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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *)	
UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00040
Plaintiff,)	
)	
vs.)	
)	
PATRICK EDWARD McCAUGHEY, III,)	Washington, D.C.
TRISTAN CHANDLER STEVENS and)	August 29, 2022
DAVID MEHAFFIE,)	9:38 a.m.
)	
Defendants.)	
)	
* * * * *)	

TESTIMONY OF JASON MASTONY EXCERPTED FROM THE
BENCH TRIAL - DAY 1
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

Jason Mastony	4	97	140
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Government's Exhibit Nos. 232, 233 & 234	27
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1 (REPORTER'S NOTE: The following contains excerpts from the
2 bench trial requested by counsel:)

3 THE COURT: Ms. Paschall?

4 MS. PASCHALL: Thank you, your Honor.

5 The Government calls Sergeant Jason Mastony.

6 (Thereupon, the witness entered the courtroom and
7 the following proceedings were had:)

8 THE COURT: Sergeant, if you could come on up to
9 the stand and remain standing for a moment.

10 JASON MASTONY, GOVERNMENT WITNESS, SWORN.

11 DIRECT EXAMINATION

12 BY MS. BOND:

13 Q. Good afternoon, Sergeant. Would you please say your
14 name and spell it for the record?

15 A. Sergeant Jason Mastony.

16 THE COURT: Feel free to adjust that microphone.

17 THE WITNESS: J-A-S-O-N M-A-S-T-O-N-Y.

18 BY MS. BOND:

19 Q. And where are you employed?

20 A. Metropolitan Police Department, Fourth District.

21 Q. What's your current rank?

22 A. Sergeant.

23 Q. What was your rank back on January 6th of 2021?

24 A. Sergeant.

25 Q. What did you do before you joined MPD?

1 A. High school, college. I worked for a medical device
2 manufacturer and became a police officer 12 years ago.

3 Q. And you've been with MPD the last 12 years?

4 A. Yes.

5 Q. So back on January 6th, 2021, what kind of
6 responsibilities did you have then?

7 A. So I was a patrol sergeant in the Fourth District
8 working the evening tour. And then additionally I was the
9 sergeant on Civil Service Unit 42, which is a platoon inside
10 of the Fourth District, staffed by Fourth District officers.
11 And CDU 42 is a rapid response unit, which is just a platoon
12 with standard CDU certifications. And then on top of that,
13 we get additional training and munitions and crowd control
14 and we're particularly designed for addressing violent
15 crowds as opposed to crowds.

16 Q. And you call it CDU 42. Are the numbers specific for
17 some reason?

18 A. Yeah. The two platoons -- there's seven rapid response
19 platoons on the Metropolitan Police Department, one for each
20 of the seven police districts. The two platoons are the
21 rapid response platoons, so 1-D, 2-D, 3-D. All have
22 platoons; and they are 12, 22, 32, and 40 is 42.

23 Q. So what kind of training do they get, CDU 42, to respond
24 to crowds?

25 A. So primarily we're given different gear. The standard

1 CDU attire for a Metropolitan Police Department police
2 officer is a pair of gloves that have padding and armor on
3 them that go down to here; a riot baton, which is just an
4 extended -- essentially like an asp baton or a police baton,
5 just bigger; and a helmet that is ballistic and has a visor
6 shield. That's what essentially every officer on the
7 Metropolitan Police Department gets for civil disturbance.

8 The rapid response platoon will have additional
9 armor protection that's got like an athletic cup situation,
10 like armor that goes on our thighs, our shins, knees,
11 forearms, shoulder pads. All that stuff hooks into our --
12 the vest that we wear on patrol. So that covers our chest
13 and pretty much it just covers all your extremities for
14 being struck with, you know, objects or thrown objects,
15 anything like that.

16 And then on top of that, training. We just -- we
17 drill more addressing a violent crowd, not a lot of, you
18 know, deescalation, like, "Sir, ma'am, the Metro is that
19 way"; more, you know, you're being attacked by a crowd. How
20 do you get something you need out of a violent crowd?
21 Extractions, things like that.

22 And then on top of that, munitions. We're
23 certified in all the munitions the department uses.

24 Q. Like what?

25 A. Shoulder OC spray, larger canister OC spray that looks

1 like, you know, bug repellent or something like that,
2 40-millimeter. We're all certified in a 40-millimeter
3 extended impact weapon, which is essentially a grenade
4 launcher with a foam round, and it also shoots munitions.
5 And then hand-thrown munitions, which are anything from CS
6 gas to OC spray to sting balls, which would be rubber
7 bullets or rubber pellets. So pretty much all the munitions
8 that are used in civil disturbance a CDU 42 member is
9 certified to use.

10 Q. And of the 12 years you've been with MPD, how many of
11 those have you been with part of CDU?

12 A. So CDU, I was certified in the academy 12 years ago.
13 The rapid response platoons were created at the beginning of
14 2017 for Trump's first inaugural election.

15 Q. So in the average year, about how many times a year
16 would you say you have worked on gatherings that started out
17 as First Amendment assemblies?

18 A. So training-wise or actual deployed for actual First
19 Amendment assemblies?

20 Q. Actually deployed.

21 A. First Amendment assemblies would be several times a year
22 up until 2020, so call it dozens.

23 And then starting in 2020, we were in an almost
24 constant -- I spent probably 40 percent of the year on CDU
25 deployment. It wasn't always on an active protest.

1 Sometimes it was just: You're going to have a crowd here
2 for this and we're going to keep you activated, and the
3 deployments lasted months.

4 But yeah. For actual disturbances I've been on, I
5 call it dozens. For actual riots, I call it about six.

6 Q. Six times in your --

7 A. Where it's a straight declared riot.

8 Q. Okay. So can you tell me why you spent so much of 2020
9 deployed?

10 A. We had the George Floyd killing on May 31st of 2020,
11 which led to unrest in the city. It was pretty much three
12 nights of riots. I worked the last night, the third night.
13 And then interspersed in there for the remainder of the year
14 we would have events, you know. They tried to take down the
15 statute at Lafayette Square Park. We deployed for that and
16 stayed deployed for a while for the nights after for weeks
17 or months. It kind of all blends together.

18 And then the -- we had a Fourth District police
19 chase that involved a citizen getting killed and riots at
20 our station, so we deployed for that.

21 Q. In your experience, what's the most difficult riot
22 you've ever had to work in the city?

23 A. The January 6th.

24 Q. Why is that?

25 A. Just numbers. We were massively outnumbered, whereas

1 generally we are outnumbered, but it's more of a factor of
2 there's several hundred of them and there's a few -- there's
3 dozens or scores of us, maybe not to 100, but 100.

4 So say again -- again, I'm generalizing -- but 100
5 versus 400, and those 400 are not always cohesive, going
6 after one thing. They're: I'm going to go here. I'm going
7 to go there.

8 In this case, you had thousands focused on one
9 object, and we were between the two things.

10 Q. How would the violence you saw on January 6th compare
11 with the violence you saw in the other six declared riots
12 you've seen in your experience?

13 A. It was comparable; but again, it just upped the factor
14 of -- before, I have had things thrown at me. I have had,
15 you know, chemical munitions and other things on. But
16 there, it reduced the number of people. I had one or two
17 people in a crowd doing that.

18 In this case, I had dozens to hundreds of people
19 that you're confronted with. So again, comparable acts, but
20 the amount of acts and the amount of people participating
21 was different.

22 Q. So I take it you were on duty on the 6th. What time did
23 you start in the morning?

24 A. 6:00 a.m., approximately, possibly 5:00. But I think it
25 was 6:00.

1 Q. And where were you stationed initially?

2 A. We went down. We were staged in -- on Constitution
3 Avenue just southeast of the Eclipse [sic]. So
4 Constitution, and we had four blocks running from the
5 Eclipse down towards the Capitol Building. So we were
6 stretched out in a high-visibility manner. We were not
7 wearing any riot gear or protection. We were just in our
8 standard uniforms and wearing neon high-visibility jackets
9 over top of our uniforms.

10 And it was just pretty much: Put a squad in each
11 block and the crowd goes by. "Officer, where's the Metro?
12 Officer, Officer," and that kind of thing. Just "Hello."
13 Just being there so that they know there is a police officer
14 there. But we were in no other capacity.

15 Q. You keep saying "we." When you say "we," are you
16 referring to CDU 42?

17 A. Yes. The platoon is there. That's where the platoon
18 was staged.

19 Q. And what were you seeing when you first got there?

20 A. So it was pretty much just a standard crowd. There was
21 an event going on on the Ellipse. And in general, the crowd
22 was moving from the east to the west, so a large crowd
23 coming up Constitution Avenue towards the Ellipse. That
24 pretty much went on from when we got on or really sunrise to
25 the time of the speech or -- the speech began.

1 Q. How would you describe the tone of the crowd during
2 those hours, early sunrise to the time the speech began?

3 A. Nothing unusual. It was fairly positive. People
4 walking back, just, you know, expressing themselves and, you
5 know, saying some common statements like "Back the Blue" and
6 other kinds of things. And that was pretty much our day to
7 that point, was just people walking by and, you know,
8 expressing to them as they are trying to get photos with us
9 and other kind of things like that.

10 Q. How many officers were part of CDU 42 on the 6th?

11 A. On the 6th? So a CDU platoon is 12 officers, four
12 sergeants, one lieutenant. On the 6th, it was 25 officers,
13 four sergeants, one lieutenant.

14 Q. Why so many officers?

15 A. That's just what a CDU platoon is. A CDU platoon is 28
16 officers --

17 Q. I see. Okay.

18 A. -- and then we had three short on the 6th.

19 Q. I apologize. I misheard.

20 So I want to ask you just about a few names of
21 people. Would Officer Daniel Hodges have been in your
22 platoon?

23 A. Yes.

24 Q. How about Officer Abdi?

25 A. Yes.

1 Q. Officer Spooner?

2 A. Yes.

3 Q. Would Officer Chad Curtice have been in your platoon?

4 A. Yes.

5 Q. Now, you mentioned on Constitution you were wearing neon
6 jackets. Can you just tell me what else you were wearing?

7 A. Essentially what I'm wearing right now: a bulletproof
8 vest; you have your standard patrol gear; your gun; your
9 magazines; your asp baton; a small cannister of OC spray.
10 Sergeants are equipped with Tasers, but just those four
11 people would have those. And then you have a bulletproof
12 vest, a body-worn camera, and then most people are wearing
13 some sort of winter jacket because it's cold. A neon yellow
14 raincoat.

15 Q. Now, at some point while you're out there on
16 Constitution, did you get a call for assistance at the
17 United States Capitol Building?

18 A. Yes.

19 Q. Tell me about that.

20 A. So we were on Constitution Avenue. Again, things were
21 going pretty much normally. People started going up.
22 Around 11:00, while the speech is still going on, we started
23 seeing the crowd go counter-flow, going back towards the
24 Capitol, large amounts of people going the opposite
25 direction.

1 Over the course of the hour, this crowd starts
2 getting kind of ornery. It starts collecting around the
3 Justice Department. I'm currently at the 500 block of 10th
4 Street, which is next to the Justice Department. I'm
5 standing with our lieutenant, Bill Hackerman. We started
6 seeing the crowd surge the Justice Department.

7 Q. What do you mean by "surge"?

8 A. The Justice Department security is in front of the
9 building. They have bike racks. We were seeing those bike
10 racks physically start moving. There's enough people in
11 front of the Justice Department that they're pushing on the
12 Justice Department line and going right -- [indiscernible]
13 start getting a little hectic.

14 THE COURT REPORTER: I'm sorry. I missed what you
15 said at the end. If you could slow down, please.

16 THE WITNESS: I'm not sure exactly where I lost
17 you. So the transmission started getting more hectic on
18 our radio zone as to the events. We started hearing more
19 transmissions going on that started kind of escalating our
20 anxiety, really, of what was going on.

21 BY MS. BOND:

22 Q. What were the conditions that you were hearing?

23 A. Pretty much our -- when we have any kind of First
24 Amendment in the city that involves the Capitol Building,
25 Capitol has an area responsibility and MPD has a different

1 area of responsibility.

2 When a crowd moves from the MPD area to the
3 Capitol area, we hand it off. So people coming from the MPD
4 area of responsibility, essentially D.C., are going onto the
5 United States Capitol grounds and there's a handoff on the
6 air. The crowd is now onto U.S. Capitol grounds. U.S.
7 Capitol has the event. When they come back off the grounds,
8 they do the same thing over the air.

9 So the crowd has come onto the U.S. Capitol
10 grounds. Standard thing. Nothing unusual. There's a crowd
11 in the Capitol grounds.

12 Then the unusual starts to happen.

13 Q. What's the unusual?

14 A. The Capitol Police is calling for MPD to come on the
15 Capitol grounds and assist them. The commander of the
16 overall MPD operation, Inspector Glover, he goes. He starts
17 pulling platoons in to respond to the Capitol, to what's
18 going on.

19 As I said, like at this point, they're starting to
20 actually voice things. Glover is starting to narrate what's
21 going on. They're taking projectiles. He's authorizing
22 helmets.

23 Q. And can I just pause you for a second?

24 A. Yes.

25 Q. So what you're recounting right now, is that what you

1 were hearing on the radio?

2 A. That's what is going on on radio transmissions while I'm
3 standing at 10th and Constitution.

4 Q. Okay.

5 A. My physical observations, that started telling me what's
6 going on at the Justice Department.

7 Q. I see. Please continue.

8 A. So between myself and Lieutenant Hackerman, we decided
9 to pull the platoon off high visibility, get them all to the
10 500 block of 10th Street just to have them in one place so
11 we can go somewhere because it's our understanding at that
12 point, we're gonna move somewhere despite not having the
13 order. Escalate the radio stuff. It continues to escalate.
14 They still don't call for us.

15 Lieutenant Hackerman has asked for authorization
16 for us to get in our gear. We are at this point in no
17 particular hard gear. He asks for authorization.

18 Authorization is granted. We start putting on our gear in
19 the 500 block of 10th Street, just everybody strapping on
20 stuff.

21 Q. And so can you tell me what gear that you're putting on
22 at --

23 A. The pads I described earlier. Essentially, you're
24 putting on pads over all your extremities. Your vest is --
25 your chest is already covered by your vest. You're starting

1 to attach pads to your legs, your arms. So -- and you're
2 completely covered so if you take a hit from a flying
3 object, you're not going to be debilitated or out. It'll
4 bounce off and you can keep going.

5 There's a part of this which might come up later,
6 but the rapid response platoon also wears a suit, a
7 coverall. So it's a onesie. It's like a NASCAR -- like a
8 Novak suit. It's flame-retardant. So you put that on over
9 it.

10 There was a time crunch here because we were all
11 hearing the transmissions. We were all starting to be,
12 like, "This is bad. It's getting bad fast." So most of
13 us -- I think only two members of the platoon, Sergeant
14 Austin, Officer Stokes, decide to put that on, that they
15 have time to get that on.

16 Q. That Novak suit?

17 A. That suit.

18 Q. Okay.

19 A. Everybody else goes down similar to what I'm wearing
20 except with a long-sleeved polyester suit, a shirt, like our
21 standard uniform shirt. And essentially that's what we go
22 down with. We go with pads on top of our uniforms.

23 So of all the rapid response platoons down there
24 that day, in videos or anything you see, if you see an
25 officer that's an MPD officer wearing that suit with pads

1 outside and no suit -- no onesie, black onesie, over it,
2 that's a CDU 42 member. We didn't have time to put the suit
3 on. So that's what we were wearing when we went down to the
4 Capitol.

5 Q. So your CDU 42 members, by the time they made it down to
6 the Capitol, were they wearing helmets?

7 A. Yes. We did have helmets. So everybody, no matter what
8 the state of their apparel was, everybody just had a
9 bullet-resistant helmet, like a rated, like, 3 helmet with a
10 visor on it.

11 Q. Does that visor come up and down?

12 A. Yeah. It comes up and down, comes out. It covers
13 around from your ears all the way around your face.

14 Q. Now, your guys in CDU 42, did they have gas masks?

15 A. We did have gas masks.

16 Q. And do you know if all of you were wearing them that
17 day?

18 A. In general, when we responded, no one would put on a gas
19 mask.

20 Q. Why is that?

21 A. It's not anywhere close to procedure for MPD to deploy
22 CS gas, which is why you would need a gas mask. CS gas is
23 an aerosol. The gas mask will stop that from coming into
24 your lungs, filter it. It stops it.

25 MPD since IMF in the early 2000s really has not

1 used that even during the protests. When Park Police would
2 deploy it, we weren't deploying CS gas. It gets everywhere.
3 It's a contaminant. There's not a lot of good ways to
4 contain it in an urban environment.

5 Q. When you say IMF, are you referring to a riot that
6 occurred in the IMF in the early 2000s?

7 A. Yes.

8 Q. So I want to take you back to when you got the call for
9 assistance at the Capitol. Do you remember those moments,
10 how you learned that you needed to get over to the Capitol?

11 A. So -- I'm sorry. So it was pretty much the radio
12 transmissions just going on --

13 Q. Okay.

14 A. -- calling for more platoons, calling for additional
15 assistance down there, that they were taking scaffolding,
16 that it was being taken off the construction site, thrown at
17 the officers, that he had officers injured. That was the
18 big one that hits you, when you start hearing people are
19 going down.

20 Q. Is that typical, to hear that officers have been
21 injured?

22 A. No.

23 Q. Now, did you get something called a 1033?

24 A. I don't recall if we received a 1033 before we were
25 actually physically on the line.

1 Q. I see.

2 A. I never recall hearing a 1033 transmission while I was
3 monitoring the radio in the -- prior to engaging with the
4 crowd.

5 Q. So you get the call for assistance. How do you and your
6 men respond?

7 A. So we go down. We all load into our vans, rental vans.
8 We drive as fast as we can to the U.S. Capitol. We come in
9 off the north side.

10 Q. Now, is the north side where you were told to go?

11 A. No. I believe we were told to go to the south side.

12 Q. So why did you go to the north side?

13 A. The crowd was -- we were on the north side of the Mall.
14 The crowd was between the Mall and was on the Mall,
15 essentially. So crossing the Mall was going to be
16 difficult. And also, that's where the lead car went. So we
17 all followed the lead car. They were going to the north
18 side. We went right behind them. We didn't really put the
19 most thought into what we had been told and to respond to it
20 appropriately.

21 Q. Before this experience, had you ever actually been to
22 the Capitol Building before?

23 A. I went once as a tourist.

24 Q. And do you recall what year that was?

25 A. 2014, 2015. I walked around the west and then I walked

1 back.

2 Q. So you touched a little bit on sort of a hand-off
3 between MPD and Capitol police as crowds moved toward the
4 Capitol Building. Did MPD have jurisdiction over Capitol
5 grounds?

6 A. I believe we have joint jurisdiction.

7 Q. Can you give me -- help me to understand that a little
8 bit?

9 A. I don't have a legal, you know, real --

10 Q. Okay.

11 A. -- to put this on here. But we are the primary law
12 enforcement agency in Washington, D.C. If there's a murder
13 on the U.S. Capitol, we have it.

14 Other than that, pretty much Capitol is primary.
15 If they have an offense on the Capitol grounds, they handle
16 the report; they handle the investigation; they handle all
17 that stuff outside of a murder. But really, they have a
18 full police agency. We let them handle the Capitol.

19 I'm a sworn police officer in Washington, D.C.
20 The Capitol's in D.C. If something goes on, I'll cross a
21 boundary at the Capitol. I'm still going to go over there
22 and take police action. Whether or not I handle it, that
23 ultimately -- or it gets investigated by another person,
24 that's something else. But I have police powers to go to
25 the Capitol and do something.

1 Q. Had you personally ever been called to assist on Capitol
2 grounds before?

3 A. No.

4 Q. And so when you're headed over there, what were you
5 expecting?

6 A. I was expecting a crowd, like a line. I did not --
7 self-admission: I did not properly prepare. There was
8 obviously -- by what information I had, there was a CDU line
9 under active assault by a crowd.

10 Q. Okay.

11 A. So I should have had a different kind of response than
12 what I had. But really what I expected was a crowd and to
13 go address it, form a line and stop that crowd from moving
14 where it wanted to move.

15 Q. So you've already talked a good bit about gear. But in
16 addition to what you've already spoken about, would CDU
17 officers -- CDU 42 officers have had OC spray that day?

18 A. Yes, but just our personal one that we would carry every
19 day. It's a little, like, two-ounce container. It's not a
20 large something meant for crowd control. It's meant for
21 personal -- if you have one person who you need to OC spray,
22 you do two short bursts. It's not a crowd-designed
23 implement.

24 Q. Did your officers have their service weapons?

25 A. They did.

1 Q. Anything else that they could use to help control the
2 crowd?

3 A. The one crowd civil disturbance thing that they had --
4 they had no munitions, nothing of the stuff we're trained to
5 carry. We just had a CDU baton, an expandible baton, that
6 we don't carry on routine patrol. That was the one piece of
7 CDU equipment that they had. Outside of that, they also had
8 asp batons, the collapsible ones. I already mentioned the
9 OC spray. And they had their service weapons.

10 Q. Did any of your officers have shields?

11 A. No, we didn't. We were not equipped with shields when
12 we responded.

13 Q. Are you -- so you weren't equipped with shields on the
14 6th. Do you ever use shields during crowd control?

15 A. Yes.

16 Q. But why didn't you have them on the 6th?

17 A. We just weren't issued them.

18 Q. Okay. Now, I want to ask you about body-worn camera.
19 Were you wearing a body-worn camera that day?

20 A. Yes.

21 Q. And what is a body-worn camera?

22 A. A body-worn camera is a small box you wear on your
23 chest. It's produced by a company called Axon. You run it.
24 It runs live the whole time, so it's constantly recording
25 over a two-minute buffer. Once I hit a button on my chest

1 in a certain manner, two taps, the camera goes actual live
2 recording. It ceases to record over that two-minute buffer
3 and it begins recording audio and recording live until the
4 camera battery dies.

5 Q. Does it record both audio and video?

6 A. After the two-minute buffer, once I hit the button, it
7 begins recording audio. There's a two-minute -- call it a
8 grace period where the camera is recording. If it was in
9 the "on" position now, if I activated this, it would start
10 two minutes ago with no audio, go two minutes, and then the
11 audio would start at the moment I hit the button.

12 Q. So for a person watching your body-worn camera after the
13 fact, does that mean that the first two minutes of video
14 would have no sound?

15 A. In most cases, barring a previous activation that
16 overlapped in some way. But if I just -- if I had my camera
17 in the "on" position at this point, I would hit it twice and
18 you would see a video that started two minutes prior to this
19 going, no sounds; and then at the moment I hit this, you'd
20 start hearing sounds and a video recording.

21 Q. I see you touching the center of your chest. Is that
22 your body-worn camera?

23 A. Yes.

24 Q. Is that where your body-worn camera was on you on
25 January 6, 2021?

1 A. Yes.

2 Q. Did you turn your body-worn camera on that day?

3 A. I did.

4 Q. Now, have you had an opportunity to review your
5 body-worn camera footage -- before I ask you that, I wanted
6 to talk about the officers in your platoon.

7 Do you know if they were wearing body cams that
8 day?

9 A. Yes.

10 Q. Do you know if every single person was or in general
11 most of them were?

12 A. Every single member of the platoon was wearing a
13 body-worn camera.

14 Q. Did you give any orders to them that day about their
15 body cams?

16 A. I'm not sure if I ever gave the order to activate the
17 body-worn cameras.

18 But on our way down -- again, sorry; I'm throwing
19 another element in here -- the Taser that I'm equipped with
20 has a Bluetooth activation. If I take a Taser out and I hit
21 the "on" switch, every camera in my vicinity activates. So
22 on the walking into the -- onto the grounds of the Capitol
23 on January 6th, I took the Taser, I turned it on and I
24 reholstered it. And by me turning it on, if anybody's
25 cameras weren't live at that point, they then went live.

1 Q. Okay. Now, your body-worn camera footage, have you had
2 a chance to review your body-worn camera footage from that
3 day?

4 A. Yes.

5 Q. So I'm pulling up for authentication -- it'll be
6 Exhibits 232, 233, 234 and then all of the derivatives of
7 those exhibits.

8 MS. BOND: If you can pull up 232 so we can
9 confirm that it was his.

10 BY MS. BOND:

11 Q. In your prior review, does your video run from
12 approximately 1:55 p.m. to 4:25 p.m.?

13 A. Yes.

14 Q. So this clip that -- the still that's here on the
15 projector here, is this your body-worn camera footage from
16 that day?

17 A. Yes.

18 Q. So I would like to ask you just a little bit more. In
19 the right-hand corner, I see some timestamps. Can you tell
20 me about those?

21 A. Yeah. It's a timestamp which is in European. So the
22 date code is turned around. 2021 is the year; 01, the
23 month; 06, the day. And then it goes to military time. So
24 it's 1300 and 53 hours, so 1:53 p.m.

25 Q. And in your experience, are the time and date stamps

1 generally accurate?

2 A. Yes.

3 Q. Are they accurate for January 6th, 2021?

4 A. They are.

5 Q. On that day, was your body cam having some sort of audio
6 issue?

7 A. I believe so.

8 Q. What was going on?

9 A. I have no idea. I cleaned my body camera since, and it
10 seems to have resolved the issue. But from the moment that
11 it's activated to the moment it's deactivated, there was
12 clearly something going on with the microphone that makes it
13 less audibly clear than it normally is.

14 Q. But you've cleaned it and it's better now?

15 A. Yes. The same cameras is now better than it used to be.
16 But the -- I didn't know there was a problem before I
17 watched the video from January 6th. And yeah. So I don't
18 know how long it was going on prior to this activation.

19 Q. So of all of your body-camera footage that day, do you
20 have any reason to believe that it's been altered in any
21 way?

22 A. No.

23 MS. BOND: So the Government moves to admit and
24 publish -- it'll be Exhibits 232, 233, 234 and all of the
25 derivatives of that body-worn camera footage.

1 THE COURT: Seeing no objection, they will be
2 admitted.

3 (Whereupon, Government's Exhibit Nos. 232, 233 and
4 234 were entered into evidence.)

5 BY MS. BOND:

6 Q. I would like to start with getting your officers ready.
7 Going back to your platoon arriving at the Capitol, once
8 everybody gets geared up, how do you make your approach to
9 the Capitol?

10 A. I don't remember the exact streets, but we go in a
11 convoy with two scout cars and four rental vans on the north
12 side of the Mall, east until we get to a cross street, and
13 then we're on the north side of the Capitol. We go through
14 one of their lowering barricades. We park on the outside of
15 the Capitol perimeter and then we dismount and walk in.

16 MS. BOND: So playing Clip 232 -- Exhibit 232.1,
17 please. It's a one-minute clip.

18 (Whereupon, Government's Exhibit No. 232.1 was
19 published in open court.)

20 THE WITNESS: In general, a CDU line is one line
21 with four sergeants and a lieutenant in the back. Four or
22 five of my officers don't have hard gear. They're just in
23 the normal outfit that I described for the CDU officer. And
24 they just -- at this point, I'm trying to let them know:
25 You guys stand behind the officers with hard gear in the

1 event we form line.

2 BY MS. BOND:

3 Q. Why would you put them behind the officers with hard
4 gear?

5 A. Because they don't have the external protection that the
6 other officers do. Pretty much throughout the clips that
7 we're going to view is me trying to get officers with
8 protection on their extremities to take the place of
9 officers without protection on their extremities.

10 Q. So as you're heading towards the Capitol, does somebody
11 help lead you?

12 A. Yeah. A Capitol officer, Seth Carl, who I met for the
13 first time that day. I don't know the U.S. Capitol grounds.
14 I'm the first guy in the line going in. I don't know where
15 my line is. I don't know where I'm going.

16 So I grab one of the Capitol officers. I tell
17 him: You need to tell me where to go. Seth Carl takes us
18 in. He has no armor. He doesn't even have a helmet. He
19 does not tell his commands where he's going. He just takes
20 us into the crowd, which I appreciated. But that's how we
21 got in. Seth Carl just said, "This way," and we followed
22 him.

23 Q. I'm sure we'll talk about Seth Carl again later.

24 MS. BOND: So let's play Exhibit 232.2, another
25 one-minute clip.

1 (Whereupon, Government's Exhibit No. 232.2 was
2 published in open court.)

3 BY MS. BOND:

4 Q. In this initial approach to the Capitol, how would you
5 describe the crowd at this point?

6 A. The crowd is -- on outskirts of the crowd, it's kind of
7 aimless: People walking around, people standing around,
8 people looking. At this point, I'm just using compliance to
9 get through the crowd. Yeah. I'm just asking people, "Move
10 aside."

11 As the crowd starts to get denser, I begin to
12 physically move people. So I'm just trying to physically
13 move people as I move through the crowd, putting my hand on
14 them: "Police department. Move aside." In going through
15 crowds before, I've had good success with just straight
16 compliance, just: "I know where I'm going. You get out of
17 my way." And before they realize what's going on, they've
18 already complied.

19 So that's what I'm going to here. When the crowd
20 is thin, we're just walking straight through them. When the
21 crowd gets thicker, I'm moving them aside. We start off in
22 a two-column formation.

23 Unfortunately, it goes down to one single line of
24 officers moving through a thick crowd. And as I'm coming
25 through, it's just more people pressing up front, harder to

1 get through.

2 As the video continues -- I'll let it play.

3 Q. Did the reactions from the members of the crowd change
4 as you were pushing through that denser crowd?

5 A. They got more hostile. You started hearing more hostile
6 remarks. At first: "Oh, it's a police officer. You told
7 me to move. I move." By the time we get to the end, it's
8 me physically grabbing people by the shoulder and pushing
9 them aside whether or not they don't hear me or don't care
10 that I'm there. I can't make that judgment. But I'm
11 physically now having to use force to get people out of my
12 way.

13 MS. BOND: I'll ask you to play the next exhibit.
14 But I will refrain from talking over it, because I think
15 that's causing problems.

16 Would you be willing to play Exhibit 232.3.

17 (Whereupon, Government's Exhibit No. 232.3 was
18 published in open court.)

19 MS. BOND: Stop it there.

20 BY MS. BOND:

21 Q. What we just observed as you're walking through the
22 crowd, is that the denser, more hostile crowd that you were
23 talking about?

24 A. Yeah. So you see me come up on our initial CDU line. I
25 have found our line, the officers. At this point, when I

1 come in, the line is not under active assault. This
2 whole -- for the next half-hour, we go through ebbs and
3 flows. Sometimes the crowd is assaulting the line;
4 sometimes the crowd is just standing there.

5 So at this point, I get into the line, find
6 Capitol. And then I'm not sure how much more of this video
7 plays, but I shortly realize -- I do not know it at this
8 exact moment in this video -- that the crowd behind me has
9 laid attack on the rest of my platoon. And I only
10 brought -- as opposed to bringing all 25 officers and
11 officials in, I brought myself, another sergeant and two
12 officers who successfully made it to the line.

13 Q. I definitely want to talk more about that.

14 But first, in this video, we see what appears to
15 be a bike rack that you're going through. Was that
16 accurate?

17 A. Yes.

18 Q. So what was that bike rack all about?

19 A. So the bike rack was -- had established a line. I'm not
20 sure when it was put up, but the line being held was secured
21 by a bike rack with officers behind it. So we had a bike
22 rack interlocked just mechanically with, like, the peg that
23 goes into the hole on the side of the bike rack. They
24 weren't attached to the ground by any means. They weren't
25 attached together with zip ties, as sometimes they are.

1 They're just bike racks. Essentially, using a barrier
2 between the police and the crowd.

3 Q. So were there any officers standing behind the bike
4 racks?

5 A. Yeah. The bike rack was fully manned. Say, every
6 stretch of the bike rack in my vision was staffed by
7 officers standing behind it. "Don't come back -- don't come
8 back to this bike rack. There're officers right here. This
9 is a police line."

10 Q. Now, in this moment that we're all staring at on the
11 screen, it's now at 14:00:43, which would be 2:00
12 approximately and 43 seconds, is this the west plaza that
13 we're looking at?

14 A. Yes.

15 Q. And the bike rack line, does it span the whole of the
16 west plaza?

17 A. To my knowledge, from the west -- again, I don't know
18 the technical parts of the U.S. Capitol grounds. But the
19 plaza in between -- there's three sets of scaffolding: the
20 north set of scaffolding over a stairwell, the south set of
21 scaffolding over a stairwell and a media tower in the
22 middle.

23 The scaffolding goes from the north tower right
24 before the stairwell starts -- or the bike rack goes from
25 the north tower right before the stairwell starts, so just

1 short of that tower, and then all the way around the south
2 tower. So that's -- I'm not sure if the plaza is considered
3 bigger than that, but that's where the bike rack was.

4 Q. Got it. And what was the purpose of that bike rack
5 line?

6 A. So I don't know why U.S. Capitol set it up. I assumed
7 it was an inner perimeter in the event that a crowd came in
8 there, that you have an additional layer to put officers
9 behind to slow anybody going through the perimeter.

10 Q. Okay. Now, you talked about only half of your platoon
11 making it through. What happened?

12 A. So it wasn't half. I have 25 officers. Two officers.
13 So --

14 Q. I see. I'm sorry.

15 A. -- so the inspector, the commander of the CDU, was
16 expecting a hard platoon to show up with 28 officers, four
17 officials to reinforce him. He's under attack. He needs a
18 platoon. We're it.

19 Instead, I show up with me, another sergeant and
20 two officers. So essentially, not great. I'm supposed to
21 bring in several dozen people or two dozen people. I bring
22 in two.

23 Q. So when did you first realize that you were missing so
24 many men?

25 A. About here. So I turn around and say: What? But

1 it's -- yeah. I don't have a good, really, you know,
2 narrative for this. Just that this isn't great. I'm --
3 not anywhere in our training, like, it was like: If you
4 lose 90 percent of your platoon, this is what you do.

5 Q. So what did you do?

6 A. Essentially, I wander around trying to figure out what
7 happened. You see again if the -- if you watch the video,
8 it continues on me looking around: What's going on? Where
9 is my platoon? Do I have to go out and get my platoon?
10 Should I go out and get my platoon? And just different --
11 what should I do in this situation?

12 So --

13 Q. So what did you actually do?

14 A. -- I stood there until my platoon managed to break out
15 itself. There was really -- the ultimate concession here is
16 that there was nothing I could do. The officers out there
17 were on their own. There was no ability for me to go.
18 There's no one for me to call to go, "Hey, I've got a
19 platoon cut off in the crowd." Like there's nothing to be
20 done there. It's just: They're out there. If they don't
21 find their way out, then that's where they're going to be.
22 Yeah. So I'm inside the line. They're outside the line.
23 Not a great supervisory position to be in, but that's what
24 it was.

25 Q. Did your platoon eventually make it back in through the

1 police line?

2 A. Yes. They were able to fight their way into the
3 direction of the police line and successfully enter the
4 police line.

5 MS. BOND: So playing Exhibit 232.4, please. It's
6 a minute and a half long. It starts at timestamp 14:03.

7 (Whereupon, segments of Government's Exhibit
8 No. 232.4 were published in open court.)

9 THE WITNESS: If you want to stop the video.
10 So in this sequence of video, you see what looks
11 like an amplifier set up on the stage next to me. It's
12 called an LRAD system. I don't know exactly what the
13 acronym means. I'm not technically certified with the
14 system. I just know it exists. It's existed for 12 years,
15 at least since I've been on the department.

16 You set it up to issue warnings to a crowd. So
17 it's a loud amplified speaker. It gives a prerecorded or a
18 message that's done manually into it and it voices to a
19 crowd in almost all instances: "This is an unlawful
20 assembly." And it gives a series of warnings. First
21 warning, second warning, third warning. And the third
22 warning comes with a modifier that: Failure to abide by
23 this warning will result in arrest. So that's what's going
24 on with that box that's speaking in an amplified manner on
25 that corner.

1 Then you also see in the picture our SOD people
2 who have munitions -- I do not -- deploying, throwing
3 munitions into the crowd to try to disperse it.

4 BY MS. BOND:

5 Q. And the LRAD system, is that what we could hear audibly
6 in this video?

7 A. Yes. You see it's a box that's on this raised railing
8 in front of me. You see a box and it's -- that's what's
9 issuing the loud warnings. I don't know exactly what the
10 warning is, but that's what's issuing the warning.

11 Q. And to your recollection, was that LRAD system going
12 when you walked into that police line?

13 A. It started almost -- whether it was on as I walked in
14 or -- but it was going. As I turned, I see what's going on;
15 and they're issuing LRAD warnings.

16 Q. And do you recall about how long you could hear it for?

17 A. No. A matter of minutes.

18 Q. Okay.

19 MS. BOND: If you would continue playing the
20 exhibit.

21 (Whereupon, segments of Government's Exhibit No.
22 232.4 were published in open court.)

23 THE WITNESS: Stop it again.

24 At this point, you see my platoon start coming
25 into the line. You'll see as the video plays that they're

1 in varying states of dishevelment. They've been assaulted.
2 And mostly the problem is they are not wearing gas masks or
3 really anything to shield their face and eyes. And they've
4 been sprayed by chemical munitions by the crowd. So mostly
5 bringing them in behind our line. People have brought
6 water. There's water that's presented itself. I don't know
7 where it came from. And they're trying to flush out their
8 eyes from the munitions that are in them.

9 BY MS. BOND:

10 Q. Now, did the other police officers have to move that
11 bike rack line so your platoon could come through?

12 A. Yes. So the bike rack has to be physically opening.
13 Whether that caused the line to weaken, I don't know. But
14 to get us in, we had to physically open those racks.

15 Q. How did the crowd react when that bike rack line was
16 opened?

17 A. So you'll see that there's a small surge of -- there's
18 several scuffles in the next half-hour that I'm present for,
19 and this is one of them. Just the back-and-forth of thrown
20 objects, fights, assaults, not a serious push, but just a
21 back-and-forth.

22 MS. BOND: Would you continue.

23 (Whereupon, segments of Government's Exhibit No.
24 232.4 were published in open court.)

25

1 BY MS. BOND:

2 Q. So did there come a point that the police line that had
3 been established there was eventually overrun?

4 A. Yes.

5 Q. Did that happen at approximately 2:30 p.m.?

6 A. Yes.

7 Q. So I want to focus on that period in between 2:00, when
8 you get your platoon back, and 2:30.

9 So what types of behaviors were you encountering
10 from the crowd?

11 A. So pretty much a spectrum, from active assault to
12 passive resistance. And passive resistance being: "I'm
13 standing here. I'm going to yell at you. I'm not going to
14 assault you. I'm not going to push you. I'm not going to
15 spray you with anything." Just -- this is what the crowd is
16 doing to us. He's just standing there and between -- giving
17 speeches, telling us that what's going on is wrong, just
18 trying to, you know, physically talk to us, essentially.

19 I'm fine. Nothing we haven't dealt with before.
20 Just a passive line of people who are upset, who, despite
21 warnings, are not leaving.

22 So really you have ebbs and flows of forces. This
23 is a deescalation of force. We've just gone through 2020.
24 We are not going to assault people who are just standing
25 there talking to us.

1 Q. Let me pause you. When you say "We've just gone through
2 2020," what does that mean to you?

3 A. It's a year, you know, just a reckoning of police force
4 used on community members. Every realm of police officer --
5 again, I'll just speak for myself: I am now very much more
6 conscious of the type of force that I'm going to use on a
7 citizen.

8 At this point in time, coming off the 2020
9 protests and having worked as many protests as I now have, I
10 am extremely cautious about how I put my hands on people.
11 And I'm not going to strike or use OC spray again unless
12 high conditions are met in my mind to move you.

13 Even if you are unlawfully where you are and
14 you're standing there against my order, if you're just
15 standing there and you are not assaulting me, I am not going
16 to strike you. I am not going to really -- I did not use OC
17 spray that day. I was going above and beyond, trying not to
18 do anything that could -- honestly, self-preservation -- get
19 me fired from my job. I had no interest in it.

20 So I think that's kind of what you see in that
21 time period. You have officers who are confronted with
22 people who are passively resisting. And then behind them,
23 interspersed with them, sometimes they're assaulting;
24 sometimes they're not. And so I cannot very well target
25 someone who comes around three passive people and sprays us

1 with bear spray.

2 So I pretty much just stand there and take it. If
3 I react to it and try to get to that person behind the three
4 passive people, in my mind, again, the perception of this
5 time, I'm going to have a video going through someone who is
6 not fighting me to get someone else who isn't [sic]. And
7 then my fear was that I would have to account for "This
8 person wasn't doing anything, Officer. Why did you strike
9 them? Why did you come through to them?"

10 You have about a half-hour of that. We are
11 getting assaulted intermittently, but a lot of the people
12 that we are interacting with are just passively there.
13 Whether they were assaulted before that or assaulted after
14 that -- whether they were assaulted before that or assaulted
15 after that, we couldn't do anything about it. We were just
16 going moment to moment.

17 If you are not actively assaulting me -- again,
18 from my perspective -- I was not going to use a great deal
19 of force against you, even if it would have helped maintain
20 that line.

21 Q. So I'd like to talk about a few specific moments in that
22 2:00-to-2:30 period.

23 MS. BOND: If we could play Exhibit 232.5. It'll
24 be at timestamp 14:06:20.

25 (Whereupon, segments of Government's Exhibit

1 No. 232.5 were published in open court.)

2 MS. BOND: Pause it.

3 BY MS. BOND:

4 Q. What was that smoke we were just observing there?

5 A. I believe that was a fire extinguisher. So that's a
6 good example of what I was talking about. You have a
7 leather jacket, American-flagged gentleman who's just
8 standing there. He's not assaulting me, not spraying me,
9 not doing anything. That red stuff that you saw coming in,
10 that's crowd chemical OC.

11 In general, our OC that I know that we were
12 carrying on that day in those shoulder-mounted OC dispensers
13 that you saw the captain carrying, that's spraying -- it is
14 OC spray, but it's not dyed red. So the red stuff that's
15 coming in that's staining our shirts, that's getting on our
16 face masks, that's the red dots on this camera, that's
17 coming in. So you can see in this that we are getting
18 munitions. You can see thrown projectiles coming in,
19 lumber, just metal, anything coming up from the construction
20 site. And you can see the fire extinguisher getting sprayed
21 at us.

22 THE COURT: You said earlier, Sergeant, that after
23 IMF, CDU wouldn't use munitions. But SOD is?

24 THE WITNESS: So in general, like I said, we're --
25 the CDU 42 is the most trained of the CDU non-SOD elements.

1 We are qualified to carry all this stuff. And -- but it's
2 essentially gone down to: Break in case of emergency.

3 And on January 6th, we were not equipped with any
4 riot control munitions. SOD has what's called a domestic
5 security office which has vans that come around, DSO teams.
6 You might hear that on the radio transmissions. They come
7 in with the munitions. All those officers have munitions.
8 A lot of these officials are SOD members who carry the
9 shoulder-mounted OC spray dispenser Mark 46.

10 So in general, I have at times -- Trump's
11 inauguration is one example where we were issued out
12 munitions. There are other occasions where they gave us
13 munitions. January 6th was not -- our CDU platoon was not
14 issued munitions.

15 So it was just what you're carrying duty-wise,
16 your small can of OC spray, which is your one reach-out-and-
17 touch-you thing. Everything else is hand controls and using
18 your riot baton as best you can.

19 THE COURT: Thank you.

20 MS. BOND: So moving on to Exhibit 232.6, which is
21 timestamped 14:09:28.

22 (Whereupon, Government's Exhibit No. 232.6 was
23 published in open court.)

24 BY MS. BOND:

25 Q. What was going on here in this clip?

1 A. You see us again taking munitions, guys running up,
2 throwing stuff, running away. They're receiving our
3 munitions back.

4 The captain, who's near me, has a Mark 46 OC
5 dispenser. And you'll see that the stuff we're getting in
6 is red. The stuff he's putting out is white, clear. It's
7 the difference between the munitions going back and forth.

8 You see all the bike rack tug of war. They're
9 taking bike racks off the line. They're taking away that
10 physical barrier. So it's just a force multiplier. I can
11 put one officer on a bike rack. It's a better way to hold
12 back a crowd than it is one officer, no bike rack. He can
13 just use his -- expand on his space. He's just not going to
14 get as much push if he's got a physical obstacle in between
15 him.

16 That bike rack's been taken away. And also, in
17 the tug of war for the bike racks, you see the Capitol
18 officer who has gone in and gotten the bike rack back.

19 We've also lost ground. We used to be before
20 where the bike racks were. But now there's a guy who's
21 down. He's injured or feigning injury. We're not going to
22 push him off. We're not going to use force against him
23 because it's an injured guy sitting on the ground. So we've
24 pretty much given up that ground to him and we establish a
25 line behind that.

1 So while in the scheme of things 4 feet is not
2 that much, but if over the course of an hour you're giving
3 up 4 feet every few minutes, you're eventually going to be
4 in so tight of a perimeter that you no longer are protecting
5 what you were protecting before.

6 Q. Now, was that the only time that day you saw a tussle
7 over bike racks?

8 A. No. For this half-hour, essentially. Again, it'll be
9 calm. You'll be talking to someone. They'll be trying to
10 express their views. You're going to say, like, "Sir,
11 nothing. Leave. Whatever. Move back. Move back. Move
12 back." And then there will be a skirmish of a few seconds.
13 Someone will come in, grab a bike rack, try to run off with
14 it. The officers do a tug of war. Sometimes they'll get
15 it; sometimes they won't.

16 MS. BOND: So moving on to Exhibit 232.7,
17 timestamped 14:13:12.

18 (Whereupon, Government's Exhibit No. 232.7 was
19 published in open court.)

20 THE WITNESS: You'll see the bike racks are now
21 gone from my side of the line.

22 BY MS. BOND:

23 Q. Why are they gone?

24 A. So again, I was not present for this. I went -- the
25 entire time on here, I have this overwhelming complex that I

1 do not have all my officers. I do not see 25 officers laid
2 out in front of me as I would in training in any kind of,
3 you know, non-dynamic environment. It makes me very, very
4 nervous that I have an officer somewhere that I don't know
5 about. So --

6 Q. Why does that make you nervous?

7 A. I'm accountable for them. They're my officers. If
8 they're out there, Inspector Glover is not going to know.
9 Who's going to know? His sergeant is going to know. That's
10 my job. I'm supposed to take care of those officers, know
11 where they are.

12 So by not having them where I was hoping they
13 would be, I'm running around, like: Are you just getting
14 your eyes washed out? Have I lost you? Did everybody come
15 in off the line when we got separated? That kind of thing.

16 So I'm away from the line when these bike racks go
17 away. I don't know for a fact, but given the circumstances,
18 I conclude that the bike racks were taken by the crowd in
19 dispersing. So instead of having a bike rack interlocked
20 with lines of officers behind them, I now just have
21 officers. There's no physical boundary between me and the
22 crowd.

23 Q. And how effective is just a line of officers compared to
24 a line of officers plus bike racks?

25 A. Plus bike racks is better.

1 Q. Why is that?

2 A. Again, it's a force multiplier. You have a steel
3 structure between you and them. It is harder for a person
4 to get through the steel structure and a line of officers
5 than a line of officers.

6 And then as you'll see as the video develops, when
7 some of those officers go away for whatever reason -- they
8 get sprayed in the eyes; they go back to get water --
9 they're not always replaced. So now you can see big holes
10 in the crowd. If you have a crowd that wants to go
11 somewhere and that crowd sees holes, it's going through the
12 holes. So if you don't plug them, people will explore that
13 space and go through it.

14 Q. So before we play the rest, I heard you in the first
15 portion of this clip saying: "42, push up." Was that your
16 voice that I was hearing?

17 A. Yes.

18 Q. Why were you saying that?

19 A. I wanted to take back that ground. I could see fairly
20 early on in this that while we weren't breaking, we were
21 losing ground incrementally --

22 Q. And did --

23 A. -- through passive resistance, through -- there's a guy
24 who comes up at some point with a bike rack with a backpack
25 facing forward who is just pushing. When I'm on the line

1 myself not supervising and things, I've plugged a hole.
2 They're not assaulting me. They're just using body weight
3 to move my line.

4 They might only achieve a foot. But like I said,
5 if they achieve a foot every few minutes, that collects over
6 time over how long we've stood on this line for as long as
7 it held.

8 (Whereupon, segments of Government's Exhibit No.
9 232.7 were published in open court.)

10 BY MS. BOND:

11 Q. So even with this, the police were still able to hold
12 the line for a while. Is that right?

13 A. Yes.

14 Q. So pulling up Exhibit 232.19, which is a still shot at
15 14:15:44, is this what the police line would have looked
16 like at 2:15 p.m.?

17 A. Yes.

18 Q. And did the police line still extend across the length
19 of that plaza?

20 A. Yes.

21 Q. Okay. Moving on to Exhibit 232.21. And that is a still
22 shot as well. Would that be what the police line looked
23 like at 2:22 p.m.?

24 A. Yes.

25 Q. And did it still extend across the length of that plaza?

1 A. Yes.

2 MS. BOND: Then I'd like to play Exhibit 232.9,
3 timestamp 14:25:30.

4 (Whereupon, segments of Government's Exhibit No.
5 232.9 were published in open court.)

6 BY MS. BOND:

7 Q. After having now watched it, would you tell me what's
8 going on here?

9 A. Yes.

10 (Whereupon, segments of Government's Exhibit No.
11 232.9 were published in open court.)

12 THE WITNESS: Stop it.

13 So that cloud you just saw is a CS device. I'm
14 not sure if it's what's called a burner, which is a constant
15 burning stream -- well, actually, I am certain it's a burner
16 because it's continuously smoking. It's a spewing or a puff
17 that's on fire similar to like a fire or snake that goes and
18 it's burning and emitting CS gas.

19 BY MS. BOND:

20 Q. What is CS gas?

21 A. It's a teargas. So it's what I was talking about
22 earlier. It's just a thing that in general we have access
23 to it, but we're not deploying it. OC is really the
24 Metropolitan Police Department's crowd control munition.
25 It's a more controlled thing. CS gas is an aerosol. It

1 expands out and it's an asphyxiant. You have a sensation
2 that you cannot breathe while inhaling the teargas.

3 Q. And did you ultimately get hit with this particular
4 cloud?

5 A. Yes. So you'll see as the video plays out that the line
6 thins. The Capitol Police officers in this video, you can
7 see they've got U.S. Capitol on the back of their helmets,
8 not MPDC. They're all masked.

9 I have not given the order. I did not give the
10 order. The only people on MPD's side who have gas masks on
11 are the ones who did it by just motivation that they didn't
12 want to get OC sprayed, so they put a gas mask on instead.
13 It was very intelligent, but we didn't all do it. I didn't
14 do it. And a lot of these officers here are about to suck
15 this concentrated CS gas that's sitting at their feet and
16 they're about to leave this line.

17 Q. How did the CS gas affect you specifically?

18 A. I held out for 26 seconds, which I'm still proud of. I
19 thought it was five at the time. I counted it; it's 26. So
20 I'm very proud of that. But I could not breathe.

21 So essentially I was trying to shout orders, push
22 the guys who were masked up because, as they saw everybody
23 else going who didn't have masks, they wanted to come back
24 too. So I pushed them up. As the crowd went back, I pushed
25 them up into the dead space that was vacated by the crowd.

1 But after 26 seconds, I had to go back. I could
2 not breathe. And I had a gas mask on my leg, but I was kind
3 of over it at that point. I could not get to it. I had an
4 officer help me. I did a buddy breathing. I just put my
5 head in it, started to breathe in and out until I had enough
6 air.

7 And then after that, this is when the line really
8 starts to fold. I get up. And I'm sure that'll come up in
9 the video.

10 THE COURT REPORTER: Just for the record, did I
11 hear you correctly that you said buddy breathing?

12 THE WITNESS: Yeah. Like what a fire fighter does
13 when he does not attach a mask.

14 THE COURT: So I take it the CS slow burner was
15 not put out by U.S. Capitol Police?

16 THE WITNESS: I could not testify as to who
17 deployed it. If I were to suggest that I believe either MPD
18 or U.S. Capitol deployed it and either gave a warning that I
19 didn't hear that we were about to deploy gas -- which is
20 standard in our training: "Gas, gas, gas." When you hear
21 "Gas, gas, gas," you drop to a knee. You put on a gas mask.

22 Never heard the command over the radio or audibly.
23 We were not on the same channel as Capitol Police. I do not
24 know that there's been any evidence that the crowd had
25 access to CS gas. If I was to suppose what happened was,

1 Capitol or MPD without radio transmission deployed a CS gas
2 burner into the crowd and someone in the crowd bounces it
3 off this tower here and it drops on my line.

4 THE COURT: I see. So you're not suggesting that
5 the crowd lit this?

6 THE WITNESS: No, but it may be possible. I do
7 believe the crowd threw it back or it did emanate from the
8 crowd. I don't know who started it, who initiated it. It
9 may be a deployed munition thrown back or it could be
10 something that emanated from the crowd. I don't have
11 anything to support it.

12 THE COURT: Okay.

13 MS. BOND: Would you play the remainder.

14 (Whereupon, segments of Government's Exhibit No.
15 232.9 were published in open court.)

16 MS. BOND: Pause it. Thank you.

17 BY MS. BOND:

18 Q. So you talked earlier about the police line eventually
19 being overrun.

20 Before I play that video for you, can you just
21 tell me what you remember about those moments, how that
22 actually happened?

23 And actually, first, looking at this timestamp
24 that's still up on the screen, 14:26, is the police line
25 still holding at that point?

1 A. Yes.

2 Q. So what do you remember about the moments that the line
3 folded?

4 A. So I'm in this position. And it will go on for about
5 the next five minutes. I'm taking off my helmet, getting my
6 mask on, getting my gloves back on.

7 There starts being penetrations on the south side
8 of the line, one's or two's breaking through, officers going
9 and tackling those people, securing the line. That's across
10 the plaza from me. I evaluate that as not my issue at that
11 moment.

12 Once I get my helmet back on, I see the same thing
13 happening on my right side. When I go back to look at the
14 right side, before I -- or this is the north side of the
15 line now -- before the CS gas hit, I had a good number of
16 officers. Everybody is shoulder to shoulder, some two deep.
17 A strong police line presence.

18 After the gas deployed and officers left the line,
19 those officers didn't make it back to the line quickly.
20 There's no bike rack. There was just a line of officers
21 that was ultimately exploited by the crowd. The crowd
22 pushed. There was no one to support it. Officers got taken
23 out into one fight or another. I get taken off the line and
24 moved to another segment of the line by a protester. And
25 then the line collapses from my side into the plaza itself

1 until there's no semblance of order on the police line.

2 Q. And -- well, we'll talk about this later.

3 MS. BOND: Would you play Exhibit 232.10, which
4 starts at timestamp 14:27:50. It is a five-minute clip.

5 (Whereupon, segments of Government's Exhibit No.
6 232.10 were published in open court.)

7 MS. BOND: Pause it.

8 BY MS. BOND:

9 Q. I see a couple of times in the last couple minutes I've
10 seen you throw bike racks down in front of you. Why are you
11 doing this?

12 A. In my mind, bike racks are coming at me. There were no
13 bike racks here, as you saw in the previous videos. The
14 bike racks are being -- coming into me. We have officers
15 still out amongst this crowd.

16 The line did not, you know, fall back in an
17 orderly manner. I'm just trying to keep -- you have
18 obstacles between you and what's in front of you. I'm just
19 trying to keep it clear so I can move back so other officers
20 can move back until we assemble some order of a line.

21 To my knowledge at this point, I have no exit. I
22 do not know the layout of the U.S. Capitol. I do not know
23 this area I'm in. All I know is that I'm in an alcove-like
24 structure, and I had no knowledge there was a stairwell
25 behind me. I thought we were just pretty much surrounded in

1 a small area with a bunch of officers. And if we don't
2 establish a line now, we're not getting out of it.

3 So it was just try to get shoulder-to-shoulder
4 with some people and hold back what was -- reestablish what
5 is left of a line.

6 Q. So in those moments as you're backing up, what did you
7 think was behind you?

8 A. Hopefully just other police officers. But there's other
9 protesters. I just thought it was a wall, that we were
10 going to be on a lower level with a wall behind us and a
11 crowd of thousands in front of us and it was just going to
12 be what we're going to do then.

13 But you'll see as the video progresses that I get
14 up to an upper level. I do not think I had access to that
15 area. I thought I was -- we came in on the lower level. I
16 thought that's where we are. We'll hold this here until we
17 do something about this crowd.

18 But I didn't think we were going to be -- I didn't
19 think I had access to any other area certainly. Once this
20 line folded, I thought I was trapped.

21 MS. BOND: Would you continue.

22 (Whereupon, segments of Government's Exhibit No.
23 232.10 were published in open court.)

24 MS. BOND: Actually, stop it there.

25

1 BY MS. BOND:

2 Q. So on the lower right-hand side of this screen, do you
3 see things leaning up against that wall there?

4 A. Yes.

5 Q. What are those?

6 A. So those are full-body riot control shields. They do
7 not belong to the Metropolitan Police Department. And so
8 they weren't -- they have the Capitol insignia, which tells
9 me they're Capitol shields. MPD or CDU 42 did not bring
10 shields in. We did not have no shields. But I used a
11 shield at many points during that day since Capitol Police
12 had them around.

13 Q. Do you know where they came from?

14 A. I don't know how Capitol Police deployed them or staged
15 them. I just -- in sequences throughout the day, as events
16 unfold, I get my hand on Capitol shields. And so they're
17 around.

18 I don't know the source of them. I know they
19 weren't MPD shields. I just know that those right there are
20 Capitol shields. I have trained on the same design of
21 shields, so I'm familiar with it, how to use it. So when
22 someone hands it to me, I'm going to use this.

23 Q. To your knowledge, does MPD have these rectangular
24 shields?

25 A. We do, but those aren't MPD shields because we don't put

1 the Capitol Police Department crest on ours.

2 Q. So before we play the rest of this --

3 MS. BOND: May I approach the witness, your Honor?

4 THE COURT: You may.

5 BY MS. BOND:

6 Q. I'm showing you what's already been admitted as
7 Exhibit -- I believe it's 801.

8 MS. AKERS: Yes.

9 BY MS. BOND:

10 Q. Do you see this?

11 A. Yes.

12 Q. Could you hold this for a second?

13 A. (Witness complies.)

14 Q. Thank you.

15 Is this the type of shield that you were using
16 that day?

17 A. Yes.

18 Q. And is it similar to what was out there that the Capitol
19 Police had provided?

20 A. Yeah. You'll hold it like this. You brace it against
21 your leg like this. It protects you in a greater degree
22 from your head to your toes than, say -- you'll see in the
23 video circular shields, which MPD does not use at all. Just
24 Capitol.

25 Then we make a smaller shield that's kind of

1 more -- certified to put in the trunk of a police car, just
2 shorter, with, like, one bar on it.

3 And this also has the ability, which I never
4 utilized during that day, to lock in with shields of a
5 similar type. You take this shield and you put it with a
6 shield that looks exactly like it, put it in here and then
7 you close it. And then you have two shields that are
8 mechanically linked.

9 Q. And the reason why you didn't use it in that way that
10 day?

11 A. Too dynamic of a situation. Didn't think to do it.

12 Q. Were you aware they could be used in that way?

13 A. I was aware, but only later did I think it would have
14 been a good idea to do that. But yeah. Not at the time.

15 Q. Thank you.

16 (Whereupon, segments of Government's Exhibit No.
17 232.10 were published in open court.)

18 MS. BOND: Pause it there.

19 BY MS. BOND:

20 Q. So we saw a lot of what was happening. But how would
21 you describe the crowd at this particular point?

22 A. It's actively assaultive. The line is under assault.
23 The unit cohesion of our platoons is gone. I'm just pretty
24 much shouting at guys in uniform. I don't know their names.
25 They're not my platoon. We've got to get a line going. I'm

1 just trying to physically be present. And now I'm just a
2 cog in the line. I'm establishing the line. They can't
3 come down these stairs.

4 Here's me. We're getting our own munitions used
5 on us. The spray that was just used on me is one of our
6 46s. You can tell: There's no dye on it. And the guy was
7 holding a shoulder-mounted OC spray, so clearly when the
8 line collapsed we lost some. So we're getting sprayed with
9 our own stuff now.

10 Q. What do you mean you lost --

11 A. I believe some of our equipment throughout the course of
12 the day gets overrun by the crowd. This particular spray
13 that you take in, again, I referenced the difference between
14 red spray and clear spray. You're getting us with non --
15 this is non-dyed spray from a guy with a shoulder-mounted
16 46.

17 I don't know for a fact that they are not
18 commercially available, but I don't believe they are. And I
19 didn't see anybody carrying them prior to our line getting
20 overwhelmed until this guy appeared after our line collapses
21 and sprays my shield down with OC spray.

22 Q. In your 12 years of experience, have you ever seen a
23 police line collapse like that?

24 A. No.

25 Q. Had you ever seen a police line fail at all?

1 A. No. In 12 years in the Metropolitan Police Department,
2 a police line has not failed to my knowledge through members
3 and going through training for 12 years. We've never
4 recounted a story in the history of the Metropolitan Police
5 Department where a line has failed in such a manner.

6 We've withdrawn lines: There's too many people
7 here; we can't hold this; let's pull it back. We've never
8 had a line fail like this.

9 Q. Now, you had talked about backing up and believing in
10 those moments that you might have been trapped.

11 So what were you trying to do as you're backing
12 out?

13 A. Make a smaller line. So we had a large line going. And
14 even with the reduced number of those officers, in my mind,
15 I'll just hold. Even though it's not -- it doesn't really
16 do anything, it will just protect me and the people behind
17 me.

18 Form a line from half the alcove. If the whole
19 thing is one big alcove, I'll get half. I'll start a line
20 in the middle. And that little wall that you saw me
21 pointing off to the right -- off to the right and other
22 officers coming up, my idea was -- poorly executed -- was to
23 move all those officers up and establish a line at that half
24 wall, a physical barrier with officers behind it. And that
25 way, we could hold it until we figured out what to do,

1 whether it was break out or stay there indefinitely.

2 Q. Were you successful in establishing that line?

3 A. Nope.

4 Q. So you talked about believing that you may have been
5 trapped. Why was that a concern?

6 A. I did not have a desire to be trapped behind that crowd.
7 I did not know what the outcome would be or how I would get
8 out if I was enclosed in there.

9 And I would also be completely ineffective. I
10 would not be able to go anywhere to assist anybody else. I
11 would not be able to do anything. They would have
12 essentially contained a large portion of our civil
13 disturbance response to what's going on. We were pretty
14 much one of the last platoons that's working day work that's
15 going in there.

16 And outside of, again, draining the districts to
17 come in and work, we were the last on-call reserve to come
18 in. So there's nobody else coming to get us. If we get
19 stuck in there, that's where your CDU assets are, in that
20 little cut-off corner on the side of the Capitol, not doing
21 much.

22 MS. BOND: Playing Exhibit 232.11.

23 (Whereupon, segments of Government's Exhibit No.
24 232.11 were published in open court.)

25 MS. BOND: Stop it there.

1 BY MS. BOND:

2 Q. Are these the moments you were just describing where you
3 guys are being pushed back against --

4 A. Yeah. We're being pushed back. This is where I thought
5 at this point, I do believe I know that there's a stairwell
6 where we're getting out.

7 Q. Okay. How did you learn about this stairwell?

8 A. Just by either turning around or saying that, "Hey,
9 we're pulling back." My radio at this point, I'm either not
10 listening or the ear mic is out of my ear. So I'm not
11 hearing transmissions. I'm aware that a transmission got
12 made to pull back to the upper deck. But at this point, I
13 have not heard that transmission. I'm just realizing that
14 there is something behind me, officers going in it; and
15 presumably, that's my exit. So I'm -- my plan was, at this
16 point, was hold as long as I can on the bottom level and the
17 last man up.

18 Q. Were you the last man up?

19 A. No, I was not. But close.

20 Q. Do you know how many other officers were still out there
21 when you went up?

22 A. A handful. I know Sergeant Brian Peeke was the last man
23 up.

24 MS. BOND: So playing -- we'll just play a few
25 seconds of 232.12.

1 (Whereupon, segments of Government's Exhibit No.
2 232.12 were published in open court.)

3 MS. BOND: Stop it there.

4 BY MS. BOND:

5 Q. So when you get to the top of these stairs, what were
6 you thinking at that point?

7 A. So again, I was one of the last guys up. I get to the
8 top of the stairs. I immediately realized that there is no
9 semblance of a line up here, that it did not get
10 reestablished. The officers have gone somewhere else. So I
11 am -- I had a crowd of thousands beneath me. I have one way
12 up that I'm aware of from where they are to where we are.

13 And so I thought: It's a narrow stairwell. You
14 can only fit two guys at a time up here. I can -- give me a
15 handful of guys. I can hold this.

16 So I tried to hold right here on the stairwell. I
17 am not at this time observing these people who are on the
18 upper part above me here. I think that when I get to this
19 point, in my mind, everybody on this level is cops. I do
20 not realize that the rioters and crowd have assumed above me
21 as well.

22 So even in this position, I'm vulnerable from any
23 number of points. But I don't see it at this moment. And
24 so I attempt to get some officers together and hold the
25 stairwell to keep the crowd from getting up to us.

1 Q. Where we've got this clip at right now, timestamp
2 14:37:50, is this on the lower west terrace?

3 A. So again, I'm not good at Capitol geography of anything.
4 To my knowledge, again, this is the west side of the
5 Capitol. It's been referred to as the lower terrace. I
6 don't know if this is the lower terrace or if what I was
7 just on was the lower terrace. But in general, this is the
8 area I believe you're talking about.

9 Q. Fair enough.

10 In these moments, are you aware of any other
11 civilians or non-officers on the stairs?

12 A. I can see in this video that they're there, but I am not
13 aware of them. As this video is recording when I'm present
14 in this moment, I think that everybody on my level right now
15 is a police officer and the only way for anyone else to get
16 to me is through the stairwell I just came up.

17 Q. So you talked about wanting to hold that stairwell. How
18 long did you try to hold the stairs?

19 A. A few minutes before it became -- I became aware of
20 these people around me, that this is clearly not the only
21 way up, that I've got rioters coming in every direction and
22 that me standing here with five officers to hold a stairwell
23 is absolutely meaningless.

24 Q. And where did you go when you realized that holding the
25 stairs wasn't going to be effective?

1 A. I went into a hallway that entered the Capitol Building.

2 MS. BOND: So playing Exhibit 232.13, starting at
3 timestamp 14:38:55.

4 (Whereupon, segments of Government's Exhibit No.
5 232.13 were published in open court.)

6 BY MS. BOND:

7 Q. So before we talk about this hallway, are you familiar
8 with Officer Bronson Spooner?

9 A. Yes.

10 Q. How do you know him?

11 A. He's an officer assigned to CDU 42.

12 Q. In that video clip we just saw, was he standing near to
13 you on the stairs as you headed into the tunnel?

14 A. Yes.

15 Q. Was he wearing a body camera that day?

16 A. Yes.

17 Q. Would it have been on?

18 A. Yes.

19 Q. How do you know?

20 A. Unless he turned it off or it got turned off in a
21 scuffle, it would have been on.

22 Q. And have you had a chance to view his body-worn camera
23 footage in preparation for today?

24 A. I believe I have.

25 Q. Is it fair and accurate, to the best of your knowledge?

1 A. Yes.

2 MS. BOND: The Government moves to -- I can -- we
3 can display them for him. It's Exhibits 235 and 236. We're
4 ultimately asking to move them into evidence as well.

5 THE COURT: Without objection, 235 and 236 are in.
6 Are you also seeking the subcomponents?

7 MS. BOND: Yes, please.

8 THE COURT: 235 and 236, including their
9 subcomponents, are in.

10 (Whereupon, Government's Exhibit Nos. 235 and 236
11 were entered into evidence.)

12 BY MS. BOND:

13 Q. So in the end of the last clip we just watched, I
14 believe you called it a hallway that you were walking to.
15 Is that the word you used?

16 A. Yea. Hallway, tunnel. We referred to it mostly as the
17 tunnel for us.

18 Q. Do you have any idea where that tunnel went?

19 A. Where it went? I determined later where it went. At
20 the time, I had no idea except for into the Capitol
21 Building.

22 Q. And when you entered that tunnel, what was your plan?

23 A. Pretty much figure out what the plan was once I was
24 inside; and hopefully, they didn't get in after us.

25 Q. And as you entered, were the doors still functioning?

1 A. Yeah.

2 Q. Did you see anything broken on the doors?

3 A. Not yet.

4 Q. Do you know if anyone from your platoon actually made it
5 into those doors with you?

6 A. Yeah. Half of our platoon, half of the officers in our
7 platoon, made it into that hallway. The other half ended up
8 on the upper deck of the outside of the Capitol.

9 Q. Who do you remember getting into the tunnel with you?

10 A. Myself, Lieutenant Hackerman, Sergeant Brian Peeke,
11 Sergeant Joseph Austin, Sergeant Jim Park, and then
12 officers -- Officer Abdi was there, Chad Curtice, David
13 Pitt, Daniel Hodges, Bronson Spooner, Jessie Leasure,
14 Carlton Wilhoit. There were one or two others.

15 Q. Was it unusual for a platoon to be split like that with
16 half in the tunnel and half on the upper deck?

17 A. Yeah. We ceased to have -- since the beginning of this,
18 once we marched in, we had no unit cohesion as a platoon.
19 It was just who I recognized to be part of my platoon. And
20 I had some of them at points and I had others at others.

21 So yeah. I've never been -- in 12 years, I've
22 never been on a platoon that was unintentionally split, not
23 divided into squads, "This squad go with Sergeant Peeke;
24 this squad go with Sergeant Park," unintentionally divided
25 in such a manner that you have no knowledge of where anybody

1 else is.

2 Q. So as a leader, was that a concern for you then?

3 A. Yes.

4 Q. Why?

5 A. I do not have any accountability of my officers.

6 So Lieutenant Hackerman is a good lieutenant. He
7 had been a lieutenant for a matter of weeks at the point he
8 was promoted. He had been on a CDU -- on two deployments
9 one other time, and that was the day before. Our deployment
10 started on January 5th. That was his first day. Day 2 was
11 January 6th.

12 I was a sergeant with the same platoon. I was
13 with it when it was formed in 2017, so I had been on it at
14 that time for five years. I knew every officer there. So I
15 had some responsibility above just my seven squad members.
16 Lieutenant Hackerman would do the best he can, but he
17 doesn't know everybody. I'd know every single one of these
18 people. When he'd call -- when I'd call out a name, I know
19 who it is. Or if I see somebody, I know who it is. So I
20 felt overly responsible for all 25 officers I led into that
21 situation.

22 Q. So once you and half of your officers made it into that
23 tunnel, did anyone else take on a leadership role at that
24 point?

25 A. So yeah. There was a commander. Ramey Kyle was

1 present. Yeah.

2 And then there was also an academy sergeant, Paul
3 Riley. Paul Riley trained me at the academy in use of force
4 and on the range when I was in the police academy 12 years
5 ago. He is more experienced easily as a sergeant than I am.
6 He did not have a mask on. I knew exactly who he was. I'm
7 like: It's hit the fan. I am not the most senior person
8 here. Paul Riley, he is a use-of-force expert on the
9 department.

10 I went up to Riley. "Riley, what do we do? Where
11 are we putting our line?"

12 Riley told me, "We're holding right here. We're
13 holding these doors."

14 I yelled out for 42. At this point, you just have
15 a ramshackle group of officers. It's only -- nobody knows
16 each other's names. There's not a lot of commands. And
17 going for unit cohesion, I have -- I see a few 42 officers.
18 "42, get in a line." Spooner, Leasure, Wilhoit, they all
19 get next to me. We form a shield line inside the door.

20 Q. So the things that you did to keep people out, we've got
21 you making a shield line at the door. Did anyone lock the
22 doors?

23 A. Yeah. The doors were locked.

24 Q. Anything else?

25 A. So from my actions at that time, we assembled a line

1 behind the doors. The doors were locked.

2 I do not know this for a fact. I do not know U.S.
3 Capitol procedures. My understanding from Ramey Kyle
4 speaking to me and telling me what he did is he told the
5 Capitol officer to lock down the doors, which was less than
6 I was hoping for when I have determined that that was the
7 full lockdown that that area was capable of. But those
8 doors were apparently as secure as U.S. Capitol could make
9 them to my understanding from being told by the commander
10 present.

11 Q. That was --

12 A. Ramey Kyle.

13 Q. Kyle. Thank you.

14 Did the rioters eventually try to breach that
15 door?

16 A. Yes.

17 Q. What do you remember about that initial breach?

18 A. The first door got breached almost immediately. The
19 second door held a little bit. I believe Sergeant Bogner
20 sprayed some OC spray out there. He tried to get them back
21 with some OC spray out the door. He closed that door. I
22 believe that door was then locked. But then that door came
23 very quickly open and a gentleman came in and gave some sort
24 of speech which was unintelligible or I didn't care to
25 listen to what he was saying.

1 MS. BOND: Playing Exhibit 232.14, starting at
2 timestamp 14:41:45.

3 (Whereupon, segments of Government's Exhibit No.
4 232.14 were published in open court.)

5 BY MS. BOND:

6 Q. Where this clip ends here, it looks like there are a lot
7 of bodies pressed together. Is that right?

8 A. Yes.

9 Q. Is that because of where you wear your body cam on your
10 chest?

11 A. Yes. So the body camera is worn, like, down by the
12 breastbone. So you have eye level what I'm actually seeing.
13 And then down by my chest is where the body-worn camera is,
14 about the breastbone. So about a foot under my eye level is
15 where the body-worn camera sits on an extended clip. And
16 that's where it hangs, essentially.

17 Q. What were you experiencing in those moments where we
18 just see body on body?

19 A. I was pressed in between two unmovable forces,
20 essentially, to the point of incapacitation. I could not
21 move my arms; I could not move forward; I could not move
22 back. So pretty much I have a plastic shield in front of
23 me. My arms are pressed in like this.

24 I have the whole crowd trying to come through the
25 door pressed up against me and I have every officer who was

1 able in the hallway behind me pressing in the opposite
2 direction. We pretty much just clogged the hallway,
3 shoulder to shoulder. As long as we stay here, they can't
4 get past us. That's where we were.

5 Q. So I want to focus on the time period between 2:40 p.m.
6 and 3:20 p.m. Were you continuously in that tunnel the
7 whole time during that time period?

8 A. I believe so.

9 Q. And in general, how would you describe what was going on
10 during that time period?

11 A. Essentially what I've just described, of a large crowd
12 trying to push its way in. MPD is forming a crowd on the
13 opposite side, trying to keep them out. And just me in the
14 middle. Sometimes I'm a few officers back; sometimes I'm at
15 the front; sometimes there's a break and we have some
16 distance between me and the crowd. And, you know, strikes;
17 some other stuff is available. But in general, I'm pressed
18 somewhere in one of those circumstances. I'm either in the
19 front or in between some officers getting crushed from
20 either side to the point where, you know, I'm just being
21 moved.

22 I'm not intentionally trying to go to the right of
23 the hallway. That's just where I'm going. I'm not
24 intentionally trying to go to the left. Wherever the crowd
25 surges or is moving in that point, I'm just going along for

1 the ride. I don't have much ability to do anything. I've
2 got a shield in front of me. Both my hands are occupied. I
3 cannot strike. I cannot use OC spray. I can't do pretty
4 much anything. I'm just in it. As long as I stay there,
5 they can't move past me.

6 Q. Did you or any other officers try to give orders to the
7 rioters?

8 A. To my knowledge, at this point, I did not try to give
9 any verbal orders in this time sequence to people. To my
10 mind, I felt like we were beyond that. I wasn't getting any
11 compliance through asking people to leave at that point.

12 Q. Okay. I'd like to draw your attention to just a few
13 moments of your body-worn camera footage.

14 MS. BOND: Moving to Exhibit 232.15, which is
15 timestamped 14:48, please.

16 (Whereupon, segments of Government's Exhibit No.
17 232.15 were published in open court.)

18 BY MS. BOND:

19 Q. Now, did you hear someone yelling "Move back" and "Push"
20 in that clip?

21 A. Yeah. I actually believe that's me.

22 Q. And what were you trying to accomplish in that moment?

23 A. I was trying to push the crowd back. During this -- and
24 I go back in the hallway at least one other time, separate
25 from this particular event. And again, in the sequence of

1 that, I'm frequently -- I recall yelling "MPD, push" as in
2 getting the officers behind me to push forward.

3 MS. BOND: Moving to Exhibit 232.16 at timestamp
4 14:53:30.

5 (Whereupon, segments of Government's Exhibit No.
6 232.16 were published in open court.)

7 BY MS. BOND:

8 Q. During this time, between 2:40 and 3:20, did the rioters
9 ever relent?

10 A. Yeah. They never relented as far as leaving the
11 hallway. But there were definitely, like, breathers that
12 both sides took because we couldn't physically take that
13 amount of exertion.

14 So occasionally, the crowd would separate enough
15 from what you just saw where you're standing apart. I'm not
16 moving forward anymore because I'm burned; and they're not
17 coming at me, I assume, for the same reason. Just --
18 there's only so much physical exertion you can go through in
19 a period of time.

20 So yeah. That's what you see there. I'm not
21 trying to advance the line. I'm not retreating. But
22 I'm just: "You're not going to be pushing on me for a few
23 minutes? I'll take it. I'm just going to stand here."

24 Q. Now showing you clip 232.18, which is timestamped
25 15:07:30.

1 (Whereupon, segments of Government's Exhibit No.
2 232.18 were published in open court.)

3 MS. BOND: Pause it. Well, maybe go one extra
4 second.

5 (Whereupon, segments of Government's Exhibit No.
6 232.18 were published in open court.)

7 BY MS. BOND:

8 Q. This individual who's standing right in front of you, do
9 you have any idea who that is?

10 A. Outside of being a United States Capitol police officer,
11 I don't.

12 Q. And do you see his hand on the wall in front of you?

13 A. Yes.

14 Q. Okay. So I want to skip over to a new exhibit, but I
15 want to keep in your mind this is timestamp 15:07:41 with
16 that gentleman's hand on the wall.

17 MS. BOND: If you could pull up Exhibit 301, which
18 has not yet been admitted, and move exactly to timestamp
19 16:47.

20 (Whereupon, segments of Government's Exhibit No.
21 301 were published in open court.)

22 MS. BOND: Now play for about five seconds there.

23 (Whereupon, segments of Government's Exhibit No.
24 301 were published in open court.)

25 MS. BOND: Stop.

1 BY MS. BOND:

2 Q. Sergeant, do you see yourself in that clip?

3 A. Yes.

4 Q. And can you -- I believe you can draw on the screen.

5 Can you circle on the screen where you see yourself?

6 A. This guy right here. You see the badge over his heart
7 and then that's my right arm.

8 Q. How do you know that's you?

9 A. So like I explained, with the hard gear platoons,
10 there's two hard gear platoons present at the Capitol at
11 this point. This is an MPD officer, the one I circled,
12 wearing an MPD uniform with the outer vest. He's got a gold
13 badge on and he's got a Taser mounted. That means he's a
14 sergeant.

15 I wear the same sequence of events. I'm also
16 left-handed. That's a small percentage of the population,
17 not a lot of the department. This person who I believe -- I
18 know it's me -- does not have a gun on his right-hand side,
19 because my gun's on the left. The Taser is -- at this
20 point, I don't have my Taser, but it's mounted on my chest,
21 a cross-hand draw from the left-hand side.

22 Additionally, he's wearing rapid response. It's
23 one of only two platoons there wearing this, so he's a
24 sergeant with a rapid response platoon. Platoon 12, the
25 other CDU rapid response team there, had a full suit over

1 their uniform because they did not get dressed in the
2 street.

3 So this guy's wearing his pads on the outside.
4 He's wearing an MPD uniform. He's left-handed, a sergeant,
5 Taser. And he's wearing a ninja glove -- he's wearing a
6 glove that has a forearm protector attached to a leather
7 glove. We issued that 20 years ago. I continue to wear it
8 because it's a glove and a forearm protector. It's not two
9 separate things. I couldn't wear it after that day, but
10 that day I was wearing it.

11 All those circumstances: That's definitely me.

12 Q. So you would say you're pretty confident that's you
13 there?

14 A. Yeah.

15 Q. And have you had an opportunity to watch this video that
16 you just identified yourself in?

17 A. Yes.

18 Q. And is that a fair and accurate depiction of what you
19 observed in the tunnel that day?

20 A. Yes.

21 MS. BOND: The Government moves to admit Exhibit
22 301 and all of its derivatives.

23 THE COURT: Seeing no objection, 301 and it's
24 components are admitted.

25 (Whereupon, Government's Exhibit No. 301 was

1 entered into evidence.)

2 MS. BOND: Now, Mr. Clements, would you be willing
3 to push the video back to 16:45?

4 (Whereupon, segments of Government's Exhibit No.
5 301 were published in open court.)

6 MS. BOND: Pause it there.

7 BY MS. BOND:

8 Q. Do you see that individual's hands on the wall there
9 holding the baton?

10 A. Yes.

11 Q. Does that moment there at timestamp 16:48 -- does it
12 correspond with what we were just looking at in your body
13 cam at 3:07 with the gentleman's hand on the wall?

14 A. Yes.

15 MS. BOND: So I'm going to play until -- from this
16 moment until timestamp 19:02.

17 (Whereupon, segments of Government's Exhibit No.
18 301 were published in open court.)

19 MS. BOND: Clear the screen. Pause it. Forgive
20 me. Go ahead.

21 (Whereupon, segments of Government's Exhibit No.
22 301 were published in open court.)

23 MS. BOND: Pause it there.

24 BY MS. BOND:

25 Q. Now, before you discuss this --

1 MS. BOND: If Mr. Clements would be willing to
2 bring up Exhibit No. 301.7, which is a screenshot of that
3 video at timestamp 17:17.

4 MR. LOPEZ: Your Honor, it's difficult to hear her
5 when she's away from the microphone.

6 MS. BOND: I'm so sorry.

7 (Whereupon, segments of Government's Exhibit No.
8 301.7 were published in open court.)

9 BY MS. BOND:

10 Q. So pulling up Exhibit 301.7, it's a screenshot from the
11 same video at timestamp 17:17. Now let's see if I can
12 circle this.

13 Did you see where I circled right there?

14 A. Yes.

15 Q. Do you remember that individual from that day?

16 A. Yes.

17 Q. And what do you remember about him?

18 A. So if you watch the video, you'll see at a point there's
19 two shields in between us. He's got one shield facing me.
20 There's another shield. I'm not sure who's holding it at
21 that point, it's but oppositely oriented, a shield facing a
22 shield. So two layers of shields.

23 There comes a point -- again, I described it --
24 where I don't have the ability to hit people at some point,
25 where I'm just there. My arms are tied up by a shield or

1 whatever it might be.

2 So I do recall at this point I had a
3 back-and-forth with this gentleman. I don't remember
4 exactly what he was saying. But the essential was, he was
5 trying to ingratiate himself, negotiate himself to, "Hey,
6 let us pass. We're on your side. You're on our side. You
7 should let us go. You should let us past you into the
8 Capitol."

9 My only response was: "F" you. That's kind of
10 it. He was saying a few things. I told him: "F" you.
11 It's memorable because it's really the only time I lost my
12 temper verbally with the crowd where I wasn't trying to,
13 like, "Hey, sir, I'm not letting you past. Get back." It
14 wasn't reasoned. It was just me yelling "F" words at this
15 gentleman.

16 Part of that whole interaction was during the
17 shield pressing, this guy was using his arm to come around
18 the shields. Again, we did not have a lot of ability to
19 stop, use our arms, strike the crowd. And he was clawing at
20 the face of the Capitol officer who was in front of me. I
21 told that Capitol officer, "If he brings his hand around
22 again, I'm going to break it."

23 Q. Now, the face that he was clawing at, was that the same
24 individual who had his arm up at 3:07?

25 A. It was the Capitol officer in front of me. Yes.

1 Q. Thank you.

2 Pulling up exhibit -- before I move on, do you
3 remember anything else about what this individual was saying
4 that day?

5 A. Saying? No.

6 Q. Anything else about what he was doing that day?

7 A. No.

8 MS. BOND: So pulling up Exhibit 441. And would
9 you be willing to start it at exactly six seconds?

10 (Whereupon, segments of Government's Exhibit No.
11 414 were published in open court.)

12 MS. BOND: I've been corrected. It's Exhibit 414.

13 (Whereupon, segments of Government's Exhibit
14 No. 414 were published in open court.)

15 MS. BOND: Stop it right there. Go back to six
16 seconds.

17 BY MS. BOND:

18 Q. Sergeant, do you see yourself in that clip?

19 A. Yes.

20 Q. And have you watched the entirety of this video?

21 A. I believe at points I have watched the entirety of this
22 video.

23 Q. And is -- does this video overlap with the same time
24 period in the tunnel where you were there?

25 A. Yes. Not the same moment, but approximately the same

1 time period of the first time I was in the tunnel.

2 Q. And is it a -- is the video a fair and accurate
3 depiction of what you experienced while you were in the
4 tunnel that day?

5 A. Yes.

6 MS. BOND: The Government moves to admit Exhibit
7 414 and all of its derivatives.

8 THE COURT: Without objection, 414 and its
9 components are in.

10 (Whereupon, Government's Exhibit No. 414 was
11 entered into evidence.)

12 THE COURT: Why don't we take about a ten-minute
13 break.

14 Sergeant, I'll ask you not to discuss the contents
15 of your testimony with anyone over the break.

16 THE WITNESS: Yes, sir.

17 (Thereupon a recess was taken, after which the
18 following proceedings were had:)

19 THE COURT: Ms. Bond, you may resume.

20 Sergeant, I'll remind you you're still under oath.

21 THE WITNESS: Yes, sir.

22 MS. BOND: Thank you.

23 At this point, I would like to play in full
24 Exhibit 414, which is a six-minute video.

25 (Whereupon, Government's Exhibit No. 414 was

1 published in open court.)

2 BY MS. BOND:

3 Q. So was that exhibit recorded between approximately 3:02
4 and 3:08 p.m.?

5 A. Yes.

6 Q. And other than what we've just seen in that video, do
7 you have specific -- any specific recollections about those
8 minutes?

9 A. Really, just what you're seeing in the video. In the
10 video, I'm in -- as from the video's perspective, I'm in the
11 left-hand side of the screen against the wall. So pretty
12 much what you see: Pushing, pulling, getting a lot of push
13 on. I remember Sergeant Park deploying his Taser to my left
14 during this whole event, which you see on the video. But
15 pretty much, there's nothing I haven't described already in
16 the course of what's going on in the hallway over this
17 period of time.

18 Q. Okay. Moving forward, then, to approximately 3:11 to
19 3:12 p.m., I'd like to pull your body-worn camera back up to
20 Exhibit 233.1, which is going to be at timestamp 15:11:42.
21 As it is played, I'll ask you to listen in particular.

22 (Whereupon, segments of Government's Exhibit No.
23 233.1 were published in open court.)

24 BY MS. BOND:

25 Q. At approximately 15:12:15, did you hear someone scream?

1 A. Yes. So it's difficult in this recording. But I
2 believe this is the recording of Daniel Hodges screaming
3 "Help" during what's going on in the videos.

4 Q. Now, when you say you believe that, why do you believe
5 that?

6 A. So I do not recall at the time hearing Daniel Hodges
7 scream for help. There was a lot going on, a lot of people
8 screaming. In the time since when I've reviewed the
9 videos -- I know Daniel Hodges, have known him for five
10 years. I know what he sounds like. And then adding to the
11 additional fact is I know from video recordings of what
12 happened to him there. That is how I know this point in
13 time to being where Daniel Hodges was screaming for help.

14 Yeah. I don't have anything more precise for it,
15 but I didn't recognize it at the time. And then when I was
16 provided a good recording with -- you know, I can tell that
17 Daniel Hodges is screaming for help in a video recorded on
18 my chest.

19 Q. So based on your knowledge of him and the knowledge of
20 this video, is it your belief that around that timestamp,
21 3:12:15, is when you hear Officer Hodges screaming?

22 A. That's my belief.

23 Q. Moving on to approximately 3:18, did there come a time
24 when law enforcement was finally able to push that first
25 wave out of the tunnel?

1 A. Yes.

2 Q. Okay. So describe to me how that happened.

3 A. So pretty much just by momentum. We got enough officers
4 behind us to push out; and at some point, the crowd had
5 eased enough that the way I measured the tunnel of what it
6 was, you have the initial entry point; then you have a first
7 set of double doors; then you have a second set of double
8 doors; and then you have a metal detector after the second
9 set of double doors on the way in, and you have access to
10 all avenues of the United States Capitol after that.

11 The last stand is the metal detector. If you see
12 us by the metal detector, it's gone almost wrong. We barely
13 have any room left to push back.

14 And at some point during this, we do manage to get
15 the line pushed all the way back up to the entry of the
16 hallway.

17 Going outside the hallway quickly becomes
18 problematic. The entire outside of where I came in has
19 been -- above, around, all of it is now owned by the
20 rioters. If an officer goes out there, he is now covered
21 from every angle except for directly behind him by someone
22 else who may want to hurt him.

23 So my perspective was, I'm not going past that
24 threshold. And I feel that almost all of the officers who
25 came to that threshold made the same determination. We were

1 coming about four or five -- a shoulder up to that
2 threshold. And we did not cross it. We held there. And we
3 held that for as long as we could until we got pushed back,
4 pushed forward, and on and on for two hours.

5 Q. And that threshold that is behind you is the covered
6 portion of the tunnel and in front of you is the open plaza?

7 A. Correct.

8 MS. BOND: So playing Exhibit 232.2, which is
9 timestamped 15:18:19. I'm sorry. It's 233.2. I'm so
10 sorry.

11 (Whereupon, segments of Government's Exhibit No.
12 233.2 were published in open court.)

13 BY MS. BOND:

14 Q. So is this one of those moments where you were able to
15 the rioters back to --

16 A. Yes. So in the video itself, you can see it's a
17 prefabricated railing, like a construction railing that's
18 been put up and attached to a plywood box on the corner of
19 the hallway. So I assume -- I've never been in the hallway
20 except for this configuration, but I assume in general it
21 does not have hand railings and this railing was added.

22 Anyway, as you can see, that railing only exists
23 at the threshold as you go from the covered portion of it
24 outside. The first set of double doors, it allows you into
25 the interior. So you're outside in like a breezeway, still

1 covered. Then you're in the open plaza. And right before
2 you're in the open plaza, you have that railing you see in
3 my video. I'm on the left-hand side of the hallway exiting.
4 You see the railing attached to plywood. So that's where
5 this is going on currently or in that video.

6 Q. And after that push at 3:18 p.m., did you learn shortly
7 thereafter that an officer had been dragged out into the
8 crowd?

9 A. So I never at that point -- I never knew how the officer
10 who came to be presented to me got in the condition he was.

11 Q. Okay.

12 A. Captain Bagshaw was standing next to me. He started
13 saying, "Officer down." I looked down and I had an officer
14 just with a helmet on lying on his face in front of my feet.

15 Q. Do you recognize the officer?

16 A. I did not know the officer at the time. So I just knew
17 he was an MPD officer who was lying face down on the ground
18 in front of me.

19 Q. So what did you do when you saw the officer in front of
20 you?

21 A. I picked him up by the -- his vest. So our vest has,
22 you know, two armholes. I picked him up by the straps of
23 the vest, lifted up his torso. And I don't know why --
24 again, hindsight is 20/20 -- I started screaming behind me,
25 "Pull me, pull me, pull me," because everybody -- as the

1 circumstances have played out, all our pressure is going
2 forward out of the tunnel. So me trying to push backwards
3 is not a successful thing. And the only thing in my mind at
4 the time to alert them that I needed to get back was to say,
5 "Somebody grab me and pull me" so I can get this guy out of
6 here, because otherwise I'm just trying to push back against
7 them and they don't know why. They can't see I'm holding an
8 officer.

9 So that's what the circumstance is of me lifting
10 up Fanone, me yelling back, "Pull me."

11 Eventually, an ERT officer who I don't know, who
12 was a much larger man than I, threw one arm around
13 everybody, grabbed who later came to be known as Michael
14 Fanone, grabbed him and helped me spin him around. I got
15 his legs and the ERT officer pulled him out and I came out
16 behind him.

17 MS. BOND: So playing Exhibit 233.3, which is
18 timestamped 15:20:28.

19 (Whereupon, segments of Government's Exhibit No.
20 233.3 were published in open court.)

21 BY MS. BOND:

22 Q. So in addition to pulling Officer Fanone out, did you do
23 anything else to assist him?

24 A. Sorry. So I had planned to. But yeah. So I took off
25 my helmet to try to get him. But an officer very shortly

1 came up, like identified himself as his partner, and I went
2 back to doing other things. The officer's with him. Okay.
3 That's handled. Back to the door.

4 Q. And so did you go back into the tunnel at that point?

5 A. I'm not sure if I went back at that point. I spent a
6 little time -- again, I don't know where my body camera
7 picks up and leaves off -- searching for my helmet, finding
8 the wrong helmet, searching again for my helmet, finding the
9 wrong helmet, trying to account for some officers. And then
10 I don't know if I went right back in then, then came out.

11 So yeah. I don't recall. I did go back in after
12 this point. But whether I went right back in, I don't
13 remember.

14 Q. About how long did you spend in the tunnel that day?

15 A. Probably total, maybe an hour and a half. So I was not
16 in there the entire span of time from coming through the
17 door at 2:40-ish to us breaking out at 5:00. I took at
18 least one break. And then I did not return after I think my
19 second or third break for when the officers actually broke
20 out of the tunnel.

21 Q. Even though you took breaks, were you still there as
22 late as 4:25 p.m.?

23 A. Yeah. I think, like, the last time I came out was 4:25.

24 But we didn't -- MPD did not push out of the tunnel until
25 about 5:00. So by the time of the final pushout, I'm

1 somewhere else in the Capitol trying to gather my platoon
2 up.

3 Q. Okay.

4 A. So I'm no longer in the hallway at that point.

5 Q. So --

6 A. If my video records the 4:25, that was the last time I
7 was in the hallway.

8 Q. During the time periods in which you were in there, did
9 rioters ever push back into the tunnel?

10 A. Yes. So there were more heave-hos. There were more
11 times when we were all the way back to the metal detectors.
12 That was not -- the sequence you saw with Mike Fanone, that
13 was not the last time we were fighting in that tunnel. We
14 managed to get them all the way out and then they got all
15 the way back in at points, all the way back to the metal
16 detectors.

17 Q. And so would it be accurate to say the clips that we've
18 witnessed between about 2:40 and 3:20, similar things were
19 happening through that whole time period until 4:25?

20 A. Yeah. And then to my knowledge, after that. But just
21 to my personal knowledge of the present, to 4:25.

22 Q. What made you decide to ultimately leave the tunnel that
23 day?

24 A. One: I was completely exhausted. But everyone was
25 exhausted. So to that point, I didn't use any kind of

1 excuse.

2 Two: You know, my helmet was gone at that point.
3 I had -- didn't have my helmet. I had already taken one
4 pretty good shot with a crutch across the head.
5 Self-preservation was kind of winning out at this point.

6 And then, too, I took the out. I did not know
7 where my platoon was, and I was probably the person most
8 capable of the command officials in that platoon to know who
9 everybody was and to find everybody to make sure we have
10 everybody accounted for. So any number of those reasons I
11 used to justify it. But really, I was burned and I couldn't
12 go back in.

13 Q. You defended the tunnel for a long time that day. Did
14 you know while you were in there that other entrances had
15 been breached?

16 A. No. I thought we held the Capitol. I did not find out
17 until later that we did not.

18 Q. So what was your belief those entire two-plus hours you
19 were in that tunnel?

20 A. That this was the penetration point, that they were
21 trying to get through this door. This was my work: this
22 door. Like, if I hold this door, then no one's getting in
23 the Capitol. But at that point, that was all I had. Like:
24 They're out there. I'm in here. As long as I'm here,
25 they're not going to be inside.

1 So I found out later that they did get inside.
2 They did delay the thing. And I was not pleased for myself
3 or for the events.

4 Q. When you say not pleased for yourself, what do you mean
5 by that?

6 A. I viewed it as a failure. I could not -- it's on our --
7 like, we can't give up that building. Like, that's not a
8 thing.

9 But, you know, they got in. They stopped the
10 congressional hearing.

11 And then again, selfishly, by them stopping it, at
12 that point I did not know it was going to continue. I
13 thought when they told me that they stopped, that Congress
14 is gone, I'm like: It's just going to happen again tomorrow
15 when they decide, "We're going to do it again" and I'm going
16 to be back in the line tomorrow with, you know, reduced
17 however many officers are left trying to do the same thing.
18 So it was kind of just a low point.

19 Q. Do you know what time, approximately, officers regained
20 control of that tunnel?

21 A. To my understanding, about 5:00 is when Virginia State
22 Police came in and gave us the manpower necessary to push
23 out of the tunnel that it was secured. That entrance was
24 not threatened again.

25 Q. And once things had calmed down and you were able to

1 take a step back, what did you do at that point?

2 A. I wandered off the Capitol looking for two lost
3 officers. So I just wandered about, looking. Like: "Are
4 you 4D? Are you 4D? Are you 4D?" Like the district.

5 So I had collected a majority of my platoon in the
6 Capitol Crypt. We were all there, injured or not. "Okay.
7 You guys are here." And there was two people I couldn't
8 find. So I spent until probably like 8:00 that night just
9 wandering around looking for -- wherever I could find MPD, I
10 was, like, trying to find these two particular officers.

11 Q. Did you eventually find them?

12 A. Yeah.

13 Q. About what time did you find them?

14 A. Sometime well after dark. Well, I didn't find them.
15 They returned to the rally point of -- somebody else, you
16 know. They managed to get in.

17 So by the time I got back to everybody else in the
18 Crypt, those two officers had appeared and I had all my
19 officers. Nobody was at the hospital. Everybody was at the
20 Capitol.

21 And then we started figuring out who is injured,
22 who is injured that they have to go, who is injured that
23 they can stay, who is injured that they can't come back
24 tomorrow and then doing all the necessary paperwork that
25 involves the amount of use of force we had and the

1 notifications for the injuries and all that clerical stuff
2 that is covered and, you know, the stuff we went through on
3 how to make all the notifications. So I was doing that
4 until 1:00 a.m. that night.

5 Q. So were you yourself injured during the course of the
6 day?

7 A. I did not report injury. I was bruised, abraded. I was
8 covered in chemical munitions. My body was on fire for the
9 next few days. Face, legs, arms, pretty much anything that
10 wasn't covered by my bulletproof vest was just soaked
11 through.

12 The thing I talked about earlier with us wearing a
13 body suit, because we didn't -- because we got dressed in
14 the street, I did not put that body suit on. And all the
15 chemical munitions that were used came through my duty
16 uniform. So all that stuff was on my skin. Yes. So eyes.
17 I couldn't wear contacts for a week. I had -- when I did
18 put them in, I had to use rubber gloves. It was, like,
19 oil-based. It was in my hands. It was everywhere.

20 And then on top of that, I did not -- I had no
21 symptoms according to Google consistent with a concussion,
22 so I did not report a head injury. I had one big bruise
23 down the front of my head from the guy hitting me in the
24 head with a crutch. My arms were all bruised up from the
25 push and pull of the tunnel. But I did not report injury to

1 it. I did not receive medical treatment for injuries
2 sustained at the Capitol.

3 Q. Do you know if any of your officers were injured?

4 A. Yes.

5 Q. Approximately how many?

6 A. I believe I completed 14 injury -- 14 injury reports --
7 we call them PD-42s -- for officers.

8 Q. That was out of 25 you had with you that day?

9 A. Yes. That included the officials. So two of the
10 sergeants were down. And I believe -- it might have been
11 15, but yeah. So it was between 11 and 13. So
12 approximately 14 to 15 injured officers out of 29, 30
13 present. One lieutenant, four sergeants, five -- yeah. So
14 of 30 people, 14 to 15 injured. So about 50 percent were
15 out the next day.

16 Q. What time did you get out of there that night?

17 A. 1:00 a.m.

18 Q. And what would your duty schedule have been?

19 A. We worked -- I'm not sure if we were on tens. So it
20 was -- I -- yes. I think we were on a ten-hour tour. So it
21 would have been 5:00 to 3:00 in the afternoon or 6:00 to
22 4:00, depending on what my start time was.

23 Q. And other than feeling the burning sensation on your
24 skin, did you have any other lingering effects from that
25 day?

1 A. No -- yeah. I -- just to be clear, I don't have -- I
2 had lingering effects from that that lasted a few days. But
3 I do not have permanent injury based on the United States
4 Capitol.

5 Q. And the next day, how many of your men were in a
6 position to report to work?

7 A. I think I had 12 police officers -- I had 12 officers,
8 the lieutenant, me and another sergeant. So that's --

9 Q. And should you have had 28?

10 A. Yeah. We should have had the whole platoon if we did
11 not go through what we did. But yeah. The next day, we
12 reported in with about half strength.

13 MS. BOND: Thank you. No further questions.

14 THE COURT: Sergeant, that was very compelling
15 testimony.

16 Why did this happen? Why do you feel like kind of
17 for the first time in MPD history a line broke?

18 THE WITNESS: I --

19 THE COURT: How did this happen?

20 THE WITNESS: So again, if you're asking for
21 opinion, I don't have like an official statement for the
22 department.

23 THE COURT: I'm asking you.

24 THE WITNESS: So I think we prepared to the level
25 we could. We had -- it was a full departmental activation.

1 Everybody on MPD was at work.

2 To the point on January 6th, the demonstrations we
3 had worked, it referenced to that political leaning, not so
4 much the antifa and the FTP of the other side of protests we
5 worked. The problems that we had on, you know, Proud Boys
6 or other associated marches that were supportive of that
7 wing of political view were -- they would come peaceably
8 during the day. They would walk around. They would do how
9 the day started. Nothing surprising. "Back the Blue, thank
10 you for being out here, we love you," all this stuff, all
11 day long.

12 Night falls. They wander. They form into bands.
13 They get melee weapons and go fight the left
14 political-leaning groups that were in the city. And then we
15 spent our days, our night, just in between the two.

16 So I think our MPD deployment was fine. Like we
17 were scheduled to ramp up when the sun went down, just like
18 everything over the last six months had taught us to do.
19 This is what they do. This is going to get violent tonight.
20 So we were scheduled and things.

21 We just happened to be a platoon that was put out
22 without armor and stuff on high visibility to wave at the
23 crowd like everyone expected: Hey, the police are here, but
24 we're not going to do anything. We're just going to be
25 here, be present.

1 And the group that was broken up was focused on
2 one thing. They were not focused on -- you know, I've been
3 on protests before where they get into arguments with each
4 other: "Let's go to the Department of Labor." "No. Let's
5 go to the Federal Reserve." "Let's go here." And the
6 groups go in two different directions and then they have
7 half the people protesting.

8 This had thousands of people focused on one target
9 point. And it was not a sustainable place to hold. We
10 could not secure the Capitol Building. It was too big, too
11 unsecurable for the manpower we had to stop what was coming
12 at us that did not have hardly infrastructure for security
13 and we did not have the ability to ramp up our response to
14 the level.

15 In my view, the only thing that could have stopped
16 that crowd short of an impenetrable fence around the Capitol
17 that day would have been a massive collection of ordnance of
18 CS gas where, if we had deployed enough CS gas all at once,
19 those people would have gone home. Short of that, we were
20 just Band-Aiding it until the line finally broke.

21 THE COURT: Mr. Urso?

22 MR. URSO: Thank you.

23 CROSS-EXAMINATION

24 BY MR. URSO:

25 Q. Good afternoon, Sergeant Mastony.

1 A. Good afternoon.

2 Q. Just following up on the judge's question, you said you
3 had -- you were fully deployed. The department was fully
4 deployed?

5 A. Yes, sir.

6 Q. So -- but didn't you testify earlier that you were not
7 issued munitions?

8 A. We were not.

9 Q. And you had been issued munitions back, like, in the
10 George Floyd protests, I think you said, and -- well, at
11 least you said the Trump inauguration?

12 A. Right. On other occasions we have been issued munition.
13 We were not issued munition for January 6th.

14 Q. And certainly that would have helped, if you all had
15 munitions. Right?

16 A. It would have.

17 Q. Do you know who made that decision?

18 A. No.

19 Q. And you said -- just now, you were just opining what you
20 think could have stopped it. CS, you said? CS gas?

21 A. In my view, from my perspective, based off the size and
22 violence of that crowd, you had two solutions: either a
23 hardened structure that was not physically possible for
24 anybody to get in or enough, you know, crowd-dispersal OC
25 spray or CS gas to disperse a crowd in the size of

1 thousands.

2 Q. How about if the National Guard were deployed?

3 A. So I have never been on a CDU deployment where National
4 Guard has been deployed in a manner that I feel could have
5 dispersed what it is. The National Guard in Washington,
6 D.C., that I have handled, like, deploys on a much smaller
7 scale.

8 I think it would have helped. I'm not sure
9 that -- I'm not sure how much military force it would have
10 taken to stop that amount of people and what level of force
11 those people would have been authorized or willing to use
12 or their training. I shouldn't really speak on the National
13 Guard. I don't know much about that.

14 Q. Do you think -- how long would it take to put the fence
15 around the Capitol like they did afterwards?

16 A. Well, so again, I'm just -- you're outside my realm of
17 expertise. But you would have to find the contractor, find
18 the people to assemble it, have access to the fence.

19 So the White House area at this time was fenced
20 out -- was completely fenced with non-scalable fencing. But
21 I don't know how much of that is available, if the
22 contract's available to put it up, what kind of legwork it
23 is to get that to happen. There seem to be a lot of
24 elements in the way to doing that.

25 And then I've been using this analogy a lot in the

1 last years: We don't have the event to start it at that
2 point. No one has -- I would think if you had tried to say,
3 "We need to put unscalable fencing around the Capitol" prior
4 to this happening, someone would tell you no, because it's
5 never happened, whereas afterwards the horse has already
6 escaped the barn. Let's lock the barn door now.

7 Q. Hindsight is 20/20. Yeah.

8 A. Yeah. You're going outside of my ability to say actual
9 things I know. But that's what I feel about it.

10 Q. Thank you.

11 You testified earlier that at some point -- at the
12 time, you didn't realize that there had already been
13 breaches all over the different parts of the Capitol as you
14 were battling and that you said they stopped the
15 certification.

16 Do you know -- did you come to find out around
17 what time that certification process was stopped?

18 A. I don't know what time it was stopped. I knew when I
19 found out that it was stopped, and I had no information to
20 believe it would be restarted.

21 Q. You haven't found out since when it was stopped?

22 A. I don't know, no, the exact time.

23 Q. You testified a little bit about shields. It's
24 Exhibit -- is it 801, that shield? It's 801. You felt
25 Exhibit 801. Did that feel a little heavier than the shield

1 you were carrying on January 6th, 2021?

2 A. I would say it feels approximately the same weight.

3 It's the same --

4 Q. Style?

5 A. Style. I don't know, you know, specifically if there's
6 a different grade of plastic or anything that felt -- when I
7 picked that up, I did not say, "Oh, this is heavier" or,
8 "Oh, this is lighter." I would say that that is
9 approximately -- while not being the exact shield, that is
10 the same shield in almost all noticeable aspects to the one
11 I had on January 6th.

12 Q. And you train -- as part of being in the CDU, you train
13 using shields?

14 A. Yes.

15 Q. Is it fair to say shields are defensive weapons,
16 defensive implements?

17 A. I would say we deploy them to hold an area. We do not
18 deploy them with the idea that we are going to go
19 offensively and attack or in to disperse a crowd with
20 shields. If we were going to do a shield line, we are doing
21 it to protect the guy behind the shield and we're trying to
22 hold ground. I would not -- if I wanted to take ground
23 away, I would not take one of those shields particularly
24 with me.

25 Q. Unlike, say, a baton, this is not designed to cause

1 injury to another party, correct, a shield?

2 A. So we do learn shield strikes in the training where you
3 use a shield like this (indicating). And on this particular
4 day, I did --

5 Q. I'm sorry. You mean -- you're motioning forward.

6 A. To strike with a shield. The shield I was holding in
7 the manner which we are trained to hold it with our forearm,
8 extend it, our forearm extended through it through a loop
9 and holding the handle. And we are trained to physically
10 move ourselves forward and use it to push people or strike
11 people out of the way.

12 And then on this day, I did use it in non-training
13 manner by using the blunt end to strike people because, once
14 you're holding a shield, you no longer have access to do
15 anything else or hit people. And I used it in the --

16 Q. What do you mean, the blunt end? You used the edge of
17 the shield?

18 A. Yeah. I used the edge, the bottom edge of the shield to
19 strike at least one person.

20 Q. Is that part of your training or that was just
21 self-preservation?

22 A. That was what had to be done at that moment. The use of
23 force continued -- had escalated to the point where if I
24 don't stop this guy assaulting an officer in front of me,
25 something very bad is going to happen to the point of

1 nearing the force being authorized. So I decided to hit
2 that man -- or hit the person assaulting that officer with
3 the blunt end -- with the edge of the shield.

4 Q. Would you agree you were improvising and that's not
5 anything you're trained to do?

6 A. Yeah. That is correct. I was not trained to strike
7 people in that manner with a shield.

8 Q. We watched a lot of the video. Before you made it up
9 that narrow stairwell up to the second level, we watched a
10 lot of video of you trying to hold the line, you guys
11 holding the line and things like that. I don't think you
12 described where exactly that was. I know that was the west
13 side of the building. But is it fair to say that was sort
14 of on the northern half of the building?

15 A. So it was definitely on the west side of the building,
16 like the west side proper. If I was standing on it today, I
17 don't think anybody could confuse me for being on the north
18 side.

19 On the west side, if you draw, you know, four
20 lines or two lines through the Capitol and you put it in a
21 quadrant, it's definitely in the north side of the west
22 area.

23 Q. Right. Yeah.

24 A. So yeah.

25 Q. Heading towards Constitution Avenue, that half of the

1 building?

2 A. Correct.

3 Q. Okay. And when you got to the west -- inside of the
4 lower west terrace tunnel where we watched -- I'm not sure
5 of the exhibits. We watched you from the inside. That's
6 where you identified you heard Officer Hodges screaming.
7 When you got there -- and you got through the inside of the
8 building. Correct?

9 A. Yes. So I entered -- the door that was being contested,
10 that's how I went through.

11 Q. Oh, you did?

12 A. I walked in from the outside on the west side. I walked
13 up that -- the narrow stairwell up to the upper raised
14 platform, that some sort of temporary platform, and then I
15 walked in from the outside.

16 Q. You're saying the same direction the protesters were
17 coming?

18 A. Yes. Then I turned around to face the protesters.

19 Q. Were there any protesters when you walked in in the
20 tunnel?

21 A. When I walked in, I don't recall seeing any civilians or
22 non-law enforcement personnel as I came through the tunnel
23 itself. There were civilians and protesters on the upper
24 deck with me as I entered the tunnel. But I don't recall in
25 my initial entry seeing any of the protesters.

1 Q. Okay.

2 MR. URSO: Can we play 101.1, please. Maybe
3 advance it a couple minutes.

4 (Whereupon, segments of Government's Exhibit No.
5 101.1 were published in open court.)

6 MR. URSO: That's good right there.

7 BY MR. URSO:

8 Q. Now, if you could look at that, Sergeant. Do you
9 know -- is that what it looked like when you walked in?
10 Were there other officers going in with you or were you
11 alone?

12 A. Yes. There was more officers behind this line. I
13 assume it's early after the line is broken that this is
14 happening. So I'm one of the last ones, not the last one,
15 but one of the last ones coming in this direction through
16 this door.

17 MR. URSO: Keep playing.

18 (Whereupon, segments of Government's Exhibit No.
19 101.1 were published in open court.)

20 BY MR. URSO:

21 Q. And there's about -- there's a couple or three dozen
22 cops, basically, police officers in that continuing video.
23 Right?

24 A. Yes.

25 Q. And they're heading in. Do you think you're going to

1 be -- show up in this video?

2 A. Not for a few minutes. I see a sergeant I helped up the
3 stairs when I'm coming in and he's still down on the deck
4 here.

5 Q. Do you know why at this point the officers were
6 retreating into the building through that doorway?

7 A. To my knowledge, officers were getting two directions to
8 move. There was a contingent of MPD on the southwest corner
9 of the platform above this one where they were and then
10 members were also coming through this door here, so pretty
11 much where I come up in this video in a few minutes.

12 An officer standing on that deck at that time has
13 two decisions: He can either go up to the southwest on a
14 platform above or he can walk in through this doorway here.
15 And so I come in in the next probably two minutes, probably
16 around 2:40, and walk in through this door.

17 Q. And was there any reason why officers wouldn't just stay
18 outside so that no people got even close to that tunnel?

19 A. In my view from -- again, I think I'm in the foreground
20 of this video -- I'm setting up a line on the stairwell.
21 That is when I think that stairwell is the only entry point
22 to the deck I'm on.

23 Q. You mean up where you can't really see you? Is that
24 right?

25 A. So up by the timestamp.

1 Q. On the left there, you're there?

2 A. There's a guy with a yellow jacket. I'm behind him on
3 the top of that stair attempting to hold that stairwell.
4 After the fact or soonly after this, I realized that there
5 is a stairwell the same behind me that is unsecured, that
6 there are protesters on the level above this all around me
7 in a ring above me and that they're coming in off this
8 amphitheater-style seating that this Capitol officer is
9 hitting with pellets. And then there's more coming in from
10 the deck level around the amphitheater seating on both ends.
11 And so in a few minutes, I'm going to realize this and get
12 inside.

13 But yeah. I don't --

14 Q. That's you up on the top left? You're in that group of
15 officers?

16 A. Yes. But if you ask me why I think we went in here to
17 hold this, it's because there's thousands of them, less of
18 us. And this -- in a best-case scenario, you need four
19 officers a side to hold. Everything else, you would need a
20 line to the similar extent of what had just failed.

21 Q. So it was a little bit more -- it was a more defensible
22 area in that tunnel?

23 A. Yeah. It's a choke point. So you have a large crowd
24 outside, and a small group of officers can hold off that
25 longer than outside --

1 Q. Now --

2 A. -- in addition to the safety of not having people behind
3 and above you.

4 Q. Do you see you coming in here at the end?

5 A. So I think I either just went in or -- depending on who
6 these officers coming up the stairs are. Yes. So this is
7 Gavin Nelson. He's the guy who can't see. And then I'm
8 standing right behind him. You see me turn around. And now
9 I'm walking in, right now. And then I'm about to come out
10 of frame. Then I'm out of frame.

11 MR. URSO: That's good. Thank you.

12 BY MR. URSO:

13 Q. Did you -- now, you've seen a lot of different videos
14 since January 6th -- of the events in the tunnel since
15 January 6th, 2021. Right?

16 A. Yes.

17 Q. Do you recall as you sit here today seeing with your own
18 eyes when you were in that tunnel Mr. McCaughey, Patrick
19 McCaughey?

20 A. So if I was sitting in this room right now and you asked
21 me, "Can you recognize that as the Defendant," I'm going to
22 say he looks similar, but I cannot say that it's him. It's
23 been a year and a half.

24 Q. But do you remember -- did you see him yourself in --
25 while you were in that tunnel?

1 A. I described a person who I saw. I do not know by face
2 who Patrick McCaughey is. I described a man I had an
3 interaction with in a video that I remember.

4 Q. But you didn't have any interaction with him, did you?

5 A. I don't know who Patrick McCaughey is by face a year and
6 a half later.

7 Q. All right. To your knowledge, were any of these
8 Defendants in the tunnel after 3:20 p.m. on January 6th,
9 2021?

10 A. I don't know any of the Defendants by face or name.

11 MR. URSO: Thank you, Officer. Thank you, sir.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you, Mr. Urso.

14 Ms. Cobb?

15 CROSS-EXAMINATION

16 BY MS. COBB:

17 Q. Good afternoon.

18 A. Good afternoon, ma'am.

19 Q. I just have a few questions for you.

20 A. Certainly.

21 Q. I want to talk specifically about your time in the
22 tunnel. I know that you testified you only had your small
23 OC spray. So a single-use type of thing. Right?

24 A. Multiple uses, but it's meant to be used on one person,
25 not a crowd.

1 Q. Based on your recollection, though, is it true that
2 there were other officers in the tunnel who were spraying
3 towards the crowd, maybe from behind you or next to you, but
4 who were spraying sort of out towards the daylight?

5 A. Yes. Not many, but some officers did have larger OC
6 deploying devices than I did.

7 Q. We watched a video just now. And I'm not going to
8 expect you to remember the number, but it was Exhibit 414.
9 It was one of the longer citizen-filmed videos we watched.

10 And in that video, everything's getting sort of
11 misty. It looks like there's some spray being sprayed and
12 we heard a few chants of "Shield wall" coming from the
13 crowd.

14 And I want to ask you, at the time -- and maybe
15 even now watching the video -- is it your perception that
16 the shield wall, would you agree that that was in response
17 to the spray and possibly meant to try to block the spray
18 that was coming from the officers?

19 A. I would say it's in any way possible. I would say that
20 if that is the case -- again, I don't know it to be -- but
21 if that's the case, it did not get used effectively to do
22 that. But I don't know.

23 Yes, but it is possible that a shield wall would
24 be used to stop someone from spraying you.

25 Q. Or to sort of block the spray that's coming towards you?

1 A. Yes. That is -- a shield is meant to block things. So
2 I would say it is possible that a shield will be utilized
3 for that purpose.

4 Q. The people in the crowd who were in the tunnel who had
5 shields, I think you already testified that it sort of
6 became a back-and-forth between the officers' shields and
7 the shields that the members of the crowd had.

8 A. Uh-huh.

9 Q. Is that a fair statement?

10 A. Yes.

11 Q. Okay. And that it was sort of -- just one side would
12 take a few steps forward and maybe take a few steps back
13 depending on who had the higher amount of pressure in that
14 moment?

15 A. Yeah. There were moves of momentum going. But we were
16 actively pushing to get them out and they were actively
17 pushing to get them in. It wasn't like we were just, "Oh,
18 we've got some space and now we'll move up."

19 Like, we were shield to shield and we were
20 essentially in a battering ram like -- I think the video
21 speaks for itself -- of they're pushing in. We're pushing
22 out. They're pushing in. And whoever has the most muscle
23 at that point makes the most progress.

24 Q. Understood.

25 MS. COBB: Thank you. Those are all my questions.

1 THE COURT: Thank you, Ms. Cobb.

2 Mr. Shipley?

3 CROSS-EXAMINATION

4 BY MR. SHIPLEY:

5 Q. Good afternoon, Sergeant.

6 A. Good afternoon, sir.

7 Q. I want to back up. I don't really want to cover too
8 much territory you've already covered unnecessarily. But
9 you said some things I want to ask you about.

10 I think you said that initially as your platoon
11 exited the vehicles and you got in formation and began to
12 walk across the grassy area towards the Capitol, it was an
13 area where, you know, the crowd was somewhat dispersed.
14 There was lots of room to move. It was moving as
15 expeditiously as you possibly could to get to your
16 destination without being impeded. Right?

17 A. That's correct.

18 Q. Now, would it be fair -- but there were people in the
19 area?

20 A. Yes.

21 Q. Would it be fair to say -- I guess -- the generic
22 reference to everybody as rioters is not necessarily
23 accurate. Right?

24 A. So I would say it's a riot and then there are degrees of
25 participation within that riot.

1 Q. Fair enough.

2 And so would it be fair to say that those first
3 people that went through that -- without any problem that
4 were just sort of standing in the grass and observing the
5 events in front of them, they're observers? They're just
6 watching what's happening in front of them?

7 A. So I don't know what the elements were that brought them
8 to the place they were. I don't know what barriers they
9 went through. I don't know any of the facts that brought
10 them to where they were.

11 I know what I was trying to do there. I know that
12 I had to go through barriers to get to where I was going and
13 that right now those people weren't fighting me. Like I
14 explained, I'm not going to stop to fight somebody who's not
15 fighting me.

16 Q. Okay.

17 A. I'm trying to get to a place, and so I was going through
18 them. I honestly did not have any, you know, need, desire
19 or want or decide to use my platoon to deal with people who
20 were just walking around in an area where I had no knowledge
21 of, no idea of how they got there, when they got there, if
22 they're supposed to be there. It wasn't part of my -- it
23 wasn't part of the stuff -- of the information I had at that
24 time. I just knew someone was calling for help and he was
25 that way, and that's where I was going.

1 Q. Okay. And so you made your way through quite a big
2 crowd, got up to the area where the first sort of artificial
3 barrier bike racks were strewn across the outside, with
4 police from behind the racks, trying to maintain the line.
5 Right?

6 A. Yes.

7 Q. Okay. And you didn't have as many officers as you
8 thought. And you didn't realize that until you got there.
9 They got separated behind you somewhere.

10 But when you got there, you described that that
11 line when you first arrived and got between the bike
12 racks -- that it was not under active attack at that point?

13 A. Yes. At that moment, that was again with the lull of
14 going up actively under attack. Slow. "Let us in. Let us
15 in. You should let us pass." And, you know, just
16 passively, "I'm not going anywhere, but I'm going to yell at
17 you for a while."

18 Q. Sure.

19 A. In that point, it was definitely -- this line is not
20 actively under attack when I arrived.

21 Q. Okay. Would it be fair to say that at that point, I
22 mean, those people are there engaged in something, but
23 they're not rioting. They're protesters. They're just like
24 protesters that you'd encountered dozens of other times in
25 CDU deployments. Right?

1 A. I --

2 Q. They're yelling, screaming at you, screaming political
3 slogans, whatever. But they're not attacking anybody.

4 A. Right. So if we break it down to moments, in that
5 moment, I would agree that me arriving there is a CDU line.
6 Don't let the people past you. Essentially, that's it. If
7 you're not using force against me, I'm not going to use
8 force again you.

9 But I also was not there for the hour beforehand
10 that necessitated the call for a rapid response hard platoon
11 to that area. And I was present for thereafter where the
12 crowd would go up into straight -- if you show a good video,
13 it's a riot. If you break it down to a moment, yes, you can
14 find moments where what was happening on the west side of
15 the Capitol on January the 6th looks no different than any
16 other protest. But, you know, you play the video ahead 30
17 seconds or back 30 seconds, and I could describe it as a
18 riot.

19 So at that point, once the LRAD starts saying,
20 "This is a riot; you need to leave," that's what I
21 considered it to be. I don't know exactly the moment when
22 the commander designated it a riot, but I know he did. That
23 was kind of where I was.

24 Q. Fair enough.

25 But I'm more just talking about your own

1 observations. So, for example, with respect to application
2 or use of force, you have to make judgments about what the
3 people are doing. You're not going to hit an observer,
4 right, who's not doing anything except watching. You're not
5 going to hit a protester who's just yelling at you. You've
6 got plenty of discipline. You testified about the
7 discipline that you've developed over time, knowing how to
8 deal with those kinds of situations. Right?

9 A. Yes.

10 Q. But when you're under active attack -- and we saw plenty
11 of video of that. I'm not saying it didn't happen. When
12 you're under active attack, that's kind of the boundary for
13 where the riot is. And those are the rioters, not
14 everybody.

15 A. So I will say that, again, I think it all comes down to
16 time. I think a rioter can be a protester and -- or a
17 protester can turn into a rioter. I think it just takes --
18 depends on what actions were taken.

19 I don't know what else to say other than that,
20 that there is a linear timeline; and you can either -- you
21 can be rioting and actively fighting, but you're still
22 someplace you shouldn't be and you're participating and you
23 see what's going on around you. And people have free will,
24 and there was no police behind them stopping them from
25 leaving. If they wanted to leave the situation they were

1 in -- which, reversing positions, I would have.

2 So yeah. I don't know exactly a good response for
3 this, but -- or me myself designating who was a rioter and
4 who's not. But I would say that I was in a riot and there
5 was an opposition and there was the police. And that was
6 really the designator I had.

7 Q. Fair enough.

8 You also said that there were periods, you know,
9 that the action, so to speak, at the artificial bike line
10 tended to ebb and flow. There were periods when there
11 wasn't anything going on and there were periods where there
12 were active skirmishes. Fair enough?

13 A. Correct.

14 Q. And there was lots of -- and periods where there was no
15 active skirmishes, a lot of yelling, a lot of chanting, a
16 lot of political sloganeering. You've heard it all before.
17 Right?

18 A. Yes.

19 Q. Did you feel like that there were overt efforts to
20 provoke you or were the people just making -- just
21 expressing their displeasure?

22 A. I would say the violent acts perpetrated by the people
23 in that crowd were the overt efforts. I'm going to say that
24 for myself and most officers, words are not going to provoke
25 me in that situation. I'm not saying it doesn't happen or

1 that, you know, police don't overreact to things. I think
2 that's the purpose sometimes of saying mean things to the
3 police: to get them to overreact.

4 I'm saying in this case that any action that
5 caused us to use the force or us to escalate our use of
6 force was an overt act of violence: spraying us with the
7 munition, hitting us, throwing something; and the crowd at
8 some point acting as in concert as you can be. Everybody
9 around you is throwing things, but you're still there. I
10 can't pick you out and say, "You, sir, can leave; but, you
11 five, you need to stay so I can spray you with OC spray."

12 Q. And the crowd's massive. The biggest crowd you had ever
13 faced under those kind of circumstances. Right?

14 A. It's the biggest, you know, violent crowd that has been
15 turned to me in a focus that I've ever experienced.

16 Q. Well, let's -- you say "violent." And, grant you, there
17 was lots of violence. But let's just say the crowd in
18 general was hostile. Not everybody was violent, but the
19 crowd in general was hostile.

20 A. The crowd was hostile.

21 Q. And, I mean, the biggest hostile crowd you've ever
22 encountered and your fellow officers?

23 A. So I've faced crowds that do not like me. I've faced
24 crowds that yell at me.

25 I would say this crowd I faced was focused on one

1 objective, me in between it and that objective, and it was
2 very hostile. I don't know how to get more defined than
3 that.

4 Q. Okay. But the objective was, the crowd wanted in the
5 building?

6 A. Yes.

7 Q. And you said that, you know, at the bike rack, you know,
8 an important thing is to try to maintain your territorial
9 integrity. Don't give ground. You know, you can maintain
10 the integrity of your line if you're not giving ground. But
11 unfortunately, you didn't have enough people even with the
12 benefit of the barriers. You didn't have enough people to
13 not lose ground. Right?

14 A. That's correct.

15 Q. And I think you said that at that point, it wasn't
16 necessarily any assaulting that caused you to lose ground,
17 just leaning on the bike racks. They've not anchored and,
18 you know, they're just able to push the bike racks and force
19 your guys to back up. And then if you had the opportunity,
20 you could reset the bike racks. Right?

21 A. Yes. So we were losing ground in that manner. But then
22 also we would lose ground through having targeted assaults
23 on our line.

24 Q. And -- but sort of the crowd trying to manipulate the
25 bike racks, either pushing them backwards or dismantling

1 them, that's causing your officers to sort of break and gaps
2 to create. Right?

3 A. I would say that dismantling the bike racks is more an
4 active resistance. You are now actively doing something to
5 take away.

6 When I describe passive resistance on a scene, it
7 is more of a person standing in front of me who will not
8 move. If that person starts doing something by physical act
9 to jeopardize the safety of my line, he is now an active
10 resistor; and in a situation where I was able to, where I
11 had resources available to place an arrest, if I took the
12 situation out of this and placed into other situations I've
13 been in, that person would be arrested.

14 I did not have that ability on this scene to do
15 that.

16 Q. You didn't have the officers to make arrests because
17 that would have taken away from your ability to maintain a
18 line. Correct?

19 A. That is correct.

20 Q. Now I want to go through some of the times in some of
21 the videos. I'm not trying to trick you, but I'm not going
22 to, like, pull the videos back up and do it all again. I
23 just want you to affirm that the times I've got are right
24 based on your recollection and having watched the videos, I
25 assume, multiple times.

1 A. Yes, sir.

2 Q. The bike rack barriers pretty much disintegrated around
3 2:15 and left you with a manned line without the benefit of
4 metal barriers?

5 A. Yes. At a point in my video, you can see that the bike
6 racks I come through on the northwestern part of the line
7 are gone, either have been taken or -- well, again, I'm
8 fairly confident they were taken, but I was not present when
9 they went going every time. But there was no longer a bike
10 rack extending all the way to the scaffolding tower in the
11 northwest part of the west side line.

12 Q. Okay. And by 2:22, I think the video we watched at
13 2:22, you then narrated and said that you had a line of
14 officers that was continuous, but skirmishes started to pull
15 officers out of the line and creating gaps that you then
16 tried to backfill?

17 A. Yes. Skirmishes or, you know, loss of officers. Again,
18 most of my officers at that point in the video did not have
19 masks on, so they were getting chemical munitions in their
20 eyes, and other varying points that had them where they
21 could no longer safely stand on a line. And so there were
22 holes in the line which I either filled myself, found
23 somebody to fill or we retreated to make the area smaller
24 that we had to cover.

25 Q. I thought you were going to talk about the CS gas

1 canisters, but you're talking about --

2 A. The gas canister comes later.

3 Q. Right. So you're just talking about officers that are
4 getting sprayed with OC or somehow otherwise are injured and
5 have to pull back out of the line and then you either have
6 to close the line or put somebody in that gap?

7 A. Yes. The ultimate thing that falls in that category is
8 when the CS gas --

9 Q. Right.

10 A. -- comes back and causes too large a loss of manpower on
11 that side of the line to successfully hold it against the
12 assault that comes in.

13 Q. And that was at 2:25, I think, on the video?

14 A. About that. You see a CS gas canister come, bounce off
15 the tower and drop on our line.

16 Q. Right. Right.

17 And you actually -- I mean, you were interviewed
18 by the FBI and gave a long statement. And these same times
19 or roughly these same times are in that interview. Right?

20 A. Yes. All that is roughly the same.

21 Q. Then you said that around 2:30, the line pretty much
22 just folded, because you had lost officers with the CS gas.
23 And now you don't have the bike barriers. Now you've got
24 bigger gaps. And you're starting to see officers fall back
25 and I think you said tap each other on the shoulder, which

1 is like a message: "Fall back." Right?

2 A. So I don't recall that. I recall the line -- the
3 thinned-out line -- it was thinned out -- was assaulted by a
4 group from the northwest side. I went over to get in that
5 before I was taken out of the picture by another individual
6 and taken to another part of the line. And at that point,
7 the line was gone, completely folded.

8 Q. So around 2:30, pretty much, the line was broken; it
9 can't be maintained; it can't be fixed?

10 A. That is correct.

11 Q. All right. And the officers are falling back. And at
12 that point, you didn't know if you had an exit. You thought
13 you had a wall behind you. Right?

14 A. That is correct.

15 Q. So as the commander or one of the commanders in that
16 area, you're thinking: Okay. Fall back. We'll find a more
17 defensible position with the guys we have and try to
18 reestablish our line, because you don't have an exit. At
19 least at first you didn't realize you had an exit?

20 A. Yes. My initial instinct was to get officers on either
21 sides of me and to establish a smaller line.

22 Q. And if you had had a wall behind you, that would have
23 been a pretty desperate situation. Right?

24 A. Yes.

25 Q. You would have had a massive advancing crowd of varying

1 degrees of hostilities and a smaller number of officers with
2 no place to go?

3 A. That is correct.

4 Q. And obviously, I mean, other than just being assaulted
5 by the crowd at that point, you're just subject to being
6 crushed because people 25 deep can't see forward that there
7 is no place left to go and everybody's just going to end up
8 against the wall, right, had there been no exit?

9 A. Right. And had all semblance of resistance broken down
10 and the line not held again, yes, you would have just been
11 crushed against the wall with the crowd.

12 Q. Okay. Fortunately, though, you did realize there was an
13 exit behind you that you saw officers started to go up. And
14 that's that narrow stairwell that we saw on your video?

15 A. Yes.

16 Q. And do you recall -- because I didn't write it down --
17 but do you recall about what time you reached the top of the
18 stairs there when you thought: Okay. This is a defensible
19 position. All we've got to do is keep people from coming up
20 this stairwell?

21 A. If I'm asked as my best recollection of what time that
22 was, I'd say approximately 2:37.

23 Q. Okay.

24 A. But --

25 Q. Actually, I have 2:37 on these notes. So I think that's

1 right. That was your testimony: 2:37.

2 A. Okay.

3 Q. It was only just a couple minutes, maybe even not that
4 long, that you realized: No. This is not a secure
5 position. We've got rioters at that point, clearly. We've
6 got rioters around us and we have to find someplace else to
7 go. Right?

8 A. Yes.

9 Q. At that point, you saw officers going back through what
10 you didn't know at the time, but we all know now is the
11 lower west terrace tunnel?

12 A. Yes.

13 Q. Okay. Now, do you recall telling the FBI as reflected
14 in your statement that the time when the line broke, that
15 that was maybe the point where the crowd became the most
16 cooperative? And I think your explanation to the FBI was
17 they realized they won. They had the ground. They won the
18 ground and they pretty much quit fighting.

19 A. So there was a moment -- you can see in my video -- not
20 the time when the line breaks. The line is broken. The
21 line is gone. We're now falling back, falling back. There
22 are still assaults going on. There are still officers in
23 trouble.

24 The moment I described to the other attorney,
25 where I have to do a shield strike on a person assaulting an

1 officer, is in that time sequence.

2 But at a moment during the -- when I'm one of the
3 last officers on the lower deck, I'm one of the last
4 officers on the lower deck, some of the protesters that were
5 there were confronting me or not assaulting me. They are
6 encouraging me to leave. Just: "You can go. We have
7 this."

8 At that moment, yes, there was a moment at the
9 bottom of the stairwell before I and then later Sergeant
10 Peeke went up where they came off the -- where they
11 essentially took their foot off the gas and said, "Just go."
12 And we did.

13 Q. And at that point, there's nobody left for them to
14 fight. They're not fighting with each other. Right?

15 A. So there are no officers on the lower deck at that point
16 to my knowledge.

17 Q. So -- and your description was that their attitude was,
18 "Just go," and your point of view was that they had won.
19 That's why they wanted us to go and that's why they're not
20 active?

21 A. My position at that point was that they felt themselves
22 a certain level of victory for taking the area they took,
23 and I'm just going to go back here and hold this area until
24 you decide to come up here.

25 Q. All right. And then we know, because we watched the

1 video, that within just a couple of minutes you're inside
2 the lower west tunnel terrace. So dozens of officers have
3 gone in there now and have gone in different directions.
4 Not everybody's congregated in one place. Right?

5 A. Uh-huh.

6 Q. There's several paths that you can take after you go
7 through those doors?

8 A. That is correct.

9 Q. And -- but you were one of the last ones in. So when
10 the call comes, "Hey, we've got to man this door," you're
11 close by along with I think the three other members of your
12 squad. Right?

13 A. Yes.

14 Q. Because you knew all their names. So these are your
15 guys?

16 A. Correct.

17 Q. And within just a couple minutes, you guys are back up
18 to the front by that mag, by those -- there's two sets of
19 doors?

20 A. Yes.

21 Q. There's the exterior clear last doors with those gold
22 frames that we saw where the big clash was with the shields.
23 And then there's that inner set of doors which, I don't know
24 if you noticed, but Captain Ortega testified before you that
25 those inner sets of doors, one, they don't lock; and, two,

1 they're opaque glass. You can't see through them going out
2 or coming in.

3 Do you recall that? Or that's just a detail
4 that --

5 A. I did not realize that those inner set of doors lock --
6 do not lock. I do recall that they were opaque as opposed
7 to the clear -- the outer doors broke fairly early, so I'm
8 not sure what glass was in there. But the inner doors for a
9 moment prior to the rioters gaining entry were definitely
10 opaque. I could not see through those doors when the outer
11 door was breached.

12 Q. You saw Sergeant Bogner?

13 A. Yes. Sergeant Bogner.

14 Q. You saw him spray OC from the handheld canister out the
15 gap of the doors a couple of times. Right?

16 A. That's correct.

17 Q. I think the video showed that it was right about 2:30,
18 3:30 -- I just wrote 2:30 and 3:30, question mark -- 2:30,
19 3:30 when those opaque doors opened. And now the four of
20 you across the front are facing one individual who comes
21 forward. I think your testimony was he wanted to give a
22 speech, and you don't remember what he said because you
23 really weren't too interested in listening to him?

24 A. That's correct.

25 Q. And so there was a moment when there was just one

1 individual and not any real interaction or action with the
2 crowd. Right?

3 A. That's correct.

4 Q. And I think we saw on the video that that individual,
5 whoever it is -- I don't know who it was -- I think the
6 person standing to your right reached out with a shield and
7 shoved him backwards out the door?

8 A. That's correct.

9 Q. And it was sort of at that moment that that individual
10 then makes what I have described as a suicide run. He's on
11 his own and just comes charging into the shield line.

12 Right?

13 A. That's correct.

14 Q. And then that sort of triggers people behind him to
15 follow along, and that's when sort of your entire front line
16 gets engaged by the crowd?

17 A. The people do follow him through that door. And then,
18 yes, it does get us a full-on -- what it developed into.

19 Q. And then we saw, you know, a lot of video over from your
20 body-worn camera and a couple other points of view, you
21 know, bodies up against each other, shields up against each
22 other, bodies trapped between shields. Minutes at a time.

23 Right?

24 A. Yes.

25 Q. And there are -- you described that initially you

1 couldn't move. You couldn't do anything, couldn't strike
2 anybody, couldn't move your arms. You were trapped. You
3 were trapped between your officers behind you who were
4 maintaining their position and the large crowd on the other
5 side where they were maintaining their position and both
6 sides are pushing against each other. Right?

7 A. That is correct.

8 Q. So the front line of officers and the front line of
9 protesters are sort of experiencing the same circumstances.
10 They're both getting pushed from behind and cannot go
11 forward. Right?

12 A. That's fair to say.

13 Q. And in that moment, I think -- would you say that you
14 were confident in the first three minutes that you could
15 maintain your position? Or was there a little bit of panic
16 that, "Hey, this is going to go bad quick unless something
17 changes"?

18 A. I wouldn't say I was panicked at that point. I would
19 say that I did certainly have doubts that we would not be
20 able to hold out where we were. And in my mind, it's just:
21 We'll reestablish someplace else. Yeah. So --

22 Q. Did you think there was a high likelihood of injury on
23 either or both sides from that tactical position?

24 A. I think for a while there I was pretty confident that I
25 was in a high-injury-prone situation.

1 Q. And I think you said that at various times -- this may
2 have been over several minutes, not just like in the
3 first -- there are various times when you were on the front
4 line and then maybe two or three people deep. Do you recall
5 saying that?

6 A. Yes.

7 Q. So was there any kind of concerted effort or just sort
8 of happenstance that there was kind of a rotation of bodies,
9 where some guys from the back came forward and some guys who
10 were at the front went back?

11 A. At points it was happenstance, just by the nature of
12 pressure on the crowd. All of a sudden pressure lets up or
13 pressure increases behind you and then pressure is relieved
14 in front of you. One goes forward; someone comes back; and
15 then you're behind or someone slides over.

16 So anything in there. There were points where we
17 actually got intentional rotation going, but that wasn't
18 until later in the conflict in the tunnel.

19 Q. And you said that there were times throughout the 10 or
20 12 minutes that you were, like, right up in the front of it
21 that there were standoffs. In other words, there was
22 actually a gap between the two sides. And you said, you
23 know, if they gave me an opportunity to breathe and rest, I
24 take the opportunity to breathe and rest. Right?

25 A. Yeah. I'll say it was definitely -- there were lulls in

1 there where I'm not fighting forward anymore and neither
2 were they, and so I was okay with it.

3 Q. Now, I'm not sure it was showed in any of your video,
4 and it might come up later.

5 But do you recall that there were times where the
6 line -- let's call it the skirmish line, for lack of a
7 better description. Sort of the point -- the reference
8 point where the police are clearly on one side and the
9 protesters, rioters, are clearly on the other. Over that
10 10- or 12-minute period, do you recall that line moving
11 backwards, closer to the mag and then moving forward
12 basically to the gold-framed doors?

13 A. Yes. There were different times when it moved forward
14 and back. But I was in that hallway, that line, so many
15 times I cannot specify exactly when we were moving which
16 direction.

17 Q. Fair enough.

18 A. If you --

19 Q. But you recall it was -- let's call it that ebbing and
20 flowing. It's going against you and then it's going for
21 you.

22 A. Correct.

23 Q. But it seemed like that the gold doors was like a line
24 that the MPD tried to maintain, tried to keep it at the gold
25 doors at a minimum?

1 A. So I would consider at a minimum we were trying to
2 hold -- not really in the video, but after the mag, the
3 magnetometer, there's -- it's an ex-hallway. So there's
4 like a utility corridor going down the length of the
5 Capitol. So that corner was essentially our -- we have to
6 hold that corner. Once they're past that corner, they're
7 now going down both ways and there's no way to hold what we
8 have.

9 The gold doors, they by default became a last
10 point. But at points, they were behind. They were through
11 the interior gold doors. Even to start with, they got
12 through the interior gold doors.

13 Q. Right.

14 A. At times, the line stagnated there because the doors
15 opened in such a fashion that you can get trapped behind or
16 against the gold doors. You cannot be pushed forward; you
17 cannot be pushed back, because you have a steel object
18 between you.

19 So I would say it was not by our design or by
20 intentional command given that the doors were a stagnant
21 point where the line would stop. It just kind of became
22 happenstance that when the line did stop moving forward or
23 moving back, it was generally around a door, either the
24 first door, the second door or the ultimate threshold.

25 Q. Well, actually, the doors themselves created another

1 choke point, right? Because to the right and left of the
2 door, there were side panels that weren't broken. So the
3 doors themselves were narrower than the concrete walls.

4 Right?

5 A. That is correct.

6 Q. So while you might be able to get five officers shoulder
7 to shoulder or from wall to wall, you can't get five
8 officers shoulder to shoulder in those doors. Right?

9 A. That is correct.

10 Q. And you can't get five protesters shoulder to shoulder
11 in the doors?

12 A. That is correct.

13 Q. So that sort of became the proverbial cork in the
14 bottle. If you could hold those doors, they weren't going
15 to be able to push through you?

16 A. So the hallway is what I considered the cork in the
17 bottle. We can put -- so there were definitely points where
18 the hallway constricted and got wider. But in general, you
19 are right: It's easier to hold a smaller point than it is a
20 longer extended line.

21 Q. Now, had you come under extreme distress, physical
22 distress at some point, in the position you were in, were
23 you confident that your fellow officers would have done
24 everything they could to extract you, to get you out of
25 harm's way and somebody else would take that position?

1 A. Yes. I felt that if I lost consciousness due to not
2 getting air through my mask or whatever the scenario was
3 that I had officers with me and that was as good as I was
4 going to get in that situation.

5 Q. In fact, that happened with Officer Hodges, who got kind
6 of pinned when the crowd was making the effort to close the
7 door and he was trapped by the closing door in between the
8 two doors. Right?

9 A. Yes.

10 Q. And he's yelling out for help, and help came to him?

11 A. Eventually. But I would say that I'd rather have it
12 sooner than later. But again, we were in a situation where
13 no one is really able to execute extractions at that point.

14 Q. Now, I -- and I've not asked you and I'm not asking you
15 this, you know, to do a proverbial counting of helmets in
16 the video. But would it be fair to say from the times you
17 have looked at the video that, you know, maybe in the middle
18 of everything, so five or six minutes after it starts and
19 five or six minutes before it ends there's five or six
20 officers across and it's seven or eight officers deep?
21 Would that be fair?

22 A. So I'll say during the course of the video, again, I'm
23 speaking for the entire segment of from when the line
24 gets -- from when the hallway gets penetrated at like 2:43
25 to 5:00, when we break out, that at times there was a thin

1 line maybe only two or three rows deep of officers, so less
2 than 12 officers in the hallway.

3 And then there are times when the entire hallway
4 is filled with an entire platoon of officers pushing back
5 and forth. And just like with the crowd, it ebbed and
6 flowed. At some point, someone hit their limit. They left.
7 They didn't come back.

8 There was not good command of control to say, "I
9 need these officers back. We're going to put them in." It
10 was just grabbing somebody. "You're in."

11 Q. But it wasn't just nine or ten officers in the breach;
12 it was -- there were -- they went back -- and that hallway
13 actually goes up, doesn't it?

14 A. That's correct.

15 Q. So it's like you can see when you look down the hallway
16 that there's an elevation change, and you can see black
17 helmets deep into that hallway. Right?

18 A. Yes. So in general, when an officer -- when it became
19 too much to hold the line, they went back in that hallway.
20 So there's different disbursements of officers behind that
21 line.

22 Q. Okay. Now, you've watched the video. And you obviously
23 became concerned with and occupied with Officer Fanone at
24 about 3:21, right, on your video?

25 A. About. Yes.

1 Q. Yeah. And then pretty much for the balance of your
2 video, at least the next several minutes, it's you helping
3 to extract Officer Fanone to get him to a place of safety.
4 And you were no longer, you know, up at the front line at
5 the mouth of the tunnel under the last area under cover.
6 Right?

7 A. That's correct.

8 Q. And -- but in looking at it, would it be fair to say
9 that that first successful effort to eject all the
10 protesters, rioters, in the tunnel, happened at 3:19?

11 A. I would say that's about right. The first time we were
12 able to push the hallway all the way back to the entry was
13 approximately that time. But I'm going to get -- again, it
14 would be multiple times, so I --

15 Q. I'm just talking about the first one. The very first
16 time.

17 A. I believe -- the first time that I got to the threshold
18 of the hallway after it had been penetrated was when I got
19 Mike Fanone and pulled him back from it.

20 Q. And so at that point, at that point in time on the
21 clock, 3:19, 3:20, 3:21, somewhere in there, the tunnel was
22 completely in control. If not outside of it, the tunnel
23 itself was in control of MPD?

24 A. Yeah. When we got -- when we pushed the line up to the
25 exterior of the building, I would say that we had it. Even

1 if we had one or two protesters behind the line, we had that
2 hallway at that point.

3 Q. Right. They had gotten trapped at some point. There
4 were people standing up on the sides that had to be dealt
5 with. Right?

6 A. Yes.

7 Q. Now, when you had gone inside that tunnel, exiting the
8 lower west terrace, there were almost no people out there.
9 Right?

10 A. So yes. When I initially made entry after coming up the
11 narrow stairwell, up the -- taking Gavin Nelson up the
12 stairs, people were coming down from on top. But it was not
13 filled to the extent it became filled --

14 Q. Well, that's my question.

15 A. -- in a few minutes.

16 Q. That's my question. When you got to the opening at 3:19
17 or 3:20, what did you see?

18 A. It was shoulder-to-shoulder packed with the crowd.

19 Q. Rioters, protesters, whatever. It was
20 shoulder-to-shoulder packed with non-law enforcement people?

21 A. Yes.

22 Q. As far as you could see?

23 A. Yes.

24 Q. Thousands?

25 A. Yes.

1 Q. Maybe over 10,000?

2 A. I've seen the estimate up to that amount. But I can't
3 estimate that many people.

4 Q. But you've obviously dealt with large crowds in these
5 kind of protest situations, and that was a large crowd.
6 Right?

7 A. It was large.

8 Q. And they're all looking at that entryway. Right?

9 A. Yes. The entryway is prominent from the perspective
10 that they have.

11 Q. Because for 10 minutes or 15 minutes, people had been
12 going in that entryway. Right? So the crowd's down maybe
13 50 yards away, and all they see are people going in. Right?

14 A. So if -- again, I'm getting to the point where I'm
15 testifying to something that's going on outside my field of
16 view.

17 But from the videos, if that's what you're asking
18 me, that I've seen of that perspective, I'd say that, yes,
19 people are going in. But there's also a lot of shields and
20 debris and other stuff flying up there.

21 And clearly, in my view from viewing the videos
22 that I've viewed from outside the Capitol at the time I was
23 inside, that if I were standing in that crowd I would have
24 known something violent is going on up there.

25 But again, I was not present. So if you're just

1 asking for my opinion of what I've seen from that footage,
2 that's my opinion.

3 Q. And would it be fair to say from what you've seen of the
4 footage and what you know about the psychology of the crowd
5 that day, the people that are looking at that entrance and
6 seeing people go inside, they're wanting to go up and go
7 inside that same entranceway?

8 MS. BOND: Objection.

9 THE COURT: Sustained.

10 MR. SHIPLEY: Well, I guess that's a good place to
11 stop.

12 THE COURT: Thank you, sir.

13 How long do you think your redirect is?

14 MS. BOND: Five minutes or less.

15 THE COURT: Let's do that.

16 REDIRECT EXAMINATION

17 BY MS. BOND:

18 Q. Sergeant Mastony, with respect to Exhibit 801, the
19 shield sitting here, is there any meaningful difference in
20 the weight of this shield here compared with the shields you
21 were holding on January 6?

22 A. Not that I can perceive.

23 Q. And then you talked about being trained on learning
24 shield strikes. Why are you trained on that?

25 A. To move people out of the way if you -- to move people

1 out of the way if you're holding a shield. Essentially,
2 you've manned it. You can't really unman a shield, a line
3 with shields.

4 If you put shields in officers' hands, that's
5 where they are. You can't take them out and you can't just
6 sling a shield behind your back and then use your hands. If
7 you have shields in your hand, you pretty much -- that
8 officer now, the only thing he can do, if you need him to
9 move forward, he has to move forward through people. He has
10 to push people out of the way utilizing a shield and
11 physical force to get them out of the way.

12 Q. So even though shields are generally defensive, they can
13 be used offensively. Is that right?

14 A. That's correct.

15 Q. Now, OC spray, there was a lot of that going around.
16 Under what circumstances can an MPD officer -- when are they
17 permitted to use OC spray?

18 A. Noncompliance. So essentially, I give you a lawful
19 order to comply with. You refuse. I can spray you with OC
20 spray.

21 Q. And in your perspective as a sergeant, was the -- were
22 the actions of the crowd justified for officers to be using
23 OC spray on them?

24 A. Yeah. In the civil disturbance fashion, the goal of the
25 OC spray is to disperse, disorient, distract, do anything to

1 get that person to stop doing what they're doing or to get
2 that person to move. So even a noncompliant person who is
3 not assaulting you, by being present and refusing to vacate
4 an area, you can spray that person with OC spray to
5 encourage them to vacate that area and comply with your
6 order.

7 Q. Now, Mr. Shipley just asked you about that time period
8 around 3:18. I think his question was: Was that the first
9 time that you had tried to push rioters out?

10 Was that the first time that you had tried to push
11 rioters out?

12 A. So I would say from the moment that that gentleman who
13 came in to give the speech tried to penetrate the door, that
14 is the moment I began trying to push rioters out of that
15 hallway. It may have been the first time we were successful
16 in getting to the exterior of the building and holding it at
17 that point. Again, I'm very shaky on this because we did
18 this several times and I don't know exactly which one was
19 the first. But I believe that's about right. The first
20 time we made it back up to the exterior of the hallway is
21 when I got Mike Fanone and dragged him back out.

22 Q. Mr. Shipley also asked about circumstances where you
23 could be in extreme distress. I believe his question was:
24 Would other officers do everything that they could to assist
25 you?

1 Do you remember that question?

2 A. Yes.

3 Q. Now, given the circumstances of what was going on in
4 that tunnel, and you were in extreme distress, do you think
5 it is a foregone conclusion that everything an officer could
6 do would actually be successful to help you?

7 A. No. I believe that if -- we could have had a very --
8 easily a situation in which an officer was being killed or
9 any number of things where we would not be able to get to
10 him. For example, you know, that video of a person who's
11 clearly hurt on the video screaming for help who I know who
12 because of what's going on I cannot hear and do anything to
13 assist.

14 MS. BOND: I would ask Mr. Clements to pull up
15 Exhibit 232.19. It's one of the still images.

16 BY MS. BOND:

17 Q. What is the timestamp there, sir?

18 A. 1415 hours.

19 Q. Is the police line holding at that point?

20 A. Yeah. The police line's intact.

21 Q. It's holding even though there are aren't any bike racks
22 in your corner. Is that right?

23 A. So again, I can't remember when the bike racks go away.

24 But in this period of time, we lose the bike racks in our
25 corner. I don't remember if this is -- I can't see them

1 here. But I can't remember if this is particularly the
2 point. But around this area, 4:15, in there, we have no
3 more bike racks in front of my portion of the line.

4 Q. And then finally, Mr. Shipley also talked to you a bit
5 about the degrees of participation of different people in
6 the crowd.

7 Do you remember that line of questions?

8 A. Yes.

9 Q. And you talked about how there were different degrees.
10 How would you place along a continuum those rioters who
11 actually made it into the tunnel and were resisting you?

12 A. Those are active resisters. Outside of -- again, I'm
13 not going to get into the legal standard of what was posted
14 outside the U.S. Capitol grounds. But in my view, once you
15 enter the U.S. Capitol where these people are and based on
16 what was going on outside this whole time and then into the
17 inside, you are now actively resisting.

18 Even if you are in there at that point trying to
19 talk to me and do what you were doing outside in there, you
20 are in an area where I need you gone from. And at that
21 point, we're using force to get you out. You are actively
22 in an area and by your physical presence not allowing me to
23 get to where I need to go.

24 And my ideal scenario here is one officer stands
25 at the door of that hallway and is just saying, "You can't

1 enter here." And that complies with the thousands of people
2 outside.

3 That's not what I had there. I had -- again, I
4 don't know if every one of the 10,000 people tried to get in
5 that door, but a lot of them did. Every single one of those
6 people in my mind is trying to actively violate the U.S.
7 Capitol and enter illegally.

8 MS. BOND: Thank you so much. No further
9 questions.

10 THE COURT: Sergeant Mastony, thank you for your
11 testimony here today.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may step down. You're free to
14 leave.

15 (Witness excused.)

16 THE COURT: We'll resume at 9:30 tomorrow.

17 I'll direct the Defendants to return for your
18 continued trial at 9:30 in this courtroom. If you fail to
19 appear, you may be subject to arrest and the trial will
20 continue up to and through verdict in your absence.

21 MR. SHIPLEY: Your Honor, Mr. Mehaffie's
22 supervised recommendation conditions do not allow him to go
23 to the Capitol. I would like the Court to give me
24 permission for him to travel to the Capitol with either
25 myself or Mr. Lopez today so that we can physically see the

1 path he took to get to where he was at with the acts that
2 he's been -- he's described them to me, but I'd like to walk
3 the grounds with him. We haven't had a chance to do this.
4 I think it's important for his own testimony.

5 THE COURT: Any objection?

6 MS. PASCHALL: Are you planning on doing this this
7 evening?

8 MR. SHIPLEY: Today or tomorrow, before he
9 testifies.

10 MS. PASCHALL: I'd like to alert the U.S. Capitol
11 Police. So if you don't mind giving me the opportunity to
12 alert them that that's going to be happening. Maybe you
13 could do it tomorrow. Just -- I'm just thinking timing-wise
14 I want to give them enough notice.

15 MR. SHIPLEY: Shall I wear a scarlet letter so
16 they know I'm there? That's fine.

17 MS. PASCHALL: With that caveat, no objection.

18 THE COURT: I think that's fine.

19 Why don't we say you can't do it tonight. You can
20 do it tomorrow. I want to be clear: I'm not granting some
21 permission that the Capitol Police -- for you to go into
22 areas the Capitol Police would not allow. I'm saying that
23 as far as his release conditions are concerned, he's allowed
24 to go with you to the Capitol.

25 MR. SHIPLEY: Thank you.

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THE COURT: Thanks, folks.

(End of requested excerpt.)

(Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings produced to the best of my ability.

Dated this 22nd day of September, 2022.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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