

1 STATE OF NEW MEXICO
2 COUNTY OF SANTA FE
3 FIRST JUDICIAL DISTRICT COURT

4 STATE OF NEW MEXICO, ex rel.,
5 MARCO WHITE, MARK MITCHELL,
6 and LESLIE LAKIND,

7 Plaintiffs,

8 vs.

9 NO. D-101-CV-2022-00473

10 COUY GRIFFIN,

11 Defendant.

12 TRANSCRIPT OF PROCEEDINGS

13
14 On the 16th day of August, 2022, at approximately 9:00
15 a.m., this matter came on for Trial on the Merits before the
16 HONORABLE FRANCIS J. MATHEW, Judge of the First Judicial
17 District, State of New Mexico, Division I.

18 The Plaintiffs appeared in person and by Counsel of
19 Record, JOSEPH GOLDBERG, FREEDMAN BOYD HOLLANDER & GOLDBERG, 20
20 First Plaza NW, Suite 7800, Albuquerque, New Mexico 87102; and
21 CHRISTOPHER A. DODD, DODD LAW OFFICE, LLC, 20 First Plaza,
22 Albuquerque, New Mexico 87102; DANIEL A. SMALL, COHEN MILSTEIN
23 SELLERS & TOLL, PLLC, 1100 New York Avenue NW, Fifth Floor,
24 Washington, D.C. 20005; NIKHEL SUS, CITIZENS FOR RESPONSIBILITY
25 AND ETHICS IN WASHINGTON, 1331 F Street NW, Suite 900,

1 Washington, D.C., 2004;

2 The Defendant COUY GRIFFIN, appeared in person.
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APPEARANCES

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PRELIMINARY MATTERS

MARK AARON GRABER

Direct Examination by Mr. Goldberg

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Closing Argument

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1 At which time, the following proceedings were had:

2 * * * * *

3 THE COURT: We're on the record in the matter of
4 State of New Mexico, ex. rel., Marco White, Mark Mitchell and
5 Leslie LaKind versus Couy Griffin, Santa Fe County Cause No.
6 D-101-CV-2022-00473.

7 May I have appearances, please, and I'll take them
8 from the Plaintiff first.

9 MR. GOLDBERG: Yes, good morning, Your Honor.
10 Joseph Goldberg of Freedman Boyd Hollander & Goldberg, for the
11 Plaintiffs. With me is Chris Dodd, Dan Small and Nik Sus.

12 THE COURT: Thank you.

13 Now for the Defendant, please.

14 MR. GRIFFIN: Good morning, Your Honor. Couy
15 Griffin, pro se.

16 THE COURT: Thank you.

17 We are here on the continuation of the trial on the
18 merits.

19 Mr. Goldberg.

20 MR. GOLDBERG: Yes, Your Honor. We call our next
21 witness, Professor Mark Graber.

22 THE COURT: Professor Graber. Professor, if you'll
23 come up here, please.

24 (Witness sworn by the Court.)

25 THE COURT: Please have a seat and speak right into

1 the microphone.

2 DIRECT EXAMINATION

3 BY MR. GOLDBERG:

4 Q. Professor Graber, will you state your full name,
5 please.

6 A. Mark Aaron Graber.

7 Q. Would you spell your full name for the benefit of
8 the court reporter?

9 A. M-A-R-K, A-A-R-O-N, G-R-A-B-E-R.

10 Q. Where are you currently employed, Professor Graber?

11 A. I am employed as a professor at the University of
12 Maryland, Francis King Carey School of Law.

13 Q. How long have you been employed by the University of
14 Maryland School of Law?

15 A. I first started teaching at the law school in 2002.
16 The law school became my primary place of employment in 2007.

17 Q. What's your current position at the University of
18 Maryland School of Law?

19 A. I am presently the Regents Professor of Law -- in
20 the University of Maryland system, Regents Professor of Law.

21 Q. What is the Regents professorship?

22 A. The Regents professorship is the highest honor in
23 the University of Maryland system. Only seven people have
24 accorded the honor. I am the seventh Regents Professor.

25 Q. How long have you been at the University of Maryland

1 faculty?

2 A. I have been at the University of Maryland system for
3 30 years. I began teaching the political science department in
4 College Park in 1993. Starting in 2002, I had a joint
5 appointment, both College Park and the law school. By 2012, I
6 had moved over to full-time in the law school.

7 Q. What do you currently teach?

8 A. I presently teach the Constitutional Law Sequence,
9 Constitutional Law 1, Structures of Government, Constitutional
10 Law 2, and Civil Rights. I also teach a one-credit course in
11 Comparative Constitutional Democracy, and I started teaching a
12 course directly taught by the University of Maryland and the
13 National University of Ireland in Galway, again on topics in
14 Comparative and Constitutional Democracy.

15 Q. I want to ask you a little bit about your education,
16 Professor. Will you describe to the Court your post high school
17 education.

18 A. I received an A.B. from Dartmouth College in 1978.
19 In 1981, I received a J.D. from Columbia Law School. I received
20 an M.A. in philosophy and a Ph.D. in political science at Yale
21 University. The Ph.D. was awarded in 1988.

22 Q. With both a J.D. degree and a Ph.D. in political
23 science, you have an area of specialty?

24 A. I work in an area called American Political and
25 Constitutional Development. In some ways, it's a fancy way for

1 American political and constitutional history. The difference
2 is the people who work in that area were not simply interested
3 in describing what happened in the past, but trying to explain
4 why is it that one of them followed from another. Was it sort
5 of determined, was it contingent, was it a product of human
6 choice? Those are the questions we sort of look at.

7 Q. How many books have you written or are an editor of?

8 A. Fifteen.

9 Q. Are any of those books particularly pertinent to
10 your work in this case?

11 A. The main one is the one I am presently finishing
12 called "Punish Treason, Reward Loyalty." It's a study of the
13 Fourteenth Amendment. The central argument is that while we
14 emphasize Section 1 of the Fourteenth Amendment, which includes
15 the due process clause, the equal protection clause, the
16 privileges, immunities clause, the ones that are frequently
17 litigated in courts across the country, it turns out, with rare
18 exception, the framers of the Fourteenth Amendment were far more
19 concerned with Sections 2, Sections 3 and Sections 4.

20 Part of the book describes their interest, pointing
21 out that the debate that is far more over Section 2 and Section
22 3 than Section 1. I also try to explain their understanding of
23 Constitutions and their political situation as to why they have
24 emphasized Section 2, Section 3 and not Section 1.

25 Q. How many book chapters have you written?

1 A. Thirty-six.

2 Q. How many scholarly articles have you written?

3 A. Eighty-seven.

4 Q. Do you consider yourself to be an expert in the
5 history of the enactment of Section 3 of the Fourteenth
6 Amendment?

7 A. I believe I am an expert. I am one of two to three
8 people who have ever done a thorough reading of that history.

9 Q. Have you ever testified in court as an expert?

10 A. This is my first time.

11 Q. It's great to do it in Santa Fe.

12 I want to turn to the work that you've done in this
13 case. Before I do that, the work that you did do in this case,
14 your investigation and the formulation of your opinions, is that
15 the type of work that you would do in your scholarly research
16 and writing?

17 A. The same.

18 Q. Then let's turn to the work you did in this case.
19 What research were you asked to perform in this case?

20 A. I was asked to answer three questions.

21 Q. Let me stop you for a second.

22 MR. GOLDBERG: Joe, would you bring up
23 Demonstrative Number 1.

24 A. All three questions concern how knowledgeable people
25 in the Nineteenth Century and the persons responsible the

1 Section 3 to the Fourteenth Amendment would understand certain
2 events. First, would they consider an Otero County Commissioner
3 or County Commissioner, in general, to hold an office that was
4 subject to the disqualifying provisions of Section 3 of the
5 Fourteenth Amendment?

6 Second, how did knowledgeable people in the
7 Nineteenth Century understand what an insurrection was, and
8 would they and the persons responsible for Section 3 of the
9 Fourteenth Amendment regard the events of January 6, both
10 immediately before and after, as an insurrection as insurrection
11 was used in the Constitution?

12 And third, assuming it was an insurrection, would
13 there be evidence that Mr. Griffin participated or engaged in
14 that insurrection, again as knowledgeable people of the time
15 understood participate or engaged?

16 Q. And did you do that investigation, Professor Graber?

17 MR. GOLDBERG: Joe, would you bring up Demonstrative
18 2.

19 A. Yes, I did.

20 BY MR. GOLDBERG:

21 Q. Would you describe generally what you did in your
22 investigation?

23 A. The first thing you do is you start with Section 3
24 in the 39th Congress First Session, which is the session that
25 drafted Section 3. I read the entire Congressional globe as

1 well as the Journal of the Joint Committee on Reconstruction,
2 which was responsible for drafting specific language.

3 I then looked particularly at various drafts of
4 Section 3. Section 3 changed in the early months of 1866. I
5 wanted to know why it changed and sometimes why it didn't
6 change. Various proposals were voted down. I then looked at
7 events before 1866 trying to figure out how Americans at the
8 time used words. I spent particular time on loyalty oaths.

9 Because Congress during the Civil War passed a
10 variety of loyalty oaths requiring officials to swear to their
11 loyalty. The language in the loyalty oaths was nearly identical
12 to the language of Section 3, moreover, members of Congress said
13 the language was identical. So in fact, I could assume they
14 understood the language in the loyalty oaths one way, that's
15 probably how they understood Section 3. Then I looked at the
16 history of insurrections in the United States through
17 presidential confirmations, judicial opinions and various legal
18 and political treatises. I then explored how Section 3 was
19 understood immediately after ratification by Presidents, by
20 Courts and by Congress.

21 Then I reviewed the very limited literature on
22 Section 3. Not much is written, but I read it. Given that I
23 was asked to explore the particular status of a New Mexico
24 office under Section 3. I looked at New Mexico Constitutional
25 legislative provisions respecting the office of Otero County

1 Commission. Given I was asked to determine whether
2 knowledgeable people of the time would consider January 6 an
3 insurrection, I looked at various videos of January 6 and
4 various government employees.

5 Q. This type of investigation that you just described,
6 is that the type of research that you and other scholars in your
7 area would do for scholarly research?

8 A. Yes.

9 Q. Were the sources that you reviewed the types of
10 materials that other scholars in your area would look at to
11 reach the opinions and conclusions that you reached are going to
12 describe here?

13 A. Yes.

14 Q. Was the type of investigation and research that you
15 just described the same as any lawyer or, with all due respect,
16 Judge Mathew may do in answering these questions?

17 A. No. There are differences between historians and
18 lawyers, which is not to say I can't show you one historian is
19 more like a lawyer and one lawyer is more like a historian, but
20 there are general differences in the fields. To begin with, I
21 live in the middle Nineteenth Century. Most lawyers only visit.

22 The result is I know a great deal more about the
23 people, the personalities, the events, than a lawyer who was
24 just there because they have a case. To take an example that
25 may be relevant today. The Attorney General of the United

1 States, Henry Stanbery in the Johnson administration
2 vehemently opposed --

3 Q. Let me stop you for a second. The Attorney General
4 of the United States in the Johnson administration in the mid
5 Nineteenth Century.

6 A. In the mid Nineteenth Century. This is Andrew
7 Johnson, not Lyndon Johnson. My apologies.

8 The Attorney General of the United States and the
9 Andrew Jackson administration strongly opposed Section 3 and did
10 their best to limit it. So I reviewed the opinions of the
11 Attorney General with in mind that this will not be an expansive
12 reading.

13 Second, and related difference, historians are
14 interested in context. I'm interested not simply in precise
15 readings, but what is the broader context. So when I talked
16 about my book, one of the crucial features of understanding the
17 middle provisions of the Fourteenth Amendment was the obsession
18 of the Republican party that drafted the Fourteenth Amendment
19 with the possibility of rebel rule.

20 Republicans in 1866 don't think the Civil War is
21 over. They all worry that rebels will rule, that traitors will
22 again gain office. They are particularly concerned that the
23 leadership class of the south, the officeholders before the
24 Civil War not be returned to office after the Civil War.

25 Finally, historians tend to answer different kinds

1 of questions. I am concerned and intend to testify of
2 identifying broad consensus. When there is a broad consensus on
3 something, I will say so. But quite frequently, I discovered,
4 guess what, there is disagreement. A lawyer, particularly a
5 judge who has to decide the case, has to adjudicate the
6 disagreement in the present time. I can simply tell the Court
7 there was a disagreement or people at that time really didn't
8 consider this problem. I don't have to adjudicate it as an
9 historian.

10 Q. Jumping ahead a little bit. When you offer opinions
11 to the Court in this case, would it be fair to say that the
12 Court can assume then that you are offering opinions based on a
13 broad consensus, you are not making it up?

14 A. Yeah. Everything I will testify to, I found in
15 judicial opinions, presidential proclamations, legal treatises,
16 political treatises of that sort to be powerful agreements.

17 Q. Did you reach opinions on the basis of the research
18 that you have described to the judge?

19 A. I did.

20 MR. GOLDBERG: Joe, will you bring up Demonstrative
21 Exhibit 3.

22 BY MR. GOLDBERG

23 Q. And Professor, will you describe generally what the
24 opinions were. Summarize the opinions.

25 A. The first conclusion was that knowledgeable people

1 at the time, particularly the persons responsible for Section 3,
2 would have regarded County Commissioners -- indeed did regard
3 County Commissioners as state, executive or judicial officers as
4 state, executive or judicial officers was understood in Section
5 3.

6 County Commissioners in Otero County take an oath of
7 allegiance to support the Constitution of the United States. If
8 we examine their understanding of a state officer and an officer
9 in general, an executive in judicial, we'll see that County
10 Commissioners were consciously covered.

11 Second, there was a consensus in the Nineteenth
12 Century on what an insurrection was. An insurrection occurred
13 when there was an assemblage of people resisting the enforcement
14 of any or all federal laws. That body had a common public
15 purpose, and they were seeking to achieve their purpose by
16 violence, force and intimidation.

17 My review of the events of January 6 --

18 Q. Can I stop you for a second. You said violence,
19 force and intimidation.

20 A. My apologies.

21 Q. That's my job. We want to make a good record.

22 THE WITNESS: My apologies, Your Honor. First time
23 nervousness.

24 A. Again, we see January 6 there was clearly an
25 assemblage. They were trying to resist the legal processes that

1 would have certified a Biden presidency. They had a public
2 purpose. They were trying to stop what they believed was a
3 stolen election. And I saw substantial evidence of violence,
4 force, and here I do mean and intimidation.

5 Third, there is substantial evidence that
6 Mr. Griffin participated in the events of January 6, as
7 knowledgeable people in the Nineteenth Century would have
8 understood participation. One of the principles of Nineteenth
9 Century law is in treason, there are no accessories. Everybody
10 who is involved in an insurrection is a principal actor.

11 We'll see that Mr. Griffin, whether the evidence was
12 in lead with the other insurgents, acted in concert with them
13 and was aware of the violence and intimidation around him. We
14 will see evidence of overt acts that aided and support the
15 insurrection.

16 Q. Thank you, Professor Graber. I want to turn now
17 then to your first opinion. That's the opinion that an office
18 like Otero County Commissioner would be subject to the
19 restrictive strictures of Section 3.

20 Explain to the Court, where did you start?

21 A. I started with, again, the language of the document
22 and tried to work out how people at the time would understand
23 the language. I particularly focused on proposals to change the
24 language.

25 Q. Let me stop you for a second.

1 MR. GOLDBERG: Joe, would you bring up Demonstrative
2 Exhibit 4.

3 BY MR. GOLDBERG:

4 Q. Go ahead.

5 A. As this exhibit shows, shows two proposals to
6 change. First, Democrats made a motion that Section 3 should be
7 limited to people in office. That motion was rejected. There
8 was another motion to say only people who held federal offices
9 should be subject. That was rejected.

10 There was another motion not listed here saying
11 there should be a ten-year time limit. If you held office
12 before 1851, you weren't disqualified. That was rejected.
13 Moreover, if we look at earlier versions of Section 3, we see
14 references to the late rebellion or references specifically to
15 the Civil War. Those references were taken out of the final
16 version. The final version speaks on any insurrection or
17 rebellion and not simply the Civil War as a particular
18 insurrection or rebellion.

19 Q. You talked about two examples that are on
20 demonstrative exhibit, and you said these proposals were made by
21 Democrats.

22 Were Democrats supportive of Section 3 of the
23 Fourteenth Amendment or were Democrats generally resistant to
24 Section 3?

25 A. With the exception of Section 4, Democrats uniformly

1 opposed all provisions of the Fourteenth Amendment.

2 Q. Was there other information that you uncovered in
3 your investigation that supports your opinion that the language
4 of Section 3 should be interpreted broadly?

5 MR. GOLDBERG: Joe, please bring up Demonstrative
6 Exhibit Number 5.

7 A. As this Demonstrative points out, I researched the
8 post ratification history of Section 3 and discovered that the
9 courts, the federal, executive and Congress, agree that county
10 offices who took an oath of allegiance to the United States were
11 covered by Section 3.

12 So there are two cases on Section 3 in the courts.
13 Those cases concern specifically county officers, but the Court
14 said any officer, any officer who takes an oath of allegiance to
15 the United States, is subject to Section 3.

16 The Johnson administration disagreed. Henry
17 Stanbery and two opinions of the Attorney General said, while I
18 agree that county officers who take an oath of allegiance to the
19 United States are covered by Section 3. Section 3 does not
20 cover municipal officers, say, the mayor of Santa Fe, who have
21 taken an oath of allegiance.

22 Congress disagreed with Stanbery and passed the
23 Third Reconstruction Act. Lyman Trumbull, Senator from
24 Illinois, was the chief sponsor of the Act, chair of the
25 judiciary committee, and in introducing the bill that became the

1 Third Reconstruction Act. He said the bill agrees with Stanbery
2 that all county officials who take an oath of allegiance to the
3 United States are covered, but we believe municipal officers who
4 implement state law or have judicial functions are also covered.

5 So the important take-home points is there was a
6 broad consensus on county officials. There was not a consensus
7 on municipal officials.

8 Q. In your investigation, Professor, did you find any
9 dissent on whether Section 3 applied to county officials who
10 otherwise then would satisfy the criteria of Section 3 taking an
11 oath of office, exercising executive and judicial functions?

12 A. I found no case, no legal treatise, no opinion of
13 the Attorney General or the Johnson administration or no
14 Republican support of the Fourteenth Amendment who claim that
15 county officials were not covered.

16 Q. Let's turn to the part of your opinion that the
17 drafters of Section 3 and other knowledgeable people in the
18 Nineteenth Century would interpret this broad language to cover
19 the Otero County Commission office, or generally County
20 Commission offices in the State of New Mexico. How did you
21 reach that opinion?

22 MR. GOLDBERG: Joe, please bring up Demonstrative
23 Exhibit 6.

24 A. Well, I looked at, again, the language of Section 3.
25 It speaks of executive or judicial officers of any state. This

1 means we need to explore, and I needed to explore what's an
2 executive or judicial, what's an office, what is a state for
3 these purposes.

4 What I discovered first was a crucial marker of a
5 state office was, was this office created by the state
6 constitution or state law and did the state law of the state
7 constitution declare this person to be an officer. Then I
8 looked at Article 10 of the New Mexico Constitution.

9 And first thing is, Article 10 authorizes the
10 creation of County Commissioners which are then created by
11 statute. Article 10 refers to those people as officers.

12 I then looked to see do Otero County Commissioners
13 have executive or judicial functions. It's high school civics
14 that the executive implements or executes the law. I saw
15 through New Mexico law and through the websites of various
16 County Commissions, including Otero County Commission, that
17 County Commissioners in New Mexico are responsible, among other
18 things, for implementing state election law. They are
19 responsible for implementing state highway construction law.

20 Perhaps of more importance to many citizens, they
21 are responsible for the county participation in the State Fair.
22 All are executive functions. All also require a degree of
23 discretion, which has historically been considered a marker of
24 an officer as opposed to an employee

25 Q. In your investigation, did you see other evidence of

1 the Otero County Commission acting like an executive officer or
2 office?

3 A. My conclusions were buttressed by a review of the
4 minutes of the Otero County Commission that I found on the Otero
5 County Commission website.

6 MR. GOLDBERG: Joe, please bring up Plaintiffs'
7 Exhibit 5 -- 7. Thank you, Joe.

8 Let me try that once more, Your Honor.

9 BY MR. GOLDBERG:

10 Q. Let me show you --

11 MR. GOLDBERG: And Joe, would you bring up
12 Plaintiffs' Exhibit 7.

13 BY MR. GOLDBERG:

14 Q. What does this show you?

15 A. Well, what we see here is the Otero County
16 Commission approving payments. Now, it's a very classic
17 division of function in Anglo-American law that, while the
18 legislature or a body with legislative functions may appropriate
19 funds, only the executive may spend the fund.

20 So a simple example: The legislature may say that
21 we're going to pay our highway construction workers \$25 an hour,
22 but it is the executive who determines how many hours I work on
23 highway construction and it's the executive who cuts the check.

24 Q. Let me clear up the record. This morning I'm making
25 a terrible record.

1 MR. GOLDBERG: What is on the screen is
2 Demonstrative Number 7, but Demonstrative Number 7 are pullouts
3 from Plaintiffs' Exhibit 5. I want to make sure the record is
4 clear on that, Your Honor. And I apologize.

5 BY MR. GOLDBERG:

6 Q. Let's turn to your second general opinion, the one
7 that addresses insurrection, as used in Section 3 of the
8 Fourteenth Amendment. Please explain to the Court how you
9 reached that opinion.

10 A. There are three wonderful websites or databases.
11 The first is by the American Presidency Project out of
12 University of California, Santa Barbara. It contains all the
13 official papers of every president. What I did was I typed in
14 insurrection from George Washington to William McKinley, looked
15 at the results, read the results.

16 I then went to Westlaw, which I suspect Your Honor
17 knows has all cases decided in American history by both state
18 and federal courts. Again, I went from about 1789 to 1876, hit
19 insurrection. So what happened? I looked at the cases.

20 Then there is online something called "The making of
21 modern law." It comes out of Harvard Law School. It is a
22 surgical collection of every legal treatise written before 1926.
23 Hit insurrection, keywords. So what happened? It built up a
24 collection of events that Americans in the Nineteenth Century
25 described as insurrections and the elements that Americans in

1 the Nineteenth Century saw constituted an insurrection.

2 Q. In that investigation, did you come up with a number
3 of incidents of insurrections?

4 A. I found numerous incidents that were described as
5 insurrection by people living in the Nineteenth Century. And I
6 do want to emphasize this is not me coming up with a definition
7 of insurrection and then applying it to events that were not
8 called insurrection.

9 Q. Let me stop you for a second.

10 MR. GOLDBERG: Joe, would you bring up Demonstrative
11 Number 8.

12 BY MR. GOLDBERG:

13 Q. Go ahead, Professor.

14 A. All the incidents on this demonstrative were called
15 insurrections by the people living at the time.

16 Q. So we have a record, would you just go through, not
17 in detail, but just describe each one of these incidents so we
18 have a record on them.

19 A. Well, first in 1787 we have Shays' insurrection,
20 which is resistance by Western Massachusetts farmers to the
21 programs by which Massachusetts was attempting to pay the
22 Revolutionary War debt.

23 We have the Whiskey insurrection in Western
24 Pennsylvania in 1793-'94, which is resistance to an excise tax
25 on whiskey and distilling.

1 We have Fries' insurrection, 1799, which is
2 resistance in Western Pennsylvania to increase taxation to
3 support the American undeclared war with France.

4 We have the Aaron Burr insurrection in the first
5 decade of the Nineteenth Century, which concerned Burr's alleged
6 attempt to create an independent state in the west.

7 We have the Dorr insurrection in Rhode Island in the
8 1840s, which concerned an effort by a group of Rhode Islanders
9 to form a separate state Constitution.

10 We have the rescue of islanders of fugitive slaves
11 in the 1850s, which was described as an insurrection by many
12 prominent authorities at the time.

13 There was a Mormon insurrection in Utah in 1857.

14 John Brown's raid was described as an insurrection.
15 Indeed, Brown was hung for being an insurrectionist by Virginia
16 authorities.

17 Americans describe the Civil War as an insurrection.
18 Members of Congress in particular were more likely to use the
19 phrase "insurrection" than "war."

20 Then clan and White Supremacists, otherwise known as
21 redeemer violence in the post-reconstruction south, was often
22 described by President Grant as an insurrection.

23 Finally, unsurprisingly, shortly after the first
24 person was enslaved, there was slave revolutions. And slave
25 revolutions throughout American history were described as

1 insurrections.

2 Q. Let me ask you a couple of questions. Let's take
3 Shays' insurrection and the Whiskey insurrection and Fries'
4 insurrection, the first three. In any of those insurrections
5 were the people involved seeking to overthrow the government of
6 the United States?

7 A. Certainly not in the Whiskey insurrection and in the
8 Fries' insurrection. There is some dispute about the precise
9 intentions in the Shays' insurrection.

10 Q. Thank you, Professor. I will want to discuss some
11 of these insurrections more fully with you, but before I do I'd
12 like you to describe what types of historical materials did you
13 review about these insurrections?

14 A. As noted, I looked first at official presidential
15 documents. I then looked at various cases that concern whether
16 someone could be punished for insurrection. I then looked at
17 the legal treatises and political treatises of the time that
18 discussed insurrection, treason, the meaning of levy war against
19 the United States.

20 Q. Did you find much case law or other judicial
21 material that dealt with insurrections in the latter half of the
22 Eighteenth Century and the first three-quarters of the
23 Nineteenth Century?

24 A. With exception of Shays' rebellion, which took place
25 before the ratification of the Constitution, and the Mormon

1 rebellion in Utah, I found each of the insurrections came with
2 several judicial opinions in the case of the Civil War, numerous
3 jury charges by judges setting out what they believe were the
4 elements of insurrection.

5 Q. Were there civil cases as well as criminal cases
6 that addressed the issue of what is an insurrection?

7 A. There were.

8 Q. How does that question arise in civil cases?

9 A. It turned out that persons who brought slaves and
10 needed those slaves transported insured them. But insurance
11 companies did not want to pay if the slave died not from natural
12 causes but because of an insurrection. So in fact, there are a
13 lot of cases, you'll find them in Westlaw, where there is a
14 lawsuit by a slave owner against an insurance company where the
15 slave owner claims the slave died from natural causes, pay up.
16 The insurance company said, no, there was an insurrection, we
17 don't have to pay.

18 Q. So these insurance case are not a uniquely Twentieth
19 Century phenomenon, Your Honor. Of course, I'm not surprised at
20 insurance companies in the Nineteenth Century didn't like to pay
21 either.

22 What did your review of these historical materials
23 lead you to conclude, Professor?

24 MR. GOLDBERG: Joe, would you bring up
25 Demonstrative Number 9.

1 A. A very broad consensus existed among knowledgeable
2 people that an insurrection had four elements: An assemblage of
3 persons tending to prevent or resist the execution of any or all
4 federal laws of public or general purpose, and the conduct must
5 involve violence, force or intimidation.

6 BY MR. GOLDBERG:

7 Q. Again, I want to emphasize this was a consensus
8 among knowledgeable people at that time?

9 A. Yes, among presidents, judges, legal treatise
10 writers, political treatise writers.

11 Q. Why do you say, as you do in Number 2, intended to
12 prevent the execution of one, some, many or all federal laws?
13 Why did you limit it to federal laws here?

14 A. Section 3 only refers to an insurrection against the
15 federal government. If I were to engage as a former office
16 holder -- I'm not -- but if I were a former officeholder to
17 engage in an insurrection against the State of New Mexico, I
18 could be punished and sanctioned by New Mexico laws. But that
19 would not be a disqualification for federal office under Section
20 3.

21 So John Brown, who was found guilty of insurrection
22 against Virginia, had he been a public official before the Civil
23 War, had he not been hung and lived after the Civil War, he
24 would not be disqualified under Section 3.

25 Q. In element Number 3 on Demonstrative 9, you talk

1 about a "public closed." Would you explain to the Court what
2 you mean by a public purpose?

3 A. Both the judges and the treatises were clear that
4 enact, prevent or resist the execution of federal law that was
5 done for a private or personal reason was not an insurrection.
6 So there is a case that was often cited, *United States versus*
7 *Hoxie*. Hoxie's boat was seized by custom agents for violating
8 the Embargo Act. Hoxie violently retrieved his boat, killing a
9 federal custom agent in the process. He was tried for
10 insurrection. The Judge said no. The evidence shows Hoxie just
11 wanted his boat back, that he was not resisting the Embargo Act,
12 in general. He didn't think the Embargo Act was
13 unconstitutional, he didn't think it was oppressive. He just
14 wanted his boat back.

15 Q. Finally in element Number 4, you talk about
16 intimidation by numbers. What do you mean by intimidation by
17 numbers?

18 A. Again, legal authorities, the knowledge of the
19 people are clear. There needs to be the threat of force but
20 there need not be force. So in Fries' insurrection, angry
21 Pennsylvania farmers marched to the tax collector. The tax
22 collector looks at the group and gets out of town. Does not
23 enforce the law. Fries was convicted and sentenced to death as
24 an insurrectionist because he resisted the execution of the law
25 through intimidation and intimidation by numbers. It didn't

1 matter that there was no evidence that anyone fired a shot,
2 anyone threw a stone, anyone threw a punch.

3 Q. In your research, did you find any disagreement
4 about these elements of insurrection you just described?

5 A. I did find one treatise, and it's a prominent
6 treatise that suggested the American census was not a good one
7 by Joel Prentiss Bishop. What Bishop said was "I agree that
8 this is the law of England, that Americans have adopted the law
9 of England, but I, in fact, would define insurrection more
10 narrowly so it would require the full overthrow of the federal
11 government."

12 Q. Was there any general acceptance of that view?

13 A. After discovering that treatise, I did a search for
14 the next 20 years to see if any judge, any treatise, any
15 president, adopted Bishop's understanding, either directly by
16 citing Bishop or indirectly by saying that's the law. I could
17 not find an example before 1876.

18 Q. So did you stop in your investigation there when you
19 found this consensus on these elements or did you do further
20 research?

21 A. Well, I looked into the facts.

22 Q. Bad question. In your research, did you find any
23 consensus as to what was not an insurrection?

24 A. Okay. I'm sorry.

25 Q. Nope. That's because I changed the nature of the

1 question.

2 A. Okay. Yes. One of the things the law is clear on
3 is until condition one is met, there is no insurrection. So
4 until there is an assemblage of persons. There may be a
5 conspiracy if you and I say, everyone, let's meet in the parking
6 lot to resist federal parking laws. That is a conspiracy to
7 engage in insurrection, but it is not an insurrection, as
8 understood by Section 3 of the Fourteenth Amendment or by
9 knowledgeable legal people at the time.

10 Q. Anything else?

11 A. Well, the other thing I discovered is it doesn't
12 matter what the motive is. So we go back to public purpose.
13 Good motive, bad motive, doesn't matter. So take fugitive
14 slaves. We might agree that freeing slaves is a moral
15 obligation. Many people then and, by the way, today think the
16 Fugitive Slave Act of 1850 was unconstitutional. The mere fact
17 that you were acting because you believed a law
18 unconstitutional, because you believed the law burdensome, but
19 you firmly believe you were acting for the good of your country,
20 that was, in fact, not a defense to insurrection, but an
21 element. It was the public purpose element. You were not
22 acting for personal or private reasons.

23 Q. Let's go back and discuss several of the specific
24 and Eighteenth and Nineteenth Century insurrection. Can you
25 describe to the Court Fries' insurrection. How do you pronounce

1 Fries? Is it Fries or Fries (pronouncing)?

2 A. I'm not entirely sure.

3 Q. No consensus.

4 A. There doesn't appear to be a consensus.

5 Q. Go ahead and please describe it.

6 A. As noted, the United States fought an undeclared
7 Naval war with France in the late 1790s. That required taxes to
8 be raised, and the burden fell very heavy on farmers. Western
9 Pennsylvania farmers organized, they harassed tax collectors.
10 They intimidated tax collectors. Some tax collectors fled.
11 Others would come out and sign a pledge, don't worry, I'm not
12 going to enforce the federal tax.

13 Fries was arrested, tried and convicted for
14 insurrection and sentenced to death. He was then pardoned by
15 President Adams, President John Adams, I, made clear in the
16 pardon that he regarded Fries as a very wicked insurrectionist,
17 but he said Fries has repented, he has agreed to obey the law.
18 And I think as president, it's best to forgive.

19 Q. What was important to you for your work in this case
20 from the Fries insurrection?

21 A. The Fries' insurrection is the first time it becomes
22 clear that the American law of treason, insurrection, levying
23 war will borrow from the English understanding of the same words
24 in that it will have all four elements in particular: The
25 legal authorities are clear that it didn't matter that Fries had

1 no intention of going to Washington and overthrowing the
2 government.

3 What was important was he was intending to resist
4 the execution of a single federal law, had a public purpose and
5 his conduct involved violence, force and intimidation.

6 Q. Let's turn to the Aaron Burr insurrection. Would
7 you describe briefly to the Court that insurrection.

8 A. The details of the Aaron Burr insurrection are still
9 controversial among historians. They didn't fully know what was
10 going on. We don't really know what was going on. What we know
11 is Aaron Burr was the third vice president of the United States.
12 But when President Jefferson ran for office in 1804, he dropped
13 Burr from the ticket. Burr went west seeking his fortune.
14 Exactly what he did has never been fully determined, but
15 Jefferson believed Burr was attempting to create an independent
16 state in the western United States. Jefferson had Burr
17 arrested, tried for treason. He was tried in the Circuit Court
18 of Richmond, Virginia. The trial was presided over by Chief
19 Justice John Marshall, acting as a Circuit Court judge. And in
20 part, because of some things Marshall said, including the notion
21 that a conspiracy to engage in insurrection is not an
22 insurrection, Burr was found not guilty.

23 Q. What was important to you from the Burr
24 insurrection?

25 A. Two things stood out from the Burr incident. First

1 the Burr trial itself. Marshall endorsed, Chief Justice of the
2 United States, all four elements of an insurrection. The
3 assemblers, can be a single law, public purpose, violence, force
4 or intimidation by numbers. Second, the companion case to Burr,
5 more minor people case called Ex Parte Bollman and Ex Parte
6 Swartwout, Marshall made clear that Americans had adopted the
7 English rule I spoke of earlier in treason, there are no
8 accessories. So if I were to sell someone here a gun knowing
9 they were going to murder their neighbor, I might be considered
10 an accessory to the murder, but not the murderer.

11 According to American law as spelled out by Marshall
12 and adopted by other knowledgeable people at the time, if I were
13 to sell someone a gun knowing they were going to use that gun in
14 an insurrection, I am an insurrectionist just as much as the
15 person who uses the gun.

16 Q. Let's turn to the incidents of insurrections that we
17 labeled as the "Rescue of Fugitive Slaves." Would you describe
18 that to the judge.

19 A. There had always been rescue of fugitive slaves. We
20 know of the underground railroad. Those rescues became more
21 intense and more violent after Congress passed the Fugitive
22 Slave Act of 1850. There was a violent slave rescue in
23 Christiana, Pennsylvania, which resulted in several people being
24 brought to trial for insurrection against the United States.

25 There were violent slave rescues in Boston which led

1 to Supreme Court Justice Benjamin Curtis and District Judge
2 Sprague charging grand juries of the rules of indicting the
3 people who engaged in these violent fugitive slave rescues.

4 Q. What was important to you from your review of these
5 incidents of the rescue of fugitive slaves resulting in
6 consideration of whether they were insurgents?

7 A. First --

8 Q. I said insurgents, I meant insurrectionists.

9 A. First that both Justice Robert Greer, Supreme Court
10 Justice Robert Greer sitting on circuit and Supreme Court
11 Justice Benjamin Sprague and the District Court Judges involved
12 in the case endorsed the previous understanding of insurrection
13 that I spoke about, endorsed all four elements.

14 Second is, in fact, their opinions were frequently
15 quoted in Grand Jury charges during the Civil War. This told me
16 that, in fact, the understanding of insurrection in 1810
17 remained the understanding during the Civil War and immediately
18 afterwards.

19 A second point is that these cases emphasized and
20 the judges emphasized to the Jury we don't care what you think
21 of the morality of slavery. We know Curtis thought slavery
22 immoral. The mere fact that people were resisting the execution
23 of a single law for the best of moral reasons still made what
24 they were doing under the understanding of the Nineteenth
25 Century an insurrection.

1 Q. We now are at the point in your investigation where
2 you've come up with your consensus of what constitutes an
3 insurrection to knowledgeable people in the Nineteenth Century.
4 But you then turn to whether the events of January 6 satisfy
5 those elements.

6 Would you describe to the Court what you did to
7 reach that part of your opinion?

8 A. Well, preliminarily --

9 MR. GOLDBERG: Joe, would you bring up Demonstrative
10 Number 10.

11 A. Obviously, living in the United States, you hear
12 some things and you watch some television on January 6. What I
13 tried to focus on, however it was, not what I learned simply
14 because I happen to watch television every now and then, but
15 what I learn from several sources that a scholar would use,
16 namely there are official reports on January 6. One by the
17 Senate, several by the GAO. I then watched videos, one produced
18 by the Congressional Committee on January 6. The others are
19 exhibits in this trial and I tried to make up my mind based on
20 that information.

21 Q. Please identify for the judge your findings based on
22 this investigation that you made.

23 A. Based on these documents and sources, first somewhat
24 obvious, there was an assemblage. Many people were involved in
25 the attack on the Capitol and many of those people were acting

1 in concert. Their purpose was to prevent or resist the
2 execution of those federal laws that would lead Congress to
3 declare that Joe Biden had been elected president.

4 Their purpose was a public one. The protestors
5 believed the election had been stolen, that there had been
6 fraud. They were not there for any private or personal reason.
7 And the evidence showed numerous instances of violence, force
8 and intimidation

9 Q. Let's talk about some of the evidence of this. What
10 evidence did you see of violence?

11 A. I read reports of documented violence. I watched
12 videos which depicted violence.

13 Q. Let's talk about the reports first. I want to turn
14 to the Senate report that you referenced. Joe, would you bring
15 up Demonstrative Number 11.

16 MR. GOLDBERG: Your Honor, Demonstrative Number 11
17 and some following demonstratives are excerpts from Plaintiffs'
18 Exhibit 12, which is depicted on the left-hand side of
19 Demonstrative 11.

20 BY MR. GOLDBERG:

21 Q. Professor, would you explain what you learned from
22 the Senate report with respect to violence?

23 A. The report says that -- highlighted, indicated, that
24 on January 6 there was a violent attack on the U.S. Capitol. It
25 declares there were attacks on members of law enforcement and

1 there were threats to the safety and lives of government
2 officials.

3 MR. GOLDBERG: Joe, would you bring up Demonstrative
4 Exhibit 12. This is still from Plaintiffs' Exhibit 12. This is
5 the Senate report, Your Honor.

6 BY MR. GOLDBERG:

7 Q. Professor Graber, would you explain what you learned
8 from this part of the Senate report.

9 A. Well, first, this report speaks of an assemblage,
10 rioters acting in concert to breach the upper West Terrace, to
11 breach the final barricade and to smash windows. Not only are
12 they acting in concert, but they are using violence and force to
13 achieve their objectives.

14 MR. GOLDBERG: Joe, would you please bring up
15 Demonstrative Number 13.

16 Your Honor, again, this is still from Exhibit 12.

17 BY MR. GOLDBERG:

18 Q. Explain to the Court what you learned from this part
19 of the report.

20 A. Again, we have an assemblage acting in concert. The
21 rioters breached the building. We have successful, at least
22 temporarily, resistance to the implementation or the execution
23 of federal law. Congress is adjourned and evacuated. We have
24 absolutely brutal, violent, physical abuse.

25 Q. Why was it important to you, Professor, that these

1 findings are made by a government report in this case, the
2 Senate?

3 A. It's an official report. It's not something I watch
4 on the news. These are our elected officials. Official
5 documents are things historians would use. For example, I spoke
6 earlier of the opinions of the Attorney General in 1866, 1867.
7 I would presume when future historians want to examine what
8 happened on January 6, these are the sort of documents they'll
9 turn to.

10 Q. You spoke also of other reports, GAO reports; is
11 that correct?

12 A. Yes.

13 Q. GAO stands for?

14 A. Government Accountability Office.

15 Q. Is it correct you looked at three separate GAO
16 reports?

17 A. That's correct.

18 Q. Let's turn to the first GAO report entitled "Capitol
19 Attack: Federal Agencies' Use of Open Source Data and Related
20 Threat Products Prior to January 6, 2012 [sic]."

21 MR. GOLDBERG: That's Plaintiffs' Exhibit 13, Your
22 Honor.

23 Joe, would you bring up Demonstrative 14.

24 BY MR. GOLDBERG:

25 Q. Would you explain with reference to Demonstrative 14

1 this part of the GAO report, Plaintiffs' Exhibit 13, how that
2 influenced your investigation and opinion.

3 A. As I have noted, the assemblage has to have an
4 intent. What this indicates for at least some members of the
5 assemblage, there was an intent to achieve goals through
6 violence, force and intimidation that was formed prior to
7 January 6, 2021.

8 Q. What was your understanding of what a threat product
9 is, as used in this report?

10 A. Well, understand a threat product is simply a
11 government agency says -- writes a report saying we've noticed
12 in social media and elsewhere a series of threats, violence,
13 force and intimidation to be used to prevent the certification
14 of the election of President Elect Biden.

15 MR. GOLDBERG: Joe, would you bring up Demonstrative
16 15. This is the same GAO report that is Plaintiffs' Exhibit 13.
17 BY MR. GOLDBERG:

18 Q. Would you explain to the Court what -- what was
19 important from this part of the GAO report?

20 A. Well, in the 30 highlighted words, we see all four
21 elements of what knowledgeable people in the Nineteenth Century
22 would regard as an insurrection. We see individuals traveling
23 to Washington, D.C. as a group. They have a plan to disrupt the
24 counting of the electoral votes. They have a public motive,
25 Stop the Steal. They believe the election was fraudulent.

1 Finally, the report speaks of violent actions. So all four
2 elements are there in those 30 words or so.

3 Q. Now I want to turn to the next GAO report,
4 Plaintiffs' Exhibit 14.

5 MR. GOLDBERG: Joe, would you bring up Demonstrative
6 16.

7 BY MR. GOLDBERG:

8 Q. Would you explain to the Court what you learned from
9 this GAO report.

10 A. This passage speaks to the scope of the violence
11 that an additional 2,000 personnel were needed to quell the
12 violence. This suggests the violence was not one, two or three
13 people who got out of hand during the protest, but was integral
14 to the protest itself.

15 MR. GOLDBERG: I want to turn to the final or the
16 third GAO report, and that is a report, Your Honor, called
17 "Capitol Attack: Additional Actions Needed to Better Prepare
18 Capitol Police Officers for Violent Demonstrations."

19 Your Honor, that's Plaintiffs' Exhibit 15.

20 Joe, would you bring up Demonstrative 17.

21 BY MR. GOLDBERG:

22 Q. Would you explain to Judge Mathew what was important
23 to you from this part of that GAO report?

24 A. Again, we go through the elements. Thousands of
25 demonstrators. We have an assemblage. Dispute the outcome of

1 the 2020 Presidential election. We have a purpose to resist or
2 prevent the implementation or execution of some federal law.
3 Assault police officers, including 114 U.S. Capitol police. We
4 have violence in force, and again sufficient violence in force
5 to lead us to suspect this is not simply some protestors getting
6 out of hand, but that the violence, force and intimidation is
7 integral to the protest.

8 MR. GOLDBERG: Your Honor, I'm done with the
9 reports. Now we're going to turn to the videos. Your Honor can
10 see I'm an older man. Would this be a good time for a break?

11 THE COURT: We'll go ahead and take a 15-minute
12 break. So we'll be in recess for 15 minutes.

13 Professor, you may step down.

14 (Court in recess at 10:07 a.m.)

15 THE COURT: We're back on the record. Mr. Goldberg.

16 MR. GOLDBERG: Thank you, Your Honor.

17 BY MR. GOLDBERG:

18 Q. Professor Graber, we talked about the four federal
19 reports that you reviewed. Did you receive any other evidence
20 relevant to whether there was violence or force or intimidation
21 by numbers on January 6?

22 A. Yes. I reviewed some of the exhibits in this case,
23 some other videos, and a video in particular made by the
24 Congressional Committee on January 6.

25 Q. What was it that impressed you about -- let me go

1 back.

2 MR. GOLDBERG: The video that you just mentioned,
3 that's Plaintiffs' Exhibit, Your Honor, 136.

4 Joe, would you just bring up the video, don't play
5 it yet.

6 BY MR. GOLDBERG:

7 Q. Did you ask that various clips from that video be
8 put together so that you could explain to the Court why you
9 found this video important to your investigation?

10 A. Yes, I did.

11 MR. GOLDBERG: Joe, would you play those excerpts
12 from PX 136.

13 (Note: The video is played to the Court.)

14 BY MR. GOLDBERG:

15 Q. Explain to the Court why you felt these excerpts
16 from Plaintiffs' Exhibit 136 were important.

17 A. First, in all the excerpts, we see peoples part in
18 assemblage, acting in concert. In the first, third and the
19 fifth, they're acting in concert with respect to violence and
20 force. People smashing in the window of the Capitol building,
21 the group attacking police officers in the third and fifth
22 excerpts. In the second and fourth excerpts, we see people
23 acting in concert to intimidate, "hang Mike Pence," the noose.

24 And in the American political tradition that I
25 studied, the noose is a classical form of intimidation. If you

1 have a noose up there, you don't want Mike Pence out to explain
2 Indiana politics. It's a threat of violence.

3 We saw 50, maybe 100 people climbing the Capitol
4 steps to the office of the Speaker chanting "Nancy, Nancy,
5 Nancy." That is exceptionally intimidating.

6 Q. Let me show you Plaintiffs' Exhibit 162.

7 MR. GOLDBERG: Your Honor, this is an exhibit of
8 Mr. Griffin on his way to Washington, D.C. in Woodlands, Texas,
9 which is just outside of Houston. There are some snippets or
10 some excerpts from this video that he asked to be put together.

11 Would you play it, Joe, and then I'll ask you some
12 questions.

13 (Note: The video is played to the Court.)

14 BY MR. GOLDBERG:

15 Q. Very short. Why don't you explain to the judge why
16 did we pick out these two very short snippets from the video
17 from Woodlands, Texas?

18 A. All this goes to part one, the assemblage, acting in
19 concert. Be there, let's do it together. It may not be the
20 precise phrasing, but that's approximately what I heard.

21 Q. The first snippet was one introducing Mr. Griffin
22 and talking about calvary, why is that important?

23 A. Calvary -- you call for the calvary when you
24 anticipate violence or force. It's a military term. The
25 metaphor does intend to be used, you call for the calvary when

1 you intend a peaceful protest.

2 Q. Can you summarize your opinions for the Court as to
3 whether the events of January 6 and surrounding events were an
4 insurrection as understood by the framers of the Fourteenth
5 Amendment and knowledgeable people?

6 A. We saw an assemblage, acting in concert, chanting
7 "hang Mike Pence" in concert, attacking police officers in
8 concert. We saw that they were there to prevent the execution
9 of those laws that would have certified that Joe Biden won the
10 Presidential election. We saw that they were there was because
11 they believed in the public purpose, that the election had been
12 fraudulent, had been stolen. That they wanted it corrected. We
13 saw no evidence of anyone acting on a private or personal
14 agenda. And we saw, particularly in the excerpt of the
15 Congressional one, substantial violence, force and intimidation.

16 Q. Let's turn to your last opinion that the framers of
17 Section 3 and other knowledgeable people in the Nineteenth
18 Century were to consider Mr. Griffin's activities on January 6
19 and the surrounding time as participating in the insurrection.
20 What did persons in the Nineteenth Century believe constituted
21 participating or engaging in an insurrection?

22 A. As I have already noted, Nineteenth Century people
23 believed with respect to levying war, insurrection, treason, all
24 people who participated were principals. There are no
25 accessories. They use a phrase called leagued. The question

1 is: Was the person leagued?

2 Q. What do you mean by "leagued"? What do you
3 understand they meant by "leagued"?

4 A. They meant one of two things. First, the person
5 acted in concert. The phrase they sometimes use is marched with
6 others knowing that the group intended to achieve its purpose in
7 part by violence, force or intimidation, or the person performed
8 an overt act knowing that overt act would aid or support the
9 revolution. It didn't have to be for the intention.

10 So there is a wonderful case, it occurs in Congress,
11 where a senator was taking the oath. It was discovered he was
12 loyal to the Union, but he -- when his son said I'm joining the
13 Confederate Army, he said, "Please don't go." The son said,
14 "I'm going." He says, "Here's \$100 to help you out." He would
15 have preferred his son spend the money, you know, just drinking
16 it away, but he gave him \$100 knowing that would aid the
17 confederacy, and the Senate said he could not take the oath to
18 become a senator.

19 Q. So when you say either or, either an overt act or
20 doing something in concert with, either one of those would
21 satisfy the definition of "leagued"; is that correct?

22 A. That is correct.

23 Q. Did you find evidence in your investigation that
24 Mr. Griffin was, and I'll use the word leagued with the
25 insurgents, insurrectionists on January 6?

1 A. There were a number of videos that I saw the people
2 of the Nineteenth Century would agree constituted evidence of
3 being leagued.

4 Q. Did he express solidarity with the January 6
5 insurrection?

6 A. Yes. In those videos, you will see consistently the
7 use of the first person plural. "We are doing this. We believe
8 this. We will not stop."

9 MR. GOLDBERG: I'm going to play -- and the Court
10 has already heard a fair amount of Plaintiffs' Exhibit 37.

11 Your Honor, I'll make sure the record is clear.
12 Plaintiffs' Exhibit 37 is the extended talk to social media
13 audience by Mr. Griffin in Roanoke, Virginia the day after the
14 insurrection.

15 BY MR. GOLDBERG

16 Q. We have a number of excerpts from that that I want
17 to play for you, Professor Graber.

18 MR. GOLDBERG: Joe, would you bring up Plaintiffs'
19 Exhibit 37. Let's start with three minutes and 14 second to
20 four minutes and 40 seconds.

21 (Note: The video is played to the Court.)

22 BY MR. GOLDBERG:

23 Q. What is important about this except from the Roanoke
24 spot to your opinion that Mr. Griffin was a participant in the
25 insurrection?

1 A. I counted six uses of the first person plural, "we."
2 "We marched. We heard. We did this." Also in the video,
3 Mr. Griffin acknowledges that the police said "Do not go here."
4 Then he said "The assemblage went here." He then also
5 acknowledges he witnessed some of the "we" fighting. That is,
6 he now knows the people he is in concert with are engaged in
7 violence and force.

8 Q. Thank you, Professor.

9 MR. GOLDBERG: Joe, would you play one minute and
10 ten seconds to one minute and 40 seconds.

11 (Note: The video is played to the Court.)

12 BY MR. GOLDBERG:

13 Q. What was it about this excerpt that formed your
14 opinion that Mr. Griffin had joined the insurrection?

15 A. That one did not come up. I heard the words -- the
16 video itself did not come up on my screen.

17 Q. I'm terribly sorry. Go ahead --

18 A. I --

19 Q. Do you want it played again?

20 A. I don't need it to be played again. Again, the use
21 of "we." "We're in a war." That again, implies some violence.
22 So this is similar to the first excerpt we saw. There is
23 acknowledgment that this is a "we," that he does not depict
24 himself as an outsider observing events. But as part of events
25 he calls historic and identifies with all that he sees

1 beforehand.

2 Q. Professor Graber, if the video doesn't turn up on
3 your screen, if you can turn around and look up above you. I
4 don't know that you can see the video there.

5 MR. GOLDBERG: Joe, will you bring up the excerpt
6 from five minutes to five minutes and 36 seconds.

7 (Note: The video is played to the Court.)

8 BY MR. GOLDBERG:

9 Q. What was it about that excerpt that informed your
10 opinion that Mr. Griffin had joined the insurrection?

11 A. Again, we. "That was us down there," taking credit
12 for all that happened on that day.

13 MR. GOLDBERG: Joe, would you play the excerpt from
14 PX 37. It starts at seven minutes and 45 seconds and it goes to
15 8 minutes and 4 seconds.

16 (Note: The video is played to the Court.)

17 BY MR. GOLDBERG:

18 Q. What was it about that excerpt that informed your
19 opinion that Mr. Griffin was one of the insurrectionists?

20 A. Again, the "we." "We are not going to lose." "This
21 is a revolution." He talks about Second Amendment rights. "You
22 have a need for a Second Amendment right when you expect to use
23 a weapon.

24 Q. Were the phrases that he used, "We are networked, we
25 are connected, we all have the same heart," were they relevant

1 to your investigation?

2 A. Again, that is talking about an assemblage with a
3 common purpose, acting in concert.

4 MR. GOLDBERG: Finally, Joe, would you play the
5 excerpt that starts at nine minutes and 45 seconds and goes to
6 ten minutes and 40 seconds.

7 A. My picture appears to be appearing again. That's
8 why I'm staring at my screen.

9 BY MR. GOLDBERG:

10 Q. What was it about that excerpt that was important to
11 you -- to your opinion that Mr. Griffin had joined the
12 insurrection?

13 A. As with the other excerpts, the use of the second
14 person -- first person plural, but also the identification of
15 the common purpose, to prevent Joe Biden from becoming
16 President, to prevent Kamala Harris from becoming President
17 [sic]. To prevent China from exercising increasing influence of
18 the United States. All of these are public purposes as
19 insurrection is understood by legally knowledgeable people in
20 the Nineteenth Century.

21 Q. I want to show you Plaintiffs' Exhibit 152.

22 MR. GOLDBERG: Your Honor, that's the January 9
23 video in San Diego of Mr. Griffin talking to folks in the
24 parking lot.

25 Play the video, Joe, from one minute 40 seconds to

1 one minute to 52 seconds and two minutes to 40 seconds to the
2 end.

3 (Note: The video is played to the Court.)

4 BY MR. GOLDBERG:

5 Q. In either of these excerpts from Plaintiffs' Exhibit
6 152, did you see Mr. Griffin separating himself from the
7 violence that he had observed at the insurrection?

8 A. No, I did not.

9 Q. So what was important to you from these excerpts
10 from Plaintiffs' Exhibit 152?

11 A. Again, the first person plural. Again, the
12 acknowledgement that the goal of the assemblage is to prevent
13 the certification of Biden. But also the statements that not
14 only did Mr. Griffin witness violence, but he regarded violence
15 as integral to the efforts to prevent the certification of the
16 Biden presidency, that he does not describe and was
17 unfortunately a couple of demonstrators got out of hand, but as
18 something "we did to advance our cause."

19 Q. Let me go back to a video of one of the speeches or
20 one of his talks that Mr. Griffin made on one of the stops on
21 his way to Washington.

22 MR. GOLDBERG: This is PX 171. Joe, will you pull
23 up and play the excerpt from four minutes and 45 seconds to five
24 minutes and 35 seconds.

25 (Note: The video is played to the Court.)

1 BY MR. GOLDBERG:

2 Q. Explain to the judge why this video was -- this
3 excerpt from the video, Plaintiffs' Exhibit 176, was important
4 to your opinion -- it's 171, I'm sorry.

5 A. Notice the gender use of language, particularly of
6 men, that Mr. Griffin acknowledges. He is not using "men" in a
7 generic sense as in all men are created equal, but calling for,
8 in fact, people who are male. Moreover, he's calling for men in
9 the heat of battle, in the fight to stand shoulder to shoulder.

10 Now, if we're talking metaphors, the war on poverty,
11 women in traditional understandings can fight metaphorical
12 battles as well as men. But when violence, force, intimidation
13 are integral to a group's plan, that is when, on a traditional
14 understanding, you need men in the biological sense.

15 Q. Did you see any evidence in your investigation,
16 Professor Graber, that Mr. Griffin performed overt acts that
17 aided and supported the insurrection?

18 A. Yes, I did. I saw three examples of acts that at
19 least people in the Nineteenth Century would regard as evidence
20 of an overt act.

21 Q. Let me show you Plaintiffs' Exhibit Number 25.

22 MR. GOLDBERG: Joe, would you play the excerpt from
23 five minutes and 40 seconds to six minutes and 20 seconds.

24 (Note: The video is played to the Court.)

25 BY MR. GOLDBERG:

1 Q. Explain why this is evidence of an overt act
2 supporting the insurrection.

3 A. Knowledgeable legal people of the Nineteenth Century
4 might understand this is an overt act in two different ways:
5 First, as I noted, anyone who marches with an insurrection,
6 knowing what the group is about, has committed an overt act.
7 Simply if, in fact, there are a group of people marching on,
8 say, this courthouse for the purpose of violently preventing the
9 implementation of federal laws and somebody joins them knowing
10 the purpose, that's an overt act.

11 Second, we see Mr. Griffin crossing a barricade
12 getting closer to, in fact, the Capitol. The closer he is to
13 the Capitol, the increase in intimidation. Again, I emphasize
14 it's simply one more person. The authorities say it's minute.
15 When you have an insurrection, there are lots of people. If the
16 Confederate Army had had one soldier more or less, the outcome
17 would have been the same. But an overt act is not measured by
18 how much it contributes, but simply does it contribute in any
19 minute sense. One more person closer to the Capitol to aiding
20 and supporting as it was understood by knowledgeable people in
21 the Nineteenth Century.

22 Q. Let me show you Plaintiffs' Exhibit 153.

23 MR. GOLDBERG: Joe, would you play the video.

24 You've seen this also before, Your Honor. This is
25 Mr. Griffin speaking in the car after the insurrection.

1 (Note: The video is played to the Court.)

2 BY MR. GOLDBERG:

3 Q. Why does this show an overt act, Professor Graber?

4 A. Here, we see as the violence is actually taking
5 place. Mr. Griffin is in the crowd encouraging the people he is
6 in concert with to attack police officers. Again, it's one more
7 voice, but legally knowledgeable people of the Nineteenth
8 Century said one more voice is one more person who is involved
9 in the insurrection.

10 Q. In order to have been part of the insurrection, did
11 Mr. Griffin have to have been personally involved in violent
12 acts?

13 A. No. The case law and, in fact, the legal treatises
14 are all very clear. So, for example, in Powell, Powell
15 purchased a substitute to join the Confederate Army, he never
16 fired a shot, never raised a fist or never threw a stone. But
17 his purchase of a substitute aided and contributed to the
18 Confederate cause. He was deemed unable to hold office under
19 Section 3.

20 Q. Mr. Griffin states in his deposition and to this
21 Court that he was animated by religious fervor, the Holy Spirit
22 in his actions in going to Washington and being there. Is this
23 a defense to being part of an insurrection, Professor?

24 A. No, that is a statement of public purpose, not
25 private or personal. John Brown claimed to be animated by the

1 Holy Spirit. He was executed in Virginia. And though some
2 anti-slavery advocates objected to the excuse, no one said his
3 defense was legitimate because he was ordained by God. Many of
4 the people involved in fugitive slave rescues believed
5 evangelical Christians who sincerely believed God commanded them
6 to do whatever was possible to help runaway slaves. Again,
7 there was no morality, religious defense to insurrection.

8 Q. Would you summarize for the Court your opinion as to
9 why knowledgeable people in the Nineteenth Century would have
10 considered Mr. Griffin's conduct as participating in the
11 insurrection?

12 A. Well, again, what we saw was an admission that he
13 was acting in the constant use of "we" to refer to the
14 protestors. Even when the protestors are engaged in violence,
15 we see the first person. So we have someone who has joined a
16 group, knowing the group was likely to try to achieve its goals
17 by force, violence and intimidation. We saw the reference to
18 calling of men, another instance that violence is likely to be
19 integral to the effort.

20 We saw the overt acts, marching with the group,
21 crossing the barricade with the group and encouraging the
22 members of the group to attack law enforcement officials.

23 MR. GOLDBERG: Thank you, Professor Graber. I have
24 no further questions.

25 THE COURT: Thank you.

1 Mr. Griffin?

2 CROSS-EXAMINATION

3 BY MR. GRIFFIN:

4 Q. Mr. Graber, I appreciate you being here today and
5 I'm honored to be able to have this conversation with you about
6 something that is as brave as insurrection as we know. But as
7 you opened, I know you are a man of a great accomplishment,
8 intellectual accomplishment and have had many successes in that.
9 You may have to have patience with me. I didn't get my
10 education in a classroom. I got my education in real life
11 experiences. So if we could keep our questions and responses
12 rather down on a level where we can all understand and, in
13 general, I'd appreciate that.

14 In your reference to insurrection and the references
15 that you've made, this is something that our country hasn't had
16 to consider them as of late. As you mentioned the laws in
17 regard to insurrection came mostly in part during the Civil War.

18 As those actions were considered to be insurrection
19 during that time, I'd like to ask you, those were organized,
20 collaborated on their face, if I'm correct?

21 A. There were, as I noted, numerous insurrections
22 before the Civil War. That's where the law originally comes
23 from. Not from the Civil War itself. The Civil War borrowed
24 law already created. As I said, they were -- one element of an
25 insurrection is it had to be acting in concert.

1 Q. In the case of the Civil War with the Confederacy,
2 that was a -- the Confederacy had an organized government, if
3 you will, including an Army, correct?

4 A. That is correct.

5 Q. And in that effort they wanted to, in a sense,
6 remove and replace the existing government of the United States,
7 correct?

8 A. That is incorrect. They wanted to establish a
9 separate government in the States that seceded. They had no
10 intention of removing the government from Washington, D.C.

11 Q. Sure. So they wanted their own separate government.
12 In line with that, and you're right in your response, would you
13 say that that is what January 6 was? Did it look like those
14 that came on January 6 were trying to instigate or have their
15 own government?

16 A. I found no evidence that suggests it influenced
17 January 6.

18 Q. Again, in regards to insurrection in your testimony
19 of today could very well be used to impact many -- I mean,
20 myself here today, as well as many others that were --
21 participated in January 6. So we need to be very clear in what
22 exactly insurrection is.

23 And so, you know, to -- to consider January 6, in my
24 opinion, what took place on that day and in your opinion what
25 took place on that day, I think probably just to kind of really

1 get to the meat of it would be I would like to ask you, in your
2 opinion, what's the difference between a protest and an
3 insurrection?

4 A. Both a protest and an insurrection involve an
5 assemblage of people. An insurrection involves people resisting
6 the execution of any or all laws. Federal law for federal
7 insurrection, state for a state insurrection.

8 A protest may simply be an objection or a call to
9 pass new laws. An insurrection must have a public purpose. As
10 I understand the definition of protest -- and I should
11 emphasize, Your Honor, I do not -- I have not researched the
12 Nineteenth Century understanding of what was a protest.

13 But I understand a protest, people maybe there for
14 their own private or personal reasons. Finally and most
15 important, an insurrection requires violence, force,
16 intimidation. A First Amendment protected protest has none of
17 those.

18 Q. As we sat as a nation and currently watched many
19 violent protests after the Supreme Court overruled *Rowe versus*
20 *Wade*, would you consider those to be insurrection?

21 A. I have not done a study of any protests in the
22 United States other than January 6. I don't have the evidence
23 to make a professional conclusion.

24 Q. But in a protest as such that I just mentioned in
25 regard to *Rowe v. Wade*, that was the Supreme Court, the highest

1 court in our nation, overturned *Rowe v. Wade* and set precedence.
2 And we have protestors who have acted very violently all the way
3 to the point of going outside of our Supreme Court Justice's
4 homes and carrying firearms, making death threats against our
5 Supreme Court Justices, and it's collaborated, coordinated and
6 strategic.

7 So again, in your definition of what an insurrection
8 is, I would like to ask you: Would those protests be considered
9 insurrection?

10 A. I have not reviewed or know of the existence of the
11 being facts you discuss so I cannot offer a professional
12 opinion. What I can say in a professional opinion is it is
13 entirely possible that any protest, whether to resist abortion
14 laws, presidential transition laws, tax laws, could become an
15 insurrection under the right conditions. I simply haven't done
16 the research that I can answer your question in my professional
17 capacity.

18 Q. As I know that you are a man who keeps up with the
19 media and as you are sitting here under oath today, do you
20 remember reading a story about a man that traveled from
21 California to Justice Brett Kavanaugh's home armed with the
22 intent to murder?

23 A. I don't recall that story.

24 Q. But if this happened, which it did -- well, I can't
25 say that it did because it came from the media, but if it so was

1 true, would this man be guilty of insurrection?

2 A. To begin with, notice an insurrection requires an
3 assemblage.

4 Q. Sure.

5 A. That's more than one person.

6 Q. Okay. So with the assemblage of many protestors who
7 act violently in front of Supreme Court Justice homes, would
8 those people who have willful intent of violent acts against
9 Supreme Court Justices that ruled inside of the law in *Rowe v.*
10 *Wade*, would they be considered insurrectionists?

11 A. By Nineteenth Century standard, and that's all I'm
12 testifying to is Nineteenth Century standards, if
13 hypothetically, and I emphasize hypothetically, we had an
14 assemblage of people united by a common purpose to resist the
15 implementation of State bans on abortion, that their purpose was
16 public, they believe women had a right to abortion and they had
17 no personal and private agenda and violence, force and
18 intimidation were integral to their efforts, that would be an
19 insurrection.

20 Again, I want to emphasize this is simply
21 hypothetical. I have no evidence on which I can make a
22 professional judgment as to any particular protest now taking
23 place in the United States.

24 Q. As a constitutional scholar, and which I'm not, but
25 in a case in which the government passes a law that the people

1 don't feel that that is a law that they want to accept or they
2 agree with, are they within their rights together, together, to
3 protest against the law that the government implies?

4 A. Every legal commentary, political commentary I read
5 in the Nineteenth Century would agree with your assessment.

6 Q. Which is?

7 A. That merely protesting a law you do not like is not
8 an insurrection. Most of the treatises begin with that comment.

9 Q. So in all of the videos that you've seen and my
10 actions, would those fall inside of the realm -- could they
11 possibly fall inside of the realm of a protest where I'm
12 speaking against -- speaking my own grievances on a personal
13 level? Do I have the right to do that as a free American? Or
14 if we do that as Americans, could we be subject to be viewed as
15 insurrectionists?

16 A. If as Americans our protests spill over to illegal
17 actions, either we perform them ourselves or we encourage
18 members in our group of which we are acting together, to engage
19 in violence and intimidation, at that point in the Nineteenth
20 Century, we are no longer in the realm of legitimate protest.
21 We are in the realm of insurrection.

22 Q. In regard to January 6, on that day, for you, in
23 your view and in your opinion, was that day a rebellion against
24 the United States?

25 A. I would describe it as an insurrection against the

1 United States.

2 Q. How is that? Why would you consider it an
3 insurrection?

4 A. Primarily because I focused on the term
5 insurrection, and it met all the conditions for insurrection. I
6 also looked at the word "rebellion" because, in fact, Section 3
7 speaks of "insurrection" or "rebellion." What I discovered was
8 some knowledgeable people said "insurrection" and "rebellion"
9 are synonymous. Others said a rebellion is an insurrection with
10 a lot of people.

11 So Fries is an insurrection because there were 100
12 farmers. Civil War is rebellion because we have a million
13 people in arms. Still others said it's an insurrection if it's
14 resistance to the law on a small scale. Fries, it's a rebellion
15 confederacy. Crucial thing is, I couldn't find any consensus on
16 the relationship between an insurrection or rebellion. I did
17 find a consensus on insurrection, so that's what I testified to.

18 Q. Believe me, I want to be very clear that I in no
19 way, shape or form would ever condone overthrowing or rebelling
20 against our government, but we just want the laws followed. In
21 saying that, if you can kind of just start afresh and let me
22 give you this scenario and let me ask you if this would fall
23 under the realm of insurrection.

24 If you had a nation with the population that
25 questioned the legitimacy of the election, and that population

1 was driven -- their suspicions were driven by videos that they
2 had seen by sworn affidavits that they had read, and by sworn
3 personal testimony that they had heard. And that population
4 believed, didn't know, but had suspicion that the electorate
5 could very well have been compromised and only wanted their
6 government to slow down in the certification process and follow
7 a more stringent certification, if you will.

8 So that population traveled to Washington, D.C. to
9 assemble to bring this protest, to try to allow their voices to
10 be not only heard but recognized by their federal government
11 because they deep down had a conviction that the electorate was
12 not a fair and legal electorate. And they didn't assemble in
13 Washington, D.C. because they wanted to rebel against the law or
14 overthrow the government. They simply wanted the Vice President
15 of the United States to deny the certification of the elections
16 legally well within inside of his bounds so that electorate
17 could go back to the States for further examination.

18 If a person went to Washington, D.C. on that day
19 with that intent, would that person, in your opinion, be guilty
20 of insurrection?

21 A. If as you describe we have a person, and not simply
22 a person, people acting in concert, they travel to Washington,
23 D.C. to communicate to the federal government they believe there
24 is fraud in the election, they believe the process should be
25 slowing down, and all they do is attempt to communicate. They

1 do not use violence, do not use force, they do not intimidate.
2 They do not violate the laws of the country or the laws of the
3 place where they are at, that's a protest.

4 Q. And that would be well within inside the law and
5 well within inside of our constitutional right to participate in
6 such an event, correct?

7 A. Absolutely.

8 Q. What if -- as I laid the scenario out and it
9 unfolded, what if there was a coordinated effort by others who
10 wanted to undermine these people and possibly make them look
11 bad, if you will, or maybe even worse, look like
12 insurrectionists? So this coordinated effort had people that
13 were placed inside of the crowd that broke windows out, that
14 assaulted Capitol Police officers, that coordinated with people
15 on the inside in order to unlock the front door of the Capitol
16 in order to, I believe, as Metropolitan Capitol [sic] Police
17 Officer Daniel Hodges referred to yesterday as luring them
18 around to another door. If there was people in this effort and
19 this took place, could people that were just there in a peaceful
20 manner on their own accord be entrapped, if you will, and
21 tainted as insurrectionists, even though they were only there
22 trying to stay with -- well within the bounds of the law and
23 stand on their constitutional rights?

24 A. What you are describing is a version of the facts in
25 *United States versus Hanway*, an 1851 fugitive slave case.

1 Hanway was a miller. He hears a commotion in the neighborhood
2 and wants to find out what was happening. It turns out it's a
3 fugitive slave rescue, and he was caught in the middle. He does
4 not help the police. They say he's a Quaker. He is put on
5 trial for insurrection. The Court charge was very clear. The
6 mere presence of a person at the time an insurrection is taking
7 place is not sufficient. If that person was not leagued with
8 the insurrectionists, did not know what was going on and did not
9 perform an overt act that aided or comforted the insurrection.

10 So to the extent the facts or anybody meet the
11 conditions of *United States versus Hanway*, that person is not an
12 insurrectionist, as the Nineteenth Century would have understood
13 insurrection.

14 Q. I believe that testimony because I believe that it
15 further vindicates myself. Because you have seen so many
16 videos. The Plaintiffs have combed through every statement that
17 I've made, every video that I've made. Many videos and
18 statements that were recorded that I didn't even know they were
19 being recorded. I am an open book before you today as all of my
20 laundry has been aired.

21 And I would like to ask you: Have you seen one
22 example or one instant in which it looked as though I was
23 collaborating or coordinating with any other party in an attempt
24 or an effort to cause any kind of insurrection on January 6?

25 A. Well, we can start with the number of things I

1 testified to. So for example, there is the video of
2 acknowledging when protestors were attacking police officers --

3 Q. But that's not answering my question.

4 MR. GOLDBERG: Your Honor, I object. He's
5 interrupting the witness.

6 MR. GRIFFIN: It's not answering my question.

7 MR. GOLDBERG: Your Honor, I am objecting.

8 MR. GRIFFIN: I'm just trying to bring him back to
9 my question. The question is simple.

10 THE COURT: Okay. You have to understand the
11 procedure. One person speaks at a time.

12 MR. GRIFFIN: Yes, sir. Okay.

13 THE COURT: The objection is let the witness finish
14 the answer. Then you can ask your next question.

15 MR. GRIFFIN: I'm sorry, Your Honor. Yes, sir.

16 A. I'll stick with a single instance where you
17 acknowledge saying "heave-ho, heave-ho." You acknowledge to be
18 encouraging the people who were attacking the police officers.
19 I think -- and I think -- this only is evidence. The trier of
20 fact determines what is truth. But a legally knowledgeable
21 person in the Nineteenth Century would consider this evidence
22 that you were acting in concert with people engaged in violence.

23 BY MR. GRIFFIN:

24 Q. Specifically, though, did you specifically see on
25 any videos, any Facebook posts, any e-mails, any media where I

1 was in direct correspondence with any single individual or
2 organization?

3 A. I'm not sure what you mean by "correspondence." I
4 apologize.

5 Q. Any back and forth, any -- any conversations or any
6 of my media directed at any specific individual or organization
7 that pointed to an attempt to overthrow our government?

8 A. I did not review anything in your social media.

9 Q. Well, believe me, if any of it was out there, you
10 would have seen it today. Believe me.

11 MR. GOLDBERG: I object. I move that it be struck.
12 That's not a question. He's trying to testify.

13 THE COURT: Again, Mr. Griffin, keep your questions
14 to the witness.

15 MR. GRIFFIN: Yes, sir. Thank you.

16 BY MR. GRIFFIN:

17 Q. I'd like to ask you once again on something that you
18 referenced earlier in the case of *U.S. versus Hoxie*. Could you
19 once again revert back to that?

20 A. You want me to --

21 Q. Just give us another definition of what *U.S. versus*
22 *Hoxie* is.

23 A. *U.S. v. Hoxie* is a case that arises in New England,
24 I think 1807, it might be 1808. The issue is the Embargo Act of
25 1807. Mr. Hoxie has a boat that was seized by custom officials

1 for violating the Embargo Act. He then attempted to violently
2 get back his boat. He killed a custom official in doing this.
3 He was tried not for murder but for insurrection.

4 And what the Court said was this was not an
5 insurrection. It was a lot of other crimes, but it was not an
6 insurrection because Mr. Hoxie was not there for a public
7 purpose. He didn't think the Embargo Act was fraud. He didn't
8 think it was unconstitutional. He had think it was oppressive.
9 He had no interest in reflecting anybody else's interest. He
10 just wanted his boat. And if you just want your boat, it's not
11 an insurrection.

12 So to take a very silly example. Imagine there is
13 somebody --

14 Q. That's fine, if I may.

15 A. Okay.

16 MR. GRIFFIN: I thought he was done with the
17 question. I'm sorry, Your Honor.

18 BY MR. GRIFFIN:

19 Q. The point that I wanted to make by referencing that
20 is when I traveled to Washington, D.C., I did so on my own
21 accord. I didn't go in my official capacity as a County
22 Commissioner. I didn't go to Washington, D.C. to represent
23 Otero County. I went to Washington, D.C. in my private
24 capacity.

25 And so I would like to ask you in regard to that,

1 if I go in my private capacity as a private citizen not speaking
2 as Otero County, not representing Otero County because I have
3 already had this conversation in Otero County and that's the
4 reason why I sit alone today, because the County says they have
5 no -- you're on your own. You weren't representing us. We have
6 no connection to any of your dealings in Washington, D.C.

7 So I would like to ask you today, as you stated
8 earlier that I was in violation of my oath, I would like to ask
9 you once again if I was in Washington, D.C. as a private citizen
10 with no association to Otero County and by Otero County's own
11 position by refusing me counsel today is proof, would I have
12 been in violation of my oath of office in Washington, D.C. in
13 January 6?

14 A. I think we have a confusion on the different
15 meanings of private. When legal treatises, political treatises
16 speak of a private motive being a defense to insurrection, they
17 don't mean a person acting as a private citizen. Rather, they
18 mean a person who is seeking things only for themselves. So if
19 a person had gone to Washington, D.C., say, for the purpose of
20 stealing furniture from the Capitol and breaks a window for the
21 purpose of stealing furniture, that's a crime. It's a lot of
22 crimes. But it's not insurrection because their motive was
23 private, personal, relating only to themselves.

24 If a person went to Washington, D.C. because they
25 sincerely believed the election was stolen, they were not acting

1 to benefit themselves. They were acting on their notion to
2 benefit the community. But that, in fact, is an element of
3 insurrection. As I talked about the rescue of fugitive slaves,
4 they believed what they were doing was best for the community.
5 They believed what they were doing was moral. They believed
6 what they were doing was correcting an unconstitutional law, as
7 commanded by God. But it was still an insurrection because that
8 is the meaning of common public purpose as opposed to private
9 purpose, not acting as a private citizen versus acting as a
10 public official.

11 Q. I think there are a lot of weeds that we just went
12 through in your response. I would like to go back and ask you
13 once again. You are a constitutional scholar. You are a man of
14 great accomplishments inside studying the law. I would like to
15 ask you once again, simply yes, no. In what I said about my
16 attendance in Washington, D.C. on my own accord inside of my own
17 private capacity, not representing Otero County and Otero County
18 not having me represent them, would I have been in violation of
19 my oath on January 6th simply for traveling to Washington, D.C.
20 and attending this protest? Without all the other, well, you
21 said this and she said that. Just in your own opinion, is that
22 a violation of my oath?

23 A. Yes.

24 Q. And how so?

25 A. Again, let's go through the elements. You were

1 acting in concert with other people. You watched with them.
2 That's what the tapes clearly show. You had a purpose; to
3 prevent the certification of Joe Biden to be President. It was
4 a public purpose. You didn't think Donald Trump was going to
5 benefit you personally. You thought the election was stolen.
6 You thought China was exercising undue influence --

7 MR. GRIFFIN: Please, Your Honor. He doesn't -- the
8 witness doesn't need to be trying to put what I was thinking or
9 what I was doing. This is my time with the witness and what I
10 was doing there, if I can --

11 THE COURT: Excuse me, Mr. Griffin.

12 MR. GRIFFIN: Yes, sir.

13 THE COURT: He's answering your question.

14 MR. GRIFFIN: But he's making accusations all the
15 same.

16 THE COURT: Well, you were asking him were you doing
17 something, and he was explaining that he said yes.

18 MR. GRIFFIN: But he was putting his own -- he was
19 making -- he was saying, yeah, because you were doing this and
20 because you were doing that.

21 THE COURT: Mr. Griffin --

22 MR. GRIFFIN: I'd like to object.

23 THE COURT: Mr. Griffin, you are going to be able to
24 follow up, but you need to let him finish.

25 MR. GRIFFIN: Okay.

1 THE WITNESS: May I finish?

2 THE COURT: You may finish.

3 A. Purpose was you believed, and I heard -- you said
4 several times that this was demonstrating undue influence.
5 Communist China. This is, in fact, a public purpose. There
6 were videos and tapes in which a Nineteenth Century fact finder
7 would interpret as evidence, not as a final conclusion, as
8 evidence that when you acted in concert, you were aware that
9 violence, intimidation and force were integral to the
10 demonstration, and that, indeed, you performed several overt
11 acts that advanced the violence, force and intimidation. Again,
12 I'm talking about what people would consider evidence. There
13 may be other evidence.

14 BY MR. GRIFFIN:

15 Q. Okay. As you make those statements right now, I
16 would like to ask you what statements of violence did I say that
17 were direct statements of violence against the government did
18 you heard me say?

19 A. First, there is the "heave-ho" exhibit that we saw.
20 We saw, for example, just to highlight, the statement that "we
21 need men in the heat of battle standing shoulder to shoulder for
22 the fight." That, again, would be evidence, according to the
23 Nineteenth Century, that you understood that violence, force and
24 intimidation would be integral. It is only evidence.

25 Q. It's amazing that you can say that that's a direct

1 statement of violence against the United States whenever I spoke
2 about somebody digging a hole for themselves and being in a
3 hole. That can be translated so many ways.

4 You're -- you're -- you're drawing assumptions to
5 things that aren't there, and, unfortunately, that's what we see
6 so many times in the courts and in different circles.

7 MR. GOLDBERG: Your Honor, I object. This is not a
8 question. This is closing argument.

9 BY MR. GRIFFIN:

10 Q. As well --

11 THE COURT: Mr. Griffin, get to your question.

12 MR. GRIFFIN: Okay.

13 BY MR. GRIFFIN:

14 Q. As well as to address whenever -- over the course of
15 the last few years, as you've followed the media, have you seen
16 the Antifa in the streets and the Black Lives Matters protestors
17 in the streets causing tremendous violence upon people?

18 A. I have seen protests by Black Lives Matter. It's
19 unclear whether Antifa is a sort of entity that would be
20 described as a group of clearly people who identify as Antifa
21 have been out on the streets. I have not reviewed for this
22 case, or any other, the scope of the behavior to be able to make
23 a professional opinion on precisely whether those are protests
24 or insurrections, as insurrections are understood in the
25 Nineteenth Century.

1 Q. I just asked you, Mr. Graber, in the protests that
2 you have seen the last few years, three or four years, in our
3 streets headed by Black Lives Matter and with Antifa's
4 involvement, have you seen harsh physical violence upon people
5 in the news, in videos? Have you seen violence in the
6 streets --

7 MR. GOLDBERG: Your Honor, Mr. Griffin is asking
8 questions and not listening to the answers. Because he asked
9 that question just before and Professor Graber gave the answer
10 and said he saw violence but didn't investigate whether that
11 violence constituted an insurrection.

12 MR. GRIFFIN: I'm sorry, Your Honor. I didn't hear
13 him say that he saw violence.

14 THE COURT: He did say he saw violence.

15 BY MR. GRIFFIN:

16 Q. So you will say -- you will admit before the Court
17 today that many of the protests that we've seen have been very
18 violent in nature?

19 A. No. What I said was that I saw some violence on --
20 perhaps it was TV news, perhaps it was a clip someone may have
21 sent me. What I have not investigated are information about the
22 extent of the violence, the purpose of the violence, the
23 knowledge of the violence, all the sorts of things I would need
24 to do a professional investigation to reach a conclusion as to
25 how the Nineteenth Century would understand my concerns.

1 Q. Could you understand my concern -- whenever I said
2 "we would call on the men to show up," could you understand
3 possibly my concern at that time that there could have been
4 violent acts that could have been done against us?

5 A. It is my job or at least it's not my expertise to
6 figure out what's in anyone's mind, because I can't do it. What
7 I can say is that statement would be understood in the
8 Nineteenth Century as evidence, merely evidence. Of course, if
9 this was a trial in the Nineteenth Century, I would presume
10 people would present counter-evidence, different
11 interpretations. All I can say is saw the statement, this is
12 what the statement signifies to a Nineteenth Century historian
13 or student of political development to be more accurate. That's
14 all I can testify to in light of my expertise.

15 Q. Mr. Graber, you just state that you can't tell
16 what's in anybody's mind, but isn't that what you've been doing
17 the whole time you've been sitting there is trying to say what
18 was in our minds on January 6 by referencing that I wanted to
19 stop the transition of power, that I wanted to disrupt the
20 transition of power because, as I stated, would it be possible
21 that we were there on that day only to express our grievances in
22 what we do believe and what has been confirmed to be fraudulent
23 elections in 2020 and only to want the law to be followed for
24 Mike Pence to refuse the certification of the election and roll
25 those elections back to the State?

1 A. I have no expertise in anyone's inner mental states.
2 What I can say is I largely agree that is what I saw in public
3 were lots of signs saying "Stop the Steal." That is, under the
4 Nineteenth Century, a common public purpose. A Nineteenth
5 Century person probably won't ask "Everyone who is carrying a
6 banner saying 'Stop the Steal,' what are they really thinking
7 inside of their head?" They wouldn't ask that. I can't ask
8 that. They see the banners, they see the crowd chanting "Stop
9 the Steal." That's the purpose of the enterprise.

10 Q. I'd like to ask you, Mr. Graber, if you know a man
11 who participated in January 6 by the name of Ray Epps. Have you
12 seen the videos of Ray Epps under oath?

13 A. The name is not familiar to me. I do not recall it.
14 It's possible, of course, I may have read something somewhere,
15 but as of now under oath I can testify that I cannot recollect
16 the name.

17 Q. You can't recall any of the videos that Ray Epps
18 made on January 6 or that were recorded of Ray Epps?

19 A. I have never been shown such a video. I do not know
20 what those videos exist, what they say or what their
21 significance is.

22 Q. If there was a man named Ray Epps and he made videos
23 the evening before January 6 where he told a large crowd of
24 people, "Tomorrow we go into the Capitol. Tomorrow we charge
25 into the Capitol." And the same man, Ray Epps, the next day was

1 filmed on a street corner directing people down to the Capitol,
2 and he was saying, "Come on, everybody, the Capitol is this way.
3 Let's go. Let's go inside the Capitol," and this same man, Ray
4 Epps, was later filmed at the initial breach of the bike racks
5 whisper into the ear of another man by the name of Ryan Samsel,
6 and Ryan Samsel was one of the first men to charge through with
7 Ray Epps following him.

8 In that short description of what I told you about
9 Ray Epps, would Ray Epps possibly be found guilty of
10 insurrection?

11 A. Assuming your hypothetical is correct, I'd want to
12 know -- it looks like Ray Epps is acting with an assemblage.
13 Seems very -- I'd like a little more if I could find it. I'd
14 want a little more of what his purpose was, but it probably was
15 the purpose of the assemblage. I need to know is it a common
16 public purpose. I need to know more about his relationship to
17 the violence, force and intimidation. It is unclear, at the
18 most, whether a Nineteenth Century would regard mere trespass
19 without intimidation, violence or force is sufficient for an
20 insurrection. My research simply can't come to a conclusion on
21 that point.

22 Q. In the trial today you have stated that you would
23 find me guilty of insurrection, correct?

24 A. No.

25 Q. That I had participated in an insurrection?

1 A. I have said that knowledgeable people in the late --
2 I'm sorry, in the Nineteenth Century, would find evidence to
3 support that conclusion. I have been very careful, I hope, to
4 emphasize that what I have been pointing to are matters of
5 evidence. They are not matters that end the fact inquiry or the
6 legal inquiry.

7 Q. Yes, sir. So in your expert witness and you are
8 very knowledgeable of the law and you are well-rounded and you
9 have seen all of the evidence that you have seen here today in
10 regard to my participation of January 6 and all the statements
11 that I have made. If you were sitting in a punishment of
12 insurrection was by death and you had the gavel in your hand and
13 the verdict was to be read, you would not find me guilty of
14 insurrection or you would find -- or you would sentence me to
15 death of insurrection?

16 A. I think that's an issue for you and counsel to argue
17 and for His Honor to decide.

18 Q. That's not my --

19 MR. GRIFFIN: He's getting around my question.

20 BY MR. GRIFFIN:

21 Q. That's not my question. My question is to you: In
22 your scope, which is respected, and if you were the final judge
23 considering the evidence that you've seen and my participation
24 in that day by statements that I've made, would you sentence me
25 to death for going to Washington, D.C. on January 6 and standing

1 in that crowd as I did on that day?

2 A. One answer to that question, unfortunately, is I
3 would be excused because I am morally opposed to the death
4 penalty and I would simply announce in advance. Now, this I
5 know is avoiding -- I simply want to make a point that I would
6 not sentence anyone to death for anything.

7 Q. Okay.

8 A. Now, if you're asking me what I think you I think
9 you really want to ask me, and I apologize for putting words in
10 your mouth, would I convict you. And if Your Honor doesn't
11 mind, and all I had was opening statements, didn't have closing
12 statements, didn't have any evidence you would choose to admit
13 to the Court. All I had was what I viewed, I would view you
14 under Nineteenth Century standards. By the way, be told
15 Nineteenth Century standards, not Twenty-First Century, under
16 Nineteenth Century Standards, I would say yes, this is an
17 insurrection.

18 Q. And the Nineteenth Century standards -- in the
19 Nineteenth Century, there wasn't social media. In the
20 Nineteenth Century, there wasn't every conversation that you
21 have behind a closed door was recorded. We live in a world
22 nowadays -- would you agree, that we live in a world nowadays
23 that can be very much more critical, very more harsh to anything
24 that is said? And more than that, things that you have said
25 that can be misconstrued as in the video, if you will -- if you

1 can revert --

2 MR. GRIFFIN: I wish I had videos some videos to
3 play, but I'm sorry I have to keep referring back to you, but
4 the second video that you played from Roanoke, it was right
5 before 152 --

6 MR. GOLDBERG: Do you want the second excerpt?

7 MR. GRIFFIN: Please, Mr. Goldberg.

8 BY MR. GRIFFIN:

9 Q. Before you play it, I want you to listen to this
10 video because in this video that is going to be played, I
11 specifically say this isn't against the Democrats. This is
12 against China.

13 MR. GRIFFIN: Play the video, please.

14 (Note: The video is played to the Court.)

15 BY MR. GRIFFIN:

16 Q. It's not against the Democrats. It's against China.
17 Do you fall under grounds of an insurrection if you speak
18 against a Communist country that you're concerned about taking
19 your own country over? Would that be insurrection?

20 A. Again, as I've said, with respect to element three,
21 element three is a common purpose, a fear of undue Chinese
22 influence. Undue -- in the Nineteenth Century, it would be a
23 fear of undue influence. If people meet the other three
24 elements of insurrection and their purpose is a sincere effort
25 to prevent fraud, to limit the influence of a foreign nation, it

1 is, nonetheless, an insurrection.

2 MR. GRIFFIN: Can we play video 152.

3 BY MR. GRIFFIN:

4 Q. Again, these are videos that the Plaintiffs -- these
5 are videos that I'm listening to as I'm sitting there in my
6 chair. Again, I want you to listen. The direction of this
7 content was against China, not the United States.

8 MR. GRIFFIN: Play the video, please.

9 (Note: The video is played for the witness.)

10 BY MR. GRIFFIN:

11 Q. So again, China. China. And the technology that is
12 being used in our Dominion machines can be compromised by
13 outside countries, so -- outside countries, so I would like to
14 ask you: If outside countries -- if you have concern that an
15 outside country, such as China, is influencing the technology
16 that counts our vote in the machines that we use, and I speak
17 out harshly against a Communist country and their possible
18 intervention in our elections, would that be considered
19 insurrection?

20 A. If all you are doing is speaking out harshly against
21 what you believe to be undue Chinese influence on American
22 elections, that is not an insurrection.

23 Q. What about if you gather in a crowd and you voice
24 the same concern in a large crowd, such as which that was
25 gathered outside the Capitol on January 6, would that be

1 considered insurrection?

2 A. If you have a large crowd where they are lawfully
3 entitled to be, speaking out as a group harshly against the
4 influence of Communist China on American elections, that is not
5 insurrection.

6 Q. What if inside of that crowd there are people that
7 are acting at their own will and they're doing very foolish,
8 disgusting things, like fighting with police officers and
9 breaking windows out, if those random actions were taking place,
10 but they were coming outside of this crowd, would you consider
11 the crowd to be insurrectionists?

12 A. What you are describing is really two crowds? And
13 what someone in the Nineteenth Century would do would be to try
14 to figure out who acted in concert with those people who engaged
15 in the acts of violence, force and intimidation, who supported
16 the people with overt acts in their violence, force and
17 intimidation, who had no knowledge of this, provided no support
18 and did not act in concert. That is what would have been done
19 in the Nineteenth Century in the hypothetical you give.

20 Q. So somebody like in the example that I made earlier
21 of Ray Epps, someone inside of that capacity, if he was doing
22 the things that I said that he was doing, in your opinion,
23 should someone like that be investigated and brought before a
24 Court?

25 A. I have no idea and no control and no expertise on

1 the reasons why we might investigate or prosecute anyone.

2 That's not my area of expertise.

3 Q. But you just mentioned specifically I was talking
4 about two different crowds, which I was. And I was talking
5 about one crowd with individuals that had infiltrated this one
6 crowd that were acting maybe in a coordinated effort amongst
7 each other or maybe just individually, but they were making
8 actions of violence. Would you say that that's an expression of
9 that crowd and you would say that those are insurrectionists?

10 A. What I would say is the answer I gave to the
11 previous question, which is what we really have here is not one
12 crowd, but two. And police, prosecutors, judges and juries in
13 the Nineteenth Century would have the extraordinary difficult
14 job of trying to figure out who was in the crowd, was seeking to
15 resist the execution of federal law for a common public purpose
16 through persuasion and simply where a lot of people disagree,
17 and who was in the crowd seeking the same goals through
18 violence, force and intimidation.

19 Q. I'd like to ask you, would you automatically
20 translate the mention of war as violence?

21 A. I would make a rebuttable inference.

22 Q. What if somebody said political war, would that be
23 -- would you consider that to be a violent statement?

24 A. Depending on the context.

25 Q. We're in a political war today.

1 A. That's too divorced from any context.

2 Q. So you can't say if that's a violent statement or
3 not a violent statement?

4 What about if it's an ideological war, would you
5 consider that to be violence -- if I said "Today we're in an
6 ideological war and this is a war that we will not lose. We
7 will win this war. We will conquer our enemy and we will not
8 lose this ideological war." Would you -- would you translate
9 that as a violent rhetoric?

10 A. I think here I'm speaking more of a political
11 scientist than a Nineteenth Century legal historian, but
12 ideological war does seem to imply battle of ideas. So my
13 rebuttable presumption would be that this is not a call to arms.

14 Q. So you would not say that that was a violent
15 statement then, in simple terms -- in simpler words?

16 A. Well, I have to use a phrase rebuttable presumption.
17 If I hear more or learn more, I might change my mind. But my
18 instinctive reaction, political war I am unclear because some
19 political wars are violent. But ideological wars, most of the
20 time when that phrase is used as a political scientist, it is
21 used to talk about a battle of ideas and not a physical battle.

22 Q. What about if a person was to say "I will not be
23 intimidated, I will not be threatened and I will not back down"
24 would that be violent rhetoric to you?

25 A. Again, context is everything. My rebuttable

1 presumption on that one is probably not.

2 Q. What about if a person was to say this, "We're going
3 to push through this at all costs and we're going to get to the
4 other side and we're going to stay the course and we will never
5 back down," would you say that that was violent rhetoric?

6 A. It depends on the context. What are you pushing
7 through? If in the context you are pushing through other human
8 beings, you're pushing through property barriers, I would say
9 yeah. If it was simply as a coach of a sports team who might
10 say it's the fourth quarter, "we have to push through," that is
11 clearly not violence.

12 Q. What if it was in a political realm? What if it was
13 my political agenda and I stood before a crowd and I said "We
14 are not going to lose this. We're going to push through. We
15 are not going to be back down. We are not going to be
16 intimidated," and I was talking about a political agenda and I
17 was trying to really just garnish support for my agenda, would
18 you translate that to be violent rhetoric?

19 A. That use of "pushing through" sounds like a high
20 school basketball coach, push through to fourth quarter.

21 Q. How many times have we said in basketball games, "I
22 hope we kill our opponents this weekend. I hope we annihilate
23 the other side," would -- if you heard a fan, some old grandma
24 sitting up in the stands and you walked by and she stood up and
25 she said, "Go get 'em, Junior, and kill them today, annihilate

1 them, let's beat them to a pulp," would you -- would you
2 consider that to be violent rhetoric?

3 A. Not in that context.

4 Q. A lot can be taken out of context, and a lot of what
5 you have seen here and testified on has been just that, taken
6 out of context. And we have to be very careful, especially
7 whenever we are dealing with a charge --

8 THE COURT: Mr. Griffin, do you have a question?

9 MR. GRIFFIN: No. He -- yeah.

10 BY MR. GRIFFIN:

11 Q. I guess my final question would be, and I appreciate
12 your patience with me, Mr. Graber, is that in all of your
13 expertise and knowledge of the law and particularly focused on
14 the point of insurrection, and with everything that's been said
15 in America about January 6, and with all of the videos that have
16 come out, and with all of the pointed attacks on individuals,
17 I'd like to ask you: Why hasn't anybody been charged with
18 insurrection in the United States today? Because there hasn't
19 been one person that has been charged -- not convicted,
20 charged -- with insurrection? So in all your knowledge, why is
21 that?

22 A. Nothing in my expertise qualifies me to answer that
23 question.

24 Q. But -- so you can't give an answer to a question as
25 simple as why hasn't anybody been charged with insurrection?

1 A. That is a decision that would be made by the Biden
2 Justice Department.

3 Q. But you are an expert witness. This is inside of
4 your realm. This is inside of your area of expertise. You are
5 a law professor.

6 MR. GOLDBERG: Your Honor, I object. He asked the
7 question and he got the answer. He just doesn't like the
8 answer.

9 THE COURT: I am not understanding the relevance of
10 the question myself.

11 MR. GRIFFIN: Well, I -- because I am here in a
12 civil court today being accused of insurrection, charged, not --
13 not to the letter, but I'm being accused of insurrection today.
14 And if Your Honor, at the end of this trial, feels that I was
15 guilty of insurrection, that's going to weigh in on your
16 decision and that's going to remove me from my office in Otero
17 County. So I believe that it's relevant in the fact that nobody
18 in America has been charged with insurrection today. I'm the
19 only one on trial for insurrection in the United States today.

20 THE COURT: I don't know that to be the case,
21 Mr. Griffin. If memory serves me, there has been a charge of
22 conspiracy.

23 MR. GRIFFIN: Yes, sir, but that's not insurrection.

24 THE COURT: Conspiracy to --

25 MR. GRIFFIN: Said conspiracy, but I think it -- I

1 mean -- I just -- it's a heavy charge, is what I say. It's a
2 heavy charge, and it's a charge that should be heavy because it
3 should be -- it's a very serious charge whenever it comes to the
4 point of wanting to overthrow the greatest government that's
5 ever been established in the world, and that's the United States
6 government.

7 THE COURT: If I understand what you're telling me,
8 there is a decision that has to be made at the end of this
9 trial.

10 MR. GRIFFIN: Okay. Well, I appreciate your
11 patience with me, Your Honor. I apologize if I overstepped in
12 any way.

13 Mr. Graber, I thank you for your answers.

14 THE COURT: Redirect, Mr. Goldberg?

15 MR. GOLDBERG: I have a very short redirect.

16 REDIRECT EXAMINATION

17 BY MR. GOLDBERG:

18 Q. Professor Graber, in the cross-examination,
19 Mr. Griffin referred to Plaintiffs' Exhibit 152, and he referred
20 to the breaking out of the windows as foolish and disgusting
21 acts. I took that language down. Foolish and disgusting acts.

22 MR. GOLDBERG: Joe, would you apply Plaintiffs'
23 Exhibit 152.

24 (Note: The video is played to the Court.)

25 BY MR. GOLDBERG:

1 Q. Did you hear Mr. Griffin talk about pushing out
2 those windows as foolish and disgusting acts?

3 A. He identified with these, "What do we do?"

4 Q. You anticipated my next question. Was he separating
5 himself from that violence or was he associating himself with
6 that violence?

7 A. When he says "What do we do," after he says "I saw
8 that," I interpreted that as associating himself with the
9 violence, or at least, again, people of the Nineteenth Century
10 would regard this as evidence -- mere evidence that he was
11 leagued with the people breaking the windows and pushing on the
12 police.

13 Q. Earlier -- earlier in his cross-examination of you,
14 Professor Graber, Mr. Griffin gave a long and complicated
15 hypothetical that led to an assertion that he was entrapped,
16 that was his word, he was entrapped into an insurrection. In
17 all of your investigation in this case, did you find any
18 evidence that Mr. Griffin was entrapped in an insurrection?

19 A. No, I did not.

20 MR. GOLDBERG: Thank you.

21 MR. GRIFFIN: Can I respond?

22 THE COURT: May you respond? It's not argument at
23 this point, Mr. Griffin. Did you have a question?

24 MR. GRIFFIN: Yes, sir.

25 THE COURT: Based upon the redirect?

1 MR. GRIFFIN: Yes, sir.

2 THE COURT: If it's based upon the redirect and it's
3 a question.

4 RE-CROSS-EXAMINATION

5 BY MR. GRIFFIN:

6 Q. Mr. Graber, in your opinion on that video that you
7 just watched, and your response, would you say that I had a
8 sense of despair at that time?

9 A. I'm not really qualified to determine whether you
10 had a sense of despair.

11 Q. When somebody says "What do we do," is that a place
12 where you're in despair?

13 A. My expertise, I'm sorry, has run out. I'm sorry. I
14 just can't -- I don't have expertise on whether people are in a
15 state of despair. I have no training in psychology or
16 psychiatry.

17 Q. In your opinion, Mr. Graber, if I would have been
18 proud of that at that time, would my nature have been "We broke
19 the windows out. We showed them," or my demeanor at that time
20 was going, "What do we do," because that's what I said. "What
21 do we do?" It's despair. It's "What do we do?"

22 MR. GOLDBERG: I object, Your Honor. One, he's not
23 asking a question. He's making an argument. It's a litigation
24 argument. It's not a fact argument.

25 THE COURT: I think that's part of your argument at

1 the conclusion of your case.

2 MR. GRIFFIN: Thank you, Your Honor.

3 THE COURT: Professor, you are excused from any
4 further obligation here.

5 THE WITNESS: Thank you.

6 THE COURT: Ladies and gentlemen, at this time,
7 we'll take our lunch recess. We'll be back on the record at
8 1:15.

9 (Court in recess at 12:01 p.m.)

10 THE COURT: We're back on the record. Next witness
11 for the plaintiff?

12 MR. SMALL: Your Honor, the Plaintiffs call
13 Dr. Rachel Kleinfeld to the stand.

14 THE COURT: Dr. Kleinfeld.

15 MR. SMALL: While we're waiting for her, let me
16 introduce myself. I'm Daniel Small with Cohen Milstein Sellers
17 & Toll, for the Plaintiffs.

18 THE COURT: Thank you.

19 Doctor, if you'll come up to the witness stand,
20 please.

21 (Witness sworn by the Court.)

22 THE COURT: Please speak right into the microphone.

23 DIRECT EXAMINATION

24 BY MR. SMALL:

25 Q. Could you state your full name for the record, and

1 spell it for the court reporter, please.

2 A. Rachel Rebecca Kleinfeld, R-A-C-H-E-L,
3 R-E-B-E-C-C-A, K-L-E-I-N-F-E-L-D.

4 Q. Thank you. You're here as an expert witness. How
5 would you describe your expertise?

6 A. I'm considered one of the foremost experts in the
7 world on political violence and democracy, and particularly on
8 political balance in the United States in the contemporary
9 period.

10 Q. Do you have any expertise on the last election cycle
11 in this country?

12 A. Yes. I followed the Stop the Steal movement very
13 closely and was engaged with the National Task Force on Election
14 Crises in order to monitor political violence.

15 Q. What education have you had, Dr. Kleinfeld, that you
16 believe has contributed to your expertise?

17 A. I have a B.A. from Yale University in ethics,
18 politics and economics, and I have an MPhil and DPhil from
19 Oxford University, which I attended as a Rhodes Scholar.

20 Q. What experience have you had that has contributed to
21 your expertise?

22 A. I'm a Senior Fellow at the Carnegie Endowment for
23 International Peace where I have researched and written on these
24 topics for over a decade. I have spent 20 years researching and
25 writing on these issues in general, and I have served on the

1 National Task Force on Election Crises where I monitored these
2 issues. I have served -- I was asked to give written testimony
3 to the January 6th Select Committee.

4 And I serve on the boards of the National Endowment
5 for Democracy, which is a governmental organization that
6 supports democracy globally; the Board of Freedom House, which
7 is a cross-partisan organization that supports democracy
8 globally; and States United for Democracy, which is also a
9 cross-partisan organization that supports democracy in the
10 States and works with law enforcement and States regarding
11 political violence.

12 Q. You mentioned that you follow the Stop the Steal
13 movement. Why did you do that?

14 A. As part of my research duties and also my duties for
15 the National Task Force on Election Crises, there was
16 significant concern about violence post election through the
17 inauguration. It was my particular duty on the National Task
18 Force to monitor security issues, political violence issues and
19 issues regarding the military. That's where my expertise lies.

20 Q. Have you worked with any international groups of
21 scholars?

22 A. Yes. Part of that monitoring effort was a 24/7
23 monitor on extremist groups, social media sites where we were
24 seeing calls for violence as one part of that. And when we
25 would see a credible call, we would report it to the relevant

1 law enforcement in the relevant state.

2 Q. Have you written scholarly articles or books in your
3 area of expertise?

4 A. Yes. My last two books were on the rule of law, how
5 to build the rule of law and on political violence in
6 democracies. I have written many scholarly articles for the
7 Journal of Democracy and Annual Review of Political Science. I
8 write popularly for the Wall Street Journal, National Review,
9 Washington Post, all sorts of places.

10 Q. Are you currently employed?

11 A. I am.

12 Q. Where?

13 A. The Carnegie Endowment for International Peace.

14 Q. What is your job there?

15 A. I am a senior fellow in a democracy conflict and
16 governing space.

17 Q. What are your principal responsibilities in that
18 position?

19 A. I advise the U.S. government and allied governments
20 on issues of security, security service reform, police and
21 military issues, democracy issues. I advise the Defense
22 Department and the State Department, the Department of Justice
23 sometimes, on issues on the rule of law and democracy. I work
24 with the business community and philanthropists to strengthen
25 democracy in the United States, and I research and write and

1 speak a lot with regard to those topics.

2 Q. Were you retained as an expert witness in this case
3 by Plaintiffs' counsel?

4 A. I was.

5 Q. Is this the first time you have been retained as an
6 expert witness?

7 A. It is.

8 Q. Did we ask you to address certain issues in this
9 case?

10 A. You did.

11 Q. Was a demonstrative exhibit prepared at your
12 direction that listed the issues you were asked to address here?

13 A. It was.

14 Q. Would that demonstrative exhibit assist you in
15 testifying fully and accurately here?

16 A. Definitely.

17 Q. Let me show you and the Court Demonstrative Exhibit
18 RK2. Is this the demonstrative exhibit you were just referring
19 to?

20 A. It is.

21 Q. Which issues did Plaintiffs' counsel ask you to
22 address in this case?

23 A. I was asked whether Mr. Griffin participated in an
24 insurrection. If so, what his role was in that insurrection,
25 what the objectives of that insurrection were and whether

1 Mr. Griffin likely shared that objective, whether Mr. Griffin
2 would likely have expected violence at the U.S. Capitol on
3 January 6, 2021, and whether Mr. Griffin was appropriately
4 characterized as a protestor or insurrectionist.

5 Q. Does your expertise in political violence help you
6 answer these questions?

7 A. It does.

8 Q. How so?

9 A. I have studied how mobs and violence groups are
10 mobilized for insurgencies, coups, insurrections and so on. I
11 have studied the ways in which the Stop the Steal movement used
12 violence and mobilized violence in the period at the state level
13 prior to January 6, on January 6th itself and then up to the
14 inauguration.

15 I have studied the dynamics of crowds and how crowds
16 become violent, the psychology of that. I have studied the
17 roles that are played in the insurrection and the different
18 roles that different individuals play.

19 Q. Have you looked at all how at the issue before this
20 case of how a protest might differ from an insurrection?

21 A. Sure, the differences between these different forms
22 of activity.

23 Q. Now, did you do an investigation for this case to
24 address these questions we've asked you to address?

25 A. I did.

1 Q. What sources of information did you look at as part
2 of your investigation?

3 A. I looked at a lot of social media posts during the
4 period in real time and then again more recently, a video of
5 Mr. Griffin, news reports, and then a lot of research and data
6 that I do on the trends in political violence in the United
7 States and what's been happening over the last few years.

8 Q. Are these sources of information among those that
9 you relied on in your professional work?

10 A. Yes.

11 Q. Is there any particular knowledge acquired
12 independently of this case that you rely on for your opinions
13 here?

14 A. Yes.

15 Q. What is that?

16 A. I was asked to give written testimony to the January
17 6 Select Committee on trends and armed violence in the United
18 States that led up to January 6. Since January 6, I researched
19 the data on those trends. I was part of this 24/7 social media
20 watch during the period of election through inauguration. I
21 speak to many senior Homeland Security officials, Department of
22 Justice officials and military officials about these issues of
23 the security in the United States.

24 Q. Have you specifically studied the events on and
25 leading up to January 6 for your professional work outside of

1 this case?

2 A. I have.

3 Q. For what particular work did you look at those
4 events?

5 A. For the testimony to the January 6 Select Committee
6 and also for the National Task Force on Election Crises is my
7 particular arena to look at the ways in which political violence
8 is being mobilized. And then if the threat of the misuse of the
9 insurrection act became probable to the national security
10 community, I was asked to draft a memo, a white paper, on the
11 proper use of the Insurrection Act and the proper use of the
12 National Guard because there were credible fears within the
13 national security community of misuse. I did that with other
14 people.

15 Q. Dr. Kleinfeld, I'd like to ask you about some
16 important context for your opinions. You mentioned that you
17 followed the Stop the Steal movement. What is the Stop the
18 Steal movement?

19 A. So then President Trump was attempting multiple
20 methods to remain in power through the courts and legal
21 challenges and so on. The Stop the Steal movement was the part
22 of that effort that was mobilizing mob intimidation and violence
23 in order to not allow the transfer of Presidential power. It
24 was really mobilized for three ends. It was mobilized at the
25 state level to try to get states to rerun their elections, to

1 declare their elections fraudulent, send a fake slate of
2 electors.

3 When that failed, the -- and it put a lot of
4 pressure, I should say, on State officials to do that. When
5 that failed, it was redirected toward January 6, the last legal
6 day of changing the direction of the transfer of Presidential
7 power. And it was meant to mobilize pressure on that day. And
8 then when that failed, there was an attempt to mobilize violence
9 for the inauguration. That one was fourth.

10 Q. Were there particular groups that were engaged as
11 part of this movement to try to exert that pressure you just
12 described?

13 A. Yes. There were three different groups. So there
14 were what I would call violence specialists. These are groups
15 that use violence as part of the course of their goals, The Oath
16 Keepers, The Proud Boys, groups like that. There were groups
17 that could mobilize armed intimidatory presence. They might not
18 be violent at all, but the presence that they could mobilize
19 particularly elements could threaten. And then there was the
20 regular members of the mob, just adding bodies.

21 Q. As part of your professional work, did you learn
22 about a group called Cowboys for Trump?

23 A. I did.

24 Q. Was Cowboys for Trump one of the three types of
25 groups that you just described?

1 A. Yes. They were the middle groups where they could
2 mobilize armed supporters to threaten or make people feel
3 intimidated.

4 Q. As more background for your opinions, can you tell
5 us at a high-level what was your understanding of what happened
6 at the U.S. Capitol in Washington, D.C. on January 6 and how
7 that came about.

8 A. So the Stop the Steal movement had put pressure on
9 multiple dates. January 6 was the most important national date
10 by far. And the goal of the mob pressure on January 6 was to
11 bring these three kinds of groups together, the violence
12 specialists, the armed intimidating presence, and the unarmed to
13 add mass. And to use that presence to first pressure Mike
14 Pence, the Vice President, to not certify the election for
15 President Elect Biden, but to somehow seize power and certify it
16 for President Trump.

17 There was also a goal of intimidating members of
18 Congress so that they might make objections. Each member can
19 make their own objection and draw the process out for a very
20 long time. And there was a hope somehow that by doing that, the
21 President, President Trump, would call an Insurrection Act,
22 which was known popularly martial law and somehow seize power.
23 Then the group there might assist, be deputized, they hoped, by
24 the President to capture a member of Congress or assist in
25 making sure that Trump remained in power.

1 Q. Dr. Kleinfeld, have you reached any opinions on the
2 issues you were asked to address in this case?

3 A. I have.

4 Q. Was a demonstrative exhibit prepared at your
5 direction that lists the opinions you have reached?

6 A. It was.

7 Q. Would that demonstrative exhibit help you in
8 testifying fully and accurately here?

9 A. It would.

10 Q. Let me show you Demonstrative RK 3. Is this the
11 demonstrative exhibit you were just referring to?

12 A. It is.

13 Q. What opinions have you reached in this case,
14 Dr. Kleinfeld?

15 A. It's my opinion that Mr. Griffin engaged in the
16 insurrection, including the January 6 attack on the U.S.
17 Capitol, as a mobilizer of a mob and inciter of that mob on the
18 day of and also as a normalizer of the violent specialist
19 groups. That the purpose of the insurrection, including the
20 January 6 attack, was to prevent the transfer of Presidential
21 power and to use violence and intimidation to do that.

22 And that Mr. Griffin's actions and comments suggest
23 that he shared that objective of using intimidation to prevent
24 the transfer of Presidential power. Violence was very
25 predictable on January 6. In fact, it was predicted.

1 Mr. Griffin likely knew there was a substantial threat of
2 violence, and he helped to create that threat. And Mr. Griffin
3 was an insurrectionist. He was not a protestor.

4 Over several weeks -- really several months before
5 that, he participated in a multifacet effort to prevent the
6 transfer of Presidential power through violence or the threat of
7 violence.

8 Q. Thank you. I'd like you to explain what the key
9 evidence is that you rely on for these opinions that you just
10 summarized and how that evidence supports those opinions. But
11 first, let me ask you, Dr. Kleinfeld, as part of your
12 investigation in this case, did you review all of the evidence
13 that you are about to discuss here?

14 A. I did.

15 Q. Do you rely on all of that evidence for your
16 opinions in this case?

17 A. Yes, I do.

18 Q. Let's go in chronological order, beginning with the
19 evidence you rely on of events before January 6, 2021. Was a
20 series of demonstrative exhibits prepared at your direction that
21 contain excerpts of the evidence predating January 6, 2021 that
22 you rely on for your opinions?

23 A. Yes.

24 Q. Would those demonstrative exhibits assist you in
25 testifying fully and accurately here?

1 A. Yes.

2 Q. Let's look at Demonstrative Exhibit RK 4. Is this
3 the first of the demonstrative exhibits in the series you just
4 mentioned?

5 A. Yes.

6 Q. Let's play the video that's embedded in this
7 Demonstrative.

8 (Note: The video is played to the witness.)

9 BY MR. SMALL:

10 Q. How does that clip support your opinions in this
11 case?

12 A. This is Mr. Griffin speaking at a rally in Truth or
13 Consequences, which is a couple hours south of here.

14 THE REPORTER: I'm sorry. Could you start over,
15 please.

16 A. This is a speech Mr. Griffin gives in a rally at
17 Truth or Consequences, a couple hours south of here. He says,
18 "The only good Democrat is a dead Democrat." He immediately
19 backtracks that statement, but the fact is you really can't
20 unring a bell like that once you've rung it. This video got
21 picked up by President Trump who retweeted it. That retweet
22 sent Mr. Griffin's social media skyrocketing. He got many, many
23 more followers after that moment. So not only did he make the
24 incendiary comment, even though he backtracked it afterward, but
25 he knew the reaction that got from many, many follow who joined

1 him because of this statement -- joined his social media I
2 should say, because of this statement.

3 Q. What was the effect of making that statement,
4 according to your expertise?

5 A. It's a form of normalizing violence, making a part
6 of the political sphere.

7 Q. What effect did it have on potential perceptions of
8 Democrats or people that Mr. Griffin believes are on the other
9 side of this issue?

10 A. It's a form of vilifying potentially dehumanizing,
11 making it seem like wicked people.

12 Q. Let's go to RK 5. Let's go ahead and -- there is no
13 clip on that one. Can you explain to us what we're seeing in
14 this demonstrative and how it supports your opinions.

15 A. Yes. So this is an Article in the Daily Beast.
16 It's a political newspaper. It reports that Griffin said that
17 certain democratic governors should be tried for treason or
18 should be executed. I don't know if he actually said they
19 should be tried, simply that they should be executed. He says
20 "You get to pick your poison. You either go before a firing
21 squad or you get the end of the rope."

22 Q. What's the significance of that information?

23 A. This is further normalizing violence as part of our
24 political Democratic sphere. It particularly is targeting
25 political officials, Democratic governors, which will be one of

1 the groups that is intimidated and threatened by his supporters
2 later. This comes after he has had social media uptick, all
3 these new supporters. So he's further normalizing violence for
4 this group of followers against Democratic governors
5 particularly.

6 Q. Let's go to the next Demonstrative Exhibit RK 6.
7 Please explain to us what we have in this exhibit and how it
8 supports your opinions.

9 A. This is an article about a Black Lives Matter
10 protest and counterprotest that occurred in Rio Rancho about 45
11 minutes south of here. It was a protest that turned a little
12 testy. There was pushing. As Cowboys for Trump rode in on
13 horses, they also were speaking the Three Percenters were there,
14 which is one of the violent specialist groups I mentioned. The
15 New Mexico Civil Guard was also there. So by showing up as a
16 counterprotester with these other groups in the arena of a
17 protest, it's really normalizing these violence groups as part
18 of the political sphere saying these militias and so on are part
19 of protest activity now.

20 Q. Let's go to the next demonstrative, which is RK 7.
21 Please explain to us what we see in this exhibit and how it
22 supports your opinions.

23 A. This is the Santa Fe New Mexican on November 7.
24 This is right after the election. This is the first of the Stop
25 the Steal events. Stop the Steal has now been organized

1 nationally. They've called for rallies at the state level all
2 over the country. Cowboys for Trump takes it upon itself to
3 rally here at the Roundhouse. The Roundhouse is also right next
4 to the building where our election officials do their work, so
5 it's the same arena.

6 At this rally, there is armed participants. That's
7 legal in New Mexico. He gives speeches. There are people who
8 have guns in the audience and they are sort of rallying a group
9 of activists here.

10 Q. Let's go to RK 8, the next Demonstrative exhibit.
11 Please explain to the Court what we see in this demonstrative
12 and how you rely on it for your opinions.

13 A. This is the following week they have protested at
14 the Roundhouse. Now they're down in Albuquerque. It's again
15 part of the plan national Stop the Steal movement. The national
16 Stop the Steal movement had a protest in Washington, D.C.. They
17 called for state level protests because right now is the period
18 during which the goal of this intimidation is to put pressure on
19 state officials. This is when Rusty Bowers is being pressured
20 in Arizona to enable fake slate of electors and his daughter is
21 dying inside and so on.

22 Here in New Mexico, that protest took part in
23 Albuquerque, heavily armed. The New Mexico Civil Guard was
24 there at this point. The State of New Mexico had declared a
25 civil action against the New Mexico Civil Guard for being an

1 illegal militia. This is again normalizing violence, rallying
2 this group of people who can provide an armed intimidatory
3 presence to state officials at this point. They're trying to
4 put pressure on for decertifying the election, declaring it
5 fraudulent, asking for a fake slate of electors. There is some
6 violence. The counterprotesters -- but mostly this is really
7 about again normalizing these violence groups and making them a
8 part of political discourse.

9 Q. Let's go to RK 9. Please explain what we see here
10 and why you rely on it for your opinions in this case.

11 A. This is the third week. It's the third rally.
12 We're back here in Santa Fe outside the Roundhouse in our
13 executive building. Again, armed groups of people rallying
14 there, speeches that are hoping that the Supreme Court changes
15 the directionality of the Presidential election.

16 This is also -- to put it in context, our Secretary of
17 State was docked (phonetic), I believe, just after this. As a
18 result of violence and intimidation that she was facing, she had
19 to send her child to live with a relative and go move into a
20 safe house with State Police presence. So this kind of
21 intimidation at the state level is starting to have an effect on
22 election officials.

23 Q. Thank you. Let's go to the next demonstrative
24 exhibit, which is RK 10. Here we have another video embedded in
25 this exhibit. Let's listen and watch it and then I would like

1 you to explain what the significance is of that video clip.

2 (Note: The video is played to the witness.)

3 BY MR. SMALL:

4 Q. What is the significance of that video clip for your
5 opinions in this case?

6 A. It's my understanding that Griffin is coming back
7 from the march on Washington that had just happened. The Proud
8 Boys were there. This is where Enrique Tarrío, the head of the
9 Proud Boys, was arrested after this for pulling down the banner
10 of the Black Lives Matter church. There was significant
11 violence against Proud Boys as well as by the Proud Boys at this
12 march in Washington, D.C.. And so to be seen the next day,
13 these are good guys, they're helping little old ladies across
14 the street, having just witnessed newspaper reports coming out
15 about the level of violence this group was causing and was
16 having directed at them is a way of normalizing their activity
17 as if these are some form of civic group and downplaying the
18 violence that was happening in Washington.

19 Q. Thank you. Let's keep moving to Demonstrative RK
20 11. Here we have another video. Let's play that video and then
21 I'd like you to explain to us how that supports your opinions in
22 this case.

23 (Note: The video is played to the witness.)

24 BY MR. SMALL:

25 Q. How does that video clip support your opinions?

1 A. First, I'd like to say what's going on here --

2 Q. Yes, please.

3 A. Women for America First is the organization that
4 applied for the park rally permit for the January 6 events in
5 Washington, D.C.. That group that applied for the park permit
6 in January 6 in D.C. had a bus tour where they took speakers
7 across the country going to Washington, D.C. for the 6th. The
8 goal of the bus tour was to rally crowds and get people to come
9 to the 6th.

10 And Commissioner Griffin agreed to be a speaker on
11 this bus tour. That's the first clip of him I have of him going
12 across the country rallying the crowds. In this one, he's
13 calling on the legitimacy of his elected office, being a County
14 Commissioner here in New Mexico, and he's calling on the
15 legitimacy of knowing President Trump personally.

16 Q. Let's go to the next demonstrative, RK 12. As you
17 just heard, there is a video embedded in this exhibit. Let's
18 now go ahead and listen and watch it and then I'd like you to
19 explain what's going on and what it's significance is for your
20 opinions.

21 (Note: The video was played to the witness.)

22 BY MR. SMALL:

23 Q. Go ahead.

24 A. Same speech. He just said "I'm a County
25 Commissioner. I know President Trump." Now he's saying the

1 goal of January 6 is to make sure that the certification is
2 going in a direction for President Trump. And after that, there
3 will be a declaration of martial law. This was widely
4 understood by people in this social media universe to be likely
5 because for Foreign National Security Advisor Michael Flynn had
6 been calling for insurrection, and calling it martial law --
7 sorry calling for an Insurrection Act declaration and calling it
8 martial law.

9 Q. Let's go to RK 13. This is the next in our series
10 of pre January 6 evidence that you rely on. Let's listen to
11 that video and then I'd like you to explain its significance.
12 (Note: The video is played to the witness.)

13 BY MR. SMALL:

14 Q. What's going on in that video and what significance
15 do you take from it, particularly where Mr. Griffin refers to
16 the most corrupt, wicked, vile people in places of power?

17 A. Sure. So first, it gets to the desire of previous
18 to this to affect the state-level elections, to have them rerun
19 their elections or redo those elections. That's failed by this
20 time. We're at January 3rd. But then what he's doing -- so
21 most normal adults don't commit violence. It's actually very
22 rare except for aggressive personalities on either side of the
23 ideological spectrum.

24 There are two ways to get normal people to commit
25 violence: One is to place that violence in the context of

1 somewhere where it's sanctioned, like a war. In a war, patriots
2 can commit violence, that's okay. So that's one way. Another
3 way is to make it seem defensive so you won't commit aggressive
4 violence, but you might do violence for self-defense to protect
5 your children, to protect your values. And that can lower
6 inhibitions to violence.

7 And the third is to dehumanize people. If you make
8 people seem like a threat that you are defending against and
9 that's somewhat less than human, that lowers inhibitions to
10 violence. And that third thing is what is going on here, vile,
11 wicked, corrupt. These are all ways of positing people as a
12 threat and also kind of lowering their status of their humanity.

13 Q. I think we skipped over RK 13. Can we go back to
14 that. This is on the tour with Women for America First; is that
15 right?

16 A. That's right. This is part of the earlier video set
17 where he was talking about being a County Commissioner, knowing
18 President Trump.

19 Q. Let's play the video embedded in this exhibit,
20 please.

21 (Note: The video is played to the witness.)

22 BY MR. SMALL:

23 Q. What's the significance you attribute to that short
24 clip?

25 A. This is mobilizing more people to be at the Capitol

1 on that day. That's part of the third group I was talking
2 about, just a mob. More people to be present. That helps in
3 intimidation.

4 Q. Let's go to RK 15. I believe we're still on the
5 tour with Women for America First. So let's watch that and then
6 explain what we're seeing and what significance it has.

7 (Note: The video is played to the witness.)

8 BY MR. SMALL:

9 Q. What's going on here and how do you rely on that for
10 your opinions?

11 A. Two things are going on here: One is that it's the
12 first intimidation that we have that he expects violence to take
13 place. First thing he says "Some of us might lose our lives,"
14 but then he invokes Jesus. And Jesus -- God is often used by
15 both sides of the war to make your side feel like you have
16 morale justice on your side. I think that's what's going on
17 here.

18 Q. Let's go to Demonstrative RK 16 and let's watch the
19 video here. And then I'm going to ask you to explain what's
20 going on and how you rely on it. We're still on the bus tour,
21 right?

22 A. Uh-huh.

23 (Note: The video is played to the witness.)

24 BY MR. SMALL:

25 Q. What's the significance of that, Dr. Kleinfeld?

1 A. He's still on this bus tour across the country
2 trying to rally people to come to the Capitol and he's rallying
3 people to come to the Capitol and he's telling them that the
4 President is asking them. Now, of course, most of us, if our
5 President asks us to serve in some way, want to answer that call
6 of service, and so it adds legitimacy to the goals of the 6th.

7 Q. Let's look at the next demonstrative exhibit, RK 16.
8 This has another video embedded in it. Let's go ahead and watch
9 that, please. This should be 16.

10 (Note: The video is played to the witness.)

11 BY MR. SMALL:

12 Q. I'm sorry. It is the next one, RK 17. My
13 apologies.

14 (Note: The video is played to the witness.)

15 BY MR. SMALL:

16 Q. Set the context for us, please, on what's going on
17 here and then how you rely on this video clip to support your
18 opinions.

19 A. Sure. So he's still on the bus tour. It's not
20 clear whether he's speaking to a group of people or speaking to
21 a camera. This really goes to show his state of mind and his
22 understanding of what's happening on January 6, that the goal is
23 first to get Mike Pence to act in the right way. That was why
24 we understood in -- among his community to certify the election
25 for President Trump, through some seizure of power that he

1 didn't constitutionally have. And then to create pressure on
2 the senators to object to the election. So he's stating these
3 are the two things that are likely to happen on the 6th.

4 Q. Let's go to the next demonstrative, which is RK 18.
5 Here we have another video embedded in this exhibit. Let's go
6 ahead and watch this video.

7 (Note: The video is played to the witness.)

8 BY MR. SMALL:

9 Q. Set the context and then explain the significance of
10 this video, please.

11 A. So again, this is showing state of mind. He's
12 saying that he'll never accept a Biden presidency, that the
13 normal rules of democracy are suspended somehow. And that
14 Cowboys for Trump are not supporters and will never give in and
15 allow that to happen.

16 Q. Let's go to RK 19 now. Here we have another video
17 embedded. Let's go ahead and watch this one.

18 (Note: The video is played to the witness.)

19 BY MR. SMALL:

20 Q. What are we seeing here, Dr. Kleinfeld, and how do
21 you rely on it for your opinions?

22 A. So he's now making threats. We don't know if anyone
23 saw those threats, but it goes to his state of mind that
24 Republicans and only the Governor of Arkansas are people that
25 they're going to go after. Violence at this point is largely

1 directed at Republicans, actually, during this period. So these
2 are credible activities. And they're also normalizing that form
3 of violence, which is happening to a significant extent, the
4 threats and intimidation against Republicans who are at this
5 point trying to allow the election process to move smoothly.

6 Q. The next demonstrative is RK 20. Here we have
7 another video. Let's go ahead and play that, please.

8 (Note: The video is played to the witness.)

9 BY MR. SMALL:

10 Q. What's the context and how do you regard it?

11 A. He's still on the bus tour moving across the
12 country. Here he's starting to step outside Democratic norms.
13 "In a democracy, losing has to be an option. That's how it
14 works." To say "If you don't within it in a ballot box you'll
15 within it in the street," is acknowledging that violence could
16 be used to effect the transfer of power and that that's somehow
17 legitimate.

18 Q. The next video is embedded in RK 21. Let's go ahead
19 and watch that.

20 (Note: The video is played to the witness.)

21 BY MR. SMALL:

22 Q. Why do you rely on this video clip for your
23 opinions?

24 A. So now he's talking about a battle on January 6. It
25 could be that he's talking metaphorically, but he's talking

1 about only men. So it strikes me that he's trying to normalize
2 the idea of a battle and of violence occurring that day. Also,
3 he's trying to normalize that violence in the context of war.
4 As I said earlier, that's one of the ways you get normal people
5 to commit violence, is you put it in a context where it's
6 allowing it.

7 Q. Let's watch the next video which is embedded in RK
8 22. Go ahead and play the video, please.

9 (Note: The video is played to the witness.)

10 BY MR. SMALL:

11 Q. How do you rely on that video clip?

12 A. So it's the same speech and it's less metaphorical
13 at this point. "If it comes down to a fight, we're going to
14 need men shoulder to shoulder." That's a physical presence, and
15 he's saying that that's something he might expect on January 6,
16 that it might come down to a fight.

17 Q. Mr. Griffin has told this Court during this trial
18 that when he was referring to a war, a battle, fighting, terms
19 like that, he meant a spiritual war or a political war. How do
20 you respond to that claim in light of the video we just watched
21 and the one before?

22 A. It doesn't seem to me to be what he's talking about
23 in this case. That if it's a spiritual or metaphorical war, why
24 don't we call the men and he's talking about fight. But even if
25 that is his intent to speak metaphorically, the people who are

1 listening to this are going to take what they take from it and
2 they might not be assuming it's metaphorical, he's talking about
3 a fight with men shoulder to shoulder for now.

4 Q. The next demonstrative exhibit, which is RK 23.
5 Here we have another video. Let's go ahead and watch and listen
6 to this video.

7 (Note: The video is played to the witness.)

8 BY MR. SMALL:

9 Q. We had a little car traffic there. Were you able to
10 hear what he was saying? If so, tell us why you rely on that.

11 A. Yes. So now it's the day before January 6. He's in
12 Maryland right outside the Capitol. He's telling his men
13 "Losing is not an option." Again, "Every card is on the table."
14 "It feels to me like we're a nation at war." So again, it's a
15 way of placing violence within an acceptable context for people,
16 lowering their inhibitions to violence and calling again on men.
17 You can see the people in the group nodding their heads and
18 joining along with that understanding.

19 Q. Let's go to RK 24, the next demonstrative exhibit.
20 Mr. Griffin has now made it to Washington, D.C.. Let's watch
21 that video and then discuss it.

22 (Note: The video is played to the witness.)

23 BY MR. SMALL:

24 Q. What did you rely on that?

25 A. He's saying the day before January 6 that -- first

1 of all, this is about Mike Pence, that Mike Pence in this
2 context of not certifying the election for President Elect Biden
3 but for President Trump. This is in a context on January 5 that
4 was a big happy rally basically going on in the Washington, D.C.
5 area, making a lot of noise. Someone, I can't remember who,
6 testified at the January 6 Select Committee that it was loud
7 enough for President Trump to open his window and his door so he
8 could hear the rally. And of course, Vice President Pence's
9 office is right next to his. So hearing this rally, Pence is
10 feeling the pressure from many people that's being put on him.

11 Q. This is the last of our exhibits of events before
12 January 6. Did you prepare or have prepared under your
13 direction a series of demonstrative exhibits about events on
14 January 6?

15 A. I did.

16 Q. Would having -- reviewing and seeing those
17 demonstrative exhibits assist you in testifying fully and
18 accurately here?

19 A. Yes.

20 Q. Let's go to the first of those demonstrative
21 exhibits of events on January 6 and then I'll ask you to explain
22 its significance. Go ahead and play, please, RK 25.

23 (Note: The video is played to the witness.)

24 BY MR. SMALL:

25 Q. What are we seeing in this clip and why do you rely

1 on it?

2 A. This is early, early morning on January 6. This
3 crowd could be there for a lot of reasons. It could be there
4 for just a protest. He's sort of walking along the crowd and
5 he's normalizing violence to the crowd. So he's saying -- there
6 is a sign "Pence, deliver us from evil." He says, "If he
7 doesn't, he's going to have to find a real dark hole to crawl
8 in." I'm sorry, I forget the exact thing he says after that,
9 but it's basically normalizing the idea that we're going to go
10 after him if he doesn't do the right thing. So it's again about
11 pressuring Vice President Pence, that that's the goal of all of
12 these people is to put pressure on the Vice President to certify
13 the election for someone who didn't win the election, and the
14 threat of violence going after someone is on the table.

15 Q. Let's go to RK 26. Here we have another embedded
16 video. Let's go ahead and play that.

17 (Note: The video is played to the witness.)

18 BY MR. SMALL:

19 Q. That was very short, but set the context of what
20 we're seeing and why it's significant to you.

21 A. So it's still early morning. He's walking along
22 this crowd, chatting with people. There is a guy who is dressed
23 a silly in a kind of marching band outfit. That's really common
24 at protests in D.C.. This man might think he's there for a
25 protest. You usually don't show up to a war in a marching band

1 outfit. This guy is being asked by Griffin, "Where is your gun
2 at? That's what I want to know."

3 And it's again normalizing the use of violence for
4 this crowd. Guns are illegal in Washington, D.C., and he's kind
5 of making the crowd think about violence in this normal type of
6 thing.

7 Q. Next demonstrative exhibit is another in the series
8 of events on January 6, it's RK 27. Let's go ahead and play
9 that video.

10 (Note: The video is played to the witness.)

11 BY MR. SMALL:

12 Q. What are you hearing in this video and why is that
13 significant to you?

14 A. This is a few minutes after the first group had
15 broken into the Capitol which happened at 1:30. There was a
16 rumor that went around that Pence had certified it for President
17 Elect Biden, but actually it hadn't happened. But the crowd
18 believes the rumor and now they're saying "Decertify." So they
19 are still believing that there is a way to change Mike Pence's
20 mind, change his actions and change the outcome of the
21 Presidential election, which is the reason they're there.

22 Q. Let's go to RK 28. Let's go ahead and play the
23 video.

24 (Note: The video is played to the witness.)

25 BY MR. SMALL:

1 Q. What are we seeing in this video and why do you rely
2 on that for your opinions?

3 A. So this is seven minutes after Trump tweeted that
4 the Vice President didn't do what with we needed him to do. I
5 can't remember the exact wording of the tweet, but it was the
6 tweet that said Mike Pence failed to certify for President
7 Trump. And people are pouring over this wall which is a barred
8 area. They've been told it's an area that they're not supposed
9 to go into. This is important because the crowd is now aroused.
10 They're getting angry. They're crossing a barrier.

11 And crowd psychology is really important to keep
12 people following the rules because there is a slippery slope
13 with crowds. Once they start breaking rules, the ability to
14 stop them becomes much harder. This is a real small wall
15 they're jumping over, but it's a really big step because they
16 just heard that Vice President didn't do what they wanted them
17 to do and now they're pouring into a barred area. And Griffin,
18 "Is there a question?"

19 Q. Let's to go the next demonstrative, which is RK 29,
20 and let's look at the video, please.

21 (Note: The video is played to the witness.)

22 BY MR. SMALL:

23 Q. What did we see briefly there and what's its
24 significance?

25 A. So now violence has been happening for over an hour

1 at the Capitol. Someone in the crowd says they have a right to
2 a militia, and he said, "That's right." Cuoy Griffin says,
3 "That's right." This is normalizing the violence that's
4 happening around them, saying that a militia is okay. We do
5 have a constitutional right to a militia, but in this context
6 it's a little bit different. It's really about these people
7 forming some sort of militia that it's okay after they've been
8 inside the Capitol for an hour and a half now.

9 Q. Let's go to RK 30, the next demonstrative exhibit in
10 our series, and let's watch the embedded video, please.

11 (Note: The video is played to the witness.)

12 BY MR. SMALL:

13 Q. What did we see briefly here and why is it
14 significant to your opinions?

15 A. So now he's crawling up a tunnel -- walking up a
16 tunnel on the inauguration stage. This is very much a
17 prohibited area. And he's saying "I love the smell of napalm in
18 the morning." Now, that's a quote from Apocalypse Now, a war
19 movie. And he's basically aware at this point that he's going
20 to a place that he's not allowed to be in and that they're
21 breaching rules. He's putting this activity in the context of a
22 battle, a war, in which violence is okay.

23 Q. Let's go to RK 31. This has another video embedded
24 in it. Please play that video.

25 (Note: The video is played to the witness.)

1 BY MR. SMALL:

2 Q. What did we see here and why does it matter to your
3 opinions?

4 A. So this is about 15 minutes after Ashli Babbitt has
5 been shot. You're seeing this man with a bloody bandage on his
6 head walking down from the inauguration stage and then kind of
7 improvise a weapon of some sort next to him. And so this shows
8 what he's seeing, that he's well aware at this point people have
9 been in the Capitol for about two hours, a woman has been shot,
10 there is violence going on all around him. He's still there and
11 he's attained high ground.

12 Q. The next exhibit is RK 32. Here we have another
13 video, which we'll watch now.

14 (Note: The video is played to the witness.)

15 BY MR. SMALL:

16 Q. What was Mr. Griffin doing in this video and how
17 does that support your opinions?

18 A. There are a couple of things going on here. First
19 is that Mr. Griffin is very -- assuming a leadership role now.
20 He's grabbed somebody -- or asked for somebody's bullhorn. He's
21 trying to lead the crowd. He's trying to get attention, and he
22 succeeds at that. He's on high ground, way up on the
23 inauguration stage. That matters in crowd psychology. Just
24 like breaking rules is sort of a slippery slope, attaining high
25 ground is a way of increasing emotional arousal of a crowd.

1 It's so much so that in Las Vegas, on the strip for
2 New Year's Eve, they grease all the poles so people can't -- the
3 police grease the poles so people can't attain high ground.
4 Because it increases emotional arousal. And when a crowd is
5 aroused, that can lead them to do things they wouldn't otherwise
6 do, like commit violence. In this case, he's further increasing
7 the emotional arousal of the crowd by praying.

8 Now, I'm not going to interpret the contents of that
9 prayer, but he's getting the crowd more and more worked up. And
10 you can hear that from the crowd in the video that they start
11 off quiet and then they get really worked up. That can enable
12 the violence. And in this context, there has been violence
13 going on for two hours. So he's driving the emotional arousal.

14 He's also speaking to a particular group in this
15 crowd. Many, many people in this crowd are holding banners and
16 flags that indicate they are Christian nationalists. Christian
17 nationalists tend to be evangelical Christians who believe that
18 Trump was sent by God to lead our nation. By invoking God on
19 the side of the nation, they're also saying Trump should stay.
20 So he's speaking particularly to that group.

21 Q. Thank you. Let's go to the next Demonstrative
22 Exhibit RK 33. Here we have another video embedded in this
23 exhibit. Please play that video.

24 (Note: The video is played to the witness.)

25 BY MR. SMALL:

1 Q. As best we could hear it and there is the
2 captioning. Griffin says, "It's an historical day. A woman in
3 the crowd says, "It's horrible," and then Griffin responds. Mr.
4 Griffin responds to that. What's the significance of that?

5 A. This is a few minutes after Trump has sent a tweet
6 saying "Go home peacefully." And so Mr. Griffin stayed until
7 the end, contributing to the crowd himself. And the events that
8 he saw caused at least the person next to him -- the woman next
9 to him to say "This was horrible." But he normalizes that
10 violence and says, "Sometimes it's necessary to send a signal.
11 It's a historic day."

12 Q. I believe this is the last of our exhibits of events
13 on January 6. Did you prepare another demonstrative exhibit of
14 a few videos of events after January 6?

15 A. Yes, I did.

16 Q. Would that demonstrative or series of demonstrative
17 exhibits assist you in testifying accurately and fully here?

18 A. Yes, it would.

19 Q. Let's look at the first of these post January 6.
20 Please play the video.

21 (Note: The video is played to the witness.)

22 BY MR. SMALL:

23 Q. What did you hear Mr. Griffin to say here and what's
24 the significance of that to your opinions?

25 A. This is the end of the same day. He's back at his

1 hotel, I believe, in Roanoke. He's saying "Everyone I saw was a
2 good guy, one of us, a patriot." Again, normalizing the
3 violence that he saw that day, and he stayed until the very end
4 of -- I guess not the extreme end. I don't know if he stayed
5 until 6:00 when they cleared out the Capitol, but until Trump
6 told them all to go home, contributing to the mob.

7 Q. I believe he said "Everyone I spoke to was concerned
8 about Mike Pence." What's the significance of that?

9 A. So it's again saying that the purpose of this crowd
10 was really to stop the transfer of Presidential power. It was
11 to put pressure on Mike Pence first and foremost, and then the
12 senators and stuff to ensure that the transfer did not happen or
13 that Trump was somehow named as the next President.

14 Q. The next video, Doctor, is embedded in Demonstrative
15 Exhibit RK 35. Let's go ahead and play that video, please.

16 (Note: The video is played to the witness.)

17 BY MR. SMALL:

18 Q. Why is that video important for your opinions?

19 A. This is state of mind. He was aware that going into
20 the grass -- I believe that's over the Olmsted wall -- was
21 prohibited, and his approach or whatever, and that his state of
22 mind was that "This is our house." He's putting it all in a
23 different context in which the rules don't apply to him.

24 Q. The next exhibit is RK 36. I believe this has
25 another embedded video. He's still in Roanoke on the evening of

1 January 6. Let's watch that video, please.

2 (Note: The video is played to the witness.)

3 BY MR. SMALL:

4 Q. Why is this video clip important to you,
5 Dr. Kleinfeld?

6 A. So if one didn't see from the man with the bloody
7 bandage and saw that he had probably witnessed violence, he's
8 saying, you know, saw the frictions going on with the police,
9 and I think the use of "frictions" means the violence against
10 over hundred police officers --

11 THE COURT REPORTER: Can you please repeat that.

12 A. Sure. I can't remember exactly what I said.

13 But the "friction" he's referring to, I believe are
14 the violence over a hundred police offices that day, some of
15 which he's suggesting he saw.

16 BY MR. SMALL:

17 Q. We have just a couple more post January 6 videos.
18 Let's go to the next one, which is RK 37. I believe Mr. Griffin
19 is still in Roanoke, but it's the next morning. Let's look at
20 that video.

21 (Note: The video is played to the witness.)

22 BY MR. SMALL:

23 Q. Why is that video clip important to you,
24 Dr. Kleinfeld?

25 A. A lot of people saw the events of January 6 as

1 horrible, but the individuals who took part in it and spoke on
2 social media, many of them actually saw it as a big success and
3 a real rallying cry. They didn't think it was over. They
4 thought that there was going to be another bite at the apple to
5 prevent the transfer of Presidential power. The date that was
6 eventually settled on was inauguration day when they hoped to
7 use violence to finally stop the transfer from happening.

8 Q. Let's go to RK 38, the next series of our post
9 January 6 videos.

10 (Note: The video is played to the witness.)

11 BY MR. SMALL:

12 Q. What's the significance of that video clip?

13 A. Again, he's normalizing the idea of violence in the
14 political sphere. After having just witnessed a day of
15 significant violence, he's continuing to say "Give me liberty or
16 give me death," is something that many people in the crowd
17 believed and continued to feel.

18 Q. The next Demonstrative exhibit is RK 39. We are
19 still in Roanoke. I believe this is a continuation of the prior
20 video clip. Please play that.

21 (Note: The video is played to the witness.)

22 BY MR. SMALL:

23 Q. Why is that video clip where he talks, among other
24 things, about "Blood running out of the building," important to
25 your opinions?

1 A. Again, this is in a time period when a lot of
2 individuals on January 6 were talking about what's next, what's
3 the next step. And he's saying, we could have a Second
4 Amendment rally. Of course, guns are illegal in Washington,
5 D.C. And he's suggesting that "Blood could run out of
6 building," which really sounds to me like an intimation of
7 violence being on the table.

8 Q. Again, how do you view that video clip in terms of
9 Mr. Griffin's claim here in Court that when he was talking about
10 war and fighting and things like that, he meant it only as a
11 political or spiritual war?

12 A. It's a little hard for me to believe that the day
13 after seeing the events of January 6, reflecting on it the next
14 day that he's speaking purely spiritually about blood running
15 out of the Capitol with the Second Amendment rally on the steps,
16 having just seen what we've all seen.

17 Q. Let's go to RK 40. We're still in Roanoke. Let's
18 play that video, please.

19 (Note: The video is played to the witness.)

20 BY MR. SMALL:

21 Q. Why is that important to your opinions?

22 A. We've just had a certification of a Presidential
23 election. That was really the last moment at which you could
24 have theoretically stopped the transfer of Presidential power
25 without a great deal of violence. Obviously, there was

1 violence. The fact that he's still saying "Joe Biden will never
2 be President" suggests that they are going to prevent Joe Biden
3 from being President some other way. At this point, the only
4 other way is actually through some form of physical violence.

5 Q. The next demonstrative exhibit is RK 41. I believe
6 we have seen this video with other witnesses, but I want to get
7 what significance you attribute to it. Let's go ahead and play
8 that.

9 (Note: The video is played to the witness.)

10 BY MR. SMALL:

11 Q. Dr. Kleinfeld, why was that video clip important to
12 you in forming your opinions in this case?

13 A. So he's genial, but admitting that he knew he wasn't
14 supposed to be up on the inauguration stage and he went anyway
15 along with the crowd of Trump supporters.

16 Q. The next in our series is RK 42. This is a
17 continuation of the same video. Please play this clip.

18 (Note: The video is played to the witness.)

19 BY MR. SMALL:

20 Q. Why do you rely on that, Dr. Kleinfeld?

21 A. So he's admitting what he saw, that he saw windows
22 getting broken, that he saw police officers getting pushed, as
23 he put it. You know, earlier we saw that he normalized that
24 violence, that he led the crowd in further arousal after seeing
25 these types of things. So he's well aware violence was taking

1 place as he was taking more of a leadership role and rallying up
2 the crowd.

3 Q. Next is RK 43. It's brief, but let's play that and
4 then I'll ask you why it's significant to your opinions.

5 (Note: The video is played to the witness.)

6 BY MR. SMALL:

7 Q. It's very short. Why is that important?

8 A. It's almost a week after January 6. He's again
9 saying -- he still believes there won't be a Biden presidency.
10 "It has to be stopped somehow." And at this point, as I said
11 before, the only way to stop it would be through violence.

12 Q. The next demonstrative exhibit is RK 44. Now we're
13 in a very different venue. Please play this clip and then I'll
14 ask you a question about it.

15 (Note: The video is played to the witness.)

16 BY MR. SMALL:

17 Q. What did we just see in this video and where is this
18 taking place and why is it significant?

19 A. So now he's at a commission meeting at the Otero
20 County Commission where he sits as a commissioner. In the role
21 of his governmental duties as an elected official of the State
22 of New Mexico or the county in New Mexico, he's explaining that
23 he's about to go to Washington, D.C. now, if he leaves tonight
24 or tomorrow to get there by car. It seems like he's trying to
25 get there in time for the inauguration. And he's talking about

1 the guns he's going to bring with him. Of course, they're
2 illegal in Washington.

3 The inauguration day had been chosen at this point
4 as the day at which violence groups were going to rally in
5 Washington, D.C.. The threat was so significant that the
6 government called 25,000 National Guardsmen to Washington, D.C..
7 That's about two and a half times the number that would normally
8 go to an inauguration. They did a double vetting of the
9 National Guardsmen for insider threats because they were so
10 worried about violence that day. So this was a very real
11 possibility. And even though that law enforcement presence
12 ultimately fizzled out the plan, the plan at this point had been
13 for violence to occur at the inauguration against the President
14 Elect.

15 Q. Let's go to the next, and I believe last in the
16 series of post January 6 videos. This is RK 45. Please play
17 the embedded video.

18 (Note: The video is played to the witness.)

19 BY MR. SMALL:

20 Q. We've seen this video with other witnesses here, but
21 I want to understand why is it significant to your opinions.

22 A. So he's recounting the events of the day with
23 joviality and talking about how he saw people pushing to get
24 into the Capitol. He saw the effort to kind of stop the
25 certification or physically pressure the members of Congress who

1 were there and the Vice President. And he's cheering on with
2 the crowd, "heave-ho, heave-ho," helping the crowd kind of get a
3 rhythm to that push, and certainly supportive of the mob
4 activity.

5 Q. Based on the evidence before, during and after
6 January 6, including the evidence we've gone through with the
7 Court today, was a demonstrative exhibit prepared at your
8 direction that summarizes the types of conduct that Mr. Griffin
9 engaged in that caused you to conclude that he was an
10 insurrectionist?

11 A. Yes.

12 Q. Let's take a look at that demonstrative. It's RK
13 46. I'm going to ask you what are the different types of
14 conduct that Mr. Griffin engaged in that caused you to conclude
15 that he was an insurrectionist?

16 A. So in our country, we had a period in which the
17 transfer of Presidential power was in flux. During that period
18 where the transfer of power could still go either way,
19 Mr. Griffin helped mobilize the credible use of force to
20 intimidate at the state level an attempt to influence State
21 officials on the national day of the certification of the
22 election, which was the most important day, really, to prevent
23 the transfer of Presidential power. He took part in the mob.
24 He tried to lead the mob. He also brought people to the
25 possible through his work on a bus tour. And then on

1 inauguration day, he seems to have planned to be present to
2 potentially to also prevent the transfer of Presidential power
3 given his earlier statements.

4 On January 6, well after violence was occurring and
5 he knew violence was occurring, he continued to normalize that
6 use of violence and even to amplify the crowd and incite them.
7 And throughout the period, he tries to normalize and validate
8 militias. These could be called agitators. These are the
9 vanguard of violence, the Proud Boys, and then here in New
10 Mexico the New Mexico Civil Guard, after he had already been
11 sued by the State as an illegal paramilitary organization.

12 Q. Now, you've used the term, Dr. Kleinfeld, repeatedly
13 throughout your testimony "normalize violence." Can you explain
14 to us what you mean by that term?

15 A. Sure. In a democracy, we try to solve disputes
16 through peaceful and legal means. That's the point of
17 elections. He's instead at multiple points talking about how
18 violence could be another way of getting the result you want in
19 our democracy, guns, "blood running out of a building," show up
20 as men to a battle. These are ways of subverting the democratic
21 process.

22 Q. What about in terms of how people might view
23 potential victims of violence and the willingness of people to
24 commit violence against other human beings?

25 A. As I said earlier, it's hard to get people to commit

1 violence against other human beings. We're all socialized from
2 a young age not to do that. Throughout the period, he tended to
3 do the three things that we know lower inhibitions of normal
4 people to violence. He posits that violence in the framework of
5 a battle of war, a place in which patriots called by their
6 President could feel themselves legitimate in using violence.
7 He posits that violence as defensive, protect themselves from a
8 fraudulent election. Protecting the democracy from a fraudulent
9 election. And then he dehumanizes Democrats at multiple points
10 and also RINOs Republicans in name only, and says they're
11 wicked, they're vile, they're corrupt, we can go after them.
12 These are ways of enabling violence to play a role in the
13 political process.

14 Q. Now, you have referred also multiple times in your
15 testimony to violence groups. I know you mentioned the Oath
16 Keepers and the Proud Boys and the Three Percenter militia. Can
17 you give the Court more examples to get a better understanding
18 of what violence groups are?

19 A. Sure. In lots of countries where violence is a part
20 of the political process, leaders use groups that specialize in
21 violence, that are kind of experts in violence to affect the
22 political process. These can be a lot of groups. They can be
23 militias, paramilitary organizations, but they can also be
24 wrestling groups. In Bulgaria, they use wrestling groups. In
25 Russia, he uses mixed martial arts groups that are kind of

1 political thugs. In Serbia, during the war in the former
2 Yugoslavia, they use football hooligans. So these are all
3 different sorts of groups that kind of specialize and are
4 willing, they are more aggressive individuals that are willing
5 to use violence.

6 Q. I want to get you to explain a little more about
7 another term you use repeatedly today, which is validating
8 violence groups. What do you mean by "validating"?

9 A. In our democracy, these violence groups have not
10 been a part of our political process, at least not for a very
11 long time. And by bringing them into rallies he'd holding, by
12 standing next to them on the dais, giving speeches rather than
13 refusing, as other groups did actually in some of those events
14 to stand next to the New Mexico Civil Guards, he's basically
15 taking these groups that use violence as a means and saying
16 these are a legitimate part of protest activity of normal
17 political activity, and that allows them to play a bigger role
18 in our policy.

19 Q. Thank you. We have two final topics that I want to
20 cover with you. One relates to the issue on violence relating
21 to Mr. Griffin himself.

22 Do you have any information that Mr. Griffin engaged
23 in violence himself on January 6?

24 A. No.

25 Q. Does that change your opinion that Mr. Griffin was

1 an insurrectionist?

2 A. It does not.

3 Q. Do you have any information that Mr. Griffin
4 directly instructed anyone else on January 6 to engage in
5 violence?

6 A. No.

7 Q. Does that change your opinion that Mr. Griffin was
8 an insurrectionist?

9 A. No.

10 Q. Why don't these two facts that Mr. Griffin didn't
11 himself engage in violence and that he didn't direct anyone else
12 to engage in violence not change your opinion?

13 A. So there are a lot of roles in an insurrection. You
14 could be the violence specialist kind of a group. But
15 Mr. Griffin wasn't that. He played other roles. So if you're a
16 politician inciting insurrection, you might not touch violence
17 at all. Mr. Griffin in this case of this insurrection played a
18 role in mobilizing the mob, bringing people to that arena on
19 January 6, of inciting the mob once they had been mobilized,
20 walking along the line, asking people where their guns were at,
21 normalizing violence in multiple ways to the people on that day,
22 rallying them and inciting them after violence had already
23 occurred. So for all these reasons, he's playing really a role
24 of a mobilizer of a mob and an inciter of further violence.
25 He's not a violence specialist and he doesn't need to commit

1 violence himself as an insurrectionist.

2 Q. At the beginning of your testimony, and this is the
3 last topic, you offered the opinion that Mr. Griffin is an
4 insurrectionist and not a protestor. Do you recall that
5 testimony?

6 A. Yes.

7 Q. Have you studied political protests?

8 A. Yes. My think tank has a global protest tracker.
9 We monitor protests all around the world.

10 Q. Can protests be violent?

11 A. Yes.

12 Q. Does the nature, though, of violence in a protest
13 differ from the nature of violence in an insurrection?

14 A. Yes.

15 Q. What is the difference?

16 A. In an insurrection, violence is the means to the
17 end. You need to use violence to achieve an insurrection. On
18 January 6, people showed up in tactical gear and so on. In a
19 protest, violence actually undermines the goals of the protest.
20 There is reams of research that suggests that violence loses
21 your group, your smaller group, which hurts the protest. So
22 protestors work very hard to minimize violence from their side.
23 They might try to be nonviolent themselves and get the state to
24 use violence against them, but they really try hard to not have
25 violence break out because it hurts the goal of a protest It's

1 the point of insurrection.

2 Q. Can you provide an example of a violent protest.

3 A. Sure.

4 Q. What's an example?

5 A. So the Black Lives Matter protest the summer of
6 2020. Most of them were peaceful, well over 90 percent. But
7 some were not. Seattle had a particularly violent protest. It
8 started off somewhat peaceful, but a rumor went through the
9 crowd that police had misused tear gas or a flashbang grenade,
10 hurting a child. Now, the point of the protest supposedly in
11 Seattle was that the police department there had been under the
12 Department of Justice oversight for the misuse of force. And
13 supposedly, the goal was to get the police department to use
14 less force. Instead, the crowd got unruly. There was a
15 significant amount of property damage. They later formed an
16 autonomous zone where they kept the police out of a multiblock
17 area in Seattle. Within that autonomous zone, people were
18 killed. The police came back. They cleared the autonomous
19 zone. None of the goals of the protest were really met. And so
20 that's when a protest uses violence, it backfires.

21 Q. What about the civil disobedience, Dr. Kleinfeld,
22 isn't that a form of protest where it's intended to use to
23 promote violence to achieve certain goals?

24 A. In a civil disobedience action, the goal is to be as
25 nonviolent as possible in order to get aggressors to use

1 violence against your group, in order to get public opinion on
2 your side. So if you think about the civil rights movement in
3 the '60s, people were trained. And where the parks -- went to a
4 Highland Park training for two weeks to learn how to remain
5 nonviolent in the face of violence. They were told to show
6 up -- women were told to show up in heels and pearls and men in
7 suits and ties so they looked nonviolent. And then they were
8 supposed to do things, sometimes illegal things, like going into
9 a space they weren't allowed to go into, or refusing to disperse
10 from a road, but not violent things in order to promote violence
11 from the State so that the picture the general public got was of
12 nonviolent protestors having violence used against them.

13 Q. Dr. Kleinfeld, were the events of January 6 a
14 protest?

15 A. No.

16 Q. Why not?

17 A. They had spent weeks leading up to it calling for
18 violence, sharing images of the Capitol online, talking about
19 how this might be a declaration of martial law sort of event.
20 Many people showed up at the insurrection in tactical gear,
21 military gear. These were not people attempting to look like
22 nonviolent protestors to spark violence against them. And
23 intimidation at the very least, was the goal. The goal was to
24 use a mob presence of many, many people who clearly wanted an
25 outcome. You could see all the Trump/Pence flags in the crowd

1 to pressure the Vice President to seize power in some way and
2 not certify the transfer of Presidential power.

3 Q. Now, did Mr. Griffin participate in the events on
4 and leading up to January 6 as a protestor or an
5 insurrectionist?

6 A. He was an insurrectionist.

7 MR. SMALL: No further questions at this time.

8 THE COURT: Let's take a 15-minute break at this
9 time. We'll be back on the record in 15 minutes.

10 Doctor, please step down.

11 (Court in recess at 2:45 p.m.)

12 THE COURT: We're back on the record. Mr. Griffin.

13 CROSS-EXAMINATION

14 BY MR. GRIFFIN:

15 Q. Ms. Kleinfeld, I have heard your opinion. And as we
16 know, everybody has opinions. But in that realm and in the
17 realm as far as your opinions go and when you watch the videos,
18 how would you describe your opinion as far as the basis of it or
19 where your opinion is motivated from?

20 A. I studied political violence and democracies for
21 nearly 20 years, and I'm basing it on that history.

22 Q. Would you consider yourself to be liberal in your
23 political position or would you consider yourself to be
24 conservative in your political position?

25 A. I come from a conservative family. I've got pretty

1 mixed views. I work a lot with national security professionals.

2 Q. But that's not -- the family that you come from, I
3 didn't ask the political opinion of your family. I asked your
4 political views. Are your political views, would you say more
5 liberal leaning or more conservative leaning?

6 A. They're just pretty complicated. I try to take
7 things as they come.

8 Q. What about say on a political issue such as
9 abortion, are you pro choice or are you pro life?

10 You know, my first daughter was born at seven months
11 and I spent two months in neonatal intensive care units with her
12 and with babies that were just 25 weeks old. My brother, he and
13 his wife had a baby that was diagnosed with a neural tube defect
14 at 20 weeks. His wife is Catholic and a baby is born with
15 seizures. They never end for a year or two and then dies and is
16 in a lot of pain. I flew to be with my brother and his wife as
17 they made a tough decision. I have complicated views on
18 abortion

19 Q. I'm very sorry for your personal trauma that you had
20 in your life and I'm sorry for that. So maybe I can rephrase my
21 question. Do you believe in a woman's right to be able to
22 terminate a pregnancy at her will and on her demand?

23 A. We've been here a long time, sir, and my views on
24 abortion are real complex.

25 Q. What I'm getting to the bottom of, though, is as we

1 express our opinions, our opinions always come from a
2 foundation. Would you agree?

3 A. In the case that we're discussing, my opinions don't
4 have a lot to do with abortion. They come from my decades of
5 study.

6 Q. I understand that and I'll sorry to bring you
7 abortion into the conversation. The only reason why I do is
8 because you fail to answer my very simple and direct question,
9 is that would you consider yourself to be more liberal leaning
10 or more conservative leaning?

11 A. Our country is really polarized now and that means a
12 lot of people are separating into those two camps, but I do a
13 lot of work with Republicans, a lot of work with Democrats and a
14 lot of work with national security leaders, and I really try not
15 to put myself into one of those camps, but to care about our
16 country first.

17 Q. I understand that, but, again, I go back to the fact
18 of opinions. As you have shared those today, your opinion --
19 every opinion that we have is based on the foundation that we
20 stand on. So to further understand your opinion that was a paid
21 opinion, I have to -- I would believe the Court -- it would be
22 fair to the Courts and Your Honor to be able to say at least say
23 yes, I'm more conservative leaning or no, I'm more liberal
24 leaning. I think that most of those that are in politics today,
25 that's a very easy question to answer, but, unfortunately, for

1 you, you can't answer a question as simple as that.

2 A. Well, I'm not --

3 MR. SMALL: Objection, Your Honor. The question has
4 been asked and answered three times now.

5 THE COURT: It has. Objection is sustained.

6 MR. GRIFFIN: I'll accept the objection. It's
7 unfortunate that I can't get an answer to what should be an
8 extremely question to answer.

9 BY MR. GRIFFIN:

10 Q. I'd like to go on and ask you, how much time did you
11 put in to your opinion?

12 A. In terms of this particular case?

13 Q. Yes, ma'am.

14 A. Many hours. Of course, it's based on even more
15 hours of work I do in general. And then I've worked in this
16 field, as I said, nearly 20 years working around the world and
17 countries facing problems with their democracies.

18 Q. But just in this case, the opinion that you've given
19 today, all the extensive work that you've done developing the
20 opinion on myself and what my words meant and how you translated
21 the words that I spoke in the videos, did you just come up with
22 this overnight or did you actually put -- in this case, how long
23 did you work on this case?

24 A. I probably spent maybe 20 hours specific to this
25 case, based on a lot more that I had done prior, of course.

1 Q. As far as your billing the Plaintiffs, was that
2 hourly or did you bill in a package?

3 A. No, I billed hourly.

4 Q. So the opinion, and which everybody has and which
5 everybody's opinion is driven by the foundation that they stand
6 in, roughly how much were you paid for your opinion by the
7 Plaintiffs?

8 A. Twenty hours is roughly \$10,000.

9 Q. Do you believe that the Plaintiffs would have
10 reached out to you for your opinion if you would have maybe have
11 been a Trump supporter?

12 A. I don't know if they knew my political voting
13 record. I write very extensively on political violence in the
14 United States. I think they knew about my writing and the
15 opinions I have stated, not particular to this case, so they
16 knew what I thought I'd written in an article that I wrote after
17 the insurrection on what I understand happened that day.

18 Q. So you could probably come to the conclusion that
19 the Plaintiffs knew the opinion they were going to get from you
20 before they contracted you?

21 A. I think they had a sense that I knew the issue set
22 pretty deeply and that my sense of what happened on January 6
23 was that it was a lot of harm to our democracy.

24 Q. Yes. But in regards to January 6 and the events on
25 that day, the opinions are from one spectrum to the other,

1 correct?

2 A. People have a very polarized set of beliefs about
3 that day, yes.

4 Q. Where some people -- would you agree that some
5 people would say that January 6 was totally peaceful and would
6 you agree that other people would have an opinion to call
7 January 6 an insurrection?

8 A. I think you're right, that out of the 300 odd
9 million Americans, people probably have an opinion to be placed
10 on that spectrum. I'm not sure I think that every opinion has
11 equal worth.

12 Q. Say if you were to put yourself in the place of the
13 Plaintiffs and the Plaintiffs were wanting to paint January 6
14 out to be an insurrection, then you would probably be a good
15 contract to pay \$10,000 to and get to fly out to Santa Fe and
16 testify today, correct?

17 A. I'm a New Mexican. I didn't fly to be here.

18 Q. I'm sorry. I apologize for that. I'm a New Mexican
19 too, born and raised.

20 But opinions as we have listened to yours today,
21 they vary across the board, would you agree?

22 A. Sure.

23 Q. Can opinions sometimes not be founded on statutory
24 law and facts?

25 A. I'm not a lawyer myself.

1 Q. Sure. So your opinion is not based on the law,
2 then? Your opinion is not based on statutory fact? Is that
3 what you say?

4 A. My opinion is based on the events from election day
5 to inauguration day and on my understanding of political
6 violence in our country and in other democracies.

7 Q. And so whenever you develop an opinion of
8 insurrection, is that opinion developed by you personally? Is
9 it developed by maybe media, what you see in the newspapers or
10 what you hear over and over?

11 A. I try to do my research in person wherever I can. I
12 have been to a lot of countries, interviewed a lot of war lords,
13 violent individuals, war crimes and people who have committed
14 war crimes, things like that.

15 Q. Would you say the term or the reference to an
16 insurrection is a very heavy word that can be thrown around very
17 lightly?

18 A. I think it's important to use words like
19 insurrection in a proper context. That's why I think it's
20 important to distinguish insurrection, coup, Civil War, protest.
21 These are different things.

22 Q. Would the proper context be bound by the letter of
23 the law?

24 A. I'm not a lawyer. I do not speak as a lawyer.

25 Q. But if I'm going to -- if you're going to say

1 somebody is a thief, then there needs to be evidence that's
2 backed up by law that proves that accusation, correct?

3 A. I study insurrections and other forms of political
4 violence, and that's what I based my opinion on.

5 Q. But the insurrections have to be based on the letter
6 of the law, would you agree?

7 A. For the judge, he needs to make a legal opinion
8 about what happened. But for me, I've been asked to provide my
9 opinion based on my knowledge base.

10 Q. I understand. The reason for my questioning is just
11 because insurrection -- has there been anybody in the United
12 States today who is charged with insurrection?

13 A. I don't know.

14 Q. Do you think that if there was somebody that was
15 criminally charged and convicted of insurrection, do you believe
16 that you stay up with the news enough where you would know?

17 A. I try, but it's a big country.

18 Q. You agree it would probably be the biggest headline
19 in America today if somebody was charged with insurrection on
20 January 6, would you not?

21 A. Well, there is hundreds of people charged for their
22 activities on January 6. I think the biggest criminal set of
23 trials in our history. I don't follow all the charges in all
24 those cases.

25 Q. In regards to my case, do you have knowledge of how

1 I was charged on January 6th?

2 A. Well, this is a civil trial, so this is what I was
3 asked to speak to.

4 Q. That's correct. And I'm asking you --

5 A. For your criminal trial?

6 Q. -- do you know how I was charged from January 6?

7 A. I know I read about your criminal trial, but I'm
8 sorry, I can't remember exactly what the charges were.

9 Q. I'll enlighten you. I was charged with disorderly
10 conduct and disruptive behavior, and which I was acquitted on.
11 I was charged and convicted on misdemeanor trespass.

12 Insurrection is a very, very heavy criminal charge. And for you
13 to give testimony through your expert witness and opinion that I
14 am an insurrectionist is not based on the law. It's not based
15 on fact. It's your opinion that is not bound by the context of
16 the law. And it's heavy.

17 MR. GRIFFIN: I'd like to go -- if you wouldn't
18 mind, sir, and I'd like to go -- I'm not going to go through all
19 of them. I feel like we've been gaslighted enough by a lot of
20 the videos, but if you could reference RK 2. I just want to go
21 through a few of the videos and question you on your opinion
22 that may have been different than mine.

23 BY MR. GRIFFIN:

24 Q. Is Mr. Griffin appropriately characterized as an
25 insurrectionist rather than a protestor? In regards to

1 insurrection, in my actions on that day, do you feel like I was
2 attempting to overthrow the government?

3 A. So I believe you were attempting to stop the
4 peaceful transfer of Presidential power. That's the only time
5 that has ever happened in our 250-year history in this country.

6 Q. What gives you that opinion that I was trying to
7 stop the transition of power?

8 A. In the lead-up to the day you said multiple times
9 that you were praying for Mike Pence, the pressure was on Mike
10 Pence. You said in a number of the videos that "There will
11 never been a Biden presidency." "Biden will never be
12 President." And your speeches to groups on the way to that day
13 spoke about martial law. So putting those facts together makes
14 me think that you wanted Mike Pence to act in some way that
15 martial law might result and that certainly Mr. Biden was not
16 supposed to become President at the end of it.

17 Q. So you agree that on that day that I was -- on the
18 lead-up to January 6, that my heart I was praying for Mike Pence
19 and we were supporting Mike Pence, correct?

20 A. I can't speak to what's in your heart. I don't know
21 you.

22 Q. My testimony.

23 A. You said you were praying for Mike Pence.

24 Q. That's correct. I said that, "We support you, Mike
25 Pence," correct?

1 A. Yes.

2 Q. And Mike Pence's job on January 6 was to certify the
3 election, correct?

4 A. It was.

5 Q. Through the testimony that you have heard from me
6 and many others is that we had grievances about the possible
7 fraud that took place in the election, correct?

8 A. Yes.

9 Q. Are we allowed to do that in America today?

10 A. It's perfectly legal to protest, and in New Mexico
11 it's perfectly legal to protest with armaments, but to disrupt
12 an act of the certification of the Presidential transfer of
13 power, I do not believe that's legal.

14 Q. We'll get to that. So by your opinion and your
15 testimony, you're saying that I was well within my
16 constitutional rights to speak out about what I thought was a
17 fraudulent election, and still do and it's been proven already
18 to be. So I was well within my rights. And I was supporting
19 Mike Pence on January 6, correct?

20 A. So the Vice President's role on the certification of
21 the Presidential transfer of power is very ceremonial. There is
22 no real reason to support Mike Pence. He's really just a rubber
23 stamp. The focus on Mike Pence that day was extraordinary and
24 highly unusual in our government.

25 Q. Did Mike Pence on the day of January 6 on the

1 certification of the election have an opportunity to vote yes or
2 no on the certification of the election?

3 A. I don't know exactly what he votes for. My
4 understanding is that he certifies that the States have been
5 appropriately counted.

6 Q. What I'm asking is on January 6 in the certification
7 process, whenever the vote comes before Mike Pence, Mike Pence
8 is the final stamp on the vote?

9 A. I don't know. I'm not real familiar with --

10 Q. Well, he is.

11 MR. SMALL: Your Honor, she was still answering the
12 question.

13 MR. GRIFFIN: I'm sorry.

14 BY MR. GRIFFIN:

15 Q. It's a yes, no vote.

16 A. I don't know.

17 Q. Mike Pence -- I'm trying to get you to understand
18 why we were there. I'm trying to get Your Honor to understand
19 why we were there. We were there -- we were going because he
20 truly believed that the 2020 election had fraud in it. I don't
21 know if anybody in particular stole it. We didn't know if China
22 -- we were hearing China stole the election. We're hearing
23 this, we're hearing that. But what we were seeing was ballots
24 being stuffed in ballot dropboxes with videos. We were seeing
25 pole watchers being locked out of counting stations. We were

1 seeing -- our suspicions were not unfounded. They were founded
2 through documentation, through sworn affidavits, through
3 testimony.

4 So that's why we went to Washington, D.C. on January
5 6, because we were concerned of the fraud of the election. We
6 went to stand in unity so our voices would be heard by Mike
7 Pence so Mike Pence would vote no on the certification of the
8 election only to remove that vote back to the States so they
9 could be looked at more closely.

10 THE COURT: Your question, Mr. Griffin?

11 BY MR. GRIFFIN:

12 Q. Okay. I would like to ask you, though, by telling
13 you that, would you view that as an insurrection?

14 A. On the day of January 6, a great deal of violence
15 was used in a way that did stop the certification of the
16 election for multiple hours. And it harmed a number of police
17 officers, over a hundred. A few died later. And we've never in
18 our country's history had a transfer of Presidential power that
19 was violently interrupted, not even during the Civil War.

20 Q. Were you there on January 6?

21 A. I was here in New Mexico.

22 Q. So the only events of January 6 is what you've seen
23 in the media, correct?

24 A. I was actually speaking with military leaders that
25 day a lot.

1 Q. I didn't ask you if you were speaking to military
2 leaders. I was asking you, the images and what you witnessed
3 with your eyes is only what you saw in the media, correct?

4 A. I only saw images from the media, but I was hearing
5 and talking in real time to people who were in Washington, D.C.
6 in positions of decision-making where I don't know if any of
7 them were present at the moment.

8 Q. Do you feel like through the images you saw on the
9 TV or secondhand accounts, do you feel like that could give you
10 a well-rounded total opinion of January 6th?

11 A. I think it gave me enough information to understand
12 the goals of January 6th as the disruption of the certification
13 process and the ways in which violence was used that day.

14 Q. But again, the opinion that you have shared here
15 today and the opinion that you rest your case on is not a
16 firsthand opinion of an actual eyewitness account of physically
17 being present in Washington, D.C. The opinion -- would you say
18 that the opinion that you have is based off of video clips that
19 you've seen and secondhand testimony that you've heard from
20 others?

21 A. Probably like a lot of Americans, I was watching the
22 events unfold live on TV and talking to people live who were in
23 charge of various parts of our security apparatus. It's true I
24 wasn't there, but, you know, the Capitol complex is large. Even
25 if you were there -- first of all, if one was there, one would

1 likely be contributing to the mob, but even if you were there,
2 you wouldn't have seen everything. So I feel like I got a
3 pretty good understanding of what happened.

4 Q. In your opinion as far as insurrection goes, where
5 do you draw the line? Would you go as far as to say that
6 everybody that was present in what you consider to be a mob,
7 were they all part of the insurrection?

8 A. If you are a tourist wandering through the Capitol
9 and happened to get caught up in that, then you would not be an
10 insurrectionist. But in your case, you spoke on a whole bus
11 tour organized by the people who got the park rally permit,
12 trying to bring to people that day speaking about your belief
13 that there be martial law declared, calling on men to battle and
14 so on throughout the days.

15 On the day of, you took a microphone and spoke to
16 the crowd in ways that it really rallied them a lot. You spoke
17 along the line of the crowd asking who had guns, which are
18 illegal in D.C. So I don't think in your case you were a
19 tourist who rolled into the wrong place.

20 Q. Asking people for guns -- if they had guns.

21 MR. GRIFFIN: Can you roll RK 26.

22 BY MR. GRIFFIN:

23 Q. At Christmastime, do you remember the little
24 ornaments on the Christmas tree that look like toy soldiers?

25 A. Sure.

1 Q. Yeah. What do little toy soldiers, what do they
2 usually have that they are carrying around?

3 A. It could have a gun. If that was your idea here,
4 but you spoke many times not in the clips that we played but in
5 other video that I saw, many, many times you said we could be
6 armed, we could be here to protect our Second Amendment. You
7 spoke about armaments a lot as you walked around the --

8 Q. If you want to reference videos that weren't played,
9 believe me if they could be used against me, they would have
10 been played. If somebody makes a statement that says "we could
11 all be armed," how would you translate that statement?

12 A. In this context, I'd translate it as normalizing the
13 idea of using violence.

14 Q. Well, maybe -- maybe what -- maybe some would
15 translate it that way. To me and others like me, if I say "we
16 could all be armed," that means we're not armed. That means
17 we're peaceful. That means we stood in peace on that day. If
18 there was to be an insurrection, as you so lightly throw this
19 word of insurrection every other sentence, don't you think that
20 people would be armed?

21 A. A number of people were armed that day.

22 Q. Was there?

23 A. Yes.

24 Q. Says who?

25 A. The January 6 Select Committee reported that I

1 believe it was the Secret Service told the President that day
2 that there were people with arms in the crowd and the President
3 wanted them in his arena, so he said let them in.

4 Q. So the January 6 committee. That would be a voice
5 that would be -- a legitimate voice that's nonbiased, that's not
6 political, would you say?

7 A. It's a bipartisan committee. Liz Chaney voted with
8 President Trump, I believe, 90 percent of the time.

9 Q. So you would say that they're nonbiased and they're
10 legitimate? Yes, no?

11 A. Yes.

12 Q. Do you know a man by the name of Ray Epps?

13 A. No.

14 Q. You've never heard the name Ray Epps?

15 A. No.

16 Q. Have you seen any of the videos from January 6 that
17 shows a big man and a backpack wearing a red Make America Great
18 Again cap and he's telling people "Tomorrow we storm the
19 Capitol"? You haven't seen that video?

20 A. I'm sorry, I haven't.

21 Q. And the next morning, Ray Epps was directing people
22 to the Capitol. He was telling them, "Come on, the Capitol is
23 this way. Let's storm the Capitol." Ray Epps' words.

24 Also right before the original breach, Ray Epps was
25 present and Ray Epps was one of the first to cross over the

1 line. Did you know the January 6 committee interviewed Ray Epps
2 and he was never charged with any kind of crime.

3 A. I'm sorry, I don't know who Ray Epps is.

4 Q. You should. If you don't know who Ray Epps is, then
5 how can you really have an opinion on January 6th? I say that
6 because Ray Epps is a huge part of January 6. Do you believe
7 that our opinions can be very much shaped by the media that we
8 watch?

9 A. Of course.

10 Q. May I ask you what media do you watch?

11 A. I don't have a television, actually. I watch -- I
12 read a lot. I read the Wall Street Journal, the Washington
13 Post, The Economist. I speak to a lot of people on both sides
14 of the aisle to try to gain firsthand accounts because I found
15 in my research that firsthand accounts tend to be more accurate.
16 And I don't watch much, honestly.

17 Q. Do you believe that the Washington Post and the New
18 York Times and those such publications, do you believe they are
19 nonbiased?

20 A. No. In fact, I'm not a fan of the New York Times.

21 Q. Yeah. Because the media can shape our opinions,
22 wouldn't you agree?

23 A. Yeah.

24 Q. Do you know the name Officer Brian Sicknick?

25 A. Of course.

1 Q. Do you know what happened to Officer Brian Sicknick?

2 A. I know that he was very badly injured. I can't
3 remember exactly the extent of his injuries.

4 Q. Do you know what the cause of death of Brian
5 Sicknick was? What the coroner's office says. Not what the
6 media says, not what a secondhand opinion says, but what the
7 coroner's report says of the cause of death of Officer Brian
8 Sicknick?

9 A. I don't. I didn't read the coroner's report.

10 Q. No. So would you -- I'll tell you. It says that he
11 died of natural causes. Did you read the headlines whenever it
12 said that Officer Brian Sicknick was bludgeoned to death by a
13 fire extinguisher on January 6?

14 A. I'm aware that the media reported him having very
15 traumatic injuries.

16 Q. On the evening of January 6, do you remember the
17 media buzzing about a D.C. Capitol Police officer that had been
18 beaten to death with a fire extinguisher?

19 A. On January 6, I was trying to rally a response to
20 January 6. I wasn't paying a lot of attention to media. I
21 didn't need to be watching, so I don't remember that.

22 Q. It's interesting, because that was one of the
23 biggest headlines on the evening of January 6, was that a D.C.
24 Capitol Police officer was beaten to death with a fire
25 extinguisher. It didn't just -- you know -- you didn't hear

1 Vice President Kamala Harris or Joe Biden referencing Office
2 Brian Sicknick being bludgeoned to death with a fire
3 extinguisher?

4 A. Like I said, I don't watch a lot of TV.

5 Q. Okay. What about the name Rosanne Boyland?

6 A. I'm sorry, I know I've heard the name, but I can't
7 recall it.

8 Q. You don't remember media telling the American people
9 that Rosanne Boyland had died of a drug overdose?

10 A. I do remember that someone there was talked about in
11 that way, and it could have been her. I remember her name, but
12 I'm not real familiar with the case.

13 Q. But you don't hear about -- have you heard a
14 headline or seen a news story about Rosanne Boyland being
15 viciously and savagely beaten by a D.C. Capitol Police officer
16 named Lila Morris?

17 A. No.

18 Q. The reason why I ask these questions, Ms. Kleinfeld,
19 is because of opinions. Opinions can be shaped, would you
20 agree?

21 A. I do think that's very true. That's why I try to
22 get firsthand accounts.

23 Q. But your opinion of me on January 6 with a bullhorn,
24 you would say that I was instigating people?

25 A. I would say that you were increasing the emotional

1 arousal of the crowd 15 minutes after Ashli Babbitt had been
2 killed when a lot of violence had already occurred.

3 Q. So in your opinion, by telling people to take a
4 knee, that's arousing the crowd?

5 A. It doesn't really matter the content of the words.
6 It's really about the emotional effect on the crowd.

7 Q. Would you say that through your testimony today that
8 you could definitely influence people's opinion of myself?

9 A. Me personally? I doubt it.

10 Q. No. You don't think that people's opinion will
11 change?

12 A. I think that your actions will shape people's
13 opinions and people will have different opinions.

14 Q. But your testimony today could very well influence
15 Your Honor's position, correct, or opinion?

16 A. I suppose the Judge needs to make an opinion about
17 the case and I'm here to provide testimony that's supposed to
18 help him shape that opinion.

19 Q. In your opinion, you said that I stood next to the
20 New Mexico Civil Guard, correct?

21 A. I said you appeared at events where you spoke and
22 they spoke or they were present and you were present.

23 Q. But you put them in the same -- but by saying that,
24 you would influence people's opinion to the point where they
25 would classify me in the same category as a New Mexico Civil

1 Guard, correct?

2 A. I was trying to be pretty careful in saying that
3 Cowboys for Trump was a different category, that they're groups
4 that specialize in the use of violence like the New Mexico Civil
5 Guard, and then there are groups that can mobilize armed
6 supporters, like Cowboys for Trump, and that they're very
7 different.

8 Q. Did you ever see any videos or did you ever read any
9 statements or see anything that would actually be factually
10 based outside of just your opinion that I was aligned in any way
11 with the New Mexico Civil Guard?

12 A. I certainly don't state anywhere that you were
13 aligned with them. I was trying to say that by appearing on
14 speaking events where they were also there, it plays a role in
15 normalizing their role and the politics of our country and our
16 state.

17 Q. But don't you believe that if I was aligned with the
18 Proud Boys, if I was aligned with the Oath Keepers, if I was
19 aligned with the New Mexico Civil Guard, after all of the
20 discovery of 2,400 videos, and unfortunately we've only seen a
21 small handful over and over and over and over, out of all of the
22 discovery that the Plaintiffs have pulled up, would you believe
23 that there would be a text somewhere or a video somewhere or
24 something that shows me standing next to these other groups or
25 collaborating with these other groups?

1 A. There are pictures of you standing near other
2 violent specialists, but I've never claimed that you are aligned
3 with them emotionally or I don't know your beliefs about that.
4 What I have said is that by standing next to them at events and
5 speaking, you're bringing them into a normal part of our
6 political discourse.

7 Q. I heard you mention earlier in your opinion about
8 Black Lives Matters [sic]. It sounded like that in your
9 opinion, and correct me if I'm wrong in your response, that
10 there was only one instant in Seattle where there was violence
11 that was attached to a Black Lives Matters protest.

12 A. So Black Lives Matter had lots and lots of protests.
13 And the vast majority were peaceful, but the ones that weren't,
14 and there were multiple that weren't, caused more than 2
15 building in insurance payouts. That's the biggest insurance
16 payout in modern history, maybe ever. So I'm not claiming they
17 were all peaceful, just that upwards of 90 percent were. But
18 the ones that weren't, really weren't.

19 Q. In your expertise in political violence, did you
20 ever have any focus on Black Lives Matters and trying to shed
21 light on some of the destructive behavior inside of that
22 organization?

23 A. I have studied Black Lives Matter. Not as much as
24 I've studied the violence of -- if you look at the global
25 terrorism database or other indices of violence in our country,

1 while justification for violence on the left and right are
2 actually pretty similar. Incidents of violence are vastly
3 higher on the right. And so I tend to focus more on that side,
4 but I'm aware of the violence on the left.

5 Q. So you feel like the violence on the right is
6 escalated at a much higher level than on the left?

7 A. If you discount the number of incidents, yes. Also,
8 if you count the number of incidents against people as opposed
9 to property, yes. But the violence on the left has gone up,
10 too, just not nearly as much.

11 Q. Have you traveled much, Ms. Kleinfeld?

12 A. Yes, I have.

13 Q. Have you traveled to a lot of our big cities across
14 America?

15 A. Sure.

16 Q. Have you gone into the downtown areas of many of our
17 big cities?

18 A. Yes.

19 Q. Have you noticed all of the glass that's broken out
20 of all of the small businesses in the fronts of our small
21 businesses in our downtown areas?

22 A. Since COVID, I haven't actually traveled a whole
23 lot, but if you look at the murder rate, the murder rate in 2020
24 rose by 30 percent. It's the biggest one-year rise in our
25 country's history that's been recorded at least. And the rise

1 is equal in rural areas and in urban areas. It's all over the
2 country. We're having a real problem with violence in this
3 country right now.

4 Q. That wasn't my question, though, on the murder rate
5 in the country and the rural areas and the cities. My question
6 was: Have you gone into the downtown areas of the big cities
7 and seen all of the glass that's busted out of the front windows
8 of people's small businesses?

9 A. Since 2020, I've only been to Albuquerque, New York,
10 and Washington, D.C., and I must say I haven't seen any glass
11 broken out anywhere.

12 Q. You haven't seen all the glass broken out in
13 downtown Albuquerque? You didn't see the destruction in
14 downtown Albuquerque?

15 A. Not so much.

16 Q. You haven't seen the plywood up in front of all of
17 the small businesses in downtown Albuquerque?

18 A. We may have different opinions about how much of
19 Albuquerque was affected. There has been plywood at businesses
20 in Albuquerque for many reasons for a long time, so...

21 Q. You would say that those that were gathered in
22 Washington, D.C. on January 6 were more destructive and more
23 violent and did more damage than all of the Black Lives Matters
24 protests that we saw across the nation the last four years?

25 A. It's a very different kind of damage. The Black

1 Lives Matter protests caused a lot of property damage, 2 billion
2 dollars plus of insurance payouts. But I'm a democracy
3 specialist. And what happened on January 6 had to do with the
4 transfer of Presidential power. In a way, it doesn't matter how
5 much property damage was done, the question is really was there
6 violence and intimidation brought to bear to affect the orderly
7 transition of power in our country. And yes, there was.

8 Q. And the transition of power on January 6, you
9 continue to say that it was there to stop the transition of
10 power. But do you know the legal recourses that can be taken in
11 an election that there is question over?

12 A. Again, I'm not a lawyer, but it's my understanding
13 that President Trump availed himself of scores of cases, and
14 just lost most of them.

15 Q. Would you agree that Mike Pence had the legal power
16 and the ability to vote yes or to vote no on the certification
17 of the election?

18 A. The Electoral Count Act is actually something that
19 the National Council on Election Crises has cleaned up for quite
20 some time. There's a bipartisan group of senators. We're
21 trying to do that now because it's so poorly written. It really
22 hard to tell. But it doesn't really mention the Vice
23 President's role. I don't know what he's exactly allowed to do,
24 but it's always been a ceremonial role.

25 Q. So apparently you're familiar with the process?

1 A. I'm not familiar with the process. I'm familiar
2 with the Electoral Count Act role.

3 Q. But you definitely have a strong opinion of the
4 people that the people in Washington, D.C. were there to stop
5 the transition of power. You will say that.

6 A. Yes. Yes.

7 Q. You will voice that opinion, but yet, you don't even
8 know the legalities and the laws that confirm our electorate?

9 A. I've been an election observer in a number of
10 countries overseas, and I don't know those countries laws
11 either. When you observe elections, you talk about, in this
12 case the government of the United States or a nonprofit
13 organization, you talk about what you saw and how it affected
14 the election. That's what I'm trying to do here.

15 Q. But this is where your opinion is skewed because you
16 have an opinion that the peaceful transition of power was
17 stopped by insurrectionists and you will call that an
18 insurrection, but you don't even know if it was a yes or no vote
19 by Mike Pence at that time. The reason why in these videos I
20 was saying that "We support you, Mike Pence, and we pray for
21 you" is because we have a right as free Americans to encourage
22 our political leaders to vote no on something that we're
23 concerned in. You don't know that Mike Pence could have voted
24 no on the certification and then that would have gone back to
25 the States?

1 A. Our Constitution says that elections are a State
2 affair. States decide how their states voted. The Vice
3 President really is just supposed to rubber stamp the State
4 decisions. And so after the safe harbor deadline, which had
5 passed, the States had made their decisions and then Mike
6 Pence's job is just to say the States have made their decisions,
7 but I don't know exactly the process by which he says that is.

8 Q. So in your words, our Vice President is nothing but
9 a mere rubber stamp?

10 A. In this particular moment of the Presidential
11 transfer of power, yes, because the States determine our
12 elections.

13 Q. But if the State -- if -- Vice President Mike Pence
14 did have a place because he could have voted no on the
15 certification and then that goes back to the States to further
16 examine our electorate. That's the law. You're a doctor,
17 aren't you? Do you have a doctorate degree?

18 A. I have a DPhil, yes, that's --

19 Q. You're a very educated woman. You know the law.
20 But the reason why you can't tell me the law is because it
21 doesn't fit the narrative?

22 A. I know the Electoral Count Act law. I'm not as
23 aware, but my understanding of our Constitution is that States
24 determine our government's elections. And that the role of the
25 certification process is to hear the States' decision, to raise

1 objections and for the Vice President to sort of rubber stamp
2 that process. And the fact that you're still talking about the
3 Vice President having the power to change that does make me
4 think that on the day of January 6 you thought the Vice
5 President had the power to change who was President of our
6 country.

7 Q. The President -- the Vice President of the United
8 States, the only reason why we were there on January 6 is
9 because we wanted Vice President Mike Pence not to vote yes on
10 the certification, not to disrupt the transition of power but to
11 only give the American people the graces of having our
12 electorate looked at closer.

13 A. Is that a question?

14 Q. No. You made a statement to me and I made a
15 statement back to you. That's why we were there.

16 THE COURT: Again, Mr. Griffin, you have to ask
17 questions.

18 MR. GRIFFIN: Yes, sir. All right. All right.

19 BY MR. GRIFFIN:

20 Q. But I could go through -- I can -- let's go to RK 6,
21 please. This is a statement of yours here where it says, "The
22 crowd cheered. There's a handful of Cowboys for Trump rode in
23 on horses. That's a group whose leader has made racist remarks
24 about black athletes."

25 Is that you? Is that yours? Did you comprise this?

1 A. No. This is a story that came out of a KUNH radio
2 station.

3 Q. Okay. But your opinion on this right here again,
4 one more time, as you stated earlier on record.

5 A. So my opinion about the events in Rio Rancho that
6 day on the protest and the counterprotest was that Cowboys for
7 Trump was there alongside the New Mexico Civil Guard and some
8 Three Percenters. The New Mexico Civil Guard had already been
9 -- had brought a civil action against them for being an illegal
10 paramilitary group in our state.

11 Q. Could there be a possibility that those that rode
12 with Cowboys for Trump were going down to this Black Lives
13 Matters protest to actually try to dialogue and communicate with
14 those of opposing views?

15 A. It could be, although they did show up after the
16 police had already been brought there because there had been
17 some scuffles and some -- it had not been a sort of dialogue-y
18 sort of protest and counterprotest.

19 Q. And respectfully, that's where you're wrong. I
20 don't know where you heard that opinion from, where you got that
21 opinion from. But the police -- and there was no -- there was
22 no skirmishes before we got there. I'll tell you something
23 because I was there. I rode in first. I was leading the pack.
24 And we rode into a crowd of people that had much different
25 political opinions than we do, and we started talking to these

1 men and these women. They came over to pat our horses. We
2 talked about differences. We reached out to them in love, and
3 they were calm. The crowd was calm until the police showed up.
4 When the police showed up and they marched in in single file
5 line, that's when everything's got escalated.

6 MR. SMALL: Objection, Your Honor. Mr. Griffin is
7 testifying, not asking a question.

8 MR. GRIFFIN: Your Honor, I was just correcting an
9 opinion that the witness had that I read -- or that she shared
10 earlier and that she just shared again that was an incorrect
11 opinion.

12 THE COURT: You can tell her that, Mr. Griffin.

13 MR. GRIFFIN: Yes, sir.

14 THE COURT: You can't make that closing argument
15 that you continue to do.

16 MR. GRIFFIN: Okay.

17 BY MR. GRIFFIN:

18 Q. Could you say that possibly your opinion was wrong?

19 A. Everyone's opinion could be wrong, mine included.
20 But what I was talking about was this story was not about the
21 character of the protest, but that Cowboys for Trump showed up
22 along with these violent specialist groups like the New Mexico
23 Civil Guard and Three Percenters on that side of the protest and
24 counterprotest.

25 Q. Could there be any possibility or chance that maybe

1 those like myself and others have gotten to the point where we
2 hate the fighting so much and you actually have the courage to
3 go into the place and actually try to talk to the people and
4 reason with people instead of fighting? Could that be a
5 possibility?

6 A. A former colleague of mine left Carnegie to be the
7 head of the Catholic group that does exactly that, and I believe
8 that can happen. But your comments after this about "blood
9 running out of Capitol, martial law," and so on, make me think
10 that that might not have been your state of mind.

11 Q. Again, your opinion could be wrong and it could be
12 absolutely politically biased as well.

13 MR. GRIFFIN: If you can roll RK 8.

14 (Note: The video is played to the witness.)

15 BY MR. GRIFFIN:

16 Q. What was your opinion on this right here that you
17 shared earlier on the record?

18 A. Again, that you appeared at a venue with the New
19 Mexico Civil Guard after they had been -- had the civil action
20 brought against them by the State of New Mexico as an illegal
21 paramilitary organization.

22 Q. And so this rally, protest, gathering, whatever you
23 want to call it, it was in a church parking lot?

24 A. Yes.

25 Q. Would that be a typical place that you would go to

1 if you wanted to promote violence?

2 A. Sadly, every religion has some people that want to
3 promote violence and some who don't. Religion can be used in a
4 lot of ways.

5 Q. And so in your opinion earlier when you shared about
6 the protestor that had his tire slashed, did you feel -- did you
7 think that man was attacked, in your opinion?

8 A. I don't think he was attacked. It sounds like his
9 tires were attacked.

10 Q. Would you have any idea or reason why to think
11 somebody would have their tires slashed in a church parking lot?

12 A. My understanding is that he had a sign and that he
13 said a curse word about Trump.

14 Q. And that's what you had heard this from where?

15 A. The newspaper story.

16 Q. Would it be possible maybe that a man like this
17 could have showed up high on drugs and been trying to use his
18 vehicle as a weapon to run people over?

19 A. I -- it would be hard to slash the tires of a moving
20 vehicle, but my testimony here was really just about your joint
21 presence between Cowboys for Trump and the New Mexico Civil
22 Guard and normalizing their behavior in the political sphere.

23 Q. His tires weren't slashed while he was moving. His
24 tires were slashed when he was stopped by people that didn't
25 want him to run people over. I witnessed it with my own eyes.

1 That's what happened. That's why your opinion cannot be taken
2 as gospel.

3 And let me ask you this: Because I was in a crowd
4 -- if I was in a crowd and a couple of New Mexico Civil Guards
5 showed up and were standing in the same crowd that I was in, do
6 you relate that to me being with them?

7 A. Again, I'm not arguing that you share their
8 opinions. I'm saying that when Cowboys for Trump speaks at an
9 event and an illegal paramilitary organization speak at an
10 event, it normalizes the behavior of that other organization.

11 Q. Was this a Cowboys for Trump organized event?

12 A. I don't know who organized this event.

13 Q. But the organizer would be the one that would be
14 organizing whoever got an opportunity to speak, correct?

15 A. Well, any speaker has to make decisions about the
16 company one keeps, whether you want to speak at an event or not.

17 Q. Would you say just by association a person is
18 guilty?

19 A. I think that when your political organization speaks
20 at an event at which a potentially illegal organization also
21 speaks or plays a role in normalizing what they're doing.

22 Q. In your opinion?

23 A. Uh-huh.

24 MR. GRIFFIN: Can you go to RK 10, please, sir.
25 Go ahead and roll it and then I'll speak on it, please.

1 (Note: The video was played to the witness.)

2 BY MR. GRIFFIN:

3 Q. Have you seen Antifa use violence against people?

4 A. I have not seen violence against anyone.

5 Q. You've never seen Antifa promote any acts of
6 violence against anybody?

7 A. I try to stay away from violent events personally.
8 I do know that there are left-wing protestors that also use
9 violence.

10 Q. You would say that Antifa is not violent in nature?

11 A. I would not say that. In Portland, there has been a
12 lot of violence from Proud Boys and other organizations and
13 Antifa are getting in street fights.

14 Q. But you've never seen Antifa walk down the street
15 with baseball bats or use umbrellas as intimidation or weapons?

16 A. I have not personally witnessed an Antifa rally, but
17 I am aware that they exist. I have studied them from -- in my
18 studies of political violence and I am aware that they have used
19 violence.

20 Q. And with whom would they use violence against?

21 A. Antifa's modus operandi -- first of all, they're
22 pretty disorganized. They're anarchists mostly. And they tend
23 to show up when Proud Boys and other violent groups show up.
24 They're aggressive individuals on the left to enjoy street
25 fighting themselves.

1 Q. So they show up when Proud Boys show up, that's what
2 you would say?

3 A. Not only Proud Boys, but it's a real disorganized
4 group. It's real different in its structure of organization
5 from militias and some that are very structured. And so you'll
6 get a couple of Antifas showing up trying to spark rumbles.

7 Q. Would you say Cowboys for Trump is a very organized
8 group?

9 A. I don't know how organized it is. I know you are
10 able to call events and get people to show up with arms.

11 Q. With arms. Okay. And so would that be a Second
12 Amendment rally?

13 A. My understanding is that you have had rallies for
14 many purposes, but arms are legal at protests here in.

15 Q. Would you consider a Second Amendment rally an armed
16 protest?

17 A. If people showed up with arms it would be an armed
18 protest, but it wouldn't be an illegal protest.

19 Q. Have you seen -- or followed along whenever we've
20 had the Second Amendment rallies at the Capitol?

21 A. I don't know about whenever, but I am aware of the
22 Second Amendment rallies at the Capitol.

23 Q. Have you ever seen members that attend those rallies
24 that walk freely inside of the Capitol embracing their Second
25 Amendment?

1 A. I've testified in our Capitol with people with long
2 guns behind me.

3 Q. Does that intimidate you?

4 A. Yes.

5 Q. Does it make you scared?

6 A. It makes me wonder what they're up to behind me.

7 Q. Because they have a -- because they're openly
8 carrying well within their legal right?

9 A. It's certainly legal. It still doesn't make me feel
10 real great about testifying when people are behind me wearing
11 guns.

12 Q. You don't like -- you don't like guns?

13 A. Actually, I grew up shooting and I don't have a
14 problem with guns, but I think that there is a place at this
15 point in our nation in which guns are being used to intimidate
16 people out of their our First Amendment rights.

17 Q. So that's your opinion?

18 A. Well, armed protests are 6.5 times more likely to
19 turn violent based on the data that we have over the couple of
20 years. And armed protests at legislative buildings in the last
21 year have been 13 times more likely to turn violent. So that's
22 what I'm basing that on.

23 Q. So you would like to see them go away, then?

24 A. I don't want to see guns go away. I grew up hunting
25 and so on, but it would be better to have fewer guns at public

1 protests, I think.

2 Q. So, again, that would be your political opinion?

3 A. I suppose it's a political opinion. I don't believe
4 that we need to change the Second Amendment or the laws, but I
5 was glad when our Legislature said that guns couldn't come into
6 the Roundhouse anymore.

7 Q. Why is that?

8 A. Because it feels a little intimidating to testify at
9 the Roundhouse when people with long guns are behind you.

10 Q. So because somebody is well within their
11 constitutional right and they're well with inside the law and
12 they're openly carrying, but just because it doesn't make you
13 feel good, per se, then you feel like that person should give up
14 his constitutional right because you feel uncomfortable?

15 A. Well, I think at the time that I was testifying and
16 that happened, it was perfectly legal. But I think that the way
17 in which violence has been metastasizing in our country over the
18 last couple of years has meant that it's -- it feels more likely
19 that guns could be used and the data bears out that it's much
20 more likely that guns could be used. And so in this context, it
21 feels more comfortable to exercise my First Amendment right when
22 people aren't armed.

23 MR. GRIFFIN: Do you have RK 7? Do you have the
24 full video clip of that? This is one that -- at the church that
25 "The only good Democrat is a dead Democrat," the video. I

1 thought it was 7. Do you have the full context of what I said
2 at that speech?

3 MR. SMALL: RK 4.

4 MR. GRIFFIN: Sorry, sir. Thank you. If you can go
5 ahead and play it.

6 (Note: The video was played to the witness.)

7 BY MR. GRIFFIN:

8 Q. I say that in the political sense. You know, that
9 video right there, and I played the hardest one that they got.
10 I'm willing to confront every single one of them. Should I have
11 said that? No. I'll say that today. Sometimes when you speak,
12 sometimes you wish you could pull stuff back. Unfortunately, in
13 that moment, I can't. But I -- but to put that in the context,
14 that was coming up into an election. We were fixing to have a
15 competition, if you will. And we were fixing to try to win as
16 many seats as we can. And in regards to Democrat policies, I
17 stand on the side of conservatism. I stand on the side of
18 protecting life. I stand on the side of protecting our borders.
19 I stand on the side of protecting our Second Amendment.

20 And so as I said that, I said it in the same context
21 as you would if you were up against a sports team. Would you
22 say, in your opinion, Ms. Kleinfeld, if, say, the Lobos were
23 going to play New Mexico State next weekend and if you heard
24 somebody say "I hope we kill the Aggies this weekend," or "I
25 hope we annihilate the Aggies. The only good Aggie is a dead

1 Aggie," would you translate that over to somebody that's violent
2 that actually wants to go physically take the life of an Aggie?

3 A. So I've been careful to say what I believe, which is
4 that you are not necessarily violent, that you've never directed
5 anyone to commit violence. I think in this case I was using
6 that clip to say you are normalizing the idea of violence for
7 people who are violent, and that we took that clip because that
8 was the clip President Trump took. He didn't take your
9 backtracking part, he just took the clip and your long pause and
10 used it on social media. And it sent a whole lot of supporters
11 to the Cowboys for Trump website -- not website, but social
12 media pages.

13 Q. Believe me, you are wrong there, too. You don't
14 even imagine how much hate mail I received, how many death
15 threats I have received because of that video right there. It
16 didn't generate supporters. It generated the kind of hate that
17 I wouldn't wish on my worst enemy. And it was shocking that
18 President Trump retweeted the one video that really did hurt.
19 We had a lot of good content, a lot of really upbeat positive
20 content. But the reason why I believe that President Trump
21 retweeted that video is because President Trump knows that I'm
22 not a violent person. He knows that I'm not -- he knows that I
23 didn't mean that in a violent context. Because I know the
24 President and he knows me.

25 In the area where that video was played was in a

1 church setting. It was at a Sunday morning church service in
2 Truth or Consequences, New Mexico. If I wanted to promote
3 violence, if I wanted to instigate acts of violence, do you
4 think that a church service would be a place to do it at?

5 A. Unfortunately, religious institutions are often
6 places internationally where violence is instigated. But I
7 don't think you were trying to instigate violence. I just think
8 that your word served that purpose for people who are
9 aggressive, and there are, unfortunately, a lot of those people
10 in this country.

11 Q. I agree with that. And a lot of times words can be
12 miss -- words can be taken out of context, statements can be
13 taken out of context. As you looked over -- and looked over my
14 backstory, I know that you've referenced all of these
15 controversial videos repeatedly. This is your first day here,
16 but we've been watching the same ones over and over and over
17 again. But I'd like to ask you: Did you dig into any more?
18 Did you look at any more of the videos that I had just about --
19 about freedom and about liberty and about our children and about
20 our future?

21 And -- you know, because that's again, as you share
22 your opinion, you can't derive an opinion only off of the videos
23 that 15, 16, 25 attorneys send you. And whoever is behind all
24 of this, all the money that this is -- this is -- they want you
25 to derive your opinion that I am an insurrectionist only off of

1 a few videos and a little bit of content. But I'd like to ask
2 you: Did you dig in any deeper?

3 A. So I was doing a 24/7 media watch in the period
4 between the election and the inauguration, not just me, but a
5 whole group of researchers were taking that on, and your
6 websites were some of the ones that we were paying attention to
7 throughout that whole time. So in real time, I was looking at a
8 lot of your videos and I have a sense of the breadth of the
9 content there.

10 Q. At the end of the day, you would still call me and
11 label me an insurrectionist?

12 A. In my career, I've had to interview warlords and a
13 lot of people who have done various things that are only one
14 part of who they are, but they have nonetheless done those
15 things. And you've participated by mobilizing a mob, speaking
16 aggressively on the day of that mob's actions, normalizing
17 violence, rallying a crowd after violence had been occurring for
18 hours. Yeah, that's my opinion, that you are an
19 insurrectionist.

20 Q. Well, I appreciate you saying that that's your
21 opinion because your opinion is also that Antifa isn't a violent
22 organization. And any American knows that's not true. And also
23 your opinion of Black Lives Matters is that there is just little
24 random acts of violence here and there whenever Americans all
25 across the country watched our cities burn to the ground, small

1 businesses decimated, bans of thugs running through the streets,
2 breaking windows out of every business that they could. Those
3 were the frustrations -- many of the frustrations that have been
4 expressed from our side. But yet, when -- in your -- in your
5 opinion, and by your position, only because we speak up, now
6 we're considered the enemy. And I feel it unfair.

7 MR. GRIFFIN: Thank you, Your Honor.

8 A. I'm sorry, there wasn't a question, but I'd just
9 like to say I don't consider any American the enemy.

10 BY MR. GRIFFIN:

11 Q. Yes, ma'am. Well, I don't -- I don't mean to put
12 words in your mouth, and I --

13 THE COURT: You can have this conversation outside.

14 MR. GRIFFIN: Yes, sir. Thank you.

15 THE COURT: Any redirect?

16 MR. SMALL: No, Your Honor.

17 THE COURT: Doctor, you are excused from any further
18 obligation here.

19 Mr. Goldberg?

20 MR. GOLDBERG: Yes, Your Honor. We are prepared to
21 close our case. We have the highlighted transcripts of Officer
22 Erickson and Officer Hawa's testimony. If I may present one of
23 these to Your Honor. And we have one for the defendant.

24 THE COURT: Yes. Thank you.

25 MR. GOLDBERG: I'll give one to Mr. Griffin and I'll

1 give one to your bailiff.

2 THE COURT: Okay.

3 MR. GOLDBERG: How do you want to handle this in
4 term of getting this into the record? Do you want us to give a
5 third highlighted copy to the court reporter?

6 THE COURT: I'm not seeing any highlights. Oh, wait
7 a minute.

8 MR. GOLDBERG: The testimony is long. We tried to
9 be quite conservative in our highlighting. My question is: In
10 terms of the mechanics of the record, does Your Honor want us to
11 make a third copy and give it to the court reporter?

12 THE COURT: I'll give the court reporter this copy.
13 What's the exhibit number?

14 MR. GOLDBERG: I don't think we made those
15 transcripts exhibits. Do you want us to make them exhibits?

16 THE COURT: Let's make them exhibits.

17 MR. GOLDBERG: Right. What's the last exhibit
18 number? Can we make just the volume itself 253? And we'll
19 amend the exhibit list, with Your Honor's permission, we'll
20 amend the exhibit list and we'll call that volume 253.

21 THE COURT: And the only part of the exhibit that
22 the Court will review are those highlighted parts.

23 MR. GOLDBERG: That's our understanding and our
24 intent, Your Honor.

25 The Plaintiffs close their case.

1 THE COURT: Thank you.

2 Mr. Griffin?

3 MR. GRIFFIN: Your Honor, I'd like to first start
4 out by thanking you for your patience during this time. This is
5 -- you know, it seems like in my world of politics, it seems
6 like --

7 THE COURT: Just so we're all on the same page, are
8 you giving me a closing?

9 MR. GRIFFIN: Closing.

10 THE COURT: The closing by the Pre-Trial Order will
11 be with your Proposed Findings of Fact and Conclusions of Law
12 filed on August 29.

13 MR. GRIFFIN: So I don't get to give you my closing?

14 THE COURT: You do. It's a written closing
15 argument. You do. Your attorney helped draft that Pre-Trial
16 Order, by the way, so it's --

17 MR. GRIFFIN: I don't have counsel now.

18 THE COURT: I realize that, but -- I said Pre-Trial
19 Order, but it's the Scheduling Order that was entered on June
20 14.

21 MR. GRIFFIN: By Diego Esquibel?

22 THE COURT: Yes. And Paragraph 10 says that the
23 parties shall file Proposed Findings of Fact and Conclusions of
24 Law and closing trial briefs by August 29, 2022.

25 Mr. Esquibel was instrumental in developing this.

1 MR. GRIFFIN: Okay. Well, I don't guess it matters
2 then. I would rather give my closing oral and I thought we were
3 going to be done. But, yeah -- but I -- it's my ignorance of
4 the process, yeah.

5 As you know, Mr. -- Diego's withdrew as counsel and
6 that's why I sit alone over here, but --

7 THE COURT: Okay. I'll tell you what I'll do.
8 Neither party needs to take me up on this. We'll give each side
9 15 minutes to make a statement, but the closing arguments are
10 going to be on the 29th.

11 MR. GRIFFIN: Thank you. I would appreciate that,
12 Your Honor, and I would be in agreement with --

13 THE COURT: The Plaintiffs need to go first and they
14 don't have to take me up on it, as I said.

15 Mr. Goldberg, did you wish to make any type of
16 closing -- oral closing now, understanding that the Order does
17 provide for the 29th?

18 MR. GOLDBERG: We are content with the 29th.

19 THE COURT: All right.

20 Mr. Griffin, 15 minutes.

21 MR. GRIFFIN: Okay. Well, I appreciate the
22 opportunity to speak before Your Honor. And as I started a
23 second ago, I do apologize for any times that I have spoken out
24 or haven't followed the processes. But this has been an -- this
25 has been an unbelievable experience, though very difficult and

1 painful at the same time.

2 But I stand on -- I stand on -- the reason why I
3 stand here today and I stand alone is because I stand on good
4 ground. I know the actions that I've taken today. I know my
5 heart and why I have said the things I've said and the motive in
6 which I've said the things I've said. And though -- as I
7 mentioned earlier, some of things that I've had to watch during
8 this trial and some of the statements that I have had to reread,
9 I'm not necessarily proud of. A lot of the things that I have
10 said were driven off of emotion.

11 And at the time, and sometimes, especially in the
12 world of politics, you get caught up in emotion and driven by
13 emotion and -- and -- but I can honestly say before Your Honor
14 today and before the Courts and before the people of New Mexico
15 is I only want good for our country. And I would never
16 encourage nor promote anyone breaking the law and acting in a
17 way to upheave the government or disrupt the government.

18 And I've sat here today, and I don't know how many
19 times I've been called an insurrectionist. And that's a very
20 heavy word that's thrown around very lightly. Because I'm not
21 an insurrectionist. God as my witness. On that day, I only
22 went to stand for my country, for my President and to support
23 Mike Pence. And -- and just hearing our voice. All we wanted
24 was just our voices heard.

25 We had concerns about the election, and I believe

1 warranted and validated concerns as we have proven right in
2 Otero County, that there is discrepancies in our electorate. We
3 just want our electorate looked at. We want to make sure that
4 every legal vote is counted and every legal vote is only counted
5 once. And that should not be a partisan issue. It should be an
6 American issue. If there is one issue in America that should
7 unite us today, it should be election integrity. What we all
8 want. And that's the only way that we can move forward safely
9 in a country.

10 But I had no intent and no desire to overthrow our
11 government and to cause chaos and violence on that day. I think
12 it was proven through the Courts and through the trial that just
13 took place, if I -- if I really had a heart and intent to cause
14 violence, believe me, I would have blurted it out and there
15 would be factual evidence to pin me to the wall. But I've sat
16 here today -- the last couple of days as pro se without even
17 bringing forth any videos to try to defend myself. Maybe it's
18 foolish. Or witnesses to come forward to testify. And maybe it
19 was foolish not to. But I still believe in our system. I still
20 believe in our court system. I still believe in the decisions
21 that come from the bench. And I believe that God will give you
22 the wisdom to make the right one here.

23 Because the -- the people of Otero County have
24 spoken. There has been an effort not that long ago to recall me
25 from office after January 6, after all the videos that you've

1 seen that have been played over and over in a gaslighting
2 fashion, to gaslight Your Honor and to gaslight the Courts into
3 making me look like I'm an insurrectionist. The people of Otero
4 County have seen all of this. They've heard everything that
5 I've had to say. And I guarantee there is a lot of them that
6 don't agree, but there is a majority that do agree. And that
7 was proven through the failed recall petition that was put out
8 against me not that long ago.

9 And whenever I went before Judge Manuel Arrieta
10 if the 12th District back home and Manuel Arrieta told me in
11 that hearing when I tried to make my case and say, you know, the
12 Complaint is frivolous. I didn't do these things, Your Honor,
13 in which the -- in the hearing which would have allowed the
14 recall to move forward, Judge Manuel Arrieta responded to me and
15 said "I'm not going to be your judge. The people of your county
16 are going to judge you." And the people of Otero County judged
17 me through that recall, and they retained me. The recall failed
18 by 28 percent of the vote. The people of Otero County spoke.

19 I have four months left in my term. Four months
20 left to continue to stand on a conservative line and fight for
21 conservative values because Otero County is a conservative
22 county. That's the fabric of the people that live there. And
23 for Your Honor to rule in the Plaintiffs' favor would be
24 directly subverting the will of the people of Otero County, as I
25 have been put under such fire for -- for not certifying the

1 vote. And I've been told that you are subverting the will of
2 the people. You're taking away the votes of the people.

3 But if this -- if this lawsuit were to be
4 successful, the whole will of the people rests in Your Honor's
5 hands, and the people of Otero County have already spoke.

6 And this lawsuit today -- this trial the last two
7 days, as you can see how many attorneys, how much money -- my
8 office is just stacks of papers all with the name Chris Dodd on
9 it. Everywhere I look I see the name Chris Dodd. I've got
10 stacks and stacks and stacks and stacks of papers and responses,
11 and it's just -- and I'm still trying to be a dad. I'm still
12 trying to pay my light bill. I'm still trying to serve as a
13 County Commissioner. I'm still -- I'm still standing.

14 And that's what the adversary hates. The adversary
15 wants voices like mine gone. Why? Because I -- I question
16 things. In the election, all we want is transparency. All we
17 want to do is be able to inspect the Dominion machines and make
18 sure there is no corruption going on. That's all the request is
19 from the county. That's why I get attacked like I do.

20 Why else? Because I call on investigations for Jeffrey
21 Epstein's oil ranch up here and why that isn't investigated
22 where sex crimes took place against small children, where Prince
23 Andrew flies over from England and molests little girls out here
24 in New Mexico and pays them off and then flies back. And I'm
25 one of the only voices calling for justice in New Mexico for an

1 investigation in New Mexico. And when you stand up against
2 those kind of people, this is what you get.

3 Whenever you stand up and you want an investigation
4 into Alec Baldwin shooting and killing a lady on set and
5 injuring another, and still hasn't even faced the very basic
6 minimal charge of involuntary manslaughter. We need justice in
7 New Mexico. We need people that will fight for justice in New
8 Mexico. We need political voices that have courage. And it's
9 not going to be intimidated. It's not going to back down. It's
10 going to fight and it's going to go to war. And the war that I
11 speak of, Your Honor, is not physical war. It's a political
12 war. It's a war for our future. It's a war for our prosperity.
13 It's a war for justice.

14 I love New Mexico. I'm born and raised. Born in
15 Albuquerque. My dad's sitting here with me. He's born in
16 Roswell. We're New Mexico true. We're New Mexican to the bone.
17 I love my state. I love the people of this state. I want to
18 see our state prosper. I want our state to have liberty, have
19 freedom. That's why I ran for office. And believe me, it would
20 be a lot easier just to say, you know what, I'm done. Take my
21 seat. Take my commission seat. I make \$22,000 a year, and I'm
22 the center of every attack -- political attack in New Mexico.
23 It's been the hardest row I've ever hoed and it's more and more
24 harder every day. But I got into it because I want the best for
25 our people. I want the best for our state.

1 And God has put it in me to answer the call. And
2 I'm willing to. And I mean, I served as a pastor before the
3 world of politics. I served in the ministry. I rode a horse
4 from San Francisco, California to Jerusalem, Israel sharing the
5 gospel, all sacrificially, because I care about people and I
6 care about our future.

7 And I hope that you can see that, Your Honor, and I
8 hope it weighs over into your decision because, believe me, if I
9 am removed from office and Governor Michelle Grisham gets to
10 hand-select who she wants to sit in my place and represent the
11 people of Otero County, it would be a great sign of disrespect
12 for the people of Otero County and it would subvert the will of
13 the people of Otero County, and it wouldn't be good. It
14 wouldn't be productive. It would be hurtful. It would be very
15 hurtful to the people there.

16 I've got four months left or five months or however
17 long. And believe me, they can't come quick enough. I'm not
18 running for reelection. I don't know if I've physically got the
19 stamina to go four more years. I don't know if I can handle
20 another four. This last four has been hard, but the political
21 battles have been hard. It's been an honor.

22 And it's an honor to speak before you today, and I
23 thank you for giving me the time to be able to speak.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Griffin.

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Mr. Goldberg?

MR. GOLDBERG: Your Honor, I'd just like the record to be clear that the Defendant's case is over also.

THE COURT: Yes. He confirmed it was a closing argument that he was making.

Ladies and Gentlemen, thank you for your appearances today. August 29th will be the date by which I must receive closing arguments -- written closing arguments, should you choose to present them, along with proposed Findings of Fact and Conclusions of Law.

And because of pressures I've got after the 29th, I will try to get a decision within ten days, especially given the gravity of this particular issue that's before me.

All right. With that, we are in recess. Thank you all again for your appearances.

(Court in recess at 4:34 p.m.)

1 STATE OF NEW MEXICO)
) ss.
2 COUNTY OF SANTA FE)
3

4 I, BRENDA CASIAS, Official Court Reporter for the
5 First Judicial District of New Mexico, hereby certify that I
6 reported, to the best of my ability, the proceedings in
7 D-101-CV-2022-00473; that the pages numbered TR-1 through
8 TR-192, inclusive, are a true and correct transcript of my
9 stenographic notes, and were reduced to typewritten transcript
10 through Computer-Aided Transcription; that on the date I
11 reported these proceedings, I was a New Mexico Certified Court
12 Reporter.

13 DATED at Santa Fe, New Mexico, this 16th day of
14 August, 2022.

17 _____ ss // Brenda Casias

18 BRENDA CASIAS
19 New Mexico CCR No. 119
Expires: December 31, 2022
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