

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA CR Nos. 1:21-cr-00175-TJK-1
1:21-cr-00175-TJK-2
v. 1:21-cr-00175-TJK-3
1:21-cr-00175-TJK-5
1:21-cr-00175-TJK-6
1-ETHAN NORDEAN
2-JOSEPH R. BIGGS
3-ZACHARY REHL Washington, D.C.
5-ENRIQUE TARRIO Tuesday, February 7, 2023
6-DOMINIC J. PEZZOLA, 9:30 a.m.
Defendants.
- - - - - x

TRANSCRIPT OF JURY TRIAL - DAY 27
*** MORNING SESSION ***
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE DEPUTY CLERK: This is criminal matter 21-175, United States of America v. Defendant 1, Ethan Nordean; Defendant 2, Joseph R. Biggs; Defendant 3, Zachary Rehl; Defendant 5, Enrique Tarrío; and Defendant 6, Dominic J. Pezzola.

Present for the Government are Jason McCullough, Erik Kenerson, Conor Mulroe, and Nadia Moore; present for Defendant 1 is Nicholas Smith; present for Defendant 2 are John Hull and Norman Pattis; present for Defendant 3 is Carmen Hernandez; present for Defendant 5 are Nayib Hassan and Sabino Jauregui; present for Defendant 6 are Steven Metcalf and Roger Roots. Also present are Defendant 1, Mr. Nordean; Defendant 2, Mr. Biggs; Defendant 3, Mr. Rehl; Defendant 5, Mr. Tarrío; and Defendant 6, Mr. Pezzola.

THE COURT: All right. Good morning to everyone.

Before we just take up at least the one preliminary matter the Government teed up for me that we may have to address now, just a quick note on my ruling yesterday on the recross of the officer, especially since there's been a lot of talk about rule of the case or law of the case in this case. I exercised my discretion the way I did with regard to that witness, but the parties should be advised that if I don't get a request for recross -- or redirect, for that matter -- right at the time the witness's

1 testimony is completed, not a day later, not two days later,
2 not three days later -- if I don't get one immediately, in
3 the future, I will not exercise my discretion along the
4 lines I did in that particular case. So the parties should
5 be advised of that, number one.

6 Number two, we have -- we -- I saw, Mr. Kenerson,
7 you put that -- the issue of the discovery obligations of
8 the Government on the table as a potential -- with regard to
9 your expert and which rule -- which version of Rule 16
10 applies and, Ms. Hernandez, I saw you responded. I'll hear
11 from you really quickly on this. Ms. Hernandez, my take on
12 this dispute is that -- my inclination is that this is a
13 proceeding -- let's see -- in which it is not just and
14 practicable to enforce the new version of this expert
15 disclosure rule for at least two reasons. One, that's --
16 the disclosure deadline in this case came and gone before
17 the rule was in place, number one; and, number two, the
18 first time any party is seeking to enforce that rule is here
19 in the middle of the trial the day before -- I guess it was
20 the day before or the day of the witness's testimony. So
21 I'll hear from you at least on that. I think that resolves
22 at least some of your objections to this witness. I know
23 you also have a discovery request that you would like to
24 make, but it seems to me that's not a reason for me to not
25 let the Government go forward and put this witness on the

1 stand with regard to the phones. And you, I think, also,
2 just as I see how you teed things up -- you also request all
3 impeachment information regarding the witness. I assume the
4 Government has produced that information as -- that has
5 nothing to do with the change in rule, obviously. And the
6 Government has to comply with its obligations along those
7 lines.

8 MS. HERNANDEZ: Right. So I'm not asking to
9 preclude the witness from testifying. I'm asking her to
10 preclude from testifying beyond the notice. So Rule -- the
11 amendment to the rule just requires more precision or more
12 detail on the notice. So as long as the old notice gave us
13 sufficient information, then she should be able to testify;
14 however, if they didn't -- if the old notice didn't give
15 sufficient information -- and I'm not sure what she's going
16 to testify to, so I can't -- I don't want her to preclude it
17 altogether. I just want if it meets the requirements of the
18 rule. Number one, Your Honor, I notified the Government
19 four days after the rule went into effect, and I guess I
20 could have filed the motion. I'm not in the habit of filing
21 motions unnecessarily. They sat on my request for over a
22 month and then they came back and said, Oh, the rule doesn't
23 apply. I, frankly -- this isn't -- I don't believe the
24 requirements of the rule are hard to comply with. All they
25 say is explain what your witness is going to say. It seems

1 to me that two months in a case where the Government has
2 five prosecutors and a cast of thousands behind the scenes
3 should not be -- it's not that burdensome or impracticable.
4 And I think the -- obviously, the rule contemplates that
5 it's going to be applied to cases that are ongoing, unless
6 there's a problem. And I could see if I was raising this
7 for the -- I mean, the Court says I'm raising it for the
8 first time in the middle of trial.

9 THE COURT: With me. With me, to be clear.

10 MS. HERNANDEZ: Well, correct, because I -- my
11 understanding is we're to resolve these issues without
12 having to come to the Court every two minutes. And,
13 again -- and I was, in fact, trying to work things out with
14 the Government. I said, you know, I don't need the
15 signature, you know? Let's work on it. But then when these
16 emails surfaced -- and let me say, yesterday, the Government
17 was, Oh, they've had these forever. These emails come in
18 as -- are produced as Jencks. So it's not that -- I didn't
19 have these emails in April of 2022.

20 THE COURT: All right. That has nothing to do
21 with -- right. I understand.

22 MS. HERNANDEZ: Well, I'm just saying the reason I
23 now -- I want to insist on it is that these emails now, in
24 my opinion, created problems with the exhibits or her
25 testimony that I think now merits -- I was willing to work

1 with them. What can you give me? Blah, blah, blah. But
2 once these -- once I read these emails which -- the last of
3 which is from January of 2023, I think that that created a
4 more acute problem. Again, I don't -- if the Court want --
5 if the Court is saying that unless I file a motion the
6 moment an issue arises without giving the Government an
7 opportunity to respond; otherwise, the Court is going to
8 rule it's too late --

9 THE COURT: No, of course -- I'm not ruling that.
10 I'm only ruling that in this particular case of this change
11 in expert disclosure rule, that, as it's being presented to
12 me right now, given that, number one -- and nothing you've
13 told me would affect this one way or the other -- that the
14 expert disclosure deadlines established in this case came
15 and gone -- came and went and the rule was changed after
16 that, number one. And, number two, given that it's only
17 being teed up for me the day of the witness's testimony,
18 number two -- now, I understand -- I'm not saying you had to
19 immediately come to me, but all I'm saying is I'm not going
20 to now, being asked for the first time -- I'm being asked to
21 enforce this rule the day of the witness's testimony, and
22 I'm not -- I don't think that's just or practicable,
23 whatever the guidance would be. So they have to comply with
24 the norm- -- the rule that was in effect beforehand, but
25 they don't have to comply with the new rule.

1 MS. HERNANDEZ: Okay. So I don't see in that
2 deadline -- the discovery deadline or the expert deadline
3 has anything to do with the rule, because, obviously, the
4 rule comprehended that it would apply to cases that were
5 already in the works, unless there's something about --
6 impracticable. And, again, I think that since they were on
7 notice that I wanted this two months ago, I don't understand
8 how that meets an impracticable test.

9 And then the second thing is, in terms of teeing
10 it up to you, under the Court's, you know, trial procedures
11 thing, the Court wants it the morning before. So I -- I'm
12 just saying I don't -- I think -- I guess what that does for
13 me now is that, when I send an email and they don't
14 respond -- and let me tell the Court that that is often the
15 case. We get a quick response when they want to. We'll get
16 the response within hours. When they don't want -- when
17 they want to ignore an issue, it will be weeks before we get
18 a response, so -- but from now on, I'll know better. If
19 they don't respond, I'll come to the Court.

20 THE COURT: Well, you -- let's just put it this
21 way. I think you need to take all the entire -- you can
22 proceed how you will, but I would take into account the
23 entire circumstances. In this case, trying to leverage a
24 motion -- a change in rule the way this particular dispute
25 is, I think the better course, if you were going to really

1 try to leverage it, would be -- would be have -- would have
2 been to raise it with me well before today. I don't know
3 what to tell you. They're about to call their witness.

4 MS. HERNANDEZ: I just -- the way the Court
5 leverages -- the term "leverage" sounds like I'm trying to
6 pull something.

7 THE COURT: No, no.

8 MS. HERNANDEZ: In fact --

9 THE COURT: I don't --

10 MS. HERNANDEZ: -- as soon as I learned of it --
11 as soon as I -- I mean, as soon as the Federal Defender sent
12 out a notice and said there's a change -- a rule change, I
13 said, Oh, good. Let me let them know. And I would say the
14 Government has a seat at the rule changes division or
15 whatever -- however rules are changed. DOJ has a seat at
16 that --

17 THE COURT: Okay. I --

18 MS. HERNANDEZ: -- so they should have known about
19 that.

20 THE COURT: I understand your argument. On that
21 point, I'm overruling your objection on what version of the
22 rule applies.

23 MR. SMITH: Judge --

24 MS. HERNANDEZ: I'm sorry. On the -- what I'm
25 asking on the impeachment is -- I sent the emails to the

1 Court. The Government redacted a bunch of information, and
2 their position is the redacted portions are not Jencks; that
3 is, they're not statements of the witness. However, to the
4 extent that those redacted portions relate back to her
5 statements about the problems extracting info, I think that
6 falls either under Brady or Giglio. So that's what I'm
7 asking. I don't know what the Government's response to that
8 is. I -- Mr. Kenerson yesterday told me it wasn't Jencks;
9 that's why it was redacted. And I responded. And I would
10 ask the Court to inquire whether the Government's position
11 is that it has nothing -- that the redacted portions is not
12 Giglio/Brady information.

13 THE COURT: All right. Mr. Kenerson, can you make
14 a representation along those lines as to the redacted
15 information?

16 MR. KENERSON: Sure. And I do want to put just
17 some of the timeline on the record. I don't want to go into
18 the Rule 16 issue. The Court has -- the Rule 16 notice
19 issue. The Court has ruled on that.

20 But with respect to just these particular emails,
21 they were provided to the defense pursuant to the Court's
22 Jencks schedule in November of 2022 -- November 28th, 2022.
23 There were some emails that postdate that date. Those were
24 provided later. But it is -- Ms. Hernandez has had them in
25 plenty of time to make whatever requests she may have wanted

1 to make about them prior to yesterday at 5:00 o'clock, which
2 is when she asked me for the unredacted portions of them.
3 And so -- I have had a chance to look quickly. I'm happy to
4 look again over lunch. But my quick look last night, I do
5 not believe that there is anything that would shed further
6 light on Ms. Cain's testimony in this regard than what her
7 statements are, which have been provided to Ms. Hernandez.

8 THE COURT: All right. But I think specifically,
9 if you'll review them over lunch for Giglio and Brady, I
10 think that's what -- that was the request, and I think
11 that's a fair request. So if you would do that, we'll come
12 back to it before the witness takes the stand.

13 MS. HERNANDEZ: Your Honor, something that
14 Mr. Kenerson just said, I think it reminded me that, in
15 fact, the Government submitted an updated expert notice on
16 Agent Cain after December 1st, after my -- not in response
17 to the amended -- just an amended one. And -- because my
18 recollection is, then, at that point, I then sent them an
19 email, Hey, how about my Rule 16 request? So that just adds
20 to my view that the Government could have complied.

21 THE COURT: All right.

22 MR. SMITH: Judge, the Government has indicated on
23 witness Shae Cooney that she's available this morning and,
24 since it's recross, I was going to ask the Court if it makes
25 sense to start with Ms. Cooney because -- Officer Cooney,

1 rather, because this is a completion of her testimony. It
2 would be, kind of, disjointed to go with one witness --

3 THE COURT: Any reason the Government -- we
4 couldn't do that? I mean, I think that makes sense.

5 MR. KENERSON: As a general matter, no. My
6 understanding from Special Agent Hanak right now is that she
7 is currently parking. So --

8 THE COURT: All right. Well, so that -- and you
9 have your other Capitol -- you have your other officer ready
10 to go?

11 MR. KENERSON: Yes.

12 MR. SMITH: Your Honor, because cross -- for some
13 of these witnesses, including Mr. Pezzola, could take
14 several -- a couple of hours, we would just -- wait five
15 minutes to do cross with --

16 THE COURT: It -- it can -- Mr. Smith, I hear what
17 you're saying. What's the -- I know the defense preference.

18 What's the Government's preference on this? I
19 know -- look, I'm trying to maximize the time, but on the
20 other hand, given Officer Cooney -- given she -- you
21 probably have an interest in wanting her to be able to get
22 back to her job, perhaps both sides would agree.

23 MR. MULROE: Your Honor, I think she's going to be
24 here soon enough that we wouldn't object to -- if the Court
25 were inclined, to just hold off and put her up, finish the

1 recross, the re-redirect, and move to the next witness. I
2 would just suggest that, if Your Honor wishes, we may be
3 able to use the intervening time to take up the motion on
4 the sealed matter that will be at issue with Agent
5 Dubrowski's testimony tomorrow.

6 MR. SMITH: Your Honor, I could just say that we,
7 at least for our part, for Nordean's part, don't intend to
8 cross-examine Dubrowski on these issues.

9 THE COURT: Okay.

10 MR. SMITH: So --

11 THE COURT: Why don't -- can I, you know -- can I
12 hear from the other defendants on whether they're in the
13 same posture as Mr. Nordean or whether it's something we
14 need to address before that witness takes the stand?

15 MR. PATTIS: For Mr. Biggs's perspective, Judge,
16 we don't know where the cross will lead. A lot depends on
17 what doors we think are opened on direct. It would probably
18 be useful to have that decided; however, if it's not, we
19 won't go inquire without Court's permission, and that can be
20 deferred. It's likely -- unlikely we'll get to Dubrowski
21 much before tomorrow afternoon even in an ideal world. I --
22 when I say "we," I mean the Biggs team.

23 THE COURT: Right. All right.

24 Mr. Roots, did you want to say something?

25 MR. ROOTS: Yeah. I would share with

1 Mr. Pattis -- we don't really know if we would cross on
2 those issues, but I believe, you know, we are looking to dig
3 in a little bit deeper into pre-January 6th investigations
4 of the Proud Boys.

5 THE COURT: I mean, tell me -- I guess -- I think
6 one thing we could discuss in open court is what the
7 Government thinks -- what you see as the scope of the direct
8 of this witness such that you think going into the matters
9 under seal would be beyond the scope of the direct, and that
10 will give me some sense -- I -- of, sort of, where at least
11 you think the line is in terms of her testimony.

12 MR. MULROE: Your Honor, the scope of Agent
13 Dubrowski's direct will be the set of Telegram exhibits that
14 we submitted to the Court and parties and that we litigated
15 yesterday. There's a small number of other exhibits that, I
16 believe, we've provided to them on a list. Clips from the
17 MOSD video briefing, for example. But the direct will hew
18 pretty closely to those exhibits, you know? He's not a fact
19 witness who went out and saw things himself. He's going to
20 be sponsoring these exhibits and describing their content.
21 So I would note on that point that to the extent Mr. Roots
22 wants to ask the agent about pre-January 6th investigation,
23 that will be far outside the scope of his testimony. He
24 didn't join this investigation until well after the 6th. So
25 he's not in a position to answer any questions about that.

1 With respect to the sealed matter, Your Honor, the
2 way that we could foresee this coming up is one I'll just
3 lay out by making reference to Mr. Smith's opening in which
4 he previewed the issue that there were certain CHSes who
5 were in a position to see what was going on within some of
6 these chat groups prior to the 6th. And so to the extent
7 that Agent Dubrowski is testifying about those chat groups
8 and shown messages from them and discussing who some of the
9 people are that are in them, you know, we think it would
10 arguably be within the scope for them to ask that. If
11 they're saying they don't want to go there, then that is
12 fine, I think, and moots the issue, but I do think that
13 given that we've supplied the set of exhibits and talked
14 about them at great length, I don't know what surprises
15 could really come up on direct that might open doors that
16 are not already opened on the face of the exhibits.

17 MR. SMITH: Your Honor, I think I just saw an
18 indication from the Government that the witness is ready.
19 So we would be prepared to just go ahead with the jury trial
20 and discuss Dubrowski before Dubrowski is -- testifies.

21 THE COURT: Well, let's just -- can I just have
22 the defense respond -- I mean, we'll do it right now -- I
23 mean, we'll turn to the witness in one second. But what's
24 the response -- does any defendant want to respond to what
25 the Government just indicated about how the door could be

1 opened and whether you all plan to go into that -- I think
2 it's still -- well, and whether you all -- what your all
3 intentions are based on what the Government just
4 represented?

5 MR. SMITH: Your Honor, I think, from Nordean's
6 part, it would -- again, would depend on how -- what
7 exactly -- which Telegram exhibits we're talking about and
8 how they would be used. So you know, there is an argument
9 here, I think, that the Government has conceded that if
10 the -- if there is a CHS that has an eye on certain
11 communications and is involved in certain communications the
12 Government is describing as conspirator, and he's at that
13 moment, you know, reporting to a handler agent, that there
14 is an argument to be made that this was not -- these
15 communications may not have been viewed as conspiratorial
16 when they occurred, at the time they occurred, and that this
17 is, kind of, a retrospective gloss that's being placed on
18 communications that were otherwise innocuous. But, Your
19 Honor, it's hard to say before hearing the witness's
20 testimony, I think like Mr. Pattis said, what --

21 THE COURT: Well --

22 MR. SMITH: -- exactly what kind of spin -- or not
23 spin, but interpretation the Government is placing on --

24 THE COURT: Well, I mean, we know that -- we know
25 the -- it's not a secret, the particular documents at -- the

1 particular Telegram exhibits -- as we know from yesterday,
2 it's not a secret what they are. So Mr. Pattis, do you want
3 to be heard briefly on this?

4 MR. PATTIS: Yes, sir.

5 I can -- the door that Mr. Mulroe opened is an
6 invitation to cross into a room that may or may not violate
7 the order. I can say that if I -- and it would depend on
8 the answer to a couple of questions that I can imagine. I
9 don't want to preview them. If I got yeses to answers [sic]
10 that I thought were a deeper invitation, I think I would
11 understand the rule as requiring me to request a sidebar.
12 And so I think I understand the boundary, and I don't intend
13 to inquire in that area without your permission, but I do
14 intend to try to get into that room as quickly as possible.

15 THE COURT: All right. Well, we'll table this. I
16 mean, I do think -- this is exactly, you know -- it's
17 interesting. The -- again, the -- I reference, again, the
18 case -- I think it -- I didn't go back and look for it, but,
19 you know, there is a case about if the agent is simply
20 testifying as to the messages and the testimony is cabined
21 to the messages without a, Well, based on the entire
22 investigation, here's my interpretation of what the thing
23 means, that -- again, I should have gone back and looked,
24 but the case Ms. Hernandez had referenced, I think -- the
25 Circuit case suggested that was problematic because the

1 agent isn't, effectively, testifying as an expert based on
2 things that may not end up coming before the jury. This
3 does -- if they really do -- if the Government really does
4 hew to that and does not, sort of, bake into the testimony
5 the broader investigation of the agent, it seems to me
6 whatever the agent might know through the broader
7 investigation, including the identity of these -- some of
8 these folks, might be fairly considered to be outside the
9 scope of direct, but we'll cross that bridge when we get to
10 it.

11 MS. HERNANDEZ: Your Honor, I think this would be
12 the second time that the Government introduces evidence that
13 mentions one of the names whose names will not be spoken in
14 open court. And I think there's something improper about
15 doing it that way because then we're not allowed to bring
16 out that this person is not an ordinary tool or whatever
17 other --

18 THE COURT: All right. We'll --

19 MS. HERNANDEZ: -- description. So I think if
20 the --

21 THE COURT: I'm not precluding -- we're going to
22 discuss further, but I don't want to keep the jury waiting.

23 MR. MULROE: Your Honor, if I could just raise one
24 related point. Examiner Cain, who's going to testify
25 today -- we think it's probably not necessary to take up the

1 sealed matter before that. I would --

2 THE COURT: Right.

3 MR. MULROE: -- just note that she's going to be
4 testifying about Telegram generally and, I think, in some
5 cases, who the members were in certain groups, but she will
6 not be testifying specifically to the contents of those
7 groups. Accurate? And I'll hand it off to Mr. Kenerson.

8 MR. KENERSON: Sorry. And thank you, Your Honor,
9 for allowing a couple, but -- or a couple of lawyers to
10 address an issue.

11 That is generally right. There is one discrete
12 video that is a scrolling screenshot of a portion of one
13 chat that we do expect Examiner Cain to testify to. We
14 expect her, as well, to authenticate -- I think we said this
15 yesterday -- the underlying data from which those PDF
16 exhibits were drawn. But outside of a couple of questions
17 about whether Defendant Tarrio and Mr. Greene were in a
18 certain group, we do not expect to get into the substance of
19 that underlying data with her, again, with the exception of
20 the scrolling video, which is self-contained.

21 THE COURT: All right. So this is not going to
22 come up for you all with that witness, it sounds like.

23 MR. PATTIS: All bets are off, based on what I
24 just heard, but I'll make an application outside the
25 presence of the jury.

1 THE COURT: All right. I --

2 MR. JAUREGUI: Your Honor --

3 THE COURT: It does not seem to me like it's going
4 to -- that they're going to open the door to it --

5 MR. PATTIS: When you hear the foundation, you'll
6 be persuaded otherwise. I'm confident.

7 THE COURT: All right. Mr. Jauregui?

8 MR. JAUREGUI: Good morning, Judge.

9 Judge, would Your Honor consider a short voir dire
10 of the expert witness on her qualifications to testify as an
11 expert on Telegram? She's only been certified as an expert
12 just once, and when she was certified as an expert, it was
13 not on Telegram. It was --

14 THE COURT: All right. I'm not -- you can -- I
15 don't think so, but we can talk about this, again, right
16 before a break or lunch. I don't want to -- I want to get
17 the jury and the witness on the stand.

18 Mr. Kenerson, is there something more you wanted
19 to say?

20 MR. KENERSON: Just noting for the record that the
21 Government's expert notice stated -- and what we intend to
22 qualify her as is an expert in digital forensic analysis.

23 THE COURT: All right.

24 MR. KENERSON: Along those lines, not Telegram
25 specifically.

1 THE COURT: All right. So let's get the witness
2 on the stand, get the --

3 Ms. Harris, if you'd bring in the jury, and
4 we'll --

5 And then if the Government will -- we'll move
6 right to your second officer witness after this recross.

7 (Brief pause.)

8 (Shae Cooney resumed the witness stand.)

9 THE DEPUTY CLERK: Jury panel.

10 (Jury returned to jury box.)

11 THE COURT: Everyone may be seated.

12 All right. Ladies and gentlemen, welcome back.

13 And we will proceed with a short recross of this
14 Government witness.

15 You may proceed, counsel for Mr. Nordean.

16 MR. SMITH: Your Honor, just indulgence of the
17 Court for just 10 seconds here. There's a computer issue.

18 (Brief pause.)

19 RECROSS-EXAMINATION

20 BY MR. SMITH:

21 Q. Good morning, Officer.

22 A. Good morning.

23 Q. Okay. So last week -- I'm going to ask you a few
24 questions about one specific piece of your testimony from
25 last week. Do you recall testifying last week about --

1 A. Yes.

2 Q. -- an incident near a barrier at Breach No. 3 on the map
3 behind you?

4 A. Yes.

5 Q. Okay. So I'm going to bring up what's been marked as
6 Government Exhibit-492G, and I'm going to go to 3 minutes
7 and 10 seconds.

8 MR. SMITH: And permission to publish?

9 THE COURT: The exhibit is admitted, and
10 permission to publish.

11 BY MR. SMITH:

12 Q. Okay. So first, I'm going to ask you, Officer, about
13 this, sort of, scene near the stairs here and the inaugural
14 platform. Do you recall testifying about that scene?

15 A. Yes.

16 Q. Okay. Now, I'm going to go to 3 minutes and 10 seconds
17 here, and I'm going to ask you to watch a figure within the
18 green circle that I drew on the screen. Could you see that
19 green circle?

20 A. Yes.

21 Q. Now, do you recall last week that I asked you to testify
22 about someone who was wearing a black neck gaiter who
23 appeared to be pulling backwards on a fence into the line of
24 protesters at that line I just draw there?

25 A. Yes.

1 Q. Okay. So I'm going to clear that and then just play
2 this for one second here.

3 Now, before I do that, I'm going to ask -- I'm
4 going to draw another circle here around a different figure.
5 Do you see that one?

6 A. Yes.

7 Q. And who is that?

8 A. That's me.

9 Q. That's you? Okay.

10 (Video played.)

11 MR. SMITH: So I'd ask you to keep an eye on this
12 figure that's within the -- within that green circle.

13 (Video played.)

14 BY MR. SMITH:

15 Q. Now, did you see how he just rocked back there? The
16 individual with the green neck gaiter.

17 A. Yes.

18 Q. And do you recall that I asked you about whether you
19 could see that person doing what appears to be pulling the
20 fence backwards?

21 A. Yes.

22 Q. Okay. Now, at that moment -- I'm circling another
23 figure in green. Who is that? (Indicating.)

24 A. Both officers or just me?

25 Q. Well, I'm -- okay. The one with the -- I've drawn an

1 arrow --

2 A. So that would be me.

3 Q. Okay. And does it -- what way does it look like you're
4 facing there?

5 A. I'm facing westbound.

6 Q. You're facing -- are you looking at the individual with
7 the black neck gaiter here? (Indicating.)

8 A. No.

9 Q. Okay. So I'm going to keep playing that.

10 (Video played.)

11 BY MR. SMITH:

12 Q. Now, if you could watch the individual with the neck
13 gaiter again. Does he appear to be rocking backwards?

14 A. Yes.

15 Q. Okay. Now, I ask you to keep watching him one more
16 time. Does he appear to be rocking backwards and pulling
17 something?

18 A. Yes.

19 Q. Okay. Now, at this point -- I'm going to draw a circle
20 here, (indicating.) It -- does that -- does it appear that
21 there's a man -- a bulky gentleman wearing gloves who's
22 standing between you and the scene we're looking at here
23 with the neck gaiter -- the man with the neck gaiter pulling
24 backwards?

25 A. Yes.

1 Q. And does it appear that there's a, kind of -- an
2 undulating flag that's between you both, as well?

3 A. Yes.

4 Q. Okay. I'm going to keep playing this for a second.

5 (Video played.)

6 BY MR. SMITH:

7 Q. Now, I'm circling a backwards black baseball cap, an
8 individual wearing that. Do you recall testifying about
9 him?

10 A. Yes.

11 Q. Okay.

12 (Video played.)

13 BY MR. SMITH:

14 Q. Now, I'm pausing this here and I'm drawing a circle
15 around a hand that has a yellow sleeve. Do you see that?

16 A. Yes.

17 Q. Okay. Now, I'm also circling an officer whose right
18 hand can be seen there, (indicating.) Does that appear to
19 be you?

20 A. Yes.

21 Q. Okay. So does it appear that there's several officers
22 between your sight line and that yellow hand?

23 A. Yes.

24 Q. Thank you. I'm going to keep playing it.

25 (Video played.)

1 BY MR. SMITH:

2 Q. Now, I'm going to pause it here and circle the man in
3 the backwards black baseball cap and what appears to be his
4 hand touching the fence. Do you see that?

5 A. Yes.

6 Q. Okay. Now, I'm going to circle, again, an officer. Is
7 that officer you I've circled? (Indicating.)

8 A. Yes.

9 Q. Does it appear that, again, your sight line is blocked
10 by several officers and a flag right there on the individual
11 touching the fence?

12 A. Yes.

13 Q. Now, at this point, it appears that the segment of the
14 fence in front of the man with the black baseball cap has
15 come down at this point. Would you say that's accurate?

16 A. Correct.

17 Q. Again -- now, I'm going to draw an officer here -- a
18 circle around an officer there. That's still you; correct?

19 A. Correct.

20 Q. And it looks like your sight line -- if I could just
21 draw an arrow from where you're standing to the fence that
22 comes down, it looks like your sight line is blocked by
23 several officers and a flag; correct?

24 A. Correct.

25 (Video played.)

1 BY MR. SMITH:

2 Q. Now, at this point, you'd say -- do you see the segment
3 of the fence I've circled there?

4 A. Yes.

5 Q. That segment of the fence is still upright; correct?

6 A. Correct.

7 Q. But there's another segment of the fence that's come
8 down at this point; right? And I've, sort of, drawn a line
9 there.

10 A. Correct.

11 Q. But still, at this moment, it appears that your sight
12 line on that incident is blocked by the flag and the
13 officers?

14 A. Correct.

15 Q. Okay. So I'm going to bring this down for one second.

16 So Officer, is it fair to say that at the moment
17 that segment of the fence -- when the fence came down, you
18 didn't have a sight line on it?

19 A. Possibly.

20 Q. Okay. Well, you didn't see yourself having a sight line
21 on it there; right?

22 A. There was a couple times that, yes, I did see it.

23 Q. Okay. So I'm going to bring up -- I'm going to bring
24 that back up for a second.

25 (Brief pause.)

1 Now, there's a moment here at 3 minutes and 39
2 seconds. I'm going to draw a circle around the individual
3 wearing a black beanie who appeared to be rocking backwards
4 and forwards and pulling the fence. Do you see that
5 individual?

6 A. Yes.

7 Q. And if you look very carefully here, you appear to be
8 facing towards the camera. I've circled someone in green;
9 right?

10 A. Yes.

11 Q. And does that appear to be you?

12 A. Yes, that's me.

13 Q. And it appears that you're facing towards the camera
14 here; right?

15 A. Yes.

16 Q. Okay. So I'm going to bring up what's been marked as
17 Government Exhibit-445BX. This is going to be at the
18 1-minute-and-25-second mark.

19 MR. SMITH: First, let me situate the witness
20 here. Permission to publish Government Exhibit-445BX.

21 THE DEPUTY CLERK: It's already entered.

22 BY MR. SMITH:

23 Q. Okay. So this is the -- this appears to be the same
24 scene to you; correct, but from a slightly different angle?

25 A. Correct.

1 Q. Okay. Now, I'm going to go forward to 1 minute and --
2 about 1 minute and 25 seconds. You can see -- I'm going to
3 circle in green here the individual wearing the black
4 baseball cap. Do you see that?

5 A. Yes.

6 Q. Now, I'm going to go forward to about 1 minute and -- so
7 about 1 minute and 13 seconds, and I'm going to draw a
8 circle around what appears to be a can that that -- the
9 individual with the black baseball cap is holding; correct?

10 A. Correct.

11 Q. Now, at this point, you're not standing in front of the
12 section of the fence where this individual is; right?

13 A. No.

14 Q. So in fact, I think -- we're going to move forward just
15 a little bit. You don't even walk -- so there's an
16 individual who looks -- I've drawn a green circle around a
17 different U.S. Capitol Police officer. Do you see him?

18 A. Yes.

19 Q. He appears to be facing -- I'm going to draw another
20 arrow -- the man in the black backwards baseball cap;
21 correct?

22 A. Correct.

23 Q. Now, I'm going to move forward just a second and you're
24 going to see someone behind that officer who's -- appears to
25 be walking out of the area with the scaffolding. Do you see

1 that?

2 A. Yes.

3 Q. And who is that?

4 A. That's me.

5 Q. Okay. And let's just walk -- let's just observe where
6 you walk here. Are you -- you're not walking towards the
7 man with the black baseball cap there?

8 A. No.

9 Q. Let's see here.

10 (Brief pause.)

11 MR. SMITH: Apologies.

12 (Brief pause.)

13 Your Honor can see the spinning wheel here.

14 There's --

15 (Brief pause.)

16 So just -- the Court's indulgence. There's a
17 glitch here. Let's just make sure we got this right. I'll
18 reopen it.

19 (Brief pause.)

20 Your Honor, sometimes when the HSBC connection is
21 linked up with a laptop, it stalls, but --

22 MS. MOORE: Do you want Ms. Rohde to play it?

23 MR. SMITH: I think we've got it now. Thank you.

24 So I'm going to bring that back up. Permission to
25 publish?

1 So I'm going to go back to the moment where you
2 appear to be walking out of the scaffolding. Play this
3 here.

4 (Video played.)

5 MR. SMITH: So I guess, let's see here if this
6 goes.

7 All right. Ms. Rhode, would you be able to bring
8 up 445BX?

9 (Brief pause.)

10 And it's the 1-minute-and-13-seconds mark.

11 (Brief pause.)

12 It's 445BX at 1 minute and 13 seconds. Oh.

13 (Brief pause.)

14 Have you got it?

15 THE DEPUTY CLERK: Mr. Smith, can you please stop
16 pressing that, because you keep taking it off the --

17 MR. SMITH: Should I leave it on the laptop --

18 THE COURT: Ms. Harris keeps publishing it and you
19 keep unpublishing it.

20 MR. SMITH: Oh. Should I leave it on the laptop?

21 THE DEPUTY CLERK: It's not even on the --

22 MR. SMITH: Okay.

23 THE DEPUTY CLERK: It's on the Government -- can
24 you please stop --

25 MR. SMITH: Okay.

1 THE DEPUTY CLERK: -- touching it.

2 MR. SMITH: Okay. So if we could just play it
3 right there to about -- play it right there.

4 (Video played.)

5 MR. SMITH: And just, sort of -- well, let it
6 continue for a few more seconds.

7 (Video played.)

8 MR. SMITH: And pause it there, please.

9 BY MR. SMITH:

10 Q. Now, let me see if this works with -- yeah. So is that
11 you, Officer, encircled in green?

12 A. Yes.

13 Q. And it appears that you're walking towards a section of
14 the platform that I've drawn a line under right there?

15 A. Yes.

16 MR. SMITH: Okay. Now, if you could play this
17 until exactly 1 minute and 25 seconds and pause it at
18 1 minute and 25 seconds.

19 (Video played.)

20 MR. SMITH: Ms. Rhode, if you could just scroll it
21 backwards just a little bit there. Keep scrolling it
22 slowly, slowly backwards at 1 -- like, a half a tick
23 earlier. Okay. Pause it right there.

24 BY MR. SMITH:

25 Q. Now, do you see that it appears that you're looking

1 towards us again here at the camera?

2 A. Yes.

3 Q. Does this appear to be the moment that we were pausing
4 at in the previous video --

5 A. Yes.

6 Q. -- when, in the foreground, we saw the individual with
7 the black gaiter rocking backwards and pulling the fence
8 into some people at the line?

9 A. Yes.

10 Q. And then there was a brief moment where you were looking
11 towards us in that video?

12 A. Yes.

13 Q. That appears to be this one?

14 A. Yes.

15 Q. Now, do you see your eyes in that photograph?

16 A. Yes.

17 Q. Does it appear that you're looking at this man right
18 here, (indicating) --

19 A. I'm looking --

20 Q. -- that's on the --

21 A. -- both in -- to his direction and the direction that
22 you're talking about.

23 Q. Okay. Now, it appears to me that you're looking at this
24 individual -- is this individual a police officer --

25 A. No.

1 Q. -- that I've circled in green?

2 A. No, he's not a police officer.

3 Q. Is he a protester?

4 A. Yes, he's a rioter.

5 Q. And does he appear to be making a scene up there and
6 waving his arms and acting rambunctiously?

7 A. Yes.

8 Q. Okay. But just to be clear, when I asked you about your
9 sight line on the moment when the fence came down, you
10 indicated that your sight line was blocked by those two
11 officers who were in front of you?

12 A. No. The camera angle showed that it possibly looked
13 like it was, but it wasn't.

14 Q. So you could see through the officers?

15 A. No, I can't see through the officers. I can see in
16 between them.

17 Q. In between them? Okay.

18 MR. SMITH: So you could bring that down. Thank
19 you, Ms. Rhode.

20 The final question, Your Honor, is just this one.
21 I'm going back to 492.

22 (Brief pause.)

23 Ms. Rohde, could you just go to 492, please, and
24 go to 3 minutes and 30 seconds. 492G, 3 minutes and 30
25 seconds.

1 (Brief pause.)

2 It's 3 minutes and 30 seconds.

3 (Brief pause.)

4 I don't know if you could just scoot forward just
5 very briefly -- move the timestamp forward just until we can
6 make it -- until we can see the officer walk onto the stage
7 here.

8 (Brief pause.)

9 If you could just stop there. Thank you.

10 BY MR. SMITH:

11 Q. So I've circled the individual in green here with the
12 black backwards baseball cap. Can you see that, Officer?

13 A. Yes.

14 Q. And this appears to be the moment where he's looking
15 down at the fence?

16 THE COURT REPORTER: Slow down.

17 BY MR. SMITH:

18 Q. And this appears to be the moment where the -- there --
19 these individuals at the line I've circled in green are
20 looking down?

21 A. Yes.

22 Q. Do you see that?

23 Okay. Now, again, we talked about how this was --
24 I've circled in green, also, an officer on the left. That
25 appears to be you; correct?

1 A. Correct.

2 Q. So your position is that you could see through these --
3 you were seeing through these three officers at this moment?

4 A. Yes, there was a space between Captain Patton and the
5 other officer that I was able to look.

6 Q. At this exact moment?

7 A. Yes.

8 Q. That's your testimony?

9 A. Yes.

10 MR. SMITH: Okay. Thank you. No more questions.

11 THE COURT: All right. Any redirect from the
12 Government?

13 MR. MULROE: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MULROE:

16 Q. Good morning, Officer.

17 A. Good morning.

18 Q. Let me just start with the fence generally.

19 MR. MULROE: Ms. Rhode, if we could have 492G at
20 5 minutes and 30 seconds and let's play that.

21 And as it plays, Officer, ask you just a question
22 or two.

23 (Video played.)

24 BY MR. MULROE:

25 Q. So Officer Cooney, what we're seeing here is a different

1 part of the fence; is that right?

2 A. Correct.

3 Q. And as we watch this, would you tell us, is tearing off
4 a piece of this fence something that happens in a single
5 instant or does it take a bit of time to accomplish?

6 A. It takes a bit of time.

7 (Brief pause.)

8 MR. SMITH: Your Honor, we would say this is
9 outside the scope of the recross. We were just asking about
10 Mr. Nordean.

11 THE COURT: I -- well, any -- are there any
12 further questions?

13 MR. MULROE: Just if we could pause it and --
14 well, just stopping here at 6:18.

15 BY MR. MULROE:

16 Q. Even as this piece of the fence is pushed all the way to
17 the concrete, do we see it, kind of, spring back up into
18 place a bit?

19 A. Yes.

20 Q. So Officer, for a piece of this fence to go from
21 completely intact to completely removed, would there be
22 multiple opportunities for somebody to see that happening?

23 MR. SMITH: Your Honor, out- -- object. Outside
24 the scope of the recross which was on a limited issue.

25 MR. METCALF: And leading.

1 MR. SMITH: Yeah.

2 THE COURT: Sustained.

3 MR. MULROE: Let's go to -- a bit backwards, back
4 to the piece of fence in question. Ms. Rohde, 3:54, please.

5 BY MR. MULROE:

6 Q. And so, Officer, directing you to the post that I've
7 drawn an arrow to at the bottom of the screen. Do you see
8 that?

9 A. Yes.

10 Q. And do you see that there's a segment of fence on what
11 I'm going to call the far side of that post?

12 A. Yes.

13 Q. Can you see whether or not that is still in place?

14 A. Yes.

15 Q. Is it or not?

16 A. It's still in place.

17 Q. And if we look on what we could call the near side of
18 the post, do we see whether there is a piece of fence
19 attached there at this point? 3:54.

20 A. No.

21 Q. No, there's not?

22 A. No, there's not. It's missing.

23 MR. MULROE: If we could play the video,
24 Ms. Rohde, up until about 4:03.

25 (Video played.)

1 BY MR. MULROE:

2 Q. And stopping there at 4:03, Officer, can you see in the
3 video whether the man in the black hat had a piece of the
4 near fence segment in his hands there?

5 A. Yes, he did.

6 Q. Could you tell from the video whether he was struggling
7 with that or whether it appeared to be moving freely?

8 MR. SMITH: Your Honor, outside the scope. This
9 was about her recollection, not her observations of the
10 video which was on direct and cross.

11 THE COURT: Well, sustained.

12 MR. MULROE: Ms. Rhode, let's have Exhibit-417 at
13 the 54-second mark, please. You don't need to play it. You
14 can just pull it up paused at 54 seconds.

15 BY MR. MULROE:

16 Q. Can you see yourself in the still, Officer?

17 A. Yes.

18 Q. Can you see the man in the black hat in the still?

19 A. Yes.

20 Q. About how far were you from him at this point?

21 A. About two feet.

22 MR. SMITH: Your Honor, this is, again, outside
23 the scope. This is after the fence came down and Mr. Mulroe
24 is questioning about, maybe, 30 seconds later. The recross
25 was about when the fence came down.

1 THE COURT: All right. Sustained. Is --

2 MR. MULROE: Your Honor, could I be heard on the
3 phone?

4 THE COURT: You may.

5 (Bench conference:)

6 MR. SMITH: Your Honor, the objection here --

7 THE COURT: I understand the objection.

8 MR. SMITH: Yeah. Yeah.

9 THE COURT: Mr. Mulroe, the -- this is very
10 limited; right, about whether she could see when the fence
11 came down? What is -- what are we doing here?

12 MR. MULROE: Your Honor, the entire purpose of the
13 recross was to impeach the witness. We are just --

14 THE COURT: Right.

15 MR. MULROE: -- offering this -- I'm just going to
16 ask two questions about it. The purpose is to show that she
17 had enough of a view of Mr. Nordean to be able to form a --

18 MR. SMITH: This is --

19 MR. MULROE: -- to know that it was him --

20 MR. SMITH: This is later --

21 MR. MULROE: -- the person that she saw.

22 MR. SMITH: Your Honor, this is later --

23 THE COURT: Mr. Smith.

24 Mr. Mulroe, if this is after the fence came down,
25 I want you to make that -- if you want to ask a question

1 that makes that clear and is only for the issue of
2 identifying Mr. Nordean, that's fine, but you need to make
3 that clear. Otherwise, you're suggesting that she had this
4 view when it came down.

5 MR. MULROE: Certainly, Your Honor.

6 THE COURT: All right.

7 (Return from bench conference.)

8 BY MR. MULROE:

9 Q. Officer, to be clear, what we've got on the screen right
10 now is after the fence had already come down; correct?

11 A. Part of it, yes.

12 Q. And, at this point, you said you were about two feet
13 from the man in the black hat?

14 A. Correct.

15 Q. Were you close enough to get a good look at him?

16 A. Yes.

17 Q. Close enough to remember what he looked like?

18 A. Yes.

19 Q. Officer, generally speaking, was January 6th a memorable
20 day for you?

21 A. Yes.

22 Q. How long were you at the Capitol that day?

23 A. I was there for about --

24 MR. SMITH: Your Honor, this is outside --

25 THE COURT: No --

1 MR. SMITH: -- the --

2 THE COURT: Overruled.

3 THE WITNESS: I was there for about 20 hours.

4 BY MR. MULROE:

5 Q. Sitting here on the witness stand, do you remember every
6 single little detail about all those 20 hours?

7 A. No.

8 Q. Are there certain details that stand out especially
9 strongly in your memory?

10 A. Yes.

11 MR. MULROE: Nothing further.

12 THE COURT: All right. Officer, thank you very
13 much for your testimony. You can step down.

14 (Witness steps down.)

15 THE COURT: And the Government may call its next
16 witness.

17 MS. MOORE: The United States calls Mark Ode.

18 **MARK ODE, WITNESS FOR THE GOVERNMENT, SWORN**

19 DIRECT EXAMINATION

20 BY MS. MOORE:

21 Q. Good morning.

22 A. Good morning, ma'am.

23 Q. Could you please state and spell your name for the
24 members of the jury.

25 A. Yes, ma'am. My first name is Mark, M-A-R-K; and my last

1 name is Ode, O-D-E.

2 Q. By whom are you employed?

3 A. I'm currently employed by NCIS. I'm a candidate for a
4 special agent position.

5 Q. Is that the Naval Criminal Investigative Service?

6 A. Yes, ma'am.

7 Q. Were you employed prior to that?

8 A. I was employed with United States Capitol Police, and my
9 last date of employment was December 31st, 2022.

10 Q. When did you join the Capitol Police?

11 A. I joined Capitol Police on June 18th, 2017.

12 Q. And did you have a specific position with them?

13 A. Yes. I was member of the uniformed division. I was
14 also a member of civil disturbance unit that specifically
15 dealt with demonstrations, and hard squad, because of the
16 specialized tools and equipment that was issued to us.

17 Q. So you said you were in a CDU squad. What does that
18 stand for?

19 A. CDU is civil disturbance unit, also generally known as
20 anti-riot unit.

21 Q. And what do you all do?

22 A. Our primary duty was to provide assistance to regular
23 uniformed officers. When demonstrators -- demonstrations
24 would escalate to a higher degree or there's a higher threat
25 of violence being used, we would be called in to protect

1 lives and property. And we would have specialized equipment
2 issued to us, such as hard gear, generally designed to
3 protect our bodies and withstand direct attacks.

4 Q. You mentioned that you also worked at the Capitol
5 division. Was the -- your work as a CDU officer, like, an
6 everyday thing or an ancillary job?

7 A. It was in addition to my regular duties, my primary
8 duties being uniformed police officers, and I served in the
9 Capitol division for a majority of my career within the
10 Capitol Police. When we had a specific event where there's
11 higher threat of violence or we had a demonstration, I would
12 be activated as part of the unit of CDU and I would respond
13 to any demonstration or anything that would deal with
14 utilization of our specific unit.

15 Q. So turning your attention to January 6th, 2021, were you
16 working that day?

17 A. On that date, I was assigned as a member of hard squad
18 CDU and we were stationed in the Capitol Visitors Center on
19 the north screening section.

20 Q. And approximately when did you begin your day that day?

21 A. I would say it was as early as 8:00 o'clock. I'm not
22 really certain about specific time frame, but I believe it
23 was around 8:00 -- 8:00 o'clock.

24 Q. And you mentioned that, when you're in a CDU, your CDU
25 squad can be activated.

1 A. Yes, ma'am.

2 Q. Were you activated that day on January 6th?

3 A. Yes, ma'am.

4 Q. And approximately when did you get that call?

5 A. I believe I -- we were activated in the sense of I knew
6 that I have to come in on that day and be part of the hard
7 squad at least day prior. Again, I don't remember exact
8 date, but I would say at least the day prior, I knew that I
9 would be coming in as a member of hard squad.

10 Q. And at some point on January 6th, was your hard squad
11 platoon asked to respond somewhere?

12 A. Yes, ma'am. Approximately, based on my memory, around
13 1:00 o'clock, our unit -- our squad received a call over the
14 radio that all members of the CDU, all available officers
15 must respond to the west front because we had a breach.
16 And, at that point, my squad and my platoon responded to the
17 east front to collect our shields, and immediately
18 thereafter, we responded to the west front of the Capitol.

19 Q. What kind of -- you mentioned you went to get gear,
20 including a shield. What kind of shield did you have?

21 A. I had a four-foot shield, ma'am.

22 MS. MOORE: May I approach the witness?

23 THE COURT: You may.

24 BY MS. MOORE:

25 Q. So showing you Government's Exhibit-73, do you recognize

1 that?

2 A. Yes, ma'am.

3 Q. And what do you recognize that to be?

4 A. I recognize that's the shield that I was issued -- or
5 similar to the shield that I was issued on January 6th and
6 the shield that we use during demonstrations.

7 MS. MOORE: Your Honor, I'd move to admit
8 Government's Exhibit-73 into evidence.

9 THE COURT: All right. It will be admitted. And
10 permission to publish.

11 BY MS. MOORE:

12 Q. If you wouldn't mind just standing up and displaying the
13 shield for the jury.

14 A. Yes, ma'am. (Indicating.)

15 Q. And this is the same type of shield you had on
16 January 6th?

17 A. Yes, ma'am.

18 Q. Thank you. I'll take that from you.

19 Why are you all issued shields?

20 A. One of the premises of existence of a hard squad is that
21 we are activated to -- when we deal with violent
22 demonstrators or violent interactions between demonstrators
23 and police officers. So this tool is one of the equipments
24 that is issued to us in basic -- we can use it for a variety
25 of reasons, but primary reason, it creates space between

1 demonstrators and the police line as well as scenarios that
2 involve arrest of demonstrators or rioters as well as a
3 rescue of the officers. So it's one of the primary tools
4 that we use as a hard squad.

5 Q. And when you're deployed as a hard squad CDU officer, is
6 it important for you to have your shield?

7 A. Yes, ma'am.

8 Q. You mentioned that it's one important piece of gear that
9 you have. Were there other items of gear that you were
10 assigned that day?

11 A. Yes, ma'am. As a member of the specialized unit of hard
12 squad, you're also issued a baton that we call PR-24 baton.
13 It's a very specific baton. It's thicker than the regular
14 batons that we use, and it has a handle which permits, kind
15 of, versatile use of that specific baton with the use of
16 shield -- a round shield. And additional to that, we're
17 also issued Scorpion gear -- as I mentioned, it's a hard
18 gear that protects us -- and a gas mask.

19 Q. Is the Scorpion gear -- that's hard protective items
20 that are on your body?

21 A. Yes, ma'am.

22 Q. Okay. And you mentioned that you went to the east side
23 to collect the gear. Where did you go after that?

24 A. Yes, ma'am. Specifically, I collected the shield and,
25 soon after I collected the shield with other members of my

1 squad unit, we responded to the west front of the Capitol.

2 Q. If you wouldn't mind just looking at the map behind you.

3 If you could show us where you all responded.

4 A. Yes, ma'am.

5 So this map demonstrates the west front of the
6 Capitol. We have the southwest side which is primarily --
7 if you imagine a line through the Capitol in the middle,
8 this represent the House side, lower west terrace, the
9 southwest side of the Capitol, and this would represent
10 northwest side of the Capitol. So on that date, my -- I --
11 my squad and I, we responded from lower west terrace door,
12 this -- there's a door in the middle here that leads
13 directly down. That specific moment when we responded, the
14 rioters were already on this baseline of scaffolding and
15 of -- excuse me, on the west front. I specifically -- when
16 I responded, I was stationed at the southwest side closer to
17 the center line, if you could imagine it, and I was
18 stationed around this area here. (Indicating.)

19 MS. MOORE: So just for the record, the witness is
20 indicating the area above the, kind of, sloping line to the
21 right of the rectangle.

22 BY MS. MOORE:

23 Q. Thank you.

24 A. Yes, ma'am.

25 Q. And I think you mentioned that you had already -- you

1 saw rioters when you got there. Can you describe this scene
2 when you made it to the west front?

3 A. Yes, ma'am.

4 The first thing I immediately noticed is thousands
5 and thousands of rioters. I did not recall seeing so many
6 people in my career outside of inauguration or Fourth of
7 July event. It was immediately apparent that there was
8 significant difference in number of officers and rioters.
9 At that specific time, I noticed that there were a lot of
10 officers that basically held themselves in a police line.
11 Specifically in the center section of the area that I
12 pointed out earlier, there were no longer bike racks in that
13 center area and, basically, we had officers who were lined
14 up and holding the lines without -- most of them did not
15 have any shields and, basically, used their own bodies as --
16 to create police line.

17 Q. And what was the crowd doing when you got down to the
18 west front?

19 A. Well, the situation was very dynamic. A lot of things
20 were happening, but specifically I can recall officers being
21 assaulted, hit with punches. There were wrestling -- at the
22 other side of the line, there was wrestling for possession
23 of the bike racks. There were things thrown, projectiles
24 thrown at us. That -- also noticed there were individuals
25 walking around spraying unknown chemical substances in

1 police officers' eyes. I also witnessed at least 10 rioters
2 trying to pick up a huge piece of -- it was almost like a
3 metal poster [sic] that they were trying to throw towards
4 the officers and, basically, many interactions where
5 officers were trying to defend themselves.

6 Q. And was the crowd saying anything while they were on the
7 west front?

8 A. There were many shouts. The ones that I distinctly
9 could remember are "traitors." That's -- I specifically can
10 recall many people shouting "traitors" towards police
11 officers.

12 Q. And what were the officers trying to do?

13 A. Police officers were trying to hold the line the best
14 way that we could, trying to maintain somewhat of an
15 organized manner, the line itself, because we knew that if
16 we would not continue to hold the line, the rioters will
17 break through, enter the premises -- internal premises of
18 the Capitol.

19 Q. And were you -- did you join that line when you got down
20 there?

21 A. Yes, ma'am.

22 MS. MOORE: Ms. Rhode, could you pull up 492H,
23 please. I believe it's already in evidence.

24 BY MS. MOORE:

25 Q. So looking at 492H, who do we see here?

1 A. I recognize myself, ma'am, wearing a hard gear or
2 Scorpion gear.

3 Q. I'm going to circle the individual in the foreground.
4 Is this you?

5 A. Yes, ma'am.

6 Q. And this is the gear that you were describing
7 previously?

8 A. Yes, ma'am.

9 Q. And just looking at this individual here in front of you
10 to your right, what is he wearing?

11 A. He is wearing a blue shirt, it looks like, with a red
12 collar and a hat.

13 Q. And I think you had described earlier that you were,
14 kind of, in the center of the west front. Are you further
15 south at this point?

16 A. Yes, I'm further south, ma'am.

17 Q. And what are you doing when this photograph was taken?

18 A. Well, at this point, I'm trying to hold the line and
19 prevent any further rioters from moving further or within
20 our line.

21 MS. MOORE: All right. Ms. Rhode, could you bring
22 up 226, please. I believe it's also already in evidence.

23 BY MS. MOORE:

24 Q. And before we start playing it, where does this show?

25 A. So this is a representation of an area I described

1 earlier. It's closer to the center line of the southwest
2 side of the Capitol or west front of the Capitol.

3 Q. And this is near where you were?

4 A. Yes, ma'am.

5 MS. MOORE: Ms. Rhode, could you please play.

6 (Video played.)

7 MS. MOORE: You can stop it there. Thank you.

8 BY MS. MOORE:

9 Q. What did we see in the video?

10 A. In this video, there was an officer that was being
11 assaulted by individuals. And to the left of that officer
12 that was being assaulted, I was stationed. So once I
13 noticed the officer being assaulted and he lost his footing
14 as a result of the assault, I decided to break a line and
15 provide assistance using my shield, and at that specific
16 time when I came out to assist him and create space from
17 rioters, there's individuals that grabbed -- violently and
18 forcefully grabbed my shield and pulled me down to the
19 ground. Instantaneously, as I was being pulled down,
20 another individual sprayed me with an unknown chemical
21 substance, and as I was going down, I fell down on my
22 stomach and there were multiple people that were on top of
23 me and, at that specific moment, I was incapable of moving
24 most of my limbs, including my legs. The only thing I could
25 have -- do is trying to protect my weapon side using my left

1 hand; and using my right hand, I was trying to clear -- I
2 was -- at that specific moment, I was wearing a face mask,
3 and I was trying to remove it because the substance that I
4 was sprayed with, it was burning my eyes and it made it very
5 difficult for me to breathe, and as I was trying to do it
6 with my right hand -- I only could move my fingers to do
7 so -- I felt significant pressure over my neck and some
8 individual on top of me were using the strap. I had my
9 helmet strap, but individual was using the helmet to choke
10 me. In that specific time, I thought that I'll not make it
11 out alive out of that pile. It was very difficult for me to
12 breathe and I was losing my breath. And I remember a voice
13 of an officer behind me saying, Stand up, stand up. And
14 it's -- one of those officers were grabbing my leg and
15 pulling me out of it. And after that, I couldn't really see
16 very well because my eyes were shut, it was burning, and I
17 was -- be able to find my way up to the stairs and try to
18 decontaminate my eyes using water and, as I was doing that,
19 I realized that I no longer held my shield and I no longer
20 had in my possession my gas mask and my PR-24 baton, and
21 soon after, I returned to the line to continue with my
22 duties.

23 Q. So that's an assault that you suffered when you were
24 down on --

25 MR. SMITH: Objection.

1 MR. PATTIS: Objection.

2 MR. ROOTS: Legal conclusion as to --

3 THE COURT: All right. Rephrase the question,
4 counsel.

5 BY MS. MOORE:

6 Q. So that was an incident that you endured when you were
7 out in this area on the west front?

8 A. Yes, ma'am.

9 MS. MOORE: Okay. Ms. Rhode, could you show just
10 for the witness Government's Exhibits 1108 through 1130, and
11 we'll click through them.

12 BY MS. MOORE:

13 Q. So do you recognize Government's Exhibits 1108 through
14 1130?

15 A. Yes, ma'am.

16 Q. And what do you recognize them to be?

17 A. It shows sequential timeline between assault on the
18 first officer I described and assault on me. And I could
19 see that it appears to be that individual in this picture is
20 holding my shield when that was forcefully taken away from
21 me.

22 Q. Are these fair and accurate photographs of the incident
23 that you described from January 6th, 2021?

24 A. I believe so.

25 MS. MOORE: Your Honor, I'd move to admit

1 Government's Exhibits 1108 through 1130.

2 THE COURT: All right. They'll be admitted. And
3 permission to publish.

4 MS. MOORE: Thank you.

5 And, Ms. Rhode, if we could start back up at 1108.

6 BY MS. MOORE:

7 Q. So I think you described these are, kind of, a
8 sequential set of photographs?

9 A. Yes, ma'am.

10 Q. So we'll click through and then I'll ask you some
11 questions about them.

12 So stopping at 1109, are you one of the officers
13 in this area?

14 A. Yes, ma'am. I'm the officer closer to the center line
15 of the picture with the shield.

16 Q. So I'm circling an individual who's just to the center
17 right with a shield in his left hand. Is that who you were
18 describing?

19 A. Yes, ma'am.

20 Q. And that's you?

21 A. I believe so, ma'am.

22 Q. And then stopping at 1109 and then circling -- I'm
23 sorry, 1110.

24 MS. MOORE: Thank you, Ms. Rhode.

25 BY MS. MOORE:

1 Q. Circling an individual. What is this man wearing?

2 A. He's wearing a blue sweatshirt with a red collar and a
3 hat.

4 Q. Does that appear to be the same individual we looked at
5 in Government's Exhibit-492 that was standing in front of
6 you?

7 A. Yes, ma'am.

8 Q. And stopping here, can you describe what's going on in
9 this photograph. And -- 1113.

10 A. Yes, ma'am. In this picture, this appeared to be two
11 individuals grabbing my shield or my arm and forcefully
12 attempting to take it away from me.

13 Q. So I'll circle these two individuals on the right. Are
14 these the two men you're talking about?

15 A. Yes, ma'am.

16 Q. And can you describe what each of them are wearing?

17 A. Yes. The man on the farthest right is wearing what
18 appears to be a gray or blue jacket, jeans -- blue jeans,
19 hat -- dark hat with American flag. And the other
20 individual is wearing dark blue jeans, a backpack, and the
21 backpack has what appears to be a red cap attached to it.

22 Q. And they're grabbing your shield here?

23 A. Yes, ma'am.

24 Q. So pausing at 1115 -- I think when you described the
25 incident, you mentioned that an officer was attacked and you

1 attempted to grab him. What are we seeing here?

2 A. Yes. In this picture, you see myself trying to bring
3 the officer up because he was pushed down to the ground. So
4 I was trying to put him up on his feet. And at the same
5 time you can see an individual grabbing the officer's right
6 arm and what appears to be pulling him down.

7 Q. And so then I'll just circle -- we can see three
8 individuals. Is -- are you the one in the hard gear?

9 A. Yes, ma'am.

10 Q. In, kind of, the foreground of the photo?

11 A. Yes, ma'am.

12 Q. And stopping on 116 [sic]. Does this appear to be
13 shortly after the photo we just saw?

14 A. Yes, ma'am.

15 Q. And so then circling the individuals in the middle, does
16 this -- is that you in the hard gear?

17 A. Yes, ma'am.

18 Q. And is this the same rioter you described with the Trump
19 hat?

20 A. It appears to be so. Yes, ma'am.

21 Q. And the officer you're attempting to help?

22 A. Yes, ma'am.

23 Q. And circling at the bottom, what is that?

24 A. That's my four-foot shield, ma'am.

25 Q. And why is it down like that?

1 A. Because individual grabbing my arm.

2 Q. And they're pulling your shield?

3 A. Yes, ma'am.

4 MR. PATTIS: Objection. Leading.

5 THE COURT: Sustained.

6 BY MS. MOORE:

7 Q. What's happening to your shield there?

8 A. My shield is being pulled down because individual is
9 grabbing my arm.

10 (Brief pause.)

11 Q. So stopping at 127 [sic], did the intervening photos
12 that we showed -- that we clicked through show additional
13 portions of that encounter you described?

14 A. Yes, ma'am.

15 Q. And then looking at 1127, what do we see here?

16 A. You see an individual what appears to be completely
17 taking possession of my shield, and you have another
18 individual spraying some type of chemical substance toward
19 direction of the area that I would be in.

20 MS. MOORE: And, Ms. Rhode, if you could zoom in,
21 please.

22 BY MS. MOORE:

23 Q. And what type of spray does that appear to be?

24 A. If I have to guess, ma'am, it appears to be --

25 MR. METCALF: Objection.

1 MR. JAUREGUI: Objection. Speculation.

2 THE COURT: Sustained as to speculation.

3 THE WITNESS: It's some type of chemical
4 substance, ma'am.

5 THE COURT: Well, let me -- so Counsel, you can
6 ask the question again and the prior answer will be struck.

7 MS. MOORE: Okay.

8 BY MS. MOORE:

9 Q. So without speculating, is this the chemical substance
10 you indicated was sprayed at you?

11 A. I believe so, ma'am.

12 Q. And then looking at 1129, does this individual have full
13 possession of your shield at this point?

14 A. Yes, ma'am.

15 MS. MOORE: And, Ms. Rhode, if we could pull up
16 Government's Exhibit-203.

17 BY MS. MOORE:

18 Q. And before we start playing it, what does this show?

19 MR. METCALF: I'm sorry. I didn't get the number.

20 MS. MOORE: 203.

21 MR. METCALF: Thank you.

22 THE COURT: Is this in evidence already?

23 MS. MOORE: Yes, Your Honor.

24 THE COURT: All right.

25 THE WITNESS: This footage appears to show the

1 west front, primarily southwest side of the west front of
2 United States Capitol.

3 BY MS. MOORE:

4 Q. So this is the same area we've been looking at?

5 A. Yes, ma'am.

6 MS. MOORE: And if -- Ms. Rhode, if you could go
7 to the 4:53 mark and then zoom in on the area we've been
8 looking at. And if you could --

9 BY MS. MOORE:

10 Q. I guess, before we start again, so you're in this group
11 of officers we see?

12 A. Yes, ma'am.

13 MS. MOORE: And if you could play at half speed,
14 Ms. Rhode -- or actually --

15 (Brief pause.)

16 BY MS. MOORE:

17 Q. So just clicking through a couple of frames, I'll just
18 circle a couple of individuals. Do those appear to be the
19 same individuals we talked about earlier in the blue sweater
20 and the red collar and the man with the backpack and the red
21 hat on him?

22 A. Yes, ma'am.

23 MS. MOORE: And then you if you'll play,
24 Ms. Rhode.

25 (Video played.)

1 MS. MOORE: If you could just go a couple
2 more frames, Ms. Rohde, and stop it there.

3 BY MS. MOORE:

4 Q. So circling the gentleman in the American flag jacket,
5 what did we just see him do? And let us know if you want us
6 to back it up a couple of seconds.

7 A. The individual in the jacket with the stars is
8 assaulting a police officer.

9 MS. MOORE: If you'll keep playing, Ms. Rhode.
10 (Video played.)

11 MS. MOORE: You can pause it there.

12 BY MS. MOORE:

13 Q. And then circling this officer in the hard gear, is that
14 you?

15 A. Yes, ma'am.

16 Q. And what are you doing here?

17 A. I'm trying to break a line, come down, and create space
18 between the rioters and the officers that was assaulted.

19 MS. MOORE: If you'll continue, Ms. Rhode.
20 (Video played.)

21 MS. MOORE: If you'll pause it there.

22 BY MS. MOORE:

23 Q. I'll circle again in the middle. Who's that officer in
24 the hard gear there?

25 A. That's me.

1 Q. And does that -- the other individual I circled, who
2 does that appear to be?

3 A. That appears to be an officer that just recently was
4 assaulted.

5 Q. I'm sorry. If it wasn't clear, this individual over in
6 the gray, is he grabbing your shield?

7 A. Oh, that was --

8 MR. METCALF: Objection as to leading, Your Honor,
9 and also, move to strike the answer of the officer being
10 assaulted.

11 THE COURT: Sustained as to leading.

12 BY MS. MOORE:

13 Q. So how about the individual -- sorry if my question
14 wasn't clear. The individual on the right side of the
15 circle in the gray, what is he doing?

16 A. He is grabbing to my shield.

17 Q. And does he appear to be the same one we saw before in
18 the photographs?

19 A. Yes, ma'am.

20 MS. MOORE: If we'll keep playing, Ms. Rhode.

21 (Video played.)

22 BY MS. MOORE:

23 Q. And stopping there, what has happened to you in that
24 clip we just saw?

25 A. So we had individuals grabbing to my shield, pulling me

1 down, because I would not let go of my shield, and as a
2 result of that, I ended up being on the ground and there
3 were multiple individuals on the ground -- on top of me
4 after I landed on the ground.

5 MS. MOORE: Ms. Rhode?

6 (Video played.)

7 MS. MOORE: If you'll stop there.

8 BY MS. MOORE:

9 Q. What are -- those other officers that are present there,
10 what are they trying to do?

11 A. They're trying to break a line, create a space to
12 retrieve me.

13 Q. And what are the rioters doing?

14 A. Trying to prevent them from reaching out to me,
15 assaulting them, pushing them, and spraying them with an
16 unknown chemical substance.

17 MS. MOORE: Okay. And if we'll just play this for
18 a few more seconds, Ms. Rhode.

19 (Video played.)

20 MS. MOORE: We can stop it there.

21 BY MS. MOORE:

22 Q. So I think, previously, you've mentioned that when you
23 were able to get out of the situation, you noticed your
24 shield, your gas mask, and your baton were gone.

25 MR. METCALF: Objection, Your Honor. Misleads

1 the -- what was actually testified to.

2 THE COURT: Overruled.

3 BY MS. MOORE:

4 Q. Was having your gas mask with you important that day?

5 A. Yes, ma'am.

6 Q. And why was that?

7 A. Usually, when you have a circumstance where you have
8 violent demonstrators or rioters, you -- we utilize -- our
9 non-lethal team utilizes CS gas and other non-lethal
10 munition as a means of control for the crowd, and it's very
11 often there's a chemical residue. So a mask is necessary to
12 protect us against that residue or potential chemicals or
13 weapon that could be used by rioters themselves.

14 Q. And so after this, you didn't have your mask?

15 A. That's correct, ma'am.

16 Q. And did that interfere with your ability to do your job
17 that day?

18 A. Yes, ma'am.

19 Q. How?

20 A. As I stated earlier, the situation at the west front was
21 very dire. Police officers were outnumbered by hundreds.
22 And using a non-lethal weapon, as a CS gas or munition, was
23 necessary to control these rioters. So our non-lethal team
24 would use those chemicals and munitions to give us more time
25 and to get additional police forces involved. So by not

1 having the gas mask, it made me susceptible to all the
2 chemicals and munition that we personally use, as well as
3 the rioters, at the west front.

4 Q. So the rioters were spraying you, as well?

5 A. Yes, ma'am.

6 Q. And --

7 THE COURT: Ms. Moore, I'm sorry to interrupt, but
8 we've gone even a little bit long just for the court
9 reporter, who's been going for an hour-and-a-half. So we
10 need to take just a quick 10-minute break.

11 Ms. Harris, if you will bring the jury for that
12 break, and we'll be back in 10 minutes.

13 (Jury returned to jury room.)

14 THE COURT: All right. You all may be seated.

15 Ms. Harris, if you'll bring them back in, I'll
16 take the bench in 10 minutes and we'll continue.

17 THE DEPUTY CLERK: All rise. This Honorable Court
18 stands in recess for 10 minutes.

19 (Brief recess taken.)

20 THE DEPUTY CLERK: Jury panel.

21 (Jury returned to jury box.)

22 THE DEPUTY CLERK: Your Honor, we're back on the
23 record in Criminal Matter 21-175, United States of America
24 versus Ethan Nordean, et al.

25 THE COURT: The Government may resume your

1 examination.

2 MS. MOORE: Thank you, Your Honor.

3 BY MS. MOORE:

4 Q. Before we broke, we were talking about some of your gear
5 that was taken. You had indicated that your baton was
6 taken?

7 A. Yes, ma'am.

8 Q. Was having your baton that day important?

9 A. Yes. Baton, specifically PR-24, the versatility of a
10 baton -- it's a thicker baton than the ones that -- issued
11 to uniformed police officers; it has a handle which it makes
12 it versatile to different strikes that could be used, and
13 generally it provides you with additional ability to utilize
14 force.

15 Q. And did it interfere with your ability to do your job
16 that day, not having your baton?

17 A. Yes, ma'am.

18 Q. So I think at the end of the episode that you described
19 for us, you indicated you washed your eyes out and then
20 resumed your duties?

21 A. Yes, ma'am.

22 Q. Where did you go?

23 A. So I went up the stairs to the lower west terrace door.
24 It's a door that's -- I earlier described I entered into
25 west front. Once I entered through the door, I went to the

1 bathroom area, and I'd be able to use some of the water to
2 wash out or decontaminate some of the substance from my eyes
3 and my face.

4 Q. And after you were able to see again, where did you go?

5 A. I returned to the line.

6 Q. On the west front?

7 A. Yes, ma'am.

8 Q. And what was the scene like when you got back there?

9 A. The scene was very dynamic. There was still assaults on
10 the officers. I think, at that point, we had more MPD
11 officers that came to our assistance. I returned to the
12 southwest side of the west front. This time, I was further.
13 I was closer to this further side, the southwest corner
14 here, (indicating.) I primarily was surrounded, at that
15 point, by MPD officers. On that side, we have a few Capitol
16 officers, but most of them were on the Senate side, and a
17 significant number MPD officers were on the southwest side,
18 House side, and this is where I was that second time when I
19 came back.

20 Q. And what happened while you were down there?

21 A. So at that specific time, you could sense in the air the
22 situation becoming more intense. You could feel that
23 rioters almost felt empowered, that they could --

24 MR. PATTIS: Objection.

25 MR. METCALF: Objection.

1 MR. PATTIS: Scope. Speculative. Move to strike.
2 Non-responsive.

3 THE COURT: Sustained as to the last sentence.
4 You may continue your answer, sir.

5 THE WITNESS: Thank you, sir.

6 It felt that more and more rioters started pushing
7 into the officers. And, at this point, all the bike racks
8 were gone. So officers were holding the line with their own
9 bodies. On that specific side that I was in, I could see
10 more officers were intentionally being pulled out and
11 singled out. And one of the officers to the right of me,
12 MPD officer, a female officer, she was one of the officers
13 that was targeted, and she was --

14 MR. PATTIS: Objection. Move to strike, Judge.
15 Targeted.

16 THE COURT: Overruled.

17 THE WITNESS: Okay. She was the one that was
18 selected by the rioters and she was pulled out --

19 MR. METCALF: Your Honor, objection as to
20 selecting.

21 THE COURT: Overruled.

22 THE WITNESS: She was pulled out, and she ended up
23 being on the ground, and I remember seeing her face and
24 seeing fear in her eyes. So at that time, I reached out to
25 help her out and I used my OC spray and my hands to push

1 demonstrators off of her, and at that specific point I was
2 helping her out, I got sprayed with unknown chemical
3 substance into my face resulting in me feeling the burning
4 in my eye and it was something that really burned my eyes
5 and irritated my eyes, and I remember I couldn't see
6 anything, I couldn't open my eyes at all, and one of the MPD
7 officers was helping me up the stairs. There was a
8 scaffolding on this side, (indicating.) And I basically
9 went out -- up the stairs, and as I was going up the stairs
10 with other officers that got affected by the substance, I
11 remember hearing over the radio, The west front is breached.
12 Retreat. Retreat -- or make -- I don't remember the wording
13 exactly, but the message was that we have to reestablish our
14 line further. And I remember being helped out to inside of
15 the Capitol and my eyes were really burning and I was going
16 to find any source of water. So I ended up going down the
17 detail office area at the bottom of the Capitol -- of
18 Capitol Visitors Center where our detail office is, because
19 all the other areas had hot water and it would just burn so
20 intensely, I couldn't use any hot water. So I was trying to
21 decontaminate myself. At that point, I was by myself in a
22 restroom. And I remember hearing over the radio 1033 codes
23 which basically -- it's our code for officer is in trouble.
24 We need assistance. I remember hearing, Shots fired. I
25 remember hearing, We need all available officers to respond

1 to Rotunda. And I was trying to clean out my eyes to be
2 able to respond, but I couldn't. I couldn't see. And I
3 was -- keep doing it, I keep working, keep cleaning my eyes,
4 and probably at the 10-minute mark, maybe, 12-minute mark, I
5 finally be able to see things in front of me and I remember
6 hearing that people -- officers needed at the Rotunda. So
7 my next thought was quickly going up the stairs and respond
8 to Rotunda.

9 Once I responded to Rotunda, I remember seeing
10 around 2- or 300 rioters inside the Capitol pushing
11 officers, assaulting officers, and we had -- at that point,
12 we already had some MPD officers with us and FBI as well as
13 other Capitol units. And we basically were using our brute
14 force to push them out of the Rotunda door which is on the
15 opposite side of the Capitol in this area, (indicating.) So
16 I responded to Rotunda area. From the Capitol detail
17 office, I made it through the stairs, and there were a bunch
18 of rioters here, 2- or 300, and other officers and other
19 state and federal units were pushing them out through this
20 Rotunda door, trying to push them out further out of the
21 premises of the Capitol.

22 So it took us approximately 30 to -- I would say,
23 maybe, 20, 30 minutes to do so. And after that, I'd be able
24 to make my way out of the Rotunda door, because we gained
25 information that there were some officers that were stuck

1 outside the Rotunda, basically, surrounded by rioters. So
2 there was -- a squad of available officers were organized
3 to, basically, clear a pathway and going down the stairs
4 and, basically, clear out this area right here,
5 (indicating.) And as we did that, then my squad was, kind
6 of, standing here in a line keeping -- standing by for the
7 further orders in terms of what we could do, but we kept
8 clearing them out from the --

9 MS. MOORE: And just for the record, the witness
10 indicated the circular area in the middle of the building is
11 the Rotunda, and then the staircase on the top of the map in
12 the center is the stairways that he pushed the rioters out
13 of.

14 THE WITNESS: Yes.

15 BY MS. MOORE:

16 Q. And without going into all the details of the rest of
17 your day, did you continue to respond to different parts of
18 the Capitol?

19 A. Yes, ma'am.

20 Q. And what time were you able to get home that night?

21 A. I would say approximately 2:00 a.m.

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

23 THE COURT: All right. Cross-examination?

24 CROSS-EXAMINATION

25 BY MR. SMITH:

1 Q. Good afternoon, Officer.

2 A. Good afternoon, sir.

3 Q. Just a couple of questions for you, mostly to make use
4 of your knowledge of this map behind you. Bear with me for
5 one second. Sometimes the computer setup here takes a
6 second.

7 Okay. I am going to bring up what was marked as
8 Government Exhibit- -- and admitted as Government
9 Exhibit-226.

10 (Brief pause.)

11 Okay. And permission to publish that.

12 Thank you, Ms. Harris.

13 BY MR. SMITH:

14 Q. So Officer, you recall that you testified about this
15 video showing a scuffle -- a confrontation between law
16 enforcement, including yourself, and some rioters here?

17 A. Yes, sir.

18 Q. Okay. I'm just going to zoom forward a little bit to
19 about 49 seconds here. So I'll just play this for a second.
20 It looks like, you know -- this is -- we don't need the
21 sound, I guess --

22 (Video played.)

23 BY MR. SMITH:

24 Q. Okay. So Officer, that was one of the confrontations
25 that you testified about; right?

1 A. Yes. Yes, sir.

2 Q. And could you show us, again, on the -- let me point you
3 to one, sort of, landmark here we can use to orient
4 ourselves. There's a -- I'm drawing a circle around a, kind
5 of -- a wall right there, (indicating.) Could you show us
6 on the map, Officer, where that wall is.

7 A. Yes. So it appears to be -- sorry, it appears to be
8 around -- (indicating.)

9 Q. And that -- and, Officer, thank you.

10 Is that the north -- would you say that's the
11 north side of the platform?

12 A. Yes. So we had -- there was scaffolding here at the --
13 and there was, kind of, a pathway --

14 Q. Or excuse me. Sorry. I meant the south. That's the
15 south side of the building?

16 A. I'm sorry. Yes, south. That's the north.
17 (Indicating.)

18 Q. So the south side would be what we were looking at in
19 this video?

20 A. Yeah. The south side, I would say, would be -- I would
21 say right -- maybe, right here, (indicating) closer to the
22 center line.

23 Q. Thank you.

24 And is that -- do you see how, like, there's a
25 part of a white wall in that green circle I drew? Where

1 would that white wall be?

2 A. So that white wall, I believe it's, kind of, right here.

3 (Indicating.)

4 Q. Okay. Thank you.

5 So I'm just going to -- so we're on the south side
6 next to the wall in front of the inaugural platform here;
7 right?

8 A. Yes, sir. I believe so.

9 Q. So I'm just going to jump forward here in the video.
10 You can still see the image, right, Officer?

11 A. Yes, sir.

12 Q. Okay. Then in this video where -- the cameraman, who I
13 believe is on the building here, is going to pan over to a
14 different section of the crowd at 1 minute and 55 seconds.
15 Now, do you notice how -- if you can still see the image, do
16 you notice how we're -- the cameraman is panning from the
17 south side, and now we're looking at a slightly different
18 section of the crowd here? We're, kind of, moving right.

19 A. Yes, sir.

20 Q. And I'm going to go to 1 minute and 55 seconds, and stop
21 it right here. And did you notice that we've -- the camera
22 has shifted from what was the south side and the wall to
23 slight -- north where -- I guess, we're panning north?

24 A. Yes, sir.

25 Q. And could you, sort of, point on the map approximately

1 where you think this would be, this section of the -- in
2 front of the platform, the landing?

3 A. Yes, sir. If I have to guess, the view of the -- of
4 this specific image would have to be around this area right
5 here. (Indicating.)

6 Q. Okay. And -- thank you, Officer.

7 And could -- I'm just going to draw a circle
8 around someone in the crowd there. Can you see an
9 individual with a black backwards baseball cap and a --
10 sunglasses?

11 A. Yes, sir.

12 Q. And to be clear, where that individual is standing is
13 where you marked on the map is, sort of, in the middle of
14 the platform area?

15 A. If I have to guess, in terms of his location, I would
16 probably say closer to the center.

17 Q. Okay.

18 A. Around this area here. (Indicating.)

19 Q. Thank you. And so that wasn't the area that we were
20 seeing where there was a confrontation -- a fist fight
21 between -- or whatever that was, a fight between law
22 enforcement and the rioters?

23 A. It appears to be not that specific area, sir.

24 Q. Well, I'll let the -- I wasn't -- I'll let this clip
25 play for a second so you can look at it.

1 (Video played.)

2 MR. SMITH: So we could hear the noise, I think,
3 from that confrontation, but if you were just watching these
4 individuals right here, that doesn't appear to be the same
5 spot, does it? Let's just -- let's let this play for a
6 second.

7 (Video played.)

8 BY MR. SMITH:

9 Q. Do you see the people, kind of, just standing around
10 there?

11 A. I do, sir.

12 Q. Does that appear to be the spot where there was the
13 confrontation?

14 A. No, sir.

15 Q. Okay. And there's just one more question I have for you
16 about one of the individuals you pointed out. By the way,
17 that individual with the black backwards baseball cap with
18 the sunglasses, do you recall seeing him involved in the
19 scuffle with you?

20 A. The situation was very dynamic, sir. I couldn't recall
21 that.

22 Q. Okay. So we're bringing up what's been marked as
23 Government Exhibit- -- and admitted as Government
24 Exhibit-203. And this is at 5 minutes and 5 seconds. So
25 Officer, can you see the video on the screen?

1 A. Yes.

2 Q. And I'm going to draw a circle around an individual with
3 a -- wearing a blue jacket with stars on it. Can you see
4 that person in green?

5 A. Yes, sir.

6 Q. Now, I'm going to ask you to watch what he does for a
7 couple of seconds here. Play this.

8 (Video played.)

9 BY MR. SMITH:

10 Q. Did you see what he was doing?

11 A. Yes.

12 Q. What was he doing there?

13 A. He was assaulting a police officer.

14 Q. Okay. So I'm going to bring up a slightly different
15 angle and -- of this same -- or close in time to this
16 episode and ask you whether you recognize it. It's marked
17 as Nordean Exhibit-317. It's admitted in evidence.

18 MR. SMITH: Hold on one second, Ms. Harris. And
19 for -- permission to publish that.

20 BY MR. SMITH:

21 Q. So before I start the video clip here, I'm going to draw
22 a green circle around someone wearing a gas mask and a blue
23 jacket. Does that look like the individual we were just
24 talking about?

25 A. Yes, sir.

1 Q. Okay. I'm going to play this and ask you to observe his
2 interaction. Can you see another individual I've circled in
3 green with a black backwards baseball cap?

4 A. I do, sir.

5 Q. Can -- I'd like you to just observe their interactions
6 for just one second here.

7 (Video played.)

8 BY MR. SMITH:

9 Q. Were you able to -- I'll play that again just because,
10 again, I'm asking about these two individuals right here.

11 A. Yes, sir.

12 Q. I'll turn that backwards for a second.

13 (Video played.)

14 BY MR. SMITH:

15 Q. Were you able to see what happened there?

16 A. Yes, sir.

17 Q. Did it appear to you that this individual I've circled
18 in the black backwards baseball cap was grabbing the
19 individual in blue after he pushed the officer?

20 A. It appears to be he was placing his hand on his --

21 Q. Well, I'll let you see that again just so you can --

22 MR. SMITH: Maybe play it in slow motion here.

23 (Video played.)

24 BY MR. SMITH:

25 Q. Did -- sorry. You were about to say something?

1 A. Yes, it appears to be individual grabbing the shoulder
2 of a man in blue.

3 Q. Did -- do you -- can you tell from that video clip why
4 it appears he was grabbing his shoulder?

5 MR. SMITH: Play it again.

6 (Video played.)

7 THE WITNESS: I can't -- I really can't speak of
8 the intent of an individual. I only can speak on the
9 appearance, and it appears to be he's grabbing him right
10 after he pushed the officer.

11 BY MR. SMITH:

12 Q. Okay. Then there's one more clip here, and then that's
13 it for mine. Bringing up what was marked as Government
14 Exhibit-452. It's admitted. Go to 1 minute and 18 seconds.
15 Let's hope this works.

16 (Video played.)

17 BY MR. SMITH:

18 Q. Officer, can you see that image on your screen? There's
19 a --

20 A. Yes, sir.

21 Q. Okay. So I'm going to move forward here to 1 minute and
22 18 seconds. And I'll just stop here for a second. Does
23 this appear to be the scene that we were watching in another
24 video clip from a different angle but we're now on the
25 ground?

1 A. It appears to be so, sir.

2 Q. And -- in front of the west front; is that --

3 A. Yeah.

4 Q. Okay.

5 A. Yes, sir.

6 Q. So I'm going to move forward to 1 minute and 18 seconds.

7 And so, Officer, in the last couple of clips, it
8 appeared that we were looking through a camera angle that
9 was looking down on the crowd from an elevated section of
10 the Capitol. There was a -- is that right?

11 A. That's correct, sir.

12 Q. And, at this point, we're now on the ground, sort of,
13 looking at the same scene but from a different angle here?

14 A. It appears to be so, sir.

15 Q. So -- you recalled that -- Officer, that one of the
16 exhibits you testified about showed -- was a still image of
17 you wearing a police officer's helmet with a glass shield in
18 front of your face, and you were standing still? Do you
19 remember that?

20 THE COURT: Counsel, can you hold on one second.
21 I'm sorry. I just -- I can't have the cross-examination
22 competing with the discussions at the defense table. You --
23 if you need to repeat your question, Mr. Smith. I
24 apologize.

25 BY MR. SMITH:

1 Q. Officer, do you remember that still image where you're
2 standing there and, like, there's a glass shield in front of
3 your face?

4 A. Yes.

5 Q. Would you say that's approximately where some of these
6 officers are standing on the screen right here?

7 A. It appears to be more towards the north side -- north --
8 towards north side, if I have to --

9 Q. So the north side would be closer to where that wall is
10 that I've circled in green?

11 A. So I believe that it would be closer to the south side.
12 So if we're looking back, they would -- probably would be in
13 this area here, (indicating) and I would be right here,
14 (indicating.)

15 Q. You were -- and, Officer, you're saying you were closer
16 to that? The south side.

17 A. Yes, sir.

18 Q. To -- relative to the individuals on this screen?

19 A. It appears to be so, sir.

20 Q. Okay. Now, I'm just going to move forward a couple of
21 seconds here to 1 minute and 18 seconds. Now, let me just
22 move the cursor away so this timestamp disappears here.

23 Okay.

24 I'm going to draw a circle around an individual
25 with a blue jacket and stars on it. Do you see that?

1 (Indicating.)

2 A. Yes, sir.

3 Q. And he's wearing -- it looks like he's wearing a mask
4 of -- a helmet and mask of some kind here?

5 A. Yes, sir.

6 Q. Do you -- does that look like the same individual we
7 were looking at from a different angle, from the angle
8 above, the one who was shoving an officer?

9 A. Yes, sir.

10 Q. Okay. And I'm going to clear that for a second and then
11 draw a circle around an individual in a black backwards
12 baseball cap and sunglasses. Can you see him?

13 A. Yes, sir.

14 Q. And do you recall that in one of the prior videos we
15 were looking at from a different angle, I circled
16 an individual with a black backwards baseball cap?

17 A. Yes, sir.

18 Q. Does that appear to be, sort of, the same individual?

19 A. It appears to be so.

20 Q. Now, do you recall that this person in blue was, kind
21 of, having multiple confrontations with law enforcement?

22 A. I do recall that, sir.

23 Q. Okay. Including one that you characterized as an
24 assault; right?

25 A. Yes, sir.

1 Q. Okay. So I just ask you to watch what the individual
2 with the black backwards baseball cap and sunglasses is
3 doing with respect to this individual in blue. I'm going to
4 move it forward here a little bit.

5 Now, do you see how the person with the black
6 backwards baseball cap appears to be reaching out to grab
7 this person in blue?

8 A. It appears to be so, sir.

9 Q. Now, I'm going to play this slowly so you can see what
10 happens here, but then play it in real time, because it's so
11 quick that you can miss it.

12 (Video played.)

13 BY MR. SMITH:

14 Q. Does it appear that this person in black is trying to
15 move his body between the rioter in bright blue and the
16 police officers? I'm going to play this slowly here?

17 (Video played.)

18 THE WITNESS: It's tough to see the angle, but it
19 appears to be so, sir.

20 MR. SMITH: Thank you. And I'll just play it in
21 real time so you can see it, but it might -- it's a matter
22 of seconds here.

23 (Video played.)

24 BY MR. SMITH:

25 Q. So did you see the man with the black hat, sort of,

1 walking up from a distance? I'll play that.

2 (Video played.)

3 THE WITNESS: Yes, I could see that individual.

4 BY MR. SMITH:

5 Q. So did it appear to you that the man with the backwards
6 hat is trying to -- is walk- -- is approaching the
7 individual in blue to move between him and the officers?

8 A. It appears to be that he was trying to approach. The
9 angle is difficult, but if I have -- based on what I seen,
10 seems to be what --

11 Q. Okay.

12 A. Yeah.

13 MR. SMITH: Okay. Thank you. That's all.

14 Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. PATTIS:

17 Q. I think it's still morning. Good morning, Officer. How
18 are you?

19 A. I'm doing well. Good morning, sir.

20 Q. My name is Norm Pattis. Together with Dan Hull, we
21 represent Joe Biggs, a defendant in this case.

22 You -- and I just want to review some of the
23 testimony that you've given and we've had a chance to see
24 material related to you in the discovery the Government has
25 provided.

1 You started working for the Capitol Police in
2 2017?

3 A. Yes, sir.

4 Q. And you left recently, and your intention -- correct?

5 A. Yes, sir.

6 Q. And your intention is to go to Naval Criminal
7 Investigative Services; correct?

8 A. Yes, sir.

9 Q. You were in law enforcement. You'd like to remain in
10 law enforcement?

11 A. Yes, sir.

12 Q. And you -- you're left-handed, I believe; correct?

13 A. Yes, sir.

14 Q. You -- before you came -- became a Capitol Police
15 officer, you were given some training?

16 A. That's correct, sir.

17 Q. On the policies and procedures related to your work as a
18 Capitol Police officer?

19 A. Yes, sir.

20 Q. How to fill out reports?

21 A. Yes, sir.

22 Q. When reports were required?

23 A. Yes, sir.

24 Q. What equipment to use?

25 A. Yes, sir.

1 Q. How to use it?

2 A. Yes, sir.

3 Q. Limit on when force was appropriate to be used?

4 A. Yes, sir.

5 Q. How to make quick judgments about the level of force to
6 use to respond in a given situation?

7 A. Yes, sir.

8 Q. The importance of working together with -- as a team?

9 A. Yes, sir.

10 Q. But your primary objective as a Capitol Police officer
11 was to assure the safety and welfare of all visitors to the
12 Capitol; correct?

13 A. Yes, sir.

14 Q. Not simply the elected officials and their appointees,
15 but visitors as well; correct?

16 A. Of course, sir.

17 Q. And, of course, in your work as a Capitol Police
18 officer, you recognize that the Capitol is a controversial
19 location. It's where people come to express their opinions.

20 A. Yes, sir.

21 Q. From all over the country.

22 A. That's correct, sir.

23 Q. Demonstrations are common?

24 A. Yes, sir.

25 Q. And what you're trained to do is respond with as little

1 force as possible; correct?

2 A. Well, the force has to be objectively reasonable, sir.

3 Q. And that's a standard you were taught in your in-service
4 training; correct?

5 A. Yes, sir.

6 Q. And in -- and when you say "objectively reasonable," it
7 means not -- your intention -- your particular intentions
8 don't matter, but you were taught that based on the totality
9 of the circumstances at the time, how would a reasonable
10 officer behave?

11 A. That's correct, sir.

12 Q. And what level of force would a reasonable officer use;
13 correct?

14 A. That's correct, sir.

15 Q. And so to that end, you were issued a uniform; correct?

16 A. I'm sorry, sir. I didn't hear --

17 Q. You were issued a uniform; correct?

18 A. I'm sorry. Once again.

19 Q. I'm sorry. It's me. You were -- if I stand back and
20 holler, you'll hear me, but I might scare everybody else.

21 You were issued a uniform; correct?

22 A. That's correct, sir.

23 Q. And in your force training, you were taught about levels
24 of force; correct?

25 A. Yes.

1 Q. One of them was command presence; correct?

2 A. Yes.

3 Q. One of the reasons you were taught you wear a uniform is
4 your hope is that when a person sees you in a uniform with
5 the badges and indicia of authority, they'll realize, I need
6 to pay attention here; correct?

7 A. That's correct, sir.

8 Q. And so you might issue a person a hand signal; correct?

9 A. That's correct.

10 Q. You might also issue verbal commands?

11 A. That's correct, sir.

12 Q. Step away from an area. That might be one?

13 A. Yes, sir.

14 Q. Sir, no one is permitted to go in that area; correct?

15 A. That's correct, sir.

16 Q. And in the overwhelming majority of interactions that
17 you've had with the public in your career as a Capitol
18 Police officer, those were sufficient; correct?

19 A. Yes, that's correct.

20 Q. There are -- you had other tools at your disposal;
21 correct?

22 A. That's correct, sir.

23 Q. And you were trained in the use of those tools?

24 A. That's correct, sir.

25 Q. So for example, you had a tool belt; correct?

1 A. That's correct, sir.

2 Q. And on that tool belt -- and forget for a moment when
3 you are in the civil disturbance unit. We'll get there in a
4 moment. But on that tool belt, you had a variety of tools
5 that you were permitted to use; correct?

6 A. That's correct, sir.

7 Q. When you're not on civil disturbance unit, did you have
8 a baton?

9 A. Yes, sir.

10 Q. But it wasn't a PR-24; correct?

11 A. That's correct, sir.

12 Q. The PR-24, you had -- you took a special class in the
13 use of the PR-24; correct?

14 A. Yes. There's special certification process for that.

15 Q. And it is a baton that has a handle coming out
16 perpendicularly to it; correct?

17 A. That's correct, sir.

18 Q. And you were taught a variety of strikes that you could
19 use with it; correct?

20 A. Yes, sir.

21 Q. So for example, if you grabbed the handle coming out of
22 the PR-24, the short end, and you have the long end against
23 your arm, it is a useful tool for clearing a crowd; correct?

24 A. Yes, sir.

25 Q. And it's not considered to be lethal force; correct?

1 A. When used correctly, that's true.

2 Q. Yeah. You were taught, for example, you cannot strike a
3 person in the head with a PR-24; correct?

4 A. Yes, sir.

5 Q. You were taught that, among the pressure points that are
6 useful, for example, are the back of the legs, the back of
7 an arm, perhaps the torso, but you needed to take special
8 care to avoid prohibited areas; correct?

9 A. That's correct, sir.

10 Q. And so to that end, you practiced with the PR-24, how to
11 use it in close quarters in contact with a crowd; correct?

12 A. That's correct, sir.

13 Q. And, obviously, you were trained that you want to keep
14 track of the thing. You don't want other people grabbing it
15 from you?

16 A. Yes, sir.

17 Q. Did you carry -- do Capitol Police officers carry
18 firearms?

19 A. Yes, sir.

20 Q. Did -- and that -- did you carry a firearm on your
21 person when you were equipped or outfitted as a civil
22 disturbance unit member?

23 A. Yes, sir.

24 Q. Did you have a firearm on your person when you
25 interacted with the crowd in the various videos and photos

1 we've seen?

2 A. Yes, sir.

3 Q. And by firearm, I'm referring to a loaded revolver;
4 correct?

5 A. It would be -- refer to a Glock 22, a .40 caliber.

6 Q. Okay. So it's not a revolver. It fires even quicker
7 than a revolver; correct?

8 A. That's correct, sir.

9 Q. And one of the benefits of a Glock is it's less likely
10 to jam than a revolver; correct?

11 A. That's correct, sir.

12 Q. So you can get off about nine rounds pretty quickly,
13 can't you?

14 A. Yes.

15 Q. And to that end, you were trained in how to use it;
16 correct?

17 A. Yes, sir.

18 Q. But could only use lethal force, you were trained, when
19 it was objectively reasonable to believe that either your
20 life or the life of another person was in imminent risk of
21 harm; correct?

22 A. Yes, that's correct, sir.

23 Q. And it had to be a serious risk of harm, not a nominal
24 or trivial; correct?

25 A. Yes, sir.

1 Q. You also had other devices on your belt that day. You
2 had your pepper spray; correct?

3 A. That's correct, sir.

4 Q. And that's an oleoresin spray, as you've heard; correct?

5 A. Yes.

6 Q. And what it does is it disables a person's soft tissues,
7 their mucus membranes; correct?

8 A. That's correct, sir.

9 Q. Disturbs your eyes?

10 A. Yes, sir.

11 Q. Clogs your nose?

12 A. Yes, sir.

13 Q. Clogs your airways?

14 A. That's -- yes, sir.

15 Q. And none of that, when you apply it, is intended to harm
16 a person; correct?

17 A. That's correct, sir.

18 Q. It is -- its use is to temporarily disable them;
19 correct?

20 A. That's correct, sir.

21 Q. So that they will stop resisting you; correct?

22 A. That's correct, sir.

23 Q. As you issue lawful commands; correct?

24 A. That's correct, sir.

25 Q. Now, on the 6th of January 2021, you were told that you

1 needed to be on duty that day; correct?

2 A. That's correct, sir.

3 Q. And if I understood your testimony correctly here today,
4 you got wind of that a day or so before the 6th?

5 A. Yes, sir.

6 Q. Expected quite a crowd in the area of the Capitol that
7 day?

8 A. That's correct, sir.

9 Q. And you were given a briefing about the need to maintain
10 the integrity of the building; correct?

11 A. That's correct, sir.

12 Q. You wanted to prevent unauthorized visitors from
13 entering; correct?

14 A. Yes.

15 MR. PATTIS: May I speak to the Government for a
16 moment, Judge? I --

17 (Brief pause.)

18 I thought the Government was trying to get my
19 attention, Judge. I always stand to be corrected.

20 BY MR. PATTIS:

21 Q. And you were taught that this could be an enormous
22 crowd; correct?

23 A. Yes, we --

24 Q. Tens of thousands of people?

25 A. It could be, yes, sir.

1 Q. Coming from around the country --

2 A. Yes, sir.

3 Q. -- to protest --

4 A. Yes, sir.

5 Q. -- about an election --

6 A. Yes, sir.

7 Q. -- that some people believed had been stolen?

8 A. That's correct, sir.

9 Q. And you -- and whether -- and I don't want to inquire
10 into your personal beliefs. But you understood that there
11 were likely to be agitated people on the Capitol grounds
12 that day; correct?

13 A. That's correct, sir.

14 Q. And on the Capitol grounds that day, a very significant
15 event was going to take place; correct?

16 A. Yes.

17 Q. Did you understand that?

18 A. Yes.

19 Q. The electoral votes were going to be certified; correct?

20 A. Yes, sir.

21 Q. That would be the final step, other than the
22 inauguration, in the peaceful transfer of power from one
23 president to another; correct?

24 A. That's correct, sir.

25 Q. And you understood that on the morning of the 6th, as

1 congressmen and senators were assembling -- or withdrawn.

2 Did you understand on the morning of the 6th, as
3 congressmen and senators were assembling, that the President
4 of the United States, then Donald J. Trump, would be
5 addressing a crowd on the Ellipse?

6 A. I didn't know about specific time frame, but I knew that
7 something like that could happen.

8 Q. I don't mean to be rude to you, sir. You knew that
9 something like that could happen or would happen?

10 A. I --

11 Q. It was going to happen?

12 A. I actually did not know about his address at that
13 specific time frame, sir.

14 Q. Okay. Did you know that the President of the United
15 States was encouraging people to appear at the Capitol to
16 stop the steal?

17 A. Prior -- prior to the day of the 6th, yes.

18 Q. And you were briefed on that; correct?

19 A. Yes.

20 Q. And your briefing included not just members of the
21 Capitol Police Department, but I think you told us members
22 of the Metropolitan Police Department were there; correct?

23 A. They had their own separate roll call, sir, but I
24 believe they got the same intelligence that we did.

25 Q. And my question was confusing. You anticipated me.

1 Members of the Metropolitan Police Department were there
2 that day; correct?

3 A. Yes.

4 Q. I think you told us you -- did you see FBI agents there,
5 as well?

6 A. There were special response teams of FBI.

7 Q. What is a special response team from the FBI?

8 A. It would be a -- their equivalent of a SWAT team.

9 Q. So there were FBI SWAT teams at the Capitol on
10 January 6th?

11 A. Inside the Capitol.

12 Q. How many?

13 A. I could not recall exact number.

14 Q. And were there members of other federal agencies that
15 you became aware of that were present on the Capitol on
16 January 6th?

17 A. Yes, Metropolitan Police Department. I think we had
18 Arlington -- I think we have state troopers as well,
19 Virginia state troopers at one point, at later points.

20 Q. Secret Service agents?

21 A. Secret Service agents, yes, sir.

22 Q. So an effort was made to gather as many law enforcement
23 officers as could reasonably be found to prepare in the
24 event that things got out of hand that day; is that a fair
25 statement?

1 A. Yes.

2 Q. Were you aware, sir -- were you made aware of the fact
3 that it was possible that this business of certifying the
4 electoral vote could take a number of days? Did anybody
5 inform you of that?

6 A. I'm sorry. Would you mind repeating the question, sir?

7 Q. Yes, sir. I'm sorry. I'm trying to talk loud enough,
8 stay near the microphone, and not holler.

9 When you were briefed about the events of
10 January 6th, were you briefed that the certification -- that
11 it would be a certification process? That was part of the
12 briefing?

13 A. Yes, sir.

14 Q. And did somebody brief you and say, Look, we might be a
15 little short-staffed here today because we need to hold
16 people in reserve so that we can keep this place going round
17 the clock for two or three days? Were you informed of that?

18 A. Not -- it, kind of, was an assumption that we
19 potentially would be there for a prolonged period of time.

20 Q. It was, kind of, an assumption. I don't know what that
21 means. So that means you weren't briefed on that?

22 A. I cannot recall to that specific --

23 Q. Okay. But in any case, it was a special event?

24 A. Yes, sir.

25 Q. More intensely prepared for than any other event other,

1 perhaps, than an inauguration that you had been involved in;
2 correct?

3 A. That's correct, sir.

4 Q. Had you been involved in an inauguration before?

5 A. I did not at that specific time, no.

6 Q. No, I don't think so, because you came in 2017. So this
7 was it? This was a big event?

8 A. That's correct.

9 Q. And I think you testified that you saw more people there
10 than you'd ever seen before; correct?

11 A. Yes, outside of Fourth of July celebrations, sir.

12 Q. Well, what you told the jury -- and I don't mean to be
13 rude to you -- you told the jury it was more people than
14 you'd ever seen besides the Fourth of July; correct?

15 A. That's correct.

16 Q. And an inauguration; correct?

17 A. Yes.

18 Q. But you were never there at an inauguration; correct?

19 A. That's correct.

20 Q. A little bit of an overstatement? Just a touch. Okay.

21 Now, you go to the briefing. You're assigned --
22 were you assigned, immediately after the briefing, to a
23 particular location in the Capitol?

24 A. We had a staging area, sir, and it was -- we had a
25 staging area for our squads and our platoon, and it was the

1 Capitol Visitors Center, north screening area.

2 Q. Can you show us on the demonstrative exhibit next to you
3 where that is, where your staging area was?

4 A. So this is the north side. (Indicating.)

5 Q. And that's the Senate side; right, sir?

6 A. Yes, that's the --

7 Q. Okay.

8 A. -- Senate side. And there's the Capitol Visitors Center
9 under the Capitol itself, the main building and it's -- it
10 would be an area that's, kind of, under the ground.

11 Q. Okay. Got it. So underground north of the Capitol;
12 correct --

13 A. Yes, sir.

14 Q. -- or is that south?

15 A. No, that's -- that would be north.

16 Q. Okay. And you met there. That was your staging area.
17 But you didn't have all your gear with you?

18 A. I had everything besides the shield, sir.

19 Q. I see. Yeah, and you mentioned that. That's -- I was
20 curious about that. You go to the staging area, you get
21 your assignment, you're told you're going to be part of the
22 civil disturbance unit, but you had to go, once you were
23 deployed to a particular location, all the way to the east
24 side of the building to get your shield?

25 A. That's what happened on that day, sir.

1 Q. Are the shields stored in a particular area on the east
2 side?

3 A. At that specific time, they were stored in trailers.
4 Trailers would have different types of shields. And the
5 trailer was, at that specific time, on the east front.

6 Q. So trailers -- you say trailers would have different
7 kinds of shields?

8 A. Yes, sir.

9 Q. Would -- and you mentioned something in your testimony
10 about a round shield?

11 A. That's correct, sir.

12 Q. But you went to -- when you went to the east side to get
13 your shield, you went to get your four-foot shield; correct?

14 A. That's correct, sir.

15 MR. PATTIS: And may I approach the witness for a
16 moment, Judge?

17 THE COURT: You may, sir.

18 MR. PATTIS: And retrieve an exhibit, sir?

19 THE COURT: Yes.

20 BY MR. PATTIS:

21 Q. I want to show you Exhibit-73. This is the shield that
22 you went to retrieve from the east side of the Capitol;
23 correct?

24 A. Yes, that's correct, sir.

25 Q. It took, maybe -- what would you say? -- 10, 15 minutes

1 to get from the staging area to where the shield was in the
2 storage unit?

3 A. No, sir. It was a very quick action, because we
4 received a radio call for immediate response to the west
5 front. So --

6 Q. Now, do you recall when you showed the jury how you used
7 the shield that day?

8 A. Yes, sir.

9 Q. You took your left arm and you went like this,
10 (indicating); right?

11 A. Yes, sir.

12 Q. But that's not what you did on the day of the riot, is
13 it?

14 A. Well --

15 Q. It's not what you did.

16 A. There's different --

17 Q. Yes or no?

18 A. I --

19 Q. You're left-handed; correct?

20 A. Yes, that's correct.

21 Q. Your left hand is your dominant hand?

22 A. Yes, sir.

23 Q. You keep your dominant hand free because that's how you
24 can get access to your tools; correct? Yes? Yes or no?

25 A. I -- it depends on the circumstances. When I'm acting

1 in a line, I only can carry it with the left hand, so I have
2 to sacrifice that in order to keep the line.

3 Q. So -- do you recall meeting with members of the U.S.
4 Attorney's Office, a couple of the lawyers seated at the
5 table there, and two FBI agents?

6 A. I do recall that.

7 Q. That meeting might have taken place in about October of
8 2022?

9 A. I do remember.

10 Q. Do you recall telling them you were left-handed?

11 A. Yes, sir.

12 Q. And that you put -- you put the screen -- the shield on
13 your right arm? Do you recall saying that?

14 A. I do not recall that.

15 Q. And, by the way, does this bear a particular
16 identification number? I mean, how many of these shields
17 were there in use that day?

18 A. I cannot tell you, but --

19 Q. Dozens? Right?

20 A. A few, sir.

21 Q. Does this have an identification number such that you
22 can recognize it as yours?

23 A. Not specifically.

24 Q. How do you know this is yours from that day?

25 A. I would not be able to tell you if it's specifically my

1 shield that I used at that specific time, but it's the type
2 of shield that I used on that day.

3 Q. So your testimony to the jury is you don't know if this
4 is your shield?

5 A. This specific shield? No.

6 Q. But it's just like the one you used; correct?

7 A. Yes.

8 MR. PATTIS: May I have a moment, Judge?

9 THE COURT: Yes, you may.

10 (Brief pause.)

11 BY MR. PATTIS:

12 Q. Sir, do you or do you not recall saying to the FBI and
13 the prosecutors that your shield was in your right hand? Do
14 you recall?

15 A. I do not recall that, sir.

16 Q. Would looking at a document refresh your memory?

17 A. Potentially, sir.

18 MR. PATTIS: Judge, may I approach the witness?

19 THE COURT: You may.

20 BY MR. PATTIS:

21 Q. Sir, I'm showing you a document and I'd ask you to read
22 it to yourself for a moment. And the only -- you can read
23 as much of it as you like, but I'd ask you to read the
24 portions that are underlined in red. And please let me know
25 when you're done reading it --

1 A. Okay, sir.

2 Q. -- to yourself.

3 (Brief pause.)

4 Have you had a chance to read it, sir?

5 A. Yes, sir.

6 Q. Does that refresh your recollection about what you told
7 the FBI and federal prosecutors in October of 2022?

8 A. Yes, to a degree that I utilized my shield.

9 Q. I'm sorry?

10 A. Yes, to a degree that I utilized my shield on that day,
11 sir.

12 Q. But not that you held it in your right hand?

13 A. Not that.

14 Q. Okay. You don't dispute that's what you told them then?

15 A. I recall saying that I was left-hand dominant.

16 Q. And that you held your hand in -- your shield in your
17 right hand?

18 A. I do not recall saying that, sir.

19 Q. Okay. Now, you testified a -- moments earlier about the
20 various forms that you have to fill out in the department;
21 correct?

22 A. Yes, sir.

23 Q. About the various equipment that you're used to train
24 with; correct?

25 A. Yes, sir.

1 Q. Now, did somebody return this shield to you at the close
2 of the day on January 6th, 2021?

3 A. No, sir.

4 Q. You never reported it as lost or missing, though, did
5 you?

6 A. I did not.

7 Q. But you did report your gas mask as lost or missing;
8 correct?

9 A. At one point, I believe so. I'm not sure on the time
10 frame.

11 Q. Do you know, sir, whether an individual gave -- one of
12 the defendants in this case gave a shield to a law
13 enforcement officer at the end of that day? Do you know
14 that?

15 A. I have no that -- knowledge of that.

16 Q. So I'd like to go a little bit to the mechanics of the
17 confrontation that you were engaged in that day -- well,
18 before we do that, as part of your CDU gear, you had your
19 Scorpion gear; correct?

20 A. That's correct, sir.

21 Q. Hard hat; correct?

22 A. Yes, that's correct, sir.

23 Q. Opaque -- I mean, a shield you could see through over
24 your face?

25 A. Yes, sir.

1 Q. And were you wearing body armor, as well?

2 A. Yes, I was wearing body armor.

3 Q. And so the goal was to prevent your being injured from
4 projectiles or knives or whatnot; correct?

5 A. Yes, sir.

6 Q. And you had your shield; correct?

7 A. That's correct, sir.

8 Q. Now, you --

9 MR. PATTIS: May -- Ms. Rhode, may we see
10 Exhibit-226, please? I believe it's a film.

11 BY MR. PATTIS:

12 Q. So before she plays it, in terms of -- you were in the
13 CDU hard -- what was it? Hard gear unit?

14 A. Yes, sir.

15 Q. There was also a less-than-lethal unit, as well?

16 A. Yes, the specialty is use of munitions and
17 specialized -- grenadiers and --

18 Q. I'm sorry?

19 A. Yes, the --

20 Q. Specialized use of munitions and what else?

21 A. And we'll call them grenadiers because they can use
22 munitions.

23 Q. I'm not hearing you. Munitions and we'll call it what?

24 A. Within the CDU unit, we have a special group of people
25 that we call grenadiers. They have licenses --

1 Q. Oh, granted use.

2 A. Grenadiers.

3 Q. You said --

4 A. We call them grenadiers.

5 Q. Oh. Grenadiers?

6 A. Yes, sir.

7 Q. Okay. I'm -- okay.

8 A. And they can use those specific munitions.

9 Q. So they get -- they're trained on how to shoot stuff at
10 people?

11 A. Exactly, sir.

12 Q. And those would include pepper bullets?

13 A. Yes, sir.

14 Q. And we -- you saw -- in one of the photos, you saw a
15 weapon pointed at the crowd with a magazine with colored
16 bullets in it. Those were the sort of projectiles that got
17 shot at the crowd; correct?

18 A. Yes, sir.

19 Q. And the -- and you were not trained in the use of those?

20 A. No, sir.

21 Q. But you were aware of the training that officers had who
22 were so trained?

23 A. That's correct, sir.

24 Q. And they were trained not to make head shots; correct?

25 A. That's correct, sir.

1 Q. That shooting somebody in the head with one of those
2 projectiles, that could be lethal force?

3 A. Potentially, sir.

4 Q. Could take out an eye?

5 A. Potentially, sir.

6 Q. And could cause serious physical injury?

7 A. Potentially, sir.

8 Q. And additionally, the use of those could further inflame
9 an already agitated crowd; correct?

10 A. Potentially so.

11 Q. And you knew that? You knew that on January 6th, 2021,
12 from your training?

13 A. Yes.

14 Q. You went to the east storage unit and you got a shield;
15 you came back with it, whether it's on your right or left
16 arm; you're deployed; and you look out at the crowd, and
17 your first thought was, Oh, my God. This is bad, really
18 bad; right?

19 A. That's correct, sir.

20 Q. People are angry?

21 A. That's correct.

22 Q. We're outnumbered hundreds to one?

23 A. That's correct, sir.

24 Q. And we're expected to secure the Capitol?

25 A. That's correct, sir.

1 Q. And they had already breached one line, as far as you
2 could tell?

3 A. That's correct, sir.

4 Q. Because in your briefing, you understood -- and turn to
5 the map next to you -- that in the area of the Peace Circle
6 and whatnot where Breach No. 1 is, the crowd was not
7 supposed to go in there through there?

8 A. That's correct, sir.

9 Q. But when you got out, they were already almost on the
10 inaugural stage?

11 A. That's correct, sir.

12 Q. And the goal was to establish a perimeter?

13 A. That's correct, sir.

14 Q. A perimeter through which the crowd would not pass?

15 A. That's correct, sir.

16 Q. No one was speaking to the crowd through a loudspeaker?

17 A. I cannot recall that, but I don't believe so.

18 Q. But members of the crowd had loudspeakers?

19 A. I believe so.

20 Q. But you were on your own with other officers standing
21 shoulder to shoulder, facing hundreds, if not thousands, of
22 angry people?

23 A. We had communication with our radio.

24 Q. Earpiece in?

25 A. Yes, sir.

1 Q. And you could hear, above the crowd, certain commands?

2 A. To a certain degree, sir.

3 Q. Well enough to know that things were going bad in a
4 hurry?

5 A. That's correct, sir.

6 Q. There were breaches here and there; correct?

7 A. Yes, breaches of the line, sir.

8 Q. Officers calling for help?

9 A. That's correct, sir.

10 Q. And you responded as best as you could?

11 A. That's correct, sir.

12 Q. Now -- but you weren't on your own that day, were you?

13 A. No.

14 Q. How many people were in your unit?

15 A. So I was a member of a platoon. Each platoon has 10 to
16 12 people. I was part of the squad. So around 30 to 40
17 people, sir.

18 Q. And you had a commanding officer?

19 A. That's correct, sir.

20 Q. Who was your commanding officer that day?

21 A. It was Sergeant Gonell.

22 Q. Was he giving you commands that you could understand as
23 the situation evolved?

24 A. Prior of me getting to the west front, but once we --
25 once we reached the west front, the situation was very

1 dynamic and it was difficult to hear direct commands.

2 Q. You've used that word "dynamic" a number of times.

3 That's in contrast to a static situation; correct?

4 A. That's -- concerns the constantly evolving situation,
5 circumstances.

6 Q. This is not a dynamic, other than verbally so,
7 interaction between you and me; correct?

8 A. Yes.

9 Q. You've heard me ask permission from the Court to get
10 near you; correct?

11 A. That's correct, sir.

12 Q. You have every reason to expect I'll stand here;
13 correct?

14 A. That's correct, sir.

15 Q. And I won't go anywhere without the judge's permission;
16 correct?

17 A. That's correct.

18 Q. You don't expect the jury to surge towards you into the
19 witness box; correct?

20 A. That's correct, sir.

21 Q. This is not a dynamic situation; correct?

22 A. This is not dynamic.

23 Q. In a dynamic situation, you would agree, coordination of
24 response is important?

25 A. That's correct, sir.

1 Q. For the safety of law enforcement officers?

2 A. That's correct, sir.

3 Q. And of the public?

4 A. That's correct.

5 Q. Your supervisors on the day of January 6th, they
6 included Lieutenant Rani Brooks [ph]; correct?

7 A. That's correct, sir.

8 Q. They included Captain N. Mendoza [ph]; correct?

9 A. That's correct, sir.

10 Q. They included Deputy Chief Eric Waldow [ph]; correct?

11 A. That's correct, sir.

12 Q. None of these individuals were giving you commands about
13 how to respond to the sight you saw when you came out onto
14 the west front of the Capitol; correct?

15 A. Well, we had -- I cannot speak to specific individuals,
16 but we were -- received orders in the sense that we have to
17 keep the line and where to go to replace the officers that
18 get injured.

19 Q. Okay. Okay. And that was a judgment that you were
20 expected to make; correct?

21 A. By myself as well, yes, sir.

22 Q. Yeah, in situations that were tense; correct?

23 A. That's correct, sir.

24 Q. Evolving; correct?

25 A. That's correct, sir.

1 Q. Uncertain; correct?

2 A. That's correct, sir.

3 Q. And potentially life-threatening?

4 A. That's correct, sir.

5 Q. And it was terrifying?

6 A. Yes, sir.

7 MR. PATTIS: Turning, again, please, Ms. Rhode,
8 now to 226 -- can we play it for a moment?

9 BY MR. PATTIS:

10 Q. Just watch this with me for a moment.

11 MR. PATTIS: And, Ms. Rhode, I'll ask you to stop
12 it at a particular moment.

13 (Video played.)

14 MR. PATTIS: Okay. Let's stop right there for a
15 moment.

16 BY MR. PATTIS:

17 Q. So you see individuals in the area in the center there
18 pushing and shoving; correct?

19 A. That's correct, sir.

20 Q. And you were authorized to use your shield; correct?

21 A. That's correct, sir.

22 Q. Not just as a defensive tactic to defend yourself;
23 correct?

24 A. That's correct, sir.

25 Q. But to use it offensively as a compliance technique;

1 correct?

2 A. As a control, yes -- technique, yes.

3 Q. I mean, indeed, after January 6th of 2021, you filled
4 out a Use of Force Report; correct?

5 A. That's correct, sir.

6 Q. And you indicated that you engaged in compliance
7 techniques; correct?

8 A. I --

9 Q. Would looking at a document refresh your memory?

10 A. Yes. Yes, sir.

11 Q. Well, I mean, I guess I should ask the predicate
12 question. Do you recall whether you so indicated?

13 A. I -- I indicated that I used force.

14 Q. Used compliance techniques; correct?

15 A. Yes.

16 Q. Okay. And you didn't use deadly force; correct?

17 A. That's correct, sir.

18 Q. The means of force that you used, they included chemical
19 agent sprays. You sprayed your own OC spray; correct?

20 A. That's correct, sir.

21 Q. And you also used empty-hand control techniques;
22 correct?

23 A. Yes.

24 Q. Empty-hand control techniques are things when you don't
25 have something in your hand; correct? That's why it's

1 called empty hand; right?

2 A. That's correct, sir.

3 Q. But you try to obtain control over another person;
4 correct?

5 A. That's correct, sir.

6 Q. In part by taking them to the ground; isn't that true?

7 A. Not necessarily, sir.

8 Q. I didn't say necessarily. I asked you -- I'm asking you
9 about January 6th, 2021. You recognized the ground as a
10 tool that you can use to bring a resisting person under
11 control; isn't that true?

12 A. It's -- could be one of the means, yes.

13 Q. And when you're using an empty-hand control technique,
14 you could, you know -- if I come up to you waving my arms,
15 you could put your arm on me and say, Look, calm down;
16 correct?

17 A. That's correct, sir.

18 Q. If I come up to you to swing, you could stop me;
19 correct?

20 A. That's correct, sir.

21 Q. If I'm out of control trying to reach at you, you might
22 want to use leverage and take me to the ground because the
23 ground, then, becomes a tool that you can use in gaining
24 leverage over me --

25 A. Yes.

1 Q. -- correct?

2 Now, you've defined or -- defined. You've
3 discussed being on the line, as it were, shoulder to
4 shoulder with other officers; correct?

5 A. That's correct, sir.

6 Q. And in 226, we just saw the line beginning to break or
7 to buckle; correct?

8 A. That's correct, sir.

9 Q. Some individuals would charge at the line; correct?

10 A. That's correct, sir.

11 Q. Some individuals were throwing things past the line at
12 officers?

13 A. That's correct, sir.

14 Q. Some individuals were spraying an unknown chemical
15 substance, as you described it, at you?

16 A. That's correct, sir.

17 Q. And some of the officers were spraying stuff back;
18 correct?

19 A. That's correct.

20 Q. But nobody was using deadly force?

21 A. No.

22 Q. On either side?

23 A. That's correct.

24 Q. From a law enforcement perspective, deadly force would
25 not have been authorized?

1 A. It would not be --

2 Q. But things were spinning out of control, weren't they?

3 A. They were out of control, yes.

4 Q. Were -- getting -- they were getting worse?

5 A. That's correct.

6 Q. And it's -- you --

7 MR. PATTIS: Can we play the tape a little bit
8 more, Ms. Rhode, 226?

9 (Video played.)

10 MR. PATTIS: Can you stop it for a moment.

11 BY MR. PATTIS:

12 Q. Now, who's this individual right here in the lower
13 left-hand corner that I just circled in green?

14 A. That would be our inspector, Inspector Loyd.

15 Q. Okay. And are you aware of whether Mr. Loyd has
16 testified in this case?

17 A. I'm not aware of that, sir.

18 Q. You've not spoken to him about his testimony?

19 A. No.

20 MR. PATTIS: Can you please continue with the
21 tape, please?

22 (Video played.)

23 MR. PATTIS: Okay. Stop.

24 BY MR. PATTIS:

25 Q. See what he's doing there? He's raising his hand and

1 looking up and doing one of these, (indicating); correct?

2 A. That's correct, sir.

3 Q. And you understood that to be a signal to other
4 officers; correct?

5 MS. MOORE: Objection, lack of foundation.

6 BY MR. PATTIS:

7 Q. Did you understand that to be a signal to other
8 officers?

9 A. It appears to be so, sir.

10 Q. Open fire; correct? Let's go. Let's use that
11 non-lethal force to try to control this crowd; correct?

12 A. It appears to be so.

13 Q. Thank you. Now, at -- shortly there -- at some point,
14 as this melee evolves, you saw an officer assaulted;
15 correct?

16 A. That's correct, sir.

17 Q. You were to the left of the officer; correct?

18 A. That's correct, sir.

19 Q. You saw the officer lose his footing; correct?

20 A. That's correct, sir.

21 Q. You decided, at that moment, to break the line; correct?

22 A. That's correct, sir.

23 Q. To provide assistance; correct?

24 A. That's correct, sir.

25 Q. And in the process of providing assistance, you lost

1 your shield; correct?

2 A. I respectfully disagree. I didn't lose my shield, sir.

3 Q. Okay. An individual violently grabbed at it?

4 A. That's correct, sir.

5 Q. You fell. And in the course of assisting your officer,
6 the officer -- withdrawn.

7 The officer had fallen on his -- on -- was it a
8 him or a her? I don't know.

9 A. That was a male officer, sir.

10 Q. He fell on his stomach; correct?

11 A. Yes.

12 Q. Other officers fell -- others fell at that same time, as
13 well; correct?

14 A. I couldn't see very clearly in terms of which officer.

15 Q. Well, you told us that some folks fell on you. You
16 fell, as well; correct?

17 A. Yes. Yes, sir. Yes.

18 Q. And all that time, you were trying to protect your
19 weapon side in your -- when you're in that close
20 confrontation; correct?

21 A. I was able to make a slight moment [sic] to protect it.
22 Yes, sir.

23 Q. Well, I mean, you wouldn't go wading into a crowd
24 leaving your handgun exposed to any Tom, Dick, or Harry,
25 would you?

1 A. I wouldn't do so, sir.

2 Q. No. And that would be a violation of your training,
3 wouldn't it?

4 A. Yes, sir.

5 Q. Especially in an agitated crowd; correct?

6 A. That's correct, sir.

7 Q. What you were taught is that in a close hand-to-hand
8 confrontation, your tool belt is a prime location, a
9 location you must protect; correct?

10 A. Yes, specifically handgun.

11 Q. And you don't want to lose control of the handgun?

12 A. That's correct, sir.

13 Q. And your dominant hand was your left hand?

14 A. That's correct, sir.

15 Q. And that's the hand you used to reach to hold down -- to
16 make sure that your weapon maintained its space on your
17 belt; correct?

18 A. That's correct, sir.

19 Q. And with your -- what did you -- what were you doing
20 with your right hand at that point?

21 A. During that specific interaction, I was trying to pick
22 up the officer, but immediately prior to that, I had my
23 other hand on his shield trying to push out to people, get
24 additional leverage, to use the shield to clear out the
25 individuals.

1 Q. Can I ask you a really stupid question?

2 A. Yes, sir.

3 Q. If you had your gun -- your left hand on your gun and
4 you're trying to pick up an officer, isn't it true, sir, you
5 let go of the shield to lend assistance to your officer?
6 That's what happened; isn't it --

7 A. Well, at --

8 Q. -- sir?

9 A. At that specific time, I had my shield in my left hand
10 and I try and pick up the officer with my right hand. And
11 it's one of these things during the situations with CDU, if
12 you want to have additional leverage with the shield and
13 want to assist someone, you have to surrender. I cannot
14 grab my weapon as I have a shield. It would be impossible
15 to utilize shield properly. So I had my shield on my left
16 hand and I try and pick up with -- the officer with the
17 right, but you also can use shield with your two hands to
18 provide you more leverage and more pushing power, as well.

19 Q. Well, you could do a lot of things, but I want to talk
20 to you about what you did that day. You told the jury you
21 had your hand on your belt -- your left hand, correct, to
22 protect your gun --

23 A. When I --

24 Q. -- correct?

25 A. When I was on the ground, sir.

1 Q. Yeah. And you got down -- you fell onto your stomach in
2 the course of this interaction -- this melee?

3 A. I -- yes, sir.

4 Q. You were forced to the ground?

5 A. I was forced to the ground, sir.

6 Q. In part by the activity of the crowd; correct?

7 A. Would you mind repeating that, sir?

8 Q. In part because of the activity of the crowd; correct?

9 A. Because of assaultive individuals, yes.

10 Q. Yes. And in part, because you lost your balance as you
11 were trying to reach down to help your fellow officer;
12 correct?

13 A. No, individuals were pushing me down using their hands
14 and grabbing to my shield, sir.

15 Q. Okay. The officers on the ground -- how -- and you have
16 just the -- I mean, there -- nothing's changed about you
17 since January 2021; right? Nothing material. I mean, you
18 didn't have more arms that day. You weren't an octopus or
19 anything like that; right?

20 A. No, sir.

21 Q. You just got the two arms; right?

22 A. Yes.

23 Q. One's left; one's right?

24 A. That's correct, sir.

25 Q. The left hand's protecting your weapon and, maybe,

1 holding your shield; correct, at the same time, apparently?

2 A. Well, when I was on the ground, I protected my weapon.

3 Q. Okay. Do you recall what you told the U.S. Attorney's
4 Office, the prosecutors here, and a couple of FBI agents in
5 October about this event -- this interaction?

6 A. Yes.

7 Q. Okay. Did you tell them that someone in the crowd
8 grabbed your hand?

9 A. Yes.

10 Q. Did you tell them that you lost your balance?

11 A. I don't recall that specifically.

12 Q. Would looking at a document refresh your memory?

13 A. Yes.

14 MR. PATTIS: May I approach the witness, sir?

15 THE COURT: You may.

16 BY MR. PATTIS:

17 Q. And, again, Officer, I would ask you to read simply the
18 portion of this document that is underlined in red. If you
19 need more, I'll get you the whole thing.

20 A. Thank you.

21 Q. Just you tell me --

22 A. Thank you very much, sir.

23 (Brief pause.)

24 Thank you, sir.

25 Q. Have you had a chance to read that to yourself, sir?

1 A. Yes, I did.

2 Q. Having read that document, does that refresh your memory
3 about what you told members of the United States Attorney's
4 Office in October of 2022?

5 A. Yes, sir.

6 Q. And you told them you lost your balance, didn't you?

7 A. After I was grabbed, yes.

8 Q. And there were a lot of people in the crowd on top of
9 you; correct?

10 A. Yes, sir.

11 Q. And it was at that point that somebody took your shield
12 when you were on the ground with a lot of people on top of
13 you. That's what you told these folks; isn't it?

14 A. It --

15 Q. Do you recall?

16 A. I -- it happened --

17 Q. Sir, do you recall what you told them; yes or no?

18 A. Yes.

19 Q. You told them that you lost the -- at the -- which --
20 somebody grabbed -- took your shield when you were on the
21 ground; correct? That's what you told these folks in
22 October of 2022; correct?

23 A. Based --

24 Q. Yes or no?

25 A. -- on the document provided, yes.

1 Q. Was it true then?

2 A. That someone took my shield, yes.

3 (Brief pause.)

4 MR. PATTIS: May I have just one moment, sir?

5 BY MR. PATTIS:

6 Q. So you help assist the officer get up; correct?

7 A. That's correct, sir.

8 Q. You re-got -- you regained your footing; correct?

9 A. Once I got pulled out, I'd be able to regain my footing,
10 sir.

11 Q. And, at this point, you're -- you were cloaked in spray.
12 You were having difficulty breathing and seeing; correct?

13 A. That's correct, sir.

14 Q. And you realized at that point you didn't have your gas
15 mask; correct?

16 A. It would be a little -- somewhat further after I'd be
17 able to decontaminate myself, sir.

18 Q. You didn't have your PR-24?

19 A. That's correct, sir.

20 Q. You didn't have your shield?

21 A. That's correct, sir.

22 MR. PATTIS: I'd like to look at a couple of
23 photos, if we may, Ms. Rhode. Can we please look at 1129,
24 please?

25 BY MR. PATTIS:

1 Q. Now, 1129 shows some individuals on the ground; correct?

2 A. That's correct, sir.

3 Q. It shows some individuals with a shield; correct?

4 A. That's correct, sir.

5 Q. Where are you?

6 A. I am somewhere to the left of them.

7 Q. So maybe, behind this guy -- between the cameraman and
8 this guy with the North Face backpack?

9 A. Yes, somewhere in that vicinity, sir.

10 Q. Did you see blood in the area I -- do you see the area I
11 circled?

12 A. Yes, I could see some red substance.

13 Q. Is that consistent with blood?

14 A. It could be, sir.

15 Q. Was it that day? Did you see someone who had been shot,
16 perhaps in the face, right nearby in that area -- at that
17 moment?

18 A. I didn't see anyone. The situation was constantly
19 evolving, sir.

20 Q. I beg your pardon, sir?

21 A. The situation was constantly evolving, sir. I was -- I
22 couldn't see everything, sir.

23 Q. Okay. And you also had pepper spray in your eye at that
24 point; correct?

25 A. That's correct, sir.

1 Q. Do you know that this is your shield or not?

2 A. I believe that's my shield, sir.

3 Q. Do you know?

4 A. Based on the circumstances, I believe that's my shield,
5 sir.

6 Q. Okay. Who else's could it have been; correct?

7 A. I'm sorry, sir?

8 Q. Who else's could it have been; correct?

9 A. I believe it's my shield, sir.

10 Q. How many people lost their shields that day?

11 A. I have no knowledge of that, sir.

12 Q. Were you reprimanded for losing control of yours?

13 A. Based on the circumstances, no.

14 Q. Do you feel that the facts and circumstances under which
15 you lost control of your shield might jeopardize your
16 application to the Naval Criminal Investigation Service?

17 A. I'm sorry. Would you mind repeating that, sir? I'm
18 sorry.

19 Q. Did you leave the Capitol Police force voluntarily?

20 A. Yes.

21 Q. You mentioned earlier in your testimony the briefing
22 that you had; correct? Prior to January 6th, 2021.

23 A. Yes, sir.

24 Q. And you said that you had some intelligence; correct?

25 A. Yes.

1 Q. And you assumed that the Metropolitan Police Department
2 had some intelligence, as well?

3 A. Yes, sir.

4 Q. Did the name Shane Lamond ever come up in these
5 intelligence briefings?

6 A. I do not recall that, sir.

7 Q. And do you -- and --

8 MR. PATTIS: May we have a brief sidebar, Judge?
9 I just want to ask one question, but I need your permission.

10 (Bench conference:)

11 THE COURT: Yes, Mr. Pattis?

12 MR. PATTIS: This would be the point where I'd
13 say, Did you know whether there were confidential human
14 sources from the Federal Government embedded with the others
15 there? And that would be the only question. If he said no,
16 I would have accomplished my purpose nonetheless.

17 THE COURT: Do we -- and what's the Government's
18 position on that question?

19 MS. MOORE: I don't think he's established any
20 basis to believe that this witness would have any
21 information about that. And so based on your prior rulings,
22 I don't believe he should be permitted to answer -- ask the
23 question.

24 MR. PATTIS: The reason I said the -- this would
25 be a foundation-specific is he said other federal agents

1 involved there. He's identified some, but he hasn't
2 identified all. So I want to ask if he knows. I have
3 reason to believe there were agents present. If he doesn't
4 know, then I move on. I'm not going to flash names or --

5 THE COURT: That's a different -- the question
6 of -- he was saying federal law enforcement agents. You've
7 gone into that. He can testify as to that. I mean, and
8 you --

9 MR. PATTIS: Understood.

10 THE COURT: Okay.

11 MR. PATTIS: So you're saying no?

12 THE COURT: I'm saying no on the CHS, because I
13 don't think there's any factual basis for him and -- no one
14 has articulated a factual basis for him to have any
15 knowledge about that, but --

16 MR. PATTIS: Okay.

17 THE COURT: -- but on the agents, I think that's
18 fair game.

19 MR. PATTIS: Thank you, sir.

20 THE COURT: All right.

21 (Return from bench conference.)

22 BY MR. PATTIS:

23 Q. In addition to Capitol Police officers, Metropolitan
24 Police Department officers, FBI agents, Secret Service
25 agents, do you know whether law enforcement had other assets

1 on the ground that day? Do you know?

2 A. Outside of that mentioned, I don't know of any other,
3 besides the usual bomb squad and specialty units within --

4 Q. Gosh. I mean, you just threw me for a minute. The
5 usual bomb squad and specialty agents? What other kind of
6 specialty agents were there that day?

7 A. Well, in our department, we have different operation
8 groups, such as bomb squad, bomb technicians. We have
9 intelligence --

10 Q. You have your own intelligence unit?

11 A. Yes, our own intelligence units.

12 Q. Who was in the intelligence unit at that time?

13 A. I'm sorry, sir?

14 Q. Do you know whether intelligence units had intermingled
15 with the crowd -- intelligent unit's members had
16 intermingled with the crowd to gain intelligence?

17 A. If I have to guess, most likely, sir.

18 Q. Most likely?

19 A. Yes.

20 MR. PATTIS: Thank you.

21 THE COURT: All right. It's 12:26, so just a few
22 moments short of lunch. So ladies and gentlemen, we'll come
23 back at 1:30 and -- see you then after lunch.

24 (Jury returned to jury room.)

25 THE COURT: Sir, you may step down from the stand.

1 Everyone may be seated.

2 Sir, you may step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Absolutely.

5 (Witness steps down.)

6 THE COURT: All right. We'll be in recess until
7 1:30.

8 THE DEPUTY CLERK: All rise. This Honorable Court
9 stands in recess.

10 (Luncheon recess taken at 12:27 p.m.)

11 * * * * *

12 CERTIFICATE OF OFFICIAL COURT REPORTER

13 I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify
14 that the above and foregoing constitutes a true and accurate
15 transcript of my stenographic notes and is a full, true and
16 complete transcript of the proceedings to the best of my
17 ability, dated this 7th day of February 2023.

18 /s/Timothy R. Miller, RPR, CRR, NJ-CCR
19 Official Court Reporter
20 United States Courthouse
21 Room 6722
22 333 Constitution Avenue, NW
23 Washington, DC 20001
24
25

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/s/Timothy [1] - 7566:18	18 [4] - 7514:14, 7514:22, 7515:6, 7516:21 18th [1] - 7478:11 1:00 [1] - 7480:13 1:21-cr-00175-TJK-1 [1] - 7435:2 1:21-cr-00175-TJK-2 [1] - 7435:3 1:21-cr-00175-TJK-3 [1] - 7435:3 1:21-cr-00175-TJK-5 [1] - 7435:4 1:21-cr-00175-TJK-6 [1] - 7435:4 1:30 [2] - 7565:23, 7566:7 1st [2] - 7435:24, 7446:16	252-7233 [1] - 7435:15 253-0514 [1] - 7436:14 27 [1] - 7435:8 28th [1] - 7445:22 2:00 [1] - 7506:21	5 5 [6] - 7438:5, 7438:11, 7438:15, 7471:20, 7511:24 5-ENRIQUE [1] - 7435:6 54 [1] - 7474:14 54-second [1] - 7474:13 55 [2] - 7509:14, 7509:20 555 [1] - 7435:14 5:00 [1] - 7446:1	A a.m [2] - 7435:6, 7506:21 ability [4] - 7499:16, 7501:13, 7501:15, 7566:17 able [20] - 7440:13, 7447:21, 7448:3, 7466:7, 7471:5, 7475:17, 7488:17, 7498:23, 7502:1, 7502:4, 7505:2, 7505:5, 7505:23, 7506:20, 7513:9, 7513:15, 7537:25, 7554:21, 7560:9, 7560:17 absolutely [1] - 7566:4 access [1] - 7536:24 accomplish [1] - 7472:5 accomplished [1] - 7563:16 account [1] - 7443:22 accurate [4] - 7454:7, 7461:15, 7489:22, 7566:14 acting [2] - 7469:6, 7536:25 action [1] - 7536:3 activated [5] - 7479:12, 7479:25, 7480:2, 7480:5, 7481:21 activity [2] - 7557:6, 7557:8 acute [1] - 7442:4 addition [2] - 7479:7, 7564:23 additional [6] - 7482:16, 7493:12, 7499:25, 7501:13, 7555:24, 7556:12 additionally [1] - 7543:8 address [4] - 7438:19, 7448:14, 7454:10, 7530:12 addressing [1] - 7530:5 adds [1] - 7446:19 admit [2] - 7481:7, 7489:25 admitted [7] - 7457:9, 7481:9, 7490:2,	
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