1			
1	UNITED STATES DISTRICT COURT		
2	FOR THE DISTRICT OF COLUMBIA		
3	* * * * * * * * * * * * * * * *) UNITED STATES OF AMERICA,) Criminal Action		
4) No. 21-00040 Plaintiff,		
5	VS.)		
6	PATRICK EDWARD McCAUGHEY, III,) Washington, D.C. TRISTAN CHANDLER STEVENS and) August 31, 2022		
7	DAVID MEHAFFIE, 9:34 a.m.		
8	Defendants.)		
9	* * * * * * * * * * * * * * * *)		
10	EDINGODIDE OF DENGY EDIL 2		
11	TRANSCRIPT OF BENCH TRIAL - DAY 3 BEFORE THE HONORABLE TREVOR N. McFADDEN,		
12	UNITED STATES DISTRICT JUDGE		
13			
14	APPEARANCES:		
15	FOR THE GOVERNMENT: KIMBERLY L. PASCHALL, ESQ. JOCELYN P. BOND, ESQ.		
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1	APPEARANCES, CONT'D:	
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1	<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>			
2				
3	<u>Direct</u> <u>Cross</u>	<u>Red.</u>		
4	WITNESSES FOR THE GOVERNMENT:			
5	Calvin Peter John 6 13			
6	Aquilino Antonio Gonell 15 66 102	115		
7	Henry Foulds 119 146	113		
8	Gregory Conner 174 206			
9	Steven Weatherhead 209			
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```
1
                 The Government calls Officer Henry Foulds.
2
                 THE WITNESS: Have a good day.
 3
                 THE COURT: You, too, sir.
                 (Witness excused.)
 4
 5
                 (Thereupon, Officer Henry Foulds entered the
 6
       courtroom and the following proceedings were had:)
 7
                HENRY FOULDS, GOVERNMENT WITNESS, SWORN.
                 THE COURT: Sir, feel free to have a seat and
 8
 9
       adjust the microphone.
10
                            DIRECT EXAMINATION
11
       BY MS. PASCHALL:
12
       Q. Good afternoon. Could you please state and spell your
13
       full name for the Court?
14
           My name is Henry Foulds, H-E-N-R-Y F-O-U-L-D-S.
15
       Q. Where do you work?
16
           The Seventh District of the Metropolitan Police
17
       Department.
18
       Q. And what is your current rank in the Metropolitan Police
19
       Department?
20
       A. Police officer.
21
       Q. How long have you been a police officer with the
22
       Metropolitan Police Department?
23
       A. In October, it'll be five years.
24
           What is your current duty assignment with the Seventh
25
       District?
```

- 1 A. I am in PSA 705 as a patrol officer.
- 2 Q. Do you also on occasion work with the civil disturbance
- 3 unit?
- 4 A. Yes.
- 5 Q. What civil disturbance unit battalion are you with?
- 6 A. CDU 74.
- 7 Q. And on January 6th, 2021, were you working in your
- 8 capacity as an officer with CDU 74?
- 9 A. I was.
- 10 Q. Where were you originally stationed on the morning of
- 11 January 6th, 2021?
- 12 A. We were stationed a few blocks down from the Capitol.
- 13 Q. What did you expect you would be doing that day?
- 14 A. I didn't expect we were going to be doing anything. At
- most, I thought we were going to be blocking some streets
- 16 | with our bicycles.
- 17 Q. And you mentioned the bicycle. Is CDU 74 one of the
- 18 | bike units?
- 19 A. It is.
- 20 Q. So what type of gear were you wearing when you were
- 21 originally stationed a few blocks from the Capitol?
- 22 A. So originally we were just wearing our regular patrol
- gear, like our armor and our bike shorts. And we had our
- 24 ballistic helmets on standby in a car in case we needed to
- 25 put them on quickly.

- 1 Q. Did there come a time when you needed to put on those
- 2 ballistic helmets?
- 3 A. Yes.
- 4 Q. Who made that decision for you to put on all that gear?
- 5 A. One of my sergeants came and talked to me, told us that
- 6 we were putting the helmets on and we were going to back up
- 7 units at the Capitol.
- 8 Q. And did your unit ultimately go to the Capitol?
- 9 A. Yes.
- 10 Q. And when you came to the Capitol, what area did you
- 11 start off supporting the police who were already there?
- 12 A. We were in a lower area, I believe, on the west side of
- 13 the building.
- 14 Q. And how long would you estimate you were down on that
- 15 | west -- lower west front of the building?
- 16 A. I think maybe under an hour.
- 17 Q. Did there come a time when you needed to retreat from
- 18 | that area and go up to the next level of the inaugurational
- 19 platform?
- 20 A. Yes.
- 21 Q. What happened when you went up to the next level of the
- 22 inauguration platform?
- 23 A. Shortly after we went up to that next level, we had
- 24 retreated even further back and we retreated down this
- 25 | hallway into the west side of the building. Then we held

- 1 that hallway.
- 2 Q. Now, on January 6th, 2021, were you wearing a body-worn
- 3 | camera?
- 4 A. I was.
- 5 Q. Did you activate it at several points during the day?
- 6 A. I did.
- 7 Q. Did it become deactivated at certain points during the
- 8 day?
- 9 A. Yes. You deactivate them by pushing on them. So
- 10 | whenever there was an altercation, it would often get pushed
- 11 off.
- 12 Q. So when you reactivate your body-worn camera after it's
- been off, is there a portion of the recording that is
- 14 silent?
- 15 A. Yeah. So the camera records -- has a buffer of the
- video for two minutes whenever it's on but not activated.
- 17 And that two-minute buffer doesn't have audio, but it has
- 18 video.
- 19 Q. And in preparation for your testimony, did you and I
- 20 review some of your body-worn camera from January 6th, 2021?
- 21 A. Yes.
- 22 Q. And was there a time when you were in that tunnel where
- 23 | that body-worn camera got turned off?
- 24 A. Yes.
- 25 Q. And then did you ultimately reactivate that body-worn

```
1
       camera?
2
       A. Yes.
 3
                 MS. PASCHALL: If we could please pull up Exhibit
 4
       218.
 5
                 (Whereupon, segments of Government's Exhibit No.
 6
       218 were published in open court.)
 7
                 MS. PASCHALL: If we could stop Exhibit 218.
       BY MS. PASCHALL:
 8
 9
       Q. Officer Foulds, do you recognize what's on the screen
10
       here as 218?
11
       A. I believe I do.
12
                 MS. PASCHALL: Let's actually play it a little bit
13
       further.
14
                 (Whereupon, segments of Government's Exhibit
15
       No. 218 were published in open court.)
16
                 MS. PASCHALL: Let's stop at 15:13:30.
17
       BY MS. PASCHALL:
18
         Do you recognize this as your body-worn camera?
19
       A. Yes.
20
       Q. And is this a fair and accurate representation of what
21
       you were witnessing on January 6th, 2021?
22
       A. Yes.
23
                 MS. PASCHALL: At this time, the Government would
24
       move the admission of Exhibit 218.
25
                 THE COURT: Seeing no objection, 218 is in.
```

```
1
                 (Whereupon, Government's Exhibit No. 218 was
2
       entered into evidence.)
 3
                 MS. PASCHALL: If we could start the video again
       here at 15:13:30.
 4
 5
                 (Whereupon, segments of Government's Exhibit
       No. 218 were published in open court.)
 6
 7
                 MS. PASCHALL: If we could stop.
       BY MS. PASCHALL:
 8
 9
         We've stopped the video at 15:13:34. Officer, I'm going
10
       to circle an individual who's all the way to the left here
11
       of the video. Do you see that person?
12
       A. Yes.
13
       Q. And what does it appear that person is holding?
14
           The person is holding one of our riot shields.
15
           Now, I'm going to play this a little bit further. We'll
16
       look closely at that shield.
17
                 (Whereupon, segments of Government's Exhibit
18
       No. 218 were published in open court.)
19
                 MS. PASCHALL: Go back just a couple of frames
20
       here.
21
                 (Whereupon, segments of Government's Exhibit
22
       No. 218 were published in open court.)
23
       BY MS. PASCHALL:
24
       Q. Officer, can you actually see the logo that's on the
25
       shield there? I'm going to circle it here for you. Do you
```

```
1
       see that?
2
           I see it kind of --
 3
       Q. Is that --
 4
          -- vaguely, but I recognize the design.
 5
           Is that actually a Capitol Police shield instead of a
 6
       Metropolitan Police shield because it has the Capitol on it?
 7
           I don't actually know the difference in the insignias
 8
       between our two shields.
 9
                 MS. PASCHALL: Let's play again from 15:13:32.
10
                 (Whereupon, segments of Government's Exhibit
11
       No. 218 were published in open court.)
12
                 MS. PASCHALL: And let's stop at 15:14:02.
13
       BY MS. PASCHALL:
14
       Q. We're going to go back and look at that a little more
15
       closely frame by frame. But just generally speaking, do you
16
       remember this interaction with that person who I had
17
       previously circled on your body-worn camera?
18
       A. Yes.
19
       Q. And what do you remember about that?
20
       A. I remember that he shoved at me with the shield he had
21
       in his hands and I struck back with a wooden baton that I
22
       had picked up from the ground.
23
       Q. So I just saw you make a motion that I wanted to
24
       describe for the record. You can correct me if I'm wrong:
25
       I saw you have both of your hands kind of at fists near your
```

- 1 chest and then you moved those fists forward in unison. 2 that -- am I describing that accurately? 3 A. Yes. Is that what you recall this person in the video using 4 5 to push that shield towards you in the moments we've just watched on your body cam? 6 7 A. Yes. 8 MS. PASCHALL: Now, Mr. Clements, if we could go 9 back to 15:13:29, please. That's fine. Thank you. 10 start at 15:13:29 and try to stop at 15:13:38. 11 (Whereupon, segments of Government's Exhibit 12 No. 218 were published in open court.) 13 MS. PASCHALL: Now let's stop at 15:13:38. 14 BY MS. PASCHALL: 15 Q. Now, in the moments before that, is it accurate to say 16 that there was another officer in front of you who just 17 moved out of the way? 18 A. Yes. 19 Q. And how is your body turned compared to the person who 20 you've described as pushing that shield towards you? Are 21 you facing him straight on? Are you turned to the side? 22 Something else? 23
 - A. I think at the moment from the angle of the body-worn camera that I am turned to the side.

24

25

Q. So that would mean that this individual is sort of off

```
1
       of your left shoulder. Is that accurate?
2
       A. Yes.
 3
       Q. Okay.
 4
                 MS. PASCHALL: Now let's continue for another two
 5
       seconds until 15:13:40.
 6
                 (Whereupon, segments of Government's Exhibit
 7
       No. 218 were published in open court.)
       BY MS. PASCHALL:
 8
 9
       Q. In those previous two seconds, what did we just see
10
       there?
       A. He shoved me with the shield and I struck back with the
11
12
      baton.
13
       O. And --
14
                 THE COURT: Sorry. Is that the same one we just
       saw? Have you just replayed this?
15
16
                 MS. PASCHALL: No. It's actually the next moment
17
       in time.
18
                 THE COURT: Okay.
19
       BY MS. PASCHALL:
20
       Q. The baton, I believe you described it. Did you say that
21
       was a duty baton that you had?
22
       A. So it was -- I believe it belonged to one of the other
23
       officers. It had fallen on the ground and I picked it up so
24
       no one else had taken control of it. It was a wooden baton
25
       similar to the asp baton that I use.
```

```
1
           And I've watched you kind of move your hands out.
2
       that one of those kind of collapsible-style batons?
 3
           Yes. I had a collapsible-style baton. The one I had in
       my hand at the moment was wooden and was solid.
 4
 5
       Q. Thank you for that.
 6
                 Now, once again, as we're looking at 15:13:40, how
 7
       is your body faced compared to the person who's using the
 8
       shield to strike at you? Again, are you straight-on
 9
       forward? Are you to the side? Or something else?
10
       A. It appears that I'm to the side or facing away.
11
                 MS. PASCHALL: If we could go forward another two
12
       seconds, please, to 15:13:42.
13
                 (Whereupon, segments of Government's Exhibit
14
       No. 218 were published in open court.)
15
       BY MS. PASCHALL:
16
           Now, what have we just seen in that moment there?
17
           I believe that's another shove.
       Α.
18
       Q. Are you now able to see your body cam facing forward
19
       towards the person with the shield?
20
       A. Yes.
21
                 MS. PASCHALL: If we could start again at 15:13:42
22
       and go for another two seconds.
23
                 (Whereupon, segments of Government's Exhibit
24
       No. 218 were published in open court.)
25
                 MS. PASCHALL: I'm sorry to do this to you,
```

```
1
       Mr. Clements. If we could go back just one second to
2
       15:13:43.
 3
                 (Whereupon, segments of Government's Exhibit
 4
       No. 218 were published in open court.)
 5
       BY MS. PASCHALL:
 6
       Q. Right there, we've stopped at 15:13:43. I'm going to
 7
       circle here all the way off to the upper left. Do you see
       what I've circled there?
 8
 9
       A. Yes. That's my hand. I'm trying to close the door to
10
       put the door between us and the protesters.
11
                 MS. PASCHALL: Let's start again at 14:30:43 and
12
       we'll go ahead another three seconds.
13
                 (Whereupon, segments of Government's Exhibit
14
       No. 218 were published in open court.)
15
       BY MS. PASCHALL:
16
       Q. It's a little bit blurry in this stopped shot. But at
17
       15:13:46 seconds, do we see kind of a long object going from
18
       the center of the screen diagonally down to the right?
19
       A. Yes. That's the wooden baton I mentioned.
20
                 MS. PASCHALL: Let's start again and go forward to
21
       15:13:58.
22
                 (Whereupon, segments of Government's Exhibit
23
       No. 218 were published in open court.)
24
                 MS. PASCHALL: Actually, we can continue to play
25
       until 15:14:05.
```

```
1
                 (Whereupon, segments of Government's Exhibit
2
       No. 218 were published in open court.)
 3
       BY MS. PASCHALL:
 4
           We've stopped the video at 15:14:05. Have you just
 5
       grabbed something from another officer?
 6
       A. Yes.
 7
       O. What is that?
       A. That is another -- one of the riot shields of the same
 8
 9
       type that he was using.
10
       Q. And in the interaction that we've watched in the 30
11
       seconds or so before this, did you have a shield or no?
12
       A. I did not.
13
                 MS. PASCHALL: If we could now please pull up what
14
       is already in evidence as Exhibit 301.
15
                 (Whereupon, segments of Government's Exhibit
16
       No. 301 were published in open court.)
17
                 MS. PASCHALL: If we could pull that ahead to 20
18
       minutes and 22 seconds.
19
                 (Whereupon, segments of Government's Exhibit
20
       No. 301 were published in open court.)
21
       BY MS. PASCHALL:
22
       Q. Now, Officer Foulds, when we have watched some videos
23
       that were taken from the members of the crowd that day, how
24
       have you been able to identify yourself in those videos?
25
       A. I was wearing a sort of neon green mask.
```

```
1
       Q. And of the officers who are in this tunnel area with
       you, do you know if any of them -- anyone else other than
2
 3
       yourself had that neon green mask?
 4
       A. I don't think so.
 5
                 MS. PASCHALL: Let's start Government's Exhibit
 6
       301 at 22:20.
 7
                 (Whereupon, segments of Government's Exhibit
       No. 301 were published in open court.)
 8
 9
                 MS. PASCHALL: Let's stop there at 22:33.
10
       BY MS. PASCHALL:
       Q. Does that interaction that we've shown from 22:20 to
11
12
       22:33 look like the inverse of what we just watched on your
13
       body-worn camera of that interaction where you mentioned
14
       that the person in front of you pushed the shield at you and
15
       then you struck with your baton?
16
       A. It seems to be the same event.
                 MS. PASCHALL: Let's continue for about another
17
18
       ten seconds here.
19
                 (Whereupon, segments of Government's Exhibit
20
       No. 301 were published in open court.)
21
                 MS. PASCHALL: Stop there at 22:43.
       BY MS. PASCHALL:
22
23
       Q. Officer, did you see yourself there going for what's
24
       kind of in the foreground here this sort of metal frame?
25
       A. Yes.
```

- Q. What is happening there? What are you trying to do?
- 2 A. I'm trying to close the door to put it between the two
- 3 groups. And whenever I do that, I get shoved with the
- 4 shield.

1

- Q. Now, in your training for CDU, when are you trained to
- 6 use your baton?
- 7 A. So the specific CDU baton they issue us, we're trained
- 8 to use that as a prying tool. This baton is not my issued
- 9 CDU baton and it's more similar to my asp baton, which I'm
- 10 trained in routine patrol if someone is being assaultive, I
- 11 can strike them in the arm, the leg or the chest with the
- 12 asp baton.
- Q. And what were to happen if you were to strike at
- 14 | somebody who was not being assaultive to you in the first
- 15 instance?
- 16 A. I would probably be -- I would be investigated by the
- 17 department.
- 18 Q. So fair to say that your training does not allow you to
- 19 use that asp baton unless someone is being assaultive to you
- 20 first?
- 21 A. Correct.
- MS. PASCHALL: Can we please pull up Exhibit 415.
- 23 Actually, your Honor, this is a good time to
- 24 mention, we played 415 yesterday with Officer Hodges. But
- 25 my team noted for me that I don't believe we actually moved

```
1
       that into evidence. I'm happy to lay a foundation with this
2
       officer or just move it in at this point in time.
 3
                 MR. URSO: We'll stipulate, your Honor.
                 THE COURT: Thank you. I thought we had it as in.
 4
 5
       But if it wasn't in, it is now.
                 MS. PASCHALL: Thank you.
 6
 7
                 (Whereupon, Government's Exhibit No. 415 was
       entered into evidence.)
 8
 9
                 MS. PASCHALL: If we could please move Exhibit 415
10
       ahead to time marker 2:17. Let's play through until minute
       2:38.
11
12
                 (Whereupon, segments of Government's Exhibit
13
       No. 415 were published in open court.)
14
       BY MS. PASCHALL:
15
       Q. Officer Foulds, right here in the center of the frame
16
       that I've just circled, is that you in the green mask?
17
       A. Yes.
18
       Q. And so would it be accurate to say this is a similar
19
       view to what we've seen in Government's Exhibit 301 but more
20
       from a higher-up vantage point?
21
           Yes.
       Α.
22
           Officer Foulds, do you recall sustaining any injuries
23
       from this interaction with this Defendant?
24
          From this particular interaction, no.
25
           Do you recall receiving injuries throughout the day on
       Q.
```

```
1
       January 6th?
2
       A. Yeah. I had a number of abrasions on my forehead from
 3
       being struck on the helmet multiple times.
 4
                 MS. PASCHALL: I am going to now ask that we pull
 5
       up Exhibit 220.
 6
                 (Whereupon, segments of Government's Exhibit
 7
       No. 220 were published in open court.)
       BY MS. PASCHALL:
 8
 9
       Q. Officer Foulds, did you remain in this tunnel area for a
10
       longer period of time after the incident that we have just
11
       been watching?
12
       A. I believe so. Yes.
13
       Q. And so now I've pulled up Exhibit 220. Do you see the
14
       timestamp here?
15
       A. I do.
16
       Q. What is that?
17
       A. 16:08.
18
       Q. I'm going to play a little bit of this; and let me know
19
       if you recognize this as your body-worn camera.
20
                 (Whereupon, segments of Government's Exhibit
21
       No. 220 were published in open court.)
22
                 MS. PASCHALL: If we could stop there at 16:09:11.
23
       BY MS. PASCHALL:
24
       Q. Officer, does this appear to be your body-worn camera?
25
           I believe so. I need to hear it turn on to be
```

```
1
       completely sure. But I believe this is.
2
       Q. Some of the audio? Sure.
 3
                 MS. PASCHALL: If we can move it ahead in time to
 4
       16:14:00.
 5
                 (Whereupon, segments of Government's Exhibit
 6
       No. 220 were published in open court.)
 7
                 THE WITNESS: Yeah. It's my body-worn.
       BY MS. PASCHALL:
 8
 9
       Q. We've stopped at 16:14:07. Were you able to hear your
10
       own voice?
11
       A. Yes.
12
       Q. Is that fair and accurate to what you would have sounded
13
       like on January 6th, 2021?
14
       A. Yes.
15
                 MS. PASCHALL: At this time, the Government would
       move the admission of Exhibit 220.
16
17
                 THE COURT: Seeing no objection, 220 is in.
18
                 (Whereupon, Government's Exhibit No. 220 was
19
       entered into evidence.)
20
       BY MS. PASCHALL:
21
       Q. So, Officer, at this point in time, are you now closer
22
       to that outer archway of the tunnel as opposed to earlier
23
       where we viewed you sort of in between those two sets of
24
       double doors?
25
       A. Yes.
```

```
1
       Q. Did there come a time when the police line that was at
2
       that outer archway got pushed back further inside the tunnel
 3
       and lost some ground?
 4
       A. Yes.
 5
                 MS. PASCHALL: Now let's continue to watch Exhibit
 6
       220 here from 16:14:00.
 7
                 (Whereupon, segments of Government's Exhibit
 8
       No. 220 were published in open court.)
 9
                 MS. PASCHALL: Let's stop the video at 16:14:20.
10
       BY MS. PASCHALL:
11
       Q. Just before we moved away there, were you able to see an
12
       individual that looked like they were dressed head to toe in
13
       red?
14
       A. Yes.
15
                 MS. PASCHALL: Start again at 16:14:20.
16
                 (Whereupon, segments of Government's Exhibit
17
       No. 220 were published in open court.)
18
                 MS. PASCHALL: Let's stop the video there at
19
       16:16:15.
20
       BY MS. PASCHALL:
21
           Were you able to hear your own voice there?
22
       A. Yes.
23
       Q. What were you saying?
24
       A. I believe I'm talking to someone who's -- talking to one
25
       of the protesters and saying, "Help us move back. Only more
```

```
1
       people are going to get hurt."
2
                 MS. PASCHALL: Let's start again at 16:16:15.
 3
                 (Whereupon, segments of Government's Exhibit
       No. 220 were published in open court.)
 4
 5
                 MS. PASCHALL: Let's stop the video at 16:16:33.
 6
       BY MS. PASCHALL:
 7
       Q. Were you able to hear somebody a little bit further away
 8
       than you screaming "Forward, forward, forward"?
 9
       A. Yes.
10
                 MS. PASCHALL: Let's start again at 16:16:33.
11
                 (Whereupon, segments of Government's Exhibit
12
       No. 220 were published in open court.)
13
                 MS. PASCHALL: Stop the video.
14
       BY MS. PASCHALL:
15
       Q. At 16:17:01, what have we just heard happening there?
16
       A. So I believe right there I'm saying, "Give me some
17
       space. I can't stand," because everyone's getting pressed
18
       up against each other. And I was losing my footing.
19
                 MS. PASCHALL: Let's play the video again at
20
       16:17:01.
21
                 (Whereupon, segments of Government's Exhibit
22
       No. 220 were published in open court.)
23
                 MS. PASCHALL: Let's stop the video there at
24
       16:17:39.
25
```

```
1
       BY MS. PASCHALL:
2
       Q. Were you able to hear a voice a little bit further away
 3
       from you in that moment saying, "Will you surrender now, you
 4
       fucking pussies?"
 5
       A. Yes.
 6
                 MS. PASCHALL: Let's start the video again at
 7
       16:17:39.
                 (Whereupon, segments of Government's Exhibit
 8
 9
       No. 220 were published in open court.)
10
                 MS. PASCHALL: Stop the video at 16:18:09.
11
       BY MS. PASCHALL:
12
           Officer, did we just hear your voice there?
13
         Yeah. I said that if they broke through where we were
14
       at at the Capitol, a lot of people were going to get killed
15
       in the riot that follows.
16
       Q. And what are you trying to accomplish in this moment
17
       with the people who are directly in front of you?
18
       A. So the hope is because this is -- if people push through
19
       this big inlet, you would have hundreds of people more in
20
       that were already storming into the Capitol. And we were
21
       heavily outnumbered. And the only thing that we could do to
22
       have some control and prevent all the bad actors in the
23
       crowd from hurting or killing people was hold this choke
24
       point where a small amount of our number could hold off a
25
       larger number of protesters.
```

```
1
                 MS. PASCHALL: Let's keep going here at 16:18:09.
2
                 (Whereupon, segments of Government's Exhibit
 3
       No. 220 were published in open court.)
 4
                 MS. PASCHALL: Stop the video.
 5
       BY MS. PASCHALL:
 6
       Q. Officer Foulds, we're now at 16:19:04. We started
 7
       playing this video for you at about 16:14. We're not seeing
 8
       much on the screen at this point. Is that accurate?
 9
       Α.
         Yes.
10
       Q. And why is that?
11
         Because my body-worn camera is being pushed right up
12
       against the mass of people so that, like, I am chest to
13
       chest and everyone next to me is chest to chest with all of
14
       the protesters who were pushing against us.
15
       Q. Are you in fact the front line of that group so that
16
       your chest is now up against directly the mob in front of
17
       you?
18
       A. I believe so.
19
                 MS. PASCHALL: Let's continue here at 16:19:04.
20
                 (Whereupon, segments of Government's Exhibit
21
       No. 220 were published in open court.)
22
                 MS. PASCHALL: If we could stop at 16:19:37.
23
       BY MS. PASCHALL:
24
          Did we just hear your voice again?
25
           Yeah. I think I said, "I can't see anything." I don't
```

```
1
       know why I bring it up. But --
2
       Q. But in that moment -- well, let me ask you this:
 3
       Earlier, you talked about a helmet that you would put on as
 4
       a part of your CDU gear.
 5
                 Do you remember that?
 6
       A. Yeah.
 7
       O. Did that have a shield?
 8
       A. Yeah, it did. And probably what I'm talking about is
 9
       over the course of the day it got covered with all sorts of
10
       stuff from mostly pepper spray getting exchanged from both
11
       sides. I imagine at this point it must be covered.
12
                 MS. PASCHALL: Let's now move ahead to 16:20:43.
13
                 (Whereupon, segments of Government's Exhibit
14
       No. 220 were published in open court.)
15
                 MS. PASCHALL: Let's stop the video.
16
       BY MS. PASCHALL:
17
       Q. We've stopped at 16:21:02. At this point in the video,
18
       what are we able to see?
19
       A. I think people are -- protesters are moving out of the
20
       hallway and I'm trying to push people along and make sure
21
       that everyone gets out of the hallway.
22
       Q. So we've now -- is it accurate to say we've now broken
23
       away from that moment where you are chest to chest with
24
       protesters for several minutes and now we've got a little
25
       bit more room to breathe?
```

```
1
       A. Yes.
2
                 MS. PASCHALL: Your Honor, I have another question
 3
       about whether something is in evidence or not. We admitted
 4
       Exhibit 101 and all of its subcomponents, but I don't think
 5
       we admitted 101.6, which is going to be camera 74 from 4:15
 6
       onwards. Since we've already admitted Exhibit 101 in its
 7
       entirety, I would ask if defense counsel have any objection
 8
       to admitting that subcomponent 101.6.
 9
                 MR. LOPEZ: I have a question on your revised
10
       exhibit list. I don't have a 101.6. It stops at --
11
                 MS. PASCHALL: We can get you one that will have
12
       101.6.
13
                 THE COURT: Without objection, 101.6 is in.
14
                 (Whereupon, Government's Exhibit No. 101.6 was
15
       entered into evidence.)
16
                 MS. PASCHALL: Can we please pull up
17
       Exhibit 101.6.
18
                 (Whereupon, segments of Government's Exhibit
19
       No. 101.6 were published in open court.)
20
                 MS. PASCHALL: We can stop that there.
21
       BY MS. PASCHALL:
22
       Q. Now, Officer, when you and I were preparing for your
23
       testimony, did we watch some of the surveillance camera
24
       video from that tunnel area at the U.S. Capitol?
25
       A. Yes.
```

```
1
       Q. What is the timestamp up in the upper left-hand corner,
2
       please?
 3
       A. 4:15 p.m.
 4
       Q. And I'm going to circle in this center right of the
 5
       photograph there -- or the still shot there. Do you see
 6
       that individual all in red?
 7
       A. Yeah.
 8
                 MS. PASCHALL: If we could please start to play
 9
       Exhibit 101.6 at 4:15:01 -- I'm sorry. Where you had it,
10
       actually. I meant 4:15:01 p.m.
11
                 (Whereupon, segments of Government's Exhibit
12
       No. 101.6 were published in open court.)
13
                 MS. PASCHALL: Stop the video.
14
       BY MS. PASCHALL:
15
       Q. We're stopped now at 4:15:40 p.m. Officer Foulds, where
16
       is the police line? You can use your finger on the screen
17
       there to annotate. Where is the police line in this
18
       photograph?
19
       A. (Witness indicates.)
20
       Q. So fair to say about the dead middle of the screen right
       here at 4:15:40. Is that accurate?
21
22
       A. Yes.
23
                 MS. PASCHALL: Let's continue playing from this
24
       point.
25
                 (Whereupon, segments of Government's Exhibit
```

```
1
       No. 101.6 were published in open court.)
2
                 MS. PASCHALL: If we could stop the video.
 3
       BY MS. PASCHALL:
 4
       Q. We've stopped at 14:16:19 p.m. Officer, I'm circling an
 5
       individual for you right in the middle there of the
 6
       photograph. Do you see that individual?
 7
       A. Yes.
 8
       Q. And what does it appear that individual is doing right
 9
       at this moment?
10
       A. I think he's about to climb up the archway.
11
       Q. Does he have his hand out on that kind of outer archway
12
       there?
13
       A. Yeah, he does.
14
                 MS. PASCHALL: If we could start the video again,
15
       please.
16
                 (Whereupon, segments of Government's Exhibit
17
       No. 101.6 were published in open court.)
18
                 MS. PASCHALL: If we could stop the video.
19
       BY MS. PASCHALL:
20
       Q. We've stopped at 14:16:59 p.m. Officer, can you draw
21
       for us on the screen if you can see the police line anymore
22
       at 14:16:59?
23
       A. (Witness indicates.)
24
       Q. So would it be accurate to describe your line here as
25
       now all the way at the bottom of the screenshot here at
```

```
1
       14:16:59?
       A. Yes.
2
 3
                 MS. PASCHALL: If we could start the video again,
       please.
 4
 5
                 (Whereupon, segments of Government's Exhibit
 6
       No. 101.6 were published in open court.)
 7
                 MS. PASCHALL: If we could stop the video.
       BY MS. PASCHALL:
 8
 9
       Q. We've stopped the video at 14:17:59. In that
10
       intervening minute there, what is happening to the police
       line?
11
12
       A. It's -- I believe it's being pushed back further.
13
       Q. And immediately off the bottom of the screen here in the
14
       direction that the police line is being pushed, what are you
15
       being pushed into?
16
       A. We're being pushed into the main Capitol Building.
17
                 MS. PASCHALL: Let's start the video again at
18
       14:17:59.
19
                 (Whereupon, segments of Government's Exhibit
20
       No. 101.6 were published in open court.)
21
                 MS. PASCHALL: Let's stop the video.
22
       BY MS. PASCHALL:
23
       Q. We're now at 14:19:06. Are we able to see the police
24
       line again yet in this video?
25
       A. I'm not sure. I don't think so.
```

```
1
                 MS. PASCHALL: Let's move forward in time to
2
       timestamp 4:20:27 p.m., so about a minute and a half.
 3
       That's fine. We're at 4:20:27 p.m. I'll ask that we start
 4
       the video again here.
 5
                 (Whereupon, segments of Government's Exhibit
 6
       No. 101.6 were published in open court.)
 7
                 MS. PASCHALL: If we could stop the video and
 8
       actually go back about three or four seconds here.
 9
                 (Whereupon, segments of Government's Exhibit
10
       No. 101.6 were published in open court.)
11
                 MS. PASCHALL: Right there is fine.
12
       BY MS. PASCHALL:
13
         Officer, I am circling an individual right in the middle
14
       of the screen at 4:20:28 p.m. Do you see that individual?
15
       A. Yes.
16
           I'm going to ask that you watch that individual here for
17
       the next couple of seconds while we play the video again.
18
                 (Whereupon, segments of Government's Exhibit
19
       No. 101.6 were published in open court.)
20
                 MS. PASCHALL: Stop at 4:20:32.
21
       BY MS. PASCHALL:
22
       Q. Were you able to see that individual kind of wave his
23
       arm in the air there during that five or so seconds?
24
       A. Yes.
25
       Q. Officer Foulds, in the time that you've been with CDU
```

```
1
       74, are you one of the main units that gets called out for
2
       large rallies, marches and First Amendment assemblies?
 3
       A. Yes.
 4
       Q. How many would you estimate large rallies, marches and
 5
       First Amendment assemblies that you've manned as a member of
 6
       CDU 74 in your time with MPD?
 7
           I think probably a few dozen.
       Α.
 8
           Have you ever experienced any of those marches, rallies
 9
       or First Amendment assemblies devolve into violence?
10
       A. Yes.
11
       Q. Has any of them been anything like what you experienced
12
       this day on January 6th?
13
       A. No.
14
                 MS. PASCHALL: Thank you. I have no further
15
       questions for you.
16
                 THE COURT: Mr. Urso?
17
                 MR. URSO: Thank you, your Honor.
18
                            CROSS-EXAMINATION
19
       BY MR. URSO:
20
       Q. Good afternoon, Officer Foulds.
21
       A. Good afternoon.
22
       O. Give me a minute here.
23
                 MR. URSO: May I have a moment, your Honor?
24
                 THE COURT: You may.
25
                 MR. URSO: (Confers with counsel.)
```

```
1
                 I'm going to use my version of one of the
       Government's exhibits. It's easier.
2
 3
                 THE COURT: Okay.
 4
       BY MR. URSO:
 5
           Just following up on that last point, this was an
 6
       unprecedented event for you. Correct?
 7
       A. Yes.
 8
       Q. And so is it your testimony -- you testified earlier
 9
       about your use-of-force policy and your baton strikes. Is
10
       it your testimony that you think you would have been
11
       unjustified in baton-striking people like, for instance,
12
       Mr. McCaughey to move them back when they were that close to
13
       the Capitol, to entering the Capitol?
14
                That's not my testimony.
           No.
15
           You said you could only hit baton strikes if you'd been
16
       assaulted.
17
           If someone is being assaultive.
18
           Oh.
       Q.
19
           So if someone's trying to, like, forcibly push me back,
20
       that's assaultive.
21
       O. Assaultive.
22
       A. Assaultive is physically attacking someone. It doesn't
23
       have to be a specific -- it doesn't have to be a specific
24
               It could be pushing someone to the ground.
```

Q. Okay. But you think that you would have been violating

25

- Case 1:22-cr-00060-BAH Document 84-2 Filed 04/12/23 Page 33 of 90 1 policy if in that tunnel you were trying to move the line 2 back of people and you started whacking people in the front 3 with the baton? You think you would have been violating 4 policy if they had not pushed you or been assaultive? 5 A. If they had not pushed me but we -- we would not have 6 been pushed back if we were not pushed. 7 Q. So let me just --8 A. So if they're trying to push their way past us, that 9 would be some way where we could asp-strike someone. 10 Q. Okay. If there was a stalemate at the moment and the 11 protesters were here, the police were here and nobody was 12 advancing but you wanted to move them out of the tunnel, 13 you're saying it would have been -- you would have violated
- 14 policy if you started using the baton at that point?
 - If everyone was just standing peacefully, yes, possibly.

Okay. I just want to be clear. I believe you did

- 17 testify about that encounter you had with Mr. McCaughey.
- 18 That's what you testified about earlier. Right? This 19 gentleman here?
- 20 I believe so. Α.
- 21 The guy with the brown -- sort of reddish-brown 22 sweatshirt?
- 23 A. Yes.

15

16

24 You said you were not injured as a result of that 25 encounter. Correct?

A. Correct.

1

- 2 Q. By the way, there was some video later played after the
- 3 encounter you had with him of another person with a brown
- 4 sweatshirt. That was not Mr. McCaughey. Correct?
- 5 A. I don't believe so.
- Q. Well, didn't you confuse Mr. McCaughey with another
- 7 gentleman when you were interviewed by the detectives,
- 8 Detective McCarthy?
- 9 A. I didn't confuse the two. The detectives at that time
- were asking about things that I remember from that day. So
- I was talking about another interaction I had, because the
- 12 guy was very memorable.
- I then immediately -- I think there was a little
- confusion initially where the agent thought I was talking
- about Mr. McCaughey and I wasn't. And I went back and
- 16 | cleared that up and said, like, "No. I'm talking about a
- 17 different guy. The guy with the shield is not the person I
- 18 was talking about."
- 19 Q. And you were -- the confusion was because they both had
- 20 brown hoodies. Right?
- 21 A. No. I simply just brought up the other guy because he
- 22 was relevant and I didn't -- the two look very different.
- 23 So I was not confusing the two.
- Q. And let me just ask you this: After your brief
- 25 | encounter that we witnessed earlier here in these exhibits

- Case 1:22-cr-00060-BAH Document 84-2 Filed 04/12/23 Page 35 of 90 1 with Mr. McCaughey, you did not see Mr. McCaughey again ever 2 that day. Correct? 3 A. Not that I recall. 4 Q. Now, I want to -- you were pretty liberal with the baton 5 during this encounter with Mr. McCaughey. Would you agree 6 with that? 7 A. No. Q. Okay. Let me -- I'm going to take you through what's 8 9 been marked as Defendant's Exhibit A. I'm going to hook it 10 up. Let me back up just a little bit. I'm going to play a 11 little bit and then I'm going to try to go frame by frame. 12 I'm trying to catch the beginning of your encounter with 13 Mr. McCaughey. 14 Right here at 1:38, you're not at the front of the 15 line yet. Correct?

- 16 A. Correct.
- 17 Q. You can see you, because you had a green mask. Right?
- 18 A. Yep.
- 19 Q. Let me just play it a little bit.
- 20 (Whereupon, segments of Defendant McCaughey's
- 21 Exhibit A were published in open court.)
- 22 BY MR. URSO:
- 23 Q. There is an officer between you and Mr. McCaughey at
- 24 that point. Correct?
- 25 A. Yes.

```
1
                 (Whereupon, segments of Defendant McCaughey's
2
       Exhibit A were published in open court.)
 3
       BY MR. URSO:
 4
       Q. Now, at that point, you're still behind that other
 5
       officer and you have your baton cocked. Is that correct?
 6
       You have it --
 7
       A. So everyone was packed really tight. So often, like, I
 8
       don't have space to have my hands out in front of me. I
 9
       have to have them pressed up against me because everyone's
10
       so close to each other.
11
           So you wanted to be in be-ready position?
12
          No. So I had someone in front of me forcing my hand all
13
       the way. So I'm holding something in my hand and my arm's
14
       being forced against my body.
15
       Q. So you're saying that you holding this baton up in this
16
       little snippet is involuntary?
17
       A. I'm saying that I'm just holding things in my hand and
18
       that's how my --
19
       Q. Did you lift up the baton on purpose or was it in -- did
20
       somebody force your arms in the air? That's all I'm asking.
21
           I mean, I'm just holding it in the air.
22
          Did you put it in the air yourself or did somebody force
23
       you --
24
           I put it in the air myself.
25
                 MR. URSO: I'm going to play a little bit more.
```

```
1
                 (Whereupon, segments of Defendant McCaughey's
2
       Exhibit A were published in open court.)
 3
                 MR. URSO: I'm going to stop at 1:48.
 4
       BY MR. URSO:
 5
       Q. Would you agree this is the first time you're face to
 6
       face with Mr. McCaughey?
7
       A. Sure.
       Q. I'm going to actually try to go frame by frame. I don't
 8
 9
       have that. I'm just going to click it, unclick it. I don't
10
       have that feature.
11
                 You have the baton in your right hand holding it
12
       in the air. Correct?
13
       A. Yes.
14
       Q. I'll go ahead.
15
                 (Whereupon, segments of Defendant McCaughey's
16
       Exhibit A were published in open court.)
17
       BY MR. URSO:
18
          Now your left hand is in the door?
19
       A. Yes.
20
       Q. Where the glass used to be?
21
       A. Yes.
22
       Q. Mr. McCaughey is sort of in the doorway and sort of in
23
       your way from closing the door?
24
       A. Yes.
25
                 (Whereupon, segments of Defendant McCaughey's
```

```
1
       Exhibit A were published in open court.)
2
       BY MR. URSO:
 3
       Q. We didn't see -- we missed something from the flag there
 4
       for a split second, but it looks like you guys are face to
 5
       face again. It doesn't look like there's been much
 6
       movement. Correct?
 7
           I believe in the body-worn camera that's when he shoves
 8
       me.
 9
           I'm going to do the body-worn camera, too. I'm trying
10
       to do both angles.
11
       A. Correct.
12
       Q. You think you got shoved while that flag was in the way?
13
           I distinctly remember I go to grab the door to pull it
14
       closed and then he shoves me.
15
       Q. Okay. Let me do it again.
16
                 (Whereupon, segments of Defendant McCaughey's
17
       Exhibit A were published in open court.)
18
       BY MR. URSO:
19
         Now, he's not making contact with you there, is he?
20
       A. I believe this is just after the shove.
21
                 (Whereupon, segments of Defendant McCaughey's
22
       Exhibit A were published in open court.)
23
       BY MR. URSO:
24
           You just swung the baton at him. Right?
```

25

Α.

Correct.

```
1
                 (Whereupon, segments of Defendant McCaughey's
2
       Exhibit A were published in open court.)
 3
       BY MR. URSO:
       Q. Now, he was in your way from closing the door. Right?
 4
 5
       Right before you --
      A. No. I --
 6
 7
       Q. Right before you whacked him?
       A. No. I went to close the door and he shoved me and so I
 8
 9
       whacked him. Sorry. I delivered a strike with the baton.
10
       Sorry.
                 THE COURT: "Whack" isn't the official term?
11
12
                 THE WITNESS: Not the technical term.
13
       BY MR. URSO:
14
       O. But he's still alive. I don't mean it that way. I'm
15
       going to go ahead.
16
                 (Whereupon, segments of Defendant McCaughey's
17
       Exhibit A were published in open court.)
18
       BY MR. URSO:
19
       Q. At that point, it looks like you reached for his shield
20
       to try to pull it and strike. Correct?
21
       A. Can you go back a second or two?
22
                 (Whereupon, segments of Defendant McCaughey's
23
       Exhibit A were published in open court.)
24
       BY MR. URSO:
25
       Q. Is that back enough?
```

- A. I can't tell from here whether I'm going for the shield or whether I'm going for the door again.
 - Q. You did at least once or twice try to pull his shield aside and hit him with the baton. Right? You don't recall?
- A. I mean, I might have tried to disarm him of the shield that he had been hitting me with.
- 7 (Whereupon, segments of Defendant McCaughey's
- 8 Exhibit A were published in open court.)
- 9 BY MR. URSO:

3

4

- 10 Q. Right there, what are you reaching for? Is this the
- 11 door or the shield?
- 12 A. I can't tell from this angle.
- 13 (Whereupon, segments of Defendant McCaughey's
- 14 Exhibit A were published in open court.)
- 15 BY MR. URSO:
- 16 Q. Now, Mr. McCaughey is raising the shield or you pushed
- it up. One or the other. Right? Your hand reached out to
- 18 the shield?
- 19 A. It looks like.
- 20 Q. But the shield's not touching your torso. Right?
- 21 You're touching the shield?
- 22 A. Okay.
- 23 Q. Would you agree with that?
- 24 A. Yes.
- 25 (Whereupon, segments of Defendant McCaughey's

```
1
       Exhibit A were published in open court.)
2
       BY MR. URSO:
 3
       Q. Now his shield came down, but it didn't strike you.
 4
       Correct?
 5
          Yes. But it looks like he swung it towards me.
 6
       Q. Well, he didn't hit you. Correct? As the shield came
 7
       down, it didn't strike you?
 8
       A. Yes. But it looks like he swung it towards me.
 9
       Q. That's a simple "yes" or "no."
10
       A. I -- I can't necessarily tell from this angle whether it
11
       struck me or not.
12
       Q. Don't you think you would have flinched a little if you
13
       got struck with it?
14
       A. I mean, I had been struck --
15
                 MS. PASCHALL: Objection.
16
                 THE COURT: Sustained. Let's keep going.
17
                 MR. URSO: I'm going to keep going forward.
18
                 (Whereupon, segments of Defendant McCaughey's
19
       Exhibit A were published in open court.)
20
       BY MR. URSO:
21
       Q. So right there, did you grab the shield and move it out
22
       of the way and strike Mr. McCaughey? Or about to strike
23
       him?
24
                It looks like I got struck with the shield or he
25
       attempted to strike me with the shield and then I struck him
```

```
1
       in response.
2
                 (Whereupon, segments of Defendant McCaughey's
 3
       Exhibit A were published in open court.)
 4
       BY MR. URSO:
 5
       Q. And now he puts the shield up again to protect himself.
 6
       Right?
 7
       A. So I'm putting my hand in the way so that he's not able
       to strike me with the shield.
 8
 9
       Q. And in the screenshot which we just showed, did he not
10
       just bring the shield back up to --
       A. He brung the shield back up. I can't speak to his
11
12
       intention.
13
                 (Whereupon, segments of Defendant McCaughey's
14
       Exhibit A were published in open court.)
15
       BY MR. URSO:
16
       Q. But you were able to speak to his intention when that
17
       shield came down. You said it looked like he was trying to
18
       hit you.
19
       A. I mean, I can only say from my perspective. If
20
       something is swinging towards me, I believe it was trying to
21
       swing towards me.
22
       Q. Okay.
23
                 (Whereupon, segments of Defendant McCaughey's
24
       Exhibit A were published in open court.)
```

25

```
1
       BY MR. URSO:
2
       Q. Now there's nothing happening. It's sort of just both
 3
       standing there. Right? You were trying to close the door
 4
       again. But other than that, nothing happened. Right?
 5
       A. Yes.
 6
                 (Whereupon, segments of Defendant McCaughey's
 7
       Exhibit A were published in open court.)
       BY MR. URSO:
 8
 9
       Q. And that's the end of your encounter from that
10
       perspective. Right?
11
       A. Yes.
       Q. Now I'm going to show your body-worn camera angle.
12
13
       So --
14
                 THE COURT REPORTER: Counsel, could I have the
15
       exhibit number for the record?
16
                 MR. URSO: This is Government's Exhibit 218.
17
                 Is it? No. Yeah.
                 MS. PASCHALL: Yes. It's Government's Exhibit
18
       218.
19
20
                 (Whereupon, segments of Government's Exhibit
21
       No. 218 were published in open court.)
22
       BY MR. URSO:
23
       Q. By the way, do you recall -- did you hear Officer Hodges
24
       when he screamed in this tunnel?
25
       A. I am not familiar with everyone's names. Is Mr. Hodges
```

```
1
       the guy that got stuck in the door?
2
       Q. Yeah.
 3
       A. Yeah, I did.
 4
       O. And did you -- okay. That's all. And this was -- the
 5
       snippet we're watching now is shortly after that, caught
 6
       maybe a minute or two after that?
 7
           I'm not entirely sure when.
 8
       Q. Okay.
 9
                 (Whereupon, segments of Government's Exhibit
10
       No. 218 were published in open court.)
       BY MR. URSO:
11
12
       Q. Now, you can just see in the background Mr. McCaughey
13
       was standing there with his shield up, protecting himself.
14
       Right?
15
           So you can also see that this is where I had my arm
16
       raised and an officer's back is right up against me.
17
       Q. Can you just answer the question I asked? Can you in
18
       that snippet -- could you see Mr. McCaughey standing in the
19
       background just holding the shield up at his chest?
20
       A. Yes.
21
       Q. You think that's the time that you had your arm raised
22
       with the baton?
23
       A. I believe so.
24
                 (Whereupon, segments of Government's Exhibit
25
       No. 218 were published in open court.)
```

```
1
       BY MR. URSO:
2
           That was -- yeah. That was when you were still behind
 3
       the other officer. Right?
 4
       A. Yeah. The other officer's in the way of me having my
 5
       hand down.
 6
                 (Whereupon, segments of Government's Exhibit
 7
       No. 218 were published in open court.)
       BY MR. URSO:
 8
 9
       Q. Now, here, it looks like Mr. McCaughey must have just
10
       got struck with a baton from another officer. Would you
11
       agree with that? I'll go back.
12
       A. I can't see from this angle.
13
       Q. Let me just play that again.
14
                 (Whereupon, segments of Government's Exhibit
15
       No. 218 were published in open court.)
16
       BY MR. URSO:
17
       Q. He had leaned back and he was -- you don't think so?
18
       A. So I have no idea. From this perspective, it doesn't
19
       show anything.
20
       Q. Now, was that your baton that struck Mr. McCaughey right
21
       there?
22
         Sorry. Could you go back a few?
23
       O. Yeah.
24
                 (Whereupon, segments of Government's Exhibit
25
       No. 218 were published in open court.)
```

```
1
       BY MR. URSO:
2
           Right there. Did you see the baton?
       A. Yes. He shoved me and I struck him back.
 3
 4
       Q. Where did he shove you from this angle before you struck
 5
       him with the baton?
 6
       A. So --
 7
       Q. I can go back.
 8
       A. Going back, you can see that he leans forward with his
 9
       shield and strikes me, probably on my left side.
10
       Q. Let me just go back a little, another second or two.
11
                 (Whereupon, segments of Government's Exhibit
12
       No. 218 were published in open court.)
13
       BY MR. URSO:
14
       Q. I'm going to actually try to do frame by frame, if I
15
       can.
16
                 (Whereupon, segments of Government's Exhibit
17
       No. 301 were published in open court.)
18
       BY MR. URSO:
19
           In that split second, you said he shoved you?
20
       A. Yes. And that's me pushing the shield out of the way.
21
       Q. Let me just do that again.
22
                 (Whereupon, segments of Government's Exhibit
23
       No. 218 were published in open court.)
24
       BY MR. URSO:
25
       Q. He struck you in that millisecond? He reached out and
```

```
1
       pushed you? That's what you're saying?
2
       A. Either -- so if he didn't strike me, he was moving to
 3
       strike. The shield was moving towards me to strike me.
 4
       Q. And -- yeah. I'm not questioning your use of the baton
 5
       in any way.
 6
       A. I'm just saying.
 7
       Q. Yeah. I'm going to go forward.
                 (Whereupon, segments of Government's Exhibit
 8
 9
       No. 218 were published in open court.)
10
       BY MR. URSO:
11
       Q. And that's when you put your hand on the door, I
12
       believe, where the glass was broken? I'll go back a little
13
       bit.
14
       A. I'm sorry.
15
                 (Whereupon, segments of Government's Exhibit
16
       No. 218 were published in open court.)
17
       BY MR. URSO:
18
       Q. I'm trying to do frame by frame. Is that your hand
19
       there on the door?
20
       A. I think so.
21
       Q. Leather glove.
22
                 (Whereupon, segments of Government's Exhibit
23
       No. 218 were published in open court.)
24
       BY MR. URSO:
25
       Q. Now it looks like you struck Mr. McCaughey again because
```

```
1
       he was sort of -- got in the way of the door being closed.
2
              He put his foot there?
 3
           You can also see the shield -- plastic shield accelerate
 4
       towards me as he shoves me off of the door.
 5
       Q. Let me go back, because I don't see the shove. Hold on.
 6
                 (Whereupon, segments of Government's Exhibit
7
       No. 218 were published in open court.)
 8
                 THE WITNESS: Right there.
 9
       BY MR. URSO:
10
           Again, he shoved you in that millisecond right there?
11
           So you can see that my hand is all the way on the far
12
       side of the door. And then in that camera, you can see that
13
       the shield has gone all the way past the far side of the
14
       door to cover up the near side of the door. So in that --
15
       whatever length of time -- I think it's a little more than a
16
       millisecond -- he has crossed that 3-foot distance towards
17
       me --
18
       Q. And you wanted --
19
           -- and pushed me off of the door that I was touching.
       Α.
20
           Is it possible that you were just annoyed that he was in
21
       the way of you shutting the door and you wanted to get him
22
       out of the way?
23
       Α.
           No.
24
                 MS. PASCHALL: Objection.
25
                 THE COURT: Overruled.
```

```
1
       BY MR. URSO:
2
       Q. No? That's not possible?
 3
       A. No.
 4
       Q. What are we just seeing there?
 5
       A. We're seeing him recoil from being struck after he
 6
       shoved me.
 7
       Q. Is this another shove or is this the same shove?
 8
       A. No. This is the same shove after I had my hand on the
 9
       door.
10
       Q. Let me just play that couple of seconds straight
11
       through.
12
                 (Whereupon, segments of Government's Exhibit
13
       No. 218 were published in open court.)
14
                 THE WITNESS: I'm sorry. That is the second one.
15
       I think I put my hand on the door again and he shoved me
16
       again.
17
       BY MR. URSO:
18
       Q. Is that depicted in the video, him shoving you? Let me
19
       do it again.
20
                 (Whereupon, segments of Government's Exhibit
21
       No. 218 were published in open court.)
22
                 MR. URSO: I'm at 40 seconds now.
23
                 (Whereupon, segments of Government's Exhibit
24
       No. 218 were published in open court.)
25
                 THE WITNESS: Yes. That's me reaching for the
```

```
1
       door.
2
       BY MR. URSO:
 3
       Q. Right. That's at 42.
 4
                 (Whereupon, segments of Government's Exhibit
 5
       No. 218 were published in open court.)
 6
       BY MR. URSO:
 7
           That's him still standing with the shield up against his
       chest. Right?
 8
 9
           I think -- with the frame-by-frame, it's hard.
10
       Q. Yeah. It's less than a second. I'm still on 42 and I
11
       did four clicks. But in that frame that you're looking at
12
       now, he's still got the shield pulled up --
13
       A. It's hard to tell motion in the frame-by-frame. But
14
       okay.
15
                 (Whereupon, segments of Government's Exhibit
16
       No. 218 were published in open court.)
17
       BY MR. URSO:
18
       Q. Actually, I think that was already the end of your
19
       encounter with him. Right? Because I think he backs up and
20
       gets sprayed.
21
       A. I think so. Yes.
22
       Q. Lets just watch that for a second. You've seen this
23
       video a few times?
24
       A. Yeah.
```

Q. And you noticed he got sprayed with something and then

25

```
1
       he backed out of the tunnel?
2
           I didn't notice that he got sprayed, but I did notice
 3
       him back out of the tunnel. Yeah.
 4
         Let me go back again. Just watch as he's looking over
 5
       to the left of the side of the screen, to your left.
 6
                 (Whereupon, segments of Government's Exhibit
 7
       No. 218 were published in open court.)
 8
                 MR. URSO: It already happened.
 9
                 (Whereupon, segments of Government's Exhibit
10
       No. 218 were published in open court.)
11
       BY MR. URSO:
12
       Q. Right here. Coming up here. Did you see him duck his
13
       face?
14
       A. Yeah.
15
       Q. Then he just runs out. Okay.
16
                 I just -- I really am having a hard time seeing
17
       him make contact with you. I just want to try one more time
18
       to see if we can see it.
19
       A. So I don't like being hit by things, so I have my hand
20
       in the way because I expected he's going to shove me as he's
21
       been doing. So some of them don't make contact with my
22
       torso because, as he brings the shield in, I'm putting my
23
       hand in the way to deflect it.
24
       Q. Let me just go back to the other exhibit briefly.
25
       is Defendant's Exhibit A.
```

```
1
                 (Whereupon, segments of Defendant McCaughey's
2
       Exhibit A were published in open court.)
 3
                 MR. URSO: I'll jump ahead to 1:26.
 4
                 (Whereupon, segments of Defendant McCaughey's
 5
       Exhibit A were published in open court.)
 6
       BY MR. URSO:
 7
       Q. At this point, Mr. McCaughey is basically either in the
 8
       doorway or sort of just being pushed outside the door.
 9
       Would you agree with that?
10
       A. I believe. If we'll go back two seconds, you can just
11
       see him shove someone.
12
                 (Whereupon, segments of Defendant McCaughey's
13
       Exhibit A were published in open court.)
14
       BY MR. URSO:
15
       Q. Who did he shove?
16
       A. I couldn't tell. I think that might be me, but there's
17
       the doorjamb in the way.
18
       Q. No. You're still two deep here. Do you see your mask
19
       back there?
20
       A. Okay. Yeah.
21
       Q. So he didn't shove you there. Right?
22
       A. Yes.
23
       Q. Yes, he didn't shove you?
24
       A. At that very moment, yes.
       Q. That's what I mean.
25
```

```
1
                 (Whereupon, segments of Defendant McCaughey's
2
       Exhibit A were published in open court.)
 3
       BY MR. URSO:
 4
       Q. And now is when that officer is sort of clearing out to
 5
       the right and then you're going to be facing McCaughey.
 6
       Right?
 7
       A. Yes.
                 MR. URSO: We're at 1:38 of Exhibit A.
 8
 9
                 (Whereupon, segments of Defendant McCaughey's
10
       Exhibit A were published in open court.)
       BY MR. URSO:
11
12
       Q. There I kind of saw Mr. McCaughey's hair come back.
13
       you see that? It looked like maybe he got hit with
14
       something here. Let me just go back. That's his hair, I
15
       believe, on the left side of the screen. I'll go back one
16
       more.
17
                 (Whereupon, segments of Defendant McCaughey's
18
       Exhibit A were published in open court.)
19
       BY MR. URSO:
20
           Do you see the head come back?
       Q.
21
       A. No.
22
                 (Whereupon, segments of Defendant McCaughey's
23
       Exhibit A were published in open court.)
24
       BY MR. URSO:
25
       Q. He's got long, flowing hair. Right?
```

```
1
       A. Okay.
2
                 (Whereupon, segments of Defendant McCaughey's
 3
       Exhibit A were published in open court.)
 4
       BY MR. URSO:
 5
           Do you see his head come back?
 6
       A. Yeah.
 7
       Q. He must have been dodging something, right, at that
       point?
 8
 9
           I mean, everyone's moving around a lot.
10
       Q. That's at 1:45.
11
                 (Whereupon, segments of Defendant McCaughey's
12
       Exhibit A were published in open court.)
13
       BY MR. URSO:
14
       Q. This is where you're trying to close the door and he
15
       starts stepping into the doorway again. Right?
16
       A. Yes.
17
                 (Whereupon, segments of Defendant McCaughey's
18
       Exhibit A were published in open court.)
       BY MR. URSO:
19
20
       Q. We did miss, like, two milliseconds behind the flag
21
       there.
22
                 Now it looks like -- it kind of looked like you
23
       stepped a little forward, doesn't it?
24
       A. I think I was standing about where I was.
25
       Q. That's right. Okay. Because you reached for the door.
```

```
1
              That's about right. You let go of the door and
2
       stayed there. Okay.
 3
                 (Whereupon, segments of Defendant McCaughey's
       Exhibit A were published in open court.)
 4
 5
       BY MR. URSO:
 6
       Q. Did you just hit Mr. McCaughey with a baton strike in
7
       that snippet?
       A. I did not hit him with a down-strike. I hit him with a
 8
 9
       diagonal strike.
10
       Q. Cross-strike, whatever?
11
       A. Yeah.
12
       Q. Did you see anywhere where he pushed you in those
13
       snippets?
14
       A. Yes.
15
       Q. Where did you see that?
16
       A. Right before I struck. He shoves me with the shield.
17
       pushed the shield away; I struck him.
18
          Let me just go back so you can show me where that was.
19
       A. Okay.
20
                 (Whereupon, segments of Government's Exhibit
21
       No. 218 were published in open court.)
22
                 THE WITNESS: Yes. So the shield's moving towards
23
       me.
24
       BY MR. URSO:
25
       Q. Right there it is.
```

```
1
           I mean, it's not a good angle.
2
           I didn't even see the shield again. Isn't it up against
 3
       his chest, down to the right?
 4
       A. I can't tell from this angle.
           I think you would see the opaque that the camera was
 5
 6
       looking through in --
 7
                 THE COURT: Mr. Urso, I think you're just kind of
       stuck with his testimony. He's been very consistent on
 8
 9
       this.
10
                 MR. URSO: The horse is dead, Judge?
                 THE COURT: Yes. Speaking of beatings and
11
12
       whackings.
13
                 MR. URSO: If I could just have a moment, your
14
       Honor.
15
                 THE COURT: Yes, sir.
16
                 MR. URSO: (Confers with Defendant McCaughey
17
       privately.)
       BY MR. URSO:
18
19
       Q. Did you see anywhere in these videos where Mr. McCaughey
20
       struck you with a deadly weapon?
21
                 MS. PASCHALL: Objection. Calls for a legal
22
       conclusion.
23
                 THE COURT: Sustained.
24
                 MR. URSO: Nothing further.
25
                 Thank you, Officer.
```

```
1
                 THE COURT: Ms. Cobb?
                 MS. COBB: I have no questions for this witness.
2
 3
                 THE COURT: Mr. Shipley?
                 MR. SHIPLEY: Just one question.
 4
 5
                            CROSS-EXAMINATION
 6
       BY MR. SHIPLEY:
 7
           Officer Foulds, I heard you testify that you considered
       somebody pushing against you with a shield to be an assault
 8
 9
       of you. Is that right?
10
       A. Yes.
11
         Your answer was yes?
12
       Α.
          Yes.
13
           Do you know Sergeant Jason Mastony?
14
           Not personally, no.
       Α.
15
         You know he's a sergeant with CDU 42. Right?
16
           I -- this is news to me. But I believe you.
17
           Well, if Sergeant Mastony testified in this courtroom
18
       two days ago that it's not an assault if they are just
19
       pushing against me with their body weight to move my line,
20
       would you disagree with that?
21
                 MS. PASCHALL: Objection. He's testifying.
22
                 THE COURT: I don't think he's testifying,
23
       actually.
24
                 Overruled.
25
```

```
1
       BY MR. SHIPLEY:
2
       Q. If that was Sergeant Mastony's testimony, that he said
 3
       it's not an assault if they're just pushing against me to
 4
       move my line, would you disagree with that?
 5
           So if he's a CDU sergeant, he would have a better
 6
       understanding. I am basing this off of what I understand to
 7
       be an assault if I was in the street in my district. And if
 8
       someone attempts to shove me around in the street of my
 9
       district, I would consider that an assault.
10
       Q. Fair enough.
11
                 THE COURT: Any redirect?
12
                 MS. PASCHALL: None. Thank you.
13
                 THE COURT: Officer Foulds, thank you for your
14
       testimony here today. You're free to go.
15
                 THE WITNESS: Thank you.
16
                 THE COURT: You may step down.
17
                 (Witness excused.)
18
                 THE COURT: Let's take a ten-minute break.
19
                 (Thereupon a recess was taken, after which the
20
       following proceedings were had:)
21
                 THE COURT: The Government may call its next
22
       witness.
23
                 MS. PASCHALL: Thank you, your Honor.
24
       Government calls Deputy United States Marshal Gregory
25
       Conner.
```

1	CERTIFICATE
2	
3	I, LISA EDWARDS, RDR, CRR, do hereby
4	certify that the foregoing constitutes a true and accurate
5	transcript of my stenographic notes, and is a full, true,
6	and complete transcript of the proceedings produced to the
7	best of my ability.
8	
9	
10	Dated this 13th day of October, 2022.
11	
12	/s/ Lisa Edwards, RDR, CRR Official Court Reporter
13	United States District Court for the District of Columbia
14	333 Constitution Avenue, Northwest Washington, D.C. 20001
15	(202) 354-3269
16	
17	
18	
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21	
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