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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 31, 2022
DAVID MEHAFFIE,)	9:34 a.m.
)	
Defendants.)	
)	
* * * * *)	

TESTIMONY OF AQUILINO GONELL AND HENRY FOULDS
EXCERPTED FROM THE BENCH TRIAL - DAY 3
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

Aquilino Antonio Gonell	4	56 91	104
Henry Foulds	108	135	161

EXHIBITS RECEIVED IN EVIDENCEPAGE

Government's Exhibit No. 218	113
Government's Exhibit No. 415	122
Government's Exhibit No. 220	124
Government's Exhibit No. 101.6	130

1 (REPORTER'S NOTE: The following contains excerpts from the
2 bench trial requested by counsel:)

3 THE COURT: Thank you.

4 Are we resuming with the Government's case in
5 chief?

6 MS. PASCHALL: Yes, your Honor. The Government
7 calls Aquilino Gonell.

8 (Thereupon, the witness entered the courtroom and
9 the following proceedings were had:)

10 THE WITNESS: Good morning.

11 THE COURT: Good morning, Sergeant.

12 AQUILINO ANTONIO GONELL, GOVERNMENT WITNESS, SWORN.

13 THE WITNESS: May I remove my mask?

14 THE COURT: You may. Please feel free to have a
15 seat. You can adjust the microphone there.

16 THE WITNESS: Sure.

17 DIRECT EXAMINATION

18 BY MS. BOND:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Please say your name and spell it for the record.

22 A. Sorry. Catching my breath.

23 Q. That's okay.

24 A. My name is Aquilino Antonio Gonell, sergeant of the
25 United States Capitol Police.

1 Q. Let me stop you --

2 A. A-Q-U-I-L-I-N-O; Antonio, common spelling; G-O-N-E-L-L;
3 last name, Gonell.

4 Q. Thank you.

5 And where did you say you're employed?

6 A. United States Capitol Police, and currently am still
7 working there.

8 Q. Can you say that again?

9 A. I'm still working, employed by the Capitol Police as of
10 now.

11 Q. Thank you.

12 Would you pull the microphone a little bit closer
13 to your mouth.

14 A. Sure.

15 Q. How long have you been with Capitol Police?

16 A. I began my 17 year two months ago.

17 Q. And what's your current rank?

18 A. Sergeant.

19 Q. And what was your rank back on January 6th, 2021?

20 A. The same.

21 Q. And what did you do before you joined the Capitol
22 Police?

23 A. I used to be a student, car washer, supply tech, Army.
24 Also I was part of the Army.

25 Q. How long were you in the Army?

1 A. Eight years in total.

2 Q. And did you go straight from the Army to the Capitol
3 Police?

4 A. No, ma'am. After I returned from -- actually, yeah.
5 I'm sorry. I did. After returning from Iraq, I became a
6 Capitol Police officer while still in the Army.

7 Q. And how long were you in Iraq?

8 A. One year.

9 Q. Now, as a sergeant, what kind of responsibilities did
10 you have back in January of 2021?

11 A. I was -- normally, my task, my assignment, was
12 midnights. Because of the pending transfer of power, we
13 were -- I was assigned to my secondary duty, which is --
14 which was CDU sergeant and mountain bike during the day. So
15 they rotated me -- well, detailed me from midnights to day
16 work while the process was still going on.

17 Q. And when did that rotation take place?

18 A. Since the summer of 2020, on and off.

19 Q. And what is the structure of a CDU within the Capitol
20 Police?

21 A. We have squads, platoons. Then you have the
22 sergeants -- you mean in terms of the ranking? Or the
23 setup?

24 Q. How many officers are in a platoon, a CDU platoon?

25 A. It ranges from 30, 40, depending if the squads are fully

1 staffed. It's about 10 to 12 officers per platoon.

2 Q. As a sergeant, are you in a position of authority?

3 A. Yes, ma'am.

4 Q. So how many sergeants would be over a platoon?

5 A. Four. One for each squad.

6 Q. Now, was it a normal part of your job with the Capitol
7 Police to deal with crowd control at the Capitol?

8 A. Yes, ma'am.

9 Q. Had you ever worked First Amendment assemblies before
10 that actually came onto Capitol grounds?

11 A. Multiple times over the course of my 16 years.

12 Q. Can you estimate about how many times you worked those
13 First Amendment assemblies?

14 A. Off the top of my head, I can't give you a figure. But
15 I know it's been over hundreds.

16 Q. Do you think near hundreds?

17 A. Over 200.

18 Q. Have you ever dealt with unruly crowds before?

19 A. Yes, ma'am.

20 Q. And in all of your years with the Capitol Police, have
21 you ever actually had a physical confrontation with a
22 citizen before?

23 A. No, ma'am.

24 Q. In all of your years with the Capitol Police, had you
25 ever encountered an unruly crowd that devolved into a riot?

1 A. No, ma'am.

2 Q. Now, on --

3 THE COURT: Sorry. You said you've never had a
4 physical confrontation with a citizen?

5 THE WITNESS: No, ma'am -- no, sir.

6 THE COURT: Okay. You're luckier than I was.

7 THE WITNESS: I try.

8 BY MS. BOND:

9 Q. So on January 6th, 2021, were you working that day?

10 A. Yes, sir -- ma'am.

11 Q. What time did you start?

12 A. I arrived at the Capitol around 6:10, clocked in around
13 6:35.

14 Q. And what did you expect to be doing that day?

15 A. It's hard to tell. I mean, I'd seen the news, some of
16 the reports about people gathering at the Capitol,
17 supposedly for the Stop the Steal, trying to stop the
18 transfer of power which had, you know -- some are my
19 officers. They had concern about the online things that
20 were consuming. But throughout the -- my chain of command
21 and through my emails and stuff like that from the Capitol
22 Police, I didn't see nothing that would change our posture.

23 Q. So what kind of orders were you giving to your officers
24 at the Capitol --

25 A. What did I give them?

1 Q. Yeah. What did you tell them to do or to expect?

2 A. I told them that whatever concerns they have, they could
3 have put it in writing or talk to me and I would try to get
4 another official higher than me, high-ranking, to provide
5 guidance on some of those concerns that they had, because
6 they want -- at some point, some of them wanted to deploy
7 the long guns, the rifle, as a deterrent for potential
8 violence or things like that, given the amount of threats
9 that they had seen online.

10 At that time, I didn't -- I was not very active on
11 social media and stuff like that, so I didn't pay attention
12 to that.

13 So I told them that I'll get a higher-ranking
14 official, and I did. We had roll call that day off and the
15 day before to alleviate some of those concerns. And to that
16 extent, their concerns were alleviated and they seemed more
17 at ease.

18 My direction to them was: We're gonna stage at
19 the north entrance of the Visitor Center of the Capitol. We
20 did that after roll call. Then I told them that we need to
21 be prepared for whatever First Amendment demonstration and
22 stuff like that that would have happened and continued to
23 follow up our training, which is respecting rights of our
24 citizens as long as they are not violent and following
25 directions from the police officer.

1 Normally, we -- throughout my time at the Capitol,
2 we try to separate the groups, pro whatever cause against
3 the other cause. So normally, that seems to do the trick.
4 And that's the same procedure we had done for 16 years since
5 I've been at the Capitol. And so I don't think that on that
6 day, we didn't do anything different than to expect that we
7 wouldn't have any violence at all.

8 Q. You mentioned some of your officers wanted to use long
9 guns. Are those -- well, what are these?

10 A. The long guns are the M4 rifles. We do deploy them
11 occasionally, depending on the threats. But not for
12 demonstrations --

13 Q. And so do you --

14 A. -- because they could get overpowered and then I guess
15 take the weapon away from the officers since we are so
16 focused on the training. We are so focused on protecting
17 civilians and property. So...

18 Q. To your knowledge, were those long guns ever deployed by
19 Capitol Police that day?

20 A. I believe they did. I was not aware until after the
21 fact. By that time, it was too late to deploy them or we
22 would probably be scrambling to get the officers, pulling
23 them out of the line. So I don't think it was feasible. So
24 I don't know how many were deployed at that time. I'm not
25 aware of. But seems like it would have been backwards at

1 that point.

2 Q. Okay. Now, you said that you clocked in about 6:35.
3 Did there come a point in the day that you realized that
4 something a little unusual was going on?

5 A. I mean, we had roll call like around 8:00. I joined
6 roll call with the other CDU platoons that were in the
7 Capitol, not the other buildings. But that was a long roll
8 call. The officers had a chance and opportunity to ask
9 questions.

10 Myself, two other lieutenants and I believe five
11 or six of the sergeants were there. They were there and
12 they asked all the questions, concerns. And at the end of
13 the day, we told them: Look, we're going to do our job just
14 like we normally do. Yes, there are threats online. But we
15 don't have that information coming down the pike, so we
16 cannot address that. And we answered those questions,
17 concerns, the best we could.

18 Q. Did there come a point in the day where you believed
19 that there was a threat to the Capitol?

20 A. I think one of the officers was watching or
21 livestreaming the speech on their phone. And once I
22 heard -- ma'am, don't quote me on this; this is -- I'm
23 paraphrasing -- somebody said: Trial by combat. And then I
24 think at the end of or near Trump's speech, it was said: We
25 going to the Capitol.

1 I told the guys: Finish up getting ready. By
2 that time, we were, like, halfway dressed in the protective
3 gear, meaning protector, the chin protector, thigh protector
4 and the bottom from the waist down. We were having -- we
5 had the CDU gear on. So when that -- when I heard that,
6 then I told: Start getting ready. These people are coming
7 this way.

8 THE COURT REPORTER: I'm sorry, sir. Did you say
9 tie or thigh protector?

10 THE WITNESS: Thigh. My English is not very
11 good-looking sometimes.

12 BY MS. BOND:

13 Q. So about what time did you start putting on the CDU
14 gear?

15 A. I'd say around 12:30, if I remember correctly. I told
16 them "Get ready" around -- I'd say around -- closer to 1:00.
17 I heard over the radio like two, three frantic calls from
18 over the radio asking for all CDU personnel to respond to
19 the west front, because there was a breach in the perimeter.
20 The whole Capitol at that time was closed. The Capitol
21 grounds was closed. And people started -- all began to
22 breach the Capitol.

23 There were signs. There were police officers --

24 Q. Before you move into that, I just want to make sure I
25 understand all the gear that you were wearing.

1 So you talked about a thigh protector and a chin
2 protector. What else were you personally wearing as CDU
3 gear?

4 A. The whole process, putting that uniform or gear on.
5 That was the whole version. That would have taken us about
6 ten minutes to put it on with the help of another officer.
7 So that includes the thighs, the chin, the back plate and
8 also the chest plate. We call it the throat, turtle, kind
9 of like -- sorry. I'm explaining to her. She's going to
10 ask me. T-U-R-T-L-E-S. Sorry.

11 Q. Do you --

12 A. So the turtle gear, because we call it. And on top of
13 that, we had the -- attached to that we had the shoulder and
14 elbow straps on the arm on both sides. And then you had the
15 gas mask, I guess, attached to whatever strong side you want
16 it or whichever side you want to. I'm sorry. And we also
17 had the helmet as well and the shield.

18 Q. So what does your helmet look like?

19 A. The helmet has -- is kind of like a ballistic metal. It
20 has a face shield, glass you can see through. Same thing
21 with the gas mask as well.

22 Q. Now, you talked about having a shield. What did your
23 shield specifically look like?

24 A. My shield was round. I used that, picked that because
25 as an official it helped me maneuver better and coordinate

1 with the other officers if I need to. And we have three
2 types of shields. One is an eight-foot shield; the other is
3 six-foot; and then the round one that I used.

4 Q. Okay. Now, when you say there were other kinds of
5 shields --

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

7 THE COURT: You may.

8 BY MS. BOND:

9 Q. Sergeant, this has already been marked, I believe, as
10 801. Do you recognize Exhibit 801?

11 A. Yes, ma'am.

12 Q. And what is that to you?

13 A. That is a defensive shield that we use to -- it could be
14 used as offensive, too, but mainly defensive.

15 Q. Now, you said you were not specifically using that on
16 that day. Correct?

17 A. Correct.

18 Q. Were other Capitol Police officers using this kind of
19 shield that day?

20 A. Yes, ma'am.

21 Q. And were they out and available for other law
22 enforcement agencies to use that day?

23 A. The amount of shields we had at that time available was
24 for the officers who were part of the hard-gear CDU control
25 group.

1 Q. In your experience during the day, did other law
2 enforcement agencies end up picking them up and using them?

3 A. Some of them, they did as a weapon -- not a weapon, but
4 as a -- something to protect themselves. I know we don't --
5 at that time, we didn't have everybody trained for it, with
6 it. But I know they know how to use it. I mean, it has the
7 handles. Pretty easy to figure it out.

8 Q. Thank you.

9 So you talked earlier about -- oh, before moving
10 on, do Capitol Police officers wear body-worn cameras?

11 A. No, ma'am.

12 Q. So did you have a body-worn camera that day?

13 A. No, ma'am.

14 Q. Are you aware of any other body-worn cameras worn by
15 Capitol Police officers that day?

16 A. No, ma'am.

17 Q. Okay. Now, you talked about at 1:00 p.m. getting a call
18 for assistance on the west front. Is that right?

19 A. Around that time. Close to. I think it was around
20 12:50, 12:54. So close to 1:00.

21 Q. So how did you respond to that call for assistance?

22 A. Because we were staged at the north Capitol Visitor
23 Center entrance, we quickly put -- completed putting our
24 uniform on. Then we -- out of that room, there's two sets
25 of double doors, that heavy set of doors. We opened it. I

1 had one officer open one, then the other officer. So that
2 way, we'd leave that area in a hurry on the ground.

3 We made a right, a left, another left, halfway on
4 the other side of the Visitor Center, up the steps, about
5 two flights of steps, up to the Crypt, across the Crypt,
6 down the steps where the president go down to the
7 inauguration.

8 And before you go out to the inauguration stage,
9 you have a hallway, a podium, another hallway, east section.
10 Then you have the x-ray machine, the magnetometer, then two
11 sets of double doors and then a ramp to go out that door.
12 In total, from the north entrance of the Visitor Center all
13 the way to that stage, I think we probably took about two
14 minutes, two or three minutes running on the ground, full
15 gear with the shields and in full armor.

16 THE COURT REPORTER: I'm sorry. Did you say
17 "underground" or "on the ground"?

18 THE WITNESS: On the ground. On the top left of
19 the Visitor Center.

20 BY MS. BOND:

21 Q. Was that you and your full platoon that did that?

22 A. Roughly, yeah. About 20, 25 officers.

23 Q. So when you got to the west front, were other members of
24 law enforcement already there?

25 A. Yes, ma'am.

1 Q. What were they doing?

2 A. When I got to the stage, there was hardly anybody on top
3 of the stage. So we continued going down. Immediately as
4 soon as you walk out of the building, you could hear the
5 crowd, the roaring of people yelling and all kinds of stuff,
6 kind of like a movie, pretty much.

7 The officers themselves at the bottom, they were
8 already being attacked, pushed, shoved, thrown to the
9 ground, tackled.

10 I know the minute I walk out of the Capitol, I'm
11 like: Holy shit. This is going to be a long day.

12 Q. Now --

13 A. And I pause for a minute, for a second. Then I looked
14 down and I saw the officers getting kicked and all that
15 stuff. And I immediately went to -- straight to that.
16 There's no -- there was no time to coordinate anything
17 because they were overwhelming the officers.

18 And the minute we went down there, I got
19 overwhelmed in that southwest corner. You could see me
20 getting beat up or pushed, shoved and all this stuff. And
21 until recently, I seen that video of people which -- I sat
22 down with the FBI a couple of -- about a week ago just to
23 identify those individuals who I never seen or attacked --
24 attacked me at that time.

25 So it was overwhelming. The -- all we could do is

1 try to do what you can. The officers were overwhelmed.

2 Q. So when you got down there, was it just Capitol Police
3 at that point?

4 A. Yes, ma'am.

5 Q. At some point, did Metropolitan Police Department show
6 up?

7 A. I think around ten minutes later they show up.

8 MS. BOND: I'd like to bring up 232.22, an exhibit
9 that's already been admitted.

10 BY MS. BOND:

11 Q. Now, Sergeant Gonell, what do you see in this picture
12 here? What is this area of the Capitol actually called?

13 A. That is the lower west terrace plaza. Some people call
14 it plaza or some people just call it the lower west terrace.

15 Q. Okay. And what are we looking at law enforcement doing
16 here?

17 A. That is police officers trying to maintain the line. At
18 this time, with the help of Metropolitan Police, we were
19 able to push the crowd back to the first tier of steps on
20 the lower west terrace.

21 Q. And while you were out there that afternoon -- during
22 the time period when the police line is still intact, did
23 you stay in one specific location the whole time or did you
24 move around?

25 A. I moved around a lot, trying to do as best as possible

1 to coordinate and also to hold the line, because we had --
2 it was kind of like whack-a-mole at some point that I began
3 to notice that some of the officers were being instigating
4 to react to one way or the other.

5 And when they did react, then the other side of
6 the group, of the mob, was taking back to show that because
7 when they created a commotion, let's say, all the way to my
8 right, then the officer on the left would shift their
9 attention to that specific area and leave the other area
10 vulnerable for the mob to start breaking down the barriers
11 and pulling or striking or attacking the police officers.

12 Q. So in just two or three sentences, can you sum up what
13 your experience was down on this west plaza area until that
14 police line broke?

15 A. I'm sorry. Can you repeat the question?

16 Q. Just --

17 THE COURT: I thought you said that it had broken
18 and that MPD helped them push.

19 MS. BOND: I apologize.

20 THE WITNESS: So this particular time in this
21 video, it's after Metropolitan Police had helped secure the
22 plaza.

23 THE COURT: Okay.

24 BY MS. BOND:

25 Q. So while --

1 A. But before that, we were cornered in that southwest. If
2 you could see where those last three officers with the -- I
3 think that's Commander Glover in the trench coat in that
4 left corner.

5 So the officers, we were cornered in that area
6 for -- until MPD arrived. And then we were able to push
7 out, establishing the perimeter further and further away,
8 bringing bike racks. I think that's all the tactics that we
9 used that day.

10 Q. Thank you for clarifying that.

11 So during this time, once MPD had helped you guys
12 establish that police line, how would you sum up what the
13 crowd was doing?

14 A. They were beating police officers. They were attacking
15 police officers in full uniform. So it's not like I'm a
16 police officer in civilian clothes and they didn't know who
17 I was. They knew who I was. They knew who the police
18 officers were. We -- most of us, we had the Capitol or
19 Metropolitan Police letters on our uniforms.

20 And yet they continued to become more hostile to
21 us by deploying chemicals against us, throwing and breaking
22 barriers.

23 I know around this time I remember seeing or
24 hearing some of the bike racks, the temporary black bike
25 rack rails -- not bike rack, but rails -- that were in place

1 temporarily for the purpose of the inauguration. And those
2 were being broken down and you could hear the clinking on
3 the ground when the metal hit the ground every single time.
4 And then they used that, those same pieces of rods, as a
5 projectile and throwing it against the officers without any
6 regard of who they hit, because there were officers there
7 without gas masks or any protections. And they did use
8 that, along with the flags and things like that, the items
9 that they used to beat up the officers.

10 Q. Did there come a point when this police line that we're
11 looking at, that it became overwhelmed?

12 A. Yes.

13 Q. What do you remember about that happening?

14 A. I was probably -- probably all the way to the right when
15 this happened.

16 Q. Can you mark on the screen approximately where you were
17 when this line was overwhelmed?

18 A. Somewhere right here further to the right.

19 Q. Okay.

20 A. Because I remember once the police line broke, I had to
21 retreat a couple of steps. And they got so overwhelmed that
22 we lost completely the line. Some of the officers were
23 being tackled, assaulted.

24 And around that time, that's when a rioter hit my
25 hand. I felt the pain, but yet I didn't think it was that

1 bad, perhaps because of my adrenaline and fear. So I didn't
2 pay too much attention to it until later on when I was
3 inside the tunnel that I noticed my hand was bleeding.

4 MS. BOND: So I'd like to pull up Exhibit 232.10
5 and start it at approximately the one-minute-and-50-second
6 mark.

7 BY MS. BOND:

8 Q. Now, Sergeant, would you watch this two-minute clip as
9 it plays? Then I'm going to ask you at the end if you can
10 identify yourself in this.

11 A. Can you remove the marking, please?

12 Q. Yes, sir. Thank you.

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

15 THE WITNESS: That is me on the right.

16 BY MS. BOND:

17 Q. You said on the --

18 A. Go back. Right there with the round shield. The radio
19 cord is dangling because there was no way for me to retain
20 it after somebody tried to grab it.

21 MS. BOND: So I'd like to play forward for two
22 minutes in this video.

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

25 MS. BOND: Stop it there.

1 BY MS. BOND:

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

3 A. Yes, ma'am.

4 Q. And what are you experiencing in this moment?

5 A. What am I not? Fear.

6 Q. What just happened to you?

7 A. We lost the police line completely, being overwhelmed.
8 You got multiple people, rioters, who are assaulting police
9 officers without regard of whether they have family, whether
10 they're doing their job, simultaneously attacking. So it's
11 not like just one person attacking us. It's hard to focus.
12 It's chaos. And this is just the beginning.

13 Q. Now, can you please circle yourself on the screen right
14 there?

15 A. (Witness complies.)

16 Q. Now, you talked about having a round shield. Is that
17 shield the round shield you talked about earlier?

18 A. Yes, ma'am.

19 Q. Now, did something happen in these few minutes that
20 damaged your shield?

21 A. I believe the -- I didn't know at that time, but the guy
22 in the green jacket on the right, he -- as you can play it
23 out, he used a weapon of opportunity or whatever weapon he
24 has, a rod or a metal or a piece of wood -- I don't know --
25 but he used that and strike -- to strike me. Had I not seen

1 him, he probably would have hit my head or my neck area.
2 Luckily, I did see him coming with the corner of my eye and
3 I turned to my right and I blocked it with my shield, my
4 left hand.

5 At that time, the hit was so hard that he broke
6 the shield and compromised it. I knew it was cracked. But
7 I kept it because I would be worse off hadn't I -- had I
8 disposed of it or let them take it.

9 Q. Now, if this had been a normal day, would you have used
10 a cracked shield?

11 A. Yeah.

12 Q. Yeah? Do cracked shields -- are they as safe as a fully
13 intact shield?

14 A. No, it's not.

15 Q. Why is that?

16 A. I mean, the structure's already compromised. So I would
17 have used it to the best I could, but, you know, any other
18 day I would have just turned it over to property and
19 exchanged it for a new one.

20 Q. So you used that same cracked shield for the rest of the
21 day?

22 A. I kept it the whole time with me that day.

23 Q. Now, after this police line broke down here, what did
24 you do?

25 A. After that, there was a -- I think we were all flanked

1 and cornered into the southwest corner of the stage. The
2 crowd continued to be belligerent and forceful and pushing
3 us back to the point that we lost all ground and we are
4 almost tripping over each other. I know back there behind
5 me there was a frame of a giant sign that they used as a
6 ramming device to push against the officers. And that was
7 in the way of us, in a way, as we were trying to retreat up.

8 So after that, I think I stayed for another two or
9 three minutes in that area. Then I realized that we had no
10 more room to maneuver.

11 And I also overheard, I think, one of the MPD
12 commanders saying -- asking, "Where should we retreat at?"
13 So I began to use hand signals, telling the officers to go
14 back up the stage. I think I did that hand signal about two
15 or three times, like "Go back up." And through my gas mask
16 at I screamed it as well.

17 The rioters, the mob continued to press against
18 the officers, continued to tell us what to do. But because
19 we lost so much ground, there was no other way or no way
20 that we could sustain the fighting, given that we -- the
21 close quarters we were in.

22 I think usually the force wasn't out of the
23 question, given the fact that we were surrounded and we
24 didn't know how many of the thousands of people who were in
25 front of us had weapons. And one strategy that they

1 continued to deploy was, one of them attacked us, then raise
2 the hand; and then somebody from behind them come and attack
3 us and they raise the hand.

4 So as the training that we normally go through,
5 once the person is not a threat to you, you try to
6 deescalate. But it was difficult for me to even entertain
7 the thought of using lethal force because even though it was
8 just violence in some situations, I knew that there was a
9 lot of people that were probably not doing the violence.
10 And if I missed, then that would be a problem for me.

11 I told them to go up. But there was no device. I
12 didn't have a device on me. I'm screaming through the gas
13 mask, but I don't know if they heard me.

14 Q. Were you also using hand signals?

15 A. Hand signals.

16 THE COURT: Why would it be a problem for you if
17 you missed?

18 THE WITNESS: Given the -- I guess you could say
19 that, being conscious about the police brutality, the
20 demonstrations, stuff like that that was happening since the
21 summer of 2020. I'm not that type of person that would
22 unjustifiably use police force on somebody for no reason.
23 So that was, I guess, in the back of my mind.

24 I don't know if that made any difference in my
25 justification of not to use it. I know -- I knew I was

1 justified. I just didn't think that -- well, we didn't know
2 that -- how many of those people in the crowd were armed.
3 And my fear was if I deployed my -- if I used lethal force,
4 would they respond in kind and therefore create a bloodbath,
5 given that we were outnumbered?

6 I don't think that was a feasible solution for our
7 problem at that time.

8 THE COURT: Understood.

9 BY MS. BOND:

10 Q. So you said you gave hand signals. Was that to send
11 officers up to the upper level?

12 A. Yes, ma'am.

13 Q. Did you eventually follow suit?

14 A. About a minute or two. Yes. We all -- all the officers
15 began to corral through that entrance. And some of us were
16 pushing each other, kind of like panicking a little bit.

17 Q. When you say "entrance," which entrance are you talking
18 about?

19 A. While they -- the southwest corner of the stage. It had
20 an entrance with a -- I guess an escape route. But that's
21 the door that we had. It's mainly there for escaping and
22 coming down the stage.

23 On that particular staircase, normally one person
24 fit in. But we were using, like, two at a time, two
25 officers. And some of the officers behind me began to push.

1 I guess they were trying -- they were fearful not to get
2 caught up, like being left behind.

3 So inside that staircase, you have a lot of smoke
4 and all the things being thrown up. I think it was either
5 teargas or a fire extinguisher that was deployed to prevent
6 the mob from going up. To an extent, that worked for a few
7 minutes, but then they began to come up.

8 Q. And did you yourself make it to the top of those stairs?

9 A. Once I went to the top, I looked down to see: How can
10 we close that door? I saw an officer from MPD try to close
11 that door. Then I went further toward where there was other
12 officers trying to block the entrance of that stage for the
13 people who were coming up the steps on the south side of
14 that. We call it the House side.

15 They had climbed the walls through the
16 scaffoldings and also through the steps. And there were, I
17 think, one or two officers on that end. And I went -- I see
18 that they had it somewhat handled, so I went back.

19 I think I went -- if my memory serves me right, I
20 think I went down or told the guy trying to close the door,
21 "Leave it; it's not locking. And come back up." And I
22 think he did.

23 Q. And after -- is it fair to say that once you got to that
24 higher level, you could see rioters coming up through
25 multiple different avenues?

1 A. Yeah. At that time, we were surrounded. The only place
2 that we could defend was the Capitol itself inside.

3 Q. So what did you do next to defend the Capitol?

4 A. Before I went in, I noticed that some of the officers
5 were being left behind. So I tried to tell them, "Hey,
6 we're losing ground. There's no way for us to keep it. So
7 go inside." If I remember correctly, I think I was one of
8 the last three people to go back inside --

9 Q. And did --

10 A. -- to the point that I was being left behind myself.
11 And I think there's a video of it. I seen the picture of
12 it, where there's a group of protesters in front of me and
13 then a couple of officers, I guess, waiting for me to go
14 back in, because I was being left behind.

15 Q. So when you say you went inside, what did you go inside
16 of?

17 A. Inside the Capitol through the lower west terrace
18 entrance or as many people call it now the tunnel.

19 Q. And why did you go there specifically?

20 A. I knew we had to defend the location, that entrance.

21 Q. Why was that --

22 A. I didn't know -- at that time, I didn't know that there
23 were other breaches to the Capitol. I did not know that
24 there were other breaches in the Capitol until, like, 5:00
25 or 6:00 p.m. after taking care of another incident.

1 But at that point, I realized that if we had let
2 those people go in through that entrance, there were secure
3 locations there for the members of Congress and Senate in
4 the area. I worked there for 16 years-plus, so it's pretty
5 obvious what was at stake to me.

6 I don't know about anybody else. I can only say
7 what -- I can only attest to what I felt and what I did.

8 Q. What did you think was at stake?

9 A. Well, I had worked the inauguration for George Bush, the
10 second one; for Obama, both of them. For Trump, I didn't do
11 it because I was nursing a right shoulder injury. But
12 nobody ever during those times attacked the Capitol. And I
13 knew back then it was peaceful. The transfer of power of --
14 sorry. The transfer of power is a big event. But normally,
15 under normal circumstances, it was peaceful.

16 Inside, during this process, we have the vice
17 president, the speaker of the House, the Senate *pro tempore*,
18 the nuclear codes along with the vice president with the
19 nuclear football and both the House and the Senate, the
20 senators.

21 So it's a big event and very treacherous to take
22 advantage if you would. And all that was at stake. We had
23 the next three people in line to the presidency along with
24 the nuclear codes; and if anybody would publish them, like
25 they did on some of those desks of the senator when they

1 breached the Capitol, that would have been terribly -- a
2 national security threat to our nation if you look at it.

3 I knew that was happening inside. The vice
4 president's family was inside. I knew he was coming,
5 because I seen the email of his arrival.

6 So all these things are happening. Yet we were
7 getting attacked for -- by our own citizens and putting our
8 national security at risk. And I understood that along with
9 the members. And so they were being hunted and targeted,
10 room by room.

11 Q. Now, when you walked into that tunnel, were the double
12 doors, double glass doors, still intact?

13 A. Yes, ma'am.

14 Q. And what was law enforcement doing inside the tunnel
15 when you went in?

16 A. When I went in, I know the officer who locked the door.
17 I passed. I assumed it was secure. I continued to go past
18 those double doors, past the metal detector all the way
19 behind the podium, which is across the hallway, probably
20 like from here to that desk.

21 And I got behind the podium because the podium has
22 the door, the buttons to lock the door in case he didn't
23 lock it. We lock the door and we stand behind the second
24 set of double doors.

25 Then I just listened for the radio for a few

1 minutes. Then they began to break the door, probably like a
2 couple seconds after it was locked.

3 After that, I overheard -- I think it was Ramey
4 Kyle. I didn't know him at the time, but an MPD officer
5 with the gray trench coat with a George Patton hat on kind
6 of gave me the impression that he was a high-ranking member
7 of Metropolitan Police. So I let him -- I knew he was
8 giving commands. He was saying, "We're not letting these
9 motherfuckers come into the Capitol," along those lines.
10 "We're going to defend the Capitol CDU-style."

11 And I took that as a rallying call to defend the
12 Capitol. I didn't have to do anything other than just be in
13 the front. Once they breached the door, I think they began
14 to request shields to the front.

15 And I immediately --

16 Q. When you say "they," who is "they"?

17 A. Capitol -- I mean, Metropolitan Police officers and the
18 officers who were by the east -- they were by the second set
19 of double doors and near the magnetometer and the x-ray
20 machine.

21 And once I heard that they were calling for
22 shields to the front, I immediately went to the front. And
23 I knew I didn't had to worry about coordinations and tactics
24 behind me because I heard that particular officer saying,
25 "We're not letting these motherfuckers take the Capitol,"

1 along those lines. I don't remember the exact words. But
2 we were determined not to let those people come in through
3 that door. And that's what we did.

4 Q. And how long did you stay on that front line?

5 A. I remember leaving that area about two or three times.
6 I cannot tell you for sure when did I do that.

7 But I do remember the reason why I left. And the
8 reason why I left was two times for calling reinforcements
9 and one to use the bathroom, because I couldn't hold it no
10 more. And Michael Fanone was the person who relieved me.
11 By the time I came back, he was already gone.

12 Q. And when you --

13 A. But I was there almost the entire time.

14 Q. And when you say "the entire time," do you mean all the
15 way until that tunnel was resecured by law enforcement at
16 the end of the day?

17 A. Roughly around that time. I know I left -- I think the
18 last time I was in at forefront was right after the other
19 individual injured my shoulder and then I went to the back.
20 And then I began -- at some point when I was catching my
21 breath, then the other incident happened that required my
22 attention to help coordinate medical assistance for another
23 individual.

24 Q. Now, you mentioned another individual. You've testified
25 in at least one other case. Is that right?

1 A. Yes, ma'am.

2 Q. And you've given a couple of victim impact statements?

3 A. Yes, ma'am.

4 Q. So you're just referring to other Defendants that you
5 have had some contact with?

6 A. Correct. I don't know if you want me to say the name.

7 Q. No.

8 A. But that's fine.

9 Q. It's not necessary.

10 So can you describe in just a couple of sentences
11 what your overall experience in that tunnel was that day?

12 A. It was claustrophobic. It was brutal. We got the mob
13 yelling, screaming, chanting, the fire alarm going off, the
14 sprinklers going off, the pepper spray, the bear spray, the
15 WD-40 spray, the firecrackers being thrown at us, the
16 weapons that they used, flagpoles, the heave-ho, push,
17 movement, back and forth.

18 Q. What's that?

19 A. They were -- originally they were not coordinated
20 tactically, disorganized. At some point they began working
21 in unison and pushing against the officers, the police line,
22 back and forth, to the point of trying to break the police
23 line, to breach the Capitol and continue doing whatever they
24 were trying to achieve.

25 We were hit with guardrails, ladders, cones,

1 speakers from the stage, broken furnitures, broom, frozen
2 cans of soda, along with those many other things that it's
3 hard to describe for me because of the language barrier.

4 But --

5 Q. So I want to focus on just a few specific minutes while
6 you're in the tunnel. I'd like to pull up an exhibit that's
7 already been admitted, 232.18. Sergeant Gonell, as we watch
8 this brief clip, if you see yourself, can you point yourself
9 out in this clip?

10 A. Sure.

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

13 THE WITNESS: I see.

14 MS. BOND: Stop it there.

15 BY MS. BOND:

16 Q. So have you marked on the --

17 A. That's my right hand, bleeding.

18 Q. So you believe that this is you right here?

19 A. I know it's me.

20 Q. How do you know it's you?

21 A. My hand's bleeding.

22 Q. And how --

23 A. That's the same spot where I was defending near Officer
24 Hodges. I didn't know him at that time, but I think this
25 was after they breached the Capitol that we were trying to

1 hold, push all those people out of the room.

2 Q. So you said that that's your hand up against the wall
3 and it's bleeding. Are you holding something there?

4 A. My shield was on the left hand. You cannot see it
5 there, but I know it's me pushing against the wall, trying
6 to, I guess, match the force or the level or intensity of
7 the force that the crowd is using against the police line.

8 Q. Now, do you get any training -- actually, what is your
9 baton made of?

10 A. That one is the collapsible baton. That one is made out
11 of metal and is collapsible. The other one that I had, it
12 was taken from me when I first got to the police line at the
13 bottom. My first interaction with the mob.

14 Q. Do you get any training on how to use that baton?

15 A. Yes.

16 Q. And in the course of your training, how are you taught
17 to use it?

18 THE COURT: Which one are you talking about,
19 ma'am?

20 MS. BOND: The one that he has in his hand.

21 BY MS. BOND:

22 Q. Are the different batons used differently?

23 A. Not necessarily. Well, there is specific training for
24 the PR-24 baton. But this one is almost the same thing. It
25 applies the same red and green areas, which is -- the red

1 areas are the areas where you're not supposed to be
2 targeting and you have to do everything possible to avoid
3 those areas.

4 Now, if they move as you're targeting them, then
5 it's justifiable still. But we don't target the head, the
6 chest, the spine or the groin area.

7 Q. So you're taught not to target those areas when
8 encountering a citizen?

9 A. Correct.

10 Q. And so what areas of the body are you taught to target
11 when encountering a citizen?

12 A. The muscle areas, like the shoulder, the thighs, the
13 lower extremities, but not the groin, not the head, not the
14 chest or the spine.

15 Q. And in this moment while you're out there, did you still
16 have your shield?

17 A. On my left hand. Yes.

18 Q. That was the one that was cracked earlier?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. BOND: Pulling up -- it'll be five exhibits in
22 a row, 301.1, 2, 3, 4 and 5. If you would show Sergeant
23 Gonell each of those in turn.

24 BY MS. BOND:

25 Q. Sergeant, if you see yourself, would you please let us

1 know.

2 A. I already see myself.

3 Q. This is Exhibit 301.1. Sergeant, you say you already
4 see yourself there?

5 A. That is my hand. That is me and that is my shield. So
6 that's my right hand pushing against the wall.

7 Q. And does this moment here correspond to the moment we
8 saw in the previous exhibit with your hand against the wall?

9 A. Correct. You can see also the broken shield, this line
10 right here. Above that line, that's where the shield is
11 broken, the crack is.

12 Q. And --

13 A. That happened earlier at the -- with the other incident
14 that you had mentioned earlier.

15 Q. Thank you.

16 MS. BOND: So the timestamp on this particular
17 video is -- or in this particular still is 16:46. So I'd
18 like to bring up Exhibit 301 and play a portion of that.

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

21 MS. BOND: Let me clear the screen.

22 BY MS. BOND:

23 Q. Sergeant Gonell, I'm going to ask Mr. Clements to play
24 about a two-minute-and-15-minute [sic] period. It'll be
25 from timestamp 16:45. And I'd like to watch it all the way

1 through. And then I'd like you to unpack it for me, what
2 we've just seen here.

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

5 BY MS. BOND:

6 Q. So, Sergeant Gonell, the first thing I want to ask you
7 about is your shield and what you were actually able to see.
8 You testified earlier that you had a face shield on. Is
9 that right?

10 A. Yes, ma'am.

11 Q. And in many of those moments, it seemed like there were
12 various shields in front of you as well. Is that right?

13 A. Mine's still the same, the round shield. I kept it the
14 whole time with me.

15 Q. Could you actually see through all of those layers?

16 A. Yes, ma'am.

17 Q. Were you able to make out facial features at that point?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BOND: Then I would like to bring up
21 Government's Exhibit 301.6.

22 (Whereupon, Government's Exhibit No. 301.6 was
23 published in open court.)

24 BY MS. BOND:

25 Q. Now, this individual right here in the center, do you

1 recognize that person from that day?

2 A. Yes, ma'am.

3 Q. And during this two-minute-and-15-second period that we
4 were just watching, what do you remember her doing?

5 A. Well, before this particular moment, there was another
6 moment that she's at the forefront and she's claiming and
7 yelling and screaming in pain out of lack of oxygen and
8 saying, "I can't breathe." So she's beginning to scream.

9 So in my intent to help her, I raised my hand
10 telling the crowd, "Stop." The reason why I know it's me is
11 because I could see my crooked finger in that video.

12 And my wife is the one who identified me because
13 of that, just a side note.

14 But I tried to help her. And I told her, "You
15 can't come in through here." This is me talking to her as
16 everything happened. "You can't come in. You've got to go
17 back."

18 And I don't know whether she's being identified or
19 not. I hope so. But she moved away. And she -- I thought
20 she was leaving that entrance altogether, the tunnel.

21 And then about ten minutes later, I find her doing
22 the same thing again in front of me on the right side
23 instead of the middle, where she was. And I told her,
24 "Aren't you the same person who was saying, 'I couldn't
25 breathe'?"

1 And she -- instead of saying, "Yes, it was me,"
2 she said, "Keep pushing. Keep pushing." And she said that
3 to the individual that was right next to her. And he did
4 that. He began to push even harder.

5 Q. So to make sure that I understand the timeline that
6 you're talking about, the moment when she's saying "Keep
7 pushing" is the moment that we are seeing here in the video?

8 A. Correct. And then she steps away slightly and the other
9 persons moves in and takes her place.

10 Q. So let's talk about that other person.

11 MS. BOND: If you would pull up Exhibit 301.7.

12 THE WITNESS: By that time, both my hands were
13 bleeding from the pushing against the rioter. How do I know
14 that's my hands bleeding? Because I looked down and I saw
15 the blood on the inside of my shield. And prior to that,
16 when the fire sprinklers were deployed and I had my hand
17 raised like this, it was burning my skin.

18 BY MS. BOND:

19 Q. How did your hand feel at that time?

20 A. Burning. It was burning.

21 Q. Did you feel anything else?

22 A. Pain. It was very painful. But I knew I couldn't stop
23 to take care of myself. Again, I knew what was at stake,
24 and I was willing to die that day. Not ideal, but I knew I
25 have to. And that was -- that possibility of me doing that

1 and not surviving it was real.

2 Q. So you spoke about the woman just a moment ago. Now, is
3 this the hat of that same woman that you spoke about just a
4 second ago?

5 A. Yes, ma'am.

6 Q. Okay. So looking -- you talked about her telling an
7 individual to keep pushing. Is that this individual here?

8 A. Yes, ma'am.

9 Q. So what do you remember about this individual?

10 A. Once she removed herself slightly, then he steps in with
11 a shield just like that one that you have here --

12 Q. For the record, that would be Exhibit 801.

13 A. -- and he had it in a way kind of like slanted,
14 sideways, diagonal.

15 And he began to press against my face shield, my
16 helmet, to the point of lifting the face shield and exposing
17 my head. I could see -- feel the chemical interacting,
18 pepper spray and things like that that was in the air,
19 interacting with my sweat. It was burning my head, too,
20 whenever he was doing that, pressing against me --

21 Q. And --

22 A. -- to the point that I could hardly see. I was trying
23 to keep my head straight to see what I was doing or how to
24 do anything possible to help myself from leaving or
25 preventing him from continuing doing that.

1 At one point, I had to -- I had to pretty much
2 stop altogether and say, "What the fuck? Why is this guy
3 continuing?" There's nothing I could do. He got two
4 shields. One he's holding. I couldn't do anything to, I
5 guess, hit him. And that was getting frustrating to me.

6 Like at one point, I kind of give up for a second
7 and I reorient myself and I tried a different way. I was
8 able to use the baton that I had in my right hand and I was
9 able to hit him around the ribs or the stomach.

10 And that's when he called me pussy to the point,
11 "That's all you got to do?" or "That's all you got,"
12 something along lines. And he continued to press against me
13 to the point that he cornered me literally against the wall,
14 against the door frame and the shield, pushing me against --
15 with the shield that he had stolen from the officers.

16 Q. So as he's pushing on you with the shield, where on your
17 body was he making contact?

18 A. My chest, my face and my head.

19 Q. And when you say your face, was --

20 A. With the gas mask on.

21 Q. Okay.

22 A. So luckily I had the gas mask on that prevented him from
23 injuring me in my face.

24 Q. And how about -- did he ever make contact with you --
25 you said your head. But do you mean your skull or your

1 helmet?

2 A. The helmet. The helmet.

3 And another thing that he was trying to do, and
4 you can see on the video that you play, is that he's trying
5 to grab my baton multiple times, not just once. Again, I'm
6 in full uniform. There's no mistaking about who I am and
7 what I'm doing and what is the position and responsibility
8 that I'm doing as I try to do my job.

9 Q. And what position was your head in as you're being
10 pressed against?

11 A. Multiple. Different. Like when he first started
12 pushing me, my head was kind of like slanted to the side and
13 he was pushing against it this way. Because the way the
14 helmet and face shield is, it's kind of like diagonal. So I
15 had to -- in order -- when he was pressing against my
16 shield, face shield, I had to turn around in order for me to
17 keep an eye on him. Otherwise, I wouldn't be able to look
18 and try to address the threats that we were facing.

19 Q. And --

20 A. The other -- in order for me to get out of that
21 situation, I kind of like duck a little bit and push his
22 shield along with the other officer behind me. He tried to
23 help assist me because he knew I was struggling. So he also
24 helped me push the shield up. That way, I could reorient
25 myself and put it another way.

1 Q. Why do you need to reorient yourself?

2 A. I was getting pushed -- you know, I'm asthmatic, myself,
3 due to my service in Iraq. And that was creating issues for
4 me to breathe when he was pushing me against the wall as
5 well.

6 MS. BOND: I'd like to bring up -- I believe it's
7 going to be Exhibit 301.8. Actually, I think it may be
8 301.9.

9 THE WITNESS: You can see the blood on the
10 previous one, too, inside, on the shield.

11 MS. BOND: Can you just move through -- I
12 apologize -- 301.11.

13 (Whereupon, segments of Government's Exhibit No.
14 301.9 were published in open court.)

15 THE WITNESS: Right there, you can see the -- me
16 trying to get the shield off my face and you can see the --
17 there you go. That's even better.

18 BY MS. BOND:

19 Q. So this is 301.9. But tell me what you were going to
20 say a moment ago.

21 A. There, I think that was when I started struggling with
22 trying to keep up my eyes and my face straight to address
23 the crowd, the mob. And he was forcing me to turn my head
24 to the right -- to the left because of the force that he was
25 applying to my face and my neck area.

1 Q. And for the record, that is timestamp 17:38.

2 MS. BOND: Can we move to 301.10.

3 (Whereupon, segments of Government's Exhibit No.
4 301.10 were published in open court.)

5 BY MS. BOND:

6 Q. Can you describe to me what is happening here in this
7 moment at timestamp 18 minutes?

8 A. If I remember correctly, that's when I tried to strike
9 him to make him stop whatever actions he was doing, pressing
10 against my head. And you could see my helmet shield lift up
11 because he continued to apply the force against me.

12 Probably around this time, that's when I strike him on the
13 ribs and stomach area.

14 Q. And based on your training, where were you aiming for?

15 A. I'm sorry?

16 Q. Based on your training with the baton, where were you
17 aiming for?

18 A. The green area.

19 Q. Thank you.

20 A. You know, the ribs is not the red area. So...

21 Q. And moving to 301.11, timestamp 18:01, what was going on
22 in this moment?

23 A. The same.

24 MS. BOND: 301.12.

25 (Whereupon, segments of Government's Exhibit No.

1 301.12 were published in open court.)

2 THE WITNESS: Can you go back, please? My helmet
3 face shield is completely over my head. You could see it
4 lift up, exposing. Luckily, I had my gas mask on, and that
5 helped me protect myself.

6 Q. So moving to 301.12, timestamp 18:06, what's happening
7 here in this moment?

8 A. That is the moment where I had to duck a little bit to
9 try to relieve the pressure that it was -- that I was
10 sustaining on my helmet and kind of like avoiding like a
11 neck injury, pretty much.

12 MS. BOND: And 301.13, timestamp 18:08.

13 (Whereupon, segments of Government's Exhibit No.
14 301.13 were published in open court.)

15 BY MS. BOND:

16 Q. Now, this individual again, what do you see in his hand
17 there?

18 A. A stolen police baton.

19 Q. Do you know where that came from?

20 A. No, ma'am.

21 Q. And do you recall what was happening to you in this
22 particular moment?

23 A. At that time, he was striking me with that and also
24 trying to grab my -- I think before this moment he was
25 trying to grab my baton. I don't know where he got it. But

1 he does make gestures towards me on the video trying to
2 either strike me or grab me.

3 Q. Now, when you say strike you, what was he trying to
4 strike you with?

5 A. The shield, the hand, plain hand or with the baton
6 itself.

7 Q. And --

8 A. At that time, there was multiple things happening at the
9 same time and it's hard to recall some of the details.

10 MS. BOND: Moving on to 301.14, which is timestamp
11 18:36.

12 (Whereupon, segments of Government's Exhibit No.
13 301.14 were published in open court.)

14 BY MS. BOND:

15 Q. Do you recall what was happening at this point?

16 A. Yes, ma'am. That's when he began to push against me,
17 press me against the wall. As I said, I think this is one
18 of the moments that I pretty much gave up for a few seconds.
19 I can't believe this guy is continuing doing whatever he's
20 doing.

21 MS. BOND: And finally, 301.15. And that is
22 timestamp 18:50.

23 (Whereupon, segments of Government's Exhibit No.
24 301.15 were published in open court.)

25 BY MS. BOND:

1 Q. What do you see this individual doing with his arm right
2 here?

3 A. Well, he's holding -- using the door frame that I was
4 pressed against or cornered against the wall, against the
5 wall, the frame, and then applying his body weight or
6 pressure towards me.

7 Q. So by holding the door frame, did that change his
8 ability to put weight against you?

9 A. I'm -- say that again.

10 Q. By holding onto that door frame, did that change his
11 ability to interact or put weight against you in --

12 A. At that point, he pressed even harder to the point that
13 I was having -- began to have issues. And luckily, I think
14 the officer behind me or I made an effort and got out of it
15 by pushing against him, trying to match his force.

16 MS. BOND: So going back to the main exhibit of
17 301, I'd like to move it forward to timestamp 18:33.

18 Mr. Clements, if you'd be willing to put it in slow motion
19 from 18:33 to 18:44.

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

22 BY MS. BOND:

23 Q. So, Sergeant Gonell, what were you just experiencing
24 during those few seconds?

25 A. Frustration, among other things.

1 Q. What happened with that shield?

2 A. The shield was completely being used against me to the
3 point that there's hardly anything I could do. You can see
4 me shaking my head right there, like, "What the fuck?"

5 Q. And where did that shield make contact with your body?

6 A. My face, my chest.

7 Q. How did it feel when it hit your face?

8 A. Angry.

9 Q. Pain-wise, did you feel any pain?

10 A. Yeah.

11 Q. How would you describe that pain on your face?

12 A. It was -- it was pain, but not -- it was bearable. And
13 even if it wasn't, I knew I had to still be there. I wanted
14 to be there to do my job. Any other day, I would have gone
15 home on any of those interactions that I had that day.

16 But this was not peaceful. It was not a tour.
17 And again, I knew had we let those people come in through
18 there it would have been a bloodbath, not only to ourselves,
19 but to the members themselves.

20 Q. You also mentioned that it hit your chest as well. Did
21 you experience any pain in your chest?

22 A. I don't remember.

23 Q. Okay.

24 A. Honestly, I don't.

25 Q. Now, you talked about a few of the things that you

1 remember this individual saying. Other than what you've
2 already testified to, do you remember anything else that he
3 said?

4 A. No, ma'am.

5 MS. BOND: Now, I'd like to pull up Exhibit 414.
6 It's already been admitted. I would like to play timestamp
7 five minutes and 20 seconds through five minutes and 45
8 seconds.

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

11 BY MS. BOND:

12 Q. Now, Sergeant Gonell, do those 20 seconds that we just
13 watched overlap to some degree with the clip we saw earlier?

14 A. Can you play it again? I'm sorry. I wasn't sure what I
15 was looking for.

16 Q. Sure. I apologize. If you see yourself or know you're
17 in a particular spot, please let us know.

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

20 BY MS. BOND:

21 Q. Does that ring a bell for you at all?

22 A. It does only show part of it, what happened. So I think
23 there's more to it.

24 Q. Sure. But so what -- the 20 seconds we just watched
25 right now, does that partly overlap with the two minutes we

1 just saw a little bit ago?

2 A. When you say "overlap," I'm sorry. I'm having --

3 Q. So the Exhibit 301, where you identified yourself and
4 talked about what happened, does that correspond to the time
5 period that we're just watching here in Exhibit 414?

6 A. Yes, ma'am.

7 Q. Thank you.

8 Moving on, how long did you stay in the tunnel
9 that day?

10 A. Roughly the entire time since the breach began. From
11 the moment that they breached that first set of double doors
12 all the way probably like around 4:30, 5:00, if I -- if my
13 memory serves me right.

14 Q. Was there ever a point where you needed to provide
15 medical assistance to one of the rioters?

16 A. In the tunnel?

17 Q. Yes.

18 A. Yes.

19 Q. And so just very briefly, describe just the assistance
20 that you provided.

21 A. There was an individual that was pulled to the back of
22 the police line. She needed -- she was unresponsive, so she
23 needed medical aid. I told -- I helped the officers
24 coordinate resuscitations, CPR, to the point that -- until
25 we waited for D.C. Fire. Initially, we were told that they

1 would not come down to our area because of the violence.

2 So we happened to come across one of the FBI
3 agents that was in military fatigue. He began to do -- put
4 a medical device on her, trying to help her, jump-start her,
5 AED. He jump-start her heart. But she was not responding.
6 Any other day, had we not been dealing with anything else,
7 more resources who had been called for and more expedient
8 possibly would have happened.

9 Q. Do you know what happened to that woman that day?

10 A. She passed away as we tried to give her CPR. She was
11 not responding at all.

12 THE COURT REPORTER: I'm sorry, sir. Just for the
13 record, did I hear correctly that the FBI agent was in
14 military fatigues?

15 THE WITNESS: Yes, ma'am. I believe it was an FBI
16 agent, from what I've been told. First I thought it was
17 either a National Guard or an Air Force. But I was told
18 later on it was an FBI agent.

19 BY MS. BOND:

20 Q. Were you injured from that day?

21 A. I'm sorry?

22 Q. Were you injured from that day?

23 A. Yes, ma'am.

24 Q. Can you just very briefly describe your injuries?

25 A. I had multiple injuries. The most severe is my right

1 hand. I have a cyst on my right thumb. Both hands were
2 bleeding. I sustained a foot injury. Then later on I
3 aggravated it as I continued to work for almost 15 days
4 after. My left shoulder, I sustained a labrum tear, rotator
5 cuff and another injury which I don't remember the term,
6 medical term.

7 So it's in total, plus the mental trauma, you're
8 talking about roughly about ten, 11 injuries all together,
9 with lacerations, contusions and injuries.

10 Q. So are you -- have you been able to return to the same
11 duties?

12 A. No, ma'am. The collateral duties that I had at that
13 time, which was the mountain bike unit and the CDU, I'm not
14 able to perform those. I'm in the process of leaving the
15 department under medical retirement because of those
16 injuries.

17 In the process of my recovery, I took the
18 lieutenant test. I passed it. And I don't know. Instead
19 of getting ready to take that higher position, now I have to
20 begin to do my résumé, which is something I have not done
21 since 2003. So I'm not able to do my police functions.

22 One of the things that -- and the reason why is
23 because, being injured, if I were to go back in uniform and
24 there is another scuffle, another fight, another struggle or
25 trying to arrest somebody, I'll be pretty much fighting or

1 trying to assist my fellow officers one hand tied. The last
2 thing I want to do is get him to worry about what I'm doing
3 or not doing.

4 And that is a hard decision, but I know it's the
5 right decision for me and for the -- so I don't put the
6 safety of my fellow officers in jeopardy, if that ever comes
7 into play.

8 I know that as a civilian I could avoid things.
9 But as a police officer, I know I have to -- there are
10 moments that you have to make a split-second decision; and
11 if I'm not able to do those decisions, then I'll put my life
12 and the other officers at risk.

13 MS. BOND: I have no further questions. Thank you
14 so much for your time, Sergeant Gonell.

15 THE WITNESS: You're welcome.

16 THE COURT: Why don't we take a ten-minute break.

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

19 THE WITNESS: Understood, sir.

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

22 THE COURT: Sergeant Gonell, you may retake the
23 stand.

24 THE WITNESS: (Complies.)

25 THE COURT: Ms. Cobb.

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MS. COBB: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. COBB:

Q. Good morning, Sergeant Gonell.

A. Good morning, ma'am.

Q. My name's Lauren Cobb. I represent Tristan Chandler. I have a few questions for you.

A. Okay.

Q. If at any point you can't hear me or understand me, please let me know.

A. Got it.

Q. Since January 6th, 2021, how many times have you testified under oath?

A. This will be the third one, if I remember.

Q. And have each of the two prior times been in criminal cases similar to the one we're here for today?

A. Yes, ma'am.

Q. Okay. Before January 6th, in your capacity as a police officer, approximately how many times had you testified under oath?

A. Zero.

Q. You had never testified in a criminal case?

A. No, ma'am. Only in training, if that counts.

Q. I guess so.

I'm going to tell you the truth: I'm a little bit

1 shocked by that number, and so that's why I'm going to ask
2 the next question: Approximately how many arrests did you
3 make during your career prior to January 6th?

4 A. Zero.

5 Q. Okay. And again, I'm a little bit shocked by that
6 number. I truly did not know. Is that something that's
7 common for United States Capitol Police, to never make an
8 arrest in 16 years?

9 A. It's not common. I mean, I know multiple people who
10 haven't had their first arrest. I mean, the Capitol itself
11 is fairly -- not fairly -- it's a secure location. So you
12 hardly have any interactions, or the interactions that you
13 have most of the time are positive. And the big events,
14 where you have either a shooting or things like that, not
15 everybody gets involved with it.

16 I guess I was fortunate enough during my career as
17 an officer and later on as a supervisor that I had not been
18 able to, not because of -- that there was no reason, but
19 just to, like, get the experience of other officers who just
20 are beginning their career.

21 Q. I --

22 A. So I'm seeing plenty of things throughout my life, both
23 overseas and here, that somebody who's beginning to -- their
24 career that, you know, that would be positive and
25 reinforcement and have confidence in their capability of

1 doing things. But it's not because I don't desire or I
2 guess I didn't have the opportunity to.

3 Q. I understand. I'm not trying to imply that you were
4 shirking away from arrests.

5 A. That's fine.

6 Q. That's not what I was trying to imply. I just truly
7 wanted to know the number.

8 I've got another sort of before-and-after January
9 6th question for you: Before January 6th, how many
10 interviews or news appearances did you give that were
11 related to your position as a Capitol Police officer?

12 A. I had given multiple interviews in relationship of me
13 trying to hold people accountable for --

14 Q. No, no. Before January 6th.

15 A. Well, before January 6th, high school, in college. When
16 I came back from the Army, there was a news station at the
17 base when -- that interviewed me, probably either Univision
18 or Telemundo, back in 2005 when I came back from Iraq. And
19 that's it.

20 Q. I'm sorry I interrupted you a second go.

21 That was my next question, I think, that you were
22 trying to answer, which was: How many interviews or
23 appearances have you done since January 6th?

24 A. Multiple interviews; like I said, in relationship of me
25 trying to voice and let people, the American people, know

1 what happened to me. It was not a tour. It was not a
2 political discourse or anything like that. So for me
3 raising my voice, I have done that with the approval of
4 United States Capitol. It's been vetted. It's been -- as
5 long as I stay within certain guidelines, I'm not restrained
6 to not to speak up about what happened to me.

7 As a matter of fact, it helped me with my healing,
8 to speak about it and holding people accountable. If that
9 means exposing myself to ridicule or being berated, that's
10 on them. I know what I did was right and I continue to
11 voice my experience because I know what happened to me was
12 horrific, and people need to be held accountable for it.

13 Q. Understood. And I'm certainly not here to berate you or
14 make fun of you in any way. I just wanted to know the
15 number.

16 And so you testified that you've done multiple.
17 Do you have a number, I guess, a specific number for how
18 many?

19 A. Let's say over 40 and a couple op-eds. Two of them have
20 been paid for. And that was -- that has been gone through
21 the department's approval as well.

22 Q. So over 40 appearances. And then you've written several
23 op-eds that you have been compensated for?

24 A. Let's say a thousand dollars, compared to the suffering
25 that I had sustained and the injuries. I guess people who

1 say that I'm taking advantage or trying to make some gains,
2 I don't think it's what I went through is enough or that I'm
3 trying to gain for. If I did wanted to make any gain for
4 it, I would just set up a GoFundMe account and I wouldn't be
5 in the situation where I am.

6 Q. Sergeant Gonell, I know we don't know each other.
7 Right? We've never met before today, right?

8 A. Uh-huh.

9 THE COURT REPORTER: Is that yes?

10 THE WITNESS: Yes, ma'am.

11 BY MS. COBB:

12 Q. I am just asking questions about facts. I'm not trying
13 to imply --

14 A. No, no, no. I'm not taking anything personally. I'm
15 just elaborating on my response to you.

16 Q. I understand. But I just want you to know, I'm not
17 trying to imply that you're a money grubber or whatever it
18 is that you think I might be trying to imply. I'm just -- I
19 just want the facts of your participation, obviously, on
20 January 6th and then what has happened since. I think
21 they're important to the case. So that's why I'm asking
22 these questions.

23 A. Okay. That's fine.

24 Q. Okay.

25 A. Again, I am -- my voice, I speak for a lot of people who

1 were on that day. And coming forward to speak about these
2 things, the trauma, the events of January 6th is not for
3 everybody. Otherwise, all the other officers, including the
4 leadership who had done it already. And if you could look
5 at some of the members themselves and the senators, they
6 went through this whole thing and they were running scared
7 that day and they look the other way. So I'm doing
8 everything possible for me to raise that voice --

9 Q. I understand.

10 A. -- and hold people accountable regardless who they were
11 and how involved they were on that day.

12 Q. I understand. I don't want to interrupt you or be rude,
13 but I would ask that you let me ask the question and then
14 respond to that question. Then I'll ask another one.

15 A. I apologize.

16 Q. It's totally okay. Totally fine.

17 You said during your testimony that you had not
18 been very active on social media before January 6th. I just
19 this morning pulled up your Twitter page, and that is no
20 longer the case. Is that fair to say?

21 A. To raise my voice, yes. That's correct.

22 Q. Yes. So since January 6th, you've become very active on
23 social media?

24 A. Depending on the topics, yes.

25 Q. And I think it's fair to say particularly on topics

1 related to January 6th and politics. Is that fair to say?

2 A. Yes, ma'am.

3 Q. Okay. And you actually, I think, are almost sort of
4 anticipating some of my next questions, because you
5 mentioned a second ago that there are not many other Capitol
6 Police officers or Metropolitan Police officers who have
7 been as outspoken as you are.

8 A. Correct.

9 Q. Correct.

10 And let's go -- there's one thing we haven't
11 talked about besides the articles and the news appearances
12 and the social media. But you're actually also writing a
13 book right now about January 6th. Is that correct?

14 A. Correct.

15 Q. Okay. And are you being paid to write that book?

16 A. As of right now, I don't have a contract. But in
17 principle, I do.

18 Q. What does that mean?

19 A. I had not signed a piece of paper saying that I am
20 responsible to provide a book at a certain timing in the
21 future. So I don't have a signed print copy of it by me.

22 One of the things that perhaps the reason why
23 other officers are not being vocal about it is because of
24 they see how us four, the four officers who testified at
25 Congress and including common areas, how people demonize

1 them and the way they were being treated, as if we were
2 faking it, as if we were not there on January 6th, as if
3 what happened to us was never happened.

4 And it did happen to me. It happened to the
5 officers. It happened. It's traumatic. And if I could
6 talk to the American people --

7 Q. I'm going to ask --

8 A. -- and use my platform, it's helpful for me, for my
9 healing.

10 Q. Let me stop you right there.

11 So today is the day to talk about the case of the
12 United States versus Patrick McCaughey and his other
13 Co-Defendants. So it's not the day, unfortunately, to tell
14 the people of the United States what you want to tell them.
15 And I would ask again that you just answer my questions,
16 please. And, you know, I didn't ask -- I did not ask you
17 why you're writing the book; I just wanted to know if you
18 are. I want to know if you're getting paid.

19 A. Again, I apologize.

20 Q. That's okay.

21 A. Just making clarifications, because I know these are
22 questions that are alluded or insinuated; and to me, it's
23 unfair because if that happened to you or to your client, I
24 would believe him. But then again, that's --

25 Q. I understand. And I understand that this is a strange

1 process, I think, particularly when you've only done it a
2 few times.

3 Now, you have an agreement in principle. And so
4 is there an amount of money that you expect to be paid for
5 the book?

6 A. Yes, ma'am.

7 Q. And what is that amount?

8 A. Over 30.

9 Q. Over 30?

10 A. 30 grands. Yeah.

11 Q. Was that --

12 A. With the cowriter and the editor. So I'll probably get
13 less than \$10,000. I don't know the details yet.

14 Q. Okay. I'm sorry. I don't think I heard you correctly.
15 You said over 30 grand?

16 A. Yes, ma'am.

17 Q. Okay. But you split that with --

18 A. The editors, the ghostwriter. So again, I don't have
19 the details for me to tell you and give you an accurate
20 description of what would be, if anything, I would be
21 gaining out of my whole traumatic details of that day.

22 Q. That's okay. That makes sense.

23 As far as you know, are there any other Metro
24 police or Capitol police who are working on books about
25 their experiences?

1 A. To my knowledge, there are other officers, and I talked
2 to them about their details. As soon as the -- I don't
3 think there's a process, a mechanism, put in place by
4 Capitol Police to prevent that from happening. If they did,
5 they would have told me already.

6 Q. All right.

7 A. But then again, I don't know who they are and I don't
8 know their circumstances or their experience. All I know,
9 all I can do is tell you what happened to me and that's it.

10 Q. Understood. And truly, I don't know the answer either.
11 You are the only witness that I've come into contact with in
12 this case who's writing a book. But I don't know if other
13 people are writing them or not. That's why I asked the
14 question.

15 A. People have their own --

16 THE COURT: Sir, there's not a question pending,
17 actually.

18 MS. COBB: Thank you.

19 THE WITNESS: Thank you.

20 BY MS. COBB:

21 Q. I want to ask you about something you said in your
22 direct examination now.

23 You talked about when you first got into the
24 tunnel that there was a man in a trench coat who -- type
25 coat who you believe was a high-ranking MPD officer who was

1 telling the other MPD officers and then the Capitol Police
2 officers who were there that "We are going to defend the
3 Capitol."

4 Is that a fair paraphrase of what you testified
5 to?

6 A. Close enough.

7 Q. Okay. I want to ask you, though, about something that
8 you told the FBI after January 6th. Not in that moment, but
9 after. And I'm going to paraphrase, so you will have the
10 opportunity to clarify if you need to.

11 A. Okay. Can I see the text instead of -- that way, I can
12 read along.

13 Q. I don't have the text. So I don't have it.

14 Is it true that -- again, this is a paraphrase --
15 that you told the FBI that you felt like if you or the other
16 Capitol Police officers had turned to leave that the Metro
17 Police officers would have left? And I think the
18 implication is maybe that you felt like you were more
19 invested in protecting the Capitol that day. Is that fair?

20 A. No, ma'am. The context of -- I don't know if it is
21 being described as -- properly.

22 Q. Okay.

23 A. What I said was, I told the FBI that I felt, even though
24 I knew that that commander had said that, that we gonna
25 defend the Capitol old CDU-style and we gonna defend the

1 fucking Capitol Building, they're not taking over, that I
2 felt, because I look back and I didn't see -- at one point,
3 I looked back, left and right, and I did not see other
4 Capitol Police officers. Maybe they were behind me. I did
5 not see them. But the uniform that I see, that I saw on
6 that particular moment, were the bright black and yellow
7 florescent, the bike uniform that MPD officers were wearing.

8 And to me, that particular moment, I felt like if
9 I had left that area, what was there to say to them, Well,
10 Capitol Police is not here. Why should we defend the
11 Capitol?

12 So in order for me to not give that impression or
13 have them even consider that, what I just thought about,
14 that I was gonna stay there. And I did stay there for the
15 long time until other officers come in.

16 Now, that does not mean that they were letting
17 people in or that they would not defend the Capitol or that
18 there were no other officers from Capitol Police there
19 because, yes, some of them, they left, but they left to
20 other areas where multiple breaches were happening.

21 Me personally, I did not know that there were
22 other breaches in the Capitol when I was there in the
23 tunnel. And that's why I made it a conscious decision to
24 remain there the whole time and defend the Capitol to the
25 point of sustaining multiple injuries and risking my life

1 being dragged through the crowd by another Defendant and
2 also getting crushed just like Hodges was getting --
3 happening to him, because I was right next to him, one
4 officer behind him at that time.

5 All I could hear was his scream and I couldn't do
6 anything about it because my hands were crisscrossed and not
7 even to the point of reaching for my gun or anything like
8 that. I was like this, crisscrossed. And all I could do is
9 look at the time: 3:11, around that time, 3:15. That's
10 when I saw that on my watch, when messages were coming from
11 my family frantically calling me and texting me, trying to
12 find out whether I was alive or not. And that was scary.
13 My family was from another country watching what was
14 happening in the United States here, in the Capitol, and our
15 own citizens attacking us. And in one of them was your
16 Defendant.

17 THE COURT: Sir, I think we've sort of strayed
18 beyond the question.

19 Do you have another question, Ms. Cobb?

20 MS. COBB: I do. I do.

21 BY MS. COBB:

22 Q. I just want to be as respectful as I can and to ask you
23 please to let me ask the question --

24 A. I'll try to keep it short.

25 Q. Yes. I understand that you have a lot of things you

1 want to say. But we have to keep it within the confines of
2 this case.

3 THE WITNESS: I apologize, Judge.

4 BY MS. COBB:

5 Q. Do you recall testifying in the case of Mr. Fitzsimons
6 about a week or two ago?

7 A. Yes.

8 Q. Do you recall in that case agreeing that anyone who
9 breached the perimeter of the Capitol grounds should be
10 charged with a coup and prosecuted to the fullest extent of
11 the law?

12 A. My statement was that if they breached the Capitol or
13 Capitol grounds, the Capitol grounds were closed.

14 Q. Right.

15 A. Capitol grounds were closed. They had signs. They
16 had --

17 Q. No, no, no. I'm not trying to say whether they were
18 closed or they weren't closed. I just want to know if you
19 said that anyone who breached the Capitol grounds should be
20 charged with a coup and prosecuted to the fullest extent of
21 the law.

22 A. If they assaulted a police officer, if they breached the
23 Capitol grounds when the Capitol grounds were closed, the
24 building was closed, the only people who were allowed on
25 Capitol grounds on that day were police officers, staffers

1 that work for the senators and the congressmen --

2 THE COURT: Sir, that was a "yes" or "no"
3 question. I'm going to ask you to answer "yes" or "no."
4 And the Government can certainly ask on redirect, have you
5 explain further.

6 THE WITNESS: Yes.

7 BY MS. COBB:

8 Q. So yes, you did say that in the trial of Mr. Fitzsimons?

9 A. Yes, ma'am.

10 Q. Okay. There's something I actually forgot to ask you
11 about when we were talking about the things that are
12 different in your life since January 6th, the news media,
13 the book, the Twitter posts. There's one more thing that I
14 wanted to ask you about. And I've read this and so I'm --
15 you can tell me if it's true or not.

16 Isn't it true or do you agree that you are also in
17 the process or investigating bringing civil suit against
18 people you came into contact with on January 6th?

19 A. I had considered it, but I had not make a decision.

20 Q. So that would be fair, then, to say you're investigating
21 or considering bringing civil suit?

22 A. You mean myself investigating them or -- can you
23 rephrase it, please?

24 Q. Sure.

25 Let's -- this is an easy one: Do you have an

1 attorney who is investigating or helping you decide whether
2 you will bring civil suits against people you came into
3 contact with on January 6th?

4 A. I had counsel, two of them, and we had talk about
5 potentially who can we go and press charges. We had not
6 come to any determinations, given all the facts that are
7 coming out, including from the former president down. So at
8 this point, I don't have a specific member of the rioters or
9 anybody who orchestrated it, the insurrection.

10 Q. So understood. But I just want to know, is this
11 something generally you are considering?

12 THE COURT: I think he's answered that.

13 THE WITNESS: Yeah. I answered.

14 BY MS. COBB:

15 Q. And I want to clarify one more thing, which is by "civil
16 suit," you mean asking a judge to order that person to pay
17 you money. Is that correct?

18 A. Could be jail time, too, for the injuries I sustained.
19 So it's not specifically about money. If that means holding
20 people accountable, whatever charges or -- the legal court
21 system awards, then that's -- I'll take that. But it's not
22 my goal to go and sue them for money. What I want is
23 accountability. And if people don't see it that way, then
24 that's on them. I'm sure if they were themselves the one
25 being injured and all that, they would want people to be

1 held accountable.

2 Q. I'm not trying to make an implication as to what your
3 motivations are. I'm just asking if a civil suit is a
4 lawsuit where you ask a judge to order someone to pay you
5 money.

6 A. Again, I had considered it. I had not considered who am
7 I gonna press charges against because there were multiple
8 people who injured me that day, that assaulted me, that hit
9 me, that pushed me, that -- so I cannot -- at this time, I
10 don't know. I don't know who, if that's what -- answers
11 your question.

12 Q. Do you believe that the charges that have been brought
13 so far in the January 6th cases are too lenient?

14 A. I do.

15 Q. Do you believe that the sentences that have been handed
16 down so far are too lenient?

17 A. For the most part, yes, because some of them, they are
18 getting picketing and parading. We did not have a parade on
19 January 6th at the Capitol. The Capitol was closed. And
20 it's not fair to the officer who sustained multiple
21 injuries. I have my classmates and myself who still remain
22 injured from that horrific day almost two years later. And
23 for picketing and parade, 40 days in jail or home arrest?
24 So I don't think that constitute a deterrence from this
25 happening again.

1 Q. So --

2 A. Next time, hopefully, there's an officer -- many
3 officers who stand the ground and protect the Capitol.

4 Q. Your opinion, then, is that the sentence imposed in a
5 January 6th case should be the highest sentence allowed
6 under the law?

7 A. That you award or are you asking me?

8 Q. I'm asking you.

9 A. If the charges are merit and the judge consider those,
10 so be it. But we did not have parade or --

11 Q. No, no, no.

12 A. -- tour on January 6th.

13 Q. Let me ask the question one more time.

14 Is it your opinion that if someone is convicted in
15 a January 6th case, they should receive the highest sentence
16 possible under the law?

17 A. If they committed a felony, if they breached the Capitol
18 grounds, they should be a deterrent for people from --

19 Q. It's just a "yes" or "no."

20 A. Okay. You didn't answer -- ask that. But yeah. I
21 think it is possible if they're -- yes.

22 Q. So yes, they should receive the highest sentence
23 possible?

24 A. Not of 30 days of home arrest. Yes. Or -- yes.

25 Q. Okay. Let's do this: Let's switch gears for a minute,

1 and I want to ask you specific questions about some of the
2 videos we've already watched.

3 MS. COBB: Mr. Clements, will you please play what
4 has already been admitted as Government's Exhibit 301.
5 Actually, if you'll just pull it up. Let's not play it yet
6 because I've got a few questions for -- a few more questions
7 for Sergeant Gonell.

8 BY MS. COBB:

9 Q. Do you agree, Sergeant Gonell, that my client,
10 Mr. Stevens, the one that you've been testifying about, his
11 use of the shield in that tunnel frustrated you because it
12 kept you from being able to strike or move your arms the way
13 that you wanted to?

14 A. That is correct.

15 Q. Okay. His use -- do you agree that his use of the
16 shield essentially blocked the things that you wanted to do?

17 A. With a stolen shield, yes.

18 Q. Yes. Okay.

19 MS. COBB: Mr. Clements, if you'll play 301 at
20 17:11, please.

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

23 MS. COBB: Actually, this is fine. You don't even
24 have to play it. Just let it sit here.

25

1 BY MS. COBB:

2 Q. I have a question about this image, Sergeant Gonell: Do
3 you agree that in this image, you see the hat that was on
4 the girl that you talked about? Is that right?

5 A. Yes, ma'am.

6 Q. And then right next to her we see Mr. Stevens's shaggy
7 hair. Is that correct?

8 A. Correct.

9 Q. And then behind Mr. Stevens, do you agree that there is
10 another protester with a shield pushing it into
11 Mr. Stevens's back?

12 A. If appears that way.

13 Q. Okay.

14 MS. COBB: If you'll fast-forward, Mr. Clements,
15 to 17:42. That's fine right there. Just play for just a
16 second.

17 BY MS. COBB:

18 Q. If you'll watch this clip, Sergeant Gonell.

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

21 MS. COBB: Pause it. It took too long for me to
22 say "Pause it." It's already gone.

23 BY MS. COBB:

24 Q. But did you see in the clip, Sergeant Gonell, that he --
25 there we go -- there's actually two shields pressed up

1 against Mr. Stevens's back in that clip?

2 A. I think I mentioned that earlier.

3 Q. Okay. But do you see it now?

4 A. Yes, ma'am.

5 MS. COBB: Mr. Clements, if you'll just continue
6 to play right there.

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

9 MS. COBB: Pause it right there.

10 BY MS. COBB:

11 Q. In this frame, Sergeant Gonell, is that Mr. Stevens
12 blocking a blow from a baton?

13 A. Correct.

14 MS. COBB: If you could continue to play, please.

15 THE COURT: Sorry. I missed that.

16 MS. COBB: Mr. Stevens is blocking a blow from a
17 baton.

18 THE WITNESS: Well, he didn't block it. He just
19 put the shield. So I didn't never strike him in that moment
20 if you play it. I almost did, but I didn't strike him.

21 BY MS. COBB:

22 Q. Right. Because he blocked it with the shield. Correct?

23 A. I'm assuming, yes.

24 MS. COBB: If you'd just back up maybe five, six
25 seconds, we'll play it one more time.

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

3 MS. COBB: Pause it.

4 BY MS. COBB:

5 Q. Right there.

6 A. Right there what?

7 Q. Was that Mr. Stevens blocking a baton strike with the
8 shield?

9 A. Correct. He also was trying to grab my baton and the
10 other baton behind me from the other officer.

11 Q. I'm going to get to that. It's coming up in just a
12 second.

13 MS. COBB: If you'll push play again,
14 Mr. Clements.

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

17 MS. COBB: Pause it, please.

18 BY MS. COBB:

19 Q. Sergeant Gonell, you testified on direct examination
20 while looking at this image that that was Mr. Stevens trying
21 to hit officers with a stolen baton. After watching it
22 again, do you agree that he was being hit and grabbed the
23 baton to prevent himself from being hit?

24 A. My memory served correct. I think we, the officers,
25 were the ones on duty that day, not him.

1 Q. Do you want to watch it again?

2 A. Sure.

3 MS. COBB: Can you rewind it?

4 THE WITNESS: I would like to see him in uniform.

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

7 MS. COBB: Pause it, please.

8 BY MS. COBB:

9 Q. I'm going to ask you again --

10 A. He stole the baton from the officer behind him -- me.

11 Q. The officer was hitting it and he grabbed it. Is that
12 correct?

13 A. It appears that way.

14 Q. Okay. When you said on direct examination that he
15 was -- by "he," I mean Mr. Stevens -- that Mr. Stevens was
16 hitting an officer with a stolen baton, that was not
17 correct?

18 A. What I said was that on that angle, it appears that he
19 was grabbing me or hitting me with his left arm. And then I
20 saw the baton when the prosecutor showed it to me. And
21 that's why I even say, I don't know where the baton came
22 from. Now I see that he stole it from the officer who was
23 trying to hit his hands so he could release the shield that
24 was being -- he was using, applying force on my face and the
25 other officer.

1 MS. COBB: Mr. Clements, will you rewind it about
2 five seconds and then play it again? And we will see what
3 happens with that.

4 THE WITNESS: Do you see my helmet being lifted?

5 THE COURT: Sorry, sir. There's not a question
6 pending right now.

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

9 MS. COBB: Pause it, please.

10 BY MS. COBB:

11 Q. Did you see that Mr. Stevens never got control of the
12 baton? It was swung towards him. He grabbed it and then it
13 was ripped from his hands back.

14 A. Can you replay it again?

15 Q. Yes.

16 A. I was looking for something else.

17 Q. Yes. No problem.

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

20 THE WITNESS: This video don't show what he do
21 with it after he grabbed it from that clip that you showed
22 just the moment.

23 BY MS. COBB:

24 Q. Okay. We'll play it one more --

25 A. Unless you play it longer. Maybe I could see it.

1 Q. We'll play it one more time. Before we do, I would ask
2 you to just watch a baton being yanked back. You can see it
3 in the frame right next to you.

4 A. Okay.

5 Q. And then it'll come back and show Mr. Stevens without a
6 baton in his hands.

7 MS. COBB: Go ahead. Thank you.

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

10 MS. COBB: Pause it, please.

11 THE WITNESS: I don't see it on his left hand now.

12 BY MS. COBB:

13 Q. Right. And so --

14 A. I don't see him passing the baton to anybody. But he
15 doesn't have it at this time.

16 Q. No. So I guess, then, let me ask it this way: Is it
17 possible that one of the officers -- I don't know if it was
18 you or Sergeant Mastony who was behind you; I don't know who
19 it was -- but if one of the officers was hitting at
20 Mr. Stevens with a baton, Mr. Stevens grabbed the baton and
21 the officer yanked it right back out of Mr. Stevens's hand?
22 Is that possible?

23 A. I did not see any of that officer reaching above the
24 shield to grab his baton that was taken --

25 Q. Never letting go of it. Hitting -- Mr. Stevens grabs

1 here. The officer never let go and then pulls back. That's
2 what I'm asking. Is that possible?

3 A. It's possible he lost it because of the retention from
4 the wet surface on the baton.

5 Q. Of course. I guess let me ask you one more thing,
6 though. We've watched this clip a couple of times now. In
7 that clip, do you see anywhere Mr. Stevens hitting law
8 enforcement with a baton?

9 A. From that angle, no.

10 Q. So is it possible, then, that when you testified on
11 direct examination that Mr. Stevens was hitting officers
12 with a stolen baton, that wasn't actually correct, because
13 now you've seen the full video?

14 A. This is not the full video. With that clip you're
15 showing, it doesn't show that he was being -- what do you
16 call it? Can you repeat the question, please?

17 Q. I'm going to try to say it in a better way this time.

18 Do you remember when you were testifying when
19 Ms. Bond was asking you questions? And she paused it at the
20 spot where Mr. Stevens's hand was on a baton. Do you recall
21 that?

22 A. I recall that he had his hands on a baton. Yes.

23 Q. Right. And you testified then that Mr. Stevens had a
24 baton and was hitting officers with it.

25 A. I think I made that -- that statement. However, you're

1 talking about a traumatic event.

2 Q. Of course.

3 A. It's hard for me to remember every single detail of who
4 did what to me. But I know certain things happened to me.

5 Q. Right.

6 A. One of them was -- one of the videos that Ms. Bond was
7 showing was that it appears to me that the individual had a
8 baton and he was either striking me or trying to hit me with
9 it.

10 But then I see your video, which shows that he
11 probably threw it back or passed it along. But then he was
12 trying to grab my baton and disarm me from doing my job and
13 preventing me from doing my job as a police officer at the
14 Capitol.

15 Q. I understand. And this is the same video that Ms. Bond
16 showed you.

17 A. Okay.

18 Q. So this is Government's Exhibit 301. We've been
19 watching between 16 and 18 and a half minutes of that video.

20 I know you said that you recall Mr. Stevens
21 calling you some names. Is that right?

22 A. Yes, ma'am.

23 Q. Do you know Metropolitan Police Sergeant Jason Mastony?

24 A. Never met him in my life.

25 Q. That's fine. You don't need to know him. He was here a

1 few days ago testifying in this case.

2 Do you see on the screen right in front of you the
3 arm that is right behind your helmet --

4 A. Yes, ma'am.

5 Q. -- the black arm?

6 He actually testified that that was him. He was
7 standing right behind you during this incident. And he also
8 told the Court that he remembered --

9 MS. BOND: Objection to counsel testifying.

10 THE COURT: Why don't you think about how you can
11 rephrase this.

12 MS. COBB: I'm sorry. I didn't hear you.

13 THE COURT: Can you think about how to rephrase
14 this? I agree that you can't testify about what somebody
15 else testified to.

16 BY MS. COBB:

17 Q. If Sergeant Mastony said that he heard Mr. Stevens
18 saying something other than what you heard, even though you
19 guys were right here on the same spot, do you think it's
20 possible that either your memory or his memory could have
21 been wrong?

22 A. It's possible. But if you play that video or the other
23 video that Ms. Bond probably has, it says -- clearly states
24 what he called me. And I clearly remember that he called me
25 pussy when I struck him because he was jabbing the -- not

1 jabbing -- using the shield forcibly on my chest and on my
2 face. And the reason why I hit him and he called me that
3 was because of that, because I hit him.

4 Q. I understand.

5 Do you recall early on in 2021 talking with FBI
6 agents about what you remembered and who did what to you at
7 different times? I mean, I'm sure you have had multiple
8 interviews with the FBI. Is that right?

9 A. There has so many interviews. I'm still involved with
10 some. So it's hard for me to remember, especially after
11 living and surviving that traumatic event. So what I
12 remember in the way I remember or the way I said it, the
13 timeline may be wrong for me. To this day, even after being
14 treated for mental trauma and going through mental
15 treatment, I still struggle with some of the timeline.

16 But I do remind your Defendant doing whatever he
17 did to me and saying -- calling me that, what he says on
18 that day.

19 Q. Do you also remember, though, telling the FBI that my
20 Defendant, Tristan Stevens, shaggy hair, did other things
21 such as hit you with a flagpole, punch you? Do you remember
22 telling that to the FBI?

23 A. I may have said that other people that I said had done
24 that. I don't know if I attributed it specifically to him.
25 But I know there were multiple individuals doing different

1 things to me in the span of four hours-plus.

2 And what you are doing is probably quoting me by
3 verbatim of what it was said to the officer. I don't know
4 whether he wrote everything that I said the way I said it to
5 the FBI. So...

6 Q. Okay. So I guess my -- let's break that down a little
7 bit.

8 My question is: Do you remember telling the FBI
9 that Mr. Stevens also hit you with a flagpole and punched
10 you?

11 A. It's possible that I did say. Again, it's hard for me
12 to attribute that particular statement because I don't
13 remember saying that about your Defendant.

14 Q. We'll just leave it at that.

15 I want to ask you a little bit about your
16 injuries. Actually, wait. You know what? I'm sorry. I'm
17 going to come back to injuries.

18 MS. COBB: I was going to say before you turn that
19 off, I have one more question about the video. Actually,
20 let's just keep playing it for a few minutes.

21 BY MS. COBB:

22 Q. And then I'm going to ask you a question, Sergeant
23 Gonell. Thank you.

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

1 MS. COBB: Pause it right there.

2 BY MS. COBB:

3 Q. Sergeant Gonell, do you see right here Mr. Stevens with
4 his hand on his head?

5 A. Yes, ma'am.

6 Q. Okay. Is it possible that he is putting his hand on his
7 head because something has knocked into his head? And I am
8 not going to pretend to know what.

9 A. I wouldn't know that, ma'am.

10 Q. Okay. So --

11 A. He could also be protecting himself from pepper spray
12 behind him they were throwing maybe. I don't know.

13 Q. But we can agree on one thing, which is that his hand is
14 on his head right here?

15 A. I don't know if it's above his head or it hit him or it
16 looks as if it is beyond his head.

17 Q. Okay.

18 MS. COBB: Let's keep playing. Maybe this will
19 help you.

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

22 MS. COBB: Pause it, please.

23 BY MS. COBB:

24 Q. Could you clearly see before he just took it off that
25 his hand was on the top of his head?

1 A. Yes.

2 Q. Now he appears to be reaching, and I think that he may
3 be reaching for this pull, which you testified about a few
4 minutes ago. So let's watch a few more minutes.

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

7 MS. COBB: Pause it, please.

8 BY MS. COBB:

9 Q. I think you testified in response to a question from
10 Ms. Bond about this door frame right here. And you said
11 that you believe Mr. Stevens was bracing on the door frame.
12 Is that right?

13 A. Correct.

14 Q. Correct. After watching this again, is it possible --
15 obviously, nobody knows what's in someone else's head -- but
16 is it possible, particularly since we have now seen
17 Mr. Stevens moving out of the frame, is it possible that he
18 was using the door frame to actually move back out of the
19 frame and out of the tunnel?

20 A. Well, if you consider him attacking me and pushing --

21 Q. Is it possible? Yes or no.

22 A. It's not possible.

23 Q. Okay.

24 A. His intent was to push against me onto the police
25 officer, push him out. You can see on the video you just

1 played.

2 Q. I did see it. Yes. I watched it. And what I saw is it
3 looked like he put his hand on his head, then grabbed the
4 doorway and then turned and left.

5 A. Did you see what he did in that corner?

6 Q. I wasn't in -- I saw --

7 A. I'm saying on the video. Play it again.

8 Q. Okay.

9 THE COURT: Let's look for a place to wrap up.

10 MS. COBB: Excuse me?

11 THE COURT: Let's look for a place to wrap up for
12 lunch.

13 MS. COBB: Two more minutes.

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

16 THE WITNESS: It's further back. Right there.

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

19 THE WITNESS: Watch his hand. What is he doing to
20 me?

21 BY MS. COBB:

22 Q. I think your testimony, though, was that he used his
23 hand to brace to do whatever he was doing when he in fact
24 was using his hand to brace to turn. And whatever he did
25 with that hand after, we can't see in the video.

1 A. I'm just telling you.

2 THE COURT: Was there a question there? I didn't
3 hear a question.

4 BY MS. COBB:

5 Q. I guess it goes back to my original question. It's
6 just: Is it possible after you've watched that now that he
7 was putting his hand on the door frame to move himself
8 backwards and walk out of the tunnel?

9 A. My recollection of his intent that day --

10 Q. I'm not asking about his intent, because we don't know
11 his intent. That's the whole point. So nobody knows what
12 he was intending to do except for him.

13 I'm asking if it's possible that that's what he
14 was doing.

15 A. It's less than likely that that's what he was trying.

16 Q. Understood.

17 I want to talk about injuries very quickly. You
18 testified that you had an injury to your hand. Correct?

19 A. Yes, ma'am.

20 Q. That occurred before you went into the tunnel?

21 A. That is correct.

22 Q. Okay. You testified that you had an injury to your
23 shoulder. And isn't the shoulder injury, according to you,
24 caused by Mr. Fitzsimons?

25 A. That is correct.

1 Q. Okay. So not by Mr. Stevens.

2 You testified you have a foot injury?

3 A. That is correct.

4 Q. And I believe I actually read in one of your interviews
5 that you said that was caused by a speaker or a heavy object
6 being dropped on your foot?

7 A. Correct.

8 Q. Okay. And then besides that, bruises?

9 A. Yes.

10 Q. Okay.

11 A. Contusions, bruises.

12 Q. Which is just another word for bruises. Right?

13 A. Yeah.

14 MS. COBB: I don't have any other questions.

15 Thank you.

16 THE COURT: Thank you, Ms. Cobb.

17 Let's take our lunch break. We'll resume at 1:40.

18 Sergeant Gonell, I'll just ask you again not to
19 discuss the substance of your testimony with anyone over the
20 break.

21 Thank you.

22 THE WITNESS: Thank you.

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

25 THE COURT: Sergeant Gonell, if you wouldn't mind

1 retaking the stand. Am I pronouncing your name correctly,
2 sir?

3 THE WITNESS: Sergeant "Gonell."

4 THE COURT: "Gonell." Sorry about that.

5 Mr. Urso, do you have any questions for this
6 witness?

7 MR. URSO: Yes. Thank you, your Honor.

8 THE COURT: Sergeant Gonell, I'll remind you
9 you're still under oath.

10 THE WITNESS: Got it.

11 CROSS-EXAMINATION

12 BY MR. URSO:

13 Q. Good afternoon, Sergeant Gonell.

14 A. Good afternoon, sir.

15 Q. You've been a CDU officer, CDU duty, for how many years?

16 A. On and off, when I first came out of the academy I was
17 there for -- on that program for about eight years. Then
18 after I got -- well, sorry. Longer than that.

19 And after I got the promotion, I was off for the
20 training for the mountain bike. And in one of the
21 requirements that they had, because they were trying to
22 integrate both the CDU and the mountain bike as a response
23 unit all together into 2018, I went back.

24 Q. So maybe like --

25 A. So roughly --

1 Q. -- 12 years?

2 A. Yes.

3 Q. You spoke earlier about there are three types of
4 shields. And you said 8-foot, 6-foot and round?

5 A. Yes, sir.

6 Q. Pointing your attention to Government's Exhibit 801,
7 that's not 6 feet. Right? It looks like about, what, 4
8 feet?

9 A. About.

10 Q. So were you mistaken? They may be 6 feet, 4 feet and
11 round?

12 A. Correct. I apologize for that.

13 Q. And you're trained to use those kind of shields?

14 A. Yes, sir.

15 Q. And you testified earlier that they're defensive
16 shields. Correct?

17 A. It could be defensive, depending on how you use it.

18 Q. How are you trained to use it not defensively?

19 A. Continue -- well, you could use it differently in terms
20 of -- in offense, to push back the crowd tactically. We
21 have -- you normally have about two weeks of training on
22 formations, tactics, how to protect yourself from throwing
23 objects and how to use it when somebody flanks you from
24 either the rear or left.

25 Q. So when you say you're trained to use it, like to push

1 people, that's to push the line away from whatever you're
2 protecting?

3 A. In formation, yes, to interlock them and so forth.

4 Q. You're not trained to do that to inflict harm. You're
5 trained to do that to just move the people. Correct?

6 A. Correct.

7 Q. Okay. So you wouldn't expect if you pushed one of those
8 4-foot shields up against another person and pressed them,
9 pushed them, that you would cause them harm. Right?

10 A. It depends how you use it. I mean, you could also
11 strike somebody --

12 Q. I'm just --

13 A. -- on the --

14 THE COURT: Sorry. I'll ask you to let the
15 sergeant answer the question.

16 MR. URSO: I'm sorry.

17 THE WITNESS: It depends how you want to use it.
18 If you want to hit somebody in the head with the edges,
19 that's a weapon right there instead of as the intended
20 purpose.

21 BY MR. URSO:

22 Q. You're not trained to use the shield that way. Correct?

23 A. No, sir.

24 Q. It's not designed to be used that way. Correct?

25 A. I wouldn't know. But I'm not trained to --

1 Q. Let me ask the question again that I asked.

2 So if you're using it in the way you are trained,
3 say, to push a line back, to push some people back away
4 from --

5 A. There are multiple ways to train with it.

6 Q. Let me just finish a question.

7 A. I apologize.

8 Q. If you're -- the way you're trained to push -- you said
9 sometimes you use it offensively. The example you gave for
10 offensively is to push people back, like push a line back.
11 Right?

12 A. It's a way.

13 Q. That's -- you wouldn't expect that pushing somebody with
14 that kind of shield would cause injury to that person.
15 Correct?

16 A. Depends. Again, depends how you use that.

17 Q. I'm talking about using it like this. Let me get the
18 shield. I'm talking about using it like you're trained,
19 like you just talked about being trained to use it, holding
20 it in front of you and using it to push people --

21 A. Now you're pressing against my body and I don't have no
22 way for me to retreat? Or --

23 Q. Let's just say --

24 A. -- or open field?

25 Q. Let's just say it's just like January 6th, in the

1 tunnel. There's eight rows deep of police, 20 rows deep of
2 protesters. The shield is pressed up against you. Did it
3 hurt you? Would it hurt you like this?

4 A. If it is pressed with force, yes.

5 Q. How would it hurt you?

6 A. It prevent my breathing and my movement from --

7 Q. And the --

8 A. -- and prevent my official capacity to work as a police
9 officer.

10 Q. Okay. That --

11 A. And the other way you can use it is slamming onto
12 somebody's feet.

13 Q. It hurts you to be prevented from doing your work. Is
14 that what you mean?

15 A. I'm sorry?

16 Q. Did you say it hurts you to prevent you -- when you're
17 prevented --

18 A. It hurts me when I breathe. It prevents me from
19 breathing properly. It prevents me from using my arm to
20 defend myself and to do my job in the capacity as a United
21 States Capitol Police officer.

22 Q. Let's just go back to your training and the way you're
23 trained to use the shield.

24 The way you're trained to use it, to push people,
25 you're not trained to use it to inflict harm to people.

1 Correct?

2 A. Correct.

3 Q. Just to move them. Correct?

4 A. Correct.

5 Q. Okay. Thank you.

6 And by the way, during your time in the tunnel,
7 there were -- like I said, there were multiple rows of
8 police officers at given times pushing in one direction and
9 protesters on the other side. Right?

10 A. That is correct.

11 Q. And would you agree at times there were rows of police
12 officers and not just officers in the front row, but other
13 officers, second, third, fourth row deep, that had shields
14 in their possession?

15 A. My recollection is that the shields were at the front
16 and I was one of them.

17 Q. They were never shields in the second row or third row?

18 A. My recollection is that I did not see shields being
19 applied behind me, multiple rows behind me. All I know is
20 that when I was in the front, most of the shields that were
21 available and that had not been taken away from the officers
22 were at the front along the line. I even -- I believe right
23 before Michael Fanone gets to the front line, I pass a
24 shield to one of the officers as well.

25 Q. Thank you.

1 MR. URSO: Can you pull up Government's Exhibit
2 232.22, please.

3 BY MR. URSO:

4 Q. Do you see that photo, Sergeant?

5 A. Yes, sir.

6 Q. You testified about that earlier a little bit?

7 A. Yes. I don't know -- well, now it's not showing. Now
8 it's clear, the whole picture, like before.

9 Q. I understand.

10 So if you're looking at this picture from the
11 vantage point of whoever took the picture or whatever the
12 camera was that took the picture, what's that big structure
13 to the right there?

14 A. To the right? That is the TV stand for the
15 inauguration.

16 Q. And would you agree that that TV stand is basically
17 located basically center of the Capitol on the west side?

18 A. That is correct. It's erected every four years.

19 Q. So wherever the camera was, that would be on the
20 northwest side of the Capitol?

21 A. Yeah. It appears that way.

22 Q. And -- because I think you had indicated at some point
23 you were in the southwest corner; but this picture shows the
24 southwest corner, but it's taken from the northwest corner.

25 Correct?

1 A. Correct. I mean, I was moving around, so maybe I was in
2 the middle. Maybe -- I know around where we -- when we lost
3 the police line, I was near the middle somewhere.

4 Q. You were in the middle, maybe even a little north?

5 A. It could be slightly to the left of the tower. It could
6 be slightly on the right of the tower. My recollection is
7 not --

8 Q. The scaffolding you see on the left side of the picture,
9 that's in the southwest corner?

10 A. That is correct.

11 Q. And that would lead sort of over to the lower west
12 terrace tunnel?

13 A. Yes, sir.

14 Q. I think you testified earlier at some point you saw
15 people on that scaffolding. Correct?

16 A. There was one individual that had climbed all the way to
17 the top initially, and two or three officers tried to arrest
18 him and they tackled him and took him down. I don't know
19 whether they arrested him or they put him back on the line
20 because of the lack of resources to make arrests.

21 Q. Thank you, Sergeant.

22 Now, you testified earlier that in your 17 years
23 you have not had occasion to make an arrest. Right?

24 A. I had the opportunity.

25 Q. You did, but you didn't?

1 A. Correct.

2 Q. But it's not unusual for people to be arrested by U.S.
3 Capitol Police. Correct?

4 A. No, sir.

5 Q. And it's not unusual for people to be arrested inside
6 the Capitol Building. Correct?

7 A. Depending what the, I guess, intent of it, because we
8 have a lot of discretion on how to do things unless it's
9 criminal or a felony.

10 Q. But it's not unusual. That does happen?

11 A. Correct. As well, not unusual that the officer don't
12 make arrests throughout the whole career at the Capitol.

13 Q. What I'm trying to ask you is, it's not unusual for
14 protesters inside the Capitol to be arrested?

15 A. Protesters?

16 Q. Yeah.

17 A. Any other time before January 6th?

18 Q. Yeah.

19 A. No.

20 Q. So protesters weren't arrested in 2017 during the
21 certification process of President Trump's election?

22 A. I wasn't there, so I wouldn't know. I was -- at that
23 time, on -- when he got elected, I was recovering from a
24 right shoulder surgery that I had.

25 Q. That was the whole time period from the time of the --

1 when did that happen? Like you weren't available --

2 A. I was --

3 Q. -- for the certification or the inauguration? The
4 inauguration was two weeks --

5 A. I did not work neither the inauguration or the election.
6 I was recovering from my right shoulder injury.

7 Q. Okay. Were protesters arrested during the, say,
8 Kavanaugh confirmation hearings?

9 A. I believe so. Yes.

10 Q. That was inside the Capitol Building. Correct?

11 A. No, sir. That was at the -- either the Dirksen,
12 D-I-I-S-E-N [sic], the Hart and the Russell Building.
13 That's where most of those --

14 Q. Hearings were?

15 A. -- most of the First Amendment procedures were
16 happening. I know the Capitol itself was closed to the
17 public due to COVID-19 protocol, I believe, if my memory
18 serves me right.

19 Q. And by the way, aside from COVID, the Capitol Building
20 is generally -- when the House and Senate are in session, is
21 the Capitol Building open to the public?

22 A. Since the declaration of the pandemic, it was closed the
23 entire --

24 Q. Before the COVID.

25 A. What's your question?

1 Q. Before the COVID, when the House and Senate are in
2 session, the building is open to the public. Correct?

3 A. There's --

4 Q. There's a gallery for the public. Correct?

5 A. Prior to the pandemic, yes. They had a ticket to be
6 issued or gallery passes. The tickets were going -- were
7 normally where you used to get into the Capitol. A staffer
8 could bring in the individuals or the tourists. And if they
9 wanted to go to the galleries, the chambers, Senate or the
10 House, they would need a gallery pass.

11 Other than that, only members of Congress would
12 be -- would have been allowed to -- or a police officer or a
13 staffer. But not the public itself.

14 Q. You testified earlier that there's not many officers
15 that were on duty that day that are speaking out. There's
16 just a handful of you guys. Right?

17 A. To my knowledge, yes.

18 Q. And you mentioned speaking to Congress, speaking to the
19 media, right, things like that?

20 A. I had.

21 Q. And one of those people, one of those handful with you
22 that's doing that, is Officer Hodges. Correct?

23 A. Yes.

24 Q. And you talked earlier about you helped one of the
25 protesters that was in distress?

1 A. Yes, sir.

2 Q. None of the nonpolice officers in that area were helping
3 this particular protester?

4 A. There were other officers assisting that individual.

5 Q. Were there any protesters helping this person?

6 A. I did not see that. By the time I -- she was taken to
7 the back of the police line, that's when I believe right
8 after Mr. Fitzsimons had already injured me. And when he
9 did that, I went to the back, called for reinforcement. I
10 think I went back for -- way past the police line and either
11 drank some water, rinsed my police shield -- helmet with
12 water, assisted another police officer. And then I went
13 back to near the podium, and that's when I saw the
14 individual being pulled to the back of the police line. And
15 some officers were rendering CPR to her and she was not
16 responsive. So therefore, I began to coordinate the
17 assistance with that.

18 Q. And in your time on duty that day, did you see other
19 officers helping other people in distress?

20 A. Yes.

21 Q. And did you see any nonpolice officers helping anybody
22 in distress?

23 A. Not to my -- no, sir.

24 Q. Would it surprise --

25 A. I did see at the beginning. When an individual got hit

1 in the cheek, there was blood on the floor. I stepped on
2 those blood. That individual, I tried to help myself and I
3 think several of my other colleagues. That incident, I
4 believe -- then people, the mob thought we were trying to
5 arrest him instead of helping him. So it became a melee.

6 There was another incident before the police
7 line -- before we lost it, that there was an older gentleman
8 that I guess he got pepper sprayed and he fell to the
9 ground. I tried to help that individual myself. And
10 somebody from the crowd said: If you need a medic, we can
11 get you a medic. And then I stepped forward trying to get
12 him to the back of the -- behind the police line. I reached
13 out to him, took him behind the police line, had him sat
14 down, gave him a bottle of water and then had another
15 officer stay nearby him. Then I went back to the police
16 line. Later on, I found out that he was part of the mob and
17 began pushing later on, too.

18 So I did help -- try to help individuals who were
19 in distress.

20 Q. Would it surprise you to know that one of the nonofficer
21 protesters actually helped a police officer that day?

22 A. Say that again.

23 Q. Would it surprise you to learn that one of the nonpolice
24 officer protesters, rioters, helped one of the officers that
25 day?

1 MS. BOND: Objection.

2 THE COURT: Overruled.

3 I think this is a yes-or-no question.

4 THE WITNESS: Would it surprise me? I can only
5 attest to what my -- what I witnessed and what I experienced
6 that day. So I wouldn't know.

7 BY MR. URSO:

8 Q. Just one final question. The person that you ended
9 up -- that ended up passing away, that woman, she died of a
10 drug -- the medical examiner said she died of a drug
11 overdose. Correct?

12 A. I had no idea. What I know is that once --

13 THE COURT: Thank you.

14 MR. URSO: Thanks, Sergeant.

15 THE COURT: Thank you.

16 Mr. Shipley?

17 MR. SHIPLEY: Nothing.

18 THE COURT: Redirect, Ms. Bond?

19 MS. BOND: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. BOND:

22 Q. Sergeant Gonell, I am going to start by going back to
23 Exhibit 301.

24 MS. BOND: I will ask Mr. Clements to move it
25 forward. We're going to play from 18 minutes and 22 seconds

1 to 18 minutes and 30 seconds.

2 BY MS. BOND:

3 Q. But before we start, Sergeant Gonell, I'm going to ask
4 Mr. Clements to turn it up as loud as he possibly can so
5 everyone in the courtroom can hear it. I want you to focus
6 on it and listen as closely as you can, please. 18:22 to
7 18:30.

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

10 MS. BOND: Thank you. You can stop there.

11 BY MS. BOND:

12 Q. Did you hear somebody? Did you hear someone say
13 something there?

14 A. Yes.

15 Q. What did you hear?

16 A. He called me pussy. This is the same thing that -- when
17 the defense was asking me --

18 Q. You don't need to say more than that.

19 Now, on cross-examination, Ms. --

20 THE COURT: Sorry. Can you play it again? I
21 didn't hear that.

22 MS. BOND: 18:22 to 18:30.

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

25 THE COURT: Thank you.

1 BY MS. BOND:

2 Q. On cross-examination, Ms. Cobb asked you about being
3 frustrated by that shield.

4 Do you remember that question?

5 A. Yes, ma'am.

6 Q. Now, were you also -- did that shield, in addition to
7 causing you frustration, did it also cause you physical
8 pain?

9 A. It did.

10 Q. Did that shield --

11 A. My neck area; my shoulder, too, the way the pressure was
12 being applied, pushing forward.

13 Q. Did that shield also concentrate the weight of the crowd
14 on you?

15 A. Yes.

16 Q. Did that shield also prevent your ability to defend
17 yourself?

18 A. Yes.

19 Q. Thank you.

20 Now, you got some questions about the fact that
21 you are very outspoken about January 6th. Isn't that right?

22 A. Correct.

23 Q. You've been out in the media. Correct?

24 A. Correct.

25 Q. And you have testified in several cases. Correct?

1 A. Yes.

2 Q. You're even writing a book. Is that right?

3 A. Yes.

4 Q. Now, are you here testifying today for the publicity?

5 A. No.

6 Q. Are you here testifying today for the money?

7 A. No.

8 Q. Why are you here testifying today?

9 A. I'm here testifying to hold the person who impeded me
10 from doing my job on January 6th, blocking me, preventing me
11 from rendering aid to that person that was -- people who
12 were being hurt, my fellow officers, people who were
13 attacking the Capitol, going room by room, hunting for the
14 lawmakers and the senators.

15 And again, had it not been because of January 6th,
16 whatever happened that day, I would have stayed that whole
17 entire day at the north entrance of the Visitor Center
18 stage. And I would have been quiet --

19 Q. I'm going to stop you there, Sergeant Gonell.

20 With what you said on the stand today, were you
21 telling the truth today? Yes or no.

22 A. Yes.

23 MS. BOND: Thank you.

24 THE COURT: Sergeant Gonell, you may step down.

25 You're free to go. Thank you for your testimony and thank

1 you for your service to the country. Good luck with the
2 next chapter of your career, sir.

3 THE WITNESS: Thank you, sir.

4 THE COURT: The Government may call its next
5 witness.

6 MS. PASCHALL: Thank you, your Honor.

7 The Government calls Officer Henry Foulds.

8 THE WITNESS: Have a good day.

9 THE COURT: You, too, sir.

10 (Witness excused.)

11 (Thereupon, Officer Henry Foulds entered the
12 courtroom and the following proceedings were had:)

13 HENRY FOULDS, GOVERNMENT WITNESS, SWORN.

14 THE COURT: Sir, feel free to have a seat and
15 adjust the microphone.

16 DIRECT EXAMINATION

17 BY MS. PASCHALL:

18 Q. Good afternoon. Could you please state and spell your
19 full name for the Court?

20 A. My name is Henry Foulds, H-E-N-R-Y F-O-U-L-D-S.

21 Q. Where do you work?

22 A. The Seventh District of the Metropolitan Police
23 Department.

24 Q. And what is your current rank in the Metropolitan Police
25 Department?

1 A. Police officer.

2 Q. How long have you been a police officer with the
3 Metropolitan Police Department?

4 A. In October, it'll be five years.

5 Q. What is your current duty assignment with the Seventh
6 District?

7 A. I am in PSA 705 as a patrol officer.

8 Q. Do you also on occasion work with the civil disturbance
9 unit?

10 A. Yes.

11 Q. What civil disturbance unit battalion are you with?

12 A. CDU 74.

13 Q. And on January 6th, 2021, were you working in your
14 capacity as an officer with CDU 74?

15 A. I was.

16 Q. Where were you originally stationed on the morning of
17 January 6th, 2021?

18 A. We were stationed a few blocks down from the Capitol.

19 Q. What did you expect you would be doing that day?

20 A. I didn't expect we were going to be doing anything. At
21 most, I thought we were going to be blocking some streets
22 with our bicycles.

23 Q. And you mentioned the bicycle. Is CDU 74 one of the
24 bike units?

25 A. It is.

1 Q. So what type of gear were you wearing when you were
2 originally stationed a few blocks from the Capitol?

3 A. So originally we were just wearing our regular patrol
4 gear, like our armor and our bike shorts. And we had our
5 ballistic helmets on standby in a car in case we needed to
6 put them on quickly.

7 Q. Did there come a time when you needed to put on those
8 ballistic helmets?

9 A. Yes.

10 Q. Who made that decision for you to put on all that gear?

11 A. One of my sergeants came and talked to me, told us that
12 we were putting the helmets on and we were going to back up
13 units at the Capitol.

14 Q. And did your unit ultimately go to the Capitol?

15 A. Yes.

16 Q. And when you came to the Capitol, what area did you
17 start off supporting the police who were already there?

18 A. We were in a lower area, I believe, on the west side of
19 the building.

20 Q. And how long would you estimate you were down on that
21 west -- lower west front of the building?

22 A. I think maybe under an hour.

23 Q. Did there come a time when you needed to retreat from
24 that area and go up to the next level of the inaugural
25 platform?

1 A. Yes.

2 Q. What happened when you went up to the next level of the
3 inauguration platform?

4 A. Shortly after we went up to that next level, we had
5 retreated even further back and we retreated down this
6 hallway into the west side of the building. Then we held
7 that hallway.

8 Q. Now, on January 6th, 2021, were you wearing a body-worn
9 camera?

10 A. I was.

11 Q. Did you activate it at several points during the day?

12 A. I did.

13 Q. Did it become deactivated at certain points during the
14 day?

15 A. Yes. You deactivate them by pushing on them. So
16 whenever there was an altercation, it would often get pushed
17 off.

18 Q. So when you reactivate your body-worn camera after it's
19 been off, is there a portion of the recording that is
20 silent?

21 A. Yeah. So the camera records -- has a buffer of the
22 video for two minutes whenever it's on but not activated.
23 And that two-minute buffer doesn't have audio, but it has
24 video.

25 Q. And in preparation for your testimony, did you and I

1 review some of your body-worn camera from January 6th, 2021?

2 A. Yes.

3 Q. And was there a time when you were in that tunnel where
4 that body-worn camera got turned off?

5 A. Yes.

6 Q. And then did you ultimately reactivate that body-worn
7 camera?

8 A. Yes.

9 MS. PASCHALL: If we could please pull up Exhibit
10 218.

11 (Whereupon, segments of Government's Exhibit No.
12 218 were published in open court.)

13 MS. PASCHALL: If we could stop Exhibit 218.

14 BY MS. PASCHALL:

15 Q. Officer Foulds, do you recognize what's on the screen
16 here as 218?

17 A. I believe I do.

18 MS. PASCHALL: Let's actually play it a little bit
19 further.

20 (Whereupon, segments of Government's Exhibit
21 No. 218 were published in open court.)

22 MS. PASCHALL: Let's stop at 15:13:30.

23 BY MS. PASCHALL:

24 Q. Do you recognize this as your body-worn camera?

25 A. Yes.

1 Q. And is this a fair and accurate representation of what
2 you were witnessing on January 6th, 2021?

3 A. Yes.

4 MS. PASCHALL: At this time, the Government would
5 move the admission of Exhibit 218.

6 THE COURT: Seeing no objection, 218 is in.

7 (Whereupon, Government's Exhibit No. 218 was
8 entered into evidence.)

9 MS. PASCHALL: If we could start the video again
10 here at 15:13:30.

11 (Whereupon, segments of Government's Exhibit
12 No. 218 were published in open court.)

13 MS. PASCHALL: If we could stop.

14 BY MS. PASCHALL:

15 Q. We've stopped the video at 15:13:34. Officer, I'm going
16 to circle an individual who's all the way to the left here
17 of the video. Do you see that person?

18 A. Yes.

19 Q. And what does it appear that person is holding?

20 A. The person is holding one of our riot shields.

21 Q. Now, I'm going to play this a little bit further. We'll
22 look closely at that shield.

23 (Whereupon, segments of Government's Exhibit
24 No. 218 were published in open court.)

25 MS. PASCHALL: Go back just a couple of frames

1 here.

2 (Whereupon, segments of Government's Exhibit
3 No. 218 were published in open court.)

4 BY MS. PASCHALL:

5 Q. Officer, can you actually see the logo that's on the
6 shield there? I'm going to circle it here for you. Do you
7 see that?

8 A. I see it kind of --

9 Q. Is that --

10 A. -- vaguely, but I recognize the design.

11 Q. Is that actually a Capitol Police shield instead of a
12 Metropolitan Police shield because it has the Capitol on it?

13 A. I don't actually know the difference in the insignias
14 between our two shields.

15 MS. PASCHALL: Let's play again from 15:13:32.

16 (Whereupon, segments of Government's Exhibit
17 No. 218 were published in open court.)

18 MS. PASCHALL: And let's stop at 15:14:02.

19 BY MS. PASCHALL:

20 Q. We're going to go back and look at that a little more
21 closely frame by frame. But just generally speaking, do you
22 remember this interaction with that person who I had
23 previously circled on your body-worn camera?

24 A. Yes.

25 Q. And what do you remember about that?

1 A. I remember that he shoved at me with the shield he had
2 in his hands and I struck back with a wooden baton that I
3 had picked up from the ground.

4 Q. So I just saw you make a motion that I wanted to
5 describe for the record. You can correct me if I'm wrong:
6 I saw you have both of your hands kind of at fists near your
7 chest and then you moved those fists forward in unison. Is
8 that -- am I describing that accurately?

9 A. Yes.

10 Q. Is that what you recall this person in the video using
11 to push that shield towards you in the moments we've just
12 watched on your body cam?

13 A. Yes.

14 MS. PASCHALL: Now, Mr. Clements, if we could go
15 back to 15:13:29, please. That's fine. Thank you. We'll
16 start at 15:13:29 and try to stop at 15:13:38.

17 (Whereupon, segments of Government's Exhibit
18 No. 218 were published in open court.)

19 MS. PASCHALL: Now let's stop at 15:13:38.

20 BY MS. PASCHALL:

21 Q. Now, in the moments before that, is it accurate to say
22 that there was another officer in front of you who just
23 moved out of the way?

24 A. Yes.

25 Q. And how is your body turned compared to the person who

1 you've described as pushing that shield towards you? Are
2 you facing him straight on? Are you turned to the side?
3 Something else?

4 A. I think at the moment from the angle of the body-worn
5 camera that I am turned to the side.

6 Q. So that would mean that this individual is sort of off
7 of your left shoulder. Is that accurate?

8 A. Yes.

9 Q. Okay.

10 MS. PASCHALL: Now let's continue for another two
11 seconds until 15:13:40.

12 (Whereupon, segments of Government's Exhibit
13 No. 218 were published in open court.)

14 BY MS. PASCHALL:

15 Q. In those previous two seconds, what did we just see
16 there?

17 A. He shoved me with the shield and I struck back with the
18 baton.

19 Q. And --

20 THE COURT: Sorry. Is that the same one we just
21 saw? Have you just replayed this?

22 MS. PASCHALL: No. It's actually the next moment
23 in time.

24 THE COURT: Okay.

25

1 BY MS. PASCHALL:

2 Q. The baton, I believe you described it. Did you say that
3 was a duty baton that you had?

4 A. So it was -- I believe it belonged to one of the other
5 officers. It had fallen on the ground and I picked it up so
6 no one else had taken control of it. It was a wooden baton
7 similar to the asp baton that I use.

8 Q. And I've watched you kind of move your hands out. Is
9 that one of those kind of collapsible-style batons?

10 A. Yes. I had a collapsible-style baton. The one I had in
11 my hand at the moment was wooden and was solid.

12 Q. Thank you for that.

13 Now, once again, as we're looking at 15:13:40, how
14 is your body faced compared to the person who's using the
15 shield to strike at you? Again, are you straight-on
16 forward? Are you to the side? Or something else?

17 A. It appears that I'm to the side or facing away.

18 MS. PASCHALL: If we could go forward another two
19 seconds, please, to 15:13:42.

20 (Whereupon, segments of Government's Exhibit
21 No. 218 were published in open court.)

22 BY MS. PASCHALL:

23 Q. Now, what have we just seen in that moment there?

24 A. I believe that's another shove.

25 Q. Are you now able to see your body cam facing forward

1 towards the person with the shield?

2 A. Yes.

3 MS. PASCHALL: If we could start again at 15:13:42
4 and go for another two seconds.

5 (Whereupon, segments of Government's Exhibit
6 No. 218 were published in open court.)

7 MS. PASCHALL: I'm sorry to do this to you,
8 Mr. Clements. If we could go back just one second to
9 15:13:43.

10 (Whereupon, segments of Government's Exhibit
11 No. 218 were published in open court.)

12 BY MS. PASCHALL:

13 Q. Right there, we've stopped at 15:13:43. I'm going to
14 circle here all the way off to the upper left. Do you see
15 what I've circled there?

16 A. Yes. That's my hand. I'm trying to close the door to
17 put the door between us and the protesters.

18 MS. PASCHALL: Let's start again at 14:30:43 and
19 we'll go ahead another three seconds.

20 (Whereupon, segments of Government's Exhibit
21 No. 218 were published in open court.)

22 BY MS. PASCHALL:

23 Q. It's a little bit blurry in this stopped shot. But at
24 15:13:46 seconds, do we see kind of a long object going from
25 the center of the screen diagonally down to the right?

1 A. Yes. That's the wooden baton I mentioned.

2 MS. PASCHALL: Let's start again and go forward to
3 15:13:58.

4 (Whereupon, segments of Government's Exhibit
5 No. 218 were published in open court.)

6 MS. PASCHALL: Actually, we can continue to play
7 until 15:14:05.

8 (Whereupon, segments of Government's Exhibit
9 No. 218 were published in open court.)

10 BY MS. PASCHALL:

11 Q. We've stopped the video at 15:14:05. Have you just
12 grabbed something from another officer?

13 A. Yes.

14 Q. What is that?

15 A. That is another -- one of the riot shields of the same
16 type that he was using.

17 Q. And in the interaction that we've watched in the 30
18 seconds or so before this, did you have a shield or no?

19 A. I did not.

20 MS. PASCHALL: If we could now please pull up what
21 is already in evidence as Exhibit 301.

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

24 MS. PASCHALL: If we could pull that ahead to 20
25 minutes and 22 seconds.

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

3 BY MS. PASCHALL:

4 Q. Now, Officer Foulds, when we have watched some videos
5 that were taken from the members of the crowd that day, how
6 have you been able to identify yourself in those videos?

7 A. I was wearing a sort of neon green mask.

8 Q. And of the officers who are in this tunnel area with
9 you, do you know if any of them -- anyone else other than
10 yourself had that neon green mask?

11 A. I don't think so.

12 MS. PASCHALL: Let's start Government's Exhibit
13 301 at 22:20.

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

16 MS. PASCHALL: Let's stop there at 22:33.

17 BY MS. PASCHALL:

18 Q. Does that interaction that we've shown from 22:20 to
19 22:33 look like the inverse of what we just watched on your
20 body-worn camera of that interaction where you mentioned
21 that the person in front of you pushed the shield at you and
22 then you struck with your baton?

23 A. It seems to be the same event.

24 MS. PASCHALL: Let's continue for about another
25 ten seconds here.

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

3 MS. PASCHALL: Stop there at 22:43.

4 BY MS. PASCHALL:

5 Q. Officer, did you see yourself there going for what's
6 kind of in the foreground here this sort of metal frame?

7 A. Yes.

8 Q. What is happening there? What are you trying to do?

9 A. I'm trying to close the door to put it between the two
10 groups. And whenever I do that, I get shoved with the
11 shield.

12 Q. Now, in your training for CDU, when are you trained to
13 use your baton?

14 A. So the specific CDU baton they issue us, we're trained
15 to use that as a prying tool. This baton is not my issued
16 CDU baton and it's more similar to my asp baton, which I'm
17 trained in routine patrol if someone is being assaultive, I
18 can strike them in the arm, the leg or the chest with the
19 asp baton.

20 Q. And what were to happen if you were to strike at
21 somebody who was not being assaultive to you in the first
22 instance?

23 A. I would probably be -- I would be investigated by the
24 department.

25 Q. So fair to say that your training does not allow you to

1 use that asp baton unless someone is being assaultive to you
2 first?

3 A. Correct.

4 MS. PASCHALL: Can we please pull up Exhibit 415.

5 Actually, your Honor, this is a good time to
6 mention, we played 415 yesterday with Officer Hodges. But
7 my team noted for me that I don't believe we actually moved
8 that into evidence. I'm happy to lay a foundation with this
9 officer or just move it in at this point in time.

10 MR. URSO: We'll stipulate, your Honor.

11 THE COURT: Thank you. I thought we had it as in.
12 But if it wasn't in, it is now.

13 MS. PASCHALL: Thank you.

14 (Whereupon, Government's Exhibit No. 415 was
15 entered into evidence.)

16 MS. PASCHALL: If we could please move Exhibit 415
17 ahead to time marker 2:17. Let's play through until minute
18 2:38.

19 (Whereupon, segments of Government's Exhibit
20 No. 415 were published in open court.)

21 BY MS. PASCHALL:

22 Q. Officer Foulds, right here in the center of the frame
23 that I've just circled, is that you in the green mask?

24 A. Yes.

25 Q. And so would it be accurate to say this is a similar

1 view to what we've seen in Government's Exhibit 301 but more
2 from a higher-up vantage point?

3 A. Yes.

4 Q. Officer Foulds, do you recall sustaining any injuries
5 from this interaction with this Defendant?

6 A. From this particular interaction, no.

7 Q. Do you recall receiving injuries throughout the day on
8 January 6th?

9 A. Yeah. I had a number of abrasions on my forehead from
10 being struck on the helmet multiple times.

11 MS. PASCHALL: I am going to now ask that we pull
12 up Exhibit 220.

13 (Whereupon, segments of Government's Exhibit
14 No. 220 were published in open court.)

15 BY MS. PASCHALL:

16 Q. Officer Foulds, did you remain in this tunnel area for a
17 longer period of time after the incident that we have just
18 been watching?

19 A. I believe so. Yes.

20 Q. And so now I've pulled up Exhibit 220. Do you see the
21 timestamp here?

22 A. I do.

23 Q. What is that?

24 A. 16:08.

25 Q. I'm going to play a little bit of this; and let me know

1 if you recognize this as your body-worn camera.

2 (Whereupon, segments of Government's Exhibit
3 No. 220 were published in open court.)

4 MS. PASCHALL: If we could stop there at 16:09:11.

5 BY MS. PASCHALL:

6 Q. Officer, does this appear to be your body-worn camera?

7 A. I believe so. I need to hear it turn on to be
8 completely sure. But I believe this is.

9 Q. Some of the audio? Sure.

10 MS. PASCHALL: If we can move it ahead in time to
11 16:14:00.

12 (Whereupon, segments of Government's Exhibit
13 No. 220 were published in open court.)

14 THE WITNESS: Yeah. It's my body-worn.

15 BY MS. PASCHALL:

16 Q. We've stopped at 16:14:07. Were you able to hear your
17 own voice?

18 A. Yes.

19 Q. Is that fair and accurate to what you would have sounded
20 like on January 6th, 2021?

21 A. Yes.

22 MS. PASCHALL: At this time, the Government would
23 move the admission of Exhibit 220.

24 THE COURT: Seeing no objection, 220 is in.

25 (Whereupon, Government's Exhibit No. 220 was

1 entered into evidence.)

2 BY MS. PASCHALL:

3 Q. So, Officer, at this point in time, are you now closer
4 to that outer archway of the tunnel as opposed to earlier
5 where we viewed you sort of in between those two sets of
6 double doors?

7 A. Yes.

8 Q. Did there come a time when the police line that was at
9 that outer archway got pushed back further inside the tunnel
10 and lost some ground?

11 A. Yes.

12 MS. PASCHALL: Now let's continue to watch Exhibit
13 220 here from 16:14:00.

14 (Whereupon, segments of Government's Exhibit
15 No. 220 were published in open court.)

16 MS. PASCHALL: Let's stop the video at 16:14:20.

17 BY MS. PASCHALL:

18 Q. Just before we moved away there, were you able to see an
19 individual that looked like they were dressed head to toe in
20 red?

21 A. Yes.

22 MS. PASCHALL: Start again at 16:14:20.

23 (Whereupon, segments of Government's Exhibit
24 No. 220 were published in open court.)

25 MS. PASCHALL: Let's stop the video there at

1 16:16:15.

2 BY MS. PASCHALL:

3 Q. Were you able to hear your own voice there?

4 A. Yes.

5 Q. What were you saying?

6 A. I believe I'm talking to someone who's -- talking to one
7 of the protesters and saying, "Help us move back. Only more
8 people are going to get hurt."

9 MS. PASCHALL: Let's start again at 16:16:15.

10 (Whereupon, segments of Government's Exhibit
11 No. 220 were published in open court.)

12 MS. PASCHALL: Let's stop the video at 16:16:33.

13 BY MS. PASCHALL:

14 Q. Were you able to hear somebody a little bit further away
15 than you screaming "Forward, forward, forward"?

16 A. Yes.

17 MS. PASCHALL: Let's start again at 16:16:33.

18 (Whereupon, segments of Government's Exhibit
19 No. 220 were published in open court.)

20 MS. PASCHALL: Stop the video.

21 BY MS. PASCHALL:

22 Q. At 16:17:01, what have we just heard happening there?

23 A. So I believe right there I'm saying, "Give me some
24 space. I can't stand," because everyone's getting pressed
25 up against each other. And I was losing my footing.

1 MS. PASCHALL: Let's play the video again at
2 16:17:01.

3 (Whereupon, segments of Government's Exhibit
4 No. 220 were published in open court.)

5 MS. PASCHALL: Let's stop the video there at
6 16:17:39.

7 BY MS. PASCHALL:

8 Q. Were you able to hear a voice a little bit further away
9 from you in that moment saying, "Will you surrender now, you
10 fucking pussies?"

11 A. Yes.

12 MS. PASCHALL: Let's start the video again at
13 16:17:39.

14 (Whereupon, segments of Government's Exhibit
15 No. 220 were published in open court.)

16 MS. PASCHALL: Stop the video at 16:18:09.

17 BY MS. PASCHALL:

18 Q. Officer, did we just hear your voice there?

19 A. Yeah. I said that if they broke through where we were
20 at at the Capitol, a lot of people were going to get killed
21 in the riot that follows.

22 Q. And what are you trying to accomplish in this moment
23 with the people who are directly in front of you?

24 A. So the hope is because this is -- if people push through
25 this big inlet, you would have hundreds of people more in

1 that were already storming into the Capitol. And we were
2 heavily outnumbered. And the only thing that we could do to
3 have some control and prevent all the bad actors in the
4 crowd from hurting or killing people was hold this choke
5 point where a small amount of our number could hold off a
6 larger number of protesters.

7 MS. PASCHALL: Let's keep going here at 16:18:09.

8 (Whereupon, segments of Government's Exhibit
9 No. 220 were published in open court.)

10 MS. PASCHALL: Stop the video.

11 BY MS. PASCHALL:

12 Q. Officer Foulds, we're now at 16:19:04. We started
13 playing this video for you at about 16:14. We're not seeing
14 much on the screen at this point. Is that accurate?

15 A. Yes.

16 Q. And why is that?

17 A. Because my body-worn camera is being pushed right up
18 against the mass of people so that, like, I am chest to
19 chest and everyone next to me is chest to chest with all of
20 the protesters who were pushing against us.

21 Q. Are you in fact the front line of that group so that
22 your chest is now up against directly the mob in front of
23 you?

24 A. I believe so.

25 MS. PASCHALL: Let's continue here at 16:19:04.

1 (Whereupon, segments of Government's Exhibit
2 No. 220 were published in open court.)

3 MS. PASCHALL: If we could stop at 16:19:37.

4 BY MS. PASCHALL:

5 Q. Did we just hear your voice again?

6 A. Yeah. I think I said, "I can't see anything." I don't
7 know why I bring it up. But --

8 Q. But in that moment -- well, let me ask you this:
9 Earlier, you talked about a helmet that you would put on as
10 a part of your CDU gear.

11 Do you remember that?

12 A. Yeah.

13 Q. Did that have a shield?

14 A. Yeah, it did. And probably what I'm talking about is
15 over the course of the day it got covered with all sorts of
16 stuff from mostly pepper spray getting exchanged from both
17 sides. I imagine at this point it must be covered.

18 MS. PASCHALL: Let's now move ahead to 16:20:43.

19 (Whereupon, segments of Government's Exhibit
20 No. 220 were published in open court.)

21 MS. PASCHALL: Let's stop the video.

22 BY MS. PASCHALL:

23 Q. We've stopped at 16:21:02. At this point in the video,
24 what are we able to see?

25 A. I think people are -- protesters are moving out of the

1 hallway and I'm trying to push people along and make sure
2 that everyone gets out of the hallway.

3 Q. So we've now -- is it accurate to say we've now broken
4 away from that moment where you are chest to chest with
5 protesters for several minutes and now we've got a little
6 bit more room to breathe?

7 A. Yes.

8 MS. PASCHALL: Your Honor, I have another question
9 about whether something is in evidence or not. We admitted
10 Exhibit 101 and all of its subcomponents, but I don't think
11 we admitted 101.6, which is going to be camera 74 from 4:15
12 onwards. Since we've already admitted Exhibit 101 in its
13 entirety, I would ask if defense counsel have any objection
14 to admitting that subcomponent 101.6.

15 MR. LOPEZ: I have a question on your revised
16 exhibit list. I don't have a 101.6. It stops at --

17 MS. PASCHALL: We can get you one that will have
18 101.6.

19 THE COURT: Without objection, 101.6 is in.

20 (Whereupon, Government's Exhibit No. 101.6 was
21 entered into evidence.)

22 MS. PASCHALL: Can we please pull up
23 Exhibit 101.6.

24 (Whereupon, segments of Government's Exhibit
25 No. 101.6 were published in open court.)

1 MS. PASCHALL: We can stop that there.

2 BY MS. PASCHALL:

3 Q. Now, Officer, when you and I were preparing for your
4 testimony, did we watch some of the surveillance camera
5 video from that tunnel area at the U.S. Capitol?

6 A. Yes.

7 Q. What is the timestamp up in the upper left-hand corner,
8 please?

9 A. 4:15 p.m.

10 Q. And I'm going to circle in this center right of the
11 photograph there -- or the still shot there. Do you see
12 that individual all in red?

13 A. Yeah.

14 MS. PASCHALL: If we could please start to play
15 Exhibit 101.6 at 4:15:01 -- I'm sorry. Where you had it,
16 actually. I meant 4:15:01 p.m.

17 (Whereupon, segments of Government's Exhibit
18 No. 101.6 were published in open court.)

19 MS. PASCHALL: Stop the video.

20 BY MS. PASCHALL:

21 Q. We're stopped now at 4:15:40 p.m. Officer Foulds, where
22 is the police line? You can use your finger on the screen
23 there to annotate. Where is the police line in this
24 photograph?

25 A. (Witness indicates.)

1 Q. So fair to say about the dead middle of the screen right
2 here at 4:15:40. Is that accurate?

3 A. Yes.

4 MS. PASCHALL: Let's continue playing from this
5 point.

6 (Whereupon, segments of Government's Exhibit
7 No. 101.6 were published in open court.)

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

9 BY MS. PASCHALL:

10 Q. We've stopped at 14:16:19 p.m. Officer, I'm circling an
11 individual for you right in the middle there of the
12 photograph. Do you see that individual?

13 A. Yes.

14 Q. And what does it appear that individual is doing right
15 at this moment?

16 A. I think he's about to climb up the archway.

17 Q. Does he have his hand out on that kind of outer archway
18 there?

19 A. Yeah, he does.

20 MS. PASCHALL: If we could start the video again,
21 please.

22 (Whereupon, segments of Government's Exhibit
23 No. 101.6 were published in open court.)

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

25

1 BY MS. PASCHALL:

2 Q. We've stopped at 14:16:59 p.m. Officer, can you draw
3 for us on the screen if you can see the police line anymore
4 at 14:16:59?

5 A. (Witness indicates.)

6 Q. So would it be accurate to describe your line here as
7 now all the way at the bottom of the screenshot here at
8 14:16:59?

9 A. Yes.

10 MS. PASCHALL: If we could start the video again,
11 please.

12 (Whereupon, segments of Government's Exhibit
13 No. 101.6 were published in open court.)

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

15 BY MS. PASCHALL:

16 Q. We've stopped the video at 14:17:59. In that
17 intervening minute there, what is happening to the police
18 line?

19 A. It's -- I believe it's being pushed back further.

20 Q. And immediately off the bottom of the screen here in the
21 direction that the police line is being pushed, what are you
22 being pushed into?

23 A. We're being pushed into the main Capitol Building.

24 MS. PASCHALL: Let's start the video again at
25 14:17:59.

1 (Whereupon, segments of Government's Exhibit
2 No. 101.6 were published in open court.)

3 MS. PASCHALL: Let's stop the video.

4 BY MS. PASCHALL:

5 Q. We're now at 14:19:06. Are we able to see the police
6 line again yet in this video?

7 A. I'm not sure. I don't think so.

8 MS. PASCHALL: Let's move forward in time to
9 timestamp 4:20:27 p.m., so about a minute and a half.
10 That's fine. We're at 4:20:27 p.m. I'll ask that we start
11 the video again here.

12 (Whereupon, segments of Government's Exhibit
13 No. 101.6 were published in open court.)

14 MS. PASCHALL: If we could stop the video and
15 actually go back about three or four seconds here.

16 (Whereupon, segments of Government's Exhibit
17 No. 101.6 were published in open court.)

18 MS. PASCHALL: Right there is fine.

19 BY MS. PASCHALL:

20 Q. Officer, I am circling an individual right in the middle
21 of the screen at 4:20:28 p.m. Do you see that individual?

22 A. Yes.

23 Q. I'm going to ask that you watch that individual here for
24 the next couple of seconds while we play the video again.

25 (Whereupon, segments of Government's Exhibit

1 No. 101.6 were published in open court.)

2 MS. PASCHALL: Stop at 4:20:32.

3 BY MS. PASCHALL:

4 Q. Were you able to see that individual kind of wave his
5 arm in the air there during that five or so seconds?

6 A. Yes.

7 Q. Officer Foulds, in the time that you've been with CDU
8 74, are you one of the main units that gets called out for
9 large rallies, marches and First Amendment assemblies?

10 A. Yes.

11 Q. How many would you estimate large rallies, marches and
12 First Amendment assemblies that you've manned as a member of
13 CDU 74 in your time with MPD?

14 A. I think probably a few dozen.

15 Q. Have you ever experienced any of those marches, rallies
16 or First Amendment assemblies devolve into violence?

17 A. Yes.

18 Q. Has any of them been anything like what you experienced
19 this day on January 6th?

20 A. No.

21 MS. PASCHALL: Thank you. I have no further
22 questions for you.

23 THE COURT: Mr. Urso?

24 MR. URSO: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. URSO:

2 Q. Good afternoon, Officer Foulds.

3 A. Good afternoon.

4 Q. Give me a minute here.

5 MR. URSO: May I have a moment, your Honor?

6 THE COURT: You may.

7 MR. URSO: (Confers with counsel.)

8 I'm going to use my version of one of the
9 Government's exhibits. It's easier.

10 THE COURT: Okay.

11 BY MR. URSO:

12 Q. Just following up on that last point, this was an
13 unprecedented event for you. Correct?

14 A. Yes.

15 Q. And so is it your testimony -- you testified earlier
16 about your use-of-force policy and your baton strikes. Is
17 it your testimony that you think you would have been
18 unjustified in baton-striking people like, for instance,
19 Mr. McCaughey to move them back when they were that close to
20 the Capitol, to entering the Capitol?

21 A. No. That's not my testimony.

22 Q. You said you could only hit baton strikes if you'd been
23 assaulted.

24 A. If someone is being assaultive.

25 Q. Oh.

1 A. So if someone's trying to, like, forcibly push me back,
2 that's assaultive.

3 Q. Assaultive.

4 A. Assaultive is physically attacking someone. It doesn't
5 have to be a specific -- it doesn't have to be a specific
6 punch. It could be pushing someone to the ground.

7 Q. Okay. But you think that you would have been violating
8 policy if in that tunnel you were trying to move the line
9 back of people and you started whacking people in the front
10 with the baton? You think you would have been violating
11 policy if they had not pushed you or been assaultive?

12 A. If they had not pushed me but we -- we would not have
13 been pushed back if we were not pushed.

14 Q. So let me just --

15 A. So if they're trying to push their way past us, that
16 would be some way where we could asp-strike someone.

17 Q. Okay. If there was a stalemate at the moment and the
18 protesters were here, the police were here and nobody was
19 advancing but you wanted to move them out of the tunnel,
20 you're saying it would have been -- you would have violated
21 policy if you started using the baton at that point?

22 A. If everyone was just standing peacefully, yes, possibly.

23 Q. Okay. I just want to be clear. I believe you did
24 testify about that encounter you had with Mr. McCaughey.

25 That's what you testified about earlier. Right? This

1 gentleman here?

2 A. I believe so.

3 Q. The guy with the brown -- sort of reddish-brown
4 sweatshirt?

5 A. Yes.

6 Q. You said you were not injured as a result of that
7 encounter. Correct?

8 A. Correct.

9 Q. By the way, there was some video later played after the
10 encounter you had with him of another person with a brown
11 sweatshirt. That was not Mr. McCaughey. Correct?

12 A. I don't believe so.

13 Q. Well, didn't you confuse Mr. McCaughey with another
14 gentleman when you were interviewed by the detectives,
15 Detective McCarthy?

16 A. I didn't confuse the two. The detectives at that time
17 were asking about things that I remember from that day. So
18 I was talking about another interaction I had, because the
19 guy was very memorable.

20 I then immediately -- I think there was a little
21 confusion initially where the agent thought I was talking
22 about Mr. McCaughey and I wasn't. And I went back and
23 cleared that up and said, like, "No. I'm talking about a
24 different guy. The guy with the shield is not the person I
25 was talking about."

1 Q. And you were -- the confusion was because they both had
2 brown hoodies. Right?

3 A. No. I simply just brought up the other guy because he
4 was relevant and I didn't -- the two look very different.
5 So I was not confusing the two.

6 Q. And let me just ask you this: After your brief
7 encounter that we witnessed earlier here in these exhibits
8 with Mr. McCaughey, you did not see Mr. McCaughey again ever
9 that day. Correct?

10 A. Not that I recall.

11 Q. Now, I want to -- you were pretty liberal with the baton
12 during this encounter with Mr. McCaughey. Would you agree
13 with that?

14 A. No.

15 Q. Okay. Let me -- I'm going to take you through what's
16 been marked as Defendant's Exhibit A. I'm going to hook it
17 up. Let me back up just a little bit. I'm going to play a
18 little bit and then I'm going to try to go frame by frame.
19 I'm trying to catch the beginning of your encounter with
20 Mr. McCaughey.

21 Right here at 1:38, you're not at the front of the
22 line yet. Correct?

23 A. Correct.

24 Q. You can see you, because you had a green mask. Right?

25 A. Yep.

1 Q. Let me just play it a little bit.

2 (Whereupon, segments of Defendant McCaughey's
3 Exhibit A were published in open court.)

4 BY MR. URSO:

5 Q. There is an officer between you and Mr. McCaughey at
6 that point. Correct?

7 A. Yes.

8 (Whereupon, segments of Defendant McCaughey's
9 Exhibit A were published in open court.)

10 BY MR. URSO:

11 Q. Now, at that point, you're still behind that other
12 officer and you have your baton cocked. Is that correct?
13 You have it --

14 A. So everyone was packed really tight. So often, like, I
15 don't have space to have my hands out in front of me. I
16 have to have them pressed up against me because everyone's
17 so close to each other.

18 Q. So you wanted to be in be-ready position?

19 A. No. So I had someone in front of me forcing my hand all
20 the way. So I'm holding something in my hand and my arm's
21 being forced against my body.

22 Q. So you're saying that you holding this baton up in this
23 little snippet is involuntary?

24 A. I'm saying that I'm just holding things in my hand and
25 that's how my --

1 Q. Did you lift up the baton on purpose or was it in -- did
2 somebody force your arms in the air? That's all I'm asking.

3 A. I mean, I'm just holding it in the air.

4 Q. Did you put it in the air yourself or did somebody force
5 you --

6 A. I put it in the air myself.

7 MR. URSO: I'm going to play a little bit more.

8 (Whereupon, segments of Defendant McCaughey's
9 Exhibit A were published in open court.)

10 MR. URSO: I'm going to stop at 1:48.

11 BY MR. URSO:

12 Q. Would you agree this is the first time you're face to
13 face with Mr. McCaughey?

14 A. Sure.

15 Q. I'm going to actually try to go frame by frame. I don't
16 have that. I'm just going to click it, unclick it. I don't
17 have that feature.

18 You have the baton in your right hand holding it
19 in the air. Correct?

20 A. Yes.

21 Q. I'll go ahead.

22 (Whereupon, segments of Defendant McCaughey's
23 Exhibit A were published in open court.)

24 BY MR. URSO:

25 Q. Now your left hand is in the door?

1 A. Yes.

2 Q. Where the glass used to be?

3 A. Yes.

4 Q. Mr. McCaughey is sort of in the doorway and sort of in
5 your way from closing the door?

6 A. Yes.

7 (Whereupon, segments of Defendant McCaughey's
8 Exhibit A were published in open court.)

9 BY MR. URSO:

10 Q. We didn't see -- we missed something from the flag there
11 for a split second, but it looks like you guys are face to
12 face again. It doesn't look like there's been much
13 movement. Correct?

14 A. I believe in the body-worn camera that's when he shoves
15 me.

16 Q. I'm going to do the body-worn camera, too. I'm trying
17 to do both angles.

18 A. Correct.

19 Q. You think you got shoved while that flag was in the way?

20 A. I distinctly remember I go to grab the door to pull it
21 closed and then he shoves me.

22 Q. Okay. Let me do it again.

23 (Whereupon, segments of Defendant McCaughey's
24 Exhibit A were published in open court.)

25

1 BY MR. URSO:

2 Q. Now, he's not making contact with you there, is he?

3 A. I believe this is just after the shove.

4 (Whereupon, segments of Defendant McCaughey's
5 Exhibit A were published in open court.)

6 BY MR. URSO:

7 Q. You just swung the baton at him. Right?

8 A. Correct.

9 (Whereupon, segments of Defendant McCaughey's
10 Exhibit A were published in open court.)

11 BY MR. URSO:

12 Q. Now, he was in your way from closing the door. Right?
13 Right before you --

14 A. No. I --

15 Q. Right before you whacked him?

16 A. No. I went to close the door and he shoved me and so I
17 whacked him. Sorry. I delivered a strike with the baton.
18 Sorry.

19 THE COURT: "Whack" isn't the official term?

20 THE WITNESS: Not the technical term.

21 BY MR. URSO:

22 Q. But he's still alive. I don't mean it that way. I'm
23 going to go ahead.

24 (Whereupon, segments of Defendant McCaughey's
25 Exhibit A were published in open court.)

1 BY MR. URSO:

2 Q. At that point, it looks like you reached for his shield
3 to try to pull it and strike. Correct?

4 A. Can you go back a second or two?

5 (Whereupon, segments of Defendant McCaughey's
6 Exhibit A were published in open court.)

7 BY MR. URSO:

8 Q. Is that back enough?

9 A. I can't tell from here whether I'm going for the shield
10 or whether I'm going for the door again.

11 Q. You did at least once or twice try to pull his shield
12 aside and hit him with the baton. Right? You don't recall?

13 A. I mean, I might have tried to disarm him of the shield
14 that he had been hitting me with.

15 (Whereupon, segments of Defendant McCaughey's
16 Exhibit A were published in open court.)

17 BY MR. URSO:

18 Q. Right there, what are you reaching for? Is this the
19 door or the shield?

20 A. I can't tell from this angle.

21 (Whereupon, segments of Defendant McCaughey's
22 Exhibit A were published in open court.)

23 BY MR. URSO:

24 Q. Now, Mr. McCaughey is raising the shield or you pushed
25 it up. One or the other. Right? Your hand reached out to

1 the shield?

2 A. It looks like.

3 Q. But the shield's not touching your torso. Right?

4 You're touching the shield?

5 A. Okay.

6 Q. Would you agree with that?

7 A. Yes.

8 (Whereupon, segments of Defendant McCaughey's
9 Exhibit A were published in open court.)

10 BY MR. URSO:

11 Q. Now his shield came down, but it didn't strike you.

12 Correct?

13 A. Yes. But it looks like he swung it towards me.

14 Q. Well, he didn't hit you. Correct? As the shield came
15 down, it didn't strike you?

16 A. Yes. But it looks like he swung it towards me.

17 Q. That's a simple "yes" or "no."

18 A. I -- I can't necessarily tell from this angle whether it
19 struck me or not.

20 Q. Don't you think you would have flinched a little if you
21 got struck with it?

22 A. I mean, I had been struck --

23 MS. PASCHALL: Objection.

24 THE COURT: Sustained. Let's keep going.

25 MR. URSO: I'm going to keep going forward.

1 (Whereupon, segments of Defendant McCaughey's
2 Exhibit A were published in open court.)

3 BY MR. URSO:

4 Q. So right there, did you grab the shield and move it out
5 of the way and strike Mr. McCaughey? Or about to strike
6 him?

7 A. Yes. It looks like I got struck with the shield or he
8 attempted to strike me with the shield and then I struck him
9 in response.

10 (Whereupon, segments of Defendant McCaughey's
11 Exhibit A were published in open court.)

12 BY MR. URSO:

13 Q. And now he puts the shield up again to protect himself.
14 Right?

15 A. So I'm putting my hand in the way so that he's not able
16 to strike me with the shield.

17 Q. And in the screenshot which we just showed, did he not
18 just bring the shield back up to --

19 A. He brung the shield back up. I can't speak to his
20 intention.

21 (Whereupon, segments of Defendant McCaughey's
22 Exhibit A were published in open court.)

23 BY MR. URSO:

24 Q. But you were able to speak to his intention when that
25 shield came down. You said it looked like he was trying to

1 hit you.

2 A. I mean, I can only say from my perspective. If
3 something is swinging towards me, I believe it was trying to
4 swing towards me.

5 Q. Okay.

6 (Whereupon, segments of Defendant McCaughey's
7 Exhibit A were published in open court.)

8 BY MR. URSO:

9 Q. Now there's nothing happening. It's sort of just both
10 standing there. Right? You were trying to close the door
11 again. But other than that, nothing happened. Right?

12 A. Yes.

13 (Whereupon, segments of Defendant McCaughey's
14 Exhibit A were published in open court.)

15 BY MR. URSO:

16 Q. And that's the end of your encounter from that
17 perspective. Right?

18 A. Yes.

19 Q. Now I'm going to show your body-worn camera angle.

20 So --

21 THE COURT REPORTER: Counsel, could I have the
22 exhibit number for the record?

23 MR. URSO: This is Government's Exhibit 218.

24 Is it? No. Yeah.

25 MS. PASCHALL: Yes. It's Government's Exhibit

1 218.

2 (Whereupon, segments of Government's Exhibit
3 No. 218 were published in open court.)

4 BY MR. URSO:

5 Q. By the way, do you recall -- did you hear Officer Hodges
6 when he screamed in this tunnel?

7 A. I am not familiar with everyone's names. Is Mr. Hodges
8 the guy that got stuck in the door?

9 Q. Yeah.

10 A. Yeah, I did.

11 Q. And did you -- okay. That's all. And this was -- the
12 snippet we're watching now is shortly after that, caught
13 maybe a minute or two after that?

14 A. I'm not entirely sure when.

15 Q. Okay.

16 (Whereupon, segments of Government's Exhibit
17 No. 218 were published in open court.)

18 BY MR. URSO:

19 Q. Now, you can just see in the background Mr. McCaughey
20 was standing there with his shield up, protecting himself.
21 Right?

22 A. So you can also see that this is where I had my arm
23 raised and an officer's back is right up against me.

24 Q. Can you just answer the question I asked? Can you in
25 that snippet -- could you see Mr. McCaughey standing in the

1 background just holding the shield up at his chest?

2 A. Yes.

3 Q. You think that's the time that you had your arm raised
4 with the baton?

5 A. I believe so.

6 (Whereupon, segments of Government's Exhibit
7 No. 218 were published in open court.)

8 BY MR. URSO:

9 Q. That was -- yeah. That was when you were still behind
10 the other officer. Right?

11 A. Yeah. The other officer's in the way of me having my
12 hand down.

13 (Whereupon, segments of Government's Exhibit
14 No. 218 were published in open court.)

15 BY MR. URSO:

16 Q. Now, here, it looks like Mr. McCaughey must have just
17 got struck with a baton from another officer. Would you
18 agree with that? I'll go back.

19 A. I can't see from this angle.

20 Q. Let me just play that again.

21 (Whereupon, segments of Government's Exhibit
22 No. 218 were published in open court.)

23 BY MR. URSO:

24 Q. He had leaned back and he was -- you don't think so?

25 A. So I have no idea. From this perspective, it doesn't

1 show anything.

2 Q. Now, was that your baton that struck Mr. McCaughey right
3 there?

4 A. Sorry. Could you go back a few?

5 Q. Yeah.

6 (Whereupon, segments of Government's Exhibit
7 No. 218 were published in open court.)

8 BY MR. URSO:

9 Q. Right there. Did you see the baton?

10 A. Yes. He shoved me and I struck him back.

11 Q. Where did he shove you from this angle before you struck
12 him with the baton?

13 A. So --

14 Q. I can go back.

15 A. Going back, you can see that he leans forward with his
16 shield and strikes me, probably on my left side.

17 Q. Let me just go back a little, another second or two.

18 (Whereupon, segments of Government's Exhibit
19 No. 218 were published in open court.)

20 BY MR. URSO:

21 Q. I'm going to actually try to do frame by frame, if I
22 can.

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

25

1 BY MR. URSO:

2 Q. In that split second, you said he shoved you?

3 A. Yes. And that's me pushing the shield out of the way.

4 Q. Let me just do that again.

5 (Whereupon, segments of Government's Exhibit
6 No. 218 were published in open court.)

7 BY MR. URSO:

8 Q. He struck you in that millisecond? He reached out and
9 pushed you? That's what you're saying?

10 A. Either -- so if he didn't strike me, he was moving to
11 strike. The shield was moving towards me to strike me.

12 Q. And -- yeah. I'm not questioning your use of the baton
13 in any way.

14 A. I'm just saying.

15 Q. Yeah. I'm going to go forward.

16 (Whereupon, segments of Government's Exhibit
17 No. 218 were published in open court.)

18 BY MR. URSO:

19 Q. And that's when you put your hand on the door, I
20 believe, where the glass was broken? I'll go back a little
21 bit.

22 A. I'm sorry.

23 (Whereupon, segments of Government's Exhibit
24 No. 218 were published in open court.)

25

1 BY MR. URSO:

2 Q. I'm trying to do frame by frame. Is that your hand
3 there on the door?

4 A. I think so.

5 Q. Leather glove.

6 (Whereupon, segments of Government's Exhibit
7 No. 218 were published in open court.)

8 BY MR. URSO:

9 Q. Now it looks like you struck Mr. McCaughey again because
10 he was sort of -- got in the way of the door being closed.

11 Right? He put his foot there?

12 A. You can also see the shield -- plastic shield accelerate
13 towards me as he shoves me off of the door.

14 Q. Let me go back, because I don't see the shove. Hold on.

15 (Whereupon, segments of Government's Exhibit
16 No. 218 were published in open court.)

17 THE WITNESS: Right there.

18 BY MR. URSO:

19 Q. Again, he shoved you in that millisecond right there?

20 A. So you can see that my hand is all the way on the far
21 side of the door. And then in that camera, you can see that
22 the shield has gone all the way past the far side of the
23 door to cover up the near side of the door. So in that --
24 whatever length of time -- I think it's a little more than a
25 millisecond -- he has crossed that 3-foot distance towards

1 me --

2 Q. And you wanted --

3 A. -- and pushed me off of the door that I was touching.

4 Q. Is it possible that you were just annoyed that he was in
5 the way of you shutting the door and you wanted to get him
6 out of the way?

7 A. No.

8 MS. PASCHALL: Objection.

9 THE COURT: Overruled.

10 BY MR. URSO:

11 Q. No? That's not possible?

12 A. No.

13 Q. What are we just seeing there?

14 A. We're seeing him recoil from being struck after he
15 shoved me.

16 Q. Is this another shove or is this the same shove?

17 A. No. This is the same shove after I had my hand on the
18 door.

19 Q. Let me just play that couple of seconds straight
20 through.

21 (Whereupon, segments of Government's Exhibit
22 No. 218 were published in open court.)

23 THE WITNESS: I'm sorry. That is the second one.

24 I think I put my hand on the door again and he shoved me
25 again.

1 BY MR. URSO:

2 Q. Is that depicted in the video, him shoving you? Let me
3 do it again.

4 (Whereupon, segments of Government's Exhibit
5 No. 218 were published in open court.)

6 MR. URSO: I'm at 40 seconds now.

7 (Whereupon, segments of Government's Exhibit
8 No. 218 were published in open court.)

9 THE WITNESS: Yes. That's me reaching for the
10 door.

11 BY MR. URSO:

12 Q. Right. That's at 42.

13 (Whereupon, segments of Government's Exhibit
14 No. 218 were published in open court.)

15 BY MR. URSO:

16 Q. That's him still standing with the shield up against his
17 chest. Right?

18 A. I think -- with the frame-by-frame, it's hard.

19 Q. Yeah. It's less than a second. I'm still on 42 and I
20 did four clicks. But in that frame that you're looking at
21 now, he's still got the shield pulled up --

22 A. It's hard to tell motion in the frame-by-frame. But
23 okay.

24 (Whereupon, segments of Government's Exhibit
25 No. 218 were published in open court.)

1 BY MR. URSO:

2 Q. Actually, I think that was already the end of your
3 encounter with him. Right? Because I think he backs up and
4 gets sprayed.

5 A. I think so. Yes.

6 Q. Lets just watch that for a second. You've seen this
7 video a few times?

8 A. Yeah.

9 Q. And you noticed he got sprayed with something and then
10 he backed out of the tunnel?

11 A. I didn't notice that he got sprayed, but I did notice
12 him back out of the tunnel. Yeah.

13 Q. Let me go back again. Just watch as he's looking over
14 to the left of the side of the screen, to your left.

15 (Whereupon, segments of Government's Exhibit
16 No. 218 were published in open court.)

17 MR. URSO: It already happened.

18 (Whereupon, segments of Government's Exhibit
19 No. 218 were published in open court.)

20 BY MR. URSO:

21 Q. Right here. Coming up here. Did you see him duck his
22 face?

23 A. Yeah.

24 Q. Then he just runs out. Okay.

25 I just -- I really am having a hard time seeing

1 him make contact with you. I just want to try one more time
2 to see if we can see it.

3 A. So I don't like being hit by things, so I have my hand
4 in the way because I expected he's going to shove me as he's
5 been doing. So some of them don't make contact with my
6 torso because, as he brings the shield in, I'm putting my
7 hand in the way to deflect it.

8 Q. Let me just go back to the other exhibit briefly. This
9 is Defendant's Exhibit A.

10 (Whereupon, segments of Defendant McCaughey's
11 Exhibit A were published in open court.)

12 MR. URSO: I'll jump ahead to 1:26.

13 (Whereupon, segments of Defendant McCaughey's
14 Exhibit A were published in open court.)

15 BY MR. URSO:

16 Q. At this point, Mr. McCaughey is basically either in the
17 doorway or sort of just being pushed outside the door.
18 Would you agree with that?

19 A. I believe. If we'll go back two seconds, you can just
20 see him shove someone.

21 (Whereupon, segments of Defendant McCaughey's
22 Exhibit A were published in open court.)

23 BY MR. URSO:

24 Q. Who did he shove?

25 A. I couldn't tell. I think that might be me, but there's

1 the doorjamb in the way.

2 Q. No. You're still two deep here. Do you see your mask
3 back there?

4 A. Okay. Yeah.

5 Q. So he didn't shove you there. Right?

6 A. Yes.

7 Q. Yes, he didn't shove you?

8 A. At that very moment, yes.

9 Q. That's what I mean.

10 (Whereupon, segments of Defendant McCaughey's
11 Exhibit A were published in open court.)

12 BY MR. URSO:

13 Q. And now is when that officer is sort of clearing out to
14 the right and then you're going to be facing McCaughey.
15 Right?

16 A. Yes.

17 MR. URSO: We're at 1:38 of Exhibit A.

18 (Whereupon, segments of Defendant McCaughey's
19 Exhibit A were published in open court.)

20 BY MR. URSO:

21 Q. There I kind of saw Mr. McCaughey's hair come back. Do
22 you see that? It looked like maybe he got hit with
23 something here. Let me just go back. That's his hair, I
24 believe, on the left side of the screen. I'll go back one
25 more.

1 (Whereupon, segments of Defendant McCaughey's
2 Exhibit A were published in open court.)

3 BY MR. URSO:

4 Q. Do you see the head come back?

5 A. No.

6 (Whereupon, segments of Defendant McCaughey's
7 Exhibit A were published in open court.)

8 BY MR. URSO:

9 Q. He's got long, flowing hair. Right?

10 A. Okay.

11 (Whereupon, segments of Defendant McCaughey's
12 Exhibit A were published in open court.)

13 BY MR. URSO:

14 Q. Do you see his head come back?

15 A. Yeah.

16 Q. He must have been dodging something, right, at that
17 point?

18 A. I mean, everyone's moving around a lot.

19 Q. That's at 1:45.

20 (Whereupon, segments of Defendant McCaughey's
21 Exhibit A were published in open court.)

22 BY MR. URSO:

23 Q. This is where you're trying to close the door and he
24 starts stepping into the doorway again. Right?

25 A. Yes.

1 (Whereupon, segments of Defendant McCaughey's
2 Exhibit A were published in open court.)

3 BY MR. URSO:

4 Q. We did miss, like, two milliseconds behind the flag
5 there.

6 Now it looks like -- it kind of looked like you
7 stepped a little forward, doesn't it?

8 A. I think I was standing about where I was.

9 Q. That's right. Okay. Because you reached for the door.
10 Yeah. That's about right. You let go of the door and
11 stayed there. Okay.

12 (Whereupon, segments of Defendant McCaughey's
13 Exhibit A were published in open court.)

14 BY MR. URSO:

15 Q. Did you just hit Mr. McCaughey with a baton strike in
16 that snippet?

17 A. I did not hit him with a down-strike. I hit him with a
18 diagonal strike.

19 Q. Cross-strike, whatever?

20 A. Yeah.

21 Q. Did you see anywhere where he pushed you in those
22 snippets?

23 A. Yes.

24 Q. Where did you see that?

25 A. Right before I struck. He shoves me with the shield. I

1 pushed the shield away; I struck him.

2 Q. Let me just go back so you can show me where that was.

3 A. Okay.

4 (Whereupon, segments of Government's Exhibit
5 No. 218 were published in open court.)

6 THE WITNESS: Yes. So the shield's moving towards
7 me.

8 BY MR. URSO:

9 Q. Right there it is.

10 A. I mean, it's not a good angle.

11 Q. I didn't even see the shield again. Isn't it up against
12 his chest, down to the right?

13 A. I can't tell from this angle.

14 Q. I think you would see the opaque that the camera was
15 looking through in --

16 THE COURT: Mr. Urso, I think you're just kind of
17 stuck with his testimony. He's been very consistent on
18 this.

19 MR. URSO: The horse is dead, Judge?

20 THE COURT: Yes. Speaking of beatings and
21 whackings.

22 MR. URSO: If I could just have a moment, your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. URSO: (Confers with Defendant McCaughey

1 privately.)

2 BY MR. URSO:

3 Q. Did you see anywhere in these videos where Mr. McCaughey
4 struck you with a deadly weapon?

5 MS. PASCHALL: Objection. Calls for a legal
6 conclusion.

7 THE COURT: Sustained.

8 MR. URSO: Nothing further.

9 Thank you, Officer.

10 THE COURT: Ms. Cobb?

11 MS. COBB: I have no questions for this witness.

12 THE COURT: Mr. Shipley?

13 MR. SHIPLEY: Just one question.

14 CROSS-EXAMINATION

15 BY MR. SHIPLEY:

16 Q. Officer Foulds, I heard you testify that you considered
17 somebody pushing against you with a shield to be an assault
18 of you. Is that right?

19 A. Yes.

20 Q. Your answer was yes?

21 A. Yes.

22 Q. Do you know Sergeant Jason Mastony?

23 A. Not personally, no.

24 Q. You know he's a sergeant with CDU 42. Right?

25 A. I -- this is news to me. But I believe you.

1 Q. Well, if Sergeant Mastony testified in this courtroom
2 two days ago that it's not an assault if they are just
3 pushing against me with their body weight to move my line,
4 would you disagree with that?

5 MS. PASCHALL: Objection. He's testifying.

6 THE COURT: I don't think he's testifying,
7 actually.

8 Overruled.

9 BY MR. SHIPLEY:

10 Q. If that was Sergeant Mastony's testimony, that he said
11 it's not an assault if they're just pushing against me to
12 move my line, would you disagree with that?

13 A. So if he's a CDU sergeant, he would have a better
14 understanding. I am basing this off of what I understand to
15 be an assault if I was in the street in my district. And if
16 someone attempts to shove me around in the street of my
17 district, I would consider that an assault.

18 Q. Fair enough.

19 THE COURT: Any redirect?

20 MS. PASCHALL: None. Thank you.

21 THE COURT: Officer Foulds, thank you for your
22 testimony here today. You're free to go.

23 THE WITNESS: Thank you.

24 THE COURT: You may step down.

25 (Witness excused.)

1 **CERTIFICATE**

2

3 I, LISA EDWARDS, RDR, CRR, do hereby

4 certify that the foregoing constitutes a true and accurate

5 transcript of my stenographic notes, and is a full, true,

6 and complete transcript of the proceedings produced to the

7 best of my ability.

8

9

10 Dated this 22nd day of September, 2022.

11

12 /s/ Lisa Edwards, RDR, CRR
13 Official Court Reporter
United States District Court for the
14 District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
15 (202) 354-3269

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\$	118:3 15:13:43 [2] - 118:9, 118:13 15:13:46 [1] - 118:24 15:13:58 [1] - 119:3 15:14:02 [1] - 114:18 15:14:05 [2] - 119:7, 119:11 16 [5] - 7:11, 10:4, 30:4, 57:8, 82:19 161 [1] - 3:7 16:08 [1] - 123:24 16:09:11 [1] - 124:4 16:14 [1] - 128:13 16:14:00 [2] - 124:11, 125:13 16:14:07 [1] - 124:16 16:14:20 [2] - 125:16, 125:22 16:16:15 [2] - 126:1, 126:9 16:16:33 [2] - 126:12, 126:17 16:17:01 [2] - 126:22, 127:2 16:17:39 [2] - 127:6, 127:13 16:18:09 [2] - 127:16, 128:7 16:19:04 [2] - 128:12, 128:25 16:19:37 [1] - 129:3 16:20:43 [1] - 129:18 16:21:02 [1] - 129:23 16:45 [1] - 38:25 16:46 [1] - 38:17 17 [2] - 5:16, 98:22 17:11 [1] - 74:20 17:38 [1] - 46:1 17:42 [1] - 75:15 18 [5] - 2:5, 46:7, 82:19, 104:25, 105:1 18:01 [1] - 46:21 18:06 [1] - 47:6 18:08 [1] - 47:12 18:22 [2] - 105:6, 105:22 18:30 [2] - 105:7, 105:22 18:33 [2] - 49:17, 49:19 18:36 [1] - 48:11 18:44 [1] - 49:19 18:50 [1] - 48:22 1:00 [3] - 12:16, 15:17, 15:20 1:26 [1] - 156:12 1:38 [2] - 139:21, 157:17	1:40 [1] - 90:17 1:45 [1] - 158:19 1:48 [1] - 141:10	2	2 [1] - 37:22 20 [6] - 16:22, 51:7, 51:12, 51:24, 95:1, 119:24 200 [2] - 1:25, 7:17 20001 [2] - 2:10, 163:14 2003 [1] - 54:21 2005 [1] - 58:18 2017 [1] - 99:20 2018 [1] - 91:23 202 [2] - 2:11, 163:15 2020 [2] - 6:18, 26:21 2021 [11] - 5:19, 6:10, 8:9, 56:12, 84:5, 109:13, 109:17, 111:8, 112:1, 113:2, 124:20 2022 [2] - 1:6, 163:10 20530 [1] - 1:18 21-00040 [1] - 1:3 218 [43] - 3:11, 112:10, 112:12, 112:13, 112:16, 112:21, 113:5, 113:6, 113:7, 113:12, 113:24, 114:3, 114:17, 115:18, 116:13, 117:21, 118:6, 118:11, 118:21, 119:5, 119:9, 147:23, 148:1, 148:3, 148:17, 149:7, 149:14, 149:22, 150:7, 150:19, 151:6, 151:17, 151:24, 152:7, 152:16, 153:22, 154:5, 154:8, 154:14, 154:25, 155:16, 155:19, 160:5 22 [2] - 104:25, 119:25 220 [19] - 3:12, 123:12, 123:14, 123:20, 124:3, 124:13, 124:23, 124:24, 124:25, 125:13, 125:15, 125:24, 126:11, 126:19, 127:4, 127:15, 128:9, 129:2, 129:20 22:20 [2] - 120:13,	120:18 22:33 [2] - 120:16, 120:19 22:43 [1] - 121:3 22nd [1] - 163:10 232.10 [3] - 22:4, 22:14, 22:24 232.18 [2] - 35:7, 35:12 232.22 [2] - 18:8, 97:2 25 [1] - 16:22 2:17 [1] - 122:17 2:38 [1] - 122:18	3	3 [4] - 1:11, 1:21, 1:24, 37:22 3-foot [1] - 152:25 30 [8] - 6:25, 64:8, 64:9, 64:10, 64:15, 73:24, 105:1, 119:17 301 [34] - 38:18, 38:20, 39:4, 49:17, 49:21, 52:3, 74:4, 74:19, 74:22, 75:20, 76:8, 77:2, 77:16, 78:6, 79:8, 79:19, 80:9, 82:18, 85:25, 86:21, 87:6, 88:15, 88:18, 104:23, 105:9, 105:24, 119:21, 119:23, 120:2, 120:13, 120:15, 121:2, 123:1, 150:24 301.1 [2] - 37:22, 38:3 301.10 [2] - 46:2, 46:4 301.11 [2] - 45:12, 46:21 301.12 [3] - 46:24, 47:1, 47:6 301.13 [2] - 47:12, 47:14 301.14 [2] - 48:10, 48:13 301.15 [2] - 48:21, 48:24 301.6 [2] - 39:21, 39:22 301.7 [1] - 41:11 301.8 [1] - 45:7 301.9 [3] - 45:8, 45:14, 45:19 31 [1] - 1:6 32502 [1] - 1:25 333 [2] - 2:9, 163:14	354-3269 [2] - 2:11, 163:15 3:11 [1] - 68:9 3:15 [1] - 68:9	4	4 [4] - 3:5, 37:22, 92:7, 92:10 4-foot [1] - 93:8 40 [5] - 6:25, 59:19, 59:22, 72:23, 154:6 414 [4] - 51:5, 51:10, 51:19, 52:5 415 [6] - 3:11, 122:4, 122:6, 122:14, 122:16, 122:20 42 [3] - 154:12, 154:19, 161:24 45 [1] - 51:7 45373 [1] - 2:6 4:15 [2] - 130:11, 131:9 4:15:01 [2] - 131:15, 131:16 4:15:40 [2] - 131:21, 132:2 4:20:27 [2] - 134:9, 134:10 4:20:28 [1] - 134:21 4:20:32 [1] - 135:2 4:30 [1] - 52:12	5	5 [1] - 37:22 555 [1] - 1:17 56 [1] - 3:5 5:00 [2] - 29:24, 52:12	6	6 [2] - 92:7, 92:10 6-foot [1] - 92:4 6706 [1] - 2:10 6:00 [1] - 29:25 6:10 [1] - 8:12 6:35 [2] - 8:13, 11:2 6th [39] - 5:19, 8:9, 56:12, 56:18, 57:3, 58:9, 58:14, 58:15, 58:23, 60:20, 61:2, 61:18, 61:22, 62:1, 62:13, 63:2, 66:8, 70:12, 70:18, 71:3, 72:13, 72:19, 73:5, 73:12, 73:15, 94:25,
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99:17, 106:21, 107:10, 107:15, 109:13, 109:17, 111:8, 112:1, 113:2, 123:8, 124:20, 135:19	113:1, 115:21, 116:7, 122:25, 124:19, 128:14, 130:3, 132:2, 133:6, 163:4 accurately [1] - 115:8 achieve [1] - 34:24 Action [1] - 1:3 actions [1] - 46:9 activate [1] - 111:11 activated [1] - 111:22 active [3] - 9:10, 61:18, 61:22 actors [1] - 128:3 addition [1] - 106:6 address [3] - 11:16, 44:18, 45:22 adjust [2] - 4:15, 108:15 admission [2] - 113:5, 124:23 admitted [7] - 18:9, 35:7, 51:6, 74:4, 130:9, 130:11, 130:12 admitting [1] - 130:14 adrenaline [1] - 22:1 advancing [1] - 137:19 advantage [2] - 30:22, 60:1 AED [1] - 53:5 afternoon [6] - 18:21, 91:13, 91:14, 108:18, 136:2, 136:3 agencies [2] - 14:22, 15:2 agent [4] - 53:13, 53:16, 53:18, 138:21 agents [2] - 53:3, 84:6 aggravated [1] - 54:3 ago [11] - 5:16, 17:22, 42:2, 42:4, 45:20, 52:1, 62:5, 69:6, 83:1, 87:4, 162:2 agree [15] - 70:16, 74:9, 74:15, 75:3, 75:9, 77:22, 83:14, 86:13, 96:11, 97:16, 139:12, 141:12, 145:6, 149:18, 156:18 agreeing [1] - 69:8 agreement [1] - 64:3 ahead [9] - 80:7, 118:19, 119:24, 122:17, 124:10, 129:18, 141:21,	143:23, 156:12 aid [2] - 52:23, 107:11 aiming [2] - 46:14, 46:17 Air [1] - 53:17 air [7] - 42:18, 135:5, 141:2, 141:3, 141:4, 141:6, 141:19 AKERS [1] - 1:15 alarm [1] - 34:13 alive [2] - 68:12, 143:22 alleviate [1] - 9:15 alleviated [1] - 9:16 allow [1] - 121:25 allowed [3] - 69:24, 73:5, 101:12 alluded [1] - 63:22 almost [7] - 25:4, 33:13, 36:24, 54:3, 62:3, 72:22, 76:20 altercation [1] - 111:16 altogether [2] - 40:20, 43:2 Amendment [7] - 7:9, 7:13, 9:21, 100:15, 135:9, 135:12, 135:16 AMERICA [1] - 1:3 American [2] - 58:25, 63:6 amount [5] - 9:8, 14:23, 64:4, 64:7, 128:5 AND [1] - 1:10 angle [10] - 78:18, 81:9, 116:4, 144:20, 145:18, 147:19, 149:19, 150:11, 160:10, 160:13 angles [1] - 142:17 angry [1] - 50:8 annotate [1] - 131:23 annoyed [1] - 153:4 answer [8] - 58:22, 63:15, 65:10, 70:3, 73:20, 93:15, 148:24, 161:20 answered [3] - 11:16, 71:12, 71:13 answers [1] - 72:10 anticipating [1] - 62:4 Antonio [3] - 3:5, 4:24, 5:2 ANTONIO [1] - 4:12 apologize [8] - 19:19, 45:12, 51:16,	61:15, 63:19, 69:3, 92:12, 94:7 appear [3] - 113:19, 124:6, 132:14 appearances [5] - 1:13, 58:10, 58:23, 59:22, 62:11 APPEARANCES [1] - 2:1 applied [2] - 96:19, 106:12 applies [1] - 36:25 apply [1] - 46:11 applying [3] - 45:25, 49:5, 78:24 approach [1] - 14:6 approval [2] - 59:3, 59:21 Aquilino [3] - 3:5, 4:7, 4:24 AQUILINO [3] - 1:10, 4:12, 5:2 archway [4] - 125:4, 125:9, 132:16, 132:17 area [25] - 16:2, 18:12, 19:9, 19:13, 20:5, 24:1, 25:9, 30:4, 33:5, 37:6, 45:25, 46:13, 46:18, 46:20, 53:1, 67:9, 102:2, 106:11, 110:16, 110:18, 110:24, 120:8, 123:16, 131:5 areas [9] - 36:25, 37:1, 37:3, 37:7, 37:10, 37:12, 62:25, 67:20 arm [10] - 13:14, 49:1, 78:19, 83:3, 83:5, 95:19, 121:18, 135:5, 148:22, 149:3 arm's [1] - 140:20 armed [1] - 27:2 armor [2] - 16:15, 110:4 arms [2] - 74:12, 141:2 Army [6] - 5:23, 5:24, 5:25, 6:2, 6:6, 58:16 arrest [8] - 54:25, 57:8, 57:10, 72:23, 73:24, 98:17, 98:23, 103:5 arrested [6] - 98:19, 99:2, 99:5, 99:14, 99:20, 100:7 arrests [4] - 57:2, 58:4, 98:20, 99:12 arrival [1] - 31:5 arrived [2] - 8:12,	20:6 articles [1] - 62:11 ASHLEY [1] - 1:15 aside [2] - 100:19, 144:12 asp [5] - 117:7, 121:16, 121:19, 122:1, 137:16 asp-strike [1] - 137:16 assault [5] - 161:17, 162:2, 162:11, 162:15, 162:17 assaulted [4] - 21:23, 69:22, 72:8, 136:23 assaulting [1] - 23:8 assaultive [8] - 121:17, 121:21, 122:1, 136:24, 137:2, 137:3, 137:4, 137:11 assemblies [5] - 7:9, 7:13, 135:9, 135:12, 135:16 assigned [1] - 6:13 assignment [2] - 6:11, 109:5 assist [2] - 44:23, 55:1 assistance [6] - 15:18, 15:21, 33:22, 52:15, 52:19, 102:17 assisted [1] - 102:12 assisting [1] - 102:4 assumed [1] - 31:17 assuming [1] - 76:23 asthmatic [1] - 45:2 attached [2] - 13:13, 13:15 attack [1] - 26:2 attacked [6] - 17:8, 17:23, 17:24, 26:1, 30:12, 31:7 attacking [8] - 19:11, 20:14, 23:10, 23:11, 68:15, 87:20, 107:13, 137:4 attempted [1] - 146:8 attempts [1] - 162:16 attention [5] - 9:11, 19:9, 22:2, 33:22, 92:6 attest [2] - 30:7, 104:5 attorney [1] - 71:1 ATTORNEYS [1] - 1:16 attribute [1] - 85:12 attributed [1] - 84:24 audio [2] - 111:23,
7				
705 [1] - 109:7 74 [6] - 109:12, 109:14, 109:23, 130:11, 135:8, 135:13 745 [1] - 2:3				
8				
8-foot [1] - 92:4 801 [4] - 14:10, 42:12, 92:6 810 [1] - 1:20 8:00 [1] - 11:5				
9				
91 [1] - 3:6 96734 [1] - 2:3 9:34 [1] - 1:7				
A				
a.m [1] - 1:7 ability [4] - 49:8, 49:11, 106:16, 163:7 able [25] - 18:19, 20:6, 39:7, 39:17, 43:8, 43:9, 44:17, 54:10, 54:14, 54:21, 55:11, 57:18, 74:12, 117:25, 120:6, 124:16, 125:18, 126:3, 126:14, 127:8, 129:24, 134:5, 135:4, 146:15, 146:24 abrasions [1] - 123:9 academy [1] - 91:16 accelerate [1] - 152:12 accomplish [1] - 127:22 according [1] - 89:23 account [1] - 60:4 accountability [1] - 71:23 accountable [6] - 58:13, 59:8, 59:12, 61:10, 71:20, 72:1 accurate [11] - 64:19,				

<p>124:9 August [1] - 1:6 authority [1] - 7:2 available [4] - 14:21, 14:23, 96:21, 100:1 Avenue [2] - 2:9, 163:14 avenues [1] - 28:25 avoid [2] - 37:2, 55:8 avoiding [1] - 47:10 award [1] - 73:7 awards [1] - 71:21 aware [3] - 10:20, 10:25, 15:14</p>	<p>149:4, 149:17, 150:2, 150:9, 150:12, 151:12, 159:15 baton-striking [1] - 136:18 batons [2] - 36:22, 117:9 battalion [1] - 109:11 be-ready [1] - 140:18 bear [1] - 34:14 bearable [1] - 50:12 beat [2] - 17:20, 21:9 beating [1] - 20:14 beatings [1] - 160:20 became [3] - 6:5, 21:11, 103:5 become [3] - 20:20, 61:22, 111:13 Bedford [1] - 1:20 BEFORE [1] - 1:11 before-and-after [1] - 58:8 began [19] - 5:16, 12:21, 19:2, 25:13, 27:15, 27:25, 28:7, 32:1, 32:13, 33:20, 34:20, 41:4, 42:15, 48:16, 49:13, 52:10, 53:3, 102:16, 103:17 begin [1] - 54:20 beginning [6] - 23:12, 40:8, 57:20, 57:23, 102:25, 139:19 behind [29] - 25:4, 26:2, 27:25, 28:2, 29:5, 29:10, 29:14, 31:19, 31:21, 31:23, 32:24, 44:22, 49:14, 67:4, 68:4, 75:9, 77:10, 78:10, 80:18, 83:3, 83:7, 86:12, 96:19, 103:12, 103:13, 140:11, 149:9, 159:4 bell [1] - 51:21 belligerent [1] - 25:2 belonged [1] - 117:4 bench [1] - 4:2 BENCH [1] - 1:11 berate [1] - 59:13 berated [1] - 59:9 best [4] - 11:17, 18:25, 24:17, 163:7 better [4] - 13:25, 45:17, 81:17, 162:13 between [6] - 82:19, 114:14, 118:17, 121:9, 125:5, 140:5 beyond [2] - 68:18, 86:16</p>	<p>bicycle [1] - 109:23 bicycles [1] - 109:22 big [5] - 30:14, 30:21, 57:13, 97:12, 127:25 bike [11] - 6:14, 20:8, 20:24, 20:25, 54:13, 67:7, 91:20, 91:22, 109:24, 110:4 bit [22] - 5:12, 27:16, 44:21, 47:8, 52:1, 56:25, 57:5, 85:7, 85:15, 97:6, 112:18, 113:21, 118:23, 123:25, 126:14, 127:8, 130:6, 139:17, 139:18, 140:1, 141:7, 151:21 black [3] - 20:24, 67:6, 83:5 bleeding [7] - 22:3, 35:17, 35:21, 36:3, 41:13, 41:14, 54:2 block [2] - 28:12, 76:18 blocked [3] - 24:3, 74:16, 76:22 blocking [5] - 76:12, 76:16, 77:7, 107:10, 109:21 blocks [2] - 109:18, 110:2 blood [4] - 41:15, 45:9, 103:1, 103:2 bloodbath [2] - 27:4, 50:18 blow [2] - 76:12, 76:16 blurry [1] - 118:23 body [30] - 15:10, 15:12, 15:14, 37:10, 43:17, 49:5, 50:5, 94:21, 111:8, 111:18, 112:1, 112:4, 112:6, 112:24, 114:23, 115:12, 115:25, 116:4, 117:14, 117:25, 120:20, 124:1, 124:6, 124:14, 128:17, 140:21, 142:14, 142:16, 147:19, 162:3 body-worn [19] - 15:10, 15:12, 15:14, 111:8, 111:18, 112:1, 112:4, 112:6, 112:24, 114:23, 116:4, 120:20, 124:1, 124:6, 124:14, 128:17, 142:14, 142:16,</p>	<p>147:19 Bond [6] - 81:19, 82:6, 82:15, 83:23, 87:10, 104:18 BOND [62] - 1:15, 4:18, 8:8, 12:12, 14:6, 14:8, 16:20, 18:8, 18:10, 19:19, 19:24, 22:4, 22:7, 22:16, 22:21, 22:25, 23:1, 27:9, 35:14, 35:15, 36:20, 36:21, 37:21, 37:24, 38:16, 38:21, 38:22, 39:5, 39:20, 39:24, 41:11, 41:18, 45:6, 45:11, 45:18, 46:2, 46:5, 46:24, 47:12, 47:15, 48:10, 48:14, 48:21, 48:25, 49:16, 49:22, 51:5, 51:11, 51:20, 53:19, 55:13, 83:9, 104:1, 104:19, 104:21, 104:24, 105:2, 105:10, 105:11, 105:22, 106:1, 107:23 book [8] - 62:13, 62:15, 62:20, 63:17, 64:5, 65:12, 70:13, 107:2 books [1] - 64:24 bottle [1] - 103:14 bottom [5] - 12:4, 17:7, 36:13, 133:7, 133:20 Box [1] - 2:3 brace [2] - 88:23, 88:24 bracing [1] - 87:11 breach [4] - 12:19, 12:22, 34:23, 52:10 breached [9] - 31:1, 32:13, 35:25, 52:11, 69:9, 69:12, 69:19, 69:22, 73:17 breaches [4] - 29:23, 29:24, 67:20, 67:22 break [7] - 32:1, 34:22, 55:16, 55:18, 85:6, 90:17, 90:20 breaking [2] - 19:10, 20:21 breath [2] - 4:22, 33:21 breathe [4] - 40:8, 45:4, 95:18, 130:6 breathe' [1] - 40:25 breathing [2] - 95:6, 95:19 brief [2] - 35:8, 139:6</p>	<p>briefly [3] - 52:19, 53:24, 156:8 bright [1] - 67:6 bring [8] - 18:8, 38:18, 39:20, 45:6, 71:2, 101:8, 129:7, 146:18 bringing [3] - 20:8, 70:17, 70:21 brings [1] - 156:6 broke [5] - 19:14, 21:20, 24:5, 24:23, 127:19 broken [7] - 19:17, 21:2, 35:1, 38:9, 38:11, 130:3, 151:20 broom [1] - 35:1 brought [2] - 72:12, 139:3 brown [4] - 138:3, 138:10, 139:2 bruises [3] - 90:8, 90:11, 90:12 brung [1] - 146:19 brutal [1] - 34:12 brutality [1] - 26:19 buffer [2] - 111:21, 111:23 building [6] - 17:4, 69:24, 101:2, 110:19, 110:21, 111:6 Building [7] - 67:1, 99:6, 100:10, 100:12, 100:19, 100:21, 133:23 buildings [1] - 11:7 burning [4] - 41:17, 41:20, 42:19 Bush [1] - 30:9 buttons [1] - 31:22 BY [154] - 2:7, 4:18, 8:8, 12:12, 14:8, 16:20, 18:10, 19:24, 22:7, 22:16, 23:1, 27:9, 35:15, 36:21, 37:24, 38:22, 39:5, 39:24, 41:18, 45:18, 46:5, 47:15, 48:14, 48:25, 49:22, 51:11, 51:20, 53:19, 56:3, 60:11, 65:20, 68:21, 69:4, 70:7, 71:14, 74:8, 75:1, 75:17, 75:23, 76:10, 76:21, 77:4, 77:18, 78:8, 79:10, 79:23, 80:12, 83:16, 85:21, 86:2, 86:23, 87:8, 88:21, 89:4, 91:12, 93:21, 97:3, 104:7, 104:21,</p>
B				
<p>backed [1] - 155:10 background [2] - 148:19, 149:1 backs [1] - 155:3 backwards [2] - 10:25, 89:8 bad [2] - 22:1, 128:3 ballistic [3] - 13:19, 110:5, 110:8 barrier [1] - 35:3 barriers [2] - 19:10, 20:22 base [1] - 58:17 based [2] - 46:14, 46:16 basing [1] - 162:14 bathroom [1] - 33:9 baton [72] - 36:9, 36:10, 36:14, 36:24, 43:8, 44:5, 46:16, 47:18, 47:25, 48:5, 76:12, 76:17, 77:7, 77:9, 77:10, 77:21, 77:23, 78:10, 78:16, 78:20, 78:21, 79:12, 80:2, 80:6, 80:14, 80:20, 80:24, 81:4, 81:8, 81:12, 81:20, 81:22, 81:24, 82:8, 82:12, 115:2, 116:18, 117:2, 117:3, 117:6, 117:7, 117:10, 119:1, 120:22, 121:13, 121:14, 121:15, 121:16, 121:19, 122:1, 136:16, 136:18, 136:22, 137:10, 137:21, 139:11, 140:12, 140:22, 141:1, 141:18, 143:7, 143:17, 144:12,</p>				

<p>105:2, 105:11, 106:1, 108:17, 112:14, 112:23, 113:14, 114:4, 114:19, 115:20, 116:14, 117:1, 117:22, 118:12, 118:22, 119:10, 120:3, 120:17, 121:4, 122:21, 123:15, 124:5, 124:15, 125:2, 125:17, 126:2, 126:13, 126:21, 127:7, 127:17, 128:11, 129:4, 129:22, 131:2, 131:20, 132:9, 133:1, 133:15, 134:4, 134:19, 135:3, 136:1, 136:11, 140:4, 140:10, 141:11, 141:24, 142:9, 143:1, 143:6, 143:11, 143:21, 144:1, 144:7, 144:17, 144:23, 145:10, 146:3, 146:12, 146:23, 147:8, 147:15, 148:4, 148:18, 149:8, 149:15, 149:23, 150:8, 150:20, 151:1, 151:7, 151:18, 152:1, 152:8, 152:18, 153:10, 154:1, 154:11, 154:15, 155:1, 155:20, 156:15, 156:23, 157:12, 157:20, 158:3, 158:8, 158:13, 158:22, 159:3, 159:14, 160:8, 161:2, 161:15, 162:9</p>	<p>cannot [4] - 11:16, 33:6, 36:4, 72:9 cans [1] - 35:2 capability [1] - 57:25 capacity [4] - 56:18, 95:8, 95:20, 109:14 Capitol [110] - 4:25, 5:6, 5:9, 5:15, 5:21, 6:2, 6:6, 6:19, 7:6, 7:7, 7:10, 7:20, 7:24, 8:12, 8:16, 8:21, 8:24, 9:19, 10:1, 10:5, 10:19, 11:7, 11:19, 11:25, 12:20, 12:22, 14:18, 15:10, 15:15, 15:22, 17:10, 18:2, 18:12, 20:18, 29:2, 29:3, 29:17, 29:23, 29:24, 30:12, 31:1, 32:9, 32:10, 32:12, 32:17, 32:25, 34:23, 35:25, 57:7, 57:10, 58:11, 59:4, 62:5, 64:24, 65:4, 66:1, 66:3, 66:16, 66:19, 66:25, 67:1, 67:4, 67:10, 67:11, 67:17, 67:18, 67:22, 67:24, 68:14, 69:9, 69:12, 69:13, 69:15, 69:19, 69:23, 69:25, 72:19, 73:3, 73:17, 82:14, 95:21, 97:17, 97:20, 99:3, 99:6, 99:12, 99:14, 100:10, 100:16, 100:19, 100:21, 101:7, 107:13, 109:18, 110:2, 110:13, 110:14, 110:16, 114:11, 114:12, 127:20, 128:1, 131:5, 133:23, 136:20 car [2] - 5:23, 110:5 care [2] - 29:25, 41:23 career [6] - 57:3, 57:16, 57:20, 57:24, 99:12, 108:2 case [15] - 4:4, 31:22, 33:25, 56:22, 60:21, 61:20, 63:11, 65:12, 69:2, 69:5, 69:8, 73:5, 73:15, 83:1, 110:5 cases [3] - 56:16, 72:13, 106:25 catch [1] - 139:19 catching [2] - 4:22, 33:20</p>	<p>caught [2] - 28:2, 148:12 caused [2] - 89:24, 90:5 causing [1] - 106:7 CDU [26] - 6:14, 6:19, 6:24, 11:6, 12:5, 12:13, 12:18, 13:2, 14:24, 32:10, 54:13, 66:25, 91:15, 91:22, 109:12, 109:14, 109:23, 121:12, 121:14, 121:16, 129:10, 135:7, 135:13, 161:24, 162:13 CDU-style [2] - 32:10, 66:25 Center [6] - 9:19, 15:23, 16:4, 16:12, 16:19, 107:17 center [5] - 39:25, 97:17, 118:25, 122:22, 131:10 certain [4] - 59:5, 62:20, 82:4, 111:13 certainly [2] - 59:13, 70:4 CERTIFICATE [1] - 163:1 certification [2] - 99:21, 100:3 certify [1] - 163:4 chain [1] - 8:20 chambers [1] - 101:9 chance [1] - 11:8 CHANDLER [1] - 1:6 Chandler [1] - 56:6 change [3] - 8:22, 49:7, 49:10 chanting [1] - 34:13 chaos [1] - 23:12 chapter [1] - 108:2 charged [2] - 69:10, 69:20 charges [5] - 71:5, 71:20, 72:7, 72:12, 73:9 cheek [1] - 103:1 chemical [1] - 42:17 chemicals [1] - 20:21 chest [20] - 13:8, 37:6, 37:14, 43:18, 50:6, 50:20, 50:21, 84:1, 115:7, 121:18, 128:18, 128:19, 128:22, 130:4, 149:1, 154:17, 160:12 chief [1] - 4:5</p>	<p>chin [3] - 12:3, 13:1, 13:7 choke [1] - 128:4 circle [5] - 23:13, 113:16, 114:6, 118:14, 131:10 circled [3] - 114:23, 118:15, 122:23 circling [2] - 132:10, 134:20 circumstances [2] - 30:15, 65:8 citizen [4] - 7:22, 8:4, 37:8, 37:11 citizens [3] - 9:24, 31:7, 68:15 civil [7] - 70:17, 70:21, 71:2, 71:15, 72:3, 109:8, 109:11 civilian [2] - 20:16, 55:8 civilians [1] - 10:17 claiming [1] - 40:6 clarifications [1] - 63:21 clarify [2] - 66:10, 71:15 clarifying [1] - 20:10 classmates [1] - 72:21 claustrophobic [1] - 34:12 clear [3] - 38:21, 97:8, 137:23 cleared [1] - 138:23 clearing [1] - 157:13 clearly [3] - 83:23, 83:24, 86:24 Clements [12] - 38:23, 49:18, 74:3, 74:19, 75:14, 76:5, 77:14, 79:1, 104:24, 105:4, 115:14, 118:8 click [1] - 141:16 clicks [1] - 154:20 client [2] - 63:23, 74:9 climb [1] - 132:16 climbed [2] - 28:15, 98:16 clinking [1] - 21:2 clip [12] - 22:8, 23:2, 35:8, 35:9, 51:13, 75:18, 75:24, 76:1, 79:21, 81:6, 81:7, 81:14 clocked [2] - 8:12, 11:2 close [14] - 15:19, 15:20, 25:21, 28:10,</p>	<p>28:20, 66:6, 118:16, 121:9, 136:19, 140:17, 143:16, 147:10, 158:23 closed [13] - 12:20, 12:21, 69:13, 69:15, 69:18, 69:23, 69:24, 72:19, 100:16, 100:22, 142:21, 152:10 closely [3] - 105:6, 113:22, 114:21 closer [3] - 5:12, 12:16, 125:3 closing [2] - 142:5, 143:12 clothes [1] - 20:16 Co [1] - 63:13 CO [1] - 2:5 Co-Defendants [1] - 63:13 coat [4] - 20:3, 32:5, 65:24, 65:25 Cobb [6] - 55:25, 56:6, 68:19, 90:16, 106:2, 161:10 COBB [59] - 1:23, 56:1, 56:3, 60:11, 65:18, 65:20, 68:20, 68:21, 69:4, 70:7, 71:14, 74:3, 74:8, 74:19, 74:23, 75:1, 75:14, 75:17, 75:21, 75:23, 76:5, 76:9, 76:10, 76:14, 76:16, 76:21, 76:24, 77:3, 77:4, 77:13, 77:17, 77:18, 78:3, 78:7, 78:8, 79:1, 79:9, 79:10, 79:23, 80:7, 80:10, 80:12, 83:12, 83:16, 85:18, 85:21, 86:1, 86:2, 86:18, 86:22, 86:23, 87:7, 87:8, 88:10, 88:13, 88:21, 89:4, 90:14, 161:11 cocked [1] - 140:12 codes [2] - 30:18, 30:24 collapsible [4] - 36:10, 36:11, 117:9, 117:10 collapsible-style [2] - 117:9, 117:10 collateral [1] - 54:12 colleagues [1] - 103:3 college [1] - 58:15 Columbia [2] - 2:9,</p>
C				
<p>cam [2] - 115:12, 117:25 camera [23] - 15:12, 97:12, 97:19, 111:9, 111:18, 111:21, 112:1, 112:4, 112:7, 112:24, 114:23, 116:5, 120:20, 124:1, 124:6, 128:17, 130:11, 131:4, 142:14, 142:16, 147:19, 152:21, 160:14 cameras [2] - 15:10, 15:14</p>				

<p>163:13 COLUMBIA [2] - 1:1, 1:16 combat [1] - 11:23 coming [12] - 11:15, 12:6, 24:2, 27:22, 28:13, 28:24, 31:4, 61:1, 68:10, 71:7, 77:11, 155:21 command [1] - 8:20 Commander [1] - 20:3 commander [1] - 66:24 commanders [1] - 25:12 commands [1] - 32:8 committed [1] - 73:17 common [4] - 5:2, 57:7, 57:9, 62:25 commotion [1] - 19:7 compared [3] - 59:24, 115:25, 117:14 compensated [1] - 59:23 complete [1] - 163:6 completed [1] - 15:23 completely [5] - 21:22, 23:7, 47:3, 50:2, 124:8 complies [2] - 23:15, 55:24 compromised [2] - 24:6, 24:16 concentrate [1] - 106:13 concern [1] - 8:19 concerns [6] - 9:2, 9:5, 9:15, 9:16, 11:12, 11:17 conclusion [1] - 161:6 cones [1] - 34:25 confers [2] - 136:7, 160:25 confidence [1] - 57:25 confines [1] - 69:1 confirmation [1] - 100:8 confrontation [2] - 7:21, 8:4 confuse [2] - 138:13, 138:16 confusing [1] - 139:5 confusion [2] - 138:21, 139:1</p>	<p>Congress [4] - 30:3, 62:25, 101:11, 101:18 congressmen [1] - 70:1 Connecticut [1] - 1:21 conscious [2] - 26:19, 67:23 consider [4] - 67:13, 73:9, 87:20, 162:17 considered [4] - 70:19, 72:6, 161:16 considering [2] - 70:21, 71:11 consistent [1] - 160:17 constitute [1] - 72:24 constitutes [1] - 163:4 Constitution [2] - 2:9, 163:14 consuming [1] - 8:20 CONT'D [1] - 2:1 contact [10] - 34:5, 43:17, 43:24, 50:5, 65:11, 70:18, 71:3, 143:2, 156:1, 156:5 contains [1] - 4:1 contents [1] - 55:18 context [1] - 66:20 continue [11] - 34:23, 59:10, 76:5, 76:14, 92:19, 116:10, 119:6, 120:24, 125:12, 128:25, 132:4 continued [11] - 9:22, 17:3, 20:20, 25:2, 25:17, 25:18, 26:1, 31:17, 43:12, 46:11, 54:3 continuing [3] - 42:25, 43:3, 48:19 contract [1] - 62:16 control [5] - 7:7, 14:24, 79:11, 117:6, 128:3 contusions [2] - 54:9, 90:11 convicted [1] - 73:14 coordinate [6] - 13:25, 17:16, 19:1, 33:22, 52:24, 102:16 coordinated [1] - 34:19 coordinations [1] - 32:23 copy [1] - 62:21 cord [1] - 22:19 corner [11] - 17:19, 20:4, 24:2, 25:1,</p>	<p>27:19, 88:5, 97:23, 97:24, 98:9, 131:7 cornered [5] - 20:1, 20:5, 25:1, 43:13, 49:4 corral [1] - 27:15 correct [77] - 14:16, 14:17, 34:6, 37:9, 38:9, 41:8, 61:21, 62:8, 62:9, 62:13, 62:14, 71:17, 74:14, 75:7, 75:8, 76:13, 76:22, 77:9, 77:24, 78:12, 78:17, 81:12, 87:13, 87:14, 89:18, 89:21, 89:25, 90:3, 90:7, 92:12, 92:16, 93:5, 93:6, 93:22, 93:24, 94:15, 96:1, 96:2, 96:3, 96:4, 96:10, 97:18, 97:25, 98:1, 98:10, 98:15, 99:1, 99:3, 99:6, 99:11, 100:10, 101:2, 101:4, 101:22, 104:11, 106:22, 106:23, 106:24, 106:25, 115:5, 122:3, 136:13, 138:7, 138:8, 138:11, 139:9, 139:22, 139:23, 140:6, 140:12, 141:19, 142:13, 142:18, 143:8, 144:3, 145:12, 145:14 correctly [6] - 12:15, 29:7, 46:8, 53:13, 64:14, 91:1 correspond [2] - 38:7, 52:4 counsel [6] - 4:2, 71:4, 83:9, 130:13, 136:7, 147:21 country [2] - 68:13, 108:1 counts [1] - 56:23 coup [2] - 69:10, 69:20 couple [11] - 17:22, 21:21, 29:13, 32:2, 34:2, 34:10, 59:19, 81:6, 113:25, 134:24, 153:19 course [5] - 7:11, 36:16, 81:5, 82:2, 129:15 Court [6] - 2:8, 2:8, 83:8, 108:19, 163:12, 163:13 court [122] - 22:14,</p>	<p>22:24, 35:12, 38:20, 39:4, 39:23, 45:14, 46:4, 47:1, 47:14, 48:13, 48:24, 49:21, 51:10, 51:19, 71:20, 74:22, 75:20, 76:8, 77:2, 77:16, 78:6, 79:8, 79:19, 80:9, 85:25, 86:21, 87:6, 88:15, 88:18, 105:9, 105:24, 112:12, 112:21, 113:12, 113:24, 114:3, 114:17, 115:18, 116:13, 117:21, 118:6, 118:11, 118:21, 119:5, 119:9, 119:23, 120:2, 120:15, 121:2, 122:20, 123:14, 124:3, 124:13, 125:15, 125:24, 126:11, 126:19, 127:4, 127:15, 128:9, 129:2, 129:20, 130:25, 131:18, 132:7, 132:23, 133:13, 134:2, 134:13, 134:17, 135:1, 140:3, 140:9, 141:9, 141:23, 142:8, 142:24, 143:5, 143:10, 143:25, 144:6, 144:16, 144:22, 145:9, 146:2, 146:11, 146:22, 147:7, 147:14, 148:3, 148:17, 149:7, 149:14, 149:22, 150:7, 150:19, 150:24, 151:6, 151:17, 151:24, 152:7, 152:16, 153:22, 154:5, 154:8, 154:14, 154:25, 155:16, 155:19, 156:11, 156:14, 156:22, 157:11, 157:19, 158:2, 158:7, 158:12, 158:21, 159:2, 159:13, 160:5 COURT [68] - 1:1, 4:3, 4:11, 4:14, 8:3, 8:6, 12:8, 14:7, 16:16, 19:17, 19:23, 26:16, 27:8, 36:18, 53:12, 55:16, 55:22, 55:25, 60:9, 65:16, 68:17, 70:2, 71:12, 76:15, 79:5, 83:10, 83:13, 88:9, 88:11, 89:2,</p>	<p>90:16, 90:25, 91:4, 91:8, 93:14, 104:2, 104:13, 104:15, 104:18, 105:20, 105:25, 107:24, 108:4, 108:9, 108:14, 113:6, 116:20, 116:24, 122:11, 124:24, 130:19, 135:23, 136:6, 136:10, 143:19, 145:24, 147:21, 153:9, 160:16, 160:20, 160:24, 161:7, 161:10, 161:12, 162:6, 162:19, 162:21, 162:24 courtroom [4] - 4:8, 105:5, 108:12, 162:1 cover [1] - 152:23 covered [2] - 129:15, 129:17 COVID [3] - 100:19, 100:24, 101:1 COVID-19 [1] - 100:17 cowriter [1] - 64:12 CPR [3] - 52:24, 53:10, 102:15 crack [1] - 38:11 cracked [5] - 24:6, 24:10, 24:12, 24:20, 37:18 create [1] - 27:4 created [1] - 19:7 creating [1] - 45:3 Criminal [1] - 1:3 criminal [3] - 56:15, 56:22, 99:9 crisscrossed [2] - 68:6, 68:8 crooked [1] - 40:11 cross [3] - 105:19, 106:2, 159:19 Cross [1] - 3:3 CROSS [4] - 56:2, 91:11, 135:25, 161:14 cross-examination [2] - 105:19, 106:2 CROSS-EXAMINATION [4] - 56:2, 91:11, 135:25, 161:14 cross-strike [1] - 159:19 crossed [1] - 152:25 crowd [16] - 7:7, 7:25, 17:5, 18:19, 20:13, 25:2, 27:2,</p>
--	--	--	--	--

36:7, 40:10, 45:23, 68:1, 92:20, 103:10, 106:13, 120:5, 128:4 crowds [1] - 7:18 CRR [3] - 2:7, 163:3, 163:12 crushed [1] - 68:2 Crypt [2] - 16:5 cuff [1] - 54:5 current [3] - 5:17, 108:24, 109:5 cyst [1] - 54:1	146:21, 147:6, 147:13, 156:10, 156:13, 156:21, 157:10, 157:18, 158:1, 158:6, 158:11, 158:20, 159:1, 159:12, 160:25 DEFENDANT [3] - 1:19, 1:23, 2:2 Defendant's [2] - 139:16, 156:9 Defendants [3] - 1:8, 34:4, 63:13 FENDER [1] - 1:23 defending [1] - 35:23 defense [2] - 105:17, 130:13 defensive [4] - 14:13, 14:14, 92:15, 92:17 defensively [1] - 92:18 deflect [1] - 156:7 degree [1] - 51:13 delivered [1] - 143:17 demonize [1] - 62:25 demonstration [1] - 9:21 demonstrations [2] - 10:12, 26:20 Department [4] - 18:5, 108:23, 108:25, 109:3 department [2] - 54:15, 121:24 department's [1] - 59:21 depicted [1] - 154:2 deploy [4] - 9:6, 10:10, 10:21, 26:1 deployed [5] - 10:18, 10:24, 27:3, 28:5, 41:16 deploying [1] - 20:21 describe [8] - 34:10, 35:3, 46:6, 50:11, 52:19, 53:24, 115:5, 133:6 described [3] - 66:21, 116:1, 117:2 describing [1] - 115:8 description [1] - 64:20 design [1] - 114:10 designed [1] - 93:24 desire [1] - 58:1 desk [1] - 31:20	desks [1] - 30:25 detail [1] - 82:3 detailed [1] - 6:15 details [5] - 48:9, 64:13, 64:19, 64:21, 65:2 Detective [1] - 138:15 detectives [2] - 138:14, 138:16 detector [1] - 31:18 determinations [1] - 71:6 determined [1] - 33:2 deterrence [1] - 72:24 deterrent [2] - 9:7, 73:18 device [4] - 25:6, 26:11, 26:12, 53:4 devolve [1] - 135:16 devolved [1] - 7:25 diagonal [3] - 42:14, 44:14, 159:18 diagonally [1] - 118:25 die [1] - 41:24 died [2] - 104:9, 104:10 difference [2] - 26:24, 114:13 different [10] - 10:6, 28:25, 36:22, 43:7, 44:11, 70:12, 84:7, 84:25, 138:24, 139:4 differently [2] - 36:22, 92:19 difficult [1] - 26:6 DIISEN [1] - 100:12 DIRECT [2] - 4:17, 108:16 direct [4] - 65:22, 77:19, 78:14, 81:11 Direct [1] - 3:3 direction [3] - 9:18, 96:8, 133:21 directions [1] - 9:25 directly [2] - 127:23, 128:22 Dirksen [1] - 100:11 disagree [2] - 162:4, 162:12 disarm [2] - 82:12, 144:13 discourse [1] - 59:2 discretion [1] - 99:8 discuss [2] - 55:17, 90:19 disorganized [1] -	34:20 disposed [1] - 24:8 distance [1] - 152:25 distinctly [1] - 142:20 distress [4] - 101:25, 102:19, 102:22, 103:19 district [3] - 162:15, 162:17, 163:13 District [5] - 2:8, 2:9, 108:22, 109:6, 163:13 DISTRICT [5] - 1:1, 1:1, 1:12, 1:16, 1:24 disturbance [2] - 109:8, 109:11 dodging [1] - 158:16 dollars [1] - 59:24 done [8] - 10:4, 54:20, 58:23, 59:3, 59:16, 61:4, 64:1, 84:23 door [48] - 16:11, 27:21, 28:10, 28:11, 28:20, 31:16, 31:22, 31:23, 32:1, 32:13, 33:3, 43:14, 49:3, 49:7, 49:10, 87:10, 87:11, 87:18, 89:7, 118:16, 118:17, 121:9, 141:25, 142:5, 142:20, 143:12, 143:16, 144:10, 144:19, 147:10, 148:8, 151:19, 152:3, 152:10, 152:13, 152:21, 152:23, 153:3, 153:5, 153:18, 153:24, 154:10, 156:17, 158:23, 159:9, 159:10 doorjamb [1] - 157:1 doors [10] - 15:25, 16:11, 31:12, 31:18, 31:24, 32:19, 52:11, 125:6 doorway [4] - 88:4, 142:4, 156:17, 158:24 double [9] - 15:25, 16:11, 31:11, 31:12, 31:18, 31:24, 32:19, 52:11, 125:6 down [35] - 11:15, 12:4, 16:6, 17:3, 17:14, 17:18, 17:22, 18:2, 19:10, 19:13, 21:2, 24:23, 27:22, 28:9, 28:20, 41:14, 53:1, 71:7, 72:16, 85:6, 98:18, 103:14,	107:24, 109:18, 110:20, 111:5, 118:25, 145:11, 145:15, 146:25, 149:12, 159:17, 160:12, 162:24 down-strike [1] - 159:17 dozen [1] - 135:14 dragged [1] - 68:1 drank [1] - 102:11 draw [1] - 133:2 dressed [2] - 12:2, 125:19 dropped [1] - 90:6 drug [2] - 104:10 duck [3] - 44:21, 47:8, 155:21 due [2] - 45:3, 100:17 during [19] - 6:14, 15:1, 18:21, 20:11, 30:12, 30:16, 40:3, 49:24, 57:3, 57:16, 61:17, 83:7, 96:6, 99:20, 100:7, 111:11, 111:13, 135:5, 139:12 duties [2] - 54:11, 54:12 duty [7] - 6:13, 77:25, 91:15, 101:15, 102:18, 109:5, 117:3
				E
				early [1] - 84:5 ease [1] - 9:17 easier [1] - 136:9 east [2] - 16:9, 32:18 East [1] - 2:5 easy [2] - 15:7, 70:25 edges [1] - 93:18 editor [1] - 64:12 editors [1] - 64:18 eds [2] - 59:19, 59:23 EDWARD [1] - 1:6 Edwards [1] - 163:12 EDWARDS [2] - 2:7, 163:3 effort [1] - 49:14 eight [4] - 6:1, 14:2, 91:17, 95:1 eight-foot [1] - 14:2 either [13] - 28:4, 48:2, 53:17, 57:14, 58:17, 65:10, 82:8, 83:20, 92:24, 100:11, 102:10, 151:10, 156:16

<p>elaborating [1] - 60:15</p> <p>elbow [1] - 13:14</p> <p>elected [1] - 99:23</p> <p>election [2] - 99:21, 100:5</p> <p>Eleventh [1] - 1:17</p> <p>email [1] - 31:5</p> <p>emails [1] - 8:21</p> <p>employed [2] - 5:5, 5:9</p> <p>encounter [8] - 137:24, 138:7, 138:10, 139:7, 139:12, 139:19, 147:16, 155:3</p> <p>encountered [1] - 7:25</p> <p>encountering [2] - 37:8, 37:11</p> <p>end [8] - 11:12, 11:24, 15:2, 22:9, 28:17, 33:16, 147:16, 155:2</p> <p>ended [2] - 104:8, 104:9</p> <p>enforcement [7] - 14:22, 15:2, 16:24, 18:15, 31:14, 33:15, 81:8</p> <p>English [1] - 12:10</p> <p>entered [6] - 4:8, 108:11, 113:8, 122:15, 125:1, 130:21</p> <p>entering [1] - 136:20</p> <p>entertain [1] - 26:6</p> <p>entire [5] - 33:13, 33:14, 52:10, 100:23, 107:17</p> <p>entirely [1] - 148:14</p> <p>entirety [1] - 130:13</p> <p>entrance [13] - 9:19, 15:23, 16:12, 27:15, 27:17, 27:20, 28:12, 29:18, 29:20, 30:2, 40:20, 107:17</p> <p>erected [1] - 97:18</p> <p>escape [1] - 27:20</p> <p>escaping [1] - 27:21</p> <p>especially [1] - 84:10</p> <p>ESQ [7] - 1:14, 1:15, 1:15, 1:19, 1:23, 2:2, 2:4</p> <p>essentially [1] - 74:16</p> <p>establish [1] - 20:12</p> <p>establishing [1] - 20:7</p> <p>estimate [3] - 7:12, 110:20, 135:11</p>	<p>event [6] - 30:14, 30:21, 82:1, 84:11, 120:23, 136:13</p> <p>events [2] - 57:13, 61:2</p> <p>eventually [1] - 27:13</p> <p>EVIDENCE [1] - 3:10</p> <p>evidence [7] - 113:8, 119:21, 122:8, 122:15, 125:1, 130:9, 130:21</p> <p>exact [1] - 33:1</p> <p>EXAMINATION [7] - 4:17, 56:2, 91:11, 104:20, 108:16, 135:25, 161:14</p> <p>examination [6] - 65:22, 77:19, 78:14, 81:11, 105:19, 106:2</p> <p>examiner [1] - 104:10</p> <p>example [1] - 94:9</p> <p>except [1] - 89:12</p> <p>EXCERPTED [1] - 1:11</p> <p>excerpts [1] - 4:1</p> <p>exchanged [2] - 24:19, 129:16</p> <p>excuse [1] - 88:10</p> <p>excused [2] - 108:10, 162:25</p> <p>exhibit [7] - 18:8, 35:6, 38:8, 49:16, 130:16, 147:22, 156:8</p> <p>Exhibit [166] - 3:11, 3:11, 3:12, 3:12, 14:10, 22:4, 22:13, 22:23, 35:11, 38:3, 38:18, 38:19, 39:3, 39:21, 39:22, 41:11, 42:12, 45:7, 45:13, 46:3, 46:25, 47:13, 48:12, 48:23, 49:20, 51:5, 51:9, 51:18, 52:3, 52:5, 74:4, 74:21, 75:19, 76:7, 77:1, 77:15, 78:5, 79:7, 79:18, 80:8, 82:18, 85:24, 86:20, 87:5, 88:14, 88:17, 92:6, 97:1, 104:23, 105:8, 105:23, 112:9, 112:11, 112:13, 112:20, 113:5, 113:7, 113:11, 113:23, 114:2, 114:16, 115:17, 116:12, 117:20, 118:5, 118:10, 118:20,</p>	<p>119:4, 119:8, 119:21, 119:22, 120:1, 120:12, 120:14, 121:1, 122:4, 122:14, 122:16, 122:19, 123:1, 123:12, 123:13, 123:20, 124:2, 124:12, 124:23, 124:25, 125:12, 125:14, 125:23, 126:10, 126:18, 127:3, 127:14, 128:8, 129:1, 129:19, 130:10, 130:12, 130:20, 130:23, 130:24, 131:15, 131:17, 132:6, 132:22, 133:12, 134:1, 134:12, 134:16, 134:25, 139:16, 140:3, 140:9, 141:9, 141:23, 142:8, 142:24, 143:5, 143:10, 143:25, 144:6, 144:16, 144:22, 145:9, 146:2, 146:11, 146:22, 147:7, 147:14, 147:23, 147:25, 148:2, 148:16, 149:6, 149:13, 149:21, 150:6, 150:18, 150:23, 151:5, 151:16, 151:23, 152:6, 152:15, 153:21, 154:4, 154:7, 154:13, 154:24, 155:15, 155:18, 156:9, 156:11, 156:14, 156:22, 157:11, 157:17, 157:19, 158:2, 158:7, 158:12, 158:21, 159:2, 159:13, 160:4</p> <p>exhibits [3] - 37:21, 136:9, 139:7</p> <p>EXHIBITS [1] - 3:10</p> <p>expect [8] - 8:14, 9:1, 10:6, 64:4, 93:7, 94:13, 109:19, 109:20</p> <p>expected [1] - 156:4</p> <p>expedient [1] - 53:7</p> <p>experience [7] - 15:1, 19:13, 34:11, 50:21, 57:19, 59:11, 65:8</p> <p>experienced [3] - 104:5, 135:15, 135:18</p> <p>experiences [1] -</p>	<p>64:25</p> <p>experiencing [2] - 23:4, 49:23</p> <p>explain [1] - 70:5</p> <p>explaining [1] - 13:9</p> <p>exposing [3] - 42:16, 47:4, 59:9</p> <p>extent [4] - 9:16, 28:6, 69:10, 69:20</p> <p>extinguisher [1] - 28:5</p> <p>extremities [1] - 37:13</p> <p>eye [2] - 24:2, 44:17</p> <p>eyes [1] - 45:22</p>	<p>FBI [14] - 17:22, 53:2, 53:13, 53:15, 53:18, 66:8, 66:15, 66:23, 84:5, 84:8, 84:19, 84:22, 85:5, 85:8</p> <p>fear [3] - 22:1, 23:5, 27:3</p> <p>fearful [1] - 28:1</p> <p>feasible [2] - 10:23, 27:6</p> <p>feature [1] - 141:17</p> <p>features [1] - 39:17</p> <p>FEDERAL [1] - 1:23</p> <p>feet [5] - 92:7, 92:8, 92:10, 95:12</p> <p>fell [1] - 103:8</p> <p>follow [3] - 55:1, 55:6, 107:12</p> <p>felony [2] - 73:17, 99:9</p> <p>felt [7] - 21:25, 30:7, 66:15, 66:18, 66:23, 67:2, 67:8</p> <p>few [20] - 23:19, 28:6, 31:25, 35:5, 48:18, 49:24, 50:25, 56:7, 64:2, 74:6, 83:1, 85:20, 87:3, 87:4, 109:18, 110:2, 135:14, 150:4, 155:7</p> <p>field [1] - 94:24</p> <p>fight [1] - 54:24</p> <p>fighting [2] - 25:20, 54:25</p> <p>figure [2] - 7:14, 15:7</p> <p>final [1] - 104:8</p> <p>finally [1] - 48:21</p> <p>fine [10] - 34:8, 58:5, 60:23, 61:16, 74:23, 75:15, 82:25, 115:15, 134:10, 134:18</p> <p>finger [2] - 40:11, 131:22</p> <p>finish [2] - 12:1, 94:6</p> <p>fire [3] - 28:5, 34:13, 41:16</p> <p>Fire [1] - 52:25</p> <p>firecrackers [1] - 34:15</p> <p>first [13] - 18:19, 36:12, 36:13, 39:6, 44:11, 52:11, 53:16, 57:10, 65:23, 91:16, 121:21, 122:2, 141:12</p> <p>First [7] - 7:9, 7:13, 9:21, 100:15, 135:9, 135:12, 135:16</p> <p>fists [2] - 115:6, 115:7</p>
F				
<p>F-O-U-L-D-S [1] - 108:20</p> <p>face [23] - 13:20, 39:8, 42:15, 42:16, 43:18, 43:19, 43:23, 44:14, 44:16, 45:16, 45:22, 45:25, 47:3, 50:6, 50:7, 50:11, 78:24, 84:2, 141:12, 141:13, 142:11, 142:12, 155:22</p> <p>faced [1] - 117:14</p> <p>facial [1] - 39:17</p> <p>facings [5] - 44:18, 116:2, 117:17, 117:25, 157:14</p> <p>fact [6] - 10:21, 25:23, 59:7, 88:23, 106:20, 128:21</p> <p>facts [3] - 60:12, 60:19, 71:6</p> <p>fair [13] - 28:23, 61:20, 61:25, 62:1, 66:4, 66:19, 70:20, 72:20, 113:1, 121:25, 124:19, 132:1, 162:18</p> <p>fairly [2] - 57:11</p> <p>faking [1] - 63:2</p> <p>fallen [1] - 117:5</p> <p>familiar [1] - 148:7</p> <p>family [4] - 23:9, 31:4, 68:11, 68:13</p> <p>Fanone [2] - 33:10, 96:23</p> <p>far [5] - 64:23, 72:13, 72:16, 152:20, 152:22</p> <p>fast [1] - 75:14</p> <p>fast-forward [1] - 75:14</p> <p>fatigue [1] - 53:3</p> <p>fatigues [1] - 53:14</p>				

<p>fit [1] - 27:24 Fitzsimons [4] - 69:5, 70:8, 89:24, 102:8 five [8] - 11:10, 37:21, 51:7, 76:24, 79:2, 109:4, 135:5 flag [3] - 142:10, 142:19, 159:4 flagpole [2] - 84:21, 85:9 flagpoles [1] - 34:16 flags [1] - 21:8 flanked [1] - 24:25 flanks [1] - 92:23 flights [1] - 16:5 flinched [1] - 145:20 Floor [1] - 1:17 floor [1] - 103:1 florescent [1] - 67:7 FLORIDA [1] - 1:24 Florida [1] - 1:25 flowing [1] - 158:9 focus [3] - 23:11, 35:5, 105:5 focused [2] - 10:16 follow [2] - 9:23, 27:13 following [7] - 4:1, 4:9, 9:24, 55:21, 90:24, 108:12, 136:12 follows [1] - 127:21 foot [6] - 14:2, 14:3, 54:2, 90:2, 90:6, 152:11 football [1] - 30:19 footing [1] - 126:25 FOR [7] - 1:1, 1:14, 1:16, 1:19, 1:23, 2:2, 3:4 Force [1] - 53:17 force [14] - 25:22, 26:7, 26:22, 27:3, 36:6, 36:7, 45:24, 46:11, 49:15, 78:24, 95:4, 136:16, 141:2, 141:4 forced [1] - 140:21 forceful [1] - 25:2 forcibly [2] - 84:1, 137:1 forcing [2] - 45:23, 140:19 forefront [2] - 33:18, 40:6 foregoing [1] - 163:4 foreground [1] - 121:6 forehead [1] - 123:9 forgot [1] - 70:10</p>	<p>formation [1] - 93:3 formations [1] - 92:22 former [1] - 71:7 forth [3] - 34:17, 34:22, 93:3 fortunate [1] - 57:16 forward [20] - 22:21, 49:17, 61:1, 75:14, 103:11, 104:25, 106:12, 115:7, 117:16, 117:18, 117:25, 119:2, 126:15, 134:8, 145:25, 150:15, 151:15, 159:7 FOULDS [2] - 1:10, 108:13 Foulds [15] - 3:7, 108:7, 108:11, 108:20, 112:15, 120:4, 122:22, 123:4, 123:16, 128:12, 131:21, 135:7, 136:2, 161:16, 162:21 foundation [1] - 122:8 four [7] - 7:5, 62:24, 85:1, 97:18, 134:15, 154:20 fourth [1] - 96:13 Fourth [1] - 1:17 frame [31] - 25:5, 43:14, 49:3, 49:5, 49:7, 49:10, 76:11, 80:3, 87:10, 87:11, 87:17, 87:18, 87:19, 89:7, 114:21, 121:6, 122:22, 139:18, 141:15, 150:21, 152:2, 154:18, 154:20, 154:22 frame-by-frame [2] - 154:18, 154:22 frames [1] - 113:25 frantic [1] - 12:17 frantically [1] - 68:11 free [4] - 4:14, 107:25, 108:14, 162:22 FROM [1] - 1:11 front [29] - 12:19, 15:18, 16:23, 25:25, 29:12, 32:13, 32:14, 32:22, 33:4, 39:12, 40:22, 83:2, 94:20, 96:12, 96:15, 96:20, 96:22, 96:23, 110:21, 115:22, 120:21, 127:23, 128:21,</p>	<p>128:22, 137:9, 139:21, 140:15, 140:19 frozen [1] - 35:1 frustrated [2] - 74:11, 106:3 frustrating [1] - 43:5 frustration [2] - 49:25, 106:7 fuck [2] - 43:2, 50:4 fucking [2] - 67:1, 127:10 full [9] - 16:14, 16:15, 16:21, 20:15, 44:6, 81:13, 81:14, 108:19, 163:5 fullest [2] - 69:10, 69:20 fully [2] - 6:25, 24:12 fun [1] - 59:14 functions [1] - 54:21 furnitures [1] - 35:1 future [1] - 62:21</p> <p style="text-align: center;">G</p> <p>gain [2] - 60:3 gaining [1] - 64:21 gains [1] - 60:1 galleries [1] - 101:9 gallery [3] - 101:4, 101:6, 101:10 Garden [1] - 1:24 gas [8] - 13:15, 13:21, 21:7, 25:15, 26:12, 43:20, 43:22, 47:4 gathering [1] - 8:16 gear [13] - 12:3, 12:5, 12:14, 12:25, 13:3, 13:4, 13:12, 14:24, 16:15, 110:1, 110:4, 110:10, 129:10 gears [1] - 73:25 generally [3] - 71:11, 100:20, 114:21 gentleman [3] - 103:7, 138:1, 138:14 George [2] - 30:9, 32:5 gestures [1] - 48:1 ghostwriter [1] - 64:18 giant [1] - 25:5 girl [1] - 75:4 given [9] - 9:8, 25:20, 25:23, 26:18, 27:5, 34:2, 58:12, 71:6, 96:8</p>	<p>glass [4] - 13:20, 31:12, 142:2, 151:20 glove [1] - 152:5 Glover [1] - 20:3 goal [1] - 71:22 GoFundMe [1] - 60:4 Gonell [35] - 3:5, 4:7, 4:24, 5:3, 18:11, 35:7, 37:23, 38:23, 39:6, 49:23, 51:12, 55:14, 55:17, 55:22, 56:4, 60:6, 74:7, 74:9, 75:2, 75:18, 75:24, 76:11, 77:19, 85:23, 86:3, 90:18, 90:25, 91:3, 91:4, 91:8, 91:13, 104:22, 105:3, 107:19, 107:24 GONELL [3] - 1:10, 4:12, 5:2 gonna [5] - 9:18, 66:24, 66:25, 67:14, 72:7 good-looking [1] - 12:11 GOVERNMENT [4] - 1:14, 3:4, 4:12, 108:13 Government [6] - 4:6, 70:4, 108:4, 108:7, 113:4, 124:22 government's [4] - 3:11, 3:11, 3:12, 3:12 Government's [107] - 4:4, 22:13, 22:23, 35:11, 38:19, 39:3, 39:21, 39:22, 45:13, 46:3, 46:25, 47:13, 48:12, 48:23, 49:20, 51:9, 51:18, 74:4, 74:21, 75:19, 76:7, 77:1, 77:15, 78:5, 79:7, 79:18, 80:8, 82:18, 85:24, 86:20, 87:5, 88:14, 88:17, 92:6, 97:1, 105:8, 105:23, 112:11, 112:20, 113:7, 113:11, 113:23, 114:2, 114:16, 115:17, 116:12, 117:20, 118:5, 118:10, 118:20, 119:4, 119:8, 119:22, 120:1, 120:12, 120:14, 121:1, 122:14, 122:19, 123:1, 123:13, 124:2, 124:12, 124:25, 125:14, 125:23,</p>	<p>126:10, 126:18, 127:3, 127:14, 128:8, 129:1, 129:19, 130:20, 130:24, 131:17, 132:6, 132:22, 133:12, 134:1, 134:12, 134:16, 134:25, 136:9, 147:23, 147:25, 148:2, 148:16, 149:6, 149:13, 149:21, 150:6, 150:18, 150:23, 151:5, 151:16, 151:23, 152:6, 152:15, 153:21, 154:4, 154:7, 154:13, 154:24, 155:15, 155:18, 160:4 grab [10] - 22:20, 44:5, 47:24, 47:25, 48:2, 77:9, 80:24, 82:12, 142:20, 146:4 grabbed [7] - 77:22, 78:11, 79:12, 79:21, 80:20, 88:3, 119:12 grabbing [1] - 78:19 grabs [1] - 80:25 grand [1] - 64:15 grands [1] - 64:10 gray [1] - 32:5 green [7] - 23:22, 36:25, 46:18, 120:7, 120:10, 122:23, 139:24 groin [2] - 37:6, 37:13 ground [16] - 16:2, 16:14, 16:17, 16:18, 17:9, 21:3, 25:3, 25:19, 29:6, 73:3, 103:9, 115:3, 117:5, 125:10, 137:6 grounds [11] - 7:10, 12:21, 69:9, 69:13, 69:15, 69:19, 69:23, 69:25, 73:18 group [4] - 14:25, 19:6, 29:12, 128:21 groups [2] - 10:2, 121:10 grubber [1] - 60:17 Guard [1] - 53:17 guardrails [1] - 34:25 guess [20] - 10:14, 13:15, 26:18, 26:23, 27:20, 28:1, 29:13, 36:6, 43:5, 56:24, 57:16, 58:2, 59:17,</p>
--	--	--	--	---

<p>59:25, 80:16, 81:5, 85:6, 89:5, 99:7, 103:8</p> <p>guidance [1] - 9:5</p> <p>guidelines [1] - 59:5</p> <p>gun [1] - 68:7</p> <p>guns [4] - 9:7, 10:9, 10:10, 10:18</p> <p>guy [10] - 23:21, 28:20, 43:2, 48:19, 138:3, 138:19, 138:24, 139:3, 148:8</p> <p>guys [5] - 12:1, 20:11, 83:19, 101:16, 142:11</p>	<p>81:22, 115:2, 115:6, 117:8, 140:15</p> <p>happy [1] - 122:8</p> <p>hard [13] - 8:15, 14:24, 23:11, 24:5, 35:3, 48:9, 55:4, 82:3, 84:10, 85:11, 154:18, 154:22, 155:25</p> <p>hard-gear [1] - 14:24</p> <p>harder [2] - 41:4, 49:12</p> <p>hardly [4] - 17:2, 42:22, 50:3, 57:12</p> <p>harm [3] - 93:4, 93:9, 95:25</p> <p>Hart [1] - 100:12</p> <p>hat [3] - 32:5, 42:3, 75:3</p> <p>Hawaii [1] - 2:3</p> <p>head [28] - 7:14, 24:1, 37:5, 37:13, 42:17, 42:19, 42:23, 43:18, 43:25, 44:9, 44:12, 45:23, 46:10, 47:3, 50:4, 86:4, 86:7, 86:14, 86:15, 86:16, 86:25, 87:15, 88:3, 93:18, 125:19, 158:4, 158:14</p> <p>healing [2] - 59:7, 63:9</p> <p>hear [20] - 17:4, 21:2, 53:13, 56:9, 68:5, 83:12, 89:3, 105:5, 105:12, 105:15, 105:21, 124:7, 124:16, 126:3, 126:14, 127:8, 127:18, 129:5, 148:5</p> <p>heard [11] - 11:22, 12:5, 12:17, 26:13, 32:21, 32:24, 64:14, 83:17, 83:18, 126:22, 161:16</p> <p>hearing [1] - 20:24</p> <p>hearings [2] - 100:8, 100:14</p> <p>heart [1] - 53:5</p> <p>heave [1] - 34:16</p> <p>heave-ho [1] - 34:16</p> <p>heavily [1] - 128:2</p> <p>heavy [2] - 15:25, 90:5</p> <p>held [3] - 59:12, 72:1, 111:6</p> <p>helmet [16] - 13:17, 13:18, 13:19, 42:16, 44:1, 44:2, 44:14, 46:10, 47:2, 47:10, 79:4, 83:3, 102:11,</p>	<p>123:10, 129:9</p> <p>helmets [3] - 110:5, 110:8, 110:12</p> <p>help [14] - 13:6, 18:18, 33:22, 40:9, 40:14, 42:24, 44:23, 53:4, 86:19, 103:2, 103:9, 103:18, 126:7</p> <p>helped [11] - 13:25, 19:18, 19:21, 20:11, 44:24, 47:5, 52:23, 59:7, 101:24, 103:21, 103:24</p> <p>helpful [1] - 63:8</p> <p>helping [6] - 71:1, 102:2, 102:5, 102:19, 102:21, 103:5</p> <p>Henry [4] - 3:7, 108:7, 108:11, 108:20</p> <p>HENRY [3] - 1:10, 108:13, 108:20</p> <p>hereby [1] - 163:3</p> <p>herself [1] - 42:10</p> <p>high [4] - 9:4, 32:6, 58:15, 65:25</p> <p>high-ranking [3] - 9:4, 32:6, 65:25</p> <p>higher [5] - 9:4, 9:13, 28:24, 54:19, 123:2</p> <p>higher-ranking [1] - 9:13</p> <p>higher-up [1] - 123:2</p> <p>highest [3] - 73:5, 73:15, 73:22</p> <p>himself [5] - 77:23, 86:11, 89:7, 146:13, 148:20</p> <p>hit [32] - 21:3, 21:6, 21:24, 24:1, 24:5, 34:25, 43:5, 43:9, 50:7, 50:20, 72:8, 77:21, 77:22, 77:23, 78:23, 82:8, 84:2, 84:3, 84:21, 85:9, 86:15, 93:18, 102:25, 136:22, 144:12, 145:14, 147:1, 156:3, 157:22, 159:15, 159:17</p> <p>hitting [9] - 78:11, 78:16, 78:19, 80:19, 80:25, 81:7, 81:11, 81:24, 144:14</p> <p>ho [1] - 34:16</p> <p>Hodges [6] - 35:24, 68:2, 101:22, 122:6, 148:5, 148:7</p> <p>hold [9] - 19:1, 33:9, 36:1, 58:13, 61:10, 107:9, 128:4, 128:5,</p>	<p>152:14</p> <p>holding [16] - 36:3, 43:4, 49:3, 49:7, 49:10, 59:8, 71:19, 94:19, 113:19, 113:20, 140:20, 140:22, 140:24, 141:3, 141:18, 149:1</p> <p>holy [1] - 17:11</p> <p>home [3] - 50:15, 72:23, 73:24</p> <p>honestly [1] - 50:24</p> <p>Honor [11] - 4:6, 14:6, 56:1, 91:7, 108:6, 122:5, 122:10, 130:8, 135:24, 136:5, 160:23</p> <p>HONORABLE [1] - 1:11</p> <p>hoodies [1] - 139:2</p> <p>hook [1] - 139:16</p> <p>hope [2] - 40:19, 127:24</p> <p>hopefully [1] - 73:2</p> <p>horrific [2] - 59:12, 72:22</p> <p>horse [1] - 160:19</p> <p>hostile [1] - 20:20</p> <p>hour [1] - 110:22</p> <p>hours [1] - 85:1</p> <p>hours-plus [1] - 85:1</p> <p>House [6] - 28:14, 30:17, 30:19, 100:20, 101:1, 101:10</p> <p>hundreds [3] - 7:15, 7:16, 127:25</p> <p>hunted [1] - 31:9</p> <p>hunting [1] - 107:13</p> <p>hurry [1] - 16:2</p> <p>hurt [5] - 95:3, 95:5, 107:12, 126:8</p> <p>hurting [1] - 128:4</p> <p>hurts [3] - 95:13, 95:16, 95:18</p>	<p>17:3, 17:15, 32:15, 32:22, 133:20, 138:20</p> <p>impact [1] - 34:2</p> <p>impeded [1] - 107:9</p> <p>implication [2] - 66:18, 72:2</p> <p>imply [5] - 58:3, 58:6, 60:13, 60:17, 60:18</p> <p>important [1] - 60:21</p> <p>imposed [1] - 73:4</p> <p>impression [2] - 32:6, 67:12</p> <p>IN [1] - 3:10</p> <p>inauguration [9] - 16:7, 16:8, 21:1, 30:9, 97:15, 100:3, 100:4, 100:5, 111:3</p> <p>inaugurational [1] - 110:24</p> <p>incident [7] - 29:25, 33:21, 38:13, 83:7, 103:3, 103:6, 123:17</p> <p>includes [1] - 13:7</p> <p>including [3] - 61:3, 62:25, 71:7</p> <p>indicated [1] - 97:22</p> <p>indicates [2] - 131:25, 133:5</p> <p>individual [30] - 33:19, 33:23, 33:24, 39:25, 41:3, 42:7, 42:9, 47:16, 49:1, 51:1, 52:21, 82:7, 98:16, 102:4, 102:14, 102:25, 103:2, 103:9, 113:16, 116:6, 125:19, 131:12, 132:11, 132:12, 132:14, 134:20, 134:21, 134:23, 135:4</p> <p>individuals [4] - 17:23, 84:25, 101:8, 103:18</p> <p>inflict [2] - 93:4, 95:25</p> <p>information [1] - 11:15</p> <p>injured [9] - 33:19, 53:20, 53:22, 54:23, 71:25, 72:8, 72:22, 102:8, 138:6</p> <p>injuries [14] - 53:24, 53:25, 54:8, 54:9, 54:16, 59:25, 67:25, 71:18, 72:21, 85:16, 85:17, 89:17, 123:4, 123:7</p> <p>injuring [1] - 43:23</p> <p>injury [10] - 30:11,</p>
H				
<p>hair [5] - 75:7, 84:20, 157:21, 157:23, 158:9</p> <p>half [2] - 82:19, 134:9</p> <p>halfway [2] - 12:2, 16:3</p> <p>hallway [7] - 16:9, 31:19, 111:6, 111:7, 130:1, 130:2</p> <p>hand [60] - 21:25, 22:3, 24:4, 25:13, 25:14, 26:2, 26:3, 26:14, 26:15, 27:10, 35:17, 36:2, 36:4, 36:20, 37:17, 38:5, 38:6, 38:8, 40:9, 41:16, 41:19, 43:8, 47:16, 48:5, 54:1, 55:1, 80:11, 80:21, 81:20, 86:4, 86:6, 86:13, 86:25, 88:3, 88:19, 88:23, 88:24, 88:25, 89:7, 89:18, 117:11, 118:16, 131:7, 132:17, 140:19, 140:20, 140:24, 141:18, 141:25, 144:25, 146:15, 149:12, 151:19, 152:2, 152:20, 153:17, 153:24, 156:3, 156:7</p> <p>hand's [1] - 35:21</p> <p>handed [1] - 72:15</p> <p>handful [2] - 101:16, 101:21</p> <p>handled [1] - 28:18</p> <p>handles [1] - 15:7</p> <p>hands [12] - 41:12, 41:14, 54:1, 68:6, 78:23, 79:13, 80:6,</p>	<p>head [28] - 7:14, 24:1, 37:5, 37:13, 42:17, 42:19, 42:23, 43:18, 43:25, 44:9, 44:12, 45:23, 46:10, 47:3, 50:4, 86:4, 86:7, 86:14, 86:15, 86:16, 86:25, 87:15, 88:3, 93:18, 125:19, 158:4, 158:14</p> <p>healing [2] - 59:7, 63:9</p> <p>hear [20] - 17:4, 21:2, 53:13, 56:9, 68:5, 83:12, 89:3, 105:5, 105:12, 105:15, 105:21, 124:7, 124:16, 126:3, 126:14, 127:8, 127:18, 129:5, 148:5</p> <p>heard [11] - 11:22, 12:5, 12:17, 26:13, 32:21, 32:24, 64:14, 83:17, 83:18, 126:22, 161:16</p> <p>hearing [1] - 20:24</p> <p>hearings [2] - 100:8, 100:14</p> <p>heart [1] - 53:5</p> <p>heave [1] - 34:16</p> <p>heave-ho [1] - 34:16</p> <p>heavily [1] - 128:2</p> <p>heavy [2] - 15:25, 90:5</p> <p>held [3] - 59:12, 72:1, 111:6</p> <p>helmet [16] - 13:17, 13:18, 13:19, 42:16, 44:1, 44:2, 44:14, 46:10, 47:2, 47:10, 79:4, 83:3, 102:11,</p>	<p>123:10, 129:9</p> <p>helmets [3] - 110:5, 110:8, 110:12</p> <p>help [14] - 13:6, 18:18, 33:22, 40:9, 40:14, 42:24, 44:23, 53:4, 86:19, 103:2, 103:9, 103:18, 126:7</p> <p>helped [11] - 13:25, 19:18, 19:21, 20:11, 44:24, 47:5, 52:23, 59:7, 101:24, 103:21, 103:24</p> <p>helpful [1] - 63:8</p> <p>helping [6] - 71:1, 102:2, 102:5, 102:19, 102:21, 103:5</p> <p>Henry [4] - 3:7, 108:7, 108:11, 108:20</p> <p>HENRY [3] - 1:10, 108:13, 108:20</p> <p>hereby [1] - 163:3</p> <p>herself [1] - 42:10</p> <p>high [4] - 9:4, 32:6, 58:15, 65:25</p> <p>high-ranking [3] - 9:4, 32:6, 65:25</p> <p>higher [5] - 9:4, 9:13, 28:24, 54:19, 123:2</p> <p>higher-ranking [1] - 9:13</p> <p>higher-up [1] - 123:2</p> <p>highest [3] - 73:5, 73:15, 73:22</p> <p>himself [5] - 77:23, 86:11, 89:7, 146:13, 148:20</p> <p>hit [32] - 21:3, 21:6, 21:24, 24:1, 24:5, 34:25, 43:5, 43:9, 50:7, 50:20, 72:8, 77:21, 77:22, 77:23, 78:23, 82:8, 84:2, 84:3, 84:21, 85:9, 86:15, 93:18, 102:25, 136:22, 144:12, 145:14, 147:1, 156:3, 157:22, 159:15, 159:17</p> <p>hitting [9] - 78:11, 78:16, 78:19, 80:19, 80:25, 81:7, 81:11, 81:24, 144:14</p> <p>ho [1] - 34:16</p> <p>Hodges [6] - 35:24, 68:2, 101:22, 122:6, 148:5, 148:7</p> <p>hold [9] - 19:1, 33:9, 36:1, 58:13, 61:10, 107:9, 128:4, 128:5,</p>	<p>152:14</p> <p>holding [16] - 36:3, 43:4, 49:3, 49:7, 49:10, 59:8, 71:19, 94:19, 113:19, 113:20, 140:20, 140:22, 140:24, 141:3, 141:18, 149:1</p> <p>holy [1] - 17:11</p> <p>home [3] - 50:15, 72:23, 73:24</p> <p>honestly [1] - 50:24</p> <p>Honor [11] - 4:6, 14:6, 56:1, 91:7, 108:6, 122:5, 122:10, 130:8, 135:24, 136:5, 160:23</p> <p>HONORABLE [1] - 1:11</p> <p>hoodies [1] - 139:2</p> <p>hook [1] - 139:16</p> <p>hope [2] - 40:19, 127:24</p> <p>hopefully [1] - 73:2</p> <p>horrific [2] - 59:12, 72:22</p> <p>horse [1] - 160:19</p> <p>hostile [1] - 20:20</p> <p>hour [1] - 110:22</p> <p>hours [1] - 85:1</p> <p>hours-plus [1] - 85:1</p> <p>House [6] - 28:14, 30:17, 30:19, 100:20, 101:1, 101:10</p> <p>hundreds [3] - 7:15, 7:16, 127:25</p> <p>hunted [1] - 31:9</p> <p>hunting [1] - 107:13</p> <p>hurry [1] - 16:2</p> <p>hurt [5] - 95:3, 95:5, 107:12, 126:8</p> <p>hurting [1] - 128:4</p> <p>hurts [3] - 95:13, 95:16, 95:18</p>	<p>17:3, 17:15, 32:15, 32:22, 133:20, 138:20</p> <p>impact [1] - 34:2</p> <p>impeded [1] - 107:9</p> <p>implication [2] - 66:18, 72:2</p> <p>imply [5] - 58:3, 58:6, 60:13, 60:17, 60:18</p> <p>important [1] - 60:21</p> <p>imposed [1] - 73:4</p> <p>impression [2] - 32:6, 67:12</p> <p>IN [1] - 3:10</p> <p>inauguration [9] - 16:7, 16:8, 21:1, 30:9, 97:15, 100:3, 100:4, 100:5, 111:3</p> <p>inaugurational [1] - 110:24</p> <p>incident [7] - 29:25, 33:21, 38:13, 83:7, 103:3, 103:6, 123:17</p> <p>includes [1] - 13:7</p> <p>including [3] - 61:3, 62:25, 71:7</p> <p>indicated [1] - 97:22</p> <p>indicates [2] - 131:25, 133:5</p> <p>individual [30] - 33:19, 33:23, 33:24, 39:25, 41:3, 42:7, 42:9, 47:16, 49:1, 51:1, 52:21, 82:7, 98:16, 102:4, 102:14, 102:25, 103:2, 103:9, 113:16, 116:6, 125:19, 131:12, 132:11, 132:12, 132:14, 134:20, 134:21, 134:23, 135:4</p> <p>individuals [4] - 17:23, 84:25, 101:8, 103:18</p> <p>inflict [2] - 93:4, 95:25</p> <p>information [1] - 11:15</p> <p>injured [9] - 33:19, 53:20, 53:22, 54:23, 71:25, 72:8, 72:22, 102:8, 138:6</p> <p>injuries [14] - 53:24, 53:25, 54:8, 54:9, 54:16, 59:25, 67:25, 71:18, 72:21, 85:16, 85:17, 89:17, 123:4, 123:7</p> <p>injuring [1] - 43:23</p> <p>injury [10] - 30:11,</p>
I			I	
<p>idea [2] - 104:12, 149:25</p> <p>ideal [1] - 41:24</p> <p>identified [3] - 40:12, 40:18, 52:3</p> <p>identify [3] - 17:23, 22:10, 120:6</p> <p>Ill [1] - 1:6</p> <p>image [3] - 75:2, 75:3, 77:20</p> <p>imagine [1] - 129:17</p> <p>immediately [6] -</p>				

<p>47:11, 54:2, 54:5, 89:18, 89:22, 89:23, 90:2, 94:14, 100:6 inlet [1] - 127:25 inside [18] - 22:3, 28:3, 29:2, 29:7, 29:8, 29:15, 29:17, 30:16, 31:3, 31:4, 31:14, 41:15, 45:10, 99:5, 99:14, 100:10, 125:9 insignias [1] - 114:13 insinuated [1] - 63:22 instance [2] - 121:22, 136:18 instead [7] - 40:23, 41:1, 54:18, 66:11, 93:19, 103:5, 114:11 instigating [1] - 19:3 insurrection [1] - 71:9 intact [3] - 18:22, 24:13, 31:12 integrate [1] - 91:22 intended [1] - 93:19 intending [1] - 89:12 intensity [1] - 36:6 intent [6] - 40:9, 87:24, 89:9, 89:10, 89:11, 99:7 intention [2] - 146:20, 146:24 interact [1] - 49:11 interacting [2] - 42:17, 42:19 interaction [8] - 36:13, 114:22, 119:17, 120:18, 120:20, 123:5, 123:6, 138:18 interactions [3] - 50:15, 57:12 interlock [1] - 93:3 interrupt [1] - 61:12 interrupted [1] - 58:20 intervening [1] - 133:17 interviewed [2] - 58:17, 138:14 interviews [7] - 58:10, 58:12, 58:22, 58:24, 84:8, 84:9, 90:4 inverse [1] - 120:19 invested [1] - 66:19 investigated [1] - 121:23 investigating [4] -</p>	<p>70:17, 70:20, 70:22, 71:1 involuntary [1] - 140:23 involved [3] - 57:15, 61:11, 84:9 Iraq [4] - 6:5, 6:7, 45:3, 58:18 issue [1] - 121:14 issued [2] - 101:6, 121:15 issues [2] - 45:3, 49:13 it'll [4] - 37:21, 38:24, 80:5, 109:4 items [1] - 21:8 itself [5] - 29:2, 48:6, 57:10, 100:16, 101:13</p>	<p>jump-start [2] - 53:4, 53:5 justifiable [1] - 37:5 justification [1] - 26:25 justified [1] - 27:1</p>	<p>law [11] - 14:21, 15:1, 16:24, 18:15, 31:14, 33:15, 69:11, 69:21, 73:6, 73:16, 81:7 LAW [2] - 1:20, 2:2 lawmakers [1] - 107:14 lawsuit [1] - 72:4 lay [1] - 122:8 layers [1] - 39:15 lead [1] - 98:11 leadership [1] - 61:4 leaned [1] - 149:24 leans [1] - 150:15 learn [1] - 103:23 least [2] - 33:25, 144:11 leather [1] - 152:5 leave [5] - 16:2, 19:9, 28:21, 66:16, 85:14 leaving [4] - 33:5, 40:20, 42:24, 54:14 left [37] - 16:3, 16:18, 19:8, 20:4, 24:4, 28:2, 29:5, 29:10, 29:14, 33:7, 33:8, 33:17, 36:4, 37:17, 45:24, 54:4, 66:17, 67:3, 67:9, 67:19, 78:19, 80:11, 88:4, 92:24, 98:5, 98:8, 113:16, 116:7, 118:14, 131:7, 141:25, 150:16, 155:14, 157:24 left-hand [1] - 131:7 leg [1] - 121:18 legal [2] - 71:20, 161:5 length [1] - 152:24 lenient [2] - 72:13, 72:16 less [3] - 64:13, 89:15, 154:19 lethal [2] - 26:7, 27:3 letters [1] - 20:19 letting [4] - 32:8, 32:25, 67:16, 80:25 level [6] - 27:11, 28:24, 36:6, 110:24, 111:2, 111:4 liberal [1] - 139:11 lieutenant [1] - 54:18 lieutenants [1] - 11:10 life [5] - 55:11, 57:22, 67:25, 70:12, 82:24 lift [3] - 46:10, 47:4, 141:1 lifted [1] - 79:4</p>	<p>lifting [1] - 42:16 likely [1] - 89:15 LINDY [2] - 1:19, 1:20 line [48] - 10:23, 18:17, 18:22, 19:1, 19:14, 20:12, 21:10, 21:17, 21:20, 21:22, 23:7, 24:23, 30:23, 33:4, 34:21, 34:23, 36:7, 36:12, 38:9, 38:10, 52:22, 93:1, 94:3, 94:10, 96:22, 96:23, 98:3, 98:19, 102:7, 102:10, 102:14, 103:7, 103:12, 103:13, 103:16, 125:8, 128:21, 131:22, 131:23, 133:3, 133:6, 133:18, 133:21, 134:6, 137:8, 139:22, 162:3, 162:12 lines [3] - 32:9, 33:1, 43:12 LISA [2] - 2:7, 163:3 Lisa [1] - 163:12 list [1] - 130:16 listen [1] - 105:6 listened [1] - 31:25 literally [1] - 43:13 livestreaming [1] - 11:21 living [1] - 84:11 located [1] - 97:17 location [3] - 18:23, 29:20, 57:11 locations [1] - 30:3 lock [3] - 31:22, 31:23 locked [2] - 31:16, 32:2 locking [1] - 28:21 logo [1] - 114:5 look [16] - 11:13, 13:18, 13:23, 31:2, 44:17, 61:4, 61:7, 67:2, 68:9, 88:9, 88:11, 113:22, 114:20, 120:19, 139:4, 142:12 looked [9] - 17:13, 28:9, 41:14, 67:3, 88:3, 125:19, 146:25, 157:22, 159:6 looking [12] - 12:11, 18:15, 21:11, 42:6, 51:15, 77:20, 79:16, 97:10, 117:13, 154:20, 155:13,</p>
	J	K		
<p>jabbing [2] - 83:25, 84:1 jacket [1] - 23:22 jail [2] - 71:18, 72:23 January [40] - 5:19, 6:10, 8:9, 56:12, 56:18, 57:3, 58:8, 58:9, 58:14, 58:15, 58:23, 60:20, 61:2, 61:18, 61:22, 62:1, 62:13, 63:2, 66:8, 70:12, 70:18, 71:3, 72:13, 72:19, 73:5, 73:12, 73:15, 94:25, 99:17, 106:21, 107:10, 107:15, 109:13, 109:17, 111:8, 112:1, 113:2, 123:8, 124:20, 135:19 Jason [2] - 82:23, 161:22 jeopardy [1] - 55:6 job [9] - 7:6, 11:13, 23:10, 44:8, 50:14, 82:12, 82:13, 95:20, 107:10 JOCELYN [1] - 1:15 joined [2] - 5:21, 11:5 JOSE [1] - 2:4 JR [1] - 2:2 judge [3] - 71:16, 72:4, 73:9 JUDGE [1] - 1:12 Judge [2] - 69:3, 160:19 jump [3] - 53:4, 53:5, 156:12</p>		L		
		<p>labrum [1] - 54:4 lacerations [1] - 54:9 lack [2] - 40:7, 98:20 ladders [1] - 34:25 language [1] - 35:3 large [2] - 135:9, 135:11 larger [1] - 128:6 last [6] - 5:3, 20:2, 29:8, 33:18, 55:1, 136:12 late [1] - 10:21 LAUREN [1] - 1:23 Lauren [1] - 56:6</p>		

<p>160:15 looks [11] - 86:16, 92:7, 142:11, 144:2, 145:2, 145:13, 145:16, 146:7, 149:16, 152:9, 159:6 LOPEZ [3] - 2:4, 2:5, 130:15 losing [2] - 29:6, 126:25 lost [8] - 21:22, 23:7, 25:3, 25:19, 81:3, 98:2, 103:7, 125:10 loud [1] - 105:4 lower [8] - 18:13, 18:14, 18:20, 29:17, 37:13, 98:11, 110:18, 110:21 luck [1] - 108:1 luckier [1] - 8:6 luckily [4] - 24:2, 43:22, 47:4, 49:13 lunch [2] - 88:12, 90:17 luncheon [1] - 90:23</p>	<p>135:11, 135:15 mark [2] - 21:16, 22:6 marked [3] - 14:9, 35:16, 139:16 marker [1] - 122:17 marking [1] - 22:11 mask [13] - 4:13, 13:15, 13:21, 25:15, 26:13, 43:20, 43:22, 47:4, 120:7, 120:10, 122:23, 139:24, 157:2 masks [1] - 21:7 mass [1] - 128:18 Mastony [5] - 80:18, 82:23, 83:17, 161:22, 162:1 Mastony's [1] - 162:10 match [2] - 36:6, 49:15 matter [1] - 59:7 McCarthy [1] - 138:15 McCaughy [27] - 1:6, 1:20, 63:12, 136:19, 137:24, 138:11, 138:13, 138:22, 139:8, 139:12, 139:20, 140:5, 141:13, 142:4, 144:24, 146:5, 148:19, 148:25, 149:16, 150:2, 152:9, 156:16, 157:14, 159:15, 160:25, 161:3 McCaughy's [30] - 140:2, 140:8, 141:8, 141:22, 142:7, 142:23, 143:4, 143:9, 143:24, 144:5, 144:15, 144:21, 145:8, 146:1, 146:10, 146:21, 147:6, 147:13, 156:10, 156:13, 156:21, 157:10, 157:18, 157:21, 158:1, 158:6, 158:11, 158:20, 159:1, 159:12 McFADDEN [1] - 1:11 mean [28] - 6:22, 8:15, 11:5, 15:6, 24:16, 32:17, 33:14, 43:25, 57:9, 57:10, 62:18, 67:16, 70:22, 71:16, 78:15, 84:7, 93:10, 95:14, 98:1, 116:6, 141:3, 143:22,</p>	<p>144:13, 145:22, 147:2, 157:9, 158:18, 160:10 meaning [1] - 12:3 means [2] - 59:9, 71:19 meant [1] - 131:16 mechanism [1] - 65:3 media [7] - 9:11, 61:18, 61:23, 62:12, 70:12, 101:19, 106:23 medic [2] - 103:10, 103:11 medical [7] - 33:22, 52:15, 52:23, 53:4, 54:6, 54:15, 104:10 MEHAFFIE [2] - 1:7, 2:2 melee [1] - 103:5 member [3] - 32:6, 71:8, 135:12 members [7] - 16:23, 30:3, 31:9, 50:19, 61:5, 101:11, 120:5 memorable [1] - 138:19 memory [6] - 28:19, 52:13, 77:24, 83:20, 100:17 mental [3] - 54:7, 84:14 mention [1] - 122:6 mentioned [10] - 10:8, 33:24, 38:14, 50:20, 62:5, 76:2, 101:18, 109:23, 119:1, 120:20 merit [1] - 73:9 messages [1] - 68:10 met [2] - 60:7, 82:24 metal [6] - 13:19, 21:3, 23:24, 31:18, 36:11, 121:6 Metro [2] - 64:23, 66:16 Metropolitan [12] - 18:5, 18:18, 19:21, 20:19, 32:7, 32:17, 62:6, 82:23, 108:22, 108:24, 109:3, 114:12 Michael [2] - 33:10, 96:23 microphone [3] - 4:15, 5:12, 108:15 middle [7] - 40:23, 98:2, 98:3, 98:4, 132:1, 132:11, 134:20 midnights [2] - 6:12,</p>	<p>6:15 might [3] - 60:18, 144:13, 156:25 military [2] - 53:3, 53:14 millisecond [3] - 151:8, 152:19, 152:25 milliseconds [1] - 159:4 mind [2] - 26:23, 90:25 mine's [1] - 39:13 minute [13] - 17:10, 17:13, 17:18, 22:8, 27:14, 55:16, 73:25, 111:23, 122:17, 133:17, 134:9, 136:4, 148:13 minutes [25] - 13:6, 16:14, 18:7, 22:22, 23:19, 25:9, 28:7, 32:1, 35:5, 40:21, 46:7, 51:7, 51:25, 82:19, 85:20, 87:4, 88:13, 104:25, 105:1, 111:22, 119:25, 130:5 miss [1] - 159:4 missed [4] - 26:10, 26:17, 76:15, 142:10 mistaken [1] - 92:10 mistaking [1] - 44:6 mob [10] - 19:6, 19:10, 25:17, 28:6, 34:12, 36:13, 45:23, 103:4, 103:16, 128:22 mole [1] - 19:2 moment [35] - 23:4, 37:15, 38:7, 40:5, 40:6, 41:6, 41:7, 42:2, 45:20, 46:7, 46:22, 47:7, 47:8, 47:22, 47:24, 52:11, 66:8, 67:6, 67:8, 76:19, 79:22, 116:4, 116:22, 117:11, 117:23, 127:9, 127:22, 129:8, 130:4, 132:15, 136:5, 137:17, 157:8, 160:22 moments [5] - 39:11, 48:18, 55:10, 115:11, 115:21 money [7] - 60:17, 64:4, 71:17, 71:19, 71:22, 72:5, 107:6 months [1] - 5:16 morning [8] - 4:10, 4:11, 4:19, 4:20, 56:4, 56:5, 61:19, 109:16 most [8] - 20:18, 53:25, 57:13, 72:17,</p>	<p>96:20, 100:13, 100:15, 109:21 mostly [1] - 129:16 motherfuckers [2] - 32:9, 32:25 motion [3] - 49:18, 115:4, 154:22 motivations [1] - 72:3 mountain [4] - 6:14, 54:13, 91:20, 91:22 mouth [1] - 5:13 move [27] - 12:24, 18:24, 37:4, 45:11, 46:2, 49:17, 74:12, 87:18, 89:7, 93:5, 96:3, 104:24, 113:5, 117:8, 122:9, 122:16, 124:10, 124:23, 126:7, 129:18, 134:8, 136:19, 137:8, 137:19, 146:4, 162:3, 162:12 moved [6] - 18:25, 40:19, 115:7, 115:23, 122:7, 125:18 movement [3] - 34:17, 95:6, 142:13 moves [1] - 41:9 movie [1] - 17:6 moving [12] - 15:9, 46:21, 47:6, 48:10, 52:8, 87:17, 98:1, 129:25, 151:10, 151:11, 158:18, 160:6 MPD [10] - 19:18, 20:6, 20:11, 25:11, 28:10, 32:4, 65:25, 66:1, 67:7, 135:13 MR [81] - 91:7, 91:12, 93:16, 93:21, 97:1, 97:3, 104:7, 104:14, 104:17, 122:10, 130:15, 135:24, 136:1, 136:5, 136:7, 136:11, 140:4, 140:10, 141:7, 141:10, 141:11, 141:24, 142:9, 143:1, 143:6, 143:11, 143:21, 144:1, 144:7, 144:17, 144:23, 145:10, 145:25, 146:3, 146:12, 146:23, 147:8, 147:15, 147:23, 148:4, 148:18, 149:8, 149:15, 149:23, 150:8, 150:20, 151:1, 151:7, 151:18, 152:1,</p>
M				
<p>M4 [1] - 10:10 ma'am [54] - 6:4, 7:3, 7:8, 7:19, 7:23, 8:1, 8:5, 8:10, 11:22, 14:11, 14:20, 15:11, 15:13, 15:16, 16:25, 18:4, 23:3, 23:18, 27:12, 31:13, 34:1, 34:3, 36:19, 37:19, 39:10, 39:16, 39:18, 40:2, 42:5, 42:8, 47:20, 48:16, 51:4, 52:6, 53:15, 53:23, 54:12, 56:5, 56:17, 56:23, 60:10, 62:2, 64:6, 64:16, 66:20, 70:9, 75:5, 76:4, 82:22, 83:4, 86:5, 86:9, 89:19, 106:5 machine [2] - 16:10, 32:20 magnetometer [2] - 16:10, 32:19 main [3] - 49:16, 133:23, 135:8 maintain [1] - 18:17 man [1] - 65:24 maneuver [2] - 13:25, 25:10 manned [1] - 135:12 marches [3] - 135:9,</p>				

<p>152:8, 152:18, 153:10, 154:1, 154:6, 154:11, 154:15, 155:1, 155:17, 155:20, 156:12, 156:15, 156:23, 157:12, 157:17, 157:20, 158:3, 158:8, 158:13, 158:22, 159:3, 159:14, 160:8, 160:19, 160:22, 160:25, 161:2, 161:8, 161:13, 161:15, 162:9 MS [235] - 4:6, 4:18, 8:8, 12:12, 14:6, 14:8, 16:20, 18:8, 18:10, 19:19, 19:24, 22:4, 22:7, 22:16, 22:21, 22:25, 23:1, 27:9, 35:14, 35:15, 36:20, 36:21, 37:21, 37:24, 38:16, 38:21, 38:22, 39:5, 39:20, 39:24, 41:11, 41:18, 45:6, 45:11, 45:18, 46:2, 46:5, 46:24, 47:12, 47:15, 48:10, 48:14, 48:21, 48:25, 49:16, 49:22, 51:5, 51:11, 51:20, 53:19, 55:13, 56:1, 56:3, 60:11, 65:18, 65:20, 68:20, 68:21, 69:4, 70:7, 71:14, 74:3, 74:8, 74:19, 74:23, 75:1, 75:14, 75:17, 75:21, 75:23, 76:5, 76:9, 76:10, 76:14, 76:16, 76:21, 76:24, 77:3, 77:4, 77:13, 77:17, 77:18, 78:3, 78:7, 78:8, 79:1, 79:9, 79:10, 79:23, 80:7, 80:10, 80:12, 83:9, 83:12, 83:16, 85:18, 85:21, 86:1, 86:2, 86:18, 86:22, 86:23, 87:7, 87:8, 88:10, 88:13, 88:21, 89:4, 90:14, 104:1, 104:19, 104:21, 104:24, 105:2, 105:10, 105:11, 105:22, 106:1, 107:23, 108:6, 108:17, 112:9, 112:13, 112:14, 112:18, 112:22, 112:23, 113:4, 113:9, 113:13, 113:14, 113:25, 114:4, 114:15, 114:18,</p>	<p>114:19, 115:14, 115:19, 115:20, 116:10, 116:14, 116:22, 117:1, 117:18, 117:22, 118:3, 118:7, 118:12, 118:18, 118:22, 119:2, 119:6, 119:10, 119:20, 119:24, 120:3, 120:12, 120:16, 120:17, 120:24, 121:3, 121:4, 122:4, 122:13, 122:16, 122:21, 123:11, 123:15, 124:4, 124:5, 124:10, 124:15, 124:22, 125:2, 125:12, 125:16, 125:17, 125:22, 125:25, 126:2, 126:9, 126:12, 126:13, 126:17, 126:20, 126:21, 127:1, 127:5, 127:7, 127:12, 127:16, 127:17, 128:7, 128:10, 128:11, 128:25, 129:3, 129:4, 129:18, 129:21, 129:22, 130:8, 130:17, 130:22, 131:1, 131:2, 131:14, 131:19, 131:20, 132:4, 132:8, 132:9, 132:20, 132:24, 133:1, 133:10, 133:14, 133:15, 133:24, 134:3, 134:4, 134:8, 134:14, 134:18, 134:19, 135:2, 135:3, 135:21, 145:23, 147:25, 153:8, 161:5, 161:11, 162:5, 162:20 multiple [21] - 7:11, 23:8, 28:25, 44:5, 44:11, 48:8, 53:25, 57:9, 58:12, 58:24, 59:16, 67:20, 67:25, 72:7, 72:20, 84:7, 84:25, 94:5, 96:7, 96:19, 123:10 muscle [1] - 37:12 must [3] - 129:17, 149:16, 158:16</p>	<p>108:19, 108:20 name's [1] - 56:6 names [2] - 82:21, 148:7 nation [1] - 31:2 National [1] - 53:17 national [2] - 31:2, 31:8 near [8] - 7:16, 11:24, 32:19, 35:23, 98:3, 102:13, 115:6, 152:23 nearby [1] - 103:15 necessarily [2] - 36:23, 145:18 necessary [1] - 34:9 neck [4] - 24:1, 45:25, 47:11, 106:11 need [10] - 9:20, 14:1, 45:1, 59:12, 66:10, 82:25, 101:10, 103:10, 105:18, 124:7 needed [6] - 52:14, 52:22, 52:23, 110:5, 110:7, 110:23 neon [2] - 120:7, 120:10 never [12] - 8:3, 17:23, 56:22, 57:7, 60:7, 63:3, 76:19, 79:11, 80:25, 81:1, 82:24, 96:17 new [1] - 24:19 news [6] - 8:15, 58:10, 58:16, 62:11, 70:12, 161:25 next [18] - 29:3, 30:23, 41:3, 57:2, 58:21, 62:4, 68:3, 73:2, 75:6, 80:3, 108:2, 108:4, 110:24, 111:2, 111:4, 116:22, 128:19, 134:24 nobody [4] - 30:12, 87:15, 89:11, 137:18 none [2] - 102:2, 162:20 nonofficer [1] - 103:20 nonpolice [3] - 102:2, 102:21, 103:23 normal [3] - 7:6, 24:9, 30:15 normally [9] - 6:11, 10:1, 10:3, 11:14, 26:4, 27:23, 30:14, 92:21, 101:7 north [5] - 9:19, 15:22, 16:12, 98:4, 107:17</p>	<p>NORTHERN [1] - 1:24 northwest [2] - 97:20, 97:24 Northwest [3] - 1:17, 2:9, 163:14 note [1] - 40:13 NOTE [1] - 4:1 noted [1] - 122:7 notes [1] - 163:5 nothing [6] - 8:22, 43:3, 104:17, 147:9, 147:11, 161:8 notice [3] - 19:3, 155:11 noticed [3] - 22:3, 29:4, 155:9 nuclear [3] - 30:18, 30:19, 30:24 number [10] - 57:1, 57:6, 58:7, 59:15, 59:17, 123:9, 128:5, 128:6, 147:22 nursing [1] - 30:11</p>	<p>108:11, 120:4, 122:6, 125:3, 131:3, 136:2, 148:5, 161:9 officer [72] - 6:6, 9:25, 13:6, 16:1, 19:8, 20:16, 28:10, 31:16, 32:4, 32:24, 44:22, 49:14, 55:9, 56:19, 57:17, 58:11, 65:25, 68:4, 69:22, 72:20, 73:2, 77:10, 78:10, 78:11, 78:16, 78:22, 78:25, 80:21, 80:23, 81:1, 82:13, 85:3, 87:25, 91:15, 95:9, 95:21, 99:11, 101:12, 102:12, 103:15, 103:21, 103:24, 109:1, 109:2, 109:7, 109:14, 112:15, 113:15, 114:5, 115:22, 119:12, 121:5, 122:9, 122:22, 123:4, 123:16, 124:6, 127:18, 128:12, 131:21, 132:10, 133:2, 134:20, 135:7, 140:5, 140:12, 149:10, 149:17, 157:13, 161:16, 162:21 officer's [2] - 148:23, 149:11 officers [93] - 6:24, 7:1, 8:19, 8:23, 10:8, 10:15, 10:22, 11:8, 11:20, 12:23, 14:1, 14:18, 14:24, 15:10, 15:15, 16:22, 17:7, 17:14, 17:17, 18:1, 18:17, 19:3, 19:11, 20:2, 20:5, 20:14, 20:15, 20:18, 21:5, 21:6, 21:9, 21:22, 23:9, 25:6, 25:13, 25:18, 27:11, 27:14, 27:25, 28:12, 28:17, 29:4, 29:13, 32:17, 32:18, 34:21, 43:15, 52:23, 55:1, 55:6, 55:12, 57:19, 61:3, 62:6, 62:23, 62:24, 63:5, 65:1, 66:1, 66:2, 66:16, 66:17, 67:4, 67:7, 67:15, 67:18, 69:25, 73:3, 77:21, 77:24, 80:17, 80:19, 81:11, 81:24, 96:8, 96:12, 96:13, 96:21, 96:24, 98:17, 101:14, 102:2, 102:4, 102:15,</p>
	N		O	

<p>102:19, 102:21, 103:24, 107:12, 117:5, 120:8 OFFICES [2] - 1:20, 2:2 official [6] - 9:4, 9:14, 13:25, 95:8, 143:19, 163:12 Official [1] - 2:8 often [2] - 111:16, 140:14 Ohio [1] - 2:6 old [1] - 66:25 older [1] - 103:7 once [13] - 11:21, 20:11, 21:20, 26:5, 28:9, 28:23, 32:13, 32:21, 42:10, 44:5, 104:12, 117:13, 144:11 one [95] - 6:8, 7:5, 11:20, 14:2, 14:3, 16:1, 18:23, 19:4, 23:11, 24:19, 25:11, 25:25, 26:1, 27:23, 28:17, 29:7, 30:10, 33:9, 33:25, 36:10, 36:11, 36:18, 36:20, 36:24, 37:18, 40:12, 42:11, 43:1, 43:4, 43:6, 45:10, 48:17, 52:15, 53:2, 54:22, 55:1, 56:14, 56:16, 61:14, 62:10, 62:22, 67:2, 68:3, 68:15, 70:13, 70:25, 71:15, 71:24, 73:13, 74:10, 76:25, 79:24, 80:1, 80:17, 80:19, 81:5, 82:6, 85:19, 86:13, 90:4, 91:20, 93:7, 96:8, 96:16, 96:24, 98:16, 101:21, 101:24, 103:20, 103:23, 103:24, 104:8, 109:23, 110:11, 113:20, 116:20, 117:4, 117:6, 117:9, 117:10, 118:8, 119:15, 126:6, 130:17, 135:8, 136:8, 144:25, 153:23, 156:1, 157:24, 161:13 one-minute-and-50-second [1] - 22:5 ones [1] - 77:25 online [3] - 8:19, 9:9, 11:14 onwards [1] - 130:12 op [2] - 59:19, 59:23</p>	<p>op-eds [2] - 59:19, 59:23 opaque [1] - 160:14 open [125] - 16:1, 22:14, 22:24, 35:12, 38:20, 39:4, 39:23, 45:14, 46:4, 47:1, 47:14, 48:13, 48:24, 49:21, 51:10, 51:19, 74:22, 75:20, 76:8, 77:2, 77:16, 78:6, 79:8, 79:19, 80:9, 85:25, 86:21, 87:6, 88:15, 88:18, 94:24, 100:21, 101:2, 105:9, 105:24, 112:12, 112:21, 113:12, 113:24, 114:3, 114:17, 115:18, 116:13, 117:21, 118:6, 118:11, 118:21, 119:5, 119:9, 119:23, 120:2, 120:15, 121:2, 122:20, 123:14, 124:3, 124:13, 125:15, 125:24, 126:11, 126:19, 127:4, 127:15, 128:9, 129:2, 129:20, 130:25, 131:18, 132:7, 132:23, 133:13, 134:2, 134:13, 134:17, 135:1, 140:3, 140:9, 141:9, 141:23, 142:8, 142:24, 143:5, 143:10, 143:25, 144:6, 144:16, 144:22, 145:9, 146:2, 146:11, 146:22, 147:7, 147:14, 148:3, 148:17, 149:7, 149:14, 149:22, 150:7, 150:19, 150:24, 151:6, 151:17, 151:24, 152:7, 152:16, 153:22, 154:5, 154:8, 154:14, 154:25, 155:16, 155:19, 156:11, 156:14, 156:22, 157:11, 157:19, 158:2, 158:7, 158:12, 158:21, 159:2, 159:13, 160:5 opened [1] - 15:25 opinion [2] - 73:4, 73:14 opportunity [5] -</p>	<p>11:8, 23:23, 58:2, 66:10, 98:24 opposed [1] - 125:4 orchestrated [1] - 71:9 order [6] - 44:15, 44:16, 44:20, 67:12, 71:16, 72:4 orders [1] - 8:23 original [1] - 89:5 originally [4] - 34:19, 109:16, 110:2, 110:3 otherwise [2] - 44:17, 61:3 ourselves [1] - 50:18 outer [3] - 125:4, 125:9, 132:17 outnumbered [2] - 27:5, 128:2 outside [1] - 156:17 outspoken [2] - 62:7, 106:21 overall [1] - 34:11 overdose [1] - 104:11 overheard [2] - 25:11, 32:3 overlap [3] - 51:13, 51:25, 52:2 overpowered [1] - 10:14 overruled [3] - 104:2, 153:9, 162:8 overseas [1] - 57:23 overwhelmed [6] - 17:19, 18:1, 21:11, 21:17, 21:21, 23:7 overwhelming [2] - 17:17, 17:25 own [5] - 31:7, 65:15, 68:15, 124:17, 126:3 oxygen [1] - 40:7</p> <p style="text-align: center;">P</p> <p>p.m [10] - 15:17, 29:25, 131:9, 131:16, 131:21, 132:10, 133:2, 134:9, 134:10, 134:21 packed [1] - 140:14 PAGE [1] - 3:10 page [1] - 61:19 paid [4] - 59:20, 62:15, 63:18, 64:4 pain [9] - 21:25, 40:7, 41:22, 50:9, 50:11, 50:12, 50:21, 106:8</p>	<p>pain-wise [1] - 50:9 painful [1] - 41:22 pandemic [2] - 100:22, 101:5 panicking [1] - 27:16 paper [1] - 62:19 parade [3] - 72:18, 72:23, 73:10 parading [1] - 72:18 paraphrase [3] - 66:4, 66:9, 66:14 paraphrasing [1] - 11:23 part [7] - 5:24, 7:6, 14:24, 51:22, 72:17, 103:16, 129:10 participation [1] - 60:19 particular [13] - 19:20, 27:23, 32:24, 38:16, 38:17, 40:5, 47:22, 51:17, 67:6, 67:8, 85:12, 102:3, 123:6 particularly [3] - 61:25, 64:1, 87:16 partly [1] - 51:25 PASCHALL [117] - 1:14, 4:6, 108:6, 108:17, 112:9, 112:13, 112:14, 112:18, 112:22, 112:23, 113:4, 113:9, 113:13, 113:14, 113:25, 114:4, 114:15, 114:18, 114:19, 115:14, 115:19, 115:20, 116:10, 116:14, 116:22, 117:1, 117:18, 117:22, 118:3, 118:7, 118:12, 118:18, 118:22, 119:2, 119:6, 119:10, 119:20, 119:24, 120:3, 120:12, 120:16, 120:17, 120:24, 121:3, 121:4, 122:4, 122:13, 122:16, 122:21, 123:11, 123:15, 124:4, 124:5, 124:10, 124:15, 124:22, 125:2, 125:12, 125:16, 125:17, 125:22, 125:25, 126:2, 126:9, 126:12, 126:13, 126:17, 126:20, 126:21, 127:1, 127:5, 127:7,</p>	<p>127:12, 127:16, 127:17, 128:7, 128:10, 128:11, 128:25, 129:3, 129:4, 129:18, 129:21, 129:22, 130:8, 130:17, 130:22, 131:1, 131:2, 131:14, 131:19, 131:20, 132:4, 132:8, 132:9, 132:20, 132:24, 133:1, 133:10, 133:14, 133:15, 133:24, 134:3, 134:4, 134:8, 134:14, 134:18, 134:19, 135:2, 135:3, 135:21, 145:23, 147:25, 153:8, 161:5, 162:5, 162:20 pass [2] - 96:23, 101:10 passed [4] - 31:17, 53:10, 54:18, 82:11 passes [1] - 101:6 passing [2] - 80:14, 104:9 past [5] - 31:17, 31:18, 102:10, 137:15, 152:22 Patrick [1] - 63:12 PATRICK [1] - 1:6 patrol [3] - 109:7, 110:3, 121:17 Patton [1] - 32:5 pause [12] - 17:13, 75:21, 75:22, 76:9, 77:3, 77:17, 78:7, 79:9, 80:10, 86:1, 86:22, 87:7 paused [1] - 81:19 pay [4] - 9:11, 22:2, 71:16, 72:4 peaceful [3] - 30:13, 30:15, 50:16 peacefully [1] - 137:22 pending [3] - 6:12, 65:16, 79:6 Pensacola [1] - 1:25 people [70] - 8:16, 12:6, 12:21, 17:5, 17:21, 18:13, 18:14, 23:8, 25:24, 26:9, 27:2, 28:13, 29:8, 29:18, 30:2, 30:23, 33:2, 36:1, 50:17, 57:9, 58:13, 58:25, 59:8, 59:12, 59:25, 60:25, 61:10, 62:25,</p>
---	--	--	---	---

<p>63:6, 63:14, 65:13, 65:15, 67:17, 69:24, 70:18, 71:2, 71:20, 71:23, 71:25, 72:8, 73:18, 84:23, 93:1, 93:5, 94:3, 94:10, 94:20, 95:24, 95:25, 98:15, 99:2, 99:5, 101:21, 102:19, 103:4, 107:11, 107:12, 126:8, 127:20, 127:23, 127:24, 127:25, 128:4, 128:18, 129:25, 130:1, 136:18, 137:9</p> <p>pepper [5] - 34:14, 42:18, 86:11, 103:8, 129:16</p> <p>per [1] - 7:1</p> <p>perform [1] - 54:14</p> <p>perhaps [2] - 22:1, 62:22</p> <p>perimeter [3] - 12:19, 20:7, 69:9</p> <p>period [6] - 18:22, 38:24, 40:3, 52:5, 99:25, 123:17</p> <p>person [26] - 23:11, 26:5, 26:21, 27:23, 33:10, 40:1, 40:24, 41:10, 71:16, 93:8, 94:14, 102:5, 104:8, 107:9, 107:11, 113:17, 113:19, 113:20, 114:22, 115:10, 115:25, 117:14, 118:1, 120:21, 138:10, 138:24</p> <p>personally [4] - 13:2, 60:14, 67:21, 161:23</p> <p>personnel [1] - 12:18</p> <p>persons [1] - 41:9</p> <p>perspective [3] - 147:2, 147:17, 149:25</p> <p>phone [1] - 11:21</p> <p>photo [1] - 97:4</p> <p>photograph [3] - 131:11, 131:24, 132:12</p> <p>physical [3] - 7:21, 8:4, 106:7</p> <p>physically [1] - 137:4</p> <p>picked [3] - 13:24, 115:3, 117:5</p> <p>picketing [2] - 72:18, 72:23</p> <p>picking [1] - 15:2</p> <p>picture [8] - 18:11,</p>	<p>29:11, 97:8, 97:10, 97:11, 97:12, 97:23, 98:8</p> <p>piece [2] - 23:24, 62:19</p> <p>pieces [1] - 21:4</p> <p>pike [1] - 11:15</p> <p>place [7] - 6:17, 20:25, 29:1, 41:9, 65:3, 88:9, 88:11</p> <p>plain [1] - 48:5</p> <p>Plaintiff [1] - 1:4</p> <p>plastic [1] - 152:12</p> <p>plate [2] - 13:7, 13:8</p> <p>platform [3] - 63:8, 110:25, 111:3</p> <p>platoon [5] - 6:24, 7:1, 7:4, 16:21</p> <p>platoons [2] - 6:21, 11:6</p> <p>play [40] - 22:21, 23:22, 38:18, 38:23, 44:4, 51:6, 51:14, 55:7, 74:3, 74:5, 74:19, 74:24, 75:15, 76:6, 76:14, 76:20, 76:25, 77:13, 79:2, 79:24, 79:25, 80:1, 83:22, 88:7, 104:25, 105:20, 112:18, 113:21, 114:15, 119:6, 122:17, 123:25, 127:1, 131:14, 134:24, 139:17, 140:1, 141:7, 149:20, 153:19</p> <p>played [3] - 88:1, 122:6, 138:9</p> <p>playing [4] - 85:20, 86:18, 128:13, 132:4</p> <p>plays [1] - 22:9</p> <p>plaza [4] - 18:13, 18:14, 19:13, 19:22</p> <p>plenty [1] - 57:22</p> <p>plus [3] - 30:4, 54:7, 85:1</p> <p>podium [5] - 16:9, 31:19, 31:21, 102:13</p> <p>point [52] - 9:6, 11:1, 11:3, 11:18, 18:3, 18:5, 19:2, 21:10, 25:3, 29:10, 30:1, 33:20, 34:20, 34:22, 35:8, 39:17, 42:16, 42:22, 43:1, 43:6, 43:10, 43:13, 48:15, 49:12, 50:3, 52:14, 52:24, 56:9, 67:2, 67:25, 68:7, 71:8, 89:11, 97:11, 97:22,</p>	<p>98:14, 122:9, 123:2, 125:3, 128:5, 128:14, 129:17, 129:23, 132:5, 136:12, 137:21, 140:6, 140:11, 144:2, 156:16, 158:17</p> <p>pointing [1] - 92:6</p> <p>points [2] - 111:11, 111:13</p> <p>police [60] - 9:25, 12:23, 18:17, 18:22, 19:11, 19:14, 20:12, 20:14, 20:15, 20:16, 20:17, 21:10, 21:20, 23:7, 23:8, 24:23, 26:19, 26:22, 34:21, 34:22, 36:7, 36:12, 47:18, 52:22, 54:21, 55:9, 56:18, 64:24, 69:22, 69:25, 82:13, 87:24, 95:1, 95:8, 96:8, 96:11, 98:3, 101:12, 102:7, 102:10, 102:11, 102:12, 102:14, 103:6, 103:12, 103:13, 103:15, 103:21, 109:1, 109:2, 110:17, 125:8, 131:22, 131:23, 133:3, 133:17, 133:21, 134:5, 137:18</p> <p>Police [42] - 4:25, 5:6, 5:9, 5:15, 5:22, 6:3, 6:6, 6:20, 7:7, 7:20, 7:24, 8:22, 10:19, 14:18, 15:10, 15:15, 18:2, 18:5, 18:18, 19:21, 20:19, 32:7, 32:17, 57:7, 58:11, 62:6, 65:4, 66:1, 66:16, 66:17, 67:4, 67:10, 67:18, 82:23, 95:21, 99:3, 108:22, 108:24, 109:3, 114:11, 114:12</p> <p>policy [4] - 136:16, 137:8, 137:11, 137:21</p> <p>political [1] - 59:2</p> <p>politics [1] - 62:1</p> <p>portion [2] - 38:18, 111:19</p> <p>position [6] - 7:2, 44:7, 44:9, 54:19, 58:11, 140:18</p> <p>positive [2] - 57:13, 57:24</p> <p>possession [1] - 96:14</p>	<p>possibility [1] - 41:25</p> <p>possible [25] - 18:25, 37:2, 42:24, 61:8, 73:16, 73:21, 73:23, 80:17, 80:22, 81:2, 81:3, 81:10, 83:20, 83:22, 85:11, 86:6, 87:14, 87:16, 87:17, 87:21, 87:22, 89:6, 89:13, 153:4, 153:11</p> <p>possibly [3] - 53:8, 105:4, 137:22</p> <p>Post [1] - 2:3</p> <p>posts [1] - 70:13</p> <p>posture [1] - 8:22</p> <p>potential [1] - 9:7</p> <p>potentially [1] - 71:5</p> <p>power [4] - 6:12, 8:18, 30:13, 30:14</p> <p>PR-24 [1] - 36:24</p> <p>PRATT [1] - 2:5</p> <p>preparation [1] - 111:25</p> <p>prepared [1] - 9:21</p> <p>preparing [1] - 131:3</p> <p>presidency [1] - 30:23</p> <p>president [4] - 16:6, 30:17, 30:18, 71:7</p> <p>President [1] - 99:21</p> <p>president's [1] - 31:4</p> <p>press [6] - 25:17, 42:15, 43:12, 48:17, 71:5, 72:7</p> <p>pressed [9] - 44:10, 49:4, 49:12, 75:25, 93:8, 95:2, 95:4, 126:24, 140:16</p> <p>pressing [4] - 42:20, 44:15, 46:9, 94:21</p> <p>pressure [3] - 47:9, 49:6, 106:11</p> <p>pretend [1] - 86:8</p> <p>pretty [8] - 15:7, 17:6, 30:4, 43:1, 47:11, 48:18, 54:25, 139:11</p> <p>prevent [8] - 28:5, 65:4, 77:23, 95:6, 95:8, 95:16, 106:16, 128:3</p> <p>prevented [3] - 43:22, 95:13, 95:17</p> <p>preventing [3] - 42:25, 82:13, 107:10</p> <p>prevents [2] - 95:18, 95:19</p> <p>previous [3] - 38:8, 45:10, 116:15</p>	<p>previously [1] - 114:23</p> <p>principle [2] - 62:17, 64:3</p> <p>print [1] - 62:21</p> <p>privately [1] - 161:1</p> <p>pro [2] - 10:2, 30:17</p> <p>problem [4] - 26:10, 26:16, 27:7, 79:17</p> <p>procedure [1] - 10:4</p> <p>procedures [1] - 100:15</p> <p>proceedings [5] - 4:9, 55:21, 90:24, 108:12, 163:6</p> <p>process [9] - 6:16, 13:4, 30:16, 54:14, 54:17, 64:1, 65:3, 70:17, 99:21</p> <p>produced [1] - 163:6</p> <p>program [1] - 91:17</p> <p>projectile [1] - 21:5</p> <p>promotion [1] - 91:19</p> <p>pronouncing [1] - 91:1</p> <p>properly [2] - 66:21, 95:19</p> <p>property [2] - 10:17, 24:18</p> <p>prosecuted [2] - 69:10, 69:20</p> <p>prosecutor [1] - 78:20</p> <p>protect [5] - 15:4, 47:5, 73:3, 92:22, 146:13</p> <p>protecting [5] - 10:16, 66:19, 86:11, 93:2, 148:20</p> <p>protections [1] - 21:7</p> <p>protective [1] - 12:2</p> <p>protector [6] - 12:3, 12:9, 13:1, 13:2</p> <p>protester [2] - 75:10, 102:3</p> <p>protesters [18] - 29:12, 95:2, 96:9, 99:14, 99:15, 99:20, 100:7, 101:25, 102:5, 103:21, 103:24, 118:17, 126:7, 128:6, 128:20, 129:25, 130:5, 137:18</p> <p>protocol [1] - 100:17</p> <p>provide [3] - 9:4, 52:14, 62:20</p> <p>provided [1] - 52:20</p> <p>prying [1] - 121:15</p>
---	---	---	--	---

<p>PSA [1] - 109:7 public [5] - 100:17, 100:21, 101:2, 101:4, 101:13 publicity [1] - 107:4 publish [1] - 30:24 published [121] - 22:14, 22:24, 35:12, 38:20, 39:4, 39:23, 45:14, 46:4, 47:1, 47:14, 48:13, 48:24, 49:21, 51:10, 51:19, 74:22, 75:20, 76:8, 77:2, 77:16, 78:6, 79:8, 79:19, 80:9, 85:25, 86:21, 87:6, 88:15, 88:18, 105:9, 105:24, 112:12, 112:21, 113:12, 113:24, 114:3, 114:17, 115:18, 116:13, 117:21, 118:6, 118:11, 118:21, 119:5, 119:9, 119:23, 120:2, 120:15, 121:2, 122:20, 123:14, 124:3, 124:13, 125:15, 125:24, 126:11, 126:19, 127:4, 127:15, 128:9, 129:2, 129:20, 130:25, 131:18, 132:7, 132:23, 133:13, 134:2, 134:13, 134:17, 135:1, 140:3, 140:9, 141:9, 141:23, 142:8, 142:24, 143:5, 143:10, 143:25, 144:6, 144:16, 144:22, 145:9, 146:2, 146:11, 146:22, 147:7, 147:14, 148:3, 148:17, 149:7, 149:14, 149:22, 150:7, 150:19, 150:24, 151:6, 151:17, 151:24, 152:7, 152:16, 153:22, 154:5, 154:8, 154:14, 154:25, 155:16, 155:19, 156:11, 156:14, 156:22, 157:11, 157:19, 158:2, 158:7, 158:12, 158:21, 159:2, 159:13, 160:5 pull [17] - 5:12, 22:4, 35:6, 41:11, 51:5,</p>	<p>74:5, 87:3, 97:1, 112:9, 119:20, 119:24, 122:4, 123:11, 130:22, 142:20, 144:3, 144:11 pulled [5] - 52:21, 61:19, 102:14, 123:20, 154:21 pulling [3] - 10:22, 19:11, 37:21 pulls [1] - 81:1 punch [2] - 84:21, 137:6 punched [1] - 85:9 purpose [3] - 21:1, 93:20, 141:1 push [29] - 18:19, 19:18, 20:6, 25:6, 27:25, 34:16, 36:1, 41:4, 44:21, 44:24, 48:16, 77:13, 87:24, 87:25, 92:20, 92:25, 93:1, 94:3, 94:8, 94:10, 94:20, 95:24, 115:11, 127:24, 130:1, 137:1, 137:15 pushed [24] - 17:8, 17:20, 45:2, 72:9, 93:7, 93:9, 111:16, 120:21, 125:9, 128:17, 133:19, 133:21, 133:22, 133:23, 137:11, 137:12, 137:13, 144:24, 151:9, 153:3, 156:17, 159:21, 160:1 pushing [30] - 25:2, 27:16, 34:21, 36:5, 38:6, 41:2, 41:7, 41:13, 42:7, 43:14, 43:16, 44:12, 44:13, 45:4, 49:15, 75:10, 87:20, 94:13, 96:8, 103:17, 106:12, 111:15, 116:1, 128:20, 137:6, 151:3, 161:17, 162:3, 162:11 pussies [1] - 127:10 pussy [3] - 43:10, 83:25, 105:16 put [25] - 9:3, 13:6, 15:23, 44:25, 49:8, 49:11, 49:18, 53:3, 55:5, 55:11, 65:3, 76:19, 88:3, 98:19, 110:6, 110:7, 110:10, 118:17, 121:9, 129:9, 141:4, 141:6, 151:19, 152:11, 153:24 puts [1] - 146:13</p>	<p>putting [9] - 12:13, 13:4, 15:23, 31:7, 86:6, 89:7, 110:12, 146:15, 156:6</p> <p style="text-align: center;">Q</p> <p>quarters [1] - 25:21 questioning [1] - 151:12 questions [19] - 11:9, 11:12, 11:16, 55:13, 56:7, 60:12, 60:22, 62:4, 63:15, 63:22, 74:1, 74:6, 81:19, 90:14, 91:5, 106:20, 135:22, 161:11 quickly [3] - 15:23, 89:17, 110:6 quiet [1] - 107:18 quote [1] - 11:22 quoting [1] - 85:2</p> <p style="text-align: center;">R</p> <p>rack [2] - 20:25 racks [2] - 20:8, 20:24 radio [4] - 12:17, 12:18, 22:18, 31:25 rails [2] - 20:25 raise [4] - 26:1, 26:3, 61:8, 61:21 raised [4] - 40:9, 41:17, 148:23, 149:3 raising [2] - 59:3, 144:24 rallies [3] - 135:9, 135:11, 135:15 rallying [1] - 32:11 Ramey [1] - 32:3 ramming [1] - 25:6 ramp [1] - 16:11 ranges [1] - 6:25 rank [3] - 5:17, 5:19, 108:24 ranking [5] - 6:22, 9:4, 9:13, 32:6, 65:25 ray [2] - 16:10, 32:19 RDR [3] - 2:7, 163:3, 163:12 reached [5] - 103:12, 144:2, 144:25, 151:8, 159:9 reaching [6] - 68:7, 80:23, 87:2, 87:3, 144:18, 154:9 react [2] - 19:4, 19:5</p>	<p>reactivate [2] - 111:18, 112:6 read [3] - 66:12, 70:14, 90:4 ready [5] - 12:1, 12:6, 12:16, 54:19, 140:18 real [1] - 42:1 realized [3] - 11:3, 25:9, 30:1 really [2] - 140:14, 155:25 rear [1] - 92:24 reason [8] - 26:22, 33:7, 33:8, 40:10, 54:22, 57:18, 62:22, 84:2 receive [2] - 73:15, 73:22 RECEIVED [1] - 3:10 receiving [1] - 123:7 recently [1] - 17:21 recess [2] - 55:20, 90:23 recognize [6] - 14:10, 40:1, 112:15, 112:24, 114:10, 124:1 recoil [1] - 153:14 recollection [4] - 89:9, 96:15, 96:18, 98:6 record [6] - 4:21, 42:12, 46:1, 53:13, 115:5, 147:22 recording [1] - 111:19 records [1] - 111:21 recovering [2] - 99:23, 100:6 recovery [1] - 54:17 Red [1] - 3:3 red [5] - 36:25, 46:20, 125:20, 131:12 reddish [1] - 138:3 reddish-brown [1] - 138:3 redirect [3] - 70:4, 104:18, 162:19 REDIRECT [1] - 104:20 referring [1] - 34:4 regard [2] - 21:6, 23:9 regardless [1] - 61:10 regular [1] - 110:3 reinforcement [2] - 57:25, 102:9 reinforcements [1] - 33:8</p>	<p>related [2] - 58:11, 62:1 relationship [2] - 58:12, 58:24 release [1] - 78:23 relevant [1] - 139:4 relieve [1] - 47:9 relieved [1] - 33:10 remain [3] - 67:24, 72:21, 123:16 remember [33] - 12:15, 20:23, 21:13, 21:20, 29:7, 33:1, 33:5, 33:7, 40:4, 42:9, 46:8, 50:22, 51:1, 51:2, 54:5, 56:14, 81:18, 82:3, 83:24, 84:10, 84:12, 84:19, 84:21, 85:8, 85:13, 106:4, 114:22, 114:25, 115:1, 129:11, 138:17, 142:20 remembered [2] - 83:8, 84:6 remind [2] - 84:16, 91:8 remove [2] - 4:13, 22:11 removed [1] - 42:10 rendering [2] - 102:15, 107:11 reorient [3] - 43:7, 44:24, 45:1 repeat [2] - 19:15, 81:16 rephrase [3] - 70:23, 83:11, 83:13 replay [1] - 79:14 replayed [1] - 116:21 REPORTED [1] - 2:7 REPORTER [5] - 12:8, 16:16, 53:12, 60:9, 147:21 Reporter [2] - 2:8, 163:12 REPORTER'S [1] - 4:1 reports [1] - 8:16 represent [1] - 56:6 representation [1] - 113:1 request [1] - 32:14 requested [1] - 4:2 required [1] - 33:21 requirements [1] - 91:21 rescued [1] - 33:15 resources [2] - 53:7, 98:20</p>
---	---	---	--	--

<p>respectful [1] - 68:22 respecting [1] - 9:23 respond [4] - 12:18, 15:21, 27:4, 61:14 responding [2] - 53:5, 53:11 response [4] - 60:15, 87:9, 91:22, 146:9 responsibilities [1] - 6:9 responsibility [1] - 44:7 responsible [1] - 62:20 responsive [1] - 102:16 rest [1] - 24:20 restrained [1] - 59:5 result [1] - 138:6 resume [1] - 90:17 resuming [1] - 4:4 resuscitations [1] - 52:24 retain [1] - 22:19 retake [1] - 55:22 retaking [1] - 91:1 retention [1] - 81:3 retirement [1] - 54:15 retreat [5] - 21:21, 25:7, 25:12, 94:22, 110:23 retreated [2] - 111:5 return [1] - 54:10 returned [1] - 6:4 returning [1] - 6:5 review [1] - 112:1 revised [1] - 130:15 rewind [2] - 78:3, 79:1 ribs [3] - 43:9, 46:13, 46:20 ridicule [1] - 59:9 rifle [1] - 9:7 rifles [1] - 10:10 rights [1] - 9:23 ring [1] - 51:21 rinsed [1] - 102:11 riot [4] - 7:25, 113:20, 119:15, 127:21 rioter [2] - 21:24, 41:13 rioters [6] - 23:8, 25:17, 28:24, 52:15, 71:8, 103:24 ripped [1] - 79:13 risk [2] - 31:8, 55:12 risking [1] - 67:25</p>	<p>roaring [1] - 17:5 rod [1] - 23:24 rods [1] - 21:4 roll [5] - 9:14, 9:20, 11:5, 11:6, 11:7 Room [1] - 2:10 room [8] - 15:24, 25:10, 31:10, 36:1, 107:13, 130:6 rotated [1] - 6:15 rotation [1] - 6:17 rotator [1] - 54:4 roughly [5] - 16:22, 33:17, 52:10, 54:8, 91:25 round [8] - 13:24, 14:3, 22:18, 23:16, 23:17, 39:13, 92:4, 92:11 route [1] - 27:20 routine [1] - 121:17 row [5] - 37:22, 96:12, 96:13, 96:17 rows [5] - 95:1, 96:7, 96:11, 96:19 rude [1] - 61:12 running [2] - 16:14, 61:6 runs [1] - 155:24 Russell [1] - 100:12 résumé [1] - 54:20</p>	<p>26:12, 34:13, 40:7, 126:15 screen [14] - 21:16, 23:13, 38:21, 83:2, 112:15, 118:25, 128:14, 131:22, 132:1, 133:3, 133:20, 134:21, 155:14, 157:24 screenshot [2] - 133:7, 146:17 scuffle [1] - 54:24 seat [2] - 4:15, 108:14 second [21] - 17:13, 30:10, 31:23, 32:18, 42:4, 43:6, 55:10, 58:20, 62:5, 75:16, 77:12, 96:13, 96:17, 118:8, 142:11, 144:4, 150:17, 151:2, 153:23, 154:19, 155:6 secondary [1] - 6:13 seconds [26] - 32:2, 48:18, 49:24, 51:7, 51:8, 51:12, 51:24, 76:25, 79:2, 104:25, 105:1, 116:11, 116:15, 117:19, 118:4, 118:19, 118:24, 119:18, 119:25, 120:25, 134:15, 134:24, 135:5, 153:19, 154:6, 156:19 section [1] - 16:9 secure [4] - 19:21, 30:2, 31:17, 57:11 security [2] - 31:2, 31:8 see [115] - 8:22, 13:20, 17:19, 18:11, 20:2, 23:2, 24:2, 28:9, 28:17, 28:24, 35:8, 35:13, 36:4, 37:25, 38:2, 38:4, 38:9, 39:7, 39:15, 40:11, 42:17, 42:22, 42:23, 44:4, 45:9, 45:15, 45:16, 46:10, 47:3, 47:16, 49:1, 50:3, 51:16, 62:24, 66:11, 67:2, 67:3, 67:5, 71:23, 75:3, 75:6, 75:24, 76:3, 78:4, 78:22, 79:2, 79:4, 79:11, 79:25, 80:2, 80:11, 80:14, 80:23, 81:7, 82:10, 83:2, 86:3, 86:24, 87:25, 88:2,</p>	<p>88:5, 88:25, 96:18, 97:4, 98:8, 102:6, 102:18, 102:21, 102:25, 113:17, 114:5, 114:7, 114:8, 116:15, 117:25, 118:14, 118:24, 121:5, 123:20, 125:18, 129:6, 129:24, 131:11, 132:12, 133:3, 134:5, 134:21, 135:4, 139:8, 139:24, 142:10, 148:19, 148:22, 148:25, 149:19, 150:9, 150:15, 152:12, 152:14, 152:20, 152:21, 155:21, 156:2, 156:20, 157:2, 157:22, 158:4, 158:14, 159:21, 159:24, 160:11, 160:14, 161:3 seeing [9] - 20:23, 41:7, 57:22, 113:6, 124:24, 128:13, 153:13, 153:14, 155:25 segments [120] - 22:13, 22:23, 35:11, 38:19, 39:3, 45:13, 46:3, 46:25, 47:13, 48:12, 48:23, 49:20, 51:9, 51:18, 74:21, 75:19, 76:7, 77:1, 77:15, 78:5, 79:7, 79:18, 80:8, 85:24, 86:20, 87:5, 88:14, 88:17, 105:8, 105:23, 112:11, 112:20, 113:11, 113:23, 114:2, 114:16, 115:17, 116:12, 117:20, 118:5, 118:10, 118:20, 119:4, 119:8, 119:22, 120:1, 120:14, 121:1, 122:19, 123:13, 124:2, 124:12, 125:14, 125:23, 126:10, 126:18, 127:3, 127:14, 128:8, 129:1, 129:19, 130:24, 131:17, 132:6, 132:22, 133:12, 134:1, 134:12, 134:16, 134:25, 140:2, 140:8, 141:8, 141:22, 142:7, 142:23, 143:4, 143:9,</p>	<p>143:24, 144:5, 144:15, 144:21, 145:8, 146:1, 146:10, 146:21, 147:6, 147:13, 148:2, 148:16, 149:6, 149:13, 149:21, 150:6, 150:18, 150:23, 151:5, 151:16, 151:23, 152:6, 152:15, 153:21, 154:4, 154:7, 154:13, 154:24, 155:15, 155:18, 156:10, 156:13, 156:21, 157:10, 157:18, 158:1, 158:6, 158:11, 158:20, 159:1, 159:12, 160:4 Senate [6] - 30:3, 30:17, 30:19, 100:20, 101:1, 101:9 senator [1] - 30:25 senators [4] - 30:20, 61:5, 70:1, 107:14 send [1] - 27:10 sense [1] - 64:22 sentence [4] - 73:4, 73:5, 73:15, 73:22 sentences [3] - 19:12, 34:10, 72:15 separate [1] - 10:2 September [1] - 163:10 sergeant [12] - 4:24, 5:18, 6:9, 6:14, 7:2, 14:9, 23:2, 37:25, 38:3, 93:15, 161:24, 162:13 Sergeant [41] - 4:11, 18:11, 22:8, 35:7, 37:22, 38:23, 39:6, 49:23, 51:12, 55:14, 55:17, 55:22, 56:4, 60:6, 74:7, 74:9, 75:2, 75:18, 75:24, 76:11, 77:19, 80:18, 82:23, 83:17, 85:22, 86:3, 90:18, 90:25, 91:3, 91:8, 91:13, 97:4, 98:21, 104:14, 104:22, 105:3, 107:19, 107:24, 161:22, 162:1, 162:10 sergeants [4] - 6:22, 7:4, 11:11, 110:11 served [1] - 77:24 serves [3] - 28:19, 52:13, 100:18 service [2] - 45:3,</p>
	S			
	<p>safe [1] - 24:12 safety [1] - 55:6 sat [2] - 17:21, 103:13 saw [17] - 17:14, 28:10, 38:8, 41:14, 51:13, 52:1, 67:5, 68:10, 78:20, 88:2, 88:6, 98:14, 102:13, 115:4, 115:6, 116:21, 157:21 scaffolding [2] - 98:8, 98:15 scaffoldings [1] - 28:16 scared [1] - 61:6 scary [1] - 68:12 school [1] - 58:15 scrambling [1] - 10:22 scream [2] - 40:8, 68:5 screamed [2] - 25:16, 148:6 screaming [4] -</p>			

<p>108:1 session [2] - 100:20, 101:2 set [5] - 15:25, 31:24, 32:18, 52:11, 60:4 sets [3] - 15:24, 16:11, 125:5 setup [1] - 6:23 Seventh [2] - 108:22, 109:5 several [5] - 59:22, 103:3, 106:25, 111:11, 130:5 severe [1] - 53:25 SEVERT [1] - 2:5 shaggy [2] - 75:6, 84:20 shaking [1] - 50:4 shield [116] - 13:17, 13:20, 13:22, 13:23, 13:24, 14:2, 14:13, 14:19, 22:18, 23:16, 23:17, 23:20, 24:3, 24:6, 24:10, 24:13, 24:20, 36:4, 37:16, 38:5, 38:9, 38:10, 39:7, 39:8, 39:13, 41:15, 42:11, 42:15, 42:16, 43:14, 43:15, 43:16, 44:14, 44:16, 44:22, 44:24, 45:10, 45:16, 46:10, 47:3, 48:5, 50:1, 50:2, 50:5, 74:11, 74:16, 74:17, 75:10, 76:19, 76:22, 77:8, 78:23, 80:24, 84:1, 93:22, 94:14, 94:18, 95:2, 95:23, 96:24, 102:11, 106:3, 106:6, 106:10, 106:13, 106:16, 113:22, 114:6, 114:11, 114:12, 115:1, 115:11, 116:1, 116:17, 117:15, 118:1, 119:18, 120:21, 121:11, 129:13, 138:24, 144:2, 144:9, 144:11, 144:13, 144:19, 144:24, 145:1, 145:4, 145:11, 145:14, 146:4, 146:7, 146:8, 146:13, 146:16, 146:18, 146:19, 146:25, 148:20, 149:1, 150:16, 151:3, 151:11, 152:12, 152:22, 154:16, 154:21, 156:6,</p>	<p>159:25, 160:1, 160:11, 161:17 shield's [2] - 145:3, 160:6 shields [22] - 14:2, 14:5, 14:23, 16:15, 24:12, 32:14, 32:22, 39:12, 43:4, 75:25, 92:4, 92:13, 92:16, 93:8, 96:13, 96:15, 96:17, 96:18, 96:20, 113:20, 114:14, 119:15 shift [1] - 19:8 Shipley [2] - 104:16, 161:12 SHIPLEY [6] - 2:2, 2:2, 104:17, 161:13, 161:15, 162:9 shirking [1] - 58:4 shit [1] - 17:11 shocked [2] - 57:1, 57:5 shooting [1] - 57:14 short [1] - 68:24 shortly [2] - 111:4, 148:12 shorts [1] - 110:4 shot [2] - 118:23, 131:11 shoulder [11] - 13:13, 30:11, 33:19, 37:12, 54:4, 89:23, 99:24, 100:6, 106:11, 116:7 shove [13] - 117:24, 143:3, 150:11, 152:14, 153:16, 153:17, 156:4, 156:20, 156:24, 157:5, 157:7, 162:16 shoved [12] - 17:8, 17:20, 115:1, 116:17, 121:10, 142:19, 143:16, 150:10, 151:2, 152:19, 153:15, 153:24 shoves [4] - 142:14, 142:21, 152:13, 159:25 showing [1] - 154:2 show [11] - 18:5, 18:7, 19:6, 37:22, 51:22, 79:20, 80:5, 81:15, 147:19, 150:1, 160:2 showed [4] - 78:20, 79:21, 82:16, 146:17 showing [3] - 81:15, 82:7, 97:7</p>	<p>shown [1] - 120:18 shows [2] - 82:10, 97:23 shutting [1] - 153:5 sic [2] - 38:24, 100:12 side [25] - 13:15, 13:16, 16:4, 19:5, 28:13, 28:14, 40:13, 40:22, 44:12, 96:9, 97:17, 97:20, 98:8, 110:18, 111:6, 116:2, 116:5, 117:16, 117:17, 150:16, 152:21, 152:22, 152:23, 155:14, 157:24 sides [2] - 13:14, 129:17 sideways [1] - 42:14 sign [1] - 25:5 signal [1] - 25:14 signals [4] - 25:13, 26:14, 26:15, 27:10 signed [2] - 62:19, 62:21 signs [2] - 12:23, 69:15 silent [1] - 111:20 similar [4] - 56:16, 117:7, 121:16, 122:25 simple [1] - 145:17 simply [1] - 139:3 simultaneously [1] - 23:10 single [2] - 21:3, 82:3 sit [1] - 74:24 situation [2] - 44:21, 60:5 situations [1] - 26:8 six [3] - 11:11, 14:3, 76:24 six-foot [1] - 14:3 skin [1] - 41:17 skull [1] - 43:25 slamming [1] - 95:11 slanted [2] - 42:13, 44:12 slightly [4] - 41:8, 42:10, 98:5, 98:6 slow [1] - 49:18 small [1] - 128:5 smoke [1] - 28:3 snippet [4] - 140:23, 148:12, 148:25, 159:16 snippets [1] - 159:22 so.. [3] - 10:17, 46:20, 85:5</p>	<p>social [4] - 9:11, 61:18, 61:23, 62:12 soda [1] - 35:2 solid [1] - 117:11 solution [1] - 27:6 someone [14] - 72:4, 73:14, 87:15, 105:12, 121:17, 122:1, 126:6, 136:24, 137:4, 137:6, 137:16, 140:19, 156:20, 162:16 sometimes [2] - 12:11, 94:9 somewhat [1] - 28:18 somewhere [2] - 21:18, 98:3 soon [2] - 17:4, 65:2 sorry [35] - 4:22, 6:5, 8:3, 12:8, 13:9, 13:10, 13:16, 16:16, 19:15, 30:14, 46:15, 51:14, 52:2, 53:12, 53:21, 58:20, 64:14, 76:15, 79:5, 83:12, 85:16, 91:4, 91:18, 93:14, 93:16, 95:15, 105:20, 116:20, 118:7, 131:15, 143:17, 143:18, 150:4, 151:22, 153:23 sort [15] - 58:8, 62:3, 68:17, 98:11, 116:6, 120:7, 121:6, 125:5, 138:3, 142:4, 147:9, 152:10, 156:17, 157:13 sorts [1] - 129:15 sounded [1] - 124:19 south [1] - 28:13 southwest [7] - 17:19, 20:1, 25:1, 27:19, 97:23, 97:24, 98:9 space [2] - 126:24, 140:15 span [1] - 85:1 speaker [2] - 30:17, 90:5 speakers [1] - 35:1 speaking [5] - 101:15, 101:18, 114:21, 160:20 specific [10] - 18:23, 19:9, 35:5, 36:23, 59:17, 71:8, 74:1, 121:14, 137:5 specifically [5] - 13:23, 14:15, 29:19, 71:19, 84:24</p>	<p>speech [2] - 11:21, 11:24 spell [2] - 4:21, 108:18 spelling [1] - 5:2 spine [2] - 37:6, 37:14 split [4] - 55:10, 64:17, 142:11, 151:2 split-second [1] - 55:10 spot [4] - 35:23, 51:17, 81:20, 83:19 spray [6] - 34:14, 34:15, 42:18, 86:11, 129:16 sprayed [4] - 103:8, 155:4, 155:9, 155:11 sprinklers [2] - 34:14, 41:16 squad [1] - 7:5 squads [2] - 6:21, 6:25 staffed [1] - 7:1 staffer [2] - 101:7, 101:13 staffers [1] - 69:25 stage [12] - 9:18, 16:8, 16:13, 17:2, 17:3, 25:1, 25:14, 27:19, 27:22, 28:12, 35:1, 107:18 staged [1] - 15:22 staircase [2] - 27:23, 28:3 stairs [1] - 28:8 stake [4] - 30:5, 30:8, 30:22, 41:23 stalemate [1] - 137:17 Stamford [1] - 1:21 stand [8] - 31:23, 55:23, 73:3, 91:1, 97:14, 97:16, 107:20, 126:24 standby [1] - 110:5 standing [7] - 83:7, 137:22, 147:10, 148:20, 148:25, 154:16, 159:8 start [25] - 8:11, 12:6, 12:13, 19:10, 22:5, 53:4, 53:5, 104:22, 105:3, 110:17, 113:9, 115:16, 118:3, 118:18, 119:2, 120:12, 125:22, 126:9, 126:17, 127:12, 131:14, 132:20, 133:10,</p>
--	---	--	--	--

<p>133:24, 134:10 started [6] - 12:21, 44:11, 45:21, 128:12, 137:9, 137:21 starts [1] - 158:24 state [1] - 108:18 statement [3] - 69:12, 81:25, 85:12 statements [1] - 34:2 States [10] - 2:8, 4:25, 5:6, 57:7, 59:4, 63:12, 63:14, 68:14, 95:21, 163:13 STATES [4] - 1:1, 1:3, 1:12, 1:16 states [1] - 83:23 station [1] - 58:16 stationed [3] - 109:16, 109:18, 110:2 stay [7] - 18:23, 33:4, 52:8, 59:5, 67:14, 103:15 stayed [3] - 25:8, 107:16, 159:11 Steal [1] - 8:17 stenographic [1] - 163:5 step [2] - 107:24, 162:24 stepped [3] - 103:1, 103:11, 159:7 stepping [1] - 158:24 steps [9] - 16:4, 16:5, 16:6, 18:19, 21:21, 28:13, 28:16, 41:8, 42:10 STEVENS [2] - 1:6, 1:23 Stevens [24] - 74:10, 75:9, 76:11, 76:16, 77:7, 77:20, 78:15, 79:11, 80:5, 80:20, 80:25, 81:7, 81:11, 81:23, 82:20, 83:17, 84:20, 85:9, 86:3, 87:11, 87:17, 90:1 Stevens's [5] - 75:6, 75:11, 76:1, 80:21, 81:20 still [23] - 5:6, 5:9, 6:6, 6:16, 18:22, 31:12, 37:5, 37:15, 38:17, 39:13, 50:13, 72:21, 84:9, 84:15, 91:9, 131:11, 140:11, 143:22, 149:9, 154:16, 154:19, 154:21, 157:2 stipulate [1] - 122:10 stole [2] - 78:10,</p>	<p>78:22 stolen [6] - 43:15, 47:18, 74:17, 77:21, 78:16, 81:12 stomach [2] - 43:9, 46:13 Stop [1] - 8:17 stop [38] - 5:1, 8:17, 22:25, 35:14, 40:10, 41:22, 43:2, 46:9, 63:10, 105:10, 107:19, 112:13, 112:22, 113:13, 114:18, 115:16, 115:19, 120:16, 121:3, 124:4, 125:16, 125:25, 126:12, 126:20, 127:5, 127:16, 128:10, 129:3, 129:21, 131:1, 131:19, 132:8, 132:24, 133:14, 134:3, 134:14, 135:2, 141:10 stopped [10] - 113:15, 118:13, 118:23, 119:11, 124:16, 129:23, 131:21, 132:10, 133:2, 133:16 stops [1] - 130:16 storming [1] - 128:1 straight [7] - 6:2, 17:15, 42:23, 45:22, 116:2, 117:15, 153:19 straight-on [1] - 117:15 strange [1] - 63:25 straps [1] - 13:14 strategy [1] - 25:25 strayed [1] - 68:17 street [2] - 162:15, 162:16 Street [4] - 1:17, 1:20, 1:24, 2:5 streets [1] - 109:21 strike [31] - 23:25, 46:8, 46:12, 48:2, 48:3, 48:4, 74:12, 76:19, 76:20, 77:7, 93:11, 117:15, 121:18, 121:20, 137:16, 143:17, 144:3, 145:11, 145:15, 146:5, 146:8, 146:16, 151:10, 151:11, 159:15, 159:17, 159:18, 159:19 strikes [3] - 136:16,</p>	<p>136:22, 150:16 striking [4] - 19:11, 47:23, 82:8, 136:18 strong [1] - 13:15 struck [20] - 83:25, 115:2, 116:17, 120:22, 123:10, 145:19, 145:21, 145:22, 146:7, 146:8, 149:17, 150:2, 150:10, 150:11, 151:8, 152:9, 153:14, 159:25, 160:1, 161:4 structure [2] - 6:19, 97:12 structure's [1] - 24:16 struggle [2] - 54:24, 84:15 struggling [2] - 44:23, 45:21 stuck [2] - 148:8, 160:17 student [1] - 5:23 stuff [8] - 8:21, 9:11, 9:22, 17:5, 17:15, 17:20, 26:20, 129:16 style [4] - 32:10, 66:25, 117:9, 117:10 subcomponent [1] - 130:14 subcomponents [1] - 130:10 substance [1] - 90:19 sue [1] - 71:22 suffering [1] - 59:24 suit [5] - 27:13, 70:17, 70:21, 71:16, 72:3 Suite [2] - 1:21, 1:25 suits [1] - 71:2 sum [2] - 19:12, 20:12 summer [2] - 6:18, 26:21 supervisor [1] - 57:17 supply [1] - 5:23 supporting [1] - 110:17 supposed [1] - 37:1 supposedly [1] - 8:17 surface [1] - 81:4 surgery [1] - 99:24 surprise [4] - 102:24, 103:20, 103:23, 104:4 surrender [1] - 127:9 surrounded [2] -</p>	<p>25:23, 29:1 surveillance [1] - 131:4 surviving [2] - 42:1, 84:11 sustain [1] - 25:20 sustained [7] - 54:2, 54:4, 59:25, 71:18, 72:20, 145:24, 161:7 sustaining [3] - 47:10, 67:25, 123:4 sweat [1] - 42:19 sweatshirt [2] - 138:4, 138:11 swing [1] - 147:4 swinging [1] - 147:3 switch [1] - 73:25 SWORN [2] - 4:12, 108:13 swung [4] - 79:12, 143:7, 145:13, 145:16 system [1] - 71:21</p> <p style="text-align: center;">T</p> <p>T-U-R-T-L-E-S [1] - 13:10 tackled [3] - 17:9, 21:23, 98:18 tactically [2] - 34:20, 92:20 tactics [3] - 20:8, 32:23, 92:22 target [3] - 37:5, 37:7, 37:10 targeted [1] - 31:9 targeting [2] - 37:2, 37:4 task [1] - 6:11 taught [3] - 36:16, 37:7, 37:10 team [1] - 122:7 tear [1] - 54:4 teargas [1] - 28:5 tech [1] - 5:23 technical [1] - 143:20 Telemundo [1] - 58:18 temporarily [1] - 21:1 temporary [1] - 20:24 tempore [1] - 30:17 ten [6] - 13:6, 18:7, 40:21, 54:8, 55:16, 120:25 ten-minute [1] - 55:16</p>	<p>term [4] - 54:5, 54:6, 143:19, 143:20 terms [2] - 6:22, 92:19 terrace [5] - 18:13, 18:14, 18:20, 29:17, 98:12 terribly [1] - 31:1 test [1] - 54:18 testified [28] - 33:24, 39:8, 51:2, 56:13, 56:19, 56:22, 59:16, 62:24, 66:4, 77:19, 81:10, 81:23, 83:6, 83:15, 87:3, 87:9, 89:18, 89:22, 90:2, 92:15, 97:6, 98:14, 98:22, 101:14, 106:25, 136:15, 137:25, 162:1 testify [3] - 83:14, 137:24, 161:16 testifying [11] - 69:5, 74:10, 81:18, 83:1, 83:9, 107:4, 107:6, 107:8, 107:9, 162:5, 162:6 TESTIMONY [1] - 1:10 testimony [13] - 55:18, 61:17, 88:22, 90:19, 107:25, 111:25, 131:4, 136:15, 136:17, 136:21, 160:17, 162:10, 162:22 text [2] - 66:11, 66:13 texting [1] - 68:11 THE [122] - 1:1, 1:11, 1:11, 1:14, 1:16, 1:19, 1:23, 1:23, 2:2, 3:4, 4:3, 4:10, 4:11, 4:13, 4:14, 4:16, 8:3, 8:5, 8:6, 8:7, 12:8, 12:10, 14:7, 16:16, 16:18, 19:17, 19:20, 19:23, 22:15, 26:16, 26:18, 27:8, 35:13, 36:18, 41:12, 45:9, 45:15, 47:2, 53:12, 53:15, 55:15, 55:16, 55:19, 55:22, 55:24, 55:25, 60:9, 60:10, 65:16, 65:19, 68:17, 69:3, 70:2, 70:6, 71:12, 71:13, 76:15, 76:18, 78:4, 79:4, 79:5, 79:20, 80:11, 83:10, 83:13, 88:9, 88:11,</p>
--	--	--	---	---

<p>88:16, 88:19, 89:2, 90:16, 90:22, 90:25, 91:3, 91:4, 91:8, 91:10, 93:14, 93:17, 104:2, 104:4, 104:13, 104:15, 104:18, 105:20, 105:25, 107:24, 108:3, 108:4, 108:8, 108:9, 108:14, 113:6, 116:20, 116:24, 122:11, 124:14, 124:24, 130:19, 135:23, 136:6, 136:10, 143:19, 143:20, 145:24, 147:21, 152:17, 153:9, 153:23, 154:9, 160:6, 160:16, 160:20, 160:24, 161:7, 161:10, 161:12, 162:6, 162:19, 162:21, 162:23, 162:24</p> <p>themselves^[5] - 15:4, 17:7, 50:19, 61:5, 71:24</p> <p>therefore^[2] - 27:4, 102:16</p> <p>Thereupon^[4] - 4:8, 55:20, 90:23, 108:11</p> <p>thigh^[4] - 12:3, 12:9, 12:10, 13:1</p> <p>thighs^[2] - 13:7, 37:12</p> <p>third^[3] - 56:14, 96:13, 96:17</p> <p>thousand^[1] - 59:24</p> <p>thousands^[1] - 25:24</p> <p>threat^[3] - 11:19, 26:5, 31:2</p> <p>threats^[4] - 9:8, 10:11, 11:14, 44:18</p> <p>three^[14] - 12:17, 14:1, 16:14, 19:12, 20:2, 25:9, 25:15, 29:8, 30:23, 33:5, 92:3, 98:17, 118:19, 134:15</p> <p>threw^[1] - 82:11</p> <p>throat^[1] - 13:8</p> <p>throughout^[5] - 8:20, 10:1, 57:22, 99:12, 123:7</p> <p>throwing^[4] - 20:21, 21:5, 86:12, 92:22</p> <p>thrown^[3] - 17:8, 28:4, 34:15</p> <p>thumb^[1] - 54:1</p>	<p>ticket^[1] - 101:5</p> <p>tickets^[1] - 101:6</p> <p>tie^[1] - 12:9</p> <p>tied^[1] - 55:1</p> <p>tier^[1] - 18:19</p> <p>tight^[1] - 140:14</p> <p>timeline^[3] - 41:5, 84:13, 84:15</p> <p>timestamp^[14] - 38:16, 38:25, 46:1, 46:7, 46:21, 47:6, 47:12, 48:10, 48:22, 49:17, 51:6, 123:21, 131:7, 134:9</p> <p>timing^[1] - 62:20</p> <p>today^[9] - 56:16, 60:7, 63:11, 107:4, 107:6, 107:8, 107:20, 107:21, 162:22</p> <p>toe^[1] - 125:19</p> <p>together^[2] - 54:8, 91:23</p> <p>took^[9] - 16:13, 32:11, 54:17, 75:21, 86:24, 97:11, 97:12, 98:18, 103:13</p> <p>tool^[1] - 121:15</p> <p>top^[8] - 7:14, 13:12, 16:18, 17:2, 28:8, 28:9, 86:25, 98:17</p> <p>topics^[2] - 61:24, 61:25</p> <p>torso^[2] - 145:3, 156:6</p> <p>total^[3] - 6:1, 16:12, 54:7</p> <p>totally^[2] - 61:16</p> <p>touching^[3] - 145:3, 145:4, 153:3</p> <p>tour^[3] - 50:16, 59:1, 73:12</p> <p>tourists^[1] - 101:8</p> <p>toward^[1] - 28:11</p> <p>towards^[14] - 48:1, 49:6, 79:12, 115:11, 116:1, 118:1, 145:13, 145:16, 147:3, 147:4, 151:11, 152:13, 152:25, 160:6</p> <p>tower^[2] - 98:5, 98:6</p> <p>train^[1] - 94:5</p> <p>trained^[18] - 15:5, 92:13, 92:18, 92:25, 93:4, 93:5, 93:22, 93:25, 94:2, 94:8, 94:18, 94:19, 95:23, 95:24, 95:25, 121:12, 121:14, 121:17</p> <p>training^[15] - 9:23, 10:16, 26:4, 36:8,</p>	<p>36:14, 36:16, 36:23, 46:14, 46:16, 56:23, 91:20, 92:21, 95:22, 121:12, 121:25</p> <p>transcript^[2] - 163:5, 163:6</p> <p>transfer^[4] - 6:12, 8:18, 30:13, 30:14</p> <p>trauma^[3] - 54:7, 61:2, 84:14</p> <p>traumatic^[4] - 63:5, 64:21, 82:1, 84:11</p> <p>treacherous^[1] - 30:21</p> <p>treated^[2] - 63:1, 84:14</p> <p>treatment^[1] - 84:15</p> <p>trench^[3] - 20:3, 32:5, 65:24</p> <p>TREVOR^[1] - 1:11</p> <p>trial^[3] - 4:2, 11:23, 70:8</p> <p>TRIAL^[1] - 1:11</p> <p>trick^[1] - 10:3</p> <p>tried^[11] - 22:20, 29:5, 40:14, 43:7, 44:22, 46:8, 53:10, 98:17, 103:2, 103:9, 144:13</p> <p>tripping^[1] - 25:4</p> <p>Tristan^[2] - 56:6, 84:20</p> <p>TRISTAN^[1] - 1:6</p> <p>Troy^[1] - 2:6</p> <p>true^[5] - 66:14, 70:15, 70:16, 163:4, 163:5</p> <p>truly^[3] - 57:6, 58:6, 65:10</p> <p>Trump^[1] - 30:10</p> <p>Trump's^[2] - 11:24, 99:21</p> <p>truth^[2] - 56:25, 107:21</p> <p>try^[19] - 8:7, 9:3, 10:2, 18:1, 26:5, 28:10, 44:8, 44:18, 47:9, 68:24, 81:17, 103:18, 115:16, 139:18, 141:15, 144:3, 144:11, 150:21, 156:1</p> <p>trying^[62] - 8:17, 18:17, 18:25, 25:7, 28:1, 28:12, 28:20, 34:22, 34:24, 35:25, 36:5, 42:22, 44:3, 44:4, 45:16, 45:22, 47:24, 47:25, 48:1, 48:3, 49:15, 53:4,</p>	<p>54:25, 55:1, 58:3, 58:6, 58:13, 58:22, 58:25, 60:1, 60:3, 60:12, 60:17, 60:18, 68:11, 69:17, 72:2, 77:9, 77:20, 78:23, 82:8, 82:12, 89:15, 91:21, 99:13, 103:4, 103:11, 118:16, 121:8, 121:9, 127:22, 130:1, 137:1, 137:8, 137:15, 139:19, 142:16, 146:25, 147:3, 147:10, 152:2, 158:23</p> <p>tunnel^[30] - 22:3, 29:18, 31:11, 31:14, 33:15, 34:11, 35:6, 40:20, 52:8, 52:16, 65:24, 67:23, 74:11, 87:19, 89:8, 89:20, 95:1, 96:6, 98:12, 112:3, 120:8, 123:16, 125:4, 125:9, 131:5, 137:8, 137:19, 148:6, 155:10, 155:12</p> <p>turn^[7] - 37:23, 44:16, 45:23, 85:18, 88:24, 105:4, 124:7</p> <p>turned^[8] - 24:3, 24:18, 66:16, 88:4, 112:4, 115:25, 116:2, 116:5</p> <p>turtle^[2] - 13:8, 13:12</p> <p>TV^[2] - 97:14, 97:16</p> <p>twice^[1] - 144:11</p> <p>Twitter^[2] - 61:19, 70:13</p> <p>two^[50] - 5:16, 11:10, 12:17, 15:24, 16:5, 16:10, 16:13, 16:14, 19:12, 22:8, 22:21, 25:8, 25:14, 27:14, 27:24, 28:17, 33:5, 33:8, 43:3, 51:25, 56:15, 59:19, 69:6, 71:4, 72:22, 75:25, 88:13, 92:21, 98:17, 100:4, 111:22, 111:23, 114:14, 116:10, 116:15, 117:18, 118:4, 121:9, 125:5, 138:16, 139:4, 139:5, 144:4, 148:13, 150:17, 156:19, 157:2, 159:4, 162:2</p> <p>two-minute^[2] - 22:8, 111:23</p> <p>two-minute-and-15</p>	<p>-minute^[1] - 38:24</p> <p>two-minute-and-15</p> <p>-second^[1] - 40:3</p> <p>type^[4] - 26:21, 65:24, 110:1, 119:16</p> <p>types^[2] - 14:2, 92:3</p> <p style="text-align: center;">U</p> <p>U.S^[2] - 99:2, 131:5</p> <p>ultimately^[2] - 110:14, 112:6</p> <p>unclick^[1] - 141:16</p> <p>under^[8] - 30:15, 54:15, 56:13, 56:20, 73:6, 73:16, 91:9, 110:22</p> <p>underground^[1] - 16:17</p> <p>understood^[7] - 27:8, 31:8, 55:19, 59:13, 65:10, 71:10, 89:16</p> <p>unfair^[1] - 63:23</p> <p>unfortunately^[1] - 63:13</p> <p>uniform^[8] - 13:4, 15:24, 20:15, 44:6, 54:23, 67:5, 67:7, 78:4</p> <p>uniforms^[1] - 20:19</p> <p>unison^[2] - 34:21, 115:7</p> <p>unit^[5] - 54:13, 91:23, 109:9, 109:11, 110:14</p> <p>UNITED^[4] - 1:1, 1:3, 1:12, 1:16</p> <p>United^[9] - 4:25, 5:6, 57:7, 59:4, 63:12, 63:14, 68:14, 95:20, 163:13</p> <p>united^[1] - 2:8</p> <p>units^[3] - 109:24, 110:13, 135:8</p> <p>Univision^[1] - 58:17</p> <p>unjustifiably^[1] - 26:22</p> <p>unjustified^[1] - 136:18</p> <p>unless^[3] - 79:25, 99:8, 122:1</p> <p>unpack^[1] - 39:1</p> <p>unprecedented^[1] - 136:13</p> <p>unresponsive^[1] - 52:22</p> <p>unruly^[2] - 7:18, 7:25</p>
---	--	---	--	---

<p>unusual [6] - 11:4, 99:2, 99:5, 99:10, 99:11, 99:13</p> <p>up [95] - 9:23, 12:1, 15:2, 16:4, 16:5, 17:20, 18:6, 18:7, 18:8, 19:12, 20:12, 21:9, 22:4, 25:7, 25:14, 25:15, 26:11, 27:11, 28:2, 28:4, 28:6, 28:7, 28:13, 28:21, 28:24, 35:6, 36:2, 37:21, 38:18, 39:20, 41:11, 43:6, 44:24, 45:6, 45:22, 46:10, 47:4, 48:18, 51:5, 59:6, 60:4, 61:19, 74:5, 75:25, 76:24, 77:11, 88:9, 88:11, 93:8, 95:2, 97:1, 104:9, 105:4, 110:12, 110:24, 111:2, 111:4, 112:9, 115:3, 117:5, 119:20, 122:4, 123:2, 123:12, 123:20, 126:25, 128:17, 128:22, 129:7, 130:22, 131:7, 132:16, 136:12, 138:23, 139:3, 139:17, 140:16, 140:22, 141:1, 144:25, 146:13, 146:18, 146:19, 148:20, 148:23, 149:1, 152:23, 154:16, 154:21, 155:3, 155:21, 160:11</p> <p>upper [3] - 27:11, 118:14, 131:7</p> <p>URSO [78] - 1:19, 1:20, 91:7, 91:12, 93:16, 93:21, 97:1, 97:3, 104:7, 104:14, 122:10, 135:24, 136:1, 136:5, 136:7, 136:11, 140:4, 140:10, 141:7, 141:10, 141:11, 141:24, 142:9, 143:1, 143:6, 143:11, 143:21, 144:1, 144:7, 144:17, 144:23, 145:10, 145:25, 146:3, 146:12, 146:23, 147:8, 147:15, 147:23, 148:4, 148:18, 149:8, 149:15, 149:23, 150:8, 150:20, 151:1, 151:7, 151:18, 152:1,</p>	<p>152:8, 152:18, 153:10, 154:1, 154:6, 154:11, 154:15, 155:1, 155:17, 155:20, 156:12, 156:15, 156:23, 157:12, 157:17, 157:20, 158:3, 158:8, 158:13, 158:22, 159:3, 159:14, 160:8, 160:19, 160:22, 160:25, 161:2, 161:8</p> <p>Urso [3] - 91:5, 135:23, 160:16</p> <p>use-of-force [1] - 136:16</p>	<p>violated [1] - 137:20</p> <p>violating [2] - 137:7, 137:10</p> <p>violence [6] - 9:8, 10:7, 26:8, 26:9, 53:1, 135:16</p> <p>violent [1] - 9:24</p> <p>Visitor [6] - 9:19, 15:22, 16:4, 16:12, 16:19, 107:17</p> <p>vocal [1] - 62:23</p> <p>voice [11] - 58:25, 59:3, 59:11, 60:25, 61:8, 61:21, 124:17, 126:3, 127:8, 127:18, 129:5</p> <p>vs [1] - 1:5</p> <p>vulnerable [1] - 19:10</p>	<p>weapon [7] - 10:15, 15:3, 23:23, 93:19, 161:4</p> <p>weapons [2] - 25:25, 34:16</p> <p>wear [1] - 15:10</p> <p>wearing [7] - 12:25, 13:2, 67:7, 110:1, 110:3, 111:8, 120:7</p> <p>week [2] - 17:22, 69:6</p> <p>weeks [2] - 92:21, 100:4</p> <p>weight [5] - 49:5, 49:8, 49:11, 106:13, 162:3</p> <p>welcome [1] - 55:15</p> <p>West [1] - 1:24</p> <p>west [14] - 12:19, 15:18, 16:23, 18:13, 18:14, 18:20, 19:13, 29:17, 97:17, 98:11, 110:18, 110:21, 111:6</p> <p>wet [1] - 81:4</p> <p>whack [2] - 19:2, 143:19</p> <p>whack-a-mole [1] - 19:2</p> <p>whacked [2] - 143:15, 143:17</p> <p>whacking [1] - 137:9</p> <p>whackings [1] - 160:21</p> <p>whichever [1] - 13:16</p> <p>whole [14] - 12:20, 13:4, 13:5, 18:23, 24:22, 39:14, 61:6, 64:21, 67:24, 89:11, 97:8, 99:12, 99:25, 107:16</p> <p>wife [1] - 40:12</p> <p>WILLIAM [2] - 2:2, 2:2</p> <p>willing [2] - 41:24, 49:18</p> <p>wise [1] - 50:9</p> <p>witness [8] - 4:8, 14:6, 65:11, 91:6, 108:5, 131:25, 133:5, 161:11</p> <p>Witness [3] - 23:15, 108:10, 162:25</p> <p>WITNESS [47] - 4:10, 4:12, 4:13, 4:16, 8:5, 8:7, 12:10, 16:18, 19:20, 22:15, 26:18, 35:13, 41:12, 45:9, 45:15, 47:2, 53:15, 55:15, 55:19, 55:24,</p>	<p>60:10, 65:19, 69:3, 70:6, 71:13, 76:18, 78:4, 79:4, 79:20, 80:11, 88:16, 88:19, 90:22, 91:3, 91:10, 93:17, 104:4, 108:3, 108:8, 108:13, 124:14, 143:20, 152:17, 153:23, 154:9, 160:6, 162:23</p> <p>witnessed [2] - 104:5, 139:7</p> <p>WITNESSES [1] - 3:4</p> <p>witnessing [1] - 113:2</p> <p>woman [4] - 42:2, 42:3, 53:9, 104:9</p> <p>wood [1] - 23:24</p> <p>wooden [4] - 115:2, 117:6, 117:11, 119:1</p> <p>word [1] - 90:12</p> <p>words [1] - 33:1</p> <p>worn [20] - 15:10, 15:12, 15:14, 111:8, 111:18, 112:1, 112:4, 112:6, 112:24, 114:23, 116:4, 120:20, 124:1, 124:6, 124:14, 128:17, 142:14, 142:16, 147:19</p> <p>worry [2] - 32:23, 55:2</p> <p>worse [1] - 24:7</p> <p>wrap [2] - 88:9, 88:11</p> <p>write [1] - 62:15</p> <p>writing [6] - 9:3, 62:12, 63:17, 65:12, 65:13, 107:2</p> <p>written [1] - 59:22</p> <p>wrote [1] - 85:4</p>
	V	W		X
	<p>vaguely [1] - 114:10</p> <p>vantage [2] - 97:11, 123:2</p> <p>various [1] - 39:12</p> <p>verbatim [1] - 85:3</p> <p>version [2] - 13:5, 136:8</p> <p>versus [1] - 63:12</p> <p>vetted [1] - 59:4</p> <p>vice [3] - 30:16, 30:18, 31:3</p> <p>victim [1] - 34:2</p> <p>video [57] - 17:21, 19:21, 22:22, 29:11, 38:17, 40:11, 41:7, 44:4, 48:1, 79:20, 81:13, 81:14, 82:10, 82:15, 82:19, 83:22, 83:23, 85:19, 87:25, 88:7, 88:25, 111:22, 111:24, 113:9, 113:15, 113:17, 115:10, 119:11, 125:16, 125:25, 126:12, 126:20, 127:1, 127:5, 127:12, 127:16, 128:10, 128:13, 129:21, 129:23, 131:5, 131:19, 132:8, 132:20, 132:24, 133:10, 133:14, 133:16, 133:24, 134:3, 134:6, 134:11, 134:14, 134:24, 138:9, 154:2, 155:7</p> <p>videos [5] - 74:2, 82:6, 120:4, 120:6, 161:3</p> <p>view [1] - 123:1</p> <p>viewed [1] - 125:5</p>			
				X
				<p>x-ray [2] - 16:10, 32:19</p>
				Y
				<p>yanked [2] - 80:2, 80:21</p> <p>year [2] - 5:16, 6:8</p> <p>years [14] - 6:1, 7:11, 7:20, 7:24, 10:4, 30:4, 57:8, 72:22, 91:15, 91:17, 92:1, 97:18, 98:22, 109:4</p> <p>years-plus [1] - 30:4</p>

yelling [3] - 17:5,
34:13, 40:7
yellow [1] - 67:6
yes-or-no [1] - 104:3
yesterday [1] - 122:6
yourself [17] - 22:10,
23:2, 23:13, 28:8,
35:8, 37:25, 38:4,
45:1, 51:16, 52:3,
92:22, 106:17, 120:6,
120:10, 121:5, 141:4

Z

zero [2] - 56:21, 57:4