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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff	:	
	:	
vs.	:	Criminal Action Nos.
MICHELLE MACCHIO,		2017 CF2 1183
JENNIFER ARMENTO,		2017 CF2 1193
CHRISTINA SIMMONS,		2017 CF2 1210
ALEXEI WOOD,		2017 CF2 1221
OLIVER HARRIS and		2017 CF2 1254
BRITTNE LAWSON,		2017 CF2 1256

Defendants.

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Washington, D.C.
November 20, 2017

The above-entitled matter came on for jury trial before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in Courtroom 203, commencing at approximately 9:30 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

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9 Elena Whitt, Esquire
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12 On behalf of Defendant Harris:
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14 Julie Coleman, Esquire
15 Washington, DC

16 On behalf of Defendant Wood:
17 Brett Cohen, Esquire
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1 TABLE OF CONTENTS

2 Preliminary Instructions to the Jury..... 36

3 Opening Statement by Ms. Kerkhoff..... 48

4 Opening Statement by Mr. McCool..... 71

5 Opening Statement by Ms. Weletz..... 92

6 Opening Statement by Ms. Jacques..... 99

7 Opening Statement by Mr. Cohen..... 101

8 Opening Statement by Ms. Knopf..... 107

9 Opening Statement by Ms. Heine..... 109

10 Exhibits admitted into evidence:

11 Government's Exhibit No. 226..... 119

12 Government's Exhibit No. 126..... 126

13 Government's Exhibit No. 231..... 128

14 Government's Exhibit No. 148..... 136

15 Government's Exhibit No. 227..... 139

16 Government's Exhibit No. 229..... 140

17 Government's Exhibit No. 228..... 140

18 Government's Exhibit No. 232..... 142

19 Government's Exhibit No. 123-Q..... 188

20 Government's Exhibit No. 123-Y..... 194

21 Government's Exhibit Nos. 106, 109, 110, 111,
22 112, 113, 118, 119, 120, 133, 143, 144
23 and 225..... 108

24 GOVERNMENT'S WITNESSES:

25 Andrew Lapp

Direct Examination..... 114

Cross-Examination.....142, 143, 145, 148

Ashley Anderson

Direct Examination.....164

1 THE DEPUTY CLERK: Your Honor, from the trial
2 calendar, United States versus Brittne Lawson, 2017 CF2 1256;
3 United States versus Jennifer Armento, 2017 CF2 1193; United
4 States versus Michelle Macchio, 2017 CF2 1138; United States
5 versus Oliver Harris, 2017 CF2 15 -- 1254; United States
6 versus Alexei Wood, 2017 CF2 1221; and United States versus
7 Christina Simmons, 2017 CF2 1210.

8 THE COURT: Good morning, everyone.

9 MS. KERKHOFF: Good morning, your Honor.

10 MS. HEINE: Good morning, your Honor.

11 MR. HEALY: Good morning, your Honor.

12 THE COURT: In whatever order, please identify
13 yourselves.

14 MS. KERKHOFF: Jennifer Kerkhoff and Rizwan Qureshi
15 for the United States.

16 THE COURT: Good morning.

17 Ms. Macchio -- on behalf of Ms. Macchio?

18 MS. HEINE: Jamie Heine and Andrew Lazerow,
19 Christina Copsey and Elena Whitt, for Ms. Macchio, present by
20 me.

21 THE COURT: Good morning.

22 For Jennifer Armento?

23 MS. WELETZ: Attorney Carrie Weletz on behalf of
24 Jennifer Armento.

25 I will also be joined by Tom Healy shortly.

1 THE COURT: Good morning.
2 For Christina Simmons?
3 MS. JACQUES: Good morning, your Honor.
4 Tammy Jacques. I represent Christina Simmons. She
5 is present to my right.

6 THE COURT: Good morning.

7 For Alexei Wood?

8 MR. COHEN: Brett Cohen on behalf of Mr. Wood. He
9 is present before the Court.

10 THE COURT: Good morning.

11 On behalf of Oliver Harris?

12 MS. COLEMAN: Good morning, your Honor.

13 Julia Coleman and Steven McCool on behalf of Oliver
14 Harris, who is present and to my right.

15 THE COURT: And on behalf of Brittne Lawson?

16 MS. KROPF: Good morning, your Honor.

17 Sara Kropf. With me today is Dan Portnov, who will
18 be filing his *pro hac* motion.

19 THE COURT: Spell your name, please, sir.

20 MR. PORTNOV: P-o-r-t-n-o-v.

21 THE COURT: What was your first name?

22 MR. PORTNOV: Daniel.

23 THE COURT: Good morning.

24 MS. KROPF: Ms. Lawson is here to my right.

25 THE COURT: I see her.

1 You can all have a seat.

2 I just want to confirm we have an overflow
3 courtroom, Courtroom 320.

4 Am I right about that?

5 THE DEPUTY CLERK: Yes.

6 THE COURT: Great.

7 And so the juror who -- the six-and-a-half-months
8 pregnant one and who wanted to be able to refrigerate her
9 food or heat her food immediately started calling after we
10 saw her Friday and informed Ms. Lis that she thought she
11 might have a high-risk pregnancy, that she had a doctor's
12 appointment the next day, and then called back and kind of
13 wanted to be excused.

14 And I said she had to come in today through Ms. Lis.

15 And faxed a note that says, from her doctor, "This
16 patient is pregnant and due date of February 11th, 2018. She
17 suffers from preterm labor contractions and is N-O-T -- in
18 capitals -- a good jury candidate.

19 I directed her to come in because I don't believe on
20 this record I could just excuse her without hearing from you
21 all.

22 I'll just ask what you want me to do with her. Does
23 the Government have a view? Let me just say this note does
24 not say she can't serve. This note does not say she's on
25 bedrest. We all know doctors know how to put you put on

1 bedrest.

2 But this is not a juror who seems to want to do
3 this. She told us the first day that she had no medical
4 condition that she was aware of in the pregnancy that would
5 interfere with her service.

6 And she remembered about the hot and cold food.
7 After we told her we could accommodate that, then she had
8 these concerns and has now got a doctor's note saying what I
9 just read to you.

10 So whether or not I would conclude from this that
11 she's medically unable to be able to a juror, she is clearly
12 stressed by this and doesn't want to do it. So that's I
13 think where we are.

14 MS. KERKHOFF: The Government's position is the same
15 that we took with respect to -- I think it was initial Juror
16 No. 7, which was -- given the emotions and stuff, I'm not
17 sure this benefits anybody.

18 We're looking for a fair and impartial juror who is
19 not looking for ways to either not pay attention or not be
20 here. And my concerns are the same that we had with the one
21 juror.

22 THE COURT: And do you all want to just talk about
23 it -- let put the husher on and let you talk?

24 I do have those concerns. And, really, I can't sit
25 here and promise her she's not going to have complications in

1 her pregnancy. And it would be a bad thing if she felt that
2 her jury service was causing that. So I just am concerned
3 about it. But I'll let you all take -- yes, Ms. Coleman.

4 MS. COLEMAN: Your Honor, Julia Coleman for Oliver
5 Harris.

6 We have no objection to letting her go.

7 THE COURT: Does anybody have an objection?
8 No. Okay.

9 So I'm just going to ask Ms. Lis to excuse her when
10 she gets here and just separate her from the rest of the
11 jurors so that we don't have to upset her any further. And I
12 will excuse her.

13 She was -- just for the record, what juror number
14 was she? She was 676 in Seat 10. If she goes, that means
15 that our first alternate replaces her. That's the juror in
16 Seat 7. So we're going to have an empty seat in Seat 10 and
17 the juror in Seat 7 will be a regular juror.

18 Everybody got that?

19 So now the Alexei Wood tape, I had a flash drive
20 that had a number of items on it that was submitted to me by,
21 I believe, counsel for Mr. Harris. And so I think I watched
22 the right thing.

23 I'm just going to characterize it so we all agree
24 it's the right thing. It's the last item down, I believe, on
25 the menu of things on that flash drive. And it's essentially

1 films from -- very much embedded within the group that is
2 traveling along -- I believe it started at -- well, I don't
3 know where it starts close to. I can't tell.

4 But very shortly into it, there's a comment about,
5 "This is a black bloc." Then there's a comment about the
6 speaker being hit by pepper spray.

7 There's a lot of holy cows sort of punctuating the
8 narration. There is a holy cow, a flash bang, in the
9 District of Columbia. So I think I've characterized it.

10 Is that the one I'm supposed to be reviewing?

11 MS. KERKHOFF: Your Honor, the Defendant Alexei Wood
12 turns the camera on himself.

13 THE COURT: Yes.

14 MS. KERKHOFF: Okay.

15 THE COURT: And, "I've been pepper-sprayed and it's
16 all over me." And there's a bunch of -- I mean, it was
17 notable for a lot of holy cows.

18 Is that the one we're talking about, Mr. Cohen?

19 MR. COHEN: Yes, your Honor.

20 THE COURT: So I've been asked to rule on its
21 admissibility and on the basis for its admissibility.

22 And though I've ruled that it was -- before having
23 seen it, tentatively ruled that it was a co-conspirator
24 statement, Ms. Kerkhoff asked me to address whether it was a
25 present-sense impression and -- because he uttered

1 essentially to himself or to the public at large, not
2 testimonial.

3 And I was not understanding her position at the
4 time. It wasn't until I viewed the thing that I realized
5 that really is the rationale for its admissibility.

6 And so I think I was not focused at the moment on
7 the -- either the Government's position or the point
8 Ms. Kerkhoff was making.

9 So it does appear to me to clearly be
10 nontestimonial. In other words, the statements are made not
11 at any moment to police. They are to either himself or to
12 the viewing public.

13 And they are present-sense impressions in the sense
14 that they are relating exactly what he's saying at the moment
15 and narrating and relating his own impressions of what he
16 sees and experiences.

17 And so I don't think I need to address whether he's
18 a co-conspirator at that moment or at the beginning or all,
19 frankly, in order to address that theory of admissibility.

20 I know Mr. McCool argued that he was talking to
21 police or was in custody. I didn't really see that part.

22 But are there any arguments relating to the
23 Government's proffer of it as a present-sense impression and
24 nontestimonial for the reasons I've stated?

25 MR. LAZEROW: Your Honor, Andrew Lazerow on behalf

1 of Ms. Macchio.

2 I'm just trying to understand because there's a lot
3 of statements in the course of this.

4 THE COURT: Yes.

5 MR. LAZEROW: And is it -- is the Government's
6 position or are you agreeing that all the statements on there
7 are all present-sense impressions?

8 THE COURT: Well, you tell me what ones aren't.

9 MR. LAZEROW: I think when he says, "There's a black
10 bloc over there," that's not a present-sense impression.
11 He's reporting -- seeing what he's seeing. That's not an
12 excited utterance of any sort.

13 THE COURT: Well, present-sense impression I think
14 is what we were discussing, not excited utterance.

15 So did you want to address whether it's a
16 present-sense impression at that moment?

17 MR. LAZEROW: I mean, no. I'm okay with that.

18 I'm just concerned that there are a lot of
19 statements on there that --

20 THE COURT: There are.

21 MR. LAZEROW: -- I would have to go through.

22 THE COURT: Well, I have. I've watched them all.
23 They strike me as all present-sense impressions. But I'm
24 happy to have you identify something I should focus on more
25 carefully.

1 MR. LAZEROW: Not right at the moment. I'm also
2 concerned, your Honor, that you may not have watched the
3 right video.

4 I say that because I believe it was us who submitted
5 a -- you only had one flash drive. Is that correct?

6 THE COURT: Yes. In a yellow envelope.

7 MR. LAZEROW: We had submitted that to your Honor.
8 But it was our understanding that, one, it was not Alexei
9 Wood's video.

10 THE COURT: No. You submitted it with a cover sheet
11 that said quite precisely that it was.

12 MR. LAZEROW: Okay. I was told we didn't have it on
13 there. But I will find out for sure.

14 We communicated with Ms. Kerkhoff about it over the
15 weekend. She said she had submitted a link to YouTube to
16 make sure you had it.

17 THE COURT: So to the extent that you're seeking to
18 exclude something, I think you need to identify what it is.
19 The things I watched, Mr. Cohen has agreed is the live stream
20 created by Mr. Wood.

21 And so I have watched it. I don't have a transcript
22 of it. But Mr. Cohen agrees that the thing I'm talking
23 about -- it does include a statement very early on that there
24 is a black bloc, and it's narrated by a person who turns the
25 camera on himself who has another person, I think, assisting

1 him. He's wired up to another person, also, and is narrating
2 from -- embedded, really, within the group that is traveling
3 along.

4 MS. KERKHOFF: The Defendant did not have anyone
5 wired up with him, your Honor.

6 THE COURT: No?

7 MS. KERKHOFF: No. If I may ask, was there moments
8 where the speaker, the Defendant, discusses a guardsman
9 getting hit in the balls?

10 THE COURT: I'm not sure I remember hearing that.

11 MS. KERKHOFF: I think you would because it's
12 discussed pretty --

13 THE COURT: Okay. So I have to go back and look at
14 the link.

15 MS. KERKHOFF: I think so.

16 THE COURT: Okay. Then, I'm going to have to do
17 that at lunchtime.

18 MR. MCCOOL: Your Honor, Steven McCool for Oliver
19 Harris.

20 Your Honor, it's our position that the one statement
21 that Mr. Lazerow referenced where he says, "This is a black
22 bloc," he's not describing or explaining what that group is
23 doing. He's offering a 701 opinion. And it's not a
24 present-sense impression.

25 That's our position with respect to that statement.

1 Thank you.
2 THE COURT: Does the Government have a response to
3 that particular argument?

4 MS. KERKHOFF: I don't think that's accurate. I
5 think the person is saying what they're seeing. They could
6 say, for example, "I see an angry group of people." That's
7 what they see.

8 THE COURT: So do you have a transcript of it?

9 MS. KERKHOFF: I don't have a transcript of it, your
10 Honor.

11 THE COURT: Because here's what I'm going to do:
12 I'm going to watch it. I'm not going to do this salami
13 negotiating.

14 If you have an objection to a particular line in it,
15 you tell me what it is. I've now heard two things, black
16 bloc -- well, that's the only thing I've heard objected to.
17 If I hear another one, I will listen for it.

18 But I'm not going to do this 20 times. So by
19 lunchtime I want to know from you what it is you're objecting
20 to in particular because, to the extent that it is a
21 narration of events that I'm seeing right now for your
22 benefit, that's present-sense impressions.

23 And if there's a 701 opinion -- what I saw was not
24 just that, "That's a black bloc," but there was some sort of
25 definition of it.

1 MS. KERKHOFF: That's not what Mr. -- then, I don't
2 believe that's what Mr. Wood says early on in his is, "Oh,
3 yeah. We got a black bloc," words to that effect, and then
4 runs towards them, then discusses, "That man just pushed a
5 black bloc member." Then there's some cursing.

6 Then he keeps going, "We've got graffiti." Then he
7 keeps moving through the park, discussing what people are
8 doing, talking about police, trying to look cool.

9 THE COURT: So I'll tell you what. It may or may
10 not be the same one that I watched because I just watched
11 what looked to me like it might be the same one people were
12 telling me about.

13 So I'll be sure to watch the thing that Ms. Kerkhoff
14 sent me a link to at lunchtime.

15 Ms. Kerkhoff, do you plan to, I guess, recite from
16 it in your opening?

17 MS. KERKHOFF: I don't plan to specifically recite
18 from it.

19 I do plan to state that he is cheering, that he is
20 excited, that he, you know, seems to be celebrating. I think
21 that's all there.

22 If the Court's analysis for the video that I
23 think watched was present-sense impression, the Government is
24 very confident the Court will find this is a present-sense
25 impression or words --

1 THE COURT: Not just that, but cheering and
2 excitement are not words and so wouldn't be affected by my
3 ruling anyway.

4 MS. KERKHOFF: Correct.

5 THE COURT: So we'll go ahead.

6 I got an email from Ms. Heine purporting to
7 represent everybody else's, I guess, positions on the motion
8 to suppress.

9 The request was that I spend time now resolving
10 motions to suppress that were not filed until over the
11 weekend, and I am not going to be doing that. What I will do
12 is resolve them on Wednesday.

13 I just want to understand expressly what everybody
14 is moving to suppress and, from the Government, what your
15 concerns are about why you think I need to resolve this now.

16 In other words, what specifically are you planning
17 to use in your case in chief that they say they're moving to
18 suppress now such that going ahead is going to be an issue?

19 MS. KERKHOFF: Well, in my initial discussions with
20 counsel, they were saying that I could not even discuss
21 anything that was learned or observed about the Defendants
22 after they were detained at 12th and L, which gets us to how
23 I can even identify, for example, Ms. Macchio.

24 THE COURT: Well, even Ms. Heine graciously --

25 MS. KERKHOFF: Yes.

1 THE COURT: -- you know, not everybody on the
2 defense side would have done that -- asserted your argument,
3 which is that the Supreme Court has held in a very settled
4 way that identity and physical appearance are not subject to
5 suppression even if I were to find that there had been no
6 probable cause.

7 MS. KERKHOFF: My understanding is the defense is
8 not agreeing with the part about physical appearance and the
9 observations.

10 What I do think is important is how the Defendants
11 appeared, how, for example, Ms. Macchio appeared in the --
12 during the riot, what the jury can assess, and then when
13 she's detained, her clothing, her attempts to mark her
14 property, the person she was with.

15 THE COURT: So what is your legal position on that
16 argument?

17 MS. KERKHOFF: My legal position is that they
18 haven't articulated -- they haven't set forth any case
19 authority that says this -- "We're entitled to an evidentiary
20 hearing on this point."

21 I believe I am allowed to say what an officer
22 observed with their eyes at the time of the stop. That's
23 identity -- goes to identity. And the Supreme Court has said
24 that the body of a defendant and the identity is not
25 suppressible under the Fourth Amendment.

1 My concern is that the defense was objecting to me
2 even calling Ms. Macchio a medic of any sort because of her
3 property, because of how she appeared.

4 THE COURT: And do you believe there's any authority
5 on the planet for that proposition?

6 MS. KERKHOFF: I don't, and I said that to them.

7 THE COURT: Okay. I mean, they related that to me.
8 And I'm not aware of any. So I'm about to ask them if they
9 have any that they want me to read.

10 But let me just ask what everybody's moving to
11 suppress. Can I just ask: Other than Ms. Lawson and
12 Ms. Macchio, are you going to be using cell phone data of any
13 other Defendant in this trial -- the charged -- the people
14 going to trial here?

15 MS. KERKHOFF: None of the other charged Defendants,
16 other than maybe to say that a phone was seized and we were
17 unable to retrieve data from it. I mean, to that extent.
18 But none of the other charged Defendants.

19 I understood from conversations with counsel on
20 Saturday they were expanding their suppression argument to
21 all physical evidence, plus body-worn camera, photos, even
22 field arrest photos. I'm not even sure I can open if I can't
23 talk about what happened at 12th and L.

24 THE COURT: So answer my next question: Are you
25 planning to refer -- well, are you planning to use in your

1 case in chief any seized items from any of these Defendants
2 such as backpacks, water bottles, et cetera?

3 MS. KERKHOFF: Yes.

4 THE COURT: Tell me what.

5 MS. KERKHOFF: With respect to Ms. Lawson, she had
6 all of the items that can be seen on her person, her helmet,
7 her medic bags, water bottles, all sorts of things like that.

8 Ms. Macchio, too, had bags.

9 Oliver Harris did not have a seized-as-evidence bag,
10 but it's visible that it was seized as prisoner's property.
11 And my understanding is they're objecting to even mentioning
12 that.

13 Alexei Wood had --

14 THE COURT: What bag are we talking about?

15 MS. KERKHOFF: Oliver Harris had a backpack -- black
16 backpack.

17 And Alexei Wood had his equipment, an ASP, a fake
18 press badge, clothing, goggles. Ms. Macchio had goggles as
19 well.

20 THE COURT: Are you planning to use those physical
21 items?

22 MS. KERKHOFF: Yes.

23 Ms. Armento had goggles as well and other clothing
24 items.

25 Ms. Simmons also had a distinctive bag and a

1 distinctive hat.

2 So, yes, we are using physical items or their
3 presence at the time of detention for each Defendant.

4 THE COURT: And so I'm just going to go down the
5 list here for those who have not filed a motion to suppress
6 up till now.

7 Ms. Weletz, on behalf of Ms. Armento, tell me
8 whether -- what your thinking was in waiting until the
9 weekend after jury selection after we had sat here and
10 discussed motions for many days, including a motions hearing
11 on motions to suppress by two Co-Defendants, how it is that
12 we came to the weekend before you decided to file a motion.

13 MS. WELETZ: Your Honor --

14 THE COURT: In fact, have you filed a motion? You
15 actually have filed one, I think.

16 MS. WELETZ: There had been a motion filed over the
17 weekend. Correct.

18 THE COURT: Yes.

19 MS. WELETZ: Your Honor, it came to light after the
20 discussions with your Honor at the end of the week,
21 specifically on Friday, when the Government was discussing
22 all of the different things that are -- allegedly have been
23 followed throughout the demonstration. So they were talking
24 specifically about a backpack, I believe, that had a water
25 bottle coming out of it.

1 And your Honor ruled -- or was forming a ruling on
2 Friday as to whether the Government could make a board that
3 they have now posted --

4 THE COURT: I didn't rule on anything. The
5 Government said that's what it planned to do. Of course, you
6 already knew that the Government planned to prove its case by
7 the physical appearance of your client and the things that
8 your client had with her that would show her to be a person
9 on videotapes.

10 So the revelation on Friday was that --

11 MS. WELETZ: Which exhibit --

12 THE COURT: -- you heard that they were going to
13 make an exhibit out of it?

14 MS. WELETZ: Well, the exhibit and the conversation,
15 your Honor, on Friday brought to light the fact that these
16 things are suppressible.

17 THE COURT: So what's your position as to what you
18 ought to be able to do now, since you haven't been, I don't
19 think, at the hearing that I was holding on the motion?

20 MS. WELETZ: I think that we would be able to -- I
21 should be able to make some sort of record on
22 cross-examination about the specific things that are
23 identified in the board that --

24 THE COURT: So you're not going to make me redo the
25 officer's testimony, for instance? You can rely on his

1 transcript at this point?

2 MS. WELETZ: Yes, your Honor.

3 THE COURT: So you would, though, want to
4 cross-examine him?

5 MS. WELETZ: I would briefly like to cross-examine
6 based specifically on the exhibits that the Government only
7 produced to us over the weekend.

8 THE COURT: So exactly -- I mean, let's say we were
9 all to agree on certain facts. I don't think the
10 Government's quarreling with the fact that police arrested
11 her and took those things from her or at least photographed
12 and observed them.

13 What points would you be making on
14 cross-examination?

15 MS. WELETZ: That it was an illegal and unwarranted
16 stop.

17 THE COURT: Well, that would be argument.

18 What points would you be making on cross? What
19 record would you be making?

20 MS. WELETZ: Just that the record -- that these
21 things were -- these specific items were followed throughout
22 the demonstration and that they're not identifiable as being
23 Ms. Armento, honestly.

24 THE COURT: But I think the Government's record
25 would be they didn't follow those things throughout the

1 demonstration such that police could say at the time of her
2 arrest that she had those things or that she was a person who
3 had been tracked through the demonstration with those things.

4 What they're saying is, like in *Carr*, basically,
5 they followed -- the police followed the demonstration and
6 that an inference by the standard applicable in a suppression
7 hearing is that they reasonably believed that whoever was
8 kettled at the end and arrested had been a part of the march
9 in such a way that they either were principals or aiders and
10 abettors at the riot.

11 MS. WELETZ: And I think that we can cross-examine
12 whether there was a reasonable belief that that those
13 200-plus individuals at 12th and L were part of the
14 demonstration.

15 THE COURT: So that's what you would want to be able
16 to do.

17 MS. WELETZ: Correct.

18 THE COURT: So can I ask: Putting aside your
19 specific arguments, everybody else, about whether or not
20 there was probable cause for everyone other than Ms. Macchio
21 and Ms. Lawson, who, of course, have attended their own
22 suppression hearing, are you going to be asking me to redo
23 the testimony of the officer or simply to cross-examine on
24 certain issues when we complete the hearing?

25 So I guess I'll just start with Ms. Jacques.

1 MS. JACQUES: Yes, your Honor.

2 I would not ask the detective to re-testify. I
3 actually have been present at the hearings and have heard his
4 testimony.

5 I would only ask briefly to cross-examine on behalf
6 of Ms. Simmons.

7 THE COURT: Okay. And can you just tell me what
8 specific additional record, other than what I've heard, you'd
9 be making factually. I'm not asking what your arguments
10 would be.

11 MS. JACQUES: Factually, I would just be
12 cross-examining the officer about the items that were posted
13 on the Government's board that --

14 THE COURT: In other words, to what -- to make the
15 point -- I mean, to what -- what factual point would you be
16 making about that? Because the Government would stipulate
17 that those things were either recovered or observed.

18 But I need to get a record from the Government as to
19 what items were recovered or observed. The fact of the
20 seizure is -- or what was seized I don't think is in dispute.

21 MS. JACQUES: I think the questions on
22 cross-examination would be to the context of where
23 Ms. Simmons was during certain events, what -- did he notice
24 or recognize the mask or the backpack that the Government is
25 alluding to, was she part of the activities as they -- and I

1 could go to specific activities when I question him -- but
2 what part did she specifically play, if any, in the
3 destruction and the riotous acts --

4 THE COURT: And --

5 MS. JACQUES: Using the Government's words.

6 THE COURT: Mr. Cohen, any different request?

7 MR. COHEN: No, your Honor.

8 THE COURT: So you aren't asking for a new direct
9 exam. You just want to be able to cross and you would be
10 establishing factually simply your position that there was
11 insufficient observation of your client to give rise to
12 probable cause?

13 MR. COHEN: At the time of arrest, yes.

14 THE COURT: And anything specific that you would be
15 making a record of?

16 MR. COHEN: No. Just asking the general question
17 if, at the time of the arrest, did you know.

18 THE COURT: Okay. And, Ms. Coleman, same question.

19 MS. COLEMAN: Same question, your Honor, and, also,
20 same position. No need to have the detective re-testify as
21 to all the matters.

22 THE COURT: And you'd be relying on a transcript or
23 have you been present?

24 MS. COLEMAN: Yes, your Honor. On the transcript.

25 THE COURT: Okay. And in terms of cross, factually

1 speaking, would you be making a record of anything in
2 particular that I should be aware of?

3 MS. COLEMAN: We would be, your Honor.
4 Specifically, you know, how the officer came to
5 associate this backpack and water bottle with Mr. Harris,
6 Mr. Harris's presence and role throughout the day, those
7 types of questions.

8 THE COURT: And I just think you all are actually --
9 I don't think you're understanding the Government's position
10 at the motion to suppress.

11 The Government's position is -- and it's an
12 interesting one -- they're kind of conceding that body cam
13 stuff, which may have been filmed at the time that officers
14 were out there, is not evidence they're relying on for
15 purposes of probable cause.

16 In other words, we could all debate whether the tree
17 fell in the forest and someone was there to see it. If it's
18 on your body cam, but you don't see it with your own two
19 eyes, does that mean you know it as of the time of arrest?

20 The Government's not taking the position that they
21 did. So they're not going to be relying on the tracking of a
22 backpack to establish probable cause to arrest.

23 They're relying on essentially the *Carr* case-type
24 rationale, which is the officer -- and if you've heard the
25 testimony or read the transcript, the detective is not

1 testifying that he could see a backpack or that officers
2 could see a backpack or that officers could see red
3 shoelaces.

4 What officers could see was a mass of people
5 traveling in cohesive fashion and the kettling at the end and
6 all the events that people observed about the riot without
7 any particularized testimony about any person at this table
8 until the time of arrest.

9 In other words, that as of the time of arrest, by
10 inference, your client is a person who was kettled at the
11 end, placed under arrest and photographed in whatever
12 clothing was worn and that that is the information known to
13 police at the time of the arrest.

14 They're not relying on having tracked individualized
15 information, though we all know it's on the videotapes.

16 Am I right about that?

17 MS. KERKHOFF: That is correct, your Honor.

18 And just to be clear, what we are tracking is
19 that -- and what the evidence we believe was elicited -- is
20 the group was moving in a cohesive fashion. Weapons
21 generally could be observed within the group.

22 THE COURT: I'm not asking for your entire argument
23 on the motion.

24 MS. KERKHOFF: Sure.

25 THE COURT: Nobody --

1 MS. KERKHOFF: *Carr* --

2 THE COURT: Nobody in this particular group is going
3 to show up in the detective's testimony until the time of
4 arrest in a particularized individual way.

5 MS. KERKHOFF: Not in a particularized,
6 individualized way that an officer would have been able to
7 say, "That person right there" -- "This person right there."
8 It truly follows the analysis in *Carr*, C-a-r-r.

9 THE COURT: So just so you know, they're conceding
10 that. There is no record of the tracking of any Defendant
11 here before arrest.

12 It's that the testimony about the demonstration is
13 what it is and, from that, the Government is asking me to
14 find probable cause, based on all the facts and circumstances
15 that Ms. Kerkhoff is arguing now, in the same manner as that
16 determined in *Carr*.

17 MS. COLEMAN: Your Honor, even though -- nothing
18 further, your Honor.

19 THE COURT: So given that --

20 MR. COHEN: Your Honor --

21 THE COURT: I don't know what the point of the cross
22 is because they're already conceding your point.

23 But here's what we're going to do: I am going to
24 let the Government open. And should there be a need to
25 strike portions of the opening after we complete the hearing

1 on Wednesday, I will do that. Opening statements are not
2 evidence.

3 And I will permit the Government to identify your
4 clients, to describe the items taken from them and to proceed
5 as if I have denied the motions to suppress.

6 These are eleventh-hour motions. The only motion
7 that was being litigated before me was a cell phone data
8 motion.

9 And to the extent that there was a footnote that
10 said something else, that was not really being addressed at
11 the time. I'm not saying you've waived it.

12 But what I am saying is we're going to open and
13 we're going to proceed and we are not going to make this jury
14 wait for eight people to argue something that I think the
15 Government's conceding.

16 And to the extent that I do have to strike things,
17 we'll get there. And in the end, you can take it upstairs if
18 you feel like it.

19 MS. KROPF: Your Honor, Sara Kropf.

20 Just to be clear, the reason we are not holding the
21 hearings before opening is this: We understand the
22 Government's position about when they used the backpack or
23 the water bottle or the helmet.

24 The issue is: We understand they plan to open on --

25 THE COURT: They do.

1 MS. KROPF: -- we can identify these people based on
2 using those items, which we have an argument were illegally
3 seized.

4 THE COURT: I understand.

5 MS. KROPF: And so --

6 THE COURT: So you're going to proceed as if I'm
7 denying that motion. If I do grant it, we'll figure out what
8 we're going to do.

9 But we're going to proceed as if I'm denying it. I
10 will allow the Government to proceed. Opening statements are
11 not evidence.

12 Shall we take a ten-minute break?

13 If there's any issue -- do I need to hear any issues
14 about openings? Objections? We don't like the Government's
15 demonstratives, whatever?

16 MR. LAZEROW: I would ask do we need to make -- I'm
17 sorry. Andrew Lazerow for Ms. Macchio.

18 When Ms. Kerkhoff identifies Ms. Macchio as a medic,
19 do I need to make an objection in opening to preserve it?

20 THE COURT: No. No.

21 MR. LAZEROW: Because our position, just so --

22 THE COURT: No. You don't need to. We know you're
23 presenting it. They will let you preserve it all day long.
24 You preserve it. You've moved under the Fourth Amendment to
25 suppress everything that officers saw, observed, heard,

1 et cetera --

2 MR. LAZEROW: Seized.

3 THE COURT: -- seized.

4 And in terms of statements -- I saw the word
5 "statements" in these motions for the first time, thank you
6 very much -- is there some statement of the Defendants that
7 we need to be litigating?

8 MS. KERKHOFF: My understanding is it was them
9 identifying themselves, booking questions, which are not --

10 THE COURT: So there's no actual statement of any
11 Defendant that you're going to be offering in your case in
12 chief that I need to address as a motion to suppress?

13 MS. KERKHOFF: No. No Fifth Amendment Miranda-type
14 statement. The Defendants are being processed and they are
15 communicating about, "This is my coat here. Can you take off
16 my coat? I'm hot," things like that.

17 THE COURT: Okay. So I know you're moving to
18 suppress everything. You filed something. Whatever you
19 filed, it counts, and you don't have to object in front of
20 the jury.

21 MR. COHEN: Brett Cohen for Mr. Wood.

22 I'm pretty sure that the Government is going to be
23 using a whole bunch of statements for Mr. Wood, the way the
24 Government announced it.

25 THE COURT: Other than his live stream?

1 MR. COHEN: I'm just saying on his live stream.

2 THE COURT: That's a separate matter because those,
3 of course, are not statements that would be subject to a
4 motion to suppress. That's an evidentiary matter.

5 MR. COHEN: Right. I understand.

6 The way the Government said that, it just seemed
7 like it included the live stream.

8 THE COURT: Anything before we do opening
9 statements?

10 How long is yours going to be, Ms. Kerkhoff?

11 MS. KERKHOFF: I think 35 to 40 minutes. And I have
12 two boards and a display that I've shown counsel. But I
13 would like to at least put the boards here. I believe this
14 is the only place to use them.

15 THE COURT: Is anybody's opening on the defense side
16 going to be longer than 30 minutes?

17 Everybody's shaking their heads no.

18 Excellent. Thank you.

19 And anything else we should address before we take a
20 break until the jurors are here?

21 All right. Thank you.

22 MS. KROPF: Sorry, your Honor.

23 Sara Kropf.

24 We have agreed amongst ourselves on the order of our
25 openings. It is a little out of the order of call.

1 THE COURT: And tell me.

2 MS. KROPF: I believe it's going Mr. Harris first,
3 Ms. Armento second, Ms. Simmons third, Mr. Wood fourth,
4 Ms. Lawson fifth, and Ms. Macchio sixth.

5 THE COURT: And so, in terms of cross-examinations,
6 are you also -- is somebody taking the lead or have you
7 arranged an order for each one?

8 MS. KROPF: We're doing --

9 THE COURT: For me, the default would be the order
10 in which everybody is in the indictment. And unless somebody
11 objects to whatever order you all come up with for any
12 particular examination, I'm not going to fuss at you.

13 But if there's any one Defendant who does object, I
14 need to know about it for any cross-examination or any part
15 of the process, because I would default back to the order of
16 the indictment if any one Defendant objects.

17 MS. KROPF: We understand. We've tried to
18 coordinate amongst ourselves for cross-examination who will
19 be taking the lead.

20 THE COURT: Great. Thank you.

21 So I just need to know from you if anybody in
22 particular objects at any point to the order in which you've
23 all decided to go.

24 Any one of you can trump everybody else, so to
25 speak, because I would go back to the order of the indictment

1 if there's an objection.
 2 Okay. I'll see you in ten minutes.
 3 (Thereupon a recess was taken, after which the
 4 following proceedings were had:)
 5 THE COURT: Good morning again. You can have a
 6 seat.
 7 THE DEPUTY CLERK: Re-calling from your Honor's
 8 trial calendar --
 9 THE COURT: I don't think we have to. No need to
 10 re-call the whole thing.
 11 THE DEPUTY CLERK: Okay.
 12 THE COURT: So are any lawyers missing from before?
 13 I think we lost a couple who were the motions people.
 14 No?
 15 Yes. Everybody's here.
 16 So we're going to pick up -- the jurors are all
 17 here?
 18 THE COURTROOM DEPUTY: Yes, your Honor.
 19 THE COURT: Is there anything before we bring the
 20 jury in and swear them?
 21 MS. KERKHOFF: What about Juror No. 10?
 22 THE COURT: 10. She's gone.
 23 MS. KERKHOFF: Okay. That was already done.
 24 THE COURT: Gone. We thanked her for her service.
 25 And she said she really did want to serve.

1 So we're going to bring the jury in, swear them.
 2 I'll instruct them first. Then we'll do openings.
 3 I'm thanking the court reporter for this. I needed
 4 to ask them about the names you all gave them that we didn't
 5 run by them before. So that's the first thing I'll do.
 6 Can I ask for the groups, who is opening? For
 7 instance, Ms. Heine, you get to open?
 8 MS. HEINE: Yes, your Honor.
 9 THE COURT: Ms. Coleman?
 10 MR. McCOOL: Mr. McCool.
 11 THE COURT: And for -- that's the whole team.
 12 And for Ms. Armento, who is opening?
 13 MS. WELETZ: Ms. Carrie Weletz. I will be. Thank
 14 you, your Honor.
 15 THE COURT: Great. Thank you.
 16 And everybody else is solo.
 17 (Whereupon, the jury entered the courtroom at
 18 10:47 a.m. and the following proceedings were had:)
 19 THE COURT: Good morning, ladies and gentlemen.
 20 THE JURY: Good morning.
 21 THE COURT: Hope you all had a great weekend.
 22 Thanks to you all for being here.
 23 Ladies and gentlemen, you can all have a seat.
 24 But you all should remain standing, ladies and
 25 gentlemen of the jury. Ms. Lis is now going to swear you as

1 a jury.
 2 (Whereupon, the jury was duly sworn and impaneled.)
 3 THE COURT: Ladies and gentlemen, before we begin
 4 the trial, I have some preliminary instructions for you now
 5 that you've been sworn.
 6 These instructions will not be a substitute for the
 7 instructions that you're going to get at the end of the trial
 8 just before you retire to consider your verdicts. These are
 9 simply to give you a feel for what's going to go on during
 10 the trial and for what your jobs will be.
 11 I'm just making sure that Seats 1 and 2 are more
 12 comfortable than the chairs we had the other day for you.
 13 JUROR 2: Yes.
 14 JUROR 1: Thank you.
 15 THE COURT: I'm glad they are.
 16 Now, let me know -- as you just took your seats, you
 17 found a notebook waiting forgot you. That's because I permit
 18 jurors in this courtroom to take notes during the trial and
 19 to have their notes with them during deliberations.
 20 I want to emphasize that you don't have to take
 21 notes if you don't want to. It is entirely up to you.
 22 Indeed, if you think that note-taking would distract
 23 your attention from the testimony or the demeanor of the
 24 witnesses, feel free not to take notes. If you think that
 25 note-taking may help you to better remember what's been said,

1 then feel free to take notes. I leave it up to each of you.
 2 If you do take notes, please remember that your
 3 notes are only intended to be a help to your memory. They
 4 are not evidence in the case, and they should not take
 5 precedence over your own independent memory of the evidence.
 6 Whenever there's a recess in the trial, I'll ask you
 7 to please leave your notebooks on your chairs. Those will be
 8 kept there during short recesses. During longer recesses,
 9 they'll be collected and kept under lock at key. At no time
 10 either during or after this trial will anyone ever look at
 11 any of the notes you've taken.
 12 At the end of the trial, after you have returned
 13 your verdicts, your notebooks will be collected. The notes
 14 will be torn out of them and destroyed. And, once again, no
 15 one will ever look at any of the notes that you have taken.
 16 The notes that you take are only to help your
 17 memory. During deliberations, each of you should rely on
 18 your own memory of the evidence and you shouldn't be
 19 influenced by the fact that another juror has taken notes.
 20 Now I'm going to talk briefly about this case, about
 21 some of the procedures that we're going to use, and about
 22 some of the rules of law that will be important.
 23 This is a criminal case, which has been begun by the
 24 United States. The name of the case, as I've told you, but
 25 I'm going to repeat it for you now, is United States against

1 Michelle Macchio, Jennifer Armento, Christina Simmons, Alexei
2 Wood, Oliver Harris, and Brittne Lawson.

3 Each of these individuals is charged in a document
4 called an indictment. Each of them is charged with the
5 offenses of engaging in a riot, inciting a riot, conspiracy
6 to riot, and destruction of property.

7 You should understand that an indictment is not
8 evidence. It's just a formal way of charging a person with a
9 crime in order to bring him or her to trial.

10 You must not think of the indictment as any evidence
11 of the Defendants' guilt, and you may not draw any
12 information of guilt because he or she has been formally
13 charged.

14 Each count charges a separate offense. Moreover,
15 each Defendant is entitled to have the issue of his or her
16 guilt as to each of the crimes for which he or she is on
17 trial determined from his or her own conduct and from the
18 evidence that applies to him or her as if the Defendant were
19 being tried alone.

20 You should therefore consider separately each
21 offense and the evidence that applies to it, and you should
22 return separate verdicts as to each count as well as to each
23 Defendant unless I specifically instruct you to do otherwise.

24 I will later instruct you that the fact that you --
25 may find may any one Defendant guilty or not guilty on any

1 one count should not influence your verdict with respect to
2 any other count for that particular Defendant or with respect
3 to any other Defendant as to that count or any other count.

4 I also will instruct you later that at any time
5 during your deliberations you may return your verdict of
6 guilty or not guilty with respect to any Defendant on any
7 count.

8 And so the point of this instruction is that each
9 person charged is entitled to have her or his guilt
10 determined separately and individually.

11 In telling you how the trial will proceed, I will be
12 referring to the Government and to the Defendant. When I
13 refer to the Government, I'm speaking of the Assistant United
14 States Attorneys in the case, Ms. Kerkhoff and Mr. Qureshi.

15 When I speak of the Defendants, I'm speaking either
16 of the individual Defendants themselves or of their lawyers.

17 And so now I'm going to just do a matchup here.

18 Well, for Ms. Macchio, who is sitting at the end
19 there, her lawyers are Ms. Heine, Mr. Lazerow, Ms. Whitt
20 and -- I'm sorry? --

21 MS. WELETZ: Ms. Copsey.

22 THE COURT: -- Ms. Copsey.

23 For Ms. Armento, who is now standing, her lawyer is
24 Ms. Weletz and Mr. Healy.

25 Thank you.

1 For Ms. Simmons, who is down there on the end, her
2 lawyer is Ms. Jacques.

3 For Mr. Wood, who is over there in the back, his
4 lawyer is Mr. Cohen.

5 For Mr. Harris, who is sitting here at the end
6 towards me, his lawyers are Ms. Coleman and Mr. McCool.

7 And for Ms. Lawson, her lawyers are Ms. Kropf -- and
8 I'm sorry, sir --

9 MR. PORTNOV: Portnov. Mr. Portnov.

10 THE COURT: -- Mr. Portnov.

11 And in a few minutes I'm going to be reading some
12 other names to you just to make sure you don't know any of
13 these people.

14 So the point is you may hear me refer to the
15 Defendant or the Defendants and, when I say that word, I mean
16 either of them or their lawyers.

17 Very often I'll say the Defendant in the singular
18 and what I mean is, for each Defendant, you take an
19 individual consideration.

20 As the first step in the trial of the case, the
21 Government and the Defendant will have a chance to make
22 opening statements. The Government must make an opening
23 statement at the beginning of its case.

24 The Defendant may make an opening statement right
25 after the Government's opening statement, may decide to give

1 an opening statement later or may choose not to give any
2 opening statement at all. No Defendant is required to make
3 an opening statement.

4 The opening statements of the lawyers are not
5 evidence. They are just to help you understand the evidence
6 that the lawyers expect will be introduced.

7 After the opening statements, the Government will
8 introduce evidence in support of the charges. After the
9 Government presents its evidence, each Defendant may present
10 evidence, but he or she is not required to do so because the
11 law does not require a defendant to prove his or her
12 innocence or to produce any evidence.

13 During the testimony of witnesses, ladies and
14 gentlemen, you sometimes may hear a lawyer ask a question
15 that contains an assertion of fact.

16 I instruct that you, no matter how convinced a
17 lawyer sounds about the facts that he or she puts into a
18 question, that the question itself is not the evidence in the
19 case. It's the witness's answer to the question that is the
20 evidence, not the lawyer's question.

21 At the end of all the evidence, each party will have
22 a chance to make oral arguments to support its case. The
23 statements of the lawyers in their closing arguments, just as
24 in their opening statements, are not evidence in this case.
25 They only are intended to help you understand the evidence

1 and what each party claims the evidence shows.

2 Finally, at the end of all of the evidence and the
3 arguments for both sides, I will instruct you on the rules of
4 law that you are to apply in your deliberations when you
5 retire to consider your verdicts. Your verdicts must each be
6 unanimous.

7 Now I'm going to speak with you briefly about my job
8 and your job. That is the function of the Court and the
9 function of the jury.

10 My job is to conduct the trial of this case in an
11 orderly, fair and efficient manner, to rule on questions of
12 law that come up during the trial, and to instruct you on the
13 law that applies to this case.

14 It is your duty to accept the law as I state it to
15 you.

16 Your job, ladies and gentlemen, is to determine the
17 facts. You and only you are the judges of the facts. You
18 alone determine the weight, the effect, and the value of the
19 evidence as well as the believability or what we call the
20 credibility of the witnesses.

21 You must consider and weigh the testimony of all the
22 witnesses who appear before you in this case, and you alone
23 are to decide whether to believe any witness and the extent
24 to which any witness should be believed.

25 If there is any reference by me or by the lawyers in

1 the case to the evidence and that reference does not coincide
2 with your own memory of it, it is your memory that should
3 control during your deliberations.

4 Additionally, because you are required to judge this
5 case based only on the evidence presented in the courtroom,
6 at no time should any juror ever attempt to visit any of the
7 locations described in the testimony or in any other way try
8 to investigate this matter.

9 What I'm really saying is that you have to stay off
10 the web entirely about this case. You can't Google names.
11 You can't look up the time of sunset or sunrise or the
12 temperature. You can't look up the definition of words.

13 You must not do any online research into anything
14 about this case at all. You also must not go to any of the
15 locations and look around for yourself. You must rely only
16 on what you hear in this courtroom in deciding this case.

17 During the trial, a lawyer on one side may object
18 when another lawyer offers argument or testimony or other
19 evidence that the objecting lawyer believes is not
20 admissible.

21 Please understand that it is the responsibility of
22 the lawyer to make objections to argument or evidence that he
23 or she believes is improper or not admissible, and you must
24 not be prejudiced against a lawyer who makes such objections.

25 If during the trial I sustain an objection by one

1 lawyer to a question asked by another lawyer, you are to
2 disregard the question and you must not speculate or guess as
3 to what the answer would have been. So the word "sustained"
4 means ignore it.

5 Every Defendant in a criminal case is presumed to be
6 innocent, and this presumption of innocence remains with the
7 Defendant throughout the trial unless and until he or she is
8 proven guilty beyond a reasonable doubt.

9 The burden is on the Government to prove the
10 Defendant guilty beyond a reasonable doubt, and that burden
11 of proof never shifts throughout the trial.

12 If you find that the Government has proved beyond a
13 reasonable doubt every element of an offense with which a
14 defendant is charged, then it is your duty to find him or her
15 guilty of that offense.

16 On the other hand, if you find that the Government
17 has failed to prove beyond a reasonable doubt any element of
18 an offense with which a defendant is charged, then you must
19 find the Defendant not guilty of that offense.

20 Until this case is submitted to you at the end of my
21 final instructions, ladies and gentlemen, you must not
22 discuss it with anyone, not with parties or witnesses or
23 anyone else connected with the case or even with your fellow
24 jurors, friends or members of your family.

25 And I remind you of my instruction before that you

1 must not communicate online with anyone about this case, no
2 blogging, Facebook posting, texting, Tweeting or any
3 emailing, any other online communication about the case.

4 If at any time during the trial anyone should
5 attempt to discuss the case with you, you should refuse to do
6 so and you should advise me immediately through the marshal
7 or the courtroom clerk.

8 You should not tell your fellow jurors or anyone,
9 other than me, the marshal or the clerk, if an attempt is
10 made to talk with you about the case. We'll follow up with
11 you as we think is appropriate.

12 You may see the lawyers, the parties or the
13 witnesses in the courthouse corridors or near the courthouse
14 during recesses in the trial. This is a public courthouse.
15 Everybody gets to be here. And you just may run into people
16 or pass by people.

17 In order to avoid even the appearance that they're
18 trying to talk to you about the case, they may not even say
19 hello or acknowledge you in any way. I assure you that this
20 is not because they're discourteous or unfriendly people.
21 They do this because they take very seriously the requirement
22 that they not have any contact with you or even appear to be
23 having any contact with you.

24 I'm encouraging you to keep your juror badges on and
25 visible when you're out and about in the courthouse or even

1 outside. It's important that you ignore other people if they
2 seem to be talking about the case unwittingly. And, of
3 course, do report it to us if you hear anything or feel that
4 you have been approached in any way.

5 You may have noticed that there are 14 -- well,
6 no -- there are 15 of you in the jury box, and many of you
7 may know that only 12 of you will retire to deliberate in
8 this case at the end of the trial.

9 The reason that we have 15 of you is that 12 of you
10 are regular jurors who will deliberate at the end of the
11 case. Three of you are alternate jurors who would deliberate
12 in the place of a regular juror if for some reason a regular
13 juror became unavailable to serve.

14 In many courtrooms, the alternates jurors are always
15 the last few jurors in the box. In this case, however, we
16 have randomly seated the alternates in the jury box. What
17 that means is that any three of you could be the alternates
18 jurors and that all 15 of you should assume that you are
19 regular jurors who will deliberate at the end of the case.

20 Each of you therefore should give the case your
21 fullest and most careful attention.

22 Ladies and gentlemen, it's important that you keep
23 an open mind and that you not decide any issue in this case
24 until the entire case has been submitted to you with my final
25 instructions.

1 As you can see, there's a court reporter sitting
2 here taking down everything that's being said during the
3 trial. She will not, however, be producing a transcript that
4 you'll have available to you during deliberations.

5 You will have to rely on your own memories of what
6 each of the witnesses has said. And, therefore, it is
7 particularly important that you pay full attention at all
8 times.

9 I thank you for your attention and your patience.

10 I need to ask you about some names before I let
11 anybody do opening statements. And so I'm going to do that.

12 There are some additional lawyers whom you may hear
13 from in this case, and I just want to give you the names in
14 case you know any of them. And some of them you've just
15 heard.

16 Christina Copsey, Elena Whitt, Michael Kennedy,
17 Daniel Portnov, Jonathan Lenzner. All of those are lawyers.

18 And then there are two additional police officers
19 whom you may hear from or about: Daniel Chau -- T-h-a-u --
20 and Michael Whiteside.

21 If any of you thinks you know any of these people,
22 could you please raise your hand.

23 I see no hands.

24 Thank you very much. I take that to be that you
25 don't know them.

1 We are now going to proceed with the Government's
2 opening statements.

3 Ms. Kerkhoff.

4 MS. KERKHOFF: Thank you.

5 Good morning.

6 THE JURY: Good morning.

7 MS. KERKHOFF: Mi Kim. Mi Kim owns the Atrium Café.

8 It's one of those small sandwich shops and kind of opens
9 about 7:00 in the morning, just early enough for you to get a
10 breakfast sandwich on your way to work or after you get
11 there. It kind of closes around 3:00 or 4:00. So if go
12 there for a late lunch, you might miss out.

13 But Mi Kim works very hard. She owns this business
14 by herself. She works hard. When she arrived at her shop,
15 she found it shattered, windows broken.

16 She bore the stress of that. She had to pay for
17 that. She was responsible for the damage that was done to
18 her shop during the riot.

19 Luis Villareal, who drives a limo, has driven for a
20 long time. He's proud of his job. He works hard at it. He
21 will tell you he works hard to provide for his family.

22 As he sat in his limo, having dropped off his
23 customers, waiting for them to return, he hears, feels,
24 banging.

25 He looks out and sees a sea of black masks, a

1 massive group of people. He sees them destroying a bus stop
2 near his limo. He gets out. He runs to the passenger's side
3 and then he watches as multi-people take crowbars, hammers,
4 rocks to his limo.

5 And he stands there and then one of them throws
6 something at him, a bag with a half-eaten sandwich. After
7 that, he sees a lit object tossed into his limo. He gets it
8 out, and he notices he's been cut.

9 Aurelia Taylor: She works hard, too. She works at
10 a Starbucks. And she and a dozen other customers had to dive
11 for cover as the massive two-story plate glass windows that
12 surrounded her Starbucks where she works were destroyed with
13 crowbars, with hammers, with bricks, with entire trash cans
14 tossed through the window as they hid under the tables trying
15 to protect themselves from the falling glass.

16 Andrew Lapp, Rance Knapp, Fitsum Menna, Lee Meadows:
17 These are all people who went to work on January 20th, 2017,
18 here in DC, who worked here in this city, all people who were
19 impacted by the riot, the riot that each of these
20 Defendants -- each of these six Defendants participated in.

21 And that's why we're here today. We're here today
22 because each of the Defendants -- Michelle Macchio, Christina
23 Simmons, Brittne Lawson, Oliver Harris, Jennifer Armento and
24 Alexei Wood -- made a choice on January 20th, 2017.

25 They made a choice to participate in a riot, to

1 participate and be a part of violence and destruction. Each
 2 of them made that choice, and each of them played a role.
 3 They played a role with others, many others, hundreds.
 4 But today, this day, we talk about them. We talk
 5 about their role.
 6 So to understand -- to understand the role that each
 7 of the Defendants played, to understand how this violence and
 8 destruction happened and the choice they made to be a part of
 9 it, you have to understand a bit about where it traveled, the
 10 riot, how long it went, the duration, the location.
 11 And to do that, we're going to take you to downtown
 12 DC, and you start at Logan Circle in Northwest DC.
 13 Starting at Logan Circle, on the morning of
 14 January 20th, starting shortly after 10:00 a.m., a massive
 15 group, hundreds of people, formed a black bloc, a group
 16 dressed all alike, many with masks covering their faces, many
 17 with weapons.
 18 This group moved together through the city. And you
 19 will see individuals come from within the group, come out,
 20 break property, run back in, get reabsorbed by the group as
 21 it continues to move.
 22 This massive group, a sea of black masks, 16 city
 23 blocks that moved for 33 minutes, breaking, destroying,
 24 frightening along the whole way.
 25 So you start at Logan Circle.

1 (Displaying video on the video screen.)
 2 The group traveled south heading towards the mall on
 3 13th Street. You can see we've identified the BP gas
 4 station, coming down as it passes over from N to M, then past
 5 Massachusetts, block after block after block. You'll see an
 6 Au Bon Pain. The group continued moving down to K Street,
 7 where it turned right.
 8 The limousine located at 13th and K. The group then
 9 moved through the park, Franklin Square, came out on other
 10 side on I Street, traveled down I Street.
 11 You see the Starbucks, the Bank of America, the Cafe
 12 Atrium located there, too. It moves down, circles around
 13 past New York Avenue, comes to the McDonald's at 13th and
 14 New York, heads back up 13th Street, enters Franklin Square
 15 park again, regroups, re-forms again, this massive park,
 16 comes out, hits 14th Street, travels past the Crowne Plaza --
 17 there's a Hamilton's Restaurant; there's a Starbucks there --
 18 turns right onto L Street and then travels from 14th, across
 19 L Street, past 13th and, ultimately, finally, 16 blocks,
 20 33 minutes in, the police are able to form a line and the
 21 police are able to stop the group.
 22 That's how long the group traveled: 16 blocks,
 23 33 minutes.
 24 Now, the route itself becomes important, and the
 25 distance traveled becomes important as it relates to what

1 each Defendant knew. So we just watched the visual of that.
 2 This, Government's Exhibit 301, shows that same map.
 3 The group starts at Logan Circle. And let me be
 4 clear what the evidence will be in this case. This was not
 5 some sort of spontaneous gathering. This was planned. This
 6 was advertised. There were planning meetings. "Come to
 7 Logan Circle, 10:00 a.m., anti-fascist, anti-capitalist bloc,
 8 wear all black."
 9 And at Logan Circle, before the group even begins to
 10 move south, witnesses see the sea of black masks in black
 11 clothing. Witnesses see weapons, flares, fireworks,
 12 crowbars, hammers.
 13 And at 10:19 a.m., this massive group of hundreds of
 14 people sets off south down 13th Street. Before it even gets
 15 to past this block, the spray paint starts. Tags a police
 16 car sitting right here south of Logan Circle. Officers
 17 standing there.
 18 The group continues moving. Police do not do
 19 anything. They follow. They just follow.
 20 The group comes down 13th Street. People within the
 21 black bloc break off. They run at the BP gas station, throw
 22 bricks, break items.
 23 And inside of that gas station is a woman by the
 24 name of Fitsum Menna. She works there. She's frightened.
 25 She's scared. She even puts a case of drinks up against the

1 door to try to prevent people from coming in to attack.
 2 She can't tell you who broke what. And she'll tell
 3 you why. They were all dressed the same. They looked the
 4 same. They ran in and they went back into the group.
 5 Individuals come from within the group. They start
 6 tearing the trash cans off the streets, the newspaper stands,
 7 lighting on fire, and still traveled south, continuing,
 8 moving as a group.
 9 You can hear cheers when the BP is attacked. You
 10 can hear directions, instructions, being given from within
 11 the group.
 12 Newspaper stands, trash cans. They litter the whole
 13 street. The officers who are following can't even drive down
 14 the street. Cars can't move.
 15 They have to get out of their vehicle and physically
 16 move all of the trash cans, the newspaper stands, just to get
 17 down the street to try to follow this group. And still the
 18 police just follow.
 19 The ABP, Andrew Lapp, who's working. Andrew Lapp
 20 will tell you he drove to work that day. He passed Logan
 21 Circle, and he saw the group. Andrew Lapp's worked at ABP.
 22 He's been in DC for years. He says, "I've seen
 23 demonstrations. I've seen protests. I immediately parked my
 24 car in a garage because I believed it would be damaged. I
 25 usually park on the street." He paid to put his car in a

1 garage before anything had happened because of what he could
2 see.

3 He gets to that ABP. He's doing his job. And he
4 hears screaming from one of his employees. The ABP is being
5 attacked.

6 (Whereupon, a certain video was published in open
7 court.)

8 MS. KERKHOFF: Andrew Lapp runs out. He tries to
9 see the people who are damaging his job, his place of
10 employment.

11 And he will tell you they just got reabsorbed in the
12 group. They kept coming out, going back in, breaking and
13 pulling, moving together.

14 Past 13th Street. Past the ABP. They take a right
15 on K Street. They take a right on K Street. Mr. Villareal's
16 limo is on the right side. There's a bus shelter across the
17 street at the north side of the park.

18 (Whereupon, a certain video was published in open
19 court.)

20 MS. KERKHOFF: Mr. Villareal will tell you --
21 watched the --

22 THE COURT: Can you turn that off.

23 THE COURT REPORTER: I'm sorry. I missed something.

24 THE COURT: Mr. Villareal will tell you what?

25 MS. KERKHOFF: He watched that bus shelter be

1 shattered.

2 On the screen right now, you can see Mr. Villareal.
3 He's standing by his limo as the hammers, the crowbars --
4 he's standing as it's being attacked.

5 (Whereupon, a certain video was published in open
6 court.)

7 MS. KERKHOFF: After the limousine is attacked,
8 trash cans are pulled in the street. The group comes down to
9 Franklin Square Park.

10 I'm going to switch to Government's Exhibit 302.

11 Franklin Square Park. The group moves through this
12 park. It's an incredibly large park. You will see video of
13 it. You will see photographs of it. Very large park.

14 At this point, the police continue to just follow.

15 The group has destroyed windows. They've got the
16 BP, the ABP, the limo, countless newspapers, trash cans.
17 They're lighting flares and fireworks in the park.

18 And a thin line of mountain bike officers, no riot
19 gear, just their bikes and bike helmets, form on I Street
20 just south of the park. Their job on the inauguration was to
21 be mobile.

22 This was the inauguration. Roads were shut down.
23 So they were on mountain bikes. They stand and watch the sea
24 of black masks coming towards them. And all they have is
25 their bike. They literally just move their bikes in front of

1 the windows, about 10 officers standing there.

2 One of those officers is Officer Ashley Anderson.

3 She doesn't normally work downtown. She works in the Seventh
4 District. And she's standing there because that was her
5 assignment that day.

6 And she moves her bike and she's watching hundreds
7 of people pouring out of the park. She can see weapons. She
8 can see and hear instructions, fireworks, flares, telling
9 people what to do, "Move together. Stay tight. Work as a
10 group."

11 She's watching and she almost didn't see it, the
12 brick that is thrown at her, the brick that is tossed at her
13 and hits her bike. She has no face shield. She has no riot
14 gear.

15 The group -- the individuals within the group are
16 throwing bricks and rocks at officers and people. And still
17 what did that line of 10 officers do? They put their bikes
18 there and they stood.

19 And then -- then it explodes. Then the destruction
20 and violence escalates.

21 (Whereupon, a certain video was shown in open
22 court.)

23 MS. KERKHOFF: Starbucks, the Bank of America, and
24 just past that, that's the Atrium Cafe, the Cafe Atrium
25 Ms. Kim owns. It was closed that day, but it did not stop.

1 You'll hear and see video from inside that

2 Starbucks. The dozen customers crouched under tables as
3 those plate glass windows rained down on them. And still the
4 group moved.

5 You'll see the video that shows people coming from
6 within the group, the black bloc, running out, breaking,
7 coming back in, running out, tearing newspapers, coming back
8 in. And still the group moved together.

9 Officer Anderson will tell you, "I couldn't stop it.
10 You couldn't tell who was doing what because they all dressed
11 the same because they seemed to be working together, moving
12 together, reabsorbing. And I couldn't go in there. They had
13 weapons. What did I have? There were hundreds of them."
14 And she'll tell you she felt helpless.

15 And as that black bloc moves down I Street, crowbars
16 begin to pry up those big cement pavers, breaking, more
17 bricks, more rocks, more weapons. And the police move
18 behind.

19 Now, at this point, this destruction has gone on for
20 block after block after block, minute after minute. So the
21 police try to form a line -- form a line as the group moves
22 south here on I Street, moves past the Bobby Van's. And
23 sirens are going. The police are trying to move.

24 And what does the group do? Individuals within the
25 group break at the Bobby Van's. They break at the ATM on

1 I Street. They move towards New York Avenue, coming around
 2 here. The police form a line. They try to disperse them.
 3 They try to try spray.
 4 And the group turns around. It re-forms again in
 5 that park. It comes back together, runs down New York Avenue
 6 towards 13th Street, moves together again to the McDonald's.
 7 It moves together and continues destroying.
 8 (Whereupon, a certain video was shown in open
 9 court.)
 10 MS. KERKHOFF: At this point, the police try to
 11 disperse the group again. They try. They try at 13th and
 12 New York.
 13 The group turns back up and enters the park.
 14 Now, there are no officers in front. The park is
 15 not surrounded. Officer Anderson will tell you she and there
 16 was about nine other officers on their mountain bikes and
 17 some officers on scooters -- they're behind them.
 18 The problem is the police are behind. They cannot
 19 get in front of them because the group is moving together.
 20 It's moving quickly. And it comes across the park.
 21 At this point, the sirens are going. The police
 22 have used pepper spray. The police are trying to stop this.
 23 Many people are walking away. But hundreds remain.
 24 They come out of this park and re-form again, move
 25 back up 14th Street, north. This is where the Crowne Plaza

1 is. There's a Hamilton's at the corner. There's are cameras
 2 located all along the Crowne Plaza. Windows are smashed at
 3 the Hamilton's.
 4 At the front entrance, Rance Knapp, a man who's
 5 worked for many years at the Crowne Plaza, hears and sees --
 6 is it possible not to hear and see? -- customers and even
 7 just people on the street are frightened.
 8 They're running inside. Glass bottles are being
 9 thrown at people simply standing. He pulls everyone inside
 10 and he locks the door to the hotel. He locks it for safety.
 11 And the group continues on 14th Street, continues
 12 moving down past that locked door towards the Starbucks
 13 that's located at the Crowne Plaza.
 14 As the group moves, again, an individual comes from
 15 within the group.
 16 (Whereupon, a certain video is displayed in open
 17 court.)
 18 MS. KERKHOFF: The group is turned onto L Street.
 19 It travels another two blocks.
 20 Glass continues to break and shatter, commercial
 21 establishments, newspaper stands, trash cans. Officers have
 22 those parking stamp placards tossed at them. Patio chairs
 23 from the Maddy's is being thrown at officers, knocks someone
 24 off a scooter.
 25 One of those mountain bike officers that works with

1 Officer Anderson, the one that has no face shield, no riot
 2 gear, rides his bike and tries to stop the person that's
 3 tossing the patio chairs into the street, tossing them at
 4 officers.
 5 And he collides. His name is Officer Harrison
 6 Grubbs. He breaks his wrist. And the sea of black masks
 7 move past him.
 8 Finally, at 12th and L, what's left of Officer
 9 Grubbs's mountain bike unit and a handful of officers on
 10 scooters, with the motorcycles -- they call them the scoot
 11 squad -- they form a line end to end here, less than two
 12 dozen officers facing several hundred, a sea, of black masks
 13 with weapons.
 14 As the officers moved -- you'll hear from many of
 15 them -- they are officers on foot coming from behind.
 16 Officer Anderson and her mountain bike squad and a couple of
 17 scooters get in front.
 18 So you have officers moving from behind, officers in
 19 front, trying to stop this group, this group that is moving
 20 together, working together.
 21 As they form a line, you can see -- you'll see it in
 22 the video -- individuals within that black bloc turn around.
 23 They got officers coming from behind. They've got about
 24 20 stretched across the whole street in front.
 25 They form in the middle of the street. They move to

1 one side. And you can hear the voice say, "We're gonna do a
 2 countdown. Ten, nine, eight, seven...."
 3 And as the group counts down, Officer Anderson and a
 4 handful of other officers stand there, waiting. And they
 5 know -- you can hear it -- they're gonna charge. They're
 6 doing a countdown. And they stand there.
 7 And several hundred charge at the part of the line
 8 on the side of the corner. 60 to 70 break through. They
 9 just run over the officers. Those officers stand up. They
 10 use those batons. They push them back. They use their
 11 spray. "Get back."
 12 Finally, they stop the group. Finally, 16 blocks,
 13 33 minutes, the group is stopped. Each of the Defendants
 14 were in that group.
 15 Now, this trial, you will not hear the Government
 16 present evidence about political opinions or disagreements or
 17 dissent. That's not what this trial is about.
 18 This is DC. We know protests. We know dissent.
 19 They can be powerful. They can be beautiful. They can
 20 effect change.
 21 But this is about violence and destruction. The
 22 video evidence, the witnesses, the photographs, what you will
 23 see and hear in this case, this isn't a protest.
 24 The Government's also not going to present evidence
 25 to you about the Defendants' opinions or emotions.

1 January 20th, 2017, Inauguration Day, people are
2 allowed to have emotions. They're allowed to feel what they
3 want, frustration, disappointment, happiness, hope, despair,
4 even anger.

5 This is not about the Defendants' emotions or
6 feelings. It's about their choice to express themselves by
7 acting with violence, with destruction. That is why we're
8 here. Violence and destruction was a choice, and they made
9 choices that day to participate in it.

10 It is the choice, it is the conduct, that is the
11 crime.

12 So we have each Defendant here today. And today is
13 their day. I told you at the beginning you're going to hear
14 evidence that there were a lot of people arrested, a lot of
15 people who participated. This is about these Defendants this
16 day.

17 Now, in this trial, you will see, hear, countless
18 videos, countless photographs, evidence in this case to show
19 you what happened during the riot.

20 This is an era of cell phones. It's an era where
21 everyone can be a photographer, if they want, and post it.
22 There's a lot of video. Officers were wearing body-worn
23 camera. There's a lot of video in this case.

24 And you're going to get to see the video, the video
25 that helps show you what each Defendant did in this riot,

1 what their specific role was, how they chose to participate
2 in the riot.

3 You will get to be the detectives, to look at the
4 videos, to compare it, to say for yourself, "Yes. That is
5 them" or, "No, it's not."

6 Defendant Oliver Harris: Now, Mr. Harris on January
7 20th, 2017, hid his face with a mask. That mask comes off
8 today.

9 But you will see the video evidence, the Defendant
10 Harris, how he dressed, his all-black clothing, with his
11 black mask, with a backpack that had a water bottle in it,
12 white strings on his hoodie, one longer than the other on the
13 same side, zipped up the middle, had a little bit of a white
14 remnant.

15 Oliver Harris was in Logan Circle. Oliver Harris
16 was present throughout the whole length of the 16 city
17 blocks, of the 33 minutes. Oliver Harris can even be seen on
18 video watching that Starbucks get destroyed.

19 And Oliver Harris rejoined that group, rejoined that
20 black bloc, again and again and again, chose to participate,
21 to move with it, to be a part of it.

22 And as the police were trying to stop that line,
23 Oliver Harris started to change his clothes, pulled down his
24 mask so you could see his face, began to take off those black
25 clothes to other clothes he had on underneath, all of which

1 you will get to see.

2 Jennifer Armento: You will see the video of
3 Jennifer Armento as well. She, too, decided to hide her face
4 that day. She brought with her goggles and other items.

5 She, too, tried to start changing as the police were
6 moving in, taking off her goggles, changing out of some of
7 her clothes.

8 But you will see that video evidence and you will
9 see Jennifer Armento again and again with this black bloc,
10 moving with them, re-forming with them, staying with them,
11 traveling with them.

12 Christina Simmons: Christina Simmons, very short
13 stature. You'll see this for yourself as well. She had a
14 unique backpack, one that was seized as evidence. Stripes.
15 You can see it on videos.

16 She also had a hat that had a skull on it that can
17 cover the face. So despite her short stature, you can see
18 the peeks and the glimpses of the hat and the bag. You can
19 see, too, that she tries to change after the police stop.

20 Brittne Lawson: Now, Brittne Lawson was present as
21 a medic that day. You see, when I told you this was
22 planned -- and you will have evidence of these planning
23 meetings talking about the anti-capitalist, anti-fascist
24 bloc -- this was planned.

25 It was planned that they would bring their own

1 street medics, people to render aid to the participants in
2 the black bloc, people to bring things like spray for when
3 the police use pepper spray to wash out the eyes.

4 This isn't the first day at a charity walk. Medics
5 with tourniquet kits and gauze, medics ready for the fight.
6 And Ms. Lawson was one of those.

7 And Ms. Lawson moved with the group, traveled with
8 the group, stayed with the group, worked with the group,
9 because her role was to aid them if they got hurt.

10 And that was part of the planning. Part of the
11 planning was, you'll hear, "We need scouts to tell us where
12 the police are. We'll have medics." There were even
13 discussions about what to do if arrested, jail solidarity,
14 "How arrestable is this? When we meet up later, no window
15 breaking later. Wear all black. Have your change of clothes
16 so you can change out of it when we're done."

17 These are part of the meetings to put this together.
18 This was not spontaneous. This was not a random, unplanned
19 act.

20 Now, Michelle Macchio also moved with the group,
21 also said she was a medic. But, unlike Ms. Lawson, she
22 didn't put red tape on herself or designate herself as she
23 moved with her goggles and other things.

24 She was fully masked, fully protected, fully
25 covered, fully ready to participate with this black bloc,

1 fully ready to move with the group, and she did again and
2 again. She re-formed with them. She went back out for more
3 destruction.

4 And, finally, Alexei Wood. Now, Alexei Wood did not
5 hide his face. Alexei Wood, in fact, showed it because he
6 live-streamed the whole event, PR, live-streamed it on his
7 phone to anyone that wanted to watch.

8 And because of that live stream, you can hear him
9 cheering when the destruction happens. You can hear him
10 celebrating when a guardsman is struck in the groin with a
11 rock. You can hear him cheering this violence.

12 Each of these Defendants played a role.

13 Now, I want to be very clear: The evidence in this
14 case is not that, because you wear black, you must have
15 participated. That is not the evidence. Black can be a
16 wonderful color, quite slimming, in fact.

17 The evidence is not that, just because a group of
18 people get together and wear a single color and come together
19 in a central location, whether that color is black, whether
20 it's orange, whether it's pink -- come together to protest,
21 that that is a crime. That's not why the Defendants are
22 charged.

23 The Defendants are charged because, when you look at
24 everything they did, all of it, how they chose to participate
25 in the black bloc, to move with it, to stay with it, to

1 re-form with it, to do it when they have chosen to dress in a
2 way that aids the group, that helps the group, to move with
3 the group, to allow people to be reabsorbed, to go back out,
4 as this group is moving and cheering and breaking, those are
5 the choices they made.

6 And so, when you look at this evidence, the
7 Government's asking you to look at everything the Defendants
8 did. What could they see? What do they hear?

9 And you will have the videos. You can see and hear
10 everything. You can see and hear the destruction. You can
11 see and hear the police finally try to stop it.

12 And, yet, each of these Defendants said: "I'm in.
13 I've traveled."

14 Now, block after block after block: I've watched
15 this. I am moving. I can see. It's apparent to anyone
16 watching that you can see how the group moves together at
17 some point. Maybe not at the BP. Maybe not at the ABP.

18 How about at the limo? How about at the bus
19 shelters? You re-form with this group. How about at the
20 Starbucks? And you say, "This is what I'm choosing to do."

21 That's the choice.

22 Now, you'll also see that there are plenty of people
23 on these videos that could see and hear and they stopped and
24 they walked away.

25 You'll see. You'll be able to watch the number of

1 people, including people who are dressed in all black with
2 masks, who stand to the side and say, "No. I'm out," because
3 they had block after block after block after block
4 re-forming, each part, to walk away.

5 But when they chose not to walk away, you will see
6 that evidence as their conscious choice to continue to
7 participate.

8 You will see that the police tried to disperse them,
9 use pepper spray, use later on what they call sting-balls
10 that have smoke, kind of a disorientation.

11 The police first use that after the BP, after the
12 trash cans, after the ABP, after the bus shelter, after
13 Mr. Villareal's limo, after Franklin Square, after the
14 officers are being chucked with bricks, after the Starbucks,
15 after the Bank of America, after the Bobby Van's. First use
16 of pepper spray at all.

17 And guess what. You'll see it didn't work. They
18 re-formed and went back out. The police tried again at
19 13th and New York. It didn't work. They went back out.
20 They re-formed. The police tried again. They continued to
21 break again and again.

22 Now, you'll have the evidence that one of the
23 reasons it didn't work is that people came prepared for it.
24 They expected it. They brought goggles. They brought gas
25 masks. They brought things to wash away pepper spray, you

1 know, the normal kinds of things for a protest, because this
2 was planned.

3 You'll see at 12th and L when that group of hundreds
4 charged at the police line, the police have tried to stop
5 them repeatedly, tried to hit pepper spray, tried to come
6 from behind.

7 They formed a line. They're standing there with
8 their ASPs, standing there. And there's a countdown: Ten,
9 nine, eight, seven, six, five, four, three, two, one. And
10 they charge.

11 Not a single officer, ever, goes for his gun. Not
12 pulls it out. Not unholsters it. They stand. And this is
13 what they use for the charge of 100.

14 So you're right. You're going to be seeing the
15 police try to disperse them and try to stop them. They were
16 not very successful until the end.

17 And through all of that, seeing and hearing the
18 glass, the newspaper stands, the trash cans, the screaming,
19 the cheering, the police sirens, the pepper spray -- seeing
20 all of that, hearing all of that, each of these Defendants
21 still said, "I'm in. Lets keep going. I'm in."

22 That's why they're charged. They're charged with
23 rioting, engaging in a riot, rioting to urge and incite,
24 conspiracy to riot, an agreement to do this. And then
25 they're charged with destruction of property.

1 I'll be very clear: We don't believe the evidence
2 is going to show that any of these six individuals personally
3 took that crowbar or that hammer and hit the limo or
4 personally bashed those windows of that Starbucks in. That
5 was not their role.

6 And the law the Judge will instruct you is they
7 didn't have to do that. You don't personally have to be the
8 one that breaks the window to be guilty of rioting, to be
9 guilty of agreeing to riot, because, as you'll see from this
10 case, you'll see from the evidence, this group is a riot.

11 When Officer Anderson is looking at hundreds of
12 people chucking bricks at them, breaking property, right in
13 front of them, and she says, "We were helpless," she says
14 that. And she'll tell you, "The group was so large, we
15 couldn't do anything. What could we do?"

16 Now, each Defendant had countless opportunities to
17 walk away, to say, "This is too much. This isn't what I
18 signed on for. This isn't what I'm going to do. This is not
19 how I'm going to express my opinion."

20 And over and over again, Franklin Square Park twice,
21 and a park near New York Avenue. Again and again, they made
22 a choice to stay, to be a part of this, to move with the
23 group.

24 And when they did that, they participated. They
25 actively helped those with the hammers and the crowbars were

1 here in Washington, DC, to exercise their freedom and to
2 speak out against the election of Donald Trump.

3 Several individuals, several individuals, chose to
4 spray-paint graffiti, set fire to trash cans, smash windows
5 and destroy property.

6 Oliver Harris did none of this. He never said, "I'm
7 in." At no point in this trial will you hear anyone say that
8 Oliver Harris said, "I'm in."

9 He did not destroy a limousine, he did not smash
10 windows and frighten those people inside, he did not engage
11 in a riot, and he did not urge others to do so.

12 The evidence is going to show, ladies and gentlemen,
13 that, on January 20th, the police treated those who exercised
14 their First Amendment rights just like those who broke the
15 law. That will be the evidence in this case.

16 They did not distinguish between lawbreakers and
17 protesters.

18 Oliver Harris was unjustly treated as a criminal.
19 He and many others were encircled. They were encircled,
20 doused with pepper spray, subjected to sting grenades and
21 pushed violently with wooden sticks by a small number of
22 officers, a small number of officers.

23 Why are we here, then? Why are we sitting here in
24 this courtroom nearly a year after Trump's election?

25 We are here because the evidence will show that it's

1 breaking, reabsorbing and moving, reabsorbing and moving.
2 They helped this path of destruction through the city.

3 And it's for those choices that they made that they
4 need to be held accountable. At the conclusion of this
5 trial, we are going to ask you to hold them accountable, to
6 find them guilty for what they did and for the choice they
7 made that day, the choice they made to express themselves
8 through violence and destruction.

9 Thank you.

10 THE COURT: Ms. McCool?

11 MR. McCOOL: Thank you, your Honor.

12 If I could just get set up here.

13 Excuse me. Ladies and gentlemen. Sorry to turn my
14 back on you.

15 May it please the Court, counsel.

16 Ladies and gentlemen of the jury, it's still good
17 morning. So good morning.

18 THE JURY: Good morning.

19 MR. McCOOL: This -- this case -- this case is about
20 our freedom to associate with one another and to express our
21 political views freely.

22 Our city has traditionally served as the national
23 gathering place for people to exercise their First Amendment
24 rights and protest against our Government.

25 On January 20th, 2017, hundreds of people gathered

1 easier for the police to treat everyone the same, to call a
2 protest a riot, lock everyone up, rather than comply with the
3 First Amendment.

4 Now, shortly after 10:00 on January 20th, a group of
5 protesters gathered at Logan Circle. You can see on the
6 monitor. That's the aerial photograph of protesters
7 gathering that day.

8 (Whereupon, certain images were published in open
9 court.)

10 MR. McCOOL: In this photo, you can see it's about
11 10:07. You see that up there on the left-hand side of the
12 screen? You can see the time. That'll be important because
13 we're going to use some of these photographs as I go along.
14 I'll be about 15 minutes, 20 minutes maybe, depending how
15 fast I talk.

16 Many of the protesters that you see in this
17 photograph carried banners. They carried signs. They
18 carried flags. And it's true. Most of them were dressed in
19 black.

20 Many of them dressed the same, but they did not all
21 behave in the same way. That is important to keep in mind, I
22 submit, as you review the evidence over the next days and
23 weeks ahead.

24 Certain people, among the hundreds of protesters,
25 would engage in criminal conduct. As you can see, as the

1 protesters gathered, many officers and supervisors were
 2 nearby.
 3 I don't know if you noticed in the first frame --
 4 and we don't need to go back there -- but there was about
 5 three vans in the first one.
 6 You see those white vans on the left side of the
 7 screen there? Those are police vans. There's about nine of
 8 them. There's about five cruisers in that photograph.
 9 Each of those vans hold about six to eight police
 10 officers.
 11 But if you could take a look at the next screen
 12 shot, you'll see many of these officers wore helmets and
 13 shields and they all carried weapons.
 14 Now, the evidence is going to show and the First
 15 Amendment procedures require that officers and supervisors
 16 seek to identify the organizers of protesters, to determine
 17 if there's going to be civil disobedience, to see if anyone
 18 is engaged in or bent on criminal conduct. This was not
 19 done.
 20 At around 10:19 on that morning, you will see
 21 protesters walk out of Logan Circle and proceed south on
 22 13th Street.
 23 Can we play this video, please.
 24 (Whereupon, a certain video was published in open
 25 court.)

1 MR. McCool: So the vans had moved to the -- to that
 2 part of the circle and now you see the protesters walking in
 3 between the vans, in between these police cruisers, and south
 4 on 13th Street.
 5 And we're going to watch this video. It takes
 6 about a couple of minutes to run. Because this case isn't
 7 about snapshots and video clips, ladies and gentlemen.
 8 (Whereupon, a certain video was published in open
 9 court.)
 10 MR. McCool: And you can see as those folks --
 11 watch -- and watch closely -- you may see people in this
 12 group pull trash cans out in the street. You may see someone
 13 paint some graffiti somewhere.
 14 But let's watch it all the way to the end. Let's
 15 watch it as these folks get down to that BP station.
 16 (Whereupon, a certain video was published in open
 17 court.)
 18 MR. McCool: If you look at the top of the screen,
 19 folks, you'll see that the BP station is coming into view in
 20 this aerial footage when the camera moves.
 21 (Whereupon, a certain video was published in open
 22 court.)
 23 MR. McCool: I want you to watch closely as the
 24 front of this group gets up towards this BP station. This is
 25 the gas station that Ms. Kerkhoff was speaking about in her

1 opening statement.
 2 You see a couple of people run towards the BP
 3 station right there, folks? Okay? Maybe those are the ones
 4 that broke glass or scared that poor woman there.
 5 But the Government's calling this a riot, folks.
 6 Right there. They would have you believe that this evidence
 7 shows right there that a riot is occurring.
 8 What this video shows and what the evidence will
 9 show, ladies and gentlemen, is that these folks were engaged
 10 in protected speech. Others within the sea of these people
 11 vandalized property. They vandalized it on their own.
 12 Ms. Kerkhoff talks about how the evidence will show
 13 that people had an opportunity to leave.
 14 Well, folks, this is America. We have an
 15 opportunity to stand and speak, speak our mind, share our
 16 beliefs with one another. It's guaranteed by the First
 17 Amendment.
 18 But that's not what happened in this case. There
 19 was no chance to leave. Rather than identify lawbreakers,
 20 arrest them and allow folks who were engaged in peaceful
 21 speech to continue, as you will hear on the following radio
 22 communication, the evidence will show that the police
 23 violated their own procedures and sought to encircle the
 24 entire protest.
 25 (Whereupon, a certain recording was published in

1 open court.)
 2 MR. McCool: This radio communication by the
 3 commander shows that the decision to get up in front of these
 4 protesters and block them in was made while they were walking
 5 down 13th Street towards and past the BP station.
 6 Let me be clear: The evidence in this case will
 7 show that the protesters exercising their First Amendment
 8 rights in this video, unbeknownst to them, were going to be
 9 encircled and they were going to be arrested.
 10 The police are not permitted to encircle First
 11 Amendment activity unless it's necessary for their protection
 12 or a decision has been made to arrest those participants that
 13 are being isolated.
 14 Let me say that again: The rules require them to
 15 isolate lawbreakers.
 16 You saw these protesters leave the circle. No one
 17 attacked the police as they walked through those -- by those
 18 police cars, except for a small number.
 19 And when you're talking about, what, hundreds
 20 and hundreds of people, I don't know what that is.
 21 15, 20 people. The rest were there to protest against Donald
 22 Trump, not to destroy property.
 23 Again, no one among the protesters was isolated by
 24 MPD. The evidence will show that the police violated their
 25 First Amendment procedures and treated protesters like

1 criminals.

2 In short, the evidence will show the MPD took away
3 their right to protest.

4 That's correct. Instead of arresting lawbreakers,
5 the police silenced the speech of law-abiding citizens.

6 Now, if we could show the next photograph.

7 You see this, folks? That's the encirclement. You
8 see those vans -- all those police vans carrying all those
9 police officers dressed with those helmets and those shields?

10 They're all inside those vans and they're heading
11 down 13th Street because the decision has already been made:
12 Encircle and arrest.

13 Now, this group of vans right there, that's the same
14 armada that the commander was describing in that radio
15 communication.

16 Now, I want to get to another thing the prosecutor
17 said that the evidence will show and it's not going to show.
18 It's simply not going to show it.

19 No one in that armada, no official, no police
20 officer, no one, ordered that crowd to disperse. No one.

21 So when the prosecutor tells you they chose to leave
22 or said, "I'm in," first of all, no one said it. Oliver
23 Harris didn't say it. But he wasn't told to disperse.

24 And what's -- just -- their procedures require this,
25 folks. I'm not just saying it's a good idea. I'm telling

1 the protesters you saw on that video simply because they're
2 wearing black.

3 I submit to you the Government will say, "Well, the
4 evidence shows you could" --

5 THE COURT: Mr. McCool, Mr. McCool, this is opening
6 statement.

7 MR. McCOOL: All right.

8 THE COURT: Thank you.

9 MR. McCOOL: This decision was made long before
10 these folks' arrest on I Street. All right? And the
11 procedures of the MPD prohibit this. The evidence will show
12 that they are to seek out, isolate and arrest those who are
13 breaking the law.

14 Did you see the bricks shown on that video? Some of
15 you may have. I believe that's the brick the Government was
16 talking about.

17 The evidence will show that's probable cause? Go
18 ahead and arrest that person. But you didn't see people
19 running around and hiding amongst those protesters.

20 The evidence will show that the MPD does not have
21 the authority to arrest everyone in hopes that they catch the
22 person with the brick.

23 But that's exactly what happened on January 20,
24 2017. They can't avoid the First Amendment by labeling this
25 a riot.

1 you the evidence requires that they give the dispersal order.

2 In fact, they're very specific. Not only are they
3 to give a dispersal order. They're to give multiple
4 dispersal orders.

5 They're to give amplified dispersal orders so that
6 the entire crowd can hear them. And they are also required
7 to give reasonable time to allow for the crowd to disperse.

8 Ms. Kerkhoff told you that the MPD tried to disperse
9 this protest. They tried to trap them. Rather than do these
10 simple things, the evidence will show that the police trapped
11 and arrested everyone they could, regardless of whether they
12 were protesting or destroying property.

13 You saw clip after clip of people breaking windows,
14 and that's awful.

15 And you're going to hear from people who are going
16 to tell stories of fear and anguish and despair, and my heart
17 will break for them just like yours will.

18 MS. KERKHOFF: Objection.

19 MR. McCOOL: But let's take a look at another clip
20 that you didn't see. Let's take a look at folks walking down
21 I Street. Right? Well, I --

22 (Whereupon, a certain video was published in open
23 court.)

24 MR. McCOOL: You heard it right there. That's the
25 same commander. He's already decided to encircle and arrest

1 Now, I want to be clear about something. And I want
2 to be crystal clear about this: The evidence is not going to
3 show and no one can say that police officers have an easy
4 job, especially in a situation like this, where you could see
5 the evidence that there's a lawbreaker mixed in among
6 law-abiding citizens and others are smashing windows while
7 others are protesting.

8 But the evidence is going to show, folks, that, you
9 know, the First Amendment's not convenient. The First
10 Amendment is hard. The First Amendment requires restraint.

11 And the commander, the evidence will show, who
12 ordered the arrests of these protesters, will testify -- will
13 come in here and testify that his officers showed enormous
14 restraint that day, and the evidence is going to contradict
15 that testimony.

16 For example, before -- you will see before an
17 officer can use pepper spray, they must issue a warning.
18 They must also permit a reasonable period of time to allow
19 compliance with that warning.

20 In any event, a police officer, as the evidence will
21 show you, can only use pepper spray when someone is actively
22 resisting them. Again, no pepper spray unless there's active
23 resistance.

24 I'll ask you to take a look at this video. And the
25 evidence will show again, unfortunately, that a small number

1 of police officers abused the use of pepper spray.
 2 (Whereupon, a certain video was published in open
 3 court.)
 4 MR. McCOOL: The prosecutor also talked about the
 5 evidence showing how the officers used wooden batons to push
 6 them. They can do that.
 7 They can use that wooden baton, but they should only
 8 use wooden batons as a defensive weapon to overcome
 9 resistance from someone who is violating the law.
 10 If we can take a look at the next photo.
 11 I'll ask you to keep an eye on this woman in the
 12 bright green hat. She may testify in this case.
 13 (Whereupon, certain images were published in open
 14 court.)
 15 MR. McCOOL: Now, I ask you to take a look at this
 16 next video and ask yourself whether this woman is resisting
 17 an officer.
 18 (Whereupon, certain images were published in open
 19 court.)
 20 MR. McCOOL: Folks, we all know and I think we can
 21 all reasonably agree that police officers have a difficult
 22 job. The vast majority of them, they comport themselves in
 23 an appropriate manner, and I'm not going to argue that and
 24 I'm not going to suggest the evidence is going to say
 25 otherwise.

1 But the fact of the matter is the evidence is going
 2 to show that some officers behaved improperly. And just as
 3 we will not condemn an entire police department based on the
 4 actions of a few officers, you cannot convict Oliver Harris
 5 based on the misconduct of others.
 6 The evidence will show that, after the protesters
 7 and others were encircled by MPD, as Ms. Kerkhoff talked
 8 about, they did. They broke free. No doubt about it.
 9 I'm not condoning it. I'm not suggesting it was
 10 appropriate. In fact, I agree: That's what the evidence is
 11 going to show.
 12 What Ms. Kerkhoff didn't tell you and the evidence
 13 will show, Mr. Harris didn't try to flee. Of those who
 14 remained behind, the officers didn't even at that point seek
 15 to separate the criminals from the protesters.
 16 Instead, they subjected them to pepper spray and, as
 17 you'll see, sting grenades, because this is the part -- this
 18 is what the evidence will show, and this is what the
 19 Government didn't discuss.
 20 If we may.
 21 (Whereupon, a certain video was published in open
 22 court.)
 23 MR. McCOOL: Can you pause for a second.
 24 Keep your eye on the upper right-hand corner of this
 25 video monitor as we go.

1 If we could start it again, if you can.
 2 (Whereupon, a certain video was published in open
 3 court.)
 4 MR. McCOOL: The evidence will show that these
 5 grenades contained pepper spray and rubber pellets. They
 6 have a blast radius of 50 feet.
 7 As you look at the evidence in this case, ask
 8 yourself why the Government would prosecute someone like
 9 Mr. Harris, who they say broke no windows, destroyed no
 10 property.
 11 The evidence will show that supervisors and officers
 12 have a motive to mischaracterize the evidence in a way that,
 13 we submit, would lead to an unfounded conviction.
 14 Why? Because when MPD arrests protesters along with
 15 lawbreakers, the ACLU sues them, they lose --
 16 MS. KERKHOFF: Objection.
 17 THE COURT: I'm sustaining the objection,
 18 Mr. McCool. Would you like to approach the bench?
 19 MR. McCOOL: I'll continue. Thank you.
 20 They want to convict everyone they trapped.
 21 I submit to you, ladies and gentlemen, that a
 22 conviction -- well, let me just -- I'll move on.
 23 The Government somehow claims that Mr. Harris is
 24 guilty because they've alleged he changed his clothes after
 25 he was doused with pepper spray.

1 First, let's not lose sight of the fact he did not
 2 engage in a riot. The evidence is going to show he didn't
 3 destroy anyone's property or urge anyone else to do so.
 4 But, second, the evidence is going to show there are
 5 many reasons why a person may want to change their appearance
 6 or change their clothes.
 7 Unfortunately, you've seen one of them. Right?
 8 It's all too common that police use pepper spray in
 9 a way that you would want to bring a change of clothes to a
 10 protest.
 11 But, unfortunately, in our society, the evidence is
 12 going to show today, ladies and gentlemen, that the Alt-right
 13 and other fascists --
 14 MS. KERKHOFF: Objection.
 15 MR. McCOOL: -- who seek -- this is what the
 16 evidence is going to show.
 17 THE COURT: Counsel, I actually would like some of
 18 the defense counsel at the bench. And can we just have
 19 headphones, please?
 20 (Whereupon, the following proceedings were had at
 21 side-bar outside the presence of the jury:)
 22 THE COURT: What is it you're about to say about
 23 Alt-right and fascists? I think the other Defendants have a
 24 right to know what you're saying about that.
 25 MR. McCOOL: The evidence is going to show and we

1 have evidence that the people who were arrested here either
2 with MPD's knowledge or not, their names and addresses were
3 published and trolls on the Internet identified them,
4 published their --

5 THE COURT: I'm asking: What is it you're about to
6 say out of your mouth about Alt-right and fascists?

7 MR. McCOOL: Alt-right extremists seek --

8 THE COURT: The objection is to the use of those
9 words on your side of the podium. I want to make sure you're
10 not saying something objectionable to your fellow Defendants.

11 So what is it you're about to say?

12 MR. McCOOL: Well, that they seek to identify,
13 threaten and silence them.

14 THE COURT: Alt-right --

15 MR. McCOOL: I'm going to say that Alt-right
16 extremists seek to identify, threaten and silence people who
17 engage in political speech that they don't agree with.

18 THE COURT: That Alt-right and fascists do?

19 MR. McCOOL: Uh-huh. They do.

20 THE COURT: Who are you saying is the Alt-right and
21 fascists?

22 MR. McCOOL: People on the Internet that have
23 identified particular Defendants in this case and threatened
24 them.

25 THE COURT: So what does that have to do with this

1 trial?

2 MR. McCOOL: It goes directly against why someone
3 would want to change their clothes or dress all in black or
4 wear a mask.

5 THE COURT: We're not going to talk about Alt-right
6 and fascists, people coming after your clients right now.
7 Maybe there will be some relevance or foundation for that
8 later, but we're not going to talk about that right now.

9 MR. McCOOL: Very well.

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

12 THE COURT: Sustained.

13 MR. McCOOL: May I continue?

14 THE COURT: Yes. How much more do you have?

15 MR. McCOOL: A couple minutes, your Honor.

16 THE COURT: How much more do you have?

17 MR. McCOOL: I said a couple minutes, your Honor.

18 Ladies and gentlemen, let me wrap this up. I think
19 we've had a long morning.

20 A conviction in this case would amount to guilt by
21 association. It would weaken all of our rights to assembly
22 freely and speak honestly with one another.

23 Now, on behalf Ms. Coleman and our client, Oliver
24 Harris, we extend our appreciation for your service. I thank
25 you for your consideration this morning.

1 THE COURT: Ladies and gentlemen, we're going to
2 take -- we're going to take a 15-minute break just so
3 everybody can get a breather. We'll come back at 20 of.

4 Please don't discuss the case. Please don't make
5 any decisions about it. Please leave your notebooks on your
6 chairs. Thank you.

7 (Whereupon, the jury exited the courtroom at
8 12:23 p.m. and the following proceedings were had:)

9 THE COURT: Ladies and gentlemen, court is in
10 session. You must be silent when you're in the courtroom.
11 Jurors cannot hear you or see you or be aware of your
12 presence. You must be silent when you're in the courtroom
13 and court is in session.

14 Thank you.

15 Like I said, court is still in session. Please be
16 silent in the courtroom.

17 Counsel, you can have a seat.

18 Is there anything we need to discuss before we
19 break?

20 MR. LAZEROW: No, your Honor.

21 Just I want to remind --

22 THE COURT: Who are you?

23 MR. LAZEROW: Andrew Lazerow for Ms. Macchio.

24 We are going through the Alexei Wood tape to provide
25 you before lunch any of the statements that you have. I just

1 wanted to remind you so you don't break and run off without
2 that. That's all.

3 THE COURT: Give it to me before I do that, please.

4 MR. LAZEROW: Yes.

5 THE COURT: Thank you. I'll see you in 15 minutes.
6 (Thereupon a recess was taken, after which the
7 following proceedings were had:)

8 THE COURT: I just want to remind spectators,
9 please, that when court is in session, meaning when I'm in
10 here, you must not hold conversations, and when the jury is
11 in here, you must not do anything to catch their attention,
12 absolutely nothing, including have a conversation of any
13 kind.

14 Thank you.

15 We're picking back up. Both Government counsel are
16 here.

17 Ms. Macchio is here. Ms. Simmons is here.

18 Ms. Lawson. Ms. Armento. Mr. Wood.

19 Mr. Wood needs to be in here.

20 Mr. Harris is here.

21 Counsel, I'm not going to excuse clients from the
22 courtroom on breaks unless they're back here on time.

23 Mr. Wood, please come on in.

24 I'm just advising you all you should not be waiting
25 until someone comes to get you. You have to be in the

1 courtroom at the time that I say the break is going to be
 2 over. And I did say 20 of. You have to be in here. If you
 3 are not here, I'm going to have to do what I have to do.
 4 So we're going to bring the jury in.
 5 Before we do that, I just want to ask one thing: Is
 6 anybody else planning to talk about contact with Defendants
 7 or communications to or about Defendants after the date of
 8 January 20th?
 9 No other counsel are planning to do that? All
 10 right.
 11 I'm just going to say a person hearing about
 12 Alt-right could think that that's who you meant the
 13 protesters were.
 14 And that was my concern, Mr. McCool.
 15 And I would add that I'm not going to allow you, on
 16 behalf of Mr. Harris, to cross-examine about or otherwise
 17 talk about contact with, communications by, communications
 18 perceived by, the clients after the date on which these
 19 events took place unless some relevance is established.
 20 So you do have to get my permission before you do
 21 that in any way, shape or form.
 22 MR. COLEMAN: Okay. Thank you.
 23 THE COURT: Let's bring the jury back in.
 24 Next on our list is Ms. Weletz.
 25 Ms. Weletz, do you need to set anything up?

1 MS. WELETZ: No.
 2 THE COURT: There's only one thing that I meant to
 3 take out and I'm telling you now that I meant to take out in
 4 the inciting or urging to riot the line near, "Encouragement
 5 of..." That should be out.
 6 "Mere presence at the scene; but mere encouragement
 7 of does not amount to inciting or urging a riot" I'm taking
 8 out.
 9 Encouragement was there because it was in the
 10 *Matthews* instruction. I took it out of the engaging
 11 instruction because I think it was *pre-Wilson-Bey*.
 12 Encouragement without the proper mens rea should not
 13 be anywhere in here. So I took it out of the engaging
 14 instruction. I don't think it would amount to engaging
 15 anymore. So I meant to take it out of the inciting
 16 instruction.
 17 I was trying to create a distinction. So I just
 18 want you to know that was not meant to be in there at the
 19 moment. Again, it's a draft. It's not a ruling. It's just
 20 my first stab at it.
 21 (Whereupon, the jury entered the courtroom at
 22 12:45 p.m. and the following proceedings were had:)
 23 THE COURT: Good afternoon again, ladies and
 24 gentlemen.
 25 We're going to pick back up with opening statements.

1 We'll now hear from Ms. Weletz.
 2 MS. WELETZ: Good morning, everybody.
 3 THE JURY: Good morning.
 4 MS. WELETZ: Again, my name is Attorney Carrie
 5 Weletz. I, along with my co-counsel, Thomas Healy,
 6 represents Jennifer Armento in this case.
 7 I want to thank you for your critical attention. I
 8 want to thank you for being here in this role as a juror.
 9 You're going to be here for a number of weeks.
 10 You're going to hear, as the Government said, countless
 11 witnesses, see videos. You've seen multiple videos played
 12 already today. You've see multiple exhibits.
 13 At the end of all of this evidence, you will find
 14 that Jennifer Armento is innocent of all the charges. This
 15 case is fundamentally about a person's right to associate and
 16 a person's right to speak their mind.
 17 During these multiple videos and all of these boards
 18 that you're going to see, you're going to see a group of
 19 people that came to Washington, DC, to protest the Trump
 20 administration. You will see it in the signs that they
 21 carried, the banners that they had, the flags that they had.
 22 These are people coming to voice their opposition to
 23 the administration. These are people coming to do what every
 24 American has the right to do: To demonstrate and to protest.
 25 You are going to hear evidence that, in fact, the

1 MPD officers and the Metropolitan Police Department in
 2 general has an entire handbook for officers to use and
 3 officers to be trained by to handle First Amendment
 4 demonstrations.
 5 The evidence is going to show that that handbook was
 6 not followed that day. The instructions and the things that
 7 the Metropolitan Police Department were supposed to do were
 8 not done.
 9 Now, you've already seen video clips of individuals
 10 starting a march from the park, from Logan Circle, that
 11 circle located in downtown DC.
 12 You see many people, some dressed in dark colors,
 13 some with other colors on them, marching up the street.
 14 They're marching.
 15 As Mr. McCool already pointed out, you see a couple
 16 of people, a couple individuals, go off towards the BP gas
 17 station while the rest of the individuals continued to march
 18 with their signs, with their banners, with their flags.
 19 These people had a right to be there. These people
 20 came to the District of Columbia to let their voice be heard.
 21 Now, you're not going to hear the defense say that
 22 Aurelia Taylor or Ms. Kim or Mr. Villareal should have had to
 23 have experienced what they did that day. You're not going to
 24 hear us say that.
 25 Tell will take the stand. They will testify to what

1 they saw. They will testify to what they experienced. And
2 that can't be discounted.

3 However, I want you to pay attention to what the
4 evidence is not going to show, much of which the Government
5 has already told you about.

6 There will be no evidence that Ms. Armento intended
7 to come to the District of Columbia to break stuff. There's
8 going to be no evidence that she conspired to come and be
9 part of destruction or damage.

10 There will be absolutely no evidence that she ever
11 had a weapon on her or participated or helped to participate
12 in any type of destruction. The evidence is simply not going
13 to show that.

14 The evidence is not going to show -- the Government
15 mentioned that this was a plan, that there were some
16 meetings -- that people went to some meetings and this was a
17 plan.

18 There will be no evidence that Ms. Armento knew of
19 those meetings or knew of a plan or the intent or any intent
20 to come and destroy anything in the District of Columbia.

21 The Government would have you believe that, because
22 Ms. Armento was photographed at 12th and L after these
23 officers encircled a large group of people, because she was
24 wearing primarily dark colors, well, she must have. She must
25 have had this plan. She must have had this intent.

1 The Government would have you believe that, because
2 she participated in some parts of a march, in some parts of a
3 protest, that she's guilty by association, that because these
4 individuals broke Ms. Kim's windows and broke those windows
5 on that limo, which you saw the individuals with your own
6 eyes who did that, that she is guilty somehow by association
7 for being there, for not leaving, apparently, when she
8 allegedly saw these things happening.

9 However, there's going to be no evidence that
10 Ms. Armento saw any of this with her own eyes, that she saw
11 those windows on the limo being broken, that she even heard
12 any of this going on.

13 You will hear with your own ears what was going on
14 that day. You will hear the crowd of people. You will hear
15 the police. You will hear the sirens. You will hear those
16 sting bombs blasting.

17 You're going to hear a lot of things. There will be
18 no evidence specifically as to what Ms. Armento heard or
19 knew.

20 There's going to be no evidence that Ms. Armento
21 participated at all other than showing up on January 20th to
22 voice her opinion, that she had any connection with any
23 social media.

24 Now, I mentioned before that there's going to be
25 testimony of a lot of police officers. You saw them. There

1 were a lot of police officers that day.

2 The Government has already told you what some of the
3 testimony will be. The testimony will be that the officers
4 followed.

5 You saw them parked at Logan Circle. They followed.
6 They followed in vans. They followed in cruisers. They
7 followed on foot. They followed by bike.

8 As specific individuals took rocks and bricks, none
9 of them were Ms. Armento. As individuals took bricks to the
10 parking kiosks, which I myself have wanted to do, they didn't
11 stop them.

12 The Government indicated that they followed. They
13 just followed until they got to 12th and L, where there was
14 an order to encircle this mass group of people.

15 Now, you will see the video footage. You will see
16 the photographs. There are -- you'll hear testimony from
17 Metropolitan Police Department detectives and police officers
18 that there were hundreds of people there that day. You will
19 see it with your own eyes. 3- to 400 people.

20 You will see how they encircle a group upwards of
21 200 people on every side. You will see the sting bombs and
22 hear the sting bombs. You will see the officers using their
23 batons and their OC spray on individuals.

24 You will not see Ms. Armento doing anything other
25 than submitting to this encirclement.

1 Now, Ms. Armento was there when she was encircled.
2 She was at 12th and L. You're going to see a photograph, a
3 booking photo, of her. She was there.

4 But there will be very little evidence prior to that
5 of where Ms. Armento was. She was at 12th and L as these
6 people were swept up and encircled by the police, as they had
7 been followed for 16 city blocks and 33 minutes by vans and
8 cruisers and foot patrol and bicycles.

9 You will see video of these people and these
10 individuals, these protesters, these demonstrators, what they
11 were wearing, what they looked like.

12 You will see them standing there from approximately
13 11:00 until the sun sets in these videos, being processed one
14 by one.

15 I ask you to look at what you don't see, what the
16 Government is not presenting to you, that evidence that
17 Ms. Armento in any way had a plan or intent other than to
18 come and protest and let her voice be heard.

19 At the end of the evidence, you will have doubts.
20 You will have many, many doubts, and I submit that you will
21 find Ms. Armento innocent of all the charges.

22 Thank you.

23 THE COURT: Ladies and gentlemen, we're going to
24 take a lunch break now.

25 I'll have you back at 2:00. It's more or less one

1 hour. So have a good lunch, but do be back on time. Please
2 don't discuss the case or make any decisions about it.

3 Thank you.

4 (Whereupon, the jury exited the courtroom at
5 12:57 p.m. and the following proceedings were had:)

6 THE COURT: Is there anything before we break?

7 MR. LAZEROW: We're having --

8 THE COURT: And you are?

9 MR. LAZEROW: Andrew Lazero, for Ms. Macchio.

10 We're having printing problems. So we're emailing
11 it to chambers, the specific statements and the timestamps,
12 and we'll obviously copy the Government. So you'll have it.

13 THE COURT: Thank you.

14 You may be excused.

15 There really has to be silence in the courtroom.

16 That's all I'm going to say. Please listen to what I say so
17 you can remain.

18 (Thereupon, a luncheon recess was taken, after which
19 the following proceedings were had:)

20 THE COURT: Good afternoon.

21 We're just re -- picking back up in United States
22 against Michelle Macchio, et al.

23 I'm not going to re-call it all.

24 And you'll all tell me if everybody's not here. But
25 it appears that all counsel and all Defendants are here.

1 Great.

2 I'd like to bring the jury in and pick back up with
3 openings.

4 While we do that, I did watch the live stream over
5 lunch. It's not the thing I had watched before, definitely.

6 And I have the submission as to the statements that
7 Ms. Macchio's asking to be excluded from it. We can talk
8 about that later.

9 So next up -- I think I'm right -- is Ms. Jacques.

10 Do you need to set anything up?

11 MS. JACQUES: No.

12 THE COURT: Does anybody need to set anything up
13 electronic-wise?

14 Great.

15 (Whereupon, the jury entered the courtroom at
16 2:05 p.m. and the following proceedings were had:)

17 THE COURT: Good afternoon again, ladies and
18 gentlemen. I hope you had a good lunch break. We'll pick
19 back up with opening statements.

20 Ms. Jacques will now give us an opening statement.

21 MS. JACQUES: Good afternoon, ladies and gentlemen.

22 My name is Tammy Jacques. I represent Christina
23 Simmons, sitting over here.

24 You will hear, on January 20th, 2017, Ms. Simmons
25 came to the District of Columbia for her first inauguration.

1 You'll hear that it was her first inauguration because it's
2 the first election in which she's been old enough to vote.

3 What happened on January 20th, 2017, is her worst
4 nightmare. Ms. Simmons was arrested for something she did
5 not do.

6 The Government has presented evidence through
7 videos, and they've indicated they will through more videos
8 of destruction of property.

9 You will see endless videos and pictures and hear
10 testimony about how things were destroyed in the District of
11 Columbia.

12 Not one of the videos will show Ms. Simmons
13 participating in the any of the destruction.

14 There will be no evidence that Ms. Simmons planned
15 or attended the planning meetings to come to the District to
16 destroy property.

17 Ms. Simmons was arrested. She was in the District
18 of Columbia doing what she has a right to do, a right to
19 protest.

20 There will be Government witnesses come in. There
21 will be defense witnesses come in. What I would ask you to
22 do is listen to each witness, watch each video and hear.

23 What did it say about Ms. Simmons? What does it say
24 she did? Nothing.

25 I'm only focusing on Ms. Simmons, even though

1 there's six of us here -- six Defendants here, because I'm
2 her attorney. That doesn't make her more important or less
3 important than any of others, but my job is just to focus on
4 her.

5 So I'm asking you, each individual witness, to
6 listen for the name Christina Simmons. Planning a meeting,
7 you won't hear her name. Destruction of property, you won't
8 hear her name. The only time you're going to hear her name
9 is that she was arrested.

10 So at the end of all the evidence, I'll stand right
11 back up here and I will ask you to find her not guilty of
12 conspiracy to riot, engaging in a riot, enticing or
13 encouraging a riot, or destruction of property, because there
14 is no evidence that would support that.

15 And I will ask you to find her not guilty on all the
16 counts.

17 Thank you.

18 THE COURT: Thank you.

19 Next up is Mr. Cohen for Mr. Wood.

20 MR. COHEN: Thank you. Thank you, your Honor.
21 Good afternoon, ladies and gentlemen.

22 I'm Brett Cohen. I represent Mr. Alexei Wood.

23 Mr. Alexei Wood is presented before you today
24 falsely accused, falsely charged, of rioting and related
25 charges.

1 And what I say by "falsely," what I mean by that, is
2 that he did nothing illegal.

3 So, first, I'm going to say that Mr. Wood's case is
4 a little bit different. You heard Mr. McCool talk about the
5 First Amendment and the right to assemble and the right of
6 free speech. Mr. Wood's case involves the right to a free
7 press.

8 Mr. Wood, from beginning to end, live-streamed
9 his -- I'm not going to say "involvement" -- but what he did
10 and didn't do and what other people did and didn't do during
11 this event.

12 Let me tell you a little bit about Mr. Wood.
13 Mr. Wood is a Texan, a native of Austin, now living in
14 San Antonio.

15 By trade, he is a professional photographer. Mostly
16 he does wedding photography, but he also contracts for
17 commercial photography for certain projects.

18 Starting a few years ago, you will learn that
19 Mr. Wood developed an interest in photo journalism and, since
20 that time, over the course of the last few years, he has
21 attended a number of events -- marches, demonstrations,
22 parades -- and documents them. That's what he does. He's
23 independent, he's up and coming, and he's building a résumé.

24 What better opportunity for a photo journalist than
25 the inauguration this year? Mr. Wood came up from Texas with

1 the intent -- and the evidence will show this -- with the
2 intent to document the events of the inauguration, but not
3 just the inauguration, not just this protest in question.

4 You'll hear evidence that two days before the
5 inauguration, Mr. Wood documented the Queer Dance Party.
6 That was an event held by the LGBT community where they
7 marched to then-vice-president-elect Mike Pence's house.
8 Mr. Wood took video and Mr. Wood took pictures.

9 The day before the inauguration, on January 19th, he
10 documented the DeploraBall, an event that was offered by an
11 inauguration supporters at the National Press Club. Mr. Wood
12 was outside with the protesters, documenting what was going
13 on.

14 Then came January 20th. Mr. Wood knew that there
15 would be certain events that he wanted to cover. So that
16 morning, not knowing what was coming ahead -- he did know
17 that there was going to be a protest. He did know that there
18 would be counterprotesters. He did know that it was a
19 protest that there would probably be police officers.

20 But not knowing exactly what's going to happen that
21 day, Mr. Wood came prepared. Mr. Wood brought memory cards
22 for his camera. He brought batteries. He brought a camera.
23 He brought a monopod.

24 A monopod is a tripod. It's like a selfie stick for
25 professional photographers like Mr. Wood.

1 Mr. Wood went out that day. And, in addition, he
2 had his phone. And on his phone he decided to live-stream
3 this event.

4 And so you'll see the evidence will show this live
5 stream from beginning all the way to the end. At the
6 beginning, as discussed, it's people leaving Logan Circle and
7 then going and doing what they did.

8 Don't get me wrong: There were victims. There were
9 people who were hurt as a result of the property destruction
10 you heard about and the violence against other persons.
11 You'll hear about that. There's no minimizing that, and
12 certainly we don't intend to do that.

13 Bu the problem is that Mr. Wood was not involved
14 with that. You will know it from the video, from the live
15 stream.

16 I want to talk a split second about the live stream.

17 For anybody familiar with Facebook, which is where
18 Mr. Wood was live-streaming to, people tend to inflate their
19 own lives. "Hey, look at the bacon and eggs I'm having this
20 morning. Isn't that wonderful?"

21 People tend to want to put out what's going on deep
22 down inside them and put that out to the world. Mr. Wood in
23 this very tense situation wanted to bring that to people that
24 followed him.

25 Now, you'll hear on this live stream things that I

1 believe the Government does object to, things that the
2 Government believes are disagreeable.

3 Let me say this is the point of the trial.
4 Disagreeable is not illegal.

5 You will not hear -- let alone, you won't
6 see Mr. Wood destroy anything. You won't see Mr. Wood
7 directing people. You won't see Mr. Wood conspiring. You
8 won't even see Mr. Wood, like, communicating with anybody.

9 He's there to document because, as the Government
10 testified, you know, there are people out there who are
11 amateur journalists. They're out there making videos. And
12 there's apparently a demand for that.

13 Otherwise, you wouldn't have journalists going out
14 and doing their constitutionally protected activity in the
15 field. Disagreeable is not illegal.

16 Mr. Wood -- you will not hear words like, "I love
17 the fact that that was destroyed," "Can you destroy that,"
18 "Can you go hurt that person?" You're not going to hear
19 that.

20 You're going to hear things that he's saying to his
21 audience, not to the people out on the street, to the people
22 he's -- that's watching his live stream.

23 More importantly, the Government has to prove that
24 the statements or the reactions of Mr. Wood were done with
25 the intent to further the violence, to further the

1 destruction of property, to further what they intend -- what
 2 they call a riot.
 3 And there's nothing that the Government has. Even
 4 though the Government has Mr. Wood's cell phone, everything
 5 on it, they still got nothing.
 6 Ladies and gentlemen, I'll talk to you more at
 7 length at the end of the trial.
 8 Mr. Wood started this event, went all the way till
 9 the time the police surrounded him, sprayed him with pepper
 10 spray.
 11 And you're going to watch him go to the ground,
 12 feeling the effects of that pepper spray. And that's where
 13 the live stream finally stops.
 14 Then he gets arrested, and now he's charged with
 15 these offenses.
 16 For someone who came to the District with the sole
 17 purpose of conducting himself under constitutionally
 18 protected activity, finding himself arrested was not how he
 19 intended things to come out.
 20 At the conclusion of the trial, I'm going to ask
 21 you, ladies and gentlemen of the jury, to find my client not
 22 guilty because that is the only just finding for Mr. Woods.
 23 Thank you.
 24 THE COURT: Thank you, Mr. Cohen.
 25 Ms. Kropf.

1 Now, you need medics at a big protest like this for
 2 a lot of reasons. There's a lot of people showing up. Some
 3 of them have healthcare problems. They have asthma. They
 4 might have an attack.
 5 People get small injuries. They trip. They fall
 6 down. You might have dehydration; on a hot day, heat
 7 exhaustion; on a cold day, exposure to the elements.
 8 So you need folks there to help take care of them.
 9 There's nothing wrong with that.
 10 Now, you also needed medics there today for exactly
 11 the reason on some of the clips we saw earlier this morning,
 12 and that was because of the police.
 13 The police repeatedly fired tear gas, concussion
 14 grenades, used their batons. So a lot of people needed help
 15 that day, and medics could be there to provide it.
 16 Now, here's what you won't hear during the trial:
 17 You won't hear the Government say that Ms. Lawson broke any
 18 windows, threw a brick, charged the police line, hurt anyone,
 19 hurt any bystanders, hurt a police officer or committed any
 20 property damage at all.
 21 But she's still here today.
 22 Now, during the Government's opening statement, I
 23 started counting the number of times the Government said "the
 24 group." I'll be honest with you. I lost count.
 25 Because that's their theory of the case and that's

1 MS. KROPF: Brittne Lawson was arrested on
 2 January 20th, 2017, with 200 other people, even though she
 3 didn't do anything wrong.
 4 Now, the Government told you in their opening that
 5 they don't plan to ask about politics or points of view. But
 6 then it's hard to understand what Brittne Lawson is doing
 7 here today because they don't have any evidence that she did
 8 anything wrong.
 9 I want to introduce you to Ms. Lawson.
 10 This is Brittne Lawson. She's 27 years old, and she
 11 lives in Pittsburgh, Pennsylvania. Ms. Lawson is a
 12 registered nurse, and every day she works with cancer
 13 patients at the University of Pittsburgh Medical Center.
 14 Every day she helps those cancer patients. She
 15 cares for them, she comforts them, and she works with their
 16 families through some of the most difficult times any of them
 17 will go through.
 18 And in Pittsburgh she is also involved with a
 19 Community Health Collective that helps bring healthcare
 20 information to the city. That's who Ms. Lawson is.
 21 Now, the Government during their opening statement
 22 referred to medics. And they referred to medics as though it
 23 was bad, as though it was something wrong to have medics at
 24 the protest, there was something nefarious about it.
 25 Well, medics are there to help, just like nurses.

1 what you'll hear them talk about. The Government is going to
 2 spend this trial showing you pictures of the group.
 3 And they're going to talk to you about a few people
 4 in that group who may have done things that were wrong.
 5 We've seen the footage. We're not apologizing for that.
 6 But you heard Judge Leibovitz tell you at the
 7 beginning that your job is to judge each Defendant's conduct,
 8 his or her own conduct.
 9 So the Government's going to spend its time talking
 10 to you about the group or referring to what a few people did
 11 on January 20th.
 12 But at the end of this trial, your job won't be to
 13 judge the group and your job won't be to judge those few
 14 people who broke windows and threw bricks.
 15 Your job will be to judge Ms. Lawson. At the end of
 16 the trial, I'll ask you to find her not guilty.
 17 Thank you.
 18 THE COURT: Thank you, Ms. Kropf.
 19 Ms. Heine for Ms. Macchio.
 20 Thank you.
 21 MS. HEINE: This case is about drawing a line, a
 22 line between conduct that is criminal and conduct that is
 23 protected by the very First Amendment of our Constitution.
 24 Now, you already know that you are going to see
 25 video after video in this case. And in all of the video, you

1 will see conduct that falls on both sides of that line.
 2 You will see video of people breaking windows, of
 3 people hurting other people, of people destroying property,
 4 of people carrying weapons.
 5 That video is disturbing. But all of that conduct,
 6 it's on this side of the line.
 7 And you will see evidence in this case that, among
 8 hundreds of people who were gathered that day, only a small
 9 handful engaged in property destruction or engaged in
 10 violence.
 11 You will also see evidence that hundreds of people
 12 gathered on that gloomy January morning when Donald Trump
 13 took the oath of office to protest, to protest against Donald
 14 Trump, to protest against fascism and to protest against
 15 unbridled capitalism.
 16 You will see evidence of protesters chanting
 17 political messages, of protesters carrying signs and banners
 18 and flags with political symbols on them.
 19 And you will see evidence that many people were
 20 dressed in all black and that many people covered or
 21 protected their faces.
 22 Now, Ms. Kerkhoff tried to tell you that that's not
 23 what this case is about. It's not about what color people
 24 were wearing. Really?
 25 Then, why did she tell you three or four times about

1 the sea of black? That's exactly what this case is about.
 2 And, ladies and gentlemen, marching down a street,
 3 wearing the color black, chanting a political message,
 4 carrying a protest sign, protecting one's face, all of that
 5 amounts to nothing more than exercising one's right to free
 6 speech.
 7 And associating with other people who are also
 8 opposed to the President, who are also opposed to fascism,
 9 well, that's a right protected by the First Amendment, too.
 10 So all of that conduct, that's on this side of the
 11 line.
 12 The Government told you this morning that Michelle
 13 Macchio was a street medic, and the Government's going to try
 14 to convince you that there is something sinister about that.
 15 Now, I would not be surprised if before today many
 16 of you had never heard the term "street medic" before. But
 17 you will hear evidence in this case that a street medic does
 18 exactly what the term itself implies: Street medics help
 19 people.
 20 And you'll see evidence in this case of street
 21 medics helping people in this protest. So helping people?
 22 That's on this side of the line, too.
 23 I would like to introduce you to my client.
 24 Michelle.
 25 This is Michelle Macchio.

1 It is my honor to represent her in this court and to
 2 speak to you on her behalf. And I am proud to tell you that,
 3 once you have an opportunity to hear all of the evidence and
 4 see all of the evidence in this case, you will find that
 5 Ms. Macchio belongs on this side of the line.
 6 So let me tell you why.
 7 Thank you.
 8 The Government made you a promise today that they're
 9 not going to be able to keep. You will see no evidence in
 10 this case that Ms. Macchio ever said, "I'm in."
 11 In all of the video that will be played for you over
 12 this next several weeks, what you will not see is Michelle
 13 Macchio breaking any window, destroying any property, hurting
 14 any person.
 15 You will see no video of Michelle Macchio urging
 16 other people to break property or to hurt others.
 17 You will see no video of Michelle Macchio
 18 celebrating or cheering on any violence or destruction.
 19 And no witness will testify that she did any of
 20 those things.
 21 Instead, the evidence will show that Michelle
 22 Macchio was arrested merely because of her association with
 23 that small handful of people who engaged in violence or
 24 destruction.
 25 You will hear evidence that the police blurred the

1 line that day, that they treated Ms. Macchio no differently
 2 than that small handful.
 3 When I come back to you at the end of this case, I'm
 4 going to ask you not to follow the police's example. And I'm
 5 confident that, once you have had an opportunity to hear and
 6 see all of the evidence for yourself, you'll see the line
 7 more clearly than the police did that day.
 8 And I'm confident that you will return a verdict of
 9 not guilty.
 10 Thank you.
 11 THE COURT: We're going to begin the Government's
 12 case.
 13 I'll ask the Government to please call its first
 14 witness.
 15 MR. QURESHI: Thank you, your Honor.
 16 Your Honor, the Government calls Andrew Lapp to the
 17 stand.
 18 (Thereupon, the witness entered
 19 the courtroom and the following
 20 proceedings were had:)
 21 THE COURT: Sir, please come up here.
 22 Please remain standing and raise your right hand.
 23 THE WITNESS: Sure.
 24 ANDREW LAPP, GOVERNMENT WITNESS, SWORN
 25 THE COURT: Good afternoon.

- 1 THE WITNESS: Good afternoon, your Honor.
 2 DIRECT EXAMINATION
 3 BY MR. QURESHI:
 4 Q. Good afternoon, sir.
 5 A. Good afternoon.
 6 Q. Can you please introduce yourself to the ladies and
 7 gentlemen of the jury by stating and spelling your first and
 8 last name, please.
 9 A. My name is Andrew Lapp, A-n-d-r-e-w, L-a-p-p.
 10 Q. Mr. Lapp, how old are you?
 11 A. 47.
 12 Q. Are you married?
 13 A. I am.
 14 Q. Do you have any children?
 15 A. Four.
 16 Q. Without telling us the exact street address, what
 17 city and state do you live in?
 18 A. Do I live in?
 19 Q. Yes.
 20 A. Silver Spring, Maryland.
 21 Q. Mr. Lapp, what do you do for a living?
 22 A. I'm restaurant manager.
 23 Q. Any particular restaurant?
 24 A. Au Bon Pain.
 25 Q. Are you at any particular location of Au Bon Pain?

- 1 A. I am. I'm the general manager of the 13th Street
 2 location.
 3 Q. Now, Mr. Lapp, how long have you been with ABP?
 4 A. Four years.
 5 Q. Do you mind if I call it ABP?
 6 A. No. We all do.
 7 Q. Four years, you said?
 8 A. Yes, sir.
 9 Q. And in your capacity as a retail manager, what are
 10 your duties and responsibilities?
 11 A. I oversee all operations in the cafe. I'm
 12 responsible for everything.
 13 Q. On a given shift, how many individuals are you
 14 supervising?
 15 A. About 20.
 16 Q. I want to direct your attention specifically to
 17 January 20th of 2017.
 18 Were you working at APB on that day?
 19 A. Yes. I was scheduled for a later shift that day.
 20 Q. What is your normal shift?
 21 A. I typically work 5:00 to 3:00. But occasionally I
 22 have to close to show my other managers I still know how to
 23 do it.
 24 Q. So 5:00 a.m. to 3:00 p.m.?
 25 A. Yes.

- 1 Q. On that particular day, January 20th of 2017, what
 2 was your scheduled shift?
 3 A. 11:00 to close. 11 a.m. to close.
 4 Q. So you come in from Silver Spring, Maryland.
 5 Correct?
 6 A. Yes, sir.
 7 Q. How do you come in to your Au Bon Pain location? Do
 8 you take the Metro? Drive?
 9 A. I drive.
 10 Q. On that particular day, did you drive in?
 11 A. I did.
 12 Q. What's your normal route that you do?
 13 A. Straight down Georgia Avenue to 16th, usually cut
 14 across P to the circle and down 13th to look for parking.
 15 Q. On that particular day, did you go by the circle?
 16 A. I did.
 17 Q. What is Logan Circle? If you can orient the jury,
 18 what are the cross streets that sort of feed it?
 19 A. Logan Circle is your typical DC circle. It's one of
 20 the larger ones. It's got the statue in the middle with the
 21 park. It's at the intersection of Rhode Island, P and 13th.
 22 Q. On that particular day, when you arrived at Logan
 23 Circle, do you remember approximately what time it was?
 24 A. Yeah. It was -- I came in a little early that day.
 25 It was around 10:00.

- 1 Q. And when you reached Logan Circle, did you observe
 2 anything out of the ordinary?
 3 A. I did.
 4 Q. What was that?
 5 A. There was a big crowd of people in the circle, a
 6 bunch of people crossing the streets to get to the circle. A
 7 lot of people -- it struck me that people were on the statue,
 8 which you don't usually see. So it kind of stuck in my
 9 memory.
 10 And the folks that were hanging out there were
 11 mostly wearing dark clothing. A few of them had like the
 12 bandannas covering their face with the different graphics on
 13 them (indicating).
 14 Q. And, for the record, when you said bandanna covering
 15 their face, you used your left thumb, your right thumb, your
 16 left -- and your right index finger and left index finger to
 17 sort of create a cover over your face just below the eye. Is
 18 that fair to say?
 19 A. Yeah. Like, you know, outlaw style.
 20 Q. What was that? Outlaw style?
 21 A. Yeah. Like a western.
 22 MS. WELETZ: Your Honor, I would object.
 23 THE COURT: Overruled.
 24 BY MR. QURESHI:
 25 Q. What was the demeanor of the folks who were gathered

1 in the park -- or in the circle that morning?

2 A. You know, other than -- I mean, they were -- it
3 struck me as unusual. I mean, it was Inauguration Day. I
4 expected to see crowds. I expected to see people.

5 But they were on the statue. So it just didn't
6 feel -- it felt unusual to me, I guess. As far as their
7 demeanor, no. I couldn't really say.

8 Q. And you described it as unusual. Did you do
9 anything in response to observing what you've described as
10 unusual.

11 A. Yeah. It was unusual enough, I took some video for
12 the record.

13 Q. And that's from your vehicle?

14 A. From my vehicle, from my phone, out the driver
15 window.

16 Q. Mr. Lapp, I'm going to show you on the screen what
17 is marked as Government's Exhibit 226.

18 Do you recognize --

19 THE COURT: Before you do that, do we have an
20 exhibit list? Do you have a couple copies for us?

21 MR. QURESHI: Yes, your Honor.

22 MS. KERKHOFF: (Tenders documents to the Court.)

23 MR. QURESHI: The Court's brief indulgence.

24 THE COURT: And this is 227, you said?

25 MR. QURESHI: 226, your Honor.

1 BY MR. QURESHI:

2 Q. Mr. Lapp, we've stopped Exhibit 226. It's paused
3 currently.

4 Do you recognize what you see on the screen in front
5 of you?

6 A. I do.

7 Q. What do you recognize it to be?

8 A. I recognize it to be what I saw that morning. And,
9 so far, it looks like the video I took.

10 Q. And does this video, at least the first screen shot
11 of the video, fairly and accurately depict what you observed
12 from your vehicle just after 10 a.m. on January 20th, 2017?

13 A. It does.

14 MR. QURESHI: At this point, your Honor, the
15 Government would move 226 in evidence and ask to publish it.

16 THE COURT: It's been admitted, subject to a motion
17 to strike. You are publishing it and you may.

18 MR. QURESHI: Thank you, your Honor.

19 (Whereupon, segments of Government's Exhibit No. 226
20 were published in open court.)

21 BY MR. QURESHI:

22 Q. Can you describe what you see here, Mr. Lapp.

23 A. Yes. I'm turning right onto the circle, heading
24 towards P. There's a crowd of people heading towards the
25 circle. There's some folks on and around the statue, all

1 THE COURT: If you could hand those out quickly.
2 And we're going to keep going.

3 MR. QURESHI: Thank you, your Honor.

4 For the record, your Honor, I've consulted with a
5 least a few defense counsel. And there's no objection to
6 publishing this exhibit.

7 THE COURT: First of all, will you be offering this?

8 MR. QURESHI: Yes, your Honor.

9 THE COURT: So may I admit it, subject to a motion
10 to strike if things turn out not to be what you expected?

11 MS. COLEMAN: Yes, your Honor.

12 THE COURT: I'm seeing all these yes's. This is
13 what I'm going to do from now on unless I hear an objection
14 from somebody.

15 MR. QURESHI: For the record, your Honor, it was
16 previously produced to counsel as well.

17 THE COURT: I understand.

18 So this is 226 and it's admitted.

19 (Whereupon, Government's Exhibit No. 226 was entered
20 into evidence.)

21 BY MR. QURESHI:

22 Q. Mr. Lapp, we're going to go ahead and play --

23 THE COURT: But you do need to lay your foundation
24 anyway.

25

1 dressed in dark clothing. I guess that was that.

2 Q. How many times have you gone by that circle -- how
3 many years have you been at that ABP on 13th Street?

4 A. Four years.

5 Q. And I might not have asked you this.

6 What's the exact address of the ABP that you work
7 at?

8 A. 1100 13th Street, between Massachusetts and L.

9 Q. Where is that in proximity to the circle that we're
10 looking at in Government's Exhibit 226?

11 A. I'd call it three or four blocks south.

12 Q. And I'd like to talk about circles like I talk about
13 clocks.

14 So where are you -- I presume you're --

15 A. I'm on the west side of the circle coming from P --
16 eastbound P, taking a right into the circle heading towards
17 13th Street.

18 Q. Is it fair to say, since you're south of the circle,
19 you're at 6:00 heading down to go to your store?

20 A. 9:00. Well, the store is 6:00.

21 Q. That's right.

22 A. I was --

23 THE COURT: So can I just say it kind of depends
24 where you are as to what time you're giving it?

25 MR. QURESHI: That's right.

1 BY MR. QURESHI:
 2 Q. If we're looking at --
 3 MR. QURESHI: I'll rephrase the question, your
 4 Honor.
 5 BY MR. QURESHI:
 6 Q. Mr. Lapp, if we're looking at the circle from an
 7 aerial view, your particular store, ABP, is at what point of
 8 the circle and what direction?
 9 A. It is 6:00 -- 6:00 due south (indicating).
 10 Q. You just gestured with your hand up and down.
 11 A. Yeah.
 12 Q. So after you observed this in the circle, what did
 13 you do next?
 14 A. I proceeded to the cafe normally -- to look for a
 15 parking spot on the street, especially since it was kind of a
 16 holiday and I figured I'd get a lucky spot.
 17 It's a residential area. So they do have some --
 18 some fee-free parking spots, I guess you'd call it. We all
 19 fight for them on a daily basis.
 20 But --
 21 Q. On that particular day, did you find a lucky spot?
 22 A. After I saw that crowd, I kind of -- I decided to
 23 park straight into the garage. And I did pass a couple empty
 24 spots on the way down.
 25 Q. And how long did you say you were at that ABP

1 location?
 2 A. Four years.
 3 Q. So that's right in downtown DC. Correct?
 4 A. Yes, sir.
 5 Q. Have you seen demonstrations in the past?
 6 A. Oh, yeah. Many.
 7 Q. Have you passed demonstrations on your way to work
 8 in the last four years?
 9 A. We've passed them and gone out to look at them and
 10 take video of them. It's a very popular intersection for, I
 11 think, those kind of events.
 12 Q. And why on that day did you decide not to park on
 13 the street?
 14 THE COURT: Can I ask counsel to approach, please.
 15 (Whereupon, the following proceedings were had at
 16 side-bar outside the presence of the jury:)
 17 THE COURT: I'm asking whether -- I don't think it's
 18 relevant why he chose to park downstairs. I don't think his
 19 state of mind at the time right before the whole thing began
 20 or before the riot is not relevant. It may be relevant that
 21 he can physically compare demonstrations that he's seen to
 22 what he saw there. But I don't think his premonitions are
 23 relevant unless somebody on the other side of the podium asks
 24 to.
 25 THE COURT: So, Mr. Lazerow said he's getting ready

1 to object. Everyone else is shaking their head no. So I
 2 don't see anyone wishing for this testimony.
 3 And I'm going to ask you to rephrase your question.
 4 MR. QURESHI: Yes, your Honor.
 5 (Whereupon, the following proceedings were had in
 6 open court:)
 7 BY MR. QURESHI:
 8 Q. So you were describing in the last four years you've
 9 seen a number of demonstrations. Is that correct?
 10 A. Yes.
 11 Q. What, if anything, was different about this one?
 12 A. A few of them had their faces covered. The dark
 13 clothing. They were a younger crowd, I guess you could say.
 14 It just had a different feel to it.
 15 Q. So how long from this location in Government's
 16 Exhibit 226 did it take you to get to your store on
 17 13th Street?
 18 A. With parking, probably four to five minutes.
 19 Q. After you parked your vehicle, I assume you
 20 responded to your work location. Correct?
 21 A. Yes.
 22 Q. How many individuals were working on that particular
 23 day?
 24 A. That day was a little less than the 20. We expected
 25 a lighter day based on the history. 12.

1 Q. And just so we can orient the ladies and gentlemen
 2 of the jury, can you just generally describe what the store
 3 looks like when you enter the premises.
 4 A. Sure.
 5 When you go in, you've got our self-serve area to
 6 the right where you can grab your bottled drinks. Your
 7 coffee station's there, the pastry and the grab-and-go, like
 8 the prepared food you don't have to wait in line for,
 9 cabinets to the right.
 10 Straight ahead is the counter where we prepare the
 11 salads and the sandwiches that are made to order. You go up
 12 there and order them.
 13 And over to the left is the self-serve soup station,
 14 the cookie rack, more of the center of the store.
 15 Further to the left is the cashiers and the
 16 dining -- sit-down area.
 17 Q. Thank you, Mr. Lapp.
 18 Now, Mr. Lapp, I'm going to ask Ms. Kerkhoff to
 19 assist me in displaying for you what we've marked as
 20 Government's Exhibit 230.
 21 THE COURT: Any objection?
 22 Hearing no objection, it'll be admitted, subject to
 23 a motion to strike.
 24 (Whereupon, Government's Exhibit No. 230 was entered
 25 into evidence.)

1 MR. QURESHI: We need to rotate that.
 2 There we go.
 3 BY MR. QURESHI:
 4 Q. So, Mr. Lapp, I'm displaying for you what we've
 5 marked as Government's Exhibit 230.
 6 Do you recognize that?
 7 A. Yes, sir.
 8 Q. What do you recognize it to be?
 9 A. That is my cafe.
 10 Q. And that's, fair to say, a Google sort of street
 11 view version of your cafe or -- is that correct?
 12 A. Yes.
 13 Q. And does it fairly and accurately depict what your
 14 cafe looks like in its normal business condition?
 15 A. It does.
 16 Q. Now, in the center of Government's Exhibit 230 is a
 17 doorway.
 18 Do you see that?
 19 A. Yes.
 20 Q. Is that the only door entrance in and out of your
 21 cafe?
 22 A. No. We have a service entrance, the back door that
 23 goes to the loading dock, where our delivery vans are because
 24 we're a catering store.
 25 There's also an interior side door that goes into

1 the building that the folks that work in the building do come
 2 in and out of without going outside.
 3 Q. But for individuals of the public who want to come
 4 off the street --
 5 A. That's the one.
 6 Q. This is the normal one?
 7 And how many windows do you have facing 13th Street
 8 Northwest at the front of your business there?
 9 A. I think there's four. I think there's one more that
 10 we don't see in the picture.
 11 Q. Okay. Is it to the left of this image or to the
 12 right?
 13 A. If there is one, it's to the left.
 14 Q. Okay.
 15 A. I think there's one more.
 16 Q. And I'm going to ask to move on to Government's
 17 Exhibit 231.
 18 MR. QURESHI: Your Honor, again, we'd move to admit
 19 this, subject to foundation.
 20 THE COURT: Any objection?
 21 You don't need to say it if you don't have one.
 22 So there's silence.
 23 I'll admit 231.
 24 (Whereupon, Government's Exhibit No. 231 was entered
 25 into evidence.)

1 THE COURT: Subject to a motion to strike.
 2 MR. QURESHI: Thank you your Honor.
 3 BY MR. QURESHI:
 4 Q. I'm showing you on the monitor what's been marked as
 5 Government's Exhibit 231.
 6 Do you recognize that?
 7 A. I do.
 8 Q. What's that a picture of?
 9 A. That is the picture of the inside of my cafe from
 10 the back right-hand corner of the dining room.
 11 Q. And you described earlier like a hot bar area at the
 12 entrance.
 13 Where is the entrance in this photo?
 14 A. The entrance is a little bit to the left of center
 15 and straight back where those -- where the light coming in
 16 is.
 17 Q. Okay. In the center of Government's Exhibit 231 we
 18 see what looks like a support beam.
 19 Do you see that?
 20 A. Yes.
 21 Q. Is the doorway to the right of that, to the left of
 22 that or behind it?
 23 A. The second support beam is to the right of it.
 24 Q. I'm not following you.
 25 THE COURT: Do you want to just get up? There's a

1 picture right behind you and you can point to it.
 2 THE WITNESS: Great.
 3 (Witness complies.)
 4 The front doors.
 5 BY MR. QURESHI:
 6 Q. So for the record, you've pointed -- I've identified
 7 a support beam in the center of Government's Exhibit 231.
 8 You've pointed to the left of that, correct, where the
 9 windows are located -- or where the light is coming in?
 10 A. Yes.
 11 Q. Okay. Thank you.
 12 THE COURT: Thank you.
 13 THE WITNESS: Yeah.
 14 BY MR. QURESHI:
 15 Q. So you've entered the store. I'd like to go back to
 16 January 20th of 2017.
 17 What's the first thing you did when you arrived that
 18 day?
 19 A. Typically -- well, that day, probably what I always
 20 do, but I couldn't say for sure. Go into the office,
 21 wintertime, take my jacket off, take my Redskins hat off,
 22 check email, come out front and get started.
 23 Q. Did you come out front and get started that morning?
 24 A. I did.
 25 Q. And what do you remember happening next?

1 A. Nothing out of the ordinary for a few minutes.
 2 Then I was kind of in a prep area, not facing the
 3 front, just kind of getting -- doing some -- some of the
 4 checklists that -- one of the many checklists we have to do
 5 on a daily basis, when I heard a really loud bang, I guess,
 6 boom.
 7 Q. Did you learn what that sound was?
 8 A. Not right away. Then I heard a lot of commotion
 9 from the dining room with one of my cashiers. As I was
 10 turning, I heard another one and -- in that second window,
 11 which -- we saw a rock.
 12 We saw a rock kind of bouncing off it because I was
 13 already looking that way after the first one and then right
 14 after that another one that broke the glass and then after
 15 that -- it happened pretty quick -- another one on the next
 16 window down.
 17 Q. And did you look outside?
 18 A. Yes. After the -- I turned after the first one to
 19 look outside.
 20 Q. Before we turn to outside, how many customers would
 21 you say you had in there at that point?
 22 A. That would be probably about 14 or so.
 23 Q. And you described the staff members already.
 24 What was the reaction in there? How would you
 25 describe it?

1 A. I heard some exclamations of -- I guess the best I
 2 could describe it would be shock, surprise, you know. After
 3 the first one, I heard -- I knew it was one of the -- my
 4 cashier. She let out kind of a little scream.
 5 Then after the second one was definitely a scream.
 6 Then she started calling my name because she didn't know I
 7 was right there. So she started calling me. And then just a
 8 lot of, I guess, excited chatter from the customers.
 9 Q. And what did you observe outside?
 10 A. A couple hundred people out on the street walking
 11 south on 13th. I recognized them to be the folks I saw at
 12 the circle.
 13 Q. And you're not obviously -- correct me if I'm wrong.
 14 Are you 100 percent sure it was the same people up
 15 at the circle?
 16 A. Yes. Yeah.
 17 Q. And what about them looked familiar to you?
 18 A. The covered faces, the dark clothing, the young
 19 crowd. They were coming from that way.
 20 Q. Okay.
 21 A. You know, it was looking organized, like it wasn't
 22 just people heading to go somewhere. It was a definite
 23 march.
 24 Q. And what was your priority at that point after you
 25 realized what was going on?

1 A. The safety of my team members and the guests and
 2 property.
 3 Q. So what did you do?
 4 A. I kind of looked over at the cashier that looked
 5 scared. I said, "Just stay calm." I kind of made eye
 6 contact with some of the customers that were looking at me,
 7 which looked like for guidance, I guess.
 8 And I headed to the front door and went out front to
 9 just kind of keep anybody from coming in if they wanted to
 10 and trying to find the people that threw the rock.
 11 Q. Were you able to find the people that threw the
 12 rock?
 13 A. They -- I saw the person who threw the last rock --
 14 or the last two rocks. They threw real quick, turned around
 15 and into the crowd.
 16 Q. Where did they go?
 17 A. I couldn't see. They just blended in.
 18 Q. And you described rocks.
 19 Did you see what else they were breaking things with
 20 or was it just rocks?
 21 A. I -- I observed one male bashing that -- it was in
 22 the picture -- bashing that pay-to-park station with a rock.
 23 MR. QURESHI: Your Honor, I'd like to ask
 24 Ms. Kerkhoff here --
 25 MR. HEALY: Your Honor, objection. Could we

1 approach?
 2 THE COURT: Yes.
 3 (Whereupon, the following proceedings were had at
 4 side-bar outside the presence of the jury:)
 5 THE COURT: Mr. Qureshi?
 6 MR. QURESHI: Yes.
 7 THE COURT: What is it you're about to show?
 8 MR. QURESHI: It's Government's Exhibit 148, a
 9 particular clip --
 10 THE COURT: Say that again.
 11 MR. QURESHI: A particular clip, your Honor, a file
 12 within that. 148 is a number of videos.
 13 THE COURT: I know. But I want to know what it's
 14 going to be.
 15 MR. QURESHI: It's a video of an individual slamming
 16 with a rock the parking meter that the witness just testified
 17 to.
 18 THE COURT: And is this witness going to be able to
 19 authenticate it?
 20 MR. QURESHI: Yes, your Honor.
 21 THE COURT: And so, Mr. Lazerow, you're objecting to
 22 it?
 23 MR. HEALY: Mr. Healy.
 24 THE COURT: Mr. Healy. Sorry.
 25 MR. HEALY: He referenced that he had already seen

1 the video. I was concerned that he had watched the
 2 statement. So --
 3 THE COURT: Why would he have been here?
 4 MR. HEALY: I'm not saying it was in here. There
 5 was another room where he could have been. But he said
 6 the -- you know, smashing the parking station, you know, that
 7 he saw in the video.
 8 So if he was referencing back to a prior --
 9 THE COURT: So the Government, generally speaking,
 10 shows its videos to the witness ahead of time so that the
 11 witness can later say, "I've seen it and can authenticate
 12 it."
 13 MR. HEALY: I just wanted to make absolutely
 14 certain --
 15 THE COURT: So the speculation that the Government
 16 showed the video -- that he watched a video in the other
 17 courtroom, is there a basis for your --
 18 MR. HEALY: That was the concern.
 19 THE COURT: None of the visuals are projected into
 20 the other courtroom. You should know that.
 21 MR. HEALY: And just for the record --
 22 MR. QURESHI: For the record --
 23 THE COURT: Let's do this now. Okay.
 24 Overruled. Thank you.
 25 (Whereupon, the following proceedings were had in

1 open court:)
 2 THE COURT: Overruled.
 3 This is Exhibit 148? Yes? It's 148?
 4 MS. KERKHOFF: Yes, your Honor.
 5 BY MR. QURESHI:
 6 Q. So, Mr. Lapp, you said that you observed an
 7 individual hitting the parking meter with a rock?
 8 A. Yes.
 9 Q. What was your vantage point? Were you inside the
 10 doors or were you --
 11 A. I was standing outside, right outside the front
 12 doors, about 10 feet away from that -- that meter.
 13 MR. QURESHI: And, for the record, your Honor, I'm
 14 going to stop at Government's Exhibit 148. This is
 15 File 2901, which has been disclosed to counsel already. It's
 16 part of 148?
 17 THE COURT: Is there a timestamp that you're
 18 stopping at?
 19 MR. QURESHI: I'm going to play the entire video,
 20 your Honor. It's a 40 second video. I'm going to stop it
 21 here to just have the witness testify to it.
 22 THE COURT: So what timestamp is it now?
 23 MR. QURESHI: Zero.
 24 THE COURT: Okay.
 25

1 BY MR. QURESHI:
 2 Q. Mr. Lapp, do you recognize the still frame in
 3 Government's Exhibit 148?
 4 A. I do.
 5 Q. What do you recognize it to be?
 6 A. I recognize that to be a still of my cafe and the
 7 cleaners next door from, I'd say, about 50 yards north.
 8 Q. Does it fairly and accurately depict what your store
 9 looks like on any given day?
 10 A. It does.
 11 MR. QURESHI: Your Honor, the Government moves
 12 148 in this particular file, 2901, into evidence, subject to
 13 further foundation, as discussed.
 14 THE COURT: Any objection?
 15 MS. COLEMAN: No, your Honor.
 16 THE COURT: I don't need everybody to say no. If
 17 there's a yes, I'll bring you back up.
 18 Not getting any yes's, thank you for that.
 19 And it's admitted.
 20 (Whereupon, Government's Exhibit No. 148 was entered
 21 into evidence.)
 22 MR. QURESHI: Thank you, your Honor.
 23 THE COURT: That's 148. That's a subfile.
 24 There are going to be more 148s?
 25 MR. QURESHI: Yes, your Honor.

1 (Whereupon, segments of Government's Exhibit No. 148
 2 were published in open court.)
 3 BY MR. QURESHI:
 4 Q. Mr. Lapp, do you recognize that?
 5 A. I sure do.
 6 Q. I know there was no audio there in that instance.
 7 But did you see the individual that you described
 8 earlier?
 9 A. Yes.
 10 Q. And where exactly were you positioned, you said?
 11 A. I was right behind the individual that was hitting
 12 the parking meter.
 13 Q. What did that individual do after he hit the meter
 14 with the rock?
 15 A. Ran back into the crowd.
 16 Q. What did you do at that point once they moved on?
 17 A. I started taking pictures of the damage.
 18 Q. Why did you take pictures?
 19 A. I took pictures of the window, obviously, for
 20 insurance purposes. Also, recorded the moment.
 21 Q. Okay.
 22 A. And for posterity, I guess. It was kind of an
 23 unusual day.
 24 Q. So, Mr. Lapp, I'm going to show you what is marked
 25 as Government's Exhibits 227, 228 and 229. I'm going to go

1 one at a time.
 2 First, Government's Exhibit 227.
 3 MR. QURESHI: Your Honor, I'm moving to admit each
 4 of these exhibits which have been previously provided to
 5 counsel, which are all images. I'll lay a foundation for the
 6 question once the images appear.
 7 THE COURT: And I just need to know -- they need to
 8 let you see it first so you know what you're responding to,
 9 counsel for the defense.
 10 MR. LAZEROW: May I ask one question of him?
 11 THE COURT: No. But can you just tell me --
 12 MR. LAZEROW: I wasn't going to do it in open court.
 13 THE COURT: And so that's Mr. Lazerow talking?
 14 MR. LAZEROW: Yes.
 15 THE COURT: Please remember to identify yourself.
 16 Are you going to be aware of what he's saying by
 17 exhibit number or are you going to have to see it first
 18 before I ask if there's an objection?
 19 MR. LAZEROW: I don't think so. I'm trying to match
 20 up what he told us it was last time. That's all.
 21 THE COURT: So now it's on the screen. Any
 22 objection?
 23 This is which one? 227?
 24 MR. QURESHI: 227, your Honor.
 25 THE COURT: All right. No objection to 227. So

1 I'll admit it subject to a motion to strike.
 2 (Whereupon, Government's Exhibit No. 227 was entered
 3 into evidence.)
 4 BY MR. QURESHI:
 5 Q. Mr. Lapp, do you recognize Exhibit 227?
 6 A. Yes, I do.
 7 Q. Who took that picture?
 8 A. I did.
 9 Q. Was that graffiti -- what does that say?
 10 A. It says "We all wear slavery."
 11 Q. Is that graffiti underneath what looks like -- and
 12 you described it earlier -- there's a dry cleaning place next
 13 door to you?
 14 A. Yeah. That's my neighbor.
 15 Q. Was "We all wear slavery" on that window that
 16 morning before you got there?
 17 A. No, it wasn't.
 18 Q. I'll now turn to Government's Exhibit 229. I'm
 19 going to go a little bit out of order.
 20 Do you --
 21 THE COURT: Any objection?
 22 Hold on.
 23 Any objection?
 24 Hearing nothing, I'll admit it subject to a motion
 25 to strike.

1 (Whereupon, Government's Exhibit No. 229 was entered
 2 into evidence.)
 3 BY MR. QURESHI:
 4 Q. Do you recognize that, Mr. Lapp?
 5 A. I do. That's my window.
 6 Q. Who took that picture?
 7 A. I did.
 8 Q. And does that fairly and accurately depict what it
 9 looked like after the crowd passed on January 20th of 2017?
 10 A. Yes, it does.
 11 Q. Finally, Mr. Lapp, I'm going to show you what's
 12 previously been marked as Government's Exhibit 228.
 13 THE COURT: Any objection?
 14 I'll admit it.
 15 (Whereupon, Government's Exhibit No. 228 was entered
 16 into evidence.)
 17 BY MR. QURESHI:
 18 Q. Mr. Lapp, do you recognize that?
 19 A. Yes. I recognize that rock.
 20 Q. What do you recognize it to be? Where did you take
 21 this picture?
 22 A. That was right on the ground under the broken window
 23 in front of my café.
 24 Q. You said --
 25 A. I recognize that to be the rock that broke the

1 window. I guess --
 2 Q. Excuse me?
 3 A. I recognize that to be the rock that broke the
 4 window.
 5 Q. And you said you've been at that location on 13th
 6 Street for four years?
 7 A. Yes, sir.
 8 Q. And you described it as a residential area?
 9 A. It is right bordering on residential. Across the
 10 street is condos. Up the street is condos.
 11 Q. Now, is there any structure, any landscaping near
 12 you where there's rocks that big?
 13 A. No, there's not. That's one of the reasons I took
 14 the picture.
 15 Q. Why did you take the picture?
 16 A. I took the picture because --
 17 THE COURT: I'm going to ask you to just move on for
 18 the same reasons I said at the bench. Relevance.
 19 MR. QURESHI: Thank you, your Honor.
 20 BY MR. QURESHI:
 21 Q. Now, Mr. Lapp, finally, I want to show you what I've
 22 marked as Government's Exhibit 232.
 23 THE COURT: Any objection?
 24 Hearing nothing, I'll admit it.
 25 (Whereupon, Government's Exhibit No. 232 was entered

1 into evidence.)
 2 BY MR. QURESHI:
 3 Q. Mr. Lapp, do you recognize Government's Exhibit 232?
 4 A. Yes, I do.
 5 Q. What is it?
 6 A. That's the invoice we received from the glass
 7 company to repair that broken window you just saw.
 8 Q. Has that broken window been repaired?
 9 A. Yes.
 10 Q. Does this invoice fairly and accurately illustrate
 11 the damage amount for the destruction that happened on
 12 January 20th of 2017?
 13 A. Yes.
 14 Q. What was that total amount?
 15 A. \$5,790.40.
 16 MR. QURESHI: I have nothing further, your Honor.
 17 THE COURT: Can you tell me who's going first?
 18 Cross-examination, please. Now would be the time.
 19 Mr. Lazerow.
 20 MR. LAZEROW: I will introduce myself.
 21 CROSS-EXAMINATION
 22 BY MR. LAZEROW:
 23 Q. Good afternoon, sir. My name is Andrew Lazerow. I
 24 represent Ms. Macchio in this case.
 25 A. Good afternoon.

1 Q. I only have a couple questions.
 2 As you drove by Logan Circle, you did not see any
 3 weapons visible in the crowd. Correct?
 4 A. None that I recall.
 5 Q. And as you drove by Logan Circle, you did not see
 6 any vandalism in the circle. Is that correct?
 7 A. That is correct.
 8 MR. LAZEROW: Thank you very much.
 9 THE COURT: Ms. Coleman.
 10 CROSS-EXAMINATION
 11 BY MS. COLEMAN:
 12 Q. Good afternoon, Mr. Lapp.
 13 A. Good afternoon.
 14 MS. COLEMAN: If I could ask the Government to put
 15 back up Government's Exhibit 148.
 16 MR. QURESHI: (Complies.)
 17 THE COURT: Could you assist, because it's out of
 18 focus.
 19 MS. KERKHOFF: It's because it's paused.
 20 MS. COLEMAN: If we could play that exhibit.
 21 (Whereupon, segments of Government's Exhibit No. 148
 22 were published in open court.)
 23 MS. COLEMAN: I'm sorry. If we could actually
 24 pause.
 25

1 BY MS. COLEMAN:
 2 Q. Now, Mr. Lapp, is it safe to say there are
 3 individuals wearing other colors such as khaki, blue, and I
 4 think I saw a white shirt in the last screen, green?
 5 A. Yeah. I see some colors in there.
 6 Q. And when you see these couple of people that are
 7 engaged in destruction of property, the mass of people in the
 8 street, is it safe to say they're just walking by?
 9 A. Yes.
 10 MS. COLEMAN: Thank you. Nothing further.
 11 THE COURT: For the record, what timestamp are we on
 12 now?
 13 MS. KERKHOFF: 12 seconds.
 14 THE COURT: And this is the parking post or meter or
 15 pay station that you were referring to before?
 16 THE WITNESS: Yes, your Honor.
 17 THE COURT: Thank you.
 18 Who's next? Ms. Weletz.
 19 You can cross from the table if you want.
 20 MS. WELETZ: I want to see Mr. Lapp. Unfortunately,
 21 your computer is blocking him.
 22 THE WITNESS: I'll sit up straighter.
 23 THE COURT: I've been asking, like, 100 times to
 24 have that computer changed.
 25 Thank you. I'll quote you to them.

1 CROSS-EXAMINATION
 2 BY MS. WELETZ:
 3 Q. Good afternoon, Mr. Lapp.
 4 A. Good afternoon.
 5 Q. Now, as you were driving around Logan Circle, you
 6 were driving your vehicle. Correct?
 7 A. Yes.
 8 Q. You were not a passenger?
 9 A. Yes.
 10 Q. So you were operating your vehicle with your cell
 11 phone, videotaping. Correct?
 12 A. I was.
 13 Q. Now, you indicated that, as you were doing that, you
 14 saw people in dark clothing congregating around the statue.
 15 Correct?
 16 A. Yes.
 17 Q. Now, you indicated that you saw people with
 18 bandannas. Are you saying from your car you could see these
 19 people with their faces covered from where you were?
 20 A. Yes.
 21 Q. Now, you said that you were expecting crowds.
 22 Correct?
 23 A. Yes.
 24 Q. It was Inauguration Day, and you've been through
 25 that before. Correct?

- 1 A. Yes, ma'am.
- 2 Q. But you also testified that you've seen other
- 3 demonstrations and protests?
- 4 A. Many. Yes.
- 5 Q. But is it your testimony that you've never seen
- 6 individuals protesting wearing black?
- 7 A. That's not my testimony. No.
- 8 Q. But you've seen protesters before who wore black.
- 9 Correct?
- 10 A. I can't say for sure that I have. No. I would
- 11 imagine that I have.
- 12 Q. Now, your testimony was that you saw hundreds of
- 13 people marching by. Correct? And I think that's shown now
- 14 with Government's Exhibit 148.
- 15 A. Yes, ma'am.
- 16 Q. I believe it is. Correct?
- 17 A. Uh-huh.
- 18 Q. Now, this individual you saw -- well, first of all,
- 19 you saw an individual spray-painting --
- 20 A. I didn't see the spray-painting.
- 21 Q. Okay. But you saw that in the Government's exhibit.
- 22 Correct?
- 23 A. I did. Yeah.
- 24 Q. And do you see this individual here? You actually
- 25 saw this destruction?

- 1 A. Yes.
- 2 Q. You indicate in fact that you were behind this
- 3 person?
- 4 A. I was. Yeah.
- 5 Q. And this person appeared to be male to you?
- 6 A. Yes.
- 7 Q. And fairly tall. Correct?
- 8 A. Seen now, yeah.
- 9 Q. And wearing a black backpack.
- 10 A. (Nods head in the affirmative.)
- 11 Q. Is that a yes?
- 12 A. That's a yes.
- 13 Q. They have a white water bottle with a red top on it.
- 14 Correct?
- 15 A. Yes.
- 16 Q. Now, did you see anybody arrest this person?
- 17 A. No.
- 18 Q. And as you watched this person do this, these
- 19 individuals are marching -- these hundreds of individuals are
- 20 marching up the street. Correct?
- 21 A. Yes.
- 22 Q. They're walking. Correct?
- 23 A. They're walking.
- 24 Q. They're not running?
- 25 A. Right.

- 1 Q. And they're carrying flags and banners?
- 2 A. Yes.
- 3 Q. And this took some time for these hundreds of people
- 4 to go in front of your store. Correct?
- 5 A. It took some time. That's fair.
- 6 Q. Several minutes?
- 7 A. Maybe a couple.
- 8 MS. WELETZ: No further questions.
- 9 MR. COHEN: On behalf of Mr. Wood, Brett Cohen.
- 10 If the Government could just leave that still up
- 11 there.
- 12 CROSS-EXAMINATION
- 13 BY MR. COHEN:
- 14 Q. How many times have you watched this video?
- 15 A. One and a little bit.
- 16 Q. The person that's to the left, do you see what that
- 17 person is holding?
- 18 A. A camera. It looks like a camera.
- 19 Q. Okay. Is he also holding a cell phone? Can you
- 20 see?
- 21 A. Yes.
- 22 Q. Does that person look like my client?
- 23 MR. QURESHI: Objection.
- 24 THE COURT: Sustained.
- 25 MR. COHEN: I have no further questions. Thank you.

- 1 THE COURT: I just need you to approach before you
- 2 do that.
- 3 Sir, if you could step back by the flag, please, for
- 4 a moment.
- 5 (Whereupon, the following proceedings were had at
- 6 side-bar outside the presence of the jury:)
- 7 THE COURT: Mr. Cohen, so you were all objecting to
- 8 having a Government witness who's had far more contact with
- 9 your clients identifying them from the witness stand. And
- 10 yet you're asking this gentleman to do that.
- 11 Is that something you still want?
- 12 MR. COHEN: I guess it'll be up to the jury to --
- 13 THE COURT: I'm asking you, because I need to ask
- 14 them whether they object, because theoretically the
- 15 Government could then show him all sorts of videos and ask
- 16 him to say where your client is. I mean, is that something
- 17 you're asking for?
- 18 MR. COHEN: If I could have the Court's brief
- 19 indulgence. I'm just trying to think of the context in which
- 20 I objected to that.
- 21 THE COURT: In other words, the Government wanted to
- 22 put on a witness who had viewed these videotapes countless
- 23 times, hundreds, I believe --
- 24 MR. COHEN: Right.
- 25 THE COURT: -- and to have him compare your client's

1 appearance to what that witness sees in videotapes and the
 2 arrest photos.
 3 MR. COHEN: I --
 4 THE COURT: And you gave an answer about whether he
 5 sees your client in there. And that's something I believe
 6 you joined in the objection to. Am I right?
 7 MR. COHEN: I probably joined in it.
 8 THE COURT: So I mean, I need to know whether you're
 9 seriously asking that witnesses who have just seen him
 10 sitting over there with you should be allowed to ID him in
 11 photographs.
 12 MR. COHEN: I'll withdraw the question.
 13 THE COURT: Because if that's what you want, I need
 14 to think about whether you should get that. In the end, what
 15 you're going to get is the Government asking for it, too.
 16 MR. COHEN: Right.
 17 THE COURT: So I just need to know if that's what
 18 you really want.
 19 You said you're withdrawing that?
 20 MR. COHEN: I'll withdraw the question.
 21 THE COURT: Okay.
 22 MR. COHEN: Yeah.
 23 (Whereupon, the following proceedings were had in
 24 open court:)
 25 THE COURT: Sir, please come back to the witness

Lapp - REDIRECT - By Mr. Qureshi

1 stand.
 2 Mr. Cohen, you were finished?
 3 MR. COHEN: I have no further questions. Thank you.
 4 THE COURT: Anyone else?
 5 MS. JACQUES: Your Honor, if I may. Tammy Jacques.
 6 CROSS-EXAMINATION
 7 BY MS. JACQUES:
 8 Q. Good afternoon, Mr. Lapp.
 9 A. Good afternoon.
 10 Q. Mr. Lapp, you indicated that you recognized the
 11 people outside your store as the exact people at Logan
 12 Circle?
 13 A. Yes.
 14 Q. How many people were at Logan Circle?
 15 A. I would put it at 150, 200 or so.
 16 Q. And how many people did you see outside your store?
 17 A. More than that. Probably 200 to 300, would be my
 18 estimate.
 19 MS. JACQUES: Thank you.
 20 Nothing further.
 21 THE COURT: I think that's everybody.
 22 Mr. Qureshi, redirect?
 23 MR. QURESHI: Yes, your Honor. Very briefly.

REDIRECT EXAMINATION

1 BY MR. QURESHI:
 2 Q. Mr. Lapp, you were asked by one of the counsel on
 3 cross-examination whether you observed any weapons at the
 4 circle.
 5 Is that correct?
 6 A. That's correct.
 7 Q. And I believe your response was no?
 8 A. Yes.
 9 Q. Did you observe any weapons as the group moved past
 10 your store?
 11 A. I did see a couple holding hammers, which made me
 12 think what I thought when I took the picture of the rock.
 13 MR. QURESHI: I have nothing further, your Honor.
 14 THE COURT: Sir, you may be excused. Do not discuss
 15 your testimony with any other witness.
 16 THE WITNESS: Okay.
 17 THE COURT: Thank you.
 18 (Witness excused.)
 19 THE COURT: Please call your next witness. Who's
 20 your next witness?
 21 MS. KERKHOFF: Officer Ashley Anderson. A longer
 22 witness.
 23 THE COURT: So it's kind of early, but I think what
 24 we'll do is take our break now. It's ten after 3:00. So
 25 I'll have you come back at 3:25.

1 Please don't discuss the case, ladies and gentlemen.
 2 (Whereupon, the jury exited the courtroom at
 3 3:12 p.m. and the following proceedings were had:)
 4 THE COURT: During opening statements, I sustained
 5 an objection to stuff about a lawsuit by the ACLU, which I
 6 didn't understand the context of at that time.
 7 And I just need to ask, because I'm not sure: Is
 8 there a pending lawsuit by the ACLU, Mr. McCool?
 9 MR. MCCOOL: Yes, your Honor.
 10 THE COURT: And so who is -- who has been sued? The
 11 police department?
 12 MR. MCCOOL: The police department, 20 John Doe
 13 supervisors and then 150 John Doe officers.
 14 THE COURT: And I guess "John Doe officers"
 15 meaning --
 16 MR. MCCOOL: They haven't been identified yet. That
 17 part of discovery is continuing it, as I understand.
 18 THE COURT: And so do any particular police officers
 19 know that they individually have been sued at this point?
 20 Probably not, because they're not named?
 21 MR. MCCOOL: Not sure.
 22 THE COURT: And so -- but there's a lawsuit against
 23 the Department.
 24 And so, Ms. Kerkhoff, to the extent there is a
 25 lawsuit against the Department, what's your view about biased

1 cross about a lawsuit?

2 MS. KERKHOFF: Well, I don't believe that it's
3 appropriate for the officers, your Honor, who are not named;
4 and no one, I believe, has been named.

5 My concern, though, is that Mr. McCool's opening
6 tied it to the timing of that, that when they made the
7 decision to arrest, they knew that because the ACLU files
8 lawsuits against people.

9 It was kind of this: They projected there would be
10 a lawsuit and they made an arrest and they had to justify it.

11 THE COURT: So I don't actually agree with that. I
12 think it was going to bias. In other words, they had bias to
13 testify in a certain way now.

14 And so putting aside whether -- you know, openings
15 are not evidence and so I'm not, you know, revisiting the
16 decision for the opening.

17 I probably ought to have overruled if I had
18 understood the context of it all.

19 But what I am not sure is whether it's appropriate
20 for individual officers to be crossed on it.

21 The question I have is: Why not? How else are they
22 going to put that kind of bias in front of the jury? It's
23 not like the whole Department's going to testify. It's not
24 like the general counsel of the Department is going to
25 testify. It's not like the chief of police is going to

1 testify.

2 So isn't there some bias or motive to curry favor in
3 the testimony of individual officers if there's a lawsuit
4 suggesting that what the Department did that day was wrong
5 and that what individual officers, unnamed, that day did was
6 wrong?

7 MS. KERKHOFF: Your Honor, I don't think that you
8 can extend that to every officer when these officers have not
9 been named and when it is about the decisions that were made
10 at a higher level. We can have this discussion as it relates
11 to, for example, Commander Deville. But I don't think the
12 officer who's standing there faces the exposure.

13 My other concern with this, your Honor, is that
14 there are some demonstrably false and yet very prejudicial
15 allegations that are demonstrably false. And if this is
16 going to come out, I think we have to talk about limitations.

17 THE COURT: Give me an example.

18 MS. KERKHOFF: Yes.

19 There are allegations that officers sexually
20 assaulted individuals. Those I can -- it is demonstrably
21 false. It is demonstrably false.

22 And I think that kind of allegation --

23 THE COURT: And so, Mr. McCool, were you planning to
24 raise sexual assault allegations on cross?

25 MR. MCCOOL: No, your Honor. What I can do is this:

1 I can follow up with a brief in support of --

2 THE COURT: I'm not asking anybody to file briefs,
3 because we actually are going forward today with the
4 testimony of a police officer.

5 So you're not going to be asking questions about
6 sexual assault allegations?

7 MR. MCCOOL: No.

8 And I can tell you --

9 THE COURT: So can I just ask --

10 MR. MCCOOL: I won't ask that question without
11 seeking leave of the Court and approaching the bench.

12 THE COURT: I believe it's appropriate to
13 cross-examine individual officers about the existence of an
14 ACLU or any lawsuit, civil suit, either against the
15 Department or individual officers, who at this point are all
16 John Does, going to bias and motive to curry favor.

17 I am not sure that individual allegations are
18 appropriate to raise. In other words, I would want to hear
19 you further on -- were you planning to? Did you intend to
20 address individual allegations or the fact of a pending
21 lawsuit going to the conduct that day such that an individual
22 officer might be motivated to testify in a certain way to
23 influence the outcome of that lawsuit?

24 MR. MCCOOL: I think more of a general bias.

25 Let me put it this way: I was not comfortable and

1 Ms. Coleman was not comfortable getting into that sort of
2 line of questioning. So we weren't certainly going there.

3 THE COURT: Let me just ask: At this point, what I
4 will permit is the cross-examination of individual officers
5 on the issue of bias and motive to curry favor because
6 lawsuits have been filed alleging, generally speaking, that
7 the conduct that day was wrong.

8 And that's what you're seeking to do on behalf of
9 Mr. Harris.

10 Is anybody else at the table planning to do anything
11 beyond that on the cross of individual officers?

12 Who's about to testify?

13 MS. KERKHOFF: Ashley Anderson.

14 THE COURT: That's the officer who you say --

15 MS. KERKHOFF: She's a mountain bike officer. She
16 never used force.

17 I do think it's appropriate for the Court to address
18 and consider the allegations in the lawsuit. While we
19 believe we can prove several are demonstrably false, all
20 relate to post-arrest connect. None of it is about the --
21 it's not an allegation of unlawful arrest.

22 And so what the Government's concern is to sit here
23 and say, particularly with opening, that there's --

24 THE COURT: We're past the opening. Let's just talk
25 about cross.

1 MS. KERKHOFF: But that leaves an impression that
2 this was an unlawful arrest.

3 And the allegations contained in the lawsuit are not
4 about the arrest, have nothing to do with the arrest, but are
5 about the -- how long it took to process, when bathroom
6 breaks during the arrest processing occurred, whether the zip
7 ties were tight. It is all post-arrest conduct.

8 And so I think that it is a little bit different for
9 the manner in which they may seek to use it other than there
10 is a pending lawsuit.

11 But when you say the ACLU has filed in this case, it
12 suggests it's about -- given -- and I know the Court doesn't
13 want to say openings -- given that each person, not about the
14 ACLU, each defense attorney said this was an unlawful arrest
15 where police didn't follow procedures.

16 That's not what the lawsuit is. It's all
17 post-conduct.

18 THE COURT: I understand your point, Ms. Kerkhoff.

19 I still think that a cross-examination about the
20 existence of a lawsuit arising from events that day or
21 challenging events from that day is appropriate, going to
22 bias and motive to curry favor.

23 I think that they're entitled to argue that as a
24 general matter, if the ACLU has filed a lawsuit, that
25 witnesses may be motivated to vindicate the police

1 department's behavior that day.

2 But now that you're telling me it relates to
3 specific allegations subsequent to arrest, do you at least
4 agree with that characterization, Mr. McCool? Or do I have
5 to read the complaint to find out from --

6 MR. McCOOL: Probably so, your Honor. But I think
7 that Ms. Coleman did not intend -- or expect to cross-examine
8 the next officer on bias. We're not going to cross every
9 officer on bias.

10 And I don't think any defense --

11 THE COURT: Let me just ask --

12 If you'll have a seat, Mr. McCool.

13 MR. McCOOL: Yes.

14 THE COURT: I need to ask as a general matter, first
15 of all, does anybody plan to cross-examine regarding bias or
16 motive to curry favor this particular officer in any way
17 other than the general way in which I've described?

18 In other words, if you choose to -- I'm not saying
19 you should choose to -- does anyone intend to go any farther
20 than the existence of a lawsuit challenging the Department's
21 behavior and unnamed individuals' behavior could create a
22 motive to testify in a manner exhibiting bias or motive to
23 curry favor?

24 Everybody's shaking their heads no.

25 I take it from your silence that that is not the

1 plan.

2 And then we're -- going to other officers, was the
3 plan to claim, at least about the ACLU suit, anything more
4 specific than what I've said?

5 And I'm still getting silence.

6 So I take it from your silence that we're all on the
7 same page that the cross would go generally only, if you
8 choose to do it -- I'm not saying you should -- no further
9 than the existence of a lawsuit challenging conduct on that
10 day.

11 The Government -- can I just ask, does anybody
12 disagree with the complaint only addressing conduct
13 subsequent to the arrest?

14 MR. McCOOL: I believe I do. I haven't read it in a
15 while.

16 THE COURT: This is Mr. McCool.

17 MR. McCOOL: Sorry. Steven McCool.

18 I believe I do. And I just need to -- I don't want
19 to speak to something I'm not sure of. I'll file it with the
20 Court along with a short brief on it.

21 THE COURT: I don't need a brief, honest to
22 goodness.

23 MS. KERKHOFF: I want to be clear: There was an
24 initial lawsuit that was filed that was withdrawn. This is
25 the subsequent lawsuit filed in the summer naming four

1 specific plaintiffs. And it's very specific to the
2 allegations.

3 THE COURT: And the plaintiffs are not sitting in
4 the courtroom today?

5 MS. KERKHOFF: No. In the courtroom or --

6 THE COURT: Well, not at the table?

7 MS. KERKHOFF: At the table.

8 THE COURT: I'd just like to see. You're saying the
9 originally filed one is not pending now?

10 MS. KERKHOFF: Correct. It was withdrawn.

11 THE COURT: And was it --

12 MS. KERKHOFF: It was about an unlawful arrest. So
13 that was the --

14 THE COURT: Hold on. Okay?

15 MS. KERKHOFF: I'm sorry.

16 THE COURT: If an officer testifies who -- I think
17 the only officer that testified to the grand jury is --

18 MS. KERKHOFF: Pemberton.

19 THE COURT: -- Pemberton. So when he testified in
20 the grand jury, was the original suit pending?

21 MS. KERKHOFF: I'll have to check the timing. There
22 was a suit filed while the named plaintiff was sitting in the
23 kettle. It was prepared and filed that afternoon before
24 most of the Defendants were even processed for arrest.

25 It was withdrawn. I'll check the withdrawal date.

1 Then the ACLU filed the subsequent complaint which
 2 did not, in my review, challenge unlawful arrest, but
 3 challenged the bathroom breaks, food, water --
 4 THE COURT: So just give me whatever was filed.
 5 But I'll have to look at what Pemberton gets to be
 6 crossed with since he testified in the grand jury. If things
 7 were pending at the time of his testimony, I'll discuss with
 8 everybody what the scope of that cross is.
 9 But if what Mr. Kerkhoff says is correct, the
 10 currently pending lawsuit goes only to events subsequent to
 11 arrest; and so I would limit cross-examination to that
 12 general cross. I do think that cross on bias and motive to
 13 curry favor is appropriate as a general matter, but not going
 14 to specific allegations and not personalizing it to the
 15 officer, unless we discuss it further and you get my
 16 permission.
 17 So with that, it's 25 after. Let's take a 15-minute
 18 break till 20 of. We can tell the jurors they have until 20
 19 of.
 20 (Thereupon a recess was taken, after which the
 21 following proceedings were had:)
 22 THE COURT: Good afternoon again.
 23 We'll get the jury back.
 24 If you can have your next witness seated in one of
 25 those chairs, please.

1 The United States calls Ashley Anderson.
 2 THE COURT: Ma'am, please come on up here.
 3 ASHLEY ANDERSON, GOVERNMENT WITNESS, SWORN
 4 THE COURT: Good afternoon.
 5 THE WITNESS: Good afternoon.
 6 DIRECT EXAMINATION
 7 BY MS. KERKHOFF:
 8 Q. Good afternoon.
 9 Can you please introduce yourself to the ladies and
 10 gentlemen of the jury.
 11 A. Good afternoon. My name is Officer Ashley Anderson
 12 from the Seventh District.
 13 Q. For the benefit of our court reporter, can you spell
 14 your first and last name.
 15 A. Yes. A-S-H-L-E-Y, last name Anderson,
 16 A-N-D-E-R-S-O-N.
 17 Q. And you said you're an officer.
 18 Where are you employed?
 19 A. Metropolitan Police Department, Seventh District.
 20 Q. In the Seventh District?
 21 A. Uh-huh.
 22 Q. What area of the city is encompassed in the Seventh
 23 District?
 24 A. The Southeast and Southwest quadrants of the city.
 25 Q. And how long have you been with the Metropolitan

1 MS. KERKHOFF: Yes.
 2 THE COURT: I want to thank spectators for doing
 3 what I asked and just remaining quiet while court's in
 4 session -- I really appreciate it -- and while the jury's
 5 filing out. It's extremely helpful.
 6 (Thereupon, the witness entered
 7 the courtroom and the following
 8 proceedings were had:)
 9 THE COURT: Ma'am, if you'll just have a seat.
 10 We're going to wait for the jury to come in.
 11 For the record, we have all Defendants. And all
 12 counsel are present.
 13 (Whereupon, the jury entered the courtroom at 3:48
 14 p.m. and the following proceedings were had:)
 15 THE COURT: Good afternoon again, ladies and
 16 gentlemen.
 17 Sorry about that delay. We were discussing some
 18 legal matters and then I need to make sure that everybody got
 19 their break, so sometimes that will happen. To me, it's
 20 better not to have you sitting in the jury box while we all
 21 talk up here at the bench.
 22 So I try to use the breaks for that.
 23 We're now going to hear from the Government's next
 24 witness.
 25 MS. KERKHOFF: Thank you, your Honor.

1 Police Department?
 2 A. A little under four years.
 3 Q. And how long have you been assigned to the Seventh
 4 District?
 5 A. Since September of 2014.
 6 Q. And what are your current responsibilities as an
 7 officer assigned to the Seventh District?
 8 A. I'm a patrol officer in the full stride unit. It is
 9 a unit that consists of bicycle patrol as well as motorcycle
 10 patrol. And we handle business beats in the District.
 11 Q. Now, do you know what a CDU squad is?
 12 A. Yes.
 13 Q. It's CDU, three letters.
 14 What is that?
 15 A. Civil disturbance unit.
 16 Q. And is that what you're assigned to in the Seventh
 17 District?
 18 A. No.
 19 Q. What is that?
 20 A. The -- what I do in the Seventh District is strictly
 21 handling business beats. We have areas of concern that we
 22 monitor to prevent robberies. We handle the 7-Elevens and
 23 different businesses and talking with the managers, you know.
 24 They give us information about what they like us to do. So
 25 we kind of ride around and patrol.

- 1 The civil disturbance unit is a deployable unit.
 2 Anytime there's anything in the city, we are asked to work.
 3 And then we're deployed to certain areas in the city that we
 4 don't normally patrol to handle different operations that are
 5 going on.
 6 Q. So for, like, big events in the city?
 7 A. Yes.
 8 Q. And does the inauguration that occurred on January
 9 20th, 2017, count as one of those events?
 10 A. It does.
 11 Q. Okay. So on January 20th, 2017 -- let me ask this:
 12 You said you were working.
 13 What was your assignment during the day before, the
 14 day after and the day of the inauguration?
 15 A. The day before inauguration, we just had fixed
 16 posts, fixed areas, just to monitor crowd controls. The day
 17 of, yeah. To handle the crowds.
 18 The day of inauguration, we were assigned to a fixed
 19 post. And we are on bicycles, so we are a mobile squad. We
 20 are asked to respond upon being needed elsewhere.
 21 So basically, just the day of, we were in one spot
 22 until called upon.
 23 And then the day after, we pretty much did the same
 24 thing. We had fixed posts and we monitored the crowd, kind
 25 of kept order and things of that nature.

- 1 Q. So your position on the CDU squad, that's not what
 2 I'm going to call your day job as an officer?
 3 A. Correct.
 4 Q. There's for extra events or special events?
 5 A. Exactly.
 6 Q. Now, when you were part of the CDU squad, you said
 7 you were mobile. You were on your mountain bike?
 8 A. Correct.
 9 Q. How many people were in your squad?
 10 A. Seven and a sergeant.
 11 Q. So eight total?
 12 A. Correct.
 13 Q. And how were you dressed?
 14 A. Exactly what I have on today, plus a bicycle helmet.
 15 Q. So on January 20th, 2017, you were wearing what
 16 you're wearing today?
 17 A. Correct.
 18 Q. For the record, that's a blue police uniform with
 19 dark blue pants, and it looks like you have your badge.
 20 What's that large black box under your nametag?
 21 A. That's my body-worn camera.
 22 Q. Is that issued to you?
 23 A. Yes.
 24 Q. Was that issued to you on January 20th, 2017?
 25 A. Yes.

- 1 Q. What else do you have? Is that a --
 2 THE COURT: Can I just ask, body-worn camera is
 3 which one?
 4 THE WITNESS: It's here (indicating).
 5 THE COURT: That's on your right sort of ribcage?
 6 THE WITNESS: Yes. Right below my nametag.
 7 BY MS. KERKHOFF:
 8 Q. And what do you have on your left shoulder?
 9 A. This is the microphone that's attached to my radio.
 10 Q. And what do you have on your belt?
 11 A. I have my service weapon, my extra magazines,
 12 handcuffs, my OC spray and ASP baton and an extra pair of
 13 handcuffs.
 14 Q. And is that the gear that you had with you on
 15 January 20th, 2017?
 16 A. It is.
 17 Q. And what about any specific riot gear?
 18 A. No.
 19 Q. Did you have any face shields?
 20 A. No.
 21 Q. Did you have any riot batons?
 22 A. No.
 23 Q. Now, you stated that you were on the mountain bike
 24 squad. And what -- at around 10:00 to 10:30, where were you
 25 in the city?

- 1 A. I can't remember the exact location. We were close
 2 to I Street, I believe. We were handling another part of the
 3 city at the time. And then we were told to get in the area
 4 of I Street, 14th, 13th, I Street.
 5 Q. On your mountain bike, on Inauguration Day, what was
 6 going on with many of the streets in downtown DC?
 7 A. Most of them were blocked off either with buses,
 8 barricades or police vehicles, because we can't have traffic
 9 coming through the city when we have big events like that.
 10 It's for safety reasons.
 11 Q. And so who were the officers that could move around
 12 in the city if they had to get from one place to the other?
 13 A. Our mobile bike squad.
 14 Q. And what about something known as the scooter squad?
 15 A. They can -- yeah. They can move around as well, but
 16 not quite as easily as we can, because our bikes are
 17 obviously a lot smaller than theirs.
 18 Q. What's a scooter?
 19 A. A scooter is similar to a motorcycle, but it's not
 20 exactly as -- it has as much power. So....
 21 Q. It's not an American-made motorcycle?
 22 A. No.
 23 Q. So they call them the scooter squad?
 24 A. Yes.
 25 Q. But there's a motorcycle squad?

- 1 A. There is. Well, the scooter unit, the bike unit is
2 composed of scooters and motorcycles, within the same unit.
- 3 Q. Now, you said you were called to respond to the area
4 of, you think, 14th and I. Would that be in Northwest DC or
5 downtown DC or in a different part of DC?
- 6 A. Northwest.
- 7 Q. And you said previously you're assigned to the
8 Seventh District. That doesn't encompass downtown DC,
9 Northwest DC, does it?
- 10 A. It doesn't.
- 11 Q. And so how familiar are you with all of the streets
12 that are in that area?
- 13 A. Not very familiar.
- 14 Q. Well, I want to take you back to January 20th, 2017.
15 Were you with your CDU mountain bike squad?
- 16 A. Yes.
- 17 Q. And were you in the area of 14th and I Street?
- 18 A. Yes.
- 19 Q. While you were there, what did you see?
- 20 A. I saw a big group of individuals all dressed the
21 same, wearing masks. They had weapons. They were throwing
22 things. It was violent. There were setting off explosives
23 or fireworks.
- 24 Q. Where was that happening in relation to where you
25 were on -- at 14th and I?

- 1 A. I believe we were on the south side of I Street, so
2 it was in the park directly in front of us.
- 3 Q. So in that --
- 4 A. Between 14th, K and I Street in the middle.
- 5 Q. So when you looked in that park, is that when you
6 could see the masks?
- 7 A. Yes.
- 8 Q. Could you see the weapons?
- 9 A. Once they got closer.
- 10 Q. And who is "they," they that got closer?
- 11 A. The big group, the group of people.
- 12 Q. How big a group?
- 13 A. It had to have been a couple hundred.
- 14 Q. And what kind of weapons were you seeing as the
15 group moved closer?
- 16 A. Hammers, bricks, explosives, items that seemed like
17 fireworks that were being set off.
- 18 Q. And how was everyone in the group dressed?
- 19 A. They were all dressed alike, in black.
- 20 Q. What were they doing as that group? Were they
21 moving towards you? Away from you? To the side?
- 22 A. They were moving towards us and kind of away at the
23 same time. We were all lined up on the street. And they
24 were approaching us, yelling things, throwing things. And
25 then they kind of kept moving. But it wasn't many of us. It

- 1 was so many of them. So we were just told to kind of stand
2 put.
- 3 Q. You said it wasn't many of you.
- 4 Do you mean many officers?
- 5 A. Many officers. Correct.
- 6 Q. Well, how many officers were standing there with
7 you?
- 8 A. I can probably remember specifically my squad, which
9 was the eight of us.
- 10 Q. And so did you have your bikes with you?
- 11 A. Yes. That's all we had.
- 12 Q. And so what did you do?
- 13 A. We were given a directive by our official. We were
14 told to form a line with our bicycles and monitor the crowd.
15 And then we were told to follow them.
- 16 Q. And did you do that?
- 17 A. We did.
- 18 Q. What did you do with your bikes?
- 19 A. We rode them.
- 20 Q. Now, before you rode your bikes, when you formed
21 this line, did you hear or see anything coming at you?
- 22 A. I heard -- well, I didn't see it coming. But I
23 heard, and at the last second saw a brick hit my bicycle,
24 which was in front of me. Had my bicycle not been there, it
25 would have struck me.

- 1 Q. And did you have any protective gear for your face
2 or your head?
- 3 A. No. Just my bicycle helmet that I kept on at all
4 times because that's pretty much all we had to protect us at
5 the time.
- 6 Q. And what could you hear from this group? Could you
7 hear people saying anything?
- 8 A. I don't remember exact words. They were yelling.
9 Specifically, I remember them calling us pigs and cursing a
10 lot us and just yelling profanity as they were walking by,
11 throwing things.
- 12 Q. Okay. So you observed the last part of someone
13 throw something at you. Correct?
- 14 A. Yes. I had no idea where it came from. It came
15 from the middle of the group. I just saw at the last second
16 it was coming towards my tire. I hit it -- I heard it. I'm
17 sorry. And then it hit my bike.
- 18 Q. And did you go in and identify that person so you
19 could stop them?
- 20 A. No. There was no way for me to identify them.
- 21 Q. Why not?
- 22 A. Because they were all dressed the same. People were
23 going in and out of the group. They would leave to destroy
24 something or throw something and then they would disappear
25 back into the group. It was almost impossible to identify

1 where anything was coming from or who was doing what.
 2 Q. And you said people were going from in the group to
 3 the outside, destroying something and coming back in.
 4 A. Correct.
 5 Q. Where did you see that happening?
 6 A. I remember that -- well, throughout the whole I
 7 Street down, I remember a Starbucks being destroyed, a Bank
 8 of America being destroyed. Several bus stops, the glass was
 9 shattered. Trash cans were thrown in the middle of the
 10 street, newsstands, tables. Pretty much anything loose that
 11 was able to be taken off the street and thrown in the street
 12 to either block us from or slow us down from moving through
 13 the street or just to throw at us. It was just coming from
 14 every direction.
 15 And --
 16 Q. And so with the other seven officers that you have,
 17 did you take steps to try to ride after and find those people
 18 you saw breaking the Starbucks?
 19 A. No.
 20 Q. Why not?
 21 A. There was not enough manpower to safely approach
 22 anyone in that crowd of people. There was --
 23 Q. Why not?
 24 A. -- too many people. And it would risk one of us
 25 getting hurt if we were to stop to try to detain someone with

1 a whole crowd moving, and the rest of our squad moving with
 2 the group. So if you take one person out of that group,
 3 you're one person down. And then they're left with seven.
 4 And so on and so on.
 5 And then you have no one to even try to control the
 6 crowd, if at all, which we couldn't.
 7 Q. And why couldn't you control the crowd?
 8 A. It was more of them than there was of us. And they
 9 were violent. And we didn't have the necessary tools that
 10 we, you know, needed to safely stop anyone.
 11 Q. Well, Officer Anderson, you have a firearm, do you
 12 not?
 13 A. I do.
 14 Q. Did you ever pull it out?
 15 A. I did not.
 16 Q. Did you ever see any officer pull out their firearm?
 17 A. I did not.
 18 Q. So when you just said there was nothing you could do
 19 safely, what did you mean?
 20 A. Safely with -- not -- I feel like my service weapon
 21 was not appropriate for that situation. I'm not going to use
 22 my service weapon in a large crowd of people. We don't fire
 23 into crowds of people. It was not appropriate to do.
 24 And I feel like that the way we were dressed, like I
 25 am now, with just a bicycle helmet and with things being

1 chucked at us and you can't look in every direction, that it
 2 was just an unsafe environment for us to try and go into a
 3 group of people with only seven or eight of us.
 4 Q. So the other seven individuals in your CDU mountain
 5 bike squad, were they dressed the same way you are with
 6 police uniforms and badges?
 7 A. They were.
 8 Q. Okay. And the body-worn camera, the radios?
 9 A. Correct.
 10 Q. And how close were you to the people in this group
 11 when they would throw bricks?
 12 A. We were pretty close. I can't give an approximate
 13 distance. But some people were almost within arm's reach of
 14 us.
 15 Q. And you said that individuals within the group were
 16 throwing trash cans. Was that at officers? At you?
 17 A. Not at me personally. But I did see an officer on
 18 his scooter get a trash can thrown at him.
 19 Q. Was that officer on his scooter dressed in a police
 20 uniform?
 21 A. He was.
 22 Q. Were the individuals in the group creating the
 23 violence at times looking at officers during this time
 24 period?
 25 A. Yes.

1 Q. Did that stop any of the violence?
 2 A. No.
 3 Q. Now, you said you saw the Starbucks and the Bank of
 4 America. You saw windows get broken?
 5 A. I did.
 6 Q. And so when that happened, what did you and your
 7 squad do?
 8 A. We continued to follow our directive and follow --
 9 move with the group.
 10 Q. And what were you going to do when you -- what were
 11 you going to do if you caught them?
 12 A. At that point, I honestly didn't know. That day I
 13 had no idea. It was just so many people. And like I -- I
 14 can't stress enough, it was so little of us officers that I
 15 really had no idea what we were going to do when we got
 16 there.
 17 I mean, there was really no catching them in my mind
 18 at that point. There was no stopping what was going on.
 19 Q. And as you watched the Starbucks and the Bank of
 20 America windows get destroyed, what were you feeling about
 21 your ability to control the situation?
 22 A. That day, I honestly felt helpless in a situation.
 23 You know, we're trained for things that we handle in the
 24 District. And you don't see things like this on a daily
 25 basis. So seeing something like that, it was like something

- 1 I had never seen before, ever. And so I personally did not
 2 feel prepared for the situation that was in front of us.
 3 Q. Now, you said that you followed the group with your
 4 mountain bike squad, followed them. Is that on I Street
 5 where windows were being broken?
 6 A. Yes.
 7 Q. And what did you do after you got past I Street?
 8 Did you observe officers using chemical spray at that point?
 9 A. Yes.
 10 Q. And tell me how that stopped the group.
 11 A. It didn't. They just kept going and doing --
 12 breaking things, still continued being violent. It didn't
 13 stop them at all.
 14 Q. Did you ever pull out your spray and use it?
 15 A. I did not use it. No.
 16 Q. So what did you do to try to stop the group?
 17 A. When we were ordered to stand in line with our
 18 bicycles, that's what I did. I held the line.
 19 Q. And is that on I Street or is that later?
 20 A. That was on I Street in the beginning and then that
 21 was also later.
 22 Q. Between that time period on I Street, did the group
 23 continue to move?
 24 A. They did.
 25 Q. And were they walking? Were they running? Can you

- 1 describe how they were moving?
 2 A. They were walking at a pretty fast pace. Some of
 3 them were running. Some of them were walking. It was just a
 4 mix. But they were moving at a pretty decent speed.
 5 Q. And where were you on your bicycle in relation to
 6 the group?
 7 A. We were on the outside perimeter of the group.
 8 However, they were starting to kind of not be as tight at
 9 times. So at times, they would be all around us and we were
 10 kind of, you know, just there moving with them. There would
 11 be people on the outside. There would be -- the majority of
 12 the group was on the inner side of us. I can't remember if
 13 it was my left or my right. We had changed sides so many
 14 times.
 15 Q. And as you're riding your bicycle, do you see people
 16 from the group just stop and walk away?
 17 A. Some.
 18 Q. Did you try to stop those people?
 19 A. No.
 20 Q. What did you do?
 21 A. We continued to ride with the group, follow the
 22 group.
 23 Q. And as you continued to ride with the group and
 24 follow the group, did you observe any additional destruction
 25 or damage?

- 1 A. Yes.
 2 Q. What?
 3 A. More tossing of trash cans, breaking of items,
 4 windows, anything.
 5 Q. At some point, did you catch up to the group?
 6 A. We did.
 7 Q. Do you know about how many blocks you rode?
 8 A. It was a couple. I don't -- honestly, it was just
 9 so much that day. I couldn't tell you.
 10 Q. Do you know what streets you were on?
 11 A. I know the main streets. But I don't remember every
 12 street that we rode on.
 13 Q. So when you did catch up with the group, can you
 14 describe what you did?
 15 A. When we did catch up to the group, we were able to
 16 kind of get in front of most of them. I believe that was at
 17 12th and L Street. We were told by our official to form a
 18 line with our bicycles. The bicycles and the scooters and
 19 the motorcycles pretty much all lined up at the intersection
 20 of the street.
 21 We were told to stand there and wait for further
 22 instructions.
 23 And the group was kind of coming together, talking,
 24 seeming like they were trying to form some sort of plan. But
 25 at that point --

- 1 MS. WELETZ: Objection, your Honor.
 2 THE COURT: Overruled.
 3 BY MS. KERKHOFF:
 4 Q. At that point...?
 5 A. At that point, we, like I said, continued to stay in
 6 the line until we heard them counting down. And then they
 7 just rushed our -- our line.
 8 Q. Okay. So before you stood at 12th and L -- and when
 9 you say "we," are you talking about the members of your
 10 bicycle -- mountain bike squad?
 11 A. Correct. Yes.
 12 Q. And at this point, were all eight of you on that
 13 line?
 14 A. Yes. I believe so.
 15 Q. What about Officer Grubbs?
 16 A. Grubbs was not.
 17 Q. And is Officer Grubbs somebody who's a member of
 18 your mountain bike squad?
 19 A. He is.
 20 THE COURT: Can you spell that, please.
 21 MS. KERKHOFF: G-R-U-B-B-S.
 22 BY MS. KERKHOFF:
 23 Q. And Officer Grubbs -- was Officer Grubbs with you at
 24 14th and I the first time you tried to form a line with your
 25 bicycles?

- 1 A. Yes.
- 2 Q. And then at 12th and L, Officer Grubbs was not with
- 3 you. Is that correct?
- 4 A. Correct.
- 5 Q. Do you know what happened to Officer Grubbs?
- 6 A. I do.
- 7 Q. What happened?
- 8 A. He --
- 9 THE COURT: Can I just ask, can you rephrase that?
- 10 MS. KERKHOFF: Yeah.
- 11 THE COURT: A personal observation.
- 12 BY MS. KERKHOFF:
- 13 Q. Did you see Officer Grubbs that day?
- 14 A. Yes.
- 15 Q. Did you see Officer Grubbs with an injury?
- 16 A. No.
- 17 Q. Did you see Officer Grubbs after that day?
- 18 A. Yes.
- 19 Q. Did you see Officer Grubbs with an injury?
- 20 A. I did.
- 21 Q. What was the injury you observed?
- 22 A. He broke his wrist.
- 23 Q. So at 12th and L, now the second time you formed a
- 24 line, do I understand there were the seven of you which you
- 25 think were from your mountain bike squad? Is that correct?

- 1 A. You said at 14th?
- 2 Q. At 12th and L.
- 3 A. Oh, 12th and L. Yes.
- 4 Q. And then individuals from the motorcycle or scooter
- 5 squad?
- 6 A. Correct.
- 7 Q. And how did you -- how did your squad get to 12th
- 8 and L? Were you able to get in front of the group as it
- 9 moved? Did the group stop moving? Can you describe that?
- 10 A. I think at some points we were able to get in front
- 11 of the group. If I can remember correctly, we were riding
- 12 down L Street. We had to pick up our pace to go around down
- 13 to 12th. And we were able to get in front of them that way,
- 14 just by moving a little bit faster than the group, than
- 15 staying with the group.
- 16 Q. And as you're doing that, does the group continue to
- 17 move down L Street?
- 18 A. Yes.
- 19 Q. And are there officers that you could see coming
- 20 from behind?
- 21 A. I didn't see.
- 22 Q. Did you see any officers as you stood on that line
- 23 on the other side at 12th and L?
- 24 A. On the other side of the group?
- 25 Q. Yes.

- 1 A. I personally could not see from my vantage point.
- 2 Q. So when you're at 12th and L, what do you see in
- 3 front of you?
- 4 A. All I see is the group of individuals dressed in
- 5 black. That's all I could see.
- 6 Q. And how about their faces? What do you see then?
- 7 A. Nothing but masks. They had masks. You could see
- 8 their eyes. Some of them, you could see their eyes. Some of
- 9 them, their whole face was covered.
- 10 Q. And as you look at this group, did you see any
- 11 weapons?
- 12 A. I did.
- 13 Q. What did you see?
- 14 A. At that time, I specifically remember a hammer being
- 15 thrown from the crowd at our line.
- 16 Q. Thrown at whom?
- 17 A. At the officers that were in line.
- 18 Q. Where did it come from?
- 19 A. The group of individuals dressed in all black.
- 20 Q. Did you go into that group and get that person who
- 21 threw the hammer?
- 22 A. No.
- 23 Q. Why not?
- 24 A. We were told to stay in our line.
- 25 Q. Could you have found that person --

- 1 A. No.
- 2 Q. -- as you stood there?
- 3 A. No.
- 4 Q. Why not?
- 5 A. Because they were all dressed the same. There was
- 6 no way to identify anyone.
- 7 Q. Now, you said a moment ago that there was a
- 8 countdown.
- 9 What do you mean by that?
- 10 A. Right before they started running at our line, I
- 11 heard them counting down. I don't know where they started.
- 12 But I -- you know, they were counting, five, four, three,
- 13 two, one, before everyone just started yelling and screaming
- 14 and running towards us.
- 15 Q. And can you estimate how many people you saw running
- 16 at that police line?
- 17 A. Probably I would say about 300 or so.
- 18 Q. Did any individuals break that line, go over the
- 19 officers?
- 20 A. They did.
- 21 Q. And did everyone get over that line past the
- 22 officers?
- 23 A. No.
- 24 Q. So what happened?
- 25 A. At that point, the officers -- we moved in and we

1 were able to get them stopped at the corner of 12th and L.
 2 Q. And what did you have in your hand as you stood
 3 there with your mountain bike holding that police line?
 4 A. What did I have in my hand?
 5 Q. Yes.
 6 A. I believe I had my bicycle and then I had my ASP
 7 baton out.
 8 Q. How were you holding it?
 9 A. I just had it in my hand.
 10 Q. And did you have it down? Did you have it up?
 11 A. I can't remember. I'm sorry.
 12 Q. Did you ever pull out your firearm?
 13 A. No.
 14 Q. Even when you heard the countdown?
 15 A. No.
 16 Q. Did you see any officer who stood in that line pull
 17 out their firearm at any point?
 18 A. No, I did not.
 19 Q. Now, Officer Anderson, after what was left of the
 20 group was stopped at 12th and L, did you stay at 12th and L?
 21 A. Yes.
 22 Q. And were the individuals within the group then
 23 processed for arrest?
 24 A. Yes.
 25 Q. And how long were you out there that day from start

1 to finish?
 2 A. Oh, gosh. I believe we started -- I honestly can't
 3 remember the start time. It was early morning. Maybe around
 4 6:00. And then I think -- I don't want to say -- I know we
 5 were out there for probably a good 17 to 19 hours that day.
 6 Q. The next day, did you have to work again?
 7 A. I did.
 8 Q. Now, Officer Anderson, you have had an opportunity
 9 to watch a number of videos. Is that correct?
 10 A. Correct.
 11 Q. One of those is the body-worn camera you had that
 12 day. Is that correct?
 13 A. Correct.
 14 Q. And have you also watched the Officer Whitehead who
 15 is in your mountain bike squad?
 16 A. Yes.
 17 MS. KERKHOFF: At this time, the Government offers
 18 into evidence Government's Exhibit No. 123-Q and 123-Y.
 19 THE COURT: And does everyone know what we're
 20 talking about? In other words, can I ask whether there's any
 21 objection or do we need to further identify it?
 22 Just somebody tell me. Do you think you know what
 23 they're talking about?
 24 MS. COLEMAN: Yes, your Honor.
 25 THE COURT: Hearing no objection to 123-Q and -Y,

1 I'll admit them.
 2 (Whereupon, Government's Exhibit Nos. 123-Q and
 3 123-Y were entered into evidence.)
 4 MS. KERKHOFF: Thank you.
 5 BY MS. KERKHOFF:
 6 Q. Officer Anderson, you also had an opportunity to
 7 watch a number of compilation videos or videos that captured
 8 portions of the event on January 20th, 2017?
 9 A. Yes, I have.
 10 Q. And we'll go through each those. But do each of the
 11 following exhibits fairly and accurately depict the portions
 12 you observed --
 13 A. Yes.
 14 Q. -- that day?
 15 MS. KERKHOFF: And subject to further foundation and
 16 any discussion with counsel on redactions, the Government
 17 hereby moves to admit Government's Exhibit 106, 109, 110,
 18 111, 112, 113, 118, 119, 120, 133, 143, 144 and 225.
 19 THE COURT: Are you going to be publishing portions
 20 of those now?
 21 MS. KERKHOFF: Publishing portions of some of them
 22 now. We were seeking to admit these, as the witness can
 23 authenticate them.
 24 THE COURT: So shall I admit those, subject to a
 25 motion to strike?

1 MS. COLEMAN: Your Honor, we'd have an objection, if
 2 we could approach.
 3 THE COURT: Yes.
 4 Ma'am, can I ask you to step down by that flag there
 5 for a second, please.
 6 Thank you.
 7 (Whereupon, the following proceedings were had at
 8 side-bar outside the presence of the jury:)
 9 MS. COLEMAN: A number of these are compilation
 10 videos. We have no objection to body-worn camera that the
 11 officer took or other members of her squad, which I believe
 12 Officer Whitehead was from her observations that day.
 13 But a number of these videos show the same acts of
 14 destruction over and over and over again, and going from one
 15 act of destruction to another very quickly and repeatedly.
 16 So we would argue that under 403, it's unduly
 17 prejudicial and should be excluded.
 18 THE COURT: Because it's -- they're cumulative or
 19 because the witnesses can't authenticate them or what?
 20 MS. COLEMAN: Because they're cumulative and unduly
 21 prejudicial, given the nature of just showing destruction
 22 over and over and over and going in very fast fashion.
 23 THE COURT: So can you tell me -- so when you say
 24 compilation, is each one of these things, 106, 109, et
 25 cetera, a compilation or these are all --

1 MS. KERKHOFF: 106 --

2 THE COURT: -- together as a single item?

3 MS. KERKHOFF: 106, 109, 110, 133, 143, 144 and 225
4 are some compilations.

5 They are different vantage points of various things.

6 And the Government -- we do believe the witness can
7 authenticate it because she was present and can say that
8 fairly and accurately depicts the --

9 THE COURT: So not authentication? Am I correct
10 that nobody's objecting to authentication?

11 MS. COLEMAN: Not if she was there and witnessed the
12 events in question.

13 THE COURT: Everybody is shaking their heads that
14 they seem to agree with you. So I'm not hearing any
15 opposition.

16 And so the only objection is cumulative or to the
17 point of prejudice.

18 And so why should you get -- are each one of these
19 things different vantage points of the same time frame?

20 MS. KERKHOFF: Some of them encompass the same time
21 frame; that is, each of these videos encompasses portions
22 from I Street where the officer was present through to
23 portions of the end. They have been edited down to only
24 include the portions of the riot itself, but not other things
25 happening.

1 But they are different vantage points. Some are of
2 the same thing. However, they capture different individuals.
3 And identity is an issue here.

4 THE COURT: Can I just ask, the ones you've just
5 named for me, are those the ones you're planing to show now?

6 MS. KERKHOFF: I don't plan to show all of them. I
7 plan to show --

8 THE COURT: You said 106, 109, 110, 133, 143, 144
9 and 225. Are you planning to show those now?

10 MS. KERKHOFF: I'm only planning to show 123-Y,
11 body-worn camera, and 123-Q, 133, 113, 110 and 225.

12 THE COURT: And are they all basically the same
13 events, but from different angles?

14 MS. KERKHOFF: They -- no. They capture portions of
15 events or they run at different time periods.

16 The Government --

17 THE COURT: Ask you just saying at different time
18 periods during the 33 minutes?

19 MS. KERKHOFF: Some capture -- are running for 33
20 minutes of the whole event. Some are shorter. Some are
21 compilations.

22 They are -- we are seeking to admit them because we
23 have to present to the jury identity issues.

24 This witness can authenticate that that is a video
25 that fairly and accurately depicts the events of that day.

1 And counsel was objecting to having Detective Pemberton speak
2 about identity except for --

3 THE COURT: So can I just say, I'm going to permit
4 the use of what could in a different scenario be cumulative.
5 In other words, I'm going to permit the Government to present
6 multiple different perspectives on the same events.

7 I conclude that it's not -- that its prejudicial
8 effect is not substantially outweighed by the probative value
9 for a couple of reasons, the first of which is that the
10 videotape that includes different people in them obviously
11 are being admitted going to identity for the purpose of
12 Ms. Kerkhoff.

13 In other words, to the extent that Detective
14 Pemberton can only testify about admitted exhibits, she has
15 to get in all the exhibits in which each client appears.

16 In addition, the different perspectives on the same
17 events illustrate perspectives of viewers from different
18 angles.

19 And to the extent that the argument that's being
20 made here is "Just because my client's walking down 13th
21 Street or walking on I Street doesn't mean she sees violence
22 happening at the Starbucks when it happens and doesn't mean
23 she has knowledge and awareness of those things," and every
24 videotape that shows this from a different perspective shows
25 the knowledge and awareness of persons from that perspective.

1 In other words, if I'm buried in the middle of the
2 crowd, focused on one angle, and I see the Starbucks window
3 get broken, that is evidence that is probative of a greater
4 degree of knowledge, a great degree of perspective on behalf
5 of the people participating in the protest.

6 So I do conclude that, although some may be multiple
7 perspectives of the same event and could become cumulative,
8 here, at least prior to seeing all of it, I'm concluding that
9 it's not.

10 Obviously, I can look at it as we're going along and
11 keep track. But I conclude that multiple views from
12 different perspectives is not inappropriately prejudicial
13 under 403.

14 So I overrule the objection.

15 MS. KROPF: The way clips are edited is to edit out
16 the First Amendment conduct.

17 THE COURT: That may be. If there is some portion
18 you want to play, you go ahead and do it.

19 The Government has a burden of proof here, and part
20 of it includes knowledge. There's a lot of discussion about
21 wilfulness, knowledge and awareness of the clients, about
22 these things. There's an element of the First Amendment.

23 You can yammer all day long as long as you're not
24 breaking any stuff. And obviously, I'm going to have to
25 instruct the jury about it.

1 But --

2 MS. KROPF: I don't call it yammering, though.

3 THE COURT: Whatever you want to call it.

4 MS. KROPF: First Amendment.

5 THE COURT: It's different from breaking. Talk is

6 different from participating in, breaking with knowledge and

7 intention to bring about the crime. And the Government does

8 have to prove that.

9 So if you want to play other parts, go ahead and

10 play other parts. But I am overruling the objection.

11 MS. KROPF: So --

12 THE COURT: And we're going to go ahead now.

13 (Whereupon, the following proceedings were had in

14 open court:)

15 THE COURT: Overruled.

16 So in terms of what I'm admitting now, subject to a

17 motion to strike, again, I'm admitting 106, 109, 110, 111,

18 112, 113, 118, 119, 133, 143, 144, 225 and 123-Q and -Y.

19 (Whereupon, Government's Exhibit Nos. 106, 109, 110,

20 111, 112, 113, 118, 119, 133, 143, 144, 225, 123-Q and 123-Y

21 were entered into evidence.)

22 BY MS. KERKHOFF:

23 Q. Now, Officer Anderson, I'd like to show you a couple

24 portions of just a couple of these videos. I'm not playing

25 all of them right now.

1 A. Okay.

2 Q. I'm going to show you what's been admitted as

3 Exhibit 123-Y, the body-worn camera of Officer Whitehead.

4 Officer Whitehead is a member of your mountain bike squad?

5 A. Correct.

6 Q. And I'm going to start it at -- I believe that's 35

7 seconds.

8 (Whereupon, segments of Government's Exhibit No.

9 123-Y were published in open court.)

10 BY MS. KERKHOFF:

11 Q. Now, Officer Anderson, I've stopped it at about one

12 minute and 40 seconds in.

13 And can you just orient us to what it is we're

14 looking at.

15 A. Over on the right-hand side is myself and my squad.

16 And then if you can see, it's the group that -- of

17 individuals I was describing earlier wearing the same

18 clothing.

19 Q. And if I look to the top left corner of this video,

20 am I looking at a park?

21 A. Yes.

22 Q. And is that the park that you talked about

23 previously they came out of when you were on I Street?

24 A. Yes. Correct.

25 Q. Now, I want to direct your attention also, for the

1 record, to the portion we just played. Did you hear words

2 "Stay together" or "Stay tight"? Did you hear those words?

3 A. Yes.

4 MS. COLEMAN: Objection. Leading.

5 THE COURT: Overruled.

6 BY MS. KERKHOFF:

7 Q. And as you followed this group, was that the only

8 time you heard words like that or were you hearing commands

9 or instructions being given?

10 A. No. I was hearing it throughout the whole time we

11 were following them.

12 Q. Do you remember what kinds of things you were

13 hearing?

14 A. Just pretty much "Stay together, stay tight, come

15 back." Then of course them yelling profanity at us, at the

16 officers.

17 Q. Now, because my pen isn't pointing --

18 MS. KERKHOFF: If I may approach the TV screen.

19 Thank you.

20 BY MS. KERKHOFF:

21 Q. Officer Anderson, I'm going to direct your attention

22 and the jury's attention to this area on the screen, which is

23 on the left portion. I want to focus on this individual here

24 in all black that appears to be wearing -- having something

25 in his hand. Okay?

1 MS. KERKHOFF: Mr. Qureshi, if you can play that.

2 (Whereupon, segments of Government's Exhibit

3 No. 123-Y were published in open court.)

4 MS. KERKHOFF: Pause it.

5 BY MS. KERKHOFF:

6 Q. And do you remember that?

7 A. I do.

8 Q. What did we just see?

9 A. One of the individuals from the group had thrown a

10 brick at my bicycle.

11 MS. KERKHOFF: Now if we can continue playing until

12 about two minutes.

13 (Whereupon, segments of Government's Exhibit

14 No. 123-Y were published in open court.)

15 BY MS. KERKHOFF:

16 Q. Now, you previously testified that you were just

17 following the directions --

18 A. Correct.

19 Q. -- to form that line?

20 A. Yes.

21 Q. Was that the line with the bicycles you talked about

22 that you formed at 14th and I Street?

23 A. Yes.

24 Q. And so after that, where did the group go next?

25 A. They continued up I Street, I believe.

1 Q. Now, I'm going to turn your attention to another
 2 exhibit, Exhibit 113, starting at 6:22 -- 6:21.
 3 THE COURT: 113 at 6:21 timestamp?
 4 MS. KERKHOFF: At 6:21. Correct.
 5 (Whereupon, segments of Government's Exhibit No. 113
 6 were published in open court.)
 7 MS. COLEMAN: Objection, your Honor.
 8 THE COURT: Stop it.
 9 MS. KERKHOFF: Pause.
 10 THE COURT: Was there an objection?
 11 MS. COLEMAN: Foundation, your Honor.
 12 MS. KERKHOFF: The witness has already stated that
 13 the witness --
 14 THE COURT: They're all admitted. She already did
 15 say that all of things were fair and accurate.
 16 MS. COLEMAN: Yes, your Honor.
 17 (Whereupon, segments of Government's Exhibit No. 113
 18 were published in open court.)
 19 MR. LAZEROW: Objection, your Honor.
 20 MS. KERKHOFF: Pause it.
 21 THE COURT: Counsel, please approach. What time are
 22 we at now? 8:43.
 23 (Whereupon, the following proceedings were had at
 24 side-bar outside the presence of the jury:)
 25 MR. LAZEROW: This is Mr. Lazerow.

1 I don't see how this witness could possibly have
 2 seen all of that.
 3 THE COURT: I was just going to ask you to ask the
 4 witness at what point she was able to personally perceive the
 5 things she's seeing, because now we're down the street and I
 6 don't know if she can or cannot see.
 7 MS. KERKHOFF: Your Honor, the witness is from a
 8 vantage point that she can watch Starbucks being broken.
 9 THE COURT: Just ask her. That's the point.
 10 MS. KERKHOFF: Yeah. Sure.
 11 MR. LAZEROW: Thank you.
 12 THE COURT: Thank you.
 13 (Whereupon, the following proceedings were had in
 14 open court:)
 15 BY MS. KERKHOFF:
 16 Q. Officer Anderson, we stopped at 8:43, watching this
 17 video.
 18 And were you behind this group of individuals?
 19 MS. COLEMAN: Objection. Leading.
 20 THE COURT: I'll sustain.
 21 BY MS. KERKHOFF:
 22 Q. Where are you in relation to this group of
 23 individuals?
 24 THE COURT: I did sustain the objection, because it
 25 was a leading question.

1 BY MS. KERKHOFF:
 2 Q. So where were you in relation to this group of
 3 individuals?
 4 A. We were still at that point on I Street, where we
 5 initially were seen in the video. So we were behind them as
 6 they were moving forward.
 7 Q. And as you stood on I Street, could you see the
 8 group moving past --
 9 MS. COLEMAN: Objection. Leading.
 10 THE COURT: It's not leading.
 11 BY MS. KERKHOFF:
 12 Q. Could you see the group moving down I Street?
 13 A. Yes.
 14 THE COURT: Overruled.
 15 BY MS. KERKHOFF:
 16 Q. And what windows could you see being broken?
 17 A. The Starbucks and the Bank of America.
 18 Q. And the video we're looking at here at 8:43, does
 19 that look like the windows being broken that you observed on
 20 January 20th, 2017?
 21 A. Yeah.
 22 THE COURT: So I think we should actually stop for
 23 the day. It's 25 of 5:00.
 24 So, ladies and gentlemen, I'm going to excuse you
 25 until tomorrow morning at 10:30. Please don't discuss the

1 case. Please don't read any news stories or other online
 2 content about this case. And please don't discuss the case
 3 with anyone.
 4 Thank you. I'll see you tomorrow morning at 10:30.
 5 Leave your notebooks in your chairs.
 6 UNIDENTIFIED JUROR: 10:30? Earlier in the week,
 7 you told us 10:30 the first day and 9:30 the other days.
 8 THE COURT: No. 9:30 is when you deliberate. I'll
 9 give you a different time every day.
 10 10:30 tomorrow. Please put your notebooks on your
 11 chairs.
 12 And Ms. Lis is great at answering questions.
 13 (Whereupon, the jury exited the courtroom at 4:37
 14 p.m. and the following proceedings were had:)
 15 THE COURT: I will excuse you until 10:30 tomorrow,
 16 ma'am. Don't discuss your testimony with anyone.
 17 THE WITNESS: Thank you.
 18 MS. KERKHOFF: Your Honor, if I may raise -- I
 19 raised this with counsel -- about the witness's availability,
 20 that she has a medical appointment. Counsel agreed that we
 21 could proceed with other witnesses and take her out of turn
 22 tomorrow.
 23 THE COURT: Okay. So come back when Ms. Kerkhoff
 24 tells you to, please.
 25 MS. KERKHOFF: As soon as she gets here.

1 THE COURT: But don't discuss your testimony.
 2 THE WITNESS: Okay.
 3 (Witness excused.)
 4 THE COURT: What are we going to do in the morning,
 5 then?
 6 MS. KERKHOFF: Oh, we will just pick up with
 7 additional witnesses. And then when Officer Anderson gets
 8 here, we will resume her testimony.
 9 THE COURT: Okay. You can have a seat.
 10 I just want to take care of a little bit of
 11 business.
 12 I wanted to -- I know that there were discussions
 13 about stipulations to define certain terms. And I don't know
 14 when -- you did opening statements, obviously, without the
 15 benefit of those. And I don't know if there's going to come
 16 a point where you all are ready for me to read something to
 17 the jury.
 18 But I'm just telling you I'm ready to do it if you
 19 can give me what I'm supposed to say.
 20 And some of those terms were antifa, anarchist and
 21 black bloc. I don't think anybody wanted that definition.
 22 And then the other thing that you wanted me to do,
 23 and I was going to do, was to explain to the jury that --
 24 something about the fact that there were later news accounts
 25 showing the limousine crazy on fire -- that that was not the

1 damage to the limo that was caused by the group in this case.
 2 And so I don't know whether there's something that I'm
 3 supposed to be telling them. If so, again, I'm ready to do
 4 it if you can give me what I'm supposed to say.
 5 I did get through the video, as I said. And I've
 6 got the defense objections.
 7 I want to ask the Government: Is the term "black
 8 bloc" introduced at all in the planning meeting? I'm going
 9 to ask you to look for that.
 10 MS. KERKHOFF: I --
 11 THE COURT: In other words, where are we hearing it
 12 from a conspirator in the case other than the utterance in
 13 Mr. Wood's video?
 14 MS. KERKHOFF: It is in the podcast, your Honor.
 15 I'll have to go back and check and see if it's within the
 16 designated portions.
 17 Mr. Petrohilos in the podcast discussed black bloc,
 18 because he decided his mom wants to be part of it. And I
 19 want to go back and just check the transcripts of the
 20 planning meeting as to whether the term "black bloc" is
 21 discussed.
 22 THE COURT: I want to know that.
 23 MS. KERKHOFF: Yeah. I'll send an email to the
 24 parties.
 25 THE COURT: Since we have about five minutes -- and

1 I think our clock finally reflects realtime -- Mr. Lazerow,
 2 are you taking the lead on the discussion about your
 3 submission of statements to exclude from the Alexei Wood live
 4 stream?
 5 MR. LAZEROW: Yes, your Honor.
 6 THE COURT: And this has been filed. Right?
 7 MR. LAZEROW: I don't know the answer to that. I
 8 know it was --
 9 THE COURT: It should be filed if you want a record.
 10 And here's what I'll say: Email is not in the docket of this
 11 case. Right? Things you give me: Not in the docket of this
 12 case.
 13 And so if you want a record made of what you ask me
 14 to consider, you should make sure to e-file it so it's in the
 15 record. I'll keep reminding you of that. It's my goal to
 16 have everything you give me made part of the record. But you
 17 just -- this thing has not been filed. You should file it
 18 tonight.
 19 So other than the black bloc thing at 4:45, what --
 20 I guess I can tell you, I can't see how it's not a present
 21 sense impression. The entire thing is him relating what he
 22 sees and reacting to what he sees and expressing, "woo woo's"
 23 and his own reactions to things.
 24 And I have more detailed notes of it.
 25 But are you arguing that generally it's not a

1 present sense impression or are you just arguing that these
 2 particular items you've listed are somehow not admissible?
 3 And if so, why?
 4 MR. LAZEROW: Correct, your Honor.
 5 We've already covered black bloc. That's the first
 6 one.
 7 The second one, it's -- "It's happening time,
 8 y'all." I mean, that's not describing anything, your Honor.
 9 That cannot be present sense impression. It's not
 10 describing.
 11 THE COURT: So if it's not articulating, it can't be
 12 a present sense impression?
 13 MR. LAZEROW: It's not to describe an event as it's
 14 happening.
 15 THE COURT: So if it's not, it's not even a
 16 statement, then?
 17 MR. LAZEROW: Well, it's --
 18 THE COURT: It's either an assertion or it's not.
 19 Right?
 20 MR. LAZEROW: I haven't heard that she's not
 21 offering that for the truth.
 22 So --
 23 THE COURT: Either it's an assertion or it's not.
 24 It may not be something that you would say as, you know,
 25 perfectly articulated. But it's either an assertion or it's

1 not. If it's not an assertion, it's not a reaction. It's
2 the equivalent of a grunt or a yell. Then it would come in
3 anyway, because it's not hearsay. Wouldn't it?

4 MR. LAZEROW: I think if it -- if it's not offered
5 for the truth, then it's not an assertion.

6 THE COURT: Okay. And so "It's happening time,
7 y'all": Is that something you're offering for the truth or
8 just as a reaction that expresses some emotion?

9 MS. KERKHOFF: Well, I think it's both. But I think
10 it is relevant. "It's happening, y'all" refers to the group
11 departing. It coincides with when the group is leaving Logan
12 Circle.

13 So I think --

14 THE COURT: This is 846. It's 20 seconds after
15 filming the broken parking meter.

16 MS. KERKHOFF: I'm sorry. I was thinking about when
17 he first left it. Then he's saying to me, you know, "It's
18 happening. Ready. This is going."

19 I think I'm allowed to argue that he's referencing
20 it's happening. What was planned is happening. The riot's
21 going on.

22 THE COURT: And so I believe that at this moment,
23 it's as events really are ramping up in drama and extremity
24 and level of violence. And "It's happening time, y'all," in
25 my view, it is an assertion. If it's not an assertion and if

1 THE COURT: So let me just hear from the Government
2 on whether black bloc is mentioned elsewhere before this film
3 or anytime else in the case.

4 So I'm reserving on 445 and 908. And there's 951.
5 Someone spray-paints "Revolution or death" on a garage door
6 and he says, "We've got some graffiti."

7 What's the objection?

8 MR. LAZEROW: This, you know, is not only -- I'm not
9 sure exactly what he is saying here. It must be commenting
10 on the writing, I think. Under 403, his statements should
11 not come in. He seemed to be, you know, if you will, mocking
12 this political message that these people put down. Under
13 403, even if you find it present-sense impression, describing
14 an event, under 403, this shouldn't come in.

15 THE COURT: Because why? Because he's mocking the
16 message?

17 MR. LAZEROW: Because he seems to be mocking
18 something that is a very strong statement, frankly, your
19 Honor.

20 THE COURT: I don't consider that a basis to exclude
21 it. I don't agree with the characterization. I don't think
22 that there's anything about it such that any prejudicial
23 effect substantially outweighs the probative value. He's
24 saying in realtime, "We have some graffiti." And that's
25 what's actually happening. There's a present sense

1 it's just sort of an -- the equivalent of a grunt or a cheer,
2 then I don't have to rule.

3 But to the extent that it -- the Government is
4 offering it as a characterization of events, I think that is
5 actually a fair read of what happens in context, which is
6 that the declarant is saying, "This is really beginning now."

7 And so to that extent, it is a present sense
8 impression.

9 Okay. Next? "This guy just pushed a black bloc
10 there." And it's in reference to a person who is dressed --

11 Was that person an undercover or just a person on
12 the street?

13 MS. KERKHOFF: The person who was wearing the tan?

14 THE COURT: The person who they were accusing of
15 having pushed someone.

16 MS. KERKHOFF: He was an individual on the street.
17 He -- his video --

18 THE COURT: So not police?

19 MS. KERKHOFF: He's not police, your Honor. No.

20 THE COURT: Okay. And so what's happening at that
21 moment is that a person is being accused of having pushed a
22 person in the group.

23 You're just objecting to the characterization of
24 black bloc?

25 MR. LAZEROW: Right. That -- correct, your Honor.

1 impression. I'm admit it.

2 I've got to stop. It's 4:45.

3 We'll pick back up tomorrow. What I'd like to do is
4 have you here at 10:00 and have a couple of matters I have to
5 handle. But if we can pick up at 10:00, I'll try and get
6 through the rest of this if we can.

7 Thank you, everyone.

8 Ladies and gentlemen, I have to give each of you
9 notice to return. Each of you must return to this courtroom,
10 203, at 10:00 a.m. If you fail to do that, you can be
11 charged for failing to appear, which has a five-year jail
12 term and a \$37,500 fine -- a \$12,500 fine for failure to
13 appear.

14 Thank you very much. And we are going to ask that
15 you sign the notice.

16 Thank you.

17 (Proceedings concluded.)

1 **CERTIFICATE**

2 I, Lisa Edwards, RDR, CRR, an Official Court
3 Reporter for the Superior Court of the District of
4 Columbia, do hereby certify that I reported by machine
5 shorthand, in my official capacity, the proceedings had and
6 testimony adduced, upon the Trial in the case of the United
7 States of America v. Michelle Macchio, et al., Criminal
8 Action No. 2017 CF2 1183, in said Court on the 20th day of
9 November, 2017.

10 I further certify that the foregoing 210 pages
11 constitute the official transcript of said proceedings, as
12 taken from said shorthand notes, my computer realtime
13 display, together with the audio sync and digital recording
14 of said proceedings.

15 In witness whereof, I have hereto subscribed my
16 name, this 20th day of November, 2017.

17
18
19 _____
20 Lisa Edwards, RDR, CRR
21 Official Court Reporter
22
23
24
25