

THE BIG FINISH: THE PROUD BOYS SEDITIOUS CONSPIRACY TRIAL GOES TO THE JURY

From emptywheel: Thanks to the generosity of emptywheel readers we have funded Brandi's coverage for the rest of the trial. If you'd like to show your further appreciation for Brandi's great work, here's her PayPal tip jar.

A jury that has listened to arguments and evidence for roughly four months in the Proud Boys seditious conspiracy trial that unfolded mere blocks away from the U.S. Capitol, has now entered deliberations.

The mere physical task of sorting through the evidence before them is significant all its own and it is only eclipsed by the burden to finally render a verdict that is just and reflective of the instructions they received at the conclusion of what has been the Justice Department's longest Jan. 6 trial to date.

When Assistant U.S. Attorney Conor Mulroe took the podium for the final time this week in U.S. District Judge Tim Kelly's courtroom, he faced the jury, his suit a dark blue and his tie a muted red, and harkened first to the words of the Proud Boys ringleader Henry "Enrique" Tarrío on Jan. 4, 2021:

"Whatever happens, Make it a spectacle."

Tarrío said this to his now co-defendant, Joseph Biggs, just before his arrest on the 4th. What followed was a sequence of events that led Tarrío to exactly where he found himself this week: listening to a federal prosecutor standing just a few feet away tell a jury of his peers that he was responsible for a conspiracy that nearly toppled democracy as they and America have only ever known it.

The Proud Boys on trial include Tarrío, Biggs,

chapter leaders Ethan Nordean and Zachary Rehl, and one of the group's foot soldiers, Dominic Pezzola. They face no less than nine charges apiece for their alleged roles in the attack at the U.S. Capitol and their attempt to stop Congress from certifying an election that would ultimately end Donald Trump's presidency after his popular and electoral defeat.

Through evidence that included video footage and raft upon raft of the Proud Boys' text messages as well as public social media posts scattered on Telegram or Parler as well as through the testimony of witnesses for and against the defense, the government weaved together the very crux of its historic case against the neofascist network.

The defendants viewed themselves as "Donald Trump's army," Mulroe said. They were a self-stylized group of "radical" and "real men" who could and would be willing to strike down anyone or anything that opposed their vision of an America only Trump could lead.

"They were hyper-focused on the election and what they viewed was the special role of the Proud Boys in a deadly serious conflict in American society," Mulroe said.

It was that "life or death" attitude among the Proud Boy defendants about the election and America's future that finally reached its fever pitch on Jan. 6. It came to a head when they initiated the breaching of barricades and it spilled over when they assaulted or impeded police trying desperately to stop them. And it was no more clear, the prosecution argued, when those efforts coalesced into a disruption of Congress from its sacred and solemn business that lasted for several tense hours.

At the close, the Justice Department showed jurors a montage of texts and posts where the defendants could be seen celebrating Trump's "stand back and stand by" remark after the 2020 presidential debates. There were also other communications displayed where members appeared

to agree it was time to stand up and fight against their perceived enemies—largely “antifa” at the start.

When Biggs arrived in Washington on Jan. 5, he did so with the conviction that there was a “war of Americanism” underway and he believed it was “time for fucking war if they steal this shit,” Biggs once wrote.

Tarrio had offered up, “No Trump, no peace no quarter.” Nordean had proposed in texts to “fash the fuck out so we don’t have to worry about these problems anymore.”

And when Biggs told fellow Proud Boys he believed “every lawmaker who breaks their own stupid laws should be dragged out of office and hung,” it was his now co-defendant Zachary Rehl who had also once called for something similar.

Rehl wrote that he hoped there were “firing squads” for “the traitors that are trying to steal the election from the American people.”

And if the taste for violence needed to be made any clearer, Mulroe pointed the jury’s attention to Nordean’s commentary ahead of the insurrection: “Live free or die hard, Politics ain’t working for nobody, it’s time to fucking rage.”

For prosecutors, this case isn’t about patriotism run amok or free speech on steroids. It wasn’t about loose talk among rough men that came to nothing. The government asked jurors as they rendered their verdict to consider information before them and see it for what it is: These were people who had spent weeks building animosity towards law enforcement. These were people who believed, as several witnesses testified at trial, that a “civil war” was imminent and these were people who would do whatever was necessary to keep their preferred leader in office.

At trial, prosecutors argued that after pro-Trump rallies in Washington in November and December 2020 had turned violent with Proud

Boys brawling with people they deemed “antifa” in the streets, the group’s members quickly lost all reverence or respect they once harbored for the police.

Jurors reviewed evidence where Proud Boys blasted police as wrongly defending “antifa” after the clashes that fall and winter. And after one of their leaders, Jeremy Bertino—who has since pleaded guilty to seditious conspiracy—was stabbed, the time to “back the blue” had ended.

Facing the jury on Tuesday, Mulroe recited a message Biggs had posted after Bertino was stabbed on Dec. 12.

“We the people will treat your thin blue line like you do antifa. We’ll knock you to your senses... and bypass your unconstitutional asses,” Biggs said.

Nordean sent messages saying he was “disgusted” with law enforcement and that they should encourage people to “back the yellow,” a reference to their group’s official colors of black and yellow.

When Proud Boy and witness for the defense Fernando Alonso, admitted to calling police “coptifa” in court last month and said “maybe” Tarrío had once called them the same, he tried to backpedal, seeming altogether unwilling to say anything critical of the organization. Wearing Proud Boy colors in court, Alonso tried to qualify that Proud Boys don’t regard all police that way.

Just the ones they believed were against them.

These communications were evidence of an appetite for violence that led to the defendant’s intent and motive on the 6th. It was there as they marched toward the Capitol and Nordean used a megaphone to taunt police that “real men are here” and it was there when Nordean said Proud Boys “represented the spirit of 1776” before warning police that day “they would remind those who have forgotten what their

oath means.”

“Listen to the contempt in their voices,” Mulroe said as he played video footage of Proud Boys marching group streaming past a small group of police scrambling to gear up. As they passed, men in the group screamed things like: “Pick a side,” “fucking scum,” “honor your oath,” “treason,” and “traitors.”

The Proud Boys are alleged to have never intended to go to Trump’s speech as their main prerogative on the 6th. Instead, many of the Proud Boys waited for the proceedings to get started and “made a beeline for the barricades.”

“The barriers were there to protect what was going on inside of that building... the proceeding was already underway when the first wave of rioters breached. Nordean, Biggs, Rehl, and Pezzola were all part of that first wave,” Mulroe said.

The defense has insisted over the last 14 weeks that there was never a plan to storm the Capitol or stop Congress from certifying the election. Not a written one or a spoken one. No testimony ever emerged at trial from witnesses called by either the government or the defense that stated an explicit plan was in place.

The Proud Boys maintain they only went to the Capitol on Jan. 6 to protest, support Trump, protect Trump supporters, and have their voices heard.

When Bertino testified on behalf of the government in February, he told the jury he never heard a point-by-point plan communicated. But, he said, there was an understanding and agreement that they would do whatever was necessary to keep Trump in power.

He described to the jury that ahead of the 6th, Proud Boys believed when “something big” would happen, they could rely on the “normies,” or Trump supporters otherwise unaffiliated with the Proud Boys, to get behind them. Bertino once

described the Proud Boys in texts as the “tip of the spear.” Another Proud Boy, a low-level member named Matthew Greene, also referred to Proud Boys this way when he testified on behalf of the government. Greene has pleaded guilty to two charges including conspiracy and obstruction of a proceeding.

“We always led the way and they were always behind us, the normies,” Bertino testified in February.

Proud Boys were “ready and willing for anything that was going to happen,” Greene testified in January. They were “essentially the tip of the spear.”

The Justice Department argues that all that unfolded at the Capitol on the 6th was not just sanctioned by Tarrio but that Tarrio was responsible for bringing his co-conspirators together, even if he wasn’t on Capitol grounds on Jan. 6. Mulroe also reminded jurors how Tarrio had never told his men *not* to use violence to achieve their ends.

He didn’t on Jan. 6, Mulroe highlighted.

Instead, Tarrio posted on Parler “don’t fucking leave” and “proud of my boys” and “1776.” In a private chat for members of the group’s secretive subdivision known as the Ministry of Self Defense, Tarrio wrote “proud of y’all” as the Proud Boys invaded the Capitol. And on the night of the 6th around 11:14 p.m., he posted an ominous-looking video of himself standing in front of the Capitol with the words “premonition” to caption it. He had shot the video the night before on Jan. 5 but waited to post it.

The Ministry of Self Defense wasn’t a back channel for run-of-the-mill rally operations or marketing as the Proud Boys had argued. The Proud Boys themselves weren’t a fraternity of roughnecks or harmless edge lords.

“Ladies and gentlemen, let’s call this what it is. The Ministry of Self-Defense is a violent

gang that came together to use force against its enemies," Mulroe said.

All of this was proof enough of Tarrío's "explicit encouragement and direction."

This made up the defendant's explicit agreement, he said.

And if that wasn't convincing beyond a reasonable doubt, Mulroe told the jury they should consider the sheer force the group used with its combined numbers enough to disrupt Congress. That too was an agreement, he argued.

Pointing out how the defendants' credibility had been shot through time and again, and perhaps most powerfully when Rehl and Pezzola mostly crumbled under cross-examination and delivered bitter, conspiracy-theory-laden testimony, Mulroe urged the jury to believe that the Proud Boys turned a peaceful process for more than 200 years into a "horrifying spectacle."

Just as Tarrío had commanded and several of his co-defendants agreed.

"From the first breach to the last, these defendants joined together and that was an agreement. What that means, is even if you didn't know about anything that had come before, even if you hadn't seen the evidence of prior rallies, secret chats, Parler posts, MOSD, even if you pick things up on the afternoon, even if you only came to this at 12:30 a.m. on Jan. 6, you still have decisive evidence of their shared action toward a mutual goal," Mulroe said.

During the defense's closing arguments, Tarrío's attorney Nayib Hassan picked up where Tarrío's other attorney, Sabino Jauregui, had begun when the trial opened.

The Proud Boys were a "scapegoat" for Trump, he said.

"It was Donald Trump's words. It was his motivation. It was his anger that caused what occurred on Jan. 6 in your beautiful and amazing city," Hassan said. "It was not Enrique Tarrío.

They want to use Enrique as a scapegoat for Donald J. Trump and those in power.”

Hassan hammered at the assertion that there was “no communicating of an understanding or of an objective” by Tarrío with anyone, or any of the defendants about stopping the transfer of power with force.

Hassan argued that Tarrío never asked anyone to attack police, never broke a window, never crossed police lines. The government was trying to distract the jury from the reality of Proud Boys being violently attacked by antifa, he said. Bertino’s stabbing was the catalyst that led Tarrío to become consumed with plans for how to protect members when they attended rallies, rallies that were a protected expression of their rights.

Bertino, who was once an intimate of Tarrío’s, and a high-ranking leader of the Proud Boys, was thrown under the bus by Hassan and other defense attorneys at close. It was a recurring theme as the trial wore on, too.

In early April, the defense presented 46 text messages between Tarrío and Shane Lamond, a Metropolitan Police Department officer who had been on the force for more than two decades. He’s now under investigation by the FBI. Lamond has denied any wrongdoing.

Tarrío’s attorneys argued Lamond and Tarrío had a symbiotic relationship where Tarrío would keep Lamond in the loop about Proud Boys activities with information flowing in a meaningful way. The existence of these communications on their face, according to Tarrío, proves there was no plan to attack the Capitol or stop Congress from certifying the election on Jan. 6 because he was engaging with law enforcement, not evading them.

But prosecutors said the messages didn’t show Tarrío was very helpful to Lamond at all, and rather, deceived him and used their relationship to keep tabs on police. When it came to the 6th, for example, Tarrío told Lamond in one of their

few dozen exchanges that Proud Boys *may* come to D.C. for the 6th and *if* they did, it would be in “extremely small numbers.”

Proud Boys would show up by the hundreds on the 6th. The only thing Tarrío told Lamond in that exchange that was true was that Proud Boys wouldn't be wearing colors that day.

Tarrío may be reprehensible to the jury, Hassan said, but he urged them to put personal feelings aside about the ugly things chats showed Tarrío saying.

“Your deliberations in the next few days will impact the rest of his life,” Hassan said. “If you have an abiding position that the government did not prove its case, its your obligation to speak up.”

Steven Metcalf, a defense attorney for Dominic Pezzola, pleaded with the jury during an impassioned plea for the Proud Boy.

Pezzola faces the same seditious conspiracy charge and conspiracy charges as his co-defendants plus a robbery charge for his alleged stealing of a police riot shield from an officer who was knocked to the ground by Pezzola.

“You hate him or me, I ask you to put that aside,” Metcalf said.

Jurors should put their politics aside, he argued, because “this case has mostly been about the government using Dominic's politics against him so each of you hate him.”

Pezzola's second day of testimony, which came not long before closing arguments, was explosive and frequently combative. Pezzola told the jury, who had sat and listened to the case for roughly four months, that the proceedings were “corrupt” and the charges “fake.” Metcalf said he warned Pezzola to “shut up” and not testify but the Rochester, New York Proud Boy really wanted to tell the jury: he trespassed, broke a window, and got a shield.

“But seditious conspiracy? Seditious

conspiracy?!" Metcalf said, loudly, driving home his disbelief.

The government had "over-inflated" the case against the Proud Boys, Metcalf said.

Biggs' defense attorney Norm Pattis closed out the case for his client with an often meandering, objection-drawing treatise heavy on the defense of the First Amendment and lighter on the defense of his client's actual conduct. It was also rich in attacking the government's broader case overall and at one point Pattis even compared the charges themselves to conspiracy theory.

"They [the defendants] have been criminalized for being present at the scene in what I will assert is basically a conspiracy theory," he said.

But when he did pick at the charges more, he balked at the government's position that "concerted action equals an agreement."

"My left eye!" Pattis wailed. "I go to a ball game and I cheer and someone buys me a hot dog at that moment. At that moment, did we all agree to buy that hot dog?"

During the government's rebuttal delivered by Assistant U.S. Attorney Nadia Moore, the prosecutor boiled it down to something more accurate under the law.

"It's no wonder they want you to focus on a specific plan to breach the Capitol. But we don't have to prove a plan. There's no requirement of a detailed plan. They're not charged with that. They are charged with conspiracy," she said.

And then she offered an example, free of legalese.

"If I pull up to a red light and I rev my engine and a guy in a Mustang next to me does it back and the light turns green and we both peel out, even if we never met each other, even if we never said a word, we both formed an agreement,"

she said.

The agreement doesn't have to be notarized, she added, and there's no requirement to prove formal or express agreement to every detail. The government only needs to prove that the defendants agreed to oppose the certification by force.

It could happen at the last second.

And though she didn't reference it in the government's rebuttal argument, jurors did hear testimony from Matthew Greene in January that he had an "abstract" feeling of what they were doing as they marched on the Capitol but he wasn't sure.

It wasn't until he saw the first barricade go down that the light bulb clicked on.

"Oh shit, this is it," he said he recalled thinking.

After their first day of deliberations Wednesday, there's no word of a verdict. The jury will meet daily from 9 a.m. to 5 p.m.

ADDITION: On Wednesday, jurors passed a note to the court asking for exhibit numbers on two exhibits: one from Rehl's phone where he's filming the breach at the first barrier and another video where Biggs "suggests they pull their masks up."