

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-208
)	Washington, D.C.
vs.)	April 28, 2022
)	9:00 a.m.
THOMAS WEBSTER,)	
)	Day 4
Defendant.)	Morning Session
_____)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription

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DEFENDANT'S:

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P R O C E E D I N G S

COURTROOM DEPUTY: All rise. The Court is in session. The Honorable Amit P. Mehta presiding.

THE COURT: Please be seated, everyone.

COURTROOM DEPUTY: Good morning, Your Honor. This is Criminal Case No. 21-208, United States of America vs. Thomas Webster.

Brian Kelly, Hava Mirell, and Katherine Nielsen for the government.

James Monroe and Walter Machnicki for the defense. The defendant is appearing in person for these proceedings.

THE COURT: Okay. Good morning, everybody; I hope everybody had a good evening.

All right. So I understand we're sort of, what -- I think we're one juror short before we can get started. I understand there may be a preliminary matter or two.

Agent, you don't need to be up there, we can have you resume the witness stand after -- when we bring the jury in.

Ms. Nielsen.

MS. NIELSEN: Yes, Your Honor.

I wasn't sure if there would be a break between the end of the government's last witness and the testimony of the defendant. So I wanted to readdress the issue that

1 the government has brought up in relation to some of
2 defendant's objections and expected arguments regarding --
3 I'm sorry, not his objections, his exhibits and expected
4 arguments regarding the defendant's career in the military
5 and in the NYPD and, particularly, whether or not the Court
6 is going to allow the introduction of his personnel records
7 and any records of commendations, things like that, related
8 to the military history and the NYPD service of the
9 defendant.

10 I'll note that the government has already
11 expressed some objections to Defendant's Exhibit 14, 15, 16.

12 THE COURT: If I can interrupt you for a moment.

13 MS. NIELSEN: Yes, Your Honor.

14 THE COURT: I think I'd already ruled that --
15 I sort of actually looked back at this is morning.

16 MS. NIELSEN: You may be referring to ECF 75, the
17 Court's order on motions in limine.

18 THE COURT: Yeah.

19 So consistent with the D.C. Circuit's decision in
20 *Washington*, 106 F.3d 983, I held that extrinsic evidence of
21 any prior commendations wouldn't be admissible, and I think
22 that would extend to employment records, military records.

23 I think what I reserved on is that if he does
24 testify, to the extent he could testimonially talk about his
25 career. And we hadn't sort of explored the scope of what

1 Mr. Monroe may be intending to try to elicit.

2 You know, look, at a minimum, he can testify he
3 was an officer of the MPD [sic] for some number of years,
4 some of the positions he may have had at the MPD [sic], the
5 fact he was in the military, what rank he achieved, I don't
6 know what else beyond that Mr. Monroe intends to elicit.

7 MR. MONROE: I do intend to elicit as much as
8 evidence as possible as to this gentleman's good character.
9 He's got a storied, excellent history both in the military
10 and NYPD.

11 When you know, when we work hard to search for the
12 truth, one of the things that have to come out in this
13 particular case is the good quality and character of
14 Mr. Webster.

15 In addition, and speaking to this gentleman's time
16 with the NYPD, his knowledge and experience in law
17 enforcement also addresses what he would reasonably expect
18 to occasion or visit when he encounters Officer Rathbun,
19 speaks to directly his own personal anticipated conduct.

20 THE COURT: Hang on. That's a separate issue.

21 MR. MONROE: Yes.

22 THE COURT: It seems to me.

23 The jurors are here. So why don't we at least get
24 started.

25 I think it sounds like, Ms. Mirell, you have

1 another 30 minutes or so.

2 MS. MIRELL: 10 to 15.

3 THE COURT: 10 to 15.

4 And then how long do you expect the
5 cross-examination will be?

6 MR. MONROE: About 30 to 45 minutes.

7 THE COURT: Okay. So that'll put us -- and then
8 there will be some redirect. That'll put us probably at a
9 time where we can take a break this morning and then have a
10 conversation about this.

11 I mean, you know, look, I think I had signaled
12 that I can -- I think I'd signaled two things. One is, I
13 said there's some degree of sort of what the Supreme Court
14 has sort of called affirmative evidence in the *Michelson*
15 decision. It's M-i-c-h-e-l-s-o-n. This is back in 1948.

16 The Court says, "Defendant may introduce
17 affirmative testimony that the general estimate of his
18 character is so favorable that the jury may infer that he
19 would not be likely to commit the offense charged. This
20 privilege is sometimes valuable to a defendant for this
21 Court has held that such testimony alone in some
22 circumstances may be enough to raise a reasonable doubt of
23 guilt," and then "the federal courts and a jury in proper
24 case should be so instructed."

25 Now, that case talked primarily about character

1 evidence. So that was made in the context of a longer
2 discussion about character evidence. So, as I said, I think
3 there's some -- some of that that you can elicit. Again,
4 I want to understand how much. I mean, you have, for
5 example, in your opening statement, suggested that you were
6 going to elicit that he had a "clean record" from the NYPD.
7 I don't know what that quite means. And, frankly,
8 I'm not sure that's relevant, but maybe it is. I'd like
9 have a better understanding -- I don't know what his NYPD
10 record even contains.

11 MR. MONROE: Just that this man has never been --
12 never had any type of violation or infraction while
13 employed, he was never -- no civilian complaints saying that
14 he used excessive force.

15 THE COURT: How do we know that?

16 MS. NIELSEN: Your Honor, I may actually be able
17 to assist here. We have actual direct evidence -- well, he
18 may not have any indication of violations of use of force,
19 I have some exhibits that if the defense plans to elicit
20 testimony regarding the "unblemished record" of his client,
21 the government would plan to bring in, these are rebuttal
22 evidence, but in the interest of -- I'm happy to provide a
23 copy to the defense.

24 THE COURT: If the civilian complaint system in
25 New York is anything like it is here, you know, the fact

1 that the personnel records may not involve -- have some
2 admonishment or what have you doesn't mean there haven't
3 been any civilian complaints filed against him. I think
4 that's a leap.

5 MR. MONROE: Right.

6 THE COURT: And, you know, so -- and I don't know
7 whether -- how he would know that. If you know, that --
8 does he have a basis to know what's been filed against him
9 in terms of civilian complaints.

10 MR. MONROE: Well, he never suffered any
11 reprimands. That's the point.

12 THE COURT: Well, that's a different issue.
13 He has knowledge of whether he's been reprimanded or not.
14 But you had just said something about some civilian
15 complaints.

16 That's why I want to explore and understand
17 exactly what you're trying going to try and bring out.

18 MR. MONROE: I don't intend to delve deeply into
19 the man's records. I'm going to elicit testimonial evidence
20 about his good conduct both in the Marines Corps and in the
21 New York City Police Department.

22 THE COURT: We're going to talk more in detail
23 about this, because I don't know what you mean by his good
24 conduct. If, for example, you intend to elicit that when he
25 was a Marine, you know, he did a good deed, I'm not going to

1 let you do that, okay?

2 MR. MONROE: Right.

3 THE COURT: If you want to elicit testimony that
4 he achieved the rank of whatever it may be and received
5 certain commendations, I think that's probably fair game
6 just as a way of background and, frankly, as some evidence
7 of his character.

8 MR. MONROE: Right. And then he was not only --

9 THE COURT: Hang on. You've got to let me finish.

10 MR. MONROE: Yeah.

11 THE COURT: But if you're going to try and push
12 the boundaries here to get to specific types of events and
13 instances, I think that goes beyond the pale, because even
14 character evidence can't rely on prior events. And, you
15 know, if you're going to start making sweeping
16 generalizations about no complaints, et cetera, well,
17 I don't know that that's true.

18 So let's get the jury in here and then we can have
19 a conversation precisely about what you intend to elicit so
20 we don't have to have too many bench conferences about this
21 during his examination.

22 MS. MIRELL: May I put up the poster?

23 THE COURT: You may.

24 COURTROOM DEPUTY: Jury panel.

25 (Jury entered the courtroom.)

1 THE COURT: All right. Have a seat, everyone.

2 Ladies and gentlemen, welcome back. I hope you
3 all had a nice evening. Thank you very much for being here
4 on time.

5 So we are ready to get going. Agent Palmertree
6 will resume his testimony.

7 Ms. Mirell.

8 MS. MIRELL: Good morning.

9 - - -

10 RILEY PALMERTREE, WITNESS FOR THE GOVERNMENT, HAVING BEEN
11 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
12 FOLLOWS:

13 DIRECT EXAMINATION (CONTINUED)

14 - - -

15 - - -

16 BY MS. MIRELL:

17 Q Just so we can recap where we left off, Special
18 Agent Palmertree, can I ask you to stand back up with that
19 permanent marker again.

20 So I think yesterday you were describing the
21 defendant's path on the Capitol based on the videos that we
22 had reviewed. And just for the record, can you mark with a
23 little number next to each X as you describe where you saw
24 the defendant in the video. And just so you're marking the
25 No. 1. Where's that?

1 A For No. 1, this is the wall that I mentioned just
2 on -- just at the end of the grass section of the west lawn
3 of the Capitol.

4 A JUROR: Can we move that over some because we
5 can't all see it.

6 THE COURT: Mr. Palmertree, if you want to move
7 the easel to your left so the jury can see the whole exhibit
8 when you're marking it.

9 I was going to suggest moving it that way sort of
10 closer to that door. There you go.

11 All right, Mr. Webster, can you see that and,
12 Mr. Monroe, can you see that?

13 MR. MONROE: I can see it standing up, is that
14 okay?

15 THE COURT: Yeah, that's fine.

16 And if you want to even reposition yourself
17 towards the back, that's fine, too.

18 MR. MONROE: I'm okay, Judge.

19 THE WITNESS: Good to continue?

20 So this is the first -- this would be the grass
21 area of the west lawn of the U.S. Capitol. This is the
22 concrete wall I mentioned that goes up to about my hip.

23 This is generally the first spot that I've noted.

24 The second is the stairs here.

25

1 BY MS. MIRELL:

2 Q And can you mark that with a No. 2.

3 A (Witness complies.)

4 These stairs are where we noted there was an
5 ornamental fence at the top.

6 This third area is generally the area where the
7 interaction took place between Mr. Webster and Noah Rathbun.
8 That would be 3.

9 No. 4 would be --

10 Q You can add another X if you think it's
11 appropriate.

12 A This No. 4 would be the area where the pointing
13 took place at the officers.

14 Q And I think after the officers you had described
15 previously him -- another hand gesture that he made and
16 maybe you can describe that in connection with --

17 A With No. 5?

18 Q With No. 5, yes, thank you.

19 A With No. 5, this is the area where Mr. Webster
20 walked towards and raised his arms.

21 Q And the last one for now?

22 A And No. 6 is the area where I mentioned
23 Mr. Webster was seen on open source video and where he took
24 the photo in this direction of the Capitol. So it would be
25 north towards this area.

1 Q Okay. Thank you very much. You can be seated for
2 now.

3 THE COURT: Ms. Mirell, do you want to have this
4 markup now sort of marked as an exhibit for the record?

5 MS. MIRELL: I think it's pre-marked as an exhibit
6 at the bottom right-hand corner.

7 THE COURT: All right.

8 MS. MIRELL: It's Exhibit 603.1.

9 BY MS. MIRELL:

10 Q All right.

11 So yesterday, I had asked you, do you know if the
12 defendant went anywhere besides that lower West Terrace
13 which you've just described?

14 A Yes.

15 Q Where did he go?

16 A To just outside the lower west tunnel, what we
17 refer to as the lower west tunnel of the Capitol.

18 Q Can you point out for the jury on that map where
19 the lower west tunnel you're describing it is.

20 A This dark spot is an archway with a set of
21 stairways that lead into the Capitol. So right in the
22 center area here of the permanent structure of the Capitol,
23 which is just beyond this temporary stage area.

24 Q Thank you.

25 So let the record reflect that the -- that the

1 witness has identified an area in the middle of the
2 temporary inauguration stage on the west side of the Capitol
3 in Exhibit 603.1.

4 Special Agent Palmertree, do you know if the
5 defendant took any pictures on his phone on that level?

6 A Yes.

7 Q I'll show you what's been marked as Exhibit 309.
8 You can publish that to the jury.

9 And directing your attention to the area in the
10 middle, the archway with what appears to be some wood around
11 it, is that what you were describing as the lower west
12 tunnel?

13 A Yes.

14 Q Okay.

15 Scrolling down here to the metadata associated
16 with this photograph, what time was this photo taken?

17 A With a capture time of January 6th, 2021,
18 at 3:43 p.m.

19 Q And was this photo deleted?

20 A In attempt to delete this photo was made by the
21 user of the phone, yes.

22 Q And in order to get from the lower West Terrace to
23 the inauguration stage, would someone have had to go up
24 stairs?

25 A Yes.

1 Q Okay.

2 THE COURT: Ms. Mirell, can I interrupt for a
3 moment? I think this is important for the jury to
4 understand.

5 You've testified a couple of times that this was
6 an attempt to delete the photo. Can you sort of elaborate
7 on what you mean by that?

8 THE WITNESS: I can elaborate on that.

9 Deleting a phone -- deleting a photo from a phone
10 is something that not everyone knows can't be done on all
11 phone models. Sometimes people that don't know phones very
12 well think you can just press delete and the item goes away.
13 But for various reasons, based on the storage of the phone,
14 say, a computer chip, for instance, an item may be written
15 over again when it's actually deleted.

16 So the photo was obviously not successfully
17 removed from the device, but as far as the user likely
18 thought, the item was deleted.

19 BY MS. MIRELL:

20 Q And let me follow up on that.

21 Are you familiar with the Cellebrite software that
22 we are discussing yesterday?

23 A I am.

24 Q And are you aware if Cellebrite is able to kind of
25 extract photos that a user attempted to delete from the

1 phone?

2 A Yes.

3 Q And so even if the user attempted to delete that
4 photo, it may still be extracted by the software?

5 A That's correct.

6 Q So when you say an attempt to delete may -- was
7 made, are you saying that Cellebrite was able to recover
8 that photo, notwithstanding the attempt to delete the photo?

9 A Correct.

10 Q All right.

11 Did you find any open source videos that show the
12 defendant near that tunnel we've been discussing?

13 A Yes.

14 Q I'm going to show you what's been admitted as
15 Exhibit 210.

16 And I'm going to start the exhibit from the
17 beginning.

18 (Video played)

19 MS. MIRELL: Is it playing?

20 BY MS. MIRELL:

21 Q I've stopped the exhibit at the three-second time
22 mark.

23 Do you see the defendant in this time -- or in
24 this still shot?

25 A Yes.

1 Q And can you identify for the jury and mark it on
2 the exhibit where you see the defendant?

3 A Just center of the frame.

4 Q What is he wearing?

5 A Red, black, and white jacket.

6 Q Can you -- okay.

7 You can clear that. Thank you.

8 (Video played)

9 BY MS. MIRELL:

10 Q Special Agent Palmertree, directing your attention
11 to that archway at the tunnel, do you see any officers near
12 that tunnel?

13 A Yes.

14 Q And can you describe how -- what you see of the
15 officer?

16 A A helmet.

17 Q And do you know what that helmet, what initials
18 that helmet had?

19 A I know those helmets to say MPDC.

20 Q Who are those helmets affiliated with?

21 A Those are affiliated with Metropolitan Police
22 Department here in D.C.

23 Q Can you circle for the jury where you see the MPD
24 officer?

25 A (Witness complies.)

1 Q And just to kind of orient the jury here, are you
2 familiar, based on your investigation into January 6th, with
3 the incident portrayed here?

4 A Yes.

5 Q And are you familiar with what happens to that
6 officer?

7 A Yes.

8 Q Can you describe generally before we review the
9 video about -- what we're about to see?

10 MR. MONROE: Objection; relevance.

11 MS. MIRELL: Defendant is there.

12 THE COURT: Can you take this off the screen for
13 the jury so -- and make sure all the screens are facing me
14 and just run it so I can take a look at it first?

15 Sorry, if it's down, you can just play it without
16 the volume.

17 MS. MIRELL: I thought you had the ability to play
18 it.

19 THE COURT: Yeah, just play it without the volume
20 on.

21 Hang on. Play it without the volume so that I can
22 take a look at it so I can think about this.

23 (Video played)

24 MS. MIRELL: That's where I'd stop it, Your Honor.

25 THE COURT: Okay. Can y'all pick the phones up

1 real quick?

2 (Bench conference)

3 THE COURT: Okay. What the government thinks,
4 just so the record reflects this, so what the video shows is
5 as it continues, is the officer who's at the face of the
6 tunnel is dragged down by some group of rioters, he's
7 dragged back down into the crowd. Mr. Webster is some feet
8 away from that. He's not seeming to be grabbing any of the
9 officer. As the video sort of continues, his arm is sort of
10 pressed out, he's holding the arm out toward the officer has
11 he's being dragged down, and he sort of appears to move
12 towards the officer, and maybe reached his hand out to touch
13 him at one point.

14 So the question is of the -- what count do you
15 think this is relevant to?

16 MS. MIRELL: Your Honor, I think it goes towards
17 his awareness and his knowledge about the wrongfulness of
18 where he was, and I think that goes towards the 1752 counts,
19 that he knew he wasn't supposed to be there and watching an
20 officer getting dragged down would go towards that.

21 It also establishes that he's on -- I mean, in
22 case there's any question about whether the area below
23 inauguration stage is restricted or not, it also goes to
24 establish that he got even further closer to the building.

25 THE COURT: Mr. Monroe.

1 MR. MONROE: Judge, it does not speak to any of
2 the elements. In fact, I've seen this video more times than
3 I can count. And it actually shows Mr. Webster asking the
4 crowd not to hurt the officer, and he's holding his hand out
5 to the extent he's not involved whatsoever. There's
6 literally thousands of people standing around just looking
7 about, including Mr. Webster himself.

8 His presence has already been established by the
9 previous clip in the video. It would be irrefutable at that
10 point. This section of clip is only intended to inflame the
11 jury. That's all this is about.

12 MS. MIRELL: Your Honor, in terms of the prejudice
13 here, the government agrees that the defendant's hand could
14 rightly be interpreted as trying to assist the officer, not
15 actually trying to hurt the officer. But also in terms of
16 the prejudice here, you don't actually see Officer Fanone,
17 and we're not going to name the officer, getting dragged
18 down. You just see him at the top and then you see him at
19 the bottom.

20 THE COURT: Well, I mean, it's pretty clear, he
21 gets dragged down. Just bear with me, everyone.

22 MR. MONROE: If it helps, if you can play the
23 audio outside the presence of the jury, you'll hear him say,
24 "Don't hurt the police, don't hurt the cop."

25 MS. MIRELL: Which again mitigates the prejudice.

1 (Pause)

2 THE COURT: Look, I guess the question is, you
3 know, count 3, which charges him with entering or remaining
4 in a restricted building or grounds while using or carrying
5 a dangerous or deadly weapon, you know, the government's
6 going to ask for a lesser included offense. You know, this
7 evidence shows him remaining on the Capitol grounds and, in
8 fact, it shows him moving closer to the entry of the Capitol
9 itself. And, you know, arguably is relevant and probative
10 to that point, to that element. Right?

11 MS. NIELSEN: Yes, Your Honor.

12 THE COURT: Mr. Monroe.

13 MR. MONROE: It's just one of those hallmark
14 events of January 6th that's impressed in so many different
15 people's minds. It's one of those real inflammatory
16 moments. I think it's the evidence --

17 THE COURT: Let me ask you this. Are you going to
18 argue to the jury that he did not know he was on restricted
19 grounds when he walked up the steps and got on to the --
20 what was the inaugural stage?

21 MR. MONROE: Yes.

22 THE COURT: You're going to argue that.

23 MR. MONROE: Yes, sir, I will.

24 THE COURT: You're going to argue that he did not
25 understand he wasn't supposed to be there.

1 MR. MONROE: Based upon the presence of the large
2 crowd and what was happening, yes.

3 THE COURT: All right. That's going to be your
4 argument, then the government is permitted to play it.

5 (Open court)

6 THE COURT: All right. So that objection will be
7 overruled. You can play the video from where it was left
8 off.

9 MS. MIRELL: I'm sorry, I didn't indicate that
10 time stamp.

11 THE COURT: I think you were at three seconds,
12 Ms. Mirell.

13 MS. MIRELL: Three seconds.

14 Well, the time stamp is a little weird right now
15 so I have to restart the exhibit.

16 Okay. Thank you.

17 THE COURT: Sorry. Can I just ask you all to get
18 on one more time. Sorry, ladies and gentlemen.

19 (Bench conference)

20 THE COURT: Just so the record is complete, you
21 know, while there is obvious prejudice from the images on
22 this video, given what the defense has said, it's going to
23 argue to the jury its probative value. There's clear
24 probative value to it and it is not substantially outweighed
25 by the danger of the prejudice from these images. Okay?

1 (Open court)

2 BY MS. MIRELL:

3 Q So we are stopped here at the three-second mark.
4 And, Special Agent Palmertree, you had identified the
5 defendant as the individual wearing the red, white, and
6 black jacket with the white triangle on the back in the
7 middle of this image.

8 (Video played)

9 BY MS. MIRELL:

10 Q And then we had stopped at approximately the
11 20-second time mark, and you had identified individual MPD
12 officer in the center of the tunnel. Do you recall that?

13 A Yes.

14 Q Special Agent Palmertree, are you familiar with
15 this incident based on your investigation?

16 A Yes.

17 Q Just so you can orient the jury, what's about to
18 happen to this officer?

19 A So if you look right at the tunnel that we talked
20 about earlier -- do you want me to -- should I circle?

21 Q You can circle, yes.

22 A This officer here is about to be -- or is in the
23 process of being separated from his colleagues closer inside
24 the tunnel and is soon to be dragged out into the crowd by
25 himself.

1 MS. MIRELL: And we can clear that.

2 (Video played)

3 BY MS. MIRELL:

4 Q I've stopped the video at the 46-second time mark.
5 Directing your attention to what appears to be a plastic
6 object towards the left side of the frame, do you know what
7 that is?

8 A Yes.

9 Q What is it?

10 A It is a police shield.

11 Q And do you see that officer that you had
12 previously identified at the top of the tunnel?

13 A I don't see him in this photo, this still frame.

14 (Video played)

15 BY MS. MIRELL:

16 Q I've stopped at the 59-second time mark.
17 Do you see the defendant in this still shot?

18 A Yes.

19 Q Can you circle the defendant and identify him for
20 the record?

21 A (Witness complies.)

22 Q What is he wearing?

23 A Red, black, and white jacket.

24 MS. MIRELL: Okay. The witness has identified the
25 defendant wearing the red, white, and black jacket in the

1 center of the still shot.

2 (Video played)

3 BY MS. MIRELL:

4 Q I've stopped the video at the 141-second time
5 mark. Do you see the defendant in this still shot?

6 A Yes.

7 Q Can you circle him for the record and describe
8 what he's wearing and describe approximately where he's
9 standing in relation to that flag?

10 A That would be the bottom steps, near the bottom
11 steps of the lower west tunnel we've talked about, and he's
12 wearing a red, white, and black jacket.

13 (Video played)

14 Q Now, I've stopped the exhibit at 147. Do you see
15 a helmet?

16 A Yes.

17 Q Can you circle for the jury where you see that
18 helmet?

19 A (Witness complies.)

20 Q Okay. The witness has circled the helmet right
21 near the man with a yellow jacket in this still shot at 147.

22 And based on your investigation into January 6th,
23 is it your understanding that that is the same officer who
24 was dragged down the stairs?

25 A Yes.

1 Q Thank you.

2 (Video played)

3 BY MS. MIRELL:

4 Q Actually, I'll play it one more time.

5 (Video played)

6 BY MS. MIRELL:

7 Q Okay. I've stopped the video at the 208 time
8 stamp. Do you recognize any individuals in this still shot?

9 A Yes, the officer that was pulled out of the tunnel
10 and Mr. Webster.

11 Q Can you circle Mr. Webster?

12 A (Witness complies.)

13 Q And does that resemble the man that you see in the
14 courtroom today?

15 A Yes.

16 MS. MIRELL: Let the record reflect that the
17 witness has circled the Defendant Thomas Webster on the
18 bottom of this image, the side profile of his face.

19 All right. We can take this exhibit down.

20 BY MS. MIRELL:

21 Q So we've now reviewed all of the videos. Can you
22 identify for the last time with this map 603.1, Special
23 Agent Palmertree, approximately where you saw the defendant
24 and where the incident with the officer getting dragged down
25 the stairs happened.

1 And mark it with a number too.

2 A So which should I go with first?

3 Q I'm sorry, that's a lot.

4 A I'll mark the area where we're seeing the
5 defendant, where the defendant moves.

6 No. 7 here is where the defendant's standing
7 generally.

8 Q And can you mark that with a number? Did you
9 already do that. Okay. No. 7. Okay.

10 That's great. Thank you.

11 Were you also able to review some surveillance
12 footage showing the inaugural stage area at around -- or at
13 around 4:13 p.m.?

14 A Yes.

15 Q And were you able to find -- identify someone who
16 resembled the defendant?

17 A I identified someone who looked to be defendant.

18 Q And based on what, how did he look to be the
19 defendant?

20 A Based on the same size, build, the same jacket,
21 and the light gray hair.

22 Q And did the defendant, or the person who appeared
23 to be the defendant, did he still have a flagpole at that
24 point?

25 A No, not that I could see.

1 Q We'll return to that in one moment.

2 Okay. We can publish this to the jury.

3 So I'm showing you what's been admitted as Exhibit
4 201.1. Can you identify where you saw the person you
5 believe to be the defendant in this photo?

6 A In the bottom right of the frame circled with a
7 red circle.

8 Q And can you say with 100 percent certainty that
9 that's the defendant?

10 A No.

11 Q But just based on the items you've -- or the
12 clothing you've described and the general appearance, you
13 believe that to be the defendant?

14 A Yes.

15 Q And directing your attention to the middle of
16 the -- the bottom middle, you see a time stamp there?

17 A I do.

18 Q You were here for the testimony of Capitol Police
19 Officer Mendoza?

20 A Yes.

21 Q And do you recall her being asked about that time
22 zone?

23 A Yes.

24 Q Are you familiar with that time zone?

25 A I am.

1 Q And have you reviewed a lot of surveillance
2 footage in relation to January 6th?

3 A Yes, and specifically Capitol Police surveillance
4 video as well.

5 Q And so are you familiar with how Capitol Police
6 time stamps some of its surveillance footage?

7 A Yes.

8 Q What time zone is that?

9 A That would be Zulu or Greenwich Mean Time, GMT or
10 UTC.

11 Q Okay.

12 So -- and I'm sorry to ask you to do math on the
13 spot, but do you know what time that would have been?

14 A So that's in military time, 2113, translates to
15 9:13 p.m., minus five hours, would be 4:13 p.m. The minus
16 five hours would be from Zulu or UTC to local Eastern
17 Standard Time for January. Right now we're minus 4, but in
18 January, it would be minus five hours.

19 Q Okay.

20 I'm going to ask you this time to mark the last X
21 on this Exhibit 603.1 based on where you see defendant in
22 Exhibit 201.1, and can you number it as No. 8, please.

23 A Generally. And that's a sideways 8, I'm sorry,
24 but that's --

25 Q All right. Thank you very much.

1 Did the defendant send any text messages after he
2 went to the Capitol on January 6th?

3 A Yes.

4 Q Directing your attention to Exhibit 304.

5 What did -- do you see where it's a contact, Frank
6 S. Home, texts the defendant on January 6th, that's 7:32
7 p.m., converting that to Eastern Standard Time. "Hey,
8 I hope you are all right down there. Do you need me to come
9 down with bail money?"

10 What did the defendant respond on January 6th,
11 2021, at 7:40 p.m., if we convert that UTC zero to Eastern
12 Standard Time?

13 A "All is well. In my room. Never forget this
14 date."

15 Q Did the defendant to any Internet searches the
16 night of January the 6th?

17 A Yes.

18 Q Directing your attention to what's been admitted
19 as Exhibit 314.

20 What is the title of the website that the
21 defendant visited the evening of January 6th at 11:13 p.m.?

22 A "Now facial recognition proves who stormed
23 Capitol, Populist Press 2021."

24 Q Did the defendant to any Internet searches in the
25 weeks after January 6th?

1 A Yes.

2 Q Directing your attention to Exhibit 315 already
3 admitted, and zooming in, what website did the defendant
4 visit on January 15th, 2021, at 12:54 p.m.?

5 A "DOJ launches tracker for those charged at
6 Capitol, Populist Press 2021."

7 Q And do you know what DOJ acronym stands for?

8 A Yes.

9 Q What is it?

10 A The Department of Justice.

11 Q Is that the same department prosecuting the
12 defendant?

13 A Yes.

14 Q Directing your attention to exhibit -- oh,
15 sorry -- 316, what website did the defendant visit on
16 January 15th at 1:39 p.m.?

17 A "Capitol rioters included highly trained
18 ex-military and cops, Thee Rant."

19 Q I'm in my last questions here. As part of your
20 investigation into the events of January 6th, did you look
21 into what areas comprised the United States Capitol grounds
22 as we've been using that term during this trial?

23 A Yes.

24 Q And did you download a map of the -- the map of
25 the United States Capitol grounds?

1 A Yes.

2 Q I'm showing you what's been admitted as Exhibit
3 408.

4 Do you recall where you downloaded this map from?

5 A Yes.

6 Q Where?

7 A Office of the Surveyor, D.C.

8 Q And can you identify in this map, and I'll zoom
9 in -- well, actually, I'm going to zoom in and ask you to
10 read numbers 1 and 3 of this legend, if you can?

11 A "No. 1. The United States Capitol grounds
12 comprise the squares, reservations, streets, roadways, walks
13 and other areas shown within the heavy lines, except the
14 misshaded portions -- except the unshaded portions of the
15 Senate and the House office building areas."

16 Q No. 3?

17 A And No. 3, "The shaded areas include properties
18 comprising the United States Capitol grounds under the
19 jurisdiction and control of the Architect of the Capitol."

20 Q Okay.

21 And zooming in to an area to the right side -- oh,
22 can you -- are you able to see what book this map came from?

23 A Yes.

24 Q What book number?

25 A 0127.

1 Q And at the top right, are you able to see what
2 page number this map came from?

3 A Yes.

4 Q What page number?

5 A Page 8.

6 Q Okay.

7 Focusing your attention on the area with the words
8 "United States Capitol" on it, do you recognize the area
9 that we've been describing as the lower West Terrace, as
10 well as the tunnel?

11 A Yes.

12 Q Can you circle on this map what area we've been
13 describing as the lower west tunnel and -- I'm sorry, the
14 lower West Terrace, as well as the tunnel and the
15 inauguration stage, generally?

16 A Generally.

17 Q Generally, yes.

18 A (Witness complies.)

19 Q Okay.

20 And to ask you the obvious, does that area fall
21 within the shaded area, the red shaded area --

22 Well, first, for the record, the witness has
23 circled the area just below the words "United States
24 Capitol," where it appears to have some stairs and a circle.

25 Does this area fall within the shaded area on this

1 map?

2 A Yes.

3 Q Does this area fall within the boundaries, the
4 thick black boundaries of this map?

5 A Yes.

6 MS. MIRELL: Finally, at this time, I'd like to
7 read into the record Exhibit 706, which is a stipulation by
8 the parties, and I will put it up for the jurors.

9 "United States and Defendant, Thomas Webster,
10 agree and stipulate to the following: The west front of the
11 United States Capitol, including the lower West Terrace, is
12 part of the United States Capitol grounds for purposes of
13 Count 6."

14 One moment.

15 (Government counsel conferred off the record.)

16 MS. MIRELL: No further questions for this
17 witness.

18 THE COURT: Okay. Mr. Monroe, cross-examination.

19 Mr. Monroe, are you going to want that large
20 exhibit up, or should I have it taken down?

21 MR. MONROE: If we can take it down.

22 THE COURT: Agent Palmertree, I'll just ask you to
23 take that down. Thank you.

24

25

1 the Capitol grounds on January 6th?

2 A No, just those two encounters.

3 Q No, not a one.

4 And did you ever see -- let me step back for a
5 second.

6 In your own investigations, Agent, you also looked
7 at video footage inside the Capitol, correct?

8 A I've seen some video footage from inside the
9 Capitol, yes.

10 Q But as you sit here today, you hadn't never seen
11 any video footage of Mr. Webster inside the Capitol,
12 correct?

13 A No, I've not seen him inside the Capitol.

14 Q So you and I can agree that there's no evidence of
15 Mr. Webster inside the Capitol on January the 6th?

16 A We can agree on that, yes.

17 Q And we can also agree that there's no evidence of
18 Mr. Webster involved in any other altercation other than
19 that one incident with Officer Rathbun, correct?

20 A I've not found any other evidence, that's correct.

21 Q So we can agree on that point, too?

22 A We can agree that I've not found any other
23 evidence of any further assaults on January 6th involving
24 Mr. Webster.

25 Q You've been working on Mr. Webster's case with the

1 U.S. Attorney's Office since sometime shortly after
2 January 6th, correct?

3 A That's correct.

4 Q You've had countless number of communications with
5 the attorneys with this office, correct?

6 A Yes.

7 Q Now, isn't it true just yesterday when we first
8 met, I asked you to speak with me about what you knew about
9 this case and you turned me down?

10 A Yes.

11 Q You wouldn't talk to me?

12 A That's correct.

13 Q Okay.

14 Now, you had a chance to speak with
15 Officer Rathbun on February 19th, 2021, correct?

16 A I'd have to see my notes.

17 Q Yeah, I'm going to show it to you, sir.

18 Do you recall speaking with Officer Rathbun about
19 the events involving him at the Capitol on January 6th?

20 A Yes.

21 Q All right.

22 What prompted you to contact Officer Rathbun?

23 A I believe he was identified as a victim in an
24 assault that I viewed from publicly available video.

25 Q And at that time, what video had you reviewed?

1 A There was a publicly available video that showed
2 the assault, I believe, from the perspective of the crowd
3 facing towards the Capitol.

4 Q Did that video prompt you to inquire further as to
5 whether the government in their possession had additional
6 footage of this incident?

7 A Well, I immediately wanted to know who the officer
8 was, and then I knew I would be able to get the body-worn
9 camera of that officer.

10 Q Now, at the time, you were aware, were you not,
11 sir, that there were a number of exterior cameras positioned
12 on the Capitol building in this location along the west
13 side, correct?

14 A I didn't know where the cameras were at that point
15 in time, where all the cameras at the Capitol were. I was
16 just learning that.

17 Q Did there come a time that that video footage
18 became available to you?

19 A The Capitol video?

20 Q Yeah, those cameras that are fixed on the
21 building.

22 A Yes.

23 Q When did you have a chance to look at that
24 footage?

25 A I can't even -- I can't say when I first saw that

1 video.

2 Q Was it before or after speaking with the officer?

3 A Like I said, I can't say, we've seen so much
4 video.

5 Q Okay.

6 Now, prior to speaking to Officer Rathbun, did you
7 speak to Officer Lauderdale?

8 A I can't remember that either. Someone on my squad
9 likely spoke to Officer Lauderdale, who identified the
10 officer. That's likely. Or someone from his team.

11 Q Did you have a chance to retrieve
12 Officer Lauderdale or MPD's records concerning their
13 interview with Officer Rathbun?

14 A Yes, at some point, eventually, yes.

15 Q Now, is it fair to say in the MPD note, there's no
16 reference to Officer Rathbun being assaulted by Mr. Webster?

17 A I'd have to see those notes.

18 THE COURT: Hang on. Let's -- that's not a fair
19 question. Can we move to the next question please?

20 BY MR. MONROE:

21 Q I'm going to show you what I've marked as
22 Defendant's Exhibit 9. Take a look at it, sir, and
23 I'm going to ask you if you recognize this document and then
24 I'll inquire further.

25 A I recognize the document.

1 Q Can you tell us what it is, sir?

2 A It's an interview report, a 302, what we call a
3 302, which is an interview, in this case.

4 Q And the date referenced?

5 A It would be -- a date of entry is when I actually
6 entered the item into our system. So that would be
7 February 19th, 2021.

8 Q And what's referenced by that date?

9 A That's the date that I -- we call it serializing
10 the report, putting it into the system.

11 Q So it doesn't necessarily reference the date you
12 spoke to the officer, it references the date you put the
13 information into the system?

14 A Correct, to my knowledge, yeah.

15 Q In looking at this document, does it refresh your
16 recollection as to approximately when you spoke with
17 Officer Rathbun?

18 A It would be on that day or soon before or after.

19 Q The document we marked as Defendant's Exhibit 9,
20 does that represent a true and accurate reporting of your
21 conversation with Officer Rathbun as entered on February 19,
22 2021?

23 A That represents a true and accurate report that I
24 typed and serialized into our system, yes.

25 MR. MONROE: I would offer defendant's 9.

1 MS. MIRELL: Hearsay.

2 THE COURT: Let's get on the phone for a second.

3 (Bench conference)

4 THE COURT: Is the purpose of the report to
5 establish that Officer Rathbun didn't, say, report the
6 assault?

7 MR. MONROE: Yes.

8 THE COURT: All right. Just ask him that.
9 I don't think we need to admit it. Frankly, the entire
10 document is hearsay so if you just want to sort of complete
11 the impeachment, to the extent there is one by omission, you
12 can do that by just asking whether the document or, frankly,
13 his recollection reflects whether Officer Rathbun reported
14 any assault to him or not. Okay.

15 MR. MONROE: Yes, sir.

16 (Open court)

17 THE COURT: So that objection will be sustained,
18 consistent with the discussions at the bench.

19 BY MR. MONROE:

20 Q Now, as of February 19th, 2021, in the course of
21 your interview with Officer Rathbun, did he report to you
22 that he had punched Mr. Webster?

23 A No, not that I recall.

24 Q I'm going to take this document out of sequence,
25 but it's just something quick I wanted to address with you

1 that was mentioned during direct.

2 I'm showing you Government's Exhibit 201.1, which
3 is in evidence.

4 In particular, take a look at the --

5 Is it displayed to the jury?

6 COURTROOM DEPUTY: Yes.

7 MR. MONROE: Yeah.

8 BY MR. MONROE:

9 Q The lower right corner where you see the red
10 circle. You can't say with certainty that that's
11 Mr. Webster, correct?

12 A That's correct.

13 Q Okay.

14 I'd like to show you an enhanced version of the
15 Government's Exhibit 205. I'll just get it up on the
16 screen.

17 Looking at 00395, do you see where we're
18 referencing?

19 THE COURT: Has this been published?

20 Let's blow it up to occupy the full screen.

21 BY MR. MONROE:

22 Q Do you see Officer Rathbun in this exhibit?

23 A Yes.

24 Q Could you circle him for me where you see him?

25 A (Witness complies.)

1 Q I don't see your circle.

2 On the screen. Good circle.

3 Can you also identify Mr. Webster by circling him?

4 A (Witness complies.)

5 Q Now, did you ever question Officer Rathbun as to
6 why his hand is raised -- his left hand is raised up in the
7 air just over his left ear?

8 A That wouldn't have been a question I would have
9 asked Mr. Rathbun, no.

10 Q Now, I'm going to play this video forward. So why
11 don't you watch the action if you would.

12 (Video played)

13 BY MR. MONROE:

14 Q I'm going to stop the action at 00821.

15 Before you got on the stand, you saw videos of
16 Officer Rathbun punching Mr. Webster, right?

17 A No.

18 Q You didn't?

19 A I never saw a video of Officer Rathbun punching
20 Mr. Webster.

21 Q Okay.

22 You saw Officer Rathbun strike Mr. Webster,
23 did you not?

24 A From this video?

25 Q Yes, sir.

1 A You can call that a strike.

2 Q Okay.

3 So you're having an issue with the way I worded my
4 question.

5 So you've seen Officer Rathbun strike Mr. Webster
6 in prior video reviews, correct?

7 A In this video, what I see is --

8 Q You've seen him strike --

9 THE COURT: Counsel --

10 Q -- Mr. Webster in prior video reviews, correct,
11 Agent?

12 A In this video, what I'm seeing, having no
13 understanding of the video, is what I would call a strike.

14 Q Did you ever -- when you initially interviewed the
15 officer, he never told you about striking Mr. Webster,
16 correct?

17 A That's correct.

18 Q Now, I will take it that, as a conscientious
19 agent, you would want to follow up why an individual like
20 Officer Rathbun didn't bother to disclose to you that he
21 struck this civilian in the course of this encounter,
22 correct?

23 A In my investigation, I would want to know
24 everything about the incident I'm investigating.

25 Q I'm going to show you another video, Investigator.

1 Now, the government showed you Exhibit 205, which
2 is now before you. This is a video near the west tunnel at
3 the Capitol, correct?

4 A Yes.

5 Q And you did not observe Mr. Webster involved in
6 any type of assaultive behavior at or near this tunnel,
7 correct?

8 A That's correct.

9 Q In fact, sir, isn't it true that there is proof
10 that Mr. Webster were actually trying to tell the other
11 people not to hurt a cop?

12 A I can't hear what Mr. Webster is saying in this
13 video.

14 Q You can't hear the crowd saying, "don't hurt the
15 cop"?

16 A I can hear maybe one or two people's voices very
17 clearly in this video.

18 Q Let's play it forward if we could.

19 THE COURT: Just to be clear, I think this is
20 Government's 210, not 205.

21 MR. MONROE: 210, Your Honor, correct. We'll play
22 it forward.

23 (Video played)

24 BY MR. MONROE:

25 Q I want to stop the video at -- the counter I have

1 is 1 minute and 3 seconds.

2 Do you see Mr. Webster's hand in the air?

3 A I do.

4 Q Did you take that as an act of aggression on
5 behalf of Mr. Webster?

6 A I can't take that hand in the air as anything.

7 Q Okay.

8 At this point in time has the crowd not telling --
9 shouting out, "Don't hurt the cop"?

10 A There are thousands of people in this frame.
11 I can tell you what the people yelling likely want, but the
12 people I can hear with words I can clearly make out and
13 want, but I can't speak to what the crowd wants.

14 Q And the words you're hearing is, "Don't hurt the
15 cop"?

16 A You'd have to play it.

17 (Video played)

18 MR. MONROE: Judge, can I see if I can fix this
19 audio issue. I have it plugged in but I don't seem to have
20 a good signal.

21 THE COURT: Either that or maybe the government
22 would be kind enough to just plug its computer in and run
23 its exhibit.

24 MR. MONROE: I'm sorry.

25 THE COURT: If not that, then perhaps the

1 government would be kind enough to just plug its computer in
2 and run the exhibit.

3 (Pause)

4 THE COURT: Thank you for your patience. The tech
5 doesn't always cooperate. Mr. Monroe, I'm not saying that's
6 even user error.

7 MR. MONROE: I put my hands back so you can see
8 that I'm not the source this time.

9 BY MR. MONROE:

10 Q Listen to the audio, Agent, if you would, hear
11 what the crowd is saying.

12 (Video played)

13 BY MR. MONROE:

14 Q So what we can hear from the crowd, they're urging
15 others not to hurt the cop.

16 A Again, I'm not going to speak to the crowd. I can
17 tell you there's a woman out of frame, sounds like a
18 female's voice, saying, "Don't hurt the cop."

19 Q Okay?

20 A And then I hear this man with the head shirt in
21 the loud speaker yelling, "Remove him."

22 Q And, again, Mr. Webster himself, he's not observed
23 engaged in any type of assaultive behavior at this point in
24 time.

25 A No.

1 Q Agent, let me show you now what's been marked and
2 in evidence as Government's 212.

3 Do you recognize, at least initially, the first
4 clip up on the screen?

5 A Do I recognize the area?

6 Q Yeah, what's depicted?

7 A Yes.

8 Q And as depicted, is this a picture of what the
9 west side of the Capitol looked like at about 12:55 in the
10 afternoon on January the 6th?

11 A Yes.

12 Q And in particular, we've noted the metal fencing
13 that exists on the West Terrace as depicted, correct?

14 A In the middle, is that what you're referring to?

15 Q Where you see the red signage.

16 A I believe those may be cones. And then right in
17 the middle, I do see some red, yes. I know that to be, from
18 my investigation, a temporary, ornamental fence.

19 Q What's that constructed of?

20 A I don't know. I've never seen it up close.

21 Q Could you put a line around that fence.

22 A (Witness complies.)

23 Q And now you have a second row of fencing. Where
24 is that depicted in this photo?

25 A As I'm moving west?

1 Q Yes.

2 A Stone wall here. And then a fence, I'm tracing
3 the top of a fence.

4 Q Now, the first perimeter fence, what materials
5 does that comprise of; is that metal, plastic, some
6 combination?

7 A Again, I have no idea what that ornamental fence
8 is made of.

9 Q But it's a temporary fence that was constructed
10 for purposes of the certification process?

11 A From what I understand, yes.

12 Q And then beyond that, we noted a second exterior
13 fencing right before that stone wall that you described?

14 A Right after that stone wall, yes.

15 Q And then just beyond that, there's another fence,
16 correct, another temporary fence?

17 A Yes.

18 Q Can you outline that for the jury?

19 A (Witness complies.)

20 Q Now, a very large crowd ended up assembling along
21 the west side of the Capitol on January 6th, correct?

22 A Yes.

23 Q Now, I'm going play this video forward, focus our
24 attention on the fencing and the signage that's attached.

25 (Video played)

1 BY MR. MONROE:

2 Q Now, I'm going to stop at 13:01:07. Do you recall
3 seeing the signs that were attached to the fencing in our
4 prior clip?

5 A I recall seeing the back of the signs, yes.

6 Q Go ahead, put up -- if you would, that far fencing
7 furthest to the west, would you put a yellow circle around
8 where that fence existed?

9 A (Witness complies.)

10 Q Now, it's about 1:01 in the afternoon when this
11 image was captured, correct?

12 A Yes.

13 Q Now, is it your understanding that this image
14 comes from a camera attached to the Capitol building,
15 correct?

16 A That's my understanding.

17 Q So you wouldn't have any reason to doubt the
18 authenticity of this video footage, correct?

19 A That's correct.

20 Q This video footage is an accurate depiction of the
21 true events as they transpired over time on January 6th?

22 A This video is an accurate depiction of this west
23 of the Capitol at this point in time.

24 Q So those signs that were nicely attached to the
25 plastic fence, they're now on the ground, correct?

1 A Yes, they're littered about the ground across the
2 frame.

3 Q All that fence is gone?

4 A The snow fence looks to be removed. I believe
5 I can still make out the pegs that would have held it in
6 place.

7 Q But the plastic fencing and the signage now has
8 been removed?

9 A I don't know where it is. It would be green.
10 It would likely blend in with the ground. But we can agree
11 that the fence is no longer in the current -- in the state
12 it was at the beginning.

13 Q You know, I didn't ask you. I'll ask you now.
14 Were you present at the Capitol grounds on January the 6th?

15 A Yes.

16 Q Where were you?

17 A I would have been at the very south of the
18 Capitol.

19 Q About where?

20 A Just outside the Capitol and eventually inside.

21 Q Were you called to the Capitol on January 6th to
22 assist?

23 A Yes.

24 Q And what services did you provide as of
25 January 6th at the Capitol?

1 A Part of the FBI D.C. SWAT team. So I was called
2 to the Capitol in that capacity.

3 Q So you had to get on some gear?

4 A I already had gear on.

5 Q What gear did you have on?

6 A SWAT gear like -- if I can explain it.

7 Q What did that comprise of?

8 A From the bottom, I would have boots, like brown
9 boots. I would have what you would refer to as fatigues,
10 a -- two layers of vests, ballistic style vests, knee pads,
11 a helmet, gas mask, rifle, pistol --

12 Q Now --

13 A -- handcuffs.

14 Q Did it take you some time for you and your team to
15 assemble outside the Capitol?

16 A What do you describe as some time?

17 Q Well, did you have a place where you rallied or
18 assembled as a team?

19 A Portions of the team.

20 Q Okay.

21 A Like we drove to the Capitol very quickly.

22 Q What time did you arrive at the Capitol on
23 January 6th?

24 A I can't say. I didn't record the time I arrived
25 at the Capitol.

1 Q Approximately.

2 A Again, I have no idea what time I got to the
3 Capitol.

4 Q And --

5 A I could extrapolate based on certain incidents.

6 Q What's your best estimate?

7 A Yeah, again, I mean, we could break it down and I
8 wouldn't be able to say exactly what time. I know it was
9 daytime. I know there were crowds still there.

10 Q Was it towards the evening, like 3, 4:00?

11 A 3 or -- 3 is the afternoon --

12 Q Yeah, I'm trying to --

13 A -- in my mind.

14 Q I'm trying to get my understanding --

15 A So I would say we got there in the afternoon.

16 Q -- of what time you arrived?

17 A So I would say I got there in the afternoon,
18 I could say that.

19 Q Okay.

20 And when you arrived, what part of the Capitol
21 did you cover?

22 A I arrived at the southern part of the Capitol,
23 parked vehicles, and stood by.

24 Q Did you stay inside your vehicle?

25 A For a time.

1 Q Did there -- was there a time where you ventured
2 over towards the west side of the Capitol?

3 A No.

4 Q So your testimony before this jury is based solely
5 on your view of video footage and other information gathered
6 from -- gathered from others, as opposed to your independent
7 observations?

8 A I was not on the west side of the Capitol on
9 January 6th.

10 Q You did not personally view any of the conduct
11 Mr. Webster is being accused of here today?

12 A I was not at the lower West Terrace, nor the
13 western portion of the Capitol on January 6th, I can say
14 that.

15 Q And you could not personally attest to the
16 exterior condition of the Capitol grounds, namely the
17 fencing, as they existed at 12:00 noon on January 6th?

18 MS. MIRELL: Asked and answered.

19 THE COURT: I think he's already said he wasn't
20 there, Mr. Monroe.

21 MR. MONROE: All right.

22 BY MR. MONROE:

23 Q I'm going to play this video forward from 1
24 minute, one second.

25 (Video played)

1 BY MR. MONROE:

2 Q Now, at 1 minute, 6 seconds, there's a large
3 banner being carried. Does it appear to you that this group
4 is stepping over any type of fence or are they just taking
5 the banner straight across the grass?

6 A This is a still frame. I can't say what these
7 people are doing.

8 Q I'll play it a little forward for you. Go ahead.

9 (Video played)

10 BY MR. MONROE:

11 Q Looking at the fencing, does it appear as though
12 anyone's walking around or walking through any type of
13 fencing that's still standing up?

14 A I can say having to focus on the video and certain
15 portions that I focused on just now, I could see the
16 individuals, in the portions I was looking at, walk
17 uninterrupted across that line you've spoken of.

18 Q All right.

19 (Video played)

20 BY MR. MONROE:

21 Q Approximately what time was it when Mr. Webster is
22 known to arrive on the Capitol grounds?

23 A Approximately 2:20, I would say, very generally.

24 Q Let's get there.

25 (Video played)

1 BY MR. MONROE:

2 Q So I'm going to stop the action at 2:15 about five
3 minutes before we can appreciate Mr. Webster's presence.

4 From this moment in time, can you see any of the
5 fencing referred to previously by the government?

6 A No.

7 Q Do you know whether it even exists?

8 A No.

9 Q Can you see any of the signs that were attached
10 saying, go -- "No trespassing by order of the Capitol"?

11 A No.

12 Q Is it fair to say that by this point in time, all
13 the fencing that was in place has been removed?

14 A Those fences would still be likely attached to
15 what they were staked into the ground with.

16 Q You can see it somewhere at 2:15? Would you
17 circle where you still see the fencing on this image?

18 A Would you like to ask your question again, and
19 I can answer it in a way that --

20 Q Yeah. I'm asking, can you show the jury where you
21 see the fencing on image -- at 2:15?

22 A I can only see people.

23 Q Okay.

24 Did you ever arrive at a number as to how many
25 people were at the Capitol on January 6th at approximately

1 2:15?

2 MS. MIRELL: Relevance.

3 THE COURT: It's overruled.

4 THE WITNESS: I never calculated the amount of
5 people that were there on January 6th.

6 BY MR. MONROE:

7 Q You work for the Federal Bureau of Investigations,
8 correct?

9 A Yes.

10 Q Are you aware your agency ever offering any
11 projections as to the number of people that were present at
12 the Capitol at its peak?

13 A I never looked at any projections of people at the
14 Capitol.

15 Q Let's show you another video here.

16 (Video played)

17 BY MR. MONROE:

18 Q Agent, I have displayed Government's Exhibit 213,
19 which is in evidence. You've seen this video played before,
20 correct?

21 A Yes.

22 Q When for the first time did you acquire a copy of
23 this video?

24 A I don't know.

25 Q Where was it acquired? Where did you obtain it?

1 A I don't know.

2 Q Is this from one of the cameras on the side of the
3 building or is this some private citizen holding up their
4 cell phone?

5 A This would be publicly available video that we
6 obtained throughout the course of the investigation and
7 it would be stored in a serial inside the case file.

8 THE COURT: Mr. Monroe, can I -- I missed the
9 exhibit number. Can you just repeat it again.

10 MR. MONROE: 213.

11 THE COURT: All right. Thank you.

12 BY MR. MONROE:

13 Q Did you have this video before you interviewed
14 Officer Rathbun?

15 A I did not see this video before I interviewed
16 Officer Rathbun.

17 Q But you saw this video before getting on the stand
18 today, correct?

19 A That's correct.

20 Q What can you share with the jury as depicted in
21 this first initial frame?

22 A I can see the press tower. I can see a line of
23 officers we've seen people trace over a period of trial.
24 I can see rioters.

25 Q Now, I noticed you used the word "rioters" for a

1 second. Now, you looked at a lot of video in this case, as
2 you described, correct? There were some people there just
3 standing around just watching the events unfold, correct?

4 A Absolutely.

5 Q They were -- it doesn't appear that they're
6 protesting. Just standing around watching?

7 A People were doing a lot of different things on
8 January 6th, that's correct.

9 Q There were some people that came to protest,
10 correct?

11 A Yes.

12 Q And there were some people that came to what would
13 appear to do harm?

14 A It appeared that way, yes.

15 Q So let's play this video forward.

16 (Video played)

17 BY MR. MONROE:

18 Q Now, this was a video that was produced and
19 offered by the government, correct?

20 A Yes.

21 Q And the highlighted portion -- well, let me step
22 back. The original video is colorized, correct?

23 A That's correct.

24 Q And in order to enhance this moment in time, the
25 balance of the video footage was made black and white except

1 for what appears in this circle, correct?

2 A Yes.

3 Q And so that's you and the jury can focus in on the
4 action as it occurs, correct?

5 A I've seen the video and know it very well. This
6 would be for the jury.

7 Q Now --

8 (Video played)

9 BY MR. MONROE:

10 Q How many times was Mr. Webster shoved by
11 Officer Rathbun before Officer Rathbun struck him in the
12 face?

13 A I didn't memorize so I can't say with certainty
14 how many times Officer Rathbun attempted to make space.
15 I believe it was twice.

16 Q Can we agree that Officer Rathbun pushes
17 Mr. Webster at least twice before he strikes him in the
18 face?

19 A I know Officer Rathbun pushed Thomas Webster at
20 least twice.

21 Q Before striking him in the face. We don't agree
22 about the part where he strikes him in the face?

23 A You're calling it a strike.

24 Q What do you want to call it?

25 A I would call it a --

1 Q His face hit his hand, like Officer Rathbun?

2 A I would more call it creating distance with an
3 open palm, having seen first the body-worn camera video.

4 Q I'm not quibbling with you, Agent. I know you
5 weren't there and I wasn't there, but we're watching this on
6 video.

7 Did Officer Rathbun strike Mr. Webster in the face
8 at some point in time? Are you not seeing the same video
9 I'm watching?

10 A Not in my investigation, I didn't see that in my
11 investigation.

12 Q Okay, Agent. I'll leave it at that.

13 (Video played)

14 BY MR. MONROE:

15 Q Does a private citizen have the ability to express
16 themselves without being punished by a police officer?

17 MS. MIRELL: Objection.

18 THE COURT: It's overruled.

19 THE WITNESS: Sure.

20 (Video played)

21 BY MR. MONROE:

22 Q Now, is this the point in time where Mr. Webster
23 is essentially cursing Officer Rathbun out, calling him
24 names, calling him a Communist, using the "F" word?

25 A Generally, in this time frame, that happens, that

1 occurs.

2 (Video played)

3 BY MR. MONROE:

4 Q Now, by the time Mr. Webster pushes the gate at
5 Officer Rathbun at 41 seconds, had Officer Rathbun already
6 pushed Mr. Webster at least twice?

7 A I believe Officer Rathbun had touched with his
8 hand Thomas Webster's body here --

9 Q At least twice?

10 A -- an open palm at least twice.

11 Q Okay.

12 (Video played)

13 BY MR. MONROE:

14 Q Have you ever been punched before?

15 A Yes.

16 Q Do you know what it feels like?

17 A Yes.

18 Q Have you ever seen other people punched?

19 A Yes.

20 Q I'm looking at the counter at 45 seconds.

21 Based on what you saw just in that clip, did
22 Officer Rathbun strike Mr. Webster in the face?

23 A Based on this video --

24 Q Yes, sir.

25 A -- alone, this would appear to be a strike.

1 Q Okay.

2 And this is the part where I questioned you.

3 Officer Rathbun never told you about striking
4 Mr. Webster, correct?

5 A That's correct.

6 MR. MONROE: Agent, thank you for speaking with
7 me.

8 THE COURT: Okay. Redirect, Ms. Mirell.

9 - - -

10 REDIRECT EXAMINATION

11 BY MS. MIRELL:

12 Q Special Agent Palmertree, are you familiar with
13 Officer Rathbun's body-worn camera?

14 A Yes.

15 Q About how many times would you say you've watched
16 that camera?

17 A Anywhere from 20 to 30 times. Maybe even more.

18 Q I'm going play that exhibit for you. It's
19 Government's Exhibit 204.

20 I want to make sure that this is audible.

21 (Video played)

22 BY MS. MIRELL:

23 Q Okay. I've stopped the video at the 1 --
24 I'm sorry, that is not right. I've stopped the video and
25 I'll describe it after I ask the witness a question.

1 You were asked about whether Officer Rathbun
2 pushed the defendant. Do you remember that?

3 A Yes.

4 Q Is this one of the pushes that you were
5 describing?

6 A Yes.

7 Q And where is Officer Rathbun's hand making contact
8 with the defendant?

9 A It appears to be the defendant's right chest area.

10 Q And is Officer Rathbun's hand opened or closed?

11 A Open.

12 Q Okay.

13 Let the record reflect that while this does not
14 appear to be giving me a time stamp, it stopped at where
15 Officer Rathbun's hand is making contact with the right side
16 of defendant's chest.

17 (Video played)

18 BY MS. MIRELL:

19 Q So, Special Agent Palmertree, was there another
20 time where you saw Officer Rathbun make contact with the
21 chest there?

22 A Yes.

23 Q And where was that? Was that a couple seconds
24 behind?

25 A Yes.

1 (Video played)

2 BY MS. MIRELL:

3 Q I'll try to replay it. I'm replaying it from the
4 12 seconds.

5 (Video played)

6 BY MS. MIRELL:

7 Q Is that the second time that you were describing?

8 A Yes.

9 Q Around the 12- or 13-second mark?

10 A Yes.

11 Q Okay.

12 (Video played)

13 BY MS. MIRELL:

14 Q All right.

15 So, Special Agent Palmertree, can you remind me,
16 how many times have you watched this body-worn camera?

17 A 20 to 30, maybe more.

18 Q And how many times before formally filing charges
19 would you say you had watched the -- against Mr. Webster,
20 would you say that you before -- watched the body-worn
21 camera?

22 A At least ten times.

23 Q And when you watched the body-worn camera during
24 those ten times, were you able to see the contact between
25 Officer Rathbun's hand and the side of the defendant's face?

1 A No.

2 Q You weren't able to see it?

3 A No, I didn't see that.

4 Q When did you ultimately -- how were you ultimately
5 able to see that point of contact between Officer Rathbun's
6 hand and the defendant's face?

7 A I was -- recently took that video and placed it
8 into an editing software that's available to me that allows
9 me to move the video frame by frame.

10 Q So in order to actually find that point of
11 contact, you had to use a software to slow the video down
12 frame by frame; is that right?

13 A That's correct.

14 Q Let's go to one of those frames.

15 And I'm showing you what's been marked as Exhibit
16 204.4. And we can publish that for the jury.

17 Okay. Special Agent Palmertree, do you see
18 Officer Rathbun's contact with the right side of the
19 defendant's face?

20 A Yes.

21 Q Is that hand open or closed?

22 A It is open.

23 Q You testified that you've been punched, right?

24 A Yes.

25 Q Would you characterize that as a punch?

1 A No.

2 Q What would you characterize that as?

3 A I would characterize that as making distance
4 between an individual and myself.

5 Q Okay.

6 And you were shown a video by defense counsel
7 where he had you try to characterize -- where he had you
8 characterize that as a strike.

9 A Yes.

10 Q Is there anything about that video or any other
11 open source videos that you've reviewed that would cause you
12 to change your opinion that Officer Rathbun was the victim?

13 MR. MONROE: Objection.

14 THE COURT: Sustained.

15 BY MS. MIRELL:

16 Q Okay. Moving forward.

17 THE COURT: You can rephrase the question.

18 As frame, it's sustained.

19 BY MS. MIRELL:

20 Q Was there anything about those other videos that
21 caused you to rethink your investigation into
22 Officer Rathbun and Thomas Webster?

23 A Nothing about those videos or this interaction
24 changed my view that Officer Rathbun is the victim.

25 Q And I also want to go back to the video for one

1 second.

2 You were asked quite extensively about fences.

3 You remember that?

4 A Yes.

5 Q Stopped at the 1-second time mark in Exhibit 204,
6 what is that metal thing you see in the bottom of the frame?

7 A That is a bike rack.

8 Q You're an FBI agent in Washington, D.C., right?

9 A Yes.

10 Q Fair to say you've seen quite a few bike racks?

11 A Yes.

12 Q What's your understanding of a bike rack?

13 A That they link to one another. In this image, you
14 can tell it's not linked on the right side at least; 25 to
15 30 pounds. You can move it and set up a hasty or a fast
16 temporary perimeter.

17 Q And the purpose of a perimeter, is that to invite
18 people in or to keep people out?

19 A The purpose would be to keep people out.

20 Q And when there's officers standing behind those
21 bike racks, is that an invitation to cross the bike racks to
22 or stay out?

23 A That would be a reinforcement that these temporary
24 perimeters are meant to keep you out.

25 MS. MIRELL: No further questions.

1 THE COURT: Okay. Special Agent Palmertree, you
2 are free to step down. Thank you.

3 Can you all just pick up the phone for a moment.

4 (Bench conference)

5 THE COURT: Okay.

6 With that, is the government prepared to rest?

7 MS. MIRELL: Yes.

8 MR. KELLY: Yes.

9 MS. NIELSEN: Yes.

10 THE COURT: Why don't you announce that you're
11 resting, we'll then take a break, and then we'll -- I'll
12 probably give us a 20-plus-minute break or so just so we can
13 deal with the issues we need to deal with, and then we'll
14 come back and we'll begin the defense case. Okay?

15 (Open court)

16 THE COURT: Okay. Any further evidence or
17 testimony, witnesses from the government?

18 MS. NIELSEN: No, Your Honor. The government
19 rests at this time.

20 THE COURT: Ladies and gentlemen, what you just
21 heard now is the government has rested its case-in-chief,
22 that means they have completed the evidence that they want
23 you to consider as part of their case-in-chief.

24 We're now going to take our break. It's going to
25 be probably a little bit longer than our ordinary breaks.

1 It will be at least 20 minutes, because I've got to discuss
2 a few things with the lawyers. So, certainly, we'll start
3 no later than 11:10 is my expectation, but hopefully closer
4 to 11:05. All right? Thank you very much for all your time
5 and attention so far this morning.

6 (Jury exited the courtroom.)

7 THE COURT: Have a seat, everybody.

8 Mr. Monroe, do you have a motion to make?

9 MR. MONROE: Yes, Your Honor. The defense would
10 move for a directed verdict as to the six counts pending
11 against Mr. Webster.

12 THE COURT: Okay.

13 That motion will be denied.

14 Viewing the evidence in the light most favorable
15 to the government, a reasonable jury could determine
16 Mr. Webster to be guilty beyond a reasonable doubt as to
17 each count. At this stage, I don't think I need to go
18 through all the elements, I'll just quickly summarize it.

19 Viewed in a light most favorable to the
20 government, Mr. Webster appears to approach a police
21 barricade created by a bike rack, says things to and is
22 pointing at Officer Rathbun. He's touched at least twice by
23 Officer Rathbun. He's ultimately -- Mr. Webster grabs the
24 bike rack a couple of times, he's touched in the face,
25 punched in the face, whatever you want to call it, struck in

1 the face, and then proceeds to charge at the officer. After
2 the officer is backed up and the flagpole is broken in half
3 and he's got a portion of it and tries to take his gas mask
4 off. Bottom line is, with respect to all the counts,
5 certainly at this stage, it's sufficient to get to a jury.

6 Okay. Let's talk then, Mr. Monroe, about the
7 extent to which you are going to seek to elicit evidence,
8 one, about your client's background, and, two, whether what
9 you intend to elicit with respect to his training and how
10 that relates to his state of mind that day.

11 MR. MONROE: So, Judge, at this point, it's my
12 intention to cover with Mr. Webster, at least from a
13 testimonial standpoint, without using the documentation,
14 Mr. Webster's beginnings, you know, through high school, he
15 joined the Marine Corps, that he has -- he enjoys his
16 service there, he receives the accolades of his superiors,
17 and ultimately he's honorably discharged. I haven't
18 essentially --

19 THE COURT: You're being sort of deliberately
20 vague with me. So, you know, I want you to be concrete.
21 And I don't want to have to deal with this on a question by
22 question basis.

23 You know what you're going to ask him, you know
24 what he's going to say, so tell me now.

25 MR. MONROE: I'm going ask him about his

1 promotions in the Marine Corps.

2 THE COURT: Okay.

3 MR. MONROE: I'm going to ask -- and the time that
4 he spent there, generally speaking, the job that he had; in
5 this case, Mr. Webster was in the infantry, and that he did
6 approximately four years when he's honorably discharged.
7 I think for all citizens we all understand the significance
8 of being honorably discharged from the service. Without
9 further --

10 THE COURT: Any objection to that scope of
11 background examination?

12 MS. NIELSEN: Your Honor, the government has no
13 objection to eliciting testimony regarding the fact that the
14 defendant was in the Marines and that he spent four years
15 there or even the level of his promotion that he finally
16 made to it to. But as to any accolades, honorable
17 discharge, none of that it relevant to this case and is
18 simply vouching for the individual who's on the stand.

19 THE COURT: That's okay.

20 I mean, look, I think he can say that -- I'll
21 limit it to what you just described it, Mr. Webster [sic].
22 I'll keep you to that; in other words, joined the Marines
23 this date, tell us what you did when you joined, what rank
24 did you enter, were you promoted during your times in the
25 Marines, yes I was, what ranks were you promoted or what

1 ranks were you promoted. How long were you in the armed
2 service -- how long were you in the Marines, and then when
3 you left, were you honorably discharged, yes, I am.

4 MR. MONROE: That's what I'm going to cover.

5 THE COURT: Fine. That's fine.

6 MR. MONROE: Yeah.

7 THE COURT: Okay.

8 Let's talk about the NYPD. What are you going to
9 ask him about that?

10 MR. MONROE: Approximately when he joins the NYPD,
11 the fact that he's trained in the academy, what his training
12 comprised of, his initial assignment, where he's assigned,
13 and then his subsequent assignments, because he moves about.
14 At some point in time, he's assigned to the NYPD rifle
15 range, and then ultimately he moves on. At the end of his
16 career, he's part of the private protective service of the
17 mayor, Bloomberg, and that's where he's -- after 20 years,
18 his career comes to an end.

19 That he was never disciplined or punished during
20 his 20-year career. And that's the extent of it. Because I
21 think that, from our standpoint, tells the jury what we need
22 to cover without going into any details.

23 THE COURT: Okay.

24 MS. NIELSEN: Your Honor, the government has no
25 problem with the defendant indicating that he was even in

1 the NYPD with a limited amount of his training, although we
2 would prefer -- we don't see any reason why all of his
3 training certificates or extensive discussion of his
4 firearms training is relevant to this matter. But a limited
5 amount of that, the government is not going to object to.
6 Some information about his assignments and his protective
7 detail is fine.

8 Now, the fact that counsel plans to elicit that he
9 was never disciplined or punished, the government has
10 evidence that indicates that there was, in fact, some
11 adverse information about his client that was out there,
12 whether or not it was disciplined or punished is up for
13 questioning, but that is improper character evidence and the
14 government's already filed a motion in limine on that.

15 THE COURT: So here's what I'm going to do.

16 I'm not going to allow you to ask him and here's
17 why, because it then arguably opens the door to the kind of
18 extrinsic cross-examination the government wants to make.
19 I think it's going to create all these sort of side
20 questions that I think are a real distraction, and I rather
21 avoid that. The fact of the matter is if the jury doesn't
22 hear you ask the question, there's not going to be an
23 impression left in their mind one way or another whether he
24 had any -- has a clean record or not. The impression
25 they'll be left with is that they haven't heard anything

1 negative in his past and let's just leave it at that.

2 MR. MONROE: All right.

3 THE COURT: Okay.

4 MR. MONROE: But as to state of mind questions,
5 because it's probative to Mr. Webster's response on
6 January 6th at the police line, I will go into territory
7 where it covers this gentleman's training, at least in the
8 same context, Mr. Webster himself, as a police officer, has
9 been in front of these types of barriers and trained how to
10 conduct himself.

11 It's the unexpected response that Mr. Webster
12 receives from Officer Rathbun as part of this defense,
13 Judge. So I do intend to inquire in that regard.

14 MS. NIELSEN: So, Your Honor, I mean, if it is
15 somewhat unclear to me what specifically defense plans to
16 get into on that, but as far as I understand it, defendant's
17 position or defendant's defense in this case is
18 self-defense. How Officer Rathbun's -- the perception of
19 Officer Rathbun's compliance with protocols or following of
20 best practices in how to man a bike rack affects the
21 defense's self-defense is still unclear, and the
22 government -- the government's position at this point is
23 that it is irrelevant and we will object to it depending on
24 how it comes in. But I simply can't see how that is going
25 to be relevant or how a discussion of NYPD use-of-force

1 policies from 2006 or '7 is going to be in any way probative
2 of the issue of whether or not the defendant committed the
3 charges that he's been -- the acts that he's been charged
4 with and whether or not he has a self-defense position in
5 this case, because, as far as the government understands it,
6 the point of a self-defense is that he felt that he was in
7 danger of imminent bodily harm.

8 THE COURT: Okay is.

9 MS. NIELSEN: Whether or not Officer Rathbun
10 followed procedures or protocols in the best way possible is
11 irrelevant to that.

12 THE COURT: So, look, I think here's where the
13 line is. You know, a self-defense defense, the jury will be
14 instructed that Mr. Webster actually and reasonably believes
15 it is necessary to use force to prevent imminent bodily harm
16 to himself. So there was a subjective element to any
17 self-defense defense and it is government's burden to show
18 that he didn't act in self-defense.

19 To the extent that his background bears on his
20 state of mind, I think he can get into that somewhat.
21 If you intend to elicit whether Officer Rathbun, in
22 Mr. Webster's opinion or experience, acted excessively,
23 I'm not going to allow that.

24 If you're going to ask him to compare his conduct
25 against any standards that Mr. Webster may be familiar with,

1 I'm not going to allow you to get into that. He's not an
2 expert in use of force. He is not an expert in crowd
3 control. And so you can get into a little bit about why he
4 was surprised, based upon his experience and why he was
5 afraid, as I assume will be his testimony, and keep it in
6 that ballpark.

7 As I said, there is a line in my mind, and it
8 begins with trying to characterize his testimony as expert
9 testimony and asking him about whether the officer's conduct
10 was consistent with what he understands an officer is
11 trained and supposed to do in those circumstances, okay? He
12 cannot ask those kind of questions because he's not an
13 expert and not qualified as an expert, and, hell, even if he
14 was an expert, I'm not sure I would allow it anyway.

15 So is that understood?

16 MR. MONROE: Yes, sir.

17 I plan to spend my time speaking about this
18 gentleman's state of mind and his perception based upon his
19 own individual experience as having been a trained NYPD
20 officer.

21 THE COURT: I understand.

22 But you also understand what I'm saying, which is
23 that if you're going to try and elicit the kind of testimony
24 I've laid out, that goes too far, okay?

25 MR. MONROE: I'll do my best, Judge, to keep it

1 clearly within the Court's lead.

2 THE COURT: I'm sure you will.

3 All right. So let's resume about 10 after 11:00.

4 And, Mr. Webster -- excuse me, Mr. Monroe, I'll ask you
5 whether the defense has a case -- or is going to call any
6 witnesses and you'll take it from there.

7 I gather you're still on course to have your other
8 witnesses here tomorrow.

9 MR. MONROE: Yeah, I appreciate that. I had to
10 re-adjust based upon the other testimony, but my three
11 character witnesses will be up and down quickly tomorrow
12 morning. They're about ten minutes each, Judge.

13 THE COURT: All right. So that'll give us --
14 I think Mr. Webster will be on probably for a little while,
15 and we'll see where we are. Hopefully we can get to jury
16 instructions later today, okay? Thanks, everybody.

17 COURTROOM DEPUTY: All rise.

18 This Court stands in recess.

19 (Recess from 10:56 a.m. to 11:12 a.m.)

20 THE COURT: Please have a seat.

21 Ladies and gentlemen, welcome back.

22 So with the government having rested, I now turn
23 to Mr. Monroe and ask him whether the defense has any
24 witnesses.

25 MR. MONROE: We do, Your Honor. We will call

1 Thomas Webster to the stand.

2 THE COURT: Okay. Mr. Webster, come on up.

3 COURTROOM DEPUTY: Please raise your right hand.

4 (Witness is placed under oath.)

5 COURTROOM DEPUTY: Thank you.

6 THE COURT: Mr. Webster, feel free to remove your
7 mask during your testimony.

8 - - -

9 THOMAS WEBSTER, WITNESS FOR THE DEFENDANT, SWORN

10 DIRECT EXAMINATION

11 - - -

12 BY MR. MONROE:

13 Q Sir, would you introduce yourself to the jury.

14 A My name is Thomas Webster.

15 Q And, sir, how old are you today?

16 A 56 years old.

17 Q And where do you reside?

18 A I reside in the Goshen, New York, area.

19 Q And tell the jury about your home life.

20 A My home life, married, happily married, 25 years,
21 three kids, good kids, yep.

22 Q And where were you raised, sir? Where are you
23 from?

24 A Originally from Brooklyn, born in Brooklyn,
25 Flatbush area. Lived down there, I was born down there in

1 1966, stayed down there for about ten years and moved
2 upstate, like the Rockland County area, and that's where I
3 went to high school. And kind of like did, after high
4 school, did about a year of college and really wasn't for
5 me, gave it a shot, and wanted to follow my dreams of
6 becoming a Marine.

7 Q When did you enlist in the United States
8 Marine Corps?

9 A 1985, October.

10 Q And how long was your commitment, sir?

11 A My commitment was four years. That took me from
12 1985 to 1989.

13 Q And what was your job with the Marine Corps?

14 A Good old fashioned grunt, Marine Corps
15 infantryman.

16 Q In the course of your service, were you promoted?

17 A Yes.

18 Rose to the rank of corporal. I was meritorious
19 promoted once, and missed a meritorious promotion by one
20 question, I forgot the max speed of like a MIG jet from
21 Russia or something like that.

22 Q And did your time at the Marine Corps come to a
23 successful end?

24 A Yes, it did.

25 Traveled the world, made three overseas

1 deployments and served my country and did it honorably and
2 came to an end.

3 Q When were you discharged?

4 A Officially, it was 1993, because I was in inactive
5 reserves. I did another four years in the inactive
6 reserves.

7 Q When you separated from the military were you
8 honorably discharged?

9 A Absolutely, honorably discharged.

10 Q And after you completed your service with the
11 United States Marine Corps, where did you move on to next?

12 A Well, while I was in -- I was planning on -- you
13 know, my next dream was to become a police officer. So
14 while I was in the Marine Corps, I was taking entry test,
15 and, you know, so I was pre-planning on my departure from
16 the military to become a police officer, yeah.

17 Q Now, we're here in Washington, D.C., so some
18 people may not know where Rockland County, New York is.
19 Would you give us a reference point as to where Rockland
20 County is in relation to New York City?

21 A It's about an hour north of New York City.

22 Q And were you eventually accepted into the police
23 department?

24 A Yes.

25 Q What department were you accepted into, initially?

1 A Initially, I was -- I'll never forget the day.
2 I was hoping to get NYPD. As I was waiting in line, 100
3 recruits before me got the NYPD, and I stepped up and they
4 said, "Housing, do you want to be a housing cop?" I said,
5 You know what? I do, I'm going to give it a shot.

6 Q And what was the housing police officer's
7 responsibility at that time?

8 A I was strictly to service the people of the
9 housing developments and housing projects.

10 Q And where were you assigned initially?

11 A In the Bronx. Basically all over the Bronx.

12 Q And what type of housing were you in charge of
13 patrolling?

14 A I was originally assigned to patrol, like normal
15 uniformed patrol, sector car, 911 calls. And then I was
16 assigned to be a project community officer, which means
17 you're specifically designated to be an officer like for one
18 of the housing projects. I spent a time of time in East
19 Gunhill houses, Edenwald, and maybe a little bit in East
20 Chester houses. That's your permanent assignment. You kind
21 of like conduct with the tenants, when they do their tenants
22 patrols to check the buildings, and you stay connected with
23 the community.

24 Q I take it during the early throws of your career
25 with the police department, you received training in how to

1 conduct yourself during when you're assigned to a civil
2 disturbance or a parade or a protest?

3 A Sure, just basic understanding of how to conduct
4 yourself professionally, how to handle situations with
5 emphasis on de-escalation techniques, a ton of training on
6 how to verbalize commands and connect with people that might
7 be giving you hard time. Certainly it's part of the
8 training.

9 Q Were you trained on how to handle being verbally
10 abused by a civilian or protester?

11 A Happened all the time. And you've just got to
12 take it. You've just got to take it.

13 Q What did your training comprise in that regard?

14 A Just do not react to it. Do not react to it and
15 don't escalate the situation. That's the bottom line. It's
16 been done to me. You know, we'd show up and have things
17 thrown at us or whatever, you know. You just can't take it
18 personally.

19 I've always dealt with it and I've always -- we'll
20 get into it later -- you communicate. When I was an
21 instructor, you teach, put yourself in the protester --

22 MS. NIELSEN: Objection, Your Honor.

23 THE COURT: Sustained.

24 Next question, please.

25 THE WITNESS: Sorry.

1 BY MR. MONROE:

2 Q Mr. Webster, did you remain in the housing your
3 entire career?

4 A I was given like a temporary assignment to a few
5 NYPD units.

6 And then I was -- came back to the housing patrol
7 and then I was -- actually, I applied to become a firearms
8 instructor, tactics instructor up at the firearms range.

9 Q Let me take you back for a moment.

10 A Yeah.

11 Q There's been a lot of video and pictures of a
12 police line created by a metal bike rack. Have you stood as
13 a police officer on the law enforcement side of a bike rack
14 before?

15 A Yeah.

16 When I was on normal patrol, I mean, countless
17 events, dignitary events, you know, stood inside the Waldorf
18 Hotel, protesters, protecting dignitaries with those bicycle
19 racks, Presidential motorcades coming through Manhattan.
20 I'll never forget the Pope coming through in the '90s,
21 I think. Countless hours of experience behind that metal
22 barricade, yes.

23 Q And then is your position behind those metal
24 barricades, as to form a police line, what were you trained
25 to do?

1 A Just protect and who -- if you have dignitaries
2 behind you, you have to protect the people that are behind
3 you.

4 Also to just hold the perimeter pretty much. and
5 you know, just be a presence, as a presence, pretty much.

6 Q Where were you trained to keep your hands?

7 A Pretty much right on the railing and just -- and
8 that's it.

9 Q And what were you trained to do in terms of
10 responding to protesters that had maybe something foul to
11 say to you?

12 A Completely ignore them and don't respond and
13 certainly do not incite and taunt at all in any way.

14 Q So before I interrupt you, you were discussing
15 your next move in the police department. You moved on to
16 the firearms range?

17 A Yeah, I definitely had, like, an understanding
18 from my Marine Corps background as far as, you know,
19 marksmanship training.

20 And I felt like it would suit me, you know, to
21 become an instructor, teach the kids going through the
22 academy and also the cops out on the street that had to come
23 up and qualify. And along with that, some of the tasks were
24 teaching the recruits tactics, how handle themselves in
25 scenarios, family disputes.

1 We had this big tack house, like a room the size
2 of this room here, it would be divided up like a regular
3 hallway with apartments all around, and we would run these
4 scenarios from just a basic noise complaint to a violent
5 family dispute.

6 Q And how long did you remain assigned at the
7 firearms training range?

8 A Approximately eight years.

9 Q And what was, generally speaking, your duties and
10 responsibilities there?

11 A I'm sorry, say that again.

12 Q Generally speaking, what was your duties and
13 responsibilities at the firearms training range?

14 A Just as a firearms instructor and tactics
15 instructors for recruits.

16 Q And were you also involved in requalifying or
17 re-certifying officers in the command?

18 A Sure, absolutely. You know, they had to -- annual
19 pistol qualifications for the cops that are already out in
20 the street. And if you weren't doing one thing, you were
21 doing another, depending on what type of training we were
22 doing during that evolution.

23 Q Now, after your time with the firearms training
24 center, where did you move on from there with the
25 department?

1 A I moved in to -- applied and went for an
2 interview, I was excited to give it a shot, to apply for the
3 intelligence division within the NYPD.

4 Q And where did those efforts take you, sir?

5 A That particular job I was applying for because to
6 become part of Mr. Bloomberg's uniformed protection.

7 Q And were you advanced to that position?

8 A Yes, I was. I was given a position and I was
9 there for about four years.

10 Q And what qualification did you need to attain that
11 position at the mayor's office?

12 A Just really just like a super clean background was
13 the key, that was the first question they ask you. You can
14 imagine what types of questions, as long as everything is
15 good, you know, along with your qualifications and
16 understanding, you know, and the background stuff worked
17 out. It was -- if they liked you, it worked out, they took
18 you in.

19 Q And once at the mayor's office, what were your
20 assigned duties and responsibilities?

21 A It was two assignments, so when I first started
22 out working down there at City Hall, down in Manhattan. And
23 about a year into my four-year stint there, they moved me up
24 to the Gracie Mansion area.

25 Q Now, for those people who are not from the

1 New York area, would you explain to the jury what Gracie
2 Mansion is?

3 A Gracie Mansion, when Mr. Bloomberg was in office,
4 was actually just an event building. Before that, and that
5 was considered like the New York City mayor's residence.

6 Q And how much time -- what was the total extent of
7 your assignment at the mayor's home?

8 A Four years, pretty much exactly.

9 Q And what were your duties and responsibilities
10 while assigned to the mayor's home?

11 A Pretty much just property protection. You know,
12 protecting and guarding the house of Gracie Mansion. And
13 then also half of my tour for that day would be stand in
14 front of the private residence of Mr. Bloomberg.

15 Q And without revealing the former mayor's private
16 residence and its whereabouts, what was your
17 responsibilities when you were assigned to his private
18 residence?

19 A Just standing, just basic -- like from a common
20 sense type of definition, would be just like a guard outside
21 the door, make sure everything is good and no disturbances,
22 which was generally, was never really a problem for the most
23 part.

24 Q And were your assignments with the city's mayor
25 limited to just the New York City area or did they take you

1 other places?

2 A Did some traveling. I'm not sure if I can
3 disclose, but --

4 Q Traveling overseas?

5 A Overseas travel, yep. And that entailed, my
6 primary assignment -- well, I can't really get into it; I'd
7 rather just leave it at that.

8 Q Okay.

9 And how long did you remain with the police
10 department?

11 A Well, exactly 20 years. That was my -- fulfilled
12 my requirement. I was still with the mayor's detail and
13 everyone thought I was crazy for leaving. It was a cush
14 place to work, kind of easy. But I -- you know, doing that
15 job, you're away from the family for quite a bit, and I just
16 wanted to just transition into something different. And
17 everybody thought I was crazy, but I started up a landscape
18 business.

19 Q Okay.

20 Your time with the police department a success?

21 A Absolutely, served honorably and --

22 MR. KELLY: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. MONROE:

25 Q And upon retirement, did you receive the benefit

1 of a pension?

2 A Absolutely, yep.

3 Just a regular service pension. No special
4 medical stuff related, just regular service pension.

5 Q And tell the jury about your private business once
6 you leave the police department.

7 A I'm sorry, say that again?

8 Q Yeah, tell the jury about your time with the
9 landscaping business.

10 A Yeah. Like I said, everybody thought I was crazy.
11 There were definitely some high profile opportunity for me
12 to do some security work with some personalities and stuff
13 like that. But I knew that was going to take me away from
14 my family and really just didn't want that.

15 You know, the one thing that was kind of being a
16 police officer, you know, you're there doing a tour for like
17 7 hours, maybe five minutes of excitement, or really doing
18 any work sometimes. I just wanted to really do some -- you
19 know, back-breaking, old-school type of work and totally,
20 just, get -- you know, do something a little bit more
21 demanding, I guess, physically.

22 Q So what did your landscaping business comprise of?
23 What were you doing?

24 A Well, I just -- well, that was whole other -- my
25 approach was initially was to maybe grown into like a big

1 business and get some employees going. I took some steps to
2 do that. Having never run a business before, with quite a
3 bit of restrictions and an amount of money that's needed to
4 really expand a business, I transitioned back to just
5 keeping it just like a mom-and-pop type of thing, family,
6 owner-operator type of business.

7 So I just went around pretty much cutting lawns,
8 kept it basic and, you know, I did some snow removal in the
9 wintertime, also, during the winter months.

10 Q And how many years did you run your landscaping
11 business?

12 A Kept it going -- I actually was doing it before I
13 left the NYPD. I was doing it before that and I did it
14 right up until the day this whole thing jumped off.

15 Q Now, let's bring you back to the months leading up
16 to November 2020 Presidential election.

17 A Yeah.

18 Q Would you characterize for the jury the extent of
19 your involvement in the developments that were occurring at
20 that time, at least as you saw them in the newspaper and the
21 media and the like?

22 A Well, you know, I was connected to what was going
23 on TV and the media and what was being projected was pretty
24 inflammatory. You know, there was -- the message that was
25 being sent. And, you know, I was following it, yeah, I was

1 upset about it, I guess you could say, what was being -- the
2 message that was being given.

3 Q Now, as of 2020, did you belong to any clubs?

4 A No. Officially, I think I had the FBIs joking and
5 laughing a little bit. When I did my interview with them,
6 they asked me the same question. I think they were
7 expecting me to say, you know, some type of militia group or
8 something like that, but I told them I belonged to, like, a
9 motorcycle club, like a dirt bike, you know, dirt bike,
10 vintage motocross club.

11 Q Is that the type of motorcycle you ride out on the
12 trails?

13 A Yeah. I like tinkering and working on things.
14 And I just have a bunch of old dirt bikes. My daughter
15 would race with me. It was like a family weekend thing.

16 Q Together than your dirt bike club, were you
17 affiliated with any other type of organization or group?

18 A Absolutely not.

19 Q And would you share with the jury your social
20 media presence as of November 2020?

21 A I'm opposed to any social media presence. I'm old
22 school. I always try to argue with my kids. If you want to
23 talk to your friend, pick up the phone and call them.

24 Q So as of, say, November 2020, did you have a
25 Facebook account?

1 A No.

2 Q Twitter account?

3 A No.

4 Q Do you know what Vine or --

5 A No.

6 Q -- any of those other stuff social media accounts
7 are?

8 A Absolutely not, no.

9 Q You never -- what's the term -- text -- so I mean,
10 not text, tweet someone before?

11 A No.

12 Q So obviously there was a Presidential election,
13 correct?

14 A Yes.

15 Q Explain to the jury the extent of your involvement
16 with the events as they were unfolding after the
17 presidential election.

18 A Like specifically like the --

19 Q Yeah. What was the extent of your interest after
20 the election?

21 A Just following it on news. Some websites, I guess
22 you could say. Just cell phone, whatever you can retrieve
23 from the cell phone, I guess.

24 Q All right.

25 Now, there came a time, did there not, where you

1 decided that you were going to head down to D.C., perhaps,
2 and participate in speeches and a demonstration?

3 A I wanted to go, and then the next day I didn't
4 want to go. I wanted to go, and then the next day -- I was
5 really on the fence whether or not I wanted to go.

6 I remember just almost like wishing it had snowed
7 that day. Like I told you, I do snow removal, and I was
8 like, man, if it snows, I stay home, I got to work.

9 I made that my determining factor weeks before it.
10 And I said, I'll go down as long as I don't have to do any
11 work, I guess was my --

12 Q What was the extent of your planning in terms your
13 trip to D.C.? What did you do?

14 A The last time I was down in D.C. was, like, in the
15 early '90s that I can remember. And, you know, I was
16 planning on traveling down here by myself. I have never
17 been down here before. I certainly did do some research on
18 it. They were going to have a rally. I want to know what
19 type -- I was doing a lot of the stuff on my own. So, yeah,
20 absolutely, I was researching, trying to get a game plan and
21 I pretty much did a little bit of research on it, but just
22 basic stuff.

23 Q As of this time, did you belong to any political
24 organization or political party?

25 A No, absolutely not, no.

1 Q And during the weeks leading up to January 6th,
2 what type of information were you receiving about -- in
3 terms of your planning phase, what information did you
4 gather at that point in time as to what you needed to do in
5 heading down to D.C.?

6 A Just to gather some basic information.

7 The big thing that I was concerned about, that
8 I was researching and finding out, was that a lot of stuff
9 was just going to be closed that day or that time period.
10 And just a basic understanding of what to be aware of while
11 I was down there.

12 Q What's your recollection of where D.C. was in
13 terms of their COVID response or restrictions at the time?

14 A Well, just like in New York, and New York City in
15 particular, it was -- I remember it being quite restrictive
16 with the restaurants. I know, like, for example, they were
17 like -- the research that I was doing, they were saying, no
18 restaurants are going to be open. You know, don't expect
19 to, you know, be able to access any restaurants or any type
20 of food stores, I guess.

21 Q So how long were you planning to visit D.C.?

22 A It was supposed to come down, like, I think, on
23 the 5th, on the morning. And I was supposed to stay
24 overnight on the 6th and then leave on the 7th.

25 Q And what items did you decide to bring with you

1 for the trip?

2 A I loaded up thinking -- like, put yourself in my
3 shoes. If you have to go somewhere, travel five hours, go
4 to an unfamiliar area that I'm not -- literally not familiar
5 with, the one thing, you know, I made this comment initially
6 with the FBI agents. You know, Manhattan, you can figure
7 out very easily. It's like a little grid; west side, east
8 side, avenues, up and down. D.C. to me was very confusing,
9 you know. So, just, you know.

10 Q Describe for the jury the food that you brought
11 with you for this trip.

12 A Well, I'm just like an old-school guy. I just
13 bought some military MREs. To me, I know Detective
14 Copeland, FBI agent here, you know, I really didn't have
15 much options. I used to use these MREs. I didn't have a
16 problem with these. He says he's never had some since the
17 military. Well, these new MREs are almost gourmet compared
18 to what I was used to when I was in back the '80s.

19 Q How many did you pack for your trip?

20 A I can't remember exactly. But if you an estimate,
21 not realizing -- understanding that there would be no
22 restaurants open, two days, two and a half days worth of
23 food, three meals, so approximately six to eight. You might
24 want to cherry-pick what you might want to eat out of one
25 package and not eat out of another.

1 Q So January being a cold month, you packed cold
2 weather clothing?

3 A Yeah, cold weather clothing.

4 Q That included the red, white, and black jacket?

5 A Yeah, that's -- you know, I don't really have --
6 I don't have any, you know, Trump gear or anything like
7 that. And that's about the only jacket I have that has any
8 red in it. It's a snowmobile jacket.

9 Q Let's talk about the police vest. Was that your
10 police vest?

11 A That's my personal police vest that I had when I
12 was on the police force.

13 And like I said before, it was always in the back
14 of my mind of doing some security work. And that would have
15 meant that I would need that vest. And that was pretty much
16 the only thing -- well, one of the few things that I kept
17 from when I left the job.

18 Q So I imagine for most of your 20-year career with
19 NYPD, you wore some type of vest?

20 A Absolutely.

21 Q And you grew accustomed to wearing vests when --

22 A It's like putting gloves on. You know, I like to
23 point out that wintertime, you don't mind having that thing
24 on. It's actually like a blanket. You know, summertime,
25 you just don't want to have it on, you know. So it was like

1 a bit of a warmth thing, along with -- we'll get into it
2 later as far as --

3 Q Explain to the jury why you brought the vest.

4 A Really, just not aware exactly -- with it being my
5 first protest, I was just concerned, you know, for my
6 safety, being down there by myself, to be honest with you.

7 Q Now, you've obviously witnessed protests as a
8 police officer, correct?

9 A Yes.

10 Q But had you ever been involved in a demonstration
11 or protest as a civilian?

12 A No, no.

13 This is a one-and-done.

14 Q There's also the matter of the flag and the
15 flagpole.

16 A Yeah.

17 Q Would you explain to the jury where you got this
18 flagpole and flag?

19 A I use that flag once a year, and I've had it in my
20 family for as long as I can remember, from the time we were
21 married. It was important to me.

22 I only put it up -- I'm not one to run around and
23 fly a flag with the Marine, not a Marine or anything like
24 that. I would only put it up on the Marine Corps birthday
25 outside my house, which is November 10th, pretty much was

1 the only time I would post it, so it's basically just a
2 house flag.

3 Q When you would display your Marine Corps flag on
4 its birthday, where would it be displayed?

5 A Just right on the post on my front porch of my
6 house.

7 Q The pole that the jury has seen in the various
8 videos and clips, what type of material is it comprised of?

9 A It's just your basic, you know, Home Depot,
10 Lowe's, you know, common bought -- purchased flagpole. It's
11 hollow. It's aluminum, and it's definitely lightweight.
12 It's comprised of two pieces. The top part swivels with the
13 wind. And, you know, I was actually surprised it was
14 holding together as well as it did with the wind that we had
15 that day. You can almost see the flag falling apart as I'm
16 walking around up on the West Terrace there.

17 Q So the two pieces of this aluminum flagpole, does
18 the one piece fit sort of telescopically into the other?

19 A I think it's kind of like just fixed together by a
20 plastic piece and to allow it to spin.

21 Q But it's not a solid piece of metal?

22 A Absolutely not.

23 Q And it's separated in the middle.

24 A It's separated in the middle, yep.

25 Q Why did you bring your Marine Corps flag and

1 flagpole with you?

2 A Just -- well, I don't have any Trump flags.
3 I thought of bringing my American flag, but, you know, if I
4 had -- you know, I'm very patriotic, in a way. If that
5 thing fell on the floor, it would bother me. So having only
6 two flags in my house and not having any supposed Trump
7 gear, I thought maybe just to bring a Marine Corps flag
8 and -- that was about the only thing I can really think of
9 really.

10 Q Fair to say you were proud of your service in the
11 United States Marine Corps?

12 A Sure. I still stay connected with friends that
13 are still in, I guess, some younger kids.

14 Q Now, as of the time you're preparing to go down to
15 D.C., would you have considered yourself a Trump supporter?

16 A Yes. At that time, yes.

17 Q And when did you decide to leave for D.C.?

18 A Well, I mean, again, it goes back to like wanting
19 to go and not wanting to go. And I just -- I jumped in my
20 car on the -- I guess that would be on the night of the 4th
21 and drove through the night.

22 My experience of driving up and down 95, or
23 whatever path I was going to take, was -- I didn't want to
24 drive during the daytime and hit traffic. And just left in
25 the middle of the night.

1 Q Now, photographs depicted by the government at
2 your hotel, you see a suitcase and a backpack. Are those
3 items that you brought with you to D.C.?

4 A Yes.

5 Q So let's tell the jury, what did you pack away in
6 the suitcase before you left New York for D.C.?

7 A Well, the suitcase on the left is my clothes, and
8 what we call the malice packs on the right, trying to figure
9 out -- I wasn't sure of the setup outside the hotel. And,
10 you know, I had water in there, I had Gatorade in there.
11 How do you pack all that stuff up, again, the food, the
12 MREs. I thought the best thing I could do was, with my
13 connection with the Marine Corps, that stuff, you put it on
14 my back and it fits like a glove. It doesn't -- might seem
15 odd to some people, but as a military guy, proud Marine,
16 whatever, it's just -- for me, that was no big deal.

17 Q So you packed your clothes and your toiletries in
18 your suitcase and your food and drinks and goodies in your
19 backpack?

20 A Yes.

21 Q And where did you decide to stay while in D.C.?

22 A The Hotel Lombardy. I only knew how to get there
23 from the GPS, don't know where it is, couldn't point it out
24 on the map where it is.

25 Q And what day did you leave for D.C.?

1 A The 4th, the night of the 4th.

2 Q Now, did you have any plans to meet anyone down
3 there?

4 A Absolutely not, no.

5 Q Did you speak to anyone about organizing or doing
6 anything specific while down there?

7 A No, absolutely not.

8 Q Did you travel to D.C. with anyone?

9 A No, I went down by myself.

10 Q And how long did you plan to stay?

11 A Checked in on the 5th. I did an early check-in
12 because I got down there so early. And I was planning on
13 leaving, I guess, whatever check-out time was on the 7th.
14 And then, you know, play it by ear whether or not to stick
15 around., and you know, see the sights.

16 D.C. is a beautiful place, but the one priority
17 for me was always to make it a point to visit the war
18 memorials., it's very important to me.

19 Q So when you -- approximately what time was it when
20 you got to D.C. on the 5th?

21 A It was -- oof, it was early, like, morning, if I
22 had to guesstimate, it was like 2:00 in the morning.

23 Q So I gather that's substantially earlier than the
24 hotel is going to let you check in, right?

25 A Yes.

1 Q So what did you do at that point?

2 A Just pulled on the side of the street close to the
3 hotel and just kind of, like, tried to crash out in the car
4 a little bit. I was shocked to see actually there was a
5 little bit of buzz around D.C., some of the workers and
6 everything still kind of -- some people running around doing
7 some work. Trying get some rest.

8 Q How long did it take you to travel from New York
9 to D.C. on the 5th?

10 A Approximately five hours.

11 Q And how long did you rest in your car on the 5th
12 before doing something?

13 A It was a few hours. And I was, like, let me --
14 I thought it over and I said, let me see if I can just do an
15 early check-in, and they accommodated me inside.

16 Q Did you have a chance to do any sightseeing on the
17 5th?

18 A I think I -- I can't remember exactly. I think
19 I just tried to get some rest pretty much. I just kind of
20 like tried the rest up in the hotel.

21 I knew there was a -- not a rally, a freedom --
22 I think it's called Freedom Plaza. They were going have a
23 fun little, like, rally with some speeches there. That was
24 my plan to go to that.

25 Q Were you familiar with the organizers of this

1 rally that was occurring on the 5th?

2 A Just only through what I've searched online.

3 Q So you're just going to be basically an attendee?

4 A Just going to stop by and check it out. You know,
5 that was part of the scheduled events for those few days.

6 Q And where was this rally taking place?

7 A Freedom Plaza, I believe.

8 Q And did you attend the Freedom rally on the 5th?

9 A Yeah. I mean, I didn't go rushing down there from
10 the very beginning. I got down there. And I remember
11 taking a picture with the Capitol in the back ground and I
12 was shocked to see how many people were actually there.
13 I thought it was kind of neat.

14 And I remember taking a picture of it with the
15 Capitol in the background.

16 And I think, at that time, had to be like right
17 around 3:00. I know it gets dark early during that time of
18 the year.

19 Q Did you stick around for any of the speeches?

20 A Yeah, absolutely, yes. I started having a good
21 time, having some fun. Some pretty interesting stuff going
22 on, and some pretty interesting speakers.

23 Q Okay.

24 And how long did you remain at the rally?

25 A Towards -- it was dark. Towards the end of it

1 pretty much, towards the end of it.

2 Q Did you head back to your hotel or somewhere else?

3 A Made a beeline back to the hotel. I was shocked.
4 I'm pretty sure I hit a food truck, I was so happy to see
5 the guy with the food truck parked over on the side. I know
6 exactly where it was, started talking to the -- I'm a big
7 talker -- the guy that owned the food truck was from
8 Vietnam, and I ended up hanging out with him, talking to him
9 for about an hour, eating my -- I think it was a Philly
10 cheesesteak.

11 Q Okay.

12 And after you had your dinner via the food truck,
13 where did you head?

14 A Beeline back to the hotel.

15 Q And what did you do at the hotel for the remaining
16 of the night?

17 A Just pretty much rested in there and -- for the
18 next day.

19 Q All right.

20 What time did you leave the Lombardy Hotel on the
21 6th?

22 A I remember not being in a real rush to get down
23 there. I can't say for sure. It was like -- I don't know,
24 like, not early morning but late morning.

25 Q And where did you head?

1 A Towards the Ellipse.

2 Q How long did it take -- I'm assuming you walked?

3 A Yes, I walked, yep.

4 Q How long did it take you to get from the Lombardy
5 to walk over to the Ellipse?

6 A I can't remember exactly. I think that walk was
7 close enough, it doesn't -- approximately like 10, 15
8 minutes. I wasn't really that far.

9 Q And describe for the jury what was taking place at
10 the Ellipse upon your arrival.

11 A It was supposed to be a big day with the speeches.
12 And obviously former-President Trump was supposed to speak,
13 the keynote speaker, I guess.

14 And I walked down there initially. And I wasn't
15 overly impressed, not that I wasn't impressed. I was like,
16 eh, whatever. Like I said, it was very important for me to
17 pay respects to the war memorials. And if there's any
18 cameras around there, you'll see me walking around the World
19 War II Memorial. I took a walk down towards the Lincoln
20 Memorial and sat down by the Vietnam Memorial and the Korean
21 War Memorial. Spent some time down there and chatted up
22 with a few people.

23 You know, I think I actually made it back to the
24 hotel, and just walked back there just to take a little
25 break.

1 Q Now, before leaving the Lombardy initially on the
2 morning of the 6th, what were you wearing?

3 A I had you know, the jacket. I'm not sure when I
4 put the vest on, if it was earlier or I had it on the whole
5 time on the 6th. You know, just wearing my jacket, pants
6 and had some gloves with me. I had some ski caps that I
7 use, because, like I said, it was a snowmobile helmet, I had
8 some caps in my -- I had full face caps, you know, in that
9 jacket, you know, that you would use with like snowmobile
10 helmets while you're riding.

11 Q What were the weather conditions outside on the
12 morning of the 6th?

13 A It was cold and breezy, yep.

14 Q How about that flagpole? Did you take the flag
15 and flagpole with you initially on your first departure from
16 the Lombardy on the morning of the 6th?

17 A I can't remember exactly, but I think I had it
18 down there from the beginning, and the first time I went
19 down there, the part that goes through my mind -- and I
20 shared this with my lawyer -- I doubted whether or not to
21 bring that flag and walk back and forth in the hotel,
22 because like I said, I'm not one to throw up the sign to
23 say, look at me, I'm a Marine, I'm more of a humble guy.
24 And I remember just pacing back and forth, you know, I
25 almost talked myself out of being bringing the thing.

1 Q Why did you ultimately decide to bring the flag?

2 A Well, you almost feel like an outcast with these
3 events, because everybody has got something on. I don't
4 even own a MAGA hat, I don't even have that. I had nothing
5 really to show that my connection to -- for the event. And
6 it was kind of like my last decision to bring it.

7 Q Now, the -- the -- I'm sorry.

8 Upon your arrival at the Ellipse to see the
9 speech, approximately how many people were there? I'm
10 talking about initially.

11 A Oh, when I go down there the first time?

12 Q Yeah, when you're down there the first time.

13 A It was pretty packed. You know, I just -- you
14 know, being -- having that -- you know, built into my, you
15 know, background with being in big events, I wasn't overly
16 impressed by the numbers or anything like that. You know,
17 I just -- you know.

18 Q Were there people at this demonstration with signs
19 of --

20 A Yeah. I was shocked, I didn't know, with the
21 level of construction that people brought with them and big
22 flag was frames on them, like, really overboard with some
23 stuff that people brought.

24 Q Were there people there with their own flags?

25 A Yeah, that was the big reason why.

1 When I went to the rally the night before,
2 everybody had some type of identification mark to make that
3 connection. So, yeah, a lot of people had flags.

4 Q And what prompted you to return to the Lombardy on
5 the 6th?

6 A Just to move around.

7 I didn't want to just -- I really didn't care to
8 listen to the speeches, to be honest with you. You know,
9 I just didn't really -- that's not what it was about.
10 I just walked around. I think I might have gone back to
11 grab something to eat or just take a break. And I started
12 to make my way back down around the time I thought that the
13 last speech was supposed to end.

14 Q And what did you have to eat on the morning of the
15 6th? Did you eat one of those MREs or something else?

16 A I think it might have been one of the MREs, yep.

17 Q And did you return to the Ellipse sometime later
18 on January 6th?

19 A Yeah, later, the second time going back to the
20 Ellipse, I can remember walking -- this is what I found
21 shocking. I heard former-President Trump speaking, and the
22 one thing I found odd was, everybody was leaving. I was
23 like, is this thing over, are we done? Should I just get
24 back in my car and go home? You know.

25 This is odd. Because I can't -- I wasn't -- I

1 don't understand my reference with where the Capitol was at
2 that time and the direction that people were walking in.
3 I was, like, they were walking away for sure. I thought
4 maybe I was going in the right direction.

5 Q Now, once you make it back to the Ellipse, who's
6 still up on the stage speaking?

7 A I think it's former-President Trump.

8 Q And did you listen to what the man had to say?

9 A Yes, I did.

10 Q And were there other speakers that followed
11 President Trump's speech?

12 A I don't recall. I don't remember.

13 Q How long did you remain at the Ellipse?

14 A Oh. Well, a long time --Well, not long time.

15 Well, he ended his speech, and, again, me being a
16 motor mouth, I just started talking to people hanging around
17 there around the Washington Monument and spoke to a few
18 people.

19 My big thing is I was always fascinated where
20 people were coming from. That was my first. It's like
21 being back in the military, hey, where are you from, what
22 state, yuck it up a little bit and talk.

23 And then -- that was about easily 20 minutes.

24 And then I walked, I guess, in front of the White House.

25 At that time, all the security measures were removed. And I

1 waited in line for a long time to use the porta-johns that
2 were there.

3 Q Well, while down at the Ellipse, what was sort of
4 the general demeanor of the crowd? What was sort of the
5 mood at the time?

6 A It was just like a neutral crowd, nothing too
7 crazy. There was maybe one or two people that were just
8 upset, yelling and screaming.

9 But for the most part, everybody was just -- it
10 was just very relaxed and chilled and a lot of fun.

11 Q Did you notice any hostilities involving the
12 police up at the Ellipse?

13 A No, a lot of picture taking.

14 I took a picture of this one kid who was dressed
15 up like a revolutionary or like a soldier, like a Marine
16 actor. And took a picture of him while I was there.
17 So it's, you know, it was pretty cool to see that.

18 Q Did you do more sightseeing at this point?

19 A I mean, no, not really. That was pretty much it,
20 just hung out those two phases of -- you know, talking to a
21 few people, and then waiting in line for quite a while at
22 the porta-john thing. There were a ton of them there. And
23 I found it very -- you know, it was kind of silly, because
24 there were so many people -- I don't want to get into
25 detail. They were overflowing.

1 Q The porta-johns?

2 A Yeah.

3 Q Okay. And what did you decide to do after using
4 the porta-john?

5 A Then I started to take my walk down to the
6 Capitol.

7 Q And how many people at this point in time were
8 heading down towards the Capitol?

9 A It was quite a bit. It was -- I was shocked,
10 because I thought I got a late enough start that the whole
11 group would be ahead of me and I could just walk down there.
12 But it just seemed like -- you know, I don't know what
13 avenue I was walking down. I remember looking down one of
14 the side streets, and I saw a whole line of people down that
15 avenue. And I was, like, totally shocked at the amount of
16 people that were there.

17 Q And you still had your red, white, and black
18 jacket on?

19 A Yes.

20 Q And your gloves?

21 A Yes.

22 Q And your hat?

23 A Yes. Well, yeah, I had it on and off. I had it
24 in my jacket.

25 Q You were wearing -- underneath your jacket you

1 were wearing your police vest?

2 A Yes.

3 Q And why did you see the need to put on your police
4 vest for this demonstration?

5 A It was going to be my first protest demonstration,
6 and I just thought, being it -- having a -- being a cold
7 day, number one, I wouldn't mind having it on. And, number
8 two, I just thought, as a safety precaution, me being down
9 there by myself, you know, concerned about maybe some type
10 of counterprotests. I wanted to avoid that in the worst
11 way.

12 Q And as you were making your way down towards the
13 Capitol, whatever street you're on, what's your purpose?
14 What do you intend to do?

15 A No, just -- well, my thought process was just to
16 go to the Capitol and petition my government. I've never
17 done it before. It was a pretty cool feeling to think that
18 I'm involved with this from the other side of the line, so
19 to speak. So it was pretty cool.

20 But at the same time, I was like, it's kind of
21 silly. You know, just walking down there, 56 years old,
22 walking down there, people blowing horns. And really, truly
23 understanding that it probably really wouldn't matter.
24 That's knowing that -- you know, I don't think it would have
25 made a difference, like, I think, you know.

1 Q You know, everyone has their own takeaway from
2 speeches that occur and presented by politicians, but I have
3 ask you, sir, what was your general takeaway from the
4 speeches that you were hearing on January 6th that you
5 stayed to the end?

6 A The only one I really remember listening to is
7 former-President Trump. And I said to myself, I think we
8 just witnessed the birth of a politician.

9 Q Okay.

10 Did you feel -- did anything about that speech
11 motivate you in any way or change the way -- your views?

12 A No, absolutely not. No, absolutely not.

13 Q And as you're walking down towards the Capitol,
14 what do you intend to do once you get there?

15 A I just wanted to -- my whole thought process was
16 like, where were all these people going to go. It was like
17 never-ending.

18 I mean, thinking about it, it was -- I was
19 thinking about it from my point of view, it was like, we
20 were all just been funneling towards the same place. Where
21 is everyone going to go? How are they going to -- you know,
22 how are they going to handle this on the other end, you
23 know?

24 And when I got there, I was shocked to see how
25 many people were there all over the place.

1 Q Are we talking about hundreds, thousands, tens of
2 thousands? What are we speaking of?

3 A Yeah, I mean, definitely easily tens of thousands
4 if -- overall, around the whole picture, the whole picture
5 was a few hundred thousand, I think.

6 Q As you're walking towards the Capitol, were people
7 all around you walking in the same direction?

8 A Yeah, yep, absolutely. Yep.

9 Q So the entire street, sidewalk, and the like,
10 covered with people?

11 A Yeah, it's all just going in the same direction.
12 You know, the same objective is to go to the Capitol.

13 Q Now, approximately what time is it when you make
14 it to the Capitol grounds itself?

15 A I'm only using information that I viewed in these
16 videos to say that it had to have been around 2:00.

17 Q So once you arrive -- as you get closer to the
18 Capitol, would you describe for the jury the condition of
19 the crowd, what you're seeing, what you're observing?

20 A I was shocked. People were just in a joyous mood.
21 It was almost like a picnic atmosphere down towards the
22 lower part of everything. The older folks had those little
23 walking canes that convert into stools. People were just
24 hanging out. People had blankets hanging out. And, you
25 know, it was just pretty much a laid-back atmosphere down on

1 the bottom.

2 Q And why did you continue forward toward the
3 Capitol?

4 A Well, here's my -- I paused and I tried to gather
5 some information. It was, you know, what was the game plan?
6 People are all over the place. So I tried to -- I'm
7 listening in on conversations, I'm asking a few questions.
8 And I was shocked to hear that the basic consensus was --
9 I don't have the map here, but I'm looking at the -- from
10 the West Terrace corner, I guess it would be the north side
11 or the front side. And the consensus was, if you want to go
12 inside, go up this way to the front of the Capitol, they're
13 just letting you in. And then I was like, that can't be
14 true. So, you know, I walk over to another group of people
15 and try to gather some more information and listening in and
16 asking some questions. And it was pretty consistent. They
17 were just letting people in.

18 And I was like, working where I worked, you know,
19 working these magnetometers, just like you see the folks
20 downstairs checking in, that's kind of like what I used to
21 do. I just felt, you know, with my experience, that
22 wasn't -- for me, that wasn't right, don't go inside,
23 because it's a security issue.

24 Q So what did you decide to do?

25 A Well, the other part, as we're walking down, yeah,

1 it's going to be a big speech, it's going to be a big
2 speech, somebody is coming down. Everybody from Trump.
3 Somebody is going to speak.

4 So the consensus again was, go to the left to go
5 inside and if you want to hear the speech, go over to the
6 right, which pointing to, at that time, the West Terrace.

7 So I was like, I'll stay outside. I'd rather just
8 stay outside and listen to a speech. And that's kind of
9 like what my game plan was.

10 Q But is it fair to say as you proceeded closer to
11 the Capitol, the thicker the crowd became?

12 A Yeah, the crowds grew.

13 You can hear the flash bangs going off. You can
14 kind of, like, get a sense that there was some gas. You saw
15 some cloud. And then the closer you got to, like, up where
16 the West Terrace was, what I witnessed and experienced
17 really upset me.

18 Q And what did you witness that upset you?

19 A I just saw people being injured. And one in
20 particular really got me going.

21 Q Describe for the jury the injuries you saw to
22 various people that were passing by.

23 A Just people -- like, kids crying.

24 I mean, it was families. It was like kids,
25 teenagers, women.

1 And this one couple, it reminded me of me and my
2 wife a few years later, in their 70s, they were walking away
3 and there was no way that they would have been considered
4 like a violent protester. And the woman had blood all over
5 her face.

6 And I remember them saying, "Why are they doing
7 this to us? Why are they doing this to us?" And just
8 really -- that really upset me. I was like, just -- it
9 upset me.

10 Q Where were you when you made these observations?

11 A I was kind of hoping to show it because I wanted
12 to backtrack, see what happened to the couple. But the
13 camera probably wasn't tilted far enough away, because they
14 were walking away from that general area on the West
15 Terrace. I kept on going through my mind, I was, like,
16 we're just outside, hanging out. If you're letting people
17 inside, which I really felt was pertinent or true -- was to
18 be true, that they were just letting people inside the
19 Capitol, what is the big deal to be just outside protesting.

20 Q So what was your response to these observations
21 that you made?

22 A I really wanted to give everybody the benefit of
23 the doubt. I said whether it was the police injuring them
24 or something crazy going on upfront, I did want to give
25 everybody the benefit of the doubt, the police and the

1 protesters, and --

2 You know, as you're going through the crowd,
3 you've got people all around you, you can't see anything.
4 And you see the flag thing, whatever, meandering through the
5 crowd, it was hard to really get a sense of, other than
6 really seeing the Capitol, what was going on.

7 But you -- walking through the crowd, the closer
8 you got, people are just standing there. They're just
9 like -- you know, we had prayer groups as I was walking up
10 there. I got yelled at for walking by one, hey, Marine, get
11 down, we're praying. I was like, oh, all right.

12 It was emotional just walking up there
13 experiencing what was happening, to be honest with you. It
14 was tough.

15 Q Now, before stepping on what you believe to be the
16 Capitol grounds, did you see any sign telling you that the
17 area was off limits or restricted in any way?

18 A Three things I said to myself. If an officer
19 tells me to turn around, I'm turning around. If I see a
20 sign, I'm going to turn around. If I hear an
21 announcement -- my whole thought process was, too, this is
22 the most secure building in the world. They've got to have
23 these PA systems that sound like a rock concert that would
24 broadcast messages to the people, you know. I said, so
25 those three things, if you hear an announcement, a cop tells

1 you to turn around or if you see a sign, turn around.

2 And, you know, very early on, my -- I didn't see
3 what was going on up closer, I had no problem with doing
4 that. I really, you know, wasn't energized or emotional
5 about what was going on with the protesters at that point.

6 Q As you continued towards the Capitol, did you come
7 upon any fencing that restricted your access to the Capitol
8 grounds?

9 A No. I mean, there was a retaining wall that I
10 viewed as, like, a landscaping type of wall, I guess.

11 Q But you've -- in your own time with the police
12 department, you've seen those temporary fencing put up for
13 different events, correct?

14 A Yes.

15 Q And you've seen the various fencing shown to the
16 jury by the government. Was any of that fencing in place
17 when you got to the Capitol?

18 A No, I didn't witness any of that, no.

19 Q So describe for the jury the reason why you
20 continue on towards the Capitol.

21 A Again, witnessing the injuries and, you know, the
22 one couple really, just really got me worked up, they really
23 did.

24 And, you know, let me see what's going on.

25 You know, I don't know. We all have our DNA, and

1 our programming that God gives us, and, you know, I wanted
2 to see what was going on.

3 And that's kind of like how I'm programmed. I see
4 people getting hurt and I want to see what's going on.

5 Q And where did you go to see what was going on?

6 A Just went up close to try to go closer to the
7 police line, I guess, and try to witness -- at that -- you
8 know, walking up towards that police line where you see the
9 body cam footage, there's nothing but people that you can
10 say. There's no police presence. You know, there's no
11 cops.

12 Q Once you're now on this Capitol grounds, could you
13 estimate for the jury how many people are present?

14 A Thousands, thousands easily. I was shocked.
15 It was --

16 MR. MONROE: Just give me a moment. I'll show you
17 a video that's in evidence.

18 BY MR. MONROE:

19 Q Now, Mr. Webster, you have before you what's in
20 evidence as Government's 205. It's -- the time on it is --
21 I don't think it's 205. Government's 212. And the time on
22 it is 2:15, Government 212.

23 Do you see the frame where we're stopped at?

24 A Yes.

25 Q Now, does this photograph offer fair and accurate

1 depictions of the number of people present at the
2 approximate time you're on the Capitol grounds?

3 A Very accurate, yep.

4 Q Okay.

5 And does it also offer fair and accurate depiction
6 of the number of people holding flags?

7 A Yes, sir.

8 Q While on the Capitol grounds?

9 A Yes, sir.

10 Q And so how long did it take you to make your way
11 to the police line?

12 A I'm only making an estimation by what I view with
13 these evidence videos. If you would have asked me without
14 looking at those videos, you know, a half hour. I think it
15 was, like, more like 20 minutes, I guess, 15 minutes.

16 Q And are you encountering various protesters on
17 your way up?

18 A Absolutely, yep.

19 Q And what are you doing to get past that?

20 A If you've ever been to, like, a rock concert or
21 rap concert with the floor -- no seats, what they call the
22 floor seating, where there's no seats and everybody gets up
23 as close as they can, and, you know, it's very crowded,
24 everybody's shoulder to shoulder pretty much.

25 Q Now, I'm going to show you an enhanced portion of

1 Government's Exhibit 205. Play it forward a bit and I want
2 to stop and ask you a few questions.

3 (Video played)

4 BY MR. MONROE:

5 Q Now, in the picture, can you see yourself with the
6 Marine Corps flag?

7 A Yeah.

8 Q And at this point in time, what's going through
9 your mind?

10 A Well, it's definitely crazy. And it's gotten a
11 lot louder. And the gas is definitely an issue. And just
12 sensing that I'm at the police line.

13 Q Now, in this photograph, the officers that appear,
14 where are their hands positioned generally speaking?

15 A Pretty much on the bicycle rack.

16 Q Is that consistent with the training you received
17 while with the police department?

18 A In this situation, absolutely, yep.

19 Q And now, that you've passed literally thousands of
20 people, has your intention at this point changed? Are you
21 still looking to get to the police line to see what's
22 happening?

23 A At this point, this is part of what I'm trying to
24 figure out, what's going on.

25 And when you get a chance to look at

1 Officer Rathbun's body cam footage and in the very, very
2 beginning -- like I talked about before, I'm giving
3 everybody the benefit of the doubt going up there, to figure
4 out what's going on, why are these people getting hurt.

5 I wasn't going to rush to judgment, but in the
6 very beginning of that video, you can see me look up over
7 the shoulders of people in front of me to look down what's
8 in front of them, and what I was looking for was whether or
9 not there were bicycle racks.

10 Q Did you see the bicycle racks?

11 A And when I saw them, that kind of, like, got me
12 upset.

13 Q Why?

14 A Because, like this FBI agent testified, that's
15 there to keep the protesters out. That's an established
16 police line. Just like we stay away from -- like the
17 protester would stay away from the police. That's an
18 established police line, that's sending a message to the
19 protesters that that's the police line and that's the
20 protest.

21 And going back in my mind, seeing all those
22 injuries, why were they targeting those people that far
23 back?

24 There were people that were back there that had
25 nothing to do with being near this -- where these bicycle

1 racks were. Those people were being injured, kids -- so
2 that really -- I want to point that out to the people.

3 Q So let's play the video forward, starting at 169.
4 I'm going stop the action in a moment.

5 (Video played)

6 BY MR. MONROE:

7 Q Now, what's happening at this moment in time,
8 Mr. Webster?

9 A Well, I'm walking up to the line. And as I told
10 you, this is where I verified what -- what's actually
11 happening. And it upset me.

12 So, yes, I am yelling out verbally, I'm upset.
13 I'm communicating that to Officer Rathbun.

14 Q So what type of words did you use, Mr. Webster?

15 A Well, my big thing was attacking Americans, called
16 him a Communist, which, you know, I don't consider a bad
17 word, you know, not very good choice words. I wasn't -- but
18 I was upset.

19 Q So you emerge out that crowd pretty upset; is that
20 fair to say?

21 A Yes.

22 Q And as you confront this police line, were you
23 looking for any one particular officer?

24 A I was shocked.

25 As I noticed some of the officers, you know, were

1 a little bit shorter, I guess, than the other ones. And as
2 I'm walking along the line, you know, I saw the officer
3 there with a gas mask on, he had a helmet on, he had his
4 riot shield on. And, you know, so I figured I'd just -- it
5 didn't single him out for any reason other than he had all
6 his equipment on to protect him from the gas. And so I felt
7 like he would be -- you know, if I got upset with him, he
8 wouldn't be too, you know -- have a hard time with it, I
9 guess, you know.

10 Q So in response to your profanity-laced
11 communications with this police line, did Officer Rathbun
12 respond in any way, communicate with you in any way?

13 A Yeah, I mean, he initially started to wave his
14 hand. This is the important part.

15 I mean, as the detective from MPD testified to and
16 Officer Rathbun testified to, this is the hand wave. This
17 officer incites me and he waves me over the fence. And to
18 use his own words, it's wrong to do that, it's inciteful.

19 Q What's your impression of what he was
20 communicating to you?

21 A He wanted me to come over that police barrier.

22 Q And do what?

23 A Basically -- you know, if somebody confronts you
24 with an argument and then the other person gives you a hand
25 wave, how else would anybody interpret that? I took that as

1 he wanted to do something to me.

2 Q Demonstrate with your left arm and hand the
3 communication you received from Officer Rathbun as you
4 approached him.

5 A It was a very quick -- like, quick finger move.
6 It was obvious that he was trying to get it out of his
7 body-worn camera view.

8 Q And what was your response to receiving that hand
9 wave?

10 A That -- well, just like they described and
11 testified to, it was pretty, you know, inciteful.

12 I mean, I'd always describe a protest, with
13 protesters as it's a soda bottle that you shake up and you
14 open up the cap and you just give it 30 seconds and it's
15 going to calm down. You've got to de-escalate.

16 Him going like this (indicating) was obviously him
17 wanting me to come over the barrier and do something to him.
18 It was an obvious taunt and a motion for me to do something
19 that would have been illegal.

20 Q Did you take that communication as his challenge
21 to a fight?

22 A Yes, absolutely.

23 It was -- you know, it was odd. It was shocking
24 to see that. It was very concerning.

25 Q In your years with the NYPD while manning a

1 similar police line, did you challenge similar protests to a
2 fight?

3 A I've never witnessed a cop do something like that.
4 It would be an issue, he would be written up, and that issue
5 would be addressed. That's just a bad thing to do, because
6 it makes it difficult for the other cops. You know, you've
7 got to remember, you've got to work together as a team, you
8 can't be an individual. Everybody's got their hands on
9 there. There's other people that are upset. I've been in
10 that situation, and you've got to figure it out. You've got
11 to figure out how to de-escalate. He had all the answers.
12 I gave him all the answers, that flag.

13 Q Why do you say that?

14 A He's a Navy corpsman. He's a Navy corpsman.
15 Marine Corps, especially in the infantry, we treat -- Navy
16 corpsman, they jump out of the helicopters with us, they do
17 everything that we do. We treat the Navy corpsman like
18 they're our mothers. That guy could have very easily
19 de-escalated this whole thing, and say, Hey, dude, I'm a
20 Navy corpsman. I would have hugged this guy.

21 Like I said, I like to talk. He had the answer
22 right in front of him.

23 Q And what happens next?

24 A Well, if you play the video here.

25 (Video played)

1 BY MR. MONROE:

2 Q What happens at that point?

3 A He makes it a point to look at me. And in the
4 body cam footage, this moment in this film, you could see
5 that body cam footage tilt just a little bit, just a little
6 bit in that body cam footage. That's when you know what
7 he's doing. He's stepping back and he's looking at my flag.

8 And I said, all right, he made a mistake, he's
9 going to take me -- he's going to give me a soft landing
10 here, he's going to brim the edge. I feel like I was back
11 being an academy instructor. Look for tools, whether you're
12 in the family dispute or whether you're out in the street,
13 you look for tools around you, indicators around you, that
14 would tell you how to handle that situation.

15 And he looked up at my flag and he looked at me
16 and he starts pushing me.

17 Q Let's play this video forward from 479.

18 (Video played)

19 BY MR. MONROE:

20 Q Okay. Do you see what just transpired at the 554?

21 A If I could just backtrack a little bit.

22 Q Go ahead.

23 A I recognize that these bicycle racks were not
24 connected, and that's a big no-no. I mean, you've got to
25 have them connected.

1 And out of respect for that officer, I didn't --
2 excuse the description -- but I didn't belly up to the --

3 THE COURT: Hang on. Let's avoid your opinions
4 about what bike racks looked like that day.

5 THE WITNESS: Okay.

6 BY MR. MONROE:

7 Q At the point in time had you received any hand
8 gestures or communications from any of the officers standing
9 to Officer Rathbun's left or right?

10 A Absolutely not. No, I looked at the other officer
11 and he was stone -- he had his poker face on.

12 Q How were they responding to you cursing at them,
13 the other officers standing to Officer Rathbun's left and
14 right?

15 A Like a statue, like you're supposed to be.

16 Q Now, did any of these other officers at this
17 police line, did they ever put their hands on you?

18 A No.

19 Q Play it forward from 554.

20 (Video played)

21 BY MR. MONROE:

22 Q Now, were you pushed for a second time by the
23 officer?

24 A Yes.

25 And I just, I was hoping to just kind of like say,

1 Your Honor, that I was trying to stay away from the barrier
2 and give him his distance. I didn't go right up to it.
3 That's all I was trying to -- that's --

4 Q Why?

5 A Because of the situation of the bike racks.
6 I just wanted to give him his distance. I didn't go
7 directly right up to the police line, you know, as far as I
8 could go, you know, because, you know, it would have been --
9 you know, I knew I had the flagpole and I was thinking about
10 making sure it didn't -- you know -- I was trying to keep it
11 perpendicular perfectly to the ground. I knew he'd be
12 concerned about it. And I tried to hold it on the very
13 bottom. I mean, if you -- you know, I kind of like, as I
14 quick as I could thought, how can I present -- how can I
15 hold this without making it look like I'm presenting a
16 danger to him. And I'm just hanging it from the bottom, you
17 know.

18 I tried to, you know, make sure he understood
19 that. And you never see that flag waving toward him in a
20 threatening manner in any way.

21 Q So what's going through your mind after being
22 pushed or shoved by this officer for a second time?

23 A He really wants to fight me. I was like, this guy
24 really wants to fight me. Totally, like, unusual, like,
25 I don't think they would teach that in the academy. I'm

1 already giving him his distance. He's waved me over. He's
2 looked at my flag. And now that he's pushing me, I really
3 thought, like, all right, this guy is like a Navy Seal, he's
4 like Special Forces or something like that. You know,
5 here's that military type of competition between the
6 branches. And after he looked up at my flag, I figured
7 maybe he had something against Marines.

8 Q Mr. Webster, did you go to this police line
9 looking for a fight?

10 A No, absolutely not. My First Amendment. And
11 I know what I can and can't do. You can't threaten anyone.
12 And it's a lot of things I can and can't say but you can't
13 threaten anyone, and verbally yelling at somebody, raising
14 your voice is my First Amendment right.

15 Q Play this video forward from 605.

16 (Video played)

17 BY MR. MONROE:

18 Q Okay.

19 Is this the third time you're pushed by the
20 officer?

21 A He's gotten really close to me, I can't really
22 say -- I just remember, like, two, one in particular that
23 was a really hard shove.

24 And this one has gotten pretty close. And the
25 amount -- I was shocked how much he was actually reaching

1 over to get to me.

2 Q So what's the significance of an officer reaching
3 beyond the police barrier in your mind?

4 A You know, it's like -- I would describe it as
5 Plexiglass in a hockey game. You know, there's Plexiglass,
6 imaginary piece of barrier that goes up above that type of
7 police bicycle rack. That side is yours, and this side is
8 mine. We both, that's kind of like how I would view it. To
9 put your hands and reach over the bicycle rack is very, very
10 unusual to make physical contact with a protester.

11 Q At this point in time, the officers that are
12 manning the line to the left and right of Officer Rathbun,
13 are they reaching over the line at you?

14 A No, I don't really recall seeing it in any of the
15 videos.

16 Q Playing forward.

17 (Video played)

18 BY MR. MONROE:

19 Q Now, you don't dispute, sir, that at some point
20 you put your hand on the metal bike rack and you shove it
21 towards the officer, correct?

22 A Right.

23 Q Tell the jury why you did it.

24 A Out of just pure frustration. He's waved me over
25 once, which is the biggest thing that you're not supposed to

1 do. It's inciteful. And then he starts pushing me.

2 I was like, I'm not here to hurt you, dude,
3 all right? But it was frustrating, having him put his hands
4 on me.

5 Yeah, out of frustration, I hit it, to be honest
6 with you. But I didn't want to hurt him. I was just -- he
7 was making contact with me. And, you know, I just felt like
8 I was doing with like a rogue cop, to be honest with you.
9 Somebody just, you know --

10 Q At this point in time, did you make any contact
11 with the officer with your hand?

12 A No.

13 Q It was just with by the virtue of shoving the bike
14 rack forward?

15 A The bar, yes.

16 Q From 776 we'll play it forward.

17 (Video played)

18 BY MR. MONROE:

19 Q What's happening here, sir?

20 A The freight train. The freight train.

21 From day one when I turned myself in before seeing
22 any videos, I described this as like getting hit by a
23 freight train. I've never seen any videos. I didn't have a
24 chance to look at all those videos that the prosecutors
25 looked at and formulated a plan. My statement is in record

1 exactly the way you're seeing --

2 THE COURT: Counsel.

3 THE WITNESS: Sorry.

4 THE COURT: Counsel. Mr. Monroe.

5 Ladies and gentlemen, you'll ignore the testimony
6 about what was previously said.

7 THE WITNESS: Sorry.

8 THE COURT: It's okay.

9 BY MR. MONROE:

10 Q Mr. Webster, just before this strike is unleashed,
11 did you have any reason to believe to anticipate that this
12 officer was going to punch you?

13 A No, absolutely not. I was just rattling the
14 cage -- the barrier out of frustration. I was not intending
15 to come into his space.

16 Q From 812, we'll play forward a clip.

17 (Video played)

18 BY MR. MONROE:

19 Q Now, we see the motion with the flag. Would you
20 explain to the jury what's happening with you and this flag
21 and flagpole?

22 A As I described, the hit -- the hit was intense.
23 It was painful and I was seeing stars. I've had a few
24 concussions in my life, played football, lacrosse, a lot of
25 other sports, I felt like I got a concussion. And I was

1 seeing stars. And it was a hard hit. And all I wanted to
2 do was defend myself.

3 And as you see me swinging that pole, I made it --
4 I kept on saying to myself, don't hit the kid, but just let
5 him know he's not going to hit you again like that.

6 Q Did you hit the officer with the pole?

7 A No, I did not. My point was, draw attention to
8 myself in case he does hit me again. There were thousands
9 of people behind me. If I -- you know, the other thing,
10 too, is, what can go through your mind is, you strike
11 somebody in the face, that's violating somebody. You know,
12 20 years of my -- well, I just can't imagine, you know,
13 striking somebody in the face like that.

14 Q Was the officer close enough to you at this point
15 in time to strike him with the pole?

16 A Sorry, say that again.

17 Q Was the officer, given his position, was he close
18 enough for you to hit him with the pole?

19 A Yeah, oh, yeah, absolutely. Yeah.

20 Q And up until this point in time, I take it the
21 purpose of the pole was to hold the flag?

22 A Yes.

23 Q Did you take the flagpole and the flag for any
24 purpose than to show that you were a Marine?

25 A Just a jar head, that's it, yep.

1 Q What came of the flag once you swung it for the
2 first time?

3 A Well, I think, only -- you know, from the
4 videos -- like I described before, I was surprised that the
5 flag held together as well as it did before I came up the
6 police line. It was getting ready to fall apart. And it
7 pretty much fell apart pretty quickly, I think, first or
8 second hit, I'm not sure.

9 Q Now --

10 A On the bike rack.

11 Q What -- how did you react -- let me say this.

12 How did your head and face and body respond to
13 being punched or struck by the officer?

14 A Just totally like whipped to the side forcefully
15 and just, again, describing, only from experiencing
16 concussions before, seeing the stars.

17 And I would have described like getting hit with
18 like a hammer, if I had to -- without seeing the video. And
19 as I described from day one, I felt like I got hit with a
20 freight train.

21 Q What part of your body was struck by the officer?

22 A It was definitely my head.

23 Q What side, sir?

24 A My right side. My right side.

25 Q And indicating your face?

1 A Yes.

2 Q And in being struck on the right side of your face
3 with the officer's left hand, what direction did your body
4 move?

5 A It moved over to my left.

6 Q How far over?

7 A Pretty far over. I remember feeling like I was
8 almost going to get knocked out.

9 Q Why?

10 A You can't fake that. It's not like I laid down
11 like a hockey player might embellish like a hit or something
12 like that, or a caulk soccer play, fake an injury or make it
13 look lot worse than it really is. That was a tremendous
14 hit, you know.

15 Q Have you been punched before years past?

16 A Yes.

17 Q You know the feeling?

18 A Yes.

19 Q Now, what did it feel like to you?

20 A It was one of the hardest hits that I've had.
21 I'm not exaggerating.

22 It was a hard hit.

23 Q Now, during this approximate moment in time, did
24 any of the other officers manning this line punch you or
25 strike you in the face?

1 A No.

2 Q Now, when you -- once -- as you're recovering from
3 being struck, what did you do next?

4 A After the -- you can look at the video. I'm like,
5 all right, this guy is definitely rogue, man. It's like --
6 I stepped back. And, again, I'm still in recovery mode.
7 And I'm still seeing a little bit of stars, but I'm staying
8 back.

9 And the one thing I do remember is keeping an eye
10 on him, and then I see him do something that I thought was
11 unusual. He started to separate the gates to try come after
12 me and come into my space. You know, it works both ways.
13 Like the FBI agent described, the gate is there to keep the
14 protesters out, and a cardinal rule is the police don't go
15 into -- the police do not go into where the protesters are.

16 MR. MONROE: All right. Let's play this video
17 forward from 852.

18 (Video played)

19 BY MR. MONROE:

20 Q Now, the flagpole, at this point in time, comes
21 apart?

22 A Yes.

23 Q The aluminum pole that is separating in the
24 middle?

25 A Yes.

1 Q So the top part of the pole is now separating with
2 the flag, correct?

3 A Yes.

4 Q Do you ever see your Marine Corps flag again?

5 A It's gone. I never see it again, no.

6 Q Now, at this point in time, you bring the pole
7 down and what does the pole make contact with?

8 A I don't know, just -- if you can rewind the video.

9 Q Take a back a little bit?

10 A Yeah.

11 (Video played)

12 THE WITNESS: Just making contact with the
13 railing. I made it a point to not hit this officer. Again,
14 to strike a human being with an object like that, that's
15 just wrong.

16 BY MR. MONROE:

17 Q Now, you're still on the civilian side of this
18 police line, are you not?

19 A Yes.

20 Q And now you have the lower section of the flagpole
21 in your hands. Would you share with the jury what's going
22 through your mind at this point?

23 A As I described before, I was going to try to get
24 in recovery mode.

25 I paused towards the rear. I kept an eye on the

1 officer, and then I saw him make a movement to separate the
2 gate. I was like, he's coming after me again, I'm afraid.
3 I'm like terrified. He's got all of this equipment on.
4 I was like, I'm thinking he's either turned off his body
5 camera footage or he has -- you know, I'm like, he's gone
6 rogue, and I was concerned for my safety.

7 Q Now, the tens of thousands of people that are
8 standing around on the west side of this Capitol, you're by
9 yourself, are you not, sir?

10 A Say again, sir.

11 Q You go to this Capitol by yourself?

12 A Yes.

13 Q There isn't anyone that knows who Tom Webster is,
14 correct?

15 A Right.

16 Q And you're not part of any group or organization
17 that went down to this rally, correct?

18 A Correct.

19 Q You're on your own?

20 A Yes.

21 Q And at this point in time, what's your intention,
22 sir?

23 A Just to stay back where I was and recover and
24 certainly not hurt this officer at all.

25 At that time, I'm staying behind the police line.

1 Q What's happening there?

2 A Just trying to keeping him away from me pretty
3 much. Again, not hitting him, but just keep him away from
4 me. That hit that I had, still just trying to recover from
5 it.

6 Q And, again, where did you strike your -- the
7 bottom part of your hollow aluminum pole?

8 A The railing.

9 Q Now, the section of pole that you have in your
10 hands, could you share with the jury how heavy it is.

11 A I describe it as just super light. It's super
12 light.

13 Now it's like half the weight that it was.

14 Q And moving forward in time, you see how you step
15 back?

16 A Yeah.

17 Q Why are you stepping back, sir?

18 A That's where I belong. You know, he hit me and
19 I'm thinking, you know, I'm going to have to deal with it
20 back here somehow.

21 Q By the way, in response to being struck, did you
22 strike the officer back?

23 A No, no.

24 (Video played)

25 Do you see me making that gesture? I recognize

1 that he's coming for me again. He's coming into my area
2 now.

3 BY MR. MONROE:

4 Q Now, do you see the separations in the bike rack?

5 A Yes.

6 Q Is this the moment in time you're describing to
7 the jury where the officer heads towards you?

8 A Right. This is a point that I feel like this guy
9 is just super old-school rogue and doing things on his own,
10 he's acting in a manner unlike other police officers, and
11 I'm concerned for my safety.

12 Q So what are you using this lower section of the
13 flagpole to do?

14 A Just kind of like just let him know, like, stay
15 away from me. I don't want you coming close to me.

16 Q You don't want to get punched again?

17 A Don't want to get hit again.

18 (Video played)

19 BY MR. MONROE:

20 Q What's happening here, sir?

21 A He's -- again, he's coming towards me. And now
22 it's obvious he's looking to take my hole.

23 Q Did you let him have the pole?

24 A Absolutely. He gave me like a little struggle,
25 like, you know, very limited resistance and I just let him

1 take it.

2 Q Why?

3 A He wanted it, and, you know, I could have done
4 things to really fend him off and do some crazy stuff to
5 him. At this point, I gave it to him, I let him have it.

6 Q Okay.

7 (Video played)

8 BY MR. MONROE:

9 Q And moving forward, do you have the flagpole at
10 this point in time?

11 A No.

12 Q Now, see the officer is -- initially stumbles?

13 A Yes.

14 Q On another barricade?

15 A Yes.

16 Q Now, at this point in time, you're surrounded by
17 thousands of people?

18 A Yes.

19 Q Okay.

20 What's going through your mind?

21 A Well, as I described before, this guy is acting a
22 manner that's unusual and very concerning to me.

23 I had just walked through this entire crowd
24 knowing how many people were there, the lines are breaking
25 down, and we're going forward. We're going to advance

1 forward -- the crowd is going to push forward.

2 Q And is that what happened?

3 A Pretty much, yep.

4 (Video played)

5 BY MR. MONROE:

6 Q Now, at this point in time, what's happening
7 around you with the other police lines?

8 A Well, there's a pause on where I -- how I want to
9 handle the situation. And, you know, I know constant eye
10 contact with Officer Rathbun.

11 At this point, he's like in gladiator position.
12 He's got my pole, like, I believe with, like, almost two
13 hands. And, again, we're making eye contact.

14 The crowd, if you look from a vantage point from
15 when the camera shot's pulled out, the crowd on my left and
16 right are going forward. I feel pressure on my shoulder to
17 go forward. As one of the kids puts his hands on my
18 shoulder and we start to go forward.

19 THE COURT: Mr. Monroe, I just want to get -- we'd
20 love to take lunch at some point. So why don't you continue
21 until about 1:00, just in terms of thinking about where
22 you're going to stop.

23 BY MR. MONROE:

24 Q I'm going to move the video a bit further and
25 describe the action.

1 Now, I want to go back a little bit actually.

2 I want to --

3 (Video played)

4 BY MR. MONROE:

5 Q Now, can you identify where you're standing at
6 this point in time?

7 A Yeah, I mean, do you want me to try to use this
8 thing?

9 Q Yeah, if you could.

10 A Right here.

11 And then the protester to my right holding that
12 sign and that hat has his hand on my right shoulder, and
13 he's pushing me forward.

14 Q Okay.

15 And what are you seeing in front you?

16 A Officer Rathbun in a ready, en garde position.

17 Q Okay.

18 Now, at this point, you're moving towards him,
19 correct?

20 A Yes.

21 Q Why?

22 A Because I feel threatened and I feel like the
23 crowd is going forward. He has my pole. He lit me up
24 pretty good with a punch, and I was concerned about what he
25 was going to do with that pole. He took it from me.

1 Q What happened to the metal police barrier at this
2 point?

3 A It's gone. It's nowhere to -- you know.

4 Q And at this point, what did you -- share with the
5 jury, what did you decide to do at this point?

6 A Well, again, just knowing that the crowd was going
7 forward, I felt like I needed to do something this time to
8 protect myself, but to do it in a way that doesn't hurt the
9 officer.

10 Q So what did you decide to do?

11 A Well, as I said before, I played a lot of sports,
12 and I thought, at the very least, like any old-school
13 football player trying not to get a penalty for holding or
14 anything like that, just put my hands up like this and went
15 towards him, and he came out and met me, you know, he came
16 out just a quarter of the way and met me, and we kind of
17 just, like, ran into each other.

18 Q Did you go down to the ground with this officer?

19 A I forget exactly at what point he -- we --
20 I wouldn't call it -- like, he kind of, like, fell down.
21 I think actually it was described in another, how he fell
22 down.

23 Q And at some point, you grab ahold of him?

24 A Yes.

25 Q And you've seen the picture more than once where

1 you have ahold of his mask?

2 A Yeah. I don't know if I can talk about my
3 experiences, but when I've been in altercations like one on
4 one, like, fighting or trying to arrest somebody, you want
5 to know where their hands are. And I've been in a struggle
6 up and down a couple flights of stairs with somebody, and
7 not knowing where his hands are is scary, and feeling a tug
8 on your gun belt, or something like that, I kind of just,
9 like, wanted him to see my hands.

10 Now, having worn these helmets, the helmet with
11 the riot shield, that's a high impact resistant shield.
12 It's not going to crack like some soft piece of plastic.
13 I wanted him to see my hands and let him know, you're not
14 going to hurt me this time.

15 Q So what did you do to avoid being hurt again by
16 this officer?

17 A I forget exactly how it went down. He was on his
18 back, and I kind of, like -- he had this rubber gas mask --
19 again, I've worn a gas mask, it's a big rubber piece of
20 material that's around his face. I grabbed the filter and
21 just pushed it up again. And I felt like it wouldn't hurt
22 him.

23 While we're doing that, you could see in the one
24 picture, the flagpole is coming up next to my eye. I mean,
25 if I had done something like that, you know, you can just

1 imagine how that would be described. In that video you can
2 see what he's doing to me. It was scary. It was definitely
3 scary, because he was -- he was fighting back.

4 You know, he testified that he did not punch me,
5 but he punched me when he was on the ground.

6 Q For a second time?

7 A Yes.

8 And you can clearly see it in one of the videos, I
9 forget the exhibit number. It's Government's Exhibit. He's
10 on the ground and you can see his right hand now make an
11 impact with my face. I believe it's on this side of my
12 lower lip, loosened up my teeth, cut the inside of my mouth,
13 and he did strike me again.

14 Q Let's play this video forward.

15 (Video played)

16 BY MR. MONROE:

17 Q Now, as you're on the ground with this officer,
18 do you punch him?

19 A No, I think that would have been wrong.

20 Again, I wanted to do something to protect myself
21 without hurting him, striking -- I couldn't do it. Even
22 though he hit me, even though he punched me, even though he
23 had my flagpole in my mouth, even though he had his flagpole
24 next to my eye, I didn't hit him, I didn't punch him.

25 Q So how long did the time on the ground with you

1 and the officer last?

2 A We broke down the time period, approximately
3 eight, nine seconds, I guess, I believe.

4 Q And did there come a time where you let up?

5 A Yeah, it was -- you know, just like this is
6 stupid, it ended up being a schoolyard thing. And I got up,
7 he got up, that's it. I don't think he was going to throw
8 another punch at me or hit me.

9 Q And did he head off in another direction?

10 A Yeah, he took off and ran next -- he went back to
11 the police line where he should have been, yep.

12 Q Did you pursue the officer?

13 A No, no, not at all, no.

14 Q Why?

15 A I just felt like it was just fixed, I guess you
16 could say. I defended myself and I think he realized that
17 he made a mistake.

18 Q Did you see this officer again on the west plaza?

19 A I know the videos have been shown before around
20 that time period, me pointing my finger.

21 I couldn't -- I did not see him again or recognize
22 him again and try to figure out where he was or anything
23 like that.

24 MR. MONROE: Judge, this would be a good time.

25 I'm probably going to switch exhibits.

1 THE COURT: All right.

2 Ladies and gentlemen, it is about 10 of 1:00, so
3 let's take our lunch break for the day.

4 So let's plan to resume about 10 of 2:00, or as
5 close to that as we can, and we will go till 4:00 today
6 because I have another administrative commitment.

7 Just same reminders as usual. Don't discuss the
8 case, no research, no communications about the case.

9 Thank you very much, we'll see you after lunch.

10 (Jury exited the courtroom.)

11 THE COURT: Okay.

12 Since he's on the stand still, officer of the
13 court, do not discuss your testimony over the lunch.
14 I assume you'll eat together, but you understand what the
15 limitations are.

16 MR. MONROE: Can I speak to you on the phone?

17 (Bench conference)

18 MR. MONROE: So, Judge, I have a condition,
19 tinnitus, as my allergy gets a little worse, I get this
20 ringing my right ear. I'm hearing most of what you're
21 saying but if I ask you to repeat yourself, it's only
22 because I'm hearing this whistle, and just in my right ear.
23 I didn't want you to think I was being cute with you.
24 I just need a little help, Your Honor, all right.

25 THE COURT: That's fine. Did you hear what I've

1 just said?

2 MR. MONROE: I did, sir. And then the mask
3 doesn't help, because I'm trying to watch you talk me to.

4 THE COURT: No. That's okay.

5 MR. MONROE: If I ask you to repeat, it's
6 because -- as you're talking to me, I'm hearing the
7 whistling going on.

8 THE COURT: If you need a moment to stop if that's
9 happening, don't hesitate to ask, okay.

10 MR. MONROE: It's just my right ear. I'm trying
11 to face with my left ear and I don't want you to think I'm
12 doing anything kooky.

13 THE COURT: No, don't worry about it. We'll see
14 everybody after lunch.

15 MR. MONROE: All right. Judge, thanks.

16 (Open court).

17 THE COURT: No need to wait for me. Thank you,
18 all.

19 COURTROOM DEPUTY: All rise. This Court stands in
20 recess.

21 (Recess from 12:53 p.m. to 1:50 p.m.)
22
23
24
25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: April 28, 2022

A red rectangular box redacts the signature. To the right of the box is a circular gold seal with a red signature over it. The seal has the text "OFFICE OF THE CLERK OF COURT" around the perimeter.

William P. Zaremba, RMR, CRR

A JUROR: [1] 12/4
BY MR. MONROE:
 [48] 36/3 40/20 42/19
 43/8 43/21 44/13 46/24
 48/9 48/13 51/1 55/22
 56/1 56/10 56/20 57/1
 58/6 58/17 59/12 60/17
 61/9 62/14 62/21 63/3
 63/13 80/12 85/1 90/24
 122/18 124/4 126/6
 130/1 130/19 131/6
 131/21 133/17 134/18
 135/18 136/9 136/18
 140/19 141/16 144/3
 144/19 145/8 146/5
 146/23 147/4 150/16
BY MS. MIRELL: [22]
 11/16 12/25 14/9 16/19
 17/20 18/9 24/2 24/9
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