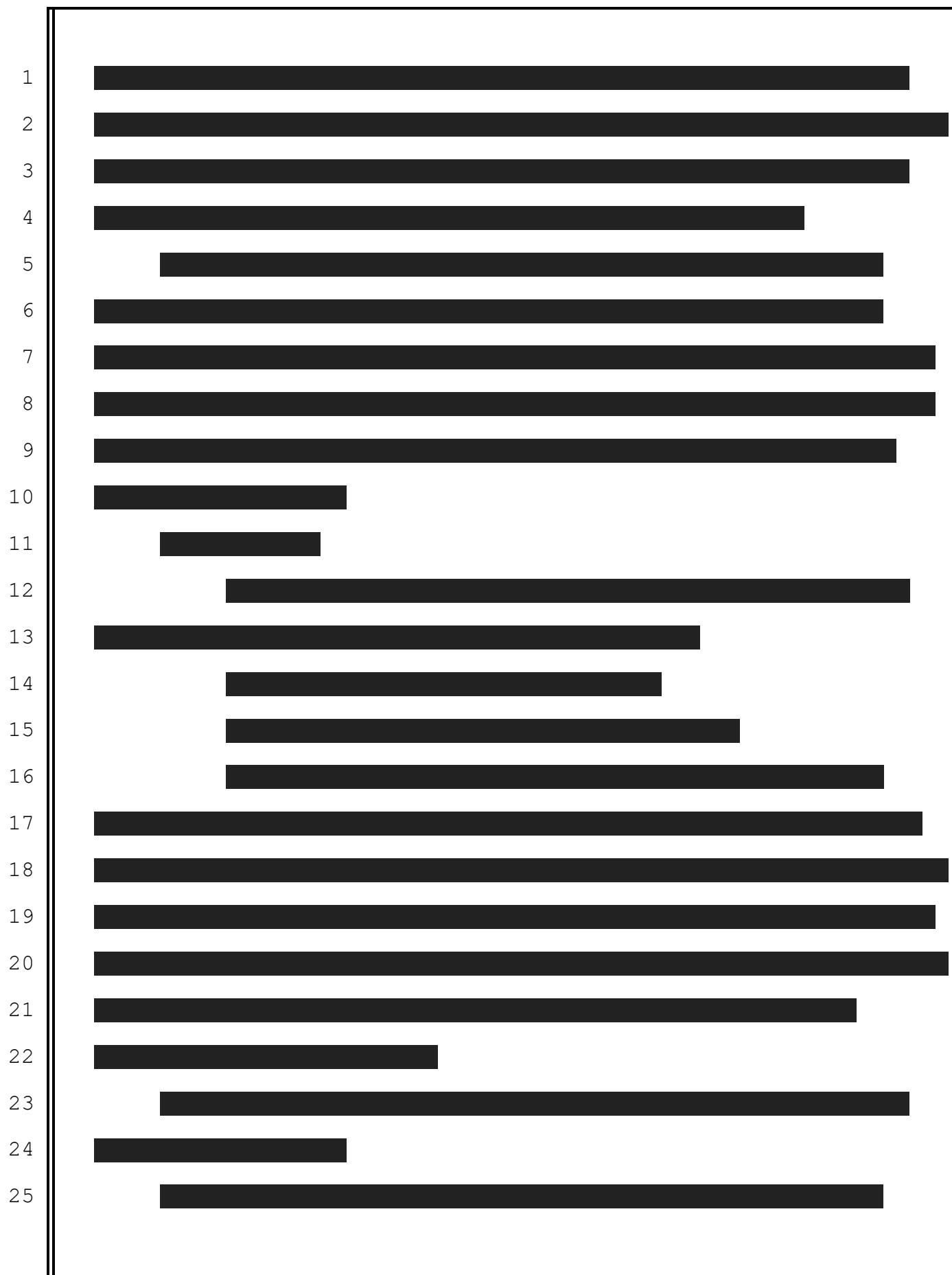
21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 (End of sealed bench conference.)

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

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

10 (Call to order of the court.)

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

15 Anything else we need to address, Counsel?

16 MR. WELCH: No, Your Honor.

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

19 (Jury entered courtroom.)

20 THE COURT: Good morning, everyone. I hope you all
21 had a good evening, and I'm very sorry again for keeping you so
22 late yesterday. If I had known it was going to take so long to
23 select a jury, we would have waited until this morning, but I
24 did want to try to get the larger crowd home and not have to
25 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

themselves from the officers' pepper balls and OC spray.

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

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

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

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

Within the building, the United States Secret Service evacuated Vice President Pence, and the United States Capitol 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, SWEORN

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?

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

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

Mr. Welch, do you have a problem?

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

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

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

THE COURT: Yes, you should.

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

THE WITNESS: I see it.

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

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

MR. NESTLER: May I proceed, Your Honor?

THE COURT: You may.

BY MR. NESTLER:

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

A. I do.

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
23 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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25