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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 30, 2022
DAVID MEHAFFIE,)	9:32 a.m.
)	
Defendants.)	
)	
* * * * *)	

TESTIMONY OF WILLIAM BOGNER AND DANIEL HODGES
EXCERPTED FROM THE BENCH TRIAL - DAY 2
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

William Christopher Bogner	4	49 66	68
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1 (REPORTER'S NOTE: The following contains excerpts from the
2 bench trial requested by counsel:)

3 THE COURT: Good afternoon, Sergeant. If you
4 could stand up there for just a moment and we'll get you
5 sworn in.

6 WILLIAM CHRISTOPHER BOGNER, GOVERNMENT WITNESS, SWORN.

7 THE COURT: Good afternoon, Sergeant. Just take a
8 seat there and feel free to adjust the microphone.

9 THE WITNESS: Okay.

10 DIRECT EXAMINATION

11 BY MS. PASCHALL:

12 Q. Good afternoon.

13 A. Hi.

14 Q. Could you please state and spell your full name for the
15 Court?

16 A. William Christopher Bogner, W-I-L-L-I-A-M
17 C-H-R-I-S-T-O-P-H-E-R B-O-G-N-E-R.

18 Q. Where do you work?

19 A. The Metropolitan Police Department.

20 Q. How long have you worked for the Metropolitan Police
21 Department?

22 A. Just over 14 years.

23 Q. What's your current duty assignment?

24 A. I'm assigned to the Metropolitan Police Academy as the
25 operations sergeant.

1 Q. And what is your rank?

2 A. I'm a sergeant.

3 Q. And what do you do in your current position?

4 A. Plan, like, logistics and operations of our police
5 academy and various trainings throughout the department.

6 Q. What type of things do you train new officers on in the
7 academy?

8 A. Personally? Anything from OC spray, civil disturbance,
9 riot control to, like, academic subjects in the classroom.
10 I don't do that as much anymore, but that was something I
11 did for a long time.

12 Q. And before you were working at the academy, what type of
13 work were you doing for the department?

14 A. Patrol. So when I first got promoted, when I first -- I
15 was assigned to the police academy as an officer. I was
16 promoted, sent to the First District. Then I went back to
17 the police academy as a sergeant. And while I'm at the
18 academy, I also do some adjunct instructor work and details
19 with our special operations division, domestic security
20 office.

21 Q. And did I ask how long you've been with the Metropolitan
22 Police Department?

23 A. Fourteen years.

24 Q. Were you working as a sergeant with the Metropolitan
25 Police Department on January 6th, 2021?

1 A. I was.

2 Q. What was your duty assignment that day?

3 A. I was detailed to the special operations division,
4 domestic security office, and I was assigned to work with
5 the lieutenant in charge of moving our CDU platoons and
6 moving things around the city that day. Yeah.

7 Q. Can you explain what the special operations division of
8 the DSO does?

9 A. It's -- so they're responsible for both training and
10 then implementing, so they have two roles. But in the
11 training role, they train everything civil
12 disturbance-related, how we handle riots, how we handle
13 munitions, OC spray, all of that sort of stuff.

14 And then in their more operational role, they have
15 response teams that bring special gear to situations.

16 Q. So on January 6th, 2021, what was the DSO deploying
17 individuals like yourself to do that day?

18 A. We were responding that day to what we call a 1033,
19 which is like an "Officers need assistance" type of call. I
20 believe it was called by then-Inspector Glover. We
21 responded from the office down to that location that day.

22 Q. So when you say you were at the office, where were you?

23 A. Blue Plains.

24 Q. Fair to say you were not out on the street at that point
25 in time?

1 A. No, I was not.

2 Q. And so when you receive that call when you're at Blue
3 Plains, what do you do?

4 A. The lieutenant and I got in the vehicle and responded
5 lights and sirens to the Capitol.

6 Q. What happened when you got to the Capitol?

7 A. We parked the vehicle. And you could see a crowd, but
8 you couldn't really see what was going on because we had to
9 park a ways away. Then as we -- the crowd out there, the
10 crowd that we could see, they were loud but, like, they
11 just -- it seemed normal. But then as we got -- the closer
12 we got, the more we could see going on with resisting the
13 officers and pushing and back and forth. And it escalated
14 from there.

15 Q. What was a part of your duty uniform when you showed up
16 at the United States Capitol that day?

17 A. Like what did I have on my uniform?

18 Q. Yeah. What were you deployed -- what were you wearing
19 when you were deployed to the Capitol?

20 A. I was in full uniform.

21 Q. Did you have a body-worn camera as a part of that
22 uniform?

23 A. I did.

24 Q. And was it working on January 6th, 2021?

25 A. It was. I lost it for a period of time and then it was

1 returned to me. But I did have it and it was operational.

2 Q. We'll talk about that point in time where you lost that
3 body-worn camera.

4 But before that point in time, was it recording
5 the activities of the day from your perspective fairly and
6 accurately?

7 A. Yes.

8 Q. Have we reviewed that body-worn camera in preparation
9 for your testimony?

10 A. To some degree, yes.

11 MS. PASCHALL: Could we pull up Exhibit 206,
12 please.

13 (Whereupon, segments of Government's Exhibit No.
14 206 were published in open court.)

15 MS. PASCHALL: And if we could stop Exhibit No
16 206.

17 BY MS. PASCHALL:

18 Q. We stopped 206 at 13:47:22. Sergeant, do you recognize
19 Exhibit 206?

20 A. I do. This is the vehicle I was driving that day, a
21 Ford Excursion. And it is just right next to the Capitol,
22 just on the south side before you get to South Capitol
23 Street, it looks like.

24 Q. And is what we have pulled up here in Exhibit 206 fair
25 and accurate as to what you were witnessing on January 6th,

1 2021?

2 A. It does.

3 MS. PASCHALL: At this time, your Honor, the
4 Government would move the admission of Exhibit 206 and all
5 of its derivatives.

6 THE COURT: Seeing no objection, 206 and its
7 components are in.

8 (Whereupon, Government's Exhibit No. 206 was
9 entered into evidence.)

10 MS. PASCHALL: Could we please pull up 206.7.

11 (Whereupon, segments of Government's Exhibit
12 No. 206.7 were published in open court.)

13 MS. PASCHALL: Pause.

14 BY MS. PASCHALL:

15 Q. All right, Sergeant. We've pulled up Exhibit 206.7.
16 What is the timestamp on this portion of your body-worn
17 camera?

18 A. It says 1351 hours.

19 Q. What's happening at this moment?

20 A. We are -- it looks like Lieutenant Horos and I are
21 walking from the vehicle. This is pretty close, I believe,
22 to where we parked, just after we exited the vehicle.

23 That's H-O-R-O-S.

24 Q. Do you know which direction, cardinal direction, you
25 were coming up to the Capitol?

1 A. We parked on the southwest corner, so we were walking up
2 to the west front. So we had to do kind of like a
3 roundabout. But I'm not exactly sure which direction we
4 were heading in this second. But overall, we're moving
5 north and east.

6 MS. PASCHALL: Let's start this video again at
7 13:51:00.

8 (Whereupon, segments of Government's Exhibit
9 No. 206.7 were published in open court.)

10 MS. PASCHALL: Stop again at 13:51:04.

11 BY MS. PASCHALL:

12 Q. Sergeant, do you see off to the left-hand side of the
13 screen what appears to be some fencing with signs on it?

14 A. I do.

15 MS. PASCHALL: If we could start again at
16 13:51:04.

17 (Whereupon, segments of Government's Exhibit
18 No. 206.7 were published in open court.)

19 MS. PASCHALL: Pause the video.

20 BY MS. PASCHALL:

21 Q. We stopped at 13:51:27. What are we seeing directly in
22 front of you here?

23 A. We see a fence to the left and right with signs that say
24 Area Closed and then two sections of bike rack, what appears
25 to be two sections of bike rack, which is typically used as

1 fencing in these types of circumstances where First
2 Amendment activities are expected. And it's tipped over.

3 MS. PASCHALL: If we could continue the video from
4 13:51:27.

5 (Whereupon, segments of Government's Exhibit
6 No. 206.7 were published in open court.)

7 MS. PASCHALL: And let's stop the video there at
8 13:52:07.

9 BY MS. PASCHALL:

10 Q. What did we just witness there?

11 A. We witnessed the lieutenant and I discussing masks. And
12 then a lady asked -- walked up and I believe she asked where
13 she could exit. And I advised her kind of behind us where
14 we had just walked over the bike rack.

15 Q. Earlier in your testimony, you were describing as you
16 were approaching the Capitol the crowd was more dispersed
17 and acting in a certain manner and then that tenor changed.
18 Is that kind of what we're seeing here?

19 A. As we advance -- as you -- like when you're a ways away,
20 we can hear the noise, which isn't necessarily indicative
21 one way or the other of what type of crowd it is. I guess
22 maybe that's kind of where my mind's at here. And then as
23 we progress and the deeper you get into the crowd, the
24 demeanor changes.

25 MS. PASCHALL: If we could please pull up 206.8.

1 (Whereupon, segments of Government's Exhibit
2 No. 206.8 were published in open court.)

3 MS. PASCHALL: Stop that there, please.

4 BY MS. PASCHALL:

5 Q. Let me just ask for the record: Did you have to go back
6 to your car to collect some --

7 A. I believe so, yes.

8 Q. -- masks? What was that for?

9 A. So the department had taken a really strict stance
10 during this event on -- during actually all the events
11 during this timeframe regarding masks, wearing masks. And
12 we were making sure we had what we needed.

13 Q. Just to be clear, you were thinking of masks in the
14 COVID context, not in the gas mask context. Is that
15 accurate?

16 A. Yes. That's accurate.

17 Q. So now what we see in 206.8 at 13:56:26, are you once
18 again crossing over that same broken-down barrier we
19 previously saw?

20 A. Yes.

21 MS. PASCHALL: Could we please move ahead to
22 13:58:09.

23 (Whereupon, segments of Government's Exhibit
24 No. 206.8 were published in open court.)

25 MS. PASCHALL: That's fine right there.

1 BY MS. PASCHALL:

2 Q. We're stopped at 13:58:10. Do you see the individual
3 who's directly in front of you?

4 A. I do.

5 Q. Who is that person?

6 A. I don't know his name, but he's a United States Capitol
7 Police officer by his uniform.

8 Q. And what is he doing at this moment?

9 A. Directing us. I believe in this moment I'm asking how
10 we can get to where we need to go, which is that west front
11 terrace. And he's giving us directions how to get there.

12 MS. PASCHALL: And let's start that video at
13 13:58:10.

14 (Whereupon, segments of Government's Exhibit
15 No. 206.8 were published in open court.)

16 MS. PASCHALL: Stop the video.

17 BY MS. PASCHALL:

18 Q. We stopped at 13:58:47. What are you doing here?

19 A. We're cutting through the woods because to the left what
20 you couldn't see on camera is the crowd was large and kind
21 of came up to the wood line. I believe they have a fence
22 along the wood line, so they're cutting us through the woods
23 to kind of get around the end of the crowd to get to where
24 the police officers are.

25 MS. PASCHALL: Start again at 13:58:47.

1 (Whereupon, segments of Government's Exhibit
2 No. 206.8 were published in open court.)

3 MS. PASCHALL: Stop the video there at 13:59:08.

4 BY MS. PASCHALL:

5 Q. What are we seeing at this point?

6 A. Sort of the initial -- so from standing on the west
7 front terrace, it would be the left kind of flank of where
8 our line is, where the police line is.

9 Q. Is that to the left, the farthest southwest point of the
10 police line at this moment, almost 2:00 p.m.?

11 A. Yes. The center of the video is actually pointed
12 directly to where we parked. So we parked at the dome you
13 see there in the center. That's directly next to where we
14 parked, the southwest corner of the Capitol.

15 Q. And do we see any barriers between you and the crowd at
16 this point?

17 A. Yes. This is that same bike rack I referenced earlier
18 that we use during First Amendment assemblies. I think all
19 agencies in the city do use bike rack.

20 MS. PASCHALL: If we could please pull up 206.9.

21 (Whereupon, segments of Government's Exhibit
22 No. 206.9 were published in open court.)

23 MS. PASCHALL: Stop 206.9 there.

24 BY MS. PASCHALL:

25 Q. What's the timestamp on this video, Sergeant?

1 A. 14:03:00.

2 Q. Where are you now?

3 A. The west front terrace of the Capitol, between the two
4 scaffolding or, like, grandstands that were built for the
5 inauguration.

6 Q. So directly in front of you, what are we seeing?

7 A. This is a police officer. I can't quite -- it's Matt
8 McFadyen, I believe. And then we're seeing the rear line of
9 the officers more towards the center of where our position
10 was for the day.

11 Q. Do you know, is this McFadyen M-C-F-A-D-Y-E-N?

12 A. I'm not sure how you spell it.

13 Q. At the beginning of this clip, were you able to hear
14 some audio?

15 A. The buzzing, yes.

16 Q. What was that noise?

17 A. That noise is a warning tone that comes from our LRAD,
18 which is like essentially a directional loudspeaker.

19 Q. And that LRAD, is that a device that you have been
20 trained to use in your duties as a sergeant?

21 A. Yes.

22 Q. How often would you say you deployed that?

23 A. In these circumstances, fairly rarely. We do deploy it
24 in training. This is -- normally, I would use it after it's
25 turned on. In this case, it was one of the first times I

1 had actually turned the device on. But it's frequently
2 used.

3 Q. And what is its purpose?

4 A. To deliver warnings or audible tones. It can do all
5 kinds of things. But in this case, today, it was to deliver
6 a dispersal warning and an unlawful assembly warning.

7 MS. PASCHALL: Let's start playing again at
8 14:03:00.

9 (Whereupon, segments of Government's Exhibit
10 No. 206.9 were published in open court.)

11 MS. PASCHALL: Stop the video, please.

12 BY MS. PASCHALL:

13 Q. We've stopped at 14:03:23.

14 What are we seeing at the bottom left corner of
15 the screen there?

16 A. So that appears to be a Capitol Police line that I see
17 to the far left. Then there's some protesters beyond them.
18 And then that is the LRAD, that square box that you see.
19 That's the back of the directional speaker.

20 Q. So when you say it's directional, is the sound going now
21 in our view at 14:03:23 away from you and towards that line
22 of rioters?

23 A. Yes.

24 MS. PASCHALL: If we could continue the video at
25 14:03:23.

1 (Whereupon, segments of Government's Exhibit
2 No. 206.9 were published in open court.)

3 MS. PASCHALL: Your Honor, this may be a good
4 stopping point.

5 THE COURT: Why don't we take our lunch break.
6 We'll come back at 1:45.

7 Sergeant Bogner, I'll ask you not to discuss the
8 subject of your testimony with anyone over the lunch break.

9 THE WITNESS: Yes, sir.

10 (Thereupon, a luncheon recess was taken, after
11 which the following proceedings were had:)

12 THE COURT: Can we re-call Sergeant Bogner?

13 MS. PASCHALL: Just one quick matter before we
14 re-call him, your Honor.

15 The Government has been in discussions with
16 defense counsel for Mr. Mehaffie and just wanted to let the
17 Court know that we are stipulating that in the prior
18 body-worn camera from Officer Abdi, it is not the
19 Government's belief that he was affirmatively using that
20 pole on the police line. There is footage from the other
21 perspective.

22 The Government thinks either that he was trying to
23 cover himself from the pole that was coming from behind him
24 or disarm the person behind him. So we just wanted to make
25 the record clear. This is what it appeared to be from

1 Officer Abdi's perspective. But defense counsel brought up
2 some other videos, and we concur the other videos do not
3 affirmatively demonstrate him using that pole.

4 THE COURT: I appreciate that. I was a little
5 confused, actually, because I didn't remember having the
6 impression from your trial brief or frankly from your
7 indictment that you were suggesting he was armed. So I
8 appreciate both Mr. Shipley raising that with the Government
9 and the Government being diligent in its review.

10 Let's proceed.

11 THE WITNESS: (Retakes the witness stand.)

12 THE COURT: Welcome back, Sergeant Bogner. I'll
13 remind you you're still under oath.

14 THE WITNESS: Okay.

15 BY MS. PASCHALL:

16 Q. Good afternoon, Sergeant Bogner.

17 So when we left off with your testimony, you were
18 on the west front and you had set up that LRAD system to
19 disperse the crowd with that dispersal order. Do you
20 remember that?

21 A. Yes.

22 Q. Now, when you were on the west front --

23 THE COURT: And can we just say for the record, I
24 think that stands for a long-range acoustic device. Does
25 that sound right?

1 THE WITNESS: That sounds right. Yes.

2 THE COURT: Google. It's amazing.

3 BY MS. PASCHALL:

4 Q. So at that point in time, when you were on the west
5 front, can you explain, what other munitions or tools were
6 the MPD using to disperse the crowd?

7 A. So we would have had a whole host of things. At that
8 moment, I don't recall exactly what had been disbursed, but
9 I can tell you what we had with us that day.

10 Q. Yes.

11 A. Anything from -- we had numerous configurations of
12 different types of OC spray ranging from like a fire
13 extinguisher size, which is what we call an MK-46, to the
14 small size that's on our belt and a few in between. But it
15 would all be roughly the same formulations, some a little
16 stronger than others, but it's all OC spray.

17 And then we would have 40-millimeter munitions
18 including impact and SCAT -- that's S-C-A-T, all caps --
19 and CS gas. We had that in the form of both a grenade and
20 able to be launched from the 40-millimeter launcher.

21 MS. PASCHALL: I would like to bring up Exhibit
22 206.1.

23 BY MS. PASCHALL:

24 Q. Sergeant, do you see what is depicted in the right-hand
25 portion of this screen in Government's Exhibit 206.1?

1 A. I see some sort of black bag, a shield, a flag on what
2 looks like a piece of paper.

3 Q. I want to focus on that shield there. Is that a
4 Metropolitan Police Department shield, a Capitol Police
5 Department shield or something else?

6 A. That's a U.S. Capitol Police shield.

7 Q. How do you know that?

8 A. The emblem that's on the shield itself. We don't have
9 those on ours.

10 Q. And on January 6th, 2021, were you utilizing shields
11 that were provided from the Capitol Police Department?

12 A. So not yet. To my knowledge, not yet at this time. But
13 when we did eventually get back to the building, we did at
14 times use Capitol Police shields. Yes.

15 Q. Do you ever recall personally using any MPD
16 department-issued shields?

17 A. I do not. There were none in my vehicle, and I don't
18 believe that I ever handled an MPD-issued shield on that
19 day.

20 Q. Now, did there come a point in time where you left this
21 lower plaza of the west front and went up to the inaugural
22 stage?

23 A. Yes.

24 Q. And why did that happen?

25 A. The decision was made that we were not going to be able

1 to maintain the line on the west front terrace. And then
2 we -- the decision was made that we would move to the next
3 area where we could establish a line, which was on the
4 inaugural stage.

5 Q. When you say the decision was made, do you know who
6 personally made that decision?

7 A. I know there was discussion between Sergeant Frank
8 Edwards and Commander Hanes. However, I don't know who made
9 the final decision.

10 Q. Fair to say that decision was made for tactical reasons.
11 Is that right?

12 A. Absolutely. Yes.

13 Q. So when you then went up to the next story up to the
14 inaugural platform stage, did you then walk through what we
15 are now calling the lower west terrace tunnel?

16 A. Walk through it? We walked into it. Yes.

17 MS. PASCHALL: If we could please pull up Exhibit
18 206.2.

19 BY MS. PASCHALL:

20 Q. Sergeant Bogner, is Government's Exhibit 206.2 a view of
21 what you would have seen walking into the lower west terrace
22 tunnel towards the Capitol Building?

23 A. Yes. This appears to be the exterior doors.

24 Q. And do you see the sign that is on those doors?

25 A. I do.

1 Q. What does that sign say?

2 A. Member Entrance Only.

3 Q. Did there come a time where nearly all of the
4 Metropolitan Police Department officers who had been on the
5 west front came either through this door or up to the upper
6 platform above this door?

7 A. Yes.

8 Q. And why did you guys go through this door?

9 A. So in the moments prior to where this photo is, the
10 officers are advancing up. I was one of the first to go up.
11 And the crowd was kind of pushing through our lines and
12 pushing past, and everyone was quickly moving, trying to
13 move the equipment.

14 Once we got up here, the various units kind of got
15 separated. Some went up another set of stairs above this
16 door and some of us went here.

17 Q. You mentioned equipment. What equipment are you talking
18 about?

19 A. All the equipment I mentioned before, including the
20 LRAD. There was members carrying -- I can't remember who,
21 but carrying bags of what we call MK-46s, which are those
22 fire extinguisher-size OC canisters.

23 Q. Why was it important to bring that equipment up to this
24 level and inside the building?

25 A. Because with the conflict happening below and the lines

1 deteriorating, we didn't want those items to fall into other
2 people's hands.

3 THE COURT: An Afghanistan type of situation?

4 THE WITNESS: Yes, sir.

5 BY MS. PASCHALL:

6 Q. You have to answer him. He's the judge.

7 MS. PASCHALL: If you could please pull up Exhibit
8 206.3.

9 BY MS. PASCHALL:

10 Q. Sergeant, in Government's Exhibit 206.3, what is the
11 timestamp at this point?

12 A. It says 14:40:09.

13 Q. Where are you facing at this point in time?

14 A. I'm at the second set of doors on that -- I forget what
15 you called it -- the west tunnel there. It's the second
16 set -- the interior set of doors for the little foyer.

17 Q. And what is happening at this moment?

18 A. Officers are coming into the Capitol and started to come
19 off the inaugural stage.

20 MS. PASCHALL: And let's start the video at
21 14:40:09.

22 (Whereupon, segments of Government's Exhibit
23 No. 206.3 were published in open court.)

24 MS. PASCHALL: Stop the video.

25

1 BY MS. PASCHALL:

2 Q. We stopped at 14:40:56. Do you see the officer
3 immediately to your left there?

4 A. The female officer?

5 Q. Yes.

6 A. Yes.

7 Q. Do you know who that is?

8 A. That's Officer Christina Lawrey.

9 Q. And do you know what type of discussion you were having
10 with her in this moment?

11 A. I didn't hear exactly what was said, but I believe we
12 were talking about the situation.

13 MS. PASCHALL: If we could start again at
14 14:40:56.

15 (Whereupon, segments of Government's Exhibit
16 No. 206.3 were published in open court.)

17 MS. PASCHALL: And if we could stop.

18 BY MS. PASCHALL:

19 Q. We stopped at 14:41:02. What is happening in this
20 portion of the video?

21 A. The U.S. Capitol Police officer who was manning the
22 station inside the door is locking the doors, the exterior
23 doors.

24 Q. And right over the right shoulder of that Capitol Police
25 officer who's locking the doors, can you see somebody

1 through the clear glass on the other side?

2 A. Yes.

3 Q. Does that person appear to be a law enforcement officer?

4 A. No.

5 MS. PASCHALL: Start the video again at 14:41:02.

6 (Whereupon, segments of Government's Exhibit
7 No. 206.3 were published in open court.)

8 MS. PASCHALL: Stop the video.

9 BY MS. PASCHALL:

10 Q. We stopped at 14:41:40. In the background off the
11 screen there, were you able to hear someone say, "We are not
12 losing the U.S. Capitol today"?

13 A. Yes.

14 Q. Do you happen to know who that person is?

15 A. No. I don't know. I know a short list of people who it
16 would be, but I don't know who it is.

17 Q. That's just fine.

18 THE COURT: Can you remind me, what exhibit are we
19 on?

20 MS. PASCHALL: This is Exhibit 206.3.

21 THE COURT: Thank you.

22 MS. PASCHALL: Start the video again at 14:41:40.

23 (Whereupon, segments of Government's Exhibit
24 No. 206.3 were published in open court.)

25 MS. PASCHALL: And if we could stop the video at

1 14:41:59.

2 BY MS. PASCHALL:

3 Q. What's happening in this portion of the video?

4 A. Sergeant Riley and I are kind of observing the doors,
5 the exterior doors to the Capitol. And Sergeant Riley asked
6 if someone could film; and I informed him that I had a
7 camera, a body camera on.

8 MS. PASCHALL: If we could pull this back about
9 two seconds, please, Mr. Clements.

10 (Whereupon, segments of Government's Exhibit
11 No. 206.3 were published in open court.)

12 MS. PASCHALL: And there is just fine.

13 BY MS. PASCHALL:

14 Q. We've now pulled up a still shot at 14:41:57. And I'm
15 going to circle a square in the middle of this screen there.
16 What are you seeing happen there?

17 A. I see someone banging on the window. It appears they
18 may have a black object in their left hand.

19 Q. And do you recall --

20 MR. SHIPLEY: Your Honor, we'll stipulate that
21 that's Mr. Mehaffie.

22 THE COURT: Thank you.

23 BY MS. PASCHALL:

24 Q. Do you recall this incident from January 6th?

25 A. I do.

1 Q. And what do you remember about how that individual had
2 his hand up on the glass there?

3 A. I remember there being an object in his hand and at some
4 point feeling the end of the object and then banging on the
5 window and then the window broke.

6 Q. Just for the record, I saw you take your left hand and
7 rub your right hand against the heel of it when you were
8 describing that moment.

9 A. Yes.

10 Q. Is that what you witnessed this person who I have
11 circled here do?

12 A. Yes.

13 Q. Is that what indicated to you that you thought something
14 was in his hand?

15 A. Yes. In my opinion of what it was, was a lot of modern
16 pocketknives have a glass breaker or an end on it. It was
17 like they were feeling for that to bang on the window. That
18 was my impression of what occurred.

19 Q. And then I just saw you do a motion again with your left
20 hand where you were banging. But instead of your front four
21 knuckles coming towards the glasses, it was the outside of
22 your hand coming towards the glass. Is that accurate to
23 what you recall this individual doing on January 6th?

24 A. Yes.

25 MS. PASCHALL: Let's continue with the video at

1 14:41:57.

2 (Whereupon, segments of Government's Exhibit
3 No. 206.3 were published in open court.)

4 MS. PASCHALL: If we could stop the video.

5 BY MS. PASCHALL:

6 Q. We've stopped at 14:42:17. What have we just seen
7 there?

8 A. So we saw the gentleman in the black come from around
9 and break the window with an object in his hand. And then
10 right before the stop, you see me reach up with what's
11 called an MK-9, which is one of those intermediate-sized OC
12 sprays that I was talking about, and spray. And I can tell
13 you I was spraying through the hole that was just broken.

14 Q. Why were you doing that?

15 A. To attempt to give the officers behind me more time to
16 form a line.

17 Q. Why did you need to form a line?

18 A. Because they were breaking into the Capitol and we
19 needed to stop them from doing that.

20 MS. PASCHALL: Let's start the video again at
21 14:42:17.

22 (Whereupon, segments of Government's Exhibit
23 No. 206.3 were published in open court.)

24 MS. PASCHALL: If you can stop.
25

1 BY MS. PASCHALL:

2 Q. At 14:43:15, can you hear a faint noise in the
3 background there?

4 A. It sounds like an alarm.

5 Q. Do you recall on January 6th around this time whether an
6 alarm was going off?

7 A. I don't.

8 Q. But based on the audio in this video, do you believe an
9 alarm would have been going off?

10 A. Yes, I do.

11 MS. PASCHALL: Let's start again at 14:43:15.

12 (Whereupon, segments of Government's Exhibit
13 No. 206.3 were published in open court.)

14 MS. PASCHALL: You can stop.

15 BY MS. PASCHALL:

16 Q. At 14:43:34, is that your voice that we're hearing
17 there, Sergeant?

18 A. Yes.

19 Q. What are you saying?

20 A. "No spray."

21 Q. Why?

22 A. Because a number of the officers didn't have masks on
23 and the spray at this point -- at this point, the wind was
24 kind of blowing in through the set of open doors and blowing
25 into our face. So I was telling the officers, "Don't spray"

1 because they're having -- it's also having effect on the
2 officers.

3 MS. PASCHALL: If we could start the video again
4 at 14:43:34.

5 (Whereupon, segments of Government's Exhibit
6 No. 206.3 were published in open court.)

7 MS. PASCHALL: And stop the video.

8 BY MS. PASCHALL:

9 Q. We stopped at 14:44:29. What just happened in this
10 interchange?

11 A. This individual that you can see his face here in the
12 stocking hat to the -- just to the left of the officer's
13 head in the red stocking hat has his hand on the door and is
14 pressing into the officers. He's kind of much bigger than I
15 am. And he's pressing into the officers and the officers
16 are having a difficult time holding their ground. It
17 appears the officer wanted him to stay there for some
18 reason, which could be he saw something worse that could
19 happen if he moved out of the way. I mean, I can't answer
20 why. But he wanted him to stay, so I trusted him.

21 Q. Fair to say were you issuing commands to those
22 individuals right in front of you?

23 A. Yes.

24 Q. And in fact, did we hear you say, "We can't let you in
25 the building"?

1 A. Yes.

2 MS. PASCHALL: Continue at 14:44:29.

3 (Whereupon, segments of Government's Exhibit
4 No. 206.3 were published in open court.)

5 MS. PASCHALL: If we can stop at 14:44:49.

6 BY MS. PASCHALL:

7 Q. Sergeant, did you just hear an individual say, "They
8 fucking stole this and you fucking know it"?

9 A. I did.

10 Q. And did you see a black sleeve sort of shaking a finger
11 as well?

12 A. I can see it here. Yes.

13 MS. PASCHALL: If we could briefly go to Exhibit
14 235.2, which is already in evidence.

15 BY MS. PASCHALL:

16 Q. What's the timestamp here?

17 A. 14:41:17.

18 Q. So now are we back a few minutes before the rioters had
19 broken through the glass?

20 A. Uh-huh.

21 THE COURT: We need a "yes" or "no," sir.

22 THE WITNESS: Yes. I'm sorry.

23 BY MS. PASCHALL:

24 Q. I'm going to have you listen for the individual that I
25 was referencing earlier about "We're not going to lose the

1 U.S. Capitol today." You let me know if you can identify
2 who is speaking.

3 A. Uh-huh.

4 MS. PASCHALL: If we could please play at
5 14:41:17.

6 (Whereupon, segments of Government's Exhibit
7 No. 235.2 were published in open court.)

8 MS. PASCHALL: Stop the video, please.

9 BY MS. PASCHALL:

10 Q. We stopped at 14:41:45. Did you see the individual who
11 was speaking?

12 A. Commander Ramey Kyle is his name.

13 Q. What was Commander Kyle's position during this point in
14 time? What is he trying to publish?

15 A. He had assumed command in this area of the Capitol and
16 he was attempting to establish a line and get the officers
17 prepared for holding the Capitol.

18 Q. How important was it during this moment for someone like
19 Commander Kyle to take charge of that situation?

20 A. Important. Very important.

21 Q. And do you know if Commander Kyle stayed in the area as
22 you guys continued to fight with the rioters?

23 A. He stayed the entire time.

24 Q. How important was that?

25 A. Very important.

1 MS. PASCHALL: If we could please go to Exhibit
2 441.

3 BY MS. PASCHALL:

4 Q. Sergeant, during the time that you were here in the
5 tunnel, were you able to observe individuals in the crowd of
6 rioters who were taking video back at your line?

7 A. Yes.

8 (Whereupon, segments of Government's Exhibit No.
9 411 were published in open court.)

10 THE COURT: Sorry. You said 441?

11 MS. PASCHALL: My apologies. It should be 411.

12 (Whereupon, segments of Government's Exhibit
13 No. 411 were published in open court.)

14 MS. PASCHALL: If we could pause.

15 BY MS. PASCHALL:

16 Q. We've stopped Exhibit 411. Sergeant, do you know, is
17 this the opposite perspective that we see on your body-worn
18 camera at around 14:41 there where you are filming the
19 rioters coming through that lower west terrace tunnel door?

20 A. It's definitely the opposing view.

21 MS. PASCHALL: If we could play that a little bit
22 farther, please.

23 (Whereupon, segments of Government's Exhibit
24 No. 411 were published in open court.)

25 MS. PASCHALL: If we could stop.

1 BY MS. PASCHALL:

2 Q. And off to the kind of upper right, do you see that guy
3 in the red stocking cap that you were talking about?

4 A. I do.

5 Q. And immediately behind him, are we able to see that line
6 of officers that you were a part of inside the Capitol
7 Building?

8 A. Yes.

9 Q. So is Exhibit 411, then, a fair and accurate
10 representation of what was occurring at the tunnel doors at
11 about 14:41 on January 6th?

12 A. In my opinion, yes.

13 MS. PASCHALL: At this time, we'd move the
14 admission of Government's Exhibit 411.

15 THE COURT: With no objection, 411 is in.

16 (Whereupon, Government's Exhibit No. 411 was
17 entered into evidence.)

18 MS. PASCHALL: If we could please continue to play
19 411.

20 (Whereupon, segments of Government's Exhibit
21 No. 411 were published in open court.)

22 MS. PASCHALL: If we could stop and go back maybe
23 one second.

24 (Whereupon, segments of Government's Exhibit
25 No. 411 were published in open court.)

1 BY MS. PASCHALL:

2 Q. We're now at 00:37 in Exhibit 411. Do you see the
3 individual on the far right of the screen here with both of
4 his hands up?

5 A. I do.

6 MS. PASCHALL: If we could continue to play
7 Exhibit 411.

8 (Whereupon, segments of Government's Exhibit
9 No. 411 were published in open court.)

10 MS. PASCHALL: Now I'm going to ask that we pull
11 up Exhibit 412. If we could play a little bit into Exhibit
12 412.

13 (Whereupon, segments of Government's Exhibit
14 No. 412 were published in open court.)

15 MS. PASCHALL: Stop now.

16 BY MS. PASCHALL:

17 Q. Sergeant, does this appear to be the same view that is
18 the opposing view of your body-worn camera as you are in
19 line inside of the lower west terrace tunnel at around 4:42
20 p.m. on January 6th?

21 A. It does.

22 Q. In fact, do we see that same individual that I stopped
23 and identified before in the gray hooded sweatshirt now sort
24 of off to the left side at the front of the line there?

25 A. Yes.

1 MS. PASCHALL: At this time, your Honor, we would
2 move the admission of Government's Exhibit 412.

3 THE COURT: Seeing no objection, 412 is in.

4 (Whereupon, Government's Exhibit No. 412 was
5 entered into evidence.)

6 MS. PASCHALL: If we could please continue to play
7 412.

8 (Whereupon, segments of Government's Exhibit
9 No. 412 were published in open court.)

10 MS. PASCHALL: And if we could just stop there.

11 BY MS. PASCHALL:

12 Q. We've stopped Exhibit 412 at 00:57 seconds. Do you see
13 that individual that we've previously identified in the gray
14 sweatshirt again at the front of the line there?

15 A. Yes, I do.

16 Q. Can you see where his hands are?

17 A. At least one hand is up and it looks like his other hand
18 is underneath. But it's difficult to tell.

19 MS. PASCHALL: Let's start Exhibit 412 again at
20 counter 00:57.

21 (Whereupon, segments of Government's Exhibit
22 No. 412 were published in open court.)

23 MS. PASCHALL: We've reached the end of 412.
24 Could we please pull up Exhibit 206.10.

25 (Whereupon, segments of Government's Exhibit

1 No. 206.10 were published in open court.)

2 MS. PASCHALL: And if we could stop the video.

3 BY MS. PASCHALL:

4 Q. So we've stopped the video at 14:48:21. Sergeant, are
5 you able to hear your own voice again?

6 A. I am.

7 Q. Do you believe this to be another portion of your
8 body-worn camera?

9 A. It is.

10 Q. What is happening at this point at 14:48:21?

11 A. It appears we're still in the same position we were.
12 But I heard myself say, "We're trying to get someone out" or
13 something to that effect. And I recall having to pull up a
14 couple of officers off the front line for various reasons
15 throughout the time. I'm not sure which one this was.

16 MS. PASCHALL: Let's start the video again at
17 14:48:21.

18 (Whereupon, segments of Government's Exhibit
19 No. 206.10 were published in open court.)

20 MS. PASCHALL: And stop.

21 BY MS. PASCHALL:

22 Q. We stopped the video at 14:48:51. What did we just hear
23 you say there, Sergeant?

24 A. I'm trying to get shields in the proper position so we
25 can relieve the officers at the front of the line.

1 Basically, what we have here is a compacted mass of officers
2 in the hallway and a compacted mass of protesters in the --
3 or rioters in the entryway or in the foyer. And they're
4 compressing against each other. And I'm -- what I'm trying
5 to do is not keep the same officers in the front of the line
6 the whole time taking the brunt of it. That's what I'm
7 doing here, is trying to switch that up.

8 Q. Why was that necessary?

9 A. Because physically officers can't handle -- people can't
10 handle that for a prolonged period of time, so swapping them
11 out keeps the officers fresh, keeps them making good
12 decisions. So that was my goal at that moment.

13 MS. PASCHALL: Let's continue at 14:48:51.

14 (Whereupon, segments of Government's Exhibit
15 No. 206.10 were published in open court.)

16 MS. PASCHALL: If we could stop the video.

17 BY MS. PASCHALL:

18 Q. So we've stopped at 14:49:21. What has just happened in
19 that portion of the video?

20 A. I'm trying to inform the officers that it's just a fire
21 extinguisher. I remember I could see -- I could see the red
22 of the fire extinguisher. And I don't want them to panic
23 and think it's something other than a fire extinguisher
24 because, you know, the mind in situations like this is a
25 powerful thing. So I'm just trying to keep their heads

1 focused.

2 MS. PASCHALL: Let's start again at 14:49:21.

3 (Whereupon, segments of Government's Exhibit
4 No. 206.10 were published in open court.)

5 MS. PASCHALL: And let's stop at 14:49:33.

6 BY MS. PASCHALL:

7 Q. Just to be clear, no Metropolitan Police Department
8 officer or Capitol Police officer is deploying that fire
9 extinguisher in this moment. Is that accurate?

10 A. No. We would not deploy a fire extinguisher.

11 MS. PASCHALL: Let's start again at 14:49:33.

12 (Whereupon, segments of Government's Exhibit
13 No. 206.10 were published in open court.)

14 MS. PASCHALL: Let's stop at 14:50:05.

15 BY MS. PASCHALL:

16 Q. Are you able to see the officer directly in front of you
17 there?

18 A. I can.

19 Q. It appear to be somebody who's wearing a green COVID
20 safety mask?

21 A. I can see the green strap -- a green strap. But I can't
22 tell the mask.

23 MS. PASCHALL: Let's play for another second or
24 two here at 14:50:05.

25 (Whereupon, segments of Government's Exhibit

1 No. 206.10 were published in open court.)

2 MS. PASCHALL: And if we could stop at 14:50:28.

3 BY MS. PASCHALL:

4 Q. Were you able to better see that green COVID mask?

5 A. Yes. I can see a green COVID mask.

6 Q. In this portion that we've just watched, what are you
7 instructing people to do?

8 A. I wanted to attempt to make a push to push the rioters
9 back. Any measure would have been a win. So I was just
10 trying to make an attempt to push to see what we could do.

11 MS. PASCHALL: Let's start again at 14:50:28.

12 (Whereupon, segments of Government's Exhibit
13 No. 206.10 were published in open court.)

14 MS. PASCHALL: And let's stop at 14:51:02.

15 BY MS. PASCHALL:

16 Q. So what have we just seen during that portion of the
17 video?

18 A. I'm conversing with a sergeant from the Fourth District.
19 I cannot remember his name. But I can tell it's him because
20 his finger was injured in that manner. And I remember him
21 standing next to me. His name escapes me at the moment.

22 Q. So in the 30 seconds or so prior where you had testified
23 that you were hoping to push back on the crowd and make any
24 measure that you could, were you successful?

25 A. Not by much, if at all.

1 MS. PASCHALL: If we could now please go to
2 Exhibit 413. If we could pull Exhibit 413 ahead to about
3 five -- actually, let's just play it straight through.
4 Sorry. Let's start at 00:00.

5 (Whereupon, segments of Government's Exhibit
6 No. 413 were published in open court.)

7 MS. PASCHALL: Stop at 00:04.

8 BY MS. PASCHALL:

9 Q. What are we viewing at that moment?

10 A. The reciprocal view from someone's personal device,
11 apparently, of that red fire extinguisher being deployed
12 into the tunnel.

13 Q. So based on viewing this video, is it fair to say that
14 this video is the exact counterpoint of what we saw in your
15 video at 14:49:12?

16 A. Yes.

17 Q. And does it appear to be a fair and accurate
18 representation of what that lower west terrace tunnel doors
19 looked like at around that time on January 6th?

20 A. It does.

21 MS. PASCHALL: At this time, the Government would
22 move the admission of Exhibit 413.

23 THE COURT: Seeing no objection, 413 is admitted.

24 (Whereupon, Government's Exhibit No. 413 was
25 entered into evidence.)

1 BY MS. PASCHALL:

2 Q. Staying here at time marker 00:04, do you see the person
3 that I am circling sort of in the center but bottom half of
4 the photograph?

5 A. I do.

6 Q. Is that somebody who appears to be wearing a gray
7 sweater?

8 A. It does.

9 MS. PASCHALL: If we could play Exhibit 413 from
10 time marker 00:04.

11 (Whereupon, segments of Government's Exhibit
12 No. 413 were published in open court.)

13 MS. PASCHALL: Having reached the end of Exhibit
14 413, could we please pull up Exhibit 301, which I believe is
15 already in evidence. If we could pull Exhibit 301 ahead to
16 time marker five minutes, 28 seconds. Push "play" there.

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

19 MS. PASCHALL: Stop the exhibit.

20 BY MS. PASCHALL:

21 Q. Sergeant, what are we looking at in Exhibit 301?

22 A. That's a reciprocal view of our position inside the
23 interior doors of the west tunnel.

24 Q. And fair to say that the officer with the name tag W.
25 Bogner, is that you?

1 A. It is.

2 Q. And based on this view, do you believe this to be a fair
3 and accurate depiction of what your position would have
4 looked like inside the lower west terrace tunnel doors on
5 January 6th, 2021?

6 A. I do.

7 MS. PASCHALL: I think this is already in
8 evidence. But if it's not, we'd move the admission.

9 MS. COBB: It is.

10 MS. PASCHALL: Great. Thank you.

11 And can we continue to play from 5:32 on Exhibit
12 301.

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

15 MS. PASCHALL: If we could stop right at 5:47.

16 BY MS. PASCHALL:

17 Q. I know it's a little blurry, but, Sergeant, are you
18 aware of law enforcement officers who appear to be above you
19 over your right shoulder in this photograph --

20 A. Yes.

21 Q. -- still?

22 Do you know what they were doing up there?

23 A. I can't say specifically. But like there was several
24 times both inside these doors and when we moved out further
25 later when we were able to push back where an officer would

1 get up on that right-hand side and would either spray or do
2 different things from that vantage point to attempt to, you
3 know, have a better aim and sight line.

4 Q. Do you know if Commander Kyle, who we discussed
5 previously, ever got up on that vantage point?

6 A. I don't recall that.

7 MS. PASCHALL: If we could please go to Exhibit
8 304. If we could pull Exhibit 304 ahead to ten minutes, 25
9 seconds.

10 (Whereupon, segments of Government's Exhibit
11 No. 304 were published in open court.)

12 MS. PASCHALL: Stop there.

13 BY MS. PASCHALL:

14 Q. We've stopped Exhibit 304 at 11:02. Right in the very
15 bottom corner of this exhibit on the left-hand side, do you
16 see who I've circled there?

17 A. That's me.

18 Q. And at this point, where has your line established?

19 A. So we are at the exterior set of doors and have
20 apparently pushed through the foyer.

21 Q. So at some point from when we were previously watching
22 your body-worn camera, you've now made a little bit of
23 ground from inside -- fully inside the Capitol doors to now
24 the exterior, second double doors. Is that fair to say?

25 A. Yes.

1 MS. PASCHALL: Let's continue to play Exhibit 304
2 at 11:02.

3 THE COURT: Did you want to move 304 in?

4 MS. PASCHALL: Yes.

5 BY MS. PASCHALL:

6 Q. Well, first, is this a fair and accurate depiction of
7 what you experienced on January 6th, 2021?

8 A. It appears to be. Yes.

9 MS. PASCHALL: We would move the admission of
10 Exhibit 304.

11 THE COURT: Seeing no objection, 304 is in.

12 (Whereupon, Government's Exhibit No. 304 was
13 entered into evidence.)

14 (Whereupon, segments of Government's Exhibit
15 No. 304 were published in open court.)

16 MS. PASCHALL: And please stop Exhibit 304 at
17 11:56.

18 BY MS. PASCHALL:

19 Q. So what have we just witnessed during this interval of
20 the video?

21 A. A continued violent exchange between the protesters and
22 the officers. You can see the officers attempting to strike
23 them there with the batons. We are still at that exterior
24 set of doors. One of them is now closed.

25 Q. Do you recall if that door that was then closed --

1 whether the glass in that door frame was broken or still
2 intact?

3 A. It appears to be broken in this video.

4 MS. PASCHALL: If we could now pull up Exhibit
5 206.4.

6 (Whereupon, segments of Government's Exhibit
7 No. 206.4 were published in open court.)

8 MS. PASCHALL: Stop there.

9 BY MS. PASCHALL:

10 Q. We stopped that at 14:54:34. Are we back to your
11 body-worn camera now?

12 A. It appears to be. Yes.

13 MS. PASCHALL: Let's start the video. Actually,
14 let's move ahead to 14:56:25. We can start from there.

15 (Whereupon, segments of Government's Exhibit
16 No. 206.4 were published in open court.)

17 MS. PASCHALL: We can stop.

18 BY MS. PASCHALL:

19 Q. We've stopped at 14:56:33. Sergeant, do you see a big
20 piece of equipment directly in front of you there?

21 A. Yes. I see like a large TV camera almost, but not quite
22 that big.

23 MS. PASCHALL: We'll start again at 14:56:33.

24 (Whereupon, segments of Government's Exhibit
25 No. 206.4 were published in open court.)

1 MS. PASCHALL: If we could stop at 14:57:03.

2 BY MS. PASCHALL:

3 Q. What have we just witnessed there?

4 A. We witnessed -- there was this lady that's visible in
5 the video. She was starting to panic and eventually had
6 difficulty breathing. I was trying to appeal to the
7 individuals immediately around. I think at one point I even
8 asked them if they could stop, we'll get her help and then
9 we can go back to what we're doing or something to that
10 effect. I don't remember exactly what I said, but I
11 remember trying to appeal to them to stop momentarily so we
12 could help her.

13 Q. And when you're asking them to stop, you're asking them
14 to stop that forward momentum against the line. Is that
15 accurate?

16 A. Yes. The mass of officers and the mass of people
17 pressing against each other. It was a tremendous force on
18 everyone at that moment.

19 MS. PASCHALL: If we could move ahead to 14:59:15.

20 (Whereupon, segments of Government's Exhibit
21 No. 206.4 were published in open court.)

22 MS. PASCHALL: And stop the video.

23 BY MS. PASCHALL:

24 Q. At 14:59:31, what have we just heard you say?

25 A. I can't remember exactly what the gentleman said, but I

1 was telling him: We're defending the building. I think he
2 was accusing us of something, and then I said: We're
3 defending the building.

4 Q. In the 14 years that you've been with MPD, how many
5 large rallies, marches, First Amendment activities do you
6 think you've manned as an officer?

7 A. Numerous. It would be difficult for me to guess.

8 Q. But over 14 years, maybe multiple every year?

9 A. Yes.

10 Q. In that entire 14 years, have you ever seen anything
11 like this?

12 A. Not specifically just like this. No.

13 Q. How difficult was this as a sergeant to be trying to
14 take charge of the men that are your officers in this
15 situation?

16 A. It's difficult. It's hard to hear. It's hard for
17 people to focus past all of this, everything that's
18 happening, the pressure, the noise. So it's difficult.

19 Q. Is it fair to say that this is the most violent rally or
20 march that you have had to man as a police officer in your
21 14 years?

22 A. It's definitely in the top five.

23 MS. PASCHALL: Thank you.

24 THE COURT: We had heard testimony yesterday from
25 one of your colleagues that he felt like officers informally

1 at least responded differently to this riot because of what
2 they'd experienced during the Black Lives Matter protest.
3 Would you agree with that?

4 THE WITNESS: I can't say that I do believe that
5 we responded differently. I think that we defended
6 ourselves in accordance with our policies. I think we do
7 that on a day-to-day basis. I mean, we use the same tools
8 here that we did the summer before. In this instance, it's
9 more concentrated.

10 But it's different in that way and the intensity
11 is different. But I think the response to the same action
12 by an individual is the same. I think this is just more
13 concentrated. That's how I would characterize it.

14 THE COURT: Your policies didn't change in 2020?

15 THE WITNESS: Maybe some, but not significantly to
16 where this type of response would change.

17 THE COURT: Mr. Shipley?

18 CROSS-EXAMINATION

19 BY MR. SHIPLEY:

20 Q. Good afternoon, Sergeant Bogner.

21 MR. SHIPLEY: Can we have 206.3 played again from
22 about 14:41.

23 (Whereupon, segments of Government's Exhibit
24 No. 206.3 were published in open court.)

25

1 BY MR. SHIPLEY:

2 Q. This is your body cam. We're going to see again the
3 glass break.

4 A. Okay.

5 (Whereupon, segments of Government's Exhibit
6 No. 206.3 were published in open court.)

7 MR. SHIPLEY: It's 57, so almost 14:42.

8 (Whereupon, segments of Government's Exhibit
9 No. 206.3 were published in open court.)

10 MR. SHIPLEY: Pause that there.

11 BY MR. SHIPLEY:

12 Q. You see the gentleman you described earlier pounding on
13 the glass with his left hand, with the front of his fist.
14 Right?

15 A. I do.

16 Q. And now we're going to see him a couple times again in a
17 few minutes. Just for simplicity's sake, I'm going to tell
18 you that's my client, Mr. Mehaffie, sitting back there.

19 A. Okay.

20 Q. I'll just refer to him as Mr. Mehaffie.

21 A. All right.

22 Q. So that's Mr. Mehaffie's left hand pounding on the
23 glass. Right?

24 A. Yes.

25 Q. Okay.

1 MR. SHIPLEY: Run it forward.

2 (Whereupon, segments of Government's Exhibit
3 No. 206.3 were published in open court.)

4 MR. SHIPLEY: Pause.

5 BY MR. SHIPLEY:

6 Q. Mr. Mehaffie, you see he steps aside there. Right? He
7 moves to his right?

8 A. Yes.

9 MR. SHIPLEY: Run it again.

10 (Whereupon, segments of Government's Exhibit
11 No. 206.3 were published in open court.)

12 MR. SHIPLEY: Stop it, please.

13 BY MR. SHIPLEY:

14 Q. That's somebody different. Right?

15 A. Yes.

16 Q. So if you said earlier that it was the same person
17 pounding on the door that broke the glass, that was just a
18 mistaken recollection. In fact, it's somebody different who
19 breaks the glass. Right?

20 A. Yes. I believe what I said earlier was that I remember
21 someone feeling for the breaker, which I saw there, and then
22 smashing the glass. But if I said that, it was a mistake.

23 Q. Yeah.

24 THE COURT: Sir -- you go ahead.

25

1 BY MR. SHIPLEY:

2 Q. That's clearly not Mr. Mehaffie --

3 A. That is not.

4 Q. -- with an object in his hand?

5 A. Yes. That is not.

6 THE COURT: I guess my question is, it looked to
7 me like there were two different people, like first
8 Mr. Mehaffie and then this second individual.

9 Are you now saying that you don't believe
10 Mr. Mehaffie had something in his hand?

11 THE WITNESS: I still believe Mr. Mehaffie had
12 something in his hand. It appears there's a black object in
13 his hand when he's banging on the glass.

14 THE COURT: But you're just saying it's the second
15 guy who broke the window?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 You may continue.

19 MR. SHIPLEY: 232.5 -- no. I'm sorry. 411 and
20 412. Can we run them both, beginning to end? Let's do 411
21 first.

22 (Whereupon, segments of Government's Exhibit
23 No. 411 were published in open court.)

24 MR. SHIPLEY: Stop it for me.

25

1 BY MR. SHIPLEY:

2 Q. I'm going to refer to that person as White Hat. Do you
3 see the gentleman with the white hat and the backpack?

4 A. The one with the kind of tan backpack in the middle?

5 Q. The one with the white hat and the backpack --

6 A. I do.

7 Q. -- or beanie, whatever it is?

8 A. Yes.

9 Q. He's the first person through the door. Right?

10 A. It appears from this camera, yes.

11 Q. And you're right in the front. I mean, you're coming
12 face to face with whoever is coming through that door.
13 Right?

14 A. Yes.

15 Q. This gentleman pauses for a moment and starts to say
16 something, starts to give some kind of speech or whatever.
17 And momentarily he's by himself. Right?

18 A. I don't remember what happens after this. But you're
19 saying in this moment here it appears he's a few feet from
20 the front of the line.

21 MR. SHIPLEY: Why don't we go forward a little
22 bit.

23 (Whereupon, segments of Government's Exhibit
24 No. 411 were published in open court.)

25 MR. SHIPLEY: Pause it.

1 BY MR. SHIPLEY:

2 Q. It's out of the frame. You can't see it. But you could
3 see for three or four seconds he was the only one who had
4 moved forward to the line of shields in front of him.

5 A. Yes.

6 MR. SHIPLEY: Let's keep going.

7 (Whereupon, segments of Government's Exhibit
8 No. 411 were published in open court.)

9 MR. SHIPLEY: Stop it. Well, can you back it up
10 about four seconds?

11 (Whereupon, segments of Government's Exhibit
12 No. 411 were published in open court.)

13 MR. SHIPLEY: Right there.

14 BY MR. SHIPLEY:

15 Q. Do you see the gentleman -- I've never done this before.
16 Here we go. Do you see that -- you can see his left
17 shoulder, the gray hoodie and gray hair?

18 A. I do.

19 Q. That's Mr. Mehaffie, too. Right?

20 A. It appears to be. Yes.

21 Q. I'll represent to you that's Mr. Mehaffie, too. So can
22 you kind of keep an eye on him as we continue to play?

23 MR. SHIPLEY: Go ahead.

24 (Whereupon, segments of Government's Exhibit
25 No. 411 were published in open court.)

1 MR. SHIPLEY: Pause right there.

2 BY MR. SHIPLEY:

3 Q. Now, at this point, Mr. Mehaffie has not moved forward
4 any further between those doors. Right? He's stayed right
5 there?

6 A. It appears he's at the interior set of doors in the
7 foyer. Yes.

8 Q. And now at this point he's actually turning around and
9 his -- his mannerisms, he's directing to the crowd, he's got
10 both hands in the air. Right?

11 A. He does.

12 Q. Fair to say he's telling the crowd to stop?

13 A. I don't know what he's saying, but he does have them up
14 as if that's what he's trying to say.

15 MR. SHIPLEY: And why don't we back up just, you
16 know, right there.

17 (Whereupon, segments of Government's Exhibit
18 No. 411 were published in open court.)

19 BY MR. SHIPLEY:

20 Q. Do you see anything in either hand?

21 A. No.

22 Q. Now, I accept your representation earlier you thought he
23 had something in your [sic] hand. But at least by this
24 point, if he had something in his hand, he's dropped it,
25 because it's not in his hand anymore?

1 A. I would agree to that. He -- it's not in his hands. I
2 can see that. I don't know what he would have done with it
3 if there was something.

4 Q. I'm going to apologize to you. Whatever -- one of my
5 hearing aids quit working. I've only got one in and I'm not
6 hearing exactly what you're saying. Could you repeat that
7 answer, please?

8 A. I'm saying, if he had something, it's no longer in his
9 hands because his hands are open. But I don't know if he
10 dropped it or not.

11 Q. So the two alternatives are either he had something and
12 he dropped it or you were mistaken earlier and he didn't
13 have anything in his hands?

14 A. There are many other alternatives. He could have put
15 something in his pocket, anything of that nature. I don't
16 know what happened to it.

17 Q. Fine. But at least one clear possibility here is he
18 never, ever had anything in his hand and you were just
19 mistaken?

20 A. I don't believe that to be true.

21 Q. I'm just asking you if that's a possibility.

22 A. Anything's possible. But I don't believe that to be
23 true.

24 MR. SHIPLEY: Can we go now to -- well, let's --
25 so play this forward to see if there's anything more. I

1 think this ends before there's anything more.

2 (Whereupon, segments of Government's Exhibit
3 No. 411 were published in open court.)

4 MR. SHIPLEY: That's the end of that one. Can we
5 go to 412 now.

6 (Whereupon, segments of Government's Exhibit
7 No. 412 were published in open court.)

8 BY MR. SHIPLEY:

9 Q. There's Mr. Mehaffie again. Right? You can see him
10 there. This is him now at this point?

11 A. Uh-huh.

12 THE COURT REPORTER: Could I have a "yes" or "no,"
13 please?

14 THE WITNESS: Yes.

15 BY MR. SHIPLEY:

16 Q. His left hand is the lower and his right hand is kind of
17 over his head. Right?

18 A. It's difficult to tell, but it appears that that's
19 correct.

20 Q. Okay. Yeah. You think there's a shield there? There
21 very well may be. It's kind of hard to make it out.

22 A. It's difficult to tell in this picture.

23 MR. SHIPLEY: Go ahead.

24 (Whereupon, segments of Government's Exhibit
25 No. 412 were published in open court.)

1 MR. SHIPLEY: Stop.

2 BY MR. SHIPLEY:

3 Q. Still in this position, Mr. Mehaffie's still got his
4 hands up. Right?

5 A. He's kind of like this, it appears. One hand -- the
6 left hand is in front and the other hand is up.

7 Q. Well, granted. Where we had frozen it, that's the
8 position of his two hands. But through that -- that little
9 sequence there of two or three seconds, both hands are up in
10 the air?

11 A. He's moving his hands around. Yes.

12 MR. SHIPLEY: Keep going.

13 (Whereupon, segments of Government's Exhibit
14 No. 412 were published in open court.)

15 MR. SHIPLEY: Pause.

16 BY MR. SHIPLEY:

17 Q. Right there, you saw somebody behind him hitting him
18 with a baton?

19 A. It appears a member of the group was hitting him. Yeah.

20 MR. SHIPLEY: Keep going.

21 (Whereupon, segments of Government's Exhibit
22 No. 412 were published in open court.)

23 MR. SHIPLEY: Pause -- go.

24 BY MR. SHIPLEY:

25 Q. At that point, you could see one of your officers

1 hitting him with a baton? Not saying unjustified. Saying
2 one of your officers strikes him.

3 A. I didn't get past where he was. I kind of got
4 distracted. Can we play that segment again?

5 Q. Yeah.

6 MR. SHIPLEY: Can we go back? Why don't we let it
7 run for a second.

8 (Whereupon, segments of Government's Exhibit
9 No. 412 were published in open court.)

10 MR. SHIPLEY: Pause there.

11 THE WITNESS: I am uncertain if they were hitting
12 him or if they were hitting the guy who was hitting him.
13 But it was an officer striking with a baton.

14 BY MR. SHIPLEY:

15 Q. And it was either him or like right over the top of his
16 head?

17 A. Yes.

18 Q. Just before we paused there, Mr. Mehaffie had both hands
19 on top of his head. Right?

20 A. When the individual behind him was hitting him, yeah.
21 He put both hands up like that.

22 Q. Right.

23 A. That is correct.

24 Q. Now he's turned around and has his back to the line?

25 A. He does.

1 MR. SHIPLEY: Let's see if we can see any more. I
2 think he disappears here, though.

3 (Whereupon, segments of Government's Exhibit
4 No. 412 were published in open court.)

5 MR. SHIPLEY: Let's pause. I think that flag is
6 in the way for most of the footage after that.

7 BY MR. SHIPLEY:

8 Q. And I know we're dealing with, you know,
9 18-plus-months-ago recollection and really what you're
10 watching here and imperfect, you know, visual
11 representation. Do you have any idea how long Mr. Mehaffie
12 was at the front in that location?

13 A. I don't have a specific timeframe. No.

14 Q. And so if there's other video that shows that not too
15 long after this he's headed out, would that surprise you?

16 A. No. On that day, numerous people would leave, come
17 back. Some wouldn't come back; some would come back. But
18 you would see the same faces. I mean, it's not surprising
19 in the least.

20 Q. I think there's video we saw from the crowd's
21 perspective looking at the officers that you're right in
22 front. Right?

23 A. Yes.

24 Q. So at least for some parts of this. I mean, you're
25 leading your guys?

1 A. Yes.

2 Q. And so you were in the thick of the press up front from
3 both in front of you and behind you?

4 A. Yes.

5 Q. And then I think you said that, you know, your tactical
6 command in that position -- understanding that you had
7 superiors further back, but your tactical command in that
8 position, you were rotating people in and out as best you
9 could because you can't leave the same guys up front the
10 whole time?

11 A. That's accurate.

12 Q. Now, let me ask you, though: You understood going in
13 there that your tactical position was such that, worst-case
14 scenario, your guys could retreat. You had room behind you
15 if the command structure behind you started to say: Okay.
16 We need to pull back from here, because this is
17 unsustainable?

18 A. I actually had no idea where we were. And when you go
19 inside of that area, it's like a T, like two tunnels. It's
20 a very precarious situation. I'm not sure -- I didn't learn
21 until later where those hallways would take me or what they
22 would do. But all the doors were locked. So to say we had
23 a place to retreat to, I'm not sure that's accurate. But
24 also, it wasn't on the table.

25 You heard the --

1 Q. No. Fair enough. And I understand it's a different
2 question --

3 A. Yeah.

4 Q. -- whether or not, you know, you were prepared to give
5 access to the crowd through that hallway. But if the choice
6 was my guys dying up front being crushed between the two
7 forces or us backing up to give some relief, you had that
8 option?

9 A. It would have been an option, though I don't think in
10 this case it would have been the right option.

11 Q. Well, it would have been the last option, desperate,
12 avoid-death option?

13 A. Perhaps.

14 Q. It would have been a difficult call to make, but one
15 that -- that somebody might have had to make if that had
16 developed?

17 A. Perhaps.

18 Q. As -- you said over time you made efforts to manage your
19 forces, rotating people in and out, staying fresh up front,
20 and then taking advantage when the opportunity presented to
21 try to push the crowd forward?

22 A. Absolutely.

23 Q. And at one point you managed to push the crowd beyond
24 those exterior doors, the gold-paneled doors with the broken
25 clear glass?

1 A. Yes.

2 Q. I think we actually saw one, like -- it might have been
3 15 -- 14:50. So we're about six, seven minutes into the
4 exchange where it looks like your guys actually have been
5 moved back or were closer to the interior set of doors.

6 A. For a while, there was a little ebb and flow with that
7 position.

8 Q. That's the point I was going to make, was there was a
9 period of time for several minutes that the -- let's call it
10 the skirmish line where the police and the protestors,
11 rioters, came together -- it moved?

12 A. Yes.

13 Q. It moved out and then it moved back?

14 A. Almost certainly the entire time. It moved at some
15 point or another.

16 Q. You've seen -- from the crowd's side, you've seen some
17 of these videos -- had you seen these crowd videos before
18 today?

19 A. Some of them.

20 Q. But from the crowd's side, back behind you, the hallway,
21 for lack of a better description, starts to slope up.

22 Right?

23 A. It does.

24 Q. So there's an ability to see behind -- what's behind the
25 front line of the officers looking in?

1 A. Uh-huh.

2 Q. I mean, to see what's back there?

3 A. Yes.

4 Q. I mean, I'm not going to ask you -- and I think I did
5 the same thing with one of your predecessors. I'm not going
6 to ask you to count helmets. But in a couple of these
7 videos, there's a lot of helmets going back there.

8 A. Accurate.

9 Q. Yeah. 30, 40? Again, not counting helmets, but just
10 with -- sort of an understanding of the circumstances of
11 your personnel and other units that were engaged, 30 or 40
12 officers there?

13 A. That would be accurate. Yeah.

14 Q. And equipped and trained with shields and with CS gas
15 and being managed, being managed by the command structure.
16 Pushing through that line would have been an enormous task
17 by the crowd?

18 A. Well, I would say this: With -- there were some
19 considerations. We didn't -- at this point, we did not have
20 CS gas. We were running low on OC spray. So those
21 resources were not readily available to us at this point.
22 However, we had no intention of moving to allow anyone in,
23 if that's what you're asking.

24 Q. My mistake. I said CS gas. That's obviously, you know,
25 teargas, which is different as opposed to OC spray.

1 A. We're even running low on OC at some point during this.
2 I don't know at what point. I can't pinpoint that exactly.
3 But we got down to the point where that large can I had had
4 nothing left in it.

5 Q. But eventually, through just sort of tactical coherence
6 and management and training, you were able to gain ground
7 steadily, push the crowd through the second set of doors and
8 eventually recapture or regain all the territory up to the
9 entrance?

10 A. That's accurate.

11 Q. Were you still with your guys at the front when you got
12 to the entrance or had you kind of fallen back to take other
13 responsibilities?

14 A. So there were a number of times where I had been sprayed
15 with OC throughout this interaction, because the
16 interaction's much longer than what we have seen here. And
17 there were a number of times where I was sprayed and had to
18 fall back and kind of regroup myself. Sergeant Paul Riley,
19 the guy with the long hair that was there in the beginning,
20 he and I were almost passing front to back as he was sprayed
21 and I was sprayed. And it happened more than six times.

22 Q. Okay. And we know, because we've seen other body-worn
23 cameras with timestamps, that it's roughly 3:20 when MPD
24 kind of gained the upper hand at the entrance and the sort
25 of pushing stopped. And there was a long period of kind of

1 a stalemate with the people at the front of the crowd and
2 the officers at the front of the MPD contingent talking back
3 and forth.

4 Were you there or were you in the back?

5 A. There was a period of time towards the very -- I'm not
6 sure what moment you're referencing. But -- like I can't
7 say for sure without seeing the video.

8 Q. You're not watching your watch, are you?

9 A. No. In fact, my watch broke and was in my pocket.
10 So...

11 Q. All I'm getting at is, there's been testimony and we've
12 seen video that Mr. Mehaffie's one of the people in the
13 crowd that was right at the front. And I'm just wondering,
14 were you one of the people engaging with him? Because the
15 officers are wearing masks. We can't see.

16 A. If there's a video of it, I could probably identify
17 myself. But I can't say that I was or I was not.

18 MR. SHIPLEY: (Confers with co-counsel privately.)

19 Nothing further, your Honor. Thank you.

20 THE COURT: Thank you, Mr. Shipley.

21 Mr. Urso?

22 CROSS-EXAMINATION

23 BY MR. URSO:

24 Q. Good afternoon, Sergeant Bogner.

25 A. Good afternoon.

1 Q. How long were you in the tunnel? Do you remember? Like
2 until what time, roughly?

3 A. It was a long time, but I don't know the exact time.

4 Q. Until you gained full control?

5 A. Until full control was gained. Yeah. It was a long
6 time.

7 Q. And you've watched some videos, other videos regarding
8 what went on in that tunnel that day?

9 A. I've seen the videos that are on TV. I've seen the
10 videos here. Yes.

11 Q. Were you -- do you recall being nearby in the tunnel --
12 did you witness when Officer Hodges got pinned in the
13 doorway and screamed for help?

14 A. I was nearby.

15 Q. Did you help to get him out of there?

16 A. I can't remember exactly where I was in that moment.
17 That was a -- if I recall, Officer Hodges was to the right,
18 and I remember it was one of the doors on the right and I
19 remember the screaming. But I can't remember -- it was
20 difficult to move. So where you were is where you were, and
21 pretty much the people next to you had to help.

22 Q. And I think Sergeant Mastony made that point.

23 Basically, if you were near the front of that line on either
24 side, the protesters' side or the police side, you weren't
25 able to move very much, if at all?

1 A. Not without the people behind you allowing it.

2 Q. Do you recall seeing Mr. McCaughey -- do you have a
3 recollection of seeing him in the tunnel that day yourself?

4 A. Possibly. It's difficult for me to remember.

5 MR. URSO: Thank you, Sergeant.

6 THE COURT: Thank you, Mr. Urso.

7 Ms. Cobb?

8 MS. COBB: No questions, your Honor.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. PASCHALL:

12 Q. Sergeant, Mr. Shipley asked you whether you could have
13 pulled back further into the Capitol.

14 Do you recall that line of questioning?

15 A. I do.

16 Q. And did there actually come a time where there was an
17 injured rioter in front of you in the line that you helped
18 to pull back into the Capitol?

19 A. There was.

20 MS. PASCHALL: Could we please pull up his
21 body-worn camera, 206, and pull it forward to about
22 15:00:00.

23 (Whereupon, segments of Government's Exhibit
24 No. 206 were published in open court.)

25 MS. PASCHALL: So we can go there. That's

1 14:59:58. We'll play from there.

2 (Whereupon, segments of Government's Exhibit
3 No. 206 were published in open court.)

4 MS. PASCHALL: Stop.

5 BY MS. PASCHALL:

6 Q. We stopped at 15:00:11. At the very bottom right corner
7 of the screen, who are we seeing there?

8 A. That's one of the individuals that I brought in. I
9 believe he said he had difficulty breathing. I can't
10 remember exactly what his symptoms were. But I remember him
11 distinctly because of his flannel coat and his face. But we
12 got him in and there was, I believe, a Capitol Police
13 officer who was a paramedic who assisted him.

14 Q. Fair to say that if somebody at the front of the
15 rioters' line pushing against the police line was in some
16 sort of mortal danger, you were in a position to help them?
17 Is that accurate?

18 A. It's -- well, it is accurate that we would try. One
19 individual during this entire interaction did, I believe,
20 pass away. But we did try. They were doing CPR on her in
21 the hallway.

22 Q. Mr. Shipley also asked you --

23 THE COURT: Sorry. You mean in the tunnel?
24 Somebody died there in the tunnel?

25 THE WITNESS: Yes.

1 BY MS. PASCHALL:

2 Q. Mr. Shipley asked you about the number of helmets. He
3 estimated about 30 to 40 helmets. And you sort of agreed
4 that that was probably the estimate for officers in the
5 tunnel at that time. Does that seem accurate?

6 A. I would agree -- I agree with him in the extent that
7 there were many. I don't know the number.

8 Q. Looking out ahead of you into the tunnel and beyond, how
9 many rioters would you estimate for that approximate number
10 of officers?

11 A. Thousands. I mean, I don't know that they were all
12 rioters, but from that perspective, all you see is a sea of
13 people. And so you get that feeling in the moment for sure.

14 Q. Did you know at any point when you were fighting in the
15 tunnel here that the Capitol had already been breached?

16 A. Actually, no. At this point -- well, actually, long
17 before this point, my radio had come out. And really, the
18 only person that was concerned with their radio or
19 attempting to make communications was Commander Kyle. And
20 he was 30 feet behind us.

21 And to -- as far as I remember, there weren't a
22 lot of people in this area trying to, because it was just
23 too loud, too many people. It would have been futile to try
24 to make radio communication.

25 Q. Is it fair to say that Commander Kyle during this point

1 in time never told you to pull back further into the
2 Capitol?

3 A. No. Absolutely not.

4 Q. Did you think that this was the last stand?

5 A. We had the mindset that we were not allowing anyone into
6 the Capitol.

7 MS. PASCHALL: Thank you. No further questions.

8 THE COURT: Sergeant Bogner, I appreciate your
9 testimony here today. You're free to go.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: The Government may call its next
13 witness.

14 MS. PASCHALL: Thank you, your Honor. The
15 Government calls Officer Daniel Hodges.

16 (Thereupon, the witness entered the courtroom and
17 the following proceedings were had:)

18 DANIEL HODGES, GOVERNMENT WITNESS, SWORN.

19 THE COURT: Good afternoon, Officer. Feel free to
20 have a seat and make the microphone comfortable for you
21 where you are.

22 THE WITNESS: Thank you.

23 DIRECT EXAMINATION

24 BY MS. PASCHALL:

25 Q. Good afternoon. Could you please state and spell your

1 full name for the Court?

2 A. My name is Daniel Hodges, D-A-N-I-E-L H-O-D-G-E-S.

3 Q. Where do you work?

4 A. I work for the Metropolitan Police Department of
5 Washington, D.C.

6 Q. How long have you worked for the Metropolitan Police
7 Department?

8 A. I've been with the MPD for about seven and a half years.

9 Q. What is your current duty assignment?

10 A. Currently I'm assigned to patrol in the Fourth District
11 and also assigned to Civil Disturbance Unit 42.

12 Q. What do you do as a part of your assignment with the CDU
13 42?

14 A. Civil Disturbance Unit 42, we are activated in response
15 to planned First Amendment assemblies within the District of
16 Columbia. We police those assemblies and provide crowd
17 control, traffic direction and, in case they become violent,
18 riot control.

19 Q. Were you working on January 6th, 2021, in your capacity
20 as a CDU officer?

21 A. I was.

22 Q. On the morning of January 6th, 2021, where were you
23 originally stationed?

24 A. The morning of January 6th, our initial assignment was
25 in a high-visibility capacity on Constitution Avenue near

1 the Ellipse.

2 Q. When you say high-visibility capacity, what does that
3 mean?

4 A. In the high visibility, we are assigned to be out on
5 foot and visible to the public, simply making our presence
6 known and making it known that the police are aware of the
7 event and the people attending it.

8 Q. What uniform were you wearing at that point in time?

9 A. At that point in time I was wearing the uniform I'm in
10 now, my normal patrol uniform.

11 Q. What did you expect to be doing?

12 A. I expected to be on foot observing the crowd, giving
13 direction to people who asked for it and keeping a lookout
14 for any crime, any signs of violence that might occur.

15 Q. Where were you originally stationed in the city? What
16 streets?

17 A. I was on the 1100 block of Constitution Avenue in front
18 of the IRS building.

19 Q. And about what time did you start your tour of duty that
20 morning?

21 A. I believe it was -- I believe I was on duty around 7:00
22 in the morning. It was fairly early.

23 Q. And when did you arrive to the -- outside of the IRS
24 building on Constitution?

25 A. It would have been an hour or two later, about I'd say

1 8:00 or 9:00.

2 Q. At around that timeframe, the 8:00 or 9:00 a.m.
3 timeframe, what were you noticing around you?

4 A. There were many people going into the Ellipse to attend
5 the rally there. There were people who were wearing what
6 you would expect, clothes in support of the former President
7 Donald Trump, and there were those who were wearing tactical
8 gear who seemed very out of place to attend a rally by a
9 politician.

10 Q. At some point in time, did you notice the crowd changing
11 its flow of direction?

12 A. I did.

13 Q. And what was that change of direction?

14 A. After the -- I would say after the speech in the Ellipse
15 concluded, they started flowing in the opposite direction on
16 Constitution Avenue toward the Capitol Building.

17 Q. During that timeframe, were you still in front of the
18 IRS building when the direction of traffic started to
19 change?

20 A. I was. Yes.

21 Q. Did you witness any incidents while you were at that
22 post?

23 A. I did. To my left, closer toward the Capitol Building
24 than the Ellipse, there was a confrontation between members
25 of the crowd and another person. They began arguing,

1 looking like it was going to get -- become a physical
2 confrontation.

3 So myself and other officers ran to intervene. We
4 separated the two parties. We were able to get the second
5 person, who I'm going to refer to as a counter-protester, to
6 move along and we were able to keep the rest of the crowd
7 from becoming violent towards that person.

8 Q. So after that incident, did there come a time where you
9 heard over the radio a call to go to the United States
10 Capitol?

11 A. That's correct.

12 Q. What did you hear?

13 A. I heard our then-commander becoming agitated, becoming
14 increasingly pressured by the violence he was experiencing
15 at the Capitol Building. And eventually, it got to the
16 point where he required additional backup from MPD units
17 such as CDU 42. He then called us from our posts on
18 Constitution to respond to the Capitol.

19 Q. So when you got that call, what did the unit do?

20 A. When we got that call, we ran back to our vans that we
21 had taken down to Constitution Avenue. We got out our hard
22 gear, our padded gear designed to defend us against attacks,
23 started putting that on. It took about ten minutes, I'd
24 say.

25 After we got that on, we got in the vans and

1 started making our way towards the Capitol Building and we
2 got about toward the northwestern portion of the Capitol
3 property, got out on foot and started making our way towards
4 the west terrace.

5 Q. Now, on that day, were you wearing a body-worn camera?

6 A. I was.

7 Q. Was it activated on that day?

8 A. It was.

9 Q. Have we reviewed that body-worn camera as a part of your
10 preparation for your testimony here today?

11 A. We have.

12 Q. Did that appear to be a fair and accurate representation
13 of what happened during certain portions of the day on
14 January 6th, 2021?

15 A. It did.

16 MS. PASCHALL: At this time, your Honor, the
17 Government would move the admission of Exhibit 222, which is
18 Officer Hodges's body-worn camera.

19 THE COURT: Seeing no objection, Exhibit 222 is
20 in. I take it you're looking to admit the subcomponents as
21 well?

22 MS. PASCHALL: Yes, your Honor.

23 THE COURT: They will be admitted.

24 (Whereupon, Government's Exhibit No. 222 was
25 entered into evidence.)

1 BY MS. PASCHALL:

2 Q. Officer Hodges, I've pulled up on the screen here
3 Exhibit 222. What are we seeing here at timestamp 13:50:04?

4 A. Right here, we're seeing members of CDU 42 as observed
5 from my body-worn camera finishing putting on their hard
6 gear and getting in the vans so we can make our way towards
7 the United States Capitol Building.

8 MS. PASCHALL: Can we please move ahead to
9 13:55:00.

10 (Whereupon, segments of Government's Exhibit
11 No. 222 were published in open court.)

12 MS. PASCHALL: If we could stop the video.

13 BY MS. PASCHALL:

14 Q. We stopped at 13:55:59. What is happening during this
15 portion of the video?

16 A. At this portion of the video, we are arriving on scene
17 at the United States Capitol property. We get out and we
18 form up into two columns. Our sergeants are issuing us
19 orders telling us to check our gear, put our face shields
20 down and various other ways to prepare for our duties.

21 MS. PASCHALL: Let's pull the video ahead to
22 13:57:15.

23 (Whereupon, segments of Government's Exhibit
24 No. 222 were published in open court.)

25 MS. PASCHALL: If we could stop.

1 BY MS. PASCHALL:

2 Q. Officer, I believe you said you were coming from the
3 northwest onto the Capitol grounds. Is that accurate?

4 A. That's accurate.

5 Q. And then do you see off to the right of the screen here
6 a barricade -- and I'll circle it -- all the way to the
7 right there?

8 A. I do.

9 Q. Do you know what that is?

10 A. That is a barricade erected by Capitol Police in order
11 to keep people into -- or out of a restricted area, I should
12 say.

13 MS. PASCHALL: Let's start again at 13:57:21.

14 (Whereupon, segments of Government's Exhibit
15 No. 222 were published in open court.)

16 MS. PASCHALL: And let's stop the video at
17 13:58:01.

18 BY MS. PASCHALL:

19 Q. Officer Hodges, at this point, as you are approaching
20 the crowd, what is going through your mind?

21 A. I am mentally preparing myself for what I have to do,
22 what I should expect, the violence that I heard over the
23 radio. I knew I was going to be in the thick of it. I was
24 trying to observe the path we needed to take, observe the
25 nature of the crowd that we had to go through and make sure

1 I was ready to protect the people inside of the building and
2 protect my fellow officers.

3 MS. PASCHALL: Let's pull ahead to 14:01:38.

4 BY MS. PASCHALL:

5 Q. Did there come a point in time when you became separated
6 from the other members of your CDU platoon as you were
7 walking onto the Capitol grounds?

8 A. There was that time. Yes.

9 Q. Can you explain what happened?

10 A. While we were marching toward the west terrace of the
11 U.S. Capitol Building, we were making our way through the
12 crowd. And the closer we got to the western terrace, the
13 more dense and aggressive the crowd became until eventually
14 the crowd attacked us. They separated us from our
15 leadership, which is at the head of our column. And they
16 started attacking us, punching, kicking, pushing. One of
17 them tried to steal my baton. We were able to repel our
18 attackers and we took a defensive posture.

19 Q. I'm going to move ahead to 14:03:25. We'll play from
20 there.

21 (Whereupon, segments of Government's Exhibit
22 No. 222 were published in open court.)

23 MS. PASCHALL: Stop the video.

24 BY MS. PASCHALL:

25 Q. Officer Hodges, did you see down at the floor there when

1 we started that video at 14:03:24 to 25 a red gas?

2 A. I did.

3 Q. Is that a gas that would be dispersed by the
4 Metropolitan Police Department?

5 A. It is not.

6 Q. Is that because it's red in color? That's how you know
7 that?

8 A. That's how I know that. Yes.

9 MS. PASCHALL: If we can pull ahead to 14:04:03.

10 (Whereupon, segments of Government's Exhibit
11 No. 222 were published in open court.)

12 MS. PASCHALL: If we could stop the video.

13 BY MS. PASCHALL:

14 Q. At 14:04:31 there, were you able to hear something over
15 a loudspeaker?

16 A. I was.

17 Q. And do you know what that was?

18 A. It was a prerecorded message notifying the public in the
19 area that this was not a legal First Amendment assembly,
20 that it was a riot, and that it was giving them a lawful
21 order to disperse.

22 Q. And right at this same moment, at 14:04:31, what have we
23 just witnessed you do?

24 A. At this moment in the video, we had just witnessed
25 myself clearing a path through the crowd leading the rest of

1 my platoon through the crowd to the west terrace.

2 Q. So the portion of the platoon that you stayed with that
3 had gotten separated from your leadership, you're now able
4 to bring them across the barricade to the west front where
5 other officers were staging. Is that accurate?

6 A. That is accurate. Yes.

7 MS. PASCHALL: Let's pull ahead to 14:06:00.

8 Before we push play here --

9 BY MS. PASCHALL:

10 Q. Do you see another officer in front of you on your
11 body-worn camera here?

12 A. I do.

13 Q. And so once you had crossed that police line and gotten
14 to where the other officers were staging, what were you
15 doing here?

16 A. Once we crossed the police line into the area in front
17 of the west terrace you see here, we were attempting to
18 regroup, reorganize into our platoon so that we could be
19 deployed effectively by our leadership.

20 MS. PASCHALL: Let's start the video here at
21 14:06:00.

22 (Whereupon, segments of Government's Exhibit
23 No. 222 were published in open court.)

24 MS. PASCHALL: Stop the video.

25

1 BY MS. PASCHALL:

2 Q. At 14:06:56, did you just hear something audible again
3 on your BWC?

4 A. I did.

5 Q. What was that?

6 THE COURT: I got the LRAD thing. I think I've
7 got that.

8 BY MS. PASCHALL:

9 Q. Do you see directly in front of you there on the left
10 sort of a tower there?

11 A. I do.

12 Q. And what are you doing in this moment?

13 A. At this moment, we're trying to repel the attackers,
14 maintain the police line and keep them out of the United
15 States Capitol.

16 MS. PASCHALL: If we could pull ahead to 14:24:16.

17 BY MS. PASCHALL:

18 Q. Officer, we've just jumped about 20 minutes ahead. But
19 in those intervening 20 minutes, what were you doing on the
20 west front?

21 A. In those 20 minutes, I was continuing to maintain the
22 police line, look for areas where it was weak, where it
23 needed help and be the support in order to maintain it.

24 Q. And are you in a substantially similar position to the
25 area you were in when we previously stopped the video at

1 about 14:06 --

2 A. Yes.

3 Q. -- minutes?

4 MS. PASCHALL: If we could please play at
5 14:24:15.

6 (Whereupon, segments of Government's Exhibit
7 No. 222 were published in open court.)

8 MS. PASCHALL: If we could stop the video.

9 BY MS. PASCHALL:

10 Q. At 14:24:34, Officer Hodges, did you observe that
11 individual in the center of the screen here who I will
12 circle who appears to be holding an object that goes a
13 little bit above his head?

14 A. I did.

15 Q. And do you remember this person from January 6th, 2021?

16 A. I do.

17 Q. And what do you remember?

18 A. I remember that he was insisting that we give him our
19 equipment. He asked us to surrender and let them in the
20 Capitol. He said that -- they weren't his exact words, but
21 he said even if we used our guns against the crowd that
22 their sheer numbers would overwhelm us and they would run
23 over us.

24 MS. PASCHALL: And I'll continue from this point
25 at 14:24:34.

1 (Whereupon, segments of Government's Exhibit
2 No. 222 were published in open court.)

3 MS. PASCHALL: Stop the video.

4 BY MS. PASCHALL:

5 Q. We've stopped at 14:25:20. At this point, can we have a
6 better view of that individual you were describing?

7 A. Yes.

8 Q. And do you see he's holding something in his right hand
9 there?

10 A. I do.

11 Q. Do you know what that is?

12 A. It appears to be some kind of a tripod for the camera
13 function of a cell phone.

14 MS. PASCHALL: Could we pull up Exhibit 303.

15 (Whereupon, segments of Government's Exhibit
16 No. 303 were published in open court.)

17 MS. PASCHALL: Stop Exhibit 303 and just go back
18 maybe two seconds.

19 (Whereupon, segments of Government's Exhibit
20 No. 303 were published in open court.)

21 MS. PASCHALL: And stop it there, please.

22 BY MS. PASCHALL:

23 Q. We've stopped at 00:01 on Exhibit 303. Officer Hodges,
24 what do we see directly in the center of the frame here in
25 Exhibit 303?

1 A. I am directly in the center of the frame.

2 Q. How do you know that?

3 A. You can see my badge with my badge number, 4518. You
4 can see my name tape, D. Hodges. You can also see my badge
5 number on my helmet. And I recognize myself by my build and
6 the face mask I was wearing that day.

7 Q. Were you able to hear the audio that was playing with
8 303?

9 A. I was.

10 Q. Did it appear to be the same voice that we just heard on
11 your body-worn camera in Exhibit 222?

12 A. It did.

13 Q. And is this footage a fair and accurate representation
14 of what you were experiencing on the west front of the
15 Capitol on January 6th?

16 A. It is.

17 MS. PASCHALL: At this time, the Government would
18 move the admission of Exhibit 303.

19 THE COURT: Seeing no objection, 303 is in.

20 (Whereupon, Government's Exhibit No. 303 was
21 entered into evidence.)

22 MS. PASCHALL: If we could pull this ahead to
23 about 27 seconds. 28 seconds is great. Play from there.

24 (Whereupon, segments of Government's Exhibit
25 No. 303 were published in open court.)

1 MS. PASCHALL: If we could stop the video.

2 BY MS. PASCHALL:

3 Q. We've stopped Exhibit 303 at 01:25. What is happening
4 in this moment?

5 A. At this moment, there appears to be some sort of
6 smoke-based munition going off behind us.

7 MS. PASCHALL: Start the video again at 01:25.

8 (Whereupon, segments of Government's Exhibit
9 No. 303 were published in open court.)

10 MS. PASCHALL: We can stop at 01:47.

11 BY MS. PASCHALL:

12 Q. Officer Hodges, did there come a point in time where the
13 police line that you were holding became overrun?

14 A. There was.

15 Q. And what happened? What did you do?

16 A. We attempted to repel the attackers again.

17 Unfortunately, we were unsuccessful. They were able to
18 breach our line, and the line collapsed and we broke into
19 fighting in front of the west terrace.

20 MS. PASCHALL: If we could go back to Exhibit 222
21 and pull it to 14:29:45.

22 (Whereupon, segments of Government's Exhibit
23 No. 222 were published in open court.)

24 MS. PASCHALL: And if we could stop the video.

25

1 BY MS. PASCHALL:

2 Q. We've stopped at 14:30:36. What are you thinking at
3 this moment in time now that that line has collapsed?

4 A. I had never been at the United States Capitol Building
5 before this day. I didn't have my radio. My radio was
6 stolen before this moment. So I didn't know where my
7 leadership was. I didn't know where my platoon was. I
8 didn't know where I was going. I didn't know whether there
9 was an avenue of egress for us to take. So I was afraid
10 that eventually we would get put up against the wall,
11 literally and figuratively.

12 Q. Eventually, did you find a point of egress?

13 A. We did.

14 Q. Where was that?

15 A. There is a staircase that was part of the inaugural
16 stage that we took upwards to the inaugural stage and the
17 west terrace itself.

18 MS. PASCHALL: If we could pull ahead to 14:32:20.
19 We'll start the video at 14:32:18.

20 (Whereupon, segments of Government's Exhibit
21 No. 222 were published in open court.)

22 MS. PASCHALL: Stop the video here.

23 BY MS. PASCHALL:

24 Q. At 14:33:09, are you now up on the inaugural stage
25 platform area of the Capitol?

1 A. Correct.

2 Q. What are you witnessing now?

3 A. Witnessing officers retreating and attempting to hold
4 that particular part of the west terrace against the
5 attackers.

6 Q. At some point in time, was the decision made to fall
7 back inside the Capitol Building itself?

8 A. Yes.

9 Q. And once you were inside the Capitol Building, what
10 happened next?

11 A. There was a CS gas munition that went off nearby or a
12 teargas munition that was disabling to those who did not
13 currently have gas mask equipment, including myself. This
14 encouraged us to go inside the building and get prepared.

15 Once inside the building, I decontaminated as best
16 I could, equipped my gas mask and went to find a place where
17 I could be useful in the defense of the Capitol.

18 MS. PASCHALL: Let's go ahead to 14:36:25. We can
19 start the video at 14:36:22.

20 (Whereupon, segments of Government's Exhibit
21 No. 222 were published in open court.)

22 MS. PASCHALL: Stop at 34 seconds.

23 BY MS. PASCHALL:

24 Q. Officer, what are you doing at that moment?

25 A. At that moment, I'm going inside the Capitol Building

1 and coughing.

2 Q. And is that coughing in response to that munition that
3 you just mentioned going off?

4 A. It is.

5 MS. PASCHALL: Let's go forward in time to
6 14:48:00.

7 BY MS. PASCHALL:

8 Q. We've moved ahead about 12 minutes. What are we looking
9 at now at 14:48:00?

10 A. Right now we're looking at the tunnel that connects the
11 west terrace to the room in the Capitol known as the Crypt.

12 MS. PASCHALL: Let's play from 14:48:00.

13 (Whereupon, segments of Government's Exhibit
14 No. 222 were published in open court.)

15 MS. PASCHALL: Stop the video.

16 BY MS. PASCHALL:

17 Q. So we just heard a shout there of "74" at 14:48:47. Do
18 you know what that's about?

19 A. I do not know for certain. However, my guess would be
20 that that was CDU Platoon 74 being called by their
21 leadership to go to another area of the Capitol where
22 they're needed.

23 MS. PASCHALL: Continue at 14:48:47.

24 (Whereupon, segments of Government's Exhibit
25 No. 222 were published in open court.)

1 MS. PASCHALL: Stop the video.

2 BY MS. PASCHALL:

3 Q. At 14:49:22, what are we seeing here?

4 A. There's a cloud of smoke emanating from the area that
5 the attackers are controlling toward the police line inside
6 the tunnel.

7 MS. PASCHALL: Let's pull ahead to 14:52:50.

8 BY MS. PASCHALL:

9 Q. We've gone ahead a couple of minutes here. Where are
10 you at this point in time?

11 A. At this point in time, I believe I am at the head of
12 the -- our defense line in the tunnel, going body to body
13 with either another officer in front of me or the attackers.

14 MS. PASCHALL: Let's play from 14:52:45.

15 (Whereupon, segments of Government's Exhibit
16 No. 222 were published in open court.)

17 MS. PASCHALL: If you can stop the video.

18 BY MS. PASCHALL:

19 Q. At 14:33:01, our screen appears to be black here. Do
20 you know why that is?

21 A. My body-worn camera is mounted on my chest. So as we
22 are going body to body attempting to repel the attackers,
23 the lens of the camera would be covered up and you wouldn't
24 be able to see anything.

25 Q. And at some point in time about four minutes after this,

1 do you actually lose your body-worn camera in the tunnel
2 here?

3 A. I do.

4 THE COURT: Ms. Paschall, why don't we take about
5 a ten-minute break.

6 MS. PASCHALL: Okay.

7 THE COURT: Officer Hodges, I'll direct you not to
8 discuss the substance of your testimony with anyone during
9 the break.

10 THE WITNESS: Yes, sir.

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

13 THE COURT: Officer Hodges, you may retake the
14 stand.

15 THE WITNESS: (Complies.)

16 THE COURT: I'll remind you you're still under
17 oath, sir.

18 BY MS. PASCHALL:

19 Q. Officer Hodges, on January 6th, were you able to observe
20 members of the crowd who were inside of that tunnel filming
21 either with phones or with larger cameras?

22 A. I was.

23 Q. And in preparation for your testimony here today, have
24 we reviewed some videos from the opposite perspective of
25 your body-worn camera that would have come from members of

1 the crowd?

2 A. We did.

3 MS. PASCHALL: If we could please pull up Exhibit
4 301, which is already in evidence. If we could pull ahead
5 to internal time marker 19:19. Let's actually pull back
6 until about 19:15. We'll play from here.

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

9 MS. PASCHALL: We can stop.

10 BY MS. PASCHALL:

11 Q. We've stopped at internal time marker 19:39. In those
12 20 seconds there, were you able to see an individual in a
13 brown hooded sweatshirt?

14 A. I was.

15 Q. And can you see the figure that is now in the still shot
16 on our screen at 19:39?

17 A. Yes.

18 Q. Do you know who this is that's on our screen now at
19 19:39?

20 A. I can't tell from the photo.

21 MS. PASCHALL: Let's play it a little bit farther.

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

24 MS. PASCHALL: Let's stop.

25

1 BY MS. PASCHALL:

2 Q. We've stopped at 19:49. At the very bottom left-hand
3 side of your screen, I'm circling a helmet down here. Do
4 you see that?

5 A. I do.

6 Q. Do you see the four numbers on that helmet?

7 A. I do.

8 Q. What four numbers are they?

9 A. 4518.

10 Q. And do those numbers mean anything to you?

11 A. Yes. Those are my badge numbers and that is my helmet,
12 which would make that me.

13 Q. Now I'm going to circle the individual that's on the
14 lower right-hand side of the screen. Do you see that
15 person?

16 A. I do.

17 Q. And what does that person appear to be holding at this
18 point?

19 A. The person appears to be holding a police riot shield.

20 Q. What do you remember about this moment in time?

21 A. At this moment, I was at the front of our defense in the
22 tunnel attempting to repel the attackers. We were -- it was
23 a fight of inches. I was attempting to push the attackers
24 out of the tunnel. I braced myself against a metal door
25 frame on my right in order to have a position of power to

1 push forward.

2 At this moment or soon after the momentum had
3 shifted, however. The strength -- the force of the people
4 trying to attack us and make their way into the Capitol had
5 me pinned against the door frame.

6 Q. Are you carrying a police shield at this moment in time?

7 A. No.

8 MS. PASCHALL: Start the video at 19:49.

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

11 MS. PASCHALL: Stop the video.

12 BY MS. PASCHALL:

13 Q. At 19:57, were you able to hear what that person holding
14 that shield is saying to you at that point?

15 A. Are you asking about January 6th or are you asking about
16 when I'm listening to this video?

17 Q. Well, let's do both. Do you recall -- do you have a
18 present recollection on January 6th of what this individual
19 said to you?

20 A. At the time, no. I couldn't hear it.

21 Q. Listening to this video now, though, are you able to
22 hear what this individual is saying to you?

23 A. Yes.

24 Q. And what is he telling you?

25 A. I heard him telling us to go home and not use that stick

1 on me, boy.

2 Q. Was that consistent with what you were hearing from the
3 crowd during your time in the tunnel?

4 A. It was. Telling us to surrender.

5 MS. PASCHALL: Let's continue at 19:57.

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

8 MS. PASCHALL: And let's stop the video.

9 BY MS. PASCHALL:

10 Q. I stopped the video at 2:53. So we've seen a couple of
11 things happen there. First, when the video was right on
12 your face, what are we watching there?

13 A. The attackers are trying to break through our defenses
14 and make their way into the Capitol. I'm pinned to the door
15 frame on my right by the force of the attackers and the riot
16 shield. And someone -- as I'm pinned, my arms are
17 functionally useless. I can't move them. And I'm pinned in
18 such a position that I can't get any functional strength
19 from my legs. So I was very vulnerable at that moment.

20 Someone in the crowd, taking advantage of that
21 moment of my vulnerability, started trying to pull on my
22 face, my gas mask, trying to rip it off my head and injuring
23 my neck.

24 Q. Then after that moment, the camera pulls away. We see
25 the view that we're seeing now. Did you hear the crowd

1 yelling "Heave-ho" in that moment?

2 A. Yes.

3 Q. Talk to me about how it felt with that riot shield
4 pressed up against you in this moment of heave-ho pressure.

5 A. The pressure from the crowd was not entirely on me, as
6 you can see the police line going back and forth as well.
7 But as I was at the front of the line and the person holding
8 the shield was at the front of their line, a lot of that
9 pressure was being focused onto me, creating my moment of
10 vulnerability and causing me pain in that moment. And as
11 you play the video, it gets worse.

12 Q. I know it's not easy to talk about the pain. But can
13 you describe that for the Court?

14 A. I can't really put a number on it or anything like that.
15 But I know that it was significant enough to contribute to
16 my injuries of the day and contributing to my mental state
17 and the -- my ability to perform my duties and to repel the
18 attackers.

19 Q. Let's talk about the effect of that shield. Would it be
20 accurate to say that the use of that shield was a force
21 multiplier in the moment that the crowd is doing their
22 heave-ho?

23 A. Yes.

24 Q. Were there other moments during the day where you were
25 pushed up against people who didn't have shields but you

1 were directly body-to-body with somebody who was not pushing
2 on you with a shield?

3 A. Yes.

4 Q. Does that feel different getting the force just of
5 someone's body versus the force that is multiplied by that
6 shield?

7 A. Yes.

8 Q. How is it different?

9 A. The force is much greater. As there are so many people
10 pushing forward on that one object, a hard object,
11 unyielding, pushing into you, doing what it's designed to
12 do, is repel a body, but being used on the police. It's
13 much greater. It's inflexible. There's no good way to
14 fight back against it, really. It just -- you have to
15 endure the pressure that it creates.

16 MS. PASCHALL: Let's start the video again at
17 20:53.

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

20 MS. PASCHALL: And please stop the video at 21:14.

21 BY MS. PASCHALL:

22 Q. What's happening here?

23 A. When the camera panned away, you can't see it, but the
24 person who was assaulting me with his hands was able to
25 wrest away my baton from me, which I had in front of me.

1 However, because I was pinned by the shield, I was unable to
2 retain my weapon.

3 He also -- actually, I should say before that he
4 was able to rip off my gas mask, rip off my face, which then
5 dislodged my helmet. And then he was able to tear away my
6 riot baton. He struck me in the head with it, causing a
7 large contusion on top of my head. And that's when I felt
8 my mouth start to bleed, so likely causing the injury inside
9 my mouth.

10 Q. And where we are stopped at 21:14, are we able to see
11 that blood in your mouth there?

12 A. Yes.

13 Q. What has happened to your helmet at this point?

14 A. The strap, the chin strap that keeps it secure in place,
15 was dislodged or rather undone. And it is starting to fall
16 off my head.

17 Q. In the moments just before where we stopped at 21:14,
18 were we able to hear you screaming audibly?

19 A. Yes.

20 Q. And in the moment directly before this, are you
21 screaming for help?

22 A. Yes.

23 Q. Here at 21:14, is that shield that we've been discussing
24 still up against your body?

25 A. It is.

1 Q. Let's talk about your position relative to the shield
2 and relative to this brass kind of object that's on the left
3 third of the screen. What is that brass object?

4 A. That object is the frame of a door that leads through
5 the tunnel.

6 Q. And is it made of metal? Wood? Something else?

7 A. As far as I know, it's made of metal.

8 Q. When you were pressed up against it in this moment, what
9 did that feel like?

10 A. It hurt a great deal. It, combined with everything else
11 that was going on, made it difficult to breathe. Being
12 crushed by the shield and the people behind it made me
13 defenseless, injured, made me -- contributed to my
14 diminishing senses after the assault, which is why I was
15 calling for help, because I knew maintaining that position
16 and staying upright was untenable. If I was there much
17 longer being assaulted in such a way, I knew that it was
18 very likely I wouldn't be able to maintain my consciousness
19 and become a liability to the other officers.

20 Q. You mentioned that being crushed in this way made it
21 difficult to breathe. Was that compounded by the fact that
22 now your gas mask was also gone?

23 MR. LOPEZ: Your Honor, I apologize. I didn't
24 hear one word.

25

1 BY MS. PASCHALL:

2 Q. So you said in this moment it was difficult to breathe.
3 Is that compounded by the fact that now your gas mask is
4 gone?

5 A. Yes.

6 Q. But are you also not able to breathe because of the
7 physical position of your body between that hard brass metal
8 and that hard shield?

9 A. Correct.

10 MS. PASCHALL: Let's play again at 21:14.

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

13 MS. PASCHALL: Stop at 21:37.

14 BY MS. PASCHALL:

15 Q. What have we just witnessed happen there?

16 A. After being assaulted, I was able to extricate myself
17 from the position I was in with the help of the officers
18 behind me, making room for me. And yeah. That's what we
19 saw in the video.

20 MS. PASCHALL: Let's now pull up Exhibit 415,
21 which I believe is already in evidence.

22 (Whereupon, segments of Government's Exhibit
23 No. 415 were published in open court.)

24 BY MS. PASCHALL:

25 Q. We're stopped at 00:03. Officer Hodges, does it appear

1 to be a different perspective but of a similar timeframe of
2 what we have just witnessed in Government's Exhibit 301?

3 A. It does.

4 MS. PASCHALL: Let's play that video from 00:03.

5 (Whereupon, segments of Government's Exhibit
6 No. 415 were published in open court.)

7 MS. PASCHALL: Stop the video.

8 BY MS. PASCHALL:

9 Q. We stopped at 01:34. Officer Hodges, from that
10 perspective, are we able to see the top of your helmet again
11 with your badge number on it?

12 A. Yes.

13 Q. And are we also able to witness a little more of the
14 crowd doing that heave-ho motion?

15 A. Yes.

16 Q. Were you eventually able to retreat from the front line
17 where we see you here?

18 A. I was.

19 Q. And did you run into one of your sergeants, Sergeant
20 Austin, once you had retreated back into the building?

21 A. I did.

22 MS. PASCHALL: Could we please pull up Exhibit
23 203.1, please.

24 (Whereupon, segments of Government's Exhibit
25 No. 203.1 were published in open court.)

1 MS. PASCHALL: If we could pull that video ahead
2 to 15:13:30.

3 (Whereupon, segments of Government's Exhibit
4 No. 203.1 were published in open court.)

5 MS. PASCHALL: Stop the video at 15:13:56.

6 BY MS. PASCHALL:

7 Q. Officer, do you see the person in the left-hand side of
8 this video?

9 A. I do.

10 Q. Who is that?

11 A. That is me.

12 Q. Is that a fair and accurate depiction of what you looked
13 like after you retreated from the tunnel at about 15:13:56
14 on January 6th, 2021?

15 A. It is.

16 MS. PASCHALL: At this time, the Government would
17 move the admission of Exhibit 203.1.

18 THE COURT: Seeing no objection, 203.1 is in.

19 (Whereupon, Government's Exhibit No. 203.1 was
20 entered into evidence.)

21 MS. PASCHALL: And if we could play the video from
22 this point at 15:13:56.

23 (Whereupon, segments of Government's Exhibit
24 No. 203.1 were published in open court.)

25 MS. PASCHALL: You can stop the video.

1 BY MS. PASCHALL:

2 Q. We stopped the video at 15:14:26. What were you feeling
3 in this moment?

4 A. In this moment, I was feeling relief and a little bit of
5 embarrassment at having to fall back so soon after having
6 gone out there, but glad to be out of there and hoping that
7 I could convalesce and return as soon as possible.

8 Q. You mentioned feeling embarrassment. Has this whole
9 thing caused you some embarrassment?

10 A. Some, yes.

11 Q. Subsequently, later on in the day, did one of your other
12 sergeants take some photographs of your injuries?

13 A. He did.

14 MS. PASCHALL: If we could please pull up Exhibit
15 501.

16 BY MS. PASCHALL:

17 Q. I've pulled up to the screen Exhibit 501. Do you
18 recognize this?

19 A. I do.

20 Q. What is this?

21 A. This is myself in the Crypt in the United States Capitol
22 Building.

23 Q. Would it be after the point in time that we've just
24 watched after you got extracted from the tunnel at 1513
25 hours?

1 A. It is.

2 Q. And what are we seeing here?

3 A. The sergeant is photographing me for documentation of
4 visible injuries.

5 Q. What injuries had you sustained at this point in time?

6 A. At this point in time, I would have sustained all the
7 injuries I sustained from that day, which was pain and
8 bruising about my entire body, a large contusion on the top
9 of my head -- you can't see it; it's under my hair -- busted
10 mouth, bleeding, lacerations, swollen hand, just generalized
11 pain.

12 MS. PASCHALL: At this time, your Honor, the
13 Government would move the admission of Government's 501.

14 THE COURT: Seeing no objection, 501 is admitted.

15 (Whereupon, Government's Exhibit No. 501 was
16 entered into evidence.)

17 MS. PASCHALL: Let's pull up Government's Exhibit
18 502.

19 BY MS. PASCHALL:

20 Q. Officer Hodges, what are we looking at in Government's
21 Exhibit 502?

22 A. Government 502 appears to be my sergeant continuing to
23 photograph my injuries; in particular, the injury on my
24 bottom lip sustained from fighting in the tunnel.

25 Q. Is 502 a fair and accurate representation of the

1 injuries that you sustained fighting in the tunnel on
2 January 6th, 2021?

3 A. It is.

4 MS. PASCHALL: At this time, the Government would
5 move the admission of Government's Exhibit 502.

6 THE COURT: Without objection, 502 is in.

7 (Whereupon, Government's Exhibit No. 502 was
8 entered into evidence.)

9 MS. PASCHALL: If we could go to 503.

10 BY MS. PASCHALL:

11 Q. Officer Hodges, what are we seeing in Government's
12 Exhibit 503?

13 A. Here the sergeant is continuing to photograph the
14 injuries I sustained from the day. In this case, it would
15 appear to be on the left hand, which is swollen.

16 Q. Is this a fair and accurate representation of what your
17 hand looked like after sustaining injuries at the Capitol on
18 January 6th, 2021?

19 A. It is.

20 MS. PASCHALL: At this time, the Government would
21 move the admission of Government's Exhibit 503.

22 THE COURT: Without objection, 503 is in.

23 (Whereupon, Government's Exhibit No. 503 was
24 entered into evidence.)

25

1 BY MS. PASCHALL:

2 Q. After this point in time, did you seek medical treatment
3 for any of your injuries?

4 A. After this point in time, the next morning, I went to
5 the police and fire clinic to be seen by a doctor.

6 Q. And what sort of injuries were you treated for there?

7 A. They found the large contusion on my head and I was sent
8 to Washington Hospital Center to receive an MRI.

9 Q. Do you know the result of that MRI?

10 A. It was negative for any -- I'm not sure what the medical
11 term is, but for the relevant injuries.

12 Q. Have you had any long-term effects, physical long-term
13 effects, from the injuries you sustained on January 6th,
14 2021?

15 A. Not to my knowledge.

16 Q. What about the mental effects?

17 A. Witnessing recordings of the day always makes my heart
18 race, my blood pressure shoot up. But that so far seems to
19 be the extent of it.

20 Q. You mentioned that you spent several years with MPD.
21 How many years have you been with CDU?

22 A. I was CDU trained from the onset in the academy, so I
23 would have been CDU capable the entire time.

24 Q. So how many large rallies, First Amendment assemblies,
25 marches, would you say that you have attended as a

1 Metropolitan Police Department officer in your CDU capacity?

2 A. I honestly wouldn't be able to count. We have a large
3 number of First Amendment assemblies in this city every
4 year.

5 Q. So would it be fair to say more than five a year?

6 A. Yes.

7 Q. And for how many years?

8 A. Seven -- about seven years.

9 Q. My math is not amazing, but five times seven, somewhere
10 maybe in the range of 30. Would that be at least the bottom
11 number?

12 A. Very bottom number. Yes.

13 Q. Have you ever seen anything like what you witnessed on
14 January 6th?

15 A. Never.

16 Q. How was it different?

17 A. When First Amendment assemblies become violent, when
18 there are riots, it's very directionless violence. It's
19 very -- I would say more akin to anarchy. When there is a
20 notion to be violent in a crowd, it is often for the sake of
21 the violence itself. They appear to find it cathartic, a
22 release.

23 Whereas January 6th, everyone who participated in
24 that violence and everyone in the crowd who was nonviolent
25 but was supportive was of a mind of two particular

1 objectives: to make their way inside the Capitol, and they
2 were using -- willing to use whatever means necessary to
3 achieve their objective and disrupt the proceedings within.

4 MS. PASCHALL: Thank you. I have no further
5 questions.

6 THE COURT: Mr. Urso?

7 MR. URSO: Thank you, Judge. If I could have a
8 minute to set up, Judge.

9 THE COURT: Sure.

10 MR. URSO: Can you play your videos from here?

11 MS. PASCHALL: No. I think you have --

12 THE COURTROOM DEPUTY: It's showing.

13 MR. URSO: But I need their videos as well. Let
14 me take this off for now.

15 CROSS-EXAMINATION

16 BY MR. URSO:

17 Q. Good afternoon, Officer Hodges. Good afternoon, Officer
18 Hodges.

19 A. Good afternoon.

20 Q. If I can just start with the injuries. Where did you
21 suffer -- well, isn't it true you suffered the injury to the
22 head earlier in the day when something -- somebody dropped
23 something from above?

24 A. I had -- I did believe that at one point. However, I
25 think it's more likely that I suffered it in the tunnel,

1 looking back on it today.

2 Q. Well, that's -- when you said that the person that
3 was -- the person that ripped your gas mask off and took
4 your baton, that was not Mr. McCaughey. Correct?

5 A. Correct.

6 Q. And you indicated that that person struck you -- once he
7 got the baton from you, he struck you in the head?

8 A. Correct.

9 Q. Is there any -- I mean, did your helmet fall off at any
10 point at that point in the video or in the tunnel?

11 A. It didn't look like it completely fell off.

12 Q. So did he strike your helmet or he struck your skull?

13 A. He struck my skull.

14 Q. Is that anywhere captured on any video? Do you know?

15 A. Not to my knowledge.

16 Q. And how did -- how did he get through your helmet to
17 your skull?

18 A. Well, the helmet was askance on top of my head, exposing
19 part of my skull.

20 Q. Okay. And how did you get the injury -- how did you get
21 the swollen left hand?

22 A. I don't know specifically. I sustained many injuries
23 that day.

24 Q. What injury -- now, the lip, the cut on your lip, that
25 also came from the person who was not Patrick McCaughey?

1 A. As far as I know, yes.

2 Q. Well, Mr. McCaughey never touched you on the lip and the
3 shield never touched you on the lip. Correct?

4 A. We were body-to-body. It's possible. It may have.

5 Q. Haven't you watched that video a number of times?

6 A. Yes.

7 Q. Have you seen anywhere in that video where that shield
8 hits you in the face?

9 A. No.

10 Q. Okay. Where did you feel pain at the time that you
11 were -- your arms were pinned in this doorway?

12 A. My arms, my legs. Trying to breathe, my body. Lungs,
13 head, face, hands.

14 Q. Did you scream -- did you scream -- when you screamed in
15 that video, when you screamed at that moment, were you
16 screaming in pain?

17 A. That was part of it. Yes.

18 Q. Well, do you recall giving an interview maybe a little
19 more than a week after these events to WUSA in D.C.?

20 A. Yes.

21 Q. And isn't it true that you told them the reason you
22 screamed was because you were defenseless and you wanted
23 your fellow officers to come help?

24 A. That is true. Yes.

25 Q. And you didn't say anything about screaming in pain to

1 the -- in that interview. Correct?

2 A. Correct.

3 Q. Why is that?

4 A. Because both are true.

5 Q. So the reason you didn't say it is because it's true?

6 A. No. Both are true. Either one is true. The pain
7 contributed to the need for me to extricate myself.

8 Q. Why did you not tell that to the interviewer?

9 A. I don't know.

10 Q. Okay. You are familiar with who Patrick McCaughey is by
11 now. Correct?

12 A. Correct.

13 Q. You've seen lots of videos involving him, right, or
14 different angles?

15 A. I've seen the one or two or so videos of the tunnel.

16 Q. Have you seen any other videos of him out in the crowd,
17 body-worn camera videos?

18 A. Not that I can recall.

19 Q. Well, you watched your body-worn camera video. Right?

20 A. Correct.

21 Q. And did you ever -- besides the time in the tunnel where
22 Mr. McCaughey was in the tunnel, did you see him anywhere
23 else on your body-worn camera video?

24 A. I could not positively identify him. No.

25 Q. Did you see somebody that looked like him that you

1 couldn't identify?

2 A. I saw many people, most of whom I cannot positively
3 identify.

4 Q. You didn't see him. Right?

5 A. I cannot positively identify him.

6 Q. Okay. And you've -- you met with the AUSAs to discuss
7 Mr. McCaughey?

8 A. I know that he's the Defendant.

9 Q. Did you discuss him with any U.S. attorney's office in
10 the Department of Justice?

11 A. In what manner?

12 Q. In any manner.

13 A. That he's the Defendant in this case.

14 Q. That's it?

15 A. Yeah.

16 Q. Did anybody from the Department of Justice ask you what
17 your feelings were about whether they should seek his
18 detention at the beginning of the case when he was arrested?

19 MS. PASCHALL: Objection. Relevance.

20 THE COURT: Sustained.

21 MR. URSO: Can we cue up Exhibit 301, please. Can
22 you go to about 20:05. Can you play about seven seconds of
23 that.

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

1 MR. URSO: That's good.

2 BY MR. URSO:

3 Q. Did you hear that part where Mr. McCaughey repeated,
4 "Don't hit me with that stick"?

5 A. Yes.

6 Q. What else did he say to you?

7 A. I think he said, "I'm not hurting you."

8 Q. Right. Right. Okay. That was true. Right? He was
9 not hurting you at that point?

10 A. No.

11 Q. Okay.

12 A. Excuse me. I need to elaborate. No. It is not true.

13 Q. I'm sorry?

14 A. It is not true.

15 Q. What's not true?

16 A. He was hurting me.

17 Q. Are you changing your answer?

18 A. No. I said -- you asked: Is it true? And I said no.

19 It was grammatically ambiguous. However, the correct answer
20 is: No. It is not true. He was hurting me.

21 Q. And where were you hurting at that point?

22 A. Wherever the shield made contact.

23 Q. The shield was hurting your body?

24 A. Correct.

25 Q. A flat plastic shield was hurting your body?

1 A. Yes.

2 Q. This was before you were pinned in the doorway.

3 Correct?

4 A. Correct.

5 Q. By the way, you've been with your CDU 42?

6 A. Yes.

7 Q. And you've been with them for how many years?

8 A. I don't remember the year I was assigned. But many.

9 Q. Many?

10 A. I would say many. At least five.

11 Q. And you get a lot of training as part of being on that
12 CDU?

13 A. Correct.

14 Q. And you train with police shields?

15 A. Correct.

16 Q. And what's your understanding of the purpose of a police
17 shield, riot shield?

18 A. To defend the one who has it equipped and to repel those
19 who need to be repelled.

20 Q. And how -- how were you trained to repel them with the
21 shield?

22 A. We can push forward.

23 Q. And if you push forward with somebody on a shield [sic],
24 you're not likely to cause any kind of serious physical
25 injury or anything like that. Correct?

1 A. Generally speaking.

2 Q. Is there -- do you think there's a way you can push
3 somebody with a shield, push them forward and it can cause
4 serious physical injury?

5 A. Yes.

6 Q. If you push them down the stairs, something like that?

7 A. That would be a part of it. Yeah.

8 Q. What other ways?

9 A. I mean, a shield is a hard object. Any hard object can
10 cause injury if you use it in a particular way.

11 Q. But if you use a shield the way it's designed, you're
12 not generally going to really injure somebody. Would you
13 agree with that?

14 A. It depends on how you're using it. But yes.

15 Q. Right. If you're using it the way it was designed,
16 you're not likely to generally hurt somebody. Right?

17 A. It's designed to be used in many different contexts. So
18 it would --

19 Q. Is it not a defensive implement?

20 A. It is a defensive implement.

21 Q. It's a shield, right, to protect the person holding the
22 shield. Correct?

23 A. Correct.

24 Q. So would you agree -- you would agree that, but for that
25 crowd, that crowd behind Mr. McCaughey yelling "Heave-ho and

1 pushing all their might forward, that you would not have
2 felt that pain that you were feeling when you were pinned in
3 that doorway?

4 A. It would definitely be diminished, the pain. However, I
5 do not know Mr. -- the Defendant's strength on his own. So
6 I cannot testify as to whether I would experience pain or
7 not.

8 Q. Well, you've acknowledged that the reason you were
9 pinned and the reason you felt that pain was because the mob
10 was pushing forward with all their might. Right?

11 A. Correct.

12 Q. And you testified to that in a trial a couple weeks ago
13 in New Mexico. Right?

14 A. Correct.

15 Q. That it was the mob that was hurting you, not
16 Mr. McCaughey. Correct?

17 A. Well, Mr. McCaughey is part of the mob. So...

18 Q. But just in his role as part of the hundred people or so
19 that were pushing?

20 A. Sure.

21 Q. Actually, you don't even know if he was pushing. Right?

22 A. I mean, it's pretty clear in the video he's pushing.

23 Q. It was clear to you that he was pushing you?

24 A. Yeah.

25 Q. Okay. And you do know that right after this -- right

1 after you allege he was pushing you that he made efforts to
2 free you from your position. Right?

3 A. I did hear in the video him saying -- trying to call for
4 people to get me out.

5 Q. So is that a yes?

6 A. Yes.

7 Q. Now, does that make sense to you, that he would be
8 trying to push at you one second and then to pin you and
9 hurt you and then free you up a second or two later?

10 A. Yes.

11 Q. That makes sense to you?

12 A. Yes.

13 Q. Explain that, please.

14 A. Because he was trying to get us to surrender to join
15 them. He knows that every officer injured and falling back
16 is one less that stands in their way to getting entrance to
17 the Capitol.

18 Q. You think that's what this 22-year-old man was thinking?

19 A. Yes.

20 MS. PASCHALL: Objection.

21 THE COURT: Overruled.

22 BY MR. URSO:

23 Q. You do, you said?

24 A. Yes.

25 MR. URSO: Can we move forward, please, to maybe

1 21:13. Play that.

2 (Whereupon, segments of Government's Exhibit No.
3 301 were published in open court.)

4 MR. URSO: Pause that.

5 BY MR. URSO:

6 Q. Did you hear Mr. McCaughey yelling anything at that
7 point?

8 A. No, I didn't.

9 Q. You didn't hear him saying anything even in the video?

10 A. I heard me yelling, but I didn't hear him saying
11 anything.

12 Q. Okay. I'm going to hook up my computer for a moment.

13 So this is a clip of the same video. I just for
14 some reason think I can hear it better on this clip, so I'm
15 going to play it if we can -- if the Government will agree
16 we can admit this, your Honor. It's Defendant McCaughey's
17 Exhibit A, I guess.

18 THE COURT: Well, why don't we hear it and we can
19 decide if -- they can decide and I can decide. Go ahead,
20 sir.

21 MR. URSO: The Government has a copy of this.

22 (Whereupon, Defendant McCaughey's Exhibit A was
23 published in open court.)

24 BY MR. URSO:

25 Q. Do you hear that, saying "Let me back"? Let --

1 (Whereupon, Defendant McCaughey's Exhibit A was
2 published in open court.)

3 BY MR. URSO:

4 Q. Again, did you hear it?

5 A. I did not, no.

6 Q. Let me just back it up again.

7 (Whereupon, Defendant McCaughey's Exhibit A was
8 published in open court.)

9 MR. URSO: I'll just play that a little more.

10 (Whereupon, segments of Defendant McCaughey's
11 Exhibit A were published in open court.)

12 BY MR. URSO:

13 Q. Right there, you don't hear him saying, "Let me back,
14 let me back, let me back"?

15 A. I do hear that.

16 Q. Let me just play it again.

17 (Whereupon, Defendant McCaughey's Exhibit A was
18 published in open court.)

19 BY MR. URSO:

20 Q. Three times, right, in rapid succession?

21 A. Yes.

22 MR. URSO: I'd ask that it be admitted, your
23 Honor. It's just easier to hear.

24 MS. PASCHALL: No objection.

25 THE COURT: Without objection, Defendant

1 McCaughey's Exhibit A is entered.

2 (Whereupon, Defendant McCaughey's Exhibit A was
3 entered into evidence.)

4 MR. URSO: Thank you, Judge. I'm going to play
5 this forward to see what else happens next.

6 (Whereupon, segments of Defendant McCaughey's
7 Exhibit A were published in open court.)

8 BY MR. URSO:

9 Q. Now, that's right when you can see him be able to move
10 himself back and the shield moved and then you were able to
11 pull out. Is that correct?

12 A. I do see that. Yes.

13 Q. So do you think -- would you agree that it's likely that
14 the crowd heeded Mr. McCaughey's calls and gave him some
15 room to back up to let you free?

16 A. I don't know.

17 (Whereupon, segments of Defendant McCaughey's
18 Exhibit A were published in open court.)

19 BY MR. URSO:

20 Q. Now, right there, you see somebody's hands coming in the
21 picture putting down your protective -- deploying your
22 protective face shield for you. Do you see that?

23 A. I do.

24 Q. Do you know whose hands those are?

25 A. I believe it's the Defendant's.

1 Q. Which one? We've got three here.

2 A. Mr. McCaughey. McCaughey.

3 Q. It's -- you pronounce it "McCaughey."

4 A. "McCaughey." Excuse me.

5 Q. Thank you.

6 (Whereupon, segments of Defendant McCaughey's
7 Exhibit A were published in open court.)

8 BY MR. URSO:

9 Q. He's got two hands on your helmet, right, straightening
10 your helmet, push your face shield down?

11 A. Uh-huh.

12 (Whereupon, segments of Defendant McCaughey's
13 Exhibit A were published in open court.)

14 BY MR. URSO:

15 Q. You hear him yell, "Hey you," to one of the officers?

16 A. I did, yes.

17 (Whereupon, segments of Defendant McCaughey's
18 Exhibit A were published in open court.)

19 BY MR. URSO:

20 Q. Do you see him tapping on the shoulder of an officer?

21 A. Yes.

22 Q. By the way, do you know the identity of the officer
23 whose shoulder he tapped?

24 A. No.

25 Q. You never found that out?

1 A. No.

2 MR. URSO: I'll play it again.

3 (Whereupon, segments of Defendant McCaughey's
4 Exhibit A were published in open court.)

5 BY MR. URSO:

6 Q. Do you see him tap the shoulder again --

7 A. Yes.

8 Q. -- for a second time? He's pointing down at you.

9 Correct?

10 A. Uh-huh.

11 THE COURT: I just need you to say "yes" or "no"
12 for the record, sir.

13 THE WITNESS: Yes.

14 (Whereupon, segments of Defendant McCaughey's
15 Exhibit A were published in open court.)

16 BY MR. URSO:

17 Q. He's sort of frantically pointing at you. Would you
18 agree with that?

19 A. He is.

20 Q. As he's looking at your fellow officers. Correct?

21 A. Correct.

22 Q. You would agree it appears he's trying to get someone's
23 attention?

24 A. Correct.

25 (Whereupon, segments Defendant McCaughey's Exhibit

1 A were published in open court.)

2 BY MR. URSO:

3 Q. You see there one of the officers finally acknowledged
4 him and shook his head yes. Do you see that?

5 A. I did not see.

6 Q. I'll go back. Right now we're at one minute, nine
7 seconds of the exhibit. I'll go back. I don't know what
8 that is.

9 (Whereupon, segments of Defendant McCaughey's
10 Exhibit A were published in open court.)

11 BY MR. URSO:

12 Q. Right there. Did you see that?

13 A. Okay. Yes.

14 Q. Then that officer looks over his shoulder as if to call
15 for help for you?

16 A. He does look over his shoulder. Yes.

17 Q. You don't know the officer -- who that was?

18 A. I do not.

19 Q. Now, that -- would you agree that now that Mr. McCaughey
20 got the attention of your fellow officers that they were
21 going to get you help, that he stopped looking for
22 attention? He was done with that?

23 A. Okay.

24 Q. Do you agree with that?

25 A. I do not see him gesturing to me anymore.

1 Q. Or anybody behind you. Right?

2 A. Correct.

3 Q. Your fellow officers.

4 MR. URSO: Let me just have a moment, your Honor.

5 (Confers with Defendant McCaughey privately.)

6 BY MR. URSO:

7 Q. Officer Hodges, are you trained -- I mean, withdraw
8 that.

9 You were involved in that skirmish in the tunnel
10 for quite some time that day. Correct?

11 A. Correct.

12 Q. And on your side -- and on both sides, there were
13 multiple people deep. The crowd was multiple people deep.
14 Right?

15 A. Correct.

16 Q. Would you agree there were officers behind the front of
17 the line at various times with shields pushing on the
18 officers in front of them?

19 A. I do not know that.

20 Q. Let me see if I can catch some in this video.

21 (Whereupon, segments of Defendant McCaughey's
22 Exhibit A were published in open court.)

23 BY MR. URSO:

24 Q. I don't think I have the video handy. So you don't
25 think that happened that day?

1 A. I don't know.

2 Q. And in terms of, like, you said that the shield sort of
3 caused you more pain because it's a shield, a force
4 multiplier. If you think of basic physics, wouldn't you
5 agree that when you have a larger area surface that's
6 pressing up against you that the pain would be distributed,
7 the force would be distributed, as opposed to something very
8 small like if he was holding a baton at your chest, the same
9 pressure would hurt a lot more than a shield. Right?

10 A. The focal point of the object in contact would serve as
11 the point where all the pressure would be deployed.

12 Correct.

13 Q. Right. So a smaller object -- so like, for instance, if
14 you didn't have a shield and it was just his shoulder
15 pressing against you, it probably would have hurt a lot more
16 than his shield. Right?

17 A. No. The shoulder is part of the body, much more
18 malleable, can be moved more than a hard plastic shield
19 designed for riot conditions. So it's possible, but it's
20 possible not as well.

21 MR. URSO: Thank you, sir. One moment.

22 (Confers with Defendant McCaughey privately.)

23 MR. URSO: Nothing further, Officer. Thank you.

24 THE COURT: Ms. Cobb?

25 MS. COBB: No questions, your Honor.

1 THE COURT: Mr. Shipley?

2 MR. SHIPLEY: Thank you. No questions.

3 THE COURT: Ms. Paschall, redirect?

4 MS. PASCHALL: Your Honor, may I approach the
5 witness?

6 THE COURT: You may.

7 MS. PASCHALL: Thank you.

8 REDIRECT EXAMINATION

9 BY MS. PASCHALL:

10 Q. I'm approaching you with what has been marked and
11 admitted as Government's 801.

12 MS. PASCHALL: May he step down to hold the
13 exhibit?

14 THE COURT: He may.

15 BY MS. PASCHALL:

16 Q. Officer Hodges, will you take hold of Exhibit 801 for
17 me?

18 A. Yes.

19 Q. You were asked on cross-examination about whether it was
20 a defensive or offensive weapon. You said that you could
21 use this to defend the person behind it or repel a person in
22 front of it. Is that fair?

23 A. That is fair.

24 Q. How would you repel a person in front of you using
25 Government's Exhibit 801?

1 A. By pushing.

2 Q. And where are your hands currently located?

3 A. Currently they're located on the handles behind the
4 shield.

5 Q. And as we're looking at Government's Exhibit 801, how
6 much of your body is now covered by Government's Exhibit
7 801?

8 A. The vast majority of it.

9 Q. So if this object is pushed forward in the manner you
10 described, how much of your body is making contact with
11 Government's Exhibit 801?

12 A. The vast majority of it.

13 Q. Can you describe for the Court the weight of
14 Government's Exhibit 801?

15 A. It's significant. It's got some heft to it.

16 Q. It's not a flimsy shield. Is that fair to say?

17 A. No.

18 MS. PASCHALL: I'll take Government's Exhibit 801
19 back from you and you can retake the stand.

20 THE WITNESS: (Complies.)

21 BY MS. PASCHALL:

22 Q. So in fact, when the Defendant was using a riot shield
23 against you that day, how much of your body was being pushed
24 against when the Defendant was using that shield?

25 A. A large part of it.

1 Q. You were asked on cross-examination about
2 Mr. McCaughey's actions versus the mob. We talked about how
3 that shield was a force multiplier and how the mob's actions
4 on that day contributed to your injuries.

5 Do you remember that discussion?

6 A. Yes.

7 Q. In this particular moment that we have been looking at
8 in Government's Exhibits 301 and 415, how are
9 Mr. McCaughey's actions specifically in that moment causing
10 you pain?

11 A. Mr. McCaughey was at the front of the assault at the
12 time when I was at the front of the defense. His actions in
13 deploying the police riot shield against me caused me pain,
14 rendered me defenseless against assaults by his -- by others
15 in the mob with him and resulted in injuries that took weeks
16 to recover from.

17 MS. PASCHALL: Let's pull up again Government's
18 Exhibit 301. I think this is going to be substantially
19 similar to -- I'm sorry, Mr. Urso. What exhibit number did
20 you say?

21 MR. URSO: A.

22 BY MS. PASCHALL:

23 Q. -- to Defense Exhibit A. And he showed you the point in
24 time after what we're looking at now at 21:16. Is that fair
25 to say?

1 A. Yes.

2 MS. PASCHALL: In Government's Exhibit 301, can we
3 please move back in time to approximately 19:15. Let's play
4 Government's Exhibit 301 from 19:15.

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

7 MS. PASCHALL: Let's stop at 19:20.

8 BY MS. PASCHALL:

9 Q. Now, there's an American flag that we see over part of
10 this frame. Is that correct?

11 A. Correct.

12 Q. But beneath and behind that, are we seeing the Defendant
13 that we've been discussing, Mr. McCaughey?

14 A. Correct.

15 Q. And at this point in time, does he appear to have his
16 hands close to his face with a black object in them?

17 A. Correct.

18 Q. Does that black object appear to be substantially
19 similar to what I had you put your hands on on that riot
20 shield, on Government's Exhibit 801?

21 A. It does.

22 Q. So fair to say that at 19:20 minutes in Government's
23 Exhibit 301, the Defendant has that shield up by his face?
24 Is that fair to say?

25 A. It is.

1 MS. PASCHALL: Let's start again at 19:20.

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

4 MS. PASCHALL: Let's stop the exhibit. We're now
5 at 19:35.

6 BY MS. PASCHALL:

7 Q. From 19:20 to 19:35, is the Defendant pushing that
8 shield into you?

9 A. He is.

10 MS. PASCHALL: Let's start again at 19:35.

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

13 MS. PASCHALL: Let's stop the video at 19:59.

14 BY MS. PASCHALL:

15 Q. From 19:35 to 19:59, is the Defendant pushing that
16 shield into you?

17 A. He is.

18 MS. PASCHALL: Start the video at 19:59.

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

21 MS. PASCHALL: Let's stop it there.

22 BY MS. PASCHALL:

23 Q. We've now stopped at 20:28. From 19:59 to 20:28, is the
24 Defendant pushing the shield into you?

25 A. He is.

1 MS. PASCHALL: Start the video again.

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

4 MS. PASCHALL: Let's stop the video.

5 BY MS. PASCHALL:

6 Q. We're at 21:11. From 20:28 to 21:11, is the Defendant
7 continuously pushing the shield into you?

8 A. He is.

9 MS. PASCHALL: Let's start the video again at
10 21:11.

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

13 MS. PASCHALL: Let's stop the video at 21:20.

14 BY MS. PASCHALL:

15 Q. Is this the moment in time that you discussed with
16 defense counsel where the Defendant is starting to say some
17 stuff and he pulls back and then you're able to sort of pull
18 away from the metal door frame there at 21:20?

19 A. It is.

20 Q. So from 19:15 until 21:20, is it accurate to say that
21 the Defendant is pushing you with that shield for that
22 entire two minutes?

23 A. Yes.

24 MS. PASCHALL: No further questions.

25 THE COURT: Officer Hodges, you may step down.

1 You're free to leave. Thank you for your testimony and for
2 your service to the country.

3 (Witness excused.)

4 THE COURT: This is a good place for us to break
5 for the evening. Why don't we resume at 9:30 tomorrow.

6 Sir?

7 MR. SHIPLEY: Both sides are talking back and
8 forth about scheduling in the absence of a jury with a
9 three-day weekend coming up and being dark on Friday.

10 It's a little unpredictable. Obviously, as in all
11 cases, some witnesses are taking longer than expected; some
12 take less than expected. They're going to have three case
13 agents cover a broad range of activity. Hard to predict how
14 long they'll take.

15 The question simply is: If we get to Thursday
16 afternoon and the Government rests, I think at least two of
17 the Defendants are likely to testify and there may be a
18 couple more witnesses. Can we just roll over to Tuesday
19 morning? I think we'll finish Tuesday and then we can argue
20 Wednesday. Or --

21 THE COURT: I'm sorry. I'm not quite sure --

22 MR. SHIPLEY: So not jump to the defense case on
23 Thursday afternoon.

24 THE COURT: I guess it depends where we are. I do
25 want to keep it moving. I mean, obviously, if it's 4:00 and

1 the Government is resting, I imagine there will be motions,
2 that type of thing. But if the Government has rested at
3 1:30, I'm not just going to want to take off the rest of the
4 afternoon.

5 MR. SHIPLEY: That's fine. I just was looking for
6 that clarification.

7 THE COURT: Sure.

8 Ms. Paschall, anything from the Government?

9 MS. PASCHALL: No, your Honor. Thank you.

10 THE COURT: Anything else from defense?

11 I'll remind the Defendants the same thing I told
12 you yesterday: You do need to return for your continued
13 trial at 9:30 tomorrow in this courtroom. Failure to appear
14 could lead to your arrest, additional charges and the case
15 continuing to verdict in your absence.

16 Thanks, folks.

17 (Proceedings concluded.)

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