



Seattle
Office of Police
Accountability

DIRECTOR'S CERTIFICATION MEMO

TO: ASSISTANT CHIEF THOMAS MAHAFFEY
PATROL OPERATIONS BUREAU

DATE: JUNE 28, 2021

ASSISTANT CHIEF ERIC GREENING
SPECIAL OPERATIONS SECTION

CAPTAIN TODD KIBBEE
SOUTH PRECINCT

CAPTAIN KEVIN GROSSMAN
SOUTHWEST PRECINCT

CAPTAIN KEITH SWANK
METROPOLITAN SECTION

FROM: DIRECTOR ANDREW MYERBERG *AM*
OFFICE OF POLICE ACCOUNTABILITY

SUBJECT: DIRECTOR'S CERTIFICATION MEMO 2021OPA-0013

INFORMATION FOR THE REVIEWER:

This Director's Certification Memo (DCM) represents the opinion of the OPA Director regarding the misconduct alleged. The DCM, while based upon the evidence and information contained in the case file, should not be considered part of the investigation process. It should be viewed as an aid to your evaluation of the Director's findings. ***Please review the case file in Blue Team if you have questions or further information is needed.***

The Director's recommended finding for an allegation contained in this investigation is Sustained, a Discipline Meeting will be scheduled.

CASE IDENTIFICATION:

180 Date: 7/5/2021		OPA Case Number: 2021OPA-0013	
Reported Date: January 7, 2021		General Offense Number: N/A	
Incident Date: January 6, 2021		Incident Location: U.S. Capitol Building and Surrounding Area, Washington, D.C.	
Complainant: Chief of Police Adrian Z Diaz Office of Police Accountability		Subject: N/A	



Interviews & Evidence:

OPA Complaints and Self-Reports
Documentary Evidence
Photographs, video stills, and third-party video
OPA Interviews

Named Employee(s)

Named Employee(s):	
# 1	Police Officer Alexander L Everett #8565
# 2	Police Officer Caitlin Ann Rochelle #8566
# 3	Police Sergeant Scotty O Bach #6711
# 4	Police Officer Jason Sean Marchione #8490
# 5	Police Officer Detective Michael Sheehy Settle #6625
# 6	Police Officer Jacob W Briskey #6824
# 7	Unknown SPD Employee(s)

Allegations of Misconduct and the Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)



Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #5

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #6

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #7

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

EXECUTIVE SUMMARY:

It was alleged that the Named Employees and other unknown SPD personnel may have engaged in criminal acts and unprofessional conduct while attending a rally on January 6, 2021 that devolved into an insurrection.

SUMMARY OF INVESTIGATION:

A. Background to January 6, 2021

On November 7, 2020, Joseph R. Biden was elected to be the 46th President of the United States of America. In the months prior to the election, sitting President Donald J. Trump had repeatedly raised concerns that the election would be "stolen" from him and his supporters due to widespread voter fraud perpetrated by Democrats.¹ President Trump did not concede once the election was called for President Biden and, instead, began a systematic effort to undermine the election.² In doing so, he was aided by state and federal legislators, politicians, and Republican Party officials from a number of states, including battleground states that had been called for President Biden.³ The states specifically

¹ See <https://www.nytimes.com/2021/02/01/us/politics/trump-election-results.html>

² See *Id.*

³ See *Id.*



targeted included: Georgia, Arizona, Wisconsin, Michigan, and Pennsylvania. President Trump's lawyers filed multiple lawsuits challenging the results of the election; however, all of these were ultimately dismissed based either on jurisdictional grounds or due to a lack of merit.⁴ The Texas Attorney General also filed suit; however, the U.S. Supreme Court ultimately declined to hear the case.⁵

As President Biden's inauguration approached, the focus began to turn to January 6, 2021 – the date when the electoral votes would be counted and then certified by a joint session of Congress. In the lead up to that day, President Trump encouraged his supporters to attend a rally that would be held at the Ellipse in the National Mall, including telling them to: "Be there. Will be wild."⁶ Multiple speakers were scheduled to address the crowd, including President Trump and his family members. The rally – dubbed "Stop the Steal" – was purposed to protest against the voter fraud that had purportedly occurred and that allegedly caused President Trump to lose the election. Prior to the rally, President Trump met with sitting Vice President Michael R. Pence. At that meeting, President Trump encouraged Vice President Pence to invalidate the electoral vote results due to alleged voter fraud.⁷ Vice President Pence informed President Trump that his role overseeing the vote count was ceremonial in nature and that he had no authority under the U.S. Constitution to take the action suggested by President Trump.⁸ In the aftermath of that meeting, President Trump tweeted: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution."⁹

Approximately 45,000 individuals gathered at the Ellipse. President Trump began addressing the crowd as the joint session of Congress was underway. He raised claims of voter fraud and alleged that Democrats had stolen the election from him and his supporters.¹⁰ At the beginning of his remarks, President Trump stated the following:

All of us here today do not want to see our election victory stolen by a bold and radical left Democrats which is what they are doing and stolen by the fake news media. That is what they have done and what they are doing. We will never give up. We will never concede. It doesn't happen. You don't concede when there's theft involved... Our country has had enough. We will not take it anymore, and that is what this is all about...And to use a favorite term that all of you people really came up with, we will stop the steal.

He continued by telling the crowd: "There's never been anything like this. We will not let them silence your voices. We're not going to let it happen...Not going to let it happen." The crowd responded by cheering: "Fight for Trump."

President Trump set forth a litany of his concerns with the election and purported voter fraud.¹¹ He then said to the crowd that they would be marching to the U.S. Capitol Building. He explained: "Because you'll never take back our country with weakness. You have to show strength and you have to be strong...We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated..."

⁴ <https://www.reuters.com/article/uk-factcheck-courts-election-idUSKBN2AF1G1>

⁵ https://www.washingtonpost.com/politics/courts_law/supreme-court-texas-election-trump/2020/12/11/bf462f22-3bc6-11eb-bc68-96af0daae728_story.html

⁶ <https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html>

⁷ <https://www.pbs.org/newshour/politics/read-pences-full-letter-saying-he-cant-claim-unilateral-authority-to-reject-electoral-votes>

⁸ *Id.*

⁹ <https://www.businessinsider.com/trump-attacks-pence-for-not-having-courage-to-overturn-election-2021-1>

¹⁰ See <https://abcnews.go.com/Politics/trump-told-supporters-stormed-capitol-hill/story?id=75110558>

¹¹ See *id.*



President Trump concluded by telling the crowd:

So we are going to--we are going to walk down Pennsylvania Avenue, I love Pennsylvania Avenue, and we are going to the Capitol, and we are going to try and give--the Democrats are hopeless, they are never voting for anything, not even one vote but we are going to try--give our Republicans, the weak ones because the strong ones don't need any of our help, we're try--going to try and give them the kind of pride and boldness that they need to take back our country. So let's walk down Pennsylvania Avenue.

Thousands of demonstrators subsequently began marching towards the Capitol and started massing on the grounds and in front of fenced off areas.

B. Siege of the U.S. Capitol Building

At 12:53 p.m. a group of demonstrators breached the outermost barriers at the west entrance of the Capitol grounds.¹² Video showed them pushing past and actively assaulting law enforcement officers. At 12:58 p.m., backup United States Capitol Police (USCP) officers in riot gear arrived and managed to hold the crowd in front of the Capitol steps.¹³ After President Trump's speech ended at around 1:12 p.m. and he renewed the call for his supporters to "walk down Pennsylvania avenue" to the Capitol¹⁴, a significantly larger crowd moved up the hill on the west front of the Capitol.¹⁵ Pipe bombs were located at both the RNC and DNC headquarters at around 1:00 p.m.¹⁶

At 1:49 p.m., the USCP Chief requested immediate assistance from the Washington, D.C. National Guard and declared the demonstration "effectively a riot."¹⁷ At 1:58 p.m., a smaller crowd on the east side of the building clashed violently with police, leading officers to remove a barricade and let the crowd in.¹⁸ At 2:10 p.m., the larger crowd at the west entrance breached the final barricade on that side.¹⁹ One minute later, at 2:11 p.m., they had broken down a door, smashed the windows, and gained access to the building itself.²⁰

Once inside the Capitol, the crowd vandalized the building, searched for members of Congress and Vice President Pence, and came very close to encountering legislators and staffers who were either evacuating or sheltering in barricaded offices.²¹ Even after members of Congress had been evacuated from the building, the crowd continued to grow and become increasingly violent.²² At 4:27 p.m., the crowd was recorded beating officers with "a crutch, a hockey

¹² <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>

¹³ *Id.*

¹⁴ *Id.*

¹⁵ [https://www.nytimes.com/live/2021/02/10/us/impeachment-](https://www.nytimes.com/live/2021/02/10/us/impeachment-trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing)

[trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing](https://www.nytimes.com/live/2021/02/10/us/impeachment-trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing)

¹⁶ <https://www.cnn.com/2021/01/29/politics/washington-pipe-bombs-dnc-rnc/index.html>

¹⁷ <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ [https://www.nytimes.com/live/2021/02/10/us/impeachment-](https://www.nytimes.com/live/2021/02/10/us/impeachment-trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing)

[trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing](https://www.nytimes.com/live/2021/02/10/us/impeachment-trial?action=click&pgtype=Article&module=&state=default®ion=header&context=breakout_link_back_to_briefing)

²¹ *Id.*

²² *Id.*



stick, a bull horn and a Trump flag” at an entrance to the building.²³ It was not until hours later that the crowd was cleared from the building by law enforcement officer, with authorities declaring that the Capitol was fully secure at around 6:00 p.m.²⁴

C. Aftermath of the Insurrection

In the aftermath of the riot, the extent of the violence became clear. Ashley Babbitt, a demonstrator who entered the Capitol Building, was shot and killed therein by a USCP officer.²⁵ In addition, three participants in the riot suffered medical emergencies and died as a result.²⁶ One officer, Brian Sicknick, was hospitalized and later died after being pulled into the crowd and assaulted with bear spray.²⁷ At least 140 other officers were physically harmed in the attack, suffering injuries including bruises, lacerations, concussions, loss of a fingertip, rib fractures, and a mild heart attack.²⁸ Two officers involved in the response later died by suicide, and many others have reported suffering symptoms of PTSD.²⁹ Additionally, at least 38 officers and 200 National Guard members tested positive for coronavirus after engaging with the largely unmasked group of demonstrators.³⁰

Amid widespread outrage, the FBI issued a public call for “tips and digital media” to help them identify the assailants.³¹ As a result, the FBI received more than 270,000 responses.³² As of June 18, 2021, 480 defendants had been arrested in connection with the insurrection and more charges were expected to be filed.³³ Authorities connected at least 73 alleged rioters to far-right militia groups including the Proud Boys, Oath Keepers, Three Percenters, and Texas Freedom Force, as well as connected rioters to the QAnon conspiracy theory.³⁴ Additionally, over 50 of those arrested were current or former military members and at least 12 individuals worked as active law enforcement officers.³⁵

D. Initiation of OPA's Investigation into SPD Employees

On January 7, 2021, SPD supervisors were notified that Named Employee #2 (NE#2) had posted a photograph on Facebook showing herself, Named Employee #1 (NE#1), and a former SPD employee – referred to here as Former Officer #1 (FO#1) – at the demonstration. It was unclear where exactly they were located. The chain of command notified OPA and the Chief of Police requested that OPA conduct an investigation into whether NE#1 and NE#2 violated the law or SPD policies.

²³ *Id.*

²⁴ <https://www.washingtonpost.com/dc-md-va/2021/01/06/dc-protests-trump-rally-live-updates/#link-5VA73VEWZBFGFMQN6IESRASUN4>

²⁵ *Id.*

²⁶ *Id.*

²⁷ <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ <https://www.washingtonpost.com/dc-md-va/2021/01/06/dc-protests-trump-rally-live-updates/#link-2U3TQIWLN5BTLMYGPI6AFD3SRQ>

³² <https://www.cbsnews.com/news/capitol-riot-arrests-latest-2021-06-18/>

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*



Over the following two weeks, four additional SPD employees self-reported to OPA or their chains of command that they were present in Washington, D.C. on January 6 and that they attended portions of the demonstration. These SPD employees – Named Employee #3 (NE#3), Named Employee #4 (NE#4), Named Employee #5 (NE#5), and Named Employee #6 (NE#6) – all denied engaging in illegal activities on that date. All of these additional Named Employees were added to OPA's investigation.

E. OPA's Documentary Review and Evidentiary Gathering

OPA's investigation into this incident involved a variety of evidence gathering. As detailed more fully below, OPA took the following investigative actions: reviewed a significant amount of video; analyzed cellphones and emails; used subpoenas to obtain relevant documentation from hotels; met with and interviewed law enforcement officers, hotel staff, and bar/restaurant employees while in Washington, D.C.; and requested and reviewed documentation provided by the Named Employees.

1. Video Review

OPA conducted extensive review of a number of third-party videos. However, due to the sheer volume of video, this review was inherently limited.

OPA was able to locate NE#5, NE#6, and a former SPD officer – referred to here as Former Officer #2 (FO#2). All three were standing in the vicinity of the Peace Monument at around 12:43 p.m. They were speaking with each other and were not engaged with other demonstrators or taking part in any demonstration activities. The video indicated that the entryway to the vicinity of the Capitol was blocked off by fencing, which was in front of a sparse line of USCP officers. Approximately four minutes after NE#5, NE#6, and FO#2 were seen on the video, individuals began to breach the fence line and proceed towards the Capitol. There was no indication from the video that NE#5, NE#6, and FO#2 were part of that group.

OPA could not find any of the other Named Employees on the video it reviewed.

2. Email and Cell Phone Review

OPA requested all Department emails sent by the Named Employees from November 1, 2020 through April 14, 2020. There were no emails that provided evidence concerning the allegations in this case.

OPA also reviewed the Department cell phones for the Named Employees. NE#1 did not remember his password and his cell phone could not be opened by Seattle IT. However, it was determined that the cell phone had not been used for a significant amount of time and was unlikely to have relevant information on it. None of the cell phones reviewed by OPA contained information relevant to this case.

3. Document Requests

OPA issued a request to all the Named Employees calling for production of the following documents: (1) receipts establishing their whereabouts on January 6; (2) records of flights and hotels stayed at; (3) text messages establishing their whereabouts and activities on January 6; (4) photographs taken on January 6; and (5) bank records showing



transactions from January 6. OPA requested that, if such records were deleted or destroyed, that the Named Employees provide a record of that action and the reason for it.

The Seattle Police Officers' Guild (SPOG) asked OPA to confirm whether or not the Named Employees were ordered to comply with these requests and OPA stated that they were. OPA offered to meet with SPOG to discuss their concerns with the requests; however, SPOG declined to engage in such a meeting. Instead, SPOG sought to convince the Chief of Police to decline to allow OPA to issue the order under his authority. The Chief did not do so.

After SPOG made their objections, five of the six Named Employees – NE#5 being the exception – produced some or all of the documents requested. NE#3 initially refused to provide photographs and text messages and NE#4 initially refused to provide text messages. In response to these refusals, OPA made clear that it was not seeking solely personal texts or photographs and was, instead, focused on text messages and photographs that established the Named Employees' whereabouts and actions from 11 a.m. to 6 p.m. on January 6. Both NE#3 and NE#4 ultimately complied with the entirety of the document request. NE#5's refusal to provide any documents resulted in him being named in a new case for insubordination and failure to cooperate with an OPA investigation. SPOG later filed a grievance concerning the document request based on their belief that it was unlawful, unconstitutional, and violated the Named Employees' contractual rights. OPA disagrees with SPOG's position and believes the requests to have been lawful.

All five of the Named Employees who responded provided receipts from purchases on January 6. NE#4 provided copies of texts that established his whereabouts during the insurrection, as well as that confirmed that he was not with the other Named Employees. Two of the Named Employees provided photographs, but the photographs were largely not relevant.

4. Washington, D.C. Site Visit

Two OPA supervisors traveled to Washington, D.C. to obtain documents, conduct interviews, and to assess the location of the rally and later riot.

OPA went to both hotels that the Named Employees stayed in and obtained door swipe records and hotel receipts. Neither of the hotels had security video from January 6. OPA spoke with several hotel employees. None had any memory of the Named Employees. The employees who worked at the hotel that NE#3 stayed in did not recall anyone buying staff dinner on the evening of January 6.

The door swipe records confirmed that NE#5 and NE#6 entered their rooms at 3:21 p.m. and 3:23 p.m., respectively. This was consistent with their account of going directly back to the hotel after leaving the bar/restaurant, though it was a later arrival time than they recalled. The door swipe records for the other Named Employees appeared to have errors and were unreliable.

OPA also went to the bar/restaurant that NE#5 and NE#6 described being at for an extended period of time. The employees generally said that there were two males who were with a third individual – FO#2. The employees believed that the two males were SPD officers. One of the employees recalled the first name of one of the males, which is consistent with NE#6's first name. Another employee placed NE#5, NE#6, and FO#2 at the establishment from approximately 11:30 a.m. to 3:00 p.m., when they closed.



OPA later contacted the bar/restaurant after locating video of NE#5, NE#6, and FO#2 standing near the Peace Monument. One staffer recognized FO#2 and potentially NE#5. Another staffer stated that the people in the video appeared to be NE#5 and NE#6.

i. Interviews of MPD Personnel

OPA interviewed multiple law enforcement personnel that either staffed or investigated the incidents of January 6. An Assistant Chief of the Metropolitan Police Department (MPD) told OPA that he was working at the U.S. Capitol when the insurrection began to occur. He took pictures of what was happening at around 1:39 p.m. He showed those pictures to OPA. He said that anyone in the vicinity would have known at that time that the events were out of control and dangerous. Smoke and chemical agents were in the area and anyone there would have understood that there was a battle ongoing inside of the building. He stated that they were not able to clear the demonstrators out of the building until around 6 or 7 that evening.

The MPD Assistant Chief for Internal Affairs concurred with the other Assistant Chief. He was positioned at the perimeter and saw things clearly becoming violent and destructive. He opined that anyone in the vicinity would have been aware that this was the case.

ii. Interview of Capitol Police Personnel

OPA also spoke with USCP personnel. A Supervisory Special Agent (SSA) walked OPA around the grounds of the Capitol. OPA focused on the areas where NE#1 and NE#2 stated that they were located during the insurrection. The SSA said that his team was working with the FBI and were focused on those demonstrators who entered the U.S. Capitol Building and who assaulted officers. The SSA said that the USCP wanted to hold a wider swath of demonstrators responsible but that they were prioritizing the most serious crimes. The SSA stated that anyone who entered the restricted areas around the Capitol was viewed by the USCP as trespassing on federal property. The SSA specifically identified D.C. Code § 22-3301, which criminalizes unlawful entry, and said that the crime would be prosecuted as a misdemeanor.

D.C. Code § 22-3301 makes it a crime to, without lawful authority, enter or attempt to enter, any public building, or other property, or part of such building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof or his or her agent, or being therein or thereon, without lawful authority to remain therein or thereon to refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof or his or her agent.

The USCP provided OPA with the following description of the security restrictions in place on January 6:

Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Additional restricted areas include locations near the "skin" of the building; the West Front Steps, West Front Terrace, the East Front Steps (House, Senate and Rotunda; past any chains or officers; which were posted); also the skin of the East Front the parking locations for leadership, the House and Senate Carriages, and the ground level of the east foundation.



On January 6, 2021, permanent and temporary security barriers were in place to separate areas where lawful first amendment activity could be conducted from areas restricted both to prevent any adverse impact to the legislative process and to safeguard and prevent any property damage directed at the U.S. Capitol and/or the West Front Inaugural Platform.

These security barriers included bike racks that were positioned to the north of the U.S. Capitol along Constitution Avenue; to the south of the U.S. Capitol along Independence Avenue; to the west of the U.S. Capitol along First Street on the eastern side of that street; and, on the east side of the U.S. Capitol, between the Capitol Plaza (East Front) and the grassy areas located between the Plaza and First Street. This bounded area is hereinafter referred to as the "Restricted Grounds."

Within the West Front of the Restricted Grounds there were additional temporary barriers due to preparations and ongoing construction for the Inauguration including green snow fencing and signage stating: "Area Closed By order of the United States Capitol Police Board." The exterior plaza of the U.S. Capitol was also closed to members of the public.

The USCP lastly provided OPA with a copy of the signage used on January 6. It read in red letters: "AREA CLOSED: By order of the United States Capitol Police Board."

iii. Meeting with FBI

OPA also met with the FBI. During that meeting, the FBI provided an overview of the nature of the investigation that it was conducting. The FBI stated that it was focusing on demonstrators who entered the U.S. Capitol Building and those who assaulted officers. The FBI provided OPA with information concerning available video that could be reviewed.

5. Information Provided by the FBI

In February of 2021, OPA transmitted photographs of the Named Employees, as well as their cell phone numbers, to the FBI. The FBI conducted an analysis of whether the Named Employees were photographed or videotaped in or immediately around the U.S. Capitol Building. The FBI also assessed whether the Named Employees' cell phones provided evidence of them being within the building. On June 15, 2021, the FBI informed OPA that there were negative results for the Named Employees' cell phones.

After receiving this information, OPA further requested an update concerning whether any photographs or videos were found depicting the Named Employees. That same day, the FBI provided three still photographs. One showed NE#1 and NE#2 in the vicinity of the Washington Monument. The second and third photographs showed NE#1 and NE#2 directly next to the side of U.S. Capitol Building. From the vantage point of the photographs, demonstrators were on the steps of the building, as well as climbing the scaffolding, and numerous demonstrators were surrounding the building.



The FBI informed OPA that these photographs were stills from a video. The FBI said that the video showed the individual recording people on the steps of the Capitol Building and scaling the walls. The individual turned to NE#1 and NE#2 and asked: "Well fuck, doing it?" The individual then turned to again face the building and a male off camera said: "Thinking about it."

OPA requested the full video from the FBI and was informed that it could not be released because the individual who took the video was pending criminal prosecution. OPA contacted the individual's criminal defense attorney to request the video and, as of the date of this DCM, that request remains outstanding.

6. OPA's Interviews

OPA interviewed all of the Named Employees, including interviewing NE#1, NE#2, NE#3, NE#5, and NE#6 twice. OPA also attempted to interview two third parties – including FO#1 – who were also in Washington, D.C. on January 6 and with some of the Named Employees. Both of these individuals declined to be interviewed.

i. Named Employee #1

OPA conducted two interviews NE#1. He told OPA that he made the decision to go to Washington, D.C. some time in December. He stated that he wanted to support President Trump and hear him speak. NE#1 also confirmed that he was in a group that included NE#2, NE#3, and NE#4.

NE#1 provided OPA with estimates for a timeline of his whereabouts on January 6. He recalled that he woke up at approximately 6:00 a.m. and traveled to the Ellipse, where President Trump was to speak at around 8:00 a.m. NE#1 believed that President Trump's speech ended at approximately 1:00 or 1:30 p.m., at which point he and the other members of his group went back to their hotel. NE#1 said they arrived at the hotel around 2:00 or 3:00 p.m. and remained there for roughly half an hour before leaving and walking to the United States Capitol Building. He estimated that they got to the Capitol at 3:00 p.m. NE#1 stated that he stayed at the Capitol for an hour to an hour and a half until they received the EBS alert. After receiving the alert, he said that he gathered the rest of his group and went back to the hotel for the evening.

At his second interview, NE#1 clarified the timeline from the first interview and stated that he believed he arrived at the Capitol closer to 2:30 p.m. NE#1 was shown stills from Capitol cameras that were in the vicinity of where he indicated in his first interview that he was standing. NE#1 did not recognize the area and said that it was not where he was on that day. He was also shown videos which were taken on the same day, but he could not recall if the vantage point looked familiar. He stated that he knew he could see the Capitol building but nothing further.

NE#1 stated that he was with NE#2 the entire day, including the duration of his time at the Capitol. He specified that, while at the Capitol, he stayed on the grass around 30 to 50 yards away from the building. NE#1 contended that he never heard any flashbangs or saw any signs of disturbance, barricades, or police officers during his time at the Capitol. He also stated that the people in their vicinity were just talking, waving flags, and standing in the grass. NE#1 reiterated multiple times during his first interview that there was zero indication that he was not allowed to be standing where he was and that he did not see any signs of disturbance.

NE#1 asserted that he was not aware that people attacked officers and broke into the U.S. Capitol Building until he returned to his hotel after receiving the EBS alert. He stated that he never stepped foot on the Capitol steps. He



clarified that he did see people standing on the stairs and some scaffolding but that he did not see any law enforcement telling anyone to leave. In his second interview, NE#1 did not recognize a still taken from a Capitol camera which included a scaffolding. He also did not recognize a subsequent still photograph which showed a United States flag covering an entire side of the scaffolding. NE#1 clarified that the scaffolding and steps were in the distance ahead of him. He said that he never heard people talking about what was occurring inside and argued that he followed the rules and regulations to the best of his knowledge. NE#1 maintained that he did not become aware that he had been standing in a restricted area until reading a news article after the OPA investigation began. He did not believe that he knowingly trespassed due to the lack of indication and contended that he would hold others to the same standard if they were trespassing in an area where there was no indication or signage to show that it was off limits.

NE#1 said that he decided to go to the Capitol on that day because President Trump had asked people to be there and had specifically requested for people to “walk up and be peaceful.” NE#1 further explained that he was there to exercise his First Amendment rights and to support a free and fair election. He felt that the investigation was discriminatory towards him for his political ideology. NE#1 also clarified that he routinely clears text messages from his phone.

ii. Named Employee #2

OPA conducted two interviews with NE#2. She said that she decided to join her friends on their trip to Washington, D.C. because she wanted to listen to speakers at the rally. She stated that she did not believe she was attending a protest and did not communicate with others via message boards or group chats prior to the rally. On January 6, NE#2 woke up early for the rally near the Washington Monument. She said she arrived near the Monument at approximately 9:00 a.m. and that she was on the grassy area near the Monument until roughly 1:00 p.m. NE#2 recalled going back to the hotel after the rally ended and staying there for 20 to 30 minutes before leaving to go to the Capitol around 2:00 p.m. While NE#2 was unable to recall which streets she took when traveling to the Capitol, she remembered walking southeast from the hotel.

NE#2 stated that, while at the Capitol, she saw people peacefully standing on the lawn and around the building, but she could not see the Capitol steps due to the large crowd and trees blocking her view. Regarding her route to the Capitol, NE#2 said that she never saw the Capitol Reflecting Pool and believes she would have walked onto the grass somewhere north of that area. Like NE#1, NE#2 maintained that she saw nothing to indicate that she was not allowed to be in the area and that she did not witness anyone committing any criminal acts. She specified that she did not see anyone dressed in anything that would suggest they were preparing for nefarious acts. She said that she followed all rules and conditions as far as she was aware.

NE#2 became aware that she may have trespassed when she read a news article after the OPA investigation had started. NE#2 noted that she was not associated with people breaking laws that day and stated that the majority of the crowd was peaceful. Like NE#1, NE#2 said that she routinely clears text messages from her phone, and she confirmed that did not have a copy of the EBS alert that she received.

iii. Named Employee #3

OPA conducted two interviews with NE#3. He decided to go on the trip on December 19, 2020, when one of his friends called and asked if he could show them around Washington, D.C. NE#3 estimates that he's been to Washington, D.C. three or four times. He knew there would be a rally for President Trump on January 6, but he refused to attend the



trip if they were only going for the rally, so they agreed to extend it to a five-day vacation. NE#3 stated that he notified his Operations Lieutenant that he would be in Washington, D.C. on January 6.

NE#3 explained that he wasn't in a hurry to get to the rally, so he stayed behind for breakfast at the hotel while everyone else left. He provided the route that he took in order to meet his friends for the rally. He also explained that he left and came back to the rally twice because he accompanied some friends on restroom breaks. NE#3 stated that, after President Trump's speech ended, another friend needed to use the restroom, but the lines were long, so they walked back to the hotel. NE#3 later clarified that his group left to find a restroom before the speech concluded. He believed this to be at approximately 1:00 p.m. NE#3 recalled that, when the group met back up after using the restroom, someone suggesting getting food at food trucks near the Capitol building. He then relayed the route taken to the Capitol area and mentioned seeing law enforcement vehicles but clarified that officers were not telling people to turn away or vacate the area.

Once they arrived closer to the Capitol area, NE#3 stated that it was well after 2:00 p.m. and was probably around 2:30 p.m. He said that he saw the Reflecting Pool and Grant's Memorial, but he was only in the Capitol area for about ten minutes before leaving to eat. He noted that, as he was leaving, he saw "anarchist-looking people" which made him nervous. He continued to the Law Enforcement Memorial and believed he was there around 2:40 p.m. After taking some photos at the Law Enforcement Memorial, NE#3 went to pick up food from a nearby restaurant. He said that his food took approximately 15 minutes to prepare and during that time, he received the EBS alert. NE#3 stated that he checked his newsfeed after receiving the alert and took the food back to his hotel where he arrived at approximately 3:05 p.m. and continued to watch the news. He explained that what he saw was horrible and disgusting and he changed his, NE#1's and NE#2's travel plans so he could fly out the next morning. NE#3 clarified that he was by himself from when he left the Capitol until later when the rest of the group, including NE#1 and NE#2, came back to the hotel. NE#3 remained in the hotel until curfew and, sometime around 7:00 or 8:00 p.m., he went to Baltimore to get dinner for his group as well as the hotel staff since everything in Washington, D.C. was closed.

When asked about his purpose for going to the Capitol area that day, NE#3 responded that he wanted to "do tourist stuff" and did not have a plan for after the rally concluded. He said that while he does not normally attend rallies, this one seemed no different than other large events he has been to. He did not recall seeing people going to the Capitol given the size of the crowd and said he did not have any visual of the Capitol building until approximately 2:30 p.m. when he was standing near Third Street Southwest and Pennsylvania Avenue Northwest.

Like NE#1 and NE#2, NE#3 said that he did not see any signs or barricades at the Capitol. In his second interview, NE#3 specified that he has been to the Capitol building before and it was clearly stated where he could and could not be, but he did not see anything of the sort on this day. He recalled standing on a grassy area but stated that he wasn't sure if people were on the Capitol steps since there were thousands of people between himself and the building. He did not recall seeing smoke or anything that would suggest the use of OC or pepper spray and he did not hear any flashbangs being used. NE#3 noted that, at one point when he was near Third Street Southwest and Constitution Avenue Northwest, he saw three law enforcement vehicles trying to get through a crowd of people. He contended that the officers had to back up and travel down a different route. NE#3 said he did not see anyone committing any crimes.

During his second interview, NE#3 said that he never saw NE#4 at the Capitol. He saw NE#4 briefly at the earlier rally but did not see him again until later that night. NE#3 stated that, when he left to go to the Law Enforcement Memorial, NE#1 and NE#2 were in the grassy area near the Capitol. NE#3 recalled that he did not sense any danger when he was



leaving the Capitol area but was simply hungry, cold, and did not want to remain in the area. He explained that the loud noise made him not want to be there. During his second interview, NE#3 was shown some still photographs and videos taken in the Capitol area. He commented that one of the videos was taken from a vantage point that was closer to the building than he was standing. He also didn't recall seeing the Peace or Garfield Monuments.

NE#3 told OPA that he was not affiliated with any groups linked to violence at the Capitol on that day. He did not believe that he violated policy because he acted respectfully as a private citizen and did not engage in any unlawful acts. NE#3 stated that, if he did go into a restricted area, it would have been unknowingly. He said that he was unaware that the rally would be related to stealing the election and just felt it would be special and historic to hear a president speak.

iv. Named Employee #4

NE#4 explained to OPA that he agreed to go to Washington, D.C. a few weeks before January 6. He stated that some of his friends wanted to attend a rally for President Trump and he agreed to go as part of a longer trip to visit other friends on the East Coast. He said that, on the morning of January 6, approximately between 10:30 a.m. and 11:45 a.m., he visited the Washington Monument, the Lincoln Memorial, and the Vietnam Memorial. NE#4 stated that, after seeing these areas, he joined NE#1, NE#2, and NE#3 at the rally for President Trump. He recalled that it was a very cold day and he was extremely hungry, so he decided to leave the rally approximately two to five minutes after President Trump began speaking. He explained that he went to Chipotle and picked up food, which he brought back to his hotel room. NE#4 remembered returning to his hotel room between 12:30 p.m. and 1:00 p.m. He remained there for the rest of the evening.

NE#4 did not recall seeing any protesters walking towards the Capitol building. He did not see any of the other Named Employees leave the rally or know where they went or what they did. He said that he learned of violence occurring at the Capitol while he was watching television in his hotel room. NE#4 specified that he was never at the Capitol on January 6 and he was not associated with any groups linked to violence at the Capitol. He also did not hear anyone talking about engaging violent actions while he was at the rally. NE#4 ultimately denied that he acted unprofessionally by attending the rally or that he violated any laws while in Washington, D.C.

v. Named Employee #5

OPA conducted two interviews with Named Employee #5 (NE#5). He said that he initially planned to go to Washington, D.C. in early December. He knew that President Trump would be speaking on January 6, but the main reason for his being in the area was to visit the hometown of one of his friends. He toured his friend's hometown for five or six days prior to January 6. NE#5 said his plan for January 6 was to see President Trump speak, get lunch, and view historic locations.

NE#5 recalled that, at approximately 11:00 a.m., he was near the Washington Monument at the rally for President Trump. He remembered hearing that the rally was called "Stop the Steal." He recalled being there from roughly 11:00 to 11:30 a.m. before walking with NE#6 and another friend – FO#2 – down the National Mall towards the Capitol building. NE#5 said that they stopped at the Peace Monument for a few minutes before continuing to a tavern to get lunch. NE#5 clarified that they likely got to the Peace Monument around 11:40 a.m., which was before President Trump finished speaking, as they left the speech early. He estimated that they were at the tavern for an hour and a half before going back to the hotel. He stated that he heard about the curfew while on his way back to



the hotel and decided to stop at a convenience store for snacks since the curfew was going to be in place. NE#5 believed they returned to the hotel between 4:00 p.m. and 5:00 p.m. They then stayed in the hotel for the rest of the night.

During his second interview, NE#5 was asked about some discrepancies between his timeline and the one provided by NE#6. Specifically, he was questioned concerning NE#6's statement that they were at Pennsylvania Avenue Northwest and First Street Northwest at 12:45 p.m. instead of 11:45 a.m. NE#5 responded by saying that NE#6 could be correct as he was unsure of each specific time on that day. He was also presented with NE#6's recollection that they were at the tavern for 45 minutes instead of an hour and a half. NE#5 said that he did not know the cause for that discrepancy and could not recall when they arrived at the tavern. In addition, NE#5 was shown a video taken near the Peace Monument that day. He identified himself, NE#6, and FO#2 as being in the video. NE#5 reiterated that they left before anyone tried to cross barriers and before violence occurred at the Capitol. NE#5 contended that he did not see anything illegal happen and they were only in that area for a short time. He clarified that they never moved any closer to the Capitol building.

NE#5 stated that he had been to Washington, D.C. at least four times previously and is acquainted with the area. He explained that NE#6 had not seen many of the memorials at that this influenced their decision to stop at the Peace Monument before lunch. NE#5 said there were roughly 150 to 200 people spread out near the Peace Monument when they were there. He also stated that, compared to other times he has been to the National Mall, there was a normal amount of people present. He believed that this was because President Trump was still speaking so most people were listening to the speech. He also recounted the route they took to the tavern.

NE#5 explained that he followed all rules, laws, and conditions while at the Capitol that day. He stated that he was not there representing the Department and only took part in "normal tourist behavior." He specified that he was not affiliated with any groups identified as taking part in violence that day and did not recall sensing anything in the crowd that made him think things would go wrong. NE#5 noted that before leaving the tavern, himself, NE#6, and FO#2 helped bring in tables from outside as the owner wanted to shut down the restaurant quickly. NE#5 said that, when he got back to the hotel, he saw what was happening on TV and felt sad and depressed at what was occurring.

vi. Named Employee #6

NE#6 said that he made plans to go to Washington, D.C. in December. He recalled that, on January 5, 2021, President Trump announced that he would be speaking at the rally. His plan was to hear President Trump speak and then to sightsee for the remainder of the day

NE#6 stated that he was at the Ellipse at around 11 a.m. where he was planning to hear President Trump's speech. A large crowd had gathered in the area and NE#6 could hear people chanting "USA" and some saying: "stop the steal." President Trump was late, so he walked to the Lincoln Memorial and then came back. NE#6 returned to where the speech was occurring and remained there for approximately 10 to 15 minutes. NE#6 said that the main purpose for leaving early was to not get stuck in the larger crowd. He then walked in the direction of the Capitol. There were nearly a thousand people walking down Constitution Avenue at that time, but NE#6 and his group took a different route where there were fewer people. The people he saw walking down Constitution Avenue had signs and flags. He did not see anything at that time suggesting to him that the group was intending on causing violence.



NE#6 explained that he and the individuals he was with – NE#5 and FO#2 – were planning on going to a bar/restaurant owned by a friend of FO#2. That bar/restaurant was also on the way to the Capitol. He observed more individuals going to the Capitol and then he and his group went to the bar/restaurant, leaving where they were at around 12:43 p.m. NE#6 said that, prior to doing so, he did not cross any barricades or enter into and restricted areas. NE#6 recalled that he remained at the bar/restaurant for a period of time – he estimated 1:45 p.m. – until he received the EBS notification setting a curfew. He then headed back to the hotel with NE#5. He believed that they arrived at the hotel between 2 and 2:15 p.m. He remained at the hotel until the next morning.

NE#6 denied committing any illegal acts on January 6. He stated that, prior to going to the bar/restaurant, he did not observe any other criminality in the crowd and did not see anyone breaking through barriers or scaling the Capitol walls. NE#6 said that he did not go to Washington, D.C. with the purpose of engaging in criminality and that he was not affiliated with any groups that did have such plans and intent.

NE#6 said that he took a photograph while at the Reflecting Pool and that the photograph had a timestamp. That is how he knew he left the vicinity of the Capitol at 12:43 p.m. He said that the owner of the bar/restaurant could confirm that he was there. He said that they paid in cash, so he did not have any receipts. He said that he communicated with his wife and a friend concerning him being okay given what occurred that day. He said that he may have texted them but that he deleted his texts daily.

At his second OPA interview, he provided some additional information of his actions from when he left the Capitol to when he went to his hotel. He said that he stopped at a convenience store to get some food and drinks because he believed it possible that he would be kept to the hotel for the whole next day given the curfew that was put in place. He thought he was there for around 45 minutes. He said that he spent \$99 and he provided the receipt to OPA as part of his response to document requests. NE#6 again affirmed that he did not enter into any restricted areas. He told OPA that he had no idea that the day was going to turn violent and, had he known this, he never would have gone to Washington, D.C. Lastly, NE#6 told OPA that he did not communicate on any message boards or with any groups or individuals concerning the potential insurrection.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This allegation was classified based on the possibility that NE#1 and NE#2 may have violated the law. OPA focused on whether NE#1 and NE#2 trespassed on the grounds of the U.S. Capitol or in any other restricted areas, and, if they did so, whether they committed any other criminal acts at that time.

As indicated above, both NE#1 and NE#2 admitted trespassing on January 6. However, both asserted that they did not know that they had done so until after the fact and, thus, that they were not culpable. NE#1 and NE#2 described their actions as peacefully observing the occurrences at the Capitol. Neither reported seeing any illegal or violent activities. Both officers said that they saw no sign that they were in a prohibited location.

OPA's investigation, and particularly the review of video and interviews of Washington, D.C. law enforcement personnel, indicates that the accounts provided by NE#1 and NE#2 are simply not credible. The video showed that



there was an active insurrection ongoing at the same time that NE#1 and NE#2 were in the immediate vicinity of the Capitol Building. This included rioters assaulting law enforcement officers and making forced entries into the building. Moreover, the testimony of the law enforcement officers interviewed by OPA and who were present on that day, belied the officers' recitation of events. The officers said that anyone in that vicinity would have been aware of the violence and chaos that was ongoing. Similarly, OPA finds the information provided by the USCP SSA to be instructive. He outlined all of the restrictions that were in place on January 6, from signs to fence lines staffed by clearly marked officers. The SSA also confirmed that anyone in the immediate vicinity of the Capitol Building – where NE#1 and NE#2 indisputably were – was committing a crime. That OPA did not locate evidence placing NE#1 and NE#2 inside of the Capitol Building does not diminish this conclusion.

OPA further finds the video still of NE#1 and NE#2 to be compelling. They were both standing in the immediate vicinity of the Capitol Building in direct view of rioters lining the steps and climbing the walls. OPA finds it unbelievable that they could think that this behavior was not illegal, contrary to their claims at their OPA interviews. The video still also serves to undermine the officers' assertions that they did not have notice that they were trespassing. Not only were there signs posted in that area, but there were ongoing violent acts, the use of less-lethal tools by law enforcement officers, and multiple other signs that being in that location was inappropriate and impermissible. Notably, the video still establishes that this was not a scenario where NE#1 and NE#2 were standing in a grassy area some distance from the Capitol where their ignorance of the restrictions might have been more understandable. Here, they were directly next to the Capitol Building during the same time as the ongoing insurrection.

OPA has consistently found that ignorance of the law is not a defense. This is the case for community members and, even more so, for SPD employees. Based on the totality of the evidence, OPA finds that NE#1 and NE#2 were trespassing and that they knew or, at the very least, should have known that this was the case. When they did so, they violated Washington, D.C. law.

Their conduct is made even more egregious by the events that were going on around them. While they smiled and looked at the Capitol Building, as captured by the video stills, rioters defiled the seat of American democracy and assaulted numerous fellow officers. That they, as SPD officers, were direct witnesses to the acts that were going on around them, including the scaling of the Capitol Building walls, but did and said nothing, compounds this. Ultimately, SPD employees, NE#1 and NE#2 included, are strictly held to the law. They violated the law here and, as such, acted contrary to SPD policy. Accordingly, OPA recommends that this allegation be Sustained as against both NE#1 and NE#2.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employee Shall Strive to Be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.)

When assessing whether NE#1 and NE#2 violated SPD's professionalism policy, OPA's focus is on actions not speech. As discussed more fully below (see Named Employee #4 – Allegation #1), NE#1 and NE#2 had the unfettered right to express their political views and to assemble. This is the case regardless of the content of those views or the reason for the assembly.



Here, the actions engaged in by NE#1 and NE#2 – criminally trespassing in the immediate vicinity of the Capitol Building while the insurrection was ongoing and saying and doing nothing to prevent these acts – served to greatly diminish public trust and confidence in both them and in the Department as a whole. Indeed, it is not an exaggeration to say that this case has done more damage to the perception of SPD by the community than any other case in my time at OPA. This is a clear example of conduct that is unprofessional.

For these reasons, OPA recommends that this allegation be Sustained as against both NE#1 and NE#2.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) This allegation was classified for investigation based on the belief that NE#1 and NE#2 knew or should have known that their conduct on January 6 violated the law and, as such, they were required to self-report to a supervisor or OPA but did not do so.

As discussed above, NE#1 and NE#2 both contended that they did not know that they were trespassing in violation of Washington, D.C. law until afterwards. However, based on all of the evidence adduced by OPA during this investigation, including the site visit conducted, a review of the photographs of the positioning of NE#1 and NE#2, the interviews of law enforcement officers who were present during and who witnessed the events, and the videos of what occurred and the timeline of events, OPA simply does not believe the explanation proffered by NE#1 and NE#2 to be credible.

OPA further finds that, given what was occurring around them at the time, NE#1 and NE#2 knew or should have known that they were criminally trespassing. This constituted serious misconduct. As such, they were required to self-report to their chain of command. When they did not do so, they violated SPD policy. OPA accordingly recommends that this allegation be Sustained as against both NE#1 and NE#2.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #2 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #2 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

Of all the Named Employees, NE#3's culpability is the most difficult to assess. NE#3 told OPA that he left the rally with NE#1, NE#2, and other non-SPD individuals. He returned to the Capitol area with them to get some food. NE#3 said that he was with NE#1 and NE#2 in a grassy area for around 10 to 15 minutes. He recalled seeing the Reflecting Pool and Grant's Memorial. He then left the area when he saw "anarchist" looking individuals who made him feel uncomfortable. He then left to get food, walking past the Law Enforcement Memorial. NE#1 and NE#2 remained on the grassy area in the vicinity of the Capitol. When pressed on his location prior to leaving the vicinity of the Capitol, NE#3 stated that he saw no signs or other indications that he was in a restricted area. He did not believe that he was trespassing at the time.

Based on a review of the officers' accounts and a review of the maps outlining the restricted zones, OPA believes it possible that NE#3 was technically trespassing. However, OPA notes that, unlike NE#1 and NE#2, there is no conclusive evidence establishing this. As such, it remains plausible that NE#3 never entered into a prohibited area.

With NE#1 and NE#2, there was a video still that placed them next to the Capitol Building while rioters had amassed on the steps and were climbing the walls and the scaffolding. As such, this evidence proved that they were clearly in a place where they were not supposed to be and, given what was going on around them, they either knew or should have known that this was the case. NE#3 was not captured in this video still, and there is no video or photograph that OPA has found placing NE#3 in a similar location.

In addition, neither NE#1 nor NE#2 place NE#3 with them at their OPA interviews. They are clear that, as they neared the Capitol and when they were in the restricted areas, they were the only SPD employees present.

Lastly, the evidence and information provided by NE#3 appears to support his timeline of events and when he left the vicinity of the Capitol. Even if this evidence is not conclusive, it must be weighed against the lack of alternative definitive evidence putting him in a prohibited location.



For these reasons, and while a close call, OPA cannot reach its burden of proof to establish that NE#3 violated the law by trespassing. Similarly, OPA's investigation did not exonerate him and the possibility remains that he did so. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The professionalism allegation against NE#3 rises and falls with whether he violated the law. As OPA cannot establish that he trespassed or engaged in other criminal conduct, OPA similarly cannot conclusively prove that he violated the Department's professionalism policy. Accordingly, OPA also recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #4 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

OPA evaluation of the evidence indicated that NE#4, NE#5, and NE#6 all left the vicinity of the Capitol prior to the insurrection commencing. All provided evidence establishing, at least in part, their whereabouts. Moreover, OPA's review of video, receipts, and hotel records, as well as interviews with the bar/restaurant employees, corroborated the accounts provided by NE#5 and NE#6. OPA found no basis to conclude that NE#4, NE#5, and NE#6 accessed restricted areas at any time or engaged in any activities that violated Washington, D.C. laws. To the contrary, all three officers provided consistent and credible accounts of what they did and did not do on January 6.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#4, NE#5, and NE#6.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #4 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The First Amendment is perhaps the most fundamental right enshrined in the U.S. Constitution. It provides for the freedom of religion, the freedoms of speech and expression, the freedom of the press, and the freedoms to assemble and to petition the government. As stated by U.S. Supreme Court Justice Benjamin Cardozo: "Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom." The First Amendment does not just protect speech or views that are popular or that are held by a majority of a given community, it also ensures that alternative views, even where abhorrent or factually incorrect, are shielded from government restraint or retaliation. Indeed, failing to do so would have dire consequences. As articulated by Justice Anthony Kennedy in *Matal v. Ham*, 137 S. Ct. 1744 (2017):

A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government's benevolence. Instead, our



reliance must be on the substantial safeguards of free and open discussion in a democratic society.

This caution rings particularly true in our current social and political age, where Democrats and Republicans, urban and rural areas, and red and blue states are often diametrically opposed. Now, to disagree is to villainize. To hold different political views is to believe that the other side is incontrovertibly wrong and morally corrupt. The risk raised by this is that political views, when they are the minority, could be subject to censorship, punishment, or worse.

This is the core issue raised in this case. Here, there are three officers who attended a political rally in support of a President who was and is still reviled by many in Seattle and that was in furtherance of a theory of election fraud that was, at best, discredited and, at worst, knowingly fabricated in an attempt to unconstitutionally seize and retain power. These officers' presence at the rally invoked public outrage and calls for their termination. Indeed, the political and factual views espoused at the rally were antithetical to the beliefs of a strong majority of the Seattle community.

However, absent any acts on their part that were illegal, that the officers attended this rally is absolutely protected by the Constitution. These officers were entitled to exercise their freedom of expression and to assemble. That they did so in a manner contrary to the majority view in Seattle does not alter this view. This is the case even if I, as the decider in this matter, disagree vehemently with everything the rally stood for.

Any contrary result would be incorrect – both constitutionally and morally – and would undermine the rule of law that is the bedrock of our society. It would also serve to speed up the current decline of reason, objectivity, and fundamental fairness that plagues America and its contemporary collective discourse. To OPA, that would be simply unpalatable and unacceptable. While this decision may be unpopular with some, OPA believes that it is supported by the law and is consistent with due process. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#4, NE#5, and NE#6.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #5 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #5 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #4 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #6 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #6 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #4 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #7 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

During their OPA interviews, none of the Named Employees identified other SPD employees as being present at the rally or in Washington, D.C. on January 6. OPA's investigation, including its review of hotel reservations and other evidence, did not indicate that any other SPD employees were so involved. However, OPA cannot definitively say that this is the case. As such, OPA recommends that this allegation and Allegation #2, below, be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #7 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #7 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**