

MARATHON PROUD BOYS SEDITION TRIAL HITS MILESTONE AS PROSECUTION PREPARES TO HAND OFF TO DEFENSE

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The winding road to a verdict in the Proud Boys seditious conspiracy trial has been rocky but after 39 grueling days featuring bitter objections, delays, and a steady stream of motions for mistrial by the defense, a crucial milestone in the historic case was finally reached after prosecutors called their last witness last week.

Starting Monday, the defense is expected to take the reins and it will be left to them to attempt an unraveling of weeks of evidence and testimony from nearly two dozen government witnesses including former Proud Boy, Jeremy Bertino, who pleaded guilty to seditious conspiracy already and had intimate ties to the ringleader of the neofascist network now on trial, Henry "Enrique"

Tarrio.

Soon, it is expected that Tarrio will take the stand and offer his take on the insurrection at the U.S. Capitol. His co-defendant, the one-time Infowars contributor Joseph Biggs—who seemingly never met a microphone he didn't want to get in front of—is also expected to testify. Whether their alleged seditious cohorts Ethan Nordean, Zachary Rehl, and Dominic Pezzola will risk joining them, is unclear for now.

In a trial that has been anything but a one-two punch for the Justice Department, it will be the next (estimated) two to three weeks of proceedings that could ultimately make or break the historic case for prosecutors.

When the Proud Boys trial opened on January 12, assistant U.S. Attorney Jason McCullough presented the thrust of the government's argument to jurors. On its face, the premise was simple enough: Tarrio, Biggs, Nordean, Rehl, and Pezzola coordinated unflinchingly to stop the certification of the 2020 election by sheer force.

Motivated by Donald Trump's lie of a "stolen" election and fueled by the fear of a societal collapse triggered by any number of perceived boogymen (namely, leftists, antifa, communists, and Joe Biden to name a few), McCullough argued the defendants planned to stop the certification by recruiting scores of people—some Proud Boys, some not—to aid them in their coming revolution so when the time for Congress to certify the results of the election finally arrived on Jan. 6, they were ready to strike.

Witting and unwitting midwives of their revolt alike were the "tools" that Proud Boys needed to help them physically breach police lines, push past barriers, and get inside the Capitol, the prosecution has argued. Some of those "tools" of the conspiracy were members of the organization and others, as government witness and former Proud Boy Jeremy Bertino testified, were "normies" or just anyone who supported Trump and

showed up at the Capitol willing to let loose.

From Tarrío, who allegedly oversaw the storming of the U.S. Capitol from afar while cheering it on in private and public alike; to Biggs, Nordean, and Rehl, who whipped people into a frenzy as they stalked to, around, and in the Capitol; and to Pezzola, who prosecutors say smashed apart a window that ultimately allowed a stream of rioters to flow inside the building; the government alleges each defendant played their specific role in leading or executing the greater attempt to upend democracy.

The Proud Boys as an organization is not on trial and the government has been adamant in defending this point in the last ten weeks of proceedings, always leaving a wide berth for the First Amendment to protect the group's virulent expression of its "western chauvinist" me-first, America-first, men-first, "fuck-your-feelings" philosophy.

Much energy has been expended by the defense on claims that Tarrío and his co-defendants only stand trial because they are the convenient "scapegoats" of a politically corrupt judicial system that has found them an all-too-easy target when holding the main culprit of Jan. 6 to account, former president Donald Trump, is too challenging.

A week after the second anniversary of the Capitol attack, Tarrío's attorney Sabino Jauregui introduced himself to the jury for the first time with a concession and then a question: "Jan. 6 was horrible, we agree. But was *Enrique* responsible?" he said.

The defendants are not on trial for their internal communications, unsavory or steeped in racist misogyny they may be. Nor are they facing charges for the overheated and often paranoid nature of their engagements leading up to and on Jan. 6. And indeed, Donald Trump is not on trial in this case though at one point defense attorney Norm Pattis, for Biggs, did launch a stalled attempt to subpoena Trump for

testimony.

Responsibility. Time and place. Motive. Intent. These have been the prosecution's focus for its case in chief and through the testimony of Capitol police officers, FBI agents, forensic analysts, and two former Proud Boys themselves. It has been a sweeping case for the government to lay out amid a battery of objections from its multi-defendant opponent. The defense has often spent time twisting itself into knots litigating and re-litigating the admissibility of certain pieces of evidence with little fruit to bear. The central theme to the objections, regardless of the defense attorney, is that the government's case is overblown and unfounded. For others, like Pezzola's attorney Roger Roots, or Tarrío's attorneys, Sabino Jauregui and Nayib Hassan, there have been more regular winks, nods, or at times, outright assertions, during questioning that the FBI has cooked up a sort of deep-state plot against innocent if now rowdy protesters like the Proud Boys.

Drawn-out fights over evidence have often prompted trial days to begin with jurors forced to enter or reenter the courtroom late or after waiting for a long period of time.

One recent snarl midday was triggered by what had surfaced in a Proud Boys elder chat known as "Skull and Bones." It showed chat members referencing Nazi propaganda or users with handles featuring Nazi-affiliated phrasing. Tarrío's attorney jumped on a motion for mistrial when a text chain appeared to show a "tool" of the conspiracy "Chris Cannon PB" sharing that Nazi propaganda video with Tarrío on Jan. 6. It featured World War II footage of Adolph Hitler saluting victorious Nazi soldiers, among other images from the period. Though jurors saw the video and the surrounding conversation, the defense managed to convince presiding U.S. District Judge Tim Kelly to strike it from the record and instruct jurors to ignore it.

Nonetheless, the jury saw shades of the world

Tarrío operated in and the people he engaged with. That message was sent to Tarrío after the first breach on Jan. 6 and *after* he had already sent out the message: "make no mistake...we did this."

In that same private elders chat, Cannon asked Tarrío: "Are we a militia yet?"

"Yup," Tarrío replied in a voice note.

Where early weeks of the trial were aimed at establishing the Proud Boys patterns of behavior that trended towards violence at political rallies before the 6th or tracking things like the group's internal rancor as Trump's bid to stay in power failed in the courts, more recently, it has been the prosecution's "tools" theory that has dominated the jury's attention.

One of those many alleged "tools" utilized by the Proud Boys on Jan. 6 was former police officer and Proud Boy Nathaniel Tuck of Florida. Tuck appeared in a video after the breach, taking what seems to be a celebratory group photo outside of the Capitol. He appears with defendants Biggs and Nordean and other Proud Boys who marched from the Washington Monument that morning to the Capitol that afternoon, per a previous discussion had among members of the Proud Boys Ministry of Self Defense.

Tuck makes what appears to be a Nazi "heil" gesture in the footage

The prosecution, as it turned out, didn't focus on that gesture, letting the images speak for themselves. Instead, the jury's attention was brought to Tuck's greater alleged conduct and his association with the defendants on trial as one of many "tools."

The defense has rejected this legal theory vehemently, arguing, in short, that it is a roundabout way of achieving a conviction when evidence of a hard and fast plan to stop the certification is too attenuated. But as other sedition trials of Jan. 6 have shown, like the first Oath Keepers case with that ringleader

Elmer Stewart Rhodes, the evidence of an explicit plan is not necessarily needed for a jury to convict on seditious conspiracy.

The government's argument that Proud Boys incited the mob to join their revolt may be sufficient. On Monday, when witness Travis Nugent is expected to testify for the defense, he is largely expected to tell the jury that Proud Boys had no plan at all.

Persuasive evidence of a concrete plan or not, the prosecution has continually pointed to the disruptive element that Proud Boys brought to each site they marched through on Jan. 6. Police testified on at least two occasions in the last several weeks that before Proud Boys showed up, people were calm. It was the Proud Boys who got edgy. It was the Proud Boys who were ready for a fight and had been for months, the government contends.

To that end, when Tarrío and "Chris Cannon PB" were texting about the deteriorating scene at the Capitol in the Proud Boys elder chat and Tarrío appeared to take credit for it, prosecutors showed jurors simultaneous surveillance video footage that shows defendant Joe Biggs, with "tools" like Nate Tuck or others like Arthur Jackman and Eddie George. Prosecutors also presented footage of Biggs reaching the Senate chamber with some of these same men in tow. Jurors saw evidence of how Biggs was part of a breach on both the east and west sides of the Capitol, and how he entered the building twice that day. Other evidence, like call logs extracted from the defendants' phones, showed Tarrío's phone connecting to Biggs for just under a minute moments before the national ringleader posted "1776" on Parler. It was also around this time that some of the worst violence of the day by rioters against police would explode.

As for Ethan Nordean, the government relied on extensive frame-by-frame footage from the very front lines of the mob where Nordean so often appeared with Biggs. Nordean was also seen often

striking a defiant posture toward police that morning. Before noon, as he marched toward the Capitol he used a bullhorn and told anyone within earshot how police had “just took our boy in” and that police “gotta prove your shit to us now” or the people would “do your goddamn job for you.”

“Our boy” was Tarrío. Tarrío had been arrested two days before for the burning of a Black Lives Matter banner at a historic church in the district in December.

Nordean’s rantings whipped people up, FBI agent Nicole Miller explained during testimony. Jeremy Bertino had said too that the “normies” looked at Proud Boys like “superheroes” and would follow wherever they went if they led the way.

By the time Nordean, Biggs, and Rehl got to the Capitol on Jan. 6, Nordean had already told those gathered around him “We represent 1776” and urged people to support and defend the Constitution against enemies foreign and domestic.

“Let us remind those who have forgotten what that means,” Nordean said.

On the way to the Capitol, Nordean at one point brought the marching group to a halt and was overheard in footage saying they needed to wait so they could “link up with Alex Jones.” Roughly 15 minutes later and moments before reaching the Capital, Nordean was overheard in another recording saying, “we have a plan. They can adjust.”

Prosecutors used video from the initial breaches to show Nordean and Biggs standing along metal inaugural fencing in a thick crowd. Both men were touching the fencing, at the very least, in the moments before the fencing was rocked back and forth and ripped up from its embedded posts in the concrete.

Other surveillance footage played for jurors has depicted defendant Zachary Rehl, a Proud Boy chapter president, entering through the same

door Biggs had come in at one point. At an earlier point, when he is outside, he is in proximity to Dominic Pezzola and it was around this time that Pezzola was, prosecutors allege, forcefully stealing a police riot shield away from a clearly outnumbered officer.

Pezzola would use that shield to smash open a window to the senate wing hallway. CCTV footage shows Pezzola later standing on the other side of that window, appearing to look through it for several moments while using what prosecutors and one FBI agent said appeared to be a radio. Pezzola's defense attorney described his client repeatedly as a "lost puppy dog." An FBI case agent testified that Pezzola looked like he was searching for someone or something before taking off toward the Capitol crypt. The same agent testified that Rehl would eventually go to the crypt too followed by "tools" of the conspiracy like Proud Boy Isaiah Giddings and others. The same agent said it was Rehl's voice she was able to identify saying "fuck it, storm the Capitol" in a video from earlier that morning filmed at the Peace Circle just moments before a crowd surged past police barricades there.

Many of the alleged "tools" tapped by the Proud Boys are awaiting trials all their own. Tuck, for example, has pleaded not guilty to a number of charges including obstruction. A motion hearing for Tuck and several alleged "tools" including Arthur Jackman, Paul Rae, Edward George, and Tuck's own father, fellow Florida police officer, Kevin Tuck was continued from February to May 5.

The Proud Boys have, by and large, defended themselves as a fraternity-style drinking club with unserious political aims or interests. They have worked to paint themselves as rough-and-tumble "patriots" akin to the Hells Angels who seek out brotherhood and camaraderie where they can mutually defend America ideologically and peacefully from an increasingly hostile woke population.

But when the insurrection at the Capitol was

over, the prosecution argued text messages showed the group's real intent. Nordean, for one, was livid with Trump after he released a statement a week after the insurrection saying there was "never a justification for violence." Where once Proud Boys had been jubilant, Nordean was now in the elders chat with Tarrío, expressing his fury.

"Fucking disgusting, I'm so pissed," Nordean wrote in one message.

"What a load of shit that whole thing has been. All Trump did was get us to reveal ourselves to the enemy. Basically butt naked and unarmed against this new regime.... Fuck Trump... Fuck that cocksucker," he added.

The defendants may likely present a case to the jury in the days ahead that largely relies on varied claims of victimization of one kind or another by Donald Trump, or assertions that the Proud Boys were good old-fashioned protesters made unwilling pawns of the "deep state" and its legion of spooks.