

Sines, et al. v. Kessler, et al., 3:17CV72, 11/02/2021

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTEVILLE DIVISION

4 ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72
5 NOVEMBER 2, 2021, 9:03 AM
6 JURY TRIAL, DAY 7

7 Plaintiffs,

8 vs.

9 Before:
10 HONORABLE NORMAN K. MOON
11 UNITED STATES DISTRICT JUDGE
12 WESTERN DISTRICT OF VIRGINIA

13 JASON KESSLER, ET AL.,

14 Defendants.

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1 (Proceedings commenced, 9:03 a.m.)

2 THE COURT: Good morning. Be seated.

3 Call the case, please.

4 THE CLERK: Yes, Your Honor. This is Civil Action
5 Number 3:17-cv-00072, Elizabeth Sines and others versus Jason
6 Kessler and others.

7 THE COURT: Plaintiffs ready?

8 MS. DUNN: We are, Your Honor.

9 THE COURT: Defendants ready?

10 MR. SMITH: Yes, Your Honor.

11 MR. KOLENICH: Your Honor, I have one or two issues
12 I'd like to bring up before the jury comes in.

13 THE COURT: All right.

14 MR. KOLENICH: Just relative to the video deposition
15 yesterday of Ms. Froelich, I understand that there was some
16 off-the-record discussion about how we're going to get
17 transcripts onto the docket. I just wanted to put that on the
18 record, that we've had those discussions and that the
19 plaintiffs are working on how to get the testimony -- the
20 transcription of the testimony onto the docket so we have
21 something to work with later on in the case, rather than just
22 the notation that a video was played.

23 Secondly, I'd like to bring up an issue that,
24 presumably, the plaintiffs are going to object to, and I'd
25 rather get that out of the way before the jury comes in, which

1 is supplementing whatever deposition portions they put in with
2 other parts of the deposition. Now, yes, defendants, we ended
3 up with a waiver argument yesterday. And yes, defendants did
4 not make counter-designations. But unlike objections,
5 counter-designations -- there's no explicit waiver provided for
6 in the law as to counter-designations. So we intend to put in
7 other parts, at least potentially, of her deposition after
8 they're done with the parts that they want to put in. And if
9 the Court is going to shoot me down on that, I'd like to have
10 that ruling before the jury so the jury doesn't see me getting
11 shot down on that issue.

12 MS. KAPLAN: Good morning, Your Honor. Let me take
13 all of those issues up.

14 On the transcript, it's my understanding that we've
15 worked something out with the court reporter. We're in the
16 process of working something out where there will be a
17 reference in the transcript to an exhibit which will have the
18 portions of the transcripts that have been designated and
19 played before the jury. And I think that's the best way to
20 accomplish that in accordance with local practice.

21 With respect to the issue Your Honor raised or Your
22 Honor's law clerk raised last night, we sent a letter --

23 THE COURT: What about his issue?

24 MS. KAPLAN: His issue with the counter-designations,
25 Your Honor, is that it was part of the pretrial order. It was

1 due a week after the designations. They didn't do it. They
2 shouldn't be permitted to do it. Parties have to file orders
3 and comply with orders, as we have. And we think Your Honor
4 should stand on Your Honor's order. In fact, Your Honor, as I
5 recall, just issued a ruling this morning about your pretrial
6 order being decided and done, and this was part of that.

7 The only other thing I would say is if Your Honor is
8 amenable to doing that, they shouldn't be able to interrupt the
9 testimony. They should propose counter-designations to us
10 which we can look at and see whether we agree or not, in
11 accordance with the system of the pretrial order, as it was
12 supposed to be.

13 MR. KOLENICH: We certainly would not interrupt the
14 testimony, Your Honor. Obviously, we would wait until they
15 were done, and then we can propose, you know, a very small
16 number of additional sections of the deposition we'd like to
17 put in. Not that they would play it or publish it to the jury;
18 we could just read it, you know, because we don't have video.
19 And that's sort of -- that's sort of the good cause I'm trying
20 to show here, Judge.

21 They have an army of attorneys and a mountain of
22 money. We have -- you know, even the limited staff that I have
23 refuse to work on this case, or begged to be allowed not to
24 work on this case. So, yes, this slipped through the cracks.
25 And I'm not complaining about objections that should have been

1 filed, but the law allows us explicitly to put in other parts
2 of the deposition.

3 The normal practice is counter-designations -- I
4 understand that -- but it's not the same thing as the explicit
5 waiver provisions in the civil rules.

6 THE COURT: Well, I don't know how I could rule until
7 they've had an opportunity to show what prejudice would be from
8 the parts you're going to designate.

9 MR. KOLENICH: Very well, Your Honor. I will get
10 that to them as quickly as possible and we'll proceed from
11 there.

12 THE COURT: Okay.

13 MR. KOLENICH: Thank you, Judge.

14 THE COURT: But I haven't ruled, so...

15 MR. KOLENICH: Thank you, Judge.

16 MS. KAPLAN: Your Honor, just one clarification. We
17 didn't send them videos. We did what every lawyer does. When
18 we made our designations, we read the transcript and we picked
19 the lines that we wanted to designate. There was no fancy
20 pyrotechnics to it at all.

21 THE COURT: Okay. Before we begin, I will remind
22 everyone that under Standing Order 2020-12 and 2013-8, the
23 Court's prohibition against recording and broadcasting court
24 proceedings remains in force. Attorneys, parties, or staff,
25 and members of the public or press accessing this proceeding

1 today, may not record or broadcast it. That means no
2 photography, no using of any video or audio recording device,
3 and no rebroadcasting, livestreaming, or otherwise
4 disseminating any live or recorded video or audio of this
5 proceeding.

6 Just -- it's not by way of criticism, but we spent an
7 awful lot of time yesterday with the same witness saying the
8 same thing every time somebody cross-examined that witness,
9 and -- I don't know. Every point doesn't have to be made eight
10 times. Two or three times at most. But I'd just caution, if
11 you would --

12 MR. SMITH: I understand, Your Honor. Be economical
13 about the questioning.

14 THE COURT: Well, proceed better. If you did not ask
15 the same question --

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: And let me say, you've got a right to
18 show that these plaintiffs have a different view from you, and
19 that's -- shows their position in the case. But it cannot get
20 to the point where either side is trying to convince the other
21 side in the case that they are right and the other side is
22 wrong. You can bring out that view to show, you know, whatever
23 prejudice there might be, but just keeping that in mind.

24 MS. KAPLAN: Your Honor, as you might imagine, we
25 have spent a lot of time thinking about that issue because

1 we're concerned about the time limits and the November 19th
2 date. It's my understanding, for example, that Mr. Willis was
3 examined on direct for about an hour and a half and was
4 cross-examined for five hours. If that continues to happen,
5 the November 19th date is going to be very hard to meet.

6 So I had some conversations with Mr. Campbell and
7 Mr. Kolenich, and we'll be back to Your Honor if we can come up
8 with something that may at least try to mitigate this problem
9 somewhat.

10 THE COURT: Okay. Now, with regard to the Froelich
11 deposition, by way of background, Mr. Campbell did file a
12 motion seeking to exclude as against him the deposition of the
13 witnesses Rousseau, Hopper, Griffin, and Isaacs, Dockets 1102,
14 1103, 1127. Mr. Cantwell's motion was filed on September 21st,
15 2021. The motion to exclude was granted in part and denied in
16 part on October 27 in Docket 1338.

17 However, in another filing, Mr. Cantwell did object
18 to, among others, the deposition testimony of Ms. Froelich
19 being used against him in Docket 1097, though he did not file a
20 motion to that effect. The Court has also considered
21 plaintiffs' letter filing from this morning on the matter.

22 To be clear, a month ago Mr. Cantwell sought to
23 extend all discovery, pretrial, and trial deadlines in this
24 case 12 months on account of the delays in his receiving case
25 documents during his period of incarceration, Docket 1099.

1 Just before trial, following a letter from plaintiffs, the
2 Court told Mr. Cantwell that it was willing to sever the case
3 and allow Mr. Cantwell the time he wants to prepare his case;
4 however, at that point, being given the option to delay his
5 trial to get more time to prepare and engage in discovery,
6 Mr. Cantwell then opposed severance and opted to proceed with
7 the trial. In that posture, the Court had difficulty seeing
8 prejudice to Mr. Cantwell by the admission of deposition
9 testimony of any witness taken while Mr. Cantwell was
10 incarcerated; however, in an abundance of caution, the Court
11 has denied plaintiffs' use of certain depositions at trial
12 against Mr. Cantwell without a limiting instruction.

13 As previously stated, given Mr. Cantwell's position
14 opposing severance, delay of his trial 12 months, the Court has
15 trouble seeing prejudice to Mr. Cantwell in this regard, but
16 out of an abundance of caution, the Court would intend to
17 instruct the jury using the limited instruction proposed by
18 plaintiffs, modified so that it would refer to Ms. Froelich,
19 such that the jury would not consider it with respect to
20 plaintiffs' case against Mr. Cantwell.

21 The instruction would also be repeated upon the close
22 of the evidence in the final jury instructions. Okay? And I
23 do propose to read the limited instruction to the jury.

24 Anything else on that?

25 MS. KAPLAN: Your Honor, are you going to read that

1 right after the jury comes in?

2 THE COURT: Yes.

3 MS. KAPLAN: The one thing I might add -- you might
4 want to add to it is we're going to have about 45 minutes more
5 of Ms. Froelich, just so they kind of get the sense of what's
6 coming.

7 THE COURT: Okay. Well, I thought I'd read it.

8 MR. CANTWELL: Yesterday when I objected to
9 Ms. Froelich's deposition designation, they had said that --
10 the plaintiffs told Your Honor that you had already ruled on
11 this. If you could just -- if somebody could tell me what the
12 ECF number on that is -- I've sort of received a lot of papers
13 lately, and I obviously have missed something, and I'd just
14 like to update myself when I get back to the facility. Or is
15 what you just read a ruling? Is there another order coming
16 out?

17 MS. KAPLAN: Your Honor, we have a copy of the letter
18 I filed this morning to the marshal, if you would be so kind to
19 hand it to Mr. Cantwell.

20 THE COURT: I had not ruled on Froelich yet. That
21 was with regard to other witnesses.

22 MR. CANTWELL: Okay.

23 MR. SPENCER: Your Honor, if it's an appropriate
24 time, could I ask the Court why Ms. Froelich isn't available as
25 a witness, why we are watching a deposition?

1 THE COURT: I have no idea.

2 MS. KAPLAN: It's my understanding, Your Honor, she's
3 outside the subpoena range.

4 THE COURT: The Court only has subpoena power within
5 very limited jurisdiction. I think Mr. Cantwell had many
6 witnesses he wanted subpoenaed, but they were beyond the power
7 of this Court to subpoena.

8 All right. Anything else?

9 MS. DUNN: Your Honor --

10 THE COURT: Excuse me.

11 MR. CANTWELL: I'll just note it seems to me a
12 difficult thing to imagine, in a conspiracy case, that a
13 limiting instruction such as the one I read with regard to the
14 second deposition of Dillon Hopper could possibly alleviate the
15 trouble that's being caused here. If evidence --

16 THE COURT: Well, Mr. Cantwell, look. I gave you the
17 opportunity to sever your case.

18 MR. CANTWELL: You did.

19 THE COURT: And this is not something I'm making up,
20 this law. This has been followed in other conspiracy cases.
21 So, I mean --

22 MR. CANTWELL: Very well.

23 THE COURT: -- the difficulty is there, of course.
24 It's sort of the unscrambling of eggs problem. Nevertheless,
25 it's the law, and it's allowed.

1 MR. CANTWELL: Understood.

2 THE COURT: Okay.

3 MS. DUNN: Your Honor, just two quick things.

4 First of all, we were asked to put on the record the
5 exhibit number of the Froelich deposition clip report. It's
6 PX3839.

7 THE CLERK: I'm sorry. Could you say it one more
8 time?

9 MS. DUNN: PX3839.

10 THE CLERK: Are you moving to admit that, or are you
11 just putting that on the record?

12 (Plaintiffs' Exhibit 3839 marked.)

13 MS. DUNN: We are going to move to admit it, but we
14 can do that now or after, whichever is more appropriate.

15 And then the only other thing, Your Honor, especially
16 because we have some *pro se* defendants, we are going to have
17 some cross-examination of defense witnesses, and we just ask
18 the Court to remind parties of the instruction that you can't
19 talk to the witness while they are in the middle of
20 cross-examination.

21 MR. SMITH: Is there some reason why that's become an
22 issue?

23 MS. DUNN: Your Honor, this is not something I wanted
24 to bring up in front of the jury, but because we have
25 defendants who are counseling themselves --

1 THE COURT: You mean once the witness takes the
2 stand?

3 MS. DUNN: Yes, Your Honor.

4 THE COURT: A witness should not discuss the case
5 until they have finished their testimony.

6 MS. DUNN: Thank you, Your Honor. Appreciate that.

7 THE COURT: You don't get to -- you don't get to meet
8 and discuss the testimony of a witness --

9 MR. SMITH: Oh, of course. I understand what you're
10 saying.

11 THE COURT: -- while the testimony is going on.

12 MR. SMITH: Of course.

13 MR. CANTWELL: Even I know that.

14 THE COURT: Call the jury back.

15 **(Jury in, 9:20 a.m.)**

16 THE COURT: Good morning, ladies and gentlemen.

17 There's one preliminary matter before we begin today,
18 and that has to do with the deposition of Ms. Froelich, whose
19 deposition you are in the middle of hearing.

20 Each party is entitled to have the case decided
21 solely on the evidence that applies to that party. Some of the
22 evidence in this case is limited under the rules of evidence to
23 some of the parties, and cannot be considered against the
24 others.

25 Plaintiffs' deposition testimony from Ms. Froelich

1 should not be considered by you in connection with Defendant
2 Christopher Cantwell; however, the testimony may be considered
3 by you in connection with the other defendants. The reason for
4 that is Mr. Cantwell was not present at the deposition. So you
5 may not -- well, just follow that instruction. And I'll read
6 it to you probably several times after this, but with regard to
7 other depositions.

8 All right. You may proceed with the deposition.

9 (Pause.)

10 MS. DUNN: Your Honor, Mr. Spalding says that he
11 needs about five minutes to figure out what's happening
12 technologically.

13 (Pause.)

14 THE CLERK: He says for you to try again.

15 (Video deposition of Samantha Froelich played,
16 Exhibit Number PX3839.)

17 MS. DUNN: Your Honor, we'd like to move in the
18 following exhibits that were used with Ms. Froelich's
19 deposition: Plaintiffs' Exhibit 3839, Plaintiffs'
20 Exhibit 2033, Plaintiffs' Exhibit 3818, and Plaintiffs'
21 Exhibit 1006.

22 THE CLERK: I'm sorry?

23 MS. DUNN: 1006.

24 THE COURT: They will be admitted.

25 (Plaintiffs' Exhibit 3839 admitted.)

1 (Plaintiffs' Exhibits 2033, 3818 and 1006 marked.)

2 (Plaintiffs' Exhibits 2033, 3818 and 1006 admitted.)

3 MS. DUNN: Thank you, Your Honor.

4 THE COURT: Members of the jury, we'll take about a
5 20-minute recess, and I'll ask counsel to stay here a few
6 minutes.

7 You may take the jury.

8 **(Jury out, 10:26 a.m.)**

9 THE COURT: I take it cross-examination -- the parts
10 that the defendant wishes to add to it, could they come up in
11 your case in chief if the Court allowed it?

12 MR. KOLENICH: Yes, Your Honor. I guess it would be
13 analogous to re-calling Froelich as a witness. There's only
14 just a few discrete parts. We certainly don't want to go on
15 and on for --

16 THE COURT: Is there any objection now to his --

17 MS. KAPLAN: So we were just looking at it during the
18 video playing. We would -- we're obviously against it in
19 general, but if it was without waiver to any other objections,
20 to any other witnesses' designations or cross-designations for
21 not being within the pretrial order, that's one; two, if after
22 viewing it we were allowed to counter-designate, because we
23 think there's -- sometimes he has questions he didn't fully get
24 in, and he wanted to get those in; three, there are some
25 objections to the form that we would need Your Honor to rule on

1 so we can cut the testimony -- cut the video appropriately.

2 THE COURT: Were there objections to form that
3 appeared in what she's already testified to?

4 MS. KAPLAN: No, Your Honor.

5 THE COURT: Okay. Well, Mr. Woodard brought that up
6 yesterday. Questions to form have to be brought up at the time
7 of the deposition.

8 MS. KAPLAN: Of course, Your Honor.

9 And then, four, the last part, would be is if we can
10 agree to all that and Your Honor would be inclined to allow it,
11 then we would actually cut the video so that the jurors can
12 hear the video rather than playing it.

13 THE COURT: Well, that's what I would prefer to do.

14 MR. KOLENICH: That's acceptable, yes, sir. No
15 objection. They do have objections to form in some of the
16 sections that I'm requesting, if that's what the Court was
17 asking.

18 THE COURT: What about form?

19 MR. KOLENICH: I mean, they objected. I think I
20 misunderstood, but they did --

21 THE COURT: You objected to the form of the question?

22 MS. KAPLAN: Yes, Your Honor, in some of the
23 counter-designations. That should be easy for Your Honor to
24 resolve. We can give you a handy set of papers to look at.

25 THE COURT: Is that something, though, that could

M. Heimbach - Direct

1 come up in his -- I hate to -- if we could do that, go on with
2 this cross, and then take that up when you put on your case.

3 MR. KOLENICH: Yes, sir.

4 MS. KAPLAN: Yes, we can.

5 THE COURT: Okay. Thank you all.

6 MS. DUNN: Thank you, Your Honor.

7 (Recess.)

8 THE COURT: Are we ready for the jury?

9 MS. DUNN: Yes, Your Honor.

10 THE COURT: Ready to call the jury?

11 MR. JONES: Yes, sir.

12 MR. KOLENICH: Yes.

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: Heidi?

15 THE CLERK: Yes, sir.

16 THE COURT: Call the jury.

17 **(Jury in, 10:53 a.m.)**

18 THE COURT: All right. You may be seated.

19 MS. DUNN: Your Honor, plaintiffs call Defendant
20 Matthew Heimbach.

21 MATTHEW HEIMBACH, CALLED BY THE PLAINTIFFS, SWORN

22 DIRECT EXAMINATION

23 BY MS. DUNN:

24 Q Good morning, Mr. Heimbach.

25 A Good morning.

M. Heimbach - Direct

1 Q My name is Karen Dunn. I'm one of the lawyers for the
2 plaintiffs in this case.

3 A Yes, ma'am.

4 Q Can you hear me?

5 A Yes.

6 Q Great.

7 Mr. Heimbach, you were the founder and chairman of the
8 Traditionalist Worker Party, also referred to as TWP or Trad
9 Worker; is that correct?

10 A Yes.

11 Q Okay. And in 2017, the time period of the events in this
12 case that we've been talking about, you considered yourself to
13 be a white nationalist, correct?

14 A Yes.

15 Q And you also identified as a national socialist?

16 A Correct.

17 Q How many members were in the Traditionalist Worker Party
18 in 2017?

19 A Between members and affiliates, several hundred.

20 Q Did you keep a membership list with people's names on it?

21 (Pause.)

22 THE WITNESS: Sorry. Can you hear me now?

23 MS. DUNN: I think we both have microphone

24 adjustments to do.

25 Great.

M. Heimbach - Direct

1 BY MS. DUNN:

2 Q Did the Traditionalist Worker Party keep a membership list
3 with peoples' names on it?

4 A I believe so, yes.

5 Q And the Traditionalist Worker Party was governed by the
6 principles of Adolf Hitler's National Socialist German Workers'
7 Party, correct?

8 A We were a political party that had our own unique 25-point
9 platform that was dedicated to the interests of white
10 working-class Americans.

11 Q So we'll talk about the platform, but my question is
12 whether your party was inspired by or governed by the
13 principles of Hitler's party?

14 MR. SMITH: Objection, Your Honor. That's been asked
15 and answered.

16 THE COURT: Overruled.

17 THE WITNESS: We were inspired by a variety of
18 movements. National socialism is not defined exclusively by
19 Adolf Hitler in Germany in the 1930s and '40s. Arab Ba'athist
20 parties, national socialist organizations in a variety of
21 countries, we took inspiration from.

22 BY MS. DUNN:

23 Q Sir.

24 A Yes.

25 Q Your counsel has time to ask you questions when he stands

M. Heimbach - Direct

1 up, but this part is for you to answer my questions.

2 So my question is --

3 MR. SMITH: Your Honor, objection. Can we not have
4 the plaintiffs' counsel talking to the witness like that?

5 THE COURT: Ask me and I'll instruct the witness.

6 MR. SMITH: Thank you, Your Honor.

7 MS. DUNN: Your Honor, will you please instruct the
8 witness that his counsel will have time to ask him questions
9 and to answer my question directly?

10 THE COURT: Yes.

11 Answer her questions directly, and your counsel can
12 follow.

13 THE WITNESS: Partially inspired, yes.

14 BY MS. DUNN:

15 Q Partially inspired by Adolf Hitler?

16 A Yes.

17 Q And in 2017, sir, you looked up to Hitler and you thought
18 he was an inspiration for what you could achieve?

19 A Yes.

20 Q And you know that Hitler's party is also called the Nazi
21 party?

22 A Yes.

23 Q And you consider the word "Nazi" to be a slur?

24 A Yes. It was utilized going back to the 1920s as a slur
25 against national socialists.

M. Heimbach - Direct

1 Q Right. And so when people say the United States fought
2 the Nazis in World War II, you would consider that to be a
3 slur?

4 A Yes.

5 Q Okay. And just like people once did with Hitler, members
6 of the Traditionalist Worker Party would salute you with a Nazi
7 salute; you recall that, right?

8 A Yes.

9 Q And you didn't discourage that?

10 A No.

11 Q And instead of "Heil Hitler," what did they say?

12 A "Heil Heimbach."

13 Q I'd like to show you on the screen, Plaintiffs' Exhibit
14 2481. Do you see this?

15 (Plaintiffs' Exhibit 2481 marked.)

16 A Yes.

17 Q Do you see it's a post regarding yourself?

18 A Yes.

19 MS. DUNN: Your Honor, we'd like to admit PX2481.

20 THE COURT: Be admitted.

21 (Plaintiffs' Exhibit 2481 admitted.)

22 BY MS. DUNN:

23 Q And in this post, Mr. Heimbach -- it's on Twitter -- it
24 describes the crowd at an event in Pikeville, Kentucky giving
25 the Nazi salute and chanting "Heil Heimbach." You see that,

M. Heimbach - Direct

1 right?

2 A Yes.

3 Q You know Adolf Hitler wrote a famous manifesto, it was
4 called *Mein Kampf*, and you've read it several times?

5 A Correct.

6 Q You wrote your own, although partially completed,
7 manuscript, which you called *White Juche*? Is that the correct
8 pronunciation?

9 A No, *White Juche*. It's a Korean term for self-reliance.

10 Q Right. And so *Juche* is a principle that's been adopted by
11 the North Korean government; you're aware of that?

12 A Yes.

13 Q I'd like to show you Plaintiffs' Exhibit 1824, which is
14 your *White Juche*, your manuscript.

15 MS. DUNN: And we move to admit this, Your Honor.

16 THE COURT: Be admitted.

17 (Plaintiffs' Exhibit 1824 marked.)

18 (Plaintiffs' Exhibit 1824 admitted.)

19 BY MS. DUNN:

20 Q All right. So in the introduction of your manuscript,
21 Mr. Heimbach, you discuss how you were raised in a conservative
22 family, but you became disgusted with conservatism; is that
23 right?

24 A Correct.

25 Q That's your word, "disgusted," correct?

M. Heimbach - Direct

1 A Correct.

2 Q Directing your attention to page 3, you say: "How could I
3 then swear allegiance to a flag and an empire that killed my
4 ancestors and their countrymen, burned our cities to the ground
5 and put us under the boot heel of tyranny by the American
6 central banks and capitalist industrialists?" You see that?

7 A Yes.

8 Q So here you're saying you did not know how you could
9 pledge allegiance to the American flag?

10 A Yes.

11 Q Further down on page 3 you go on to say that part of what
12 brought you to national socialism is that you realized the
13 Constitution was a death cult that broke you out of the normal
14 conservative conditioning. Do you see that?

15 A Yes.

16 Q Okay. And so you go on to write -- and this is on page
17 14 -- how you found your inspiration in national socialism and
18 in Adolf Hitler, who you consider to be one of the greatest
19 European men to ever live. Do you see that?

20 A Yes.

21 Q Okay. And you even talk here about how when your newborn
22 son opened his eyes for the first time your first thought was
23 about Adolf Hitler?

24 A Correct.

25 Q And in 2017 you said that other white nationalists looked

M. Heimbach - Direct

1 up to you as their leader, who was fighting for them. You
2 remember saying that?

3 A I'm sure I did.

4 Q You don't deny you did?

5 A No.

6 Q All right. So let's talk about some of the events in 2017
7 that led up to Charlottesville 2.0, which was also known as the
8 Battle of Charlottesville. So we just saw a post from
9 Pikeville, Kentucky, and that event was in April of 2017, and
10 that was the annual event for the National Socialist Movement;
11 am I right?

12 A Correct.

13 Q NSM?

14 A Yes.

15 Q And that's your co-defendant Jeff Schoep, that's his
16 group, or at least at the time was his group, correct?

17 A Correct.

18 Q All right. And he was at that meeting in Pikeville?

19 A Uh-huh.

20 MS. DUNN: And Your Honor, we'd just like to show the
21 demonstratives that the jury has already seen from opening so
22 that Mr. Heimbach can identify Mr. Schoep.

23 THE COURT: All right.

24 BY MS. DUNN:

25 Q So this picture you see on the screen, this is Mr. Schoep.

M. Heimbach - Direct

1 A Yes.

2 Q That's right. Okay. Another person at the Pikeville
3 event was Michael Hill. He leads League of the South. And
4 Michael Hill is the person you're seeing to the left of your
5 screen with the hat, correct?

6 A Correct.

7 Q Okay. And you've known Michael Hill since 2011; that's
8 right?

9 A Yes.

10 Q Because you used to be a member of the League of the
11 South.

12 A Correct.

13 Q All right. We can take that down, Mr. Spalding.

14 So Mr. Heimbach, did you listen to the opening statements
15 in this case?

16 A I did not.

17 Q Okay. Has anyone told you that Mr. Cantwell said that he
18 really didn't know his co-defendants?

19 A I don't recall hearing that.

20 Q Okay. So Mr. Cantwell told the jury, he said, "I really
21 don't know my co-defendants, and I knew them even less on
22 August 11th of 2017."

23 And that's not true as to you, is it? You knew
24 Mr. Cantwell by that time and you introduced him at the
25 Pikeville event, right?

M. Heimbach - Direct

1 A I believe at the time of Pikeville I had only met
2 Mr. Cantwell in passing one time previously to that. And that
3 would have been the second time, I believe, I would have met
4 Mr. Cantwell.

5 Q So even though you say you had only met him in passing, do
6 you remember introducing him to a crowd of people and
7 describing him as a man who cares about the truth and is
8 willing to sacrifice for it?

9 A Yes.

10 Q All right. And I'll show you PX2911. Do you recognize
11 that as a picture of yourself and Mr. Cantwell?

12 A Yes.

13 MS. DUNN: Your Honor, we'd move to admit Exhibit
14 2911.

15 THE COURT: It will be admitted.

16 (Plaintiffs' Exhibit 2911 marked.)

17 (Plaintiffs' Exhibit 2911 admitted.)

18 BY MS. DUNN:

19 Q So if we could see, Mr. Spalding, the whole post.

20 This is a post by Mr. Cantwell from May 3rd, 2017; you see
21 that? And that's a picture of yourself and Mr. Cantwell. And
22 he says, "How I started hanging out with Nazis." You see that?

23 A Yes.

24 Q When he says Nazis he's referring to you, presumably?

25 A I presume.

M. Heimbach - Direct

1 Q So just to be completely clear, by the time that you and
2 Mr. Cantwell ended up in Charlottesville for August 11th and
3 12th, you did already know each other?

4 A Yes, I did know Mr. Cantwell, and was familiar primarily
5 with his podcast, the Radical Agenda.

6 Q Which you later appeared upon. Right? You appeared on
7 his podcast?

8 A Correct.

9 Q But you knew him. I just want to make sure there's no
10 question about that.

11 A Yes. I had met Mr. Cantwell previously to
12 Charlottesville.

13 Q Another person who was at this Pikeville meeting is Dillon
14 Hopper. And you see Dillon Hopper in the center there. And he
15 was the leader of, at this time, of Vanguard America, right?

16 A Correct.

17 Q Okay. I'd like to show you Plaintiffs' Exhibit 628. You
18 recognize this as a picture of yourself and Mr. Hopper?

19 A Yes.

20 Q Okay.

21 MS. DUNN: Your Honor, move to admit 628.

22 THE COURT: It will be admitted.

23 (Plaintiffs' Exhibit 628 marked.)

24 (Plaintiffs' Exhibit 628 admitted.)

25

M. Heimbach - Direct

1 BY MS. DUNN:

2 Q All right. These are pictures of you, like -- that you
3 see on the screen that Mr. Hopper posted to Discord -- I
4 apologize. It looks like somebody else posted this, that
5 somebody other than Mr. Hopper posted on Discord in May of
6 2017. Do you see that?

7 A Yes.

8 Q Okay. And this is a picture of Mr. Hopper Nazi saluting
9 you. Do you see that?

10 A Yes.

11 Q And above the photo it says "Heil Heimbach," right?

12 MR. SMITH: Your Honor, if I could object very
13 quickly to the characterization of "Nazi salute." It's
14 actually referred to as a Roman salute. Nazi was a slur, as we
15 just established.

16 THE COURT: Overruled. I think the witness is
17 testifying. But you're testifying. Let the witness testify.

18 MR. SMITH: I understand, Your Honor.

19 MS. DUNN: Thank you, Your Honor.

20 BY MS. DUNN:

21 Q Mr. Heimbach, you're holding in your hand what's known as
22 a fasces.

23 And actually, Mr. Spalding, if we can go to the second
24 page so the jury can see it better.

25 This is what's called a fasces; you see that?

M. Heimbach - Direct

1 A Yes.

2 Q That's the original symbol of fascism, right?

3 A It was original symbol of Rome.

4 Q It's come to be a symbol of fascism?

5 A Yes.

6 Q Right. And so what it is is it's an axe with sticks
7 wrapped around it to symbolize that an individual by itself can
8 be broken, but bound together with a strong cord, it's
9 unbreakable. I have that right?

10 A Yes. That's why we have it in the halls of Congress as
11 well.

12 Q Right. I understand. But this is a fasces that
13 Mr. Hopper made for you specifically. And one of the reasons
14 he did that is to symbolize that you and the others at
15 Pikeville were stronger bonded together than you would have
16 been individually?

17 A Yes.

18 Q And prior to Pikeville you wrote a document called "The
19 Next Step of the Revolution"; do you remember that?

20 A Yes.

21 Q And that document began with a quote from Joseph Goebbels.
22 And he was, for everyone's edification, one of Hitler's closest
23 comrades. He was the minister of propaganda for the Nazi
24 party. And actually Hitler put it in his will that this was
25 the person to succeed him, right?

M. Heimbach - Direct

1 A Correct.

2 Q This is the quote that you used in your document that you
3 wrote called "The Next Step of the Revolution." And it says,
4 "Whoever can conquer the street will one day conquer the state,
5 for every form of power politics and any dictatorship-run state
6 has its roots in the street." Do you recall that?

7 A I do.

8 Q Okay. I'd like to show you Plaintiffs' Exhibit 2240.
9 All right. So you recognize this as a post that you made?

10 A Yes.

11 MS. DUNN: Okay. Your Honor, we'd move to admit
12 2240.

13 THE COURT: It will be admitted.

14 (Plaintiffs' Exhibit 2240 marked.)

15 (Plaintiffs' Exhibit 2240 admitted.)

16 MS. DUNN: And if we could see the whole thing,
17 Mr. Spalding.

18 BY MS. DUNN:

19 Q This is a post you made, Mr. Heimbach, on a social media
20 platform called Gab. And Gab is used, among other -- by, among
21 others, white supremacists. Is that correct?

22 MR. SMITH: Objection, Your Honor. Again, the term
23 "white supremacist" appearing in questioning.

24 THE COURT: All right. Sustained.

25 MR. SMITH: Thank you.

M. Heimbach - Direct

1 MS. DUNN: Your Honor, the question is whether Gab is
2 used by white supremacists.

3 THE COURT: Well, that's argumentative and I think
4 you can -- you can use a nonpejorative term such as "white
5 nationalists" or whoever --

6 BY MS. DUNN:

7 Q Okay. Mr. Heimbach, you used Gab, the platform, correct?

8 A I did.

9 Q And Gab is very popular with the alt-right; you don't
10 disagree with that?

11 A It was at the time, yes.

12 Q And also with white nationalists, correct?

13 A Correct.

14 Q Okay. And so in this post that you posted on Gab, it's
15 the same quote that says, "The reason we have marches and
16 public demonstrations is because, as Dr. Joseph Goebbels said,
17 'whoever can conquer the street will one day conquer the
18 state.'" But then you go on to add your own language that
19 says, "If we are to win, we must march, we must take public
20 space, and we must push our enemies off our streets." Do you
21 see that?

22 A I do.

23 Q And you believed that at the time?

24 A Yes.

25 Q Following the April 2017 Pikeville meeting, you attended

M. Heimbach - Direct

1 an event in Charlottesville on May 13th, 2017, and that's
2 become known as Charlottesville 1.0. You remember that?

3 A Correct.

4 Q I'd like to show you a photograph, Plaintiffs' Exhibit
5 939. This is a picture that you recognize, correct?

6 A Correct.

7 (Plaintiffs' Exhibit 939 marked.)

8 MS. DUNN: Your Honor, move to admit 939.

9 THE COURT: It will be admitted.

10 (Plaintiffs' Exhibit 939 admitted.)

11 BY MS. DUNN:

12 Q So this is a picture from May 13th of 2017. And you're in
13 this photograph. Do you see yourself?

14 A Yes. On the right-hand side of the photograph.

15 Q Right. And Mr. Spalding is going to help us with the
16 circles.

17 And where is Mr. Kline?

18 A The left side of the photograph holding the banner.

19 Q And Mr. Spencer?

20 A Directly next to him.

21 Q And Mr. Damigo?

22 A Skip one and then the shorter fellow.

23 Q He's the one in the sweater vest?

24 A Correct.

25 Q After this picture was taken there was also a public torch

M. Heimbach - Direct

1 march at Charlottesville 1.0?

2 A Correct.

3 Q And were the torches used because you didn't have
4 flashlights; you needed to light the way?

5 A No, I don't believe so.

6 Q And are you aware that the torch march was Nathan Damigo's
7 idea based on a torch march in Germany? Did you know that?

8 A No, I did not.

9 Q All right. And after the public events with
10 Charlottesville 1.0, there was a private after-party that you
11 attended, generally only attended by white nationalists. You
12 recall that?

13 A Yes.

14 Q All right. I'd like to show you Plaintiffs' Exhibit 941,
15 which is a Discord post. You recognize yourself there?

16 A Yes.

17 MS. DUNN: Your Honor, we move to admit Plaintiffs'
18 Exhibit 941.

19 (Plaintiffs' Exhibit 941 marked.)

20 (Plaintiffs' Exhibit 941 admitted.)

21 THE COURT: It will be admitted.

22 BY MS. DUNN:

23 Q This is a photo of you, Mr. Spencer, and another
24 individual.

25 A Correct.

M. Heimbach - Direct

1 Q And it looks like you're in somebody's house for the
2 after-party. Is that right?

3 A Correct.

4 Q That's Mr. Spencer next to you in the green?

5 A Yes.

6 Q And in this photo you and the other person next to you are
7 making the white power symbol with your hands; do you see that?

8 A We are making an "okay" sign, yes.

9 Q Are you going to deny that the reason you're making the
10 "okay" sign is because it's also the white power symbol?

11 A Well, I would say the usage of that sign was to speak to
12 the hysteria, specifically of the media, that any sort of
13 symbol or any outlandish sort of thing could be turned into the
14 next news story of the alt-right. So it was playing, really,
15 on the media that was so eager to jump onto any sort of
16 symbolism or things like that. It's a joke, yes.

17 Q So it's a joke, and your testimony is that the reason this
18 was posted in a private Discord chat is so the media would see
19 it?

20 A Well, it was -- the picture was taken and distributed
21 other places, I believe, as well.

22 Q Okay.

23 A But the usage of the symbol, yes, was really a kind of
24 tongue-in-cheek sort of thing that really characterizes a lot
25 of the alt-right subculture.

M. Heimbach - Direct

1 Q Okay. At some point at the after-party you remember that
2 Mr. Spencer gave -- you wouldn't describe it as a speech, but
3 you would describe it as a pep talk, right? Do you remember
4 that?

5 A Yes, he gave some remarks.

6 Q Right. A pep talk. That's what you called it?

7 A Sure.

8 Q All right. And you say you don't remember what
9 Mr. Spencer said in the pep talk, right?

10 A Not particularly.

11 Q Can't remember anything?

12 A I believe at the end of it we all said "hail victory."

13 Q Great. Let's look at that. I think you're right about
14 that.

15 Can we look at Plaintiffs' Exhibit 2514.

16 (Plaintiffs' Exhibit 2514 marked.)

17 (Video playing.)

18 BY MS. DUNN:

19 Q Mr. Heimbach, you've seen the video. The jury has not
20 seen it yet. Is this what you meant when you said "we all said
21 'hail victory'"?

22 A Yes.

23 MS. DUNN: Your Honor, we move to admit Plaintiffs'
24 Exhibit 2514 and show it to the jury.

25 THE COURT: It will be admitted and you may show it.

M. Heimbach - Direct

1 (Plaintiffs' Exhibit 2514 admitted.)

2 (Video playing.)

3 BY MS. DUNN:

4 Q You were here for Ms. Froelich's testimony, correct?

5 A Correct.

6 Q And you heard what she said about Sieg Heil; you heard
7 that?

8 A Yes.

9 Q Okay. We have a screenshot, Plaintiffs' Exhibit 2414,
10 that's taken from this video. You recognize yourself in this
11 screenshot, correct?

12 (Plaintiffs' Exhibit 2414 marked.)

13 THE WITNESS: The back right of the photograph, I
14 believe.

15 MS. DUNN: Your Honor, we move to admit 2414.

16 THE COURT: Be admitted.

17 (Plaintiffs' Exhibit 2414 admitted.)

18 BY MS. DUNN:

19 Q Okay. Mr. Heimbach, can you identify yourself in this
20 photo, just show the jury?

21 A Yes.

22 Q If you write on the screen, we can see it.

23 A Okay. Would you like me to --

24 Q Let's test it out. There you are.

25 Can you also circle Mr. Spencer?

M. Heimbach - Direct

1 A (Witness complies.)

2 Q And are any of the other defendants in this photograph?

3 A I'm not sure.

4 Q And you're not going to deny that you and the rest of the
5 group and Mr. Spencer are doing a Nazi salute?

6 MR. SMITH: Objection, Your Honor. First of all,
7 "can we not deny," that is really an inappropriate phrasing.

8 THE COURT: Sustain the objection.

9 BY MS. DUNN:

10 Q All right. Mr. Heimbach, you know what Discord is, right?

11 A Yes.

12 Q Discord is a free app. It offers group chats. You can
13 also share texts and videos and you can also communicate by
14 voice over Discord, right?

15 A Correct.

16 Q All right. And Discord offers servers that are private,
17 invitation-only servers as places to communicate?

18 A Correct.

19 Q And you posted -- you yourself posted in the
20 Charlottesville 2.0 Discord server?

21 A Several times, yes.

22 Q Yes, you did that.

23 And in addition to the Charlottesville 2.0 server,
24 Traditionalist Workers Party had its own server on Discord and
25 you posted in that, correct?

M. Heimbach - Direct

1 A Correct.

2 Q And actually, you were one of the moderators of the
3 Traditionalist Workers Party server on Discord, which was
4 called tradworker, right?

5 A Correct.

6 Q Let's look at Plaintiffs' Exhibit 672. And this is a
7 collection of posts on the Discord tradworker server, including
8 posts from you. Your posts are on page 3. Do you see that?

9 (Plaintiffs' Exhibit 672 marked.)

10 A I do.

11 Q Okay.

12 MS. DUNN: Your Honor, move to admit Plaintiffs'
13 Exhibit 672.

14 MR. JONES: If I could have a minute to review it,
15 Your Honor. This is my first time seeing it. How many pages
16 is it? Just one?

17 MS. DUNN: It's at least three.

18 MR. JONES: Okay. Could I see the three-page
19 document?

20 MS. DUNN: It's on the screen.

21 MR. JONES: I can't really see it on the screen. I'm
22 sorry.

23 MR. CANTWELL: Judge, Christopher Cantwell. While
24 they look at the rest of this, I want to object to anybody --
25 any post from -- any Discord post from people we can't

M. Heimbach - Direct

1 identify. I believe that that's hearsay.

2 THE COURT: What is the exhibit? Tell me what...

3 MS. DUNN: Your Honor, it's Exhibit -- Plaintiffs'
4 Exhibit 672.

5 THE COURT: What does it purport to be?

6 MS. DUNN: It purports to be a Discord conversation
7 that involves the defendant, where he is conversing directly
8 with other people and responding to what they say.

9 MR. CANTWELL: So the user name, if I understand, the
10 user name starting with K, is that what we're claiming is
11 Mr. Heimbach?

12 MS. DUNN: No. Mr. Heimbach, his Discord name is
13 Matthew Heimbach, and he is talking to various people on the
14 Discord Charlottesville 2.0 server. And these are
15 conversations that were had with Mr. Heimbach and other people
16 in advance of Charlottesville 2.0. And there's a lot of these
17 conversations in this case. And people on Discord went by
18 pseudonyms. They didn't use their own names. And defendants
19 have stipulated to the authenticity of these documents.

20 THE COURT: All right.

21 MS. DUNN: So we are entitled to ask --

22 THE COURT: There's evidence that the Discord
23 Charlottesville was used by Unite the Right, isn't it?

24 MS. DUNN: Yes, Your Honor.

25 MR. JONES: I think Mr. Cantwell is asking them to

M. Heimbach - Direct

1 articulate an exception to the hearsay rule for the non-Matthew
2 Heimbach statements in the exhibit.

3 MS. DUNN: Your Honor, several things. Some of these
4 posts come in under the co-conspirator exception, first of all.
5 Second of all, they're needed for context because they're
6 conversations that the defendants were involved in. And the
7 third reason is they're not being admitted for the truth of the
8 matter asserted, but these are conversations the defendants
9 were all in as part of the planning of Charlottesville 2.0.

10 THE COURT: Well --

11 THE WITNESS: This was not in the Charlottesville
12 Discord.

13 MS. DUNN: Your Honor, the witness also just
14 testified that this server, the Traditionalist Worker Party
15 server, was one he posted in in the run-up to the Unite the
16 Right.

17 THE COURT: Who testified to that?

18 MS. DUNN: This witness, Your Honor.

19 THE COURT: Okay. All right. Overruled.

20 MS. DUNN: Thank you.

21 BY MS. DUNN:

22 Q Mr. Heimbach, have you had a chance to look at what's on
23 your screen?

24 A Yes, ma'am.

25 MS. DUNN: Your Honor, we move to admit 672.

M. Heimbach - Direct

1 THE COURT: It will be admitted.

2 (Plaintiffs' Exhibit 672 admitted.)

3 BY MS. DUNN:

4 Q Okay. If you look, Mr. Heimbach, to the top of page 1,
5 somebody named Kombat-Unit says, "I mean, let's be real here,
6 we're very much for certain terrorists, right? We're not Dubya
7 neocohens." Do you see that?

8 A I do.

9 Q First of all, who is Kombat-Unit in real life?

10 A I'm not sure.

11 Q Okay. And when Kombat-Unit, who you say you don't know,
12 is referring to "we're not Dubya neocohens," Dubya is a
13 reference to President George W. Bush, correct?

14 A I believe so.

15 Q And neocohens you understand used to be the word neocons,
16 like neoconservative, but is made neocohens because of its
17 reference to Jewish people. Do I have that right?

18 MR. SMITH: Your Honor, there's a lack of foundation
19 for that also. She's asking what this person meant to
20 Mr. Heimbach, and he doesn't necessarily have personal
21 knowledge.

22 MS. DUNN: Your Honor, I'm asking what Mr. Heimbach
23 would understand that to be.

24 THE COURT: Yes. Overruled.

25 THE WITNESS: That would likely be in reference to

M. Heimbach - Direct

1 the neoconservative movement's pro-Israeli stance, yes.

2 BY MS. DUNN:

3 Q The next poster, White-PowerStroke, in parentheses,
4 Dillon, that's Dillon Hopper?

5 A I believe so.

6 Q Who you earlier identified as the head of Vanguard
7 America, says, "Which terrorists?" You see that?

8 A Yes.

9 Q And then Kombat-Unit states -- lists a very long list of
10 terrorist organizations, including Hezbollah and many that I
11 won't try to pronounce because they're in different languages.
12 He says, "Basically every single RWDS." That stands for
13 right-wing death squad, do you see that?

14 A I do.

15 Q "The Order and McVeigh and Breivik if you're hardcore
16 enough." Do you see that?

17 A I do.

18 Q And this is a conversation about which terrorist groups
19 those posters support and --

20 MR. SMITH: Your Honor, I don't believe there's been
21 foundation established that these support any of those groups.

22 MS. DUNN: Your Honor, I have not yet asked my
23 question.

24 THE COURT: Go ahead.

25 MR. JONES: Your Honor, I'll object. It's hard to

M. Heimbach - Direct

1 know when something is a question and when she's
2 editorializing. She's going really quick.

3 MR. SMITH: I should note that plaintiffs' counsel
4 really harped on that yesterday.

5 THE COURT: Yes. You are adding --

6 MS. DUNN: Thank you, Your Honor.

7 BY MS. DUNN:

8 Q Mr. Heimbach, you would understand McVeigh to refer to
9 Timothy McVeigh who is responsible for the Oklahoma City
10 bombing?

11 A Yes.

12 Q If you look at page 2, Kombat-Unit goes on to say, "These
13 guys slay Jews and ISIS. It's just great, right? We want them
14 gone anyway and white blood doesn't get spilled more than is
15 necessary." Do you see that?

16 A I do.

17 Q If you move to page 3 of this exhibit, in the center of
18 the page, or the top of the page, third line down,
19 White-PowerStroke (Dillon), Dillon Hopper is talking about
20 killing the Jews' first-born sons and turning their water into
21 bacon grease. Do you see that?

22 A Yes.

23 Q And then you respond, responding to Kombat-Unit, who you
24 say you don't know, "I support any group that is fighting the
25 kikes and their minions." You see that?

M. Heimbach - Direct

1 A I do.

2 Q And at the time of the events in this case, you also refer
3 to Jews as evil, genocidal and satanic lunatics, correct?

4 A Correct.

5 Q All right. I'd like to show you Plaintiffs' Exhibit 2499.
6 This is also a Discord post. It was produced in sort of a
7 strange fashion, so the formatting may look different. But you
8 recognize this as a post that you made, correct?

9 (Plaintiffs' Exhibit 2499 marked.)

10 A Correct.

11 MS. DUNN: Your Honor, we move to admit 2499.

12 MR. JONES: Your Honor, I haven't seen this yet
13 either. I need to read the whole thing.

14 Are you introducing just Matthew Heimbach's statement
15 or the whole?

16 MS. DUNN: Yes, we plan to only introduce
17 Mr. Heimbach's statement.

18 MR. JONES: With the understanding that only
19 Mr. Heimbach's statement is being introduced, no objection.

20 MS. DUNN: Your Honor, move to introduce Plaintiffs'
21 Exhibit 2499.

22 THE COURT: Be admitted.

23 (Plaintiffs' Exhibit 2499 admitted.)

24 BY MS. DUNN:

25 Q Mr. Heimbach, could you please read for the jury what you

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1 posted?

2 A "The total destruction of Jewry is the only way to ensure
3 that we no longer will be plagued by the eternal enemy of all
4 mankind. If they are not destroyed in their entirety, they
5 will come back to attack and subvert all free peoples and
6 nations. This is total war, because the Jews are waging total
7 war against us. They want nothing less than the slavery of our
8 children and the destruction of our folk. To do anything less
9 than wage a war of extermination against these vermin would be
10 a betrayal of our future generations. We did not start this
11 war, but we will finish it, once and for all."

12 Q You believed this in 2017?

13 A Well, it's important to understand what we called in the
14 Traditionalist Worker Party "the Rockwell pivot." Going
15 back -- I'm answering your question --

16 Q Mr. Heimbach, it's okay. Did you post this in 2017?

17 A Yes.

18 Q As a representation of your views?

19 A As political speech with a specific purpose, as I was
20 saying, in reference to George Lincoln Rockwell. Rockwell
21 specifically came from a vaudeville family, and he -- he
22 utilized --

23 Q Mr. Heimbach --

24 MR. SMITH: Please -- object to her interrupting the
25 witness.

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1 MS. DUNN: Your Honor --

2 THE COURT: Excuse me just a minute. Your attorney
3 can ask you what you meant. The question was: Did you post
4 it?

5 THE WITNESS: Yes.

6 THE COURT: And you said yes. Okay.

7 BY MS. DUNN:

8 Q I'd like to show you Plaintiffs' Exhibit 3336.

9 (Plaintiffs' Exhibit 3336 marked.)

10 MS. DUNN: Again, here, we would only seek to
11 introduce this document for Mr. Heimbach's own post.

12 MR. SMITH: Your Honor, the evidence is starting to
13 become cumulative at this point.

14 THE COURT: Excuse me?

15 MR. SMITH: The evidence is starting to become
16 cumulative and duplicative. I suggest -- I would like to ask
17 the Court to ask counsel --

18 THE COURT: Well, this is a different statement,
19 isn't it?

20 MR. SMITH: It's different in text, but not in
21 character.

22 THE COURT: Okay. Overruled.

23 MS. DUNN: Thank you, Your Honor.

24 BY MS. DUNN:

25 Q Mr. Heimbach, you recognize this, correct?

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1 A Yes.

2 Q Okay. And this is a post that you made on February
3 24th -- I'm sorry, February 14th of 2018, on Valentine's Day;
4 do you recall that?

5 A That looks like an accurate date, yes.

6 Q Okay. And on Valentine's Day of 2018 --

7 MR. SMITH: Objection, Your Honor. Why are we
8 mentioning Valentine's Day?

9 THE COURT: I don't know.

10 MS. DUNN: It's the date he posted it.

11 MR. SMITH: No, the date was February 14th.

12 THE COURT: What's the purpose? You're beyond
13 August 12th.

14 MR. SMITH: It's a form of editorializing, Your
15 Honor.

16 THE COURT: Mr. Smith, don't --

17 MR. SMITH: Sorry, Your Honor.

18 MS. DUNN: Your Honor?

19 THE COURT: Yes.

20 MS. DUNN: This is the frame of mind that
21 Mr. Heimbach had during the time of the events of this case,
22 which -- Mr. Smith can't at once object it's cumulative and
23 then object there's a problem with this exhibit. These were
24 Mr. Heimbach's own beliefs.

25 MR. SMITH: I don't understand how --

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1 THE COURT: Well, you can ask him first, does he
2 still adhere to those -- at that time, were those his views?

3 BY MS. DUNN:

4 Q At that time, did you state what it says in this post?

5 THE COURT: And were they consistent with his views
6 on August 12th?

7 BY MS. DUNN:

8 Q Is this consistent with your views at the time of the
9 Unite the Right?

10 A Yes.

11 MS. DUNN: All right. Your Honor, we move to admit
12 this exhibit.

13 THE COURT: All right. You may post it. But I'm
14 beginning to agree with Mr. Smith. I think you've established
15 his feelings towards Jewish persons.

16 MS. DUNN: Understood, Your Honor.

17 (Plaintiffs' Exhibit 3336 admitted.)

18 BY MS. DUNN:

19 Q So in this post, Mr. Heimbach, you say: "I hate Jews. I
20 actually, truly, fucking hate them." Right?

21 A Correct. Speaking of the organized Jewish community.

22 Q Thank you.

23 MS. DUNN: I'd like to play for Mr. Heimbach
24 Plaintiffs' Exhibit 2560.

25 (Plaintiffs' Exhibit 2560 marked.)

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1 (Video playing.)

2 BY MS. DUNN:

3 Q Did you see that?

4 A Yes.

5 Q And you recognize that as a video of yourself and
6 co-defendant Matthew Parrott?

7 A Correct.

8 MS. DUNN: Your Honor, move to admit 2560.

9 MR. JONES: Your Honor, I don't know anything about
10 this exhibit.

11 THE COURT: I didn't see 2560. Did it come up on the
12 screen?

13 MS. DUNN: Would you like us, Your Honor, to replay
14 the video?

15 THE COURT: No. I just -- he said he didn't see it.
16 I didn't see it.

17 MS. DUNN: It's not a long video. Mr. Spalding is
18 putting it on the screen.

19 MR. JONES: Is this an ABC Nightly News video?

20 THE COURT: Are you objecting to it?

21 MR. JONES: Well, I haven't seen it yet, but if this
22 is an ABC --

23 THE COURT: I was waiting to see. He said he didn't
24 see it. I don't know.

25 MR. SMITH: It's not showing up on this screen,

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1 either.

2 MS. DUNN: Your Honor --

3 MR. JONES: If plaintiffs are trying to introduce an
4 ABC Nightly News cast, then yes, we are objecting to it.

5 MS. DUNN: Your Honor, we are only introducing the
6 comments that the defendants in this case made. Obviously,
7 anything ABC News were to say is not admissible, and I don't
8 believe can be heard in the clip that we're playing.

9 I will also note yesterday there were news clips
10 played, because a lot of the video in this case was aired on
11 the news.

12 THE COURT: Is he on the video?

13 MS. DUNN: Yes.

14 THE COURT: Okay. Well, he can identify himself and
15 what he said.

16 MS. DUNN: Right. That's all we're asking for.

17 MR. JONES: They're asking for the whole video to be
18 admitted. So if they want to ask him what he said and he can
19 identify, that's fine.

20 THE COURT: Right.

21 MR. JONES: But they can't introduce a whole
22 nine-minute video, a newscast.

23 MS. DUNN: Understood, Your Honor. That was not our
24 intention.

25 THE COURT: Well, this is only to be considered as to

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1 this witness. Go ahead.

2 MS. DUNN: Your Honor, this as a video of both
3 Mr. Heimbach and Mr. Parrott. We do seek to admit just the
4 clip that we're playing, which is minute 1:52 to minute 1:56.

5 I think it's admitted. Mr. Spalding, let's play it.

6 (Plaintiffs' Exhibit 2560 admitted.)

7 (Video playing.)

8 BY MS. DUNN:

9 Q So you recognize yourself and Mr. Parrott in this video,
10 correct?

11 A Yes.

12 Q And you are screaming "the day of the rope is coming"?

13 A Yes.

14 Q Do you hear that?

15 And you're screaming "the day of the rope is coming" at
16 counter-protesters?

17 A Organized anti-fascists, yes.

18 Q Okay. And Mr. Parrott is holding a sign that depicts a
19 person being hung with a rope; do you see that?

20 A Yes, specifically Zionism. That's a political statement.

21 Q And the day of the rope is a scene from a book where race
22 traitors get hung, correct?

23 A It's a reference to *The Turner Diaries*.

24 Q And in *The Turner Diaries*, race traitors get hung; that's
25 right?

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1 A Indeed.

2 Q And race traitors are white people who betray their own
3 race by supporting racial and religious minorities; do I have
4 that right?

5 A Not exclusively. The book also includes scenes of
6 politicians, newscasters, people that politically were opposed
7 to the ideology of the organization featured in the book.

8 Q Right. But Mr. Heimbach, I'd ask you just to answer the
9 question that I asked, which is: Race traitors are white
10 people who betray their own race by supporting racial and
11 religious minorities; that's correct?

12 A The political agenda associated with multiculturalism and
13 such. So yes, those who betray their race.

14 Q And the author of *The Turner Diaries*, who is that?

15 A Dr. William Luther Pierce.

16 Q And he became famous for murdering a Jewish talk show
17 host; that's correct?

18 A No. He was a doctor that ran the National Alliance, which
19 was a political organization. He was never accused of any sort
20 of violent crimes.

21 Q Okay. So in August of 2017, is it true that you believed
22 white people who marry black people or have children are race
23 traitors?

24 A Fundamentally, yes.

25 Q We'd like to show you Plaintiffs' Exhibit 641. These are

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1 Discord posts made by you and others in the Discord server that
2 you moderated, the tradworker server.

3 These posts are made on June 17th of 2017; do you see
4 that?

5 (Plaintiffs' Exhibit 641 marked.)

6 A Yes.

7 MS. DUNN: Your Honor, we move to admit Exhibit 641.

8 MR. JONES: Your Honor, I haven't seen these. I need
9 a paper copy. I can't see the screen.

10 (Pause.)

11 MR. JONES: No objection.

12 THE COURT: Be admitted.

13 MS. DUNN: Thank you, Your Honor.

14 (Plaintiffs' Exhibit 641 admitted.)

15 BY MS. DUNN:

16 Q Mr. Heimbach, in this Discord post in the Traditionalist
17 Worker Party server, directing your attention to page 2, so
18 here you and others, including, again, Kombat-Unit, are
19 discussing a young potential new member of the white
20 nationalist movement; do you see that?

21 A Yes.

22 Q And is this a potential new member of your own group, TWP?

23 A Not sure of the context.

24 Q Okay. That's fair.

25 You write, "He's young, new to the movement." And

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1 Kombat-Unit responds, "He'll come around to RaHoWaism"; do you
2 see that?

3 A Yes.

4 Q And "RaHoWa" stands for "racial holy war"; is that
5 correct?

6 A Correct.

7 Q And RaHoWaism is the belief that white people should unite
8 and undertake a holy war against Jews and non-whites, correct?

9 A Specifically, it's a religious tenet of specific sects of
10 Christian Identity. So it's a religious view of one subculture
11 of white nationalism.

12 Q Right. But you don't disagree what I just said, that
13 RaHoWaism is the belief that white people should unite and
14 undertake a holy war against Jews and non-whites, and that
15 you're speaking about that here, RaHoWaism?

16 A Sure.

17 Q And that ideology was put forward by a group called the
18 Aryan Nations, which is a group that the FBI has identified as
19 a terrorist threat; you know that?

20 THE COURT: Wait, wait, wait --

21 MR. JONES: Your Honor, I'm going to object to that.

22 THE COURT: Sustained.

23 BY MS. DUNN:

24 Q And when you write --

25 MR. JONES: I'll ask that that be stricken from the

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1 record.

2 THE COURT: Repeat the question -- strike that from
3 the record.

4 You are testifying. That's not -- that's not --
5 that's not asking him a question.

6 MS. DUNN: Your Honor --

7 THE COURT: And it doesn't --

8 MS. DUNN: Your Honor, respectfully, Mr. Heimbach is
9 giving historical context, and I expect that he will do that on
10 his direct exam, which has already been indicated. This was
11 part of his deposition, and this is where this phrase comes
12 from. So there -- that's the --

13 THE COURT: Well, you can ask him if he believes it.

14 MS. DUNN: This is the etymology of this phrase. So
15 that is germane. But I'm happy to move on.

16 THE COURT: All right.

17 BY MS. DUNN:

18 Q Mr. Heimbach, when you say "we all do," what you're saying
19 is "we all do come around to RaHoWaism"; correct?

20 A Correct. The term, however -- there was often a lot of
21 jokes in reference to the movement that was popularized during
22 the 1980s and 1990s and the subcultural memes of that
23 generation. So yes, but that's not necessarily something to be
24 taken seriously.

25 Q And when you write, "we all do come around to RaHoWa," you

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1 were referring to white nationalists, correct?

2 A Correct. But as to your previous exhibit where you
3 brought up that I expressed support for non-white organizations
4 such as Palestinians and Houthis, the fact that it's a joke --

5 MS. DUNN: Your Honor --

6 MR. SMITH: Your Honor --

7 MS. DUNN: Your Honor, Mr. Smith is going to have an
8 opportunity with this witness.

9 MR. SMITH: Your Honor, they chose to call this
10 witness adversely during their case in chief.

11 THE COURT: Well, okay. What is your question?

12 MS. DUNN: My question, which was also asked of
13 Mr. Heimbach and answered directly earlier in his deposition,
14 is whether, when he writes, "we all do come around to RaHoWa,"
15 he's referring to white nationalists.

16 THE COURT: That's the question?

17 MS. DUNN: That's the question.

18 THE COURT: Can you answer that?

19 THE WITNESS: Yes, within the context I previously
20 expressed.

21 BY MS. DUNN:

22 Q All right. And directing your attention to the date on
23 these posts, these posts are made on June 17th, 2017, which is
24 just two months before Charlottesville 2.0; is that right?

25 A Correct.

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1 Q Okay. Now, in May of 2017, Jason Kessler reached out to
2 you because he wanted to plan what became -- what ultimately
3 became Charlottesville 2.0 for the summer of 2017?

4 MR. KOLENICH: Objection. Assumes facts not in
5 evidence.

6 THE COURT: Well, it's not --

7 MS. DUNN: Your Honor, we're trying to get the facts.
8 These are questions.

9 THE COURT: Okay. But you're asking him about what
10 Mr. Kessler was thinking.

11 MS. DUNN: Your Honor, with respect, I said "Jason
12 Kessler reached out to you."

13 I can rephrase.

14 BY MS. DUNN:

15 Q I'll say: Mr. Kessler reached out to you and you
16 understood him to want to plan Charlottesville 2.0?

17 A Yes.

18 MS. DUNN: Your Honor, we'd like to show this witness
19 Plaintiffs' Exhibit 1425.

20 (Plaintiffs' Exhibit 1425 marked.)

21 BY MS. DUNN:

22 Q Do you recognize this to be a text exchange between
23 yourself and Mr. Kessler?

24 A Yes.

25 MS. DUNN: Your Honor, move to admit 1425.

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1 THE COURT: It will be admitted.

2 (Plaintiffs' Exhibit 1425 admitted.)

3 BY MS. DUNN:

4 Q All right. So, Mr. Heimbach, you spoke to Mr. Kessler
5 repeatedly about Charlottesville 2.0 throughout the summer of
6 2017. That's correct?

7 A Correct.

8 Q All right. And in your text messages you also arranged
9 phone calls. So you had both texts and phone calls, correct?

10 A Correct.

11 Q And what we're seeing on the screen is from page 1 of a
12 long text string between yourself and Mr. Kessler.

13 And let's just go up to the top, Mr. Spalding.

14 He says: "Hey, Matt, this is Jason Kessler. I'd like to
15 organize another, much larger, event in Charlottesville later
16 this summer. I wanted to invite you and pick your brain about
17 how to conceive this thing."

18 Do you see that?

19 A I do.

20 Q You say: "Sounds great. I'm at work now. Wanna chat
21 tomorrow?" And you did, in fact, talk to Mr. Kessler, correct?

22 A I'm not sure.

23 Q You don't remember that you spoke to him in the summer of
24 2017?

25 A No. I did. I just don't know if I chatted with him that

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1 next day.

2 Q Okay. Fair enough.

3 And if you look down on page 1, Mr. Kessler asks you:

4 "Supposedly the KKK" -- that's the Ku Klux Klan -- "are trying
5 to do a Charlottesville event in July. I think that will hurt
6 the overall prowhite message. Can we convince them to come in
7 plain clothes to the August thing instead?"

8 Do you see that?

9 A I do.

10 Q And you say: "Let's set the dress code now, khakis and a
11 polo." Correct?

12 A Yes.

13 Q And that did become the dress code for
14 Charlottesville 2.0, more or less?

15 A Not for my organization.

16 Q Right. I agree with that. But for some organizations,
17 the dress code that you suggested, khakis and a polo, became
18 the dress code, right?

19 A Yes, as had been previously established at rallies.

20 Q Right. And so when you said "let's set the dress code
21 now" in this text exchange, which was on May 22nd, 2017, of
22 khakis and a polo, you agree that even though your organization
23 didn't adopt that dress code, others did, including Identity
24 Evropa and Vanguard America, correct?

25 A I believe it was continuing the dress code they had

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1 previously adopted.

2 Q And you say that even though, in your message, you say
3 "let's set the dress code now," on May 22nd, 2017?

4 A Yes. For instance, the first Charlottesville event, that
5 was the dress code then. Richard Spencer's speech at Auburn, a
6 variety of other times the alt-right met, khakis and a polo and
7 was just kind of a standard, easy to get, presentable uniform.

8 Q And it was important that it be presentable, correct?

9 A Yes.

10 Q All right. And so you just testified that, actually, the
11 Traditionalist Worker Party did not adopt the dress code that
12 you suggest here, but you had your own dress code. That's
13 correct?

14 A Correct.

15 Q And that was to wear all black because black hides blood,
16 correct?

17 A Well, we wore Dickeys, work pants, and work shirts,
18 because we are a working class party, and that's typical
19 working-class attire for factory workers across America.

20 MS. DUNN: Your Honor, we'd like to pass up
21 Mr. Heimbach's deposition.

22 THE COURT: You may.

23 MS. DUNN: There are two depositions. This one --
24 the one that the judge will need is the August 2020 deposition.

25 BY MS. DUNN:

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1 Q So, Mr. Heimbach, you just testified that the reason you
2 wore all black was because you're a working-class party, and
3 that's typical working-class attire.

4 You were deposed in this case. Do you remember that?

5 A Yes.

6 Q And a deposition is under-oath testimony; you're aware of
7 that?

8 A Yes. There were multiple reasons why we chose the uniform
9 that we did.

10 MS. DUNN: Your Honor, we'd direct the Court and
11 Mr. Heimbach to the 2020 deposition, page 622, lines 7 to 25.

12 Your Honor, may we play the clip?

13 THE COURT: Yes.

14 THE CLERK: What is this supposed to be played for?

15 MS. DUNN: We'd like to play page 622, lines 7 to 25.

16 THE CLERK: For everyone?

17 MS. DUNN: Yes.

18 THE COURT: Well, are you impeaching him with the
19 deposition?

20 MS. DUNN: Yes, Your Honor.

21 THE COURT: Well, why don't you just read the
22 question to him and ask him did he say it?

23 BY MS. DUNN:

24 Q Mr. Heimbach, are you at page 622, 7 to 25 of your
25 deposition?

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1 A Yes.

2 Q And is this what you said at that page and line that
3 you're looking at?

4 A Yes. And in reference to the question on line 15 and 16,
5 you asked one of the reasons why we chose that uniform. And,
6 as I just said, there were multiple reasons why we chose the
7 uniform. You didn't ask if that was the exclusive reason we
8 chose that uniform.

9 MS. DUNN: Your Honor --

10 MR. JONES: Mr. Heimbach's correct, Your Honor.

11 THE COURT: Read the question and the answer and I'll
12 instruct the jury that's what's in the record.

13 So read the question and answer.

14 BY MS. DUNN:

15 Q All right. Mr. Heimbach, you were asked at your
16 deposition: "TWP has a specific dress code, right?"

17 Answer: "Yes."

18 Question: "And what was it?"

19 Answer: "Party T-shirt, black khaki work pants, and work
20 boots."

21 Question: "So the TWP uniform was to wear all black,
22 correct?"

23 Answer: "Yes."

24 Question. "Isn't it true that one of the reasons that you
25 believed your members should wear all black is because black is

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1 a good color to hide blood?"

2 Answer: "Yes. If someone is injured, it isn't a good
3 look if they're bleeding all over a white polo shirt."

4 Question: "When you say it isn't a good look, what do you
5 mean?"

6 Answer --

7 MR. JONES: Your Honor, I'm going to object. This
8 part is not relevant.

9 THE COURT: Were those questions asked of you and
10 were those your answers?

11 THE WITNESS: Yes, I did respond that, when asked one
12 of the reasons we chose the uniform.

13 THE COURT: Well, I mean, getting back to the
14 deposition --

15 THE WITNESS: Yes.

16 THE COURT: You were asked the questions and gave
17 those answers at that time?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 THE WITNESS: My answer --

21 THE COURT: That's what the record shows.

22 MS. DUNN: Thank you, Your Honor.

23 BY MS. DUNN:

24 Q Mr. Heimbach, you agreed with Mr. Kessler that you would
25 bring TWP members to the event, correct?

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1 A Correct.

2 Q And beyond TWP, your own party, Mr. Kessler asked you to
3 make sure certain groups attended on August 11th and 12th,
4 correct?

5 A Yes.

6 Q And he specifically asked you to reach out to a group
7 called the Hammerskins; do you remember that?

8 A I believe so.

9 Q And the Hammerskins are a skinhead group, correct?

10 A Yes.

11 Q And he also asked you to reach out to a group called the
12 Blood & Honour Social Club, which is also a skinhead group that
13 originated in England, correct?

14 A Correct.

15 Q And Mr. Kessler specifically requested that you ask these
16 groups to be present in Charlottesville because they were known
17 to be violent, correct?

18 A I can't recall the specifics of our conversation.

19 Q I direct you to your deposition at 517, lines 5 to 10.
20 You'll see in your testimony, Mr. Heimbach, you do not use
21 the word "violent," but you say "rough and tumble"; do you see
22 that?

23 A Yes. I said they were rough around the edges.

24 Q So you were asked: "Would it be fair to say that
25 Mr. Kessler reached out to you to ask you to reach out to the

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1 other groups that are known to be violent to make sure they're
2 present at Charlottesville?"

3 MR. SMITH: Your Honor, he didn't say "known to be
4 violent." He said "rough around the edges."

5 THE COURT: Well, read the question and the answer
6 again, as it's stated in the record.

7 MS. DUNN: Yes, Your Honor.

8 BY MS. DUNN:

9 Q "Would it be fair to say that Mr. Kessler reached out to
10 you to ask you to reach out to other groups that are known to
11 be violent to make sure they are present at Charlottesville?"

12 And your --

13 A As I answered on line 23 and 24 --

14 Q Mr. Heimbach, I think for this exercise I'm supposed to
15 read your answer.

16 THE COURT: All right. Let -- she can read the
17 question and the answer, and I will ask you if that question
18 was asked and if that was your answer.

19 THE WITNESS: Yes, Your Honor.

20 BY MS. DUNN:

21 Q And your answer was: "That have a reputation of
22 perhaps -- of being, perhaps, rough and tumble, rough around
23 the edges, yes."

24 Do you see that is your answer at 9 and 10?

25 A Yes.

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1 Q All right. And you did reach out, at Mr. Kessler's
2 request, to each of those skinhead groups, knowing at the time
3 about their reputations, correct?

4 A Yes. And as I responded on line 23 and 24, I believe he
5 wanted to invite organizations that had -- would have a
6 deterrent effect.

7 Q So your testimony, Mr. Heimbach, is that the purpose of
8 inviting violent -- or, I'm sorry, "rough and tumble" skinhead
9 groups was to make things less violent?

10 A Yes. So there would be a deterrence effect.

11 Q I understand.

12 MS. DUNN: All right. Mr. Spalding, can we show the
13 opening slide depicting Mr. Kline?

14 BY MS. DUNN:

15 Q Mr. Heimbach, just one more question.

16 You said you -- when I asked you whether the purpose of
17 inviting skinhead groups was to make things less violent and
18 you said there would be a deterrent effect, that people would
19 see the skinhead groups and be frightened; is that what you
20 mean?

21 A No, not frightened. But anti-fascists have a long track
22 record in this country of attacking legally permitted
23 demonstrations. I believe the thought process would be they
24 would be less likely to want to assault members of the
25 Hammerskins than college students in white polos, thereby

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1 reducing violence at the event.

2 Q So your idea was more skinhead groups, less violence,
3 right?

4 A There would be a deterrent effect from organized
5 anti-fascists attacking legally permitted demonstrators.

6 Q If you'll look at the screen, there's a picture on the
7 screen of Mr. Kline.

8 You recognize Mr. Kline?

9 A Yes.

10 Q Okay. And he also went by "Eli Mosley," as we've heard?

11 A Yes.

12 Q What did you call him?

13 A "Eli" or "Mosley."

14 Q All right. And so in addition to Mr. Kessler, you also
15 communicated by phone and by text message with Eli Kline to
16 plan for Charlottesville 2.0, correct?

17 A Correct. Mr. Kline, in many ways, was the chief
18 organizer.

19 Q Okay. And you agree with me, then, that you spoke with
20 him on the phone and via text message multiple times during the
21 summer of 2017?

22 A Correct.

23 Q All right. And you also spoke quite a lot to Defendant
24 Parrott, right?

25 A Yes.

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1 Q And just one question: You're aware that Mr. Kessler and
2 Mr. Kline work very closely together, aren't you?

3 A Yes. I believe there was some sort of breakdown in
4 communication between the two prior to the event.

5 Q Right. Well, we'll ask them about that, but you're aware
6 that they worked together to plan the Charlottesville 2.0
7 event?

8 MR. KOLENICH: Objection, asked and answered.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MS. DUNN:

12 Q And you've known Matthew Parrott, who is right over here,
13 for a long time. You've known him since 2012, correct?

14 A Yes.

15 Q All right. And with the exception of your wife, you
16 considered Mr. Parrott to be your best friend, correct?

17 A That sounds accurate.

18 Q And you were both involved in the Traditionalist Youth
19 Network in 2013 and 2014, right?

20 A Yes. We founded it together.

21 Q And you spoke regularly with Mr. Parrott since 2015,
22 correct?

23 A Yes. For a lot of the time we were next-door neighbors.

24 Q And you're married to his ex-wife; is that right?

25 A Formerly, yes. Not currently.

M. Heimbach - Direct

1 Q Formerly.

2 A There's a lot of "formers" there.

3 Q I apologize. You were formerly married to Defendant
4 Parrott's former wife?

5 A Correct.

6 Q So you spoke to him you've said every day in the summer of
7 2017, right?

8 A That sounds accurate, yes.

9 Q And you sent text messages to Mr. Parrott about
10 Charlottesville 2.0, correct?

11 A I'm sure I did.

12 Q Well, you did, right?

13 A Yes.

14 Q Okay. And even though he was your best friend and you
15 spoke with him every day and you texted with him in the summer
16 of 2017, you did not produce a single text message between you
17 and Defendant Parrott in this litigation, correct?

18 A Yes, because my ex-wife threw out the phone in question
19 where those would have been.

20 Q Right. And we will talk about that.

21 A Okay.

22 Q But my question for now is you didn't produce to us a
23 single text message between you and your best friend who you
24 spoke to every day, including by text, correct?

25 A Correct.

M. Heimbach - Direct

1 Q Okay. And so there's also no record of your verbal
2 communications with Mr. Parrott planning Charlottesville 2.0,
3 correct?

4 A We often did not record one another as we sat and had
5 coffee together, correct.

6 Q So there's no record of that that we have, correct? And
7 there's no record of your written communications with
8 Mr. Parrott about Charlottesville 2.0; is that right?

9 A Most of our communication was face to face.

10 Q Okay. But you would agree, you have not told us what
11 those face-to-face conversations contained, correct?

12 A I believe I answered all the questions in the depositions.

13 Q Okay. But apart from that?

14 A Apart from the depositions where you asked me all of those
15 questions?

16 MR. JONES: Your Honor, I'm going to object. It's a
17 misleading question. It suggests they've had conversations
18 outside of depositions.

19 THE COURT: He hasn't said he had any written
20 communication.

21 MS. DUNN: Your Honor, respectfully, he did. He said
22 that they had text messages which were written.

23 THE COURT: Okay.

24 MS. DUNN: And that they spoke every day.

25 THE COURT: You took up texts. Then you said other

M. Heimbach - Direct

1 written -- he didn't have the texts. So I gather he's saying
2 he doesn't have the hard copy. He didn't make a hard copy.

3 MS. DUNN: Correct. He -- he acknowledged he didn't
4 produce any written communications. He also spoke verbally to
5 Mr. Parrott every day in the summer of 2017.

6 THE COURT: Okay. You don't -- I heard that.

7 MS. DUNN: Okay. All right.

8 THE WITNESS: In regards to written communications,
9 you have the entirety of the tradworker Discord, of which there
10 was extensive communication, which you do have records for.

11 BY MS. DUNN:

12 Q Right. None of which was produced by you, correct?

13 MR. SMITH: Your Honor, objection. She's badgering.

14 THE COURT: Sustained.

15 BY MS. DUNN:

16 Q All right. Mr. Heimbach, the Nationalist Front is an
17 organization or an alliance that you know about, correct?

18 A A broad coalition.

19 Q Okay. It was originally called the Aryan National
20 Alliance when it was founded in 2016; you're aware of that?

21 A By Jeff Schoep.

22 Q You knew that that's what it was called, did you not?

23 A Yes.

24 Q All right. And the Nationalist Front was an alliance of
25 organizations with a shared statement of principles, correct?

M. Heimbach - Direct

1 A Correct.

2 Q And there was an admission process to admit a group into
3 membership in the Nationalist Front; is that right?

4 A Correct. Such as rejecting white supremacy.

5 MS. DUNN: Your Honor, we'd ask that the second half
6 of the answer be struck. Mr. Smith can ask all these questions
7 on his exam.

8 THE COURT: Excuse me. Just a minute.

9 All right. I'll strike that.

10 MS. DUNN: Thank you, Your Honor.

11 BY MS. DUNN:

12 Q All right. Mr. Heimbach, we're going to show you
13 Plaintiffs' Exhibit 2781. Do you recognize this as the
14 Nationalist Front website?

15 (Plaintiffs' Exhibit 2781 marked.)

16 THE WITNESS: Yes.

17 BY MS. DUNN:

18 Q And on the Nationalist Front website, if you look at page
19 1, it says that, "the Nationalist Front is not an organization
20 in itself. It's an alliance of organizations."

21 Do you see that?

22 A I do.

23 Q And, "membership is only open to organizations with a
24 proven commitment to struggle for the white nationalist vision.
25 It's not open to individuals."

M. Heimbach - Direct

1 Do you see that?

2 A I do.

3 Q And it goes on to say that "Movement leaders were
4 encouraged to join the Nationalist Front to pool talent,
5 resources, and manpower with other nationwide, regional, and
6 local organizations."

7 Do you see that?

8 A I do.

9 Q And if you look at page 2 of the Nationalist Front
10 website, it goes on to say that the Nationalist Front wanted to
11 leverage the power of solidarity and -- let me start over.

12 "The Nationalist Front wanted to leverage the power of
13 solidarity and scale to raise voices and fists against the
14 organized left and globalist Jewish oligarchs." Do you see
15 that?

16 A I do.

17 MS. DUNN: I'm sorry, Your Honor, I neglected to seek
18 to admit Exhibit 2781.

19 THE COURT: All right. Be admitted.

20 (Plaintiffs' Exhibit 2781 admitted.)

21 MS. DUNN: Thank you.

22 BY MS. DUNN:

23 Q Mr. Heimbach, I'm going to ask you a couple questions
24 about who was in the Nationalist Front, what organizations.

25 And I'd ask Mr. Spalding to put on the screen a

M. Heimbach - Direct

1 demonstrative that shows the organizations' logos.

2 So first of all, League of the South, do you see that?

3 A I do.

4 Q League of the South was in the Nationalist Front. You're
5 aware of that?

6 A Yes.

7 Q And we already talked about that you knew Michael Hill for
8 quite a long time, right?

9 A Yes.

10 Q And you spoke with Michael Hill, the leader of League of
11 the South, about organizing Charlottesville 2.0, right?

12 A Yes.

13 Q And the National Socialist Movement, that's Jeff Schoep's
14 group, we talked about, right?

15 A Yes, although I don't believe that would be an accurate
16 representation of their logo at the time of planning for
17 Charlottesville.

18 Q Okay. And Jeff Schoep you've known since 2013; that's
19 correct, right?

20 A Yes.

21 Q And you communicated extensively with Mr. Schoep regarding
22 Charlottesville 2.0, correct?

23 A Extensively? We did have communications.

24 Q Okay. I don't want to belabor this, but when you were
25 asked in your deposition whether you communicated extensively

M. Heimbach - Direct

1 you said yes; do you recall that?

2 A I don't recall. I guess we could say extensively.

3 Q And Vanguard America was also a member of the Nationalist
4 Front. You know about Vanguard America, right?

5 A Yes. But prior to Charlottesville they had a leadership
6 change that changed the relationships with the Nationalist
7 Front, I believe.

8 Q Right. So Dillon Hopper, the individual we talked about
9 earlier who on Discord was known as White-PowerStroke (Dillon),
10 he was, during some part of the planning of Charlottesville
11 2.0, he was the leader of Vanguard America, right?

12 A Yes.

13 Q And then Mr. Hopper had to step back and an individual
14 named Thomas Ryan Rousseau took over the leadership of Vanguard
15 America. You recall that?

16 A Correct.

17 Q And you personally invited Vanguard America members to
18 Charlottesville 2.0, right?

19 A Yes, but they ended up not participating, I believe, with
20 the Nationalist Front at Charlottesville.

21 Q But you recall that you invited the Vanguard America
22 members to Charlottesville 2.0?

23 A Yes.

24 Q Did you personally invite other groups, other than the
25 ones that we've mentioned, which include the Hammerskins, the

M. Heimbach - Direct

1 Blood & Honour Social Club, Vanguard America? Did you invite
2 others?

3 A I had reached out to one of our comrades in Greece to see
4 if a member of the Golden Dawn party would come as a
5 representative.

6 Q Did Golden Dawn attend at your request?

7 A They did not.

8 Q Did you invite Jeff Schoep's group, or did somebody else
9 invite them?

10 A I believe I probably did.

11 Q Did you invite -- we -- you already testified you invited
12 the Hammerskins and Blood & Honour Social Club at Mr. Kessler's
13 request. Did you invite Vanguard America at somebody else's
14 request?

15 A I don't recall. We were in the Nationalist Front umbrella
16 together. So I think that would have been a continuation of
17 our previous participation in rallies together such as the
18 peaceful rally in Pikeville, Kentucky.

19 Q Did you -- do you recall whether -- I think you said that
20 you invited Jeff Schoep's group. Do you recall whether
21 somebody asked you to do that or you did that on your own?

22 A I don't recall. Again, that would have been a
23 continuation of previous policy of holding peaceful, legally
24 permitted events across the country.

25 Q Okay. Well, let's talk about that.

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1 Let's show you Plaintiffs' Exhibit 635.

2 (Plaintiffs' Exhibit 635 marked.)

3 BY MS. DUNN:

4 Q All right. And this is a Discord post by you in the lobby
5 of the tradworker Discord server. Do you see this?

6 A Yes.

7 Q And this is a post that you made on June 5th of 2017. You
8 say: "All right, y'all. August 12th is going to be a full
9 callout for our members." Do you see that?

10 A I do.

11 Q And you testified earlier that at this time TWP had a
12 couple hundred members?

13 A And associates, yes.

14 Q And associates and supporters?

15 A Yes.

16 Q And how many -- if you include the associates and the
17 supporters, how many is that?

18 A A couple hundred.

19 Q Okay. So a couple hundred includes those people?

20 A Yeah.

21 Q Okay. And so one of the ways that you would reach out to
22 your full membership and supporters is through Discord,
23 correct?

24 A Yes.

25 Q And you testified just a moment ago that these groups'

M. Heimbach - Direct

1 attendance at Charlottesville 2.0 was really just a
2 continuation of what was happening before.

3 Do you remember that?

4 A Sure.

5 Q So on page 2 of this Discord post, Dillon Hopper, the head
6 of Vanguard America, responds to you. You're talking about
7 Charlottesville 2.0. And he responds, "Mind if we join in?"

8 Do you see that?

9 A Yes.

10 Q And you respond, "Good stuff. I was planning on calling
11 you, by the way."

12 Do you see that?

13 A Yes.

14 Q And you say -- after you say "I was planning on calling
15 you," you say, "laugh out loud, it wouldn't be a party without
16 you and your boys." And Mr. Hopper responds, "Fuck, yeah,
17 man."

18 Do you see that?

19 A Yes.

20 Q Okay. All right. So you understand that these Discord
21 posts show that you were -- Dillon Hopper was asking to be
22 invited and you were agreeing to invite him, correct?

23 A Correct.

24 Q And that's on June 5th of 2017.

25 MS. DUNN: Your Honor, we move to admit Exhibit 635.

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1 MR. JONES: How many pages is it?

2 MS. DUNN: Three.

3 MR. JONES: Could I get a copy of that, please?

4 MS. DUNN: Sure.

5 Your Honor, we move to admit this Exhibit 635.

6 THE COURT: All right. Have you had a chance to look
7 at it?

8 MS. DUNN: And while we're doing this, I neglected to
9 admit 2781. So we'd seek to admit that.

10 THE COURT: 2781 will be admitted.

11 MS. DUNN: Thank you, Your Honor.

12 The posts we just looked at were from June 5th of --

13 THE COURT: Just a minute. Where are we? He
14 objected or said he hadn't seen the exhibit.

15 MS. DUNN: Your Honor, Mr. Jones has the exhibit. I
16 also want to note that these exhibits have been on the exhibit
17 list and were produced years ago to the defense.

18 THE COURT: All right.

19 MR. SMITH: For the record, not all counsel have had
20 that particular production for years.

21 THE COURT: Well, you had it before the trial. I
22 mean, timely before the trial, right?

23 MR. SMITH: That's right, Your Honor. I'm not
24 objecting to it.

25 MR. JONES: I just needed to review it, Your Honor.

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1 I don't have the 100,000 pages of Discord learned to memory.

2 So I just needed to see it in advance. I don't object.

3 THE COURT: Okay. Go ahead. Be admitted.

4 MS. DUNN: Thank you, Your Honor.

5 (Plaintiffs' Exhibit 635 admitted.)

6 BY MS. DUNN:

7 Q So that was on June 5th, 2017. On that same day, you
8 separately had a private Discord conversation with Dillon
9 Hopper. And that's Plaintiffs' Exhibit 707. I'm going to show
10 that to you on the screen.

11 (Plaintiffs' Exhibit 707 marked.)

12 BY MS. DUNN:

13 Q Do you see this?

14 A I do.

15 MS. DUNN: Your Honor, we'd move to admit 707.

16 MR. JONES: Same problem, Your Honor.

17 THE COURT: All right.

18 MR. JONES: I think plaintiffs know in advance which
19 exhibits they're going to use. I think the easiest way to do
20 it would just be to provide those to us in advance. There's
21 3,000 exhibits.

22 THE COURT: Well, they need to know. As he said, he
23 can't commit them to memory. They need to know what's being
24 talked about.

25 MR. KOLENICH: Judge, we do have these exhibits. The

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1 problem is we can't call up a document number. There's no
2 search function available in the form we have them. We have to
3 click through and it's a slow process. We're trying to fix
4 that on our end and hopefully we can do that soon, but that's
5 why we can't just call up doc 635 or whatever.

6 MS. DUNN: Until defense counsel can fix that
7 problem, we're happy to run the hard copy across the room.

8 THE COURT: Okay.

9 MS. DUNN: All right. We'd move to admit 707.

10 THE COURT: All right. Okay. It will be admitted.

11 MS. DUNN: Thank you, Your Honor.

12 (Plaintiffs' Exhibit 707 admitted.)

13 BY MS. DUNN:

14 Q Mr. Heimbach, if you could direct your attention to page 1
15 of this, it's a direct message exchange on Discord from June
16 5th between yourself and Mr. Hopper. You say, "We want to do a
17 monthly call between you, me, Jeff, and Dr. Hill."

18 Do you see that?

19 A I do.

20 Q And Jeff -- well, you is you. Me -- you is Dillon Hopper.
21 Me is you. And Jeff is Jeff Schoep?

22 A Yes.

23 Q And Dr. Hill is Michael Hill, head of League of the South,
24 right?

25 A Correct.

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1 Q You say, "The League is now on board." And Mr. Hopper
2 says, "Oh, snap. Sick."

3 Do you see that?

4 A Yes.

5 Q And then this goes on. You say, "Yep, so now basically
6 we've got 90 percent of all the real orgs in America together
7 with the leadership being you, me, Jeff, and Dr. Hill. So
8 that's a good table for us to sit at."

9 Do you see that?

10 A Yes.

11 Q And then Mr. Hopper responds, "Now all we need is Spencer
12 and Damigo." Do you see that?

13 A Uh-huh.

14 Q And Spencer is Richard Spencer?

15 A Yes.

16 Q And Damigo is Nathan Damigo?

17 A Yes.

18 Q From Identity Evropa who we talked about earlier?

19 A Correct.

20 Q And he's in the same group as Eli Kline, correct?

21 A Correct.

22 Q And you reply, "Well, this is where Charlottesville comes
23 in. We're all doing it together."

24 Do you see that?

25 A Yes.

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1 Q I'd like to show you Plaintiffs' Exhibit 579. This is a
2 Discord communication between yourself and Thomas Ryan
3 Rousseau, who went as Thomas Commander A770 on Discord. Do you
4 see that?

5 A Yes.

6 (Plaintiffs' Exhibit 579 marked.)

7 BY MS. DUNN:

8 Q And as we discussed earlier, Thomas Ryan Rousseau had
9 taken over for Dillon Hopper in June of 2017 as the leader of
10 Vanguard?

11 A Correct.

12 MS. DUNN: Your Honor, we move to admit PX579.

13 THE COURT: Be admitted.

14 MR. JONES: Your Honor, I haven't seen it yet. I'm
15 sorry.

16 THE COURT: Okay.

17 MS. DUNN: So I'll ask my colleagues, for the Discord
18 chats, if they could provide defense counsel with this exhibit.

19 (Pause.)

20 MR. JONES: Thank you.

21 THE COURT: All right. It will be admitted.

22 MS. DUNN: Thank you.

23 (Plaintiffs' Exhibit 579 admitted.)

24 BY MS. DUNN:

25 Q Okay. So if you look in the middle of the page, there are

M. Heimbach - Direct

1 some posts from June 28th of 2017. And you say, "Hey, brother,
2 heard you're the new HNIC"?

3 A Uh-huh.

4 Q What does that stand for?

5 A Head nigga in charge.

6 Q And after you say that, Rousseau responds, "I am. Dillon
7 decided to take a break. So you can contact me about anything
8 as far as now goes."

9 Do you see that?

10 A I do.

11 Q And then you say, "Fantastic. Well, would there be a good
12 time to do a phone conference? For Charlottesville I wanna
13 have all the National Front groups on the same page."

14 Do you see that?

15 A Yes.

16 Q And here's your reference to Golden Dawn, who ultimately
17 didn't show up.

18 A Correct.

19 Q If you move now to the third page of this exhibit, a
20 little later in time, July 19th, the conversation with
21 Mr. Rousseau, head of Vanguard America, continues. You say,
22 "We need plans. The National Front (NF) has been charged with
23 taking the ground early, so I need to talk to you and get our
24 security leaders talking to one another."

25 Do you see that?

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1 A I do.

2 Q And then a little bit lower down, you sent the phone
3 numbers of the security people for League of the South and for
4 your own group, TWP.

5 Do you see that?

6 A Yes.

7 Q And you tell Thomas Ryan Rousseau to call the security
8 people and say that you had sent him.

9 Do you see that?

10 A I do.

11 Q And your testimony in this case is that when Mr. Kessler
12 and Mr. Kline told you to take the ground early, for which
13 security leaders needed to be involved, what they meant was
14 just to arrive at the park earlier?

15 A Yes. There was discussion online where counter-protesters
16 had spoken about --

17 Q Sir, was that your testimony?

18 MR. SMITH: Can he finish his answer, Judge?

19 THE COURT: Just answer -- can you answer the
20 question?

21 BY MS. DUNN:

22 Q Was that your testimony?

23 A I believe so, yes.

24 MS. DUNN: We can take that down.

25 BY MS. DUNN:

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1 Q Okay. So we talked about inviting groups and members to
2 Charlottesville 2.0. But one of the other things you did to
3 coordinate Traditionalist Worker Party's involvement in
4 Charlottesville --

5 MR. SMITH: Your Honor, these questions are becoming
6 very lengthy and editorialized.

7 THE COURT: Overruled.

8 BY MS. DUNN:

9 Q Mr. Heimbach, one of the other things that you did is you
10 provided promotional material to your members, correct?

11 A Correct.

12 Q All right. We'll show you Plaintiffs' Exhibit 1827.

13 (Plaintiffs' Exhibit 1827 marked.)

14 BY MS. DUNN:

15 Q And you'll recognize this as a document that you sent to
16 TWP members concerning Charlottesville?

17 A Correct.

18 MS. DUNN: Your Honor, we move to admit 1827.

19 THE COURT: All right. It will be admitted.

20 (Plaintiffs' Exhibit 1827 admitted.)

21 BY MS. DUNN:

22 Q And it's a long document. So I'm just going to direct
23 your attention, Mr. Heimbach, to the end of the document, the
24 last few paragraphs. So in the last few paragraphs you say,
25 "My comrades, we stand with the ghosts of Dr. Pierce, Commander

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1 Rockwell and so many other great men and women, all who are
2 urging us forward to secure the existence of our people and a
3 future for white children." Do you see that?

4 A I do.

5 Q Then you quote Adolf Hitler, who says, "Those who want to
6 live, let them fight. And those who do not want to fight in
7 this world of eternal struggle do not deserve to live." Do you
8 see that?

9 A I do.

10 Q Then you continue, "Coming to this event will take
11 sacrifice from each of us," right?

12 A Yes.

13 Q "The enemy is mobilizing and is threatening to kill us,
14 but I know that our movement is made up of brave men, those who
15 want to fight, who want to struggle, and because of this drive,
16 will be victorious." Do you see that?

17 A I do.

18 Q And then you close it out by saying, "So be there, August
19 12th in Charlottesville, and let us tell the entire world with
20 a mighty and triumphant voice, we will not be replaced."

21 Do you see that?

22 A Yes.

23 Q And this letter, did this go out to all 200 of your
24 members and supporters?

25 A I believe that was for those that had signed up to attend,

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1 but it might have gone out to the entire email list. I'm not
2 exactly sure.

3 Q To the entire what?

4 A List of people that we had email contacts for. I don't
5 know the specifics. I didn't handle any of the tech elements.

6 Q Mr. Parrott handled that?

7 A Indeed.

8 Q Okay. And you said that this may have gone out via email.
9 How many people were on the email list, if you know?

10 A I don't know.

11 Q All right. So you're familiar with what's called the 14
12 Words?

13 A Yes, "We must secure the existence of our people and a
14 future for white children."

15 Q Right. And you cite the 14 Words here in your letter?

16 A Yes.

17 Q My apologies about earlier, and I appreciate the
18 correction. The 14 Words was a slogan that was created by
19 David Lane?

20 A Yes.

21 Q Who was convicted of murdering --

22 MR. JONES: Your Honor, I'm going to object to the
23 relevance of who David Lane was.

24 THE COURT: Sustained.

25

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1 BY MS. DUNN:

2 Q And your reference to the 14 Words in this document is
3 about Charlottesville 2.0, correct?

4 A Yes.

5 Q And you separately wrote about the 14 Words in a different
6 document that you mentioned earlier called the 25-Point Plan of
7 the Traditionalist Worker Party.

8 A Correct.

9 Q And that document was also created in the summer of 2017,
10 right?

11 A I believe so.

12 Q All right. Let's show you that document. That's
13 Plaintiffs' Exhibit 2728.

14 (Plaintiffs' Exhibit 2728 marked.)

15 BY MS. DUNN:

16 Q You recognize this as your 25 points?

17 A Yes.

18 MS. DUNN: Your Honor, we move to admit 2728.

19 THE COURT: Be admitted.

20 (Plaintiffs' Exhibit 2728 admitted.)

21 BY MS. DUNN:

22 Q And you circulated your 25-Point Plan to the
23 Traditionalist Worker Party and on Discord in the summer of
24 2017?

25 A Correct.

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1 Q And it went out very widely, right?

2 A Yes.

3 Q And on the first page, you wrote that "The guiding
4 principle of the Traditionalist Worker Party is fighting for
5 the best interests and self-determination of whites in
6 America."

7 A Correct.

8 Q And you say that "The 14 Words best exemplifies the
9 mission of our movement." Do you see that?

10 A Yes.

11 Q And the first point is self-determination.

12 A Yes.

13 Q Do you see that?

14 And under self-determination it says, "The Traditionalist
15 Worker Party shall establish an independent white ethnostate in
16 North America. This nation will be a homeland for whites,
17 governed and built by our people and only for our people."

18 Do you see that?

19 A Yes.

20 Q And then a little lower down you say --

21 MR. SMITH: Your Honor, I believe he is still
22 answering the question.

23 THE WITNESS: Follow -- what follows is our support
24 for people of color to have self-determination and for those of
25 mixed communities that also want self-determination. It's a

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1 universal principle.

2 BY MS. DUNN:

3 Q I understand that. I'm focused on the independent white
4 ethnostate in North America. So in the independent white
5 ethnostate in North America, black people would not be allowed
6 in the ethnostate?

7 A As citizens, no.

8 Q Right. They would be -- it says they would be aliens,
9 right?

10 A Yeah, or residents.

11 Q And Hispanic people would not be allowed in the
12 ethnostate?

13 A Correct. They would have their own ethnostate.

14 Q And Jews would not be allowed in the ethnostate in -- the
15 white ethnostate in North America, correct?

16 A No. They already have their own ethnostate.

17 Q But the white ethnostate that is going to be in North
18 America, Jews would not be allowed in that?

19 A Correct.

20 Q Okay. And you say that non-citizens, so Jews, Hispanics,
21 blacks and other minorities, people of color, would be subject
22 to laws for aliens. So non-whites would be treated like aliens
23 in the North American ethnostate?

24 A In --

25 MR. JONES: Your Honor, I'm going to object to

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1 relevance and the cumulative nature of this. If we're going to
2 go through all 27 or however many pages --

3 MS. DUNN: I do not plan to go through all 27.

4 MR. SMITH: It's already been an hour and a half,
5 Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: They would not have voting privileges.

8 BY MS. DUNN:

9 Q What else would they not have?

10 A Well, they wouldn't be considered citizens. So just like
11 any sort of -- you know, here in the United States there are
12 Native American tribes that have tribal autonomy, and land is
13 for that tribe and representation on tribal boards are for
14 members of that tribe. So it's not even a foreign concept to
15 the United States as it stands.

16 Q Okay. So no voting. No land. Is that what you meant?

17 A Correct.

18 Q What else would they not have?

19 A I mean, we don't have a parliament in session to come up
20 with all the laws, but the idea is that it would be a homeland
21 specifically for us, in concert with the establishment of other
22 homelands for people that want mixed communities and those that
23 want to have their own independent ethnostates.

24 Q All right. And --

25 THE COURT: Let's stop right there. It's 12:30.

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1 We'll take a recess, lunch recess, until 1:30.

2 I'll caution the jury not to discuss the case with
3 anyone, allow anyone to discuss it with you, or remain in
4 hearing of anyone discussing it, or watch or listen on any
5 media, or so forth.

6 Recess until 1:30.

7 **(Jury out, 12:29 p.m.)**

8 (Recess.)

9 THE COURT: All right. Are you ready to call the
10 jury?

11 Did I understand you to say you're not going through
12 all 24 points?

13 MS. DUNN: Correct. Your Honor, we're done with that
14 document. And the other thing that we did is we provided
15 copies of the Discord posts that we'll be using in the rest of
16 the exam.

17 THE COURT: Good. Thank you.

18 MS. DUNN: Thank you, Your Honor.

19 THE COURT: Call the jury.

20 **(Jury in, 1:36 p.m.)**

21 THE COURT: All right. Be seated.

22 You may resume.

23 MS. DUNN: Thank you, Your Honor.

24 BY MS. DUNN:

25 Q Mr. Heimbach, when we took a break we had just discussed

M. Heimbach - Direct

1 your inviting members and groups to Charlottesville 2.0?

2 A Yes.

3 Q Another thing that you did was provide shields to TWP
4 members for use in Charlottesville, correct?

5 A Yes. Following an FBI report that was in the news that
6 counter-protesters were planning to use projectiles, we thought
7 it was best to have a way to protect ourselves.

8 MS. DUNN: Your Honor, I'd ask that the Court strike
9 the second half of Mr. Heimbach's response.

10 THE COURT: Disregard everything after "yes."

11 BY MS. DUNN:

12 Q Mr. Heimbach, I'm going to show you Plaintiffs'
13 Exhibit 1063, which is a communication with yourself and others
14 on the Charlottesville 2.0 server in the demonstration and
15 tactics channel; do you see that on the screen?

16 A I do.

17 MS. DUNN: Your Honor, we move to admit Exhibit 1063.

18 THE COURT: Be admitted.

19 (Plaintiffs' Exhibit 1063 marked.)

20 (Plaintiffs' Exhibit 1063 admitted.)

21 BY MS. DUNN:

22 Q So if you look the top of page 1, Mr. Heimbach, you begin
23 this post by saying: "TWP has shields." Then you say: "Both
24 TWP symbols and Celtic crosses"; do you see that?

25 A Yes.

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1 Q And then a little bit farther down the page, somebody
2 named AltRightVa writes: "Shield wall sounds delightful." Do
3 you see that.

4 A I do.

5 Q Then a little farther down the page, somebody named
6 Heinz - MI advises you that -- or advises that: "If you use a
7 shield wall, people should know how to actually fight in the
8 shield wall." Do you see that?

9 A Yes.

10 Q Who is Heinz - MI?

11 A I'm not sure.

12 Q And you agree that sometimes on Discord you would
13 communicate about plans with people whose actual names you did
14 not know?

15 A Correct.

16 Q He posts a YouTube link that says: "Start with these. Go
17 through all three parts. They have incredibly good tips that
18 you won't get from studying riot shield tactics." Do you see
19 that?

20 A I do.

21 Q I'm going to show you Plaintiffs' Exhibit 583. You'll
22 recognize this as a private Discord chat that you had with
23 Heinz - MI.

24 This is not in the regular channel. This is just between
25 the two of you. Do you see this?

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1 A I do.

2 MS. DUNN: Your Honor, move to admit PX583.

3 THE COURT: Be admitted.

4 (Plaintiffs' Exhibit 583 marked.)

5 (Plaintiffs' Exhibit 583 admitted.)

6 BY MS. DUNN:

7 Q You still say you don't know who this is?

8 A Correct.

9 Q But you agree this is the same individual we just spoke
10 about with the last document?

11 A Correct.

12 Q All right. So in this Discord chat between the two of you
13 he says: "Hey, Mr. Heimbach, I got placed in charge of
14 planning general security for Charlottesville."

15 It goes on to say: "The plan right now is to essentially
16 form a shield wall around the speakers' front and sides. We've
17 been drilling with shields for the past month and are going to
18 keep drilling up until the actual event. We're bringing about
19 50 guys with us."

20 Do you see that?

21 A I do.

22 Q And then you respond: "Fantastic." And then you put him
23 in touch with TWP's security officer. Do you see that?

24 A Yes.

25 Q So at this point, you're preparing to fight with a shield

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1 wall of as many as 50 people?

2 A To protect the speakers.

3 MR. SMITH: I object to the question -- form of the
4 question, Your Honor. She said -- could you --

5 MS. DUNN: The question was, based on the exact
6 language of this document: You are preparing to fight with a
7 shield wall of as many as 50 people?

8 THE WITNESS: The plan was to form a shield wall
9 around the speakers' front and sides.

10 THE COURT: Here again, this is one of those things
11 where you -- are you -- I don't know if you're seeking to
12 impeach him, or --

13 MS. DUNN: No, Your Honor.

14 THE COURT: You're not reading from the deposition,
15 though?

16 MS. DUNN: No, I'm not reading from the deposition.

17 THE COURT: Okay. Repeat the question and let him
18 answer.

19 BY MS. DUNN:

20 Q Mr. Heimbach, at this point, in this Discord chat, you are
21 preparing to fight with a shield wall of as many as 50 people,
22 correct?

23 A To have a shield wall with as many as 50 people, correct.

24 Q And the shield wall was to take place in the park,
25 correct?

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1 A Correct.

2 Q Okay. Please take a look at Plaintiffs' Exhibit 584.

3 (Plaintiffs' Exhibit 584 marked.)

4 BY MS. DUNN:

5 Q You'll recognize this as another Discord exchange that you
6 had with somebody named Furor_Tuetonicus?

7 A Yes.

8 Q Again, like the last post, this is a communication just
9 between this individual and yourself. Do you see that?

10 A Yes.

11 Q And you see that this is from July 21st of 2021 -- or, I'm
12 sorry, July 21st, 2017?

13 A Yes.

14 MS. DUNN: Your Honor, move to admit 584.

15 THE COURT: Be admitted.

16 (Plaintiffs' Exhibit 584 admitted.)

17 BY MS. DUNN:

18 Q Who is Furor_Tuetonicus?

19 A I can't recall.

20 Q Mr. Heimbach, if you look at this page -- look at the
21 entire page in front of you, Furor_Tuetonicus says to you:
22 "You still coming tonight at 7?" And says: "Ayy." And then
23 you say: "Yo yo." He says: "Did you get my text message? My
24 phone's in the charger." You arrange a phone call via Skype or
25 Discord.

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1 Are you sure you don't know who this person is?

2 A Not off the top of my head. I was the leader of a
3 political party that had chapters all around the country.

4 Q But this is a person who you corresponded with more than
5 once, you had phone calls and text messages with, and you're
6 saying here today that you do not know who this was?

7 A No, not off the top of my head. I talked to lots of folks
8 organizing our political party.

9 Q But you will agree, then, that he was a member of TWP?

10 A No. I can't confirm that.

11 Q Okay. And even based on these texts talking about shields
12 for TWP, you will not agree with that?

13 A Correct. There are lots of organizations that we had open
14 lines of communication with.

15 Q Right. So you couldn't be sure; it could be somebody from
16 a different organization that you were talking to about the
17 shields?

18 A Potentially.

19 Q Okay. What other organizations did you talk to about TWP
20 shields?

21 A Primarily, those conversations would have been had, most
22 likely, by Cesar Ortiz, the head of our security.

23 Q I'm asking about you. You just testified that you talked
24 to other organizations about shields, about TWP shields. Who
25 did you talk to? What were you mentioning -- what were you

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1 referring to in your testimony?

2 A I believe I might have had a conversation with a member of
3 a pool party that was associated with the podcast The Right
4 Stuff, but that's not an organization.

5 Q Okay. So --

6 A So individuals that met socially.

7 Q Okay. And when he says to you, "you mind calling real
8 quick," it seems like you probably had his phone number?

9 A Most likely.

10 Q Okay. All right. So --

11 A Well, actually, my follow-up response for "Skype or
12 Discord would be fine," I think would indicate I probably did
13 not have his phone number.

14 Q Okay. But you don't disagree that you knew how to contact
15 him?

16 A Sure. I talked to lots of folks.

17 Q Okay. All right. If you go to the bottom of page 2, your
18 post on July 21st, 2017, it says: "But our riot shields
19 arrived." And then if you continue -- that's the last post on
20 page 2.

21 If you continue to page 3 it says -- Furor_Tueticus says
22 to you: "Are they our usual shields or actual riot shields?"
23 Do you see that?

24 A I do.

25 Q And you post below that and you assure Furor_Tueticus

M. Heimbach - Direct

1 that they're actual cop riot shields?

2 A Yes. They were police surplus.

3 Q And that's different from TWP's usual shield?

4 A Correct. We had previously utilized handmade things. So
5 this was police surplus.

6 Q And are police surplus, police riot shields, are they
7 harder or more -- stronger material? What's the difference?

8 A Well, the primary difference is we were looking to emulate
9 the Nordic Resistance Movement, a national socialist
10 organization in the Scandinavian countries, and at their
11 rallies they utilized clear shields of the same design. So we
12 were working to emulate their aesthetic.

13 Q So it was aesthetic; it wasn't about the material of the
14 shield?

15 A Yeah, aesthetic.

16 Q So if you direct your attention now to page 4,
17 Furor_Tuetonicus writes to you: "PS, I think I have a great
18 use for those riot shields in our hand. I'll tell you over
19 call. Best to leave sensitive planning to voice whenever
20 possible." And you said: "Agreed. I'm free now."

21 Do you see that?

22 A I do.

23 Q So you had a conversation in July of 2017 regarding use of
24 riot shields that couldn't be put in writing with this person
25 named Furor_Tuetonicus, correct?

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1 A Based on his comment.

2 Q But the answer is yes, correct?

3 A Yes. I have no idea of knowing what he was going to say.

4 Q Mr. Heimbach, were you asked in your deposition whether
5 you had a conversation on July 21st of 2017 regarding a use for
6 riot shields that couldn't be put in writing with somebody
7 named Furor?

8 A I don't recall, but if you can direct me to a page
9 number...

10 Q That's okay. Why don't you just tell us what was said in
11 that conversation?

12 A I don't recall. Riot shields are specifically defensive.
13 They're not offensive.

14 Q But my question to you was whether you can tell the jury
15 what was said in that conversation about the riot shields.

16 A No. I had lots of conversations with lots of folks during
17 that time period.

18 Q Okay. All right. And if you direct your attention to
19 page 5, Furor says: "Hey, we need to talk. Have you allocated
20 the shields?" Do you see that?

21 A I do.

22 Q It was important to allocate the shields to the right
23 people, correct?

24 A I think it more meant, were you going to have people there
25 to protect the speakers at the event. The overall idea, as I

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1 recall, for the security plan was to surround the speakers so
2 projectiles couldn't hit them while they were talking.

3 MS. DUNN: So, Your Honor, I'd ask that that answer
4 be struck as nonresponsive.

5 MR. SMITH: Your Honor, that answer was responsive.

6 THE COURT: Well, overruled. I think it's
7 generally -- go ahead.

8 BY MS. DUNN:

9 Q So he's saying to you: "Have you allocated the shields?"
10 Do you see that?

11 A I do.

12 Q Okay. And did you in particular allocate the shields to
13 particular TWP members?

14 A No.

15 Q Who was responsible for that?

16 A Well, this plan that was being discussed about protecting
17 the speakers never actually happened. Communication between
18 organizers and the Traditionalist Worker Party fundamentally
19 broke down in the lead-up to the event. So our participation
20 in their idea for shields around the speakers never manifested.

21 Q Okay. So your testimony is that you never allocated the
22 shields?

23 A Well, we handed them out the day of the event, but it was
24 just kind of handing them out to folks.

25 Q That was my question, sir, was whether you allocated the

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1 shields to particular individuals.

2 A Just handed them out. Same with helmets, so folks would
3 have their heads projected against projectiles.

4 Q So you handled out the shields randomly?

5 A Essentially, yes.

6 Q Okay. If you will look at Plaintiffs' Exhibit 587.

7 (Plaintiffs' Exhibit 587 marked.)

8 BY MS. DUNN:

9 Q And you'll recognize this, again, not as a Discord post in
10 the lobby where everyone could see it, but this is a direct
11 message exchange between yourself and one other individual; do
12 you see that?

13 A Correct.

14 Q The individual you were speaking with here is RCO Nick; do
15 you see that?

16 A Yes.

17 Q Who is Nick?

18 A I can only ascertain from context that is he was
19 Vanguard's security representative for Charlottesville.

20 Q And this Discord post, which is a one-on-one message
21 between you and RCO Nick, happens on July 23rd to 24th of 2017.
22 Do you see that?

23 A I do.

24 Q Okay. And that is just two days after your discussion
25 with Furor_Tueticus about the riot shields, correct?

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1 A Correct. But likewise, Vanguard America decided to do
2 their own thing during the Charlottesville event, so any
3 discussions never manifested.

4 MS. DUNN: Your Honor, I'd ask the witness be
5 directed to answer the question.

6 THE WITNESS: Could you repeat the question?

7 BY MS. DUNN:

8 Q Yes. It says: And this post is just two days after your
9 discussion with Furor_Tuetonicus about the riot shields,
10 correct?

11 A Correct.

12 Q And it's two days after the discussion with
13 Furor_Tuetonicus where he says to you -- and you agree -- that
14 "sensitive planning should be left to voice whenever possible"?

15 A Correct.

16 Q If we look --

17 MS. DUNN: Oh. I apologize, Your Honor. Move to
18 admit 587.

19 THE COURT: Be admitted.

20 (Plaintiffs' Exhibit 587 admitted.)

21 BY MS. DUNN:

22 Q All right. So two days later, on July 24th, RCO Nick
23 writes to you: "As you're probably already aware, we may have
24 to remove commie from Lee Park. It's going to be up to
25 Vanguard, TWP" -- League of the South -- "LOS, Stormers" --

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1 those are *The Daily Stormers* -- "TRS" -- The Right Stuff, who
2 you just mentioned, those guys -- "and unaffiliated allies."

3 Do you see that?

4 A I believe it's on the first page, but yes, I recall
5 reading that.

6 MS. DUNN: Mr. Spalding, are you there?

7 THE WITNESS: Now we are.

8 BY MS. DUNN:

9 Q It's the first post?

10 A Yes.

11 Q Okay. So Nick mentions Vanguard, TWP, LOS, Stormers, The
12 Right Stuff guys, and unaffiliated allies in his post about
13 needing to "remove commie from Lee Park." You see that?

14 A Yes, but once again, that never happened. So...

15 Q So that seems like a lot of manpower to "remove commie
16 from Lee Park" in the plans, all of those groups, including
17 most of the Nationalist Front and unaffiliated allies, no?

18 A Well, the organized anti-fascist community said they were
19 bringing activists from around the country, including
20 paramilitary groups such as Redneck Revolt that are heavily
21 armed at all their demonstrations.

22 Q I'm focusing your attention on this language of: "As
23 you're probably aware, we may have to remove commie from Lee
24 Park."

25 And my question to you was: This seems like a lot of

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1 manpower for that task?

2 MR. SMITH: Your Honor, calls for speculation.
3 Objection.

4 THE COURT: Overruled. He can answer.

5 THE WITNESS: Given the numbers and militancy and
6 heavy firepower possessed by anti-fascist organizations around
7 the country that were seeking to prevent us from utilizing our
8 permit, no, I don't believe that would be extreme or excessive.

9 BY MS. DUNN:

10 Q "Removing commie from Lee Park" sounds like a physical
11 activity, no?

12 A I believe the general idea at the time was to arrive early
13 so that the park would be maintained for the permitted
14 rally-goers so no one else would be able to enter the park and
15 thereby deny us our permit.

16 Q I'm focusing you on this language in the post that's
17 directed at you in this one-on-one conversation. And my
18 question to you is whether "removing commie from Lee Park"
19 sounds physical to you.

20 A Well, again, the idea of the plan of arriving before
21 counter-protesters seized the space to deny us our permit would
22 thereby mean it would be entirely peaceful.

23 MS. DUNN: Your Honor, move to strike.

24 MR. SMITH: Your Honor, that was entirely responsive.
25 We should move on.

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1 THE COURT: Okay. You asked a question that could
2 have given an opinion. It wasn't a yes-or-no answer,
3 necessarily.

4 MS. DUNN: Your Honor, the question was whether
5 "removing commie from Lee Park" sounds physical to this
6 witness, yes or no.

7 THE COURT: Well, it's not necessarily -- well, if he
8 can answer yes or no, answer.

9 THE WITNESS: Not necessarily.

10 BY MS. DUNN:

11 Q And there was no permit to physically remove commies from
12 the park, right?

13 A Which is why the Traditionalist Worker Party did not
14 arrive early on the day of August 12th.

15 MS. DUNN: Your Honor, again, move to strike. The
16 question is simply, yes or no, was there a permit to physically
17 remove commies from the park?

18 MR. SPENCER: That's a -- objection. That's a
19 ridiculous question.

20 MR. SMITH: Argumentative.

21 MR. JONES: It's argumentative, Your Honor.

22 THE COURT: That's not appropriate.

23 Can you answer the question?

24 THE WITNESS: Could you repeat the question?

25 BY MS. DUNN:

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1 Q Yes. You mentioned a permit. My question is: There was
2 no permit to physically remove commies from the park, was
3 there?

4 A No, but there was also not a permit by armed anti-fascists
5 to deny us our First Amendment rights.

6 MS. DUNN: Your Honor --

7 MR. SMITH: Your Honor, she asked the question.

8 THE COURT: They don't issue special permits to
9 remove people from the park. He had a permit for whatever
10 affair they were having.

11 Let's move on.

12 BY MS. DUNN:

13 Q Mr. Heimbach, you just said there was a plan to arrive
14 prior to the counter-protesters. There was no need, therefore,
15 to confront counter-protesters outside the park, correct?

16 A In terms of what? Do you mean -- because the plan to
17 arrive early, we did not participate in. So we would arrive at
18 the permitted time in accordance with the plan we had with the
19 Charlottesville Police Department.

20 So what's the context you're asking? There were two
21 separate plans. The plan we went with on the day of August
22 12th was the one we had made with the Charlottesville Police
23 Department on when to arrive and from what entrance to arrive
24 to.

25 Q When you said you had a conversation with the police, who

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1 is it you spoke to?

2 A Primarily that was handled by Ike Baker, the head of
3 security for the League of the South. He is the one who, to
4 the best of my knowledge, secured our permission to park in the
5 parking garage on Market Street directly next to the police
6 station, along with the time we were going to be entering the
7 park.

8 Q Mr. Heimbach, will you please look at your deposition,
9 page 534, lines 16 to 22?

10 A Which line?

11 Q 534, 16 to 22.

12 A Yes.

13 Q And you were asked the question: "When you said you had a
14 conversation with local police about it, who is it that you
15 spoke to?" And --

16 A I believe I had a single conversation confirming the plan
17 with a Charlottesville police officer. As I said in the
18 deposition, in all of my years of participating in organizing
19 rallies, I never had to take detailed notes on badge numbers,
20 but I confirmed that the plan was for us to be allowed to park
21 in the Market Street garage with the permission of the
22 Charlottesville Police Department and enter down Market Street
23 to the protest.

24 MS. DUNN: Your Honor, move to strike. I was in the
25 middle of reading a Q and A from Mr. Heimbach's deposition. He

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1 testified here today when asked this same question that this
2 was handled by Ike Baker. In his deposition --

3 THE WITNESS: Primarily handled.

4 MS. DUNN: In his deposition his answer was, "I'm not
5 sure. I mean, you guys have my phone record. So that should
6 help maybe. I can't recall any names. I never needed to -- in
7 all my years of organizing events I've never needed to write
8 down the officer's name in question."

9 BY MS. DUNN:

10 Q Mr. Heimbach, were you asked that question and did you
11 give that answer?

12 A Yes. And as I just responded to you --

13 Q Thank you, Mr. Heimbach. Thank you.

14 A -- I said primarily --

15 Q Thank you, Mr. Heimbach.

16 A Primarily handled by Ike Baker.

17 Q So returning to Exhibit 587, further down the page after
18 RCO Nick talks about removing commie from the park, you say,
19 "12 police surplus riot shields, numbers right now 60-ish."

20 So in the last message we saw that you were contemplating
21 50 guys. Is it fair to say that now it's up to 60?

22 A In terms of Traditionalist Worker Party members planning
23 to currently attend the rally, yes.

24 Q And how many in the shield wall?

25 A Well, we had 12 shields, so.

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1 Q Allocated randomly?

2 A Yes.

3 Q All right. If you look at page 2, RCO Nick asks I think
4 the same question I just asked: "Is that 60 number just TWP?"
5 And you say it is.

6 And Mr. Spalding, if we could see the rest of this.

7 RCO Nick says, "Awesome, appreciate it. Could get really
8 interesting." Do you see that?

9 A I do.

10 Q And you agreed; do you see that?

11 A Yes.

12 Q And then you say, "It's really up to us. If we don't take
13 the park, it's over before it began."

14 Do you see that?

15 A I do.

16 Q And RCO Nick says, "Exactly. And we can't depend on
17 anyone outside of, as Ike described it, the hard right. I'm
18 trying to get an official stance from IE right now. If they
19 won't assist, I want it on record."

20 So just to break this down, Mr. Heimbach, when he says "we
21 can't depend on anyone outside of, as Ike discussed," that's
22 Ike Baker of League of the South, correct?

23 A Correct.

24 Q "Outside of the hard right." He's saying the hard right
25 could be depended on to take the park, correct?

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1 A That seems reasonable.

2 Q Is that what you took him to be saying?

3 A Yes.

4 Q And is it your testimony today that the hard right was
5 more likely to get somewhere early?

6 A Sorry? Would we be more likely than other rally attendees
7 to arrive early?

8 Q Right.

9 A Perhaps.

10 Q Okay. So -- because your previous testimony is that this
11 idea of removing commie from the park was part of a plan just
12 to get there early. And so this post says the hard right could
13 be depended on to take the park. So I want to know if your
14 testimony to us is going to be that the hard right was more
15 likely to get there early that day?

16 A Sure, but the hard right organizations as Mr. Baker would
17 have described did not arrive early that day.

18 Q Right. I understand that. I'm just trying to figure out
19 what it means that only the hard right could be depended on to
20 take the park.

21 A Sure.

22 Q I want to figure out if what you're saying, consistent
23 with your prior testimony, is that you were more likely just to
24 get there early.

25 A Due to our organization and experience with events and

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1 organizing, yes, that seems reasonable.

2 Q So that's what you meant here? That's what's being
3 discussed?

4 A I believe so.

5 Q Okay. So if you look at the last line, then, RCO Nick
6 says, "Exactly." We just talked about that part. And he says,
7 "I'm trying to get an official stance from IE right now. If
8 they won't assist, I want it on record."

9 So you are talking about something that IE may not be
10 willing to do, correct?

11 A Correct.

12 Q Okay. And is it going to be your testimony that IE might
13 not be willing to get there early?

14 A Identity Evropa and the Traditionalist Worker Party and
15 other organizations had a fraught relationship that was also
16 very much at odds with one another due to subcultural and class
17 differences. So it was our opinion at the time that they
18 fundamentally could not be relied upon really for anything.

19 Q And so when RCO Nick says "if they won't assist," this
20 means they won't assist with getting there early, they were
21 just --

22 A To ensure that the park would remain in the hands of the
23 permit-goers.

24 Q And so your testimony, just to put a fine point on this,
25 is not that the hard right could be relied upon to be more

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1 violent or aggressive, and that that has nothing to do with why
2 other groups might not be willing to do it.

3 MR. SMITH: Objection, argumentative, Your Honor.

4 THE COURT: You may answer the question.

5 THE WITNESS: I would say the discipline and
6 organization of groups such as myself were more reliable to
7 ensure that there wouldn't be violence. We were used to,
8 unfortunately, being attacked by anti-fascists at
9 demonstrations.

10 MS. DUNN: Your Honor, I'd move to strike. I also
11 would like to publish this exhibit to the jury. I think it's
12 been admitted, and I want to make sure we can display it.

13 MR. SMITH: Your Honor, we oppose the motion to
14 strike. The rest of that, you know, as far as admitting
15 evidence, we're fine with that. But we don't believe that the
16 response should be stricken.

17 THE COURT: Restate your question. Strike that and
18 restate the question and let him give an answer.

19 MS. DUNN: Your Honor, may we also publish the
20 exhibit that we're talking about?

21 THE COURT: Yes.

22 THE CLERK: Just to be clear for the record, what
23 exhibit is it?

24 MS. DUNN: 587. Thank you.

25 Ms. Wheeler -- oh, thank you so much.

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1 BY MS. DUNN:

2 Q Okay. So for the sake of the jury who is seeing this,
3 we're talking about the last post where -- well, Mr. Heimbach
4 says, "It's really up to us. If we don't take the park, it's
5 over before it began." And RCO Nick says, "Exactly. And we
6 can't depend on anyone outside of, as Ike described it, the
7 hard right. I'm trying to get an official stance from IE right
8 now. If they won't assist, I want it on record."

9 Mr. Heimbach, I just want to ask you whether it's your
10 testimony, yes or no, that this has nothing to do with violence
11 or physical aggression, the idea of taking the park in a way
12 that IE might not want to participate in?

13 A Self-defense, yes.

14 Q Okay. Earlier I thought you were saying this had to do
15 with they couldn't be relied upon to get there early enough.

16 A Yes, but also we as an organization were used to being
17 attacked by armed anti-fascists that unfortunately has become a
18 norm across this country for even political conservatives.

19 Q Okay. But are you standing by your testimony that this
20 had to do with getting there early?

21 A Yes. Getting there early, and if we were attacked by
22 armed demonstrators, then we would defend ourselves.

23 Q And you didn't think IE would be willing to do that?

24 A No, they were more the boat shoes, bougie types.

25 Q And they wouldn't be willing enough to use the physical

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1 power as the hard right would be in a circumstance at the
2 event, correct? That's what you're saying?

3 A To defend themselves within the limits of the law, no, not
4 necessarily.

5 Q Okay. So we'll talk -- we will get to self-defense. I
6 just want to make sure that we understand your testimony about
7 this particular exhibit.

8 Can we look at Plaintiffs' Exhibit 649.

9 Oh, I'm sorry, I apologize. Mr. Heimbach, that exhibit
10 that we saw, does that say anything about self-defense? Do you
11 see it anywhere in there?

12 A No, but that would be generally understood.

13 Q Right. Instead of self-defense it talks about, "as you
14 may already know, we may have to remove commie from Lee Park."
15 Do you see that?

16 A I do.

17 Q And before I believe you said that had to do with getting
18 there early. Is it now your testimony that you say that's
19 about self-defense?

20 A Not necessarily. There was the potential for self-defense
21 due to the threats of violence levied against our organization
22 and others on the weekend of August 12th, 2017.

23 Q Mr. Heimbach, my question is before you said this had to
24 do with getting there early. Is it now your testimony that
25 this is about -- this "remove commie" is about self-defense?

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1 MR. SMITH: Objection, asked and answered.

2 MS. DUNN: Your Honor, this question has not been
3 answered.

4 THE COURT: Answer the question, sir.

5 THE WITNESS: There's a continuity of understanding
6 where the idea would be to arrive before anyone at the park
7 because there would be no points of contact. Then if
8 counter-protesters attempted to seize the park through
9 violence, then there would be an understanding that we would
10 defend ourselves with purely defensive implements such as
11 shields.

12 BY MS. DUNN:

13 Q And you don't see that anywhere in this post, correct?

14 A I think that's kind of understood. Not bringing weapons
15 but having defensive things such as shields would indicate
16 self-defense.

17 Q I'm just asking, Mr. Heimbach, do you see that anywhere
18 here?

19 A No, but that would be my understanding.

20 Q Okay. Let's move on to Plaintiffs' Exhibit 649. This is
21 a collection of Discord posts in the tradworker server in the
22 lobby channel that includes posts by you. Do you see this?

23 A Yes.

24 MS. DUNN: Your Honor, move to admit 649.

25 THE COURT: It will be admitted.

M. Heimbach - Direct

1 (Plaintiffs' Exhibit 649 marked.)

2 (Plaintiffs' Exhibit 649 admitted.)

3 BY MS. DUNN:

4 Q If you direct your attention to page 1, it's a few days
5 later now, July 29th of 2017, where someone writes to you, "I
6 am wondering what equipment like helmets do we need for
7 Charlottesville." Do you see that?

8 A I do.

9 Q In response you write, "The party has ordered 40 helmets
10 for us, plus 12 military surplus helmets. So the front lines
11 will have 12 riot shields, 52 helmets." Do you see that?

12 A I do.

13 Q And then somebody writes in response to that, "Heil
14 Hitler." Do you see that?

15 A I do.

16 Q If you go to page 2, you respond to this and you say, "It
17 will be solid alongside our League of the South and Vanguard
18 allies. We'll have an unbreakable line."

19 And so is it fair to say that at this point you were
20 preparing an unbreakable line of TWP members and others,
21 including League of the South, with helmets and shields?

22 A Well --

23 Q That's fair to say, right?

24 A The helmets, hard hats, because, again, working class, and
25 shields to protect ourselves at the rally, yes.

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1 Q So your testimony is that when people are talking about
2 helmets they're -- you want us to understand that as hard hats?

3 A Yes. The majority of them were OSHA-approved hard hats.

4 Q Okay. Please look at Plaintiffs' Exhibit 615.

5 And actually, sir, I just want to make sure I get a clear
6 answer to my last question. The question was, so it's fair to
7 say --

8 MR. SMITH: Your Honor, objection. Can we not
9 editorialize like that, implying the last answer wasn't clear?

10 THE COURT: Just state -- just ask a question.

11 BY MS. DUNN:

12 Q So it's fair to say, Mr. Heimbach, that at this point you
13 were preparing an unbreakable line of TWP members and others,
14 including League of the South, with helmets and shields,
15 correct?

16 A Correct, because the idea was that there would be elderly
17 folks, Russian Orthodox priests and women attending the event
18 with us. So the --

19 THE COURT: Don't -- after you answer the question,
20 don't expand on it because then they have to come back --

21 THE WITNESS: I apologize, Your Honor.

22 THE COURT: -- and clear that up.

23 THE WITNESS: Then yes.

24 BY MS. DUNN:

25 Q All right. If you would look at Plaintiffs' Exhibit 615,

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1 which is on your screen. This is a Discord post by somebody
2 named Commander Davis. It's in the lobby of the tradworker
3 server that you were one of the moderators of. Do you see
4 this?

5 A I do.

6 (Plaintiffs' Exhibit 615 marked.)

7 BY MS. DUNN:

8 Q And Mr. Davis, his name is Derrick Davis, he marched with
9 you on August 12th. And sometimes actually with his hand on
10 your shoulder so that you would not be separated. Do you
11 remember that?

12 A Yes.

13 Q And Mr. Davis also made the armbands that TWP members,
14 including yourself, wore, right?

15 A Correct.

16 MS. DUNN: Your Honor, we move to admit 615.

17 THE COURT: Be admitted.

18 (Plaintiffs' Exhibit 615 admitted.)

19 BY MS. DUNN:

20 Q Okay. So this is the post in the lobby of the tradworker
21 server. They're photographs of shields, correct?

22 A Correct. Shields that, to the best of my knowledge, never
23 were brought to Charlottesville in any capacity.

24 Q Mr. Heimbach, in your deposition were you asked: "And
25 were these shields used?" And did you answer, "I don't know if

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1 those ever made it to Charlottesville or ever got used, to be
2 honest." Was that your answer?

3 A Yes.

4 Q So they may have been. You just didn't know at the time
5 of your deposition?

6 MR. SMITH: Objection, Your Honor, calls for
7 speculation.

8 THE COURT: Overruled.

9 THE WITNESS: I don't believe I ever saw them.
10 Mr. Davis was very interested in woodworking as a hobby, and
11 made a variety of things as a personal project.

12 BY MS. DUNN:

13 Q All right. So is your testimony that this post, which is
14 from -- let's look at the date -- that this post has nothing to
15 do with -- well, let me ask this a different way: Another TWP
16 member says in the same post that these are "kike-bashing
17 shields." Do you see that?

18 A I do.

19 Q Okay. And so your testimony is that this post is really
20 about Mr. Davis's woodworking hobby?

21 A Indeed, because I don't believe those shields were ever
22 brought to Charlottesville.

23 Q Well, in your deposition you said you weren't sure. Now
24 you don't believe it. Are you going to stand by your
25 deposition testimony?

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1 A I believe I'm expressing a very similar sentiment.

2 Q But you agree, don't you, that these are photographs of
3 real shields that have nails sticking out of them, correct?

4 A I don't -- well, I don't know if they have nails sticking
5 out of them.

6 Q Why don't we look at the picture again, then. Do you see
7 that?

8 A Yes. If you could zoom in, please.

9 Q Can you see on -- actually both these shields have nails
10 sticking out of them. You don't disagree with that, do you?

11 A No, that looks like it.

12 Q Okay. Let's move along to Plaintiffs' Exhibit 2221. This
13 is a post of yours. You recognize it, correct?

14 (Plaintiffs' Exhibit 2221 marked.)

15 A Correct.

16 Q Is this a post in Gab?

17 A I believe so.

18 Q Okay.

19 MS. DUNN: Your Honor, we move to admit 2221.

20 THE COURT: Be admitted.

21 (Plaintiffs' Exhibit 2221 admitted.)

22 BY MS. DUNN:

23 Q Okay. So Mr. Heimbach, the picture that the jury is
24 seeing right now is a picture of TWP members at Charlottesville
25 on August 12th with the riot shields that you had provided,

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1 correct?

2 A Correct.

3 Q Okay. And we spoke earlier about the allocation of
4 shields. Who are these people, if you know their identities?

5 A It's hard to tell.

6 Q Do you know who they are?

7 A No, not for certain.

8 Q How about at all?

9 MR. JONES: Objection, calls for speculation. Asked
10 and answered.

11 THE COURT: Overruled.

12 BY MS. DUNN:

13 Q Mr. Heimbach, please identify the people that we see in
14 this photograph.

15 A I think one of them might be -- I don't know. I wouldn't
16 want to speculate.

17 Q Is one reason it's hard to see who they are that they're
18 wearing goggles over their faces?

19 A Yes, so they wouldn't be pepper-sprayed and incapacitated
20 by anti-fascists.

21 MS. DUNN: Your Honor, move to strike. The question
22 is simply whether one of the reasons Mr. Heimbach is having a
23 hard time identifying his members is because they have goggles
24 on their faces.

25 THE COURT: All right. I'll strike all after "yes."

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1 BY MS. DUNN:

2 Q And then, Mr. Heimbach, if you look at the -- I'm sorry.
3 Mr. Spalding, can we keep up this post.

4 If you look at in particular these individuals all the way
5 on the left, is it your testimony that what they're wearing on
6 their heads are hard hats?

7 A No, but those are not the helmets or hats provided. The
8 ones on the right side of the photograph, however, are hard
9 hats.

10 Q Okay. But you are not going to disagree that all of these
11 people holding these TWP shields, that you put this -- that you
12 put in a picture on your own Gab account, that these are TWP
13 members, correct?

14 A I believe so, or supporters.

15 Q Okay. All right. Mr. Spalding, can we see the whole
16 post, please.

17 All right. So Mr. Heimbach, you posted this under the
18 hashtag tradworker?

19 A Uh-huh.

20 Q It says, "We don't scream for the police like any old
21 veterans association, nor do we hide like cowardly members of
22 the bourgeoisie behind their fences and wait like cowards for
23 whatever fate has in store. We step onto the streets and use
24 our fists against terror." Do you see that?

25 A I do.

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1 Q Again, you cite for this proposition that you're posting
2 under the Traditionalist Worker Party and your own name,
3 Dr. Joseph Goebbels, the prime minister of Hitler's party.

4 A Yes.

5 Q That's correct.

6 A I believe he was speaking in reference to anti-fascist
7 violence at the time.

8 Q But that's not what you put in your own post. What you
9 put in your post was "We step onto the streets and use our
10 fists against terror," with a picture of your people that day.
11 Isn't that correct, sir?

12 A The fists against terror would be in reference to the
13 hundreds of members of the SA who were wounded or killed as
14 they were attacked by their political enemies on the streets of
15 Germany.

16 MS. DUNN: Your Honor, again, I move to strike. I'm
17 asking Mr. Heimbach whether he posted this, not for an
18 exposition on what Dr. Goebbels meant.

19 THE COURT: Motion granted.

20 MS. DUNN: Thank you, Your Honor.

21 BY MS. DUNN:

22 Q Mr. Heimbach, we're going to show you a screenshot that's
23 labeled PX2901. Do you see this?

24 A Yes.

25 Q And you see in the back right of this screenshot there is

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1 a TWP shield. Do you see that?

2 A Yes.

3 MS. DUNN: Your Honor, move to admit 2901.

4 THE COURT: Be admitted.

5 (Plaintiffs' Exhibit 2901 marked.)

6 (Plaintiffs' Exhibit 2901 admitted.)

7 BY MS. DUNN:

8 Q Thank you. And if we could display on the screen for the
9 jury, this is a screenshot from the beating of a man named
10 DeAndre Harris. Do you know who DeAndre Harris is?

11 A Individual who himself, right before this video -- or
12 screenshot is taken, viciously assaulted a man on the streets
13 of Charlottesville as counter-protesters were attempting to
14 leave the city in accordance with the governor's order.

15 MS. DUNN: Your Honor, move to strike. The question
16 was do you know who DeAndre Harris is.

17 MR. SMITH: Your Honor, he answered the question.

18 THE COURT: He answered the question.

19 BY MS. DUNN:

20 Q And Mr. Heimbach, you know that Mr. DeAndre Harris was
21 found to have committed no wrongdoing. You're aware of that,
22 aren't you?

23 MR. JONES: Your Honor, I'm going to object.

24 THE COURT: No, that's not --

25 MR. JONES: Ask that be struck from the record.

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1 MR. SMITH: Absolutely that should be stricken.

2 THE COURT: I sustain the objection.

3 BY MS. DUNN:

4 Q I'd ask you -- actually, Mr. Spalding, can we put up this
5 Exhibit 2901 side by side with the prior exhibit that we just
6 talked about, Mr. Heimbach's post, 2221.

7 Now, Mr. Heimbach, all the way left in the photograph you
8 posted, this individual who you did not identify has a shield.
9 And if you could look at his necklace, do you see that?

10 A I do.

11 Q Okay. And if we could close up on the individual who's
12 standing above Mr. DeAndre Harris, do you see this individual?

13 A I do.

14 Q Okay. And you see the necklace and you see that the
15 necklace is the same and the shield is the same and the helmet
16 is the same and the goggles are the same. Do you see that?

17 A I do.

18 Q Okay. Are you willing to agree with me this is the same
19 person?

20 A Yes.

21 MS. DUNN: Your Honor, we'd like to play -- well,
22 first of all, Mr. Heimbach -- well, Your Honor, we'd like to
23 play Plaintiffs' Exhibit 2368 for the witness. And the
24 question to the witness is whether he can see the TWP shields
25 in this video.

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1 (Plaintiffs' Exhibit 2368 marked.)

2 (Video playing.)

3 THE WITNESS: Yes.

4 MS. DUNN: Your Honor, we move to admit 2368.

5 MR. JONES: Your Honor, I'm going to object. He
6 can't authenticate it.

7 MS. DUNN: Your Honor, we're asking him just to
8 identify the shields of TWP and his co-defendant who we think
9 he'll be able to recognize in the video. This exhibit is
10 coming in anyway through that co-defendant.

11 MR. SMITH: Since it's coming in, Your Honor, can we
12 also admit the video of DeAndre Harris right before this?

13 THE COURT: Are you conducting an examination at this
14 time? Please don't ask me -- I'm not running a law school. So
15 don't ask me legal questions when you're not -- it's not your
16 turn.

17 Get back to what you were saying.

18 MS. DUNN: Your Honor, we'd ask to play this video so
19 that Mr. Heimbach can identify the TWP shields that he has
20 discussed at length.

21 THE COURT: Is this a -- I mean, something that was
22 filed?

23 MS. DUNN: Yes. Very much.

24 THE COURT: Was there an objection to it?

25 MS. DUNN: Excuse me?

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1 THE COURT: Was there any objection filed to it?

2 MS. DUNN: None that I'm aware of.

3 THE COURT: Okay. I don't understand why there's an
4 objection now.

5 MS. DUNN: Thank you, Your Honor. May we play the
6 video?

7 (Plaintiffs' Exhibit 2368 admitted.)

8 (Video playing.)

9 BY MS. DUNN:

10 Q Mr. Heimbach, in that video did you see people using TWP
11 shields to beat Mr. Harris?

12 A Following Mr. Harris's unprovoked assault on an old man,
13 yes, it did appear TWP shields were used.

14 MS. DUNN: Your Honor, we'd ask that if this
15 testimony is permitted, we be permitted to put in evidence that
16 Mr. DeAndre Harris was found through the courts of law and
17 so --

18 MR. JONES: Your Honor, I'm going to object to this
19 statement being made in front of the jury.

20 THE COURT: Can we agree, then, that none of the
21 defendants except Mr. Fields was charged with a crime? That's
22 exactly what -- the type of evidence you're seeking to get in.
23 And none of the plaintiffs were charged with a crime; isn't
24 that correct?

25 MS. DUNN: Your Honor, may we have a sidebar?

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1 Thank you.

2 (Sidebar commenced.)

3 MS. DUNN: Do you want me to go?

4 THE COURT: Yes.

5 MS. DUNN: Okay.

6 THE COURT: I have sustained the objection to that
7 earlier.

8 MS. DUNN: Here's the problem. They keep opening the
9 door by assigning fault to a person who was beaten. And so
10 here's what happened: There were four individuals who were
11 convicted of assault, of beating Mr. DeAndre Harris. This
12 witness wrote them letters, and very lovely letters. And --

13 THE COURT: So what?

14 MS. DUNN: Well, because it's -- Your Honor has said
15 it's about the ratification of the violence. And the issue is,
16 that is separate from the convictions, which I never would have
17 had to talk about, but this witness keeps saying he didn't --
18 you know, he's to blame for being beaten. And he's not to
19 blame.

20 THE COURT: I didn't hear him say that.

21 MS. DUNN: He did. He said that several times.

22 THE COURT: He said -- he did, but that -- you didn't
23 move to strike that.

24 MS. DUNN: Well, he -- I did, and he keeps saying it.

25 THE COURT: Here's the thing. Now, you think that

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1 it's admissible that your side wasn't convicted of a crime.

2 But you don't think that --

3 MS. DUNN: I don't think that. I don't think that.

4 The problem is, this witness has now put it into evidence

5 several times. I did object.

6 THE COURT: Well, so what that -- so what that --

7 MS. DUNN: He keeps saying it.

8 THE COURT: -- some judge somewhere said that

9 Mr. Harris was not --

10 MS. DUNN: I think it was a jury.

11 THE COURT: -- was not involved? Or a jury. So

12 what?

13 MR. SMITH: No, Your Honor -- Your Honor may --

14 THE COURT: Excuse me.

15 MR. SMITH: I'm sorry, Your Honor. I'm sorry.

16 MR. LEVINE: Your Honor, may I speak?

17 THE COURT: Yes.

18 MR. LEVINE: So the beating of the black man in the

19 garage is an event that's charged in the complaint as part of

20 the racially motivated violence in this case.

21 THE COURT: Okay. So why doesn't a jury verdict in a

22 criminal -- a jury -- was he charged with a crime?

23 MR. LEVINE: No, Your Honor. So four individuals

24 were charged with beating this man and were convicted. The

25 defendants are trying to raise the argument that the man that

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1 was beaten had -- several minutes or whatever before that
2 beating had himself struck somebody of the protesters. That's
3 the facts that they're trying to elicit. And --

4 THE COURT: Tell me --

5 MR. LEVINE: And -- Your Honor, one more sentence.
6 One more sentence.

7 THE COURT: Where -- I mean, where is it that what
8 happened in another trial somewhere is admissible in this case?
9 That's what I don't understand.

10 MR. LEVINE: The point -- Your Honor, they are
11 claiming that -- that it was an act of self-defense.

12 THE COURT: Well, I don't care if they claim it. You
13 can't call (inaudible) and ask her to come up here and
14 contradict it. I mean, this witness is alive, right?

15 MR. LEVINE: Mr. Harris?

16 THE COURT: Yeah. He can testify.

17 MS. DUNN: We don't have him on our witness list,
18 Your Honor.

19 THE COURT: Well, you don't get hearsay in. I mean,
20 that's --

21 MR. LEVINE: We're not. All we're trying to do, Your
22 Honor, if they are opening the door to the fact that
23 Mr. Harris --

24 THE COURT: No. I'm going to slam the door right
25 now. I mean, how you are hung up on this thing in this case is

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1 beyond me. Can't you prove that by the witnesses?

2 MS. DUNN: I think --

3 THE COURT: The guy is lying on the ground being
4 beaten with a stick. That doesn't make it -- even if he ran
5 over somebody with a car, that doesn't justify somebody hitting
6 him.

7 MS. DUNN: I agree with you. I agree with you. I
8 just -- what I was reacting to is the witness constantly saying
9 that it was this person's fault that he was -- that he was
10 beaten. And I do think we would ask Your Honor to -- we would
11 move to strike that testimony, because it is not appropriate to
12 argue that it is this person's fault that he is being beaten.

13 MR. JONES: He didn't say that. All he said was that
14 Mr. Harris had struck somebody else.

15 MR. LEVINE: No, viciously. Viciously attacked an
16 elderly man. That's pretty vicious. It's on video, too.

17 (Overlapping speakers.)

18 MR. JONES: We're going to ask Your Honor to play the
19 full video of the incident.

20 THE COURT: Okay.

21 MS. DUNN: All I want to do is have this witness
22 identify the use of the shields and a co-defendant. That's
23 all.

24 MR. SPENCER: Your Honor, if it would help matters
25 towards their resolution -- I'll just -- I'll say this: If it

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1 would help matters if we could agree that it could be
2 established to the jury that I have not been charged with any
3 crime, I would be willing -- why is that funny?

4 THE COURT: Well, that's what I'm saying. It doesn't
5 make any difference who was charged.

6 MR. SPENCER: I get that, but there seemed to be a
7 suggestion that we could agree to that.

8 I would also prefer sarcastic guffawing --

9 THE COURT: You may not speak to other lawyers.

10 MR. SPENCER: Well, he may not sarcastically huff and
11 puff.

12 THE COURT: Well, you can do it on your side.

13 (Overlapping speakers.)

14 MR. CANTWELL: May I?

15 Judge, I'm surprised nobody else has brought this up.
16 The implication that they're making is that the beating of
17 DeAndre Harris was racially motivated. Okay? He's pointing
18 out that that's not the reason that those men are beating
19 him --

20 THE COURT: Well, he knows -- was he there?

21 MR. CANTWELL: He's well aware of the facts and the
22 issues.

23 (Overlapping speakers.)

24 THE COURT: Was he there?

25 MR. CANTWELL: No.

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1 THE COURT: Did he see Mr. Harris strike someone?

2 MR. CANTWELL: I don't know.

3 THE COURT: I don't think so.

4 All right.

5 MS. DUNN: Thank you.

6 (Sidebar concluded.)

7 THE COURT: Members of the jury, as far as it's been
8 developed in this case, this witness was not present when
9 Mr. Harris was beaten before, and he wasn't -- he didn't see
10 anything; is that correct, sir?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: You did not see Mr. Harris?

13 THE WITNESS: Correct. I was on the --

14 THE COURT: Anything that he said regarding
15 Mr. Harris doing anything or whatever is not admissible. And
16 you should disregard it.

17 And as far as that's concerned, anything that might
18 have happened, whether somebody was charged with an offense and
19 acquitted, or charged and even convicted, has nothing to do
20 with your decision in this case.

21 You decide this case based on the facts that you hear
22 and see in this case and not -- and generally, it's not going
23 to be admissible what might have happened in some other case,
24 unless somebody pled guilty, which -- that's an admission.

25 But anyway, disregard whether anybody else was

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1 charged or not charged, and in particular what this witness
2 might have said about Mr. Harris, because he wasn't there.

3 Go ahead.

4 MS. DUNN: Thank you, Your Honor.

5 BY MS. DUNN:

6 Q Mr. Heimbach, my questions to you about this video have to
7 do with what -- the use of the TWP shields.

8 What did you see TWP shields used for in this video? And,
9 if it's helpful, we can play it again.

10 A It looked like there was an ongoing conflict by mutual
11 combatants.

12 Q All right. So did you see that in this video a man is
13 beaten using the TWP shields?

14 A I wouldn't necessarily say "beaten." As I said, there was
15 an ongoing conflict between mutual combatants.

16 Q Did you see in this video a person with a clear TWP shield
17 shove Mr. Harris to the ground and kick Mr. Harris repeatedly
18 while he was on the ground trying to crawl away?

19 A Yes.

20 Q And did you see another TWP member chasing after
21 Mr. Harris as he stumbled to the ground?

22 A I think that would be speculation to say that he was
23 chasing anyone.

24 Q And your view of this video is that this is mutual
25 conflict?

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1 A Yes.

2 Q And I will ask you, Mr. Heimbach, to identify in this
3 video co-defendant Michael Tubbs. I think to do that we have
4 to show -- do you see Mr. Tubbs in this photograph?

5 A I do.

6 Q Okay. Where is he?

7 I'll also ask you to identify whether you see the Vanguard
8 America shield in this video.

9 A Yes.

10 Q Where is that?

11 And in this video, do you also see the TWP armband?

12 A Yes.

13 Q And where is that?

14 A (Indicating.)

15 Q All right. Thank you, Mr. Heimbach.

16 The Nationalist Front we talked about earlier also met in
17 person in July of 2017 in Tennessee, specifically to discuss
18 planning for Charlottesville 2.0, correct?

19 A Yes, we had an event.

20 Q And at the July 2017 planning meeting in Tennessee, there
21 were members of League of the South, NSM; Jeff Schoep was
22 there. I have that all right, correct?

23 A I believe so, yes.

24 Q And a man named Michael Chesny was also there, correct?

25 A Yes.

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1 Q And you're aware that Mr. Chesny's Discord name, the name
2 he went by on Discord, was Tyrone, correct?

3 A Yes.

4 Q Okay. And you're also aware that Tyrone, or Mr. Chesny,
5 was placed in charge of transportation for Charlottesville 2.0,
6 correct?

7 A Yes.

8 Q All right. And it's your testimony that this was a
9 meeting where planning for Charlottesville 2.0 was discussed, a
10 month ahead of time, people traveled from out of town, and the
11 only thing you can remember discussing at this planning meeting
12 was carpooling; is that correct?

13 A I believe so. We also had speeches that day, a meal,
14 fellowship. So it was a busy day.

15 Q Okay. But when you were asked, "what specifically did you
16 discuss regarding Unite the Right at that meeting," you
17 answered: "Primarily carpooling, I believe."

18 And you were asked: "Anything else?" And you said: "Not
19 that I can recall"; is that accurate?

20 A That would be accurate. Most of the folks that were there
21 were from that region of Tennessee or close by.

22 Q Okay. So the fact that they were from nearby meant that
23 only carpooling would be discussed?

24 A That would be the primary point of conversation.

25 Q Okay. Would you take a look at Plaintiffs' Exhibit 2268,

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1 please?

2 (Plaintiffs' Exhibit 2268 marked.)

3 BY MS. DUNN:

4 Q Do you recognize this as a post that you made on Twitter?

5 A Yes.

6 Q In November of 2016, less than a year before the car
7 attack in this case?

8 A Less than a year before August 12th, 2017, correct.

9 Q Are you -- I take it from your answer that you do not want
10 to call it a car attack; is that accurate?

11 A I would say that is irrelevant to me. Any capacity and
12 any reference I would have made the year previous to
13 Charlottesville has no context or connection whatsoever to
14 anything that happened in 2017.

15 Q I'd move to strike. The question is just whether -- I
16 asked you whether this was posted a year before the car attack.
17 And you declined to call it a car attack. All I'm asking you
18 is whether you have a problem calling it a car attack.

19 A I have no opinion on that subject.

20 Q All right.

21 MS. DUNN: So, Your Honor, we'd move to admit
22 Plaintiffs' Exhibit 2268.

23 THE COURT: Be admitted.

24 (Plaintiffs' Exhibit 2268 admitted.)

25 BY MS. DUNN:

M. Heimbach - Direct

1 Q In this tweet that you posted in November of 2016 you say:
2 "Leftist protesters blocking the road with weapons, threats and
3 violence while making you fear for your life? #HitTheGas."

4 Do you see that?

5 A Yes.

6 Q And you did, in fact, post this?

7 A Yes.

8 Q Now, when you were asked about this post, your testimony
9 was that when you said "HitTheGas" and you posted a foot on a
10 gas pedal, what you actually meant was "don't get dragged out
11 of your vehicle"; do you recall that?

12 A Yes. Specifically referencing, for instance, the Reginald
13 Denny case of the LA riots, where a truck driver who did stop
14 during a riot was dragged out of his vehicle and almost beaten
15 to death, yes.

16 Q Where does that appear in this tweet?

17 A It does not specifically, but I did say folks with weapons
18 threatening you and making you fear for your life? It's not
19 your duty or responsibility to be dragged out of your vehicle
20 and beaten to death.

21 Q So all the people that saw this tweet were just supposed
22 to read into it that you meant all that, but it doesn't say any
23 of that here?

24 A Well, I think it's generally clear, if you fear for your
25 life and folks with weapons are threatening your life, that

M. Heimbach - Direct

1 yes, escaping the situation would definitely be a wise thing.

2 I don't think that's a partisan position or issue.

3 Q Wait. So what you're trying to communicate is that if
4 there are protesters who are blocking the road, the right thing
5 to do is to run them over with a car?

6 A With --

7 MR. SMITH: Your Honor, argumentative.

8 THE COURT: No, she's asking -- overruled.

9 Answer the question.

10 THE WITNESS: No, because specifically blocking the
11 road, plus weapons, plus threats, plus violence, while making
12 someone in the vehicle fear for their life, is far different
13 than protesters who happen to be blocking a street.

14 BY MS. DUNN:

15 Q Okay. And does it have to be all three of those things to
16 justify getting run over? Do you need weapons, threats, and
17 violence?

18 MR. SMITH: Your Honor, calls for a legal conclusion.
19 Objection.

20 MS. DUNN: This is his witness's post.

21 THE COURT: Asking about his own opinion.

22 MR. SMITH: She seems like she's asking him what the
23 law says as to self-defense.

24 MS. DUNN: Your Honor, I'm asking for this witness's
25 opinion about his own post.

M. Heimbach - Direct

1 THE COURT: Sir, just answer the question.

2 THE WITNESS: I believe if your life is being
3 threatened by folks with weapons, not even hitting protesters,
4 but hitting the gas, so you don't get dragged out of your
5 vehicle like Reginald Denny, seems reasonable.

6 BY MS. DUNN:

7 Q My question, Mr. Heimbach, is whether to justify that, in
8 your opinion, do you need weapons, threats, and violence, or
9 just one of those things?

10 A Well, you said in reference to hitting protesters, and I
11 said nothing about hitting protesters.

12 Q Your testimony is this is nothing about hitting
13 protesters?

14 MR. JONES: Your Honor, I'm going to object. What's
15 the relevance of his opinion on whether you need all three of
16 these things to this case?

17 THE COURT: His motivation is part of the case.

18 THE WITNESS: I have said nothing about hitting
19 protesters, simply not becoming victimized by sitting there and
20 risking being dragged out of your vehicle and killed.

21 BY MS. DUNN:

22 Q Okay. So your testimony, Mr. Heimbach, is that this tweet
23 that you tweeted -- not some private chat --

24 A That says nothing about hitting protesters. Simply
25 preserving one's own life.

M. Heimbach - Direct

1 Q Okay. So it doesn't say #PreserveOnesOwnLife. It says
2 #HitTheGas, right?

3 MR. SMITH: Your Honor, what kind of questions are
4 these?

5 THE COURT: Let him answer the questions.

6 THE WITNESS: Indeed, stepping on the gas would
7 remove your vehicle from you being in a situation where you are
8 dragged out of your vehicle and beaten to death, yes. So
9 hitting the gas has nothing necessarily to do with striking any
10 protesters. Simply removing yourself from the situation is --
11 again, I think is a reasonable, nonpartisan position.

12 BY MS. DUNN:

13 Q And, Mr. Heimbach, one additional question on this topic,
14 then: What constitutes, in your mind, sufficient cause for
15 somebody to get run over by a car in this kind of circumstance?
16 What do they need to actually do to warrant being run over by a
17 car?

18 A Well, I have no comment on running over anyone with a car,
19 merely removing yourself by stepping on the gas, which is in
20 line with legislation that has been proposed and passed in
21 multiple states by state legislators -- legislatures, pardon
22 me. This is not a radical or fringe position, that you have no
23 duty and responsibility to be beaten to death in your own car.

24 Q Thank you, Mr. Heimbach.

25 You were planning to meet with Christopher Cantwell in

M. Heimbach - Direct

1 Charlottesville prior to August 11th and 12th, correct?

2 A Correct. I don't believe that meeting ever happened,
3 though.

4 Q Okay. But on August 10th you exchanged some text messages
5 with Mr. Cantwell. And as we've discussed, we don't have any
6 of your text messages, but we do have some from Mr. Cantwell.
7 So we're going to put those on the screen for you.

8 It's PX3317. Do you see this?

9 (Plaintiffs' Exhibit 3317 marked.)

10 THE WITNESS: I do.

11 BY MS. DUNN:

12 Q We did try to make this more readable. The production
13 was -- the quality was not great.

14 All right. So can you recognize these as texts between
15 yourself and Mr. Cantwell?

16 A Yes.

17 Q And on August 10th of 2017, Mr. Cantwell texts you:
18 "Still wanna meet up this evening? What time? I'm also
19 planning a meetup tomorrow at noon."

20 And so before Mr. Cantwell says "this is Cantwell, by the
21 way," you already had a plan to meet up, correct?

22 A Potentially. I can't recall specifically.

23 MS. DUNN: Your Honor, I apologize. I move to admit
24 3317. I neglected to do that.

25 THE COURT: Be admitted.

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1 (Plaintiffs' Exhibit 3317 admitted.)

2 BY MS. DUNN:

3 Q And you responded: "Let's meet tomorrow," meaning
4 August 11th. "I've been severely delayed by rain." And then
5 he texts you back to use the Signal app to encrypt your SMS
6 messages; do you see that?

7 A Yes.

8 Q So Signal is an app that deletes your texts right after
9 you send them; you're aware of that?

10 A Yes.

11 Q And you didn't turn over to us any Signal chats in
12 discovery; you're aware of that?

13 A Yes.

14 Q And you've testified that you can't remember whether you
15 used Signal to communicate about August 11th and 12th, even
16 though here, Mr. Cantwell is telling you to speak with him via
17 this app; is that accurate?

18 A Considering my text messages beyond that going forward are
19 still available, then I would say I most likely did not start
20 using Signal at that time.

21 Q So your position today is that you didn't use it to
22 communicate?

23 A I don't believe so.

24 Q Okay. You text him back that you have his back
25 100 percent. That's after August 12th. That's on the 16th; do

M. Heimbach - Direct

1 you see that?

2 A Yes.

3 Q And he says: "Thanks." And you say: "Victory or death,
4 brother." Do you see that?

5 A Yes.

6 Q And you've testified that when you said "victory or
7 death," what you meant was "meaning you win or you die." Do
8 you remember that?

9 A Yes, the concept that you keep struggling for your goals
10 or you die as you're working to achieve them.

11 Q Okay. So you were willing to die at the event on
12 August 11th and 12th, right?

13 A Considering the amount of times I had been attacked by
14 anti-fascists or threats they had mailed to my house or
15 comments online, there was an understanding, to be a pro-white
16 advocate, that there was danger from the political opposition
17 that liked to chant things like "kill the Nazis, kill the
18 fascists," and they would do everything they could to try to
19 make that happen.

20 Q So my question to you was just whether you were willing to
21 die at the event at August 11th and 12th -- or excuse me,
22 August 12th?

23 A Yes.

24 Q All right. So you arrived --

25 MS. DUNN: We can take this down, Mr. Spalding.

M. Heimbach - Direct

1 BY MS. DUNN:

2 Q You arrived in Charlottesville on August 11th, and you
3 rented a cabin outside of town with about 15 other TWP members;
4 is that right?

5 A Yes.

6 Q Did you travel to Charlottesville with Defendant Parrott?

7 A I believe so.

8 Q You don't remember, but you think --

9 A I believe so.

10 Q Okay. And you've said that you arrived around dinnertime.
11 What time was that, about?

12 A I don't know, mid -- midafternoon-ish.

13 Q So when you said "dinnertime," you meant midafternoon?

14 A Well, there's dinner and supper in the south. So...

15 Q Right. I'm just trying to get some clarity on the time.

16 A Yes. So midafternoon, I believe.

17 Q Okay. And what did you do after you got to
18 Charlottesville around dinnertime?

19 A Went to the store, to Walmart, to get pizza, beer, snacks,
20 things like that. Primarily talked to some journalists, lots
21 of journalists. Talked with Matt Parrott and others.
22 Socialized.

23 Q And did you meet with your membership?

24 A Just the folks who were there at the cabin.

25 Q Okay. The jury has heard already about a torch march on

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1 August 11th. You did not attend the torch march on

2 August 11th, correct?

3 A Correct.

4 Q And your testimony at your deposition is that you
5 specifically instructed all your members and supporters not to
6 go because there wasn't a permit?

7 A Correct.

8 Q But you don't have anything in writing about this
9 directive that you say you gave to all your members and
10 supporters, right?

11 A I believe the fact that our membership didn't attend the
12 event kind of speaks for itself.

13 Q Well, we'll talk about that. But my question to you is
14 whether you had anything in writing about this directive that
15 you say that you gave to all your members and supporters.

16 A I believe Cesar Ortiz, our head of security, had texted
17 folks.

18 Q Mr. Heimbach, in your deposition you were asked whether
19 you recalled a document that specifically instructed members of
20 the TWP not to attend the August 11th event, and you said: "I
21 just remember saying it verbally"?

22 A Yes.

23 Q To your members?

24 A To the folks who were at the cabin, and then other people
25 who had duties and responsibilities in the organization would

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1 have handled it from there.

2 Q Sir, in your deposition you were asked: "And did you
3 attend the torch march?" And your answer was: "Nope. And I
4 specifically instructed all TWP members and supporters not to
5 go because there wasn't a permit"?

6 A Correct.

7 Q Do you stand by that?

8 A I do.

9 Q And your lawyer, Mr. Smith, said in opening that you were
10 not told about the torch march; that you found out only a
11 couple of hours before it was supposed to happen?

12 A I believe that would be accurate.

13 Q Is it accurate?

14 A I don't recall exactly when I first heard of the proposal
15 of the torch march.

16 Q Okay. But is your attorney correct that you heard about
17 it that day?

18 MR. JONES: Your Honor, I'm going to object to
19 quoting attorneys' opening statements to a witness.

20 THE COURT: Sustained.

21 BY MS. DUNN:

22 Q Mr. Heimbach, when did you hear about the torch march?

23 A Before the torch march; not by much, I don't believe, but
24 I don't recall exactly when. I was busy with reporters. I was
25 busy traveling hundreds of miles to the event, trying to manage

M. Heimbach - Direct

1 a lot of different balls in the air. So I'm not exactly sure
2 specifically when, but we decided not to attend it.

3 Q Okay. So I just want to be clear: Is it your testimony
4 that you got there around midafternoon, learned about the torch
5 march, and then called an all-member-and-supporter meeting
6 where you specifically told people not to attend the torch
7 march that night?

8 A No. As I said earlier, there would have been a delegation
9 of responsibilities where, after myself and Mr. Parrott
10 discussed it, we decided that we would not be attending the
11 torch march, and folks such as our head of logistics, Cesar
12 Ortiz, likely would have handled notifying individuals.

13 Q Okay. So when you said "I specifically instructed all TWP
14 members and supporters not to go," what you meant was somebody
15 else did that?

16 A Well, I --

17 THE COURT: Well, he meant what he said. He said he
18 told Mr. Parrott. We've gone over this about ten times.

19 MS. DUNN: Understood, Your Honor.

20 All right. So let's show the witness Plaintiffs'
21 Exhibit 2468.

22 THE COURT: Let's take a recess right now for about
23 20 minutes.

24 **(Jury out, 2:56 p.m.)**

25 (Recess.)

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1 THE COURT: Ready to call the jury back? Okay. Call
2 the jury.

3 **(Jury in, 3:22 p.m.)**

4 THE COURT: All right. Be seated, please. You may
5 proceed.

6 MS. DUNN: Thank you, Your Honor.

7 BY MS. DUNN:

8 Q Mr. Heimbach, before the break at some point you had
9 mentioned the police. Do you remember that?

10 A Yes.

11 Q Do you remember that during the course of this case you
12 received questions and submitted sworn answers?

13 A Yes.

14 Q Okay. And do you remember that you were asked to identify
15 any communications with a government official before, after, or
16 during the events? Do you remember that?

17 A Not off the top of my head.

18 Q Do you recall that, in response to that question, number 7
19 in your interrogatory responses, you said: "To my knowledge,
20 my only communication with government officials for this event
21 was during the event and calling Charlottesville PD
22 officers/assorted state police, quote, pigs, and, quote, class
23 traitors." Do you remember that?

24 A Yes.

25 Q Okay. In August of 2017 your mindset was that you saw

M. Heimbach - Direct

1 cops as traitors to your people and all humanity. Do you
2 remember writing that?

3 A Not off the top of my head, but that would probably be an
4 accurate statement.

5 Q That's what you wrote in your manuscript that we discussed
6 earlier, *White Juche*. Do you remember that now?

7 A Yes.

8 Q You also said that you believe "each cop works and fights
9 for the Jews, no exception." Do you remember writing that?

10 A Yes.

11 Q And you said, "Putting on the uniform isn't honorable,
12 it's treason." Do you remember writing that?

13 A Yes.

14 Q And those were your beliefs at this time, correct?

15 A Yes.

16 Q We briefly discussed the torch march, and I'd like to move
17 on from that. I just have two additional questions. If you
18 could look at Plaintiffs' Exhibit 2468, which is this exhibit.
19 Do you recognize in this picture, you see a man wearing a shirt
20 with the TWP logo? Do you see that?

21 (Plaintiffs' Exhibit 2468 marked.)

22 A Yes.

23 Q Do you know who this is?

24 A No.

25 Q Okay. And you recognize this to be a photo of the torch

M. Heimbach - Direct

1 march?

2 A Yes.

3 Q Okay.

4 MS. DUNN: Your Honor, move to admit Exhibit 2468.

5 THE COURT: Be admitted.

6 (Plaintiffs' Exhibit 2468 admitted.)

7 BY MS. DUNN:

8 Q You also said, Mr. Heimbach, that you didn't support what
9 happened at the torch march, correct?

10 A Correct.

11 Q And yet the next morning you yourself posted photographs
12 from the torch march on Facebook saying, "we will not be
13 replaced, exclamation point, #charlottesville, #virginia,
14 #traditionalistworkerparty, #tradworker, #unitetheright."

15 So your testimony is you didn't support it but the next
16 day you told everybody on Facebook -- you posted photos with
17 the hashtag TWP and tradworker? You don't deny that, right?

18 A As the chairman of the party, most of my posts included
19 that, yes.

20 Q Right. As the chairman of the party, you posted in very
21 enthusiastic support of the torch march, correct?

22 A Correct.

23 Q And I'll just show you PX1811 very quickly, which is a
24 notification of this Facebook post that you made. Do you
25 recognize that?

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1 A Yes.

2 MS. DUNN: Your Honor, we move to admit 1811.

3 THE COURT: Be admitted.

4 (Plaintiffs' Exhibit 1811 marked.)

5 (Plaintiffs' Exhibit 1811 admitted.)

6 MS. DUNN: Thank you.

7 BY MS. DUNN:

8 Q Okay. So let's talk about August 12th. On the morning of
9 August 12th you went to the parking lot of Joann's Fabric,
10 that's a store about 20 minutes outside of Charlottesville,
11 correct?

12 A Correct.

13 Q And 100 or more people gathered there with you, right?

14 A Yes.

15 Q That's about half of your membership and supporters that
16 you talked about earlier?

17 A Sure.

18 Q Why did you gather outside of town?

19 A Well --

20 Q And actually, strike that. I apologize.

21 You were joined there by League of the South, right?

22 A Yes.

23 Q And that included Michael Hill, Ike Baker, and Michael
24 Tubbs, correct?

25 A Correct.

M. Heimbach - Direct

1 Q And Mr. Hill and Mr. Tubbs are defendants in this
2 litigation?

3 A Yes.

4 Q Was Brad Griffin there?

5 A I'm not sure.

6 Q Okay. And other League of the South members like the rank
7 and file, they were there?

8 A Yes.

9 Q You were joined by NSM members, National Socialist
10 Movement?

11 A Yeah. They only had a very small handful, though.

12 Q Okay. Jeff Schoep was there?

13 A Yes.

14 Q Mike Schloer, Brian Culpepper, all there, right?

15 A Yes.

16 Q And other TWP members like Defendant Parrott and Derrick
17 Davis, Commander Davis that we talked about?

18 A Correct.

19 Q Okay. And you were also joined there by the skinhead
20 groups you testified about earlier, the Hammerskins and the
21 Blood & Honour Social Club, correct?

22 A Correct.

23 Q And from Joann's Fabric your group then drove to the
24 Market Street garage, where you parked your car, correct?

25 A Yes, the garage right next to the police station.

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1 Q And you put your car in the Market Street garage?

2 A Yes.

3 Q That same garage we just saw in the video, right?

4 A Yes.

5 Q And you lined up in the garage and led the group out of
6 the garage. You remember that?

7 A Yes.

8 Q Okay. I'm showing you Plaintiffs' Exhibit 2435.

9 You recognize yourself in this photo, as well as your
10 co-defendants, correct?

11 A Yes.

12 MS. DUNN: All right. Your Honor, we move to admit
13 this Exhibit 2435.

14 THE COURT: Be admitted.

15 MS. DUNN: Thank you.

16 (Plaintiffs' Exhibit 2435 marked.)

17 (Plaintiffs' Exhibit 2435 admitted.)

18 BY MS. DUNN:

19 Q Mr. Heimbach, let's talk a little bit about this
20 photograph. You're on the left. You can circle yourself, if
21 you want. Can you do that? If you touch the screen it circles
22 you. There, I just did it.

23 And you're wearing a helmet. You're all dressed in black,
24 correct?

25 A Correct.

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1 Q And Mr. Hill is to your left?

2 A Yes.

3 Q This is Mr. Hill, correct?

4 A Correct.

5 Q And this is Defendant Tubbs right there, right?

6 A Yes.

7 Q And this is Commander Davis right behind you. Do you see
8 that?

9 A Yes.

10 Q Okay. So Defendant Hill has on the uniform that many in
11 the League of the South wore, khaki pants and black on top,
12 right?

13 A Yes.

14 Q Okay. He's also got on black leather gloves in August.
15 Any idea why that was?

16 A I couldn't begin to speculate.

17 Q Okay. And can we look at the glove itself? If we could
18 just zoom in on that. I know it's blurry. Any idea what that
19 is on Mr. Hill's gloves? It looks like some sort of metal?

20 A I have no idea. I didn't inspect the hand wear of my
21 friends.

22 Q But looking at it, you can't tell?

23 A I'm not sure what that is.

24 Q But it's -- okay. And if you zoom out, you can see
25 Mr. Hill is also carrying a cane? You see that?

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1 A He is a senior citizen. Yes.

2 Q So I just want to make sure your testimony is that
3 Mr. Hill is carrying a cane because he is a senior citizen?

4 MR. JONES: Your Honor, I'm going to object to his
5 foundation for knowing why Mr. Hill was carrying a cane.

6 THE COURT: Sustained.

7 BY MS. DUNN:

8 Q So somebody other than Mr. Hill also appears to have a
9 cane or a stick in this photo. You can see it right there. Do
10 you know whose that is?

11 A I can only see the arm in the photo. So I have no idea.

12 Q Okay. But you don't know who that is who is carrying the
13 cane or the stick right behind -- it looks like Mr. Tubbs is
14 right in front of that person?

15 A I have absolutely no way of knowing.

16 Q Okay. And during that day, did you observe Mr. Hill use
17 his cane as a weapon?

18 A No, I don't believe so.

19 Q You didn't see that?

20 A No.

21 Q Okay. So you circled Mr. Tubbs. Mr. Tubbs, Defendant
22 Tubbs, is the person we just saw in the video with Mr. Harris,
23 correct?

24 A Correct. He's just standing there in the video.

25 Q Okay. And this whole line of men is marching down the

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1 street. You see that, right, in the middle of the street?

2 A Men and women, but yes.

3 Q Forgive me. I didn't see any women there.

4 A There were women with us that day.

5 Q Okay. And this -- the column is walking down the middle
6 of the street, correct?

7 A Correct. Going from the Market Street garage towards the
8 permitted rally.

9 Q Right. You're about a block away from Emancipation Park?

10 A That sounds accurate.

11 Q Yes. And there are men with white shields with a black X
12 on the front in line behind Defendants Tubbs and Hill. And
13 those are men from League of the South, correct?

14 A Yes.

15 Q That's what that X means, right?

16 A It's the Southern Nationalist flag, yes.

17 Q And you also marched that day with Defendant Parrott, even
18 though we can't -- I can't see him in this paragraph?

19 A Yes.

20 Q Okay. Are any of the other people we discussed today in
21 this photograph, like, for example, Tyrone or any of your
22 co-defendants?

23 A I don't believe so, and I don't believe Mr. Chesny even
24 attended Unite the Right.

25 Q Okay. All right. So you walked west on Market Street

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1 from the Market Street garage to Emancipation Park and, as we
2 discussed, you're walking down the middle of the street.

3 As you got closer to Emancipation Park you encountered
4 counter-protesters with their arms linked, correct?

5 A With their arms linked, with poles in their hands, and
6 other counter-protesters that had pepper spray and firearms,
7 but yes, there were protesters with their arms linked.

8 MS. DUNN: Objection, Your Honor. Move to strike.

9 My question was just about whether the
10 counter-protesters had their arms linked.

11 THE WITNESS: Yes.

12 BY MS. DUNN:

13 Q Okay. And when you encountered the counter-protesters
14 with their arms linked, you did not tell the people you were
15 leading to stop; is that correct?

16 A There would be no way to notify a line of hundreds of
17 people to stop. We didn't have radios or the ability. We were
18 trying to walk to the permitted rally on the path that the
19 police had told us to.

20 Q So is the answer to my question that you didn't tell the
21 people that you were leading to stop?

22 A Correct.

23 MS. DUNN: Your Honor, we'd like to play for the
24 witness Plaintiffs' Exhibit 1888. The witness will recognize
25 himself in this video.

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1 We're playing 0 to 1 minute.

2 THE COURT: All right. Be admitted.

3 MS. DUNN: Thank you, Your Honor.

4 (Plaintiffs' Exhibit 1888 marked.)

5 (Plaintiffs' Exhibit 1888 admitted.)

6 BY MS. DUNN:

7 Q Do you see yourself, Mr. Heimbach?

8 A I do.

9 Q I think the Court has admitted this, and we can play it in
10 real time for the jury as well.

11 (Video playing.)

12 All right. So, Mr. Heimbach, at the beginning of this
13 video you yelled to your group, "shields up," and then they
14 charged into the crowd; is that correct?

15 A A majority of the people appeared to be, potentially,
16 League of the South members, but I did say "shields up" because
17 projectiles were incoming.

18 Q Okay.

19 MS. DUNN: Mr. Spalding, let's play the beginning of
20 the video again.

21 (Video playing.)

22 MS. DUNN: Mr. Spalding, you can stop.

23 BY MS. DUNN:

24 Q Mr. Heimbach, right before you said "shields up," you said
25 "just another day in the park." And, at least as I saw this

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1 video, I didn't see any projectile and I didn't see you say
2 anything about any projectile?

3 MR. JONES: Your Honor, I'm going to object to
4 Ms. Dunn characterizing the --

5 THE COURT: Sustained.

6 MS. DUNN: That's fair, Your Honor. That's fair.

7 BY MS. DUNN:

8 Q You don't disagree, Mr. Heimbach, that at the beginning of
9 that video, you said "just another day at the park" and then
10 you yelled "shields up," and then people charged forward with
11 their shields; you don't disagree with that?

12 A No, I don't disagree.

13 Q Okay. We have taken some screenshots from this clip that
14 you just watched, and I want to ask you some questions about
15 that.

16 A Sure.

17 Q This is the first screenshot. So you see here on the
18 screen that there is a man dressed all in black with a black
19 helmet and goggles who is in your group; do you see that?

20 A Yes.

21 Q And Mr. Davis is right in front of this individual. Do
22 you see that?

23 A Yes.

24 Q Okay. And this is a TWP member in your line, with a TWP
25 flag, who is stabbing counter-protesters with the end of the

M. Heimbach - Direct

1 flagpole. You agree with that?

2 A Well, I can't see the full context. Perhaps the
3 individual was armed. So context is important in this case, I
4 think.

5 Q Okay. We can play the video again, Mr. Heimbach, and you
6 can point out whatever context you see here.

7 I think we'll do that. We can do that right now.

8 (Video playing.)

9 MS. DUNN: Okay. Thanks, Mr. Spalding.

10 BY MS. DUNN:

11 Q Mr. Heimbach, you don't disagree that you saw that TWP
12 member stabbing counter-protesters with the end of a flagpole?

13 MR. SMITH: Your Honor, I object to the
14 characterization "stabbing with a flagpole."

15 MS. DUNN: Your Honor, Mr. Heimbach used that
16 language in his own deposition.

17 MR. SMITH: I don't see how that makes it proper
18 here, Your Honor.

19 THE COURT: Well, he can answer the question if he
20 knows, if he agrees with it, and if he saw someone stabbing
21 someone.

22 THE WITNESS: I don't even see necessarily if that
23 individual made contact with anyone. So I could not
24 affirmatively say that they did anything other than move a
25 flagpole vigorously.

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1 BY MS. DUNN:

2 Q Okay. And you note, Mr. Heimbach, or at least you
3 wouldn't disagree, that this flagpole is already rolled up and
4 ready for use. You don't disagree with that?

5 A Well, not ready for use, but traditionally, going back
6 even thousands of years, the idea of capturing your enemy's
7 banner is something that happens all the time. And it goes
8 into politics. So I think the idea would be for people not to
9 be able to grab a flying flag to then have as some sort of sick
10 trophy.

11 Q All right. So, Mr. Heimbach, your testimony to the jury
12 is that what's going on here with this flagpole and this TWP
13 member is that they're capturing their enemy's banner?

14 A No. I'm saying having the flag rolled up is so the flag
15 could not be ripped off the pole by counter-demonstrators for
16 them to get a trophy.

17 Q I see. Let's look at the second screenshot.

18 All right. So there is a man here in a black polo and a
19 vest with a khaki hat and khaki pants slamming a shield into
20 the counter-protesters who have their arms locked. And I'll
21 circle the part I'm talking about.

22 Do you see that?

23 A Yes.

24 Q And you see that the counter-protesters have their arms
25 linked, correct?

M. Heimbach - Direct

1 A Correct. But I don't believe that's a Traditionalist
2 Worker Party member.

3 Q Okay. But this was somebody in your line, which included
4 League of the South, correct?

5 A Well, I'm fundamentally not the babysitter of other
6 organizations and whatever their membership does. I don't
7 believe that's a Traditionalist Worker Party member, and I was
8 already out of frame by then, trying to enter the park
9 peacefully.

10 Q Okay. You're aware, Mr. Heimbach, this is a case about
11 individuals and organizations, correct? You understand that?

12 A Sure.

13 Q So you had marched in. We just saw you with Mr. Hill.
14 He's right there. Do you see him?

15 A I do.

16 Q Okay. And the person who is pushing his shield into the
17 counter-protesters with their arms linked, that person is
18 wearing what you already testified was the League of the South
19 uniform. You don't disagree with that, do you?

20 A No.

21 Q Okay. And I think this is the case. Is this -- this
22 looks to me very much like -- or strike that.

23 Mr. Heimbach, do you recognize that black helmet with the
24 white logo on the side as the TWP helmet?

25 A Not necessarily. There were folks with baseball helmets

M. Heimbach - Direct

1 you get at sporting goods stores and stuff like that. So no.
2 I can't say that that looks like a hard hat. We were the only
3 ones in hard hats that day. But helmet-wise, no, I can't
4 confirm that.

5 Q You wouldn't deny, would you, that TWP members wore -- in
6 fact, you wore -- black helmets with white logos on the side?

7 A No. To my knowledge, very few other TWP members had any
8 stickers or logos on their helmets or hard hats other than the
9 logo of our party on the front.

10 MS. DUNN: Okay. Mr. Spalding, let's just go to
11 2435.

12 BY MS. DUNN:

13 Q Mr. Heimbach, your hat is a black helmet with a TWP logo
14 on the side, correct?

15 A No. That's actually a Celtic cross.

16 Q Okay. Fair enough. But it's a white logo and a circle.
17 You don't disagree with that, correct?

18 A Yes. I was given a sticker prior to the rally that I put
19 on the helmet.

20 Q Okay.

21 A Before I was struck in the head with a bat. Luckily, I
22 had a helmet on that day.

23 MS. DUNN: Objection, Your Honor. Move to strike.

24 MR. SMITH: Can't object to that, Your Honor.

25 THE COURT: Sustained. Strike that.

M. Heimbach - Direct

1 MS. DUNN: Thank you, Your Honor.

2 All right. Mr. Spalding, can we go back to the
3 screenshot?

4 BY MS. DUNN:

5 Q This is what we're talking about. Mr. Heimbach, could
6 that logo we're zoomed in --

7 A I mean, I don't see a pitchfork there. So...

8 Q Okay.

9 A I could not positively identify that.

10 Q Okay. Where do you think you are at this time?

11 A Well, it's hard to tell. If you could back the video up a
12 few seconds, I could get context.

13 Q That's okay. Let's put in the third screenshot.

14 So the third screenshot is another man with a black polo
15 and khakis shoving a woman in a tank top and shorts. Do you
16 see that? He has both his hands on her?

17 A Yes.

18 Q Okay. And he, too, is wearing a black helmet with a white
19 logo; do you see that?

20 A Yes. But that individual also has a League of the South
21 logo on his polo. That's not a Traditionalist Worker Party
22 member.

23 Q Correct. Mr. Heimbach, League of the South and
24 Traditionalist Worker Party marched in together. We saw you
25 shoulder-to-shoulder with Defendants Hill and Tubbs?

M. Heimbach - Direct

1 A Yes.

2 Q Okay. Okay. And in the fourth screenshot that we have,
3 there is a man with a black shirt and a helmet with long hair;
4 do you see that?

5 A I do.

6 Q And he is using a red shield to shove that same
7 counter-protester that we saw in the last shot?

8 A Sure.

9 Q And what's his shirt that he's wearing? Do you recognize
10 that?

11 A It looks like a Traditionalist Worker Party shirt.

12 Q Yes. You and I would agree that it is a Traditionalist
13 Worker Party shirt?

14 A Yes.

15 Q All right. In the fifth -- oh, and you don't disagree
16 that this person seems to be shoving into people, into this
17 counter-protester, with a shield, that he's pushing the shield?
18 She's not pushing into him with the shield?

19 MR. SMITH: Your Honor, objection. Do we have the
20 video, or are we going to look at screenshots from the video?
21 Moments in time can misrepresent.

22 MS. DUNN: Your Honor, we showed the video.

23 THE COURT: She can show the video and stop and show
24 screenshots.

25 MR. SMITH: All right.

M. Heimbach - Direct

1 BY MS. DUNN:

2 Q Mr. Heimbach, you agree with me, right, that this person
3 is shoving the shield into the counter-protester, not that the
4 counter-protester is shoving herself into the shield?

5 A Sure. But I'm unsure of the exact context that led to
6 this exact moment.

7 Q All right. Let's put up the fifth screenshot. You see a
8 man in a black polo, khakis, and baseball hat macing this same
9 counter-protester, correct?

10 A Correct.

11 Q Okay. And now, everything that we just saw in the video
12 and in the screenshots occurred on Market Street, correct?

13 A Correct.

14 Q Not in Emancipation Park, correct?

15 A We're right outside Emancipation Park at that point.

16 Q But you agree this was not in the park?

17 A Correct.

18 Q Okay.

19 A We were trying to enter the park for our legally permitted
20 rally.

21 Q My question, Mr. Heimbach, is only whether this occurred
22 on Market Street, outside the park.

23 A Yes. As we were being blocked from entering the park,
24 yes.

25 Q Okay. All right. Mr. Heimbach, please look at PX2260.

M. Heimbach - Direct

1 You'll recognize this as a Twitter post by Commander Davis --
2 that's Derrick Davis, who marched with you on August 12th --
3 and it's a photo of yourself.

4 Do you see that?

5 A I do.

6 MS. DUNN: Your Honor, move to admit 2260.

7 THE COURT: Be admitted.

8 (Plaintiffs' Exhibit 2260 marked.)

9 (Plaintiffs' Exhibit 2260 admitted.)

10 BY MS. DUNN:

11 Q Here's a post that Commander Davis tweeted and then
12 tradworker, your group, retweeted it; do you see that?

13 A Yes.

14 Q The picture Mr. Davis posted is of you and he, and you're
15 both wearing your helmets and your armbands. Do you see that?

16 A Yes.

17 Q The date on this post is August 13th. Do you see that?

18 A I do.

19 Q And the picture he's posting is from August 12th, correct?

20 A Yes.

21 Q And by the way, I just want to know: Do you see this
22 backpack of the person all the way to the left?

23 A Yes. They have a backpack.

24 Q Is that the same backpack that was in the screenshot that
25 we saw previously? Let me find that.

M. Heimbach - Direct

1 Does that look familiar to you? Is that the same person
2 in the backpack?

3 A I can't tell.

4 Q Returning, then, to --

5 A They actually look like they could be different colors.
6 So I would likely argue no.

7 Q Okay. And Mr. Davis posts this picture of you and he on
8 August 12th and he says: "In memory of plowing through a human
9 wall of communists." Do you see that?

10 A I do.

11 Q And he says: "We have passed and we shall pass again."
12 Do you see that?

13 A Yes.

14 Q And that seems to suggest that members of TWP will plow
15 through a human wall of communists again?

16 A Well, actually, it's in reference to, during the Spanish
17 Civil War, the Republican forces had a rallying cry of "no,
18 pasarán," of "you shall not pass." So the opposite, you know,
19 "si, pasarán," or "we shall pass and we shall pass again."
20 It's a reference to the Spanish Civil War.

21 Q Right. But when this is posted on Twitter on August 13th
22 saying "we shall pass again," you would agree that the message
23 to the people in the world is not about the Spanish Civil War.
24 It's about plowing through a human wall of communists, correct?

25 A No. I absolutely would say that those within our

M. Heimbach - Direct

1 subculture would know a rather obscure reference to the Spanish
2 Civil War as context, because anti-fascists commonly chant "no
3 pasarán."

4 Q Are you going to deny that Commander Davis wrote "in
5 memory of plowing through a human wall of communists" because
6 that's what you did on August 12th?

7 A Well, I walked through to the side, but...

8 Q But he posted a picture of you?

9 A Well, and himself, yes.

10 Q Of you both?

11 A Yes. With a reference to the Spanish Civil War.

12 MS. DUNN: Mr. Spalding, can we look at the whole
13 tweet?

14 BY MS. DUNN:

15 Q Then tradworker, the organization, writes -- in response
16 to the mayor of Lexington, Kentucky making this announcement,
17 they say: "Game on." Do you see that?

18 A Yes.

19 Q And then can we just look at the -- at the full tweet,
20 where it says "tradworker," and it says: "Traditionalist
21 Worker Party: Local solutions to the globalist problem."

22 Do you see that?

23 A I do.

24 Q You were here this morning for Ms. Froelich's testimony,
25 where she said that "globalist" is another word for Jewish

M. Heimbach - Direct

1 people. You were here for that, right?

2 A Yes.

3 Q She said "globalist" means Jewish person, "communist"
4 means Jewish person, and these are dog whistles that you would
5 use in everyday conversation to see if someone was on the same
6 wavelength as you mentally? You were here for that, right?

7 A Yes. But respectfully, ma'am, we were very vocal and
8 didn't hide anything about our opposition to the organized
9 Jewish community or Zionism. So there was no need for any sort
10 of dog whistle. Our opposition was consistently opposed to
11 globalism in all forms.

12 Q Did you ask Commander Davis to take down this tweet about
13 plowing through a human wall of communists?

14 A I don't recall.

15 Q You don't recall or you didn't?

16 A I don't recall.

17 Q You might have, you're saying?

18 A Potentially.

19 Q Okay. All right. So you mentioned, Mr. Heimbach,
20 projectiles. Can you look at PX2217?

21 (Plaintiffs' Exhibit 2217 marked.)

22 BY MS. DUNN:

23 Q Do you see this?

24 A I do.

25 Q Do you see yourself in this photo?

M. Heimbach - Direct

1 A I do.

2 MS. DUNN: Move to admit 2217.

3 THE COURT: Be admitted.

4 (Plaintiffs' Exhibit 2217 admitted.)

5 BY MS. DUNN:

6 Q Mr. Heimbach, in this photo you will see flying through
7 the air a bottle with something in it. Do you see that?

8 A I do.

9 Q Okay. You would agree with me that we can call that a
10 projectile, correct?

11 A A bottle of water that was being returned to sender. One
12 of the tactics that was utilized that day by anti-fascists was
13 to use frozen bottles of water and use those as projectiles
14 against us. So to the best of my memory, that had already been
15 thrown at us, and was simply being returned to the initial user
16 of it.

17 Q Okay. So your testimony is you're just returning this
18 water bottle to somebody else. That's your testimony?

19 A After they had thrown it at us, yes. That's a return to
20 sender.

21 Q And the person who is throwing it -- I think we'll agree
22 it's obvious he's just thrown it -- is Cesar Ortiz, the TWP
23 member who you put in charge of security, correct?

24 A Correct.

25 Q Okay. And that's you right there next to Mr. Ortiz,

M. Heimbach - Direct

1 correct?

2 A Correct.

3 Q And --

4 MR. SMITH: Not in the circle, though, in the next --
5 off to his left, right? Is that --

6 BY MS. DUNN:

7 Q Mr. Heimbach, is this you?

8 A Yes.

9 MR. SMITH: Yes. Okay.

10 BY MS. DUNN:

11 Q And you're smiling, right?

12 A I am.

13 Q Okay. And Commander Davis right next to you?

14 A Yes.

15 Q Seems like he might also be smiling.

16 MS. DUNN: If we can zoom out, Mr. Spalding.

17 BY MS. DUNN:

18 Q Let's talk about where you are in this photo where
19 Mr. Ortiz is throwing the projectile. Do you recognize this
20 building in the back of the photo in the upper right?

21 A I'm not sure what the building is, but we're on the steps
22 entering the park.

23 Q Correct. This is the Albemarle County Historical Society,
24 and it's just across Second Street --

25 MR. JONES: Your Honor, I'm going to object to her

M. Heimbach - Direct

1 providing evidence.

2 MS. DUNN: Withdrawn. That's fair. That's fair.

3 BY MS. DUNN:

4 Q And so where you are in this photograph is on the
5 staircase at the southeast entrance to the park, correct?

6 A Correct. And that's a Traditionalist Worker Party member
7 that had been maced by anti-fascists.

8 MS. DUNN: Your Honor, there's no question pending.

9 THE COURT: Sustained.

10 BY MS. DUNN:

11 Q Okay. Now, Mr. Heimbach, your testimony is that you
12 withdrew from participating in the leadership discussion
13 channel on Discord two weeks before the event on August 12th.
14 Do you recall that?

15 A Yes. I'm not sure about the exact day, but we did decide
16 to come up with an entirely separate plan from the organizers.
17 As merely attendees of the event, we wanted to come up with our
18 own plan with the Charlottesville Police Department.

19 Q Right. But when you were asked in your deposition whether
20 the separate plan that you talk about is a different means of
21 entering the park, you responded "yes." Do you recall that?

22 A Yes.

23 Q Yes. All right. And you still descended in
24 Charlottesville 2.0, and you still brought TWP members and
25 shields and flagpoles as you planned, correct?

M. Heimbach - Direct

1 A Yes, because as the leader of a political party, I was --

2 THE COURT: Please don't say why.

3 THE WITNESS: Yes.

4 MS. DUNN: Thank you, Your Honor.

5 BY MS. DUNN:

6 Q All right. So you had just testified that you had
7 withdrawn from the leadership discussion channel on Discord.

8 If you could take a look at Plaintiffs' Exhibit 1177, this
9 is a post on August 8th, just a few days before the events,
10 where you and others, including Tyrone -- Mr. Chesny -- are
11 talking in the leadership discussion on the Charlottesville 2.0
12 server.

13 Do you see that?

14 (Plaintiffs' Exhibit 1177 marked.)

15 A Yes. Specifically about finding a local lawyer, not
16 talking about organizing the event, because the City of
17 Charlottesville was trying to block our permit.

18 MS. DUNN: Your Honor, objection.

19 BY MS. DUNN:

20 Q The question was, having testified you had withdrawn from
21 the leadership discussion channel, do you see this post from
22 August 8th where you are posting in the leadership discussion
23 channel?

24 A Yes, but what I meant was in reference to discussing the
25 actual organizing of attending the event.

M. Heimbach - Direct

1 MS. DUNN: Your Honor, move to strike.

2 MR. SMITH: Your Honor, he's trying to explain his
3 answer.

4 THE COURT: Sustained.

5 MS. DUNN: Thank you, Your Honor.

6 BY MS. DUNN:

7 Q Now, you've also testified that in the lead-up to
8 Charlottesville 2.0, you weren't really on speaking terms with
9 Mr. Kline or Mr. Kessler.

10 A That would be accurate.

11 Q Okay. Let's look at your phone records, which is
12 Plaintiffs' Exhibit 3257A.

13 (Plaintiffs' Exhibit 3257A marked.)

14 MS. DUNN: I'd like to admit this, Your Honor, into
15 evidence.

16 (Plaintiffs' Exhibit 3257A admitted.)

17 BY MS. DUNN:

18 Q Mr. Heimbach, you recognize these to be your phone
19 records, correct?

20 A Correct.

21 Q And your phone number in 2017 was 301-525-1474?

22 A Correct.

23 Q Is that right? All right. So the phone records are very
24 voluminous. So we're going to show you a page with your calls
25 with Mr. Kline.

M. Heimbach - Direct

1 If you look at page 13, this reflects that you called
2 Mr. Kline at 5:49 p.m. on August 7th, five days before
3 Charlottesville 2.0. Do you see that?

4 A I do.

5 THE CLERK: Ms. Dunn, did we get an admission on
6 these?

7 MS. DUNN: I believe so but let me verify.

8 THE COURT: It'll be admitted.

9 THE CLERK: Thank you.

10 THE WITNESS: What was shown was actually -- oh, yes,
11 that one. Yes.

12 (Plaintiffs' Exhibit 3257A admitted.)

13 BY MS. DUNN:

14 Q And if you look at page 15, there is a phone call with
15 Mr. Kline on August 12th at 7:29. Do you see that?

16 A Yes.

17 Q Okay. And it's also been your testimony that you did not
18 speak with Mr. Kline in person in Emancipation Park on August
19 12th, correct?

20 A Not in Emancipation Park, no. I don't think there's any
21 point in time we came in contact with one another.

22 MS. DUNN: Your Honor, we'd like to play Exhibit 2538
23 from 2:10 to 2:40 as impeachment.

24 THE COURT: All right.

25 (Plaintiffs' Exhibit 2538 marked.)

M. Heimbach - Direct

1 (Video playing.)

2 MS. DUNN: Why don't we pause there.

3 BY MS. DUNN:

4 Q Mr. Heimbach, do you recognize this to be yourself and
5 this to be Mr. Kline?

6 A It looks like. It was a very hectic day where folks were
7 trying to kill me. I didn't remember a ten-second
8 conversation. It wasn't memorable.

9 Q But you don't deny that this is you and Mr. Kline in
10 Emancipation Park, correct?

11 A Correct.

12 Q And in this video Mr. Kline can be heard saying "McIntire"
13 to you. Did you hear that?

14 A I didn't hear it, but I believe you.

15 Q Okay. Would you like us to play it again?

16 A I trust you.

17 Q Okay. And so Mr. Kline is telling you in this video --

18 MS. DUNN: Your Honor, we move to strike the "people
19 are trying to kill me" statement in Mr. Heimbach's prior
20 answer.

21 THE COURT: All right. Sustained.

22 BY MS. DUNN:

23 Q And Mr. Kline is telling you to go to McIntire Park from
24 Emancipation Park, correct? You heard that?

25 A Sure.

M. Heimbach - Direct

1 Q Okay. Can we look at 2871.

2 (Plaintiffs' Exhibit 2871 marked.)

3 BY MS. DUNN:

4 Q Mr. Heimbach, do you see this photograph of yourself?

5 A I do.

6 Q What is this black string that's hanging out of your
7 shirt?

8 A I was miked up for a news report, I believe. There were
9 lots of reporters there that day that were embedded with us.
10 So that would have been the microphone has fallen off my lapel
11 by the look of it.

12 Q Did you or other members of TWP have some radio
13 communication with others that day?

14 A Not that I can recall. I believe we had purchased radios,
15 but never got around to actually fully figuring them all out.

16 Q So when did you purchase the radios?

17 A I don't recall.

18 Q And your testimony is that you bought radios for this
19 event, but you didn't use them?

20 A The degree of disorganization amongst not only my
21 organization but the alt-right in general, due to the fact
22 we're all working class folks with jobs, families, and such,
23 yeah, sometimes things fell by the wayside.

24 MS. DUNN: Your Honor, move to strike.

25 MR. SMITH: Your Honor, I think he answered the

M. Heimbach - Direct

1 question sufficiently.

2 THE COURT: Don't let him answer if you're going to
3 move to strike. Once he finishes his answer, then raise the
4 question.

5 MS. DUNN: Thank you, Your Honor. I'm trying not to
6 cut him off.

7 MR. SMITH: Thank you, Your Honor.

8 MS. DUNN: But I can do that.

9 BY MS. DUNN:

10 Q Okay. Mr. Heimbach, so you have said in your testimony
11 that you wanted to leave the city to avoid conflict, but
12 instead of going back to the Market Street garage, you followed
13 Mr. Kline's instructions and you went to McIntire Park; is that
14 correct?

15 A Yes, because there was an entire wall of anti-fascist
16 protesters, who had spent the last hour assaulting us, in
17 between us and going back to Market Street.

18 MS. DUNN: Your Honor, I apologize. I was too slow
19 to interrupt Mr. Heimbach and I move to strike.

20 THE COURT: All right. He answered your question
21 "yes," and the jury will disregard the remainder of the answer.

22 MS. DUNN: Thank you.

23 BY MS. DUNN:

24 Q All right. Let's talk about your communications with
25 Mr. Kessler. You said that you did not speak with Mr. Kessler

M. Heimbach - Direct

1 in the days leading up to Charlottesville 2.0. You know that
2 Mr. Kessler's phone number is 434-996-5567?

3 A If you say it.

4 Q Well, this was discussed in your deposition.

5 A Sure. I don't know his phone number off the top of my
6 head.

7 Q Okay. Let's look at your phone records with respect to
8 Mr. Kessler. You spoke to Mr. Kessler on August 7th, five days
9 before Charlottesville 2.0. You called him at almost 5 p.m.
10 You left a voicemail. Do you see that?

11 A Yes.

12 Q Mr. Kessler returned your phone call at 5:11 and you spoke
13 for seven minutes. You then called Mr. Kessler again, left
14 another message. He called you back five minutes later at
15 10:54 p.m. and you spoke for another seven minutes. You also
16 spoke to Mr. Kessler on August 10th. And now we're on page 14
17 of your phone records. Mr. Kessler called you at 2:14 on the
18 10th and you spoke for six minutes. Then you spoke also --

19 MR. JONES: There needs to be questioning, not just
20 reading the records.

21 MS. DUNN: Your Honor, I'm just trying to do this in
22 the interest of time.

23 THE COURT: Well, she's reading from the -- if he
24 disagrees -- Mr. Heimbach, say so if you disagree, but this
25 seems the quickest way to get through it.

M. Heimbach - Direct

1 MS. DUNN: Thank you, Your Honor.

2 BY MS. DUNN:

3 Q Mr. Kessler called you at 2:14 p.m. on August 10th and you
4 spoke for six minutes. And then you also spoke with
5 Mr. Kessler on August 11th when you arrived -- or after you
6 arrived in Charlottesville at 5:02.

7 And so we can agree, I would think, at this point that you
8 did have communications with both Mr. Kessler and Mr. Kline in
9 the days before Charlottesville 2.0, correct?

10 A Sure. As you can see from the phone records, there were a
11 lot of phone calls. I just hadn't recalled talking to them.

12 Q And even though you spoke to Mr. Kessler on August 7th,
13 10th and the 11th multiple times, it's your testimony he never
14 told you about the torch march that he led, correct?

15 MR. SMITH: Your Honor, that mischaracterizes the
16 testimony, that he didn't speak to -- the records don't say
17 that he spoke to either of those people multiple times in a
18 single day every day.

19 THE COURT: Overruled. Go ahead, answer the
20 question, sir.

21 BY MS. DUNN:

22 Q Even though you spoke to Mr. Kessler multiple times
23 including on August 7th, 10th and 11th, it's your testimony he
24 never told you about the torch march that he led on the 11th,
25 correct?

M. Heimbach - Direct

1 A I can't recall discussing it with him.

2 Q All right. You also communicated with Mr. Kessler on
3 August 12th. This is on page 16. That's at 7:05 p.m. And you
4 would agree with me that you also communicated with Mr. Kessler
5 via text. And we saw your text messages earlier.

6 A Yes.

7 Q Okay. All right. On August 13th -- this is Exhibit 1425.
8 On August 13th -- this is in evidence -- you texted Mr. Kessler
9 about an upcoming press conference that you wanted TWP to be
10 involved with.

11 A I actually didn't want TWP to be involved with as the
12 topic goes. Mr. Kessler had asked for us to be there, if
13 memory serves, but he had said that he didn't want the
14 Traditionalist Worker Party to go as the Traditionalist Worker
15 Party. So I informed him that then I had no interest in that.

16 Q All right. Mr. Spalding, let's go to pages 6 and 7.

17 Mr. Heimbach, you write to Mr. Kessler on August 13th, "We
18 literally bled yesterday as you all stood behind the barricades
19 safe and sound and then you're going to ask my men to protect
20 you again, but cut us out of the press conference? That dog
21 don't hunt." Do you see that?

22 A Yes. Because --

23 Q And then Mr. Kessler says, "I plan to be standing up for
24 all of us, but the message has to be tightly controlled." Do
25 you see that?

M. Heimbach - Direct

1 A I do.

2 Q Then you say, "I'll call you right back. Okay, we'll be
3 team players, but we won't be disrespected. We're either equal
4 partners or we're not. You decide." And Mr. Kessler says -- I
5 can barely read this. "There are people who are going to try
6 to kill me if I don't get some security." And you respond,
7 "Well, do you want to stand by TWP as partners?" Do you see
8 that?

9 A I do.

10 Q And you're asking Mr. Kessler on August 13th whether he's
11 going to stand by TWP as partners, right?

12 A Yes.

13 Q Okay. And it's also been your testimony that you didn't
14 see Richard Spencer at McIntire Park; do you remember that?

15 A I believe I didn't see him at Emancipation Park. I can't
16 recall, given the state of emergency, the pepper spray in my
17 face, and the general chaos of trying to disperse following the
18 governor's order, exactly who I talked to in McIntire Park
19 after marching miles and dealing with everything that we just
20 had dealt with.

21 Q Okay. But do you remember in your deposition being asked
22 whether you saw Richard Spencer at McIntire Park?

23 A I don't recall.

24 Q All right. Let's show the witness 2554, please.

25 (Plaintiffs' Exhibit 2554 marked.)

M. Heimbach - Direct

1 MS. DUNN: And I'm sorry, this is just minute 28:22
2 to 28:28. It's very brief.

3 (Video playing.)

4 BY MS. DUNN:

5 Q Do you see that, Mr. Heimbach?

6 A I do.

7 MS. DUNN: Okay. And if we could move into evidence
8 2554 and play it for the jury?

9 THE COURT: Be admitted.

10 (Plaintiffs' Exhibit 2554 admitted.)

11 BY MS. DUNN:

12 Q Okay. So you see Mr. Spencer, you see yourself, you see
13 Mr. Davis, correct?

14 A Correct.

15 Q Okay. I believe David Duke is also in this video. Was he
16 there in McIntire Park?

17 A I believe so.

18 Q And you saw him that day?

19 A I believe so.

20 Q All right. So after August 11th and 12th, you said that
21 you believed that at Charlottesville your movement had, quote,
22 achieved all of its objectives. Do you remember saying that?

23 A Yes.

24 Q And that was after the car attack and after all the events
25 of August 11th and 12th, correct?

M. Heimbach - Direct

1 A Correct.

2 Q And you said, "I think we did an incredibly impressive
3 job." Do you remember that?

4 A Not off the top of my head, but I'm sure I said something
5 like that.

6 Q And on August 18th you said, "This is a stunning victory
7 for us. We achieved all our objectives." Do you remember
8 saying that to a news station?

9 A Sure.

10 Q You called this "the most amazing successful white
11 nationalist event of the past two generations." Do you recall
12 that?

13 A Yes.

14 Q That was on your own podcast?

15 A I said yes.

16 Q Okay. And you thought that Charlottesville 2.0 was a
17 stunning victory and a huge success, despite someone getting
18 killed by a car and many other people being injured, correct?

19 A Which had nothing to do with us or the rally and happened
20 after the Traditionalist Worker Party and myself was already
21 out of the city. I would view those as fundamentally separate
22 events.

23 Q So your testimony, just to be clear, is that none of this
24 had anything to do with you?

25 A In terms of James Fields, yes, that had absolutely nothing

M. Heimbach - Direct

1 to do with me, and the lack of attendance at the torch march.

2 So when I speak of Charlottesville, I'm fundamentally speaking
3 about the actual rally itself.

4 Q All right. So you mentioned James Fields. You are aware,
5 aren't you, that Mr. Fields did hit the gas and drove through a
6 crowd of counter-protesters on August 12th and killed a woman
7 named Heather Heyer? You're aware of that?

8 A I am.

9 Q And are you also aware that many of the plaintiffs in this
10 case were injured in that car attack?

11 A I am.

12 Q And you believe that James Fields did not do anything
13 wrong, correct?

14 A I believe as it stands, the political nature of trials in
15 this country, it's hard to really know that day what --

16 MS. DUNN: Your Honor, move to strike.

17 BY MS. DUNN:

18 Q My question is you believe that James Fields did not do
19 anything wrong?

20 MR. SMITH: He was answering that question, Your
21 Honor.

22 THE COURT: Well, I think this is a question he has a
23 right to explain his answer.

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: You can withdraw the question or proceed.

M. Heimbach - Direct

1 MS. DUNN: I can withdraw it, Your Honor.

2 BY MS. DUNN:

3 Q Mr. Heimbach, are you aware that Mr. Fields's own lawyer
4 began this case by saying that Mr. Fields purposely drove his
5 car into a crowd?

6 MR. CAMPBELL: Objection. That's inappropriate.

7 THE COURT: Strike. Don't preface a question like
8 that.

9 BY MS. DUNN:

10 Q Mr. Heimbach, when you were asked by a reporter if you
11 would disassociate from Mr. Fields, you said "not at all,"
12 correct?

13 A I can't recall exactly saying that.

14 Q You don't recall ever having said that?

15 A I don't recall what interview or time that would have
16 been.

17 Q Do you remember being asked in your deposition,
18 "Mr. Heimbach, were you asked by a reporter: You're not going
19 to disassociate yourself from James Fields at all?

20 "Answer: Yes.

21 "Question: And did you respond in response to that
22 question, 'not at all'?

23 "Answer: Yes, because I believe he acted in self-defense
24 and didn't commit a crime."

25 A I don't recall saying that, but I do believe the fact --

M. Heimbach - Direct

1 Q Mr. Heimbach --

2 A Yes, ma'am.

3 Q Were you asked that in your deposition and was that your
4 answer? And if you're not sure, you can look at page 668,
5 lines 3 to 10.

6 A I'll believe you.

7 Q Well, it's important that you know whether you said this
8 or not.

9 THE COURT: Well, he said -- the record reflects that
10 that's what the question was asked and that's what he
11 responded.

12 BY MS. DUNN:

13 Q Okay. Mr. Heimbach, take a look, please, at Plaintiffs'
14 Exhibit 1833.

15 (Plaintiffs' Exhibit 1833 marked.)

16 BY MS. DUNN:

17 Q Do you recognize this?

18 A It's a letter I wrote to James Fields.

19 Q Right. This is a letter you wrote to James Fields.

20 MS. DUNN: Your Honor, we would move to admit 1833.

21 THE COURT: Be admitted.

22 (Plaintiffs' Exhibit 1833 admitted.)

23 BY MS. DUNN:

24 Q So let's look at your letter to Mr. Fields. It begins by
25 saying, "Dear James, we've never met and you might not know who

M. Heimbach - Direct

1 I am. I am the chairman of the Traditionalist Worker Party, a
2 national socialist organization that was there with you in
3 Charlottesville." Do you see that?

4 A I do.

5 Q The second paragraph you say, "What we do have is a
6 connection as comrades." Do you see that?

7 A Yes.

8 Q All right. And in the third paragraph you can say, "I
9 know why you went to Charlottesville."

10 Let me back up. "You are a good man. I can tell from
11 everything I've read or heard about you. I know why you went
12 to Charlottesville, because you want a future for yourself and
13 for our people."

14 And so, Mr. Heimbach, at this time you were telling
15 Mr. Fields that you understood why he went to Charlottesville,
16 correct?

17 A To try and protect the confederate statues, yes.

18 Q Where do you see that?

19 A That's why we went to Charlottesville.

20 Q Right. But my question, Mr. Heimbach, is whether you were
21 communicating to him that you understood why he went?

22 A To stand up for the confederate statues that were being
23 threatened with being torn down, which would have been --

24 Q Mr. Heimbach, that's a different question. It may be my
25 fault. I'm asking you whether you were communicating to

M. Heimbach - Direct

1 Mr. Fields that you understood why he went, not what you
2 thought the explanation was? You were saying to him, I
3 understand why you --

4 THE COURT: You can answer that question yes or no.

5 THE WITNESS: Yes.

6 BY MS. DUNN:

7 Q And one reason you understood is because of your shared
8 beliefs with Mr. Fields, correct?

9 A Sure.

10 Q Sure, or yes?

11 A Yes.

12 Q Okay. If you go to page 2 in your letter, the first
13 paragraph, at the end you say, "You, my friend, are a martyr
14 for our folk." Do you see that? It's at the end of the
15 paragraph.

16 A Yes.

17 Q And in the next paragraph you say, "The enemy has
18 imprisoned you because they are scared of the rise of
19 nationalism."

20 Who is the enemy to whom you refer in this sentence,
21 Mr. Heimbach?

22 A The American empire, which is fundamentally hostile to the
23 continued survival of white Americans.

24 Q And you continue that "You are a prisoner of war in this
25 fight, nothing less. I think of this song" -- and I'm going to

M. Heimbach - Direct

1 mispronounce this name in German, but it's also called The Good
2 Comrade. Then you write him -- you write the lyrics of this
3 song or poem. Do you see that?

4 A Yes.

5 Q Can you read that song or poem?

6 A "I once had a comrade. You will find no better. The drum
7 called to battle, he walked at my side, in the same pace and
8 step. A bullet came a-flying. Is it my turn or yours? He was
9 swept away, he lies at my feet, like it were a part of me. He
10 still reaches out his hand to me, while I am about to reload.
11 I cannot hold onto your hand. You stay true, my good comrade."

12 Q What's your understanding of the line "while I'm about to
13 reload"?

14 A This is a German song that goes back far before World War
15 II that was traditionally utilized by German military units at
16 funerals and such.

17 Q So "while I'm about to reload" is a reference to the
18 military, presumably to a weapon, correct?

19 A Sure.

20 Q Sure or yes?

21 A Yes.

22 Q Then you go on to say, "We have marched into battle
23 together, and while our foes have taken you, you are still here
24 with us in spirit." Do you see that?

25 A Yes.

M. Heimbach - Direct

1 Q You say, "You will one day soon be free and you will be
2 given a hero's welcome when you come home. I promise you, you
3 will not be forgotten." And here you are talking about "our
4 foes," meaning your foes and James Fields's foes, our foes,
5 correct?

6 A Yes.

7 Q Then in the next paragraph you say, "Thank you for your
8 service to our people." Do you see that?

9 A Yes.

10 Q And who are "our people"?

11 A That would be white folks.

12 Q So thank you for your service to white folks for what you
13 did. When you say service, what are you describing?

14 A Well, and this is important to clarify. I'm not speaking
15 about the car accident. I'm talking about the fact that I view
16 his prosecution as being severely politically motivated, a
17 modern political lynching. And his service is continuing on to
18 fight for his innocence at the time I wrote this letter.

19 Q Okay. So your testimony is that when you're talking about
20 James Fields's service to our people, that's not a reference to
21 what happened on August 12th?

22 A Yes, traditionally --

23 Q Mr. Heimbach, it's just a yes or no question.

24 A Yes.

25 Q All right. And then you say -- you offer him additional

M. Heimbach - Direct

1 support. Did you also send him money?

2 A I believe so.

3 Q Okay. And then you say, "Let's be in touch, because as a
4 man behind the wire, you deserve our support as a movement."

5 Do you see that?

6 A Yes.

7 Q You conclude by saying, "May God bless you and hail
8 victory." And you sign your name. Do you see that?

9 A Yes.

10 Q And then the quote below is by Sir Oswald Mosley. We've
11 heard about this Mr. Mosley before. Do you see that?

12 A Yes. Would you like me to read the quote?

13 Q No, thank you. After Mr. Fields killed Ms. Heyer, you
14 said, "She wasn't on her way to church and was blocking
15 traffic. If you don't want shit, don't start shit." Do you
16 recall saying that?

17 A Not off the top of my head.

18 Q That's not something you would remember if you said it?

19 A I used to do a daily podcast. So I said a lot of things
20 over the years.

21 MS. DUNN: Your Honor, no further questions at this
22 time.

23 I'm sorry. We have some exhibits that we need to
24 move.

25 MR. SMITH: No objection to the exhibits, Your Honor.

M. Heimbach - Cross

1 MS. DUNN: Your Honor, we move 2538 and 2871.

2 THE COURT: They will be admitted.

3 MS. DUNN: Thank you.

4 (Plaintiffs' Exhibit 2538 admitted.)

5 (Plaintiffs' Exhibit 2871 marked.)

6 (Plaintiffs' Exhibit 2871 admitted.)

7 CROSS-EXAMINATION

8 BY MR. KOLENICH:

9 Q Good afternoon, Mr. Heimbach.

10 A Afternoon, Mr. Kolenich.

11 Q Do you recall earlier today being asked about the phrase
12 "take the ground early"?

13 A Yes.

14 Q Do you still have your deposition transcript up there?

15 A I do, sir.

16 Q Could you please turn to page 566?

17 MR. SMITH: You said 566?

18 THE WITNESS: Yes, sir.

19 BY MR. KOLENICH:

20 Q So would you agree with me that your testimony at
21 deposition was that this was your phraseology, not something
22 that Jason Kessler or Eli Mosley said to you?

23 A Correct.

24 Q Thank you. In fact, would you agree with me that either
25 Kessler or Mosley asked your group to show up early? That's

M. Heimbach - Cross

1 all they asked you to do?

2 A I can't recall the specific conversations I had with them.

3 Q Fair enough. At any point in the preparations for August
4 11th and 12th or either one of those days, were you taking
5 orders from Jason Kessler?

6 A Absolutely not.

7 Q How about from Eli Mosley?

8 A Absolutely not.

9 Q What do you know about the command organization and
10 structure of Identity Evropa?

11 A Absolutely nothing.

12 Q What do you know about what Eli Mosley was supposed to be
13 doing for Identity Evropa on August 11th and 12th in
14 Charlottesville, Virginia?

15 A Nothing. That was an entirely separate organization that
16 was often hostile with my own. So nothing.

17 Q Thank you.

18 Do you recall the discussion about the phrase, "the hard
19 right"?

20 A Yes. I believe Mr. Ike Baker coined that phrase.

21 Q All right. Now, would you consider Identity Evropa to be
22 part of this hard right?

23 A Absolutely not.

24 Q Would you consider Jason Kessler to be part of this hard
25 right?

M. Heimbach - Cross

1 A No.

2 Q And what is the reason for not considering them part of
3 the hard right?

4 A Identity Evropa was generally a far more bourgeoise
5 movement of upper class folks --

6 MS. DUNN: Objection, Your Honor. Foundation.

7 MR. KOLENICH: I'm merely asking his opinion, Your
8 Honor.

9 THE COURT: Well, he's accused of being related to
10 him -- having a relationship, so he can explain what that
11 means.

12 MR. KOLENICH: Thank you, Your Honor. Go ahead,
13 Mr. Heimbach.

14 THE WITNESS: No. Radically different subcultures,
15 radically different places in the movement. Different
16 constituencies of members. So very different from one another.

17 BY MR. KOLENICH:

18 Q Would your organization have relied on Identity Evropa or
19 Kessler for physical defense at a public event?

20 A No.

21 MR. KOLENICH: Thank you. I have no further
22 questions.

23 THE COURT: Thank you.

24 CROSS-EXAMINATION

25 BY MR. SPENCER:

M. Heimbach - Cross

1 Q Hello.

2 A Hello, Mr. Spencer.

3 Q Mr. Heimbach, was I ever involved with any organization
4 that you ran or were intimately involved with?

5 A No.

6 Q Does that include the Traditionalist Worker Party?

7 A It does.

8 Q Does that include the League of the South?

9 A Yes.

10 Q Does that include the National Alliance?

11 A Nationalist Front.

12 Q Nationalist Front, excuse me. Does that include the
13 Nationalist Front?

14 A Yes.

15 Q Did you ever provide security for me during the events of
16 Charlottesville or anything like that?

17 A No.

18 Q Did you ever provide me with a shield?

19 A No.

20 Q Or a helmet?

21 A No.

22 Q Did you ever give me advice with regard to security or
23 tactics or marching?

24 A No, sir.

25 Q Did I march with you in August of 2017?

M. Heimbach - Cross

1 A No.

2 MS. DUNN: Your Honor, may I request a brief sidebar?

3 THE COURT: Okay.

4 (Sidebar commenced.)

5 MS. DUNN: Your Honor, this is my question.

6 Mr. Spencer is leading this witness, having not established
7 that he is a hostile witness to Mr. Spencer. And so I think
8 this is a real question about how these defendants,
9 co-defendants are going to be examined. That has not been
10 dealt with legally. But it is not -- I would say that they're
11 not allowed to lead because they are co-defendants in a common
12 defense agreement. And I apologize for not thinking of this
13 earlier, but I don't think anybody did. But there is not the
14 foundation for the *pro se* individuals or the counsel to lead
15 this witness. So open-ended questions are fine, but this whole
16 line of questions is leading.

17 THE COURT: In any respect that he has implicated you
18 or somebody, you may lead him, if he said something that you
19 disagree with. But since he's not hostile to you, you
20 generally cannot lead a witness unless they're hostile to you.

21 MR. SPENCER: I understand the idea of a leading
22 question. Yeah. I was asking --

23 MS. DUNN: No. I'm sorry, Mr. Spencer.

24 THE COURT: I know they're factual, but they suggest
25 the answer.

M. Heimbach - Cross

1 MR. SPENCER: I see what you're saying.

2 MS. DUNN: Questions that start with "did" are
3 leading.

4 MR. SMITH: You have to get more basic --

5 MR. SPENCER: Okay.

6 MR. SMITH: Baby steps to take him through the --

7 THE COURT: Mr. Cantwell?

8 MR. CANTWELL: If I could offer an example to just
9 try to clarify. As opposed to was I involved with X
10 organization, my organization, would it be more appropriate to
11 say something to the effect of which of your organizations was
12 I involved with?

13 MR. SPENCER: Oh, I see.

14 MR. CANTWELL: Would that be more acceptable?

15 MS. DUNN: It's more like --

16 MR. CANTWELL: These are details that it's sort of
17 important that we get out. If you'd like us to phrase the
18 question differently --

19 THE COURT: Something like, Mr. Heimbach, to what
20 extent, if any, do you suggest that I was involved with your
21 company, or if I had anything to do with your organization,
22 describe what it would have been.

23 MR. CANTWELL: Describe my involvement at TWP.

24 THE COURT: Well, if I was involved -- just don't
25 suggest the answer.

M. Heimbach - Cross

1 MR. SPENCER: Thank you.

2 (Sidebar concluded.)

3 BY MR. SPENCER:

4 Q All right. Could you describe my involvement with any of
5 the aforementioned organizations?

6 A None, to my knowledge.

7 Q Okay. We've seen evidence that you have gotten into some
8 altercations in the process of a rally that you attended. In
9 your recollection, was I ever involved in any of these
10 altercations?

11 A No, sir.

12 Q Do you remember me being there in the vicinity in any
13 altercation involving the Charlottesville --

14 A No.

15 MS. DUNN: Objection, Your Honor.

16 THE COURT: All right. Mr. Spencer, you can ask him
17 if he saw you and where.

18 MR. SPENCER: Okay. I understand.

19 THE COURT: Something to that effect.

20 BY MR. SPENCER:

21 Q In any of these altercations that might have gotten
22 physical, did you happen to see me?

23 A No.

24 Q You were involved with logistical coordination with the
25 Charlottesville police. And I'll just focus on this. You have

M. Heimbach - Cross

1 testified to that fact?

2 A Yes.

3 MS. DUNN: Objection.

4 MR. SPENCER: Well, I was just -- I haven't asked my
5 question yet. I was just establishing --

6 MS. DUNN: Objection. Not the witness's testimony,
7 and so objection, misstates testimony and also leading.

8 MR. SMITH: Your Honor -- you know what, I'll --

9 MR. SPENCER: I can just rephrase.

10 THE COURT: Did you say you were involved earlier
11 with the Charlottesville police coordination?

12 THE WITNESS: Yes, Your Honor. But Ike Baker of the
13 League of the South was the primary point of contact for our
14 overall plans, so yes.

15 THE COURT: What is your question?

16 BY MR. SPENCER:

17 Q Was I involved in any of those meetings that you
18 participated in of any nature, digital or physical, with the
19 Charlottesville police about logistics or safety of the rally?

20 A No. There was a total divorce between yourself and myself
21 in any of the lead-up.

22 Q I want to go back and talk a little more generally. Were
23 we in communication in the year leading up to the
24 Charlottesville rally?

25 A To some degree.

M. Heimbach - Cross

1 Q I would like to introduce -- this is in my evidence file.
2 This is just a screenshot of a text message.

3 MS. DUNN: Your Honor, we just would ask Mr. Spencer,
4 if he knows, what is the exhibit number?

5 MR. SPENCER: It's not -- I entered all my
6 Exhibits -- I'm introducing this because this came up during
7 your examination. And this is in my exhibit list that was
8 given weeks ago.

9 THE COURT: Does it have a number?

10 MR. SPENCER: It does not have a number.

11 THE COURT: How do we know --

12 MR. SPENCER: Well, because I put this together today
13 because it's a direct response to the testimony of
14 Mr. Heimbach.

15 MR. SMITH: I think what he's saying, Your Honor, is
16 it's a rebuttal exhibit so he didn't know he was planning to
17 introduce it.

18 THE COURT: Can you get it on the screen? I mean,
19 it's something that's been filed.

20 MR. SPENCER: Yes.

21 THE COURT: Right? Okay. Can you get it on the
22 screen?

23 MR. SPENCER: It's on the screen right now.

24 THE COURT: Okay. Well, what's the issue?

25 Okay. Go ahead.

M. Heimbach - Cross

1 MR. SPENCER: And can that be published to the jury?

2 THE COURT: Yes.

3 (Defendants' Exhibit 1 marked.)

4 (Defendants' Exhibit 1 admitted.)

5 BY MR. SPENCER:

6 Q Mr. Heimbach, did you possess a phone number during the
7 period of these events, 301-525-1474?

8 A Yes.

9 Q Looking at this exhibit, do you recall sending me this
10 text message?

11 A Not off the top of my head, but I believe I did.

12 MS. DUNN: Your Honor, we would just request, because
13 this exhibit has no identifying information, it's a text, but
14 it has no phone numbers, we just would like to see the whole
15 exhibit. Since it doesn't have a number, we can't look it up.

16 THE COURT: Okay. We need -- I mean, they need to
17 see it like Mr. Jones needed to see...

18 MR. SPENCER: I don't know how I can show that to
19 you. I mean, this was presented to you years ago originally,
20 and then I have -- again, because this was brought up today, I
21 brought this up. I mean, I could --

22 MR. SMITH: Your Honor --

23 MR. SPENCER: We don't need it, I guess. I could
24 move on without it.

25 MR. SMITH: Perhaps we could have a quick sidebar

M. Heimbach - Cross

1 about this.

2 THE COURT: No. Can you find the whole -- I mean,
3 can you find the entire message?

4 MR. SPENCER: I can.

5 THE COURT: All right.

6 MR. SPENCER: Could you turn the screen on here again
7 so I can find that?

8 THE CLERK: It's showing on here. Did it come
9 unplugged?

10 MR. SPENCER: It's not showing here.

11 THE CLERK: Is it VGA or HDMI?

12 MR. SPENCER: It's HDMI.

13 I don't want to hold up the trial. I can just move
14 on. This was just supplementing.

15 THE COURT: All right.

16 BY MR. SPENCER:

17 Q Do you recall having a phone conversation with me in the
18 summer of 2017?

19 A I believe so, yes.

20 Q Do you recall anything about that conversation?

21 A I think we mostly talked about our families, honestly.
22 Just friendly chitchat.

23 Q Okay. Before that call, had we been in communication in
24 some way?

25 A Not that I can particularly think of. Again, different

M. Heimbach - Cross

1 subcultures.

2 Q Did we interact on social media? Do you remember any
3 interaction on social media?

4 A I might have followed you on Twitter.

5 Q I'll bring you to Charlottesville 1 which occurred in May
6 of 2017.

7 A Yes.

8 Q Did you attend Charlottesville 1?

9 A I did.

10 Q Do you remember seeing me there?

11 A Yes.

12 Q Do you remember seeing me at an after-party?

13 A Yes.

14 Q Did we come together to that after-party?

15 A Not together, no.

16 Q Do you remember my general state at that after-party?

17 A Not entirely.

18 Q Okay. Do you remember there being a lot of boisterous
19 singing and drinking and so on at that after-party?

20 MS. DUNN: Objection, leading.

21 BY MR. SPENCER:

22 Q What do you remember about that after-party?

23 A It was a very enthusiastic sort of event where folks
24 thought it was a very successful demonstration. So there was
25 food, music, drinking.

M. Heimbach - Cross

1 Q Do you remember anyone being drunk at that after-party?

2 A Yes.

3 Q Do any names come to mind?

4 A I mean, I would just have to go with a large percentage
5 probably of the folks that were there. There was a lot of
6 celebration going on.

7 Q Did I invite you to attend Charlottesville 1 in May?

8 A I don't believe you did.

9 Q Who invited you to attend Charlottesville 1 in May?

10 A I believe I got an invitation initially from Derrick Davis
11 that had been in contact with local organizers. He had friends
12 in different organizations.

13 Q I would like to speak a little bit about ideological
14 questions.

15 A Sure.

16 Q Have you ever heard the term "ethnostate"?

17 A Yes.

18 Q Could you describe what that means to you?

19 A Sure. Well, the creation of an ethnostate would be a
20 racially homogenous nation that is essentially a Herrenvolk
21 democracy where a single people, culture, identity, would be
22 the ones who would be in charge of that region.

23 Q Do you remember who coined that term, "ethnostate"?

24 A I believe it's been used far before any of us got involved
25 in politics.

M. Heimbach - Cross

1 Q Have you ever heard me discuss the ethnostate? Or have
2 you ever heard me discuss that -- using that term, the
3 "ethnostate"?

4 A I can't think specifically of a podcast or whatever where
5 you've touched on that. I should have listened better, I
6 guess.

7 Q Okay. How would you describe the ethnostate? Is the
8 ethnostate -- how would you describe the ethnostate in its
9 relationship to, say, activism?

10 A Well, the goal would be to be able to have a movement that
11 was political in order to be able to achieve political goals.
12 In this case it would be self-determination in line with
13 international law.

14 Q In terms of -- going back a little bit before 2017, what
15 was your impression of me, Richard Spencer, before the
16 Charlottesville rally?

17 A It was a complicated view. Kind of always viewed you as a
18 bit of a dandy.

19 Q Okay. Was I someone that you looked up to in terms of a
20 traditionalist workers movement?

21 A No.

22 Q Was I someone that you listened to in order to get
23 ideological advice?

24 A No.

25 Q Was I someone who you would listen to to get strategic

M. Heimbach - Cross

1 advice or safety advice?

2 A No.

3 Q Did you ever see me wear boat shoes?

4 A Not sure off the top of my head, but it wouldn't surprise
5 me.

6 Q There was a discussion during your testimony and just with
7 Mr. Kolenich as well about relying on people at this rally.
8 Could you rely on me?

9 A No.

10 Q I want to bring up something very quickly. This came in
11 the plaintiffs' examination of you. This is just to refresh
12 your memory. This was Exhibit 0707.

13 A It's not on my screen.

14 There we go.

15 Q It's a bit hard to read.

16 So Dillon, that's Dillon Hopper?

17 A Yes.

18 Q Number 6190, he wrote, "Now all we need is Spencer and
19 Damigo."

20 A Yes.

21 Q What did you need us for?

22 A I mean, I personally would have said nothing. As the top
23 of the discussion said, I said that we had 90 percent of the
24 worthwhile activist groups in America, of which obviously
25 Identity Evropa and your section of the movement would have

M. Heimbach - Cross

1 comprised more than ten percent of the movement. So when I
2 wrote that, I was not including your part of things. So Dillon
3 said that we needed you guys.

4 Q Okay. Did you want me there?

5 A In terms of at Charlottesville in general?

6 Q Yes.

7 A In politics in general?

8 Q No, I would say Charlottesville.

9 A Well, I mean, going to Charlottesville was primarily -- it
10 was going to be a big platform for our message. In many ways I
11 would say yeah, I was hoping you would be there, but I was
12 hoping my speech would be better and, you know, I would view us
13 in many ways subculturally as in competition for one another
14 because the version of white advocacy that you had and I had
15 were so fundamentally different from one another, we really
16 weren't trying to go to the same end destination.

17 MR. SPENCER: Thank you. No further questions.

18 THE COURT: Mr. Cantwell, do you have any questions?

19 MR. CANTWELL: I was going to say, Judge, I'm happy
20 to get started, but I'm definitely going to take more than 13
21 minutes. If you'd like me to get started, I will.

22 THE COURT: Did you have any questions?

23 MR. CAMPBELL: Your Honor, I do have only a few that
24 would easily fit in before we would need a break.

25 THE COURT: Okay.

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1 CROSS-EXAMINATION

2 BY MR. CAMPBELL:

3 Q Mr. Heimbach, I represent James Fields. I have a couple
4 of questions for you.

5 A Yes, sir.

6 Q Prior to August 12, did you know the name "James Fields"?

7 A No.

8 Q Ever met James Fields, to your knowledge, before August
9 12?

10 A No.

11 Q Since August 12, and having seen photographs of Mr. Fields
12 presumably all over the Internet and newspapers and that sort
13 of thing, does that make you recall ever seeing James Fields at
14 any event you participated in prior to August 12th?

15 A No.

16 Q So Charlottesville 1.0, Pikeville, I don't know if you
17 went to Berkeley or whatever, any event, did you ever see James
18 Fields at any event prior to August 12?

19 A No.

20 Q In your mind, when was the Unite the Right rally over?

21 A As soon essentially as the state of emergency was declared
22 and we dispersed from the park.

23 MR. CAMPBELL: Thank you, sir. I don't have any more
24 questions.

25 THE COURT: Anyone going to take just about five

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1 minutes? Anyone on the Internet?

2 THE CLERK: Mr. Hopper indicated he had no questions
3 and Mr. ReBrook has indicated he has questions.

4 THE COURT: Okay.

5 THE CLERK: Hang on, Mr. ReBrook is thinking. One
6 second.

7 THE COURT: Members of the jury, we'll take a recess
8 now until 9 o'clock tomorrow morning. Same admonition. Do not
9 discuss the case with anyone. Do not allow anyone to discuss
10 it with you. Do not remain within the hearing of anyone
11 discussing it. And do not read, listen, or watch anything
12 pertaining to the case.

13 And you're excused at this time. You may go with the
14 marshal.

15 THE CLERK: Your Honor, Mr. ReBrook will have some
16 tomorrow morning.

17 THE COURT: Who?

18 THE CLERK: Mr. ReBrook tomorrow morning.

19 **(Jury out, 4:50 p.m.)**

20 MS. KAPLAN: Your Honor, can we raise one
21 housekeeping matter?

22 THE COURT: Yes.

23 MS. KAPLAN: So, Your Honor, I'm very hopeful --
24 we've all been talking about scheduling. I'm very hopeful
25 tomorrow that we'll get a chance to put on one of our experts,

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1 Deborah Lipstadt, on the stand. I think I mentioned earlier
2 I've had conversations with Mr. Campbell and Mr. Kolenich about
3 the exhibits I want to use. We've made disclosure to all the
4 defendants about the exhibits.

5 The vast majority of them will be already in evidence
6 but there may be one or two that we'll have to get in later in
7 the case with other witnesses. And I wanted to make sure that
8 would be okay with Your Honor, in terms of showing them to the
9 jury. I won't admit them.

10 THE COURT: They have been filed?

11 MS. KAPLAN: No, not with Your Honor. They've been
12 disclosed to the other side.

13 Oh, yes, they've all been produced, yes, Your Honor.

14 THE COURT: Okay. Well, if you'll vouch for the fact
15 they're going -- I will take your word for it that they're
16 admissible and so someone else will tie it in.

17 MS. KAPLAN: Thank you, Your Honor.

18 MR. CAMPBELL: Your Honor, just for my part anyway,
19 having reviewed all of them, I would concur.

20 MR. SMITH: I don't have a problem with the exhibits
21 that were in Ms. Kaplan's email that she sent.

22 MS. KAPLAN: Thank you, Your Honor.

23 MR. SPENCER: Your Honor, I have one small thing.
24 The plaintiffs have been excellent at producing all of the data
25 on Discord, and I actually have a dedicated computer for that.

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1 The issue was actually brought up by Mr. Jones this morning
2 regarding the fact that all of the evidence on Discord, which
3 is a huge amount, they are not labeled using the plaintiffs'
4 exhibits.

5 So for instance, when I was just using an exhibit to
6 remind Mr. Heimbach, I was able to find the hard copy of what I
7 wanted, but in the future I might want to use these exhibits.
8 And I've asked the plaintiffs in recess whether they could
9 allow me to have a cross-reference. And they've been helpful,
10 but they really haven't offered anything. I just simply want a
11 simple way to cross-reference the exhibits.

12 THE COURT: Can you send them something that --

13 MR. SPENCER: I could send a letter.

14 THE COURT: -- whatever you have, and list as much
15 information as you have about it, and that should give them an
16 opportunity to maybe ferret out the exhibit by number.

17 MR. SPENCER: I'll send you an email, but it's really
18 kind of like a cross-reference key so that when you put
19 forward -- I have your exhibit list. So if you could just put
20 the exhibit list so that I could know the number, the file name
21 number on the Impact that I have on my computer.

22 MS. DUNN: Your Honor, I don't know what that would
23 require as far as work. I also think there's a little
24 disconnect, and maybe Mr. Kolenich or Mr. Jones can help us
25 out. I think what Mr. Spencer needs is the exhibit by PX

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1 number or by exhibit number, and I assume other counsel has
2 that.

3 MR. SPENCER: I have that. That's what I'm saying.
4 The file name on the -- you sent me a hard drive that I have
5 attached to a computer. The file name in that hard drive,
6 there's no way to cross-reference to the exhibit number.

7 MS. KAPLAN: I don't think we have that, Your Honor.
8 It doesn't exist. I will say that all the exhibits have the
9 Bates number on them, as they always do. So I don't know if we
10 can do much more than that. We don't have the kind of key that
11 he's talking about.

12 MR. SPENCER: I'll try again. If you wouldn't mind,
13 I might send you an email. Sometimes when it's in writing it's
14 a little more clear.

15 MS. DUNN: That's fine.

16 MR. CANTWELL: I seem to have gathered some
17 conversation about stipulations in email. As we have sort of
18 established, I'm not big on emails these days. So I have no
19 idea what's going on.

20 (Proceedings adjourned, 4:55 p.m.)

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C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: November 2, 2021