

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America, )  
)  
Plaintiff, ) Criminal Action  
) No. 21-cr-175  
vs. )  
) JURY TRIAL  
Ethan Nordean, ) Day 25  
Joseph R. Biggs, )  
Zachary Rehl, ) Washington, DC  
Enrique Tarrio, ) February 2, 2023  
Dominic J. Pezzola, ) Time: 2:00 p.m.  
)  
Defendants. )

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TRANSCRIPT OF JURY TRIAL  
HELD BEFORE  
THE HONORABLE JUDGE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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\* \* \* \* \* \*AFTERNOON SESSION\* \* \* \* \*

THE COURT: All right.

THE COURTROOM DEPUTY: We're back on the record in criminal matter 21-175, United States of America versus Ethan Nordean, et al.

THE COURT: All right. Before we bring the witness and the jury back, had an opportunity to process what Mr. McCullough told me about the government's witnesses, had an opportunity to look back at the -- at the -- sort of where we are on the, sort of, Telegram issue.

And, so, I'm going to slightly adjust the schedule that we talked about and give it a little more certainty that, I think, will both hopefully help us resolve the -- resolve the remaining issues as expeditiously as we can while giving the government a little more certainty as far as its witnesses and what it needs to be prepared for, so -- and to make sure that I'm getting from you all what I need to try to resolve things expeditiously.

So, Friday we talked about the defendants' responding to the government's chart that lays out all the -- all the exhibits and the bases the government is contending -- the bases on which I can admit the various exhibits.

I think -- just to make sure we're all on the same page, I think the most helpful thing for the defendants to provide to the government, and to provide to me, is -- and I'm

1 not -- I want to simplify this for you all, too -- is something  
2 that just indicates those documents you continue -- based on  
3 the rulings that I've already made, incorporating them, that  
4 you still think you have an objection to.

5 So, we'll narrow -- hopefully narrow some of the  
6 scope. I understand. Your objections are preserved as to  
7 objections you've made already, and that I have -- and that  
8 I've overruled based on my prior rulings. So, just let -- when  
9 the government is provided that -- again, you can even just use  
10 the chart itself, and just indicate, you know, Nordean has an  
11 objection to -- however you want to denote it so the government  
12 knows that.

13 Provide that to chambers, too -- provide that to me,  
14 too, so I will know, not just the government, kind of where the  
15 disputes continue to lie.

16 Yes, Mr. Pattis?

17 MR. PATTIS: Is the practical outcome of this a  
18 universe in which the government would be permitted to  
19 introduce exhibits without witnesses? Because --

20 THE COURT: No.

21 MR. PATTIS: Okay. Because I have several  
22 observations, Judge, four observations, from --

23 THE COURT: Mr. Pattis, why don't I get through all  
24 the new schedule and then I'll hear from you --

25 MR. PATTIS: Sorry.

1 THE COURT: -- if you want to hear, but that's just  
2 the first point, and we'll get -- we'll get to the rest of it.

3 So, if -- again, if you all will provide that to the  
4 government and to chambers, then I will kind of have a sense of  
5 where things lie.

6 I don't think we need -- the second thing I had asked  
7 the parties to do is submit something on Saturday about a  
8 schedule. You don't have to do that because I'm about to lay  
9 out at least a preliminary schedule, and we'll see if we have  
10 to adjust it going forward.

11 I will tell the jury not to come in on Monday. We'll  
12 give them some certainty, too. So, we'll just tell them not to  
13 come in, and I'll have you all in at 11 o'clock on Monday.  
14 We'll have a few hours before lunch and time after lunch, if we  
15 need to, and we'll talk about where things stand.

16 I'll already have -- on Friday, I will have kind of  
17 a -- an indication of what -- what -- what things the parties  
18 agree, based on my prior rulings, are either in or out, and  
19 then what -- and what remains in terms of a dispute, and I'll  
20 take that up. And I'll take it up and we'll see how far we  
21 get.

22 The government, at least, then -- I just -- I had  
23 asked you to have a witness ready on Monday. I think it still  
24 behooves you to have a backup witness ready for Tuesday. It  
25 gives you at least one more day to kind of scramble things, but

1 to have a back up witness. It may be that -- again, depending  
2 on how you want to divvy things up, it may be that on Tuesday,  
3 you could go forward with a witness with some of this stuff,  
4 depending on how far we get.

5 But, in case we don't, then you have a backup for  
6 Tuesday and you can put on your non-Telegram witness on  
7 Tuesday, if we still -- if this process is going to go beyond  
8 then.

9 Thoughts from any party on that revised schedule?  
10 Which, I think, make sure that I have what I need to sort of  
11 see where things lie and prepare, frankly, over the weekend.  
12 And then, you know, gives the jury some certainty about just  
13 letting them know we won't sit on Monday, and then gives you  
14 all some space.

15 Again, I don't want to create -- I think most of  
16 what -- most of what -- as a legal matter, a lot of the  
17 things -- a lot of the disputes have already been teed up  
18 through the motions in limine. So, really, all I need to know  
19 is what is still outstanding as far as things that each side  
20 thinks haven't been resolved, and then just hear you on it.

21 And I don't want to make you have to file any more --  
22 I mean, I've seen -- we've talked about the various theories  
23 before, and that way I'll just hear you on it and we'll go from  
24 there.

25 Any -- yes, Mr. Pattis?

1 MR. PATTIS: So, first, I would like to thank the  
2 government for the chart. It's extremely helpful and makes  
3 this a non-impossible task, but -- and I mean that -- but I'm  
4 not sure that it doesn't make it a fruitless task. Because  
5 from Mr. Biggs' perspective, while we understand the law of the  
6 case and the Court's rulings, you know, we obviously want to  
7 have any exhibit come in through a witness.

8 And then as to that witness, there may or may not be  
9 a 403 claim, depending on the totality of the circumstances.  
10 And the Court may say, Well, you know those circumstances now.  
11 But, by way of example, the Court changed course with respect  
12 to 417X, which I had forgotten there had been a ruling on, and  
13 it was arguably admissible when we began today, but became  
14 inadmissible in the course of the proceeding.

15 Additionally, my concern is the inability to  
16 cross-examine a document. And, so, for example, with respect  
17 to the affect on listeners -- or, the mental state of tools, I  
18 still don't know who these tools are, and it's difficult for me  
19 to conceive of a universe in which a document comes in for its  
20 impact on an unknown listener.

21 And, so, Mr. Biggs' suggested at the end of trial  
22 yesterday, and renews this suggestion, that as the Court  
23 pointed out, because as a legal matter, these issues have  
24 largely been resolved by the use of motions in limine. We  
25 believe the most efficient way to proceed is just to get it on.

1 Put a witness on. Offer the exhibit. And if the  
2 Court were to look at the chart -- I don't know if it has it  
3 before it -- but, for example, the mental state of the  
4 defendant or coconspirators, the Court has ruled. There's a  
5 notation that the ruling's already docketed at ECF 646, at  
6 pages 1 to 2.

7 You know, assuming that's true, the first couple  
8 rulings on this solve themselves. And then the defendant who  
9 continues to object after the Court has overruled the objection  
10 three or four times, or once or twice and, hopefully, does so  
11 at their peril.

12 So my impression is that the most efficient way to  
13 proceed is just to get the witnesses on the stand. We may have  
14 a couple more sidebars than we've had. And we've had a lot,  
15 and I understand that. But, I do believe the issue takes care  
16 of itself in time, given the length of time that it took to  
17 deal with the Parler witness who, I believe, was on for three  
18 days or thereabouts.

19 The Telegram witness is likely to be a week, in any  
20 case. If a day were added to that by proceeding as Mr. Biggs  
21 suggests, that's still a day we're going to spend anyhow, if  
22 we're going to do this outside the presence of a witness on  
23 Monday.

24 So, to me, it is very difficult to make sense of  
25 these issues, absent a witness and absent the context, given



1 the evolving nature of the law of the case. And so our request  
2 would be that we just proceed to evidence on Monday.

3 THE COURT: All right. I don't need to hear a  
4 response from the government on that. Look, the law of the  
5 case -- I've made pretrial rulings on these things. They were  
6 not -- they were not the kind of -- sort of in-the-moment type  
7 of ruling that I was called on to make regarding the document  
8 you're talking about.

9 So, I don't -- I definitely don't want the parties to  
10 think that I'm going to change the things that I've ruled on  
11 already that were the product of a lot of briefing, a lot of  
12 argument, and a considered ruling. So, I just warn everybody,  
13 if I get back something -- I know there are plenty of -- I  
14 mean, what percent there are, I don't know. I know there are a  
15 good number of the documents at issue here, are subject to  
16 rulings I've already made and are likely admissible.

17 If I get back something from the defendants on  
18 Friday, or a particular defendant that just says, We object to  
19 everything, you know, that -- I will give that all due  
20 consideration -- let's -- let me put it that way -- again.

21 So, I hear you, Mr. Pattis. I don't think your  
22 suggestion is unreasonable, but I really do want to try to  
23 minimize the sidebars. And if we can have half a day to -- if  
24 we could reduce the number of sidebars in half, I think that  
25 would be a worthy goal.

1 MR. PATTIS: Final comment, Judge.

2 I've gotten to know you somewhat during the course of  
3 trial and believe you to be fair, and so I don't mean to  
4 suggest otherwise.

5 If we take a position on behalf of Biggs that until  
6 we see the context we reserve, I hope you won't take that as an  
7 act of defiance, suggesting that we don't understand your  
8 rulings. We're not going to lodge frivolous objections, but we  
9 want to reserve the right to make 403 objections as the case  
10 evolves.

11 And the concern I have is that in many of these  
12 documents, the impact on the -- you know, the government may  
13 claim that, We're not offering a statement for the truth of the  
14 matter asserted, but for the impact on the listener, and the  
15 listener may not be here. There may not be a foundation if the  
16 listener had the opportunity even to hear the utterance or make  
17 the utterance.

18 And, so, I -- I don't know how to make these -- I  
19 don't know how to make 200 snap decisions, absent a witness.

20 THE COURT: For the reasons you're laying out, if you  
21 think you can't -- if you think -- well, first of all, I think  
22 the types of -- the scenario you just laid out, I don't think I  
23 have admitted those documents.

24 MR. PATTIS: I don't think you have either.

25 THE COURT: So it wouldn't really matter. And, look,

1 I hear what you're saying. If you think for some reason  
2 there's a contextual reason why you don't think my prior ruling  
3 resolves the issue definitively, okay. I mean, I take you at  
4 your word.

5 MR. PATTIS: Well, as your officer, we'll make our  
6 best effort. But, I approach this with some skepticism because  
7 I think evaluating evidence before an attempt has been made to  
8 offer it is difficult. Understanding legal theories that  
9 govern the Court's decision, that we've done and I understand  
10 those decisions.

11 THE COURT: But, I mean, I just say, Mr. Pattis, it's  
12 certainly a very -- the procedure we're employing here is not  
13 an uncommon procedure in federal criminal or civil litigation.  
14 So, yes, I understand there might be an issue or two where the  
15 context is confusing, and particularly given the particular  
16 theory you just referenced. But, I think there will be many  
17 documents where that's not the case.

18 Mr. Smith?

19 MR. SMITH: Thank you, Your Honor.

20 I just wanted to make a comment about Your Honor's  
21 point about what the Court expects to see from the defendants,  
22 and we anticipate filing a spreadsheet with the Court that  
23 breaks down an objection on -- by each statement and each  
24 government exhibit that was provided in the PDF that Mr. Mulroe  
25 created.

1 In terms of how many disputes the Court can expect to  
2 see, we would note that it may be significant, notwithstanding  
3 the Court's pretrial rulings. And for this reason, if Your  
4 Honor looks at the chart that the government provided, it will  
5 see that for the first dozen or more exhibits, the government  
6 is not making an argument on admissibility as to conspirator  
7 statements, which was the heaviest amount of briefing that the  
8 parties had before trial, and that's because a lot of these  
9 statements are made between September 2020 and December.

10 THE COURT: Yes.

11 MR. SMITH: So Your Honor might actually see lots and  
12 lots of disputes on a statement-by-statement basis for that  
13 reason, because the government is not even asserting  
14 coconspirator statements for a lot of them, Your Honor. So I'm  
15 just letting the Court know in advance, it might see a lot of  
16 disputes on these statements.

17 THE COURT: Well, at least as to those early --  
18 temporally those early --

19 MR. SMITH: Yeah. And I just wanted to let the  
20 Court -- when the Court says "early ones," that is a great many  
21 statements, Your Honor.

22 THE COURT: Maybe a third?

23 MR. SMITH: Maybe a third, or perhaps more.

24 But then, Your Honor, on the coconspirator statement  
25 with witness -- this is the last point, Your Honor -- Your

1 Honor was absolutely correct, and we agree that the pretrial  
2 ruling was kind of an announcement of a general principle that  
3 might apply to these statements, but then the devil in the  
4 details would be that to get to be a coconspirator statement,  
5 the statement has to be in furtherance, which is a  
6 fact-specific inquiry.

7 THE COURT: Of course. Okay. Fair.

8 MR. SMITH: So we're just alerting the Court that  
9 even on the coconspirator statements there could be lots of  
10 disputes, Your Honor.

11 THE COURT: Understand.

12 MR. SMITH: Thank you.

13 THE COURT: That's not unreasonable.

14 Any comment from all of -- on that way forward from  
15 the government? Which I think gives you a little more  
16 certainty in terms of your witness and your ability to plan.

17 MR. McCULLOUGH: Yes. I mean, I'll say, very much  
18 appreciate the Court's consideration of this and considering  
19 the issues. Just to -- we went back over the lunch break and  
20 just looked at kind of where we are in terms of the exhibits  
21 and kind of what had been -- what universe we're actually  
22 talking about.

23 And I agree that -- may lightening not strike us all,  
24 I agree with Mr. Smith, I agree with Mr. Pattis, the devil is  
25 in the details here. So, we agree with that, that, you know,

1 kind of, you have to actually look at the documents to figure  
2 out what the ruling is going to be.

3 I do think that because much of this is -- you know,  
4 we're not talking about hearsay statements. We're talking  
5 about, you know, other issues which, I think, Your Honor has  
6 ruled on. I think we can clear away a lot of the underbrush.  
7 I think that we have a -- a habit every once in a while of  
8 jumping to the most difficult problems as opposed to solving  
9 the easier ones immediately ahead of us.

10 We produced a total of 569 Telegram exhibits, 104 of  
11 those are from the Ministry of Self-Defense leadership group.  
12 So, I mean, you know, almost -- close to a fifth, you call it a  
13 sixth of that group, 140 additional are from the MOSD  
14 membership group.

15 So, I mean, in terms of the universe as we've defined  
16 it since November, half of this stuff is really, you know, kind  
17 of the core of the case. And I would hope that we can have,  
18 you know, a good-spirited debate. I hope that we come out on  
19 top on Monday. I just think that you've given us a path  
20 forward that I think -- I think we'll get there, and I  
21 appreciate it.

22 THE COURT: Okay. You know, I do think it -- all  
23 right. And I'll just say to the extent -- again, I'll get that  
24 document by 6 o'clock on Friday, the various responses.

25 And, Mr. Smith, you don't have to -- I mean, you can

1 just email to chambers. You don't have to file it on the  
2 docket, if you don't want to. The government's chart wasn't  
3 filed on the docket, so, you know, I don't think -- this could  
4 be just done by email, as an aid to all of us to see where the  
5 disputes lie, and we'll see how far we get.

6 But, I think that gives you a little more certainty  
7 on your witnesses. It gives you a -- you know, we'll have a  
8 trapdoor for Tuesday, in case we aren't all the way through or,  
9 who knows what, you'll be able to put on somebody else. And  
10 shortly thereafter, one way or the other, I think I'll have  
11 resolved this and we'll move forward.

12 All right. So -- and I'll also just let everyone  
13 know, today is a day when, also, we do have to wrap with the  
14 jury at 5 o'clock. Just so you all -- just so you all know  
15 that.

16 So, with any -- without further ado, if we can bring  
17 the witness back.

18 And, Ms. Harris, if you can bring the jury back in.

19 (Whereupon the jurors enter the courtroom.)

20 THE COURT: You all may be seated. Welcome back,  
21 ladies and gentlemen. Before we continue, a couple of just  
22 scheduling notes. Per our at least partly usual schedule, we  
23 will not sit tomorrow. I think that was your expectation at  
24 this point, but just to confirm that.

25 And then, we are not going to sit on Monday. This

1 Monday, we are not going to sit. We're going to -- we'll do  
2 some -- we'll all do some homework to try to make sure we  
3 minimize the interruptions going forward one way or the other.  
4 So, we have some things we need to talk about outside your  
5 presence. We're going to do that on Monday, hopefully, and  
6 we'll resume on Tuesday.

7 All right. Mr. Mulroe, you may proceed.

8 DIRECT EXAMINATION (Cont.)

9 BY MR. MULROE:

10 Q. Officer Cooney, before the lunch break you were telling us  
11 about the black fence, and we saw some videos. I would like to  
12 show just a little bit more of one of those videos.

13 Ms. Rohde, if we could have 492G, starting at the  
14 4-minute-and-25-second mark.

15 You remember where we paused it there, Officer?

16 A. Yes.

17 Q. Ms. Rohde, let's play another minute and a half or so of  
18 the video.

19 (Video played.)

20 We could pause it.

21 So, I'm going to draw the line from the post -- black  
22 post that's kind of in the middle of the screen.

23 Had there been a fence here previously?

24 A. Yes.

25 Q. And is that gone at this point?



1 A. Yes.

2 Q. What's happening to the fence on the other side of the  
3 post?

4 A. The people right there are grabbing the fence and pulling  
5 it backwards.

6 Q. Okay. Continue the video.

7 (Video played.)

8 Now, if we pause it there at 5:45.

9 What's happening to the panel of fence that we see in  
10 this part of the video?

11 A. So they're ripping it apart and gaining access beyond the  
12 fence.

13 Q. And as we see the people here at 5:45 pulling on the fence,  
14 does that give us a sense of sort of the structural integrity  
15 and characteristics of the fence?

16 A. Yes.

17 Q. Let's play another 30 seconds, Ms. Rohde.

18 (Video played.)

19 All right. We can stop at 6:19.

20 And moving past the fence, Officer, you were telling us  
21 right before lunch about what was happening on the West Plaza,  
22 and I think the last question I asked you was whether members  
23 of the crowd were throwing things at an officer.

24 A. Um-hum. Yes.

25 Q. What's the answer to that question?

1 A. So, they were throwing, actually, bits and pieces of that  
2 fence. They were taking the individual poles on the fence and  
3 throwing those at us, water bottles. They were hitting us with  
4 flagpoles. Anything that they had that they brought with them,  
5 or the fence, they were throwing at us.

6 Q. What other types of things had they brought with them?

7 A. We saw many people with baseball bats, flagpoles, makeshift  
8 poles that they were using to carry flags. They were hitting  
9 those with -- those flagpoles onto us. We had many water  
10 bottles that were frozen that were being thrown at us.

11 Q. Were there any water bottle that were not frozen that were  
12 being thrown at you?

13 A. Yes.

14 Q. So, when you say "water bottles," that's just kind of a  
15 standard plastic?

16 A. Yeah, standard plastic water bottle. Some were filled with  
17 water, and then we saw other water bottles that were colored  
18 yellow.

19 Q. And for just a normal plastic water bottle with water in it  
20 to be thrown at you as an officer, does that cause any concern  
21 or threat to you?

22 A. It does for a little bit. Just because we see them  
23 throwing things, it's a matter of concern of what it could lead  
24 after that.

25 Q. And to have a bottle flying at you like that, does that

1 have any affect on your ability to deal with what is right in  
2 front of your face?

3 A. Yes.

4 Q. How so?

5 A. When dealing with someone that's right in front of you and  
6 then having a water bottle or some sort of object being thrown,  
7 either from behind you or to the side, it distracts you from  
8 what's in front of you.

9 Q. Now, you talked about the crowd generally and officers  
10 generally. Were you, personally, the victim of anything thrown  
11 or any other kind of attack?

12 A. Yes.

13 Q. Tell us.

14 A. I had a couple water bottles hit me. We had -- those black  
15 poles, I was hit in the head with those. We were hit with Thin  
16 Blue Line flags, American flags, personally.

17 Q. Officer, I want to direct you to a point in the map that's  
18 marked with the Breach 3 sticker. Can you see there's an arrow  
19 pointing?

20 A. Breach 3?

21 Q. Breach 3.

22 A. Correct.

23 Q. Do you recognize what that's pointing to?

24 I know it's kind of stylized, but given the setup of  
25 things on the 6th, do you see what that's pointing to?

1 A. Yes.

2 Q. What's that?

3 A. That would be the Senate side of the Lower West Terrace  
4 stairs.

5 Q. And are you familiar with that location?

6 A. Yes.

7 Q. Is there any significance to that set of stairs?

8 A. So, those stairs are off limits to the public on every day.  
9 They were shut down after 911, so only staff, members of  
10 Congress are allowed up those stairs. And up those stairs is  
11 where you can gain access to the building itself.

12 Q. When you were out there working on the west front of the  
13 Capitol, were you ever in a position to see those stairs?

14 A. Yes.

15 Q. Based on what you could see on the west front, did there  
16 come a time when you had some concern about those stairs?

17 A. Yeah. We saw people getting close to the opening of the  
18 stairs, where the scaffolding was being put up from  
19 construction of the inaugural stage, and we saw officers  
20 forming a line to keep the crowd from entering the tunnel of  
21 the scaffolding.

22 Q. Why is that concerning to you?

23 A. So, the first level up those stairs is where the Lower West  
24 Terrace door is located, and that is the first entry into the  
25 Capitol building.

1 Q. When you saw this happening, did you take any action in  
2 response?

3 A. Yes.

4 Q. What did you do?

5 A. So, as we saw people moving towards that opening, we had  
6 officers and myself moving towards that area to build a  
7 stronger line of officers.

8 Q. Ms. Rohde, if we could play Government 380 that's in  
9 evidence.

10 If we could publish that.

11 (Audio played.)

12 Do you recognize the voice, officer?

13 A. Yes. That's me.

14 Q. That's you?

15 A. Yes.

16 Q. Why did you send that transmission over the radio?

17 A. So, we had them breaching the scaffolding that was on the  
18 Senate side of the Lower West Terrace steps, and they started  
19 climbing onto the scaffolding and breaching that area.

20 Q. Ms. Rohde, if we could have 492A, please -- I'm sorry --  
21 429A.

22 429A, which, I believe, is in evidence.

23 THE COURTROOM DEPUTY: I'm not showing that it was  
24 admitted. I'm showing that it was IDed by Mr. Greene, but not  
25 admitted.

1 MR. MULROE: All right.

2 THE COURTROOM DEPUTY: 429A.

3 MR. MULROE: 429 alpha.

4 THE COURTROOM DEPUTY: Yes. I'm showing that it  
5 wasn't admitted, but it was identified.

6 MR. SMITH: No objection.

7 MR. MULROE: Thank you, Ms. Harris.

8 We'd offer the exhibit at this time.

9 THE COURT: It will be admitted, and permission to  
10 publish.

11 BY MR. MULROE:

12 Q. Seeing the pause at the beginning, Officer, do you  
13 recognize the scene here?

14 A. Yes.

15 Q. What do we see with this white tarp and this -- kind of the  
16 rectangular opening in it?

17 A. So, that is the opening that they used pretty much for us  
18 to go down to post and to bring supplies in. So, that opening,  
19 if you go up the stairs where the officers are in the back,  
20 there's a makeshift door that they are able to use back and  
21 forth through that scaffolding.

22 Q. And as we see this area in the video, where you were  
23 positioned on the west front, were you looking from this same  
24 angle or from a different angle?

25 A. I was looking to the side.

1 Q. Could you, nonetheless, see what was happening in this  
2 area?

3 A. Yes.

4 Q. Let's play the video.

5 (Video played.)

6 Officer, what did we see happen at the stairs?

7 A. The breach of the scaffolding on the Lower West Terrace  
8 Senate side.

9 Q. Show you a different angle. Exhibit 451, which, I believe,  
10 is in.

11 (Video played.)

12 We're going to play that and pause it at about 29  
13 seconds.

14 (Video played.)

15 And paused at 29 seconds. Officer, I want to direct you  
16 to what we saw, kind of a stream pattern on the screen. Did  
17 you see that?

18 A. Yes.

19 Q. Do you know what that is?

20 A. We -- most likely, some sort of OC spray.

21 Q. What's OC spray?

22 A. OC spray is what us officers have on our duty belts, pepper  
23 spray, and it's what we use when dealing with large crowds in a  
24 unruly manner.

25 Q. And on January 6, were officers the only ones deploying OC

1 spray?

2 A. No. They were also -- they were also spraying us.

3 Q. Members of the crowd?

4 A. Yes.

5 Q. Play Exhibit 382, which is in evidence.

6 (Audio played.)

7 Do you recognize the voices in that clip?

8 A. Yes.

9 Q. Who was in there?

10 A. Me and Captain Graves, I believe.

11 Q. Officer Cooney, did there come a time that day when you  
12 learned the building itself had been breached?

13 A. Yes.

14 Q. How do you learn that?

15 A. We had an officer go over the air that the Capitol building  
16 itself had been breached.

17 Q. Exhibit 388, please.

18 (Audio played.)

19 What did you do when you heard that?

20 A. We were retreating back up the Upper West Terrace stairs to  
21 the very top, and at that point, I went inside.

22 Q. And, officer, without going into all the details of the  
23 rest of the day, did you respond to different parts of the  
24 Capitol building?

25 A. I did.



1 Q. Were you still at the Capitol when the certification  
2 proceedings stopped?

3 A. Yes.

4 Q. Were you still at the Capitol when the certification  
5 proceedings resumed?

6 A. Yes.

7 Q. And were you still at the Capitol when the certification  
8 proceedings ultimately concluded?

9 A. Yes.

10 Q. What time did you go home that night?

11 A. I clocked out at 4:30 in the morning.

12 Q. Were you scheduled to work the next day?

13 A. Yes.

14 Q. Did your supervisors tell you any specific time you were  
15 supposed to be there?

16 A. For the most part, they told everyone to be back at 7 a.m.  
17 They told officers who were drafted to stay until Congress was  
18 done, to try and take eight hours before coming back.

19 Q. And so you stayed there until 4-something, you said?

20 A. Um-hum.

21 Q. What were you doing until 4 in the morning?

22 A. I'm trained in the M4 rifle, and when Congress is in  
23 session, they have us up at the Upper House and Upper Senate  
24 landings. So, I was in charge of the Upper House landing with  
25 the M4, going back and forth with a few officers.

1 Q. And after you left that night, did you actually come back  
2 after eight hours?

3 A. No.

4 Q. What happened?

5 A. I came back about maybe five hours later, after getting  
6 about two hours of sleep and taking a shower.

7 Q. Why did you come back early?

8 A. Didn't feel right to take too much time off between the  
9 last shift and my next shift.

10 MR. MULROE: Nothing further, Your Honor.

11 THE COURT: All right. Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. SMITH:

14 Q. Good afternoon, Officer.

15 A. Hello.

16 Q. I'm just going to ask you a few questions about some of the  
17 videos we saw, and then I'll be done.

18 Officer, you testified about a video that was marked  
19 Government Exhibit 417X. And I'm going to --

20 MR. SMITH: It's 417X. Thank you.

21 THE COURTROOM DEPUTY: 417X is not in.

22 MR. SMITH: So I'm going to publish.

23 MS. HERNANDEZ: I'm sorry, I believe 417 was  
24 introduced, not 417X.

25 MR. SMITH: Thank you, Ms. Hernandez.

1 BY MR. SMITH:

2 Q. I'm going to put on the screen what's been marked as  
3 Government Exhibit 417X, which is, I believe, a shorter version  
4 of Government's Exhibit --

5 MS. HERNANDEZ: Your Honor, could we have a bench  
6 conference?

7 MR. SMITH: Your Honor, if it will speed things up,  
8 I'll use 417.

9 THE COURT: All right.

10 MR. SMITH: Okay.

11 Actually -- so, Your Honor, 417, in the defense  
12 production, is vertical -- vertical rather than horizontal, and  
13 417X is a horizontal version of 417.

14 So, would you have any objection to 417X?

15 MR. MULROE: She may. We don't.

16 THE COURT: Is there a way to simply use -- the  
17 version the government played was horizontal, I thought.

18 MR. SMITH: Correct. But, in the way that it was  
19 produced to the defendant, it's vertical. So I can represent  
20 to Ms. Hernandez it's the same video, just horizontal.

21 MS. HERNANDEZ: Can we have a side bar?

22 THE COURT: Ms. Hernandez, you need to have a  
23 microphone. The court reporter just --

24 MS. HERNANDEZ: I'm sorry, Your Honor.

25 THE COURT: Yes. All right. Let's have just a quick

1 sidebar that, hopefully, will resolve this.

2 (Bench discussion:)

3 MS. HERNANDEZ: The Judge excluded 417X because it  
4 has outlines of my client that I object to. And the witness  
5 did not -- did not identify anybody, and the government played  
6 417.

7 MR. SMITH: So, 417 in ours, Ms. Hernandez, is  
8 vertical, so I can't play it to the jury. But, I'm not playing  
9 the sections with your client in it or referencing your client.  
10 So, I have to be able to cross-examine the witness on a video  
11 that she was shown. If I rely on the government to do it, then  
12 I won't be able to indicate where I want to go forward.

13 THE COURT: Can we just do this: Since he's not  
14 going to reference, why doesn't Mr. Smith just say, It's  
15 Government's Exhibit 417, the one that's in evidence? But,  
16 because he's not going to -- I mean, will -- actually, will any  
17 of the portions of it show any outlines, Mr. Smith?

18 MR. SMITH: Your Honor, I'm just freezing it for a  
19 moment on an image that shows my client, not Mr. Rehl. So,  
20 I --

21 THE COURT: I mean, I don't --

22 Ms. Hernandez, is that acceptable to you? They're  
23 not going to -- they're not going to see the -- anything about  
24 your -- the issue with your client won't come up at all.

25 MS. HERNANDEZ: Obviously, I'll take his word for it.

1 I don't want to open that door. The Court made a ruling, so,  
2 I'm not sure what happened -- what's happening here.

3 MR. SMITH: That is not a scene involving Mr. Rehl.  
4 This is just a scene involving the steps, with Mr. Nordean  
5 walking up the steps. It doesn't show Mr. Rehl.

6 THE COURT: All right. Does any defendant object to  
7 just -- we'll reference this as part of Exhibit 417, the one  
8 that is in? And even though it technically is part of  
9 another exhibit, it's the exact same thing as Exhibit 417, as  
10 far as what the jury is going to see.

11 Is there any objection to that?

12 And, Ms. Hernandez, you can jump up and object if  
13 anything contrary occurs.

14 MS. HERNANDEZ: Thank you, Your Honor.

15 THE COURT: But please do use the microphone, if you  
16 do.

17 (Open court:)

18 MR. SMITH: Ms. Harris, I'm going to put up an  
19 exhibit, but before it's published, I'm just going to go to a  
20 specific section for a witness.

21 Okay. So, permission to publish a version of  
22 Government Exhibit 417 at the 43-second mark.

23 THE COURT: All right. Permission is granted.

24 BY MR. SMITH:

25 Q. So, Officer, I've got a section of Government Exhibit 417

1       that you testified about, showing a flight of stairs here. I'm  
2       just going to zoom forward just a little bit here so you can  
3       get your bearings.

4               Do you recognize that image?

5       A. Yes.

6       Q. And is that you that I'm circling in green on the screen?

7       A. Yes.

8       Q. Okay. And I'm going to go forward here to the point where  
9       you're -- so at this moment, I'm going to circle an individual  
10      with a backwards black baseball cap in green, and then circle  
11      another individual who appears to be a U.S. Capitol Police  
12      officer in green.

13             Do you see those two figures?

14      A. Yes.

15      Q. And is the figure, the Capitol Police officer, the captain  
16      you're referring to?

17      A. Yes.

18      Q. And is he directing the individuals, including the  
19      individual with the black baseball cap, to stop and not move  
20      forward?

21      A. Yes.

22      Q. And should that individual with the black baseball cap have  
23      stopped?

24      A. Yes.

25      Q. Okay. Now, I'm going to zoom forward a little bit. And

1 I'm not trying to hide anything by playing it this way. I'm  
2 just being sensitive to a defense objection here.

3 (Video played.)

4 So, I'm going to circle two figures again.

5 Do you see the man with the black baseball cap?

6 A. Yes.

7 Q. And do you see yourself circled in green as well?

8 A. Yes.

9 Q. And it looks like you're gesturing to the man in the black  
10 baseball cap to stop, correct?

11 A. Yes.

12 Q. Should he have stopped?

13 A. Yes.

14 (Video played.)

15 Q. So, I'm pausing it here again. Again circling the man in  
16 the black baseball cap. It appears that he proceeded,  
17 notwithstanding you telling him to stop, correct?

18 A. Correct.

19 Q. And did he -- it appears that he then moved up onto the  
20 landing that's on the other side of the stairs?

21 A. Correct.

22 Q. And should he have gone there?

23 A. No.

24 Q. Okay.

25 So, Officer, you testified that -- so, was it -- did it

1 interfere with you for those individuals to go up the stairs?

2 A. Yes.

3 Q. Okay. Would it have interfered with you -- it wouldn't --  
4 would it have not interfered with you in the same way if they  
5 had remained at the bottom of the stairs?

6 A. They were still in an area that was not allowed to be in.

7 Q. The restricted area you're referring to?

8 A. Yes.

9 Q. But would it have interfered with you in the way that you  
10 were testifying about?

11 A. No.

12 Q. Okay. So, I'm going to bring up what's been marked as  
13 Government Exhibit 492 -- well, actually, let's go back to 417  
14 for one second there because you -- you refer to "agitators," I  
15 think, in that clip, and I want to drill down on that point  
16 just a little bit.

17 MR. SMITH: Permission to publish that again.

18 Sorry for that, Ms. Harris.

19 THE COURT: Permission granted.

20 BY MR. SMITH:

21 Q. So, you said that some of these individuals here, including  
22 the man with the black baseball cap I've circled in green, were  
23 agitating, right?

24 A. Yes.

25 Q. And you said that some of them were screaming things like



1 "pigs" and "traitors."

2 Do you remember that?

3 A. Yes.

4 Q. Do you remember if this man with the black baseball cap  
5 shouted "pigs" or "traitors" at you?

6 A. Yes.

7 Q. He did?

8 A. Mm-hmm.

9 Q. You remember him saying that?

10 A. We all heard him. They were both yelling in that area,  
11 yes.

12 Q. In what area?

13 A. In that area right where you circled.

14 Q. Okay. And how do you remember him saying "pigs" or  
15 "traitors" to you?

16 A. Because it was one of the first words that was said to me  
17 that day.

18 Q. The man with the black baseball cap?

19 A. Yes.

20 Q. Okay. And how do you know it was him that said it and not  
21 someone else?

22 A. Because he looked right at me.

23 Q. He did?

24 A. Um-hum.

25 Q. Okay. I'm going to show you a different -- I'm going to

1 pull this down, and I'm going to bring up another exhibit that  
2 you looked at. It was Government Exhibit 452.

3 MR. SMITH: So, permission to publish Government  
4 Exhibit 452.

5 THE COURT: Yes. It's already in evidence.

6 (Video played.)

7 BY MR. SMITH:

8 Q. Okay. Do you -- Officer, do you remember testifying about  
9 this scene? I'll just play a couple seconds of it here.

10 This looks like it's the same -- a few minutes after the  
11 moment when the man in the black baseball cap is walking up the  
12 stairs, and this is right in front of the -- the inaugural  
13 platform.

14 (Video played.)

15 Do you remember that, testifying about that scene?

16 A. Yes.

17 Q. And you witnessed this yourself, right?

18 A. Yes.

19 Q. Okay. So I'm going to go to 1 minute and 18 seconds -- 17  
20 seconds, and I'm going to circle someone again.

21 (Video played.)

22 Can you see an individual with a black baseball cap and  
23 glasses?

24 A. Yes.

25 Q. Do you recognize that to be the man who shouted that thing

1 at you?

2 A. Yes.

3 Q. Okay. So, I'm going to ask you to watch him in relation  
4 to -- let me clear that and ask you about this figure right  
5 here (indicating), who has got a blue jacket on and a helmet.

6 Can you see him?

7 A. Yes.

8 Q. Okay. Now, I'm going to move this forward a little bit  
9 because this is quick, from this angle.

10 (Video played.)

11 But, do you see -- do you see this -- the figure in blue  
12 sort of interacting with someone in front of him here?

13 A. Yes.

14 Q. And does that appear to be a police officer?

15 A. Yes.

16 Q. And does it appear that this individual in the blue jacket  
17 is confronting that officer?

18 A. Yes.

19 Q. Now I'm going to play it, and it's -- it's -- let's play it  
20 here.

21 (Video played.)

22 Do you see how he's kind of -- looks like he's maybe  
23 gesturing aggressively at the officer?

24 A. Yes.

25 Q. Now I'm going to move forward here.

1 (Video played.)

2 And stop it right here.

3 Do you see this figure with the black backwards baseball  
4 cap?

5 A. Yes.

6 Q. Do you see that his arm -- it seems to be reaching out and  
7 maybe taking ahold of this figure in blue?

8 A. Possibly.

9 Q. Okay. So, let's watch this kind of -- we don't have the  
10 slow motion technology on this side, but we can watch this  
11 again here.

12 (Video played.)

13 And did you see him sort of -- do you see the figure  
14 with the black baseball cap sort of grab this person?

15 Here, I'll do it again.

16 (Video played.)

17 A. Possibly.

18 Q. Okay. So I'm going to take this down and show you a  
19 different angle of that, and I'm going to ask you whether this  
20 is still the figure that you believe was -- the man in the  
21 black baseball cap was shouting hostilities towards law  
22 enforcement.

23 MR. SMITH: So this is Nordean Exhibit 317. This is  
24 admitted. I'm going to -- permission to publish.

25 THE COURT: Permission is granted.

1 (Video played.)

2 BY MR. SMITH:

3 Q. Well, let me just -- you haven't seen this video yet, so  
4 I'm going to show you -- just allow you to get your bearings  
5 here.

6 Do you see these officers gathered down here in the  
7 circle I've made in green?

8 A. Yes.

9 Q. Does that appear to be the same location we were looking at  
10 from a different angle?

11 A. Yes.

12 Q. Okay. So I'm going to go back a few seconds.

13 (Video played.)

14 And pause it here.

15 And do you see this person I'm circling in green?

16 A. Yes.

17 Q. Did that -- does that appear to be the same figure in the  
18 last government exhibit we were looking at?

19 A. Yes.

20 Q. Okay. And I'm going to clear that.

21 And do you see this person with the black backwards  
22 baseball cap?

23 A. Yes.

24 Q. Do you see how he's grabbing this figure?

25 A. Yes.

1 Q. Does that appear to be sort of the same scene we were  
2 looking at, but from a different angle?

3 A. Yes.

4 Q. Okay. So, I want you to just watch these two people here  
5 for one second.

6 (Video played.)

7 Now I want you to watch the person in blue, because he  
8 appears to be pushing this police officer in this clip, but I  
9 want to get you to see if you can agree.

10 (Video played.)

11 Did you see that?

12 A. Yes.

13 Q. And does it look like the person with the black backwards  
14 baseball cap is grabbing the individual in blue to stop him?

15 A. Possibly.

16 Q. Well, I'll let you watch it again.

17 (Video played.)

18 Did you see it in that one?

19 A. Yes.

20 Q. Does it look like the person in the black backwards  
21 baseball cap is stopping him from pushing the police officer?

22 A. Yes.

23 Q. Okay. Now, do you see how the individual in the black  
24 backwards baseball cap has got a -- something under his neck  
25 that looks black and yellow?

1 A. Yes.

2 Q. Okay. Does that look like a neck gaiter to you?

3 A. Yes.

4 Q. And you also see how he's wearing black sunglasses?

5 A. Yes.

6 Q. Do you -- is it fair -- well, I'll give you an example.

7 Do you see this second individual I'm drawing in green?

8 A. Yes.

9 Q. Is he also wearing a black gaiter?

10 A. Yes.

11 Q. Neck gaiter?

12 Now, is fair to say a lot of people were wearing neck  
13 gaiters that day?

14 A. Yes. It was cold.

15 Q. Were a lot of people wearing sunglasses? I'll just circle  
16 maybe -- just off the top of my head, maybe three more right  
17 there with sunglasses?

18 A. Yes.

19 Q. Were a lot of people wearing backwards baseball caps, or  
20 baseball caps generally? Like, I mean --

21 A. Yes.

22 Q. Is it possible that you are remembering a different person  
23 when you say this man with the black baseball cap shouted "pig"  
24 at you?

25 A. No.

1 Q. It's not possible?

2 A. No, it's not possible.

3 Q. Okay. So I'm going to go to some other questions.

4 So, you testified about Government Exhibit 492G, which  
5 is the scene where -- the slow motion scene where we can see  
6 the fence being pulled down. I'm going to bring that up.  
7 Let's see. Okay. We'll go to three minutes here.

8 This is Government Exhibit 492G.

9 (Video played.)

10 I'm just going to play a little bit of this clip,  
11 Officer, so you can see if you remember testifying about this  
12 video.

13 (Video played.)

14 This is slow motion clip.

15 Do you recall testifying about that scene?

16 A. Yes.

17 Q. Okay. And you are around this part of this -- on this  
18 flight of stairs where I drew the green line (indicating)?

19 A. Yes.

20 Q. Okay. Now, the government asked you about 3 minutes and 50  
21 seconds in this clip, which begins, I guess, about right here  
22 (indicating). And I'll play it at 3 minutes and 50 seconds.

23 (Video played.)

24 And I'm continuing to play this.

25 (Video played.)



1           And you saw that Mr. Nordean -- or, excuse me -- the  
2           individual with the black backwards baseball cap is touching  
3           the fence there, right? Do you remember testifying about that?

4           A. Yes.

5           Q. Okay. So, the government didn't show you -- ask you to  
6           testify about 20 seconds before that clip. So I'm going to ask  
7           you to watch this segment.

8           (Video played.)

9           And do you see the individual carrying a -- holding a  
10          camera aloft with his arms there?

11          A. Yes.

12          Q. And do you see how there's an individual you can see  
13          between -- inside the circle of his arms who is wearing a black  
14          beanie cap and a neck gaiter? Do you see that?

15          A. Yes.

16          Q. Okay. So, I'm going to ask you to watch that person for a  
17          second -- watch that person's actions for a second.

18          (Video played.)

19          Did you see what that person was doing?

20          A. Not really.

21          Q. No? Did it look like he's rocking backwards and forwards?

22          A. Possibly, yes.

23          Q. Okay. I'll ask you to watch it one more time, just so you  
24          can see.

25          (Video played.)

1 Did you see that motion?

2 A. Yes.

3 Q. Does he appear to be pulling back on something?

4 A. Yes.

5 Q. Okay. I'll ask you to do it again because I think he takes  
6 another turn here.

7 (Video played.)

8 Did you see him pull back again?

9 A. Yes.

10 Q. Okay. Now I'm going to ask you a slightly separate  
11 question right here at the same time, which is: When he's  
12 pulling back, this individual right here (indicating), I'm  
13 going to ask you to look at what happens to the people who are  
14 at the front line of the gate right here where I've drawn a  
15 green line.

16 Do you see how that's, like -- where I've drawn the line  
17 is where individuals are standing right next to the gate?

18 A. Yes.

19 Q. Now, I'm going to ask you to watch their body movements as  
20 the person I've circled in green rocks backwards and forwards.  
21 Okay? Can you follow -- do you see what I'm saying?

22 A. Yes.

23 Q. It's --

24 (Video played.)

25 Did you see how this line all moved back in unison?

1 A. Yes.

2 Q. And did they move back in unison after that individual was  
3 pulling backwards?

4 A. Yes.

5 Q. Does it look like he's pulling the fence into them?

6 A. Yes.

7 Q. Now, do you see this -- the person I've circled with a  
8 black baseball cap?

9 A. Yes.

10 Q. Is that -- from your understanding of watching these videos  
11 with the government, is that the same individual that we were  
12 talking about in the previous videos?

13 A. Yes.

14 Q. So I'm going to bring up one more exhibit that you  
15 testified about, which was Government Exhibit 445BX. 445BX.

16 And I'm going to ask to publish this to the jury.

17 This is a -- okay.

18 (Video played.)

19 I'm going to pause it here.

20 And do you recognize this scene?

21 A. Yes.

22 Q. And do you remember testifying about this video from this  
23 angle?

24 A. Yes.

25 Q. Okay. Now, I'm circling a figure with a black backwards

1 baseball cap. Does that look like the same person we've been  
2 talking about in these videos?

3 A. Yes.

4 Q. Okay. Now I'm going to move forward a little bit.

5 (Video played.)

6 And we can see this individual here. Again, that's the  
7 man with the black backwards baseball cap I've circled in  
8 green?

9 A. Yes.

10 Q. Okay. And does it look like he's drinking a beverage  
11 there?

12 A. Yes.

13 Q. Okay. Does it look like he's at the front line of the  
14 fence that we've been watching in the other videos?

15 A. Yes.

16 Q. Okay.

17 (Video played.)

18 Now he's -- so, right here we have him highlighted  
19 again, and it looks like he's at the front line still, right?  
20 He's right next to the fence right there, right?

21 A. Yes.

22 Q. Okay.

23 (Video played.)

24 Now I'm going to move it forward just a little bit in  
25 the timestamp here in the government's exhibit.

1           And we could almost miss it when the government was  
2           playing it for you. I'm going to -- now, looks like the same  
3           person is right up against the fence right here, right?

4           A. Yes.

5           Q. Do you see where I've circled in green?

6           A. Yes.

7           Q. It looks like he's holding a can there, right?

8           A. Yes.

9           Q. Okay. So, is he holding the fence right there?

10          A. No.

11          Q. Okay. Now, does this appear to be about the same timeframe  
12          when -- in the previous video we watched an individual who is  
13          rocking back and forth and pulling the fence. Do you remember  
14          that person with the black and white neck gaiter?

15          A. Yes.

16          Q. Does this appear to be about the same time to you?

17          A. Possibly.

18          Q. Okay.

19                 (Video played.)

20                 So then we saw a moment in this video when we can't  
21                 really see what's going on here, but I'll play it at this  
22                 point.

23                 (Video played.)

24                 Okay. Now, did you -- did you see that the man with the  
25                 black baseball cap sort of stumbles backwards here for a

1 second?

2 A. Yes.

3 Q. Let's watch that again.

4 (Video played.)

5 Did you see how he kind of jerked back right there?

6 A. Yes.

7 Q. Does that remind you of the moments in the video we were  
8 watching before, when the person in the black gaiter was  
9 pulling the fence and there was a line of individuals at the  
10 fence who were kind of rocked back in unison?

11 A. Yes.

12 Q. Does that look like the same moment to you?

13 A. Possibly.

14 Q. Okay. Just watch it one more time.

15 (Video played.)

16 Did you see that all of a sudden it's like he's a  
17 marionette, he's pulled back by a string there?

18 A. Yes.

19 Q. Okay. Now, I'm going to skip forward just a little bit  
20 here.

21 And you can see that he's now standing right there  
22 (indicating), and there's no fence at this point, right?

23 A. Yes.

24 Q. Now, we just go to the very end, and you could almost miss  
25 it.

1 (Video played.)

2 And what's there on the ground? I'll let the  
3 timestamp move away.

4 A. The can.

5 Q. Let's let -- sorry. I just got to move the cursor.

6 What's that on the ground that's circled in green?

7 A. The can.

8 Q. Okay. Does it look like the can is falling there? Let's  
9 see here. Let's watch this.

10 (Video played.)

11 Did you see the can moving?

12 A. Yes.

13 Q. Is -- does that look like the same can that the person was  
14 holding before in one of his hands?

15 A. Yes.

16 Q. Okay. So, Officer, one question that the government didn't  
17 ask you is -- so you -- scratch that.

18 You testified that some people were throwing bits and  
19 pieces of the fence that came down there, right?

20 A. Yes.

21 Q. Did you see the defendant with the black hat throwing the  
22 fence?

23 A. No.

24 Q. Okay. You testified that some -- you saw some individuals  
25 throwing water bottles, and at you, specifically, right?

1 A. Yes.

2 Q. Did you see the man with the black hat throwing water  
3 bottles?

4 A. No.

5 Q. Did you see him encouraging other people to throw a fence?

6 A. No.

7 Q. Did you see him encouraging other people to throw water  
8 bottles?

9 A. No.

10 Q. You also referenced the use of flagpoles and baseball bats.

11 A. Yes.

12 Q. Protestors using those on police officers.

13 A. Yep.

14 Q. Did you see the individual with the black baseball cap  
15 using a flagpole or a base -- a flagpole or a baseball bat?

16 A. No.

17 Q. Did you see him encouraging other people to do that?

18 A. No.

19 Q. Did the individual in the black baseball cap strike you  
20 with something?

21 A. No.

22 Q. Did you see him encourage someone to strike you with  
23 something?

24 A. No.

25 Q. I'm going to bring up what's been marked as Government



1 Exhibit 429A.

2 Okay. And permission to publish that.

3 (Video played.)

4 Officer, can you see this scene in -- do you remember  
5 testifying about this scene, which is directly behind the  
6 stairs? I'm going to play a little bit of it.

7 (Video played.)

8 Do you remember testifying about that?

9 A. Yes.

10 Q. And I think this video shows some of these protestors  
11 moving into -- up that flight of stairs. Do you remember that?

12 A. Yes.

13 Q. Okay. And can you -- can you point out on the map behind  
14 you, again, approximately where that is on the map, that  
15 scaffolding?

16 A. Breach 3.

17 Q. Breach 3. Okay.

18 Now I'm going to show you -- are you familiar with the  
19 Capitol grounds? So, the entrances to the Capitol building?

20 A. Yes.

21 Q. Okay. Is it fair to say you're familiar with all of them?

22 A. Yes.

23 Q. Okay. Now I'm going to show you one of those entrances and  
24 ask you to let me know where it is. It's Nordean Exhibit 401,  
25 which has been admitted.

1 THE COURTROOM DEPUTY: Is this Government 401 or is  
2 it your Exhibit 401?

3 MR. SMITH: It's Nordean -- sorry, Ms. Harris. It's  
4 Nordean 401.

5 THE COURTROOM DEPUTY: Thank you.

6 BY MR. SMITH:

7 Q. And I'm going to go to 10 minutes and 19 seconds here.

8 Well, first, let me just -- permission to publish  
9 that.

10 Do you see that -- this is what's been admitted as  
11 Capitol CCTV footage. Do you recognize that entrance from  
12 this?

13 A. Yes.

14 Q. Where is that?

15 A. I believe those are the doors that are on the Upper West  
16 Terrace.

17 Q. I think you're right about that. And, in fact, I think if  
18 you look at the top of the screen here -- oops. I still  
19 haven't maximized this.

20 If you look at the top of the screen here, you can see a  
21 little indicator. That's a stamp indicating where the door is,  
22 and it says, "Upper West Terrace door."

23 Do you see that?

24 A. Yes.

25 Q. Okay. So that -- you were correct, right?

1 A. Yes.

2 Q. Can you let me know where on the map that door is?

3 A. (Indicating.)

4 Q. There. Okay.

5 A. Right about in the middle area right there.

6 Q. Okay. And so I'm going to go to 10 minutes and 18 seconds  
7 here.

8 MR. MULROE: Objection on scope.

9 MR. SMITH: Your Honor, I'm just pointing out that  
10 one of the areas that the witness testified --

11 THE COURT: Overruled.

12 BY MR. SMITH:

13 Q. So, I've gone to 10 minutes and 18 seconds here. And there  
14 are some -- do you see some of these protestors are entering  
15 the building at that point that you marked on the map?

16 A. Yes.

17 Q. And I'm going to circle in green someone wearing a black  
18 backwards baseball cap and a neck gaiter that's red and yellow,  
19 with the sunglasses.

20 Does that look like the person we were talking about?

21 A. Yes.

22 Q. Now, I'm going to bring that down and I'm going to bring up  
23 the same Nordean Exhibit 402 at 10 minutes and 29 seconds.  
24 This has also been admitted into evidence.

25 And permission to publish?

1 THE COURTROOM DEPUTY: Just bring it up.

2 BY MR. SMITH:

3 Q. Now, Officer, do you recognize this hallway?

4 A. Yes.

5 Q. And is this the hallway that opens up on the entrance that  
6 you pointed out -- the Upper West Terrace entrance that you  
7 pointed out on the map?

8 A. Yes.

9 Q. And I'm going to let you watch what's going on here for a  
10 couple seconds and then ask you about it.

11 (Video played.)

12 So, the first question I'd ask is: Does it appear that  
13 these police officers are -- excuse me -- these protestors are  
14 interfering with the officers who are -- let me go back one  
15 second.

16 I'm going to draw two lines here on either side of the  
17 screen.

18 MR. MULROE: Your Honor, I would object, again, on  
19 scope and relevance and cumulative.

20 MR. SMITH: This is our last question about this,  
21 Your Honor.

22 THE COURT: All right. Last question.

23 I'll overrule the objection.

24 MR. SMITH: Well, I just need to finish -- I -- well,  
25 laying a foundation that these are U.S. Capitol Police officers

1 on the left and right.

2 BY MR. SMITH:

3 Q. But, Officer, did those -- did the individuals on the left  
4 and right near the green lines I've drawn, do those appear to  
5 be U.S. Capitol Police officers?

6 A. Yes.

7 Q. And there's an individual who is wearing a black backwards  
8 baseball cap there who's walking between them. Do you see that  
9 person?

10 A. Yes.

11 Q. Okay. Does it look like that person was in a contentious  
12 situation with these officers as he's walking in the building?

13 A. No.

14 Q. Does it appear to you that he's interfering with them?

15 A. He's in the building when he shouldn't be.

16 Q. Officer, we're not -- I would not dispute that with you.  
17 I'm just asking you whether he's interfering with them there.

18 A. Interfering how?

19 Q. Interfering with them. Does it look like he's in either a  
20 verbal or physical altercation with those individuals.

21 (Video played.)

22 A. Not sure.

23 Q. Okay.

24 (Video played.)

25 Are you -- Officer, are you -- I'm going to take down

1       that from the screen.

2               Are you familiar with protestors entering that entrance  
3       on --

4       A.   Yes.

5       Q.   And do you know what occurred that day, basically at that  
6       entrance?

7       A.   I don't know what you mean.

8       Q.   So, are you aware that at some entrances to the building,  
9       there was physical altercations between police officers and  
10      protestors who were attempting to enter the building?

11      A.   Yes.

12      Q.   And that happened in quite a few places, right?

13      A.   Yes.

14      Q.   But it appears that at this entrance, there didn't seem to  
15      be any conflict between the officers and the individuals who  
16      were walking between that line?

17               MR. MULROE:  Object on foundation, if she wasn't  
18      there.

19               THE COURT:  Sustained.

20               MR. SMITH:  Can I -- may I lay the foundation?

21               THE COURT:  Very well.

22               MR. SMITH:  Okay.

23      BY MR. SMITH:

24      Q.   So are you -- I think you indicated that you were familiar  
25      with that -- with protestors entering that entrance to the

1 building?

2 A. Yes.

3 Q. Okay. Because you've familiarized yourself with the  
4 footage that I was showing you?

5 A. No. Because I saw the door open.

6 Q. Oh, you saw it yourself?

7 A. Yeah. Later on.

8 Q. Were you ever in that hallway?

9 A. No, I was not.

10 Q. Okay. Have you -- is this the first time, today, that  
11 you're seeing evidence of individuals walking in that door?

12 A. Yes.

13 Q. Okay. And you're not familiar with how that happened?

14 A. No.

15 Q. Okay. So, Officer, I think -- so, you met with the FBI and  
16 the prosecutors in this case to discuss the testimony today,  
17 correct?

18 A. Yes.

19 Q. And is it fair to say that that happened sometime in  
20 November?

21 A. I believe so, yes.

22 Q. Okay. And were you -- is it your position that -- we've  
23 talked about Breach 1 and Breach -- Breach 2 and Breach 3 --  
24 behind you, those two sticky marks -- on the grounds.

25 A. Yes.

1 Q. And is it your position that some -- there may have been a  
2 moment that kind of, you might say, triggered the crowd at that  
3 point?

4 A. Possibly.

5 Q. And what would that moment be?

6 A. Fighting with officers.

7 Q. Right. And, so, do you -- do you recall taking the  
8 position that there was a protestor who may have been hit in  
9 the face with less-than-lethal ammunition, and then after that  
10 incident, it appeared the crowd exploded?

11 A. Yes. It happened in front of me.

12 Q. Okay. And so is it your position that that made the crowd  
13 jump?

14 A. No.

15 Q. It's not? Do you ever recall taking that position?

16 A. No. I don't understand what you're asking.

17 Q. So, you're trained in crowd control, right?

18 A. Yes.

19 Q. Okay. And, so, I think you've been trained in the factors  
20 that create a mob-like atmosphere and how to quell that  
21 atmosphere, right?

22 A. Um-hum. Yes.

23 Q. Okay. So, are you aware that there are certain moments  
24 that can cause a crowd to get excited?

25 A. Yes.



1 Q. Like, split-second moments?

2 A. Yes.

3 Q. And after that, you would say that the conditions that  
4 created that riot, or a mob, you might call it, were  
5 spontaneous, right?

6 A. (No response.)

7 Q. So, spontaneous as opposed to planned.

8 A. No.

9 Q. So, do you recall taking the position that the crowd  
10 exploded that moment when someone was shot --

11 MR. MULROE: Asked and answered.

12 BY MR. SMITH:

13 Q. -- in a less than lethal --

14 THE COURT: Let me have counsel at sidebar.

15 (Bench discussion:)

16 THE COURT: Mr. Smith, if you want to get into what  
17 you think is a prior inconsistent statement, you have to just  
18 ask her. Just --

19 MR. SMITH: Your Honor, I'm just trying to refresh  
20 her recollection.

21 THE COURT: Right. But you can just ask her, you  
22 know, Is it your -- not prior position. Is it -- did you see  
23 this happen that day? If he says, No, I didn't, then you can  
24 either refresh her or whatever, but you're not giving her  
25 the --

1 MR. SMITH: I understand, Your Honor. But, I think I  
2 asked the second question again, but I can -- I mean, I did ask  
3 it, but I can ask her again.

4 THE COURT: Not taking a position on -- what is your  
5 testimony here today? Did this occur? If she says no, then  
6 you can, you know, refresh her or impeach her, whatever you  
7 would like.

8 MR. SMITH: I hear what you're saying.

9 THE COURT: Okay.

10 MR. SMITH: But, Your Honor, the position is that  
11 what I need to refresh her on she's already testified. Because  
12 I asked her whether her position is that it's spontaneous, she  
13 said no, and she told -- I mean, so, I want to refresh her  
14 memory with something that --

15 THE COURT: All right. Refresh her memory.

16 MR. SMITH: Yep.

17 THE COURT: All right.

18 MR. SMITH: Thank you.

19 THE COURT: Hold on.

20 Mr. Mulroe?

21 MR. MULROE: This is what we raised in the morning a  
22 week or two ago. If the witness said no, that didn't happen,  
23 there's nothing to refresh. You need to have a failure of  
24 recollection, "I don't remember."

25 MR. SMITH: She said --

1 THE COURT: He can ask, Well, would -- I mean, I  
2 think -- let me put it this way: If she is says no, if -- I  
3 think Mr. Smith can ask the question: Would it refresh your  
4 recollection? She may still say: No, it wouldn't refresh my  
5 recollection. I think he can say that, or impeach her with a  
6 prior inconsistent statement.

7 MR. SMITH: Thank you.

8 (Open court:)

9 BY MR. SMITH:

10 Q. Sorry for that, Officer.

11 One of the questions I asked you about was whether it  
12 was your position that there was a spontaneous outbreak of  
13 violence after someone, a protestor, had been shot with a  
14 less-than-lethal projectile, and I believe you said that that  
15 was not your position, right?

16 A. No.

17 Q. It's not your position or it is?

18 A. I don't understand. What do you mean, my "position"?

19 Q. So, like, your understanding.

20 A. My understanding?

21 Q. Yeah.

22 A. That it was spontaneous as soon as someone was hit in the  
23 face with a less than lethal?

24 Q. Yeah.

25 A. No, because we had been pushing and shoving with them for

1 about 15 minutes before that happened.

2 Q. So would it refresh your recollection about whether that's  
3 been your position if I showed you a copy of your interview in  
4 November --

5 MR. MULROE: Object. It misstates. There's no copy  
6 of the interview.

7 THE COURT: Rephrase the question.

8 BY MR. SMITH:

9 Q. A memorandum of your interview.

10 A. Sure.

11 Q. Okay.

12 So, without -- without publishing this to the jury, I'm  
13 going to bring up a document for the witness to look at.

14 Officer, can you see a document in front of you?

15 A. Yes.

16 Q. Now, I'm just going to point out that this is a memorandum  
17 reflecting an interview on November 8th, 2022. Do you see that  
18 section?

19 A. Yes.

20 Q. Okay. And do you see that -- I'm going to draw a line  
21 where it says -- I believe it says your name.

22 A. Correct.

23 Q. And do you recall having an interview on that day?

24 A. Yes.

25 Q. And does that -- was that interview with FBI agents and

1 prosecutors?

2 A. Yes.

3 Q. Okay. Now I'm going to scroll down to the second page and  
4 I'm going to draw -- I'm going to draw a -- I drew a line next  
5 to a paragraph, and I would ask you to begin the sentence --  
6 and I'm not going to read the sentence, but it begins, "Cooney  
7 remembers."

8 A. You want me to read it?

9 Q. No, not read it out loud. I'm just asking you whether that  
10 refreshes your recollection about a position you take.

11 A. (Pause.)

12 Q. If you just continue reading to the sentence that says,  
13 "After that incident, it appeared the crowd exploded."

14 A. Yes.

15 Q. Does that refresh your recollection about your position?

16 A. Sure.

17 Q. Okay. So, your position is that after a protestor was hit  
18 by a less-than-lethal projectile, the crowd exploded?

19 A. Possibly.

20 Q. Okay.

21 Oh, the last question I have for you, Officer, is that  
22 you worked -- you did crowd control in November and December of  
23 2022 -- 2020 rallies, right?

24 A. Correct.

25 MR. MULROE: Objection to scope.

1 THE COURT: Sustained.

2 MR. SMITH: That's all. Thank you.

3 CROSS-EXAMINATION

4 BY MR. HULL:

5 Q. Good afternoon, Officer Cooney. My name is Dan Hull. How  
6 are you today?

7 A. Good. How are you?

8 Q. Thanks for your service.

9 I represent Joe Biggs, along with this gentleman named  
10 Norm Pattis. Mr. Biggs is sitting there over in the corner.

11 You mentioned baseball bats. I was curious about this.  
12 Mr. Smith had asked you about this, and you talked about it a  
13 little bit in connection with the questions that Mr. Mulroe  
14 asked you. And you also said the crowd -- bear with me -- had  
15 fire extinguishers, poles, fence parts, and water bottles. But  
16 you said "baseball bats," plural.

17 Did you see anybody with baseball bats?

18 A. Yes.

19 Q. Okay. How many people did you see with baseball bats?

20 A. Quite a few.

21 Q. Can you give me just a ballpark? Because I was really  
22 curious about that.

23 A. Probably 50-plus people.

24 Q. 50-plus people with baseball bats?

25 A. Yes.

1 Q. And do you know if any of the people that you saw with  
2 baseball bats or something that looked like a baseball bat to  
3 be a Proud Boy?

4 A. I can't be for sure.

5 Q. Did you know whether or not any of the defendants that are  
6 here today -- and I think you know who they are by now --  
7 whether any of them had any kind of weapon at all?

8 A. I'm not sure.

9 Q. You're not sure.

10 When you say you're with the -- just to move to  
11 something different -- you're with the FRU, that means First  
12 Responders Unit?

13 A. Correct.

14 Q. And that's -- part of that is crowd control, or managing  
15 crowds, is it not?

16 A. Correct.

17 Q. All right. And at the time of January 6, you had been on  
18 the force as a private -- I think you were private first-class  
19 at that time, right?

20 A. Correct.

21 Q. That's the third rank up the chain, is it not?

22 A. Correct.

23 Q. All right. So, you'd been with the force for three years.  
24 Is it fair to say that was your first major crowd control  
25 situation?

1 A. No.

2 Q. Name some others.

3 A. The BLM riots in 2020.

4 Q. Well, it's interesting you said that.

5 By "the BLM riots," you mean the BLM riots that came up  
6 near the Capitol?

7 A. Came at the Capitol.

8 Q. Came at the Capitol. The Capitol's jurisdiction is  
9 about -- Capitol Police jurisdiction is about 200 city blocks,  
10 is it not?

11 A. Are you talking primary or extended?

12 Q. I think primary would be, from what I understand, is, like,  
13 60 acres; does that sound right?

14 A. Possibly.

15 Q. That's the Capitol, the whole grounds?

16 A. Possibly.

17 Q. And you share with the police -- D.C. police and the Park  
18 Police more acreage, more blocks; is that correct?

19 A. Correct.

20 Q. There would be about 200 blocks?

21 A. I think so.

22 Q. Surrounding the Capitol?

23 A. Yeah, about that.

24 Q. All right. And is it fair to say that by the time that you  
25 had become the rank that you're at on January 6, that you had



1 had meetings about what to do in situations where there was a  
2 crowd that might be coming up the Capitol --

3 A. Yes.

4 Q. -- up to the Capitol.

5 And that could have been coming up the east side or that  
6 could have been coming up the west side, either way, correct?

7 A. Correct.

8 Q. All right. On the morning of January 6, your shift started  
9 at 11 o'clock?

10 A. Correct.

11 Q. Okay. And then you were asked to go over to the West -- I  
12 think you went around by the House side to get over to the West  
13 Lawn; is that right?

14 A. Yeah. That's where my next post ended. I had posts that  
15 day, and we have rotations that we move about, and by the time  
16 I got to the House step, that's where my last post was.

17 Q. So at 11 o'clock, you're at the -- what we'll call the  
18 east -- I think of it as the front of the Capitol, don't you?

19 A. There's two fronts.

20 Q. There's two fronts? Okay.

21 Is it true that the east front of the Capitol is the  
22 Capitol -- part of the Capitol where you normally see the most  
23 people during the day?

24 A. Yes. It's the business side.

25 Q. Okay. And you said in your testimony that there were

1 crowds, or a number of people on the lawn or -- I think you  
2 said on the lawn on the east grounds; is that right?

3 A. Correct.

4 Q. Okay. That's not unusual, though, is it?

5 A. It's not what?

6 Q. It's not unusual to see crowds or people on the lawn?

7 A. On the Senate and House A, no.

8 Q. So, you see that every day?

9 A. Not every day to that extreme, like, crowd numbers. But  
10 we --

11 Q. Okay. Isn't it also true that people rarely access the  
12 Capitol, whether they're Congressmen or -- with the exception  
13 of maybe construction workers, from the West Lawn? They just  
14 don't come up that way.

15 A. Correct.

16 Q. All right. And that summer -- you had made some references  
17 to BLM, to BLM riots. Were there any meetings or planning  
18 meetings that you'd been involved in in connection with  
19 handling crowd control of crowds coming down the Mall to the  
20 west side of the Capitol?

21 Do you understand my question?

22 A. Are you asking if I was in the meetings?

23 Q. Yes.

24 A. No. I'm not of higher rank.

25 Q. I knew you would say that.

1 But, I ask you, were you given any instructions about  
2 what to do if, in fact, that kind of thing could happen?

3 A. Yes. From our upper officials. They would tell us kind of  
4 how we would do things.

5 Q. Generally speaking, you don't need -- well, and you won't  
6 see -- whether it's a January 6 or any other day of the year,  
7 you won't see many policemen on the west side of the Capitol,  
8 will you?

9 A. No.

10 Q. All right. And, generally, that's a province of tourists,  
11 people walking around taking pictures --

12 A. Yes.

13 Q. -- isn't that right?

14 So on that day, January 6, which was the day of the  
15 certification, how many policemen do you think were at the --  
16 just roughly, out in front of the west part of the Capitol?

17 MR. MULROE: Object to foundation, if she wasn't  
18 there.

19 THE COURT: The witness can answer the question, if  
20 she knows.

21 Do you know?

22 A. Just on a normal day or that day specifically?

23 BY MR. MULROE:

24 Q. That particular day.

25 A. That particular day? You most likely would have at least

1 four officers on that side for normal post work, and they  
2 possibly -- we would have, maybe, a squad of CDU, but I can't  
3 be for sure.

4 Q. Okay. Let me make sure I understand something.

5 On a normal day, you would have about four Capitol Hill  
6 Police officers, correct?

7 A. Yes.

8 Q. Okay. So, on that day, based on your experience as we sit  
9 here today of six years of Capitol Police, how many people do  
10 you believe were posted that day?

11 A. Probably four people on that side.

12 Q. And you went over to that side?

13 A. Yes.

14 Q. And how many people were over on that side when you went  
15 over from around the House side?

16 A. By the time I got there, there was probably 15 officers.

17 Q. Now, how many -- not officers, how many crowd members?

18 A. Thousands.

19 Q. Thousands. Okay.

20 Had you ever seen that before?

21 A. No.

22 Q. All right. Do you think the Capitol Hill Police was -- had  
23 planned or was ready for that day?

24 A. No.

25 Q. Why not?

1 MR. MULROE: Object to foundation and relevance.

2 MR. HULL: I'll ask another question.

3 BY MR. HULL:

4 Q. You also talked about -- we talked about -- I think in  
5 response to Mr. Mulroe's question, and also in response to some  
6 of Mr. Smith's questions, we use the word -- we bandied about  
7 "exploded," "crowd snapping," that kind of thing, correct?

8 A. Yes.

9 Q. Correct? Do you remember that?

10 A. Correct.

11 Q. All right. And do you remember -- and do you remember, as  
12 we sit here now, what it was, in your mind, that made that  
13 crowd explode?

14 A. In -- like, in front of me or in general?

15 Q. In front of you.

16 A. Um --

17 Q. Just what you saw.

18 A. Me, personally, when someone hit an officer, and then we  
19 protected the officer with less than lethal.

20 Q. Okay. So, your testimony is that when an officer was hurt,  
21 the crowd exploded?

22 A. Yes.

23 Q. All right. Let's go to the fence for a minute. Remember,  
24 we were talking about the fence.

25 This is not a bike rack, is it?

1 A. The black fence? No, it's not a bike rack.

2 Q. This is a small, similarly sized fence, but it's a fence  
3 that is about the same size as the bike rack; is that right?

4 A. No. It's smaller.

5 Q. It's even smaller, even lower?

6 A. Yes.

7 Q. All right. Do you remember your testimony about seeing  
8 Mr. Biggs, I think, or Mr. Nordean near the fence?

9 A. Yes.

10 Q. Is it your testimony that they were tearing down the fence?

11 A. Yes.

12 Q. How were they tearing down the fence?

13 A. By moving it back and forth and breaking the screws inside  
14 the ground.

15 Q. Did you look at videos or were you presented with any  
16 videos that showed you that they were, in fact, laying down the  
17 fence after it was broken off already?

18 A. No.

19 Q. You haven't seen any videos?

20 A. Laying it down, like, gently?

21 Q. Laying it down relatively gently, yes, as opposed to  
22 ripping it from its hinges.

23 A. No. I, personally, saw it being ripped from the ground and  
24 getting thrown to the ground.

25 Q. And your testimony is Biggs and Mr. Nordean were involved

1 in that?

2 A. Yes.

3 Q. Your testimony earlier, in one of the first questions I had  
4 of you was that you had been involved in a BLM protest that was  
5 near the Capitol, correct?

6 A. Correct.

7 Q. The summer of 2020?

8 A. Correct.

9 Q. Which -- that was in the summer of 2020?

10 A. Yes.

11 Q. Thanks.

12 MR. MULROE: Object to relevance and scope.

13 MR. HULL: Well --

14 THE COURT: Sustained.

15 BY MR. HULL:

16 Q. In the summer of 2020, was there a BLM protest near the  
17 Capitol?

18 MR. MULROE: Same objection.

19 THE COURT: Sustained.

20 BY MR. HULL:

21 Q. In the summer of 2020, were you involved in any crowd  
22 control exercises other than the BLM?

23 MR. MULROE: Same objection.

24 MR. HULL: I think it's a fair question, Your Honor.

25 THE COURT: Counsel -- Counsel, what's the relevance?

1 MR. HULL: The relevance is she said that she's seen  
2 these kind of demonstrations before, and I'm asking her, like,  
3 how she handles them. What's her approach to them?

4 THE COURT: Overruled -- the objection is sustained.

5 BY MR. HULL:

6 Q. Was that day, January 6th, the only time you had ever been  
7 stationed or summoned for a crowd control situation on Capitol  
8 Hill on the west grounds?

9 A. No.

10 Q. Name another one.

11 A. Name another one I was called for crowd control?

12 Q. On the west grounds, if you understand my question.

13 A. BLM riots.

14 Q. And that was the only other one?

15 A. From my recollection, yes.

16 Q. So, as of January 6, you've been involved in two crowd  
17 control situations of a magnitude that you would consider  
18 significant?

19 A. Yes.

20 MR. HULL: Thank for your patience. I have no  
21 further questions.

22 THE COURT: All right. Let's take a ten-minute break  
23 for the court reporter. We'll be back to continue with  
24 cross-examination.

25 (Whereupon the jurors leave the courtroom.)



1 THE COURT: You can step down, Officer.

2 And everyone else can be seated, please.

3 Ms. Harris, let's just bring the -- in ten minutes,  
4 let's just bring them right back. Let me know. I'll come out  
5 and we'll continue on.

6 All right. We'll be in recess for ten minutes.

7 (Recess.)

8 (Whereupon the jurors enter the courtroom.)

9 THE COURTROOM DEPUTY: We're back on the record in  
10 criminal matter 21-175, United States of America versus Ethan  
11 Nordean, et al.

12 THE COURT: All right. We'll proceed with  
13 cross-examination for counsel -- by counsel for Mr. Rehl.

14 MS. HERNANDEZ: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. HERNANDEZ:

17 Q. Good afternoon. My name is Carmen Hernandez. I represent  
18 Mr. Rehl.

19 Are you on duty today?

20 A. Yes.

21 Q. I have very little to ask you. I want to thank you for  
22 your service.

23 MS. HERNANDEZ: I have no other questions, Your  
24 Honor.

25 THE COURT: All right. That wasn't even a question.

1 MS. HERNANDEZ: Did I ask her if she was on duty.

2 THE COURT: All right. Fair enough. Fair enough.

3 MS. HERNANDEZ: Thank you.

4 THE COURT: My bad.

5 Counsel for Mr. Tarrío.

6 CROSS-EXAMINATION

7 BY MR. HASSAN:

8 Q. Good afternoon, Officer.

9 A. Hello.

10 Q. How are you?

11 A. Good. How are you?

12 Q. Been a long day, right?

13 A. What was that?

14 Q. Been a long day so far?

15 A. Yeah.

16 Q. All right. So, my name is Nayib Hassan, and along with my  
17 colleague, Sabino Jauregui, we represent Mr. Enrique Tarrío.

18 Mr. Tarrío, can you stand up for a minute.

19 You've never seen Mr. Enrique Tarrío, have you?

20 A. No.

21 Q. Did you see him on January 6, out there on the front lawn?

22 A. I can't be for sure.

23 Q. Okay. Let me ask you a series of questions regarding  
24 January 6, if that's okay with you.

25 You stated that your rank is, basically, the third one

1 up or fourth one up; is that fair to say?

2 A. Correct.

3 Q. Did you have any conversation with Inspector Lloyd prior to  
4 today?

5 A. Like, talking with him?

6 Q. Correct.

7 A. Yeah. He's my commander.

8 Q. And did -- at any point in time, did you speak to him  
9 regarding your testimony here today?

10 A. No.

11 Q. Did you speak about this case at all with Inspector Lloyd?

12 A. No.

13 Q. Okay. Now, on January 6, on that morning, did you have any  
14 conversation with Inspector Lloyd?

15 A. He says, Hi.

16 Q. He says, Hi.

17 Were you, at any point, debriefed that morning by  
18 anybody in further command above you?

19 A. No.

20 Q. Were you given any instructions by anybody, other than the  
21 normal instructions that you're given every day?

22 A. No.

23 Q. What -- tell me a little bit about when you get into work.  
24 You got into work that day at 11 o'clock, correct?

25 A. Correct.

1 Q. And your normal day starts at 3 o'clock, or had you already  
2 shifted that day?

3 A. My normal shift is 3 p.m. to 11 p.m.

4 Q. For some reason that your shift had started early that day?

5 A. Yes.

6 Q. And I would imagine, in regards to communications, that  
7 occurred within the Capitol Police?

8 A. Say that again.

9 Q. You started for a particular reason on -- at 11 o'clock  
10 that day?

11 A. Because they needed backfill for day work.

12 Q. For day work?

13 A. Yes.

14 Q. Okay. Nothing in particular to what was occurring that  
15 day; is that fair to say?

16 A. No. It was for that.

17 Q. It was for that occurrence?

18 A. Yes.

19 Q. Okay. How many other officers were called, apart from  
20 yourself, that day?

21 A. For my shift, three others.

22 Q. Three other officers. Okay.

23 Were you briefed that day, in particular, regarding  
24 anything -- anything that was supposed to occur on January 6?

25 A. No.

1 Q. You weren't given any special instructions that day?

2 A. To not let anyone besides members of Congress, staff, and  
3 members with official business through the bike racks.

4 Q. Okay. Did you speak to Mr. John Donahue that day?

5 A. No.

6 Q. Do you know who John Donahue is?

7 A. No.

8 Q. Did you ever come into communications with Metropolitan  
9 Police Department that day?

10 A. Yes.

11 Q. Did you speak to them prior to what was occurring on  
12 January 6 regarding the mob that day?

13 A. Did I speak with Metropolitan?

14 Q. Correct.

15 A. No.

16 Q. Did you speak with your Intelligence Department, either  
17 with the Capitol Police or with Metropolitan Police Department,  
18 at any point in time prior to January 6?

19 A. Me, personally?

20 Q. Correct.

21 A. No.

22 Q. I see that you're, basically, in your attire, correct?

23 A. Yes.

24 Q. What are some of the things that you have on you right now,  
25 if you don't mind me asking?

1 A. Well, I'm completely unarmed, so --

2 Q. Unarmed? So, when you say "unarmed," that's your sidearm,  
3 correct?

4 A. Correct.

5 Q. What other items do you have on you?

6 A. Just my radio. I had to lock everything else up.

7 Q. What are some of the other items you had to lock up?

8 A. My handcuffs, my handcuff keys, my baton, my magazines for  
9 my gun, my OC spray, and any knives I carry.

10 Q. Okay. Earlier on, while one of my colleagues was asking  
11 you a series of questions, you stated that you used OC spray to  
12 stop individuals, correct?

13 A. Yes.

14 Q. And is that the standard way of stopping individuals?  
15 Correct?

16 A. Correct.

17 Q. And the reason that you use those OC spray is to,  
18 basically, stop their action from moving forward. It's a  
19 matter to immobilize them immediately, correct?

20 A. Correct.

21 Q. Now, in the course of stopping individuals, you don't use  
22 the knife, correct?

23 A. No.

24 Q. Because that would be lethal force, correct?

25 A. Yes.

1 Q. Okay. So, you don't use the knives in the normal course of  
2 stopping anybody from coming into the Capitol or doing anything  
3 incorrect, correct?

4 A. No.

5 Q. The reason you carry a knife on your possession is in order  
6 to cut something or do something in the routine job  
7 obligations, correct?

8 A. Correct.

9 Q. Okay. As far as hierarchy of Capitol, you stated earlier  
10 when one of my colleagues asked you a series of questions, that  
11 there was some issues internally within the Capitol Police.  
12 There was some failures that happened, correct?

13 A. Correct.

14 Q. And that failures of leadership came from above you,  
15 correct?

16 A. Correct.

17 Q. And I'm not saying that you failed us, and I appreciate  
18 your service that day.

19 But, there was failures in leadership above you,  
20 correct?

21 A. Correct.

22 Q. And as a reason of that failed leadership, some of the  
23 individuals were asked to resign?

24 MR. MULROE: Object. Relevance and scope.  
25 Foundation.

1 MR. HASSAN: If she knows.

2 THE COURT: Sustained. Sustained.

3 BY MR. HASSAN:

4 Q. Now, you know the Capitol grounds quite well, correct?

5 A. Correct.

6 Q. And you've worked there for approximately three years, you  
7 stated?

8 A. At January 6.

9 Q. January 6 would be three years?

10 A. Correct.

11 Q. Now, at this point in time, you're talking about five  
12 years, correct?

13 A. Um-hum. Correct.

14 Q. Is that yes?

15 A. Yes. Sorry.

16 Q. And I would imagine that during the *transcurso*, you've had  
17 the opportunity to walk the grounds, as far as completely?

18 A. Yes.

19 Q. And you, I imagine -- I don't know if you have not or have  
20 not, but have you ever worked the National Mall?

21 A. Yes.

22 Q. And the process from walking from the Ellipse over to the  
23 Capitol, approximately how far of a distance is that?

24 A. About two miles.

25 Q. And that two miles, approximately how long does it take to



1 walk? Roughly 30 minutes?

2 A. Approximately.

3 Q. During the *transcurso* of January 6, were you listening to  
4 any radio transmissions that were going on that day?

5 A. Just the radio that I have on myself.

6 Q. You weren't listening to any radio transmissions that were  
7 going on at the Ellipse, correct?

8 A. I don't have that access.

9 Q. Were you listening to any of that by any of the individuals  
10 that were around you that day?

11 A. No.

12 Q. Were any of the fellow officers, that you're aware,  
13 listening to what was going on at the Ellipse or going on at  
14 the White House area?

15 A. No.

16 Q. So you, in fact, don't know what President Trump was  
17 stating at the Ellipse or at the White House area, correct?

18 A. No.

19 Q. Now, you were alerted, based upon the radio transmission  
20 that the government played at 12:53, to relocate to the other  
21 side of the Capitol, correct?

22 A. Correct.

23 Q. And you relocated from the west side, where you were  
24 originally at, over to one of the breach areas, correct?

25 A. I was on the east side. I went to the west side.

1 Q. Okay. My apologies on that one.

2 But, basically, you relocated from your original post  
3 over to another post, correct?

4 A. Correct.

5 Q. Now, that movement happened at 12:53, correct?

6 A. Correct.

7 Q. You state in your report -- there were multiple reports  
8 done in this case that were provided by the government. That  
9 would be, approximately, somewhere roughly around 1 o'clock,  
10 correct, 12:53?

11 A. Correct.

12 Q. You didn't know exactly that it was 12:53 until the  
13 government played that audio, correct?

14 A. Correct.

15 Q. You only learned of that afterwards, correct, the precise  
16 timing?

17 A. Correct.

18 Q. Is that correct?

19 A. Correct.

20 Q. Now, the mob that you're alerted to -- now, you were never  
21 alerted prior to 12:53 regarding what was occurring at that  
22 breach location, correct?

23 A. Correct.

24 Q. There was no unruly mob, to your knowledge, before, prior  
25 to 12:53, correct?

1 A. Correct.

2 Q. So if a speech was going on at -- concluded at 12:16 and  
3 now it's 12:53, easily the mob could have moved between that  
4 time period --

5 MR. MULROE: We object.

6 BY MR. HASSAN:

7 Q. -- from the Ellipse over to the Capitol, correct?

8 MR. MULROE: Object to the hypothetical.

9 THE COURT: Sustained.

10 BY MR. HASSAN:

11 Q. Now, the mass mob of individuals that you saw at 12:53,  
12 that would be roughly 30 minutes after 12:16?

13 A. Correct.

14 Q. Now, the individuals that you had the opportunity to  
15 observe around that time, correct, they were being unruly,  
16 correct?

17 A. Correct.

18 Q. They were screaming?

19 A. Correct.

20 Q. This were chastising officers?

21 A. Yes.

22 Q. They were chastising the crowd, correct?

23 A. Yes.

24 Q. They were carrying banners?

25 A. Yes.

1 Q. They were lifting Trump banners, correct?

2 A. Yes.

3 Q. What other things were they carrying and holding?

4 A. Makeshift weapons, bats, anything that they could get their  
5 hands on.

6 Q. Anything that they could get their hands on.

7 And these items were basically -- and this is a mob as a  
8 whole, correct?

9 A. Correct.

10 Q. In particular to -- in particular to the two individuals  
11 that were -- you were asked questions about today, did you see  
12 them at any point have a radio in their possession?

13 A. The two individuals?

14 Q. Correct, that you were asked questions about earlier on  
15 today by my colleagues.

16 A. I'm not sure.

17 Q. And you never saw them use any telephone device; is that  
18 fair to say?

19 A. I'm not sure.

20 Q. You're not sure? Have you seen videos in regards to that?

21 A. No.

22 Q. Okay. Have you seen videos with them with a phone in their  
23 hands?

24 A. No.

25 Q. Have you seen them at any point in time with a radio in

1 their hands?

2 A. No.

3 Q. So to your knowledge, they didn't have any radio or  
4 telephone in their possession, correct?

5 A. No.

6 Q. And you didn't physically see it for yourself, correct?

7 A. No.

8 Q. Not that you recall, of course?

9 A. No.

10 Q. Okay.

11 MR. HASSAN: Thank you. Thank you, Officer.

12 Thank you, Your Honor.

13 THE COURT: Counsel for Mr. Pezzola.

14 CROSS-EXAMINATION

15 BY MR. ROOTS:

16 Q. Thank you for coming, Officer Cooney. My name is Roger  
17 Roots, and I represent Mr. Dominic Pezzola.

18 At one point in time on your direct examination you were  
19 talking about less than lethal.

20 A. Yes.

21 Q. And you indicated there was a less-than-lethal team at the  
22 Capitol Police; is that correct?

23 A. Correct.

24 Q. How many people are on that team?

25 A. I believe less than ten.

1 Q. You are not on that team?

2 A. No.

3 Q. What does this term mean, "less than lethal"?

4 A. Less than lethal is not lethal.

5 Q. It would be one stage down from lethal --

6 A. Correct.

7 Q. -- deadly force, correct?

8 A. Correct.

9 Q. So one step down, before you would use your sidearm to kill  
10 someone approaching, you would use less than lethal, correct?

11 A. Correct.

12 Q. And that would include such things as a taser?

13 A. We don't have tasers -- we didn't have tasers at that  
14 moment.

15 Q. Okay. And that would include things such as CS gas?

16 A. Yes.

17 Q. The CS gas, there was a lot of CS gas sprayed that day,  
18 correct?

19 A. Yes.

20 Q. And you testified all sides were -- both sides or all sides  
21 were using that, correct?

22 A. Yes.

23 Q. Isn't it true that the Capitol Police used every single  
24 canister that they possessed that day?

25 A. I don't recall.

1 Q. And they had spent something like \$1000,000 just a few  
2 months earlier on CS gas?

3 A. I'm not sure.

4 Q. You're familiar, also, you worked that day with the Metro  
5 Police Department as well?

6 A. Yes.

7 Q. They were also using CS gas, correct?

8 A. I believe so.

9 Q. And they used every single canister that they possessed  
10 that day, correct?

11 A. Not sure.

12 Q. Is it safe to say there was vast amounts used?

13 A. Yes.

14 Q. Would you say that use of CS gas makes people act in a  
15 panicked state at times?

16 A. Yes.

17 Q. Confused at times?

18 A. Yes.

19 Q. Violent, would you say?

20 A. Yes.

21 Q. Crazy or irrational?

22 A. Yes.

23 Q. Would you say that it can put people into a rage?

24 A. Yes.

25 Q. You must have undertaken some training, have you, in the

1 use of CS gas yourself?

2 A. No.

3 Q. Have you ever used CS gas yourself?

4 A. I've never used it.

5 Q. Were you ever required to read any policy manuals about the  
6 use of this -- these things?

7 A. We have a Use of Force Policy, that I know.

8 Q. It's a violation of that policy to spray CS gas at close  
9 range in someone's face, correct?

10 A. I don't recall.

11 Q. It's a violation of that policy to use CS gas in enclosed  
12 spaces; isn't that true?

13 A. I'm not sure.

14 Q. Are you familiar with something called "the tunnel"?

15 A. What do you mean by "the tunnel"?

16 Q. In the Capitol, there's an area called "the tunnel"?

17 A. Yes.

18 Q. And that is a -- some kind of a hallway that connects --  
19 it's an exit from the Capitol?

20 A. Well, there's many exits.

21 Q. The tunnel is one of the exits out from the Capitol?

22 A. Yes.

23 Q. Is the tunnel on the main floor?

24 A. No.

25 Q. It's on a basement floor or something?



1 A. I'm not quite sure what tunnel you're speaking of.

2 Q. The tunnel where there -- I'm sure you're aware there was a  
3 lot of conflict in the Tunnel that day.

4 A. You mean, the Lowest West Terrace door tunnel?

5 Q. I believe, yes.

6 A. Yes.

7 Q. There was a lot of conflict in the tunnel -- what people  
8 refer to as "the tunnel"?

9 A. Yes.

10 Q. And Capitol Police was deploying lots of CS gases in that  
11 area, correct?

12 A. I believe so.

13 Q. What about rubber bullets? Are those considered less than  
14 lethal?

15 A. We have pepper balls.

16 Q. What is the difference between a rubber bullet and pepper  
17 ball?

18 A. A pepper ball, when shot it, hits either a person or  
19 anything other than that, releases a small amount of OC spray,  
20 or pepper spray.

21 Q. So a pepper ball, upon impact, releases an irritant?

22 A. Yes. It will burst.

23 Q. And that can cause pain and further -- even more so than  
24 just being struck with the ball?

25 A. Correct.

1 Q. That is, again, considered a less-than-lethal weapon?

2 A. Correct.

3 Q. Have you ever deployed those?

4 A. No. I'm not trained in it.

5 Q. Have you read any of the policy manuals of the Capitol  
6 Police on those?

7 A. Have I read the manual for?

8 Q. Regarding pepper ball use.

9 A. No.

10 Q. But the Capitol Police were using pepper balls that day,  
11 correct?

12 A. Correct.

13 Q. And the Metropolitan Police Department were also using  
14 pepper balls?

15 A. I believe so.

16 Q. Is it your understanding that hitting people in the face  
17 with such things is a violation of policies?

18 A. That's a -- not an area where we're supposed to hit people  
19 with.

20 Q. I think you indicated in an exchange with Mr. Smith, who  
21 represents Mr. Nordean, that you had indicated you witnessed  
22 someone being hit in the face with a pepper ball.

23 A. Yes.

24 Q. A protestor?

25 A. Yes.

1 Q. And that that -- I think you said it may have caused the  
2 crowd to erupt in an explosion of anger?

3 A. Possibly.

4 Q. Were there more -- did you witness more than one of those  
5 incidents?

6 A. More than one person getting hit in the face?

7 Q. Yes.

8 A. No.

9 Q. The individual that you saw getting hit in the face, upon  
10 impact it was causing bleeding, correct?

11 A. Correct.

12 Q. Isn't it true that if one of those hits someone in the eye  
13 socket, that that could cause death?

14 MR. MULROE: Object to the hypothetical.

15 THE COURT: The officer can answer, if she knows.

16 A. Possibly.

17 BY MR. ROOTS:

18 Q. Isn't it true that if someone was hit in the temple, that  
19 that can cause death?

20 A. Possibly.

21 MR. ROOTS: One second.

22 (Pause.)

23 MR. ROOTS: No further questions. Thank you so much.

24 THE COURT: All right. All right. Any redirect,  
25 Mr. Mulroe?

1 REDIRECT EXAMINATION

2 BY MR. MULROE:

3 Q. Officer Cooney, let me start with what the attorneys called  
4 the explosion anger.

5 At the time that you encountered the crowd at that black  
6 fence, had any pepper balls been shot yet?

7 A. No.

8 Q. Had any CS gas been deployed yet?

9 A. No.

10 Q. Had any less-than-lethal techniques at all been used at  
11 that point?

12 A. No.

13 Q. And at that point, was the crowd peaceful?

14 A. For the most part, yes.

15 Q. Were they calm?

16 A. Most of them.

17 Q. Were all of them calm?

18 A. No.

19 Q. Which ones were not calm?

20 A. Pretty much the front row of the people that were at the  
21 black fence.

22 Q. And what did they do that indicated to you they were not  
23 calm?

24 A. Screaming. Yelling. Calling us names. That was pretty  
25 much the indication that they were not a happy crowd.

1 Q. And did that include the individuals who had been --

2 MR. PATTIS: Objection. Leading, Judge.

3 THE COURT: Sustained.

4 BY MR. MULROE:

5 Q. Did that or did that not include the individuals we've seen  
6 on the screen with the backwards cap and the winter cap and the  
7 gaiter --

8 A. Correct.

9 Q. -- the American flag gaiter?

10 A. That included them.

11 Q. When the crowd first got onto the West Terrace, did you say  
12 there was still shouting at that time?

13 A. Yes.

14 Q. Did you tell us whether or not the crowd was throwing  
15 things at that time?

16 A. Not at that time, they weren't.

17 Q. They would later, though?

18 A. Yes.

19 Q. Let's stay at the fence for a moment. Mr. Smith showed you  
20 some video of the fence.

21 Let's pull up 592G -- 492G.

22 And, Ms. Rohde, if we could go to the 4-minute,  
23 45-second mark.

24 (Video played.)

25 Maybe skip forward about 20 seconds.

1 (Video played.)

2 Now, Officer, as we watch the video, let me ask you  
3 about that fence.

4 Did it take some amount of force to remove that fence?

5 A. Yes.

6 Q. Could you be a little descriptive for the jury about what  
7 it took to get that fence detached from the ground?

8 A. So the fence, itself, was screwed into the concrete. So,  
9 the main thick poles you see there are screwed into the  
10 concrete, so it takes a pretty good amount of force to get that  
11 detached.

12 Q. Based on what you observed, would one person by themselves  
13 be able to easily just pull that fence out, or would it take  
14 the efforts of more than one person?

15 A. More than one person.

16 Q. And just ask you directly: At any point did you see the  
17 man in the black hat being taken for a ride against his will on  
18 the fence?

19 A. No.

20 Q. What did he do?

21 A. He was pulling at the fence, back and forth, and ripping it  
22 out of the concrete.

23 Q. He didn't just gently lay it on the concrete?

24 A. No.

25 MR. MULROE: Please stop the video.

1           Nothing further, Your Honor.

2           THE COURT: All right. Very well.

3           Officer, you may step down.

4           All right. Can I have sidebar with counsel?

5           (Bench discussion:)

6           THE COURT: All right. I'm going to just release the  
7 jury for the weekend, but I will give -- Mr. Hull, I will give  
8 them the quick instruction that you had mentioned, and I'll  
9 tell them to be back Tuesday morning. But, I can see everyone  
10 is nodding.

11           And anyone want to be heard on any of that? I don't  
12 see that. All right. That's what we'll do, and we'll go from  
13 there.

14           (Open court:)

15           THE COURT: All right. Ladies and gentlemen, that  
16 will conclude the testimony for today. Before you go, a couple  
17 of just reminders. Again, we will see you next back here  
18 Tuesday morning, ready to go. And I'll just -- I haven't  
19 repeated them every night. I know from filling out the  
20 questionnaire and also from your time through -- going through  
21 the voir dire process you know these things, but I will remind  
22 you today.

23           Please avoid any media coverage of this case and all  
24 things January 6. Two, of course, don't talk about this case  
25 or your jury service to anyone, including your fellow jurors.

1 And, third, of course, no independent investigation of any of  
2 the matters involving this case.

3 Thank you very much for your time and attention.  
4 We'll see you on Tuesday morning.

5 (Whereupon the jurors leave the courtroom.)

6 THE COURT: You all may be seated.

7 All right. So, I don't want to take up any more of  
8 your time to sift through Telegram chats. So, we'll see you  
9 all here Monday at 11 o'clock. Everyone have a good weekend.

10 \* \* \*



CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 2nd day of February, 2023

---

Janice E. Dickman, CRR, CMR, CCR  
Official court reporter  
Room 6523  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

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