

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00175
Plaintiff,)	
)	
vs.)	
)	
ETHAN NORDEAN, JOSEPH R. BIGGS,)	Washington, D.C.
ZACHARY REHL, ENRIQUE TARRIO and)	March 1, 2023
DOMINIC J. PEZZOLA,)	9:10 a.m.
)	
Defendants.)	
)	
* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 41
AFTERNOON SESSION
BEFORE THE HONORABLE TIMOTHY J. KELLY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

Jason McIntyre

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David Riggleman

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EXHIBITS RECEIVED IN EVIDENCEPAGE

Defendant Rehl's Exhibit No. 11-A

11568

Government's Exhibit No 485

11646

Government's Exhibit Nos. 122-A and 151-A

11653

1 THE COURTROOM DEPUTY: We are back on the record
2 in Criminal Matter 21-175, the United States of America
3 versus Ethan Nordean, et al.

4 THE COURT: Sorry for that delay.

5 I wanted to first address the email that was sent
6 to the chambers account. I think it copied all the defense
7 counsel.

8 I don't want to go under seal, so I think I can
9 make representations about this in open court.

10 I received a call from the individual who reached
11 out to the Government and spoke with her just over lunch.
12 And I think the issue is going to be resolved, that the --
13 just I guess for the record, the information was about a
14 potential other court obligation of a juror in the case; and
15 the individual I spoke with, I think, is going to take steps
16 to make sure that that obligation does not interfere with
17 our trial.

18 I don't know if you all want to be heard any
19 further on this.

20 But -- Mr. Pattis, do you want to be heard at the
21 phones? We'll have a private sidebar.

22 (Whereupon, the following proceedings were had at
23 sidebar outside the hearing of the jury:)

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

(Whereupon, the following proceedings were had in open court:)

THE COURT: And I guess I will order that what we discussed be placed under seal. But, of course, we would permit unsealing for the purposes of providing the transcript to the parties.

All right. Anything preliminary before we bring the jury and the witness back on the stand?

Seeing no takers, Ms. Harris, if you would do that.

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

THE COURTROOM DEPUTY: Jury panel.

(Whereupon, the jury entered the courtroom at 1:48 p.m. and the following proceedings were had:)

THE COURT: Everyone may be seated.

Mr. Hull, you may proceed, sir.

(JASON MCINTYRE, GOVERNMENT WITNESS, PREVIOUSLY SWORN.)

CROSS-EXAMINATION CONTINUED

BY MR. HULL:

Q. Good afternoon, Mr. McIntyre. Again, I'm Dan Hull. I represent Joe Biggs. I have just a few questions for you.

1 Thanks for your patience and thanks for your service to the
2 building and the grounds.

3 You've testified in other January 6th cases before
4 with respect to damages. Right?

5 A. I have, yes.

6 Q. How many?

7 A. I believe four others.

8 Q. Okay. And they had to do with things, like, in
9 different parts of the Capitol: the east Rotunda doors,
10 Columbus doors, that kind of thing, things that are
11 different than what we're doing here?

12 A. Both things that are different, as well as other cases
13 that are -- that were similar.

14 Q. And this -- I take it this is the full extent of your --
15 you're not a professional testifier or anything like that.
16 Most of the testimony you've done in courts has been with
17 respect to the January 6th cases. Is that right?

18 A. Correct.

19 Q. With respect to the west terrace windows, just the
20 windows, it's the first thing you testified about.

21 You said that was a sole-source contract; is that
22 right?

23 A. The contract to replace and repair the broken glass for
24 the entire building was done under a sole source, correct.

25 Q. Okay. But you had said with respect to the inaugural

1 fencing outside, that was competitive bidding. Correct?

2 A. When it was purchased in 2008 --

3 Q. Originally?

4 A. Originally, in 2008, that was done under a competitive
5 bid process.

6 Q. What was the name of the contractor that did the repairs
7 on the west terrace windows?

8 A. So the same contractor did the repairs for the entire
9 facility.

10 Q. That contractor was who?

11 A. It was a company called New Image Glass.

12 Q. New Image Glass?

13 A. That is correct.

14 Q. And the contractor for the west terrace fencing --
15 not -- excuse me -- the inaugural fencing, that was the same
16 group. No?

17 A. 2008, I was not with --

18 Q. Not in 2008. But whoever replaced or did the work -- I
19 assume besides the purchase, there was also installation of
20 the inaugural fence.

21 Who was the contractor for that?

22 MR. MULROE: Objection. Assumes facts not in
23 evidence.

24 THE COURT: Sustained.

25

1 BY MR. HULL:

2 Q. Who did you purchase that from?

3 A. In 2008?

4 Q. No; as the replacement.

5 MR. MULROE: Same objection.

6 THE COURT: Overruled.

7 THE WITNESS: There has been no purchase of a
8 replacement black inaugural fence at this time.

9 BY MR. HULL:

10 Q. There has not been.

11 Let me ask you another question with respect to
12 the fence. And I'm just -- probably this will be my last
13 one. They are the -- the initial installation and purchase
14 was in 2008. So I take it -- correct me if I'm wrong --
15 that there are holes in the ground, permanent holes, that
16 hold this inaugural fence that you use -- I guess you've
17 used it before three or four times -- three times by my
18 count.

19 So is that right? There's permanent sorts of
20 installations or places where you can put poles to stretch
21 out and maintain the fence? Is that right?

22 A. No. That is not correct.

23 Q. Okay. How is my question misguided? Explain to me how
24 that works.

25 A. Those are not permanent.

1 Q. Those are not permanent?

2 A. Those are -- those fence posts are installed with
3 construction anchors at the time of installation. Over
4 time, we replace sidewalks; we replace other concrete
5 structures throughout the grounds. And so those are not
6 permanent construction facilities that are in the ground
7 awaiting a future inaugural to allow the fence posts to be
8 installed.

9 Q. So those structures have to be recreated or redrilled
10 every four years for the installation of the fence?

11 A. Correct.

12 MR. HULL: I have no further questions.

13 THE COURT: Thank you, sir.

14 CROSS-EXAMINATION

15 BY MS. HERNANDEZ:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. My name is Carmen Hernandez, and I represent Mr. Rehl,
19 one of the Defendants in this case. I just have a few
20 questions.

21 Did I understand you to say that that
22 particular -- the black fence, that that was the same
23 fencing that was purchased in 2008?

24 A. Yes.

25 Q. And you take it up and down at least every four years

1 for the inauguration?

2 A. It is installed prior to each inaugural, and then it is
3 taken back down and put in storage. Yes.

4 Q. And is it also up for other events?

5 A. No, it is not.

6 Q. Just for the inauguration? That's the only time?

7 A. That is correct. It is only used for the inaugurals.

8 Q. And so that means how many times have they been taken up
9 and down? That's -- what? -- 2008 to --

10 A. '08, '12, '16 and '20; four times.

11 Q. So that's interesting.

12 And was -- it's fencing that's put up, as I
13 understood -- it's more about -- it wasn't for the
14 demonstrations that were expected that day?

15 A. Correct. It was not for -- it was for purposes of the
16 inaugural itself.

17 Q. And as you described it, part of the reasoning for the
18 fencing is because there are different types of tickets, I
19 assume, with different security backgrounds for the
20 people -- the guests who are expected at any inauguration?

21 A. Those ticketed areas do not have separate security
22 protocols. Those ticketed areas are -- just like if you
23 want to go to a sporting event, that some people sit closer
24 than others. And this is one way to demarcate one ticketed
25 area from another.

1 Q. Are the tickets -- I should know this, but I don't.

2 Do you have to purchase those tickets, or are they
3 by invitation?

4 A. Invitation.

5 Q. Okay. So -- but at the same time, the distance -- you
6 analogized it to a sporting event. You might get better
7 seats in the sense that you get a better view of the stage
8 or something like that in different areas. Is that correct?

9 A. Our office is not responsible for ticketing. We don't
10 take a part in who gets what tickets.

11 Q. Right.

12 But I'm just wondering, if you know from your
13 knowledge of the Capitol, does that ordinarily mean that the
14 locations that maybe are closer to the stage are going to
15 be -- have a better view of the stage than other locations?

16 MR. MULROE: Object to scope, relevance,
17 foundation.

18 MS. HERNANDEZ: If he knows.

19 THE COURT: Overruled.

20 THE WITNESS: Not necessarily.

21 BY MS. HERNANDEZ:

22 Q. Okay. And then the other thing, you've been there for
23 quite a long time. And there are -- obviously, I'm sure
24 you're familiar with this -- there are demonstrations at or
25 near the Capitol on a regular basis?

1 A. Correct.

2 Q. For example, there's at least -- and often, are there
3 also damages to the Capitol? Not as extensive as what
4 happened here, but are there sometimes damages as a result
5 of the demonstrations?

6 A. I can't recall a time where we were requested to do work
7 of this similar nature after a demonstration.

8 Q. So of this extensive a nature; is that what you're
9 saying?

10 A. Clearly, there may be a timeframe where trash is left
11 behind and general cleanup needs to occur. Nothing of this
12 nature. You know, from time to time, like all -- any area,
13 we do get graffiti in and on our property, but nothing of
14 the nature of what occurred from the events of January 6th.

15 Q. And when you say "the nature," you're meaning the
16 magnitude as much -- as much graffiti or as much garbage
17 or -- is that what you mean by "the nature"?

18 A. Both scale and type.

19 Q. Okay. And in those past events, does the Capitol
20 have -- does the Architect of the Capitol or the members of
21 the House, however that's funded -- is there a fund to
22 repair and clean up after demonstrations?

23 MR. MULROE: Object to relevance.

24 THE COURT: Overruled.

25 THE WITNESS: The Architect of the Capitol's

1 mission is to care for the Capitol and the Capitol complex,
2 maintain our facilities and perform the, like -- historic
3 preservation and, like, construction activities. So
4 anything that would occur that falls within that realm,
5 that's what we are -- that is our mission and we are funded
6 for.

7 BY MS. HERNANDEZ:

8 Q. So that's your mission and that's what you do
9 ordinarily.

10 Were you required for purposes of the events after
11 January 6th to get special funding or special appropriation?
12 Do you know?

13 A. I believe the Architect of the Capitol did request
14 access to funds specific to repairs as they pertained to the
15 damages that occurred on January 6th.

16 Q. And do you know whether that was an additional
17 appropriation or whether that was within your funding
18 structure already?

19 MR. MULROE: Object to foundation.

20 MS. HERNANDEZ: If he knows.

21 THE COURT: The witness can answer if he knows.

22 THE WITNESS: I'm sorry?

23 THE COURT: You may answer if you know, sir.

24 THE WITNESS: I do not know.
25

1 BY MS. HERNANDEZ:

2 Q. Okay. For example, I understand there was some -- an
3 environmental group some years ago, some of the protesters
4 glued their hands to doors in the Capitol.

5 Are you familiar with that event?

6 MR. MULROE: Object to relevance and scope.

7 THE COURT: Sustained.

8 BY MS. HERNANDEZ:

9 Q. In assessing the cost -- you went through a series of
10 cost calculations with the prosecutors.

11 Do you recall that?

12 A. Yes.

13 Q. As I understood the line items, you included in the cost
14 the cost of -- sort of a labor cost for people who are
15 employed by the Architect of the Capitol or by the Congress.
16 Is that correct?

17 A. There were labor hours included in that estimate for
18 hours associated with Architect of the Capitol employees.

19 Q. Employees. And those people -- so the way you
20 calculated that number, you looked at their normal hourly
21 rate. Is that correct?

22 A. Yes.

23 Q. And then you figured they spent X number of hours doing
24 that particular task and that's how you calculated it in the
25 documents that the prosecutors showed you?

1 A. That is correct.

2 Q. But those persons' salaries would still be paid no
3 matter what they were working on; is that correct?

4 A. Their salary would be paid, but they would be doing
5 other work in the building that we also have to complete.

6 Q. Right.

7 But what I'm trying to get at -- in contrast to
8 having to pay a contractor whom -- you bring in the person
9 who's -- from whom you bought the glass or some outside
10 contractor that you have to pay an additional amount, the
11 persons that are employed by the Capitol or by the Architect
12 of the Capitol get a biweekly check no matter what they're
13 doing?

14 A. I'm not sure I understand your question.

15 Q. So if I'm employed -- I'm a Capitol police officer at
16 the Capitol -- let me not say that.

17 If I'm a staffer for one of the congresspersons, I
18 get a salary. Correct?

19 A. Not everyone. There are unpaid people who work on the
20 Hill.

21 Q. Okay. People in your office that you're familiar with
22 who are salaried employees -- correct? There are some
23 people in your office that are salaried employees?

24 A. We are all considered hourly employees.

25 Q. Hourly. And what does that mean in contrast to when I

1 ask salaried employees?

2 A. We have an employee who has to work a certain number of
3 hours to get a certain amount of pay. If they work less
4 than that, they may or may not get that same pay, depending
5 on if they have the leave available to make up for that
6 delta.

7 Q. But if you're a full-time employee, you're expected to
8 work X number of hours and your salary -- you know what your
9 hourly rate is and so you know what your biweekly or annual
10 salary is. Is that correct?

11 A. Correct.

12 Q. So if you are an hourly employee, as you put it, you
13 come into work on a day -- on any given day. Correct?

14 A. Come into work?

15 Q. Yes. On a given day, you come into work as an hourly
16 employee. Correct?

17 A. Correct.

18 Q. And you -- on that day you have some work that you're
19 required to do, some task that you're required to do.
20 Correct?

21 A. Yes.

22 Q. That someone assigned to you, or maybe if you're the
23 boss, you assigned to yourself. Correct?

24 A. Correct.

25 Q. So what I'm trying to get at is that person, as long as

1 they're at work that day, will get their salary, no matter
2 what particular task they're doing. Is that correct?

3 A. Correct. But the United States Government still
4 incurred costs for that employee to perform this work.

5 Q. But that employee was going to get paid no matter what,
6 as long as he showed up for work that day?

7 A. But they performed this work in expense of work that
8 went undone that would have been completed --

9 Q. All right.

10 A. -- if this damage had not occurred.

11 Q. Do you have a list of the work that would have been
12 completed had this damage not been done?

13 A. Do I have a list? No.

14 Q. Some of us have been federal employees. And you go into
15 work and you do what is fair for you to do. Sometimes you
16 get more work done; other sometimes you get less work --

17 MR. MULROE: Object to counsel testifying.

18 BY MS. HERNANDEZ:

19 Q. Is that correct?

20 THE COURT: I'll overrule the objection.

21 MS. HERNANDEZ: Thank you.

22 BY MS. HERNANDEZ:

23 Q. So the point is, if you're an hourly employee, you come
24 into work, and the Federal Government issues you a check.

25 Correct?

1 A. Correct.

2 Q. And you do the work that's assigned to you that day or
3 that week?

4 A. Yes.

5 Q. Okay. And whether that work involved -- I'm not
6 downplaying the work that had to be done to recover the
7 Capitol.

8 But whether that work involved picking up the
9 trash or getting bids or identifying the damage or painting
10 the walls or cleaning or whatever, those people got paid the
11 same amount of money as they would have gotten paid if they
12 had been doing some other task?

13 MR. MULROE: Your Honor, I'm now going to object
14 under Rule 403, cumulative and waste of time.

15 THE COURT: The witness -- I'll overrule the
16 objection.

17 MS. HERNANDEZ: Thank you, your Honor.

18 THE WITNESS: Can you repeat your question?

19 BY MS. HERNANDEZ:

20 Q. Let's just agree that people who are employed by the
21 Federal Government come into work and they get paid their
22 salary as long as they're working that day?

23 A. Correct.

24 Q. Regardless of whatever particular task they're doing
25 that day?

1 A. Correct.

2 Q. Okay. That's all. We don't need to belabor that.

3 And you in your direct testimony spoke about the
4 public nature of the building?

5 A. Yes.

6 Q. And it's a beautiful building? Correct?

7 A. Is that a -- I didn't know if that was a statement.

8 Q. That was a question mark. It's a statement and a
9 question mark.

10 A. Yes.

11 Q. It is an impressive building for someone who may not
12 have ever been there?

13 A. Yes. Again, I'm not sure -- are these questions?

14 Q. I'm asking you questions. There's a question mark at
15 the end. Or I can say "Isn't that right?"

16 A. Yes.

17 Q. And I think you described it with a certain amount of
18 love for the building and for its meaning to the country?

19 A. Absolutely.

20 Q. Okay. And the public ordinarily is able to have tours
21 at the Capitol; is that correct?

22 A. Correct.

23 Q. Or sometimes they come and visit their Congresspersons?

24 A. That is correct.

25 Q. Attend hearings?

1 A. Yes.

2 Q. Or sometimes people, they're in town; they're tourists;
3 they want to see the building, and they just tour around?

4 A. Around the grounds?

5 Q. Yes.

6 A. Yes.

7 Q. Or inside -- I don't know what rules there are, but
8 there -- in the past, there have been times when the
9 building was relatively open to the public?

10 A. There are tours available of the United States Capitol,
11 yes.

12 Q. Okay. And the tours take you around -- like you said,
13 you can see the artwork and the statues and all of that?

14 A. Correct.

15 Q. And are there tour guides?

16 A. Yes, there are.

17 Q. Okay. With respect to January 6th, there has been
18 testimony or -- let me strike the intro.

19 Were you -- you were aware that there was going to
20 be the Electoral College count January 6th. Correct?

21 A. Yes.

22 Q. And were you informed that the congresspeople were going
23 to be challenging the vote count that day, sort of an
24 extraordinary occurrence?

25 MR. MULROE: Object to hearsay, relevance and

1 scope.

2 MS. HERNANDEZ: There's been testimony, your
3 Honor.

4 THE COURT: I'm going to sustain as to scope, I
5 think, unless you want to be heard, Ms. Hernández.

6 MS. HERNANDEZ: I just have a couple -- whatever.
7 I have a few questions on this area, your Honor. But I can
8 be heard.

9 (Whereupon, the following proceedings were had at
10 sidebar outside the presence of the jury:)

11 MS. HERNANDEZ: I just have a few questions about
12 what he knew or didn't know about -- I believe it was
13 Inspector Loyd who indicated that they had gotten notice in
14 advance of January 6th from the leadership of the Congress
15 that -- to expect a longer day because there was going to be
16 official objections lodged by the congresspeople.

17 I just have a couple of questions about whether he
18 knew about that or whether there were any special provisions
19 made by the Architect of the Capitol as a result of that.
20 I'm not going much farther than that.

21 THE COURT: But, Ms. Hernández, why is that either
22 relevant or within the scope?

23 MS. HERNANDEZ: I think he was given -- I think
24 the Court gave the Government a lot of latitude to describe
25 the -- you know, what happens at the Capitol and his job and

1 his love of the Capitol and how significant it is for the
2 country and that type of thing. Again, it's just one or two
3 questions.

4 THE COURT: There was a little bit of testimony
5 also about how he learned of what happened that day. I'll
6 give you that latitude.

7 MS. HERNANDEZ: Thank you.

8 (Whereupon, the following proceedings were had in
9 open court:)

10 BY MS. HERNANDEZ:

11 Q. I just have a couple of questions.

12 So the question is: Were you given any advance
13 notice by the congressional leadership that this particular
14 January 6th may be a longer day because of the official
15 objections that were going to be lodged by the
16 congresspersons?

17 A. If I recall, that was in the news. I think that was
18 public knowledge that that may occur.

19 Q. But you didn't personally as an employee of the
20 Architect of the Capitol -- weren't given any kind of notice
21 like that?

22 A. No.

23 Q. And then my last question is -- and I'm going to show
24 you Zachary Rehl Exhibit 11-A.

25 MS. HERNANDEZ: Which I believe has been

1 identified, your Honor, but -- and I believe the Government
2 has no objection to this particular exhibit. But it has not
3 been admitted.

4 MR. MULROE: If we can be heard on the phones.

5 THE COURT: Ms. Hernández, if you would put it up
6 just for me so I can see it while we're at sidebar.

7 MS. HERNANDEZ: Yes, your Honor.

8 (Whereupon, the following proceedings were had at
9 sidebar outside the presence of the jury:)

10 MS. HERNANDEZ: So that's the demonstration map.
11 My understanding is that -- the Government has indicated to
12 me that they do not object to the authenticity of the
13 document at this point. We've had those conversations.

14 And if the Court notes, at the top left-hand
15 corner, it says "Architect of the Capitol." I just had a
16 couple of questions about that to see whether he's familiar
17 with that or not.

18 THE COURT: Mr. Mulroe?

19 MR. MULROE: Your Honor, we don't object to the
20 authenticity of this document. But I do think that it's
21 outside the scope of anything we asked about this, any
22 topics we covered with this witness. I think, you know,
23 just because it bears the insignia of his office does not
24 mean that there's any foundation for him to testify about
25 it.

1 THE COURT: Ms. Hernández, why is it within the
2 scope? I hear what you're saying, but why isn't it beyond
3 the scope? He didn't testify to anything remotely relevant
4 about sort of demonstration areas or anything like that.

5 MS. HERNANDEZ: Well, he did testify about the
6 fences and where they are. And this is a map, as I say. It
7 does bear the insignia of the Architect of the Capitol.

8 Again, it's just a handful of questions about
9 whether he knows where these fences that he described were
10 located on this map and that type of thing.

11 THE COURT: The black fences we're talking about?

12 MS. HERNANDEZ: Yes.

13 THE COURT: And where they were in relation to
14 this map?

15 MS. HERNANDEZ: Yes.

16 THE COURT: Those are the only questions?

17 MS. HERNANDEZ: Excuse me?

18 THE COURT: Those are your only questions, using
19 the map to locate the fences on the map, where they were?

20 MS. HERNANDEZ: Yes. I mean, just describe what
21 the map is, whether he's familiar with the map and then to
22 point out where those fences were.

23 THE COURT: Well, he's going to have to -- I think
24 you're going to have to lay the foundation for what he can
25 testify to or not and ask him those questions. But I do

1 think --

2 Mr. Mulroe, why isn't it relative to point out
3 where the fences were on this map?

4 MR. MULROE: I think if all she wants to do is
5 point out the location of the black inaugural fence on this
6 map, that's fine. But as soon as it goes past that, we're
7 going to raise the scope objection again.

8 THE COURT: Well, Ms. Hernández, just so we can
9 get this over with now, what are you going to do --

10 MS. HERNANDEZ: I'm not going further. I don't
11 want to say one question, but I'm going to do just a handful
12 of questions. I'm not going to go deep into this issue.

13 THE COURT: I understand that. But why don't you
14 just tell me the topics right now so we don't have to have
15 another sidebar.

16 Are there any other topics other than the location
17 of the fence?

18 MS. HERNANDEZ: No. But, I mean, I want him to
19 have the map, if he's familiar with it and the location of
20 the fence, and I'm going to ask him if it does reflect that
21 there are demonstration areas; does he know where those
22 fences were in front or otherwise. I guess that's three or
23 four questions. That's all.

24 THE COURT: I'll give you the latitude. Go ahead.

25 MS. HERNANDEZ: Thank you.

1 (Whereupon, the following proceedings were had in
2 open court:)

3 MS. HERNANDEZ: Thank you.

4 BY MS. HERNANDEZ:

5 Q. So I'm sorry. Are we still --

6 MS. HERNANDEZ: Will the Government stipulate to
7 allow me to admit the map?

8 This is Zachary Rehl Exhibit 11-A for
9 identification.

10 BY MS. HERNANDEZ:

11 Q. Can you see it on your screen, sir?

12 A. Yes, I can.

13 Q. And can you -- at the top left-hand corner, it shows a
14 logo of the Architect of the Capitol; is that correct?

15 A. The Architect of the Capitol's logo is on this. Yes.
16 It's on the top right-hand side for me.

17 Q. Are you familiar with this map?

18 A. This is my first time seeing this.

19 Q. Does the map accurately reflect the area of the Capitol
20 that you're familiar with?

21 A. This is a -- at least the streets and buildings that are
22 shown here are of the general Capitol complex and
23 surrounding streets and facilities.

24 Q. Okay.

25 MS. HERNANDEZ: Your Honor, I would move the map

1 into evidence.

2 THE COURT: Mr. Mulroe?

3 MR. MULROE: The Court's indulgence one moment.

4 No objection, your Honor.

5 MS. HERNANDEZ: Thank you.

6 THE COURT: Very well. It will can admitted.

7 (Whereupon, Defendant Rehl's Exhibit No. 11-A was
8 entered into evidence.)

9 MS. HERNANDEZ: And published to the jury, please.

10 THE COURT: And permission to publish.

11 MS. HERNANDEZ: Thank you, your Honor.

12 BY MS. HERNANDEZ:

13 Q. So again, the white area in the middle here, that's the
14 U.S. Capitol, which is the same as on this chart behind you?

15 A. That is correct.

16 Q. And you indicated this generally looks like the area
17 around the Capitol that you're familiar with?

18 A. That is correct.

19 Q. And again, the top right-hand corner is the logo of the
20 Architect of the Capitol?

21 A. That is correct.

22 Q. Do you know whether the Architect of the Capitol logo is
23 on a number of documents that your office publishes or...

24 MR. MULROE: Object to relevance.

25 MS. HERNANDEZ: It's just a foundational question.

1 THE COURT: Overruled.

2 You can answer, sir, if you know.

3 THE WITNESS: This appears to be a computer-aided
4 drafting drawing. Our office provides that support for the
5 Capitol complex. Our office -- if that logo is in the upper
6 right-hand corner, I would imagine that our office would
7 have authored this document.

8 BY MS. HERNANDEZ:

9 Q. Would have authored?

10 A. Correct.

11 Q. Thank you.

12 So you've testified as to some black fencing that
13 was -- that's what -- part of your testimony was about the
14 black fencing, the repairing of that black fencing.

15 Correct?

16 A. Correct.

17 Q. Can you on this map tell me where that black fencing
18 would have been located?

19 A. As I stated earlier, just north of what is shown here as
20 Region 1. Let's see if I can draw it.

21 Effectively, that area (indicating).

22 Q. Okay. So right where that semi-circle is above the
23 number 1?

24 A. Correct.

25 Q. And do you know whether those other -- like the green

1 areas, those are areas where people ordinarily demonstrate?

2 MR. MULROE: Object to scope.

3 BY MS. HERNANDEZ:

4 Q. If you know.

5 THE COURT: Sustained.

6 MS. HERNANDEZ: Thank you for your testimony.

7 Thank you, your Honor.

8 I just wanted to make sure the Court admitted that
9 exhibit, 11-A, Rehl exhibit?

10 THE COURT: Yes.

11 MS. HERNANDEZ: Thank you.

12 CROSS-EXAMINATION

13 BY MR. JAUREGUI:

14 Q. Good afternoon, Mr. McIntyre.

15 A. Good afternoon.

16 Q. My name is Sabino Jauregui on behalf of Enrique Tarrio,
17 along with my co-counsel, Nayib Hassan. I just have some
18 short questions for you.

19 You said you've been employed at that office for
20 about 18 years?

21 A. No. 14 years.

22 Q. I'm sorry. 14 years?

23 A. A little over 14 years.

24 Q. And you worked at different sections of the office?

25 A. Correct.

1 Q. Okay. And as in, I guess, all government agencies, you
2 guys are regulated by a manual, right, the Architect of the
3 Capitol manual?

4 A. I'm not sure I understand the question.

5 Q. Okay. There exists a 145-page manual -- it's in your
6 website -- called the "Architect of the Capitol manual."

7 Have you read that manual?

8 A. Is that the human resources manual?

9 Q. No, no. I'm surprised you don't know about it. Let me
10 tell you what it is.

11 MR. MULROE: Object to counsel testifying.

12 THE COURT: Sustained.

13 BY MR. JAUREGUI:

14 Q. It's actually called the "Architect of the Capitol
15 Contracting Manual."

16 Are you familiar with that manual?

17 A. I am familiar with the contracting manual.

18 Q. Yes. That one. That's the one I'm referring to.

19 A. Yes.

20 Q. Would it be fair to say it's 145 pages in length, and it
21 governs how you're supposed to contract?

22 A. I know it is a significant document, yes.

23 Q. Thank you.

24 Now, could you please tell the members of the jury
25 what a contracting officer is?

1 A. A contracting officer is the individual who is
2 responsible for making the award of the procurement of a
3 service or goods and assigning dollars to that procurement
4 of those goods or services.

5 Q. Great.

6 And are you the contracting officer for the fence
7 in this case?

8 A. No, I am not.

9 Q. Okay. And are you the contracting officer for the
10 windows and for the work done in this case?

11 A. No, I am not.

12 Q. Would it be fair to say that the person with the most
13 personal knowledge and expertise would be the contracting
14 officer assigned to the fencing and to the windows and to
15 the repairs?

16 A. No.

17 Q. No?

18 A. There is a term called the "contracting officer's
19 technical representative." A technical representative is
20 the person who has the technical knowledge, which would be
21 myself, and we would then provide that technical knowledge
22 to the contracting officer to aid them in the effort for
23 them to assign those funds to that purchase of goods or
24 services.

25 Q. Okay. And who is the contracting officer for the

1 fencing in this case?

2 A. I don't know if I'm allowed to provide that information
3 based on my counsel.

4 Q. Your counsel by who?

5 A. The Architect of the Capitol's counsel. That
6 information has been redacted from the documents that were
7 admitted into evidence.

8 Q. Okay. So you're refusing to answer my question?

9 A. I don't know if I have permission.

10 Q. That's not the question I'm asking.

11 MR. MULROE: Your Honor, can we be heard sidebar?

12 THE COURT: You may.

13 (Whereupon, the following proceedings were had at
14 sidebar outside the presence of the jury:)

15 MR. MULROE: Your Honor, I don't know if this is
16 the terminology the witness would use, but I believe what's
17 happening is that the questions are going into information
18 that the Architect of the Capitol may consider proprietary
19 information and has for that reason redacted it from the
20 production that's made.

21 This witness clearly does not have counsel from
22 the Architect of the Capitol here with him to confer with,
23 but I think that he's testifying based on his understanding
24 that that is information that there may potentially be some
25 assertions of privilege with respect to. I, of course,

1 can't speak firsthand to that or weigh in one way or the
2 other.

3 I will say that if Mr. Jauregui thought that this
4 was relevant or material to have for the preparation of his
5 defense, we would have been happy to field a discovery
6 request on this at any time in the past leading up to trial.

7 I think at this stage, I would assert a relevance
8 and 403 objection. I don't see that the name of the
9 contracting officer is relevant to this witness's testimony.

10 If the defense believes that they need to get the
11 name of that person, conceivably, just to serve a defense
12 trial subpoena on, I think we can discuss that at another
13 time.

14 THE COURT: Mr. Jauregui, I think the Government
15 has -- I think, first of all, the name of this person, if
16 you want it, absolutely is something the Government's going
17 to have to provide you. But I do think it's not relevant to
18 his testimony.

19 MR. JAUREGUI: Judge, I wasn't trying to get into
20 any kind of proprietary information. I was trying to get
21 into his personal lack of knowledge of the work done in
22 purchasing and the pricing, the market research, that kind
23 of thing.

24 THE COURT: Sure.

25 MR. JAUREGUI: And I wasn't even going to get into

1 the name at all. But this witness then said, Well, it's
2 actually my job.

3 THE COURT: Understood.

4 So I think there's a way to get at the points you
5 want to in a nonobjectionable way.

6 As to this issue that has come up, I mean, I do
7 think that's -- again, if that's something you all want to
8 pursue, I think you probably are entitled to it if you --
9 you probably are entitled to it. But that's a question for
10 another day.

11 MR. JAUREGUI: Yes, sir.

12 THE COURT: All right.

13 (Whereupon, the following proceedings were had in
14 open court:)

15 BY MR. JAUREGUI:

16 Q. Where were we? Were there two different contracting
17 officers in this case?

18 A. The fence was purchased in 2008.

19 Q. Okay.

20 A. Back in 2008, I would imagine the contracting officer
21 was different than the person who procured the -- who helped
22 us procure the window glass.

23 Q. Understood.

24 And that person in 2008, you don't know him? You
25 didn't speak to him in any way. Correct?

1 A. Prior to today?

2 Q. Correct.

3 A. About this purchase order? I did not speak to them
4 about this purchase order prior.

5 Q. Understood.

6 You did speak to the window guy, I assume. Right?

7 A. Correct.

8 Q. Okay. Now, how old is the Capitol Building?

9 A. The original cornerstone was laid in 1793. It's been
10 expanded multiple times since.

11 Q. Would it be fair to say that the main section of the
12 building was completed in 1800?

13 A. The history of the Capitol is such that there are many,
14 many different sections that opened at different times.

15 Q. Understood.

16 As you sit here today, you don't know the exact
17 date of when the Capitol was completed?

18 A. When -- when which part of the Capitol was completed?

19 Q. Well, I asked you the main section of the Capitol, when
20 it was completed. You couldn't answer that question.

21 A. The main section of the Capitol?

22 Q. Yes, sir.

23 A. Can you define the main section for me?

24 Q. Well, what's considered the main section of the Capitol?

25 The middle of the Capitol?

1 A. That's the entire United States Capitol to me. That --
2 the most recent expansion of the United States Capitol was
3 done in the 1950s --

4 Q. Okay.

5 A. -- and in the 1960s when the east front section of the
6 Capitol was expanded by about 25 feet to add that east front
7 section, and then again in 2008, when the United States
8 Capitol visitor center opened up.

9 Q. I'm glad you brought up the 1950s.

10 In the 1950s is when they renovated; they
11 modernized it. Correct?

12 A. Not correct.

13 Q. When was that?

14 A. I'm not sure of your question. Can you please further
15 define it?

16 Q. Okay. You just talked about the 1950s. What were you
17 referring to? What happened in the 1950s?

18 A. They expanded the east front of the Capitol in the
19 1950s. The vast majority of the Capitol was not renovated
20 in the 1950s. Only that section of the building that was
21 expanded in the late 1950s, early 1960s was added, and then
22 ultimately that's where the work occurred.

23 Q. And in the 1950s -- I don't know the exact date; I'm
24 sure you will know -- that's when the Carrier air
25 conditioning company was awarded the contract to install air

1 conditioning in the Capitol. Correct?

2 MR. MULROE: Object to relevance.

3 MR. JAUREGUI: Judge, it goes to him testifying as
4 to the climate inside the Capitol and how important it was.

5 THE COURT: Overruled.

6 BY MR. JAUREGUI:

7 Q. In the 1950s is when they finally put in a modern air
8 conditioning system in the Capitol; isn't that right?

9 A. I was not there in the 1950s and 1960s. I can't speak
10 to what contractor and what -- when the award was made.

11 Q. Understood.

12 But I would assume that you would -- working as a
13 deputy there at the Architect of the Capitol, you'd want to
14 be well-versed in the climate control systems, when they
15 were installed and how they operate at the Capitol,
16 correct -- and the historical nature of the Capitol.
17 Correct?

18 A. That is not what you asked me. You asked me if Carrier
19 installed air conditioning systems in the 1950s. You did
20 not ask me when the most recent air conditioning systems
21 were installed in the building.

22 Q. Let me ask you this question: When was the first time
23 an air conditioning system was installed at the Capitol?

24 A. Well, in the 1850s, when the House and Senate wings were
25 both expanded, there was a ventilation system installed in

1 the system. That ventilation system included putting ice on
2 a, quote-unquote, waterproof floor and pumping air over top
3 of that ice, and then that ice provided the cooling to the
4 air that moves throughout the building.

5 Q. Okay. Now, my question is: When was the air
6 conditioning, an actual modern air conditioning system,
7 installed in the Capitol?

8 A. 1920s is effectively when the -- 1910s and 1920s is when
9 the original -- what you are calling modern -- air
10 conditioning system would have been installed in the
11 facility.

12 Q. Okay. So for -- what? -- over how many hundreds of --
13 is it 180 years or something? -- the Capitol was just fine
14 without any kind of air conditioning or climate control
15 systems. Correct?

16 A. I can't speak -- I don't know what you're defining as
17 "fine."

18 Q. Well, the Government made a big deal out of -- there was
19 a broken window and you immediately had to go and put a
20 piece of plywood over the window. If not, the priceless
21 artifacts, statues, paintings would have been ruined because
22 of the temperature.

23 The Capitol did just fine for hundreds of years
24 before that system was put in place. Isn't that true,
25 Mr. McIntyre?

1 MR. MULROE: Your Honor, I object to counsel
2 opining about what the Government made a big deal about.

3 THE COURT: Sustained.

4 BY MR. JAUREGUI:

5 Q. Did the Government ask you if you had to, you know, in
6 an emergency mode put a piece of plywood over a broken
7 window to control the temperature inside of the Capitol
8 Building?

9 Did they ask you that question?

10 A. They did not ask me that question. They asked me if
11 that was a consideration. And, yes, it is a consideration,
12 as well as security to the building and the security of the
13 inside being for the Capitol Police to secure the facility.

14 Q. I agree with the security part, but not the climate.
15 Right?

16 MR. MULROE: Object to -- counsel is testifying
17 about what he agrees and disagrees with.

18 THE COURT: Overruled.

19 The witness can answer the question.

20 THE WITNESS: I'm -- can you repeat your question?

21 BY MR. JAUREGUI:

22 Q. Sure.

23 What was the weather like on January 7th, when you
24 got to the Capitol? Was it hot that day?

25 A. No. It would have been a cold day, low humidity.

1 Q. That's why, besides the security part of the plywood,
2 you did it to control the extreme humidity that was on
3 January 7? Is that what you're saying?

4 A. That's not what I said.

5 Q. What did you say, in your own words?

6 A. In my own words?

7 Q. Sure.

8 A. We provided plywood at the direction of the United
9 States Capitol Police for safety and security, as well as
10 temperature and humidity control.

11 Q. Some of that artwork is hundreds of years old. Correct?

12 A. Correct.

13 Q. It fared just fine before the climate-controlled
14 environment we have now. Correct?

15 A. Some of that art would not have been in the building at
16 that time. These pieces of -- the works of art are procured
17 by the Senate curator as well as House curator and the
18 Architect of the Capitol curator. Those pieces of art may
19 come and go over time.

20 Q. Do you, as you sit here today, know what art was
21 actually at the Capitol on January 6th? Do you have a list,
22 an inventory of some kind?

23 A. Our curator does, yes.

24 Q. No. You, sir. You. Do you know what artwork was at
25 the Capitol on January 6th?

1 A. I have a general understanding. But that is not my
2 responsibility. My office's responsibility is for the care
3 and the maintenance of the facility, not the artwork.

4 Q. Understood.

5 Let's talk about those responsibilities. In your
6 manual, to become a contractor, a contractor actually needs
7 to have at least 11 preconditions to even bid for work for
8 you. Correct?

9 A. I do not work with that contracting manual on a
10 day-to-day basis. That would be our contracting officer who
11 uses that contracting manual on a day-to-bay basis.

12 Q. Oh, the contracting officer is, again, the one that
13 knows what's going on. Is that what you're saying?

14 A. They are the one who is responsible for the procurement
15 of goods or services.

16 Q. Got it.

17 If I showed you your manual, would that refresh
18 your recollection as to the 11 exact preconditions you need
19 to even be a contractor for you?

20 MR. MULROE: Object to foundation. Nothing to
21 refresh.

22 THE COURT: Sustained.

23 BY MR. JAUREGUI:

24 Q. You've read this manual, have you not, Mr. McIntyre?

25 A. I have read sections of it as I work with our

1 contracting officers. Yes.

2 Q. Got it.

3 And you know that there's a section, 1.5.4,
4 Minimum Standards For Responsible Prospective Contractors;
5 isn't that right? There's a section like that in the
6 manual?

7 A. If that's what you're telling me, yes.

8 Q. And that paragraph -- it breaks down into A, B, C, D,
9 and goes on for a while as to minimum requirements for a
10 contractor.

11 You know that's in the manual, don't you?

12 A. We don't have requirements for contractors, yes.

13 Q. If I showed you that page in the manual, would that
14 refresh your recollection as to what's in the manual?

15 MR. MULROE: Your Honor, could we have a sidebar?

16 (Whereupon, the following proceedings were had at
17 sidebar outside the presence of the jury:)

18 MR. MULROE: Your Honor, I just want to first
19 express concern that Mr. Jauregui is becoming very combative
20 with the witness in a way that I don't think that is
21 appropriate.

22 That's not my objection. My objection is I think
23 there is a lack of relevance and a lack of foundation for
24 this entire line of questioning.

25 THE COURT: Mr. Jauregui can -- he's got to first

1 of all say he knew -- you're saying, Well, you know this is
2 in there.

3 He's not expressing any familiarity with the
4 substance of what you're about to ask him. And so if he
5 doesn't know the substance of it, how can his memory be
6 refreshed about it? Number one.

7 Number two, I think it is fair to say -- I
8 understand the points you want to make. He's not the
9 contracting officer. He's a slightly different -- he has a
10 slightly different position. But quizzing him on what
11 someone else's job responsibilities are that he is not
12 necessarily familiar with, I don't know how that's relevant
13 here.

14 MR. JAUREGUI: Judge, that's the Government's
15 problem, not mine. They put this guy as the supervisor of
16 the contracting officer. If he's a supervisor of the
17 contracting officer --

18 THE COURT: He's not. He's not the -- was that
19 his testimony, that he's a supervisor?

20 MR. JAUREGUI: Judge, he said that, actually, the
21 contracting officer reports to him -- to him and his
22 technical knowledge and expertise. He said that in
23 cross-examination.

24 So if he said that, that the contracting officer
25 reports to him, then he needs to be familiar with the

1 contracting officer's duties and responsibilities, which is
2 outlined in this manual.

3 Now, the reason I'm -- I'm going to tell you why
4 I'm getting into this. This isn't just smoke, you know.
5 Okay? These preconditions of contractors raise the price
6 exponentially, in my opinion, on the product or service
7 that's sold to the government. Okay?

8 Now, no mom-and-pop contractor can do any work
9 with the Capitol. It's impossible. It's impossible. So
10 any contractor that goes to the Capitol has to charge 10 to
11 20 to 30 times what a normal contractor would charge to do
12 any work.

13 And there's 11 preconditions that -- if you read
14 this, it's outrageous, Judge. It goes to credibility; it
15 goes to bias; it goes to the cost of doing work with the
16 Capitol.

17 And I'm not being combative. The witness is being
18 combative with me. I ask him one question; he answers
19 something else. I'm just trying to get him back on point.

20 THE COURT: It seems to me -- does the Government
21 agree that the testimony was that the person reports to him?
22 That's not --

23 MR. MULROE: No, your Honor. That was not my
24 appreciation or recollection of the testimony. I think he
25 said his role was to work with and, as I understood it,

1 advise the contracting officer about the technical aspects.
2 You know, to the extent that there was a seniority
3 relationship, I actually took it to go in the opposite
4 direction. But I would want the transcript to control.

5 THE COURT: Mr. Jauregui, it's not -- look, I
6 think at a minimum you have to establish that he knows about
7 what you're talking about. If he doesn't know anything
8 about these details, then I don't see where this goes. It's
9 not his position, not his job, to know them. It's not fair.

10 MR. JAUREGUI: Judge, he has to know this. This
11 manual is from his own -- it's from his own office. It
12 governs contracting, specifically contracting in his own
13 office. And he came here to testify about the contractors
14 doing the job. He went out on a limb and said, I find that
15 what they charge is reasonable. I find that it's market
16 value. It's market price.

17 And then all of a sudden --

18 MR. MULROE: That's not accurate.

19 MR. JAUREGUI: All of a sudden the Government's
20 saying, This guy doesn't know anything, you know. He's not
21 the contracting officer.

22 The Government didn't even bring up the
23 contracting officer thing. I did.

24 THE COURT: He didn't say market price, I know,
25 but he did testify that what was done was reasonable.

1 Isn't that fair, Mr. Mulroe?

2 MR. MULROE: Absolutely, your Honor. That's
3 different from the market price. I think the fact that
4 things cost more at the Capitol is something that we brought
5 out as a fact that's fair. So we don't dispute the overall
6 point.

7 But if he wants to get this manual in, he's got to
8 call someone in his defense case or find another appropriate
9 witness, because this just isn't the one.

10 MR. JAUREGUI: Judge, I respectfully disagree with
11 my friend. This is a manual from his own office. Not only
12 that, but Mr. Mulroe even asked him, Would this price be the
13 same as the price if somebody came to my house, for God's
14 sake. He said that.

15 THE COURT: He's not disputing the relevance of
16 the point you're trying to make. He's saying it's not
17 through this witness.

18 Look, it's the same office. He is involved in the
19 contracting. But I just don't think -- if he doesn't
20 know -- I think you're going to have to ask him -- if you
21 want to refresh him, you have to ask him, Are you familiar
22 with these things? If he says, No, I'm not, then I think
23 you're stuck.

24 And then if you want to ask him leading questions
25 about it, I mean, he may say, No, I didn't know. I mean, I

1 think you have a little latitude here.

2 But to go into, like -- to put it in front of him,
3 I don't know how you're refreshing his recollection without
4 him knowing what the thing you want to refresh him about is.
5 If he never had the knowledge, you can't refresh him.
6 Right?

7 MR. JAUREGUI: Judge, you're right. But remember,
8 the Government did ask him about the expense compliance, the
9 security check. The Government opened the door to this kind
10 of thing.

11 THE COURT: I don't disagree it's relevant.
12 They're not disagreeing, I don't think, that it's relevant.
13 But I think the question is: Does he have a foundation to
14 testify to it and how do you approach it?

15 So --

16 MR. MULROE: Your Honor, I think -- sorry to
17 interrupt.

18 But if he just phrases the question differently in
19 more general terms, I think maybe there is a basis to ask
20 the question. He's got a good-faith basis to ask the
21 witness, Is it true contractors have to do this? They have
22 to do that? He may or may not know the answer.

23 But that's different than asking him to adopt a
24 written 150-page manual he's not familiar with.

25 THE COURT: Right. I think that's fair. We all

1 agree this is in play as far as relevance goes.

2 But I do think you're going to have to -- you
3 can't just say, Would this refresh your memory? about
4 something. You know it's in there. He says, Well, if you
5 say it is. Take a look at it.

6 Let's continue.

7 MR. JAUREGUI: Yes, Judge.

8 (Whereupon, the following proceedings were had in
9 open court:)

10 BY MR. JAUREGUI:

11 Q. Let's continue here, Mr. McIntyre.

12 Would it be fair to say that contractors working
13 for the Capitol have to meet certain prerequisites? Is that
14 fair?

15 A. Yes.

16 Q. Okay. They have to be qualified by your office. It
17 can't be just any contractor. You can't just open the
18 yellow pages and pick somebody. Correct?

19 A. In order to pick someone, we would go through one of two
20 processes. We would either go through a competitive bid
21 process or we would go through a sole-source justification
22 in order to procure goods or services from a single source.

23 Q. Would it be fair to say that a contractor working for
24 the Capitol needs to have adequate financial resources or
25 the ability to obtain adequate financial resources to

1 perform the contract? Would that be fair?

2 A. Yes.

3 Q. That contractor would also have to comply with the
4 proposed delivery schedules, taking into consideration other
5 existing commitments, commercial and governmental. Correct?

6 A. Yes.

7 Q. Okay. They would have a need to have a satisfactory
8 performance record regarding both quality and timeliness on
9 previously awarded contracts. Isn't that right?

10 A. Yes.

11 Q. Okay. They -- very important -- must have obtained a
12 satisfactory evaluation in a federal awarding performance
13 and integrity information system award management program.
14 Correct?

15 A. If you're reading from the manual, I would say yes.

16 Q. I am. I'm kind of cheating. But yeah.

17 MR. MULROE: Objection. Counsel testifying.

18 THE COURT: Sustained.

19 BY MR. JAUREGUI:

20 Q. Does that sound right, Mr. McIntyre?

21 A. Yes.

22 Q. Okay. They would also have to possess or have the
23 ability to acquire the necessary equipment, technical
24 skills, productive capacity to perform that contract
25 requirement. Would that be fair?

1 A. Yes.

2 Q. Okay. They would also need to have adequate production
3 controls and quality assurance methods to satisfy the
4 quality requirements of the contract. Is that fair?

5 A. Yes.

6 Q. Okay. Now, they would also need to satisfy any special
7 standards of responsibility that are incorporated in special
8 standards or specifications where the requirements call for
9 unusual expertise, specialized facilities or location of
10 facilities.

11 Is that also required for a contractor?

12 A. Yes.

13 Q. They have to properly register and enter all mandatory
14 information into the SAM database and the contractor cannot
15 be listed on the SAM exclusions or as an excluded vendor.
16 Is that also fair?

17 A. Correct.

18 Q. Now, not only does a contractor have to have those
19 preconditions, but they also have to comply with a bunch of
20 special laws that you guys have as the Architect of the
21 Capitol. Isn't that right?

22 A. I don't know if they're considered laws.

23 Q. Well, for example, the construction wage rate
24 requirement statute and its related acts, would that be fair
25 they've got to comply with that?

1 A. Davis-Bacon wage rates? That is correct.

2 Q. They also have to comply with the Service Contract Labor
3 Standards Act; would that be fair?

4 A. I'm sure you can read off -- there will be several that
5 they have to comply with, yes.

6 Q. Yeah.

7 To save us some time, there are about eight or
8 nine different specialized laws that you, the Architect of
9 the Capitol, require -- statutes just for you guys that you
10 require for your contractors. Isn't that right?

11 A. That sounds correct.

12 Q. Now, this stuff does not govern regular businesses,
13 people out in the wild. Correct? That's you, the Architect
14 of the Capitol. Correct?

15 A. You are reading from the Architect of the Capitol's
16 contracting manual.

17 Q. I am. So am I correct?

18 A. That governs the Architect of the Capitol's contracting,
19 yes.

20 Q. Thank you, sir.

21 Now, in this case, I think you testified that the
22 people that fixed the glass was New Image Glass. Is that
23 right?

24 A. That is correct.

25 Q. And that's a reputable, well-established business, been

1 in business for more than 28 years.

2 Is that correct?

3 A. They are a reputable company who has been in business
4 for quite some time, yes.

5 Q. Right.

6 They're not a small business. Correct?

7 MR. MULROE: Object to relevance.

8 MR. JAUREGUI: Goes to expense and the cost.

9 THE COURT: Overruled.

10 BY MR. JAUREGUI:

11 Q. They're not a small business, are they?

12 A. How are you defining small business? It has a specific
13 definition in our contracting manual.

14 Q. What's your definition? Tell me.

15 A. A small business would be defined by the amount of work
16 that they procure and that they -- that they perform for the
17 government or outside the government on a yearly basis. And
18 so I do not know that company's financials.

19 Q. You don't know how many employees they have?

20 A. I do not.

21 Q. They're not a minority-owned business, are they?

22 A. I do not know their specifics.

23 Q. Got it.

24 Now, let's talk about some of these expenses.

25 From what I saw there in the PowerPoint presentation, the

1 painter made \$34.15 an hour. Correct?

2 A. One moment.

3 Q. Sure.

4 A. That is correct.

5 Q. My fuzzy math, that painter makes about \$65,568 a year.

6 Is that correct?

7 A. I do not have that math in front of me. If that's times

8 2,040 -- 2,080 hours a year, that would be about right.

9 Q. The insulator makes \$37.50 an hour; is that right?

10 A. That is correct.

11 Q. That guy or gal makes \$72,000 a year; would that be

12 right?

13 A. If that is the math times that hourly rate times 2,080

14 hours, I would say that is correct.

15 Q. And an average teacher in D.C. makes about 62,000.

16 Correct?

17 A. I do not know.

18 MR. MULROE: Object to relevance.

19 THE COURT: Sustained.

20 BY MR. JAUREGUI:

21 Q. Now, let's talk about the fence.

22 The fence is just a lightweight aluminum

23 decorative fence; isn't that right?

24 A. For all intents and purposes, that's fair.

25 Q. Yes. The fence, you guys purchased it in 2008.

1 Correct?

2 A. That is correct.

3 Q. And you said in all those years it was still in like-new
4 condition. Right?

5 A. That is correct.

6 Q. And is there anything special about that aluminum fence,
7 any special specifications for the Capitol that we're
8 unaware of, or is it just a regular aluminum decorative
9 fence?

10 A. The only thing that we had -- if you look at the Exhibit
11 932-B, the only requirement was: Contractor shall provide
12 and install 328 linear feet of 35-inch-tall two-line black
13 powder-coated fence.

14 Q. Got it.

15 And would it be fair to say you can purchase that
16 fence way, way, way cheaper at, say, Home Depot,
17 Mr. McIntyre?

18 A. No.

19 Q. That fence segment in Home Depot is not 80 to \$100? You
20 got it at around 400 bucks?

21 A. That fence segment, to get it -- to get it purchased and
22 installed at the Capitol cannot be purchased at Home Depot
23 for cheaper than that.

24 Q. How do you know? You weren't involved in purchasing,
25 were you?

1 A. I was not involved in 2008 when that was purchased.

2 Q. Got it. And you're not involved in purchasing it now
3 either, are you?

4 A. I didn't understand your question.

5 Q. You're not involved in purchasing it now either, are
6 you?

7 A. My office will be responsible for purchasing a new fence
8 once that is determined.

9 Q. Right. Some CO is going to do that. Right?

10 A. I'm sorry. I did not hear you.

11 Q. Some CO is going to do that? Some contracting officer
12 is going to do that. Right?

13 A. A contracting officer will be assigned, and then a
14 contracting officer's technical representative, myself or
15 someone who works for me, will be assigned to identify the
16 scope and provide them a basis of what goods and services
17 need to be purchased.

18 We prepare the scope document, and the contracting
19 officer is the one who does the financial paperwork in order
20 to appropriately procure using the regulations in the
21 contracting officers' manual that you referred to earlier.

22 Q. Got it.

23 So we need, like, two or three people to buy a
24 piece of fence. Is that what you're telling us?

25 A. Sometimes more.

1 Q. Sometimes more than. I understand.

2 MR. JAUREGUI: Thank you, sir.

3 CROSS-EXAMINATION

4 BY MR. ROOTS:

5 Q. Mr. McIntyre, my name is Roger Roots. And I, along with
6 Mr. Steven Metcalf over here, we represent Mr. Dominic
7 Pezzola.

8 MR. ROOTS: Dominic, would you stand up?

9 (Defendant Pezzola complies.)

10 MR. ROOTS: Thank you.

11 I would like to play -- I'd actually like to play
12 Government's Exhibit 425, which is that video we've seen
13 several times, the window break video. 425. I'd like to
14 show it to the jury.

15 THE COURTROOM DEPUTY: It's coming from your
16 laptop or the Government's?

17 MR. ROOTS: I think it's coming from Ms. Rohde.

18 THE COURTROOM DEPUTY: All right.

19 (Whereupon, segments of Government's Exhibit No.
20 425 were published in open court.)

21 BY MR. ROOTS:

22 Q. Do you recall this video, Mr. McIntyre?

23 A. Yes, I do.

24 MR. ROOTS: If you could play it up until the
25 window breaks. Thank you so much.

1 (Whereupon, segments of Government's Exhibit No.
2 425 were published in open court.)

3 BY MR. ROOTS:

4 Q. You recognize this as a video about January 6th that was
5 taken on January 6th?

6 A. Yes.

7 (Whereupon, segments of Government's Exhibit No.
8 425 were published in open court.)

9 MR. ROOTS: Right there. If we could stop it
10 right there.

11 I'd like the record to show that we are stopped
12 at -- I guess 18 seconds in.

13 BY MR. ROOTS:

14 Q. Would you direct your attention, please, to the window
15 there that you see that appears to be cracked or busted. Do
16 you see that?

17 A. I do.

18 Q. And you agree that there seems to be two windows or two
19 panes of glass next to each other. Correct?

20 A. On the window in the left of the screen?

21 Q. Yes.

22 A. Yes. There are two panes on the bottom of that window.

23 Q. Just for the record, would you call those two windows?

24 A. No. It is one window; two panes of glass.

25 Q. Two panes of glass. Okay.

1 I'm going to later on ask you a bunch of questions
2 about your math and how you got to the numbers you got to.

3 But would you agree, just as an introductory
4 point, that you cannot get to \$1,000 without this pane of
5 glass on the right? You would agree with that. Correct?

6 A. I don't follow your question, sir.

7 Q. The calculations that you made with Mr. Mulroe to get
8 over \$1,000 amount of damage requires -- even with the
9 valuations that you made and the prosecution made, it
10 requires this window or this pane of glass on the right to
11 be included. Correct?

12 A. To be included in?

13 Q. In the valuation of damage.

14 A. If you are meaning to say that you get to a valuation of
15 over \$1,000 by including two panes of glass -- is that what
16 you're asking?

17 Q. Correct.

18 A. Correct.

19 Q. Again, for example, you cannot separate the two panes
20 and just consider conceptually the pane to the left of the
21 broken pane.

22 Even with your valuation, you cannot get to
23 \$1,000. Correct?

24 MR. MULROE: Asked and answered.

25 THE COURT: Overruled.

1 THE WITNESS: The documentation that I've provided
2 and Mr. Mulroe and I have gone over today shows each pane of
3 glass has a value of \$774.

4 MR. ROOTS: Can you roll it a little bit more.

5 (Whereupon, segments of Government's Exhibit No. 425
6 were published in open court.)

7 BY MR. ROOTS:

8 Q. Okay. Do you see this two-by-four going through?

9 A. I do.

10 Q. Do you see the man in red there?

11 A. I do.

12 Q. And it appears that he's breaking that pane of glass.
13 Correct?

14 MR. ROOTS: Actually, can you pan back and stop it
15 there. Thank you so much.

16 (Whereupon, segments of Government's Exhibit No.
17 425 were published in open court.)

18 BY MR. ROOTS:

19 Q. And you would agree that that man in red has already
20 broken that pane of glass. Correct?

21 MR. MULROE: I'm going to object to causation,
22 being outside the scope of direct.

23 THE COURT: Sustained.

24 BY MR. ROOTS:

25 Q. You would agree that that pane of glass is a total loss.

1 Correct?

2 A. Unfortunately, I can't make that determination sitting
3 here watching that video. I would say that in the events
4 after the 6th, we had many pieces of glass that were in
5 different states, and we had to make a determination --
6 similar to what we would do for any damage in our building
7 or any broken utility, we would make a determination on what
8 the next course of action would be.

9 Q. So your testimony is that that window as it is in
10 that -- in that video right there at that second would be
11 just fine? It doesn't need to be replaced?

12 A. What I'm testifying is, I don't know.

13 THE COURT: To be clear, just for the record, it's
14 paused at 28 seconds.

15 MR. ROOTS: 28 seconds. Thank you.

16 BY MR. ROOTS:

17 Q. So your testimony is it doesn't necessarily need to be
18 replaced right there?

19 MR. MULROE: Asked and answered.

20 THE COURT: Sustained.

21 MR. ROOTS: Okay. Can we play it until that
22 peculiar edit.

23 (Whereupon, segments of Government's Exhibit No.
24 425 were published in open court.)

25 MR. ROOTS: Actually, can we go back? I'm sorry.

1 I want to make a point about the video here.

2 Maybe a little bit farther back.

3 Play it forward there.

4 (Whereupon, segments of Government's Exhibit No.
5 425 were published in open court.)

6 BY MR. ROOTS:

7 Q. You see the man in red throwing the two-by-four.

8 Correct?

9 A. I see a two-by-four going into the window.

10 Q. And then he pulls back. And there's a peculiar edit
11 there. Correct?

12 MR. MULROE: Object to scope.

13 THE COURT: Sustained.

14 BY MR. ROOTS:

15 Q. Would you agree, then --

16 MR. ROOTS: Actually, let me make a record one
17 more time.

18 Can you play that one more time? I want to get
19 the second mark down so I can -- just for the record.

20 (Whereupon, segments of Government's Exhibit No.
21 425 were published in open court.)

22 BY MR. ROOTS:

23 Q. Here we are at --

24 MR. MULROE: Same objection.

25 THE COURT: Well, you may ask the question,

1 Mr. Roots. I don't know what the question is going to be.
2 Go ahead.

3 BY MR. ROOTS:

4 Q. Here we are at second mark 24 seconds in. We -- it
5 appears that that two-by-four is all the way through that
6 pane of glass on the right. Correct?

7 A. That two-by-four has gone through the window pane, yes.

8 MR. ROOTS: Can we roll it until the point where
9 the video pans to the left and -- just to get the second
10 mark.

11 (Whereupon, segments of Government's Exhibit No.
12 425 were published in open court.)

13 BY MR. ROOTS:

14 Q. Right there. 29 seconds for the record. So that was
15 the -- it was basically 24 seconds to about 29.

16 It was that segment of that pane of glass,
17 correct, on the right that appeared to be busted?

18 A. That was on the screen, yes.

19 Q. Now, I know you just saw Mr. Pezzola stand up just now
20 very, very briefly.

21 Would you say that you've seen Mr. Pezzola in that
22 video at all?

23 A. It is not my responsibility with the Architect of the
24 Capitol to determine who is in this video. This is my first
25 time watching this video in this depth.

1 Q. Okay. Now let's even look at this image that we have
2 right here on screen.

3 You see that people appear to be breaking the --
4 some glass in the doorway. Correct?

5 A. Correct.

6 Q. Does that appear to be a closed fist or someone's
7 pounding on it and breaking it?

8 A. He --

9 MR. MULROE: Object to scope of causation
10 questions.

11 THE COURT: Sustained.

12 MR. ROOTS: Can we continue playing? I want to
13 get to -- basically, I want to play to that very point where
14 the video moves and pans back to the right, if we could.
15 Thank you so much.

16 (Whereupon, segments of Government's Exhibit No.
17 425 were published in open court.)

18 BY MR. ROOTS:

19 Q. Do you see these people pounding on the glass? Correct?

20 A. I do.

21 Q. And then the video pans back to the -- right there. Do
22 you see that? It looks like a darker-haired man is at
23 that -- at that pane of glass on the left of the other pane
24 of glass. Correct?

25 A. Correct.

1 Q. So when we saw that -- before the video -- before the
2 videographer panned over to the left, you recall you saw
3 that the pane of glass on the far right there had already
4 been cracked and busted. Correct?

5 A. Correct.

6 MR. MULROE: Same scope objection on causation.

7 THE COURT: Overruled.

8 MR. ROOTS: I'm almost done with this.

9 THE COURT: And to be clear, the video is paused
10 at now 40 seconds.

11 BY MR. ROOTS:

12 Q. It appears that the darker-haired man appears to be
13 striking at the window pane on the left. Correct?

14 A. I can't tell from this paused video what is happening.

15 MR. ROOTS: What I'd like to do is go to another
16 exhibit, which I would call Pezzola's proposed exhibit, just
17 for the witness, 1A-1.

18 THE COURTROOM DEPUTY: You said 1A-1, Mr. Roots?

19 MR. ROOTS: Yes. This is actually a still screen
20 shot of that very moment.

21 Can we see there on the screen? It's from my
22 laptop.

23 THE COURTROOM DEPUTY: You have it on the desktop.

24 MR. MULROE: Try to drag it over.

25 MR. ROOTS: This is a still -- I'm trying to make

1 the point that at the moment -- maybe I'll use Mr. Pezzola's
2 laptop real quick for something.

3 Right there. That's great.

4 BY MR. ROOTS:

5 Q. Does this look like -- does it look like a still shot
6 taken at the very first moment that the video pans back over
7 to the right toward the broken windows?

8 A. It could be. It's tough to tell. This appears to be
9 the same general location. I can't tell when on the -- from
10 a video this still shot was taken.

11 MR. MULROE: Your Honor, may we have a sidebar?

12 THE COURT: Yes.

13 (Whereupon, the following proceedings were had at
14 sidebar outside the presence of the jury:)

15 MR. MULROE: Your Honor, I just think this
16 dissecting of the videos with this witness is not remotely
17 within the scope of what he testified about.

18 THE COURT: Mr. Roots, I'm trying to give you -- I
19 mean, the question you asked before about whether the window
20 in a given state was a total loss I thought was totally
21 fair, and that's what I'm trying to give you leeway to get
22 to.

23 But what are we doing here?

24 MR. ROOTS: I'm trying to show that even the other
25 window, this second window, the window to the left, was

1 already broke before Mr. Pezzola takes a swipe at it.

2 THE COURT: But that's not -- that is not within
3 the scope of this witness's testimony. He's not here --
4 he's not competent to testify as to who broke what, where --
5 when and where. He's just not. So again, I thought it was
6 fair for you to ask, Hey, does that window at that time --
7 does that look like it's a total loss or not? Do you know?
8 Can you testify to that?

9 That's fair.

10 But this thing about who struck the window when,
11 it's totally outside the scope, isn't it?

12 MR. ROOTS: Well, there was discussion of --
13 there's just been discussion about whether the window was a
14 total loss or not. I want to bring in even the pane of
15 glass on the left.

16 THE COURT: You can put up -- I think it's fair
17 for you to put up something and say, Is it a total loss at
18 this point or that point? But this whole thing about who
19 did what when and where is just not -- the video speaks for
20 itself. This witness -- it's totally beyond the scope.
21 Does that make sense?

22 I mean, again, if you want to ask him about the
23 condition of a window at a given time, I think that's fair.
24 But I don't understand how he can possibly testify about a
25 video he's never seen before.

1 MR. ROOTS: I actually think I've made my point,
2 mostly. So I'll move on.

3 THE COURT: All right.

4 (Whereupon, the following proceedings were had in
5 open court:)

6 MR. ROOTS: Thank you. I would like to play
7 that -- Ms. Rohde's -- the full version all the way until
8 people start jumping in, if I could.

9 425. This is back to Government's 425. If we
10 could play it back until the people go into the building.
11 Just play it to that point. Thank you.

12 (Whereupon, segments of Government's Exhibit No.
13 425 were published in open court.)

14 BY MR. ROOTS:

15 Q. Do you see the man with the shield taking some whacks at
16 that window?

17 A. I do.

18 MR. ROOTS: We can stop right there.

19 BY MR. ROOTS:

20 Q. Do you recognize that man right there as Mr. Pezzola,
21 the man who just stood up?

22 MR. MULROE: Object to scope and foundation.

23 THE COURT: Sustained.

24 BY MR. ROOTS:

25 Q. You've testified a lot about the valuation of damage,

1 valuation of damage, and how many different factors go into
2 that.

3 And you would agree that your valuation is a bit
4 subjective. Correct?

5 A. My valuation was an attempt to make a fair assessment of
6 how much a contractor would assign to an individual pane of
7 glass, given that all we received and all we asked for at
8 the time of mid-January was to have a group of windows -- a
9 repair cost for a group of windows.

10 Q. You discussed different things that can go into the
11 valuation of damage. Correct?

12 A. I'm not sure I understand your question. Can you please
13 explain further?

14 Q. Well, you and Mr. Mulroe went through a series where you
15 took an average -- the invoices that the Architect of the
16 Capitol received from the vendor did not itemize this
17 damage, did they?

18 A. They did not.

19 Q. So you and Mr. Mulroe, or maybe the Justice Department,
20 came to certain conclusions with some calculations. Is that
21 fair to say?

22 A. We assigned a value per window based on our best
23 information in working with both our -- with our contractor,
24 yes.

25 Q. And at different times you talked about other potential

1 costs that might go into things, like plywood, the plywood
2 boards and things.

3 Do you recall that?

4 A. Yes.

5 Q. Would you agree that if someone was to be a window
6 repair contractor, that the first thing they would have to
7 do would be remove the damaged glass from a broken window?
8 Correct?

9 A. No.

10 Q. What would the first thing they would do be when they
11 arrived at a busted window?

12 A. From a process perspective, the first thing they did was
13 we did a site walk with the contractor for them to put eyes
14 on each of the windows and identify what material they would
15 need to provide for us.

16 When performing the work --

17 Q. Okay. Let me stop you. That's not quite the question I
18 asked.

19 At the moment a window repairman arrives at a
20 cracked window, what's the first thing he has to do? He has
21 to remove the glass, doesn't he?

22 A. Not at the Architect of the Capitol -- not for the
23 Capitol Building, they did not. We removed that glass.

24 Q. Okay. Would you agree that it takes at least some labor
25 costs, some time, to remove the damaged glass from a window

1 pane?

2 A. Depending on how damaged it was and depending on the age
3 of the window, potentially. These windows are held in place
4 by what's called glazing. That glazing is kind of like a
5 putty material that is somewhat rigid but also somewhat
6 flexible. It allows you, in the event that you need to
7 replace a window, to easily pull that glazing out, pull that
8 window out and to repair it.

9 It appears from --

10 Q. Let me stop you there.

11 You would agree that at least an argument could be
12 made that Mr. Pezzola, by removing damaged glass, is adding
13 value, then, according to at least some analysis?

14 A. It is not my office's determination to -- it is not my
15 office's mission to determine who did what damage. We
16 provide analysis of the damage, what the damage is and how
17 much -- how to fix it and what that cost would be.

18 MR. ROOTS: Thank you so much.

19 Let me go to 931-B. I have it, if you don't.

20 This was shown on direct.

21 I have it. I have it.

22 THE COURT: Madam Court Reporter, are we okay?

23 THE COURT REPORTER: Yes, Judge. Thank you.

24 MR. ROOTS: I have it. Here we are.

25

1 BY MR. ROOTS:

2 Q. Do you recall seeing this document on direct?

3 A. Yes, I do.

4 Q. And I think you said this was a proposal by a vendor.

5 Is that correct?

6 A. That is correct.

7 Q. So this was not the final invoice or a bill; this was
8 just a proposal?

9 A. Correct. It's listed -- at the top you can see where
10 it's listed as "proposal."

11 Q. And it has that price, \$7,545. That's the total price
12 on this invoice -- this proposed invoice. Correct?

13 A. That's not the total price. Please go to Page 2 and you
14 can see the total price.

15 MR. ROOTS: Okay. Before we do that -- before we
16 do that, I'd like to direct the witness to the top there.

17 BY MR. ROOTS:

18 Q. "Highly sensitive"; do you see that?

19 A. Yes.

20 Q. Can you think of a reason why this would be highly
21 sensitive?

22 A. Those are markings that the Architect of the Capitol
23 placed on this document prior to providing them to the
24 Department of Justice.

25 Q. And you see there seems to be a lot of redactions on

1 this document. Correct?

2 A. That is correct.

3 Q. What would be under that first big black box there on
4 the left, the upper left?

5 A. Identifying information of the contractor, their phone
6 number, their email address, things of that nature.

7 Q. And you've told us, I guess for the first time on cross,
8 that the contractor is called New Image?

9 A. That is correct.

10 Q. But this was concealed from us in your direct. Correct?

11 A. It was redacted from this document, yes.

12 Q. What about in that other box on the upper right? What
13 information would be under that black box?

14 A. All the identifying information of the contractor.

15 Q. And there's -- is there a reason why that's being hidden
16 from view here?

17 A. That was done at the discretion of the Architect of the
18 Capitol's general counsel.

19 Q. You're aware people are supposed to have a right to
20 confront their accusers. Correct?

21 MR. MULROE: Object. Relevance, 403 and
22 inaccurate legal argument.

23 THE COURT: Sustained.

24 BY MR. ROOTS:

25 Q. It's possible that if the defense had had that

1 information, we might have called that vendor up and he
2 might have had a different valuation. Correct?

3 MR. MULROE: Objection. Defense's access to the
4 vendor was never asked.

5 THE COURT: The objection is sustained.

6 BY MR. ROOTS:

7 Q. If I could ask, what are under these smaller redactions?
8 What information is under there?

9 A. Security-sensitive information based on location of
10 different pieces of glass.

11 Q. So each one has a different location inside the Capitol?

12 A. Each one of those are listed as -- those would be the
13 listed location and identifying information on the piece
14 of -- where that glass would be installed.

15 Q. Okay. So the particular panes of glass that you spoke
16 about in this -- in your direct was listed on here, you
17 said.

18 And what was the dimensions that you said it was?

19 A. 24 inches by 54 inches by one-quarter inch clear
20 laminated safety glass.

21 Q. So it would be this one -- if I could circle -- the 24
22 by 54, you said?

23 A. 24 by 54.

24 Q. If I could circle, that's down there.

25 And what would be under that black mark there?

1 A. I need to correct you. You're circling things that are
2 not correct.

3 Q. Okay. I'm sorry. Actually, I see the word "doors."

4 So these are door windows at the bottom. Correct?

5 A. That is not correct.

6 Q. Okay. Please --

7 A. Each one of those redacted items is a unique identifier
8 for the location of where that piece of glass would be
9 installed. It has been redacted due to security concerns.

10 Q. So the Architect of the Capitol believes it would be
11 some national security issue if the public were to know --
12 know the locations of these windows?

13 A. The --

14 MR. MULROE: Object to foundation, relevance.

15 THE COURT: Sustained.

16 MR. ROOTS: I'd like to go now to 931-A, which has
17 also been shown. Government's 931-A.

18 BY MR. ROOTS:

19 Q. Again, this says "highly sensitive" at the top.
20 Correct?

21 A. Yes, it does.

22 Q. Now that -- this other thing was a proposed invoice or
23 some kind of a proposal, correct, that past document?

24 A. That past document was the proposal for that group of
25 windows from the glass vendor, yes.

1 Q. Now, is this the final invoice?

2 A. This is my estimate.

3 Q. This is your estimate --

4 A. Per pane for the damages associated with correcting the
5 cost -- the cost to correct the damages on a per-pane basis.

6 Q. So we've not been shown the final invoice, have we?

7 A. There's -- that final invoice -- their proposal was
8 accepted by the government and paid at that price.

9 Q. Okay. Back to this document -- so your office drafted
10 this document?

11 A. I drafted this, yes.

12 Q. Okay. And this is 931-A.

13 What would be under that redacted black mark in
14 the upper left there?

15 A. Again, identifying information that the Architect of the
16 Capitol did not -- that they redacted.

17 Q. Would that be the vendor again?

18 A. No, not in that location. The vendor is not on this
19 document. The vendor does not have information -- the
20 information of the vendor would not be on this document.

21 Q. If I could ask, what would be under that black mark?

22 A. The one on the left or the one on the right?

23 Q. The largest one on the page, the upper left.

24 A. Some instructions on -- and some identifying information
25 that would have been provided originally to our general

1 counsel -- my general counsel.

2 Q. Okay. Now, somewhere on here there are listings for
3 insulation. Do you recall that?

4 A. There is a listing for an Architect of the Capitol
5 insulator's WG wage rate, yes. They are our certified
6 hazardous material abatement employees. They are certified
7 to take samples, to provide those samples to a laboratory,
8 as well as if there was any hazardous materials found, they
9 are our certified team who can remove those materials
10 appropriately.

11 Q. So this is a -- I'm trying to understand. In the window
12 industry, doesn't insulation pertain to gases like radon gas
13 that is between two panes of glass?

14 A. There's no -- so you're using the term "insulation" to
15 mean insulating from a temperature perspective or from a
16 delta between one surface and another.

17 This is the name of a shop of men and women in the
18 Architect of the Capitol. They are called the United States
19 Capitol Insulation Shop.

20 Q. Okay. And they do this toxic HAZMAT analysis?

21 A. HAZMAT -- the word "toxic" is not something that I had
22 spoke of. They do hazardous material: lead, asbestos,
23 PCBs, things of that nature.

24 Q. Wouldn't it be true if they've tested one window, they
25 pretty much have the idea -- they know how much HAZMAT

1 material is in all the windows?

2 A. No.

3 Q. Each one might have a different hazardous material in
4 them?

5 A. Every window may have been constructed at a different
6 time and may have been painted with paint containing lead
7 paint at a different time. Each lead paint may have a
8 different value of lead paint. And once you exceed a
9 certain threshold, it's now considered lead-based paint and
10 is required to be handled in a specific way.

11 We are required to -- by law to take a sample of
12 each work location where we are going to perform work for
13 lead-based paint and for other hazardous materials.

14 Q. So it was a very large amount -- thousands of dollars
15 that were added to the total, and then you extrapolated and
16 itemized that on an average to our window in question. Is
17 that what you did?

18 A. No. No. \$25 is how much each sample costs. We took
19 one sample on each window pane and sent that away for
20 analysis.

21 Q. Okay. Mr. Jauregui asked -- already asked a bunch of
22 questions I was going to ask.

23 Generally speaking, if these windows were to be
24 replaced in any building outside the Capitol, they would be
25 replaced at a much lower price. Correct?

1 A. The window or the glass? Those are very different.
2 This window we would not replace because of the historic
3 nature of the window.

4 Q. Okay. There are a lot of historic buildings around D.C.
5 Correct?

6 A. Yes.

7 Q. Houses, a lot of historic houses. Correct?

8 A. I don't know.

9 Q. If you owned a historic house, you could replace the
10 glass a lot cheaper than \$1500 for two panes. Correct?

11 A. Depending on the regulations of the board who oversees
12 the historic preservation of that area. It depends. There
13 are some areas in the United States which require you to use
14 certain materials.

15 Q. Okay. In general, you would agree that government
16 repairs are more expensive than repairs, like Mr. Mulroe
17 said, at his house? Would you agree with that?

18 A. Making a repair here at the Capitol certainly is --
19 because of all of the inherent costs are certainly more
20 expensive than someone performing work at their residence
21 outside of the Capitol area.

22 Q. But that's not really a measure of the damage, though,
23 the damage that was done. The damage might be the same, but
24 the cost that you would impose would be different. Correct?

25 A. I don't understand your question, sir.

1 Q. Mr. Mulroe, if he had a window that was -- at his house
2 that was 54 inches tall by -- what was it? -- 24, whatever
3 it was --

4 A. Yes, 24 by 54.

5 Q. -- he could probably get that repaired a lot cheaper
6 than the numbers you gave out today. Correct?

7 A. I can't testify to that. I don't have enough
8 information to identify how much it would cost at someone's
9 personal residence.

10 Q. Is the Capitol more expensive even than other
11 government -- other Federal Government buildings?

12 A. Other -- I would say it is similar pricing. We receive
13 similar pricing that other similar equitable buildings of
14 its nature in the United States would incur.

15 You think of the security protocols. A building
16 like the Pentagon would experience similar security
17 protocols.

18 Q. Okay. And you testified that you did not use -- that
19 the Architect of the Capitol did not use normal bidding,
20 correct, on this --

21 A. I don't believe I used the word "normal." We did not
22 use a competitive bidding process.

23 It is normal to go through a sole-source
24 justification for certain goods and services. It depends on
25 the goods or services that you are procuring. And over --

1 you know, in conjunction with our contracting officer, we
2 would make a determination as a team to determine should we
3 or should we not competitively bid that product and do we
4 have enough information to justify going through a sole
5 source.

6 Q. Okay. So these would be what would be known as a no-bid
7 contract. Would you call a -- you called it sole-source
8 justification.

9 That would be a no-bid contract. Correct?

10 A. They are not competitively bidding against other
11 contractors, correct.

12 Q. And you would agree that a no-bid contract generally is
13 more expensive than a contract where people are fighting for
14 bids?

15 A. I do not agree with that.

16 Q. You would agree --

17 A. It may be, but there are times where a sole source is
18 necessary. It may be the only contractor who has the
19 ability to provide that service. You have nothing to
20 benchmark it against.

21 Q. Okay. You agree that the reason for competitive bidding
22 is to keep costs down for the Federal Government? Would you
23 agree with that?

24 A. It's to keep costs fair, yes. The competitive bidding
25 process traditionally would allow a contractor to know that

1 they are bidding against someone and so they -- hopefully,
2 they provide you their best price.

3 Q. You would agree that no-bid contract situations
4 sometimes open the door to cronyism, corruption?

5 A. What do you mean by that?

6 MR. MULROE: Object to speculation, relevance.

7 THE COURT: You can rephrase the question, sir.

8 BY MR. ROOTS:

9 Q. Would you agree that a contractor that gets no-bid
10 contracts has a cozy relationship with the Federal
11 Government, generally?

12 A. I do not.

13 Q. They're on the Rolodex that you would call; they're
14 companies you've dealt with before, friendly, friendly
15 vendors?

16 A. I deal with a lot of vendors that we competitively bid
17 against that I would pick up the phone and call them before
18 I ever pick up the phone and call someone I've sole-sourced
19 something to.

20 Q. You would agree --

21 A. Their performance is what matters.

22 Q. -- there have been problems with no-bid contracts?

23 A. Who is?

24 Q. There have been problems with the GSA and whatnot, even
25 the Architect of the Capitol?

1 A. I -- I am not aware of what you're speaking of. And I
2 do not work for the General Services Administration, so I'm
3 not familiar with the problems you speak of.

4 Q. I could think of examples, but I'm going to ask you for
5 examples.

6 Where one particular corporation has a very cozy
7 relationship with the Defense Department, for example -- are
8 you aware of examples like that?

9 MR. MULROE: Object to the relevance of other
10 vendors with other agencies.

11 THE COURT: Sustained.

12 BY MR. ROOTS:

13 Q. So you used a formula with Mr. Mulroe, a particular
14 calculation, several steps along the way.

15 How many steps would you say you used to get to
16 the -- to the dollar amounts that you provided?

17 A. Two.

18 Q. Two steps.

19 Each one required a judgment. Correct?

20 A. The first step required a judgment.

21 Q. And you would agree that someone else might come to a
22 different judgment. Correct?

23 A. They could, yes.

24 Q. Even the vendor himself who provided this that we
25 learned about only on cross might have come to a different

1 calculation than you?

2 A. I worked with them to make that determination, directly.

3 So that was both my and their determination.

4 Q. Okay. You would agree that we could find a window
5 repair business in D.C. that might come to a different
6 calculation. Correct?

7 MR. MULROE: Object to speculation.

8 THE COURT: Sustained.

9 BY MR. ROOTS:

10 Q. You would agree that using the same exact documents that
11 have been provided -- that have been shown during your
12 direct examination, the same exact documents, that another
13 window business could analyze those same documents and come
14 to different dollar amounts for the windows we are
15 discussing. Correct?

16 MR. MULROE: Same objection.

17 THE COURT: Sustained.

18 BY MR. ROOTS:

19 Q. You talked about different things that might go into --
20 into the calculation of damage.

21 Do you recall that?

22 A. Yes.

23 Q. You talked about how in some cases, these things are
24 very difficult to measure. Correct?

25 A. I don't believe that I testified to that.

1 Q. Well, let's just talk about the black metal fence a
2 little bit.

3 That metal fence --

4 THE COURT: Mr. Roots, I'm sorry. Let me just
5 interrupt you.

6 I have to get in a break for the court reporter at
7 this point.

8 So, ladies and gentlemen, we're going to take our
9 afternoon break. We'll come back in ten minutes.

10 (Whereupon, the jury exited the courtroom at 3:25
11 p.m. and the following proceedings were had:)

12 THE COURT: Sir, you may step down.

13 (Witness excused.)

14 THE COURT: Everyone may be seated.

15 MR. McCULLOUGH: Your Honor, I -- Jason McCullough
16 for the United States.

17 I just had a quick question about the Court's
18 expected ending time today.

19 THE COURT: Yes. I was hoping to go to 5:15
20 today.

21 MR. McCULLOUGH: Thank you, your Honor.

22 THE COURT: So past 5:00.

23 MR. McCULLOUGH: Yes. Purely for planning
24 purposes. Thank you.

25 THE COURT: Understood. I should have let you

1 know.

2 So we'll take our ten-minute break and be back on
3 the other side.

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

6 THE COURTROOM DEPUTY: Jury panel.

7 (Whereupon, the jury entered the courtroom at 3:40
8 p.m. and the following proceedings were had:)

9 THE COURTROOM DEPUTY: You may be seated.

10 (Thereupon, the Court entered the courtroom and
11 the following proceedings were had:)

12 THE COURTROOM DEPUTY: We're back on the record in
13 Criminal Matter 21-175, the United States of America versus
14 Ethan Nordean, et al.

15 THE COURT: Mr. Roots, you may proceed, sir.

16 BY MR. ROOTS:

17 Q. Okay, Mr. McIntyre. I just have a couple further
18 questions.

19 Those panes of glass that we've been discussing,
20 those were not bulletproof. Correct?

21 A. They did not carry a bullet resistance rating.

22 Q. They were not shatterproof, were they?

23 A. I don't know if -- they were not safety -- they were not
24 glass that was shatterproof, correct.

25 Q. They weren't particularly specialized panes of glass,

1 were they?

2 A. They were glass that we see throughout the Capitol
3 Building on our windows. They were nothing -- they were not
4 specialty glass.

5 Q. Okay. Just one last time: Even under your padded
6 calculations, you cannot get to a thousand dollar damage
7 without using both of those panes of glass, correct?

8 A. I provided a damage estimate per pane. Per pane,
9 it's -- my estimate is \$774 per pane of glass.

10 MR. ROOTS: No further questions. Thank you so
11 much, Mr. McIntyre.

12 THE COURT: Thank you, sir.

13 Any redirect from the Government?

14 REDIRECT EXAMINATION

15 BY MR. MULROE:

16 Q. Mr. McIntyre, just a few followup questions for you.

17 The first defense attorney, Mr. Smith, asked you
18 about your knowledge of specific parts of the black fence.
19 Do you remember that?

20 A. Yes.

21 Q. Now, when you arrived at the Capitol grounds on January
22 7th, were there any parts of that fence that were still
23 standing in place?

24 A. Not to my recollection. The events of that day -- we
25 toured the building and all parts of the building multiple

1 times, identifying damage and then going back to those
2 areas. I did not specifically walk that black fence
3 multiple times. I was focused on many of the immediate
4 safety repairs that were needed inside -- to the envelope of
5 the building and inside the building.

6 Q. To your knowledge, are any of those fence parts
7 available to be reused at the next inauguration, 2025?

8 A. They are not.

9 Q. Ms. Hernández asked you some questions about prior
10 demonstrations.

11 Do you recall that?

12 A. Yes.

13 Q. How many doors and windows have been breached at prior
14 demonstrations?

15 A. None that I'm aware of.

16 Q. How many fences have been totally destroyed at prior
17 demonstrations?

18 A. None that I'm aware of.

19 Q. How many disaster assessment teams have been formed in
20 response to prior demonstrations?

21 A. None that I'm aware of.

22 Q. Ms. Hernández also asked you about the employees who did
23 some of the work and whether they would have been paid no
24 matter what kind of work they were performing.

25 Do you remember that line of questioning?

1 A. Yes, I remember that.

2 Q. Mr. McIntyre, as far as you know, were any of these
3 employees just sitting around waiting for a disaster to
4 happen?

5 A. They were not.

6 MS. HERNANDEZ: Objection.

7 THE COURT: Overruled.

8 BY MR. MULROE:

9 Q. They had other work to do?

10 A. They had other work to do, yes.

11 Q. Mr. Roots asked you about, let's say, who effectuated
12 the removal of the old glass.

13 Do you recall that?

14 A. I do, yes.

15 Q. Do you think that the glass company would have reduced
16 their price if they knew that Mr. Pezzola had started the
17 job for them?

18 MR. METCALF: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. MULROE:

21 Q. Mr. Jauregui asked you about various policies and
22 regulations that government -- that govern government
23 contracting.

24 Do you recall that?

25 A. Yes.

1 Q. And, Mr. McIntyre, in your role at Architect of the
2 Capitol, are you the expert on all those policies?

3 A. No.

4 Q. Do you have a general familiarity with the types of
5 policies in place?

6 A. Yes.

7 Q. So explain to us, if you would, why is it that when the
8 Architect of the Capitol needs the glass replaced, they
9 don't just get a guy from craigslist to come do it?

10 A. For the simple fact of the regulations he read out loud
11 to us. There are reasons why we have to make sure that the
12 government is procuring goods and services from contractors
13 or vendors that can provide those goods and services and
14 have the means to provide them.

15 Q. And when you participate in getting new windows put in
16 or purchasing a fence or anything else, do you have the
17 discretion just to toss those to the side and do whatever
18 you want?

19 A. We do not.

20 MR. MULROE: No further questions.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: And before the Government calls its
25 next witness, can I just have counsel at sidebar for a

1 moment.

2 (Whereupon, the following proceedings were had at
3 sidebar outside the presence of the jury:)

4 THE COURT: I'll try to talk over the buzzing.

5 I wanted to just mention one thing outside the
6 presence of the jury.

7 When we had the back-and-forth this morning about
8 the admissibility of the -- this officer's testimony
9 about -- and the video, in particular, about why he acted
10 the way he did, I referenced the notion that there were
11 trespassory offenses charged in this case.

12 And as I looked at the indictment over lunch, in
13 addition to just trying to solve the other problem we
14 already talked about with the juror, I noticed that there
15 are not -- I was reminded that there are not.

16 So I do still think the reasoning holds for
17 purposes of -- for the point that the parties were arguing
18 about with regard to, for example, the impression that was
19 left on the jury regarding, for example, the civil disorder
20 charge, not to prove the disorder, but that the charge
21 involves obstructing, impeding and interfering with law
22 enforcement officers.

23 I think the impression that was -- that could have
24 been -- that could be left by these officers, by their
25 conduct, is that Mr. Nordean's conduct didn't interfere with

1 them.

2 And you all are going to argue this one way or the
3 other, but I think the officers get to explain why they
4 acted the way they acted. Even though we're not talking
5 about a trespassory offense, we're talking about a violation
6 of 231(a)(3).

7 So I think the rationale is the same, but I just
8 wanted to correct that for the record, that I understand the
9 offense for which it's relevant is not a trespass offense,
10 but we don't have trespassory offenses charged here. That's
11 all.

12 The Government can call its next witness.

13 (Whereupon, the following proceedings were had in
14 open court:)

15 THE COURT: I'd ask the Government to call its
16 next witness, please.

17 MR. McCULLOUGH: Your Honor, the Government calls
18 Officer David Riggleman.

19 (Thereupon, Officer David Riggleman entered the
20 courtroom and the following proceedings were had:)

21 THE COURTROOM DEPUTY: Can you please raise your
22 right hand.

23 DAVID RIGGLEMAN, GOVERNMENT WITNESS, SWORN

24 THE COURTROOM DEPUTY: Thank you. You may be
25 seated.

1 THE WITNESS: Thank you.

2 DIRECT EXAMINATION

3 BY MR. McCULLOUGH:

4 Q. Good afternoon, Officer Riggleman.

5 A. Good afternoon.

6 Q. Can you please introduce yourself to the jury and spell
7 your last name, please.

8 A. Good afternoon. Officer David Riggleman,
9 R-I-G-G-L-E-M-A-N.

10 Q. And where are you employed?

11 A. The United States Capitol Police.

12 Q. And, Officer Riggleman, you'll want to adjust the
13 microphone just a little bit to make sure -- it does slide
14 around there -- just to make sure you're speaking into it.
15 The acoustics in this room are imperfect.

16 A. Thank you.

17 Q. How long have you been employed with the Capitol Police?

18 A. I've been employed since August of 2017.

19 THE COURT: Officer, I can tell, and counsel is
20 right, that -- the acoustics are what they are. You'd think
21 with a new courtroom, they'd be better.

22 But I can tell your voice isn't catching the mic,
23 so if you can just lean forward a little bit.

24 THE WITNESS: Sure.

25 THE COURT: We can make sure -- because we have

1 counsel and folks all the way on the other side of the room
2 that need to hear you.

3 THE WITNESS: Of course. Thank you.

4 BY MR. McCULLOUGH:

5 Q. And so you said since 2017; is that correct?

6 A. Yes.

7 Q. And where are you are currently assigned within the
8 Capitol Police?

9 A. I'm assigned to the United States Capitol, the FRU unit,
10 so the exterior portion of the Capitol Division.

11 Q. And you said the FRU unit. What does that stand for?

12 A. The First Responders Unit.

13 Q. And the First Responders Unit focuses on operations
14 outside the Capitol; is that right?

15 A. Yes.

16 Q. And were you assigned to the First Responders Unit on
17 January 6th?

18 A. I was.

19 Q. What time did you arrive for your shift on January 6th?

20 A. Our shifts starts at 0700, so 7:00 a.m.

21 Q. What were you doing throughout the course of the morning
22 on January 6th?

23 A. I was assigned to transporting officers to our off-site
24 facilities to swap out equipment that day.

25 Q. And when you were transporting officers, were you using

1 a vehicle?

2 A. Yes.

3 Q. And so did there come a time when you responded to the
4 Capitol on January 6th?

5 A. Yes.

6 Q. What made you respond to the Capitol on January 6th?

7 A. There was a radio call for a breach of the perimeter on
8 First Street, and that's when I responded back. There were,
9 I believe, four officers that I transported back with myself
10 to the Capitol.

11 Q. And you transported back to the Capitol.

12 Can you -- behind you there's a map. Can you just
13 look at the map and tell me if you recognize that as the
14 Capitol, first of all?

15 A. I do.

16 Q. And so is the north side of the Capitol on the left side
17 there, the Senate side?

18 A. It is.

19 Q. Okay. And so when you arrived at the Capitol in the
20 vehicle, where did you go?

21 A. Should I show you?

22 Q. Absolutely. If you want to point to it and then sit
23 down for the microphone, that may be helpful.

24 A. So in here -- initially, when I returned back to the
25 Capitol here, the officers were dropped off and

1 then [indiscernible] --

2 COURT REPORTER: I'm sorry, sir. I'm really
3 having trouble understanding you.

4 THE COURT: I think if you'll just describe it
5 sitting and then maybe return to the demonstrative if you
6 need to.

7 THE WITNESS: Of course.

8 THE COURT: I don't think there's any other way.

9 BY MR. McCULLOUGH:

10 Q. For the record, Officer Rigglesman pointed to the upper
11 left-hand corner of the demonstrated and indicated parking
12 the vehicle.

13 And after that?

14 A. The vehicle keys were taken down to the detail. I came
15 back up and exited through the law library door, which is
16 going to be on the north side of -- kind of the center of
17 the building where the stairs are, on the east front.

18 Then I proceeded around the north side of the
19 building, kind of following the upper west terrace.

20 Q. And so you exited on the east side and proceeded around
21 the north side of the Capitol. Is that right?

22 A. That's correct.

23 Q. Can you just trace that just on the map behind you?

24 A. Yes.

25 Q. Thank you, Officer.

1 And so you just traced around the left-hand side
2 going around the top headed towards the bottom and then back
3 to the right, just for the record.

4 As you arrived on the upper west terrace facing
5 the west side, what did you see?

6 A. As I turned the corner, you could see just an enormous
7 crowd of people heading east towards the Capitol.

8 Q. And how did you respond?

9 A. Immediately went down the north side stairs, so we call
10 it the lower west terrace north. The stage was constructed
11 there and there's kind of a chute that goes down the side
12 there for access. Immediately I started to go down towards
13 the group.

14 Q. And why were you going down towards the group?

15 A. The perimeter had been breached at First Street.

16 Q. And can you describe the size of the crowd relative to
17 the number of officers that were there with you?

18 A. There was a great difference between us, very few of
19 us -- like I said, it was an enormous crowd. As you peered
20 down the west front, it just was completely covered.

21 Q. Can you describe the conduct of the crowd when you got
22 down there?

23 A. They were aggressive, things that I typically don't see
24 with demonstrations or riots, so tac gear, so, like,
25 tactical helmets, plate carriers. Some people had masks on

1 or a breathing apparatus.

2 Q. And did you mention tac gear? Is that what you said?

3 A. Yeah.

4 Q. What is tac gear?

5 A. So like a protective helmet, like a lot of times you
6 would see like a SWAT team or a response team wearing.

7 Q. How about yourself? How were you dressed that day?

8 A. Very much as I am today, but with a jacket and a ball
9 cap.

10 Q. Did you have a helmet on or --

11 A. No.

12 Q. I want to show you Exhibit 451.

13 MR. McCULLOUGH: I believe this is in evidence.

14 Thank you, Ms. Harris.

15 THE COURTROOM DEPUTY: You're welcome.

16 BY MR. McCULLOUGH:

17 Q. Officer Rigglesman, do you recognize this location?

18 A. I do.

19 Q. And can you just point generally on the map, if you can
20 tell -- I know this is -- if you can tell on the map
21 approximately where this is and focusing you on the west
22 front.

23 A. It's going to be kind of this -- there. I just wanted
24 to put it at the bottom.

25 Q. Officer Rigglesman's indicating towards the Breach 3

1 marker on the demonstrative.

2 MR. McCULLOUGH: Just play for two seconds,
3 please.

4 (Whereupon, segments of Government's Exhibit No.
5 451 were published in open court.)

6 BY MR. McCULLOUGH:

7 Q. Officer Riggleman, do you see yourself in this video?

8 A. I do.

9 Q. And can you circle yourself? This is a touch screen.

10 A. (Witness complies.)

11 Q. For the record, Officer Riggleman has circled the
12 individual underneath the scaffolding wearing a black
13 baseball cap and appears to be wearing a white face
14 covering.

15 And did you have -- do you recall having any
16 interactions with the crowd while you were down there?

17 A. Yes. The crowd was very animated, we'll say, aggravated
18 and, you know, things were being shouted. They're not
19 following directions. Obviously, they've breached the line
20 down on First Street. And I believe there's another bike
21 rack or barrier set at the base of the steps. So this is a
22 third area.

23 Q. And what were you and the other officers attempting to
24 do at this point?

25 A. Attempting to keep them from going up the stairs.

1 Q. And were you successful in keeping them from going up
2 the stairs?

3 A. We were not.

4 MR. McCULLOUGH: Play the video.

5 (Whereupon, segments of Government's Exhibit No.
6 451 were published in open court.)

7 MR. McCULLOUGH: Pausing at the 26-second mark in
8 the video.

9 BY MR. McCULLOUGH:

10 Q. Officer Rigglesman, if you could circle yourself in this
11 frame, please.

12 A. (Witness complies.)

13 Q. And when you were in this location, did anything happen
14 to you?

15 A. At this point you can kind of see me pushing back and
16 forth with the protesters. There was an individual in front
17 of me that was trying to kind of breach that line there.
18 Shortly after this, you can see I'll be sprayed with pepper
19 spray or OC spray.

20 MR. McCULLOUGH: Ms. Rohde, can we go frame by
21 frame forward, please.

22 (Whereupon, segments of Government's Exhibit No.
23 451 were published in open court.)

24 MR. McCULLOUGH: Pausing there.

25

1 BY MR. McCULLOUGH:

2 Q. Circling this area right here, in particular this yellow
3 substance that's going vertical there, is that spray that's
4 being directed at you?

5 A. Yes.

6 Q. And did that spray hit you?

7 A. It did.

8 Q. Where did it hit you?

9 A. Contact across the face, like across the eye section
10 there.

11 Q. What did that feel like?

12 A. Pepper spray burns. It's very gritty. It's going to
13 disable you from seeing. You're going to cough. Your nose
14 is going to run. It very much immobilizes you.

15 Q. And were you able to see clearly at that point?

16 A. No.

17 Q. How did you respond?

18 A. Covered my weapon and made my way back up the stairs to
19 try to decon or flush the contaminant out of my eyes.

20 Q. You mentioned a weapon.

21 You guarded your weapon? Is that what you said?

22 A. Yes.

23 Q. Where was your weapon?

24 A. On my side.

25 Q. What was your weapon?

1 A. Excuse me?

2 Q. What was your weapon?

3 A. We're issued a Glock firearm. There's also a baton,
4 spray. We have some other things on our belt that we carry.

5 Q. Why did you cover your weapon?

6 A. In our training, that's the first thing, because if you
7 can't see to protect your weapon, you want to cover it so
8 that nobody else is able to obtain it and use it either
9 against you or anyone else around you.

10 MR. McCULLOUGH: Go ahead and play the video.

11 (Whereupon, segments of Government's Exhibit No.
12 451 were published in open court.)

13 MR. McCULLOUGH: Pause it.

14 BY MR. McCULLOUGH:

15 Q. And, Officer Riggleman, did you -- where did you go
16 next?

17 A. Up the stairs to try to find fresh water to clean the
18 contaminants out of my eyes.

19 Q. Officer Riggleman, we see the crowd coming up behind
20 you. Is that right?

21 A. Yes.

22 Q. Do you hear that coming up behind you?

23 A. No.

24 Q. What were you focused on?

25 A. Trying to clean my eyes or decontaminate them to be able

1 to see again.

2 Q. And where did you go?

3 A. Up the stairs and then kind of to the right or south to
4 try to get the -- to fresh water. Eventually, I was able to
5 make my way through kind of the stage and get some water on
6 the way up and eventually to the lower west terrace door.

7 Q. So once you got inside the lower west terrace door, was
8 that inside the Capitol at that point?

9 A. Yes.

10 Q. Inside the building itself?

11 A. Yes.

12 Q. Where did you go after that?

13 A. There's a ladies' room, if you enter through the
14 building, all the way at the end of the hall. I was able to
15 get water in there and kind of flush my eyes out.

16 Q. And what were you -- what were you doing? You said
17 flush your eyes out. What were you doing?

18 A. You kind of have to -- hopefully, nobody ever has to
19 experience this, but you kind of have to hold your eyes open
20 and repeatedly put fresh water in to get the contaminants
21 out.

22 Q. When you say "hold your eyes open," why do you have to
23 hold your eyes open?

24 A. It's painful, and your natural reflex is to keep your
25 eye closed. Well, you have to force it open to kind of get

1 that contamination out of there.

2 Q. Approximately how long did it take you to decontaminate
3 your eyes?

4 A. Ten minutes or so.

5 Q. And after decontaminating your eyes, did you go home?

6 A. No.

7 Q. What did you do?

8 A. Right back into the fight, just trying to do whatever we
9 could there to help with other officers.

10 Q. And did you encounter other rioters inside the building?

11 A. Yes.

12 Q. Where was that?

13 A. There were some in the Crypt.

14 Q. And when you arrived at the Crypt area, were you still
15 experiencing the effects of the spray?

16 A. Yes.

17 Q. And what kind of effects were you experiencing at that
18 point?

19 A. Blurred vision. You're still going to get some of the
20 burning sensation. Your nose is going to run. You're still
21 going to have, you know, some issues breathing. It's not
22 pleasant.

23 Q. When you arrived in the Crypt, can you describe the
24 scene generally that you saw once you got there?

25 A. There was a large group of rioters there and they were

1 trying to push their way through the Crypt to the center of
2 the building. So myself and some other officers tried to
3 form a line in there to kind of keep them from penetrating
4 further into the building.

5 Q. Why was that important, to form a line to keep them from
6 penetrating further into the building?

7 A. To protect the stakeholders and the members.

8 Q. And can you describe the relative size of the officers
9 as compared to the rioters at that point in the Crypt?

10 A. We were greatly outnumbered, maybe a handful of us in
11 there, and I couldn't even count how many rioters were in
12 the building at that point.

13 Q. What did it sound like?

14 A. I guess the best analogy would be like a sports stadium,
15 just kind of like that roaring, like the yelling and the
16 screaming. Sirens are going off.

17 Q. And were the officers able to keep the crowd from
18 advancing?

19 A. No.

20 Q. What happened?

21 A. There was just a -- almost like an enormous push or like
22 a wave of people pushed through us. We kind of got pinned
23 back against the wall as the group moved through and kept
24 going towards the center of the building.

25 MR. MCCULLOUGH: I'll bring up Exhibit 485, not in

1 evidence, just for the witness, please.

2 (Whereupon, segments of Government's Exhibit No.
3 485 were published for the witness.)

4 BY MR. McCULLOUGH:

5 Q. Officer Rigglesman, pausing there -- pausing at the
6 three-second mark, do you recognize this location?

7 A. I do.

8 Q. And is this a fair and accurate depiction of the -- have
9 you reviewed this video previously?

10 A. I believe so.

11 Q. Is it a fair and accurate depiction of the events in the
12 Crypt on January 6th?

13 A. Yes.

14 MR. McCULLOUGH: Move to admit Exhibit 485.

15 THE COURT: It will be admitted and permission to
16 publish.

17 (Whereupon, Government's Exhibit No. 485 was
18 entered into evidence.)

19 MS. HERNANDEZ: Subject to the earlier objections.

20 THE COURT: Subject to the earlier discussion we
21 had, yes. Correct.

22 You may proceed.

23 (Whereupon, segments of Government's Exhibit No.
24 485 were published in open court.)

25

1 BY MR. McCULLOUGH:

2 Q. And so what are we seeing here? We're inside the
3 Capitol, Officer Rigglesman?

4 A. Yes. This is the inside of the Capitol. It would be
5 the main level. If you were to go into the building, this
6 is the level you'd come in off of the street. This is the
7 center of the building. I can't tell from this image which
8 kind of direction we're kind of facing, but that's what it
9 looks like.

10 Q. And when you say the center of the building, do you want
11 to point out generally where that is? It may be
12 self-evident, but just to make sure that we're all on the
13 same page.

14 A. (Witness indicating.)

15 Q. Great. The officer has indicated the area right in the
16 middle of the building as outlined.

17 MR. McCULLOUGH: Let's go ahead and play this,
18 Ms. Rohde.

19 (Whereupon, segments of Government's Exhibit No.
20 485 were published in open court.)

21 MR. McCULLOUGH: Pause it there.

22 BY MR. McCULLOUGH:

23 Q. We see here -- I'm drawing a line. Who are those
24 individuals in that area?

25 A. Capitol Police officers.

1 Q. And is that part of the group of officers that were
2 attempting to form a line in the Crypt area?

3 A. Yes.

4 Q. Were you part of that group -- not this particular group
5 of officers, but were you also in this area trying to form
6 part of the line?

7 A. Yes.

8 MR. McCULLOUGH: Can you play.

9 (Whereupon, segments of Government's Exhibit No.
10 485 were published in open court.)

11 MR. McCULLOUGH: Pausing it there, please.

12 BY MR. McCULLOUGH:

13 Q. Officer Riggleman, there's an officer in the screen
14 here.

15 Is that an officer that you were with later in the
16 day?

17 A. Yes.

18 Q. Is that Officer Lopez?

19 A. Yes.

20 MR. McCULLOUGH: Play.

21 (Whereupon, segments of Government's Exhibit No.
22 485 were published in open court.)

23 MR. McCULLOUGH: Pause.

24 BY MR. McCULLOUGH:

25 Q. Did an individual say, "You fucking traitors"?

1 A. Yes.

2 Q. Did you hear remarks like that while you were in the
3 Crypt from the people that were there?

4 A. Yes.

5 MR. McCULLOUGH: Go ahead.

6 (Whereupon, segments of Government's Exhibit No.
7 485 were published in open court.)

8 MR. McCULLOUGH: Pause it.

9 BY MR. McCULLOUGH:

10 Q. Did you hear the words, "You ain't holding back a
11 million of us"?

12 A. I believe so. I don't -- I'm not certain what was said,
13 but...

14 Q. And describe the relative size of the officers as to the
15 rioters at this point.

16 A. There's, you know, maybe a handful of us there, as you
17 can see in the images, and you can see the size of the group
18 and the crowd that's kind of on the opposite side of us
19 there.

20 MR. McCULLOUGH: Let's skip to the five-minute
21 mark.

22 Go ahead and play.

23 (Whereupon, segments of Government's Exhibit No.
24 485 were published in open court.)

25

1 BY MR. McCULLOUGH:

2 Q. Who's that in the screen there?

3 A. Officer Lopez.

4 Q. And the officers are still maintaining the line in this
5 area; is that right?

6 A. Yes.

7 MR. McCULLOUGH: Play.

8 (Whereupon, segments of Government's Exhibit No.
9 485 were published in open court.)

10 BY MR. McCULLOUGH:

11 Q. Does that appear to capture the -- around the moment
12 when the crowd surged through the line of officers?

13 A. It does.

14 MR. ROOTS: Leading. Objection.

15 THE COURT REPORTER: Who was that, please?

16 THE COURT: That was Mr. Roots.

17 Sustained as to leading.

18 BY MR. McCULLOUGH:

19 Q. What did we just see?

20 A. The crowd pushed through the group of officers that were
21 there trying to hold that line.

22 Q. You mentioned previously that you were pushed up against
23 the wall; is that right?

24 A. Yes.

25 MR. ROOTS: Objection. Leading.

1 THE COURT: Overruled.

2 BY MR. McCULLOUGH:

3 Q. And when you were pushed up against the wall, were you
4 able to move?

5 A. No.

6 Q. Did there eventually come a time when you were able to
7 move from being pinned against the wall?

8 A. Yes.

9 Q. Where did you go?

10 A. We were able to kind of get away from the wall, and I
11 witnessed an officer kind of getting pulled back into a
12 corridor. And I made my way to that officer.

13 Q. Did you ever catch up with that officer?

14 A. I did not.

15 Q. Were you able to rejoin any other officers?

16 A. I was. There were two other officers kind of around the
17 upper west terrace door in the center, but it's kind of
18 around the side of the building there. There were two
19 there. I believe another number of rioters were there with
20 them.

21 Q. What did you do when you caught up with those other
22 officers?

23 A. I attempted to hold another line with them, and we were
24 unsuccessful.

25 Q. Unsuccessful, you said?

1 A. Yes.

2 Q. Were you still experiencing the effects of the spray?

3 A. Yes.

4 Q. Were you still experiencing the effects of being pushed
5 past and pinned against the wall in the Crypt?

6 A. Yes.

7 Q. Did you attempt to -- did there come a time after that
8 that you attempted to stop other rioters from entering the
9 building?

10 A. Yes.

11 Q. What location was that?

12 A. The upper west terrace door.

13 Q. Showing you Exhibit 122-A --

14 MR. McCULLOUGH: Not in evidence, just for the
15 witness, please.

16 (Whereupon, segments of Government's Exhibit No.
17 122-A were published for the witness.)

18 BY MR. McCULLOUGH:

19 Q. Office Riggleman, do you recognize this area of the
20 Capitol?

21 A. I do.

22 Q. Is this a fair and accurate depiction of this area of
23 the Capitol?

24 A. Yes.

25 Q. Where is this?

1 A. The upper west terrace door. It leads out to the upper
2 level of the terrace to the building.

3 Q. I'll show you as well --

4 MR. McCULLOUGH: Ms. Rohde, if we can knock this
5 out --

6 BY MR. McCULLOUGH:

7 Q. -- 151-A as well.

8 THE COURTROOM DEPUTY: I didn't hear that.

9 MR. McCULLOUGH: 151-A as well, not yet admitted.

10 BY MR. McCULLOUGH:

11 Q. Officer Rigglesman, where is this?

12 A. These are the doors that actually lead onto the terrace,
13 to the upper west terrace doors, on the west side of the
14 building.

15 Q. Do you recognize this location?

16 A. I do.

17 Q. A fair and accurate depiction of this area of the
18 Capitol?

19 A. Yes.

20 MR. McCULLOUGH: Move to admit 122-A and 151-A.

21 THE COURT: They'll be admitted and permission to
22 publish.

23 (Whereupon, Government's Exhibit Nos. 122-A and
24 151-A were entered into evidence.)

25 MR. McCULLOUGH: Ms. Rohde, if you'll take us to

1 the six-minute mark, please -- pardon me -- three-minute
2 17-second mark. Thank you.

3 This is 122-A.

4 BY MR. McCULLOUGH:

5 Q. Officer Rigglesman, if you can just point up to the
6 demonstrative as to the door which we're talking about here.

7 A. (Witness complies.)

8 Q. Officer Rigglesman has indicated the opening of the
9 bottom side of the Capitol Building in the middle.

10 Were you in this location at approximately 2:33
11 p.m. on January 6th?

12 A. Yes.

13 MR. McCULLOUGH: Go ahead and play this video.

14 (Whereupon, segments of Government's Exhibit No.
15 122-A were published in open court.)

16 BY MR. McCULLOUGH:

17 Q. Were you and other officers engaged in efforts to get
18 rioters out of the building at this point?

19 A. Yes.

20 Q. Where we see the individuals going at this point, coming
21 towards the camera, are they going out of the building?

22 A. Yes.

23 Q. Now, are they going through a doorway and outside the
24 building at that point?

25 A. Yes. There's a door that's out of frame view just on

1 the other side here that they're exiting through.

2 (Whereupon, segments of Government's Exhibit No. 122-A
3 were published in open court.)

4 MR. McCULLOUGH: Pausing there.

5 BY MR. McCULLOUGH:

6 Q. Was that door making any sound at that point?

7 A. The door was on alarm, yes. So it had been opened.

8 Q. And what does a door on alarm sound like?

9 A. It's an alarm or like a ringing sound.

10 MR. McCULLOUGH: Go ahead and play.

11 (Whereupon, segments of Government's Exhibit No.
12 122-A were published in open court.)

13 BY MR. McCULLOUGH:

14 Q. This individual in the red hat, is he going into the
15 building at this point?

16 A. It appears so.

17 (Whereupon, segments of Government's Exhibit No.
18 122-A were published in open court.)

19 MR. McCULLOUGH: Pause there, Ms. Rohde.

20 BY MR. McCULLOUGH:

21 Q. At the 4:18 mark I've circled the individual in the
22 doorway.

23 Who is that?

24 A. Sergeant or Special Agent -- the name eludes me right
25 now.

1 Q. Is that an employee of the Capitol Police?

2 A. Yes. Yes.

3 Q. And what is he engaged in at this point?

4 A. It appears he's having a conversation with the
5 individual with the flag.

6 Q. And where were you located at this point?

7 A. I believe I'm on the other side of the doors to the
8 left.

9 MR. McCULLOUGH: Go ahead.

10 (Whereupon, segments of Government's Exhibit No.
11 122-A were published in open court.)

12 BY MR. McCULLOUGH:

13 Q. What is that officer engaged in here?

14 MR. JAUREGUI: Objection. Speculation.

15 THE COURT: Overruled.

16 The witness can answer if he can determine from
17 his experience and viewing the video.

18 THE WITNESS: He was speaking with them. I'm not
19 sure exactly what he was saying.

20 BY MR. McCULLOUGH:

21 Q. Were you and the other officers attempting to hold back
22 this crowd?

23 MS. HERNANDEZ: Objection. Leading.

24 THE COURT: Sustained.

25

1 BY MR. McCULLOUGH:

2 Q. Were you allowing these rioters inside the Capitol --

3 MS. HERNANDEZ: Leading.

4 BY MR. McCULLOUGH:

5 Q. -- or telling them to leave?

6 THE COURT: Overruled.

7 THE WITNESS: We were telling them to leave.

8 BY MR. McCULLOUGH:

9 Q. Were you successful?

10 A. No.

11 Q. Did you quit and go home?

12 A. No.

13 Q. What did you do?

14 A. We came back into this -- into this area here and, you
15 know, tried to form a lineup and tried to keep the
16 individuals from entering the building.

17 (Whereupon, segments of Government's Exhibit No.
18 122-A were published in open court.)

19 MR. McCULLOUGH: Pause for me there.

20 BY MR. McCULLOUGH:

21 Q. Circling this individual here, is that an employee of
22 the Capitol Police?

23 A. Yes. Special Agent Millard.

24 Q. Circling these individuals there, who are those people?

25 A. It's myself with the ball cap in the front, Sergeant

1 Junior and Lieutenant Cerisa behind him.

2 Q. That's four of you?

3 A. Yes.

4 MR. McCULLOUGH: Go ahead and play.

5 (Whereupon, segments of Government's Exhibit No.
6 122-A were published in open court.)

7 MR. McCULLOUGH: Pausing there.

8 BY MR. McCULLOUGH:

9 Q. Who is that?

10 A. Officer Lopez.

11 Q. You said you attempted to form a line to keep the
12 rioters out of the building?

13 A. Yes.

14 MR. McCULLOUGH: I'm going to switch to
15 Exhibit 151-A.

16 Moving us to the six-minute mark.

17 (Whereupon, segments of Government's Exhibit No.
18 151-A were published in open court.)

19 BY MR. McCULLOUGH:

20 Q. Officer Rigglesman, which direction are we facing now?

21 A. We're facing west out towards the monument or across the
22 Mall.

23 Q. Is this the same hallway that we were just seeing from
24 the other angle?

25 A. Yes.

1 Q. So these individuals here, are those individuals coming
2 outside into the Capitol?

3 A. Yes.

4 Q. And you and the other officers -- you formed a line at
5 the bottom half of the screen.

6 Is that your approximate location?

7 A. Approximately, yes.

8 MR. McCULLOUGH: Go ahead and play.

9 (Whereupon, segments of Government's Exhibit No.
10 151-A were published in open court.)

11 MR. McCULLOUGH: Pausing there.

12 BY MR. McCULLOUGH:

13 Q. Who is that, Officer Rigglesman?

14 A. Special Agent Millard.

15 Q. Is he able to view the number of rioters outside the
16 building?

17 A. I believe so.

18 MR. JAUREGUI: Objection. Speculation: "I
19 believe so."

20 BY MR. McCULLOUGH:

21 Q. Was he in a position to observe the number of rioters
22 outside the building?

23 A. Yes.

24 Q. Officer Rigglesman, prior to January 6th, had you seen
25 visitors to the Capitol dressed like that?

1 A. No.

2 MR. McCULLOUGH: Go ahead and play.

3 (Whereupon, segments of Government's Exhibit No.
4 151-A were published in open court.)

5 BY MR. McCULLOUGH:

6 Q. Officer Rigglesman, we see people's bodies moving here.

7 Do you remember people -- what the crowd was doing
8 at this point?

9 A. They're there. I believe they were conversing with
10 Millard. I'm not sure exactly what they were saying. I
11 don't recall again. There was a lot of -- sirens were going
12 off. This door is alarmed. There's still a roar from
13 people. They're able to kind of just hold that position.

14 (Whereupon, segments of Government's Exhibit No.
15 151-A were published in open court.)

16 MR. McCULLOUGH: Pausing there.

17 BY MR. McCULLOUGH:

18 Q. How many officers were there trying to hold this line?

19 A. I believe five.

20 Q. Were you concerned for your safety?

21 A. Yes.

22 MS. HERNANDEZ: Objection.

23 MR. JAUREGUI: Objection.

24 THE COURT: Overruled.

25 MS. HERNANDEZ: Leading.

1 BY MR. McCULLOUGH:

2 Q. Were you concerned for your safety?

3 THE COURT: Sustained as to leading.

4 BY MR. McCULLOUGH:

5 Q. Did you have any concerns?

6 A. Yes.

7 Q. What were your concerns?

8 A. My safety and the safety of the other officers.

9 Q. Now, Officer Riggleman, these doors are open.

10 Why didn't you and the other officers just attempt
11 to close them?

12 A. These doors are secured with magnetic locks, and you
13 have to have a key to reset them. We were unable to secure
14 the doors.

15 MR. McCULLOUGH: Go ahead and play.

16 (Whereupon, segments of Government's Exhibit No.
17 151-A were published in open court.)

18 BY MR. McCULLOUGH:

19 Q. Were you and the other officers able to hold back this
20 crowd from entering the building?

21 A. No.

22 Q. Why not?

23 A. There's five of us, and you can see the large group
24 that's at the door. Just the sheer numbers and manpower,
25 we're not going to be able to stop that.

1 (Whereupon, segments of Government's Exhibit No.
2 151-A were published in open court.)

3 MR. McCULLOUGH: Pausing there.

4 BY MR. McCULLOUGH:

5 Q. At this point, 2:37:22 in the afternoon, was the door
6 still in an alarm state at that point?

7 A. Yes.

8 Q. Is that a loud alarm?

9 A. Yes.

10 Q. What tactical options did you have?

11 A. We really didn't at this point. Again, there's such a
12 large group of people there; and as you've seen in the
13 video, there's only five of us. I'm not sure how many have
14 come to that door and exactly how many are outside, but it's
15 quite a bit more than what we are. And there's not really a
16 lot we can do there.

17 MR. McCULLOUGH: Just for the witness.

18 BY MR. McCULLOUGH:

19 Q. Showing you Exhibit 473.

20 MR. McCULLOUGH: Ms. Harris, I do not believe this
21 is in evidence.

22 (Whereupon, segments of Government's Exhibit No.
23 473 were published for the witness.)

24 THE COURTROOM DEPUTY: Yes. It's in evidence.

25 MR. McCULLOUGH: So for the jury, please.

1 Thank you, Ms. Harris.

2 THE COURTROOM DEPUTY: You're welcome.

3 MR. McCULLOUGH: Go ahead and play.

4 (Whereupon, segments of Government's Exhibit No.
5 473 were published in open court.)

6 MR. McCULLOUGH: Pause it there.

7 BY MR. McCULLOUGH:

8 Q. Officer Rigglesman, circling this doorway here, what is
9 that?

10 A. That's the upper west terrace door. We're on the other
11 side of this.

12 MR. McCULLOUGH: Go ahead and play.

13 (Whereupon, segments of Government's Exhibit No.
14 473 were published in open court.)

15 MR. McCULLOUGH: Pause it there, please.

16 BY MR. McCULLOUGH:

17 Q. Officer Rigglesman, I hear a whining sound. What is
18 that?

19 A. That's the door alarm that you hear ringing.

20 Q. And you can hear that in this video?

21 A. Yes.

22 MR. McCULLOUGH: Go ahead and play.

23 (Whereupon, segments of Government's Exhibit No.
24 473 were published in open court.)

25 MR. McCULLOUGH: Pause.

1 BY MR. McCULLOUGH:

2 Q. As the camera approaches that door, does the alarm get
3 louder?

4 A. Yes.

5 MR. McCULLOUGH: Go ahead.

6 (Whereupon, segments of Government's Exhibit No.
7 473 were published in open court.)

8 MR. McCULLOUGH: Pause it there.

9 BY MR. McCULLOUGH:

10 Q. Now, we're seeing the top of an individual's head there
11 and there.

12 Are those officers?

13 A. I believe so.

14 MR. McCULLOUGH: Go ahead and play.

15 (Whereupon, segments of Government's Exhibit No.
16 473 were published in open court.)

17 MR. McCULLOUGH: Pause.

18 BY MR. McCULLOUGH:

19 Q. What are they chanting?

20 A. "Let us in."

21 MR. JAUREGUI: Judge, best evidence rule. The
22 video speaks for itself.

23 THE COURT: Overruled.

24 THE WITNESS: "Let us in."
25

1 BY MR. McCULLOUGH:

2 Q. Did you have any concerns, hearing the crowd chanting
3 that at you?

4 A. Yes.

5 Q. What were those concerns?

6 A. There was five of us and quite a few more of them. We
7 already have individuals in the building, so we have threats
8 to our back. There's not really a lot we can do with this.

9 Q. At this moment, did you know that you were going to make
10 it home?

11 A. No.

12 MS. HERNANDEZ: Objection.

13 MR. JAUREGUI: Judge, 403.

14 MS. HERNANDEZ: And leading.

15 THE COURT: Sustained as to leading.

16 BY MR. McCULLOUGH:

17 Q. At this moment, did you want to make it home that night?

18 A. Yes.

19 MR. JAUREGUI: Objection again, Judge. Relevance.
20 403.

21 MS. HERNANDEZ: Leading.

22 THE COURT: Overruled.

23 BY MR. McCULLOUGH:

24 Q. At any time, did you or the other officers in this
25 hallway tell the rioters that they could come inside the

1 building?

2 A. No.

3 MR. ROOTS: Objection. Hearsay.

4 THE COURT: Overruled.

5 MR. McCULLOUGH: Go ahead and play.

6 (Whereupon, segments of Government's Exhibit No.
7 473 were published in open court.)

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

9 BY MR. McCULLOUGH:

10 Q. Who's that?

11 A. That's myself.

12 Q. Officer Rigglesman, you're just letting rioters inside
13 the building there?

14 A. There's not a lot we can do with it at this point.

15 MR. McCULLOUGH: Go ahead and play.

16 (Whereupon, segments of Government's Exhibit No.
17 473 were published in open court.)

18 MR. McCULLOUGH: Pause it there.

19 BY MR. McCULLOUGH:

20 Q. Where do these stairs lead up there?

21 A. To the Rotunda.

22 MR. McCULLOUGH: Take that down, please.

23 Ms. Harris, I believe we can take that down.

24 Thank you.

25 THE COURTROOM DEPUTY: Sorry.

1 MR. McCULLOUGH: Thank you.

2 BY MR. McCULLOUGH:

3 Q. Did there come a time when you left that doorway?

4 A. Yes.

5 Q. Why?

6 A. There was a radio call for shots fired in the chamber.

7 Q. And how did you respond?

8 A. We responded to the chamber immediately.

9 Q. Why did you leave that location to respond to a shots
10 fired call?

11 A. Loss of life's going to be prioritized --

12 MR. JAUREGUI: Objection, relevance as to this
13 case. And I'd like to come sidebar, please, your Honor.

14 THE COURT: All right.

15 (Whereupon, the following proceedings were had at
16 sidebar outside the presence of the jury:)

17 THE COURT: Let me first start by just saying,
18 Ms. Harris, we need to have John look at the buzzing.

19 Mr. Jauregui, go ahead.

20 MR. JAUREGUI: Judge, first of all, I object to
21 this line of questioning regarding the safety of the
22 officer's life and whether or not he was going to make it
23 home. It's unduly prejudicial. It has nothing to do with
24 this case. None of these videos have to do with our
25 clients. None of the actions of the people in these videos

1 have anything to do with our clients.

2 THE COURT: Wait. None of these videos -- we just
3 saw Mr. Nordean on one of the videos, so I don't know what
4 you mean by that.

5 MR. JAUREGUI: Well, none of these clients, Judge,
6 took any actions to assault this officer in any way, to hurt
7 this officer, to place his life in danger in any way.

8 And, actually, the protesters are thanking him
9 when he lets them walk into the building.

10 The second issue I have, Judge, is that the
11 Government -- I didn't want to mess with Mr. McCullough's
12 flow -- they've been playing these videos without any
13 beginning timestamps or end timestamps of any kind, which
14 makes it very difficult for us to follow along and then
15 conduct our cross-examination. When we get up there and we
16 try to play a video, the Government immediately interrupts
17 us and tells us, What was the beginning and ending
18 timestamp? over and over again.

19 So I would please request from the Government that
20 they tell us the beginning timestamp and the end timestamp
21 when they're playing these videos.

22 But this whole line of questioning of the
23 officer's life being in danger is inappropriate and unduly
24 prejudicial to the defense.

25 THE COURT: Mr. Jauregui, we're past -- let me put

1 it this way: We're past, I think, the issue -- what's for
2 the moment on the first issue you raised.

3 The second issue you raised is a very fair point,
4 and I have tried to police that for both sides when I
5 remember. But I think it's a good point.

6 Mr. McCullough, you should identify when we stop
7 and start here for the record. And I'll try to remember the
8 same.

9 The original objection was now -- not the
10 original, but why we -- the last thing you objected to was:
11 Where are we going with regard to this issue about the shots
12 fired.

13 If you're just trying to get him, Mr. McCullough,
14 to say, "Why did you leave the doors?" "I left because I
15 moved on to something else," then I don't see anything
16 objectionable about that as long as we're not going to go,
17 you know, deeply into the shooting or anything else.

18 MR. MCCULLOUGH: No. Not at all, your Honor.
19 It's just to move him away from that door. He responded to
20 shots fired. That was a more urgent issue for him.

21 THE COURT: That's it. And there's nothing more.

22 I see Mr. Jauregui nodding that that's fine. And
23 I think we just can move on from there.

24 Very well.

25 MS. HERNANDEZ: Your Honor, Mr. Pattis has his

1 hand up.

2 THE COURT: Oh, I'm sorry. I didn't see.

3 One more thing from Mr. -- our court staff did
4 look at, since Mr. Pattis's -- since the phone he has wasn't
5 working.

6 THE COURTROOM DEPUTY: He just has a listen-only
7 phone, your Honor. It's working.

8 THE COURT: Understood.

9 MR. PATTIS: Judge, I'd like to raise an objection
10 to what I'll call a subtle appeal to heroism as a *leitmotif*
11 in Mr. McCullough's questions. Such comments as, Did you
12 quit to go home? Did you think you were going to make it
13 home? you know, those are inappropriate comments.

14 I'd move -- I'd ask the Court to instruct the
15 Government to stick to its facts in this case and make its
16 appeal to heroism in its closing argument.

17 THE COURT: Mr. McCullough, let me put it this
18 way: Again, I think I've given all the leeway here because
19 I think he does -- it is fair for him and fair for the
20 Government to try to illustrate why they acted the way they
21 did that day. But it's not relevant whether -- if he was
22 going to make it home or not, I don't think that really
23 illustrates why he acted the way he did or did not.

24 So I think Mr. Pattis has a point. And I think we
25 should just stick to, again, the facts, but -- other things

1 that informed his conduct that day in a relevant way. All
2 right?

3 MR. McCULLOUGH: Understood. We're about -- I
4 think we're two to three minutes from ending, just for
5 everybody's benefit here.

6 THE COURT: All right.

7 MR. McCULLOUGH: With one more mention of heroism.
8 It's a joke. That's a joke.

9 MR. PATTIS: As long as I get to cross-examine
10 Mr. McCullough on this.

11 MS. HERNANDEZ: Sorry, your Honor.

12 But what about giving a limiting instruction that
13 our -- at least some of our clients are not in these videos?

14 THE COURT: I don't know that -- I will consider a
15 limiting instruction if you craft one and suggest it to me.
16 I think by the time cross is over, I'm not sure you're going
17 to really want one, given that I think it'll be very, very
18 evident that actually only one Defendant has appeared in
19 these videos and appeared in a particular way.

20 MS. HERNANDEZ: Right.

21 THE COURT: I'll certainly consider it.

22 MS. HERNANDEZ: But the concern is, of course,
23 that the officer will not be able to say that the other
24 Defendants are not in the video, because I think he won't be
25 able to recognize them.

1 THE COURT: Sure. But you'll be able to ask the
2 question: Do you have any information that my client was in
3 this video?

4 And he will say: No, I do not.

5 MS. HERNANDEZ: All right.

6 THE COURT: But again, I'll consider whatever you
7 want. But I'm not going to take the time to do it now.

8 MS. HERNANDEZ: Thank you.

9 (Whereupon, the following proceedings were had in
10 open court:)

11 BY MR. McCULLOUGH:

12 Q. Before the break, Officer Rigglesman, you were just
13 describing that you left that area to respond to a shots
14 fired call. Is that right?

15 A. That's correct.

16 Q. And setting aside your response to the shots fired call,
17 did you engage in any other actions that day inside the
18 Capitol?

19 A. Nothing that, like, stands out.

20 Q. What time did you leave the Capitol that evening?

21 A. Approximately 1:00 a.m.

22 Q. Approximately 1:00 a.m.?

23 A. Approximately.

24 Q. What time did you return the next morning?

25 A. 0700 are our starts.

1 Q. Do you ever still think about that day?

2 MS. HERNANDEZ: Objection.

3 MR. JAUREGUI: Objection, Judge.

4 THE COURT: Sustained.

5 THE WITNESS: Yes.

6 MR. JAUREGUI: Objection.

7 Ask that the answer be stricken, your Honor.

8 THE COURT: The objection is sustained.

9 So the officer's testimony -- that last answer
10 will be stricken.

11 BY MR. McCULLOUGH:

12 Q. How well did you sleep that night?

13 MR. JAUREGUI: Objection, Judge.

14 MS. HERNANDEZ: Objection, your Honor.

15 THE COURT: Mr. McCullough, can we go to the
16 phones, please.

17 (Whereupon, the following proceedings were had at
18 sidebar outside the presence of the jury:)

19 THE COURT: All right.

20 MS. HERNANDEZ: Judge, this line of questioning --

21 THE COURT: Ms. Hernández, you don't have to say
22 anything.

23 Mr. McCullough, we've been down this road. I
24 thought it was and is relevant for him to be able to explain
25 the way he acted, but I think any of this stuff really

1 goes -- it's not relevant. It's not relevant. This is not
2 an assault case. It's -- I don't understand the relevance
3 of it.

4 MR. McCULLOUGH: Understood, your Honor.

5 THE COURT: All right.

6 MR. PATTIS: I'll agree to represent
7 Mr. McCullough, Judge.

8 (Whereupon, the following proceedings were had in
9 open court:)

10 MR. McCULLOUGH: Thank you, Officer.

11 THE COURT: Cross-examination by counsel for
12 Mr. Nordean.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Good afternoon, Officer. I'm Nick Smith. I'm going to
16 ask you just a few questions about your testimony and, in
17 particular, the videos we just watched.

18 A. Good afternoon.

19 MR. SMITH: Ms. Harris, I'd like to bring up
20 Government's Exhibit 451, which is the scaffolding video we
21 watched on direct.

22 BY MR. SMITH:

23 Q. So, Officer, can you see that -- the beginning image of
24 a video clip on your screen?

25 A. Yes.

1 Q. And is that -- do you recall testifying about this
2 scene?

3 A. Yes.

4 Q. Okay. I'll just play a little bit of it so you can
5 orient yourself to what we're talking about.

6 (Whereupon, segments of Government's Exhibit No.
7 451 were published in open court.)

8 BY MR. SMITH:

9 Q. Do you recall testifying about that scene?

10 A. Yes.

11 Q. Later on in this video clip there's someone who I think
12 sprays pepper spray.

13 And you were testifying about that?

14 A. Yes.

15 Q. Can you remind me again on the map behind you where that
16 scaffolding is?

17 A. (Witness indicating.)

18 Q. Thank you.

19 And can you show me on the map where the -- do you
20 recall that later in your testimony you were testifying
21 about a door that people -- a hallway that people walked
22 through when they're entering the building at the upper west
23 terrace door? Do you recall that testimony?

24 A. Yes.

25 Q. Can you point to me where the upper west terrace door is

1 on the map?

2 A. (Witness indicating.)

3 Q. Thank you.

4 So, Officer, in order to get to the upper west
5 terrace door, if one is approaching the Capitol from the
6 west side, from the west front, does one need to walk
7 through this flight of stairs that you see on the -- that
8 you see right here in this video clip?

9 A. Yes.

10 Q. One has to walk through those stairs?

11 A. Yes. But it's inaccessible to the public, even today.

12 Q. Officer, I'm not referring to generally. I mean at this
13 point on January 6th, there were lots of people approaching
14 the Capitol Building. Correct?

15 A. Correct.

16 Q. Were all of them approaching through this flight of
17 stairs?

18 A. No.

19 Q. Okay. And it's possible to get to the upper west
20 terrace door that you pointed out without taking this
21 particular flight of stairs. Correct?

22 A. It is. But again, since 9/11 these have been off limits
23 to the public.

24 Q. Sir, I understand the rules. I'm just asking about
25 physical possibility rather than whether something is in

1 compliance with the rules.

2 Do you see what I'm saying?

3 A. Yes.

4 Q. Okay. So it's physically possible to get to the upper
5 west terrace door without walking up this flight of stairs?

6 A. Yes.

7 Q. Okay. And you were asked in some of the later video
8 clips about an individual with a -- a man wearing a
9 backwards baseball cap who had walked in the upper west
10 terrace door.

11 Do you recall that?

12 A. I don't recall.

13 Q. You were asked about -- you were shown a video clip of a
14 hallway leading into the building and the prosecutor asked
15 you whether you saw a man with a backwards baseball cap, and
16 he circled it for you.

17 A. It's possible. I don't recall who the individual is or
18 what they -- if you have the video, we could pull it up.

19 Q. That's fair. You don't -- you didn't know who that
20 individual was?

21 A. No.

22 Q. So you don't recall whether that -- the same individual
23 was one of the people walking up these stairs?

24 A. No.

25 Q. Okay. Officer, you were then asked about a video clip

1 in the Crypt. This was Government's Exhibit 485. There
2 was -- you were shown a video clip of a very loud, chaotic
3 scene where people were shouting and, you know, there was
4 potential violence.

5 Do you recall that?

6 A. Yes.

7 Q. Now, that episode -- you were there, correct, when that
8 video was filmed?

9 A. Correct.

10 Q. And that episode occurred before you moved onto the
11 upper west terrace?

12 A. Correct.

13 Q. You moved toward the upper terrace door. Correct?

14 A. Correct.

15 MR. SMITH: I'm bringing up Government's Exhibit
16 122 which was admitted.

17 Permission to publish 122? Ms. Harris?

18 THE COURTROOM DEPUTY: 122 or 122-A?

19 THE COURT: Is it already in evidence?

20 THE COURTROOM DEPUTY: 122 is in evidence.

21 (Whereupon, segments of Government's Exhibit No.
22 122 were published in open court.)

23 BY MR. SMITH:

24 Q. So, Officer, do you see the timestamp at the top of this
25 CCTV footage?

1 A. Yes.

2 Q. And what time is this that we're looking at here?

3 A. It appears to be 2:37.

4 Q. And I'm going to draw a circle around someone's head.

5 Who is that?

6 A. That's myself.

7 Q. Okay. So I'm just going to play --

8 MR. SMITH: Let's play this for a second.

9 (Whereupon, segments of Government's Exhibit No.
10 122 were published in open court.)

11 BY MR. SMITH:

12 Q. Now, I've put a green circle around a man wearing a
13 backwards black baseball cap.

14 Do you remember that on direct the prosecutor
15 asked you whether you saw a man wearing a backwards black
16 baseball cap?

17 MR. McCULLOUGH: Objection. Misstates.

18 THE COURT: Sustained.

19 BY MR. SMITH:

20 Q. Officer, at this point at 2:37, the House had recessed
21 previously. Correct?

22 A. I couldn't tell you, sir. I don't have an exact
23 recollection of the timeline minute by minute that day.

24 Q. Well, not minute by minute, but do you have an
25 understanding that it recessed before 2:29 p.m.?

1 A. I don't recall when they recessed that day. I'm sorry.

2 Q. Okay. Thank you.

3 So, Officer, I'm not asking you to identify the
4 individual that's circled in green right here. But this is
5 chronologically after the point in time when you were in the
6 Crypt. Correct?

7 A. I believe so. I don't know the times, again.

8 Q. Well, I think your testimony was that you were in the
9 Crypt and then you proceeded to the upper west terrace door
10 afterwards. Right?

11 A. That's correct.

12 Q. So I'm going to draw a circle around an officer here.
13 That's you. Correct?

14 A. Correct.

15 Q. So we know to a certainty this is after the point in
16 time when you were in the Crypt. Correct?

17 A. Correct.

18 Q. Okay. So if -- this individual I've circled in green is
19 walking into the building. Correct?

20 A. Yes.

21 Q. So, therefore, he could not have been in the Crypt when
22 you were in there in that loud scene. Right?

23 A. Sir, I couldn't tell you who was in the Crypt. I don't
24 remember exactly. Again, you could see the number of people
25 in the video. I don't remember the faces. I don't know who

1 they are. I've never met them before.

2 Q. But at least on the surface of things, it appears this
3 person is walking in the building after that incident in the
4 Crypt. Right?

5 A. Whoever this -- you can't see the individual's face. I
6 don't know who it is. I'm sorry.

7 Q. Whoever that is. Whoever it may be.

8 A. (No audible response.)

9 Q. Okay. Thank you.

10 Now --

11 THE COURT REPORTER: I'm sorry, counsel. I didn't
12 get a response to that last question.

13 MR. SMITH: Let the record reflect that the
14 witness nodded his head and put up his hand.

15 THE COURT: It shall so reflect.

16 MR. SMITH: So I want to go to a video clip that's
17 already in evidence. The Government showed portions of it
18 through a Government exhibit. It's Nordean Exhibit 402.

19 This is at six minutes and 32 seconds.

20 (Whereupon, segments of Defendant Nordean's
21 Exhibit No. 402 were published in open court.)

22 BY MR. SMITH:

23 Q. Officer, do you remember testifying about this scene
24 around 2:30 p.m. in the upper west terrace corridor here?

25 You were asked about an officer who was standing right

1 there.

2 A. Yes.

3 Q. And you couldn't recall the officer's name. Right?

4 A. That's Sergeant Junior.

5 Q. Oh, okay. Sergeant what?

6 A. Junior.

7 Q. Junior?

8 A. Yes.

9 Q. Okay. So I'm just going to let this play for a second
10 here.

11 (Whereupon, segments of Defendant Nordean's
12 Exhibit No. 402 were published in open court.)

13 BY MR. SMITH:

14 Q. Were you able to watch that exchange?

15 A. It appears that he spoke to him. I don't know what he
16 said.

17 Q. So it looks like the officer's pointing towards the door
18 that is in the foreground. Did you see that?

19 A. Yeah. There's a door at the adjacent end of this
20 hallway.

21 Q. So did you testify that you were standing somewhere
22 nearby at this moment?

23 A. I don't recall exactly where I was. But if you watch
24 the video, I come from the left side of the opening. So I
25 don't remember exactly where I was over there, but --

1 Q. Is it your understanding that the officer is pointing
2 towards the door so this gentleman with a white hat can just
3 leave?

4 A. I believe he's -- I don't know. I can't tell you what
5 he's saying.

6 Q. Okay.

7 A. I don't want to speculate.

8 THE COURT: To be clear, Mr. Smith, you played
9 from 6:25 to 6:38 of this exhibit --

10 MR. SMITH: And then stopped.

11 THE COURT: -- and then stopped.

12 MR. SMITH: Thank you, your Honor.

13 (Whereupon, segments of Defendant Nordean's
14 Exhibit No. 402 were published in open court.)

15 BY MR. SMITH:

16 Q. At this point, I think we can see some of these
17 individuals walking towards the door right there?

18 A. It appears so.

19 Q. Okay. And because there's two camera angles here, we
20 have to toggle between them.

21 MR. SMITH: This is Nordean Exhibit 401 at six
22 minutes and 40 seconds.

23 (Whereupon, segments of Defendant Nordean's
24 Exhibit No. 401 were published in open court.)

25

1 BY MR. SMITH:

2 Q. Do you see how there's the individual we were just
3 looking at speaking with Officer Junior -- is it Sergeant
4 Junior, did you say?

5 A. Sergeant Junior.

6 Q. Sergeant Junior. The individual with the white baseball
7 cap talking to him is now opening the upper west terrace
8 door here. Correct?

9 A. That appears to be a black cap. I don't know if it's
10 the same individual.

11 Can you go back to the other screen?

12 Q. Yeah, I can. Before we do that, let's just look to make
13 sure we've got the hat right here.

14 (Whereupon, segments of Defendant Nordean's
15 Exhibit No. 401 were published in open court.)

16 BY MR. SMITH:

17 Q. I drew a green circle around it. It looks blue in the
18 back, white in the front. Is that right?

19 A. Uh-huh.

20 THE COURT REPORTER: Is that yes?

21 THE WITNESS: Yes. Sorry.

22 BY MR. SMITH:

23 Q. The previous exhibit, which I'm going to show the
24 witness, is Nordean Exhibit 402 at six minutes and 32
25 seconds.

1 (Whereupon, segments of Defendant Nordean's
2 Exhibit No. 402 were published in open court.)

3 BY MR. SMITH:

4 Q. Officer, I've drawn a green circle around the man
5 wearing a white --

6 MS. HERNANDEZ: It's not playing for the jurors.

7 MR. SMITH: I believe it is, Ms. Hernández.

8 BY MR. SMITH:

9 Q. I've drawn a green circle around an individual wearing a
10 backwards white baseball cap.

11 Do you see that?

12 A. Yes.

13 Q. Does it appear to be the same person we're watching at
14 the exact same moment, except from a different camera angle?

15 A. It appears to be on the image.

16 Q. Okay. So we'll just go back.

17 And then we were looking at that individual in
18 Nordean Exhibit 401 at six minutes and 40 seconds opening
19 the door. Correct?

20 A. If that's what's in the video.

21 Q. Okay.

22 A. I don't have it in front of me. I'm not sure.

23 MR. SMITH: Okay. So I'll just go to a later
24 point in the film. This is Nordean Exhibit 401 at nine
25 minutes and four seconds.

1 This is admitted, Ms. Harris.

2 (Whereupon, segments of Defendant Nordean's
3 Exhibit No. 401 were published in open court.)

4 BY MR. SMITH:

5 Q. So, Officer, you were asked about a different police
6 officer in this section of the clip. Correct?

7 A. Yes.

8 Q. And what did you say his name was again?

9 A. Special Agent Millard.

10 Q. Special Agent Millard.

11 Okay. You were shown a couple seconds of this,
12 but let's just let this play for a little bit longer here.

13 (Whereupon, segments of Defendant Nordean's
14 Exhibit No. 401 were published in open court.)

15 BY MR. SMITH:

16 Q. Did you see what the officer did there?

17 A. It appears he moved something or he reached down.

18 Q. I'll just go back a couple seconds here.

19 (Whereupon, segments of Defendant Nordean's
20 Exhibit No. 401 were published in open court.)

21 BY MR. SMITH:

22 Q. Were you able to see it there?

23 A. In the image, it appears that he reaches for something.
24 I can't tell what it is.

25 Q. I'll play it again.

1 (Whereupon, segments of Defendant Nordean's
2 Exhibit No. 401 were published in open court.)

3 BY MR. SMITH:

4 Q. Does it look like he's moving a box out of the way?

5 A. That's what the image appears to be.

6 Q. I'll play it again.

7 (Whereupon, segments of Defendant Nordean's
8 Exhibit No. 401 were published in open court.)

9 BY MR. SMITH:

10 Q. Does he appear to be moving a box there?

11 A. It appears he's reaching and pulling back on something.

12 Q. What's your understanding of what Officer -- Special
13 Agent Millard is doing there?

14 MR. McCULLOUGH: Objection. Rule 106. Play the
15 next five seconds, please.

16 MR. SMITH: Sure.

17 (Whereupon, segments of Defendant Nordean's
18 Exhibit No. 401 were published in open court.)

19 BY MR. SMITH:

20 Q. Officer, did there come a time in this clip when a group
21 of officers, including yourself, come to confront and
22 discuss something with these individuals coming in the door?

23 A. We attempted to form a line there to stop the
24 individuals from coming in.

25 Q. Do you recall -- did you testify about that on direct?

1 A. I was there. If it's something that was just asked of
2 me, then yes. But...

3 MR. SMITH: I'm going to go to Nordean 401 at 17
4 minutes and 12 seconds.

5 (Whereupon, segments of Defendant Nordean's
6 Exhibit No. 401 were published in open court.)

7 MR. McCULLOUGH: Your Honor --

8 MR. SMITH: This has been admitted.

9 MR. McCULLOUGH: -- the Court's indulgence, if I
10 may.

11 THE COURT: Let me just hear you quickly at
12 sidebar.

13 (Whereupon, the following proceedings were had at
14 sidebar outside the presence of the jury:)

15 THE COURT: Mr. Smith, the reason -- the first
16 thing I wanted to say while we're at sidebar, I want you to
17 be able to do what you want to do here. But when you looked
18 at me quizzically when Mr. McCullough objected before about
19 the question about -- so when you circled your client, I
20 don't think the Government asked any questions. I think
21 Mr. McCullough circled and he kept going.

22 MR. SMITH: That's fine, your Honor.

23 THE COURT: I wanted to explain why I sustained
24 the objection in case you wanted to do something else.

25 MR. SMITH: Your Honor is 100 percent correct.

1 THE COURT: Fine.

2 MR. McCULLOUGH: Your Honor, my -- this is -- the
3 objection is just if Mr. Smith would play the version of
4 this that has the timestamp in the upper left-hand corner,
5 because that actually would allow us to kind of -- there is
6 a version of this which we used, which is the 151.

7 THE COURT: Mr. McCullough, keep your voice down.

8 MR. McCULLOUGH: Sorry. Sorry.

9 There's a version of this that has the -- I can
10 hide behind Mr. Smith. There's a version of this that has
11 the timestamp in the upper left-hand corner. I just think
12 that that would -- that without the timestamp in the upper
13 left-hand corner just kind of risks confusing the jury in
14 terms of the timing and sequence of these videos.

15 I frankly -- I'm very familiar with these videos,
16 and I can't tell whether this is 1:32 or 1:42.

17 MR. SMITH: Your Honor, these are Nordean
18 exhibits. We provided these to the Government in November.
19 This is the version that we have. It was produced in
20 discovery. If the Government would like to go through
21 timestamps itself on redirect, it's free to do that, your
22 Honor. But this was given to the Government in November,
23 your Honor.

24 And this is --

25 THE COURT: Mr. McCullough, I mean, if there's

1 something more specific about the objection you're making, I
2 would be sympathetic to it. But I think -- it might be
3 helpful to you if the defense did it your way, but I think
4 they get to do it whatever way they would like.

5 MR. McCULLOUGH: That's fine. That's absolutely
6 fine.

7 THE COURT: Mr. Smith, you may proceed.

8 (Whereupon, the following proceedings were had in
9 open court:)

10 BY MR. SMITH:

11 Q. Sorry about that, Officer.

12 (Whereupon, segments of Defendant Nordean's
13 Exhibit No. 401 were published in open court.)

14 BY MR SMITH:

15 Q. Can you see what's going on on the screen right here?

16 A. Yes.

17 Q. And does this appear to be -- this was Special Agent
18 Millard. Correct?

19 A. Yes.

20 Q. And who is this officer right here? Can you tell?

21 A. I can't be certain, but it appears to be Lieutenant
22 Ceresa.

23 Q. I'm going to let this play for a moment. We can see
24 what happens here.

25 MR. SMITH: Seventeen minutes and 12 seconds.

1 (Whereupon, segments of Defendant Nordean's
2 Exhibit No. 401 were published in open court.)

3 BY MR. SMITH:

4 Q. Did you see someone whisper in the last officer -- the
5 ear of the last officer we mentioned? Excuse me.

6 Someone whispers in the ear of Officer Millard
7 right here?

8 A. It appears if that's Lieutenant Ceresa. I can't see his
9 face. He's saying something. I have no idea what.

10 Q. And what happens after he says something to Special
11 Agent Millard?

12 A. I'm not sure. Can we play the video?

13 (Whereupon, segments of Defendant Nordean's
14 Exhibit No. 401 were published in open court.)

15 BY MR. SMITH:

16 Q. Did you see what happened at that point?

17 A. It appeared per the video that they backed up out of
18 view.

19 Q. And do you have an understanding, because you were -- I
20 guess, were you present at this point?

21 A. Yes, but I'm not certain exactly where in this. You
22 can't see it. So I don't recall exactly where I was in the
23 room at that time.

24 Q. Do you recall why the officers left the hall?

25 A. No.

1 Q. So it wasn't the incident you were referring to about a
2 shooting?

3 A. I don't know when they backed up. I don't recall
4 exactly what happened when we all backed out of there.

5 Q. Okay. After they backed out, these individuals
6 continued to enter. Correct?

7 A. It would appear in the video, yes.

8 MR. SMITH: So I'm going to go to Nordean Exhibit
9 402, which is the same moment but from a different
10 perspective, at 17 minutes and 34 seconds.

11 (Whereupon, segments of Defendant Nordean's
12 Exhibit No. 402 were published in open court.)

13 BY MR. SMITH:

14 Q. Officer, since this is a different angle, is that you
15 that I've circled in green?

16 A. Yes.

17 MR. SMITH: Keep going.

18 (Whereupon, segments of Defendant Nordean's
19 Exhibit No. 402 were published in open court.)

20 BY MR. SMITH:

21 Q. Now, at this point the crowd seems -- it's a pretty
22 heavy number of people. Right?

23 A. It would appear so.

24 Q. Yeah.

25 Now, Officer, did there come a time when the crowd

1 thinned out and you and maybe -- I believe it was you -- but
2 you and some other officers may have come back into the hall
3 and then the flow of protesters was diminished?

4 A. I don't recall. If you have the video of it, possibly,
5 yeah.

6 Q. I'm going to fast-forward through this a little bit.

7 MR. McCULLOUGH: For the record, we've moved from
8 the 17-minute mark back to --

9 MR. SMITH: To the nine-minute mark.

10 MR. McCULLOUGH: So we've gone backwards eight
11 minutes?

12 MR. SMITH: Correct.

13 (Whereupon, segments of Defendant Nordean's
14 Exhibit No. 402 were published in open court.)

15 MR. SMITH: We ended up at nine minutes and 58
16 seconds here.

17 BY MR. SMITH:

18 Q. Now, Officer, I'm going to bring this down for a second.

19 Did you -- actually, I'm going to go back to ten
20 minutes and 19 seconds in this, or very close. I'll put
21 that back up.

22 MR. SMITH: I apologize, Ms. Harris.

23 (Whereupon, segments of Defendant Nordean's
24 Exhibit No. 402 were published in open court.)

25

1 BY MR. SMITH:

2 Q. Here we are. I asked you about the individual with the
3 backwards black baseball cap, and you said you didn't
4 know -- you couldn't recall that person.

5 Do you remember that?

6 A. Correct.

7 Q. Now, you're standing right next to him right here in
8 this video. Correct?

9 A. Yes.

10 Q. Did it appear that that individual attempted to
11 interfere with you?

12 A. No, not per the video nor per my recollection.

13 Q. Okay. And did it appear that he -- well, did he try
14 to -- I guess if he didn't interfere with you, it's implied
15 that he didn't try to physically assault you. Right?

16 A. Correct.

17 Q. Do you recall seeing this person with the backwards
18 black baseball cap at any other point that day?

19 A. Not that I recall.

20 MR. SMITH: And now I'm bringing up what's been
21 marked as Nordean Exhibit 408 at 26 seconds. It's been
22 admitted.

23 (Whereupon, segments of Defendant Nordean's
24 Exhibit No. 408 were published in open court.)
25

1 BY MR. SMITH:

2 Q. Officer, can you see the scene here?

3 A. Yes.

4 Q. Does that appear to be adjacent to the Rotunda in the
5 Capitol Building?

6 A. I'm not actually sure where this is based on this image.

7 MR. McCULLOUGH: Objection. Relevance, scope,
8 403.

9 THE COURT: Let me briefly hear you at sidebar.

10 (Whereupon, the following proceedings were had at
11 sidebar outside the presence of the jury:)

12 MR. McCULLOUGH: We've now --

13 THE COURT: I've got it.

14 Mr. Smith, what's the relevance?

15 MR. SMITH: I was going to lay a foundation by
16 asking him if he could verify the accuracy of this scene and
17 testify that it accurately depicts CCTV footage of a
18 particular event where he works and where he was on
19 January 6th.

20 THE COURT: Was he there?

21 MR. SMITH: Your Honor, I don't know whether he
22 was there yet. But he is a competent witness to testify
23 about whether CCTV footage reflects what happened in a
24 particular moment in time.

25 THE COURT: I mean, I think it's 5:13. I'm going

1 to -- since this is a good time to pause anyway, I'm going
2 to do that. But I think you have to ask him whether he was
3 there that day and lay the foundation.

4 MR. SMITH: Thank you, your Honor.

5 (Whereupon, the following proceedings were had in
6 open court:)

7 THE COURT: Ladies and gentlemen, it's 5:14. So
8 we're going to break for the evening. We'll see you first
9 thing tomorrow morning. Thank you again for your time and
10 attention.

11 (Whereupon, the jury exited the courtroom at 5:14
12 p.m. and the following proceedings were had:)

13 THE COURT: Everyone may be seated.

14 Sir, you may step down.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: I'll see everyone at 9:00 tomorrow.

18 THE COURTROOM DEPUTY: All rise. This honorable
19 court is adjourned.

20 (Proceedings concluded.)

21

22

23

24

25

CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 1st day of March, 2023.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
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