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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

- - - - - x

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.

- - - - - x

Washington, D.C.
December 11, 2017

The above-entitled matter came on for jury trial before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in Courtroom 203, commencing at approximately 9:58 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.

APPEARANCES:

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On behalf of Defendant Lawson:

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Daniel Portnov, Esquire
Washington, D.C.

2

1 APPEARANCES, CONT'D:

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6 On behalf of Defendant Macchio:

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8 Christina Copsey, Esquire
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10 Washington, DC

11 On behalf of Defendant Harris:

12 Steven McCool, Esquire
13 Washington, DC

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15 Brett Cohen, Esquire
16 Washington, DC

17 On behalf of Defendant Simmons:

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19 Washington, DC

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22 Official Court Reporter
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1 TABLE OF CONTENTS CONTINUED

2 EXHIBITS

3

4 On behalf of the Government:

5 Government's Exhibit No. 150-A..... 21

6 Government's Exhibit No. 316..... 27

7 Government's Exhibit No. 154..... 29

8 Government's Exhibit No. 154-A..... 30

9 Government's Exhibit Nos. 140-A, 140-B and
10 140-C..... 52

11 Government's Exhibit Nos. 317 to 321..... 60

12
13
14
15
16
17
18
19
20
21
22
23
24
25

3

1 TABLE OF CONTENTS

2 TRIAL

3 WITNESS

4 On behalf of the Government:

5 Gregory Pemberton

6 Direct Examination Cont'd by Ms. Kerkoff..... 20

7 Cross-Examination by Mr. McCool..... 70

8 Cross-Examination by Ms. Weletz..... 98

9 Cross-Examination by Ms. Jacques..... 115

10 Cross-Examination by Mr. Cohen..... 116

11 Cross-Examination by Ms. Kropf..... 183

12 Cross-Examination by Mr. Lazerow..... 208

13
14
15
16
17
18
19
20
21
22
23
24
25

5

1 THE DEPUTY CLERK: Now calling Co-Defendant matters

2 United States versus Brittne Lawson, 2017 CF2 1256; United

3 States versus Jennifer Armento, 2017 CF2 1193; United States

4 versus Michelle Macchio, 2017 CF2 1183; United States versus

5 Oliver Harris, 2017 CF2 1254; United States versus Alexei

6 Wood, 2017 CF2 1221; and United States versus Christina

7 Simmons, 2017 CF2 1210.

8 THE COURT: I'm just going to ask everybody to have

9 a seat. I need to just discuss something with the court

10 reporter.

11 (Confers with the court reporter privately.)

12 THE COURT: Good morning, everybody. I hope

13 everybody had a good weekend.

14 Both Government counsel are here.

15 For Ms. Macchio, looks like we have three out of

16 four. So that is --

17 MR. LAZEROW: Ms. Copsey.

18 THE COURT: So we don't have Ms. Whitt.

19 For Ms. Armento, both counsel are here.

20 For Ms. Simmons, Ms. Jacques is here.

21 For Mr. Wood, Mr. Cohen is here.

22 For Mr. Harris, Mr. McCool is here.

23 And for Ms. Lawson, Ms. Kropf and Mr. Portnov are

24 here.

25 There is a subpoena that Mr. Portnov hopefully got

1 from us.

2 We're going to be picking back up with Detective
3 Pemberton's testimony.

4 Is there anything I should be aware of before we
5 start with him regarding his testimony or any exhibits, any
6 cross, anything?

7 Silence. Okay.

8 And after this, what's the Government's plan in
9 terms of witnesses?

10 MS. KERKHOFF: The Government intends to call
11 Investigator Ranck as well as the individual from our office
12 that made the exhibits.

13 THE COURT: Okay. And who will -- then you'll rest?

14 MS. KERKHOFF: I think we have a stipulation to
15 admit and then we'll formally admit some exhibits, subject to
16 the later admission, and then we'll rest. Yes.

17 THE COURT: Okay. Just so I know, are you
18 anticipating a lengthy cross of Detective Pemberton?

19 Anyone?

20 MR. COHEN: Probably for Mr. Wood.

21 THE COURT: And if we get to any defense cases
22 today, do we have some people here? Is anyone here?

23 MR. LAZEROW: Your Honor, we have one witness here.
24 It will be a very short witness. So we've told the witness,
25 if he gets on today, we expect it would be at the very end of

1 the day. That's where we are.

2 THE COURT: And there was some talk about a
3 witness -- I wasn't sure if it was an expert or not -- who
4 may testify remotely and we need a hookup for that.

5 MS. KROPF: Yes, your Honor.

6 THE COURT: Is that still happening?

7 MS. KROPF: Your Honor, I've been talking to --
8 Carrie Weletz for Ms. Armento.

9 I've been talking to Ms. Rice. He is not an expert.
10 He is just a doctor. Because of his surgeries scheduled, he
11 can't travel down.

12 So I'm trying to work out a time that he will
13 actually be able to testify remotely based on his surgery
14 schedule.

15 THE COURT: I mean, here's the thing. With all due
16 respect to his surgery schedule, I assume you've subpoenaed
17 him. He's not an expert. If you haven't subpoenaed him, I
18 don't know what to tell you.

19 MS. KROPF: I understand.

20 THE COURT: Does the Government object to remote
21 testimony?

22 MS. KERKHOFF: I don't object to remote testimony.
23 But I would like some -- you know, when are we doing this?
24 At what point in time? We need to know.

25 We also haven't been provided his information to run

1 a check. We've been given his name only. But that's it.

2 THE COURT: And so you're not objecting to remote
3 testimony. We do need to know when it's going to happen and
4 from where.

5 In other words, our folks can't set it up and make
6 it happen unless we know where the person's going to testify
7 from, which I assume is an easier thing to answer than when.

8 MS. WELETZ: Correct.

9 THE COURT: And your witness is going to have to
10 commit himself or herself to a time, more or less.

11 MS. WELETZ: And, obviously, if it doesn't work,
12 Your Honor, I have put him directly in contact with Ms. Rice.
13 They are running the checks on his system and our system
14 either today or tomorrow morning through his assistant. So I
15 think that, technologically-wise, we'll be all set.

16 THE COURT: I agree with that. I mean, as far as I
17 know, unless -- I'm assuming that's going to work out. And
18 maybe Ms. Laborge knows more than I do.

19 I'm assuming technologically we can make it work.
20 We just need to know the timing so that we have IT staff
21 available to make it happen.

22 MS. WELETZ: I understand.

23 THE COURT: In terms of other information, I assume
24 you and the Government can talk to each other about that
25 outside the courtroom.

1 MS. WELETZ: Yes, your Honor.

2 THE COURT: You'll provide the information.

3 MS. WELETZ: Yes. Thank you.

4 THE COURT: And then do we have enough witnesses to
5 roll through tomorrow and the next day?

6 I'm looking at the defense table. I'm just really
7 going to want you to have your witnesses here. If we have to
8 go out of order, I'm fine with that.

9 I don't know what your plans are. I don't need to
10 know. I just need to know that we can go through once we get
11 started.

12 I did send out draft jury instructions on Friday.
13 Those are NOT a ruling. They're just a place to start. And,
14 that way, you know what I'm contemplating and you can tell me
15 what you don't like about them.

16 I know a First Amendment instruction has been
17 proposed. And I'm assuming that the Government also is going
18 to want to have some sort of commentary on that, but I don't
19 know.

20 You've talked about this is not a defense and that
21 is not a defense, and we can talk about that.

22 But to the extent that there is language about what
23 the First Amendment allows, I assume you're going to want
24 language about what the First Amendment doesn't allow.

25 I'm thinking through what I would give in a perfect

1 world, and we'll see if we all agree on that or if I just
2 have to decide myself what's appropriate.

3 But the right of assembly being something that does
4 exist here, there's also very direct language in very
5 well-established Supreme Court case law that says you don't
6 have a right to commit crimes. You have a right to assemble,
7 to talk, to have political views and speech, but not to be
8 violent.

9 And so I can take the quotes right out of the cases,
10 and that's a pretty simple instruction. And we can talk
11 about whether or not the jury needs that at all because, as I
12 said the other day, *Elonis* was decided very recently,
13 incorporating First Amendment principles into criminal
14 instructions. And I'm not so sure we need to tell them
15 anything that's not incorporated in the instructions unless
16 everybody agrees we should.

17 So that's sort of my current thinking.

18 Why don't we -- are they all here yet?

19 THE DEPUTY CLERK: We're missing five.

20 THE COURT: Five.

21 Well, then, I'm going to -- we have one more
22 Defendant's composites, I think, to go through with Detective
23 Pemberton.

24 Is that correct, Ms. Kerkhoff?

25 MS. KERKHOFF: We have the compilation video to go

1 through with respect to the Defendant we did the board on.
2 And then we have one more Defendant to do both the board and
3 the compilation video.

4 THE COURT: Well, here's my question: Does it make
5 sense to start discussing motion for judgment of acquittal,
6 since we have some time on our hands?

7 And, principally, I guess I want to start by asking
8 the Government what your view is about the inciting charge.
9 I know you've seen my draft instruction. And I'm going to
10 assume I'll be getting a motion for judgment of acquittal on
11 that particular count.

12 Is the Government going to be opposing that motion?

13 MS. KERKHOFF: A motion for judgment of acquittal?

14 THE COURT: Yes. On inciting.

15 MS. KERKHOFF: Yes.

16 THE COURT: And can I ask: Do you disagree with my
17 formulation of the elements in my proposed instructions, in
18 other words, that -- and I suppose not just the language, but
19 the interpretation of it that would require something beyond
20 the conduct that's exhibited in this case.

21 MS. KERKHOFF: So the Government -- I don't
22 disagree -- while we have some comments about the
23 instructions overall, I don't disagree with the elements.

24 I do think, though, as it relates to conduct, that
25 conduct can include something more than words or gestures.

1 Conduct can include actions and participation designed to
2 continue a riot.

3 I also believe that the way Count 1 was indicted and
4 as exists, Count 1 states that the Defendants, in committing
5 all of those and inciting and urging, that it did, in fact,
6 cause -- and I think this is where the initial draft was
7 wrong -- but that it did cause a riot.

8 A riot cannot -- in which more than \$5,000 of damage
9 or serious bodily -- grave danger of serious bodily alarm to
10 property or persons.

11 The Government's position, in addition to the fact
12 that conduct can include how individuals move and aid those
13 that are engaging or urging this to continue, that their own
14 conduct is continuing, that under aiding and abetting, as
15 well as under *Pinkerton* theory, you cannot have a riot
16 without participants.

17 And for those that are urging and inciting
18 destruction, it needs actual people to have committed the act
19 as charged in Count 1.

20 Count 1 is not an attempt. Count 1 is an actual
21 riot. And so I do believe that, as it relates to the
22 Defendants, that their conduct does fall within this.

23 And I think also --

24 THE COURT: So it is your position that -- and, like
25 I said, I haven't seen the last set of composites. But as to

1 anyone in this case, let's assume knowledge of what's going
2 on.

3 Let's assume some ability to see stuff being thrown
4 into the street, windows being broken, et cetera, and the
5 remaining there; in other words, opportunities to leave and
6 not leaving. So I'm assuming all that for purposes of
7 argument.

8 What would distinguish urging and inciting from
9 engaging --

10 MS. KERKHOFF: Engaging --

11 THE COURT: -- if that's all it takes to aid and
12 abet the incitement of a riot? And wouldn't we, therefore,
13 have multiplicitas counts?

14 MS. KERKHOFF: Your Honor, first, I would note that,
15 as it relates to each of these Defendants, I think Defendant
16 Alexei Wood --

17 THE COURT: I mean these Defendants. Yes.

18 MS. KERKHOFF: I understand that.

19 I think Defendant Alexei Wood is, by words and
20 gestures --

21 THE COURT: So let's put his stuff aside.

22 How about let's just talk about somebody --

23 MS. KERKHOFF: The other five.

24 THE COURT: -- who's not on audiotape woo-hooing
25 while things get broken, just who -- your evidence is

1 physically present, has knowledge of what's going on, remains
2 with the group and gets to the end.

3 And assuming for purposes of argument that that
4 would be engaging, what's to distinguish that from inciting?
5 You can charge aiding and abetting anything.

6 And haven't we got multiplicitas counts if what
7 you're really saying is all you have to do is be there
8 because presence alone is incitement on that theory?

9 MS. KERKHOFF: And that's where I disagree with the
10 concept of presence alone, your Honor. This is not
11 individuals --

12 THE COURT: I don't mean alone; I mean presence with
13 knowledge and intent.

14 MS. KERKHOFF: I understand that.

15 Except that the Court is saying they're present and
16 they didn't leave. It's more than that here.

17 We believe that both the boards and the compilations
18 show the purposeful attire, the purposeful bringing of
19 supplies, the purposeful efforts by each individual for the
20 role they will play, coupled with this is not in a park.

21 These are not people standing around making the
22 group bigger so that individuals in a park who are stationary
23 can go out and do things in a park.

24 Each of these Defendants actively moved, re-formed,
25 regrouped. There were instructions and commands being given.

1 They're re-forming and regrouping.

2 THE COURT: But am I wrong? I'm not going to see
3 anything that shows any of the individuals here giving
4 instructions and commands.

5 MS. KERKHOFF: I don't think you can say whether or
6 not they were giving instructions --

7 THE COURT: But you don't have evidence that they
8 did?

9 MS. KERKHOFF: That's right.

10 THE COURT: In other words, a person could not find
11 beyond a reasonable doubt that even Mr. Wood gave
12 instructions and commands. We can talk about his role.

13 MS. KERKHOFF: Right.

14 But the Government's point is the Court can say,
15 Well, it's conduct that can apply to both. I think the jury
16 has to find the elements.

17 The way this indictment is charged, this is a riot
18 that actually occurred and caused damage in excess. And I
19 think you can charge it as aiding and abetting and
20 co-conspirators.

21 And I think their continued participation is
22 conduct. Participation not just engaging in the riot, but as
23 it related to those that were breaking.

24 Engaging doesn't require proof of damage. It
25 doesn't require any of those things for purposes of this

1 count.

2 THE COURT: But inciting requires proof of
3 incitement.

4 MS. KERKHOFF: Right.

5 THE COURT: And what's the proof of incitement,
6 other than the things you've already told me --

7 MS. KERKHOFF: That --

8 THE COURT: -- the participation?

9 MS. KERKHOFF: The Government submits that that is
10 aiding and abetting those that are inciting the riot. A riot
11 isn't required to have incitement.

12 THE COURT: That's true.

13 MS. KERKHOFF: So if this riot has both engaging and
14 there is incitement in this riot, then you have to factor in,
15 does the Defendant's conduct fall within both?

16 Now, whether or not at the end of the day --

17 THE COURT: How could anyone have attended and been
18 there straight through to the end with knowledge and intent
19 to participate and not have incited, on your theory? What
20 would be the difference between the two crimes? Nothing,
21 you're saying.

22 MS. KERKHOFF: In this case, I think the jury has to
23 find their intent as it relates to incitement.

24 THE COURT: And isn't incitement some sort of
25 direction or leadership or causation act that causes conduct,

1 effort to promote? I mean, I can go back to the dictionary,
2 which I was at a few weeks ago.

3 Well, a different question: Do you have cases for
4 anywhere else that distinguish between incitement and
5 participation in a riot?

6 You know, in my order finding that engaging was not
7 a felony, you know, I spent some time on the legislative
8 history.

9 To the extent that people who understood the
10 difference between incitement and participation or engaging
11 were talking, the intention was to punish incitement more
12 strictly.

13 And, to me, it sounded like good old-fashioned
14 leadership, in other words, either planning, though planning
15 is not required, or some other form of urging, causation,
16 promoting, sort of catalytic behavior.

17 Are you disagreeing with that? Or you're saying
18 that, in the circumstances of this case, the conduct
19 evidences an intention to catalyze, to lead, to promote an
20 event and cause it to happen?

21 MS. KERKHOFF: So, in this case, unlike other
22 historical -- I'll say the analysis of facts -- historical
23 facts, the lack of spontaneity I think is very important in
24 this case because I do think that, if this were more of a
25 spontaneous riot, more people coming out into the streets and

1 saying, "What is happening?" with anger, swelling, which has
 2 happened in the past factually, the Government's position
 3 that the extent of the planning as evidenced by a lot of
 4 factors, including what these Defendants themselves brought,
 5 chose to wear, bring, chose to have other clothing, how they
 6 prepared for this, does make this fall within something that
 7 goes to urging and inciting others.
 8 It's more than just spontaneity. There is urging.
 9 There is --
 10 THE COURT: Is your appellate division backing you
 11 on this?
 12 MS. KERKHOFF: Yes, your Honor.
 13 THE COURT: And do you have case law from anywhere
 14 that you can give me?
 15 MS. KERKHOFF: Not for. Not against, your Honor.
 16 There isn't much out there where they've made the distinction
 17 as our statute has done on engaging and urging and inciting.
 18 THE COURT: I did just hear the jury knock. I know
 19 that everybody on the other side of the podium wants to say
 20 something about this.
 21 But, you know, I guess I'm showing my cards. I'm
 22 not certain that count is going to survive a motion for
 23 judgment of acquittal.
 24 I'm happy to have you give me whatever else you have
 25 other than a factual argument. Obviously, we still do need

1 to talk about the nature of the -- of Mr. Wood's
 2 participation and the stuff on the livestream that is
 3 different in quality from the evidence against the other
 4 Defendants.
 5 I'm still not so sure, though, about the inciting
 6 part of it. And so I'm interested in whatever you want to
 7 give me to think about.
 8 MS. KERKHOFF: Yes, your Honor.
 9 THE COURT: Can we bring the detective back in.
 10 (Whereupon, the witness entered
 11 the courtroom and the following
 12 proceedings were had:)
 13 THE COURT: And we'll get started with the jury.
 14 (Whereupon, the jury entered the courtroom at
 15 10:20 a.m. and the following proceedings were had:)
 16 THE COURT: Good morning, ladies and gentlemen.
 17 THE JURY: Good morning.
 18 THE COURT: Welcome back. Thank you for coming
 19 back. I really appreciate it. I hope you had a good
 20 weekend.
 21 Thank goodness the snow didn't affect today because,
 22 boy, could that delay us badly.
 23 So far, so good.
 24 We're going to pick back up with the Government's
 25 case. Detective Pemberton is back on the stand.

1 I remind you that you're still under oath.
 2 And we'll continue with the direct examination.
 3 MS. KERKHOFF: Thank you.
 4 (GREGGORY PEMBERTON, GOVERNMENT WITNESS, PREVIOUSLY SWORN)
 5 CONTINUED DIRECT EXAMINATION
 6 BY MS. KERKHOFF:
 7 Q. Now, Detective Pemberton, when we left off on
 8 Wednesday, we had just reviewed Government's Exhibit 314.
 9 MS. KERKHOFF: At this time, your Honor, the
 10 Government's offering into evidence Government's Exhibit
 11 No. 150.
 12 MR. LAZEROW: No objection.
 13 THE COURT: 150?
 14 MS. KERKHOFF: Yes.
 15 THE COURT: I think you had. It's in.
 16 BY MS. KERKHOFF:
 17 Q. Detective, as we pull that up, Government's Exhibit
 18 No. 150: Is this also a compilation?
 19 A. Yes, it is.
 20 Q. Okay. I corrected the spelling of "compilation"
 21 over the weekend.
 22 This is a compilation of various videos, some of
 23 which are the still images contained on Government's
 24 Exhibit 314?
 25 A. Yes. That's correct.

1 MS. KERKHOFF: Go ahead and play that.
 2 (Whereupon, Government's Exhibit No. 150 was
 3 published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. Detective, in connection with the compilation, did
 6 you also assist in preparing a PowerPoint that showed where
 7 on -- at what locations each of those video compilations were
 8 captured?
 9 A. Yes.
 10 MS. KERKHOFF: At this time the Government offers
 11 into evidence Government's Exhibit No. 150-A.
 12 MS. WELETZ: No objection.
 13 THE COURT: It's admitted.
 14 (Whereupon, Government's Exhibit No. 150-A was
 15 entered into evidence.)
 16 BY MS. KERKHOFF:
 17 Q. And looking at Government's Exhibit 150-A,
 18 Detective?
 19 A. This is an overhead map that shows the five
 20 locations in which the clips were obtained. This is a
 21 zoomed-in area of 13th Street showing where Clips 1 and 2
 22 were filmed.
 23 MS. KERKHOFF: Mr. Qureshi, if you could forward
 24 to -- advance through -- just for the record, the jury will
 25 have this in the back.

1 BY MS. KERKHOFF:

2 Q. If you click on each of the video links, what does
3 that do?

4 A. It will play just the portion of the clip that's
5 relevant to that area.

6 Q. And with respect to what's listed as No. 4 at the
7 Crowne Plaza, on the video compilation, did we watch four
8 separate camera views there?

9 A. Yes. That link should play all four of those clips.

10 Q. Now, Detective, on the compilation we just observed
11 as well as on the board, did you include every image of every
12 purple backpack that you observed?

13 A. No.

14 Q. Did you observe other purple backpacks?

15 A. Yes.

16 Q. So with respect to what you included on Board
17 No. 314 and in the compilation, with respect to this
18 particular person with that purple backpack, what distinction
19 did you make?

20 A. It was really --

21 MS. WELETZ: I'll object, your Honor.

22 THE COURT: Can I ask you to approach, please.

23 (Whereupon, the following proceedings were had at
24 side-bar outside the presence of the jury:)

25 THE COURT: What do you expect his answer is going

1 to be?

2 MS. KERKHOFF: I expect his answer to be that he did
3 observe several other purple backpacks; however, they did not
4 appear consistent with the person for a variety of reasons.
5 This goes to the absence of evidence.

6 THE COURT: So they didn't appear consistent with
7 the person, and that's all he's going to say?

8 MS. KERKHOFF: And I could lead him, if the Court
9 wants me to ask that question, so there's nothing else that
10 comes out.

11 THE COURT: And so, for example, on men or on --

12 MS. KERKHOFF: On women, the shoes were different as
13 well as other features. So if I could point to that, I think
14 that's important.

15 THE COURT: So you're talking about clothing, not
16 facial features?

17 MS. KERKHOFF: Correct.

18 THE COURT: Any objection to that?

19 MS. WELETZ: I mean, my objection is we're veering
20 dangerously into your Honor's ruling that he's never seen
21 these -- this purple backpack in person, nor has he seen
22 those shoes in person, and there's no way to distinguish who
23 was wearing them in any of those videos.

24 THE COURT: Is that something you can ask on cross?

25 I don't know. Has he seen them in person? Were these items

1 tat were collected?

2 MS. KERKHOFF: The --

3 THE COURT: Like the backpack -- her backpack.

4 MS. KERKHOFF: It's on video. But it was not -- she
5 picked it up. But it was --

6 THE COURT: So the video.

7 I'm going to overrule the objection. He is not
8 identifying her. He's not saying this is the same person.

9 What he's saying is he saw a purple backpack on
10 persons who had different appearances on the video. So he
11 didn't include those. And the differences include shoes that
12 the individual was wearing and other characteristics.

13 If do you want cross on it -- you have no idea what
14 you're looking at -- you can go ahead and do it. The risk
15 there, of course, is that he's looked at these very closely.

16 And would add, I guess, just for the record, there
17 are portions of this where her face covering is entirely off.

18 And so you can see her face. You can see who she is.

19 And probably anybody at this point could say, "I've
20 observed enough characteristics about the person with the
21 purple backpack to know who she is in these videos."

22 I'm not going to let Ms. Kerkhoff go that far, but I
23 think it would probably be permissible, given how much of her
24 is shown on this videotape.

25 It's not like -- it's not even really a lay opinion.

1 It's just she's got, you know, long braids or dreads in all
2 of these images. And so --

3 MS. WELETZ: In some of the videos --

4 THE COURT: -- those are characteristics that are
5 pretty distinctive.

6 MS. WELETZ: And I agree in some of the video. I
7 fear that he's going to go to the point that he's going to
8 say this is the same backpack.

9 THE COURT: Well, he knows I've ruled that he can't.
10 So I don't think that's what Ms. Kerkhoff has told us she's
11 going to elicit.

12 So I'm going to overrule your objection to what
13 she's told us she plans to do.

14 MS. KERKHOFF: I will lead just to make sure we
15 don't get there.

16 THE COURT: Okay.

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

19 THE COURT: Sir, can you come on back, please.

20 I've overruled.

21 BY MS. KERKHOFF:

22 Q. Detective Pemberton, did you observe in the course
23 of videos other individuals, more than one individual, with a
24 purple backpack?

25 A. Yes.

1 Q. And you stated you did not include all of those
2 images on the boards. Correct?
3 A. That's correct.
4 Q. Did any -- how many other purple backpacks did you
5 observe?
6 A. I can think of three.
7 Q. For the images you included on the board, did the
8 other three purple backpacks include the same type of shoes
9 and clothing?
10 A. No. They also were not the same backpack.
11 Q. And what features did you look at on the backpack
12 itself?
13 A. You can tell different backpacks by the straps, the
14 size, the shape, where the zippers are, the piping, the
15 lining, where pockets are located, the overall shape of the
16 bag.
17 So not only the bag in and of itself was distinct
18 and different than the other bags that Ms. Kerkhoff
19 mentioned, but also the other objects in those frames, as she
20 mentioned: Shoes, pants, jacket, hat, hair, height, weight,
21 stature, gait of the individuals. You could separate those
22 things using those type of distinctions.
23 Q. Thank you.
24 Now I want to direct your attention to what's been
25 marked as Government's Exhibit 316.

1 MS. KERKHOFF: At this time the Government offers
2 into evidence Government's Exhibit 316.
3 THE COURT: Any objection?
4 MR. LAZEROW: No objection.
5 THE COURT: No? I'll admit it.
6 (Whereupon, Government's Exhibit No. 316 was entered
7 into evidence.)
8 BY MS. KERKHOFF:
9 Q. And, Detective, showing you what's been marked as
10 Government's Exhibit No. 316, like the other compilation
11 boards, do each of the images here -- are they identified by
12 the video exhibit that was admitted into evidence?
13 A. Yes.
14 Q. These are still images from videos?
15 A. Yes.
16 Q. And can you, looking at the top row from
17 Exhibit 123-O, describe for the record what the two colored
18 arrows are pointing to.
19 A. The blue arrow points to a hat that has a skull logo
20 on it.
21 The red arrow points to a backpack strap.
22 In the next two frames, there's also a green arrow
23 that points to what appears to be a woven, colorful backpack.
24 Q. And with respect to -- and the location from
25 Government's Exhibit 123-O -- were you familiar, based on

1 your familiarity with the location, where that occurred?
2 A. Yes. That was just south of I Street and the park
3 that intersects at -- in between 11th and 12th and New York
4 and I Street Northwest. There's a small triangular park
5 right there. That's where those images were filmed.
6 Q. What's marked as No. 2 from Government's
7 Exhibit 148.44: Can you describe that still image.
8 A. That is an image that was obtained from the
9 intersection of 13th and I. There's a group of individuals
10 running northeast -- I'm sorry -- northwest into Franklin
11 Square from that intersection. And the green arrow is
12 pointing to a colorful, woven backpack.
13 Q. And Exhibit 111?
14 A. That is a still shot from a video. And the area
15 that is filmed is at 14th and K as the group is moving past
16 the Crowne Plaza Hotel.
17 Q. And does that still image also depict three colored
18 arrows?
19 A. Yes. The blue arrow is pointing to a hat with what
20 appears to be a white logo or white area in the front.
21 The red arrow points to a backpack strap.
22 And the green arrow points to a woven, colored
23 backpack.
24 Q. And, finally, what's marked as No. 4: This is
25 marked as Exhibits 108, 107 and 106.

1 Have you had an opportunity to view each of those
2 video exhibits?
3 A. Yes.
4 Q. And what location does that show?
5 A. That is at the intersection of 12th and L. And
6 these images are taken right around -- just before and just
7 after the charge of the police line.
8 Q. And where in relation -- Government's Exhibits 108,
9 107, 106: Do they capture different events or the same
10 events from a different angle?
11 A. Mostly the same event. All of these images were
12 captured within a moment or two of each other.
13 Q. And did you also assist in preparing a video
14 compilation containing clips from admitted videos with images
15 on Government's Exhibit No. 316?
16 A. Yes.
17 MS. KERKHOFF: At this time the Government offers
18 into evidence Government's Exhibit No. 154.
19 THE COURT: Any objection?
20 MS. JACQUES: No objection.
21 THE COURT: 154 is admitted.
22 (Whereupon, Government's Exhibit No. 154 was entered
23 into evidence.)
24 (Whereupon, Government's Exhibit No. 154 was
25 published in open court.)

1 BY MS. KERKHOFF:

2 Q. Now, Detective, in addition to preparing the video
3 compilation, did you also assist in preparing a PowerPoint
4 which documents on a map the location of where each of those
5 video clips were taken?

6 A. Yes.

7 MS. KERKHOFF: At this time the Government offers
8 into evidence Government's Exhibit No. 154-A.

9 THE COURT: Any objection?

10 MS. JACQUES: No.

11 MR. LAZEROW: No objection.

12 THE COURT: It's admitted.

13 (Whereupon, Government's Exhibit No. 154-A was
14 entered into evidence.)

15 BY MS. KERKHOFF:

16 Q. And, for the record, again, we're looking at the
17 same map that exists on every PowerPoint. Correct?

18 A. Yes.

19 MS. KERKHOFF: Mr. Qureshi, if you could advance it.

20 BY MS. KERKHOFF:

21 Q. And do each of the video clips -- if you click on
22 that, will that open and play within the PowerPoint itself?

23 A. Yes.

24 Q. The jury will have that in the back.

25 Now, Detective, you testified last week that part of

1 your job as the lead detective in this case was to try to
2 obtain as much video as possible.

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. And during the course of your investigation, did you
7 learn about some video of a meeting that was held on or about
8 January 8th, 2017, here in Washington, DC, in the basement of
9 a church?

10 A. Yes.

11 Q. Can you describe for the ladies and gentlemen of the
12 jury what you learned.

13 A. Part of the initial process of this investigation
14 was trying to obtain and collect and download and preserve
15 whatever evidence existed, much of which you've seen. It was
16 obtained from the Internet or open sources.

17 So there was a push to find anyone from anywhere
18 that had posted anything that could be relevant or probative.

19 And during that process, we located individuals that
20 had posted what appeared to be undercover video, if you will,
21 of a meeting of individuals that appeared to be planning what
22 occurred that day.

23 Q. And you said -- who had posted it?

24 A. It was posted by Project Veritas.

25 Q. And when did you learn about it?

1 A. It had to be very early on. I believe it was no
2 later than March -- February or March.

3 Q. The video that you observed posted, did it appear
4 complete?

5 A. No. It was just edited portions, you know, maybe
6 30 seconds to a minute of individuals talking. But it
7 obviously had been edited to be sort of an informative piece
8 by that organization.

9 Q. So what did you do?

10 A. I contacted them to see if they had raw, unedited
11 footage of that very meeting.

12 Q. And what happened next?

13 A. They provided me with a hard drive which contained
14 hours of video that they had obtained through their
15 investigation.

16 Q. And with respect to Government's Exhibit 125 itself,
17 did you watch it?

18 A. Yes.

19 Q. And how was it provided to you? As one continuous
20 stream or in segments?

21 MR. LAZEROW: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: The hard drive contained individual
24 files of what appeared to be a number of meetings. And in
25 each of those files were separate segments of video, some of

1 which were 15 minutes, some of which were 20 minutes. But it
2 was not a running stream of video of each one of the events.

3 BY MS. KERKHOFF:

4 Q. Are you familiar with digital media devices and how
5 they capture or record?

6 A. Yes.

7 Q. So as it relates to a meeting that purported to be
8 January 8th, 2017, how many segments did you receive?

9 A. I believe four.

10 Q. And how many of those capture the actual meeting
11 itself versus the before and after?

12 A. Three.

13 Q. When you reviewed it, did it contain timestamps?

14 A. Yes.

15 Q. On each of those videos?

16 A. Yes.

17 Q. And based on your review, what, if any, edits did
18 you see?

19 THE COURT: Could I just ask counsel to approach,
20 please.

21 (Whereupon, the following proceedings were had at
22 side-bar outside the presence of the jury:)

23 THE COURT: So -- everybody listening?

24 You objected before to the questions about did he
25 get it and did it come in segments.

1 MR. LAZEROW: Sure. I -- it was coming.
 2 THE COURT: I overruled it because I didn't think
 3 that was responsive to the cross involving the video itself
 4 and further authentication of it.
 5 But now you're asking him for, I guess, his opinion
 6 about whether there had been edits.
 7 MS. KERKHOFF: What he observed.
 8 THE COURT: Right.
 9 But to the extent that he wasn't at the meeting --
 10 well, first of all, I heard an objection.
 11 Was there an objection?
 12 MS. WELETZ: Attorney Carrie Weletz.
 13 He is not an expert in video technology. So --
 14 THE COURT: He might be.
 15 So what exactly would be his basis to say whether
 16 there appeared to be edits and why wouldn't the witness who
 17 was present for the meeting have been the one to have said
 18 there appeared to be no edits?
 19 MS. KERKHOFF: Well, that is part of what he does to
 20 confirm whether there are any.
 21 But they cross-examined Officer Adelmeyer as to
 22 where the video was obtained from and what condition it was
 23 in when it was received.
 24 Officer Adelmeyer did not have that information
 25 because he did not obtain the video.

1 Detective Pemberton obtained the video. So I'm
 2 trying to close the loop on their specific examinations about
 3 how the files were received.
 4 THE COURT: So I think you can do that. But whether
 5 there appeared to be edits, I guess that question in and of
 6 itself suggests some ability to -- some expertise, I guess,
 7 some ability, to discern whether there are edits in a
 8 videotape. You're describing how it came.
 9 I think you can ask him how -- what he got compared
 10 to Exhibit 125, which is in evidence. I don't think you can
 11 ask him whether there were edits.
 12 To the extent that he has no personal knowledge of
 13 what went on at the meeting, I suppose he could testify
 14 that -- I mean, he's already said it came in in three
 15 different segments.
 16 And if 125 was basically an amalgamation of those
 17 three segments unedited from what he got --
 18 MS. KERKHOFF: Correct.
 19 THE COURT: -- I think he can say that.
 20 MS. KERKHOFF: Okay.
 21 THE COURT: Yes. Thank you.
 22 (Whereupon, the following proceedings were had in
 23 open court:)
 24 BY MS. KERKHOFF:
 25 Q. Now, Detective Pemberton, when you observed the

1 three segments, you said they were time-stamped?
 2 A. Yes.
 3 Q. What -- when you watched the video, did you observe
 4 an individual you recognized from the Metropolitan Police
 5 Department on one of the videotapes?
 6 A. Not right away. But, yes, eventually.
 7 Q. Later in the video?
 8 A. Yes.
 9 Q. And who was that that you recognized?
 10 A. Officer Adelmeyer.
 11 Q. Was that Bryan Adelmeyer?
 12 A. Yes.
 13 Q. What steps did you take -- did you provide the video
 14 to Officer Adelmeyer for his review?
 15 A. Yes. I contacted Officer Adelmeyer. I had him come
 16 in and review the video. He was able to corroborate that he
 17 was at that meeting and that the video actually and fairly
 18 represented what occurred at that meeting.
 19 Q. And why did you contact Officer Adelmeyer as you
 20 reviewed the video to ask him for that information?
 21 A. To verify the accuracy and the validity and the
 22 veracity of that evidence, as I do with every --
 23 MR. COHEN: I would object, your Honor. Hearsay.
 24 THE COURT: And so you're objecting to everything
 25 he's already said or to what he's about to say?

1 MR. COHEN: Both, to the question and the previous
 2 question.
 3 THE COURT: Counsel, please approach.
 4 Generally, objections should happen before the
 5 testimony comes out.
 6 (Whereupon, the following proceedings were had at
 7 side-bar outside the presence of the jury:)
 8 THE COURT: Can you tell me specifically what you're
 9 objecting to that he's already said.
 10 MR. COHEN: Yes, your Honor.
 11 And I would move to strike it. At the moment, I
 12 would say that --
 13 THE COURT: Are you objecting before it all comes
 14 out or at least as it's coming out? Because I'm listening
 15 for objections. I won't stop him unless you do object.
 16 So what specifically are you objecting to?
 17 MR. COHEN: That's clearly hearsay, saying that he,
 18 Adelmeyer, was there watching the -- at the meetings and now
 19 he is corroborating what's on the video. That has to be
 20 information that comes through Adelmeyer, not the detective.
 21 It's being presented for the truth of the matter
 22 asserted that what's on the video is what Adelmeyer saw at
 23 the meeting.
 24 THE COURT: I'm just asking you to be a little
 25 quicker on the trigger with that sort of thing. Okay?

1 Because you have just said it all.

2 MR. COHEN: I apologize.

3 THE COURT: And so what -- is it offered for its
4 truth? In other words, the witness corroborated what was on
5 the video and said it was an accurate representation of the
6 meeting.

7 MS. KERKHOFF: No, your Honor.

8 What it's being offered for is to rebut the
9 cross-exam and line of inquiry that MPD failed to take steps
10 to verify the authenticity as well as the accuracy and
11 non-editing of the video, which was specifically discussed
12 with Officer Adelmeyer.

13 THE COURT: So should I give a limiting instruction
14 saying that it's not being offered to prove the truth of any
15 of Officer Adelmeyer's statements, but to explain the actions
16 that members of the police department took to ensure -- with
17 respect to the recording?

18 MS. KERKHOFF: Yes.

19 THE COURT: Is that satisfactory?

20 MR. COHEN: I would say no. I would say that's
21 still -- that limiting instruction doesn't make it any less
22 hearsay. It doesn't --

23 THE COURT: Well, the point that Ms. Kerkhoff is
24 making is that it's not being offered to prove the truth of
25 the matter asserted, that it's being offered to show that

1 they took steps to make sure that the videotape was genuine
2 rather than a fabrication, which -- the suggestion in cross
3 of Officer Adelmeyer was that Project Veritas makes things up
4 or lies about things or creates things that don't exist, that
5 they shouldn't have relied on it.

6 So my question is: Why can't the Government rebut
7 that?

8 MR. LAZEROW: I was going to say the reason I did
9 not object as the ones who brought this up is because I think
10 Officer Adelmeyer did say that this looks like the meeting he
11 had and he saw.

12 I don't think you should give an instruction other
13 than just to instruct the witness to stick to what his
14 observations were and don't get into his discussions with --

15 THE COURT: I'm not telling the witness what to
16 testify to.

17 MR. LAZEROW: I understand.

18 THE COURT: He has to testify responsibly; and he
19 did, and there was no objection.

20 MR. LAZEROW: I understand.

21 THE COURT: So you're not objecting to actually what
22 he said and you don't want me to give a limiting instruction?

23 MR. LAZEROW: If you are going to give a limiting
24 instruction, I think that should be the limiting instruction,
25 that he should not be testifying about --

1 THE COURT: I don't give instructions to the
2 witness. The limiting instruction would be to the jury for
3 their consideration --

4 MR. LAZEROW: That's fine. That's fine.

5 THE COURT: -- for the evidence.

6 MR. LAZEROW: That's fine. You should give a
7 limiting instruction.

8 THE COURT: So, just so I understand, you are
9 objecting to the testimony that's just been given, coming in
10 as to the truth of the matter of Adelmeyer's statements?

11 MR. LAZEROW: Yes.

12 THE COURT: So you do want me to give a limiting
13 instruction to the jury that they should consider the
14 testimony only going to the measures, I guess, that the
15 detective took to validate or verify the material he was
16 getting?

17 MR. LAZEROW: Yes, your Honor. Yes, your Honor.

18 THE COURT: Okay.

19 MS. KROPF: Sara Kropf.

20 The problem is, your Honor, that substantive
21 testimony is in. He can say, "I checked with Officer
22 Adelmeyer," period.

23 THE COURT: Nobody objected when he said it all.

24 MS. KROPF: I -- and we should have, your Honor.

25 THE COURT: What is it you'd like me to do?

1 MS. KROPF: To strike the testimony of what Officer
2 Adelmeyer told him.

3 THE COURT: On what basis?

4 MS. KROPF: On hearsay.

5 THE COURT: Well, what if Ms. Kerkhoff is saying
6 that she's actually offering it for a purpose that is not
7 hearsay, not for the truth of the matter asserted, to address
8 very strong inferences you were asking for on Adelmeyer's
9 testimony on his cross that the police did not make efforts
10 to validate or verify information that had come from a very
11 unreliable source?

12 MS. KROPF: Then, he can describe the efforts that
13 he took, which is --

14 THE COURT: That's what he did.

15 MS. KROPF: No, your Honor.

16 THE COURT: He asked the officer whether it was an
17 accurate recording of what he had attended.

18 MS. KROPF: And then he responded with what Officer
19 Adelmeyer told him.

20 THE COURT: Right.

21 MS. KROPF: He can say, "I checked with Officer
22 Adelmeyer." That's fine. He can explain his steps.

23 But when we get to what Officer Adelmeyer told him,
24 that is being offered for the truth.

25 There's no doubt, your Honor, that they're going to

1 stand up and argue that this case is authentic and that they
2 checked it out.

3 THE COURT: They have a right to argue that, and you
4 have a right to argue it's not based on the fact that the
5 person who taped it wasn't here and comes from an unreliable
6 organization that you should all distrust.

7 MS. KROPF: Agreed, your Honor. But they shouldn't
8 be able to bolster that argument by getting in hearsay
9 through another witness.

10 There's no hearsay exception for this in response to
11 our attack. They can put on that evidence through -- you're
12 smiling, your Honor, but you know that's true. There isn't
13 an exception for it. They put on their witness.

14 THE COURT: But there is a rule that says that
15 something not offered to prove the truth of the matter
16 asserted -- I believe it's in Rule 801 that says it's
17 nonhearsay.

18 MS. KROPF: I --

19 THE COURT: So that's Ms. Kerkhoff's point.

20 MS. KROPF: And we may disagree. But I don't see
21 any way that they are not offering Officer Adelmeyer's
22 statement that this was a fair and accurate depiction as
23 truth of the matter asserted. That's exactly why they want
24 it in.

25 THE COURT: So I am going to overrule the request

1 that it be stricken. It is being offered for a permissible
2 purpose.

3 As has been pointed out, the witness himself,
4 Officer Adelmeyer, did testify that it was a fair and
5 accurate recording.

6 And the challenge to the Government's use of that
7 tape, particularly given its source and the inflammatory sort
8 of current events surrounding people's opinions about
9 Veritas, do put the Government in a position of permissibly
10 showing that they took steps to make sure that the thing was
11 correct.

12 And so I will allow the testimony. I'm not going to
13 strike it, but I will give a limiting instruction. Assuming
14 I'm not going to strike it as hearsay, I think it's
15 permissibly offered as nonhearsay.

16 Do you want me to give a limiting instruction?

17 MS. KROPF: If you're going to allow it, then I
18 guess a limiting instruction that those statements are not
19 being offered and cannot be considered by the jury for the
20 truth of the statements that this is an accurate depiction of
21 what happened at that meeting.

22 THE COURT: No. Just to the truth that Officer
23 Adelmeyer said the words he said.

24 MS. KROPF: That's fine, your Honor.

25 THE COURT: Okay.

1 MS. KERKHOFF: The only thing the Government would
2 just clarify is that --

3 THE COURT: The truth of Officer Adelmeyer's
4 declaration.

5 MS. KERKHOFF: That Detective Pemberton's recitation
6 of what Officer Adelmeyer said is not being offered for the
7 truth.

8 That said, they can consider the truth of what
9 Officer Adelmeyer himself said on the stand. I think that
10 if --

11 THE COURT: Well, they can consider Officer
12 Adelmeyer's testimony for its truth and they can consider
13 this witness's testimony for its truth.

14 His report that Officer Adelmeyer said things to him
15 is not being offered to prove the truth of what Officer
16 Adelmeyer said, only to show steps he took with respect to
17 verifying the recording.

18 MS. KERKHOFF: I just don't want any confusion that
19 they can't consider that what Officer Adelmeyer testified --

20 THE COURT: Believe me, they're not following these
21 instructions, anyway.

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

24 THE COURT: Ladies and gentlemen, you've just heard
25 testimony about things that Officer Adelmeyer said.

1 That testimony is not admitted and you may not
2 consider it to prove the truth of what Officer Adelmeyer
3 said.

4 It's being offered solely to show the measures and
5 efforts that Detective Pemberton and the police department
6 took to verify the authenticity of the tape they got.

7 BY MS. KERKHOFF:

8 Q. Now, Detective Pemberton, with respect to what's
9 been admitted as Government's Exhibit No. 125 --

10 MS. KERKHOFF: If I could have Mr. Qureshi pull that
11 up.

12 BY MS. KERKHOFF:

13 Q. -- you said that was originally in three separate
14 segments?

15 A. Correct.

16 Q. And each was time-stamped?

17 A. That's correct.

18 Q. Who created Exhibit 125, putting the multiple
19 segments together?

20 A. I did.

21 Q. And why did you put them together in a single video?

22 A. Just for ease of use to make them one exhibit.

23 Q. I'm going to pull up Exhibit 125 at about 16:48.

24 (Whereupon, segments of Government's Exhibit No. 125
25 were published in open court.)

1 BY MS. KERKHOFF:
 2 Q. Just for the record, do we see what appears to be
 3 2013.05.11 as well as what appears to be a timestamp on this
 4 video?
 5 A. Yes.
 6 Q. Is that counter stamp wrong?
 7 A. I believe it is wrong. The date and time I believe
 8 are wrong.
 9 Q. But does it run?
 10 A. I'm sorry. Yes. It runs.
 11 MS. KERKHOFF: I'm going to have Mr. Qureshi go
 12 ahead and play this.
 13 THE COURT: Wait. What was last thing just said?
 14 You're going to have Mr. Qureshi play this?
 15 MS. KERKHOFF: At 16:48 on -- play the counter time.
 16 (Whereupon, segments of Government's Exhibit No. 125
 17 were published in open court.)
 18 BY MS. KERKHOFF:
 19 Q. Now, Detective Pemberton, did you just observe a
 20 black screen come in?
 21 A. Yes.
 22 Q. Did you observe that the counter went from about
 23 20:31:01 to about 20:31:06, so about a five-second gap?
 24 A. Yes.
 25 Q. What was that?

1 A. That is the gap that's created in between the files.
 2 Q. File 1 to File 2?
 3 A. Yes.
 4 Q. Who put that black screen in there?
 5 A. I did.
 6 Q. Just to designate that was a separate segment?
 7 A. That's correct.
 8 Q. Did you take any other portion out in between those?
 9 A. No.
 10 MS. KERKHOFF: And if we could advance to 34:43 on
 11 the counter. 34:41 is fine, Mr. Qureshi.
 12 (Whereupon, segments of Government's Exhibit
 13 No. 125-A were published in open court.)
 14 BY MS. KERKHOFF:
 15 Q. Did we just observe another black screen come at
 16 about 34:49?
 17 A. Yes.
 18 Q. And who put that black screen in?
 19 A. I did.
 20 Q. Now, we just observed on the previous screen a
 21 timestamp or a counter. Is that correct?
 22 A. That's correct.
 23 Q. On this video, there is no timestamp or counter.
 24 There's a black bar at the bottom?
 25 A. That's right.

1 Q. Do you know where that came from?
 2 A. I don't.
 3 Q. Do you know who put these three segments together?
 4 A. It's probably a mistake on my part. Yes.
 5 Q. Well, let's just go ahead.
 6 MS. KERKHOFF: The Government is going to offer into
 7 evidence Government's Exhibit 125-A, 125-B and 125-C, the
 8 three separate segments.
 9 If we could just pull up 125-A.
 10 THE COURT: Can I just ask are these newly created
 11 exhibits or you're just offering the same thing as before in
 12 three separate segments?
 13 BY MS. KERKHOFF:
 14 Q. Detective, 125-A, 125-B, 125-C, are these the three
 15 segments as provided to you by the Project Veritas group?
 16 A. These are the original clips that I was provided,
 17 yes, that I assembled into Exhibit 125. Yes.
 18 Q. Before you put it together in 125, these are the
 19 three?
 20 A. Correct.
 21 Q. And pulling up what's Government's Exhibit 125-A, is
 22 that how -- does that have the counter and timestamp on it?
 23
 24 A. It does. Yes.
 25 MS. KERKHOFF: Mr. Qureshi, if you could pull up

1 125-B.
 2 (Whereupon, segments of Government's Exhibit
 3 No. 125-B were published in open court.)
 4 BY MS. KERKHOFF:
 5 Q. Does this also have a counter and timestamp?
 6 A. Yes, it does.
 7 MS. KERKHOFF: And what about 125-C, Mr. Qureshi.
 8 (Whereupon, segments of Government's Exhibit
 9 No. 125-C were published in open court.)
 10 BY MS. KERKHOFF:
 11 Q. And does this have a counter and timestamp?
 12 A. Yes. The third file as the original has that
 13 counter and timestamp. Yes.
 14 Q. Did it always have a counter and timestamp?
 15 A. Yes, it did.
 16 Q. And before you combined these into one exhibit, did
 17 you also assist in producing these to the defense during
 18 discovery?
 19 A. Yes. I believe we produced these in March, these
 20 original files.
 21 Q. And that third clip, before you created it and the
 22 black bar moved in, did it also contain a timestamp that was
 23 produced to the defense?
 24 A. Yes, it did.
 25 Q. And it's identical to 125-C. Correct?

- 1 A. That's correct. Yes.
- 2 Q. Now, what, if any, edits did you make at all to
- 3 Government's Exhibit 125-A, 125-B and 125-C?
- 4 A. Other than combining the three clips consecutively,
- 5 none.
- 6 Q. What -- prior to combining the three clips, did you
- 7 edit it to remove the beginning portion of the video?
- 8 A. Yes.
- 9 Q. Why did you do that?
- 10 A. The person that was filming the video could be seen
- 11 in a mirror.
- 12 Q. And why would you remove that individual's -- that
- 13 portion?
- 14 THE COURT: And I'm just going to stop you.
- 15 Could you just lead him here, please.
- 16 MS. KERKHOFF: Yes.
- 17 BY MS. KERKHOFF:
- 18 Q. You removed the person who was filming it who put
- 19 camera on. Correct?
- 20 A. Yes.
- 21 Q. They were in a mirror. Correct?
- 22 A. That's correct.
- 23 Q. And you edited that portion. You stopped that
- 24 portion so it did not close the identify of the person who
- 25 recorded it. Correct?

- 1 A. That's correct.
- 2 Q. And is that a common thing or an uncommon thing to
- 3 do with respect to any witness in a case?
- 4 A. We always redact witness names and faces and
- 5 information.
- 6 Q. Did you also edit out the face of Officer Adelmeyer
- 7 as he appeared undercover in the latter part of the video?
- 8 A. Yes, I did.
- 9 Q. And why did you do that?
- 10 A. To protect the identity of an undercover police
- 11 officer.
- 12 Q. And with respect to those edits, other than that,
- 13 did you edit the words, content or anything else in the
- 14 videos?
- 15 A. No. Not at all.
- 16 Q. Now, Detective --
- 17 MS. KERKHOFF: At this time the Government is going
- 18 to offer into evidence Government's Exhibit No. 140-A, 140-B
- 19 and 140-C. These are the DDOT videos.
- 20 THE COURT: Any objection? And that's 140-A, -B and
- 21 -C?
- 22 MS. KERKHOFF: Yes.
- 23 THE COURT: And was there any objection to 125-A, -B
- 24 and -C as well?
- 25 So 140-A, -B and -C, any objection to those?

- 1 MR. LAZEROW: May I approach on that very briefly,
- 2 your Honor?
- 3 THE COURT: As to the 140s?
- 4 MR. LAZEROW: No. The 125.
- 5 THE COURT: How about the 140s? Any objection to
- 6 those?
- 7 MR. LAZEROW: No.
- 8 THE COURT: So we'll admit those.
- 9 (Whereupon, Government's Exhibit Nos. 140-A, 140-B
- 10 and 140-C were entered into evidence.)
- 11 THE COURT: As to the 125 we can talk later are.
- 12 MR. LAZEROW: Great.
- 13 BY MS. KERKHOFF:
- 14 Q. Now, on Government's Exhibit No. 140-A --
- 15 MS. KERKHOFF: Go ahead, Mr. Qureshi.
- 16 (Whereupon, segments of Government's Exhibit
- 17 No. 140-A were published in open court.)
- 18 BY MS. KERKHOFF:
- 19 Q. This video shows 13th Street and I Street Northwest
- 20 and are time-stamped at the top. Correct?
- 21 A. Yes.
- 22 Q. This is from what kind of camera?
- 23 A. This is a DC Government, Department of
- 24 Transportation, camera that monitors traffic.
- 25 MS. KERKHOFF: And I'm going to ask Mr. Qureshi to

- 1 go to about one minute in on the counter.
- 2 (Whereupon, segments of Government's Exhibit
- 3 No. 140-A were published in open court.)
- 4 BY MS. KERKHOFF:
- 5 Q. As we watch this video, what is directly behind and
- 6 below the camera where it's located?
- 7 A. That would be the Starbucks coffee shop.
- 8 Q. What are we looking at? What large location are we
- 9 looking at at that point?
- 10 A. That's Franklin Square.
- 11 Q. For the record, can you note what it is we're seeing
- 12 in the park at this point.
- 13 A. That is the group that we've been discussing had
- 14 just traveled westbound on K Street and then they've turned
- 15 south into Franklin Square and they're headed towards the
- 16 1300 block of I Street.
- 17 MS. KERKHOFF: Mr. Qureshi, I'll have you advance
- 18 the counter to four minutes, please.
- 19 (Whereupon, segments of Government's Exhibit
- 20 No. 140-A were published in open court.)
- 21 BY MS. KERKHOFF:
- 22 Q. For the record, what direction is the large group of
- 23 individuals walking towards?
- 24 A. They're walking eastbound on I Street towards the
- 25 Starbucks.

1 MS. KERKHOFF: And if you could pause it there,
 2 Mr. Qureshi.
 3 BY MS. KERKHOFF:
 4 Q. And have you also had -- at the very top, there's a
 5 timestamp just after 10:35. Correct?
 6 A. It's hard for me to see from here. But I believe
 7 that's at the 10:35 marker.
 8 Q. And did you have an opportunity to compare the
 9 timestamp for when -- the Starbucks' interior video from when
 10 windows began to break?
 11 A. Yeah. It's right at 10:35 a.m.
 12 MS. KERKHOFF: If you could go ahead and play.
 13 (Whereupon, segments of Government's Exhibit
 14 No. 140-A were published in open court.)
 15 BY MS. KERKHOFF:
 16 Q. If you could describe what we see on the camera.
 17 A. There's a group of individuals at the bottom of the
 18 screen that appears to be watching the windows get broken.
 19 MR. McCOOL: Objection, your Honor.
 20 MS. KERKHOFF: Could you please pause.
 21 BY MS. KERKHOFF:
 22 Q. Does it appear --
 23 THE COURT: Counsel, please approach.
 24 (Whereupon, the following proceedings were had at
 25 side-bar outside the presence of the jury:)

1 THE COURT: At this point what are you going to have
 2 him do with the video?
 3 MS. KERKHOFF: I'm just having him make a record for
 4 a timestamp. I will lead him through. I want -- I can say
 5 they are watching and facing the direction of the Starbucks
 6 and then make a record of what those individuals on the video
 7 do in a moment.
 8 THE COURT: And so on this video are we going to see
 9 things get broken?
 10 MS. KERKHOFF: We know from -- no.
 11 THE COURT: We're not?
 12 MS. KERKHOFF: We can see people leaving.
 13 THE COURT: And so he is extrapolating from other
 14 videos that that's what they're seeing on here?
 15 MS. KERKHOFF: Correct. And I'll clarify.
 16 THE COURT: He shouldn't be doing that, really.
 17 MS. KERKHOFF: I understand. I'll lead him through.
 18 THE COURT: That was your objection, Mr. McCool?
 19 MR. McCOOL: Whether she leads him through or not,
 20 he has no personal knowledge and shouldn't be testifying
 21 about this at all.
 22 THE COURT: But what you're saying is, if you're not
 23 going to have him talk about broken windows, you're going to
 24 have him -- how is he going to anchor things in time?
 25 MS. KERKHOFF: He has compared the timestamp of the

1 Starbucks video.
 2 THE COURT: So exactly what's he going to say?
 3 MS. KERKHOFF: The timestamp of the Starbucks video
 4 at this time shows that windows are being broken, and then
 5 I'm simply going to have him describe individuals that are
 6 running away from that direction.
 7 THE COURT: And so are we saying that, for instance,
 8 4:53, where we are on this tape, is going to be at 4:53 on
 9 the video or no?
 10 MS. KERKHOFF: No. 4:53 is a counter stamp at the
 11 very top, Your Honor. You can see it's 10:35.
 12 THE COURT: And so what he's going to say is what?
 13 I mean, once he puts up the Starbucks video, he can say it's
 14 10:35 on here and 10:35 on there?
 15 MS. KERKHOFF: Correct.
 16 THE COURT: And say what the locations of each place
 17 are?
 18 MS. KERKHOFF: Correct. Yes.
 19 THE COURT: And so, rather than giving conclusory
 20 testimony that these people are doing whatever they're doing
 21 in this video at the same time as the Starbucks window is
 22 breaking, you're just going to have him identify timestamps
 23 on particular videos?
 24 MS. KERKHOFF: Correct.
 25 THE COURT: Is that something you object to?

1 MR. McCOOL: He can say what the timestamp is.
 2 That's fine. He can't, in my view, testify what those people
 3 are looking at, doing or thinking.
 4 THE COURT: So you've just heard what Ms. Kerkhoff
 5 plans to do. Do you object to that?
 6 MR. McCOOL: I'm not sure that I know what she plans
 7 to do.
 8 THE COURT: What she's going to do is have him
 9 identify the timestamp of this, which is right now 10:35:31,
 10 and then identify the timestamp of a different video that
 11 shows the Starbucks windows breaking at whatever time it is
 12 and say the street location of this video and the street
 13 location of that video, and, that way, she's not drawing
 14 conclusions about what these people are seeing on this tape.
 15 Is that okay with you?
 16 MR. McCOOL: Sure.
 17 THE COURT: Okay.
 18 (Whereupon, the following proceedings were had in
 19 open court:)
 20 THE COURT: You can come back.
 21 BY MS. KERKHOFF:
 22 Q. Now, Detective, for the record, can you note the
 23 timestamp? I believe Mr. Qureshi has moved the area down.
 24 Can you see a timestamp located at the very top of
 25 Government's Exhibit No. 140-A?

1 A. Yes.
 2 Q. And what timestamp is marked here?
 3 A. 10:35 and 31 seconds.
 4 Q. And a moment ago, Mr. --
 5 MS. KERKHOFF: Mr. Qureshi, can you back it up by
 6 about three seconds.
 7 (Whereupon, segments of Government's Exhibit
 8 No. 140-A were published in open court.)
 9 MS. KERKHOFF: Pause it.
 10 BY MS. KERKHOFF:
 11 Q. And the individuals at the bottom of the screen,
 12 what direction are they facing?
 13 A. They're facing eastbound.
 14 Q. What building is located directly in front of them?
 15 A. 1225 I Street.
 16 MS. KERKHOFF: If you could play.
 17 (Whereupon, segments of Government's Exhibit
 18 No. 140-A were published in open court.)
 19 BY MS. KERKHOFF:
 20 Q. For the record, are individuals at this point --
 21 MS. KERKHOFF: Mr. Qureshi, can you pause.
 22 BY MS. KERKHOFF:
 23 Q. Are they walking towards the building that you just
 24 described, the Starbucks, or are they walking away from it?
 25 A. They're walking away.

1 Q. Approximately, for the record, how many individuals
 2 are gathered at the opposite side of the street at the park?
 3 A. I'd say about two dozen.
 4 Q. And are facing what?
 5 A. They're facing the Starbucks.
 6 MS. KERKHOFF: Mr. Qureshi, can you please pull up
 7 Exhibit No. 100.
 8 (Whereupon, segments of Government's Exhibit No. 100
 9 were published in open court.)
 10 BY MS. KERKHOFF:
 11 Q. Is there also -- while Government's Exhibit 100 is
 12 playing, is there a timestamp that's recording at the bottom?
 13 A. Yes. It says 10:34 and 50 seconds right now.
 14 (Whereupon, segments of Government's Exhibit No. 100
 15 were published in open court.)
 16 MS. KERKHOFF: If you could pause.
 17 BY MS. KERKHOFF:
 18 Q. And at what timestamp -- well, for the record, did
 19 we just observe glass breaking from the front door?
 20 A. Yes.
 21 Q. And what timestamp is this?
 22 A. 10:35 and 27 seconds.
 23 Q. Now, Detective, did you also assist in preparing
 24 Government's Exhibits 317 to 321?
 25 A. Yes, I did.

1 MS. KERKHOFF: At this time the Government offers
 2 into evidence Government's Exhibits 317 to 321.
 3 THE COURT: Does everybody --
 4 MR. McCOOL: May I approach to see them, your Honor?
 5 MS. KERKHOFF: These were produced previously.
 6 MR. McCOOL: I'm sure they were, but I just want to
 7 see them.
 8 I've seen these before. Thank you, your Honor. No
 9 objection.
 10 THE COURT: Any other -- any objection from anyone?
 11 MR. LAZEROW: No objection.
 12 THE COURT: So 317 to 321 will be admitted.
 13 (Whereupon, Government's Exhibit Nos. 317 to 321
 14 were entered into evidence.)
 15 BY MS. KERKHOFF:
 16 Q. Showing you what's been admitted as Government's
 17 Exhibit 317.
 18 Showing you Government's Exhibit No. 317, Detective,
 19 what does Government's Exhibit 317 depict?
 20 A. These are still-shot images from various exhibits
 21 that have been admitted that I think have significance.
 22 Q. Well, let me -- before you get to that, are they
 23 still images from exhibits that have been admitted?
 24 A. Yes.
 25 Q. So what is depicted -- or do you recognize the

1 location of Government's -- of what's depicted in -A and -B?
 2 A. Yes.
 3 Q. What is the location?
 4 A. That is 13th Street and N Northwest, right outside
 5 of the BP gas station.
 6 Q. And where is the image from No. -C?
 7 A. That's in the 1300 block of I Street, looking north.
 8 Those trees in the background are in Franklin Square.
 9 Q. And letters -D, -E, -F, -G and -H?
 10 A. Those are in the 1200 block of I Street, directly in
 11 front of the Starbucks.
 12 Q. What about No. -I?
 13 A. -I is in Franklin Square, right at the northwest
 14 corner.
 15 Q. -J?
 16 A. That is in the 1300 block of L Street on the north
 17 sidewalk.
 18 Q. And --
 19 THE COURT: And this is all in Exhibit 317?
 20 MS. KERKHOFF: Correct.
 21 BY MS. KERKHOFF:
 22 Q. And letter -K: Is that a body-worn camera from
 23 Officer Whitehead?
 24 A. Yes, it is. It's at the intersection of 12th and L.
 25 Q. Is this before or after the charge of the police

- 1 line?
- 2 A. Just before.
- 3 Q. And Government's Exhibit -L and -M: Is that also
- 4 body-worn camera?
- 5 A. Yes.
- 6 Q. That depicts individuals who were stopped?
- 7 A. That's right.
- 8 Q. At 12th and L?
- 9 A. Yes.
- 10 Q. Okay. Government's Exhibit No. 318: Are these also
- 11 a series of images?
- 12 A. Yes.
- 13 Q. And -A: Do you recognize the location?
- 14 A. Yes. Logan Circle.
- 15 Q. And is -A -- this image was also contained on one of
- 16 the video compilations, No. 152. Correct?
- 17 A. That's correct.
- 18 Q. -B?
- 19 A. That's a still image of footage that was taken on
- 20 13th Street.
- 21 Q. -C?
- 22 A. Again, 13th Street near the firehouse.
- 23 Q. -D?
- 24 A. That is -- 13th and K at the limousine.
- 25 Q. -E?

- 1 A. Same location.
- 2 Q. -F?
- 3 A. -F and -G are at the Starbucks in the 1200 block of
- 4 I Street.
- 5 Q. And -H: Is that body-worn camera on an individual
- 6 stopped at 12th and L Streets?
- 7 A. Yes.
- 8 Q. No. 319: What is 319?
- 9 A. These are still images taken from admitted exhibits.
- 10 Q. What's the -- where is the location in -A?
- 11 A. 13th, near Mass. Avenue.
- 12 Q. And at -B?
- 13 A. 13th and L -- approaching L Street.
- 14 Q. And what appears to be in the individual's hand in
- 15 -B?
- 16 A. A yellow crowbar.
- 17 Q. And -C, where is that location?
- 18 A. That's the same. That's right at the Maddy's Tavern
- 19 on 13th Street and L.
- 20 Q. What about -D and -E?
- 21 A. Again, 13th and L.
- 22 Q. What's depict in Images -F, -G and -H?
- 23 A. Those images were filmed at the limousine which was
- 24 at -- near 13th and K.
- 25 Q. -I and -J?

- 1 A. Right at the Starbucks in the 1200 block of
- 2 I Street.
- 3 Q. -K, -L and -M?
- 4 A. Again, Starbucks.
- 5 Q. -N?
- 6 A. That's at 12th and L during the charge of the police
- 7 line.
- 8 Q. And what is on the ground?
- 9 A. The yellow crowbar.
- 10 Q. And -O?
- 11 A. That's just outside of the police line. And that's
- 12 an image of an individual stopped.
- 13 Q. At 12th and L?
- 14 A. Yes.
- 15 THE COURT: Before you do any more, can I ask you to
- 16 come to the bench, please.
- 17 (Whereupon, the following proceedings were had at
- 18 side-bar outside the presence of the jury:)
- 19 THE COURT: So are these meant to be persons other
- 20 than the Defendants on trial here?
- 21 MS. KERKHOFF: Right.
- 22 THE COURT: They're meant to be five other people so
- 23 that you're proving up your five people who willfully
- 24 participated, I assume.
- 25 MS. KERKHOFF: And individuals within the assemblage

- 1 who caused such damage.
- 2 THE COURT: Okay. And so should I be telling the
- 3 jury that you're not saying any of the people with crowbars,
- 4 et cetera, in these images are the Defendants or do you all
- 5 want me to leave that alone?
- 6 MR. McCOOL: You can -- I'm happy to have you tell
- 7 the jury, your Honor.
- 8 THE COURT: She can elicit it from him. In
- 9 Exhibit 317 through -- the problem is, of course, by
- 10 inference, other people were the Defendants. But it's up to
- 11 you.
- 12 Do you want the jury to be told the Government is
- 13 not asking the jury to conclude that anybody in 317 through
- 14 3 -- whatever it is -- 321 are the Defendants charged in this
- 15 case?
- 16 MR. McCOOL: Yes. Those are all the boards. Just
- 17 keeping track, 321 is where we end?
- 18 MS. KERKHOFF: No. Where we will end.
- 19 MR. McCOOL: We will end. Okay.
- 20 THE COURT: At 319.
- 21 MS. KERKHOFF: Correct.
- 22 THE COURT: At the end of those, should I say --
- 23 does everybody want me to do that? Obviously, it does
- 24 suggest by implication that other people were the Defendants.
- 25 But since these show people with crowbars and doing bad

1 things, I assume we want to make it clear it's not them.
 2 MR. McCOOL: Yes. I would.
 3 MS. KERKHOFF: It's not these six Defendants.
 4 THE COURT: Right.
 5 MS. KERKHOFF: And so I can elicit from him who they
 6 are, although I was told I can't elicit an ID. So this is
 7 why I'm doing it this way.
 8 THE COURT: How do you want me to do that?
 9 MR. McCOOL: I don't want IDs elicited. I prefer
 10 that the Court instruct the jury that those --
 11 THE COURT: The parties agree that none of the
 12 persons depicted in Exhibits 317 to 321 are any of the six
 13 persons on trial in this particular trial?
 14 MR. McCOOL: Yes, your Honor. Thank you.
 15 MS. KERKHOFF: They were arrested, though. That's
 16 what we've elicited. They were individuals who were
 17 arrested.
 18 THE COURT: And you want me to say that?
 19 MS. KERKHOFF: Yes.
 20 THE COURT: Shall I say that you all stipulate to
 21 that or --
 22 MR. McCOOL: We could say that you stipulate not
 23 only to that, but they're some of 200 names that were read to
 24 the jury. I presume you read them.
 25 THE COURT: I mean, I don't know. Do you want that

1 stipulated or not?
 2 MR. McCOOL: I'm just thinking.
 3 MS. KERKHOFF: They have their pictures.
 4 THE COURT: So shall I simply say are persons who
 5 were arrested that day, but are not any of the six persons on
 6 trial in this trial?
 7 MR. LAZEROW: Yes.
 8 THE COURT: Does everybody agree?
 9 MR. McCOOL: Yes.
 10 THE COURT: Okay. Should I wait to the end or do it
 11 now?
 12 MR. COLEMAN: Wait to the end of the boards.
 13 THE COURT: Okay.
 14 (Whereupon, the following proceedings were had in
 15 open court:)
 16 BY MS. KERKHOFF:
 17 Q. Two more, Detective.
 18 No. 320, Government's Exhibit 320: Can you describe
 19 what it is we're looking at here?
 20 A. Again, these are still images taken from admitted
 21 exhibits.
 22 Q. And what is -- do you recognize the location that's
 23 depicted in -A?
 24 A. Yes. -A is on 13th Street near Mass. Avenue.
 25 Q. And what the depicted in -B, -C and -D?

1 A. That's the Starbucks at the 1200 block of I Street.
 2 Q. The individual in -B, -C and -D is holding what?
 3 A. A flag. A red flag.
 4 Q. What's the location of -E?
 5 A. That is right in front of the Bobby Van's at
 6 12th and New York Avenue.
 7 Q. And -F?
 8 A. 14th and K, by the Crowne Plaza.
 9 Q. And the location for -G and -H?
 10 A. 14th and L.
 11 Q. And the locations of -I and -J?
 12 A. That's 12th and L.
 13 Q. Where the individual was stopped?
 14 A. Yes.
 15 Q. And, finally, Government's Exhibit 321: What are we
 16 looking at here?
 17 A. Again, still images taken from admitted exhibits.
 18 Q. And what is the location depicted in -A?
 19 A. 13th Street near Mass. Avenue.
 20 Q. What about -B?
 21 A. Again, 13th Street, approaching L.
 22 Q. -C, -D, -E and -F?
 23 A. That's the Starbucks, 1200 block of I.
 24 Q. And is that Starbucks or the Bank of America?
 25 A. Well, the door that's there to the left is for the

1 Starbucks, but those windows actually belong to the Bank of
 2 America.
 3 Q. And -J?
 4 A. Again, that's at -- in front of the Bank of America.
 5 Q. And what, if anything, is the individual in -G
 6 holding?
 7 A. It appears to be some sort of wooden club.
 8 Q. -H?
 9 A. New York Avenue and 11th Street.
 10 Q. -I?
 11 A. 12th and L.
 12 Q. -J?
 13 A. Also 12th and L.
 14 Q. And -K and -L?
 15 A. -K and -L should probably have been before -I, but
 16 that's just before 12th and L. That's 13th and L.
 17 Q. And this individual that's in -I and -J, is that
 18 before or after the charge of the police line?
 19 A. After.
 20 Q. And this was the individual stopped at 12th and L?
 21 A. Yes.
 22 MS. KERKHOFF: Thank you, your Honor. The
 23 instruction?
 24 THE COURT: Ladies and gentlemen, the persons in the
 25 images in Exhibits 317 and 3 -- between -- in Exhibits 317

1 through 321, the boards you've just seen, the parties
 2 stipulate and agree that none of those persons are the
 3 individuals on trial in this particular trial today.
 4 They are persons who were arrested on January 20th,
 5 but they are not the six individuals on trial here before
 6 you.
 7 Thank you.
 8 MS. KERKHOFF: The Court's indulgence.
 9 No further questions.
 10 THE COURT: Cross-examination in whatever order.
 11 MR. LAZEROW: We've agreed on our order, your Honor.
 12 THE COURT: Okay.
 13 MR. McCOOL: I'll go first.
 14 Good morning.
 15 THE JURY: Good morning.
 16 CROSS-EXAMINATION
 17 BY MR. McCOOL:
 18 Q. Good morning, Detective.
 19 A. Good morning, Mr. McCool.
 20 Q. Last week you testified that, in Government's
 21 Exhibit 151, you observed an individual wearing a darkish
 22 hat.
 23 Do you recall that testimony?
 24 A. Yes.
 25 Q. That hat wasn't seized as evidence, was it?

1 A. No.
 2 Q. Last week you testified that, in Government's
 3 Exhibit 151, you saw an individual with a greenish-blue
 4 scarf.
 5 Do you recall that testimony?
 6 A. I don't recall a greenish-blue scarf.
 7 Q. Okay.
 8 A. I'm sorry. I recall, Mr. McCool. I recall.
 9 Q. Thank you. I was about to find it.
 10 A. I apologize.
 11 Q. You did not seize that -- or MPD did not seize this
 12 scarf as evidence. Correct?
 13 A. Not that I'm aware of. No.
 14 Q. Last week you testified about a certain backpack
 15 with a water bottle.
 16 Do you recall that testimony?
 17 A. Yes.
 18 Q. And you -- the backpack was not seized as evidence.
 19 Correct?
 20 A. That's correct.
 21 Q. The water bottle was not seized as evidence. Is
 22 that correct?
 23 A. That is correct.
 24 Q. All right. And did you have an opportunity to
 25 review the receipt of property that purports to be associated

1 with Oliver Harris?
 2 A. I looked at the property book. I don't think I've
 3 ever seen the actual property receipt.
 4 Q. Well, let me know if your recollection needs to be
 5 refreshed.
 6 Let me do this. I have Harris Exhibit 46.
 7 MR. McCOOL: I'll show counsel.
 8 BY MR. McCOOL:
 9 Q. Look at Harris 46.
 10 Can you -- what is that?
 11 A. This is the prisoner's property book.
 12 Q. Okay. So the prisoner's property book.
 13 Who fills that out?
 14 A. The arresting officer.
 15 Q. Okay. And then underneath -- in that property book,
 16 they describe the items that were taken. Is that correct?
 17 A. Yes, sir.
 18 Q. And there's -- on that page, there's a part of the
 19 book that's associated with O. Harris. Is that right?
 20 A. That's correct.
 21 Q. And is it true that the receipt or the property book
 22 did not indicate the color of the backpack that was
 23 associated with Oliver Harris?
 24 A. That's correct. It does not.
 25 Q. And is it true that the receipt of property

1 mentions, but does not identify, personal items?
 2 A. Yeah. It just says "Backpack with personal items."
 3 That's correct.
 4 Q. So the property receipt does not list the scarf.
 5 Correct?
 6 A. No, it does not.
 7 Q. And it's true that the property receipt does not
 8 list a hat. Right?
 9 A. That's correct.
 10 Q. And if I recall your testimony -- I do recall your
 11 testimony from last week.
 12 You testified, quote, during your review of all the
 13 videos in this case, you did not see the clothing combination
 14 prior to 12th and L Streets. Is that right?
 15 A. That's correct. Yeah.
 16 Q. Okay. And you obtained videos from YouTube. Right?
 17 Social media. Correct?
 18 A. Yeah. Yeah. All over the place.
 19 Q. Twitter?
 20 A. Sure.
 21 Q. Facebook?
 22 A. Yes.
 23 Q. Project Veritas?
 24 A. Not of the event. But, yes, in reference to this
 25 case. Yes.

1 Q. All right. Security cameras?
 2 A. Yes.
 3 Q. DDOT cameras?
 4 A. That's correct.
 5 Q. And you reviewed these over and over again?
 6 A. Yes, I did.
 7 Q. For hundreds of hours?
 8 A. Unfortunately, yes.
 9 Q. And in your review, you didn't see that clothing
 10 combination.
 11 Is that your testimony to the ladies and gentlemen
 12 of the jury?
 13 A. Yes. That's correct.
 14 Q. Okay. But it's fair to say that, even though you
 15 had all these security cameras, these videos, it can't be
 16 your testimony that everyone was captured on video who was in
 17 the area from Logan Circle to 12th and L between 10:00 and
 18 11:00 on January 20, 2017. Right?
 19 A. That everyone who was in that area -- yeah. No.
 20 That's correct. Yeah.
 21 Q. Thank you.
 22 Now, you testified last week that you observed my
 23 client, Oliver Harris, within the last month or so. Is that
 24 right?
 25 A. Yes.

1 Q. And you testified that, within the --
 2 MR. McCOOL: Excuse me for a moment.
 3 BY MR. McCOOL:
 4 Q. You testified that, within the last month or so, you
 5 saw my client, Oliver Harris, in this courthouse. Right?
 6 A. Yes.
 7 Q. In fact, I think it was after that question it was
 8 emphasized that you saw him here in this courthouse in
 9 Washington, DC. Right?
 10 A. Yes.
 11 Q. And then you testified that you observed Mr. Harris
 12 carrying a black backpack. Correct?
 13 A. I did. Yes.
 14 Q. And you also testified that, in your opinion, quote,
 15 the details of that backpack are consistent with the details
 16 that you observed in a video. Is that right?
 17 A. Yes.
 18 Q. Okay. Now, can you please tell the ladies and
 19 gentlemen of the jury the date and the time that you observed
 20 this backpack.
 21 A. No. I don't recall.
 22 Q. If you were shown a copy of your search and seizure
 23 warrant, would that refresh your recollection?
 24 A. There is no search and seizure warrant.
 25 Q. There's no search and seizure warrant?

1 A. No.
 2 Q. You know what a search and seizure warrant is, don't
 3 you?
 4 A. Yes, I do.
 5 MR. McCOOL: Your Honor, I'd like to publish Harris
 6 Exhibit 45, which is simply a redacted copy of a search and
 7 seizure warrant.
 8 MS. KERKHOFF: Objection. Relevance.
 9 THE COURT: Counsel, please approach.
 10 (Whereupon, the following proceedings were had at
 11 side-bar outside the presence of the jury:)
 12 THE COURT: That's from this case?
 13 MR. McCOOL: It was. But I just redacted all the
 14 identifiers out.
 15 THE COURT: Is this relating to your client?
 16 MR. McCOOL: No. It's related to this case. But
 17 the purpose is just the form itself, not the particulars of
 18 it.
 19 THE COURT: And what's the purpose of -- so this has
 20 nothing to do your client. It's just a redacted warrant
 21 form?
 22 MR. McCOOL: Yeah.
 23 THE COURT: It's a search warrant?
 24 MR. McCOOL: A search warrant. Unfilled out.
 25 THE COURT: A form?

1 MR. McCOOL: Right. It's a form.
 2 THE COURT: What's the relevance?
 3 MR. McCOOL: I'm going to walk him through that and
 4 ask him --
 5 THE COURT: I'm sustaining the objection under
 6 Rule 403.
 7 MR. McCOOL: Okay.
 8 (Whereupon, the following proceedings were had in
 9 open court:)
 10 THE COURT: Sustained. Relevance and Rule 403.
 11 BY MR. McCOOL:
 12 Q. Have you ever obtained a search and seizure warrant?
 13 THE COURT: So I am going to ask you to move on --
 14 MS. KERKHOFF: Objection.
 15 THE COURT: -- under Rule 403 and because judges
 16 decide whether warrants get issued.
 17 MR. McCOOL: May we approach?
 18 THE COURT: Judges decide whether warrants get
 19 issued.
 20 Please proceed, Mr. McCool.
 21 BY MR. McCOOL:
 22 Q. Your --
 23 THE COURT: Please proceed on a different line of
 24 questioning.
 25

1 BY MR. McCOOL:
 2 Q. You don't have this backpack?
 3 A. (No response.)
 4 Q. Well, let me ask you this: How close was this
 5 backpack to your eyeballs when you saw it?
 6 A. He was on the escalator in front of me going down
 7 towards the front door.
 8 Q. All right. Exigent circumstances.
 9 You know what that concept means, too, don't you?
 10 A. Yes. I'm familiar.
 11 Q. All right.
 12 MR. McCOOL: May we approach on this, your Honor?
 13 THE COURT: Actually, no. I've actually sustained a
 14 couple objections and told you to move forward on relevance
 15 and Rule 403 grounds, Mr. McCool.
 16 BY MR. McCOOL:
 17 Q. Now, let's go back to this video.
 18 The Government has produced a substantial amount of
 19 video in this case. Is that fair to say?
 20 A. Yes, sir.
 21 Q. And last week and then today you testified about the
 22 DDOT camera around 13th and I Street. Correct?
 23 A. I did.
 24 Q. Last week you testified about the hours that you
 25 spent searching for the man with the backpack and the water

1 bottle. Right?
 2 A. I don't -- I wouldn't phrase it that way. But, yes,
 3 I spent a lot of hours looking at video.
 4 Q. Well, did you spend a lot of hours searching for the
 5 man with the backpack and the water bottle?
 6 A. I spent a lot of hours looking at a lot of video for
 7 a lot of things.
 8 Q. How about my question?
 9 Did you spend a lot of hours searching for the man
 10 with the backpack and the water?
 11 A. I mean, yeah. I wouldn't characterize it that way.
 12 But okay.
 13 Q. You made a good-faith effort to identify all the
 14 video showing the man with the backpack and the water bottle.
 15 Right?
 16 A. Yes, I did.
 17 MR. McCOOL: Can we publish Harris 40, please, to
 18 the jury. It's a video. It's taken from Government's
 19 Exhibit -- is it 100, I think?
 20 THE COURT: While you're doing that, can you just
 21 come on up, Mr. McCool.
 22 MR. McCOOL: I'm sorry?
 23 THE COURT: Can you just come up to the bench,
 24 please.
 25 (Whereupon, the following proceedings were had at

1 side-bar outside the presence of the jury:)
 2 THE COURT: I didn't sustain an objection to whether
 3 you could ask the witness simply whether he sought a warrant
 4 to obtain the backpack.
 5 I did sustain an objection to that form and what is
 6 a search and seizure warrant and what is exigent
 7 circumstances.
 8 But you may elicit the basic fact that he didn't do
 9 anything to recover that backpack. That you may elicit.
 10 MR. McCOOL: Thank you.
 11 (Whereupon, the following proceedings were had in
 12 open court:)
 13 THE COURT: Please come back.
 14 BY MR. McCOOL:
 15 Q. Let's go step back for a moment.
 16 A. Sure.
 17 Q. We'll talk about the backpack.
 18 You didn't -- you did not seek to obtain a search
 19 and seizure warrant for that backpack that you say you saw.
 20 Right?
 21 A. That's right.
 22 Q. And you did not seek under exigent circumstances --
 23 THE COURT: So exigent circumstances has nothing to
 24 do with it.
 25

1 BY MR. McCOOL:
 2 Q. Did you seek to seize the backpack?
 3 A. No.
 4 MR. McCOOL: Let's go to Harris 40. Can you play to
 5 8 on the timer, please.
 6 Thank you, Jamie.
 7 (Whereupon, segments of Defendant Harris's
 8 Exhibit No. 40 were published in open court.)
 9 MR. McCOOL: Stop right there. Go back. I want to
 10 identify that at 8, please.
 11 (Whereupon, segments of Defendant Harris's Exhibit
 12 No. 40 were published in open court.)
 13 BY MR. McCOOL:
 14 Q. This is what's been marked for identification as
 15 Harris Exhibit 40. You can see that it reads "Published and
 16 unpublished excerpt of Government's Exhibit 100."
 17 Do you see that?
 18 A. I do.
 19 Q. And you've looked at Government's Exhibit 100 in its
 20 entirety. Right?
 21 A. Yes, sir.
 22 MR. McCOOL: Can we go to the next slide, please.
 23 (Whereupon, segments of Defendant Harris's Exhibit
 24 No. 40 were published in open court.)
 25 MR. McCOOL: Let's stop it right there.

1 BY MR. McCOOL:
 2 Q. So what we're going to show, ladies and gentlemen of
 3 the jury -- you must be getting bored with this -- we're
 4 going to show from 10:34:50 to 10:37:40 in realtime. Okay?
 5 MR. McCOOL: Let's just pause -- go to -- let it
 6 play to 22, Jamie, if you would, and we'll pause there.
 7 (Whereupon, segments of Defendant Harris's Exhibit
 8 No. 40 were published in open court.)
 9 BY MR. McCOOL:
 10 Q. So that's the security camera from inside the
 11 Starbucks. Right?
 12 A. Yes.
 13 Q. How many times do you think you've seen this video?
 14 A. I don't know. 100.
 15 Q. 100 times. I feel like I've watched it 100 times,
 16 too.
 17 And this is the Starbucks that's near the
 18 13th Street and I. Correct?
 19 A. Yes. 1225 I Street.
 20 Q. Towards the end of the direct examination, that's
 21 the DDOT camera on 13th and I where Ms. Kerkhoff was
 22 orienting your testimony.
 23 Is that fair to say?
 24 A. Yeah. It's just to the right of this image.
 25 Q. Okay.

1 MR. McCOOL: Now, let's play this through until
 2 10:37:40. Jamie, that's going to be 3:04 on the counter.
 3 (Whereupon, segments of Defendant Harris's Exhibit
 4 No. 40 were published in open court.)
 5 BY MR. McCOOL:
 6 Q. This is the video you've testified you've seen
 7 hundreds of times. Correct?
 8 A. Yes.
 9 Q. And then the videos that we saw with the little
 10 highlight boxes in them, did you make those?
 11 A. I did. Yes.
 12 Q. Did you do that on your own?
 13 A. Yes.
 14 Q. So what I'm going to do, sort of consistent with
 15 you -- what you had done, is I'm going to play this again.
 16 All right?
 17 We're going to play up to -- let me get this
 18 right -- we're going to play it again to 10:36:20 and then in
 19 slow motion with highlights from then on. All right?
 20 Once we get to the slow-motion part, I'm going to
 21 have some questions for you.
 22 MR. McCOOL: Jamie, can you play to 4:43 -- hold on
 23 a second.
 24 BY MR. McCOOL:
 25 Q. Do you know where we're going with this?

1 A. Yes. Go right ahead, sir.
 2 MR. McCOOL: Let's go.
 3 (Whereupon, segments of Defendant Harris's Exhibit
 4 No. 40 were published in open court.)
 5 BY MR. McCOOL:
 6 Q. Do you see the man highlighted there with the camera
 7 and the backpack?
 8 A. Yes.
 9 Q. He's leaving the Starbucks. Right?
 10 A. That's correct.
 11 Q. And you'd agree with me that, at 10:36:20, the
 12 damage to the Starbucks is -- that's been completed. Is that
 13 right?
 14 A. It appears so. Yeah.
 15 MR. McCOOL: Jamie, could you play that till 4:51,
 16 please.
 17 (Whereupon, segments of Defendant Harris's Exhibit
 18 No. 40 were published in open court.)
 19 BY MR. McCOOL:
 20 Q. Now this is in slow motion. This will be my last
 21 line of questioning.
 22 MR. McCOOL: Pause right there for a moment.
 23 Is that 4:51?
 24 MS. HEINE: Yes.
 25

1 BY MR. McCOOL:
 2 Q. Who is the guy in the yellow with the motorcycle?
 3 Is he a police officer?
 4 A. Yes.
 5 Q. And this is a couple seconds now after the man with
 6 the camera and the backpack left the Starbucks. Is that
 7 correct?
 8 A. He's still in the frame. Yes.
 9 Q. Okay. Yeah. I see him.
 10 MR. McCOOL: Can we play to 5:06, please.
 11 (Whereupon, segments of Defendant Harris's Exhibit
 12 No. 40 were published in open court.)
 13 BY MR. McCOOL:
 14 Q. This is a different gentleman, different officer,
 15 but with the Metropolitan Police Department on the
 16 motorcycle. Is that correct?
 17 A. That's a police officer. Yes.
 18 Q. If you didn't see it, we don't need to go back.
 19 Did you see the guy with the cat, he and the hat and
 20 the camera that was filming right before we stopped here?
 21 A. Yes.
 22 Q. All right. That's -- he's the same man that was
 23 walking near the Crowne Plaza in video that we had saw -- we
 24 saw last week. Is that right? Do you recall seeing him?
 25 A. I'm not sure about that. I'd have to look at it

1 again.
 2 Q. Okay.
 3 MR. McCOOL: Can we play until 5:18, please.
 4 (Whereupon, segments of Defendant Harris's Exhibit
 5 No. 40 were published in open court.)
 6 BY MR. McCOOL:
 7 Q. There's another officer on an MPD motorcycle. Is
 8 that correct?
 9 A. Yes, it is.
 10 Q. This is at least the third officer on a motorcycle
 11 that we've seen. Correct?
 12 A. I would agree with that.
 13 MR. McCOOL: Let's play until 5:29, please.
 14 THE COURT: By 5:29, are you referencing a counter
 15 on this very same tape?
 16 MR. McCOOL: Yes. There's a counter on the bottom
 17 left, your Honor, right above the play button.
 18 May I approach?
 19 THE COURT: Well, can't we just do the 10:36:30?
 20 MR. McCOOL: No. Otherwise, it's too difficult to
 21 keep up with the thing. If I may, I'm almost done with this,
 22 your Honor. I think that it's easier to coordinate with
 23 Ms. Heine on this.
 24 I could --
 25 THE COURT: For record purposes, I'm not clear on --

1 MR. McCOOL: In terms of referencing the ladies and
 2 gentlemen of the jury to the time, I'm getting to that point,
 3 your Honor, if that's your Honor's concern.
 4 THE COURT: Go on, please.
 5 MR. McCOOL: I'm sorry?
 6 THE COURT: You can keep going.
 7 MR. McCOOL: Thank you so much.
 8 Can we play until 5:29.
 9 (Whereupon, segments of Defendant Harris's Exhibit
 10 No. 40 were published in open court.)
 11 BY MR. McCOOL:
 12 Q. There are a couple more police officers. Correct?
 13 A. It looks like a whole platoon.
 14 Q. I agree.
 15 MR. McCOOL: Can we play until 5:55, please.
 16 (Whereupon, segments of Defendant Harris's Exhibit
 17 No. 40 were published in open court.)
 18 BY MR. McCOOL:
 19 Q. Now, you would agree, would you not, Detective, that
 20 we are now 42 seconds after the last damage was done to the
 21 Starbucks? Correct?
 22 A. I'll take your word for it. I wasn't counting.
 23 But, yeah, that sound right.
 24 Q. It sounds right, though, doesn't it?
 25 A. Yes.

1 Q. And in the upper right-hand corner of this
 2 highlight, you see the gentleman in the blue riding the
 3 bicycle?
 4 A. Yes.
 5 Q. And he's with the Metropolitan Police Department.
 6 Is that correct?
 7 A. It appears like a mountain bike officer. Yeah.
 8 Q. And in the left-hand side, you see a woman with --
 9 dressed in black carrying the sign "Wrong." Correct?
 10 A. Yes.
 11 Q. And we've seen her in other videos -- or we've seen
 12 the person carrying a sign that says "Wrong" on it in other
 13 videos. Correct?
 14 A. I don't recall.
 15 Q. You don't recall in the hours that you've searched
 16 these videos that you've seen that sign "Wrong"?
 17 A. No.
 18 Q. Okay. What about the gentleman carrying the flag
 19 that has Donald Trump's face on it? Do you recall seeing
 20 him?
 21 A. He's definitely in other videos. Yes.
 22 MR. McCOOL: Can we play until 6:19.
 23 (Whereupon, segments of Defendant Harris's Exhibit
 24 No. 40 were published in open court.)
 25 THE COURT: We're going to take a break after that.

1 MR. McCOOL: Your Honor, if I could finish this. My
 2 line of questioning will be done in five minutes and I'd like
 3 not to break it up, please.
 4 THE COURT: Okay. Five minutes.
 5 (Whereupon, segments of Defendant Harris's Exhibit
 6 No. 40 were published in open court.)
 7 BY MR. McCOOL:
 8 Q. Now, at this point in the video, it's been -- it
 9 says 10:36:51.
 10 That's more than a minute since the last damage at
 11 the Starbucks. Is that correct?
 12 A. That sounds fair.
 13 Q. And prior to stopping at this highlight, we saw
 14 other police officers go by. Is that right?
 15 A. Yes.
 16 Q. And in this highlighted frame you see another
 17 officer on a mountain bike. Right?
 18 A. Yes, I do.
 19 Q. And then that brown car, that's Officer DeVille's
 20 SUV, isn't it?
 21 A. Commander DeVille. Yes.
 22 Q. Commander DeVille. I'm sorry.
 23 He has his police lights activated. Is that right?
 24 A. Yes, he does.
 25 Q. Do you know if he has an amplification system in his

1 car?

2 A. I have no -- I'd guess, but I have no idea. I've

3 never been inside it.

4 MR. McCOOL: Let's play -- for the record, we're at

5 10:36:51. But let's play on the counter until 7:29.

6 Your Honor, I promise we're getting close.

7 (Whereupon, segments of Defendant Harris's Exhibit

8 No. 40 were published in open court.)

9 BY MR. McCOOL:

10 Q. So at this point in the video, we've seen quite a

11 few people walk by since the damage was done at the

12 Starbucks. Is that correct?

13 A. Yes.

14 Q. And in this video some of those folks were dressed

15 in black. Correct?

16 A. Yes.

17 Q. Some of those folks were not dressed in black.

18 Correct?

19 A. That's also correct.

20 Q. None of them appear to be celebrating, correct,

21 since the damage to Starbucks? Is it your testimony they

22 appear to you to be celebrating?

23 A. Visually celebrating, no.

24 Q. Okay. How about gesturing in a way that indicated

25 they were -- well, let's just move on.

1 Let me ask you about this guy right here in the

2 frame.

3 Does he appear to be hiding anyone in this video, in

4 this frame right here?

5 A. Does he appear to be hiding anyone?

6 Q. Yeah.

7 Does appear to be hiding anybody, concealing them,

8 the guy in the highlighted frame?

9 A. I don't understand the question.

10 Q. Do you see anyone around him? Do you see anyone

11 standing behind him? To the side of him?

12 A. Just one person in front of him.

13 Q. Okay. Does that appear to be a water bottle in the

14 back -- in that backpack?

15 A. It does. Yeah.

16 Q. Yeah.

17 MR. McCOOL: Could we play until 7:36.

18 (Whereupon, segments of Defendant Harris's Exhibit

19 No. 40 were published in open court.)

20 BY MR. McCOOL:

21 Q. Now, you would agree with me that we're at 10:37:24.

22 That's -- a minute and 29 seconds have passed since the last

23 damage was done to the Starbucks. Is that right?

24 A. Yeah. That sounds right.

25 Q. And do you see the person standing behind the person

1 taking the photograph?

2 A. Yes.

3 Q. And that person's dressed in black?

4 A. Yes.

5 Q. Carrying a black backpack?

6 A. Yes.

7 Q. To the left side of that backpack appears to be a

8 water bottle. Is that correct?

9 A. Yes, it does.

10 MR. McCOOL: Can we play until 7:43, please.

11 (Whereupon, segments of Defendant Harris's Exhibit

12 No. 40 were published in open court.)

13 BY MR. McCOOL:

14 Q. Do you see the person in black with the water bottle

15 in his backpack in this frame?

16 A. Yes, I do.

17 Q. Now, let me ask you this, Detective: Did you find

18 this video and fail to include it in the Government's

19 exhibits or did you not see it when you searched for hours

20 for the man with the water bottle?

21 A. Well --

22 MS. KERKHOFF: Object to the extent it calls for an

23 identification.

24 MR. McCOOL: I'll move on.

25 THE COURT: Well, I'm going to overrule it. I'll

1 allow an identification if Mr. McCool wants an

2 identification.

3 BY MR. McCOOL:

4 Q. I'd like an answer to my question.

5 Did you see this video?

6 A. I've seen this video. Yes.

7 Q. Okay. All right.

8 MR. McCOOL: Let's play until 7:49, please.

9 (Whereupon, segments of Defendant Harris's Exhibit

10 No. 40 were published in open court.)

11 BY MR. McCOOL:

12 Q. This man with the backpack and the water bottle is

13 walking alone. Right?

14 A. Yes.

15 Q. You didn't see him breaking anything here. Right?

16 A. That person, no.

17 Q. No.

18 You didn't see this person in this frame hand

19 something to someone so they could break something, did you?

20 A. I did not.

21 Q. You see this person appears to have his hands at his

22 side, not raised in celebration. Correct?

23 A. That's also correct.

24 MR. McCOOL: Could we play to the end, please.

25 (Whereupon, segments of Defendant Harris's Exhibit

1 No. 40 were published in open court.)
 2 MR. McCOOL: I have nothing further.
 3 THE COURT: We'll take a break. It's five after
 4 12:00. Ladies and gentlemen, I'll see you in 15 minutes.
 5 That'll be 20 after 12:00. Thank you.
 6 THE WITNESS: Thank you, your Honor.
 7 (Whereupon, the jury exited the courtroom at
 8 12:05 p.m. and the following proceedings were had:)
 9 THE COURT: Sir, I'll excuse you for 15 minutes.
 10 Don't discuss your testimony with anyone.
 11 THE WITNESS: Yes, your Honor.
 12 (Witness excused.)
 13 THE COURT: Is there anything before we break?
 14 MS. KERKHOFF: No.
 15 THE COURT: You're not actually objecting to an ID.
 16 You are just saying you want to be able to do redirect if
 17 that's what he's doing?
 18 MS. KERKHOFF: He's already done it. So I believe I
 19 can do redirect.
 20 MR. McCOOL: I object, your Honor.
 21 THE COURT: You can object, Mr. McCool, but you know
 22 what you're doing. You know what you're asking him. If the
 23 Government is going to elicit testimony that, in this
 24 witness's opinion, that's not the same person, that's what
 25 you've just asked for.

1 MR. McCOOL: I have asked that he can go back and
 2 make -- I disagree. He can go back and make all the
 3 comparisons he wants. But it's personal opinion. I did not
 4 open the door to that, your Honor.
 5 THE COURT: We can talk about exactly how that gets
 6 elicited. It's correct that he's talking about a person with
 7 a backpack. I suppose the witness can point out what the
 8 witness thinks is different about that person from other
 9 people.
 10 And just so we all know, is it his view that that's
 11 not the same person?
 12 MS. KERKHOFF: Oh, no. We believe that's
 13 Mr. Harris.
 14 THE COURT: Okay.
 15 MS. KERKHOFF: He re-formed with the group several
 16 times later after he walked away.
 17 THE COURT: So to the extent that -- so I'm not
 18 going to let you elicit an ID of him.
 19 MS. KERKHOFF: Understood.
 20 THE COURT: You have argument to make about whether
 21 that's fine with you that he's walking past the window and
 22 you still have your theory.
 23 MS. KERKHOFF: Correct. It's consistent with the
 24 videos that were introduced. Yes.
 25 THE COURT: So I don't think an ID is necessary.

1 MS. KERKHOFF: No. But I think we can speak about
 2 the person with the backpack since it was talked about as an
 3 amorphous figure, but he was asked regarding what that
 4 person, the person, was doing.
 5 THE COURT: So we'll see whether -- where we get to
 6 with that.
 7 No IDs, though. Right?
 8 MS. KERKHOFF: Not the name Oliver Harris.
 9 THE COURT: Not the same person -- it's the backpack
 10 that we're identifying, not the person?
 11 MS. KERKHOFF: I believe that's --
 12 THE COURT: So it's the backpack and the water
 13 bottle. Right?
 14 MS. KERKHOFF: He identified more, your Honor. He
 15 talked about his clothing.
 16 THE COURT: Okay. Backpack, clothing, water.
 17 MS. KERKHOFF: Yes.
 18 MR. McCOOL: Your Honor, I did not say clothing.
 19 THE COURT: I'm excusing you for 15 minutes.
 20 (Thereupon a recess was taken, after which the
 21 following proceedings were had:)
 22 THE DEPUTY CLERK: Now re-calling Co-Defendant
 23 matters United States versus Jennifer Armento, 2017 CF2 1193,
 24 et al.
 25 THE COURT: Picking back up, we can call the cases.

1 United States versus Michelle Macchio, et al.,
 2 resuming trial.
 3 It appears that everybody but Ms. Weletz is present,
 4 and that's because I just gave Ms. Weletz an appointment.
 5 UNIDENTIFIED FEMALE SPEAKER: I can let her know.
 6 THE COURT: Thank you.
 7 MR. QURESHI: Would you like me to retrieve the
 8 witness, your Honor?
 9 THE COURT: Yes. Thank you.
 10 (Thereupon, the witness and
 11 Ms. Weletz entered the courtroom
 12 and the following proceedings
 13 were had:)
 14 THE COURT: Thank you, Ms. Weletz. It's much
 15 appreciated.
 16 MS. WELETZ: Thank you.
 17 (Whereupon, the jury entered the courtroom at
 18 12:33 p.m. and the following proceedings were had:)
 19 THE COURT: Juror 16, I don't know if you noticed,
 20 but all the bolts were taken out of your chair and it was
 21 about to fall over.
 22 I think there was a training program that took place
 23 in here during our training days and, obviously, somebody
 24 thought it was a great idea to unscrew the chairs. Go
 25 figure.

1 So we'll fix that up as soon as we can. Thank you
 2 for your patience.
 3 We're going to pick back up with Detective
 4 Pemberton's cross-examination.
 5 Mr. McCool?
 6 MR. MCCOOL: I'm finished. Thank you, your Honor.
 7 THE COURT: Who's next?
 8 CROSS-EXAMINATION
 9 BY MS. WELETZ:
 10 Q. Good afternoon, Detective Pemberton.
 11 A. Good afternoon, Ms. Weletz.
 12 Q. So as you testified on direct, you spent an entire
 13 year of your time and energy on this single case alone.
 14 Correct?
 15 A. Yeah. That's right.
 16 Q. So you have a whole lot invested in this specific
 17 matter. Correct?
 18 A. What do you mean by "invested"? I'm not
 19 understanding.
 20 Q. MPD has paid your salary for an entire year to
 21 investigate this single case. Correct?
 22 A. Yes.
 23 Q. And almost all of your work on this case -- or a lot
 24 of it has to do with reviewing all of this footage that we've
 25 seen during trial. Correct?

1 A. Yes.
 2 Q. Did you use any type of software to assist you in
 3 looking at this video?
 4 A. No.
 5 Q. No type of specialized software at all?
 6 A. Only to make those exhibits that Mr. McCool was
 7 referencing that's sort of pause and zoom in.
 8 Q. So you used the features of, like, slow-mo and
 9 zooming in. Correct?
 10 A. Yes.
 11 Q. But, otherwise, it's just your eyeballs looking at
 12 videos. Correct?
 13 A. Yeah.
 14 Q. Okay. So you identified -- and I think that, when
 15 Attorney Kerkhoff was going through all the exhibits, you
 16 seemed to have a lot of familiarity with the actual exhibits
 17 and the exhibit numbers. Correct?
 18 A. I try to. Yes.
 19 Q. Okay. And that is because you testified that you
 20 tried to vet these exhibits. You tried to get raw footage
 21 when you could. Correct?
 22 A. When I could, yes.
 23 Q. And you did that by using the Internet. Correct?
 24 A. Yes.
 25 Q. You went on, I assume, Facebook and Twitter.

1 Correct?
 2 A. I mean, a whole myriad of social media platforms,
 3 yes, ones I wasn't even previously familiar with. Yeah.
 4 Q. Are you familiar with those videos that are labeled
 5 148?
 6 A. Yes.
 7 Q. Now, 148 has numerous subparts. Correct?
 8 A. That's right. I think 40.
 9 Q. I think there about 40 snippets of videos?
 10 A. Yes. I think so. About 40. Yeah.
 11 Q. Approximately.
 12 And those were provided to you by the Media Research
 13 Center, is that correct, or MRC?
 14 A. Yes.
 15 Q. And you testified again that you used open-source
 16 media to research all of these different -- all of these
 17 different videos and organizations. Correct?
 18 A. Yes.
 19 Q. And as you hopefully are aware, MRC's mission
 20 statement online states that its sole mission is to expose
 21 and neutralize the propaganda arm of the Left, the national
 22 news media. Correct?
 23 A. I was not familiar with that. But, yeah, I
 24 understand they are a right-leaning organization. I was
 25 aware of that.

1 Q. Now, do you remember what type of platform you
 2 received the MRC videos from?
 3 A. A flash drive, like a thumb drive, USB drive.
 4 Q. And that was sent to you directly by MRC?
 5 A. I picked it up at MRC headquarters in Virginia.
 6 Q. And did you send that flash drive to any forensic
 7 digital servicing center to confirm its validity or its
 8 veracity?
 9 A. No.
 10 Q. Just used your eyeballs?
 11 A. Yes.
 12 Q. So were any forensic measures taken on any videos
 13 that you received from, say, a third-party forensic kind of
 14 outfit?
 15 A. No. None.
 16 Q. Including the Project Veritas video?
 17 A. That's correct.
 18 Q. Do you know how many individuals from MRC or, for
 19 that matter, were taping on January 20th, 2017?
 20 A. No. I'm only aware of one -- one individual from
 21 MRC was filming. That's all I'm aware of.
 22 Q. But you do testify that Exhibit 148 has about
 23 40 subparts. Correct?
 24 A. Yeah.
 25 Q. So it's quite possible that there were multiple

1 people taping?

2 A. It's possible. But I interviewed the people who
3 actually filmed it. They stated it was one individual with a
4 camera who was following the group and filming and created
5 all of these exhibits.

6 Q. So you're going on the word of the individuals from
7 MRC saying that there was only one person that filmed it,
8 despite the fact that their mission statement is to
9 neutralize the propaganda arm of the Left?

10 MS. KERKHOFF: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: That's not the only thing I did.

13 BY MS. WELETZ:

14 Q. So let's back up about that footage.

15 Do you -- on the videos submitted by MRC, are you
16 able to see the individual that's filming? Do they ever
17 self-identify themselves?

18 A. Not on those videos. No.

19 Q. Are you able to hear if they say anything on those
20 videos?

21 A. No.

22 Q. Are you able to hear whether those individuals that
23 are taping from MRC ever cheer?

24 A. I don't hear anyone cheering that appears to be the
25 filmer, the camera person. It doesn't seem to me that that

1 person is cheering --

2 Q. But --

3 A. -- or making any statements.

4 Q. -- there's no definitive way to see if that person,
5 after witnessing a broken window, raised up their arms and
6 cheered. Correct?

7 A. Well, I can see that individual on other videos and
8 their behavior because there's other cameras that are out
9 there.

10 So I've been able to identify that person in other
11 videos. And, no, there's no cheering coming from that person
12 or arms raised.

13 Q. Do you know -- well, you mentioned that it was
14 standard that arrest photos and processing videos are kept in
15 an MPD database. Correct?

16 A. Yes.

17 Q. And that information for the arrestees includes
18 those people's names and addresses. Correct?

19 A. Yes, it does.

20 Q. Does anybody at MPD have access to that information?

21 A. Yes. Lots of people. All police officers would
22 have access to that. Sure.

23 Q. Are you aware that personal information --

24 MS. KERKHOFF: Objection.

25 THE COURT: Please approach.

1 (Whereupon, the following proceedings were had at
2 side-bar outside the presence of the jury:)

3 THE COURT: What is it you're about to ask him?

4 MS. WELETZ: If he's aware of personal information
5 of any of the Defendants in this case were released.

6 THE COURT: By whom?

7 MS. WELETZ: By anybody at MPD.

8 THE COURT: What's the relevance of that?

9 MS. WELETZ: It's bias.

10 THE COURT: If he's aware?

11 MS. WELETZ: Correct.

12 THE COURT: Do you have any information that he
13 personally released information?

14 MS. WELETZ: No.

15 MR. LAZEROW: I have information that the police
16 released it, your Honor.

17 MS. KERKHOFF: And, your Honor, with respect to the
18 information, the police, as is customary, provided --

19 THE COURT: What does that have to do with his
20 direct examination? In other words, he's testifying about
21 videos. He's not allowed to identify anybody. He's
22 testifying: I saw a backpack here and this and that there.

23 How is that within the scope of anything he's asked
24 about, whether or not he disclosed -- whether or not the
25 police department disclosed names?

1 MS. WELETZ: Well, because he has invested an entire
2 year of his time investigating this case and he has a whole
3 lot invested in convictions.

4 If those convictions are gotten or the police
5 attempted to cover something up by releasing information, I
6 think it's completely relevant to his motives for testifying
7 in this trial.

8 THE COURT: So I don't know any of the things that
9 you're telling me about right now. They don't sound like
10 there was -- it sounds like Detective Pemberton is going
11 anyplace.

12 So we can discuss whether this is going to come in
13 in some way. Has this ever been investigated that you know
14 of?

15 MS. WELETZ: By the police? No.

16 MS. KERKHOFF: No, your Honor.

17 THE COURT: And so has there been any kind of formal
18 complaint filed or any kind of proceeding initiated as a
19 result of disclosure of names by police of the charged
20 Defendants in this case?

21 MS. WELETZ: Not yet, to my knowledge.

22 MS. KERKHOFF: Which is on a public document in
23 court, your Honor.

24 THE COURT: And so I have to say I'm not aware right
25 now of any basis to cross-examine him about those things.

1 I'll ask you to move on and we can talk about it at length
 2 more when the jury is not sitting there.
 3 MS. WELETZ: Yes.
 4 (Whereupon, the following proceedings were had in
 5 open court:)
 6 THE COURT: Please come back to the witness stand.
 7 BY MS. WELETZ:
 8 Q. Detective Pemberton, during your direct testimony,
 9 you indicated -- or you mentioned that, at 11th -- or
 10 12th and L, there were numerous weapons or items that were
 11 discarded on the ground. Correct?
 12 A. Yes.
 13 Q. And those items weren't collected as evidence.
 14 Do I have that correct?
 15 A. Some were collected by DFS as evidence. Yes.
 16 Q. But there were other items that were discarded that
 17 were never collected. Is that correct?
 18 A. I'm not sure if those were weapons or not. But
 19 there were items that were discarded that were not recovered.
 20 Yes.
 21 Q. And do you know the reasons why they were discarded
 22 and not collected as evidence?
 23 A. I mean, I'd have to speculate based on my
 24 conversations with other officers.
 25 Q. Do you believe that they were discarded because they

1 were soaked in OC spray?
 2 A. I think it's a myriad of reasons. That could be one
 3 of them.
 4 Q. Is one of the reasons that they were also soaked in
 5 urine?
 6 MS. KERKHOFF: Objection, your Honor. Asks for
 7 personal knowledge.
 8 THE COURT: I'm going to sustain on relevance
 9 grounds and 403 grounds.
 10 BY MS. WELETZ:
 11 Q. Those things that you -- for weapons that you
 12 mentioned that were discarded, you don't know -- it goes
 13 without saying you don't know who was carrying those weapons.
 14 Correct?
 15 A. Well, again, I'm not really sure about weapons being
 16 discarded. I mean, there were items that were left on the
 17 scene, presumably, by people who were stopped and detained,
 18 and those items were not collected.
 19 Q. For instance, it sticks out in my mind that you
 20 testified that there were shin guards that you believe
 21 were -- I think you said it several times during direct --
 22 there were shin guards that were discarded that were never
 23 collected as evidence. Is that correct? That was your
 24 testimony on direct?
 25 A. Yeah. There were shin guards on the scene

1 afterward. Yeah.
 2 Q. And you don't know the specific person that was
 3 wearing those shin guards. Correct?
 4 A. No, I do not.
 5 Q. And you don't know if those shin guards were visible
 6 to other people in the protest. Correct?
 7 A. No. I wouldn't know if they were visible to other
 8 people.
 9 Q. And you don't know if those shin guards were worn on
 10 top of clothing or underneath clothing. Correct?
 11 A. Ones discarded on the scene? No.
 12 Q. Correct.
 13 A. No.
 14 Q. Bringing to you Exhibit 103 --
 15 MS. WELETZ: If we could pull that up, please.
 16 BY MS. WELETZ:
 17 Q. Now, 103, 102 and 104 are all videos, is that
 18 correct, from the Crowne Plaza surveillance camera?
 19 A. Yes.
 20 Q. And these exhibits -- 103, 104 and 102 --
 21 specifically were part of one of the compilations that we
 22 went through in your direct. I believe it was
 23 Compilation 150. Correct?
 24 A. Yeah.
 25 Q. And starting with Exhibit 103, we're going to be

1 beginning at 19 seconds and playing until 1:06, if you could
 2 watch this, Detective Pemberton.
 3 (Whereupon, segments of Government's Exhibit No. 103
 4 were published in open court.)
 5 MR. HEALY: I'm trying to get the sound going again.
 6 MS. WELETZ: There's no sound. If you can keep
 7 playing.
 8 (Whereupon, segments of Government's Exhibit No. 103
 9 were published in open court.)
 10 MS. WELETZ: Pause right here.
 11 BY MS. WELETZ:
 12 Q. Now, at this timestamp -- I believe it's 51 seconds,
 13 Detective Pemberton -- you just saw somebody in a black
 14 hoodie pick up what appears to be a rock by one of these
 15 planters. Correct?
 16 A. Yes.
 17 MS. WELETZ: If we could keep playing.
 18 (Whereupon, segments of Government's Exhibit No. 103
 19 were published in open court.)
 20 MS. WELETZ: If we could pause.
 21 BY MS. WELETZ:
 22 Q. At 57 seconds, you saw someone breaking a window. I
 23 believe that that's near the Starbucks on the -- on the
 24 Crowne Plaza or the Hamilton Hotel. Correct?
 25 A. It's the front door of the Starbucks. Yes.

1 Q. Okay. And just for reference for the jury, what is
2 the street that these individuals right now are passing up?
3 A. The people on the left, that's 14th Street. That's
4 the northbound lanes of 14th Street just north of K.
5 Q. Okay. And so they are about to go towards K or are
6 they going towards a different street?
7 A. Well, at the top right of the frame, that's the
8 alley in between K and L Street. It runs perpendicular. But
9 beyond that would be L Street.
10 Q. Okay.
11 MS. WELETZ: If we could go back to 19 seconds on
12 this video.
13 (Whereupon, segments of Government's Exhibit No. 103
14 were published in open court.)
15 BY MS. WELETZ:
16 Q. Part of your compilation of Exhibit 150, pausing at
17 20 seconds, the individuals that are passing on the screen
18 right now, they are passing on the sidewalk. Correct?
19 A. Yes.
20 Q. And, as of yet, the group of individuals wearing all
21 black has not appeared in the street. Is that correct?
22 A. They have not appeared in the street. Correct.
23 MS. WELETZ: Starting again at 20.
24 (Whereupon, segments of Government's Exhibit No. 103
25 were published in open court.)

1 MS. WELETZ: Pausing again.
2 BY MS. WELETZ:
3 Q. At about 27, you see a trickling of individuals
4 coming up the street that are dressed in black. As it plays
5 further, you're going to see the rest of the group, as you
6 refer to them, coming through the street, correct, on 14th?
7 A. Yes.
8 Q. This is before any damage happened to the Crowne
9 Plaza. Correct?
10 A. That's right. Yes.
11 Q. Those two individuals that you pointed out in the
12 Compilation 150, they have already passed the area. Correct?
13 A. Seven seconds ago. Yes.
14 Q. Okay.
15 MS. WELETZ: If we can go to Exhibit 102, starting
16 at 22 seconds, and playing through 1:40.
17 (Whereupon, segments of Government's Exhibit No. 102
18 were published in open court.)
19 MS. WELETZ: Pausing right here.
20 BY MS. WELETZ:
21 Q. Now, these are the same two individuals that we saw
22 on the other video, correct, Detective Pemberton? Do they
23 appear to be the same two individuals?
24 A. Are you asking me to identify these people?
25 Q. I'm not asking you to identify them.

1 These two people passing in the middle are walking
2 on the sidewalk. Correct?
3 A. Yes.
4 Q. And this is a different camera on the Crowne Plaza.
5 Correct?
6 A. Yes. This is the front door camera.
7 Q. This is the camera that you would pass first,
8 correct, coming on the sidewalk?
9 A. Yes. It would be prior to the previous exhibit.
10 Q. And these two people in the center a little bit
11 towards the right, again, they are walking -- they are not
12 within the group of individuals on the street that will pass
13 shortly. Correct?
14 A. Well, the group of individuals is in the top left of
15 the frame. But, no, they're not -- there is some space
16 between those two individuals and the group. I can see it
17 here on this shot.
18 MS. WELETZ: If we can continue playing through
19 1:40, please.
20 (Whereupon, segments of Government's Exhibit No. 102
21 were published in open court.)
22 MS. WELETZ: If we could pause.
23 BY MS. WELETZ:
24 Q. Now, you see in the video there a few -- at least
25 one projectile. Correct? There's, I believe, what looks

1 like a glass bottle that has been thrown against the Crowne
2 Plaza?
3 A. Yes.
4 Q. Those two individuals that just passed before this
5 group, they have already exited the scene and then this
6 bottle is thrown. Correct?
7 A. By about seven seconds. Yes.
8 MS. WELETZ: If we can continue playing through
9 1:40.
10 (Whereupon, segments of Government's Exhibit No. 102
11 were published in open court.)
12 MS. WELETZ: If we could pause.
13 BY MS. WELETZ:
14 Q. Detective Pemberton, did you just see what was done
15 there?
16 A. No. Could you direct my attention to what you're
17 referring to?
18 Q. Did you see a rock that was thrown?
19 A. Yes. I did see the rock.
20 MS. WELETZ: If we could continue playing the video.
21 (Whereupon, segments of Government's Exhibit No. 102
22 were published in open court.)
23 MS. WELETZ: Stopping Exhibit 102 at 1:40.
24 BY MS. WELETZ:
25 Q. Lastly, Detective Pemberton, 104, which is another

1 admitted exhibit, starting at 20 seconds.
 2 (Whereupon, segments of Government's Exhibit No. 102
 3 were published in open court.)
 4 MS. WELETZ: Pausing there.
 5 BY MS. WELETZ:
 6 Q. The two individuals that we see that just passed on
 7 the screen, they are -- their pace is a little bit picked up.
 8 Correct?
 9 A. Yes.
 10 MS. WELETZ: Continue playing.
 11 (Whereupon, segments of Government's Exhibit No. 102
 12 were published in open court.)
 13 BY MS. WELETZ:
 14 Q. So this is the Starbucks camera on the Crowne Plaza.
 15 Correct?
 16 A. Yes.
 17 Q. So we see here another view of the window being
 18 broken out by what I believe is a crowbar. Correct?
 19 A. I think it's a hammer. But yes.
 20 Q. Or a hammer. I'm sorry.
 21 So those two individuals that their pace had packed
 22 up, they have already passed by the time that this window has
 23 been broken. Correct?
 24 A. Yes.
 25 MS. WELETZ: No further questions.

1 THE COURT: I don't know what order we're going in.
 2 So I'll let you go ahead in whatever order you want.
 3 CROSS-EXAMINATION
 4 BY MS. JACQUES:
 5 Q. Good afternoon, Detective.
 6 A. Good afternoon, Ms. Jacques.
 7 Q. I only have a couple questions.
 8 Focusing your attention on the individuals who are
 9 here in this case today, is it fair to say that you have
 10 watched their processing videos in preparation for your
 11 testimony here?
 12 A. I mean, I've certainly watched preliminary at some
 13 point. I don't know about in preparation for testimony. But
 14 I definitely watched them.
 15 Q. Is it fair to say that you said you've watched the
 16 same videos hundreds of times? Correct?
 17 A. Some of the videos. Yes.
 18 Q. Okay. I just want to focus on the videos from
 19 12th and L.
 20 In the processing video of Ms. Simmons, is it fair
 21 to say that she was cooperative with the officers during the
 22 processing?
 23 A. She was reluctant to give her information. But,
 24 yes, she was cooperative for the most part.
 25 Q. And while she was handcuffed waiting to be searched

1 by the female officer, she offered Officer Darby snacks from
 2 her backpack. Correct?
 3 A. That sounds right. I don't recall specifically, but
 4 I think something like that occurred. Yeah.
 5 Q. Okay. And the items that were processed as evidence
 6 from Ms. Simmons were all dark-colored items. Correct?
 7 A. Yes.
 8 Q. In fact, the bright-colored backpack that
 9 Ms. Simmons had was not taken by the police. Correct?
 10 A. That's correct.
 11 MS. JACQUES: May I have the Court's brief
 12 indulgence, your Honor?
 13 Thank you. I don't have anything else.
 14 THE COURT: Should we just go in order? I don't
 15 know -- is Ms. Macchio going next?
 16 MR. COHEN: I'll go next.
 17 THE COURT: Mr. Cohen? Okay. Go ahead.
 18 CROSS-EXAMINATION
 19 BY MR. COHEN:
 20 Q. Good afternoon.
 21 A. Good afternoon, Mr. Cohen.
 22 Q. I'm going to want to discuss the -- Mr. Wood's
 23 evidence in this case.
 24 I'll start off by saying again that you looked at a
 25 lot of evidence in this case. Right?

1 A. Yes, sir.
 2 Q. And you were the lead detective in the case?
 3 A. I was. Yes.
 4 Q. All information came through you from the police?
 5 A. Yes.
 6 Q. From their investigation. It also came from a
 7 myriad of other sources, including the Internet?
 8 A. Yes.
 9 Q. And private individuals?
 10 A. That's correct.
 11 Q. Okay. So for Mr. Hood's case, you looked at the
 12 livestream. Correct?
 13 A. I did.
 14 Q. And then you looked at -- for Mr. Wood other
 15 pictures and videos?
 16 A. I looked for Mr. Wood?
 17 Q. Yes.
 18 A. Yes. I looked for Mr. Wood.
 19 Q. Okay. We'll get back to that.
 20 A. Okay.
 21 Q. I see your expression. We'll get back to that.
 22 There were items taken from him at his arrest?
 23 A. Yes.
 24 Q. And that includes the press pass that you testified
 25 to last week?

- 1 A. That's correct.
- 2 Q. And then, in addition to these items, you also --
- 3 you also had the items that were taken at the arrest that
- 4 were put into evidence and then the items that were taken
- 5 from Mr. Wood and not put into evidence. Right?
- 6 A. Like his prisoner's property? Is that what you
- 7 mean?
- 8 Q. Well, yeah. There was prisoner's property.
- 9 Correct?
- 10 A. Yes.
- 11 Q. But there were also things like the camera stick?
- 12 A. Yes.
- 13 Q. And then you also looked at an extraction from
- 14 Mr. Wood's cell phone?
- 15 A. Yes.
- 16 Q. And the camera memory cards?
- 17 A. That's correct.
- 18 Q. And then you checked his online footprint?
- 19 A. I believe early on I looked at that.
- 20 Q. Anything else that you looked at for Mr. Wood -- for
- 21 Mr. Wood's case that I haven't asked?
- 22 A. Not that I can think of.
- 23 Q. So that's all the -- that's all the information you
- 24 got. Right?
- 25 A. From what I can recall, yes.

- 1 Q. Now, in addition to all this evidence and all these
- 2 videos, you actually went to locations around the area of the
- 3 demonstration. Correct?
- 4 A. I did.
- 5 Q. And you did that to talk to witnesses?
- 6 A. Yes. And also to understand the chronology of what
- 7 happened.
- 8 Q. Understandable.
- 9 You also did it to gather some videos from private
- 10 stores or, like, security cameras?
- 11 A. Let me just be specific. That wasn't specifically
- 12 my job. There was other detectives that were collecting
- 13 those exhibits -- that evidence. I didn't necessarily
- 14 physically go and download the footage. But, yes, I did
- 15 obtain the footage one way or another.
- 16 Q. All right. So it's safe to say that you were in
- 17 this area a whole lot over the last year since January 20th?
- 18 A. Yes. That's correct.
- 19 Q. Dozens of times?
- 20 A. Maybe a dozen times.
- 21 Q. And then prior to -- you said you've been on the
- 22 police force for 14 years?
- 23 A. It'll be 13 in February.
- 24 Q. 13.
- 25 So you're pretty familiar with this area anyway,

- 1 even before going to investigate this particular case?
- 2 A. Yes.
- 3 Q. Let's talk about the livestream a little bit.
- 4 These days, in order to do your job, apparently, you
- 5 have to keep up with technology. Right?
- 6 A. I think that's fair to say. Yeah.
- 7 Q. You used a lot of technology to develop some of the
- 8 exhibits that we have seen here in court during the trial?
- 9 A. I've tried.
- 10 Q. Now, it's -- live-streaming has only been around
- 11 for, like, a couple of years. Right?
- 12 A. I am not sure.
- 13 Q. Live-streaming, as far as you're aware, is something
- 14 that occurs on the Internet where someone posts a video of
- 15 something as it's happening?
- 16 A. That's correct. That's how I understand it.
- 17 Q. And Facebook is one of those websites that allow
- 18 that kind of portal. Right?
- 19 A. Yes.
- 20 Q. And it's your testimony -- and it's from the
- 21 video -- you can tell that Mr. Wood's livestream goes from
- 22 Logan Circle to the kettle. Right?
- 23 A. Yes.
- 24 Q. Did you ever discover the name on the account that
- 25 that livestream was broadcast from?

- 1 A. I didn't obtain it live. I obtained it later from
- 2 Mr. Wood's YouTube account.
- 3 Q. YouTube account? Okay.
- 4 So you're not aware of what account on Facebook that
- 5 the video was broadcast to?
- 6 A. No.
- 7 Q. And you're not aware of the number of -- other than
- 8 that one statement by Mr. Wood on the video where he
- 9 complains about only having two viewers, you don't know how
- 10 many viewers were watching this livestream?
- 11 A. I do not.
- 12 Q. And you don't know who those viewers were?
- 13 A. I do not.
- 14 Q. So, as you stated, you do an Internet search on
- 15 open-source Internet websites for people that get arrested.
- 16 Correct?
- 17 A. I'm sorry?
- 18 Q. When someone gets arrested and you're trying to
- 19 investigate them, you look for them on open-source Internet
- 20 websites. Correct?
- 21 THE COURT: Are you speaking about in any type of
- 22 case or in this case, Mr. Cohen?
- 23 MR. COHEN: I'll go in this case, your Honor, to
- 24 make it easy.
- 25

- 1 BY MR. COHEN:
 2 Q. For Mr. Wood, you did a search for him on
 3 open-source websites. Correct?
 4 A. I believe. I believe so. That's fair.
 5 Q. Okay. And you also had found other livestreams that
 6 Mr. Wood did while he was in the kettle. Correct?
 7 A. I did. Yes.
 8 Q. There were three of them?
 9 A. Yes. There was three.
 10 Q. Now, for the time -- I'll get back to that.
 11 Now, in addition to that livestream, you said you
 12 also see Mr. Wood in other parts -- in other videos and
 13 pictures. Right?
 14 A. Yes.
 15 Q. Okay. And every time you see Mr. Wood in those
 16 videos and pictures -- so this is now -- you could see
 17 Mr. Wood's whole body. Right?
 18 A. Yes. I could see Mr. Wood's whole body.
 19 Q. You can't do that in front of his livestream, right,
 20 for the most part?
 21 A. No.
 22 Q. So during -- from the Logan Circle to the kettle,
 23 anytime you see Mr. Wood on a video or a picture, you see him
 24 with a cell phone camera. Correct?
 25 A. You mean in other person's video that I obtained?

- 1 Q. Correct. Other person's video. Not the livestream.
 2 Don't think livestream for this question.
 3 In any other video and picture that you've seen
 4 Mr. Wood from Logan Circle to the kettle, you see what
 5 appears to be a cell phone in one hand. Correct?
 6 A. That's right.
 7 Q. And his other hand appears to be holding a camera on
 8 a stick?
 9 A. That's correct.
 10 Q. And these other -- strike that. I'll move on.
 11 Now, let's talk about the physical evidence taken
 12 from Mr. Wood.
 13 So you're aware of the items of evidence that the
 14 Government entered into -- the items recovered from Mr. Wood
 15 that were entered into evidence in this case. Correct?
 16 A. I am.
 17 Q. Okay.
 18 MR. COHEN: It's this box?
 19 MR. QURESHI: Yeah.
 20 BY MR. COHEN:
 21 Q. And so there were black clothing and accessories
 22 that were taken and put into evidence. Correct?
 23 A. Yes.
 24 Q. There was a Leatherman tool?
 25 A. Yes.

- 1 Q. And a Leatherman tool is just like a multipurpose
 2 tool that has screwdrivers and small knives and...?
 3 A. That's correct. Yeah.
 4 Q. There were three pairs of swim goggles?
 5 A. There were three.
 6 Q. There's a camera with a microphone?
 7 A. Yes.
 8 Q. Now, I'm just going to back up for a split second on
 9 that.
 10 The microphone is attached to the camera in
 11 evidence. Correct? Are you aware of that?
 12 A. Yes.
 13 Q. But that's not the way it was recovered from
 14 Mr. Wood. Correct?
 15 A. That's correct. Yes.
 16 Q. So there was actually -- when Mr. Wood was detained,
 17 he had the stick on the camera, but no microphone. Correct?
 18 A. That's correct. Yes.
 19 Q. And then the backpack?
 20 A. His backpack. Yes.
 21 Q. And, you know, I just skipped over it. I'm sorry.
 22 I skipped over two.
 23 The press badge, the press pass, and the camera with
 24 the -- yeah. Okay. Yes. I just skipped over the press
 25 pass.

- 1 But there was a number of other items that are
 2 missing from this list -- that are missing from this box that
 3 were taken from Mr. Wood. Is that correct?
 4 A. I think there's items that aren't in that box. Yes.
 5 Q. And they were taken as evidence, not as prisoner's
 6 property?
 7 A. Correct.
 8 Q. That includes that camera stick?
 9 A. Yes, it does.
 10 Q. And a lens with a lens case?
 11 A. I don't think that's in the box. I don't know if
 12 that's on the -81 as evidence. But if it is, then it is not
 13 in there.
 14 Q. Well, I'm asking: Was a lens with a lens case taken
 15 from Mr. Wood at the time of his arrest?
 16 A. I'm telling you I don't know without looking at the
 17 PD-81.
 18 Q. Okay. We'll go back to that, then.
 19 And then there was memory cards?
 20 A. Yes.
 21 Q. Camera memory cards?
 22 A. Yes.
 23 Q. And that came in, like, a hard-plastic-shell case?
 24 A. Yes, they did.
 25 Q. That's in evidence, isn't it?

1 A. Yes.

2 Q. And then was there a memory card from the cell --

3 not the cell.

4 Was there a memory card from the camera? Do you

5 know?

6 A. I don't recall. I don't recall if there was or not.

7 Q. And there was also a camera battery as well taken

8 into evidence?

9 A. That sounds right.

10 Q. Okay. You said before -- you kind of said something

11 about a PD-81. Right?

12 A. Yes.

13 Q. What is a PD-81?

14 A. It is a property record that is completed by an

15 officer who's submitting property into the property clerk.

16 Whether it's evidence or items that are seized or found,

17 anything that's classified as not prisoner's property,

18 something that would be returned to an arrestee, would have

19 to be itemized on a PD-81.

20 Q. Are you aware whether there was a PD-81 drafted for

21 Mr. Wood?

22 A. Yes.

23 Q. And, in fact, that was a document that spanned six

24 pages?

25 A. That sounds right.

1 Q. And you indicated that you reviewed all of the

2 evidence for Mr. Wood's case. Correct?

3 A. Yes.

4 Q. And you reviewed the PD-81?

5 A. I viewed his PD-81. Yes.

6 Q. And it's important for a PD-81 to be accurate.

7 Right?

8 A. Yes.

9 Q. You don't want to lose evidence. Right?

10 A. That's correct.

11 Q. Okay. So I'm going to publish what I have marked as

12 Wood 3.

13 THE COURT: Any objection?

14 MS. KERKHOFF: No objection.

15 BY MR. COHEN:

16 Q. So let's go through the PD-81.

17 This is Page 1. It lists five items?

18 THE COURT: And then, after you've gotten through

19 this, we're going to break for lunch.

20 MR. COHEN: What's that, your Honor?

21 THE COURT: After you've gotten through this, we're

22 going to break for lunch.

23 MR. COHEN: I'm going to be a while with this. Be

24 least ten minutes.

25 THE COURT: We'll break now.

1 So, ladies and gentlemen, we're going to break until

2 2:15, which is just an hour and five minutes, I know. But

3 it'll be good to pick up.

4 So I'll see you at 2:15. Have a good lunch. Please

5 don't discuss the case or make any decisions about it.

6 (Whereupon, the jury exited the courtroom at

7 1:08 p.m. and the following proceedings were had:)

8 THE COURT: Detective, I'll excuse you until a

9 quarter after.

10 THE WITNESS: Yes, your Honor.

11 THE COURT: What did I say? A quarter after?

12 MR. MCCOOL: A quarter after.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE COURT: See you all at a quarter after.

16 (Thereupon, a luncheon recess was taken, after which

17 the following proceedings were had:)

18 THE DEPUTY CLERK: Now re-calling United States

19 versus Jennifer Armento, 2017 CF2 1193, et al.

20 THE COURT: Good afternoon.

21 We're missing a couple of the Macchio team.

22 MS. HEINE: He'll be back in a one second.

23 THE COURT: So we're just missing Mr. Lazerow from

24 today.

25 Mr. McCool as well. Is Mr. McCool coming back?

1 MS. KROPF: We think he's right outside.

2 Do you want me to go check?

3 THE COURT: That's okay. I see them coming in.

4 Everybody's here for Ms. Armento.

5 Ms. Jacques is here for Ms. Simmons.

6 Mr. Cohen is here for Mr. Wood.

7 THE COURT: Ms. Kropf and Mr. Portnov are here for

8 Ms. Lawson.

9 Now Mr. Lazerow and Mr. McCool are here.

10 In anticipation of having to do motions for

11 judgments of acquittal again, could I possibly get a hard

12 copy of the first page of the PowerPoint for each person, in

13 other words, just an -- obviously, I know I'm not going to

14 see a hard copy of anything else in the PowerPoint.

15 MS. KERKHOFF: Just the ones with the locations on

16 them?

17 THE COURT: Yes.

18 MS. KERKHOFF: Yes.

19 THE COURT: With the one, two, three, four, five.

20 MS. KERKHOFF: We can do that. Yes.

21 THE COURT: And if I could just orient myself with

22 that.

23 We were just -- well, I won't ask questions.

24 There was a squabble over whether the Government

25 will be able to ask Detective Pemberton on redirect to

1 identify Mr. Harris based on the cross that Mr. McCool did of
2 Mr. -- of the person walking in front of the Starbucks.

3 And, Ms. Kerkhoff, are you going to be asking to
4 have Detective Pemberton actually identify that person?
5 MS. KERKHOFF: Your Honor, what I believe -- my
6 intent is to ask the detective regarding the individual who
7 appears on 140-A, the location there, that 100 is in between
8 that, and that there are other places after that that the
9 individuals with the black backpack and water bottle, which
10 is how Mr. McCool called the person, the person with the
11 backpack and water bottle, "the," where they appear, which it
12 is our position required running around, moving, re-forming
13 after they -- and basically after they had to go around the
14 police lines.

15 So I think I can say the person with the black
16 backpack, the water bottle, the hoodie with the white
17 strings, because Mr. McCool --

18 THE COURT: Okay. So you believe you can.

19 But what you're proposing to do is identify or
20 describe that person in your questions as the person with the
21 black backpack with the water bottle with a white hoodie and
22 white strings?

23 MS. KERKHOFF: Correct. And ask if there were any
24 other individuals, having been shown No. 100 by Mr. McCool in
25 slow motion -- any other individuals that, when he observed

1 the videos, who matched that description.

2 THE COURT: So if the point -- and you agree -- of
3 Mr. McCool's cross is simply that the same guy they've been
4 pointing out in other places is walking past the Starbucks in
5 a less-than-excited way I think a few minutes after the
6 destruction --

7 MS. KERKHOFF: About a minute after.

8 THE COURT: -- by himself, all he's doing is
9 pointing out the same stuff that Detective Pemberton has
10 pointed out, but other facts, other information. "This is
11 what the Government didn't show you."

12 So in terms of rebuttal, I agree that you -- or
13 redirect -- would be able to ask whether, "In the following
14 footage, is there a person with a black backpack and a water
15 bottle?"

16 "Yes."

17 "And do you see the individual?"

18 I don't think you actually need to go there with
19 those semantics. And why bother? Because everybody knows
20 what you're talking about.

21 But -- "And do you see a person in a black this with
22 a black backpack and water bottle now dodging around the" --
23 or, "What's he doing now?" and, "What's he doing there?"

24 In other words, if the point is to complete the
25 picture as to what -- you could have done that in your direct

1 case. You could have done that on direct of Detective
2 Pemberton. You obviously chose not to. I assume that that
3 footage wasn't that important to you.

4 But you can redirect with other footage. I just
5 don't agree that you get to change the way in which you're
6 asking the questions. I don't think there's a need for it.

7 The jury can figure out who they're looking at. If
8 they want to scour these videos for another person who is
9 wearing a black backpack and a water bottle in it, they can
10 certainly do it.

11 I don't think we need you to elicit from Detective
12 Pemberton an opinion that this is the person rather than a
13 person.

14 MS. KERKHOFF: So the only distinction that I would
15 make there is that the Government was -- had to -- and
16 Detective Pemberton -- had to say "a person." We couldn't
17 even say anything close to "the."

18 When the Court has described what's come out, the
19 Court has described the same person. And, I mean, I get what
20 the inference is, but we had to do this kind of --

21 THE COURT: I think it's coming in fine for you.
22 The jury's going to be able to connect the dots and give
23 whatever weight they want to give to the fact that these are
24 people who look very similar in appearance and that the way
25 the jury is going to have to decide whether they give weight,

1 I guess, to the exhibits and the testimony is by looking at
2 the similarities themselves.

3 MS. KERKHOFF: Understood.

4 THE COURT: So I would say, rather than "the
5 person," let's stick with "a person." And I'm sure they'll
6 understand the point of your redirect.

7 MS. KERKHOFF: Yes, your Honor.

8 THE COURT: Can we bring the detective back, please.

9 MS. KERKHOFF: Yes.

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

13 THE COURT: Did we make any progress on fixing that
14 chair over there?

15 THE DEPUTY CLERK: I called back. They said they
16 would come back.

17 THE COURT: Detective, please come back to the
18 witness stand.

19 THE WITNESS: Yes, your Honor.

20 (Whereupon, the jury entered the courtroom at
21 2:25 p.m. and the following proceedings were had:)

22 THE COURT: Good afternoon, ladies and gentlemen. I
23 hope you had a good lunch break.

24 We're back with Detective Pemberton on
25 cross-examination.

- 1 I'll remind you you're still under oath.
 2 Mr. Cohen, please go ahead.
 3 MR. COHEN: If I could get Wood 3 back up on the
 4 screen.
 5 BY MR. COHEN:
 6 Q. We have Wood 3 on the screen.
 7 That's the six-page PD-81 for Mr. Wood. Correct?
 8 A. Correct.
 9 Q. Were there any other PD-81s drafted for the items
 10 taken from Mr. Wood?
 11 A. Not that I'm aware of.
 12 Q. Anyway, when we left off, I said that there appears
 13 to be on the first page five items cataloged?
 14 A. Yes.
 15 Q. And the first of those items is the camera memory
 16 cards in a black box. Is that correct?
 17 A. Yes.
 18 Q. And that black box -- that slipped out -- that black
 19 box was in a hard-plastic clamshell container?
 20 A. Yes. I think so.
 21 Q. There were three cards in that box -- three memory
 22 cards?
 23 A. I thought it was more than that, but it could have
 24 been three. There was at least three memory cards. Yes.
 25 Q. Okay. And 27 minutes into Mr. Wood's livestream he

- 1 talks about having memory cards. Correct?
 2 A. He does. Yeah.
 3 Q. It sounds like he's it in for the long haul? I
 4 think that's the term he used?
 5 A. That's fair to say.
 6 Q. Do you have the -- those camera memory cards here or
 7 where are they?
 8 A. I don't think they're here.
 9 Q. Okay. Did you have Detective Evans extract any
 10 information from those memory cards?
 11 A. Yes, I did.
 12 Q. And are you aware if those cards were then returned
 13 to evidence after the information was extracted?
 14 A. To the best of my knowledge, yeah. Yes. That's
 15 where it would be.
 16 Q. From that extraction report, there were several
 17 pictures and videos. Correct?
 18 A. I believe so. Yeah.
 19 Q. Did you watch everything on those cards?
 20 A. I did not.
 21 Q. Do you know of anybody who did?
 22 A. It would have been one of the other detectives. But
 23 they had advised me that there wasn't probative information
 24 related to this case. So I didn't take much time to review
 25 it.

- 1 Q. Do you know if there was a memory card in the camera
 2 at the time Mr. Wood was arrested?
 3 A. I have no idea.
 4 Q. Let's go to No. 2. It says "Gloves, black," and it
 5 says "Quantity: One."
 6 Do you know if that refers to a pair of gloves or
 7 just a single glove?
 8 A. I don't know.
 9 Q. And then No. 3 are two black beanies. Is that
 10 correct?
 11 A. Yes.
 12 Q. Those are like skullcaps?
 13 A. Yes.
 14 Q. And that's part of Government's Exhibit No. 45.
 15 Correct?
 16 A. Yes.
 17 Q. No. 4 says a baton of quantity one. Is that
 18 correct?
 19 A. It does say that. Yes.
 20 Q. Is a baton a weapon?
 21 A. I guess it could be.
 22 Q. Okay. Do you know -- do you know that you testified
 23 before this Court, indicating that Mr. Wood was not arrested
 24 with any weapons?
 25 A. That's right.

- 1 Q. Is there a baton in evidence?
 2 A. Not that I'm aware of.
 3 Q. No. 5 says "Cell phone: (Samsung)," in parentheses.
 4 Correct?
 5 A. Yes.
 6 Q. Do you know if that was the cell phone that was used
 7 to produce the livestream?
 8 A. I do not. I don't know specifically which cell
 9 phone that is.
 10 Q. Do you know whether Mr. Wood had more than one cell
 11 phone on him?
 12 A. I don't. No.
 13 Q. Was this the cell phone that you used where you
 14 asked Detective Evans to extract information from it?
 15 A. I believe so. We would have extracted -- we would
 16 have attempted to extract information from any cell phone
 17 that we had. I just don't know if he had more than one.
 18 Q. I'm talking about this particular cell phone.
 19 A. Okay.
 20 Q. Was the information extracted from this particular
 21 cell phone?
 22 A. I believe so.
 23 Q. Okay. Is that cell phone somewhere -- in evidence
 24 somewhere?
 25 A. I would hope so. Yes.

- 1 Q. That couldn't have been put in property -- sorry --
 2 prisoner's property because it was ultimately used later to
 3 extract information?
 4 A. That's correct.
 5 Q. No. 6 is a Røde microphone -- R-ø-d-e -- oh. I'm
 6 sorry. That ends the first page.
 7 On the next set of -- on the next set, that's
 8 Items 6 through 10 on that page. Correct?
 9 A. Yes, it is.
 10 Q. And that appears to be the third page of this
 11 document, the PD-81?
 12 A. Yes.
 13 Q. Okay. Now I'll ask.
 14 No. 6 is a Røde microphone. Correct?
 15 A. Yes.
 16 Q. Is that the microphone that is now attached to the
 17 camera?
 18 A. Yes.
 19 Q. That's part of Government's Exhibit 49?
 20 A. That's correct.
 21 Q. No. 7 says a Canon DSLR. Right?
 22 A. Yes.
 23 Q. And that's also a part of Government's Exhibit
 24 No. 49?
 25 A. Yes, it is.

- 1 Q. Now, it indicates that the serial number is rubbed
 2 off. Correct? Is that the term?
 3 A. That's what's written in the box.
 4 Q. And it's rubbed off because the camera was used so
 5 much. Right?
 6 MS. KERKHOFF: Objection.
 7 THE WITNESS: I don't know.
 8 MR. COHEN: I didn't hear the Court's ruling.
 9 THE COURT: Well, there's an objection. I think you
 10 should lay a foundation for the witness's knowledge of how
 11 anything could have happened to a camera that he may --
 12 MR. COHEN: I'll approach. We have 49.
 13 THE COURT: How is he going to know?
 14 MR. COHEN: Huh?
 15 THE COURT: How is he going to know how something
 16 got rubbed off?
 17 MR. COHEN: I'll have him look at it.
 18 THE COURT: But how is he going to know how it
 19 happened?
 20 MR. COHEN: Okay. Then, I'll ask this question.
 21 BY MR. COHEN:
 22 Q. From your inspection of the -- did you inspect the
 23 camera?
 24 A. I don't think so.
 25 Q. You had indicated that you had inspected or reviewed

- 1 all of the evidence in the case.
 2 A. I've looked at it. I don't think I looked at the
 3 serial number. I've looked at the camera.
 4 Q. So you don't know why it says "rubbed off" there?
 5 A. I do not. I didn't fill out this form.
 6 Q. No. 8 on this list says "Goggles." Correct?
 7 A. Yes.
 8 Q. And the quantity is one. Right?
 9 A. The quantity is one. Yes.
 10 Q. You're aware that there are three goggles in
 11 evidence. Correct? That's part of -- I don't recall the
 12 exhibit number. But there's three goggles here. Correct?
 13 A. There are three goggles.
 14 Q. Okay.
 15 A. Three pairs of goggles, to be specific. Yeah.
 16 Q. Three pairs of goggles.
 17 But the PD-81 only says one?
 18 A. It does say one. That's correct.
 19 Q. No. 9 is "Jackets." Correct?
 20 A. Yes.
 21 Q. And there are two of those?
 22 A. That's correct.
 23 Q. That's part of No. 45. Right?
 24 A. Yes.
 25 Q. As well as No. 10, the pants.

- 1 That's also a part of No. 45?
 2 A. It is. Yes.
 3 Q. And then, on the third PD-81, Item No. 11 is a
 4 backpack?
 5 A. Yes.
 6 Q. And that's Government's Exhibit No. 50?
 7 A. I believe so. Yeah.
 8 Q. Knowing what you know about Mr. Wood's evidence,
 9 this PD-81 is pretty sloppily drafted. Correct?
 10 MS. KERKHOFF: Objection, your Honor.
 11 THE COURT: Sustained as to relevance. His opinion
 12 about whether it's sloppy or not is irrelevant.
 13 BY MR. COHEN:
 14 Q. The PD-81 doesn't accurately reflect the items taken
 15 from Mr. Wood?
 16 A. There are discrepancies.
 17 Q. And not only are there discrepancies, there are
 18 items that have been introduced in evidence that are not even
 19 in the PD-81. Correct?
 20 A. I'm not sure which items those are.
 21 Q. Well, the Leatherman, that wasn't on this PD-81.
 22 Correct?
 23 A. It is not on the PD-81. Correct.
 24 Q. And the press badge with lanyard?
 25 A. That's also correct.

- 1 Q. Do you recall in one of the -- what I'll call kettle
2 livestreams from Mr. Wood where he leaves behind a pair of
3 goggles?
4 A. I don't recall that. No.
5 Q. Or the gas mask?
6 A. I don't recall that part.
7 Q. So you don't know why -- as you sit on the stand
8 today, why the gas mask that you see Mr. Wood with in the
9 livestream is not in evidence?
10 A. I don't know the answer to that. That's right.
11 Q. There was nothing unusual about the black clothes,
12 the pants and shirt that he had that was taken into evidence.
13 Correct? That's part of No. 45.
14 A. What do you mean by "unusual"?
15 Q. Well, that doesn't show that he was participating in
16 a riot or urging or inciting a riot. Correct?
17 A. I don't know what about somebody's clothes would
18 tell you that.
19 Q. So you didn't inspect the clothes?
20 A. I've looked at them. Yes.
21 Q. There's nothing unusual for him to have the clothes?
22 A. I don't understand what you mean by "unusual."
23 Q. If something was unusual, you would have inspected
24 it further. Right?
25 A. Maybe.

- 1 Q. So you just let evidence go? You don't --
2 A. Evidence was not let go. I'm not sure what you're
3 asking me when you say were his clothes unusual. I don't
4 know what that means.
5 Q. Well, do you think that -- I'll move on.
6 From your investigation of the case, you found out
7 that Mr. Wood is from Texas. Right?
8 A. I did. Yes.
9 Q. And he came up to DC for the inauguration?
10 A. It appeared that way, yes, to me.
11 Q. And he -- he's actually from San Antonio, Texas,
12 like the southern part of Texas?
13 A. I -- yes.
14 Q. Now, Mr. Wood was wearing a -- you can see on his
15 arrest video, 124-I, that Mr. Wood is wearing a gray jacket?
16 A. I don't recall a gray jacket.
17 Q. You don't recall a gray jacket. Okay.
18 Now, the items not in evidence, a lot of them are
19 camera items, like the stick that Mr. Wood had?
20 A. That was for his camera. Yes.
21 Q. Well, it's clearly from his camera.
22 Do you recall the officer twisting it off, the
23 stick, before putting it in the big plastic bag?
24 A. Yeah. I believe she asked for his help to
25 disassemble it. Yeah.

- 1 Q. Okay. And we don't have the lens, correct, the lens
2 that Mr. Wood had on his camera at the time?
3 A. When you say "we don't have," do you mean here in
4 the courtroom?
5 Q. It's not in evidence?
6 A. It has not been admitted. That's correct. Yes.
7 Q. And the lens pouch is likewise not in evidence?
8 A. Yes, sir.
9 Q. And were you aware that there were also batteries
10 for that camera that were not taken into evidence?
11 A. I was not aware of the batteries. No.
12 Q. Let's talk about the press pass.
13 You had testified about Government's Exhibit 48, the
14 press pass. Right?
15 A. Yes.
16 Q. You said you could not identify a person by the name
17 of John Osburn?
18 A. As associated with Mr. Wood, no.
19 Q. Okay. And you also could not identify the -- I
20 think it was the Glass B Cooperative.
21 A. That's right.
22 Q. Did you do an Internet search for them?
23 A. Yes.
24 Q. Now, on the livestream -- from the livestream when
25 he's in the kettle, you see the press badge around his neck.

- 1 Correct?
2 A. Yes.
3 Q. At one time in his livestream video he kind of shows
4 it to his audience. Right?
5 A. Yes.
6 Q. Maybe even a couple of times?
7 A. Yeah. At least once. Could be more.
8 Q. And at one time in the video it appears like he's
9 showing it to other people near -- around the kettle.
10 Correct?
11 A. Yes.
12 Q. Okay. Does -- based on the videos that you've
13 watched, he never asks to leave the kettle. Right?
14 A. Not that I've seen. No.
15 Q. In fact, he tells somebody in the kettle that he
16 does not intend to leave?
17 A. I don't recall that. But he certainly didn't ask
18 anybody.
19 Q. Okay. Now, prior to Mr. Wood being in the kettle,
20 from the time of Logan Circle until the kettle, you don't see
21 that press badge?
22 A. No. I don't think so. I don't think you do.
23 Q. So you don't know how it comes to be around his neck
24 when he's in the kettle. Right?
25 A. I don't know. No.

1 Q. You don't know if it was, like, below one of the
2 shirts that he had on?
3 A. Could have been. Sure.
4 Q. He could have taken it out of his backpack and put
5 it on?
6 A. Also true.
7 Q. Or he could have taken it out of his pocket?
8 A. That's correct.
9 Q. But you don't know?
10 A. I do not.
11 Q. So isn't it safe to say that Mr. Wood never used
12 the press badge, as far as you can tell on the video, on
13 January 20th, 2017?
14 A. As an effort to display to law enforcement? Is that
15 what you mean?
16 Q. Well, he could display it to law enforcement.
17 But he didn't use it. Right?
18 A. But that's what I'm asking. To display to a law
19 enforcement officer. Is that what you're saying? Like he
20 never used it in that manner?
21 Q. He never used it to get anything. Correct?
22 A. I don't know why's he's showing it to other people
23 in the group. But I think maybe what you're asking me -- I'm
24 trying to clarify -- is if he ever displayed it to a law
25 enforcement officer as -- in an effort to sort of mitigate

1 the situation or be let out or not arrested.
2 No. I don't think he ever did that, if that's what
3 you're asking.
4 Q. Okay.
5 A. I don't have any evidence that he ever displayed it
6 to a law enforcement officer.
7 Q. As a matter of fact, in all your investigation, as
8 you understand it, he never used it?
9 A. I'll testify to the fact he never used it in that
10 manner to law enforcement, that he never displayed it to a
11 law enforcement officer. Yes. That's correct.
12 Q. You're aware that media personnel are allowed to be
13 anywhere that the public is; correct?
14 A. Correct. Yes.
15 Q. And there's only two caveats to that.
16 They can't -- they can't hinder an investigation.
17 Right?
18 A. That's correct.
19 Q. And they can't pose a safety hazard?
20 A. That's right.
21 Q. Okay. In all the videos that you watched with
22 Mr. Wood interacting with police officers, did he appear to
23 be courteous to them or combative to them?
24 A. I don't think he was ever combative. I think
25 courteous is a fair representation of Mr. Wood's demeanor.

1 Q. And he listened to their commands?
2 A. Yes.
3 Q. Was there anybody else's commands he listened to
4 from the video you watched?
5 A. I'm not sure.
6 Q. Okay. Now, with respect to Mr. Wood's cell phone,
7 did you write out -- did you write out an affidavit for a
8 warrant to search that phone?
9 A. Someone did. I'm not sure if it was me or not.
10 Q. Okay. But, ultimately, the information had to come
11 to you, the extraction from that cell phone. Correct?
12 A. Once it was extracted, yes.
13 Q. Did you get that extraction report?
14 A. I did.
15 Q. Now, you testified last week that you reviewed all
16 of the data from those extraction -- well, I'll make it for
17 Mr. Wood.
18 Well, logically speaking, you said that you got --
19 you reviewed all of the information from the cell phone data.
20 Correct? That's part of what your investigation was?
21 A. Yes.
22 Q. As a part of that, you looked at Mr. Wood's cell
23 phone data?
24 A. I did.
25 Q. And do you recall that the data report for

1 Mr. Wood's cell phone was greater than 9,000 pages?
2 A. No. But that doesn't surprise me.
3 Q. Okay. Now, you get the extraction report to assist
4 in your investigation. Correct?
5 A. Yes, sir.
6 Q. And you do so to try to find out more about the
7 individual that's being investigated. Correct?
8 A. Sort of generically speaking, yes. I'm looking for
9 evidence to show inculpatory information about the crime.
10 Q. That was actually going to be my next question.
11 So did Mr. Wood's phone, the extraction data,
12 provide you information about Mr. Wood coming to the
13 demonstration?
14 MS. KERKHOFF: Objection, your Honor.
15 THE COURT: Counsel, please approach.
16 (Whereupon, the following proceedings were had at
17 side-bar outside the presence of the jury:)
18 THE COURT: So what's the objection?
19 MS. KERKHOFF: I believe we're eliciting hearsay at
20 this point. He's trying to extract information from the
21 phone made by Mr. Wood himself, what the statements on the
22 phone were.
23 THE COURT: So, in other words, it's a hearsay
24 objection because you're trying to find --
25 You're trying to elicit from this witness statements

1 that Mr. Wood himself made on his phone?
 2 MR. COHEN: That's correct.
 3 THE COURT: And so is it a hearsay objection?
 4 MS. KERKHOFF: It is a hearsay objection.
 5 THE COURT: Is it hearsay?
 6 MR. COHEN: No.
 7 THE COURT: What is it?
 8 MR. COHEN: He's planning. Planning isn't a
 9 statement of fact.
 10 THE COURT: So tell me what statements it is that
 11 you would expect to elicit that he made.
 12 MR. COHEN: So, at one point, he contacted -- at one
 13 point, he is requesting assignments from a local news -- a
 14 local publication and saying, "I'm going to the inauguration.
 15 Do you want anything?"
 16 THE COURT: Okay.
 17 MR. COHEN: That's not hearsay.
 18 THE COURT: What else?
 19 MR. COHEN: There is -- there's like two --
 20 THE COURT: So he's contacting news organizations
 21 and saying, "I'm going to the inauguration. Do you want
 22 anything? I'm going to the protest. Do you want anything?"
 23 MR. COHEN: Right.
 24 THE COURT: Meaning he's trying to get assignments
 25 or some sort of, you know, credentials from news

1 organizations to go?
 2 MR. COHEN: That's correct.
 3 THE COURT: Okay. And anything else you're trying
 4 to elicit from this witness that is statements of your
 5 client?
 6 Because it's a fair hearsay objection. So I want to
 7 rule on it now. And you have to tell me what statements
 8 you're trying to elicit.
 9 MR. COHEN: Okay. I'll go through it.
 10 He's got a friend in DC and he's saying, "I'm coming
 11 to DC to cover the inauguration," that they did bong hits
 12 together.
 13 THE COURT: And that's in the statement? Okay.
 14 What else? Come on. You know what you're trying to
 15 elicit. Tell me.
 16 MR. COHEN: Let me look at the list here.
 17 There is a -- I believe there's a conversation where
 18 he talks about wanting to, among other things, also cover the
 19 Women's March.
 20 And these are all about a week to two weeks out from
 21 January 20th.
 22 THE COURT: So is everything going to be of this
 23 nature? That's what you're trying to elicit?
 24 MR. COHEN: That, and there's also where he's trying
 25 to develop his career. That goes back a little bit earlier.

1 THE COURT: Tell me what that is.
 2 MR. COHEN: He's seeking to bolster his résumé. He
 3 asks a bunch of people for references -- if he can put them
 4 down as references on his résumé.
 5 He talks about how he's seeking to change his career
 6 to photo journalism.
 7 There's an exchange where he sends his résumé to a
 8 publication.
 9 THE COURT: Sends a résumé to a publication?
 10 MR. COHEN: To a publication, yes, the same one he's
 11 asking for assignments from.
 12 THE COURT: Generally speaking? Not having anything
 13 to do with planning for January 20th? He's just sending a
 14 résumé and saying what?
 15 MR. COHEN: He's saying, "If you have a part-time
 16 photo journalist job, I'd like to take it."
 17 THE COURT: And that's to prove that he wants to be
 18 a photo journalist?
 19 MR. COHEN: That's correct.
 20 So the Government -- well --
 21 THE COURT: And so anything else?
 22 MR. COHEN: Yes.
 23 Also, that he made plans to go to the RNC, the
 24 Republican national convention, back in July of last year.
 25 THE COURT: And that's to prove what?

1 MR. COHEN: That he's been covering -- that he's
 2 trying to bolster his résumé to become a photo journalist.
 3 THE COURT: Okay. And so can we separate these into
 4 two categories?
 5 MS. KERKHOFF: Yes.
 6 THE COURT: The first is, "This is what I planned to
 7 do on January 20th" and, "This is why I'm doing it."
 8 Why isn't that the state of mind exception and
 9 relevant, in other words, his statements of intention offered
 10 to prove that he, in fact, was planning to come there with a
 11 state of mind not to break windows, but to take pictures?
 12 Why isn't that admissible?
 13 MS. KERKHOFF: I think under the state of mind, with
 14 the proper instruction, it's fine.
 15 The problem is that Mr. Cohen --
 16 THE COURT: Under state of mind, it does come in for
 17 the truth, to prove that it was his plan and coming to cover
 18 the Women's March and coming to DC to cover the inauguration.
 19 "I'm going to DC" -- and I can't remember what your proffer
 20 was about the first thing. But --
 21 MS. KERKHOFF: The Government's position is, under
 22 the hearsay exception, it specifically says it's not being
 23 offered for the truth of the matter asserted. It's being --
 24 going to the individual's state of mind. I think there are
 25 two distinctions.

1 The Government would just note that Mr. Cohen
2 advised me of a number of statements and I wasn't sure which
3 one he was putting in.

4 THE COURT: I do think that those come in for the
5 truth of the matter asserted. I'm not going to give a
6 limiting instruction as to what his intentions were.

7 The whole point of this case is you're relying on
8 planning and you're relying on intentions when people came
9 here and, to the extent that his statements reflect his
10 intentions and plans, they should come in for all purposes.

11 MS. KERKHOFF: Yes.

12 THE COURT: With respect to the other stuff, "I'm
13 trying to get a job as a photo journalist," "I'd like you to
14 let me go to the RNC in July," those may partially go to his
15 state of mind.

16 They're also going to prove the truth of the matter
17 asserted. And those are not relevant hearsay statements. In
18 other words, the fact that he was trying to develop his
19 career in other ways at other times I'm not going to allow
20 you to offer.

21 MR. COHEN: Well --

22 THE COURT: And you are effectively offering it to
23 prove the truth of the matter asserted, which is, "I want to
24 be a photo journalist. I don't want to come in here and
25 break windows."

1 And I'm -- so I will sustain the objection as to
2 those.

3 MS. KERKHOFF: And, your Honor, the Government would
4 just note that, if Mr. Cohen chooses to admit this as a state
5 of mind exception, then under Rule 807, the Government is
6 permitted to impeach Mr. Wood as if he had taken the stand.
7 As a declarant, he may have taken the stand.

8 THE COURT: Can I just ask, it is your plan to have
9 him take the stand or have you not decided that?

10 MR. COHEN: Haven't decided yet.

11 THE COURT: And so that is correct. Obviously, if
12 you're introducing hearsay statements, Ms. Kerkhoff can
13 impeach the hearsay statements.

14 I would have to know what you are planning to
15 impeach with and what -- decide whether it was appropriate
16 impeachment.

17 MS. KERKHOFF: Okay.

18 THE COURT: But what exactly, just so we all know?

19 MS. KERKHOFF: Well, I'll see how the statements
20 come in, and I can advise the Court before I do it. I just
21 am curious as to how --

22 THE COURT: I guess I'm curious.

23 Are there arrests? Are there --

24 MS. KERKHOFF: Your Honor, Mr. --

25 THE COURT: -- are there convictions?

1 MS. KERKHOFF: -- Mr. Wood has given a number of
2 statements since his arrest both in print media and on TV,
3 where he has discussed some of these matters and specifically
4 refused to discuss others, to include the press badge.

5 So the Government submits that, with respect to his
6 intent and with respect to his statements specifically about
7 his involvement in this case itself, that those statements
8 would become relevant at this point.

9 THE COURT: And so I would just want to know what
10 they were when you get to that point.

11 MS. KERKHOFF: Okay.

12 THE COURT: In other words, you would be offering
13 statements that he's given since the arrest in this case
14 about January 20th and his purpose in being there?

15 MS. KERKHOFF: Correct.

16 THE COURT: Okay. So I would want you to tell me if
17 you were going to be offering other more generalized
18 impeachment of him about other bad acts or anything.

19 MS. KERKHOFF: I understand. At this time, no. I
20 think there's enough statements he's given in the media.

21 THE COURT: Okay. You know what he said. I don't,
22 Mr. Cohen, so --

23 MR. COHEN: I think what the Government is
24 insinuating is that he -- hopefully, I get this right -- he
25 makes a whole bunch of statements and the Government will

1 come in with the calculated statements and say, "Aha, he
2 doesn't talk about his press badge. Therefore, that goes to
3 the state of mind about how bad the press badge is."

4 THE COURT: I don't know.

5 MR. COHEN: That's my guess.

6 THE COURT: Well, okay. My ruling is that the other
7 stuff on his phone about applying for jobs and, "I want to be
8 a photo journalist" not related to that day are not
9 admissible. They are inadmissible hearsay.

10 But -- and to the extent that some of them reflect
11 states of mind rather than utterances to prove the truth of
12 the matter asserted, that the -- state of mind is not
13 relevant to this case.

14 In other words, it's -- general career desires are
15 not the point here. It's his intention on that day. And I
16 will allow you to elicit the statements about his intentions
17 on that day.

18 MR. COHEN: Okay.

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

21 THE COURT: Please come on back.

22 Sorry, ladies and gentlemen in the jury box. Every
23 once in a while a legal issue worthy of a law school exam
24 comes up in this case.

25 So thank you.

1 So I overrule, in part.
 2 MR. COHEN: The Court's indulgence.
 3 THE COURT: So you were asking the detective about
 4 data pulled from Mr. Wood's phone.
 5 MR. COHEN: That's correct.
 6 THE COURT: Did you want to ask him something about
 7 that?
 8 MR. COHEN: I'll lay a foundation, your Honor.
 9 THE COURT: Okay.
 10 BY MR. COHEN:
 11 Q. Did you review Mr. Wood's extraction?
 12 A. Yes.
 13 Q. Did you find information on that extraction about
 14 Mr. Wood coming to DC?
 15 A. I seem to remember him talking about traveling here.
 16 Yes.
 17 MR. COHEN: If I may call up -- this is going to be
 18 Wood 1-A, since Wood 1 is the --
 19 THE COURT: And has the Government got all these so
 20 you know what's being -- Ms. Kerkhoff is --
 21 MS. KERKHOFF: I received a disc this morning, your
 22 Honor.
 23 THE COURT: Okay.
 24 BY MR. COHEN:
 25 Q. So let me --

1 THE COURT: So you could just quote it if you wanted
 2 to, if you wanted to.
 3 MR. COHEN: What's that?
 4 THE COURT: You can quote it.
 5 MR. COHEN: Okay.
 6 THE COURT: You've got 1-A. You can really just cut
 7 right to it.
 8 BY MR. COHEN:
 9 Q. So 1-A is Page 1548 of the extraction.
 10 And this is -- do you see what I'm looking at?
 11 A. Yes, sir.
 12 Q. By the number 63, there is a "Subject" line that
 13 says "Regarding: Hey, Iris. Inauguration Rivard Report."
 14 Correct?
 15 A. Yes.
 16 THE COURT: And can you just say that again.
 17 Regarding what?
 18 MR. COHEN: "Inauguration" -- "Regarding Hey,
 19 Iris" -- I-r-i-s --
 20 THE COURT: "Inauguration" --
 21 MR. COHEN: -- "Inauguration."
 22 THE COURT: -- "Rivard Report."
 23 MR. COHEN: "Rivard" -- R-i-v-a-r-d -- "Report."
 24 THE COURT: And would you like to quote it at this
 25 time?

1 MR. COHEN: Yes.
 2 THE COURT: Please do.
 3 MR. COHEN: Yes.
 4 BY MR. COHEN:
 5 Q. This is an email from Mr. -- your investigation
 6 determined that this is an email from Mr. Wood. Correct?
 7 A. Yes.
 8 Q. And the tag line for Mr. Wood is "lexshoots."
 9 Correct?
 10 A. Yes.
 11 Q. And you learned that from doing the Internet
 12 research for Mr. Wood. Correct?
 13 A. That's right.
 14 Q. And that's l-e-x-s-h-o-o-t-s?
 15 A. Yes, sir.
 16 Q. So Mr. Wood writes, "Hey, Iris. Just checking back
 17 in. Got any assignments you want to throw at me? Also, any
 18 update on bus to Women's March in DC? Alexei."
 19 Is that what that says?
 20 A. Yes, sir.
 21 Q. Actually, I probably should be doing this the other
 22 way.
 23 MR. COHEN: The Court's indulgence. I believe the
 24 earliest is at the bottom.
 25 THE COURT: So can you just tell us the date and

1 time of this. This is an item from Saturday, December 24th,
 2 2016, at 6:36 p.m. Is that correct? That's down at the
 3 bottom.
 4 MR. COHEN: No. The timestamp is on the left where
 5 it says "Timestamp."
 6 THE COURT: So it's January 5th, 2017, at 10:29?
 7 MR. COHEN: That's correct, your Honor. Yeah. And
 8 the 10:29 is -- yes. That should be the time.
 9 THE COURT: And I'd really be happy to have you
 10 state the time and date and quote it and ask him, please.
 11 MR. COHEN: Yes, your Honor.
 12 BY MR. COHEN:
 13 Q. So on January 5th, 2017, at 10:29 p.m., Mr. Wood
 14 sends this email. Correct?
 15 A. Yes, sir.
 16 Q. And at the -- that's in response to the email that
 17 says -- sorry -- there we go -- that's in response to --
 18 Mr. Wood had sent an email previously on December 27th, 2016,
 19 at 11:01. Correct?
 20 A. Yes, sir.
 21 Q. And that one says, "Hey, Iris. Thanks for getting
 22 back to me. No worries on timing. We got plenty of time.
 23 Yes. Please let me know about the bus details. I appreciate
 24 it."
 25 Then it says, "Thinkers & Drinkers is the meetup

1 group I really like. I'm glad to have run into you. I truly
 2 hope to get some assignments from y'all."
 3 Is that right?
 4 A. Yes, sir. That's what it says.
 5 Q. You're not surprised with the "y'all" from a man
 6 from Texas. Right?
 7 A. I am not. No, sir.
 8 MR. COHEN: If we can call up 1-B, please.
 9 BY MR. COHEN:
 10 Q. 1-B, Pages 1538 to 1539. I think we'll start at the
 11 bottom and do it right. Okay.
 12 On January 15th, 2017, we see an email at 6:54 p.m.
 13 from lexshoots?
 14 A. Yes, sir.
 15 Q. And the body of that says -- well, the subject is
 16 "Pitch, Inauguration." Right?
 17 A. Yes, sir.
 18 Q. And the body of that says, "Hey, Scott. Touching
 19 base with you about the inauguration in DC. I'm specifically
 20 focusing in on street friction, protests and support and
 21 police. Bob said he wants something on the actual event,
 22 which I doubt I will get access to, but" -- uh-oh. Sorry
 23 about that.
 24 "Bob said he wants something on the actual event,
 25 which I doubt I will get access to, but I'm sure I can whip

1 up something that could work for y'all, though. Any
 2 direction would be appreciated. Let's keep in touch.
 3 Alexei."
 4 Is that correct?
 5 A. Yes, sir.
 6 Q. All right. And then we move up.
 7 The response to that is -- now, this is January 16th
 8 at 12:08 a.m. This is from a Scott Ball at Rivard Report.
 9 Is that correct?
 10 A. Sure. Yes.
 11 Q. And it's still the same email thread. Right?
 12 A. Yes.
 13 Q. This is again an email threat from Mr. Wood's cell
 14 phone. Right?
 15 A. Yes, sir.
 16 Q. It says, "Hey, Alexei. The inauguration probably
 17 wouldn't be something we would be super interested in unless
 18 we found a way to localize it to San Antonio. Maybe you
 19 could do some research and find a group of San Antonio women
 20 who made the trip to protest or to celebrate the
 21 inauguration.
 22 "Of course, as journalists, we are bound and
 23 surrounded by ethics. So just documenting street friction
 24 and not the story of the inauguration, we would come off as
 25 one-sided.

1 "I don't want to guarantee you we will publish your
 2 work. I still need to discuss the possibility of the story
 3 to my colleagues during our weekly meeting on Tuesday and
 4 you've never been on our site before.
 5 "If you can find a way to localize the event to
 6 San Antonio" -- I think that's what's "SA" stands for.
 7 Right? --
 8 A. Yes, sir.
 9 Q. -- "and report the overall day with both words and
 10 photographs, I can definitely take a look at what you submit
 11 to me. But, like I said, I can't guarantee anything."
 12 Right? Is that the full email?
 13 A. Yes, sir.
 14 Q. And then Mr. Wood responds to that on January 16th
 15 at 1:37 p.m.
 16 This is from Mr. Wood. Correct?
 17 A. Yes.
 18 Q. At that date and time?
 19 A. Yes, sir.
 20 Q. And he says -- Mr. Wood says, "Hey, Scott. Yes.
 21 Certainly I understand. No worries. I will see what
 22 formulates and keep you abreast. Thanks for the parameters.
 23 It's quite helpful in plugging in with y'all.
 24 "Some of my photos were in Adam Tudor's piece about
 25 street musicians and politics. I'll see what unfolds when it

1 gets there."
 2 Is that correct?
 3 A. Yes, sir.
 4 Q. And now on to 1-C, which is Pages 597 to 600 of the
 5 extract, correct, or it appears that way?
 6 A. Yes.
 7 Q. Okay. I think we start on top with this. The top
 8 is earliest on this.
 9 So the conversation here starts at -- on
 10 January 10th at 2:49 p.m. And this is from Mr. Wood to
 11 someone -- it says Morgan Freeman, but we don't know that to
 12 be the Morgan Freeman. Right?
 13 A. Not that I know of. No.
 14 Q. Okay. And so Mr. Wood says, "Hey, Morgan. You
 15 going to DC after all?" And that's at 2:49 p.m.
 16 At 2:49 p.m., Mr. Freeman writes back, "Secret
 17 Service credentials didn't come back."
 18 Mr. Morgan continues to write at 2:50 p.m.,
 19 "Covering NAMM instead." N-A-M-M.
 20 At 2:50, Mr. Morgan continues, "Though regretting
 21 decision."
 22 And then, still at 2:50, "Keiko" -- K-e-i-k-o --
 23 "and others will be there."
 24 At 2:50, "Heard BLM people are going to cause chaos
 25 with drum bands and boxing gloves."

1 BLM, do you understand that to be Black Lives
 2 Matter?
 3 A. Yes.
 4 Q. January 10th, at 2:50, Mr. Wood writes back, "Music
 5 industry NAMM?"
 6 At 2:51, Mr. Morgan replies, "Yeah."
 7 At 2:51, Mr. Wood writes to Mr. Freeman, "At
 8 Disrupt J20." Correct? Oh. I'm sorry. On January 10th.
 9 Right?
 10 A. Yes.
 11 Q. Okay. And then Mr. Foreman says, "Injured shoulder
 12 around New Year's" on January 10th at 2:51.
 13 Continuing on at that time, he continues to say --
 14 Mr. Morgan -- "So best to take light for month."
 15 Mr. Wood responds back, "Danng," with an extra "n."
 16 A. Yes. That's correct.
 17 Q. Mr. Morgan says, "How are you?" at 2:51.
 18 At 2:52, Mr. Wood writes, "I'm good. Been trying to
 19 get my professionalism up to par, website, CV" -- which you
 20 understand to be a résumé. Right?
 21 A. Curriculum vitae.
 22 Q. Well, and then he says "résumé shit."
 23 A. Yes.
 24 Q. And then he writes, "I've learned so much" --
 25 MS. KERKHOFF: Objection, your Honor.

1 MR. COHEN: I'll skip over that.
 2 THE COURT: Okay.
 3 MR. COHEN: I'll skip over that.
 4 BY MR. COHEN:
 5 Q. So we'll continue to move down.
 6 Mr. Morgan writes at 2:53 -- same day, January 10th.
 7 Right? --
 8 A. Yes.
 9 Q. -- "Keiko will be there and needing photos."
 10 And he continues to write shortly after that, "You
 11 should link up."
 12 Mr. Wood says, "Great" at 2:53.
 13 And again at 2:53, "How?"
 14 And then he writes, "Check out lexshoots.com."
 15 Mr. Morgan writes, "She's on FB" -- which you
 16 understand to mean Facebook. Right?
 17 A. I do.
 18 Q. "I'll pass her your number as well."
 19 And Mr. Wood writes back at 3:18 on January 10th,
 20 "Great. Thanks."
 21 Mr. Morgan writes at 3:18 on January 10th,
 22 "International photo credit would be good for your CV."
 23 Mr. Wood responds back, "Yup."
 24 MS. KERKHOFF: Objection, your Honor.
 25 THE COURT: Overruled.

1 BY MR. COHEN:
 2 Q. Mr. Wood then writes back at 3:20, "Keiko isn't in
 3 your friends list."
 4 Mr. Wood then follows up at 3:21 and asks, "Last
 5 name?"
 6 And Mr. Freeman writes back, "Psuyama,"
 7 P-s-u-y-a-m-a.
 8 Mr. Wood says, "Great. Thanks. I'll contact her."
 9 Mr. Foreman [sic] says, "What's the word on the
 10 beat?"
 11 Oh. This is January 19th now. Right? We've just
 12 jumped ahead to January 19th from January 10th?
 13 A. Nine days. Yes.
 14 Q. And Mr. Freeman says, "What's the word on the beat?"
 15 And Mr. Wood responds back, "DeploraBall could be
 16 war [sic]. 7:30 National Press Club. Overall, nothing going
 17 on. Friday, 10 a.m., Logan Square, anti-fascist bloc, my
 18 best lead."
 19 THE COURT: So it's "warm," w-a-r-m? "DeploraBall
 20 could be warm," not "war"?
 21 MR. COHEN: Yes. Just clarifying the DeploraBall.
 22 THE COURT: Okay. You don't have to do that. Just
 23 clarifying the "warm."
 24 MR. COHEN: Yes. It's "warm."
 25 THE COURT: Yes.

1 BY MR. COHEN:
 2 Q. Mr. Freeman responds back at 8:16 p.m. on January
 3 19th, "Hmm."
 4 I won't get into the rest of this.
 5 That's what this --
 6 A. Yes. That's correct. That's accurate.
 7 Q. And then we'll go to 1-B.
 8 This is from Page 1543 of the extract?
 9 A. Yes, sir.
 10 Q. And 1-B appears to be again a -- and we'll go from
 11 the bottom to the top on this -- appears to be an email
 12 exchange between Mr. Wood and -- appears to be an exchange
 13 between Mr. Wood and somebody at d-a-e-m-o-n@googlemail.com.
 14 Is that correct?
 15 A. This is a failed email. This is the Google mail
 16 delivery subsystem indicating it's a failed email.
 17 Q. Oh. Sorry. Let me go to the one above it. Sorry.
 18 The one number 14 timestamp January 10th at
 19 11:58 p.m. from Mr. Wood. Correct?
 20 A. Yes.
 21 Q. And to David Harvey?
 22 A. That's correct.
 23 Q. And the body -- well, the "Subject" line is, "Hey,
 24 David. DC years ago." Is that correct?
 25 A. Yes, sir.

- 1 Q. And the body of that says, "Hey, David. I don't
2 know if this email works for you anymore. We met years ago
3 at your apartment in DC. We took bong hits and you showed me
4 your Cuba book. I'm a photographer and you told me way back
5 then I could reach out. Anyway, I'm going to be in DC
6 covering the inauguration and Women's March. I'm wondering
7 if you're still in DC. Alexei Wood."
8 Is that correct?
9 A. Yes. That's correct.
10 Q. Okay. We can put that off.
11 On Mr. Wood's phone, you didn't find any connections
12 with others that were involved with the protest on
13 January 20th. Correct?
14 A. No. I don't believe so.
15 Q. And you didn't find Mr. Wood's information anywhere
16 else in your investigation that -- besides -- from other
17 Defendants. Correct?
18 A. No. No. That's correct. I did not.
19 Q. You did not find any connections on Mr. Wood's phone
20 or on those memory cards indicating that he had any
21 connection to any group such as an anti-capitalist group.
22 Correct?
23 A. That's correct.
24 Q. Or an anti-fascist group?
25 A. Also correct.

- 1 Q. And there's no indication that Mr. Wood was in
2 communication with anybody that you knew was involved in
3 organizing this particular demonstration. Correct?
4 A. That's correct.
5 Q. As a matter of fact, you didn't find any evidence on
6 Mr. Wood's phone that you found useful in this case.
7 Correct?
8 A. I don't know about useful. But as far as connecting
9 him to other Defendants, no, I did not.
10 Q. You also used a warrant for -- or had somebody draft
11 a warrant to extract the information on those camera memory
12 cards. Correct?
13 A. Yes.
14 Q. And you received an extraction report from that
15 warrant. Correct?
16 A. Yes.
17 Q. And that was, again, Detective Evans that assisted
18 you?
19 A. I believe so.
20 Q. Now, when you got the extraction report back, it
21 appeared that all of the information was erased from those
22 memory cards by the memory card's owner. Correct?
23 A. Yes.
24 Q. And that is what I'll call a soft erase. Right?
25 A. I'm sorry?

- 1 Q. A soft erase. It was not a hard erase. It wasn't
2 like a deep scrub of the memory cards?
3 A. Yes. That's correct.
4 Q. So even though there was -- even though the cards
5 were erased, the extraction still yielded information?
6 A. Some of the information was recovered. Yes.
7 Q. And from what Mr. Wood said on the livestream at
8 around 27 minutes, that he had memory cards, you surmised
9 that he needed the blank memory cards for the long haul.
10 Right?
11 MS. KERKHOFF: Objection, your Honor.
12 THE COURT: Sustained.
13 BY MR. COHEN:
14 Q. From that extraction of the memory cards, you had
15 learned that Mr. Wood didn't just come to DC to be at this
16 event, this demonstration. Correct?
17 MS. KERKHOFF: Objection, your Honor.
18 THE COURT: Sustained.
19 Rephrase your question, please.
20 BY MR. COHEN:
21 Q. From the memory cards -- let me start --
22 THE COURT: Can you hold on? Was that a
23 vagueness-rephrase objection or a hearsay objection?
24 MS. KERKHOFF: It's both hearsay as well as lack of
25 foundation for what the Defendant thought.

- 1 THE COURT: Do we need to talk about something at
2 the bench that's specific or are you just asking general
3 questions right now?
4 MR. COHEN: Right now, general questions.
5 THE COURT: I'm sustaining the objection to any
6 conclusions he can draw about what's on somebody else's mind.
7 MR. COHEN: I'll get to -- I'll rephrase and
8 establish a foundation.
9 THE COURT: Thank you.
10 BY MR. COHEN:
11 Q. You indicated that, after you got the extraction
12 report back, that you started to review the items that were
13 on these cards. Correct?
14 A. Yes.
15 Q. And you determined that a -- that there had been a
16 video on the card. Correct?
17 A. Yes.
18 Q. And you were able to get not just video, but also
19 pictures?
20 A. Yes.
21 Q. And from the -- and it was a lot. Right?
22 A. There was a lot.
23 Q. At some point, you gave up because it was -- you
24 just weren't finding anything useful. Correct? That's what
25 you testified before?

1 A. I don't know if I gave up. But I think that, after
 2 an examination, there was nothing that was probative.
 3 Q. But you had learned from your review of those cards
 4 that Mr. Wood had actually come to DC a few days before the
 5 inauguration?
 6 A. I mean, I don't recall, sitting here right now. But
 7 that's possible.
 8 Q. Well, did you watch videos that Mr. Wood produced of
 9 the DeploraBall?
 10 A. I vaguely remember that he had videos of the
 11 DeploraBall. Yes.
 12 Q. And he also had videos from an event two days before
 13 the inauguration, something called the Queer Dance Party?
 14 A. Yes. Yes. That's correct.
 15 Q. Did you watch the videos from those?
 16 A. I did.
 17 Q. Okay. And did it appear that Mr. Wood produced
 18 those videos?
 19 A. They appeared to be filmed by Mr. Wood. Yes.
 20 Q. Okay.
 21 MR. COHEN: I would like to show a couple of those
 22 videos.
 23 MR. LAZEROW: May we approach?
 24 THE COURT: Yes.
 25 (Whereupon, the following proceedings were had at

1 side-bar outside the presence of the jury:)
 2 THE COURT: Is there an objection?
 3 MR. LAZEROW: I'd like to know where we're going.
 4 That's the first part of it. Because I thought that we'd
 5 been keeping out the DeploraBall and other items.
 6 But I'd just like to know before I know whether I'm
 7 objecting --
 8 THE COURT: Have you see any of these things?
 9 MS. KERKHOFF: They were produced and --
 10 MR. LAZEROW: I'm sorry. They may have been
 11 produced. I don't want to say I have seen them because I'm
 12 not positive I have. I can't guarantee someone on my team
 13 didn't. I don't want to make any representation.
 14 THE COURT: And I guess, Ms. Kerkhoff, you produced
 15 them.
 16 MS. KERKHOFF: Yes.
 17 THE COURT: And was there a large volume of material
 18 from Mr. Wood's --
 19 MS. KERKHOFF: From Mr. Wood, no. Not from the
 20 videos. But it was the video from a few nights before that
 21 we produced, what was produced to all counsel. Mr. Cohen is
 22 giving me a skeptical look.
 23 MR. COHEN: No. No.
 24 THE COURT: Ms. Kerkhoff, just so I know, are you
 25 objecting to any of these items?

1 MS. KERKHOFF: I am objecting to the admission at
 2 this point. I allowed the detective to answer the question.
 3 It's unimpeached. But to now play videos of --
 4 THE COURT: And what's the basis for your objection?
 5 MS. KERKHOFF: Relevance.
 6 THE COURT: And so, to the extent that other people
 7 haven't focused on these things, what is the relevance of
 8 actual videotapes of other events that are not this one?
 9 MR. COHEN: Showing --
 10 THE COURT: You could play the inauguration, too.
 11 You could play, you know, his visit to the Beer Garden on
 12 Georgia Avenue and Park Road. But none of that would
 13 necessarily be relevant to this particular event and his
 14 intentions.
 15 So what is relevant about his videotapes of the
 16 DeploraBall and whatever other party that was?
 17 MR. COHEN: Well, I'm just going to -- my intent --
 18 THE COURT: My question is: What's relevant?
 19 MR. COHEN: The relevance is that Mr. Wood didn't
 20 come to DC to go smashy smashy or promote smashy smashy. He
 21 was there to document what was going on in and around the
 22 inauguration. He did it. He came here early.
 23 THE COURT: I'm not going to allow you to play
 24 videotapes of other events. You have certainly attempted to
 25 make that point through the statements that you've offered.

1 But to the extent that he actually filmed other
 2 things, I don't believe that that is relevant, and it is way
 3 403 out of the sort of realm of what we're talking about
 4 here, confusing to the jury, causing delay and potentially
 5 prejudicial to other Defendants because it shows other events
 6 that other Defendants may have been at, et cetera.
 7 MR. COHEN: Well, I'm not --
 8 THE COURT: So I'm sustaining the objection on
 9 relevance grounds, Rule 403 grounds. I don't think that
 10 playing all of the other things he did while he was here has
 11 relevance to what his purpose was in being out there that
 12 day.
 13 MR. COHEN: I mean, I wasn't going to go that far.
 14 I wasn't --
 15 THE COURT: I'm sorry. I'm sustaining the
 16 objection.
 17 (Whereupon, the following proceedings were had in
 18 open court:)
 19 THE COURT: Sustained.
 20 BY MR. COHEN:
 21 Q. Moving away from the video cards, the camera memory
 22 cards, you also indicated that you investigated Mr. Wood's
 23 online presence. Correct?
 24 A. I did.
 25 Q. And you found that, prior to January 20th -- sorry.

1 You had discovered that he had his own website at
 2 lexshoots.com. Correct?
 3 A. At some point during the investigation, yes.
 4 Q. I'm going to --
 5 MR. COHEN: If we can queue up Wood 7. This is
 6 body-worn camera.
 7 BY MR. COHEN:
 8 Q. Do you recall seeing the -- do you remember the
 9 Government's Exhibit 124-I?
 10 A. Probably, if I saw it. I don't recall which body
 11 camera that is.
 12 Q. There was a body-worn camera video of Mr. Wood's
 13 property being taken off him. Correct?
 14 A. Okay. Yes.
 15 Q. And I'm going to have you watch the first 30 seconds
 16 of this video. Then I'll ask you a couple of questions.
 17 A. Yes, sir.
 18 (Whereupon, segments of Defendant Wood's Exhibit
 19 No. 7 were published in open court.)
 20 MR. COHEN: Pause it there.
 21 BY MR. COHEN:
 22 Q. It's paused at 32 seconds. This is identified as
 23 Wood 7.
 24 Is this a video of Mr. Wood being processed?
 25 A. Yes.

1 Q. On the scene?
 2 A. That's correct.
 3 Q. On January 20, 2017?
 4 A. Yes, sir.
 5 Q. Okay.
 6 MR. COHEN: If we can continue until 39 seconds,
 7 please.
 8 (Whereupon, segments of Defendant Wood's Exhibit
 9 No. 7 were published in open court.)
 10 BY MR. COHEN:
 11 Q. Did you observe two gloves being removed from
 12 Mr. Wood's pocket?
 13 A. It looks like it. Yeah.
 14 MR. COHEN: If you can continue on to 47 seconds,
 15 please.
 16 (Whereupon, segments of Defendant Wood's Exhibit
 17 No. 7 were published in open court.)
 18 BY MR. COHEN:
 19 Q. What I'm going to ask you to do is pay attention to
 20 the officer that is pulling stuff out of Mr. Wood's pockets.
 21 MR. COHEN: If we can play now to 1:17.
 22 (Whereupon, segments of Defendant Wood's Exhibit
 23 No. 7 were published in open court.)
 24 MR. COHEN: Hold it there.
 25

1 BY MR. COHEN:
 2 Q. I'm going to ask you to keep an eye on the officer's
 3 left hand, the one that's pulling the items out of Mr. Wood's
 4 pocket. We're at 1:17 now.
 5 MR. COHEN: If we can play this until 1:33, please.
 6 (Whereupon, segments of Defendant Wood's Exhibit
 7 No. 7 were published in open court.)
 8 BY MR. COHEN:
 9 Q. Do you see the officer transferring those items to
 10 his right hand?
 11 A. Yes.
 12 MR. COHEN: If you can now play until 1:46.
 13 (Whereupon, segments of Defendant Wood's Exhibit
 14 No. 7 were published in open court.)
 15 MR. COHEN: Pause it. Advance it just another
 16 second, please.
 17 (Whereupon, segments of Defendant Wood's Exhibit
 18 No. 7 were published in open court.)
 19 MR. COHEN: Go back to 1:40, please.
 20 I apologize. There's some technical difficulties.
 21 (Whereupon, segments of Defendant Wood's Exhibit
 22 No. 7 were published in open court.)
 23 MR. COHEN: Pause it.
 24 BY MR. COHEN:
 25 Q. Can you look at Mr. Wood's left foot?

1 A. Yes.
 2 Q. Does it look like a DC Guide?
 3 A. It does.
 4 Q. Like a tour guide?
 5 A. Or a map of some sort. Yes.
 6 MR. COHEN: Continue playing until 2:41.
 7 (Whereupon, segments of Defendant Wood's Exhibit
 8 No. 7 were published in open court.)
 9 MR. COHEN: Pause it.
 10 BY MR. COHEN:
 11 Q. Do you see the items that the one officer's handing
 12 to the other?
 13 A. Yes.
 14 Q. Is that a stack of business cards?
 15 A. It appears to be so. Yes.
 16 Q. Okay.
 17 MR. COHEN: Just go one more second, please.
 18 (Whereupon, segments of Defendant Wood's Exhibit
 19 No. 7 were published in open court.)
 20 MR. COHEN: Just keep going.
 21 (Whereupon, segments of Defendant Wood's Exhibit
 22 No. 7 were published in open court.)
 23 MR. COHEN: Pause it right there.
 24 BY MR. COHEN:
 25 Q. Is that -- can you tell if that is a battery the

- 1 officer is picking up off the ground there?
- 2 A. No. I can't tell what it is.
- 3 MR. COHEN: Let's keep going until 4:01.
- 4 (Whereupon, segments of Defendant Wood's Exhibit
- 5 No. 7 were published in open court.)
- 6 MR. COHEN: Pause it.
- 7 BY MR. COHEN:
- 8 Q. Is that a gray coat Mr. Wood is wearing?
- 9 A. It looks black to me.
- 10 Q. It looks black to you? Has that got a -- have you
- 11 seen Mr. Wood with that coat at all since that day?
- 12 A. No.
- 13 Q. Is that a neon orange lining on that coat?
- 14 A. Are you talking about the stripe next to the zipper?
- 15 MR. COHEN: Let's keep going.
- 16 (Whereupon, segments of Defendant Wood's Exhibit
- 17 No. 7 were published in open court.)
- 18 BY MR. COHEN:
- 19 Q. So at 4:02, is that a reporter's notebook going into
- 20 that bag there?
- 21 A. It looks like it.
- 22 Q. Okay.
- 23 MR. COHEN: Play on.
- 24 (Whereupon, segments of Defendant Wood's Exhibit
- 25 No. 7 were published in open court.)

- 1 MR. COHEN: Pause it.
- 2 BY MR. COHEN:
- 3 Q. Does that appear to be a bright orange interior for
- 4 that coat?
- 5 A. It's bright. Yeah. It looks reddish orange.
- 6 MR. COHEN: The Court's brief indulgence.
- 7 I have no further questions.
- 8 THE COURT: Next?
- 9 CROSS-EXAMINATION
- 10 BY MS. KROPF:
- 11 Q. Good afternoon.
- 12 A. Good afternoon, Ms. Kropf.
- 13 Q. Exhibit 153 was the compilation of video footage
- 14 showing a person wearing a white coat helmet. Is that right?
- 15 A. Yes.
- 16 Q. The white helmet has a red cross?
- 17 A. Yes, it does.
- 18 Q. The person I think you identified in that video, I
- 19 think you said she also had red tape on her arm. Is that
- 20 correct?
- 21 A. Yes.
- 22 Q. And did you identify a person with a white patch on
- 23 her back throughout some of the videos as well?
- 24 A. Yes.
- 25 Q. Was there -- was there a person that you identified

- 1 who was wearing a fanny pack?
- 2 A. Yes.
- 3 Q. And the fanny pack had a green bottle with an orange
- 4 top?
- 5 A. That's right.
- 6 Q. A Gatorade bottle?
- 7 A. Yes, ma'am.
- 8 Q. Was there anyone else in all the videos that you
- 9 reviewed among the protesters who was wearing a white helmet
- 10 with a red cross?
- 11 A. Not that I recall. No.
- 12 Q. Now, in Exhibit 153, which was the compilation of
- 13 the videos showing a person wearing a while helmet, the
- 14 police were pretty much right behind or close behind that
- 15 person wearing a while helmet in several of those clips.
- 16 Correct?
- 17 A. Yes.
- 18 Q. Let's take a look at a few of them.
- 19 MS. KROPF: Showing Exhibit 153. Can we go to 8:21.
- 20 (Whereupon, segments of Government's Exhibit No. 153
- 21 were published in open court.)
- 22 BY MS. KROPF:
- 23 Q. And this is -- where it's paused here, this is at
- 24 that Crowne Plaza Starbucks that we have seen so many times.
- 25 Right?

- 1 A. Yes, ma'am.
- 2 Q. And we can see in the upper right-hand side there
- 3 that the window has already been broken. Is that right?
- 4 A. Yes. You can see the glass on the ground.
- 5 Q. Okay.
- 6 MS. KROPF: Let's play until 8:25, please.
- 7 (Whereupon, segments of Government's Exhibit No. 153
- 8 were published in open court.)
- 9 BY MS. KROPF:
- 10 Q. And there is a person wearing a white helmet with a
- 11 red cross?
- 12 A. Yes.
- 13 Q. And a person with a white patch upon her back.
- 14 Right?
- 15 A. That's correct.
- 16 Q. And with red tape on her arms. Right?
- 17 A. Yes, ma'am.
- 18 Q. Okay.
- 19 MS. KROPF: Let's play from 8:25 to 8:35.
- 20 (Whereupon, segments of Government's Exhibit No. 153
- 21 were published in open court.)
- 22 BY MS. KROPF:
- 23 Q. And those are the police. Right?
- 24 A. Yes.
- 25 Q. The police are wearing their riot gear?

- 1 A. Yes.
- 2 Q. And it looks like, at least that officer, they're
- 3 running. Right?
- 4 A. It looks like they're double-timing.
- 5 MS. KROPF: Let's go to 12 minutes and 24 seconds --
- 6 I'm sorry -- nine minutes and 16 seconds.
- 7 (Whereupon, segments of Government's Exhibit No. 153
- 8 were published in open court.)
- 9 BY MS. KROPF:
- 10 Q. This is the same Starbucks window, right, we were
- 11 just looking at?
- 12 A. Yes.
- 13 Q. Some of your compilations had several angles of the
- 14 same property damage. Right?
- 15 A. Yes.
- 16 Q. You weren't suggesting that two windows were broken
- 17 here. Just one. You were showing different angles. Right?
- 18 A. Correct. It's two different camera angles of the
- 19 same incident.
- 20 Q. Okay. Do you see in the upper sort of left-hand
- 21 side a person wearing a white helmet?
- 22 A. Yes, I do.
- 23 Q. That's a white helmet with a red cross. Right?
- 24 A. Yes, ma'am.
- 25 Q. Okay.

- 1 MS. KROPF: We are going to play from 9:16 to 9:23.
- 2 (Whereupon, segments of Government's Exhibit No. 153
- 3 were published in open court.)
- 4 MS. KROPF: Pause.
- 5 BY MS. KROPF:
- 6 Q. Those are the same riot police. Right?
- 7 A. Yes.
- 8 Q. Running after them or double-timing?
- 9 A. Yes.
- 10 Q. And close behind that person you identified in this
- 11 video as having a white helmet with a red cross. Right?
- 12 A. Yes, ma'am.
- 13 Q. Okay.
- 14 MS. KROPF: Let's go to 12:24, please.
- 15 (Whereupon, segments of Government's Exhibit No. 153
- 16 were published in open court.)
- 17 BY MS. KROPF:
- 18 Q. Now, 12:24 is showing the kettle. Is that right?
- 19 A. Yeah. The police closing in right after the charge
- 20 of the line. Yes.
- 21 Q. This is after the police have already closed in,
- 22 correct, at 12th and L Street?
- 23 A. I think they're still closing in. But it's right
- 24 around that time. Yes.
- 25 Q. Okay.

- 1 MS. KROPF: Let's play from 12:24 to 12:26, please.
- 2 (Whereupon, segments of Government's Exhibit No. 153
- 3 were published in open court.)
- 4 BY MS. KROPF:
- 5 Q. Those are the people at the front of this group
- 6 moving towards the police line. Correct?
- 7 A. That's right.
- 8 Q. And this is what people have been referring to as
- 9 the countdown. Is that right?
- 10 A. Yes, ma'am.
- 11 Q. So starting at 12:26, let's see, watching the video,
- 12 when a person wearing a white helmet with a red cross comes
- 13 into the screen.
- 14 MS. KROPF: If we could play.
- 15 (Whereupon, segments of Government's Exhibit No. 153
- 16 were published in open court.)
- 17 MS. KROPF: Pause.
- 18 BY MS. KROPF:
- 19 Q. Is that a person wearing a white helmet with a red
- 20 cross on it?
- 21 A. Yes, ma'am, it is.
- 22 Q. That is at -- I need glasses. Sorry.
- 23 A. This is 12:55.
- 24 Q. 12:55. Thank you.
- 25 So that's about 30 seconds past when the people at

- 1 the front of the line were moving towards the police. Is
- 2 that right?
- 3 A. That's fair.
- 4 Q. Who is that right behind the person wearing a white
- 5 helmet with a red cross?
- 6 A. The people to the right are police officers.
- 7 Q. Okay. All those people with the bright neon yellow
- 8 jackets are police officers?
- 9 A. Yes.
- 10 Q. They have their riot batons out?
- 11 A. Some of them do. Yes.
- 12 Q. And they're pretty much right behind the person
- 13 wearing the -- a person wearing a white helmet with a red
- 14 cross. Right?
- 15 A. Yes.
- 16 Q. Now, in your review of the video footage in this
- 17 case, did you see that a person wearing a white helmet with a
- 18 red cross was forced into the kettle by the police?
- 19 A. Well, exactly when are you talking about? Because
- 20 there's sort of some confusion about the police lining up on
- 21 the street and sort of closing in, as we just saw there. So
- 22 I just want to make sure that I'm answering it from the
- 23 correct point in time.
- 24 Q. I'll tell you what: Why don't we look at something.
- 25 We'll see if it clears up the confusion.

1 A. Sure.

2 MS. KROPF: I'll put up Lawson 3, which is part of

3 Exhibit 123-H.

4 THE COURT: I need to do this. I have to stop now.

5 MS. KROPF: That's fine.

6 THE COURT: One of the lawyers here is being sought

7 by a judge in another courtroom. I'm already in trouble.

8 So I'm going to break now. It's 20 of. I'll bring

9 you back at five of.

10 Ladies and gentlemen, don't discuss the case. Don't

11 make any decisions about it. I'll see you in 15 minutes.

12 (Whereupon, the jury exited the courtroom at 3:38

13 p.m. and the following proceedings were had:)

14 THE COURT: So I'll excuse you, sir.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Ms. Weletz, you've got to get to Judge

18 Broderick. I told her you only have 15 minutes. I think

19 she's trying to release two people. So you might want to get

20 a stand-in.

21 MS. KERKHOFF: Your Honor, I need to flag a

22 scheduling issue.

23 THE COURT: We'll talk about it at the end of the

24 break. I need to have Ms. Weletz back. Just let everybody

25 else know.

1 (Thereupon, Ms. Weletz retired

2 from the courtroom and the

3 following proceedings were had:)

4 THE COURT: Everybody can have a seat.

5 You're all excused.

6 MR. McCOOL: Thank you.

7 (Thereupon a recess was taken, after which the

8 following proceedings were had:)

9 THE COURT: Good afternoon.

10 THE DEPUTY CLERK: Good afternoon.

11 Now re-calling United States versus Jennifer

12 Armento, 2017 CF2 1193, et al.

13 THE COURT: So good afternoon.

14 Everybody is here.

15 Can I just ask: Ms. Kerkhoff was saying something

16 about witness scheduling problems.

17 Do you need to put somebody on now just to get them

18 over and done with?

19 MS. KERKHOFF: We were, except the defense is

20 agreeing. We're just going to stipulate and admit the

21 processing portion of the photos. We can do that tomorrow,

22 so we don't have to break this up any further. But that was

23 the witness that's not available tomorrow.

24 THE COURT: The processing portion of the photos,

25 meaning those little -- the skinny parts of the brown boards?

1 MS. KERKHOFF: Yes.

2 THE COURT: Okay. And you still, though, have

3 somebody who's going to authenticate the portions of --

4 MS. KERKHOFF: Videos.

5 THE COURT: -- the videos?

6 MS. KERKHOFF: Correct.

7 THE COURT: Okay.

8 MS. KERKHOFF: But that person is available

9 tomorrow.

10 THE COURT: Do you expect to rest once that's

11 happened?

12 MS. KERKHOFF: Yes. We have some exhibits to admit

13 and a stipulation. But once that witness takes the stand,

14 after he's done and the admission of exhibits, we do expect

15 to rest.

16 THE COURT: And we're obviously going to have to

17 talk about MJOA, and that's going to take a little while or

18 at least some time. But it would help me if I had those

19 exhibits and even the -- maybe the composite videos.

20 Are those incorporated into the PowerPoints? Maybe

21 I should just get you to email the PowerPoints to my chambers

22 so I can look at them overnight and just compare them to my

23 notes so I'm at a more educated place.

24 MS. KERKHOFF: I'll do that. I think because of the

25 size of the clips, it may be lengthy. But I'll work with

1 your clerk to upload it to the portal. I'll make a separate

2 folder to upload it to the portal. I can walk her through

3 that tonight as soon as I get back to the office.

4 THE COURT: Okay. If not that, then some other

5 solution for just orienting me to what I've already seen.

6 MS. KERKHOFF: Yes.

7 THE COURT: But you're going to refocus on --

8 MS. KERKHOFF: Yes, your Honor.

9 THE COURT: So what realistically are we looking at

10 for the defense case? Have you all thought through how long

11 you think the defense cases are going to take?

12 MR. LAZEROW: My sense is that it's going to be a

13 half day or less, your Honor.

14 THE COURT: I mean, for the whole -- have you all

15 sort of put your heads together and thought about how long

16 you think everybody's case is going to take? I was thinking

17 half a day per Defendant. But --

18 MS. KROPF: It will not be.

19 THE COURT: Something less? Yes?

20 You're shaking your head for less, Ms. Weletz.

21 Thank you for coming back, by the way.

22 MS. WELETZ: No problem.

23 THE COURT: I wasn't sure if I was going to see you

24 again.

25 So realistically, when do we think we're going to

1 be -- of course, I don't know whether the Government's going
2 to have rebuttal evidence; and I'm not going to ask them that
3 now since we don't know yet.

4 But when do we think we're going to get to closings?
5 I'd like to at least come clean with this jury and tell them
6 what we think we're looking at.

7 MR. LAZEROW: My best guess is Wednesday morning.

8 THE COURT: You really think that soon?

9 MR. LAZEROW: Or Wednesday afternoon.

10 MS. KERKHOFF: Your Honor, we were advised the
11 expert is no longer testifying. I believe the witness list
12 has become much shorter and much more pointed.

13 THE COURT: So no expert?

14 MR. LAZEROW: Correct.

15 THE COURT: So we actually could get to closings by
16 Wednesday, Thursday-ish.

17 Friday this week is, among other things -- let's put
18 it this way: I have a status hearing with the next trial
19 group in the morning, but that won't be that long because
20 they're going to tell me they want to go to trial or they're
21 going to tell me they don't want to go to trial. We'll just
22 have to get an answer to the question and we'll know better
23 when that will happen.

24 And what I'm thinking through is whether I'm going
25 to have any time that I can give you all on Friday. And at

1 it would matter. If we're at a point where it won't matter,
2 I'm not going to have them here for two hours for nothing.

3 But what I want to do is to make Friday available.

4 The only thing I know for sure is the Court's
5 holiday party starts late Friday afternoon; and I'm not
6 allowed to go into that. We'd have to be out. Before that,
7 there's a rules committee meeting that I hopefully could make
8 somebody else go to for me. So I probably would say you
9 could go until 3:00. I would do what I could to minimize
10 everything else I was doing.

11 MR. LAZEROW: So I should have said that. I'm
12 sorry, your Honor. I think the planning that we're
13 projecting is everybody is going to do their best to try to
14 work through and get the case to the jury in terms of
15 evidence by tomorrow. I mean the evidence portion of the
16 case.

17 THE COURT: I mean to the jury as in closings.

18 MS. KERKHOFF: I understand that.

19 I'm trying to think in terms of timing for jury
20 instructions and argument when we can begin closings. I
21 think we are all under the expectation we can begin on
22 Wednesday.

23 THE COURT: Really? Really?

24 MS. KERKHOFF: Yes.

25 MR. LAZEROW: Agreed.

1 the moment, I'm not 100 percent certain. But I might. And
2 so if we are in closing arguments, I might try to make the
3 time to do that. But I don't know. So I'm wondering.

4 So either way, I've told the jury I kind of thought
5 we'd be getting the case to them next Monday. It's sounding
6 like I may not be that far off. It could be Tuesday.

7 MS. KERKHOFF: I do think -- I think Mr. Lazerow --
8 and I'm not trying to speak for him -- when he said half a
9 day, I think that he's not just speaking for himself.

10 THE COURT: Oh, you're saying for the whole table
11 half a day?

12 MR. LAZEROW: Sorry. Yes.

13 MS. KERKHOFF: Yes, ma'am.

14 MR. LAZEROW: I was not clear about that. I thought
15 it was about half a day. It's my understanding we're going
16 to be at --

17 THE COURT: You're making my day here.

18 MR. LAZEROW: -- five or six short witnesses, is my
19 understanding.

20 THE COURT: Five or six?

21 MR. LAZEROW: Without compromising anybody's rights,
22 et cetera, et cetera, that's what my current understanding
23 is.

24 THE COURT: So I'm going to want to keep some
25 flexibility about Friday, if we're at a critical point where

1 THE COURT: Does nobody disagree with that? I won't
2 be that specific. But I think I want to say to them based on
3 my prediction to them the other day that we are well on
4 schedule and I don't want them to worry about timing. And if
5 they have concerns, they can let Ms. Hodge know about them.
6 But when I actually said that the other day, they were pretty
7 cool. I mean, they want to be out of here for Christmas
8 weekend, but we were good.

9 MS. KERKHOFF: I understand. I'm saying that the
10 point in -- in terms of planning when we argue jury
11 instructions and things like that, if we can get through the
12 evidence and focus on some arguments, we could give the jury
13 whatever that break is, the end of tomorrow, early Wednesday.
14 So we can really push to try to start these closings on
15 Wednesday.

16 THE COURT: On Wednesday?

17 MS. KERKHOFF: Yes.

18 THE COURT: So thank you for telling me that. I'm
19 just going to say something optimistic-ish to them right now
20 but not be too, you know, overly optimistic.

21 MR. LAZEROW: So I should tell my brother I won't be
22 at his rehearsal dinner on Friday in New York? I think
23 that's what you're telling me.

24 THE COURT: I'm not telling you that.

25 MR. LAZEROW: Well, I got it. I got it.

1 THE COURT: In fact, if that's what you're telling
 2 me, I don't want to make you miss that.
 3 MR. LAZEROW: No, no. I want the case to be over as
 4 much as everyone else.
 5 THE COURT: 3:00 will get you in there.
 6 MR. LAZEROW: I'll be okay. I've already told him.
 7 THE COURT: I'm not trying to make you miss that.
 8 Let's just see where we are. Okay? Like I said, I don't
 9 want to not -- I don't want to put people in for unproductive
 10 time on Friday. So let's see. I haven't decided that. And
 11 I didn't know about your rehearsal dinner. I'm not trying to
 12 make you miss a rehearsal dinner.
 13 And there are a lot of you there, I'm saying.
 14 MR. LAZEROW: I'm well aware.
 15 THE COURT: There are some very capable people
 16 sitting next to you --
 17 MR. LAZEROW: I agree, your Honor.
 18 THE COURT: -- who can pick up the ball.
 19 So thank you for the information.
 20 How about bringing the detective back?
 21 MR. QURESHI: Yes, your Honor.
 22 THE COURT: I will tell the jury, then, from my
 23 recent updates from you all that we're doing fine.
 24 (Thereupon, the witness entered
 25 the courtroom and the following

1 proceedings were had:)
 2 (Whereupon, the jury entered the courtroom at 4:15
 3 p.m. and the following proceedings were had:)
 4 THE COURT: Good afternoon again, ladies and
 5 gentlemen.
 6 I wanted to take a minute to talk to you about
 7 timing. I know that you all have been so committed to being
 8 here on time, we so appreciate the commitment you have all
 9 made to giving yourself time, especially in this busy time of
 10 year.
 11 I just had a very good discussion with the lawyers.
 12 I think the prediction I was making the other day about you
 13 all deliberating by Monday is a likely goal; and it could
 14 even be sooner. But we'll see.
 15 I can't promise because everybody here has a right
 16 to proceed through this trial and exercise all their rights.
 17 And it's important that we honor that.
 18 So I really do appreciate your time, your presence,
 19 the fact that you've been on time every day and the fact that
 20 you're sticking with us.
 21 But I just want to say, based on my conversations,
 22 we're doing all right on time.
 23 And we're going to proceed now with Detective
 24 Pemberton's cross-examination.
 25 Yes, Ms. Kropf.

1 BY MS. KROPF:
 2 Q. Detective, we were talking about how -- about a
 3 person wearing a white helmet with a red cross that ended up
 4 in the kettle.
 5 Do you remember that?
 6 A. Yes.
 7 Q. So we're going to take a look at a portion of what's
 8 been marked by the Government as 123-H.
 9 MS. KROPF: For the record, it is time stamped
 10 15:52:13 to 15:53:43.
 11 BY MS. KROPF:
 12 Q. Just to make that clear, when we say 15:52, that's
 13 10:52 a.m.?
 14 A. Yes, ma'am.
 15 Q. Now, 10:52 a.m. was near the end of the march.
 16 Correct?
 17 A. Right at the end. Yeah.
 18 Q. Do you see in what we've marked as Lawson 3 -- do
 19 you see the building on the left? Correct?
 20 A. Yes.
 21 Q. And do you see how there are some people in that
 22 alcove just past the green garage door there?
 23 A. Yes, I do.
 24 Q. We're going to watch in particular what happens to
 25 the folks in that alcove in a few seconds, of course keeping

1 our eye out for a person wearing a white helmet with a red
 2 cross.
 3 A. Of course.
 4 MS. KROPF: If we could play from zero seconds to
 5 nine seconds, please.
 6 (Whereupon, segments of Defendant Lawson's Exhibit
 7 No. 3 were published in open court.)
 8 BY MS. KROPF:
 9 Q. You see a person wearing a white helmet with a red
 10 cross there?
 11 A. Yes, I do.
 12 Q. You see the officer's hand over there on the left?
 13 A. Yes.
 14 Q. He's holding his baton. Is that right?
 15 A. He's holding a baton.
 16 Q. And the officers or the voices we hear are saying,
 17 "Move." Correct?
 18 A. Yes.
 19 Q. They're not saying, "Stop"?
 20 A. No. They're saying, "Move."
 21 Q. Okay. They're not saying, "Go home." Right?
 22 A. Not in this video. No.
 23 Q. They're saying, "Move," and that officer at least
 24 has his baton out. Correct?
 25 A. Yes.

1 Q. Okay.
 2 MS. KROPF: Can we play nine seconds to 32 seconds,
 3 please.
 4 (Whereupon, segments of Defendant Lawson's Exhibit
 5 No. 3 were published in open court.)
 6 BY MS. KROPF:
 7 Q. And did you see from that video that the person -- a
 8 person wearing a white helmet with a red cross is effectively
 9 pushed into the kettle? Right?
 10 A. Yes.
 11 Q. She's -- that person is at the very back of this
 12 group of people. Right?
 13 A. Well, what are you designating as the front?
 14 Q. Let's a good question, I guess. Let me make that a
 15 little clearer.
 16 This person is standing right in front of the police
 17 officers with their batons out. Right?
 18 A. I mean, there's police officers everywhere. But
 19 yes. I mean, obviously, this is body-worn camera of an
 20 officer with his baton out. So yes.
 21 Q. That's -- right across the screen there is the
 22 baton. Right?
 23 A. Yes.
 24 Q. Okay.
 25 MS. KROPF: Could we play 32 seconds to 45.

1 (Whereupon, segments of Defendant Lawson's Exhibit
 2 No. 3 were published in open court.)
 3 BY MS. KROPF:
 4 Q. Did you hear someone yell "Go home" there?
 5 A. No.
 6 Q. You didn't?
 7 A. I wasn't quite paying attention to that. If you
 8 could play it again.
 9 Q. Yeah. Maybe we can play it again.
 10 MS. KROPF: If you could go back to 32. Play 32 to
 11 45.
 12 (Whereupon, segments of Defendant Lawson's Exhibit
 13 No. 3 were published in open court.)
 14 BY MS. KROPF:
 15 Q. Did you hear it that time?
 16 A. A female officer's voice?
 17 Q. Yes.
 18 A. It sounds a little bit like "Go home."
 19 Q. Did it look like she was letting them go home?
 20 A. No.
 21 Q. Not really.
 22 And right there, do you see a person wearing a white
 23 helmet on the left side of the screen?
 24 A. Yes, I do.
 25 Q. And the police with riot batons are right behind

1 that person in the video that is wearing a white helmet.
 2 Right?
 3 A. Yes.
 4 MS. KROPF: Could we play now to 59 seconds.
 5 (Whereupon, segments of Defendant Lawson's Exhibit
 6 No. 3 were published in open court.)
 7 BY MS. KROPF:
 8 Q. Did you hear that loud bang?
 9 A. Yes.
 10 Q. Is it your understanding that was one of the
 11 sting-balls that was thrown into this crowd?
 12 A. Yes.
 13 Q. And did you see everyone flinch there in the video
 14 at the sound?
 15 A. Some of them.
 16 Q. Yeah.
 17 And the officers were still pushing them closer in.
 18 Right?
 19 A. I don't know. I can't say that. I mean, they're
 20 being held at that location. I can't say they're being
 21 pushed.
 22 Q. Okay. They're not being allowed to move away from
 23 where that sting-ball was thrown into the crowd. Right?
 24 A. I think that's fair.
 25 MS. KROPF: If we could play, then, to one minute

1 and 27 seconds.
 2 (Whereupon, segments of Defendant Lawson's Exhibit
 3 No. 3 were published in open court.)
 4 BY MS. KROPF:
 5 Q. Did you hear that second bang?
 6 A. Yes.
 7 Q. That's to your understanding the second sting-ball
 8 that was thrown into the crowd?
 9 A. That's correct.
 10 Q. And it is accurate to say those police officers are
 11 still holding everyone in that same position, at least.
 12 Right?
 13 A. That's correct.
 14 Q. Now, Detective Pemberton, you reviewed videos of
 15 people while they were in the kettle. Correct?
 16 A. Yes.
 17 Q. And do you recall in those videos hearing people
 18 calling for medics?
 19 A. Yes.
 20 Q. And do you recall seeing medics respond to those
 21 calls for help?
 22 A. I saw, yeah, people moving towards those locations.
 23 Yes.
 24 Q. During your review of the video, did you review
 25 video from US Park Police?

- 1 A. Yes.
- 2 Q. And there was a file in what the Government produced
- 3 to us with -- the file name was mvi_006_1.
- 4 Do you remember that file name?
- 5 A. Yes.
- 6 Q. You have a very good memory for these exhibits.
- 7 A. I try.
- 8 Q. Part of that was designated -- it's been marked at
- 9 least as Exhibit 122 for the Government. Correct?
- 10 A. That's correct. Yes.
- 11 Q. So we're going to show you what we marked as Lawson
- 12 5, which is another portion of that same file. And this is
- 13 US Park Police body-worn camera. Is that correct?
- 14 A. It was initially marked as body-worn camera, but I
- 15 think it was actually a handheld camera by one of the Park
- 16 Police officers.
- 17 Q. Fair enough. You watched this video as part of your
- 18 investigation?
- 19 A. I did.
- 20 MS. KROPF: We're going to show from zero seconds to
- 21 three seconds.
- 22 (Whereupon, segments of Defendant Lawson's Exhibit
- 23 No. 5 were published in open court.)
- 24 BY MS. KROPF:
- 25 Q. Do you see a person there at the bottom of the

- 1 screen wearing a white helmet with a red cross on it?
- 2 A. Yes, I do.
- 3 MS. KROPF: If we could play the rest of this video
- 4 up to nine seconds, please.
- 5 (Whereupon, segments of Defendant Lawson's Exhibit
- 6 No. 5 were published in open court.)
- 7 BY MS. KROPF:
- 8 Q. Now I'll show you the second clip.
- 9 MS. KROPF: Could we go to six minutes and 21
- 10 seconds.
- 11 (Whereupon, segments of Defendant Lawson's Exhibit
- 12 No. 5 were published in open court.)
- 13 MS. KROPF: Could you pause at 6:49.
- 14 BY MS. KROPF:
- 15 Q. Do you see on the left side of the screen in the
- 16 lower half -- do you see a person holding a green bottle with
- 17 a red -- an orange top?
- 18 A. Yes, I do.
- 19 Q. That looks like one of those Gatorade bottles?
- 20 A. It does.
- 21 Q. She has it up near those other person's eyes. Is
- 22 that correct?
- 23 A. That's correct.
- 24 MS. KROPF: Thank you. Nothing further.
- 25

- 1 CROSS-EXAMINATION
- 2 BY MR. LAZEROW:
- 3 Q. Good afternoon, Detective Pemberton.
- 4 A. Good afternoon, Mr. Lazerow.
- 5 Q. Now, I believe -- correct me if I'm wrong -- you
- 6 testified last week that you were contacted by your
- 7 lieutenant to work on this case. Is that correct?
- 8 A. Yes.
- 9 Q. And was that Lieutenant Hickman?
- 10 A. No. It would have been my previous lieutenant,
- 11 Lieutenant Bedlion.
- 12 Q. And what time -- Lieutenant Bedlion?
- 13 A. Bedlion, B-E-D-L-I-O-N.
- 14 Q. And what time did Lieutenant Bedlion call you on
- 15 January 20th?
- 16 A. I don't recall. But it was in the afternoon.
- 17 Q. And was Lieutenant Bedlion your direct supervisor on
- 18 January 20th?
- 19 A. Yes.
- 20 Q. What was his position at that time?
- 21 A. He was the lieutenant of the Seventh District
- 22 detectives' unit.
- 23 Q. And so he was the head of the Seventh District
- 24 detectives?
- 25 A. Yes, sir.

- 1 Q. At that time, you were a detective on -- in the
- 2 Seventh District. Is that correct?
- 3 A. Yes, sir.
- 4 Q. You were assigned to the Seventh District on January
- 5 20, 2017. Correct?
- 6 A. Yes, sir.
- 7 Q. And that means that you typically investigate
- 8 potential crimes in the Seventh District. Correct?
- 9 A. Yes.
- 10 Q. And it's -- the Seventh District are areas in the
- 11 southeast, like Barry Farms. Is that right?
- 12 A. That's one neighborhood. Yes.
- 13 Q. The Seventh District is made up mostly of the
- 14 southeast. Is that correct?
- 15 A. Yes. Anacostia all the way down to the PG County
- 16 line.
- 17 Q. Now, the protests in this case took place entirely
- 18 in the Third District. Is that correct?
- 19 A. And the First District. First and Third, I think.
- 20 Q. The First and Third District?
- 21 A. Yes.
- 22 Q. Are you familiar with the various districts that the
- 23 Metropolitan Police Department has broken the city up into?
- 24 A. I'd like to think. So yeah.
- 25 MR. LAZEROW: We're going to publish to the jury

- 1 this.
- 2 And I'll show you, counsel.
- 3 BY MR. LAZEROW:
- 4 Q. I've shown to the Government what we have marked as
- 5 Macchio Exhibit 39 and what should come up, hopefully. This
- 6 is a map of the District of Columbia broken down by the
- 7 Metropolitan Police Department districts.
- 8 Is that what you're seeing on the scene, Detective
- 9 Pemberton?
- 10 A. Yes, sir.
- 11 Q. So the Seventh District is all the way down in the
- 12 bottom right corner shaded in pink. Is that correct?
- 13 A. Yes.
- 14 MR. LAZEROW: Can we blow that up at all?
- 15 BY MR. LAZEROW:
- 16 Q. Can you see that, Detective?
- 17 A. Yes.
- 18 Q. And so you see those numbers in the Seventh
- 19 District: 703, 701, 702. Do you see those numbers?
- 20 A. Yes, sir.
- 21 Q. What are those numbers?
- 22 A. Those are the professional service areas that are
- 23 designated to be within the Seventh District; basically,
- 24 police beats.
- 25 Q. And where is your office actually located, if you

- 1 just could identify it by number, in the Seventh District?
- 2 A. It's in 702.
- 3 Q. And am I right that -- I think you said the Third
- 4 District and the First District is where this protest took
- 5 place. Correct?
- 6 A. Yes.
- 7 Q. And the Third District is sort of right in the
- 8 middle of this map. Right?
- 9 A. Yes, sir.
- 10 Q. And the First District is just below it, if you
- 11 will. Is that correct?
- 12 A. Yes.
- 13 Q. Am I right that the Third District on January 20,
- 14 2017, had detectives that were assigned to the Third
- 15 District?
- 16 A. Yes.
- 17 Q. And am I right that the First District had
- 18 detectives that were assigned to it?
- 19 A. You're correct.
- 20 Q. And just to round the picture out, the other
- 21 districts that are surrounding the Third District are the
- 22 First and the Second, the Fourth and the Fifth Districts. Do
- 23 I have that correctly?
- 24 A. That's correct.
- 25 Q. Now, am I -- you got a call because you were not

- 1 actually downtown on January 20, 2017, in the morning.
- 2 Correct?
- 3 A. That's right.
- 4 Q. So you didn't personally observe any portion of this
- 5 protest?
- 6 A. Yes. That's correct.
- 7 Q. And at the time that your lieutenant called you, you
- 8 had not reviewed any of the videos that you have been talking
- 9 about in this -- in your testimony in this trial. Correct?
- 10 A. That's right.
- 11 Q. You personally were not responsible for the
- 12 operations by the police on January 20th. Correct?
- 13 A. Correct.
- 14 Q. Commander DeVille was responsible for that.
- 15 Correct?
- 16 A. Yes.
- 17 Q. And Commander DeVille had officers like Officer
- 18 Howden actually on the ground responding to the protest.
- 19 Correct?
- 20 A. Yes.
- 21 Q. Now, on January 20, 2017, you had already concluded
- 22 that the police officers showed an incredibly inspiring
- 23 amount of restraint. Is that correct?
- 24 A. Are you referring to comments I made as a union
- 25 executive?

- 1 Q. I'm referring to a tweet that you made on Twitter --
- 2 whether it was in your personal capacity or union, I don't
- 3 know -- but a tweet that you put on Twitter where you said
- 4 that you were -- you found the officers' conduct to be
- 5 incredibly inspiring that day.
- 6 A. Well, right. So as a union executive, I'm someone
- 7 who sits on the board of the DC police union who represents
- 8 3600 police officers. I made that comment based on the
- 9 limited amount of information I had from watching local news
- 10 from my office.
- 11 Q. And then you put that comment on Twitter. Correct?
- 12 A. Yes.
- 13 Q. And you also put on Twitter that your conclusion at
- 14 that time was that you were humbled at the level of
- 15 professionalism that the police officers of the Metropolitan
- 16 Police Department had shown that day. Correct?
- 17 A. Yes.
- 18 Q. And is that still your testimony sitting here today?
- 19 A. Yeah. I think so.
- 20 Q. I'm going to show --
- 21 MR. LAZEROW: We're going to mark this as Macchio
- 22 Exhibit 11. This is body-worn camera. The file name -- for
- 23 the record, the file name for the Government and for the
- 24 record is axon_body_2_video_2017-01-20_10:31.
- 25 THE COURT: Okay. Is there an exhibit number?

1 MR. LAZEROW: It is Macchio Exhibit 11.
 2 THE COURT: Okay. So that's good. Thank you.
 3 MR. LAZEROW: I apologize. I thought that I said
 4 that first. I'll try to remember that next time. But I want
 5 to make sure the Government knew what exhibit it is, the
 6 original file.
 7 And I'm going to play -- on the time counter, it's
 8 going to be 15:39:37 through 15:39:50.
 9 BY MR. LAZEROW:
 10 Q. And that -- again, 15:39, Detective, is 10:39.
 11 Correct?
 12 A. Yes.
 13 MR. LAZEROW: So, Jamie, if you could play at 8:59
 14 on the file counter to 9:11.
 15 (Whereupon, segments of Defendant Macchio's Exhibit
 16 No. 11 were published in open court.)
 17 BY MR. LAZEROW:
 18 Q. Now, Detective Pemberton, did the officer you saw in
 19 that clip display an incredibly inspiring amount of
 20 restraint?
 21 MS. KERKHOFF: Objection, your Honor, as to the
 22 opinion.
 23 THE COURT: What was that last thing?
 24 MS. KERKHOFF: Objection. It's opinion. Relevance.
 25 THE COURT: So can I just ask everybody to approach.

1 Sir, can you just step back.
 2 (Whereupon, the following proceedings were had at
 3 side-bar outside the presence of the jury:)
 4 THE COURT: Your objection is it's opinion
 5 testimony?
 6 And so you've asked him, Mr. Lazerow, his opinion
 7 about the officers that day, only to then impeach that
 8 opinion.
 9 And I guess I'm wondering how it's proper cross. If
 10 you wanted to ask him, you know, how humbled he was, you got
 11 to ask him that.
 12 But why do you now get to launch into an impeachment
 13 of that with all your video clips? First of all, I assume
 14 these are all video clips that you can show anyway. But why
 15 does he have to answer questions about his opinion about
 16 them?
 17 MR. LAZEROW: So this goes squarely to bias, your
 18 Honor. He just testified on January 20th he put two tweets
 19 out there about his view of what the police officers had done
 20 that day.
 21 And I asked him before I started, I said, Is that
 22 still your testimony today?
 23 He said yes.
 24 I'm entitled to --
 25 THE COURT: But you elicited that.

1 MR. LAZEROW: Correct. That's his view. We're
 2 entitled to --
 3 THE COURT: So why do you get to elicit generally
 4 his opinions about police action?
 5 MS. KROPF: Because I get to ask him if he still
 6 believes based on the clips I'm showing him whether he has
 7 the same view --
 8 THE COURT: What's the relevance of his opinion?
 9 MR. LAZEROW: It's his -- it's bias of this witness.
 10 THE COURT: Can you explain how?
 11 MR. LAZEROW: This is the lead detective on the case
 12 against these clients. Okay? He spent a lot of time on
 13 direct talking about what he's done in this investigation.
 14 And I'm entitled to probe his bias as --
 15 THE COURT: I'm asking you a direct question.
 16 MR. LAZEROW: And I'm trying to answer it directly.
 17 THE COURT: Tell me how his opinion about police
 18 action that day is relevant to bias. Tell me --
 19 MR. LAZEROW: Because it shows --
 20 THE COURT: -- the A, the B and then the C of the
 21 logical proposition you're offering.
 22 MR. LAZEROW: I thought I just said it, your Honor.
 23 I apologize.
 24 I was trying to explain that this witness had the
 25 already-formed opinion --

1 THE COURT: Let's say he has an opinion that your
 2 client is guilty. Is that relevant?
 3 MR. LAZEROW: He thinks my client's guilty. I know
 4 that.
 5 THE COURT: But doesn't mean you get to elicit from
 6 the Government --
 7 MR. LAZEROW: If I asked that, I'm sure I'm going to
 8 get an objection. I'm not going to ask that question.
 9 If --
 10 THE COURT: But that wouldn't be so relevant either.
 11 His opinion about whether your client is guilty: Not so
 12 relevant. Right? It's for the jury to decide that.
 13 So I'm asking you, whether or not he holds an
 14 opinion about the police department that you have elicited,
 15 what is relevant about that opinion or the soundness of it?
 16 MR. LAZEROW: This goes squarely to the bias of the
 17 lead detective in this case. That's what it goes to.
 18 THE COURT: Explain that.
 19 MR. LAZEROW: He made up his mind very, very
 20 quickly. He had seen zero video. He put those tweets on
 21 Twitter. He knew nothing about the case other than maybe
 22 what he'd heard from someone. I don't know. He hadn't seen
 23 the video. He testified to that.
 24 And it goes squarely to him concluding right off the
 25 bat that these people, you know, were guilty.

1 And I get to show that the police officers -- that
2 his state of mind or his view at the time was faulty and that
3 he made a conclusion, a snap judgment. And I get to find out
4 if he still holds that judgment.

5 THE COURT: "I get to" and all. I understand you're
6 asserting that.

7 But generally speaking, "I get to" needs to be
8 supported by some evidentiary or foundational basis.

9 And to the extent that you're saying that an opinion
10 that police handled themselves appropriately equals an
11 opinion that your clients are guilty -- and I don't think
12 that's correct. You haven't asked him that question. And I
13 assume you're not going to.

14 And he's not --

15 MR. LAZEROW: I might at some point.

16 THE COURT: -- taking the position on the witness
17 stand either about the propriety of the officers' conduct
18 that day or of the propriety of the prosecution or your
19 client's guilt. So you did elicit that.

20 And if your proposition is bias, that is certainly
21 something you can cross-examine about.

22 But I'm trying to understand other than the fact
23 that he is saying that he felt the police handled themselves
24 well that day, whether they handled themselves well or poorly
25 doesn't really equal guilt of your client or bias unless you

1 THE COURT: Explain how it is that his opinion about
2 police conduct that day either exposes that bias, that "I'm
3 going to point toward guilt," because everything he does is
4 an investigation of crime. If he stayed up in Barry Farms,
5 he'd be investigating something up in Barry Farms with an eye
6 toward proving the guilt or establishing the culpability of
7 somebody.

8 How is it that any of that is affected by his
9 opinion about police conduct?

10 MR. McCOOL: Well, excluding someone as a culpable
11 actor. And that's the whole point: that his mindset and his
12 thought processes were such that on January 20, 2017, that he
13 wasn't looking to exclude somebody as a culpable actor. He
14 was --

15 THE COURT: Because -- what does that have to do
16 with his opinion about police action?

17 MR. McCOOL: Because if he was going to act in an
18 objective way and exclude a culpable actor, that would then
19 run counter to his views against the police. He would
20 naturally have to say: Well, wait a second. You weren't
21 behaving in a certain way that would allow me to conclude
22 that these people were engaging in a riot.

23 THE COURT: I actually think that none of you are
24 tying this up.

25 Nevertheless, the point they're actually trying to

1 want to explain it to me better.

2 I'm not clear how --

3 MR. LAZEROW: Does anyone else want to explain it?
4 I thought I did. I apologize, your Honor, if I'm not.

5 THE COURT: All you tell me is you get to. But I'm
6 not understanding the logical inference that his opinion --
7 which you are now impeaching; you've elicited it and you're
8 impeaching it -- how it is his opinion of police conduct that
9 day, which was not in the case at all until you elicited it,
10 is relevant to bias.

11 MR. LAZEROW: He had --

12 MR. McCOOL: Your Honor, if I may.

13 THE COURT: Can you come closer so I can hear you.

14 MR. McCOOL: He can put the evidence in of bias
15 however he would like.

16 THE COURT: I know. But how --

17 MR. McCOOL: What it goes to is his mindset --

18 THE COURT: I want a proffer.

19 MR. McCOOL: The proffer is this: On January 20,
20 2017, his mindset, this detective's mindset, was of -- was
21 such that he was going to investigate in a way that would
22 automatically point to guilt as opposed to investigating it
23 in an objective way that would determine whether or not these
24 people were in fact protesting properly under the First
25 Amendment or they were rioting.

1 make --

2 Don't go away yet.

3 The point they're trying to make, Ms. Kerkhoff, is
4 that a person so profoundly motivated by instinct to
5 vindicate police conduct -- he was a union board member; he
6 came out that day and said how proud he was of them -- the
7 bias I think they want to tell me would exist is a person
8 that motivated to vindicate police conduct would have a
9 motive to testify falsely against these Defendants to show
10 that the police did right that day.

11 And that is different from the "There's a complaint
12 against the commander" thing.

13 That's not what you're saying.

14 Are you planning to get into that as well?

15 MR. LAZEROW: Well, we've already -- if you're
16 talking PPMS, we've already agreed --

17 THE COURT: The civil complaint against the police
18 department.

19 MR. LAZEROW: Oh, no.

20 THE COURT: And so I think there's relevance to it.

21 But can I just ask: Do you really need to show him
22 400 clips of people not behaving well and ask him his opinion
23 about that?

24 MR. LAZEROW: I have two more. That's all I'm going
25 to show.

1 THE COURT: Because Ms. Kerkhoff could ask his
 2 opinions about so many things. Right? I mean -- but okay.
 3 I'm going to allow it.
 4 We're going to stop now.
 5 (Whereupon, the following proceedings were had in
 6 open court:)
 7 THE COURT: So I'm overruling the objection.
 8 And what we're going to do is have you all come back
 9 at 10:00. We will begin at 10:00. I appreciate your
 10 patience with that bench conference that went on for a little
 11 while.
 12 And like I said, I feel optimistic about our timing.
 13 I want you to also. And I will see you tomorrow at 10:00
 14 a.m.
 15 Thank you very much.
 16 (Whereupon, the jury exited the courtroom at 4:42
 17 p.m. and the following proceedings were had:)
 18 THE COURT: Sir, I'll excuse you until 10:00 a.m.
 19 tomorrow morning. Don't discuss your testimony with anyone.
 20 THE WITNESS: Thank you, your Honor.
 21 (Witness excused.)
 22 THE COURT: Hang on one second.
 23 Mr. Lazerow, I think you're the last
 24 cross-examination. How long do you think?
 25 MR. LAZEROW: Well, I'd like to say it'll be 30, 45

1 minutes, but my sense is there's going to be more bench
 2 conferences, your Honor.
 3 THE COURT: Well, how about work it out? You've
 4 just heard my rulings, so I'm not sure why there have to be
 5 bench conferences. Can you tell me anything else we're going
 6 to have to discuss?
 7 MR. LAZEROW: Sure. There's a lot more bias to go
 8 into, your Honor.
 9 THE COURT: How about itemize it for me now --
 10 MR. LAZEROW: Okay.
 11 THE COURT: -- as in, you want to show a series of
 12 clips.
 13 Everyone, please have a seat.
 14 You want to show a series of clips to go into his
 15 opinion about how police acted that day.
 16 MR. LAZEROW: I have two more of those.
 17 THE COURT: Then what?
 18 MR. LAZEROW: We're going to spend a lot of time on
 19 his Twitter feed.
 20 MS. KERKHOFF: I will object to that.
 21 THE COURT: And so specifically --
 22 MR. LAZEROW: I'm just trying to get to -- he has a
 23 lot of comments about false narratives by disingenuous
 24 activists.
 25 THE COURT: Maybe we need to tell the jury to come

1 back a little bit later so we can discuss all of this before
 2 they get here.
 3 Ms. Hodge, can you let everybody who's still here
 4 know that they shouldn't come back until 10:30.
 5 THE DEPUTY CLERK: 10:30.
 6 THE COURT: And we'll make calls to the ones we
 7 don't get ahold of.
 8 Thank you.
 9 So Twitter? Tell me exactly.
 10 MR. LAZEROW: Right.
 11 So he has a lot of comments about false narratives
 12 by disingenuous activists who want to blame the police for
 13 everything that happens. And there's all kinds of specific
 14 examples.
 15 He --
 16 THE COURT: So you're actually going to be eliciting
 17 from him specific examples of what he says is false?
 18 MR. LAZEROW: Yes.
 19 MS. KERKHOFF: In this case?
 20 THE COURT: Hold on, Ms. Kerkhoff. I'm talking to
 21 him. You're not asking him questions right now.
 22 MR. LAZEROW: We are going to -- he has comments
 23 about leftist goons.
 24 His Twitter page -- he is a follower of all kinds of
 25 right-wing entities. He has liked Project Veritas and his

1 founder, James O'Keefe, on Twitter.
 2 He has liked the person who I believe we will be
 3 able to elicit gave him the video from Media Research Center
 4 that Ms. Weletz talked about today.
 5 He gave an interview to an organization called One
 6 American News Network, which has a very pro-Donald Trump
 7 support, talking about the false narratives.
 8 THE COURT: So when you say false narratives, is
 9 he -- can you be more specific about the statements about
 10 false narratives?
 11 MR. LAZEROW: Right.
 12 So we have in Logan Circle -- I want to tie this up
 13 for the Court.
 14 THE COURT: I'm asking you a specific question,
 15 which is: Tell me what words are used that are specific to
 16 this case.
 17 MR. LAZEROW: He talks about Black Lives Matter,
 18 pushing false narratives.
 19 THE COURT: Black Lives Matter?
 20 MR. LAZEROW: Yeah. I'm going to tie it up for you.
 21 THE COURT: Because I haven't seen that much of a
 22 connection between that organization and this group --
 23 MR. LAZEROW: I'm going to show --
 24 THE COURT: -- yet.
 25 MR. LAZEROW: -- video from Logan Circle on that day

1 where this group is chanting as loud as you can chant, "Black
 2 Lives Matter. Black Lives Matter. Black Lives Matter."
 3 THE COURT: So you're saying that he has a
 4 specific -- I'm going to want to see the text of whatever it
 5 is you're offering from Twitter to the extent that it's about
 6 Black Lives Matter, because that's not sounding like an
 7 opinion about these folks. That's sounding like an opinion
 8 about something else that could be used to inflame or
 9 prejudice.
 10 I would like to see the specifics.
 11 MR. LAZEROW: Okay. We can make a submission
 12 tonight and we can talk about it tomorrow. Is that
 13 acceptable?
 14 THE COURT: How about just show it to me?
 15 MR. LAZEROW: Do you want to see my cross?
 16 THE COURT: No.
 17 MR. LAZEROW: I don't understand.
 18 THE COURT: I just want to see the quotes, the
 19 Twitter. You don't have screens of it?
 20 MR. LAZEROW: Oh, yeah. I do. Sorry.
 21 THE COURT: That's kind of what I meant. I wasn't
 22 asking to see your cross.
 23 MR. LAZEROW: You can keep these.
 24 THE COURT: If you'd like to forward them to my
 25 chambers, you can do that.

1 That's okay. I'm just saying I'd like to see the --
 2 if you're going to be crossing about statements he made on
 3 Twitter about false narratives, I would like more specific
 4 quotations of what you're offering, because if it's about
 5 Black Lives Matter, I'm not so sure that that's relevant to
 6 his testimony here.
 7 If it's about these folks or this case, then that
 8 would be more relevant. So that's all I'm saying. I just
 9 want to see it.
 10 MR. LAZEROW: We think it's going to be more
 11 relevant whether --
 12 THE COURT: Just show it to me, Mr. Lazerow. I can
 13 rule. I can't rule without seeing it and knowing it.
 14 And so you arguing it now: Not a lot of help.
 15 MR. LAZEROW: I'm confused whether you want me to
 16 submit it to you tonight.
 17 THE COURT: I just want to see it one way or the
 18 another.
 19 MR. LAZEROW: Can I submit it tonight, your Honor?
 20 THE COURT: Yes.
 21 MR. LAZEROW: Thank you.
 22 THE COURT: So what else? What other biased stuff?
 23 MR. LAZEROW: We've already talked about PPMS,
 24 obviously, your Honor.
 25 THE COURT: Whenever there's a prediction we might

1 be spending a lot of time at the bench, that's when I need
 2 for you to raise it with me outside the presence of the jury
 3 so we don't have them sitting in the jury box. That is my
 4 goal.
 5 MR. LAZEROW: You know, your Honor, I apologize. I
 6 thought these items go clearly to bias. So that was my --
 7 THE COURT: Any other topics?
 8 MR. LAZEROW: There's -- I've already told you he
 9 liked a tweet by James O'Keefe, the founder of Project
 10 Veritas, and the media research person -- Media Research
 11 Center person.
 12 I believe that's it.
 13 THE COURT: That's all since this case or before?
 14 MR. LAZEROW: Some of these items predate the case.
 15 Some of these items were in November -- October, November.
 16 THE COURT: So I'm going to want to know about that
 17 and how the timing is relevant to this case.
 18 MR. LAZEROW: It all goes to his biases, your Honor.
 19 THE COURT: I can't make that decision until I
 20 actually know the facts.
 21 MR. LAZEROW: Okay. We will.
 22 THE COURT: So, Ms. Kerkhoff, to the extent that I'm
 23 hearing that there are statements by him that are either
 24 against this group or in favor of the diametric opposition to
 25 this group and whatever characterizations have been made

1 about it, I think that that will probably be relevant.
 2 I'm not agreeing that Black Lives Matter has a
 3 relationship to this group in such a way that I would allow
 4 his characterizations of Black Lives Matter to come in. I
 5 think that's potentially inflammatory and not relevant.
 6 MS. KERKHOFF: If I could just state our position.
 7 I think the vast majority -- first of all, there are
 8 no statements about this group or this case. There are no
 9 statements about this case to my knowledge on his Twitter
 10 feed.
 11 So these are broader -- virtually all, I believe,
 12 predate January 20th, 2017, before he was assigned.
 13 I would also note the Government does --
 14 THE COURT: Can I just see them first and then I'll
 15 hear argument?
 16 MS. KERKHOFF: Sure.
 17 THE COURT: I'm going to ask you all to be here at
 18 9:30, and I'll get started as soon as I can. Whatever I can
 19 see about specific statements about false narratives, I'm
 20 really not going to speculate about what they might say or
 21 what they might mean or when they might have been issued. I
 22 want to know actually what they are.
 23 So that would help me.
 24 I'll see you at 9:30. Thank you.
 25 MS. KERKHOFF: Thank you.

(Proceedings concluded.)

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CERTIFICATE

I, Lisa Edwards, RDR, CRR, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Trial in the case of the United States of America v. Michelle Macchio, Criminal Action No. 2017 CF2 1183, et al., in said Court on the 11th day of December, 2017.

I further certify that the foregoing 230 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio sync and digital recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 11th day of December, 2017.

 Lisa Edwards, RDR, CRR
 Official Court Reporter