

PROUD BOYS SEDITIONOUS CONSPIRACY TRIAL ENTERS 32ND DAY

From emptywheel, 4/2: 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.

Hello, I'm Brandi Buchman and I am a reporter covering the aftermath of the attack on the U.S. Capitol on Jan. 6, 2021. I have covered the events of Jan. 6 since their inception and I have covered the Proud Boys seditious conspiracy trial since its start as well as the first Oath Keepers seditious conspiracy trial gavel-to-gavel.

It is the 32nd day (and eighth week) of the Proud Boys seditious conspiracy trial involving ringleader Henry "Enrique" Tarrio and his cohorts Ethan Nordean, Joseph Biggs, Zachary Rehl, and Dominic Pezzola. After a break for jurors on Monday—a lengthy motion hearing was held outside of their presence—they will return on Tuesday to hear more evidence from the prosecution as the historic trial trudges toward its expected end this April.

Monday's motion hearing focused exclusively on the admissibility of certain evidence presented under a key legal argument advanced by the prosecution known as the "tools" theory. In short, prosecutors argue that roughly two dozen associates and/or members of the Proud Boys were utilized as blunt "tools" by the defendants on Jan. 6 to pull off the plot to forcibly stop the certification of the 2020 election.

It was Tarrio and his fellow chapter leaders, the Justice Department contends, who handpicked the "tools" of the conspiracy, and of those individuals identified, most were not charged alongside Tarrio, Nordean, Biggs, Rehl, or

Pezzola. The defense has balked over whether some of the tools were truly members of Proud Boys and has suggested this “catch-all” approach by the prosecution is improper.

Presiding U.S. District Judge Timothy Kelly has for weeks accepted the government’s “tools” theory as viable, so the fight during Monday’s motion hearing largely revolved around the admissibility of specific video footage featuring roughly two-dozen so-called “tools” of the conspiracy.

Here’s a bit of background for the “tools” listed by prosecutors:

William Pepe, a former Proud Boy of New York, was seen near Pezzola in footage from Jan. 6 and he was originally charged in the same indictment. Pepe was also a member of Boots on the Ground, a Proud Boys chat set up specifically for Jan. 6, 2021. He was not, however, a member of the Ministry of Self-Defense chat where operations for the Capitol assault were allegedly hashed out among a core group of Proud Boy leaders including the defendants.

Barton Shively, a former aspiring Proud Boy of Pennsylvania—allegedly—is seen on footage from Jan. 6 where he’s near the Washington Monument on the morning of the 6th. This was a designated meet-up location for the defendants, prosecutors argue. Shivley has already pleaded guilty to assaulting police.

Christopher Worrell, a Proud Boy of Florida who used a chemical spray on officers and was a member of Boots on the Ground chat, is seen in video clips from Jan. 6 where he’s very close to fellow Proud Boys who breached barriers.

Dan “Milkshake” Scott, a Proud Boy of Florida, breached police lines after marching with Proud Boys. Defense attorneys on Monday vehemently denied Scott’s membership with the organization.

Barry Ramey, an alleged Proud Boy of Florida, was in Scott’s proximity on Jan. 6 as they

marched on the Capitol. Ramey has been charged with assaulting police with chemical spray and defense attorneys for Tarrio have argued he is not an official member of the extremist group.

Marc Bru, a Proud Boy from Washington state, is seen on video footage leading a group of people toward the Capitol, according to prosecutors.

Trevor McDonald, who entered the Capitol with defendant Joseph Biggs, has been brought forward as a tool of the conspiracy by prosecutors but evidence of his direct connection to the Proud Boys struck Judge Kelly as thin. McDonald came to Washington on Jan. 6 with his father, Shannon Rusch. In video clips, McDonald is seen near Biggs, Nordean, and Rehl as well as other Proud Boys like Gilbert Fonticoba, Arthur Jackman, and Paul Rae.

Ronald Loehrke, an alleged Proud Boy of Washington state, received a text from defendant Ethan Nordean leading up to the Capitol attack where Nordean suggested bringing him to the front lines. Loehrke promised in return that he would bring "bad motherfuckers" to the Capitol.

James Haffner of Washington state appears in Jan. 6 footage wielding chemical irritants, and prosecutors say evidence shows Haffner standing close to Biggs before helping tear apart barricades at the Capitol.

Nicholas Ochs, a Proud Boy chapter leader from Hawaii and onetime elder of the extremist group, made it into the Capitol on Jan. 6 and recorded another Proud Boy, Nicholas DeCarlo, writing "Murder the Media" onto a door. Once inside, prosecutors say Ochs interacted with Nordean.

Gilbert Fonticoba, a member and alleged "captain" of the Proud Boys Ministry of Self Defense group, Fonticoba participated in the Proud Boys Boots on the Ground chat where operations for Jan. 6 were siloed. Prosecutors say Tarrio invited Fonticoba into the Ministry group chat but defense attorneys have denied this connection. Other evidence shows Fonticoba reported his location back to Proud Boy Aaron

Wolkind during some of the thickest rioting and after Wolkind told Proud Boys he was “storming the Capitol” several times.

Paul Rae made it inside of the Capitol on Jan. 6 and prosecutors argue they heard Rae on footage telling members to “find” former Speaker of the House Nancy Pelosi.

Arthur Jackman met up with Proud Boys at the Washington Monument on the morning of Jan. 6 and is an alleged member of the group.

Eddie George Jr. of Florida, a member of the Ministry of Self-Defense chat, appeared in a selfie with Biggs and Nordean on Jan. 6 and faces multiple charges including obstruction, disorderly conduct, and civil disorder.

Nate and Kevin Tuck, are a father-son duo from Florida. Kevin Tuck was a police officer and Nate Tuck was a former police officer who resigned in 2020. Kevin Tuck resigned after his arrest in July 2021.

Alan AJ Fisher III was a member of both the Ministry of Self Defense and Boots on the Ground chat who joined Nordean and Joseph Biggs at an AirBnB in D.C. on the eve of the insurrection. Footage shows Fisher at the lower west terrace tunnel archway of the Capitol on Jan. 6, close to where some of the worst violence of the day occurred.

Brian Boele ends up at the lower west terrace tunnel archway and may have been a direct part of the violent push inside the tunnel.

Dion Rajewski ends up at the lower west terrace tunnel archway with Fisher III and Zach Johnson and others.

Zach Johnson, a member of Boots on the Ground chat appeared in a selfie with defendant Biggs, at the lower west tunnel archway. He also appears in video footage from the west plaza where Biggs, Nordean, and others are spotted near him. Also appearing in the video from this time and place are Rae, Boele, Fonticoba, and

Fisher.

James Brett IV was at the lower west tunnel archway and was later seen inside of the Capitol.

Other individuals like Robert Gieswein and William Chrestman were initially featured on the government's list of "tools" of the conspiracy. But on Monday, neither Gieswein nor Chrestman made the cut.

Though he was short on details on Tuesday morning once court was underway, Judge Kelly said he would exclude evidence from Barry Ramey and Barton Shivley.

"The constellation of information we knew about these two people didn't get over the hump as far as evidence being sufficiently relevant," Kelly said.

Video evidence identifying Dion Rajewski, Brian Boele, and James Brett will be excluded in part for now but videos showing AJ Fischer and Zach Johnson in this group can be included. Kelly said footage involving AJ Fisher and Zach Johnson can come in because they are seen marching with defendants on the national mall.

To save the jury time this morning, Judge Kelly said he would explain his decisions at length about the "tools" of the conspiracy in writing later.