

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO
1437 Bannock Street
Denver, CO 80203

Case Number 2023CV032577, Division/Courtroom 209

CERTIFIED STENOGRAPHER'S TRIAL TRANSCRIPT
TRIAL DAY 1: October 30, 2023

NORMA ANDERSON, MICHELLE PRIOLA,
CLAUDINE CMARADA, KRISTA KAUFER,
KATHI WRIGHT, and CHRISTOPHER
CASTILIAN,

Petitioners,

v.

JENA GRISWOLD, in her official capacity as
Colorado Secretary of State, and
DONALD J. TRUMP,

Respondents,

and

COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE, and DONALD J. TRUMP,

Intervenors.

The trial in the above-entitled matter,
commenced on Monday, October 30, 2023, at 8:06 a.m.,
before the HONORABLE SARAH B. WALLACE, Judge of the
District Court.

This transcript is a complete transcription
of the proceedings that were had in the above-entitled
matter on the aforesaid date.

Reported by: K. Michelle Dittmer, RPR

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A P P E A R A N C E S

For the Petitioners:

ERIC OLSON, ESQ.
SEAN GRIMSLEY, ESQ.
JASON MURRAY, ESQ.
Olson Grimsley Kawanabe
Hinchcliff & Murray LLC
700 17th Street, Suite 1600
Denver, Colorado 80202
(303)535-9151
eolson@olsongrimsley.com
sgrimsley@olsongrimsley.com
jmurray@olsongrimsley.com

MARTHA TIERNEY, ESQ.
Tierney Lawrence Stiles LLC
225 East 16th Avenue, Suite 350
Denver, Colorado 80203
(303)356-4870

MARIO NICOLAIS, ESQ.
KBN Law, LLC
7830 West Alameda Avenue
Suite 103-301
Lakewood, Colorado 80226

NIKHEL SUS, ESQ.
Citizens for Responsibility and
Ethics in Washington
1331 F Street NW, Suite 900
Washington, DC 20004
(202)408-5565
nsus@citizensforethics.org

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A P P E A R A N C E S (Cont'd)

For the Respondents/Intervenor Donald J. Trump:

SCOTT GESSLER, ESQ.
GEOFF BLUE, ESQ.
JUSTIN NORTH, ESQ.
Gessler Blue LLC
7350 East Progress Place, Suite 100
Greenwood Village, Colorado 80111
(720)647-5320
sgessler@gesslerblue.com
gblue@gesslerblue.com
jnorth@gesslerblue.com

JONATHAN M. SHAW, ESQ.
Dhillon Law Group, Inc.
2121 Eisenhower Avenue, Suite 608
Alexandria, Virginia 22314
(415)520-6593
jshaw@dhillonlaw.com

CHRIS HALBOHN, ESQ.
MARK P. MEUSER, ESQ.
Dhillon Law Group, Inc.
177 Post Street, Suite 700
San Francisco, California 94108
(415)433-1700
chalbohn@dhillonlaw.com
mmeuser@dhillonlaw.com

JACOB WILLIAM ROTH, ESQ.
Dhillon Law Group, Inc.
1601 Forum Place, Suite 403
West Palm Beach, Florida 33401
(415)682-6827
jroth@dhillonlaw.com

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A P P E A R A N C E S (Cont'd)

For the Respondent Jena Griswold:

GRANT T. SULLIVAN, ESQ.
JENNIFER SULLIVAN, ESQ.
Colorado Department of Law
State Services Section
Public Officials Unit
1300 Broadway, 6th Floor
Denver, Colorado 80203
(720)508-6349
grant.sullivan@coag.gov
jennifer.sullivan@coag.gov

For the Intervenor Colorado Republican
State Central Committee:

JANE RASKIN, ESQ.
Raskin & Raskin
2525 Ponce de Leon Boulevard
Suite 300
Coral Gables, Florida 33134
(305)444-3400
jraskin@raskinlaw.com

NATHAN MOELKER, ESQ.
BENJAMIN P. SISNEY, ESQ.
American Center for Law and Justice
P.O. Box 90555
Washington, DC 20090-05551
(800)342-2255
nmoelker@aclj.org

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A P P E A R A N C E S (Cont'd)

For the Intervenor Colorado Republican
State Central Committee:

MICHAEL W. MELITO, ESQ.
Law Office of Melito Law LLC
138 West 5th Avenue
Denver, Colorado 80204
(303)813-1200
melito@melitolaw.com

ROBERT KITSMILLER, ESQ.
Podoll & Podoll, P.C.
5619 DTC Parkway, Suite 1100
Greenwood Village, Colorado 80111
(303)861-4000
bob@podoll.net

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9	**STENOGRAPHER'S NOTE: All quotations from exhibits are	
10	reflected in the manner in which they were read into the	
11	record and do not necessarily indicate an exact quote	
12	from the document.	
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1 MORNING SESSION, MONDAY, OCTOBER 30, 2023

2 WHEREUPON, the court convened at
3 8:06 a.m., and the following proceedings were had:

4 * * * * *

5 THE COURT: You may be seated.

6 Good morning. We are on the record on
7 2023-CV-32577, Norma Anderson, et al., vs. Jena Griswold
8 and Interveners, Colorado Republican State Central
9 Committee and Donald J. Trump.

10 Before we start, I just want to cover some
11 preliminary matters. The Court has reviewed the motion
12 to recuse that was filed yesterday, as well as the
13 exhibits.

14 I do not dispute that in October '22,
15 prior to taking the bench, I apparently made a \$100
16 contribution to the Colorado Turnout Project. That being
17 said, prior to yesterday, I was not cognizant of this
18 organization or its mission.

19 It has always been my practice, whether I
20 was entirely successful or not, to make contributions to
21 individuals, not PACs. While I have no specific memory
22 of this contribution, it was my practice and my intention
23 to contribute to an individual candidate, not a PAC.

24 I can assure all of the litigants in this
25 litigation that prior to the start of this litigation,

1 and to this day, I have formed no opinion whether the
2 events of January 6th constituted an insurrection or
3 whether Intervenor Trump engaged in an insurrection or,
4 for that matter, any of the issues that need to be cited
5 in this hearing. If I did, I would recuse myself. But
6 because I don't, I deny the motion for recusal.

7 I'm going to start with some ground rules.
8 The petitioners and Secretary Griswold have a combined
9 18 hours of testimony, evidence, and arguments, and the
10 intervenors have a combined 18 hours. You may use them
11 as you wish, so long as they are productive and respect
12 the decorum of the Court.

13 As I said in my prior rulings, the parties
14 have very sophisticated lawyers. If the parties think
15 something is relevant, then I will likely allow the
16 subject to be explored. I will not, however, allow this
17 proceeding to turn into a circus.

18 I also think that it is worth repeating
19 that to the extent we have discussions on the record
20 regarding evidence and whether it should be allowed in, I
21 will count that time against the party who's objecting to
22 the evidence.

23 Because I am the judge, I may ask
24 questions. Do not infer anything by my questions.

25 Petitioners, are you planning on making an

1 opening statement, or do you intend to go straight to the
2 evidence?

3 MR. GRIMSLEY: Your Honor, we will make an
4 opening statement, and then we have a few preliminary
5 issues as well.

6 THE COURT: Okay. And Mr. Gessler, are
7 you planning on making an opening statement?

8 MR. GESSLER: Your Honor, we have a few
9 preliminary issues, and then we'll make our opening
10 statement.

11 THE COURT: Yeah. I just want to make
12 sure we all understand the schedule. Okay. Whatever the
13 preliminary issues are.

14 MR. GRIMSLEY: Thank you, Your Honor.
15 First, the parties have reached some stipulations. We
16 will be filing those with the Court. There are 17,
17 pretty benign, but it should help speed things up and
18 make things more efficient.

19 THE COURT: Okay.

20 MR. GRIMSLEY: I can hand up a copy, if
21 you'd like, or if you --

22 THE COURT: Sure.

23 Are these factual stipulations?

24 MR. GRIMSLEY: They are factual
25 stipulations, Your Honor.

1 THE COURT: Okay.

2 MR. GRIMSLEY: The next issue is the rule
3 on witnesses. We would like to invoke the rule on
4 witnesses, meaning that fact witnesses should not be
5 present for testimony in the courtroom. Normally, that
6 would be easy; you just keep people out of the courtroom.

7 In this case, because it's streaming and
8 people could be watching from other places, we'd ask for
9 an admonition that that not be done and that the parties
10 alert their witnesses to that fact.

11 THE COURT: Okay. Well, the --

12 MR. GRIMSLEY: Expert witnesses, though,
13 we would concede, can stay and watch.

14 THE COURT: Okay. Is that acceptable?

15 MR. GESSLER: Yeah, that's acceptable. No
16 objection, Your Honor.

17 THE COURT: Okay. So the Court will enter
18 a sequestration order, and it is incumbent upon the
19 parties to make sure that their witnesses don't walk into
20 the courtroom, but it's also incumbent on the parties to
21 ensure that their witnesses don't log on to WebEx or
22 otherwise watch the proceedings, either live streamed or
23 after the fact on YouTube, et cetera.

24 MR. GRIMSLEY: And there's another issue
25 on witnesses I wanted to raise, Your Honor, and this may

1 actually shorten the hearing.

2 THE COURT: Okay.

3 MR. GRIMSLEY: We have two of our
4 witnesses -- I'm not going to name names -- abruptly
5 decide not to testify last week. They asserted -- may I
6 approach?

7 THE COURT: Sure.

8 MR. GRIMSLEY: -- just so you can just see
9 who they are.

10 I've highlighted the witness names on the
11 second page. These were two Trump administration
12 officials who were set to testify. One at length. We
13 don't think they're necessary for our case, but wanted to
14 alert the Court that they did very abruptly tell us last
15 week they were not going to testify.

16 There have been some concerns about
17 safety, but I'll confess, they did not say that was the
18 issue. It's not very clear to us what the issue was.

19 They had raised the possibility of
20 executive privilege. That seemed odd to us since one of
21 them had submitted a declaration and no objection on
22 privilege had been made. A motion to exclude that
23 witness's testimony had been filed, and no objection
24 based on privilege had been made. So it's a little odd
25 to us, but we at least wanted to alert the Court.

1 If we hear anything that gives us greater
2 concern, we will, of course, bring it to the Court right
3 away.

4 THE COURT: Okay.

5 MR. GRIMSLEY: On experts. As you know,
6 we did not get expert reports -- there was only one --
7 from the respondents until Friday shortly before, I
8 think, midnight. We got a report from a Mr. Delahunty --
9 or Professor Delahunty.

10 In the normal course, we would have filed
11 a 702 motion to exclude. He claims to be an expert on
12 the Fourteenth Amendment and the history of the
13 Fourteenth Amendment. He's never written on it before.
14 He doesn't cite much in the way of actual history in this
15 discussion of the Fourteenth Amendment.

16 Given the late nature of today, we can
17 either file a short motion, if you'd like, or simply
18 cross-examine Mr. Delahunty when he testifies. I assume
19 that would be either Wednesday or Thursday.

20 THE COURT: Okay.

21 MR. GRIMSLEY: And then there were a few
22 issues on exhibits.

23 In your order, I think on October 27, you
24 had asked us to explain why Plaintiffs' Exhibit 131 was
25 going to be used. That's the video of both Rudy Giuliani

1 and John Eastman on the Ellipse on January 6. They gave
2 a speech right before President Trump gave his speech,
3 and they provided the basis for President Trump to say
4 that Vice President Pence had the authority to reject
5 certification of the electors, and President Trump
6 referred to their statements in his speech endorsing
7 them. That was also the speech in which Mr. Giuliani
8 said "trial by combat."

9 And again, we're not offering those
10 statements or that speech for the truth of the matter
11 asserted, but for the effect on the listeners, the effect
12 on Mr. Trump. And, indeed, we don't agree with most of
13 what they said. We're offering it really for the untruth
14 of the matter asserted.

15 And then there are two others, Plaintiffs'
16 Exhibit 73 and Plaintiffs' Exhibit 126. Those were two
17 videos that the Court excluded in its most recent order,
18 I believe. It was not clear from our submission, and we
19 apologize, that those were both videos that were embedded
20 in tweets that President Trump sent out, so they were
21 retweets from his account.

22 One of them, "The Fight for Trump,"
23 Plaintiffs' 73, was sent out the very same day as the
24 "Will be Wild" tweet on December 19, and so we think it
25 is highly relevant as speech of Mr. Trump. It was

1 endorsed by him and tweeted out. So we would ask for
2 those to be admitted.

3 THE COURT: Okay. Any response?

4 MR. GESSLER: Yes, Your Honor. Thank you.

5 Before going to a response, for a
6 preliminary matter, would you like us to enter
7 appearances on record?

8 THE COURT: I was going to -- I was
9 planning on doing that before openings, but since -- why
10 don't -- why don't you -- why don't you respond to these
11 things, and we'll have everybody enter their appearances.

12 MR. GESSLER: And then we'll take a half
13 hour for entry of appearances.

14 So just -- and if I may just talk about
15 some of the preliminary matters we have as well. With
16 respect to the witness withdrawals, we feel the
17 petitioners' pain, and with respect to the exhibits, I
18 mean, we'll maintain our objections.

19 And I understand the posture of the Court,
20 particularly the objections with respect to
21 Mr. Giuliani's and Mr. Eastman's speech. They're not the
22 ones on trial here today. We're talking about whether
23 President Trump engaged in activities, not -- not whether
24 they and -- they were not President Trump when they made
25 those speeches. So we would maintain those objections.

1 With respect to 73 and 126, we'll have to
2 take a look at that a little bit closer, Your Honor. I
3 confess that I don't have all 100-and-whatever exhibits
4 fully committed to memory at this point.

5 With respect to some of our points, just
6 to point out -- and I know the Court has been very
7 diligent in producing orders on issues. I think we still
8 have the specific intent motion outstanding as far as
9 that, as well as the First Amendment motion to dismiss.
10 I'm assuming the Court will take those issues under
11 advisement, but I wanted to at least point that out.

12 We have one witness who has concerns about
13 some of the legal threats that have been levied against
14 him, and so he's asked for an attorney to be present to
15 be prepared to make objections to his testimony if the
16 attorney believes it's inappropriate.

17 We're asking the Colorado Supreme Court,
18 we will be asking them today, to sort of expedite that
19 process so that he can -- the attorney can be admitted
20 pro hac vice, and then once that's done, we'll probably
21 come to you and ask for an oral admission for that
22 attorney.

23 THE COURT: Is that the person who -- who
24 filed the Prok motion on Friday, or is that somebody
25 different?

1 MR. GESSLER: It's someone yet new,
2 Your Honor.

3 THE COURT: Okay.

4 MR. GESSLER: Yeah, that's someone
5 different, Your Honor. It's a witness of our list; I
6 believe it's the second witness we've listed.

7 THE COURT: Okay.

8 MR. GESSLER: Let me -- I don't quite have
9 that order -- yes, the second witness that we've listed.

10 THE COURT: My guess on both is, I don't
11 think that we need to intervene to tell the Colorado
12 Supreme Court that the hearing is going on currently.
13 But to the extent they say they won't expedite something
14 without hearing from my chambers, just let us know, and
15 we'll try to take care of that.

16 MR. GESSLER: Thank you.

17 And we expect, you know, estimates of
18 time, that he'll go on probably Wednesday or Thursday.
19 So we're hopeful we can get that taken care of.

20 The other thing, and I know -- I believe
21 you addressed this before. Some of our witnesses we may
22 ask to call out of order based on schedule and the
23 vagaries of the case.

24 I will say, Your Honor, it brought us no
25 joy to file that motion earlier, so I just want to tell

1 you where we're coming from on that.

2 THE COURT: No worries.

3 MR. GESSLER: And I think from preliminary
4 matters, that's it.

5 While I'm at the podium, if you'd like me
6 to do entries of appearance for our cast of characters,
7 I'm happy to do that or -- or wait.

8 THE COURT: Are you prepared to enter
9 appearance for at least everybody on President Trump's
10 team?

11 MR. GESSLER: Yes, ma'am.

12 THE COURT: Okay. If you can do that,
13 that would be great.

14 MR. GESSLER: Okay. So for the record, my
15 name is Scott Gessler. I represent President
16 Donald J. Trump, and with me at the head of the table
17 here is our paralegal, Ms. Joanna Bila. She keeps the
18 trains running on time. Mr. Jonathan Shaw, who's been
19 admitted pro hac vice. Mr. Geoffrey Blue, a member of my
20 law firm.

21 In the back row we have Mr. Chris Halbohn.
22 His motion was submitted. He will not be speaking until
23 he's admitted, or perhaps ever. But he represents
24 President Trump as well. Mr. Justin North from our law
25 firm represents President Trump.

1 In the back, we have Mr. Mark Meuser
2 representing President Trump, and Mr. Jacob Roth as well.

3 I don't think I've missed anyone.

4 THE COURT: Great.

5 MR. GESSLER: Thank you, Your Honor.

6 THE COURT: And why don't we just go to
7 the Colorado Republican Party. Could just one person
8 do -- enter the appearance for everyone, and I think it's
9 probably best if you go to the podium.

10 MS. RASKIN: Certainly.

11 Good morning, Your Honor. I'm Jane Raskin
12 with the American Center for Law and Justice. With me
13 today, also with the ACLJ, is Norman [sic] Moelker and
14 Benjamin Sisney, who's appearing remotely.

15 Also with us are Michael Melito of Melito
16 Law, and Bob Kitsmiller of Podoll & Podoll.

17 THE COURT: Great. Thank you.

18 MS. RASKIN: Thank you.

19 THE COURT: And for the petitioners?

20 MR. GRIMSLEY: Thank you, Your Honor.

21 Sean Grimsley, on behalf of petitioners.
22 With me is Eric Olson, Martha Tierney, at the end of
23 counsel table. We have Nikhel Sus, Mario Nicolais, Jason
24 Murray. And Derek Hehn will be handling technology for
25 us.

1 THE COURT: Great.

2 MR. SULLIVAN: Good morning, Your Honor.
3 Grant Sullivan with the Colorado Attorney General's
4 Office.

5 With me is Jennifer Sullivan, Deputy
6 Attorney General. We represent Colorado Secretary of
7 State, Jena Griswold.

8 I did have just one clarifying question on
9 preliminary matters. The Secretary of State is a party
10 to this case. She's also listed on the GOP's witness
11 list. I just wanted to clarify that she's not subject to
12 the sequestration order.

13 THE COURT: She is not.

14 MR. SULLIVAN: Thank you.

15 THE COURT: Parties are not going to be
16 subject to the sequestration order.

17 MR. SULLIVAN: Thank you, Your Honor.

18 THE COURT: Are the petitioners ready to
19 begin?

20 MR. OLSON: Yes, Your Honor.

21 THE COURT: Great.

22 As I look around, I think we have more
23 lawyers and police officers than anybody else.

24 MR. GRIMSLEY: Sign of the times.

25 MR. OLSON: My apologies, Your Honor.

1 Give me one second to make sure we have the right thing
2 showing in the right way.

3 Do we need to turn these monitors on?
4 We're seeing it on the -- I think we're getting the
5 output. We just need --

6 THE COURT: While we do that, just for
7 everybody's edification, if anybody doesn't want to stand
8 at the podium, we do have a microphone that they can use.

9 MR. OLSON: Thank you, Your Honor.

10 Good morning. Six Colorado voters, four
11 Republicans and two independents, brought this case to
12 ensure Colorado has a fair election among eligible
13 candidates.

14 Trump incited a violent mob to attack our
15 Capitol, to stop the peaceful transfer of power under our
16 Constitution. That mob got within 40 feet of Vice
17 President Pence after they chased him from the Senate
18 Floor. That mob tried to hurt and kill our elected
19 leaders, and we are here because Trump claims, after all
20 that, he has the right to be President again.

21 But our Constitution, our shared charter
22 of our nation, says he cannot do so. And Colorado law
23 says this Court must ensure that only eligible candidates
24 appear on our ballots.

25 Now, this case has four basic components:

1 Trump took an oath as an officer of the United States;
2 January 6 was an insurrection against the Constitution;
3 Trump engaged in that insurrection; and the Secretary of
4 State enforces constitutional qualifications, and this
5 Court can order her to keep ineligible candidates off the
6 ballot.

7 Now, turning to the first element, there's
8 no dispute Trump took an oath as President. That's
9 stipulated. I'll address their novel claim that his oath
10 somehow falls outside of the Fourteenth Amendment later.

11 And what happened on January 6 was an
12 insurrection against the Constitution. That's not in
13 serious dispute. Trump's own impeachment lawyer admitted
14 as much. Many others have found it.

15 We'll hear today and tomorrow from three
16 people who were there that day. First are two officers,
17 Officer Danny Hodges and Officer Winston Pingeon. They
18 fought the mob, hand-to-hand combat, you'll see.

19 We'll also hear from Representative
20 Eric Swalwell, who will explain how that mob disrupted
21 the core constitutional process of the peaceful transfer
22 of power.

23 We'll also hear from Professor Gerard
24 Magliocca. He is one of the nation's experts on the --
25 Section 3 of the Fourteenth Amendment. He's written

1 several peer-reviewed articles on Section 3 and many
2 articles and books on the history of the Fourteenth
3 Amendment. He will explain that when the Fourteenth
4 Amendment was ratified, insurrection against the
5 Constitution referred to any public use or threat of
6 violence by a group to prevent or hinder the execution of
7 the Constitution.

8 January 6 easily meets that standard.
9 Trump assembled a violent mob that tried to prevent the
10 constitutional transfer of power, and did, in fact, stop
11 that transfer of power for some time.

12 Now, turning to President Trump's role in
13 all of this, he engaged in this insurrection on
14 January 6. He began by undermining the process for
15 selecting our President in sowing doubts about elections.
16 This early pattern of behavior shows Trump's use of
17 common extremist tactics, using language that played into
18 existing conspiracy theories. He was a leading proponent
19 of the birther myth about President Obama.

20 He questioned the validity of elections,
21 even the one he won in 2016, claiming he actually got
22 millions more popular votes than he really did. And
23 leading up to the 2020 election, he developed a plan to
24 cast doubt on the results, and after the election, he
25 quickly focused on the January 6 transfer of power to

1 disrupt the peaceful transfer of power.

2 In December, he started laying the
3 groundwork for disrupting the constitutional process on
4 January 6. On December 19, he posted that "There will be
5 a big protest in DC on January 6. Be there. Will be
6 wild."

7 A week later, he talked about never giving
8 up: "See everyone in DC on January 6."

9 "See you in Washington, DC, on January 6.
10 Don't miss it."

11 Again, "See you in DC."

12 These tweets continued: "Big protest
13 rally." "Stop the steal." We'll hear about the
14 importance of that language later on.

15 Again, talking about the 6th, over and
16 over again, here he retweeted a claim that, quote, "The
17 cavalry is coming."

18 We'll hear about Trump's invocation of
19 military terms to support and rile up his supporters.
20 More admonitions: "Come to DC on January 6th," over and
21 over and over again. And then on January 6, he reposted
22 his speech.

23 Now, in addition to this drumbeat of pleas
24 to his supporters to have him come -- to have them come
25 to Washington to disrupt the transfer of power on

1 January 6, he made repeated, deliberate statements to
2 bring a mob primed for violence to DC on January 6.

3 He refused to criticize the Proud Boys, an
4 important part of the insurrection on January 6th in the
5 presidential debate and, instead, told them to stand back
6 and stand by.

7 (Video playing.)

8 MR. OLSON: Leading up to January 6, he
9 praised the Trump Train, which was a group of trucks that
10 intimidated and forced Biden campaign workers on a bus
11 off a highway in Texas. He tweeted, "I love Texas," with
12 this video.

13 (Video playing.)

14 MR. OLSON: He deliberately praised his
15 supporters that used violent techniques to intimidate
16 political opponents.

17 Again, leading up to January 6th, he used
18 violent, inflammatory rhetoric. He claimed that if this
19 happened to someone else, they would consider it an act
20 of war and fight to the death.

21 Right before, January 5, he started --
22 6th, I'm sorry -- he started threatening lawmakers with
23 the crowd he assembled.

24 On the afternoon of January 5, he said,
25 "Washington is being inundated with people. Our

1 country's had enough. They won't take it anymore."

2 And he got even more bold a few minutes
3 later when he said, "I hope the Democrats, and even more
4 importantly, the weak and ineffective RINO section of the
5 Republican Party are looking at the thousands of people
6 pouring into DC. They won't stand for a landslide
7 election victory to be stolen."

8 And then he identified three Republican
9 leaders by name. He threatened leaders of his own party
10 with the mob he assembled.

11 Now, you will hear from an expert in
12 political extremism, who will discuss Trump's
13 relationship with violence and political extremism.
14 Professor Peter Simi has studied extremists for his whole
15 career. He's written books, provided testimony at the
16 January 6 Committee's invitation.

17 And he will explain how communications
18 like we just saw, and additional ones, by President Trump
19 fit into a longstanding call-and-response pattern that he
20 developed with supporters where he instigated violence
21 and praised those who committed violence against
22 political opponents on his behalf.

23 Now, turning back to what happened on
24 January 6, once Trump brought the crowd there, he told
25 them to march to the Capitol and fight. Let's look at

1 two portions of his speech on the Ellipse on January 6.

2 (Video playing.)

3 MR. OLSON: Two important features of that
4 speech we just saw: First is his focus of the crowd on
5 the actions of Mike Pence that were shortly to happen in
6 the Senate Chamber; and second, his repeated reference to
7 fight, and urging his supporters to fight.

8 Now, I'm sure that Trump will claim that
9 because he used the words, quote, "peacefully and
10 patriotically," later in that speech, that he did not,
11 therefore, engage in insurrection.

12 That claim is wrong at every level. He
13 used "fight" 20 times in that speech, "peaceful" only
14 once. Professor Simi explains how leaders use language
15 like that, like the peacefully comment, to create
16 plausible deniability that s just filter.

17 Trump well knew how his supporters would
18 respond. He saw what happened when he told the Proud
19 Boys to stand back and stand by and how they treated that
20 as an endorsement. In fact, his use of "peaceful" in the
21 rally and again use in this proceeding highlights that he
22 knew the power of his other words.

23 If you don't think people are going to
24 engage in violence after what you told them or that your
25 words will provoke violence, you don't need to say "be

1 peaceful." They already will be.

2 But that speech that we just saw got the
3 crowd worked up and headed to the Capitol. I'll show you
4 a video taken from the top of the Capitol, at 2:23. You
5 can see the time stamp in the upper left.

6 So after the speech, the crowd followed
7 Trump's orders and marched down to the Capitol. But as
8 you can see from the video, much of the rally, they
9 weren't doing much. They were just standing there. So
10 what did Trump do right after, the minute after this
11 video? He posted a tweet that incited the mob to
12 violence.

13 Again, channeling on the focus on Mike
14 Pence he used earlier in the day, he described Mike Pence
15 as weak and said he didn't have the courage to do what
16 should have been done to protect our country and our
17 Constitution. "USA demands the truth."

18 And look what happened. Instantaneously
19 with this tweet, we see people read it in the crowd from
20 bullhorns. They immediately started chanting "Hang Mike
21 Pence," and the violence began in earnest.

22 (Video playing.)

23 MR. OLSON: There was no possible innocent
24 explanation for that tweet that set the crowd on fire.

25 We'll hear later today from

1 Officer Hodges. This is his body cam at the exact same
2 time. You can see in the upper right-hand corner, it's
3 2:28, so within five minutes of Trump's issuing that
4 tweet, this is what he faced.

5 (Video playing.)

6 MR. OLSON: So within 30 minutes of the
7 tweet, we see the picture from the same vantage point we
8 saw before. The crowd had overrun the barriers, but this
9 was the back of the crowd. This was a crowd that was not
10 the frontline of the attack, of the assault on our
11 constitutional process.

12 We have video which shows Officer Hodges.
13 Within 30 minutes of the tweet, he had retreated to the
14 tunnel and was trying to defend the tunnel against this
15 mob.

16 (Video playing.)

17 MR. OLSON: That is Officer Hodges, who
18 you'll hear from shortly.

19 This was an insurrection that Trump led.
20 As we've seen, he summoned and organized the mob. He
21 gave the mob a common purpose: Disrupt Mike Pence's
22 certification of the election. He did that by inciting
23 the mob at the Ellipse.

24 He knew that mob was armed and dangerous.
25 He told the mob to go to the Capitol with him. Once they

1 were there and not sufficiently violent, he incited the
2 mob with that 2:24 p.m. tweet and others that followed.

3 And, importantly, he helped the mob by
4 refusing to mobilize resources to stop the attack. He
5 spent three hours watching it unfold on TV without doing
6 a single thing, even though he was the most powerful
7 person in the world.

8 Now, what does Trump say in response to
9 this overwhelming evidence? He says a few things. He
10 says: Hey, I said "peacefully" in the speech so I didn't
11 engage in the insurrection.

12 We already talked about that. That
13 "peacefully" proves his intent.

14 He then says: I wasn't there. I did not
15 engage in insurrection.

16 But he did. He kept quiet. He tweeted
17 inflammatory statements that incited the mob and watched
18 the mayhem unfold for three hours, with doing nothing.

19 He continued to try to pressure Congress
20 to do the mob's bidding and overturn the election.

21 And lastly, Trump says: Others failed to
22 protect the Capitol, so it's not my fault there was an
23 insurrection.

24 He blames others. But it was Trump's
25 dereliction of duty in violation of his oath to preserve,

1 protect, and defend the Constitution that caused the
2 constitutional process to stop.

3 You'll hear from national security expert
4 Bill Banks, who's dedicated his career to the safety of
5 our nation, studying how that works. He wrote a book
6 recently called "Soldiers on the Home Front: The Domestic
7 Role of the American Military." He explains that Trump
8 did not use the available federal resources.

9 In fact, Trump didn't use the resources he
10 used in response to other threats, like the Black Lives
11 Matter protest at Lafayette Square, where they used tear
12 gas and federal agents to clear the square very
13 violently.

14 Now, Trump is going to call witnesses, we
15 understand, to say that he tried to put people in place
16 to defend the Capitol before January 6. That is not
17 true. No record exists of him doing that, no indication
18 that he used his vast power as Commander in Chief to do
19 that at all. That is just an invented excuse after the
20 fact with no evidentiary support.

21 But even that doesn't matter. Trump
22 cannot avoid culpability for engaging insurrection by
23 blaming the victim. Whether or not an insurrection
24 occurred does not turn on how well defended the Capitol
25 was. He ignited the mob, told them to go to the Capitol,

1 and inflamed them with his tweet.

2 Now, finally, Trump says the law -- even
3 if all that's true, the law doesn't apply to him, first
4 because he says he just was using speech. But again,
5 Professor Magliocca explains the history of Section 3 of
6 the Fourteenth Amendment in using robust historical
7 sources; shows that at the time of passage, 1868,
8 engaging in insurrection included words of incitement or
9 specific words of encouragement. That's what Trump did
10 here.

11 And in any event, it's not just Trump's
12 speech that is at issue. His conduct contributed to the
13 mob's violence. His failure to act when his oath
14 required him to do so led to the insurrection.

15 Now, Trump brings an expert,
16 Professor Delahunty, but he's no expert at all on the
17 Fourteenth Amendment. Never written a book or
18 peer-reviewed article on this issue; on the Fourteenth
19 Amendment more generally, not performed any original
20 history. There's no record of him studying this before
21 he wrote a short opinion piece two months ago.

22 Now, Trump next argues that the Fourteenth
23 Amendment doesn't cover the President, that there's an
24 exception because it's a different kind of officer.

25 Again, Professor Magliocca will explain

1 why history contradicts this claim. It's nonsensical to
2 create an exception for the most powerful person in
3 government. And at the time, in 1868, there's widespread
4 understanding that "officer" included the President.

5 Finally, Trump claims that state courts
6 like this one can't hear these disputes. Now, as we've
7 talked about, he's wrong under Colorado law. Hanlen v.
8 Gessler makes clear that the Election Code requires
9 issues regarding a candidate's eligibility to be
10 determined by the courts, which is what we're doing here.

11 In addition to this bedrock law, we'll
12 also hear from Hilary Rudy, who's a deputy director in
13 the Secretary of State's elections division. And she
14 will explain the history of Secretary of State
15 enforcement of qualifications and qualification
16 challenges in court.

17 And I think Your Honor will easily
18 conclude that this action falls well within a long line
19 of cases where Courts decide ballot eligibility
20 requirements.

21 Now, our Constitution prevents people who
22 betrayed their solemn oath, as Trump did here, from
23 serving in office again. Colorado law gives these voters
24 the rights to make sure their votes will count by coming
25 to this Court and ensuring that only eligible candidates

1 appear on our ballots.

2 Trump engaged in insurrection and,
3 therefore, cannot appear on the ballot. No person, not
4 even the former President, is above the law.

5 We ask, after this hearing, that this
6 Court find Trump is an ineligible candidate under
7 Colorado law and order the Secretary of State not to
8 place him on the ballot.

9 Thank you, Your Honor.

10 MR. GESSLER: Thank you, Your Honor.

11 So I don't have a highly produced video,
12 but I do have a few words that I think this Court should
13 follow and think about in this case.

14 The United States is the oldest modern
15 democracy, well over 200 years, far different than any
16 other country in many ways.

17 And what makes us different is the
18 experiment we launched, which is this thing called
19 elections. We have elections. And that means when it
20 comes to decide as to who should lead our nation, it's
21 the people of the United States of America that get to
22 make those decisions, not six voters in Colorado who have
23 picked and chosen who they want to file a lawsuit
24 against.

25 And this Court should not interfere with

1 that fundamental value, that rule of democracy. It's the
2 people who get to decide.

3 And this lawsuit seeks to cancel that
4 principle. This lawsuit is antidemocratic. It looks to
5 extinguish the opportunity, extinguish it, the
6 opportunity, for millions of Coloradans, Colorado
7 Republicans and unaffiliated voters, to be able to choose
8 and vote for the presidential candidate they want.

9 In fact, the leading Republican
10 presidential candidate, and by many measures, the
11 candidate, you know, most likely to win the presidency,
12 they try -- they want to extinguish that opportunity by
13 preventing him from running for office.

14 It is antidemocratic. This is a case of
15 lawfare that seeks to interfere with the presidential
16 election. We argue here that this, at its basest level,
17 this is election interference.

18 The petitioners here, the six voters, have
19 appointed themselves private attorney generals that can
20 pick and choose and file lawsuits against whom they seek
21 to disqualify. And they rely on exceptionally weak and,
22 frankly, in some cases fringe legal and logical theories
23 to try and tilt the playing field of this election by
24 wiping out President Trump's ability to run for election
25 well before anyone has an opportunity to vote.

1 They're asking today for a number of
2 historical firsts. First, this is the first -- they are
3 asking this Court to be the first ever in American
4 history, in American history, to disqualify a
5 presidential candidate under Section 3 of the Fourteenth
6 Amendment.

7 I point -- we pointed the Court, I
8 believe, to -- or we will, Horace Greeley, who ran in
9 1872 as a Democratic presidential candidate. He had paid
10 for Jefferson Thomas's [sic] bail. He was roundly
11 accused, loudly accused of giving aid and comfort to the
12 enemies of the United States shortly after the Civil War,
13 when he ran.

14 Lots of debate on that issue. No one ever
15 once thought of trying to disqualify him from voting.
16 They took their arguments to the people for them to make
17 that decision.

18 Eugene Debs, Socialist Party USA candidate
19 in four elections, in 1920 ran from jail. He had been
20 convicted of sedition for giving aid and comfort to
21 enemies during the First World War by trying to stop
22 military recruitment. He was convicted of that. He ran
23 from jail.

24 He was never disqualified. No attempt was
25 made to disqualify him under the -- under Section 3 of

1 the Fourteenth Amendment.

2 The case of Eugene Debs is often regarded
3 as a low point in American history, a low point when it
4 comes to First Amendment protections. And for good
5 reason. People should be able to run for office and
6 shouldn't be punished for their speech.

7 The petitioners ask this Court to be the
8 first state court in American history to disqualify a
9 presidential candidate. They are asking, for the first
10 time in American history, to disqualify any federal
11 candidate -- the state court to disqualify any federal
12 candidate.

13 This is the first time in Colorado history
14 anyone's ever tried to disqualify a presidential
15 candidate under the Fourteenth Amendment.

16 Asking the Secretary of State to go back
17 and research a candidate's behavior, that's also a first.
18 Never been asked or demanded before.

19 Even right now, there are 50 -- about
20 50 cases, either pending or happen, nationwide
21 specifically attacking President Trump. This is not a
22 new tactic. This is the first where a dismissal has not
23 automatically -- I shouldn't say automatically -- but
24 promptly been granted because of the weakness of so many
25 of these arguments.

1 They're asking for the first time that the
2 January 6 Report be treated as evidence in this Court, in
3 a court of law, that politicized hearing. That's what
4 they're asking, that this Court rely upon that as
5 evidence.

6 And, frankly, they're asking this Court to
7 be the first in the country ever to embrace a number of
8 legal theories that have never been accepted by a court,
9 state or federal. There's a lot of firsts they're trying
10 in this case.

11 Their legal theories. I mean, we're
12 arguing we shouldn't even be here, and we've argued that
13 multiple times. This is a federal issue, perhaps the
14 most important federal issue we can have. And it's for
15 Congress to set these standards, for Congress to provide
16 guidance, not for the petitioners to come up with
17 theories and try and convince you that they may be right.

18 We've argued the Fourteenth Amendment's
19 not self-executing and the preemption of political
20 question, and we understand this Court's ruled against us
21 in every instance. But nearly every Court that's ever
22 looked at presidential qualifications -- and I'm not just
23 talking about issues involving President Trump --

24 (Siren interruption.)

25 THE COURT: You should just expect this to

1 be a regular occurrence.

2 MR. GESSLER: I live in Denver,
3 Your Honor. I understand sirens, unfortunately.

4 THE COURT: They really like this
5 courtroom, though, because it's right next to Colfax.

6 MR. GESSLER: So it's not just
7 President Trump.

8 You may recall that there was a little bit
9 of controversy about President Obama's citizenship, and
10 there was some controversy about Candidate, Senator, and
11 Presidential Candidate McCain's citizenship, and there
12 was controversy about Senator and Presidential Candidate
13 Cruz's citizenship.

14 And there's one or two instances where
15 those went to trial. But the vast majority of them were
16 properly dismissed. The overwhelming weight of evidence
17 is that this case should not be here.

18 Now, I want to talk a little bit about
19 some of these specific claims. The claim that there was
20 an insurrection. What constitutes an insurrection really
21 needs to be grounded in historical usage. Because if you
22 don't ground it in historical usage, you're just making
23 it up.

24 Now, I'm not accusing the Court of making
25 it up. I'm accusing the petitioners of making it up.

1 But, look, you will hear from
2 Professor Delahunty that there are lots of definitions of
3 what an insurrection is. It's been going on -- that
4 word's been in English usage for a couple hundred years,
5 probably more. I haven't quite looked at the etymology
6 of it. And there are a lot of definitions.

7 Your Honor, I submit I could construct a
8 legal argument or a law review article defending pretty
9 much any one of those definitions. And when there are
10 numerous definitions, that means there's really none.
11 You might as well pick a definition out of the hat. And
12 the petitioners have picked a definition out of the hat
13 that suits them. That's their job, I get it.

14 But frankly, they're making up the
15 standard so that it fits the facts of January 6, and I'm
16 sure they'll try and come up with an argument that it
17 will just fit to the facts of January 6, and it will
18 never fit any other facts and there can never be any
19 consequences. But the bottom line is, they're making it
20 up, and they're picking a definition out of the hat.

21 What constitutes an insurrection needs to
22 be grounded in historical usage because that's what the
23 law demands; that's what equality under the law demands;
24 that's what fairness so we understand what the standards
25 are by which we comport our behavior, not post facto

1 making it up to try and figure that out.

2 The term "engage." The term "engage"
3 means to do something. Frankly, no one really knows what
4 that means, but I think we can all agree it means to do
5 something. That's what the word "engage" means. Okay.

6 There's substantial historical evidence
7 that engage does not mean mere incitement through words.
8 It doesn't mean that.

9 And frankly, President Trump didn't
10 engage. He didn't carry a pitchfork to the Capitol
11 Grounds, he didn't lead a charge, he didn't get in a
12 fistfight with legislators, he didn't goad
13 President Biden into a -- going out back and having a
14 fight. He gave a speech in which he asked people to
15 peacefully and patriotically go to the Capitol to
16 protest.

17 Now, I understand that there's several
18 experts that are going to testify, and one's going to
19 testify that President Trump, he just didn't do enough.
20 He should have done more.

21 Now, that's a case of Monday morning
22 quarterbacking. But he's saying: You should have done
23 more. You didn't do enough. Should have done more,
24 should have done more stuff earlier.

25 I can come up with all kinds of theories

1 this professor will say as to why you should have done
2 enough stuff. And that professor is no doubt a learned
3 man and very thoughtful on this.

4 But his basic argument, when it comes down
5 to it, is they're claiming President Trump was negligent.
6 Now, we reject that factual claim, of course, and you'll
7 hear that -- evidence that that characterization is
8 completely wrong.

9 But more fundamentally, the entire theory
10 is wrong. The failure to do something is the opposite of
11 the word "engage." It's the opposite of the word
12 "engage." And we'll -- and we've argued engage requires
13 specific intent. Someone doesn't just sort of stumble
14 into starting an insurrection. They have to have the
15 intent to do that.

16 And you'll hear evidence that
17 President Trump took very specific actions to try to
18 prevent violence, to take precautions, that he didn't
19 want there to be violence on January 6.

20 And on January 6, he called for peace, and
21 he used the word "peace" at least four times in his
22 speech at the Ellipse and two tweets and a video message.
23 So he asked for peace.

24 Now, the petitioners have played a couple
25 videos.

1 (Siren interruption.)

2 THE COURT: The cards are stacked against
3 you, I guess.

4 MR. GESSLER: I've been here before,
5 Your Honor.

6 THE COURT: I promise, it's going to be an
7 equal opportunity problem all week.

8 MR. GESSLER: I'm assuming your clerks are
9 not timing -- taking time against me when the sirens go
10 by. Stop that timer, please.

11 So my next point is, thank God we have a
12 First Amendment. I'm very thankful for the First
13 Amendment. Spent most of my career defending the First
14 Amendment.

15 Now, there's a reason it's the First, not
16 the Second, not the Eighth, as I debate with my friends
17 who like the Second Amendment. It's the First Amendment,
18 and it's free speech.

19 And I referred to Eugene Debs before.
20 Eugene Debs was thrown in jail. He had to run for
21 President from jail because of his speech. And it's
22 properly condemned, that case today. And, in fact, even
23 then, his sentence was commuted very shortly after the
24 election of 2020 [sic].

25 None of President Trump's speech ever

1 called for violence. Just the opposite. None of it ever
2 called for insurrection. Did it call for political
3 pressure? Yeah. Did it use a metaphor to fight in the
4 political context? Yes. And I don't think even the
5 petitioners would allege that President Trump, when he
6 says "fight," he wants to get into a fistfight with
7 people, okay?

8 None of his speech call for the overthrow
9 of government, none of it. Any objective reading, the
10 plain language of a speech, was clearly not directed
11 towards violence.

12 Now, the petitioners are going to have an
13 expert, an expert on speech, an expert who says
14 right-wing speech. He understands what right-wing
15 speech -- right-wing extremist speech really means.

16 And he's basically going to argue when you
17 strip away all of the academic language and you look at
18 what he's saying, he's going to say: Look,
19 President Trump used a bunch of dog whistles. And, of
20 course, a dog whistle is a whistle that has a very high
21 pitch that humans can't hear but dogs can hear. Okay?

22 And he's going to say President Trump,
23 like, had this sort of dog whistle -- I don't know if
24 he'll use the phrase "dog whistle" -- but he used a
25 speech that really these far right-wing extremists could

1 understand and mobilize on; but us mere mortals, well, we
2 don't -- we missed it. We didn't understand it, but
3 those folks understood it.

4 And he's going to say that, normal sort of
5 commonly used English doesn't count because there's this
6 subjective special language out there that is sort of
7 underneath it all that has been unearthed by the
8 sociologist, and only right-wing extremists and people
9 very learned in sociology and right-wing extremism can
10 understand.

11 And he's going to say that with his
12 expertise, he's been able to decipher what we normal
13 mortals cannot, and his decipherment is going to
14 basically say that President Trump was really ordering
15 people to be violent. Even when he said "peaceful and
16 patriotically" and even when he sent out tweets that said
17 to be peaceful, that's not really what he meant. And
18 those ultra right-wingers knew it, he meant something
19 else.

20 This turns our American values on their
21 head. It is fundamentally anti-First Amendment. He is
22 saying that when we look at political speech, we don't
23 look at it in an objective way. We don't look at the
24 plain meaning of the words.

25 We look at the secret, hidden

1 interpretation that no one in this courtroom or -- well,
2 I mean, maybe someone in this courtroom besides him can
3 understand. Maybe he thinks I understand it and no one
4 else can. I will submit, I was in Georgia on January 6
5 helping with an election. But the right-wing can
6 understand it, but no one else.

7 That is anti-First Amendment. In fact,
8 that has been soundly rejected by our courts, and
9 properly so. We look at what people say as we commonly
10 understand them. And the common understanding of
11 "peacefully and patriotic" means: Don't commit violence,
12 and support your country. That's what it means.

13 Let's talk about the history and meaning
14 of Section 3. You're going to hear from two professors.
15 You've gotten about 40,000 words of briefing on sort of
16 the meaning of Section 3.

17 You've rendered an opinion against us, and
18 I understand. That's a conditional opinion. You want
19 more evidence, and you want to hear more argument, and
20 that's what we're providing.

21 And so I'm going to ask you three things,
22 all right?

23 First, I'm going to ask you to reconsider
24 your Footnote 5 in your order.

25 THE COURT: You're going to have to remind

1 me what that is.

2 MR. GESSLER: I'm not, Your Honor, because
3 I'm not going to take up the time. But I'm simply going
4 to ask you to reconsider it, okay?

5 THE COURT: I'll write it down so I can --

6 MR. GESSLER: Thank you.

7 And I think those cases deserve a much
8 closer reading, and I respectfully say I believe that
9 they were improperly mischaracterized, okay? So that's
10 my first request.

11 My second request is when you look at the
12 experts, and our position -- and I think the Court
13 ultimately agrees -- is that they are testifying as to
14 what the law is and what the history is.

15 And Your Honor rightfully recognized that
16 there's other folks out there, so I'm just going to give
17 you a lineup of the other folks.

18 On one side, the petitioners cite Baude
19 and Paulsen and Graber, three professors: Baude, Paulsen,
20 and Graber.

21 And on our side, we cite Tillman and
22 Blackman and Lash. And I'd like you to take particular
23 care to look at Lash's, Professor Kurt Lash's articles.
24 And -- because he's done a more thorough analysis of the
25 history behind the Fourteenth Amendment and Section 3,

1 the Congressional debates and the ratification debates,
2 not just what legislators said, but how it was understood
3 by the public as well.

4 You're going to get an overview of that,
5 you're going to get argument on that, but I'm going to
6 urge you to take a look at those others closely.

7 And third, as we've said, we think this is
8 legal argument and not appropriate for Rules of Evidence.
9 It's in. The Court will make good -- will provide its
10 analysis.

11 We have talked to the petitioners about,
12 frankly, including the expert reports, the law
13 professors, as demonstrative exhibits to review. That's
14 fine.

15 I think what you're going to see is when I
16 had talked about the lack of firsts, there's a reason
17 presidential candidates have not been knocked off, or no
18 one's even attempted to, under Section 3 of the
19 Fourteenth Amendment, okay?

20 There's a reason this is a unique case.
21 There's a reason cases like this have either never been
22 brought or quickly rejected. There's reasons for that.
23 And the reasons are grounded in the text and the language
24 of the Fourteenth Amendment.

25 You're going to hear about the Secretary's

1 authority from Mrs. Hilary Rudy. This is sort of an
2 interesting case in the sense that my understanding is,
3 petitioners are calling Ms. Rudy and haven't even spoken
4 to her. And we haven't even spoken to her. So it's
5 going to be an adventure.

6 But having had some experience in that
7 office, I'm confident you will see that this case is a
8 radical outlier from the Secretary's past practice, in
9 addition, obviously, to the Fourteenth Amendment.

10 Let's talk a little bit about the evidence
11 before the Court today -- or this next week. To be sure,
12 the petitioners have spent about ten months preparing
13 their case. As you have described, we've talked about
14 this as a mantra.

15 I'll submit volume does not equal quality.
16 A lot of attorneys does not equal a good argument. A lot
17 of stuff in front of the Court does not equal good
18 evidence. The Court shouldn't confuse a vigorous effort
19 with a good argument or with good evidence.

20 If anything, the fact that they have to
21 put on so much and make one inference and pile one
22 argument on top of another shows the weakness of their
23 case, not strength.

24 After all the time they have prepared this
25 case, this is what they've got. They've got the

1 January 6 Report. They've got two police officers out of
2 hundreds, perhaps thousands of police officers there.
3 And not commanders, but two police officers.

4 And they've got three professors. Two law
5 professors testify about the law, and the sociologist to
6 testify about the coded language. That's what they've
7 got. And they've got one House member, I'm sorry, one
8 House member. So that's what they've got.

9 And at the end of the day, the start of
10 the day, this case is, frankly, about the January 6
11 Report. This is their effort to get the Court to endorse
12 the January 6 Report. That's what it comes down to.

13 The video montage with overlaid sound that
14 you saw in this opening argument, that's a pretty good
15 production. And the reason it's a good production is
16 because the January 6 Committee hired a television
17 producer to produce this stuff for prime time TV.

18 The January 6 Report made 411 findings,
19 and petitioners have asked to introduce 408 of them, many
20 of which this Court has allowed conditionally and allowed
21 argument against.

22 But this report is poison, and I mean
23 poison very bluntly. It is a one-sided political
24 document of cherry-picked information, no adversarial
25 process, with a preordained conclusion. It omits a

1 number of other arguments. It ignored other witnesses
2 before it. And it ignores other explanations and causes.
3 It has very much.

4 Let me ask you, Your Honor, and obviously
5 I'm asking rhetorically. If someone walked into court
6 and said: Hey, here is how this court case is going to
7 work. I, on my side, the prosecutor, I'm going to get
8 all kinds of time, years, year and a half, to investigate
9 witnesses, to take statements, to gather evidence, okay?

10 And people who strongly disagree with my
11 viewpoint, they get no time whatsoever. They don't get
12 to interview any witnesses, they don't get to get any
13 evidence. They get none of that. But I get all of it, I
14 get to do all of that.

15 And on top of that, you're not going to
16 hear the case. I'm going to choose my own panel. I'm
17 going to choose my own judges. I'm going to choose my
18 Democrats and a couple of Republicans that agree with me.
19 I get to choose them.

20 And then what I'm going to do is, I'm
21 going to hire a television producer, and I'm going to
22 time this for an election. And I'm going to put all that
23 out there, and I want you to render legal opinions based
24 on the quality of that evidence.

25 I think you and everyone else would be

1 rightfully -- would be repulsed by that process. But
2 that's what the January 6th process was, and you are
3 going to hear from a Congressman involved in this, just
4 the deficiencies and the problems of that January 6
5 process.

6 And so what the petitioners are doing is
7 they're trying to shove this January 6 Report as evidence
8 for this Court. They're asking the Court to endorse that
9 process. They're asking the Court to endorse that
10 one-sided poisonous report.

11 There is a reason Democrats, for the large
12 part, love that report and cite it. And there is a
13 reason Republicans, for the most part, hate that report
14 and condemn it. And the reason why is that report is a
15 political document, first and foremost.

16 This, however, is a court of law. Like
17 you, we, like the petitioners' attorneys have spent the
18 majority, perhaps all of our adult working lives as
19 officers of the court, defending one of the greatest
20 American institutions, one of the greatest world
21 institutions, is fair courts, that conduct themselves
22 according to the rule of evidence, that work hard to come
23 with good decisions. That's what we do. That's what
24 courts do.

25 That is not what the January 6 Report was.

1 And we should hold ourselves here to a much higher
2 standard than that poisonous January 6 Report. We should
3 allow in only real evidence that's subject to cross-exam,
4 that is properly authenticated by people who actually
5 have knowledge of that.

6 That's what this Court should be about,
7 not importing a bunch of stuff from the January 6 Report
8 that really has little, if any, credibility.

9 You'll also hear from two police officers,
10 and we want to be very respectful of those police
11 officers. But like any human being, they had a very
12 limited viewpoint on what happened on January 6.

13 And we're going to ask that you limit the
14 testimony to actually what the officers knew, not what
15 they guessed at, not what they surmised, but what they
16 knew and what they saw, their actual experience.

17 And we'll point out that, frankly, I mean,
18 there's a reason these officers are here, and it's
19 because of their intense dislike for President Trump.
20 You're going to hear from a member of the House of
21 Representatives, and we're going to give you a member of
22 the House of Representatives, too. There you have it,
23 Your Honor.

24 And then you're going to hear from
25 three experts from the petitioners. Two are going to

1 testify to what the law is, and then you're going to have
2 the sociologist, and we've already spoken about. That's
3 it. That's their evidence.

4 At the end of the day, their evidence is
5 the January 6 Report. Everything they bring in is part
6 of the January 6th report. I won't say everything, but
7 the vast majority of it.

8 Our evidence, I've refrained from naming
9 witnesses. I'll continue to follow that convention. But
10 you're going to hear that President Trump took very
11 specific precautions to prevent violence on that day as
12 President.

13 You're going to hear that the organizers
14 of the rally at the Ellipse took precautions to avoid
15 violence or inflammatory rhetoric. You're going to hear
16 that the rally at the Ellipse was peaceful, that there
17 was no violence. You didn't have a crowd that was intent
18 on violence before or after President Trump's speech.

19 You're going to see that President Trump's
20 communications on January 6 called for peace, they called
21 for respect of the police. Certainly two police officers
22 that were involved in violence, you're going to see that
23 from them.

24 But we also have at least one witness
25 who's going to say: Look, I didn't -- I saw very, very

1 little, I saw a peaceful crowd. Nearly everyone was
2 peaceful.

3 That's a different perspective. And so
4 it's impossible, we think, to say the mob did this or the
5 mob did that, the mob, the mob. There are a lot of
6 people, with a lot of different actions, a lot of
7 behavior. There was not a mind-meld mob that
8 President Trump supposedly mobilized.

9 And then you're going to hear about how
10 the January 6 Report was a completely partisan,
11 unreliable document. This case here is about
12 President Trump's right to run for office.

13 That right is the flip side of the coin
14 for people to be able to vote for the candidate of their
15 choice. People can't vote without candidates.
16 Candidates aren't really candidates if people can't vote
17 for them. It's the same side of the coin.

18 And so we've talked about the right for
19 the people of Colorado to vote for someone for office,
20 and that's very closely bound with the right of
21 Donald J. Trump to be able to run for office. And the
22 petitioners seek to deny millions of Coloradans that
23 right, and they seek to deny President Trump his rights.

24 Now, I understand the posture that this is
25 merely a state disqualification case. And it's not.

1 This is a Fourteenth Amendment case. And it is dressed
2 up as a state proceeding. 95 percent of the evidence is
3 a Fourteenth Amendment; maybe it's 92 percent. But the
4 overwhelming majority of the evidence in this case is
5 about the Fourteenth Amendment, and the overwhelming
6 argument is about the Fourteenth Amendment. And the
7 consequences are about the Fourteenth Amendment, and it
8 asks the Court to interpret the Fourteenth Amendment.
9 That's what this case is about.

10 If it looks like a duck, and if it walks
11 like a duck, it quacks like a duck, it's a duck. This is
12 a Fourteenth Amendment case. Okay?

13 And so I want to bring -- it's a
14 constitutional case. It's sort of what we lawyers dream
15 of being able to litigate. We don't dream in law school
16 of litigating a Section 1204 qualifications. We dream of
17 litigating constitutional law. And that's what this is,
18 it's a constitutional case.

19 And so I'm going to bring you to my last
20 point. January 6th. So I've been -- I'm old enough and
21 overweight enough to -- I've been litigating election law
22 in the state of Colorado for well over two decades. And
23 this is the third presidential candidate ballot access
24 case I have litigated, and obviously I'm familiar with
25 the law nationwide.

1 And there is a rule in election law, and
2 that rule is called a rule of democracy. Maybe I'm
3 making it up a little bit, but it's the rule of
4 democracy. And that rule says that when something is
5 close, when there's a unique and strange argument on the
6 other side, okay, where there's a question or an
7 ambiguity or a stretch, the rule of democracy says: We
8 err on the side of letting people vote. That's what the
9 rule says.

10 Now, we've made preemption arguments,
11 we've argued about holding office, that the Fourteenth
12 Amendment applies to holding office so that Congress has
13 the choice to remove a disqualification, we shouldn't
14 short-circuit that.

15 We've made arguments about officer of the
16 United States. We've made arguments about engagement and
17 insurrection, First Amendment, all of that stuff. And to
18 date, the Court has either deferred those or oftentimes
19 ruled against us.

20 But what I'm asking this Court to do is
21 apply a rule of democracy. When something's close or
22 ambiguous or a stretch or an unusual argument, you don't
23 interpret it as a way to cancel the opportunity for
24 people to choose their representatives. You don't
25 interpret it as a way to cancel the ability of millions

1 of people to be able to vote for the leader of the free
2 world.

3 What you do is you interpret it to allow
4 people to vote. Because there is no doubt that the six
5 electors don't like President Trump. And I would submit
6 that maybe their attorneys don't like President Trump,
7 and their experts, and I know the police officers don't
8 like President Trump. They don't like President Trump.
9 And they have every right to vote against him.

10 But there are millions of people in
11 Colorado and across this country who are inspired by
12 President Trump, who view them as -- who view him as
13 someone who protects their interests and who are going
14 to -- and is going to create a nation, help build a
15 nation that they want to live in and that they want their
16 children to live in. Millions of people look to him for
17 hope and inspiration.

18 And who are the petitioners to prevent
19 those people from not being able to vote on that? Who
20 are they?

21 Well, we are arguing that they shouldn't
22 be able to stop those votes. That when millions of
23 people are inspired by a candidate, and millions of
24 people may hate that candidate, what we need to do and
25 what the rule of democracy says and what makes America

1 great is we get to vote on that person. We don't stifle
2 it, we don't short-circuit it through a court proceeding.

3 We're confident that that's what the
4 framers thought about when they drafted the Fourteenth
5 Amendment. We're confident that that's historical usage.
6 We're confident that our legal arguments and our evidence
7 are appropriate and carry the day.

8 And part of the reason we're confident is
9 because those arguments and that evidence fits within the
10 long tradition of American democracy and of American law
11 to allow an election to go forward rather than
12 short-circuiting it and engaging in what we would
13 consider anti-democratic behavior.

14 Thank you very much, Your Honor.

15 THE COURT: Do the intervenors -- does the
16 Colorado Republican Party have a statement?

17 MS. RASKIN: Yes, we do. A brief one,
18 Your Honor.

19 THE COURT: Okay.

20 MS. RASKIN: Thankfully.

21 The Colorado Republican Party has
22 intervened here, Your Honor, in order to urge you to
23 vindicate the important and ultimate right of the party
24 to select the candidates whose names will appear on the
25 primary election ballot as Republican nominees for

1 President of the United States.

2 As the Supreme Court has recognized, under
3 our political system, a basic function of a political
4 party is to select the candidates to be offered to the
5 voters. Indeed, a party's ability to select its
6 candidates implicates the First Amendment right to
7 association. And Colorado law is entirely consistent
8 with this.

9 Section 1204 of the Election Code requires
10 the Secretary of State to place on the ballot, quote,
11 "only those candidates who are seeking the nomination of
12 a political party as a bona fide candidate for President
13 of the United States pursuant to political party rules."

14 As the evidence will show, the rules of
15 the Colorado Republican Party require a bona fide
16 candidate to satisfy three categories of rules.

17 First, the candidate must comply with the
18 constitutional requirements set forth in Article II,
19 Section 1, Clause 5, namely that the candidate be
20 35 years of old -- 35 years of age, be a natural-born
21 citizen, and have lived here for 14 years.

22 Second, the candidate must register his
23 committee with the FEC.

24 Third, the candidate must demonstrate
25 enthusiasm, viability, seriousness, and competitiveness

1 according to certain party-defined standards.

2 President Trump has satisfied each of
3 those requirements, and the party has certified to the
4 Secretary of State that he is a bona fide presidential
5 candidate affiliated with the Colorado Republican Party.

6 The Secretary of State has no basis upon
7 which to thwart the party's political choice and deny him
8 a place on the ballot. As the Secretary herself
9 acknowledges, Section 1204 does not give her the
10 authority to evaluate whether a bona fide candidate as
11 selected by the Colorado Republican Party would be
12 subject to disqualification under Section 3 of the
13 Fourteenth Amendment.

14 And for all the reasons articulated by
15 Mr. Gessler, which I will not repeat and we have briefed,
16 the Constitution doesn't give the Secretary the
17 independent right to do so, nor does it authorize this
18 Court to.

19 Thank you.

20 THE COURT: Anything from the Secretary of
21 State?

22 MR. SULLIVAN: Very briefly, Your Honor.

23 THE COURT: Okay.

24 MR. SULLIVAN: Thank you, Your Honor.

25 Good morning. Grant Sullivan for the

1 Secretary of State, may it please the Court.

2 It's been said that this is an
3 extraordinary case, and the Secretary agrees. I think
4 the video that we just saw shows that.

5 But in many ways, this is a very typical
6 proceeding under the Colorado Election Code, specifically
7 Section 113. As in nearly all Section 113 actions, a
8 group of eligible voters alleges that an election
9 official, here the Secretary, is about to commit a breach
10 of her duties or other wrongful act. And like other
11 Section 113 cases, a candidate and a political party have
12 intervened to participate.

13 That's not at all unusual. It's also not
14 at all unusual for the Secretary of State or other
15 election official, in a 113 action, to act as a nominal
16 respondent and await the Court's direction while the real
17 parties in interest present evidence on the factual
18 issues.

19 Our pleadings cite three examples from
20 just the last couple of election cycles.

21 Consistent with this history and practice,
22 the Secretary of State does not intend to offer any
23 evidence in her own right in this case. The Secretary,
24 unsurprisingly, does not have any direct evidence on
25 whether Donald Trump engaged in insurrection or rebellion

1 against the United States.

2 Other parties, of course, will present
3 evidence on that question.

4 What the Secretary can do and will do in
5 this case is make her deputy elections director available
6 to testify on the election administration issues that the
7 Court has signaled some interest in.

8 We anticipate that the deputy elections
9 director will testify regarding how the Secretary's
10 office administers Colorado's election law to ensure
11 conformance with federal law. And that includes the
12 presidential primary provisions in Colorado's
13 Proposition 107.

14 Now, at the end of the day, and the
15 beginning of the day, the Secretary believes that Donald
16 Trump bears significant responsibility for the attack on
17 the Capitol on January 6. But she welcomes the Court's
18 direction on whether his actions rise to such a level as
19 to disqualify him from appearing on the presidential
20 primary ballot in Colorado. And she will, of course,
21 follow the Court's judgment on that question.

22 Thank you, Your Honor.

23 THE COURT: Great.

24 Are the petitioners ready to call their
25 first witness?

1 MR. OLSON: Your Honor, before that, we
2 just wanted to get your preference on admission of
3 exhibits. Was it appropriate to move for the
4 unobjected-to exhibits I referenced in opening now, or
5 would you like to do that at a break? What's
6 Your Honor's preference?

7 THE COURT: Why don't we do that at a
8 break.

9 MR. OLSON: Okay. Thank you, Your Honor.

10 MR. SHAW: Your Honor, springboarding from
11 the Secretary's counsel's request earlier, but our
12 representative, Mr. Dave Williams, is also listed as a
13 witness. We would ask permission to be able to have him
14 log in either online or view the proceedings.

15 THE COURT: Any objection?

16 MR. OLSON: No objection.

17 MR. SULLIVAN: No objection, Your Honor.

18 MR. GESSLER: None from us, Your Honor.

19 MR. SHAW: Thank you, Your Honor.

20 THE COURT: Of course, then.

21 MR. SUS: Good morning, Your Honor.

22 Nikhel Sus for the petitioners. Petitioners call
23 Officer Daniel Hodges.

24 THE COURT: And I'm sorry, I did not catch
25 your name.

1 MR. SUS: Nikhel Sus.

2 DANIEL HODGES,

3 having been first duly sworn, was examined and

4 testified as follows:

5 THE COURT: Just be sure to speak into the
6 microphone.

7 THE WITNESS: Yes.

8 THE COURT: And you should feel free to
9 kind of position that screen in any way that you like.
10 You don't need to look right into it.

11 THE WITNESS: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SUS:

14 Q. Please state your name for the record.

15 A. My name is Daniel Hodges.

16 Q. And where do you currently work?

17 A. I currently work for the Metropolitan
18 Police Department of Washington, DC.

19 Q. And what is your rank?

20 A. I'm an officer.

21 Q. When did you join the DC Police
22 Department?

23 A. I joined the DC Police Department in
24 December of 2014, so I've been on for almost nine years
25 now.

1 Q. And what was your job prior to joining the
2 DC Police Department?

3 A. Prior to joining the DC Police Department,
4 I joined the Virginia National Guard in 2012. I served a
5 six-year contract and was honorably discharged in 2018.

6 Q. What divisions are you assigned to at the
7 DC Police Department?

8 A. At MPD, I am assigned to patrol in the
9 Fourth District. I am also assigned to Civil Disturbance
10 Unit 42.

11 Q. And how long have you been a member of
12 Civil Disturbance Unit 42?

13 A. I've been with Civil Disturbance Unit 42,
14 or CD 42, since its inception, approximately five years.

15 Q. And what is the Civil Disturbance Unit?

16 A. Civil Disturbance Unit is organization
17 within MPD that officers are assigned to specific
18 platoons. We are activated and deployed to planned First
19 Amendment assemblies on an as-needed basis.

20 Once we are there, we perform law
21 enforcement duties around that First Amendment assembly,
22 be it traffic control or just high visibility, making our
23 presence known, and should they turn riotous, we police
24 that as well.

25 Q. And what duties do you perform as a member

1 of the Civil Disturbance Unit?

2 A. As a member of CD 42, I perform all the
3 duties that I just described. CD 42 is also what's
4 called a rapid response platoon. That means that we are
5 issued hard gear, pads, that are not standardized for --
6 that are not standard to all CD members, so we use those
7 as well.

8 Q. Do you use any other sort of special
9 equipment as a member of the CDU?

10 A. I do. CDU officers are issued ballistic
11 helmets, gas masks, riot batons, and then the hard gear,
12 the pads I just told you about.

13 Q. And as a member of the CDU, do you receive
14 special training?

15 A. We do. CDU members are trained in ways to
16 move in formations as a group, effectively utilize
17 ourselves in a crowd for- -- or formations, and how to
18 make arrests and protect ourselves and others in the
19 event of a criminal First Amendment assembly riot.

20 Q. Does the CDU respond to civil disturbances
21 any anywhere in Washington, DC, or only in particular
22 areas of the city?

23 A. Typically MPD's CDU units respond to areas
24 under a local city -- under the control of a local city.
25 However, we also respond to property that belongs to our

1 federal partners should they request our assistance.

2 Q. I'd like to turn now to the morning of
3 January 6, 2021.

4 Were you on assignment with the Civil
5 Disturbance Unit that morning?

6 A. I was.

7 Q. Were you aware of any proceedings
8 happening at the U.S. Capitol Building that day?

9 A. I was.

10 Q. What was that?

11 A. I was aware that at the United States
12 Capitol that day, they were certifying the 2020
13 presidential election with Congress and the Vice
14 President.

15 Q. And what were your initial orders?

16 A. Initially, my platoon was ordered to
17 respond to around 11th and Constitution in the morning
18 of January 6 in a high visibility capacity, which means
19 that we simply stood on Constitution Avenue making
20 ourselves visible, letting people know that the police
21 were present.

22 Q. And about what time was that?

23 A. We probably arrived on scene around 8:00
24 in the morning.

25 Q. And were you monitoring a particular

1 event?

2 A. We were. We were monitoring Donald
3 Trump's rally on the Ellipse.

4 Q. As you were monitoring the crowd, did you
5 notice anything unusual about how they were dressed?

6 A. As I was monitoring the crowd, I noticed
7 that there were multiple people who were wearing tactical
8 gear, that -- some had helmets like my own ballistic
9 helmets, goggles, gas masks, armored gloves, backpacks
10 full of gear that we couldn't identify, tactical boots,
11 some earpieces for radios, things of that nature.

12 Q. How did you feel seeing those people
13 wearing tactical gear?

14 A. It made me very uncomfortable, nervous.

15 Q. Why is that?

16 A. Because there's no need for all that
17 tactical gear to listen to a politician speak in a park.

18 Q. While you were deployed on Constitution
19 Avenue, did you have any other cause for concern about
20 what would happen that day?

21 A. I did. While I was on Constitution
22 Avenue, I was monitoring our radio frequency we were
23 using for that day for the First Amendment assembly.

24 I was -- heard our Gun Recovery Unit, our
25 GRU unit -- or GRU, rather, was identifying people in the

1 crowd who had firearms or they thought potentially had
2 firearms. They were identifying them so they could make
3 arrests later on, or at the time as need be.

4 I also heard our Explosive Ordnance
5 Disposal Unit, EOD, come over the air and say that they
6 had identified a device on the Capitol Grounds. They
7 also said that the device was viable, and I took this to
8 mean that they had found a bomb.

9 Q. Did the crowd stay at the site of
10 President Trump's rally at the Ellipse?

11 A. Largely the crowd, after staying at the
12 Ellipse for some time, flowed back in the opposite
13 direction on Constitution Avenue towards the United
14 States Capitol.

15 Q. And what was the general tenor of the
16 crowd as they were moving towards the Capitol Building?

17 A. The crowd, as they were moving toward the
18 Capitol, were moving with a sense of purpose. They -- it
19 would seem like they were moving as they had something to
20 do there, even though the -- ostensibly the event they
21 were there to attend had concluded, or come close to it.

22 Q. And was your platoon eventually deployed
23 to the Capitol?

24 A. We were. We were monitoring the radio,
25 and we heard our commander that day getting more and more

1 agitated as people continued to flow toward the United
2 States Capitol. He was -- you could tell from the way he
3 was talking, they were -- the crowd was becoming
4 aggressive and attacking and overwhelming the defenses
5 present.

6 Eventually, he requested CD 42 to back
7 them up at the Capitol, at which time we went back to our
8 vans that we used to transport ourselves, put on our hard
9 gear, and made our way toward the Capitol Grounds.

10 Q. And about what time did you receive the
11 order to deploy to the Capitol?

12 A. I believe it was about 1:30.

13 Q. And what was your understanding of why you
14 were being deployed to the Capitol?

15 A. We were being deployed to the Capitol to
16 reinforce the defense there, to prevent people who were
17 attacking officers from gaining entry to the Capitol.

18 Q. Prior to January 6th, 2021, had you ever
19 been called to respond to civil unrest at the
20 U.S. Capitol Building?

21 A. No.

22 Q. What did you do after receiving that order
23 to deploy to the Capitol?

24 A. After receiving the order to deploy to the
25 Capitol, we -- as I said, we went back to the vans, made

1 our way toward the Capitol Grounds. We made our way
2 toward the -- I'd say northwestern port edge of the
3 Capitol Grounds, where we got out on foot, organized
4 ourselves into two columns, and started marching toward
5 the West Terrace of the Capitol.

6 Q. I want to focus now on the hours --
7 between the hours of 1:50 p.m. to 3:10 p.m.

8 Could you tell us what happened when you
9 arrived at the Capitol Building?

10 A. When we arrived at the Capitol, as I said,
11 we organized ourselves into two columns, started marching
12 toward the West Terrace. The crowd at the edges of the
13 Capitol Grounds were more spread out, less aggressive.

14 However, they quickly identified us and
15 started hurling insults at us, calling us traitors, oath
16 breakers, telling us to remember our oaths, telling us to
17 be on the right side of history. And then we -- we
18 ignored them, we moved on.

19 As we got closer to the West Terrace, the
20 crowd became more dense and more aggressive, until
21 eventually we were attacked. They -- our assailants cut
22 us in half, whereas the forward part of our element was
23 able to keep moving toward the West Terrace, the rear
24 portion, which I was a part of, was cut off and encircled
25 by our assailants. And we were attacked at that point

1 and had to defend ourselves there.

2 Q. Over the course of the day, how did the
3 crowd attack you?

4 A. The crowd attacked me in a variety of
5 ways, punching, kicking, pushing. I -- chemical
6 irritants such as OC spray or pepper spray. I was beaten
7 in the head with blunt instruments, including my own riot
8 baton. I was pinned and crushed with a police shield.

9 I can't remember all the different ways in
10 which I was assaulted.

11 Q. Did you sustain injuries?

12 A. I did.

13 Q. Which injuries?

14 A. I experienced pain and bruising about my
15 body and a swollen hand. I had a large contusion on my
16 head from being struck with my riot baton, which I
17 believe resulted in a concussion as I experienced a
18 headache for about two weeks after the fact.

19 I had a -- lacerations of the face,
20 bleeding from the mouth, and pain in my eye from where
21 someone attempted to gouge it out.

22 Q. Tell us what was going through your head
23 when you were being attacked that day.

24 A. I was afraid. I was afraid for my life
25 and for that of my colleagues. I was afraid for the

1 people in the United States Capitol Building. I was
2 afraid for Congress, the Vice President, and what these
3 people would do to them and how it would affect our
4 democracy.

5 Q. Over the course of the day, did you see
6 your fellow officers attacked?

7 A. I did.

8 Q. How?

9 A. In very much the same way as I was
10 attacked: punching, kicking, pushing, being struck with
11 blunt instruments.

12 I, unfortunately, couldn't pay too much
13 attention to the ways in which they were being attacked
14 as I had my hands full myself.

15 Q. Over the course of the day, did you see
16 the attackers use weapons?

17 A. I did.

18 Q. What types?

19 A. They used flagpoles that they had brought
20 as blunt instruments to beat us with. They used stolen
21 police equipment, such as riot batons, police shields to
22 assault us.

23 They used pieces of what's called bike
24 rack-style barriers, which they had broken into its
25 constituent pieces, the poles, passed out amongst the --

1 the mob to attack us. And pepper spray, chemical
2 irritants.

3 Yeah, that's all -- that's all I can think
4 of.

5 Q. And you testified earlier that you saw
6 people on the morning of January 6 wearing tactical gear;
7 is that right?

8 A. That's correct.

9 Q. At the Capitol, did you see individuals in
10 the crowd wearing similar types of tactical gear?

11 A. I did.

12 Q. And did you observe any behavior by the
13 crowd indicating why they were at the Capitol Building?

14 A. I did.

15 MR. SHAW: Objection. Your Honor, I just
16 want to be very careful because I have read some of his
17 prior testimony, and he has a definite tendency to
18 mind-read.

19 So I want to be very careful that he
20 limits himself to what he actually observed and not try
21 to get into the head and speculate about what was going
22 through the heads of individual members of the crowd or
23 the crowd as a whole.

24 THE COURT: Okay. Well, he hasn't
25 testified as to any of those things, so I'm going to

1 overrule the objection. And if and when he does, you can
2 make a request to strike.

3 Q. (By Mr. Sus) Do you need me to repeat the
4 question?

5 A. Please.

6 Q. Did you observe any behavior by the crowd
7 indicating why they were at the Capitol?

8 A. I did. I saw the crowd carrying flags
9 with Trump campaign slogans on it, advertising "Trump for
10 2020," which was confusing as the 2020 presidential
11 election was over.

12 I saw them carrying banners that said
13 "Stop the Steal," and it's my understanding that that's
14 the -- the slogan means that they -- bearers believe that
15 the 2020 presidential election was somehow stolen.

16 MR. SHAW: Objection, Your Honor. Unless
17 he has a basis for saying what that slogan meant to any
18 particular person carrying it, that is pure speculation.

19 THE COURT: Overruled.

20 But would you just make sure when you make
21 the objections, to speak into the microphone.

22 MR. SHAW: Yes, Your Honor.

23 THE COURT: You don't need to stand up if
24 you don't want to.

25 A. I saw people carrying banners saying "Stop

1 the Steal," which, based on my understanding, means that
2 people believed the 2020 presidential election was
3 stolen, which was confusing to me as I was not aware of
4 any evidence that this was the case.

5 I saw -- I heard them chant "Fight for
6 Trump," which seems very to the point.

7 They were carrying very -- various flags
8 referencing war and revolution.

9 They told us that we were on the wrong
10 side of history when we were defending the United States
11 Capitol and the peaceful transfer of power.

12 Q. (By Mr. Sus) Did members of the crowd
13 reference President Trump?

14 A. They did.

15 Q. How?

16 A. By the clothes they wore, the banners they
17 carried, saying "Fight for Trump." They called --
18 referenced Joe Biden as a tyrant, things of that nature.

19 Q. Over the course of the day, did you get a
20 sense of how big the crowd was?

21 A. I did. It was difficult to gauge on the
22 ground where I was, and I have no formal training in
23 crowd estimates.

24 However, when I was on the -- in front of
25 the West Terrace, rather, I was able to look out over the

1 crowd a bit, and I could not see the end of them. There
2 were thousands, I would say.

3 Q. How did the size of the mob compare to the
4 size of law enforcement that were present that day?

5 A. I would -- the mob outnumbered us a great
6 deal. I would say 50, 70 to 1.

7 Q. What impact, if any, did the size of the
8 mob have on your ability to do your job that day?

9 A. The size of the mob was the greatest
10 weapon utilized by the mob that day -- or, rather, most
11 effectively utilized, I should say. They had us
12 completely outnumbered. They had us encircled.

13 We were unable to escape should we need to
14 get out of there for medical attention. We were unable
15 to easily receive reinforcements.

16 There were no uniformed-differentiating
17 people who were violent from people who were not. So the
18 mob aided and abetted those who were violent in that way,
19 as those who were violent would then fall back into the
20 crowd and we would be unable to engage them.

21 THE COURT: Officer, just pause for a
22 second so that -- I think there was an objection trying
23 to be made.

24 MR. SHAW: Yes, Your Honor. The objection
25 is he continually talks about the mob as if all of the

1 individuals in the crowd were acting with a single mind
2 or single intent, when clearly --

3 THE COURT: This is -- that's a
4 cross-examination point. He can use the words that he
5 chooses to use. So overruled.

6 I think you probably need to remind him
7 where he was.

8 Q. (By Mr. Sus) Officer Hodges, I was asking
9 you, did the size of the mob have your -- what impact did
10 the size of the mob have on your ability to do your job
11 that day?

12 A. That's right. It -- it was the most
13 effective weapon utilized by the mob. They -- we had to
14 treat everyone as a threat, and in that way, we couldn't
15 focus on people who were violent. We -- our attention
16 was divided so thinly that it was difficult to engage and
17 protect ourselves and others.

18 Q. How, if at all, did the size of the mob
19 impact your ability to use firearms?

20 A. The size of the mob made it extremely
21 difficult to use firearms. While there were those in the
22 mob who at times used force or assaulted us in ways that
23 were likely to cause serious bodily injury or death, we
24 could not -- it made it extremely difficult to engage
25 them legally with firearms as we are not allowed to shoot

1 into a crowd.

2 As the crowd was largely the main element
3 present, and very rarely did we encounter individuals
4 that we could not handle one on one, it made it so that
5 firearms were an extremely risky proposition both legally
6 and morally.

7 Q. How, if at all, did the size of the mob
8 impact your ability to make arrests?

9 A. The size of the mob made it impossible to
10 make arrests. When we make a custodial arrest, we are
11 legally obligated to the safety, security, and medical
12 treatment of our prisoner.

13 These are things that we could not
14 guarantee for ourselves at the time, let alone members of
15 Congress and the Vice President inside, let alone, again,
16 any prisoners we might want to take.

17 Again, if we took a prisoner, typically
18 that requires two officers to guard them at all times,
19 and we needed every officer we had to assist in the
20 defense.

21 And so taking prisoners at that time was
22 simply untenable.

23 Q. How, if at all, did the size of the mob
24 impact the ability of emergency medical personnel to
25 render aid to individuals at the Capitol?

1 A. As far as I could tell, the Capitol was
2 encircled. There was no way for medical personnel to
3 access the -- to access the Capitol.

4 So the mob made it impossible for us to
5 receive professional medical care.

6 Q. What about nonviolent people in the mob;
7 how, if at all, did they impact your ability to do your
8 job?

9 A. Nonviolent people in the mob were still a
10 part of the crowd. They created all the problems that I
11 had previously testified to.

12 Q. So, Officer Hodges, are DC Metro Police
13 officers required to wear body cameras when they're on
14 duty?

15 A. We are.

16 Q. Were you wearing your department-issued
17 body camera on January 6, 2021?

18 A. I was.

19 Q. And was your body camera activated when
20 you were on the U.S. Capitol Grounds?

21 A. It was.

22 MR. SUS: Mr. Hehn, please pull up what's
23 been admitted as Exhibit 10 and pause the video.

24 Q. (By Mr. Sus) Officer Hodges, can you see
25 the video on your screen?

1 A. I can.

2 Q. What is this?

3 A. This is -- depicts me and my platoon
4 walking towards the West Terrace on January 6, 2021.

5 THE COURT: Okay. And I'm going to
6 apologize because I think I probably confused people.
7 When you -- when you're using an exhibit, we should offer
8 and admit it into evidence.

9 MR. SUS: Oh, okay. I can go back and do
10 that for this.

11 THE COURT: Okay.

12 Q. (By Mr. Sus) So, Officer Hodges, can you
13 see what's on your screen?

14 A. I can.

15 Q. What is this?

16 A. This is my body-worn camera recording from
17 January 6, 2021.

18 Q. And does the footage fairly and accurately
19 depict what you witnessed on January 6, 2021?

20 A. It does.

21 MR. SUS: Your Honor, move to admit
22 Exhibit 10.

23 MR. SHAW: Your Honor, we haven't yet seen
24 the video, so I'm not sure how he can state that it
25 accurately depicts what he saw that day.

1 THE COURT: Okay. But presumably he's
2 seen it before. And you've had access to it, so do you
3 have an objection?

4 MR. GESSLER: Your Honor, may I speak?

5 THE COURT: Sure. But in general, I'd
6 like to limit whoever is -- to one party, but . . .

7 MR. GESSLER: Absolutely.

8 Your Honor, I understand the procedural
9 posture of this case. Normally, you know, you listen to
10 the video, he looks at the whole thing, he authenticates
11 it. Then's the time for objection or admission.

12 I guess our preference is and -- I mean, I
13 understand that this has been admitted already. I
14 understand we've seen it and --

15 THE COURT: And --

16 MR. GESSLER: -- but just for purposes of
17 the record, we think that may be the best way to do it,
18 but if you want to provide guidance otherwise, we're
19 willing to follow that.

20 THE COURT: Okay. So I want to make
21 clear, you made some objections to exhibits, and I
22 overruled some of that -- objections.

23 That doesn't mean that it's admitted into
24 evidence. It needs to be presented at trial to actually
25 be admitted into evidence.

1 And so I think that he's offering to admit
2 it. I know -- I assume you object. If you do, let's get
3 it on the record and proceed.

4 Does that make sense?

5 MR. GESSLER: There is text underneath it.

6 THE COURT: Uh-huh.

7 MR. GESSLER: If we can just listen to it
8 and, you know, if the text reflects what was said and,
9 you know, indicates it, we're not going to object.

10 THE COURT: Okay. Perfect.

11 MR. GESSLER: Let me put it that way.

12 THE COURT: Why don't we play the video.

13 MR. SUS: Please play the video.

14 (Video playing.)

15 MR. SUS: Stop the video at 13:59:53.

16 Q. (By Mr. Sus) Officer Hodges, let me ask
17 you first, do you see the numbers on the top right corner
18 of the screen?

19 A. I do.

20 Q. What are those numbers?

21 A. The first set of numbers is the date:
22 2021/01/06.

23 The second set of numbers is the time at
24 which the recording was taken in the 24-hour clock.
25 13:59; in this 12-hour clock, it would be 1:59 p.m.

1 Q. Now, in this point in the video, where are
2 you headed?

3 A. Currently we're headed toward the West
4 Terrace.

5 Q. And what types of things are people
6 shouting in the video?

7 A. In the video, people are shouting at us,
8 calling us oath breakers, traitors, telling us to
9 remember our oaths, we're on the wrong side of history.
10 That sort of thing.

11 Q. And how did you interpret those words at
12 the time?

13 A. At the time, I interpreted those words to
14 mean that they -- the people shouting at us --

15 MR. SHAW: Objection, Your Honor. His
16 interpretation of the -- of those shouts is irrelevant to
17 any issue in this case. The shouts were made, but what
18 he understood them to mean is irrelevant.

19 THE COURT: Objection overruled.

20 A. I understood the shouts to mean that the
21 people who were shouting at us, which was everyone in the
22 mob that I could perceive, disapproved of us being there.

23 They understood that we were there to
24 protect the Capitol, which was antithetical to their
25 goals; that by protecting the United States Capitol, we

1 were somehow breaking our oaths to the Constitution; that
2 we were traitors to the United States.

3 Q. (By Mr. Sus) And why did you and your
4 fellow officers have your hands on each others' shoulders
5 in the video?

6 A. We put our hands on each others' shoulders
7 spontaneously as the crowd became more dense and
8 aggressive in an effort to try and keep ourselves from
9 getting separated.

10 Q. Had you ever done that prior to January 6,
11 2021?

12 A. No, we had not.

13 MR. SUS: Mr. Hehn, please resume the
14 video at time stamp 13:59:53.

15 (Video playing.)

16 MR. SUS: Let's pause the video at
17 14:00:35.

18 Q. (By Mr. Sus) Officer Hodges, could you
19 describe what we just saw?

20 A. In the video, we were -- my platoon,
21 rather, we were making our way towards the West Terrace
22 when we were attacked by the mob.

23 I was assaulted in various ways that I've
24 testified to, and someone attempted to steal my riot
25 baton. I wrestled with control of the baton and was able

1 to retain my weapon.

2 When we fended off the initial assault, we
3 were encircled by the mob, at which point they started
4 yelling at us, telling us that we're on the wrong team,
5 which suggested to me that they were going against our
6 efforts to defend the United States Capitol.

7 MR. SUS: Mr. Hehn, please resume the
8 video at 14:00:35.

9 (Video playing.)

10 MR. SUS: Let's pause the video at
11 14:01:20.

12 Q. (By Mr. Sus) Officer Hodges, do you see
13 the man wearing a vest in the video?

14 A. I do.

15 Q. What kind of vest is that?

16 A. It appears to be an external carrier vest
17 designed to carry within it a ballistic panel that would
18 protect the wearer from firearms. And judging from the
19 way it's bulging outward, it appears to carry such a
20 panel.

21 MR. SUS: Okay. Mr. Hehn, please pull up
22 what's been admitted as Exhibit 11 and hit pause.

23 Q. (By Mr. Sus) Officer Hodges, can you see
24 the video on your screen?

25 A. I can.

1 Q. What is this?

2 A. This further depicts the -- the time in
3 which we were making our way -- or trying to fight off
4 the mob and make our way to the west terrace.

5 Q. Is this your body camera footage from
6 January 6, 2021?

7 A. It is.

8 Q. Did you review this footage prior to your
9 testimony today?

10 A. I did.

11 Q. Does the footage fairly and accurately
12 depict the events you witnessed on January 6?

13 A. It does.

14 MR. SUS: Your Honor, at this time we
15 would move to admit Exhibit 11.

16 THE COURT: Let's go back to 10. You
17 asked to admit it. I didn't rule. Counsel for
18 Intervenor Trump, I think, wanted to wait to decide
19 whether to make an objection.

20 MR. SHAW: We have no objection to
21 Exhibit 10, Your Honor.

22 THE COURT: Okay. 10 is admitted.

23 (Exhibit 10 was admitted into evidence.)

24 THE COURT: I will let you play 11, and
25 then why don't you give them an opportunity to make an

1 objection if they would like to.

2 MR. SUS: Sure.

3 Please play Exhibit 11.

4 (Video playing.)

5 MR. SUS: Let's pause the video at
6 14:02:41.

7 Would now be an appropriate time to move
8 to admit, Your Honor?

9 THE COURT: Is that the end of the video?

10 MR. SUS: That is the end of this clip,
11 yes.

12 THE COURT: Okay. Any objection?

13 MR. SHAW: No, Your Honor.

14 THE COURT: Exhibit 11 is admitted.

15 (Exhibit 11 was admitted into evidence.)

16 Q. (By Mr. Sus) Officer Hodges, could you
17 describe what we just saw?

18 A. Yes. I had attempted to forge a path
19 through the mob for the rest of my platoon to follow so
20 we could join the defense of the West Terrace.

21 However, I looked back and saw that my
22 platoon was again being assaulted by the mob, their
23 forward progress effectively halted and being pushed
24 back.

25 I backtracked, started pulling off members

1 of the mob by their backpacks until someone observed me
2 and then assaulted me as well.

3 We -- they tried to steal my riot baton
4 again. We wrestled for control. I was elbowed. We went
5 to the ground, kicked in the chest, at which point I
6 ended up on my hands and knees with the medical mask I
7 was wearing pulled up over my eyes, so I was blind for a
8 moment.

9 Q. And looking at Exhibit 11 at time stamp
10 14:02:41, what type of vest is the man wearing in the
11 video?

12 A. The man appears to be wearing an external
13 carrier vest designed to carry within it a ballistic
14 panel. And again, judging from the way it's bulging
15 outward, it appears to carry such a panel.

16 MR. SUS: Your Honor, this video does
17 actually contain more content on it, so I prematurely
18 moved to admit it.

19 And frankly, to explain myself, I thought
20 that these videos were previously admitted and so -- but
21 could we watch the rest of the video, and then I move to
22 admit it again? Okay. Thank you.

23 So, Mr. Hehn, please resume the video at
24 time stamp 14:02:41.

25 (Video playing.)

1 MR. SUS: Pause the video at 14:03:20.

2 Q. (By Mr. Sus) Officer Hodges, did you hear
3 what the man said in the video?

4 A. I did.

5 Q. What did he say?

6 A. He wanted to get me out of there. He -- I
7 told him -- he asked me what he could do to help. I told
8 him to leave. He said, "That ain't gonna happen." And
9 he said, "It's going to turn bad," and that the others
10 were coming up from the back.

11 Q. And what did you understand those words to
12 mean?

13 MR. SHAW: Objection. It is -- his
14 understanding is irrelevant, it's speculative, and
15 it's -- he lacks foundation.

16 THE COURT: Overruled. He can testify as
17 to what somebody said to him, what he thought it meant.
18 It doesn't mean that's what they meant. It means it's
19 what he thought they meant.

20 Objection overruled.

21 A. I understood the -- the words he told me
22 were very concerning. He said that it was going to turn
23 bad, which means that it was going to -- he didn't think
24 it was bad yet, and it was going to get worse.

25 He said that the others were coming up

1 from the back. This indicated to me that there was
2 preplanning, coordination, and that they were
3 intentionally encircling the United States Capitol.

4 Q. (By Mr. Sus) And when the man asked what
5 he could do to help, you said, "Leave"; is that right?

6 A. That's correct.

7 Q. Why did you say that?

8 A. Because aside from convincing other people
9 to leave as well, that is the only thing he could do to
10 help.

11 His presence there was the biggest problem
12 to us, that he was a part of the mob, and the mob was the
13 threat.

14 MR. SUS: Mr. Hehn, please pull up
15 Exhibit 12, and press pause.

16 Yes, Your Honor, at this time we'd move to
17 admit Exhibit 11.

18 MR. SHAW: No objection.

19 THE COURT: 11 is admitted.

20 (Exhibit 11 was admitted into evidence.)

21 MR. SUS: And now could we pull up
22 Exhibit 12, Mr. Hehn.

23 Q. (By Mr. Sus) Officer Hodges, can you see
24 the video on your screen?

25 A. I can.

1 Q. What is this?

2 A. This further depicts the -- our time on
3 the Capitol Grounds as we make our way towards the West
4 Terrace, "we" being the remnant of CD 42 that was
5 attacked.

6 Q. Is this your body camera footage from
7 January 6, 2021?

8 A. It is.

9 Q. Did you review this footage prior to your
10 testimony today?

11 A. I did.

12 Q. Does the footage fairly and accurately
13 depict what you witnessed on January 6, 2021?

14 A. It does.

15 MR. SUS: And if we could play the video
16 starting at 14:03:57.

17 (Video playing.)

18 Q. (By Mr. Sus) Officer Hodges, could you
19 describe what we just saw?

20 A. The video depicts me as I, once again,
21 attempt to forge a path through the mob for the rest of
22 my platoon to follow as we make our way towards the West
23 Terrace.

24 This time I was successful. I was able to
25 push my way through. We made our way toward the area in

1 front of the West Terrace, where we joined a police line
2 being held there.

3 Q. And could you describe what you saw in the
4 crowd as you ran through them?

5 A. In the crowd, I saw people destroying
6 property, breaking down the bike rack-style barriers into
7 its poles, which I saw in the day used as weapons.

8 I saw agitator -- an agitator with a
9 megaphone encouraging further violence. I saw munitions
10 going off, chaos, no one -- no one obeying our lawful
11 orders to go home.

12 Q. And the people in the crowd you were
13 running through, did every one of them try to physically
14 attack you?

15 A. No.

16 Q. So did the people just peacefully standing
17 there impede your ability to do your job that day?

18 A. Yes.

19 Q. How is that?

20 A. Even the people who were not -- I didn't
21 observe attacking us made it difficult for us to analyze
22 the threats, engage those who were violent, and --
23 because we had no idea who was going to become violent or
24 who would not. The crowd made it so that the mob, when
25 they fell back, had a defense that made it very difficult

1 for us to deal with.

2 Q. And did you hear the alarm sound playing
3 in the video?

4 A. I did.

5 Q. What was that?

6 A. That is our LRAD system, which is like a
7 loudspeaker system. It's deployed when a First Amendment
8 assembly becomes unlawful or is unlawful. It broadcasts
9 a very loud order to disperse, and I -- it's very -- very
10 audible.

11 Q. And where the crowd was standing in the
12 area depicted in the video, was that area open to the
13 general public?

14 A. No.

15 Q. What, if any, chemical irritants did the
16 police deploy that day?

17 A. That day, I understand the police deployed
18 OC spray or pepper spray, and CS gas or tear gas.

19 Q. In your experience as a member of the
20 Civil Disturbance Unit, what do crowds typically do after
21 the police deploy chemical irritants?

22 A. In my experience, crowds typically
23 disperse when confronted with chemical irritants. It's
24 very persuasive in getting them to change their minds
25 about what they're trying to do. Gets them to break up

1 into individuals instead of continuing to function as a
2 singular group.

3 MR. SUS: Mr. Hehn, please resume the
4 video at time stamp 14:04:30.

5 (Video playing.)

6 MR. SUS: Let's stop at 14:04:45.

7 Q. (By Mr. Sus) Officer Hodges, looking at
8 the video, where on the Capitol Grounds are you located
9 at this point in the video?

10 A. At this point in the video, I am in front
11 of the West Terrace.

12 Q. And is there a police line shown in the
13 video?

14 A. There is.

15 Q. What, if anything, happened to that police
16 line that day?

17 A. Later on, the mob was able to break
18 through the police line.

19 MR. SUS: Your Honor, at this time, we'd
20 move to admit Exhibit 12.

21 MR. SHAW: No objection.

22 THE COURT: Exhibit 12 is admitted.

23 (Exhibit 12 was admitted into evidence.)

24 THE COURT: Are you going to be moving on
25 to another exhibit?

1 MR. SUS: Yes.

2 THE COURT: Okay. Let's take a break from
3 10:15 to 10:30. We're going to resume promptly
4 afterwards.

5 Did you need something, Mr. Gessler?

6 MR. GESSLER: No. I'm just --

7 THE COURT: Stretching your legs?

8 MR. GESSLER: I've had four glasses of
9 water this morning.

10 THE COURT: So at 10:30, we will be back
11 on the record.

12 (Recess taken from 10:14 a.m. until
13 10:34 a.m.)

14 THE COURT: You may be seated.

15 MR. SUS: Ready, Your Honor?

16 THE COURT: You may proceed.

17 MR. SUS: Mr. Hehn, please pull up
18 Exhibit 13, starting at time stamp 14:13:30.

19 Q. (By Mr. Sus) Officer Hodges, do you see
20 the video on your screen?

21 A. I do.

22 Q. Is this your body camera footage from
23 January 6, 2021?

24 A. It is.

25 Q. Did you review this footage prior to your

1 testimony today?

2 A. I did.

3 Q. Does the footage fairly and accurately
4 depict what you witnessed on January 6, 2021?

5 A. It does.

6 MR. SUS: Mr. Hehn, please play the video.

7 (Video playing.)

8 MR. SUS: And we're pausing at 14:13:42.

9 Q. (By Mr. Sus) Officer Hodges, do you see
10 the yellow flag that says, "Don't Tread on Me," in the
11 video?

12 A. I do.

13 Q. Over the course of the day on January 6,
14 did you see the mob holding up flags referencing American
15 wars?

16 A. I did.

17 Q. Which ones?

18 A. I saw the flag you just referenced, which
19 I know to be the Gadsden flag. It's a Revolutionary War
20 flag of the United States.

21 And I saw Confederate battle flags,
22 referencing the United States Civil War.

23 Q. Did any other flags stand out?

24 A. I saw flags advertising Trump for the
25 presidential election of 2020, which at that point was

1 over.

2 I saw another flag in the video, crossed
3 rifles, signifying the military and willingness to
4 violence. I --

5 MR. SHAW: Objection. Foundation.

6 THE COURT: You can --

7 MR. SHAW: Move to strike.

8 THE COURT: I will sustain the objection.
9 You can ask him how he knows.

10 MR. SUS: I'll move on, Your Honor.

11 Q. (By Mr. Sus) Officer Hodges, what, if any,
12 Trump paraphernalia did you see among the crowd that day?

13 A. I saw lots of Trump paraphernalia. People
14 wearing articles of clothing with Trump's name on them.
15 Trump 2020 advertisements. Flags and articles of
16 clothing saying, "God, Guns, Trump." Again, the "Stop
17 the Steal" slogan was prevalent.

18 Q. And what, if anything, did you hear the
19 mob say about President Trump?

20 A. I heard them say, "Fight for Trump." It
21 was a chant. They -- that was the most explicit one.

22 MR. SUS: And, Mr. Hehn, could you play
23 the video again.

24 (Video playing.)

25 MR. SUS: And, Your Honor, that's the

1 complete video.

2 At this time, we would move to admit
3 Exhibit 13.

4 THE COURT: Any --

5 MR. SHAW: No objection.

6 THE COURT: 13 is admitted.

7 (Exhibit 13 was admitted into evidence.)

8 MR. SUS: Mr. Hehn, could you pull up
9 Exhibit 14 at time stamp 14:25:11.

10 Q. (By Mr. Sus) Officer Hodges, do you see
11 the video on your screen?

12 A. I do.

13 Q. Is this your body camera footage from
14 January 6, 2021?

15 A. It is.

16 Q. Did you review this footage prior to your
17 testimony today?

18 A. I did.

19 Q. Does the footage fairly and accurately
20 depict the events of January 6, 2021, as you remember
21 them?

22 A. It does.

23 MR. SUS: Mr. Hehn, please play the video.

24 (Video playing.)

25 Q. (By Mr. Sus) Officer Hodges, did you hear

1 the man speaking in the video?

2 A. I did.

3 Q. How did you interpret his statements at
4 the time?

5 A. At the time, I interpreted his statements
6 to -- as an attempt to coerce us into joining their
7 assault on the Capitol. He explicitly asks us to take
8 off our badges and put down our weapons and join them.
9 He says that if we don't, then they will run over us.

10 He then references our guns, saying that,
11 "Do you think those little pee shooters are going to stop
12 us?" This was particularly concerning to me that it
13 meant that he was willing to withstand lethal force that
14 we might use and -- in his efforts to achieve his
15 objective.

16 MR. SUS: Your Honor, at this time, we
17 would move to admit Exhibit 14.

18 MR. SHAW: No objection.

19 THE COURT: Exhibit 14 is admitted.

20 (Exhibit 14 was admitted into evidence.)

21 MR. SUS: Mr. Hehn, please pull up
22 Exhibit 15, time stamp 14:28:45.

23 Q. (By Mr. Sus) Officer Hodges, do you see
24 the video on your screen?

25 A. I do.

1 Q. Is this your body camera footage from
2 January 6, 2021?

3 A. It is.

4 Q. Did you review this video prior to your
5 testimony today?

6 A. I did.

7 Q. Does the video fairly and accurately
8 depict the events of January 6, 2021, as you recall them?

9 A. It does.

10 MR. SUS: Mr. Hehn, please play the video.

11 (Video playing.)

12 MR. SUS: We're stopping the video at
13 14:30:33.

14 Q. (By Mr. Sus) Officer Hodges, could you
15 describe what we just saw?

16 A. The video depicts the police line in front
17 of the West Terrace at the time it was breached by the
18 mob. The -- the mob was able to breach the line, they
19 pushed through us, and the sheer size and number of
20 people involved made it impossible to re- -- get the line
21 back where it was.

22 We -- they continued to assault us, push
23 us back. We were beaten, pushed, kicked. I was
24 overwhelmed by members of the mob, being pushed back by
25 several at once, until I was pushed back against that

1 waist/back-high wall you see in the video. I was held
2 there while one of the assailants attempted to gouge out
3 my eye.

4 And I was able to repel the attackers, and
5 we were forced to retreat.

6 Q. Officer Hodges, how did the assailant try
7 to gouge out your eye?

8 A. He grabbed my face and stuck his thumb in
9 my eye and pushed it in, tried to dig it out as best he
10 could.

11 Q. So the time stamp at the start of this
12 video was around 2:28 p.m.

13 Is that about when -- the time the mob
14 started to surge?

15 A. That's correct.

16 Q. Had you ever seen a crowd break through a
17 police line like that before?

18 A. No.

19 Q. To your knowledge, prior to this point,
20 had the DC Metropolitan Police Department ever had to
21 fall back from a police line because a crowd broke
22 through it?

23 A. No.

24 Q. Did you hear the man in the video say,
25 "This is our house"?

1 A. I did.

2 Q. What did you understand those words to
3 mean?

4 MR. SHAW: Objection. Relevance.

5 THE COURT: Overruled.

6 MR. SHAW: Foundation as well.

7 THE COURT: You may testify as to what you
8 understood it to mean.

9 A. At the time, I understood the assailants'
10 words "This is our house" to mean that they had the right
11 to be there or they believed they had the right to be
12 there, that they had the right to enter whenever they
13 wanted, and they had the right to decide what went on
14 and, more pertinently, what did not go on inside the
15 United States Capitol.

16 Q. (By Mr. Sus) Over the course of the day,
17 did you hear other individuals say, "This is our house"?

18 A. I did.

19 MR. SUS: Your Honor, at this time, we
20 would move to admit Exhibit 15.

21 MR. SHAW: No objection.

22 THE COURT: Exhibit 15 is admitted.

23 (Exhibit 15 was admitted into evidence.)

24 MR. SUS: Mr. Hehn, please pull up
25 Exhibit 16, starting at time stamp 14:30:44, and pause

1 the video.

2 Q. (By Mr. Sus) Officer Hodges, do you see
3 the video on your screen?

4 A. I do.

5 Q. Is this your body camera footage from
6 January 6, 2021?

7 A. It is.

8 Q. Did you review this footage prior to your
9 testimony today?

10 A. I did.

11 Q. Is this footage a fair and accurate
12 depiction of the events of January 6, 2021, as you recall
13 them?

14 A. It is.

15 MR. SUS: Please play the video.

16 (Video playing.)

17 Q. (By Mr. Sus) Officer Hodges, could you
18 describe what we just saw?

19 A. As we were retreating from the police line
20 being broken on -- in front of the West Terrace, I
21 observed a man who was on the ground and had a large
22 knife on his belt. Other officers were attempting to
23 disarm him of his knife, and I assisted while another
24 officer took possession of the knife.

25 Q. To your knowledge, was this man arrested

1 at the scene?

2 A. No.

3 Q. Why not?

4 A. As I previously testified, the current
5 conditions that you see in the video made it untenable to
6 make arrests. We could not guard him adequately with our
7 manpower, nor provide for his safety, security, and
8 medical treatment.

9 MR. SUS: Your Honor, at this time we
10 would move to admit Exhibit 16.

11 MR. SHAW: No objection, Your Honor.

12 THE COURT: Exhibit 16 is admitted.

13 (Exhibit 16 was admitted into evidence.)

14 MR. SUS: Mr. Hehn, please pull up
15 Exhibit 17, starting at time stamp 14:32:15, and press
16 pause.

17 Q. (By Mr. Sus) Officer Hodges, do you see
18 the video on your screen?

19 A. Yes.

20 Q. Is this your body camera footage from
21 January 6, 2021?

22 A. It is.

23 Q. Did you review this footage prior to your
24 testimony today?

25 A. I did.

1 Q. Is this a fair and accurate depiction of
2 the events of January 6, 2021, as you recall them?

3 A. It is.

4 MR. SUS: Please play the video.

5 (Video playing.)

6 Q. (By Mr. Sus) Officer Hodges, just to
7 orient us, can you describe where you start at the
8 beginning of the video and then where you ended up?

9 A. At the beginning of the video, I was in
10 front of the West Terrace. I ascended the stairs of the
11 inaugural stage up to the West Terrace proper.

12 Q. And looking at the time stamp currently
13 showing on Exhibit 17, it says 14:13:11.

14 So this is approximately 2:33 p.m.; is
15 that right?

16 A. 14:30- -- 14:33, is that what you mean?

17 Q. Yes.

18 A. Correct.

19 Q. And by this time, 2:33 p.m., were the
20 police still in control of where you were standing on the
21 West Terrace of the Capitol?

22 A. Yes.

23 Q. Were the police able to maintain control
24 of the West Terrace of the Capitol the rest of the day?

25 A. No.

1 MR. SUS: Your Honor, at this time we
2 would move to admit Exhibit 17.

3 MR. SHAW: No objection.

4 THE COURT: Exhibit 17 is admitted.

5 (Exhibit 17 was admitted into evidence.)

6 MR. SUS: Mr. Hehn, please pull up
7 Exhibit 18, starting at time stamp 14:36:10.

8 Q. (By Mr. Sus) Officer Hodges, do you see
9 the video on your screen?

10 A. I do.

11 Q. Is this more of your body camera footage
12 from January 6, 2021?

13 A. It is.

14 Q. Did you review this footage prior to your
15 testimony today?

16 A. I did.

17 Q. Is this a fair and accurate depiction of
18 the events of January 6, 2021, as you recall them?

19 A. It is.

20 MR. SUS: Please play the video.

21 (Video playing.)

22 MR. SUS: Let's pause the video at
23 14:37:06.

24 Q. (By Mr. Sus) Officer Hodges, just to
25 orient us again, can you walk us through where you

1 started at the beginning of the video and then where you
2 ended up?

3 A. At the beginning of the video, I was on
4 the West Terrace. I then entered the doorway and into
5 the tunnel that connects the West Terrace to the room
6 known as the Crypt.

7 Q. And who was coughing in the video?

8 A. That was me.

9 Q. Why were you coughing?

10 A. I was experiencing the effects of CS gas,
11 or tear gas, in the air.

12 MR. SUS: Your Honor, at this time, we
13 would move to admit Exhibit 18.

14 MR. SHAW: No objection.

15 THE COURT: Admitted.

16 (Exhibit 18 was admitted into evidence.)

17 MR. SUS: Mr. Hehn, please pull up
18 Exhibit 19, starting at time stamp 19:54:38.

19 Q. (By Mr. Sus) Officer Hodges, do you see
20 the video on your screen?

21 A. Yes.

22 Q. Is this more of your body camera footage
23 from January 6, 2021?

24 A. Yes.

25 Q. Did you review this video prior to your

1 testimony today?

2 A. I did.

3 Q. Is this a fair and accurate depiction of
4 the events of January 6, 2021 --

5 A. Yes.

6 Q. -- as you recall them?

7 A. Yes.

8 Q. Could you tell us where you're located at
9 this point in the video --

10 MR. SUS: Oh, I'm sorry, Your Honor.

11 Could we please play the video.

12 (Video playing.)

13 Q. (By Mr. Sus) Now, Officer Hodges, could
14 you tell us where you're located at this point in the
15 video?

16 A. At this point in the video, I am in the
17 tunnel that connects the West Terrace to the Crypt.

18 Q. So you were on the other side of the
19 tunnel that you had previously seen walking through in
20 the prior video?

21 A. Correct.

22 Q. And can you describe what was happening in
23 the video?

24 A. In the video, we are forming a line inside
25 the tunnel, attempting to defend that entrance from the

1 mob.

2 Q. And could you describe the scene inside of
3 that tunnel?

4 A. The scene inside of the tunnel was a
5 sensory overload. It was chaotic. It was extremely
6 loud. There was alarms going off. Lots of people
7 yelling. There were chemical munitions in the air,
8 strobe lights.

9 And intense body-to-body contact. We --
10 as you got closer to where the assailants in the police
11 line was, the more compressed everyone got, until it was
12 a lot of pressure being exerted on you.

13 Q. By this point in the day, around
14 2:55 p.m., had the mob taken control of the West Terrace
15 of the Capitol?

16 A. Yes.

17 Q. What was your belief of what would happen
18 if the mob broke through that police line in that tunnel?

19 A. We -- at the time, we had no idea if the
20 mob was able to gain entry into the Capitol building
21 through any other means.

22 We believed that if they were to defeat
23 our line in the tunnel, they would have unfettered access
24 to the Capitol itself and make good on all their threats.

25 Q. Threats against whom?

1 A. Congress, the Vice President.

2 Q. Did you hear the officers in the video
3 say, "Interlock the shields"?

4 A. Yes.

5 Q. And what does that mean?

6 A. Some of our police shields are designed by
7 their shape to be able to interlock with each other when
8 placed next to each other in a certain way. This allows
9 them to function as a single shield and thus eliminates
10 the vulnerability of having two individual shields as
11 individual pieces of equipment.

12 Q. Prior to January 6, 2021, had you ever
13 used that interlocking shield function?

14 A. I had not.

15 MR. SUS: At this time, Your Honor, we
16 would move to admit Exhibit 19.

17 MR. SHAW: No objection.

18 THE COURT: Exhibit 19 is admitted.

19 (Exhibit 19 was admitted into evidence.)

20 THE COURT: Officer Hodges, could you just
21 explain for the Court exactly, like -- I'm not sure I
22 understand this tunnel. Like, a tunnel from where to
23 where and -- and -- yeah.

24 A. It's -- it's commonly referred to as the
25 tunnel, but it's a hallway.

1 THE COURT: Oh.

2 A. It just connects the outside, the terrace
3 where I was, to the inside of the Capitol itself. It's a
4 hallway.

5 THE COURT: In my mind, it was some sort
6 of underground tunnel, so . . .

7 MR. SUS: Mr. Hehn, please pull up
8 Exhibit 20 and pause the video.

9 Q. (By Mr. Sus) Officer Hodges, do you see
10 the video on your screen?

11 A. I do.

12 Q. And what does this video show?

13 A. This video shows the inside of the tunnel
14 connecting the West Terrace to the Crypt while we were
15 defending it from the mob, who was trying to gain entry
16 to the Capitol.

17 Q. Did you review this video prior to your
18 testimony today?

19 A. I did.

20 Q. And is it a fair and accurate depiction of
21 the events from January 6, 2021, as you remember them?

22 A. It is.

23 MR. SUS: Please play the video.

24 (Video playing.)

25 Q. (By Mr. Sus) Officer Hodges, can you

1 describe what we just saw?

2 A. The video depicts the time at which I had
3 moved to the front of the police line inside the tunnel
4 connecting the West Terrace to the Crypt.

5 And when I was attempting to repel the
6 attackers, I had positioned myself in front of a metal
7 rigid doorframe in an attempt to use it to support my
8 efforts to push forward. Unfortunately, that time, the
9 momentum had shifted and our assailants had me pushed
10 back and pinned me against the doorframe with a police
11 shield.

12 At that time, one of my assailants took
13 advantage of my vulnerability, grabbing my gas mask on my
14 face, pushing and pulling rapidly, effectively punching
15 me in the face several times, and then ripping it off my
16 head.

17 He was able to -- at the time, my arms
18 were pinned to my sides. I was effectively defenseless.
19 With this in mind, he was able to rip away my riot baton
20 and then strike me in the head with it.

21 I -- at that point, I was experiencing all
22 the effects of the day: various assaults, the head trauma
23 I had just endured, chemical irritants, and the crushing
24 pressure from the crowd. And I was -- my -- I could feel
25 my senses diminishing. I was still trapped, though, so I

1 did the only thing I could do: called for help.

2 Fortunately, other officers were able to
3 extricate me from my position, and I fell back to the
4 rear of the tunnel.

5 Q. Did you hear the mob shouting, "Heave ho"?

6 A. I did.

7 Q. What was your understanding of what they
8 were doing?

9 A. The mob shouting "Heave-ho," I understood
10 to be them coordinating their efforts in order to break
11 through our defensive line. They were synchronizing
12 their movement to multiply the force it applied and use
13 their bodies to break through our line and gain access to
14 the Capitol.

15 Q. Now, the body camera video we previously
16 watched, Exhibit 19, showed you in the tunnel around
17 2:55 p.m., according to the time stamp on that video; is
18 that right?

19 A. That's correct.

20 Q. Approximately how long after 2:55 p.m. did
21 the events shown in this video, Exhibit 20, take place?

22 A. Approximately 10, 15 minutes.

23 Q. Okay. So around 3:05 or 3:10?

24 A. That's correct.

25 MR. SUS: Your Honor, at this time, we

1 would move to admit Exhibit 20.

2 MR. SHAW: No objection.

3 THE COURT: Admitted.

4 (Exhibit 20 was admitted into evidence.)

5 Q. (By Mr. Sus) Officer Hodges, how long did
6 you remain in the tunnel after 3:10?

7 A. I did not remain in the tunnel for very
8 long at that point. I fell back to the Crypt to
9 convalesce as best I could.

10 However, the fight was still ongoing, and
11 we needed every body we had in the defense of the
12 Capitol. So I went back out there.

13 I no longer had my gas mask and a lot of
14 my equipment. I was afraid I would be a liability in the
15 tunnel, so I ascended a stair nearby back out to the West
16 Terrace and joined a police line that was there.

17 I remained on that line until
18 reinforcements started to arrive from outside agencies,
19 at which point I returned to the Crypt and waited there.

20 MR. SUS: Mr. Hehn, could you please pull
21 down the video.

22 Q. (By Mr. Sus) Officer Hodges, when you left
23 the tunnel, did you still have your body camera on you?

24 A. I did not.

25 Q. What happened to it?

1 A. It either fell off or was ripped off my
2 chest where it was mounted and fell to the ground, where
3 it remained until another officer found it the following
4 day.

5 Q. And did you retrieve it at some point from
6 that officer?

7 A. Through my agency, it returned to my
8 possession, yes.

9 Q. And so what did you do for the remainder
10 of the day after you left the Crypt?

11 A. Back in the Crypt, I waited while members
12 of my platoon gradually gathered, and we waited to --
13 until we were all assembled, at which point we stood by,
14 waiting for further orders. We stayed there until around
15 midnight, at which point we were told that we were able
16 to clear the Capitol.

17 We left the Capitol grounds. Those who
18 needed immediate medical attention went to hospitals.
19 Those of us who did not were still on-duty. We reported
20 to downtown and awaited further orders.

21 I believe at about 1:00 a.m., eventually
22 we were told we could go home. And we went back to our
23 district from there, and then went our separate ways.

24 Q. How would you characterize the events you
25 witnessed on January 6, 2021?

1 A. The events on January 6, 2021 at the
2 United States Capitol were horrific. It was a terrorist
3 attack on the United States of America, an assault on
4 democracy, and an attempt to prevent the peaceful
5 transfer of power.

6 Q. About how many protest events have you
7 worked as a member of the Civil Disturbance Unit?

8 A. Dozens.

9 Q. How did the events of January 6, 2021
10 compare to those other experiences you had as a member of
11 the CDU?

12 A. The events of January 6 are incomparable
13 to any other riots or protests or First Amendment
14 assemblies I have policed. There is just no -- no
15 comparison on the level of violence and stakes.

16 Q. And what were you fighting for on
17 January 6?

18 A. On January 6, I was fighting for --

19 MR. SHAW: Objection. Relevance.

20 THE COURT: Overruled.

21 A. On January 6, I was fighting for
22 democracy. I was fighting for the safety and well-being
23 of the members of Congress, the Vice President, the
24 congressional staff who were in the building that day. I
25 was fighting for myself, for my colleagues, and everyone

1 who participates in our democracy.

2 MR. SUS: Thank you, Officer Hodges.

3 No further questions.

4 THE COURT: Cross-examination.

5 MR. SHAW: I may want that a little later,
6 but not yet.

7 CROSS-EXAMINATION

8 BY MR. SHAW:

9 Q. Officer Hodges, there were multiple
10 demonstrations --

11 THE COURT: Mr. Shaw, can you move the
12 microphone? You're taller so can you --

13 MR. SHAW: Sure.

14 THE COURT: -- make sure that you're
15 speaking into it?

16 MR. SHAW: Sure thing.

17 Is that better?

18 THE COURT: Yeah, a little bit.

19 Q. (By Mr. Shaw) Officer Hodges, how many
20 demonstrations were there in Washington, DC on January 6?

21 A. I'm only aware of what transpired at the
22 Capitol and the one at the Ellipse.

23 Q. Okay. Are you aware that there were
24 people who spoke at the Supreme Court?

25 A. No.

1 Q. Are you aware that there were people who
2 spoke at other venues in Washington, DC that day?

3 A. No.

4 Q. Are you aware that there were protesters
5 who did not attend any of the events where people spoke?

6 A. No.

7 Q. You said that you thought there were --
8 based on your view of the crowd that day, there were at
9 least thousands of people present; is that correct?

10 A. Correct.

11 Q. How many people attended demonstrations in
12 Washington, DC, overall, that day?

13 A. I don't have an exact number.

14 Q. Okay. Have you heard any estimates of the
15 number who were in attendance at various demonstrations
16 that day?

17 A. I -- at the Capitol, I heard of -- or I've
18 read of a number around 9,400.

19 Q. Okay. Have you heard an overall number in
20 excess of 120,000?

21 A. No.

22 Q. Okay. Is it your position that all of the
23 people who attended demonstrations in Washington, DC that
24 day were members of what you called "the mob"?

25 A. If there are demonstrations that were not

1 part of the assault on the Capitol, then no.

2 Q. So "the mob," if I understand you
3 correctly, you're defining as just the subset of people
4 who assaulted the Capitol?

5 A. Correct.

6 Q. And as you sit here today, are you able to
7 tell me what percentage of what you call "the mob"
8 attended President Trump's speech at The Ellipse?

9 A. No.

10 Q. Are you able to tell me what percentage of
11 what you call "the mob" listened to President Trump's
12 speech at the Ellipse?

13 A. No.

14 Q. Now, several times, you said: The mob did
15 this, the mob said this, I saw the mob do this, or words
16 to that effect.

17 Do you remember that?

18 A. Yes.

19 Q. Okay. Fair to say what you're really
20 saying is, I saw individuals in what I call "the mob" do
21 this or say this, correct?

22 A. A mob is composed of individuals, so yes.

23 Q. Okay. And there were other people who
24 were standing there who did not do or say those things,
25 right?

1 A. That is correct.

2 Q. And some portion of the people who were
3 standing there were there and did not physically assault
4 anybody, right?

5 A. I did not -- there were times where I
6 observed people and they were not assaulting anyone,
7 correct.

8 Q. And there were other demonstrators in
9 Washington, DC that day who did not form part of the mob,
10 as you define it, correct?

11 A. I'm only aware of what transpired at the
12 Ellipse and at the Capitol.

13 Q. Okay. Now, fair to say that you are not
14 able to read minds, right?

15 A. That is fair to say.

16 Q. And just by looking at someone who was
17 there that day, you weren't able to tell if that person
18 attended the speech at the Ellipse, correct?

19 A. That's correct.

20 Q. Or if that person had heard the speech,
21 right?

22 A. Correct.

23 Q. Or, for that matter, if that person had
24 ever read a tweet by President Trump, correct?

25 A. Correct.

1 MR. SHAW: Would you put up Exhibit 14,
2 please. And just pause it right at the very beginning,
3 whoever was working the . . .

4 Yeah. Okay, great. Joanna's doing it,
5 okay.

6 Q. (By Mr. Shaw) So, for example, if we look
7 at this picture, you can't tell whether -- this woman on
8 the left in the striped shirt, you can't tell whether she
9 attended the -- the speech on the Ellipse, correct?

10 A. I cannot tell that by looking at her, no.

11 Q. Or in -- or in any other way, right?

12 A. Correct.

13 Q. And the man behind her who, a few moments
14 later, was going to yell at you, you can't tell whether
15 he attended that speech, right?

16 A. Correct.

17 Q. Or any of the other people in that
18 picture, right?

19 A. Correct.

20 Q. Or, in fact, any of the other people in
21 any of the other film exhibits that we saw earlier today,
22 right?

23 A. I cannot identify individuals who attended
24 the speech and then were at the Capitol.

25 Q. Or who read any of President Trump's

1 tweets, correct?

2 A. Correct.

3 Q. And I wanted to clear up a couple of
4 things I just wasn't clear about from your testimony.

5 At one point, you said that the -- and I
6 forget the exact name of it, but you said there was a gun
7 unit?

8 A. Gun Recovery Unit?

9 Q. Gun Recovery Unit. That's it. Thank you.

10 And you said, I believe, that they
11 identified people who either had weapons or who they
12 thought might have weapons.

13 Is that correct?

14 A. That's correct.

15 Q. Okay. Do you know how many people have
16 been prosecuted for firearms crimes arising out of the
17 January 6 demonstration?

18 A. No.

19 Q. Would it surprise you to learn that it is
20 a total of five?

21 A. No.

22 Q. Okay. And that one of those people
23 arrived on January 7 in Washington, DC; so it was really
24 four on January 6?

25 A. Okay.

1 Q. And do you know how many people in -- how
2 many demonstrators discharged a firearm in Washington, DC
3 on January 6?

4 A. I do not know.

5 Q. Would it surprise you to learn it was
6 zero?

7 A. No.

8 Q. And then I just -- I believe you said that
9 you -- you thought you had suffered a concussion, is that
10 correct, because you had a headache for --

11 A. That's --

12 Q. -- for two weeks?

13 A. That's correct.

14 Q. Okay. Were you diagnosed with a
15 concussion by a medical professional?

16 A. I went to the Police & Fire Clinic, and
17 they sent me to Washington Hospital Center, which is a
18 hospital in Washington, DC.

19 Received an MRI, and I wasn't diagnosed
20 with a concussion, but that they -- they asked me if I
21 wanted to do any further tests for that. And I said no,
22 because if I was or wasn't, the course of treatment is
23 the same.

24 Q. Okay.

25 MR. SHAW: I have no further questions for

1 you, sir. Thank you.

2 THE COURT: Any questions from the
3 Colorado Republican Party?

4 MS. RASKIN: No questions, Your Honor.

5 THE COURT: Any questions from
6 Secretary Griswold?

7 MR. SULLIVAN: No questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. SUS: Brief redirect, Your Honor.

10 THE COURT: Okay.

11 REDIRECT EXAMINATION

12 BY MR. SUS:

13 Q. Officer Hodges, you testified that you
14 were initially stationed on Constitution Avenue; is that
15 right?

16 A. That's correct.

17 Q. On January 6?

18 A. Yes.

19 Q. And that was between the hours of
20 7:00 a.m. and 1:30 p.m.; is that accurate?

21 A. That's accurate.

22 Q. And during that time, did you observe the
23 crowd walking -- or your testimony earlier today was that
24 you observed the crowd walking from the Ellipse area to
25 the Capitol; is that right?

1 A. That's correct.

2 Q. Okay.

3 MR. SUS: No further questions, Your
4 Honor.

5 THE COURT: Officer Hodges, thank you so
6 much for your testimony and your service to this country.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Next witness.

9 MS. TIERNEY: Your Honor, our next witness
10 is remote, and so it might just take about one minute. I
11 think they're all ready. We just have to let them in,
12 and they are -- it will now be under Congressman Eric
13 Swalwell.

14 Your Honor, the petitioners call
15 Congressman Eric Swalwell.

16 Okay, he's coming right now. Sorry for
17 the delay.

18 Here he is, Your Honor.

19 THE COURT: I can't see him. Am I
20 supposed to be able to?

21 MS. TIERNEY: Thank you, Congressman
22 Swalwell. Just one moment while we get the tech set up.

23 Okay. Good afternoon, Congressman. Can
24 you please introduce yourself.

25 THE COURT: I need to swear him in.

1 MS. TIERNEY: Oh, sorry.

2 THE COURT: Now I'm fumbling with the
3 technology.

4 MS. TIERNEY: Well, and we have a siren
5 again.

6 THE COURT: Congressman Swalwell, can you
7 hear us?

8 THE WITNESS: Yes, Your Honor, I can.

9 THE COURT: Great.

10 Will you please raise your right hand.

11 ERIC SWALWELL,

12 having been first duly sworn, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. TIERNEY:

16 Q. Good afternoon, Congressman Swalwell.
17 Could you please introduce yourself.

18 A. Good afternoon. My name is Eric Swalwell,
19 and I represent the 14th Congressional District from
20 California.

21 Q. How long have you been a member of
22 Congress?

23 A. Going on 11 years. Elected in 2012 and
24 sworn in on January 3, 2013.

25 Q. Were you at the U.S. Capitol on January 6,

1 2021?

2 A. Yes, I was.

3 Q. And what was supposed to happen in
4 Congress that day?

5 A. We were sworn in three days earlier, and
6 on the 6th was to be the day where the Congress votes
7 to certify the electoral college votes that were sent
8 from December after being ratified by the states.

9 Q. I'm going to ask you some more questions
10 about January 6, 2021. But first, I would like to ask
11 you some questions about prior presidential elections.

12 When, if ever, had you participated in
13 Congress's counting of electoral votes for President
14 before January 6, 2021?

15 A. I had also participated in the January 6,
16 2013 certification for the reelection of President Barack
17 Obama, and I also participated on January 6, 2017 for the
18 election of President Donald Trump.

19 Q. And does Congress always count the votes
20 on January 6?

21 A. Yes, every four years on January 6.
22 Again, the new Congress sworn in on the 3rd, and then
23 on the 6th is when the certification occurs.

24 Q. In your experience, what is the process
25 for counting and certification of electoral votes on

1 January 6?

2 A. Largely ceremonial, in that, you know, the
3 Congress convenes in what's called a joint session,
4 meaning the House and the Senate are in the Congress.
5 The Vice President of the United States, the President of
6 the Senate, presides over the count.

7 And each state alphabetically has their
8 votes called. If there's an objection, you need somebody
9 to meet your objection from the other Chamber.

10 So, for example, if a House member
11 objects, a Senator would also have to object. And then
12 both bodies would go back to their Chambers and debate
13 the objection, and then come back for resuming the count.

14 Q. And how are those objections resolved?

15 A. They're resolved through debate and then a
16 vote.

17 Q. And I think you testified about this, but
18 what role does the Vice President play in those
19 proceedings, generally?

20 A. As the President of the Senate, the Vice
21 President, you know, presides over the count.

22 There are tellers who are seated just
23 below the Vice President from both Chambers, both
24 parties. They tally the counts that are sent from the
25 states, and the Vice President literally -- you know,

1 kind of like in an award show -- opens up the count and
2 reads how the state went for each individual candidate.

3 Q. In 2016, were there objections to the
4 counting and certification of electoral votes from any
5 state?

6 A. Do you mean in 2017?

7 Q. Yes, I'm sorry. Arising out of the 2016
8 election, so on January 6, 2017.

9 A. I do recall there was at least one, and
10 perhaps more, Democratic House objections. But I also
11 recall that there was no Senator to sign off, so to
12 speak, or cosign on the objection, and so we never
13 adjourned for a debate.

14 Q. And so what happened with those
15 objections?

16 A. I remember Vice President Biden -- I was
17 in the Chamber and Vice President Biden asked if there
18 was a Senator who also objected. No Senator objected,
19 and the Vice President would open up the envelope or look
20 at the votes sent from the state, and they would just
21 alphabetically proceed to the next state.

22 Q. And did you object to the counting or
23 certification of any electoral votes?

24 A. Not in 2013 and not in 2017, no.

25 Q. Do you recall any of the objectors in

1 2017, on January 6, 2017, suggesting that then-Vice
2 President Biden, as President of the Senate, could have
3 rejected any of the electoral votes submitted by the
4 states?

5 A. No, I do not recall that ever coming up in
6 any caucus meetings or any public representations.

7 Q. And what do you recall, if anything, about
8 anyone suggesting that then-Vice President Biden, as
9 President of the Senate, could declare Hillary Clinton
10 the winner of the 2016 election?

11 A. To my recollection, that was never
12 discussed by any of my House colleagues.

13 Q. Before late 2020 or early 2021, had you
14 ever heard anyone suggest that the Vice President, as
15 President of the Senate, had discretion to reject
16 electoral votes from states?

17 A. I would -- I would not hear of that line
18 of argument until after the 2020 election from the former
19 President, Donald Trump, and his team.

20 Q. And did then-Vice President Biden try to
21 do any of those things during the counting and certifying
22 of the 2016 presidential election?

23 A. He did not. If there was not a Senator to
24 match a House member's objection, he moved on with the
25 count.

1 Q. Do you recall any candidate or colleague
2 suggesting that Congress should ignore the Constitution
3 and certify the election for the winner of the 2016
4 popular vote?

5 A. I don't recall that ever happening.

6 Q. And did any person supporting any
7 candidate for President, to your knowledge, attack the
8 Capitol on January 6, 2017?

9 A. That definitely did not happen on
10 January 6, 2017.

11 Q. And are you aware of anyone ever attacking
12 the Capitol during Congress's counting and certification
13 of presidential electoral votes in the history of our
14 country prior to January 6, 2021?

15 A. Certainly not in my lifetime and not any
16 knowledge I have of the Congress's history.

17 Q. I now want to turn to the 2020 election.

18 Did you have any concerns in the weeks and
19 months leading up to the 2020 presidential election about
20 whether Mr. Trump would accept the results of the
21 election if he lost?

22 A. I did. And that was the evening of the
23 election, when a statement was made by the President
24 early in the morning, essentially -- or not
25 essentially -- he was saying that the election was

1 rigged.

2 And then -- and to be honest, prior to the
3 election, the President would not honor reporters'
4 requests to accept the outcome of the election if he
5 lost.

6 And then, of course, on the night of the
7 election, he had said in his first public statement that
8 he believed it was rigged.

9 And then in the weeks after the media
10 declared Joe Biden as the President-elect and the states
11 certified the election outcomes and the lawsuits that the
12 President and his team had brought had all been dismissed
13 in the courts, the President ramped up his rhetoric in
14 public appearances and on Twitter.

15 And the one that I recall was an
16 invitation in mid-December via Twitter for people to come
17 to the Capitol on January 6 and stating in the tweet,
18 "Will be wild."

19 Q. You testified just there that there were
20 legal challenges that you were aware of brought by
21 Mr. Trump to the 2020 election.

22 By December 14, 2020, are you aware of
23 what the status of those legal challenges was?

24 A. By December 14, I think that, if I recall,
25 is the date where the states were certifying their

1 counts. Every challenge to the states' counting and
2 doing their certification had been dismissed or dropped
3 by the President's team.

4 Q. Okay. Following the states' certification
5 of electoral votes on December 14, 2020, what was your
6 understanding as to whether Mr. Trump had any further
7 legal avenues to challenge the 2020 election?

8 A. Again, my understanding was the next step
9 in the process was the January 6 certification and then
10 the January 20 inauguration for President-elect Biden,
11 but that was it. They had been exhausted.

12 Q. Let's turn now to January 6, 2021.

13 What was your role in the counting and
14 certification process on January 6, 2021?

15 A. I was told the day before by
16 Speaker Pelosi that she would like me to preside as the
17 speaker-designate at noon on January 6 to gavel us in, so
18 to speak. And so the day starts, every congressional day
19 starts with the Speaker gaveling the Congress in.

20 And so I gaveled us in, led us in Pledge
21 of Allegiance. There was a new chaplain to the Congress,
22 and asked the chaplain -- as we do every opening of a
23 session, asked the chaplain to lead us in prayer.

24 And then I read an appointment of the
25 tellers that each side -- that each party in each Chamber

1 had designated to participate in the count on January 6.

2 And then I adjourned.

3 And all of that lasted no more than

4 ten minutes.

5 Q. I'm going to back you up just briefly.

6 What did you do that morning before the

7 certification process began?

8 A. I ran from the residence I have in

9 Washington, DC to the Capitol and then back. It's a run

10 I do often.

11 And I recall on the run back from the

12 Capitol, actually running up North Capitol, seeing dozens

13 of individuals carrying signs that read, "Stop the

14 Steal," and wearing body armor and military fatigue --

15 fatigues.

16 And I remember pulling down the cap that I

17 was wearing, it was pretty cold, so kind of pulling it

18 over my face because I didn't want to be seen by this

19 crowd or recognized by this crowd.

20 But it certainly just gave me an

21 unsettling feeling about the direction the day was

22 headed.

23 Q. Did you watch any of Mr. Trump's speech on

24 the Ellipse that day?

25 A. I did. Once I returned to the Capitol and

1 after I had opened the session, I had -- I was on the
2 Floor with my Democratic colleagues, and many of us had
3 our phones out, and we were watching the speech on the
4 Floor.

5 We would step off the Floor into this area
6 called a Cloakroom, which is just footsteps from the
7 Floor, and there were televisions on in the Cloakroom
8 playing the speech from the President and his supporters
9 at the Ellipse.

10 Q. And what was your reaction to that speech
11 or the parts that you saw of it?

12 A. Well, in the weeks before January 6,
13 again, the President had fired up his supporters with
14 claims that the election was rigged; said the 6th was
15 going to be wild; and it came together on the 6th. Like
16 just from what I saw of individuals on the streets of
17 Washington and then what I saw in the speech, it appeared
18 that an angry mob had assembled around the Capitol and
19 near the White House.

20 And when the President said that he was --
21 that his supporters must fight like hell or they won't
22 have a country anymore, that worried me because we were
23 undergoing the process of certifying the election he
24 lost.

25 And when he aimed them at the Capitol by

1 saying that he was, in solidarity, going to the Capitol
2 with them, that, "We're going to go to the Capitol," a
3 lot of us in the Cloakroom looked at each other in a "Oh,
4 God, like, what does this mean for us" kind of feeling.

5 Q. So how did the counting and certification
6 of electoral votes on January 6, 2021 go?

7 A. So after I recessed, we took a break for
8 about 50 minutes. And then Speaker Pelosi and Vice
9 President Pence, as the President of the Senate, would
10 next reconvene the House and the Senate in the House
11 Chamber. And as I said, it begins alphabetically.

12 So on the Democratic side, because of
13 COVID, only members of leadership and members from the
14 states that were going to have to defend the vote were on
15 the House Floor. Any other Democrat would have to watch
16 in the gallery.

17 So there were, you know, no more than two
18 dozen or so of myself and others on the House Floor. And
19 I should have added, at that time, I was a member of
20 House leadership.

21 And so Arizona was, you know, the first
22 state to be challenged and, if I recall,
23 Congressman Gosar, Paul Gosar from Arizona, challenged
24 the Arizona vote.

25 The Vice President asked if there was a

1 Senator who would cosign the challenge, and I believe it
2 was Senator Cruz from Texas who signed off. And so we
3 adjourned the joint session, meaning the senators left to
4 go to their own Chamber for debate; we stayed in our
5 Chamber; and Speaker Pelosi took the gavel to kick off
6 the debate on the matter of Arizona.

7 Q. At some point thereafter, you learned that
8 rioters had breached the Capitol, correct?

9 A. Myself and everyone around us on the floor
10 had our phones out and were watching intently on what was
11 happening around the Capitol.

12 We were also receiving a number of Capitol
13 Police alerts. There's an email -- an internal email
14 system for members and staff, and the alerts were telling
15 us about the mob that was assembling around the Capitol,
16 the Capitol office buildings that were closed, suspected
17 pipe bombs around the Capitol that had been discovered.

18 And so we were focused on the debate, but
19 also our own security posture, whether it was watching
20 Twitter or receiving the Capitol Police alerts, was also
21 right in front of us in our handheld devices.

22 Q. And about what time was this happening?

23 A. This was between 1:00 and 2:00, as we
24 watched either people who were in the mob and staged at
25 the Capitol during the speech or people who were at the

1 Ellipse and moved, you know, toward the Capitol after the
2 speech.

3 Q. What was the first thing that occurred
4 that was unusual to you inside the Capitol?

5 A. Well, first, I would say watching the mob
6 on our devices blow past, with force, various security
7 perimeters was unusual. We had never seen anything like
8 that before.

9 But also on the floor, Speaker Pelosi was
10 presiding in the House Chamber and, abruptly, she was
11 asked to step off the podium, and her security detail
12 took her off the Floor.

13 And I also noticed Mr. Hoyer, who was the
14 majority leader, Steny Hoyer of Maryland, and James
15 Clyburn of South Carolina, who was the majority whip,
16 also their details hurriedly went to them and took them
17 off the Floor.

18 Q. And about what time was that?

19 A. This was in the 1:00 hour, I would say mid
20 1:00 hour.

21 And at that point, James McGovern, who is
22 a rules committee chairman from Massachusetts, he stepped
23 up to the podium. And so it was a seamless transition;
24 debate did not stop. He stepped up to the podium and
25 presided over the debate on the matter of Arizona.

1 Q. After Speaker Pelosi and the other members
2 of leadership that you mentioned were moved out of the
3 Chamber, you said debate continued for -- for about how
4 long did debate continue?

5 A. For probably another -- no more than
6 30 more minutes. And it may have been even fewer.

7 Q. What happened next in terms of safety
8 recommendations?

9 A. Mr. McGovern suspended debate, and a
10 Capitol Police officer went to the podium. I remember it
11 being the lower podium.

12 So the podium where the Speaker
13 presides -- there's two podiums in what's called the
14 rostrum. The upper podium is where the Speaker presides,
15 and that's where I gaveled us in, and that's where
16 Speaker Pelosi and Pence presided; that's where McGovern
17 presided.

18 The lower podium, if you think about State
19 of the Unions, where the President speaks.

20 So a security officer went to that lower
21 podium and told the members that there were people
22 unauthorized inside the building and that Capitol Police
23 was dispersing tear gas, and that we were to reach under
24 our seats and pull out a gas mask and be ready to put it
25 on in case they had to disperse tear gas inside the

1 Chamber and also be ready to move through an evacuation
2 route.

3 Q. Had you ever had to put a gas mask on in
4 the Capitol House Chamber before?

5 A. I didn't -- until that moment, I did not
6 know that there were gas masks under our seats. And we
7 had also never before, you know, rehearsed any type of
8 scenario like this.

9 So first, there was just -- I think people
10 were surprised that they were even there. We sit on top
11 of them every day; we just didn't know.

12 Q. Who were you sitting with at that time?

13 A. I had moved from sitting with Barbara Lee
14 and Cheri Bustos early in the debate over to Congressman
15 Ruben Gallego of Arizona.

16 His wife had reached out to me. She was
17 worried that -- that Ruben would probably not follow
18 orders of the Capitol Police and that he would want to
19 fight the mob or the protesters, and she asked me if I
20 could just look out for Ruben.

21 And so I went over and sat -- sat with
22 Ruben Gallego.

23 Q. And what can you tell us about
24 Congressman Gallego's training?

25 A. So I knew and most of our colleagues knew

1 that Ruben had served a combat mission as a Marine in the
2 Iraq War.

3 And so as we were pulling out the gas
4 masks, he saw immediately that I had no idea how to use
5 or even open the gas mask. And so he started having
6 women first throw him or toss him their gas masks, and he
7 was ripping them open, sometimes using his teeth to rip
8 them open, and was just handing out the gas masks and
9 telling people to not breathe too quickly because that
10 could lead you to pass out.

11 He and I agreed that we would take off our
12 coats so that our congressional pins were not obvious if
13 we had to move to any of the rioters and also so that we
14 had more freedom of movement.

15 He also handed me a pen that was sitting
16 on the table where he was prepared to debate for Arizona,
17 and he said to me as he handed me the pen, he said, "If
18 any of them get near you, just put this in their neck."

19 Q. So what was going through your mind at
20 that moment?

21 A. A lot. Uncertainty, disbelief that this
22 was happening, that we were taking our coats off, that we
23 were looking for weapons or how to use gas masks.

24 At that point, as we're waiting for the
25 security officer to give us further instructions, the

1 chaplain, who I had asked to lead us in prayer earlier in
2 the day, went back up to the podium and, uninvited,
3 unannounced, just started reading from that lower podium
4 a prayer, and she asked all of us if we would pray with
5 her.

6 Q. What, if anything, did you notice being
7 done to secure the Chamber at that time?

8 A. So after I and my colleagues prayed, I
9 noticed that Capitol police officers were -- along with
10 some -- actually, some of my Republican members, were
11 pushing -- Republican colleagues, were pushing furniture
12 against the back door.

13 So if you think of -- again, the State of
14 the Union is probably the best way to orient yourself.
15 But the door that the President walks through for the
16 State of the Union, that's the back of the Chamber.
17 Those double doors have glass panes on them, and so
18 furniture was being moved to block those doors because we
19 could hear the pounding on those doors and the shouting
20 of the rioters outside.

21 In the front of the Chamber where the
22 rostrum is, where the podiums are for the speakers,
23 there's -- there's two massive portraits: There's the
24 portrait of George Washington, and that's on the
25 Democratic side. And there's a portrait of

1 General Lafayette, the French general from the
2 Revolutionary War; that's on the Republican side.

3 So on the Democratic side, right behind
4 the portrait is a set of double doors that takes you off
5 the Floor and you -- they're glass doors. So I could see
6 through the glass doors in what's called the Speaker's
7 Lobby that Capitol Police were stacking furniture and
8 chairs against the doors that lead into the Speaker's
9 Lobby. And they were stacking them as high as they could
10 stack them with what they had.

11 And we -- we sat, as I said, and waited
12 for instructions on the evacuation.

13 Q. How would you characterize the group of
14 people gathered outside the Speaker's Lobby and the House
15 Chamber at that time?

16 A. I could -- at that point, I can mostly
17 just hear the sounds of the banging or the screaming.
18 I -- I would not see them until we left.

19 Q. And how would you characterize those
20 sounds? What did it sound like?

21 A. They were -- they were -- it was haunting.

22 And I say that because the Chamber's
23 mostly windowless. And so just having been alerted on
24 our phones that bombs, suspected bombs were found around
25 the building and watching the violence against the police

1 officers and seeing that the mob had breached multiple
2 perimeters and had come closer to the Chamber, it was
3 really just the uncertainty of what they wanted or what
4 they would do.

5 Q. How concerned were you for your personal
6 safety at that moment?

7 A. It was escalating as we went from gas
8 masks, to a pen in my hand, to a prayer from the
9 chaplain. And it was when the chaplain read that prayer
10 that I finally texted my wife, something I did not want
11 to text her.

12 I had essentially been telling her, you
13 know: We're going to be fine. It's okay. I didn't want
14 to, you know, worry her throughout the morning.

15 Q. During the attack on the Capitol, were you
16 following Mr. Trump's tweets?

17 A. I was. And as I said, almost all of my
18 colleagues, we had our phones out and we were reading our
19 phones and following the tweets and the Ellipse speeches
20 and listening to debate.

21 Q. And why were you following his tweets?

22 A. We connected the President's tweets to our
23 own safety, our own safety in the Chamber, and also the
24 integrity of the proceedings that were taking place.

25 MS. TIERNEY: I'm going to ask for

1 Exhibit 148 to be displayed, please.

2 And, Your Honor, this exhibit has been
3 stipulated by both -- by all sides. This is one of
4 Mr. Trump's tweets.

5 THE COURT: Okay. Are you offering it
6 into --

7 MS. TIERNEY: I am offering it into
8 evidence, Exhibit 148, Your Honor.

9 And this is a long exhibit, so we're --
10 we're only going to look at two tweets --

11 THE COURT: Okay.

12 MS. TIERNEY: -- of the whole compilation.

13 So this tweet is on page 83 and it has a
14 time stamp of 2:24 p.m. on January 6, 2021.

15 THE COURT: Okay. Exhibit 148 is
16 admitted.

17 (Exhibit 148 was admitted into evidence.)

18 Q. (By Ms. Tierney) Congressman Swalwell, can
19 you see the exhibit on your screen?

20 A. Yes, I see the tweet from the verified
21 account of the former President.

22 Q. And do you remember reading this tweet
23 while you were in the Chamber?

24 A. Yes. We were -- the time stamp reflects
25 what I recall -- the time that I recall being still on

1 the floor, which is 2:24 p.m. on the 6th.

2 Q. And what did -- what did -- how did you
3 interpret this tweet? What did you interpret it to mean?

4 A. I interpreted that the President believed
5 that the Vice President was refusing to do something that
6 could overturn the outcome the President wanted.

7 But again, for my personal safety and the
8 proceedings we were engaged in, the colleagues that I was
9 with, we interpreted it as a target had been painted on
10 the Capitol because that's where the Vice President was
11 when the tweet was sent.

12 Q. And can you read the tweet, Congressman?

13 A. Yes.

14 "Mike Pence didn't have the courage to do
15 what should have been done to protect our Country and our
16 Constitution, giving States a chance to certify a
17 corrected set of facts, not the fraudulent or inaccurate
18 ones which they were asked to previously certify. USA
19 demands the truth!"

20 Q. Did you notice any change in -- in what
21 was happening outside the Chamber after this tweet
22 occurred, was sent?

23 A. Well, we didn't feel more safe. It wasn't
24 as if, you know, the mob subsided. You know, we were --
25 continued to be updated by Capitol security, that they

1 were trying to secure an evacuation route and that we
2 should stand ready and -- but the pounding and the
3 shouting continued.

4 THE COURT: Representative Swalwell, could
5 you just speak up a teeny bit?

6 THE WITNESS: Sure.

7 THE COURT: You're starting to trail just
8 a little bit.

9 THE WITNESS: Yeah. I'm happy to repeat
10 that, too, if that --

11 THE COURT: If you wouldn't mind.

12 THE WITNESS: Sure.

13 A. When the tweet was sent, we did not feel
14 more safe. It wasn't as if the mob subsided.

15 And so we waited, and this was near the
16 point where we would ultimately leave the Floor, but you
17 could still hear the sounds of the pounding of side of
18 the Chamber and the screaming of the protesters.

19 Q. (By Ms. Tierney) When -- at some point,
20 you were led out of the Chamber; is that correct?

21 A. Yes. Again, the security officer went to
22 that lower podium and told us there was an evacuation
23 route and that we were to go in the direction of the
24 Lafayette portrait.

25 Again, two sides: One is Washington;

1 that's where they were stacking chairs. The other was
2 the Lafayette portrait exit. And so we went -- we were
3 told to go in that direction.

4 (Connection lost.)

5 MS. TIERNEY: Sorry, Your Honor. Small
6 tech issue.

7 Did the entire WebEx go down?

8 THE COURT: The WebEx seems to still be
9 on.

10 MS. TIERNEY: Okay.

11 THE COURT: Congressman Swalwell, we're
12 just having a technical problem.

13 THE WITNESS: No problem.

14 MS. TIERNEY: Should I wait?

15 THE COURT: Let's wait a minute.

16 MS. TIERNEY: Yeah.

17 THE COURT: If it doesn't get fixed in a
18 minute, we can still hear him, so . . .

19 MS. TIERNEY: Okay.

20 (A pause occurred in the proceedings.)

21 THE COURT: Ms. Tierney, let's just -- I
22 just wanted to make sure that the court reporter could
23 continue if she couldn't see him for lip reading, but she
24 says she can, so why don't we continue while they work on
25 the technical issue.

1 MS. TIERNEY: Okay. Thank you, Your
2 Honor.

3 Q. (By Ms. Tierney) Congressman Swalwell, can
4 you hear me?

5 THE COURT: Yes.

6 MS. TIERNEY: Oh, I just can't hear him.

7 THE COURT: Oh, he -- can you -- can you
8 say something, Mr. Swalwell?

9 THE WITNESS: Yes, I'm unmuted now. It
10 doesn't allow me on my end to unmute.

11 MS. TIERNEY: Okay.

12 THE WITNESS: But I can hear you.

13 MS. TIERNEY: Okay. Hopefully we'll be
14 back to visual in just a moment.

15 Q. (By Ms. Tierney) Did you play a role in
16 the evacuation of the Chamber?

17 A. Well, no. The brave police officers were
18 the ones who asked us to leave.

19 Being a rule follower, the son of a cop, I
20 immediately started to follow the police officers as we
21 were asked to leave.

22 But I did see my colleague, Ruben Gallego,
23 who is not a rule follower, did not follow the orders of
24 the police. And I saw that he was standing on the House
25 chairs, yelling at the members in the gallery, that they

1 were going to be okay and just reminding them about their
2 gas masks.

3 And so I went back to the Washington side
4 of the Chamber, of the Washington portrait side, and
5 started yelling, "Ruben, Ruben, time to go. We've got to
6 go." And was ultimately able to get Ruben to walk out of
7 the Chamber with me.

8 Q. And what path did you take during the
9 evacuation?

10 A. So we went out of the doors near the
11 Lafayette portrait, which is the Republican side of the
12 Chamber. And there's a long hallway that those doors
13 lead into that's called the Speaker's Lobby. And in a
14 non-COVID time, that's where the press corps assemble and
15 interview members.

16 There were no press at the time because of
17 the COVID restrictions, and so I went out that door and
18 then down the stairway that was just off that exit.

19 Q. When you were starting to leave, did you
20 notice that there were any -- was there anybody still in
21 the Chamber?

22 A. There were -- there were still police
23 officers in the Chamber. And as I said, if I recall,
24 there were one or two Republican colleagues who were
25 standing at the double doors at the back of the Chamber,

1 helping push the furniture against the doors.

2 But Gallego was one of the last ones on
3 the floor, and so I had finally pulled him out. And as
4 we were leaving, I looked down the long hallway of the
5 Speaker's Lobby at the -- where they had stacked the
6 chairs and saw the mob, you know, pressed up against
7 the -- the glass doors that lead into the lobby.

8 Q. When you were leaving the Chamber, was --
9 were there any people left in the gallery?

10 A. Unfortunately, the gallery colleagues of
11 mine were not able to leave at the same time that we
12 were.

13 They -- many -- I did look up at the
14 gallery a number of times, and especially when Ruben
15 was -- Congressman Gallego was yelling at them. Many of
16 them were lying under the chairs of the gallery. Some of
17 them had their gas masks on. Some of them looked like
18 they were in kind of like a prayer group, praying
19 together.

20 But the Capitol Police, as I would later
21 learn in the impeachment, had not yet secured the exit
22 for the third floor doors.

23 Q. Okay. And what was your reaction to
24 seeing those members and staff in the gallery?

25 A. Horrified. And felt helpless that I and

1 the police were not able to get them out and, frankly,
2 felt guilt that I was able to leave and they were still
3 up there.

4 Q. You testified a moment ago that the path
5 you took led you through the Speaker's Lobby.

6 How long did you stay in the Speaker's
7 Lobby?

8 A. We were encouraged to move as quickly as
9 we could, but you can only -- I learned you would only
10 move as fast as the people in front of you. And with,
11 you know, hundreds of members leaving the floor, there
12 were fits and starts, and so we would move and then we
13 would stop and cluster.

14 And the evacuation route would last, I
15 recall, well over 10 to 15 minutes to get us out of
16 there.

17 Q. Did you hear anything as you exited the
18 Chamber?

19 A. As I was leaving the Chamber and going
20 through the Speaker's Lobby, I did hear what sounded like
21 a gunshot. I did not see it, and I was in the mix of
22 members who were trying to move as fast as we could to
23 follow the route.

24 Q. And when did you ultimately make it to a
25 safe location?

1 A. It took, as I said, at least 10 to 15
2 minutes. And so I would say, you know, sometime in
3 the -- just before 3:00 or near the 3:00 hour.

4 Q. Who else from Congress did you meet up
5 with there?

6 A. House leadership had been taken off the
7 floor when Speaker Pelosi was taken off the Floor.

8 So anyone who remained on the Floor was
9 members of Democratic leadership, members from states
10 that were defending their vote, and then most of my
11 Republican colleagues. It didn't appear that they had
12 the same COVID restrictions that we had on our side. And
13 so that was the group that moved together off the Floor.

14 Eventually in the evacuation room, our
15 colleagues from the gallery would join us, members of the
16 press corps would join us, and then members of leadership
17 staff who worked in offices in the Capitol would join us.

18 Q. Once you were in that location, were you
19 receiving updates as to what was going on in the Capitol
20 and outside?

21 A. The Sergeant of Arms, who is the
22 individual charged with House security, moved with us and
23 was in the room when we arrived.

24 And so he routinely gave us updates and,
25 you know, frankly, it felt like being on a delayed flight

1 where the captain just kept telling me the same thing
2 every 15 minutes, which was that the Capitol was under
3 attack, they were trying to get more resources to clear
4 the Capitol, but we would have to stay there until the
5 Capitol was cleared.

6 And that was, you know, every 15 to
7 20 minutes or so.

8 Q. Was there communication in that location
9 between you and your colleagues about what was happening
10 outside?

11 A. Certainly, yes, and there was Republicans
12 and Democrats, you know, in the same room.

13 And at one point, I do recall that the
14 Sergeant of Arms had kind of loosely implied that they
15 may be bringing buses to the site and that we would leave
16 in buses.

17 And I was seated next to -- for most of
18 the time, next to Congressman Adam Schiff. And I do
19 remember Mr. Schiff vocalizing that we should not leave,
20 we should stay, and that essentially the worst thing we
21 could do, you know, if there's an attempted coup taking
22 place is to leave, you know, the site of the coup. That
23 we needed to go back to the Capitol and finish the count.

24 Q. I'm going to now show --

25 A. And I also recall -- just, sorry --

1 Q. No.

2 A. Ruben Gallego also -- because I remember
3 asking Gallego, like: Should, like, we consider the
4 buses?

5 And Gallego was adamant that he -- I
6 remember the phrase, like we would be "sitting ducks" if
7 we got on a bus and left, that that would be the worst
8 thing for us, for our personal safety.

9 Q. At some point that afternoon, are you
10 aware that Mr. Trump made a statement?

11 A. Yes. I remember -- I remember multiple
12 statements and a video, but yes.

13 Q. And the --

14 MS. TIERNEY: I'm going to have Mr. Hehn
15 bring up Exhibit Number P68.

16 Your Honor, this is also a stipulated
17 exhibit.

18 THE COURT: 68 is admitted.

19 (Exhibit 68 was admitted into evidence.)

20 Q. (By Ms. Tierney) And can you -- do you
21 remember seeing this video, Congressman Swalwell?

22 A. Yes, I do.

23 MS. TIERNEY: Can you play the video,
24 Mr. Hehn.

25 He indicates there's an issue with the

1 WebEx audio.

2 THE COURT: Ms. Tierney, how much longer
3 do you have with him? I'm wondering if maybe we should
4 break for lunch, and people can figure out the
5 technology.

6 MS. TIERNEY: I've probably got about
7 another 10 or 15 minutes.

8 THE COURT: I mean, I was hoping to get
9 through direct before lunch, but I'm worried that the
10 technology issue might take some figuring out.

11 MS. TIERNEY: Okay. That's fine, Your
12 Honor.

13 THE COURT: And it may be that it's not
14 possible to play the video over WebEx with sound, so
15 hopefully your tech people can talk to the Court's tech
16 people and we'll figure something out.

17 MS. TIERNEY: I can also have the video
18 played locally for Congressman Swalwell because everybody
19 here can see the video, I think. So maybe that's an
20 option, too.

21 THE COURT: Okay. Why don't we figure
22 that out because I -- yeah, I'd like to see the video,
23 so --

24 MS. TIERNEY: Okay. Yeah. And it's only
25 one minute. It's a short video.

1 THE COURT: Okay. Let's take a break. We
2 will reconvene at 1:15, and hopefully somebody on your
3 team can talk to Collin and the IT people here and figure
4 it out.

5 MS. TIERNEY: We'll work very hard to do
6 that. Thank you, Your Honor.

7 THE COURT: Okay.

8 (Recess taken from 12:08 p.m. until
9 1:15 p.m.)

10 AFTERNOON SESSION, MONDAY, OCTOBER 30, 2023

11 THE COURT: You may be seated.

12 Representative Swalwell, can you hear us?

13 I think he's on mute.

14 Can you hear us, Representative Swalwell?

15 THE WITNESS: Yes, I can.

16 THE COURT: Great.

17 You may proceed.

18 MR. OLSON: Thank you, Your Honor.

19 Thank you, Congressman Swalwell.

20 THE WITNESS: Okay.

21 CONTINUED DIRECT EXAMINATION

22 BY MS. TIERNEY:

23 Q. Before we go to the video that halted us
24 for a little bit there, I wanted to circle back and ask
25 you a question about earlier in the afternoon.

1 Do you recall Vice President Pence issuing
2 a statement that day before the certification began?

3 A. I do. I recall it being, I believe, like
4 the 1:00 hour, almost right as we gaveled in.

5 Q. And what was in the statement, if you can
6 recall?

7 A. I recall it was written in like a "Dear
8 Colleague" fashion. I think it was a member of
9 Congress --

10 MS. TIERNEY: One second, sorry. Court
11 reporter asking for a tech pause.

12 Q. (By Ms. Tierney) Can we start over with
13 that answer? Do you recall what was in the statement,
14 Congressman?

15 A. I recall it being printed in the cloakroom
16 and being passed around with the members. I remember it
17 being written as a "Dear Colleague," which is a way that
18 members communicate to each other. And Pence, of course,
19 as president of the Senate, is also a member of Congress,
20 so to speak. And he's a former member, and I thought it
21 was interesting that he wrote it in that format.

22 But it essentially informed us that he
23 would not be stepping outside what he believed his
24 constitutional duties were, in the counting of the votes.

25 Q. Okay. So just in follow-up to that, so

1 you testified that he stated that he would not be
2 stepping outside his bounds.

3 Can you explain what you mean by that?

4 A. It was well-known among myself and my
5 colleagues and the public that President Trump believed
6 that Pence had the -- that Vice President Pence had the
7 ability to essentially reject the electoral ballots that
8 were sent from the states.

9 And so in the 1:00 hour, I do recall being
10 handed, from the cloakroom, a "Dear Colleague" that Pence
11 had sent, essentially saying that he was not going --
12 that he did not believe he had the authority to do what
13 the former President was asking him to do, and that he
14 would not step outside the ceremonial duty of adding up
15 the electoral ballots and declaring a winner.

16 Q. Okay. Great.

17 MS. TIERNEY: Okay. Let's try with
18 Exhibit P-68, please, Mr. Hehn.

19 (Video playing.)

20 Q. (By Ms. Tierney) Do you recall seeing that
21 video on January 6, 2021?

22 A. Yes, I do.

23 Q. And do you recall approximately what time
24 that video came out?

25 A. I recall that being in the 3:00 hour. I

1 don't know the exact time.

2 Q. Okay. What, if anything, changed after
3 Mr. Trump issued this statement?

4 A. As I said, we were still in a holding
5 pattern at the evacuation site, being told by the
6 Sergeant of Arms that the rioters were still inside the
7 Capitol. And so at least when it was sent, or when the
8 statement was made, there was still an active attack on
9 the Capitol.

10 Now, I would watch, you know, on Twitter,
11 in the minutes after the statement, footage of
12 individuals being interviewed or making their own posts
13 that were reposted saying that Trump told them to go
14 home, it was time to go home. So -- and these were
15 rioters who had been in the Capitol.

16 So we do recall -- I do recall being with
17 my colleagues and seeing that that statement had at least
18 an effect on some of the people who were posting on
19 social media.

20 Q. And at this time, you're still in the
21 secure location, correct?

22 A. That's right.

23 Q. Now I'm going to have Mr. Hehn pull up
24 another tweet.

25 MS. TIERNEY: It's P 148, Your Honor,

1 which we've already stipulated into evidence, and this is
2 just a different page from that tweet -- that compilation
3 of tweets.

4 THE COURT: Okay.

5 Q. (By Ms. Tierney) Do you see the tweet on
6 your screen, Congressman Swalwell?

7 A. Yes, I do. Yes.

8 Q. And can you read it?

9 A. Yes. It's a tweet from the former
10 President's verified account at 6:01 on January 6,
11 saying:

12 "These are the things and events that
13 happen when a sacred landslide election victory is so
14 unceremoniously & viciously stripped away from great
15 patriots who have been badly & unfairly treated for so
16 long. Go home with love & in peace. Remember this day
17 forever!"

18 Q. And where were you when this tweet came
19 out?

20 A. I was still with my colleagues in the
21 evacuation room, not too far from the Capitol.

22 Q. And so this, as you testified a moment
23 ago, was about 6:00 p.m. on January 6?

24 A. That's right.

25 Q. And what happened, if anything, after this

1 tweet came out?

2 A. We were still being updated by the
3 Sergeant of Arms that -- that reinforcements and law
4 enforcement were on the way to clear the Capitol, that
5 rioters were still in the building, it wasn't safe for us
6 to go back.

7 And at about this time, Speaker Pelosi
8 also arrived with other members of leadership and told us
9 that she had been on the phone with the Vice President,
10 the Department of Defense, and local governors about
11 getting the National Guard to the Capitol as well so that
12 we could go back and finish the count.

13 Q. At some point, did Congress resume
14 counting and certifying the states' electoral votes for
15 the 2016 presidential election?

16 A. Around the 8:00 hour, we were told that
17 the Capitol had been secured and that we were going to be
18 able to head back to the Capitol, and there would likely
19 be speeches by -- by the leaders of the -- both chambers,
20 and then the debate and the count would resume.

21 Q. And what did you expect would happen when
22 you returned to the Chamber in terms of the debate?

23 A. Well, certainly that we would just go back
24 to what we had done in 2017 and 2013, which was to not
25 see a contest of the count, considering violence had

1 occurred.

2 And so when we learned -- when I learned
3 and my Democratic colleagues learned that there were
4 going to be further challenges, again, it was unsettling
5 because we believed that that could still invite further
6 violence.

7 And it was also in a, like, "Are you
8 kidding me" sentiment that, like, after we just went
9 through all of this, we would really go back to trying to
10 challenge the election and believe that the Vice
11 President could do something about it.

12 Q. About how long had you been gone when you
13 returned to the Chamber?

14 A. It was about five hours that I had been in
15 the evacuation room and then walked through the Cannon
16 Tunnel, which connects the House office buildings to the
17 Chamber, that I and many colleagues walked back over to
18 wait for the debate.

19 Q. And what did you observe in the Chamber on
20 your way back in?

21 A. I went through the back double doors; and
22 again to reorient you, these are the doors for our State
23 of the Union where the President would enter. Those are
24 the doors that, on the other side on the Chamber side,
25 Capitol Police and some Republican colleagues had been

1 putting furniture against during the attack on the
2 Capitol.

3 And I stepped over glass, and as the
4 Capitol police officer told me to be careful, I was among
5 one of the first groups to go back. So they were still
6 sweeping up -- a cleaning crew was sweeping up glass as
7 you stepped into the Chamber.

8 And then when I stepped into the Chamber,
9 I noticed two individuals wearing a blue FBI technician
10 jacket, and they were taking photographs and conducting
11 measurements on the House Floor.

12 Q. Was that unusual?

13 A. I've never seen -- photographs are not
14 allowed on the House Floor, so odd -- I don't know why
15 but that was one of the first things I remember thinking,
16 like, You're not allowed to take photos of the House
17 Floor. But, of course, it had become a crime scene.

18 But yes, it was unusual to see that.

19 Q. How were other members reacting, in your
20 view?

21 A. There was a lot of anxiety that the debate
22 would continue, and we were un- -- I don't want to speak
23 for everyone.

24 I was unclear, and the people I spoke to
25 were unclear if --

1 MS. TIERNEY: Hold on one -- just one
2 second, Congressman. There's a siren coming by the
3 courtroom.

4 THE COURT: You can start again. Sorry
5 about that.

6 THE WITNESS: That's okay.

7 A. I -- I was anxious because I feared if we
8 were going to continue to challenge -- if Republicans
9 were going to continue to challenge the outcome, that the
10 mob could return and that the scene on the Floor could
11 also become combustible among the members.

12 Q. (By Ms. Tierney) Were -- did you hear any
13 meaningful speeches?

14 A. Well, one contentious moment was during
15 the challenge of the Pennsylvania results. And I was
16 seated directly behind Conor Lamb, a Democrat from
17 Pennsylvania, as he defended the count in Pennsylvania.

18 And Conor began his remarks, essentially
19 saying before the riot, he prepared remarks that was
20 going to show deference and respect to the Republican
21 challenges, but considering that the riot occurred and
22 we're still doing this, they're not worthy of his
23 respect.

24 And -- and then a Republican from
25 Maryland, Andy Harris, started shouting, "Down, Conor,"

1 and then some of my Democratic colleagues beelined over
2 to Andy Harris, who was behind me, and told them to let
3 Conor finish.

4 I jumped up and went over, and I saw that
5 Andy Harris and Democrat Colin Allred, a former NFL
6 player from Texas, were essentially in an argument. And
7 I recall yelling at Andy, "You don't want to do that,
8 Andy. He used to tackle people for a living, Andy, you
9 don't want to do that."

10 And fortunately, it stopped there.

11 Q. Did Congress ultimately finish the
12 counting and certifying of the states' electoral votes
13 for the 2016 presidential election that evening?

14 A. We did, and it was in the 3:00 a.m. hour
15 the next day, January 7.

16 Q. And what was the very last act of the
17 night?

18 A. It was Vice President Pence presiding over
19 the joint session, receiving the tallying from the
20 tellers, and declaring that Joseph R. Biden was the
21 winner and would be inaugurated on January 20.

22 Q. What time did you get home that night?

23 A. I got home just after 4:00 a.m.

24 Q. And what happened when you returned home?

25 A. I was greeted by my wife. There was a lot

1 of late nights at the Capitol. That was the first time
2 she had ever waited up for me.

3 And gave her a big hug, and then went up
4 and did something that I also would never do with little
5 children, which is to go into their room when they're
6 sleeping, and I just gave both of them kisses on their
7 forehead.

8 Q. After January 6, 2021, what conclusion, if
9 any, did you come to as to what or who caused or
10 instigated the attack on the Capitol?

11 MR. SHAW: Objection.

12 A. Well, I -- I --

13 MR. SHAW: His conclusions are not
14 relevant, Your Honor.

15 THE COURT: Sustained.

16 Q. (By Ms. Tierney) In the aftermath of the
17 attack, did Congress consider any action against
18 Donald Trump for his role in the attack?

19 A. As we were in the evacuation room,
20 colleagues of mine on the Judiciary Committee,
21 David Cicilline, Ted Lieu and Joe Neguse, were already
22 thinking about what we would have to do legislatively to
23 make sure that the inauguration could take place if we
24 did finish the count.

25 And so within days, Speaker Pelosi,

1 working with them, would bring forth articles of
2 impeachment, and that would be voted on and -- or debated
3 and voted on one week later, on January 13.

4 Q. How did you vote on the impeachment?

5 A. I voted with my Democratic colleagues and
6 ten other Republican colleagues to impeach on the count
7 of insurrection.

8 Q. And what role did you have, if any, in
9 those proceedings, those impeachment proceedings?

10 A. A few hours before the vote,
11 Speaker Pelosi called me and asked me if I would serve as
12 an impeachment manager on the impeachment team in the
13 Senate, and I -- I accepted and would be a part of a
14 nine-person impeachment manager team led by lead manager,
15 Jamie Raskin.

16 Q. And you testified a moment ago that there
17 were Democrats and Republicans that voted in favor of the
18 impeachment.

19 Did the -- did that vote result in an
20 impeachment of the President by the House?

21 A. Yes. On January 13, in the evening,
22 President Donald Trump was impeached a second time by the
23 House.

24 Q. Was there a trial in the Senate?

25 A. There was, yes.

1 Q. And what was the result of that trial?

2 A. In the Senate, the President -- 50
3 Democrats and 7 Republicans voted that the President had,
4 indeed, committed insurrection, although that would be
5 10 votes short of the two-third requirement for removal.

6 Q. Did any Republican senators who voted
7 against conviction publicly reveal the reasons for their
8 vote?

9 MR. SHAW: Objection, Your Honor. This is
10 not relevant.

11 MS. TIERNEY: Your Honor, I'll try to tie
12 it together here with another question.

13 THE COURT: Overruled.

14 Q. (By Ms. Tierney) Do you want me to repeat
15 the question, Congressman?

16 A. Oh, no, I understand the question.
17 Shortly after the Senate proceedings,
18 Leader McConnell went to the Floor and said that his vote
19 to acquit did not mean that Donald Trump would escape
20 accountability at all and that there were other legal
21 means, civilly and criminally, that would hold him
22 accountable.

23 Q. As a member of the House of
24 Representatives, Congressman Swalwell, are you required
25 to take an oath of office?

1 A. Yes, I take it every other year, if
2 elected, on January 3.

3 Q. And does that include an oath to the
4 Constitution?

5 A. Yes, it does.

6 Q. And what do you understand that oath to
7 the Constitution to mean?

8 A. That that oath predominates my loyalty to
9 anything else, and I have a duty to defend and protect.

10 MS. TIERNEY: No further questions.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. SHAW:

14 Q. Good afternoon, Representative Swalwell.

15 A. Good afternoon, Counsel.

16 Q. Am I correct that you weren't injured on
17 January 6?

18 A. I was not, no, not physically.

19 Q. Yet you are the plaintiff in a personal
20 injury lawsuit that you brought against Donald Trump in
21 the United States District Court for the District of
22 Columbia; is that correct?

23 A. Yes.

24 Q. And you're seeking damages in that
25 lawsuit?

1 A. Unstated, but yes, meaning no dollar
2 amount has been stated.

3 Q. And as a lawyer, you understand that if
4 this proceeding against President Trump is successful,
5 that would improve your chances of success in that
6 lawsuit, correct?

7 A. I'm sorry, Counsel, could you rephrase the
8 question?

9 Q. Yeah.
10 You're a lawyer, are you not?

11 A. Yes.

12 Q. And you understand that if this case goes
13 against President Trump, that likely increases your
14 probable success in your personal injury lawsuit against
15 him, right?

16 MS. TIERNEY: Objection, Your Honor.
17 Relevance.

18 MR. SHAW: It goes to bias, Your Honor.

19 THE COURT: Overruled.

20 A. I'll leave it to the legal experts as to
21 what this means for a separate lawsuit. I don't know.

22 Q. (By Mr. Shaw) Is it your view, sir, that
23 President Trump has some -- or had some lesser quantum of
24 First Amendment rights than every other American on
25 January 6?

1 A. No, that's not my view.

2 Q. So he enjoyed the full -- as far as you're
3 concerned, he had every right that every other American
4 had to speak with full First Amendment protections on
5 that date?

6 A. In accordance with the law, yes.

7 Q. And you pointed out that during his
8 January 6 speech, he used the phrase "Fight and fight
9 like hell," correct?

10 A. Yes.

11 Q. Okay. And you would acknowledge that that
12 is, in fact, common, or certainly not uncommon discourse,
13 in political circles during speeches, right?

14 A. I'm sorry, could you clarify, Counsel.

15 Q. Yeah.

16 Politicians often say, "Fight or fight
17 like hell," or words like that, right, when they give
18 speeches?

19 A. Yes, sir.

20 Q. You've done it yourself, right?

21 A. I have.

22 Q. Many of your Democratic colleagues do
23 that, too, right?

24 A. That's right. That's correct.

25 Q. Okay. And when you do it, you're not

1 calling for physical violence, right?

2 A. I am not.

3 Q. And you're not saying that your Democratic
4 colleagues are calling for physical violence, right?

5 A. In my experience, that's not how I'd
6 interpret it, no.

7 Q. And you judge that by the words that are
8 said, right?

9 A. And the surroundings of where they are,
10 but yes.

11 Q. I'd like to show you Exhibit 1066.

12 MR. SHAW: Which is a -- was designated as
13 a cross exhibit.

14 Well, I'm not asking you to put it up on
15 the screen. I'm asking, was there -- did you have an
16 objection to that?

17 MS. TIERNEY: Oh. No.

18 MR. SHAW: Okay.

19 Could you put up Exhibit 1066, please.

20 THE COURT: Are you asking for it to be
21 admitted?

22 MR. SHAW: I will, yes.

23 Since there appears to be no objection,
24 can it be admitted, Your Honor?

25 THE COURT: 1066 is admitted.

1 (Exhibit 1066 was admitted into evidence.)

2 Q. (By Mr. Shaw) Okay. And, sir, I will
3 represent to you that this is a collection of tweets from
4 your -- your Twitter account.

5 And -- we're having a slight technical
6 snafu, so --

7 A. No worries.

8 Q. -- we'll ask you to bear with us.

9 I'm not going to go through all of these,
10 sir, but why don't we look at page 16 first.

11 A. Sure.

12 MR. SHAW: So if you would put page 16 up.

13 Q. (By Mr. Shaw) Okay. And I ask you if you
14 recognize that as a tweet from your verified Twitter
15 account, dated May 2, 2022?

16 A. Yes, I do.

17 Q. Okay. And you wrote, "If you think
18 they'll stop with a women's right to choose, you haven't
19 been paying attention. We have to fight like our lives
20 depend on it, because clearly, they do."

21 You wrote that, right?

22 A. Yes, I did.

23 Q. And you were not calling for any sort of a
24 physical fight, correct?

25 A. No, sir, I was not.

1 Q. Okay. You were not advocating violence?

2 A. I was not.

3 Q. Okay. And if you'd look at the next page,
4 please.

5 Okay. And this is another tweet from your
6 verified account; is that right?

7 A. Yes, sir.

8 Q. Okay. And you wrote: "This is just the
9 beginning. They won't stop."

10 "Fight like your lives depend on it."

11 "Because they do."

12 Right?

13 A. And it says, "Hashtag Vote Blue," yes.

14 Q. And again, you were not calling for
15 physical violence; that was a metaphorical fight, right?

16 A. Correct.

17 Q. Okay. And I could go through a bunch more
18 examples, but I'm not going to spend a great deal of time
19 on that.

20 There was one other tweet in here that I
21 was -- I did want to bring to your attention and ask you
22 about. If you would look at page 13, please.

23 Is this a tweet from your verified Twitter
24 account, dated February 4, 2022?

25 A. It looks like it, yes.

1 Q. Okay. And you write there, "Cheney &
2 Kinzinger may not be in my party but in this fight, we're
3 all on the same side."

4 Do you see that?

5 A. Yes, I do.

6 Q. Okay. And what "fight" were you referring
7 to here?

8 A. I'd have to see the tweet above it to have
9 context, but I'm assuming, based on the date, that it
10 refers to the January 6, 2021 investigation. But again,
11 I'd have to have more context.

12 Q. When you say the January 6 investigation,
13 you mean the January 6 Select Committee?

14 A. Yes, sir.

15 Q. Okay. And that was because
16 Representatives Cheney and Kinzinger were the two
17 Republican members who Speaker Pelosi had appointed to
18 that committee; is that right?

19 A. Yes, sir.

20 Q. And you considered them to be on your side
21 of that fight, correct?

22 A. I think I said "we," but all of our side,
23 yes, which I was on, yes.

24 Q. Okay. All right. We'll put that exhibit
25 aside.

1 Now, earlier today, counsel showed you
2 some tweets by President Trump.

3 You remember that?

4 A. I do.

5 Q. Did counsel pick which tweets they were
6 going to show you, or did you discuss with them which
7 tweets you wanted to testify about?

8 A. Those are -- those are chosen by counsel.

9 THE COURT: Did you have an objection?

10 MS. TIERNEY: I'll let it go, Your Honor.

11 THE COURT: I'm sorry. So now I missed
12 the -- can you repeat the question and the answer.

13 MR. SHAW: I think he said that they were
14 chosen by counsel, Your Honor.

15 THE COURT: Okay.

16 Q. (By Mr. Shaw) So one that counsel focused
17 on --

18 MR. SHAW: If you would put up the
19 2:24 p.m.

20 Q. (By Mr. Shaw) So this is Exhibit 148,
21 page 83, in that first one.

22 Do you remember discussing this one from
23 2:24 p.m.?

24 A. Yes, I do.

25 Q. Okay. And then --

1 MR. SHAW: If you go to the next page, the
2 second tweet on that page.

3 Q. (By Mr. Shaw) And you remember discussing
4 the second tweet at -- from 6:01 p.m.?

5 A. Yes, I do.

6 Q. Okay. Now let's look at the two that
7 counsel decided to skip that were right in between those
8 two, okay?

9 Let's look first at the tweet from
10 15 minutes after the first one you discuss at 2:24 p.m.

11 MR. SHAW: Page 83, second tweet on the
12 page.

13 A. Yeah, I see it.

14 Q. (By Mr. Shaw) Okay. And at 2:38 p.m.,
15 15 minutes or so after the tweet that you discussed
16 about -- about Vice President Pence, you see that
17 President Trump wrote, "Please support our Capitol Police
18 and Law Enforcement. They are truly on the side of our
19 Country. Stay peaceful!"

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you remember reading that on January 6?

23 A. I do.

24 Q. Okay. What did you understand that tweet
25 to mean?

1 A. That we needed it ten exits before he sent
2 it, before the mob had come, but he, I imagine, had seen
3 the violence committed against the officers and believed
4 that he had the power, because he sent them there, to
5 stop them from abusing the officers.

6 Q. So that's -- strike that.

7 So whether he had the power or not,
8 certainly he's telling people to support our Capitol
9 Police and law enforcement and stay peaceful, right?

10 A. In that tweet, yes.

11 Q. Yeah. And he told them that in his
12 speech, right? He told them to proceed peaceably and
13 patriotically to the Capitol, right?

14 A. You would have to play that for me. I
15 don't have a line-by-line --

16 Q. Okay. The judge has heard it, so I'm not
17 going to take the time to replay it now.

18 Let's look at the next tweet that he sent,
19 at 3:13 p.m.

20 MR. SHAW: If you put that up, please.

21 Q. (By Mr. Shaw) Do you see that tweet? He
22 says, "I am asking for everyone at the U.S. Capitol to
23 remain peaceful. No violence! Remember, WE are the
24 Party of Law & Order - respect the Law and our great men
25 and women in Blue. Thank you!"

1 You see that?

2 A. I do, sir, yes.

3 Q. Okay. Do you remember reading that on
4 January 6, 2021?

5 A. I do, yes.

6 Q. Okay. What did you understand that to
7 mean on January 6, 2021, sir?

8 A. That a lot of violence had taken place.
9 At that time, I was, as I said, probably just arriving
10 with a gas mask in my hand to the evacuation room, and
11 the President is asking the violent rioters to stop
12 attacking the police.

13 Q. Okay. So that's a couple of posts between
14 the two posts that you had previously discussed where the
15 President has -- is asking people to stop attacking and
16 be peaceful, right?

17 A. In these tweets, yes.

18 Q. In those tweets.

19 And we looked at a -- at a short video of
20 about one minute where he asks the people to do exactly
21 the same thing, right, to be peaceful?

22 A. Essentially, yes.

23 Q. Yeah. And that came somewhere in the
24 3:00 hour, so presumably around or slightly after that
25 3:13 p.m. tweet, right?

1 A. That's about right, yes.

2 Q. Yeah.

3 MR. SHAW: I'm done with that document.

4 Thank you.

5 I don't have any further questions for
6 you, sir. Thank you very much.

7 THE WITNESS: Thank you, Counsel.

8 THE COURT: Are there any questions from
9 the Colorado Republican Party?

10 MS. RASKIN: No questions, Your Honor.

11 THE COURT: How about Secretary of State?

12 MR. KOTLARCZYK: No questions, Your Honor.

13 THE COURT: Okay. Redirect?

14 MS. TIERNEY: Thank you, Your Honor, very
15 briefly.

16 REDIRECT EXAMINATION

17 BY MS. TIERNEY:

18 Q. Congressman Swalwell, in colloquy with
19 counsel just a moment ago, he asked you about two other
20 tweets that Mr. Trump sent.

21 In either of those tweets, did Mr. Trump
22 ask people to go home?

23 A. No.

24 Q. And did he ask people to leave the
25 Capitol?

1 A. Not in those two tweets.

2 MS. TIERNEY: Thank you.

3 THE COURT: Congressman Swalwell, I think
4 you're done. Thank you so much for your testimony.

5 THE WITNESS: Thank you, Your Honor.

6 MR. NICOLAIS: Your Honor, Mario Nicolais
7 on behalf of the petitioners.

8 And we are going to call Officer Winston
9 Pingeon as our next witness.

10 THE COURT: You said it's pronounced
11 "Pingeon"?

12 MR. NICOLAIS: "Pingeon."

13 THE COURT: "Pingeon." Okay.

14 WINSTON PINGEON,
15 having been first duly sworn, was examined and
16 testified as follows:

17 THE COURT: So when you sit down, just
18 make sure to speak into the microphone, okay?

19 THE WITNESS: Yes.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. NICOLAIS:

23 Q. Good afternoon, Officer Pingeon. Would
24 you please state and spell your name for the record.

25 A. Yes. My name is Winston Pingeon,

1 W-i-n-s-t-o-n, P-i-n-g-e-o-n.

2 Q. Officer Pingeon, where did you go to
3 college?

4 A. I went to American University in
5 Washington, DC.

6 Q. And what degree did you receive there?

7 A. I received a bachelor's in justice and
8 law, which is a criminal justice degree.

9 Q. When did you receive that degree?

10 A. In May of 2016.

11 Q. Where did you go to work after you
12 graduated from American University?

13 A. I joined the United States Capitol Police
14 as a police officer.

15 Q. And roughly when was that?

16 A. June of 2016.

17 Q. Are you still currently employed with the
18 USCP?

19 A. I am not, no.

20 Q. When did you leave the USCP?

21 A. I left the department in October of 2021.

22 Q. Okay. During the course of your career
23 with USCP, what units were you assigned to?

24 A. I was primarily assigned to the House
25 Division, but I also served on a variety of other

1 collateral assignments: The Ceremonial Unit or Honor
2 Guard, the Special Operations Division, and the Civil
3 Disturbance Unit.

4 Q. Can you describe for the Court what the
5 Civil Disturbance Unit is?

6 A. Yes. The Civil Disturbance Unit is
7 effectively the riot team for the Capitol Police.

8 Q. Okay. Prior to January 6, 2021, were you
9 ever deployed as a part of the CDU?

10 A. Yes, I was, multiple times.

11 Q. Can you describe just briefly some of your
12 deployments prior to January 6?

13 A. Yes. For large-scale protests or events
14 that the -- of numerous people coming to the Capitol, we
15 were deployed sometimes in full riot gear, sometimes with
16 our gear just on standby. But it was commonplace for --
17 for CDU to be deployed for a variety of events of groups
18 that would come and protest or demonstrate around the
19 Capitol.

20 Q. Can you provide the Court with some
21 examples of those, those other events?

22 A. Yes. A few in the summer of 2020 of Black
23 Lives Matter protests, as well as two different ones in
24 November and December of 2020 in protesting the results
25 of the election.

1 Q. During those prior events, did you witness
2 any violence at those events?

3 A. Nothing large scale, no, but there were --
4 there were times where we would have to arrest people,
5 but no major violence, no.

6 Q. And did you ever feel, when you were
7 serving in the CDU at those prior events, that your unit
8 would be overrun?

9 A. No.

10 Q. Were your lines ever broken in those prior
11 events?

12 A. No.

13 Q. Did you ever fear for your life during any
14 of those prior events?

15 A. No.

16 Q. Officer Pingeon, I want to take you to
17 January 6, 2021.

18 Were you on duty that day?

19 A. Yes, I was.

20 Q. When did you report for duty on January 6?

21 A. I reported at approximately 8:00 or
22 9:00 a.m. that morning.

23 Q. And were you assigned your regular duty or
24 to a separate unit?

25 A. I was assigned to CDU that morning. My

1 normal assignment at that time was 3:00 p.m. to
2 11:00 p.m., so I was working overtime early with CDU.

3 Q. Okay. What is your understanding of why
4 that changed?

5 A. I understood that to be the case because
6 of what Congress was doing that day of certifying the
7 results of the election, as well as the former President
8 was hosting a rally or event near the White House.

9 Q. Okay. How many officers were in your CDU
10 squad that day?

11 A. In my squad, there were approximately 25
12 or 30 of us.

13 Q. Okay. Officer Pingeon, I'm going to ask
14 you just a couple questions about --

15 MR. NICOLAIS: I want to bring up what's
16 previously been marked as Exhibit P-163, Your Honor.
17 Sorry. I'm grabbing the wrong one.

18 Q. (By Mr. Nicolais) Officer Pingeon, as a
19 USCP officer, are you familiar with the layout of the
20 U.S. Capitol itself?

21 A. Yes, I am.

22 Q. And how are you familiar with the layout
23 of the Capitol?

24 A. I'm familiar with it because I spent
25 five years there and worked numerous events, and so I

1 spent a significant amount of time in the Capitol and
2 around the Capitol grounds over my career there.

3 Q. Okay. And are you familiar with the
4 Capitol grounds as well?

5 A. Yes, very much so.

6 Q. So I brought up what is Plaintiffs'
7 Exhibit 163, and I'd like you to take a look at it.

8 Have you reviewed this exhibit before?

9 A. Yes, I have.

10 Q. Would you say that it's a fair and
11 accurate representation of the Capitol grounds and one
12 level of the U.S. Capitol?

13 A. Yes, it is.

14 Q. Would you say that this would help you to
15 explain your testimony to the Court?

16 A. Yes, it would.

17 MR. NICOLAIS: Your Honor, I'd like to, at
18 this time, move to admit Plaintiffs' Exhibit 163 as a
19 demonstrative exhibit.

20 MR. SHAW: Your Honor, can I get some
21 clarification? Is this a general representation of the
22 Capitol grounds, or is it a representation at some
23 specific time? Because there are all sorts of markings
24 and --

25 MR. NICOLAIS: Your Honor, I can -- let

1 me --

2 MR. GESSLER: Let him finish, please.

3 MR. SHAW: There are all sorts of markings
4 and -- and annotations on this.

5 THE COURT: I don't think either one of
6 those really go to admissibility, so I'm going to admit
7 the exhibit.

8 (Exhibit 163 was admitted into evidence.)

9 THE COURT: And you can ask questions
10 about what they are, and you can certainly ask on
11 cross-examination.

12 MR. NICOLAIS: I'll tell you what, I'll
13 try to actually lay some foundation for that, Your Honor.

14 Q. (By Mr. Nicolais) Officer Pingeon, were
15 you around the Capitol and the Capitol grounds prior to
16 January 6 in the weeks leading up to that?

17 A. I was on leave the week of Christmas of
18 2020, but -- so I believe my first day back on duty was
19 that Monday, which -- January 4, I think.

20 Q. Okay. And so when you -- were you
21 familiar with some of the additional things that --
22 barricades and things that were placed there prior to the
23 inauguration?

24 A. Yes.

25 Q. And does this exhibit, does it accurately

1 and fairly represent some of those additional structures
2 that were placed there?

3 A. Yes, it does.

4 Q. Thank you, Officer Pingeon.

5 Okay. I'd like to go to -- to go back to
6 January 6 and talk to you a little bit about that.

7 Where did your group -- where did your
8 group, your squad, ultimately stage from?

9 A. We had our roll call in the Longworth
10 House Office Building, but we ultimately staged in the --
11 what we call the truck tunnel along New Jersey Avenue and
12 Constitution Avenue in the northwest. So --

13 Q. Okay. So I'm -- I'm going to use my mouse
14 here.

15 A. Yes.

16 Q. And if you can direct me towards where you
17 were talking about.

18 A. So approximately in this -- this area
19 right here (indicating), be New Jersey Ave.

20 Q. What is that?

21 A. Well, so where your cursor is now is where
22 we had roll call initially, and opposite from that on the
23 map, about there (indicating), is where we staged and
24 awaited further orders.

25 Q. Okay. So you were awaiting further

1 orders. What time was this, roughly, that you were
2 staged over there?

3 A. That was approximately 11:00 a.m. or so.

4 Q. Okay. Were you told to do -- how were you
5 to receive further orders?

6 A. Yes. My lieutenant, who was my commander
7 that day, told us to put our riot gear on around that
8 time.

9 Q. Okay. Do you remember getting a call on
10 the radio later that day?

11 A. Yes, I do.

12 Q. And what was that call, what -- what did
13 you hear in that call?

14 A. In that call, I heard that one of our
15 outer perimeter lines had been breached and that the
16 officers there had been overrun, and I remember
17 distinctly hearing the need for help in the officer's
18 voice.

19 As a police officer, you know when
20 something's not right. You can hear it in people's
21 voices on the radio. And that was one of those times.

22 Q. And why were they calling for the CDU at
23 that point?

24 A. They needed additional officers to
25 respond, and because we were with the CDU, and more

1 specifically the CDU hard squad in full riot gear, they
2 needed us to -- to go assist to back them up.

3 Q. Can you describe the gear you put on that
4 day?

5 A. Yes. The CDU gear is similar to hockey or
6 football pads of chest protector over my bulletproof
7 vest, arm protectors, groin protector, thigh protectors,
8 shin pads, as well as additional gear on my belt, like my
9 PR 24 baton, my gas mask, and we had protective
10 sunglasses, too, in case of lasers being pointed at us.

11 Q. Okay. Were you wearing a body camera at
12 that time?

13 A. No, I was not. I was never issued a body
14 camera, and no Capitol police officer at that time wore
15 body cameras.

16 Q. All right. You said that you had a call
17 from -- where was it you said you received a call from?

18 A. The call came from the -- near
19 Peace Circle where Pennsylvania Avenue meets the -- meets
20 the Capitol.

21 Q. I'd like you to take a look at the map
22 again, and is this roughly where you -- where you're
23 talking about you received the call from?

24 A. Yes.

25 Q. And what was going on in the Peace Circle

1 at that time, as you understood it?

2 A. The call for help was that the line had
3 been breached and that people had pushed past those
4 officers and were making their way towards the Capitol.

5 Q. In response to that call, what did your
6 squad do?

7 A. We responded over to assist.

8 Q. And so as I understand it, this is -- is
9 this roughly where you were at, where my pointer is?

10 A. Yes, in that rough area.

11 Q. And what was your path to get to respond?

12 A. So we were on a Capitol Police bus, and
13 the bus took us through the north barricade, which is
14 where the Delaware Avenue meets Constitution Avenue.

15 We went straight, or south, from there and
16 then curved along down the northwest drive to
17 approximately where it says the -- Summer House is where
18 we -- we stopped.

19 Q. And is that roughly here (indicating)?

20 A. Yes, that's correct.

21 Q. Okay. When you stopped at that -- and
22 what's in that Summer House area? Can you describe it a
23 little bit to the Court?

24 A. Yes. It's -- you know, there's some
25 trees, and it's -- I think -- I don't know the full

1 history of it, but I'm -- it's historic, old function,
2 and there -- the white lines there are pedestrian
3 walkways.

4 So it's an area where tourists or people,
5 you know, neighbors would often jog or bike or walk their
6 dog, that kind of thing.

7 Q. Okay. What did you see when you got out
8 there near the Summer House?

9 A. From there, I could see that already
10 individuals of the crowd had made their way up closer
11 to -- to the lower West Terrace of the
12 Capitol (indicating).

13 Q. I see you're pointing at the map, so I
14 just want to, for the Court -- so you said originally the
15 call came from the Peace Circle because there's a
16 barricade.

17 You said that -- where were they making
18 their way up to?

19 A. So they continued -- I guess that's
20 southeast along what we call the Pennsylvania Avenue
21 walkway, because the road ends at Peace Circle, but that
22 white area where your mouse is, that's the walkway; and
23 people had made their way up that.

24 Q. And what's at the end of that walkway?

25 A. The stairs -- well, there's stairs, and at

1 that time, there were construction parts of the
2 inauguration stage.

3 Q. So how long between when you received the
4 call and when you got there and saw people making --
5 already on the stage, how long was that?

6 A. Oh, approximately five minutes or less
7 even.

8 Q. Okay. How would you describe the crowd
9 that you saw when you got out?

10 A. From there, I could see that they were
11 dressed in numerous Trump apparel, red hats and carrying
12 flags, and that they were advancing quickly and that the
13 crowd was already growing larger, just by the minute.

14 Q. Okay. When you got out, did you put on
15 any additional gear at that point?

16 A. Yes, I did.

17 Q. What did you put on, what additional gear?

18 A. I put on my gas mask.

19 Q. Had you ever worn your gas mask in the
20 line of duty before?

21 A. No. Only in a training environment.

22 Q. And why were you told to put on a gas mask
23 on this day?

24 A. There were calls that potentially gas
25 either was already deployed or was soon to be deployed,

1 so the decision was made that we would do that in order
2 to be best prepared.

3 Q. Okay. So I want to go back.

4 You were -- you were here (indicating),
5 and you got out. So is this roughly where you were
6 putting on your gas mask?

7 A. Yes.

8 Q. Where did you go from there?

9 A. From there, we marched -- we formed up and
10 marched as best we could to the steps. And ended up in
11 the area here of sort of northwest lawn along that
12 walkway, and we ended up right in that grassy area, right
13 where your -- where your mouse is now.

14 Q. Tell you what, I'm going to zoom in a
15 little bit, Officer Pingeon, so you can see it a little
16 bit better.

17 Okay. So you said right about here on the
18 map (indicating)?

19 A. Yes, that's correct.

20 Q. Okay. As you were arriving there, did you
21 see anyone in medical distress?

22 A. Yes, I did.

23 Q. And what did you see?

24 A. I saw an individual being carried out on a
25 stretcher and somebody performing CPR on that person.

1 Q. How did the crowd react to the first
2 responders providing medical care?

3 A. Well, it was mixed, but I would soon see
4 another person in need of medical care, where the, at
5 that point, mob, had turned hostile and was assaulting
6 officers that were trying to go and help the -- the
7 second person in distress.

8 Q. Officer Pingeon, so from this position
9 where my cursor is currently at, from where your squad
10 was deployed, could you see beyond the immediate area
11 around you?

12 A. Yes, I could.

13 Q. And why could you see beyond the immediate
14 area?

15 A. Primarily because of the elevation of
16 Capitol Hill that I could see and just the direction of
17 how we were sort of lined up closely to Pennsylvania
18 Avenue, that I could see down -- down Pennsylvania Avenue
19 looking towards downtown DC.

20 Q. So would that be looking out over the
21 Peace Circle?

22 A. Yes, facing west.

23 Q. And how far beyond that could you see?

24 A. I could probably see 10 or so blocks until
25 the road shifts.

1 Q. And what did you see when you looked in
2 that direction?

3 A. When I looked down there, I could see that
4 there appeared to be thousands of people coming towards
5 the Capitol.

6 Q. And they were -- they were coming towards
7 the Capitol along what route?

8 A. Along Pennsylvania Avenue.

9 Q. Did you notice anything unusual about what
10 members of the mob were wearing while you were on the
11 northwest lawn?

12 A. Yes, I did.

13 Q. And what was that?

14 A. That was the equipment that some of them
15 were wearing, to include things like helmets, goggles,
16 what appeared to me to be body armor, paramilitary style
17 gear and equipment that they -- that they were wearing.

18 Q. As a USCP officer, did that concern you?

19 A. Yes, it did.

20 Q. And why did that concern you?

21 A. It concerned me because I had not seen
22 that before and because we don't typically face people
23 who appear to me to be prepared for physical altercations
24 or violence.

25 Q. Okay. Can you describe any interactions

1 between your unit and members of the mob while you were
2 on the northwest West Terrace lawn, so roughly where my
3 pointer is?

4 A. Yes. They were saying things to us as
5 they would continue to say throughout the day, things
6 like, "Trump sent us," and things like, "We don't want to
7 hurt you, but we will." "We're getting in that
8 building."

9 And, of course, chanting things like,
10 "Stop the Steal," and a variety of other pro-Trump
11 messages like that.

12 Q. Were any -- were either you or any of the
13 members of your squad physically assaulted in that area?

14 A. Yes. Members of my squad there started to
15 be assaulted, pushed, and pepper-sprayed by members of
16 the mob.

17 Q. Could you see any other -- could you see
18 members of the mob engage with other law enforcement
19 units in the vicinity?

20 A. Yes, I could.

21 Q. And what did you see?

22 A. From where I was posted, I could see that
23 what's marked here as the northwest steps, that the mob
24 was advancing up those steps and engaging with other
25 Capitol police officers and assaulting them with what

1 appeared to me to be pieces of construction materials and
2 flagpoles and other things like that that they were
3 striking officers with.

4 And also spraying them with what appeared
5 to me to be pepper spray or chemical irritants.

6 Q. Okay. How long, roughly, were you at that
7 position on the northwest lawn?

8 A. I was there for approximately an hour,
9 maybe a little bit more.

10 Q. And in that time, what change in size or
11 nature of the mob did you observe?

12 A. Well, the size of it, like I said,
13 continued to grow larger, and they seemingly became more
14 emboldened by -- by that size, that it was apparent to me
15 we were very outnumbered.

16 Q. Do you remember your attackers saying or
17 doing anything that would have indicated what they were
18 trying to do?

19 A. Yes.

20 Q. And what was that?

21 A. Well, like I said, they -- some of them
22 told me that they were there to break inside and to get
23 into the U.S. Capitol.

24 Q. Did any of them threaten you?

25 A. Yes, they did.

1 Q. And how did they threaten you?

2 A. Oh, well, saying things like, "We don't
3 want to hurt you, but we will," and other taunts of
4 saying, you know, "You look scared and you might need
5 your baton," or, you know, stuff like that.

6 Q. You said you were there for roughly an
7 hour, from -- from 1:00 to 2:00; is that accurate?

8 A. Yes, approximately.

9 Q. Was your CDU unit able to hold the line at
10 the base of the West Terrace?

11 A. No, we were not.

12 Q. And why weren't you able to hold that
13 line?

14 A. We were not able to hold that line because
15 the mob became increasingly aggressive and hostile
16 towards us, and we were simply outnumbered. So
17 ultimately, the 25, 30 of us or so sort of ended up
18 forming a circle where we were guarding nothing but each
19 other's backs as the mob sort of surrounded us there.

20 Q. Okay. Did you eventually leave that
21 position?

22 A. Yes, I did.

23 Q. And where did you decide to go from there?

24 A. So I knew that we needed to get to the
25 upper West Terrace to have that higher ground strategic

1 advantage because I could see the progress that they had
2 made and were making up those northwest steps, that we
3 needed to go and help those officers.

4 Q. Can you describe the path that you took to
5 get there?

6 A. Yes. Basically I went kind of along the
7 corner of the Capitol here, up the northwest lawn, up the
8 north lawn, and was able to, you know, access the upper
9 West Terrace again via this north access path.

10 Q. And where did you go from there,
11 Officer Pingeon?

12 A. From there, I knew -- excuse me, I knew we
13 needed to get back to where those steps were, so I
14 continued west or down along the North Terrace, sort of
15 where that green line is, and I kind of followed that
16 green line over.

17 Q. And Officer Pingeon, how many members of
18 your squad were with you at that time?

19 A. Well, I thought that my whole squad was
20 with me, but I would soon learn that we were getting
21 separated. And given the nature of having all of our
22 riot gear on and having to go up the hill and be impeded
23 by some members of the mob as well, it took some time,
24 and we got separated.

25 So I soon would learn that it was just

1 myself and three or four other officers.

2 Q. Okay. So you said you were going along
3 the North Terrace, walking down, or west at this point?

4 A. Yes.

5 Q. Where did you -- did you stop there, did
6 you continue on?

7 A. I continued and rounded the first corner
8 and continued to go to assist those other officers and
9 help defend the building.

10 Q. And when you got to this corner
11 here (indicating), Officer Pigeon, what did you see?

12 A. From there, I was horrified to see that
13 there were many members of the mob who had already
14 flooded up into that area of the upper West Terrace,
15 so --

16 Q. Roughly there (indicating)?

17 A. More so sort of over here (indicating),
18 but I could see all the way down, but -- but they were
19 more in this sort of circle area, from that point I could
20 see.

21 Q. Okay. And when you rounded that corner,
22 did you stop there?

23 A. No, I didn't, so I continued forward
24 because, again, I knew I needed to do my job and respond
25 and get -- get there as quickly as I could.

1 Q. When you said you continued forward,
2 what -- what direction were you going?

3 A. Yes. So at this point, I was going
4 southbound, so again kind of tracing that green line over
5 to that northwest courtyard area.

6 Q. And, Officer Pingeon, what did you see
7 when you got roughly here on the map (indicating)?

8 A. So again, I could -- was also horrified
9 even more to see that they had broken into the building
10 and that the mob was streaming inside, into the
11 U.S. Capitol.

12 Q. When you said they had gotten access, what
13 had they gotten -- how had they gotten access, how had
14 they gotten in?

15 A. Well, from there, I could see that they
16 were entering where the red arrow is here, which is an
17 emergency exit fire door, so I could -- I assume that
18 they had broken their way in because those doors are
19 locked and secured normally.

20 Q. I'm going to zoom in a little bit so that
21 it's easier to see, Officer Pingeon.

22 So just to be clear, you said from
23 here (indicating), you saw that people were accessing
24 through -- what is this Number 1, what's at that
25 Number 1?

1 A. So where Number 1 is, is it's an emergency
2 exit fire door, and there are windows on either side of
3 it.

4 Q. Is that what this Number 2 and 4 are?

5 A. Yes.

6 Q. And what about Number 3?

7 A. 3 is a fire door emergency exit.

8 Q. And what do you find if you go through
9 that emergency exit?

10 A. There, you'll be in the Senate side of the
11 U.S. Capitol on the first floor there.

12 Q. Okay. How many people do you think --
13 would you estimate you saw in the northwest courtyard
14 when you came around this corner?

15 A. I would say at least a few hundred, but
16 again, it was growing because they were coming up the
17 steps as well.

18 Q. And again, how many of your squad were
19 there?

20 A. At that point, it was just myself and
21 three or four other officers.

22 Q. What did you and those three or four
23 officers do at that point?

24 A. We continued. And I was the first
25 officer, and I led them to go closer to -- to those

1 breach points in an effort to secure those and prevent
2 further people from breaching and accessing the building.

3 Q. And did they -- did the members of the mob
4 let you through?

5 A. No, they did not.

6 Q. What happened when you tried to get to
7 those access doors?

8 A. When I tried to push forward, I was
9 attacked by members of the mob, and I was punched in the
10 face on my left side, and I was also pushed or attacked
11 on the right side.

12 And before I knew it, they had knocked me
13 on my back. And I couldn't see anything because either
14 my helmet had come down over my eyes and it felt like
15 somebody was on top of me.

16 Q. Were you able to maintain all of your
17 equipment at that point?

18 A. No, I was not.

19 Q. What happened to your equipment?

20 A. My PR 24 baton, which I had -- was holding
21 out in my hands, was ripped from my grip and stolen from
22 me by some person.

23 Q. Were you concerned about your service
24 weapon?

25 A. Yes, very much so.

1 Q. And what did you do with that concern?

2 A. Well, because my baton had been stolen
3 from me so quickly and so easily, I was very concerned
4 that they would take my gun from me. So I did what I was
5 trained to do, which was just to hold on to it as best I
6 could and maintain that retention and control in my
7 holster.

8 Q. And this was all while you were on your
9 back on the ground?

10 A. Yes.

11 Q. Did you consider radioing for help,
12 Officer Pingeon?

13 A. I did briefly.

14 Q. You did briefly. But did you -- did you
15 actually radio for help?

16 A. No, I did not. And the reason for that
17 was basically because we were just so outnumbered, I felt
18 that there was help needed in many other places as well,
19 and I didn't know if help would come or -- or when.
20 So -- so that's why I didn't.

21 THE COURT: And I'm sorry, what's the time
22 frame that we're --

23 Q. (By Mr. Nicolais) How long -- how long
24 were you at the -- I'm sorry.

25 How long were you at the northwest lawn?

1 A. So --

2 Q. What time frame?

3 A. So that was -- that would have been
4 approximately at maybe 2:30 or so.

5 THE COURT: So this is --

6 Q. (By Mr. Nicolais) You're saying -- when
7 were you in the northwest courtyard, is that --

8 A. Yeah, approximately 2:30. So by the time
9 I left the lower West Terrace and made it -- you know, by
10 the time I was in the lower West Terrace was probably an
11 hour or so, and so by the time I got up was approximately
12 2:15, 2:30.

13 Q. Okay.

14 THE COURT: And your testimony is, is that
15 people were going through all four of those windows
16 and -- and fire exits?

17 A. They were going through, through Number 3.
18 And I couldn't see exactly, but I knew they were going
19 through Door Number 1, and I think either one or both of
20 those windows nearby that.

21 Q. (By Mr. Nicolais) All right. So we're
22 roughly at 2:30 when that's -- when that's happening, and
23 it's roughly -- roughly 2:30, you're lying on your back
24 in the northwest courtyard.

25 Did you think your life was in imminent

1 danger?

2 A. Yes, I did.

3 Q. How did you get up off the ground,
4 Officer Pingeon?

5 A. Fortunately, with the assistance of one of
6 my squad mates, as well as just my own strength and
7 training, I was able to -- to get up and -- and right
8 myself there.

9 Q. You said you were headed towards this
10 Number -- this Arrow Number 3.

11 Were you ever able to get there?

12 A. Yes. Well, we were just headed in to
13 where we could help and stop the breach. That just
14 happened to be the first most accessible door.

15 But yes, I was -- I was able to continue
16 to fight my way through to ultimately get to that door.

17 Q. And what did you and your squad do when
18 you reached that door?

19 A. We were able to close it and secure it as
20 best we could; because -- because it is a fire door, once
21 it's locked from the outside -- or once it's closed, it
22 is locked from the outside.

23 Q. And were you on the inside of the Capitol
24 or outside of the Capitol after you closed the door?

25 A. We stayed on the outside, so we shut the

1 door and continued to defend the door from -- from the
2 outside.

3 Q. Did members of the mob who were in that
4 courtyard say anything to you while you were there and
5 securing the door?

6 A. Yes, they did.

7 Q. And what did they say?

8 A. They said all kinds of things similar to
9 what they had told me down previously at the lower West
10 Terrace of, again, you know, "We don't want to hurt you,
11 but we will," and we took an oath to the Constitution,
12 that we were traitors, and that, you know, they were
13 getting in the building.

14 Q. Okay. Did members of that mob attack you
15 while you were securing that door?

16 A. Yes. And they continued to throw things
17 at myself and my fellow officers there.

18 Q. Were you and your fellow officers able to
19 hold or maintain that position at the door?

20 A. Not for very long, no.

21 Q. Why weren't you able to hold or maintain
22 that position?

23 A. Again, primarily because we were so
24 outnumbered and we, similar to before, had to effectively
25 reevaluate very quickly and determine what we needed to

1 do for a more strategic and tactical advantage, which was
2 not just stand there at that point.

3 Q. While you were securing that door, was
4 anyone stopping them from going into the other breach
5 points?

6 A. Not that I could tell, no.

7 Q. Do you believe that the assault against
8 you could have been more severe if the only point of
9 entry was where you were guarding?

10 MR. SHAW: Objection. Speculation.

11 THE COURT: Sustained.

12 Q. (By Mr. Nicolais) Can you describe the
13 impression of the mob demeanor as they went through the
14 open breaches?

15 A. Yes. At this point, it had changed
16 because they were very excited and they were cheering,
17 and so they were celebrating because -- because they were
18 breaching into the building.

19 Q. You said before that you found that
20 guarding that door, that breachment was untenable.

21 What did you do next after deciding you
22 couldn't keep that position?

23 A. So again, because we couldn't keep that
24 because other officers also had equipment stolen from
25 them and we were so outnumbered, we collectively felt we

1 needed to get inside the building to, again, get that
2 strategic tactical advantage where we could push them out
3 of the building and try to maintain some kind of control.

4 Q. Okay. So how did you get back to the
5 building, what path did you take?

6 A. So I effectively retraced my steps of the
7 way I had come, which was down and then north,
8 effectively along that green line, and then up to where
9 it says "North Terrace" and into the north door where
10 that -- as marked by that yellow arrow.

11 Q. Officer Pingeon, was your way impeded
12 in -- were you impeded in any way in getting there?

13 A. Yes, I was.

14 Q. And how were you impeded?

15 A. At that point, the whole upper West
16 Terrace had become overrun by people from the mob, and
17 when I got to that door, there was many individuals
18 trying to gain access there.

19 Q. So roughly what time? I understand you
20 probably weren't looking at your watch, but do you have
21 an idea of what time this was?

22 A. So that time was probably anywhere between
23 2:30 and 3:00 p.m. or so.

24 Q. Okay. Were you able to make it through
25 the north doors at any point?

1 A. I was ultimately, by forcing my way and
2 fighting with some of the members there to -- to
3 ultimately get in, because there were officers inside
4 defending those doors. So it was difficult, but I was
5 able to -- to enter the building there.

6 Q. When you entered the building through the
7 north doors there, what did you see?

8 A. From there, I could see just complete
9 chaos and that the halls of the U.S. Capitol were overrun
10 by this mob.

11 Q. And I want to actually ask you a little
12 bit more about the layout of the U.S. Capitol.

13 So if you're standing at the north doors
14 and you're facing the way that that arrow is facing, what
15 can you see?

16 A. So normally you could see effectively all
17 the way to the south door, as marked there (indicating).
18 That --

19 Q. I'm sorry, when you said "there," can I --
20 I'm just going to put my marker. Is -- I saw where
21 you're pointing.

22 Is that roughly where you were
23 pointing (indicating)?

24 A. Yes, that's correct.

25 So that hallway there serves like the main

1 artery of the building, on the first floor at least, and
2 so you can typically see clear from -- from one door all
3 the way to the other, across the whole Capitol.

4 Q. How large is that hallway?

5 A. It's a standard hallway. But it -- but
6 it's, you know, fairly large.

7 Q. Did you -- did you walk down the hallway
8 in this building before?

9 A. In this courthouse today?

10 Q. In this courtroom.

11 A. Yes, I did.

12 Q. Was it roughly as wide as that hallway?

13 A. I would say yes, or maybe slightly
14 narrower than this.

15 Q. Is it roughly that long?

16 A. The hallway in the Capitol is longer. To
17 me, it appears to be longer than the hallway here in this
18 courthouse.

19 Q. When you looked down that hallway on
20 January 6 and you said it was chaos, what could you see
21 looking down the hallway?

22 A. Well, I certainly couldn't see all the way
23 down to the end because there were so many people already
24 in the building impeding any further view of mine.

25 Q. Once you were inside, what did you do?

1 A. From there, it, again, was very chaotic,
2 but we were in that area where it says "lower Senate
3 corridors" and were trying to, again, maintain -- or gain
4 some kind of control to maintain and enforce some sort of
5 order.

6 Q. And when you were saying we were trying to
7 enforce some sort of order, how -- how would -- did you
8 go about doing that?

9 A. Well, primarily it was to secure the doors
10 and try to push people back outside who had -- who had
11 already breached and entered.

12 Q. When you tried to push people outside, did
13 they willingly go?

14 A. No, they did not.

15 Q. And how would you describe your engagement
16 with the members of that mob?

17 A. Well, it was very difficult because,
18 again, there were so many of them, and it just sort of
19 turned into like a back-and-forth where we would get some
20 of them out and then they'd get more back in. So it was
21 just sort of that -- that tug-of-war or back-and-forth
22 for a while.

23 Q. Were you engaging with them from a
24 distance, or how close were you to members of the mob?

25 A. Oh, I was very close and -- and in those

1 corridors, there were many people there that I
2 effectively was engaged in hand-to-hand combat with.

3 Q. And how long, roughly, were you engaged in
4 hand-to-hand combat in the halls of the U.S. Capitol?

5 A. For probably two to three hours.

6 Q. Okay. Were you ever able to -- were you
7 ever able to make it back from the inside to that -- to
8 the breach point here?

9 A. Yes, I was.

10 Q. And what happened when you got there?
11 What were you -- what did you and your squad do?

12 A. Well, from there, we again attempted to
13 secure that door from the inside, but it was a similar
14 kind of pushing and pulling of the -- of the mob. But
15 there were some Metro Transit police officers who had
16 responded and were assisting us there in an attempt to
17 secure that.

18 Q. What about -- what is this where my marker
19 is right here (indicating)? What does that represent?

20 A. That is a staircase that leads up to the
21 Senate Chambers, Senate Gallery areas.

22 Q. Did you ever engage members of the mob at
23 those stairs?

24 A. Yes, I did. And we attempted to form a
25 line to prevent further members of the mob from accessing

1 upstairs, but again, with the chaos and how outnumbered
2 we were, it was not a position I could maintain very
3 long.

4 Q. Also in that area, did you see any -- did
5 you -- I'm sorry, let me rephrase.

6 In that area, did you see any members of
7 the mob outside of the corridors?

8 A. Yes. In what's marked here as the "Senate
9 Parliamentarian's Office."

10 Q. And what did you see inside the Senate
11 Parliamentarian's office?

12 A. Inside there, I could see that members of
13 the mob had totally ransacked the office. They had
14 turned furniture over. They were ripping through file
15 cabinets, pulling papers out, stealing alcohol from
16 drawers, and just really vandalizing and just totally
17 desecrating that office.

18 Q. Okay. Officer Pingeon, during the two to
19 three hours that you were in hand-to-hand combat, were
20 you ever near the emergency door and windows that you had
21 talked about up here (indicating)?

22 A. Yes, I was.

23 Q. What happened there, Officer Pingeon?

24 A. So there we were, again, trying to push
25 them -- push them out, kind of back and forth. But we

1 ultimately used -- did as best we could to barricade
2 those doors in an attempt to prevent any further people
3 from coming in.

4 Q. When you say "barricade those doors," what
5 did you use to barricade the doors?

6 A. We used what we could, which were
7 primarily wooden placards, sort of information for
8 tourists, you know. There's sort of like a small desk
9 almost with -- with historical information about the
10 building and about Congress's and our country's history.

11 And we had pulled those because that was
12 what was most immediately accessible, as well as wooden
13 fire extinguisher holders or cases. Really anything that
14 we could find that we could push up against that door and
15 those windows, we were using.

16 Q. Did members of the mob continue attacking
17 you through that barricade?

18 A. Yes, they did.

19 Q. Do you remember any particular attack on
20 you through that barricade?

21 A. Yes, I do.

22 Q. What happened?

23 A. At one point, I distinctly remember
24 dodging lines of pepper spray that came through --
25 through the broken window there, as well as a sharpened

1 flagpole that was stabbed that came just about this
2 close (indicating) to my face.

3 Q. Just for the record, Officer Pingeon, you
4 said "this close to my face."

5 How close to your face did the sharpened
6 edge of a flagpole come?

7 A. Approximately 2 inches.

8 Q. And where did the end of that flagpole
9 finally end up?

10 A. Past my head, past my ear.

11 Q. Did that -- did that cause you significant
12 fear when that went by your head?

13 A. Yes, it did.

14 Q. Why did that cause you significant fear?

15 A. Well, because of the force that was used,
16 I was very much fearful that had it hit me in my eye, it
17 would take my eye. Or further, that it could take my
18 life.

19 Q. Okay. During this time that you were
20 guarding that area of the Capitol, was your radio on?

21 A. Yes, it was.

22 Q. How loud did you have your radio turned
23 up?

24 A. I had it turned up very loud because the
25 alarms of the door breach were blaring, as well as

1 members of the mob having megaphones and all kinds of
2 noise from them.

3 So I had it turned up as high -- I think
4 as high as it would go so I could hear as best I could
5 what was going on outside the building and in and around
6 the building.

7 Q. Do you remember any unusual radio calls
8 from -- on your radio?

9 A. Yes, I do.

10 Q. And what did you -- what was -- what was
11 one of the unusual calls that you heard?

12 A. One of them was that there were shots
13 fired.

14 Q. What went through your mind when you heard
15 that there were shots fired?

16 A. I was obviously very concerned, and where
17 my mind most immediately went to was that one of my
18 fellow officers had potentially been shot or been shot
19 at.

20 Q. Okay. How close were members of the mob
21 to you when you got that call?

22 A. Very close, like within arm's reach.

23 Q. Do you believe that they probably could
24 have heard that radio call as well?

25 A. Yes. I know some of them heard it because

1 I could see how they reacted.

2 Q. And how did they react to that call?

3 A. Well, some of them didn't -- I guess some
4 of them seemed hesitant about it or perhaps
5 uncomfortable, but by and large, most of them really
6 didn't seem to care.

7 Q. Okay. At any point in time, did you
8 respond to an "officer down" radio call?

9 A. Yes, I did.

10 Q. And can you explain what happened there?

11 A. Yes. There was a call for assistance for
12 an officer down in the area beneath -- under the floor
13 where I was, in the area between where the U.S. Capitol
14 connects underground via subway trolley cars over to the
15 Senate side, and so I responded down in that area to
16 assist.

17 Q. When you say "down in that area," how --
18 how did you get down there?

19 A. I went, I believe it was these stairs
20 here (indicating) --

21 Q. I'm going to use my marker to show where
22 it looks like you're pointing.

23 Is this the accurate reflection --

24 A. Yes.

25 Q. -- of where you were

1 pointing (indicating)?

2 So these stairs here, you went down these
3 stairs (indicating)?

4 A. Correct, and down into that lower basement
5 area.

6 Q. What did you find when you went down those
7 stairs?

8 A. When I got down there, I saw that there
9 were already numerous officers on scene there to assist.

10 And so knowing that I had no additional
11 formal medical training beyond basic first aid and CPR
12 that I had received in the Academy like every other
13 officer had received, I knew that I needed to get back --
14 also because I was in riot gear -- that I needed to go
15 back and -- that I couldn't be useful there; I needed to
16 be more useful back where I was upstairs.

17 Q. Officer Pingeon, did you later find out
18 who that officer -- that officer was that was receiving
19 help?

20 A. Yes, I did.

21 Q. Who was that officer?

22 A. Officer Brian Sicknick.

23 Q. And do you know what happened to
24 Officer Sicknick that day and the next day?

25 A. Yes. He was assaulted in the line of duty

1 that day and sprayed with chemical irritants like bear
2 spray, and he died the next day, line-of-duty death.

3 Q. Officer Pingeon, did you attend
4 Officer Sicknick's funeral?

5 A. Yes, I did.

6 Q. In what capacity did you attend his
7 funeral?

8 A. I was at that point, a month or so later,
9 assigned with my honor guard, the ceremonial unit, and I
10 was one of the officers who guarded his remains in the
11 Rotunda of the U.S. Capitol during his lying in honor
12 ceremony.

13 Q. Okay. Officer Pingeon, I'd like to take
14 you back to January 6. So you talked about the funeral.

15 Do you at any point in time remember
16 seeing attackers in the Crypt of the U.S. Capitol?

17 A. Yes, I do.

18 Q. And so just to orient the Court, is this
19 roughly where you saw them? Is this the
20 Crypt (indicating)?

21 A. Yes.

22 Q. Okay. What did you do when you saw --
23 when you saw people there?

24 A. I ultimately responded to the Crypt and
25 down the stairs to the tunnel, where I believe I had

1 heard on the radio or talked to other officers around
2 that additional assistance was needed down there.

3 Q. Officer -- Officer Pingeon, you said down
4 the stairs. So these stairs, or what -- what are we
5 looking at?

6 A. So there's stairs underneath those. So
7 there's sort of two sets of stairs, one on top of the
8 other: One that leads up to the Rotunda, and one that
9 is -- leads down, down to what's marked as the tunnel
10 where the yellow arrow is, a hallway down that leads --
11 feeds right out to the inauguration stage.

12 Q. Okay. So if you go down these stairs
13 here, there's a tunnel directly to -- is -- this?

14 A. Yes, that's correct. A hallway that
15 leads -- leads out to that.

16 Q. And so the inauguration balcony over
17 here (indicating)?

18 A. Correct. Yes. The -- the tunnel opens up
19 to the walkway right to the -- and then you're on the
20 stage, when -- when the stage is built.

21 Q. Is this the same tunnel that Presidents
22 use to walk out to the inauguration stage?

23 A. Yes, it is.

24 Q. Okay. What do you remember seeing when
25 you got down into that tunnel?

1 A. When I got down there, I could see that
2 there were numerous officers with injuries, some with
3 fairly extensive injuries, and I could see that there
4 were officers defending that door, entryway to the tunnel
5 from the stage that -- and there are many officers packed
6 in tightly as they were defending it from the mob.

7 Q. And do you have a rough idea when this
8 was, what time this was?

9 A. This was probably around 5:00 p.m. or so.

10 Q. Okay. Do you remember anyone asking for
11 additional help at that point in time?

12 A. Yes, I do.

13 Q. And what happened, what was the ask?

14 A. I believe it was -- a Capitol Police
15 official was there and was yelling for fresh bodies,
16 fresh officers to go to the front of the line.

17 Q. And how did you respond at that time?

18 A. Well, at that time, I also witnessed
19 additional officers from the Virginia State Police and
20 Fairfax County Police had responded there. And so
21 knowing that there were fresh officers there, and I
22 myself was very much not fresh after having been engaged
23 with the mob for hours at that point, I stepped aside and
24 let those additional officers go ahead and answer that
25 call.

1 Q. Okay. Were you ever -- were you ever able
2 to exit the tunnel?

3 A. Yes, I was.

4 Q. And what happened when you exited the
5 tunnel? Where did you go?

6 A. Well, so after I had sort of gotten to
7 regain myself and my composure and maybe had a sip of
8 water or something there, I was able to exit through the
9 tunnel. There were no longer officers guarding it. They
10 had gone out to the stage, and so I followed and went out
11 to the inauguration stage.

12 Q. At any point, did you meet any members of
13 the National Guard?

14 A. Yes.

15 Q. And what happened when you met those
16 members of the National Guard?

17 A. I had a conversation with a National Guard
18 commander, command staff, and we got to talk about that
19 day.

20 Q. What -- what did you talk about?

21 A. Well, he told me that they had been
22 wanting to come but they just didn't have the
23 authorization. They were waiting and really trying to
24 come to our assistance, but that they could not because
25 of their orders.

1 Q. How did that make you feel,
2 Officer Pingeon?

3 A. It made me feel angry and very
4 disappointed.

5 Q. Okay. After you spoke with that National
6 Guard member, though, were you -- did you believe you
7 needed to continue fighting, protecting the Capitol?

8 A. Well, thankfully at that time, it appeared
9 to me that at least most of the Capitol or the parts that
10 I could see as I went back through the Crypt back to the
11 Senate side, that there were no longer members of the mob
12 in there.

13 But again, I couldn't -- I obviously
14 couldn't see the entire building, so I was feeling
15 better, but I was still concerned that there could be
16 people in the building or that they could -- because it
17 wasn't secure, they could have left weapons or explosives
18 or anything that we didn't know about inside the Capitol.

19 Q. Okay. Were you -- were you ever able to
20 regroup with the rest of your squad that day?

21 A. Yes, I was.

22 Q. When did that happen?

23 A. That happened probably around 6:00 or
24 7:00 p.m.

25 Q. Okay. And where did you meet up with

1 them?

2 A. We -- so I was able to find a few, and
3 then I think somebody, our lieutenant or sergeant, called
4 on the radio for us to regroup back in the Senate side
5 around those corridors.

6 Q. So roughly here (indicating) is where you
7 regrouped?

8 A. Yes, right in that area.

9 Q. What were -- what was the condition of
10 your squad members when you got there?

11 A. Well, not good. One of our officers would
12 go to the hospital for injuries, and others had, similar
13 to me, been assaulted and had equipment and gear stolen
14 from them.

15 Q. Okay. When did you finally leave the
16 U.S. Capitol on January 6?

17 A. Probably maybe around 7:00 or 8:00 p.m.

18 Q. Okay.

19 A. I mean, we went back to Longworth to just
20 stage, so -- stage in case we were further needed.

21 Q. Officer Pingeon, at any time during the
22 time that you were in the U.S. Capitol, were you able to
23 use your cell phone?

24 A. Yes, at one point.

25 Q. And what did you use it for?

1 A. At one point, I was able to -- when we had
2 regained some semblance of control, I was able to escape
3 into an office to send a text message to my family.

4 Q. And what did you tell your family?

5 A. I told them that I had been attacked
6 and -- but I was okay, but -- and that I loved them, but
7 that I had to go back and that I was going back in to
8 keep fighting.

9 Q. So this was in the middle of fighting, so
10 you had to go back again; is that what you're saying?

11 A. Yes.

12 Q. Okay. So this wasn't after you were done?

13 A. No.

14 Q. Okay. Officer Pingeon, how did you feel
15 at the end of the day on January 6, 2021?

16 A. Physically, I was completely exhausted.
17 And mentally, I was just devastated to see everything
18 that had happened that I could not have even imagined, of
19 how desecrated the building had been and how violent the
20 mob had been towards me and my fellow officers.

21 MR. NICOLAIS: Thank you, Officer Pingeon.

22 I have no further questions, Your Honor.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25

1 BY MR. SHAW:

2 Q. Good afternoon, sir.

3 You mentioned the death of Officer --

4 THE COURT: Try again.

5 MR. SHAW: Try it again.

6 Okay. All right, that's better.

7 Q. (By Mr. Shaw) You mentioned earlier the
8 death of Officer Sicknick.

9 Do you recall that?

10 A. Yes.

11 Q. Okay. And you said that it was a
12 line-of-duty death; is that correct?

13 A. Yes.

14 Q. Are you familiar with the criteria for
15 declaring something a line-of-duty death?

16 A. I am familiar with what the chief of
17 police tells us.

18 Q. And what does the chief of police tell
19 you?

20 A. Well, that this was, in fact, a
21 line-of-duty death.

22 Q. Okay. So you know that this particular
23 death was declared a line-of-duty death, but you do not
24 know what criteria were used to make the determination;
25 is that fair?

1 A. Yes.

2 Q. Okay. Are you aware that the DC Medical
3 Examiner conducted an autopsy of Officer Sicknick?

4 A. I believe so, that that's the standard
5 thing to do, yes.

6 Q. Do you know what the results of that
7 autopsy were?

8 A. Not off the top of my head right now, no.

9 Q. Are you aware that the DC Medical Examiner
10 found that Officer Sicknick died on January 7 of natural
11 causes, sir?

12 A. I may have heard that, but I can't -- I'm
13 not totally sure.

14 Q. Are you aware that the Department accepted
15 the findings of the Medical Examiner but, nonetheless,
16 declared it a line-of-duty death?

17 A. I'm not aware. As I was just an officer,
18 I'm not aware what the department would --

19 Q. Are you aware, based on your time as an
20 officer, that it makes a difference in terms of the
21 benefits that the survivors of an officer receive
22 depending on whether the department declares it a
23 line-of-duty death versus a non-line-of-duty death?

24 A. I'm not aware of the specifics or what the
25 difference of those are, no.

1 Q. Okay. You have no reason to second-guess
2 the findings of the DC Medical Examiner, correct?

3 A. No.

4 Q. Okay. So if the DC Medical Examiner found
5 that Officer Sicknick's death was due to natural causes
6 rather than to anything that occurred on January 6, you
7 have no reason to question that, correct?

8 A. I'm not a doctor, so I -- no, I can't
9 question their rulings.

10 Q. Okay. Do you know how many demonstrations
11 there were in DC on January 6?

12 A. No, I do not.

13 Q. Do you know if it was more than one?

14 A. Well, are you talking permitted
15 demonstrations?

16 Q. I'm not sure what you mean by permanent
17 demonstrations.

18 A. Oh, sorry, "permitted."

19 Q. Oh, "permitted." Yes. All right. First
20 of all, let's start with permitted.

21 Do you know how many permitted
22 demonstrations there were?

23 A. No, I do not.

24 Q. Do you know if there were multiple
25 permitted demonstrations?

1 A. All I knew at that time was that there --
2 well, I don't even know if it was permitted or not, but
3 all I knew at that time was there was one big one at the
4 White House.

5 Q. So there was one at the Ellipse, that's
6 what you mean by the White House?

7 A. Yes.

8 Q. Okay. Do you know if there was another
9 permitted one at the Supreme Court?

10 A. I do not know.

11 Q. Do you know if there was another permitted
12 one elsewhere?

13 A. No.

14 Q. Okay. Do you know if there were people
15 who were demonstrating in DC at unpermitted
16 demonstrations that day?

17 A. I do not know.

18 Q. Do you know how many demonstrators were in
19 DC that day in total?

20 A. No.

21 Q. Do you have an estimate of how many were?

22 A. Thousands at least.

23 Q. Okay. Would it surprise you that
24 estimates in the area of 120,000 have been circulated?

25 A. That would not surprise me, no.

1 Q. Okay. You spoke about what you called
2 "the mob"; is that correct?

3 A. Yes.

4 Q. And how are you defining "the mob"?

5 A. Well, I don't know the dictionary
6 definition, but to me, a crowd turns into a mob when they
7 are engaging in unlawful conduct and violence.

8 Q. Okay. I asked a bad question, so I
9 apologize for that.

10 I'm asking about "the mob." Was it a
11 particular group of people on January 6 that you're
12 referring to as "the mob"?

13 A. It was the -- I'm not quite sure --

14 Q. So if you assume -- so if you accept for
15 purposes of this question that there were perhaps 120,000
16 or that order of magnitude people in DC demonstrating
17 that day, are you saying that all of those 120,000 people
18 were "the mob," or is it a subset of them?

19 A. I didn't see personally 120,000 people so
20 I couldn't characterize all of them as "a mob."

21 Q. In terms of the people who were at the
22 Capitol during the afternoon when you were there, do you
23 have an estimate of how many people were there?

24 A. Thousands, but I couldn't -- I don't know
25 an exact number, no.

1 Q. Somewhere in the -- well, let me change
2 that.

3 You know that an extensive investigation
4 has been conducted by the Department of Justice and the
5 FBI in the wake of January 6, correct?

6 A. Yes.

7 Q. And do you know how many people have been
8 prosecuted, roughly?

9 A. I think more than 1,000, but I don't know
10 exactly.

11 Q. About 1200 sound right to you?

12 A. Potentially, yes.

13 Q. Okay. In terms of the people who were at
14 the -- at or around the Capitol that day, do you know
15 what percentage of them attended the rally at
16 the Ellipse?

17 A. No, I do not.

18 Q. Do you know what percentage of the people
19 who attended the rally at the Ellipse did not go anywhere
20 near the Capitol that day?

21 A. No, I do not.

22 Q. I take it that you don't claim any ability
23 to read people's minds; is that fair?

24 A. That is fair.

25 Q. And just by looking at the folks who were

1 there that day, you weren't able to tell if any
2 particular person attended the rally at the Ellipse,
3 right?

4 A. Correct.

5 Q. And you weren't able to tell if any
6 particular person heard President Trump speak at that
7 rally, correct?

8 A. Correct.

9 Q. And you weren't able to tell if any
10 particular person had seen any of President Trump's
11 tweets, correct?

12 A. That's correct.

13 Q. What do you currently do for a living,
14 sir?

15 MR. NICOLAIS: Objection, Your Honor.
16 Relevance.

17 THE COURT: Can you respond?

18 MR. SHAW: Yes. I think the relevance
19 will become clear in a moment, Your Honor.

20 Q. (By Mr. Shaw) What do you currently do
21 for a living, sir?

22 THE COURT: Well, hey, you don't reask the
23 question when I haven't ruled on the objection.

24 MR. SHAW: Sorry, Your Honor.

25 THE COURT: I will -- I will allow you to

1 answer, but if I don't find it relevant, I'll strike the
2 answer.

3 A. I work as a sales -- I have a sales
4 position in a technology company.

5 THE COURT: I'm sorry, what kind of
6 company?

7 A. Technology, software company.

8 THE COURT: Okay.

9 Q. (By Mr. Shaw) Do you also sell your
10 artwork?

11 A. Yes, I do. I am also an artist.

12 Q. Is much of your artwork January 6 themed?

13 A. Well, I've been an artist for most of my
14 life, so I've explored numerous mediums and subject
15 matter. But yes, after January 6, it was a source of
16 inspiration, and I use my artwork as a form of healing
17 for the trauma that I endured that day.

18 Q. And you -- you sell the artwork that you
19 create, correct?

20 A. I do, yes.

21 Q. You have an Etsy store?

22 A. I do.

23 Q. And you sell your pictures for between \$50
24 and \$250 a picture; is that correct?

25 A. Some are lower, some are higher, but

1 approximately, yes.

2 Q. And so far, you've sold about 300 pictures
3 from your Etsy store; is that -- is that right?

4 A. I'd have to look exactly, but that sounds
5 about right, yes.

6 Q. Is it fair to say that you would like to
7 attract more visitors to your Etsy store to buy more
8 pictures?

9 MR. NICOLAIS: Objection, Your Honor. I
10 don't understand the relevance of Etsy store.

11 THE COURT: I think I do, but it's -- the
12 objection is overruled.

13 A. You know, as an artist and, I guess you
14 could call it small business owner, yes, it is attractive
15 for me to have more customers buying my artwork.

16 Q. (By Mr. Shaw) And is it fair to say you
17 expect that being in a televised trial like this one
18 about January 6 is likely to raise your profile and sell
19 more pictures about January 6?

20 MR. NICOLAIS: Objection, Your Honor.
21 This calls for speculation from the witness.

22 THE COURT: Overruled.

23 You can answer.

24 A. With your endorsement, perhaps.

25 Q. (By Mr. Shaw) If I can help, glad to.

1 MR. SHAW: I have no further questions for
2 you, sir.

3 THE COURT: Any questions from the
4 Colorado Republican Party?

5 MS. RASKIN: No questions.

6 MR. KOTLARCZYK: No questions, Your Honor.

7 THE COURT: Okay. Redirect?

8 MR. NICOLAIS: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. NICOLAIS:

11 Q. Officer Pingeon, I'll try to keep this
12 brief.

13 Did the -- did the autopsy results of
14 Officer Sicknick keep him from being honored in the
15 Rotunda of the U.S. Capitol?

16 A. No, they did not.

17 Q. And just to be clear, you guarded his body
18 in the Rotunda?

19 A. His remains, yes.

20 Q. Okay. I want to go back also to -- you
21 were asked about definition of "the mob," and I want to
22 make sure I got this right.

23 You said "a mob" is a group of people who
24 engages in unlawful conduct and violence.

25 Does that sound roughly about what you

1 said?

2 A. Yes.

3 Q. Would you characterize the people who
4 assaulted you on January 6 as "a mob" under that
5 definition?

6 A. Yes.

7 Q. Officer Pingeon, there was a question
8 about rallies and permitted events, et cetera.

9 You responded you thought there was one
10 big event at the Ellipse?

11 A. Yes.

12 Q. And when you were on the northwest lawn
13 and you were looking down from your elevated position,
14 what were you looking toward?

15 A. Down Pennsylvania Avenue, leads towards
16 the White House and the Ellipse.

17 Q. And what did you see coming down
18 Pennsylvania Avenue?

19 A. Thousands of people coming towards the
20 Capitol.

21 Q. Okay. I do -- I'll be brief about your
22 artwork, Officer Pingeon.

23 Is your artwork your primary source of
24 income?

25 A. No. Far from it. I -- I wish it could

1 be, but no.

2 Q. What is the primary reason that you engage
3 in artwork post January 6, Officer Pingeon?

4 A. Like I previously stated, it's -- you
5 know, I always turn to art in difficult times as a
6 creative outlet to express myself, but it became more
7 important post January 6, as I dealt with posttraumatic
8 stress symptoms, to be able to express myself and heal
9 from that experience by expressing myself artistically.

10 Q. Are you here today to sell more artwork?

11 A. No.

12 Q. Why are you here today, Officer Pingeon?

13 A. I'm here today to share my story and speak
14 the truth of what happened to me and what I saw, heard,
15 and experienced on January 6.

16 MR. NICOLAIS: Thank you very much. I
17 have no further questions.

18 THE COURT: Officer Pingeon, thank you so
19 much for your testimony today.

20 THE WITNESS: Thank you.

21 THE COURT: You are released.

22 THE WITNESS: Thank you.

23 THE COURT: We will go on break until
24 3:20.

25 (Recess taken from 3:05 p.m. until

1 3:22 p.m.)

2 THE COURT: You may be seated.

3 And we're going to be watching some

4 videos?

5 MR. GRIMSLEY: We're going to be watching
6 some videos and seeing some photos. And I know we had
7 discussed it in earlier hearing that there was going to
8 be a period in the case where we wanted to present video
9 evidence and some of the other evidence that wouldn't be
10 coming in through a witness, so we'll do that now.

11 Your Honor will be happy to hear that we
12 are well ahead of time. And then given what I had said
13 this morning about the witnesses who abruptly pulled out,
14 that gives us some time back as well. So I think we're
15 going to be good.

16 I don't think the evidence presentation
17 will go all the way through to 5:30.

18 THE COURT: Okay.

19 MR. GRIMSLEY: But we've already spoken to
20 counsel for respondents, and we would start with our next
21 witness tomorrow morning.

22 THE COURT: Okay. That's fine.

23 Did you -- did you bring popcorn?

24 MR. GRIMSLEY: I did not. I don't know if
25 it's going to be that scintillating, but --

1 THE COURT: I think the popcorn is if it
2 isn't that scintillating.

3 MR. GRIMSLEY: Perhaps you're right as to
4 why we might need it.

5 But just in terms of timing, I wanted to
6 let Your Honor know why we don't have that witness
7 here --

8 THE COURT: Yeah.

9 MR. GRIMSLEY: -- at the ready.

10 The estimates for cross-examination -- and
11 I'm not going to fault them at all --

12 THE COURT: Yeah.

13 MR. GESSLER: -- were quite a bit longer,
14 shall we say, than the cross-examinations actually were.

15 THE COURT: Yeah.

16 MR. GRIMSLEY: So we're well, as I said,
17 ahead of schedule right now.

18 THE COURT: So we'll just do whatever
19 video evidence you have, and then we'll break for the
20 day?

21 MR. GRIMSLEY: Yes. And there will be
22 some discussion, I think, of how you would like us to
23 present some of the January 6 Report findings.

24 THE COURT: Okay.

25 MR. GRIMSLEY: We could -- I could read

1 them, but we can -- we could talk about whether that
2 makes sense to do --

3 THE COURT: Okay.

4 MR. GRIMSLEY: -- in terms of a good use
5 of everyone's time.

6 But Mr. Gessler has said that he has a
7 procedural matter that he wanted to raise before the
8 entertainment begins.

9 THE COURT: Okay.

10 MR. GESSLER: Thank you, Your Honor.

11 So I want to go back to our status
12 conference -- I believe it was last week. They're all
13 beginning to bleed together -- and we had talked a little
14 bit about experts.

15 THE COURT: Uh-huh.

16 MR. GESSLER: We have -- Your Honor had
17 said, you know, if there's a way for us to get in an
18 expert, we might -- the door was open to testimony next
19 week sometime. And I think we have identified an expert
20 on political communications as a --

21 THE COURT: Okay.

22 MR. GESSLER: -- as a rebuttal expert for
23 Professor Simi.

24 May we present that? We'll produce a
25 report. I can't give you an exact timeline, but I know

1 the timeline is going to be within a few days. I
2 understand it's pretty fast.

3 But I'm asking if we would be able to do
4 that, Your Honor.

5 THE COURT: And do the petitioners have
6 any objection?

7 MR. GESSLER: And -- and, Your Honor, I
8 just sprung this on them, so this is the first they've
9 heard of it as well.

10 MR. GRIMSLEY: We do have an objection,
11 Your Honor.

12 Our expert on the subject is going to be
13 testifying tomorrow. He's not, obviously, going to have
14 an opportunity or ability to respond. And they are going
15 to be able to tailor any sort of report, expert report,
16 to his testimony that's offered tomorrow.

17 We think that is unfair. They've had
18 ample amount of time to find somebody and have not. I
19 don't think next week was meant for an entirely new
20 expert. I think it may have been meant for if Mr. Heaphy
21 needed to testify next week or if there was some fact
22 witness, but this is introducing a whole new kettle of
23 fish into the case.

24 THE COURT: Okay. I'm going to let them.
25 Everything has been on an extremely compressed schedule,

1 and I know it's been hard for both parties to get
2 witnesses to appear on that schedule, but I will allow.
3 So this is to respond to Professor Simi?

4 MR. GRIMSLEY: Correct.

5 THE COURT: If Professor Simi wants to
6 have a rebuttal to that, which would normally happen in
7 his testimony, and wants to do so by phone -- by video
8 next week, the Court will allow that, so long as that
9 rebuttal testimony is, you know, disclosed.

10 Are we going to get a report?

11 MR. GESSLER: Yes, of course, Your Honor.
12 No, we're going to work very hard to get that. I'm not
13 looking to do an ambush here, but we're going to -- we've
14 had some communications. We have to firm that up, and
15 we're going to work like crazy to -- to get something to
16 petitioners. It will be a meaningful report.

17 Understanding the Court's framework from
18 before, that there's not an opinion that's in the report
19 that cannot be elicited on the stand. So we're prepared
20 to abide by that and go forward.

21 MR. GRIMSLEY: And, Your Honor, as for us,
22 I assume -- and I would ask if it's not the correct
23 assumption -- that Professor Simi doesn't have to now
24 submit a rebuttal report in advance of his rebuttal
25 testimony in response to the testimony that we don't yet

1 know what it is going to be?

2 THE COURT: Let's -- let's see what this
3 rebuttal report looks like before we get too deep into
4 this conversation.

5 But I'm -- I understand that, normally, in
6 a normal course, Professor Simi would have a chance
7 potentially to rebut and that he would do so when he's on
8 the stand and that he's obviously not going to have that
9 opportunity.

10 So I'm going to make -- we'll do what it
11 takes to level the playing fields.

12 MR. GRIMSLEY: Thank you, Your Honor.

13 THE COURT: And is Mr. Heaphy coming or
14 testifying?

15 MR. GRIMSLEY: He is available to testify
16 remotely on Friday, so we can -- I expect that I would do
17 a short direct with Mr. Heaphy and then opposing counsel
18 would be able to cross-examine.

19 THE COURT: Okay. So he'll be testifying
20 out of order?

21 MR. GRIMSLEY: Yes. He'll be, I think,
22 testifying from Washington, DC.

23 THE COURT: Okay. So the videos.

24 MR. GRIMSLEY: Yes.

25 So I've tried to limit this to exhibits

1 that Your Honor has already ruled on, saying that they
2 would be admitted --

3 THE COURT: Okay.

4 MR. GRIMSLEY: -- or were conditionally
5 admissible.

6 There were a few -- I raised one earlier
7 today -- that has not been ruled on yet, but I will
8 obviously raise that when I get to it, so --

9 THE COURT: Okay. Is that the -- is that
10 the videos on -- which were embedded in the tweets?

11 MR. GRIMSLEY: Yes. Those too, Your
12 Honor. I think there's one of those in here. I don't
13 know if it's both in here.

14 So I was going to raise that when we got
15 there, but I was thinking of the Giuliani and Eastman
16 speech. Again, President Trump referred to that
17 speech -- or those speeches explicitly within his Ellipse
18 speech.

19 It was the justification that President
20 Trump gave and provided to the crowd on that day, that
21 Vice President Trump -- or Vice President Pence had the
22 ability to reject certification of the electoral votes,
23 and so was a critical piece of that speech.

24 And President Trump actually selected them
25 as speakers before he took the stage, so -- and, again,

1 we're not offering it for the truth of the matter
2 asserted.

3 THE COURT: I understand you're not
4 offering it for the truth of the matter asserted, but I
5 do have, kind of, fairness issues with having a speech of
6 someone who then isn't available for cross-examination,
7 though I suppose Mr. Gessler would have a lot better
8 chance of getting Mr. Eastman or Mr. Giuliani to respond,
9 so I need -- I'm still thinking about it.

10 MR. GRIMSLEY: And, Your Honor, to be
11 fair, I think, to everyone, I don't think anybody's
12 getting either of those two to testify, other than to
13 assert their Fifth Amendment right against
14 self-incrimination, given that they're both currently
15 under indictment.

16 But, again, if it had been a document that
17 President Trump held up and said, "Here's the proof that
18 I have that Vice President Trump -- or Vice President
19 Pence can decertify the election," I think you would
20 allow it in as part of the speech.

21 He refers to it, and it comes right before
22 his speech that day. It is an integral part of what he
23 did in his plan to incite the riot.

24 And obviously Your Honor can take it for
25 the weight it warrants.

1 THE COURT: Any response, Mr. Gessler?

2 MR. GESSLER: Your Honor, at the end of
3 the day, we're talking about President Trump's -- whether
4 or not he, quote, engaged in an insurrection, and
5 referral to other speakers is not President Trump
6 speaking. It's not. And it's not President Trump's
7 engagement.

8 And so we would continue to object to
9 that, just as President Trump may refer to many things
10 and has referred to many things over six, eight years of
11 a political career, or more.

12 But not every one of them -- we would
13 submit none of them -- are admissible as his statement or
14 as his embracing of that statement.

15 MR. GRIMSLEY: I would say that that is
16 generally true, but this was the speech right before him
17 on the Ellipse on January 6, speeches that he planned to
18 have there that day, speeches that he referred to
19 explicitly within his own speech as what gave him the
20 justification for saying that the Vice President could
21 decertify.

22 It's incredibly important context to
23 understand what President Trump was saying.

24 MR. GESSLER: Your Honor, I would simply
25 say the Rules of Evidence don't change on January 6.

1 MR. GRIMSLEY: No, they don't.

2 MR. GESSLER: They remain the same.

3 THE COURT: I'm going to -- I'm going to
4 continue to ponder it while I also simultaneously watch
5 the other videos.

6 MR. GRIMSLEY: Okay. Well, I was going to
7 start and try and break this up into two different
8 categories.

9 The first is additional evidence that
10 there was an insurrection on January 6 and then
11 additional evidence that President Trump engaged in that
12 insurrection.

13 THE COURT: Okay.

14 MR. GRIMSLEY: So I'm going to start with
15 an admitted exhibit, Plaintiffs' 133.

16 THE COURT: Okay. 133 will be officially
17 admitted.

18 (Exhibit 133 was admitted into evidence.)

19 MR. GRIMSLEY: And Exhibit 133 is a series
20 of photos taken by Nate Gowdy. He was a photographer
21 that was present at the Ellipse and then at the Capitol
22 on January 6, and we'll just run through a few of those.

23 The nice thing about these photos is they
24 have a time stamp on the upper left-hand side. So I just
25 want to look at a few.

1 So let's go to page 4. And the time stamp
2 there is 11:38 a.m. Eastern Standard Time. And you see
3 there, somebody there with "Pence Has the Power." And,
4 again, this is why I think it's so important, the
5 Giuliani speech.

6 Photos of individuals in camo and gear
7 with those plates that were discussed earlier.

8 (Siren interruption.)

9 THE COURT: See, Mr. Gessler, I told you
10 they would get their turn.

11 MR. GESSLER: I'm glad to know the
12 ambulances are an equal opportunity interrupter.

13 THE COURT: Yeah.

14 Mr. Grimsley, just make sure you speak
15 into the microphone so that --

16 MR. GRIMSLEY: Yes.

17 And then let's go to page 17, which is
18 from 2:14 p.m. that afternoon. And you see people
19 holding on and carrying away the bike racks.

20 At 2:36 -- and this is after the tweet
21 about Vice President Pence -- you see the tear gas and
22 chemical irritant and individuals swarming the Capitol.

23 Here again is another photo that shows
24 individuals carrying -- the attackers carrying the Trump
25 flags and various Trump paraphernalia, and that's

1 page 26, 3:27 p.m.

2 This is page 30 at 3:55 p.m., and you see
3 the sign there: "Certify Honesty Not Fraud," reflecting
4 the claims of fraudulent -- of a fraudulent election.
5 And you see again the Trump paraphernalia and flags and
6 the crowd proceeding towards the Capitol.

7 And then here on page 37 is a photo at
8 5:07, and you see still Trump paraphernalia. It's
9 getting dark outside, and you see the tear gas and
10 chemical irritant there as well.

11 Now I'd like to play a portion of
12 Plaintiffs' Exhibit 9- --

13 MR. GESSLER: Your Honor, may I just make
14 one clarification.

15 These are being admitted over our
16 objection, so we are clear. We would object to counsel's
17 characterization of them. They're not the evidence.

18 So, for example, the people lined up with
19 the vests, I mean, did the photographer say, "Hey, come
20 on in and let me get a photo of you all," or were they
21 locked arm in arm preparing to storm the Capitol?
22 There's just no context.

23 So we're going to make that objection for
24 the record, and we will ask the Court not consider
25 Counsel's characterization of these photos because

1 it's -- doesn't come from a witness, and counsel's
2 statements are not evidence.

3 Thank you, Your Honor.

4 MR. GRIMSLEY: Your Honor, I'm next going
5 to play a clip from Plaintiffs' Exhibit 94. It's a video
6 that was admitted by Your Honor on October 27. Part of
7 it, I think, has already been played in the opening, so
8 I'll play only a portion of it here.

9 THE COURT: And 94 is admitted over
10 objection.

11 (Exhibit 94 was admitted into evidence.)

12 (Video playing.)

13 MR. GRIMSLEY: And so I think you heard
14 other portions of Exhibit 94 during openings, so I won't
15 play those here.

16 Next I'd like to show Exhibit 105.

17 THE COURT: Exhibit 105 is admitted.

18 (Exhibit 105 was admitted into evidence.)

19 MR. GRIMSLEY: And this is an exhibit Your
20 Honor has said was admitted. It is a transcript of the
21 closing argument in the --

22 THE COURT: Did I -- have I ruled on this
23 previously, or am I jumping the gun?

24 MR. GRIMSLEY: Oh, I'm sorry. It's
25 stipulated. You have not ruled on it. It was

1 stipulated.

2 THE COURT: Okay.

3 MR. GRIMSLEY: And so this is a transcript
4 of the closing argument in the second impeachment trial.

5 This is from President Trump's lawyer,
6 Mr. van der Veen, and he says: "Yet the question before
7 us is not whether there was a violent insurrection of the
8 Capitol. On that point everyone agrees."

9 And I've got video of that as well. We
10 hadn't marked that. I can play that. But to be fair, I
11 haven't provided that to the other side, and we can wait
12 if they would like, but it's just video of the same
13 statement.

14 THE COURT: I don't -- I don't need video
15 of the same statement.

16 MR. GRIMSLEY: Thank you.

17 Now I want to play video from Plaintiffs'
18 Exhibit 1. Again, not the entire video, but this is
19 video from January 6.

20 (Video playing.)

21 MR. GRIMSLEY: The time stamp on the upper
22 right.

23 So I would move to admit Plaintiffs'
24 Exhibit 1, as well as Plaintiffs' Exhibit 105. I forgot
25 about that one.

1 THE COURT: Hold on.

2 Plaintiffs' Exhibit 1 is admitted and the
3 other one you said was 105?

4 (Exhibit 1 was admitted into evidence.)

5 MR. GRIMSLEY: 105, Your Honor.

6 THE COURT: And 105 is stipulated, so
7 admitted.

8 (Exhibit 105 was admitted into evidence.)

9 MR. GESSLER: Your Honor, if I may.

10 THE COURT: Yeah.

11 MR. GESSLER: I don't think Number 105 was
12 stipulated. I think -- it was? I may be corrected.

13 THE COURT: That's what my notes say as
14 well.

15 MR. GESSLER: Okay.

16 Again, Number 94 and Number 1 are over our
17 objection.

18 And I'll simply renew my objection with
19 respect to the first video you saw. That's a movie
20 production. There's sound overlays on it. It's a
21 montage. It is -- it's a -- it's a good movie
22 production, and it was produced by the January 6
23 Commission for the purpose of being a good movie
24 production.

25 It shouldn't be evidence here. I don't

1 have an opportunity to cross-examine. I don't know the
2 full context of each one of those videos. We have not
3 been able to pull them apart. We have not been able to
4 pull up the witnesses or the people who actually took
5 those videos or -- or the actual context of those radio
6 transmissions and how it's all been assembled together.

7 So just as I would submit that you
8 wouldn't accept a Steven Spielberg production for the
9 truth of the matter asserted -- maybe this rises to that
10 level of quality -- but you wouldn't accept this one,
11 either.

12 So that's going to be our objection there.

13 MR. GRIMSLEY: You might if it was
14 documentary footage, which is what we have here.

15 MR. GESSLER: We don't think Michael Moore
16 would be accepted -- Michael Moore's documentaries would
17 be accepted by this Court either if we want to use that
18 analogy.

19 THE COURT: 94 is admitted.

20 MR. GRIMSLEY: And so we just looked at a
21 portion of Plaintiffs' Exhibit 1.

22 I want to play a portion of Plaintiffs'
23 Exhibit 92. Again, that was ordered admissible on
24 October 27.

25 (Video playing.)

1 MR. GRIMSLEY: I move to admit Plaintiffs'
2 Exhibit 92.

3 THE COURT: Admitted. 92 will be
4 admitted.

5 (Exhibit 92 was admitted into evidence.)

6 MR. GRIMSLEY: Now I want to show a page
7 from Plaintiffs' Exhibit 26, which is the GAO report from
8 February of 2023 regarding the investigation of that
9 entity into the Capitol security during January 6. This
10 is one that was admitted as well.

11 THE COURT: Stipulated, I believe. And
12 it's admitted now.

13 (Exhibit 26 was admitted into evidence.)

14 MR. GRIMSLEY: And I would just like to go
15 to page 7. And this is a finding from that document:

16 In the months leading up to the attack on
17 the U.S. Capitol on January 6, 2021, there were reported
18 efforts to organize large groups of protesters to travel
19 to Washington, DC to dispute the outcome of the 2020
20 presidential election.

21 Over the course of about 7 hours, more
22 than 2,000 protesters entered the U.S. Capitol on
23 January 6, disrupting the peaceful transfer of power and
24 threatening the safety of the Vice President and members
25 of Congress.

1 The attack resulted in assaults on at
2 least 174 police officers, including 114 Capitol Police
3 and 60 DC Metropolitan Police Department officers. These
4 evens led to at least seven deaths and caused about
5 \$2.7 billion in estimated costs.

6 As of September 2022, more than 870
7 individuals have been arrested on charges including
8 entering a Restricted Federal Building, assaulting
9 officers with a deadly weapon, and seditious conspiracy.

10 THE COURT: And so when you say that it's
11 page -- is it page 7 of the exhibit even though it says
12 page 1?

13 MR. GRIMSLEY: It's page 7 of the
14 document, but page 1, I guess, of the report. It
15 probably has some little i's and little two i's.

16 THE COURT: Okay.

17 MR. GRIMSLEY: And now I wanted to point
18 to just a couple of the January 6 Report findings that
19 Your Honor has found conditionally admissible.

20 And the first is Finding 119, which is at
21 page 35 of Plaintiffs' Exhibit 78:

22 More than 140 Capitol and Metropolitan
23 Police were injured, some very seriously. A perimeter
24 security line of Metropolitan Police intended to secure
25 the Capitol against intrusion broke in the face of

1 thousands of armed rioters, more than 2,000 of whom
2 gained access to the interior of the Capitol Building.

3 A woman who attempted to forcibly enter
4 the Chamber of the House of Representatives through a
5 broken window while the House was in session was shot and
6 killed by police guarding the Chamber.

7 Vice President Pence and his family were
8 at risk, as were those Secret Service professionals
9 protecting him. Congressional proceedings were halted,
10 and legislators were rushed to secure locations.

11 So that's the evidence I wanted to present
12 now on whether there was an insurrection.

13 I'd like to turn now to whether President
14 Trump engaged in that insurrection.

15 MR. GESSLER: I'm doing this for the
16 record, Your Honor.

17 We're going to object to that January 6
18 finding. We're particularly going to object to the
19 characterization that the protesters were armed. All the
20 testimony you've heard today from police officers was
21 that they weren't armed with any firearms or knives or
22 weapons.

23 So that's our objection, Your Honor.

24 THE COURT: And I just want to make sure
25 we're all on the same page, and thank you for your

1 objection. But just because I allow a finding in does
2 not mean that I am accepting it as true.

3 MR. GESSLER: I understand, Your Honor,
4 and it's our job to explain to you why that is the
5 correct finding.

6 THE COURT: But I just want to -- in case
7 you didn't hear me say it before, I just want to make
8 sure that just because I allow in the January 6 Report
9 does not mean that I agree with all of the findings.

10 MR. GESSLER: I understand, Your Honor.

11 MR. GRIMSLEY: So now turning to the
12 evidence on engagement, I wanted to start with
13 Plaintiffs' Exhibit 47.

14 This is -- these are clips from President
15 Trump's speech from election night or, really, the next
16 morning, so very early November 4, 2020.

17 THE COURT: And that -- that will be
18 admitted. Exhibit 47, correct?

19 MR. GRIMSLEY: Yes.

20 (Exhibit 47 was admitted into evidence.)

21 (Video playing.)

22 MR. GRIMSLEY: So that's the first clip.
23 And I'm not going to play the entire speech. It's about
24 nine minutes long.

25 So the second . . .

1 (Video playing.)

2 THE COURT: And I apologize. You said
3 this is all from the same speech that was 90 minutes long
4 on the night -- the morning after the election?

5 MR. GRIMSLEY: It was only nine minutes
6 long, Your Honor.

7 THE COURT: Oh, nine minutes. I was
8 like --

9 MR. GRIMSLEY: So I wanted to spare you
10 the whole speech. We can play it, if you want, but just
11 wanted to play those two portions.

12 THE COURT: Only if Mr. Gessler wants to
13 play the whole thing.

14 MR. GESSLER: You never know, Your Honor,
15 but not right now.

16 THE COURT: Okay.

17 MR. GRIMSLEY: So now I want to move on to
18 Plaintiffs' Exhibit 148, which has already been admitted.
19 That is the compilation of President Trump's tweets over
20 time. And I want to start with page 12.

21 And I'm going to walk through these.
22 Mr. Olson walked through some of these during his
23 opening, but I will walk through more of them here.

24 So November 5, 2020, this is the morning
25 after the speech we just saw at 9:12 a.m. He tweets,

1 "Stop the Count."

2 November 8, a few days later: "We believe
3 these people are thieves. The big city machines are
4 corrupt. This was a stolen election. Best pollster in
5 Britain wrote this morning that this clearly was a stolen
6 election, that it's impossible to imagine that Biden
7 outran Obama in some of these states."

8 Next one, same page: "Where it mattered,
9 they stole what they had to steal." And that, too, I
10 believe, is November 8.

11 Next page, page 13, November 9: "Nevada
12 is turning out to be a cesspool of Fake Votes. @MSchlapp
13 and @AdamLexalt are finding things that when released
14 will be absolutely shocking."

15 The next day, November 10: "People will
16 not accept this Rigged Election!"

17 Next page, 14: "A guy named Al Schmidt, a
18 Philadelphia Commissioner and so-called Republican
19 (RINO), is being used big time by the Fake News Media to
20 explain how honest things were with respect to the
21 Election in Philadelphia. He refuses to look at a
22 mountain of corruption & dishonesty. We win!"

23 November 12: "Report: Dominion deleted
24 2.7 million Trump votes nationwide. Data analysis finds
25 221,000 Pennsylvania votes switched from President Trump

1 to Biden. 941,000 Trump votes deleted. States using
2 Dominion voting systems switched 435,000 votes from Trump
3 to Biden."

4 On page 15, November 13: "Georgia
5 Secretary of State, a so-called Republican (RINO), won't
6 let the people checking the ballots see the signatures
7 for fraud. Why? Without this the whole process is very
8 unfair and close to meaningless. Everyone knows that we
9 won the state. Where is Brian Kemp?"

10 Go down to the bottom of page 16,
11 November 14: "What are they trying to hide. They know
12 and so does everyone else. Expose the crime!"

13 November 14, page 17, 11:17 p.m.: "Antifa
14 scum" run for the -- "ran for the hills today when they
15 tried attacking the people at the Trump Rally, because
16 those people aggressively fought back. Antifa waited
17 until tonight, when 99 percent were gone, to attack
18 innocent MAGA people. DC Police, get going - do your job
19 and don't hold back!!!"

20 November 16, page 18: "Dominion is
21 running our Election. Rigged!"

22 They go on. December 1, 2020 on page 27:
23 "Rigged election. Shows signatures and envelopes.
24 Expose the massive voter fraud in Georgia. What is
25 Secretary of State and @BrianKemp Georgia afraid of?"

1 They know what will find."

2 And Your Honor, this was one of the tweets
3 with the embedded video that I had talked about earlier.

4 THE COURT: Yeah. I'm going to allow
5 videos that President Trump tweeted, so . . .

6 MR. GRIMSLEY: This is Plaintiffs' 126, so
7 we would move for admission of it.

8 (Video playing.)

9 MR. GRIMSLEY: So back to --

10 THE COURT: Okay. So just to be clear,
11 that is --

12 MR. GRIMSLEY: That is --

13 THE COURT: P-126, which --

14 MR. GRIMSLEY: P-126, which is a video
15 embedded in a tweet in Plaintiffs' 148.

16 THE COURT: And that's admitted.

17 (Exhibit 126 was admitted into evidence.)

18 THE COURT: Do you object, Mr. Gessler?

19 MR. GESSLER: Yeah, I do, Your Honor.

20 Look, I mean, as a former Secretary of State who's
21 received death threats, violent sexualized threats
22 against my mother, my daughter, and my wife, I'm
23 empathetic to this.

24 But this is an out-of-court statement
25 intended to prove the truth of the matter asserted. It's

1 highly inflammatory. It should not be part of this
2 hearing.

3 THE COURT: So the Court rules, A, it was
4 adopted by President Trump when he decided to tweet it to
5 however many followers President Trump has, which I
6 assume is many, and so I'm going to allow it.

7 MR. GESSLER: And, Your Honor --

8 MR. GRIMSLEY: Your Honor --

9 MR. GESSLER: -- I would submit that it's
10 an improper inference to say that President Trump adopted
11 this as his own.

12 THE COURT: He tweet -- he -- he tweeted
13 this statement, okay? Whether that's a legal adoption or
14 not, I'm going to allow it in based on the fact that he
15 is the one that has publicized this statement, vis-a-vis
16 his Twitter account, or whatever they call it now.

17 MR. GRIMSLEY: And, Your Honor, it's not
18 that we're offering it necessarily for the truth of the
19 matter asserted, although we're happy to do that as well.

20 It's to show President Trump's state of
21 mind and his communications to his supporters, and that's
22 why I wanted to come back to this tweet on page 27 of
23 Exhibit 148, which is the tweet where President Trump
24 retweets this video that you just saw. "Rigged election.
25 Shows signatures and envelopes. Expose the massive voter

1 fraud in Georgia. What is Secretary of State and @Brad
2 Kemp GA afraid of? They know what will find."

3 And there's just more of these, so I'll
4 skip over.

5 So page 33, tweet from December 10, 2020,
6 9:24 a.m.: "The Supreme Court has a chance to save our
7 Country from the greatest Election abuse in the history
8 of the United States. 78 percent of the people feel
9 (know!) the Election was Rigged."

10 3:28 p.m. December 11: "If the Supreme
11 Court shows great Wisdom and Courage, the American People
12 will win perhaps the most important case in history, and
13 our Electoral Process will be respected again!"

14 December 11, later in the day, 11:50 p.m.:
15 "The Supreme Court really let us down. No Wisdom, No
16 Courage!"

17 So let's fast-forward to December 19, and
18 this is on page 41. And you've seen this tweet already.
19 But it says: "Peter Navarro releases 36-page report
20 alleging election fraud 'more than sufficient' to swing
21 victory to Trump -" At great report by Peter -- "A great
22 report. Statistically impossible to have lost the 2020
23 Election. Big protest in DC on January 6th. Be there,
24 will be wild!"

25 And then this is the other embedded video

1 that we were talking about, Your Honor. It was played in
2 part in opening. I believe this is -- the embedded video
3 is Plaintiffs' 73.

4 And the important point here is, it's
5 released the very same day right after, basically, the
6 "will be wild" tweet on December 19.

7 THE COURT: I'm going to watch it first
8 before I rule on its admissibility.

9 (Video playing.)

10 MR. GRIMSLEY: So that was a video that
11 President Trump retweeted on December 19 to his
12 followers.

13 THE COURT: And the Court will admit it.
14 It's not being offered for the truth of the matter
15 asserted.

16 (Exhibit 73 was admitted into evidence.)

17 MR. GRIMSLEY: And that's Exhibit 1- -- or
18 Exhibit 73, Your Honor.

19 And I'm not going to go through the tweets
20 that Mr. Olson put up where he showed the number of times
21 between December 19 and January 6 where President Trump
22 tweeted out about the rally on January 6.

23 And just moving to January 5, this is
24 page 75 of Exhibit 148. Donald Trump 10:27 a.m.: "See
25 you in DC."

1 11:06 a.m.: "The Vice President has the
2 power to reject fraudulently chosen electors."

3 5:05 p.m. on page 76: "Washington is
4 being inundated with people who don't want to see an
5 election victory stolen by emboldened Radical Left
6 Democrats. Our Country has had enough, they won't take
7 it anymore! We hear you (and love you) from the Oval
8 Office. Make America Great Again!"

9 7 minutes later, 5:12 p.m.: "I hope the
10 Democrats, and even more importantly, the weak and
11 ineffective RINO section of the Republican Party, are
12 looking at the thousands of people pouring into DC. They
13 won't stand for a landslide election victory to be
14 stolen."

15 January 5, a few minutes later, I think,
16 5:25 p.m. this is page 77: "Antifa is a Terrorist
17 Organization, stay out of Washington. Law enforcement is
18 watching you very closely! @DeptofDefense
19 @TheJusticeDept @DHSgov @DHS_Wolf @SecBernhardt
20 @SecretService @FBI."

21 Fast-forwarding to 1:00 a.m. in the
22 morning, January 6, 2021, this is page 80 of the exhibit.
23 "If Vice President Mike Pence comes through for us, we
24 will win the Presidency. Many States want to decertify
25 the mistake they made in certifying incorrect & even

1 fraudulent numbers in a process NOT approved by their
2 State legislators (which it must be). Mike can send it
3 back!"

4 Later that morning, 8:17 a.m.: "States
5 want to correct their votes, which they now know were
6 based on irregularities and fraud, plus corrupt process
7 never received legislative approval. All Mike Pence has
8 to do is send them back to the states, AND WE WIN. Do it
9 Mike, this is a time for extreme courage!"

10 And it wasn't just tweets that the
11 President was sending out over this period of time. I
12 want to show clips from two speeches.

13 The first is Plaintiffs' Exhibit 99. This
14 is a speech by President Trump from December 2 of 2020.
15 That I think has been admitted or will be admitted
16 pursuant to this Court's order.

17 THE COURT: So 99 will be admitted.

18 (Exhibit 99 was admitted into evidence.)

19 THE COURT: And did you say it's clips or
20 the whole --

21 MR. GRIMSLEY: It's a clip.

22 THE COURT: Okay. And I just want to make
23 clear in terms of the rule of completeness that the
24 intervenor is always welcome to play other parts of the
25 clips as -- so should they choose.

1 (Video playing.)

2 MR. GRIMSLEY: So move to admit
3 Plaintiffs' Exhibit 99.

4 THE COURT: Admitted.

5 MR. GRIMSLEY: The next speech is from
6 December 22. Again, it is a clip. This is Plaintiffs'
7 Exhibit 100.

8 (Video playing.)

9 MR. GRIMSLEY: So I've shown evidence of
10 what went on between November 3 and January 6, so I now
11 want to turn to January 6 itself.

12 And, Your Honor, this is where I would
13 play Plaintiffs' Exhibit 131, Mr. Giuliani and
14 Mr. Eastman.

15 THE COURT: I'm going to -- I'm going to
16 sustain the objection on Mr. Giuliani and Mr. Eastman.
17 There's been plenty of evidence that he was -- that
18 President Trump was telling people that Vice President
19 Pence had the authority to do something, and I think it's
20 cumulative. And also I think there's a sense of
21 unfairness since they won't be here to testify.

22 MR. GRIMSLEY: Thank you, Your Honor.

23 So I wanted then to move to Plaintiffs'
24 Exhibit 49 and -- and these are clips from President
25 Trump's speech on the Ellipse. It's about 12 minutes in

1 total.

2 THE COURT: Okay.

3 MR. GRIMSLEY: We didn't want to submit
4 everybody to the 90 minutes, but certainly if Your Honor
5 wants to watch it, I encourage you to do so.

6 But move to admit 49. I don't think
7 there's any objection to that.

8 THE COURT: It's been stipulated to, so
9 it's admitted.

10 (Exhibit 49 was admitted into evidence.)

11 THE COURT: So this is the Ellipse speech,
12 but it's not the whole thing?

13 MR. GRIMSLEY: It's not the whole thing,
14 Your Honor. And, in fact, I have with me, just for ease
15 of reference, a highlighted transcript, which has the
16 clips, so I think that would be good for everybody if
17 they want to follow along.

18 May I approach?

19 THE COURT: Yes, please.

20 MR. GRIMSLEY: And I'm trying to get the
21 volume right, but these are so variable, so I -- you've
22 got to hold on for a second sometimes. So I hope I'm not
23 going to blow anybody's ears out here.

24 (Video playing.)

25 (Technical difficulties with video.)

1 MR. GRIMSLEY: I blame Mr. Gessler.

2 MR. GESSLER: Bring it. I think that was
3 President Trump's fault, actually.

4 (A pause occurred in the proceedings.)

5 MR. GRIMSLEY: You may get a little repeat
6 here, but . . .

7 (Video playing.)

8 MR. GRIMSLEY: So that's -- I think it's
9 already admitted. That's Plaintiffs' Exhibit 49, at
10 least clips from it.

11 I'd now like -- see if this works this
12 time. Go to the January 6 Report, which is the findings,
13 Plaintiffs' Exhibit 78.

14 Finding 315, and this is page 96 of the
15 exhibit:

16 "At 1:10 p.m. on January 6 President Trump
17 concluded his speech at the Ellipse. By that time, the
18 attack on the U.S. Capitol had already begun, but it was
19 about to get much worse. The President told thousands of
20 people in attendance to march down Pennsylvania Avenue to
21 the Capitol. He told them to fight like hell because if
22 they didn't, they were not going to have a country
23 anymore."

24 "Not everyone who left the Ellipse did as
25 the Commander in Chief ordered, but many of them did.

1 The fighting intensified during the hours that followed."

2 I'd like to go back to Exhibit 148, which
3 is compilation of tweets, and see one that we've seen
4 quite a bit already. This is the 2:24 p.m. tweet from
5 January 6.

6 "Mike Pence didn't have the courage to do
7 what should have been done to protect our Country and our
8 Constitution, giving States a chance to certify a
9 corrected set of facts, not the fraudulent or inaccurate
10 ones which they were asked to previously certify. USA
11 demands the truth!"

12 And then I'd like to show Your Honor some
13 additional clips from Plaintiffs' Exhibit 94, which has
14 already been admitted. And some of these we've seen, but
15 not all, I don't think.

16 (Video playing.)

17 MR. GRIMSLEY: And I'll show another one.

18 (Video playing.)

19 MR. GRIMSLEY: Now I'd like to move to
20 Plaintiffs' Exhibit 6, and I believe this will be
21 admitted per the October 27 order.

22 This is a very lengthy video. It's
23 footage from the camera taken on top of the Capitol
24 looking down. I just have a few clips. It's nice to see
25 because it has, I think, the time stamp.

1 And Mr. Olson reminded me, I did not move
2 to admit Exhibit 100, which was the December 22 Trump
3 speech, so I would like to move to admit that.

4 THE COURT: Admitted.

5 (Exhibit 100 was admitted into evidence.)

6 THE COURT: And then we're on P-6, you
7 said?

8 MR. GRIMSLEY: Correct, Your Honor.

9 THE COURT: That's also admitted.

10 (Exhibit 6 was admitted into evidence.)

11 MR. GRIMSLEY: And there's no sound here,
12 but you can see the time stamp in the upper left. And it
13 will skip a few as we do the clips, but you'll see it in
14 the time stamp.

15 So right now this is roughly four minutes
16 after that tweet.

17 (Video playing.)

18 MR. GRIMSLEY: Ten minutes, 20 minutes,
19 and a little over 30 minutes.

20 And then the question I'd like to move on
21 is what President Trump was doing during this time
22 besides putting out some tweets.

23 And here again, I'll go to the January 6
24 Report Findings, page 16, Exhibit 148.

25 THE COURT: I think he said 1 --

1 MR. GRIMSLEY: Yeah, I was mistaken. It's
2 78, Your Honor.

3 Finding 55: "Once Trump returned to the
4 White House, he was informed almost immediately that
5 violence and lawlessness had broken out at the Capitol
6 among his supporters."

7 Then page 36, Finding 120. Sorry, this
8 one's a little longer.

9 "From the outset of the violence and for
10 several hours that followed, people at the Capitol,
11 people inside President Trump's Administration, elected
12 officials of both parties, members of President Trump's
13 family, and Fox News commentators sympathetic to
14 President Trump all tried to contact him to urge him to
15 do one singular thing, one thing that all of these people
16 immediately understood was required: Instruct his
17 supporters to stand down and disperse, to leave the
18 Capitol."

19 "As the evidence overwhelmingly
20 demonstrates, President Trump specifically and repeatedly
21 refused to do so for multiple hours while the mayhem
22 ensued."

23 "Chapter 8 of this report explains in
24 meticulous detail the horrific nature of the violence
25 taking place that was directed at law enforcement

1 officers at the Capitol and put the lives of American
2 lawmakers at risk. Yet in spite of this, President Trump
3 watched the violence on television from a dining room
4 adjacent to the Oval Office, calling Senators to urge
5 them to help him delay the electoral count, but refusing
6 to supply the specific help that everyone knew was
7 unequivocally required."

8 "As this report shows, when Trump finally
9 did make such a statement at 4:17 p.m. after hours of
10 violence, the statement immediately had the expected
11 effect: The rioters began to disperse immediately and
12 leave the Capitol."

13 Go to page 6 --

14 MR. GESSLER: Your Honor, if I may, I
15 haven't stood up for a while so I feel as though I need
16 to stand up and make an objection.

17 I don't even know where to begin on this
18 one. How do we cross-examine? How do we examine any of
19 this evidence? It contains speculation and opinion in
20 this. This is a finding that is -- that characterizes or
21 exemplifies the very worst aspects of the January 6
22 Commission, so we object to it.

23 THE COURT: Would you like to just have a
24 continuing objection to the January 6 Report Findings --

25 MR. GESSLER: Well --

1 THE COURT: -- or do you want to get up
2 and --

3 MR. GESSLER: Some I feel very strongly
4 about getting up, and this is sort of one of them, Your
5 Honor.

6 THE COURT: Okay. Well, I'm going to let
7 you make whatever objections you want.

8 MR. GESSLER: I appreciate that. Thank
9 you.

10 MR. GRIMSLEY: So we're going to page 6 of
11 the Findings, Finding 24.

12 "President Trump had authority and
13 responsibility to direct deployment of the National Guard
14 in the District of Columbia, but never gave any order to
15 deploy the National Guard on January 6 or on any other
16 day, nor did he instruct any federal law enforcement
17 agency to assist."

18 Going to page 40 of Exhibit 78, the
19 Findings, going to Finding 134.

20 "At 3:13 p.m. President Trump sent another
21 tweet, but again declined to tell people to go home. 'I
22 am asking for everyone at the U.S. Capitol to remain
23 peaceful, no violence. Remember, we are the party of law
24 and order. Respect the law and our great men and women
25 in blue. Thank you.'"

1 "Almost everyone, including staff in the
2 White House, also found the President's 2:38 p.m. and
3 3:15 tweets to be insufficient because they did not
4 instruct the rioters to leave the Capitol. Evidence
5 showed that neither of these tweets had any appreciable
6 impact on the violent rioters, unlike the video message
7 tweet that did not come until 4:17 finally instructing
8 the rioters to leave. Neither the 2:38 nor the 3:13
9 tweets made any difference."

10 And then finally on this, Your Honor,
11 page 100, Finding 331:

12 "It was not until it was obvious that the
13 riot would fail to stop the certification of the vote
14 that the President finally relented and released a video
15 statement made public at 4:17 p.m."

16 And I'd like to show a Truth Social
17 post -- I don't think it's called a tweet -- from two
18 years later that goes to President Trump's state of mind.

19 This is a Truth Social post, December 3,
20 2022. I believe it's admissible under Your Honor's 10/27
21 order, so we would move to admit Plaintiffs' 74.

22 THE COURT: Admitted.

23 (Exhibit 74 was admitted into evidence.)

24 MR. GRIMSLEY: "So, with the revelation of
25 massive and widespread fraud and deception and working

1 closely with big tech companies, the DNC and the
2 Democratic Party" -- "Democrat Party, do you throw the
3 Presidential Election Results of 2020 OUT and declare the
4 RIGHTFUL WINNER, or do you have a NEW ELECTION? A
5 Massive Fraud of this type and magnitude allows for the
6 termination of all rules, regulations, and articles, even
7 those found in the Constitution. Our great 'founders'
8 did not want, and would not condone, False and Fraudulent
9 elections!"

10 And Your Honor, there are some additional
11 findings at some point that we would move into evidence
12 from the January 6 Report, but I don't want to take up
13 people's time reading those today.

14 THE COURT: Okay.

15 MR. GRIMSLEY: But those are the ones that
16 I did want to present.

17 THE COURT: Okay.

18 Is that the conclusion of --

19 MR. GRIMSLEY: It is.

20 THE COURT: -- your presentation today?

21 MR. GRIMSLEY: It is, Your Honor.

22 THE COURT: Okay.

23 MR. OLSON: I have nothing new to present,
24 Your Honor, but I was able to take notes while
25 Mr. Grimsley was talking, and I think we still need to

1 have P-49 admitted officially.

2 MR. GRIMSLEY: That's the Ellipse speech.

3 MR. OLSON: Ellipse speech. I don't
4 think -- we've talked about it, played it, but it wasn't
5 admitted.

6 THE COURT: Okay. It's admitted.

7 (Exhibit 49 was admitted into evidence.)

8 MR. OLSON: And then the only other
9 exhibit that I showed in opening that we would like to
10 move for admission is the first portion of P-109. This
11 is the "stand back and stand by" comment that Trump made.

12 You had ruled the rest of that video clip
13 had your statement that the Trump section was admissible.
14 That's what we played, and we would move to admit that
15 section of P-109.

16 THE COURT: That's admitted, but you will
17 at some point need to put -- all the exhibits are going
18 to have to be dealt with, but you'll need to make sure
19 that only that clip is submitted --

20 MR. OLSON: Yes.

21 THE COURT: -- to the Court.

22 (Exhibit 109 was admitted into evidence.)

23 MR. OLSON: We will. And, Your Honor, is
24 it your preference that we revise P-49 or we make a
25 new -- I'm sorry, P-109 or we make a new exhibit, just

1 the clip?

2 THE COURT: I think a revise -- when you
3 actually submit P-49 at the end, just have it be what was
4 allowed in.

5 MR. OLSON: Okay. Thank you, Your Honor.
6 That's all we have.

7 THE COURT: Okay. So since we have a few
8 extra moments, I think that the -- one of -- Mr. Gessler,
9 one of the things that you had mentioned at the beginning
10 of the day was that there was the pending question on
11 specific intent, your motion, which I think was largely
12 agreed to by the petitioners with some caveats.

13 MR. GESSLER: I'm not sure if it was quite
14 a motion, Your Honor.

15 THE COURT: Yeah.

16 MR. GESSLER: More like a trial brief.

17 THE COURT: Right.

18 MR. GESSLER: But I just wanted to point
19 that out.

20 THE COURT: Yeah. It's clear that
21 specific intent is going to apply to this case. Exactly
22 how that plays out with the nuances that the petitioners
23 want, something that I will rule on when I make my
24 findings of the facts, conclusions of law. And I will
25 address your First Amendment arguments regarding

1 Brandenburg at that time as well.

2 MR. GESSLER: Okay. Thank you, Your
3 Honor.

4 THE COURT: Is there anything else we need
5 to address before we stop for the day?

6 MR. OLSON: Not from petitioners'
7 perspective. Thank you.

8 MR. GESSLER: More simply, none from us,
9 Your Honor.

10 THE COURT: Okay. So we will start again
11 at 8:00. Does that work, and is that the plan with your
12 witnesses?

13 MR. OLSON: Yes, Your Honor. Dr. Simi
14 will be our first witness at 8:00 tomorrow morning.

15 THE COURT: Okay. And are you thinking,
16 other than Mr. Heaphy, that you will conclude tomorrow?

17 MR. OLSON: It depends on the brevity of
18 cross, but I think it's possible, but unlikely --

19 THE COURT: Okay.

20 MR. OLSON: -- I would say.

21 THE COURT: I just want to make sure that
22 the intervenors are going to be prepared to start
23 whenever it is that the petitioners finish their case
24 absent Mr. Heaphy.

25 MR. GESSLER: Yeah. We're -- Your Honor,

1 we're anticipating starting Wednesday. So I guess
2 tomorrow's a little bit of a short day, if I remember
3 correctly, until 4:00.

4 THE COURT: Oh, for Halloween, correct.

5 MR. GESSLER: Yeah. We probably won't be
6 ready to start tomorrow afternoon if it's done that
7 early, but -- but we'll be prepared Monday -- Wednesday
8 morning.

9 THE COURT: Okay. So we will end at the
10 latest on 4:00 tomorrow. If we finish earlier, then
11 we'll still just go to Wednesday morning, at which point
12 we'll either be finishing petitioners' case or you'll be
13 prepared to start.

14 MR. GESSLER: Great. And, Your Honor,
15 would it be possible to get a time update, maybe tomorrow
16 morning? No -- no rush on that.

17 THE COURT: Well, I have one, apparently.
18 So the -- as we've calculated, the petitioners have used
19 4 hours and 34 minutes and the intervenors have used
20 1 hour and 9 minutes.

21 MR. GESSLER: Okay. Thank you, Your
22 Honor.

23 THE COURT: And I just remind the parties
24 to tell Collin who is going to be live tomorrow so that
25 security knows.

1 With that, we will -- we are in -- we are
2 done for the day. I'm getting tired, too.

3 (WHEREUPON, the within proceedings were
4 adjourned at the approximate hour of 4:43 p.m. on the
5 30th day of October, 2023.)

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Proceedings Day 1
 October 30, 2023

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