

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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2)	
3	UNITED STATES OF AMERICA,)	Criminal Action
4)	No. 21-00040
5	Plaintiff,)	
6)	
7	vs.)	
8)	
9	PATRICK EDWARD McCAUGHEY, III,)	Washington, D.C.
10	TRISTAN CHANDLER STEVENS and)	August 29, 2022
11	DAVID MEHAFFIE,)	9:38 a.m.
12)	
13	Defendants.)	
14)	
15	* * * * *)	

TRANSCRIPT OF BENCH TRIAL - DAY 1
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

Ronald Ortega	21	66	
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Nikhil Paranjape	113	136	
Jason Mastony	139	233	
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1 this is an out-of-town witness, whether defense would ever
2 plan to re-call this witness.

3 MR. URSO: No.

4 MS. PASCHALL: Thank you, Mr. Urso.

5 THE COURT: I should have checked. I take it no
6 other defense counsel has any questions for this witness?

7 Okay. Thank you, sir. You may step down.

8 (Witness excused.)

9 THE COURT: This a good place for us to take our
10 lunch break. Why don't we come back at 1:30.

11 MS. PASCHALL: Thank you, your Honor.

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

14 THE COURT: Ms. Paschall?

15 MS. PASCHALL: Thank you, your Honor.

16 The Government calls Sergeant Jason Mastony.

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

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

21 JASON MASTONY, GOVERNMENT WITNESS, SWORN.

22 DIRECT EXAMINATION

23 BY MS. BOND:

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

1 A. Sergeant Jason Mastony.

2 THE COURT: Feel free to adjust that microphone.

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

4 BY MS. BOND:

5 Q. And where are you employed?

6 A. Metropolitan Police Department, Fourth District.

7 Q. What's your current rank?

8 A. Sergeant.

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

10 A. Sergeant.

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

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

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

15 A. Yes.

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

18 A. So I was a patrol sergeant in the Fourth District
19 working the evening tour. And then additionally I was the
20 sergeant on Civil Service Unit 42, which is a platoon inside
21 of the Fourth District, staffed by Fourth District officers.
22 And CDU 42 is a rapid response unit, which is just a platoon
23 with standard CDU certifications. And then on top of that,
24 we get additional training and munitions and crowd control
25 and we're particularly designed for addressing violent

1 crowds as opposed to crowds.

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

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

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

11 A. So primarily we're given different gear. The standard
12 CDU attire for a Metropolitan Police Department police
13 officer is a pair of gloves that have padding and armor on
14 them that go down to here; a riot baton, which is just an
15 extended -- essentially like an asp baton or a police baton,
16 just bigger; and a helmet that is ballistic and has a visor
17 shield. That's what essentially every officer on the
18 Metropolitan Police Department gets for civil disturbance.

19 The rapid response platoon will have additional
20 armor protection that's got like an athletic cup situation,
21 like armor that goes on our thighs, our shins, knees,
22 forearms, shoulder pads. All that stuff hooks into our --
23 the vest that we wear on patrol. So that covers our chest
24 and pretty much it just covers all your extremities for
25 being struck with, you know, objects or thrown objects,

1 anything like that.

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

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

10 Q. Like what?

11 A. Shoulder OC spray, larger canister OC spray that looks
12 like, you know, bug repellent or something like that,
13 40-millimeter. We're all certified in a 40-millimeter
14 extended impact weapon, which is essentially a grenade
15 launcher with a foam round, and it also shoots munitions.
16 And then hand-thrown munitions, which are anything from CS
17 gas to OC spray to sting balls, which would be rubber
18 bullets or rubber pellets. So pretty much all the munitions
19 that are used in civil disturbance a CDU 42 member is
20 certified to use.

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

23 A. So CDU, I was certified in the academy 12 years ago.
24 The rapid response platoons were created at the beginning of
25 2017 for Trump's first inaugural election.

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

4 A. So training-wise or actual deployed for actual First
5 Amendment assemblies?

6 Q. Actually deployed.

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

9 And then starting in 2020, we were in an almost
10 constant -- I spent probably 40 percent of the year on CDU
11 deployment. It wasn't always on an active protest.
12 Sometimes it was just: You're going to have a crowd here
13 for this and we're going to keep you activated, and the
14 deployments lasted months.

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

17 Q. Six times in your --

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

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

21 A. We had the George Floyd killing on May 31st of 2020,
22 which led to unrest in the city. It was pretty much three
23 nights of riots. I worked the last night, the third night.
24 And then interspersed in there for the remainder of the year
25 we would have events, you know. They tried to take down the

1 statute at Lafayette Square Park. We deployed for that and
2 stayed deployed for a while for the nights after for weeks
3 or months. It kind of all blends together.

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

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

9 A. The January 6th.

10 Q. Why is that?

11 A. Just numbers. We were massively outnumbered, whereas
12 generally we are outnumbered, but it's more of a factor of
13 there's several hundred of them and there's a few -- there's
14 dozens or scores of us, maybe not to 100, but 100.

15 So say again -- again, I'm generalizing -- but 100
16 versus 400, and those 400 are not always cohesive, going
17 after one thing. They're: I'm going to go here. I'm going
18 to go there.

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

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

24 A. It was comparable; but again, it just upped the factor
25 of -- before, I have had things thrown at me. I have had,

1 you know, chemical munitions and other things on. But
2 there, it reduced the number of people. I had one or two
3 people in a crowd doing that.

4 In this case, I had dozens to hundreds of people
5 that you're confronted with. So again, comparable acts, but
6 the amount of acts and the amount of people participating
7 was different.

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

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

12 Q. And where were you stationed initially?

13 A. We went down. We were staged in -- on Constitution
14 Avenue just southeast of the Eclipse [sic]. So
15 Constitution, and we had four blocks running from the
16 Eclipse down towards the Capitol Building. So we were
17 stretched out in a high-visibility manner. We were not
18 wearing any riot gear or protection. We were just in our
19 standard uniforms and wearing neon high-visibility jackets
20 over top of our uniforms.

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

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

3 A. Yes. The platoon is there. That's where the platoon
4 was staged.

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

6 A. So it was pretty much just a standard crowd. There was
7 an event going on on the Ellipse. And in general, the crowd
8 was moving from the east to the west, so a large crowd
9 coming up Constitution Avenue towards the Ellipse. That
10 pretty much went on from when we got on or really sunrise to
11 the time of the speech or -- the speech began.

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

14 A. Nothing unusual. It was fairly positive. People
15 walking back, just, you know, expressing themselves and, you
16 know, saying some common statements like "Back the Blue" and
17 other kinds of things. And that was pretty much our day to
18 that point, was just people walking by and, you know,
19 expressing to them as they are trying to get photos with us
20 and other kind of things like that.

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

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

25 Q. Why so many officers?

1 A. That's just what a CDU platoon is. A CDU platoon is 28
2 officers --

3 Q. I see. Okay.

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

5 Q. I apologize. I misheard.

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

9 A. Yes.

10 Q. How about Officer Abdi?

11 A. Yes.

12 Q. Officer Spooner?

13 A. Yes.

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

15 A. Yes.

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

18 A. Essentially what I'm wearing right now: a bulletproof
19 vest; you have your standard patrol gear; your gun; your
20 magazines; your asp baton; a small cannister of OC spray.
21 Sergeants are equipped with Tasers, but just those four
22 people would have those. And then you have a bulletproof
23 vest, a body-worn camera, and then most people are wearing
24 some sort of winter jacket because it's cold. A neon yellow
25 raincoat.

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

4 A. Yes.

5 Q. Tell me about that.

6 A. So we were on Constitution Avenue. Again, things were
7 going pretty much normally. People started going up.
8 Around 11:00, while the speech is still going on, we started
9 seeing the crowd go counter-flow, going back towards the
10 Capitol, large amounts of people going the opposite
11 direction.

12 Over the course of the hour, this crowd starts
13 getting kind of ornery. It starts collecting around the
14 Justice Department. I'm currently at the 500 block of 10th
15 Street, which is next to the Justice Department. I'm
16 standing with our lieutenant, Bill Hackerman. We started
17 seeing the crowd surge the Justice Department.

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

19 A. The Justice Department security is in front of the
20 building. They have bike racks. We were seeing those bike
21 racks physically start moving. There's enough people in
22 front of the Justice Department that they're pushing on the
23 Justice Department line and going right -- [indiscernible]
24 start getting a little hectic.

25 THE COURT REPORTER: I'm sorry. I missed what you

1 said at the end. If you could slow down, please.

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

7 BY MS. BOND:

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

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

13 When a crowd moves from the MPD area to the
14 Capitol area, we hand it off. So people coming from the MPD
15 area of responsibility, essentially D.C., are going onto the
16 United States Capitol grounds and there's a handoff on the
17 air. The crowd is now onto U.S. Capitol grounds. U.S.
18 Capitol has the event. When they come back off the grounds,
19 they do the same thing over the air.

20 So the crowd has come onto the U.S. Capitol
21 grounds. Standard thing. Nothing unusual. There's a crowd
22 in the Capitol grounds.

23 Then the unusual starts to happen.

24 Q. What's the unusual?

25 A. The Capitol Police is calling for MPD to come on the

1 Capitol grounds and assist them. The commander of the
2 overall MPD operation, Inspector Glover, he goes. He starts
3 pulling platoons in to respond to the Capitol, to what's
4 going on.

5 As I said, like at this point, they're starting to
6 actually voice things. Glover is starting to narrate what's
7 going on. They're taking projectiles. He's authorizing
8 helmets.

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

10 A. Yes.

11 Q. So what you're recounting right now, is that what you
12 were hearing on the radio?

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

15 Q. Okay.

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

18 Q. I see. Please continue.

19 A. So between myself and Lieutenant Hackerman, we decided
20 to pull the platoon off high visibility, get them all to the
21 500 block of 10th Street just to have them in one place so
22 we can go somewhere because it's our understanding at that
23 point, we're gonna move somewhere despite not having the
24 order. Escalate the radio stuff. It continues to escalate.
25 They still don't call for us.

1 Lieutenant Hackerman has asked for authorization
2 for us to get in our gear. We are at this point in no
3 particular hard gear. He asks for authorization.

4 Authorization is granted. We start putting on our gear in
5 the 500 block of 10th Street, just everybody strapping on
6 stuff.

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

9 A. The pads I described earlier. Essentially, you're
10 putting on pads over all your extremities. Your vest is --
11 your chest is already covered by your vest. You're starting
12 to attach pads to your legs, your arms. So -- and you're
13 completely covered so if you take a hit from a flying
14 object, you're not going to be debilitated or out. It'll
15 bounce off and you can keep going.

16 There's a part of this which might come up later,
17 but the rapid response platoon also wears a suit, a
18 coverall. So it's a onesie. It's like a NASCAR -- like a
19 Novak suit. It's flame-retardant. So you put that on over
20 it.

21 There was a time crunch here because we were all
22 hearing the transmissions. We were all starting to be,
23 like, "This is bad. It's getting bad fast." So most of
24 us -- I think only two members of the platoon, Sergeant
25 Austin, Officer Stokes, decide to put that on, that they

1 have time to get that on.

2 Q. That Novak suit?

3 A. That suit.

4 Q. Okay.

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

9 So of all the rapid response platoons down there
10 that day, in videos or anything you see, if you see an
11 officer that's an MPD officer wearing that suit with pads
12 outside and no suit -- no onesie, black onesie, over it,
13 that's a CDU 42 member. We didn't have time to put the suit
14 on. So that's what we were wearing when we went down to the
15 Capitol.

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

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

22 Q. Does that visor come up and down?

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

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

1 A. We did have gas masks.

2 Q. And do you know if all of you were wearing them that
3 day?

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

6 Q. Why is that?

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

11 MPD since IMF in the early 2000s really has not
12 used that even during the protests. When Park Police would
13 deploy it, we weren't deploying CS gas. It gets everywhere.
14 It's a contaminant. There's not a lot of good ways to
15 contain it in an urban environment.

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

18 A. Yes.

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

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

24 Q. Okay.

25 A. -- calling for more platoons, calling for additional

1 assistance down there, that they were taking scaffolding,
2 that it was being taken off the construction site, thrown at
3 the officers, that he had officers injured. That was the
4 big one that hits you, when you start hearing people are
5 going down.

6 Q. Is that typical, to hear that officers have been
7 injured?

8 A. No.

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

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

12 Q. I see.

13 A. I never recall hearing a 1033 transmission while I was
14 monitoring the radio in the -- prior to engaging with the
15 crowd.

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

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

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

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

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

24 A. The crowd was -- we were on the north side of the Mall.
25 The crowd was between the Mall and was on the Mall,

1 essentially. So crossing the Mall was going to be
2 difficult. And also, that's where the lead car went. So we
3 all followed the lead car. They were going to the north
4 side. We went right behind them. We didn't really put the
5 most thought into what we had been told and to respond to it
6 appropriately.

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

9 A. I went once as a tourist.

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

11 A. 2014, 2015. I walked around the west and then I walked
12 back.

13 Q. So you touched a little bit on sort of a hand-off
14 between MPD and Capitol police as crowds moved toward the
15 Capitol Building. Did MPD have jurisdiction over Capitol
16 grounds?

17 A. I believe we have joint jurisdiction.

18 Q. Can you give me -- help me to understand that a little
19 bit?

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

21 Q. Okay.

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

25 Other than that, pretty much Capitol is primary.

1 If they have an offense on the Capitol grounds, they handle
2 the report; they handle the investigation; they handle all
3 that stuff outside of a murder. But really, they have a
4 full police agency. We let them handle the Capitol.

5 I'm a sworn police officer in Washington, D.C.
6 The Capitol's in D.C. If something goes on, I'll cross a
7 boundary at the Capitol. I'm still going to go over there
8 and take police action. Whether or not I handle it, that
9 ultimately -- or it gets investigated by another person,
10 that's something else. But I have police powers to go to
11 the Capitol and do something.

12 Q. Had you personally ever been called to assist on Capitol
13 grounds before?

14 A. No.

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

17 A. I was expecting a crowd, like a line. I did not --
18 self-admission: I did not properly prepare. There was
19 obviously -- by what information I had, there was a CDU line
20 under active assault by a crowd.

21 Q. Okay.

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

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

4 A. Yes, but just our personal one that we would carry every
5 day. It's a little, like, two-ounce container. It's not a
6 large something meant for crowd control. It's meant for
7 personal -- if you have one person who you need to OC spray,
8 you do two short bursts. It's not a crowd-designed
9 implement.

10 Q. Did your officers have their service weapons?

11 A. They did.

12 Q. Anything else that they could use to help control the
13 crowd?

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

21 Q. Did any of your officers have shields?

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

24 Q. Are you -- so you weren't equipped with shields on the
25 6th. Do you ever use shields during crowd control?

1 A. Yes.

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

3 A. We just weren't issued them.

4 Q. Okay. Now, I want to ask you about body-worn camera.

5 Were you wearing a body-worn camera that day?

6 A. Yes.

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

8 A. A body-worn camera is a small box you wear on your
9 chest. It's produced by a company called Axon. You run it.
10 It runs live the whole time, so it's constantly recording
11 over a two-minute buffer. Once I hit a button on my chest
12 in a certain manner, two taps, the camera goes actual live
13 recording. It ceases to record over that two-minute buffer
14 and it begins recording audio and recording live until the
15 camera battery dies.

16 Q. Does it record both audio and video?

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

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

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

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

9 A. Yes.

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

12 A. Yes.

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

14 A. I did.

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

18 Do you know if they were wearing body cams that
19 day?

20 A. Yes.

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

23 A. Every single member of the platoon was wearing a
24 body-worn camera.

25 Q. Did you give any orders to them that day about their

1 body cams?

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

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

12 Q. Okay. Now, your body-worn camera footage, have you had
13 a chance to review your body-worn camera footage from that
14 day?

15 A. Yes.

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

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

21 BY MS. BOND:

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

24 A. Yes.

25 Q. So this clip that -- the still that's here on the

1 projector here, is this your body-worn camera footage from
2 that day?

3 A. Yes.

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

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

11 Q. And in your experience, are the time and date stamps
12 generally accurate?

13 A. Yes.

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

15 A. They are.

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

18 A. I believe so.

19 Q. What was going on?

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

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

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

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

8 A. No.

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

12 THE COURT: Seeing no objection, they will be
13 admitted.

14 (Whereupon, Government's Exhibit Nos. 232, 233 and
15 234 were entered into evidence.)

16 BY MS. BOND:

17 Q. I would like to start with getting your officers ready.
18 Going back to your platoon arriving at the Capitol, once
19 everybody gets geared up, how do you make your approach to
20 the Capitol?

21 A. I don't remember the exact streets, but we go in a
22 convoy with two scout cars and four rental vans on the north
23 side of the Mall, east until we get to a cross street, and
24 then we're on the north side of the Capitol. We go through
25 one of their lowering barricades. We park on the outside of

1 the Capitol perimeter and then we dismount and walk in.

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

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

6 THE WITNESS: In general, a CDU line is one line
7 with four sergeants and a lieutenant in the back. Four or
8 five of my officers don't have hard gear. They're just in
9 the normal outfit that I described for the CDU officer. And
10 they just -- at this point, I'm trying to let them know:
11 You guys stand behind the officers with hard gear in the
12 event we form line.

13 BY MS. BOND:

14 Q. Why would you put them behind the officers with hard
15 gear?

16 A. Because they don't have the external protection that the
17 other officers do. Pretty much throughout the clips that
18 we're going to view is me trying to get officers with
19 protection on their extremities to take the place of
20 officers without protection on their extremities.

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

23 A. Yeah. A Capitol officer, Seth Carl, who I met for the
24 first time that day. I don't know the U.S. Capitol grounds.
25 I'm the first guy in the line going in. I don't know where

1 my line is. I don't know where I'm going.

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

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

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

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

14 BY MS. BOND:

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

17 A. The crowd is -- on outskirts of the crowd, it's kind of
18 aimless: People walking around, people standing around,
19 people looking. At this point, I'm just using compliance to
20 get through the crowd. Yeah. I'm just asking people, "Move
21 aside."

22 As the crowd starts to get denser, I begin to
23 physically move people. So I'm just trying to physically
24 move people as I move through the crowd, putting my hand on
25 them: "Police department. Move aside." In going through

1 crowds before, I've had good success with just straight
2 compliance, just: "I know where I'm going. You get out of
3 my way." And before they realize what's going on, they've
4 already complied.

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

9 Unfortunately, it goes down to one single line of
10 officers moving through a thick crowd. And as I'm coming
11 through, it's just more people pressing up front, harder to
12 get through.

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

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

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

24 MS. BOND: I'll ask you to play the next exhibit.
25 But I will refrain from talking over it, because I think

1 that's causing problems.

2 Would you be willing to play Exhibit 232.3.

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

5 MS. BOND: Stop it there.

6 BY MS. BOND:

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

10 A. Yeah. So you see me come up on our initial CDU line. I
11 have found our line, the officers. At this point, when I
12 come in, the line is not under active assault. This
13 whole -- for the next half-hour, we go through ebbs and
14 flows. Sometimes the crowd is assaulting the line;
15 sometimes the crowd is just standing there.

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

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

25 But first, in this video, we see what appears to

1 be a bike rack that you're going through. Was that
2 accurate?

3 A. Yes.

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

5 A. So the bike rack was -- had established a line. I'm not
6 sure when it was put up, but the line being held was secured
7 by a bike rack with officers behind it. So we had a bike
8 rack interlocked just mechanically with, like, the peg that
9 goes into the hole on the side of the bike rack. They
10 weren't attached to the ground by any means. They weren't
11 attached together with zip ties, as sometimes they are.
12 They're just bike racks. Essentially, using a barrier
13 between the police and the crowd.

14 Q. So were there any officers standing behind the bike
15 racks?

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

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

25 A. Yes.

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

3 A. To my knowledge, from the west -- again, I don't know
4 the technical parts of the U.S. Capitol grounds. But the
5 plaza in between -- there's three sets of scaffolding: the
6 north set of scaffolding over a stairwell, the south set of
7 scaffolding over a stairwell and a media tower in the
8 middle.

9 The scaffolding goes from the north tower right
10 before the stairwell starts -- or the bike rack goes from
11 the north tower right before the stairwell starts, so just
12 short of that tower, and then all the way around the south
13 tower. So that's -- I'm not sure if the plaza is considered
14 bigger than that, but that's where the bike rack was.

15 Q. Got it. And what was the purpose of that bike rack
16 line?

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

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

23 A. So it wasn't half. I have 25 officers. Two officers.
24 So --

25 Q. I see. I'm sorry.

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

5 Instead, I show up with me, another sergeant and
6 two officers. So essentially, not great. I'm supposed to
7 bring in several dozen people or two dozen people. I bring
8 in two.

9 Q. So when did you first realize that you were missing so
10 many men?

11 A. About here. So I turn around and say: What? But
12 it's -- yeah. I don't have a good, really, you know,
13 narrative for this. Just that this isn't great. I'm --
14 not anywhere in our training, like, it was like: If you
15 lose 90 percent of your platoon, this is what you do.

16 Q. So what did you do?

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

23 So --

24 Q. So what did you actually do?

25 A. -- I stood there until my platoon managed to break out

1 itself. There was really -- the ultimate concession here is
2 that there was nothing I could do. The officers out there
3 were on their own. There was no ability for me to go.
4 There's no one for me to call to go, "Hey, I've got a
5 platoon cut off in the crowd." Like there's nothing to be
6 done there. It's just: They're out there. If they don't
7 find their way out, then that's where they're going to be.
8 Yeah. So I'm inside the line. They're outside the line.
9 Not a great supervisory position to be in, but that's what
10 it was.

11 Q. Did your platoon eventually make it back in through the
12 police line?

13 A. Yes. They were able to fight their way into the
14 direction of the police line and successfully enter the
15 police line.

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

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

20 THE WITNESS: If you want to stop the video.

21 So in this sequence of video, you see what looks
22 like an amplifier set up on the stage next to me. It's
23 called an LRAD system. I don't know exactly what the
24 acronym means. I'm not technically certified with the
25 system. I just know it exists. It's existed for 12 years,

1 at least since I've been on the department.

2 You set it up to issue warnings to a crowd. So
3 it's a loud amplified speaker. It gives a prerecorded or a
4 message that's done manually into it and it voices to a
5 crowd in almost all instances: "This is an unlawful
6 assembly." And it gives a series of warnings. First
7 warning, second warning, third warning. And the third
8 warning comes with a modifier that: Failure to abide by
9 this warning will result in arrest. So that's what's going
10 on with that box that's speaking in an amplified manner on
11 that corner.

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

15 BY MS. BOND:

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

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

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

24 A. It started almost -- whether it was on as I walked in
25 or -- but it was going. As I turned, I see what's going on;

1 and they're issuing LRAD warnings.

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

3 A. No. A matter of minutes.

4 Q. Okay.

5 MS. BOND: If you would continue playing the
6 exhibit.

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

9 THE WITNESS: Stop it again.

10 At this point, you see my platoon start coming
11 into the line. You'll see as the video plays that they're
12 in varying states of dishevelment. They've been assaulted.
13 And mostly the problem is they are not wearing gas masks or
14 really anything to shield their face and eyes. And they've
15 been sprayed by chemical munitions by the crowd. So mostly
16 bringing them in behind our line. People have brought
17 water. There's water that's presented itself. I don't know
18 where it came from. And they're trying to flush out their
19 eyes from the munitions that are in them.

20 BY MS. BOND:

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

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

1 Q. How did the crowd react when that bike rack line was
2 opened?

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

8 MS. BOND: Would you continue.

9 (Whereupon, segments of Government's Exhibit No.
10 232.4 were published in open court.)

11 BY MS. BOND:

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

14 A. Yes.

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

16 A. Yes.

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

19 So what types of behaviors were you encountering
20 from the crowd?

21 A. So pretty much a spectrum, from active assault to
22 passive resistance. And passive resistance being: "I'm
23 standing here. I'm going to yell at you. I'm not going to
24 assault you. I'm not going to push you. I'm not going to
25 spray you with anything." Just -- this is what the crowd is

1 doing to us. He's just standing there and between -- giving
2 speeches, telling us that what's going on is wrong, just
3 trying to, you know, physically talk to us, essentially.

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

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

11 Q. Let me pause you. When you say "We've just gone through
12 2020," what does that mean to you?

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

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

23 Even if you are unlawfully where you are and
24 you're standing there against my order, if you're just
25 standing there and you are not assaulting me, I am not going

1 to strike you. I am not going to really -- I did not use OC
2 spray that day. I was going above and beyond, trying not to
3 do anything that could -- honestly, self-preservation -- get
4 me fired from my job. I had no interest in it.

5 So I think that's kind of what you see in that
6 time period. You have officers who are confronted with
7 people who are passively resisting. And then behind them,
8 interspersed with them, sometimes they're assaulting;
9 sometimes they're not. And so I cannot very well target
10 someone who comes around three passive people and sprays us
11 with bear spray.

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

20 You have about a half-hour of that. We are
21 getting assaulted intermittently, but a lot of the people
22 that we are interacting with are just passively there.
23 Whether they were assaulted before that or assaulted after
24 that -- whether they were assaulted before that or assaulted
25 after that, we couldn't do anything about it. We were just

1 going moment to moment.

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

6 Q. So I'd like to talk about a few specific moments in that
7 2:00-to-2:30 period.

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

10 (Whereupon, segments of Government's Exhibit
11 No. 232.5 were published in open court.)

12 MS. BOND: Pause it.

13 BY MS. BOND:

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

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

21 In general, our OC that I know that we were
22 carrying on that day in those shoulder-mounted OC dispensers
23 that you saw the captain carrying, that's spraying -- it is
24 OC spray, but it's not dyed red. So the red stuff that's
25 coming in that's staining our shirts, that's getting on our

1 face masks, that's the red dots on this camera, that's
2 coming in. So you can see in this that we are getting
3 munitions. You can see thrown projectiles coming in,
4 lumber, just metal, anything coming up from the construction
5 site. And you can see the fire extinguisher getting sprayed
6 at us.

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

9 THE WITNESS: So in general, like I said, we're --
10 the CDU 42 is the most trained of the CDU non-SOD elements.
11 We are qualified to carry all this stuff. And -- but it's
12 essentially gone down to: Break in case of emergency.

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

20 So in general, I have at times -- Trump's
21 inauguration is one example where we were issued out
22 munitions. There are other occasions where they gave us
23 munitions. January 6th was not -- our CDU platoon was not
24 issued munitions.

25 So it was just what you're carrying duty-wise,

1 your small can of OC spray, which is your one reach-out-and-
2 touch-you thing. Everything else is hand controls and using
3 your riot baton as best you can.

4 THE COURT: Thank you.

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

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

9 BY MS. BOND:

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

11 A. You see us again taking munitions, guys running up,
12 throwing stuff, running away. They're receiving our
13 munitions back.

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

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

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

4 We've also lost ground. We used to be before
5 where the bike racks were. But now there's a guy who's
6 down. He's injured or feigning injury. We're not going to
7 push him off. We're not going to use force against him
8 because it's an injured guy sitting on the ground. So we've
9 pretty much given up that ground to him and we establish a
10 line behind that.

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

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

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

1 MS. BOND: So moving on to Exhibit 232.7,
2 timestamped 14:13:12.

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

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

7 BY MS. BOND:

8 Q. Why are they gone?

9 A. So again, I was not present for this. I went -- the
10 entire time on here, I have this overwhelming complex that I
11 do not have all my officers. I do not see 25 officers laid
12 out in front of me as I would in training in any kind of,
13 you know, non-dynamic environment. It makes me very, very
14 nervous that I have an officer somewhere that I don't know
15 about. So --

16 Q. Why does that make you nervous?

17 A. I'm accountable for them. They're my officers. If
18 they're out there, Inspector Glover is not going to know.
19 Who's going to know? His sergeant is going to know. That's
20 my job. I'm supposed to take care of those officers, know
21 where they are.

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

1 So I'm away from the line when these bike racks go
2 away. I don't know for a fact, but given the circumstances,
3 I conclude that the bike racks were taken by the crowd in
4 dispersing. So instead of having a bike rack interlocked
5 with lines of officers behind them, I now just have
6 officers. There's no physical boundary between me and the
7 crowd.

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

10 A. Plus bike racks is better.

11 Q. Why is that?

12 A. Again, it's a force multiplier. You have a steel
13 structure between you and them. It is harder for a person
14 to get through the steel structure and a line of officers
15 than a line of officers.

16 And then as you'll see as the video develops, when
17 some of those officers go away for whatever reason -- they
18 get sprayed in the eyes; they go back to get water --
19 they're not always replaced. So now you can see big holes
20 in the crowd. If you have a crowd that wants to go
21 somewhere and that crowd sees holes, it's going through the
22 holes. So if you don't plug them, people will explore that
23 space and go through it.

24 Q. So before we play the rest, I heard you in the first
25 portion of this clip saying: 42, push up." Was that your

1 voice that I was hearing?

2 A. Yes.

3 Q. Why were you saying that?

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

7 Q. And did --

8 A. -- through passive resistance, through -- there's a guy
9 who comes up at some point with a bike rack with a backpack
10 facing forward who is just pushing. When I'm on the line
11 myself not supervising and things, I've plugged a hole.
12 They're not assaulting me. They're just using body weight
13 to move my line.

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

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

20 BY MS. BOND:

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

23 A. Yes.

24 Q. So pulling up Exhibit 232.19, which is a still shot at
25 14:15:44, is this what the police line would have looked

1 like at 2:15 p.m.?

2 A. Yes.

3 Q. And did the police line still extend across the length
4 of that plaza?

5 A. Yes.

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

9 A. Yes.

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

11 A. Yes.

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

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

16 BY MS. BOND:

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

19 A. Yes.

20 (Whereupon, segments of Government's Exhibit No.
21 232.9 were published in open court.)

22 THE WITNESS: Stop it.

23 So that cloud you just saw is a CS device. I'm
24 not sure if it's what's called a burner, which is a constant
25 burning stream -- well, actually, I am certain it's a burner

1 because it's continuously smoking. It's a spewing or a puff
2 that's on fire similar to like a fire or snake that goes and
3 it's burning and emitting CS gas.

4 BY MS. BOND:

5 Q. What is CS gas?

6 A. It's a teargas. So it's what I was talking about
7 earlier. It's just a thing that in general we have access
8 to it, but we're not deploying it. OC is really the
9 Metropolitan Police Department's crowd control munition.
10 It's a more controlled thing. CS gas is an aerosol. It
11 expands out and it's an asphyxiant. You have a sensation
12 that you cannot breathe while inhaling the teargas.

13 Q. And did you ultimately get hit with this particular
14 cloud?

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

19 I have not given the order. I did not give the
20 order. The only people on MPD's side who have gas masks on
21 are the ones who did it by just motivation that they didn't
22 want to get OC sprayed, so they put a gas mask on instead.
23 It was very intelligent, but we didn't all do it. I didn't
24 do it. And a lot of these officers here are about to suck
25 this concentrated CS gas that's sitting at their feet and

1 they're about to leave this line.

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

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

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

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

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

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

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

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

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

7 Never heard the command over the radio or audibly.
8 We were not on the same channel as Capitol Police. I do not
9 know that there's been any evidence that the crowd had
10 access to CS gas. If I was to suppose what happened was,
11 Capitol or MPD without radio transmission deployed a CS gas
12 burner into the crowd and someone in the crowd bounces it
13 off this tower here and it drops on my line.

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

16 THE WITNESS: No, but it may be possible. I do
17 believe the crowd threw it back or it did emanate from the
18 crowd. I don't know who started it, who initiated it. It
19 may be a deployed munition thrown back or it could be
20 something that emanated from the crowd. I don't have
21 anything to support it.

22 THE COURT: Okay.

23 MS. BOND: Would you play the remainder.

24 (Whereupon, segments of Government's Exhibit No.
25 232.9 were published in open court.)

1 MS. BOND: Pause it. Thank you.

2 BY MS. BOND:

3 Q. So you talked earlier about the police line eventually
4 being overrun.

5 Before I play that video for you, can you just
6 tell me what you remember about those moments, how that
7 actually happened?

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

11 A. Yes.

12 Q. So what do you remember about the moments that the line
13 folded?

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

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

22 Once I get my helmet back on, I see the same thing
23 happening on my right side. When I go back to look at the
24 right side, before I -- or this is the north side of the
25 line now -- before the CS gas hit, I had a good number of

1 officers. Everybody is shoulder to shoulder, some two deep.
2 A strong police line presence.

3 After the gas deployed and officers left the line,
4 those officers didn't make it back to the line quickly.
5 There's no bike rack. There was just a line of officers
6 that was ultimately exploited by the crowd. The crowd
7 pushed. There was no one to support it. Officers got taken
8 out into one fight or another. I get taken off the line and
9 moved to another segment of the line by a protester. And
10 then the line collapses from my side into the plaza itself
11 until there's no semblance of order on the police line.

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

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

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

17 MS. BOND: Pause it.

18 BY MS. BOND:

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

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

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

6 To my knowledge at this point, I have no exit. I
7 do not know the layout of the U.S. Capitol. I do not know
8 this area I'm in. All I know is that I'm in an alcove-like
9 structure, and I had no knowledge there was a stairwell
10 behind me. I thought we were just pretty much surrounded in
11 a small area with a bunch of officers. And if we don't
12 establish a line now, we're not getting out of it.

13 So it was just try to get shoulder-to-shoulder
14 with some people and hold back what was -- reestablish what
15 is left of a line.

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

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

23 But you'll see as the video progresses that I get
24 up to an upper level. I do not think I had access to that
25 area. I thought I was -- we came in on the lower level. I

1 thought that's where we are. We'll hold this here until we
2 do something about this crowd.

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

6 MS. BOND: Would you continue.

7 (Whereupon, segments of Government's Exhibit No.
8 232.10 were published in open court.)

9 MS. BOND: Actually, stop it there.

10 BY MS. BOND:

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

13 A. Yes.

14 Q. What are those?

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

22 Q. Do you know where they came from?

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

1 around.

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

7 Q. To your knowledge, does MPD have these rectangular
8 shields?

9 A. We do, but those aren't MPD shields because we don't put
10 the Capitol Police Department crest on ours.

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

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

13 THE COURT: You may.

14 BY MS. BOND:

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

17 MS. AKERS: Yes.

18 BY MS. BOND:

19 Q. Do you see this?

20 A. Yes.

21 Q. Could you hold this for a second?

22 A. (Witness complies.)

23 Q. Thank you.

24 Is this the type of shield that you were using
25 that day?

1 A. Yes.

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

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

9 Then we make a smaller shield that's kind of
10 more -- certified to put in the trunk of a police car, just
11 shorter, with, like, one bar on it.

12 And this also has the ability, which I never
13 utilized during that day, to lock in with shields of a
14 similar type. You take this shield and you put it with a
15 shield that looks exactly like it, put it in here and then
16 you close it. And then you have two shields that are
17 mechanically linked.

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

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

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

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

24 Q. Thank you.

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

1 232.10 were published in open court.)

2 MS. BOND: Pause it there.

3 BY MS. BOND:

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

6 A. It's actively assaultive. The line is under assault.
7 The unit cohesion of our platoons is gone. I'm just pretty
8 much shouting at guys in uniform. I don't know their names.
9 They're not my platoon. We've got to get a line going. I'm
10 just trying to physically be present. And now I'm just a
11 cog in the line. I'm establishing the line. They can't
12 come down these stairs.

13 Here's me. We're getting our own munitions used
14 on us. The spray that was just used on me is one of our
15 46s. You can tell: There's no dye on it. And the guy was
16 holding a shoulder-mounted OC spray, so clearly when the
17 line collapsed we lost some. So we're getting sprayed with
18 our own stuff now.

19 Q. What do you mean you lost --

20 A. I believe some of our equipment throughout the course of
21 the day gets overrun by the crowd. This particular spray
22 that you take in, again, I referenced the difference between
23 red spray and clear spray. You're getting us with non --
24 this is non-dyed spray from a guy with a shoulder-mounted
25 46.

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

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

8 A. No.

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

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

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

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

20 So what were you trying to do as you're backing
21 out?

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

1 me.

2 Form a line from half the alcove. If the whole
3 thing is one big alcove, I'll get half. I'll start a line
4 in the middle. And that little wall that you saw me
5 pointing off to the right -- off to the right and other
6 officers coming up, my idea was -- poorly executed -- was to
7 move all those officers up and establish a line at that half
8 wall, a physical barrier with officers behind it. And that
9 way, we could hold it until we figured out what to do,
10 whether it was break out or stay there indefinitely.

11 Q. Were you successful in establishing that line?

12 A. Nope.

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

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

18 And I would also be completely ineffective. I
19 would not be able to go anywhere to assist anybody else. I
20 would not be able to do anything. They would have
21 essentially contained a large portion of our civil
22 disturbance response to what's going on. We were pretty
23 much one of the last platoons that's working day work that's
24 going in there.

25 And outside of, again, draining the districts to

1 come in and work, we were the last on-call reserve to come
2 in. So there's nobody else coming to get us. If we get
3 stuck in there, that's where your CDU assets are, in that
4 little cut-off corner on the side of the Capitol, not doing
5 much.

6 MS. BOND: Playing Exhibit 232.11.

7 (Whereupon, segments of Government's Exhibit No.
8 232.11 were published in open court.)

9 MS. BOND: Stop it there.

10 BY MS. BOND:

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

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

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

17 A. Just by either turning around or saying that, "Hey,
18 we're pulling back." My radio at this point, I'm either not
19 listening or the ear mic is out of my ear. So I'm not
20 hearing transmissions. I'm aware that a transmission got
21 made to pull back to the upper deck. But at this point, I
22 have not heard that transmission. I'm just realizing that
23 there is something behind me, officers going in it; and
24 presumably, that's my exit. So I'm -- my plan was, at this
25 point, was hold as long as I can on the bottom level and the

1 last man up.

2 Q. Were you the last man up?

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

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

6 A. A handful. I know Sergeant Brian Peeke was the last man
7 up.

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

10 (Whereupon, segments of Government's Exhibit No.
11 232.12 were published in open court.)

12 MS. BOND: Stop it there.

13 BY MS. BOND:

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

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

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

25 So I tried to hold right here on the stairwell. I

1 am not at this time observing these people who are on the
2 upper part above me here. I think that when I get to this
3 point, in my mind, everybody on this level is cops. I do
4 not realize that the rioters and crowd have assumed above me
5 as well.

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

10 Q. Where we've got this clip at right now, timestamp
11 14:37:50, is this on the lower west terrace?

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

18 Q. Fair enough.

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

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

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

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

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

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

11 MS. BOND: So playing Exhibit 232.13, starting at
12 timestamp 14:38:55.

13 (Whereupon, segments of Government's Exhibit No.
14 232.13 were published in open court.)

15 BY MS. BOND:

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

18 A. Yes.

19 Q. How do you know him?

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

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

23 A. Yes.

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

25 A. Yes.

1 Q. Would it have been on?

2 A. Yes.

3 Q. How do you know?

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

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

8 A. I believe I have.

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

10 A. Yes.

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

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

16 MS. BOND: Yes, please.

17 THE COURT: 235 and 236, including their
18 subcomponents, are in.

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

21 BY MS. BOND:

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

25 A. Yea. Hallway, tunnel. We referred to it mostly as the

1 tunnel for us.

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

3 A. Where it went? I determined later where it went. At
4 the time, I had no idea except for into the Capitol
5 Building.

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

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

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

10 A. Yeah.

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

12 A. Not yet.

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

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

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

19 A. Myself, Lieutenant Hackerman, Sergeant Brian Peeke,
20 Sergeant Joseph Austin, Sergeant Jim Park, and then
21 officers -- Officer Abdi was there, Chad Curtice, David
22 Pitt, Daniel Hodges, Bronson Spooner, Jessie Leasure,
23 Carlton Wilhoit. There were one or two others.

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

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

5 So yeah. I've never been -- in 12 years, I've
6 never been on a platoon that was unintentionally split, not
7 divided into squads, "This squad go with Sergeant Peeke;
8 this squad go with Sergeant Park," unintentionally divided
9 in such a manner that you have no knowledge of where anybody
10 else is.

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

12 A. Yes.

13 Q. Why?

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

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

21 I was a sergeant with the same platoon. I was
22 with it when it was formed in 2017, so I had been on it at
23 that time for five years. I knew every officer there. So I
24 had some responsibility above just my seven squad members.
25 Lieutenant Hackerman would do the best he can, but he

1 doesn't know everybody. I'd know every single one of these
2 people. When he'd call -- when I'd call out a name, I know
3 who it is. Or if I see somebody, I know who it is. So I
4 felt overly responsible for all 25 officers I led into that
5 situation.

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

9 A. So yeah. There was a commander. Ramey Kyle was
10 present. Yeah.

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

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

21 Riley told me, "We're holding right here. We're
22 holding these doors."

23 I yelled out for 42. At this point, you just have
24 a ramshackle group of officers. It's only -- nobody knows
25 each other's names. There's not a lot of commands. And

1 going for unit cohesion, I have -- I see a few 42 officers.

2 "42, get in a line." Spooner, Leasure, Wilhoit, they all

3 get next to me. We form a shield line inside the door.

4 Q. So the things that you did to keep people out, we've got

5 you making a shield line at the door. Did anyone lock the

6 doors?

7 A. Yeah. The doors were locked.

8 Q. Anything else?

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

10 behind the doors. The doors were locked.

11 I do not know this for a fact. I do not know U.S.

12 Capitol procedures. My understanding from Ramey Kyle

13 speaking to me and telling me what he did is he told the

14 Capitol officer to lock down the doors, which was less than

15 I was hoping for when I have determined that that was the

16 full lockdown that that area was capable of. But those

17 doors were apparently as secure as U.S. Capitol could make

18 them to my understanding from being told by the commander

19 present.

20 Q. That was --

21 A. Ramey Kyle.

22 Q. Kyle. Thank you.

23 Did the rioters eventually try to breach that

24 door?

25 A. Yes.

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

2 A. The first door got breached almost immediately. The
3 second door held a little bit. I believe Sergeant Bogner
4 sprayed some OC spray out there. He tried to get them back
5 with some OC spray out the door. He closed that door. I
6 believe that door was then locked. But then that door came
7 very quickly open and a gentleman came in and gave some sort
8 of speech which was unintelligible or I didn't care to
9 listen to what he was saying.

10 MS. BOND: Playing Exhibit 232.14, starting at
11 timestamp 14:41:45.

12 (Whereupon, segments of Government's Exhibit No.
13 232.14 were published in open court.)

14 BY MS. BOND:

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

17 A. Yes.

18 Q. Is that because of where you wear your body cam on your
19 chest?

20 A. Yes. So the body camera is worn, like, down by the
21 breastbone. So you have eye level what I'm actually seeing.
22 And then down by my chest is where the body-worn camera is,
23 about the breastbone. So about a foot under my eye level is
24 where the body-worn camera sits on an extended clip. And
25 that's where it hangs, essentially.

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

3 A. I was pressed in between two unmovable forces,
4 essentially, to the point of incapacitation. I could not
5 move my arms; I could not move forward; I could not move
6 back. So pretty much I have a plastic shield in front of
7 me. My arms are pressed in like this.

8 I have the whole crowd trying to come through the
9 door pressed up against me and I have every officer who was
10 able in the hallway behind me pressing in the opposite
11 direction. We pretty much just clogged the hallway,
12 shoulder to shoulder. As long as we stay here, they can't
13 get past us. That's where we were.

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

17 A. I believe so.

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

20 A. Essentially what I've just described, of a large crowd
21 trying to push its way in. MPD is forming a crowd on the
22 opposite side, trying to keep them out. And just me in the
23 middle. Sometimes I'm a few officers back; sometimes I'm at
24 the front; sometimes there's a break and we have some
25 distance between me and the crowd. And, you know, strikes;

1 some other stuff is available. But in general, I'm pressed
2 somewhere in one of those circumstances. I'm either in the
3 front or in between some officers getting crushed from
4 either side to the point where, you know, I'm just being
5 moved.

6 I'm not intentionally trying to go to the right of
7 the hallway. That's just where I'm going. I'm not
8 intentionally trying to go to the left. Wherever the crowd
9 surges or is moving in that point, I'm just going along for
10 the ride. I don't have much ability to do anything. I've
11 got a shield in front of me. Both my hands are occupied. I
12 cannot strike. I cannot use OC spray. I can't do pretty
13 much anything. I'm just in it. As long as I stay there,
14 they can't move past me.

15 Q. Did you or any other officers try to give orders to the
16 rioters?

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

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

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

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

1 232.15 were published in open court.)

2 BY MS. BOND:

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

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

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

7 A. I was trying to push the crowd back. During this -- and
8 I go back in the hallway at least one other time, separate
9 from this particular event. And again, in the sequence of
10 that, I'm frequently -- I recall yelling "MPD, push" as in
11 getting the officers behind me to push forward.

12 MS. BOND: Moving to Exhibit 232.16 at timestamp
13 14:53:30.

14 (Whereupon, segments of Government's Exhibit No.
15 232.16 were published in open court.)

16 BY MS. BOND:

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

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

23 So occasionally, the crowd would separate enough
24 from what you just saw where you're standing apart. I'm not
25 moving forward anymore because I'm burned; and they're not

1 coming at me, I assume, for the same reason. Just --
2 there's only so much physical exertion you can go through in
3 a period of time.

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

8 Q. Now showing you clip 232.18, which is timestamped
9 15:07:30.

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

12 MS. BOND: Pause it. Well, maybe go one extra
13 second.

14 (Whereupon, segments of Government's Exhibit No.
15 232.18 were published in open court.)

16 BY MS. BOND:

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

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

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

22 A. Yes.

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

1 MS. BOND: If you could pull up Exhibit 301, which
2 has not yet been admitted, and move exactly to timestamp
3 16:47.

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

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

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

9 MS. BOND: Stop.

10 BY MS. BOND:

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

12 A. Yes.

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

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

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

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

18 A. So like I explained, with the hard gear platoons,
19 there's two hard gear platoons present at the Capitol at
20 this point. This is an MPD officer, the one I circled,
21 wearing an MPD uniform with the outer vest. He's got a gold
22 badge on and he's got a Taser mounted. That means he's a
23 sergeant.

24 I wear the same sequence of events. I'm also
25 left-handed. That's a small percentage of the population,

1 not a lot of the department. This person who I believe -- I
2 know it's me -- does not have a gun on his right-hand side,
3 because my gun's on the left. The Taser is -- at this
4 point, I don't have my Taser, but it's mounted on my chest,
5 a cross-hand draw from the left-hand side.

6 Additionally, he's wearing rapid response. It's
7 one of only two platoons there wearing this, so he's a
8 sergeant with a rapid response platoon. Platoon 12, the
9 other CDU rapid response team there, had a full suit over
10 their uniform because they did not get dressed in the
11 street.

12 So this guy's wearing his pads on the outside.
13 He's wearing an MPD uniform. He's left-handed, a sergeant,
14 Taser. And he's wearing a ninja glove -- he's wearing a
15 glove that has a forearm protector attached to a leather
16 glove. We issued that 20 years ago. I continue to wear it
17 because it's a glove and a forearm protector. It's not two
18 separate things. I couldn't wear it after that day, but
19 that day I was wearing it.

20 All those circumstances: That's definitely me.

21 Q. So you would say you're pretty confident that's you
22 there?

23 A. Yeah.

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

1 A. Yes.

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

4 A. Yes.

5 MS. BOND: The Government moves to admit Exhibit
6 301 and all of its derivatives.

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

9 (Whereupon, Government's Exhibit No. 301 was
10 entered into evidence.)

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

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

15 MS. BOND: Pause it there.

16 BY MS. BOND:

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

19 A. Yes.

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

23 A. Yes.

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

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

3 MS. BOND: Clear the screen. Pause it. Forgive
4 me. Go ahead.

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

7 MS. BOND: Pause it there.

8 BY MS. BOND:

9 Q. Now, before you discuss this --

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

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

15 MS. BOND: I'm so sorry.

16 (Whereupon, segments of Government's Exhibit No.
17 301.7 were published in open court.)

18 BY MS. BOND:

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

22 Did you see where I circled right there?

23 A. Yes.

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

25 A. Yes.

1 Q. And what do you remember about him?

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

7 There comes a point -- again, I described it --
8 where I don't have the ability to hit people at some point,
9 where I'm just there. My arms are tied up by a shield or
10 whatever it might be.

11 So I do recall at this point I had a
12 back-and-forth with this gentleman. I don't remember
13 exactly what he was saying. But the essential was, he was
14 trying to ingratiate himself, negotiate himself to, "Hey,
15 let us pass. We're on your side. You're on our side. You
16 should let us go. You should let us past you into the
17 Capitol."

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

25 Part of that whole interaction was during the

1 shield pressing, this guy was using his arm to come around
2 the shields. Again, we did not have a lot of ability to
3 stop, use our arms, strike the crowd. And he was clawing at
4 the face of the Capitol officer who was in front of me. I
5 told that Capitol officer, "If he brings his hand around
6 again, I'm going to break it."

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

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

10 Q. Thank you.

11 Pulling up exhibit -- before I move on, do you
12 remember anything else about what this individual was saying
13 that day?

14 A. Saying? No.

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

16 A. No.

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

19 (Whereupon, segments of Government's Exhibit No.
20 414 were published in open court.)

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

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

24 MS. BOND: Stop it right there. Go back to six
25 seconds.

1 BY MS. BOND:

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

3 A. Yes.

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

5 A. I believe at points I have watched the entirety of this
6 video.

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

9 A. Yes. Not the same moment, but approximately the same
10 time period of the first time I was in the tunnel.

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

14 A. Yes.

15 MS. BOND: The Government moves to admit Exhibit
16 414 and all of its derivatives.

17 THE COURT: Without objection, 414 and its
18 components are in.

19 (Whereupon, Government's Exhibit No. 414 was
20 entered into evidence.)

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

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

25 THE WITNESS: Yes, sir.

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

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

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

5 THE WITNESS: Yes, sir.

6 MS. BOND: Thank you.

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

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

11 BY MS. BOND:

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

14 A. Yes.

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

18 A. Really, just what you're seeing in the video. In the
19 video, I'm in -- as from the video's perspective, I'm in the
20 left-hand side of the screen against the wall. So pretty
21 much what you see: Pushing, pulling, getting a lot of push
22 on. I remember Sergeant Park deploying his Taser to my left
23 during this whole event, which you see on the video. But
24 pretty much, there's nothing I haven't described already in
25 the course of what's going on in the hallway over this

1 period of time.

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

6 (Whereupon, segments of Government's Exhibit No.
7 233.1 were published in open court.)

8 BY MS. BOND:

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

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

13 Q. Now, when you say you believe that, why do you believe
14 that?

15 A. So I do not recall at the time hearing Daniel Hodges
16 scream for help. There was a lot going on, a lot of people
17 screaming. In the time since when I've reviewed the
18 videos -- I know Daniel Hodges, have known him for five
19 years. I know what he sounds like. And then adding to the
20 additional fact is I know from video recordings of what
21 happened to him there. That is how I know this point in
22 time to being where Daniel Hodges was screaming for help.

23 Yeah. I don't have anything more precise for it,
24 but I didn't recognize it at the time. And then when I was
25 provided a good recording with -- you know, I can tell that

1 Daniel Hodges is screaming for help in a video recorded on
2 my chest.

3 Q. So based on your knowledge of him and the knowledge of
4 this video, is it your belief that around that timestamp,
5 3:12:15, is when you hear Officer Hodges screaming?

6 A. That's my belief.

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

10 A. Yes.

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

12 A. So pretty much just by momentum. We got enough officers
13 behind us to push out; and at some point, the crowd had
14 eased enough that the way I measured the tunnel of what it
15 was, you have the initial entry point; then you have a first
16 set of double doors; then you have a second set of double
17 doors; and then you have a metal detector after the second
18 set of double doors on the way in, and you have access to
19 all avenues of the United States Capitol after that.

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

23 And at some point during this, we do manage to get
24 the line pushed all the way back up to the entry of the
25 hallway.

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

7 So my perspective was, I'm not going past that
8 threshold. And I feel that almost all of the officers who
9 came to that threshold made the same determination. We were
10 coming about four or five -- a shoulder up to that
11 threshold. And we did not cross it. We held there. And we
12 held that for as long as we could until we got pushed back,
13 pushed forward, and on and on for two hours.

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

16 A. Correct.

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

20 (Whereupon, segments of Government's Exhibit No.
21 233.2 were published in open court.)

22 BY MS. BOND:

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

25 A. Yes. So in the video itself, you can see it's a

1 prefabricated railing, like a construction railing that's
2 been put up and attached to a plywood box on the corner of
3 the hallway. So I assume -- I've never been in the hallway
4 except for this configuration, but I assume in general it
5 does not have hand railings and this railing was added.

6 Anyway, as you can see, that railing only exists
7 at the threshold as you go from the covered portion of it
8 outside. The first set of double doors, it allows you into
9 the interior. So you're outside in like a breezeway, still
10 covered. Then you're in the open plaza. And right before
11 you're in the open plaza, you have that railing you see in
12 my video. I'm on the left-hand side of the hallway exiting.
13 You see the railing attached to plywood. So that's where
14 this is going on currently or in that video.

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

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

20 Q. Okay.

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

24 Q. Do you recognize the officer?

25 A. I did not know the officer at the time. So I just knew

1 he was an MPD officer who was lying face down on the ground
2 in front of me.

3 Q. So what did you do when you saw the officer in front of
4 you?

5 A. I picked him up by the -- his vest. So our vest has,
6 you know, two armholes. I picked him up by the straps of
7 the vest, lifted up his torso. And I don't know why --
8 again, hindsight is 20/20 -- I started screaming behind me,
9 "Pull me, pull me, pull me," because everybody -- as the
10 circumstances have played out, all our pressure is going
11 forward out of the tunnel. So me trying to push backwards
12 is not a successful thing. And the only thing in my mind at
13 the time to alert them that I needed to get back was to say,
14 "Somebody grab me and pull me" so I can get this guy out of
15 here, because otherwise I'm just trying to push back against
16 them and they don't know why. They can't see I'm holding an
17 officer.

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

20 Eventually, an ERT officer who I don't know, who
21 was a much larger man than I, threw one arm around
22 everybody, grabbed who later came to be known as Michael
23 Fanone, grabbed him and helped me spin him around. I got
24 his legs and the ERT officer pulled him out and I came out
25 behind him.

1 MS. BOND: So playing Exhibit 233.3, which is
2 timestamped 15:20:28.

3 (Whereupon, segments of Government's Exhibit No.
4 233.3 were published in open court.)

5 BY MS. BOND:

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

8 A. Sorry. So I had planned to. But yeah. So I took off
9 my helmet to try to get him. But an officer very shortly
10 came up, like identified himself as his partner, and I went
11 back to doing other things. The officer's with him. Okay.
12 That's handled. Back to the door.

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

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

20 So yeah. I don't recall. I did go back in after
21 this point. But whether I went right back in, I don't
22 remember.

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

24 A. Probably total, maybe an hour and a half. So I was not
25 in there the entire span of time from coming through the

1 door at 2:40-ish to us breaking out at 5:00. I took at
2 least one break. And then I did not return after I think my
3 second or third break for when the officers actually broke
4 out of the tunnel.

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

7 A. Yeah. I think, like, the last time I came out was 4:25.
8 But we didn't -- MPD did not push out of the tunnel until
9 about 5:00. So by the time of the final pushout, I'm
10 somewhere else in the Capitol trying to gather my platoon
11 up.

12 Q. Okay.

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

14 Q. So --

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

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

19 A. Yes. So there were more heave-hos. There were more
20 times when we were all the way back to the metal detectors.
21 That was not -- the sequence you saw with Mike Fanone, that
22 was not the last time we were fighting in that tunnel. We
23 managed to get them all the way out and then they got all
24 the way back in at points, all the way back to the metal
25 detectors.

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

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

6 Q. What made you decide to ultimately leave the tunnel that
7 day?

8 A. One: I was completely exhausted. But everyone was
9 exhausted. So to that point, I didn't use any kind of
10 excuse.

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

15 And then, too, I took the out. I did not know
16 where my platoon was, and I was probably the person most
17 capable of the command officials in that platoon to know who
18 everybody was and to find everybody to make sure we have
19 everybody accounted for. So any number of those reasons I
20 used to justify it. But really, I was burned and I couldn't
21 go back in.

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

25 A. No. I thought we held the Capitol. I did not find out

1 until later that we did not.

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

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

10 So I found out later that they did get inside.
11 They did delay the thing. And I was not pleased for myself
12 or for the events.

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

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

18 But, you know, they got in. They stopped the
19 congressional hearing.

20 And then again, selfishly, by them stopping it, at
21 that point I did not know it was going to continue. I
22 thought when they told me that they stopped, that Congress
23 is gone, I'm like: It's just going to happen again tomorrow
24 when they decide, "We're going to do it again" and I'm going
25 to be back in the line tomorrow with, you know, reduced

1 however many officers are left trying to do the same thing.
2 So it was kind of just a low point.

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

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

9 Q. And once things had calmed down and you were able to
10 take a step back, what did you do at that point?

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

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

20 Q. Did you eventually find them?

21 A. Yeah.

22 Q. About what time did you find them?

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

1 So by the time I got back to everybody else in the
2 Crypt, those two officers had appeared and I had all my
3 officers. Nobody was at the hospital. Everybody was at the
4 Capitol.

5 And then we started figuring out who is injured,
6 who is injured that they have to go, who is injured that
7 they can stay, who is injured that they can't come back
8 tomorrow and then doing all the necessary paperwork that
9 involves the amount of use of force we had and the
10 notifications for the injuries and all that clerical stuff
11 that is covered and, you know, the stuff we went through on
12 how to make all the notifications. So I was doing that
13 until 1:00 a.m. that night.

14 Q. So were you yourself injured during the course of the
15 day?

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

21 The thing I talked about earlier with us wearing a
22 body suit, because we didn't -- because we got dressed in
23 the street, I did not put that body suit on. And all the
24 chemical munitions that were used came through my duty
25 uniform. So all that stuff was on my skin. Yes. So eyes.

1 I couldn't wear contacts for a week. I had -- when I did
2 put them in, I had to use rubber gloves. It was, like,
3 oil-based. It was in my hands. It was everywhere.

4 And then on top of that, I did not -- I had no
5 symptoms according to Google consistent with a concussion,
6 so I did not report a head injury. I had one big bruise
7 down the front of my head from the guy hitting me in the
8 head with a crutch. My arms were all bruised up from the
9 push and pull of the tunnel. But I did not report injury to
10 it. I did not receive medical treatment for injuries
11 sustained at the Capitol.

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

13 A. Yes.

14 Q. Approximately how many?

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

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

18 A. Yes. That included the officials. So two of the
19 sergeants were down. And I believe -- it might have been
20 15, but yeah. So it was between 11 and 13. So
21 approximately 14 to 15 injured officers out of 29, 30
22 present. One lieutenant, four sergeants, five -- yeah. So
23 of 30 people, 14 to 15 injured. So about 50 percent were
24 out the next day.

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

1 A. 1:00 a.m.

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

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

7 Q. And other than feeling the burning sensation on your
8 skin, did you have any other lingering effects from that
9 day?

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

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

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

18 Q. And should you have had 28?

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

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

23 THE COURT: Sergeant, that was very compelling
24 testimony.

25 Why did this happen? Why do you feel like kind of

1 for the first time in MPD history a line broke?

2 THE WITNESS: I --

3 THE COURT: How did this happen?

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

7 THE COURT: I'm asking you.

8 THE WITNESS: So I think we prepared to the level
9 we could. We had -- it was a full departmental activation.
10 Everybody on MPD was at work.

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

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

25 So I think our MPD deployment was fine. Like we

1 were scheduled to ramp up when the sun went down, just like
2 everything over the last six months had taught us to do.
3 This is what they do. This is going to get violent tonight.
4 So we were scheduled and things.

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

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

17 This had thousands of people focused on one target
18 point. And it was not a sustainable place to hold. We
19 could not secure the Capitol Building. It was too big, too
20 unsecurable for the manpower we had to stop what was coming
21 at us that did not have hardly infrastructure for security
22 and we did not have the ability to ramp up our response to
23 the level.

24 In my view, the only thing that could have stopped
25 that crowd short of an impenetrable fence around the Capitol

1 that day would have been a massive collection of ordnance of
2 CS gas where, if we had deployed enough CS gas all at once,
3 those people would have gone home. Short of that, we were
4 just Band-Aiding it until the line finally broke.

5 THE COURT: Mr. Urso?

6 MR. URSO: Thank you.

7 CROSS-EXAMINATION

8 BY MR. URSO:

9 Q. Good afternoon, Sergeant Mastony.

10 A. Good afternoon.

11 Q. Just following up on the judge's question, you said you
12 had -- you were fully deployed. The department was fully
13 deployed?

14 A. Yes, sir.

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

17 A. We were not.

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

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

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

25 A. It would have.

1 Q. Do you know who made that decision?

2 A. No.

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

5 A. In my view, from my perspective, based off the size and
6 violence of that crowd, you had two solutions: either a
7 hardened structure that was not physically possible for
8 anybody to get in or enough, you know, crowd-dispersal OC
9 spray or CS gas to disperse a crowd in the size of
10 thousands.

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

12 A. So I have never been on a CDU deployment where National
13 Guard has been deployed in a manner that I feel could have
14 dispersed what it is. The National Guard in Washington,
15 D.C., that I have handled, like, deploys on a much smaller
16 scale.

17 I think it would have helped. I'm not sure
18 that -- I'm not sure how much military force it would have
19 taken to stop that amount of people and what level of force
20 those people would have been authorized or willing to use
21 or their training. I shouldn't really speak on the National
22 Guard. I don't know much about that.

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

25 A. Well, so again, I'm just -- you're outside my realm of

1 expertise. But you would have to find the contractor, find
2 the people to assemble it, have access to the fence.

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

9 And then I've been using this analogy a lot in the
10 last years: We don't have the event to start it at that
11 point. No one has -- I would think if you had tried to say,
12 "We need to put unscalable fencing around the Capitol" prior
13 to this happening, someone would tell you no, because it's
14 never happened, whereas afterwards the horse has already
15 escaped the barn. Let's lock the barn door now.

16 Q. Hindsight is 20/20. Yeah.

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

19 Q. Thank you.

20 You testified earlier that at some point -- at the
21 time, you didn't realize that there had already been
22 breaches all over the different parts of the Capitol as you
23 were battling and that you said they stopped the
24 certification.

25 Do you know -- did you come to find out around

1 what time that certification process was stopped?

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

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

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

7 Q. You testified a little bit about shields. It's
8 Exhibit -- is it 801, that shield? It's 801. You felt
9 Exhibit 801. Did that feel a little heavier than the shield
10 you were carrying on January 6th, 2021?

11 A. I would say it feels approximately the same weight.
12 It's the same --

13 Q. Style?

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

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

23 A. Yes.

24 Q. Is it fair to say shields are defensive weapons,
25 defensive implements?

1 A. I would say we deploy them to hold an area. We do not
2 deploy them with the idea that we are going to go
3 offensively and attack or in to disperse a crowd with
4 shields. If we were going to do a shield line, we are doing
5 it to protect the guy behind the shield and we're trying to
6 hold ground. I would not -- if I wanted to take ground
7 away, I would not take one of those shields particularly
8 with me.

9 Q. Unlike, say, a baton, this is not designed to cause
10 injury to another party, correct, a shield?

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

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

15 A. To strike with a shield. The shield I was holding in
16 the manner which we are trained to hold it with our forearm,
17 extend it, our forearm extended through it through a loop
18 and holding the handle. And we are trained to physically
19 move ourselves forward and use it to push people or strike
20 people out of the way.

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

25 Q. What do you mean, the blunt end? You used the edge of

1 the shield?

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

4 Q. Is that part of your training or that was just
5 self-preservation?

6 A. That was what had to be done at that moment. The use of
7 force continued -- had escalated to the point where if I
8 don't stop this guy assaulting an officer in front of me,
9 something very bad is going to happen to the point of
10 nearing the force being authorized. So I decided to hit
11 that man -- or hit the person assaulting that officer with
12 the blunt end -- with the edge of the shield.

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

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

17 Q. We watched a lot of the video. Before you made it up
18 that narrow stairwell up to the second level, we watched a
19 lot of video of you trying to hold the line, you guys
20 holding the line and things like that. I don't think you
21 described where exactly that was. I know that was the west
22 side of the building. But is it fair to say that was sort
23 of on the northern half of the building?

24 A. So it was definitely on the west side of the building,
25 like the west side proper. If I was standing on it today, I

1 don't think anybody could confuse me for being on the north
2 side.

3 On the west side, if you draw, you know, four
4 lines or two lines through the Capitol and you put it in a
5 quadrant, it's definitely in the north side of the west
6 area.

7 Q. Right. Yeah.

8 A. So yeah.

9 Q. Heading towards Constitution Avenue, that half of the
10 building?

11 A. Correct.

12 Q. Okay. And when you got to the west -- inside of the
13 lower west terrace tunnel where we watched -- I'm not sure
14 of the exhibits. We watched you from the inside. That's
15 where you identified you heard Officer Hodges screaming.
16 When you got there -- and you got through the inside of the
17 building. Correct?

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

20 Q. Oh, you did?

21 A. I walked in from the outside on the west side. I walked
22 up that -- the narrow stairwell up to the upper raised
23 platform, that some sort of temporary platform, and then I
24 walked in from the outside.

25 Q. You're saying the same direction the protesters were

1 coming?

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

3 Q. Were there any protesters when you walked in in the
4 tunnel?

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

10 Q. Okay.

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

13 (Whereupon, segments of Government's Exhibit No.
14 101.1 were published in open court.)

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

16 BY MR. URSO:

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

21 A. Yes. There was more officers behind this line. I
22 assume it's early after the line is broken that this is
23 happening. So I'm one of the last ones, not the last one,
24 but one of the last ones coming in this direction through
25 this door.

1 MR. URSO: Keep playing.

2 (Whereupon, segments of Government's Exhibit No.
3 101.1 were published in open court.)

4 BY MR. URSO:

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

8 A. Yes.

9 Q. And they're heading in. Do you think you're going to
10 be -- show up in this video?

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

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

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

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

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

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

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

9 A. So up by the timestamp.

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

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

22 But yeah. I don't --

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

25 A. Yes. But if you ask me why I think we went in here to

1 hold this, it's because there's thousands of them, less of
2 us. And this -- in a best-case scenario, you need four
3 officers a side to hold. Everything else, you would need a
4 line to the similar extent of what had just failed.

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

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

10 Q. Now --

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

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

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

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

21 BY MR. URSO:

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

25 A. Yes.

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

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

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

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

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

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

16 Q. All right. To your knowledge, were any of these
17 Defendants in the tunnel after 3:20 p.m. on January 6th,
18 2021?

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

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

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, Mr. Urso.

23 Ms. Cobb?

24 CROSS-EXAMINATION

25

1 BY MS. COBB:

2 Q. Good afternoon.

3 A. Good afternoon, ma'am.

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

5 A. Certainly.

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

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

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

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

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

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

24 And I want to ask you, at the time -- and maybe
25 even now watching the video -- is it your perception that

1 the shield wall, would you agree that that was in response
2 to the spray and possibly meant to try to block the spray
3 that was coming from the officers?

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

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

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

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

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

18 A. Uh-huh.

19 Q. Is that a fair statement?

20 A. Yes.

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

25 A. Yeah. There were moves of momentum going. But we were

1 actively pushing to get them out and they were actively
2 pushing to get them in. It wasn't like we were just, "Oh,
3 we've got some space and now we'll move up."

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

9 Q. Understood.

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

11 THE COURT: Thank you, Ms. Cobb.

12 Mr. Shipley?

13 CROSS-EXAMINATION

14 BY MR. SHIPLEY:

15 Q. Good afternoon, Sergeant.

16 A. Good afternoon, sir.

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

20 I think you said that initially as your platoon
21 exited the vehicles and you got in formation and began to
22 walk across the grassy area towards the Capitol, it was an
23 area where, you know, the crowd was somewhat dispersed.
24 There was lots of room to move. It was moving as
25 expeditiously as you possibly could to get to your

1 destination without being impeded. Right?

2 A. That's correct.

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

5 A. Yes.

6 Q. Would it be fair to say -- I guess -- the generic
7 reference to everybody as rioters is not necessarily
8 accurate. Right?

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

11 Q. Fair enough.

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

17 A. So I don't know what the elements were that brought them
18 to the place they were. I don't know what barriers they
19 went through. I don't know any of the facts that brought
20 them to where they were.

21 I know what I was trying to do there. I know that
22 I had to go through barriers to get to where I was going and
23 that right now those people weren't fighting me. Like I
24 explained, I'm not going to stop to fight somebody who's not
25 fighting me.

1 Q. Okay.

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

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

16 A. Yes.

17 Q. Okay. And you didn't have as many officers as you
18 thought. And you didn't realize that until you got there.
19 They got separated behind you somewhere.

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

23 A. Yes. At that moment, that was again with the lull of
24 going up actively under attack. Slow. "Let us in. Let us
25 in. You should let us pass." And, you know, just

1 passively, "I'm not going anywhere, but I'm going to yell at
2 you for a while."

3 Q. Sure.

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

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

11 A. I --

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

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

19 But I also was not there for the hour beforehand
20 that necessitated the call for a rapid response hard platoon
21 to that area. And I was present for thereafter where the
22 crowd would go up into straight -- if you show a good video,
23 it's a riot. If you break it down to a moment, yes, you can
24 find moments where what was happening on the west side of
25 the Capitol on January the 6th looks no different than any

1 other protest. But, you know, you play the video ahead 30
2 seconds or back 30 seconds, and I could describe it as a
3 riot.

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

9 Q. Fair enough.

10 But I'm more just talking about your own
11 observations. So, for example, with respect to application
12 or use of force, you have to make judgments about what the
13 people are doing. You're not going to hit an observer,
14 right, who's not doing anything except watching. You're not
15 going to hit a protester who's just yelling at you. You've
16 got plenty of discipline. You testified about the
17 discipline that you've developed over time, knowing how to
18 deal with those kinds of situations. Right?

19 A. Yes.

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

25 A. So I will say that, again, I think it all comes down to

1 time. I think a rioter can be a protester and -- or a
2 protester can turn into a rioter. I think it just takes --
3 depends on what actions were taken.

4 I don't know what else to say other than that,
5 that there is a linear timeline; and you can either -- you
6 can be rioting and actively fighting, but you're still
7 someplace you shouldn't be and you're participating and you
8 see what's going on around you. And people have free will,
9 and there was no police behind them stopping them from
10 leaving. If they wanted to leave the situation they were
11 in -- which, reversing positions, I would have.

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

17 Q. Fair enough.

18 You also said that there were periods, you know,
19 that the action, so to speak, at the artificial bike line
20 tended to ebb and flow. There were periods when there
21 wasn't anything going on and there were periods where there
22 were active skirmishes. Fair enough?

23 A. Correct.

24 Q. And there was lots of -- and periods where there was no
25 active skirmishes, a lot of yelling, a lot of chanting, a

1 lot of political sloganeering. You've heard it all before.
2 Right?

3 A. Yes.

4 Q. Did you feel like that there were overt efforts to
5 provoke you or were the people just making -- just
6 expressing their displeasure?

7 A. I would say the violent acts perpetrated by the people
8 in that crowd were the overt efforts. I'm going to say that
9 for myself and most officers, words are not going to provoke
10 me in that situation. I'm not saying it doesn't happen or
11 that, you know, police don't overreact to things. I think
12 that's the purpose sometimes of saying mean things to the
13 police: to get them to overreact.

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

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

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

1 Q. Well, let's -- you say "violent." And, grant you, there
2 was lots of violence. But let's just say the crowd in
3 general was hostile. Not everybody was violent, but the
4 crowd in general was hostile.

5 A. The crowd was hostile.

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

8 A. So I've faced crowds that do not like me. I've faced
9 crowds that yell at me.

10 I would say this crowd I faced was focused on one
11 objective, me in between it and that objective, and it was
12 very hostile. I don't know how to get more defined than
13 that.

14 Q. Okay. But the objective was, the crowd wanted in the
15 building?

16 A. Yes.

17 Q. And you said that, you know, at the bike rack, you know,
18 an important thing is to try to maintain your territorial
19 integrity. Don't give ground. You know, you can maintain
20 the integrity of your line if you're not giving ground. But
21 unfortunately, you didn't have enough people even with the
22 benefit of the barriers. You didn't have enough people to
23 not lose ground. Right?

24 A. That's correct.

25 Q. And I think you said that at that point, it wasn't

1 necessarily any assaulting that caused you to lose ground,
2 just leaning on the bike racks. They've not anchored and,
3 you know, they're just able to push the bike racks and force
4 your guys to back up. And then if you had the opportunity,
5 you could reset the bike racks. Right?

6 A. Yes. So we were losing ground in that manner. But then
7 also we would lose ground through having targeted assaults
8 on our line.

9 Q. And -- but sort of the crowd trying to manipulate the
10 bike racks, either pushing them backwards or dismantling
11 them, that's causing your officers to sort of break and gaps
12 to create. Right?

13 A. I would say that dismantling the bike racks is more an
14 active resistance. You are now actively doing something to
15 take away.

16 When I describe passive resistance on a scene, it
17 is more of a person standing in front of me who will not
18 move. If that person starts doing something by physical act
19 to jeopardize the safety of my line, he is now an active
20 resistor; and in a situation where I was able to, where I
21 had resources available to place an arrest, if I took the
22 situation out of this and placed into other situations I've
23 been in, that person would be arrested.

24 I did not have that ability on this scene to do
25 that.

1 Q. You didn't have the officers to make arrests because
2 that would have taken away from your ability to maintain a
3 line. Correct?

4 A. That is correct.

5 Q. Now I want to go through some of the times in some of
6 the videos. I'm not trying to trick you, but I'm not going
7 to, like, pull the videos back up and do it all again. I
8 just want you to affirm that the times I've got are right
9 based on your recollection and having watched the videos, I
10 assume, multiple times.

11 A. Yes, sir.

12 Q. The bike rack barriers pretty much disintegrated around
13 2:15 and left you with a manned line without the benefit of
14 metal barriers?

15 A. Yes. At a point in my video, you can see that the bike
16 racks I come through on the northwestern part of the line
17 are gone, either have been taken or -- well, again, I'm
18 fairly confident they were taken, but I was not present when
19 they went going every time. But there was no longer a bike
20 rack extending all the way to the scaffolding tower in the
21 northwest part of the west side line.

22 Q. Okay. And by 2:22, I think the video we watched at
23 2:22, you then narrated and said that you had a line of
24 officers that was continuous, but skirmishes started to pull
25 officers out of the line and creating gaps that you then

1 tried to backfill?

2 A. Yes. Skirmishes or, you know, loss of officers. Again,
3 most of my officers at that point in the video did not have
4 masks on, so they were getting chemical munitions in their
5 eyes, and other varying points that had them where they
6 could no longer safely stand on a line. And so there were
7 holes in the line which I either filled myself, found
8 somebody to fill or we retreated to make the area smaller
9 that we had to cover.

10 Q. I thought you were going to talk about the CS gas
11 canisters, but you're talking about --

12 A. The gas canister comes later.

13 Q. Right. So you're just talking about officers that are
14 getting sprayed with OC or somehow otherwise are injured and
15 have to pull back out of the line and then you either have
16 to close the line or put somebody in that gap?

17 A. Yes. The ultimate thing that falls in that category is
18 when the CS gas --

19 Q. Right.

20 A. -- comes back and causes too large a loss of manpower on
21 that side of the line to successfully hold it against the
22 assault that comes in.

23 Q. And that was at 2:25, I think, on the video?

24 A. About that. You see a CS gas canister come, bounce off
25 the tower and drop on our line.

1 Q. Right. Right.

2 And you actually -- I mean, you were interviewed
3 by the FBI and gave a long statement. And these same times
4 or roughly these same times are in that interview. Right?

5 A. Yes. All that is roughly the same.

6 Q. Then you said that around 2:30, the line pretty much
7 just folded, because you had lost officers with the CS gas.
8 And now you don't have the bike barriers. Now you've got
9 bigger gaps. And you're starting to see officers fall back
10 and I think you said tap each other on the shoulder, which
11 is like a message: "Fall back." Right?

12 A. So I don't recall that. I recall the line -- the
13 thinned-out line -- it was thinned out -- was assaulted by a
14 group from the northwest side. I went over to get in that
15 before I was taken out of the picture by another individual
16 and taken to another part of the line. And at that point,
17 the line was gone, completely folded.

18 Q. So around 2:30, pretty much, the line was broken; it
19 can't be maintained; it can't be fixed?

20 A. That is correct.

21 Q. All right. And the officers are falling back. And at
22 that point, you didn't know if you had an exit. You thought
23 you had a wall behind you. Right?

24 A. That is correct.

25 Q. So as the commander or one of the commanders in that

1 area, you're thinking: Okay. Fall back. We'll find a more
2 defensible position with the guys we have and try to
3 reestablish our line, because you don't have an exit. At
4 least at first you didn't realize you had an exit?

5 A. Yes. My initial instinct was to get officers on either
6 sides of me and to establish a smaller line.

7 Q. And if you had had a wall behind you, that would have
8 been a pretty desperate situation. Right?

9 A. Yes.

10 Q. You would have had a massive advancing crowd of varying
11 degrees of hostilities and a smaller number of officers with
12 no place to go?

13 A. That is correct.

14 Q. And obviously, I mean, other than just being assaulted
15 by the crowd at that point, you're just subject to being
16 crushed because people 25 deep can't see forward that there
17 is no place left to go and everybody's just going to end up
18 against the wall, right, had there been no exit?

19 A. Right. And had all semblance of resistance broken down
20 and the line not held again, yes, you would have just been
21 crushed against the wall with the crowd.

22 Q. Okay. Fortunately, though, you did realize there was an
23 exit behind you that you saw officers started to go up. And
24 that's that narrow stairwell that we saw on your video?

25 A. Yes.

1 Q. And do you recall -- because I didn't write it down --
2 but do you recall about what time you reached the top of the
3 stairs there when you thought: Okay. This is a defensible
4 position. All we've got to do is keep people from coming up
5 this stairwell?

6 A. If I'm asked as my best recollection of what time that
7 was, I'd say approximately 2:37.

8 Q. Okay.

9 A. But --

10 Q. Actually, I have 2:37 on these notes. So I think that's
11 right. That was your testimony: 2:37.

12 A. Okay.

13 Q. It was only just a couple minutes, maybe even not that
14 long, that you realized: No. This is not a secure
15 position. We've got rioters at that point, clearly. We've
16 got rioters around us and we have to find someplace else to
17 go. Right?

18 A. Yes.

19 Q. At that point, you saw officers going back through what
20 you didn't know at the time, but we all know now is the
21 lower west terrace tunnel?

22 A. Yes.

23 Q. Okay. Now, do you recall telling the FBI as reflected
24 in your statement that the time when the line broke, that
25 that was maybe the point where the crowd became the most

1 cooperative? And I think your explanation to the FBI was
2 they realized they won. They had the ground. They won the
3 ground and they pretty much quit fighting.

4 A. So there was a moment -- you can see in my video -- not
5 the time when the line breaks. The line is broken. The
6 line is gone. We're now falling back, falling back. There
7 are still assaults going on. There are still officers in
8 trouble.

9 The moment I described to the other attorney,
10 where I have to do a shield strike on a person assaulting an
11 officer, is in that time sequence.

12 But at a moment during the -- when I'm one of the
13 last officers on the lower deck, I'm one of the last
14 officers on the lower deck, some of the protesters that were
15 there were confronting me or not assaulting me. They are
16 encouraging me to leave. Just: "You can go. We have
17 this."

18 At that moment, yes, there was a moment at the
19 bottom of the stairwell before I and then later Sergeant
20 Peeke went up where they came off the -- where they
21 essentially took their foot off the gas and said, "Just go."
22 And we did.

23 Q. And at that point, there's nobody left for them to
24 fight. They're not fighting with each other. Right?

25 A. So there are no officers on the lower deck at that point

1 to my knowledge.

2 Q. So -- and your description was that their attitude was,
3 "Just go," and your point of view was that they had won.
4 That's why they wanted us to go and that's why they're not
5 active?

6 A. My position at that point was that they felt themselves
7 a certain level of victory for taking the area they took,
8 and I'm just going to go back here and hold this area until
9 you decide to come up here.

10 Q. All right. And then we know, because we watched the
11 video, that within just a couple of minutes you're inside
12 the lower west tunnel terrace. So dozens of officers have
13 gone in there now and have gone in different directions.
14 Not everybody's congregated in one place. Right?

15 A. Uh-huh.

16 Q. There's several paths that you can take after you go
17 through those doors?

18 A. That is correct.

19 Q. And -- but you were one of the last ones in. So when
20 the call comes, "Hey, we've got to man this door," you're
21 close by along with I think the three other members of your
22 squad. Right?

23 A. Yes.

24 Q. Because you knew all their names. So these are your
25 guys?

1 A. Correct.

2 Q. And within just a couple minutes, you guys are back up
3 to the front by that mag, by those -- there's two sets of
4 doors?

5 A. Yes.

6 Q. There's the exterior clear last doors with those gold
7 frames that we saw where the big clash was with the shields.
8 And then there's that inner set of doors which, I don't know
9 if you noticed, but Captain Ortega testified before you that
10 those inner sets of doors, one, they don't lock; and, two,
11 they're opaque glass. You can't see through them going out
12 or coming in.

13 Do you recall that? Or that's just a detail
14 that --

15 A. I did not realize that those inner set of doors lock --
16 do not lock. I do recall that they were opaque as opposed
17 to the clear -- the outer doors broke fairly early, so I'm
18 not sure what glass was in there. But the inner doors for a
19 moment prior to the rioters gaining entry were definitely
20 opaque. I could not see through those doors when the outer
21 door was breached.

22 Q. You saw Sergeant Bogner?

23 A. Yes. Sergeant Bogner.

24 Q. You saw him spray OC from the handheld canister out the
25 gap of the doors a couple of times. Right?

1 A. That's correct.

2 Q. I think the video showed that it was right about 2:30,
3 3:30 -- I just wrote 2:30 and 3:30, question mark -- 2:30,
4 3:30 when those opaque doors opened. And now the four of
5 you across the front are facing one individual who comes
6 forward. I think your testimony was he wanted to give a
7 speech, and you don't remember what he said because you
8 really weren't too interested in listening to him?

9 A. That's correct.

10 Q. And so there was a moment when there was just one
11 individual and not any real interaction or action with the
12 crowd. Right?

13 A. That's correct.

14 Q. And I think we saw on the video that that individual,
15 whoever it is -- I don't know who it was -- I think the
16 person standing to your right reached out with a shield and
17 shoved him backwards out the door?

18 A. That's correct.

19 Q. And it was sort of at that moment that that individual
20 then makes what I have described as a suicide run. He's on
21 his own and just comes charging into the shield line.

22 Right?

23 A. That's correct.

24 Q. And then that sort of triggers people behind him to
25 follow along, and that's when sort of your entire front line

1 gets engaged by the crowd?

2 A. The people do follow him through that door. And then,
3 yes, it does get us a full-on -- what it developed into.

4 Q. And then we saw, you know, a lot of video over from your
5 body-worn camera and a couple other points of view, you
6 know, bodies up against each other, shields up against each
7 other, bodies trapped between shields. Minutes at a time.
8 Right?

9 A. Yes.

10 Q. And there are -- you described that initially you
11 couldn't move. You couldn't do anything, couldn't strike
12 anybody, couldn't move your arms. You were trapped. You
13 were trapped between your officers behind you who were
14 maintaining their position and the large crowd on the other
15 side where they were maintaining their position and both
16 sides are pushing against each other. Right?

17 A. That is correct.

18 Q. So the front line of officers and the front line of
19 protesters are sort of experiencing the same circumstances.
20 They're both getting pushed from behind and cannot go
21 forward. Right?

22 A. That's fair to say.

23 Q. And in that moment, I think -- would you say that you
24 were confident in the first three minutes that you could
25 maintain your position? Or was there a little bit of panic

1 that, "Hey, this is going to go bad quick unless something
2 changes"?

3 A. I wouldn't say I was panicked at that point. I would
4 say that I did certainly have doubts that we would not be
5 able to hold out where we were. And in my mind, it's just:
6 We'll reestablish someplace else. Yeah. So --

7 Q. Did you think there was a high likelihood of injury on
8 either or both sides from that tactical position?

9 A. I think for a while there I was pretty confident that I
10 was in a high-injury-prone situation.

11 Q. And I think you said that at various times -- this may
12 have been over several minutes, not just like in the
13 first -- there are various times when you were on the front
14 line and then maybe two or three people deep. Do you recall
15 saying that?

16 A. Yes.

17 Q. So was there any kind of concerted effort or just sort
18 of happenstance that there was kind of a rotation of bodies,
19 where some guys from the back came forward and some guys who
20 were at the front went back?

21 A. At points it was happenstance, just by the nature of
22 pressure on the crowd. All of a sudden pressure lets up or
23 pressure increases behind you and then pressure is relieved
24 in front of you. One goes forward; someone comes back; and
25 then you're behind or someone slides over.

1 So anything in there. There were points where we
2 actually got intentional rotation going, but that wasn't
3 until later in the conflict in the tunnel.

4 Q. And you said that there were times throughout the 10 or
5 12 minutes that you were, like, right up in the front of it
6 that there were standoffs. In other words, there was
7 actually a gap between the two sides. And you said, you
8 know, if they gave me an opportunity to breathe and rest, I
9 take the opportunity to breathe and rest. Right?

10 A. Yeah. I'll say it was definitely -- there were lulls in
11 there where I'm not fighting forward anymore and neither
12 were they, and so I was okay with it.

13 Q. Now, I'm not sure it was showed in any of your video,
14 and it might come up later.

15 But do you recall that there were times where the
16 line -- let's call it the skirmish line, for lack of a
17 better description. Sort of the point -- the reference
18 point where the police are clearly on one side and the
19 protesters, rioters, are clearly on the other. Over that
20 10- or 12-minute period, do you recall that line moving
21 backwards, closer to the mag and then moving forward
22 basically to the gold-framed doors?

23 A. Yes. There were different times when it moved forward
24 and back. But I was in that hallway, that line, so many
25 times I cannot specify exactly when we were moving which

1 direction.

2 Q. Fair enough.

3 A. If you --

4 Q. But you recall it was -- let's call it that ebbing and
5 flowing. It's going against you and then it's going for
6 you.

7 A. Correct.

8 Q. But it seemed like that the gold doors was like a line
9 that the MPD tried to maintain, tried to keep it at the gold
10 doors at a minimum?

11 A. So I would consider at a minimum we were trying to
12 hold -- not really in the video, but after the mag, the
13 magnetometer, there's -- it's an ex-hallway. So there's
14 like a utility corridor going down the length of the
15 Capitol. So that corner was essentially our -- we have to
16 hold that corner. Once they're past that corner, they're
17 now going down both ways and there's no way to hold what we
18 have.

19 The gold doors, they by default became a last
20 point. But at points, they were behind. They were through
21 the interior gold doors. Even to start with, they got
22 through the interior gold doors.

23 Q. Right.

24 A. At times, the line stagnated there because the doors
25 opened in such a fashion that you can get trapped behind or

1 against the gold doors. You cannot be pushed forward; you
2 cannot be pushed back, because you have a steel object
3 between you.

4 So I would say it was not by our design or by
5 intentional command given that the doors were a stagnant
6 point where the line would stop. It just kind of became
7 happenstance that when the line did stop moving forward or
8 moving back, it was generally around a door, either the
9 first door, the second door or the ultimate threshold.

10 Q. Well, actually, the doors themselves created another
11 choke point, right? Because to the right and left of the
12 door, there were side panels that weren't broken. So the
13 doors themselves were narrower than the concrete walls.

14 Right?

15 A. That is correct.

16 Q. So while you might be able to get five officers shoulder
17 to shoulder or from wall to wall, you can't get five
18 officers shoulder to shoulder in those doors. Right?

19 A. That is correct.

20 Q. And you can't get five protesters shoulder to shoulder
21 in the doors?

22 A. That is correct.

23 Q. So that sort of became the proverbial cork in the
24 bottle. If you could hold those doors, they weren't going
25 to be able to push through you?

1 A. So the hallway is what I considered the cork in the
2 bottle. We can put -- so there were definitely points where
3 the hallway constricted and got wider. But in general, you
4 are right: It's easier to hold a smaller point than it is a
5 longer extended line.

6 Q. Now, had you come under extreme distress, physical
7 distress at some point, in the position you were in, were
8 you confident that your fellow officers would have done
9 everything they could to extract you, to get you out of
10 harm's way and somebody else would take that position?

11 A. Yes. I felt that if I lost consciousness due to not
12 getting air through my mask or whatever the scenario was
13 that I had officers with me and that was as good as I was
14 going to get in that situation.

15 Q. In fact, that happened with Officer Hodges, who got kind
16 of pinned when the crowd was making the effort to close the
17 door and he was trapped by the closing door in between the
18 two doors. Right?

19 A. Yes.

20 Q. And he's yelling out for help, and help came to him?

21 A. Eventually. But I would say that I'd rather have it
22 sooner than later. But again, we were in a situation where
23 no one is really able to execute extractions at that point.

24 Q. Now, I -- and I've not asked you and I'm not asking you
25 this, you know, to do a proverbial counting of helmets in

1 the video. But would it be fair to say from the times you
2 have looked at the video that, you know, maybe in the middle
3 of everything, so five or six minutes after it starts and
4 five or six minutes before it ends there's five or six
5 officers across and it's seven or eight officers deep?
6 Would that be fair?

7 A. So I'll say during the course of the video, again, I'm
8 speaking for the entire segment of from when the line
9 gets -- from when the hallway gets penetrated at like 2:43
10 to 5:00, when we break out, that at times there was a thin
11 line maybe only two or three rows deep of officers, so less
12 than 12 officers in the hallway.

13 And then there are times when the entire hallway
14 is filled with an entire platoon of officers pushing back
15 and forth. And just like with the crowd, it ebbed and
16 flowed. At some point, someone hit their limit. They left.
17 They didn't come back.

18 There was not good command of control to say, "I
19 need these officers back. We're going to put them in." It
20 was just grabbing somebody. "You're in."

21 Q. But it wasn't just nine or ten officers in the breach;
22 it was -- there were -- they went back -- and that hallway
23 actually goes up, doesn't it?

24 A. That's correct.

25 Q. So it's like you can see when you look down the hallway

1 that there's an elevation change, and you can see black
2 helmets deep into that hallway. Right?

3 A. Yes. So in general, when an officer -- when it became
4 too much to hold the line, they went back in that hallway.
5 So there's different disbursements of officers behind that
6 line.

7 Q. Okay. Now, you've watched the video. And you obviously
8 became concerned with and occupied with Officer Fanone at
9 about 3:21, right, on your video?

10 A. About. Yes.

11 Q. Yeah. And then pretty much for the balance of your
12 video, at least the next several minutes, it's you helping
13 to extract Officer Fanone to get him to a place of safety.
14 And you were no longer, you know, up at the front line at
15 the mouth of the tunnel under the last area under cover.
16 Right?

17 A. That's correct.

18 Q. And -- but in looking at it, would it be fair to say
19 that that first successful effort to eject all the
20 protesters, rioters, in the tunnel, happened at 3:19?

21 A. I would say that's about right. The first time we were
22 able to push the hallway all the way back to the entry was
23 approximately that time. But I'm going to get -- again, it
24 would be multiple times, so I --

25 Q. I'm just talking about the first one. The very first

1 time.

2 A. I believe -- the first time that I got to the threshold
3 of the hallway after it had been penetrated was when I got
4 Mike Fanone and pulled him back from it.

5 Q. And so at that point, at that point in time on the
6 clock, 3:19, 3:20, 3:21, somewhere in there, the tunnel was
7 completely in control. If not outside of it, the tunnel
8 itself was in control of MPD?

9 A. Yeah. When we got -- when we pushed the line up to the
10 exterior of the building, I would say that we had it. Even
11 if we had one or two protesters behind the line, we had that
12 hallway at that point.

13 Q. Right. They had gotten trapped at some point. There
14 were people standing up on the sides that had to be dealt
15 with. Right?

16 A. Yes.

17 Q. Now, when you had gone inside that tunnel, exiting the
18 lower west terrace, there were almost no people out there.
19 Right?

20 A. So yes. When I initially made entry after coming up the
21 narrow stairwell, up the -- taking Gavin Nelson up the
22 stairs, people were coming down from on top. But it was not
23 filled to the extent it became filled --

24 Q. Well, that's my question.

25 A. -- in a few minutes.

1 Q. That's my question. When you got to the opening at 3:19
2 or 3:20, what did you see?

3 A. It was shoulder-to-shoulder packed with the crowd.

4 Q. Rioters, protesters, whatever. It was
5 shoulder-to-shoulder packed with non-law enforcement people?

6 A. Yes.

7 Q. As far as you could see?

8 A. Yes.

9 Q. Thousands?

10 A. Yes.

11 Q. Maybe over 10,000?

12 A. I've seen the estimate up to that amount. But I can't
13 estimate that many people.

14 Q. But you've obviously dealt with large crowds in these
15 kind of protest situations, and that was a large crowd.
16 Right?

17 A. It was large.

18 Q. And they're all looking at that entryway. Right?

19 A. Yes. The entryway is prominent from the perspective
20 that they have.

21 Q. Because for 10 minutes or 15 minutes, people had been
22 going in that entryway. Right? So the crowd's down maybe
23 50 yards away, and all they see are people going in. Right?

24 A. So if -- again, I'm getting to the point where I'm
25 testifying to something that's going on outside my field of

1 view.

2 But from the videos, if that's what you're asking
3 me, that I've seen of that perspective, I'd say that, yes,
4 people are going in. But there's also a lot of shields and
5 debris and other stuff flying up there.

6 And clearly, in my view from viewing the videos
7 that I've viewed from outside the Capitol at the time I was
8 inside, that if I were standing in that crowd I would have
9 known something violent is going on up there.

10 But again, I was not present. So if you're just
11 asking for my opinion of what I've seen from that footage,
12 that's my opinion.

13 Q. And would it be fair to say from what you've seen of the
14 footage and what you know about the psychology of the crowd
15 that day, the people that are looking at that entrance and
16 seeing people go inside, they're wanting to go up and go
17 inside that same entranceway?

18 MS. BOND: Objection.

19 THE COURT: Sustained.

20 MR. SHIPLEY: Well, I guess that's a good place to
21 stop.

22 THE COURT: Thank you, sir.

23 How long do you think your redirect is?

24 MS. BOND: Five minutes or less.

25 THE COURT: Let's do that.

REDIRECT EXAMINATION

BY MS. BOND:

Q. Sergeant Mastony, with respect to Exhibit 801, the shield sitting here, is there any meaningful difference in the weight of this shield here compared with the shields you were holding on January 6?

A. Not that I can perceive.

Q. And then you talked about being trained on learning shield strikes. Why are you trained on that?

A. To move people out of the way if you -- to move people out of the way if you're holding a shield. Essentially, you've manned it. You can't really unman a shield, a line with shields.

If you put shields in officers' hands, that's where they are. You can't take them out and you can't just sling a shield behind your back and then use your hands. If you have shields in your hand, you pretty much -- that officer now, the only thing he can do, if you need him to move forward, he has to move forward through people. He has to push people out of the way utilizing a shield and physical force to get them out of the way.

Q. So even though shields are generally defensive, they can be used offensively. Is that right?

A. That's correct.

Q. Now, OC spray, there was a lot of that going around.

1 Under what circumstances can an MPD officer -- when are they
2 permitted to use OC spray?

3 A. Noncompliance. So essentially, I give you a lawful
4 order to comply with. You refuse. I can spray you with OC
5 spray.

6 Q. And in your perspective as a sergeant, was the -- were
7 the actions of the crowd justified for officers to be using
8 OC spray on them?

9 A. Yeah. In the civil disturbance fashion, the goal of the
10 OC spray is to disperse, disorient, distract, do anything to
11 get that person to stop doing what they're doing or to get
12 that person to move. So even a noncompliant person who is
13 not assaulting you, by being present and refusing to vacate
14 an area, you can spray that person with OC spray to
15 encourage them to vacate that area and comply with your
16 order.

17 Q. Now, Mr. Shipley just asked you about that time period
18 around 3:18. I think his question was: Was that the first
19 time that you had tried to push rioters out?

20 Was that the first time that you had tried to push
21 rioters out?

22 A. So I would say from the moment that that gentleman who
23 came in to give the speech tried to penetrate the door, that
24 is the moment I began trying to push rioters out of that
25 hallway. It may have been the first time we were successful

1 in getting to the exterior of the building and holding it at
2 that point. Again, I'm very shaky on this because we did
3 this several times and I don't know exactly which one was
4 the first. But I believe that's about right. The first
5 time we made it back up to the exterior of the hallway is
6 when I got Mike Fanone and dragged him back out.

7 Q. Mr. Shipley also asked about circumstances where you
8 could be in extreme distress. I believe his question was:
9 Would other officers do everything that they could to assist
10 you?

11 Do you remember that question?

12 A. Yes.

13 Q. Now, given the circumstances of what was going on in
14 that tunnel, and you were in extreme distress, do you think
15 it is a foregone conclusion that everything an officer could
16 do would actually be successful to help you?

17 A. No. I believe that if -- we could have had a very --
18 easily a situation in which an officer was being killed or
19 any number of things where we would not be able to get to
20 him. For example, you know, that video of a person who's
21 clearly hurt on the video screaming for help who I know who
22 because of what's going on I cannot hear and do anything to
23 assist.

24 MS. BOND: I would ask Mr. Clements to pull up
25 Exhibit 232.19. It's one of the still images.

1 BY MS. BOND:

2 Q. What is the timestamp there, sir?

3 A. 1415 hours.

4 Q. Is the police line holding at that point?

5 A. Yeah. The police line's intact.

6 Q. It's holding even though there are aren't any bike racks
7 in your corner. Is that right?

8 A. So again, I can't remember when the bike racks go away.
9 But in this period of time, we lose the bike racks in our
10 corner. I don't remember if this is -- I can't see them
11 here. But I can't remember if this is particularly the
12 point. But around this area, 4:15, in there, we have no
13 more bike racks in front of my portion of the line.

14 Q. And then finally, Mr. Shipley also talked to you a bit
15 about the degrees of participation of different people in
16 the crowd.

17 Do you remember that line of questions?

18 A. Yes.

19 Q. And you talked about how there were different degrees.
20 How would you place along a continuum those rioters who
21 actually made it into the tunnel and were resisting you?

22 A. Those are active resisters. Outside of -- again, I'm
23 not going to get into the legal standard of what was posted
24 outside the U.S. Capitol grounds. But in my view, once you
25 enter the U.S. Capitol where these people are and based on

1 what was going on outside this whole time and then into the
2 inside, you are now actively resisting.

3 Even if you are in there at that point trying to
4 talk to me and do what you were doing outside in there, you
5 are in an area where I need you gone from. And at that
6 point, we're using force to get you out. You are actively
7 in an area and by your physical presence not allowing me to
8 get to where I need to go.

9 And my ideal scenario here is one officer stands
10 at the door of that hallway and is just saying, "You can't
11 enter here." And that complies with the thousands of people
12 outside.

13 That's not what I had there. I had -- again, I
14 don't know if every one of the 10,000 people tried to get in
15 that door, but a lot of them did. Every single one of those
16 people in my mind is trying to actively violate the U.S.
17 Capitol and enter illegally.

18 MS. BOND: Thank you so much. No further
19 questions.

20 THE COURT: Sergeant Mastony, thank you for your
21 testimony here today.

22 THE WITNESS: Yes, sir.

23 THE COURT: You may step down. You're free to
24 leave.

25 (Witness excused.)

1 THE COURT: We'll resume at 9:30 tomorrow.

2 I'll direct the Defendants to return for your
3 continued trial at 9:30 in this courtroom. If you fail to
4 appear, you may be subject to arrest and the trial will
5 continue up to and through verdict in your absence.

6 MR. SHIPLEY: Your Honor, Mr. Mehaffie's
7 supervised recommendation conditions do not allow him to go
8 to the Capitol. I would like the Court to give me
9 permission for him to travel to the Capitol with either
10 myself or Mr. Lopez today so that we can physically see the
11 path he took to get to where he was at with the acts that
12 he's been -- he's described them to me, but I'd like to walk
13 the grounds with him. We haven't had a chance to do this.
14 I think it's important for his own testimony.

15 THE COURT: Any objection?

16 MS. PASCHALL: Are you planning on doing this this
17 evening?

18 MR. SHIPLEY: Today or tomorrow, before he
19 testifies.

20 MS. PASCHALL: I'd like to alert the U.S. Capitol
21 Police. So if you don't mind giving me the opportunity to
22 alert them that that's going to be happening. Maybe you
23 could do it tomorrow. Just -- I'm just thinking timing-wise
24 I want to give them enough notice.

25 MR. SHIPLEY: Shall I wear a scarlet letter so

1 they know I'm there? That's fine.

2 MS. PASCHALL: With that caveat, no objection.

3 THE COURT: I think that's fine.

4 Why don't we say you can't do it tonight. You can
5 do it tomorrow. I want to be clear: I'm not granting some
6 permission that the Capitol Police -- for you to go into
7 areas the Capitol Police would not allow. I'm saying that
8 as far as his release conditions are concerned, he's allowed
9 to go with you to the Capitol.

10 MR. SHIPLEY: Thank you.

11 THE COURT: Thanks, folks.

12 (Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 13th day of October, 2022.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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